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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 293 and 351

Reduction in Force Ratings for Retention-Longer Period to Credit Ratings; Clarification of Assignment Rights

AGENCY: Office of Personnel Management.

ACTION: Final rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing final retention regulations that will allow employees to receive retention service credit for performance ratings received during the 4-year period prior to the date the agency issues reduction in force notices. Under the applicable former regulations, employees received additional service credit for reduction in force purposes based on ratings received during the 3-year period prior to the date the agency issued specific reduction in force notices. The new regulations better ensure that employees competing for positions under OPM's reduction in force regulations receive credit for three actual annual performance ratings. These final regulations also make technical changes in how agencies (1) document the performance ratings that are used for retention purposes, (2) establish competitive areas that cover an Inspector General activity, and (3) offer temporary positions under OPM's reduction in force regulations.

EFFECTIVE DATE: January 16, 1992. For reduction in force actions effective after January 16, 1992, but before January 19, 1993, agencies may use either 5 CFR 351.504 in these final regulations, or the current 5 CFR 351.504 in 5 CFR part 351 (January 1, 1991, edition).

FOR FURTHER INFORMATION CONTACT: Thomas A. Glennon or Edward P. McHugh, (202) 606-0960; FAX (202) 606-0390.

SUPPLEMENTARY INFORMATION:

Summary of Comments

On May 8, 1991, OPM published (at FR 21332) proposed regulations to revise 5 CFR part 351. These regulations proposed: (1) Extending the 3-year period for crediting performance ratings used for retention purposes to a 4-year period; (2) establishing separate competitive areas that cover an Inspector General function; and (3) limiting offers of assignment to temporary positions.

We received comments from seven agencies and one individual. Five agencies and the individual supported our proposal to base reduction in force service credit for performance upon a 4-year period rather than the present 3-year period. One agency did not support the proposal. In the final regulations, we extend the 3-year period to a 4-year period.

One agency also suggested that we publish conforming changes in 5 CFR part 293 (Personnel Records) at the same time that final 5 CFR part 351 regulations are published. We agree with this suggestion and have adopted it in the final regulations.

Two agencies suggested that we clarify that an agency must establish a separate competitive area for an Inspector General activity only if it is established under authority of the Inspector General Act of 1978 (Pub. L. 95-452), as amended. Again, we agree with this suggestion and have adopted it in the final regulations.

Implementation of New Reduction in Force Performance Rating Requirements

To minimize administrative difficulties, the new 4-year period for crediting performance ratings used for retention purposes is being phased in over a 1-year period. It must be applied to any action under 5 CFR part 351 that is effective on or after 1 year following the effective date of these final regulations. In the interim, agencies may use either these final regulations or the present regulations found in 5 CFR 351.504.

(1) Sections 293.404(a)(1) and 293.405(a) are revised to provide that agencies will generally retain performance ratings and supporting documents for a minimum of a 4 years rather than 3 years.

(2) Sections 351.504(b) and 351.504(c) are revised to provide that an employee's entitlement to additional service credit for reduction in force purposes is based on the employee's three most recent annual performance ratings of record received during the 4-year period prior to the date the agency issues reduction in force notices. These final regulations also provide that, when a cutoff date is used, employees receive performance credit for retention purposes based on the three most recent annual ratings received during the 4-year period prior to the cutoff date. In addition, these regulations require that the awarding of additional service credit for reduction in force purposes must be uniformly and consistently applied by an agency, must be consistent with the agency's performance management system, and must be documented in the agency's performance appraisal system.

(3) Section 351.402(d) is added and states that each Inspector General office established under authority of the Inspector General Act of 1978 (Pub. L. 95-452) must be in a separate reduction in force competitive area that is established only for that office.

(4) Section 351.701(a) is revised to clarify longstanding OPM policy that promotion potential is not a consideration in determining whether an employee is offered assignment to another position, and an employee who accepts an offer of assignment retains the same status and tenure in the new position.

(5) Section 351.703 is revised to provide that an agency may waive qualifications in offering an employee assignment only to a vacant, rather than an occupied, position.

(6) Section 351.704(d) is added to prohibit an agency from offering a competing employee assignment to a temporary position except in lieu of separation by reduction in force. This revision provides that an agency may satisfy a nontemporary employee's right of assignment under the reduction in force regulations only by offering the employee a nontemporary position. Also, § 351.704(a)(2) is revised to clarify when an agency may offer a vacant other-than-full-time position to a full-time employee, or offer a full-time position to an other-than-full-time employee.

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(7) Section 351.802(a) is revised to provide that an employee's reduction in force notice must include the employee's annual performance ratings of record for retention purposes that the employee received in the 4 years prior to, as appropriate, the date the agency issues reduction in force notices or the agency's cutoff date, as covered in § 351.504.

E.O. 12291 Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects Federal employees.

List of Subjects in 5 CFR Parts 293 and 351

Government employees.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending parts 293 and 351 of title 5, Code of Federal Regulations, as follows:

PART 293—PERSONNEL RECORDS

1. The authority citation for part 293 continues to read as follows:

Authority: 5 U.S.C. 552, 4302a, and 4315; E.O. 12107 (December 28, 1978); 3 CFR 1954–1958 Comp.; U.S.C. 1103, 1104 and 1302; 5 CFR 7.2; E.O. 9830; 3 CFR 1943–1948 Comp.; 5 U.S.C. 2951(2) and 3301; and E.O. 12107.

2. Section 293.404(a)(1) is revised to read as follows:

§ 293.404 Retention schedule.

(a)(1) Except as provided in § 293.405(a), performance ratings or documents supporting them are generally not permanent records and shall, except for appointees to the SES and including incumbents of executive positions not covered by SES, be retained as prescribed below:

(i) Performance ratings of record, including the performance plans on which they are based, shall be retained for 4 years;

(ii) Supporting documents shall be retained for as long as the agency deems appropriate (up to 4 years);

(iii) Performance records superseded (e.g., through an administrative or judicial procedure) and performance-related records pertaining to a former employee (except as prescribed in § 293.405(a)) need not be retained for a minimum of 4 years. Rather, in the former case they are to be destroyed and in the latter case agencies shall determine the retention schedule; and

(iv) Except where prohibited by law, retention of automated records longer than the maximum prescribed here is permitted for purposes of statistical analysis so long as the data are not used in any action affecting the employee when the manual record has been or should have been destroyed.

* * * * *

3. Section 293.405(a) is revised to read as follows:

§ 293.405 Disposition of records.

(a) When the OPF of a non-SES employee is sent to another servicing office in the employing agency, to another agency, or to the National Personnel Records Center, the "losing" servicing office shall include in the OPF all performance ratings of record that are 4 years old or less, including the performance plan on which the most recent rating was based, and the summary rating prepared when the employee changes positions, as prescribed in part 430 of this chapter. Also, the "losing" office will purge from the OPF all performance ratings and performance plans that are more than 4 years old, and other performance-related records, according to agency policy established under § 293.404(a)(2) and in accordance with FPM Supplement 293–31.

* * * * *

PART 351—REDUCTION IN FORCE

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503.

2. Section 351.402 is amended by adding a new paragraph (d), and paragraphs (a), (b), and (c) are republished for the convenience of the reader. As revised § 351.402 reads as follows:

§ 351.402 Competitive area.

(a) Each agency shall establish competitive areas in which employees compete for retention under this part.

(b) A competitive area may consist of all or part of an agency. The minimum competitive area in the departmental service is a bureau, major command, directorate or other equivalent major subdivision of an agency within the local commuting area. In the field, the minimum competitive area is an activity under separate administration within the local commuting area. A competitive area must be defined solely in terms of an agency's organizational unit(s) and geographical location, and it must include all employees within the competitive area so defined.

(c) When a competitive area will be in effect less than 90 days prior to the effective date of a reduction in force, a description of the competitive area shall be submitted to the OPM for approval in advance of the reduction in force. Descriptions of all competitive areas must be made readily available for review.

(d) Each agency shall establish a separate competitive area for each Inspector General activity established under authority of the Inspector General Act of 1978, Public Law 95–452, as amended, in which only employees of that office shall compete for retention under this part.

3. Section 351.504 is amended by revising paragraph (b), the introductory text to paragraph (c), and the introductory text to paragraph (d) as set out below. The remainder of the section is republished for the convenience of the reader. As revised § 351.504 reads as follows.

§ 351.504 Credit for performance.

(a) Annual performance ratings of record of outstanding (Level 5), exceeds fully successful (Level 4), fully successful (Level 3), minimally successful (Level 2), and unacceptable (Level 1), or equivalent, are those ratings established under part 430 of this chapter.

(b)(1) An employee's entitlement to additional service credit for performance under this subpart shall be based on the employee's three most recent annual performance ratings of record received during the 4-year period prior to the date of issuance of reduction in force notices, except as provided in paragraph (b)(2) of this section.

(2) To provide adequate time to determine employee retention standing, an agency may provide for a cutoff date—a specified number of days prior to the issuance of reduction in force notices—after which no new annual ratings will be put on record and used for purposes of this subpart. When a cutoff date is used, an employee will receive performance credit for the three most recent annual ratings received during the 4-year period prior to the cutoff date.

(3) To be creditable for purposes of this subpart, a rating must have been issued to the employee, with all appropriate reviews and signatures, and must also be on record (e.g., the rating is available for use by the office responsible for establishing retention registers).

(4) The awarding of additional service credit based on performance for purposes of this subpart must be uniformly and consistently applied, and must be consistent with the agency's performance appraisal system, and other appropriate issuances that implement these policies. Each agency must specify in its performance appraisal system or other appropriate issuance:

(i) The types of annual performance ratings of record that are used for purposes of this subpart;

(ii) The conditions under which a rating is considered to have been received for purposes of determining whether it is within the 4-year period prior to either the date the agency issues reduction in force notices or the agency-established cutoff date for ratings, as appropriate; and

(iii) If the agency elects to use a cutoff date, the number of days prior to the issuance of reduction in force notices after which no new annual ratings will be put on record and used for purposes of this subpart.

(c) Service credit for employees who do not have three actual annual performance ratings of record received during the 4-year period prior to the date of issuance of reduction in force notices, or the 4-year period prior to the agency-established cutoff date for ratings permitted in paragraph (b)(2) of this section, shall be determined as follows:

(1) An employee who has not received an annual performance rating of record shall receive credit for performance on the basis of three assumed ratings of fully successful (Level 3) or equivalent.

(2) An employee who has received at least one but fewer than three previous annual performance ratings of record shall receive credit for performance on the basis of the actual rating(s) received and of one, or two assumed ratings(s) of fully successful (Level 3) or equivalent, whichever is needed to credit the employee with three ratings.

(d) The additional service credit an employee receives for performance under this subpart shall be expressed in additional years of service and shall consist of the mathematical average (rounded in the case of a fraction to the next higher whole number) of the employee's last three (actual and/or assumed) annual performance ratings of record computed on the following basis:

(1) Twenty additional years of service for each performance rating of outstanding (Level 5) or equivalent;

(2) Sixteen additional years of service for each performance rating of exceeds fully successful (Level 4) or equivalent; or

(3) Twelve additional years of service for each performance rating of fully successful (Level 3) or equivalent.

(e) The current annual performance rating of record shall be the last annual rating except that:

(1) An employee who has received an improved rating following an opportunity to demonstrate acceptable performance as provided in part 432 of this chapter shall have the improved rating considered as the current annual performance rating of record; and

(2) An employee's current annual performance rating of record shall be presumed to be fully successful when the employee had been demoted or reassigned under part 432 of this chapter because of unacceptable performance and as of the date of issuance of reduction in force notices has not received a rating for performance in the position to which demoted or reassigned.

(4) Section 351.701 is amended by revising paragraph (a) to read as follows:

§ 351.701 Assignment involving displacement.

(a) *General.* When a group I or II competitive service employee with a current annual performance rating of record of minimally successful (Level 2) or equivalent, or higher, is released from a competitive level, an agency shall offer assignment, rather than furlough or separate, in accordance with paragraphs (b), (c), and (d) of this section to another competitive position which requires no reduction or the least possible reduction in representative rate. The employee must be qualified for the offered position. The offered position shall be in the same competitive area and last at least 3 months. Upon accepting an offer of assignment, or displacing another employee under this part, an employee retains the same status and tenure in the new position. The promotion potential of the offered position is not a consideration in determining an employee's right of assignment.

5. Section 351.703 is revised to read as follows:

§ 351.703 Exception to qualifications.

An agency may assign an employee to a vacant position under § 351.201(b) or § 351.701 of this part without regard to OPM's standards and requirements for the position if:

(a) The employee meets any minimum education requirement for the position; and

(b) The agency determines that the employee has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position.

6. Section 351.704 is amended by revising paragraph (a)(1) and adding a new paragraph (b)(4) as set out below. The remainder of the section is republished for the convenience of the reader. As revised § 351.704 reads as follows:

§ 351.704 Rights and prohibitions.

(a)(1) An agency may satisfy an employee's right to assignment under § 351.701 by assignment under § 351.201(b) or § 351.705 to a position having a representative rate equal to that to which he or she would be entitled under § 351.701.

(2) An agency may, at its discretion, choose to offer under this part a vacant other-than-full-time position to a full-time employee or to offer a vacant full-time position to an other-than-full-time employee in lieu of separation by reduction in force.

(b) Section 351.701 does not:

(1) Authorize or permit an agency to assign an employee to a position having a higher representative rate;

(2) Authorize or permit an agency to displace a full-time employee by an other-than-full time employee, or to satisfy an other-than-full-time employee's right to assignment by assigning the employee to a vacant full-time position.

(3) Authorize or permit an agency to displace an other-than-full-time employee by a full-time employee, or to satisfy a full-time employee's right to assignment by assigning the employee to a vacant other-than-full-time position.

(4) Authorize or permit an agency to assign a competing employee to a temporary position (i.e., a position under an appointment not to exceed 1 year), except as an offer of assignment in lieu of separation by reduction in force under this part when the employee has no right to a position under § 351.701 or § 351.704(a)(1) of this part. This option does not preclude an agency from, as an alternative, also using a temporary position to reemploy a competing employee following separation by reduction in force under this part.

7. Section 351.803 is amended by revising paragraph (b) to read as follows:

§ 351.803. Content of notice.

* * * * *

(b) The notice shall state specifically the employee's competitive area, competitive level, subgroup, service date, and annual performance ratings of record received during the last 4 years as provided in § 351.504 of this part.

[FR Doc. 91–29986 Filed 12–16–91; 8:45 am]

BILLING CODE 6325–01–M

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5 CFR Parts 842 and 843

RIN: 3206-AE02

Federal Employees Retirement System—Basic Annuity; Death Benefits and Employee Refunds

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting as final its proposed rules under the Federal Employees Retirement System (FERS) that (1) amend portions of the interim regulations governing the so-called "Minimum Retirement Age (MRA) plus 10" and the "early deferred" retirement provisions; (2) make technical corrections and conforming changes to the rules governing service credit deposits and survivor elections; and (3) amend the rules concerning the basic employee death benefit to permit a widow(er) who had elected to receive that benefit in installments to take the present value of the remaining payments in a single payment.

EFFECTIVE DATE: January 16, 1992.

FOR FURTHER INFORMATION CONTACT: Robert M. Rosenblatt, (202) 606-0775, extension 207.

SUPPLEMENTARY INFORMATION: On July 5, 1991, OPM published (56 FR 30701) proposed regulations that made a number of changes under subpart B, C, and F of 5 CFR part 842, and Subpart C of 5 CFR part 843. OPM received no comments on these rules. However, a letter from one agency expressed concern about a sentence in the Supplementary Information that, the agency felt, seemed to introduce a new rule. In fact, the meaning of that sentence (the last sentence beginning on page 30701) had been inadvertently distorted by the misplacement of a word. The sentence should have read as follows:

> If a refund of CSRS deductions has been paid and the individual later becomes subject to FERS, *and* the service is counted under FERS rules, a FERS deposit is required which is computed as if no deductions had been made for the service at issue.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal agencies and retirement payments to retired Government employees, spouses, and former spouses.

List of Subjects in 5 CFR Parts 842 and 843

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Law enforcement officers, Air traffic controllers, Pensions, Retirement, Survivors.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending 5 CFR part 842 and 5 CFR part 843 as follows:

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

1. The authority citation for part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); sections 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); section 842.105 also issued under 5 U.S.C. 8402(c)(1); section 842.106 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508; sections 842.604 and 842.611 also issued under 5 U.S.C. 8417; section 842.607 also issued under 5 U.S.C. 8416 and 8417; section 842.614 also issued under 5 U.S.C. 8419; section 842.615 also issued under 5 U.S.C. 8418; § 842.703 also issued under sec. 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508; section 842.707 also issued under section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203; section 842.708 also issued under section 4005 of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101-239 and section 7001 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508; subpart H also issued under 5 U.S.C. 1104.

Subpart B—Eligibility

2. Section 842.204 is amended by revising paragraph (a)(1) and (c)(3), and by adding paragraph (d) to read as follows:

§ 842.204 Immediate voluntary retirement—basic age and service requirements.

(a) * * *

(1) Except as provided in paragraph (d) of this section, after attaining the minimum retirement age and completing 10 years of service; or

* * * * *

(c) * * *

(3) A postponed commencing date must be no later than the second day before the employee's 62nd birthday.

* * * * *

(d)(1) If an employee or Member separates from service after attaining the minimum retirement age and completing 10 years of service, but is reemployed before filing an application for retirement based on that separation, the individual may not elect an annuity commencing date that precedes separation 34from the reemployment service.

(2) In the case of an employee or Member who separates from service after attaining the minimum retirement age and completing 10 years of service, and is reemployed after filing an application for retirement based on that separation, that individual may not elect an annuity commencing date that precedes separation from the reemployment service if he or she is reemployed prior to a postponed commencing date elected under paragraph (c) of this section.

3. § 842.212 is amended by revising paragraph (b)(1) and adding paragraph (c) to read as follows:

§ 842.212 Deferred retirement.

* * * * *

(b)(1) Except as provided in paragraphs (b)(3) and (c) of this section, an employee or Member who has not attained the minimum retirement age, and who, after completing 10 years of service, is separated or transferred to a position in which the individual is no longer covered by FERS, is entitled to a deferred annuity commencing—

(i) The first day of the month following the date on which the individual attains the minimum retirement age or, if later,

(ii) A date the individual designates that follows the date on which the designation is filed.

* * * * *

(c)(1) If an employee or Member separates from service after completing 10 years of service but before attaining the minimum retirement age, and is reemployed before filing an application for retirement based on that separation, that individual may not elect an annuity commencing date that precedes separation from the reemployment service.

(2) In the case of an employee or Member who separates from service after completing 10 years of service but before attaining the minimum retirement age, and is reemployed after filing an application for retirement based on that separation, that individual may not elect an annuity commencing date that precedes separation from the reemployment service if he or she is reemployed prior to a postponed commencing date elected under paragraph (b).

Subpart C—Credit for Service

4. § 842.305 is amended by revising paragraphs (a) and (e)(3) to read as follows:

§ 842.305 Deposits for Civilian Service.

(a) *Eligibility—current and former employees or Members.* An employee or Member subject to FERS and a former employee or Member who is entitled to an annuity may make a deposit for civilian service described under paragraphs (a)(2) and (a)(3) of § 842.304 upon application to OPM in a form prescribed by OPM. A deposit for civilian service cannot be made later than 30 days after the first regular monthly payment as defined in § 842.602.

* * * * *

(e) * * *

(3) Interest is computed from the midpoint of each service period included in the computation. The interest accrues annually on the outstanding portion, and is compounded annually, until the portion is deposited. Interest is not charged after the commencing date of annuity or for a period of separation from the service that began before October 1, 1956.

* * * * *

Subpart F—Survivor Elections

5. Section 842.602 is amended by adding a new definition in alphabetical order to read as follows:

§ 842.602 Definitions.

* * * * *

First regular monthly payment means the first annuity check payable on a recurring basis (other than an estimated payment or an adjustment check) after OPM has initially adjudicated the regular rate of annuity payable under FERS and has paid the annuity accrued since the time of retirement. The "first regular monthly payment" is generally preceded by estimated payments before the claim can be adjudicated and by an adjustment check (including the difference between the estimated rate and the initially adjudicated rate).

* * * * *

6. Section 842.606 is revised to read as follows:

§ 842.606 Changes of election before final adjudication.

An employee or Member may name a new survivor or change his or her election of type of annuity if, not later than 30 days after the date of the first regular monthly payment, the named survivor dies or the employee or Member files with OPM a new written election. All required evidence of spousal consent or justification for waiver of spousal consent, if applicable, must accompany any new written election under this section.

§ 842.609 [Removed]

7. Section 842.609 is removed and reserved.

8. Section 842.610 is amended by revising paragraph (a) to read as follows:

§ 842.610 Changes of election after final adjudication.

(a) Except as provided in § 842.611, § 842.612, or paragraph (b) of this section, an employee or Member may not revoke or change the election or name another survivor later than 30 days after the date of the first regular monthly payment.

* * * * *

PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

9. The authority citation for part 843 continues to read as follows:

Authority: 5 U.S.C. 8461; §§ 843.205, 843.208, and 843.209 also issued under 5 U.S.C. 8424; § 843.309 also issued under 5 U.S.C. 8442; § 843.406 also issued under 5 U.S.C. 8441.

Subpart C—Current and Former Spouse Benefits

10. Section 843.309 is amended by adding paragraph (c) to read as follows:

§ 843.309 Basic Employee Death Benefit.

* * * * *

(c)(1)(i) A current spouse who has elected to receive the basic employee death benefit in 36 installments under paragraph (b)(2) of this section may elect to receive the remaining portion of the basic employee death benefit in one payment.

(ii) The election to receive the remaining portion of the basic employee death benefit in one payment must be in writing and signed by the current spouse.

(iii) The election to receive the remaining portion of the basic employee death benefit in one payment is irrevocable when OPM authorizes the payment.

(2) Upon the death of a current spouse who was receiving the basic employee death benefit in 36 installments under paragraph (b)(2) of this section, the remaining portion of the basic employee death benefit will be paid as one payment to the estate of the current spouse.

(3) As used in this section, "remaining portion of the basic employee death benefit" means the amount of the basic employee death benefit computed under paragraph (a) of this section that has not been paid. The amount is the remaining principal computed based on an amortization schedule with the initial principal equal to the amount computed under paragraph (a) of this section and the interest rate based on the applicable factor under paragraph (b)(2) of this section.

[FR Doc. 91-29997 Filed 12-16-91; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[FV-91-421FR]

Handling of Almonds Grown in California; Change of Date for Satisfying Inedible Disposition Obligations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes from July 31 to August 31 each year, the date by which handlers of California almonds must satisfy their inedible disposition obligations. The action was unanimously recommended by the Almond Board of California (Board), the agency responsible for local administration of the Federal marketing order for California almonds. The purpose of this action is to provide handlers with more flexibility in their operations.

EFFECTIVE DATE: January 16, 1992.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Marketing Specialist, Marketing Order Administration Branch, room 2525-S, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3992.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 981 [7 CFR part 981], both as amended, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the "Act."

This final rule has been reviewed by the U.S. Department of Agriculture (Department) under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

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Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 105 handlers of California almonds subject to regulation under the marketing order for almonds grown in California during the current season. There are approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This final rule will amend § 981.442(a)(5) of the Administrative Rules and Regulations issued pursuant to the order, to allow handlers until August 31 of each year to satisfy their inedible disposition obligations. This action is based on a unanimous recommendation of the Board and upon other available information.

Section 981.42 of the order provides that handlers are required to deliver a quantity of almond kernels equal to their inedible disposition obligation to the Board or Board accepted crushers, feed manufacturers, or feeders. A handler's inedible disposition obligation is the percentage of inedible kernels in lots received by such handler during a crop year, as determined by the Federal-State Inspection Service (inspection agency), less any tolerance in effect for the crop year. Section 981.42 also provides that the Board may establish rules and regulations necessary to the administration of these provisions.

Section 981.442(a)(5) of the regulations provides that each handler's inedible disposition obligation is satisfied when the almond meat content of the material delivered to accepted users equals the inedible disposition obligation, but no later than July 31 succeeding the crop year in which the obligation was incurred. On June 28, 1991, an interim final rule [56 FR 29561] changed the July 31 date to August 31 for handlers' inedible disposition obligations for the 1990–91 crop year only.

At its June 13, 1991, meeting, the Board recommended further amending § 981.442(a)(5), to allow handlers until August 31 to satisfy their inedible disposition obligation for the 1991–92 and subsequent seasons. A proposed rule on this action was published in the **Federal Register** on September 26, 1991 [56 FR 48765]. Comments were received until October 28, 1991. One comment was received favoring the proposed action.

The comment received was from Blue Diamond Growers, Inc. The commenter stated that the tremendous growth in the industry over the last decade has turned the almond business from a seasonal one to a year round sales effort. The approval of this action will provide handlers with more flexibility in their operations. Also, this will provide handlers with sufficient time to process their growers' crops and complete the sorting out of the inedible materials. Further, extending the date until August 31 should not interfere with the processing of new crop almonds, as harvest generally begins in early September.

This action relaxes restrictions on almond handlers and does not impose any additional burden or costs on handlers.

Based on the above, the Administrator of the AMS has determined that the issuance of this final rule will not have significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is found that this action as hereinafter set forth will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

2. The last sentence in paragraph (a)(5) of § 981.442 is revised to read as follows:

Note: This action will appear in the Annual Code of Federal Regulations.

§ 981.442 Quality control.

(a) * * *

(5) * * * Each handler's disposition obligation shall be satisfied when the almond meat content of the material delivered to accepted users equals the disposition obligation, but no later than August 31 succeeding the crop year in which the obligation was incurred.

* * * * *

Dated: December 11, 1991.

Robert C. Keeney,

Deputy Director Fruit and Vegetable Division.

[FR Doc. 91–29989 Filed 12–16–91; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 376

[DoD Directive 5100.81]

Department of Defense Support Activities (DSAs)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part establishes Department of Defense Support Activities (DSAs) as an organizational category within the Department. This part defines the term DSA; specifies the criteria which DSAs must satisfy; prescribes policy and assigns responsibilities under which DSAs shall be established, supported, and operate; and includes a list of approved DSAs. The primary mission of a DSA is to perform technical and/or analytical support functions for the Office of the Secretary of Defense (OSD). For appropriate organizational, management, or efficiency reasons, DEAs are located outside the OSD and within another DoD Component. DSAs function under the authority, direction, and control of an OSD Principal Staff Assistant, and receive manpower, operational funding, and other administrative support from the DoD Component in which the DSA is located.

EFFECTIVE DATE: December 5, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. D. Clark, telephone (703) 697–1142.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 376

Organization and functions (Government agencies)

Accordingly, title 32, chapter I, subchapter R, is amended by adding part 376 to r[illegible] as follows:

PART 376—DEPARTMENT OF DEFENSE SUPPORT ACTIVITIES (DSAs)

Sec.

376.1 Purpose.
376.2 Applicability.
376.3 Definitions.
376.4 Policy.
376.5 Responsibilities.

Appendix A to Part 376—List of Department of Defense Support Activities (DSAs)

Authority: 10 U.S.C. 131.

§ 376.1 Purpose.

Under the authority vested in the Secretary of Defense by Title 10, United States Code, this part:

(a) Establishes DSAs as an organizational category within the Department.

(b) Prescribes policy and assigns responsibilities under which DSAs shall operate.

§ 376.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

§ 376.3 Definitions.

(a) *Department of Defense Support Activity (DSA).* An organizational entity of the Department of Defense whose primary mission is to perform technical and/or analytical support functions for the OSD. A DSA must satisfy all of the following criteria:

(1) Function under the direction, authority, and control of an OSD Principal Staff Assistant.

(2) Perform technical and/or analytical support functions in specific areas of interest—as distinct from the normal OSD functions of developing policy, managing resources, and evaluating and overseeing programs.

(3) Have a primary organizational mission to perform assigned functions for a designated OSD Principal Staff Assistant(s)—as distinct from organizations whose primary mission is to provide support for all or several DoD Components.

(4) Be organizationally located outside the OSD and within another DoD Component for appropriate organizational, management, or efficiency reasons.

(5) Receive manpower, operational funding, and other administrative support from the DoD Component in which the DSA is located.

(b) *OSD Principal Staff Assistant(s).* The Under Secretaries of Defense, the Director of Defense Research and Engineering, the Assistant Secretaries of Defense, the General Counsel of the Department of Defense, the Comptroller of the Department of Defense, the Assistants to the Secretary of Defense, and the OSD Directors or equivalents who report directly to the Secretary or Deputy Secretary of Defense.

§ 376.4 Policy.

A DSA shall be established in accordance with this part when it is the most efficient and effective organizational alternative for accomplishing essential technical and/or analytical support functions for an OSD Principal Staff Assistant, and shall be organized and staffed in a manner that permits the effective accomplishment of assigned responsibilities with a minimum number of personnel. To provide a framework for implementing this policy, the Director of Administration and Management shall maintain:

(a) A DoD-wide definition and criteria for DSAs.

(b) An approved list of DSAs.

(c) A procedure for establishing, disestablishing, and modifying the organization of a DSA(s).

(d) A common method of accounting for DSA personnel, and for separately and visibly describing DSA support funding and costs within the DoD budget.

§ 376.5 Responsibilities.

(a) The Director of Administration and Management, Office of the Secretary of Defense, shall:

(1) Be the DoD approval authority, with concurrence by the Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) and the Comptroller of the Department of Defense (C, DoD), for requests from OSD Principal Staff Assistants to establish or disestablish a DSA(s), or to change the mission and functions of an existing DSA. Approval will be subject to funding and manpower availability, along with other relevant factors.

(2) Be the DoD approval authority for requests from an OSD Principal Staff Assistant to increase the overall funding level for DSA(s) under that official's sponsorship. Increases that would add to the overall funding level of the separate DSA budget line in the O&M Defense Agencies Appropriation are subject to fund availability, and shall be addressed through the normal budget process.

(3) Maintain, monitor, and revise, as necessary, the official list of DSAs in appendix A to this part.

(4) Conduct periodic reviews to evaluate the continuing requirement for existing DSAs, and to ensure that the DoD components are accounting for DSAs in accordance with this part.

(b) The Assistant Secretary of Defense (Force Management and Personnel) shall review DSA manpower authorizations and issue guidance to ensure compliance with manpower levels established by the Secretary of Defense or by law.

(c) The Comptroller of the Department of Defense shall:

(1) Establish a separate DSA budget activity in the O&M Defense Agencies Appropriation.

(2) Review DSA supporting resource data contained in requests from OSD Principal Staff Assistants to establish a DSA(s), and in subsequent DSA budget submissions.

(3) Ensure that all funds required to support a DSA are separately and visibly described and justified in the budget of the DoD Component designated to provide administrative support to that DSA.

(d) The OSD Principal Staff Assistants shall:

(1) Forward requests for establishing or disestablishing a DSA(s), or for modifying the organization of an existing DSA (if changes to currently approved manpower for funding levels are required), to the Director, Administration and Management (DA&M), OSD for approval. Recommendations for establishing a DSA shall include: Assignment of DSA responsibilities, functions, relationships, authorities; identification of funding support and other resources to be allocated; appropriate organizational, management, or efficiency justification for establishing the DSA outside the OSD organizational structure; and designation of the DoD Component that will provide manpower, operational funding, and other administrative support to the DSA.

(2) When approved, establish the DSA in accordance with this part, and ensure that the DSA is efficiently organized and staffed.

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(3) Exercise authority, direction, and control over the DSA(s) assigned to their respective offices.

(4) Ensure appropriate internal management controls are established for DSAs assigned to their office, in accordance with DoD Directive 5010.38 [1].

(5) Ensure all personnel assigned to a DSA under their authority are accounted for as OSD Management Headquarters Support personnel, in accordance with DoD Directive 5100.73 [2].

(6) Be the approval authority for reallocations between personnel and non-personnel funds within a single DSA under their authority, and for reprogramming funds between DSAs under their authority, as long as the overall funding level for those DSAs is not exceeded and no other DoD reprogramming restrictions are in effect. Requests for increases that would add to the overall funding level of the DSAs under thier authority shall be referred to the DA&M, OSD for approval, consistent with paragraph (a)(2) of this section.

(7) As required, develop a memorandum of understanding (MOU) with the DoD Component designated to provide administrative support to a DSA(s) assigned to their office. MOUs shall comply with this part and, as a minimum, include supervisory, policymaking, and operating instructions, and establish required administrative controls.

(e) The Heads of the DoD Components designated to provide support to a DSA shall:

(1) Provide manpower and operational funding to the assigned DSA(s).

(2) Provide full administrative support to the assigned DSA(s) in accordance with this part and any implementing MOU that may be completed with the sponsoring OSD Principal Staff Assistant. In the case of the Defense Logistics Agency, administrative support to the assigned DSAs shall be provided on a reimbursable basis; the necessary additional funding to accommodate this requirement will be included in the appropriate DSA budget.

(3) Account for all personnel assigned to a DSA as OSD Management Headquarters Support personnel, maintain DSA manpower strength data by category of personnel (military and civilian), and report the data, under DoD Directive 5100.73, as a separate "OSD DSA" item in the Future Years Defense Program using Defense Planning and Programming Category program element code ending in "98."

(4) Submit a DoD Management Headquarters Exhibit (PB–22) and a Reconciliation of Increases and Decreases Exhibit (OP–5) which specifically identify the assigned DSA(s) to the C, DoD, in accordance with DoD 7110.1–M [3].

(5) Ensure all DSA manpower requirements and budget documentation are appropriately coordinated with and approved by the sponsoring OSD Principal Staff Assistant, prior to submission to cognizant OSD officials.

(6) Ensure all funds required to support the DSA are separately and visibly described and justified in the Component budget.

Appendix A to Part 367—List of Department of Defense Support Activities (DSAs)

DoD support activity	OSD sponsor (OSD principal staff assistant)	DoD component responsible for administrative support
1. Defense Technology Analysis Office	Director, Defense Research & Engineering (DDR&E)	Defense Logistics Agency (DLA).
2. Intelligence Program Support Group	Assistant Secretary of Defense (Command, Control, Communications & Intelligence).	Defense Intelligence Agency (DIA).
3. Defense Productivity Program Office	ASD (FM&P)	DLA.
4. Defense Manpower Data Center	ASD (FM&P)	DLA.
5. Defense Training & Performance Data Center	ASD(FM&P)	DLA.
6. DoD Civilian Personnel Systems Center	ASD(FM&P)	DLA.
7. Vulnerability & Analysis Branch, Military Studies & Analysis Division, Joint Data Systems Support Center, Defense Information Systems Agency (DISA).	Assistant Secretary of Defense (Program Analysis & Evaluation).	DISA.
8. Defense Installations Support Office	Assistant Secretary of Defense (Production & Logistics) (ASD(P&L)).	DLA.
9. Defense Analysis & Studies Office	ASD(P&L)	DLA.
10. Defense Environment Support Office	ASD(P&L)	DLA.
11. Management Support Center (Includes Administrative Support Office)	ASD(P&L)	DLA.
12. Defense Logistics Support Office	ASD(P&L)	DLA.
13. Defense Procurement Support Office	USD(A)	DLA.
14. Defense Production Resources Support Office	ASD(P&L)	DLA.
15. Defense Systems & Programs Office	ASD(P&L)	DLA.
16. Total Quality Management Support Office	Under Secretary of Defense (Acquisition)	DLA.

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 367.5(d)(4).

[3] Copies may be obtained, by written requests, to the Office of the Assistant Secretary of Defense (Public Affairs), Room 2C757, Pentagon, Washington, DC 20301.

Dated: December 10, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–29883 Filed 12–16–91; 8:45 am]

BILLING CODE 3810–01–M

Defense Logistics Agency

32 CFR Part 1285

[Defense Logistics Agency Regulation 5400.14]

Defense Logistics Agency Freedom of Information Act Program

AGENCY: Defense Logistics Agency, DoD.

ACTION: Final rule.

SUMMARY: The Defense Logistics Agency operates its Freedom of Information Act Program in accordance with DoD 5400.7–R (32 CFR part 286) which provides the policies and procedures for the Department of Defense (DoD) and the DoD Components. This final rule establishes procedures for obtaining information from DLA under the provisions of the FOIA, 5 U.S.C. 552, and revises 32 CFR part 1285.

EFFECTIVE DATE: December 17, 1991.

FOR FURTHER INFORMATION CONTACT: Susan Salus, Freedom of Information Act Officer, Administrative Management Branch, Resources Management Division, Defense Logistics Agency, room 5A120, Cameron Station, Alexandria, Virginia 22304–6100. Telephone 703–617–7583.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 1285

Freedom of information.

Gary C. Tucker,

Colonel, USA, Director of Administration.

Accordingly, 32 CFR part 1285 is revised to read as follows:

PART 1285—DEFENSE LOGISTICS AGENCY FREEDOM OF INFORMATION ACT PROGRAM

Sec.

1285.1 Purpose and scope.
1285.2 Policy.
1285.3 Definitions.
1285.4 Responsibilities.
1285.5 Procedures.
1285.6 Fees and fee waivers.
1285.7 Reports.

Appendix A to Part 1285—Gaining Access to DLA Records.

Authority: 5 U.S.C. 552.

§ 1285.1 Purpose and scope.

This rule provides policies and procedures for the DLA implementation of DoD 5400.7–R,[1] DoD Freedom of Information Act Program. It applies to HQ DLA and all DLA field activities and takes precedence over all DLA regulations that supplement the FOIA program. A list of mailing addresses for DLA activities is provided at appendix A to this part.

§ 1285.2 Policy.

(a) *General.* The public has a right to information concerning the activities of its Government. DLA policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A DLA record requested by a member of the public who follows rules established herein shall be withheld only when it is exempt from mandatory public disclosure under the FOIA. In order that the public may have timely information concerning DLA activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information should continue to be honored through appropriate means even though the request does not qualify under FOIA requirements.

(b) *Control system.* A request for records that invokes the FOIA shall enter a formal control system designed to ensure compliance with the FOIA. A release determination must be made and the requester informed within the time limits specified in this rule. Any request for DLA records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this rule, unless otherwise required by paragraph (m) of this section.

(c) *Compliance with the FOIA.* DLA personnel are expected to comply with the FOIA and this rule in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DLA FOIA program and to create conditions that will promote public trust. To promote a positive attitude among DLA personnel, each DLA Primary Level Field Activity (PLFA) will establish education and training programs described in part 286, subpart H, of this title. Training materials, including supplements, will be coordinated with DLA–XAM prior to publication or issuance.

(d) *Openness with the public.* DLA shall conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Records not exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated herein, whether or not the Act is invoked.

(e) *Avoidance of procedural obstacles.* DLA activities shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DLA records promptly. DLA activities shall provide assistance to requesters to help them understand and comply with procedures established by this rule and any rules published by the DLA PLFA's.

(f) *Prompt action on requests.* When a member of the public complies with the procedures established in this rule for obtaining DLA records, the request shall receive prompt attention; a reply shall be dispatched within 10 working days unless a delay is authorized. When a DLA activity has a significant number of requests, e.g., 10 or more, the requests shall be processed in order of receipt. However, this does not preclude an activity from completing action on a request which can be easily answered, regardless of its ranking within the order of receipt. A DLA activity may expedite action on a request regardless of its ranking within the order of receipt upon a showing of exceptional need or urgency. Exceptional need or urgency is determined at the discretion of the activity processing the request.

(g) *Public domain.* Nonexempt records released under the authority of this rule are considered to be in the public domain. Such records may also be made available in reading rooms to facilitate public access. Exempt records released pursuant to this rule or other statutory or regulatory authority, however, may be considered to be in the public domain only when their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional committee, the released records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this rule apply if the

[1] Copies may be obtained, at cost, from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161–2171.

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same individual seeks the records in a private or personal capacity.

(h) *Creating a record.* (1) There is no obligation to create nor compile a record to satisfy an FOIA request. A DLA activity, however, may compile a new record when doing so would result in a more useful response to the requester or be less burdensome to the activity provided the requester does not object. The cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which would be charged for providing the existing record. Fee assessments shall be in accordance with § 1285.6 of this part and part 286, subpart F, of this title.

(2) With respect to electronic data, the issue of whether records are actually created or merely extracted from an existing database is not always readily apparent. Consequently, when responding to FOIA requests for electronic data where creation of a record, programming, or particular format are questionable, DLA activities should apply a standard of reasonableness. In other words, if the capability exists to respond to the request and the effort would be a business-as-usual approach, then the request should be processed. However, the request need not be processed where the capability to respond does not exist without a significant expenditure of resources, thus not being a normal business-as-usual approach.

(i) *Description of the requested record.* (1) Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record that enables DLA to locate the record with a reasonable amount of effort. When a DLA activity receives a request that does not reasonably describe the requested record, it shall notify the requester of the defect. The requester may be asked to provide the type of information outlined in paragraph (i)(2) of this section. Activities are not obligated to act on the request until the requester responds to the specificity letter. When practicable, DLA activities shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the Act.

(2) The following guidelines are provided to deal with "fishing expedition" requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

(i) Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

(ii) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(3) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, nonrandom search based on the activity's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search. The decision of the DLA activity concerning reasonableness of description must be based on knowledge of its files. If the description enables DLA activity personnel to locate the record with reasonable effort, the description is adequate.

(4) The following guidelines deal with requests for personal records. Ordinarily, when only personal identifiers are provided in connection with a request for records concerning the requester, then only records retrievable by personal identifiers need be searched. The search for such records may be conducted under Privacy Act procedures contained in DLAR 5400.21.[2] No record may be denied that is releasable under the FOIA.

(j) *Possession and control.* A record must exist and be in the possession and control of DLA at the time of the search to be considered subject to this rule and the FOIA. Mere possession of a record does not presume Agency control. Information created or originated by another activity shall be referred to that activity for release determination and direct response to the requester.

(1) *Referring requests.* A DLA activity having no responsive records to an FOIA request may refer the request to another DLA activity, DoD component, or Federal agency if, after consultation with such activity, component, or agency, the intended recipient confirms that it has the requested record. In cases where the DLA activity receiving the request has reason to believe that the existence or nonexistence or the record may in itself be classified, that activity shall consult the DoD component having cognizance over the record in question before referring the request. If the DoD component that is consulted determines that the existence or nonexistence of the record is in itself classified, the requester shall be so notified by the DLA activity originally receiving the request, and no referral shall take place. Otherwise, the request shall be referred to the other DoD component, and the requester shall be notified of any such referral. Any DLA activity receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester.

(2) *Referring records.* (i) Whenever a record or a portion of a record is, after prior consultation, referred to another DLA activity, DoD component, or to a Government agency outside of the DoD for a release determination and direct response, the requester shall be informed of the referral. Referred records shall only be identified to the extent consistent with security requirements.

(ii) A DLA activity shall refer an FOIA request for a classified record that it holds to another DoD component or agency outside the Department of Defense if the record originated in the other DoD component or outside agency or if the classification is derivative. In this situation, provide the record and a release recommendation on the record with the referral action.

(iii) A DLA activity may refer a request for a record that it originated to another DoD component or agency when the record was created for the use of the other DoD component or agency. The DoD component or agency for which the record was created may have an equally valid interest in withholding the record as the DLA activity that created the record. In such situations, provide the record and a release recommendation on the record with the referral action.

(iv) Within DLA, an activity shall ordinarily refer an FOIA request for a record that it holds but that was originated by another activity or that contains substantial information obtained from another activity to that activity for direct response after coordination and obtaining concurrence from the activity. The requester shall then be notified of such referral. DLA activities shall not, in any case, release or deny such records without prior consultation with the other activity.

(3) *On-loan documents.* A DLA activity shall refer to the agency that provided the record any FOIA request for investigative, intelligence, or any other type of records that are on loan to DLA for a specific purpose if the records are restricted from further release and so marked. However if, for investigative or intelligence purposes, the outside agency desires anonymity, a DLA activity may only respond directly to the requester after coordination with the outside agency.

[2] Copies may be obtained, at cost, from DASC-PD, Cameron Station, Alexandria, VA 22304-6130.

(4) *General Accounting Office (GAO) documents.* On occasion, the DoD receives FOIA requests for GAO documents containing DoD information. Even though the GAO is outside the executive branch and not subject to the FOIA, all FOIA requests from GAO documents containing DoD information received either from the public or on referral from GAO will be processed under the provisions of the FOIA.

(5) *Agencies not subject to the FOIA.* A DLA activity may refer an FOIA request for any record that originated in an agency outside the DoD or that is based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the DLA activity must respond to the request.

(6) *Time to respond.* DLA activities that receive referred requests shall answer them in accordance with the time limits established by the FOIA and this rule. Those time limits shall begin to run upon proper receipt of the referral by the PLFA FOIA manager to respond.

(7) *Accumulating fees.* Requesters receiving the first two hours of search and the first 100 pages of duplication without charge (see part 286, subpart F, of this title) are entitled to such only once per request. Consequently, if a DLA activity, after completing its portion of a request, finds it necessary to refer the request to another DLA activity or another DoD component to action their portion of the request, the referring activity shall inform the recipient of the expended amount of search time and duplication cost to date.

(k) *Requests for authentication of records.* FOIA requests for authentication of records shall be authenticated with an appropriate seal, whenever necessary, to fulfill an official Government or other legal function according to DLA Regulation 5105.5.[3] This service, however, is in addition to that required under the FOIA and is not included in the FOIA fee schedule. DLA activities may charge for the service at a rate of $5.20 for each authentication.

(l) *Records management.* FOIA records shall be maintained and disposed of in accordance with DLA Manual 5015.1.[4]

[3] See Footnote 2 to § 1285.2(i)(4).

[4] See Footnote 2 to § 1285.2(i)(4).

(m) *Relationship between the FOIA and the Privacy Act.* Not all requesters are knowledgeable of the appropriate statutory authority to cite when requesting records. In some instances, they may cite neither Act but will imply one or both Acts. For these reasons, the following guidelines are provided to ensure that requesters receive the greatest amount of access rights under both Acts:

(1) Requesters who seek records about themselves contained in a Privacy Act system of records and who cite or imply the Privacy Act, will have their requests processed under the provisions of the Privacy Act, 5 U.S.C. 552a.

(2) Requesters who seek records about themselves which are not contained in a Privacy Act system of records and who cite or imply the Privacy Act, will have their requests processed under the provisions of the FOIA, since they have no access rights under the Privacy Act.

(3) Requesters who seek records about themselves which are contained in a Privacy Act system of records and who cite or imply the FOIA or both Acts will have their requests processed under the time limits of the FOIA and the exemption and fee provisions of the Privacy Act.

(4) Requesters who seek access to Agency records and who cite or imply the Privacy Act, the FOIA, or both will have their requests processed under the FOIA.

(5) Requesters should be advised in final responses why their request was processed under a particular act.

(n) *Reading rooms.* (1) DLA activities may provide a facility or room where the public may inspect and copy or have copied the so-called "(a)(2)" material (see § 1285.3(b) of this part). At those activities where it is impractical to set up a formal reading room, the FOIA manager will arrange for a review of "(a)(2)" material at a suitable time and location. Identifying details that, if revealed, would create a clearly unwarranted invasion of personal privacy may be deleted from "(a)(2)" materials prior to placement in reading rooms. However, in every case, justification for the deletion must be fully explained in writing. The public's right to inspect first and then decide what is to be copied applies only to "(a)(2)" material. Activities may elect to place other documents in their reading room, including so-called "(a)(1)" material (see § 1285.3(a) of this part), as a means to provide public access to such documents and allow the public to first inspect them before copying. When appropriate, the cost of copying may be imposed on the person requesting the material in accordance with § 1285.6 of this part and part 286, subpart F, of this title.

(2) *"(a)(2)" materials index.* Each activity maintaining a reading room shall maintain an index of the "(a)(2)" materials that are issued, adopted, or promulgated after 4 July 1967. No "(a)(2)" materials issued, promulgated, or adopted after 4 July 1967 that are not indexed and either made available or published may be relied upon or used or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Each index shall be arranged topically or by descriptive words rather than by case name or numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for the convenience of the DLA activity. Such materials issued, promulgated, or adopted before 4 July 1967 need not be indexed but must be made available upon request if not exempted under part 286, subpart C, of this title.

(3) DLA publications and PLFA supplements may, at the discretion of the DLA activity, be regarded as "(a)(2)" material and placed in reading rooms subject to the restrictions in paragraph (o) (2) of this section. Otherwise, requests for publications will be handled according to paragraph (o)(1) of this section.

(o) *Publications of DLA regulations, manuals, handbooks, and uncontrolled forms.* (1) Since most DLA publications are available to the public through the publications distribution sales outlet, the requester may be referred to that outlet.

(2) Requests for DLA publications which are classified, marked "FOR OFFICIAL USE ONLY," or have limited distribution statements will be referred to the issuing activity for release determination and, if appropriate formal denial. Such publications will not be placed in reading rooms. However, where a public reading room also serves as an activity's library, restricted publications may be maintained provided they are appropriately safeguarded and not commingled with other nonsensitive regulations.

(3) For DoD regulations, manuals, directives, handbooks and similar issuances, the FOIA manager may refer the requester to the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161-2171.

(p) *Exemptions.* The types of records described in part 286, subpart C, of this title may be withheld in whole or in part

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organizations, policies, functions, decisions, or procedures of a DLA activity. Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium, are not agency records. (This does not include the underlying data which is processed and produced by such software and which may in some instances be stored with the software.) Exceptions to this position are outlined in paragraph (d)(3) of this section.

(iii) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(iv) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee and not distributed to other agency employees for their official use.

(v) Information stored within a computer for which there is no existing computer program for retrieval of the requested information.

(3) In some instances, computer software may have to be treated as an agency record and processed under the FOIA. These situations are rare and shall be treated on a case-by-case basis. Examples of when computer software may have to be treated as an agency record are:

(i) When the data is embedded within the software and cannot be extracted without the software. In this situation, both the data and the software must be reviewed for release or denial under the FOIA.

(ii) Where the software itself reveals information about organizations, policies, functions, decisions, or procedures of a DLA activity, such as computer models used to forecast budget outlays, calculate retirement system costs, or optimization models on travel costs.

(iii) See part 286, subpart C, of this title for guidance on release determinations of computer software.

(4) A record must exist and be in the possession and control of DLA at the time of the request to be considered subject to this rule and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request.

(5) If unaltered publications and processed documents, such as regulations, manuals, maps, charts and related geophysical materials are available to the public through an established distribution system with or without charge, the provisions of 5 U.S.C. 552(a)(3) normally do not apply, and requests for such need not be processed under the FOIA. Normally, documents disclosed to the public by publication in the **Federal Register** also require no processing under the FOIA. In such cases, DLA activities should direct the requester to the appropriate source to obtain the record.

(e) *Appellate authority.* The Director, DLA, or his designee, except for fee waivers and category determinations. The appellate authority for such appeals is the Staff Director, Office of Administration, HQ DLA.

(f) *DLA activity.* An element of DLA authorized to receive and act independently on FOIA requests. A DLA activity has its own FOIA manager, initial denial authority, and office of counsel.

(g) *Electronic data.* Those records and information which are created, stored, and retrievable by electronic means. This does not include computer software, which is the tool by which to create, store, or retrieve electronic data. See paragraphs (d)(2)(ii) and (d)(3) of this section for a discussion of computer software.

(h) *FOIA request.* A written request for records made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a Federal agency or a fugitive from the law, that either explicitly or implicitly invokes the FOIA, DoD 5400.7–R, DLAR 5400.14, this rule, or DLA activity supplementing regulations or instructions.

(i) *Initial denial authority (IDA).* An official who has been granted authority by the Director, DLA, to withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure or to issue a "no record" determination. These include the Directors (or equivalent) of HQ DLA Primary Staff Elements (PSE's) and the Commanders (or equivalent) of PLFA's. For fee waiver and requester category determinations, the initial denial authority is the FOIA manager or head of the FOIA unit.

(j) *Public interest disclosures.* Those disclosures which shed light on DLA performance of its statutory duties and thus inform citizens about what their government is doing. The "public interest", however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files that reveals little or nothing about an agency's or official's own conduct. The public interest is one of several factors considered in determining if a fee waiver is appropriate (see part 286, subpart F, of this title).

(k) *Releasing official.* Any individual with sufficient knowledge of a requested record or program to allow him or her to determine if harm would come through release. Releasing officials are at all levels and may be selected to review a particular document because of their expertise in the subject area. The level must be high enough to make sure that releases are made according to the policies outlined here. The authority to release records of a routine nature, such as fact sheets or local directories, may be delegated to any individual at the discretion of the denial authority. In doubtful cases, releasing officials may consult with the FOIA staff or servicing counsel prior to release.

§ 1285.4 Responsibilities.

(a) *The Staff Director, Administration, HQ DLA–X:* (1) Has overall responsibility for establishment and implementation of the DLA FOIA program, providing guidance and instructions to PLFA's and PSE's.

(2) Designates a FOIA manager to administer the DLA FOIA program.

(3) Serves as the point of contact for referring members of the public to the proper DLA source for Agency records.

(4) Serves as appellate authority on fee waivers and category determinations.

(5) Serve as initial denial authority for record denials where more than one PSE is involved or where a PSE has made a determination that the requested record cannot be found.

(6) Submits required reports to the Office of the Assistant Secretary of Defense, Public Affairs.

(7) Collects and deposits fees for FOIA services performed at HQ DLA and DASC.

(b) *The General counsel, HQ DLA–G:* (1) Provides legal advice and assistance to HQ DLA PSE's and, where appropriate, PLFA's in determining decisions to withhold records.

(2) Processes appeals to the Director, DLA, of denials to provide records or "no record" determinations.

(3) Coordinates denial actions with Office of the General Counsel, DoD, and the Department of Justice, as appropriate.

(4) Ensures that case files of FOIA appeals are maintained for 6 years after final agency decision.

(c) *The Staff Director, Office of Public Affairs, HQ DLA–B,* serves as a coordinating office for the release of information to the news media where potential for controversy exists.

(d) *The Staff Director, Office of Congressional Affairs, HQ DLA–Y,* serves as a coordinating office on final

from disclosure under the FOIA unless otherwise prescribed by law.

(q) *Requests for the examination of DLA records.* Only those materials described as "(a)(2)" (and "(a)(1)" at the discretion of the PLFA head) are subject to the examination clause of the FOIA. Such requests will be submitted directly to the appropriate DLA activity listed in appendix A. FOIA managers will inform requesters of the location and time the requested record may be examined. Requesters may be charged for the cost to reproduce copies subject to the guidelines § 1285.6 of this part and part 286, subpart F, of this title.

(r) *Requests for copies of records.* Individuals seeking copies of DLA records should address their FOIA requests to the FOIA manager of the appropriate activity. Addresses and brief descriptions of functions are included in appendix A to this part.

(s) *Requests from private parties.* The provisions of the FOIA are reserved for persons with private interests as opposed to Federal Governments seeking official information. Requests from private persons will be made in writing and will clearly show all other addressees within the Federal Government to whom the request was also sent. This procedure will reduce processing time requirements and ensure better inter- and intra-agency coordination. DLA activities are under no obligation to establish procedures to receive hand delivered requests. Release for records to individuals under the FOIA is considered public release of information, except as provided for in paragraph (g) of this section and § 286.13(a) of this title.

(t) *Requests from government officials.* Requests from Members of Congress for records on behalf for a Congressional Committee, Subcommittee, or either House sitting as a whole will be processed according to DLA Regulation 5400.12.[5] Requests from officials of foreign governments which do not invoke the FOIA shall be referred to HQ DLA–I or the appropriate foreign disclosure channel for processing and the requester so notified. Requests invoking the FOIA from the following government officials will be considered the same as any other requested and processed according to this rule:

(1) Officials of State or local governments.

(2) Members of Congress seeking records on behalf of their constituents.

(3) Officials of foreign governments.

(u) *Privileged release to U.S. Government officials.* (1) Records determined to be exempt from public disclosure under one or more of FOIA exemptions may be authenticated and released to U.S. Government officials requesting them on behalf of Federal governmental bodies, whether legislative, executive, administrative, or judicial, as follows:

(i) To a Committee or Subcommittee of Congress or to either House sitting as a whole in accordance with DoD Directive 5400.4.[6]

(ii) To the Federal courts, whenever ordered by officers of the court as necessary for the proper administration of justice. However, receipt of a subpoena *duces tecum* does not automatically compel disclosure of DLA records. To qualify for privileged release under this section, the subpoena must be signed by the judge of a court of competent jurisdiction. A subpoena which has been sent through FOIA channels and signed by a litigating attorney, a subpoena service agent, or an official of a state or local court will be treated as any other FOIA request and subject to the exemptions in Part 286, Subpart C, of this title. Consult with Counsel before acting on such subpoenas.

(iii) To other Federal Agencies, both executive and administrative, as determined by the DLA Director or designee.

(2) Disclosure under these privileged release circumstances does not set a precedent for disclosure to the general public under the FOIA.

(3) DLA activities shall inform officials receiving records under the provisions of this paragraph that those records are exempt from public release under the FOIA and are privileged. DLA activities will also advise officials of any special handling instructions. See part 286, subpart D, of this title for marking requirements under privileged release circumstances.

§ 1285.3 Definitions.

The following terms and meanings shall be applicable:

(a) *"(a)(1) material".* Material described in 5 U.S.C. 552(a)(1) consisting of descriptions of central and field organizations and, to the extent that they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

(b) *"(a)(2) material".* Material described in 5 U.S.C. 552(a)(2) encompassing:

(1) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551, that may be cited, used, or relied upon as precedents in future adjudications.

(2) Statements of policy and interpretations that have been adopted by the agency and are not published in the **Federal Register.**

(3) Administrative staff manuals and instructions, or portions thereof, that establish DLA policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties or to instructions relating only to the internal management of the DLA activities. Examples of manuals and instructions not normally made available include but are not limited to the following:

(i) Those issued for audit, investigation, and inspection purposes or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(ii) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

(c) *Administrative appeal.* A request made under the FOIA by a member of the general public asking the appellate authority to reverse an initial denial authority's decision to withhold all or part of a requested record, to review a "no record found" determination, to reverse a decision to deny a request for waiver or reduction of fees, or to review a category determination for fee assessment purposes.

(d) *Agency record.* (1) The products of data compilation, such as all books, papers, maps and photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in DLA's possession and control at the time the FOIA request is made.

(2) The following are not included within the definition of the word "record":

(i) Objects or articles, such as structures, furniture, vehicles and equipment, whatever their historical value or value as evidence.

(ii) Administrative tools by which records are created, stored, and retrieved, if not created or used as sources of information about

[5] See Footnote 2 to § 1285.2(i)(4).

[6] See Footnote 1 to § 1285.1.

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responses to FOIA requests from members of the Congress.

(e) *The heads of the DLA principal staff elements (PSE's):* (1) Appoint an individual to serve as FOIA monitor. Letters of appointment will be forwarded to DLA–XAM.

(2) Forward to DLA–XAM any FOIA request received directly from the public so that the request may be administratively controlled.

(3) Ensures that provisions of this regulation are followed in processing requests for records from the public.

(4) Coordinate requests with other HQ DLA staff elements to the extent considered necessary.

(5) Coordinate any proposed denial with the General Counsel.

(6) Serve as initial denial authority.

(7) Ensure that FOIA case files of denials are maintained for 6 years and that full releases are maintained for 2 years.

(8) Make initial determinations to release records or designate individuals to make such determinations.

(f) *The PSE FOIA monitors:* (1) Process and control all FOIA requests received from DLA–XAM.

(2) Make sure established suspenses are met.

(3) Request extensions of time from DLA–XAM when necessary and within the limits of § 1285.5(j) of this part.

(4) Gather cost estimates when requested.

(5) Ensure costs for processing each Freedom of Information Act request are properly recorded.

(6) Coordinate proposed full and partial denials with DLA–XAM prior to signature by the PSE director. Forward a copy of the final response and cost information to DLA–XAM.

(g) *The heads of DLA primary level field activities (PLFA's):* (1) Designate a FOIA manager to administer the DLA FOIA program within the PLFA. Forward the name, address, and telephone number of the manager to DLA–XAM.

(2) Ensure that the provisions of this regulation are followed in processing requests for records from members of the public.

(3) Provide facilities where members of the public may examine and copy the following documents:

(i) DLAH 5805.1 [7], DLA Organization Directory.

(ii) DLAH 5025.1 [8], DLA Index of Publications.

(iii) DLAM 5015.1, Files Maintenance and Disposition.

(iv) Copies of local directories or indexes.

(v) Any other available "(a)(1)" or "(a)(2)" material.

(4) Sign letters of denial and "no record" determinations after coordination with Counsel.

(5) Refer cases of significance to DLA–XAM for review and evaluation when the issues raised are unusual, precedent setting, or otherwise require special guidance.

(6) Establish safeguards to ensure that FOUO material is protected.

(7) Establish procedures to ensure that a record is maintained of all FOIA requests for logistical data (data on magnetic tape extracted from any of the DLA automated data processing (ADP) systems). The record will contain the requester's name and address, the date of the request, what information was requested, and what information was furnished. This record will be kept for five years.

(8) Inform Public Affairs offices in advance when they intend to withhold or partially withhold a record if it appears that the withholding action may be challenged in the media.

(h) *Freedom of Information Act managers at all levels:* (1) Establish procedures to receive, control, process, and screen FOIA requests. To provide for rapid retrieval of information, FOIA managers will maintain a central log of all incoming FOIA requests.

(2) Review requests to determine if they meet the requirements of 5 U.S.C. 552. Determine category of the requester before assigning the request for search. Provide instructions to the searching office on fees and time limits for response.

(3) Consult with requesters, where necessary, to determine requester category and to resolve fee issues.

(4) Establish training and education program for those personnel who may be involved in responding to FOIA requests.

(5) Approve requests for formal extensions of time and notify requesters in writing of the extension.

(6) Grant or deny requests for fee waivers or requester category determinations and provide DLA–XAM with a copy of each such denial.

(7) Establish procedures to ensure that § 1285.5(1) of this part regarding consultation with submitters of information is complied with.

(8) Establish procedures for the collection and deposit of fees for FOIA services.

(9) Ensure that cost data is maintained for each case file.

(10) Establish procedures to ensure that record denials and "no record" determinations are signed by the PLFA initial denial authority and a copy forwarded to DLA–XAM.

(11) Notify DLA–XAM of requesters who have failed to pay fees in a timely manner.

(12) Prepare and submit reports as required.

(13) Consult with public affairs officers (PAO's) to become familiar with subject matter that is considered to be newsworthy and advise PAO's of all requests from news media representatives.

(14) Establish procedures to provide the Congressional Affairs focal point with an information copy of each FOIA request received from a member of the Congress.

(15) Coordinate any proposed supplements or training material with DLA–XAM prior to publication or dissemination.

(16) Establish procedures to ensure that case files of FOIA releases are maintained for two years after cutoff and that denials are maintained for 6 years after cutoff.

(17) Review all proposed full and partial denials prior to signature by the initial denial authority for compliance with these rules.

§ 1285.5 Procedures.

(a) *FOIA channels.* If DLA personnel receive a FOIA request directly from the public that has not been logged in and processed through the FOIA office, they will immediately forward it to the local FOIA manager.

(b) *Central log system.* Each FOIA manager will maintain a central log of FOIA requests received within the activity to ensure compliance with the time limits and accurate cost accounting, fee assessment, and reporting.

(c) *Time limit.* FOIA requests must be responded to within 10 business days after proper receipt, except in unusual circumstances outlined in paragraph (j) of this section. A request is considered properly received on the date the FOIA manager receives it provided the request has been reasonably described and the requester has either agreed to pay assessable fees or has provided sufficient justification for a fee waiver.

(d) *Screening requests.* (1) Before assigning a request for search, the FOIA manager will screen the request for defects in the description, the requester category, and the issue of fees. FOIA managers will notify requesters of any such defects and, wherever possible, offer assistance to help remedy the defects. If the FOIA manager must consult with the requester on any of the following issues, then the request is not considered to be properly received and the 10-day time limit does not begin or resume until the requester has satisfactorily addressed the issue.

(i) *Payments in arrears.* If a requester has failed to pay fees for a previous request, then the FOIA manager need not process the current request until the requester pays the delinquent amount. In such situations, the FOIA manager will notify the requester of the defect and provide an opportunity to forward payment along with any assessable interest. At that time, the FOIA manager may, at his or her discretion, demand that the requester also pay an estimated fee for the current request.

(ii) *Faulty description.* If the request is not reasonably described, the FOIA manager will notify the requester of the defect and advise that a search cannot be initiated without more specific information. In making such determinations, FOIA managers may consult with offices of primary interest to determine the details that are needed to conduct a search. See also paragraph (f)(2) of this section and § 1285.2(i) of this part.

(iii) *Requester category and fees.* The FOIA manager will analyze the request to determine the category of the requester. If the category of the requester is different than that claimed by the requester, the FOIA manager will:

(A) Notify the requester that he or she should provide additional justification to warrant the category claimed and that a search for responsive records will not be initiated until agreement has been attained relative to the category of the requester. Absent further category justification from the requester and within a reasonable period of time (i.e., 30 calendar days), the FOIA manager shall render a final category determination, and notify the requester of such determination, to include normal administrative appeal rights.

(B) Advise the requester that, notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs appropriate for the category determined by the FOIA manager. Requesters must submit a fee declaration appropriate for the following categories:

(1) Commercial. Requesters must indicate a willingness to pay all search, review, and duplication costs.

(2) Educational or noncommercial scientific institution or news media. Requesters must indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

(3) All others. Requesters must indicate a willingness to pay assessable search and duplication costs if more than two hours of search effort or 100 pages of records are desired.

(iv) *Justification for fee waivers.* If the requester has asked for a fee waiver but failed to provide a justification, FOIA managers will ask requesters to address the fee waiver criteria in part 286, subpart F, of this title before further processing the request. FOIA managers are reminded that with some types of records, a final decision cannot be made on waiver until after the records have been surfaced, reviewed, and the public benefit and previous public availability assessed.

(2) In cases where there is disagreement on the category of the requester or there is lack of justification for fee waiver, the FOIA manager may process the request without further contacting the requester if he or she believes it can be processed within the automatic $15 waiver limit.

(e) *Providing estimates.* In the situations described by paragraphs (d)(1)(iii) and (d)(1)(iv) of this section, DLA activities must be prepared to provide an estimate of assessable fees if desired by the requester. While it is recognized that search situations will vary among DLA activities and that an estimate is often difficult to obtain prior to an actual search, requesters who desire estimates are entitled to such before committing to a willingness to pay. Should actual costs exceed the actual amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the requester's agreed amount shall not be charged without the requester's agreement.

(f) *Internal processing.* (1) Upon making a determination that the request is reasonably described, that the fee issue has been settled, and that the requester does not owe for a prior request, the FOIA manager will assign the request to the appropriate office of primary interest (OPI) for handling and provide instructions on the category of the requester, the fees to be charged or waived, and what actions the OPI is to take.

(2) After reviewing a request, the OPI may determine, based on knowledge of the files and programs, that a request is, in fact, not reasonably described. OPI's will notify FOIA managers of such defects immediately so that further details may be sought from the requester. Any delays on the requester's part in receiving more detailed information will not count toward the 10-day time limit.

(g) *Initial determinations*—(1) *Reasons for not releasing a record.* There are seven reasons for not complying with a request for a record:

(i) The request is transferred to another DLA activity, DOD component, or to another Federal agency.

(ii) The DLA activity determines through knowledge of its files and reasonable search efforts that it neither controls nor otherwise possesses the requested record. Responding officials will advise requesters of the right to appeal such determinations. See paragraph (i)(5) of this section for details on processing "no record" responses.

(iii) A record has not been described with sufficient particularity to enable the DLA activity to locate it by conducting a reasonable search.

(iv) The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by this rule.

(v) The request is withdrawn by the requester.

(vi) The information requested is not a record within the meaning of the FOIA and this rule.

(vii) The record is denied in accordance with procedures set forth in the FOIA and this rule.

(2) *Reasonably segregable portions.* Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not reasonable to segregate portions of the record for release.

(h) *Preparing documents for public release*—(1) *Material containing For Official Use Only marks.* When a determination has been made that a FOUO document may be fully released to a requester under any public information program, the FOUO markings will be removed from the requester's copy prior to release. In cases where a person seeks access to his or her own record and the record is marked FOUO to protect that person's personal or proprietary interests, the FOUO marks will be deleted from the requester's copy prior to release, even though the FOUO status has not been terminated. In such cases, the official file copy will retain the FOUO warning. If only portions of a document marked as FOUO are to be released to the

[7] See Footnote 2 to § 1285.2(i)(4).
[8] See Footnote 2 to § 1285.2(i)(4).

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public under the FOIA, then the exempt portions will be taped out, blackened out, whited out, or cut out and a copy reproduced for the requester from the marked up copy. Initial denial authorities will ensure that the deleted portion cannot be read and that the FOUO marks have been lined through prior to release.

(2) *Material containing classification markings.* The procedures in paragraph (h)(1) of this section apply to classified documents with the exception that the classified portions will be cut out rather than blackened, taped, or whited out. The classification markings on the requester's copy will be deleted prior to release.

(i) *Response to requester*—(1) *Time limits.* Initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 10 working days after receipt of the request by the FOIA manager. When a decision is made to release a record, a copy should be made available promptly to the requester once he has complied with procedural requirements.

(2) *Acknowledging date of receipt.* When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

(3) *Billing.* When fees are being levied, the response to the requester will contain a billing paragraph. Responding officials will advise requesters to make checks or money orders payable to the United States Treasury and forward them to the FOIA manager of the PLFA that incurred the expense. FOIA managers will notify DLA–XAM of names and addresses of requesters who have failed to pay after a second billing has been mailed and 30 days have elapsed without payment.

(4) *Full and partial denials.* (i) When a request for a record is denied in whole or in part on the basis of one or more of the exemptions in part 286, subpart C, of this title the initial denial authority shall inform the requester in writing and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemption(s) on which the denial is based. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable Executive Order criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to the Director, DLA.

(ii) FOIA managers shall forward a copy of each letter of denial to DLA–XAM, Cameron Station, Alexandria, Virginia 22304–6100. Do not include attachments, the incoming request, or any backup material.

5. *Providing "no record" responses.* (i) If no documents can be located in response to a FOIA request, the initial denial authority will so advise the requester. Requesters will also be advised that, if they consider the response to be adverse, they may file an appeal within 60 calendar days from the date of the response. Requesters are to be advised to address appeals to the local FOIA manager and include the case number and reasons why they believe the DLA activity should have records on the subject matter.

(ii) Before a formal "no record" response is issued, OPI will verify that the requester has adequately described the record. If additional details will aid the search, then the requester will be asked to provide those details. See paragraph (d)(1)(ii) of this section and § 1285.2(i) of this part for procedures for resolving inadequate descriptions.

(iii) In cases where the requested record has been destroyed, the initial denial authority will confirm that the record was retained for the period authorized in DLAM 5015.1 before issuing a formal response. In responding to requesters in these cases, advise the requester that the records were properly destroyed according to Agency rules for record disposition and give the right to appeal as outlined in paragraph (i)(5)(i) of this section. However, do not ask the requester to provide reasons why the activity should have the records.

(iv) Upon receipt of an appeal, the FOIA manager will direct that a second search be conducted using any information supplied by the requester. If the second search produces no documents, the appeal will be forwarded to HQ DLA–G, Cameron Station, Alexandria, Virginia 22304–6100, along with a copy of the case file. The FOIA manager will include the cost information and an explanation of the method of search and the types of offices searched. In cases where the "no record" response was issued because the records have been destroyed, the FOIA manager will verify that the records were destroyed as provided for in DLAM 5015.1 and provide a statement to that effect.

(v) FOIA managers will ensure that a copy of each "no record" response letter is forwarded to DLA–XAM, Cameron Station, Alexandria, Virginia 22304–6100. Do not include attachments, the incoming request, or any backup material.

(6) *Coordination.* OPI's will ensure that the proposed response is fully coordinated with offices having an interest in the request. Proposed responses to FOIA requests from members of the Congress will be coordinated with DLA–Y or the local Congressional Affairs focal point.

(j) *Extensions of time*—(1) *Formal extensions.* In unusual circumstances, when additional time is needed to respond, the FOIA manager will acknowledge the request in writing within the 10-day period, describe the circumstances requiring the delay, and indicate the anticipated date for substantive response that may not exceed 10 additional working days. Such extensions will be approved on a case-by-case basis. In these unusual cases where the statutory time limits cannot be met and no informal extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester with a request that he agree to await a substantive response by an anticipated date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made. Since the requester still retains the right to treat this delay as a defacto denial with full administrative remedies, such extensions should be issued only when essential. The unusual circumstances that may be cited to justify delay are:

(i) *Location.* The requested record is located in whole or in part at places other than the office processing the request.

(ii) *Volume.* The request requires the collection and evaluation of a substantial number of records.

(iii) *Consultation.* Consulation is required with other DoD components or agencies having substantial interest in the subject matter to determine whether the records requested are exempt from disclosure in whole or in part under provisions of this rule or should be released as a matter of discretion.

(2) *Informal extensions.* Where practical and expedient, the FOIA manager or official designated to respond may negotiate with the requester and arrange for an informal extension. Such extensions may be appropriate in instances where the records have to be ordered from a record repository; where the record has been sent out for commercial printing and is not expected back before the 10-day time has elapsed; and similar circumstances.

(k) *Misdirected requests.* Misdirected requests shall be forwarded promptly to the FOIA manager of the DLA activity, DoD component, or Federal agency with the responsibility for the records requested. The period allowed for responding to the request misdirected by the requester shall not begin until the request is received by the FOIA manager of the PLFA that controls the records requested.

(l) *Records of contractors and other non-U.S. government sources.* (1) Executive Order 12600 of 23 June 1987 (52 FR 23781) establishes predisclosure notification procedures for confidential commercial information. When a request is received for a record that was obtained from a contractor or other non-U.S. Government source or for a record containing information clearly identified as having been provided by a contractor or other non-U.S. Government source, the source of the record or information (also known as "the submitter" for matters pertaining to proprietary data under 5 U.S.C. 552(b)(4)) (see § 286.13(a)(4) of this title) shall be notified promptly of that request and afforded reasonable time (e.g., 30 calendar days) to present any objections concerning the release, unless it is clear that there can be no valid basis for objection. The following procedures will be followed:

(i) The person designated to respond will provide the source with a copy of the incoming request, a copy of the documents responsive to the request, and a letter of instruction. The notification letter will be addressed to the president of the entity or the entity's counsel and sent by return receipt mail.

(ii) When a substantial issue has been raised, the DLA activity may seek additional information from the source and afford the source and requester reasonable opportunities to present their arguments on the legal and substantive issues involved.

(iii) Any objections to release will be evaluated and the source provided with a copy of the activity's final decision. Where a decision is made to release information claimed to be exempt, the source will be notified that the information will be released on a specified date unless the source seeks a restraining order or takes court action to prevent disclosure. Evaluators are cautioned that any decision to disclose information claimed to be exempt under 5 U.S.C. 552(b)(4) must be made by an official equivalent in rank to the initial denial authority.

(iv) When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the FOIA manager will notify the requester and suspend action on the request until after the outcome of that court action is known. When the requester brings court action to compel disclosure, the FOIA manager shall promptly notify the submitter of this action.

(2) These procedures are required for those FOIA requests for data not deemed clearly exempt from disclosure under exemption (b)(4). If, for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and established that it would be made available to the public upon request, there is no obligation to notify the source.

(3) These coordination provisions also apply to any non-U.S. Government record in the possession and control of DLA from multi-national organizations, such as North Atlantic Treaty Organization (NATO) and North American Aerospace Defense Command (NORAD), or foreign governments. Coordination with foreign governments under the provisions of this paragraph shall be made through the Department of State.

(m) *File of initial denials.* Copies of all initial denials shall be maintained by each DLA activity in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation.

(n) *Appeals.*

(1) *General.*

(i) *Appeals to record denials.* Requesters denied access to records under the provisions of part 286, subpart C, of this title may appeal such determinations to the Director, DLA. The appeal should be accompanied by a copy of the letter denying the initial request and contain the basis for disagreement with the initial refusal.

(ii) *Appeals to a "no record" finding.* Requesters have the right to appeal any "no record" finding to the FOIA manager of the activity that issued the finding. The letter of appeal should include the case number and, where appropriate, reasons why the requester believes the activity should have records on the subject matter. Using the information supplied by the requester, the FOIA manager will direct that a second search be conducted. If the second search produces no documents, the appeal will be forwarded to HQ DLA–G, Cameron Station, Alexandria, Virginia 22304–6100, along with a copy of the case file. The FOIA manager will include information on the amount of time spent on the request and provide an explanation of the method of search and the types of offices searched.

(iii) *Appeals to fee waiver denials or requester category decisions.* Requesters may appeal an initial determination regarding placement in a certain fee assessment category or waiver or reduction of fees when disclosure serves the public interest. Requesters will include a basis for disagreement and submit the appeal to the Staff Director, Office of Administration (Attn: DLA–XAM), Cameron Station, Alexandria, Virginia 22304–6100.

(2) *Time limits*—(i) *Time limits to file appeals.* The requester shall be advised to file an appeal so that it reaches the appellate authority no later than 60 calendar days after the date of the initial denial letter. At the conclusion of this period, the case may be considered closed; however, such closure does not preclude the requester from filing litigation. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the requester receives the last such notification.

(ii) *Time of receipt.* An FOIA appeal is considered received by DLA when it reaches DLA–G or, in the case of fee or requester category appeals, when it reaches DLA–XAM. Misdirected appeals should be referred expeditiously to the appropriate office.

(iii) *Time limits to decide appeals.* Final determinations on appeals normally shall be made within 20 working days after receipt.

(iv) *Delay in responding to an appeal.* (A) If additional time is needed due to the unusual circumstances described in paragraph (j) of this section, the final decision may be delayed for the number of working days (not to exceed 10), that were not used as additional time for responding to the initial request.

(B) If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in paragraph (j) of this section, they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. DLA shall continue to process the case expeditiously, whether or not the

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requester seeks a court order for release of the records, but a copy of any response provided subsequent to filing of a complaint shall be forwarded to the Department of Justice.

(C) When the appellate authority or the authority's representative must consult with the requester over an issue not previously settled, such as agreement to pay fees for documents previously denied, then any delays on the requester's part will not count toward the 20-day time limit.

(3) *Response to the requester.*

(i) When an appellate authority makes a determination to release all or a portion of records withheld by an IDA, a copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

(ii) Final refusal to provide a requested record must be made in writing by the DLA Director or his designee. In the case of fee appeals, final refusal to waive or reduce fees must be made in writing by the Staff Director of Administration. Record denial responses, at a minimum, shall conform to the following:

(A) The basis for the refusal shall be explained to the requester with regard to the applicable statutory exemption or exemptions invoked.

(B) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

(C) The response shall advise the requester that the material being denied does not contain meaningful portions that are reasonably segregable.

(D) The response shall advise the requester of the right to judicial review.

(4) *Consultaton.* (i) Final refusal involving issues not previously resolved or that are known to be inconsistent with rulings of other DoD components ordinarily should not be made without first consulting with the Office of the General Counsel of the Department of Defense.

(ii) Tentative decisions to deny records that raise new or significant legal issues of potential significance to other agencies of the Government shall be provided to the Department of Justice, Attn: Office of Legal Policy, Office of Information and Policy, Washington, DC 20530.

(5) *Records management.* Case files of appeals shall be retained by DLA–G or, in the case of fee or requester category appeals, by DLA–XAM for a period of six years to meet the statute of limitations of claims requirement.

(o) *Special mail services.* DLA activities are authorized to use registered mail, certified mail, certificates of mailing and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence.

(p) *Receipt accounts.* The Treasurer of the United States has established Receipt Account 3210 for use in depositing search, review, and duplication fees collected under the FOIA. Upon receipt of payment, the FOIA manager will forward the check or money order to DFAS/CO/PDG, P.O. Box 182317, Columbus, Ohio 43218–2317. FOIA managers will advise DFAS that the check is to be deposited to accounting classification 21R3210.0004. This account will not, however, be used for depositing receipts for technical information released under the FOIA, industrially-funded activities, and non-appropriated funded activities. Instead, payments for these shall be deposited to the appropriate fund.

§ 1285.6 Fees and fee waivers.

The rules and rates published in part 286, subpart F of this title apply to this rule. For purposes of computer search, DLA has established rates of $20 per minute of central processing unit time for mainframe computer use and $20 per hour of wall clock time for personal computer use. These rates represent average operational costs and may be used when the actual computer cost cannot be determined.

§ 1285.7 Reports.

The reporting requirement outlined in this rule is assigned Report Control Symbol DD–PA(A)1365 and will be prepared according to part 286, subpart G, of this title.

Appendix A to Part 1285—Gaining Access to DLA Records

I. General

The Defense Logistics Agency was established pursuant to authority vested in the Secretary of Defense and is an agency of DoD under the direction, authority, and control of the Assistant Secretary of Defense (Production and Logistics) and is subject to DoD policies, directives, and instructions. DLA is made up of a headquarters and 22 Primary Level Field Activities (PLFA's). DLA does not have a central repository for its records. FOIA requests, therefore, should be addressed to the FOIA Office of the DLA activity that has custody of the record desired. In answering inquiries regarding FOIA requests, DLA personnel will assist requesters in determining the correct DLA activity to address their requests. If there is uncertainty as to the ownership of the DLA record desired, the requester may be referred to the FOIA manager of the DLA activity most likely to have the record or to HQ DLA–XAM.

II. Description of DLA's Central and Field Organization

A. HQ Defense Logistics Agency, Cameron Station, Alexandria, Virginia 22304–6100

The headquarters is organized by broad functional area and includes the following offices and directorates:

Office of the Director.
Executive Director, Contracting.
Executive Director, Supply Operations.
Executive Director, Technical and Logistics Services.
Executive Director, Contract Administration.
Executive Director, Quality Assurance.
Executive Director, Program and Technical Support.
Staff Director, Congressional Affairs.
Staff Director, Public Affairs.
Staff Director, Command Security.
Staff Director, Administration.
Staff Director, Civilian Personnel.
Staff Director, Contracting Integrity.
Staff Director, Military Personnel.
Staff Director, Small and Disadvantaged Business Utilization.
Staff Director, Installation Services and Environmental Protection.
Assistant Director, Information Systems and Technology.
Assistant Director, Policy and Plans.
General Counsel.
Comptroller.

B. The PLFA's.

The 22 PLFA's are organized into six supply centers, four depots, six service centers, and six contract districts.

1. *Supply centers.* The six supply centers are responsible for materiel management of assigned commodities and items of supply relating to food, clothing, textiles, medical, chemical, petroleum, industrial, construction, electronics, and general items of supply. The six supply centers are:

a. Defense Construction Supply Center (DCSC). Buys and manages construction materials, automotive, and construction equipment components, and many repair parts used by the Military Services and other Federal agencies. Manages items ranging from common commercial items such as lumber and plumbing accessories to complex repair parts for mechanical, construction, and automotive equipment, and for military aircraft, surface ships, submarines, combat vehicles, and missile systems.

b. Defense Electronics Supply Center (DESC). Responsible for the acquisition, management, and supply of more than one-half million electronic components such as resistors, capacitors, tubes, transformers, microcircuits, and components for various communications and weapons systems.

c. Defense Fuel Supply Center (DFSC). Serves as material manager for bulk petroleum and coal and is responsible for its worldwide supply, storage, and distribution.

d. Defense Industrial Supply Center (DISC). Buys and manages industrial items such as bearings, ferrous and nonferrous metals, electrical wire, gasket material, and certain mineral ores and precious metals.

e. Defense Personnel Support Center (DPSC). Buys and manages food, clothing, and medical supplies for all the armed services, some Federal agencies and authorized foreign governments.

f. Defense General Supply Center (DGSC). Buys and manages such categories of materials as electrical hardware, materials handling equipment, kitchen and laundry equipment, woodworking and metalworking machines, photographic supplies, and precision measuring instruments.

2. *Depots.* DLA depots are responsible for the receipt, storage, and distribution of DLA-managed materiel. The principal depots are:

Defense Distribution Region West (DDRW)
Defense Distribution Region East (DDRE)
Defense Depot Memphis (DDMT)
Defense Depot Ogden (DDOU)

3. *Service centers.* DLA operates six service centers which provide technical and logistics services. The service centers are:

a. Defense Logistics Services Center (DLSC). Responsible for maintenance of the Federal Supply Catalog System, including the development and dissemination of cataloging and item intelligence data to the Military Departments and other authorized customers.

b. Defense Reutilization and Marketing Service (DRMS). The central clearinghouse for the reutilization, donation, sale, or disposal of DoD-owned excess property, including scrap and waste.

c. Defense Industrial Plant Equipment Center (DIPEC). Manages the reserve of DoD-owned industrial plant equipment. The center repairs, rebuilds, and updates equipment to avoid new procurement costs.

d. DLA Administrative Support Center (DASC). Provides general administrative support to designated DLA activities.

e. Defense National Stockpile Center (DNSC). Maintains the national reserve of strategic materials stored for use in event of war or other national emergency.

f. DLA Systems Automation Center (DSAC). Develops and maintains DLA's automated and computerized systems.

4. *Contract districts.* Six districts, each responsible for contracts covering a multistate or specialized area, administer materiel contracts after they are awarded by the military services, defense agencies, some civil agencies, and certain foreign governments. The districts are:

Defense Contract Management District Northeast (DCMDN).
Defense Contract Management District Mid Atlantic (DCMDM).
Defense Contract Management District North Central (DCMDC).
Defense Contract Management District South (DCMDS).
Defense Contract Management District West (DCMDW).
Defense Contract Management Command International (DCMCI).

III. Requester Requirements

A. Addressing Requests

Address requests to the DLA PLFA most likely to hold the records (see paragraph V of this appendix for mailing addresses of FOIA managers). If the PLFA is undeterminable, address requests to HQ DLA–XAM for proper routing. Requests must be in writing.

B. Description of Records.

Provide a reasonable description of the documents you are seeking. If you have detailed information which would help reduce the search time involved, please include it in your request. If you have a document which references the DLA record you seek, include a copy of that document.

C. Fees and fee waivers.

State your willingness to pay fees above the $15 automatic waiver or provide a justification for waiver of all or part of the costs. Waiver requests must address with specificity each of the fee waiver elements in part 286, subpart F, of this title.

IV. Availability of DLA Publications

Unrestricted DLA regulations, manuals, and handbooks may be purchased from the DLA publications sales outlet. DLA Handbook 5025.1, Defense Logistics Agency Index of Publications, is published quarterly and may be used to help you identify publications of interest to you. Orders for this and other nonrestricted publications may be placed through DASC–PD, Cameron Station, Alexandria, VA 22304–6130. That office will advise you of cost before completing your order.

V. FOIA Mailing Addresses

HQ Defense Logistics Agency, Attn: HQ DLA–XAM, Cameron Station, Alexandria, VA 22304–6100.
Defense Construction Supply Center, Attn: DCSC–WXA, 3990 E. Broad Street, Columbus, OH 43216–5000.
Defense Electronics Supply Center, Attn: DESC–WXA, 1507 Wilmington Pike, Dayton, OH 45444–5252.
Defense Fuel Supply Center, Attn: DFSC–DB, Cameron Station, Alexandria, VA 22304–6160.
Defense General Supply Center, Attn: DGSC–DB, Richmond, VA 23297–5000.
Defense Industrial Supply Center, Attn: DISC–PPR, 700 Robbins Avenue, Philadelphia, PA 19111–5096.
Defense Personnel Support Center, Attn: DPSC–WXA, 2800 South 20th Street, Philadelphia, PA 19101–8419.
Defense Distribution Region East, Attn: DDRE–WX, New Cumberland, PA 17070–5001.
Defense Depot Memphis, Attn: DDMT–WX, 2163 Airways Blvd., Memphis, TN 38114–5000.
Defense Depot Ogden, Attn: DDOU–G, 800 West 12th Street, Ogden, UT 84407–5000.
Defense Distribution Region West, Attn: DDRW–WX, Tracy, California 95376–5000.
Defense National Stockpile Center Attn: DNSC–L, 1745 Jefferson Davis Highway, Crystal Square No. 4, suite 100, Arlington, VA 22202–3402.
Defense Industrial Plant Equipment Center, Attn: DIPEC–LP, 2163 Airways Blvd., Memphis, TN 38114–5051.
Defense Logistics Services Center, Attn: DLSC–WXA, 74 N. Washington Avenue, Battle Creek, MI 49017–3084.
Defense Reutilization and Marketing Service, c/o Defense Logistics Services Center, Attn: CLSC–WXA, 74 N. Washington Avenue, Battle Creek, MI 49017–3084.
DLA Systems Automation Center, Attn: DSAC–E, P.O. Box 1605, Columbus, OH 43216–5002.
DLA Administrative Support Center, Attn: DASC–RA, Cameron Station, Alexandria, VA 22304–6130.
Defense Contract Management District South, Attn: DCMDS–W, 805 Walker Street, Marietta, Georgia 30060–2789.
Defense Contract Management District Northeast, Attn: DCMDN–WX, 495 Summer Street, Boston, MA 02210–2184.
Defense Contract Management District North Central, Attn: DCMDC–WX, O'Hare International Airport, P.O. Box 66926, Chicago, Il 60666–0926.
Defense Contract Management District West, Attn: DCMDW–WXA, 222 N. Sepulveda Blvd., El Segundo, CA 90245–4320.
Defense Contract Management District Mid Atlantic, Attn: DCMDM–RW, 2800 S. 20th Street, Philadelphia, PA 19101–7478.
Defense Contract Management Command International, Attn: DCMCI–MBW, Wright–Patterson AFB, OH 45433–5000.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD–FRL–3977–4]

Preparation, Adoption, and Submittal of State Implementation Plans, Method for Measurement of Condensible Particulate Emissions From Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Method 202 for the measurement of condensible particulate matter (CPM) was proposed in the Federal Register on October 12, 1990, at (55 FR 41546). This action promulgates this method. On April 17, 1990 at (55 FR 14246) EPA promulgated two methods for measuring particulate matter (PM) with an aerodynamic diameter of 10 μm or less (PM_{10}). Since CPM emissions form very fine particles in the PM_{10} size range and are considered PM_{10} emissions, the Agency is adding a method for measuring CPM emissions from stationary sources to appendix M in 40 CFR part 51. The purpose of this

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rule is to provide the States with a method for measuring CPM.

EFFECTIVE DATE: December 17, 1991.

ADDRESSES: Background Information Document. The Background Information Document for the promulgated test methods may be obtained from Candace Sorrell or Peter Westlin, MD–19, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–1064. Please refer to "Summary of Comments and Responses for Method 202."

Docket. Docket No. A–90–03, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:30 a.m. to 12 Noon and 1:30 to 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, room M1500, 1st Floor, Gallery 1, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Candace Sorrell or Peter Westlin, Emission Measurement Branch (MD–19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–1064.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

The EPA is proposing to add a method for measuring CPM emissions to appendix M in 40 CFR part 51 to provide a method that States can use in their State implementation plans.

II. Public Participation

The opportunity to hold a public hearing on November 2, 1990 at 10 a.m. was presented in the proposal notice, but no one desired to make an oral presentation. The public comment period was from October 12, 1990 to December 17, 1990.

III. Significant Comments and Changes to the Proposed Rulemaking

Six comment letters were received from the proposal rulemaking. A detailed discussion of these comments is contained in the background document entitled "Summary of Comments and Responses for Method 202" which is referred to in the ADDRESSES section of this preamble. The major comments raised in these letters and the Agency's responses follow.

One commenter suggests that EPA determine the chemical composition of the material collected in the sampling train to verify that it will form ambient condensibles.

The EPA believes that material will collect in the impingers only by condensation or dissolution. Dissolved gases will evaporate during analysis and will not be measured unless the gases react to form a solid or liquid while they are in solution. The EPA has designed Method 202 to prevent the formation of reaction materials from dissolved gases. The EPA believes that any remaining material collected and measured by Method 202 represents the material that would condense in the ambient air. Additional analysis of chemical composition is not necessary.

Another comment raises the concern that the method may collect some portion of the sulfur dioxide (SO_2) as condensible.

The dissolution of SO_2 in water does not lead immediately to the formation of sulfuric acid (H_2SO_4), but tends to lower the solution pH, which further inhibits sulfate or H_2SO_4 formation. The method includes a purging procedure which effectively removes SO_2 before significant oxidation occurs. No additional revisions are necessary.

The commenter feels that if EPA is allowing Method 202 to be used in conjunction with Method 201 or 201A or another dry catch procedure to determine the total PM_{10} measurement, the combined methods should be tested for precision.

The imprecision associated with combining Method 202 with Method 201 or 201A or any other dry catch procedure is not additive because each train provides a separate measurement. Since the total precision associated with the combined methods cannot be larger than the least precise sampling method, a precision evaluation of a combined sampling system is unnecessary.

A commenter suggests that EPA add specific language to the applicability section of the method stating that Method 202 cannot be used on wet sources. He notes that Method 17 is excluded from use on wet sources, and Methods 201 and 201A are not recommended for wet sources.

The EPA agrees that Method 202 with an in-stack filter is not recommended for wet sources, and such a statement has been added to the applicability. However, a heated Method 5 filter could be used in Method 202 instead of the in-stack filter which would allow application to wet sources.

One commenter requests that EPA clearly state that Method 202 should not be used for assessing compliance with emission limits set on the basis of data derived from a different measurement approach.

The EPA agrees that a violation must be shown, in the first instance, by means of measurements made with the applicable test method. Once such a showing is made, however, section 113(e) of the Clean Air Act allows the Agency to rely on any credible evidence, including evidence other than the applicable test method, to establish the duration of the period of noncompliance for the purposes of assessing a penalty.

A commenter believes that the sample collection efficiency and method precision may be affected by the sampling conditions such as impinger temperature and sampling flow rate and the method should address this possibility.

The EPA agrees that the nature of the material in the sample gas may affect collection efficiency. For example, a field demonstration of Method 202 at an oil-fired boiler resulted in about 75 percent impinger collection efficiency. This collection efficiency can be improved with the addition of a second filter place between the second and third impinger. This option has been included in the method with a discussion of applicability.

The commenter feels the 1-hour nitrogen (N_2) purge is too long. He believes the majority of the SO_2 is removed in the first few minutes. He suggests the method be revised to reduce the purge time in conjunction with maintaining the sample under cold conditions and analyzing it within 48 hours.

The EPA does not agree with reducing the purge time. Laboratory tests have shown that a 1-hour purge time is necessary to ensure the adequate removal of SO_2 from the impinger solution.

Another commenter suggests that the method should be revised to give credit for ammonium sulfate ($(NH_4)_2SO_3$) dihydrte and other condensible particulate matter formed in the gas stream due to ammonia (NH_3) injection used to enhance the efficiency of a control device.

The EPA does not agree. The condensible particulate matter formed in the gas stream due to NH_3 injection is emitted to the atmosphere. The EPA believes that condensible particulate matter emitted from the source should be counted as such even if it is a product of a pollution-control technique.

The commenter suggests that EPA consider an alternative to $MeCl_2$ consistent with the Montreal Protocol.

The EPA investigated the effectiveness of a chloroform-ether extraction during the method development phase. The chloroform-ether was not as effective as the $MeCl_2$ in removing organic materials; however, the chloroform-ether procedure was found to be acceptable for organic extraction. The method has been revised to allow a chloroform-ether extraction.

The commenter supports the exclusion of ammonium chloride as a condensible; however, he expresses concern about $(NH_4)_2SO_4$ forming in the impingers.

The N_2 purge removes SO_2 before significant oxidation occurs. If NH_3 is present in the flue gas, the $(NH_4)_2SO_4$ formed in the impingers would not be counted as a condensible, although the H_2SO_4, which reacted with NH_3, would be counted as a condensible. Method 202 corrects for the NH_3 by measuring the sulfate using an IC analysis and subtracting out the ammonium ion (NH_4^+) mass.

The commenter agrees that the NH_3 added during the titration should be subtracted from the final weight. However, he does not agree with adding back in the water removed by the acid-base reaction.

Because H_2SO_4 is hygroscopic, the H_2SO_4 mass found in the atmosphere would have the water attached to it. The method has been revised to allow the source to correct for only the NH_4^+ or for both NH_4^+ and water as an option depending on the basis for the regulation.

A. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principle purposes of the docket are to: (1) Allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) serve as the record in case of judicial review except for interagency review materials (Section 307(d)(7)(A)).

B. Office of Management and Budget Review

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This rulemaking would not result in any of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a "major rule." It will neither have an annual effect on the economy of $100 million or more, nor will it result in a major increase in costs or prices. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rulemaking was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

C. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have any economic impact on small entities because no additional costs will be incurred.

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Dated: December 6, 1991.

F. Henry Habicht II,

Acting Administrator.

List of Subjects in 40 CFR Part 51

Administrative practice and procedure,
Air pollution control,
Carbon Monoxide,
Inter-governmental relations,
Lead,
Nitrogen dioxide,
Ozone,
Particulate matter,
Reporting and recordkeeping requirements,
Sulfur Oxides,
Volatile Organic Compounds.

The EPA amends title 40, chapter I, part 51 of the Code of Federal Regulations as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: Section 110 of the Clean Air Act as amended (42 U.S.C. 7410).

2. **Appendix M,** to part 51 Table of Contents is amended by adding an entry to read as follows:

Method 202—Determination of Condensible Particulate Emissions From Stationary Sources

3. By adding Method 202 to Appendix M to part 51 to read as follows:

Method 202—Determination of Condensible Particulate Emissions From Stationary Sources

1. Applicability and Principle

1.1 Applicability. 1.1.1 This method applies to the determination of condensible particulate matter (CPM) emissions from stationary sources. It is intended to represent condensible matter as material that condenses after passing through a filter and as measured by this method (Note: The filter catch can be analyzed according to the appropriate method).

1.1.2 This method may be used in conjunction with Method 201 or 201A if the probes are glass-lined. Using Method 202 in conjunction with Method 201 or 201A, only the impinger train configuration and analysis is addressed by this method. The sample train operation and front end recovery and analysis shall be conducted according to Method 201 or 201A.

1.1.3 This method may also be modified to measure material that condenses at other temperatures by specifying the filter and probe temperature. A heated Method 5 out-of-stack filter may be used instead of the in-stack filter to determine condensible emissions at wet sources.

1.2 Principle. 1.2.1 The CPM is collected in the impinger portion of a Method 17 (appendix A, 40 CFR part 60) type sampling train. The impinger contents are immediately purged after the run with nitrogen (N_2) to remove dissolved sulfur dioxide (SO_2) gases from the impinger contents. The impinger solution is then extracted with methylene chloride ($MeCl_2$). The organic and aqueous fractions are then taken to dryness and the residues weighed. The total of both fractions represents the CPM.

1.2.2 The potential for low collection efficiency exist at oil-fired boilers. To improve the collection efficiency at these type of sources, an additional filter placed between the second and third impinger is recommended.

2. Precision and Interference

2.1 Precision. The precision based on method development tests at an oil-fired boiler and a catalytic cracker were 11.7 and 4.8 percent, respectively.

2.2 Interference. Ammonia. In sources that use ammonia injection as a control technique for hydrogen chloride (HCl), the ammonia interferes by reacting with HCl in the gas stream to form ammonium chloride (NH_4Cl) which would be measured as CPM. The sample may be analyzed for chloride and the equivalent amount of NH_4Cl can be subtracted from the CPM weight. However, if NH_4Cl is to be counted as CPM, the inorganic fraction should be taken to near dryness (less than 1 ml liquid) in the oven and then allowed to air dry at ambient temperature to prevent any NH_4Cl from vaporizing.

3. Apparatus

3.1 Sampling Train. Same as in Method 17, section 2.1, with the following exceptions noted below (see Figure 202–1). *Note:* Mention of trade names or specific products does not constitute endorsement by EPA.

3.1.1 The probe extension shall be glass-lined or Teflon.

3.1.2 Both the first and second impingers shall be of the Greenburg-Smith design with the standard tip.

3.1.3 All sampling train glassware shall be cleaned prior to the test with soap and tap water, water, and rinsed using tap water, water, acetone, and finally, $MeCl_2$. It is important to completely remove all silicone grease from areas that will be exposed to the $MeCl_2$ during sample recovery.

3.2 Sample Recovery. Same as in Method 17, section 2.2, with the following additions:

3.2.1 N_2 Purge Line. Inert tubing and fittings capable of delivering 0 to 20 liters/min of N_2 gas to the impinger train from a

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standard gas cylinder (see Figure 202–2). Standard 0.95 cm (⅜-inch) plastic tubing and compression fittings in conjunction with an adjustable pressure regulator and needle valve may be used.

3.2.2 Rotameter. Capable of measuring gas flow at 20 liters/min.

3.3 Analysis. The following equipment is necessary in addition to that listed in Method 17, section 2.3:

3.3.1 Separatory Funnel. Glass, 1-liter.

3.3.2 Weighing Tins. 350-ml.

3.3.3 Dry Equipment. Hot plate and oven with temperature control.

3.3.4 Pipets. 5-ml.

3.3.5 Ion Chromatograph. Same as in Method 5F, Section 2.1.6.

4. Reagents

Unless otherwise indicated, all reagents must conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society. Where such specifications are not available, use the best available grade.

4.1 Sampling. Same as in Method 17, section 3.1, with the addition of deionized distilled water to conform to the American Society for Testing and Materials Specification D 1193–74, Type II and the omittance of section 3.1.4.

4.2 Sample Recovery. Same as in Method 17, section 3.2, with the following additions:

4.2.1 N_2 Gas. Zero N_2 gas at delivery pressures high enough to provide a flow of 20 liters/min for 1 hour through the sampling train.

4.2.2 Methylene Chloride, ACS grade. Blanks shall be run prior to use and only methylene chloride with low blank values (0.001 percent) shall be used.

4.2.3 Water. Same as in section 4.1.

4.3 Analysis. Same as in Method 17, section 3.3, with the following additions:

4.3.1 Methylene Chloride. Same as section 4.2.2.

4.3.2 Ammonium Hydroxide. Concentrated (14.8 M) NH_4OH.

4.3.3 Water. Same as in section 4.1.

4.3.4 Phenolphthalein. The pH indicator solution, 0.05 percent in 50 percent alcohol.

5. Procedure

5.1 Sampling. Same as in Method 17, section 4.1, with the following exceptions:

5.1.1 Place 100 ml of water in the first three impingers.

5.1.2 The use of silicone grease in train assembly is not recommended because it is very soluable in $MeCl_2$ which may result in sample contamination. Teflon tape or similar means may be used to provide leak-free connections between glassware.

5.2 Sample Recovery. Same as in Method 17, section 4.2 with the addition of a post-test N_2 purge and specific changes in handling of individual samples as described below.

5.2.1 Post-test N_2 Purge for Sources Emitting SO_2. (Note: This step is recommended, but is optional. With little or no SO_2 is present in the gas stream, i.e., the pH of the impinger solution is greater than 4.5, purging has been found to be unnecessary.) As soon as possible after the post-test leak check, detach the probe and filter from the impinger train. Leave the ice in the impinger box to prevent removal of moisture during the purge. If necessary, add more ice during the purge to maintain the gas temperature below 20 °C. With no flow of gas through the clean purge line and fittings, attach it to the input of the impinger train (see Figure 202–2). To avoid over- or under-pressurizing the impinger array, slowly commence the N_2 gas flow through the line while simultaneously opening the meter box pump valve(s). When using the gas cylinder pressure to push the purge gas through the sample train, adjust the flow rate to 20 liters/min through the rotameter. When pulling the purge gas through the sample train using the meter box vacuum pump, set the orifice pressure differential to $\Delta H_@$ and maintain an overflow rate through the rotameter of less than 2 liters/min. This will guarantee that the N_2 delivery system is operating at greater than ambient pressure and prevents the possibility of passing ambient air (rather than N_2) through the impingers. Continue the purge under these conditions for 1 hour, checking the rotameter and ΔH value(s) periodically. After 1 hour, simultaneously turn off the delivery and pumping systems.

5.2.2 Sample Handling.

5.2.2.1 Container Nos. 1, 2, and 3. If filter catch is to be determined, as detailed in Method 17, section 4.2.

5.2.2.2 Container No. 4 (Impinger Contents). Measure the liquid in the first three impingers to within 1 ml using a clean graduated cylinder or by weighing it to within 0.5 g using a balance. Record the volume or weight of liquid present to be used to calculate the moisture content of the effluent gas. Quantitatively transfer this liquid into a clean sample bottle (glass or plastic); rinse each impinger and the connecting glassware, including probe extension, twice with water, recover the rinse water, and add it to the same sample bottle. Mark the liquid level on the bottle.

5.2.2.3 Container No. 5 ($MeCl_2$ Rinse). Follow the water rinses of each impinger and the connecting glassware, including the probe extension with two rinses of $MeCl_2$; save the rinse products in a clean, glass sample jar. Mark the liquid level on the jar.

5.2.2.4 Container No. 6 (Water Blank). Once during each field test, place 500 ml of water in a separate sample container.

5.2.2.5 Container No. 7 ($MeCl_2$ Blank). Once during each field test, place in a separate glass sample jar a volume of $MeCl_2$ approximetely equivalent to the volume used to conduct the $MeCl_2$ rinse of the impingers.

5.3 Analysis. Record the data required on a sheet such as the one shown in Figure 202–3. Handle each sample container as follows:

5.3.1 Container Nos. 1, 2, and 3. If filter catch is analyzed, as detailed in Method 17, section 4.3.

5.3.2 Container Nos. 4 and 5. Note the level of liquid in the containers and confirm on the analytical data sheet whether leakage occurred during transport. If a noticeable amount of leakage has occurred, either void the sample or use methods, subject to the approval of the Administrator, to correct the final results. Measure the liquid in Container No. 4 either volumetrically to ±1 ml or gravimetrically to ±0.5 g. Remove a 5-ml aliquot and set aside for later ion chromatographic (IC) analysis of sulfates. (Note: Do not use this aliquot to determine chlorides since the HCl will be evaporated during the first drying step; Section 8.2 details a procedure for this analysis.)

5.3.2.1 Extraction. Separate the organic fraction of the sample by adding the contents of Container No. 4 ($MeCl_2$) to the contents of Container No. 4 in a 1000-ml separatory funnel. After mixing, allow the aqueous and organic phases to fully separate, and drain off most of the organic/$MeCl_2$ phase. Then add 75 ml of $MeCl_2$ to the funnel, mix well, and drain off the lower organic phase. Repeat with another 75 ml of $MeCl_2$. This extraction should yield about 250 ml of organic extract. Each time, leave a small amount of the organic/$MeCl_2$ phase in the separatory funnel ensuring that no water is collected in the organic phase. Place the organic extract in a tared 350-ml weighing tin.

5.3.2.2 Organic Fraction Weight Determination (Organic Phase from Container Nos. 4 and 5). Evaporate the organic extract at room temperature and pressure in a laboratory hood. Following evaporation, desiccate the organic fraction for 24 hours in a desiccator containing anhydrous calcium sulfate. Weigh to a constant weight and report the results to the nearest 0.1 mg.

5.3.2.3 Inorganic Fraction Weight Determination. (Note: If NH_4Cl is to be counted as CPM, the inorganic fraction should be taken to near dryness (less than 1 ml liquid) in the oven and then allow to air dry at ambient temperature. If multiple acid emissions are suspected, the ammonia titration procedure in section 8.1 may be preferred.) Using a hot plate, or equivalent, evaporate the aqueous phase to approximately 50 ml; then, evaporate to dryness in a 105 °C oven. Redissovle the residue in 100 ml of water. Add five drops of phenolphthalein to this solution; then, add concentrated (14.8 M) NH_4OH until the sample turns pink. Any excess NH_4OH will be evaporated during the drying step. Evaporate the sample to dryness in a 105 °C oven, desiccate the sample for 24 hours, weigh to a constant weight, and record the results to the nearest 0.1 mg. (Note: The addition of NH_4OH is recommended, but is optional when little or no SO_2 is present in the gas stream, i.e., when the pH of the impinger solution is greater than 4.5, the addition of NH_4OH is not necessary.)

5.3.2.4 Analysis of Sulfate by IC to Determine Ammonium Ion (NH_4^+) Retained in the Sample. (Note: If NH_4OH is not added, omit this step.) Determine the amount of sulfate in the aliquot taken from Container No. 4 earlier as described in Method 5F (appendix A, 40 CFR part 60). Based on the IC SO_4^{-2} analysis of the aliquot, calculate the correction factor to subtract the NH_4^+ retained in the sample and to add the combined water removed by the acid-base reaction (see section 7.2).

5.3.3 Analysis of Water and $MeCl_2$ Blanks (Container Nos. 6 and 7). Analyze these sample blanks as described above in sections 5.3.2.3 and 5.3.2.2, respectively.

5.3.4 Analysis of Acetone Blank (Container No. 8). Same as in Method 17, section 4.3.

6. Calibration

Same as in Method 17, section 5, except for the following:

6.1 IC Calibration. Same as Method 5F, section 5.

6.2 Audit Procedure. Concurrently, analyze the audit sample and a set of compliance samples in the same manner to evaluate the technique of the analyst and the standards preparation. The same analyst, analytical reagents, and analytical system shall be used both for compliance samples and the EPA audit sample. If this condition is met, auditing of subsequent compliance analyses for the same enforcement agency within 30 days is not required. An audit sample set may not be used to validate different sets of compliance samples under the jurisdiction of different enforcement agencies, unless prior arrangements are made with both enforcement agencies.

6.3 Audit Samples. Audit Sample Availability. Audit samples will be supplied only to enforcement agencies for compliance tests. The availability of audit samples may be obtained by writing:

Source Test Audit Coordinator (MD–77B), Quality Assurance Division, Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle, Park, NC 27711

or by calling the Source Test Audit Coordinator (STAC) at (919) 541–7834. The request for the audit sample must be made at least 30 days prior to the scheduled compliance sample analysis.

6.4 Audit Results. Calculate the audit sample concentration according to the calculation procedure described in the audit instructions included with the audit sample. Fill in the audit sample concentration and the analyst's name on the audit response form included with the audit instructions. Send one copy to the EPA Regional Office or the appropriate enforcement agency and a second copy to the STAC. The EPA Regional Office or the appropriate enforcement agency will report the results of the audit to the laboratory being audited. Include this response with the results of the compliance samples in relevant reports to the EPA Regional Office or the appropriate enforcement agency.

7. Calculations

Same as in Method 17, section 6, with the following additions:

7.1 Nomenclature. Same as in Method 17, section 6.1 with the following additions.

C_{cpm} = Concentration of the CPM in the stack gas, dry basis, corrected to standard conditions, g/dscm (g/dscf).

C_{SO_4} = Concentration of SO_4^{-2} in the sample, mg/ml.

m_b = Sum of the mass of the water and $MeCl_2$ blanks, mg.

m_c = Mass of the NH_4^+ added to sample to form ammonium sulfate, mg.

m_i = Mass of inorganic CPM matter, mg.

m_o = Mass of organic CPM, mg.

m_r = Mass of dried sample from inorganic fraction, mg.

V_b = Volume of aliquot taken for IC analysis, ml.

V_{tc} = Volume of impinger contents sample, ml.

7.2 Correction for NH_4^+ and H_2O. Calculate the correction factor to subtract the NH_4^+ retained in the sample based on the IC SO_4^{-2} and if desired, add the combined water removed by the acid-base reaction.

$$m_c = K\, C_{SO_4}\, V_{tc} \qquad \text{Eq. 202–1}$$

where:

K = 0.0205, when correcting for NH_4^+ and H_2O.
= 0.1840, when only correcting for NH_4^+.

7.3 Mass of Inorganic CPM.

$$m_i = m_r \frac{V_{tc}}{V_{tc} - V_b} - m_c \qquad \text{Eq. 202–2}$$

7.4 Concentration of CPM.

$$C_{cpm} = \frac{m_o + m_i - m_b}{Vm_{std}} \qquad \text{Eq. 202–3}$$

8. Alternative Procedures

8.1 Determination of NH_4^+ Retained in Sample by Titration.

8.1.1 An alternative procedure to determine the amount of NH_4^+ added to the inorganic fraction by titration may be used. After dissolving the inorganic residue in 100 ml of water, titrate the solution with 0.1 N NH_4OH to a pH of 7.0, as indicated by a pH meter. The 0.1 N NH_4OH is made as follows: Add 7 ml of concentrated (14.8 M) NH_4OH to 1 liter of water. Standardize against standardized 0.1 N H_2SO_4 and calculate the exact normality using a procedure parallel to that described in section 5.5 of Method 6 (appendix A, 40 CFR part 60). Alternatively, purchase 0.1 N NH_4OH that has been standardized against a National Institute of Standards and Technology reference material.

8.1.2 Calculate the concentration of SO_4^{-2} in the sample using the following equation.

$$CSO_4 = \frac{48.03\, V_t\, N}{100} \qquad \text{Eq. 202–4}$$

where

N = Normality of the NH_4OH, mg/ml.
V_t = Volume of NH_4OH titrant, ml.
48.03 = mg/meq.
100 = Volume of solution, ml.

8.3.1 Calculate the CPM as described in section 7.

8.2 Analysis of Chlorides by IC. At the conclusion of the final weighing as described in section 5.3.2.3, redissolve the inorganic fraction in 100 ml of water. Analyze an aliquot of the redissolved sample for chlorides by IC using techniques similar to those described in Method 5F for sulfates. Previous drying of the sample should have removed all HCl. Therefore, the remaining chlorides measured by IC can be assumed to be NH_4Cl, and this weight can be subtracted from the weight determined for CPM.

8.3 Air Purge to Remove SO_2 from Impinger Contents. As an alternative to the post-test N_2 purge described in section 5.2.1, the tester may opt to conduct the post-test purge with air at 20 liter/min. Note: The use of an air purge is not as effective as a N_2 purge.

8.4 Chloroform-ether Extraction. As an alternative to the methylene chloride extraction described in section 5.3.2.1, the tester may opt to conduct a chloroform-ether extraction. Note: The Chloroform-ether was not as effective as the $MeCl_2$ in removing the organics, but it was found to be an acceptable organic extractant. Chloroform and diethylether of ACS grade, with low blank values (0.001 percent), shall be used. Analysis of the chloroform and diethylether blanks shall be conducted according to Section 5.3.3 for $MeCl_2$.

8.4.1 Add the contents of Container No. 4 to a 1000-ml separatory funnel. Then add 75 ml of chloroform to the funnel, mix well, and drain off the lower organic phase. Repeat two more times with 75 ml of chloroform. Then perform three extractions with 75 ml of diethylether. This extraction should yield approximately 450 ml of organic extraction. Each time, leave a small amount of the organic/$MeCl_2$ phase in the separatory funnel ensuring that no water is collected in the organic phase.

8.4.2 Add the contents of Container No. 5 to the organic extraction. Place approximately 300 ml of the organic extract in a tared 350-ml weighing tin while storing the remaining organic extract in a sample container. As the organic extract evaporates, add the remaining extract to the weighing tin.

8.4.3 Determine the weight of the organic phase as described in Section 5.3.2.2.

8.5 Improving Collection Efficiency. If low impinger collection efficiency is suspected, the following procedure may be used.

8.5.1 Place an out-of-stack filter as described in Method 8 between the second and third impingers.

8.5.2 Recover and analyze the filter according to Method 17, Section 4.2. Include the filter holder as part of the connecting glassware and handle as described in sections 5.2.2.2 and 5.2.2.3.

8.5.3 Calculate the Concentration of CPM as follows:

$$C_{cpm} = \frac{m_o + m_i + m_f - m_b}{Vm_{std}} \qquad \text{Eq. 202–5}$$

where:

m_f = amount of CPM collected on out-of-stack filter, mg.

8.6 Wet Source Testing. When testing at a wet source, use a heated out-of-stack filter as described in Method 5.

9. Bibliography

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3. Texas Air Control Board, Laboratory Division. "Determination of Particulate in Stack Gases Containing Sulfuric Acid and/or Sulfur Dioxide." *Laboratory Methods for Determination of Air Pollutants.* Modified December 3, 1976.

4. Nothstein, Greg. Masters Thesis. University of Washington. Department of Environmental Health. Seattle, Washington.

5. "Particulate Source Test Procedures Adopted by Puget Sound Air Pollution Control Agency Board of Directors." Puget Sound Air Pollution Control Agency, Engineering Division. Seattle, Washington. August 11, 1983.

6. Commonwealth of Pennsylvania, Department of Environmental Resources. Chapter 139, Sampling and Testing (Title 25, Rules and Regulations, Part I, Department of Environmental Resources, Subpart C, Protection of Natural Resources, Article III, Air Resources). January 8, 1960.

7. Wisconsin Department of Natural Resources. *Air Management Operations Handbook, Revision 3.* January 11, 1988.

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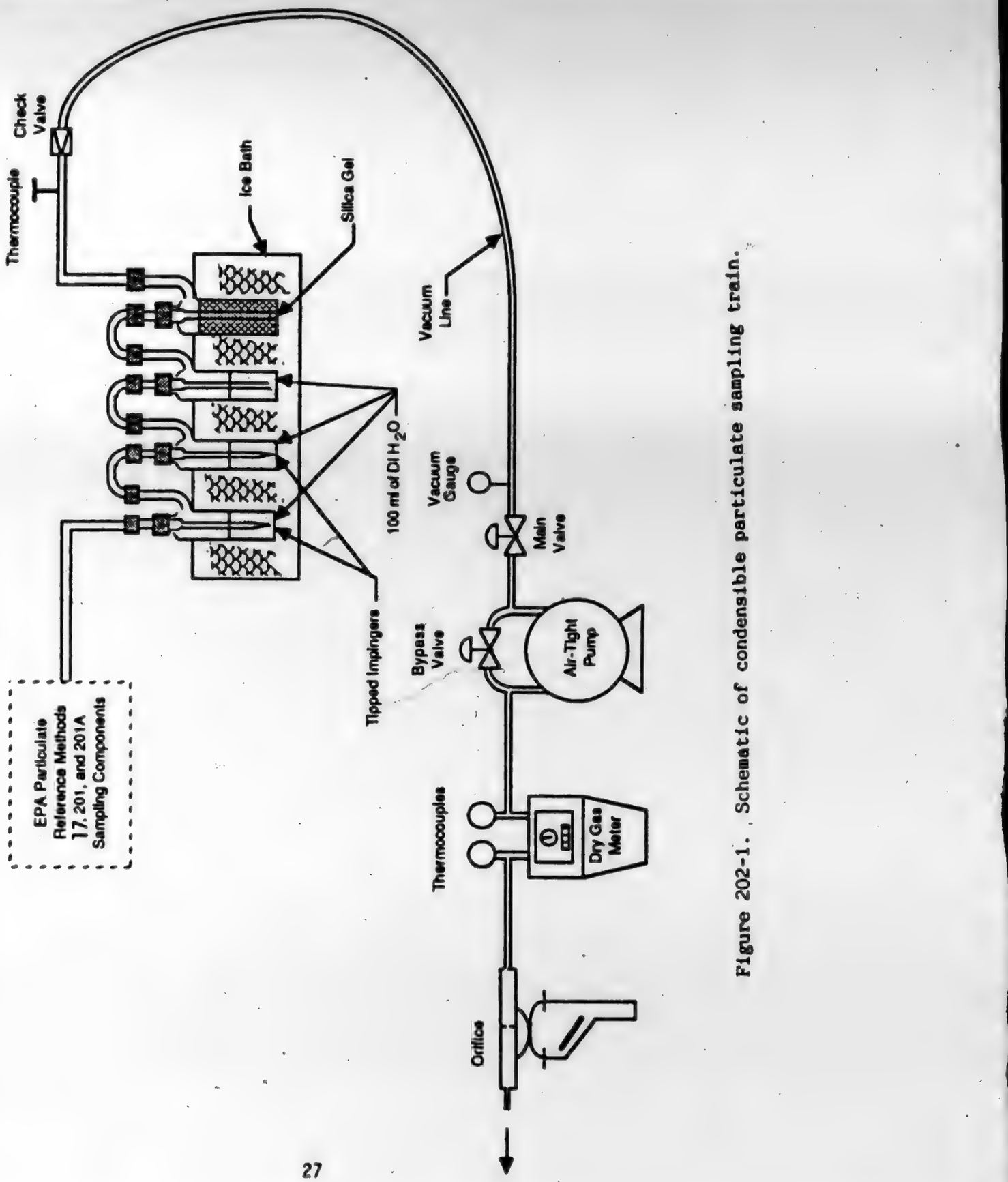


Figure 202-1. Schematic of condensible particulate sampling train.

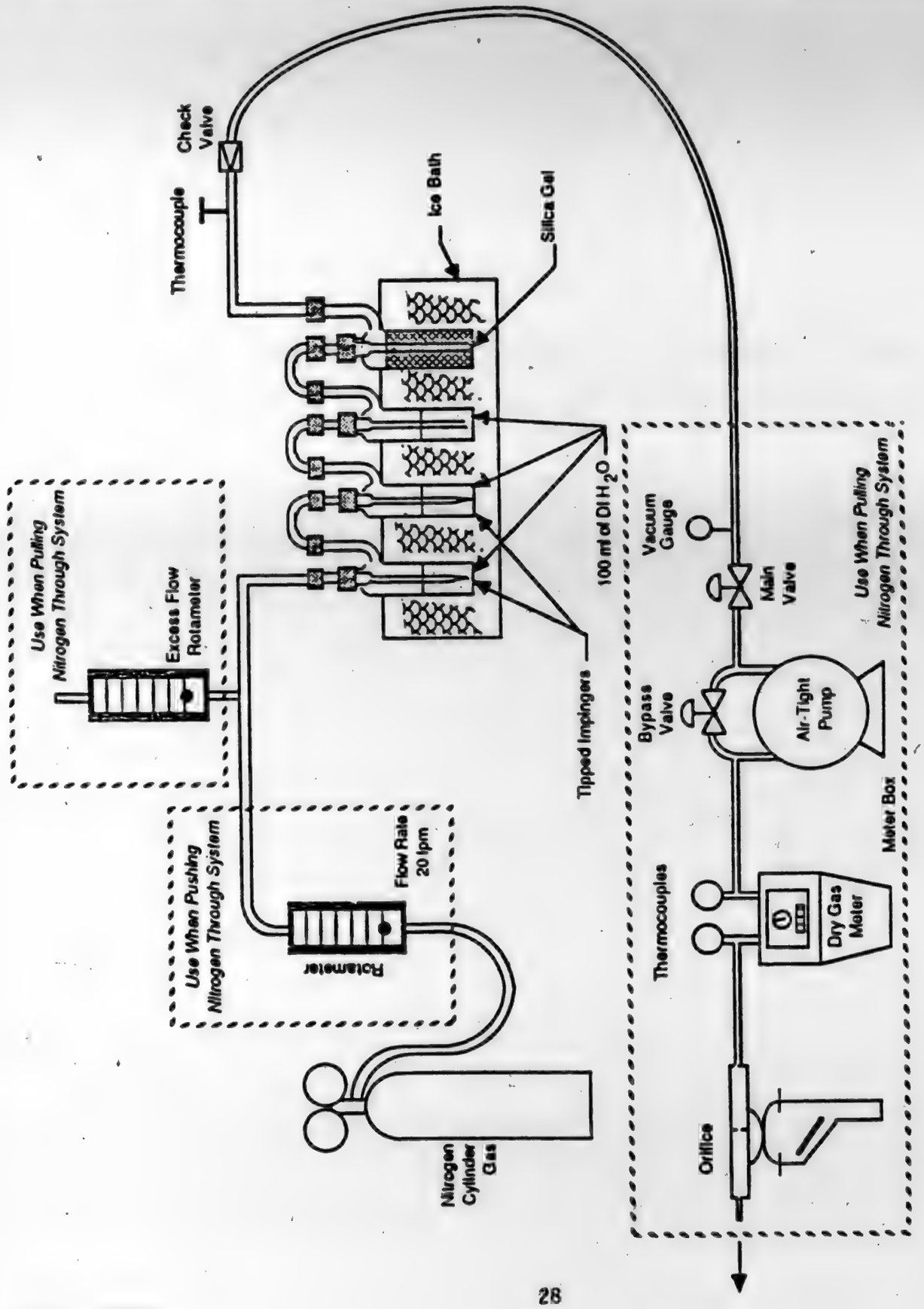


Figure 202-2. Schematic of post-test nitrogen purge system.

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Moisture Determination

Volume or weight of liquid in impingers: _____ ml or g

Weight of moisture in silica gel: _____ g

Sample Preparation (Container No. 4)

Amount of liquid lost during transport: _____ ml

Final volume: _____ ml

pH of sample prior to analysis: _____

Addition of NH_4OH required: _____

Sample extracted 2X with 75 ml $MeCl_2$?: _____

For Titration of Sulfate

Normality of NH_4OH: _____ N

Volume of sample titrated: _____ ml

Volume of titrant: _____ ml

Sample Analysis

Container number	Weight of condensible particulate, mg		
	Final weight	Tare weight	Weight gain
4 (Inorganic)			
4 & 5 (Organic)			

Total: _____

Less Blank: _____

Weight of Consensible Particulate: _____

Figure 202–3. Analytical data sheet.

[FR Doc. 91–29957 Filed 12–16–91; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[PA–14–1–5383; A–1–FRL–4083–6]

Deficiency for the Allegheny County Portion of the Pennsylvania State Implementation Plan—Banking Provisions

AGENCY: Environmental Protection Agency.

ACTION: Notice of deficiency.

SUMMARY: Allegheny County is located in western Pennsylvania and is one of seven counties which make up the Pittsburgh ozone nonattainment area. The Allegheny County Health Department, Bureau of Air Quality, has promulgated regulations which are substantially the same as the State regulations but which apply solely to the County.

In a May 26, 1988 State Implementation Plan (SIP) call and in a **Federal Register** notice on September 21, 1989, EPA identified the Pennsylvania regulations for generic bubbles (title 25, § 129.53) and banking (title 25, § 127.67) as deficient. A SIP call is a finding made by EPA pursuant to section 110(a)(2)(H) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(H) in which EPA identifies a SIP to be inadequate to attain and maintain the National Ambient Air Quality Standard (NAAQS). In a June 14, 1988 follow-up letter to the May 26, 1988 SIP call, EPA specifically identified deficiencies in the Allegheny County SIP. In response to this SIP call, Allegheny County was required to submit a workplan to correct all deficiencies in the Allegheny County SIP, including those for the banking regulations (article XX, Section 808). On September 1, 1988, Allegheny County proposed to correct all SIP deficiencies by September 30, 1989. On August 26, 1991, Allegheny County deleted its generic bubble regulation. However, Allegheny County has not corrected or deleted its deficient banking regulations.

On September 28, 1990, EPA sent a letter to Allegheny County to verify that EPA considers section 808 to be deficient and provided formal notification that this regulation must be changed. The corrections to Allegheny County's banking regulation, section 808, are overdue according to Allegheny County's SIP call commitment.

Therefore, this notice reiterates the deficiencies cited in the June 14, 1988 follow-up letter to the May 26, 1988 SIP call to Allegheny County, specifically identifies deficiencies with respect to the Allegheny County banking regulation (article XX, section 808), and explicitly establishes a 60 day schedule for the submittal, to EPA, of an approvable SIP revision to correct deficiencies in the banking regulations or a draft which proposes to delete this regulation from the Allegheny County SIP.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia H. Stahl, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, (215) 597–9337, FTS 597–9337.

SUPPLEMENTARY INFORMATION: On December 4, 1986, EPA published the final Emissions Trading Policy Statement (ETPS) on the banking and use of emission reduction credits (51 FR 43814). In the ETPS, EPA indicated that it would notify States which had deficient generic rules and require the States to correct those rules according to a schedule established in the notification. The ETPS further stated that if the State did not meet the schedule established in the notification, EPA could issue a SIP call with respect to those generic regulations.

On May 26, 1988, EPA issued State Implementation Plan (SIP) calls for States around the nation. Pennsylvania, including Allegheny County, was one of the States which received a SIP call. Although the ETPS anticipated that a notice would precede a SIP call, in this particular case, EPA has already issued a SIP call to Allegheny County because air quality data indicated that the County continued to exceed the ozone standard for the years 1985–87. EPA stated in that SIP call that all deficient VOC regulations must be corrected within one year. Therefore, no further schedule will be established in this Notice for the correction of deficiencies in the Allegheny County banking regulation.

Emission Offsets (Section 808)

The Allegheny County regulations pertaining to the banking of emission credits are located in article XX, section 808 which also imposes criteria for the calculation of emission offsets. The specific subsections in § 808 which relate to banking are B., C., D., E., and G. The Allegheny County banking regulation, like the Pennsylvania banking regulation, does not meet the December 4, 1986 ETPS because, under the Allegheny County regulation, banked emissions are not required to be surplus, enforceable, permanent, and quantifiable. The banking regulation must meet all the requirements specified in that ETPS including such requirements as specifying how emission credits are to be calculated and specifying all the relevant data needed to perform this calculation. Recordkeeping provisions need to be required and clearly stated and a formal system of recording emission credit/debit transactions must be established. Clear records of ownership, available for public inspection must be kept and updated. Provisions must be added to make emission credit deposits state enforceable at the time of deposit and to make emission credit withdrawals both state and federally enforceable at the time of use. As stated in the December 4, 1986 ETPS, emission credits obtained from a bank must meet the requirements of the applicable program(s) for which their use is intended (Whether bubbling to meet Reasonably Available Control Technology (RACT) source regulations or offsetting emissions for prevention of significant deterioration (PSD) or new source review (NSR) purposes) at the time the emission credits are to be used. The State (and the County) must allow for possible adjustments to the banked emission credits for air quality management purposes by stating the conditions under which banked emission credits can be altered or eliminated. The existence of banked emission credits cannot interfere with the State's (or County's) ability to obtain additional emission reductions to attain or maintain ambient air quality

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standards. All external offsets must be federally enforceable. External offsets are those emission credit transactions which involve two or more sources of different ownership/control.

Schedules

EPA's SIP call required that Allegheny County submit a workplan by August 15, 1988 indicating the schedule for completing, among other activities, correction of deficiencies including those listed for the generic bubble regulations in Allegheny County. The schedule was not to exceed one year from the date of the workplan submittal. On September 1, 1988, Allegheny County submitted a workplan with a schedule to submit a final draft to correct all SIP deficiencies by September 30, 1989 and to adopt those changes on a schedule dependent on Pennsylvania's adoption of similar changes. The correction of section 808 deficiencies, while implied in the May 26, 1988 SIP call, was not specifically included. However, the SIP call letter stated that while every attempt had been made to identify all deficiencies, the State (or County) was requested to affirm the list of deficiencies by comparing its SIP with the guidance provided. Therefore, Allegheny County should correct the deficiencies identified in section 808 by submitting an approvable SIP revision to EPA by January 17, 1992.

On April 3, 1990, EPA informed Allegheny County that its banking regulations are substantially identical to Pennsylvania's regulations and that its regulations pertaining to bubbles and banking are deficient in the same respect. On September 28, 1990, Allegheny County was formally notified that EPA could begin the process of rescinding approval of, among other provisions, the generic bubble and banking provisions in the Allegheny County SIP if an approvable SIP revision was not submitted. The consequence of rescinding approval of the Allegheny County banking regulation will be to remove Allegheny County's authority to approve banking transactions without prior EPA approval.

Conclusion

Through the May 26, 1988 SIP call, Allegheny County was formally notified that its generic bubble regulations (section 506) and banking regulations (section 808) are deficient. EPA has previously brought to Allegheny County's attention the deficiencies in the banking regulations. Although EPA believes that the May 26, 1988 SIP call provided Allegheny County with formal notification that the banking regulations are deficient, this notice provides further notification of the specific deficiencies in section 808 banking provisions. Nothing in this notice should be construed as implicitly or explicitly making any determination regarding the nonattainment new source review portion of the Allegheny County SIP.

Action

The purpose of this notice is to reiterate the County's previous obligation to correct the banking regulations (or delete them), and to notify Allegheny County that it must submit an approvable SIP revision to EPA by February 18, 1992. Failure to submit an approvable SIP revision could result in an EPA action to rescind federal approval of the banking regulations in Allegheny County.

Under 5 U.S.C. 605(b), the Regional Administrator certifies that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This Agency action is consistent with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the deficiencies identified in the Allegheny County generic bubble and banking regulations were first identified prior to the 1990 Clean Air Act Amendments.

This action, pertaining to a notice of deficiency for the Allegheny County banking regulation, has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and Recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: December 6, 1991.

Edwin B. Erickson,

Regional Administrator.

[FR Doc. 91–30098 Filed 12–16–91; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–42118; FRL 3945–8]

40 CFR Part 799

Testing Consent Order For Sodium Cyanide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This document announces that EPA has signed an enforceable testing Consent Order with E.I. du Pont de Nemours and Company (DuPont), FMC Corporation (FMC), Degussa Corporation (Degussa), ICI Americas Incorporated (ICI), and Cyanco Company (Cyanco), hereinafter referred to as "the Companies." The Companies have agreed to perform certain chemical fate and terrestrial effects tests on sodium cyanide (NaCN; CAS No. 143–33–9). This sodium cyanide (NaCN) Consent Order is added to the list of testing consent orders in 40 CFR 799.5000 for which export notification requirements of 40 CFR part 707 apply. This rule constitutes EPA's response to the Interagency Testing Committee's (ITC) recommendation that EPA consider chemical fate and terrestrial effects tests on sodium cyanide.

EFFECTIVE DATE: December 17, 1991.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, rm E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under procedures described in 40 CFR part 790, the Companies have entered into a testing Consent Order with EPA, and have agreed to perform certain chemical fate and terrestrial effects tests for NaCN, (CAS No. 143–33–9). This rule amends 40 CFR 799.5000 by adding NaCN to the list of chemical substances and mixtures subject to testing Consent Orders.

I. Recommendation

In its Twenty-sixth Report to EPA, published in the Federal Register of June 5, 1990 (55 FR 23050), the ITC recommended with intent-to-designate NaCN for environmental effects testing. The rationale for the original recommendation with intent-to-designate appeared in the ITC's Twenty-sixth Report. In its Twenty-seventh Report to EPA published in the Federal Register of March 6, 1991 (56 FR 9534), NaCN was designated as a candidate for rulemaking under TSCA and the testing recommendations were changed because discussions with the Department of Interior (DOI), EPA, and industry identified additional testing data gaps. The Twenty-seventh Report designated certain chemical fate and terrestrial effects tests for NaCN. Specifically, the ITC recommended soil sorption testing as well as testing for

toxicity to migratory birds, plant uptake and translocation.

II. Testing Consent Order Negotiations

In accordance with 40 CFR 790.28, EPA issued a Federal Register notice on June 5, 1990 (55 FR 23050), announcing a public meeting and EPA's intent to develop a testing Consent Order or a TSCA section 4 Test Rule for NaCN. EPA requested persons wishing to be designated as "interested parties," or to monitor testing negotiations on NaCN, to contact EPA by July 5, 1990. DuPont, FMC, and Degussa identified themselves as interested parties. On June 20, 1990, EPA convened a public meeting attended by representatives of the interested parties and DOI's Fish and Wildlife Service (FWS) to discuss NaCN testing. DuPont, FMC, and Degussa announced their interest in pursuing testing of NaCN through a testing Consent Order, if a consensus could be reached on the testing necessary to address the concerns raised by DOI. DOI's concerns were detailed in a letter to the ITC (Ref. 1). DOI recommended that the ITC consider further testing of NaCN based upon potential adverse effects to wildlife when NaCN is used commercially to recover precious metals from mine tailings.

During the next year, EPA met with representatives of DOI/FWS to develop a suitable testing program for NaCN. DuPont, FMC, and Degussa were sent a draft testing Consent Order outlining the program, and invited to comment. In addition to submitting written comments on the document, DuPont, FMC, and Degussa requested an opportunity to meet with EPA. EPA convened a meeting on July 9, 1991, with DuPont, FMC, and Degussa at which the parties agreed on data deficiencies and the testing necessary to adequately address these deficiencies. In addition to DuPont, FMC, and Degussa, representatives of ICI and Cyanco expressed interest on behalf of their companies to participate in a testing Consent Order. On November 29, 1991, DuPont, FMC, Degussa, Cyanco, and ICI signed a testing Consent Order for NaCN. The Companies agreed to perform certain chemical fate and terrestrial effects tests by specified dates according to test standards included in this Order.

III. Production and Use

NaCN is a white, crystalline, water soluble compound (Ref. 2). NaCN in the presence of oxygen has the ability to solubilize free gold and silver (and other metals) in a process known as cyanidation. Because of the low cost of NaCN, its use in precious metal leaching processes has become widespread (Ref. 3). DuPont, a domestic manufacturer of cyanide (CN), in 1989 reported a 51 percent increase in CN consumption in North America--from 142 million pounds in 1988 to 215 million pounds in 1989. EPA estimated domestic production of NaCN was approximately 180 million pounds in 1989, and that domestic capacity to produce CN compounds (e.g., NaCN) was likely to double in 1990 (Ref. 4). Goldmining operations consume approximately 80 percent of CN production. Additionally, CN compounds are an important ingredient in processes for electroplating, case hardening of steel, metal cleaning, metals leaching, and ore floatation (Ref. 3).

IV. Testing Program

DOI/FWS will use the data generated by these tests in conjunction with its responsibilities under the Migratory Bird Treaty Act and the National Environmental Policy Act. EPA will use the data to determine the chemical fate of NaCN and potential environmental risks associated with the manufacture, processing, use, and disposal of NaCN and other sources of CN. EPA's Office of Solid Waste (OSW) has expressed interest in using the data to support risk-based or technology-based standards for CN.

A. Chemical Fate

During its use to extract gold and silver from mine tailings, cyanide-containing waters are discharged to impoundments (Ref. 5). Goldmining operations have been shown to yield CN concentrations of 25 to 300 parts per million (ppm) in the water of mill tailings impoundments. Higher concentrations, 500 to 2,000 ppm, occur where the leach process is used. The fresh water impoundments vary from shallow depressions of about 50 feet across to more than 100 acres and depths of 15 feet (Ref. 1). The chemical fate study will allow EPA to assess concerns for groundwater protection at active and abandoned mining sites. The Companies have agreed to develop the chemical fate data as outlined in the table below.

B. Ecological Effects Information

Cyanides are "priority pollutants" under the Clean Water Act. Numerous tests are available that demonstrate the acute toxicity of free cyanide to aquatic organisms. Free cyanide is present in water from the dissolution of such cyanide compounds as sodium cyanide, potassium cyanide, and hydrogen cyanide.

The LC_{50} values for 9 freshwater fish species range from 52 to 350 micrograms per liter; the most sensitive species tested is *Salvelinus fontinalis*. The LC_{50} values for 6 invertebrate species range from 83 to 2,490 micrograms per liter, with the most sensitive species tested being *Daphnia pulex*. The LC_{50} values for 3 marine fish species (*Menidia menidia, Cyprinodon variegatus*, and *Pseudopieronectes americanus*) are 59, 300, and 372 micrograms per liter, respectively. Amphipods are the least sensitive of the marine invertebrates tested (LC_{50} = 1,220 micrograms per liter), and mysids and copepods the most sensitive (LC_{50} values = 30 and 113 micrograms per liter, respectively). In addition, the 96–hour LC_{50} value for the green alga *Scenedesmus quadricauda* is 160 micrograms per liter (Ref. 6).

The letter from DOI nominating NaCN to the ITC contained the following information (Ref. 1):

> Cyanide in water of heap leach and mill tailings ponds associated with precious metal mining has been implicated in substantial wildlife mortality in the western U.S. during the 1980's. As a result of voluntary reporting by 47 mining operations in the State of Nevada, more than 6,000 carcasses of at least 80 species of birds, 17 species of mammals, and a variety of amphibians have been retrieved from these impoundments. Birds, especially aquatic migrants, represented over 90 percent of the total mortalities. Although these mine ponds are not usually associated with prime wildlife habitat, they are frequently located along critical avian migration routes and provide resting sites for opportunistic migrants.

DOI/FWS is concerned about the toxicity of cyanide to migratory birds that alight on ponds containing cyanide contaminated water. Furthermore, there are concerns for the potential plant uptake and potential dietary uptake of CN through the plant; especially once mine reclamation has commenced. The Companies have agreed to develop the terrestrial effects data as outlined in the following table:

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TABLE—TESTING REQUIRED FOR SODIUM CYANIDE

Test	Test methods	Start date[1]	Final report date[2]
Chemical Fate Test:			
Sediment and soil adsorption isotherm[3]	40 CFR 796.2750	6	18
Terrestrial Effects Tests:			
Avian dietary toxicity test[4]	WI Protocol	6	18
Mallard reproduction test[5]	WI Protocol	12	30
Plant uptake and translocation test[6]	40 CFR 797.2850	6	24
Plant uptake and translocation test[7]	40 CFR 797.2850	30	48

[1] Number of months after the effective date of the Consent Order.
[2] Number of after the effective date of the Consent Order. Interim (6- month) progress reports shall be submitted to EPA for all tests having final reports dates greater than 9 months, starting 6 months after the start date.
[3] NaCN in water at pH 10.5.
[4] Wildlife International LTD. Protocols 112/090891/MLC/CHP29 (Mallard) and 112/090891/QLC/CHP29 (Bobwhite) are appended to the testing Consent Orde for sodium cyanide.
[5] Wildlife International LTD. Protocol 112/090591/MR/CHP29 is appended to the testing Consent Order for sodium cyanide.
[6] Tier 1: NaCN in water at pH 10.5; at least 2 vegetative species in 1 soil type (sand).
[7] Tier 2: (based on the results of Tier 1): NaCN in water at pH 10.5; 3 vegetative species in 3 soil types (oxidative, sulfitic, and carbonaceous).

C. Test Substance

The test substance, NaCN (CAS No. 143–33–9), shall be as pure a technical grade as can be reasonably attained, but shall be at least 98.0 percent pure.

V. Export Notification

The issuance of the testing Consent Order subjects any persons who export or intend to export the chemical substance, NaCN (CAS No. 143–33–9), of any purity, to the export notification requirements of section 12(b) of TSCA. The specific requirements are listed at 40 CFR part 707. Chemicals subject to testing Consent Orders are listed at 40 CFR 799.5000. This listing serves as a notification to persons who export or intend to export the chemical substance which is the subject of this testing Consent Order that 40 CFR part 707 applies.

VI. Rulemaking Record

A. Supporting Documentation

EPA has established a record for this Consent Order under TSCA section 4, docket number OPTS–42118, which is available for inspection Monday through Friday, excluding legal holidays, in Rm. NE–G004, 401 M St., SW., Washington, DC., 20460 from 8 a.m. to 12 noon and from 1 p.m. to 4 p.m. This record includes basic information considered by EPA in developing this policy. This record includes the following information:

(1) Testing consent order for NaCN and associated testing protocols.

(2) Federal Register notices pertaining to this notice and consent order consisting of:

(a) Notice soliciting interested parties for developing a consent order for sodium cyanide (26th Report of the ITC, June 5, 1990; 55 FR 23050).

(b) 27th Report of the ITC (March 6, 1991; 56 FR 9534).

(3) Communications consisting of:

(a) Written letters.

(b) Contact reports of telephone summaries.

(c) Meeting summaries.

(4) Reports - published and unpublished factual materials.

B. References

(1) Buffington, J.D. Letter from John D. Buffington, Regional Director for Research and Development, Fish and Wildlife Service, U.S. Department of Interior to John D. Walker, Acting Executive Secretary, Interagency Testing Committee (ITC), nominating sodium cyanide for consideration by the ITC, (April 17, 1990).

(2) Windholz, M., Budavari, S., Blumetta, R.F., and Otterbain, E.S., eds., The Merck Index. 10th edition. Rahway, New Jersey. Merck Co., Inc., p. 1233 (1983).

(3) Stanton, M.D., Colbert, T.A., and Trenholm, R.B. The National Park Service Environmental Handbook for Cyanide Leaching Projects. U.S. Department of Interior, Washington, DC (1986).

(4) USEPA. Environmental Protection Agency. Public Focus Meeting for Sodium Cyanide. Office of Toxic Substances, U.S. Environmental Protection Agency (1990).

(5) Fiskel, J., Cooper, C., Eschenroeder, A., Goyer, M., and Perwak, J.. "Exposure and risk assessment for cyanide." EPA/440/4–85/008. (NITS P85–220572). Cambridge, MA. Arthur D. Little, Inc. (1981).

(6) USEPA. Environmental Protection Agency. Ambient Water Quality Criteria for Cyanide. Washington, DC., Office of Water Regulation and Standards, U.S. Environmental Protection Agency (1985).

VII. Other Regulatory Requirements

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this Consent Order under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and has assigned OMB control number 2070–0033.

Public reporting burden for this collection of information is estimated to be 40 hours per response. The estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the OMB, Paperwork Reduction Project (2070–0033), Washington, DC 20503.

List of Subjects in 40 CFR Part 799

Chemicals, Chemical export, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements, and Testing.

Dated: November 29, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 799 is amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by adding sodium cyanide to the table in CAS Number order, to read as follows:

§ 799.5000 Testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers.

* * * * *

CAS Number	Substance or mixture name	Testing	FR citation
*	*	*	*
143–33–9	Sodium Cyanide	Chemical fate Terrestrial effcts	[56 FR December 17, 1991] [56 FR December 17, 1991]
*	*	*	*

* * * * *

[FR Doc. 91–30065 Filed 12–16–91; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–38

[FPMR Temp. Reg. G–48, Supp. 4]

Federal Motor Vehicles Expenditure Control

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: The Office of Management and Budget established the end of fiscal year 1990 as the completion date for studies required by title XV, subtitle C—Federal Motor Vehicle Expenditure Control, Public Law 99–272, Consolidated Omnibus Budget Reconciliation Act of 1985. FPMR Temporary Regulation G–48, dated August 6, 1986, implemented the provisions of this law. This supplement extends the expiration date of FPMR Temp. Reg. G–48 and supplements 1 and 2 thereto to June 30, 1992.

DATES: Effective date: July 1, 1991, Expiration date: June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Karen Hampel, Fleet Management Division (703–557–8276).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–38

Government property management, motor vehicles.

The authority citation for part 101–38 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486 (c).

In 41 CFR chapter 101, the following supplement to FPMR Temp. Reg. G–48 is added to the appendix at the end of Subchapter G to read as follows:

Federal Property Management Regulations; Temporary Regulation G–48, Supplement 4

November 5, 1991.

To: Heads of Federal agencies.

Subject: Federal motor vehicle expenditure control.

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation G–48.

2. *Effective date.* This supplement is effective on July 1, 1991.

3. *Expiration date.* This supplement expires June 30, 1992, unless sooner superseded or canceled.

4. *Background.* FPMR Temporary Regulation G–48, dated August 6, 1986, implemented the provisions of title XV, subtitle C—Federal Motor Vehicle Expenditure Control, Public Law 99–272, Consolidated Omnibus Budget Reconciliation Act of 1985. The law and the regulation require that an agency which operates 300 or more motor vehicles to take several actions regarding their motor vehicle operations and activities. The Office of Management and Budget (OMB) is still monitoring agencies implementation of the cost comparison study process. To allow time for analysis and review of agency efforts and to determine what changes are needed to codify a permanent regulation, it is necessary to extend the expiration dates of FPMR Temp. Reg. G–48 and supplements 1 and 2 thereto to June 20, 1992.

5. *Explanation of changes.* The expiration dates in paragraph 3 of FPMR Temp. Reg. G–48 and supplements 1 and 2 of FPMR Temp. Reg. G–48 are extended to June 30, 1992.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 91–30026 Filed 12–16–91; 8:45 am]

BILLING CODE 6820–24–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 87–266; FCC 91–334]

Facilities for the Provision of Video Programming by a Telephone Common Carrier in Its Telephone Service Area

AGENCY: Federal Communications Commission [FCC].

ACTION: Final rule; Interpretive rulings.

SUMMARY: The Commission issued interpretive rulings concluding that the telephone/cable cross ownership ban of the Cable Act applies only to local exchange carriers and that neither a local exchange carrier nor its customer-programmer need obtain a local cable television franchise to offer video dialtone.

EFFECTIVE DATE: January 16, 1992.

FOR FURTHER INFORMATION CONTACT: Donna Lampert, Common Carrier Bureau, (202) 632–6363 or Greg Lipscomb, Common Carrier Bureau, (202) 634–1800.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3501–3520, and found to impose no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements; and will not increase burden hours imposed on the public. Implementation of any new or modified requirement will be subject to approval by the Office of

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Management and Budget as prescribed by that Act.

Background

Common Carrier Docket 87-266: Telephone Company/Cable Television Cross Ownership Rules, §§ 63.54-63.58, Notice of Inquiry, 2 FCC Rcd 5092 (1987) (52 FR 34818 (9/15/87)); Telephone Company/Cable Television Cross Ownership Rules, §§ 63.54-63.58, Further Notice of Inquiry and Notice of Proposed Rulemaking, 3 FCC Rcd 5849 (1988) (53 FR 38042 (9/29/88)).

Summary of First Report and Order

This is a summary of the Commission's First Report and Order relating to Common Carrier Docket 87-266: Telephone Company/Cable Television Cross Ownership Rules, §§ 63.54-63.58. Adopted: October 24, 1991 and Released: November 22, 1991. The full texts of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC 20554. The complete text of this First Report and Order may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW., Washington, DC 20036.

In the First Report and Order, the Commission issued an interpretive ruling concluding that the telephone/cable cross ownership ban of the Cable Act does not apply to interexchange carriers and should be interpreted only to apply to local exchange carriers that own or control facilities that provide local exchange service. The Commission also issued an interpretive ruling concluding that neither a local exchange carrier nor its customer-programmer need obtain a local cable television franchise to offer video dialtone.

Ordering Clauses

It is further ordered That, pursuant to sections 1, 4, 214 and 303(r) of the Communications Act, as amended, and sections 613 and 621 of the Cable Communications Policy Act of 1984, 47 U.S.C. 151, 154, 214, 303(r), 533 and 541, the first report and order is adopted.

List of Subjects in 47 CFR Part 63

Cable television, Communications common carriers, Telephone, Video dialtone.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-30040 Filed 12-16-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF ENERGY

48 CFR Part 970

Acquisition Regulation

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) today adopts a final rule which amends the Department of Energy Acquisition Regulation (DEAR) to require management and operating (M&O) contractors to have, and maintain, systems of management and quality controls in order to discourage waste, fraud and abuse. The amendments set forth in this final rule provide guidance and a standardized contract clause to be used in DOE solicitations for, and awards of, M&O contracts. The intended effect of this rule is to enhance the effectiveness of such systems, thereby increasing the likelihood that instances of waste, fraud or abuse are identified and eliminated, and components, products and services provided the DOE meet specifications. This final rule is issued subsequent to a Notice of Proposed Rulemaking (NOPR) published in the **Federal Register** (56 FR 42588) on August 28, 1991.

DATES: *Effective date:* January 16, 1992.

FOR FURTHER INFORMATION CONTACT:

James J. Cavanagh, Business & Financial Policy Division (PR-122), Office of Procurement, Assistance and Program Management, Department of Energy, Washington, DC 20585, (202) 586-8173.

Mary Ann Masterson, Office of the Assistant General Counsel for Procurement and Finance (GC-34), Department of Energy, Washington, DC 20585, (202) 586-1900.

SUPPLEMENTARY INFORMATION:

I. Background
- A. Discussion
- B. Section-By-Section Analysis

II. Procedural Requirements
- A. Review Under Executive Order 12291
- B. Review Under Regulatory Flexibility Act
- C. Review Under Paperwork Reduction Act
- D. Review Under National Environmental Policy Act
- E. Review Under Executive Order 12612

III. Public Comments

I. Background

A. Discussion

As a result of an internal management assessment, DOE has determined that, while all of DOE's M&O contractors have established some form of management and quality controls, greater DOE emphasis on, and oversight of, such systems can enhance the effectiveness of the contractor's systems of controls. The enhanced effectiveness of those controls will increase the likelihood that instances of waste, fraud, or abuse are identified and eliminated, and components, products and services provided DOE meet specification. Internal Departmental guidance assigns appropriate Departmental elements the responsibility for monitoring, ensuring and considering the integrity and efficiency of the M&O contractor operations under their cognizance. While this oversight is presently being performed, there is no explicit DEAR clause requirement for establishment of such controls. DOE does not necessarily envision the mandatory creation of a separate oversight system; rather, the effective coordination and integration of the components of existing systems may suffice. DOE is amending the DEAR to implement appropriate DOE policies, procedures and requirements for systems of controls by DOE's M&O contractors.

B. Section-By-Section Analysis

Part 970

The amendment set forth in the final rule amends subpart 970 to add a new subpart 970.0901 to provide policy guidance concerning DOE's requirements regarding systems of management controls. DOE requires, among other things, that such systems cover both programmatic and administrative functions; that they provide reasonable assurance that Government resources are safeguarded against theft, fraud, waste, mismanagement, loss and abuse; that they promote efficient and effective operations; that they provide for quality assurance controls, standards and assessment techniques; and that they be documented and satisfactory to DOE. The subpart also requires a Management Controls clause to be placed in an M&O contract awarded pursuant to Federal Acquisition Regulation 17.6 and DEAR 917.6.

A new subsection, 970.5204-20, is added which provides the text of the Management Controls clause which, when included in a contract, will implement DOE's requirements regarding systems of management and quality controls to be used as required by 970.0901.

II. Procedural Requirements

A. Review Under Executive Order 12291

This Executive Order, entitled "Federal Regulation," requires that certain regulations be reviewed by the Office of Management and Budget (OMB), prior to their promulgation. The Director, OMB, by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

B. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Public law 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. *et seq.* (1976)), or the Council on Environmental Quality regulations (40 CFR parts 1500-1508) and DOE's guidelines (10 CFR part 1021), and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

E. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41285 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's final rule will revise certain policy and procedural requirements. However, DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of States.

III. Public Comments

Interested persons were invited to participate by submitting data, views, or arguments with respect to the proposed DEAR amendments set forth in a NOPR published in the **Federal Register** (56 FR 42588) on August 28, 1991. Based upon that August 28, 1991, publication date, the public comment period closed on September 27, 1991. During that period, DOE received four comments from interested parties. Those comments, and DOE's response thereto, are set forth below.

Comment: A commenter questioned the need for such a rule given the myriad of requirements for controls systems found in other laws and regulations.

DOE Response: As stated in the preamble to the NOPR, DOE believes that greater emphasis on, and oversight of, such systems are warranted and, therefore, that explicit DEAR regulatory coverage is appropriate.

Comment: Another commenter questioned the need for an explicit rule given that there are numerous separate provisions designed to eliminate waste, fraud, and abuse.

DOE Response: DOE believes that this explicit requirement is needed to focus greater attention on the need to coordinate and integrate these many requirements into a more efficient and effective overall system of controls.

Comment: A commenter found the proposed provisions to be overly broad and lacking specificity as to the appropriate standards.

DOE Response: DOE believes the regulatory coverage, as proposed, contains sufficiently specific and appropriately detailed standards, while still allowing flexibility in the development and implementation of systems designed against performance criteria set forth in the clause.

Comment: A commenter believes that the statement in the NOPR that the proposed rule is not subject to the Paperwork Reduction Act is in error and argues that the proposed rule mandates extensive recordkeeping and is, therefore, a collection of information as that term is defined in the Paperwork Reduction Act.

DOE Response: DOE disagrees, as the requirements for those management controls do not necessarily mandate creation of a new separate system of controls, merely the effective coordination and integration of existing systems, if those are already sufficient. DOE notes that this same commenter also argues that the rule is not needed as there are already such control systems in place and functioning.

Comment: A commenter suggests that DOE articulate the elements of a system which would likely result in DOE's approval.

DOE Response: DOE believes that the detailed performance criteria listed in the proposed clause sufficiently and clearly articulates the system needed to obtain DOE's approval.

Comment: A commenter states that the proposed DEAR 970.0901(a) requires compliance with specifications without requiring the listing of such specifications in the contract.

DOE Response: DEAR 970.0901(a) is a policy statement and a general direction to the contracting officer, as to the general requirements under this subsection. It does not require compliance to specifications.

Comment: A commenter suggested eliminating the reference at DEAR 970.0901(b)(10) to the Comptroller General standards for internal control, as the M&O contractors may not be able to have visibility into changes, nor the ability to comment on or impact these standards.

DOE Response: DOE disagrees with eliminating reference to the Comptroller General standards, as these are readily available and establish basic provisions that are appropriate and desired by DOE in internal control systems. For greater clarity, we have revised that subpart to provide a more exact reference.

Comment: A commenter did not think that reference to "a baseline program of quality assurance" was sufficiently clear.

DOE Response: DOE disagrees, as the referred to sentence in DEAR 970.0901(c) goes on to explain clearly what is required.

Comment: A commenter states that the requirement for internal audit review of the management system and internal controls is a considerable expansion in work and recordkeeping over what is currently being done.

DOE Response: DOE is troubled that a major contractor would currently have in place an internal audit program that did not routinely determine that these systems are accomplishing their objectives and that their controls are working effectively. DOE believes this to be already required and, hence, does not constitute an expansion.

List of Subjects in 48 CFR Part 970

Government procurement.

For the reasons set out in the preamble, part 970 of title 48 of the code

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of Federal Regulations is amended as set forth below.

Berton J. Roth,

Acting Director, Office of Procurement, Assistance and Program Management.

Title 48 CFR Chapter 9 is amended as set forth below:

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

2. Part 970 is amended by adding a new § 970.0901, Management Controls, to read as follows:

970.0901 Management controls.

(a) As a management and operating contractor, the contractor shall develop and maintain systems of management and quality control to discourage waste, abuse, and fraud; and to ensure components, products, and services provided DOE meet's the specifications.

(b) As a part of the required overall management structure, the contractor must maintain management control systems which:

(1) Are documented and satisfactory to DOE;

(2) Ensure that all levels of management are accountable for effective management systems and internal controls within their areas of assigned responsibility;

(3) Cover both programmatic and administrative functions;

(4) Provide reasonable assurance that Government resources are safeguarded against theft, fraud, waste, and unauthorized use;

(5) Promote efficient and effective operations;

(6) Ensure that all obligations and costs incurred are in compliance with the contract's terms and conditions and intended purposes;

(7) Properly record, manage, and report all revenues, expenditures, transactions and assets;

(8) Maintain financial, statistical and other reports necessary to maintain accurate, reliable, and timely accountability and management controls;

(9) Are periodically reviewed to ensure they are adequate to provide reasonable assurance that the objectives of the system are being accomplished and that these controls are working effectively;

(10) Are in accordance with the Comptroller General's standards for internal controls, as set forth in the General Accounting Office Policy and Procedures Manual For Guidance To Federal Agencies, chapter 3 of title 2 (Oct 1984), as amended.

(c) As a management and operating contractor, the contractor shall also develop and maintain a baseline program of quality assurance that will implement documented performance and quality standards, and management controls and assessment techniques to ensure components, services, and products meet DOE's, design agency and other governing and applicable specifications.

3. A new § 970.5204–20 is added to read as follows:

970.5204–20 Management controls.

(a) The contractor shall be responsible for maintaining, as an integral part of its organization, effective systems of management controls for both administrative and programmatic functions. Management controls comprise the plan of organization, methods and procedures adopted by management to reasonably ensure that: The mission and functions assigned to the contractor are properly executed; efficient and effective operations are promoted; resources are safeguarded against theft, fraud, waste, and unauthorized use; all obligations and costs that are incurred under the contract are in compliance with applicable clauses and other current terms, conditions, and intended purposes; all revenues, expenditures, and all other transactions and assets are properly recorded, managed, and reported; and financial, statistical, and other reports necessary to maintain accountability and managerial control are accurate, reliable, and timely. The systems of controls employed by the contractor shall be documented and satisfactory to DOE. Such systems shall be an integral part of the contractor's management functions, including defining specific roles and responsibilities for each level of management, and holding employees accountable for the adequacy of the management systems and internal controls in their areas of assigned responsibility. The contractor shall, as part of the internal audit program required elsewhere in this contract, periodically review the management systems and internal controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the system are being accomplished and that these systems and controls are working effectively.

(b) The contractor shall be responsible for maintaining, as a part of its operational responsibilities, a baseline quality assurance program that implements documented performance, quality standards, and control and assessment techniques.

[FR Doc. 91–30078 Filed 12–16–91; 8:45 am]

BILLING CODE 6450–01–M

Proposed Rules

Federal Register
Vol. 56, No. 242
Tuesday, December 17, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 979

[Docket No. FV–91–450]

South Texas Melons; Amended Expenses and Establishment of Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the level of authorized expenses and establish the assessment rate under Marketing Order No. 979 for the 1991–92 fiscal period. Authorization of this budget would permit the South Texas Melon Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessment on handlers.

DATES: Comments must be received by December 31, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clerk, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–720–2020.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 156 and Order No. 979 (7 CFR Part 979), regulating the handling of melons grown in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 27 handlers of South Texas melons under this marketing order, and approximately 27 producers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of South Texas melon producers and handlers may be classified as small entities.

The budget of expenses for the 1991–92 fiscal period was prepared by the South Texas Melon Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of South Texas melons. They are familiar with the committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. This, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of South Texas melons. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses.

Committee administrative expenses of $93,187, recommended in a mail vote completed September 19, 1991, were approved on November 13, 1991, and published in the Federal Register on November 19, 1991, (56 FR 58302). The committee subsequently met on November 18, 1991, and unanimously recommended funding for several research and promotion projects and adjustments to a number of the previously approved administrative items. The 1991–92 budget of $285,309.51 is $6,180.51 more than the previous year. Major increases in the manager and field salaries, rent and utilities, field travel, and research categories would be partially offset by decreases in the office salary and promotion categories.

The Committee also unanimously recommended an assessment rate of $0.05 per carton of melons, $0.01 more than last season. This rate, when applied to anticipated shipments of 6 million cartons of melons, would yield $300,000 in assessment income. This would be adequate to cover budgeted expenses. Funds in the reserve as of October 31, 1991, estimated at $287,210.22, were within the maximum permitted by the order of two fiscal periods' expenses.

While this action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1991–92 fiscal period for the program began on October 1, 1991, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable South Texas melons handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting.

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Therefore, it is found and determined that a comment period of 10 days is appropriate because the amended budget and assessment rate approval for this program needs to be expedited.

List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 979 be amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 979 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 979.214 is revised to read as follows:

§ 979.214 Expenses and assessment rate.

Expenses of $285,309.51 by the South Texas Melon Committee are authorized and an assessment rate of $0.05 per carton of regulated melons is established for the fiscal period ending September 30, 1992. Unexpended funds may be carried over as a reserve.

Dated: December 11, 1991.

William J. Doyle

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–29990 Filed 12–16–91; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1205

[CN–91–002]

Amendment to the Cotton Board Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service proposes to amend the Cotton Board Rules and Regulations in order to implement recent amendments to the Cotton Research and Promotion Order.

These proposed amendments to the rules and regulations would establish procedures for calculating, collecting, and remitting assessments on imported cotton and cotton-containing products.

A de minimis figure based on the value of imported cotton per line item entry would be established to lessen the administrative burden of collecting import assessments while providing for maximum participation of imports of cotton in the assessment provisions. Imported cotton and cotton-containing products containing cotton equal in value or less than the de minimis figure would not be subject to assessment.

Procedures by which refunds of producer assessments are obtained would be removed from the regulations so that the regulations conform to the provisions of the Cotton Research and Promotion Act Amendments of 1990 which eliminated the refund provision.

Exemptions from assessment would be set forth in these amendments to the regulations along with procedures importers would follow to obtain reimbursement of assessments paid on imported cotton and textile products which were not subject to assessment would also be established.

DATES: Written comments concerning the proposed rule must be sent in triplicate and received no later than January 16, 1992.

ADDRESSES: Written comments should be sent to: Craig Shackelford, USDA, AMS, Cotton Division; P.O. Box 96456; room 2641–S; Washington, DC 20090–6456. All comments will be made available for public inspection at the Office of the Docket Clerk during regular business hours. In addition, comments concerning the information collection requirements should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention Desk Officer for Agricultural Marketing Service, USDA. All comments should reference the date and page of the Federal Register publication.

FOR FURTHER INFORMATION CONTACT: Craig Shackelford (202) 720–2259.

SUPPLEMENTARY INFORMATION: This proposal would amend the Cotton Board Rules and Regulations in order to implement the amendments to the Cotton Research and Promotion Order which were issued pursuant to the Cotton Research and Promotion Act Amendments of 1990 enacted by Congress under subtitle G of title XIX of the Food, Agriculture, Conservation and Trade Act of 1990 on November 28, 1990.

A proposed rule amending the Cotton Research and Promotion Order was published for public comment on April 10, 1991. The proposed amendment to the Order was published on July 9, 1991. The proposed amendment was approved by a majority (60 percent) of importers and producers of cotton voting in a referendum conducted July 17–26, and is required to be published in the **Federal Register** as a final Order amendment.

This proposed rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a non-major rule since it does not meet the criteria for a major regulatory action.

The Administrator, Agricultural Marketing Service (AMS), has certified that this action would not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

There are an estimated 210,000 producers and 650 collecting handlers who are presently subject to rules and regulations issued pursuant to the Cotton Research and Promotion Order. There are also an estimated 10,000 importers that would become subject to the rules and regulations. The majority of these producers, handlers and importers would be classified as small businesses under the criteria established by the Small Business Administration.

Under this proposed amendment, refunds to producers would be eliminated. Therefore, it is estimated that $42,075,853, for 1991, collected by handlers from producers would not be subject to refunds. At current refund rates of approximately 34 percent, $13,965,790 of the estimated $41,075,853 would be retained by the Research and Promotion program. The economic impact of the proposed elimination of refunds is not expected to be significant. It is expected that assessments from imports would total $6,785,816, including reimbursements, and that the total program would generate an estimated total of $47,861,669 based on the 1991 forecast. Therefore, the economic impact of an assessment on importers is not expected to be significant. The economic impact of the other amendments to the regulations as described in the preamble is also not expected to be significant. Furthermore, the Research and Promotion program is expected to benefit producers, handlers and importers by expanding and maintaining new and existing markets.

The proposed rules and regulations impose recordkeeping and reporting burdens on importers and producers. The recordkeeping burden should average approximately .25 hours per year per person. The reporting burden should be approximately 6, 174 hours per year. Therefore, the economic impact of these burdens would not be significant.

Accordingly, the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork reduction Act (PRA) of 1980 (44 U.S.C. 3501 *et. seq.*) the information collection and recordkeeping requirements for domestic handlers and producers contained in this subpart have been previously approved by OMB and assigned control number 0581–0093.

Implementation of the provisions of the Cotton Research and Promotion Act Amendments of 1990 would require comparable information collection requirements for importers. The information collection and recordkeeping requirements for importers contained in this subpart have been previously approved by OMB and have also been assigned control number 0581–0093.

Based on comparable research and promotion programs, it would require approximately 10 minutes for an importer to complete a reporting form and approximately 10 minutes to complete a reimbursement or exemption application. There would be an estimated 1,000 importers per year subject to these information collection requirements. Reporting forms would be filed on a monthly basis and reimbursement or exemption applications would be filed when necessary yielding an estimated annual burden of 4080 hours. Importers would be expected to maintain and make available to the Secretary such books and records as necessary to carry out the provisions of the Order and regulations. Importers would be required to retain such records for at least two years beyond the marketing year of their applicability.

Two respondents commented on the proposed reporting and recordkeeping requirements for importers contained in the proposed Order, published in the **Federal Register** on April 10, 1991 (FR 14482). The comments expressed concerns that the proposed requirements may be overly burdensome, overly broad and violative of the Paperwork Reduction Act.

The agency disagreed and responded by stating that the U.S. Customs Service would as the collecting agency for import assessments. Almost all information required under this proposal would be available from records already maintained by importers under the Customs Service requirements. The Department intends to rely greatly on records maintained by the Customs Service and records maintained by importers under Customs Service requirements for its administration and enforcement of the provisions of the proposed regulations. We anticipate that importers would be required to provide additional reports and records only on occasions when additional information is needed as evidence or reimbursement of assessments.

Comments concerning the information collection requirements contained in this action should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Attention: Desk Officer for Agricultural Marketing Service, USDA.

This proposal is promulgated to implement the Cotton Research and Promotion Act Amendments of 1990 and provisions of the amended Cotton Research and Promotion Order. The proposed amendments to the Cotton Board Rules and Regulations are discussed in the following paragraphs which are arranged by subject.

Definitions

The terms "importer", "import", "cotton", "industrial products", and "Customs Service" would be defined in Section 1205.500.

General

Section 1205.505 "Communication" would be amended by removing the term "refund" and replacing it with the term "reimbursement".

Assessments

Section 1205.510 "Levy of assessments" would be amended by adding the title "Producer assessments" to paragraph (a), redesignating paragraphs (b) and (c) as (a)(1) and (a)(2) respectively, and adding a new paragraph (b)(1) through (b)(6) to provide for importer assessments. The manner in which importer assessments would be determined, the amounts of assessment, and the supplemental assessment for imported cotton would be established. The proposed amendments to the regulations would also contain the procedures for collecting importer assessments. The assessment rate on imported cotton would be $1 per bale. For the purpose of assessing imported cotton or the cotton content of imported products, a bale of cotton would be equivalent to 500 pounds or 226.8 kilograms. The $1 per bale assessment would be converted to a value per kilogram to facilitate the U.S. Customs Service in collecting assessments on the cotton content of imported products.

The supplemental assessment on imported cotton and the cotton content of imported products would be levied at six tenths of one percent of the historical value of the cotton. A supplemental assessment of six tenths of one percent of the value of the cotton is currently levied on domestically produced cotton.

The average price received by producers for a calendar year for Upland cotton in the U.S. weighted by monthly marketings would be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton. This would approximate as nearly as is practical the value of domestically produced cotton and insure that supplemental assessments to be paid by importers are determined in a fair and equitable manner. The average price received by U.S. farmers weighted by marketings for the calendar year 1990 was 65.6 cents per pound or 1.446 dollars per kilogram. The figure of 1.446 dollars per kilogram would be used as the value of imported cotton for the purpose of the assessment calculation for imported cotton during the calendar year 1992. This value would be calculated annually by the Secretary and published in this subpart. The average price of 65.6 cents per pound for calendar year 1990 was obtained from Agricultural Prices, a publication of the National Agricultural Statistics Service of the Department of Agriculture.

Several years ago, the United States converted to the eleven digit Harmonized Tariff Schedule (HTS) in classifying imports. The USDA has published data on the raw fiber content of textile imports for over 20 years. For over 2000 cotton-containing HTS classifications, conversion factors have been developed and updated by the USDA to determine the raw fiber equivalence contained in the end product. These factors are utilized for a variety of purposes including estimating the raw fiber content equivalence of cotton imported into the U.S. The agency proposes to use these conversion factors to reflect the cotton content of imported cotton products for assessment purposes. These conversion factors were compiled by the Economic Research Service of the USDA through extensive contacts with textile manufacturers and represent the predominant raw fiber cotton equivalents for the specific HTS classifications.

The agency has determined that the use of these factors is justified in view of alternatives. For example, the anticipated burden resulting from calculating cotton content for each individual product prior to entry would make such an alternative costly, undesirable, and impractical.

A table would list the HTS classification numbers representing imported cotton and cotton-containing products subject to assessment, the conversion factors, and the assessment per kilogram for each product, except in the case of raw cotton, for which there would be no conversion factor in the

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table. HTS classification numbers would be listed in the left hands column of the table.

In determining which HTS classifications would be assessed under this proposal, the primary objectives were to meet the intent of the Cotton Research and Promotion Act Amendments of 1990 by maximizing participation of cotton imports in the assessment provision of the Act, while at the same time, minimizing the burden of administering those provisions. More than 2,400 HTS textile classifications contain cotton. However, out of this total, approximately 700 classifications account for approximately 97 percent of the annual volume of imported cotton textiles and apparel. The agency determined to propose limiting assessments to this lower number, thereby exempting a large number of low volume categories.

The cotton content of industrial products is also not subject to assessment. Industrial products would include such cotton-containing items as tubes, pipes, hoses, belting material, and tires, all of which are reinforced with or in some way composed, in part, of cotton but, are not classified under the HTS textile classification numbers. Certain cotton-containing textiles would also be considered industrial products, and would therefore not be included in the table listing products subject to assessments. Such products would include textile products classified in chapter 59 of the Harmonized Tariff Schedule that include cotton-containing textile fabrics coated, impregnated, covered, or laminated with other materials, textile piping and tubing, and belting.

By limiting the assessment to the 700 HTS classifications, the administrative burdens on all those who are involved in the assessment program would be reduced. At the same time, the vast majority of the volume of cotton textiles and apparel imported into the U.S. would be assessed.

The corresponding conversion factor for each HTS classification number would be listed in the center column of the table in the regulations listing classifications of imported cotton and cotton-containing products subject to assessment. The total assessment per kilogram for each HTS number would be indicated in the right hand column. The total assessment per kilogram would be applied to the net weight of the product entered on the Customs entry documentation form and would take into account the cotton content of each kilogram.

An example of the table is as follows:

HTS classification	Conversion factor	Cents/kg
6205202065 (Mens cotton shirts)	0.9961	1.3035

The assessment per kilogram (not including the conversion factor) represents the sum of the assessment and the supplemental assessment. An example of how the assessment per kilogram would be calculated is as follows.

One bale is equal to 500 pounds.
One kilogram equals 2.2046 pounds.
One pound equals 0.453597 kilograms.
One dollar per bale assessment converted to kilograms:
A 500 pound bale=228.6 kg. (500×.453597)
$1 ppr bale assessment=$0.002000 per pound (1÷500)=$0.004409 per kg. (1÷228.6).
Supplemental assessment of 6/10 of 1 percent of the value of the cotton converted to kilograms:
Average price received or average value=$0.656 per pound=$1.446218 per kg. (0.656×2.2046)
$\frac{6}{10}$ of one percent of the average price in kg.=$0.006677 per kg. (1.446×.006).
Total assessment per kilogram:

$1 per bale equivalent assessment	= $0.004409	per kg.
Supplemental assessment	+ $0.008677	per kg.
total assessment per kg.	= $0.013086	

The total assessment per kilogram in the right hand column of the table would be the product of the conversion factor for the HTS classification and the base assessment per kilogram calculated above. An example would be: HTS code, 6205202065 (Men's Cotton Shirts)

conversion factor	0.9961	
assessment per kg.	× 1.3086	cents
total assessment	= 1.3035	cents per kg.

Prior to the publication of this proposal, the Agency received comments from importers and from others, including the U.S. Customs Service regarding the payment of assessments on domestically produced cotton reimported into the U.S. The 1990 Act Amendments provide that the Secretary shall establish procedures to ensure that the Upland cotton content of imported products is not subject to more than one assessment under this title.

One suggestion from an importer was to reduce the assessment rate by the percentage of U.S. produced cotton exported to the U.S. from foreign countries, or reduce the assessment by a percentage equal to the average return rate of U.S. produced cotton. In 1983 and again in 1987, the Economic Research Service of the USDA published reports identifying raw fiber equivalents of U.S. textile imports, by country of origin. The reports listed the return rates for U.S. produced cotton from 28 countries. The basic assumption made to support the estimates was that the proportion of foreign mill use of U.S. produced cotton was assumed to represent the return ratio for foreign textile products. This was said to be valid in textile producing countries where very little semi-processed fabric is imported for apparel manufacture and subsequent export. However, the import and export of semi-processed products appears to be on the increase globally. Additional calculations and assumptions were made to account for the movement of semi-processed products.

The U.S. Customs Service, which would collect the assessments on imported cotton, expressed concern over implementation of a collection system with assessment rates dependent upon the country of origin. Customs Service representatives have informed us that computer software development for such a system of varying rates would present very difficult problems.

It was the view of some importers, that under a system with assessment rates varying by country of origin the potential exist for substantial handling cost per line item entry being passed to the importer. Presumably this potential would be greater in a situation where the importer uses an agent to perform the import transaction.

In the absence of current estimates on the U.S. produced cotton content of textile imports and other pertinent information, the need to minimize administrative cost and burdens, the proposed regulation does not include a reduction in the assessment rate to account for the U.S. produced cotton content in imported cotton products.

Section 1205.510 would provide exemptions from assessments for importers in the following four situations.

The amendments to the Act provide that the term "cotton" shall not include any entry of imported cotton having a weight or value less than any de minimis figure as established by regulation. In the final rule implementing procedures for the conduct of referenda in connection with the Cotton Research and Promotion Order, a de minimis value of $220.99 per line item entry was established. This de minimis figure reflects only the value of cotton in each line item entry of imported product shown on the Customs Service entry documentation. Eligibility of importers to vote in the referendum conducted in July 1991, which approved the amended Cotton Research and Promotion Order, was in part determined by whether an importer had entered a value of cotton greater than the de minimis amount into the U.S.

The agency established the $220.99 per line item entry de minimis value based on its determination that the amount of estimated assessment collected on a value of cotton which was less than $220.99 would not be sufficient to adequately cover the estimated amount that the U.S. Customs Service would charge for collecting the assessment. According to the amendments to the Act, the Customs Service is to be reimbursed for the reasonable cost of collecting the assessment. The Act further states that the de minimis figure should be such as to minimize the burden in administering the import assessment but still provide for the maximum participation of importers of cotton in the assessment provision. On that basis, the agency viewed the $220.99 de minimis as consistent with the provisions of the Act.

Importers have suggested that the de minimis figure is too low and that it should be raised substantially. A substantial increase in the de minimis value appears unwarranted and would be inconsistent with the Act. Using $220.99 per line item entry as the minimis value of cotton, the minimum assessment collected would be approximately $2.00, which exceeds the anticipated cost of collecting the assessment and which would satisfy the goal of providing for maximum participation of importers of cotton in the assessment program.

Two examples are provided below to show how the de minimis value might effect the payment of assessment.

Example 1

HTS 6205202065, Men's Cotton Shirts:

Net weight		235.50	kg.
Conversion factor	×	0.9961	
Cotton content	=	234.58	kg.
Cotton value per kg.	×	$1.446	
Total cotton value	=	$339.20	

Since the value of the cotton in the line item entry is greater than $220.99 an assessment would be paid. The multiplication of the net weight times the assessment per kilogram from the table reveals the amount of the assessment.

Net weight		234.58	kg.
Assessment per kg.	×	1.3049	cents
Assessment		$ 3.06	

Since $2.00 in assessment would be due on a $220.99 de minimis value of cotton, the importer could calculate the assessment first and then determine whether to pay the assessment or not by noting if the assessment per line item entry is greater than or less than $2.00.

Example 2

This example shows an entry for which no Research and Promotion assessment would be paid because the value of the cotton is not greater than the de minimis value of $220.99.

HTS code, 6205202065, men's cotton shirts:

Net weight		137.2600	kg.
Conversion factor	×	0.9961	
Cotton content	=	136.7446	kg.
Cotton value per kg.	×	$ 1.446	
Total cotton value	=	$197.73	

Entries of HTS classifications identified in the assessment table of this proposal that qualify for informal entry according to regulations issued by the Customs Service would not be subject to assessment.

Section 1205.510 would provide exemption from assessments for specific HTS classifications in which U.S. produced cotton frequently reenters the U.S. Textile articles assembled abroad from U.S. cut and formed fabrics represent a significant number of entries recorded by the Customs Service. These products can reenter the U.S. under special access programs having special Customs statistical notations. Classification of entries, on the Customs entry documentation, identified by HTS numbers beginning with (9802) would identify these products for exemption from assessment at the time of entry.

An importer would be able to obtain an exemption from assessment for cotton and products composed of U.S. produced cotton, or cotton which is other than Upland cotton prior to entry of the products. Exemptions would be made for a specified weight of an HTS classification to be imported during a specified 90 day period. The specified weight of the HTS classification could be imported in more than one shipment, but all such shipments would be imported during the period designated for the exemption. The Cotton Board would assign a numerical designation to the exemption which the importer would include on the Customs entry documentation to indicate exemption for the entry. The exemption number would be valid only for the specified HTS classification, weight, and time period.

The importer would submit documentation supporting the request for exemption to the Cotton Board prior to the estimated date of entry. Documentation submitted by the importer as evidence that the imported product is composed of U.S. produced cotton or cotton which is other than Upland cotton would provide the basis for the exemption.

Documentation should include (1) the name, address, and importer identification number for the importer; (2) the HTS classification of the imported product; (3) weight of the product for which the exemption is sought; (4) estimated date of entry; (5) commercial invoices; (6) documentation indicating the origin or type of the cotton fiber used to produce the imported product; and (7) manufacturer's description of the imported product.

The United States Customs Service of the United States Department of the Treasury would be designated in § 1205.511 as the organization which would collect importer assessments. The agency is currently working with the Customs Service to incorporate assessment calculations into the computerized Customs entry system.

Two new sections, 1205.514 and 1205.515, would indicate the time at which importers would pay the assessment.

Section 1205.514 has been redesignated as 1205.516 and revised to indicate the type of information that may be requested from importers by the Secretary or the Cotton Board. Since the Customs Service would act as the collecting agent for importer assessments, no regularly scheduled reporting to the Cotton Board would be required. The availability of periodic reports from importers could be needed to assist the Cotton Board in resolving any claims that may arise and also for ascertaining compliance.

Section 1205.520 would be revised to eliminate procedures for cotton producers to obtain refunds. This is in accordance with the Cotton Research and Promotion Act Amendments of 1990.

The section as amended would provide the procedure for importers to

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obtain a reimbursement for assessments paid on imported cotton or products not subject to assessment. Such cotton and products would include, but would not be limited to the cotton content of imported products that contained U.S. produced cotton or cotton that is other than Upland cotton. The reimbursement would be made for the portion of the assessment paid on said cotton.

Warehouse Receipts

Section 1205.525 "Entry of gin code number" would be amended by removing the date from the section and revising the text for clarity.

Conforming changes and section and paragraph redesignations would also be made in the regulations for the purpose of clarity and organization.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1205 is proposed to be amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation for part 1205 continues to read as follows:

Authority: 7 USC 2101–2118.

2. The authority citation for subpart Cotton Board Rules and Regulations is removed.

3. Section 1205.500 "Terms defined" is amended by adding paragraphs (o), (p), (q), and (r) to read as follows:

Definitions

§ 1205.500 Terms defined.

* * * * *

(o) *Importer* means any person who enters, or withdraws from warehouse, cotton for consumption in the customs territory of the United States and *import* means any such entry.

(p) *Customs Service* means the United States Customs Service of the United States Department of Treasury.

(q) *Cotton* means:

(1) all Upland cotton harvested in the United States, and, except as used in section 7(e) of the Act, includes cottonseed of such cotton and the products derived from such cotton and its seed, and

(2) imports of Upland cotton, including the Upland cotton content of the products derived thereof. The term *cotton* shall not, however, include

(i) any entry of imported cotton by an importer which has a value or weight less than a de minimis amount established in regulations issued by the Secretary and

(ii) industrial products as that term is defined by regulation.

(r) *Industrial products* means cotton-containing products which are classified in the Harmonized Tariff Schedule of the United States under classifications other than textile classifications. Certain cotton-containing textile products under textile classifications shall also be considered to be industrial products, and are therefore not included in the table appearing in these regulations as products subject to assessment. Such products include, but are not limited to textile fabrics coated, impregnated, covered, or laminated, with other materials, textile piping and tubing, and belting materials.

General

4. Section 1205.505 "Communication" is revised to read as follows:

§ 1205.505 Communication.

All reports, request, applications for reimbursements, and communications in connection with the Cotton Research and Promotion Order shall be addressed as follows: Cotton Board, Post Office Box 2121, Memphis, Tennessee, 38101–2121.

Assessments

5. Section 1205.510 "Levy of assesments" is revised to read as follows:

§ 1205.510 Levy of assessments.

(a) *Producer assessments.* An assessment of $1 per bale for cotton research and promotion is hereby levied on each bale of Upland cotton that is produced from cotton harvested and ginned except cotton consumed by any governmental agency from its own production. Such assessment shall be payable and collected only once on each bale.

(1) A supplemental assessment for cotton research and promotion in addition to the $1 per bale assessment provided for in paragraph (a) of this section, is hereby levied on each bale of Upland cotton harvested and ginned except cotton consumed by any governmental agency from its own production. The supplemental assessment rate shall be levied at the rate of six-tenths of one percent of:

(i) The current value of the cotton multiplied by the number of pounds of lint cotton or;

(ii) The current value of the cotton converted to a fixed amount per bale as reflected in the following assessment chart:

ASSESSMENT CHART [1]

Current value (cents per pound)	Supplemental assessment, dollars per bale
.00 to 9.99	.15
10.00 to 19.99	.45
20.00 to 29.99	.75
30.00 to 39.99	1.05
40.00 to 49.99	1.35
50.00 to 59.99	1.65
60.00 to 69.99	1.95
70.00 to 79.99	2.25
80.00 to 89.99	2.55
90.00 to 99.99	2.85
100.00 to 109.99	3.15
110.00 to 119.99	3.45

[1] Assessment is calculated in 6/10 of 1 percent of the midpoint of each 10¢ increment, based on a 500 lb. bale and converted to a fixed amount per bale.

(2) Each marketing year the collecting handler must select one of the two options for collecting the supplemental assessment as provided in paragraph (a)(1) of this section. The handler shall notify the Cotton Board as to the method selected at the time the handler files the first handler report each marketing year.

(b) Importer assessment. An assessment for cotton research and promotion of $1 per bale is hereby levied on each bale of cotton, or the bale equivalent thereof for cotton in cotton-containing products identified in the HTS conversion factor table in paragraph (b)(3) of this section and imported into the United States on or after (insert effective date of final rule). The $1 per bale assessment shall be converted to a fixed amount per kilogram to facilitate the U.S. Customs Service in collecting this assessment.

(1) A supplemental assessment for cotton research and promotion in addition to the $1 per bale assessment provided for in paragraph (b) of this section is hereby levied on each bale of cotton or bale equivalent of cotton in cotton-containing products, identified in this subpart, imported into the United States on or after (insert effective date of final rule). The supplemental assessment shall be levied at the rate of 6/10 of 1 percent of the historical value of cotton as determined by the Secretary. The rate of the supplemental assessment on imported cotton will be the same as that levied on cotton produced within the United States. The supplemental assessment will be calculated as a fixed amount per kilogram and added to the $1 per bale or bale equivalent assessment to facilitate the Customs Service in collecting assessments.

(2) The average of monthly average prices received by U.S. farmers will be calculated annually. Such average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment for the period January 1, 1992 through December 31, 1992 is $1.446 per kilogram.

(3) The following table contains the Harmonized Tariff Schedule classification numbers and corresponding conversion factors and assessments. The left column of the table indicates the HTS classifications of imported cotton and cotton-containing products subject to assessment. The center column indicates the conversion factor for determining the raw fiber content for each kilogram of the HTS. HTS numbers for raw cotton have no conversion factor in the table. The right column indicates the total assessment per kilogram of the article assessed. Any line item entry of cotton appearing on Customs entry documentation in which the value of the cotton contained therein is less than $220.99 will not be subject to assessments as described in this section.

IMPORT ASSESSMENT TABLE

[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/KG.
5201001000	.0000	1.3086
5201002000	.0000	1.3086
5201002010	.0000	1.3086
5201002020	.0000	1.3086
5201002050	.0000	1.3086
5204110000	1.1111	1.4540
5204200000	1.1111	1.4540
5205111000	1.1111	1.4540
5205121000	1.1111	1.4540
5205122000	1.1111	1.4540
5205131000	1.1111	1.4540
5205141000	1.1111	1.4540
5205210000	1.1111	1.4540
5205220000	1.1111	1.4540
5205230000	1.1111	1.4540
5205240000	1.1111	1.4540
5205250000	1.1111	1.4540
5205310000	1.1111	1.4540
5205320000	1.1111	1.4540
5205330000	1.1111	1.4540
5205340000	1.1111	1.4540
5205410000	1.1111	1.4540
5205440000	1.1111	1.4540
5206120000	0.5556	0.7271
5206130000	0.5556	0.7271
5206140000	0.5556	0.7271
5206230000	0.5556	0.7271
5206240000	0.5556	0.7271
5206310000	0.5556	0.7271
5207100000	1.1111	1.4540
5208112040	1.1455	1.4990
5208112090	1.1455	1.4990
5208114060	1.1455	1.4990
5208124020	1.1455	1.4990
5208124040	1.1455	1.4990
5208124090	1.1455	1.4990
5208126020	1.1455	1.4990
5208126040	1.1455	1.4990
5208126060	1.1455	1.4990
5208126020	1.1455	1.4990

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/KG.
5208126090	1.1455	1.4990
5208130000	1.1455	1.4990
5208192020	1.1455	1.4990
5208192090	1.1455	1.4990
5208194020	1.1455	1.4990
5208194090	1.1455	1.4990
5208196090	1.1455	1.4990
5208224040	1.1455	1.4990
5208224090	1.1455	1.5006
5208226020	1.1455	1.4990
5208228020	1.1455	1.4990
5208230000	1.1455	1.4990
5208292020	1.1455	1.4990
5208294090	1.1455	1.4990
5208296090	1.1455	1.4990
5208298020	1.1455	1.4990
5208312000	1.1455	1.4990
5208323020	1.1455	1.4990
5208323040	1.1455	1.4990
5208323090	1.1455	1.4990
5208324020	1.1455	1.4990
5208324040	1.1455	1.4990
5208325020	1.1455	1.4990
5208330000	1.1455	1.4990
5208392020	1.1455	1.4990
5208392090	1.1455	1.4990
5208394090	1.1455	1.4990
5208398090	1.1455	1.4990
5208398020	1.1455	1.4990
5208412000	1.1455	1.4990
5208416000	1.1455	1.4990
5208418000	1.1455	1.4990
5208421000	1.1455	1.4990
5208423000	1.1455	1.4990
5208424000	1.1455	1.4990
5208425000	1.1455	1.4990
5208430000	1.1455	1.4990
5208492000	1.1455	1.4990
5208494090	1.1455	1.4990
5208496090	1.1455	1.4990
5208498090	1.1455	1.4990
5208516060	1.1455	1.4990
5208523020	1.1455	1.4990
5208523040	1.1455	1.4990
5208523090	1.1455	1.4990
5208524020	1.1455	1.4990
5208524040	1.1455	1.4990
5208524060	1.1455	1.4990
5208530000	1.1455	1.4990
5208592020	1.1455	1.4990
5208592090	1.1455	1.4990
5208594090	1.1455	1.4990
5208596090	1.1455	1.4990
5209110020	1.1455	1.4990
5209110030	1.1455	1.4990
5209110050	1.1455	1.4990
5209110090	1.1455	1.4990
5209120020	1.1455	1.4990
5209120040	1.1455	1.4990
5209190020	1.1455	1.4990
5209190040	1.1455	1.4990
5209190060	1.1455	1.4990
5209190090	1.1455	1.4990
5209220020	1.1455	1.4990
5209290040	1.1455	1.4990
5209290060	1.1455	1.4990
5209313000	1.1455	1.4990
5209316030	1.1455	1.4990
5209316090	1.1455	1.4990
5209320020	1.1455	1.4990
5209320040	1.1455	1.4990
5209390020	1.1455	1.4990
5209390040	1.1455	1.4990
5209390060	1.1455	1.4990
5209390080	1.1455	1.4990
5209413000	1.1455	1.4990

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/KG.
5209416020	1.1455	1.4990
5209420020	1.0309	1.3490
5209420040	1.0309	1.3490
5209430020	1.1455	1.4990
5209430040	1.1455	1.4990
5209490020	1.1455	1.4990
5209490090	1.1455	1.4990
5209516030	1.1455	1.4990
5209516050	1.1455	1.4990
5209590020	1.1455	1.4990
5209590090	1.1455	1.4990
5210114020	0.6873	0.8994
5210114040	0.6873	0.8994
5210116020	0.6873	0.8994
5210116040	0.6873	0.8994
5210116080	0.6873	0.8994
5210120000	0.6873	0.8994
5210192090	0.6873	0.8994
5210216060	0.6873	0.8994
5210314020	0.6873	0.8994
5210316020	0.6873	0.8994
5210318020	0.6873	0.8994
5210416000	0.6873	0.8994
5210418000	0.6873	0.8994
5210514040	0.6873	0.8994
5210516020	0.6873	0.8994
5210516040	0.6873	0.8994
5210516060	0.6873	0.8994
5211190020	0.6873	0.8994
5211190060	0.6873	0.8994
5211290090	0.6873	0.8994
5211390060	0.6873	0.8994
5211490020	0.6873	0.8994
5211490090	0.6873	0.8994
5211590020	0.6873	0.8994
5212236060	0.9164	1.1992
5601101000	1.1455	1.4990
5601102000	1.0413	1.3626
5601210010	1.1455	1.4990
5601210090	1.1455	1.4990
5601220010	1.0413	1.3626
5601220090	1.0413	1.3626
5601290090	0.9730	1.2733
5601300000	1.1455	1.4990
5602109010	1.0629	1.3909
5602109090	0.5727	0.7494
5602210000	1.0629	1.3909
5602290000	1.1455	1.4990
5603001090	1.0413	1.3626
5603009010	0.1041	0.1362
5603009030	0.3124	0.4088
5603009050	0.3124	0.4088
5603009070	0.3124	0.4088
5603009090	0.3124	0.4088
5604900000	0.5556	0.7271
5608000000	0.3030	0.3965
5607100000	0.8791	1.1504
5607210000	0.8791	1.1504
5607290000	0.8791	1.1504
5607301000	0.8791	1.1504
5607302000	0.8791	1.1504
5607411000	0.8081	1.0575
5607413000	0.8081	1.0575
5607491000	0.8081	1.0575
5607491500	0.8081	1.0575
5607492500	0.8081	1.0575
5607493000	0.8081	1.0575
5607502000	0.8081	1.0575
5607504000	0.8081	1.0575
5607902000	0.6889	1.1632
5608110000	1.0101	1.3218
5608110090	1.0101	1.3218
5608191010	1.0101	1.3218
5608191020	1.0101	1.3218
5608192000	1.0101	1.3218
5608901000	1.1111	1.4540
5608902000	1.1111	1.4540

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[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/KG.
5809003000	1.0101	1.3218
5809003000	1.0101	1.3218
5809004000	0.5556	0.7271
5702202000	1.0989	1.4380
5702491010	1.0333	1.3522
5702991010	1.1111	1.4540
5706100000	0.6313	0.8261
5704900000	0.2104	0.2753
5801100000	1.0529	1.3900
5801220000	1.1455	1.4990
5801230000	1.1455	1.4990
5801250010	1.1455	1.4990
5801250020	1.1455	1.4990
5801310000	1.0413	1.3626
5801360000	1.0413	1.3626
5801350010	1.0413	1.3626
5801350020	1.0413	1.3626
5802190000	1.1455	1.4990
5802300030	0.5727	0.7494
5804210000	1.0413	1.3626
5804290020	1.1455	1.4990
5805004090	1.1447	1.4980
5806102000	1.0413	1.3626
5806200000	0.3534	0.4625
5806310000	1.1455	1.4990
5806321010	1.0413	1.3626
5806321090	1.0413	1.3626
5806322000	1.0413	1.3626
5806392000	1.1447	1.4980
5806400000	0.4256	0.5622
5807101020	1.0413	1.3626
5808103010	0.5727	0.7494
5808900010	0.5727	0.7494
5810910020	1.1455	1.4990
5810920040	1.0413	1.3626
5810920080	1.0413	1.3626
5811000000	1.1455	1.4990
6002302000	0.9956	1.3081
6002920000	1.1574	1.5146
6101200010	1.0094	1.3209
6101302010	1.2235	1.6011
6101302020	1.2235	1.6011
6102200010	1.0094	1.3209
6102302010	1.2235	1.6011
6102302020	1.2235	1.6011
6103421020	0.8806	1.1524
6103421040	0.8806	1.1524
6103421050	0.8806	1.1524
6103421070	0.8806	1.1524
6103431520	0.2516	0.3292
6103431540	0.2516	0.3292
6103431550	0.2516	0.3292
6104220040	0.9002	1.1780
6104220060	0.9002	1.1780
6104320000	0.9207	1.2048
6104410010	0.9645	1.2621
6104420010	0.9002	1.1780
6104420020	0.9002	1.1780
6104431010	0.4823	0.6311
6104432010	0.0688	0.0892
6104510000	0.9978	1.3057
6104522010	0.9312	1.2188
6104522020	0.9312	1.2188
6104522010	0.0688	0.0881
6104522010	0.8806	1.1524
6104522025	0.8806	1.1524
6104522030	0.8806	1.1524
6104522060	0.8806	1.1524
6104582010	0.3774	0.4939
6104582025	0.3774	0.4939
6104582030	0.3774	0.4939
6104582060	0.3774	0.4939
6105100010	0.9850	1.2890
6105100020	0.9850	1.2890
6105100030	0.9850	1.2890
6105202010	0.3078	0.4026

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/KG.
6105202030	0.3078	0.4026
6106100010	0.9850	1.2890
6106100020	0.9850	1.2890
6106100030	0.9850	1.2890
6106202010	0.3078	0.4026
6106202030	0.3078	0.4026
6106801010	0.9080	1.0573
6107110010	1.1322	1.4816
6107110020	1.1322	1.4816
6107120010	0.5032	0.6585
6107210010	0.8606	1.1524
6107220025	0.3774	0.4939
6108110010	1.1314	1.4806
6108210010	1.2445	1.6286
6108210020	1.2445	1.6286
6108220020	1.1314	1.4806
6108220030	1.1314	1.4806
6108310010	1.1201	1.4658
6108320010	0.2489	0.3257
6108320015	0.2489	0.3257
6108320025	0.2489	0.3257
6108910015	1.2445	1.6286
6108910025	1.2445	1.6286
6108910030	1.2445	1.6286
6108920030	0.2489	0.3257
6108994010	1.1790	1.5428
6109100005	0.9956	1.3028
6109100007	0.9956	1.3028
6109100009	0.9956	1.3028
6109100012	0.9956	1.3028
6109100014	0.9956	1.3028
6109100018	0.9956	1.3028
6109100023	0.9956	1.3028
6109100027	0.9956	1.3028
6109100037	0.9956	1.3028
6109100040	0.9956	1.3028
6109100045	0.9956	1.3028
6109100060	0.9956	1.3028
6109100065	0.9956	1.3028
6109100070	0.9956	1.3028
6109901007	0.3111	0.4071
6109901009	0.3111	0.4071
6109901025	0.3111	0.4071
6109901050	0.3111	0.4071
6109901060	0.3111	0.4071
6109901065	0.3111	0.4071
6109901090	0.3111	0.4071
6110101010	1.2390	1.6135
6110101020	1.2390	1.6135
6110102010	0.8691	1.1295
6110102030	0.8691	1.1295
6110102070	0.8691	1.1295
6110102060	0.8691	1.1295
6110202005	1.1837	1.5409
6110202010	1.1837	1.5409
6110202015	1.1837	1.5409
6110202020	1.1837	1.5409
6110202025	1.1837	1.5409
6110202030	1.1837	1.5409
6110202035	1.1837	1.5409
6110202040	1.1574	1.5146
6110202045	1.1574	1.5146
6110202065	1.1574	1.5146
6110202075	1.1574	1.5146
6110901510	0.4932	0.6456
6110901520	0.4932	0.6454
6110901560	0.4932	0.6454
6110903010	0.1850	0.2421
6110903015	0.1850	0.2421
6110903020	0.1850	0.2421
6110903025	0.1850	0.2421
6110903040	0.1850	0.2421
6110903045	0.1850	0.2421
6110903050	0.1850	0.2421
6110903055	0.1850	0.2421
6110906022	0.2630	0.3442
6110906024	0.2630	0.3442

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/KG.
6110906036	0.3902	0.5106
6110906038	0.3902	0.5106
6110906040	0.2630	0.3442
6110906042	0.2630	0.3442
6110906060	0.2630	0.3442
6111201000	1.2581	1.6463
6111202000	1.2581	1.6463
6111203000	1.0064	1.3170
6111205600	1.0064	1.3170
6111206010	1.0064	1.3170
6111206020	1.0064	1.3170
6111206030	1.0064	1.3170
6111206040	1.0064	1.3170
6111305015	0.2516	0.3292
6111305020	0.2516	0.3292
6111305040	0.2516	0.3292
6112110050	0.7548	0.9877
6112120010	0.2516	0.3292
6112120030	0.2516	0.3292
6112120040	0.2516	0.3292
6112120050	0.2516	0.3292
6112390010	1.1322	1.4816
6112490010	0.9435	1.2347
6113000085	0.4783	0.6259
6114200005	0.9002	1.1780
6114200010	0.9002	1.1780
6114200015	0.9002	1.1780
6114200020	1.2960	1.6829
6114200040	0.9002	1.1780
6114200052	0.9002	1.1780
6114200060	0.9002	1.1780
6114301020	0.2572	0.3366
6114303030	0.2572	0.3366
6114303050	0.2572	0.3366
6115110010	1.0522	1.3769
6115110020	1.0522	1.3769
6115120000	1.0522	1.3769
6115190010	1.0417	1.3632
6115200010	1.0522	1.3769
6115910000	0.8681	1.1360
6115922000	1.0417	1.3632
6115932000	0.2315	0.3029
6116101510	0.3655	0.4783
6116101520	0.8526	1.1160
6116102510	0.3323	0.4348
6116103520	0.7753	1.0146
6116103540	0.8079	1.0572
6116910000	0.9137	1.1957
6118922010	1.0965	1.4349
6118922020	1.0965	1.4349
6118922030	1.2183	1.5943
6118922040	1.0965	1.4349
6118922060	1.2183	1.5943
6118923000	1.0965	1.4349
6118931000	1.1076	1.4494
6118932010	0.1218	0.1594
6118932020	0.1218	0.1594
6117101000	1.0250	1.3452
6117800010	0.9747	1.2755
6117800035	0.3655	0.4783
6117900036	1.1076	1.4494
6117900055	1.1076	1.4494
6201110010	0.9774	1.2790
6201121000	0.9480	1.2406
6201122010	0.8950	1.1716
6201122050	0.6847	0.8960
6201122060	0.6847	0.8960
6201131000	0.9576	1.2531
6201134015	0.2107	0.2757
6201134030	0.2630	0.3440
6201912010	0.9584	1.2502
6201921000	0.9267	1.2127
6201921500	1.1580	1.5156
6201922010	1.0296	1.3473
6201922040	1.2871	1.6843

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/KG.
6201922050	1.0296	1.3473
6201922060	1.0296	1.3473
6201931000	0.3089	0.4042
6201932010	0.2574	0.3366
6201933000	1.1700	1.5311
6201933510	0.2574	0.3368
6201933520	0.2574	0.3368
6202110010	0.0650	0.0851
6202121009	0.9372	1.2264
6202122010	1.1064	1.4478
6202122025	1.3017	1.7034
6202122050	0.6461	1.1072
6202122060	0.6461	1.1072
6202131000	0.9687	1.2676
6202134005	0.2664	0.3486
6202134020	0.3330	0.4358
6202134030	0.3330	0.4358
6202912010	0.9663	1.2645
6202921000	1.0413	1.3626
6202921500	1.0413	1.3626
6202922025	1.3017	1.7034
6202922060	1.0413	1.3626
6202922070	1.0413	1.3626
6202931000	0.3124	0.4088
6202934500	1.1833	1.5485
6202935010	0.2603	0.3406
6202935020	0.2603	0.3406
6203112000	0.1301	0.1702
6203121000	0.5435	0.7112
6203122010	0.1302	0.1704
6203193000	1.1833	1.5485
6203221000	1.3017	1.7034
6203222010	1.2366	1.6182
6203322040	1.2366	1.6182
6203332010	0.1302	0.1704
6203392010	1.1715	1.5330
6203411010	0.9448	1.2364
6203422010	0.9961	1.3035
6203422025	0.9961	1.3035
6203422050	0.9961	1.3035
6203424005	1.2451	1.6293
6203424010	1.2451	1.6293
6203424015	0.9961	1.3035
6203434020	1.2451	1.6293
6203424025	1.2451	1.6293
6203424030	1.2451	1.6293
6203424035	1.2451	1.6293
6203424040	0.9961	1.3035
6203424045	0.9961	1.3035
6203424050	0.9238	1.2089
6203424060	0.9238	1.2089
6203431500	0.1245	0.1629
6203433010	0.5199	0.6803
6203434010	0.1232	0.1612
6203434020	0.1232	0.1612
6203434030	0.1232	0.1612
6203434040	0.1232	0.1612
6203492010	0.1245	0.1629
6203492030	0.1245	0.1629
6203493045	0.2490	0.3258
6203493060	0.1244	0.1628
6204132010	0.1302	0.1704
6204192000	0.1302	0.1704
6204193090	0.2603	0.3406
6204221000	1.3017	1.7034
6204223030	1.0413	1.3626
6204223040	1.0413	1.3626
6204223050	1.0413	1.3626
6204223060	1.0413	1.3626
6204223065	1.0413	1.3626
6204292015	0.3254	0.4258
6204292040	0.3254	0.4258
6204312010	0.0650	0.0851
6204322030	1.0413	1.3626
6204335010	0.1301	0.1702
6204393010	0.1301	0.1702
6204394040	0.1301	0.1702

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/KG.
6204394060	0.2603	0.3406
6204423010	1.2726	1.6658
6204423030	0.9546	1.2492
6204423040	0.9546	1.2492
6204423050	0.9546	1.2492
6204423060	0.9546	1.2492
6204434010	0.4724	0.6182
6204434030	0.2953	0.3864
6204434040	0.2953	0.3864
6204444010	0.4831	0.6322
6204490040	0.1301	0.1702
6204490060	0.2603	0.3406
6204522010	1.2654	1.6559
6204522030	1.2654	1.6559
6204522040	1.2654	1.6559
6204522070	1.0656	1.3944
6204522080	1.0656	1.3944
6204533010	0.2664	0.3486
6204593010	0.0666	0.0872
6204594040	0.1331	0.1742
6204594060	0.2664	0.3486
6204610010	0.0623	0.0815
6204622010	0.9961	1.3035
6204622025	0.9961	1.3035
6204622050	0.9961	1.3035
6204624005	1.2451	1.6293
6204624010	1.2451	1.6293
6204624020	0.9961	1.3035
6204624025	1.2451	1.6293
6204624030	1.2451	1.6293
6204624035	1.2451	1.6293
6204624040	1.2451	1.6293
6204624045	0.9961	1.3035
6204624050	0.9961	1.3035
6204624055	0.9854	1.2895
6204624060	0.9854	1.2895
6204624065	0.9854	1.2895
6204633510	0.2546	0.3332
6204633530	0.2546	0.3332
6204633532	0.2437	0.3189
6204633540	0.2437	0.3189
6204692510	0.2490	0.3258
6204692540	0.2437	0.3189
6204693040	0.1244	0.1628
6204699040	0.2490	0.3258
6205202015	0.9961	1.3035
6205202020	0.9961	1.3035
6205202025	0.9961	1.3035
6205202030	0.9961	1.3035
6205202035	1.1206	1.4664
6205202040	0.9961	1.3035
6205202050	0.9961	1.3035
6205202060	0.9961	1.3035
6205202065	0.9961	1.3035
6205202070	0.9961	1.3035
6205302075	0.9961	1.3035
6205302010	0.3113	0.4074
6205302030	0.3113	0.4074
6205302040	0.3113	0.4074
6205302050	0.3113	0.4074
6205302070	0.3113	0.4074
6205302080	0.3113	0.4074
6206100040	0.1245	0.1629
6206303010	0.9961	1.3035
6206303030	0.9961	1.3035
6206303040	0.9961	1.3035
6206303050	0.9961	1.3035
6206303060	0.9961	1.3035
6206403010	0.3113	0.4074
6206403030	0.3113	0.4074
6206403050	0.3113	0.4074
6206900040	0.2490	0.3258
6207110000	1.0852	1.4201
6207199010	0.3617	0.4733
6207210010	1.1065	1.4508
6207210090	1.1065	1.4535
6207220000	0.3695	0.4835

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/KG.
6207911000	1.1455	1.4990
6208210010	1.0583	1.3849
6208210020	1.0583	1.3849
6208220000	0.1245	0.1629
6208911010	1.1455	1.4990
6208913010	1.1455	1.4990
6208920010	0.1273	0.1666
6208920030	0.1273	0.1666
6208998030	1.0965	1.4349
6209201000	1.1577	1.5150
6209203000	0.9749	1.2756
6209205030	0.9749	1.2756
6209205035	0.9749	1.2756
6209205040	1.2186	1.5947
6209205045	0.9749	1.2756
6209205050	0.9749	1.2756
6209303020	0.2463	0.3223
6209303040	0.2463	0.3223
6210104015	0.2291	0.2998
6210301020	0.0891	0.1166
6210401010	0.0391	0.0512
6210401020	0.4556	0.5962
6210401030	0.4556	0.5962
6210501020	0.0911	0.1192
6211111010	0.1273	0.1666
6211111020	0.1273	0.1666
6211112010	1.1455	1.4990
6211112020	1.1455	1.4990
6211201535	0.2473	0.3236
6211320010	1.0413	1.3626
6211320015	1.0413	1.3626
6211320030	0.9763	1.2776
6211320060	0.9763	1.2776
6211320070	0.9763	1.2776
6211320080	0.9763	1.2776
6211330010	0.3254	0.4258
6211330030	0.3905	0.5110
6211330035	0.3905	0.5110
6211330040	0.3905	0.5110
6211330050	0.3905	0.5110
6211420010	1.0413	1.3626
6211420020	1.0413	1.3626
6211420025	1.1715	1.5330
6211420050	1.1715	1.5330
6211420060	1.0413	1.3626
6211420070	1.1715	1.5330
6211420080	1.1715	1.5330
6211430010	0.2603	0.3406
6211430030	0.2603	0.3406
6211430060	0.2603	0.3406
6211430090	0.2603	0.3406
6211490010	1.1214	1.4675
6212101020	0.2412	0.3156
6212102010	0.1648	1.2523
6212102020	0.2412	0.3156
6212200020	0.3014	0.3944
6212900010	0.7717	1.0096
6212900030	0.1929	0.2524
6213201000	1.1809	1.5453
6213202000	1.0828	1.3906
6213901000	0.4724	0.6182
6214101000	1.0965	1.4349
6214200000	0.8961	1.1713
6214300000	0.1205	0.1578
6214900010	0.9043	1.1834
6215100040	0.9234	1.2084
6216001000	0.3617	0.4733
6216001510	0.3617	0.4733
6216002540	0.1743	0.2281
6216003810	1.2451	1.6293
6216003820	1.2451	1.6293
6216004400	0.5650	0.7405
6216004835	1.1319	1.4812
6216004845	1.1319	1.4812
6216006800	1.2442	1.6282
6217100010	1.0182	1.3324
6217100030	0.2546	0.3332

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IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/KG.
6217900075	1.0182	1.3324
6301200010	0.9219	1.2064
6301300010	0.8766	1.1471
6301300020	0.8766	1.1471
6301400010	1.0626	1.3905
6301400020	1.0626	1.3905
6302100010	1.1689	1.5296
6302212010	1.1689	1.5296
6302212020	0.8182	1.0707
6302212030	1.1689	1.5296
6302212040	0.8182	1.0707
6302212060	0.8182	1.0707
6302222010	0.4091	0.5353
6302222020	0.4091	0.5353
6302311060	0.8182	1.0707
6302311090	0.8182	1.0707
6302312010	1.1689	1.5296
6302312020	0.8182	1.0707
6302312030	1.1689	1.5296
6302312040	0.8182	1.0707
6302312050	0.8182	1.0707
6302312060	0.8182	1.0707
6302312090	0.8182	1.0707
6302322020	0.4091	0.5353
6302322040	0.4091	0.5353
6302402010	0.9935	1.3001
6302402020	1.0626	1.3905
6302511000	0.5844	0.7647
6302512000	0.8766	1.1471
6302513000	0.5844	0.7647
6302514000	0.8182	1.0707
6302530010	1.0626	1.3905
6302530020	1.0626	1.3905
6302530030	1.0626	1.3905
6302590000	1.1189	1.4642
6302600010	1.1689	1.5296
6302600020	1.0520	1.3766
6302600030	1.0520	1.3766
6302910005	1.0520	1.3766
6302910015	1.1689	1.5296
6302910025	1.0520	1.3766
6302910035	1.0520	1.3766
6302910045	1.0520	1.3766
6302910050	1.0520	1.3766
6302910060	1.0520	1.3766
6303110000	0.9248	1.2102
6303120000	1.0626	1.3905
6303910000	0.6429	0.8413
6303920000	0.2922	0.3824
6304111000	1.0404	1.3615
6304112000	1.0626	1.3905
6304190500	1.0520	1.3766
6304191000	1.1689	1.5296
6304191500	0.4091	0.5353
6304192000	0.4091	0.5353
6304910020	0.9351	1.2237
6304910040	1.0626	1.3905
6304920000	0.9351	1.2237
6304930000	1.0626	1.3905
6304992000	1.1680	1.5284

(4) Any entry of cotton that qualifies for informal entry according to regulations issued by the Customs Service will not be subject to the assessment.

(5) Imported textile articles assembled abroad in whole or in part of fabricated components, produced in the United States which:

(i) Were exported from the U.S. in condition ready for assembly without further fabrication,

(ii) Have not lost their physical identity in such articles by change in form, shape or otherwise, and

(iii) Have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process shall not be subject to assessments under this subpart. The specific HTS categories affected under this paragraph are 9802.00.6010, 9802.00.8040, and 9802.00.8060.

(6) Imported cotton and products may be exempted by the Cotton Board from assessment under this paragraph. Such imported cotton and products may include, but are not limited to cotton and the cotton content of products which is U.S. produced cotton, or cotton other than Upland cotton.

(i) A request for such exemption must be submitted to the Cotton Board by the importer, prior to the importation of the cotton or cotton product. The Cotton Board will then issue, if deemed appropriate, a numbered certificate. The exemption number should be entered on the Customs entry documentation.

(ii) The request for exemption should include:

(A) The name, address, and importer identification number for the importer;

(B) The HTS classification of the imported product;

(C) Weight of the product for which the exemption is sought;

(D) Estimated date of entry;

(E) Commercial invoices or other such documentation indicating the origin of production or type of the cotton fiber used to produce the imported product;

(F) Manufacturer's descriptions of the imported product.

6. Section 1205.511 "Payment and collection" is revised to read as follows:

§ 1205.511 Payment and collection.

(a) The $1 per bale assessment shall be paid by:

(1) The producer of the cotton to the collecting handler designated in § 1205.512, and

(2) The importer of cotton to the Customs Service as provided in § 1205.513.

(b) The supplemental assessment shall be paid by:

(1) The producer of the cotton to the collecting handler designated in § 1205.514, and

(2) The importer of cotton to the Customs Service as described in § 1205.515.

(c) If more than one person subject to assessment shares in the proceeds received from a bale or bale equivalent, each such person is obligated to pay that portion of the assessment that is equivalent to that person's proportionate share of the proceeds.

(d) Failure of the handler to collect the assessments on each bale shall not relieve the handler of the handler's obligation to remit the assessments to the Cotton Board as required in §§ 1205.512, 1205.513 and 1205.516.

7. In § 1205.512 "Collecting handlers and the time of collection of $1 per bale assessment" paragraph (h) is revised to read as follows:

§ 1205.512 Collecting handlers and the time of collection of the $1 per bale assessment.

Collecting handlers and the time of collecting the $1 per bale assessment shall be as follows:

* * * * *

(h) In the event of a producer's death, bankruptcy, receivership, or incapacity to act, the representative of such producer, or the producer's estate, or the person acting on behalf of creditors, shall be considered the producer for the purposes of this section.

8. In § 1205.513 "Collecting handlers and time of collection of the supplemental assessment" paragraph (k) is revised to read as follows:

§ 1205.513 Collecting handlers and the time of collection of the supplemental assessment

* * * * *

(k) In the event of a producer's death, bankruptcy, receivership, or incapacity to act, the representative of such producer or the producer's estate, or the person acting on behalf of creditors, shall be considered the producer for the purposes of this section.

§ 1205.516 [Redesignated as § 1205.518]

9. Section 1205.516 "Receipts for payment of assessments" is redesignated as § 1205.518.

§ 1205.514 [Redesignated as § 1205.516]

10. Section 1205.514 "Reports and remittance to the Cotton Board" is redesignated as § 1205.516 and revised to read as follows:

§ 1205.516 Reports and remittance to the Cotton Board.

(a) *Handler Reports and Remittances.* Each collecting handler shall transmit assessments to the Cotton Board as follows:

(1) *Reporting periods.* Each calendar month shall be a reporting period and the period shall end on the close of business on the last day of the month.

(2) *Reports.* Each collecting handler shall make reports on forms made available or approved by the Cotton Board. Each report shall be mailed to the Cotton Board and postmarked within 10 days after the close of the reporting period.

(i) *Collecting handler report.* Each collecting handler shall prepare a separate report form each reporting period for each gin from which such handler handles cotton on which the handler is required to collect the assessments during the reporting period. Each report shall be mailed in duplicate to the Cotton Board and shall contain the following information:

(A) Date of report;

(B) Reporting period covered by report;

(C) Gin code number;

(D) Name and address of handler;

(E) Listing of all producers from whom the handler was required to collect the assessments, their addresses, total number of bales, and total assessment collected and remitted for each producer;

(F) Date of last report remitting assessments to the Cotton Board.

(ii) *No Cotton Purchased Report.* Each collecting handler shall submit a no cotton purchased report form for each reporting period in which no cotton was handled for which the handler is required to collect assessments during the reporting period. A collecting handler who handles cotton only during certain months shall file a final no cotton purchased report at the conclusion of such handler's marketing season. If a collecting handler handles cotton during any month following submission of the final report for the handler's marketing season, such handler shall send a collecting handler report and remittance to the Cotton Board by the 10th day of the month following the month in which cotton was handled. The no cotton purchased report shall be signed and dated by the handler or the handler's agent.

(3) *Remittances.* The collecting handler shall remit all assessments to the Cotton Board with the report required in paragraph (a)(2) of this section. All remittances sent to the Cotton Board by collecting handlers shall be made by check, draft, or money order payable to the order of the "Cotton Board". All remittances shall be received subject to collection and payment at par.

(4) *Interest and Late Payment Charges.* (i) There shall be an interest charge, at rates prescribed by the Cotton Board with the approval of the Secretary, on any handler who is sent a second certified mail notice of past-due assessments from the Cotton Board in any one marketing year (August 1–July 31).

(ii) In addition to the interest charge specified in paragraph (a)(4)(i) of this section, there shall be a late payment charge on any handler whose remittance is not received by the Cotton Board within 10 days after the close of the reporting period in which interest charges were first accrued. The late payment shall be 5 percent of the unpaid balance before interest charges have accrued.

(iii) The interest and late payment charges on the unremitted assessments for a particular reporting period will be applied from the first working day on or following the 20th day of the month in which the assessments were due.

(b) *Importer Reports and Remittance.* The United States Customs Service will transmit reports and assessments collected on imported cotton to the Agricultural Marketing Service according to the agreement between the Customs Service and the Agricultural Marketing Service. Upon the request of the Cotton Board, an importer shall file with the Board a report, for a period of time specified in the request, that includes the following information:

(1) The importer's name and address;

(2) The quantity of cotton and cotton products imported;

(3) The amount of the assessment paid on imported cotton and cotton products;

(4) The amount of imported cotton and cotton products on which the assessment was not paid to the Customs Service.

11. Section 1205.515 "Failure to report and remit" is redesignated as § 1205.517 and revised to read as follows.

§ 1205.517 Failure to report and remit.

(a) Any collecting handler who fails to submit reports and remittances according to reporting periods and time schedules required in § 1205.516 shall be subject to appropriate action by the Cotton Board which may include one or more of the following actions:

(1) Audits of the collecting handler's books and records to determine the amount owed the Cotton Board;

(2) Requirement that an escrow account for the deposit of assessments collected be established. Frequency and schedule of deposits and withdrawals from the escrow account shall be determined by the Cotton Board with the approval of the Secretary;

(3) Referral to the Secretary for appropriate enforcement action;

(4) Publication of a collecting handler's name in accordance with the following provisions:

(i) The name of any collecting handler will be subject to publication if the collecting handler:

(A) Is sent two certified mail notices of past due assessments and/or collecting handler reports from the Cotton Board in any one marketing year (August 1–July 31), or

(B) Is required by the Cotton Board to establish an escrow account for depositing assessments, in accordance with paragraph (a)(2) of this section, and does not comply with the deposit procedures established by the Cotton Board with approval of the Secretary.

(ii) The name of any collecting handler who is subject to publication will be published by the Cotton Board with the approval of the Secretary in a monthly listing during the primary cotton marketing season (September through March) and a bimonthly listing during the remainder of the year. The published listing will be distributed by the Cotton Board.

(iii) The Cotton Board, with approval of the Secretary, may notify individual producers that the assessments collected by such producer's collecting handler, whose name is subject to publication in accordance with the provisions of paragraph (a)(4)(i) of this section, have not been remitted to the Cotton Board as required.

(b) Any importer who fails to submit,

(1) Reports to the Cotton Board pursuant to request made according to § 1205.516 or

(2) Assessments to the Customs Service, shall be subject to one or more of the following actions:

(i) Audits of the importer's books and records to determine the amount owed the Cotton Board.

(ii) A deduction for the amount of any unpaid assessment by the Customs Service from the importers surety bond.

(iii) Referral to the Secretary for appropriate enforcement action.

12. Section 1205.514 "Customs Service and the collection of the $1 per bale assessment" is added to read as follows:

§ 1205.514 Customs Service and the Collection of the $1 per bale assessment.

Customs Service and the Collection of the $1 per bale assessment shall be as follows:

(a) The Customs Service will collect the assessment from the importer or from any person acting as principal, agent, broker or consignee for cotton or cotton-containing products produced outside the United States and imported into the United States. The Customs Service will collect the assessment on cotton and cotton-containing products identified by Harmonized Tariff Schedule heading numbers in § 1205.510(b)(2) at the time of importation and forward such

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assessment as per the agreement between the United States Customs Service and the Department of Agriculture.

(b) In the event of an importer's death, bankruptcy, receivership, or incapacity to act, the representative of such importer, or the importer's estate, or the person acting on behalf of creditors, shall be considered the importer for the purposes of this section.

13. Section 1205.515 "Customs Service and collection of the supplemental assessment" is added to read as follows:

§ 1205.515 Customs Service and the collection of the supplemental assessment.

Customs Service and the collection of the supplemental assessment shall be as follows:

(a) The Customs Service will collect the supplemental assessment from any person acting as principal, agent, broker or consignee for cotton or cotton-containing products produced outside the United States and imported into the United States. Customs Service will collect the assessment on all cotton and cotton-containing products identified by Harmonized Tariff Schedule heading numbers in § 1205.510(b)(2) at the time of importation and forward such assessment as per the agreement between the United States Customs Service and the Department of Agriculture.

(b) In the event of an importer's death, bankruptcy, receivership, or incapacity to act, the representative of such importer, or the importer's estate, or the person acting on behalf of creditors, shall be considered the importer for the purposes of this section.

Reimbursements

14. Section 1205.520 "Procedure for obtaining refund" is revised to read as follows:

§ 1205.520 Procedure for obtaining reimbursement.

Each importer against who's imports of cotton or cotton-containing products any assessments are made and collected may obtain a reimbursement on that portion of the assessment that was collected on cotton produced in the United States or cotton other than Upland cotton only by following the procedures prescribed in this section.

(a) *Application form.* An importer shall obtain a reimbursement application form from the Cotton Board. Such form may be obtained by written request to the Cotton Board and the request shall bear the importer's signature or the importer's properly-witnessed mark.

(b) *Submission of Reimbursement Application to Cotton Board.* Any importer requesting a reimbursement shall mail the application on the prescribed form to the Cotton Board. The application shall be postmarked within 90 days from the date the assessments were paid on the cotton by such importer. The reimbursement application shall show.

(1) The importer's name, address, phone number and Customs Service identification number;

(2) Weight of the cotton in each HTS category for which the reimbursement is requested;

(3) Subtotal amounts to be reimbursed for each HTS number and grand total to be reimbursed;

(4) Date or inclusive dates on which the assessments were paid;

(5) The name of the port of entry; and

(6) Certification by the importer that the cotton was grown in the U.S. or is other than Upland cotton.

(c) Where more than one importer shared in the assessment payment on cotton joint or separate reimbursement application forms may be filed. In any such case, the reimbursement application shall show the names, addresses and proportionate shares of assessments paid by all importers. The reimbursement application shall bear the signature of each importer seeking reimbursement.

(d) *Proof of payment of the assessment on U.S. produced or other than Upland cotton.* A copy of the Customs entry form and the commercial invoice filed with the Customs Service shall accompany the importer's reimbursement application. Within 60 days from the date the properly executed application for reimbursement is received by the Cotton Board, the Cotton Board shall make reimbursement to the importer. For joint applications, the reimbursement shall be made payable to all eligible importers signing the reimbursement application. Documentation submitted with reimbursement applications shall not be returned to the importer.

Warehouse Receipts

15. Section 1205.525 "Entry of gin code number" is revised to read as follows:

§ 1205.525 Entry of gin code number.

The warehouse that first receives a bale for storage after ginning shall enter the gin code number of the gin at which the bale was ginned on the warehouse receipt issued for the bale.

Reports and Records

16. Section 1205.530 "Gin reports and reporting schedule" is amended by revising paragraph (a)(2) to read as follows:

§ 1205.530 Gin reports and reporting schedule.

(a) * * *

(2) *Certificate in Lieu of End-of-Season Report.* If a gin is the collecting handler on every bale ginned at such gin and collecting handler reports and remittances of assessments have been made in accordance with § 1205.516, a certification to that effect may be made to the Cotton Board in lieu of an end-of-season report.

* * * * *

17. Section 1205.531 "Records" is revised to read as follows:

§ 1205.531 Records.

Each handler or importer required to make reports pursuant to this subpart shall maintain such books and records as are necessary to verify the reports.

18. Section 1205.532 "Retention period for reports and records" is revised to read as follows:

§ 1205.532 Retention period for reports and records.

Each handler and importer required to make reports pursuant to this subpart shall retain for at least 2 years beyond the marketing year of their applicability:

(a) One copy of the report made to the Cotton Board; and

(b) Such books and records as are necessary to verify such reports.

19. Section 1205.533 "Availability of Reports and Records" is revised to read as follows:

§ 1205.533 Availability of reports and records.

Each handler and importer required to make reports pursuant to this subpart shall make available for inspection by the Cotton Board, including its designated employees, and the Secretary any reports, books, or records required under this subpart.

Confidential Information

20. Section 1205.540 "Confidential Books, Records, and Reports" is revised to read as follows:

§ 1205.540 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handlers and importers shall be kept confidential in the manner and to the extent provided for in § 1205.340 of this part.

Dated: December 6, 1991.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 91-30001 Filed 12-16-91; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[GL-174-89]

RIN 1545-AN47

Sale of Seized Property; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of public hearing on proposed Income Tax Regulation that relates to the request for the sale of seized property under section 6335(f) of the Internal Revenue Code of 1986.

DATES: The public hearing originally scheduled for Tuesday, December 17, 1991, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Felicia A. Daniels of the Regulations Unit, Assistant Chief Counsel (corporate), 202-566-3935 (not toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 6335(f) of the Internal Revenue Code of 1986. A notice of public hearing appearing in the **Federal Register** for Wednesday, October 9, 1991 (56 FR 50833), announced that the public hearing on the proposed regulations would be held on December 17, 1991, beginning at 10 a.m. in the Internal Revenue Service Building, second floor, room 2615, 1111 Constitution Avenue, NW., Washington, DC 20224.

The public hearing scheduled for Tuesday, December 17, 1991, has been cancelled.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-30185 Filed 12-13-91; 12:40 pm]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80 and 86

[FRL-4083-7]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Evaporative Emission Regulations for Gasoline- and Methanol-Fueled Light-Duty Vehicles and Light-Duty Trucks and Heavy-Duty Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public workshop and report availability.

SUMMARY: This notice announces the availability of a new technical report and the time and place for a public workshop related to EPA's proposed evaporative emission control regulations. In addition, draft regulations and draft supporting analyses related to the test procedures are available for public review. This notice seeks comment, both oral and written, on the report, regulations, and supporting analyses.

DATES: The public workshop will be held on January 8, 1992. It will start at 9 a.m. and will continue throughout the day as long as necessary to complete testimony. Comments will be accepted until January 22, 1992.

ADDRESSES: The public workshop will be at Activities Hall, Domino's Farms, 24 Frank Lloyd Wright Dr., Ann Arbor, Michigan 48105 (telephone 313-930-5032). Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A-89-18, at: Air Docket Section (LE-131), U.S. Environmental Protection Agency, Attention: Docket No. A-89-18, First Floor, Waterside Mall, rm. M-1500, 401 M Street, SW., Washington, DC 20460.

Materials related to this rulemaking have been placed in Docket A-89-18 by EPA. The docket is located at the above address and may be inspected between 8:30 a.m. and noon and between 1:30 p.m. and 3:30 p.m., Monday through Friday. EPA may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Stout, Standards Development and Support Branch, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Telephone: (313) 741-7805.

For copies of support documents, contact: Ms. Margaret Borushko, (313) 668-4272.

SUPPLEMENTARY INFORMATION: On January 19, 1990 EPA published a Notice of Proposed Rulemaking (NPRM) detailing a revised procedure to test vehicles for evaporative emissions (55 FR 1914). The test included an initial step to load the evaporative canister to breakthrough, then the exhaust emission test, followed by repeated high-temperature diurnal heat builds. The test also included provisions to ensure that vehicles could control running losses. The NPRM also requested comment on an alternative "real time" test concept advanced by General Motors (GM).

In response to the comments received following the January 1990 NPRM, EPA subsequently held a public workshop to provide further opportunity for comment on several possible modifications to the proposed test procedure. These modifications included the addition of running loss and resting loss tests to the end of the procedure, as well as various adjustments to the method of testing. The workshop also provided an additional opportunity for comment on the GM real time test.

More recently, EPA has completed a draft analysis related to the GM real time test which supports a revised sequencing of test segments of the GM test ("Emission Evaluation of the GM Real Time Evaporative Test Procedure"). The necessary revision to the GM sequence makes it consistent with the sequence presented and commented on at the December 1990 public workshop. Because of the importance of this issue, the Agency has decided once again to open the rulemaking record and hold an additional public workshop for the purpose of presenting and receiving comment on its analysis.

EPA is also providing the public the opportunity to review staff positions on several other issues, each of which has been commented on previously. These staff positions are discussed in a technical report, entitled "Supplementary Information—EPA Proposal for Control of Evaporative Emissions." Also, EPA staff have drafted more detailed regulations for the test procedure options. All these documents are available for public inspection in the public docket (see "ADDRESSES" above). One outcome of EPA's rulemaking could be that EPA would adopt test procedures, such as described in the draft regulations, which are different from those adopted by CARB. EPA requests comment on such an outcome, and ways to minimize its impact if it occurred.

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Public Participation

As in past rulemaking actions, EPA strongly encourages full public participation in the development and assessment of information that will be used in developing a final rule. In particular, comment is invited on the draft analysis and other supporting information identified above. For those submitting comments, whenever possible, full supporting rationale, data, and detailed analyses should be submitted to allow EPA to make maximum use of the comments.

EPA will make a presentation highlighting its sequencing analysis and some other key portions of the rulemaking. After EPA's presentation, attendees will be encouraged to ask questions and make oral presentations. Any person desiring to present testimony at the public workshop should notify the contact person listed above of such intent at least seven days before the workshop. The contact person also should be provided an estimate of the time required for the presentation of the testimony and notification of any need for audio/visual equipment. A sign-up sheet will be available at the registration table the morning of the workshop to schedule the order of testimony.

EPA suggests that enough copies of the statement or material for presentation be brought to the workshop for distribution to the audience. In addition, it will be helpful for EPA to receive an advance copy of any statement or material for presentation before the scheduled workshop date, for EPA staff to give such material full consideration. The official record of the workshop will be kept open for 14 days following the workshop to allow submission of rebuttal and supplementary testimony.

Mr. Richard D. Wilson, Director of the Office of Mobile Sources, will be the presiding officer of the workshop. The workshop will be conducted informally, and technical rules of evidence will not apply. A court reporter will be present at the workshop to make a transcript of the proceedings and a copy will be placed in the docket. Anyone desiring a copy of the transcript should make individual arrangements with the court reporter at the time of the workshop.

Dated: December 10, 1991.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 91-30086 Filed 12-16-91; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 300

[FRL-4037-5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete Westline Site from the National Priorities List: Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA) Region III announces its intent to delete the Westline Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendment and Reauthorization Act of 1986, Public Law Number 99-499 (CERCLA), as amended 42 U.S.C. Section 9605 EPA and the Commonwealth of Pennsylvania have determined that all appropriate CERCLA actions have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the Commonwealth have determined that remedial activities conducted at the Site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning this Site may be submitted on or before January 16, 1992.

ADDRESSES: Comments may be mailed to Roy Schrock, Remedial Project Manager, Superfund Branch, (3HW22), Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107.

Comprehensive Information on this Site is available through the Region III public docket which is available for viewing at the Westline Site information repositories at the following locations:

McKean County Courthouse, McKean County Planning Office, Main Street, Smethport, PA 16749

Bradford Area Public Library, 27 Congress or 67 West Washington, Bradford, PA 16701

Westline Firehall, Westline, PA 16751

FOR FURTHER INFORMATION CONTACT: Roy Schrock, U.S. EPA Region 3, 841 Chestnut Street, Philadelphia, PA 19107, (215) 597-0913.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA) Region III announces its intent to delete a site from the National Priorities List (NPL), appendix B, of the National Oil and Hazardous Substances Contingency Plan ("NCP"), 40 CFR as amended, and requests comments on this deletion. The EPA identifies sites that appear to present a significant risk to human health or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be remediated using the Hazardous Substances Superfund. As described in § 300.425(e)(3) of the NCP, any sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action.

EPA plans to delete the Westline Site in Lafayette Township, McKean County, Pennsylvania from the NPL.

EPA will accept comments on this Site for thirty days after publication of this notice in the **Federal Register.**

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that the EPA is using for this action. Section IV discusses the Westline Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

Amendments to the NCP published in the **Federal Register** on March 8, 1990 (55 FR 8666) establish the criteria the Agency uses to delete sites from the NPL. Section 300.425(e) of the NCP, 40 CFR 300.425(e), provides that releases may be deleted from or recategorized on the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

In addition to the above, for all remedial actions which result in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow unlimited use and unrestricted exposure, it is EPA's policy that sites generally review has been conducted following completion of all remedial actions at a site (except operations and maintenance), any appropriate actions have been taken to ensure that the site remains protective of public health and the environment, and the site meets EPA's deletion criteria as outlined above.

The Remedial Action implemented at the Westline Site involved excavation of the largest tar lagoon and some of the underground deposits of the tar along the creek. The excavated materials were transported to an offsite incinerator for treatment and disposal. Following the remediation activities, EPA developed a guidance document for risk calculations and the Agency revised the risks associated with the polynuclear aromatic hydrocarbons (PAHs). When the risk calculations were revised it was determined that the contaminants were removed from the Site allowing for unlimited use and unrestricted exposure. Consistent with OSWER Directive 9355.7-02, a five-year review is not necessary at the Westline Site because hazardous materials remaining on site allow for unlimited use and unrestricted exposure.

III. Deletion Procedures

In the NPL rulemaking published on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on whether the notice of comment procedures followed for adding sites to the NPL should also be used before sites are deleted. Comments were also received in response to the amendments to the NCP proposed on December 21, 1988 (53 FR 51394).

The following procedures were used for the intended deletion of this Site: (1) That EPA Region III has prepared the relevant documents, (2) the Commonwealth of Pennsylvania has concurred with the deletion decision, (3) a notice has been published in local newspapers and has been distributed to appropriate Federal, state and local officials, and other interested parties, and the starting date of the 30-day public comment period, and (4) all relevant documents have been made available in the local site information repositories.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual rights or obligations. The NPL is designed primarily for information purposes and to assist Agency management. As mentioned in section II of this Notice, 40 CFR 300.425(e)(3) states that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

For deletion of this site, EPA's Regional Office will accept and evaluate public comments before making the final decision to delete.

A deletion occurs when the Regional Administrator places a notice in the **Federal Register.** Generally the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional Office.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the intention to delete this site from the NPL.

Westline Site, Lafayette Township, McKean County, Pennsylvania

The Westline Site is located in the rural town of Westline, McKean County, Pennsylvania. The town is situated along Kinzua Creek and is completely surrounded by the Allegheny National Forest. Approximately 100 people reside in the town Westline at present.

During the period from 1901 to 1952 a chemical company operated in Westline converting wood into charcoal, methanol and acetic acid. A tar-like waste was generated by the chemical process and deposited onto the ground, eventually forming several lagoons. Chemical analysis of the tar reveals phenol, 2,4-dimethylphenol and polynuclear aromatic hydrocarbons (PAHs). Today, all that is left of the chemical plant is the foundation. The office of the former plant is now a restaurant and bar, which has been named the Westline Inn.

The Site Inspection (SI) occurred in 1982 and the Site was listed on the NPL in 1983. In February of 1983 EPA Region III began an immediate removal action at the Site. In April 1983 the largest lagoon of tar deposits, located in the parking lot of the Westline Inn, was capped to prevent offsite migration. By August, 1983 it became apparent that the clay cap was inadequate and excavation and removal of the tar material was necessary. Variations in temperature and the water table level caused the tar to seep out from under the capped area. Therefore, excavation began in August, 1983. Two thousand tons of tar and contaminated soil were removed from the Site by CECOS International, Inc. and taken to CECOS' disposal Site in Niagara Falls, New York. The removal action was completed on or about September 14, 1983.

The remedial action began in March of 1983 when a work assignment was issued to NUS Corporation. NUS prepared a Remedial Action Master Plan (RAMP) in October 1983. The RAMP summarized all previous information. By August of 1984, NUS prepared a work plan for the remedial Investigation/ Feasibility Study (RI/FS). NUS installed monitoring wells and collected groundwater samples from the monitoring wells and from several residential wells. They collected surface water and sediment samples from Kinzua Creek and from the small tributaries on the Site. They collected fish samples and benthic organism from the creek. They also collected soil samples from the surface and subsurface areas throughout the Site.

The results of this sampling effort revealed two areas where health risks were of concern. The waste tar on Site contained phenols and PAHs at levels which could cause a direct contact threat to the residents in the town of Westline, particularly small children who might come into contact with the larger lagoons on the Site. The other concern was found in groundwater. In one of the monitoring wells behind the Westline Inn, possibly gasoline-related compounds were found which did not seem to be directly related to the tar like materials that caused the Site to be listed on the NPL. Specifically, benzene was found at 80 ppb which clearly exceeded the maximum concentration levels (MCL) of 5 ppb.

NUS completed the RI/FS reports by July of 1986 and a Record of Decision (ROD) was signed on July 3, 1986. This ROD called for excavation of the waste tar/soil mixture and for offsite incineration of the materials. The ROD also required a groundwater verification study of the "non tar-related" compounds found during the RI.

The community relations activities conducted during the period of this ROD included the released of the documents used in the decision making process and a public meeting which was held a few weeks prior to the signing of the ROD. Public reaction to the EPA investigation was somewhat surprising. The general attitude was that the tar was not really that much of a problem; the public did not understand why the Agency was spending so much money investigating the tar which has been there for so many years. A majority of the residents did not think that the excavation and offsite incineration were necessary. Some felt, however, that if EPA's actions

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would protect the future environment of their town then they could agree with such actions.

The groundwater verification study and the remedial design work assignment for offsite incineration began in the fall of 1986. EBASCO/NUS prepared the work plans and conducted the additional field studies in the summer of 1987. The groundwater verification study report was issued in December of 1987 and a second ROD was signed on June 29, 1988. The groundwater RI showed that benzene was still present in the well behind the Westline Inn and in one other new well installed downgradient from the contaminated well; the concentrations in the well behind the Inn had decreased from 80 ppb to 60 ppb and the new well showed only 9 ppb. The ROD stated that concentrations of benzene were decreasing with time and that the aquifer should flush out the contaminants within five to ten years. Therefore, a No Action Alternative with continued monitoring was selected. The wells are to be monitored for a period of five years.

Another important factor in this decision was that none of the residents were using the groundwater for drinking purposes. The town's water was derived from one of the tributaries to the creek and was collected far up on the hill away from any of the contaminated areas of the Site.

For the second ROD the repositories were updated with the new documents and another public availability session was held. Three of the local newspapers attended and wrote articles in these local newspapers which service the area residents. The public reaction to the second ROD was more positive. The Agency made a decision not to spend more money and the public was in agreement.

To verify the site cleanup action level (70,000 ug/kg for total polynuclear aromatic hydrocarbons), an EPA-owned mobile laboratory was provided at the Westline Site. The onsite analysis was performed using a Gas Chromatographic Flame Ionization Detector (GCFID). Analyses and associated field laboratory QA/QC were accomplished using a modified RCRA Method 8100 analytical protocol. Approximately 10 percent of the samples were shipped to a fixed-base REM III laboratory for analysis to verify the mobile laboratory results.

A total of 133 soil samples were collected and analyzed during the remediation to confirm that the remaining soil met the site action level. The analytical results for these samples are tabulated in the "Final Project Summary Report for Remedial Action at the Westline Site" dated 1989 for both the mobile laboratory and the fixed-based laboratory.

Operation and maintenance (O&M) activities for the excavated areas were limited only to restoration of the surface features. All excavated areas were backfilled with clean soils and revegetated. The area where the tar pit was behind the church is now an open field area and used for gatherings of cross country skiers in the area. The support areas were cleaned up before demobilization, but some additional soil grading and seeding was done the following summer.

In contrast to the excavation activities the groundwater ROD did call for operation and maintenance activities. As discussed earlier the first samples taken in 1985 indicated high levels of benzene and other gasoline compounds. The second samples taken in 1987 indicated a decrease in benzene concentrations and the 1988 ROD predicted the contaminants would be flushed out by normal groundwater movement towards Kinzua creek.

Operation and maintenance samples were collected by the Regional Field Investigation Team in the summer of 1990 and the results were excellent. The benzene was not detected at all in the originally contaminated well behind the Westline Inn. The other well which had 9 ppb in 1987 had decreased to 2 ppb which is within acceptable limits for EPA's MCLs. Therefore the normal flushing out of the contaminants was successful at this Site.

It is expected, however, that the PADER will conduct one more round of sampling within the next two years just to complete these O&M activities. Pennsylvania has signed a Superfund State Contract (SSC) to conduct one more round of monitoring at the site.

Based on the prior excavation of the two largest lagoons at the site and the revised risk assessment, hazardous substances, pollutants and contaminants were removed from the Site allowing for unlimited use and unrestricted exposure within the Site.

Dated: September 18, 1991.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 91-30087 Filed 12-16-91; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 87-266; FCC 91-334]

Facilities for the Provision of Video Programming by a Telephone Common Carrier in Its Telephone Service Area

AGENCY: Federal Communications Commission (FCC).

ACTION: Proposed rule.

SUMMARY: The Commission requests comment on its proposed rule changes and regulatory policy with respect to video dialtone. The Commission proposed alternative regulatory approaches to video dialtone for local exchange carriers and tentatively concluded that the approach that best serves the public interest would consist of video dialtone provided on two levels. The first level would consist of Title II basic regulated services. The second level would consist of enhanced and other non-Title II services subject to competition among service providers. The proposed video dialtone policy will promote the Commission's goals of development of an advanced communications infrastructure, free and open competition and a diversity of information sources.

DATES: Comments must be filed by January 23, 1992. Reply comments are due by February 24, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Donna Lampert, Common Carrier Bureau, (202) 632-6363 or Greg Lipscomb, Common Carrier Bureau, (202) 634-1800.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3501-3520, and found to impose no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements; and will not increase burden hours imposed on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by that Act.

Background

Common Carrier Docket 87-266: Telephone Company/Cable Television Cross Ownership Rules, §§ 63.54-63.58, Notice of Inquiry, 2 FCC Rcd 5092 (1987) (52 FR 34818 (9/15/87)); Telephone Company/Cable Television Cross Ownership Rules, §§ 63.54-63.58, Further Notice of Inquiry and Notice of Proposed Rulemaking, 3 FCC Rcd 5849 (1988) (53 FR 38042 (9/29/88)).

Summary of Further Notice of Proposed Rulemaking and Second Further Notice of Inquiry

This is a summary of the Commission's Further Notice of Proposed Rulemaking and Second Notice of Inquiry relating to Common Carrier Docket 87-266: Telephone Company/Cable Television Cross Ownership Rules, §§ 63.54-63.58, Adopted: October 24, 1991 and Released: November 22, 1991. The full texts of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC 20554. The complete text of this Further Notice of Proposed Rulemaking and Second Further Notice of Inquiry may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW., Washington, DC 20036.

In the Further Notice of Proposed Rulemaking, the Commission has proposed rule change in connection with its tentative regulatory policy for video dialtone. The Commission tentatively concluded that a video dialtone policy will provide the best foundation to achieve the goals of promoting the development of an efficient, nationwide, publicly accessible, advanced telecommunications infrastructure, facilitating robust competition, and fostering the First Amendment goal of ensuring a diversity of information sources. The Commission proposed that video dialtone be common carrier-based with the addition of competitive non-common carrier services that would provide end users access to video programming and other information sources.

The Commission proposed alternative regulatory approaches to video dialtone for local exchange carriers and seeks comment on other approaches. The Commission has tentatively concluded that the approach that best serves the public interest would consist of video dialtone provided on two levels. The first level would consist of Title II basic regulated services and would provide an "electronic platform" or "window" that opens to a broader network, giving end users access to video and non-video communication services provided by a multiplicity of competitive service providers. The second level would consist of enhanced and other non-Title II services subject to competition among service providers. The proposed video dialtone policy will promote the Commission's goals of development of an advanced communications infrastructure, free and open competition and a diversity of information sources.

In the Second Further Notice of Inquiry, the Commission seeks comment on the risks and benefits of permitting local exchange carriers to provide video programming directly to consumers in the video dialtone context and asks whether any changes in the statutory ban should be recommended to Congress. Comment is also requested on whether current regulatory incentives support the stated video dialtone policy.

Ordering Clauses

It is ordered that, pursuant to sections 1, 4, 201-205, 218, 220, 303(r) and 403 of the Communications Act of 1934, as amended, and section 601 of the Cable Communications Policy Act of 1984, as amended, 47 U.S.C. 151, 154, 201-205, 218, 220, 303(r), 403 and 521; and 5 U.S.C. 553, a second further notice of inquiry is hereby provided as explained herein.

It is further ordered that, pursuant to sections 1, 4, 201-205, 215, 218, 220, 303(r) of the Communications Act of 1934, as amended, and sections 601, 612 and 613 of the Cable Communications Policy Act of 1984, as amended, 47 U.S.C. 151, 154, 201-205, 215, 218, 220, 303(r), 521, 532 and 533; and 5 U.S.C. 553, further notice of proposed rulemaking is hereby provided to amend § 63.54 of the Commission's rules, 47 CFR 63.54, as indicated herein.

It is further ordered that, the Secretary shall send a copy of this Further Notice of Proposed Rulemaking, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 63

Cable television, Communications Common Carriers, Telephone, Video dialtone.

Proposed Rule Changes

It is proposed that Part 63 of Title 47 of the Code of Federal Regulations be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended 47 U.S.C. 154. Interpret or apply sec. 214, 48 Stat. 1075, as amended; 47 U.S.C. 214.

2. Section 63.54 is amended by adding paragraph (c) to Note 1 to read as follows:

§ 63.54 Facilities for provision of video programming by a telephone common carrier in its telephone service area.

* * * * *

Note 1: * * * (c) Nothing in this section shall be construed to prohibit the provision of video dialtone services, enhanced services related to video dialtone, advanced video gateways and other related non-programming video dialtone functions by a telephone common carrier.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-30047 Filed 12-16-91; 8:45 am]
BILLING CODE 6712-01-M

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Notices

Federal Register
Vol. 56, No. 242
Tuesday, December 17, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

[A-588-819]

Postponement of Final Antidumping Duty Determination: Aspheric Ophthalmoscopy Lenses From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: December 17, 1991.

FOR FURTHER INFORMATION CONTACT: Stefanie Amadeo, Office of Antidumping Duty Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, at (202) 377-1174.

Postponement: This notice informs the public that we have received a request from Nikon Corporation and Nikon, Inc. ("Nikon"), respondent in this investigation, to postpone the final determination until not later than 135 days after the date of the publication of the preliminary determination in the investigation of aspheric ophthalmoscopy lenses (lenses) from Japan, in accordance with section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)). Nikon accounts for a significant proportion of exports of the subject merchandise from Japan to the United States. Pursuant to 19 CFR 353.20(b), if exporters who account for a significant proportion of exports of the merchandise under investigation request an extension subsequent to an affirmative preliminary determination, we are required, absent any compelling reasons to the contrary, to grant the request. Accordingly, we are postponing the date of the final determination as to whether sales of lenses from Japan have occurred at less than fair value until not later than February 21, 1992.

Public comment: Because no interested parties have requested a hearing we have not scheduled one. In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than December 16, 1991, and rebuttal briefs no later than December 20, 1991.

The U.S. International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act.

This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: December 12, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 91-30090 Filed 12-16-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Massachusetts Institute of Technology, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comment: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 90-218R. *Applicant:* Massachusetts Institute of Technology, Cambridge, MA 02139. *Instrument:* Isotope Mass Spectrometer, Model 215-50. *Manufacturer:* Mass Analyser Products Ltd., United Kingdom. *Intended Use:* See notice at 56 FR 1512, January 15, 1991. *Reasons:* The foreign instrument provides a sensitivity of $6.0x10^{-4}$ A/torr for M/e 40 and an M/e 36 background less than $5.0x10^{-14}$ cm^3 STP.

Docket Number: 90-222R. *Applicant:* University of Southern California, Los Angeles, CA 90089-0740. *Instrument:* Mass Spectrometer, Model VG PRISM. *Manufacturer:* VG Instruments Incorporated, United Kingdom. *Intended Use:* See notice at 56 FR 1512, January 15, 1991. *Reasons:* The foreign instrument provides an internal precision of 0.006 per mil for 3 bar μl samples of Co_2 and an integrated carbonate sample preparation system.

Docket Number: 91-109. *Applicant:* Michigan State University, East Lansing, MI 48824-1115. *Instrument:* Mass Spectrometer, Model PRISM Series II. *Manufacturer:* VG Isotech, United Kingdom. *Intended Use:* See notice at 56 FR 41120, August 19, 1991. *Reasons:* The foreign instrument provides a precision of 0.006 per mil for 3 bar μl samples of CO_2.

The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-30091 Filed 12-16-91; 8:45 am]

BILLING CODE 3510-DS-M

Veterans Administration Medical Center, et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 91-134. *Applicant:* Veterans Administration Medical Center, Washington, DC 20422. *Instrument:* Electron Microscope, Model CM 10. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* See notice at 56 FR 47188, September 18, 1991. *Order Date:* April 30, 1991.

Docket Number: 91-136. *Applicant:* The University of Toledo, Toledo, OH 43606. *Instrument:* Electron Microscope, Model EM 902/PC. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* See notice at 56 FR 50096, October 3, 1991. *Order Date:* April 30, 1991.

Docket Number: 91-145. *Applicant:* Veterans Administration Medical Center, Durham, NC 27705. *Instrument:* Electron Microscope, Model JEM-1200EX. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 56 FR 56408, November 4, 1991. *Order Date:* August 16, 1991.

Docket Number: 91-147. *Applicant:* The Ohio State University, Columbus, OH 43210. *Instrument:* Electron Microscope, Model EM 900 PC. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* See notice at 56 FR 56408, November 8, 1991. *Order Date:* July 2, 1991.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-30092 Filed 12-16-91; 8:45 am]

BILLING CODE 3510-DS-M

Wright State University, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 90-213R. *Applicant:* Wright State University, Dayton, OH 45435. *Instrument:* Gas Chromatograph Mass Spectrometer System, Model MS 890. *Manufacturer:* Kratos Analytical Inc., United Kingdom. *Intended Use:* See notice at 55 FR 51752, December 17, 1990. *Reasons:* The foreign instrument provides femtogram sensitivity for dioxin (PCDD and PCDF) and rapid switching software for selected ion monitoring at resolution of 10 000. *Advice Submitted By:* National Institutes of Health, November 5, 1991.

Docket Number: 91-111. *Applicant:* University of Washington, Seattle, WA 98195. *Instrument:* Mass Spectrometer, Model Profile HV-3. *Manufacturer:* Kratos Analytical Inc., United Kingdom. *Intended Use:* See notice at 56 FR 41120, August 19, 1991. *Reasons:* The foreign instrument provides: (1) A liquid chromatograph particle beam interface, (2) scan speeds to 0.1 second per decade and (3) continuous flow FAB. *Advice Submitted By:* National Institutes of Health, November 5, 1991.

Docket Number: 91-131. *Applicant:* University of Wisconsin-Madison, Stoughton, WI 53589-3097. *Instrument:* Semiconductor Stepper/Aligner System, Model XRS-200. *Manufacturer:* Karl Suss, West Germany. *Intended Use:* See notice at 56 FR 50095, October 3, 1991. *Reasons:* The foreign instrument provides precise gap control and sub 0.5 μm alignment capability for development of microcircuit lithography. *Advice Received From:* National Institute of Standards and Technology, November 14, 1991.

The National Institutes of Health and National Institute of Standards and Technology advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-30093 Filed 12-16-91; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 88-4A017.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the Construction Industry Manufacturers Association ("CIMA") on May 26, 1989. Notice of issuance of the Certificate was published in the **Federal Register** on June 12, 1989 (54 FR 24932).

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (1990) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 88-00017 was issued to the Construction Industry Manufacturers Association ("CIMA") on May 26, 1989 (54 FR 24932, June 12, 1989) and previously amended on April 4, 1990 (55 FR 14100, April 16, 1990), and January 3, 1991 (56 FR 843, January 9, 1991).

CIMA's Export Trade Certificate of Review has been amended to:

1. Add Sioux Steam Cleaner Corporation of Beresford, South Dakota as a "Member" within the meaning of Section 325.2(1) of the Regulations (15 CFR 325.2 (1));

2. Add (a) General Industrial Machinery and Equipment, Not Elsewhere Classified (SIC code 3569) and (b) Service Industry Machinery, Not Elsewhere Classified (SIC code 3589) as products to be covered by the Certificate; and

3. Delete CMI Corporation as a "Member" of the Certificate.

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

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Dated: December 11, 1991

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91-30036 Filed 12-16-91; 8:45 am]

BILLING CODE 3510-DR-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Licensing information may be obtained by writing to: National Technical Information Service, Center for Utilization of Federal Technology—Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151 or by telephoning (703) 487-4732. All patent applications may be purchased, specifying the serial number listed below, by writing NTIS, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephoning the NTIS Sales Desk at (703) 487-4650. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Patent Licensing Specialist, Center for the Utilization of Federal Technology.

Department of Health and Human Services

7-189,164 Process for Producing a Human Neutrophil Chemotactic Factor Polypeptide and a Recombinant Expression Vector for the said Polypeptide

7-234,092 (U.S. 5,055,287) Thin Film Environmental Monitor

7-350,906 (U.S. 5,040,539) Pulse Oximeter for Diagnosis of Dental Pulp Pathology

7-352,313 (U.S. 5,063,206) Compositions Having Use as Treatment of Psoriasis and Neurosychiatric Deficits

7-362,357 (U.S. 5,051,557) Microwave Induced Plasma Torch with Tantalum Injector Probe (An An Ion Source for Mass Spectrometry)

7-493,538 (U.S. 5,050,616) Universal Collector for Submandibular-Sublingual Saliva

7-528,080 (U.S. 5,044,363) Waste Gas Released During Surgical Activity (Adsorption System for Scavenging Anesthetic Agents)

7-533,442 (U.S. 5,061,488) Flavone-8-Acetic Acid and Interleukin-2 For Cancer Therapy (especially renal carcinoma)

7-585,793 Complexes of Nitric Oxide With Polyamines

7-620,939 Recombinant Immunotoxin Composed of a Single Chain Antibody Reacting With the Human Transferrin Receptor and Diptheria Toxin

7-623,826 Inhibition of Human Immunodeficiency Virus by an Adeno-associated Virus Gene in Human Cells

7-631,349 A Sensitive Method for Measurement of Chimeric Transcripts of DNA Containing Translocations and Predicting Clinical Course of Disease Relafed Thereto (Use of Reverse Transcription and PCR to Measure Chimeric mRNA for Monitoring Cancers

7-640,694 Liposome-Incorporation of Polyenes

7-663,455 Recombinant Chimeric Proteins Deliverable Across Cellular Membranes Into Cytosol of Target Cells

7-668,309 Detection of the Common Cystic Fibrosis Mutation (and Similar Small Insertions or Deletions for Detecting Other Genetic Diseases

7-668,090 Monoclonal Antibodies to Cytochrome B5

7-669,731 Modified RNA Template-Specific Polymerase Chain Reaction

7-672,577 The Use of Hydroxamic Acid Derivatives to Inhibit Viral Replication

7-676,174 Octopamine Receptor

7-681,679 Inhibitors of Protein Kinase C Function

7-683,432 Lipophilic, Aminohydrolase-Activated Prodrugs

7-683,440 PCR Induced (Ligase-free) Subcloning: a Rapid and Versatile Method of Subcloning Polymerase Chain Reaction (PCR) Products

7-683,685 A Screening Test That Identifies Individuals At Increased Risk for the Development of Lymphoid Leukemia and Lymphoma

7-688,067 Activity-Dependent Neurothropic Factor

7-690,841 Monoclonal Antibodies Specific for Human Thymidylate Synthase

7-692,923 A Method for Identifying an Individual Homozygous or Heterozygrous for Lactate Dehydrogenase-A Deficiency

7-694,302 Monoclonal Antibodies for Detection of Friend Murine Leukemia Virus

7-696,923 Method for Designing Cancer Treatment Regimens and Methods and Pharmaceutical Compositions for the Treatment of Cancer

7-699,466 A Solid Phase Assay for Proteases

7-707,501 Three Highly Informative Microsatellite Repeat Polymorphic DNA Markers

7-707,502 Human Lactoferrin

7-707,543 Use of Visible Light for Treatment of Immunodeficiency

7-710,160 Transfected Mammalian Cell Lines Expressing the A1 Adenosine Factor

7-710,428 XX174 Transgenic Animals (Useful for Inexpensive Mutagenesis Studies)

7-715,652 Azo Dye Derivatives Exhibiting Anti-HIV Activity, Pharmaceutical Compositions Containing the Same and Methods for Using the Same

7-716,827 Super Glucocorticoid Receptors

7-718,666 Fiber Optic Devices

7-720,174 Osteogenic Composite Implants

7-721,784 Method and Device for Reversible Sterilization

7-732,021 Apparatus for Fluorescent Excitation and Detection from Potentiometric Dyes with a Single-Ended Optical Fiber

7-737,872 System and Method for Performing Simultaneous Bilateral Measurements on a Subject in Motion

7-743,518 Papua New Guinea Human T-Lymphotropic Virus

7-749,240 Stopcock Holder

7-751,090 Interleukin-2 Stimulated T Lymphocyte Cell Death for the Treatment of Autoimmune Diseases, Allergic Disorders, and Graft Rejection

Department of Commerce

7-414,213 (U.S. 5,039,872) Digitally Synthesized Audio Frequency Voltage Source

Department of the Interior

7-367,646 (U.S. 5,043,119) High Strength Particulate Ceramics

7-477,395 (U.S. 5,039,312) Gas Separation With Rotating Plasma ARC Reactor

7-490,898 (U.S. 5,050,493) Bi-Directional Draining Pore Fluid Vessel

7-541,689 (U.S. 5,059,309) Ultrasonic Flotation System

7-582,690 (U.S. 5,060,751) Pneumatic Wall-Locking Geophone System

7-696,805 Method for Locating Metallic Nitridewv Inclusions in Metallic Alloy Ingots

7-734,002 Thrust Bolting; Roof Bolt Support Apparatus

7-736,344 Process for Forming A Hard Surface Coating

7-738,411 Chemical Process for the Catalytic Oxidation of Formaldehyde and Other Organic Compounds

7-750,685 Digital Roughness Gauge

Department of Agriculture

7-246,842 (U.S. 5,053,327) High Affinity Monoclonal Antibodies to Bowman-Birk Inhibitor and Immunoassay Methods

7-393,010 (U.S. 5,047,239) Biological Control of Fruit Rot

7-436,154 (U.S. 5,045,314) Control of Parasitic Nematode of Ova/Larvae with Bacillus Laterosporus

7-514,478 (U.S. 5,058,444) System for Analyzing Entrained Solids Such as Cotton or Seed

7-536,865 (U.S. 5,056,721) Method for Classifying Wheat Kernels as Hard or Soft

7-592,735 (U.S. 5,060,463) Twin Rinse Columns for Freeze Concentration of Rinsable Concentrates

7-598,256 Means and Method of Soil Water Desorption

7-675,979 Method and Apparatus for Forming Structural Components from Dry Wood Fiber Furnish

7-677,930 Power Density Measuring Apparatus and Method

7-691,873 Synthetic Bait for Delivery of Chemicals and Biologics

7-712,226 Greenhouse Illumination System

7-723,037 Attenuated Revertant Serotype 1 Marek's Disease Vaccine

7-725,320 Selection-Gene-Free Transgenic Plants

7-741,691 Non-Aflatoxigenic Aspergillus Parasiticus Species and Their Use in Controlling Aflatoxin Contamination

7-746,705 Bifunctional Protein from Carrots with Aspartokinase and Homoserine Dehydrogenase Activities

7-747,220 N-Acyl Loline Derivatives As Insecticides and Herbicides

7-749,347 Inhibition of Enzymatic Browning of Raw Fruit and/or Vegetable Juice

7-758,068 Uniform and Quantitative Evaluation of Aroma Emitting Substances

7-758,154 Lactose Hydrolysis by Mutant Streptococcus Thermophilus

7-764,732 System for Separating Particles in a Rotary Separator

7-764,738 Tensiometer Irrigation Valve

7-764,924 Constructed Wetlands to Control Nonpoint Source Pollution

7-765,732 PVC/Twine Dispenser for (+) — Disparlure

7-765,744 Measurement of Avian Embryo Movement in Intact Eggs

7-769,288 Use of Free Amines for Enhancement of Polycarboxylic Acid Based Cellulose Crosslinking Reactions

7-770,258 Adjustable Flume

7-770,808 Apparatus and Method for Applying Material to Agricultural Commodities

[FR Doc. 91-30099 Filed 12-16-91; 8:45 am]

BILLING CODE 3510-04-M

National Institute of Standards and Technology

Announcement of Meeting of National Conference on Weights and Measures

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Interim Meeting of the National Conference on Weights and Measures will be held January 12 through 17, 1992, at the Hyatt Regency Bethesda Hotel, Bethesda, MD. The meeting is open to the public.

The National Conference on Weights and Measures is an organization of weights and measures enforcement officials of the States, counties, and cities of the United States, and private sector representatives. The interim meeting of the conference, as well as the annual meeting to be held next July (a notice will be published in the **Federal Register** prior to such meeting), brings together enforcement officials, other government officials, and representatives of business, industry, trade associations, and consumer organizations to discuss subject that relate to the field of weights and measures technology and administration.

Pursuant to section 2(5) of its Organic Act (15 U.S.C. 272(5)), the National Institute of Standards and Technology acts as a sponsor of the National Conference on Weights and Measures in order to promote uniformity among the States in the complex of laws, regulations, methods, and testing equipment that comprises regulatory control by the States of commercial weighing and measuring.

DATES: The meeting will be held January 12-17, 1992.

LOCATION OF MEETING: Hyatt Regency Bethesda Hotel, Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: Dr. Carroll Brickenkamp, Executive Secretary, National Conference on Weights and Measures, P.O. Box 4025, Gaithersburg, Maryland 20885. Telephone: (301) 975-4005.

Dated: December 10, 1991.

John W. Lyons,

Director.

[FR Doc. 91-29994 Filed 12-16-91; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nigeria

December 11, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit for the new agreement year.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A Memorandum of Understanding (MOU) dated February 21, 1991 between the Governments of the United States and Nigeria establishes a limit for the period beginning on January 1, 1992 and extending through December 31, 1992.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the

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implementation of certain of its provisions.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 11, 1991.

Commissioner of Customs.

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Memorandum of Understanding dated February 21, 1991 between the Governments of the United States and Nigeria; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Nigeria and exported during the twelve-month period beginning on January 1, 1992 and extending through December 31, 1992, in excess of the following level of restraint:

Category	Twelve-month restraint limit
219, 220, 313, 314, 315, 317	26,090,000 square meters of which not more than 8,988,800 square meters shall be in Category 219, 8,988,800 square meters shall be in Category 220, 8,988,800 square meters shall be in Category 313, 8,988,800 square meters shall be in Category 314, 10,112,400 square meters shall be in Category 315 and 8,988,800 square meters shall be in Category 317

Imports charged to the category limit for the period January 1, 1991 through December 31, 1991 shall be charged against that level of restraint to the extent of any unfilled balance in the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The limit set forth above is subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Nigeria.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-30069 Filed 12-16-91; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Department of the Navy

CNO Executive Panel; Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet January 15, 1992 from 9 a.m. to 5 p.m. at 4401 Ford Avenue, Alexandria, Virginia.

The purpose of this meeting is to review maritime environmental issues as they impact naval vessel construction and operation and shore establishment environmental protection. The agenda of the meeting will consist of discussions of key issues related to environmental cleanup and protection of naval facilities.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205

Dated: December 10, 1991.

Wayne T. Baucino

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 91-30028 Filed 12-16-91; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF ENERGY

[Docket No. PP-50-EA-H]

Waiver of Terms of Export Authorization

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of issuance of waiver of terms of export authorization.

SUMMARY: The DOE issued Central Power and Light Company a temporary order on December 10, authorizing a waiver of annual energy limits for the electricity export authorization contained in Docket No. PP-50-EA-H.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202-586-9624 or Lise Howe (Program Attorney) 202-586-2900.

SUPPLEMENTARY INFORMATION: On November 26,1991, Central Power and Light Company (CPL) applied to the Department of Energy (DOE) for a waiver, on an interim basis, of certain terms of its existing electricity export authorization governing exports to Commission Federal de Electricidad (CFE), the Mexican national utility, over their 138-kilovolt (kV) Laredo to Nuevo Laredo Interconnection.

By order issued September 30, 1977, CPL and CFE were authorized to exchange electricity over three interconnections. The order was issued in accordance with a May 1, 1973, letter agreement between CPL and CFE that provided for exchanges of electricity in such a manner that the "exchange account" would have a zero balance at least once during the calendar year. CPL and CFE are not currently engaged in the type of energy exchanges contemplated by and provided for in the 1973 agreement. Furthermore, CFE has had to postpone several planned generating additions and has chosen to purchase capacity and energy from other utilities. As a result, CFE and CPL have entered into two additional power purchase agreements dated August 11, 1988, and April 30, 1991. The terms of these agreements make it impossible for CPL to comply with the zero balance requirements of the 1973 agreement, as reflected in the conditions of the 1977 export authorization.

Based on the above situation and CPL's assertion that it intends to make a filing, in the very near future, addressing all of its existing export authorizations governing CPL's points of interconnection with CFE, CPL requested a waiver of the terms of the 1977 export authorization. DOE has determined that issuance of such a temporary waiver is in the public interest, and issued such order on December 10, 1991. The order will remain in effect until December 31, 1992, or until such time as CPL receives from DOE a new export authorization, for which public participation has been sought.

Issued in Washington, DC on December 10, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Fossil Energy.

[FR Doc. 91-30079 Filed 12-16-91; 8:45 am]

BILLING CODE 6450-01-M

Floodplain/Wetland Notice of Involvement for Two Proposed Process Water Outfalls to the Columbia River on the Hanford Site, Richland, Washington

AGENCY: Department of Energy.

ACTION: Notice of floodplain/wetlands involvement.

SUMMARY: The Department of Energy (DOE) proposes to construct two process water outfalls to the Columbia River in the 600 Area of the Hanford Site, Richland, Washington. Most activities related to the proposed projects would occur on the upland portion of the Hanford Site. Potential corridors of disturbance associated with pipelines on the designated wetlands or within the 100-year floodplain of the Columbia River would be kept as narrow as possible to reduce adverse impacts to these sensitive areas.

Pursuant to 10 Code of Federal Regulations part 1022 ("Compliance with Floodplain/Wetlands Environmental Review requirements"), DOE has determined that the construction of outfall piping systems would involve activities within a designated floodplain/wetland. In accordance with these regulations, DOE will prepare a floodplain/wetlands assessment for the proposed activities in conjunction with an environmental assessment. Maps and further information are available from DOE at the address shown below.

DATES: Comments are due on or before January 16, 1992.

ADDRESSES: Address comments to Mr. John P. Neath, P.O. Box 550, U.S. Department of Energy, Richland, Washington 99352.

FOR FURTHER INFORMATION CONTACT: Mr. Ken W. Bracken, Director, Waste Management Division, U.S. Department of Energy, P.O. Box 550, Richland, Washington 99352 (509) 376-1366. FAX: (509) 376-6540.

SUPPLEMENTARY INFORMATION: The Hanford Site, owned by the U.S. Government and managed by the DOE Richland, Field Office, occupies 560 square miles within the semiarid Pasco Basin of the Columbia Plateau in southeastern Washington. The entire Hanford Site is a controlled access area; 24-hour surveillance is maintained for the protection of the government property. Located north of the confluence of the Snake and Yakima Rivers with the Columbia River and north of the City of Richland, the Hanford Site is surrounded primarily by agricultural and range land. The cities of Richland, Kennewick, and Pasco, known as the Tri-Cities, constitute the nearest population center and are southeast of the Hanford Site. The Columbia River flows through the northern part of the Hanford Site, then turns to the south, forming the eastern boundary of the site. The Yakima River runs along a portion of the southern boundary of the site, and joins the Columbia River below the city of Richland.

Waste streams from the two proposed process water outfalls might either be released to the soil column on the upland portion of the Hanford Site or be discharged to the Columbia River. Discharge to the river might involve construction of the piping system within the 100-year floodplain of the Columbia River. The first waste stream would be composed of various separate effluent streams, all originating in the 200 Areas of the Hanford Site. After treatment, the effluent would meet all applicable release limits certified by the Washington State Department of Ecology and based on the National Pollutant Discharge Elimination System. The treated effluent streams might be discharged to the river at one of two possible locations: Effluent might be piped to an existing river outfall in the 100 N Area or to a new outfall to be located south of the 100 F Area on the Columbia River, approximately 20 miles upstream of the City of Richland. An environmental assessment would address relevant concerns associated with sitting a new outfall on the Columbia River.

The second waste stream consists of 300 Area process water effluent from various industrial facilities. If river discharge is determined to be the best alternative, effluent would be routed to the Columbia River directly north of the 300 Area. The effluent would meet applicable release limits certified by the Washington State Department of Ecology and based on the National Pollutant Discharge Elimination System.

If river discharge is selected, each outfall would consist of piping 8 to 21 inches in diameter buried to an average depth of five feet. Piping would lead to a diffuser (likely a multiport variable diameter horizontal reinforced concrete unit). The diffuser would be placed perpendicular to river flow and anchored to the river bottom using concrete weighted anchors. The proposed actions would be carried out by DOE, with appropriate permits from the U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, State of Washington Departments of Ecology and Fisheries, and consultation with the National Park Service under Public Law 100-605, Hanford Reach Study Act. Maps and further information are available from DOE at the address shown above.

Paul D. Grimm,

Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 91-30081 Filed 12-16-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP92-218-000, et al.]

Natural Gas Certificate Filings; Arkla Energy Resources, et al.

Take notice that the following filings have been made with the Commission:

1. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP92-218-000]

December 6, 1991.

Take notice that on December 3, 1991, Arkla Energy Resources, a division of Arkla, Inc. (AER), 525 Milam Street, Shreveport, Louisiana 71151, filed in Docket No. CP92-218-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to operate certain existing delivery facilities located in Arkansas, Oklahoma, Louisiana, Kansas and Texas as jurisdictional facilities to provide jurisdictional services, including transportation services under subpart G of part 284 of the Commission's Regulations, under its blanket certificate issued in Docket No. CP82-384-000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the delivery facilities consist of ten 2-inch, 4-inch, 6-inch and 8-inch taps, meters and appurtenant facilities located in White, Independence, Hot Springs, and Mississippi Counties, Arkansas; Grant and Caddo Counties, Oklahoma; Bossier Parish, Louisiana; Sedgewick and Sumner Counties, Kansas; and Cass County, Texas. It is further stated that AER completed construction of the facilities in 1987 and 1988 at a total cost of $1,278,572.

AER states that the delivery facilities were originally constructed solely to provide services authorized under section 311 of the Natural Gas Policy Act and subpart B of the Commission's Regulations. AER further states that information applicable to each facility including the location, completion date, volumes and amount of cost to construct

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has been provided by AER in appendix A to the filing.

Comment date: January 21, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. Inland Oil & Gas Corp.

[Docket No. CI92-13-000]

December 9, 1991.

Take notice that on December 2, 1991, Inland Oil & Gas Corp. (Inland) of 2300-1066 West Hastings Street, Vancouver, British Columbia V6E 3G3 filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales for resale in interstate commerce of natural gas subject to the Commission's NGA jurisdiction, including imported natural gas, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: December 26, 1991, in accordance with Standard Paragraph J at the end of this notice.

3. O & R Energy, Inc.

[Docket No. CI88-496-001]

December 9, 1991.

Take notice that on November 27, 1991, O & R Energy, Inc. (O & R), filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend its unlimited-term blanket certificate with pregranted abandonment previously issued by the Commission in Docket No. CI88-496-000 to (1) effect a change of name from O & R Energy Development, Inc. and (2) to include authorization for the sale for resale in interstate commerce of imported gas, gas purchased under any existing or subsequently approved pipeline blanket certificate authorizing interruptible sales for resale of surplus system supply (ISS gas), and gas purchased from non-first sellers including intrastate pipelines and local distribution companies, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: December 26, 1991, in accordance with Standard Paragraph J at the end of the notice.

4. Marathon Oil Company

[Docket No. CI63-271-001]

December 9, 1991.

Take notice that on February 27, 1990, Marathon Oil Company, (Marathon) of P.O. Box 3128, Houston, Texas 77252, filed an application pursuant to sections 7(b) and 16 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder requesting that the Commission clarify that, because its sale of gas to Northern Natural Gas Company (Northern) is deregulated under the Natural Gas Wellhead Decontrol Act of 1989 (Decontrol Act), no abandonment authorization is required to terminate the sale. Alternatively, Marathon requests that the Commission authorize abandonment of the sale to Northern, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Marathon was authorized in Docket No. CI63-271 to make a sale to Northern from the Yates Casinghead Gas Plant in Pecos County, Texas, under a gas purchase contract dated October 10, 1961. The contract provides for a term ending June 30, 1981. According to Marathon, since July 1, 1976, all gas subject to that contract has been used as fuel gas or injection gas for pressure maintenance purposes and there have been no sales to Northern since that date.

Marathon argues that, since the contract expired in 1981, the gas from the Yates Plant was not subject to a contract on the date of enactment of the Decontrol Act, and is no longer subject to the Commission's Natural Gas Act jurisdiction. Therefore, Marathon requests that the Commission clarify that Marathon does not need authorization to terminate its sale to Northern.

Comment date: December 26, 1991, in accordance with Standard Paragraph J at the end of this notice.

5. Questar Pipeline Company

[Docket No. CP92-214-000]

December 10, 1991.

Take notice that on November 27, 1991, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP92-214-000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations and Questar's blanket certificate issued in Docket No. CP82-491-000 pursuant to section 7 of the Natural Gas Act for authorization to convert the jurisdictional status of its existing Amoco Production Company (Amoco) Ryckman Creek delivery point, located in Uinta County, Wyoming from that of a NGPA § 311 facility to a NGA § 7(c) facility consistent with the Commission's Order No. 537 issued September 20, 1991, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Questar states that the Ryckman Creek delivery point facility consists of one 2-inch meter run and minor appurtenant facilities. The Ryckman Creek delivery point was placed in service on October 10, 1988, and the transportation of Volumes commenced on October 15, 1988. Questar states that converting the jurisdictional status of the Ryckman Creek delivery point facility will allow it to permanently provide the complete array of open-access transportation services for Amoco and allow Amoco to use a variety of additional natural-gas suppliers to meet its Ryckman Creek processing plant fuel gas and heating requirements. It is stated that Amoco expects future peak-day and annual requirements at the delivery point to approximate 1,000 Mcf per day and 150,000 Mcf per year, respectively. No change in the level of the delivery of transportation volumes is proposed. Questar states that it has sufficient pipeline capacity to deliver the specified volumes to Amoco without detriment or disadvantage to its other customers. Questar's FERC Gas Tariff does not prohibit the addition of new delivery points.

Comment date: January 24, 1992, in accordance with Standard Paragraph G at the end of this notice.

7. National Fuel Gas Supply Corporation

[Docket No. CP92-222-000]

December 10, 1991.

Take notice that on December 6, 1991, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP92-222-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (19 CFR 157.205, 157.211) for authorization to construct and operate sales tap facilities for the delivery of gas for the account of Clarion River Gas (CRG) under National's blanket certificate issued in Docket No. CP83-4-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

National proposes to construct and operate two sales tap facilities in Barnett Township, Forest County, Pennsylvania, for the account of an existing wholesale customer, CRG. National states that the first sales tap would be a temporary facility located on National's Line K-104 with proposed deliveries which are estimated to be 1,332 Mcf annually. National further states that the second facility would be a permanent tap which would be located on National's Line QM 95 with proposed deliveries which are estimated to be 2,644 Mcf annually. National advises that the gas would be sold pursuant to the terms of its FERC Rate Schedule RQ.

Comment date: January 24, 1992, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30005 Filed 12-16-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-161-004]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 10, 1991.

Take notice that on November 27, 1991, Columbia Gas Transmission Corporation (Columbia) filed a motion to place its suspended rates in this proceeding into effect on December 1, 1991, and tendered for filing the revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2. The revised tariff sheets bear an issue date of November 27, 1991, and a proposed effective date of December 1, 1991.

The revised filing is being made in accordance with the Commission's order issued June 28, 1991, in these proceedings and § 154.67(a) of the Commission's Regulations.

Columbia requests a 30-day waiver of § 154.63(a)(2) of the Commission's Regulations in order to include costs associated with certain "Global Settlement" and other facilities that will not be in service on November 30, 1991.

Copies of the filing were served by the company upon each of its wholesale customers, interested state commissions and each of the parties set forth on the Official Service List in the consolidated proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 17, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30006 Filed 12-16-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-164-002]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

December 11, 1991.

Take notice that on November 29, 1991, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581, tendered for filing the following revised tariff sheet in its FERC Gas Tariff, Second Revised volume No. 1 and First Revised Volume No. 2, containing changes in rates and other tariff provisions for effectiveness on December 1, 1991:

Second Revised Volume No. 1

Second Substitute Seventh Revised Sheet No. 21
Substitute Second Revised Sheet No. 30
Second Revised Sheet No. 123
Substitute First Revised Sheet No. 222

First Revised Volume No 2

Substitute Second Revised Sheet No. 28

According to Granite State, the above identified revised tariff sheets comprise its motion rates in this proceeding. Granite State states that it filed revised rates on May 31, 1991, with further revisions on June 17, 1991, for effective on July 1, 1991. It is stated that the Commission accepted the filing in an order issued June 28, 1991, subject to refund and suspended it until December 1, 1991. The order also initiated a hearing with respect to the filing. According to Granite State, since the proceeding initiated by the Commission's order of June 28, 1991 has not been concluded at the end of the suspension period, it is authorized pursuant to section 4(e) of the Natural Gas Act to move its suspended rates into effect.

Granite State further states that the motion rates reflect a voluntary reduction in the suspended rates. It is further stated that the initial rates filed in this proceeding and suspended by the Commission's order proposed an annual increase in the non-gas components of Granite State's jurisdictional rates of approximately $880,000 and that the motion rates reflect an annual revenue increase of approximately $424,000 in the non-gas rate components. It is also stated that the motion rates reflect an increase in billing determinants and annual throughout because of increased jurisdictional sales authorized, effective November 1, 1991, in Docket No. CP91-2373.

It is stated that the proposed rate changes are applicable to Granite State's jurisdictional services rendered to Bay State Gas Company and Northern Utilities, Inc. Granite State further states that copies of its filings were served upon its customers, the regulatory commissions of the States of Maine, Massachusetts and New Hampshire and the intervenors in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission,

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825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 18, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30010 Filed 12-16-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ92-2-16-000, TA92-1-16-001]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

December 11, 1991

Take notice that on December 2, 1991, National Fuel Gas Supply Corporation ("National") submits for filing Substitute Seventeenth Revised Sheet No. 5, as part of its FERC Gas Tariff, Second Revised Volume No. 1, to become effective on January 1, 1992.

National states that the purpose of this filing is to reflect a revision to the current adjustment shown in National's Annual Purchased Gas Cost Adjustment ("PGA") filed on October 31, 1991, in Docket No. TA92-1-16-000. The tariff sheet reflects a commodity current adjustment of 32.96 cents per dekatherm ("Dt"), from National's October quarterly PGA filed on August 30, 1991 in Docket Nos. TQ92-1-16-000 and TM92-1-16-000. The revised RQ and CD sales commodity rate of 300.83 cents per Dt is based upon a current average cost of purchased gas of 285.29 cents per Dt (in unit of purchases), or 291.28 cents per Dt (in unit of sales).

National further states that copies of this filing were served on National's jurisdictional customers and on the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protests should be filed on or before December 18, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30007 Filed 12-16-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM-92-2-37-003]

Northwest Pipeline Corporation; Proposed Change in FERC Gas Tariff

December 11, 1991.

Take notice that on November 27, 1991, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets:

Second Revised Volume No. 1

1st Rev Tenth Revised Sheet No. 10
1st Rev Eleventh Revised Sheet No. 10
Substitute Twelfth Revised Sheet No. 10
2nd Rev Twelfth Revised Sheet No. 10
2nd Sub Thirteenth Revised Sheet No. 10
1st Rev Fourteenth Revised Sheet No. 10
1st Rev Tenth Revised Sheet No. 11
1st Rev Eleventh Revised Sheet No. 11
Substitute Twelfth Revised Sheet No. 11
2nd Rev Twelfth Revised Sheet No. 11
2nd Sub Thirteenth Revised Sheet No. 11
1st Rev Sixth Revised Sheet No. 13
Substitute Seventh Revised Sheet No. 13
2nd Rev Seventh Revised Sheet No. 13
2nd Sub Eighth Revised Sheet No. 13

First Revised Volume No. 1-A

1st Rev Sixth Revised Sheet No. 201
Sub Seventh Revised Sheet No. 201
2nd Rev Seventh Revised Sheet No. 201
2nd Sub Eighth Revised Sheet No. 201

Original Volume No. 2

1st Rev Twenty-Third Rev Sheet No. 2.3
1st Rev Twenty-Fourth Rev Sheet No. 2.3
Sub Twenty-Fifth Rev Sheet No. 2.3

Northwest states that the purpose of this filing is to recalculate and restate the Commodity SSP Surcharge on all previously Commission approved tariff sheets, which have a July 1, 1991 or October 1, 1991 effective date, to comply with the Commission's letter order and Order Denying Rehearing, issued by the Commission on September 30, 1991 and November 14, 1991, respectively, in the above docket. Northwest has restated the Commodity SSP Surcharges contained in the above sheets using annual billing determinants of 568.6 TBtu rather than 450 TBtu, as previously filed.

Northwest has challenged the Commission's orders requiring it to calculate its Commodity SSP Surcharge based upon billing determinants other than those approved in the settlement of Phase I of Docket No. RP88-47. Northwest reserves the right and gives notice that it will refile its Commodity SSP Surcharge rates for any affected periods beginning July 1, 1991, should Northwest ultimately be successful in its court appeals.

Northwest states that a copy of this filing has been served upon all parties of record in Docket No. RP89-137 and upon Northwest's jurisdictional customer list and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 18, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30011 Filed 12-16-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ92-1-55-001 and TM92-2-55-000]

Questar Pipeline Co.; Tariff Filing

December 11, 1991.

Take notice that Questar Pipeline Company, on November 27, 1991 tendered for filing and acceptance the following tariff sheets to its FERC Gas Tariff:

Substitute Fifteenth Revised Sheet No. 12 to Original Volume No. 1 to be effective December 1, 1991.
Sixteenth Revised Sheet No. 12 to Original Volume No. 1.
Seventeenth Revised Sheet No. 5 to Original Volume No. 1-A and
Eighth Revised Sheet No. 8 to Original Volume No. 3 to be effective January 1, 1992.

Questar states that this filing (1) revises the Statement of Rates filed in its November 6, 1991, purchase gas cost adjustment filing by reflecting new base rates as filed in Questar's November 15, 1991, compliance filing in Docket No. RP91-140-008 and (2) implements the 1992 Gas Research Institute charge authorized by the Commission on October 1, 1991.

Questar requests an effective date of December 1, 1991, for Substitute Fifteenth Revised Sheet No. 12 and January 1, 1992, for the tariff sheets submitted to implement the GRI charge.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 385.211 and 385.214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before December 18, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30009 Filed 12-16-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-42-000]

Ringwood Gathering Co.; Petition for Waiver

December 11, 1991.

Take notice that on December 4, 1991, Ringwood Gathering Company (Ringwood) filed with the Federal Energy Regulatory Commission a request for a continued waiver of the PGA regulations in 18 CFR 154.301 through 154.310 for its currently scheduled PGA Docket No. TQ92-1-38-000. Ringwood also requests a continued waiver to maintain the existing quarterly PGA rates in Ringwoods' last quarterly filing (TQ91-3-38-000) excluding the surcharge adjustment which was effective through September 30, 1991. Ringwood states that it anticipates no sales will be made under the PGA mechanism.

Ringwood submitted Eighth Revised Sheet No. 4C Superceding Seventh Revised Sheet No. 4C to maintain its prior rates excluding the surcharge rates. The tariff sheet has a proposed effective date of January 1, 1992.

Ringwood states that copies of the filing have been mailed to Williams Natural Gas Company, Oklahoma Natural Gas Company, and interested State regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 17, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30013 Filed 12-16-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-4-8-000]

South Georgia Natural Gas Company; Proposed Changes to FERC Gas Tariff

December 11, 1991.

Take notice that on December 4, 1991, South Georgia Natural Gas Company (South Georgia) tendered for filing Eighty-First Revised Sheet No. 4 and Eleventh Revised Sheet No. 43 to its FERC Gas Tariff, First Revised Volume No. 1. Eighty-First Revised Sheet No. 4 is being filed pursuant to the Purchased Gas Cost Adjustment (PGA) provision set out in Section 14 of South Georgia's FERC Gas Tariff with a proposed effective date of January 1, 1992. Eleventh Revised Sheet No. 43, Index of Purchasers, reflects the conversion by certain of South Georgia's customers from firm sales service to firm transportation service. The proposed effective date for Eleventh Revised Sheet No. 43 is also January 1, 1992.

South Georgia states that Eighty-First Revised Sheet No. 4 reflects a revised Current Adjustment computed in accordance with § 154.305(c) of the Federal Energy Regulatory Commission's (Commission) Regulations. The Current Adjustment, which is proposed to be in effect from January 1, 1992, through March 31, 1992, reflects an increase in jurisdictional revenues of approximately $1.4 million which is attributable to an increase in the demand component of $9.85 per Mcf and an increase in the commodity component of $.39 per MMBtu from South Georgia's out-of-cycle PGA filing in Docket No. TQ92-3-8-000.

South Georgia states that copies of the filing will be served upon all of South Georgia's jurisdictional purchasers, interested state commissions and interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before December 18, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30012 Filed 12-16-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-32-000]

Southern Natural Gas Co. and South Georgia Natural Gas Co.; Petition for Limited Waiver

December 11, 1991.

Take notice that on November 22, 1991, Southern Natural Gas Company (Southern) and South Georgia Natural Gas Company (South Georgia) petition the Commission for a limited waiver of certain storage tariff provisions which limit the availability of the storage service to gas purchased from Southern and South Georgia.

Southern requests a limited waiver of the requirement contained in section 2.1 of Exhibit B of Rate Schedules STS-1 that a customer make volumes available for delivery to storage under Rate Schedules CSS-1 and CSS-2 by purchasing such volumes from Southern and of the requirement contained in section 3.1 of Exhibit B of Rate Schedules CSS-1 and CSS-2 that storage gas shall be provided pursuant to Rate Schedule STS-1. South Georgia requests a limited waiver of the same provisions set out in section 2.1 of Exhibit B of its ST-1 and ST-2 Rate Schedules and in section 3.1 of Exhibit B to its SS-1 and SS-2 Rate Schedules.

Southern and South Georgia request that the waivers be granted for a period ending on the earlier of October 31, 1992, or the date the Commission approves, on a basis acceptable to all parties, the Stipulation and Agreement dated July 30, 1991, in Docket No. CP89-1721.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR

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385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 17, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30014 Filed 12-16-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-629-009 and CP90-639-005]

Tennessee Gas Pipeline Co.; Compliance Filing

December 11, 1991.

Take notice that on November 6, 1991, Tennessee Gas Pipeline Company (Tennessee), in compliance with the Federal Energy Regulatory Commission's (Commission) October 9, 1991 order in the above-referenced dockets tendered for filing revised Incremental Pressure Charge (IPC) for Orchard Gas Corporation (Orchard Gas) on behalf of MASSPOWER.

Tennessee states that the revised filing is consistent with the Commission's concerns discussed in the October 9 order with one exception. Tennessee states that with regard to the inclusion of certain fixed costs, notably depreciation expense, return, and taxes, Tennessee submits that the fixed costs are already included in the NET-EU tariff rate approved by the Commission.

Tennessee states that it has served a copy of the filing on each person designated on the official service list compiled by the Company in the above-referenced dockets.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 18, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30018 Filed 12-16-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-3-000]

West Texas Gas, Inc.; Filing

December 11, 1991.

Take notice that on December 3, 1991, West Texas Gas, Inc. ("WTG") filed Twenty-Sixth Revised Sheet No. 3a to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective January 1, 1991. Twenty-Sixth Revised Sheet No. 3a and the accompanying explanatory schedules constitute WTG's quarterly PGA filing submitted in accordance with the Commission's purchased gas adjustments regulations.

WTG states that copies of the filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before December 18, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30008 Filed 12-16-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[Docket No. PP-93]

Application for a Presidential Permit; Southwestern Public Service Company

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Receipt of Application for a Presidential Permit in Docket No. PP-93; Southwestern Public Service Company.

SUMMARY: Southwestern Public Service Company has applied for a Presidential permit to construct a new electric transmission line at the U.S./Mexican border.

DATES: Comments, protests or requests to intervene must be submitted on or before January 16, 1992.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE-52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket Number PP-93 should appear clearly on the enevelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202-586-9624 or Lise Howe (Program Attorney) 202-586-2900.

SUPPLEMENTARY INFORMATION: The construction, connection, operation, and maintenance of facilities at the international border of the United States for the transmission of electrical energy is prohibited in the absence of a Presidential permit pursuant to Executive Order No. 12038. Exports of electricity from the United States to a foreign country also are regulated and require authorization under section 202(e) of the Federal Power Act.

On November 22, 1991, Southwestern Public Service Company (SPS) applied to the Department of Energy (DOE) for a Presidential permit to construct, connect, operate, and maintain two, 345-kilovolt (kV) transmission lines which would extend approximately 208.5 miles from the site of the Eddy County Interchange west, southwest, to a proposed crossing of the international boundary at a point in New Mexico situated west of El Paso, Texas. The proposed line would interconnect at the international boundary with a proposed 345-kV transmission line owned and operated by the Comision Federal de Electricidad (CFE), the Mexican national utility. SPS also proposes to construct a new substation facility near the site of an existing interchange operated by SPS in Eddy County, New Mexico.

In its application for a Presidential permit, SPS stated that the proposed interconnection would facilitate sales of electricity from SPS to the Quixx Corporation, an operating subsidiary of SPS, and Pecten Coal International, Inc., which propose to market electricity to CFE as a joint venture. The granting of a Presidential permit does not automatically render approval for the exporting of electricity; a separate export authorization must be obtained by the exporting company.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with § § 385.211 or 385.214 of the Rules of Practice and Procedures (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with: Mr. Olon Plunk, Manager, Environmental Affairs, Southwestern Public Service Company, P.O. Box 1261, Amarillo, Texas 79170.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that is has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after a determination is made by the DOE that the proposed action will not impair the reliability of the U.S. electric power supply system.

Before a Presidential permit may be issued, the environmental impacts of the proposed DOE action (i.e., granting the Presidential permit, with any conditions and limitations, or denying it) must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA). The NEPA compliance process is a cooperative, non-adversarial process involving members of the public, state governments and the Federal government. The process affords all persons interested in or potentially affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the environmental documentation for the proposed action. Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. Should a public proceeding be necessary in order to comply with NEPA, notice of such activities and information on how the public can participate in those activities will be published in the **Federal Register**, local newspapers and public libraries and/or reading rooms in the vicinity of the electric transmission facilities.

Copies of this application will be made available, upon request, for public inspection and copying at the Department of Energy, room 3F-070, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, from 9 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on December 10, 1991.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs.

[FR Doc. 91-30060 Filed 12-16-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-44578; FRL-4006-3]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on tributyl phosphate (TBP) (CAS No. 126-73-8), submitted pursuant to a final test rule. Test data were also received on C.I. disperse blue 79:1 (CAS No. 3618-72-2), and the following phthalate esters: di(heptyl, nonyl, undecyl) (D711P) (CAS No. 68515-42-4), diundecyl (DUP) (CAS No. 3648-20-2), dihexyl (DHP) (CAS No. 68515-50-4 and 84-75-3), di-n-butyl (DnBP) (CAS No. 84-74-2) and dimethyl (DMP) (CAS No. 131-11-3) submitted pursuant to a testing consent order. All data were submitted under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for TBP were submitted by the Tributyl Phosphate Task Force, affiliated with the Synthetic Organic Chemical Manufacturers Association Inc., on behalf of the test sponsors and pursuant to a test rule at 40 CFR 799.4360. They were received by EPA on September 5 and 27, and November 18, 1991. The September 5th submission describes an acute *in-vivo* cytogenetics assay in rats. The September 27th submission describes the chronic toxicity of TBP to *daphnia magna* under flow-through test conditions. The November 18th submission describes the acute flow-through toxicity exposure of TBP to *Gammarus pseudolimnaeus*. Health effects and environmental effects testing is required by this test rule. This chemical is used in aircraft hydraulic fluids; for extraction and separation processes in the plutonium uranium reduction extraction process; as a deformer in the paper industry; in textile sizers, inks, and lacquers; and as a plasticizer.

Test data for C.I. disperse blue were submitted by the U. S. Operating Committee of the Ecological and Toxicological Association of the Dyestuffs Manufacturing Industry on behalf of the participating companies of record, and pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on October 11, 1991. The submission describes the disposition and metabolite characterization following peroral dose administration to male and female sprague-dawley rats. Health effects testing is required by this consent order. This chemical is used for dyeing or printing polyester fibers.

Test data for the phthalates esters (D711P), (DUP), (DHP), (DnBP) and (DMP) were submitted by the Chemical Manufacturers Association on behalf of the test sponsors and pursuant to a testing consent order at 40 CFR 799.5000. They were received by EPA on October 28, November 4, and 7, 1991. The submissions describe the early life-stage toxicity of (D711P), (DUP), (DHP), (DnBP) and (DMP) to the rainbow trout *Oncorhynchus mykiss* under flow-through conditions. Environmental effects testing is required by this consent order. These chemicals are used

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primarily as plasticizers in a wide variety of plastic products.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44578). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: December 9, 1991.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 91-30088 Filed 12-16-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 4, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0206.

Title: Part 21—Domestic Public Fixed Radio Services (§§ 21.201, 21.307, 21.406, 21.708, 21.808).

Action: Extension.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: Recordkeeping requirement and on occasion reporting.

Estimated Annual Burden: 2,272 responses, .44 hours average burden per response, 1,000 hours total annual burden; 100 recordkeepers, 2 hours average burden per recordkeeper, 200 hours total annual burden.

Needs and Uses: The Communications Act of 1934, as amended, requires the FCC to license all common carrier microwave stations and to establish pertinent rules to assure proper operation. Section 21.201 requires the posting of station authorizations to demonstrate to the public, station owners and FCC field inspectors that the station is properly licensed. Section 21.307, equal employment opportunities, is required to assure nondiscrimination in recruiting, selection and hiring, promoting and other areas of employment practices. Such recordkeeping facilitates the timely filing by the licensee or permittee of the equal employment annual report (FCC Form 395). Section 21.406 requires the submission of developmental reports upon completion of projects authorized for developmental purposes to assure the compliance with the developmental authorization and for determination of the feasibility of such proposal for rendering telecommunication services. Sections 21.708 and 21.808 require notification to the FCC and its field offices of impending operation of microwave stations at temporary locations for periods less than 6 months. Notification is necessary to assure technical and legal compliance with part 21 since specific frequencies are not assigned to licensees.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-30090 Filed 12-16-91; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 6, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

Note: The Commission had requested emergency OMB review and approval by November 27, 1991.

OMB Number: None.

Title: Time Brokerage Agreement Survey.

Action: New collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: Other: One-time survey.

Estimated Annual Burden: 300 responses; 1 hour average burden per response; 300 hours total annual burden.

Needs and Uses: This collection of information is needed for the Commission to assess the nature and extent of time brokerage agreements, which are reported to be a growing phenomenon in the commercial broadcast industry, and the degree to which they comply with the Commission rules and policies. The information will be used by the FCC in gauging compliance with its time brokerage rules and policies and deciding what rules may be needed to control the spread of time brokerage agreements if the survey shows that there is a growing number of time brokerage stations and that problems of loss of licensee control or disregard for localism and diversity are resulting. At this point, the FCC does not know whether there is significant amount of time brokerage to be a problem.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Attachment—Data Gathering Methodology

FCC will gather information regarding commercial broadcast stations' time brokerage activities three ways: By reviewing broadcast licensees' records (required by OMB approved rules); by observing the stations' operations; and interviews. FCC already has the authority to review station records and to inspect stations. However, it wants OMB approval for the interviews. Listed below are the three ways we will gather data. We request OMB approval for the interview questions, Part III (and, to the extent necessary, for Parts I and III as well).

**Part I—Review of Licensee's Records*

Was the complete public inspection file at the studio?

Is the issue/program list complete and available?

Does the licensee have a written brokerage agreement? With whom?

** Part II—Observations of FCC Inspector*

Is there more than one person employed at the station during business hours?

Is station management available within an hour?

Is there a transmitter operator on duty?

Is the main studio closed during business hours?

Does the station have the facilities to originate programming?

Are any other indications of loss of control by the licensee apparent?

Part III—Station Management Interview Survey Questions

Is a third party paying employees salaries?

Is the station simulcasting in the same market more than 25% of the time? (How many hours per day are simulcast?)

Is the station simulcasting in an adjacent market?

Does this station provide or receive time brokerage programming?

How many hours per week does the station operate?

How many hours per week is operation brokered?

What is the average percentage of time brokered for the past year?

Note: the information may be collected by telephone rather than at the stations. If this occurs, only Part III information will be collected.

[FR Doc. 91-30051 Filed 12-16-91; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1868]

Petitions for Reconsideration and Clarification and Application for Review of Actions in Rulemaking Proceedings

December 11, 1991.

Petitions for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452-1422. Oppositions to these petitions must be filed January 3, 1992. See 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations. (Jackson, Alabama) (RM-7489).

Number of Petitions Received: 6.

Subject: Provision of Access for 800 Services. (CC Docket No. 86-10).

Number of Petitions Received: 6

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Sonora, California) (MM Docket No. 89-108; RM No. 6606).

Number of Petitions Received: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Elkins, West Virginia, Mountain Lake Park, and Westernport, Maryland) (MM Docket No. 89-580, RM Nos. 6977, 7177 and 7446).

Number of Petitions Received: 1.

Subject: Amendment of parts 21, 43, 74, 78 and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational-Fixed Microwave Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service. (GEN. Docket No. 90-54).

Number of Petitions Received: 1.

Subject: Competition in the Interstate Interexchange Marketplace. (CC Docket No. 90-132).

Number of Petitions Received: 13.

Subject: Amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations. (Homerville, Lakeland and Statenville, Georgia) (MM Docket No. 90-214; RM No. 7101 and 7226).

Number of Petitions Received: 1.

Subject: Policies and Rules Concerning Interstate 900 Telecommunications services. (CC Docket No. 91-65).

Number of Petitions Received: 11.

Application for Review

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Eatonton and Sandy Springs, Georgia; Anniston and Lineville, Alabama) (MM Docket Nos. 89-585, 7035 and 7320).

Number of Applications Received: 1.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-30049 Filed 12-16-91; 8:45 am]

BILLING CODE 6712-01-M

* FCC currently has authority for these areas of review

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Extension of 3067-0147.

Title: Report to Submit Technical or Scientific Data to Correct Mapping Deficiencies unrelated to Community-wide Elevation Determinations.

Abstract: Any owner or lessee of property in communities with mapped Special Flood Hazard Areas who believes their property should not be shown within a SFHA on the National Flood Insurance Program Flood Hazard Boundary Maps or Flood Insurance Rate Maps has the right to submit the technical or scientific data which shows the map to be incorrect. FEMA's Federal Insurance Administration reviews the information and issues a letter of map correction, if warranted.

Type of Respondents: Individuals and households.

Estimate of Total Annual Reporting and Recordkeeping Burden: 61,504 Hours.

Number of Respondents: 3,398.

Estimated Average Burden Hours Per Response: 24 Hours.

Frequency of Response: On occasion.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395-7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: December 5, 1991.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 91-30068 Filed 12-16-91; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-925-DR]

Republic of the Marshall Islands; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Republic of the Marshall Islands (FEMA-925-DR), dated

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December 6, 1991, and related determinations.

DATES: December 6, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated December 6, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Public Law 93-288, as amended by Public Law 100-707), as follows:

I have determined that the damage in certain areas of the Republic of the Marshall Islands, resulting from Typhoon Zelda on November 28-29, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the Republic of the Marshall Islands.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Major P. May of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Republic of the Marshall Islands to have been affected adversely by this declared major disaster:

The islands of Ebeye Island, Kwajalein Atoll, Lae Atoll, and Ujae Atoll for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 91-30060 Filed 12-16-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-826-DR]

Federated States of Micronesia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Federated States of Micronesia (FEMA-826-DR), dated December 10, 1991, and related determinations.

DATES: December 10, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated December 10, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Public Law 93-288, as amended by Public Law 100-707), as follows:

I have determined that the damage in certain areas of the Federated States of Micronesia, resulting from Typhoon Yuri on November 25-29, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the Federated States of Micronesia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Richard A. Buck of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Federated States of Micronesia to have been affected adversely by this declared major disaster:

The Island of Pohnpei, Mwoakilloa Atoll, and Pingelap Atoll for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 91-30067 Filed 12-16-91; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Compagnie Generale Maritime, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-011102-016.

Title: U.S. Atlantic & Gulf/Western Mediterranean Rate Agreement.

Parties: Compagnie Generale Maritime, Compania Transatlantica Espanola, S.A., Evergreen Marine Corporation (Taiwan), Ltd., Italia di Navigazione, S.p.A., Lykes Lines, Nedlloyd Lines, P & O Containers Limited, Sea-Land Service, Inc., Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would revise article 5.1(b) of the Agreement Authority to permit the members to discuss and agree upon matters pertaining to open tariff items. Adherence to any such agreement is voluntary.

Agreement No.: 217-011360.

Title: Space Charter Agreement between Concorde Line and Network Shipping, Ltd.

Parties: Concorde Line, Network Shipping Ltd.

Synopsis: The proposed Agreement would permit the parties to charter space aboard one another's vessels in the trade between ports in Honduras, Guatemala, Nicaragua and El Salvador and U.S. Atlantic and Gulf ports and inland U.S. points via such ports.

Agreement No.: 217-011361.

Title: Space Charter Agreement between Concorde Line and Central America Shippers S.A.

Parties: Concorde Line, Central America Shippers S.A.

Synopsis: The proposed Agreement would permit the parties to charter space aboard one another's vessels in the trade between ports in Honduras, Guatemala, Nicaragua and El Salvador and U.S. Atlantic and Gulf ports and inland U.S. points via such ports.

Dated: December 12, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-30094 Filed 12-16-91; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed; Port Authority of New York and New Jersey, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC. Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200005-006.

Title: Port Authority of New York and New Jersey/Maher Terminals Lease Agreement.

Parties: Port Authority of New York and New Jersey Maher Terminals, Inc.

Synopsis: The Agreement, filed December 4, 1991, provides for the modification of lease rental terms. The Agreement covers the period from the effective date of the agreement through September 30, 2000.

Agreement No.: 224-200493-001.

Title: Port Authority of New York and New Jersey/Maher Terminals, Inc. Agreement.

Parties: Port Authority of New York and New Jersey Maher Terminals, Inc.

Synopsis: The Agreement, filed December 4, 1991, provides for an extension of Permit No. PEP-44 for a period expiring June 30, 1992 and an increase in additional space to be used for the receipt, distribution and transshipment of waterborne freight.

Agreement No.: 224-200506.

Title: Los Angeles Harbor Department/California Cartage Co., Inc. Lease Agreement.

Parties: Los Angeles Harbor Department California Cartage Company, Inc.

Synopsis: The Agreement, filed December 4, 1991, provides California Cartage Company with a five-year lease covering warehouse 13, 17 and Bay 5 of warehouse 16 plus land for container storage, container repair, truck parking, truck scales and an office site. The Agreement covers operation and maintenance of warehouses, container freight stations, Custom Bonded warehouses, cargo and merchandise storage, container storage and repair and purposes incidental thereto.

Dated: December 11, 1991.

By Order of the Federal Maritime Commission.

[FR Doc. 91-30095 Filed 12-16-91; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 91-57]

Philadelphia Regional Port Authority et al. v. USA-North Europe Rate Agreement et al.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Philadelphia Regional Port Authority; Custom House Brokers Association; Trans Freight Systems, Inc.; S.T.S. International, Inc.; Holt Cargo Systems, Inc.; Marty's Express, Inc.; Delaware River Port Authority; Pennsylvania Liquor Control Board; International Longshoremen's Association; and John A. Steer Company (collectively designated "Complainants") against USA-North Europe Rate Agreement; North Europe-USA Rate Agreement; Atlantic Container Line; P&O Container's Limited; Sea-Land Service, Inc.; A.P. Moller-Maersk Line; Compagnie Generale Maritime; Nedlloyd Lijnen; and Hapag-Lloyd A.G. (collectively designated "Respondents") was served December 11, 1991. Complainants allege that Respondents have violated sections 6(g) and 10 (b)(11), (b)(12), (c)(1) and (c)(2) of the Shipping Act of 1984, 46 U.S.C. app. 1705(g) and 1706 (b)(11), (b)(12), (c)(1) and (c)(2), by filing conference tariff changes eliminating alternate port service to Philadelphia effective January 1, 1992, while providing unfair advantage to neighboring ports.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by December 11, 1992, and the final decision of the Commission shall be issued by April 12, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 91-30052 Filed 12-16-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Barclays PLC; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the

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proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 7, 1992.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Barclays PLC, London, England, Barclays Bank PLC, London, England, Bay Banks, Inc., Boston, Massachusetts, Chemical Banking Corporation, New York, New York, Manufacturers Hanover Corporation, New York, New York, National Westminster Bank PLC, London, England, NatWest Holdings, Inc., New York, New York, Northeast Bancorp, Inc., New Haven, Connecticut, The Bank of New York Company, Inc., New York, New York, The Chase Manhattan Corporation, New York, New York, and HSBC Holdings, PLC, London, England, The Hongkong and Shanghai Banking Corporation Limited, Hong Kong, B.C.C., Kellett NV, Curacao, Netherlands Antilles, HSBC Holdings BV, Amsterdam, The Netherlands, and Marine Midland Banks, Inc., Buffalo, New York; to expand the activities of The New York Switch Corporation, Fort Lee, New Jersey, and thereby engage in certain data processing activities permitted pursuant to § 225.25(b)(7) of the Board's Regulation Y, including the ownership, installation, operation and maintenance of automated teller machines and scrip terminals at supermarket and other merchant locations in the states of Connecticut, Pennsylvania and Vermont.

Board of Governors of the Federal Reserve System, December 11, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-30040 Filed 12-16-91; 8:45 am]

BILLING CODE 6210-01-F

Lanier Bankshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 7, 1992.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Lanier Bankshares, Inc., Gainesville, Georgia; to engage *de novo* through its subsidiary, Lanier Data Corporation, Gainesville, Georgia, in data processing and transmission services pursuant to § 225.25(b)(7).

Board of Governors of the Federal Reserve System, Decmeber 11, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-30041 Filed 12-16-91; 8:45 am]

BILLING CODE 6210-01-F

New Independent Bancshares, Inc., et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than January 7, 1992.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. New Independent Bancshares, Inc., New Washington, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of The New Washington State Bank, New Washington, Indiana.

Board of Governors of the Federal Reserve System, December 11, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-30042 Filed 12-16-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Clinical Studies of Safety and Effectiveness of Orphan Products; Availability of Grants; Request for Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of funds for fiscal year 1992 for awarding grants to support only phase 2 and phase 3 clinical trials on safety and effectiveness of orphan products in rare diseases and conditions (i.e., one affecting fewer than 200,000 people in the United States). FDA intends to award no more than $800,000 for up to four grants of up to $200,000 each in direct costs per annum for up to 2 years. Applications exceeding this limit will be considered nonresponsive and will be returned. Applicants may submit an application under this announcement or under RFA–FDA–OP–92–2, but may not submit under both for the same product and indication. This notice is subject to the availability of FY–92 funds.

DATES: The closing date for submission of applications is February 18, 1992.

ADDRESSES: Application forms are available from, and completed applications should be submitted to: Robert L. Robins, State Contracts and Assistance Agreements Branch (HFA–520), Food and Drug Administration, Park Bldg., Rm. 3–20, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6170.

NOTE: Applications hand-carried or commercially delivered should be addressed to Park Bldg., Rm. 3–20, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Regarding the administrative and financial management aspects of this notice: Robert L. Robins, address above.

Regarding the programmatic aspects of this notice: Carol A. Wetmore, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rm 8–73, Rockville, MD 20857, 301–443–4903.

SUPPLEMENTARY INFORMATION: FDA will support the clinical studies covered by this notice under section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 93.103.

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; stock # 017–001–00474–0) or Healthy People 2000 (Summary Report; stock # 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, 202–783–3238.

I. Background

The Office of Orphan Products Development (OPD) was established to identify and facilitate the availability of orphan products. In the OPD grants program, orphan products are defined as drugs, biologics, medical devices, and foods for medical purposes which are indicated for a rare disease or condition (i.e., one affecting fewer than 200,000 people in the United States).

One way to make orphan products available is to support clinical research to determine whether the products are safe and effective. FDA has allocated funds to support such research since fiscal year 1983. All funded studies are subject to the requirements of the Federal Food, Drug, and Cosmetic Act (the act) and regulations promulgated thereunder. The grants are funded under the legislative authority of section 301 of the Public Health Service Act.

II. Research Goal and Objectives

A. Clinical Studies

The goal of FDA's OPD grants program is to encourage clinical development of products for use in rare diseases or conditions. In furtherance of this goal, FDA provides grants to conduct pivotal clinical studies intended to provide data acceptable to the agency which will either result in or substantially contribute to approval of these products. Applicants should keep this goal in mind and must include an explanation in the "Specific Aims" section of the application of how their proposed study will either facilitate product approval or provide essential data needed for product development. The application will be considered nonresponsive without this explanation in the "Specific Aims" section and will be returned.

Except for medical foods that do not require premarket approval, FDA will only consider awarding grants to support clinical studies for determining whether the products are safe and effective for premarket approval under the act (21 U.S.C. 301 *et seq.*) or under section 351 of the Public Health Service Act (42 U.S.C. 262). In most cases, preliminary clinical research suggesting effectiveness and relative safety will already be available.

Studies submitted in response to this announcement must be continuing in phase 2 or phase 3 of investigation under an existing investigational new drug application (IND) or investigational device exemption (IDE). The IND/IDE number and the date it was submitted must appear on the face page of the application with the title of the project. Phase 2 trials include controlled clinical studies conducted to evaluate the effectiveness of the drug for a particular indication in patients with the disease or condition and to determine the common or short-term side effects and risks associated with the drug. Phase 3 trials gather additional information about effectiveness and safety that is necessary to evaluate the overall benefit-risk relationship of the drug and necessary to provide an adequate basis for physician labeling. Phase 1 studies will not be considered under this announcement. (See announcement RFA–FDA–OP–92–2.)

Applications should propose a single discrete clinical trial (one therapy for one indication). The applicant must provide supporting evidence that sufficient quantity of the product to be investigated is available to the applicant in the form needed for the clinical trial. (A letter from the supplier as an appendix will be acceptable.) The applicant must also provide supporting evidence that the patient population has been surveyed and that there is reasonable assurance that the necessary number of eligible patients are available for the study. (This information should be included in the "Specific Aims" section of the application.)

The typical study that FDA will consider for support may involve up to several dozen subjects, will be well-controlled, and will be designed to provide substantial evidence of the safety and effectiveness of the product.

FDA's standards for adequate and well-controlled studies should be followed. In designing a well-controlled study, the investigator should especially keep in mind that historical controls or use of the subjects as their own control is generally less desirable and reliable than active control or placebo controls. The applicant's proposal should provide a rationale for use of the control method chosen to satisfy considerations of scientific quality.

B. Significance

All investigators submitting a grant application for a proposed orphan use in response to this request for applications must include in the "Specific Aims" section of the "Research Plan" of their application, an explanation of why the product meets the objectives of the OPD grants program and why the product to be studied is an orphan product as described in the "Background" section of this notice. If this explanation is not included in the "Specific Aims" section, the application will be considered nonresponsive and will be returned.

C. Statistical Support

Statistical expertise is helpful in the planning, design, execution, and analysis of clinical investigations and

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clinical pharmacology to ensure the validity of estimates of safety and efficacy obtained from human studies. Applicants are expected to provide a statistical justification for the number of patients chosen for the trial based on the proposed outcome measures. Applicants should also document the appropriateness of the statistical procedures to be used in analysis of the results.

D. Journal Reference

Published reports are necessary and often critical for the review process and help to support the investigator's research intent. Applicants may include copies of reprints of relevant references for FDA review. This should include favorable as well as unfavorable reports. Applicants should follow "Specific Instructions—Section 3, Appendix" of the application kit (six collated sets). The application may be returned if the applicant fails to observe the Appendix size limitations.

III. HUMAN SUBJECT PROTECTION AND INFORMED CONSENT

A. Research Involving Human Subjects

Applicants should carefully review the section on human subjects on pages 4 and 5 of the instructions in the application kit. The "Specific Instructions—Section 1, Item 4, Human Subjects," on pages 12 and 13 of the application kit should also be carefully reviewed for the certification of institutional review board (IRB) approval requirements. The goal should be to include enough information on the protection of human subjects in a sufficiently clear fashion so reviewers will have adequate material to make a complete review.

B. Informed Consent

Consent and/or assent forms and any additional information to be given to a subject should accompany the Grant Application Form PHS 398 (Rev. 10/88) or PHS 5161 for State and local governments. Information that is given to the subject or the subject's representative shall be in language that the subject or his or her representative can understand. No informed consent, whether oral or written, may include any language through which the subject or the subject's representative is made to waive any of the subject's legal rights, or by which the subject or representative releases or appears to release the investigator, the sponsor, or the institution or its agent from liability.

If a study involves both adults and children, separate consent forms must be provided for the adults and the parents or guardians of the children.

C. Elements of Informed Consent

The elements of informed consent are as stated in the regulations at 45 CFR 46.116 and 21 CFR 50.25 as follows:

1. Basic elements of informed consent

In seeking informed consent, the following information shall be provided to each subject.

(a) A statement that the study involves research, an explanation of the purposes of the research, the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental.

(b) A description of any reasonably foreseeable risks or discomforts to the subject.

(c) A description of any benefits to the subject or to others which may reasonably be expected from the research.

(d) A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject.

(e) A statement that describes the extent, if any, to which confidentiality of records identifying the subject will be maintained and that notes the possibility that FDA may inspect the records.

(f) For research involving more than minimal risk, an explanation as to whether any compensation and any medical treatments are available if injury occurs and, if so, what they consist of or where further information may be obtained.

(g) An explanation of whom to contact for answers to pertinent questions about the research and research subject's rights, and whom to contact in the event of research related injury to the subject.

(h) A statement that participation is voluntary, that refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and that the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

2. Additional elements of informed consent.

When appropriate, one or more of the following elements of information shall also be provided to each subject.

(a) A statement that the particular treatment or procedure may involve risks to the subject (or the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable.

(b) Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent.

(c) Any costs to the subject that may result from participation in the research.

(d) The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject.

(e) A statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation will be provided to the subject.

(f) The approximate number of subjects involved in the study. The informed consent requirements are not intended to preempt any applicable Federal, State, or local laws which require additional information to be disclosed for informed consent to be legally effective.

Nothing in the notice is intended to limit the authority of a physician to provide emergency medical care to the extent that a physician is permitted to do so under applicable Federal, State, or local law.

IV. Reporting Requirements

A program progress report and a Financial Status Report (FSR) (SF–269) are required. An original FSR and two copies of this report shall be submitted to FDA's Grants Management Officer within 90 days of the budget expiration date of the grant. Failure to file the Financial Status Report (SF–269) in a timely fashion will be grounds for suspension or termination of the grant.

A final program progress report, Financial Status Report (SF–269), and Invention Statement must be submitted within 90 days after the expiration of the project period as noted on the Notice of Grant Award.

Program monitoring of grantees may be conducted on an ongoing basis and written reports will be done at least quarterly by the project officer. The monitoring may be in the form of telephone conversations between the project officer/grants management specialist and the principal investigator and/or a site visit with appropriate officials of the grantee organization. The results of these reports will be duly recorded in the official grant file and may be available to the grantee upon request.

V. Mechanism of Support

A. Award Instrument

Support will be in the form of a grant. All awards will be subject to all policies and requirements that govern the research grant programs of the Public Health Service, including the provisions of 42 CFR part 52 and 45 CFR parts 74 and 92. The regulations promulgated under Executive Order 12372 do not apply to this program.

All grant awards are subject to applicable requirements for clinical investigations imposed by sections 505, 507, 512, and 515 of the act (21 U.S.C. 355, 357, 360b, and 360e), section 351 of the Public Health Service Act, and regulations promulgated under any of these sections.

B. Eligibility

These grants are available to any public or private nonprofit entity (including State and local units of government) and any for-profit entity. For-profit entities must exclude fees or profit from their request for support.

C. Length of Support

The length of the study will depend upon the nature of the study. For those studies with an expected duration of more than 1 year, a second year of noncompetitive continuation of support will depend on: (1) Performance during the preceding year; and (2) the availability of Federal fiscal year appropriations.

D Funding Plan

The number of awards to be made will depend on the quality of the applications received and the availability of Federal funds to support the projects. No more than four awards will be made.

Resources for this program are limited. Therefore, should FDA approve two or more applications which propose duplicative or very similar studies, FDA will support only the study with the best score.

VI. Review Procedure and Criteria

A. Review Method

All applications submitted in response to this request for applications will first be reviewed by grants management and program staff for responsiveness to this request for applications. If applications are found to be nonresponsive, they will be returned to the applicant. Applicants may submit either an application under this announcement or under RFA–FDA–OP–92–2, but may not submit under both.

Responsive applications will be reviewed and evaluated for scientific and technical merit by experts in the subject field of the specific application. This review will take the form of either competitive review panels or field readers. To ensure fairness, the score by both types of reviews (panels and readers) will be combined into one rank order for the entire competition. Responsive applications will also be subject to a second level of review by a National Advisory Council for concurrence of the recommendations made by the first level reviewers with funding decisions made by the Commissioner, Food and Drug Administration.

B. Responsiveness Review Criteria

Before the applications are sent out for the first level review, they will be evaluated by program and grants management staff for responsiveness according to the following criteria:

1. Whether the application proposes a single discrete clinical trial, conducted in phase 2 or phase 3 of study, with the IND/IDE number noted on the face page of the application to determine safety and efficacy of an orphan product. (Phase 1 studies will not be considered under this announcement; see FRA–FDA–OP–92–2.);

2. Whether a brief statement has been included in the "Research Plan, Section A," under "Specific Aims" as to why the product is appropriate to the objectives of the OPD grants program;

3. Whether an explanation has been included in the "Research Plan, Section A," under "Specific Aims" as to how the proposed study will either facilitate product approval or provide essential data needed for product development;

4. Whether there is supporting evidence that a sufficient quantity of the product is available to the applicant in the form needed for the investigation.

5. Whether the product is subject to FDA review prior to marketing (Medical foods will be exempt when they are not subject to premarket approval requirements.); and

6. Whether the requested budget is within the limits (up to $200,000) as stated in this request for applications.

Applications considered nonresponsive to the review criteria will be returned to the applicant.

C. Scientific/Technical Review Criteria

For the first level of review, the scientific and technical merit criteria are:

1. The soundness of the rationale for the proposed study;

2. The appropriateness and quality of the study design;

3. The adequacy of the evidence that the proposed number of eligible subjects can be recruited;

4. The qualifications of the investigator and support staff and resources available to them;

5. The adequacy of the justification for the request for financial support;

6. The adequacy of plans for complying with regulations for protection of human subjects; and

7. The ability of the applicant to complete the proposed study within its budget and within time limitations stated in this request for applications.

VII. Submission Requirements

The original and six copies of the completed Grant Application Form PHS 398 (Rev. 10/88) or the original and two copies of the PHS 5161 for State and local governments, with copies of the appendix for each of the copies, should be delivered to Robert L. Robins (address above). No supplemental material will be accepted after the closing date. (Evidence of final IRB approval will be accepted for the file after the closing date, but it will not be sent out to the first level reviewers.)

The outside of the mailing package and item #2 of the application face page should be labeled, "Response to FRA–FDA–OP–92–1."

VIII. Method of Application

A. Submission Instructions

Applications will be accepted during normal working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established closing date.

Applications will be considered received on time if sent on or before the closing date(s) as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on the method, applicants should check with their local post office.

B. Format for Application

Submission of the application must be on Grant Application Form PHS 398 (Rev. 10/88). All "General Instructions" and "Specific Instructions' in the application kit should be followed with the exception of the receipt dates and the mailing label address. Do not send applications to the Division of Research Grants, the National Institutes of Health. Applications from State and local governments should be submitted on Form PHS 5161. The face page of the application must reflect the request for application number RFA–FDA–OP–92–1. An IND/IDE number and the date of submission must appear on the face

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page of the application with the title of the project. Applicants may submit an application under this announcement or under RFA-FDA-OP-2, but they may not submit under both for the same product and indication. The title of the proposed study must include the name of the product and the disease/disorder to be studied along with the IND/IDE number and the submission date of the IND/IDE. Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Information collection requirements requested on Form PHS 398 and the instructions have been submitted by the Public Health Service to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925-0001.

C. Legend

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of the Department of Health and Human Services or by a court, data contained in the portions of this application which have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes.

Dated: November 15, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 91-30044 Filed 12-16-91; 8:45 am]

BILLING CODE 4160-01-M

Clinical Studies of Safety and Effectiveness of Orphan Products; Availability of Grants; Request for Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of funds for fiscal year 1992 for awarding grants to support any phases of clinical trials on safety and effectiveness of orphan products in rare diseases and conditions (usually affecting a U.S. population of less than 200,000). FDA intends to award approximately $3 million for 15 to 20 grants of up to $100,000 each in direct costs per annum for up to 3 years. Applications exceeding this limit will be considered nonresponsive and will be returned. Applicants may submit an application under this announcement or under RFA-FDA-OP-92-1 (phase two and three only), but may not submit for the same product and indication under both announcements. This notice is subject to the availability of FY-92 funds.

DATES: The closing date for submission of applications is February 18, 1992.

ADDRESSES: Application forms are available from, and completed applications should be submitted to: Robert L. Robins, State Contracts and Assistance Agreements Branch (HFA-520), Food and Drug Administration, Park Bldg., rm. 3-20, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6170.

Note: Applications hand-carried or commercially delivered should be addressed to Park Bldg., rm. 3-20, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Regarding the administrative and financial management aspects of this notice: Robert L. Robins, address above.

Regarding the programmatic aspects of this notice: Carol A. Wetmore, Office of Orphan Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, rm. 8-73, Rockville, MD 20857, 301-443-4903.

SUPPLEMENTARY INFORMATION: FDA will support the clinical studies covered by this notice under section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 93.103.

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; stock #017-001-00474-0) or Healthy People 2000 (Summary Report; stock #017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, 202-783-3238.

I. Background

The Office of Orphan Products Development (OPD) was established to identify and facilitate the availability of orphan products. In the OPD grants program, orphan products are defined as drugs, biologics, medical devices, and foods for medical purposes which are indicated for a rare disease or condition (i.e., one affecting fewer than 200,000 people in the United States).

One way to make orphan products available is to support clinical research to determine whether the products are safe and effective. FDA has allocated funds to support such research since fiscal year 1983. All funded studies are subject to the requirements of the Federal Food, Drug, and Cosmetic Act (the act) and regulations promulgated thereunder. The grants are funded under the legislative authority of section 301 of the Public Health Service Act.

II. Research Goal and Objectives

A. Clinical Studies

The goal of FDA's OPD grants program is to encourage clinical development of products for use in rare diseases or conditions. In furtherance of this goal, FDA provides grants to conduct pivotal clinical studies intended to provide data acceptable to the agency which will either result in or substantially contribute to approval of these products. Applicants should keep this goal in mind and must include an explanation in the "Specific Aims" section of the application of how their proposed study will either facilitate product approval or provide essential data needed for product development. The application will be considered nonresponsive without this explanation in the "Specific Aims" section and will be returned.

Except for medical foods that do not require premarket approval, FDA will only consider awarding grants to support clinical studies for determining whether the products are safe and effective for premarket approval under the act (21 U.S.C. 301 *et seq.*) or under section 351 of the Public Health Service Act (42 U.S.C. 262). In most cases, preliminary clinical research suggesting effectiveness and relative safety will already be available.

Applications should propose a single discrete clinical trial (one therapy for one indication). The applicant must provide supporting evidence that sufficient quantity of the product to be investigated is available to the applicant in the form needed for the clinical trial. (A letter from the supplier as an appendix will be acceptable.) The applicant must also provide supporting evidence that the patient population has been surveyed and that there is reasonable assurance that the necessary number of eligible patients are available for the study. (This information should be included in the "Specific Aims" section of the application.)

The typical study that FDA will consider for support may involve up to several dozen subjects, will be well-controlled, and will be designed to

provide substantial evidence of the safety and effectiveness of the product.

FDA's standards for adequate and well-controlled studies should be followed. In designing a well-controlled study, the investigator should especially keep in mind that historical controls or use of the subjects as their own control is generally less desirable and reliable than active control or placebo controls. The applicant's proposal should provide a rationale for use of the control method chosen to satisfy considerations of scientific quality.

B. Significance

All investigators submitting a grant application for a proposed orphan use in response to this request for applications must include, in the "Specific Aims" section of the "Research Plan" of their application, an explanation of why the product meets the objectives of the OPD grants program and why the product to be studied is an orphan product as described in the "Background" section of this notice. If this explanation is not included in the "Specific Aims" section, the application will be considered nonresponsive and will be returned.

C. Statistical Support

Statistical expertise is helpful in the planning, design, execution, and analysis of clinical investigations and clinical pharmacology to ensure the validity of estimates of safety and efficacy obtained from human studies. Applicants are expected to provide a statistical justification for the number of patients chosen for the trial based on the proposed outcome measures. Applicants should also document the appropriateness of the statistical procedures to be used in analysis of the results.

D. Journal Reference

Published reports are necessary and often critical for the review process and help to support the investigator's research intent. Applicants may include copies of reprints of relevant references for FDA review. This should include favorable as well as unfavorable reports. Applicants should follow "Specific Instructions—Section 3, Appendix" of the application kit (six collated sets). The application may be returned if the applicant fails to observe the Appendix size limitations.

III. Human Subject Protection and Informed Consent

A. Research Involving Human Subjects

Applicants should carefully review the section on human subjects on pages 4 and 5 of the instructions in the application kit. The "Specific Instructions—Section 1, Item 4, Human Subjects," on pages 12 and 13 of the application kit should also be carefully reviewed for the certification of institutional review board (IRB) approval requirements. The goal should be to include enough information on the protection of human subjects in a sufficiently clear fashion so reviewers will have adequate material to make a complete review.

B. Informed Consent

Consent and/or assent forms and any additional information to be given to a subject should accompany the Grant Application Form PHS 398 (Rev. 10/88) or PHS 5161 for State and local governments. Information that is given to the subject or the subject's representative shall be in language that the subject or his or her representative can understand. No informed consent, whether oral or written, may include any language through which the subject or the subject's representative is made to waive any of the subject's legal rights, or by which the subject or representative releases or appears to release the investigator, the sponsor, or the institution or its agent from liability.

If a study involves both adults and children, separate consent forms must be provided for the adults and the parents or guardians of the children.

C. Elements of Informed Consent

The elements of informed consent are as stated in the regulations at 45 CFR 46.116 and 21 CFR 50.25 as follows:

1. *Basic Elements of Informed Consent*

In seeking informed consent, the following information shall be provided to each subject.

(a) A statement that the study involves research, an explanation of the purposes of the research, the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental.

(b) A description of any reasonably foreseeable risks or discomforts to the subject.

(c) A description of any benefits to the subject or to others which may reasonably be expected from the research.

(d) A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject.

(e) A statement that describes the extent, if any, to which confidentiality of records identifying the subject will be maintained, and that notes the possibility that FDA may inspect the records.

(f) For research involving more than minimal risk, an explanation as to whether any compensation and any medical treatments are available if injury occurs and, if so, what they consist of or where further information may be obtained.

(g) An explanation of whom to contact for answers to pertinent questions about the research and research subject's rights, and whom to contact in the event of research-related injury to the subject.

(h) A statement that participation is voluntary, that refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and that the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

2. *Additional Elements of Informed Consent*

When appropriate, one or more of the following elements of information shall also be provided to each subject.

(a) A statement that the particular treatment or procedure may involve risks to the subject (or the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable.

(b) Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent.

(c) Any costs to the subject that may result from participation in the research.

(d) The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject.

(e) A statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation will be provided to the subject.

(f) The approximate number of subjects involved in the study.

The informed consent requirements are not intended to preempt any applicable Federal, State, or local laws which require additional information to be disclosed for informed consent to be legally effective.

Nothing in the notice is intended to limit the authority of a physician to provide emergency medical care to the extent that a physician is permitted to do so under applicable Federal, State, or local law.

IV. Reporting Requirements

A program progress report and a Financial Status Report (FSR) (SF-269)

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are required. An original FSR and two copies of this report shall be submitted to FDA's Grants Management Officer within 90 days of the budget expiration date of the grant. Failure to file the Financial Status Report (SF-269) on time will be grounds for suspension or termination of the grant.

A final program progress report, Financial Status Report (SF-269), and Invention Statement must be submitted within 90 days after the expiration of the project period as noted on the Notice of Grant Award.

Program monitoring of grantees may be conducted on an ongoing basis and written reports will be done at least quarterly by the project officer. The monitoring may be in the form of telephone conversations between the project officer/grants management specialist and the principal investigator and/or a site visit with appropriate officials of the grantee organization. The results of these reports will be duly recorded in the official grant file and may be available to the grantee upon request.

V. Mechanism of Support

A. Award Instrument

Support will be in the form of a grant. All awards will be subject to all policies and requirements that govern the research grant programs of the Public Health Service, including the provisions of 42 CFR part 52 and 45 CFR parts 74 and 92. The regulations promulgated under Executive Order 12372 do not apply to this program.

All grant awards are subject to applicable requirements for clinical investigations imposed by sections 505, 507, 512, and 515 of the act (21 U.S.C. 355, 357, 360b, and 360e), section 351 of the Public Health Service Act, and regulations promulgated under any of these sections.

B. Eligibility

These grants are available to any public or private nonprofit entity (including State and local units of government) and any for-profit entity. For-profit entities must exclude fees or profit from their request for support.

C. Length of Support

The length of the study will depend upon the nature of the study. For those studies with an expected duration of more than 1 year, a second and third year of noncompetitive continuation of support will depend on: (1) Performance during the preceding year; and (2) the availability of Federal fiscal year appropriations.

D. Funding Plan

The number of studies funded will depend on the quality of the applications received and the availability of Federal funds to support the projects. Before an award will be made, acknowledgement of the receipt of an investigational new drug (IND) application or an investigational device (IDE) exemption must be submitted.

Resources for this program are limited. Therefore, should FDA approve two or more applications which propose duplicative or very similar studies, FDA will support only the study with the best score.

VI. Review Procedure and Criteria

A. Review Method

All applications submitted in response to this request for applications will first be reviewed by grants management and program staff for responsiveness to this request for applications. If applications are found to be nonresponsive, they will be returned to the applicant. Applicants may submit either an application under this announcement or under RFA-FDA-OP-92-1, but may not submit under both.

Responsive applications will be reviewed and evaluated for scientific and technical merit by experts in the subject field of the specific application. This review will take the form of either competitive review panels or field readers. To ensure fairness, the score by both types of reviews (panels and readers) will be combined into one rank order for the entire competition. Responsive applications will also be subject to a second level of review by a National Advisory Council for concurrence of the recommendations made by the first level reviewers with funding decisions made by the Commissioner, Food and Drug Administration.

B. Responsiveness Review Criteria

Before the applications are sent out for the first level review, they will be evaluated by program and grants management staff for responsiveness according to the following criteria:

1. Whether the application proposes a single discrete clinical trial to determine safety and efficacy of an orphan product.

2. Whether a brief statement has been included in the "Research Plan, Section A," under "Specific Aims" as to why the product is appropriate to the objectives of the OPD grants program;

3. Whether an explanation has been included in the "Research Plan, Section A," under "Specific Aims" as to how the proposed study will either facilitate product approval or provide essential data needed for product development;

4. Whether there is supporting evidence that a sufficient quantity of the product is available to the applicant in the form needed for the investigation;

5. Whether the product is subject to FDA review prior to marketing. (Medical foods will be exempt when they are not subject to premarket approval requirements.); and

6. Whether the requested budget is within the limits (up to $100,000) as stated in this request for applications.

Applications considered nonresponsive will be returned to the applicant.

C. Scientific/Technical Review Criteria

For the first level of review, the scientific and technical merit criteria are:

1. The soundness of the rationale for the proposed study;

2. The appropriateness and quality of the study design;

3. The adequacy of the evidence that the proposed number of eligible subjects can be recruited;

4. The qualifications of the investigator and support staff and resources available to them;

5. The adequacy of the justification for the request for financial support;

6. The adequacy of plans for complying with regulations for protection of human subjects; and

7. The ability of the applicant to complete the proposed study within its budget and within time limitations stated in this request for applications.

VII. Submission Requirements

The original and six copies of the completed Grant Application Form PHS 398 (Rev. 10/88) or the original and two copies of the PHS 5161 for State and local governments, with copies of the appendix for each of the copies, should be delivered to Robert L. Robins (address above). No supplemental material will be accepted after the closing date. (Evidence of final IRB approval will be accepted for the file after the closing date, but it will not be sent out to the first level reviewers.)

The outside of the mailing package and item #2 of the application face page should be labeled, "Response to RFA-FDA-OP-92-2."

VIII. Method of Application

A. Submission Instructions

Applications will be accepted during normal working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established closing date.

Applications will be considered received on time if sent on or before the closing date(s) as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before replying on this method, applicants should check with their local post office.

B. Format for Application

Submission of the application must be on Grant Application Form PHS 398 (Rev. 10/88). All "General Instructions" and "Specific Instructions" in the application kit should be followed with the exception of the receipt dates and the mailing label address. Do not send applications to the Division of Research Grants, the National Institutes of Health. Applications from State and local governments should be submitted on Form PHS 5161. The face page of the application must reflect the request for applications number RFA-FDA-OP-92-2. Applicants may submit an application under this announcement or under RFA-FDA-OP-92-1, but they may not submit under both announcements for the same product and indication. The title of the proposed study must include the name of the product and the disease/disorder to be studied. Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Information collection requirements requested on Form PHS 398 and the instructions have been submitted by the Public Health Service to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925-0001.

C. Legend

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of the Department of Health and Human Services or by a court, data contained in the portions of this application which have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes.

Dated: November 15, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc: 91-30043 Filed 12-16-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N-0499]

Superpharm Corp., et al.; Withdrawal of Approval of Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 25 abbreviated new drug applications (ANDA's). The holders of the ANDA's notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: January 16, 1991.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD-360), Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855, 301-295-8038.

SUPPLEMENTARY INFORMATION: The holders of the ANDA's listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

ANDA No.	Drug	Applicant
70-008	Metronidazole Tablets U.S.P., 250 milligrams (mg).	Superpharm Corp., 1758 Fifth Ave., Bayshore, NY 11706.
70-009	Metronidazole Tablets U.S.P., 500 mg.	Do.
71-750	Droperidol Injection U.S.P., 2.5 mg/milliliter (mL) (2 mL and 5 mL Ampules).	Smith & Nephew Solopak, 1845 Tonne Rd., Elk Grove Village, IL 60007-5125.
80-293	Delta-Dome (prednisone) Tablets, 5 mg.	Miles, Inc., 400 Morgan Lane, West Haven, CT 06516.
80-410	Procaine Hydrochloride Injection U.S.P., 1% and 2%.	Elkins-Sinn, Inc., 2 Esterbrook Lane, Cherry Hill, NJ 08003-4099.
80-972	Vi-Dom-A Capsules (Vitamin A Palmitate Capsules, 50,000 I.U.).	Miles, Inc.
83-381	Antagonate (Chlorpheniramine Maleate) Tablets, 4 mg.	Do.
84-529	Chlorpromazine Hydrochloride Injection U.S.P., 25 mg/mL (Vial).	Elkins-Sinn, Inc.
84-626	Lidocaine Hydrochloride Injection U.S.P., 4%.	Do.
85-017	Genapax (gentian violet) Tampons.	Key Pharmaceuticals, Inc., 2000 Galloping Rd., Kenilworth, NJ 07033.
85-131	Lidocaine Hydrochloride Injection U.S.P., 0.5%.	Elkins-Sinn, Inc.
86-357	Heparin Lock Flush Solution, 10 and 500 U.S.P..	International Medication Systems Limited, 1886 Santa Anita Ave., South El Monte, CA 91733.
87-448	Quinidine Gluconate Extended-release Tablets, 324 mg.	Boiar Pharmaceutical Co., Inc., 33 Ralph Ave., P.O. Box 30, Copiague, NY 11726-0030.
88-541	Triprolidine and Pseudoephedrine Hydrochloride Syrup.	Bausch & Lomb, 8500 Hidden River Parkway, Tampa, FL 33637.
88-986	Chlordiazepoxide Hydrochloride Capsules U.S.P., 10 mg.	Superpharm Corp.
88-987	Chlordiazepoxide Hydrochloride Capsules U.S.P., 5 mg.	Do.
88-988	Chlordiazepoxide Hydrochloride Capsules U.S.P., 25 mg.	Do.
89-021	Cyproheptadine Hydrochloride Syrup, 2 mg/5 mL.	Naska Pharmacal Co., Inc., Riverview Rd., P.O. Box 888, Lincolnton, NC 28093.

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ANDA No.	Drug	Applicant
89-031	Hydroxyzine Pamoate Capsules U.S.P., 25 mg.	Superpharm Corp.
89-032	Hydroxyzine Pamoate Capsules U.S.P., 50 mg.	Do.
89-033	Hydroxyzine Pamoate Capsules U.S.P., 100 mg.	Do.
89-137	Spironolactone and Hydrochlorothiazide Tablets, 25 mg/25 mg.	Do.
89-704	Hydrocortisone Ointment U.S.P., 1%.	Naska Pharmacal Co., Inc.
89-705	Hydrocortisone Lotion U.S.P., 1%.	Do.
89-706	Hydrocortisone Cream U.S.P., 1%.	Do.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the abbreviated new drug applications listed above, and all supplements thereto, is hereby withdrawn, effective January 16, 1991.

Dated: December 9, 1991.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 91-30095 Filed 12-16-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[MB-040-N]

Medicaid Program; Model Medicaid Application Form

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice publishes a model Medicaid application form that States have the option of using in full, in part, with modification or not at all. It would be used for noninstitutionalized individuals applying for benefits under title XIX of the Social Security Act who are not receiving cash assistance under the Aid to Families with Dependent Children (AFDC) program, Part A of title IV of the Social Security Act. This notice is published in accordance with section 6506(b) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239), which requires the Secretary to develop a model Medicaid application form for publication in the **Federal Register**.

EFFECTIVE DATE: This notice is effective December 17, 1991.

FOR FURTHER INFORMATION CONTACT: Elliott Weisman (301) 966-4723.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1902 of the Social Security Act (the Act) State agencies administer the Medicaid program in compliance with Federal statutory and regulatory requirements, and in accordance with a State plan approved by HCFA. Individuals qualify for Medicaid on the basis of being members of a category of eligibles, e.g., aged, blind, disabled, pregnant women, or families with dependent children, and on the basis of meeting certain income and resource requirements. In most States, if individuals qualify for cash assistance under the AFDC or SSI programs (or for aid to the aged, blind, or disabled in the Territories), the receipt of cash assistance automatically qualifies them for Medicaid without a separate Medicaid application. Individuals ineligible under AFDC, SSI, or for aid to the aged, blind, or disabled in the Territories, may still qualify for Medicaid. These individuals must file an application with the State.

Section 1902(a)(8) of the Act provides that all individuals wishing to make application for medical assistance under the State Medicaid plan must have the opportunity to do so, and that such assistance must be furnished with reasonable promptness to all eligible individuals. Each State agency designs its own applications for medical assistance and redetermination of eligibility. Our regulations at 42 CFR 435.907 specify that the agency must require a written application from the applicant, an authorized representative or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The application must be on a form prescribed by the agency and signed under a penalty of perjury.

Our regulations at 42 CFR 435.905 through 435.909, 436.900, 436.901 and 436.909 specify the rules for application requirements that a State agency must furnish to all applicants and individuals. In addition, the agency must publish in quantity and make available bulletins or pamphlets that explain the rules governing eligibility and appeals in simple and understandable terms.

II. Provisions of This Notice

Section 6506(b)(1) of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89) (Pub. L. 101-239), enacted December 19, 1989, requires the Secretary to develop not later than December 19, 1990, a model application form for use in applying for Medicaid benefits for individuals who are not receiving cash assistance under the AFDC program, Part A of title IV of the Act, and who are not institutionalized. Use of the model application form is optional; the Secretary is not authorized to require that the form be adopted by a State as part of its State Medicaid plan.

Section 6506(b)(2) of OBRA 89 also requires the Secretary to provide for publication in the **Federal Register** of the model application form and, in addition, to send a copy of the form to each State agency responsible for administering a State Medicaid plan.

To address the legislative mandate, we determined that it would be desirable to base our model on forms actually being used since any information about actual experience with a form would be useful in evaluating its clarity and completeness. We contacted each of our ten regional offices, who, in turn, contacted the States in their areas to secure actual applications in use. These applications were forwarded to us for review. We received approximately 50 non-institutional and non-AFDC application forms from the States. The application forms ranged in length from 4 pages to 34 pages.

In reviewing State application forms, we considered their usefulness as a model by considering them in terms of brevity, clarity and ease of completion. We hoped to find in one application all the necessary criteria: Brief, yet thorough treatment of areas such as income and resources; easily understandable terms that would be clear to either a governmental institution or a layman; and a format that was not difficult to follow. We chose to follow one State application, with modifications primarily in the area of assignment of rights. The final selection was made based on these aforementioned objectives, and on our own working knowledge that, had we attempted to initiate and develop a model based on composites of best practices from among several State examples, it would not have resulted in a more professional manuscript than the document selected as our model.

Although we are publishing the model form, we are not including a set of instructions, for several reasons. First, we believe the information being sought and the subject areas are clear and are not new to States. We believe any State choosing to use part or all of the model would very likely want to use or adopt its own existing instructions. It is not our objective or purpose to have the States defer their own individual initiatives and totally embrace this model application. Second, the States are being asked to review the model and are free to use it intact or to use any portions they feel would be beneficial to them. Also, any one set of instructions could not encompass the myriad of unique State circumstances and systems. Thus, any instructions we prepare probably would need to be altered. Lastly, States are already well familiar with gathering this information. The purpose of the model application is simply to make available to States another potential avenue of reference, illustrating ways in which information can be collected and arrayed.

This model application is published exclusively for States' consideration. States have the option to adopt part, all or none of the model application, and may make any necessary changes in development of an application as part of the State Medicaid plan. It is not intended to thwart expedited enrollment measures which may be in place for pregnant women, infants and children described in section 1902(1) of the Act whose eligibility is related to the poverty level. In addition, the application can be used as a screening form by a "qualified provider" to determine if a pregnant woman is entitled to a period of presumptive eligibility under section 1920 of the Act. A presumptively eligible pregnant woman can receive coverage for ambulatory prenatal care. The provider's determination is based on preliminary information about income alone and the pregnant woman must appear to meet income eligibility standards. The pregnant woman can be required to provide on the application only preliminary information about her income and not exact information under a penalty of perjury; she can choose, however, to complete the entire application in order to apply for regular Medicaid.

At the time the qualified provider makes a presumptive eligibility determination, the provider must inform the pregnant woman that she must complete a regular Medicaid application form (this one or another one) by the last day of the month following the month of her presumptive determination or her presumptive eligibility will end on that last day. If she applies for regular Medicaid within the deadline, her presumptive status will continue until the agency makes a final Medicaid determination.

The model application outlined below has four positive features. The application—

(1) Is short and direct;

(2) Solicits information in an easily understandable format and progression;

(3) Is easy to both read and understand; and

(4) Can be completed without a need for supplemental instructions.

(A copy of this model application has been forwarded to the director of each State agency responsible for administering the Medicaid program.

Model Medicaid Application Form

BILLING CODE 4120-01-M

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BENEFIT PROGRAMS
APPLICATION/REDETERMINATION BASE DOCUMENT

AGENCY USE ONLY		
CASE NUMBER	CATEGORY	DATE REC'D
CASE NUMBER	CATEGORY	DATE REC'D
COUNTY / CITY	WORKER'S NAME	

I. IDENTIFYING INFORMATION
(IF YOU ARE NOT APPLYING FOR YOURSELF BUT ANOTHER PERSON, COMPLETE THE FORM AS IF YOU WERE THAT PERSON)

1 NAME (LAST, FIRST, MIDDLE/MAIDEN)

2 MARITAL STATUS ☐ NEVER MARRIED ☐ MARRIED ☐ SEPARATED ☐ DIVORCED ☐ WIDOWED

3 I RESIDE ☐ ALONE ☐ WITH SPOUSE ☐ WITH CHILDREN ☐ HOME FOR ADULTS ☐ NURSING HOME ☐ OTHER (SPECIFY)

APPLICANT	SPOUSE / PARENT
4 ADDRESS (MAILING)	NAME (LAST, FIRST, MIDDLE/MAIDEN)
	ADDRESS (MAILING)
CITY, STATE, ZIP	CITY, STATE, ZIP
RESIDENCE ADDRESS (IF DIFFERENT) / TELEPHONE	RESIDENCE ADDRESS (IF DIFFERENT) / TELEPHONE
5 DOB	DOB
SSN	SSN
6 ARE YOU A VETERAN? ☐ YES ☐ NO	IS YOUR SPOUSE A VETERAN? ☐ YES ☐ NO
7 IS YOUR SPOUSE A VETERAN? ☐ YES ☐ NO	DO YOU HAVE MEDICARE PART A (HOSPITAL COVERAGE)? ☐ YES ☐ NO
8 IS ANYONE FOR WHOM YOU ARE APPLYING SERIOUSLY ILL, DISABLED, NEARLY BLIND, OR BLIND? ☐ YES ☐ NO	DO YOU HAVE MEDICARE PART B (PHYSICIAN COVERAGE)? ☐ YES ☐ NO

9 HAVE YOU OR ANYONE FOR WHOM YOU ARE APPLYING EVER RECEIVED MEDICAL ASSISTANCE OR ANY OTHER BENEFITS? ☐ YES ☐ NO

WHO	UNDER WHAT NAME	FROM WHICH DEPARTMENT
TYPE OF ASSISTANCE	WHEN	MEDICAID NUMBER (IF APPLICABLE)

10 ARE YOU OR ANYONE FOR WHOM YOU ARE APPLYING NOW RECEIVING OR ELIGIBLE FOR MEDICAL ASSISTANCE, OR ANY OTHER BENEFITS? ☐ YES ☐ NO

WHO	UNDER WHAT NAME	FROM WHICH DEPARTMENT
TYPE OF ASSISTANCE		MEDICAID NUMBER (IF APPLICABLE)

11 DO YOU OR ANYONE FOR WHOM YOU ARE APPLYING HAVE MEDICARE PART A (HOSPITAL COVERAGE)? ☐ YES ☐ NO — IF YES, WHO

12 DO YOU OR ANYONE FOR WHOM YOU ARE APPLYING HAVE MEDICARE PART B (PHYSICIAN COVERAGE)? ☐ YES ☐ NO — IF YES, WHO

13 IS PREMIUM DEDUCTED FROM SOCIAL SECURITY OR RAILROAD RETIREMENT CHECK? ☐ YES ☐ NO

14 IF RECEIVING SOCIAL SECURITY OR RAILROAD RETIREMENT BENEFITS OR MEDICARE, LIST CLAIM NUMBER

15 DO YOU WANT TO TALK WITH A SERVICE WORKER ABOUT ANY NEEDS OR PROBLEMS? ☐ YES ☐ NO

16 IF YOU ARE MARRIED, BUT ARE NOT LIVING WITH YOUR SPOUSE, LIST DATE YOU LAST LIVED TOGETHER — DATE

II. RESOURCES

DO YOU OR ANYONE FOR WHOM YOU ARE APPLYING, OR YOUR SPOUSE, HAVE ANY OF THE FOLLOWING

☐ YES ☐ NO	CASH ON HAND	WHO	AMOUNT $	☐ YES ☐ NO	STOCKS OR BONDS?	WHO	AMOUNT $

☐ YES ☐ NO MACHINERY, TOOLS, FARMING OR OTHER EQUIPMENT

TYPE OF EQUIPMENT	WHO	VALUE $

☐ YES ☐ NO A SAVINGS ACCOUNT OR CHECKING ACCOUNT, CREDIT UNION, CHRISTMAS CLUB, TRUST FUND, CERTIFICATE OF DEPOSIT, IRA OR KEOUGH PLAN?

IN WHOSE NAME(S)	TYPE OF ACCOUNT	WHERE	ACCOUNT NUMBER	AMOUNT $
IN WHOSE NAME(S)	TYPE OF ACCOUNT	WHERE	ACCOUNT NUMBER	AMOUNT $

☐ YES ☐ NO DO YOU, YOUR SPOUSE, OR ANYONE FOR WHOM YOU ARE APPLYING HAVE PART OR FULL OWNERSHIP OR LIFE INTEREST IN ANY REAL PROPERTY (HOUSE, LAND, BUILDINGS) WHETHER PURCHASED OR INHERITED?

3 ☐ YES ☐ NO ARE YOU, YOUR SPOUSE, OR ANYONE FOR WHOM YOU ARE APPLYING BUYING ANY REAL PROPERTY NOW?

IF YOU OWN OR ARE BUYING PROPERTY, LIST

NAME(S) OF OWNER(S)	NUMBER OF ACRES	VALUE $
WHERE LOCATED	TYPE OF PROPERTY ☐ HOME ☐ HOME AND LAND ☐ OTHER BUILDINGS AND OR LAND	

4 LIST THE HOSPITAL OR MEDICAL INSURANCE (OTHER THAN MEDICARE) OF ANYONE FOR WHOM YOU ARE APPLYING, INCLUDING ANY INSURANCE AVAILABLE TO YOU THROUGH EMPLOYMENT, BLUE CROSS/BLUE SHIELD, CHAMPUS, CHAMPVA, PUBLIC HEALTH SERVICE, UNION OR PROFESSIONAL OR FRATERNAL, SCHOOL INSURANCE, SPECIAL CANCER POLICIES, FEDERAL EMPLOYEE PROGRAMS AND HEALTH MAINTENANCE ORGANIZATIONS (HMO'S) USE ADDITIONAL PAPER IF MORE SPACE IS NEEDED

NAME AND ADDRESS OF INSURANCE COMPANY OR OTHER COVERAGE	POLICY / GROUP / CONTRACT / MILITARY ID NUMBER	COVERAGE BEGIN DATE	TYPE OF POLICY	PREMIUM AMOUNT

III. INCOME

1 LIST THE INFORMATION ON ALL PEOPLE, INCLUDING YOURSELF, LIVING IN THE HOME. ALL THE MONEY IS TO BE LISTED FOR EACH PERSON INCLUDING SELF EMPLOYMENT, INCOME PRODUCING PROPERTY, FARMING, BABYSITTING, SOCIAL SECURITY, SSI, ETC. COMPLETE ITEM 5 BELOW IF A MEMBER OF THE HOUSEHOLD IS WORKING. * SOCIAL SECURITY NUMBER REPORTING OPTIONAL FOR INDIVIDUALS NOT RECEIVING MEDICAID

NAME (LAST, FIRST, MIDDLE)	SOCIAL SECURITY NUMBER	BIRTHDATE	SEX	RELATIONSHIP TO APPLICANT (WIFE, SON, DAUGHTER, ETC.) IF NOT RELATED ENTER NONE	BIRTHPLACE (CITY, STATE OR COUNTRY OF ORIGIN)	IS THIS PERSON EARNING MONEY? YES	NO	GROSS AMOUNT

2 DOES ANYONE WITHIN THE HOUSEHOLD HELP YOU IN PAYING ANY BILLS? ☐ YES ☐ NO — IS THIS A LOAN? ☐ YES ☐ NO

WHO	WHICH BILLS	HOW OFTEN	AMOUNT $

3 DOES ANYONE OUTSIDE THE HOUSEHOLD HELP YOU IN PAYING ANY BILLS? ☐ YES ☐ NO — IS THIS A LOAN? ☐ YES ☐ NO

WHO	WHICH BILLS	HOW OFTEN	AMOUNT $

5 COMPLETE THIS SECTION FOR ANY PERSON, INCLUDING CHILDREN, EARNING MONEY. (IF MORE THAN TWO ARE WORKING, COMPLETE ADDITIONAL SHEET OF PAPER.)

NAME OF PERSON WORKING	NUMBER OF HOURS PER WEEK	NAME OF PERSON WORKING	NUMBER OF HOURS PER WEEK
WHERE		WHERE	
AMOUNT OF GROSS EARNINGS	AMOUNT OF EARNED INCOME CREDIT	AMOUNT OF GROSS EARNINGS	AMOUNT OF EARNED INCOME CREDIT

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II. RESOURCES

2. DO YOU OR ANYONE FOR WHOM YOU ARE APPLYING, OR YOUR SPOUSE HAVE ANY OF THE FOLLOWING.

☐ YES ☐ NO A CEMETERY PLOT, BURIAL FUND OR PREARRANGED FUNERAL ?

WHO	WHAT	WHERE	VALUE

☐ YES ☐ NO ANY CARS, BOATS, TRUCKS, MOTORCYCLES, CAMPERS, MOBILE HOMES, ETC ?

	OWNER	ITEM	MAKE	MODEL	YEAR	AMOUNT OWED	VALUE
						$	$
						$	$
						$	$

☐ YES ☐ NO LIFE INSURANCE POLICIES WHICH CAN BE CASHED IN BY YOU OR ANYONE FOR WHOM YOU ARE APPLYING (NOT REQUIRED FOR FOOD STAMPS)

NAME OF INSURANCE COMPANY	POLICY NUMBER	INSURED PERSON	FACE VALUE	CASH VALUE	TO WHOM IT IS AVAILABLE
			$	$	
			$	$	
			$	$	

4. LIST THE HOSPITAL OR MEDICAL INSURANCE (OTHER THAN MEDICARE) OF ANYONE FOR WHOM YOU ARE APPLYING, INCLUDING ANY INSURANCE AVAILABLE TO YOU THROUGH EMPLOYMENT, BLUE CROSS/BLUE SHIELD, CHAMPUS, CHAMPVA, PUBLIC HEALTH SERVICE, UNION OR PROFESSIONAL OR FRATERNAL, SCHOOL INSURANCE, SPECIAL CANCER POLICIES, FEDERAL EMPLOYEE PROGRAMS AND HEALTH MAINTENANCE ORGANIZATIONS (HMO'S). USE ADDITIONAL PAPER IF MORE SPACE IS NEEDED.

MAJOR MEDICAL YES	MAJOR MEDICAL NO	COVERED INDIVIDUAL	EMPLOYER / PERSON WHO BOUGHT THE POLICY	RELATIONSHIP	BENEFITS
					☐ HOSPITAL ☐ MEDICAL ☐ OTHER (SPECIFY) ☐ SURGICAL ☐ DENTAL
					☐ HOSPITAL ☐ MEDICAL ☐ OTHER (SPECIFY) ☐ SURGICAL ☐ DENTAL
					☐ HOSPITAL ☐ MEDICAL ☐ OTHER (SPECIFY) ☐ SURGICAL ☐ DENTAL

III. INCOME

LIST THE INFORMATION ON ALL PEOPLE, INCLUDING YOURSELF, LIVING IN THE HOME. ALL THE MONEY IS TO BE LISTED FOR EACH PERSON INCLUDING SELF EMPLOYMENT, INCOME PRODUCING PROPERTY, FARMING, BABYSITTING, SOCIAL SECURITY, SSI, ETC. COMPLETE ITEM 5 BELOW IF A MEMBER OF THE HOUSEHOLD IS WORKING.

RECEIVING UNEMPLOYMENT COMPENSATION			RECEIVING SUPPORT PAYMENTS			RECEIVING SOCIAL SECURITY OR SUPPLEMENTAL SECURITY INCOME			RECEIVING FOOD, CLOTHING, SHELTER CONTRIBUTIONS			RECEIVING ANY OTHER PENSIONS, INCOME OR MONEY FROM ANY SOURCE			
YES	NO	AMOUNT	YES	NO	AMOUNT	YES	NO	AMOUNT	YES	NO	AMOUNT	YES	NO	AMOUNT	SOURCE

4. DO YOU, OR ANYONE FOR WHOM YOU ARE APPLYING, OR YOUR SPOUSE, EXPECT TO RECEIVE ANY MONEY FROM ANY SOURCE?

WHO	FROM WHERE	AMOUNT $

6. HAVE YOU OR ANYONE FOR WHOM YOU ARE APPLYING, OR YOUR SPOUSE, SOLD, GIVEN AWAY, OR TRANSFERRED ANY REAL OR PERSONAL PROPERTY (BANK ACCOUNTS, MONEY, ETC.) IN THE PAST 36 MONTHS ? ☐ YES ☐ NO

IF YES, WHAT, TO WHOM, WHY, WHEN (DATE) AND WHAT DID YOU RECEIVE IN RETURN ?

IF YES, WHAT WAS THE VALUE OF THE TRANSFERRED REAL OR PERSONAL PROPERTY (BANK ACCOUNTS, MONEY, ETC.) $

ASSIGNMENT OF RIGHTS TO MEDICAL SUPPORT AND THIRD-PARTY PAYMENTS

I. **Statement of Citizenship or Alienage:**

In order to receive non-emergency medical assistance, each applicant for Medicaid must certify, under penalty of perjury, whether he or she is a citizen or national of the United States or is in a satisfactory immigration status. Satisfactory immigration status means that the person is living in the United States legally. Please note: While this declaration may be made by a parent on behalf of a minor child, the declaration must be made separately for each adult applying for assistance.

A. Are you a United States Citizen by birth or naturalization? ☐ YES ☐ NO

If no, are you lawfully admittted for permanent residence in the United States? ☐ YES ☐ NO

If you are lawfully admitted for permanent residence, give the month, day, and year of admission. Date:

If you are not lawfully admitted for permanent residence, please complete the following:

(a) Is the Immigration and Naturalization Service (INS) aware of your presence in the United States? ☐ YES ☐ NO
(If Yes, go to (b). If No, go to next question)

(b) When did you first make your home in the United States? Date:

By signing this application, you are certifying that this statement of your citizenship or alienage is true and correct.

II. **Assignment of Rights to Third Party Payment:**

Medicaid does not pay medical expenses that a third party, such as a private health insurance company, is supposed to pay. All persons applying for Medicaid benefits are required to assign the State Medicaid agency any rights they may have to medical support or other third party payments for medical care. When you sign this application for Medicaid benefits, you are assigning the Medicaid agency all rights to collect or receive any such payments for the time you are on Medicaid.

III. **Cooperation Requirements:**

I understand that by applying for Medicaid benefits, I agree to cooperate with the State Medicaid agency in identifying and providing information to help pursue any third party who may be responsible for providing medical support for me. If I am signing this application on behalf of another person, I agree to cooperate in identifying and obtaining information to pursue any third party who may be responsible for providing medical support for them, including, if necessary, establishing paternity for any children applying for Medicaid benefits. I further understand that there is a special exception to this general rule for low-income pregnant women which exempts them from cooperating in establishing paternity.

I also understand that, if I am eligible to enroll in any insurance or benefit plan offered by my employer or my spouse's employer, I am required to enroll in that plan.

IV. **Change in Status:**

I agree to let the State Medicaid agency _____ know immediately _____ (per 42 CFR 435.916) of any changes in my family or financial situation.

V. **Release of Medical Information:**

I hereby authorize the release to the State Medicaid agency of any information in any medical records pertaining to any services received by me or a member of my family as a benefit under Medicaid.

VI. **Non-discrimination:**

I understand that I have the right to file a complaint if I believe I have been discriminated against because of race, color, national origin, religion, sex, age, handicap or religious belief.

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VII. **Privacy Act and Computer Matching Notice:**

I understand that the State Medicaid agency is authorized to request the information on this form. The primary use of this information is to determine eligibility for Medicaid benefits and it is protected by law from disclosure to unauthorized persons or for unauthorized purposes.

Please note: It is possible this information may be used:

1) To determine another person's right to Medicaid benefits, or

2) To comply with Federal laws requiring the release of information from Medicaid records. The information may be matched with the records in other agencies, such as the Social Security Administration, the Internal Revenue Service or the Immigration and Naturalization Service. These matches may be done by computer or on an individual basis.

VIII. **Further help:**

If you need additional forms or have any questions, contact: (name, phone number, address or other identifying information provided by the State agency.)

IX. **Penalties for False Statements:**

I understand that if I give false information, withhold information, or fail to report changes promptly or on purpose, I may be breaking the law and could be prosecuted for perjury, larceny and/or welfare fraud. I further understand that if I complete or assist in completing this form for an applicant/recipient and/or aided or abetted the applicant/recipient to obtain assistance for which he/she is not eligible that I may be breaking the law and could be prosecuted.

X. **CERTIFICATION:**

I HEREBY APPLY FOR MEDICAL ASSISTANCE AND CERTIFY THAT THE STATEMENTS AND ATTACHMENTS ON THIS APPLICATION ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Signed: _____ Date: _____

BILLING CODE 4120-01-C

III. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any notice that meets one of the Executive Order 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, State agencies are not considered to be small entities.

This notice does not require either an impact analysis under Executive Order 12291 or a regulatory flexibility analysis under the RFA since it merely notifies and makes available to State agencies responsible for administering the State Medicaid plan, a model application form as required by section 6506(c) of Pub. L. 101–239.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a notice will have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this notice will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

IV. Paperwork Burden

This notice does not impose paperwork collection requirements. Consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3801 et. seq.).

The notice merely makes available to the States a model Medicaid application form for them to consider using either in full, part, or with modification or not at all. States that make no changes to their forms will experience no change in reporting burden. States that find the model simpler or briefer and adopt the model for their own use would likely experience a reduction in burden.

(Catalog of Federal Domestic Assistance Program No. 93.778 Medical Assistance)

Dated: May 6, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: September 17, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91–30002 Filed 12–16–91; 8:45 am]

BILLING CODE 4120-01-M

Social Security Administration

Supplemental Security Income Modernization Project; Change in Location of a Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of change in location of a meeting.

SUMMARY: Notice is hereby given that the meeting of the Supplemental Security Income (SSI) Modernization Project (the Project) that was to be held at the Social Security Administration Headquarters, 6401 Security Boulevard, Baltimore, MD 21235 on January 9 and 10, 1992 will instead be held at the Social Security Administration's Office of Hearings and Appeals, One Skyline Tower 5107 Leesburg Pike, Falls Church, Virginia 22041. This notice supersedes the notice of this meeting published on November 29, 1991 at 56 FR 61030.

DATES: January 9–10, 1992, 8:30 a.m. to 5 p.m.

ADDRESSES: Social Security Administration Office of Hearings and Appeals, One Skyline Tower, room 1600, 5107 Leesburg Pike, Falls Church, Virginia 22041.

FOR FURTHER INFORMATION CONTACT: SSI Modernization Project Staff, room 300, Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3571.

SUPPLEMENTARY INFORMATION: The meeting of the SSI Modernization Project will be held at a different location. This notice supersedes the notice of this meeting published on November 29, 1991 at 56 FR 61030.

The Social Security Administration (SSA) is undertaking a comprehensive examination of the SSI program, reviewing its fundamental structure and purpose. The purpose of the Project is to determine if the SSI program is meeting and will continue to meet the needs of the population it is intended to serve in an efficient and caring manner, recognizing the constraints in the current fiscal climate.

The first phase of this Project is intended to create a dialogue that provides a full examination of how well the SSI program serves the needy, aged, blind, and disabled.

To begin this dialogue, the Commissioner has involved 23 people who are experts in the SSI program and/or related public policy areas. The experts include a wide range of representatives of the aged, blind, and disabled from private and nonprofit organizations and Federal and State government as well as former SSA staff. Dr. Arthur S. Flemming, former Secretary of Health, Education and Welfare, will chair the meeting. The purpose of this initial dialogue is to exchange ideas and existing information about the program. This exchange will facilitate the sharing of ideas among attendees' constituencies, including advocacy groups, state and local government and academicians. The outcome will be a more informed public that has an interest in bringing individually produced innovative ideas for change in the SSI program to the Modernization Project.

This is the tenth in a series of meetings that have been held throughout the country. The meeting will be open to the public to the extent that space is available. Please call the Project Staff at 410–965–3571, if you plan to attend.

The experts will review and discuss the public comments that were received on the paper, "Summary of Options Identified by the Public In Connection with the Supplemental Security Income Modernization Project." This document was published in the **Federal Register** on July 31, 1991 (56 FR 36640).

A summary of the meeting will be available at no charge. The transcript of the meeting will be available at cost. Summaries and transcripts may be ordered from the Project Staff. The transcript and all written submissions will become part of the record of these meetings.

Dated: December 11, 1991

Peter Spencer,

Director, SSI Modernization Project Staff.

[FR Doc. 91–30053 Filed 12–16–91; 8:45 am]

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[Social Security Ruling SSR 91-8P.]

Evaluation of Human Immunodeficiency Virus Infection

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 91-8P. This Policy Interpretation Ruling updates the policy for evaluating human immunodeficiency virus (HIV) infection, including acquired immunodeficiency syndrome (AIDS), in determining disability based on these impairments under titles II (Federal Old-Age, Survivors, and Disability Insurance Benefits) and XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the Social Security Act. This Ruling uses the universally accepted term "HIV infection" for the virus that causes AIDS.

This Ruling also states the criteria for identifying HIV infection as a disabling condition for Social Security purposes. It includes the diagnostic criteria necessary, explains the documentation and evaluation of all HIV infection (including AIDS) cases, and the setting of the onset date. The Commissioner also gives notice that Social Security Ruling 86-20 is out of date and is superseded by this Ruling.

EFFECTIVE DATE: December 17, 1991.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security-Disability Insurance; 93.803 Social Security-Retirement Insurance; 93.805 Social Security-Survivor's Insurance; 93.807 Supplemental Security Income.)

Dated: December 11, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Policy Interpretation Ruling Titles II and XVI: Evaluation of Human Immunodeficiency Virus Infection

This supersedes Program Policy Statement (PPS) No. 124 (Social Security Ruling (SSR) 86-20), titles II and XVI: Evaluation of Acquired Immune Deficiency Syndrome, Cumulative Edition 1986, p. 87.

Purpose: To update the policy for evaluating human immunodeficiency virus (HIV) infection, including acquired immunodeficiency syndrome (AIDS), in determining disability based on these impairments under titles II and XVI of the Social Security Act.

Citations: Sections 216(i), 223(d) and 1614(a) of the Social Security Act, as amended; Regulations No. 4, subpart P, §§ 404.1520(d), 404.1525, 404.1526, 404.1578, 404.1590, and appendix 1, parts A and B; Regulations No. 16, subpart I, §§ 416.906, 416.920(d), 416.924(e), 416.925, 416.926, and 416.926a.

Introduction: This Ruling revises and expands the guidelines for evaluating cases involving HIV infection. It reformats the opportunistic infections by type (e.g., viral, fungal, bacterial, protozoan, etc.), thereby making the criteria easier to apply.

It also includes additional criteria to take into account the clinical manifestations and course of the disease in women and children, and to reflect recent data on the correlation of absolute CD4 lymphocyte counts and the percentage of total lymphocytes. It also realigns and adds certain manifestations of HIV infection which when paired with functional restrictions result in listing-level severity.

Policy Interpretation: This Ruling states the guidelines for identifying HIV infection as a disabling condition for Social Security purposes. It includes the diagnostic criteria necessary, explains the documentation and evaluation of all HIV infection (including AIDS) cases, and the setting of the onset date.

HIV Infection—General

HIV infection is caused by a specific retrovirus and is characterized by susceptibility to one or more opportunistic diseases, cancers, or other conditions.

The criteria in this Ruling include severe HIV-associated conditions that equal the severity of the listings. However, the criteria listed do not describe the full spectrum of diseases or conditions manifested by HIV-infected individuals. When other diseases or conditions are documented, it is necessary to determine whether the other diseases or conditions carry a level of severity equivalent to the HIV criteria specified in this Ruling, or to any listing.

Under the sequential evaluation process, if the medical evidence shows that a person meets the listing criteria (or, as determined by a program physician, has other infections or diseases which are equivalent in severity to the listings), is not working and meets the other nonmedical requirements for entitlement, he or she will be determined to be disabled.

If the person has manifestations of HIV infection that are not specifically included in or equivalent in severity to the specific criteria, then we again evaluate all of his or her signs, symptoms, and laboratory findings to determine the person's capacity to engage in substantial gainful activity (or, in the case of a child, to perform age-appropriate activities).

For adults, we assess their residual functional capacity and, based on that assessment, determine whether the claimant retains the capacity to perform past relevant work, or, if not, whether the claimant retains the capacity to perform any other work considering his or her age, education, and work experience.

For children, we individually assess their ability to function to determine whether there is a substantial reduction in their ability to function independently, appropriately and effectively in an age-appropriate manner.

Documentation of HIV Infection in Adults

The medical file should be documented by the findings of a thorough history and physical examination. The onset and nature of signs and symptoms should be specifically and clearly described. Attempts should be made to quantify the extent and severity of all signs and symptoms. The variability or intensity of signs, symptoms, and laboratory findings over time should also be indicated.

The medical evidence should include documentation of HIV infection and specific laboratory evidence of an opportunistic disease, cancer, or other condition. The extent of immune depression correlates with the absolute number or percentage of CD4 (T4) lymphocytes. In general, when the CD4 count is 200 per mm^3 or less (14 percent or less), the susceptibility to opportunistic disease is considerably increased. In obtaining information regarding HIV antibody or viral testing, requirements of State and local laws governing the release of information must be met.

Laboratory evidence of HIV infection includes:

1. A serum specimen that contains HIV antibodies, detected by a screening test (e.g., ELISA) and confirmed by a more definitive test (e.g., Western blot, immunofluorescence assay), or
2. A serum specimen that contains HIV antigen, or
3. A lymphocyte culture, positive for HIV, confirmed by a specific test for the antigen (not just detection of reverse transcriptase), or
4. Other test(s) believed to be highly specific for detection of HIV (e.g., polymerase chain reaction (PCR)).

When the above tests are not part of the medical evidence in the file, a diagnosis of HIV infection can still be accepted if the individual has a disease predictive of a defect in cell-mediated immunity, and there is no known cause of diminished resistance to that disease. The following would cause diminished resistance:

1. High-dosage or long-term systemic corticosteroid therapy or other immunosuppressive/cytotoxic therapy within 3 months before the onset of the indicator disease.
2. Any of the following diseases diagnosed within 3 months of the indicator disease:
   a. Hodgkin's disease;
   b. Non-Hodgkin's Lymphoma (other than primary brain lymphoma);
   c. Lymphocytic leukemia;
   d. Multiple myeloma;
   e. Other cancer of lymphoreticular or histiocytic tissue; or
   f. Angioimmunoblastic lymphadenopathy.
3. A genetic (congential) immunodeficiency syndrome or an acquired immunodeficiency syndrome atypical of HIV infection, such as one involving hypogammaglobulinemia.

When tests are not available, full details of the history, clinical course, and results of serological testing, microbiologic cultures, or tissue biopsy must be documented. The documentation of HIV infection will rely on clinical history, physical examination, exclusion of other causes for the clinical abnormalities, and treating source opinion.

If HIV infection is not documented by the evidence described previously, see item 1 of "Manifestation of HIV Infection in Adults."

Pneumocystis carinii pneumonia (PCP) as described in item 2.b of "Manifestations of HIV Infection in Adults" is the most common opportunistic disease associated with HIV infection. While it is definitively diagnosed by histology or cytology, a diagnosis of PCP may be based on clinical impressions and response to treatment. Medical judgment must be exercised when PCP or other opportunistic diseases are diagnosed without microscopic evidence.

It will often be necessary to obtain a detailed description of daily activities to describe functional limitations or abilities for those cases which require an assessment of residual functional capacity (RFC). This information is essential for evaluation under item 13 in "Manifestation of HIV Infection in Adults" including special documentation for item "d" to evaluate the four general areas of functioning.

Evaluation of HIV Infection in Adults

As with all medically determinable impairments, the assessment of severity must take into account signs, symptoms, and laboratory findings.

In evaluating HIV infection, the impact of all impairment(s) must be considered. Many individuals with HIV infection manifest mental signs and symptoms such as anxiety, depression, apathy, and cognitive impairment. Medical evidence should include documentation of mental impairment when pertinent and the impairment(s) should be evaluated under the appropriate listing(s). These signs and symptoms must also be factored into the assessment of RFC when applicable.

The impact of therapy must also be considered. The therapeutic regimens and consequent adverse response to therapy may vary; therefore, each case must be evaluated on an individual basis. It is essential to obtain a specific description of drugs given, dosage, frequency of administration, and a description of the complications or any other adverse response to therapy. In many instances the effect is temporary and/or dose-related; however, on occasion, the adverse effect may be permanent or long-term.

Medical judgment must be exercised when PCP or other opportunistic diseases are diagnosed without microscopic evidence to establish whether the impairment equals the severity of the listings.

For individuals with HIV infection evaluated under item 13 in the "Manifestations of HIV Infection in Adults" listing-level severity will be assessed in terms of the function limitations imposed by the impairment. The full impact of signs, symptoms, and laboratory findings on the claimant's ability to function in a work setting must be considered. Important factors to be considered in evaluating the functioning of individuals with HIV infection include, but are not limited to: symptoms, such as fatigue and pain; characteristics of the illness, such as the frequency and duration of manifestations or periods of exacerbation and remission in the disease course; and the functional impact of treatment for the disease, including the side effects of medication.

Where "marked" is used as standard for measuring the degree of functional limitations, it means more than moderate, but less than extreme. A marked limitation may arise when several activities or functions are impaired or even when only one is impaired, so long as the degree of limitation is such as to seriously interfere with the ability to function independently, appropriately, and effectively.

The four general areas of functioning in which the functioning of HIV-infected individuals is to be assessed are: Activities of daily living; social functioning; difficulties in completing tasks due to deficiencies in concentration, persistence, or pace; and repeated episodes of deterioration or decompensation in work or work-like settings. These areas of functioning provide a framework for the evaluation of the specific functional limitations of the individual. Functional limitations should always be assessed on a case-by-case basis.

For the first general area of functioning, activities of daily living, "marked" means that most of the time the individual is unable to perform daily activities independently. Activities of daily living include, but are not limited to, such activities as doing household chores, grooming and hygiene, using a post office, taking public transportation, and paying bills. For example, an HIV-infected person, because of symptoms, such as pain, or the fatigue imposed by the illness or its treatment, or the side effects of medication, may be able to

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perform some selfcare activities but not be able to maintain a household, or take public transportation on a sustained, regular basis or without assistance.

For the second general area of functioning, social functioning (i.e., the individual's capacity to interact appropriately and communicate effectively with others), "marked" means that most of the time the individual is unable to sustain interaction and communication. For example, an HIV-infected person may be restricted from engaging in social interaction on a sustained basis. These restrictions could also result from a pattern of exacerbation and remission caused by the illness itself or its treatment.

For the third general area of functioning, "marked" means that most of the time the individual is unable to sustain concentration, persistence, or pace to permit timely completion of tasks commonly found in work settings. The HIV-infected person may be restricted in this area by the impact of the disease process itself on his or her mental or physical functioning, or both. This could result from extended or intermittent symptoms, such as depression, fatigue, or pain, resulting in a limitation on the ability to concentrate, to persevere at the task, or to perform the task at an acceptable rate of speed. Limitations may also result from the side effects of medication which limit the ability of the person to complete tasks or to sustain activity.

For the fourth general area of functioning, repeated episodes of deterioration or decompensation in work or work-like settings refers to frequent inability to adapt to the work setting or recurrent significant limitations in this ability. This may be caused by manifestations of HIV infection itself, such as its symptoms, or by the frequency and intrusiveness of treatment for the disease. For example, repeated episodes of deterioration could include frequent hospitalizations because of exacerbations of HIV manifestations or medical need to be absent from work imposed on the person because of immunosuppression.

Because of the known high mortality rate in many symptomatic HIV infection cases, for purposes of duration, that aspect of the definition of disability, "expected to result in death," is met if the criteria listed in this Ruling are met. Therefore, an individual with an impairment that meets these criteria would meet the duration requirement under §§ 404.1509 and 416.909 of the regulations.

Those individuals who do not meet the criteria in this Ruling, but who have evidence of severe, symptomatic HIV infection, must be assessed on a case-by-case basis following the sequential evaluation process.

Some individuals infected with HIV are asymptomatic and have no identifiable severe impairment. Other individuals with documented HIV infection may manifest signs and symptoms, such as generalized lymphadenopathy, moderate weight loss, fever, diarrhea, malaise and lethargy, lymphopenia, anemia, thrombocytopenia, or mucosal candidiasis that are of less than the severity described in this Ruling (which is considered to be of listing-level severity). Individuals who have an impairment with a level of severity which is not of listing-level may or may not have the RFC to engage in substantial gainful work activity. Evaluation of the impairment of these individuals should proceed through the final steps of the sequential evaluation process or, as appropriate, the steps in the medical improvement review standard.

Assessment of RFC must take into account the individual's ability to perform work-related activities over time such as a 6- to 8-hour day for 5 days a week. If abilities cannot be sustained over time, this should be noted in the RFC. Since many individuals may be limited significantly by symptoms, such as fatigue, shortness of breath, or side effects of drugs, the impact of symptoms on RFC must be considered.

Special Evaluation Issues in Women

Most women with end-stage HIV infection exhibit the typical opportunistic infections and other conditions, such as pneumocystis carinii pneumonia, candida esophagitis, wasting syndrome, cryptococcosis, and toxoplasmosis. However, HIV infection may manifest itself differently in women than in men. Adjudicators must carefully scrutinize the medical evidence and be alert to the variety of medical conditions specific to women which may or may not affect their ability to function in the work place. Examples include, but are not limited to:

1. Vulvovaginal candidiasis ("yeast infection," monilia). Although this condition usually heals quickly with appropriate treatment, in women with weak immune systems the disorder may become chronic or recurrent, painful and respond poorly to therapy. See item 13.C.6 in "Manifestations of HIV Infection in Adults."

2. Genital herpes. Although the lesions usually occur in limited areas (such as the cervix), as HIV infection progresses the herpes may involve more widespread anatomical areas and may be chronic or recurrent, painful and resistant to therapy. See item 5.b in "Manifestations of HIV Infection in Adults."

3. Pelvic inflammatory disease. This is a condition characterized by infection of the pelvic structures usually caused by infection with a sexually transmitted pathogen such as gonococcus (gonorrhea), chlamydia, or mycoplasma. Disease may be facilitated by an intrauterine device (IUD). In women infected with HIV, there may be resistance to therapy and recurrent episodes of inflammation and pain.

These gynecologic manifestations are also present in the general population but may be more severe in the immunosuppressed individual. It is important when evaluating the claim of a woman with HIV infection, that gynecologic problems be considered in assessing the severity of their impairment and their functional limitations. Gynecologic conditions may or may not severely affect one's ability to function. These conditions should be considered together with all other conditions to determine if the impairment equals the severity of the listings, or if not, to assess functional capacity. (This policy also applies to older female children (adolescents).)

Manifestations of HIV Infection in Adults

An individual will have an impairment that equals the listings if the criteria in one of the following (1 through 13) are met:

1. If there is no documentation of HIV infection as described in "Documentation of HIV Infection in Adults" and the person has no other cause of immunodeficiency, one or more of the following diseases should be present:

a. Candidiasis of the esophagus, trachea, bronchi, or lungs (demonstrated by biopsy, microscopy of a "wet" preparation, or culture); or

b. Cryptococcosis, extrapulmonary (demonstrated by culture, antigen detection in the cerebrospinal fluid (CSF), India-ink preparation of the CSF, or by biopsy); or

c. Cryptosporidiosis with diarrhea persisting over 1 month (documented by intestinal biopsy or fecal microscopy); or

d. Cytomegalovirus disease of an organ other than liver, spleen, or lymph nodes (demonstrated by culture or histology); or

e. Herpes simplex virus infection causing a mucocutaneous ulcer that persists longer than 1 month; or

bronchitis, pneumonitis, or esophagitis for any duration (demonstrated by culture, histology or cytology); or

f. Lymphoma of the brain (primary) affecting a patient less than 60 years of age; or

g. Mycobacterium avium complex or M. kansasii disease, disseminated (at a site other than or in addition to lungs, skin, or cervical or hilar lymph nodes) (demonstrated by culture); or

h. Pneumocystis carinii pneumonia (documented by lung biopsy, microscopy of a "touch" preparation, bronchial washings, or induced sputum); or

i. Progressive multifocal leukoencephalopathy; or

j. Toxoplasmosis of the brain.

Or

2. Documentation of HIV infection as described in the section, "Documentation of HIV Infection in Adults," and one of the following protozoan or helminthic infections:

a. Intestinal cryptosporidiosis (documented by intestinal biopsy or fecal microscopy) that has caused diarrhea for 1 month or more; or

b. Pneumocystis carinii pneumonia (documented by lung biopsy, microscopy of a "touch" preparation, bronchial washings, or induced sputum); or

c. Toxoplasmosis (documented by histology or microscopy of a "touch" preparation) with involvement of an organ other than the liver, spleen, or lymph nodes; or

d. Isosporiasis (documented by intestinal biopsy or fecal microscopy) that has caused diarrhea for a month or more; or

e. Extra-intestinal strongyloidiasis.

Or

3. Documentation of HIV infection as described in the section, "Documentation of HIV Infection in Adults," and one of the following fungal infections:

a. Candidiasis, disseminated (beyond the skin, urinary tract, intestinal tract, or oral or vulvovaginal mucous membranes) or involving the esophagus, trachea, bronchi, or lungs (and demonstrated by microscopy of a "wet" preparation, or observation on endoscopy of white plaques on an erythematous base); or

b. Cryptococcosis, disseminated (beyond the lungs), or involving the central nervous system (and demonstrated by culture, antigen detection in the CSF, India-ink preparation of the CSF, or by biopsy); or

c. Disseminated histoplasmosis (beyond the lungs or lymph nodes and demonstrated by culture or biopsy); or

d. Disseminated coccidioidomycosis (beyond the lungs or lymph nodes and demonstrated by culture or histology).

Or

4. Documentation of HIV infection as described in the section, "Documentation of HIV Infection in Adults," and mycobacterial infection, disseminated (beyond the lungs, lymph nodes, or skin) and demonstrated by culture or by microscopy showing acid fast bacilli of a species not identified by culture.

5. Documentation of HIV infection as described in the section, "Documentation of HIV Infection in Adults," and one of the following viral infections:

a. Cytomegalovirus, causing infection of organs other than the liver, spleen, or lymph nodes and demonstrated by culture or histology; or

b. Herpes simplex virus, causing chronic continuous, (longer than 1 month) mucocutaneous infection or infection of the pulmonary or gastrointestinal tracts or encephalitis or disseminated infection demonstrated by culture, histology, or cytology; or

c. Progressive multifocal leukoencephalopathy.

Or

6. Documentation of HIV infection as described in the section, "Documentation of HIV Infection in Adults," and one of the following bacterial infections:

a. Recurrent non-typhoid salmonella bacteremia; or

b. Nocardiosis (demonstrated by culture).

7. Documentation of HIV infection as described in the section, "Documentation of HIV Infection in Adults," and HIV encephalopathy, characterized by cognitive and/or motor dysfunction that limit function and progress over weeks and months in the absence of a concurrent illness that could explain the findings.

Or

8. Documentation of HIV infection as described in the section, "Documentation of HIV Infection in Adults," and HIV wasting syndrome, characterized by involuntary weight loss (more than 10 percent of baseline body weight) and either chronic diarrhea (2 or more loose stools per day for 2 months or more) or chronic weakness and documented fever (greater than 100.4° F for the majority of 2 months or longer) in the absence of a concurrent illness that could explain the findings.

Or

9. Documentation of HIV infection as described in the section, "Documentation of HIV Infection in Adults," and one of the following neoplasms:

a. Lymphoma of the brain; or

b. Other Non-Hodgkin's lymphoma of B-cell or unknown phenotype and histology indicating either:

(1) Burkitt's or other small noncleaved lymphoma; or

(2) Immunoblastic sarcoma.

Or

10. Documentation of HIV infection as described in the section, "Documentation of HIV Infection in Adults," and one of the following neoplasms:

a. Non-Hodgkin's lymphoma or Hodgkin's disease;

b. Invasive carcinoma of the cervix, FIGO stage II and beyond; or

c. Anal squamous cell carcinoma.

Or

11. Documentation of HIV infection as described in the section, "Documentation of HIV Infection in Adults," and cardiomyopathy as described under the criteria in Listing 4.02, 4.04, or 4.05.

12. Documentation of HIV infection as described in the section, "Documentation of HIV Infection in Adults," and nephropathy as described under the criteria in Listing 6.02 or 6.06.

Or

13. Documentation of HIV infection as described in the section, "Documentation of HIV Infection in Adults," and the criteria listed below. (The level of severity is met when the requirements for both a and d, both b and d, or both c and d are satisfied.)

a. Impaired cellular immunity as manifested by a CD4 (T4) lymphocyte count less than or equal to 200 cells/mm^3 (or 14 percent or less lymphocytes);

Or

b. One or more of the following persistent and/or resistant to therapy:

(1) Pneumonia; or

(2) Pulmonary tuberculosis; or

(3) Bacterial or fungal sepsis; or

(4) Meningitis; or

(5) Septic arthritis; or

(6) Endocarditis; or

(7) Peripheral neuropathy; or

(8) Kaposi's sarcoma;

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Or

c. Two or more of the following persisting over a 2-month period:
(1) Anemia, (hematocrit (HCT) less than or equal to 30 percent); or
(2) Granulocytopenia (absolute neutrophil count less than or equal to 1000/mm^3); or
(3) Thrombocytopenia (less than or equal to 40,000/mm^3); or
(4) Documented fever (greater than or equal to 100.4° F or 38° C); or
(5) Weight loss of greater than or equal to 10 percent of baseline body weight; or
(8) Mucosal (including vulvovaginal) candidiasis other than listed in 1.a and 3.a above; or
(7) Oral hairy leukoplakia; or
(8) Chronic or recurrent Herpes Zoster; or
(9) Persistent dermatological conditions such as eczema, or psoriasis; or
(10) Persistent, unresponsive diarrhea; or
(11) Persistent or recurrent radiographically documented sinusitis;

Or

d. At least two of the following:
(1) Market restriction of activities of daily living; or
(2) Marked difficulties in maintaining social functioning; or
(3) Marked difficulties in completing tasks in a timely manner due to deficiencies in concentration, persistence, or pace; or
(4) Repeated episodes of decompensation, averaging 3 times a year or once every 4 months, lasting 2 or more weeks each, which cause the individual to deteriorate (which may include loss adaptive functioning).

Documentation of HIV Infection in Children

The medical file should be documented by the findings of a thorough history and physical examination. The onset and nature of signs and symptoms should be specifically and clearly described. Attempts should be made to quantify the extent and severity of all signs and symptoms. The variability or intensity of signs, symptoms, and laboratory findings over time should also be indicated.

The medical evidence should include documentation of HIV infection and specific laboratory evidence of an opportunistic disease, cancer, or other condition. In obtaining information regarding HIV antibody or viral testing, requirements of State and local laws governing the release of information must be met.

Laboratory evidence of HIV infection in children includes:

1. For children from birth to attainment of 1 year of age, HIV infection should be documented by one of the following:
a. a serum specimen that contain HIV antigen; or
b. A blood or CSF culture positive for HIV, confirmd by a specific test for the antigen; or
c. Other tests believed to be highly specific for detection of HIV (e.g., polymerase chain reaction (PCR)); or
d. A CD4 (T4) count of 1500 per mm^3 or less, or a CD4 count less than or equal to 20 percent of total lymphocytes.

2. For children 1 year of age to 15 months of age, HIV infection should be documented by one of the following:
a. A serum specimen that contains HIV antigen; or
b. A blood or CSF culture positive for HIV, confirmed by a specific test for the antigen; or
c. Other tests believed to be highly specific for detection of HIV (e.g., PRC); or
d. A CD4 (T4) count of 750 per mm^3 or less, or a CD4 count less than equal to 20 percent of total lymphocytes.

3. For children 15 months of age or older, HIV infection should be documented by one of the following:
a. A serum specimen that contains HIV antibodies, detected by a screening test (e.g., ELISA) and confirmed by a more definitive test (e.g., Western blot, immunofluorescence assay), or
b. A serum specimen that contains HIV antigen, or
c. A lymphocyte culture, positive for HIV, confirmed by a specific test for the antigen, (not just detection of reverse transcriptase).
d. Other tests believed to be highly specific for detection of HIV (e.g., PCR).

When the above tests are not part of the medical evidence in the file, a diagnosis of HIV infection can be accepted if the individual has a disease predictive of a defect in cell-mediated immunity, and there is no known cause of diminished resistance to that disease. (See "Documentation of HIV Infection in Adults" for causes of diminished resistance.)

When tests are not available, full details of the history, clinical course, and results of serological testing, microbiologic cultures, or tissue biopsy must be documented. The documentation of HIV infection will rely on clinical history, physical examination, exclusion of other causes for the clinical abnormalities, and treating source opinion.

If HIV infection is not documented by the evidence described previously, see Item 1 of "Manifestation of HIV infection in Children."

Pneumocystis carinii pneumonia (PCP) as described in item 2.b of "Manifestations of HIV Infection in Children" is one of the most common opportunistic disease associated with HIV infection. While it is definitively diagnosed by histology or cytology, a diagnosis of PCP may be based on clinical impressions and response to treatment. Medical judgment must be exercised when PCP or other opportunistic diseases are diagnosed without microscopic evidence.

All relevant evidence regarding the child's impairment(s) and the functional effects of the impairment(s) on the child's ability to grow, develop, or mature in an age-appropriate manner should be obtained. This information is essential for evaluation under items 12 and 13 in "Manifestations of HIV Infection in Children."

Evaluation of HIV Infection in Children

As with all medically determinable impairments, the assessment of severity must take into account signs, symptoms, and laboratory findings. Development and assessment of age-appropriate activities (the effect of the impairment(s) on the child's ability to grow, develop, or mature in an age-appropriate manner) may also be helpful in evaluating the severity of the impairment.

In evaluating HIV infection, the impact of all impairments must be considered. Children with HIV infection may manifest mental signs and symptoms such as anxiety, depression, apathy, and cognitive impairment. Medical evidence should include documentation of mental impairment when pertinent and the impairment(s) should be evaluated under the appropriate listing(s). These signs and symptoms must also be factored into the individualized functional assessment, when applicable.

The impact of therapy must also be considered. The therapeutic regimens and consequent adverse response to therapy may vary: therefore, each case must be evaluated on an individual basis.

It is essential to obtain a specific description of the drugs given, dosage, frequency of administration, and a description of the complications or any other response to therapy. In many instances the effect is temporary and/or dose-related; however, on occasion, the adverse effect may be permanent or long-term.

For children with HIV infection evaluated under items 12 or 13 in "Manifestations of HIV Infection in Children," listing-level severity will be assessed in terms of the functional limitations imposed by the manifestations of the impairment. The full impact of signs, symptoms, and laboratory findings on the child's ability to grow, develop, or engage in age-appropriate activities must be considered. Important factors to be considered in evaluating the functioning of children with HIV infection include, but are not limited to: Symptoms, such as fatigue and pain; characteristics of the illness, such as the frequency and duration of manifestations or periods of exacerbation and remission in the disease course; and the functional impact of treatment for the disease, including the side effects of medication.

To meet the standards in item 12, for children age 12 or younger, the HIV-infected child must demonstrate the appropriate degree and number of limitations for his or her age in Listing 112.02, paragraph B1 (for children age 1 to attainment of age 3) or paragraph B2 (for children age 3 to attainment of age 13), or in any paragraph of Listing 112.12 (for children from birth to the attainment of age 1). To meet the standards in item 13, a child age 13 to the attainment of age 18 must demonstrate marked restriction in at least two of the four general areas of functioning in Listing 112.02, paragraph B2.

We will exercise medical judgment when PCP or other opportunistic diseases are diagnosed without microscopic evidence to establish whether the impairment equals the severity of the listings.

Because of the known high mortality rate in many symptomatic HIV infection cases, for purposes of duration, that aspect of the definition of disability, "expected to result in death," is met if the criteria listed in this Ruling are met. Therefore, a child with an impairment that meets these criteria would meet the duration requirement under § 416.909 of the regulations.

Children may or may not have impairments that are equivalent to listing-level severity and, if not, may or may not have impairments of comparable severity to those that would disable an adult based on an individualized functional assessment (IFA). If the child's impairment or impairments do not meet or equal a listing (medically or functionally), an IFA is crucial to the evaluation of whether the child is disabled.

Special Evaluation Issues For Children

Younger children with HIV infection differ from adults in the mode of infection, clinical manifestation, and course of disease. Younger children may acquire infection from the mother or from transfusion of contaminated blood or blood products (such as coagulation factors) or, rarely, as a result of sexual abuse. In addition, survival times are shorter for children infected in the first year of life compared to older children and adults.

The mean age of diagnosis of children infected before or shortly after birth is 17 months but a diagnosis may be made much earlier. The majority develop failure to thrive, pneumonia, enlarged livers and spleens. Infants will commonly have candida infection, failure to thrive, pneumocystis carinii pneumonia (PCP); 2-year-olds may present with parotitis, enlarged lymph nodes, recurrent infections, neurologic problems, and development abnormalities.

Although in children, as well as adults, T-helper lymphocyte (CD4) counts decrease as disease progresses, infants and young children have much higher CD4 counts than adults. Children with significant immunosuppression can have CD4 counts which would fall within the normal range for adults.

Mothers with HIV infection usually transfer HIV antibodies to their newborns and therefore, these infants will have HIV antibodies in their serum. Therefore, this finding does not necessarily in itself establish the presence of HIV infection in the infant. Because the presence of HIV infection in young children can be difficult to confirm, evidence of significantly depressed CD4 counts may also be used to establish that a disease or condition is in fact related to HIV infection.

Older children (adolescents) may become infected from contaminated blood or blood products or due to behaviors such as intravenous drug use and unprotected sexual relations. The course and spectrum of disease in children age 13 and older generally is similar to that of adults. Some children, particularly older children, may exhibit HIV encephalopathy or HIV wasting syndrome as described in "Manifestation of HIV Infection in Adults" and should be evaluated under that section when applicable.

Manifestations of HIV Infection in Children

A child will have an impairment that equals the listings if the criteria listed in one of the following (1 through 13) are met:

1. If there is no documentation of HIV infection as described in "Documentation of HIV Infection in Children" and the child has no other cause of immunodeficiency, one or more of the following diseases should be present:
a. Candidiasis of the esophagus, trachea, bronchi, or lungs (demonstrated by biopsy, microscopy of a "wet" preparation, or culture); or
b. Cryptococcosis, extrapulmonary (demonstrated by culture, antigen detection in the CSF, India-ink preparation of the CSF, or by biopsy); or
c. Cryptosporidiosis with diarrhea persisting over 1 month (documented by intestinal biopsy or fecal microscopy); or
d. Cytomegalovirus disease of an organ other than liver, spleen, or lymph nodes in a child over 1 month of age (demonstrated by culture or histology); or
e. Herpes simplex virus infection causing a mucocutaneous ulcer that persists longer than 1 month; or bronchitis, pneumonitis, or esophagitis for any duration affecting a child over 1 month of age (demonstrated by culture, histology or cytology); or
f. Lymphoma of the brain (primary); or
g. Lymphoid interstitial pneumonia and/or pulmonary lymphoid hyperplasia (LIP/PLH complex) affecting a child less than 13 years of age (demonstated by biopsy); or
h. Mycobacterium avium complex or M. kansasii disease, disseminated (at a site other than or in addition to lungs, skin, or cervical or hilar lymph nodes) (demonstrated by culture); or
i. Pneumocystis carinii pneumonia (documented by lung biopsy, microscopy of a "touch" preparation, bronchial washings, or induced sputum); or
j. Progressive multifocal leukoencephalopathy; or
k. Toxoplasmosis of the brain affecting a child over 1 month of age.

Or

2. Documentation of HIV infection as described in the section, "Documentation of HIV Infection in Children," and one of the following protozoan or helminthic infections:
a. Intestinal cryptosporidiosis (documented by intestinal biopsy or fecal microscopy) that has caused diarrhea for a month or more; or
b. Pneumocystis carinii pneumonia (documented by lung biopsy, microscopy or a "touch" preparation, bronchial washings, or induced sputum); or
c. Toxoplasmosis (documented by histology or microscopy of a "touch" preparation) with involvement of an organ other than the liver, spleen, or lymph nodes; or
d. Isosporiasis (documented by intestinal biopsy or fecal microscopy)

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that has caused diarrhea for a month or more; or

e. Extra-intestinal strongyloidiasis.

Or

3. Documentation of HIV infection as described in the section, "Documentation of HIV Infection in Children," and one of the following fungal infections:

a. Candidiasis, disseminated (beyond the skin, urinary tract, intestinal tract, or oral or vulvovaginal mucous membranes) or involving the esophagus, trachea, bronchi, or lungs (and demonstrated by microscopy of a "wet" preparation, or observation on endoscopy of white plaques on an erythematous base); or

b. Cryptococcosis, disseminated (beyond the lungs), or involving the central nervous system (and demonstrated by culture, antigen detection in the CSF, India-ink preparation of the CSF, or by biopsy); or

c. Disseminated histoplasmosis (beyond the lungs or lymph nodes and demonstrated by culture or biopsy); or

d. Disseminated coccidioidomycosis (beyond the lungs or lymph nodes and demonstrated by culture or by histology).

Or

4. Documentation of HIV infection as described in the section, "Documentation of HIV Infection in Children," and mycobacterial infection, disseminated (beyond the lungs, lymph nodes, or skin and demonstrated by culture or by microscopy showing acid fast bacilli of a species not identified by culture);

Or

5. Documentation of HIV infection as described in the section, "Documentation of HIV Infection in Children," and one of the following viral infections:

a. Cytomegalovirus, causing infection of organs other than the liver, spleen, or lymph nodes and demonstrated by culture or histology; or

b. Herpes simplex virus, causing chronic, continuous (longer than 1 month), mucocutaneous infection or infection of the pulmonary or gastrointestinal tracts or encephalitis or disseminated infection demonstrated by culture, histology, or cytology; or

c. Progressive multifocal leukoencephalopathy.

Or

6. Documentation of HIV infection as described in the section, "Documentation of HIV Infection in Children," and bacterial infections of one of the following types:

a. Multiple or recurrent bacterial infections (i.e., two or more within a 2-year period of time) of the following types affecting a child less than 13 years of age: septicemia, pneumonia, meningitis, bone or joint infection, or abscess of an internal organ or body cavity (excluding otitis media or superficial skin or mucosal abscesses) caused by pyogenic bacteria; or

b. Nocardiosis (demonstrated by culture); or

c. Recurrent non-typhoid salmonella bacteremia.

Or

7. Documentation of HIV infection as described in the section, "Documentation of HIV Infection in Children," and lymphoid interstitial pneumonia and/or pulmonary lymphoid hyperplasia (LIP/PLH complex) affecting a child less than 13 years of age (documented histologically or by a persistent interstitial pattern on chest x-ray for 2 months or more).

Or

8. Documentation of HIV infection as described in the section, "Documentation of HIV Infection in Children," and one of the following neoplasms:

a. Lymphoma of the brain; or

b. Other non-Hodgkin's lymphoma of B-cell or unknown phenotype and histology indicating either:

(1) Burkitt's or other small noncleaved lymphoma; or

(2) Immunoblastic sarcoma.

Or

9. Documentation of HIV infection as described in the section, "Documentation of HIV Infection in Children," and non-Hodgkin's lymphoma or Hodgkin's disease.

Or

10. Documentation of HIV infection as described in the section, "Documentation of HIV Infection in Children," and progressive neurological disease resulting in one or more of the following:

a. Loss of previously acquired or marked delay in achieving developmental milestones or intellectual ability; or

b. Impaired brain growth (acquired microcephaly and/or brain atrophy on scan); or

c. Progressive symmetric motor deficits as manifested by two or more of paresis, abnormal tone, pathologic reflexes, ataxia, or gait disturbance. Some children, particularly older children, may exhibit HIV encephalopathy as described in item 7 of "Manifestations of HIV Infection in Adults." If HIV encephalopathy is involved, evaluate under that criterion.

Or

1. Documentation of HIV infection as described in the section, "Documentation of HIV Infection in Children," and failure to thrive or a falling off from the age-appropriate range of the projected growth curve. Evaluate under Listing 100.02. Older children may exhibit HIV wasting syndrome as described in item 8 of "Manifestations of HIV Infection in Adults." If HIV wasting syndrome is involved, evaluate under that criterion.

Or

12. Documentation of HIV infection as described in the section, "Documentation of HIV Infection in Children," in children age 12 or younger with the criteria listed below. (The level of severity is met when the requirements for both a and c are satisfied, or both b and c are satisfied.)

a. One or more of the following persistent and/or resistant to therapy:

(1) Pneumonia; or

(2) Pulmonary tuberculosis; or

(3) Bacterial or fungal sepsis; or

(4) Meningitis; or

(5) Septic arthritis; or

(6) Endocarditis; or

(7) Peripheral neuropathy; or

(8) Kaposi's sarcoma;

Or

b. Two or more of the following persisting for at least 2 months:

(1) Fever (greater than or equal to 100.4° F or 38° C); or

(2) Hepatomegaly; or

(3) Splenomegaly; or

(4) Generalized lymphadenopathy; or

(5) Parotitis; or

(6) Diarrhea (defined as 3 or more loose stools daily or at least 2 recurrent episodes associated with dehydration); or

(7) Persistent dermatological conditions such as eczema, psoriasis; or

(8) Weight loss greater than 10 percent; or

(9) Persistent or recurrent radiographically documented sinusitis;

And

c. For children from:

(1) Birth to attainment of age 1, at least one of the criteria in paragraphs A–E of Listing 112.12; or

(2) Age 1 to attainment of age 3, at least one of the appropriate age-group criteria in paragraph B1 of Listing 112.02; or

(3) Age 3 to attainment of age 13, at least two of the appropriate age-group criteria in paragraph B2 of Listing 112.02.

Or

13. Documentation of HIV infection as described in the section, "Documentation of HIV Infection in Children," in children age 13 or older with the criteria listed below. (The level of severity is met when the requirements for both a and d, both b and d, or both c and d are satisfied.)

a. Impaired cellular immunity as manifested by a CD4 (T4) lymphocyte count less than or equal to 200 cells/mm^3 (or 14 percent or less lymphocytes);

Or

b. One or more of the following persistent and/or resistant to therapy:

(1) Pneumonia; or

(2) Pulmonary tuberculosis; or

(3) Bacterial or fungal sepsis; or

(4) Meningitis; or

(5) Septic arthritis; or

(6) Endocarditis; or

(7) Peripheral neuropathy; or

(8) Kaposi's sarcoma;

Or

c. Two or more of the following persisting over a 2 month period:

(1) Anemia, (hematocrit (Hct) less than or equal to 30 percent); or

(2) Granulocytopenia (absolute neutrophil count less than or equal to 1000/mm^3; or

(3) Thrombocytopenia (less than or equal to 40,000/mm^3); or

(4) Documented fever (greater than or equal to 100.4°F or 38° C); or

(5) Weight loss of greater than or equal to 10 percent of baseline body weight; or

(6) Mucosal (including vulvovaginal) candidiasis other than listed in 1.a or 3.a above; or

(7) Oral hairy leukoplakia; or

(8) Chronic or recurrent Herpes Zoster; or

(9) Persistent dermatological conditions such as eczema, or psoriasis; or

(10) Persistent, unresponsive diarrhea; or

(11) Persistent or recurrent radiographically documented sinusitis;

And

d. At least two of the appropriate age-group criteria in paragraph B2 of Listing 112.02.

Onset of Disability For Adults

The onset of disability should be based on allegations, work history, and the medical and other evidence concerning impairment severity. Onset in cases of symptomatic HIV infection cases will be no later than the date medical findings show that the impairment is disabling unless the individual is engaging in substantial gainful activity (SGA).

An earlier onset date of disability may be established if supported by the documented findings in the case. In some cases, it may be reasonable to infer that the onset occurred some time prior to the first recorded medical examination, provided the claimant was not engaging in SGA. However, an automatic date (e.g., 6 months prior to medical evidence) should not be inferred; the inference must be made based on all of the facts in each individual case.

EFFECTIVE DATE: December 17, 1991.

Cross-Reference: Program Operations Manual System, Part 04, sections DI 24525.001–.045

[FR Doc. 91–30032 Filed 12–16–91; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–4320–12–241A]

Information Collection submitted to the Office of Management and Budget for Review Under Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau's Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0005), Washington, DC 20503, telephone (202) 395–7340.

Title: Grazing Application-Grazing Schedule.

OMB Approval Number: 1004–0005.

Abstract: This form is used by permittees to apply for annual authorization to graze livestock on the Public lands.

Bureau Form Number: 4130–1.

Frequency: On occasion/annually.

Description of Respondents: Applicants requesting authorizations to graze livestock on the public lands.

Estimated completion time: 20 minutes.

Annual Responses: 6,000.

Annual Burden Hours: 2,000.

BLM Clearance Officer (Alternate): Gerri Jenkins, (202) 653–8853.

Dated: July 26, 1991.

Michael J. Penfold,

Assistant Director, Land and Renewable Resources.

[FR Doc. 91–29992 Filed 12–16–91; 8:45 am]

BILLING CODE 4310–84–M

[WO–220–4320–12–241A]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau's Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0051), Washington, DC 20503, telephone (202) 395–7340.

Title: Actual Grazing Use Report.

OMB Approval Number: 1004–0051.

Abstract: This form is used by permittees to provide information on the actual amount of livestock grazing use made on the public lands within a specified time to the Bureau of Land Management for billing purposes and program monitoring.

Bureau Form Number: 4130–5.

Frequency: Annually.

Description of Respondents: Permittees required to report actual Livestock uses on the Public Lands.

Estimated Completion Time: 24 minutes.

Annual Responses: 15,000.

Annual Burden Hours: 6,000.

Bureau Clearance Officer (Alternate): Gerri Jenkins (202) 653–8853.

Dated: July 26, 1991.

Michael J. Penfold,

Assistant Director, Land and Renewable Resources.

[FR Doc. 91–29993 Filed 12–16–91; 8:45 am]

BILLING CODE 4310–84–M

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[CA-020-4760-02;]

Closure of Land; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency closure of use on public lands; Modoc County, California.

SUMMARY: Notice is hereby given that use of selected public lands southeast of the City of Alturas, Modoc County, California, is closed to the public until further notice. Access to these lands, commonly known as the site of the Yankee Jim Ranch homestead, is limited to authorized personnel from the Bureau of Land Management on official business, or other persons specifically authorized by the Susanville District Manager or the Alturas Area Manager of the Bureau of Land Management. This closure is necessary to protect persons and property from coming into contact with a hazardous materials site.

DATES: This closure goes into effect on December 10, 1991 and shall remain in effect until revoked or modified by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Rich Burns, Area Manager, Alturas Resource Area, 608 W. 12th Street, Alturas, California 96101. Telephone: (916) 233-4666.

SUPPLEMENTARY INFORMATION: The authority for this closure is title 43, Code of Federal Regulations, part 8364.1 (43 CFR 8364.1). Any person who fails to comply with this order is subject to arrest and fine of up to $1,000 and/or imprisonment not to exceed 12 months. This closure applies to all members of the public except persons authorized by the Bureau of Land Management. This closure affects the following described public Land Management. This closure affects the following described public land:

Mount Diablo Meridian, California

T. 41 N., R. 14 E.
sec. 17, NE¼.

The site commonly known as the Yankee Jim Ranch homestead.

Dated: December 9, 1991.

Robert J. Sherve;

Associate District Manager.

[FR Doc. 91-30100 Filed 12-16-91; 8:45 am]

BILLING CODE 4310-40-M

[CO-942-92-4730-12]

Colorado: Filing of Plats of Survey

December 9, 1991

The plat of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., December 9, 1991.

The plat representing the dependent resurvey of portions of the Second Standard Parallel South (S. bdy.), T. 10 S., Rs. 88 and 89 W., the Eleventh Guide Meridian West (W. bdy.), and the subdivisional lines; the subdivision of certain sections; and a metes-and-bounds survey of certain lots in section 7, T. 11 S., R. 88 W., Sixth Principal Meridian, Colorado, Group No. 899, was accepted December 3, 1991.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

All inquires about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 91-30037 Filed 12-16-91; 8:45 am]

BILLING CODE 4310-JB-M

National Park Service

General Management Plan; Organ Pipe Cactus National Monument, AZ; Notice of Intent to Prepare an Environmental Impact Statement

SUMMARY: The National Park Service will prepare an environmental impact statement (EIS) in conjunction with the General Management Plan (GMP) for Organ Pipe Cactus National Monument, Arizona. This notice is in accordance with 40 CFR 1501.7 and 40 CFR 1508.22, of the regulations of the President's Council on Environmental Quality for the National Environmental Policy Act of 1969, Public Law 91-150. The GMP/EIS will describe and analyze a proposal and alternatives for the future management of the monument.

BACKGROUND: Prior to making the determination that an EIS would be required, the National Park Service initiated the scoping process for the GMP by publishing notice in the **Federal Register**, page 21487, Vol. 54, No. 95 of May 18, 1989. A 60 day public comment period on plan considerations was allowed at that time. Subsequently, numerous meetings have been held with adjacent land owners, other monument neighbors and interest groups regarding the future management directions for the monument.

Any additional persons or organizations wishing to comment or express concerns on future management directions for Organ Pipe Cactus National Monument, should address such comments or any questions to: Superintendent, Organ Pipe Cactus National Monument, Route 1, Box 100, Ajo, AZ 85321. These comments should be received within 30 days of the publication of this notice.

The responsible official is Stanley T. Albright, Regional Director, Western Region, National Park Service. The draft GMP/EIS is expected to be available for public review in fall 1992, and the final GMP/EIS and Record of Decision completed approximately one year later.

Dated: December 5, 1991.

Lewis Albert,

Acting Regional Director, Western Region.

[FR Doc. 91-30097 Filed 12-16-91; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Agency Information Collection Under OMB Review

The following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) are being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Kathleen King, (202) 927-5493. Comments regarding this information collection should be addressed to Kathleen King, Interstate Commerce Commission, room 1312, Washington, DC 20423 and to Ed Clark, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. When submitting comments, refer to the OMB number of the title of the Form.

Type of Clearance: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection

Bureau/Office: Office of Economics.

Title of Form: Annual Report to the Interstate Commerce Commission.

OMB Form Number: 3120-0029.

Agency Form Number: ACAA-R-1

Frequency: Annual.

Respondents: Class I Railroads.

No. of Respondents: 21.

Total Burden Hours: 16,800.

Type of Clearance: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Bureau/Office: Office of Economics.

Title of Form: Annual Report to the Interstate Commerce Commission.

OMB Form Number: 3120-0032

Agency Form Number: Form M.

Frequency: Annual.

Respondents: Class I and II Motor Carriers of Property.

No. of Respondents: 2017.

Total Burden Hours: 50,425.

Type of Clearance: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Bureau/Office: Office of Economics.

Title of Form:
Motor Carrier Quarterly Report Form.

OMB Form Number: 3120-0002.

Agency Form Number: Form QFR.

Frequency: Quarterly.

Respondents: Class I and II Motor Carriers of Property and Household Goods.

No. of Respondents: 896.

Total Burden Hours: 7168.

Type of Clearance: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Bureau/Office: Office of Economics.

Title of Form: Uniform System of Accounts Motor Carrier of Property.

OMB Form Number: 3120-0106.

Agency Form Number: N/A.

Frequency: Annual.

Respondents: Motor Carriers of Property.

No. of Respondents: 2017.

Total Burden Hours: 284,397.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-30054 Filed 12-16-91; 8:45 am]

BILLING CODE 7035-01-FR

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

In accordance with Departmental policy, 28 CFR 50.7, 42 U.S.C. 6973(d) and 42 U.S.C. 9622(i), notice is hereby given that on December 4, 1991, a proposed consent decree in *United States of America* v. *Anson, Inc., et al.*, Civil Action No. 91-0392-P-C, has been lodged with the United States District Court for the District of Maine. The United States' complaint, filed at the same time as the consent decree, sought recovery of response costs and injunctive relief under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9606 and 9607, against the Adams Co. and 59 other entities responsible for hazardous substances found at the Union Chemical Company Site in South Hope, Maine, a National Priorities List facility.

The consent decree provides that the defendants will perform work to remedy contamination at the Site, in accordance with the Record of Decision (ROD) issued by the U.S. Environmental Protection Agency (EPA), and reimburse EPA for one hundred percent of the estimated present value of all response costs to be incurred by the United States in connection with oversight of the implementation of the ROD. The remedial work will include excavation and treatment of contaminated soils, pumping and treating the contaminated groundwater, monitoring of the groundwater, monitoring of off-site soils and decontamination, demolition, and off-site disposal of facilities located on the Site. The defendants also agree to reimburse EPA for certain past governmental response cost.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Anson, Inc., et al.*, D.J. Ref. 90-11-2-643A.

The proposed consent decree may be examined at the office of the United States Attorney, EastTower-Sixth Floor, 100 Middle Street Plaza, Portland, Maine, 04101, and at the Region I office of the Environmental Protection Agency, One Congress St., Boston, Massachusetts, 02203. The proposed consent decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Washington, DC 20004 (202-347-7829). A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW, Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $20.25 (25 cents per page reproduction cost, exclusive of the costs of copying the appendix and signature pages) payable to the "Consent Decree Library."

Roger Clegg,

Acting Assistant Attorney General, Environmental & Natural Resources Division.

[FR Doc. 91-30103 Filed 12-16-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Stipulation and Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended ("CERCLA")

In accordance with section 122(i) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. 9622(i), and Departmental policy at 28 CFR 50.7, notice is hereby given that a proposed Stipulation and Agreement To Settle and Compromise Claims of the United States in *In re: Bellamah Community Development Co.*, (N. Mex. Bankruptcy Ct.), No. 7-89-01559 MA, was lodged on December 3, 1991, with the United States Bankruptcy Court for the District of New Mexico.

On October 5, 1989, a Proof of Claim was filed by the United States of America against Bellamah Community Development Co., seeking payment of a general unsecured claim of $2,321,910.00 for response costs incurred by EPA in responding to the release or threat of release of hazardous substances from the Compass Landfill Site located near Tulsa, Oklahoma. The United States also claimed as administrative expenses its response costs to be incurred after the filing of its Proof of Claim.

The proposed Stipulation and Agreement settles the United States' claims under section 106 and 107 of CERCLA for $150,000. Bellamah Community Development Co., also provides an irrevocable right of access to the Site to the extent it owns or controls the property.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the Stipulation and Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *In re: Bellamah Community Development Co.*, DOJ Ref. No. 90-11-3-552.

The proposed Stipulation and Agreement may be examined at the Region 6 office of the Environmental Protection Agency ("EPA"), Twelfth Floor, 1445 Ross Avenue, Dallas, Texas, 75202; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, DC 20004. (202) 347-2072. A copy of the proposed Stipulation and Agreement may be obtained in person or by mail from the Document Center. In requesting a copy of the Stipulation and Agreement, please enclose a check for copying costs in the amount of $3.000 (25 cents per page

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reproduction costs), payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 91-30104 Filed 12-16-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act; Operating Industries, Inc. Site

In accordance with section 122(d)(2)(B) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), and in accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on December 3, 1991, a proposed Third Partial Consent Decree in *United States* v. *Chevron Chemical Company, et al.*, was lodged with the United States District Court for the Central District of California. That action was brought pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, for performance of certain remedial action at the Operating Industries, Inc. ("OII") landfill in Monterey Park, California, and for reimbursement of response costs incurred by the United States Environmental Protection Agency ("EPA") in responding to releases and threatened releases of hazardous substances at the OII site.

The Third Partial Consent Decree settles claims against 171 companies and public entities that have entered into the settlement. Pursuant to the consent decree, the defendants will perform substantial portions of the third operable unit at the OII site, for design, construction and operation of a landfill gas migration control system, and design and construction of a landfill cover system, and will reimburse federal and state past costs incurred from June 1, 1988 through December 31, 1990 of approximately $18 million, and pay federal and state oversight costs for performance of the response actions. The total value of the settlement is approximately $130 million. Under the settlement, numerous settlers will be responsible for actual performance of the work, while other settlers are making a cash payment only to resolve their liability and will not be involved in the performance of the work.

As provided in section 122(d)(2)(B) of CERCLA and 28 CFR 50.7, the Department of Justice will receive comments from persons who are not named as parties to this action relating to the proposed Third Partial Consent Decree for a period of thirty days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Chevron Chemical Company, et al.*, D.J. Ref. 90-11-2-156.

The proposed Third Partial Consent Decree may be examined at the office of the United States Attorney, 312 N. Los Angeles Street, Los Angeles, California 90012, and at the Region IX office of the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105. A copy of the proposed Third Partial Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Washington, DC 20004, (202) 347-2072. A copy of the proposed Third Partial Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check either in the amount of $28.75 for a copy of the consent decree without the exhibits or attachments, or a check in the amount of $108.75 for a copy of the consent decree plus all exhibits and attachments, (25 cents per page reproduction costs) payable to "Consent Decree Library."

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-30105 Filed 12-16-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act

Notice is hereby given that on November 26, 1991, a proposed Consent Decree in *United States* v. *City of Cleveland*, Civil Action No. 1:91 CV 2398, was lodged with the United States District Court for the Northern District of Ohio. The proposed consent decree concerns the Matousek Landfill in Garfield Heights, Ohio. The proposed consent decree requires the City of Cleveland and codefendants Cities of Garfield Heights, North Olmsted, Maple Heights, Brookpark, Parma Heights, Berea, Warrensville Heights, Bedford, University Heights, Seven Hills, Middleburg Heights, Independence, Newburgh Heights, Valley View, and Cuyahoga Heights to pay $412,000 to the United States in settlement costs incurred by the United States relating to the remediation of hazardous conditions posed by leakage of methane gas from the Matousek Landfill.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Cleveland*, D.J. Ref. 90-7-1-483.

The proposed consent decree may be examined at the office of the United States Attorney, suite 500, 1404 East Ninth Street, Cleveland, Ohio 44114, and at the Region V Office of the Environmental Protection Agency, 111 West Jackson Street, Chicago, Illinois 60604.

The proposed consent decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004, 202-347-7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $7.00 ($.25 per page reproduction costs) payable to the Consent Decree Library.

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-30106 Filed 12-16-91; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on November 6, 1991, filed a written notification on behalf of Bellcore and TranSwitch Corporation ("TranSwitch") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objective of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business in Livingston, New Jersey.

TranSwitch is a Delaware corporation with its principal place of business in Shelton, Connecticut.

Bellcore and TranSwitch entered into an agreement effective as of October 17, 1991 to engage in cooperative research for investigation of internetworking of SONET-based exchange networks with other standard networks, including fabrication of experimental prototypes for the demonstration of SONET capabilities.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-30039 Filed 12-16-91; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Unix International, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), UNIX International, Inc. ("UNIX") on November 5, 1991, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On January 30, 1989, UNIX filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 1, 1989 (54 FR 8808). On May 4, 1989, August 1, 1989, October 31, 1989, January 31, 1990, May 1, 1990, July 30, 1990, November 13, 1990, February 6, 1991, May 17, 1991, and August 12, 1991, UNIX filed additional written notifications. The Department published notices in the **Federal Register** in response to the additional notifications on June 22, 1989 (54 FR 26286), August 17, 1989 (54 FR 33985), November 29, 1989 (54 FR 49124), March 14, 1990 (55 FR 9517), May 21, 1990 (55 FR 20862), September 17, 1990 (55 FR 38173), December 28, 1990 (55 FR 53368), March 15, 1991 (56 FR 11273), June 20, 1991 (56 FR 28417), and September 12, 1991 (56 FR 46445), respectively.

As of November 1, 1991, the following have become members of UNIX International, Inc.:

AIR Company Limited of Tokyo, Japan
ATB Associates of Wellesley, Massachusetts
Bellcore of Piscataway, NJ
COSA—an open systems association of Taiwan, ROC
Eastman Kodak (Japan), Ltd. of Yokohama, Japan
Faculty of Engineering, Hokkaido University of Sapporo, Japan
Institute of Systems Science of Singapore, Republic of Singapore
MEITEC Intelligent Technology Corp. of Tokyo, Japan
NETLABS, Inc. of Los Altos, CA
Roads and Traffic Authority, NSW of Sydney, NSW, Australia
SOFTWAY of Chippendale, NSW, Australia
The Standish Group International of Hyannis, Massachusetts

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-30038 Filed 12-16-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

B.T.H., Inc., et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 27, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 27, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 2nd day of December 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No	Articles produced
B.T.H., Inc ILGWU	New York, NY	12/02/91	11/21/91	26,617	Dresses.
Bijur Lubricating Corp (UE)	Bennington, VT	12/02/91	11/22/91	26,618	Lubricating Pumps.
BMY—Wheeled Vehicle Division (Wkrs)	Marysville, OH	12/02/91	11/23/91	26,619	Military Trucks.
CAC Microcircuits, Inc (Wkrs)	Mt. Carmel, IL	12/02/91	11/21/91	26,620	Electronic Circuits.
Chevron Chemical Co (OCAW)	Kennewick, WA	12/02/91	11/15/91	26,621	Dry Fertilizer.
Cinn Milacron Heald Corp (wkrs)	Worcester, MA	12/02/91	11/01/91	26,622	Grinders and Boring Centers.
Country Miss, Inc. ILGWU	Cookeville, TN	12/02/91	11/21/91	26,623	Womens slacks, shorts, skirts.
GEO Western Drilling Fluids (Co.)	Bakersfield, CA	12/02/91	11/03/91	26,624	Drilling Fluids.
Intrex Corp (Wkrs)	Harrison, NJ	12/02/91	11/05/91	26,625	Wood Furniture & Fixtures.
Jay-Zee Merchandising, Inc. (Co)	New York, NY	12/02/91	11/22/91	26,626	Boys and Young Men's Slacks, Pants.
Jay-Zee, Inc. (Co)	Maryland Heights, MO	12/02/91	11/22/91	26,627	Boys and Young Men's Slacks Pants.
Nikki Lee Fashions, Inc ILGWU	Duryea, PA	12/02/91	11/21/91	26,628	Women's Dresses.

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APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No	Articles produced
PanCanadian Petroleum Co (Co.)	Houston, TX	12/02/91	11/19/91	26,629	Oil, Natural Gas and Liquids.
Parkway Sterling Regal, Inc (ALA)	Carlstadt, NJ	12/02/91	11/21/91	26,630	Lithographic Production Products.
Power Application & Mfg Co (PAMCO) (Wkers)	Casper, WY	12/02/91	11/11/91	26,631	Engine Generator & Compressors.
PPG Industries, Inc. (ABGW)	Greensburg, PA	12/02/91	11/22/91	26,632	Fabrication of Automobile Windshields.
Summit Timber (Wkrs)	Darrington, WA, PA	12/02/91	11/21/91	26,633	Dimensional Lumber and Timber.
Times Microwave Systems (Wkrs)	Wallingford, CT	12/02/91	11/20/91	26,634	Cable & Connectors.

[FR Doc. 91–30073 Filed 12–16–91; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–26,298]

Flowline Division, New Castle, PA; Affirmative Determination Regarding Application for Reconsideration

On November 15, 1991 the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on November 7, 1991 and published in the Federal Register on November 21, 1991 (56 FR 58711).

The company claims that the Department's customer survey was inadequate and submitted an additional list of customers.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 29th day of November 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91–30071 Filed 12–16–91; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–26,122]

The Merrow Machine Co.; Newington, CT; Negative Determination Regarding Application for Reconsideration

By an application dated November 5, 1991, one of the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on October 10, 1991 and published in the Federal Register on October 29, 1991 (56 FR 55690).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the workers at Merrow Machine produce industrial sewing machines and parts.

The petitioner claims that the Department's survey was inadequate since it did not include sewing machine parts. The petitioner also claims that domestic garment manufacturers moved overseas and did not take their Merrow machines with them, thereby reducing the market for sewing machine parts.

Investigation findings show that nearly half of Merrow Machines' sales were for sewing machines parts. Although not specifically mentioned in the Department's denial notice, its survey was for sewing machines and sewing machine parts. None of the customers surveyed imported sewing machines or sewing machine parts. Customer comments show that the Merrow sewing machine was so designed that it had to use parts from The Merrow Machine Company. Accordingly, increased imports of other sewing machine parts would not provide a basis for a worker group certification.

Further, the decrease in the parts business because of the relocation of garment manufacturers overseas would not provide a basis for certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 29th day of November 1991.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services Unemployment Insurance Service.

[FR Doc. 91–30072 Filed 12–16–91; 8:45 am]
BILLING CODE 4510–30–M

Federal-State Unemployment Compensation Program Extended Benefits; Ending of Extended Benefit Period in the State of Puerto Rico

This notice announces the ending of the Extended Benefit Period in the State of Puerto Rico, effective on November 2, 1991.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during and extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by part 615 of title 20 of the code of Federal Regulations (20 CFR part 615).

Extended Benefits are payable in a State during an Extended Benefit Period which is triggered "on" when the rate of insured unemployment in the State reached the State trigger rate set in the Act and the State law. During an Extended Benefit Period, individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rate set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Puerto Rico on March 31, 1991, and has now triggered off.

Determination of an "Off" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the period consisting of the week ending on October 12, 1991, and the immediately preceding twelve weeks, fell below the State trigger rate, so that for that week there was an "off" indicator in the State.

Therefore, the Extended Benefit Period in the State terminated with the week ending November 2, 1991.

Information for Claimants

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits of the ending of the Extended Benefit Period and its effect on the individual's right to Extended Benefits, 20 CFR 615.13(c)(4).

Persons who wish information about their rights to Extended Benefits in the State named above would contact the nearest State employment service office in their locality.

Signed at Washington, DC on December 12, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 91–30077 Filed 12–16–91; 8:45 am]
BILLING CODE 4510–30–M

Job Training Partnership Act: Announcement of Proposed Noncompetitive Grant Awards

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of intent to award a noncompetitive grant.

SUMMARY: The Employment and Training Administration (ETA) announces its intent to award a noncompetitive grant to Draketail Maritime, Ltd. of Shady Side, Maryland, for the provision of specialized services under the authority of the Job Training Partnership Act (JTPA).

DATES: It is anticipated that this grant award will be executed by January 6, 1992, and will be funded for twelve months. Submit comments by 4:45 p.m. (Eastern Time), on January 2, 1992.

ADDRESSES: Submit comments regarding this proposed assistance award to: U.S. Department of Labor, Employment and Training Administration, room C–4305, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Brenda Banks; Reference FR–DAA–005–91.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) announces its intent to award a noncompetitive grant to the Draketail Maritime, Ltd. of Shady Side, Maryland. The Draketail Maritime Project is a pilot intergenerational, experiential-learning initiative designed to serve the student/family population of southern Anne Arundel county, along Maryland's western shore of the Chesapeake Bay. The key target population includes adolescent children ages ten to fifteen. The project's overall goals are to: improve student achievement; enhance the link between education and learning, and among school, work attitudes, habits and goals; and broaden the potential career landscape for young students. Funds for this activity are authorized by the Job Training Partnership Act, as amended, Title IV—Federally Administered Programs. The proposed funding is approximately $98,500 for twelve months.

Signed at Washington, DC on December 9, 1991.

Robert D. Parker,

ETA Grant Officer.

[FR Doc. 91–30075 Filed 12–16–91; 8:45 am]
BILLING CODE 4510–30–M

Advisory Panel for the Dictionary of Occupational Titles (APDOT); Open Meeting

AGENCY: Employment and Training Administration, Labor.

SUMMARY: The Advisory Panel for the Dictionary of Occupational Titles (APDOT) was established in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) on August 28, 1990.

The APDOT was established as part of the Secretary of Labor's Workforce Quality Agenda to improve the quality of the work force. The APDOT will assist the Department of Labor in meeting the goals of the Secretary's Agenda by providing a diversified range of user perspectives on the Dictionary of Occupational Titles (DOT). The DOT is a document which is used extensively in business, education and government. It defines, classifies and describes occupations in the labor market. A revised fourth edition of the DOT was published in September 1991. The APDOT will provide advice on a new, fifth edition.

The APDOT will report to and advise the Assistant Secretary for Employment and Training on the development, publication and dissemination of the DOT.

TIME: The meeting will begin at 8:30 a.m. on January 15, 1991, and adjourn at 2 p.m. that day.

PLACE: The U.S. Department of Labor, 200 Constitution Avenue NW., C–5515, Seminar Room 1A, Washington, DC 20210.

AGENDA: Matters to be considered as part of the agenda for the APDOT meeting include:

- Office of Personnel Management's Multi-Purpose Approach to Job Analysis.
- Fort Worth: Project C^3.
- Subcommittee on Purpose and Uses progress report.
- Subcommittee on Skills Issues progress report.

PUBLIC PARTICIPATION: The meeting will be open to the public. A half hour (8:45 a.m.–9:15 a.m.) will set aside for public comments. Individuals wishing to speak to the panel should call Dr. Marilyn Silver at 202–535–0161. Seating will be available for the public on a first-come, first-serve basis.

Individuals or organizations wishing to submit written statements should send 14 copies to Dr. Marilyn B. Silver, Executive Director, Advisory Panel for the Dictionary of Occupational Titles, room N4470, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Dr. Marilyn B. Silver, Executive Director, Advisory Panel for the Dictionary of Occupational Titles, room N4470, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (202) 535–0161.

Signed at Washington, DC this 10th day of December 1991.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

[FR Doc. 91–30074 Filed 12–16–91; 8:45 am]
BILLING CODE 4510–30–M

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Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process

The Employment and Training Administration has established a voice-mail service for the H–1A nurse attestation process. Call Telephone Number: 202–535–0643 (this is not a toll-free number). At that number, a caller can:

(1) Listen to general information on the attestation process for H–1A nurses;

(2) Request a copy of the Department of Labor's regulations (20 CFR part 655, subparts D and E, and 29 CFR part 504, subparts D and E) for the attestation process for H–1A nurses, including a copy of the attestation form (form ETA 9029) and the instructions to the form;

(3) Listen to information on H–1A attestations filed within the preceding 30 days;

(4) Listen to information pertaining to public examination of H–1A attestations filed with the Department of Labor;

(5) Listen to information on filing a complaint with respect to a health care facility's H–1A attestation (however, see the telephone number regarding complaints, set forth below); and

(6) Request to speak to a Department of Labor employee regarding questions not answered by Nos. (1) through (4) above.

Regarding the Complaint Process

Questions regarding the complaint process for the H–1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–523–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i) (a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504; 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 11 day of December 1991.

Robert J. Litman,

Acting Director, United States Employment Service.

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS

[Nov. 1, 1991 to Nov. 30, 1991]

CEO-name/facility name/address	State	Approval date
Jeffrey P. Winter, Encino Hospital, 16237 Ventura Boulevard, Encino 91436, 818–995–5000.	California	11/14/91
Ms. Nini Bucoy, Comprehensive Nursing Service, 1941 O'Farrell St., San Mateo 94403, 415–571–5373.	California	11/15/91
Ms. Vicki L. Cummings, Sisters of Mercy, Marian Care Center, Bulingame 94010, 415–340–7429.	California	11/15/91
Mr. Gary Rapaport, Oak Valley Hospital District, 350 S. Oak Ave., Oakdale 95361, 209–847–3011.	California	11/22/91
William H. Comte, Doctors' Hospital, 5000 University Drive, Coral Gables 33146, 305–669–3401.	Florida	11/15/91
Mr. William T. Moore, Shallowford Hospital, 4575 N. Shallowford Rd., Dunwoody 30338, 404–454–2028.	Georgia	11/07/91
Mr. Frederick R. Bailey, N. Fulton Regional Hospital, 3000 Hospital Boulevard, Roswell 30075, 404–751–2658.	Georgia	11/15/91
Faye Nazon, Conjeunaze Nursing Center, 3311 S. Michigan, Chicago 60616, 312–326–5700.	Illinois	11/15/91
Mr. John Samatas, Lexington Health Care Center, of Chicago Ridge, Inc., Chicago Ridge 60415, 708–495–1700.	Illinois	11/20/91

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[Nov. 1, 1991 to Nov. 30, 1991]

CEO-name/facility name/address	State	Approval date
Joseph O'Grady-Peyton, O'Grady-Peyton Int'l USA Inc., 651 Boylston Street, Boston 02116, 617–262–3533.	Massachusetts	11/21/91
Mr. Robert E. Pezzoli, St. Agenes Hospital of the City of Baltimore, Baltimore 21229, 410–368–6000.	Maryland	11/22/91
Ms. Gladys A. Sullivan, Village North Woods, 9500 Bellefontaine Road, Bellfont Neighbors 63137, 314–868–1400.	Missouri	11/07/91
Ms. Ronnette Cox, Convalescent Center of Enfiel, 208 Cary Street, Enfield 27823, 919–445–2111.	North Carolina	11/07/91
Ms. Dolores Turco, Lincoln Park Nursing Center, 499–521 Pine Brook Road, Lincoln Park 07035, 201–696–3300.	New Jersey	11/07/91
Leonora Pilao-Dwyer, King David Care Center of Atlantic City, Atlantic City 08401, 609–344–2181.	New Jersey	11/15/91
Daniel J. Moles, Ashbrook Nursing Home, 1610 Raritan Road, Scotch Plains 07076, 908–889–5500.	New Jersey	11/21/91
Sr. Paola Canziani, Casa Angelica, 5629 Isleta Blvd SW, Albuquerque 87105, 505–877–5763.	New Mexico	11/21/91
Ms. Phyllis Schindler, Long Island Nursing Home, 144-61 38th Avenue, Flushing 11354, 718–939–7500.	New York	11/07/91
Gene Rose, Queens Artificial Kidney Center, Jackson Heights 11372, 718–651–9700.	New York	11/21/91
Sister Mary Blandina, Saint Francis Hospital, Inc., 6161 S. Yale Ave., Tulsa 74136, 918–494–2200.	Oklahoma	11/20/91
Ms. Vickie H. Tears, Good Samaritan Convalescent Center, Antioch 37013, 615–731–7130.	Tennessee	11/15/91
Larry F. Parsons, Wilbarger General Hospital, 920 Hillcrest Drive, Vernon 76384, 817–552–9351.	Texas	11/14/91
Judith G. Novak, Woman's & Medical Center Hospital, Houston 77054, 713–790–8101.	Texas	11/15/91
Nedro G. Parker, Health Network International, 4506 La Branch, Houston 77004, 713–522–2443.	Texas	11/22/91
David S. Dunham, Southside Regional Medical Center, Petersburg 23803, 804–862–5768.	Virginia	11/15/91

Total Attestations: 26.

[FR Doc. 91–30082 Filed 12–16–91; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. L. V. Coal Company

[Docket No. M–91–107–C]

L. V. Coal Company, RD 1, Box 929, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity and velocity) to its No. 4 Slope (I.D. No. 36–08014) located in Schuylkill County, Pennsylvania. The petitioner requests a modification to require the minimum quantity of air reaching the working face be 1,500 cubic feet a minute (cfm), reaching the last open crosscut in any pair or set of developing entries be 5,000 cfm, and reaching the intake end of a pillar line be 5,000 cfm.

2. Consolidation Coal Company

[Docket No. M–91–108–C]

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Dilworth Mine (I.D. No. 36–04281) located in Greene County, Pennsylvania. The petitioner proposes to use high-voltage cables inby the last open crosscut to power the longwall.

3. Eagle Nest, Inc.

[Docket No. M–91–109–C]

Eagle Nest, Inc., P.O. Box 270, Van, West Virginia 25206 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its No. 132 Mine (I.D. No. 46–04789); its No. 131 Mine (I.D. No. 46–01268); and its Eagle Mine (I.D. No. 46–07711) all located in Boone County, West Virginia. The petitioner proposes to plug and mine through oil and gas wells.

4. Consolidation Coal Company

[Docket No. M–91–110–C]

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Ireland Mine (I.D. No. 46–10438) located in Marshall County, West Virginia. Due to deteriorating roof conditions, the petitioner proposes to establish evaluation points to monitor the hazardous conditions.

5. Island Creek Coal Company

[Docket No. M–91–111–C]

Island Creek Coal Company, P.O. Box 11430, Lexington, Kentucky 40575–1430 has filed a petition to modify the application of 30 CFR 75.1103–4 (automatic fire sensor and warning device systems); installation; minimum requirements) to its Hamilton No. 2 Mine (I.D. No. 15–02706) located in Union County, Kentucky. The petitioner proposes to use belt air to ventilate the working face and remove restrictions on the velocity of air in the belt entries, and use a low-level carbon monoxide detection system to monitor the air in the belt entries.

6. Island Creek Coal Company

[Docket No. M–91–112–C]

Island Creek Coal Company, P.O. Box 11430, Lexington, Kentucky 40575–1430 has filed a petition to modify the application of 30 CFR 75.326 (aircourses

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and belt haulage entries); to its Hamilton No. 2 Mine (I.D. No. 15-02708) located in Union County, Kentucky. The petitioner proposes to use belt air to ventilate the working face and remove restrictions on the velocity of air, and use a low-level carbon monoxide detection system to monitor the air in the belt entries.

7. Wilgar Land Company

[Docket No. M-91-113-C]

Wilgar Land Company, P.O. Box 266, Robinson Creek, Kentucky 41560 has filed a petition to modify the application of 30 CFR 75.1710 (canopies or cabs; electric face equipment) to its No. 3 Mine (I.D. No. 15-10396) located in Pike County, Kentucky. The petitioner states that the use of canopies on the S&S supply scoop would result in a safety hazard to the equipment operator.

8. Clinchfield Coal Company

[Docket No. M-91-114-C]

Clinchfield Coal Company, P.O. Box 4000, Lebanon, Virginia 24266 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its McClure No. 2 Mine (I.D. No. 44-04946) located in Dickenson County, Virginia. The petitioner proposes to use a carbon monoxide detection system to monitor electrical equipment instead of ventilating the equipment directly to the return.

9. Clinchfield Coal Company

[Docket No. M-91-115-C]

Clinchfield Coal Company, P.O. Box 4000, Lebanon, Virginia 24266 has filed a petition to modify the application of 30 CFR 75.326 (aircourse and belt-haulage entries) to its McClure No. 2 Mine (I.D. No. 44-04946) located in Dickenson County, Virginia. The petitioner proposes to use belt air to ventilate active working places, and install a low-level carbon monoxide detection system in all belt entries used as intake aircourses.

10. Shell Mining Company

[Docket No. M-91-116-C]

Shell Mining Company, P.O. Box 2906, Houston, Texas 77252-2906 has filed a petition to modify the application of 30 CFR 77.900 (low- and medium-voltage circuits serving portable or mobile three-phase alternating current equipment; circuit breakers) to its North Rochelle Coal Mine (I.D. No. 48-01355) located in Campbell County, Wyoming. The petitioner proposes to use an automatic reset circuit breaker to supply power to electrical equipment instead of using a manual reset breaker.

11. Cyprus Thompson Creek Mining Company

[Docket No. M-91-20-C]

Cyprus Thompson Creek Mining Company, 9100 East Mineral Circle, Englewood, Colorado 80112 has filed a petition to modify the application of 30 CFR 56.6309 (fuel oil requirements for ANFO) to its Thompson Creek Mining (I.D. No. 10-00531) located in Custer County, Idaho. The petitioner proposes to design and construct an oil recycling system that filters used oil, and blends the recycled product with fuel oil for use in blasting.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 16, 1991. Copies of these petition are available for inspection at that address.

Dated: December 11, 1991.

Patricia W. Silver,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91-30076 Filed 12-16-91; 8:45 am]

BILLING CODE 4510-43-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-277, 50-278, 50-352 and 50-353]

Philadelphia Electric Co; Public Service Electric and Gas Co.; Delmarva Power and Light Co; Atlantic City Electric Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an exemption to Philadelphia Electric Company, et. al. (PECo, the licensees), for operation of the Peach Bottom Atomic Power Station, Units 2 and 3, located in York County, Pennsylvania, and the Limerick Generating Station, Units 1 and 2, located in Montgomery and Chester Counties, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would 1) grant a one-time schedular exemption to eight (8) Senior Reactor Operators limited to fuel handling (LSROs) to permit them to take their first annual requalification operating test during January 1992 instead of the end of 1991.

The Need for the Proposed Action

By letter dated October 18, 1991, the licensee requested an exemption, in accordance with 10 CFR 55.11 from the requirements of 10 CFR 55.59(a)(2) and 10 CFR 55.59(c)(4)(i) related to annual requalification operating tests for LSROs. Pursuant to 10 CFR 55.53(h) a licensee, as a condition of the license, shall complete a requalification program as described by 10 CFR 55.59. In 10 CFR 55.59(c)(4)(i), the requalification program must include annual operating tests, and 10 CFR 55.59(a)(2) stipulates that each licensee shall pass an annual operating test.

NRC Generic Letter (GL) No. 89-03, "Operator Licensing National Examination Schedule," issued March 24, 1989, specified two examination months for each facility during which operator licensing examinations would be conducted each year. The purpose of the national examination schedule is to provide a consistent time period for conducting the examinations at each facility so that the facility can establish a standard schedule for conducting the required licensed operator training, and so that the NRC can schedule the resources required for conducting the examinations. The national examination schedule months for LGS, Units 1 and 2, are January and July. The scheduled months for PBAPS are February and August. PECo is requesting, on behalf of the licensed LSROs, a one-time schedular exemption from the requirements of 10 CFR 55.59(a)(2) with regard to each individual licensed LSRO to conduct the first annual requalification operating test for the multi-site licensed LSROs in January 1992 in conformance with the national examination schedule for LGS instead of the end of 1991. By letter dated October 18, 1991, from R.J. Conte, NRC, Region I, to D.M. Smith, PECo, the NRC confirmed that arrangements have been made for administration of fuel handling licensing examinations at LGS, for both Limerick and Peach Bottom, during the week of January 13, 1992.

Environmental Impacts of the Proposed Action

The proposed exemption from 10 CFR 55.59(c)(4)(i) and 10 CFR 55.59(a)(2) will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant cumulative radiation exposure. Accordingly, the Commission concludes that these proposed exemptions would result in no significant radiological environmental impact. Additional, it does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant impacts associated with the proposed exemptions.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental affects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemptions. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This proposed action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Limerick Generating Station, dated April 1984 or the Final Environmental Statement for the Peach Bottom Atomic Power Station, dated April 1973.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

For further details with respect to this action, see the request for exemption dated October 18, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, Lower Level, 2120 L Street, NW., Washington, DC, 20555, at the Limerick Local Public Document Room located at Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 18464 and at the Peach Bottom Local Public Document Room located at Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland this 10th day of December 1991.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Project Directorate I-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-30059 Filed 12-16-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-260]

Tennessee Valley Authority; Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-52 issued to the Tennessee Valley Authority (TVA) for operation of the Browns Ferry Nuclear Plant (BFNP), Unit 2 located in Limestone County, Alabama.

The proposed amendment would revise the Limiting Conditions for Operation (LCO) of the Technical Specifications (TS) for the Containment Atmosphere Dilution (CAD) System. More specifically, the LCO requirements of TS 3.7.G and Table 3.2.F would be temporarily changed (i.e., until the next refueling outage) to allow for extended plant operation with only one of two CAD systems operable.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

As required by 10 CFR 50.91(a), TVA has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not affect the probability of occurrence (or consequences) of a previously analyzed accident. The main function of the CAD system is to mitigate the effects of an accident by limiting the concentration of oxygen in the containment atmosphere after an accident has occurred. The consequences of a (an) accident are not significantly affected because the single train CAD system allowed by this change is not relied upon to mitigate an accident. Conservative analysis has demonstrated that processes within the containment after an accident will not generate sufficient oxygen to produce a combustible mixture and the CAD function will not be needed. (A single train is capable of performing 100 percent of the CAD systems safety functions. Furthermore, offsite supplies exist to supplement the remaining train as necessary).

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The CAD system is not a factor in normal plant operation and is mainly used after a postulated loss of coolant accident to control combustible gas inside the primary containment, as a backup pneumatic supply to the torus to reactor building vacuum breakers or to provide backup pneumatic supply to operate main steam relief valves during events beyond-design-basis. The availability of the backup pneumatic supply is not addressed in technical specifications and not directly affected by the proposed amendment. (Furthermore, each CAD system train is fully capable of performing this system's safety function. Loss of one train does not initiate a new or different kind of accident, and if a redundant nitrogen source becomes necessary, time exists to locate offsite supplies).

3. The proposed amendment does not involve a significant reduction in a margin of safety. The affected safety function of the CAD system to limit combustible gas mixture inside the primary containment is not relied upon during post accident. The containment is inerted with nitrogen during normal operation and a more recent analysis documented in General Electric NEDO 22155 demonstrates that generation of oxygen within the containment after an accident is not sufficient to produce a

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combustible mixture (greater than five percent). (Furthermore, should a redundant source of nitrogen for the CAD system be required to perform its safety function, offsite commercial supplies are available within 12 hours).

The NRC staff has reviewed the licensee's analysis and concluded that the three standards of 10 CFR 50.92(c) appear to be satisfied. Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received with thirty (30) days after the date of publication of this notice will be considered in making any final determination. The commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 16, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Athens Public Library on South Street in Athens, Alabama 35611. If a request for a hearing or a petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent to the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter or the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

No later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Frederick J. Hebdon, Director (petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the General Counsel for TVA at ET 11H, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filing of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 6, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Athens Public Library on South Street in Athens, Alabama 35611.

Dated at Rockville, Maryland, this 11th day of December 1991.

For the Nuclear Regulatory Commission.

Thierry M. Ross,

Senior Project Manager, Project Directorate II-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-30058 Filed 12-16-91; 8:45 am]

BILLING CODE 7590-01-M

State of Maine: Staff Assessment of Proposed Agreement Between the Nuclear Regulatory Commission and the State of Maine

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of proposed agreement with the state of Maine.

SUMMARY: The U.S. Nuclear Regulatory Commission is publishing for public comment the NRC staff assessment of a proposed agreement received from the Governor of the State of Maine for the assumption of certain of the Commission's regulatory authority pursuant to section 274 of the Atomic Energy Act of 1954, as amended. Comments are requested on the public health and safety aspects of the proposal.

Exemptions from the Commission's regulatory authority, which would implement this proposed agreement, have been published in the **Federal Register** and codified as part 150 of the Commission's regulations in title 10 of the Code of Federal Regulations.

DATES: Comments must be received on or before January 2, 1992.

ADDRESSES: Submit comments to the Chief, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, Washington, DC 20555. Comments may also be delivered to 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Monday through Friday. Copies of comments received by NRC may be examined at the NRC. Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. A copy of the proposed agreement, program narrative, including the referenced appendices, applicable State legislation and Maine regulations, is available for public inspection in the NRC's Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC, telephone: (202) 634-3273.

FOR FURTHER INFORMATION CONTACT: Kathleen N. Schneider. State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301-492-0320.

SUPPLEMENTARY INFORMATION:

Assessment of Proposed Maine Program to Regulate Certain Radioactive Materials pursuant to section 274 of the Atomic Energy Act of 1954, as amended (the Act).

The Commission has received a proposal from the Governor of Maine for the State to enter into an agreement with the NRC whereby the NRC would relinquish and the State would assume certain regulatory authority pursuant to section 274 of the Act.

Section 274e of the Act requires that the terms of the proposed agreement be published for public comment once each week for four consecutive weeks. Accordingly, this notice will be published four times in the **Federal Register**.

I. Background

A. Section 274 of the Act provides a mechanism whereby the NRC may transfer to the States certain regulatory authority over agreement materials [1] when a State desires to assume this authority and the Governor certifies that the State has an adequate regulatory program, and when the Commission finds that the State's program is compatible with that of the NRC and is adequate to protect the public health and safety. Section 274g directs the Commission to cooperate with the States in the formulation of standards for protection against radiation hazards to assure that State and Commission programs for radiation protection will be coordinated and compatible. Further, section 274j provides that the Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

B. In a letter dated March 5, 1990, Governor John P. McKernan, Jr. of the State of Maine requested that the Commission enter into an agreement with the State pursuant to section 274 of the Act. The Governor certified that the State of Maine has a program for control of radiation hazards which is adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State of Maine desires to assume regulatory responsibility for such materials. The text of the proposed agreement is shown in Appendix A to this document.

The specific authority requested is for (1) byproduct material as defined in section 11e.(1) of the Act, (2) source material, and (3) special nuclear material in quantities not sufficient to form a critical mass. The State does not wish to assume authority over (1) land disposal of source, byproduct and special nuclear material received from other persons; and (2) uranium recovery activities (byproduct material as defined in section 11e.(2)). The State, however, reserves the right to apply at a future date to NRC for an amended agreement to assume authority in these areas. The nine articles of the proposed agreement—

Lists the materials covered by the agreement.

Lists the Commission's continued authority and responsibility for certain activities.

Allows for future amendment of the agreement.

Allows for certain regulatory changes by the Commission.

References the continued authority of the Commission for common defense and security for safeguard purposes.

[1] A byproduct materials as defined in 11e.(1). B. Byproduct materials as defined in 11e.(2). C. Source materials; and D. Special nuclear materials in quantities not sufficient to form a critical mass.

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Pledges the best efforts of the Commission and the State to achieve coordinated and compatible programs.
Recognizes reciprocity of licenses issued by the respective agencies.
Sets forth criteria for termination or suspension of the agreement.
Specifies the effective date of the agreement.

C. Maine Radiation Protection Act, sections 671 through 690, the enabling statute for the Maine Department of Human Services, authorizes the Department to issue licenses to, and perform inspections of, users of radioactive materials under the proposed agreement and otherwise carry out a total radiation control program. Maine regulations for radiation protection were adopted on January 1, 1988, with revisions dated January 1, 1988 and December 1, 1990, under authority of the enabling statute and provide standards, licensing, inspection, enforcement and administrative procedures for agreement and non-agreement materials. In addition, editorial revisions recommended by NRC are presently under consideration in Maine and are expected to be finalized in November 1991. Pursuant to Maine's regulations, section C.19, the regulations will apply to agreement materials on the effective date of the agreement. In addition to the material covered under the proposed agreement, the regulations provide for the State to license and inspect users of naturally-occurring and accelerator-produced radioactive materials.

D. The NRC staff assessment finds the proposed Maine program will provide adequately for public health and safety.

II. NRC Staff Assessment of the Proposed Maine Program for Control of Agreement Materials

Reference: Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement.[2]

Objectives

1. *Protection.* A State regulatory program shall be designed to protect the health and safety of the people against radiation hazards.

Based upon the analysis of the State's proposed regulatory program, the staff believes the Maine proposed regulatory program for agreement materials is adequately designed to protect the health and safety of the public against radiation hazards.

Reference: Maine Program Statement, Application for Agreement State Status.

Radiation Protection Standards

2. *Standards.* The State regulatory program shall adopt a set of standards for protection against radiation which shall apply to byproduct, source and special nuclear materials in quantities not sufficient to form a critical mass.

Statutory authority to formulate and promulgate rules for controlling exposure to sources of radiation is contained in the enabling statute. In accordance with that authority, the State adopted radiation control regulations on January 1, 1988, and with revisions dated January 1, 1988, and December 1, 1990, which include radiation protection standards which would apply to byproduct, source and special nuclear materials in quantities not sufficient to form a critical mass upon the effective date of an agreement between the State and the Commission pursuant to Section 274b of the Atomic Energy Act of 1954, as amended. In addition, editorial revisions recommended by NRC are presently under consideration by the State and are expected to be finalized in November 1991.

Reference: State of Maine Rules Relating to Radiation Protection, parts A, B, C, D, E, G, J, K, L, Letter dated October 15, 1991.

3. *Uniformity in Radiation Standards.* It is important to strive for uniformity in technical definitions and terminology, particularly as related to such things as units of measurement and radiation dose. There shall be uniformity on maximum permissible doses and levels of radiation and concentrations of radioactivity, as fixed by 10 CFR part 20 of the NRC regulations based on officially approved radiation protection guides.

Technical definitions and terminology contained in the Maine Radiation Control Regulations including those related to units of measurement and radiation doses are uniform with those contained in 10 CFR part 20.

Reference: State of Maine Rules Relating to Radiation Protection, Sections A.2, D.2, E.3, G.2, K.3, L.2.

4. *Total Occupational Radiation Exposure.* The regulatory authority shall consider the total occupational radiation exposure of individuals, including that from sources which are not regulated by it.

The Maine regulations cover all sources of radiation within the State's jurisdiction and provide for consideration of the total radiation exposure of individuals from all sources of radiation in the possession of a licensee or registrant.

Reference: State of Maine Rules Relating to Radiation Protection, Sections D.2 to D.7.

5. *Surveys, Monitoring.* Appropriate surveys and personnel monitoring under the close supervision of technically competent people are essential in achieving radiological protection and shall be made in determining compliance with safety regulations.

The Maine requirements for surveys to evaluate potential exposures from sources of radiation and the personnel monitoring requirements are uniform with those contained in 10 CFR part 20.

References: State of Maine Rules Relating to Radiation Protection, Sections D.9, D.10 and D.15.

6. *Labels, Signs, Symbols.* It is desirable to achieve uniformity in labels, signs, and symbols, and the posting thereof. However, it is essential that there be uniformity in labels, signs, and symbols affixed to radioactive products which are transferred from person to person.

The prescribed radiation labels, signs and symbols are uniform with those contained in 10 CFR parts 20, 30 through 32 and 34. The Maine posting requirements are also uniform with those of 10 CFR part 20.

References: State of Maine Rules Relating to Radiation Protection, Sections C.6.E, C.6.F, C.11.D, D.11, and D.12.

7. *Instruction.* Persons working in or frequenting restricted areas shall be instructed with respect to the health risks associated with exposure to radioactive materials and in precautions to minimize exposure. Workers shall have the right to request regulatory authority inspections as per 10 CFR 19.16 and to be represented during inspections as specified in 10 CFR 19.14.

The Maine regulations contain requirements for instructions and notices to workers that are uniform with those of 10 CFR part 19.

Reference: State of Maine Rules Relating to Radiation Protection, Section J.

8. *Storage.* Licensed radioactive material in storage shall be secured against unauthorized removal.

The Maine regulations contain a requirement for security of stored radioactive material.

Reference: State of Maine Rules Relating to Radiation Protection, Section D.14.

9. *Radioactive Waste Disposal.* (a) Waste disposal by material users. The standards for the disposal of radioactive materials into the air, water and sewer, and burial in the soil shall be in accordance with 10 CFR part 20. Holders of radioactive material desiring to release or dispose of quantities or concentrations of radioactive materials in excess of prescribed limits shall be required to obtain special permission from the appropriate regulatory authority.

Requirements for transfer of waste for the purpose of ultimate disposal at a land disposal facility (waste transfer and manifest system) shall be in accordance with 10 CFR part 20.

The waste disposal standards shall include a waste classification scheme and provisions for waste form, application to waste generators, that is equivalent to that contained in 10 CFR part 61.

(b) Land disposal of waste received from other persons. The State shall promulgate regulations containing licensing requirements for land disposal of radioactive waste received from other persons which are compatible with the applicable technical definitions, performance objectives, technical requirements and applicable supporting sections set forth in 10 CFR part 61. Adequate financial arrangements (under terms established by regulation) shall be required of each waste disposal site licensee to ensure sufficient funds for decontamination, closure and stabilization of a disposal site. In addition, Agreement State financial arrangements for long-term monitoring and maintenance of a specific site must be reviewed and approved by the Commission prior to relieving the site operator of licensed responsibility (Section 151(a)(2), Pub. L. 97-425).

The Maine regulations contain provisions relating to the disposal of radioactive materials into the air, water and sewer, and burial in soil which are essentially uniform with those of 10 CFR part 20. Waste transfer and manifest system requirements for transfer of waste for ultimate disposal at a land disposal facility are included in the Maine regulations. The waste disposal requirements include a waste classification scheme and provisions for waste form equivalent to that in 10 CFR part 61.

Maine does not plan on seeking authority for the regulation of land disposal of source, byproduct and special nuclear material received from other persons.

References: State of Maine Rules Relating to Radiation Protection, Sections D.7, and D.16 to D.26.

10. *Regulations Governing Shipment of Radioactive Materials.* The State shall to the extent of its jurisdiction promulgate regulations applicable to the shipment of radioactive materials, such regulations to be compatible with those established by the U.S. Department of Transportation and other agencies of the United States whose jurisdiction over interstate shipment of such materials necessarily continues. State regulations regarding transportation of radioactive materials must be compatible with 10 CFR part 71.

The Maine regulations are uniform with those contained in NRC regulations 10 CFR part 71.

References: State of Maine Rules Relating to Radiation Protection Section L.

11. *Records and Reports.* The State regulatory program shall require that holders and users of radioactive materials (a) maintain records covering personnel radiation exposures, radiation surveys, and disposals of materials; (b) keep records of the receipt and transfer of the materials; (c) report significant incidents involving the materials, as prescribed by the regulatory authority; (d) make available upon request of a former employee a report of the employee's exposure to radiation; (e) at request of an employee advise the employee of his or her annual radiation exposure; and (f) inform each employee in writing when the employee has received radiation exposure in excess of the prescribed limits.

The Maine regulations require the following records and reports of the licensees and registrants:

(a) Records covering personnel radiation exposures, radiation surveys, and disposals of materials.

(b) Records of receipt and transfer of materials.

(c) Reports concerning incidents involving radioactive materials.

(d) Reports to former employees of their radiation exposure.

(e) Reports to employees of their annual radiation exposure.

(f) Reports to employees of radiation exposure in excess of prescribed limits.

Reference: State of Maine Rules Relating to Radiation Protection Sections A.4, D.27, D.29, D.30, and J.4.

12. *Additional Requirements and Exemptions.* Consistent with the overall criteria here enumerated and to accommodate special cases and circumstances, the State regulatory authority shall be authorized in individual cases to impose additional requirements to protect health and safety, or to grant necessary exemptions which will not jeopardize health and safety.

The Maine Radiation Control Program is authorized to impose upon any licensee or registrant by rule, regulation, or order such requirements in addition to those established in the regulations as it deems appropriate or necessary to minimize danger to public health and safety or property.

Reference: State of Maine Rules Relating to Radiation Protection Section A.7.

The Department may also grant such exemptions from the requirements of the regulations as it determines are authorized by law and will not result in undue hazard to public health and safety or property.

Reference: State of Maine Rules Relating to Radiation Protection Section A.3.

Prior Evaluation of Uses of Radioactive Materials

13. *Prior Evaluation of Hazards and Uses, Exceptions.* In the present state of knowledge, it is necessary in regulating the possession and use of byproduct, source and special nuclear materials that the State regulatory authority require the submission of information on, and evaluation of, the potential hazards and the capability of the user or possessor prior to his receipt of the materials. This criterion is subject to certain exceptions and to continuing reappraisal as knowledge and experience in the atomic energy field increase. Frequently there are, and increasingly in the future there may be, categories of materials and uses as to which there is sufficient knowledge to permit possession and use without prior evaluation of the hazards and the capability of the possessor and user. These categories fall into two groups—those materials and uses which may be completely exempt from regulatory controls, and those materials and uses in which sanctions for misuse are maintained without pre-evaluation of the individual possession or use. In authorizing research and development or other activities involving multiple uses of radioactive materials, where an institution has people with extensive training and experience, the State regulatory authority may wish to provide a means for authorizing broad use of materials without evaluating each specific use.

Prior to the issuance of a specific license for the use of radioactive materials, the Maine Radiation Control Program will require the submission of information on, and will make an evaluation of, the potential hazards of such uses, and the capability of the applicant.

References: State of Maine Rules Relating to Radiation Protection

[2] NRC Statement of Policy published in the Federal Register January 23, 1981 (46 FR 7540-7548), a correction was published July 16, 1981 (46 FR 36969) and a revision of Criterion 9 published in the Federal Register July 21, 1983 (48 FR 33376).

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Sections C.7 and C.17 and the Maine Program Statement.

Provision is made for the issuance of general licenses for byproduct, source and special nuclear materials in situations where prior evaluation of the licensee's qualifications, facilities, equipment and procedures is not required. The regulations grant general licenses under the same circumstances as those under which general licenses are granted in the Commission's regulations.

References: State of Maine Rules Relating to Radiation Protection Sections C.5 and C.6.

The Maine regulations contain provisions for exempting of certain source and other radioactive materials and devices containing radioactive materials. These exemptions, for materials covered by the agreement, are the same as those granted by NRC regulations.

References: State of Maine Rules Relating to Radiation Protection Sections C.2 and C.3.

14. *Evaluation Criteria.* In evaluating a proposal to use radioactive materials, the regulatory authority shall determine the adequacy of the applicant's facilities and safety equipment, his training and experience in the use of the materials for the purpose requested, and his proposed administrative controls. States should develop guidance documents for use by license applicants. This guidance should be consistent with NRC licensing and regulatory guides for various categories of licensed activities.

In evaluating a proposal to use agreement materials, the Maine Radiation Control Program will determine that:

(1) The applicant is qualified by reason of training and experience to use the material in question for the purpose requested in accordance with the regulations in such a manner as to minimize danger to public health and safety or property;

(2) The applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property; and

(3) The issuance of the license will not be inimical to the health and safety of the public.

Other special requirements for the issuance of specific licenses are contained in the regulations.

References: State of Maine Rules Relating to Radiation Protection Sections C.8 to C.11 and the Maine Program Statement.

15. *Human Use.* The use of radioactive materials and radiation on or in humans shall not be permitted except by properly qualified persons (normally licensed physicians) possessing prescribed minimum experience in the use of radioisotopes or radiation.

The Maine regulations require that the use of radioactive materials (including sealed sources) on or in humans shall be by a physician having substantial experience in the handling and administration of radioactive material and, where applicable, the clinical management of radioactive patients.

Reference: State of Maine Rules Relating to Radiation Protection Sections G.66 to G.76.

Inspection

16. *Purpose, Frequency.* The possession and use of radioactive materials shall be subject to inspection by the regulatory authority and shall be subject to the performance of tests, as required by the regulatory authority. Inspection and testing is conducted to determine and to assist in obtaining compliance with regulatory requirements. Frequency of inspection shall be related directly to the amount and kind of material and type of operation licensed, and it shall be adequate to insure compliance.

Maine materials licensees will be subject to inspection by Radiation Control Program, Division of Health Engineering, the Department of Human Services. Upon instruction from the Department, licensees shall perform or permit the Department to perform any reasonable test and survey the Department considers appropriate or necessary. The frequency of inspections is dependent upon the type and scope of the licensed activities and will be at least as frequent as inspections of similar licensees by NRC. Generally, inspections will be unannounced.

References: State of Maine Rules Relating to Radiation Protection Sections A.5, A.6, A.7 and J.5.A; Maine Program Statement.

17. *Inspections Compulsory.* Licensees shall be under obligation by law to provide access to inspectors.

Maine regulations state that licensees shall afford the Department, at all reasonable times, opportunity to inspect sources of radiation and the premises and facilities wherein such sources of radiation are used or stored.

Reference: State of Maine Rules Relating to Radiation Protection Section A.5.

18. *Notification of Results of Inspection.* Licensees are entitled to be advised of the results of inspections and to notice as to whether or not they are in compliance.

Following Radiation Control Program inspections, each licensee will be notified in writing of the results of the inspection. The letters and written notices indicate if the licensee is in compliance and if not, list the areas of noncompliance.

Reference: Maine Program Statement.

Enforcement

19. *Enforcement:* Possession and use of radioactive materials should be amenable to enforcement through legal sanctions, and the regulatory authority shall be equipped or assisted by law with the necessary powers for prompt enforcement. This may include, as appropriate, administrative remedies looking toward issuance of orders requiring affirmative action or suspension or revocation of the right to possess and use materials, and the impounding of materials; the obtaining of injunctive relief; and the imposing of civil or criminal penalties.

The Maine Radiation Control Program is equipped with the necessary powers for prompt enforcement of the regulations. Where conditions exist that create a clear presence of a hazard to the public health that requires immediate action to protect human health and safety, Maine may issue orders to reduce, discontinue or eliminate such conditions. The Radiation Control Program actions may also include impounding of radioactive material, imposition of a civil penalty, revocation of a license, and requesting the State Attorney General to seek injunctions and convictions for criminal violations.

References: State of Maine Rules Relating to Radiation Protection Sections A.7, A.8, A.9, part B and C.22; Maine Radiation Protection Act Sections 688 and 690; Maine Program Statement.

Personnel

20. *Qualifications of Regulatory and Inspection Personnel.* The regulatory agency shall be staffed with sufficient trained personnel. Prior evaluation of applications for licenses or authorizations and inspection of licensees must be conducted by persons possessing the training and experience relevant to the type and level of radioactivity in the proposed use to be evaluated and inspected. This requires competency to evaluate various potential radiological hazards associated with the many uses of radioactive material and includes concentrations of radioactive materials in air and water, conditions of shielding, the making of radiation measurements, knowledge of radiation instruments—their selection, use, and calibration—laboratory design, contamination

control, other general principles and practices of radiation protection, and use of management controls in assuring adherence to safety procedures. In order to evaluate some complex cases, the State regulatory staff may need to be supplemented by consultants or other State agencies with expertise in geology, hydrology, water quality, radiobiology, and engineering disciplines.

To perform the functions involved in evaluation and inspection, it is desirable that there be personnel educated and trained in the physical and/or life sciences, including biology, chemistry, physics and engineering, and that the personnel have had training and experience in radiation protection. For example, the person who will be responsible for the actual performance of evaluation and inspection of all of the various uses of byproduct, source and special nuclear material which might come to the regulatory body should have substantial training and extensive experience in the field of radiation protection. It is desirable that such a person have a bachelor's degree or equivalent in the physical or life sciences, and specific training in radiation protection.

It is recognized that there will also be persons performing a more limited function in evaluation and inspection. These persons will perform the day-to-day work of the regulatory program and deal with both routine situations as well as some which will be out of the ordinary. These persons should have a bachelor's degree or equivalent in the physical or life sciences, training in health physics, and approximately two years of actual work experience in the field of radiation protection.

The foregoing are considered desirable qualifications for the staff who will be responsible for the actual performance of evaluation and inspection. In addition, there will probably be trainees associated with the regulatory program who will have an academic background in the physical or life sciences as well as varying amounts of specific training in radiation protection but little or no actual work experience in this field. The background and specific training of these persons will indicate to some extent their potential role in the regulatory program. These trainees, of course, could be used initially to evaluate and inspect those applications of radioactive materials which are considered routine or more standardized from the radiation safety standpoint; for example, inspection of industrial gauges, small research programs, and diagnostic medical programs. As they gain experience and competence in the field, trainees could be used progressively to deal with the more complex or difficult types of radioactive material applications. It is desirable that such trainees have a bachelor's degree or equivalent in the physical or life sciences and specific training in radiation protection. In determining the requirement for academic training of individuals in all of the foregoing categories proper consideration should be given to equivalent competency which has been gained by appropriate technical and radiation protection experience.

It is recognized that radioactive materials and their uses are so varied that the evaluation and inspection functions will require skills and experience in the different disciplines which will not always reside in one person. The regulatory authority should have the composite of such skills either in its employ or at its command, not only for routine functions, but also for emergency cases.

(a) Number of personnel. There are approximately 110 NRC specific licenses in the State of Maine. Under the proposed agreement, the State would assume responsibility for about 105 of these licenses. The Division of Health Engineering is currently staffed with 8 professional persons.

Donald Hoxie—Director, Division of Health Engineering. Responsible for the overall supervision of four Statewide regulatory programs, including the Radiological Health Program.

Wallace Hinckley—Assistant Director of Health Engineering. Responsible as Assistant Director for the overall supervision of four Statewide regulatory programs, including the Radiation Control Program.

Wellington Clough Toppan, Jr.—Manager, Radiation Control Program. Responsible for overall supervision of the Radiation Control Program, which regulates x-ray equipment and radionuclide users and conducts environmental monitoring of nuclear power facilities.

Robert Schell—Nuclear Engineering Specialist, Radiation Control Program. Responsible for environmental surveillance of and emergency planning for Maine Yankee Atomic Power Company.

David Breau—Sanitary Engineer II, Drinking Water Program. Responsible for review and approval of engineering plans for water treatment facilities. Backup staff available to the Radiation Control Program.

Linda A. Plausquellic—Radiation Specialist, Radiation Control Program. Performs compliance inspections and registration for x-ray machines. Assists in radioactive materials licensing program.

Jay Carl Hyland—Health Physicist, Radiological Health Program. Responsible for radioactive materials licensing and inspection program.

Cheryl Baker—Chemist II. Responsible for implementation of all radiological testing.

(b) Training. The academic and specialized short course training for those persons involved in the administration, licensing and inspection of the radiation control program is shown below:

Donald C. Hoxie—B.S. Chemical Engineering, University of Maine, M.S. Radiological Health, Rutgers University.
U.S. Public Health Service, Basic Radiological Health. Two week course in 1960.
Oak Ridge Associated Universities, Health Physics Course. A 10-week course ending May 1961.
Brookhaven National Laboratory, Health Physics Training. A 4-week course ending September 1966.
Conference of Radiation Control Program Directors, Training for Radiation Therapy Inspections. November 3–25, 1984.
Conference of Radiation Control Program Directors, Training for Radon Control. November 28–29, 1986.

Wallace W. Hinckley—B.S., Civil Engineering, University of Maine.
University of Oklahoma, NIOSH Course. Safety and Health. January 8 to March 30, 1973.
Federal and Emergency Management Agency. Radiological Emergency Response Planning. 1974 and 1978.
Federal Emergency Management Agency. Basic Radiological Defense Officers Course. Course I, March 7, 1975. Course II, March 14, 1975.
Harvard University. Basic Radiation Protection. April 4–8, 1977.
Harvard University, Environmental Surveillance. May 16–20, 1977.
Harvard University, Planning for Nuclear Emergencies. June 13–17, 1977.
U.S. Nuclear Regulatory Commission, Oak Ridge Associated Universities, Health Physics and Radiation Protection. A 5-week course ending April 14, 1978.
Federal Emergency Management Agency, Radiological Emergency Response Course. August 19–29, 1980.
Federal Emergency Management Agency, Radiological Accident Assessment Course. February 2–6,

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1981.
Wellington Clough Toppan, Jr.—B.S., Civil Engineering, Norwich University, M.S., Environmental Engineering, Clarkson College of Technology, M.P.A., Public Administration, University of Maine at Orono.
Federal Emergency Management Agency, Radiological Emergency Response Planning. May 18–22, 1981.
Federal Emergency Management Agency, Basic Radiological Defense Officers. September 8–11, 1981.
Federal Emergency Management Agency, Radiological Accident Assessment. August 23–27, 1982.
New England Radiological Health Committee, Radiological Laboratory Workshop I. April 24–25, 1984.
Federal Emergency Management Agency, Radiological Emergency Response. September 12–21, 1984.
Conference of Radiation Control Program Directors, Training for Radiation Therapy Inspections. October 23–25, 1984.
U.S. Nuclear Regulatory Commission, Health Physics and Radiation Protection. February 3 to March 8, 1985.
New England Radiological Health Committee, Radiological Laboratory Workshop II. April 30 to May 2, 1985.
U.S. Nuclear Regulatory Commission, Introduction to Licensing Practices and Procedures. September 23–27, 1985.
Conference of Radiation Control Program Directors, Health Issues of Non Ionizing Radiation. October 29–30, 1985.
U.S. Environmental Protection, Indoor Radon Workshop. January 21–23, 1986.
U.S. Nuclear Regulatory Commission, Medical Uses of Radionuclides. March 15–20, 1987.
U.S. Nuclear Regulatory Commission, Pressurized Water Reactor Technology. April 28 to May 1, 1987.
U.S. Nuclear Regulatory Commission, Nuclear Transportation Course. August 17–21, 1987.
Southern Maine Vocational Technical School, Radon Mitigation Course. April 12–14, 1988.
Robert J. Schell—B.S., Bioengineering, University of Illinois.
United States Air Force Course, Bioenvironmental Engineering. March 18 to June 21, 1985.
Federal Emergency Management Agency, Radiological Emergency Response. October 16–26, 1985.
U.S. Nuclear Regulatory Commission, Introduction to Health Physics. February 10 to March 14, 1986.
Federal Emergency Management Agency, Radiological Response Planning. June 2–6, 1986.
Federal Emergency Management Agency, Radiologic Accident Assessment. July 14–18, 1986.
University of Massachusetts Medical Center, Medical X-Ray Inspection. August 19–22, 1986.
U.S. Nuclear Regulatory Commission, Medical Uses of Radionuclides. September 8–12, 1986.
U.S. Nuclear Regulatory Commission, PWR Technology. February 23–27, 1987.
U.S. Nuclear Regulatory Commission, CE Technology. June 1–12, 1987.
U.S. Nuclear Regulatory Commission, Inspection Procedures. June 6–10, 1988.
U.S. Nuclear Regulatory Commission, Safety Aspects of Industrial Radiography. August 1–5, 1991.
Federal Emergency Management Agency, Advanced Radiological Accident Assessment. January 23–27, 1989.
David P. Breau—B.S., Civil Engineering, University of Maine at Orono.
Federal Emergency Management Agency, Basic Radiological Defense Officers Course. September 8–11, 1981.
Federal Emergency Management Agency, Nuclear Power Plant Offsite Accident Assessment Course. May 13–17, 1985.
U.S. Nuclear Regulatory Commission, Reactor Theory Operations and Emergency Planning. June 18–21, 1985.
Federal Emergency Management Agency, X-Ray Training. October 16–17, 1985.
Conference of Radiation Control Program Directors, Health Issues of Non Ionizing Radiation. October 29–30, 1985.
Federal Emergency Management Agency, Radiological Emergency Response Course. August 20–29, 1986.
U.S. Nuclear Regulatory Commission, Medical Use of Radionuclides. September 8–12, 1986.
U.S. Nuclear Regulatory Commission, Inspection Procedures Course. September 15–19, 1986.
U.S. Nuclear Regulatory Commission, Health Physics and Radiation Protection. July 20 to August 21, 1987.
U.S. Nuclear Regulatory Commission, Licensing and Practices and Procedures. September 21–25, 1987.
Linda A. Plusquellic—Maine Central Institute, The John Hopkins Hospital School of Radiologic Technology, University of Maine, working toward B.S., Public Administration.
New England Radiological Health Committee, Radon's Impact on State Radiation Control Programs. October 28–29, 1986.
U.S. Department of Health and Human Resources, Medical X-Ray Protection, March 23–27, 1987.
U.S. Department of Health and Human Resources, Basic Course for Investigators: Diagnostic X-Ray. April 27 to May 7, 1987.
Federal Emergency Management Agency, Radiological Emergency Response Course. September 9–18, 1987.
U.S. Nuclear Regulatory Commission, Inspection Procedures Course. September 25–29, 1989.
U.S. Nuclear Regulatory Commission, Medical Uses of Radionuclides. March 18–22, 1991.
Jay Carl Hyland—B.S., Engineering Physics, University of Maine, Orono.
Maine Emergency Management Agency, Fundamentals Course for Radiological Monitors. November 30 to December 1, 1988.
U.S. Nuclear Regulatory Commission, Medical Uses of Radionuclides. March 27–31, 1989.
Federal Emergency Management Agency, Radiological Accident Assessment. May 22–26, 1989.
U.S. Nuclear Regulatory Commission, Inspection Procedures Course. June 19–23, 1989.
U.S. Nuclear Regulatory Commission, Health Physics and Radiation Protection. July 10 to August 11, 1989.
U.S. Nuclear Regulatory Commission, Nuclear Transportation. August 14–18, 1989.
Federal Emergency Management Agency, Radiological Emergency Response Course. August 23 to September 1, 1989.
U.S. Nuclear Regulatory Commission, Special Topics Workshop. November 27 to December 1, 1989.
U.S. Nuclear Regulatory Commission, Licensing Practices and Procedures. June 11–15, 1990.
U.S. Nuclear Regulatory Commission, Special Topics Workshop. August 27–29, 1990.
U.S. Nuclear Regulatory Commission, Safety Aspects of Industrial Radiography. September 24–28, 1990.
Cheryl Baker—B.S., Chemistry University of Maine, Orono. U.S. Nuclear Regulatory Commission, Radiochemistry. February 9–13, 1981.
Public Health Laboratory, Radiation Safety in the Laboratory. July 28, 1983.
Federal Emergency Management Agency, Radiological Accident Assessment. March 5–9, 1984.
New England Radiological Health Committee, Radiological Laboratory Workshop. April 24–25, 1984.
Oak Ridge Associated Universities, Health Physics and Radiation Protection. July 9 to August 10, 1984.
New England Radiological Health Committee, Radiation Therapy Inspections. October 23–25, 1984.
New England Radiological Health Committee, Radiological Laboratory Workshop. April 30 to May 2, 1985.
New England Radiological Health Committee, Non Ionizing Radiation. October 29–30, 1985.
New England Radiological Health Committee, Radon's Impact on State Programs. October 28–29, 1986.
New England Radiological Health Committee, Radiological Laboratory Workshop. May 5–7, 1987.

Reference: Maine Program Statement.

21. *Conditions Applicable to Special Nuclear Material, Source Material and Tritium.* Nothing in the State's regulatory program shall interfere with the duties imposed on the holder of the materials by the NRC, for example, the duty to report to the NRC, on NRC prescribed forms (1) transfers of special nuclear material, source material and tritium and (2) periodic inventory data.

The State's regulations do not prohibit or interfere with the duties imposed by the NRC on holders of special nuclear material owned by the U.S. Department of Energy or licensed by NRC, such as the responsibility of licensees to supply to the NRC reports of transfer and inventory.

Reference: State of Maine Rules Relating to Radiation Protection Section A.1.

22. *Special Nuclear Material Defined.* Special nuclear material, in quantities not sufficient to form a critical mass, for present purposes means uranium enriched in the isotope $U-^{235}$ in quantities not exceeding 350 grams of contained $U-^{235}$; uranium 233 in quantities no exceeding 200 grams: Plutonium in quanties not exceeding 200 grams; or any combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination should not exceed "1" (i.e., unity). For example, the following quantities in combination would not exceed the limitation and are within the formula, as follows:

$$\frac{175 \text{ (grams contained } U-235)}{350} + \frac{50 \text{ (grams } U-233)}{200} + \frac{50 \text{ (grams Pu)}}{2200}$$

(This definition is subject to change by future Commission rule or regulation.)

The definition of special nuclear material in quantities not sufficient to form a critical mass, as contained in the Maine regulations, is uniform with the definition in 10 CFR Part 150.

Reference: State of Maine Rules Relating to Radiation Protection Section A.2.A(62), Definition of Special Nuclear Material in Quantities Not Sufficient to Form a Critical Mass.

Administration

23. *Fair and Impartial Administration.* State practices for assuring the fair and impartial administration of regulatory law, including provision for public participation where appropriate, should be incorporated in procedures for:

(a) Formulation of rules of general applicability;

(b) Approving or denying applications for licenses or authorization to possess and use radioactive materials, and

(c) Taking disciplinary actions against licensees.

The Maine statute and regulations provide for administrative and judicial review of actions taken by the Division of Health Engineering which includes the Maine Radiation Control Program.

Reference: Maine Administrative Procedure Act, State of Maine Rules Relating to Radiation Protection Sections A.9, A.11, C.22, and J.

24. *State Agency Designation.* The State should indicate which agency or agencies will have authority for carrying on the program and should provide the NRC with a summary of that legal authority. There should be assurances against duplicate regulation and licensing by State and local authorities, and it may be desirable that there be a single or central regulatory authority.

The Maine Department of Human Services in which the Maine Radiation Control Program is located has been designated as the State's radiation control agency.

References: Maine Radiation Protection Act, section 674.1 and 686.

25. *Existing NRC Licenses and Pending Applications.* In effecting the discontinuance of jurisdiction, appropriate arrangements will be made by NRC and the State to ensure that there will be no interference with or interruption of licensed activities or the processing of license applications, by reason of the transfer. For example, one approach might be that the State, in assuming jurisdiction, could recognize and continue in effect, for an appropriate period of time under State law, existing NRC licenses, including licenses for which timely applications for renewal have been filed, except where good cause warrants the earlier reexamination or termination of the license.

Maine regulations have provisions for NRC licensees to possess a like license issued under the Maine regulations and the Maine Act. These licenses will expire either 90 days after receipt from the Agency of a notice of expiration of such license or on the date of expiration specified in the NRC license, whichever is earlier.

Reference: State of Maine Rules Relating to Radiation Protection Section C.19.

26. *Relations With Federal Government and Other States.* There should be an interchange of Federal and State information and assistance in connection with the issuance of regulations and licenses or authorizations, inspection of licensees, reporting of incidents and violations, and training and education problems.

The proposed agreement declares that the State will use its best efforts to cooperate with the NRC and the other

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Agreement States in the formulation of standards and regulatory programs for the protection against the hazards of radiation and to assure that the State's program will continue to be compatible with the Commission's program for the regulation of like materials.

Reference: Proposed Agreement between the State of Maine and the Nuclear Regulatory Commission, Article VI.

27. *Coverage, Amendments, Reciprocity.* The proposed Maine agreement provides for the assumption of regulatory authority over the following categories of materials within the State:

(a) Byproduct material, as defined by Section 11e.(1) of the Atomic Energy Act, as amended.

(c) Source materials.

(c) Special nuclear materials in quantities not sufficient to form a critical mass.

Reference: Proposed Agreement, Article I.

Provision has been made by Maine for the reciprocal recognition of licenses to permit activities within Maine of persons licensed by other jurisdictions. This reciprocity is like that granted under 10 CFR part 150.

Reference: State of Maine Rules Relating to Radiation Protection Section 3.X.

28. *NRC and Department of Energy Contractors.* The State's regulations provide that certain NRC and DOE contractors or subcontractors are exempt from the State's requirements for licensing and registration of sources of radiation which such persons receive, possess, use, transfer, or acquire.

Reference: State of Maine Rules Relating to Radiation Protection Section A.3.B.

III. Staff Conclusion

Section 274d of the Atomic Energy Act of 1954, as amended, states:

The Commission shall enter into an agreement under subsection b of this section with any State if:

(1) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

(2) The Commission finds that the State program is in accordance with the requirements of subsection o. and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed amendment.

The staff has concluded that the State of Maine meets the requirements of section 274 of the Act. The State's statutes, regulations, personnel, licensing, inspection and administrative procedures are compatible with those of the Commission and adequate to protect the public health and safety with respect to the materials covered by the proposed agreement. Since the State is not seeking authority over uranium milling activities, subsection o. is not applicable to the proposed Maine agreement.

Dated at Rockville, Maryland, this 22nd Day of November 1991.

Carlton Kammerer,

Director, Office of State Programs.

Appendix A—Agreement Between the United States Nuclear Regulatory Commission and the State of Maine for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and section 161 of the Act with respect to byproduct materials as defined in sections 11e. (1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, The Governor of the State of Maine is authorized under Maine Revised Statutes Annotated section 284 to enter into this Agreement with the Commission; and,

Whereas, The Governor of the State of Maine certified on March 5, 1990, that the State of Maine (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and,

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the State recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to this Agreement; and

Whereas, This Agreement is entered into pursuant to the provisions of the Act, as amended;

Now Therefore, It is hereby agreed between the Commission and the Governor of the State, acting in behalf of the State, as follows:

Article I

Subject to the exceptions provided in articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under chapters 6, 7, and 8, and section 161 of the Act with respect to the following materials:

A. Byproduct materials as defined in section 11e.(1) of the Act;

B. Source materials; and

C. Special nuclear materials in quantities not sufficient to form a critical mass.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:

A. The construction and operation of any production or utilization facility;

B. The export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

C. The disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

D. The disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission;

E. The land disposal of source, byproduct and special nuclear material received from other persons; and,

F. The extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material.

Article III

This Agreement may be amended, upon application by the State and approval by the Commission, to include the additional area(s) specified in article II, paragraph E or F, whereby the State can exert regulatory control over the materials stated herein.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under subsection 161 b. or i. of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will use its best efforts to cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible. The State will use its best efforts to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of like materials. The State and the Commission will use their best efforts to keep each other informed of proposed changes in their respective rules and regulations and licensing, inspection and enforcement policies and criteria, and to obtain the comments and assistance of the other party thereon.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any Agreement State. Accordingly, the Commission and the State agree to use their best efforts to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of section 274 of the Act. The Commission may also, pursuant to section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgement of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance with section 274 of the Act.

Article IX

This Agreement shall become effective on _____, and shall remain in effect unless and until such time as it is terminated pursuant to article VIII.

Done at Augusta, Maine, in triplicate, this _____, 1991.

For the U.S. Nuclear Regulatory Commission.

Ivan Selin,

Chairman.

For the State of Maine

John R. McKernan, Jr.,

Governor.

[FR Doc. 91-30060 Filed 12-16-91; 8:45 am]

BILLING CODE 7590-01-M

POSTAL SERVICE

Privacy Act; Notice of a Computer Matching Program

AGENCY: United States Postal Service.

ACTION: Notice of a computer matching program between the United States Postal Service and the Small Business Administration.

SUMMARY: Subsection (e)(12) of the Privacy Act, as amended by The Computer Matching and Privacy Protection Act of 1988 (Public Law 100-503) requires agencies to publish advance notice of new matching programs. This publishes notice that the United States Postal Service (USPS) proposes to conduct a computer matching program with the Small Business Administration (SBA). The program will compare USPS payroll and SBA debtor records to identify postal employees delinquently indebted to the federal government under certain programs administered by SBA and to collect those debts under the salary offset provisions of the Debt Collection Act of 1982 when voluntary payment is not made.

DATES: Comments must be received no later than January 16, 1992. Unless comments are received that result in a contrary determination, the matching program will begin no sooner than 30 days after this published notice has been sent to Congress and the Office of Management and Budget and a copy of the matching agreement has been sent to Congress.

ADDRESSES: Comments may be mailed to the RECORDS OFFICER, US POSTAL SERVICE, 475 L'ENFANT PLAZA SW, WASHINGTON, DC 20260-5010, or delivered to Room 8141 at the above address between 8:15 a.m. and 4:45 p.m. Comments received may also be inspected during the above hours in Room 8141.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office (202) 268-5158.

SUPPLEMENTARY INFORMATION: Set forth below is a description of the matching program proposed by this notice. The description complies with Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818), and OMB Bulletin 89-22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public."

Report of Computer Matching Program—United States Postal Service and Small Business Administration (Comparing USPS Payroll and SBA Debtor Records)

A. Participating Agencies. The United States Postal Service (USPS) is the recipient agency and will perform the computer match with debtor records provided by the Small Business Administration (SBA), the source agency in this matching program.

B. Purpose of the Matching Program. This matching program will compare USPS payroll and SBA delinquent debtor files for the purposes of identifying postal employees who may owe delinquent debts to the federal

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government under certain programs administered by SBA. The pay of an employee identified and verified as a delinquent debtor may be offset under the provisions of the Debt Collection Act of 1982 when voluntary payment is not made.

C. Legal Authorities Authorizing Operation of the Match. This matching program will be undertaken under the authority of the Debt Collection Act of 1982 (Public Law 97-365) which authorizes federal agencies to offset a federal employee's salary as a means of satisfying delinquent debts owed to the United States.

D. Categories of Individuals Matched and Identification of Records Used. The systems of records maintained by the participant agencies under the Privacy Act of 1974, as amended, from which records will be disclosed for the purpose of this matching program are:

1. USPS will use records from its system "Finance Records—Payroll System, USPS 050.020" containing records about approximately 850,000 employees. Disclosure will be made pursuant to routine use No. 24 of USPS 050.020 which last appeared at 54 FR 43667, dated October 26, 1989, amended at 55 FR 20554, dated May 17, 1990 and 56 FR 13505, dated April 2, 1991.

2. SBA will use records from its "Loan Case File, SBA 075" containing approximately 100,000 debtor records, of which approximately 10,000 debtor records, of which approximately 10,000 pertain to delinquent loans.

E. Description of the Matching Program. The SBA will provide to USPS a magnetic computer tape containing the names, social security numbers (SSN), home address and work location of its loan defaulters. By computer, the USPS will compare that information with its payroll file, establishing matched individuals (i.e. "hits") on the basis of like SSNs. For each matched individual, the USPS will provide to SBA the name, SSN, home address and work location. SBA will screen that data to verify that the matched individual is in fact a delinquent debtor not in a repay status. The identity and debtor status of an individual will be verified by SBA through a review of its manual application and payment files and independent inquiries as needed.

The Debt Collection Act requires SBA to provide the suspected debtor with certain due process rights including 30 days advance notice and an opportunity to contest the alleged debt. Only after SBA has afforded the debtor these opportunities and certified over the signature of an authorized agency official that all due process procedures have been followed will involuntary offset be made.

F. Beginning and Ending Dates of the Matching Program. The matching program is expected to begin in November 1991 and to continue in effect for a period not to exceed 18 months. The agreement may be extended for one additional year beyond that period if, within 90 days prior to the actual expiration date, the Data Integrity Boards of the USPS and SBA find that the program will be conducted without change and each party certifies that the program has been conducted in compliance with the Matching Agreement.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91-30000 Filed 12-16-91; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30057; File No. SR-CBOE-91-38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Administration of the Floor Member Qualification Examination

December 10, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 12, 1991, the Chicago Board Options Exchange, Inc. ("CBOE") or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is filing this proposed rule change pursuant to a Commission request that all qualification examinations administered by the Exchange be filed with the Commission. Accordingly, the CBOE has submitted its Floor Member Qualification Examination ("Exam") for Commission review and approval. The Exchange states that the Exam is designed specifically to test applicants' knowledge in a variety of areas, including general trading principles and procedures as well as CBOE rules and policies.

The text of the proposed rule is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Commission requires that all self-regulatory organizations file for review and approval all practices imposing qualification standards.[2] In a letter dated April 8, 1991, the Commission specifically requested that the CBOE submit as proposed rule changes all qualification examinations administered by the Exchange. Accordingly, the CBOE is submitting the contents of its qualification examination and related materials as a proposed rule change in response to this Commission request.

The CBOE administers only one qualification examination, the Floor Member Qualification Examination.[3] Pursuant to CBOE Rule 3.9(c)(2), all applicants for CBOE membership who are "seeking trading privileges" are required to take the Exam, which includes individual members and the nominees of member organizations.[4] The same examination is given regardless of whether the applicant is seeking to act in the capacity of a floor broker or a market-maker. Moreover, in addition to new membership applicants and nominees, if a member has been off a seat or on inactive nominee status for more than one year, the Exchange requires such person to retake the Exam.

The Exam is administered by the Options Institute, which is the educational arm of the Exchange, and offered approximately one time per month. Each test consists of 100 questions, with a score of 75% or better required to pass. According to CBOE Rule 3.4(b), membership will be denied by the Membership Committee where the applicant has failed the Exam. The applicant must then wait 30 days before retaking the Exam if he or she fails it once, 60 days if a second attempt is failed, and 120 days if a third or subsequent attempt is failed.[5]

The CBOE states that the Exam was specifically designed for CBOE membership applicants in order to test the applicants' knowledge in a variety of areas, including general trading principles and procedures as well as specific CBOE rules and policies.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, and furthers the objectives of section 6(b)(5), 6(c)(3)(A) and 7(c)(3)(B), in particular. The Exchange further states that the proposed rule change is designed to examine the training, experience, and competence of applicants for CBOE membership and verify such applicants' qualifications for Exchange membership. In addition, the CBOE believes that the proposed rule change serves to protect investors and the public interest by helping to assure member competence.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 7, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-30063 Filed 12-16-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30048; File Nos. SR-PSE-91-33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to Options on Preferred Stock and American Depository Receipts

December 9, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that the Pacific Stock Exchange, Inc. ("PSE"), on November 20, 1991, filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE requests approval to list options on preferred stocks and American Depository Receipts ("ADRs") that meet established uniform options listing standards and guidelines.[1] Specifically, the Exchange proposes to amend its uniform options listing standards rules to provide that, if a preferred stock or an ADR meets the Exchange's current initial listing standards criteria, then the preferred stock or the ADR is appropriate for options trading.

The text of the proposed rule change is available at the Office of the Secretary, PSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange is filing its proposal to establish its policy that, like common stock, securities other than common stock will be required to meet the standards and guidelines set forth in the Exchange's uniform options listing standards rules, in order to be approved for listing and trading on the Exchange.[2] To that end, the Exchange is proposing that its options listing standards rules be amended to include preferred stock or ADRs as a security which is appropriate for options trading.

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[1] On November 25, 1991, the CBOE amended the filing to provide that it was submitted pursuant to section 19(b)(2) of the Act instead of section 19(b)(3)(A) of the Act, allowing for notice and comment rather than summary effectiveness.

[2] *See* Securities Exchange Act Release No. 17258 (October 30, 1980), 45 FR 73906.

[3] *See* CBOE Rule 3.9(c)(2).

[4] *See* CBOE Rules 8.71 and 8.2.

[5] *See* CBOE Rule 3.4(b).

[1] *See* PSE Rule 3.6.

[2] On August 29, 1991, the Commission approved uniform proposals by the options exchanges to lower the options listing standards. *See* Securities Exchange Act Release No. 29628 (August 29, 1991), 56 FR 43949 ("Options Listing Standards Approval Order"). In footnote eleven of that approval order, the Commission stated that the "Exchanges must file separate rule changes pursuant to section 19(b) of the Act for options on securities other than common stock."

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The Exchange believes the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5) in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 7, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-30065 Filed 12-16-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18434; File No. 812-7747]

MB Variable Life Insurance Company, et al.

December 10, 1991.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: MB Variable Life Insurance Company ("MB Variable"), Separate Account B of MB Variable Life Insurance Company (the "Account"), and Directed Services, Inc. ("DSI").

RELEVANT 1940 ACT SECTIONS: Exemptions requested pursuant to section 6(c) from sections 2(a)(35), 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF THE APPLICATION: Applicants seek an order to permit the deduction of mortality and expense risk charges from the assets of the Account under a deferred variable annuity contract and an immediate variable annuity contract, and to permit the deduction of a premium-based sales load from the accumulation value of the Account.

FILING DATES: The application was filed on July 1, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m., on January 6, 1992. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o MB Variable Life Insurance Company, 909 Third Avenue, 19th Floor, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Michael V. Wible, Senior Attorney, at (202) 272-2026, or Heidi Stam, Assistant Chief, Office of Insurance Products (Division of Investment Management), at (202) 272-2060.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. MB Variable is a stock life insurance company organized under the laws of Minnesota on January 2, 1973. From January 2, 1973 through December 31, 1987, the name of the company was St. Paul Life Insurance Company. On December 31, 1987, the company was renamed Golden American Life Insurance Company ("Golden American"). On March 7, 1988, all of the stock of Golden American was acquired by The Golden Financial Group, Inc., a financial services holding company. On October 19, 1990, The Golden Financial Group, Inc. merged with and into MBL Variable, Inc., a wholly-owned direct subsidiary of The Mutual Benefit Life Insurance Company ("Mutual Benefit"). On January 1, 1991, MBL Variable, Inc. became a wholly-owned indirect subsidiary of Mutual Benefit and Golden American became a wholly-owned direct subsidiary of Mutual Benefit. Golden American's name has been changed to MB Variable in the state of Minnesota and is in the process of being changed in other jurisdictions.

2. The Account is a distinct separate investment account of MB Variable which acts as a funding vehicle for a deferred variable annuity ("Deferred Annuity") and an immediate variable annuity certain ("Annuity Certain") (the Deferred Annuity and Annuity Certain are collectively referred to as the "Contracts"). DSI serves as the principal underwriter for and distributor of the Contracts.

3. The Deferred Annuity is a flexible premium payment contract which provides for an initial premium payment and allows for subsequent premium payments, if desired. The Contract owner is under no obligation to make additional payments.

[3] 17 CFR 200.30-3(a)(12) (1990).

4. The Annuity Certain is an immediate annuity which provides for a single premium payment by the Contract owner and variable annuity payments over a fixed period of time.

5. The sales loads imposed under the Contracts may be structured in two ways. Under Contracts currently being offered, deferred loading at a maximum rate of 7.50% of each payment is deducted from each premium payment. If the payment received at issue on one Contract or several simultaneously purchased Contracts exceeds specified limits, the Applicants may reduce this load. This charge is allocated to cover distribution charges. All deferred loading applicable to initial or additional premium payments is deducted by MB Variable at the time of payment but is advanced back to the investment divisions of the Account and is recovered periodically by MB Variable from the divisions in equal installments over a time period specified in the Contracts. If the Contract owner surrenders a Contract, any remaining deferred loading will be recovered by MB Variable a that time. A portion of the deferred loading will be recovered by MB Variable in connection with partial withdrawals in excess of 15% of accumulation value. For purposes of the provisions of the 1940 Act applicable to sales load, the deferred loading is a front-end sales load. The Applicants are not relying on rule 6c-8 in connection with this charge.

6. In the future, MB Variable may offer contracts with the combination of a premium-based sales load and a contingent deferred sales load in lieu of the deferred sales load described above. These charges are allocated to cover distribution expenses. MB Variable will deduct the premium-based sales load from the accumulation value in an amount equal to a maximum of 7.50% of each premium payment. The premium-based charge will be deducted in equal installments for a period of not more than ten years or until such time as the Contract owner surrenders the Contract or annuitizes.

7. A contingent deferred sales load may also be deducted. If a Contract owner surrenders a Contract during the first ten years after a premium has been paid, the maximum contingent deferred sales load will be 7.50% of such premium in year one and will decline to zero after year ten. A contingent deferred sales load may also be deducted for partial withdrawals in excess of 15% of the accumulation value. MB Variable will monitor sales load on the individual Contract owner basis to ensure that the sum of the premium-based sales load and any contingent deferred sales load will not exceed 9.00% of each premium payment. Once a Contract is purchased, the sales load will not increase. Applicants are relying on Rule 6c-8 to deduct the contingent deferred sales load.

8. In a Deferred Annuity, an annual administrative charge of $40 is deducted in equal installments on each Contract processing date from the accumulation value of a Contract to reimburse MB Variable for the anticipated actual cost of administrative expenses relating to the Contract. There may also be an asset-based administrative charge accrued daily, not to exceed on an annual basis 0.10% of the assets of each Contract. In certain versions of the Contract which do not have an asset-based administrative charge, the per policy administrative charge may be charged by MB Variable. However, the charge is guaranteed not to exceed $60 annually. The administrative charge assessed under the Contract remains in effect for the life of the Contract.

9. In certain versions of the Annuity Certain, an administrative charge of 0.25% is applied to single premiums of less than a specified minimum in the same manner and over the same time period as the deferred load. The specified minimum is determined taking into account administrative cost savings based on volume. The administrative charge is to cover MB Variable's ongoing administrative expenses and will not exceed the cost of services to be provided over the life of the Contract. There may also be an asset-based administrative charge accrued daily, not to exceed 0.10% annually of the assets of each Contract.

10. The Applicants submit that the imposition of a sales charge in the form of a premium-based charge to be deducted from accumulation value is more favorable to a Contract owner than the deduction of sales charge from premiums paid; the conventional way of imposing such charges. The amount of the Contract owner's investment in the Account is not reduced as it would be if these charges were taken in full directly from premiums paid. Moreover, the total amount charged to any Contract owner is no greater than it would be if these charges were taken from premiums paid. Finally, the fact that the entire amount of the charge has not been deducted will favorably affect the amount of the death benefit. As a result, the Applicants submit that Contract owners will obtain the advantages described above, which arise from the deferred nature of the charge, without incurring any additional cost.

11. Accordingly, the Applicants request exemption from sections 2(a)(35), 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the premium-based sales load to be deducted from accumulation value in the manner described above.

12. In the Deferred Annuity, MB Variable guarantees a death benefit payable to the beneficiary if the Contract owner or Annuitant dies prior to the annuity commencement date. MB Variable imposed a charge for the guaranteed death benefit under old Contracts and may in the future offer Contracts for which it will impose a charge. This charge is not an asset-based charge. Rather, it is an account charge imposed to compensate MB Variable for the risk that the guaranteed death benefit due under a Deferred Annuity when the annuitant dies during the accumulation phase may exceed the normal death benefit otherwise payable. In the Deferred Annuity, the guaranteed death benefit charge would be at a maximum rate of $1.20 per $1,000.00 of guaranteed death benefit per year. To the extent that a guaranteed death benefit charge is imposed with respect to a particular Deferred Annuity Contract, the mortality and expense risk charge will be limited to a level such that the sum of the mortality and expense risk charge and an asset-based approximation of the guaranteed death benefit charge does not exceed 1.25% of the assets in a division of the Account. The Applicants have previously received the exemptive relief necessary to deduct this charge for the guaranteed death benefit.

13. With respect to Contracts issued on a prospective basis, the daily mortality and expense risk charge will be at the maximum rate of 0.003446% (equivalent to an annual rate of 1.25%) of the assets in each division of the Account. In the Deferred Annuity, approximately 0.75% is allocated to the mortality risk and 0.50% is allocated to the expense risk. In the Annuity Certain, approximately 0.625% is allocated to the mortality risk and 0.625% is allocated to the expense risk. The mortality and expense risk charge is paid daily to MB Variable to compensate for the mortality and expense risk MB Variable assumes under the Contract. The Applicants request an exemption from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to deduct the mortality and expense risk charge under the Contracts.

14. The mortality risk assumed by MB Variable arises from its obligations to continue to make annuity payments under the Contracts determined in

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accordance with the guaranteed annuity tables and other provisions of the Contracts, regardless of how long each annuitant lives and regardless of how long all payees as a group live. The mortality risk under the Deferred Annuity is the risk that, after annuitization or upon selection of an annuity option with a life contingency, annuitants will possibly live longer than indicated by MB Variable's actuarial projections, resulting in higher than expected payments during the payout phase, since the payment options are guaranteed to be not less than the tables discussed in the Deferred Annuity. In the Deferred Annuity, MB Variable also assumes a risk to pay out a guaranteed death benefit if the death benefit is in excess of the accumulation value.

15. In the Annuity Certain, the mortality risk assumed by MB Variable relates to the fact that, at all times, MB Variable will offer the option to convert the Annuity Certain, which does not provide for payments based on life contingencies, to one or more annuity contracts that provide for payments based on life contingencies. The mortality risk assumed by MB Variable is the risk that annuitants, or beneficiaries after the death of the annuitant, will choose one such option and will possibly live longer than MB Variable's actuarial projections indicate, resulting in higher than expected payments during the payment phase, since any payment option is guaranteed to be not less than the tables discussed in the Annuity Certain.

16. In addition, MB Variable assumes a risk that the charges for the administrative expenses may not be adequate to cover such expenses.

17. If the charges under the Contracts are insufficient to cover the actual cost of the mortality and expense risk, the loss will fall on MB Variable; conversely, if the deduction proves more than sufficient, the excess will be profit to MB Variable. Any profits resulting to MB Variable from the mortality and expense risk charge can be used by MB Variable, at its discretion, for any business purposes, including distribution expenses relating to the Contracts.

18. With respect to the level of mortality and expense risk charge, the Applicants represent that they have reviewed publicly available information regarding the aggregate level of the mortality and expense risk charge under comparable variable annuity contracts currently being offered in the insurance industry taking into consideration such factors as current charge levels, the manner in which charges are imposed, the presence of charge level or annuity rate guarantees and the markets in which the Contracts will be offered. Based upon the foregoing, the Applicants represent that the mortality and expense risk charge under the Contracts is within the range of industry practice for comparable contracts. The Applicants will maintain and make available to the Commission, upon request, a memorandum outlining the methodology underlying this representation.

19. The Applicants do not believe that the deferred load imposed under the Contracts will necessarily cover the expected costs of distributing the Contracts. Any "shortfall" will be made up from the general account assets which will include amounts derived from the risk charges. MB Variable has concluded that there is a reasonable likelihood that the distribution financing arrangement used in connection with the Contracts will benefit the Account and the Contract owners. MB Variable will keep and make available to the Commission, upon request, a memorandum setting forth the basis for this representation.

20. The Applicants represent that the Account will only invest in underlying funds which have undertaken to have a board of directors/trustees, a majority of whom are not interested persons of any such fund, formulate and approve any plan under rule 12b-1 under the 1940 Act to finance distribution expenses.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-30064 Filed 12-16-91; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2539]

Territory of Guam; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on December 4, 1991, I find that the Territory of Guam constitutes a disaster area as a result of damages caused by Typhoon Yuri which occurred November 27–28, 1991. Applications for loans for physical damage may be filed until the close of business on February 3, 1992, and for loans for economic injury until the close of business on September 4, 1992, at the address listed below:

Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853–4795

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For Economic Injury	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 253906 and for economic injury the number is 749100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: December 5, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91-30083 Filed 12-16-91; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2532; Amdt. #2]

Maine; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated November 27, to the President's major disaster declaration of November 7, to include Knox, Lincoln, and Sagadahoc Counties in the State of Maine as a disaster area as a result of damages caused by a major coastal storm beginning on October 30 and continuing through November 2, 1991.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Hancock, Kennebec and Waldo in the State of Maine may be filed until the specified date at the previously designated location.

Any county contiguous to the above-named primary county and not listed herein has previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is January 6, 1992, and for economic injury until the close of business on August 7, 1992.

The economic injury number assigned to this disaster for the State of Maine is 746100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: December 9, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91-30084 Filed 12-16-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements filed during the Week Ended December 6, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47873.
Date filed: December 3, 1991.
Parties: Members of the International Air Transport Association.
Subject: Reso 024F/033F—Tariff Changes From Madagascar.
Proposed Effective Date: Upon Necessary Government Approvals.

Docket Number: 47874.
Date filed: December 3, 1991.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 524—Fares/charges from Turkey.
Proposed Effective Date: January 1, 1992.

Docket Number: 47875.
Date filed: December 3, 1991.
Parties: Members of the International Air Transport Association.
Subject: COMP Meet/C 0157 dated November 13, 1991, Minutes & Report—5th Joint Cargo Rates Board.
Proposed Effective Date: December 1, 1991.

Docket Number: 47876.
Date filed: December 3, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC23 Reso/P 0475 dated November 20, 1991, Expedited Middle East-TC3 Resos R–1 to R–3, TC23 Reso/P 0478 dated November 21, 1991, Expedited Africa-TC3 Resos R–4 to R–7, TC23 Reso/P 0482 dated November 22, 1991, Expedited Europe-Southwest Pacific Resos R–8.
Proposed Effective Date: January 1, 1992.

Docket Number: 47877.
Date filed: December 3, 1991.
Parties: Members of the International Air Transport Association.
Subject: SNATC/2059 dated October 24, 1991, US-Europe Agreement R–1 to R–16, SNATC/2060 dated October 24, 1991, US-Europe Agreement R–17, SNATC/2064 dated November 27, 1991, Fares Tables.
Proposed Effective Date: January 1, 1992.

Docket Number: 47886.
Date filed: December 4, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC23 Reso/P 0483 dated November 22, 1991, Expedited Europe-Southwest Pacific R–1 to R–4.
Proposed Effective Date: March 1, 1992.

Docket Number: 47887.
Dated filed: December 4, 1991.
Parties: Members of the International Air Transport Association.
Subject: Telex dated November 18, 1991, Mail Vote 523 (Fares from Swtizerland).
Proposed Effective Date: January 1, 1992.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-30026 Filed 12-16-91; 8:45 am]

BILLING CODE 4910-62-M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 6, 1991

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47883.
Date filed: December 4, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 11, 1991.
Description: Application of American Airlines, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity to engage in foreign air transportation of persons, property, and mail between Los Angeles, California, and Nagoya, Japan.

Docket Number: 47896.
Date filed: December 6, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 3, 1992.
Description: Application of Trans World Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations applies for renewal of the authority set forth in its certificate of public convenience and necessity for Route 523, namely to engage in foreign air transportation of persons, property and mail between Baltimore, Maryland and London, United Kingdom.

Docket Number: 47900.
Date filed: December 6, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 3, 1992.
Description: Application of Delta Air Lines, Inc., pursuant to section 401 of the Act and subpart Q of the regulations applies to renew its certificate of public convenience and necessity to permit Delta to continue to provide scheduled air transportation of persons, property and mail between Cincinnati, Ohio and London (Gatwick), England.

Docket Number: 47901.
Date filed: December 6, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 3, 1992.
Description: Application of Lauda Air Luftfahrt AG, pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a foreign air carrier permit authorizing it to engage in scheduled foreign air transportation of persons, property and mail between a point or points in Austria and points in the United States.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-30025 Filed 12-16-91; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

[Docket No. 91-60; Notice 1]

Solectria Corporation; Receipt of Petition for Temporary Exemption From Seven Federal Motor Vehicle Safety Standards

Solectria Corporation of Arlington, Massachusetts, has applied for a temporary exemption from seven Federal motor vehicle safety standards for passenger cars that it converts to electric power. The basis of the petition is that compliance with the standards would cause substantial economic hardship.

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Notice of receipt of the petition is published in accordance with agency regulations on the subject (49 CFR part 555), and does not represent any judgment of the agency on the merits of the petition.

Petitioner intends to convert new Geo Metro passenger cars to electric power. The vehicles, seating 2, 4, and 5 passengers, would be marketed as the Solectria Force. The vehicles to be converted have been certified by their original manufacturer to conform to all applicable Federal motor vehicle safety standards. However, petitioner has determined that the vehicles may not conform with all or part of seven Federal motor vehicle safety standards after their modification. The standards for which exemptions are requested are discussed below.

1. Standard No. 103, Windshield Defrosting and Defogging Systems.

Petitioner states that the Force relies on an electric resistance/forced hot air heater to provide cabin heat and defrosting. While it believes that the heating system will perform similarly to the original one, recertification will be required. It requests an exemption of one year for testing for compliance, and such subsequent modifications as may be required to certify compliance with the standard.

2. Standard No. 204, Steering Control Rearward Displacement.

3. Standard No. 208, Occupant Crash Protection.

4. Standard No. 212, Windshield Mounting.

5. Standard No. 219, Windshield Zone Intrusion.

Exemption is requested from these four standards for a period of two years. The conversion of the vehicle to electric power results in a net weight increase of 250 pounds for the 4- and 5-passenger models, which is 15% over the weight at which the vehicle was originally certified, and of 350 pounds for the 2-passenger model, which is 20% over original certification weight. Petitioner states that "thirty-mile per hour barrier crash testing is needed to determine the actual energy absorbing characteristics of the three Force configurations."

6. Standard No. 214, Side Door Strength.

7. Standard No. 216, Roof Crush Resistance.

These standards require vehicle components to be able to withstand a crush force determined by the vehicle curb weight. As noted above, the Force's curb weight, is 15% and 20%, depending on the model, over the weight of the vehicle originally certified to meet these standards. The petitioner requests an exemption of two years after which it expects to be able to certify compliance with these standards.

Petitioner argues that to require immediate compliance would create substantial economic hardship. As of September 30, 1990, the end of its first fiscal year, the company had a net income of $8,185.66. At the end of the first ten months of fiscal 1991, it had an additional net income of $7,360.26. Aside from testing for compliance with Standard No. 103, the cost for "one set" of testing for compliance with Standard No. 103, the cost for "one set" of testing for the remaining standards on one vehicle is approximately $30,000, exclusive of the costs of delivering the vehicle to the test facility. Because the Force will be available in three configurations, the petitioner believes that it must test all configurations for compliance. It estimates a total testing cost of $216,100. An exemption would permit vehicle sales and the generation of cash permitting testing while the exemptions are in effect. It plans to produce ten vehicles in its first year of production, with an additional 50 vehicles in the second year. A denial of the petition would delay its production while it attempted to test for conformance, but the costs of testing immediately would require a retail price of $50,000 for a Force. Petitioner doubts that it could sell a car at this price, and that, accordingly, it would be forced out of business in the year following a denial of its petition.

According to the petitioner, granting the exemption would be in the public interest and consistent with the National Traffic and Motor Vehicle Safety Act by helping to relieve environmental problems associated with automotive transportation. It believes that "the Force can make a very positive contribution to the country's clean transportation needs quickly and effectively."

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 16, 1992.

(15 U.S.C. 1410; delegations of authority at 49 CFR 1.50, and 501.8)

Issued on December 11, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-30022 Filed 12-16-91; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 91-45; Notice 2]

Thomas Built Buses, Inc.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Thomas Built Buses, Inc. (Thomas Built), of High Point, North Carolina, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.205, Federal Motor Vehicle Safety Standard No. 205, "Glazing Materials." The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on September 19, 1991, and an opportunity afforded for comment (56 FR 47519).

Paragraph S6.2 of Standard No. 205 specifies that a number designating the material used and the symbol "DOT" shall be marked on all glazing materials by prime glazing material manufacturers.

Between February 1980 and April 1991, Thomas Built produced 2,763 buses and school buses, both over and under 10,000 pounds GVWR (for 16 to 72 passengers) which did not comply with the above mentioned requirements of Standard No. 205. The material designation and the symbol "DOT" were not marked on the wire reinforced glass installed in the lower portion of the rear emergency door. Thomas Built supported its petition with the following:

Although the glass did not have the DOT mark it meets all of the requirements of Standard No. 205 and ANSI Z26.1 A test report (#506406) from an independent testing facility was included with the petition.

Finally, the wire reinforced glass was installed only in the lower portion of the rear emergency door. This is permissible under both Standard No. 205 and ANSI Z26.1.

No comments were received on the petition.

Standard No. 205 is one of several motor vehicle equipment safety standards which requires that the DOT symbol be affixed to the item as the certification of compliance required by section 114 of the National Traffic and Motor Vehicle Safety Act. NHTSA has regarded previous instances of omission of the DOT symbol as a failure to certify, rather than as a noncompliance with a Federal motor vehicle safety standard that requires notification and remedy. There is no reason to regard the petitioner's failure to label its glazing with the DOT symbol in a different light.

The materials designation requirement ensures that the correct material will be used if the original glazing material has to be replaced. The designation that was not applied in this instance was "AS8". However, Standard No. 205 is permissive with respect to the type of glazing that may be used in the bottom of the rear door of school buses, and Thomas could have elected to use other types such as AS4 or AS1, the required glazing for windshields, in its original manufacture of the vehicle. Therefore, the agency has concluded that the failure to mark the rear glazing does not present a negative safety implication if the glazing is replaced by a type other than AS8. As the petitioner has noted, the glazing meets all other requirements for its type. Similar labelling failures were determined to be inconsequential after consideration of petitions submitted by Wayne Corporation (Docket No. IP86-7), and Cadillac Plastics & Chemical Company (Docket No. IP90-3).

Therefore, in consideration of the foregoing, it is found that the petitioner has met its burden of persuasion that the noncompliance described above is inconsequential as it relates to motor vehicle safety, and its petition is hereby granted.

Authority: 15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 501.8.

Issued December 11, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-30021 Filed 12-16-91; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before January 16, 1992.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application number	Applicant	Regulation(s) affected	Nature of exemption thereof
10710–N	Hawkins Chemical Inc., Minneapolis, MN	49 CFR 176.67(i), 176.67(j)	To authorize chlorine filled tank cars to stand with unloading connections attached during unloading without the physical presence of an unloader. (mode 2).
10712–N	City of Grand Rapids, Grand Rapids, MI	49 CFR 174.67(i)(j)	To authorize chlorine filled tank cars to stand with unloading connections attached during unloading without the physical presence of an unloader. (mode 2).
10713–N	Intercontinental Packaging Corporation, Tuckahoe, NY.	49 CFR 173.306	To manufacture, mark and sell a non-DOT specification polyethylene terephthalate plastic aerosol container with an inner flexible collapsible pouch for shipment of a nonflammable compressed gas. (modes 1, 3, 5).
10714–N	FIBA Compressed Gas Equipment, Westboro, MA.	49 CFR 173.304(a)(2)	To authorize the use of DOT Specification 3A, 3AAX and 3T cylinders forming part of a tube trailer or tube skids, for transportation of fluorocarbon trifluoromethane, classed as a non-inflammable liquified gas. (modes 1, 3).
10715–N	U.S. Department of Defense, Washington, DC.	49 CFR 173.88, 173.91	To authorize the transportation of Class B explosives and fireworks as part of aircrew survival gear. (mode 5).
10716–N	The West India Rum Refinery Ltd., Barbados, West Indies.	49 CFR 172.400(a), appendix B part 107, subchapter B.	To authorize the transportation of various distilled spirits, classed as flammable liquids, in non-DOT specification stainless steel portable tanks equipped with pressure and vacuum relief valves. (modes 1, 3).
10717–N	Union Tank Car Company, East Chicago, IN	49 CFR 173.31, Retest Table 1	To extend retest provisions for specially designed DOT specification tank cars, which are in acid service and are over 22 years of age, from annually to 3 year intervals. (mode 2).
10718–N	Tesco Resources, Inc. Prospect, CT	49 CFR 173.3(c)	To authorize the manufacture, mark and sell of an emergency collapsible overpack container for use in transporting leaking containers from spill scenes. (modes 1, 2, 3, 4, 5).

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Note: Notice of Application No. 10693–N Vertex Chemical Corporation that appeared at page 51747 of the **Federal Register** for October 15, 1991, should have appeared as follows:

To authorize chlorine filled tank cars to stand with unloading connections attached during unloading *without* the physical presence of an unloader.

Notice of Application No. 10701–N Kin-Tek Leb Inc. that appeared at page 57552 of the **Federal Register** for November 12, 1991, should have appeared 10719–N Kin-Tek Lab. Inc.

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on December 11, 1991.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 91–30023 Filed 12–16–91; 8:45 am]

BILLING CODE 4910–60–M

Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications for Modification of Exemptions or Applications to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before January 2, 1992.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
9374–X	Poly Processing Company, Inc., Monroe, LA [1]	9374
9941–X	Thiokol Corporation—Huntsville Division, Huntsville, AL [2]	9941
10062–X	Callery Chemical Company, Pittsburgh, PA [3]	10062
10594–X	U.S. Department of Energy, Washington, DC [4]	10594
10706–X	Energy & Environmental Technology Company, Southfield, MI [5]	10706
10709–X	Exxon Chemical Company, Houston, TX [6]	10709

[1] To modify the exemption to authorize shipment of isothiazilone formulations without a need for venting or a restriction against bottom outlets.
[2] To modify exemption to authorize shipment of two additional Rocket Motor assemblies (Castor IVA) and Rocket Motor (Castor IVB).
[3] To modify the exemption to change the heater well on a welded steel cylinder from a schedule 80 stainless steel pipe to a "schedule 40" stainless steel pipe for shipment of potassium metal, classed as a flammable solid.
[4] To modify the exemption to clarify the reporting requirements relating to an incident during transportation.
[5] To reissue exemption originally issued on an emergency basis to authorize shipment of a flammable liquid contained in aluminum canisters overpacked in steel cylindrical packagings (missile containers).
[6] To reissue exemptions originally issued on basis to authorize shipment of certain mixtures of flammable and corrosive liquids in stainless steel DOT Specification 57 portable tanks.

Application No.	Applicant	Parties to exemption
6614–P	Mid-State Chemical & Supply Corp., Indianapolis, IN	6614
6614–P	Hasa of Arizona, Inc., Eloy, AZ	6614
6614–P	Cinderella, Inc., Saginaw, MI	6614
6691–P	McGinnis Welding Supply, Wichita Falls, TX	6691
6691–P	Capital Welding Supply Company, Little Rock, AR	6691
7909–P	DowBrands, Inc., Indianapolis, IN	7909
7909–P	Marion Merrell Dow, Inc., Cincinnati, OH	7909
7929–P	ECONEX, Inc., Pittsfield, IL	7929
8009–P	Southern California Gas Company, Los Angeles, CA	8009
8236–P	TAC Manufacturing, Inc., Jackson, MI	8236
8451–P	ECONEX, Inc., Pittsfield, IL	8451
8526–P	Certified Distribution Services, Inc., Cleveland, OH	8526
8526–P	Transport Corporation of America, Inc., Minneapolis, MN	8526
8556–P	Teisan Kabushiki Kaisha	8556
8627–P	Good Chemical & Testing Co., Inc., Hennessey, OK	8627
8723–P	Buckley Powder Company, East Englewood, CO	8723
8723–P	Ireco of Florida, Inc., Miramar, FL	8723
8966–P	Hasa of Arizona, Inc., Eloy, AZ	8966
9571–P	Teledyne McCormick Selph, Hollister, CA	9571
9607–P	International Lubrication Laboratories, Inc., Wichita, KS	9607
9610–P	Alliant Techsystems, Inc., New Brighton, MN	9610
9953–P	Burlington Motor Carriers, Inc., Daleville, IN	9953
9990–P	Alliant Techsystems, Inc., New Brighton, MN	9990
10298–P	Heli-Lift, Inc., Dallas, TX	10298

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Application No.	Applicant	Parties to exemption
10504–P	Silicon Systems, Inc., Santa Cruz, CA	10504
10660–P	Chemsyn Science Laboratories, Lenexa, KS	10660

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on December 11, 1991.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 91–30024 Filed 12–16–91; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

December 11, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0115.
Form Number: ATF F 5220.4.
Type of Review: Extension.
Title: Monthly Report—Export Warehouse Proprietor.
Description: Proprietors who are qualified to operate export warehouses that handle untaxpaid tobacco products are required to file a monthly report. This report summarizes all transactions by proprietors including receipts, dispositions and onhand quantities. ATF F 5220.4 is used for product accountability and is examined by regional office personnel.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 195.
Estimated Burden Hours Per Respondent: 49 minutes.
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 1,895 hours.

OMB Number: 1512–0192.
Form Number: ATF REC 5110/02 and ATF F 5110.11.
Type of Review: Extension.
Title: Distilled Spirits Plants Warehousing Records and Reports.
Description: The information collected is used to account for proprietor's tax liability, adequacy of bond coverage and protection of the revenue. The information also provides data to analyze trends, audit plant operations, monitor industry activities and compliance to provide for efficient allocation of field personnel plus provide for economic analysis.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 243.
Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours.
Frequency of Response: Monthly.
Estimated Total Reporting/Recordkeeping Burden: 5,832 hours.

OMB Number: 1512–0205.
Form Number: ATF REC 5110/01 and ATF F 5110.40.
Type of Review: Extension.
Title: Distilled Spirits Records (5110/01) and Monthly Report of Production Operations (5110.40).
Description: The information is used to account for proprietor's tax liability, adequacy of bond coverage and protection of the revenue. The information also provides data to analyze trends in the industry, and plan efficient allocation of field resources, audit plant operations and compilation of statistics for government economic analysis.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 143.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 3,432 hours.
Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–30056 Filed 12–16–91; 8:45 am]

BILLING CODE 4810–31–M

Public Information Collection Requirements Submitted to OMB for Review

December 11, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0069.
Form Number: CF 3461 and CF 3461 Alternate.
Type of Review: Reinstatement.
Title: Immediate Delivery Application.
Description: These form are used by importers and brokers to provide Customs with the necessary information in order to examine and release imported cargo.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Responses: 6,100.
Estimated Burden Hours Per Response: 8 minutes.
Frequency of Response: On Occasion.
Estimated Total Reporting Burden: 838,158 hours.
Clearance Officer: Ralph Meyer (202) 566–4019, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Department Reports Management Officer.

[FR Doc. 91–30057 Filed 12–16–91; 8:45 am]

BILLING CODE 4820–02–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–86]

Possible Action in Response to the People's Republic of China's Intellectual Property Laws, Policies, and Practices; Location of the Trade Policy Staff Committee (TPSC) Public Hearings

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice of public hearing location.

SUMMARY: On Monday, December 9, 1991, the **Federal Register** published a notice regarding a public hearing (56 FR 64280) to be held on January 6–7, 1992, and stated that the location would be announced at a later date. The public hearing will be held at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. The hearing room will be posted at the entrance.

FOR FURTHER INFORMATION CONTACT: Questions about the public hearing should be directed to Ms. Carolyn Frank, Executive Secretary, Trade Policy Staff Committee, (202) 395–7210. Question about filing written testimony should be directed to Ms. Dorothy Balaban, Staff Assistant to the Section 301 Committee, (202) 395–3432.

David A. Weiss,

Chairman, Trade Policy Staff Committee.

[FR Doc. 91–30061 Filed 12–16–91; 8:45 am]

BILLING CODE 3190–01–M

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Sunshine Act Meetings

Federal Register
Vol. 56, No. 242
Tuesday, December 17, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Friday, December 20, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

SUMMARY AGENDA: Because of their routine nature, no discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed 1992 Federal Reserve Bank pension supplement.
2. Publication for comment of proposed amendments to Regulation Z (Truth in Lending) relating to home equity lines of credit.

DISCUSSION AGENDA: Please Note That No Discussion Items Are Scheduled for This Meeting.

Note: If an item is moved from the Summary Agenda to the Discussion Agenda, discussion of the item will be recorded. Cassettes will then be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $5 per cassette by calling (202) 452-3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: December 13, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-30167 Filed 12-13-91; 2:40 pm]

BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 10:15 a.m., Friday, December 20, 1991, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed acquisition of reader/sorters and peripheral equipment within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 13, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-30168 Filed 12-13-91; 2:40 pm]

BILLING CODE 6210-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: December 30, 1991 at 10:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings
2. Minutes
3. Ratification List
4. Petitions and complaints: Certain woodworking accessories (Docket Number 1662)
5. Inv. Nos. 731-TA-540, 541 (Preliminary) (Certain Welded Stainless Steel Pipes from Korea and Taiwan)—briefing and vote.
6. Any items left over from previous agenda

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 205-2000.

Dated: December 12, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-30191 Filed 12-13-91; 2:41 pm]

BILLING CODE 7020-02-M

NATIONAL LABOR RELATIONS BOARD

Notice of Meeting

TIME AND DATE: 9:30 a.m., Thursday, December 13, 1991.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. section 552 (c)(2) and (9)(B) (internal personnel matters and matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action).

MATTERS CONSIDERED: Staffing and internal casehandling procedures.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, DC 20570, Telephone: (202) 254-9430.

Dated: Washington, DC., December 12, 1991.

By direction of the Board:

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 91-30166 Filed 12-13-91; 2:39 pm]

BILLING CODE 7445-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 16, 23, and 30, 1991 and January 6, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 16

Monday, December 16

10:00 a.m.
Briefing on Regulatory Application of PRA (Public Meeting)

Tuesday, December 17

10:00 a.m.
Briefing by DOE on Status of Civilian High Level Waste Program (Public Meeting)

Thursday, December 19

10:00 a.m.
Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)
11:30 a.m.
Affirmative/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing on Status of Technical Specifications Improvement Program (Public Meeting)

Week of December 23—Tentative

There are no Commission meetings scheduled for the Week of December 23.

Week of December 30—Tentative

There are no Commission meetings scheduled for the Week of December 30.

Week of January 6—Tentative

Thursday, January 9

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504-1661.

Dated: December 13, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91-30221 Filed 12-13-91; 8:45 am]

BILLING CODE 7590-01-M

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Corrections

Federal Register
Vol. 56, No. 242
Tuesday, December 17, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 235

State Administrative Expense Funds: National School Lunch Program, Special Milk Program for Children, School Breakfast Program, Child and Adult Care Food Program, Food Distribution Program

Correction

In proposed rule document 91-29196 beginning on page 63882 in the issue of Friday, December 6, 1991, make the following corrections:

1. On page 63884, in the table, in the 5th column, in the 21st and 22d entries, "5.000" should read ".5000".

2. On page 63885, in the 2d column, in the 2d paragraph, in the 19th line, "obligated" should read "unobligated".

3. On page 63889, in the 3d column, under the heading "State agency", in the 12th entry, "OK" should read "OR".

§ 235.4 [Corrected]

4. On page 63891, in the second column, in § 235.4, in amendatory instruction 4., paragraph d. was omitted. It should read as follows:

"d. Paragraph (b)(1) is amended by removing the words "For each fiscal year, FNS shall allocate " and the word "agency"."

5. On the same page, in the third column, in § 235.4(c), the last sentence was printed incorrectly. It should read as follows:

"The remaining funds shall be allocated to the State agency administering the child care component of the Child and Adult Care Food Program."

§ 235.11 [Corrected]

6. On page 63893, in the first column, in § 235.11:

a. In amendatory instruction b., in the third line, "§ 235.(4)(a)(1)" should read "§ 235.4(a)(2)".

b. In amendatory instruction c., in the third line, "§ 235.4(a)(2)" should read "§ 235.4(a)(1)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91F-0424]

Sherex Chemical Co., Inc.; Filing of Food Additive Petition

Correction

In notice document 91-28606 appearing on page 61022 in the issue of Friday, November 29, 1991, make the following correction:

In the second column, in the **SUPPLEMENTARY INFORMATION**, in the fifth line, "Sherex" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0354]

New Monographs and Revisions of Certain Food Chemicals Codex Monographs; Opportunity for Public Comment

Correction

In notice document 91-28160, beginning on page 58910, in the issue of Friday, November 22, 1991, make the following correction:

On page 58910, in the third column, under **DATES:**, in the second line, "1991" should read "1992".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Notice of Meetings

Correction

In notice document 91-28103, beginning on page 58911, in the issue of Friday, November 22, 1991, make the following correction:

On page 58912, in the second column, in the first full paragraph, in the first line, "*One*" should read "*Open*".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 220

[Docket No. R-91-1567; FR-3081-P-01]

RIN 2502-AF59

Smoke Detectors for HUD-Assisted or Insured Rental Housing and Public and Indian Housing

Correction

In proposed rule document 91-27952 beginning on page 59150 in the issue of Friday, November 22, 1991, make the following corrections:

On page 59152, in the second column, amendatory instruction 8, and the following section heading shoud read "Subpart C of part 220 would be amended by adding § 220.510 to read as follows:

§ 220.510 Smoke detectors."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-940-4214-10; CACA 28888, CACA 28889, CACA 28890, CACA 28891, CACA 28892, CACA 28893, CACA 28894, CACA 28895, CACA 28896]

Proposed Withdrawals and Opportunity for Public Meeting; California

Correction

In notice document 91-24960, beginning on page 52053, in the issue of Thursday, October 17, 1991, make the following corrections:

1. On page 52053:

a. In the third column, in the land description, under T. 20 N., R. 11 E., in Sec. 28, "NE¼SE¼," should read "NE¼SE¼SW¼,".

b. In the same column, in the land description, under T. 19 N., R. 9 E., in Sec. 1, "N½S¼SE¼." should read "N½S½SE¼."

c. In the same column, in the land description, under T. 16 N., R. 8 E., in Sec. 28, "N½N½NW¼SE¼†SE¼." should read "N½N½NW¼SE¼SE¼."

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Notification; "Feasibility Study on Using Molecular Sieves for Diesel NO_x Control"

Correction

In notice document 91-28624, appearing on page 56528, in the issue of Tuesday, November 5, 1991, make the following correction:

On page 56528, in the 2nd column, in the 11th line from the bottom of the page, "Nisson" should read "Nissan".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87-02; Notice 5]

RIN 2127-AE22

Federal Motor Vehicle Safety Standards; Seat Belt Assembly Anchorages

Correction

In proposed rule document 91-28996, beginning on page 63473, in the issue of Wednesday, December 4, 1991, make the following correction:

§ 571.210 [Corrected]

On page 63474, in the third column, in § 571.210, S 4.3.1.1(b), in the second line, "lime" should read "line".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket No. HM-198A; Amdt. Nos. 171-13, 172-125, 173-227, 174-69]

RIN 2317-AB31

Elevated Temperature Materials

Correction

In rule document 91-23468, beginning on page 49980, in the issue of Wednesday, October 2, 1991, make the following correction:

§ 173.247 [Corrected]

On page 49990, in the first column, in § 173.247(c)(3), in the sixth line, "(c)(l)" should read "(c)(1)".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 3500

[Docket No. R-91-1558; FR-2955-P-02]

RIN 2502-AF24

Real Estate Settlement Procedures Act; Regulation X; Section 10 Escrow Account Statements

Correction

In proposed rule document 91-29390 beginning on page 64446 in the issue of Monday, December 9, 1991, make the following correction:

The "Initial Escrow Account Statement" appearing on page 64448, in the third column, and continuing on page 64449, in the first column, the first paragraph, is correctly printed below.

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Initial Escrow Account Statement

An escrow account is being established to assure that certain obligations relating to the mortgaged property, such as taxes, insurance premiums and other charges, are paid. The escrow account may include charges that you have agreed voluntarily to have collected. This initial escrow account statement sets forth amounts to be collected, along with your principal and interest payments, to pay anticipated expenses during the first 12 months after your account is opened.

Date first escrow payment due: _____

Your escrow account payment will be $_____ per _____.
(month or other period)

Payee	Anticipated Date Due	Estimated Amount
_____	_____	$_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Estimated Annual Total Due: $_____

These figures are frequently estimates and may be subject to revision during the escrow account computation year. The escrow account normally continues outstanding during the life of the loan. Within 30 days after one year from the first escrow payment date set out above, you will receive an annual statement showing actual receipts and disbursements in your escrow account for the preceding year.

BILLING CODE 1505-01-D

federal register

Tuesday
December 17, 1991

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 10, et al.
New Animal Drugs; Proposed Rules

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 10, 12, 16, 20, 500, 510, 511, and 514

[Docket No. 88N-0058]

RIN 0905-AA96

New Animal Drug Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise the regulations governing the approval, disapproval, and withdrawal of approval for marketing of new animal drugs. FDA is taking this action to make the agency's new animal drug approval process more efficient and to improve the agency's management of applications for marketing new animal drugs. The improvements will help applicants prepare and submit better quality applications and permit FDA to review them more efficiently and with fewer delays. This will benefit both the public and the applicants by facilitating earlier availability and marketing of safe and effective new animal drugs.

DATES: Comments by February 18, 1992.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Bob G. Griffith, Center for Veterinary Medicine (HFV-110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8612.

SUPPLEMENTARY INFORMATION:

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X. Text of the Proposed Rule

I. Introduction

Since 1981, FDA has been reevaluating and revising its regulations for investigational drugs and applications for marketing new drug products. The regulations governing the approval for marketing of new drugs and antibiotic drugs for human use (21 CFR part 314) were substantially revised through a notice of proposed rulemaking (47 FR 46622, October 19, 1982), followed by a final rule (50 FR 7452, February 22, 1985). (These revised regulations are referred to as the NDA Rewrite.)

In 1982, FDA's Center for Veterinary Medicine (CVM) commissioned a task force to review the agency's new animal drug regulations in 21 CFR part 514 with the intention of recommending revisions and streamlining the approval process for new animal drugs. The task force examined FDA's proposal of October 19, 1982, to revise the regulations governing applications for new human drugs and considered their applicability to the approval process for applications for new animal drugs. With certain exceptions, discussed below, the task force recommended that the changes proposed with regard to applications for new (human use) drugs be adopted with regard to applications for new animal drugs. A notice announcing the availability of the task force report was published in the Federal Register of May 20, 1983 (48 FR 22748).

As with the new (human use) drug regulations, this proposed rule for new animal drugs would be supplemented by a number of guidelines to provide specific advice for the collection and presentation of data and information to support approval of a new animal drug application (NADA). For example, format guidelines would address the summary and each of the different technical sections of the application. These guidelines would be in addition to the guidelines that CVM already has made available concerning the design of an adequate and well-controlled study.

Part 514 contains regulations governing applications for new animal drugs and for animal feeds bearing or containing new animal drugs. This proposed rule deals primarily with the approval, disapproval, and the withdrawal of approval for marketing of new animal drugs. Any final rule that is published based upon this proposal will contain a recodification/redesignation table showing how the current sections of the Code of Federal Regulations pertaining to animal feeds will be incorporated into the regulations for new animal drugs. (This proposed rule is also referred to as the NADA Rewrite.)

In a proposed rule published elsewhere in this issue of the Federal Register, FDA is proposing that certain revisions be made in the records and reports requirements for marketed animal drugs. Accordingly, in this proposed rule, FDA is only including a redesignation of § 510.305 as § 514.83 with no change in text.

II. Highlights of the Proposed Rule

The guiding principle of this proposed rule is that FDA's animal drug approval process should be efficient, but thorough, in order to facilitate the approval of new animal drugs that are shown to be safe and effective, to ensure the disapproval of new animal drugs that are not shown to be safe and effective, and to expedite the withdrawal of approval of new animal drugs that are no longer shown to be safe and effective. FDA encourages comments concerning any and all provisions of this proposed rule, including those provisions which differ from the new human drug regulations (21 CFR part 314). The major provisions of this proposed rule are summarized below:

A. Application Format

FDA proposes to follow the format adopted in the NDA Rewrite, codified at 21 CFR 314.50, with some modifications in the section headings and in the types of information to be included in the various sections. The new format would require an applicant to submit a summary of the entire application including labeling, and submit separate, detailed technical sections that contain the data, information, and analyses needed by each of FDA's reviewing disciplines. One of the principal causes of delay in FDA's review of applications is the unavailability of information essential to the agency's reviewers. A typical NADA for a new animal drug intended for use in food animals requires review by various types of scientists, including veterinarians, animal scientists, manufacturing chemists, microbiologists, medical specialists (e.g., parasitologists), residue chemists, toxicologists, environmental scientists, genetic toxicologists, and statisticians. Although NADA's are now submitted in three complete copies, a given reviewer might receive only the information in a particular volume or volumes related to his or her particular discipline and thus might not have in hand basic information on the composition, use, and labeling of the new animal drug under review. The proposed format would permit a complete, informed, and simultaneous review by each of the various scientific reviewers. In addition, the overall summary will facilitate review by CVM officials following completion of the individual review.

B. Safety Update Reports

FDA is proposing to require that new safety information received by the applicant following submission of the NADA be provided to FDA at key points in the review process (proposed § 514.50(d)(3)(ii)). Thus, FDA is proposing to require that the applicant provide to FDA safety updates 4 months following submission of the application, following receipt of an "approvable" letter, and at other times at FDA's request. These safety updates would ensure that FDA's decision on the NADA reflects the most current safety information available.

C. Human Food Safety

Animal drugs are commonly administered to animals used for food. Residues of the animal drugs may be present in the edible tissues or other products of the treated animals. For this reason, section 512(d)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(d)(2)) requires that FDA, in determining whether a new animal drug is safe for use under the conditions prescribed, recommended, or suggested in its proposed labeling, evaluate, among other things, the safety of "any substance formed in or on food" because of the use of the animal drug. See section 201(u) of the act (21 U.S.C. 321(u)), providing that the term "safe" as used in section 512 refers to the health of man or animal. FDA is proposing to set forth the requirements for establishing that a new animal drug will not cause unsafe residues in the edible tissues or other products of treated animals (proposed § 514.50(d)(4) and (5)).

D. Case Report Forms and Data Tabulations

This proposal differs significantly from the NDA Rewrite in that individual animal case report forms would be required to be submitted to FDA when applicable (proposed § 514.50(f)). There are good reasons for this difference from human drug evaluation. Human drug investigation is characterized by a number of strong safeguards to the patient, to ensure safety and confidentiality, adherence to protocols, and close clinical monitoring. The practice of veterinary medicine is not structured in a manner permitting such close control of animal subjects. There are two primary types of veterinary health care: (1) Herd or flock

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management, and (2) individual animal care. The former generally involves large numbers of animals, usually receiving the drug as a group (e.g., in feed or water). Here, individual case report forms are rarely used. Rather, the performance, morbidity, and mortality are reported on the basis of the entire group of animals. FDA will continue to accept and review reports based upon herd or flock evaluations when applicable.

Individual animal treatment, on the other hand, is generally practiced on clinically ill animals or on companion animals in an out-patient clinic setting. Clinical laboratory results, to confirm diagnoses of the condition(s) being treated, are not always available and followup examinations are often not possible. Because of this variability in data gathering procedures, FDA is proposing to require that all case report forms describing individual animal treatment be submitted in the archival copy of the NADA. These reports, reviewed in conjunction with well-controlled laboratory studies, can provide the requisite evidence of the animal drug's safety and effectiveness under field conditions.

E. Environmental Assessment

The NDA Rewrite requires that applicants submit information on the environmental effects of drug manufacture in the manufacturing section of a new drug application but does not require information on the environmental effects of ultimate use. Animal drugs, however, often require an assessment of such effects. For example, drugs used in cattle or poultry can result in relatively large quantities of the drug or its metabolites entering the environment without intervening waste treatment. The environmental effects of such release must be carefully evaluated. For this reason, FDA is proposing to require that each NADA include a separate technical section for environmental data (proposed § 514.50(d)(8)) that is somewhat broader than that found in the NDA Rewrite, e.g., environmental effects information is required concerning ultimate use as well as manufacture.

F. Time Frames for FDA Review

FDA is proposing that, within 180 days from receipt of an application, the agency issue to the applicant an action letter, i.e., an "approval" letter, an "approvable" letter, or a "not approvable" letter, unless the 180-day period is extended through mutual agreement between the applicant and FDA. As is the case now, this time period could be extended if a major amendment is received, but FDA is proposing that the extension be only for the extra time needed to review the amendment. FDA is also proposing to allow the submission of a "minor" amendment without triggering any extension of the review time for the application.

FDA is proposing to define the procedure and time frame for "filing" an application within the meaning of section 512(b) of the act (21 U.S.C. 360b(b)) (proposed § 514.101). The current regulation (21 CFR 514.110) provides 30 days for the agency to refuse to file an application when it is obviously incomplete. In the agency's experience, 30 days has been an insufficient period in which to determine the acceptability of an application for "filing." FDA is proposing to provide 60 days for this initial review, a time sufficient to determine an application's acceptability and to either file the application or issue a refusal to file letter.

G. Foreign Data

FDA is proposing to incorporate current FDA policy with respect to the acceptability of foreign data in support of an NADA (proposed § 514.107). An NADA based solely on foreign clinical data may be approved by FDA if: (1) The foreign data reflect appropriate animal treatment in the United States, considering breeds, husbandry practices, environment, and disease patterns; (2) the studies have been conducted by qualified clinical investigators of recognized competence; and (3) the data may be considered valid without the need for an FDA on-site inspection or, if FDA determines that such an inspection is necessary, FDA can validate the data through an on-site inspection or other appropriate means. Use of these criteria on a case-by-case basis would ensure the quality of any animal drug product approval based on foreign data, while removing the need to conduct repetitive clinical testing in this country in those instances where adequate data have been gathered abroad.

H. Action Letters

FDA is proposing to establish three types of FDA "action" letters on NADA's: An "approval" letter, an "approvable" letter, and a "not approvable" letter (proposed §§ 514.105, 514.110, and 514.120). The first is the same as the current "approval" letter. For dosage form animal drugs, and Category I Type A medicated articles that are not to be mixed with a Category II Type A medicated article, an "approval" letter grants marketing permission, and the effective date of the approval is the date of the "approval" letter. The current "incomplete" letter encompasses the proposed "approvable" and "not approvable" letters. The "approvable" letter would notify the applicant that the application may be approved when minor deficiencies are corrected. The "not approvable" letter would notify the applicant that major deficiencies exist, requiring the gathering of additional data/information or detailed new analyses of previously reported data.

As discussed below, for Category II Type A medicated articles, or a Category I Type A medicated article that is to be mixed with a Category II Type A medicated article, the effective date of the approval is the date of publication of the notice of approval in the **Federal Register**.

I. Communications Between FDA and Applicants

FDA is proposing to revise its policy for communications permitted between an applicant and FDA (proposed § 514.102). Under current policy, except in unusual circumstances, there is no provision for communication until all reviews have been completed and an "incomplete" letter has been issued. The proposal would encourage dialogue between an applicant and FDA about scientific and medical issues that arise during the review process. This dialogue would include notifying the applicant of easily correctable deficiencies in an application as they are found, and providing an opportunity to schedule informal conferences and for telephone contact during the review process and after FDA's review is completed.

FDA is also proposing to assign a "primary review division" upon receipt of the application (proposed § 514.100). That division would be the applicant's agency contact during the review process (see also proposed § 514.102(c)).

J. Dispute Resolution

FDA recognizes a need to codify a procedure for resolving disputes between an applicant and the agency. FDA is proposing to adopt the appeals procedure that CVM already uses to help resolve any disagreements over scientific and medical issues (proposed § 514.103). Proposed § 514.103 would supplement the general procedures set forth in 21 CFR 10.75.

K. Publication of Approvals

Section 512(i) of the act (21 U.S.C. 360b(i)) requires FDA to publish in the **Federal Register** all approvals of NADA's. Initially, FDA decided that the

date of approval for an NADA should be the date of publication in the **Federal Register** of the approval. Recently, FDA determined that, for dosage form drugs and Category I Type A medicated articles that are not to be mixed with a Category II Type A medicated article, no useful purpose was served by delaying the approval date beyond the date of the "approval" letter. FDA is proposing to codify the agency's current interpretation of the effective date of the approval of a dosage form drug and such a Category I Type A medicated article (proposed § 514.105(a)(1)). Approval of a Category II Type A medicated article and a Category I Type A medicated article that is to be mixed with a Category II Type A medicated article, however, will continue to become effective on the date of publication in the **Federal Register** of the "regulation" established under section 512(i) of the act reflecting the approval (proposed § 514.105(a)(2)). A Category II Type A medicated article is used in the subsequent manufacture of a Type B or Type C medicated feed. Such a feed cannot be manufactured or used unless it is in compliance with the regulations in 24 CFR part 558 and is the subject of a medicated feed application (MFA) approved pursuant to section 542(m) of the act (24 U.S.C. 360b(m)). The notice of approval of a Category II Type A medicated article published in the **Federal Register** establishes the necessary regulation in 21 CFR part 558 required for approval of an MFA.

L. Fewer Supplements to Approved Applications

FDA intends to substantially reduce the number of supplements to approved applications (supplemental NADA's) which must be submitted to the agency. FDA is proposing to establish different categories of supplemental NADA's (proposed § 514.70). FDA is proposing that, where an applicant seeks a change in the conditions of approval of an NADA that could affect the safety or effectiveness of an animal drug product, the applicant be required to submit a supplemental NADA which must be approved by FDA before the change is implemented. However, FDA is proposing that an applicant seeking other kinds of changes in the conditions of approval of an NADA may implement the changes and notify FDA afterwards. FDA estimates that the proposed rule, if promulgated, will result in a 20-percent reduction in the number of supplemental applications that require prior approval by the agency. FDA believes that establishing such categories of supplements should provide two advantages. First, it should permit applicants to implement a number of changes quickly without compromising animal drug safety or effectiveness. Second, it should facilitate more timely review in FDA of those changes which would still require prior approval.

Unlike the NDA Rewrite, the proposal would continue the requirement of prior approval of certain manufacturing changes. This difference is due to the nature of many animal drugs, their use, and administration. Although most animal drugs contain animal drug substances that are highly purified, Type A medicated articles may contain animal drug substances in the form of biomass products of low purity. Biomass products are derived from a fermentation process and are administered to animals as a complex mixture with no or only partial purification. Most of the biomass is comprised of mycelial fragments, metabolic products from the producing organism, media residues, and other compounds of unknown characteristics. For this reason, FDA performs a comprehensive initial safety review of biomass products. Manufacturing changes, especially new sources of the biomass, could have an adverse effect on the final product. Therefore, FDA proposes to continue to require prior approval of manufacturing changes involving animal drug substances that are biomass products.

M. Withdrawal of Approvals

Section 512(a)(1)(B) of the act (21 U.S.C. 360b(a)(1)(B)), provides that a new animal drug is unsafe unless the drug, its labeling, and its use conform to the approved NADA for the drug. This provision, and most notably its requirement that the use of a new animal drug conform to a NADA, has no express counterpart in section 505 of the act (21 U.S.C. 355), which applies to new (human use) drugs. FDA has tentatively concluded that, due to section 512(a)(1)(B) of the act (21 U.S.C. 360b(a)(1)(B)), significant misuse of an approved animal drug is a ground for withdrawing approval of an NADA under section 512(e)(1)(B) of the act (21 U.S.C. 360b(e)(1)(B)). Likewise, FDA has tentatively concluded that an animal drug is not shown to be safe for use within the meaning of section 512(e)(1)(B) of the act when new evidence shows that the drug is no longer shown to be safe by adequate tests by all methods reasonably applicable. FDA's interpretations of section 512(e)(1)(B) of the act are discussed further in section III C, paragraph 13a of this preamble.

N. Definition of New Animal Drug Substance

Following enactment of the Drug Amendments of 1962 (Pub. L. 87-781, 76 Stat. 780), FDA promulgated 21 CFR 130.1 (28 FR 6377, June 20, 1963), which set forth definitions applicable to new drugs and new drug substances. Section 130.1, which at the time applied to both new human and new animal drugs, stated: " 'New drug substance' means any substance that when used in the manufacture, processing, or packing of a drug causes that drug to be a new drug, but does not include intermediates used in the synthesis of such substances." Under § 130.1, the agency adopted a policy of permitting the unrestricted interstate shipment of bulk chemicals that were not in themselves drug substances but that could become such substances upon further chemical processing. Because interstate shipment includes export, such intermediates could be exported.

The Animal Drug Amendments of 1968 (Pub. L. 90-399, 82 Stat. 343-351) established a separate regulatory scheme for animal drugs, and prohibited the export of a new animal drug unless each of the requirements of sections 512 and 801(e) of the act (21 U.S.C. 360b and 381(e)) were met. In addition, when procedural regulations implementing the Animal Drug Amendments of 1968 were promulgated, the definition of new animal drug substance was not included (36 FR 18378, September 14, 1971). In view of the intent of Congress to prohibit export of unapproved new animal drugs (then section 801(d) of the act), the agency adopted a policy that intermediate substances intended for further processing into a new animal drug substance were themselves new animal drugs, and were therefore prohibited from export unless approved.

However, with the passage of the Drug Export Amendments Act of 1986 (Pub. L. 99-660, 100 Stat. 3743), it appeared that Congress intended to allow the export of intermediate drug substances upon FDA approval. Therefore, FDA is proposing to reinstate the definition of new animal drug substance removed in 1971. This reinstated definition would exclude intermediates used in the synthesis of such substances. This exclusion would have the effect of allowing the export of intermediate drug substances (proposed §§ 514.3(b) and 514.410).

III. Explanation of the Proposed Rule

Current Part 514—New Animal Drug Applications, has four subparts: Subpart A—General Provisions, Subpart B—

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Administrative Actions on Applications, Subpart C—Hearing Procedures, and Subpart F—Judicial Review (Subparts D and E are reserved).

FDA is proposing to establish a new heading for part 514 and make major revisions and recodifications of these regulations.

FDA is proposing that the heading be "Part 514—Applications for FDA Approval to Market a New Animal Drug" and that the regulations contain six subparts: Subpart A—General Provisions describes the scope and purpose of the regulations and contains definitions of terms. Subpart B—Applications contains regulations about applications for new animal drugs and animal feeds bearing or containing new animal drugs and the responsibilities and rights of applicants concerning their applications. Subpart C—FDA Actions on Applications contains regulations about actions the agency takes on applications, including both applications under review and those already approved. Subpart D—Hearing Procedures for New Animal Drugs contains regulations on the procedures for hearings on proposals by CVM to withdraw or refuse approval of applications for new animal drugs and animal feeds bearing or containing new animal drugs. Subpart E—[Reserved]. Subpart F—Miscellaneous Provisions contains regulations stating FDA's policy on administrative issues that frequently arise concerning applications.

A. General Provisions

1. Scope of this Part (Section 514.1)

The proposed rule would apply to an application for marketing approval of a new animal drug or an animal feed bearing or containing a new animal drug. Excluded from the scope of the proposal are those animal drugs produced and distributed as biologics in full conformance with the Animal Virus, Serum, and Toxin Law of March 4, 1913 (37 Stat. 832 as amended (21 U.S.C. 151 *et seq.*)).

2. Purpose (Section 514.2)

The intent of the proposed rule is set forth in this section. The proposal is intended to facilitate the approval of any new animal drug that is shown to be safe and effective for its intended use, to ensure the disapproval of any new animal drug that is not shown to be safe and effective for its intended use, and to facilitate the withdrawal of approval of any new animal drug that is no longer shown to be safe and effective for its intended use.

3. Definitions (Section 514.3)

The proposed rule would define an *animal drug product* as a finished dosage form, such as a capsule, tablet, powder or solution, or a Type A medicated article, that contains an animal drug substance with or without one or more other ingredients. An "animal drug substance" would be defined as any active ingredient that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or function of an animal's body. A "new animal drug substance" would be defined as any substance that when used in the manufacture, processing, or packing of an animal drug, causes that animal drug to be a new animal drug. As discussed above, the definitions would exclude intermediates used in the synthesis of the animal drug substance or the new animal drug substance. The exclusion of intermediates would apply only to intermediates that require some chemical change to produce the animal drug substance or the new animal drug substance. The exclusions would not apply to intermediates that require only purification or concentration to produce the animal drug substance or the new animal drug substance.

As used in 21 CFR part 514, the term "animal feed" would be defined to mean an animal feed bearing or containing a new animal drug as provided in 21 CFR part 558.

The term "applicant" would be defined to mean both a person who is seeking, and one who has obtained, FDA approval of an application. Under the current regulations, the terms "sponsor" and "applicant" are used interchangeably. In addition, the term "holder" is often applied to an applicant holding an approved application. As proposed, the term "sponsor" would be reserved for a person engaged in the investigation of a new animal drug as defined in 21 CFR 510.3(k). The term "holder" would be used only in reference to a drug master file. FDA is proposing use of the single term "applicant" to avoid confusion.

The proposed rule would also define "approval letter," "approvable letter," and "not approvable letter," terms the agency now uses to refer to action letters on new drug applications. An applicant may market a new animal drug upon the effective date of an "approval" letter received from FDA, unless the new animal drug is a Category II Type A medicated article (or a Category I that is to be mixed with a Category II), in which case the applicant may market the article upon the effective date of a "regulation" published in the **Federal Register** under section 512(i) of the act reflecting FDA's approval of the NADA. This difference in effective dates is necessary because of the requirement in section 512(m)(1)(B) of the act (21 U.S.C. 360b(m)(i)(B)) that an application to manufacture a Type B or Type C medicated feed identify the regulation (relating to the Category II Type A medicated article to be used in such feed), published pursuant to section 512(i) of the act, on which the applicant relies as a basis of approval of the application. That requirement cannot be met without publication in the **Federal Register** of a regulation showing the approval of the NADA for the Category II Type A medicated article to be used in the manufacture of the Type B or Type C medicated feed.

FDA believes that these proposed definitions will clarify the purpose of each action letter and make clear that action letters other than "approval" letters do not confer any rights to market an animal drug.

The term "application" is intended to apply to the full application described under proposed § 514.50, the application for an animal feed bearing or containing a new animal drug under proposed § 514.51, currently codified in § 514.2, and the minor use application described under proposed § 514.58. An "application" would include all amendments and supplements. FDA is not proposing any changes in the definitions of "minor use" and "minor species" in current 21 CFR 514.1(d)(1), but FDA is proposing to include these definitions in § 514.3.

B. Applications

In § 514.50, the agency is proposing substantial changes in the content and format requirements for NADA's. The proposed changes are intended to reduce significantly the amount of information applicants must submit, improve the quality of their submissions through greater use of summaries and analyses, and expedite FDA's review.

The agency will issue guidelines to assist applicants with the requirements stated in § 514.50. Such guidelines do not themselves establish requirements; an applicant may choose to follow an alternative procedure. These guidelines will not necessarily be issued under § 10.90(b) (21 CFR 10.90(b)). FDA is considering whether to revise that section. In the meantime, the agency will continue issuing guidelines, but they will not bind FDA or any other person in any way, nor will they create or confer any

rights, privileges, or benefits for or on any person.

1. Content (Section 514.50(a))

The current content requirements for an NADA are contained in a two-part form, Form FDA 356V and 357V. Form FDA 356V is a checklist application form which advises FDA of what is being submitted. The form must be signed by the applicant or by a U.S. agent of the applicant, if the applicant resides outside the United States. Form FDA 357V lists the information that is set out in the current regulations and that is required for an NADA submission. Form FDA 357V need not be submitted by the applicant. If proposed § 514.50 is promulgated, Form FDA 356V will be revised accordingly and Form FDA 357V will be eliminated.

2. Format (Section 514.50(h))

The current format of the application is unnecessarily burdensome for applicants to prepare and for the agency to review. An applicant must submit to FDA three copies of the complete application. FDA then divides its review of the application into five review areas: Chemistry, manufacturing, and controls; effectiveness; animal safety; environmental impact; and bioavailability. If the new animal drug is to be used in food-producing species, FDA also reviews residue chemistry and residue toxicology data. In addition, if the new animal drug is an anti-infective, the agency conducts a microbiology review. FDA is proposing that applicants prepare an application that is in a format that facilitates concurrent reviews by the different scientific disciplines.

The agency proposes to require two complete copies of an application, an archival copy and a review copy, and a second review copy of the "chemistry, manufacturing, and controls" technical section of the application. The archival copy (§ 514.50(h)(1)) would be a complete copy of the application including case report forms and tabulations. The review copy (§ 514.50(h)(2)) would consist of separately bound sections that could be distributed for concurrent review in each reviewing unit. Both complete copies of the application would contain six to eight technical sections, one for each of the specific review areas. Each technical section in the review copy would contain a copy of a revised Form FDA 356V, the technical and scientific information needed by the specific review area, and a copy of the summary of the complete application. A summary would not be required for certain supplements. The second review copy of the "chemistry, manufacturing, and controls" technical section would be required to facilitate preapproval inspection of the manufacturing facility. That proposed requirement reflects the proposed preapproval inspection requirements for human drugs that were published in the **Federal Register** of January 28, 1991 (56 FR 3180).

Proposed § 514.50(h) would reduce the amount of paperwork applicants would be required to submit to FDA, provide each reviewing unit with an overview of the entire application, as well as the specific data the unit is charged with reviewing, and give each reviewer access to the complete application. Proposed § 514.50(g)(3) would also provide for submission of certain kinds of data via microfiche or electronic media, upon agreement between the applicant and the agency.

3. Summary (Section 514.50(c))

The application summary would contain an abstract of all the information in the application and would provide reviewers in each review unit and CVM officials with a good general understanding of the new animal drug. The summary would contain an annotated copy of the proposed labeling for the new animal drug, a discussion of the new animal drug's benefits and risks, a description of the foreign marketing history of the new animal drug (if any), and a summary of each technical section. The description of the foreign marketing history would permit FDA to contact foreign regulatory officials about their experiences with the new animal drug and, depending on the facts and circumstances, expedite approval in this country of important new animal drugs that are already available in other countries.

The agency believes that a good summary that integrates all the information in an application would contribute most to assisting FDA in reaching a decision on the application. The agency intends to prepare and make available guidelines describing the preparation of a summary and each of the technical sections.

The proposed rule would require the applicant to submit an archival copy of the application that contains a single copy of the application form, the summary, an index, and a copy of each review area's technical section. The archival copy would also contain copies of tabulations and case reports, and labeling. Samples of the new animal drug would be submitted if requested by FDA. The applicant may submit specified portions of the archival copy on microfiche, but the applicant may not submit tabulations and case report forms on microfiche unless the applicant and the agency agree to such submission.

During the review of the application, the archival copy would serve as a reference source for reviewers to find information not contained in the technical sections they receive, a reference source for agency officials, and the repository of the copies of tabulations and case report forms on the clinical studies. Each section of the review copy would be used by a primary or consulting reviewer for simultaneous review. A second review copy of the "chemistry, manufacturing, and controls" technical section would be provided to an FDA field office for its use in conducting a preapproval inspection of the manufacturing facility. After an application is approved, the review copy would either be destroyed or parts of it would be provided to other FDA offices for reference.

After approval of an application, the archival copy would serve as the agency's sole copy of the approved application for monitoring the safety, effectiveness, and labeling of the new animal drug; the focus of supplements and changes contained in the annual reports; and a source of documents for release under the agency's public information regulations in 21 CFR Part 20 and proposed § 514.430.

4. Colored Binders (Section 514.50(h)(2)).

The agency now furnishes colored binders to applicants free of charge for organizing their applications. By providing such binders, FDA establishes a standard color set. FDA would continue to do so under this proposal because the agency has found that its document control units can file and distribute submissions to appropriate offices more quickly and with fewer mistakes if uniform colored binders are used for each section of the submission. Also, if a section is misrouted, the color of the binder quickly alerts the recipient to the mistake. Although proposed § 514.50(h)(2) would not require applicants to use the agency's binders, FDA believes that their use will expedite review of applications.

5. Information Incorporated from a Drug Master File (Section 514.420).

The agency proposes to continue its current practice of permitting an applicant to incorporate into an application information that the applicant has previously submitted in a drug master file (described below) or in other applications, without resubmission of the information to the agency. The

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incorporation must specifically identify the FDA file where the agency can find the information.

If an applicant incorporates information submitted to the agency by another person, the applicant must obtain and include in the application a written statement from that person authorizing the incorporation.

6. Foreign Language Submissions (Section 514.50(g)(2)).

The agency would also retain the current requirements that an application contain an accurate and complete English translation of each part of the application that is in a foreign language and a copy of each original literature publication for which an English translation is submitted.

7. Contents of Review Copy of Application.

As noted above, the review copy of the application would consist primarily of six to eight separate sections containing the technical and scientific information that FDA reviewers need to conduct their reviews. Each review copy would also contain a signed Form FDA 356V, a summary of the application, and a copy of all the labeling for the product. A description of the proposed requirements for each of the technical sections follows:

a. *Chemistry, manufacturing, and controls section (§ 514.50(d)(1)).* This section would describe the composition manufacturing methods, specifications, and test methods used for the animal drug substance and the animal drug product. Under the NDA Rewrite, the environmental impact analysis for a new drug is contained in this section. Under this proposal, such an analysis for a new animal drug would be contained in its own technical section (section III B, paragraph 7h of this preamble).

FDA proposes to eliminate certain of its requirements with respect to the information that an application must contain about manufacturing practices that are the subject of the agency's current good manufacturing practice (CGMP) regulations in 21 CFR part 211 or 21 CFR part 226. The CGMP regulations were promulgated in 1963 and updated substantially in 1975 and 1986 for Type A medicated articles and in 1978 for finished pharmaceuticals. The CGMP regulations set comprehensive standards for animal drug product manufacturing. FDA enforces these standards through statutorily required on-site inspections of animal drug manufacturers and through other means.

FDA is proposing that the following information currently required under 21 CFR 514.1(b)(5) no longer need be submitted in an application, because the agency already has access to the information in reports of establishment inspections conducted to determine compliance with the CGMP regulations:

(1) A description of the physical facilities;

(2) A description of the qualifications and responsibilities of technical and professional personnel;

(3) Information about the method of preparation of the master formula records and individual batch records, and a statement about the manner in which the records are used;

(4) Information about the number of individuals checking the weight or volume of each individual ingredient in each batch of the new animal drug, information about whether the total weight or volume of each batch is determined at any stage of the manufacturing process, and information about precautions taken to check actual package yield produced from a batch of a new animal drug with the theoretical yield; and

(5) Information about precautions taken to ensure that each lot of the new animal drug is packaged with the proper label and other labeling.

Information relevant to equipment used in the manufacturing process and an explanation of the lot control number system for raw materials and animal drug products would still be required to be submitted.

The agency also proposes to require that applications continue to contain the following information about the animal drug substance and the animal drug product.

i. *Animal drug substance (§ 514.50(d)(1)(i)).* The agency proposes to require that the applicant continue to submit the following information about the animal drug substance: (1) A full description of the animal drug substance, including its physical and chemical characteristics and stability; (2) the name and address of its manufacturer; (3) the method of synthesis (or fermentation or isolation) and purification of the animal drug substance; (4) the process controls used during its manufacture and packaging; and (5) the specifications and analytical methods needed to assure the identity, strength, quality, and purity of the animal drug substance and the bioavailability of the animal drug product made from the substance. Under proposed § 514.50(d)(1)(i), an applicant may refer to the current edition of an official compendium or to a master file to satisfy some of these requirements.

ii. *Animal drug product (§ 514.50(d)(1)(ii)).* The agency proposes to require that the applicant continue to submit the following information about the animal drug product that is the subject of the application: (1) A statement of the composition of the animal drug product and a list of all components used in the manufacture of the animal drug product, regardless of whether they actually appear in the animal drug product (for example, even if they are removed during processing they would nevertheless have to be listed); (2) a statement of the specifications and analytical methods for each component; (3) the name and address of the animal drug product manufacturer with (a) a list of manufacturing and laboratory equipment, and (b) an explanation of the raw material and batch control number system; (4) a description of the manufacturing production record and packaging procedures and in-process controls for the animal drug product; (5) the specifications and analytical methods that are necessary to assure the identity, strength, quality, purity, and bioavailability of the animal drug product; and (6) stability data necessary to establish an expiration date for the animal drug product. Under proposed § 514.50(d)(1)(ii), an applicant may refer to the current edition of an official compendium or to a master file to satisfy some of these requirements.

b. *Effectiveness section (§ 514.50(d)(2)).* Clinical data and information are generally gathered from studies of the new animal drug in the species or class of animals for which approval for marketing is being sought. The proposal would change little of the substance of the current requirement that an application contain a description and analysis of each study conducted to evaluate the effectiveness of the new animal drug, including: Each controlled dose determination study, each controlled dose confirmation study, each controlled clinical study, each uncontrolled clinical study, and all other information relevant to an evaluation of a new animal drug's effectiveness. When needed, the application would also have to contain a description of the statistical analyses of the controlled studies. In addition to the description and individual analyses, the proposed rule would also require the applicant to prepare an integrated analysis of all the clinical information about the new animal drug.

c. *Target animal safety section (§ 514.50(d)(3)).* The proposal would require that the application contain a description and analysis of each

nonclinical and clinical pharmacology study to determine the safety of the new animal drug, including a brief comparison of the results of the target animal studies with the laboratory animal pharmacology and toxicology data. In addition, the proposed rule would require the application to contain a description and analysis of any other data or information relevant to an evaluation of the safety of the animal drug in the target species. Such data or information would include any information received by the applicant from any source, foreign or domestic, such as information resulting from clinical investigations, controlled or uncontrolled studies of a use of the animal drug other than the use proposed in the application, commercial marketing experience, reports in the scientific literature, and unpublished scientific papers.

In § 514.50(d)(3)(ii), the agency proposes to add one new requirement. FDA is proposing to require that an applicant submit safety information from ongoing animal studies at specified times following submission of the NADA. This new provision is consistent with the requirement of safety update reports in the NDA Rewrite, and is based upon the same concerns. Although new safety information obtained from clinical or nonclinical studies is currently required to be submitted to FDA with respect to an investigational new animal drug (INAD), such information is not now required to be submitted with respect to a pending NADA, unless specifically requested by the agency. Although FDA reviewers routinely examine the INAD as an integral part of the NADA review, this examination normally occurs early in the review process. Submissions of safety information by the applicant later in the review period may not now come to the attention of the reviewer in a timely manner.

Accordingly, the proposed change would require that applicants periodically submit updated safety reports describing new information about the new animal drug. These periodic updated safety reports would include the same kinds of information and would be submitted in the same format as would be required in the original application. Under the proposal, these reports would be required to be submitted 4 months after the original submission of the application, after receipt of an "approvable" letter, and at other times as requested by FDA. Applicants are encouraged to consult with agency officials prior to submission of the first safety update report.

d. *Residue toxicology section (§ 514.50(d)(4)).* In this section, the agency is proposing requirements for the toxicology studies for a new animal drug intended for use in animals raised for food production. Residues of the animal drug may be present in the edible products of those animals. The data from the toxicology studies establish the safety of residues of the new animal drug including its metabolites and any other substances formed in or on food because of the use of the drug (section 512(d)(2)(A) of the act (21 U.S.C. 360b(d)(2)(A)). The studies in question include acute, subacute, and chronic toxicity; carcinogenicity; reproductive toxicity and teratogenicity in several mammalian species; and genetic toxicology. A determination by FDA that the new animal drug may be or is a carcinogen when subjected to these tests will trigger some or all of the requirements of subpart E of 21 CFR part 500.

The studies identified above represent the full range of toxicity tests that may be required to enable the agency to determine whether the residues which may be incurred in food because of use of the new animal drug are safe. These studies may not be required in each application for a given new animal drug proposed for use in food-producing animals. FDA has prepared a guideline describing a data collection scheme that makes possible an agency decision regarding residue safety without the necessity of the applicant always performing all the studies identified. This guideline would remain in effect after publication of a final rule based on this proposal.

e. *Residue chemistry section (§ 514.50(d)(5)).* In this section, the agency is proposing requirements for determining the quantity and characteristics of residues of the new animal drug in the edible products of treated animals. This section would require the application to contain the method proposed by the applicant for the detection and measurement of residues of the new animal drug and its metabolites and any other substances formed in or on food as a result of use of the new animal drug, or, in the case of a new animal drug that is not a carcinogen or a possible carcinogen, data or other adequate information to establish that it is not reasonable to expect the animal drug or its residues to become a component of food at concentrations deemed to be unsafe.

The residue chemistry section of the application would also have to contain data and information on the absorption, distribution, metabolism, and excretion of the animal drug in laboratory animals as well as in the target species.

FDA will evaluate the data from the residue toxicology and residue chemistry studies together with the data from the residue depletion studies. All these data will be evaluated by the agency to determine the conditions of safe use of the new animal drug from the standpoint of human food safety. The agency will determine the safe concentrations of the new animal drug and its metabolites and any other substances formed in or on food because of the use of the drug and either publish an appropriate tolerance or establish safe concentrations for such residues. FDA may also require a withdrawal period or other use restriction to ensure human food safety.

In the case of a carcinogenic or possibly carcinogenic new animal drug, the proposed rule would retain the current requirement that the drug satisfy the applicable provisions of subpart E of 21 CFR part 500.

f. *Pharmacokinetics and bioavailability section (§ 514.50(d)(6)).* In this section, FDA is proposing requirements for pharmacokinetics and bioavailability studies. The data from these studies will enable FDA to determine the bioavailability and distribution of the new animal drug product in the target species to ensure that the new animal drug will have the effect it is purported to have. The bioavailability studies would provide an in vivo test of the assumptions made when testing the animal drug in vitro as part of the manufacturing and controls development.

g. *Microbiology section (§ 514.50(d)(7)).* For an anti-infective new animal drug, the agency proposes to require that the application contain a separate section with information, based on microbiological data, about the anti-infective properties of the new animal drug. The proposed requirements would not differ from those now in effect but would simply ensure that the requisite data are included in a discrete section of the application. The microbiology section would include information about the new animal drug's microbial action, including the biochemical basis of the new animal drug's actions, its antimicrobial spectrum, and the results of in vitro studies that show the concentrations of the new animal drug needed to affect that spectrum. This section of the application would also be required to contain information about mechanisms and prevalence of microbial resistance to the new animal drug and a description of clinical laboratory tests

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(for example, in vitro susceptibility products) needed for effective clinical use of the new animal drug. Finally, the microbiology section would have to contain certain information required of anti-infective drugs subject to 21 CFR 558.15, namely, antibiotic, nitrofuran, and sulfonamide drugs intended for continuous low level (i.e., subtherapeutic) administration in animal feeds. These drugs require testing to ensure that their subtherapeutic use in animals does not result in a reservoir of drug-resistant organisms that could be hazardous to humans.

h. *Environmental impact section (§ 514.50(d)(8)).* FDA is proposing to retain the requirement that an application contain either a claim for categorical exclusion under 21 CFR 25.24 or an environmental assessment prepared under 21 CFR 25.31 analyzing the environmental impact of the manufacturing process and the ultimate use of the new animal drug product. (Part 25 contains FDA's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*, as amended).) The claim for categorical exclusion or the environmental assessment must be accompanied by documentation supporting the claim or the conclusions reached regarding environmental impact.

8. Contents of Archival Copy of Application

As explained above, the archival copy of the application would contain copies of the technical sections, the application Form FDA 356V, the summary, an index, all labeling components, and the following additional sections:

a. *Samples and labeling (§ 514.50(e)).* The agency proposes to retain the requirement that the applicant submit samples of the finished animal drug product, the animal drug substance used in the manufacture of the animal drug product, and reference standards and blanks. However, FDA is proposing to reduce the applicant's burden of submitting samples of the finished animal drug product by requiring the submission of samples only if specifically requested by FDA. FDA is also proposing to reduce the number of copies of proposed and final printed labeling for the animal drug product.

b. *Case report forms and tabulations (§ 514.50(f)).* FDA is proposing to reduce the amount of paperwork an applicant is required to submit in an application by requiring the submission of copies of the individual case report forms only in the archival copy of the application. The agency proposes to require the submission of tabulations of the data from the individual case report forms in both the review copy and the archival copy. The tabulations put the data and information gathered in the clinical studies in a more condensed and more easily reviewed form. Thus, the submission of tabulations instead of case report forms in the review copy is expected to reduce the time needed to review the application. The reviewer would still have access to the individual case report forms in the archival copy.

9. Application for an Animal Feed Bearing or Containing a New Animal Drug (Section 514.51)

FDA is more clearly stating current procedures for the processing of applications for animal feeds bearing or containing new animal drugs (medicated feed applications or MFA's, also known as Form FDA 1900's).

10. Abbreviated Application

An abbreviated new animal drug application can be filed under certain conditions based on either a pre- or post-1962 approved "pioneer" product. The statutory authority for an abbreviated application based on either a pre- or post-1962 "pioneer" product is as follows:

a. *Drug Amendments of 1962, Drug Efficacy Study Implementation (DESI) Program.* In 1962 Congress amended the new drug approval provisions of the act (which then applied to new drugs intended for both man and other animals) to require that an animal drug be shown to be both safe and effective before marketing (the Drug Amendments of 1962, Pub. L. 87–781, 76 Stat. 780). Before 1962, an animal drug had to be tested to show only its safety. Under the 1962 amendments, the effectiveness requirement was made applicable, after a 2-year transitional period, to new animal drugs approved before 1962. To implement this congressional mandate, FDA undertook an evaluation of new animal drug products that had been approved before October 10, 1962, to determine whether there was substantial evidence of effectiveness for each such product for each of its indications. FDA, relying largely on reviews conducted by the National Academy of Sciences and National Research Council (NAS/NRC), established a pre-1962 drug evaluation program known as the Drug Efficacy Study Implementation (DESI) program. Under the DESI program, an NADA approved before October 10, 1962, could continue to be approved if the sponsor submitted a supplemental NADA to revise the indications for use to those FDA had determined to be effective.

There were also marketed animal drug products for which no application had been filed but that were identical, similar, or related to the new animal drug products found effective in the DESI review. These identical, similar, or related animal drug products, commonly referred to as "me-too" animal drug products, were duplicate versions of pre-1962 approved "pioneer" products. In many cases, FDA policy had allowed these "me-too" animal drug products to be marketed without approved applications or without any notification to the agency. This policy was invalidated in 1975 (*Hoffmann La-Roche, Inc.* v. *Weinberger*, 425 F. Supp. 890 (D.D.C. 1975)).

FDA had already established the abbreviated application to provide an appropriate procedure for such products to obtain FDA approval based in part on the DESI evaluation. Each **Federal Register** notice announcing the effectiveness conclusion reached in the DESI review included, when appropriate, an FDA finding that an abbreviated application was the suitable mechanism by which manufacturers or suppliers of "me-too" new animal drug products could obtain FDA approval. Following a finding of effectiveness under the DESI program, manufacturers of "me-too" products subject to the finding were required to submit and obtain FDA approval of an abbreviated application. Other manufacturers who subsequently decided to market a "me-too" animal drug product were also required to submit and obtain FDA approval of an abbreviated application.

An abbreviated application, unlike a full application, was not required to include extensive target animal safety and effectiveness data and information on the new animal drug product. Rather, the abbreviated application, in the usual circumstance, had to establish that the new animal drug product covered by the application was equivalent in target animal safety and effectiveness (generally by bioavailability data) to the "pioneer" product that has undergone DESI review. The effectiveness of the new animal drug was already determined on the basis of the information reviewed as part of the DESI process. The agency's conclusions, which could be relied upon by all marketers, were stated in the DESI notices. The target animal safety of the new animal drug was determined on the basis of the approval and marketing experience of the "pioneer" product. Thus, the information required to be in an abbreviated application was usually limited to information about the applicant's ability to manufacture a product of acceptable quality, and about total residue depletion.

The agency specified in the animal drug regulations which animal drugs were eligible for abbreviated applications.

An abbreviated application for a "me-too" animal drug product (a generic equivalent of any pre-1962 approved "pioneer" product) ordinarily will not be approved under the DESI program, but will be considered for approval under the Generic Animal Drug and Patent Term Restoration Act. Such an application will not be approved where the "pioneer" has not conformed to the applicable DESI notice.

b. *Generic Animal Drug and Patent Term Restoration Act (GADPTRA) of 1988.* On November 16, 1988, the Generic Animal Drug and Patent Term Restoration Act of 1988 was enacted (Pub. L. 100–670, 102 Stat. 3971). GADPTRA amended the act to authorize abbreviated new animal drug applications, and title 35 of the United States Code to authorize the extension of patents for animal drug products. At the time of enactment, the agency accepted certain abbreviated applications only for those animal drug products which were duplicates of drug products that were approved on the basis of safety prior to October 10, 1962, the date of enactment of the Drug Amendments of 1962, and which were subsequently found effective in the DESI program. (See section III B, paragraph 10a of this preamble.)

GADPTRA requires the agency to promulgate regulations to implement its provisions. There is a transitional provision which directs the agency to apply the human drug regulations for abbreviated applications at 21 CFR 314.55, and for bioavailability and bioequivalence at 21 CFR part 320, to the extent such regulations are not inconsistent with GADPTRA. FDA considered including proposed implementing regulations in this proposal. After reviewing GADPTRA, FDA decided that it would be premature to do so at this time. There are a number of issues to be resolved and procedures to be developed before proposed regulations implementing GADPTRA can be issued.

To provide guidance, however, FDA has issued several policy statements on GADPTRA. Before promulgating regulations FDA will, if needed, issue additional policy statements to implement GADPTRA.

c. *Effect of GADPTRA on Approval of Pre-1962 Drugs Under the DESI Program.* GADPTRA provides for the generic duplication of "pioneer" new animal drug products that have been approved for safety and effectiveness by FDA. The new law, therefore, covers drugs that were approved for safety by FDA prior to 1962, and subsequently approved for effectiveness under the DESI program. FDA has approved generic duplicates of such drugs under the DESI program for a number of years. Requirements and procedures for approval of generic drugs under the DESI program differ in some respects from those for approval of generic drugs under GADPTRA.

FDA was not permitted to approve abbreviated NADA's (ANADA's) for generic animal drugs under GADPTRA until January 1, 1991. In passing GADPTRA, Congress did not explicitly revoke the authority for FDA to approve generic duplicates of pre-1962 drugs under the DESI program. Now that generic drugs may be approved under GADPTRA, however, FDA does not intend to have two separate programs or policies for the approval of such drugs, and FDA will no longer accept DESI applications for generic new animal drugs. Generic equivalents of pre-1962 new animal drugs will now be approved under GADPTRA, except that FDA will approve as a DESI application, such an application that was pending on December 31, 1990, provided that the applicant has exercised due diligence in pursuing the approval and continues to do so. FDA's current bioequivalence guidelines for new animal drugs will be applied to all pending DESI applications, unless commitments have already been made for different bioequivalence requirements.

11. Minor Use Application (Section 514.58)

The agency proposes to redesignate, with editorial changes only, the provisions in current § 514.1(d) regarding a minor use application.

12. Amendment of an Unapproved Application (Section 514.60)

The proposed provisions regarding submission of an amendment to a pending application are substantially different from current agency policy. The current policy is that any substantive amendment submitted to an application, whether at FDA's request or on the applicant's own initiative, automatically restarts FDA's 180-day review clock, resulting in a new review cycle. Under the proposal, extensions to the review clock for evaluating major amendments would be limited to the time necessary for FDA to review them. An amendment would be classified as major if it would require a substantial amount of time to review; for example, a major amendment might contain significant new data from a previously unreported study or detailed new analyses of previously reported data. Normally, the submission of updated safety information under proposed § 514.50(d)(3)(ii) would not constitute a major amendment of the application.

The agency would consider the submission of a major amendment to constitute an agreement by the applicant to an extension of the review period, but, as noted above, only for the length of time needed for FDA to review the submission.

The director of the CVM primary review division would determine the extent of the extended review period, up to a maximum of 180 days. The division director would then inform the applicant of the length of the extension.

An applicant who disputes the length of the extension provided by the division could request FDA's reconsideration (see proposed § 514.103). This proposed change should significantly reduce the amount of time FDA would have to review applications because most applications are amended at some point during the review process.

13. Withdrawal by the Applicant of an Unapproved Application (Section 514.65)

This proposed section is substantially the same as current §§ 514.7 and 514.100(g), with one change. The proposal would provide that a pending application would be considered to be withdrawn if the applicant has not responded to an "approvable" letter or a "not approvable" letter within 60 days.

14. Supplements and Other Changes to an Approved Application (Section 514.70)

With few exceptions, any change in the conditions originally approved by FDA in an application was formerly required to be approved by the agency in a supplemental application before the change could be implemented. With respect to some changes, particularly those concerning manufacturing practices, this requirement seemed to be unnecessary. Further, review of supplements diverted FDA reviewers from more important work and caused applicants to defer making beneficial changes in approved products until the supplement was approved. For these reasons, CVM reviewed its supplemental application policy and identified changes that would no longer require prior FDA approval. By letter dated February 20, 1987, FDA notified each of the sponsors of approved applications listed in 21 CFR 510.600 of

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the changes that could be made in an approved application and placed into effect before receiving agency approval. In proposed § 514.70, FDA would codify the policy described in the 1987 letter.

Under § 514.70, an applicant's proposed changes in the conditions in NADA's as currently approved would fall into one of three categories: (1) Those changes requiring prior FDA approval of a supplement before implementation; (2) those requiring a supplement but for which FDA approval prior to implementation is not necessary; and (3) those requiring reporting to FDA in a periodic drug experience report instead of a supplement. FDA is proposing to retain preclearance requirements for those changes in conditions of approval for animal drugs that could affect the safety or effectiveness of the animal drug. Proposed § 514.70 would permit applicants to implement certain changes sooner.

Whether data in the parent NADA will require reevaluation before a supplement may be approved depends on the nature of the supplement. Assignment of review categories for those changes that ordinarily will not require reevaluation of the safety or effectiveness data in the parent NADA and those that may require reevaluation of certain portions or all of the data in the parent NADA are described in current § 514.106, as promulgated in the **Federal Register** of November 1, 1990 (55 FR 46045), which is being included in this proposal for the sake of completeness, rather than for comment.

a. *Supplements requiring FDA approval before the change is made (§ 514.70(b)).* The agency proposes to retain requirements that the applicant submit a supplemental application and obtain FDA approval before making any of the following changes in the conditions in an approved application:

(1) A change in the synthesis, fermentation, or isolation of the animal drug substance;

(2) A change affecting either the animal drug substance or the animal drug product to relax the limits for a specification, establish a new analytical method, or delete a specification or analytical method;

(3) A change in the animal drug product to delete or add an ingredient or otherwise to change the composition of the product (other than deletion of an ingredient intended to affect only the color of the product);

(4) A change in the method of manufacture of the animal drug product;

(5) The use of a different facility or establishment to manufacture, process, or package and label the animal drug product;

(6) The use of a different facility or establishment to manufacture, process, or package the animal drug substance in any one of several circumstances, including where the manufacturing process in the new facility or establishment differs from that approved in the application; where the new facility or establishment has not received a satisfactory CGMP inspection within the previous two years covering that facility or establishment; and where the animal drug substance is intended to be administered to animals as a biomass product;

(7) A change in the animal drug product container and closure system or in a specification or analytical method for the system;

(8) Any change in the size of the container, except for solid oral dosage forms, without a change in the approved container and closure system;

(9) An extension of the expiration date of the animal drug product based on data obtained under a new or revised stability testing protocol that has not been approved in the application;

(10) A change in the procedure for reprocessing a batch of an animal drug product that fails to meet specifications; or

(11) Any change in labeling not covered by proposed § 514.70 (c)(2) or (d).

FDA believes that these changes needing prior approval are of a type that are more likely than others to affect the safety or effectiveness of an animal drug.

b. *Supplement for changes that may be made before FDA approval (§ 514.70(c)).* Although most changes in labeling would require the applicant to submit a supplement and obtain FDA approval before making a change, the following changes in labeling, which would make available important new information about the safe use of an animal drug product, could be made without prior approval of FDA if the applicant submits a supplement when the change is made: A change that adds or strengthens a contraindication, warning, precaution, or statement about an adverse reaction or overdosage; a change in any other instruction about dosage or administration that is intended to improve the safe use of the product; or a change that would delete a false, misleading, or unsupported indication for use.

FDA is proposing that an applicant also be permitted to make a change of the kinds listed below without FDA approval before the change is made if the applicant submits a supplement when making the change: Adding a new specification, adding a test method, or changing a method or control to provide increased assurance that the animal drug will meet the requirements of identity, strength, quality, and purity that the animal drug purports or is represented to possess. Although a change identified above may present some risk with respect to the safety and effectiveness of the product, FDA believes that any such risk is minimal, because the animal drug product would still be required to comply with each of the in-process and final specifications already approved in the original application. In addition, FDA promptly reviews supplements containing these kinds of changes.

Proposed § 514.70(c)(3) would permit an applicant to use a different facility or establishment to manufacture an animal drug substance, except in the three circumstances described above, if the manufacturer submits a supplement when making the change. This proposal would give an applicant greater flexibility in purchasing a bulk animal drug substance on the domestic and international markets.

FDA is proposing to retain the requirement for prior approval of a change in the supplier of an animal drug substance that will be administered to animals as a biomass product. A biomass product obtained from two different manufacturers may have similar characteristics insofar as the animal drug substance is concerned, but the toxicologic profiles of the total biomass may be significantly different due to the media, fermentation procedure, or strain of microorganism used. Thus, the agency subjects biomass products to special review.

c. *Changes that may be described in a drug experience report (§ 514.70(d)).* A change of the following types would be permitted in the conditions of approval of a new animal drug product without the submission or approval of a supplement, provided the change is fully described in reports submitted under proposed §§ 514.80 through 514.82.

(1) Changes in the specifications or methods for active and inactive ingredients to bring them into compliance with current specifications or methods in the official compendium.

(2) A different container size for solid oral dosage forms, (e.g., tablets or capsules) where container and closure are of the same materials as those provided for in the approved application.

(3) Change in equipment that does not alter the method of manufacture of a new animal drug.

(4) Change from one batch size to another without any change in manufacturing procedure unless the change involves a greater than ten-fold increase in batch size.

(5) Change to more stringent specifications without altering the method described in the approved application.

(6) Inclusion of additional specifications and methods without deletion of those described in the approved application.

(7) Initiation of a product identification coding system.

(8) Change from paper labels to direct printing on glass or other kinds of immediate containers without a change in text.

(9) Extension of the current expiration date based on full shelf-life data obtained using a stability protocol approved in the application.

(10) Addition of precautionary statements, explanations, and clarifications to manufacturing and control procedures.

(11) Minor editorial or similar minor label changes, such as changes in the ink colors of the label, the addition of an NADA number and an FDA approval statement, changes in the placement of the text on the label as long as the FDA label guidelines are followed, the revision or updating of a company logo or label design, and the correction of typographical errors.

(12) Changes in the marking of solid oral dosage forms which do not result in any changes in the labeling or approved specifications for the drug product.

(13) Reduction or elimination of manufacturing overages for drug and nondrug ingredients.

(14) Changes in suppliers of inactive ingredients, containers, and closures provided the product of the new suppliers are shown to meet approved criteria.

(15) Changes in in-plant coding and control number systems; e.g., material and product identification codes, lot numbering systems of raw materials, specification and method codes.

(16) Changes in outer packaging material, such as carton shape, color, or style of printing which do not decrease the degree of protection of the drug, modify approved labeling text, or decrease legibility of print.

(17) Changes in or replacement of noncompendial specifications and methods for ingredients, except those used for the determination of identity, potency, purity, sterility, and safety of the ingredients.

d. *Changes permitted pending finalization of the National Academy of Sciences/National Research Council (NAS/NRC) review (§ 514.70(e)).* This paragraph is the same as current § 514.8(g) except for a minor editorial revision for the purpose of clarification.

The agency would continue to permit certain types of changes prior to approval of a supplement to an NADA that became effective before October 10, 1962, pending completion of the review of effectiveness of the animal drug by the NAS/NRC and a determination of whether there are grounds for refusing, suspending, or withdrawing approval. The applicant must have written authorization from FDA prior to implementing such a change in advance of approval. The type of changes permitted by FDA are those that do not adversely affect, but may enhance the safety, effectiveness, quality, or stability of the product.

15. Procedure for Submission of a Supplement to an Approved Application (Section 514.71)

The agency proposes to codify its policy for the submission of a supplement to an approved application. All procedures and actions that apply to an application under proposed § 514.50 and a minor use application under § 514.58 also apply to a supplement, except that the information required in a supplement is limited to that needed to support a change.

16. Change in Ownership of an Application (Section 514.72)

The agency proposes to codify its policy on a change in ownership of an approved application. Under the proposal, when ownership is transferred, the former owner of the application would provide the agency written notification of the change. The new owner must also provide written notification of the change and, in addition, a signed application form and a letter or other document stating the date that the change of ownership is effective. The new owner must make a commitment to comply with all agreements, promises, and conditions made by the former owner contained in the application. The new owner must also confirm that it has a complete copy of the application or ask FDA to provide one.

A change in ownership of an application, including a change in labeling to reflect a new brand name or the name of the new manufacturer, packer, or distributor, would not require FDA approval if each of the conditions in proposed § 514.72 is met. FDA approval would be required, however, if the new owner makes a change in the application that would require a supplement under proposed § 514.70 (b) or (c). A "regulation" reflecting the change of ownership would be published in the **Federal Register** under section 512(i) of the act.

Withdrawal of a request to transfer ownership of an application must be made in writing to FDA and must have the concurrence of all parties, as must a request, following FDA's receipt of the information and documents required to effect a change in ownership, that ownership not be transferred.

17. Supplemental Application for an Animal Feed Bearing or Containing a New Animal Drug (Section 514.75)

As proposed, this section provides that the applicant is to complete only part of the MFA and specifically address the changes being proposed. Section 514.75 would thus reduce paperwork while maintaining the integrity of the application.

Also, FDA is providing procedures for the establishment of list (facilities) master files (LMF) for firms with multiple feed manufacturing facilities (multimill firms) that have more than one approved medicated feed application. The LMF procedures will reduce the amount of paper work needed to make changes in mill lists, allowing for a single submission to make simultaneous changes in mill lists for all of a firm's MFA's. In addition, FDA is proposing procedures for deleting a mill from mill lists by the submission of a letter, rather than a Form FDA 1900.

18. Maintenance of Copies of Approved Applications for Animal Feed Bearing or Containing New Animal Drugs (Section 514.83)

This section would be recodified unchanged from current § 510.305.

19. Waivers (Section 514.90)

The agency proposes to add a section under which an applicant may obtain a waiver of a nonstatutory requirement for the submission of information in an application. An applicant may submit a request for such a waiver with supporting information in an original application, a supplemental application, or an amendment to either an original or supplemental application. The request for a waiver must justify why the requirement is unnecessary or cannot be achieved in a particular case, describe an alternative submission that satisfies the purpose of the requirement, or provide other information justifying a waiver.

FDA may grant a waiver of a nonstatutory requirement if the agency finds that the applicant's compliance with a requirement is unnecessary, the applicant makes an alternative submission that satisfies the

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requirement, or the applicant otherwise justifies a waiver. This waiver provision is intended to give applicants flexibility to seek alternative ways of complying with the statutory standards for new animal drug approval. Clearly, however, FDA is unable to waive statutory requirements.

C. FDA Actions on Applications

1. Time Frames for Reviewing an Application (Section 514.100)

FDA is proposing to revise its regulations regarding agency actions in filing, reviewing, and approving or refusing to approve an application. Under section 512(c) of the act (21 U.S.C. 360b(c)), within 180 days after an application for a new animal drug is filed, FDA must either approve the application or give the applicant notice of an opportunity for a hearing on whether the application is approvable, unless FDA and the applicant agree to an extension. The agency proposes to revise its regulations to specify, in accordance with the statute, how long FDA may take to review an application, when FDA would file an application, and the circumstances in which the review period could be extended.

The key to the proposal is a provision under which FDA would be required to send to an applicant an action letter (that is, an "approval" letter, an "approvable" letter, or a "not approvable" letter) within 180 days of FDA's receipt of the application. Although FDA could extend this time period if an amendment is submitted to the application, any extension would be for only the additional period of time necessary for review of the amendment. Thus, under this proposal, applicants would be assured of a response from the agency within a reasonable period of time on whether the application is approvable.

2. Filing an Application (Section 514.101)

The proposal contains several technical features regarding the "filing" of an application and the issuance of a notice of opportunity for a hearing. Under the proposal, FDA would determine within 60 days after receipt of the application whether it is acceptable for filing, and the applicant would receive notification at the 60-day point stating whether the application is indeed "filed." This proposed provision would give the applicant earlier feedback on whether the application is suitable for filing, but it would not affect FDA's commitment to issue an action letter to the applicant within 180 days of receipt of the application.

FDA's proposed time frames for actions from date of receipt and from date of filing are shown in a table at the end of this preamble section.

The proposed date for "filing" an application would be an important change from current practice. Currently, FDA has 30 days after receipt of an application to determine its acceptability for filing. Because an application consisting of numerous volumes is physically difficult to handle, very often more than 30 days pass after receipt before review of an application is initiated. FDA finds that it cannot always determine within the 30-day period now specified whether an application is suitable for filing. By contrast, the agency believes that the 60-day period proposed is a reasonable period of time during which FDA can make a threshold determination on whether an application is acceptable for filing. That period would give agency reviewers an opportunity to perform a cursory review of each application and to prepare and issue a "Refusal to File" letter in cases where an application is obviously incomplete, or where it may not be filed because of other regulatory provisions.

The proposal would modify the current mechanism for "filing over protest." Under the current system, upon the issuance of a "Refusal to File" letter, the applicant may request that the application be filed over protest. This request results in an immediate "filing over protest," and obligates the agency to conduct a complete review of the application. The proposal provides that, if FDA notifies an applicant within 60 days of receipt of the application that the application is not suitable for filing, the applicant would be permitted to request in writing, within 30 days of the date of FDA's notification, an informal conference to discuss the inadequacies in the application. If following the informal conference the applicant requested that FDA file the application, FDA would file the application over protest as provided by proposed § 514.101(b), notify the applicant in writing, and review it as filed. If the application were filed over protest, the date of filing would be 60 days after the date the applicant requested the informal conference.

FDA is also proposing to reduce to 60 days the time period between the issuance of a "not approvable" letter and the issuance of a notice of opportunity for a hearing, including a 10-day period during which the applicant may notify CVM if the appplicant wants CVM to issue such a notice. This proposed revision would expedite administrative hearing procedures in those instances where an applicant wishes to invoke them.

3. Two Overlapping 180-Day Time Periods (Section 514.101(b))

FDA is proposing to establish two overlapping 180-day time periods. The agency recognizes that some persons may initially find this scheme confusing, but believes that the proposal meets both the pragmatic concerns of applicants and the requirements of the statute. From a pragmatic standpoint, what applicants care about most is how long FDA will take from receipt of the application until reaching an institutional decision on whether the application is approvable. This is the 180-day clock described above at the beginning of this preamble section. The statute (section 512(c) of the act), however, speaks in terms of issuing a "notice of opportunity for a hearing" rather than an "action letter," and it is the time between the filing date and the date of issuance of a notice of opportunity for a hearing which, by statute, must be within 180 days. The proposal would also satisfy this legal requirement.

The two overlapping 180-day time periods are illustrated in the following table:

Actions	Days from submission (FDA's operating time frame)	Days from filing (statutory time frame)
1. FDA receipt of application	0	
2. Filing	60	0
3. Action letter issues	180	120
4. Applicant may request issuance of a notice of opportunity for a hearing	190	130
5. Notice of opportunity for a hearing issues	240	180

Because a notice of opportunity for a hearing is issued for relatively few applications, FDA believes that the proposed operating time frame of 180 days "from receipt to action letter" is the most important time period to applicants.

4. Communications Between FDA and an Applicant (Section 514.102)

FDA believes that increasing and improving communications between the agency and applicants can do much to facilitate review of applications. Frank and open discussions involving

individuals who develop applications and FDA officials and personnel who review those applications can enhance the application of good science to the animal drug approval process. FDA encourages such communications wherever feasible, both before an application is submitted and while it is under review.

a. *Communications before submission of an application.* In the agency's experience, a presubmission conference, where the applicant meets with the reviewing team to discuss the best way to present the information in the application, is exceedingly helpful in speeding up FDA's subsequent review of an application. A significant source of delay in FDA's review of applications occurs when reviewers need to ask the applicant to analyze or present the data in the application differently. A presubmission conference may help avoid such delay. FDA strongly encourages applicants to initiate a presubmission conference, especially if the applicant is relatively inexperienced in new animal drug development. However, FDA is not proposing to require that a presubmission conference be held because such a conference is not always necessary. FDA requests that all conferences and meetings be scheduled in advance.

b. *Communications during review of an application.* FDA believes that more communication between the agency and an applicant during the review of an application would be mutually advantageous. Such communications permit an applicant to monitor the progress of the review and to learn of deficiencies as soon as possible, so that the applicant can promptly correct any deficiencies. FDA is taking the following steps to encourage such communications.

First, FDA would determine within 60 days of receipt of an application if the application is acceptable for filing. Under this proposal, every applicant would receive from the agency within 60 days from the submission date a letter concerning the suitability of the application for filing. If the application is not filed, FDA suggests that the applicant request an informal conference with reviewing officials and personnel.

Second, the agency is directing its reviewing staff to inform applicants of easily correctable deficiencies as they are discovered, in order to allow applicants to submit amendments to correct minor deficiencies within the 180-day review period.

Third, FDA may schedule a meeting during the review to inform the applicant of the general progress and status of the application and to discuss important deficiencies that have been identified. The agency encourages such a meeting, which may be held by telephone, if mutually agreeable. Unless it is extremely urgent (e.g., to discuss important new safety information), FDA strongly requests that the applicant or the applicant's representative not make unannounced or unscheduled visits with FDA personnel performing reviews. Such visits can be scheduled on relatively short notice.

5. Dispute Resolution (Section 514.103)

During review of an application, agency reviewers or division management may, under procedures described in proposed § 514.102(a), communicate with the applicant orally or in writing about what they believe are scientific deficiencies in the application. Reviewers may ask for additional information, data, or changes in the application to facilitate their review. In some cases, an applicant may question the need for an additional submission or a change in an application, or may disagree with FDA's request. An applicant may seek to modify or reverse an agency request through informal meetings with persons in reviewing divisions or through telephone conversations or letters. FDA intends to continue its policy of allowing applicants to informally negotiate such differences with the agency.

The agency recognizes, however, that a dispute between an applicant and a reviewing division regarding scientific or veterinary medical issues may not always be resolved after one or more meetings described in proposed § 514.102(c). If the applicant and the reviewing division conclude that an impasse exists, proposed § 514.103(c) would permit the applicant to appeal the division's decision.

Since 1981, CVM has used an appeals procedure for resolving disputes. The procedure has worked well. For this reason, the agency would retain it in proposed § 514.103(c)(2). CVM's appeal procedure is detailed in its Policy and Procedures Manual and is available to the public under FDA's Freedom of Information regulations.

6. Drug With Potential for Abuse (Section 514.104)

FDA has followed the practice of notifying the Drug Enforcement Administration if an application is submitted for a new animal drug that appears to have the potential for abuse. In proposed § 514.104, FDA would codify that practice. The proposal is consistent with the NDA Rewrite.

7. Action Letter

Under the proposal, after FDA completes its substantive review of an application, the agency would send to the applicant one of three action letters: An "approval" letter, an "approvable" letter, or a "not approvable" letter. (The proposed "approvable" letter and "not approvable" letter are both encompassed by CVM's current "incomplete" letter.)

a. *"Approval" letter (§ 514.105).* If FDA finds that none of the grounds in the statute for refusing to approve an application applies, the agency would approve the application and send the applicant an "approval" letter (§ 514.105). Only an approval letter would permit the marketing of a new animal drug. The proposed procedure for issuance of an "approval" letter is the same as current practice, as qualified below. FDA is proposing an important change. If an application contains minor deficiencies, such as deficiencies in the product's draft labeling, FDA is proposing to approve the application before the final corrections are submitted, with the condition that the deficiencies will be corrected before the product is marketed. In such a case, the "approval" letter would describe the specific conditions needing correction before any marketing of the product.

The "approval" letter to an applicant would take one of two forms, depending upon the animal drug product. First, if the animal drug product is a pharmaceutical dosage form (tablet, capsule, powder, or solution) or a Category I Type A medicated article that is not to be mixed with a Category II Type A medicated article, FDA is proposing that the "approval" letter state that the application is approved upon the date of the letter. Second, if the animal drug product is a Category II Type A medicated article (or a Category I that is to be mixed with a Category II), FDA is proposing that the "approval" letter state that the approval is effective upon the date of its publication in the **Federal Register** of the requisite "regulation" under section 512(i). In each of the cases above, marketing may not be initiated until copies of the final printed labeling have been submitted to FDA.

The date of approval of a Category II Type A medicated article (or a Category I that is to be mixed with a Category II) is the date of publication in the **Federal Register** of a "regulation" reflecting the approval because of the statutory provisions regulating the manufacture of Type B and Type C medicated feeds. Section 512(m) of the act requires that

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an application to manufacture an animal feed bearing or containing a new animal drug contain, among other things, a reference to the regulations providing for such use. Thus, medicated feeds cannot be prepared unless a "regulation" has been published providing for use of the Category II Type A medicated article.

b. *"Approvable" letter (§ 514.110) and "not approvable" letter (§ 514.120).* If an application contains deficiencies, FDA is proposing that it would issue to the applicant either an "approvable" letter (§ 514.110) or a "not approvable" letter (§ 514.120). An "approvable" letter means the agency believes that important, but easily resolved, deficiencies exist in the application, and that FDA will approve it if the applicant submits specific additional information or material identified in the letter or agrees to other specific conditions. A "not approvable" letter reflects the agency's conclusion that major deficiencies exist in the application, or that information in the application is unable to support approval of it.

8. Applicant's Response to an Action Letter

Under the proposal, an applicant would be required to respond to either an "approvable" or a "not approvable" letter within 60 days, unless FDA and the applicant both agree to an extension of the response time. The applicant's response would (1) withdraw the application, (2) amend the application or notify FDA of its intent to file an amendment, or (3) ask the agency to provide the applicant a notice of opportunity for a hearing on a proposal to refuse approval of the application under section 512(d) of the act or § 514.125. FDA would deem an applicant's failure to respond within 60 days to be a withdrawal of the application by the applicant. The withdrawal of the application would be without prejudice to refiling.

If FDA sends the applicant an "approvable" letter and the applicant files an amendment or notice of intent to file an amendment, FDA would review the amendment and take appropriate action within 45 days of its receipt. If FDA sends the applicant a "not approvable" letter requiring the applicant to attempt to resolve major deficiencies in the application by amendment, FDA would extend the review period for the time needed to review the amendment.

8a. Categories of Supplemental Applications (21 CFR 514.106)

As discussed earlier in this preamble, in reference to supplemental applications (§ 514.70), current § 514.106 *Approval of supplemental applications* is being amended to read § 514.106 *Categories of supplemental applications*, and is included for the sake of completeness rather than for comment.

9. Foreign Data (Section 514.107)

The agency is proposing requirements regarding the acceptance of foreign data in support of the safety and effectiveness of a new animal drug. The proposed requirements for most studies are the same as those required of similar studies conducted in the United States, but FDA is proposing that foreign clinical data must meet certain additional criteria in order to be accepted in support of the safety and effectiveness of a new animal drug. The foreign data must reflect appropriate animal treatment in the United States; the studies must have been conducted by qualified and recognized clinical investigators; and the data must be considered valid without the need for an FDA on-site inspection, or, if FDA determines that such an inspection is necessary, FDA can validate the data through an on-site inspection or by other appropriate means.

10. Refusal to Approve an Application (Section 514.125)

The agency proposes to retain the grounds for refusing to approve an application in the current regulations, but to amend the regulations to provide that CVM will prepare and issue a notice of opportunity for a hearing on a proposed refusal only if each of the following three conditions is met:

(1) CVM sends the applicant an "approvable" letter or a "not approvable" letter;

(2) The applicant, within 60 days of the date of the letter, asks CVM to issue a notice of opportunity for a hearing; and

(3) CVM concludes that grounds exist under section 512(d) of the act or § 514.125 for refusing approval of the application.

FDA is also proposing to add the following grounds for refusing to approve an application to those in the current regulations:

(1) The applicant refuses to correct a deficiency for which the agency may refuse to file an application (this ground might apply to an application filed over protest);

(2) The animal drug product will be manufactured processed in an establishment that is not registered or exempt from registration or records relevant to the application;

(3) The applicant's facilities do not comply with the agency's current good manufacturing practice regulations;

(4) The animal drug product's labeling does not comply with the agency's labeling regulations (other than minor deviations that are easily correctable); and

(5) The applicant or contract research organization does not retain reserve samples of the drug products used to conduct bioavailability or bioequivalence studies or release those samples to FDA when so requested (this proposed requirement conforms to that of the interim rule published in the **Federal Register** of November 8, 1990 (55 FR 47034)).

A notice of opportunity for a hearing on a proposed refusal to approve an application would generally provide, as such notices now do, a detailed description and analysis of the specific facts resulting in CVM's proposed refusal, and would refer to specific requirements in the act and regulations under which CVM proposed to refuse approval of the application. An applicant would have, as it does now, 30 days to respond to such a notice. If the applicant requests a hearing, the agency would issue a notice granting or denying a hearing within 90 days of the expiration of the 30-day period.

11. Adequate and Well-Controlled Studies (Section 514.126)

The agency is proposing to retain with minor editorial revisions the regulations in current § 514.111(a)(5) describing the criteria for an adequate and well-controlled study, except that FDA is proposing to establish the requirements in a separate section of the regulations (§ 514.126).

12. Incomplete Application for an Animal Feed Bearing or Containing a New Animal Drug (Section 514.129)

The agency is proposing that an application found incomplete due to deficiencies or inaccuracies in the information required in § 514.51 be considered withdrawn without prejudice to future filing, unless within 30 days of the date of issuance of the letter citing the deficiencies or inaccuracies the applicant requests a notice of opportunity for a hearing.

13. Withdrawal of Approval of an Application (Section 514.150)

The agency is proposing to retain the grounds for withdrawing approval of an application in the current regulations, but is proposing two new substantive provisions. Proposed § 514.150(d) would permit an applicant to voluntarily

request withdrawal after CVM has notified the applicant that grounds for withdrawal may exist. The proposal would permit CVM to notify an applicant if CVM believes a potential problem associated with the new animal drug product is sufficiently serious to warrant the products' removal from the market. CVM may ask the applicant to voluntarily remove the product from the market, waive the notice and opportunity for a hearing, and permit CVM to withdraw approval of the application. If the applicant complied with CVM's request, CVM would not make the detailed finding it would otherwise be obligated to make when withdrawing approval. CVM would, however, when publishing a notice of a voluntary withdrawal of approval of an application, give a brief summary of the reasons for the voluntary withdrawal.

Proposed § 514.150(b)(3)(iii) would provide for the issuance of a notice of opportunity for a hearing on a proposal to withdraw an application approved pursuant to section 512(c) of the act if CVM finds that the applicant or contract research organization that conducted a bioavailability or bioequivalence study contained in the application refuses to permit an inspection of facilities or records relevant to the study by a properly authorized officer or employee of the Department of Health and Human Services or refuses to submit reserve samples of the drug products used in the study when requested by FDA.

a. *Section 512(e)(1)(B) of the act—new evidence.* As discussed in two notices of opportunity for a hearing proposing to withdraw approval of several NADA's, new animal drugs are not shown to be safe within the meaning of section 512(e)(1)(B) of the act when new evidence provides a reasonable basis from which serious questions about the ultimate safety of the drug and the residues that may result from its use may be inferred, when new evidence shows that the drug is no longer shown to be safe by adequate tests by all methods reasonably applicable, and when new evidence shows that the labeled directions for use have not been followed in practice and are not likely to be followed in the future. See "Dimetridazole; Opportunity for Hearing" (51 FR 45244, December 17, 1986), and "Chloramphenicol Oral Solution; Opportunity for Hearing" (50 FR 27059, July 1, 1985).

Section 512(e)(1)(B) of the act is part of the Animal Drug Amendments of 1968, which consolidated into one section (section 512 of the act), the various provisions of the act that related to "new drugs" intended for use in animals. Prior to 1968, the definition of "new drug" in section 201(p) of the act (21 U.S.C. 321(p)), did not distinguish between drugs intended for use in man or other animals, and the premarket clearance provisions of section 505 of the act applied to new drugs intended for both man and other animals. Under section 505(e)(2) of the act, which was added to the statute in 1962, FDA must withdraw approval of a new drug application (NDA) if, after due notice and opportunity for hearing to the applicant, the agency finds that "new evidence" shows that the drug that is the subject of the application is not shown to be safe for use under the conditions of use upon the basis of which the NDA was approved.

b. *Section 512(e)(1)(B) of the act—safety.* Section 505(e)(2) was intended to "[c]larify and expand the authority to withdraw approval on safety grounds so that the manufacturer would continue to have the burden of showing that the drug is safe, as he has on the original submission." See 108 Cong. Rec. 17366 (1962) (statement of Senator Eastland, a sponsor of S. Doc. 1552, which was the forerunner of section 505(e)(2) of the act). See also 108 Cong. Rec. 21080 (1962). Under section 512(e)(1)(B) of the act, which is the new animal drug analog of section 505(e)(2) of the act, the manufacturer also continues to have the burden of showing safety. See S. Rept. No. 136, 90th Cong., 2d Sess. 3 (1968) ("[t]he enactment of [the Animal Drug Amendments of 1968] would in no way weaken the authority of [FDA] with respect to the regulation of new animal drugs").

c. *Section 512(d)(1)(A) of the act—methods to show safety.* Section 512(d)(1)(A) of the act requires FDA to refuse to approve an NADA if the agency finds that:

> • • • the investigations, reports of which are required to be submitted to the [FDA] pursuant to subsection (b), [section 512(b)], do not include adequate tests by all methods reasonably applicable to show whether or not such drug is safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof • • •.

The analog of section 512(d)(1)(A) of the act is section 512(e)(1)(B) of the act, which requires withdrawal of approval of an NADA where:

> • • • tests by new methods, or tests by methods not deemed reasonably applicable when such application was approved, evaluated together with the evidence available to the [FDA] when the application was approved, shows that such drug is not shown to be safe • • •.

FDA can satisfy its burden under section 512(e)(1)(B) of the act by citing (1) progress in scientific standards (new evidence) such that new tests are needed for a safety evaluation under current scientific standards, and (2) a failure by the applicant to do such tests. Section 512(e)(1)(B) of the act is not as explicit as section 512(d)(1)(A) of the act in imposing on the applicant the duty to conduct tests and submit the results. But the general philosophy of section 512 of the act (as of sections 409, 505, and 706 of the act (21 U.S.C. 348, 355, and 376)) is that testing shall be the responsibility of the firm, and not the agency. That philosophy is explicitly reflected in section 512 (b)(1)(A) and (d)(1)(A) of the act. There is no reason to interpret section 512(e)(1)(B) of the act differently.

Section 512(d)(1)(A) of the act uses the phrase "adequate tests," but section 512(e)(1)(B) of the act does not. Nevertheless, it would be absurd to interpret "tests" in section 512(e)(1)(B) of the act as including inadequate tests.

Therefore, it is appropriate to read "tests" in section 512(e)(1)(B) of the act as "adequate tests." It is also appropriate to read the general "new evidence" provision of section 512(e)(1)(B) of the act as incorporating the standard of "adequate tests by all methods reasonably applicable," which appears in section 512(d)(1)(A) of the act. Thus, if new evidence of scientific progress shows that the data supporting an NADA no longer constitute adequate tests by all methods reasonably applicable to a determination of safety, that new evidence warrants withdrawal under section 512(e)(1)(B). *Cf. United States* v. *Western Serum Co., Inc.*, 666 F.2d 335 (9th Cir. 1982) (absent current general recognition of the safety of an animal drug, that drug is a new animal drug and must have an approved NADA).

d. *Section 512(a)(1)(B) of the act—labeling and conditions of use.* Section 512(a)(1)(B) of the act provides that a new animal drug is unsafe unless the drug, its labeling, and its use conform to that provided for in the approved NADA for the drug. Section 512(d)(2)(D) of the act provides that in determining whether a drug is safe for use under the conditions prescribed, recommended, or suggested in the labeling, the agency is to consider, among other factors, whether those conditions of use are reasonably certain to be followed in practice. Accordingly, where labeled conditions including indications for use of an approved new animal drug have not been followed, or are not reasonably certain to be followed in practice, the animal drug is not shown to be safe for

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use and therefore its approval is subject to withdrawal under section 512(e)(1)(B) of the act. Furthermore, the use or intended use of an approved new animal drug in a manner that is inconsistent with the conditions of its approval causes the animal drug to be unsafe and thereby adulterated under sections 501(a)(5) and 512(a)(1) (A) and (B) of the act. The approval of such an adulterated drug is also subject to withdrawal under section 512(e)(1)(B) of the act.

14. Notice of Withdrawal of Approval of an Application for a New Animal Drug (Section 514.152)

The agency proposes to codify its policy to provide public notice of the withdrawal of approval of an application for a new animal drug. If FDA withdraws approval of an application for a new animal drug, FDA will publish a notice in the **Federal Register** announcing the withdrawal and a final rule removing the regulations reflecting the approval. An application providing for the manufacture of an animal feed bearing or containing a new animal drug and approved pursuant to section 512(m)(2) of the act will be deemed to be withdrawn upon publication of the final rule removing the corresponding regulation.

15. Approval or Reinstatement of an Application for Which Approval was Refused, Suspended, or Withdrawn (Section 514.160)

FDA is proposing to make only editorial revisions in current § 514.120 and also establish a new section number for these requirements (proposed § 514.160).

16. Adulteration and Misbranding of an Approved Animal Drug (Section 514.170).

The agency proposes to add a new section in the regulations to clarify the relationship between the premarket approval requirements of the act and its adulteration and misbranding provisions. This new section would provide the same regulatory interpretation for new animal drugs as was established for new drugs under the NDA Rewrite.

D. Hearing Procedures for New Animal Drugs (Sections 514.200, 514.201, 514.235)

The agency proposes to make substantive changes of the regulations in §§ 514.200, 514.201, and 514.235 describing notices of opportunity for hearing on proposals to refuse to approve applications or to withdraw approval of approved applications, notices of participation and requests for hearing, notices and orders granting and denying hearings with respect to new animal drugs, procedures for hearings, and judicial review. The proposed changes in the regulations clarify the responsibility of both FDA and applicants with respect to hearings. The changes would set forth in greater detail the process and content of a response to a notice of opportunity for a hearing. This additional detail should aid applicants in preparing appropriate and adequate responses to such notices.

The applicant would have 30 days from the date of publication of the notice to file with FDA's Dockets Management Branch a notice of participation and a request for a hearing. Within 60 days from the date of the notice of opportunity for a hearing, the applicant would have to file with the Dockets Management Branch data, information, and analysis relied on to justify the request for a hearing.

The supporting information to be submitted by the applicant would include studies, protocols and raw data, and factual analysis of all information relied on to justify the request for a hearing. The proposed rule specifies a format for submission of data to support a request for a hearing. The proposed rule also contains provisions regarding separation of functions within the agency and administrative summary judgment.

These proposed changes are consistent with those promulgated under the NDA Rewrite, except that the proposed rule, unlike the NDA Rewrite, does not include provisions regarding contentions that an animal drug product is not subject to the new animal drug requirements of the act. If an animal drug product is generally recognized as safe and effective within the meaning of section 201(w) of the act (21 U.S.C. 321(w)), or if it is "grandfathered" under the exemption for products marketed before June 25, 1938, contained in section 201(w) of the act, or under section 108(b)(3) of the Animal Drug Amendments of 1968, it may be exempt from some or all of the new animal drug provisions of the act. Contentions that an animal drug product is not subject to the new animal drug requirements of the act have rarely been made. For this reason, FDA decided not to burden the proposal with provisions governing such contentions. If the need arises, CVM will specify in a notice of opportunity for a hearing proposing to refuse or withdraw approval of an application for a new animal drug the data, information, and factual records that are necessary and appropriate to support the contention(s) in question, relying on the act and its legislative history and purpose, the decided cases, and any applicable regulations.

E. Subpart E [Reserved]

In order to retain a format that parallels that of 21 CFR part 314, subpart E in 21 CFR part 514 is reserved because there no longer are provisions for the certification of antibiotic new animal drugs.

F. Miscellaneous Provisions

1. Imports and Exports (Section 514.410).

Section 301 of the act (21 U.S.C. 331) prohibits interstate commerce in unapproved new animal drugs. The definition of such commerce in section 201(b) of the act (21 U.S.C. 321(b)) effectively includes commerce in imports and exports. In addition, section 801(d) of the act specifically prohibits the exportation of a new animal drug that is unsafe within the meaning of section 512(b) of the act (e.g., is not the subject of an approved NADA or an exemption granted for an investigational new animal drug (INAD)). Under section 802 of the act, however, such a new animal drug may be exported if it is the subject of an approved export application. Thus, a new animal drug product may be imported only if it is the subject of an approved NADA or of a valid INAD, and may be exported only if it is the subject of an approved NADA, a valid INAD, or an export application approved under section 802 of the act. In addition, a bulk animal drug substance may be imported if it complies with 21 CFR 201.122.

FDA is proposing to codify the agency's current policy on imports and exports of a new animal drug, with two changes. The first proposed change would permit a supplier of a bulk animal drug substance used in an approved new animal drug product to export the bulk animal drug substance even if the animal drug substance manufacturer does not hold an approved application for an animal drug product containing the substance. The agency is proposing this action to make the animal drug regulations consistent with those for human drugs and to facilitate commerce in bulk animal drug substances. Because FDA generally does not approve applications for new animal drug substances, it would consider the approval of the application for a new animal drug product, which contains detailed information about the new animal drug substance, to cover the export of that substance. The export shipment would be required to meet the same specifications the new animal drug substance must meet for use in the approved new animal drug product and to include a copy of the labeling for the product.

The second proposed change in FDA's current policy on imports and exports is the acknowledgement in § 514.410(b)(iii) of the right to export an unapproved new animal drug product under section 802 of the act (the Drug Export Amendments Act of 1986). The agency is currently developing policies and procedures to implement section 802. FDA intends to make these policies and procedures available to the public for comment in the future.

2. Drug Master File (Section 514.420)

The agency proposes to amend substantially the regulations to provide for drug master files in order that the regulations reflect current practice. A drug master file is a body of information that a person (a holder of a drug master file) submits to FDA. The existence of a drug master file permits its holder to incorporate the information in an INAD, an NADA, an ANADA, or another submission to the agency without having to resubmit individual copies of the information. In addition, the holder may authorize other persons to rely upon information to support their submissions to FDA without the holder or the agency disclosing to the other persons information in the master file that may be a trade secret. The proposed regulations describe a master file and clarify that FDA reviews the content of a master file only in the context of its review of an application.

The proposal lists five examples of a drug master file that the agency accepts. The drug master file holder is requested to review the drug master file annually and notify CVM in order to keep the file up to date. The proposed regulations specify that each incorporation from a drug master file is required to describe the incorporated material by name, reference number, volume, and page number. The regulations would require the holder to (1) submit two copies of the drug master file, (2) maintain a list in the master file of each person authorized to incorporate information in the file and identify the information the person is authorized to incorporate, and (3) notify, in writing, each person authorized to refer to information in the file each time the file holder makes a change in the information upon which that person relies. Proposed § 514.420 would be consistent with § 314.420 established under the NDA Rewrite.

3. Public Master File (Section 514.421)

The agency is proposing a new section to provide for public master files. Information from such files may become available for incorporation into an INAD, an NADA, or an ANADA.

4. Availability for Public Disclosure of Data and Information in an Application (Section 514.430)

The agency is proposing to redesignate the regulations regarding the availability for public disclosure of data and information in an application, and to make minor changes in those regulations, primarily concerning the timing of disclosure.

5. Addresses (Section 514.440)

FDA proposes a new section that would designate various agency offices to which applications, filings, and other correspondence should be sent.

6. Guidelines (Section 514.445)

The agency is also proposing a new section that reflects the agency's use of guidelines to help persons comply with the regulations. Although the proposed rule would establish general provisions for the kind, quantity, and presentation of data needed to obtain marketing approval of a new animal drug, FDA is proposing to give applicants a great deal of flexibility in putting together an application. Such guidelines do not bind FDA nor do they in any way create or confer any rights, privileges, or benefits for any person. In the preamble to any final rule, FDA will include a list of applicable guidelines. The preamble will also state how a person can obtain a copy of each guideline.

IV. Animal Feeds

At the time any final rule based on this proposal is published, the agency will revise and redesignate certain portions of the regulations in 21 CFR part 510 into part 514 and revise and redesignate certain others in part 514. Those regulations concern the approval of new animal drugs for use in animal feeds. Specifically, § 510.305 will be revised and redesignated as § 514.83; § 514.2 as § 514.51; § 514.9 as § 514.75; and § 514.112 as § 514.129. The major provisions of these regulations were substantially revised in a final rule that was published in the **Federal Register** of March 3, 1986 (51 FR 7382).

V. Records and Reports

In a proposed rule published elsewhere in this issue of the **Federal Register**, the agency is proposing to amend the regulations for reporting and recordkeeping currently at 21 CFR 510.300 to 510.302 by incorporating certain portions of the existing requirements into proposed 21 CFR 514.80 to 514.82.

VI. Conforming Amendments of the Proposed Rule

These proposed regulations, if promulgated, will necessitate changes in various regulations in parts 10, 12, 16, 20, 500, 510, 511, and 514.

A. Part 510, Subpart C—Exportation of New Animal Drugs

In part 510, FDA proposes to remove the heading "Subpart C—Exportation of New Animal Drugs", to incorporate the material in § 510.200 into § 514.410, and to substantially revise and update the section and its heading as noted above.

B. Part 511, New Animal Drugs for Investigational Use

In part 511, FDA proposes to establish a new § 511.2 to describe the public information aspects of investigational new animal drug applications formerly described in § 514.12 *Confidentiality of data and information in an investigational new animal drug notice.*

C. Other Conforming Amendments To Reorganize the Regulations

In parts 10, 12, 16, 20, and 500, conforming amendments have been proposed to reflect the proposed reorganization of part 514.

VII. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Economic Impact

FDA has examined the economic consequences of these proposed regulations governing new animal drugs in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354). The requisite threshold assessment required by these provisions was completed in 1987.

The agency concludes that the proposed rule, if promulgated, will improve the efficiency of the agency's NADA review process without compromising the high level of public health protection that process now provides. The reviewing efficiencies will benefit both the public and applicants by facilitating earlier availability and marketing of safe and effective new animal drugs and expedite withdrawal of approval of new animal drugs that are no longer shown to be safe and effective.

Although not every impact can be quantified, the agency estimates, based

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on the 1987 threshold assessment, that the proposed changes in the approval process may provide a modest net savings to animal drug manufacturers—perhaps as much as $1 million per year. An estimated $1.7 million per year in annual savings may be achieved through earlier receipts of sales revenues due to quicker approvals, decreases in the number of supplements sent to the agency, and a reduction in the number of NADA copies submitted. A significant portion of those savings is based on the assumption that approvals will be 120 days sooner. About $1 million of the $1.7 million in savings is a result of the shorter time for approval. These savings, however, may be offset by about $700,000 in costs each year for the preparation of full summaries. The summary, along with the separation of the NADA into technical sections, will lead to a faster and more efficient review by facilitating concurrent reviews of the NADA. If the agency's estimate of the value of earlier approvals turns out to be optimistic, the net impact of the changes in the regulations would move closer to zero.

Based on this analysis, the agency concludes that the proposed regulations do not constitute a major rule, as defined in Executive Order 12291. The agency also certifies, in accordance with section 605(b) of the Regulatory Flexibility Act, that there will not be a significant impact on a substantial number of small entities, and, therefore, that a Regulatory Flexibility Analysis is not required. An assessment of the economic impact of this proposed rule has been placed on file in the Dockets Management Branch (address above), and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

IX. Paperwork Reduction Act of 1980

The proposed rule contains information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. Existing information requirements in the following sections of this proposed rule have been approved by OMB under the control numbers indicated: 514.50 (d)(4) and (d)(5), OMB 0910–0032; 514.50(d)(8), OMB 0910–0190; 514.51, OMB 0910–0011; 514.200, OMB 0910–0101; 514.410, 0910–0117; 514.420, OMB 0910–0001. Information requirements in § 514.410 were approved under OMB 0910–0204 which has expired. The remaining information requirements, discussed below, have been submitted to OMB for review. The title and description of the information collection requirements are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: New Animal Drug Regulations.

Description: The information requirements contained in the proposed rule would collect information from persons who must obtain FDA approval prior to marketing new animal drug products. These persons must submit information in the form of applications and related submissions. FDA will use the information submitted to determine whether the proposed new animal drug is eligible for approval and marketing.

Description of Respondents: Businesses.

Estimated Annual Reporting and Recordkeeping Burden:

Section	No. of respondents	Annual No. of responses	Average burden per response	Annual burden hours
514.50				
(d)(1)	214	1,050	160	168,000
(d)(2)	214	70	650	45,500
(d)(3)(ii)	214	65	270	17,550
(d)(6)	214	48	370	17,760
(d)(7)	214	54	125	6,750
(f)	214	65	325	21,125
514.58	214	20	45	900
514.70	214	1,424	99	140,976
514.421	214	4	42	168
514.430	214	36	30	1,080
Total		2,836	2,116	419,809

As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements. Organizations and individuals desiring to submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should direct them to FDA's Dockets Management Branch (address above), and to the Office of Information and Regulatory Affairs, OMB, Rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Desk Officer for FDA.

X. Text of the Proposed Rule

List of Subjects

21 CFR Part 10

Administrative practice and procedure, News media.

21 CFR Part 12

Administrative practice and procedure.

21 CFR Part 16

Administrative practice and procedure.

21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

21 CFR Part 500

Animal drugs, Animal feeds, Cancer, Labeling, Polychlorinated biphenyls (PCB's).

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 511

Animal drugs, Medical research, Reporting and recordkeeping requirements.

21 CF Part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that 21 CFR parts 10, 12, 16, 20, 500, 510, 511, and 514 be amended as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

1. The authority citation for 21 CFR part 10 is revised to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 21 U.S.C. 41–50, 141–149, 467f, 679, 821, 1034; secs. 2, 351, 530–542, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 264); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 5 U.S.C. 551–558, 701–706; 28 U.S.C. 2112.

§ 10.25 [Amended]

2. Section 10.25 *Initiation of administrative proceedings* is amended in paragraph (a)(1) by removing "§ 514.1" and replacing it with "§ 514.50".

PART 12—FORMAL EVIDENTIARY PUBLIC HEARING

3. The authority citation for 21 CFR part 12 is revised to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 21 U.S.C. 41–50, 141–149, 467f, 679, 821, 1034; secs. 2, 351, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 264); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 5 U.S.C. 551–558, 701–706; 28 U.S.C. 2112.

§ 12.21 [Amended]

4. Section 12.21 *Initiation of a hearing involving the issuance, amendment, or revocation of an order* is amended in paragraph (a)(2) by removing "§ 514.1" and "§ 514.2" and replacing them with "§ 514.50" and "§ 514.51", respectively.

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

5. The authority citation for 21 CFR part 16 is revised to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 21 U.S.C. 41–50, 141–149, 467f, 679, 821, 1034; secs. 2, 351, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 264); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451 1461); 28 U.S.C. 2112.

§ 16.1 [Amended]

6. Section 16.1 *Scope* is amended in paragraph (b)(2) by removing the entry for "§ 514.210."

PART 20—PUBLIC INFORMATION

7. The authority citation for 21 CFR part 20 is revised to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 2421, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1); 5 U.S.C. 552; 18 U.S.C. 1905.

§ 20.100 [Amended]

8. Section 20.100 is amended by revising the section heading, in paragraph (c)(10) by removing "§ 514.12" and replacing it with "§ 514.430", in paragraph (c)(11) by removing "§ 514.11" and replacing it with "§ 514.430", and in paragraph (c)(12) by removing "§ 514.10" and replacing it with "§ 514.430" to read as follows:

§ 20.100 Applicability; cross-reference to other regulations.

* * * * *

PART 500—GENERAL

9.–11. The authority citation for 21 CFR part 500 continues to read as follows:

Authority: Secs. 201, 301, 402, 403, 409, 501, 502, 503, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 353, 360b, 371).

§ 500.25 [Amended]

12. Section 500.25 *Anthelmintic drugs for use in animals* is amended in paragraph (c) by removing "§ 514.8(d)

Service Act (42 U.S.C. 201, 262, 264); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 5 U.S.C. 551–558, 701–706; 28 U.S.C. 2112.

§ 12.21 [Amended]

4. Section 12.21 *Initiation of a hearing involving the issuance, amendment, or revocation of an order* is amended in paragraph (a)(2) by removing "§ 514.1" and "§ 514.2" and replacing them with "§ 514.50" and "§ 514.51", respectively.

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

5. The authority citation for 21 CFR part 16 is revised to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 21 U.S.C. 41–50, 141–149, 467f, 679, 821, 1034; secs. 2, 351, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 264); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451 1461); 28 U.S.C. 2112.

§ 16.1 [Amended]

6. Section 16.1 *Scope* is amended in paragraph (b)(2) by removing the entry for "§ 514.210."

PART 20—PUBLIC INFORMATION

7. The authority citation for 21 CFR part 20 is revised to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 2421, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1); 5 U.S.C. 552; 18 U.S.C. 1905.

§ 20.100 [Amended]

8. Section 20.100 is amended by revising the section heading, in paragraph (c)(10) by removing "§ 514.12" and replacing it with "§ 514.430", in paragraph (c)(11) by removing "§ 514.11" and replacing it with "§ 514.430", and in paragraph (c)(12) by removing "§ 514.10" and replacing it with "§ 514.430" to read as follows:

§ 20.100 Applicability; cross-reference to other regulations.

* * * * *

PART 500—GENERAL

9.–11. The authority citation for 21 CFR part 500 continues to read as follows:

Authority: Secs. 201, 301, 402, 403, 409, 501, 502, 503, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 353, 360b, 371).

§ 500.25 [Amended]

12. Section 500.25 *Anthelmintic drugs for use in animals* is amended in paragraph (c) by removing "§ 514.8(d) and (e)" and "§ 514.9" and replacing them with "§ 514.70" and "§ 514.75", respectively.

PART 510—NEW ANIMAL DRUGS

13. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.7 [Amended]

14. Section 510.7 *Consignees of new animal drugs for use in the manufacture of animal feed* is amended in paragraphs (a)(1) and (a)(2) by removing "§ 514.2" and replacing it with "§ 514.51".

Subpart C [Removed and Reserved]

15. Subpart C, consisting of § 510.200 is removed and reserved.

§ 510.305 [Removed]

16. Section 510.305 *Maintenance of copies of approved applications for animal feed bearing or containing new animal drugs* is removed from Subpart D.

PART 511—NEW ANIMAL DRUGS FOR INVESTIGATIONAL USE

17. The authority citation for 21 CFR part 511 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 360b, 371).

18. Section 511.2 is added to read as follows:

§ 511.2 Confidentiality of data and information in an investigational new animal drug notice.

(a) The existence of an investigational new animal drug (INAD) notice will not be disclosed by the Food and Drug Administration unless it has previously been publicly disclosed or acknowledged.

(b) The availability for public disclosure of all data and information in an INAD file shall be handled in accordance with provisions established in § 514.430 of this chapter.

19. Part 514 is revised to read as follows:

PART 514—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW ANIMAL DRUG

Subpart A—General Provisions

Sec.

514.1 Scope of this part.
514.2 Purpose.
514.3 Definitions.

Subpart B—Applications

514.50 Content, format, and summary of a new animal drug application.
514.51 Application for an animal feed bearing or containing a new animal drug.
514.58 Minor use application.
514.60 Amendment of an unapproved application.
514.65 Withdrawal by the applicant of an unapproved application.
514.70 Supplements and other changes to an approved application.
514.71 Procedure for submission of a supplement to an approved application.
514.72 Change in ownership of an application.
514.75 Supplemental application for an animal feed bearing or containing a new animal drug.
514.83 Maintenance of copies of approved applications for animal feed bearing or containing new animal drugs.
514.90 Waivers.

Subpart C—FDA Actions on Applications

514.100 Review of an application.
514.101 Filing an application.
514.102 Communications between FDA and an applicant.
514.103 Dispute resolution.
514.104 Drug with potential for abuse.
514.105 Approval of an application.
514.106 Categories of supplemental applications.
514.107 Foreign data.
514.110 Approvable letter to the applicant.
514.120 Not approvable letter to the applicant.
514.125 Refusal to approve an application.
514.126 Adequate and well-controlled studies.
514.129 Incomplete application for an animal feed bearing or containing a new animal drug.
514.150 Withdrawal of approval of an application.
514.152 Notice of withdrawal of approval of an application for a new animal drug.
514.160 Approval or reinstatement of an application for which approval was refused, suspended, or withdrawn.
514.170 Adulteration and misbranding of an approved animal drug.

Subpart D—Hearing Procedures for New Animal Drugs

514.200 Notice of opportunity for hearing; notice of participation and request for hearing; grant or denial of hearing.
514.201 Procedure for hearings.
514.235 Judicial review.

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Subpart E—[Reserved]

Subpart F—Miscellaneous Provisions

514.410 Imports and exports of a new animal drug.
514.420 Drug master file.
514.421 Public master file.
514.430 Availability for public disclosure of data and information in an application.
514.440 Addresses.
514.445 Guidelines.

Authority: Secs. 501, 502, 512, 701, 706, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360b, 371, 376, 381).

Subpart A—General Provisions

§ 514.1 Scope of this part.

(a) This part sets forth procedures and requirements for the submission to, and review by, the Food and Drug Administration (FDA) of applications, and amendments and supplements to them, by persons seeking or holding approval from FDA of the following:

(1) An application under section 512(b) of the Federal Food, Drug, and Cosmetic Act (the act) to market a new animal drug.

(2) An application under section 512(m) of the act to manufacture an animal feed containing a new animal drug.

(b) This part does not apply to an animal drug produced and distributed in full conformance with the Animal Virus, Serum, and Toxin Law of March 4, 1913 (37 Stat. 832 as amended (21 U.S.C. 151 *et seq.*)).

(c) References in this part to regulations in the Code of Federal Regulations are to chapter I of title 21, unless otherwise noted.

§ 514.2 Purpose.

The purpose of this part is to establish an efficient and thorough new animal drug review process to facilitate the approval of any new animal drug that is shown to be safe and effective for its intended use, to ensure the disapproval of any new animal drug that is not shown to be safe and effective for its intended use, and to facilitate the withdrawal of approval of any new animal drug that is no longer shown to be safe and effective for its intended use. These regulations shall be construed in the context of these objectives.

§ 514.3 Definitions.

(a) The definitions and interpretations contained in section 201 of the Federal Food, Drug, and Cosmetic Act (the act) and in §§ 510.3 and 558.3 of this chapter apply to those terms when used in this part.

(b) The following definitions of terms apply to this part:

Act means the Federal Food, Drug, and Cosmetic Act (sections 201–903 (21 U.S.C. 321–394)).

Animal drug product means a finished dosage form, for example, tablet, capsule, powder or solution, or a Type A medicated article that contains an animal drug substance, generally, but not necessarily, in association with one or more other ingredients.

Animal drug substance means an active ingredient that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease or to affect the structure or any function of an animal's body, but does not include intermediates used in the synthesis of such ingredient.

Animal feed means an animal feed bearing or containing a new animal drug as provided in part 558 of this chapter.

Applicant means any person who submits an application under this part to obtain FDA approval to market a new animal drug or an animal feed bearing or containing a new animal drug or any person who owns an approved application.

Application means the applications described under §§ 514.50 and 514.51; and the minor use application described under § 514.58; "application" includes all amendments and supplements. "Application" also includes applications approved under the DESI program.

Approvable letter means a written communication to an applicant from FDA stating that FDA will approve the application if specific additional information or material is submitted or specific conditions are met. An approvable letter does not constitute approval of an application or any part of an application and does not permit marketing of the animal drug product that is the subject of the application.

Approval letter means a written communication to an applicant from FDA approving an application. An approval letter permits marketing of the animal drug product that is the subject of the application, except in the case of an application for approval of a Category II Type A medicated article.

Approval upon publication of a regulation applies to a Category II Type A medicated article. A regulation under section 512(i) of the act must be published before an application for a Type B or Type C medicated feed as described in § 514.51 may be submitted.

CVM means Center for Veterinary Medicine.

FDA means the Food and Drug Administration.

MFA means a medicated feed application as described in § 514.51 and includes all amendments and supplements.

Minor species means an animal other than cattle, horses, swine, chickens, turkeys, dogs, and cats. Sheep are a minor species with respect to effectiveness and animal safety data collection requirements; sheep are a major species with respect to human food safety data collection requirements arising from the possible presence of drug residues in food.

Minor use means the use of a new animal drug in a minor animal species or the use of a new animal drug in any animal species for the control of a disease that occurs infrequently or that occurs in limited geographic areas.

NADA means a new animal drug application as described in § 514.50 and includes all amendments and supplements.

New animal drug substance means any substance that, when used in the manufacture, processing, or packing of an animal drug, causes that animal drug to be a new animal drug, but does not include intermediates used in the synthesis of such substance.

Not approvable letter means a written communication to an applicant from FDA stating that FDA does not consider the application approvable because one or more deficiencies in the application preclude FDA from approving it.

Subpart B—Applications

§ 514.50 Content, format, and summary of a new animal drug application.

An application to be filed pursuant to section 512(b) of the act shall be submitted in the form and shall contain the information, as appropriate for the particular submission, required under this section. Two copies of the entire application are required, an archival copy and a review copy. An additional copy of the chemistry, manufacturing, and controls section is required to facilitate preapproval inspection of the manufacturing facility. An application for a new animal drug will generally contain an application form, an index, a summary, six to eight technical sections, case report tabulations of animal data, case report forms, and labeling. Certain applications may contain only some of those items, and information will be limited to that needed to support the particular submission. The application is required to contain reports of all investigations of the animal drug product sponsored by the applicant, and all other information about the animal drug pertinent to an evaluation of the application that is received or otherwise obtained by the applicant from any source. FDA will maintain guidelines on the format and content of applications to assist applicants in preparing them.

(a) *Application form.* The applicant shall submit a completed and signed application form (Form FDA 356V) that contains the following:

(1) The name and address of the applicant; the date of the application; the application number if previously issued (for example, if the application is a resubmission, an amendment, or a supplement); the name of the new animal drug product, including its established, proprietary, code, and chemical names; the dosage form and strength; the route of administration; the identification numbers of all investigational new animal drug applications that are referred to in the application; the identification number of all drug master files and other applications under this part that are referred to in the application; and the new animal drug product's proposed indications for use.

(2) A statement whether the submission is an original submission under § 514.50, a resubmission under § 514.50, a minor use application under § 514.58, an amendment under § 514.60, or a supplement under § 514.70.

(3) A statement whether the applicant proposes to market the new animal drug product as a prescription or an over-the-counter product, and a justification for marketing the new animal drug product as a prescription or an over-the-counter product, as appropriate.

(4) A checklist identifying what enclosures required under this section are being submitted.

(5) The applicant, or the applicant's attorney, agent, or other authorized official, shall sign the application. If the person signing the application does not reside or have a place of business within the United States, the application shall contain the name and address of, and to be countersigned by, an attorney, agent, or other authorized official who resides or maintains a place of business within the United States. WARNING: A willfully false statement is a criminal offense (18 U.S.C. 1001).

(b) *Index.* The archival copy of the application shall contain an index by volume number and page number to the summary under paragraph (c) of this section, the technical sections under paragraph (d) of this section, and the supporting information under paragraph (f) of this section.

(c) *Summary.* (1) An application shall contain a summary of the application in enough detail that the reader may gain a good general understanding of the data and information in the application, including an understanding of the quantitative aspects of the data. A summary is required for an application under § 514.50, a minor use application under § 514.58, and a supplement under § 514.70(b) or (c). A summary is not required for a supplement under § 514.70(d) or (e). If an application is resubmitted, the application shall contain an updated summary, as appropriate. The summary shall contain a discussion of all aspects of the application and shall abstract the information into a well-structured and unified document. FDA may furnish the summary to FDA advisory committee members and other FDA officials whose duties require an understanding of the application. To the extent possible, data in the summary are required to be presented in tabular or graphic form. The summary required under this paragraph may be used by FDA or the applicant to prepare the freedom of information summary for public disclosure (under § 514.430(e)(2)(ii)) when the application is approved.

(2) The summary shall contain the following information:

(i) The proposed text of the labeling for the new animal drug product, with annotations to the information in the summary and technical sections of the application that support the inclusion of each statement in the labeling, including the statement that the product is a prescription or an over-the-counter product.

(ii) A statement identifying the pharmacologic class of the new animal drug product and a discussion of the scientific rationale for the new animal drug, its intended use, and the potential benefits and risks of the new animal drug product.

(iii) A brief description of the marketing history, if any, of the new anima1 drug product outside the United States, including a list of the countries in which the product has been marketed, a list of any countries in which the product has been withdrawn from marketing including an explanation of the reason for such withdrawal, and a list of countries in which applications for marketing are pending. The description is required to include both marketing by the applicant and, if known, the history of marketing by other persons.

(iv) A summary of the chemistry, manufacturing, and controls section of the application.

(v) A summary of the effectiveness section of the application, including the results of all statistical analyses of the clinical trials.

(vi) A summary of the target animal safety section of the application.

(vii) A summary of the residue toxicology section of the application.

(viii) A summary of the residue chemistry section of the application.

(ix) A summary of the target animal pharmacokinetics and bioavailability section of the application.

(x) A summary of the microbiology section of the application (for anti-infective new animal drugs only).

(xi) A summary of the environmental impact section of the application.

(xii) A concluding discussion that presents the benefit and risk considerations related to the new animal drug, including a discussion of any proposed additional studies or surveillance the applicant intends to conduct following approval of the application.

(d) *Technical sections.* The application shall contain the technical sections described below. Each technical section shall contain data and information in sufficient detail to permit FDA to make a knowledgeable judgment about whether to approve the application or whether grounds exist under section 512(d) of the act to refuse to approve the application. The required technical sections are as follows:

(1) *Chemistry, manufacturing, and controls section.* A section describing the composition, manufacture, and specifications of the animal drug substance and the animal drug product, including the following:

(i) *Animal drug substance.* A full description of the animal drug substance including its physical and chemical characteristics and stability; the name and address of the manufacturer; the method of synthesis or fermentation, isolation, and purification of the animal drug substance; the process controls used during manufacture and packaging; such specifications and analytical methods as are necessary to ensure the identity, strength, quality, and purity of the animal drug substance; the sterility, particle size, crystalline form, and stability of the new animal drug substance; and the bioavailability of the new animal drug products made from the animal drug substance. In addition, the application may provide for the use of alternatives to meet any of these requirements, including alternative sources, process controls, methods, and specifications. Reference to the current edition of the U.S. Pharmacopeia and the National Formulary or a master file may satisfy relevant requirements in this paragraph.

(ii) *New animal drug product.* A list of all components used in the manufacture of the new animal drug product (regardless of whether they appear in

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the product) and a statement of the composition of the product; a statement of the specifications and analytical methods for each component; the name and address of each manufacturer of the new animal drug product; a description of the manufacturing and packaging procedures and in-process controls for the product including a list of relevant manufacturing and laboratory equipment and an explanation of the raw material and batch control number system; such specifications and analytical methods as are necessary to ensure the identity, strength, quality, purity including specifications relating to sterility, bioavailability, and dissolution rate of the animal drug product; specifications relating to containers and closure systems; and stability data with proposed expiration dating. In addition, the application may provide for the use of alternatives to meet any of these requirements, including alternative components, manufacturing and packaging procedures, in-process controls, methods, and specifications. Reference to the current edition of the U.S. Pharmacopeia and the National Formulary or a master file may satisfy relevant requirements in this paragraph.

(iii) *Early submission.* The applicant may submit a complete chemistry, manufacturing, and controls section 90 to 120 days before the anticipated submission of the remainder of the application. FDA will review such early submissions as resources permit.

(2) *Effectiveness section.* A section describing the studies conducted to demonstrate the effectiveness of the animal drug for its intended use, including the following:

(i) A description and analysis of each controlled clinical study pertinent to a proposed use of the new animal drug product, including the protocol for the study and when necessary a description of the statistical analyses used to evaluate the study. If the study report is an interim analysis, that fact is to be noted and a projected completion date provided. A description of each controlled clinical study that has not been analyzed in detail for any reason (e.g., because it has been discontinued or is incomplete) is to be included in this section, together with a copy of the protocol for the study, a brief description of the results and status of the study, and an explanation of why the study has not been analyzed in detail.

(ii) A description of each uncontrolled clinical study, a summary of the results, and a brief statement explaining why the study is classified as uncontrolled.

(iii) A description and analysis of any other data or information relevant to an evaluation of the effectiveness of the new animal drug product obtained or otherwise received by the applicant from any source, foreign or domestic, including information derived from clinical investigations (including controlled and uncontrolled studies of uses of the new animal drug other than those proposed in the application), commercial marketing experience, reports in the scientific literature, and unpublished scientific papers.

(iv) An integrated analysis of the data demonstrating substantial evidence of effectiveness for the claimed indications. Evidence is also required to support the dosage and administration section of the labeling, including support for the dosage and dose interval recommended, and modifications for specific subgroups (for example, young animals, older animals, debilitated, or diseased animals). The analysis shall include a discussion of the benefits and risks of the animal drug, and an explanation of why the benefits exceed the risks under the conditions stated in the labeling.

(v) If the new animal drug product is a combination of previously investigated or approved new animal drugs, an integrated summary of preexisting information obtained from nonclinical and clinical investigations and from experience with its components. Such summary is required to include an adequate bibliography of publications about the components and may incorporate information concerning such components previously submitted to FDA by the applicant. With written authorization, the applicant may also incorporate information which another applicant has on file with FDA. Substantial evidence is required to show that each ingredient designated as active in any new animal drug combination makes a contribution to the effect in the manner claimed or suggested in the labeling. Further, if in the absence of express labeling claims of advantages for the combination, such a product purports to be better than either component alone, substantial evidence is required to show that the new animal drug has that purported effectiveness.

(vi) If the applicant has transferred any obligations for the conduct of any clinical study to a contract research organization, the application is required to include a statement containing the name and address of the contract research organization, identifying the clinical study, and listing the obligations transferred. If all obligations governing the conduct of the study have been transferred, a general statement of this transfer—in lieu of a listing of the specific obligations transferred—may be submitted.

(vii) If original subject records were audited or reviewed by the applicant in the course of monitoring any clinical study to verify the accuracy of the case reports submitted to the applicant, the applicant shall submit a list identifying each clinical study so audited or reviewed.

(3) *Target animal safety section.* (i) A section describing the investigations of the new animal drug to determine its safety to the target species, including the following:

(A) A description and analysis of each nonclinical and clinical pharmacology study of the new animal drug, including a brief comparison of the results of the target animal studies with the laboratory animal pharmacology and toxicology data.

(B) A description and analysis of any other data or information relevant to an evaluation of the safety of the new animal drug product obtained or otherwise received by the applicant from any source, foreign or domestic, including information derived from clinical investigations (including controlled or uncontrolled studies of uses of the new animal drug other than those proposed in the application), commercial marketing experience, reports in the scientific literature, and unpublished scientific papers.

(C) An integrated analysis of all available information about the safety of the new animal drug product including pertinent data from studies in laboratory animals, demonstrated or potential adverse effects of the new animal drug, clinically significant interactions with other animal drugs, and other safety considerations, such as data from epidemiological studies of related animal drugs. A description of any statistical analyses performed in analyzing safety data is also required, unless such description is already included under paragraph (d)(2)(i) of this section.

(D) For each nonclinical laboratory study a statement that it was conducted in compliance with the good laboratory practice regulations in part 58 of this chapter, or, if the study were not conducted in compliance with those regulations, a statement explaining the noncompliance.

(E) If the new animal drug has a potential for abuse, a description and analysis of studies or information related to abuse of the new animal drug, including a proposal for its scheduling under the Controlled Substances Act. A description of any studies relating to overdosage, including information on antidotes or other treatments, if known, is also required.

(ii) The applicant shall periodically update its pending application with new safety information concerning the new animal drug that may reasonably affect the statement of contraindications, warnings, precautions, or adverse reactions in the draft labeling. These "safety update reports" are required to include the same kinds of information (from clinical studies, laboratory animal studies, and other sources) and are required to be submitted in the same format as the integrated analysis in paragraph (d)(3)(i)(C) of this section. In addition, the safety update reports are required to include the case report forms for each animal or group of animals, including those which did not complete the study. The applicant shall submit these reports 4 months after the initial submission; following receipt of an approvable letter; and at other times as requested by FDA. Prior to the submission of the first such report, applicants are encouraged to consult with FDA regarding further details on its form and content.

(4) *Residue toxicology section.* A section containing the data necessary to assess the safety of food derived from animals treated with the new animal drug product. To permit such assessment, the applicant shall submit the following kinds of studies:

(i) Studies of the toxicological effects of the new animal drug as they relate to the new animal drug's intended uses, including, as appropriate, studies assessing the following: acute, subacute, and chronic toxicity; carcinogenicity; genetic toxicity; and any toxicity related to the new animal drug's particular mode of administration or conditions of use.

(ii) Studies, as appropriate, of the effects of the new animal drug on reproduction and on the developing fetus.

(iii) For each nonclinical laboratory study, a statement that it was conducted in compliance with the GLP regulations in part 58 of this chapter, or, if the study were not conducted in compliance with those regulations, a statement explaining the noncompliance.

(5) *Residue chemistry section.* A section describing the new animal drug residue methods and studies, including the following:

(i) A description of practicable methods for determining the quantity, if any, of the new animal drug in or on food, and any substance formed in or on food because of the drug's use. When data or other adequate information establish that it is not reasonable to expect the new animal drug (other than a carcinogen or a possible carcinogen) to become a component of food at concentrations FDA considers unsafe, a regulatory method is not required.

(ii) Studies on the absorption, distribution, metabolism, and excretion of the new animal drug in laboratory animals as well as in the target species.

(iii) The proposed tolerance or withdrawal period or other use restrictions to ensure that the proposed use of the new animal drug product will be safe.

(iv) A new animal drug that is for use in food-producing animals and that is a carcinogen or a possible carcinogen is required to satisfy the applicable requirements of subpart E of part 500 of this chapter.

(6) *Pharmacokinetics and bioavailability section.* A section describing the animal pharmacokinetic data and animal bioavailability data, including the following:

(i) A description of each of the bioavailability and pharmacokinetic studies of the new animal drug in the target species performed by or on behalf of the applicant, including a description of the analytical and statistical methods used in each study.

(ii) If the application describes in the chemistry, manufacturing, and controls section specifications or analytical methods needed to ensure the bioavailability of the new animal drug product or animal drug substance, or both, a statement in this section of the rationale for establishing the specifications or analytical methods, including data and information supporting the rationale.

(iii) A summarizing discussion and analysis of the pharmacokinetics of the active ingredients and the bioavailability of the new animal drug product.

(7) *Microbiology section.* If the new animal drug is an anti-infective, a section describing the microbiology data, including the following:

(i) A description of the biochemical basis of the new animal drug's action on microbial physiology.

(ii) A description of the antimicrobial spectrum of the new animal drug, including results of in vitro preclinical studies to demonstrate concentrations of the drug required for effective use.

(iii) A description of any known mechanisms of resistance to the new animal drug, including results of any known epidemiologic studies to demonstrate prevalence of resistance factors.

(iv) A description of clinical microbiology laboratory methods (for example, in vitro susceptibility discs) needed for effective use of the new animal drug.

(v) A description of the data that satisfy the criteria in § 558.15 of this chapter concerning the safety of subtherapeutic uses of antibacterial drugs in animal feeds.

(8) *Environmental impact section.* The application shall contain either a claim for categorical exclusion under § 25.24 of this chapter or an environmental assessment under § 25.31 of this chapter.

(e) *Samples and labeling*—(1) *Samples.* Upon request from FDA, the applicant shall submit samples of the new animal drug substance, the new animal drug product, and any required ingredient used as a component and any pertinent information concerning them for physical review and/or testing. Whenever FDA decides to conduct a validation trial of the applicant's methods and specifications, FDA will advise the applicant of the necessary requirements.

(2) *Labeling.* The applicant shall submit the following in the archival copy of the application:

(i) Copies of the label and all other labeling for the new animal drug product (2 copies of draft labeling and 6 copies of final printed labeling).

(ii) Labeling for new animal drugs intended for use in the manufacture of medicated feeds shall include:

(A) Specimens of labeling to be used for the new animal drug (i.e., Type A medicated article) with adequate directions for the mixing and use of finished feeds for all conditions for which the new animal drug is intended, recommended, or suggested in any of the labeling, or in any of the advertising, sponsored by the applicant. Ingredient labeling may utilize collective names as provided in § 501.110 of this chapter.

(B) Representative labeling proposed to be used for Type B and Type C medicated feeds containing the new animal drug.

(f) *Case report forms and tabulations.* The archival copy of the application shall contain the following case report tabulations and case report forms:

(1) *Case report tabulations.* The application shall contain tabulations of the data from each adequate and well-controlled study under § 514.126 and from other studies which are intended to provide corroborative information. The tabulations shall include the data on each animal or group of animals in each study.

(2) *Case report forms.* The application shall contain a copy of the case report

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form for each animal or group of animals, including an animal or a group of animals receiving a reference drug (i.e., Type A medicated article) or a placebo. A case report form for any animal or group of animals which did not complete the study is also required.

(g) *Other.* The following apply to the submission of information.

(1) An applicant is invited to meet with FDA before submitting an application to discuss the presentation and format of supporting information. FDA requests that all conferences and meetings be scheduled in advance.

(2) The applicant ordinarily is not required to resubmit information previously submitted, but may incorporate the information. A reference to information submitted previously shall identify FDA's file by name, reference number, volume, and page number where the information can be found. A reference to information submitted to FDA by a person other than the applicant shall be accompanied by a written statement that authorizes the reference and that is signed by the person who submitted the information.

(3) For each part of the application that is not in English, the applicant shall submit both an accurate and complete English translation and the original foreign language publication.

(4) With prior FDA concurrence, an applicant may submit, on microfiche or electronic media, the portions of the archival copy of the application described in paragraphs (b) through (d) of this section and tabulations of data and case report forms, described in paragraph (f) of this section. Information relating to samples and labeling, described in paragraph (e) of this section, is required to be submitted in hard copy.

(h) *Format of an original application.* (1) An applicant shall submit a complete archival copy of the application that contains the information required under paragraphs (a) through (f) of this section. FDA will maintain intact the archival copy during the review of the application to permit individual reviewers to refer to information that is not contained in their particular technical sections of the application, to give other FDA personnel access to the application for official business, and to maintain in one place a complete copy of the application.

(2) The applicant shall submit a review copy of the application. Each of the technical sections described in paragraphs (d)(1) through (d)(8) of this section is required to be separately bound with a copy of the application form required under paragraph (a) of this section and a copy of the summary required under paragraph (c) of this section. The applicant may obtain from FDA sufficient colored binders to contain the archival and review copies of the application.

§ 514.51 Application for an animal feed bearing or containing a new animal drug.

(a) An application submitted under section 512(m) of the act shall be completed, signed, and submitted in triplicate in a Form FDA 1900 as described in paragraphs (b) and (c) of this section.

(b) Each application for a Type B or Type C medicated feed, as defined in § 558.3 of this chapter, shall include the following information:

(1) The name and address of the applicant.

(2) The registration number assigned pursuant to section 510 of the act and last date of registration of each mill. If an approved List Master File (LMF) as defined in § 514.75(d) is in effect, the applicant shall reference the LMF by stating "See LMF (LMF number) submission of (date)." Simultaneously, the applicant shall make a supplemental submission to the LMF as provided in § 514.75(d).

(3) Whether the submission is an original or supplemental application.

(4) Identification of the Type A medicated article, as defined in § 558.3 of this chapter, used by generic name, potency, and manufacturer.

(5) The species of animal(s) for which the feed is intended.

(6) The form of feed to be produced, i.e., mash, meal crumbles, pellets, liquid, or other specified form.

(7) Whether the feed is a Type B or Type C medicated feed.

(8) Whether the feed is for sale or for own use (not for sale).

(9) Level of the drug(s) in the finished feed, and the amount of Type A medicated article per ton contained therein.

(10) Identification of the regulation(s) in part 558 of this chapter on which approval relies. In addition, § 510.515 of this chapter may provide a basis on which approval of the application relies.

(11) Labeling representative of each intended use as stated in the claim. Each generic label shall include, in addition to other required information, the claim, drug level, mixing directions, feeding directions, caution and/or warning statements, and any other special directions required by the published regulation. The labeling shall consist of bag labels, invoice copy, bulk labels, and placards when applicable.

(12) A commitment to establish and maintain a program of sampling and analysis consisting of an assay of the first batch manufactured, followed thereafter by two samples at periodic intervals during the calendar year. If a medicated feed contains a combination of drugs, only one of the drugs need be subject to analysis each time, provided the one tested is different from the one(s) previously tested. Reports of assays shall be kept on the premises for not less than 1 year after the date of manufacture of the medicated feed.

(13) A statement of the minimum and maximum assay value permitted from the labeled amount of the drug.

(14) Identification of the agent authorized to act on behalf of the applicant.

(15) The applicant's name, responsible individual's title and original signature, and date.

(c) Upon approval, one copy of the application will be signed by an authorized employee of FDA and returned to the applicant.

§ 514.58 Minor use application.

(a) An application submitted under this section is intended for approval of a "minor use" as defined in § 514.3.

(b) A minor use application shall include the same information as an application filed under § 514.50, except that, where FDA determines that it is scientifically appropriate, the data required to establish target animal safety, target animal effectiveness, or human food safety may be obtained through the use of animal models and the extrapolation of data from a major species. Information gathered with public funds may be made available for incorporation from a "Public Master File."

(c) Guidelines for the preparation and submission of data to satisfy the requirements of section 512 of the act regarding target animal safety and effectiveness, human food safety, and environmental considerations for new animal drugs intended for a "minor use" are available from the Industry Information Branch (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

(d) Where the guidelines do not specifically provide for a particular "minor use," CVM will, upon request, attempt to advise interested persons of the data that are required for the minor use and that will satisfy the requirements of section 512 of the act.

§ 514.60 Amendment of an unapproved application.

An applicant may submit an amendment to an unapproved application that has been accepted for filing under § 514.101. The submission of a major amendment (for example, an amendment that contains significant new data from a previously unreported study or detailed new analyses of previously submitted data), whether on the applicant's own initiative or at FDA's invitation, constitutes an agreement by the applicant under section 512(c) of the act to extend the review period for the application. Ordinarily, FDA will extend the review period for a major amendment, but only for the time necessary to review the new information. However, FDA may not extend the review period for more than 180 days. If FDA extends the review period, the director of the primary review division will notify the applicant of the length of the extension. The submission of an amendment that is not a major amendment will not cause the review period to be extended. Normally, submission of updated safety data under § 514.50(d)(3)(ii) will not cause any extension of the review period.

§ 514.65 Withdrawal by the applicant of an unapproved application.

By notifying FDA in writing, an applicant may at any time withdraw an application that is not approved. FDA will deem an applicant's failure to respond within 60 days to an approvable letter under § 514.110 or a not approvable letter under § 514.120 to be a withdrawal of the application by the applicant. Such a withdrawal is without prejudice to refiling. FDA will retain the application and will provide a copy to the applicant on request under the fee schedule of FDA's public information regulations in § 20.42 of this chapter.

§ 514.70 Supplements and other changes to an approved application.

(a) *Changes in an approved application.* An applicant shall notify FDA about each change in the conditions established in an approved application that differs from any variation already provided for in the application. The notification to FDA shall fully describe the change. Depending on the type of change, the applicant shall notify FDA by submission of a supplemental application under paragraph (b) or (c) of this section or by inclusion of the information in a periodic drug experience report (DER) to the application submitted under paragraph (d) of this section. Notwithstanding the requirements of paragraphs (b) and (c) of this section, an applicant shall make a change described in one of those paragraphs (for example, the deletion of an ingredient common to many animal drug products) if the change is required by regulation, and may make a change described in one of those paragraphs if the change is provided for by a guideline or notice that is published or announced in the **Federal Register**, where the regulation, guideline, or notice provides for a less burdensome notification of the change (for example, by notification at the time a supplement is submitted or in the next annual report).

(b) *Supplements requiring FDA approval before the change is made.* An applicant shall submit a supplement and obtain FDA approval of the supplement before making any of the changes listed below:

(1) *Animal drug substance.* A change affecting the animal drug substance to accomplish any of the following:

(i) To relax the limits for a specification;

(ii) To establish a new analytical method;

(iii) To delete a specification or analytical method;

(iv) To change the synthesis, fermentation, or isolation of the animal drug substance;

(v) To use a different facility or establishment to manufacture, process, or package the animal drug substance, where:

(A) The manufacturing process in the new facility or establishment differs from that approved in the application;

(B) The animal drug substance is intended to be administered to animals as a biomass product; or

(C) The new facility or establishment has not received a satisfactory current good manufacturing practice (CGMP) inspection within the previous 2 years covering that manufacturing process.

(2) *New animal drug product.* A change affecting the new animal drug product to accomplish any of the following:

(i) To add or delete an ingredient, or otherwise to change the composition of the product, other than deletion of an ingredient intended to affect only the color of the product;

(ii) To relax the limits for a specification;

(iii) To establish a new analytical method;

(iv) To delete a specification or analytical method;

(v) To change the method of manufacture of the new animal drug product, including changing or relaxing an in-process control;

(vi) To use a different facility or establishment, including a different contract laboratory or labeler, to manufacture, process, or package and label the product;

(vii) To change the container and closure system for the product (for example, glass to high density polyethylene or high density polyethylene to polyvinyl chloride) or change a specification or analytical method for the container and closure system;

(viii) To change the size of the container, except for solid oral dosage forms, without a change in the approved container and closure system;

(ix) To extend the expiration date of the product based on data obtained under a new or revised stability testing protocol that has not been approved in the application;

(x) To establish a procedure for reprocessing a batch of the product that fails to meet specifications.

(3) *Labeling.* Any change in labeling, except one described in paragraph (c)(2) or (d) of this section. Examples of labeling changes not described in paragraph (c)(2) or (d) of this section and that therefore require FDA approval prior to implementation include a revision in labeling such as updating information pertaining to effects, dosages, side effects and contraindications, which includes information headed "side effects," "warnings," "precautions," and "contraindications."

(4) *Multiple changes.* Any number of changes may be submitted at any one time, but if they fall into different categories as listed in paragraphs (b)(1)(i) through (b)(1)(v) of this section, the proposed changes are to be covered by separate supplements. Where, however, a change necessitates an overlap in categories, it should be submitted in a single supplement. For example, a change in tablet potency would require other changes such as in components, composition, and labeling, and should be submitted in a single supplement.

(c) *Supplements for changes that may be made before FDA approval.* Changes made under this section are applicable to new animal drug substances and finished dosage form new animal drug products. A supplement for a change made before FDA approval requires a full explanation of the basis for the change and a statement of the date on which the change was made. If the change concerns labeling, the applicant shall submit final printed labeling. The applicant shall promptly revise all promotional labeling and drug advertising to make it consistent with any change in the labeling. The supplement and its mailing cover are to be plainly marked: "Special Supplement—Changes Being Effected."

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An applicant shall submit a supplement at the time the applicant makes any of the kinds of changes listed below in the conditions in an approved application.

(1) Add a new specification or test method or make a change in the manufacturing procedures or controls to provide increased assurance that the new animal drug substance or product will have the characteristics of identity, strength, quality, and purity which it purports or is represented to possess;

(2) Change in labeling to accomplish any of the following:

(i) To add or strengthen a contraindication, warning, precaution, or adverse reaction statement;

(ii) To add or strengthen a statement about drug abuse or overdosage;

(iii) To add or strengthen an instruction about dosage or administration that is intended to increase the safe use of the product;

(iv) To delete false, misleading, or unsupported indications for use or claims for effectiveness.

(3) To use a different facility or establishment to manufacture the animal drug substance, where:

(i) The manufacturing process in the new facility or establishment does not differ from that approved in the application;

(ii) The animal drug substance is not a biomass product; and

(iii) The new facility or establishment has received a satisfactory current good manufacturing practice inspection within the previous 2 years covering that manufacturing process.

(d) *Changes that may be described in a drug experience report.* Other than a change described in paragraphs (b) and (c) of this section, an applicant may describe the following kinds of changes in the next periodic drug experience report required under §§ 514.80, 514.81, and 514.82:

(1) Changes in the specifications or methods for active and inactive ingredients to bring them into compliance with current specifications or methods in the current official compendium.

(2) A different container size for solid oral dosage forms (e.g., tablets and capsules) where the container and closure are of the same materials as those provided for in the approved application.

(3) Change in equipment that does not alter the approved method of manufacture of a new animal drug.

(4) Change from one batch size to another without any change in manufacturing procedure unless the change involves greater than a tenfold increase in batch size.

(5) Change to more stringent specifications without altering the method described in the approved application.

(6) Inclusion of additional specifications and methods without deletion of those described in the approved application.

(7) Initiation of a product identification coding system.

(8) Change from paper labels to direct printing on glass or other kinds of immediate containers without a change in text.

(9) Extension of the current expiration date based on full shelf-life data obtained using a stability protocol approved in the application.

(10) Addition of precautionary statements, explanations, and clarifications to manufacturing and control procedures.

(11) Minor editorial or similar minor label changes, such as changes in the ink colors of labeling, the addition of the FDA approval statement (including the NADA number), changes in the placement of the text on the label as long as FDA label guidelines are followed, the revision or updating of a company logo or label design, and the correction of typographical errors.

(12) Changes in the marking of solid oral dosage forms which do not result in any changes in the labeling or approved specifications for the product.

(13) Reduction or elimination of manufacturing overages for drug and nondrug ingredients.

(14) Changes in suppliers of inactive ingredients, containers, or closures provided the products of the new suppliers meet criteria approved in the application.

(15) Changes in the in-plant coding and control number systems; e.g., material and product identification codes, lot numbering systems of raw materials, product specifications, or method codes.

(16) Changes in outer packaging material, such as carton shape, color, or style of printing which do not decrease the degree of protection of the drug, modify the text of approved labeling, or decrease the legibility of print.

(17) Changes in or replacement of noncompendial specifications and methods for ingredients, except those used for the determination of identity, potency, purity, sterility, or safety of the ingredients.

(e) *Changes permitted pending finalization of the National Academy of Sciences/National Research Council (NAS/NRC) review.* In addition to a change described in paragraph (c) of this section, a change proposed in a supplement to an NADA approved before October 10, 1962 may, upon written authorization from FDA, be implemented prior to approval of the supplement. The type of changes authorized by FDA in advance of approval are those that do not adversely affect, but may enhance the safety, effectiveness, quality, or stability of the product. A change may be permitted in advance of approval pending completion of the NAS/NRC review of the effectiveness of such drug and a determination as to whether there are grounds for refusing approval under section 512(d) of the act or for suspending or withdrawing approval under section 512(e) of the act. FDA will not take any action against a new animal drug or an applicant solely because changes that have been permitted in a written communication are placed into effect by the applicant prior to his receipt of a written notice of approval of the supplemental application.

§ 514.71 Procedure for submission of a supplement to an approved application.

(a) Only the applicant may submit a supplement to an application.

(b) All procedures and actions that apply to an application under § 514.50 and a minor use application under § 514.58 also apply to a supplement, except that the information required in a supplement is limited to that needed to support a change. A supplement is required to include an application form and to contain an archival copy and a review copy, each with a summary when required and each with appropriate technical sections and labeling.

§ 514.72 Change in ownership of an application.

(a) An applicant may transfer ownership of its application. At the time of transfer, the new and former owners are required to submit the following information to FDA:

(1) The former owner shall submit a letter or other document stating that all rights to the application have been transferred to the new owner and the date on which the transfer is effective.

(2) The new owner shall submit a signed application and a letter or other document containing the following:

(i) The new owner's commitment to comply with all agreements, promises, and conditions made by the former owner and contained in the application;

(ii) The date that the change of ownership is effective; and

(iii) Either a statement that the new owner has a complete copy of the application, including supplements and

records that are required to be kept under § 514.80, or a request for a copy of the application from FDA's files. FDA will provide a copy of the application to the new owner under the fee schedule in § 20.42 of FDA's public information regulations.

(b) Once FDA has received the information specified in paragraph (a) of this section, FDA will not honor a request that ownership not be transferred, or, after the effective date of the change in ownership, that the transfer be withdrawn, unless both the former owner and the new owner request in writing that ownership not be transferred or that the transfer be withdrawn.

(c) The new owner shall submit a supplemental application under § 514.70 for any change in the conditions in the approved application, except the new owner may advise FDA in a specia1 drug experience report about a change in the animal drug product's label or labeling to change the product's brand or the name of its manufacturer, packer, or distributor as provided in §§ 514.70 and 514.80.

(d) FDA will publish in the **Federal Register** a notice of the change of ownership pursuant to section 512(i) of the act. Any revision of § 510.600(c) of this chapter or a specific approval regulation will be published at this time.

§ 514.75 Supplemental application for an animal feed bearing or containing a new animal drug.

(a) The applicant shall submit a supplemental application for any change which deviates from the conditions under which the application was approved. Animal feed label changes based on § 514.70(c) may be put into effect prior to approval provided a supplemental application is submitted at the time the applicant makes the changes and the supplemental application and its mailing cover are plainly marked: "Special Supplement—Changes Being Effected."

(b) The applicant shall submit an MFA (Form FDA 1900) in triplicate, completing items 1—name of applicant, 2—address including zip code, 3—establishment registration number, 4—date last registered, 6—type of application, 20—certification, signed by responsible individual, and date, and each item for which a change is being proposed. For all other items, the applicant may insert "See previous MFA approval." If changes are proposed for item 5—additional mills (mill list), the applicant shall attach a revised mill list (stating the establishment registration number, establishment name and address including zip code, and date last registered for each mill).

(c)(1) Firms with multiple feed manufacturing facilities that have more than one approved application may establish a list (facilities) master file (LMF) to consolidate their mill list (item 5 of the MFA). The request, by letter, is required to be accompanied by a signed MFA in triplicate. The applicant shall complete items 1 through 5, and item 20. For item 5, the applicant shall provide an up-to-date mill list (stating the establishment registration number, establishment name and address including zip code, and date last registered for each mill) for each approved MFA. For item 6, the applicant should check the "original" box. For all other items, the applicant may insert "See previous MFA approvals."

(2) Future changes in the mill list for any of the referenced MFA's may be obtained by submitting to the LMF an MFA, in triplicate, completed as described in paragraph (c)(1) of this section except that the applicant shall complete item 6 with the previously established LMF number and a check in the "supplemental" box.

(d) If the only change proposed is the deletion of a mill from the mill list, the applicant shall submit a certification in triplicate to the appropriate MFA or LMF stating the establishment registration number, establishment name and address including zip code, date last registered, and a list of the affected MFA's. A mill that is deleted from the mill list may no longer manufacture any medicated feed that requires an approved MFA.

(e) Upon approval of an MFA, one copy will be signed by an authorized FDA employee and returned to the applicant.

§ 514.83 Maintenance of copies of approved applications for animal feed bearing or containing new animal drugs.

Each applicant shall maintain in a single accessible location on the premises of each establishment to which an approved MFA or supplemental MFA applies either:

(a) A copy of the approved MFA and a sample of the approved labeling; or

(b) Identification of the approved MFA in a single file or in a single readable document that includes:

(1) The MFA number and the date of approval;

(2) The name(s) of the Type A medicated article(s) and the concentration of the drug(s);

(3) The name(s) of the approved manufacturer(s) of the article(s);

(4) The concentration of the drug(s) in the Type B or C medicated feed; and

(5) A sample of the approved labeling.

§ 514.90 Waivers.

(a) An applicant may request FDA to waive any requirement in part 514. Under § 514.126(c), an applicant may request FDA to waive any criteria of an adequate and well-controlled study described in § 514.126(b).

(b) A request for waiver is required to be submitted with supporting documentation in an application, an amendment, or a supplement. The request for waiver shall show that the waiver is legally permissible and shall contain one of the following:

(1) A justification showing that the applicant's compliance with the requirement is unnecessary or cannot be achieved;

(2) A description of an alternative submission that satisfies the purpose of the requirement; or

(3) Other information justifying a waiver.

(c) FDA may grant a waiver if it finds that the waiver is legally permissible and if it finds one of the following:

(1) The applicant's compliance with the requirement is unnecessary for FDA to evaluate the application or compliance cannot be achieved;

(2) The applicant's alternative submission satisfies the requirement; or

(3) The applicant's submission otherwise justifies a waiver.

Subpart C—FDA Actions on Applications

§ 514.100 Review of an application.

(a)(1) Upon receipt of an application submitted pursuant to section 512(b) of the act, FDA will assign a primary review division for the application. That division will be the applicant's agency contact during the review process.

(2) Within 180 days of receipt of the application, plus any extension of the review period, FDA will review it and send the applicant an approval letter under § 514.105, an approvable letter under § 514.110, or a not approvable letter under § 514.120. This 180-day review period is called the "review clock."

(3) During the 180-day review period, an applicant may withdraw an application under § 514.65. If an applicant withdraws an application and later resubmits it, FDA will handle it as a new application.

(4) The 180-day review period may be extended by mutual agreement between FDA and an applicant or, as provided in § 514.60, as the result of submission of a major amendment.

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(5) The 180-day review period applies to the application described under § 514.50, the minor use application described under § 514.58, and the supplemental application described under § 514.70(b).

(b) Within 90 days of receipt of an application submitted pursuant to section 512(m) of the act, or an additional time period as mutually agreed, FDA will:

(1) Notify the applicant that the application is approved, or

(2) Give the applicant written notice of an opportunity for a hearing on a proposal to refuse approval of the application on one or more of the grounds specified in section 512(m)(3) of the act.

§ 514.101 Filing an application.

(a) Within 60 days after FDA receives an application submitted under section 512(b) of the act, FDA will determine whether the application may be filed. The filing of an application means that FDA has made a threshold determination that the application is sufficiently complete to permit a substantive review.

(b) If FDA finds that none of the reasons in paragraphs (d) and (e) of this section for refusing to file the application applies, FDA will file the application. The date of filing will be the date 60 days after the date FDA received the application. The date of filing begins the 180-day period described in section 512(c) of the act. This 180-day period is called the "filing clock."

(c) If FDA refuses to file an application, FDA will notify the applicant in writing and state the reason for the refusal under paragraph (d) or (e) of this section. If FDA refuses to file the application under paragraph (d) of this section, the applicant may, within 30 days of the date of FDA's notification, request in writing an informal conference with FDA to discuss filing the application. If following an informal conference an applicant requests that FDA file the application, FDA will file the application over protest in accordance with paragraph (b) of this section, notify the applicant in writing, and review it as filed. If the application is filed over protest, the date of filing will be the date 60 days after the date the applicant requested the informal conference. An applicant need not resubmit an application that is to be filed over protest. If FDA refuses to file an application under paragraph (e) of this section, an applicant may amend the application and resubmit it, and FDA will make a determination under this section whether it may be filed.

(d) FDA may refuse to file an application if any of the following apply:

(1) The application does not contain a completed application form.

(2) The application is not submitted in the form required under §§ 514.50, 514.58, or § 514.70(b).

(3) The application is incomplete because it does not contain information required under section 512(b) of the act, or §§ 514.50, 514.58, or § 514.70(b).

(4) The application does not contain a complete environmental assessment that addresses each of the items specified in the applicable format under § 25.31 of this chapter, or fails to provide sufficient information to establish that the requested action is subject to categorical exclusion under § 25.24 of this chapter.

(5) The application does not contain an accurate and complete English translation of each part of the application that is not in English.

(6) The application does not contain a statement that each nonclinical laboratory study was conducted in compliance with the requirements set forth in part 58 of this chapter, or, for each such study not conducted in compliance with part 58, a brief statement justifying the noncompliance.

(e) FDA will refuse to file an application if any of the following apply:

(1) The new animal drug product that is the subject of the submission is already covered by an approved application.

(2) The submission purports to be a minor use application under § 514.58, but the new animal drug product is not one for which FDA has determined under § 514.58(b) that the data required to establish target animal safety and effectiveness and human food safety may be obtained through the use of animal models and the extrapolation of data from a major species.

(3) The animal drug product is produced and distributed as a biologic in full conformance with the Animal Virus, Serum, and Toxin Law of March 4, 1913 (37 Stat. 832 as amended; 21 U.S.C. 151 *et seq.*).

(f) Within 180 days after the date of filing, plus the time the review period was extended (if any), FDA will either approve the application or issue a notice of opportunity for a hearing, if in response to an approvable letter or a not approvable letter, the applicant has asked FDA to provide an opportunity for a hearing on the application. This paragraph does not apply to an application that has been withdrawn by the applicant from FDA review.

§ 514.102 Communications between FDA and an applicant.

(a) *General principles.* During the course of reviewing an application, FDA may communicate with an applicant about scientific, policy, and procedural issues that arise during the review process. Such communication may take the form of telephone conversations, letters, or meetings, whichever is most appropriate. Such communication will be appropriately documented in the application in accordance with § 10.65 of this chapter. Further details on the procedures for communications between FDA and an applicant are contained in the CVM Policy and Procedures Manual, which is publicly available.

(b) *Notification of easily correctable deficiencies.* FDA reviewers will make every reasonable effort to communicate promptly to applicants easily correctable deficiencies found in an application when those deficiencies are discovered, e.g., deficiencies concerning chemistry, manufacturing, and control issues. FDA will also inform applicants promptly of the need for more data or information or for technical changes in the application to facilitate FDA's review. FDA's communication of easily correctable deficiencies is intended to permit an applicant to correct such deficiencies relatively early in the review process and to allow the applicant to submit an amendment before the review period has elapsed. Such early communication will not normally apply to major scientific issues, which require consideration of the entire pending application by FDA officials as well as reviewing staff. FDA's communication of major scientific issues will normally be addressed in an action letter to the applicant.

(c) *Conferences.* With advance notice, meetings between FDA and an applicant may be held to inform an applicant of the general progress and status of its application; to discuss scientific, policy, and other issues that arise during the review process; and to discuss what further steps need to be taken by the applicant before the application can be approved. An applicant shall direct a request for a meeting to the Director of the primary review division. FDA will make every attempt to grant a request for a meeting that involves important issues and that can be scheduled at a mutually convenient time. However, a "drop-in" visit (i.e., an unannounced and unscheduled visit by a company representative) is strongly discouraged except for an extremely urgent matter, such as to discuss an important new safety issue.

§ 514.103 Dispute resolution.

(a) *General.* FDA is committed to resolving differences between an applicant and an FDA reviewing division with respect to a technical requirement in an application as quickly and amicably as possible through the cooperative exchange of information and views.

(b) *Administrative or procedural issue.* When an administrative or procedural dispute occurs, the applicant shall first attempt to resolve the matter with the primary review division beginning with the primary reviewer. If resolution is not achieved at the division level, the applicant may discuss the matter with the Associate Director for New Animal Drug Evaluation, who will investigate the matter and facilitate a timely and equitable resolution. Examples of appropriate issues to discuss with the Associate Director include difficulty in scheduling a meeting, obtaining a timely reply to an inquiry, and obtaining timely completion of a pending review.

(c) *Scientific or veterinary medical issue.* (1) Because any major scientific or veterinary medical issue is normally communicated to an applicant in an approvable or not approvable letter pursuant to § 514.110 or § 514.120, respectively, the conferences described in § 514.102(c) are intended to provide a forum earlier in the review process for discussing and resolving, if possible, a scientific or veterinary medical issue on which the applicant disagrees with FDA.

(2) If, following the meetings described in § 514.102(c), the applicant and the reviewing division conclude that an impasse exists, the applicant may appeal a decision made by the reviewing division on an issue of science or veterinary medicine. Details on the appeals procedure are contained in CVM Policy and Procedures Manual, which is publicly available.

§ 514.104 Drug with potential for abuse.

FDA will inform the Drug Enforcement Administration under section 201(f) of the Controlled Substances Act (21 U.S.C. 811(f)) when an application is submitted for an animal drug that appears to have an abuse potential.

§ 514.105 Approval of an application.

(a) FDA will approve an application described under §§ 514.50, 514.58, or § 514.70(b) and send the applicant an approval letter if none of the grounds specified in section 512(d) of the act or in § 514.125 for refusing to approve the application applies.

(1) New animal drug product in finished dosage form or a Category I Type A medicated article that is not to be mixed with a Category II Type A medicated article: The date of approval of the application is the date of FDA's approval letter. A new animal drug product may not be marketed until an approval letter for the product is issued. Notice of approval will be published as a regulation in the **Federal Register** pursuant to section 512(i) of the act.

(2) Category II Type A medicated article: Approval of an application is effective upon publication in the **Federal Register** of a regulation published pursuant to section 512(i) of the act. The date of approval of the application is the date of publication of the regulation. The article may not be marketed until such a regulation has been published.

(b) FDA will approve an application and issue to the applicant an approval letter (rather than an approvable letter under § 514.110) on the basis of draft labeling, if the only deficiencies in the application concern editorial or similar minor deficiencies in the draft labeling. Such approval will be conditioned upon the applicant incorporating the specified labeling changes exactly as directed, and upon the applicant submitting to FDA a copy of the final printed labeling prior to marketing.

(c) FDA will approve an MFA or a supplemental MFA submitted under § 514.51 or § 514.75, respectively, within 90 days after the date of receipt, or additional time as mutually agreed, if FDA determines that none of the grounds for refusing approval specified in section 512(m)(3) of the act applies. FDA will notify the applicant that the application has been approved by signing and mailing to the applicant the original copy of the Form FDA 1900.

§ 514.106 Categories of supplemental applications.

(a) FDA will assign a supplement to its proper category to ensure appropriate processing of the application.

(b)(1) *Category I.* Supplements that ordinarily do not require a reevaluation of any of the safety or effectiveness data in the parent application. Category I supplements include the following:

(i) A corporate change that alters the identity or address of the sponsor of the application.

(ii) The sale, purchase, or construction of manufacturing facilities.

(iii) The sale or purchase of an application.

(iv) A change in container, container style, shape, size, or components.

(v) A change in approved labeling (color, style, format, addition, deletion, or revision of certain statements, e.g., trade name, storage, expiration dates).

(vi) A change in promotional material for a prescription drug not exempted by § 514.70(c)(10), (c)(11), or (d)(2).

(vii) Changes in manufacturing processes that do not alter the method of manufacture or change the final dosage form.

(viii) A change in bulk drug shipments.

(ix) A change in an analytical method or control procedures that do not alter the approved standards.

(x) A change in an expiration date.

(xi) Addition of an alternate manufacturer, repackager, or relabeler of the drug product.

(xii) Addition of an alternate supplier of the new drug substance.

(xiii) A change permitted in advance of approval as listed in § 514.70(d)(2).

(xiv) Changes not requiring prior approval which are listed under § 514.70(c)(10) and (c)(11) when submitted as a supplement.

(2) *Category II.* Supplements that may require a reevaluation of certain safety or effectiveness data in the parent application. Category II supplements include the following:

(i) A change in the active ingredient concentration or composition of the final product.

(ii) A change in quality, purity, strength, or identity specifications of the active or inactive ingredients.

(iii) A change in dose (amount of drug administered per dose).

(iv) A change in the treatment regimen (schedule of dosing).

(v) Addition of a new therapeutic claim to the approved uses of the product.

(vi) Addition of a new or revised animal production claim.

(vii) Addition of a new species.

(viii) A change in the prescription or over-the-counter status of a drug product.

(ix) A change in statements regarding side effects, warnings, precautions, and contraindications, except the addition of approved statements to container, package, and promotional labeling, and prescription drug advertising.

(x) A change in the drug withdrawal period prior to slaughter or in the milk discard time.

(xi) A change in the tolerance for drug residues.

(xii) A change in analytical methods for drug residues.

(xiii) A revised method of synthesis or fermentation of the new drug substance.

(xiv) Updating or changes in the manufacturing process of the new drug substance and/or final dosage form (other than a change in equipment that does not alter the method of manufacture of a new animal drug, or a

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change from one commercial batch size to another without any change in manufacturing procedure), or changes in the methods, facilities, or controls used for the manufacture, processing, packaging, or holding of the new animal drug (other than use of an establishment not covered by the approval that is in effect) that give increased assurance that the drug will have the characteristics of identity, strength, quality, and purity which it purports or is represented to possess.

§ 514.107 Foreign data.

(a) *General.* The acceptance of foreign data in an application generally is described in the CVM Policy and Procedures Manual, which is publicly available.

(b) *As sole basis for marketing approval.* An application based solely on foreign clinical data may be approved if:

(1) The foreign data are applicable to the treatment of the U.S. animal population and U.S. veterinary medical practice;

(2) The studies have been conducted by qualified clinical investigators of recognized competence; and

(3) The data may be considered valid without the need for an FDA on-site inspection or, if FDA determines that such an inspection is necessary, FDA can validate the data through an on-site inspection or other appropriate means. Failure of an application to meet all these criteria will result in the application not being approvable based on the foreign data alone.

(c) *Consultation between FDA and an applicant.* An applicant is encouraged to meet with agency officials prior to submitting an application based solely on foreign data.

§ 514.110 Approvable letter to the applicant.

At the end of the review period, FDA may inform an applicant that the application is basically approvable provided certain issues are resolved. FDA will send the applicant an approvable letter if the application substantially meets the requirements of this part and the agency believes that it can approve the application if specific additional information or material is submitted or specific conditions (for example, certain changes in labeling) are met. The approvable letter will describe the information or material FDA requires or the conditions the applicant is asked to meet. Within 60 days after the date of an approvable letter, the applicant shall:

(a) Amend the application or notify FDA of an intent to file an amendment. The filing of an amendment or notice of intent to file an amendment constitutes an agreement by the applicant to extend the review period for 45 days after the date FDA receives the amendment. The extension is to provide time for the agency to review the amendment.

(b) Withdraw the application. FDA will deem the applicant's failure to respond within 60 days to an approvable letter to be a withdrawal of the application by the applicant as provided in § 514.65. Such a withdrawal is without prejudice to refiling.

(c) Ask CVM to provide the applicant with a written notice of opportunity for hearing on a proposal to refuse approval of the application under section 512(d) of the act or § 514.125. The applicant shall submit the request to the Division of Voluntary Compliance and Hearings Development (HFV-240). Within 60 days of the date of the applicant's request, or within a different time period to which CVM and the applicant agree, CVM will either approve the application under § 514.105 or refuse to approve the application under section 512(d) of the act or § 514.125 and give the applicant written notice of opportunity for a hearing under § 514.200 and section 512(c)(2) of the act on a proposal to refuse approval of the application on one or more of the grounds specified in section 512(d) of the act or § 514.125.

(d) Notify FDA in writing that the applicant agrees to an extension of the review period under section 512(c) of the act so that the applicant can determine whether to respond further under paragraph (a), (b), or (c) of this section. The applicant's written notification is required to state the length of the extension. FDA will honor any reasonable request for such an extension. FDA will deem the applicant's failure to respond further within the extended review period to be a withdrawal of the application by the applicant as provided in § 514.65. Such a withdrawal is without prejudice to refiling.

§ 514.120 Not approvable letter to the applicant.

FDA will send the applicant a not approvable letter if FDA believes that the application may not be approved for one of the reasons given in section 512(d) of the act or § 514.125. The not approvable letter will describe the deficiencies in the application. Within 60 days after the date of the not approvable letter, the applicant shall:

(a) Amend the application or notify FDA of an intent to file an amendment. The filing of an amendment or notice of intent to file an amendment constitutes an agreement by the applicant to extend the review period under § 514.100.

(b) Withdraw the application. FDA will deem the applicant's failure to respond within 60 days to a not approvable letter to be a withdrawal of the application by the applicant as provided in § 514.65. Such a withdrawal is without prejudice to refiling.

(c) Ask CVM to provide the applicant with a written notice of opportunity for a hearing on a proposal to refuse approval of the application under section 512(d) of act or § 514.125. The applicant shall submit the request to the Division of Voluntary Compliance and Hearings Development (HFV-240). Within 60 days of the date of the applicant's request, or within a different time period to which FDA and the applicant agree, CVM will either approve the application under § 514.105 or refuse to approve the application under section 512(d) of the act or § 514.125 and give the applicant written notice of opportunity for a hearing under § 514.200 and section 512(c)(2) of the act on a proposal to refuse approval of the application on one or more of the grounds specified in section 512(d) of the act or § 514.125.

(d) Notify FDA in writing that the applicant agrees to an extension of the review period under section 512(c) of the act and § 514.100(a) so that the applicant can determine whether to respond further under paragraphs (a), (b), or (c) of this section. The applicant's written notification is required to state the length of the extension. FDA will honor any reasonable request for such an extension. FDA will deem the applicant's failure to respond further within the extended review period to be a withdrawal of the application by the applicant as provided in § 514.65. Such a withdrawal is without prejudice to refiling.

§ 514.125 Refusal to approve an application.

(a) CVM will propose to refuse to approve an application and give the applicant written notice of an opportunity for a hearing under § 514.200 on a proposal to refuse approval of the application under section 512(d) of the act or § 514.125 if:

(1) FDA sends the applicant an approvable or a not approvable letter under 514.110 or 514.122; and

(2) The applicant within 60 days of the date of receipt of the letter asks CVM to give the applicant written notice of an opportunity for a hearing on a proposal to refuse approval of the application under section 512(d) of the act or § 514.125; and

(3) FDA finds that any of the reasons given in paragraph (b) of this section apply.

(b) FDA will refuse to approve an application for any of the following reasons:

(1) FDA has determined that any of the grounds for refusing approval specified in section 512(d)(1)(A) through (I) of the act apply.

(2) The application fails to include an appropriate proposed tolerance for residues in edible products derived from an animal or a proposed withdrawal period or other proposed restrictions for use of the animal drug, if any tolerance or withdrawal period or other restrictions for use are required in order to ensure that the edible products derived from an animal treated with such drug will be safe.

(3) In the case of a combination new animal drug product, there is a lack of substantial evidence demonstrating that each component designated as active makes a contribution to the effect in the manner claimed or suggested in the labeling. If in the absence of express labeling claims of advantages for the product, the product purports to be better than either component alone and there is a lack of substantial evidence demonstrating that purported effectiveness.

(4) The conditions of use prescribed, recommended, or suggested in the proposed labeling are not reasonably certain to be followed in practice.

(5) The application does not contain an adequate environmental assessment under § 25.31 of this chapter or sufficient information to establish that the requested action is subject to categorical exclusion under § 25.24 of this chapter.

(6) The application contains an untrue statement of a material fact.

(7) The applicant's proposed labeling of a new animal drug product does not comply with the requirements for labels and labeling in Part 201 of this chapter.

(8) The applicant fails to correct a deficiency given in FDA's letter explaining a refusal to file the application under § 514.101(d).

(9) The new animal drug product will be manufactured or processed in whole or in part in an establishment that is not registered and not exempt from registration under section 510 of the act and part 207 of this chapter.

(10) The applicant does not permit a duly designated officer or employee of the Department of Health and Human Services an adequate opportunity to inspect the facilities and procedures or refuses to permit access to, or copying or verification of, any records relevant to the application.

(11) The methods to be used in, and the facilities and procedures used for the manufacture, processing, controls, packing, or holding of the animal drug substance or the new animal drug product do not comply with the relevant current good manufacturing practice regulations in parts 210, 211, 225, or 226 of this chapter.

(12) The application does not contain an adequate justification of the omission of a report of any investigation of the animal drug product sponsored by the applicant, or an adequate justification of the omission of other information about the animal drug pertinent to an evaluation of the application that is received or otherwise obtained by the applicant from any source.

(13) A nonclinical study that is described in the application and that is essential to show that the new animal drug product is safe for use under the conditions prescribed, recommended, or suggested in its proposed labeling, was not conducted in compliance with the good laboratory practice (GLP) regulations in Part 58 of this chapter and no justification for the noncompliance is provided or, if it is, the differences between the practices used in conducting the study and the GLP regulations do not support the validity of the study.

(14) The applicant or contract research organization that conducted a bioavailability or bioequivalence study contained in the application refuses to permit an inspection of facilities or records relevant to the study by a properly authorized officer or employee of the Department of Health and Human Services or refuses to submit reserve samples of the drug products used in the study when requested by FDA.

§ 514.126 Adequate and well-controlled studies.

(a) The purpose of conducting a clinical (field) investigation of a new animal drug product is to distinguish the effect of the product from other influences, such as a spontaneous change in the course of the disease or biased observation. The characteristics described in paragraph (b) of this section have been developed over a period of years and are recognized by the scientific community as the essentials of an adequate and well-controlled clinical investigation. FDA considers these characteristics in determining whether an investigation is adequate and well-controlled for purposes of section 512 of the act. Reports of adequate and well-controlled investigations, including clinical (field) investigations, provide the basis for determining whether there is "substantial evidence" to support the claims of effectiveness for a new animal drug. Therefore, the study report is required to provide sufficient details of study design, conduct, and analysis to allow critical evaluation and a determination whether the characteristics of an adequate and well-controlled study are present.

(b) An adequate and well-controlled study has the following characteristics:

(1) There is a clear statement of the objectives of the investigation and a summary of the proposed or actual methods of analysis in the protocol for the study and in the report of its results. In addition, the protocol contains a description of the proposed methods of analysis, and the study report contains a description of the methods of analysis ultimately used. If the protocol does not contain a description of the proposed methods of analysis, the study report describes how the methods used were selected.

(2) The study uses a design that permits a valid comparison with a control to provide a quantitative assessment of animal drug effect. The protocol for the study and report of results should describe the study design precisely; for example, duration of treatment periods, whether treatments are parallel, sequential, or crossover, and whether the sample size is predetermined or based upon some interim analysis. Generally, four types of control are recognized:

(i) *Placebo concurrent control.* The test animal drug is compared with an inactive preparation designed to resemble the test animal drug as far as possible. A placebo-controlled study may include additional treatment groups, such as an active treatment control, and usually includes randomization and blinding of investigators.

(ii) *No treatment concurrent control.* Where objective measurements of effectiveness are available and placebo effect is negligible, the test new animal drug product is compared with no treatment. No treatment concurrent control trials usually include randomization.

(iii) *Active treatment concurrent control.* The test new animal drug product is compared with known effective therapy; for example, where the condition treated is such that administration of placebo or no treatment would be contrary to the well-being of the animal. An active treatment study may include additional treatment groups, however, such as a placebo control, when necessary to determine the effectiveness of the product. Active

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treatment trials usually include randomization and blinding of investigators. If the intent of the trial is to show similarity of the test and control animal drugs, the report of the study should assess the ability of the study to have detected a difference between treatments. Similarity of the test new animal drug product and active control can mean either that both animal drugs were effective or that neither was effective. The analysis of the study explains why the animal drugs should be considered effective in the study, for example, by reference to results in previous controlled studies of the active control animal drug.

(iv) *Historical control.* The results of treatment with the test new animal drug product are compared with experience historically derived from the adequately documented natural history of the disease or condition, or from the results of active treatment, in comparable individual animals or animal populations. Because historical control populations usually cannot be as well assessed with respect to pertinent variables as can concurrent control populations, historical control designs are usually reserved for special circumstances. Examples include studies of diseases with high and predictable mortality (for example, leukemia or tetanus) and studies of diseases with signs and symptoms of predictable duration or severity (some forms of parasitism, bovine hypocalcemia, canine eclampsia).

(3) The method of selection of subjects provides adequate assurance that they have the disease or condition being studied, or evidence of susceptibility and exposure to the condition against which prophylaxis or treatment is directed.

(4) The method of assigning subjects to treatment and control groups minimizes bias and is intended to ensure comparability of the groups with respect to pertinent variables such as breed, age, sex, severity of disease, duration of disease, and use of animal drugs or therapy other than the test animal drug. The protocol for the study and the report of its results describe how subjects were assigned to groups. Ordinarily, in a concurrently controlled study, assignment is by randomization, with or without stratification. When the effect of variables is accounted for by an appropriate design, and when, within the same animal, effects due to the test animal drug can be obtained free of the effects of such variables, the same animal may be used for both the test new animal drug product and the control using the controls set forth in paragraph (b)(2)(i), (b)(2)(ii), or (b)(2)(iii) of this section.

(5) Adequate measures are taken to minimize bias on the part of the observers and analysts of the data. The protocol and report of the study describe the procedures, such as blinding, used to minimize bias.

(6) The methods of assessment of the animals' response are well-defined and reliable. The protocol for the study and the report of results explain the variables measured, the methods of observation, and criteria used to assess response.

(7) There is an analysis of the results of the study adequate to assess the effects of the test new animal drug product. The report of the study describes the results and the analytical methods used to evaluate them, including when necessary any appropriate statistical methods. The analysis assesses, among other things, the comparability of test and control groups with respect to pertinent variables, and the effects of any interim data analyses performed.

(c) The Director of the Center for Veterinary Medicine may, on the Director's own initiative or on the petition of an interested person, waive in whole or in part any of the criteria in paragraph (b) of this section with respect to a specific clinical investigation, either prior to the investigation or in the evaluation of a completed study, provided the clinical investigation so conducted will yield, or has yielded, substantial evidence of effectiveness, notwithstanding nonconformance with the criteria for which waiver is requested under § 514.90. A petition for a waiver is required to set forth clearly and concisely the specific criteria from which waiver is sought, why the criteria are not reasonably applicable to the particular clinical investigation, what alternative procedures, if any, are to be, or have been employed, and what results have been obtained. The petition is also required to show why the clinical investigation so conducted will yield, or has yielded, substantial evidence of effectiveness, notwithstanding nonconformance with the criteria for which waiver is requested.

(d) For an investigation to be considered adequate for approval of a new animal drug product, the test drug product is required to be standardized as to identity, strength, quality, purity, and dosage form to give significance to the results of the investigation.

(e) Uncontrolled studies or partially controlled studies are not acceptable as the sole basis for the approval of claims of effectiveness. When carefully conducted and documented, such studies may provide corroborative support of adequate and well-controlled studies regarding effectiveness and may yield valuable data regarding the safety of the test animal drug. Such studies will be considered on their merits in the context of the principles listed in this section, with the exception of the requirement for the comparison of the treated subjects with controls. Isolated case reports, random experience, and reports lacking the details which permit scientific evaluation will not be considered.

§ 514.129 Incomplete application for an animal feed bearing or containing a new animal drug.

When a medicated feed application has been found incomplete due to deficiencies or inaccuracies in the information required in § 514.51, the application shall be considered withdrawn on the date of issuance of the letter citing the deficiencies or inadequacies contained in the application, unless within 30 days the applicant requests a notice of opportunity for a hearing. Such a withdrawal is without prejudice to refiling.

§ 514.150 Withdrawal of approval of an application.

(a) CVM will notify the applicant and afford an opportunity for a hearing on a proposal to withdraw approval of an application approved pursuant to section 512(c) or (m)(2) of the act under section 512(e)(1) or (m)(4)(A) of the act and under the procedures in § 514.200, if any of the following apply:

(1) The Secretary of Health and Human Services has suspended the approval of the application for a new animal drug product or an animal feed bearing or containing a new animal drug on a finding that there is an imminent hazard to the health of man or of the animals for which such drug product or such animal feed is intended. CVM will promptly afford the applicant an expedited hearing following summary suspension on a finding of imminent hazard to health.

(2) CVM has determined that any of the grounds for withdrawing approval specified in section 512(e)(1) (A) through (E) or section 512(m)(4)(A) (i) through (ii) of the act apply.

(3) CVM has determined under section 512(e)(1)(B) of the act that new evidence of scientific progress shows that the data supporting an NADA no longer constitute adequate tests by all methods reasonably applicable to a determination of safety.

(4) CVM has determined under section 512(e)(1)(B) of the act that new evidence shows that labeled conditions including indications for use of the new animal drug have not been followed or are not reasonably certain to be followed in practice.

(b) CVM may notify the applicant and afford an opportunity for a hearing on a proposal to withdraw approval of the application approved pursuant to section 512(c) or (m)(2) of the act, under section 512(e)(2) or (m)(4)(B) of the act and under the procedures in § 514.200, if any of the following apply:

(1) CVM has determined that any of the grounds for withdrawing approval specified in section 512 (e)(2)(A) through (e)(2)(C) or section 512 (m)(4)(B)(i) through (m)(4)(B)(iii) of the act apply.

(2) The applicant has failed to comply with the notice requirements of section 510(j)(2) of the act.

(3) In the case of an application approved pursuant to section 512(c) of the act, CVM finds:

(i) That the application does not contain an adequate justification of the omission of a report of any investigation of the new animal drug product sponsored by the applicant, or an adequate justification of the omission of other information about the new animal drug pertinent to an evaluation of the application that is received or otherwise obtained by the applicant from any source.

(ii) That any nonclinical laboratory study that is described in the application and that is essential to show that the new animal drug product is safe for use under the conditions prescribed, recommended, or suggested in its labeling was not conducted in compliance with the good laboratory practice (GLP) regulations in Part 58 of this chapter and no justification for the noncompliance was provided or, if it were, the differences between the practices used in conducting the study and the GLP regulations do not support the validity of the study.

(iii) The applicant or contract research organization that conducted a bioavailability or bioequivalence study contained in the application refuses to permit an inspection of facilities or records relevant to the study by a properly authorized officer or employee of the Department of Health and Human Services or refuses to submit reserve samples of the drug products used in the study when requested by FDA.

(c) CVM will withdraw approval of an application approved pursuant to section 512 (c) or (m)(2) of the act if the applicant requests withdrawal because the new animal drug product or the animal feed bearing or containing a new animal drug and subject to the application is no longer being marketed, provided none of the conditions listed in paragraphs (a) and (b) of this section applies to the drug product or animal feed. CVM will consider a written request for withdrawal under this paragraph to be a waiver of an opportunity for hearing otherwise provided for in this section. Withdrawal of approval of an application under this paragraph is without prejudice to refiling.

(d) FDA may notify an applicant that it believes a potential problem associated with a new animal drug product or animal feed bearing or containing a new animal drug is sufficiently serious that the drug product or animal feed should be removed from the market and may ask the applicant to waive the opportunity for hearing otherwise provided for under this section, to permit FDA to withdraw approval of the application for the product, and to voluntarily remove the product from the market. If the applicant agrees, FDA will not make a finding under paragraph (b) of this section, but will withdraw approval of the application in a notice published in the **Federal Register** that contains a brief summary of the reasons for withdrawal.

§ 514.152 Notice of withdrawal of approval of an application for a new animal drug.

If FDA withdraws approval of an application for a new animal drug product approved pursuant to section 512(c) of the act, FDA will publish in the **Federal Register** a notice announcing the withdrawal of approval and a final rule removing that portion of the regulations promulgated under section 512(i) of the act reflecting the approval. A medicated feed application approved pursuant to section 512(m)(2) of the act shall be deemed to be withdrawn upon publication of the final rule removing the corresponding regulation.

§ 514.160 Approval or reinstatement of an application for which approval was refused, suspended, or withdrawn.

Upon FDA's own initiative or upon request of an applicant, FDA may, on the basis of new information, approve an application for which it had refused, suspended, or withdrawn approval. CVM will publish in the **Federal Register** pursuant to section 512(i) of the act a regulation reflecting the approval.

§ 514.170 Adulteration and misbranding of an approved animal drug.

Any animal drug, including a new animal drug product FDA approves under section 512 of the act and this part, is subject to all the adulteration and misbranding provisions in sections 501 and 502 of the act. FDA is authorized to regulate an approved new animal drug product by proceedings for the enforcement, or to restrain violations, of the act by and in the name of the United States and by regulations issued through informal rulemaking under sections 501, 502, and 701(a) of the act.

Subpart D—Hearing Procedures for New Animal Drugs

§ 514.200 Notice of opportunity for hearing; notice of participation and request for hearing; grant or denial of hearing.

(a) *Notice of opportunity for hearing.* As provided herein and in part 12 of this chapter, CVM will give the applicant notice of opportunity for a hearing on a proposal to refuse approval of an application or to withdraw the approval of an application. The notice will state the reasons for the action and the proposed grounds for the order.

(1) The notice may simply summarize in a general way the information resulting in the notice or refer to specific requirements in the statute and regulations with which there is a lack of compliance, or provide a detailed description and analysis of the specific facts resulting in the notice.

(2) CVM will publish the notice in the **Federal Register** and will state that the applicant, who wishes to participate in a hearing, has 30 days after the date of publication of the notice to file a written notice of participation and request for hearing. If an applicant fails to file a written notice of participation and request for hearing within 30 days, the applicant waives the opportunity for a hearing.

(b) *Notice to applicant.* FDA will provide a copy of the notice of opportunity for a hearing to any firm or person who has submitted an application, by delivering the notice in person or sending it by registered or certified mail to the last address shown in the application and by publication of the notice in the **Federal Register**. However, it is the responsibility of every manufacturer of an animal drug product to review every notice of opportunity for a hearing published in the **Federal Register** to determine whether it covers any animal drug product that firm or person manufactures.

(c) *Notice of participation and request for a hearing, and submission of studies and comments.* (1) The applicant who wishes to participate in a hearing shall file with the Dockets Management Branch (HFA–305), Food and Drug

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Administration, 12420 Parklawn Dr., Rockville, MD 20857:

(i) Within 30 days after the date of publication of the notice, a written notice of participation and request for a hearing, and

(ii) Within 60 days after the date of publication of the notice, unless a different period of time is specified in the notice, the studies on which the applicant relies to justify a hearing as specified in paragraph (d) of this section.

The applicant may incorporate in its submission in support of the request for hearing the raw data underlying a study if the data were previously submitted to FDA as part of an application or other report. If an applicant fails to file any studies to justify a hearing as specified in paragraph (d) of this section, the applicant waives the opportunity for a hearing.

(2) FDA will not consider data or analyses submitted after 60 days in determining whether a hearing is warranted unless they are derived from adequate and well-controlled studies begun before the date of the notice of opportunity for a hearing and the results of the studies were not available within 60 days after the date of publication of the notice. Nevertheless, FDA may consider other studies on the basis of a showing by the applicant requesting a hearing of inadvertent omission and hardship. The applicant requesting a hearing shall list in the request for hearing all studies in progress, the results of which the applicant intends to submit later in support of the request for a hearing. The applicant shall submit under paragraph (c)(1)(ii) of this section a copy of the complete protocol, a list of the participating investigators, and a brief status report of the studies.

(d) *Supporting information.* The applicant requesting a hearing is required to submit under paragraph (c)(1)(ii) of this section the studies (including all protocols and underlying raw data) on which the applicant relies to justify a hearing with respect to the new animal drug product, except that an applicant who requests a hearing on the refusal to approve an application is not required to submit additional studies and analyses if the studies upon which the applicant relies have been submitted in the application and in the format and containing the summaries required under § 514.50.

(1) If the grounds for CVM's proposed action concern the effectiveness of the new animal drug product, each request for hearing is required to be supported only by adequate and well-controlled clinical studies meeting each of the requirements of § 514.126 or by other studies not meeting those requirements but for which a waiver has been previously granted under § 514.126. Each applicant requesting a hearing shall submit all adequate and well-controlled clinical studies on the animal drug product, including any unfavorable analyses, views, or judgments with respect to the studies. No other data, information, or studies may be submitted.

(2) The submission is required to include a factual analysis of all the studies submitted. If the grounds for CVM's proposed action concern the effectiveness of the new animal drug product, the analysis is required to specify how each study accords, on a point-by-point basis, with each criterion required for an adequate and well-controlled clinical investigation established under § 514.126, or the study is required to be accompanied by an appropriate waiver previously granted by FDA. If the study concerns a new animal drug product or dosage form or conditions of use or mode of administration other than the one in question, that fact is required to be clearly stated. Any study conducted on the final marketed form of the new animal drug product is required to be clearly identified.

(3) Each applicant requesting a hearing shall submit an analysis of the data upon which the applicant relies, except that the required information relating either to safety or to effectiveness may be omitted if the notice of opportunity for a hearing does not raise any issue with respect to that aspect of the new animal drug product. FDA can most efficiently consider submissions made in the following format.

I. Safety data.
  A. Animal safety data.
  1. Controlled studies.
  2. Partially controlled or uncontrolled studies.
  3. Documented case reports.
  4. Pertinent marketing experience that may influence a determination about the safety of the animal drug product.
  B. Human safety data.
  1. Toxicology.
  2. Residue depletion and assay methods.

II. Effectiveness data.
  Controlled studies, with an analysis showing clearly how each study satisfies, on a point-by-point basis, each of the requirements of § 514.126.

III. A summary of the data and views setting forth the rationale and purpose for the animal drug and its ingredients and the scientific basis for the conclusion that the new animal drug product and its ingredients have been proven safe and/or effective for the intended use. If there is an absence of controlled studies in the material submitted or the requirements of any element of § 514.126 have not been fully met, that fact is required to be stated clearly and a waiver previously granted by FDA under § 514.126 is required to be submitted.

IV. A statement signed by the person responsible for such submission that it includes in full, or incorporates as provided in § 514.200(c)(2), all studies and information specified in § 514.200(d).

(**Warning:** A willfully false statement is a criminal offense (18 U.S.C. 1001).)

(e) *Separation of functions.* Separation of functions commences upon receipt of a request for hearing. CVM will prepare an analysis of the request and a proposed order ruling on the matter. The analysis and proposed order, the request for hearing, and any proposed order denying a hearing and response under paragraph (g) of this section will be submitted to the Office of the Commissioner of Food and Drugs for review and decision. When CVM recommends denial of a hearing on all issues on which a hearing is requested, no representative of CVM will participate or advise in the review and decision by the Commissioner. When CVM recommends that a hearing be granted on one or more issues on which a hearing is requested, separation of functions terminates as to those issues, and representatives of CVM may participate or advise in the review and decision by the Commissioner. The Commissioner may modify the text of the issues, but may not deny a hearing on those issues. Separation of functions continues with respect to issues on which CVM has recommended denial of a hearing. The Commissioner will neither evaluate nor rule on CVM's recommendation on such issues and such issues will not be included in the notice of hearing. Participants in the hearing may make a motion to the administrative law judge for the inclusion of any such issue in the hearing. The ruling on such a motion is subject to review in accordance with § 12.35(b) of this chapter. Failure to so move constitutes a waiver of the right to a hearing on such an issue. Separation of functions on all issues resumes upon issuance of a notice of hearing. The Office of the General Counsel, Department of Health and Human Services, will observe the same separation of functions.

(f) *Summary judgment.* A person who requests a hearing may not rely upon allegations or denials but is required to set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing with respect to a particular new animal drug product specified in the request for hearing.

(1) Where a specific notice of opportunity for hearing (as defined in paragraph (a)(1) of this section) is used, the Commissioner will enter summary judgment against a person who requests a hearing, making findings and conclusions, denying a hearing, if it conclusively appears from the face of the data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact which precludes the refusal to approve the application or the withdrawal of approval of the application; for example, no adequate and well-controlled clinical investigations meeting each of the precise elements of § 514.126 showing effectiveness have been identified. Any order entering summary judgment is required to set forth the Commissioner's findings and conclusions in detail and is required to specify why each study submitted fails to meet the requirements of the statute and regulations or why the request for hearing does not raise a genuine and substantial issue of fact.

(2) When following a general notice of opportunity for a hearing (as defined in paragraph (a)(1) of this section) CVM concludes that summary judgment against a person requesting a hearing should be considered, CVM may serve upon the person requesting a hearing, by registered or certified mail, a proposed order denying a hearing. This person has 60 days after receipt of the proposed order to respond with sufficient data, information, and analyses to demonstrate that there is a genuine and substantial issue of fact which justifies a hearing.

(3) When following a general or specific notice of opportunity for a hearing a person requesting a hearing submits data or information of a type required by the statute and regulations, and CVM concludes that summary judgment against the person should be considered, CVM will serve upon the person by registered or certified mail a proposed order denying a hearing. The person has 60 days after receipt of the proposed order to respond with sufficient data, information, and analyses to demonstrate that there is a genuine and substantial issue of fact which justifies a hearing.

(4) If review of the data, information, and analyses submitted show that the grounds cited in the notice are not valid, for example, that substantial evidence of effectiveness exists, the Commissioner will enter summary judgment for the person requesting the hearing, and rescind the notice of opportunity for a hearing.

(5) If the Commissioner grants a hearing, it will begin within 90 days after expiration of the time for requesting the hearing unless the parties otherwise agree in the case of refusal of approval, and as soon as practicable in the case of withdrawal of approval.

(6) The Commissioner will grant a hearing if there exists a genuine and substantial issue of fact or if the Commissioner concludes that a hearing would otherwise be in the public interest.

(7) A request for a hearing, and any subsequent grant or denial of a hearing, applies only to the new animal drug products named in such documents.

(g) *Final action.* CVM and the Commissioner, respectively, will issue a notice refusing or withdrawing approval of, and declaring unlawful, all new animal drug products subject to a notice of opportunity for a hearing for which an opportunity for a hearing is waived or for which a hearing is denied. The Commissioner may defer or stay the action pending a ruling on any related request for a hearing or pending any related hearing or other administrative or judicial proceeding.

§ 514.201 Procedure for hearings.

Parts 10 through 16 of this chapter apply to hearings relating to new animal drugs and animal feeds bearing or containing new animal drugs under sections 512 (d), (e), (m)(3), (m)(4), and (n) of the act.

§ 514.235 Judicial review.

(a) The Commissioner will certify the transcript and record. In any case in which the Commissioner enters an order without a hearing under § 514.200(f), the record certified by the Commissioner is required to include the requests for hearing together with the data and information submitted and the Commissioner's findings and conclusions.

(b) An applicant may seek judicial review of an order refusing or withdrawing approval of a new animal drug application, whether or not a hearing has been held, in a U.S. Court of Appeals under sections 505(h) and 512(h) of the act.

Subpart E—[Reserved]

Subpart F—Miscellaneous Provisions

§ 514.410 Imports and exports of a new animal drug.

(a) *Imports.* (1) A new animal drug product may be imported into the United States only if:

(i) It is the subject of an application approved under this part; or

(ii) It complies with the regulations pertaining to investigational new animal drugs under part 511 of this chapter.

(2) An animal drug substance intended for use in the manufacture, processing, or repackaging of a new animal drug may be imported into the United States only if it complies with § 201.122 of this chapter pertaining to shipments of animal drug substances in domestic commerce.

(b) *Exports.* (1) A new animal drug product may be exported only if:

(i) It is the subject of an application approved under this part;

(ii) It complies with the regulations pertaining to investigational new animal drugs under part 511 of this chapter; or

(iii) It is the subject of an export application approved under section 802 of the act.

(2) A new animal drug substance that is covered by an application approved under this part for use in the manufacture of an approved new animal drug product may be exported by the applicant or any person listed as a supplier in the approved application, provided the animal drug substance intended for export meets the specifications of, and is shipped with a copy of the labeling required for, the approved new animal drug product.

§ 514.420 Drug master file.

(a) A drug master file (DMF) is a submission of information to FDA by a person (the holder of a DMF) who intends it to be used for one of the following purposes:

(1) To permit the holder to incorporate the information in an investigational new animal drug (INAD) notice as described under part 511 of this chapter or an application as defined in § 514.3.

(2) To permit the holder to authorize another person to rely on the information to support a submission to FDA without the holder having to disclose information in the DMF to the other person.

(b) FDA does not independently review, approve or disapprove a DMF. FDA reviews the information, as authorized, only in conjunction with a review of INAD notices as described under part 511 of this chapter.

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applications as defined in § 514.3, or another DMF.

(c) FDA has prepared and made available a guideline that provides information about how to prepare a well organized DMF.

(d) Two copies of a DMF are required to be submitted. A DMF may contain information of the kind required for any submission to the agency, including information about the following:

(1) Facilities and operating procedures used in the manufacture, packaging, labeling and a control of an animal drug substance or animal drug product (Note: Holders of a DMF for foreign establishments shall abide by this requirement);

(2) Components used in the manufacture of an animal drug substance or animal drug product;

(3) Manufacturing instructions;

(4) Packaging materials;

(5) Analytical controls;

(6) Stability program/data;

(7) Analytical method validation information;

(8) Environmental data/information;

(9) Human food safety, preclinical, or clinical data.

(e) All or part of the contents of any DMF may be incorporated or used in support of an INAD notice as described under part 511 of this chapter or an application as defined in § 514.3 if the holder of the DMF provides written authorization to FDA for such use. Each incorporation is required to describe the incorporated material by name, reference number, volume, and page number of the status DMF.

(f) A holder of a DMF shall provide updated data and information on an annual basis to reflect the status of current operations for those files describing any manufacturing operations.

(g) If the holder of a DMF adds, changes, or deletes any information in the file, the holder shall provide written notification to FDA and all other persons authorized to refer to the cited file. Two copies of any addition, change, or deletion of information in the DMF shall be provided to FDA. All copies shall identify the specific file change(s) by reference to a volume number and page.

(h) A list identifying and designating the appropriate information (application number, product name, and designated firm) to which the authorization applies shall be provided on an annual basis.

(i) The public availability of data and information in a DMF, including the availability of data and information in the file to a person authorized to reference the file, is determined under part 20 of this chapter and § 514.430.

§ 514.421 Public master file.

A public master file (PMF) is established by FDA and contains information (other than manufacturing) relative to an animal drug. The public may access the information in a drug master file, because that information is acquired with public funds. The existence of a PMF is made known by a notice published in the **Federal Register**.

§ 514.430 Availability for public disclosure of data and information in an application.

(a) FDA will determine the public availability of any part of an application under this section and part 20 of this chapter. For purposes of this section, the application includes all data and information submitted with or incorporated in the application, including INAD notices as described under part 511, applications as defined in § 514.3, reports under § 514.80, and other submissions, e.g., drug master files under § 514.420. For purposes of this section, safety and effectiveness data include all studies and tests of an animal drug in laboratory animals and the target species and all studies and tests of the animal drug for identity, stability, purity, potency, and bioavailability.

(b) FDA will not publicly disclose the existence of an application before an approval letter is sent to the applicant under § 514.105, unless the existence of the application has been previously publicly disclosed or acknowledged. CVM will maintain and make available for public disclosure a list of applications for which FDA has sent an approval letter to the applicant.

(c) If the existence of an unapproved application has not been publicly disclosed or acknowledged, no data or information in the application is available for public disclosure.

(d) If the existence of an application has been publicly disclosed or acknowledged before FDA approves the application, no data or information contained in the application is available for public disclosure before FDA approves the application, but the Commissioner may, in his or her discretion, disclose a summary of selected portions of the safety and effectiveness data that are appropriate for public consideration of a specific pending issue, for example, for consideration of an issue at an open session of an FDA advisory committee.

(e) After FDA approves an application, the following data and information in the application are immediately available for public disclosure, unless the applicant shows that extraordinary circumstances exist:

(1) All safety and effectiveness data previously disclosed to the public as set forth in § 20.81 of this chapter.

(2) If the approval is for a new animal drug product, a summary or summaries of the safety and effectiveness data and information submitted with or incorporated in the application. The summaries do not constitute the full reports of investigations under section 512 (b)(1) or (b)(2) of the act on which the safety and effectiveness of the product may be approved. The summaries consist of the following:

(i) For an application approved before July 1, 1975, internal agency records that describe safety and effectiveness data and information, for example, a summary of the basis for approval or internal reviews of the data and information, after deletion of the following:

(A) Names and any pertinent information that would identify the investigators.

(B) Any inappropriate gratuitous comments unnecessary to an objective analysis of the data and information.

(ii) For an application approved on or after July 1, 1975, a summary of the safety and effectiveness data and information evaluated by CVM during the animal drug approval process. The summary is prepared in one of the following ways:

(A) Before approval of the application, the applicant shall prepare a draft summary which CVM will review and may revise. The draft may be submitted with the application or as an amendment.

(B) CVM may prepare its own summary.

(3) A protocol for a test or study, unless it is shown to fall within the exemption established for trade secrets and confidential commercial information in § 20.61 of this chapter.

(4) Adverse reaction reports, product experience reports, consumer complaints, and other similar data and information, after deletion of:

(i) Names and any information that would identify the person using the product.

(ii) Names and any information that would identify any third party involved with the report, such as a veterinarian or hospital or other institution.

(5) A list of all active ingredients and any inactive ingredients previously disclosed to the public as set forth in § 20.61 of this chapter.

(6) Analytical methods used for regulatory purposes which are shown to fall within the exemption established for trade secrets and confidential commercial information in § 20.61 of this chapter.

(7) All correspondence and written summaries of oral discussions between FDA and the applicant relating to the application, under the provisions of part 20 of this chapter.

(f) All safety and effectiveness data and information which have been submitted in an application and which have not previously been disclosed to the public are available to the public, upon request, at the time any one of the following events occurs unless extraordinary circumstances are shown:

(1) No work is being or will be undertaken to have the application approved.

(2) A final determination is made that the application is not approvable and all legal appeals have been exhausted.

(3) Approval of the application is withdrawn and all legal appeals have been exhausted.

(4) A final determination has been made that the animal drug is not a new animal drug.

(5) A final determination has been made that the animal drug may be marketed without the submission of such safety and/or effectiveness data and information.

(g) The following data and information in an application are not available for public disclosure unless they have been previously disclosed to the public as set forth in § 20.81 of this chapter or they relate to a product or ingredient that has been abandoned and they do not represent a trade secret or confidential commercial or financial information under § 20.61 of this chapter:

(1) Quantitative or semiquantitative batch formulas.

(2) Manufacturing methods and processes, including quality control procedures.

(3) Production, sales distribution, and similar data and information, except that any compilation of that data and information aggregated and prepared in a way that does not reveal data or information which is not available for public disc... re under this provision is available for public disclosure.

(h) The compilations of information specified in § 20.117 of this chapter are available for public disclosure.

§ 514.440 Addresses.

(a) An applicant shall normally submit an application and other correspondence relating to matters covered by this part to the Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, and to the appropriate office identified below:

(1) An application under §§ 514.50, 514.58, 514.60, or 514.70 should be submitted to the Document Control Section (HFV–199). An applicant may obtain binders to contain the application from that office. After FDA has filed an application, the agency will designate a primary review division as provided in § 514.100(a)(1). An amendment, supplement, resubmission, request for waiver, or other correspondence about the application that has been filed should be submitted to the Document Control Section (HFV–199), attention of the primary review division assigned (the file or application number and date of last FDA correspondence should also be identified).

(2) A medicated feed application (Form FDA 1900) under § 514.51 and amendments and supplements under § 514.71 should be submitted to the Division of Animal Feeds (HFV–220).

(3) A request for a notice of opportunity for a hearing under § 514.110 or § 514.120 on a proposal to refuse approval of an application should be submitted to the Division of Voluntary Compliance and Hearings Development (HFV–240).

(4) A request for a copy of the list of guidelines that apply to parts 500 through 599 of this chapter or of a specific guideline should be submitted to the Industry Information Staff (HFV–12).

(5) A periodic report, whether Form FDA 1932, Form FDA 2301, or equivalent, should be submitted to the Division of Surveillance (HFV–210).

(b) [Reserved]

§ 514.445 Guidelines.

(a) FDA prepares and makes available guidelines to help persons comply with requirements in this part. When a guideline is made available under § 10.90(b) of this chapter, the notice of availability of the guideline will so state.

(b) CVM will maintain and make publicly available a list of guidelines that apply to parts 500 through 599 of this chapter. The list will state how a person can obtain a copy ot each guideline.

Editorial Note. This document was received by the Office of Federal Register on December 9, 1991.

Dated: July 1, 1991.

David A. Kessler,

Commissioner of Foods and Drugs.

[FR Doc. 91-29779 Filed 12-16-91; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

21 CFR Parts 226, 510, and 514

[Docket No. 88N-0038]

RIN 0905-AA96

Records and Reports Concerning Experience With New Animal Drugs for Which an Approved Application Is in Effect

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations regarding the requirements for recordkeeping and reporting of adverse experiences and other information relating to approved new animal drugs and medicated feeds. The kinds of information to be maintained and submitted by the applicant will be defined more clearly. The timing and content of certain reports will be revised to enhance the usefulness of the information. The purpose of these proposed changes is to improve protection of public health, including protection of animals, while also reducing or eliminating unnecessary reporting requirements. These proposed changes are part of a revision of the animal drug regulations. Another proposed rule, published elsewhere in this issue of the **Federal Register**, would provide for a major revision of the sections in 21 CFR part 514. That proposal concerns regulations affecting new animal drug applications (NADA's) and is known as the "NADA Rewrite."

DATES: Comments by February 18, 1992.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, room 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew J. Beaulieu, Center for Veterinary Medicine (HFV–210), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8722.

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I. Introduction

The agency is proposing revisions in the recordkeeping and reporting requirements, including reports of adverse drug experiences, that apply after FDA approves an NADA or medicated feed application (MFA). Section 512(l) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(l)) provides that following approval of an NADA, the applicant shall establish and maintain such records and make such reports to the agency as are prescribed by regulation or order. Section 512(m)(5) of the act establishes similar requirements with respect to an MFA. FDA has promulgated regulations to implement sections 512(l) and 512(m)(5) in 21 CFR 510.300 and 510.301. Upon finalization of this proposed rule, those sections will be redesignated as 21 CFR 514.80, 514.81, and 514.82.

The recordkeeping and reporting requirements enable FDA to monitor the use of a new animal drug or medicated animal feed after approval. Such records and reports are necessary for the agency to determine whether the approval of an application should be withdrawn. FDA must withdraw approval if, among other things, new information shows that the drug or medicated feed is unsafe or ineffective (21 U.S.C. 360b(e) and (m)(4)). FDA may withdraw approval of an application if an applicant fails to establish a system for maintaining required records, fails to maintain records or make reports, or refuses to permit access to, or copying or verification of, its records (21 U.S.C. 360b(e)(2)(A) and (m)(4)(B)(i)).

II. Records and Reports Concerning New Animal Drugs

A. Current Requirements

Section 510.300 *Records and reports concerning experience with new animal drugs for which an approved application is in effect,* requires submission of several types of reports:

1. Immediate Reports (21 CFR 510.300(b)(1)).

Applicants are required to report immediately information about any mixup in a new animal drug or its labeling with another article; any bacteriological or significant physical or other change or deterioration in the new animal drug; and any failure of one or more distributed batches of the new animal drug to meet established specifications.

2. Fifteen-Day Reports (21 CFR 510.300(b)(2)).

Applicants are required to report as soon as possible, but not later than 15 working days after the applicant obtains the information, unexpected side effects, injuries, toxicities, or sensitivity reactions associated with clinical use or studies of a new animal drug, and information about any unusual failure of the animal drug to exhibit its expected pharmacological activity. Applicants are also required to report any increase in the incidence or severity of adverse reactions.

3. Six-Month Reports (21 CFR 510.300(b)(4)).

Within 6 months of approval, and again within a second 6-month period, applicants are required to provide the following information about each new animal drug: (i) Unpublished reports of clinical or other animal experience, studies, investigations, and tests conducted by or reported to the applicant; (ii) experience, investigations, studies, or tests involving the chemical, physical, or other properties of the animal drug; (iii) copies of all labeling and, for prescription animal drugs, advertising; (iv) the quantity of the animal drug distributed; and (v) manufacturing or control changes that do not require a supplemental NADA. However, the applicant is not required to submit information previously reported, for example, in an immediate or 15-day report. In addition, applicants are required to submit samples of promotional labeling at the time of initial dissemination and advertisements for prescription animal drugs at the time of initial publication. Thus, they are not required to submit the same information in the 6-month reports.

4. Annual Reports (21 CFR 510.300(b)(4))

After the two initial 6-month periods, applicants are required to provide annually the information listed in the previous paragraph.

B. Proposed Changes

1. Reports That Would Be Required From Applicants (21 CFR 514.80, 514.81, and 514.82)

The agency proposes to improve the current reporting system by requiring the following types of reports: (i) 3-day "NADA-field alert reports," involving certain product and manufacturing defects; (ii) 15-day "alert reports" for all adverse drug experiences that are both serious and unexpected, as well as for any significant increase in the frequency of serious, expected adverse drug experiences; (iii) periodic adverse drug experience reports for all other adverse drug experiences, as well as product defect information not covered by a 3-day NADA-field alert report, at quarterly intervals for 3 years from the date of approval of the application, and annually thereafter; (iv) annual reports for other information necessary to monitor safety of the animal drug product; and (v) other reports to meet particular needs. The proposed rule also defines key terms including "adverse drug experience," "increased frequency," "serious," "unexpected," "product defect," and "manufacturing defect." For the purpose of the proposed rule, the term "NADA" includes both an abbreviated NADA, and all amendments and supplements.

The proposed reports would closely parallel those required under the revised regulations governing the marketing of new drugs for human use (21 CFR 314.80, 50 FR 7452, February 22, 1985), and would simplify the process for those firms that manufacture both kinds of products. Because of the proposed quarterly reporting requirement for adverse drug experiences, the proposed rule would eliminate the requirement for a 6-month complete report, which is now used to monitor an animal drug's safety in the first year after approval.

a. *Three-day "NADA-field alert reports".* (21 CFR 514.80(d)(1), 514.81(d)(1), 514.82(d)(1)). The "immediate report" would be sent to an FDA district office and its title would be changed to "NADA-field alert report." Product defects that are manufacturing defects would be included in the "immediate report." The proposal defines the terms "product defect" and "manufacturing defect." The latter category includes defects that have a potential for causing significant safety or effectiveness problems in one or more lots of an animal drug. The proposed rule provides examples of manufacturing defects.

Under the proposal, the requirement for immediate reporting of manufacturing defects would be met if the applicant reported the information to the appropriate FDA district office within 3 working days of the applicant's receipt of that information. FDA recognizes that an applicant may not be able to submit a complete report within that time. The agency believes, however, that these reports, which can assist in the prevention of safety and effectiveness problems from the use of products already in distribution, are important and must be made whether or not the applicant has obtained all the facts regarding the incident giving rise to the report.

b. *Fifteen-day "alert reports".* (21 CFR 514.80(d)(2), 514.81(d)(2), 514.82(d)(2)). Under the proposed rule, FDA would require adverse drug experiences that are both serious and unexpected to be reported within 15 working days of receipt of the information. The 15-day report would be called an "alert report." Applicants would be required to report these experiences as soon as possible, and in any event within 15 days, even if they have not obtained complete information about the experiences. Followups of 15-day alert reports would be required within 15 working days of the applicant's receipt of new information. Additionally, the applicant would be required to review periodically (at least as often as the periodic reporting cycle) the frequency of reports of adverse drug experiences that are both serious and expected, regardless of source, and report any significant increase in frequency as soon as possible but in any case within 15 days of determining that a significant increase in frequency exists.

c. *Periodic adverse drug experience reports.* (21 CFR 514.80(d)(3), 514.81(d)(3), 514.82(d)(3)). Under the proposal, applicants would be required to report all adverse drug experiences (other than those already reported under the preceding paragraph) quarterly for 3 years following approval of the application and annually thereafter as part of the annual reports. Quarterly reports would have to be submitted within 30 days of the close of a quarter.

d. *Annual reports.* (21 CFR 514.80(d)(4), 514.81(d)(4), 514.82(d)(4)). Annual reports, to be submitted within 60 days of the anniversary of approval, would include distribution data, labeling, own-label (private label) distribution data, manufacturing or control changes, nonclinical laboratory studies and clinical data, and the adverse drug experience reports mentioned in the previous paragraph.

e. *Other reports* (21 CFR 514.80(d)(5), 514.81(d)(5), 514.82(d)(5)). Other reports would include advertising and promotional labeling, distributor statements and labeling, and special reports.

2. Description of Reports Required From Applicants

Principal changes from the current system that would be brought about by this proposed rule are described in the following paragraphs.

First, the proposal would focus 15-day reporting on adverse drug experiences that are both unexpected and serious, rather than unexpected (regardless of severity) as under the current regulations. FDA believes that this change will allow the agency to concentrate its efforts on those reports that are most significant. Reports of any significant increase in frequency of adverse drug experiences would continue to be required within 15 working days after determining that a significant increase in frequency exists, but such reporting requirement would apply only in the case of serious, expected reactions.

Second, FDA is proposing to revise the periodic reporting requirements so that they, too, focus on the most significant information. Currently, the regulations require, in the first year after approval, a 6-month complete report that contains considerable information in addition to adverse drug experiences. This additional information includes: (1) Unpublished reports of clinical or other animal experience, studies, investigations, and tests conducted by or reported to the sponsor; (2) experience, investigations, studies, or tests involving the chemical, physical, or other properties of the drug; (3) copies of all labeling and, for prescription drugs, advertising; (4) the quantity of the drug distributed; and (5) manufacturing or control changes that do not require a supplemental NADA. Under the proposed rule, FDA would require this information (other than adverse drug experiences) to be submitted annually rather than semiannually because the timeliness of FDA's receipt of this information is not as critical as it is for adverse drug experiences. Conversely, however, as with human drugs, FDA is proposing that adverse drug experience information for approved new animal drugs, not required in a 15-day report, be reported to the agency quarterly for the first 3 years after approval and annually thereafter. As noted in the preamble to the revised regulations governing the marketing of new drugs for human use (50 FR 7452 at 7472, February 22, 1985), FDA's experience has shown that serious safety problems with a new drug, if any exist, are likely to be detected during the first 3 years of marketing. FDA believes, therefore, that closer surveillance of new animal drugs during this time period is also warranted through the quarterly reporting mechanism.

The proposed rule would require reports of product defects to be submitted quarterly for 3 years following approval and annually thereafter if not previously reported in the NADA-field alert report as manufacturing defects. The proposal also defines the term "product defect" to mean an observable or measurable deviation in any subunit of a lot of a distributed animal drug product from the acceptance standards specified in the approved application, or from the typical physical and chemical characteristics expected for the animal drug product and its container.

Currently, although the regulations do not contain the term "product defect," they require reports involving chemical, physical, or other properties of the drug (see § 510.300(a)(2)) in addition to the information about product-related problems required in the immediate report. FDA has interpreted the regulations to require reporting of "product defect" information. For example, the title of Form FDA 1932 contains the words "Product Defect Report." Many applicants have routinely submitted product defect information in a 15-day report or in a periodic report if they have not submitted it in an immediate report.

Because product defects can result in adverse effects in the animals in which the animal drugs are used, FDA believes that it is important to clarify the need for reporting such information, and the time within which it is to be reported. Although the time that will be allowed for reporting product defects that are not manufacturing defects will be extended beyond the time by which some sponsors have been submitting the information, FDA believes that the proposed periods will provide adequate protection considering that the kinds of problems that are most likely to cause widespread adverse effects would be reported immediately in the NADA-field alert report.

All adverse drug experience and product defect reports would be submitted on Form FDA 1932, "Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report." The content of the annual report would remain

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essentially unchanged, but the applicable portion of the regulations has been rewritten in the interest of clarity and simplicity. As noted above, the proposal would delete the requirement of a semiannual report in the first year following approval.

The proposed rule would retain the current reporting requirements for new promotional and advertising materials, i.e., they are to be provided at the time of initial dissemination or publication.

The proposal defines the information covered by proposed § 514.80 to include that which is obtained from foreign as well as domestic sources. The change is for clarification, the agency having historically interpreted the regulations to apply to information from both sources.

FDA is proposing to define the term "adverse drug experience." In addition to adverse effects on treated animals, the term would include adverse effects resulting from human exposure during manufacture, testing, or handling, as well as human exposure during use. This provision would codify the agency's current interpretation. Other terms, e.g., "applicant," which means, in relevant part, any person who owns an approved application, are defined in the proposed NADA Rewrite published elsewhere in this issue of the **Federal Register**, and apply to this proposal also.

Section 510.300 now requires any person whose name appears on the labeling of an approved new animal drug, or who manufactures, processes, packs, or labels it, to keep records and make reports to FDA about the animal drug. Due to the two-step nature of the medicated feed approval system (following approval of an NADA for a Type A medicated article, a medicated feed application must be approved to use the article in the manufacture of a Type B or C medicated feed), each of the approved application holders has an obligation to report to FDA any information relating to the use of its product. In addition, under proposed § 514.80(a), the manufacturer of a Type A medicated article for subsequent manufacture of a Type B and/or Type C medicated feed would be required to report such information that is available to the manufacturer and that is associated with the manufacture, distribution, or use of the medicated feeds derived from that article, whether or not the medicated feed manufacturer may have knowledge of such information and may report the same information as required under proposed § 514.81. This provision would clarify a long-standing agency interpretation of the existing regulation (§ 510.300), and would avoid situations in which neither party reports the information because each thought the other would do so.

Currently, applicants are required to maintain indefinitely the records required by § 510.300. The proposed rule would require records to be retained for 10 years.

Reports submitted to FDA are currently required to be submitted in duplicate. The proposal would require only a single copy of each report with two copies of the required labeling to be submitted with the annual report.

3. Proposed Reporting Requirements for Manufacturers, Packers, Labelers, and Distributors Other Than the Applicant (21 CFR 514.82)

In addition, the agency is proposing a new § 514.82 *Records and reports concerning experience with new animal drugs from manufacturers, packers, labelers, and distributors other than the applicant.* The terms defined in § 514.80 will also be cross referenced in § 514.82. Section 514.82 would require the submission of information concerning adverse experiences and product defects by each manufacturer, packer, labeler, and own-label (private label) distributor of a new animal drug other than the applicant who holds the approval for the animal drug.

Own-label (private label) distributors are currently required to submit drug experience reports. However, the requirement is imposed by the regulation that requires prior approval of supplements for distributors (§ 514.8(a)(6)). FDA is proposing to permit the designation of own-label (private label) distributors to be reported after-the fact in the annual drug experience report. In connection with the changes that it is proposing, the agency emphasizes the importance of the reports required to be submitted by own-label (private label) distributors. Manufacturers that are not applicants are now required, under current good manufacturing practice (CGMP) regulations, to maintain records and reports of the types of information covered by proposed § 514.82. However, the CGMP regulations do not explicitly require such manufacturers to report such information to FDA.

Agency experience has led it to conclude that others in the manufacturing and distribution chain, besides the applicant, should be required to submit drug experience reports. In some instances, e.g., in the case of drugs distributed by own-label (private label) distributors, the veterinarian or other user is unable to determine the name of the applicant from the labeling. The proposed rule would therefore enable the agency to monitor more closely the safety, effectiveness, and manufacture of approved new animal drugs.

III. Other Proposed Changes

The agency is also proposing to remove § 510.301 *Records and reports concerning experience with animal feeds bearing or containing new animal drugs for which an approved application is in effect* and to incorporate certain portions of the regulations into proposed § 514.81. The proposed changes parallel those for § 510.300, which the agency is proposing to remove and to incorporate certain portions of the regulations into proposed § 514.80. The terms defined in proposed § 514.80 will be cross referenced in proposed § 514.81.

Also, the proposed rule would amend Part 226 *Current good manufacturing practice for Type A medicated articles* (21 CFR part 226) to state explicitly that although the recordkeeping requirements of the CGMP regulations for Type A medicated articles apply to Type A medicated articles in general, those Type A medicated articles for which approved NADA's are in effect are also subject to the requirements of proposed § 514.80. This provision is needed primarily to avoid confusion, because §§ 226.110 and 226.115 establish 2-year record retention requirements for distribution records and complaint files. The records and reports that would be required for Type A medicated articles under § 514.80 are more comprehensive and are to be kept for 10 years under proposed § 514.80.

In summary, the following amendments are proposed: § 510.300 through 510.302 and 510.310 would be removed and certain portions of the regulations would be incorporated into § 514.80 through 514.82. Section 510.310 was established to provide for the one-time submission of updating information on animal drugs marketed prior to the effective date of the Drug Amendments of 1962. This information has been submitted, and, thus, § 510.310 no longer serves any useful purpose. Section 514.82 would also be established to clarify the requirement for submitting certain adverse information to FDA.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(d)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Economic Impact

The agency concludes that the proposed rule does not constitute a major rule, as defined in Executive Order 12291. The agency also certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action, and, therefore, that a regulatory flexibility analysis is not needed. The revisions in the reporting requirements are expected to result in savings for the applicant and for the agency. In the proposal, the term "applicant" is limited to the holder of an approved NADA and does not include every firm whose name appears on product labeling, as the regulations currently provide. This change would reduce paperwork requirements because fewer firms would be required to submit periodic (annual) drug experience reports.

The current requirement for adverse drug experience reports to be submitted by own-label (private label) distributors is retained under proposed new § 514.82. The requirement for any firm involved in the manufacturing process other than the applicant or own-label (private label) distributor to report adverse experiences either to FDA or the applicant is a new requirement, but it applies only to a small class of firms that would not routinely be expected to receive such information. Nevertheless, it is clear that any such information they do receive should be reported despite the minor associated paperwork burden. Only one copy of the report would be required. The change in retention requirement for reports and records from an indefinite period to a 10-year period would provide an additional opportunity for savings. The reporting requirements would be simplified and clarified for easier compliance and administration. The proposed changes that would add language to the regulations would, for the most part, merely codify current practices. The proposed uniformity of reporting requirements for animal drugs and human drugs may simplify the process for firms that manufacture both kinds of products. Thus, no added costs are expected.

FDA has not done a formal economic impact analysis or gathered any data on the effects of this proposed rule. Not having a threshold assessment of cost savings, FDA would welcome any comments on this or any aspect of the proposed revised requirements.

VI. Paperwork Reduction Act of 1980

Sections 514.80 (a), (c), and (d), 514.81 (a), (c), and (d), and 514.82 (a), (c), and (d) of this proposed rule contain collection of information requirements. Existing information requirements in §§ 514.80 (a) and (c), 514.81 (a) and (c), and 514.82 (a), (c), and (d) have been approved under OMB control number 0910-0019. The remaining information collections are discussed below.

Title: Records and Reports Concerning Experience With New Animal Drugs for Which an Approved Application is in Effect.

Description: The information requirements contained in this proposed rule would collect information from persons who have received FDA approval of an NADA or medicated feed application. The information will enable FDA to monitor the use of a new animal drug or medicated feed after approval. Such reports are necessary for FDA to determine whether the approval of an application must be withdrawn for safety, effectiveness, or other reasons specified in the act.

Description of Respondents: Businesses.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	No. of respondents	Annual No. of responses	Average burden per response	Annual burden hours
514.80(d) and 514.81(d)	200	400	0.5	200

As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these collection of information requirements. Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, room 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Desk Officer for FDA.

VII. Comments

Interested persons may, on or before February 18, 1992 submit to the Dockets Management Branch (address above), written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 226

Animal drugs, Animal feeds, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and Recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 226, 510, and 514 be amended as follows:

PART 226—CURRENT GOOD MANUFACTURING PRACTICE FOR TYPE A MEDICATED ARTICLES

1. The authority citation for 21 CFR part 226 continues to read as follows:

Authority: Secs. 501, 502, 512, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360b, 371, 374).

2. Section 226.1 is amended by redesignating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 226.1 Current good manufacturing practice.

* * * * *

(b) In addition to the recordkeeping requirements in this part, Type A medicated articles requiring approved new animal drug applications are subject to the recordkeeping requirements in § 514.80 of this chapter.

PART 510—NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.300 [Removed]

4. Section 510.300 *Records and reports concerning experience with new animal drugs for which an approved application is in effect* is removed.

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[510.301 [Removed]

5. Section 510.301 *Records and reports concerning experience with animal feeds bearing or containing new animal drugs for which an approved application is in effect* is removed.

§ 510.302 [Removed]

6. Section 510.302 *Reporting forms* is removed.

[510.310 [Removed]

7. Section 510.310 *Records and reports for new animal drugs approved before June 20, 1963* is removed.

PART 514—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW ANIMAL DRUG

8. The authority citation for 21 CFR part 514 continues to read as follows:

Authority: Secs. 501, 502, 512, 701, 706, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360b, 371, 376, 381).

9. Sections 514.80, 514.81, and 514.82 are added to subpart B to read as follows:

§ 514.80 Records and reports concerning experience with new animal drugs for which an approved application is in effect.

(a) *Applicability.* Each applicant shall establish and maintain records and make reports for each of its approved NADA's and abbreviated new animal drug applications (ANADA's), as required under this section to facilitate a determination by FDA whether there may be grounds for invoking section 512(e) of the act to suspend or withdraw approval of an application for a new animal drug, or whether any applicable regulation should be amended or revoked. The applicant shall maintain adequately organized and indexed files containing full reports of all information pertinent to the safety or effectiveness of the new animal drug that has not previously been submitted as part of the application for the drug and that is received or otherwise obtained by the applicant from any source, whether foreign or domestic, and shall report such information, whether from a foreign or a domestic source, as is required by this section. Each manufacturer of an approved Type A medicated article shall report all such information associated with the manufacture, distribution, and use of the Type A medicated article and of any feeds incorporating the approved Type A medicated article, whether or not the medicated feed manufacturer has reported the same information in accordance with the requirements of § 514.81.

(b) *Definitions.* As used in this section:

(1) *Adverse drug experience* means any adverse event associated with the use of an animal drug (or adverse experience in humans associated with exposure during manufacture, testing, handling, or use of the drug), whether or not considered drug-related, including the following:

(i) An adverse event occurring in the course of the use of an animal drug product by a veterinarian or by a livestock producer or other animal owner or caretaker;

(ii) An adverse event occurring from animal drug overdose, whether accidental or intentional;

(iii) An adverse event occurring from animal drug abuse or use of the drug not in accordance with its approved indications or conditions of use;

(iv) An adverse event occurring from animal drug withdrawal; and

(v) Any failure of an animal drug product to produce its expected pharmacological action.

(2) *Increased frequency* means an increase in the rate of reported occurrence of a particular adverse drug experience, e.g., an increase in the number of reports of a particular adverse drug experience after appropriate adjustment for drug exposure.

(3) *New animal drug application (NADA)* includes both an abbreviated NADA, and all amendments and supplements.

(4) *Serious* means an adverse drug experience that is fatal, life-threatening, permanently disabling, requires hospitalization, or involves systemic drug or other intervention.

(5) *Unexpected* means an adverse drug experience that is not listed in the current labeling for the animal drug and includes an event that may be symptomatically and pathophysiologically related to an event listed in the labeling, but differs from the event because of greater severity or specificity. For example, under this definition, hepatic necrosis would be unexpected if the labeling referred only to elevated hepatic enzymes or hepatitis.

(6) *Product defect* means an observable or measurable deviation in any subunit of a lot of a distributed animal drug product from the acceptance standards specified in the approved application, or from the typical physical and chemical characteristics expected for the animal drug product and its container.

(7) *Manufacturing defect* means the manufacturing process is the cause of a product defect which is determined after investigation of a product defect complaint or a routine quality control procedure. A manufacturing defect could affect one or more lots of a product.

(c) *Records to be maintained.* The applicant shall maintain records of all information required by this section for a period of 10 years.

(d) *Reporting requirements.* The applicant shall submit to FDA at the specified times one copy of each of the following reports:

(1) *NADA-field alert report.* The applicant shall submit information on any manufacturing defect to the FDA district office that is responsible for the facility involved within 3 working days from the day that the applicant first becomes aware that a defect may exist. The information may be provided by telephone or other telecommunication means, with prompt written followup. The report and its mailing cover are to be plainly marked: "NADA-field alert report." The following are examples of information required to be reported by this paragraph:

(i) Information concerning any incident that causes the distributed animal drug product or its labeling to be mistaken for, or applied to, another article.

(ii) Information concerning any bacteriological contamination, or any significant chemical, physical, or other change or deterioration in the distributed animal drug product, or any failure of one or more distributed batches of the animal drug product to meet the specifications established for it in the application.

(2) *Fifteen-day alert reports.* (i) The applicant shall report each serious, unexpected adverse drug experience, regardless of the source of the information, as soon as possible, but in any case within 15 working days of initial receipt of the information. The applicant shall submit the information on Form FDA 1932 (Adverse Reaction, Lack of Effectiveness, Product Defect Report) and shall identify the report as a "15-day alert report."

(ii) The applicant shall promptly investigate all adverse drug experiences that are the subject of 15-day alert reports and shall submit followup reports within 15 working days of receipt of new information. If additional information is sought but not obtained within a reasonable period of time, the applicant may be required to submit a followup report briefly describing the steps taken and the reasons additional information could not be obtained.

(iii) The applicant shall periodically review (at least as often as the periodic reporting cycle) the frequency of reports of adverse drug experiences that are both serious and expected, regardless of source, and report any significant increase in frequency of serious, expected adverse drug experiences as soon as possible but in any case within 15 working days of determining that a significant increase in frequency exists. Upon written notice, FDA may require that the applicant review the frequency of reports of serious, expected adverse drug experiences at intervals different than the periodic reporting cycle. Reports of a significant increase in frequency are required to be submitted in narrative form (including the time period on which the increased frequency is based, the method of analysis, and the interpretation of the results), rather than using Form FDA 1932. Fifteen-day alert reports based on significant increases in frequency are required to be submitted under separate cover and may not be included, except for summary purposes, in a periodic report.

(3) *Periodic adverse drug experience reports.* The applicant shall report each adverse drug experience not already reported under paragraph (d)(2) of this section at quarterly intervals for 3 years from the date of approval and annually thereafter. The applicant shall also report all product defect information, excluding information submitted in conjunction with an NADA-field alert report, within these same time periods. The applicant shall submit the information on Form FDA 1932.

(4) *Annual report.* The applicant shall submit the information listed in paragraphs (d)(4)(i) through (d)(4)(v) of this section, in the order listed, each year within 60 days of the anniversary date of approval of the application. Each annual report is required to be accompanied by a completed transmittal Form FDA 2301 (Transmittal of Periodic Reports and Promotional Material for New Animal Drugs) and is required to include all the information required under this section that the applicant received or otherwise obtained during the annual reporting interval which ends on the anniversary date. Each annual report is required to contain the following:

(i) *Distribution data.* Information about the quantity of the animal drug product distributed under the approved application, including that for each distributor-labeled product. This information is required to include the total number of units of each size and strength or potency distributed (e.g., 100,000 bottles of 100 5-milligram tablets, 50,000 10-milliliter vials of 5 percent solution), the quantities distributed for domestic use, and the quantities distributed for foreign use. Disclosure of financial or pricing data is not required.

(ii) *Labeling.* Two copies of currently used package labeling, including package inserts (if any), or a representative sample of the package labels, and a summary of any changes in labeling that have been made since the last report, listed by date in the order in which they were implemented, or if there have not been any changes, a statement of that fact.

(iii) *Own-label (private label) distributor data.* If a product manufactured under the conditions of a particular NADA approval is distributed under own-label (private label) distributor agreements, the applicant shall submit a complete list of all such own-label (private label) distributors together with one copy of the label used by each distributor.

(iv) *Manufacturing or controls changes.* A description of the manufacturing or controls changes not requiring a supplemental application under § 514.70(d), listed by date in the order in which they were implemented.

(v) *Nonclinical laboratory studies and clinical data.* (A) Copies of in vitro studies (e.g., mutagenicity) and other nonclinical laboratory studies conducted by or otherwise obtained by the applicant.

(B) Copies of published clinical trials of the animal drug (or abstracts of them) including clinical trials on safety and effectiveness, clinical trials on new uses, and reports of clinical experience pertinent to safety conducted by or otherwise obtained by the applicant. Review articles, papers, and abstracts in which the drug is used as a research tool, promotional articles, press clippings, and papers that do not contain tabulations or summaries of original data are not to be reported; and

(C) Descriptions of, or, if available, prepublication manuscripts relating to, completed clinical trials conducted by or known to the applicant. Supporting information is not to be reported. (A study is considered completed no later than 1 year after it is concluded.)

(vi) *Adverse drug experiences.* Adverse drug experiences required to be reported annually under paragraph (d)(3) of this section. The applicant shall submit the information on Form FDA 1932.

(5) *Other reporting*—(i) *Advertisements and promotional labeling.* The applicant shall submit specimens of mailing pieces and any other labeling, and, if it is a prescription new animal drug, advertising devised for promotion of the animal drug product, at the time of initial dissemination of the labeling and at the time of initial publication of the advertisement for a prescription animal drug product. Mailing pieces and labeling that are designed to contain samples of an animal drug product are required to be complete, except that the sample of the animal drug product may be omitted. Each submission of promotional material is required to be accompanied by a completed transmittal Form FDA 2301 and is required to include a single copy of the product's current labeling.

(ii) *Distributor statements and labeling.* At the time of initial distribution of an animal drug product manufactured in accordance with the conditions of an approved NADA by an own-label (private label) distributor, the applicant shall submit as a special drug experience report:

(A) Two copies of the distributor labeling. The only changes from the conditions of the approved application permitted in such labeling are a different and suitable proprietary name of the new animal drug (if one is used) and the name and address of the distributor as used on the label and labeling. The name of the distributor shall be accompanied by an appropriate qualifying phrase such as "manufactured for" or "distributed by."

(B) A distributor's statement which shall identify the category of his or her operations (for example, wholesaler, retailer) and state that he or she will distribute the new animal drug only under the labeling provided for in the NADA; that any other labeling or advertising for the drug will prescribe, recommend, or suggest its use only under the conditions stated in the labeling provided for in the application; that he or she will adhere to the reporting requirements of § 514.82; and, if the drug is a prescription new animal drug, that he or she is regularly and lawfully engaged in the distribution or dispensing of prescription animal drugs.

(iii) *Statements of NADA approval status.* The statement "NADA _____, approved by FDA" may be added to the label of a product which is the subject of an approved NADA provided that at the time of addition the applicant submits a drug experience report which meets the following conditions: (A) The drug experience report contains two copies of final printed labeling of each piece of labeling being revised which differ from approved labeling only with respect to the addition of the statement, "NADA _____, approved by FDA."

(B) All labeling for each approved product, including distributor labeling,

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should be revised to be consistent as soon as possible.

(C) The statement should appear at the bottom of the front panel of the label on the immediate container and at the bottom of the carton labeling (preferably on the front panel). It should appear at the very top (beginning) or the very bottom (end) of inserts.

(D) In terms of type style, size, color or other means of emphasis, the statement should be no more prominent than the least prominent signal word identifying cautionary information appearing on the label (or the text of such cautionary information if no signal word is used to identify it).

(E) In no event may the statement be placed to obscure or otherwise render less conspicuous any necessary information on labels or labeling.

(iv) *Special reports.* Upon written request, FDA may require that the applicant submit the reports required under this section at different times than those stated.

(e) *General requirements.* (1) An applicant is not to include in reports under this section any adverse drug experiences that occurred in clinical trials if they were previously submitted as part of the approved application. If a report applies to an animal drug for which an applicant holds more than one approved application, the applicant shall submit the report to the application that was approved first. If a report refers to more than one animal drug marketed by an applicant, the applicant shall submit the report to the application for each animal drug listed in the report. The report is required to identify all the applications to which the report applies.

(2) Reports of adverse drug experiences in the published literature are required to be accompanied by a copy of the published articles.

(3) The applicant shall separate and clearly mark reports of adverse drug experiences that occur during a postapproval study from those experiences that are reported spontaneously to the applicant.

(f) *Reporting forms.* Applicants shall submit the information described in this regulation on or accompanied by a Form FDA 1932 or Form FDA 2301 as specifically noted in the regulation except that in lieu of Form FDA 1932 the applicant may submit a computer generated report if the information contained therein and the sequence in which it is presented are equivalent to the information and sequence required by Form FDA 1932. The use of computer generated reports requires approval by FDA prior to use. Forms FDA 1932 and FDA 2301 with instructions for use, may be obtained from Center for Veterinary Medicine (HFV–210), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Completed forms should be sent to the same address.

(g) *Access to records and reports.* The applicant shall upon request from any designated officer or employee of the Department of Health and Human Services, at all reasonable times, permit such officer or employee to have access to and copy and verify any records and reports established and maintained under this section.

(h) *Withdrawal of approval.* If an applicant fails to establish and maintain records and make reports required under this section, or refuses to permit access to, or copying or verification of, such records and reports, FDA may withdraw approval of the application to which they relate.

(Information collection requirements in this section were approved by the Office of Management and Budget (OMB) and assigned OMB control number 0910–0019)

§ 514.81 Records and reports concerning experience with animal feeds bearing or containing new animal drugs for which an approved application is in effect.

(a) *Applicability.* Each applicant holding an approved MFA shall establish and maintain records and make reports for each of its approved MFA's as required under this section and under section 512(m)(5) of the act to facilitate a determination by FDA whether there may be grounds for invoking section 512(m)(4) of the act to suspend or withdraw approval of an MFA, or whether any applicable regulation should be amended or revoked. The applicant shall maintain adequately organized and indexed files containing full reports of all information pertinent to safety or effectiveness that has not previously been submitted as part of the MFA and that is received or otherwise obtained by the applicant from any source, whether foreign or domestic, and shall report all such information as is required by this section. Each manufacturer of a medicated feed shall report all such information associated with the manufacture, distribution, and use of the feed whether or not the applicant holding the NADA for the Type A medicated article has reported the same information in accordance with the requirements of § 514.80.

(b) *Definitions.* The definitions included in § 514.80 of this part are applicable to the terms used in this section. The term "adverse drug experience" as defined in § 514.80 shall apply to adverse drug experiences resulting from use of a medicated feed.

(c) *Records to be maintained.* The applicant shall maintain records of all information required by this section for a period of 10 years.

(d) *Reporting requirements.* The applicant shall submit to FDA at the specified times one copy of the following reports:

(1) *MFA-field alert reports.* The applicant shall submit information on any manufacturing defect to the FDA district office that is responsible for the facility involved within 3 working days from the day that the applicant first becomes aware that a defect may exist. The information may be provided by telephone or other telecommunication means, with prompt written followup. The report and its mailing cover are to be plainly marked: "MFA-field alert report." The following are examples of manufacturing defects:

(i) Information concerning any incident that causes the medicated feed or its labeling to be mistaken for, or applied to, another article.

(ii) Information concerning any bacteriological contamination, or any significant chemical, physical, or other change or deterioration in the distributed medicated feed, or any failure of one or more distributed batches of the product to meet the specifications established for it in the application.

(2) *Fifteen-day alert reports.* (i) The applicant shall report each serious, unexpected adverse drug experience, regardless of the source of the information, as soon as possible, but in any case within 15 working days of initial receipt of the information. The applicant shall submit the information on Form FDA 1932 (Adverse Reaction, Lack of Effectiveness, Product Defect Report) and shall identify the report as a "15-day alert report."

(ii) The applicant shall promptly investigate all adverse drug experiences that are the subject of 15-day alert reports and shall submit followup reports within 15 working days of receipt of new information. If additional information is sought but not obtained within a reasonable period of time, the applicant may be required to submit a followup report briefly describing the steps taken and the reasons additional information could not be obtained.

(3) *Periodic adverse drug experience reports.* The applicant shall report each adverse drug experience not already reported under paragraph (d)(2) of this section at quarterly intervals for 3 years from the date of approval and annually thereafter. The applicant shall also report all product defect information, excluding information submitted in conjunction with an NADA-field alert report, within these same time periods. The applicant shall submit the information on Form FDA 1932.

(e) *Access to records and reports.* The applicant shall upon request from any designated officer or employee of the Department of Health and Human Services at all reasonable times, permit such officer or employee to have access to and copy and verify any records and reports established and maintained under this section.

(f) *Withdrawal of approval.* If an applicant fails to establish and maintain records and make reports required under this section, or refuses to permit access to, or copying or verification of, such records and reports, FDA may withdraw approval of the application to which they relate.

(Information collection requirements in this section were approved by the Office of Management and Budget (OMB) and assigned OMB control number 0910-0019)

§ 514.82 Records and reports concerning experience with new animal drugs from manufacturers, packers, labelers, and distributors other than the applicant.

(a) *Applicability.* For the purpose of this section, a manufacturer, packer, labeler, or own-label (private label) distributor of an approved new animal drug other than the applicant is a nonapplicant. Each nonapplicant shall establish and maintain records and make reports for each approved new animal drug as required under this section to facilitate a determination by FDA whether there may be grounds for invoking section 512(c)(2)(G) or 512(e) of the act to suspend or withdraw approval of an NADA or whether any applicable regulation should be amended or revoked. The nonapplicant shall maintain adequately organized and indexed files containing full reports of all information pertinent to the safety or effectiveness of the new animal drug that is received or otherwise obtained by the nonapplicant from any source, whether foreign or domestic, and shall report all such information, whether from a foreign or a domestic source, as is required by this section.

(b) *Definitions.* The definitions included in § 514.80 of this part are applicable to the terms used in this section.

(c) *Records to be maintained.* The nonapplicant shall maintain records of all information required by this section for a period of 10 years.

(d) *Reporting requirements.* The nonapplicant shall submit to FDA or, alternatively, in the case of 15-day alert reports, to the applicant, at the specified times, one copy of the following reports:

(1) *NADA-field alert reports.* Information on any manufacturing defect shall be submitted to the FDA district office that is responsible for the facility involved within 3 working days from the day that the nonapplicant first becomes aware that a defect may exist. The information may be provided by telephone or other telecommunication means, with prompt written followup. The report and its mailing cover are to be plainly marked: "NADA-field alert report." The following are examples of information required to be reported by this paragraph:

(i) Information concerning any incident that causes the distributed animal drug product or its labeling to be mistaken for, or applied to, another article.

(ii) Information concerning any bacteriological contamination, or any significant chemical, physical, or other change or deterioration in the distributed animal drug product, or any failure of one or more distributed batches of the animal drug product to meet the specifications established for it in the application.

(2) *Fifteen-day alert reports.* (i) Each serious, unexpected drug experience, regardless of the source of the information, as soon as possible, but in any case within 15 working days of initial receipt of the information. If the nonapplicant elects to report to FDA, the nonapplicant shall submit the information to FDA on Form FDA 1932 (Adverse Reaction, Lack of Effectiveness, Product Defect Report) and shall identify the report as a "15 day alert report." If the nonapplicant elects to report to the applicant rather than to FDA, it shall submit each report to the applicant within 3 working days of its receipt by the nonapplicant, and the applicant shall then comply with the requirements of § 514.80. Under this circumstance, the nonapplicant shall maintain a record of this action. The record shall include:

(A) A copy of the drug experience report.

(B) The date the report was submitted to the nonapplicant.

(C) The date the report was submitted to the applicant.

(D) The name and address of the applicant.

(ii) [Reserved]

(e) *Access to records and reports.* The nonapplicant shall upon request from any designated officer or employee of the Department of Health and Human Services, at all reasonable times, permit such officer or employee to have access to and copy and verify any records and reports established and maintained under this section.

(Information collection requirements in this section were approved by the Office of Management and Budget (OMB) and assigned OMB control number 0910–0019)

Editorial Note: This document was received by the Office of the Federal Register on December 9, 1991.

Dated: July 1, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

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Part III

Environmental Protection Agency

40 CFR Part 73
Auctions, Direct Sales, and Independent Power Producers Written Guarantee Regulations and Request for Delegation Proposals To Administer the Auctions and Direct Sale; Rule and Notice

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 73

[FRL-4039-2]

Auctions, Direct Sales, and Independent Power Producers Written Guarantee Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to title IV of the Clean Air Act as amended by Public Law 101-549, the Clean Air Act Amendments of 1990 ("the 1990 Amendments") ("the Act"), the Administrator must promulgate regulations to reduce emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_x), precursors of acid rain. The regulations promulgated today are part of the Title IV program to reduce SO_2 emissions. The centerpiece of this control program is the allocation of transferable allowances, or authorizations to emit SO_2, which are distributed by the Administrator in limited quantities for existing utility units and which eventually must be held by all utility units to cover their SO_2 emissions. These allowances may be transferred among polluting sources and others, so that market forces may govern their ultimate use and distribution, resulting in the most cost-effective sharing of the emissions control burden. In order to stimulate and support such a market in allowances, and to provide a public source of allowances, particularly to new units for which no allowances are allocated, the Administrator is directed under section 416 of the Act to conduct annual sales and auctions of allowances.

Today, EPA is promulgating the regulations for conducting these sales and auctions, as well as regulations under which certain independent power producers ("IPP") may obtain written guarantees of the availability of allowances and may exercise priority in purchasing allowances through the direct sale.

EFFECTIVE DATE: This rule becomes final effective December 17, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Reidt Critchfield, EPA/OAIAP/Acid Rain Division (ANR-445), 401 M St., SW., Washington, DC 20460 (202) 260-7915.

SUPPLEMENTARY INFORMATION:

I. Background

Acid rain is the accepted term which encompasses a complex set of phenomena that begin with fossil fuel emissions, include the transport and transformation of those emissions through the atmosphere, and end with the effects of those emissions and their resulting transformation products on the environment. Specifically, the burning of fossil fuels, particularly coal and oil, releases emissions of sulfur dioxide (SO_2) and nitrogen oxide (NO_x) into the atmosphere. In the atmosphere, SO_2 and NO_x may undergo various chemical reactions, resulting in the transformation of the emissions into chemical products including sulfates, nitrates, sulfuric acid and nitric acid. These compounds can fall to earth near the source or be transported hundreds of miles. They may be deposited during any stage of their transformation, returning to earth as dry deposition in the form of gases, aerosols, and particles of these emissions and their transformation products in the atmosphere contributes to reduced visibility and is suspected of posing a threat to human health at current levels. The acidic deposition resulting from SO_2 and NO_x emissions and their byproducts damages both ecosystems and man-made materials. Of the approximately 23 million tons of SO_2 and 19 million tons of NO_x emitted annually from all sources in the United States in 1985, about 16 million tons of SO_2 and 7 million tons of NO_x were emitted by electric utilities.

Title IV, which sets forth the acid rain control program of the 1990 Amendments, establishes a national cap on utility SO_2 emissions of 8.95 million tons per year (aside from 530,000 tons of additional emissions authorized for each year between 2000 and 2009). This cap will result in SO_2 emissions reductions of ten million tons from 1980 levels, which will be achieved in two phases. Phase I will begin in 1995 and mainly affects large, high-emitting coal-fired utility plants which are listed specifically in the statute. Phase II will begin in 2000 and affects virtually all utility units with output capacity greater than 25 megawatts, and new utility units of any size. In addition, SO_2 sources not explicitly affected by phase II requirements (e.g., industrial facilities) may opt into the allowance trading program.

The centerpiece of the acid rain control program is an innovative system of marketable allowances. An allowance authorizes the emission of up to one ton of SO_2 in one year. The Act explicitly requires "affected" units (most units in operation prior to passage of the Act) to meet an annual sulfur dioxide emissions tonnage limitation expressed for each unit in the language of title IV itself. At the same time, the Act requires the Administrator to allocate annually for each affected unit allowances to emit sulfur dioxide in a number equal in tons to the unit's statutory emissions limitation requirement. Once allowances are allocated, the Act requires that a unit's total annual SO_2 emissions be less than, or equal to, the number of allowances held for that unit. Allowances may be transferred to and from affected units and to and from any person. Allowances not used for compliance in the year in which they are allocated may be banked for future use. As a result, each unit may meet its SO_2 emissions limitation requirements by the most economically efficient means possible, either by selecting the most efficient method of controlling emissions or by purchasing allowances from other units that can reduce emissions more efficiently. In addition, the marketable value of allowances is expected to create incentives for units to achieve greater reductions than required or to achieve reductions through improved or innovative methods.

To maintain the total emissions cap, the Act requires new units (most units commencing operation after passage of the Act) to obtain allowances from existing allowance holders or through the auctions and sales programs, which are the two methods the Act provides for making allowances available in addition to the statutory allocations.

Because the availability of allowances is crucial to assure both the economic efficiency of the emissions limitation program and the addition of new electric generating capacity, title IV mandates that the Administrator hold yearly auctions and direct sales of allowances for a small portion (2.8 percent) of the total allowances required by the statute to be allocated each year. It also requires the Administrator to provide a written guarantee assuring priority for certain new IPPs in purchasing allowances in the direct sales. The auctions, sales, and IPP guarantee provisions of title IV should provide some certainty that units, including new IPPs, will have a public source of allowances beyond those which are allocated initially for existing units. In addition, the auctions are expected to help signal price information to the allowance market early in the regulatory program.

EPA will sell allowances pursuant to section 416(d) of the Act at a once-a-year public auction, to be held no later than March 31 of each calendar year beginning in 1993. Each auction is required to include allowances in an amount prescribed by statute, and obtained from the Auction Subaccount of the Special Allowance Reserve, as set forth in section 416(d)(1). It may also include allowances offered for sale by private parties pursuant to section 416(d)(4), as well as allowances that are not sold in the direct sale program under section 416(c). The direct sale will begin on June 1 of each calendar year and continue until all allowances are sold or until the last day on which allowances may be transferred for purposes of compliance (as specified in a separate rulemaking: see 40 CFR part 73). Each allowance will be offered for sale at $1500 (indexed yearly to inflation), a price fixed by the Act. Allowances not sold in an annual direct sale will be added to those auctioned in the following year. A crucial element of the direct sales program is the special priority afforded to certain IPPs. As required by the Act, the Administrator will guarantee these IPPs the right to purchase direct sale allowances before the allowances are offered for sale to others. To qualify for the written guarantee, an IPP must meet certain criteria set forth in the Act and incorporated in this regulation. The proceeds from the auctions and direct sales, and any allowances remaining after their completion, will be distributed on a pro rata basis to those from whose allowance allocation allowances were withheld for purposes of creating the Special Allowance Reserve.

At a future date, EPA will propose and promulgate regulations establishing a Special Reserve of Allowances for the purpose of auctions, direct sales, and the IPP written guarantee. As required by section 416(b), those regulations will specify that the Administrator withhold from original allowance holders 2.8% of the total allowances to be allocated each year from 1995 to 1999 and 2.8% of the basic Phase II allowance allocations beginning in the year 2000. That reserve will comprise a subaccount for auctions of 150,000 allowances annually for phase I and 200,000 allowances annually for phase II and a subaccount for direct sales of 50,000 allowances for phase II. The direct sale reserve will be subject to the IPP guarantee.

The calculations for the pro rata distribution of proceeds from, and any allowances remaining after, the auctions and direct sale will also be included in the rulemaking establishing the Special Allowance Reserve.

Table 1 below summarizes the standard auctions and sales schedule required by section 416.

TABLE 1.—ALLOWANCES OFFERED AT AUCTIONS AND SALES

Year of purchase	Spot sale	Advance sale [1]	Spot auction	Advance auction [1]
1993		25,000	[2] 50,000	100,000
1994		25,000	[2] 50,000	100,000
1995		25,000	50,000	100,000
1996		25,000	150,000	100,000
1997		25,000	150,000	100,000
1998		25,000	150,000	100,000
1999		25,000	150,000	100,000
2000 and after	25,000	25,000	100,000	100,000

[1] Not useable until 7 years after purchase.
[2] Not useable until 1995.

The regulations made final today are to be Subpart E of 40 CFR Part 73. Part 73 governs the allowance system and includes several components, the balance of which are being proposed and promulgated according to the schedule listed below:

TABLE 2.—ALLOWANCE SYSTEM RULE

[40 CFR part 73]

Subpart	Proposed rule (date published)	Final rule (target date for publication)
A: Background	December, 1991.	May, 1992.
B: Allocation	March, 1991	December, 1992.
C: Tracking	December, 1991.	May, 1992.
D: Transfers	December, 1991.	May, 1992.
E: Auction and sales.	May 23, 1991	December, 1991.
F: Conservation and renewable energy reserve.	December, 1991.	May, 1992.
G: Small diesel refineries.	March, 1992	December, 1992.

On May 23, 1991, EPA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (56 FR 23744) proposing regulations for conducting the auction and sale of allowances, as well as regulations governing the IPP written guarantee. The comment period for this notice expired on July 5, 1991. The comments received in response to this notice, as well as the procedures and conditions that are being adopted in this final rule, are discussed below. Editorial comments will not be discussed, but editorial changes have been incorporated where EPA believes appropriate.

II. Discussion of Comments

Thirty-four commenters with one hundred and twenty-nine comments responded to the May 23, 1991 notice. Commenters included twelve utilities, eight utility or energy-related trade associations, four public utility commissions, two environmental groups, one state environmental agency, one unaffiliated individual, one potential broker for allowances, and one commodity futures trading exchange.

Section 73.3 Definitions

In the rule, EPA has deleted the definition of "qualified applicant" because it was superfluous. EPA has added definitions for "owner" and "owner or operator" for the convenience of the reader. These definitions are proposed in the Allowance System Rule (40 CFR part 73, § 73.3) and commenters will have the opportunity to comment on them and on all other definitions that appear both here and in that rulemaking during the comment period for that rulemaking. Such definitions will become final when the Allowance System Rule is promulgated; should there be any changes in those definitions as a result of the comment period, the definitions printed here will be changed accordingly.

Section 73.7 Auctions

The Private Auction

The Act allows any person holding allowances to sell those allowances in auctions held by EPA [section 416(d)(4)], but requires that allowances from the auction subaccount must be sold before other offerings may be sold. Unlike EPA, other allowance holders may specify a minimum price for the allowances they offer. Subject to these two statutory provisions, EPA proposed to treat allowances offered from others as part of the total annual supply of allowances for sale in each auction held by EPA, including requiring that only allowances allocated for the year of the auction (or allowances banked from previous years' allocations) and seven-year-advance allowances may be offered.

EPA proposed that all bids to the auctions be ranked from highest to lowest on the basis of bid price. EPA would allocate and sell all the allowances in the auction subaccount on the basis of this ranking; when all such allowances were sold, EPA would match contributed allowances offered for sale with any remaining bids, as described in the next section.

Eleven commenters believe that EPA has interpreted incorrectly section 416(d)(4) of the Act, which governs the sale of contributed allowances, by proposing to sell the allowances offered from others, immediately following the sale of EPA allowances in a combined

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auction. They argue that while this section does not specify that such private allowances should be sold in a separate auction, it does state that allowances shall be sold after the EPA auction is complete. Their preferred interpretation of this section would require EPA to hold a separate private auction so that sellers could offer a variety of allowance packages, including, for example, multi-year "streams" of allowances (*i.e.*, X allowances/year for Y years), rather than being limited to offering spot and seven-year-advance allowances. In addition, these commenters believe that separating the private part of the auction would allow participants time to evaluate bids and offers based on the results of the EPA auction.

Some of these same commenters have expressed concern that the facilitating mechanisms of the private market might be slow to develop in the early years of the regulatory program. This prospect would justify a separate, EPA-sponsored auction to "jump-start" the market, by facilitating contact between buyers and sellers who might not have other, more efficient means for making contact, and to provide the public with information concerning both offers and the market's response to such offers. In fact, some of these commenters argued that those brokers who will be active in the near term will offer only a proprietary and costly brokering function, mediating transactions based on limited, closely-held information, rather than providing their clients and the market with a broad vision of the entire market. Some public utility commissions (PUCs) expressed concern that they will not be able to evaluate utilities' decisions concerning allowances because of the lack of widely available price information.

Response: The rule remains unchanged from the proposal concerning the separation of private allowances from the EPA auction and the role of EPA in facilitating information exchange. EPA believes that incorporation of allowances offered from others as part of the total annual supply of allowances complies with the language in section 416(d)(4) of the Act. The language in the Act is broad and places few requirements on the conduct of the auction, all of which are met in the EPA proposal.

In the NPRM, EPA anticipated the comments expressed above and requested comment on an EPA-sponsored catalogue auction, catalogue exchange, and bulletin board. The catalogue auction was proposed to serve as the private auction where a variety of allowance packages could be offered and EPA would determine winners based on the highest bid price. The catalogue exchange and bulletin board are non-regulatory instruments designed to facilitate the exchange of information among potential market participants and other interested parties such as PUCs which EPA is free to institute at any time without engaging in a formal rulemaking. Though the Agency received some comments in favor of those options, EPA has decided not to adopt a catalogue auction in the final rule or implement at this time a catalogue exchange or bulletin board.

EPA's rejection of the catalogue exchange rests on EPA's clear commitment to promoting, or at least not impeding or competing with, private market solutions. To the extent that an allowance bulletin board or catalogue exchange would be valuable, EPA believes the market itself can be expected to provide such mechanisms. In fact, on July 17, 1991 the Chicago Board of Trade (CBOT) publicly announced its intention to create a futures market for allowances. The announcement is a strong, early indication that a sophisticated, self-sustaining private market for allowances is developing. As expressed in its comments to EPA, the CBOT also intends to offer market participants an electronic bulletin board system that will distribute information on allowances offered.

The CBOT's announced intention to create an allowance exchange is clear evidence that private enterprise will respond to real or anticipated needs. EPA also believes that other devices will enable the market to avoid the higher transaction costs associated with using brokers and their reliance on proprietary, closely-held information. Specifically, utilities and others seeking to buy or to sell can publish requests for proposal offering purchases or sales and inviting counter-offers. This approach would result in wider dissemination of information, while leaving the parties free to negotiate the terms of a proposed transaction.

EPA rejected sponsoring a separate catalogue auction because a strict auction format, in contrast to a party's ability to publish offers to sell or buy and to entertain counter-offers allowing for negotiation between parties, would be unsuitable for all but a negligible number of transactions. To satisfy the requirements of an auction format, sellers would be required to offer their allowance packages at a single price, and bidders would be compelled to accept an offer without a single variance or amendment. Given the complexity and variety of potential allowance packages and the number of variable terms (*e.g.*, timing of payment and delivery) from both buyers' and sellers' perspectives, EPA believes that most transactions could only be the result of direct negotiations between buyers and sellers. In addition to mechanisms that publish offers to buy and sell, the private market has brokerages and consulting firms to facilitate the matching of, and negotiations between, buyers and sellers.

Four commenters supported EPA's position of limiting its role in the development of information exchange mechanisms. PSI Energy stated in its comments:

> • • • That a private market for emission allowances will evolve without EPA needing to play a major role in its establishment. The utility industry has already seen several offers to sell allowances, as well as solicitation to purchase allowances. As the compliance deadline grows nearer and the first few transactions are finished, a robust market should develop.

In fact, three of these commenters believe that administration of an allowance market by the EPA would discourage the natural emergence of private trading mechanisms and could possibly be detrimental to the development of the allowance market.

These commenters believe, and EPA agrees, that since the Agency has no experience in constructing trading systems and monitoring markets to protect against fraud, market participants might be hesitant to participate in an EPA-sponsored catalogue auction or exchange. The allowance market is best served, they argue, if trading and information mechanisms are administered by experienced and proven private entities. These entities would not only facilitate individual transactions, but promote price and information discovery, which would lead, in turn, to increased market liquidity.

Finally, some analysts suggest that uncertainties concerning compliance costs, PUC action and future growth of electricity demand are likely to be the primary inhibitors of allowance trading. Uncertainties stemming from inadequate dissemination of information are less likely to pose a threat simply because, given the wide-spread belief that allowance trading can reduce costs, the market is very likely to solve problems involving the sharing of information quickly, efficiently and effectively. In view of that possibility, both the bulletin board and catalogue exchange, as well as the catalogue auction, could prove to be superfluous at best, if not damaging to the development of mechanisms that the private market has fostered and will continue to foster.

The Matching of Private Allowances With Bids

With regard to the auction of SO_2 allowances, EPA proposed a matching scheme in which allowances with the lowest minimum prices (reservation price) offered by private parties would be matched with the highest bids that remained after the allowances in the Auction Subaccount were sold. Under this approach, privately offered allowances would be matched, in ascending order of minimum price, with remaining bids until either all bids are awarded, all privately contributed allowances are sold, or privately contributed allowances can no longer be matched with bids because the minimum price is higher than remaining bids.

Most commenters did not address this issue. However, some commenters suggested that an alternative matching scheme, one in which privately contributed allowances would be matched in descending order with the bids that remained after the auction of EPA allowances was completed (*i.e.*, offers of allowances with the highest minimum prices would be matched to the highest bids first) would be preferable. They argued that: (1) The proposed matching scheme is confusing and may result in no matches being made; (2) the alternative matching scheme could result in more allowances being sold in the auction; and (3) the proposed matching scheme encourages private offerors to specify minimum prices that are lower than they truly are willing to accept so as to be matched to the highest bids in order to increase the revenue generated from the sale. One commenter was concerned that this activity might result in artificially low price signals being sent to the market.

Response: As discussed above, EPA believes that in the trading of allowances, it is more likely that private mechanisms will be relied upon to sell allowances rather than the EPA auctions, regardless of the matching scheme employed in such auctions.

EPA proposed the low-offer-to-high-bid matching scheme, in part, to simplify the design of the "private" auction and to minimize EPA's burden in administering the auction. The proposed matching scheme is straightforward—the "offer curve" for private allowances takes the shape of a supply curve used in standard economic analysis and this allows offers to be matched unambiguously with bids. Further, the only time matches would fail under the proposed matching scheme is when the minimum prices specified by all offerors are higher than the highest bid remaining after the allowances in the Auction Subaccount are sold. In this situation no matching schemes, including high-offer-to-high-bid, would result in matches between offers and bids because minimum prices would still be higher than the remaining bids.

EPA believes that the high-offer-to-high-bid matching system that some commenters have suggested as an alternative would prove to be more complicated and could create difficulties in matching offers with bids. Under such a system, EPA would order the offers from high minimum price to low minimum price. Any offers with minimum prices higher than the highest bid remaining after allowances in the Auction Subaccount are sold would be discarded, and the remaining offers would be matched, in descending order, with the remaining bids. The problem with this approach is that separate segments of the resulting "descending offer curve" could be both above and below the bid curve depending on the bids and offers submitted in the auction. For example, if the bid prices for allowances decline more rapidly than the minimum prices specified in offers, a segment of the offer curve will be above the bid curve and no matches would be feasible; if the minimum prices declined by more than bid prices, the "offer curve" would cross over the bid curve and lie below it and matches would occur. It is not clear, however, how offers and bids should be matched in situations where bid and offer curves exhibited this "overlapping" behavior.

Table 3 below illustrates the concerns of adopting a high-offer-to-high-bid matching scheme:

TABLE 3.—HYPOTHETICAL EXAMPLE FOR MATCHING OPTIONS

Bids	Low to high ordering		High to low ordering	
	Minimum price	Bid successful?	Minimum price	Bid successful?
500	150	Yes	500	Yes.
500	175	Yes	500	Yes.
450	200	Yes	475	No.
400	200	Yes	450	No.
350	200	Yes	300	Yes.
300	300	Yes	200	Yes.
250	450	No	200	Yes.
200	475	No	200	Yes.
150	500	No	175	No.
100	500	No	150	No.

Table 3 assumes each bid and private offer are for an equal number of allowances. Under the low-offer-to-high-bid matching scheme, the sample auction clears 6 of the 10 bids, with a clearing price of $300, with the 4 offers with the highest minimum prices rejected. Under the high-offer-to-high-bid matching scheme, the sample auction clears 6 of the 10 bids. The lowest clearing price is $200, but two bids at much higher prices, $400 and $450, are rejected because the offers matched against them had set higher minimum prices. Such a result seems arbitrary and imposes considerable uncertainty on the bidders at the auctions. Such outcomes would in fact, make the high-offer-to-high-bid matching scheme a random selection process for filling bids, rather than a rational system that assured allowances to high bidders.

If a high-offer-to-high-bid matching scheme was adopted, the Administrator would have to develop a method for matching bids and offers that might require making partial matches or, alternatively, shifting the "offer curve" so that the offers with the lowest minimum prices could be matched with bids. Either approach would make administering the auction more difficult.

With regard to the second point made by commenters, standard supply-demand analysis suggests that the alternative high-offer-to-high-bid matching mechanism could result, in some situations, in more allowances being sold in the auction, but with a lower auction clearing price. This would create an anomaly, however, since this same analysis also suggests that those offerors able to sell their allowances at the auction would subsequently have an incentive to purchase allowances in the market that are available at the lower auction-clearing price (*i.e.* the lowest price at which allowances are sold at the auction). That is, sellers offering allowances at higher prices (presumably representing their marginal cost of reducing sulfur dioxide emissions) and selling them to the higher price bidders would then have an incentive to purchase other allowances at the lower auction-clearing price (which would presumably be lower than the sellers' marginal reduction costs). Such re-purchasing would negate the higher sales volume promoted by the commenter as a virtue of high offer to high bid matching.

The third point made by commenters is that the incentives created by the low-offer-to-high-bid matching system will lead to a systematic reduction in the expressed minimum prices that in fact will understate the offeror's true reduction costs. EPA believes this type of bidding behavior is unlikely in an

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allowance market with even minimum activity. If an active allowance market is established apart from the EPA auctions, as EPA believes will occur, offerors are more likely to profit from sale of their allowances in a private transaction, in any event, than they could in a sale made in the EPA auctions. For this reason, EPA anticipates that more activity will occur in the market than in the auction of private allowances. In addition, a strategy of offering allowances at auction at a minimum price that understates actual reduction costs would make sense only if the offeror were assured that the auction would yield a better price for the allowances than would the private market. Such an outcome would not be likely: since offered allowances are sold after all EPA allowances have been sold, private offerors necessarily will receive a price that is lower than the clearing price in the auction of EPA allowances. Such a strategy could pose risks for the offeror, especially if the demand for allowances is uncertain, since the offeror must commit to the private auction before the bidding begins. If demand fluctuates, the offeror could end up selling allowances at a lower price than could be found in the market. Thus, EPA does not believe that a systematic reduction in requested minimum prices will occur. EPA will monitor each of the auctions, however, and identify any necessary changes to the design of the auction that may be required to assure an orderly and competitive market.

In sum, EPA believes that there are persuasive practical reasons for preferring the proposed low-offer-to-high-bid matching scheme. The proposed matching scheme offers more rational matching patterns and avoids the administrative difficulties that are likely to arise under the alternative matching scheme in the situation when bid and offer curves overlap. In addition, sales of allowances made under the proposed matching scheme might more approximate the genuine economic incentives of the allowance market. Some sales under the alternative matching scheme, in contrast, might not.

Withdrawal of Bids During the EPA Auction

One commenter questioned EPA's failure to propose to afford private offerors of allowances the option of withdrawing their offers from the EPA auction if fewer than the full number of allowances offered would be sold. EPA proposed to allow bidders to withdraw their bid if the full number requested cannot be supplied. EPA agrees that private offerors should be allowed to withdraw their offers if fewer than the full number of allowances offered would be sold. Accordingly, the final rule incorporates this suggestion.

The Contract or Delegation of the Auction Function

Section 416(f) of the Act authorizes the Administrator to provide, by delegation or contract, for the conduct of sales and auctions by other departments or agencies of the United States Government or by nongovernmental agencies, groups, or organizations.

One commenter suggested that EPA should contract out the auction function if EPA committed to offering a catalogue auction as addressed in the private auction discussion. The commenter proposed that the contractor charge a fee for administering the auction to offset the added expense of running a catalogue auction. At the same time, a second commenter expressed concern that EPA would contract out the auction function to an entity that would charge large fees for administering the auction. This commenter also suggested that the contract or delegation should be formally proposed through public rulemaking.

Response: As stated in the NPRM and reiterated herein, EPA has not yet made a determination as to the managing agent, if any, for the conduct of the auctions and direct sale. If the auctions and direct sale are administered by another entity on EPA's behalf, that entity would be unable to charge fees to cover its expenses. Finally, the Act does not require the Administrator to contract or delegate the administration of the auction through public rulemaking.

Section 73.71 Bidding

Publishing Losing Bidders Names

The Administrator is required by section 416(d)(5) of the Act to "publicly report the nature, prices, and results of each auction * * * including the prices of successful bids * * *". EPA proposed to publish the names of all bidders, their bids and the lowest price at which allowances are sold in each auction.

Three commenters were supportive of EPA's proposal to publish the names of all bidders and their bids. They believe full disclosure of this information is important to the functioning of the market and will assist state PUCs in their evaluation of utilities' decisions concerning allowances. They suggest that bidders could use the names of agents, surrogates, or brokers submitting bids on their behalf if they wished to avoid disclosure.

Ten commenters thought that EPA should not disclose losing bidders' names because this public information may put the losing bidder at a competitive disadvantage in negotiating to buy or sell allowances in a private transaction. These commenters also argued that the public disclosure of losing bidders' names is not useful to the allowance market.

Response: EPA agrees that publishing losing bidders' names could compromise the interests of these bidders in private negotiations and that the publication of this information is not important to the operation of the market. Therefore, EPA has decided not to publish losing bidders' names after each auction. This change is reflected in the final rule. EPA will be required, however, to respond to requests for this information under the Freedom of Information Act (FOIA) if such requests are received by EPA.

In the NPRM, EPA requested comment on a two-envelope bid process which would separate names from bids. This bidding process was proposed to avoid subjecting the identity of losing bidders to Freedom of Information Act (FOIA) requests, which EPA would be compelled to fulfill even if EPA received information identifying losing bidders simply in carrying out the mechanics of the auction. EPA received comments in favor of the two-envelope bidding process because losing bidders' names would not be published. EPA has concluded, however, that this process would pose substantial difficulties for both bidders and the Agency. As was pointed out by some commenters, it would be very difficult for EPA to segregate fully the identity of bidders from the information minimally necessary to process each bid. Each bidder necessarily would be identified in connection with the payment instruments required to be submitted with the bid or through the information supplied for purposes of return of payment. Even if a method for avoiding such an exchange of information could be devised, EPA believes the burden both bidders and EPA would incur to implement the two-envelope bid process would impair substantially the efficiency and speed with which each auction could be conducted. EPA does not believe such a burden is justified when other suitable options, such as that of using a surrogate's name, are available if bidders wish to avoid disclosure of their identities.

Method of Payment

EPA proposed that each auction bid must be accompanied by a certified check or a letter of credit (LOC) for the total bid price or by some method of electronic transfer or other instrument, which EPA, following public notice, may require or permit at some future time.

Six commenters suggested that EPA presently allow electronic transfer as a method of payment for allowances after they had been awarded at the auctions since, compared to an LOC or a certified check, electronic transfer methods lower costs and processing time.

Response: The rule remains unchanged from the proposal. Electronic payment, as envisioned by the commenters, could not guarantee future payment and would only be executed after the allowance awards were made. No matter how quickly payment could be executed through electronic transfer, such a method would not fully preclude defaults by winning bidders if payment were not required with the submission of each bid.

EPA is requiring payment guaranteed either with a certified check or an LOC prior to the award of allowances to ensure integrity of each auction. Such an approach is implied by the express elements of section 416 of the Act. The Act makes no provision for the awarding of allowances to a successful bidder by any method other than certain, direct, and immediate payment. If EPA did not require guaranteed payment with bids, winning bidders could default on their payments, requiring EPA to recalculate allowance awards. Such a process could delay the resolution of pending bids and undermine the stability of the auction process. However, EPA, following public notice, may require or permit at some future time a method or methods of electronic transfer or other instrument for payment of allowances awarded at the auctions if such methods can ensure guaranteed payment prior to the calculation of the allowance awards.

EPA proposed that to qualify as an LOC, such instrument must ensure that EPA will receive full payment for allowances awarded at the auction no later than 24 hours after the results of the auctions are announced in the Allowance Tracking System. Two commenters stated that 24 hours may not be enough time to process the funds transfer; it may also be impossible if the results of the auction are announced on a Friday. They suggest that 2 business days following the announcement of the results of the auctions in the Allowance Tracking System is a more reasonable time period to ensure EPA will receive full payment for allowances. EPA agrees with these comments and has incorporated this suggestion in the final rule accordingly.

Unrestricted Bidding

EPA proposed no restrictions on who may bid in the auctions or the number of allowances that may be sought in any one bid. One commenter suggested that EPA restrict bidding to only affected units needing allowances for compliance purposes. The commenter argues that an auction with unlimited participation could create artificially high prices for allowances. The commenter also suggested that EPA restrict the number of allowances a bidder may seek to a number no greater than 120% of the utility's average sulfur dioxide emissions for the preceding five years. Such a restriction, the commenter argued, would prevent hoarding of allowances or price-fixing by a group of utilities.

Response: The final rule remains unchanged from the proposal. Section 416 of the Act imposes no restrictions on who may bid in the auction and gives EPA no express authority to do so. EPA, however, is well aware of the recent controversy surrounding the auction of government securities conducted by the Federal Reserve on behalf of the Department of Treasury. The most important problems that have surfaced regarding these auctions are that:

(1) Major bidders may have shared information and may have colluded in setting bids in some auctions; and

(2) Limitations on the share of a given bond issue that any one bidder can obtain at auction were violated on several occasions. In view of this situation, EPA believes it is important to highlight the differences between the Treasury auction and the EPA auctions and explain how the problems occurring in the Treasury auction are unlikely in the EPA auctions.

Critics of Treasury auctions recently have argued that the auction design as discriminating, rather than as uniform, increases the incentives for bidders to collude. Although EPA's allowance auction is also a discriminating price auction, EPA believes a number of factors distinguish it from the Treasury auctions and reduce the likelihood of collusion among bidders.

In the Treasury auction, a limited number of primary bidders have an advantage in placing bids and in consulting with Treasury in regards to its financial strategy. In the EPA auctions, in contrast, any party may participate. Participation is not limited to a specific class of bidders (e.g., utilities), nor are any special privileges accorded to any class of bidders. Thus, a potentially large number of geographically dispersed bidders are likely to participate in the EPA auctions and the group of bidders is likely to vary from year to year. Additionally, the EPA auctions will be run once per year, rather than many times per year as is characteristic of Treasury auctions, which will tend to make the EPA auctions involve a greater number of bidders. This will tend to limit the ability of participants to familiarize themselves with competing bidders and should raise the cost of coordinating bidding strategies, as compared to that in auctions held more frequently and involving a census of bidders that is smaller and more well defined. Hence, free entry to the EPA auctions should make collusion to influence the auction clearing price a difficult and ineffective strategy.

Second, EPA will computerize all bids and will make public the names of, and prices paid by, winning bidders. This procedure will further reduce the incentive for bidders to collude because such bidding practices would be readily detectable.

Unlike the Treasury auction, EPA's auctions will have no limits on the share of allowances that any one bidder may obtain in the auction. At this time, EPA does not believe there are any compelling reasons to restrict the number of allowances for which a single bidder may bid, or restrict the submission of multiple bids. In particular, attempts at hoarding or price-fixing allowances would be subject to anti-trust laws and, to the extent utilities are involved with such practices, subject to review by public utility commissions. Restrictions on bidding without good cause may inhibit the efficiency of the EPA auctions and signal unsubstantiated distrust of the new allowance market.

Although EPA excepts the allowance auction, as designed, to function properly, EPA will monitor each of the auctions and identify any necessary changes to the design of the auction that may be required to assure an orderly and competitive market.

Timing of the Annual Auction

EPA proposed to hold the spot auction and the advance auction on the same day, no later than March 31, in each calendar year beginning in 1993. One commenter suggested that EPA hold the auction some time during the period between December 31 and the allowance transfer deadline which is the last day allowance transfers may be submitted to EPA for recordation in effected units' accounts for use in meeting their emissions limitations requirements for the preceding year. This would enable allowances sold in

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the auction to be used for end-of-year compliance needs. Another commenter suggested that EPA hold the auctions in late summer for the same purpose.

Four commenters supported the EPA proposal.

Response: The final rule remains unchanged from the proposal. Holding the auctions prior to March 31 will allow those needing to acquire allowances, such as the operators of new IPP units, the opportunity to do so at an auction price before having to resort to buying allowances for $1,500 in the direct sale, which will immediately follow the auctions. Holding auctions early in the year will also allow new and existing units time to plan for end-of-the-year compliance. If utilities need to buy spot allowances for end-of-the-year compliance, the direct sale will serve that purpose for those unable to purchase allowances in the private market.

Disposition of Unsold Allowances

Section 416(c)(6) of the Act mandates that any unsold allowances from the direct sale must be transferred from the direct sale into the Auction Subaccount. EPA proposed that the unsold spot allowances will be sold in the following year's spot auction and that any unsold advance sale allowances be transferred into the Auction Subaccount and be sold as spot allowances when the allowances became useable for offsetting SO_2 emissions, according to their compliance use dates. EPA proposed this approach because advance allowances transferred from the advance sale into the Auction Subaccount would, at the time of their transfer, have a compliance use date of six years in the future, which would be inconsistent with the seven-year advance auction mandated by the Act.

Eight commenters objected, however, to the holding of advance sale allowances for seven years until they could be sold as spot allowances. They argued that holding allowances deprives utilities of their statutory compensation either in the form of payment from sale of their allowances or return of their allowances if they remain unsold in the annual auction. EPA's proposal, they argued, would also be inconsistent with the policy, established elsewhere in the proposal, of distributing both the proceeds of the sale and unsold allowances promptly.

Response: EPA agrees with the commenters' objections. Because the Act simply mandates the transfer of unsold allowances to the Auction Subaccount, EPA does not believe the Act bars the sale, at auction, of advance allowances on a six-year basis if such allowances are first offered for sale, but are not sold, as seven-year advance allowances.

The final rule reflects EPA's intention to offer in the advance auction, as six-year advance allowances, any allowances initially offered as seven-year allowances in the direct sale but not sold, as well as seven-year advance allowances. Bidders in the advance auction will simply indicate on their bid form which allowances (six- or seven-year advance) they are seeking. Bids for these allowances will be ranked from highest to lowest and awarded accordingly. The method of processing and awarding bids for these allowances, and the distribution of the proceeds from the auction, will be the same as those for seven-year advance and spot allowances. EPA believes that this approach responds to the commenters' objections since it eliminates the retention of unsold allowances in the Auction Subaccount for six years.

Section 73.72 Direct Sales

In anticipation of the possibility that the Direct Sales Subaccount may be oversubscribed by the total number of applications submitted in any one year, EPA proposed to create a "waiting list," on a first come, first served basis. EPA proposed that "wait-listed" applicants only be approved if previously reserved allowances become available and if ample time (at minimum, five business days) for payment and transfer remains in the direct sale period.

As authorized under section 416(c)(2) of the Act, applicants may reserve allowances for direct sale without paying a deposit until six months after approval of their application; therefore, applicants could reserve allowances less than six months prior to the end of the direct sale and cancel their reservation at the very end of the sale without penalty. Wait-listed applicants could fail to acquire allowances simply as a result of the proposed time constraints, even though allowances would in fact remain unpurchased by those whose applications had initially been approved. For this reason, eight commenters argued that EPA's proposal reduced the value of the waiting list while doing nothing to discourage potential buyers from reserving more allowances than they needed. Commenters suggested that full payment for reserved allowances be required thirty days prior to the end of the direct sale "wait-listed" applicants an opportunity to purchase allowances from the direct sale.

Response: EPA agrees with the commenters' position. As reflected in the final rule, the Administrator will assess the allowance reservation status of the direct sale subaccount on December 1 of each year the direct sale is held. In the event that the direct sale is oversubscribed by December 1, the Administrator will require full payment for reserved allowances no later than 30 calendar days prior to the allowance transfer deadline ("the oversubscription payment deadline") for those applicants whose applications were previously approved and for whom allowances were reserved. The Administrator will transfer allowances to applicants at the time full payment is received. The reservation of direct sales allowances and the waiting list process remain the same as proposed. After the oversubscription payment deadline has passed, the Administrator will reserve allowances, if any, for the wait-listed applicants according to the applicants' rank on the waiting list. The Administrator will notify such applicants of their rank and the amount of allowances reserved for them. If applicants without reserved allowances wish to contact those wait-listed applicants for whom allowances have been reserved, in case such applicants choose not to purchase their reserved allowances, EPA will make such information available upon request. Full payment for allowances must be received by EPA on or before the allowance transfer deadline.

If the direct sale is not oversubscribed by December 1, the Administrator will continue to reserve allowances remaining in the direct sale subaccount in the order of receipt of the applications, up to 10 calendar days prior to the allowance transfer deadline. Ten business days are necessary for EPA to notify approved applicants and receive payment prior to the end of the direct sale. Full payment must be received by EPA on or before the allowance transfer deadline.

Distribution of Proceeds From the Direct Sale and the Annual Auctions

The Act mandates that the Administrator distribute all proceeds from the direct sale (including deposits by approved applicants who fail to complete purchases) within 90 days after the direct sale ends, and proceeds from the annual auction within 90 days after the auction ends. Proceeds are distributed on a pro rata basis to units that had allowances withheld from their initial allocation of allowances for purposes of the direct sale and annual auctions. EPA proposed to carry out these redistributions by the statutory deadline although the Agency, as expressed in the NPRM, intends to distribute proceeds more quickly. EPA also proposed to transfer proceeds to the owners of contributed allowances shortly after the auction.

A few commenters requested that EPA specify a regulator deadline for returning proceeds from the sale and auctions that is shorter than the 90 days allowed by section 416 of the Act. One commenter suggested a deadline of 10 business days to return proceeds after the sale and auction.

Response: The final rule remains unchanged from the proposal. Although EPA is unwilling to impose a shorter regulatory deadline, it intends to return the proceeds as expeditiously as possible, well before the maximum 90 days permitted under the Act. Establishing a shorter period by regulation would not accelerate the rapid distribution of proceeds, which the Agency already intends, nor would it afford those entitled to the proceeds any additional practicable remedy or recourse.

Section 73.73 Independent Power Producers Written Guarantee

Termination of the Written Guarantee

EPA proposed that IPPs issued written guarantees demonstrate to EPA the following, to continue to hold their guarantees:

1. Continued good faith efforts to obtain allowances. Section 416(c)(4)(b) states that the Administrator may terminate a written guarantee if continued efforts to obtain allowances are not pursued.

2. Timely commencement of commercial operations. EPA proposed to terminate a written guarantee if the unit for which a guarantee is issued has not commenced commercial operation by the later of January 1, 2000 or within two years of the date stated in the guarantee.

3. Notification of continued need for the guarantee. Lastly, EPA proposed to terminate a written guarantee if the responsible official for the IPP fails to notify EPA semi-annually until 1993 and annually thereafter of the continued need for the guarantee. The notification would include information on any allowances acquired through other means; EPA would deduct the number of allowances from the number initially guaranteed. EPA proposed in effect, to terminate guarantees, at least in part, to the extent, and only to the extent, the acquisition of allowances met part, or all, of the unit's allowance needs.

Comments and responses: One commenter requested that EPA allow IPPs to petition EPA for a deferral of termination of the guarantee if the projected start-up date of the unit is delayed beyond the two years allowed after the date stated in the guarantee. EPA has concluded, however, that such a concern is merely speculative and that the two-year delay is sufficient to accommodate whatever setbacks may be faced by units nevertheless destined to begin operation. Accordingly, the final rule remains unchanged from the proposal on this issue.

One commenter stated that EPA should add the failure of an IPP project as a condition for termination of the guarantee. EPA believes that project failure would be revealed in the certification of the continued need for the guarantee, prompting EPA to terminate the guarantee.

The commenter also argued that IPP certification of the continuing need of the guarantee was an excessive requirement and that EPA could simply require IPPs to notify EPA when their project had failed or when they obtained some or all of the needed allowances. EPA believes that the certification requirements is important in the likely event that there is an oversubscription to the guarantee program. EPA, seeking to safeguard the interests of IPPs waiting to obtain guarantees following initial oversubscription of the program, cannot rely on IPPs with guarantees to notify EPA as soon as their status has changed, since the IPPs may have little incentive to do so. The certification of continued need as a prerequisite for continuing the guarantee assures IPPs' diligence in notifying EPA of any changes in their status.

One commenter apparently misunderstood the NPRM, believing that EPA proposed to terminate a guarantee if allowances were obtained in a number only partially fulfilling the unit's needs. EPA believes the language in the rule to be clear, but that the wording in the preamble was misconstrued. As proposed and as reflected in the final rule, EPA will reduce only the number of allowances guaranteed for that year or years by the number of allowances obtained from other sources.

Issuing Guarantees to Units

EPA proposed that guarantees be issued for a unit and not to the unit's owners and may only be transferred with the unit itself. One commenter suggested that EPA issue guarantees to developers of IPP projects since such projects are typically owned by developers initially. The commenter also stated that guarantees should be able to be applied to any other project that the developer may own or initiate.

The commenter also asked whether operational changes made to, or planned for, a unit subsequent to the issuance of a guarantee would affect the guarantee.

Response: Under the Act, allowances are required for affected units to offset their sulfur dioxide emissions. In addition, the Act makes clear that a unit's eligibility for a guarantee and the number of allowances subject to the guarantee are to be determined on the basis of required showings concerning facts specific to the unit. Since each guarantee application pertains to one specific unit, there would thus be no justification for transferring guarantees to other units or entities.

The commenter's second question concerned operational changes made to a unit subsequent to the issuance of a guarantee, and the possibility that such changes could result in the guarantee failing to ensure that the unit's future allowance needs will be met. An IPP needing additional allowances because of unforeseen circumstances must obtain the additional allowances in the private market, in the EPA auction or direct sale, or reapply to the guarantee program for the new number of allowances needed. EPA will not add allowances to the number guaranteed for a unit for changed operations after issuance of the guarantee. Usually such changes require new financing. If EPA issued additional allowances without new information, EPA and IPP financiers could not ensure that the showings presented for the previous unit corresponded to the characteristics and circumstances of the changed unit. In addition, adjustments to guarantees already issued would jeopardize the certainty in the reservation of allowances and the integrity of the guarantee program.

"Useful life" of the Unit

EPA proposed that duration of the guarantee is up to 30 years (the useful life of the unit), beginning in the year 2000. One commenter thought that EPA should conduct a separate rulemaking on what constitutes the "useful life" of the unit and not simply declare it to be 30 years.

Response: EPA has chosen 30 years as the operating life of the unit in order to be consistent with the time period commonly chosen by financial institutions for the purposes of financing IPP projects. Since the guarantee is a means for IPPs to demonstrate to their financial lenders that they have access to a sufficient number of allowances to operate planned facilities fully, the guarantee must continue for the duration of the financing. EPA intends that the definition of "useful life" of the unit apply only for purposes of determining

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the duration of the written guarantee. The final rule remains unchanged from the proposal.

Application for a Written Guarantee

EPA proposed that written guarantees be processed and approved according to the order in which applications are received, beginning with the date the regulations go into effect. EPA will time- and date-stamp applications as they are received.

As mandated by section 416(c)(3) of the Act, the Administrator must provide written guarantees to qualified applicants within 30 days of receiving the application. Applicants who have filed applications that are deficient will have their applications returned as soon as the deficiencies are discovered and those applicants will receive a new time- and date-stamp upon their resubmission. Revised applicants will be processed according to the date on which they are filed.

One commenter suggested that EPA allow IPP applications with minor errors to be allowed to retain their original time- and date-stamp while the errors are being corrected instead of having to reapply and begin again with a new time- and date-stamp.

Response: As is stated in the rule, the Agency retains discretion in determining whether an error defeats the approval of an applicant or whether some action short of complete resubmission may suffice to correct the error. EPA believes it must be stringent with respect to deficient applications because EPA is mandated by the Act either to disapprove an application or to issue a guarantee within 30 days after receipt. EPA believes that its primary obligation is to IPPs that submit complete applications and that it should not delay the issuance of guarantees to those IPPs with approvable applications in effect for the benefit of an earlier applicant whose initial submission was not complete.

"Responsible Official"

EPA proposed that certification of all requirements in the application for a written guarantee shall be made by a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation. For a partnership a general partner would make the certification. The responsible official will be the contact person for all correspondence between EPA and the IPP concerning the written guarantee. Changes to the name of the responsible official must be made in writing to EPA.

One commenter asked why EPA did not allow or require the designated representative to be the responsible official.

Response: The final rule remains unchanged from the proposal except that the term "responsible official" has been changed to "certifying official" in order to avoid confusion with the term "responsible official" used in regulations issued under title V under the Act. The definition, however, has been expanded slightly to be usable for all of part 73. The rule neither prohibits nor requires the naming of the designated representative as the certifying official. When IPPs apply for written guarantees in 1991–1993, they may not yet have submitted their designated representative certifications.

Payment For Guaranteed Allowances

EPA proposed that allowances purchased pursuant to guarantees must be purchased by certified check for the total amount. One commenter questioned why EPA did not allow electronic transfer or other instruments to be announced, following public notice, to pay for these allowances, as it proposed for the auction and direct sale.

Response: The final rule is changed from the proposal to allow for electronic transfer or other instruments to be announced following public notice, which EPA may require or permit at some future time for the payment of allowances purchased through an IPP written guarantee. EPA did not intend to exclude this option for the IPP written guarantee; it was an oversight.

Miscellaneous

One commenter mistakenly thought that the proposed regulations provided that IPPs would have to pay 50% of the allowances guaranteed within six months after they were issued the guarantee. Direct sale applicants are required by the Act to pay 50% of the total purchase price within six months after their request to purchase has been approved by EPA.

As was stated in the NPRM, EPA interprets the Act to require no payment or deposit upon the issuance of a guarantee. Section 416(c)(2) of the Act requires that each applicant shall be required to pay the first half of the total purchase price within 6 months after the approval of the request to purchase. EPA does not believe the word "applicant" in section 416(c)(2) refers to holders of written guarantees, who, by definition, have been granted the purchase rights under the program. Any other interpretation would defeat the apparent overall purpose of the guarantee program: to provide certain assurances to IPPs, before they secure financing, while affording them subsequent opportunities to obtain allowances in the market. In addition, IPPs with guarantees do not need the six months delay to pay the first half of the total purchase price in order to secure a better purchase price for allowances while holding a place in the direct sale, because the guarantee affords them the right of first refusal. Therefore, EPA simply requires IPPs to pay full price for their allowances when they choose to exercise their guarantee.

As part of the application for an IPP written guarantee, EPA proposed that an IPP demonstrate it has met any one of the following milestones:

(1) It has been selected as a winning bidder in a utility competitive bid solicitation;

(2) It has entered into a fully binding power sales agreement;

(3) It has entered into a fully binding fuel supply agreement;

(4) It has received a site lease or proof of land acquisition;

(5) It has entered into a fully binding steam sales agreement; or

(6) It has submitted a complete environmental permit(s) application or has received such a permit(s).

One commenter asked the question whether escape clauses in power sales agreements could be construed to mean not "fully binding."

EPA added the words "fully binding" to the requirements listed above to ensure that the power, fuel, or steam sales agreements do not contain major contingencies or conditions that could jeopardize the implementation of the agreement. EPA does not consider clauses in contracts that protect lenders' and utilities' interests prior to the operation of the plant to compromise binding agreements. These types of clauses are considered standard in legally binding contracts. Since the words "fully binding" could be construed to disallow standard exemption clauses in IPP project development contracts, EPA has changed the words in the power, fuel and steam sales agreements from "fully binding" to "legally binding."

III. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, the Administrator must judge whether a regulation is "major" and therefore subject to the requirement to conduct a regulatory impact analysis. This final rule is not major as defined in section 1(b) of E.O. 12291, because of the following reasons: the annual effect of the rule on the economy will be less than $100 million; it will not cause any significant increase in costs or prices for any sector of the economy or for any geographic region; and it will not result in any significant adverse effects on competition, investment, productivity, or innovation or on the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets. EPA's economic analysis estimates that the total impact for participants in the auctions, direct sales, and IPP written guarantee program are minimal. The estimated number of bidders for each auction will be between 200 and 400, and each bidder is estimated to submit one to three bids. The number of direct sale applicants is estimated at 100 over two years. The number of applicants for the IPP written guarantee program is estimated to total 100 and is assumed to occur in the first year, 1992.

The total estimated annual costs to each auction participant range from $14,100 to $84,600. The estimated total costs for each direct sale applicant is $14,100 over two years. Assuming all IPP guarantee applications occur in the first year, the total cost to IPP guarantee applicants is estimated to be $235,000. The Agency anticipates that these proposed regulations will not have a significant effect on competition, costs, or prices. Therefore, EPA has determined that these final regulations are not "major."

The analysis is contained in the Economic Analysis of the Proposed Acid Rain Regulations for Auctions, Direct Sales, and IPP Written Guarantees, March 1991, EPA, Office of Atmospheric and Indoor Air Programs.

This final rule was submitted to the Office of Management and Budget (OMB) for review prior to publication as required by E.O. 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities."

EPA has three reasons for expecting that the auctions, direct sales, and IPP guarantee regulations will not have significant impacts on small entities. First, the costs to any one entity of participating in the auctions, direct sales, or IPP guarantees are too small to affect the financial health of a participating firm of any size. Second, because participation is voluntary, entities can choose not to incur any of the costs if they do not expect to gain from participation. Finally, the benefits of the programs are likely to flow disproportionately to small entities, as the intended target of assistance from the direct sales and IPP guarantee programs. The auction is designed to ensure that all entities have an essentially equal chance to secure allowances, with minimal transaction costs. Based on this analysis and pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq* and have been assigned control number 2060–0221.

The public reporting burden for this collection of information is estimated to average 48.5 hours per IPP guarantee application including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing the collection of information, and securing means of payment.

The information collection requirements associated with the letter of credit form in this rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. EPA proposed that bidders submit a letter of credit. EPA has since determined that a standard form for the letter of credit will be less burdensome for bidders and will facilitate EPA review of bid applications. An Information Collection Request document has been prepared by EPA (ICR No. 1584.03) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., SW. (PM–223Y); Washington, DC 20460 or by calling (202) 260–2740. These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register**.

Public reporting burden for this collection of information is estimated to vary from 1 to 9 hours per response with an average of 5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing these burdens, to Chief, Information Policy Branch, PM–223Y, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 73

Acid rain, Air pollution control, Electric utilities, Sulfur dioxide, Reporting and record-keeping requirements.

Dated: December 4, 1991.

F. Henry Habicht, II,

Acting Administrator.

For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is amended by adding part 73 as follows:

PART 73—SULFUR DIOXIDE ALLOWANCE SYSTEM

Subpart A—Background and Summary

Sec.

73.1 Purpose. [Reserved]
73.2 Applicability. [Reserved]
73.3 Definitions.
73.4 Deadlines.

Subpart B—Allowance Allocations [Reserved]

73.11–73.29 [Reserved]

Subpart C—Allowance Tracking System [Reserved]

73.30–73.49 [Reserved]

Subpart D—Allowance Transfers [Reserved]

73.50–73.69 [Reserved]

Subpart E—Auctions, Direct Sales, and Independent Power Producers Written Guarantee

73.70 Auctions.
73.71 Bidding.
73.72 Direct sales.
73.73 Delegation of auctions and sales and termination of auctions and sales.
73.74 Independent power producers written guarantee.
73.75 Application for an IPP written guarantee.
73.76 Approval and exercise of IPP written guarantee.
73.77 Relationship of independent power producers written guarantee to the direct sale subaccount.

Subpart F—Conservation and Renewable Energy Reserve [Reserved]

73.80–73.89 [Reserved]

Authority: 42 U.S.C. 7651.

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Subpart A—Background and Summary

§ 73.1 Purpose. [Reserved]

§ 73.2 Applicability. [Reserved]

§ 73.3 Definitions.

The terms used in this subpart shall have the meaning given in the Act, and in this section, as follows:

Additional advance auction means the auction of advance allowances that were offered the previous year for sale in an advance sale.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Advance allowance means an allowance that may be used for purposes of compliance with a unit's sulfur dioxide emissions limitation requirements beginning no earlier than seven years following the year in which the allowance is first offered for sale.

Advance Auction means an auction of an advance allowance.

Advance Sale means a sale of an advance allowance.

Affiliate is defined as in section 2(a)(11) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79b(a)(11).

Allowance means an authorization, allocated by the Administrator under the Acid Rain program, to emit up to one ton of sulfur dioxide during or after a specified calendar year.

Allowance Tracking System means the system by which the Administrator allocates, records, and tracks allowances.

Allowance Tracking System account means an account in the Allowance Tracking System established by the Administrator for purposes of allocating, holding, transferring, and using allowances.

Allowance transfer deadline means midnight of January 30 or, if January 30 is not a business day, midnight of the first business day thereafter, and is the last day on which allowances may be submitted for recordation in an affected unit's compliance subaccount for the purposes of meeting sulfur dioxide emissions limitation requirements for the previous calendar year.

Auction Subaccount means an account in the Special Allowance Reserve, as specified in section 416(b) of the Clean Air Act. The Auction Subaccount shall contain allowances to be sold at auction in the amount of 150,000 per year from 1995 through 1999, inclusive, and 200,000 per year for each year beginning in the calendar year 2000, subject to modifications noted in these regulations.

Authorized account representative means a natural person who may transfer and otherwise dispose of allowances held in an account in the Allowance Tracking System, including, in the case of a unit account, the designated representative of the owners and operators of an affected unit.

Certifying official, for purposes of part 73, means:

(1) for a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation;

(2) for a partnership or sole proprietorship, a general partner or the proprietor, respectively; and

(3) for a local government entity or State, Federal or other public agency, either a principal executive officer or ranking elected official.

Commenced commercial operation means to have begun to generate electricity for sale, including test generation.

Compliance use date means the first calendar year for which an allowance may be used for purposes of meeting a unit's sulfur dioxide emissions limitation requirements.

Consumer Price Index (CPI) means the United States government's primary indicator of the monetary inflation rate as published monthly by the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Indices Branch, in the CPI Detailed Report and in the Monthly Labor Review. For purposes of part 73, the Administrator will use the "Consumer Price Index for all urban consumers for the US City Average, for all Items on the Official Reference Base" (CPI–U), or if such index is no longer published, such other index as the Administrator in his discretion determines meets the requirements of the Clean Air Act Amendments of 1990.

(1) CPI (1990) means the most recently adjusted CPI for all urban consumers as of August 31, 1989. The CPI for 1990 is 124.6 (with 1982–1984 = 100).

(2) CPI (year) means the most recently adjusted CPI for all urban consumers as of August 31 of the previous year.

Direct Sale Subaccount means an account in the Special Allowance Reserve, as defined in section 416(b) of the Clean Air Act. The Direct Sale Subaccount will contain Phase II allowances to be sold in the amount of 25,000 per year, beginnning in calendar year 1993 and of 50,000 per year beginning in the calendar year 2000.

Fuel supply agreement means a legally binding document between a firm associated with a new independent power production facility (IPPF) or a new IPPF and a fuel supplier that establishes the terms and conditions under which the fuel supplier commits to provide fuel to be delivered to a specific new IPPE.

New independent power production facility means, for purposes of this part, a unit(s) that:

(1) Commences commercial operation on or after November 15, 1990;

(2) Is nonrecourse project-financed, as defined in 10 CFR part 715;

(3) Sells 80% of electricity generated at wholesale; and

(4) Does not sell electricity to any affiliate or, if it does, demonstrates it cannot obtain the required allowances from such an affiliate.

Owner means any of the following persons:

(1) Any holder of any portion of the legal or equitable title in an affected unit; or

(2) Any holder of a leasehold interest in an affected unit; or

(3) Any purchaser of power from an affected unit under a life-of-the-unit, firm power contractual arrangement as that term is used in section 408(i) of the Act. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the affected unit.

Owner or operator means any person who is an owner or who operates, controls, or supervises in any way an affected unit or affected source of which an affected unit is a part, and shall include, but not be limited to any holding company, operating company, utility system, designated representative, or plant manager of an affected unit or affected source.

Oversubscription payment deadline means 30 calendar days prior to the allowance transfer deadline.

Power sales agreement is a legally-binding document between a firm associated with a new independent power production facility (IPPF) or a new IPPF and a regulated electric utility that establishes the terms and conditions for the sale of power from a specific new IPPF to the utility.

Site lease is a legally-binding document signed between a firm associated with a new independent power production facility (IPPF) or a new IPPF and a site owner that establishes the term and conditions under which the firm associated with the new IPPE has the binding right to utilize a specific site for the purposes of operating or constructing the new IPPF.

Spot allowance means an allowance that may be used for purposes of compliance with a unit's sulfur dioxide emissions limitations requirements beginning in the year in which the allowance is offered for sale.

Spot Auction means an auction of a spot allowance.

Spot Sale means a sale of a spot allowance.

Steam sales agreement is a legally-binding document between a firm associated with a new independent power production facility (IPPF) or a new IPPF and an industrial or commercial establishment requiring steam that sets the terms and conditions under which a specific new IPPF will provide steam to the establishment.

Unit means a fossil fuel-fired combustion device.

Utility competitive bid solicitation is a public request from a regulated electric utility for offers to the utility for meeting future capacity needs. A new independent power production facility (IPPF) may be regarded as having been "selected" in such solicitation pursuant to section 405(g)(6)(A)(iv) if the utility has named the IPPF as a project with which it intends to negotiate a power sales agreement.

§ 73.4 Deadlines.

In any year in which the deadline for an action authorized or required under this Part falls on a non-business day, the deadline will be the first business day after the date stated in this part.

Subpart B—Allowance Allocations [Reserved]

§§ 73.11–73.29 [Reserved]

Subpart C—Allowance Tracking System [Reserved]

§§ 73.30 to 73.49 [Reserved]

Subpart D—Allowance Transfers [Reserved]

§§ 73.50 to 73.69 [Reserved]

Subpart E—Auctions, Direct Sales, and Independent Power Producers Written Guarantee

§ 73.70 Auctions.

(a) *Allowances to be auctioned.* Every year the Administrator will auction allowances from the Auction Subaccount, established pursuant to Subpart B of this Part, according to the following schedule:

TABLE 1.—ALLOWANCE SCHEDULE FOR AUCTIONS

Year of purchase	Spot auction	Advance auction
1993	[a] 50,000	[a] 100,000
1994	[a] 50,000	[a] 100,000
1995	50,000	[a] 100,000
1996	150,000	[a] 100,000
1997	150,000	[a] 100,000
1998	150,000	[a] 100,000
1999	150,000	[a] 100,000
2000 and after	100,000	[a] 100,000

[a] Not useable until 7 years after purchase.
[b] Not useable until 1995.

In addition to the allowances listed above, the Administrator will auction allowances pursuant to paragraph (c) of this section and § 73.72(q) in the amounts and at the times provided for therein.

(b) *Timing of the auctions.* The spot auction and the advance auction, and, if required pursuant to § 73.72(q), an additional advance auction will be held on the same day, selected each year by the Administrator, but no later than March 31 of each year. The Administrator will conduct one spot auction and one advance auction, and, if required to § 73.72(q), one additional advance auction in each calendar year.

(c) *Submittal for other allowances for auction.* Authorized account representatives may offer allowances for sale at auction, provided that allowances are dated for the year in which they are offered or for any previous year or for seven years following the year in which they are offered. Such authorized account representatives may specify a minimum price for the allowances offered at the auctions. The authorized account representative must notify the Administrator fifteen business days prior to the auctions, using the SO_2 Allowance Offer Form published by the Administrator, or by means of electronic communication if the Administrator, following public notice, so requires or permits at some future time. The notification shall include:

(1) The compliance use date of the allowances offered;

(2) The number of allowances to be sold and any other information identifying the allowances offered that may be required by Subpart C of this Part;

(3) Any minimum price in whole dollars; and

(4) Whether the authorized account representative is willing to sell fewer allowances than the number stated in paragraph (c)(2) of this section, if the full amount cannot be sold. After notification, the Administrator will deduct allowances from the appropriate Allowance Tracking System account from which allowances are being offered and place them in a separate subaccount for such allowances.

(d) *Conduct of the auctions.* (1) The Administrator will rank all bids in descending order of bid price starting with the highest. Allowances will be sold from the Auction Subaccount in this order at the amounts specified in the bids until there are no allowances in the subaccount. If all allowances are sold from the Auction Subaccount, including unsold allowances transferred from the preceding year's direct sale, and if bids still remain, the Administrator will sell allowances offered by the authorized account representatives, beginning with those offered at the lowest minimum price. Allowances offered at the lowest minimum price will be matched with the highest bid remaining after the Auction Subaccount is exhausted. Sales of offered allowances, including, but not limited to, allowances offered by more than one offeror at the same minimum bid price, will continue in ascending order of minimum price, starting with the lowest, and descending order of remaining bids, starting with the highest, until:

(i) All allowances are sold,

(ii) No bids remain, or

(iii) Prices of remaining bids do not meet minimum prices required in remaining offers.

(2) In the event that there is more than one bid submitting the same price and the total number of allowances requested in all such bids exceeds the number of allowances remaining, the Administrator will award the remaining allowances by lottery to such bidders.

(3) In the event that there are more offers of sale at the minimum price than there are bids meeting that price, allowances from all such offers will be sold to cover the bids, according to each such offeror's pro rata share of all allowances so offered.

(4) In the event that fewer allowances remain than are requested in a bid, the Administrator will sell such remaining allowances to the bidder provided that, pursuant to § 73.71(b)(4), the bid states the bidder's willingness to purchase fewer allowances than requested in the bid.

(5) In the event that fewer than all allowances included in an offer for sale would be sold to remaining bids based on price, the Administrator will sell such allowances to the bidder(s), provided that, pursuant to § 73.70 (c)(4), the offer states the offeror's willingness to sell

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fewer allowances than were offered for sale.

(e) *Announcement of results.* Following each auction, the Administrator will publish the names of winning bidders and their bids, the amounts of losing bids, and the lowest price at which allowances are sold. The Administrator will announce the results of each auction through the Allowance Tracking System. The results will also be published in the **Federal Register** and in the Commerce Business Daily.

(f) *Transfer of allowances.* Allowances will be transferred from the Auction Subaccount and from the subaccount for allowances offered by authorized account representatives to the Allowance Tracking System accounts of successful bidders as soon as payment is collected by the Administrator.

(g) *Return of Unsuccessful Bids.* The Administrator will return payment to unsuccessful bidders and to bidders unwilling to purchase fewer allowances than requested following the conclusion of each auction.

(h) *Transfer of Proceeds.* The Administrator will return all proceeds from the auction as follows:

(1) Allowances auctioned from the Auction Subaccount. Not later than 90 days following each auction, the Administrator will pay a pro rata share of the proceeds of each auction to the authorized account representative of each unit from whose annual allowance allocation allowances were withheld for the purposes of establishing the Auction Subaccount. Each unit's pro rata share will be calculated pursuant to regulations to be promulgated under subpart B.

(2) Allowances contributed from others. Not later than 90 days following each auction, the Administrator will transfer the full amount of the proceeds of each sale of allowances offered by authorized account representatives to such representatives. Proceeds from the sale of allowances that were offered with the same specified minimum price will be distributed according to each such offeror's pro rata share of the sale of such allowances.

(3) The Administrator will pay no interest on any payment made pursuant to paragraphs (h)(1) and (2) of this section.

(i) *Return of unsold allowances.* The Administrator will return all unsold allowances from the auction as follows:

(1) Allowances in the Auction Subaccount. At the conclusion of each auction, the Administrator will transfer to the Allowance Tracking System account of each unit specified in paragraph (h)(1) of this section its pro rata share of any allowances remaining in the Auction Subaccount. Each unit's pro rata share will be calculated pursuant to regulations to be promulgated under subpart B.

(2) Allowances contributed from others. At the conclusion of each auction, the Administrator will return unsold allowances to the appropriate offerors' Allowance Tracking System accounts. Any unsold allowances that were offered with the same specified minimum price will be distributed according to each such offeror's pro rata share of all such allowances offered.

§ 73.71 Bidding.

(a) *Who may participate in the auctions.* Any person may participate in the auctions by submitting a bid or bids pursuant to this section.

(b) *Bidding.* Sealed bids shall be sent to the Administrator using the Bid Form for SO_2 Allowance Auctions, or some method of electronic transfer if the Administrator, following public notice, so requires or permits at some future time. The bid form shall state:

(1) The number of allowances sought and the price;

(2) Whether spot or advance allowances are sought;

(3) Allowance Tracking System account number;

(4) Whether the bidder is willing to purchase fewer allowances than the number of allowances stated in (b)(1) of this section if the full amount is not available. Where the bidder holds no Allowance Tracking System account, a New Account/New Authorized Account Representative Form must accompany the bid. New account information shall include at a minimum: Name, address, telephone number, facsimile number, organization or company name (if applicable), type of organization, and the authorized account representative for purposes of the account.

(c) *Payment.* Each bid must include a certified check or letter of credit for the total bid price, or may specify a method of electronic transfer or other method of payment, if the Administrator, following public notice, so requires or permits at some future time. The certified check should be made payable to the U.S. EPA. To meet the requirements of this paragraph bidders must submit a completed SO_2 Allowance Auction Letter of Credit Form. If such Form is used, the Administrator must receive full payment for allowances awarded at the auctions, either by wire transfer or certified check, no later than 2 business days after the results of the auction are announced in the Allowance Tracking System.

(d) *Bid amount and number of bids.* Bidders may request any number of allowances up to the amount of allowances available for auction. Any person may submit more than one bid in each auction, provided that each bid meets the requirements of this section.

(e) *Submission of bids.* The Administrator will publish in the **Federal Register** and in the Commerce Business Daily the address of where to submit bids and payment not later than 60 calendar days before each auction.

(f) *Deadline for bids.* All bids must be revised by the Administrator no later than 3 business days prior to the date of the auctions.

§ 73.72 Direct sales.

(a) *Allowances to be sold.* The Administrator will sell allowances every year according to the following schedule:

TABLE 2.—ALLOWANCE SCHEDULE FOR THE DIRECT SALE

Year of purchase	Spot sale	Advance sale
1993		* 25,000
1994		* 25,000
1995		* 25,000
1996		* 25,000
1997		* 25,000
1998		* 25,000
1999		* 25,000
2000 and after	25,000	* 25,000

* Not useable until 7 years after purchase.

(b) *Adjustment of the direct sale schedule.* The schedule listed in paragraph (a) of this section will be adjusted to reflect allowances subject to IPP written guarantees pursuant to § 73.74.

(c) *Price.* Allowances in the direct sale will be sold at $1,500 per allowance, adjusted by the Consumer Price Index (CPI). The following formula will be used each year to calculate the price:

$$\$1500 \times [1 + CPI(year) - CPI(1990)]$$

$$CPI(1990)$$

(d) *Form and timing of the direct sale.* The Administrator will begin accepting applications for the direct sale on June 1st of each calendar year and will continue to accept applications up to 10 calendar days prior to the allowance transfer deadline.

(e) *Who may purchase from the direct sale.* Any person may apply to purchase allowances from the direct sale.

(f) *Amount allowed to purchase.* Applicants may request to purchase any number of allowances up to the amount available for sale in the Direct Sale Subaccount.

(g) *Request to purchase allowances.* Applicants shall submit the Direct Sale Application Form to request to purchase allowances from the Administrator, or shall make such request by some method of electronic transfer if the Administrator, following public notice, so requires or permits at some future time. The Direct Sale Application Form shall state:

(1) The number of allowances sought;

(2) Whether spot or advance allowances are sought;

(3) The Allowance Tracking System account number; and

(4) Whether the applicant is willing to purchase fewer allowances than the number of allowances stated in (g)(1) of this section, if the full amount is not available. Where the applicant holds no Allowance Tracking System account, a New Account/New Authorized Account Representative Form must accompany the application. New account information shall include at a minimum: name, address, telephone number, facsimile number, organization or company name (if applicable), type of organization, and the authorized account representative for purposes of the account.

(h) *Submission of direct sale applications.* The Administrator will publish in the **Federal Register** and in the Commerce Business Daily the address of where to submit Direct Sale Application Forms no later than 60 calendar days before each direct sale.

(i) *First come, first served.* Applications will be approved in order of receipt, indicated by the date and time stamped on the applications upon arrival at the destination indicated pursuant to paragraph (h) of this section.

(j) *Partial fulfillment of requests.* In the event the number of allowances requested for a purchase exceeds the number of allowances remaining in the Direct Sale Subaccount, the Administrator will approve the request for the number of allowances remaining, provided that, pursuant to paragraph (g)(4) of this section, the application states the applicant's willingness to purchase fewer allowances than the number stated in its application. In all other cases, the Administrator will place applicants on the waiting list pursuant to paragraph (n) of this section.

(k) *Notification of approval.* After approving an application, the Administrator will notify the applicant of the amount and type of allowances that may be purchased, the date on which the approval was made, the exact price of allowances for purchase from the direct sale, and instructions for making payment.

(l) *Payment.* Applicants shall submit 50% of the total purchase price by six months after the date of approval of their request to purchase. Pursuant to paragraph (m) of this section, the remaining 50% must be paid on or before the allowance transfer deadline. In the event that approval is granted less than six months prior to the allowance transfer deadline, payment shall be made on or before the allowance transfer deadline, pursuant to paragraph (m) of this section. The Administrator will terminate the approval of any request to purchase upon failure to pay the 50% deposit within six months. Upon failure to submit timely payment for the remaining balance, the Administrator will terminate the sale and the deposit will be forfeited. The 50% deposit and the final payment shall be made by certified check or by some method of electronic transfer or other instrument if the Administrator, following public notice, so requires or permits at some future time. The certified check should be made payable to the U.S. EPA.

(m) *Oversubscription payment deadline.* The Administrator will assess the status of the allowance reservations to the Direct Sale Subaccount on December 1 of each year the direct sale is held. In the event that the direct sale is oversubscribed by December 1, the Administrator will require full payment for reserved allowances no later than the oversubscription payment deadline for those applicants whose applications were previously approved and for whom allowances were reserved. Allowances will be transferred immediately upon such payment.

(n) *Oversubscription to the direct sales program.* Applications received after all allowances in the Direct Sale Subaccount are subject to approved applications shall be included on a waiting list and ranked in order of receipt, as indicated by the time and date stamped on the application upon arrival at the destination indicated pursuant to paragraph (h) of this section. In the event that an approved application is terminated pursuant to paragraph (l) of this section, applications on the waiting list will be approved according to the order in which they are ranked, subject to paragraph (i) of this section. Approved applicants will be notified pursuant to paragraph (k) of this section. If applicants without reserved allowances wish to contact those wait-listed applicants for whom allowances have been reserved, in case such applicants choose not to purchase their reserved allowances, the Administrator will make such information available upon request. Full payment for allowances must be collected by the Administrator on or before the allowance transfer deadline.

(o) *Transfer of allowances.* Allowances will be transferred to purchasers' Allowance Tracking System accounts from the Direct Sale Subaccount as soon as full payment is collected.

(p) *Transfer of proceeds.* Not later than 90 days after the conclusion of the direct sale, the Administrator will pay a pro rata share of the total proceeds of the direct sale (including forfeited deposits) to the authorized account representatives of each unit from whose annual allocation allowances are withheld for the purposes of establishing the Direct Sale Subaccount. The Administrator will pay no interest on such payment. Each unit's pro rata share will be calculated pursuant to regulations to be promulgated under subpart B of this part.

(q) *Unsold allowances in the Direct Sale Subaccount.* If allowances remain in the Direct Sale Subaccount after the allowance transfer deadline, the Administrator will transfer those allowances to the Auction Subaccount. All allowances remaining from the spot sale will be sold in the spot auction in

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the following year. Advance allowances transferred from the direct sale will be sold in an additional advance auction the following year, in which allowances usable for compliance in six years will be sold. This additional auction will be conducted before allowances offered by authorized account representatives are auctioned.

§ 73.73 Delegation of auctions and sales and termination of auctions and sales.

(a) *Delegation.* The Administrator may, in the Administrator's discretion, by delegation or contract provide for the conduct of sales or auctions under the Administrator's supervision by other departments or agencies of the United States Government or by nongovernmental agencies, groups, or organizations.

(b) *Termination of sales.* If the Administrator determines that, during any period of 2 consecutive calendar years, fewer than 20 percent of the allowances available in the subaccount for direct sales have been purchased, the Administrator shall terminate the Direct Sale Subaccount and transfer such allowances to the Auction Subaccount.

(c) *Termination of auctions.* The Administrator may, in the Administrator's discretion, terminate the withholding of allowances and the auctions if the Administrator determines, that, during any period of 3 consecutive years after 2002, fewer than 20 percent of the allowances available in the Auction Subaccount have been purchased.

§ 73.74 Independent power producers written guarantee.

(a) *Nature of guarantee.* The written guarantee is a right to purchase allowances from the Direct Sale Subaccount for $1,500 (CPI adjusted) prior to the time in each calendar year that such allowances are offered for sale to others.

(b) *Issuance of a guarantee.* IPP written guarantees will be issued for a unit and not to the unit's owners and may only be transferred with the unit itself. Each guarantee application pertains to one specific unit.

(c) *Yearly total number guaranteed.* The number of allowances which may be subject to such written guarantees each year will be equal to the total number of allowances in the Direct Sales Subaccount for that year (50,000).

(d) *Duration of the guarantee.* Applicants may request a guarantee for the useful life of the unit, up to 30 years, beginning in the year 2000.

(e) *Termination of the guarantee.* The Administrator will terminate a written guarantee if the unit for which a guarantee is issued has not commenced commercial operation by January 1, 2000 or within two years of the planned start-up date of the unit, whichever is later, or if the holder of the guarantee fails to make a continuing good faith effort to obtain allowances, including participation in the annual auctions, as required under section 416(c)(4) of the Act. The Administrator will also terminate a guarantee if the holder of the guarantee fails to notify the Administrator of the continued need for the guarantee pursuant to § 73.76(e).

§ 73.75 Application for an IPP written guarantee.

(a) *Application requirements.* Applicants shall demonstrate the following by filling out the Application for an IPP Written Guarantee for SO_2 Allowances:

(1) Certification of Qualifications. Each applicant shall certify that it is the owner or operator of a new independent power production facility and that it meets the criteria set forth in the definition of new independent power production facility, and, where applicable, submit a certified statement from a senior manager (who shall meet the requirements of "certifying official" set forth in § 73.3) of its affiliate that it cannot supply all or any of the required allowances.

(2) Proof of "propose to construct" a new unit. Each applicant shall demonstrate any *one* of the following:

(i) That it has been selected as a winning bidder in a utility competitive bid solicitation;

(ii) That it has entered into a legally binding power sales agreement or such agreement has been entered into on its behalf;

(iii) That it has entered into a legally binding fuel supply agreement or such agreement has been entered into on its behalf;

(iv) That it has received a site lease or proof of land acquisition;

(v) That it has entered into a legally binding steam sales agreement or such agreement has been entered into on its behalf; or

(vi) That it has submitted a complete environmental permit application or has received such a permit.

Each applicant shall submit the relevant document in support of the demonstration. If the document is longer than 10 pages, only the signature page(s) and the first 10 pages of the document shall be submitted.

(3) Pledge to apply for financing. The applicant shall certify that it will apply for, or has applied for, financing for the unit after January 1, 1990 and before the date of the 1993 auction.

(4) Submission of written offers at $750. The applicant shall certify that it has made offers to purchase some or all of the required allowances at $750 each from all phase I utilities, but that it received no unconditional acceptances within 180 days from the date on which each offer was made.

(5) Other information required. The applicant shall submit the following information for the unit:

(i) The proposed location (complete address);

(ii) The proposed production capacity and fuel source;

(iii) Sulfur dioxide emissions limitations under which the unit will be required to operate;

(iv) Projected annual emissions of sulfur dioxide;

(v) Annual allowances requested;

(vi) The proposed date on which the unit will commence commercial operation; and

(vii) The unit's expected operating lifetime.

(b) *Application submitted after the 1993 Auction.* An application may be submitted after the date of the 1993 auctions provided that it meets all the requirements of paragraph (a) of this section and includes Supplement A of the Application For An IPP Written Guarantee For SO_2 Allowances which requests the name of the financial entity(ies) to whom application for financing was made.

(c) *Submittal location.* Completed applications shall be submitted to: U.S. Environmental Protection Agency, Acid Rain Division (ANR-445), 401 M Street, SW., Washington, DC 20460, attn.: IPP Written Guarantee.

(d) *Certification.* Certification of all requirements shall be made by a certifying official upon his/her verification of all information and documentation submitted. Changes by an applicant in the name of the certifying official must be made in writing to the Administrator.

(e) *Recordkeeping requirements.* Applicants shall maintain and make available to the Administrator, at the Administrator's request, copies of the $750 written offers to Phase I utilities, any responses to such offers, and copies of documents showing the project milestones set forth in paragraph (a)(2) of this section that have been attained. Holders of written guarantees shall retain copies of their bids in the annual auctions and any written offers made to other allowance holders and shall make such documents available to the Administrator at the Administrator's request.

§ 73.76 Approval and exercise of the IPP written guarantee.

(a) *First come, first served.* The Administrator will process and approve or disapprove, in whole or in part, applications received on or after the effective date of the regulations. The Administrator will issue guarantees pursuant to approved applications according to the order in which applications are received, as indicated by the date and time stamped on the applications upon arrival at the destination indicated in § 73.75(c).

(b) *Oversubscription to the IPP written guarantee program.* Applications received after all allowances in the Direct Sale Subaccount have become subject to written guarantees or when there is an insufficient number of allowances available to satisfy the amount requested for any year covered by the guarantee will be included on a waiting list and ranked in order of time and date of receipt. In the event that an IPP guarantee is terminated pursuant to § 73.74(e), the Administrator will process applications on the waiting list by rank order and will issue guarantees pursuant to any approved application.

(c) *Deficient applications.* The Administrator may, in his or her discretion, return applications that fail to meet the requirements set forth in §§ 73.75 (a), and (b) if applicable. Revised applications will be processed according to the date and time of receipt of such revised applications.

(d) *Notification of approval.* The Administrator will issue a written guarantee pursuant to each approved application within 30 calendar days of receipt, provided that there is a sufficient number of allowances available to satisfy the guarantee for each year covered by the guarantee at the time the application is processed.

(e) *Certification of continued need for the guarantee.* (1) By no later than June 30 and December 31 of 1992 and no later than December 31 of each year thereafter, the certifying official for a unit for which a guarantee has been issued shall certify, through written notification, to the Administrator that the unit continues to require allowances subject to the guarantee pursuant to § 73.75.

(2) As soon as a unit for which a guarantee has been issued is no longer in need of any or all of the allowances subject to the guarantee, the certifying official shall notify the Administrator, in writing, of the number of allowances that are no longer needed. Pursuant to the terms of the notification, the Administrator will reduce the number of allowances subject to the guarantee or terminate the guarantee.

(f) *Exercise of guarantee.* Allowances may be purchased in each year for those years for which the guarantee has been issued provided that they are purchased for the unit for which the guarantee has been issued. In any year, the certifying official of a unit for which a guarantee is issued may purchase any number of allowances up to the maximum number specified in the guarantee for such year. Allowances purchased through guarantees will be fully transferable.

(1) Notification and response. To exercise a written guarantee, the certifying official shall notify the Administrator of the number of allowances to be purchased. Such notification shall be in writing and signed by the certifying official pursuant to § 73.75(d). The Administrator, following public notice, may require or permit a method or methods of electronic transfer of this information. The Administrator will respond to the written notification within 5 business days after receipt by sending the certifying official a statement of the exact price for the allowances and where to send payment. If the certifying official does not have an account in the Allowance Tracking System, the New Account/New Authorized Account Representative Form shall be completed and mailed with payment.

(2) Payment. Certifying officials shall purchase allowances by certified check for the total amount or by some method of electronic transfer or other instrument, if the Administrator, following public notice, so requires or permits at some future time. The certified check shall be made payable to U.S. EPA.

(3) Time period to exercise. Notification to exercise a guarantee shall be received by the Administrator no later than April 15th of the calendar year in which allowances are to be purchased. Payment for allowances shall be collected by the Administrator no later than May 15th of that same year. If the direct sales program has been terminated pursuant to § 73.73(b), notification and payment may occur at any time prior to the allowance transfer deadline for each year in which allowances are to be purchased.

(g) *Transfer of allowances.* Allowances will be transferred into the unit's allowance system account as soon as full payment is collected.

(h) *Transfer of proceeds.* The Administrator will pay all proceeds from the exercise of written guarantees pursuant to § 73.72(p).

§ 73.77 Relationship of the independent power producers written guarantee to the direct sale subaccount.

(a) *Reserving allowances in the Direct Sale Subaccount.* The Administrator will make available up to 50,000 yearly allowances in the direct sales subaccount for written guarantees. The Administrator will first reserve for IPP guarantees the 25,000 yearly allowances in the advance sale category. If more than 25,000 yearly allowances are subject to guarantees, the excess allowances needed will be reserved from the spot allowance category, up to 25,000 each year.

(b) *Adjustment of the direct sale schedule.* If fewer than 25,000 advance allowances are subject to written guarantees for any year from 2000 through 2006, any remaining advance allowances will be sold in the advance sale seven years preceding that year. If all 25,000 advance allowances are reserved for written guarantees for 2000 through 2006, the direct sale will begin in the year 2000 and will consist only of spot sales of allowances not sold pursuant to written guarantees.

(c) *Continuation of the guarantee.* Termination of the direct sale will not affect IPP written guarantees which will continue in effect for the operating life of the unit or 30 years, whichever is shorter, unless terminated pursuant to § 73.74(e).

(d) *Guaranteed allowances not sold.* If a certifying official of a unit for which a guarantee is issued chooses not to exercise the guarantee for a year in which allowances are reserved, the allowances will be offered for sale in the direct sale beginning on June 1 of that year. In the event the direct sale is terminated, any unsold allowances will be transferred to the Auction Subaccount pursuant to § 73.72(q).

Subpart F—Conservation and Renewable Energy Reserve [Reserved]

§§ 73.80–73.89 [Reserved]

[FR Doc. 91–29744 Filed 12–16–91; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

[FRL-4039-9]

Request for Delegation Proposals to Administer the Auctions and Direct Sale and Request for Public Comment

AGENCY: Environmental Protection Agency.

ACTION: Notice of EPA request for delegation proposals to administer the auctions and direct sale under section 416 of the Clean Air Act amendments of 1990, and request for public comment.

SUMMARY: Pursuant to title IV of the Clean Air Act Amendments of 1990 ("the Act"), the Administrator must promulgate regulations to reduce emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_x), precursors of acid rain. The centerpiece of the SO_2 control program is the allocation of transferable allowances, or authorizations to emit SO_2, which are distributed in limited quantities for existing utility units and which eventually must be held by all utility units to cover their SO_2 emissions. These allowances may be transferred among polluting sources and others, so that market forces may govern their ultimate use and distribution, resulting in the most cost-effective sharing of the emissions control burden. In order to stimulate and support such a market in allowances, and to provide a public source of allowances particularly to new units for which no allowances are allocated, the Administrator is directed under section 416 of the Act to conduct an annual sale and auctions of allowances.

Today, the Administrator promulgated regulations for conducting such sales and auctions, as well as regulations under which certain independent power producers ("IPP") may obtain written guarantees of the availability of allowances and may exercise priority in purchasing allowances through the direct sale (see 40 CFR part 73).

Along with the publication of these regulations, EPA is, in this notice: (1) Notifying the public of its intent to request proposals for the delegation of the administration of the auctions and direct sale, (and the issuance of allowances for persons holding Independent Power Producer guarantees) under the authority of section 416(f) of the Act; (2) requesting such proposals; and (3) seeking, from any member of the public, comments, with regard to this notice before deciding whether to delegate these functions. EPA reserves its discretion to decline to delegate these functions following review of proposals and comments submitted pursuant to this notice.

Delegation of these functions shall be administered without compensation from EPA. A delegatee will not be allowed to retain any portion of the monies collected for the sale or auction of allowances or to charge fees to administer these functions. In addition, the delegation will require a strict adherence to the regulations as promulgated today in 40 CFR part 73. EPA will be accepting proposals to administer these programs from candidates who meet the criteria specified in section III of this notice. Demonstration of these criteria will be made by the completion of a delegation application which will explain in more detail the evaluation criteria, the corresponding emphasis EPA places on those criteria, and procedural requirements. Delegation applications may be obtained from EPA at the address listed below.

EPA will hold a public meeting on this notice on the date listed below. The purpose of the public meeting is to explain further, and answer questions about, the objectives and requirements for the delegation.

DATES: Complete proposals, in the form of delegation applications, for undertaking administration of the auctions, direct sale, and IPP written guarantee program, and public comments, must be received, in writing, on or before February 21, 1992. Proposals and public comments should be sent to the address listed below. The public meeting on this notice will be held on January 13, 1992 from 2 p.m. to 4 p.m.

ADDRESSES: U.S. EPA Acid Rain Division (ANR–445), 401 M St., SW., Washington, DC 20460, Attn: Auctions and Direct Sale Delegation.

The public meeting will be held at the address given above in the EPA Conference Center Room 3 North.

FOR FURTHER INFORMATION CONTACT: Linda Reidt Critchfield, EPA/OAIAP/Acid Rain Division (ANR–445), 401 M. St., SW., Washington, DC 20460 (202) 260–7915.

SUPPLEMENTARY INFORMATION:

I. Authority

Pursuant to section 416(f) of the Clean Air Act Amendments of 1990, the Administrator may, in his or her discretion, delegate, or contract for, the conduct of sales or auctions under the Administrator's supervision by other departments or agencies of the United States Government or by nongovernmental agencies, groups, or organizations. The Administrator is considering whether to exercise this discretion under section 416(f) and 40 CFR part 73, § 73.73(a) and to delegate the administration of the auctions, direct sale, and IPP program to the candidate determined by the Administrator to be the most qualified. The Administrator will base this determination on the public comments received and the proposals, in the form of delegation applications, submitted to meet the criteria contained in the delegation application.

II. Functions of the Delegatee in Conducting the Auctions and Direct Sale

In addition to adhering to the applicable requirements for the auctions, direct sale, and IPP program set forth in the regulations promulgated today, and summarized below, a major component in administering the auctions and direct sale would be the interaction between a delegatee's information system and EPA's Allowance Tracking System (ATS). The ATS will issue, record, and track allowances and will be the official computer system for the supply of allowances. For a complete discussion of the ATS, see subpart C (Allowance Tracking System) of the proposed Sulfur Dioxide Allowance System regulations which were published in the **Federal Register** on December 3, 1991.

The specific duties and the interactions between the ATS and a delegatee would be fully developed when such duties are discussed with the appointed delegatee and when Subpart C (Allowance Tracking System) of 40 CFR part 73 is promulgated. The information system used by a delegatee would need to interface with the ATS in a form compatible with the ATS format.

Listed below are the major steps in conducting the auctions, direct sale, and IPP written guarantee program, pursuant to 40 CFR part 73, subpart E. Though not included in these steps, recordkeeping and tracking functions are also required in the administration of the auctions and direct sale. Almost all the duties listed below would be carried out by a delegatee through electronic methods, unless otherwise specified.

A. Conducting the Auctions

Pursuant to 40 CFR part 73, §§ 73.70 through 73.71, a delegatee would conduct the auctions as follows:

1. The delegatee will receive notice from others offering to sell their allowances in the EPA auctions. The delegatee will notify the ATS of these contributions so that the ATS can place them in a separate subaccount for offered allowances.

2. EPA will publish notice in the **Federal Register** and Commerce Business Daily of the date that the auctions will be held, the total number of allowances to be auctioned, including both those in the EPA Auction Subaccount and those offered by private parties, and any minimum prices specified by private parties. Information about allowances offered by private parties will be provided by the delegatee.

3. The delegatee will receive sealed auction bid forms and a prescribed form of payment from those seeking to purchase allowances in the EPA auctions. The delegatee will deposit certified checks in an EPA-specified bank account. If a letter of credit ([LOC) is submitted, the delegatee will hold the LOC until the auctions are completed.

4. The delegatee will review bid forms; if incomplete or incorrect, the delegatee will return the bid form and payment.

5. The delegatee will conduct the auctions by matching allowances and bids.

6. The delegatee will notify the ATS of the results of each auction for the purpose of transferring allowances to winning bidders' accounts and publishing the results of each auction. The delegatee will also notify the ATS of any winning bidders for whom a new account must be established.

7. Within 2 business days of publication of the auction results in the ATS, the delegatee will collect payment from winning bidders using an LOC.

8. The delegatee will deposit the total proceeds from the auctions in an EPA-specified bank account and inform the ATS of this amount.

9. EPA will publish the results of each auction in the **Federal Register** and the Commerce Business Daily.

10. The delegatee will return LOCs or send refund checks to losing bidders.

B. Conducting the Direct Sale and Fulfilling the IPP Written Guarantee

Pursuant to 40 CFR part 73, §§ 73.72 through 73.77, a delegatee would conduct the direct sale and the IPP written guarantee program as follows:

Implementing the IPP Written Guarantee

1. The delegatee will receive notification from IPPs choosing to exercise their written guarantees.

2. Not later than five business days after receipt of such notification, the delegatee will send the IPP a statement confirming the amount and type of allowances requested, the exact price, and payment instructions.

3. The delegatee will receive from IPPs, payment for the total amount of allowances they are requesting to purchase at that time.

4. The delegatee will notify the ATS of the purchases from the IPPs, and deposit all payment proceeds in an EPA-specified bank account.

Implementing the Direct Sale

1. EPA will publish in the **Federal Register** and in the Commerce Business Daily notice of the beginning and ending date of the direct sale, and the amount of allowances for sale.

2. The delegatee will receive requests to purchase allowances and notify applicants of approved requests. The delegatee will reserve requested allowances on a first come, first served basis as applications are approved. The delegatee will sent notice to approved applicants of the amounts and type of allowances reserved, the date on which approval was made, the exact price, and payment instructions. If the direct sale is oversubscribed, the delegatee will establish a waiting list.

3. The delegatee will process deposits and final payments. The delegatee will transmit to the ATS, account numbers of buyers and purchase amounts as sales are completed. The delegatee will deposit all payments in an EPA-specified bank account.

III. Criteria To Be Used in Selecting an Organization for Delegation

In exercising his or her discretion to delegate the administrations of the auctions, direct sale, and IPP written guarantee program, the Administrator would evaluate applicants based on the following criteria:

1. Ability to process and manage financial instruments such as letters of credit, certified checks, and electronic payment.

2. Knowledge of administering a sealed bid, discriminating form of auction.

3. Experience in developing and using transactional information systems and information transaction processing in commercial applications, comparable to automated bid matching program and interface with the ATS.

4. Experience developing and managing a document control system for recordkeeping and information tracking.

5. Adequate resources, staff, and facilities to meet the implementation requirements of section 416 of the Act.

6. Ability to produce summary reports and analysis of auctions and direct sale results.

7. Knowledge of the Clean Air Act title IV, Section 416 and its implementing regulations and programs.

The delegation application will include a more detailed statement of these criteria and how they will be applied to the proposals. Applicants will also be required to agree to provide the Administrator with advance notice of termination of the delegation not later than eighteen months prior to the time of termination. Applicants must also agree to provide a complete surrender of all documentation, computer software, and any other critical information associated with the administration of the auctions, direct sale, and IPP written guarantee program. Applicants will also be required to explain the linkage the delegation would have to their other ongoing or planned activities or to the interests of any constituency represented by the applicant. The proposal should indicate what legitimate advantage the delegatee will derive from running the auctions, direct sale, and IPP written guarantee program.

IV. Requests for Public Comment

EPA is seeking to delegate the administration of the auctions, direct sale, and IPP written guarantee program for a variety of reasons. EPA has heard from the Acid Rain Advisory Committee (ARAC), utilities, and others, concerns about a government agency such as EPA, with no experience in conducting auctions, administering such functions. This concern was voiced even prior to enactment and is reflected by language in the Act that gives EPA broad discretion to delegate or contract out these functions. As an alternative to EPA administering these functions, EPA explored various options for administering the auctions and direct sales, including other Federal Agencies and Departments, and contracts.

EPA therefore requests comment from the public on the option for delegating the functions described in this notice to a private entity. Such comments will be considered in the review of individual proposals and EPA's decision whether to delegate this program.

Dated: December 4, 1991.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

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Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 761 et al.
Intial and Permanent Regulatory Programs: Special Categories of Mining; Surface and Underground Mining Activities; Final Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 761, 780, 784, 785, 816 and 817

RIN 1029-AA57

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Areas Unsuitable for Mining; Special Categories of Mining; Surface Mining Activities; Underground Mining Activities

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) is amending its permanent program permitting and performance standards regulations in several technical areas. The technical areas affected are (1) Backfilling and grading, (2) Approximate original contour (AOC) variances, (3) Disposal of coal mine waste, (4) Definition of values incompatible with surface coal mining operations, (5) Disposal of excess spoil on preexisting benches, and (6) Contemporaneous reclamation practices. Except for the area of disposal of excess spoil on preexisting benches, the amendments are in response to U.S. District Court and Court of Appeals decisions.

In the area of values incompatible with surface coal mining operations, the rule amends the definition of "no significant recreational, timber, economic, or other values incompatible with surface coal mining operations" to eliminate reclaimability as a criterion in determining compatibility with surface coal mining operations.

In the area of AOC variances, the rule revises regulations governing permits incorporating variances from AOC restoration requirements to limit their application to steep slope mining.

In the area of disposal of excess spoil on preexisting benches, the rule revises special regulations governing the disposal of excess spoil on preexisting benches for conformance with OSM's generic backfilling and grading regulations. OSM is revising the rules to encourage the reclamation of abandoned highwalls by removing impediments to the use of excess spoil on preexisting benches.

In the area of disposal of coal mine waste, the rule revises former requirements for the disposal of coal mine waste by adding the requirement that coal mine waste be hauled or conveyed for final placement to the point of disposal. This addition prohibits the final placement of coal mine waste by end or side dumping in any area other than mine workings and excavations. The rule also removes regulatory language cross-referencing the requirements for handling of hazardous noncoal coal mine waste in accordance with the Environmental Protection Agency's (EPA's) Resource Conservation and Recovery Act (RCRA) and its implementing regulations.

In the areas of contemporaneous reclamation and backfilling and grading, the final rule reestablishes backfilling and grading time and distance requirements. The rules require the completion of backfilling and grading within certain times or distances following coal removal, or, for mining methods other than area and contour mining under a schedule established by the regulatory authority, or under case by case time and distance variances approved by the regulatory authority. Also in the context of backfilling and grading to AOC, the rules define "thin overburden" and "thick overburden", and establish performance standards for backfilling and grading in areas of thin and thick overburden.

Finally, existing suspensions of previous regulations are removed where they are superseded by these final regulations.

EFFECTIVE DATE: January 16, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis M. Hunter, Jr., Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Ave. NW, Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Final Rule and Comments
III. Procedural Matters

I. Background

These rules amend several technical areas in 30 CFR, chapter VII. These areas have been combined in this rulemaking for administrative convenience. Therefore, the pertinent legislative, regulatory and litigation background for each technical area is discussed separately below.

Where the discussion concerns similarly or identically constructed sections in part 816, which applies to surface mining activities, and part 817, which applies to underground mining activities, these sections are cited together in the heading as §§ 816. [ ] and 817. [ ]. In such cases the subsequent discussion, while only referring to § 816. [ ], nevertheless applies identically to both parts 816 and 817 unless otherwise noted.

A. Section 761.5 Values Incompatible with Surface Coal Mining Operations

Section 522(e)(2) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), 30 U.S.C. 1272(e)(2), with certain exceptions, prohibits surface coal mining operations

> on any Federal lands within the boundaries of any national forest [unless] the Secretary finds that there are no significant recreational, timber, economic, or other values which may be incompatible with such surface [coal] mining operations * * *.

The corresponding OSM permanent program regulation appears at 30 CFR 761.11(b).

In implementing this requirement, the 1979 OSM regulations at 30 CFR 761.5 defined the emphasized language in section 522(e)(2) in part to mean:

> [T]hose significant values which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on off-site areas which could be affected by mining * * *. (44 FR 15341, March 13, 1979).

On June 10, 1982 (47 FR 25278) OSM proposed, and on September 14, 1983 (48 FR 41312) OSM promulgated, a rule revising the 1979 definition. The revised definition dropped the introductory term "no" as unneccessary, changed the phrase "significant values" to "values to be evaluated for their significance," changed the term "offsite areas which could be affected by mining" to "affected areas," and of particular relevance to this proposed rule, inserted after the word "damage" the phrase "beyond an operator's ability to repair or restore."

Thus, following revision in 1983, the corresponding portion of the definition read:

> Significant recreational, timber, economic, or other values incompatible with surface coal mining operations means those values to be evaluated for their significance which could be damaged beyond an operator's ability to repair or restore by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on other affected areas. 30 CFR 761.5 (1983).

This revised definition was challenged by the citizen and environmental plaintiffs in In re Permanent Surface Mining Regulation Litigation (In re Permanent II (Round III)), 620 F. Supp. 1519 at 1556–57 (D.D.C. July 15, 1985). The challengers contended that the definition was contrary to the Act

because under it mining could be permitted in national forests as long as reclamation was possible. The U.S. District Court for the District of Columbia agreed with this contention and remanded the definition. *Id.* at 1557. On November 20, 1986, (51 FR 41952) OSM suspended the definition "insofar as the listed values are evaluated for compatibility solely in terms of reclaimability." *Id.* at 41960–41961.

OSM appealed, and the U.S. Court of Appeals for the District of Columbia Circuit affirmed the district court ruling. *National Wildlife Federation (NWF)* v. *Hodel*, 839 F. 2d 694, 751–53 (D.C. Cir. 1988). Like the district court, the court of appeals ruled that the revised regulation was contrary to the intent of the Congress and to elementary principles of statutory construction.

On October 31, 1988 (53 FR 43970), OSM proposed to revise the § 761.5 definition of "no significant recreational, timber, economic, or other values incompatible with surface coal mining operations" in conformance with the district court and court of appeals decisions.

B. Sections 785.16, 816.133(d), and 817.133(d)—AOC Variances

Section 515(b)(3) of the Act, 30 U.S.C. 1265(b)(3), generally requires

> * * * all surface coal mining and reclamation operations [to] backfill, compact (where advisable to insure stability or prevent leaching of toxic materials), and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated (unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this Act).

For steep slope mining, section 515(d)(2), 30 U.S.C. 1265(d)(2), imposes an additional requirement for

> [c]omplete backfilling with spoil material * * * to cover completely the highwall and return the site to the approximate original contour * * *.

The term "approximate original contour", as used in these sections, is defined in section 701(2) of the Act, 30 U.S.C. 1291(2), and in the regulations at 30 CFR 701.5 as "that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain * * *."

Sections 515(e)(1) through (e)(6) of the Act, 30 U.S.C. 1265(e)(1) through (e)(6), allow regulatory authorities to permit variances from AOC under certain circumstances. Section 515(e)(1) allows State regulatory programs, and requires Federal regulatory programs, to include procedures for permitting variances for the purposes set forth in section 515(e)(3). Section 515(e)(2) explicitly allows the regulatory authority to grant a variance from the steep-slope requirement of section 515(d)(2).

Accordingly, on March 13, 1979 (44 FR 15372), OSM promulgated at 30 CFR 785.16 a regulation which authorized the regulatory authority to grant a variance, when certain specified conditions were met, from AOC for steep slope mining which does not involve mountaintop removal. This regulation was challenged by the coal industry in In re Permanent Surface Mining Regulation Litigation (In re Permanent I), No. 79–1144, slip op. at 69–70 (D.D.C. February 26, 1980), as unduly restrictive.

In upholding the § 785.16 limitation of AOC variances to steep slope mining, the U.S. District Court for the District of Columbia in *In re Permanent I* said:

> Section 515(e) of the Act contains one variance provision: it applies to steep slopes. Rather than calling for a general variance mechanism, section 515(e)(1) establishes the right to apply for a variance * * *. Section 514(e)(2) restricts the variance application to the contour restoration requirements of subsection 515(d)(2) (steep slopes). Whatever ambiguity may be read into section 515 is dispelled upon examination of the legislative history. *Id.* at 69–70.

Subseqently, OSM reconsidered the legislative history of the Act and concluded "that the section allowing for AOC variances was not limited to steep slope operations." (48 FR 39900, September 1, 1983) Accordingly, OSM expanded the coverage of § 785.16 to permit variances from AOC on both steep and non-steep slope terrain, (48 FR 39892, September 1, 1983) as amended at (48 FR 44780, September 30, 1983). At the same time (48 FR 39892, September 1, 1983) OSM revised its regulations governing postmining land use to include at 30 CFR 816.133(d) criteria for permitting variances in accordance with revised § 785.16. OSM set out its rationale for these revisions in a detailed analysis of the legislative history of section 515(e), and of the issues considered by the district court in In re Permanent I, (48 FR 39899–900, September 1, 1983).

These revised regulations were challenged by the citizen and environmental plaintiffs in In re Permanent II (Round III), 620 F. Supp. at 1574–78. In response, the district court remanded the revised regulations "as inconsistent with law to the extent they permit[ted] a variance beyond the variance for steep slopes embodied in 515(e)(2) [of the Act]." *Id.* at 1577–78.

On November 20, 1986 (51 FR 41952), OSM suspended §§ 785.16 and 816.133(d) insofar as they authorized any variance from AOC outside a steep slope area. The district court remand was appealed by the coal industry, and affirmed by the court of appeals in *NWF* v. *Hodel*, 839 F.2d at 761–64. In affirming the district court, the court of appeals "rel[ied] on the text of sec. 515(e)(2), which specifically states that variances may be granted from the AOC requirements of section 515(d)(2), the steep slope mining provision; it does not, as enacted, state that non-steep slope mining AOC requirements may be waived or excused, and neither does it reference section 515(b)(3), the general AOC provision." *Id.* at 763. The court of appeals found nothing in the legislative history that would change its reading of section 515(e). *Id.* at 764.

On October 31, 1988, OSM proposed to revise § 785.16, and to remove the suspension of that section and of §§ 816.133(d) and 817.133(d), in conformance with the district court and court of appeals decisions (53 FR 43970).

C. Sections 816.74 and 817.74—Disposal of Excess Spoil on Preexisting Benches

Section 515(b)(22) of the Act, 30 U.S.C. 1265(b)(22), specifies the performance standards for disposing of excess spoil from surface coal mining and reclamation activities. Section 516(b)(10) of the Act, 30 U.S.C. 1266(b)(10), provides similar performance standards for underground mining activities.

OSM implements these statutory performance standards at 30 CFR 816.71 through 816.74 for surface mining activities and 30 CFR 817.71 through 817.74 for underground mining activities. Section 816.74 and § 817.74, which are affected by this rule, govern the disposal of excess spoil on preexisting benches.

The 1979 OSM permanent program rules did not specifically provide for the disposal of excess spoil on preexisting benches. Regulations to allow the disposal of excess spoil on preexisting benches were originally proposed by OSM on May 16, 1980 (45 FR 32331). As a result of public comment, these regulations were reproposed in substantially different form on July 20, 1981 (46 FR 37283). Final regulations were issued on April 29, 1982 (47 FR 18553), as 30 CFR 816.75.

On June 8, 1982 (47 FR 24954), as part of an overall revision of its excess spoil regulations, OSM proposed to revise § 816.75. The revised (and renumbered) regulations were promulgated on July 29, 1983 (48 FR 32910), as 30 CFR 816.74.

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Paragraphs (a) through (d) of these rules were essentially the same as the 1982 regulations. A new paragraph, (e), was added to allow the disposal of excess spoil from an upper, actively-mined bench to a lower, preexisting bench by means of gravity transport in certain circumstances.

In July 1986, OSM released a study titled, "Encouraging Abandoned Mine Reclamation Via Remining: A Federal, State and Industry Initiative" for public review and comment. On September 23, 1986, OSM held a public meeting in Washington, DC, to discuss the study's proposed initiatives. Copies of the study and a transcript of the public meeting have been placed in the administrative record for this rule.

One of the initiatives proposed in the study and discussed at the public meeting was "Reclaiming Abandoned Mine Lands with Excess Spoil." Included under this proposal was the disposal of excess spoil on preexisting benches, and, particularly, whether the requirements for such disposal were excessive as compared to the requirements for backfilling and grading. Both in written comments and at the public meeting, commenters pointed out that the differences in the rules were inconsistent with the similarity in topography, geology, and physical and engineering characteristics between preexisting and actively mined benches.

On October 31, 1988, OSM proposed revisions to §§ 816.74 and 817.74 to conform their requirements with the backfilling and grading requirements of §§ 816.102 and 817.102 (53 FR 43970).

D. Sections 816.81, 816.89, 817.81, and 817.89—Disposal of Coal Mine Waste

Recognizing the problems posed by improper disposal of coal waste, the Congress included in the Act a number of performance standards governing waste disposal. These performance standards appear in section 515 of the Act, 30 U.S.C. 1265, for surface mining activities, and in section 516 of the Act, 30 U.S.C. 1266, for underground mining activities.

To implement these statutory performance standards, the 1979 permanent program included at 30 CFR 701.5 a definition of "coal processing waste", and at 30 CFR 816.81 to 816.93 (44 FR 15395 and 15422, March 13, 1979), regulations governing the disposal of coal mine waste. Several changes in the 1979 regulations, which are not relevant to this discussion but are noted for completeness, were made on August 16, 1980 (45 FR 54753), and on November 20, 1980 (45 FR 76932).

On September 26, 1983 (48 FR 44006), OSM promulgated at 30 CFR 701.5 a revised definition of "coal processing waste", and new definitions of "coal mine waste", "impounding structure", and "refuse pile". At the same time (48 FR 44006), OSM promulgated at 30 CFR 816.81, 816.83, 816.84, 816.87 and 816.89, a comprehensive revision of the 1979 regulations. These new regulations were challenged in In re Permanent II (Round III). 620 F. Supp. at 1534–38.

In re Permanent II (Round III) involved two coal waste issues that are dealt with in this rulemaking: (1) Controlled transport of coal waste; and (2) Environmental Protection Agency (EPA) regulations on hazardous wastes.

1. Sections 816.81(a) and 817.81(a)—Controlled Transport of Coal Waste

In In re Permanent II (Round III) the district court rejected §§ 816.81(a) and 817.81(a) as arbitrary and capricious to the extent they allowed end or side dumping of coal mine waste, a mining practice in "hill and valley" topographic areas of placing material at a disposal site by means of gravity. 620 F. Supp. at 1534–35.

On November 20, 1988 (51 FR 41952), OSM suspended §§ 816.81(a) and 817.81(a) insofar as they allowed end or side dumping of coal mine waste. On October 31, 1988 (53 FR 43970), OSM proposed to amend these sections by prohibiting end or side dumping of coal mine waste in regard to final placement disposal, and to simultaneously remove the suspension of the earlier version in conformance with the district court decision.

2. Sections 816.89(d) and 817.89(d)—EPA Regulations on Hazardous Wastes

Section 816.89(d) of the 1983 regulations required that "any noncoal [coal] mine waste defined as 'hazardous' under section 3001 of the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94–580, as amended) and 40 CFR part 261 shall be handled in accordance with the requirements of subtitle C of RCRA and any implementing regulations." (48 FR 44006, 44030 and 44032, September 26, 1983.) As OSM noted in the preamble to the final rule, this was done at the suggestion of the U.S. Environmental Protection Agency (EPA). *Id.* at 44027.

In In re Permanent II (Round III), 620 F. Supp. at 1538, the coal industry challenged this section of the regulations, which the district court remanded for lack of adequate notice and comment. The district court said:

> Industry challenges this rule because it contends that Congress gave the Secretary exclusive responsibility to regulate every kind of waste at coal mines in SMCRA permits, and expressly provided that EPA's regulations for hazardous wastes under RCRA shall not be applied to coal mines.
>
> The court need not spend much time detailing the statutory analysis because it concludes that the rule was promulgated without adequate notice and comment under the APA [(Administrative Procedure Act)] * * *.
>
> The Secretary * * * did not respond to the Industry's APA challenge, but instead attempted to explain that the rule neither broadens nor diminishes the Secretary's rules on the disposal of noncoal [coal mine] waste. Industry takes a vastly different view of the effect of the regulation, and makes a lengthy argument that has nowhere been considered by the Secretary prior to this litigation. Second, Industry is able to point to legal and practical complications that result from the rules. *Id.*

On November 20, 1988 (51 FR 41952), OSM suspended §§ 816.89(d) and 817.89(d). OSM proposed to remove these sections from its regulations on October 31, 1988 (53 FR 43970).

E. Sections 816.100, 816.101, 816.104(a) and 816.105(a)—Contemporaneous Reclamation and Backfilling and Grading

Section 515(b)(16) of the Act, 30 U.S.C. 1265(b)(16), provides for general performance standards to require surface coal mining and reclamation operations to "insure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations."

In addition, section 515(b)(3) of the Act, 30 U.S.C. 1265(b)(3), with two exemptions, provides for general performance standards requiring that "all surface coal mining operations backfill, compact (where advisable to insure stability or to prevent leaching of toxic materials), and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated (unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this Act)."

As described under heading B., above, the phrase "approximate original contour" is defined as "that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain * * *."

The previously noted exemptions to the AOC restoration requirements of section 515(b)(3) pertain to operations

involving either "thin" or "thick" overburden. With respect to thin overburden, section 515(b)(3) provides

> [t]hat in surface coal mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit, and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade, and compact (where advisable) using all available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region.

With respect to thick overburden, section 515(b)(3) provides

> [t]hat in surface coal mining where the volume of ove... ·den is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operations is more than sufficient to restore the approximate original contour, the operator shall after restoring the approximate contour, backfill, grade, and compact (where advisable) the excess overburden and other spoil and waste materials to attain the lowest grade but not more than the angle of repose, and to cover all acid-forming, and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region and that such overburden or spoil shall be shaped and graded in such a way as to prevent slides, erosion, and water pollution and is revegetated in accordance with the requirements of this Act.

The OSM permanent program promulgated on March 13, 1979 included regulations governing contemporaneous reclamation for surface mining activities at 30 CFR 816.100 (44 FR 15411), and backfilling and grading at 30 CFR 816.101, 816.102, 816.104 and 816.105 (44 FR 15411–13. Section 816.100 required reclamation efforts to occur as contemporaneously as practicable with mining operations. Section 816.101 provided time and distance schedules as general requirements for backfilling and grading. Sections 816.104 and 816.105 provided for the thin and thick overburden exemptions authorized by section 515(b)(3) of the Act.

On May 24, 1983 (48 FR 23356), OSM revised its regulations governing contemporaneous reclamation and backfilling and grading. The revision deleted § 816.101 from the regulations, and added to § 816.100 a provision authorizing regulatory authorities to establish schedules for defining contemporaneous reclamation. At the same time the numerical limits on thin and thick overburden that appeared in §§ 816.104 and 816.105, *i.e.*, plus or minus twenty percent, were deleted (48 FR 23355, May 24, 1983).

The 1983 regulations were challenged in In re Permanent Surface Mining Regulation (In re Permanent II (Round II)), 21 ERC 1724, 1744–1746 (D.D.C. October 1, 1984). As a result, the U.S. District Court for the District of Columbia remanded the regulations governing contemporaneous reclamation (§ 816.100; 21 ERC at 1745–46), cut and fill terraces (§ 816.102(g); 21 ERC 1744–45), thin overburden (§ 816.104(a); 21 ERC at 1746), and thick overburden (§ 816.105(a); 21 ERC at 1746). Generally, the district court found that the remanded regulations lacked sufficient guidance to regulatory authorities beyond what was provided in the Act.

OSM appealed the district court ruling, and the court of appeals in *NWF v. Hodel* affirmed the remand with respect to contemporaneous reclamation and thin and thick overburden, but reversed with respect to cut and fill terraces. 839 F.2d at 734–739. The court of appeals said:

> We hold, in accord with the Secretary, that the Act does not automatically and inevitably *require* him to 'flesh out' the prescriptions of sections 515(b)(3) and (b)(16). Nonetheless, we affirm the remand of the contemporaneous reclamation and thick and thin overburden regulations, for only with respect to terracing did the Secretary adequately explain why guidance beyond the statutory requiremetns sensibly could not be given to local regulators.
>
> We note that the Act expressly commands the Secretary to flesh out certain statutory provisions * * *. Nothing in the Act, however, expressly requires the Secretary to flesh out Sections 515(b)(3) or (b)(16). *Id.* at 734. (Emphasis in original).

"In short," the court of appeals continued,

> we read the Act, in light of its legislative history * * * to afford the Secretary discretion, absent an express statutory instruction to regulate, to decide whether fleshing out is appropriate in light of other concerns. Chief among those concerns is the need to accommodate widely varying local conditions that will not admit of a single, nationwide rule * * *. *Id.* at 735. (Footnote omitted).
>
> * * *Under *[Motor Vehicle Mfrs. Ass'n* v.*] State Farm [Mut. Auto. Inc. Co.*, 463 U.S. 29, 43 (1983),] 'the agency must examine the relevant data and articulate a satisfactory explanation' for the revised regulations * * *. The Secretary's accounting for his actions regarding the contemporaneous reclamation, and thin and thick overburden regulations fails to meet this standard; we do not find in the rulemaking record any identified factual basis for, or satisfactory explanation of, the Secretary's conclusion that the variety of local conditions warrants regulations on these matters that simply reiterate the relevant prescriptions in sections 515(b)(3) and (b)(16) of the Act. In contrast, we find that the Secretary adequately explained his revision of the terracing regulation. *Id.* at 735.

In affirming the district court remand of the contemporaneous reclamation regulations, the court of appeals said:

> Section 515(b)(16) of the Act directs mine operators to reclaim land 'as contemporaneously as practicable [to the] mining operations.' In 1979, the Secretary had issued both a general instruction that reclamation occur 'as contemporaneously as practicable with mining operations,' 30 CFR 816.100 (1982), and specific 'time and distance' standards for backfilling and grading spoil at contour and area strip mines, 30 CFR 816.101 (1982). *Id* (Footnotes omitted, brackets in original).
>
> The 1983 revision retained the general prescription in § 816.100, but eliminated § 816.101 entirely * * *. To support his deletion, the Secretary commented 'that "contemporaneous reclamation" is a relative term which must be interpreted by each State on the basis of the mining conditions in its territory.' * * * Because § 816.101 was devised to account for local differences, we do not find entirely satisfying, as an explanation for scrapping the regulations entirely, the observation that '"contemporaneous reclamation" is a relative term' whose precise meaning depends on local conditions. The core deficiency, however, is that the Secretary has published barely more than a *conclusion* that the variety of mining conditions across the nation made § 816.101 of the regulations infeasible. State Farm requires a 'satisfactory *explanation*,' one that informs us *why* he drew his conclusion. The Secretary, in other words, if he determines there is no need to 'flesh out' the statute, must 'flesh out' his explanation so that we can review the rationality of his decision. *Id* at 736. (Footnote omitted, emphasis in original).

In affirming the district court remand of the thin and thick overburden regulations, the court of appeals said:

> Section 515(b)(3) of the Act directs mine operators to return land to its 'approximate original contour.' The provision contains an exemption, however, for situations where the spoil is either so thin or thick relative to the coal seam that there is insufficient or too much spoil to permit return to approximate original contour.' * * * In 1979, the Secretary issued regulations that defined numerically when a variance from the approximate original contour requirement for too little or too much spoil could be granted. 30 CFR 816.104 and 816.105 (1982).
>
> In 1983, the Secretary eliminated the numerical definition, permitting a variance whenever the mine operator demonstrates that spoil is either 'insufficient' or 'more than sufficient' to restore land to its approximate

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original contour. 30 CFR 816.104 and 816.105 (1988). The sole support we have found for this revision is the Secretary's cryptic observation that '[t]he mathematical limit * * * has proved to be impractical because of its preciseness.' * * * We do not know from this unadorned statement why no adjusted (less precise) or alternate nationwide rule was ordered in place of the one found impractical. Absent fuller statement of the reason for the revision, we cannot intelligently determine whether the Secretary has a 'satisfactory explanation' for his action. *Id.* at 736–737. (Footnotes omitted, brackets in original).

OSM proposed to amend §§ 816.100, 816.104 and 816.105, and to add a new § 816.101, on October 31, 1988 (53 FR 43970), in conformance with the district court and court of appeals decisions.

II. Discussion of Final Rule and Comments

A. General Comments

One commenter requested a 60-day time extension to the comment period in order to allow adequate time to evaluate the nationwide effects of the proposed regulations. The comment period originally was scheduled to end on December 30, 1988. OSM acceded in part to this request by granting an extension of the comment period by 30 days. The extended comment period closed January 30, 1989 (53 FR 52433, December 28, 1988). OSM believes that this extension of time was adequate to meet the needs of the reviewers.

B. Section 701.5 Definitions: Significant Recreational, Timber, Economic, or Other Values Incompatible with Surface Coal Mining Operations

The definition of "significant recreational, timber, economic, or other values incompatible with surface coal mining operations" in final § 701.5 was not changed from that in the proposed rule. In response to the court of appeals decision upholding the district court remand of this definition (see related discussion in I. Background, under the heading A. Values Incompatible with Surface Coal Mining Operations), OSM has amended § 701.5 to eliminate the phrase "beyond an operators ability to repair." In accordance with the courts' decisions, an operator's ability to reclaim the land may no longer be used as criterion for determining compatibility under this definition.

One commenter supported the deletion or reclaimability as required by section 522(e)(2) of the Act and court decisions. The commenter cautioned OSM against making further changes to this rule without providing for public comment. OSM thanks the commenter for submitting the cautionary remark. No changes have been made by OSM to § 701.5 following its proposal of October 31, 1988.

C. Section 785.16 Permits Incorporating Variances from AOC: Restoration Requirements for Steep Slope Mining

[Note: For related rulemaking, the reader is directed to heading J., entitled Sections 816.133 and 817.133—AOC Variances]

1. Section Heading

This section heading for § 785.16 has been revised as proposed by adding the phrase "for steep slope mining". The heading reads:

Section 785.16 Permits incorporating variances from approximate original contour restoration requirements for steep slope mining.

The revision is made to emphasize that variances from approximate original contour are authorized only for steep slope surface coal mining and reclamation operations.

2. Section 785.16(a)

Final § 785.16(a) limits the granting of AOC variances to "steep slope, surface coal mining and reclamation operations." The quoted phrase duplicates the corresponding wording of the 1979 regulation and is unchanged from the proposed rule. The November 20, 1986, suspension of § 785.16 which prevented the variance from being applied in non steep slope areas is removed. The variance is itself now limited to steep slope areas.

The language in final § 785.16(a) has been revised from the October 31, 1988 proposed language by adding a cross-reference to § 816.105. This change was made in response to a comment as discussed below.

Thick Overburden

A commenter recommended that § 785.16(a) include a reference to § 816.105, Backfilling and grading: Thick overburden, along with existing references to §§ 816.102, 816.104, 816.107, 817.102 and 817.107 because § 816.105 contains the requirement that not less than AOC be achieved during backfilling and grading in thick overburden situations.

The cross-reference to § 816.105 at § 785.16(a) was inadvertently omitted from the October 31, 1988 proposed rule through a typographical error. A correction to the proposed rule was published (54 FR 19632, May 8, 1989), and the cross-reference to § 816.105 is restored in the final rule.

Restriction to Steep Slope Areas

A commenter stated that the proposed AOC and thin overburden rules do not account for coal operations in which the overburden is composed in part of noncoal economic minerals which are removed prior to coal extraction. In such cases, according to the commenter, insufficient spoil may remain with which to return to AOC. The commenter asserted that section 515(e)(1) of the Act does not restrict the granting of AOC variances to steep slope areas, and imposing that restriction is contrary to the purpose of the Act.

Contrary to the commenter's assertion that section 515(e)(1) of the Act does not limit AOC variances to steep slope areas, the Federal courts have consistently ruled that this section limits AOC variances to steep slope areas (see discussion at I. Background, under heading B. Sections 785.16, 816.133(d), and 817.133(d)—AOC Variances). OSM will discuss the relationship between thin overburden and recovery of noncoal minerals in the section of this preamble that discusses the thin overburden exemption.

Small Depressions

A western commenter suggested that the scope of AOC variances be expanded in non steep slope areas to include small depressions needed to retain moisture for reclamation or approved postmining land uses such as livestock production which were felt to be authorized by section 515(b)(3). The commenter claimed that the alternative to such depressions is the construction of impoundments through the use of earthern dams and that such construction is not as cost effective or beneficial as depression development and increases the potential both for erosion on constructed slopes and spillways and for dam failure.

As previously noted, the courts have interpreted the provisions of section 515(e) of the Act as restricting AOC variances to steep slope areas. A discussion of the small depressions authorized by section 515(b)(3) is not germane to this rulemaking.

Effects on State Programs and Permitted Operations

The same commenter asserted that limiting variances from AOC to steep slope areas without regard to depression development would threaten the effectiveness of his State reclamation program.

In response to this concern, OSM reviewed the commenter's State program's amendment history. OSM found that the State did not have an approved program amendment which corresponded to previous § 785.16 that allowed variances from AOC for non-steep slope areas. Accordingly, limiting variances from AOC to steep slope areas should not adversely affect that program.

Another commenter requested that OSM clarify in the final rule that § 785.16 applies prospectively to operations applying for a permit as of the date a State adopts the rule in their program. The commenter pointed out that, in light of prior OSM regulations authorizing variances from AOC for non-steep slope areas, it would be unjust to apply the final rule retroactively to operations which had previously obtained such variances.

OSM cannot agree with the commenter's recommendation that the final rule be applied prospectively. As previously discussed, in I. Background B. Sections 785.16, 816.133(d), and 817.133(d)—AOC Variances, the district and appeals courts have held that the Act restricts the AOC variance provisions of 515(e) to steep slopes. Thus, OSM has no discretion on the issue as to whether to apply the rule prospectively. On two previous occasions, OSM attempted to implement court decisions prospectively. Both attempts were overturned. *NWF* v. *Lujan*, Nos. 87–1051, 87–1814, and 88–2788, slip op. at 35–51 (D.C.C. February 12, 1990).

OSM further believes the commenter overestimates the impact the final rule will have on the coal industry. Previous § 785.16, which authorized variances from the AOC requirement in non-steep slope areas, was not approved as an amendment to any State program between its promulgation on September 1, 1983, and its suspension by OSM on November 20, 1986.

From the time of promulgation of the previous rule on September 1, 1983 through its suspension on November 20, 1986, that rule was under legal challenge. Even if operators somehow relied upon variances granted under the 1983 rule, there can be little equity in relying upon a position not justified by statute, particularly when such position is contrary to a prior rule upheld by the courts as correctly interpreting the statute. Therefore, in the light of the 1985 district court remand of the 1983 rule as inconsistent with the Act to the extent that they permitted AOC variances in non-steep slope areas, OSM has no legal alternative but to revoke such variances.

D. Sections 816.74 and 817.74 Disposal of Excess Spoil: Preexisting Benches

OSM is revising § 816.74 to conform the requirements for the disposal of excess spoil on preexisting benches with the backfilling and grading requirements of § 816.102 within the framework allowed by section 515(b)(22) of the Act. This action was prompted by public comment to an OSM study on remining initiatives and at a related public meeting. (See related discussion in II. Background, under the heading, C. Disposal of Excess Spoil on Preexisting Benches.)

Comments to the proposed rule suggested that the proposal did not meet the minimum requirements of the Act contained in section 515(b)(22) governing the disposal of excess spoil. In substituting the backfilling and grading sections for the excess spoil disposal references in § 816.74(a), several provisions required by the Act for disposal of excess spoil that do not have counterparts in the backfilling and grading regulations had to be restored. In preparing the final rule, many of those provisions which were formerly invoked through the cross reference to § 816.71 have now been specifically included in § 816.74.

OSM has maintained the principle of utilizing the backfilling and grading requirements wherever possible because preexisting benches are similar to active mining benches in the regulator controls required. The final rules contain no new regulatory requirements beyond the proposal. In some cases, as will be discussed later, proposed changes are being withdrawn because they could not be accommodated under current law.

Final § 816.74 contains 7 paragraphs. Paragraphs (a) and (b), with one exception, are being issued as they were proposed. Final paragraph 816.74 (c) is the result of combining former paragraphs (b) and (c) with certain requirements from formerly cross-referenced provisions of 816.71 which had been proposed to be deleted but are being retained. Proposed paragraph (e) is being issued as paragraph (d) with one change in addition to the paragraph designation. Final paragraphs (e), (f), and (g) have been added to § 816.74 to account for provisions in 816.71 which do not have counterparts in § 816.102. Final paragraph (h) is former paragraph (e) which has been redesignated.

Table 1 contains a cross reference which shows the derivation of each section of the new final rules. This table also contains a column which shows where the change is explained.

TABLE 1.—CROSS REFERENCE, FORMER PROVISIONS VS NEW PROVISIONS, DISPOSAL OF EXCESS SPOIL ON PREEXISTING BENCHES

Former provision	New provision	Section where change is discussed
816.71(a)	816.74(a)	816.74(a)
816.71(a)(1)	816.102(f)	816.74(a)
816.71(a)(2)	816.102(c) and 816.74(c)	816.74(a) and 816.74(c)
816.71(a)(3)	816.74(g)	816.74(g)
816.71(b)(1)	816.74(c)	816.74(c)
816.71(d)	Deleted	816.74(c)
816.71(e)(1)	816.74(b)	816.74(b)
816.71(e)(2)	816.74(c)	816.74(c)
816.71(e)(3)	816.102(g) and 816.74(g)	816.74(a) and 816.74(g)
816.71(e)(4)	816.102(h) and 816.74(f)	816.74(a) and 816.74(f)
816.71(e)(5)	816.102(f)	816.74(a)
816.71(f)(1)	816.74(d)(4)	816.74(d)(4)
816.71(f)(2)	816.43	816.74(d)
816.71(f)(3)	816.74(d)	816.74(d)
816.71(g)	816.102(j) and 816.74(e)	816.74(a) and 816.74(e)
816.71(h)	Deleted	816.74(c)
816.71(i)	816.102(e)	816.74(a)
816.74(b)	816.74(c)	816.74(c)
816.74(c)	816.74(c)	816.74(c)
816.74(d)(1)	816.74(d)(1)	816.74(d)(1)
816.74(d)(2)	816.74(d)(2)	816.74(d)(2)
816.74(e)	816.74(h)	816.74(h)
816.102(a)(4)	816.74(d)(3)	816.74(d)(3)

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1. Sections 816.74(a) and 817.74(a)

Final § 816.74(a) is being issued as proposed. In it, OSM has substituted references to the backfilling and grading rules in place of the references to the general requirements for the disposal of excess spoil.

Former § 816.74(a) authorized the regulatory authority to approve the disposal of excess spoil on preexisting benches "provided that all the standards set forth in § 816.71(a), (b)(1) [and] (d) through (i) . . . are met." The references to § 816.71 contain the general requirements for the disposal of excess spoil. The final rule substitutes references to § 816.102 (c), (e) through (h), and (j) for the § 816.71 references. Section 816.102 contains the backfilling and grading counterparts to the excess spoil disposal regulations of § 816.71. The substitution has the effect of conforming the requirements for disposal of excess spoil on a preexisting bench with the requirements for backfilling and grading spoil on an actively mined bench.

As proposed, OSM is adding a requirement to final § 816.74(a) that the affected portion of the preexisting bench be permitted. Because § 816.71 (a) requires that the disposal of excess spoil occur "within the permit area," and the substituted references to § 816.102 do not refer to the permit area, final § 816.74(a) has been written to explicitly require that "the affected portion of the preexisting bench is permitted." Thus, the final rule requires, as did the former rule, that the affected portion of the preexisting bench be permitted. This provision allows the affected area to be either within the permit area where the excess spoil was generated, or in a separately permitted area.

Section 816.102(c) requires compaction of material where advisable to ensure the stability of the spoil material and to prevent leaching of toxic materials. The section generally replaces the former requirement in § 816.71(a)(2). OSM is adding to a later paragraph (816.74(c)) the requirement in § 816.71(a)(2) that the spoil be placed in a controlled manner.

The reference to § 816.102(e) requires that the disposal of coal processing waste and underground development waste be in accordance with §§ 816.81 through 816.83, except that a long term static safety factor of 1.3 be achieved. This reference replaces the former reference to § 816.71(i) which provided similar requirements.

Section 816.102(f) protects surface and groundwater from the adverse effects of acid, toxic and combustible materials by requiring that exposed coal seams, acid or toxic forming materials and combustible materials be covered. The new reference replaces the reference to §§ 816.71(a)(1) and 816.71(e)(5) which have similar requirements.

Section 816.102(g) allows cut and fill terraces to be constructed in the backfill if certain conditions are satisfied. This reference replaces the provisions of § 816.71(e)(3) which allowed cut and fill terraces on excess spoil disposal areas. Section 816.71(e)(3) contains a requirement that the outslope of the terrace be limited to a maximum slope of 2h:1v, a requirement not in § 816.102(g). As proposed, OSM is deleting this limitation from cut and fill terraces constructed on preexisting benches. The limit on the outslope, as proposed, will be the angle of repose as detailed in § 816.74(d)(2).

The reference to § 816.102(h) allows small depressions to be constructed on the fill material. Section 816.71(e)(4) provided a similar authorization. The one difference between the two provisions is that § 816.71(e)(4) prohibits the construction of permanent impoundments on excess spoil disposal areas. In the preamble to the proposed rule OSM explained:

> although the rule would not explicitly prohibit permanent impoundments, § 816.74(a) does not reference § 816.102(i) which authorizes permanent impoundments in certain circumstances and the regulatory authority would not be authorized to allow permanent impoundments on preexisting benches. (53 FR 43975, October 31, 1988)

In response to a comment, which is addressed in the discussion of final § 816.74(f), OSM is adding a paragraph, final § 816.74(f), to the rule which prohibits permanent impoundments on preexisting benches.

The final rule references § 816.102(j), the backfilling and grading rule for controlling stabilization and erosion. This replaces the requirement in § 816.71(g) which addresses surface area stabilization, erosion and revegetation. The last sentence of § 816.71(g) which requires that "[a]ll disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction" does not have a counterpart in § 816.102 and has been added as proposed as final § 816.74(e).

2. Sections 816.74(b) and 817.74(b)

Section 816.74(b) is being issued as proposed except for one change. The proposed rule required the removal of "vegetation." The final rule has been changed to require the removal of "vegetation and organic materials." This returns the final rule to the former language in § 816.71(e)(1). The change from the proposal results from a comment which noted that the Act at section 515(b)(22)(B) requires the removal of all "organic matter". OSM agrees that there is a distinction between the terms "organic matter" and "vegetation." The final rule, therefore, requires removal of all vegetation and organic material as required by the former rules and the statute.

Final § 816.74(b) requires the removal of all vegetation and organic material from the affected portion of the preexisting bench prior to the placement of the excess spoil; it cross-references the permanent program topsoil performance standards at 30 CFR 816.22; and it allows the use of topsoil substitutes in accordance with § 816.22(b) where insufficient topsoil is available on the preexisting bench.

Formerly, the cross reference to § 816.71(e)(1) provided for the removal of vegetative and organic materials prior to the placement of excess spoil, the removal, segregation, storage and redistribution of topsoil, and the use of organic material as mulch or as an additive to topsoil. These requirements are not in § 816.102, therefore, they have been added as final § 816.74(b).

3. Sections 816.74(c) and 817.74(c) (Proposed as §§ 816.74 (b) and (c) and 817.74 (b) and (c))

Final § 816.74(c) contains six provisions which state—

- The fill shall be designed and constructed using current, prudent engineering practices.
- The design shall be certified by a registered professional engineer.
- Spoil shall be placed only on the solid portion of the bench.
- Spoil shall be placed in a controlled manner and concurrently compacted as necessary.
- The spoil shall achieve a long term static safety factor of 1.3.
- Spoil deposited on any fill portion of a bench shall be treated as excess spoil under § 816.71.

a. *The fill shall be designed and constructed using current, prudent engineering practices.* Final § 816.74(c)'s first sentence tracks the language of § 816.74(c) with the phrase "and constructed" added. As proposed, the specialized inspection requirements in § 816.71(h) for excess spoil are being replaced by the normal inspection requirements for all permitted areas. OSM is also adding through the new rule a requirement that fills be constructed using current, prudent engineering practices. The additional language is included in response to a comment to the proposed rules which expressed concern over the deletion of the inspections formerly required by § 816.74(a)'s reference to § 816.71(h).

The environmental hazards posed by disposing of excess spoil on the solid portion of existing level benches are no greater than the hazards posed by backfilling spoil on an active bench. A regulatory authority inspects backfilling of active benches under the requirements in 30 CFR 840.11. These inspections have proven to be an effective means of controlling against the hazards of backfilling on an active bench and of ensuring compliance with the performance standards and with the reclamation plan. OSM believes that these inspections will be an equally effective means of protecting against the hazards posed by disposing of excess spoil on preexisting benches. Therefore, the final rule replaces the inspections described in § 816.71(h) with the normal inspection process described in § 840.11. OSM continues to believe that the additional safeguards provided in § 816.71(h) are appropriate for those excess spoil disposal areas which pose significantly greater risk of environmental harm such as valley fills and head-of-hollow fills.

b. *The design shall be certified by a registered professional engineer.* The second provision of final § 816.74(c) provides for the certification of the design by a registered professional engineer. OSM did not include this requirement in its proposed rule. However, certification is required for all excess spoil disposal areas by section 515(b)(22)(H) of the Act as was pointed out by a commenter to the proposed rule. Certification was formerly required by cross reference to § 816.71(b)(1). In order to retain the statutory requirement while avoiding cross reference to the excess spoil rules, the sentence is being added to this paragraph.

The new rule uses the term "registered professional engineer" instead of the term "qualified registered professional engineer" which appears in § 816.71(b)(1). In 1983 when § 816.71 was published, the preamble explained that OSM had found some practicing registered professional engineers involved in design and certification of excess spoil fills who did not have sufficient experience to certify all phases of design and construction (48 FR 32913, July 19, 1983). OSM continues to believe that the risks posed by certain types of excess spoil disposal areas require specialized knowledge beyond the minimum standards posed by state certification boards. The particular specialized knowledge needed for excess spoil fills relates to the design of the underdrain system to prevent water infiltration from springs or seeps into the fill and the design of rock toe buttress or keyway cuts to insure stability of the fill on a downslope. However, these risks do not exist when excess spoil is disposed on the solid level foundation required to invoke this rule. For this reason, this rule only provides that the design be certified by a registered professional engineer. OSM does not mean to suggest that the registered professional engineer does not have to be qualifed. OSM intends merely that the qualifications necessary to design the disposal of excess spoil on a solid level pre-existing bench may not necessarily be the same as those required for the design and construction of structures covered by § 816.71(b).

c. *Spoil shall be placed only on the solid portion of the bench.* This requirement was proposed as § 816.74(c). It formerly appeared as §816.74(b). Some concern was expressed by commenters that preexisting benches may contain areas composed of filled areas which may not have the stability of true rock floored benches. The rules being issued today only apply to disposal on solid preexisting benches. Although the requirement for foundation examinations in § 816.71(d) has been deleted as proposed, the professional engineer responsible for designing the fill and the regulatory authority approving the permit are still responsible for ensuring that disposal under these rules is limited to solid portions of the bench. In order to invoke the provisions of this section, the professional engineer's design must certify that the disposal area is a solid bench. Therefore, any foundation analysis necessary to establish the qualification of the proposed disposal site under this section must have already been performed and any additional foundation analysis would be redundant.

d. *Spoil shall be placed in a controlled manner and concurrently compacted as necessary.* The proposed rule did not require, as does the statute in section 515(b)(22)(A) and the former rules in § 816.71(e)(2) placement in a controlled manner and concurrent compaction as necessary. OSM has added these provisions in the final rules as required by the Act. The former rules provide for this requirement in § 816.71(e)(2). Additional discussion on spoil placement and compaction is given in response to a comment at 12.b of this rulemaking.

e. *The spoil shall achieve a long-term static safety factor of 1.3.* Excess spoil disposed on preexisting benches must achieve a long-term static safety factor of 1.3. Obtaining a minimum long-term safety factor of 1.3 is a general requirement for all backfilling and grading as specified in § 816.102 and was a requirement for disposal of excess spoil on preexisting benches in prior § 816.74(c).

f. *Spoil deposited on any fill portion of a bench shall be treated as excess spoil under § 816.71.* The final sentence has been added in response to a comment to provide further guidance on situations in which there are both a solid bench and a fill area to be used to dispose of excess spoil. In such cases the solid portion of a preexisting bench is governed by § 816.74 while the fill portion is governed by § 816.71.

4. Sections 816.74(d) and 817.74(d) (Proposed as §§ 816.74(e) and 817.74(e))

Final § 816.74(d) (1) and (2) require that the preexisting bench be backfilled and graded to achieve the most moderate slope possible which does not exceed the angle of repose, and to eliminate the highwall to the maximum extent technically practical. These two paragraphs appear in the former rules and are being issued as proposed.

Final § 816.74(d)(3) requires, as proposed, that the preexisting bench be backfilled and graded to "[m]inimize erosion and water polution both on and off the site." This paragraph picks up the backfilling and grading provision at § 816.102(a)(4), which is not otherwise referenced by the rule. This requirement protects the hydrologic balance.

Proposed § 816.74(d)(4) required that the preexisting bench be backfilled and graded to "[p]revent water infiltration into the backfill from springs, water courses, or seeps, and ensure stability." This corresponded with the requirements of § 816.71(f) which had been referenced by former § 816.74(a). Final § 816.74(d)(4) has been changed to quote the language from § 816.71(f)(1). The language of final § 816.71(d)(4) is closer to the statutory requirement of section 515(b)(22)(D) than the proposed language. The other two requirements formerly referenced by § 816.74, that is, § 816.71(f)(2) and § 816.71(f)(3), are expressly incorporated into the final rule through the provisions of § 816.74(d)(4). Section 816.71(f)(2) provides only a cross reference to § 816.43 which applies in all cases to permitted areas. Section 816.71(f)(3) provides design standards for underdrains when they are needed. The preamble to the final § 816.71(f)(3) clearly states that:

> these specific requirements apply to all underdrain systems whether or not the disposal area falls within the definition of a

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head-of-hollow or valley fill. (48 FR 32917, July 19, 1983]

(See the preceding discussion of § 816.74(a).) A comment relevant to issues addressed in this paragraph appears under section 12.d of this rulemaking.

5. Sections 816.74(e) and 817.74(e) (Proposed as §§ 816.74(f) and 817.74(f))

Final § 816.74(e) is being issued as proposed with the exception that its section number has been changed as noted above. It requires that

[a]ll disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

This adds as an express provision to § 816.74 the last sentence of § 816.71(g), which was formerly referenced in § 816.74(a). (See preceding discussion of § 816.74(a).)

6. Former Sections 816.74(e) and 817.74(e)

Former § 816.74(e) is redesignated as final § 816.74(h). The proposed rule redesignated § 816.74(e) as § 816.74(g).

7. Sections 816.74(f) and 817.74(f)

Final § 816.74(f) prohibits the construction of permanent impoundments on preexisting benches backfilled with excess spoil. As stated in the preamble to the proposed rule and as mentioned earlier in the discussion of § 816.74(a), it is OSM's policy to prohibit the construction of permanent impoundments on preexisting benches backfilled with excess spoil. However, the proposed rule did not explicitly prohibit impoundments constructed on excess spoil as the former rules did. In response to the suggestion of a commenter, OSM is explicitly stating that policy by adding such a prohibition as § 816.74(f).

8. Sections 816.74(g) and 817.74(g)

Final § 816.74(g) requires that the

[f]inal configuration of the backfill must be compatible with the natural drainage patterns and the surrounding area and support the approved postmining land use.

This section is issued in response to a comment received and comports with the requirements of section 515(b)(22)(G) of the Act. Similar requirements were specified at formerly referenced §§ 816.71(e) (2) and (3), and replicate others found at § 816.102(a)(5) but not cross-referenced. OSM agrees that the provision is needed for completeness and has included it with the final rules.

9. Sections 816.74(h) and 817.74(h) (Proposed as § 816.74(g) and § 817.74(g))

Former § 816.74(e) is redesignated as final § 816.74(i).

10. Conforming Changes to Parts 780 and 784

After review of the proposed rules, OSM determined that additional conforming changes are required. OSM is making three changes to these permitting rules to accommodate the changes proposed and made to the performance standards at final § 816.74.

a. *Section 780.14(c).* OSM is inserting "816.74(c)" into the list of cross referenced sections which are excepted from this rule allowing qualified registered professional engineers, professional land geologists or land surveyors to prepare and certify cross sections, maps and plans. Included among these exceptions is a reference to § 816.71(b) which, after today's rule, no longer applies to the disposal of excess spoil on preexisting benches. The effect of the insertion of § 816.74(c) into § 780.14(c) would be to continue the previous exception afforded by the reference to § 816.71(b). The insertion of § 816.74(c) would require that the cross sections, maps and plans prescribed by § 780.14(c) for the disposal of excess spoil on preexisting benches be certified by a registered professional engineer. This would make consistent the permitting and performance standards certification requirements for such disposal on preexisting benches.

b. *Section 780.35.* Section 780.35 governs the disposal of excess spoil. OSM is adding a phrase to the start of paragraph (b) which will read "[e]xcept for the disposal of excess spoil on preexisting benches,". The change conforms the permitting requirements for disposal of excess spoil on preexisting benches at § 780.35 to the changes made to the performance standards for disposal of excess spoil on preexisting benches at § 816.74. The deletion from § 816.74 of the foundation analysis formerly required by its reference to § 780.71(d), as discussed earlier, obviates the need for a permit application to submit the results of a geotechnical investigation.

Preexisting bench areas used for the disposal of excess spoil are, of course, still subject to all the other permit application requirements that apply to surface coal mining operations including the requirement of § 780.35(a) to submit a description (with maps and drawings) of the disposal area. As discussed earlier, the use of § 816.74 to govern an excess spoil disposal site is limited to those areas which are established as solid, rock floored benches by the design certified by the registered professional engineer.

c. *Section 784.23(c).* OSM is inserting "817.84(c)" into the list of cross referenced sections which are excepted from this rule allowing qualified registered professional engineers, professional land geologists or land surveyors to prepare and certify sections, maps and plans. Included among these exceptions is a reference to § 817.71(b) which, after today's rule, no longer applies to the disposal of excess spoil on preexisting benches. The effect of the insertion of § 817.74(c) and § 784.23(c) would be to continue the previous exception afforded by the reference to 817.71(b). The insertion of § 717.74(c) would require that the cross sections, maps and plans prescribed by § 784.23(c) for the disposal of excess spoil on preexisting benches be certified by a registered professional engineer. This would make consistent the permitting and performance standards certification requirements for such disposal on preexisting benches.

11. Other Comments

A commenter, supportive of the proposed rule, noted that the proposed revisions remove a significant impediment to reclaiming previously mined areas. The commenter also recommended OSM not apply the rule in a manner that would discourage voluntary reclamation by industry through no-cost AML contracts with the State Regulatory Authorities (SRA).

The requirements in this final rule for the disposal of excess spoil material on preexisting benches are designed to parallel the backfilling and grading rules and to provide an incentive for industry to reclaim preexisting areas which otherwise may not be reclaimed through remining. OSM has no intention to apply this rulemaking in a manner that would discourage voluntary reclamation by industry. Any disposal of excess spoil from active mining operations must be performed in accordance with the requirements of this rule and any other applicable requirements of the regulatory program and the Act. The use of no-cost contracts under the Abandoned Mine Lands Program however is not germane to this rulemaking since projects supervised under that program are not subject to jurisdiction under title V.

Several commenters expressed concern about the placement of excess spoil on preexisting benches many preexisting benches are, in part, fill benches resulting from the pushing of material over the outslope. Since fill

benches often lack the stability to support further placement of spoil material, the commenters fear that excess spoil will be placed on the fill portion of the preexisting benches, not just on the rock bench, and will create the potential for mass movement.

Other commenters indicated they believed, in general, that the proposed rules adequately address foundation preparation and placement requirements. Nevertheless, these commenters also emphasized that care should be taken to insure that excess spoil material be placed only on the solid portion of the bench.

OSM recognizes that there are areas where there is material on the downslope from previous mining operations. There are also areas where material from previous operations remains on the bench. Therefore, OSM expressly states in final §§ 816.74(c) and 817.74(c) that this section of the rules only applies when excess spoil is placed on the solid portion of a bench and that § 816.17 applies when excess spoil is placed on a fill portion. OSM has included in the final rule a requirement that the design must be certified by a registered professional engineer. This is a requirement of the former rules but was not included in the proposed rule. OSM is retaining the professional engineer certification because of the need to establish that the foundation of the preexisting bench is a solid foundation.

A commenter stated that the proposed rule would encourage preexisting highwall reclamation wihtout sacrificing environmental quality. However, the commenter recommended inclusion of the contemporaneous requirements of 30 CFR 816/817.100 as well as the time and distance limitations of proposed § 816.101.

OSM agrees the proposed language will encourage the reclamation of preexisting highwalls. While the general principles of contemporaneous reclamation in § 816.100 apply to all surface coal mining operations, the specific schedules in 816.101 for area and contour mines do not apply to disposal of excess spoil on preexisting benches.

Commenters also raised a related issue of seepage and its adverse affect on stability of the backfilled areas and, therefore, strongly recommended OSM create a separate provision for disposal of excess spoil on preexisting benches incorporating the ten (10) requirements described and discussed below.

a. *The disposal area must be permitted and bonded.* OSM agrees. Proposed and final § 816.74(a) require the disposal areas to be permitted. Section 30 CFR 800.11(a) requires that all areas of the permit be covered by a bond prior to issuing the permit.

b. *The spoil must be transported and placed in a controlled manner, compacted concurrently and in such a way as to assure mass stability and to prevent mass movement, as required by section 515(b)(22) of the Act.* Section 515(b)(22)(A) specifies that

spoil [be] transported and placed * * * in position for concurrent compaction and in such a way as to assure mass stability * * *.

OSM agrees it is necessary to require spoil to be placed in a controlled manner and, if necessary for stability, compacted concurrently. The language of the Act does not, however, require concurrent compaction as the commenter alleges. Section 515(b)(22) specifies that

spoil [be] transported and *placed * * * in position for concurrent compaction* and in such a way as to assure mass stability. (emphasis added).

The emphasized language does not specifically require concurrent compaction. It only requires that the spoil be placed in position for concurrent compaction. The manifest concern of this statutory provision is that mass stability be assured. Final § 816.74(c) addresses that concern by providing that the spoil be placed in a controlled manner and compacted concurrently as necessary to attain the required stability. It may further be noted that the general requirements for disposal of excess spoil at § 816.71 have contained a similar provision since their promulgation in 1979. (44 FR 15311, March 13, 1979). Final § 816.74 (c) also provides that the fill shall be designed and constructed, using current, prudent engineering practices to attain a long-term static safety factor of 1.3 for all portions of the fill. Finally, the design must be certified by a registered professional engineer.

OSM also agrees that spoil must be transported and placed on preexisting benches "in such a way as to assure mass stability and to prevent mass movement." This means that under this section of the rules spoil may be placed only over rock floored portions of benches and not over fill areas which extend over the outslope. It also means that preexisting bench surfaces must be prepared prior to placement of the excess spoil. Preparation includes drainage of any existing impoundments and the removal of organic materials and vegetation. The regulatory authority has both the responsibility and the authority to require these actions under §§ 816 and 817.74 of the final rule and the §§ 816 and 817.102(c), (f) through (h), and (j) requirements cross-referenced therein.

c. *All organic material must be removed prior to spoil placement as mandated by section 515(b)(22) of the Act.* OSM agree. The requirement in §§ 816.74(b) and 817.74(b) of the final rule has been amended to add the term organic material to the term vegetation. Prior rules have used the terminology "vegetation and organic material" which is being retained in the final rule.

d. *The disposal area must not contain springs, wet weather seeps, natural water courses or their lateral water discharges (i.e., from auger or old underground mine workings) unless section 515(b)(22)(D) of the Act is complied with.* OSM agrees. The prevention of adverse effects from seepage on a backfill's stability is addressed in §§ 816.74(d)(4) and 817.74(d)(4) of the final rule. The final rule was changed from the proposed language to quote the requirement imposed by the former reference to § 816.71(f)(1). Therefore there is no change to this existing requirement under the new rule.

e. *The design of the spoil disposal area on the preexisting bench must be certified by a qualified registered professional engineer in conformance with professional standards, as mandated by section 515(b)(22)(H) of the Act, and not merely those fills using coal mine waste as proposed.* OSM agrees. Final 816.74(c) provides that backfills must have their design certified by a registered professional engineer. Certification is a statutory requirement in section 515(3)(22)(H) of the Act which, while not in the proposed rule, is included in the final.

f. *Standards for foundation and bench stability analyses for the proposed disposal area must be tailored to the nature of the proposed disposal areas.* OSM agrees that preexisting bench disposal areas may differ depending on age and the mining methods employed during the past mining operation and may require different preparation prior to placing the spoil in the backfill. OSM remains satisfied that the performance standard in § 816.74(c) for the use of prudent engineering practices during design and construction, coupled with a requirement to achieve a long term static factor of safety of 1.3 and limiting the rule to cover only disposal on the solid portion of the bench will provide the necessary regulatory controls to ensure stability. Nevertheless, the regulatory authorities may tailor additional program requirements to their individual needs. Further, nothing will prohibit the regulatory authority from

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conditioning permits with more stringent criteria based on site specific conditions.

g. *There must be an explicit prohibition on the creation of permanent impoundments on preexisting benches.* OSM agrees. Accordingly, proposed §§ 816.74 and 817.74 were revised by adding a new paragraph (f). The final rule expressly prohibits permanent impoundments on the backfill areas of preexisting benches. For further information see II. D. 8., addressing §§ 816.74(f) and 817.74(f), of this final rulemaking.

h. *There must be a requirement that the final configuration of the backfill be compatible with the natural drainage pattern and surroundings and be suitable for its intended uses.* OMS agrees. Since a similar requirement does not exist in §§ 816.102 and 817.102, OSM has added this requirement as §§ 816.74(g) and 817.74(g) of the final rule. As discussed earlier (II. D. 9. addressing §§ 816.74(g) and 817.74(g) of this final rulemaking) paragraph (g) of §§ 816.74 and 817.74 requires the final configuration of the backfill be compatible with the natural drainage patterns of the surrounding area and support the approved post mining land use.

i. *There must be compliance with all other requirements of section 515(b)(22) of the Act.* OSM agrees that compliance with the applicable requirements of section 515(b)(22) of the Act is necessary. Table 2 is a cross reference between the subsection of the Act and the former and new regulatory requirement.

TABLE 2.—CROSS REFERENCE THE ACT VERSUS FORMER AND NEW IMPLEMENTING RULES FOR EXCESS SPOIL DISPOSAL

The Act provision	Former rule	New rule
515(b)(22)(A)	30 CFR 816.71 (a)(2), (e)(2)	30 CFR 816.74(c) and 816.102(c)
515(b)(22)(B)	816.71 (a), (e)(1)	816.74 (a), (b)
515(b)(22)(C)	816.71(f)(1)	816.74(d)(4)
515(b)(22)(D)	816.71(f)(1)	816.74(d)(4)
515(b)(22)(E)*	Not applicable*	Not applicable*
515(b)(22)(F)*	Not applicable*	Not applicable*
515(b)(22)(G)	816.71(e) (2) and (3)	816.74(g)
515(b)(22)(H)	816.71(b)(1)	816.74(c)
515(b)(22)(I)	816.71(a)	816.74(a)

*The Act sections 515(b)(22) (E) and (F) apply to slopes, OSM rules for disposal of excess spoil on preexisting benches only apply to solid portions of existing level benches.

j. *There must be a requirement for inspection of the spoil disposal area prior to placement of spoil to ensure that factors which potentially could lead to the creation of an unstable fill are considered and properly treated.* OSM agrees that factors which could lead to the creation of an unstable fill must be considered prior to approving a permit for the site. Inspection of the spoil disposal area prior to placement of spoil to ensure that such factors are properly treated is a reasonable measure. Final § 816.74(c) requires that

> the fill shall be designed and constructed using current, prudent engineering practices * * * be certified by a registered professional engineer * * * and the spoil be placed * * * to attain a long term static safety factor of 1.3 for all portions of the fill.

These provisions ensure that the design and construction of spoil fills includes the proper treatment of factors which potentially could lead to the creation of an unstable fill.

E. Sections 816.81, 817.81 and 816.89, 817.89 Coal Mine Waste: General Requirements

1. Section 816.81(a)

OSM is amending § 816.81(a) in response to the district court decision concerning end or side dumping of coal mine waste In re Permanent II (Round III), 620 F. Supp. at 1534–38. As proposed, the final rule now requires that coal mine waste be "hauled or conveyed" instead of the former language which only required coal mine waste to be "placed." The final rule adds two additional phrases to the proposed rule. Both changes have been made in response to comments and will be discussed more fully later. First, the phrase, "disposed of in an area other than the mine workings or excavations" has been added to the first sentence of § 816.81(a). Second, the phrase, "with final placement in a controlled manner" has been added to the second sentence of § 816.81(a).

OSM believes the final placement of coal mine waste by end or side dumping is inherently dangerous. As discussed in the preamble to the 1979 rule (44 FR 15209, March 13, 1983), the lack of control over compaction when material is end or side dumped may lead to instability and permeability. Instability or permeability may in turn lead to combustion, erosion, and oxidation of pyrite resulting in water quality degradation. As will be discussed later in greater detail, OSM will allow controlled gravity transport of coal waste when its final placement is accompanied by such additional steps as may be required to meet the performance standards of § 816.81.

OSM maintains, as it did in the preamble to the 1983 rule (48 FR 44011, September 26, 1983), that the controlled gravity transport of coal mine waste is consistent with the Act. The legislative history of the Act does not indicate that the Congress intended OSM to regulate the transportation of coal mine waste to the disposal site.

The practice of transporting coal mine waste to a disposal area through methods other than direct hauling is well documented in the technical literature. (See, for example, Engineering and Design Manual—Coal Refuse Disposal Facilities, pp. 8.22–8.75, by E. D'Appolonia Consulting Engineers for the Mine Safety and Health Administration.) Accepted methods include conveyor belts and tramways, useful in mountainous terrain where haul road construction is difficult or where steep grades decrease the efficiency of individual hauling units. (See id. at p. 8.45; and Pit Slope Manual, "Chapter 9: Waste Embankments," p. 96, by the Canada Center for Mineral and Energy Technology.)

One commenter supported the language in § 816.81(a) of the proposed rule which requires that coal mine waste must be hauled and conveyed and placed in a controlled manner. The commenter stated that the possibility of spontaneous combustion from improper compaction, increased potential for saturation and (stability) failure, and the difficulty of effectively and evenly compacting end dumped material, described in the 1979 preamble, continue to be valid reasons to reject end and side dumping of coal and to require controlled placement after hauling or conveying the waste.

On January 29, 1986, the D.C. Court of Appeals considered the threats of fill instability and spontaneous combustion. *NWF* v. *Hodel*, 839 F.2d 694, 731. The court upheld the 1983 revisions to 30 CFR 816.81 and 816.83 which eliminated the specific absolute design criteria prescribing compaction density, lift thickness and other "how to" rules on the basis of existing performance standards prescribing minimum satisfactory end results. The specific performance standards cited by the court as reasonably promoting fill stability and incombustability were the requirements that the coal mine waste be placed in a controlled manner to prevent combustion and that the disposal facility be designed to obtain a minimum long-term static safety factor of 1.5. 30 CFR 816.81(a)(5) and (c)(2). These performance standards continue in the current regulations.

The provisions of final § 816.81(a)(1) that require coal mine waste to be "hauled or conveyed and placed for final placement in a controlled manner * * *" preclude end and side dumping as a means of final placement of coal waste. As will be subsequently discussed in response to other comments, additional steps following the transportation of coal waste to a storage facility would invariably be required to achieve the performance standards specified in § 816.81.

Four commenters objected to what they described as OSM's intention to regulate the transportation of coal waste by preventing the disposal of coal waste using end or side dumping. Those commenters asserted that Congress did not intend OSM to regulate the transport of coal waste and that the court did not ask OSM to prohibit end or side dumping, but only required OSM to explain why this practice is reasonable. One of these commenters also contended that OSM was reversing its position by preventing controlled gravity transport in the proposed rule. The commenter strongly recommended that OSM reevaluate the proposed rule and repropose it with adequate rationale in the preamble to support the rulemaking.

OSM believes that these commenters, in the main, have misunderstood the meaning of the terms "hauled or conveyed" as applied to this rule. "Hauled or conveyed" includes virtually all forms of transporting coal waste including trucks and systems such as conveyor belts and tramways. OSM is not prohibiting any form of transportation of coal waste but rather is regulating its final placement. OSM rules have sought to protect against the problems associated with coal mine waste which occur in its placement rather than its transportation. OSM is not changing that policy.

One commenter who objected to the proposed change asked whether additional steps taken by the operators following end or side dumping would be acceptable to OSM. The commenter stated that it is unclear from the preamble of the proposed rule whether end or side dumping is prohibited as a method of placement prior to spreading (i.e., transportation) or only as a method of final placement. The commenter suggested that, if end or side dumping is prohibited as a method of final placement and not transportation, OSM insert the phrase "with final placement in a controlled manner" after the terms "hauled or conveyed". This commenter also submitted that the use of conveyor belts and tramways should be considered acceptable methods of controlled placement of coal waste under any final rule.

In response to the commenter's suggestion, the words: "for final placement" have been inserted between the word "placed" and "in a controlled manner" in the final rule. OSM has made the addition to emphasize that the regulatory controls of activities which place the coal mine waste for disposal are distinguished from the regulatory controls for activities which transport coal mine waste to a storage facility. OSM is unaware of any means of transporting coal mine waste to a storage facility which would achieve the performance standards required by § 816.81 for disposal without some additional steps being taken. These steps, however, may vary depending on the design of the disposal area, the individual site conditions, and the characteristics of the waste. However, the performance standards in § 816.81 cannot be achieved by gravity alone, as would be the case if end or side dumping were the means of final placement. Therefore, while there may be a variety of acceptable ways of transporting the coal mine waste to the disposal area, the final placement of the coal mine waste must be controlled so that the disposal achieves all the performance standards in § 816.81. Thus, final § 816.81 will read

> [c]oal mine waste shall be hauled or conveyed and placed for final placement in a controlled manner to * * *.

One commenter stated that the rule does not apply to the material disposed in the mine workings or excavations as indicated in sections 515(b)(11) and 516(b)(4) of the Act. The commenter maintained that the rule applies only to the surface disposal of coal mine waste in areas other than the mine workings and excavations and recommended that appropriate rule language be added to this section to make that clear.

The commenter is correct. OSM does not intend for this rule to apply to material disposed in the mine workings or excavations. The language in proposed § 816.81(a) has been changed by adding the phrase "disposed of in areas other than the mine working or excavation." The new text is taken from the statutory limitation on the application of these rules contained in sections 515(b)(11) and 516(b)(4) of the Act.

2. Sections 816.89(d) and 817.89(d) EPA Regulations on Hazardous Waste

As proposed, OSM is deleting paragraph (d) from §§ 816.89 and 817.89. As stated in the Background section, these paragraphs were added to the regulations in 1983 and suspended in 1986 when the district court ruled that OSM had failed to follow the notice and comment provisions of the Administrative Procedures Act. The paragraphs required that any noncoal mine waste defined as "hazardous" under section 3001 of the Resource Conservation and Recovery Act (RCRA) must be handled in accordance with subtitle C and any implementing regulations of that Act.

OSM received two comments on the deletion. A commenter opposed the deletion on the basis that OSM was obligated to coordinate the implementation of the Act with other Federal laws, including RCRA, and must continue to require compliance by permit applicants with the applicable waste laws. Another commenter supported the deletion stating that the Act operates in concert with, but not in place of, other environmental laws and regulations.

Section 816.89(d) was originally issued at the request of EPA. In reassessing § 816.89(d) for the purpose of this rulemaking, OSM has decided to delete the paragraph for the following reasons. The incorporation by reference of certain RCRA provisions in § 816.89(d) would have required OSM and State regulatory authorities to assume permitting, inspection and enforcement responsibilities over those RCRA provisions which are assigned by Congress to EPA. Assuming those responsibilities is not required by the Act nor is it a task for which the Congress appropriates funds to OSM or the State regulatory authorities.

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Enforcing RCRA provisions requires regulatory units structured and staffed appropriate to the task, a task significantly different from regulating the environmental impacts of coal mining *per se*.

An operator's duties under RCRA regarding disposal of hazardous noncoal waste will continue to be regulated by EPA. OSM, for its part, will continue, consistent with its jurisdiction under the Act, to coordinate its regulatory program with EPA to facilitate the implementation of RCRA regulations.

F. Section 816.100 Contemporaneous Reclamation

As proposed, the final sentence in § 816.100 has been deleted. This change conforms § 816.100 to the addition of § 816.101. The sentence being deleted authorized the regulatory authority to establish schedules for defining contemporaneous reclamation. This authorization is being replaced with the guidance contained in § 816.101.

G. Section 816.101 Backfilling and Grading: Time and Distance Requirements

On October 31, 1988, OSM proposed § 816.101 which contained four paragraphs. Section 816.101(a) contained time and distance schedules for contour and area mines as well as provisions for the regulatory authority to establish schedules for other mining methods. Section 816.101(b) allowed the regulatory authority to submit alternative schedules in lieu of those in section (a). Section 816.101(c) defined the parameters under which alternative schedules submitted under section (b) would be evaluated. Section 816.101(d) allowed the regulatory authority to extend the backfilling and grading time limit for a portion of the permit area if the permittee demonstrated through the permit application that additional time was necessary.

On April 17, 1990, OSM published a Notice of Inquiry in the **Federal Register** to provide an opportunity for public comment on whether additional regulations were needed to control the contemporaneous reclamation of multiple seam and mountaintop removal mining operations (55 FR 14319, April 17, 1990). OSM published the Notice of Inquiry because of comments received on this proposed rule and reports of problems in enforcing contemporaneous reclamation at multiple seam and mountaintop sites. A further discussion of this notice of inquiry appears in section G. 5., Notice of Inquiry on Multiple Seam Mining and Mountaintop Removal Operations, of this preamble.

The final rule contains two paragraphs. As proposed, final § 816.101(a) provides the time and distance schedules for area and contour mines and requires regulatory authorities to establish schedules for other mining methods permitted in their State. Final § 816.101(b) authorizes the regulatory authority to approve extensions to time for rough backfilling and grading for a permit area or a portion of a permit areas, similar to proposed § 816.101(d). OSM is withdrawing proposed § 816.101(b) which would have allowed a regulatory authority to submit schedules in lieu of those in § 816.101(a). Proposed § 816.101(c) detailing the criteria to evaluate alternative schedules has likewise been withdrawn. As will be discussed later, OSM believes the language of the final rule, which is very similar to the rule issued in 1979, provides sufficient guidance to States, while allowing sufficient flexibility to deal with any State- or site-specific problem.

1. Section 816.101(a) Time and Distance Schedules

Final § 816.101(a) contains time and distance schedules for contour and area mining and requires the regulatory authority to establish schedules for other methods of surface mining. For contour mining, § 816.101(a)(1) requires the completion of backfilling and grading within 60 days or 1,500 linear feet following coal removal. For area mining, § 816.101(a)(2) requires completion within 180 days following coal removal, and not more than four spoil ridges behind the pit being worked, the spoil from the active pit constituting the first ridge. Sections 816.101(a) (1) and (2) are identical to the proposed rule. Under § 816.101(a)(3), backfilling and grading schedules for other mining methods shall be established by the regulatory authority. Any schedule established by the regulatory authority must incorporate an inspectable standard between coal removal and the completion of backfilling and grading.

One commenter wanted OSM to clarify that an operation completing the "rough" backfilling and grading stage, but not the final grading stage, would be considered to be in compliance with the time and distance requirements. The commenter also mentioned that final grading must at times be combined with topsoil placement and seeding in order to minimize erosion. Because the 1979 Federal rules recognized this distinction (44 FR 15411, March 13, 1979), the commenter requested OSM clarify the issue in this final rule.

OSM intends backfilling and grading to mean that all of the spoil material has been placed in the mined-out area and the backfilled material is ready for final-grading as specified in § 816.102(j). Thus, backfilling and grading does not include final grading, placing topsoil, and seeding. The 1979 preamble and rules used the phrase "rough backfilling and grading" but did not explain the meaning of the term "rough". Since it was not explained in 1979, OSM chose not to include this wording in the proposed rule. In response to the commenter's request for clarification, OSM has adopted language similar to the 1979 rules; therefore, final § 816.101 reads " * * * rough backfilling and grading for surface mining * * *."

A commenter stated that time standards should be eliminated since the distance limitations were felt to be sufficient to ensure contemporaneous reclamation. The commenter believes that the elimination of time standards would eliminate difficulties in inspection related to tracking the number of days between coal removal and backfilling and grading.

OSM disagrees with the comment. The establishment of distance limits without concomitant time limits would not sufficiently ensure that contemporaneous reclamation would occur. For instance, an operator could cease coal extraction prior to proceeding four spoil ridges or 1,500 linear feet. In circumstances such as these, where a distance limit would not apply, a time limit would ensure that reclamation would proceed properly. Alleged enforcement difficulties do not constitute sufficient reason for OSM to retreat from this important performance standard. Moreover, required monthly inspections make it unlikely that the time limits will be abused to any great degree.

The commenter also stated that the term "coal removal" also needs to be defined, so that whatever time standard is applied, it is applied at a clearly defined point. The commenter stated that it is not clear if the time period starts when coal is removed from a point or if it starts when coal removal is completed for a cut or pit.

In a similar vein, several commenters asked OSM to clarify the phrase "following coal removal" for area mining so as to assure that reclamation follows disturbance of the land surface in a timely manner. Citing Save Our Cumberland Mountains, Inc. (Rith Energy), 106 IBLA 70 (1989), these commenters objected to OSM's explanation in that case that the 180-day deadline for backfilling and grading did

not start until after all minable coal was removed from the mine cut. The commenters claimed the OSM's interpretation of "following coal removal" to mean following final removal of all coal from a pit, rather than from any point in the cut or pit, is in contradiction with the Secretary's 1979 interpretation and Congressional intent. Therefore, the commenters contended that reclamation of an area must follow within 180 days of the disturbance of land and coal removal at any point of land within the mine cut, rather than following removal of all coal within the mine cut or pit. On the other hand, another commenter suggested applying the 180 day limit only after final coal removal to ensure that the last pit or cut is reclaimed in a timely fashion.

The time and distance schedules for area and contour mining begin following the completion of coal removal. The phrase "following coal removal" means that no minable coal is left in a particular area of the mine. In the Rith Energy case, referred to by the commenter, the board held that backfilling and grading attaches to an area of land at the time of coal removal, and not at the time of final coal removal from a mining cut. *Id.* 106 IBLA at 80. Therefore, the key to enforcing time and distance schedules is to focus on the area of land rather than coal removal. Practical application of this concept requires that time and distance schedules be calculated from a moving "point", i.e., a small area, of a coal seam from which coal is being removed. In the case of multiple seam mining, the moving "point" would be established as coal is extracted from the lowest coal seam.

A commenter claimed that there is no justification given for the numerical time standards in §§ 816.101(a)(1) and (a)(2) (60 and 180 days, respectively, for contour and area mining). The commenter noted that contemporaneous reclamation is so dependent upon site-specific conditions (e.g., type of mining, equipment, geology, climate, speed of mining), that it cannot be tied to such specific time constraints as OSM proposed. Therefore, the commenter wanted OSM to outline steps for determining contemporaneous reclamation for each operation on a site-by-site basis. In the commenter's view the permit is the place to specify time standards because site and operating conditions are too variable for generic Federal or State rules to be appropriate.

Similarly, another commenter objected to the reimposition of nationwide time and distance requirements for completion of backfilling and grading operations at surface coal mining operations. The commenter stated that OSM deleted identical 1979 regulations in 1983 on the premise that the variety of local conditions in mining States precluded the imposition of national standards, and because the Act does not mandate uniform, nationwide time and distance requirements. The commenter pointed out that the legislative history of the Act fails to mention the necessity for nationwide time and distance requirements to define contemporaneous reclamation. The commenter asserted that it is apparent from the 1988 appeals court decision in *NWF* v. *Hodel*, 839 F.2d 694, (D.C. Cir. 1988) that the Act does not require a national time and distance standard. Therefore, OSM was asked to remove what the commenter described as the arbitrary reference to the nationwide standards, which bear no resemblance to on-the-ground conditions or to OSM's prior position.

The same commenter argued that OSM failed to provide adequate justification in the proposed rule for the reversal in agency position. The commenter insisted that OSM's reliance upon the States' requests for guidance on time and distance schedules and various State programs' adoption of the 1979, or more stringent standards, does not constitute sufficient justification for the rule change. The commenter claimed OSM's reliance upon such State action was flawed because (1) the States had to adopt the 1979 rules to keep their programs consistent with the rules of the Secretary and (2) the States have not wanted to change their rules while the issue remained in the courts and unsettled.

The commenter recommended OSM adopt rules which would allow States to set their own requirements for contemporaneous reclamation based on local conditions and would contain flexible standards to accommodate the distinct circumstances of individual surface coal mining operations.

In establishing a regulatory framework for implementing the Congressional prescriptions for contemporaneous reclamation at section 515(b)(16) OSM has, in the past, adopted two alternatives. In 1979, the regulations provided a nationwide limit on time and distance for contour and area mines and allowed for time limit extensions for specific permit areas in accordance with § 780.18(b)(3). In 1983, OSM removed the time and distance limitations from the national program and provided regulatory authorities with the responsibility for determining schedules for their individual States. The legal challenge to this second alternative resulted in the district court's remand of the regulations for failure to provide States with sufficient guidance in defining contemporaneous reclamation beyond that which was provided in the Act. In Re Permanent Surface Mining Regulation Litigation (II), No. 79–1144 (D.D.C. Oct. 1, 1984).

In affirming the remand with regard to contemporaneous reclamation, the circuit court held that, while the Act does not automatically and inevitably require the Secretary to "flesh out" the contemporaneous reclamation prescriptions of section 515(b)(3) and (b)(16), he did not adequately explain why guidance beyond the statutory requirements sensibly could not be given to local regulators. *NWF* v. *Hodel*, 839 F.2d 694, (D.C. Cir. 1988).

This final rule has a sufficient basis and purpose to be valid. The commenter who asserted that the Secretary failed to justify his reversal from his 1983 rules misconstrues the posture of the issue. The position taken in the 1979 rules on time and distance limits is the only one to which the current rule may properly be weighed against. The Secretary is not now required to justify a reversal from a 1983 policy which the court invalidated. OSM has always intended that there will be an inspectable contemporaneous reclamation standard which will apply to every mining site. In final § 816.101(a) OSM has reestablished national standards for area and contour mines (§ 816.101(a) (1) and (2)) and required the States to set State standards for other types of mining (§ 816.101(a)(3)).

Final § 816.101 is modeled on the 1979 rules. The time and distance schedules for contour and area mining in final § 816.101(a) are identical to those in the 1979 rule. The preamble to that rule (44 FR 15226, March 13, 1979), explained how these schedules were developed. Among other things, OSM stated that "(i)t is necessary to establish a maximum time limit for backfilling and grading to ensure that toxic-forming material in the spoil will not remain exposed to surface runoff over an indefinite period of time. 44 FR 15226 (1979). In light of the substantial additional experience gained with these rules at the State and Federal level since 1983, OSM has reconsidered their utility for providing workable national time and distance standards for which reasonable accommodations can be made for local differences. In this light, OSM has affirmed its earlier conclusions and modeled final § 816.101(a)(1) and (2) after the 1979 rules.

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Despite the commenter's assertions of the States' motivation for retaining the 1979 schedules, States, when given the option of removing them from their rules in 1983, did not do so. OSM believes the State rules were not changed because the 1979 provisions are viable and workable for a great majority of contour and area mines. These provisions and schedules simplify mine planning, bonding and inspecting and provide a uniform playing field across State lines for operations which are substantially similar in scope. Permit applicants have found retention of State program provisions governing time and distance schedules as an aid to complying with the permit information requirements of § 780.18. Many permits cite the program time and distance schedule as a means of demonstrating their adherence to backfilling and grading reclamation timetable requirements. In short, where appropriate, nationwide standards have substantial administrative benefits for all concerned.

To the degree that flexibility is required, the final rule in § 816.101(b) provides for such flexibility based upon specific showings by a permittee. This allows for site-specific conditions to be taken into account. For types of mining other than area and contour operations, the State is required to establish State standards in accordance with § 816.101(a)(3). OSM has not defined national standards for mining operations other than area and contour mines. Limits for the remaining types of mining operations, if and where they are conducted, are to be determined on a state-by-state basis. OSM believes that contemporaneous reclamation standards for these operations are best defined by the State regulatory authority.

One commenter complained that, although area mining can be conducted either as a truck and shovel or as a dragline operation, the standard for contemporaneous reclamation of area mines in § 816.101(a)(2) is suitable only for dragline operations. The commenter did not explain the basis for this opinion. OSM disagrees with this comment. In the case of area mining that uses truck and shovel operations, the four spoil ridge criteria would not apply but the time schedule would be appropriate to ensure contemporaneous reclamation.

On a similar tack, another commenter claimed the time and distance requirements for area mining are not adequate in all cases. This commenter wanted the rules to clarify that the 180-day period would not include periods when the operation is temporarily shut down through circumstances beyond the control of the operator (e.g., as a result of labor disputes, weather, etc.).

The provisions of 30 CFR 816.131 on temporary cessation are to be used for temporary shutdown. Anytime an operation is in temporary cessation for 30 days or more because of circumstances such as adverse weather or labor problems or similar reasons the person conducting the surface mining activity is required to notify the regulatory authority. Since the 30 day provision of § 816.131 is within either the 60 or 180 day provisions of § 816.101, there should be no conflict with this provision and the contemporaneous reclamation time limits.

Another commenter questioned the use of "or" instead of "and" in § 816.101(a)(1). The commenter wondered if OSM really intended the time and distance requirements for backfilling and grading in contour mines to be alternatives (i.e., within 60 days or 1500 linear feet). Instead, the commenter suggested that "and" would be more suitable since its use would parallel its use in § 816.101(a)(2) for area mines where backfilling and grading are to be completed with both a specified time and a specified distance.

There is no reason to change the conjunction of § 816.101(a)(1) from "or" to "and". OSM believes that the meaning of this provision is clear that backfilling and grading must be completed within either 60 days or 1500 linear feet following coal removal, whichever comes first.

To have interpreted § 816.101(a)(1) otherwise would have opened its provisions to grave abuse. As previously noted, an operation could have ceased mining short of 1500 linear feet and never have been required to backfill and grade the disturbed area. Such a scenario would conflict with the intent of the Act to compel reclamation as "contemporaneously as practicable" (section 515(b)(16)), "and * * * as possible." (Sec. 102(e)).

2. Section 816.101(a)(3) Schedules for Other Mining Methods

Final § 816.101(a)(3) requires the regulatory authority to establish backfilling and grading schedules for other surface mining methods. This section requires a schedule if mining other than contour or area mining is being conducted within the State. Section 816.101(a)(3) has been revised from the proposed rule to clarify that schedules for mining methods other than contour or area mines also apply where OSM is the regulatory authority.

OSM interprets these provisions as requiring the regulatory authority establish schedules that are inspectable standards.

Because of the diversity which exists in types of operations and areas where such operations are conducted, it is infeasible to suggest that OSM establish national schedules for all methods of operations. The conditions placed on the regulatory authority are—if the regulatory authority is going to approve permits for mining method other than contour and area mining—then the regulatory program must contain an inspectable contemporaneous reclamation standard for the type of mining proposed.

At a public meeting, a commenter asked OSM to state in the preamble to the final rule that schedules for other mining methods are required, and not merely authorized, under proposed § 816.101(a)(3). OSM acknowledges that the preamble to the proposed rule was not clear as to whether the development of schedules was required or merely authorized. However, the rule language, both proposed and final, is clear that regulatory authorities shall provide schedules for mining methods other than area and contour mining. OSM believes that final § 816.101(a)(3) is clear that such schedules are required and not merely authorized.

A commenter asked what OSM will do in Tennessee (a Federal program State) as a result of proposed § 816.101(a)(3) which provides for the establishment through the State program approval process of schedules for operations which are neither contour nor area operations. OSM agrees that the proposed rule language did not make it clear how, or whether, mining operations requiring schedules established by the regulatory authority are to be treated when OSM is the regulatory authority. Consequently, § 816.101(a)(3) was revised to remove the word "state" from the phrase "state regulatory authority". OSM will establish the schedules for operations on Federal or Indian lands or a Federal Program State where OSM is the regulatory authority. For example, 30 CFR 942.816(e) contains the time and distance schedules for the State of Tennessee.

3. Extensions of Time Final § 816.101(b) (Proposed as § 816.101(d))

Final § 816.101(b), authorizes the regulatory authority to extend the time allowed for backfilling and grading for the entire permit area or for a specified portion of the permit area if the permittee demonstrates, in accordance with 30 CFR 780.18(b)(3), that additional time is necessary. OSM recognizes that

not all mining operations can meet a time or distance limit set on either a national or State basis. However, the extension must be requested by the permit applicant, who must demonstrate its necessity in the permit application and it must be approved by the regulatory authority as a part of the permit process.

The 1979 rules at § 816.101(a)(1) and (3) for contour and area strip mining, respectively, made similar provision for granting additional time (44 FR 15411, March 13, 1979). The preamble to those rules indicated the regulatory authority may allow additional time for rough backfilling and grading if, for example, the permittee demonstrates that the time limit established under § 816.101(a) is too restrictive because of local conditions (44 FR 15226, March 13, 1979).

One commenter stated that the flexibility provided in proposed § 816.101(d) (Final § 816.101(b)) was needed to handle unexpected delays due to unique site specific conditions such as weather, equipment, and to protect the safety of the miners. However, the commenter also insisted that the regulations in proposed § 816.101(d) should allow the regulatory authority to grant extensions for the entire permit area, and not limit such extensions to specific portions of the permit area. Also, another commenter wanted OSM to include special provisions for seasonal operations that backfill the previous mining area during the next operating period which may be 9 months later. The commenter stated that no backfill is available until the next pit is started and that the economics of coal extraction would be destroyed by having to backfill the existing pit before the start of the next pit.

OSM adopted the suggestion to modify final § 816.101(b) to allow the regulatory authority to grant time extensions for the entire permit area instead of limiting that authority to a specified portion of the permit area. Final § 816.101(b) is to be used by the regulatory authority to grant an extension because the operator cannot meet either the national standard for area or contour mines or the State standard for other types of mines because of the site-specific conditions of the permit area. In addition, these extensions are granted through the permit process in accordance with § 780.18(b)(3). To reiterate an earlier point, extensions of time are not granted to accommodate temporary shut downs resulting from adverse weather, market condition, labor problems or similar reasons. These conditions are governed under the temporary cessation provisions of 30 CFR 816.131.

A commenter suggested adding a new subsection which would allow for a specific backfilling and grading schedule as part of a postmining land use change. The commenter wanted the regulatory authority to have the flexibility to approve schedules for specific land uses on a case-by-case basis. The commenter maintained that postmining land uses such as industrial land for utility ash disposal require detailed schedules for backfilling and grading which are outside of the norm.

Another commenter recommended extending the time and distance requirements where noncoal mining operations occur within the same pit area. The commenter cited an example where sand and clay are extracted above a seam of coal (lignite) by a different company than the one mining the lignite. Additional flexibility is required, the commenter stated, where more than one operation has valid rights in the same pit area.

OSM believes these comments illustrate why flexibility in the time and distance requirements for backfilling and grading the permit area is needed. The time and distance requirements for a permit area as those described above may be extended under final § 816.101(b) for either an entire permit area or for a portion of a permit area, whichever is appropriate, depending on specific circumstances.

4. Withdrawal of Proposed §§ 816.101(b) and 816.101(c)

OSM has withdrawn proposed §§ 816.101(b) and 816.101(c) in the final rule. Proposed § 816.101(b) would have allowed a regulatory authority to establish, subject to the State program approval process, alternative backfilling and grading schedules in lieu of those prescribed in § 816.101(a). Proposed § 816.101(c) would have allowed regulatory authorities to incorporate one of two standards governing the completion of backfilling and grading in any schedule it established. The two standards were either a time interval or distance function.

As indicated in the preamble to the proposed rule, OSM considered providing this option in response to comments received during outreach briefings in which States, in their comments regarding backfilling and grading guidelines, asked to retain discretion in determining alternative schedules. These proposed provisions would have given State regulatory authorities the flexibility to adopt backfilling and grading schedules which meet State-specific conditions, but would not have established a standard for OSM to measure the sufficiency of the alternate schedules.

These proposals are withdrawn in favor of the final rules promulgated today. OSM believes the final rule's context of national schedules for area and contour mines, State schedules for other types of mining, and permit-based exemptions, when required, for special circumstances accomplishes the goal of ensuring contemporaneous reclamation while, at the same time, providing sufficient flexibility to adapt to special circumstances. After a careful analysis of the comments to the proposed rule, OSM has concluded that all potential problems with time and distance schedules could be accommodated under the final rule's structure and the additional flexibility provided in the proposed rule was unnecessary.

5. Notice of Inquiry on Multiple Seam Mining and Mountaintop Removal Operations

On April 17, 1990, OSM published a Notice of Inquiry (NOI) in the Federal Register to provide an opportunity for public comment on whether additional regulations were needed to control the contemporaneous reclamation of multiple seam and mountaintop removal mining operations (55 FR 14319, April 17, 1990). OSM published the Notice of Inquiry because of comments received on this proposed rule and reports of problems in enforcing contemporaneous reclamation at multiple seam and mountaintop sites. According to the Notice, OSM was receiving reports from field inspectors about mine sites which appeared not to be contemporaneously reclaimed. In response to those complaints, OSM solicited public comments on whether to add information requirements to the permitting rules which would require specific data on the methods of mining and schedule for completion.

Promulgation of time and distance schedules in this rule is not intended to resolve the concerns raised in the NOI concerning contemporaneous reclamation at multiple-seam operations. The issues identified in the NOI were primarily associated with enforcing contemporaneous reclamation requirements prior to the commencement of the removal of coal from the lowest permitted seam. This rule does sufficiently address, however, what it was intended to cover: Contemporaneous reclamation of sites were coal removal from the lowest permitted seam has begun. Solutions to the issue raised in the April 1991 NOI are thus beyond the scope of the

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October 31, 1988 proposal, and need not be part of the basis and purpose of this rule.

Having examined the issues raised in the NOI in light of the comments received on the NOI, OSM has concluded that other existing OSM rules are sufficient to address the issues raised in the NOI. Therefore, OSM has decided not to initiate further rulemaking at this time. The sufficiency of other existing rules is explained in the following discussion. The discussion covers OSM permitting, enforcement, and oversight rules.

How Existing Regulations Ensure Contemporaneous Reclamation.—a. *Permitting.* The permitting regulations in 30 CFR 780.18(b)(1) require a detailed timetable for the completion of each major step in the reclamation plan. Paragraph 780.18(b)(3) requires a plan for backfilling, soil stabilization, compacting and grading that shows the final surface contours of the proposed permit area. In the Notice of Inquiry, OSM considered amending the permitting information regulations to require more detailed information on the mining methods and backfilling and grading sequence and schedule. Three States commenting to the Notice of Inquiry believed that OSM has adequate regulations in place to ensure contemporaneous reclamation of multiple seam and mountaintop removal operations. One commented that further rulemaking is unnecessary and not likely to accomplish the intended goal.

One commenter to the Notice of Inquiry expressed the opinion that a review of the current regulations shows that OSM has already promulgated a very comprehensive set of requirements for the permitting of surface coal mining operations to assure contemporaneous reclamation. The commenter further stated that the provision of § 780.18(b)(3) empowers State regulatory authorities to require that the operator fully remove all seams of coal and accomplish reclamation in a timely manner, in accordance with the timetable required in each permit.

OSM agrees with the commenter. In addition to § 780.18, under which operators have to submit a reclamation plan for approval, 30 CFR 780.12 and 780.14 require the submittal of operation plans and maps describing the projected progress and sequence of the permitted operation. See, e.g., § 780.14(b)(2). Plans submitted and approved under all of these sections become part of the approved permit and are enforceable by the regulatory authority. Thus regulatory authorities are empowered to assure that mining operations proceed in a timely manner and that reclamation be performed contemporaneously.

To the extent that the lack of time and distance requirements may have contributed to problems, under the final rule States are required to have time and distance schedules for all types of mining being permitted within their State. Area and contour mines have national time and distance schedules (§ 816.101(a)(1)&(2)) and other types of mines must have State schedules (§ 816.101(a)(3)).

b. *Enforcement.* OSM regulations at § 840.11(b) require four complete and 12 partial inspections of all mine sites yearly. Inspectors visiting a mine monthly can readily ascertain whether mining and reclamation is progressing contemporaneously, and whether an operator is following the approved operation and reclamation plans. Thus enforcement of the permit conditions that an operator must follow should assure that reclamation will occur in a timely manner.

c. *Oversight.* In accordance with § 842.11(a)(1), OSM has the authority to conduct inspections of surface coal mining and reclamation operations to monitor and evaluate the administration of the approved State programs.

A commenter to the Notice of Inquiry addressed the issue of additional oversight. Since the commenter believed that the issue of timely reclamation was confined to one State, they recommended that a better course of action appears to be oversight where the problem is allegedly occurring. The commenter can be assured that if additional oversight efforts are indicated by OSM's evaluation of a State's implementation of its program, these efforts will be undertaken.

d. *Multiple seam mining.* As stated earlier, the final rules provide for the application of time and distance schedules to contour and area mines with more than one seam. States may elect to have a separate schedule for multiple seam mines, which are also area or contour mines, if the State schedule adheres to the limits in § 816.101(a) (1) or (2) for those mines.

Two commenters stated that the proposed regulations failed to address multiple-seam mining. For a variety of reasons the commenters asked that the final rules include explicit standards for applying time and distance limitations to multiple-seam operations in both contour mining and mountaintop removal operations.

The same commenters contended OSM must provide, as required by the district court in its remand of the regulations governing contemporaneous reclamation, justification for its failure to establish minimum national backfilling and grading standards for multiple seam mining whether in area and contour mines or mountaintop removal operations. The commenters claimed the States, in the absence of Federal standards, will establish the weakest standards possible in order to assist their local industry.

A commenter to the Notice of Inquiry stated that when the proposed rule on time and distance schedules is adopted it will establish standards applicable to all types of mining operations, including multiple seam and mountaintop removal. The commenter continued by making the observation that many of the multiple seam coal mining operations occur within contour or area operations for which specific time and distance requirements are already in place.

As stated earlier, the time and distance schedules for contour and area mines apply whether the mine is a single or multiple seam situations. When these schedules are applied to mines with more than one seam, the time or distance standard will start with the removal of coal within the last seam. Also, if a permit applicant believes that the national schedules for contour and area mines which apply to a particular multiple seam operation are unworkable they have the ability to request a site-specific extension to the time limit under § 816.101(b).

Commenters to the proposed rules, pointed out a situation where a lower seam is permitted without any intention of mining the seam. The commenters asserted that after mining the next to last seam, the operator applies for inactive status and leaves the mountain with no reclamation.

With regard to the above comment, the time and distance limits apply when the requirement to reclaim begins. Until coal removal occurs at an area, the particular limits in § 816.101(a) do not apply. However, OSM has rules which govern not only contemporaneous reclamation but also temporary and permanent cessation and bonding all of which may apply to the type of situation described. Operators are required to follow their approved plans of operation. If they do not, the regulatory authority can step in to ensure that the rules are complied with and the violations based upon misrepresentations in such plans are corrected.

e. *Mountaintop removal operations.* Commenters to the proposed rule stated that OSM must provide justification for its failure to establish minimum national backfilling and grading standards for

mountaintop removal operations as required by the district court in its remand or to explain its failure to do so as required by the circuit court.

OSM disagrees with the characterization of the October 1984 district court opinion and the 1988 Circuit court opinion. In their discussion of contemporaneous reclamation, both courts focused on the removal of time and distance limits of area and contour mines. Neither discussion requires the establishment of such standards for mountaintop removal where such standards did not exist previously.

The commenters also maintained that the States would establish the weakest standard possible to help their industry in the absence of Federal standards. They stated that OSM must provide some national minimum standard for mountaintop removal operations so that the Congressional mandate of contemporaneous reclamation is met. In a meeting with OSM, these same commenters claimed that the rules should require State regulatory authorities to establish mountaintop removal requirements which specifically contain standards for contemporaneous reclamation.

The above commenters also acknowledged the difficulty of establishing time or distance limitations for mountaintop removal operations. They said that backfilling and grading operations and the resulting time and distance limitations for these operations will vary depending on whether multiple seams are involved and whether the spoil is being stored on the mountain, or placed entirely in fills. In either case, they concluded, the area would be graded or the surface prepared for revegetation.

Mountaintop removal operations are outside the scope of this rulemaking. However, in response to comments it is noted that the regulatory controls for mountaintop removal operations are based on the premise that the exemption from AOC is the result of an approved, specific post mining land use. The key to timely reclamation therefore is linking the mining and reclamation with the attainment of the post mining land use.

Post mining land use is, of course, evaluated on a site-by-site basis. Land use is determined by the needs of the local area as well as the compatibility of the use with the surrounding environment. Since the mountaintop removal exemption is based on the approved post mining land use and the reclamation is tied to that approval, the reclamation would be coordinated with the development of that land use.

The decision on how to achieve contemporaneous reclamation and how to inspect the permitted site to ensure adherence to timely reclamation is provided for in the 1987 amendment to the permitting requirements for mountaintop removal operations (52 FR 39182, October 21, 1987).

§ 785.14(c)(1)(iii)(F) requires the applicant for a mountaintop removal permit to attach a schedule to the reclamation plan as to integrate the mining operation and the reclamation with the post mining land use. To approve a permit for mountaintop removal operations a regulatory authority must evaluate that schedule against the general prescriptions covering contemporaneous reclamation in § 816.100. Following the approval of the permit, the schedule forms the inspectable basis to ensure the operation is being contemporaneously reclaimed.

In summary, mountaintop removal operations are subject to the contemporaneous reclamation standards in § 816.100. That performance standard is achieved through a site-by-site analysis of the requirements for attaining the post mining land use which formed the basis for the exemption from AOC in the permit. Each permit for mountaintop removal operations must contain a schedule, attached to the reclamation plan, which integrates the mining operation and the reclamation with achieving the post mining land use. Mine sites will be inspected against that schedule to ensure that the site is being contemporaneously reclaimed.

H. Thin or Thick Overburden

The final rules for §§ 816.104 and 816.105 remain unchanged from the rules proposed. OSM has reorganized former §§ 816.104 and 816.105 so that paragraph (a) of these sections defines thin overburden and thick overburden, respectively, and paragraph (b) contains the corresponding backfilling and grading performance standards. For convenience, the definitions of thin overburden and thick overburden in §§ 816.104(a) and 816.105(a), respectively, are discussed concurrently under the following subheading. The backfilling and grading performance standards for thin and thick overburden in § 816.104(b) and § 816.105(b), respectively, are then discussed under consecutive separate subheadings.

1. Section 816.104(a)—Definition of Thin Overburden; Section 816.105(a)—Definition of Thick Overburden

In preparing the proposed rule on §§ 816.104(a) and 816.105(a) OSM considered moving the definitions of thin overburden and thick overburden to the definition section in 30 CFR 701.5. However, because of their limited application, OSM decided to not do so. However, the term "spoil", which is used in both definitions, continues to be defined at § 701.5.

Thin overburden is defined in final § 816.104(a) as the condition where there is

> insufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. Insufficient spoil and other waste materials occur where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is less than the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not: (1) [c]losely resemble the surface configuration of the land prior to mining; or (2) [b]lend into and complement the drainage pattern of the surrounding terrain.

Final § 816.105(a) defines thick overburden as

> more than sufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. More than sufficient spoil and other waste materials occur where the overburden thickness times the swell factor less the settlement exceeds the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not: (1) [c]losely resemble the surface configuration of the land prior to mining; or (2) [b]lend into and complement the drainage pattern of the surrounding terrain.

Both definitions contain three standards incorporating the requirements of sections 515(b)(3) and 701(2) of the Act. The first is whether there is sufficient overburden and, in the case of thin overburden, other waste materials, to restore the approximate original contour. The second standard is whether the resulting surface configuration closely resembles the land prior to mining. The third is whether the drainage pattern of the reclaimed area complements the surrounding terrain. OSM has adopted these standards for the reasons discussed below.

The exemptions in section 515(b)(3) of the Act are based on whether there is sufficient overburden to restore the land to AOC. Thin overburden means there is too little material to restore AOC; thick overburden means there is too much. Thus, whether a permit area qualifies for a thick or thin overburden exemption fundamentally depends on the definition of AOC.

Section 701(2) of the Act and the corresponding regulation at 30 CFR 701.5 define AOC as

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that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area including any terracing or access roads, [1] closely resembles the general surface configuration of the land prior to mining and [2] blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated * * *.

Under this definition the two principal standards for determining AOC are whether the surface configuration of the reclaimed area would (1) closely resemble the surface configuration of the land prior to mining; and (2) blend into and complement the drainage pattern of the surrounding terrain. In restoring AOC, both of these standards must be met.

The final definitions of "thin overburden" and "thick overburden" incorporate these two standards from the definition of AOC as the measure of whether the spoil and other available waste materials are sufficient to restore AOC. The definitions apply these two standards for AOC in the disjunctive, using the term or, because a failure to meet either standard would prevent the restoration of AOC, and thus establish the occurrence of thin or thick overburden.

As it did in 1983, OSM rejects the precise numerical limits which were included in the 1979 rules as being impractical for evaluating the utility of the overburden and other available waste materials to restore AOC. Defining thin and thick overburden in precise numerical terms is impractical because of the diversity of surface configurations and drainage patterns to which the final rule would apply throughout the coal mining regions of the United States. Depending on the circumstances, inflexible numerical limits might be either too loose or too stringent, and seldom ideal.

OSM's first attempt at defining thick or thin overburden relied solely on the percentage change in overburden volume. In 1977, the proposed initial program rules prescribed thick or thin overburden as existing when the final thickness exceeded 1.2 of the initial thickness for thick overburden and when the final thickness was less than 0.8 of the initial thickness for thin overburden. (42 FR 44931, September 7, 1977). However, as acknowledged in the preamble to that rule, while OSM was using a numerical value as the standard, the primary purpose of the rules were to ensure that sites met approximate original contour. (42 FR 44921, September 7, 1977).

OSM altered its position in the final initial program rule, acknowledging at that time, that the precise numerical limits were insufficient by themselves. This position is discussed in the preamble to the final initial program rule.

Some concern was expressed over the distinction between thick and thin overburden. In particular, reviewers were concerned that not all operations needed modification of the requirement to achieve AOC. The regulations have been revised to require that whether thin or thick overburden conditions exist operations must achieve AOC whenever possible. (42 FR 62645, Dec. 27, 1977).

The final initial program rule (30 CFR 715.14(f)) added the following sentence to the proposed initial program rule.

The provisions of paragraphs (g) and (h) [performance standards for thick and thin overburden] apply only when operations cannot be carried to comply with the requirements of paragraph (a) of this section to achieve AOC.

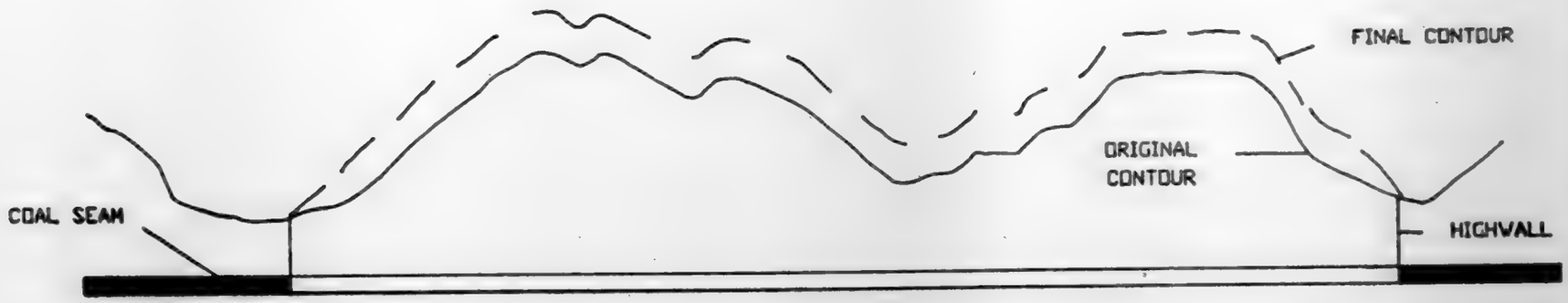
The 1979 final permanent regulatory program rules mirrored the final initial regulatory program by using the two pronged test, i.e., greater than 1.2 and achieve AOC or less than 0.8 and achieve AOC. By 1982, OSM recognized that this artificially constructed two pronged test was impractical. The numerical limits were only one part of a complex, site specific determination as to whether or not an operation could achieve AOC. In addition to being only one part of the decision there are situations in which the sites could qualify under the numerical limit but not meet the AOC criteria.

Figures 1 and 2 give examples of where reliance on precise numerical limits to determine whether thin or thick overburden conditions exist would lead to improper regulatory determinations as to whether the disturbed land should be returned to AOC. Figure 1 shows a situation where more than 20% of the premining volume has been lost but AOC can still be obtained. Figure 2 shows a situation where the post mining volume is more than 20% greater than the premining volume but AOC can still be obtained. In these situations an exemption from AOC for thin or thick overburden based on a precise 20% numerical limit would be inappropriate.

BILLING CODE 4310-05-M

AVAILABLE FILL > 120%

NO AOC VARIANCE NECESSARY



SCALE
H: 1" = 1000'
V: 1" = 100'

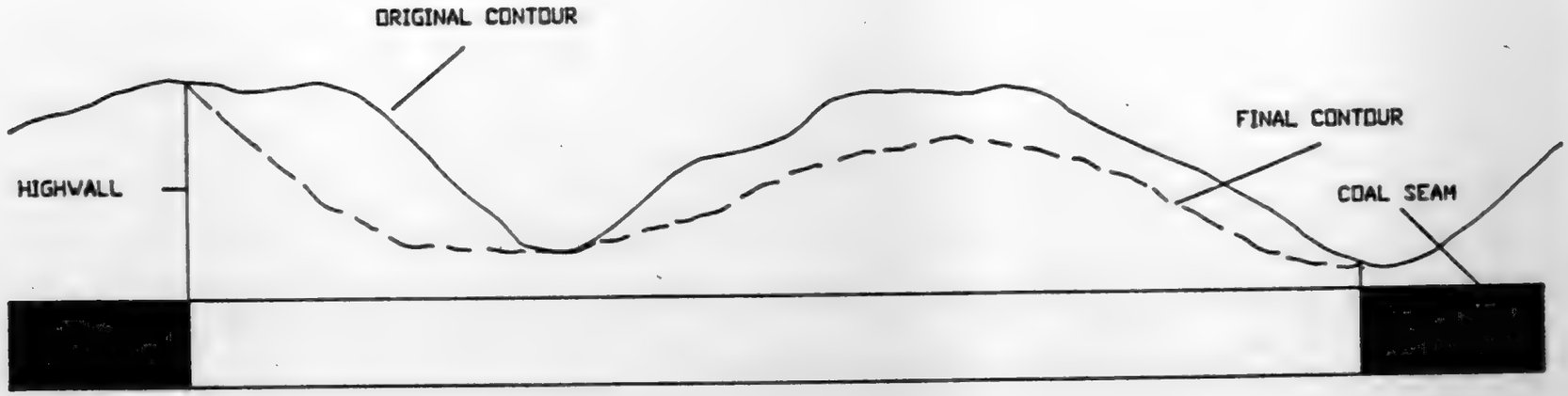
BACKFILLING & GRADING
THICK & THIN OVERBURDEN

FIGURE 1

BILLING CODE 4310-05-C

AVAILABLE FILL < 80%

NO AOC VARIANCE NECESSARY



SCALE

H: 1" = 1000'

V: 1" = 100'

BACKFILLING & GRADING
THICK AND THIN OVERBURDEN

FIGURE 2.

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Evaluations of post-mining surface configuration and drainage pattern involve subjective professional judgments that must be custom-tailored to approximate the terrain at any given mine. The responsible regulatory authority is best equipped to determine the sufficiency of overburden to restore AOC in its own jurisdiction on a case-by-case basis. For these reasons OSM believes it is preferable to define "thin overburden" and "thick overburden" in a way so as to conform with the standards of the Act, while giving the regulatory authority sufficient discretion to apply these standards in a sound professional manner to the diverse conditions which prevail at individual mines in each particular State.

One commenter supported OSM's deletion of the numerical standards for thin and thick overburden and the rationale that no set of rigid numerical standards could possibly apply to all types of terrain. Another commenter supported OSM's functional approach to defining thin or thick overburden and deleting the numerical limitations of the 1979 regulations. The latter commenter also claimed that section 515(b)(3) of the Act provides all the guidance regulators can be given, and that OSM should adopt that explanation in order to avoid excessive detail in the performance standards.

Another commenter objected to deleting the numerical limitations contained in the 1979 regulations for determining what constitutes thin and thick overburden. This commenter asserted that OSM's proposed rule failed to justify deletion of the 1979 standards because OSM had not presented data showing these standards to be unworkable. The commenter claimed that such data is what the Court of Appeals had in mind in remanding the 1983 regulations on thin and thick overburden.

As discussed earlier, a precise 20% numerical limit calculated from a comparison of pre and post mining volumes is an impractical test for determining the existence of a thin or thick overburden exemption because such a percentage limit cannot always accommodate the diversity of surface configurations and drainage patterns to which the final rule applies. The appropriateness of a thin or thick exemption from the requirement to return to AOC must instead be evaluated on the ability of available overburden, following backfilling and grading, to return the surface configuration of the reclaimed land to that closely resembling the surface configuration of the land prior to mining and to blend into the drainage patterns of the surrounding terrain.

Another commenter proposed that the thin overburden minimum standards be revised to include overburdens which are "thin" because of the removal of noncoal minerals by other operators prior to coal extraction. The commenter asserted that coal mining operations that follow noncoal mineral removal should not be excluded from the relaxed original contour reclamation requirements available to other surface coal mining operations where the overburden is naturally thin.

OSM's rules do not require the excavation of additional pits for the sole purpose of obtaining material to backfill the original pit. A situation such as described by the commenter should be evaluated under the previously mined area provisions of § 816.106, since, presumably, the noncoal mining operation would not be a "surface coal mining operation subject to the standards of the Act."

2. Section 816.104(b)—Thin Overburden Performance Standards

Final § 816.104(b) contains the performance standards that apply where thin overburden, as defined in § 816.104(a), occurs within the permit area. The section requires the permittee at a minimum to (1) use all spoil and other waste materials available from the entire permit area to attain the lowest practicable grade, but not more than the angle of repose; and (2) meet the general backfilling and grading requirements of 30 CFR 816.102 (a)(2) through (j).

The performance standards in § 816.104(b) (1) and (2) are identical to those adopted by OSM in 1983 (48 FR 23369, May 24, 1983) and are identical to those proposed. They will complement the general backfilling and grading performance standards in § 816.102. Section 816.104(b)(1) implements the thin overburden exemption found at section 515(b)(3) of the Act, while § 816.104(b)(2) stipulates that all of the general requirements for backfilling and grading of § 816.102 are applicable except for § 816.102(a)(1), which requires the restoration of AOC, and § 816.102(k), which provides exemptions, including the thin overburden exemption that do not apply. Thus, the only practical difference between the general performance standards in § 816.102 and those for thin overburden in § 816.104(b) (1) and (2) is that the latter section establishes priority for the use of limited spoil and waste material in reclamation.

A commenter expressed concern about the requirement to place spoil so as to achieve the lowest practicable grade in §§ 816.104(b) and 816.105(b). The commenter interpreted lowest practicable grade to mean flat and pointed out that flat land may reduce landscape diversity, which reduces wildlife habitat, and may be geomorphically incompatible with upstream and downstream drainage characteristics. The commenter stated that § 515(b)(3) of the Act has a built-in contradiction (i.e., requires spoil be backfilled to "the lowest practicable grade" in order to achieve "an ecologically sound land use compatible with the surrounding region"). The commenter wanted the regulations to resolve this conflict and require backfilling in a manner compatible with the approved postmining land use and surrounding undisturbed land.

OSM agrees that "flat land" may not resemble the general configuration of the land prior to mining or complement the drainage pattern of the surrounding terrain. Nevertheless, the provisions of § 816.104(b) and 105(b), as taken from section 515(b)(3) of the Act, require the backfilled area to attain the lowest practicable grade, but not more than the angle of repose. The phrase "lowest practicable grade" does not require flat land. It requires the lowest grade that is compatible with the surrounding terrain. In describing reclamation in a thin overburden situation, Congress indicated that the final regrading of the mine site should resemble the original landscape. H.R. No. 95–218, 95th Cong., 1st Sess. 103 (1977). Thus, the regulations already do what the commenter wishes them to do.

3. Section 816.105(b)—Thick Overburden Performance Standards

Final § 816.105(b) contains the performance standards that apply where thick overburden, as defined in § 816.105(a), occurs within the permit area.

Where the reclamation plan indicates the occurrence of thick overburden, § 816.105(b) requires the permittee at a minimum to (1) restore the approximate original contour and then use the remaining spoil and other waste materials to attain the lowest practicable grade, but not more than the angle of repose; (2) meet the general backfilling and grading requirements of 30 CFR 816.102(a)(2) through (j); and (3) dispose of any excess spoil in accordance with 30 CFR 816.71 through 816.74.

The performance standards in § 816.105(b)(1) through (3) are identical to those adopted by OSM in 1983 (48 FR 23369, May 24, 1983), and as proposed. They complement the general backfilling

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and grading performance standards in § 816.102. Section 816.105(b)(1) implements the thick overburden exemption found at section 515(b)(3) of the Act, while § 816.105(b)(2) provides that all of the general requirements for backfilling and grading of § 816.102 are applicable. Section 816.105(b)(3) references the former regulations governing the disposal of excess spoil, and ensures that all spoil and other waste materials that would exceed the angle of repose are disposed of in accordance with the requirements of the Act.

The only practicable differences between the general performance standards in § 816.102 and those for thick overburden in § 816.105(b) are that under the latter (1) after AOC is restored the permittee may continue to use any remaining spoil and other waste materials to attain the lowest practicable grade, but not more than the angle of repose; and (2) the permittee must dispose of any excess spoil in accordance with § § 816.71 through 516.74.

I. Sections 816.133(d) and 817.133(d) AOC Variances

Final § 816.133(d), which is identical to proposed § 817.133(d), contains criteria for granting a variance from the requirement to restore disturbed areas to their approximate original contour. Included in paragraph (d)(1) is the stipulation that the variance be granted in accordance with § 785.16, thus limiting such variances to steep slope areas. Final § 785.16 renders the previous suspension of § 816.133(d) void, as it was based upon the suspension of former § 785.16.

A commenter recommended that § 816.133(d) be further clarified by adding language to limit its application to steep slope mining operations.

OSM disagrees. There is no need for additional language in § 816.133(d) to clarify that the section is limited in applicability to steep slope mining operations. That fact is indicated by the cross-reference to § 785.16 found at § 816.133(d)(1). Surface coal mining operations which qualify for a variance from AOC requirements under this section are obligated to adhere to § 785.16 which limits variances for steep slope operations.

III. Procadural Matters

A. Effect in Federal Program States and on Indian Lands

The rule applies through cross-referencing to those States with Federal programs. This includes California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. The rule also applies, through cross-referencing, to Indian lands under the Federal program for Indian lands as provided in 30 CFR part 750.

B. Effect on State Programs

Following promulgation of this final rule, OSM will evaluate permanent State regulatory programs approved under section 503 of the Act to determine whether any changes in these programs will be necessary. If the Director determines that certain State program provisions should be amended in order to be made no less effective than the revised Federal rules, the individual States will be notified in accordance with the provisions of 30 CFR 732.17.

C. Federal Paperwork Reduction Act

This rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

D. Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior has determined that the proposed rule is not a major rule under the criteria of Executive Order 12291 (February 17, 1981), and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule would affect a relatively small number of surface coal mining operations. The rule does not distinguish between small and large entities. The economic effects of the proposed rule are estimated to be minor, and no incremental economic effects are anticipated as a result of the rule.

E. National Environmental Policy Act

OSM has prepared environmental assessments and has made a finding that the final rules will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). The environmental assessments are on file in the OSM Administrative Record, room 5131, 1100 L Street, NW., Washington, DC.

F. Agency Approval

Section 516(a) requires that, with regard to rules directed toward the surface effects of underground mining, OSM must obtain written concurrence from the head of the department which administers the Federal Mine Safety and Health Act of 1977, the successor to the Federal Coal Mine Health and Safety Act of 1969. OSM has obtained the written concurrence of the Assistance Secretary for Mine Safety and Health, U.S. Department of Labor.

G. Author

The final author of this rule is Mr. Dennis M. Hunter, Jr., Chief, Research and Technical Standards Branch, Office of Surface Mining Reclamation and Enforcement.

List of Subjects

30 CFR Part 761

Historic preservation, National forests, National parks, National trails system, National wild and scenic rivers system, Surface mining, Underground mining, Wilderness areas, Wildlife refuges.

30 CFR Part 780

Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 784

Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 785

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Accordingly, 30 CFR Parts 761, 780, 784, 785, 816 and 817 are amended as set forth below:

Dated: October 21, 1991.

David O'Neal,

Assistant Secretary—Land and Minerals Management.

PART 761—AREAS DESIGNATED BY ACT OF CONGRESS

1. The authority citation for part 761 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 761.5 [Amended]

2. Section 761.5 is amended by removing from the definition of Significant recreational, timber, economic, or other values incompatible with surface coal mining operations the phrase "beyond an operator's ability to repair or restore."

PART 780—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENT FOR RECLAMATION AND OPERATION PLAN

3. The authority citation for part 780 continues to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, as amended; sec. 115 of Pub. L. 98–146, 30 U.S.C. 1257; 16 U.S.C. 470 *et seq.*; and Pub. L. 100–34.

§ 780.14 [Amended]

4. Section 780.14 paragraph (c) is amended by adding a comma and the citation "816.74(c)" after the citation "816.73(c)" in the first sentence.

§ 780.35 [Amended]

5. Section 780.35 paragraph (b) introductory text is amended by adding the words "except for the disposal of excess spoil on pre existing benches," to the beginning of the sentence.

PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

6. The authority citation for part 784 continues to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, as amended; sec. 115 of Pub. L. 98–146, 30 U.S.C. 1257; 16 U.S.C. 470 *et seq.*; and Pub. L. 100–34.

§ 784.23 [Amended]

7. Section 784.23 paragraph (c) is amended by adding a comma and the term "817.74(c)" after the term "817.73(c)" in the first sentence.

PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

8. the authority citation for part 785 is revised to read as follows:

Authority: 30 U.S.C. 1201 et seq., as amended, and Pub. L. 100–34.

§ 785.16 [Amended]

9. The suspension of § 785.16, published in the **Federal Register** of November 20, 1986 (51 FR 41961), is removed effective January 16, 1992.

10. Section 785.16 is amended by revising the heading and the first sentence of paragraph (a) to read as follows:

§ 785.16 Permits incorporating variances from approximate original contour restoration requirements for steep slope mining.

(a) The regulatory authority may issue a permit for non-mountaintop removal, steep slope, surface coal mining and reclamation operations which includes a variance from the requirements to restore the disturbed areas to their approximate original contour that are contained in §§ 816.102, 816.104, 816.105, and 816.107, or 817.102 and 817.107 of this chapter. * * *

* * * * * * *

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

11. The authority citation for part 816 continues to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 et seq.), and Pub. L. 100–34, unless otherwise noted.

§ 816.74 [Amended]

12. Section 816.74 is amended by redesignating paragraph (e) as paragraph (h); by adding paragraphs (e), (f) and (g); and by revising paragraphs (a), (b), (c), and (d), to read as follows:

§ 816.74 Disposal of excess spoil: Preexisting benches.

(a) The regulatory authority may approve the disposal of excess spoil through placement on a preexisting bench if the affected portion of the preexisting bench is permitted and the standards set forth in §§ 816.102(c), (e) through (h), and (j), and the requirements of this section are met.

(b) All vegetation and organic materials shall be removed from the affected portion of the preexisting bench prior to placement of the excess spoil. Any available topsoil on the bench shall be removed, stored and redistributed in accordance with § 816.22 of this part. Substitute or supplemental materials may be used in accordance with § 816.22(b) of this part.

(c) The fill shall be designed and constructed using current, prudent engineering practices. The design will be certified by a registered professional engineer. The spoil shall be placed on the solid portion of the bench in a controlled manner and concurrently compacted as necessary to attain a long term static safety factor of 1.3 for all portions of the fill. Any spoil deposited on any fill portion of the bench will be treated as excess spoil fill under § 816.71.

(d) The preexisting bench shall be backfilled and graded to—

(1) Achieve the most moderate slope possible which does not exceed the angle of repose;

(2) Eliminate the highwall to the maximum extent technically practical;

(3) Minimize erosion and water pollution both on and off the site; and

(4) If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the fill design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the fill, and ensure stability.

(e) All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(f) Permanent impoundments may not be constructed on preexisting benches backfilled with excess spoil under this regulation.

(g) Final configuration of the backfill must be compatible with the natural drainage patterns and the surrounding area, and support the approved postmining land use.

* * * * * *

13. Section 816.81 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 816.81 Coal mine waste: General Requirements.

(a) *General.* All coal mine waste disposed of in an area other than the mine workings or excavations shall be placed in new or existing disposal areas within a permit area, which are approved by the regulatory authority for this purpose. Coal mine waste shall be hauled or conveyed and placed for final placement in a controlled manner to—

* * * * *

14. Section 816.89 is amended by removing paragraph (d).

15. Section 816.100 is amended by removing the last sentence.

16. Section § 816.101 is added to read as follows:

§ 816.101 Backfilling and grading: Time and distance requirements.

(a) Except as provided in paragraph (b) of this section, rough backfilling and grading for surface mining activities shall be completed according to one of the following schedules:

(1) Contour mining. Within 60 days or 1,500 linear feet following coal removal;

(2) Area mining. Within 180 days following coal removal, and not more than four spoil ridges behind the pit being worked, the spoil from the active pit constituting the first ridge; or

(3) Other surface mining methods. In accordance with the schedule established by the regulatory authority. For States with approved State programs, schedules are subject to the State program approval process.

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(b) The regulatory authority may extend the time allowed for rough backfilling and grading for the entire permit area or for a specified portion of the permit area if the permittee demonstrates in accordance with § 780.18(b)(3) of this chapter that additional time is necessary.

17. Section 816.104 is revised to read as follows:

§ 816.104 Backfilling and grading: Thin overburden.

(a) *Definition.* Thin overburden means insufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. Insufficient spoil and other waste materials occur where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is less than the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not:

(1) Closely resemble the surface configuration of the land prior to mining; or

(2) Blend into and complement the drainage pattern of the surrounding terrain.

(b) *Performance standards.* Where thin overburden occurs within the permit area, the permittee at a minimum shall:

(1) Use all spoil and other waste materials available from the entire permit area to attain the lowest practicable grade, but not more than the angle of repose; and

(2) Meet the requirements of §§ 816.102(a)(2) through (j) of this part.

18. Section 816.105 is revised to read as follows:

§ 816.105 Backfilling and grading: Thick overburden.

(a) *Definition.* Thick overburden means more than sufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. More than sufficient spoil and other waste materials occur where the overburden thickness times the swell factor exceeds the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not:

(1) Closely resemble the surface configuration of the land prior to mining; or

(2) Blend into and complement the drainage pattern of the surrounding terrain.

(b) *Performance standards.* Where thick overburden occurs within the permit area, the permittee at a minimum shall:

(1) Restore the approximate original contour and then use the remaining spoil and other waste materials to attain the lowest practicable grade, but not more than the angle of repose;

(2) Meet the requirements of §§ 816.102(a)(2) through (j) of this part; and

(3) Dispose of any excess spoil in accordance with §§ 816.71 through 816.74 of this part.

§ 816.133 [Amended]

19. In § 816.133, the suspension of paragraph (d) is removed.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

20. The authority citation for part 817 continues to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 et seq.), and Pub. L. 100–34, unless otherwise noted.

§ 817.74 [Amended]

21. Section 817.74 is amended by redesignating paragraph (e) as paragraph (h); by adding paragraphs (e), (f) and (g); and by revising paragraphs (a), (b), (c), and (d), to read as follows:

§ 817.74 Disposal of excess spoil: Preexisting benches.

(a) The regulatory authority may approve the disposal of excess spoil through placement on a preexisting bench if the affected portion of the preexisting bench is permitted and the standards set forth in § 817.102 (c), (e) through (h), and (j), and the requirements of this section are met.

(b) All vegetation and organic materials shall be removed from the affected portion of the preexisting bench prior to placement of the excess spoil. Any available topsoil on the bench shall be removed, stored and redistributed in accordance with § 817.22 of this part. Substitute or supplemental materials may be used in accordance with § 817.22(b) of this part.

(c) The fill shall be designed and constructed using current, prudent engineering practices. The design will be certified by a registered professional engineer. The spoil shall be placed on the solid portion of the bench in a controlled manner and concurrently compacted as necessary to attain a long term static safety factor of 1.3 for all portions of the fill. Any spoil deposited on any fill portion of the bench will be treated as excess spoil fill under § 817.71.

(d) The preexisting bench shall be backfilled and graded to—

(1) Achieve the most moderate slope possible which does not exceed the angle of repose;

(2) Eliminate the highwall to the maximum extent technically practical;

(3) Minimize erosion and water pollution both on and off the site; and

(4) If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the fill design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the fill, and ensure stability.

(e) All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(f) Permanent impoundments may not be constructed on preexisting benches backfilled with excess spoil under this regulation.

(g) Final configuration of the backfill must be compatible with the natural drainage patterns and the surrounding area, and support the approved postmining land use.

* * * * *

22. Section 817.81 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 817.81 Coal mine waste: General requirements.

(a) *General.* All coal mine waste disposed of in an area other than the mine workings or excavations shall be placed in new or existing disposal areas within a permit area, which are approved by the regulatory authority for this purpose. Coal mine waste shall be hauled or conveyed and placed for final placement in a controlled manner to—

* * * * *

23. Section 817.89 is amended by removing paragraph (d).

24. In § 817.133, the suspension of paragraph (d) is removed.

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Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 1, et al.
Airspace Reclassification; Final Rule

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DEPARTMENT OF TRANSPORTATION

14 CFR Parts 1, 11, 45, 61, 65, 71, 75, 91, 93, 101, 103, 105, 121, 127, 135, 137, 139, and 171

[Docket No. 24456; Amendment Nos. 1-38, 11-35, 45-21, 61-92, 65-36, 71-14, 75-5, 91-227, 93-63, 101-5, 103-4, 105-10, 121-226, 127-44, 135-40, 137-14, 139-18, and 171-16]

RIN 2120-AB95

Airspace Reclassification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Aviation Regulations (FAR) to adopt certain recommendations of the National Airspace Review (NAR) concerning changes to regulations and procedures in regard to airspace classifications. These changes are intended to: (1) Simplify airspace designations; (2) achieve international commonality of airspace designations; (3) increase standardization of equipment requirements for operations in various classifications of airspace; (4) describe appropriate pilot certificate requirements, visual flight rules (VFR) visibility and distance from cloud rules, and air traffic services offered in each class of airspace; and (5) satisfy the responsibilities of the United States as a member of the International Civil Aviation Organization (ICAO). The final rule also amends the requirement for minimum distance from clouds in certain airspace areas and the requirements for communications with air traffic control (ATC) in certain airspace areas; eliminates airport radar service areas (ARSAs), control zones, and terminal control areas (TCAs) as airspace classifications; and eliminates the term "airport traffic area." The FAA believes simplified airspace classifications will reduce existing airspace complexity and thereby enhance safety.

EFFECTIVE DATE: These regulations become effective September 16, 1993, except that §§ 11.61(c), 91.215(d), 71.601, 71.603, 71.605, 71.607, and 71.609 and Part 75 become effective December 12, 1991, and except that amendatory instruction number 20, § 71.1, is effective as of December 17, 1991 through September 15, 1993, and that §§ 71.11 and 71.19 become effective October 15, 1992. The incorporation by reference of FAA Order 7400.7 in § 71.1 (amendatory instruction number 20) is approved by the Director of the Federal Register as of December 17, 1991, through September 15, 1993. The incorporation by reference of FAA Order 7400.9 in § 71.1 (amendatory instruction number 24) is approved by the Director of the Federal Register as of September 16, 1993 through September 15, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. William M. Mosley, Air Traffic Rules Branch, ATP-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-9251.

SUPPLEMENTARY INFORMATION:

Background

On April 22, 1982, the NAR plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the ATC system. Organizations participating with the FAA in the NAR included: Aircraft Owners and Pilots Association (AOPA), Air Line Pilots Association (ALPA), Air Transport Association (ATA), Department of Defense (DOD), Experimental Aircraft Association (EAA), Helicopter Association International (HAI), National Association of State Aviation Officials (NASAO), National Business Aircraft Association (NBAA), and Regional Airline Association (RAA).

The main objectives of the NAR were to:

(1) Develop and incorporate a more efficient relationship between traffic flows, airspace allocation, and system capacity in the ATC system. This relationship will involve the use of improved air traffic flow management to maximize system capacity and to improve airspace management.

(2) Review and eliminate, wherever practicable, governmental restraints to system efficiency thereby reducing complexity and simplifying the ATC system.

(3) Revalidate ATC services within the National Airspace System (NAS) with respect to state-of-the-art and future technological improvements.

In furtherance of the foregoing objectives, several NAR task groups were organized and assigned to review various issues associated with airspace classifications and ATC procedures, pilot certification requirements, and aircraft equipment and operating requirements in the different categories of airspace areas. The recommendations formed the basis of three separate advance notices of proposed rulemaking (ANPRM): Notice No. 85-4, Terminal Airspace Reclassification (50 FR 5055; February 2, 1985); Notice No. 85-5, Airspace Reclassification/Services/Requirements (50 FR 5046; February 2, 1985); and Notice No. 85-15, Controlled Airspace Designations in International Airspace (50 FR 30798; July 7, 1985).

On March 12, 1990, ICAO through its Air Navigation Commission (ANC) formally adopted the airspace classification concept in amendment No. 33 to annex 11. The airspace classifications adopted by ICAO, along with the nearest equivalent U.S. airspace designations, are summarized as follows:

Class A Airspace (U.S. Positive Control Areas)

All operations must be conducted under instrument flight rules (IFR) and are subject to ATC clearances and instructions. ATC separation is provided to all aircraft.

Class B Airspace (U.S. Terminal Control Areas)

Operations may be conducted under IFR, special visual flight rules (SVFR), or VFR. However, all aircraft are subject to ATC clearances and instructions. ATC separation is provided to all aircraft.

Class C Airspace (U.S. Airport Radar Service Areas)

Operations may be conducted under IFR, SVFR, or VFR; however, all aircraft are subject to ATC clearances and instructions. ATC separation is provided to all aircraft operating under IFR or SVFR and, as necessary, to any aircraft operating under VFR when any aircraft operating under IFR is involved. All VFR operations will be provided with safety alerts and, upon request, conflict resolution instructions.

Class D Airspace (U.S. Control Zones for Airports with Operating Control Towers and Airport Traffic Areas that are not associated with a TCA or an ARSA)

Operations may be conducted under IFR, SVFR, or VFR; however, all aircraft are subject to ATC clearances and instructions. ATC separation is provided to aircraft operating under IFR or SVFR only. All traffic will receive safety alerts and, on pilot request, conflict resolution instructions.

Class E Airspace (U.S. General Controlled Airspace)

Operations may be conducted under IFR, SVFR, or VFR. ATC separation is provided only to aircraft operating under IFR and SVFR within a surface area. As far as practical, ATC may provide safety alerts to aircraft operating under VFR.

Class F Airspace (U.S. Has No Equivalent)

Operations may be conducted under IFR or VFR. ATC separation will be provided, so far as practical, to aircraft operating under IFR.

Class G Airspace (U.S. Uncontrolled Airspace)

Operations may be conducted under IFR or VFR. ATC separation is not provided.

Discussion of the Amendments and Public Comments

This final rule is based on Notice of Proposed Rulemaking (NPRM) No. 89-28 (54 FR 42916; October 18, 1989). The rule amends parts 1, 11, 45, 61, 65, 71, 75, 91, 93, 101, 103, 105, 121, 127, 135, 137, 139, and 171 and Special Federal Aviation Regulations (SFAR) 51-1, 60, and 62. These parts either incorporate airspace designations and operating rules or amend the existing rule to meet the new classification language.

Amendments to part 1 delete the definition of an "airport traffic area" and add definitions of "Special VFR conditions" and "Special VFR operations."

The amendments to part 71 establish a new subpart M—Jet Routes and Area High Routes that includes the existing rules in part 75 as of December 17, 1991; revise §§ 71.11 and 71.19 as of October 15, 1992; and revise all of part 71 to reclassify U.S. airspace in accordance with the ICAO designations as of September 16, 1993. (Further information on the amendments to part 71 appears in this discussion under Revisions to Part 71.) Under this amendment the positive control areas (PCAs), jet routes, and area high routes are reclassified as Class A airspace areas; TCAs are reclassified as Class B airspace areas; ARSAs are reclassified as Class C airspace areas; control zones for airports with operating control towers and airport traffic areas that are not associated with the primary airport of a TCA or an ARSA are reclassified as Class D airspace areas; all Federal airways, the Continental Control Area, control areas associated with jet routes outside the Continental Control Area, additional control areas, control area extensions, control zones for airports without operating control towers, transition areas, and area low routes are reclassified as Class E airspace areas; and airspace which is not otherwise designated as the Continental Control Area, a control area, a control zone, a terminal control area, an airport radar service area, a transition area, or special use airspace is reclassified as Class G airspace. Because airport traffic areas are not classified as airspace areas, this amendment establishes controlled airspace for airports with operating control towers, but without control zones.

Part 75 is removed and reserved. The existing information is transferred to new subpart M of existing part 71.

Amendments to Part 91 change terminology to integrate the adopted airspace classifications into corresponding part 91 operating rules. In addition, the distance from cloud requirements in Class B airspace areas for VFR operations are amended to require a pilot to remain clear of clouds instead of the current requirements of 500 feet below, 1,000 feet above, and 2,000 feet horizontal from clouds in TCAs.

Section 91.215(d) is amended by relaxing current restraints on ATC in authorizing deviations to operators of aircraft that are not equipped with transponders. The amendment clarifies that the ATC facility having jurisdiction over the airspace concerned is permitted to authorize deviations from the transponder requirements in § 91.215(b) and that a request for a deviation due to an inoperative transponder or an operating transponder without operating automatic pressure altitude reporting equipment having Mode C capability may be made at any time. To provide maximum flexibility to ATC and aircraft operators, this amendment has an effective date of December 17, 1991.

Amendments to parts 11, 45, 61, 65, 93, 101, 103, 105, 121, 127, 135, 137, 139, and 171 change the terminology to integrate the adopted airspace classifications into respective regulations that refer to those airspace assignments and operating rules. In addition, § 11.61(c) is amended to meet an administrative change within the FAA for titles of persons under the term "Director."

The final rule includes modifications to the proposed rules based on amendments to the FAR that have become effective since the publication of NPRM No. 89-28. The section numbers to part 91 are changed to match the section numbers designated by amendment No. 91-211, Revision of General Operating and Flight Rules (54 FR 34292; August 19, 1989). Sections 91.129 and 91.130 are modified to include revisions to § 91.130 by amendment No. 91-215, Airport Radar Service Area (ARSA) Communication Requirement (55 FR 17736; April 26, 1990). Section 91.131(c) is modified to include revisions from amendment No. 91-216, Navigational Equipment Requirement in a Terminal Control Area (TCA) and Visual Flight Rules (VFR) Operations (55 FR 24822; June 18, 1990). Section 91.117(a) is modified to include revision by amendment No. 91-219, Revision to General Operating and Flight Rules (55 FR 34707; August 24, 1990).

Section 91.155(b)(1) is modified to include a revision by amendment No. 91-224, Inapplicability of Basic VFR Weather Minimums for Helicopter Operations (56 FR 48088; September 23, 1991). Section 91.155(c) was revised by amendment No. 91-213, Night-Visual Flight Rules Visibility and Distance from Cloud Minimums (55 FR 10610; March 22, 1990) and was corrected on July 19, 1990 (55 FR 29552) and November 13, 1990 (55 FR 47309).

In this amendment, the FAA does not adopt the proposal to lower the Continental Control Area to 1,200 feet above the surface and to establish the United States Control Area as proposed in NPRM No. 88-2. The FAA will not adopt this proposal and the regulatory agenda will be revised to delete the U.S. Control Area project.

On October 4, 1990, the FAA established SFAR No. 60—Air Traffic Control System Emergency Operations (55 FR 40758) and on December 5, 1990, the FAA established SFAR No. 62—Suspension of Certain Aircraft Operations from the Transponder with Automatic Pressure Altitude Reporting Capability Requirement (55 FR 50302). These SFARs are revised by replacing references to such terms as "terminal control area" with "Class B airspace area" to integrate the appropriate airspace classification.

Obsolete clauses in the existing rule are deleted and typographical errors in the proposal are corrected. The final rule also revises affected paragraphs of the existing rule requiring modification as a result of the rulemaking action but not included in NPRM No. 89-28. The modifications to these paragraphs replace such terms as "terminal control area" and "control zone" with language to integrate the appropriate airspace classification.

Under airspace reclassification, the Sabre U.S. Army Heliport (Tennessee) Airport Traffic Area will become a Class D airspace area; the Jacksonville, Florida, Navy Airport Traffic Area will become three separate but adjoining Class D airspace areas; and the El Toro, California, Special Air Traffic Rules will become part of the El Toro Class C airspace area. Currently, these airports operate under special air traffic rules in subparts N, O, and R of part 93. To achieve a goal of airspace reclassification, which is to simplify airspace, the existing rules for these airspace areas are to be deleted as of

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September 16, 1993. Therefore, this amendment removes and reserves subparts N, O, and R of part 93 as of September 16, 1993.

Revisions to Part 71

Part 71 is revised in three stages.

The first revision creates a new subpart M—Jet Routes and Area High Routes, comprising §§ 71.601, 71.603, 71.605, 71.607, and 71.609. Under this amendment, the existing information in part 75 is transferred to new subpart M of part 71. Since this amendment does not change any operating rules, it is effective December 17, 1991. Section 75.17, Bearings; radials; miles, is not transferred to new subpart M, because the same information is located in existing § 71.19. NPRM No. 89–28 proposed to amend existing § 75.13. The proposed language is adopted in new § 71.605. A chart comparing old part 75 and new part 71, subpart M follows.

Part 75—Establishment of Jet Routes and Area High Routes	Part 71, Subpart M—Jet Routes and Area High Routes
§ 75.1 Applicability.	§ 71.601 Applicability.
§ 75.11 Jet routes.	§ 71.603 Jet routes.
§ 75.13 Area routes above 18,000 feet MSL.	§ 71.605 Area routes above 18,000 feet MSL.
§ 75.100 Jet routes.	§ 71.607 Jet route descriptions.
§ 75.400 Area high routes.	§ 71.609 Area high route descriptions.

Sections 71.607, Jet route descriptions, and 71.609, Area high route descriptions are not set forth in the full text of this final rule. The complete listing for all jet routes and area high routes can be found in FAA Order 7400.7, Compilation of Regulations, which was last published as of April 30, 1991, and effective November 1, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this order may be obtained from the Document Inspection Facility, APA–220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–3484. Copies may be inspected in Docket Number 24456 at the Federal Aviation Administration, Office of the Chief Counsel, AGC–10, room 915G, 800 Independence Avenue, SW., Washington, DC 20591 weekdays between 8:30 a.m. and 5 p.m. or at the Office of the **Federal Register**, 1100 L Street, NW., room 8401, Washington, DC The part 75 sections referenced in FAA Order 7400.7 will be redesignated as part 71 sections in the next revision to FAA Order 7400.7.

The second revision amends existing § 71.11, Control zone, and § 71.19, Bearings; radials; miles, and is effective October 15, 1992. This revision relates to the FAA's parallel reviews of certain airspace areas. The revision to § 71.11 permits the Administrator to terminate the vertical limit of a control zone at a specified altitude. The revision to § 71.19 provides for the conversion from statute miles to nautical miles and consists of the same language as § 71.7 that is effective September 16, 1993. More detail on the review of certain airspace areas is found under the title Implementation of Airspace Reclassification.

The third revision to part 71 establishes a new part 71 that includes the adopted airspace designations. This amendment, which is effective September 16, 1993, transfers the current sections of existing part 71, including subpart M—Jet Routes and Area High Routes, to this new part 71. The following table lists the sections of existing part 71, including subpart M and the corresponding sections in the new part 71 that are effective September 16, 1993. Subparts B through K and §§ 71.501(b), 71.607, and 71.609, which list airspace descriptions, are not set forth in the full text of this final rule. The complete listing for these airspace designations can be found in FAA Order 7400.9, Airspace Reclassification, which is effective September 16, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of this order may be obtained from the Document Inspection Facility, APA–220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–3484. Copies may be inspected in Docket Number 24456 at the Federal Aviation Administration, Office of the Chief Counsel, AGC–10, room 915G, 800 Independence Avenue, SW., Washington, DC 20591 weekdays between 8:30 a.m. and 5 p.m. or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

Existing Part 71	Revised Part 71 that is effective September 16, 1993, and FAA Order 7400.9
Subpart A—General	*Subpart A—General; Class A airspace*
§ 71.1 Applicability.	§ 71.1 Airspace classification.
§ 71.3 Classification of Federal airways.	§ 71.73 Classification of Federal airways.
§ 71.5 Extent of Federal airways.	§ 71.75 Extent of Federal airways.
§ 71.6 Extent of area low routes.	§ 71.77 Extent of area low routes.
§ 71.7 Control areas.	Not applicable.
§ 71.9 Continental control area.	§ 71.71 Class E airspace.
§ 71.11 Control zones.	Not applicable.
§ 71.12 Terminal control areas.	§ 71.41 Class B airspace.
§ 71.13 Transition areas.	§ 71.71 Class E airspace.
§ 71.14 Airport radar service areas.	§ 71.51 Class C airspace.
§ 71.15 Positive control areas.	§ 71.31 Class A airspace.
§ 71.17 Reporting points.	§ 71.5 Reporting Points.
§ 71.19 Bearings; Radials; Miles.	§ 71.7 Bearings, radials, mileages.
Subpart B—Colored Federal Airways	*Subpart E—Class E Airspace*
§ 71.101 Designation.	Subpart E of FAA Order 7400.9.
§ 71.103 Green Federal airways.	Subpart E of FAA Order 7400.9.
§ 71.105 Amber Federal airways.	Subpart E of FAA Order 7400.9.
§ 71.107 Red Federal airways.	Subpart E of FAA Order 7400.9.
§ 71.109 Blue Federal airways.	Subpart E of FAA Order 7400.9.
Subpart C—VOR Federal Airways	*Subpart E—Class E Airspace*
§ 71.121 Designation.	§ 71.79 Designation of VOR Federal airways.
§ 71.123 Domestic VOR Federal airways.	Subpart E of FAA Order 7400.9.
§ 71.125 Alaskan VOR Federal airways.	Subpart E of FAA Order 7400.9.
§ 71.127 Hawaiian VOR Federal airways.	Subpart E of FAA Order 7400.9.
Subpart D—Continental Control Area	*Subpart E—Class E Airspace*
§ 71.151 Restricted areas included.	Subpart E of FAA Order 7400.9.
Subpart E—Control Areas and Control Area Extensions	*Subpart E—Class E Airspace*
§ 71.161 Designation of control areas associated with jet routes outside the continental control area.	§ 71.71 Class E airspace and Subpart E of FAA Order 7400.9.
§ 71.163 Designation of additional control areas.	§ 71.71 Class E airspace and Subpart E of FAA Order 7400.9.
§ 71.165 Designation of control areas extensions.	Subpart E of FAA Order 7400.9.
Subpart F—Control Zones	*Subpart D—Class D Airspace*
§ 71.171 Designation.	*Subpart E—Class E Airspace*
	Subpart D of FAA Order 7400.9.
	Subpart E of FAA Order 7400.9.
Subpart G—Transition Areas	*Subpart E—Class E Airspace*
§ 71.181 Designation.	Subpart E of FAA Order 7400.9.
Subpart H—Positive Control Areas	*Subpart A—General; Class A Airspace*
§ 71.193 Designation.	§ 71.33 Class A airspace areas.
Subpart I—Reporting Points	*Subpart H—Reporting Points*
§ 71.201 Designation.	§ 71.901 Applicability.
§ 71.203 Domestic low altitude reporting points.	Subpart H of FAA Order 7400.9.
§ 71.207 Domestic high altitude reporting points.	Subpart H of FAA Order 7400.9.
§ 71.209 Other domestic reporting points.	Subpart H of FAA Order 7400.9.
§ 71.211 Alaskan low altitude reporting points.	Subpart H of FAA Order 7400.9.
§ 71.213 Alaskan high altitude reporting points.	Subpart H of FAA Order 7400.9.
§ 71.215 Hawaiian reporting points.	Subpart H of FAA Order 7400.9.
Subpart J—Area Low Routes	*Subpart E—Class E Airspace*
§ 71.301 Designation.	Subpart E of FAA Order 7400.9.
Subpart K—Terminal Control Areas	*Subpart B—Class B Airspace*
§ 71.401(a) Designation.	Subpart B of FAA Order 7400.9.
§ 71.401(b) Terminal control areas.	Subpart B of FAA Order 7400.9.
Subpart L—Airport Radar Service Areas	*Subpart C—Class C Airspace*
§ 71.501 Designation.	Subpart C of FAA Order 7400.9.
Subpart M—Jet Routes and Area High Routes	*Subpart A—General; Class A Airspace*
§ 71.601 Applicability.	Not applicable.
§ 71.603 Jet routes.	Subpart A of FAA Order 7400.9.
§ 71.605 Area routes above 18,000 feet MSL.	Subpart A of FAA Order 7400.9.
§ 71.607 Jet route descriptions.	Subpart A of FAA Order 7400.9.
§ 71.609 Area high route descriptions.	Subpart A of FAA Order 7400.9.

Discussion of Comments

A total of 205 commenters submitted comments to Docket No. 24456 on NPRM No. 89–28. The FAA considered these comments in the adoption of this rule and changes to the proposals were made accordingly. Some comments did not specifically apply to any particular proposal addressed in NPRM No. 89–28. These comments related to the requirements for a transponder with Mode C capabilities, the FAA's anti-drug program, and the proposed TCA for the Washington-Baltimore metropolitan area.

Comments submitted on NPRM No. 89–28 reflect the views of a broad spectrum of the aviation public. The commenters included individuals as well as organizations representing commercial and general aviation pilots. Organizations that commented on NPRM No. 89–28 include: AOPA, ALPA, Air Traffic Control Association (ATCA), ATA, Alaska Airmen's Association, Arizona Pilots Association, Canadian Owners and Pilots Association (COPA), EAA, Ohio Department of Transportation, and Soaring Society of America (SSA).

The following is a discussion of issues addressed in the comments in accordance with the reclassification effort and each classification of airspace. A general division entitled, Additional Comments, addresses issues that do not affect a specific airspace classification. Each discussion includes a description of the final amendment and an explanation of the FAA's views.

Reclassification of Airspace

One hundred and forty-one comments on the proposal to reclassify U.S. airspace to meet ICAO standards were submitted. Sixty-eight supported reclassification and 69 opposed reclassification. Four commenters neither supported nor opposed the reclassification effort, but offered observations.

The 68 supporting comments include those submitted by the ATA, ATCA, and COPA. The COPA stated that on an average, approximately 60,000 general aviation aircraft cross the U.S./Canadian border each year. Some commenters stated that the proposed classifications are easier to understand than the current classifications and noted that the proposed classifications would help develop standardization. Two flight instructors commented that the proposed classifications would aid in the teaching of the airspace system to new pilots.

The 69 opposing comments include the Arizona Pilots Association, EAA, and SSA. Several comments, including EAA's, asserted that the current airspace designation names are more descriptive, and hence, easier to remember. Several comments, including one from the Arizona Pilots Association, stated that the proposal would cause confusion, while other commenters alleged that the proposal would only benefit pilots who operate internationally.

Both the SSA and the Arizona Pilots Association recommend that existing airspace nomenclature be retained and a table be included in the Airman's Information Manual (AIM) or part 91 to correlate U.S. airspace designations and ICAO equivalents.

The four comments submitted that do not directly support or oppose the proposal include those from the Alaska Airmen's Association, ALPA, and AOPA. The AOPA expressed concerns about how pilots would be reeducated during the transition phase that would precede the adoption of the proposed airspace reclassification. AOPA recommended that the FAA take five steps to ensure proper pilot education: (1) Convene a government, industry, and user meeting before the issuance of a final rule to consider the implications of final rule adoption; (2) ensure that all necessary funding is in place, including monies for the specific purpose of pilot education; (3) adopt a dual airspace system during the transition phase; (4) coordinate with the National Oceanic and Atmospheric Administration (NOAA) to ensure that all charts are printed in a timely manner; and (5) amend the flight review requirements to reflect explicitly the need to discuss airspace classifications. The FAA agrees that the aviation public needs to be educated in airspace reclassification. Therefore, the FAA has developed an education and transition program, which is discussed under "Education of the Aviation Community."

As proposed, the FAA will reclassify U.S. airspace in accordance with ICAO standards. Airspace areas, with the exception of special use airspace (SUA) designations, will be classified by a single alphabet character. The FAA believes that reclassification of U.S. airspace simplifies the airspace system, achieves international commonality, enhances aviation safety, and satisfies the responsibility of the United States as a member of ICAO.

Some commenters misunderstood the proposal on airspace reclassification. These commenters understood Class A airspace areas to be en route airspace and Class B, Class C, and Class D airspace areas to be terminal airspace. The recommended ICAO airspace classes are not based on whether the airspace area is designated for "en route" or "terminal" operations, but rather on other factors that include type of operation (i.e., IFR, VFR) and ATC services provided. (The table below lists the new airspace classifications, its equivalent in the existing airspace classification, and its features, which would apply to terminal and en route airspace areas.) For example, under this rule Class C airspace is designated in terminal areas. Class C airspace in another country could be designated in en route areas. However, the type of operation, ATC services provided, minimum pilot qualifications, two-way radio requirements, and VFR minimum visibility and distance from cloud requirements in that country's Class C airspace will be similar to the Class C airspace areas designated in the United States. As adopted by the FAA, Class A airspace areas are designated in positive control en route areas; Class B, Class C, and Class D airspace areas are designated in terminal areas; and Class E airspace areas are designated in both en route (low altitude) and terminal

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areas. However, the rules are written in a manner that the classes of airspace will not be limited to terminal or en route airspace areas. For example, if a regulation only applies to operations in a terminal environment, the rule specifies that the airspace is "designated for an airport."

AIRSPACE CLASSIFICATIONS

Airspace features	Class A airspace	Class B airspace	Class C airspace	Class D airspace	Class E airspace	Class G airspace
Current Airspace Equivalent	Positive Control Areas.	Terminal Control Areas.	Airport Radar Service Areas.	Airport Traffic Areas and Control Zones.	General Controlled Airspace.	Uncontrolled Airspace
Operations Permitted	IFR	IFR and VFR	IFR and VFR	IFR and VFR	IFR and VFR	IFR and VFR
Entry Prerequisites	ATC clearance	ATC clearance	ATC clearance for IFR Radio contact for all.	ATC clearance for IFR Radio contact for all.	ATC clearance for IFR Radio contact for all IFR.	None
Minimum Pilot Qualifications	Instrument rating	Private or student certificate.	Student certificate	Student certificate	Student certificate	Student certificate
Two-way radio communications.	Yes	Yes	Yes	Yes	Yes for IFR operations.	No
VFR Minimum Visibility	Not applicable	3 statute miles	3 statute miles	3 statute miles	* 3 statute miles	** 1 statute mile
VFR Minimum Distance from Clouds.	Not applicable	Clear of clouds	500 feet below, 1,000 feet above, and 2,000 feet horizontal.	500 feet below, 1,000 feet above, and 2,000 feet horizontal.	* 500 feet below, 1,000 feet above, and 2,000 feet horizontal.	** 500 feet below, 1,000 feet above, and 2,000 feet horizontal
Aircraft Separation	All	All	IFR, SVFR, and runway operations.	IFR, SVFR, and runway operations.	IFR, SVFR	None
Conflict Resolution	Not applicable	Not applicable	Between IFR and VFR operations.	No	No	No
Traffic Advisories	Not applicable	Not applicable	Yes	Workload permitting	Workload permitting	Workload permitting
Safety Advisories	Yes	Yes	Yes	Yes	Yes	Yes

* Different visibility minima and distance from cloud requirements exist for operations above 10,000 feet MSL.
** Different visibility minima and distance from cloud requirements exist for night operations, operations above 10,000 feet MSL, and operations below 1,200 feet AGL.

Offshore Airspace

The FAA adopts, as proposed, the NAR recommendations NAR 3–2.1.1—Offshore Airspace Nomenclature, NAR 3–2.1.2—Offshore Control Area Uniform Base, NAR 3–2.1.3—Offshore Control Area Identification, and NAR 3–2.1.4—Offshore Airspace Classification, which consider offshore airspace areas. However, NAR 3–2.1.2, which recommends a uniform base for offshore control areas of 1,200 feet above the surface unless otherwise designated, and NAR 3–2.1.3, which recommends that offshore control areas be identified with a name as opposed to a number are contingent on the FAA's further review. (More details on the review process appear later in this document under the title Implementation of Airspace Reclassification.) Any changes to offshore airspace areas resulting from the FAA's review will be accomplished by separate rulemaking actions. The FAA's review is being conducted in compliance with Executive Order 10854, which requires FAA consultation with both the Departments of State and Defense before designating controlled international airspace. The FAA expects that most offshore airspace areas will be classified as Class E or Class A airspace areas.

Education of the Aviation Community

The FAA agrees with the comments that the aviation public needs to be educated in airspace reclassification. To ensure that the aviation community can become knowledgeable about the new airspace classifications and that aeronautical charts can be updated, the new airspace classification will not become effective until September 16, 1993.

The FAA has begun to coordinate with a task group of the Interagency Air Cartographic Committee (IACC) and the National Ocean Service (NOS), which will begin to update aeronautical charts. During the transition, the FAA will update its orders, manuals, handbooks, and advisory circulars, and will provide pilot/controller education. Significant dates in the transition process appear below with additional discussion following.

AIRSPACE RECLASSIFICATION TRANSITION

Tentative date	Event
October 15, 1992.	First sectional aeronautical charts (SAC), world aeronautical charts (WAC), and terminal aeronautical charts (TAC) are published with legends that indicate both existing and future airspace classifications.
March 4, 1993	Initial charting changes are completed for the SAC and TAC.
June 24, 1993	North Pacific, Gulf of Mexico, and Caribbean planning charts are published with legends that indicate both existing and future airspace classifications.

AIRSPACE RECLASSIFICATION TRANSITION—Continued

Tentative date	Event
August 19, 1993	Flight Case Planning and North Atlantic Route charts are published with legends that indicate existing and future airspace classifications.
September 16, 1993.	New airspace classifications become effective. All charts begin publication with legends that indicate both the new airspace classification and the former airspace classification. All related publications are updated.
March 3, 1994	First charts are published with legends that only indicate the new airspace classifications.
August 17, 1994	All charts are published with legends that only indicate the new airspace classifications.

Coordination with a task group of the IACC and the NOS will continue throughout the transition. An anticipated modification to the symbols on aeronautical charts is the addition of a segmented magenta line to represent the controlled airspace area for airports without operating control towers that extends upward from the surface (Class E airspace). A segmented blue line (which currently depicts a control zone) will denote a Class D airspace area, the controlled airspace for airports with operating control towers that are not the primary airport of a TCA or an ARSA.

The legends in aeronautical charts will include both the existing airspace classifications and the airspace classifications to be effective September 16, 1993. For example, the solid blue line that symbolizes a TCA will be followed by "TCA (Class B)." The first charts with a dual legend will be published October 15, 1992. Commencing September 16, 1993, the legends on these charts will be reversed (e.g., a solid blue line will be followed by "Class B (TCA)"). Between March 3 and August 17, 1994, the use of dual indication legends will be phased out.

Between October 1992 and March 1993, educational materials such as pocket guides, a video, and posters will be issued to instruct the aviation public on airspace reclassification. The FAA will begin to update the AIM and other publications, as well as FAA orders, manuals, handbooks, and advisory circulars that must be revised to include the new airspace classifications and an explanation of the transition and implementation procedures.

The transition and implementation of the Airspace Reclassification final rule also will include parallel reviews of certain current airspace designations to meet the new airspace classifications. A full discussion on this review appears later in this document under the title Implementation of Airspace Reclassification.

Class A Airspace

NPRM No. 89–28 proposed to reclassify the PCAs as Class A airspace areas with no other alterations to this airspace. Four commenters, including AOPA, neither supported nor opposed this classification; however, they offered comments and modifications. Some commenters stated that if the FAA adopts the Class A designation for the PCAs, Class A airspace areas should remain en route airspace and should not be lower than 18,000 feet mean sea level (MSL).

As proposed, the FAA will reclassify the PCAs as Class A airspace areas. In addition, jet routes and area high routes will be reclassified as Class A airspace areas. These airspace areas, which consist of direct courses for navigating aircraft at altitudes between 18,000 feet MSL and flight level 450, inclusive, meet the criteria of Class A airspace as adopted by ICAO.

As noted earlier, the recommended ICAO airspace classes are not based on whether the airspace area is designated for "en route" or "terminal" operations. Any new Class A airspace areas would be proposed in separate rulemaking actions.

Class B Airspace

NPRM No. 89–28 proposed to reclassify TCAs as Class B airspace areas and to amend the minimum distances by which aircraft operating under VFR must remain from clouds. The current VFR minimum distance requirements of 500 feet below, 1,000 feet above, and 2,000 feet horizontal from clouds will be amended to require that the pilot must remain clear of clouds.

One comment supports and two comments specifically oppose the proposed reclassification. Twelve comments on the proposal to amend minimum distance from clouds for VFR operations in Class B airspace areas were received. Eight of these comments support and four oppose the proposal.

The comments submitted in support of the proposal to reclassify TCAs as Class B airspace areas and to modify the minimum distances from cloud for VFR operations include those from AOPA, the Alaska Airmen's Association, EAA, and SSA. AOPA stated that the proposal "is a positive step in improvement of VFR traffic flow within" Class B airspace areas.

A commenter in support of reclassification stated that some of the areas to be classified as Class B airspace areas could be redesignated as Class C airspace areas.

The four comments submitted in opposition to the proposed amendment on distance from cloud requirements for VFR operations include a comment from ALPA. Some commenters stated that the proposal to modify the minimum distance from clouds for VFR flight in Class B airspace areas reduces the existing margin of safety. ALPA further stated that the ability of a pilot to maintain visual contact with other aircraft is reduced if aircraft operate in close proximity to clouds. One commenter stated that the proposals do not answer the need for clear radio failure procedures in Class B airspace areas. Another commenter stated that Class B airspace areas are actually divided into two types of Class B airspace: One in which a private pilot certificate is required and one in which, at a minimum, only a student pilot certificate is required.

This rulemaking reclassifies existing airspace areas with the equivalent recommended ICAO airspace area. It does not redesignate existing airspace areas. For example, the redesignation of a Class B airspace area (TCA) to a Class C airspace area (ARSA) is beyond the scope of this rulemaking. The FAA believes that the elimination of terminal areas designated as Class B airspace areas would create a substantial adverse impact on the safe and efficient control of air traffic in those high volume terminal areas. Class B airspace areas, like the TCAs that preceded them, provide more efficient control in terminal areas where there is a large volume of air traffic and where a high percentage of that traffic is large turbine-powered aircraft. Additionally, on July 25, 1991, the FAA revised FAA Order 7110.65, Air Traffic Control, by adopting specific separation standards for operations under VFR in existing TCAs. These standards require air traffic controllers to separate aircraft operating under VFR in existing TCAs from other aircraft operating under VFR and IFR.

As stated in NPRM No. 89–28 in response to NAR 1–7.2.9—Recommended VFR Minima, the FAA views the relaxation of the distance from cloud requirements for VFR operations as a modification that would enhance rather than reduce safety. Under the existing regulations, a pilot operating an aircraft under VFR in a TCA (Class B airspace) is provided with ATC services and is subject to ATC clearances and instructions. For the pilot operating under VFR to remain specific distances from clouds, the pilot must alter course or assigned heading/route, which is a disruption to traffic flow and could be a compromise to safety. The amendment will increase safety for pilots operating under VFR and ATC by permitting these pilots to remain clear of clouds in Class B airspace areas, but not requiring them to remain a specific distance from clouds. However, if an ATC instruction to a pilot operating an aircraft under VFR could place that aircraft in a cloud, FAR § 91.3, Responsibility and authority of the pilot in command, requires the pilot in command to be responsible for ensuring that the aircraft does not enter a cloud and any such ATC instruction may be refused.

Accordingly, as proposed, the FAA will reclassify TCAs as Class B airspace areas and amend the distance from cloud requirements for VFR operations to clear of clouds.

Even though ATC communication requirements for operations in Class B airspace areas are the same as those that exist in TCAs, the relaxation of the distance from cloud requirements will become effective with the new airspace classifications. This will ensure that all users are familiar with the amendment when it becomes effective.

The amendment to reclassify TCAs as Class B airspace areas does not modify the current operating rules for

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communications. Lost communication requirements are addressed in paragraph 470, Two-way Radio Communications Failure, of the AIM and are not within the scope of the rulemaking.

The FAA accepted NAR 1-7.3.3—Pilot Requirements for Operations in a TCA, under the provisions of the existing requirements; hence, the reclassification of TCAs as Class B airspace areas meets existing regulations on minimum airman certificate levels. Section 61.95 of the FAR, which lists student pilot requirements for operations in a TCA (Class B airspace), is revised to meet the new airspace classification. Solo student pilot activity is, under both the existing regulations and this final rule, prohibited at certain airports.

Class C Airspace

Three comments were submitted on the reclassification of ARSAs as Class C airspace areas. None of the comments specifically support or oppose the reclassification. All of the comments, including one from EAA, addressed additional modifications.

Two commenters noted that the proposal for VFR operations in Class B airspace areas to remain clear of clouds could be applied to Class C airspace areas.

In its comment, EAA opposed any increase in the size of Class C airspace areas. Other recommendations by commenters included the need for clear radio failure procedures and the need for designated areas that do not require communications with ATC when the pilot desires to use an uncontrolled airport within Class C airspace areas.

As proposed, the FAA will reclassify ARSAs as Class C airspace areas. No other modifications to Class C airspace areas or changes in operating rules were proposed. An ARSA that currently operates on a part-time basis is classified as Class C part-time and Class D or Class E at other times.

Aircraft operating under VFR in Class C airspace areas operate under less stringent requirements than aircraft operating under VFR in Class B airspace areas and are not provided the same separation by ATC. Therefore, the relaxation of the VFR distance from cloud requirements in Class C airspace areas to remain clear of clouds would not be in accordance with safety precautions. As noted earlier, lost communication procedures are addressed in paragraph 470, Two-way Radio Communications Failure, of the AIM. Since Class C airspace areas often have a high number of aircraft that operate under IFR, a relaxation of existing communications requirements would not be in the interest of safety. Any modifications to the dimensions or operating requirements for Class C airspace areas are outside the scope of this rulemaking.

Class D Airspace

NPRM No. 89-28 proposed to reclassify control zones for airports with operating control towers and airport traffic areas, not associated with a TCA or an ARSA, as Class D airspace areas. In addition, NPRM No. 89-28 proposed to: (1) Raise the ceiling to up to, and including, 4,000 feet from the surface of the airport; (2) require aircraft in Class D airspace areas to establish two-way radio communications with ATC; and (3) convert the lateral unit of measurement from statute miles to nautical miles.

One hundred and forty comments concerning the proposal to establish the ceiling of the Class D airspace areas at 4,000 feet above the surface were submitted. All of the comments opposed the proposal.

Of the 83 comments regarding the proposal to require pilots who operate in Class D airspace areas to establish two-way radio communications with ATC, two supported the proposal and 80 opposed it. One comment neither supported nor opposed the proposals.

One hundred and forty-three comments related to the proposal to convert the lateral unit of measurement of Class D airspace areas from statute to nautical miles were submitted. Most interpreted the proposal to mean that the lateral size of the airspace areas would change from 5 statute miles to 5 nautical miles. (The FAA's intent in NPRM No. 89-28 is to convert statute miles as a unit of measurement to the equivalent in nautical miles.) Twelve comments supported and 131 comments opposed the proposal. Most of the commenters who specifically opposed the use of nautical miles instead of statute miles were opposed to a 5 nautical mile lateral measurement of Class D airspace areas.

The commenters who support the proposed conversion from statute to nautical miles or the proposed two-way radio communications requirements with ATC submitted suggestions and reasons for support. Some of these comments stated that the standardized use of nautical miles as opposed to statute miles could be expanded to weather reports, visibility requirements, and distance from cloud requirements above 10,000 feet MSL. ATCA stated that the proposal for two-way radio communications with ATC "erases a potentially dangerous practice and is long overdue." Another commenter suggested that a corridor could be provided in Class D airspace areas for operations at satellite airports without operating control towers.

The 140 commenters that opposed the proposed ceiling of 4,000 feet above the surface included AOPA, the Alaska Airmen's Association, the Arizona Pilots Association, EAA, the Ohio Department of Transportation, and SSA. These same organizations are represented in the 131 comments that opposed the proposed conversion from statute to nautical miles and the 80 comments that oppose the proposed two-way radio communications requirements with ATC.

Several comments, including one from EAA, were submitted on the effects of the proposed ceiling modification and communications requirements on operations under SFAR No. 51-1—Special Flight Rules in the Vicinity of Los Angeles International Airport. According to the comments, the proposal would raise the ceiling of the airport traffic areas at Santa Monica and Hawthorne Airports into the Special Flight Rules Area. The commenters also stated that the proposed two-way radio communication requirements with ATC may not allow aircraft, especially those with one radio, to listen to an advisory frequency.

Some commenters, including SSA, stated that airport traffic areas (Class D airspace) could be depicted on aeronautical charts. Several commenters, including AOPA, the Alaska Airmen's Association, EAA, and the Ohio Department of Transportation stated that the proposals would increase air traffic controller workload. Some comments, including one from AOPA, stated that the proposal would increase pilot workload or that no safety benefit exists for the proposed modifications.

Several commenters, including AOPA and EAA, requested that the ceiling of Class D airspace areas be lowered to 2,000 feet or 2,500 feet above the surface. The commenters stated that the lower altitudes are adequate for the arrival and departure of aircraft. Other commenters, including the Alaska Airmen's Association and SSA, recommended retaining the current ceiling of 3,000 feet above the surface.

Commenters stated that the proposals for modifying the size of airspace and for requiring two-way radio communications with ATC would be a burden to aircraft that fly at low altitudes, and that some aircraft would need to fly a minimum of 5,500 feet MSL as opposed to 3,500 feet MSL. Some commenters stated that the proposal would burden pilots of airplanes that do not have radios. One commenter noted that pilots who fly older aircraft with no radios or navigational aids do not pose a threat to commercial aviation.

Several comments, including those submitted by the AOPA and the Alaska Airmen's Association, stated that the proposal for two-way radio communications with ATC would not permit aircraft to listen to the common traffic advisory frequency (CTAF) of satellite airports. Additional comments, including those submitted by the AOPA and EAA, noted that air traffic controllers in control towers cannot provide effective traffic advisories for satellite airports. Some commenters, including EAA and the Ohio Department of Transportation, stated that the proposed two-way radio communication requirements with ATC are not necessary because operations at satellite airports usually do not interfere with airports with operating control towers. Another commenter noted that a pilot who desires to use a satellite airport and needs to fly near an airport with an operating control tower would need to notify the local ATC facility.

Commenters, including the Arizona Pilots Association and EAA, recommended that the lateral unit of measurement of Class D airspace areas be designated at 4 nautical miles.

As proposed, control zones for airports with operating control towers and airport traffic areas that are not associated with a TCA or an ARSA are reclassified as Class D airspace areas. After considering public comment and re-examining technical criteria, the FAA has determined that: (1) The ceiling of a Class D airspace area (designated for an airport) will normally be designated at 2,500 feet above the surface of the airport converted to mean sea level (MSL), and rounded to the nearest 100 foot increment; (2) two-way radio communications with ATC will be required; and (3) the lateral dimensions will be expressed in nautical miles rounded up to the nearest tenth of a mile. The actual lateral and vertical dimensions will be determined on an individual basis using revised criteria in FAA Order 7400.2C, Procedures for Handling Airspace Matters. (More detail on the review of airspace appears under the title Implementation of Airspace Reclassification.)

Airspace at an airport with a part-time control tower is classified as a Class D airspace area when the control tower is in operation, and as a Class E airspace area when the control tower is not in operation.

The amendments do not affect operations under SFAR 51-1. The amendments to SFAR 51-1 replace the term "Terminal Control Area" with "Class B airspace area" and change the references to sections in Part 91 to the sections effective August 18, 1990. Any modifications to operations under an SFAR or Part 93, Special Air Traffic Rules and Airport Traffic Patterns, will be proposed under separate rulemaking actions.

Vertical Limit of Class D Airspace Areas

A goal of airspace reclassification is to enhance safety. The FAA is of the opinion that the existing airspace designations of an ARSA, which has a ceiling of "up to and including" 4,000 feet above the surface, and an airport traffic area, which has a ceiling of "up to, but not including," 3,000 feet above the surface, has caused confusion, which does not enhance safety. To promote uniformity, the FAA in NPRM No. 89-28 proposed that the ceiling of Class C, Class D, and Class E airspace areas that extend upward from the surface be established at "up to, and including" 4,000 feet above the surface. Many of the comments on this proposal were opposed to this modification. As previously stated, the FAA has determined that the ceiling of Class D airspace areas will normally be designated at up to, and including, 2,500 feet above the surface of the airport expressed in MSL. To further enhance uniformity, the ceiling of Class E airspace areas that extend upward from the surface normally will also have a ceiling established at up to, and including, 2,500 feet above the surface of the airport expressed in MSL. A ceiling of 2,500 feet above the surface will provide adequate vertical airspace to protect traffic patterns. However, the FAA emphasizes that the ceiling of a Class D or a Class E airspace area will reflect the conditions of the particular airspace area. For example, if local conditions warrant, the ceiling could be designated at more than 2,500 feet above the surface (e.g., 2,700 or 3,000 feet above the surface). Conversely, some airports with limited volume of nonturbine-powered aircraft may have a lower vertical limit.

The decision to use 2,500 feet above the surface is based on recent FAA analysis of vertical airspace necessary to protect traffic patterns and a review of public comment to lower the ceiling of an airport traffic area. The FAA's analysis demonstrates that the 2000-foot vertical limit is insufficient since it often does not protect traffic patterns for high performance aircraft.

Two-Way Radio Communications in and Lateral Dimensions of Class D Airspace Areas

The FAA has determined that in order to meet safety standards, two-way radio communications with ATC must be established in Class D airspace areas. Task Group 1-2.3, which recommended NAR 1-2.3.2—Two-Way Radio Requirements in Airport Traffic Areas, stated that "pilots have been issued violations, or critical injuries have occurred because pilots were not in compliance with the two-way radio communications requirements."

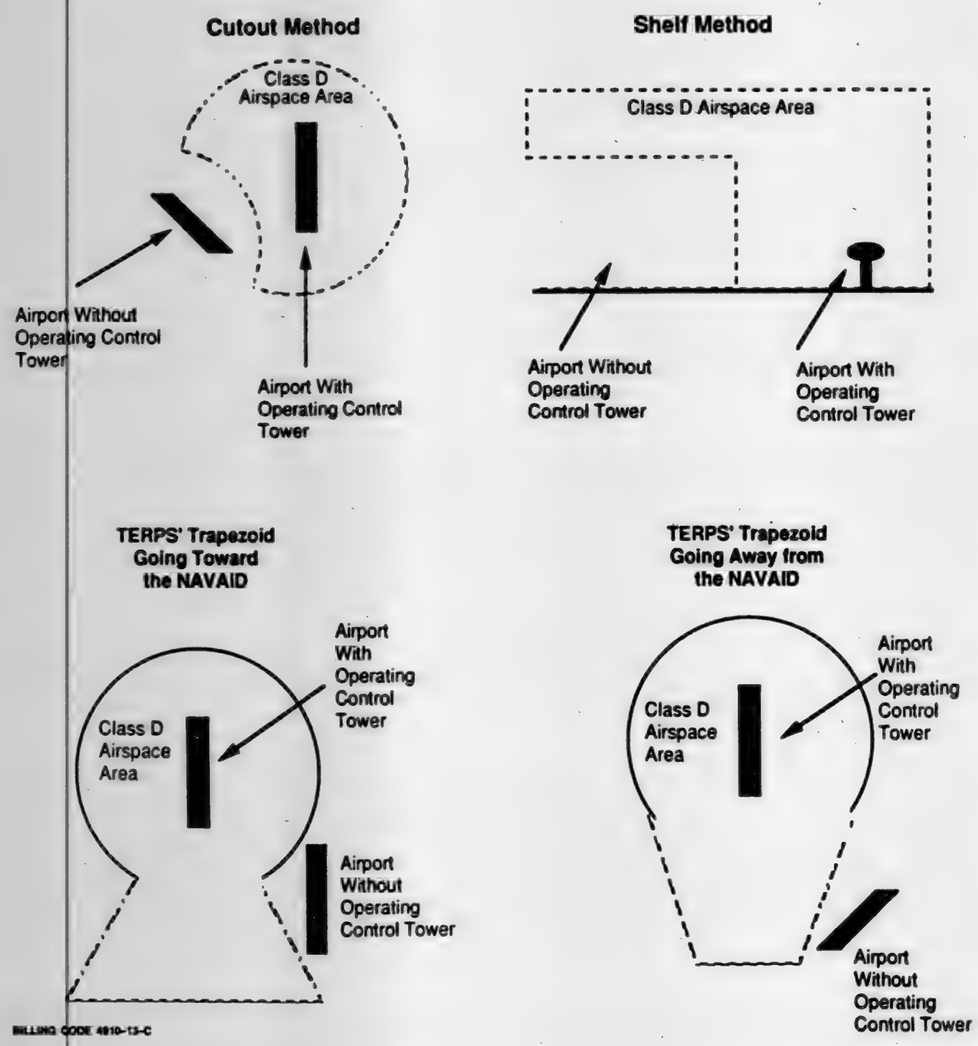
The FAA also has determined that the lateral distance of Class D airspace areas will be based on the instrument procedures for which the controlled airspace is established. Therefore, the dimensions may not be in a circular shape that is similar to the current airport traffic areas or control zones.

Many commenters stated that the communications requirements associated with operations at satellite airports within Class D airspace areas would prevent them from using CTAF procedures. The FAA generally agrees with these comments; consequently, the FAA will individually review control zones and associated transition areas that are not associated with the primary airport of a TCA or an ARSA. The review of the designation of Class D airspace areas will be conducted to determine the necessary size of the area and will exclude satellite airports to the maximum extent practicable and consistent with safety. For example, a satellite airport without an operating control tower might have a Class E airspace area carved out of a Class D airspace area, or a Class E airspace area might be placed under a shelf of a Class D airspace area. (See Figure 1.) In another example, the portions of an existing control zone that extend beyond the existing limits of an airport traffic area (extension used for instrument approaches) may be designated only by using the airspace necessary under the terminal instrument procedures (TERPs) criteria. (See Figure 1.) When a satellite airport is excluded, a pilot who is operating an aircraft in the immediate vicinity of that satellite airport and who does not otherwise penetrate airspace where two-way radio communications with ATC are required will be free to communicate on the CTAF of that satellite airport.

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Figure 1. Examples of Satellite Airports Excluded from Class D Airspace Areas.



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The FAA will be flexible in the review of the airspace dimensions. However, pilots who operate at satellite airports that underlie the instrument arrival and departure path of the airport in Class D airspace areas may, in some instances, be required to establish two-way radio communications with ATC to comply with safety precautions.

Class E Airspace

NPRM No. 89-28 proposed to reclassify as Class E airspace areas as follows: All Federal airways, the Continental Control Area, control areas associated with jet routes outside the Continental Control Area, additional control areas, control area extensions, control zones for airports without operating control towers, transition areas, and area low routes. The five comments submitted on this proposal neither supported nor opposed the proposal, but offered suggestions.

One commenter noted that the current names are descriptions of how the airspace area is to be used (i.e., transition areas, airways) and that under the proposal, airways would still be necessary. The SSA recommended the continued use of the term "control zone" for airspace extending upward from the surface that is independent of Class B, Class C, or Class D airspace areas. They also recommended that control zones should extend to the floor of overlying controlled airspace. One commenter recommended that the floor of Class E airspace areas that are now 1,200 feet above ground level (AGL) be raised to 1,500 or 2,200 feet AGL and noted that the floor of Class E airspace areas should not be below the minimum en route IFR altitude (MEA) in mountainous regions.

The FAA will adopt the classification of Class E airspace areas as proposed. This classification will not eliminate the requirement for Federal airways, which are specified in part 71. However, this classification will eliminate the designation of control zones. Control zones for airports without operating control towers are classified as Class E airspace areas designated for an airport that extend upward from the surface.

The FAA believes that the reclassification of control zones for airports without operating control towers as Class E airspace areas will not cause confusion. As noted earlier, such airspace areas will be depicted on visual aeronautical charts by a segmented magenta line. Under existing regulations, a control zone usually has a 5-statute mile radius and ascends to the base of the Continental Control Area. The FAA's review process, using the revised criteria in FAA Order 7400.2C, will look at the dimensions of each control zone and associated transition areas. Each review will include a review of instrument approach procedures, as well as local terrain to determine the actual airspace needed to contain IFR operations.

The floor of Class E airspace areas, which do not extend upward from the surface, will remain the same as existing airspace areas (e.g., 700 feet AGL, 1,200 feet AGL, 1,500 feet AGL, 14,500 feet MSL). Any modifications to the floor of Class E airspace areas are beyond the scope of this rulemaking.

Class G Airspace

NPRM No. 89-28 proposed to reclassify airspace that is not otherwise designated as the Continental Control Area, a control area, a control zone, a terminal control area, a transition area, or SUA as Class G airspace areas. Of the six comments submitted, four comments opposed the proposal and two offered suggestions.

The four opposing comments, including EAA's comment, understood the Class G airspace areas to be airspace below 700 feet AGL.

The two comments that neither supported nor opposed the proposal included the comment from the ATA. The ATA recommended that Class G airspace areas be designated as Class F airspace areas.

The FAA has determined that all navigable airspace areas not otherwise designated as Class A, Class B, Class C, Class D, or Class E airspace areas or SUA are classified as Class G airspace areas. Since the proposal to replace the Continental Control Area with the U.S. control area in NPRM No. 88-2 was not adopted, the vertical limit of Class G airspace areas will vary (e.g., 700 feet AGL, 1,200 feet AGL, 1,500 feet AGL, 14,500 feet MSL). In addition, the flight visibility and distance from cloud requirements for operations under VFR proposed in NPRM No. 89-28 are modified to remain consistent with the existing requirements in §§ 91.155 and 103.23.

Class F airspace is omitted from the U.S. airspace classifications because this airspace, as adopted by ICAO, does not have a U.S. equivalent. Class G airspace, as adopted by ICAO, is the equivalent of U.S. uncontrolled airspace.

Additional Comments

Comments on issues affecting a specific class of airspace were also received. These comments with any modifications to the final rule are discussed below.

Some commenters, including AOPA, expressed apprehension that the FAA may reclassify airspace in an arbitrary manner. Other commenters, including EAA and SSA, believed the FAA implied in NPRM No. 89-28 that the person who is delegated airspace authority could allow any airspace designations considered appropriate.

In NPRM No. 89-28 and in this final rule, the FAA does not suggest that any new airspace designations could be specified without following rulemaking procedures where required. Further review of airspace areas will be proposed in future FAA rulemaking actions.

Three commenters, including the Alaska Airmen's Association and SSA, noted that NPRM No. 89-28 proposed to define controlled airspace in FAR § 1.1 as airspace in which "all aircraft may be subject to ATC" rather than airspace in which "some or all aircraft may be subject to ATC." According to one commenter, because aircraft operating under VFR are not always subject to ATC in controlled airspace, especially Class E airspace, the current definition is more accurate.

The proposed definition of controlled airspace is adopted in essence but it has been modified to correspond with ICAO's definition of a controlled airspace. Subsequent to the publication of NPRM No. 89-28, ICAO modified its definition of controlled airspace to read as follows: "Controlled airspace. An airspace of defined dimensions within which air traffic control service is provided to IFR flights and to VFR flights in accordance with the airspace classification. Note—Controlled airspace is a generic term which covers ATS (air traffic services) in airspace Classes A, B, C, D, and E." The proposed FAA definition in NPRM No. 89-28 read: "Controlled airspace means airspace designated as Class A, Class B, Class C, Class D, or Class E airspace in part 71 of this chapter and within which all aircraft may be subject to air traffic control."

While the commenter is essentially correct that all aircraft are not always subject to air traffic control, any aircraft may be subject to ATC if the pilot operates under IFR or if the pilot requests and receives air traffic services. The FAA believes that misunderstandings would be minimized with the adoption of the ICAO definition. The ICAO definition and the proposed definition are essentially synonymous; however, the FAA is confident the adoption of the ICAO definition is consistent with the objectives of airspace reclassification and that it is beneficial to have a

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common international definition of controlled airspace.

Four commenters, including EAA and SSA, noted that NPRM No. 89-28 only permits Special VFR operations for the purposes of departing from or arriving at an airport. The commenters stated that such a restriction of Special VFR operations would affect pipeline patrol, aerial photography, law enforcement, agricultural, and other special types of operations. EAA also stated that the proposed limitation of 4,000 feet above the surface for Special VFR operations could prevent pilots from climbing to the top of a haze layer.

The FAA will continue to permit Special VFR operations for through flights as well as flights for arrival or departure. Because control zones will be eliminated under Airspace Reclassification, Special VFR operations are only permitted within the ceiling and lateral boundaries of the surface areas of the Class B, Class C, Class D, or Class E airspace designated for an airport. Because the proposal for a uniform ceiling for Class C, Class D, and Class E airspace areas at 4,000 feet above the surface is not adopted, the boundaries of the airspace area in which Special VFR operations are permitted will vary. For example, if a Class C airspace area has a ceiling designated at 4,500 feet MSL and a surface area designated within a 5-nautical mile radius from the airport, Special VFR operations are permitted within that 5-nautical mile radius up to and including 4,500 feet MSL.

One commenter, a flight instructor with a petition signed by additional flight instructors, stated that the language in the proposal on aerobatic flight is vague and could be interpreted to restrict aerobatic operations within existing transition areas and other less crowded airspace areas. The commenter was concerned that the proposed § 91.71(q) could affect spin training at flight schools.

Under this amendment, the term "control zone" will be eliminated. However, the FAA desires to continue restrictions that currently exist in the FAR on operations within control zones. These restrictions will now apply within the lateral boundaries of the surface areas of the Class B, Class C, Class D, or Class E airspace designated for an airport. For example, if a Class E airspace area is designated to extend upward from the surface with a 4.4-nautical mile radius from the airport and a ceiling of 2,600 feet MSL, aerobatic flight will not be permitted below 2,600 feet MSL within a 4.4-nautical mile radius of the airport.

Implementation of Airspace Reclassification

The implementation of the Airspace Reclassification final rule includes parallel reviews of certain existing airspace areas to meet the new airspace classifications. The outcome of the multi-phase review will be published in separate NPRMs. The reviews will focus on control zones, non-Federal control towers, transition areas, and offshore airspace. The FAA realizes that some of the reviews could be in areas with unique local conditions.

The FAA drafted changes to FAA Order 7400.2C, which focuses on existing control zones and transition areas. The changes to Order 7400.2C are considered independent of the Airspace Reclassification final rule, and involve the revised criteria to be used for the reviews. Because the changes to Order 7400.2C and the reviews occur before the effective date of the Airspace Reclassification final rule, the revised criteria are written in existing airspace terminology. Examples of the revised criteria include: (1) Converting the lateral unit of measurement from statute miles to nautical miles; (2) conforming existing control zones to be congruent with the lateral dimensions of the surface areas of existing TCAs or ARSAs; (3) redesignating control zones to contain intended operations (not necessarily in a circular configuration); (4) redesignating the vertical limit of control zones from the surface of the earth to a specified altitude (but not to the base of the Continental Control Area); (5) establishing a policy to exclude satellite airports from control zones to the maximum extent practicable, consistent with instrument procedures and safety; and (6) replacing control zone departure extensions with transition areas.

The FAA anticipates that many control zones and associated transition areas would require minor modification. For example, a control zone could be integrated with the associated TCA or ARSA (Class B or Class C airspace area) or a control zone could become either a Class D airspace area or a Class E airspace area that extends upward from the surface.

The reviews will include control zones where a significant change in the current airspace structure is expected. For example, a control zone that extends beyond the perimeter of the associated TCA or ARSA and could require modification of the associated TCA or ARSA (Class B or Class C airspace area). The reviews will also include transition areas not associated with control zones and offshore airspace. Proposed changes that result from these reviews will be promulgated using normal rulemaking procedures.

The reviews could also result in the expansion of controlled airspace. These actions could affect airspace areas associated with non-Federal control towers. Any expansion of controlled airspace will be proposed in future NPRMs.

All necessary changes to the airspace structures are scheduled to be completed by September 16, 1993, the effective date of the Airspace Reclassification final rule.

Changes to the NPRM

This final rule includes several nonsubstantive editorial changes made to NPRM No. 89-28. Changes are also included in this final rule to certain FAR sections that were not included in NPRM No. 89-28 but require changes in terminology to be consistent with the amendments. Three additional subparts in part 93 are deleted because the rules will not be necessary under airspace reclassification. The sections and subparts, with an explanation of the changes made to them, follow.

SFAR 51-1

The reference to "Terminal Control Area (TCA)" in section 1 is replaced with "Class B airspace area." The reference to § 91.105(a) in section 2(a) is replaced with § 91.155(a). The reference to § 91.24(b) in section 2(b) is replaced with § 91.215(b). The phrase "meet the equipment requirements" in section 2(b) is replaced with "be equipped as." The reference to § 91.90(a) and § 91.90 in section 3 is replaced with § 91.131(a) and § 91.131.

SFAR 60

The references to "terminal control area" and "airport radar service area" in section 3a are replaced with "Class B airspace area" and "Class C airspace area." The phrase "terminal and en route airspace" in section 3a is replaced with "class of controlled airspace."

SFAR 62

The two references to "terminal control area" in section 1(a) are replaced with "Class B airspace area." The references to the "Tri-Area TCA" in section 2(24) and (25) are replaced with "Tri-Area Class B airspace area."

§ 45.22(a)(3)(i)

The phrase "the designated airport control zone of the takeoff airport, or within 5 miles of that airport if it has no designated control zone" is replaced with "the lateral boundaries of the surface areas of Class B, Class C, Class D, or Class E airspace designated for the takeoff airport, or within 4.4 nautical miles of that airport if it is within Class G airspace."

§ 61.95

All references to "terminal control area" in the title and paragraphs (a), (a)(1), (a)(2), (a)(3), and (b) are replaced with "Class B airspace" or "Class B airspace area."

§ 61.193(b)(4)

Both references to a "terminal control area" are replaced with "Class B airspace area."

§ 61.195(d)(3)

Both references to a "terminal control area" are replaced with "Class B airspace area."

Part 75

This part is removed and reserved with all sections being transferred to a new subpart M in existing Part 71.

§ 91.128

This section is established to include the existing requirements in § 91.127 on operations on or in the vicinity of an airport without an operating control tower.

§ 91.905

The references to §§ 91.127, 91.129, 91.130, 91.131, and 91.135 are replaced with the titles to become effective September 16, 1993, and a reference is added to § 91.126.

§ 93.1(b)

The reference to § 93.113, which is to be deleted as of September 16, 1993, is deleted.

Subpart N, part 93

This subpart on the airport traffic area at the Sabre U.S. Army Heliport (Tennessee) is removed and reserved. On September 16, 1993, this airspace will become a Class D airspace area.

Subpart O, part 93

This subpart on the Navy airport traffic area at Jacksonville, Florida, is removed and reserved. On September 16, 1993, this airspace will become three separate but adjoining Class D airspace areas.

Subpart R, part 93

This subpart on the Special Air Traffic Rules at El Toro California, is removed and reserved. On September 16, 1993, this airspace will become a part of the El Toro Class C airspace area.

§ 135.205(b)

The reference to "uncontrolled airspace" is replaced with "Class G airspace." The reference to "control zones" is replaced with "within the lateral boundaries of the surface areas of Class B, Class C, Class D, or Class E airspace designated for an airport."

§ 139.323(a)

The reference to "terminal control area" is replaced with "Class B airspace area."

§ 171.9(e)(1) and (e)(2)

All references to "air traffic control areas" are replaced with "controlled airspace."

§ 171.29(d)(1) and (d)(2)

All references to "air traffic control areas" are replaced with "controlled airspace."

§ 171.159(e)(1) and (e)(2)

Both references to "air traffic control areas" are replaced with "controlled airspace." The reference to "air traffic control zones or areas" is replaced with "controlled airspace."

§ 171.209(d)

Both references to "air traffic control areas" are replaced with "controlled airspace." The reference to "air traffic control zones or areas" is replaced with "controlled airspace."

§ 171.323(i)

The reference to "air traffic control areas" is replaced with "controlled airspace." The reference to "air traffic control zones or areas" is replaced with "controlled airspace."

Obsolete Dates

Obsolete dates have been removed from §§ 91.215 (b)(2), (b)(4), and (b)(5)(ii). Section 91.215(b)(5)(i)(A) is obsolete and is deleted. Section 91.215(b)(5)(i)(B) is incorporated into existing § 91.215(b)(5)(i).

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA that provides more detailed estimates of the economic consequences of this final rule regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all major rules except those responding to emergency situations or other narrowly defined exigencies. A major rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or one that is highly controversial.

The FAA has determined that this rule is not major as defined in the executive order. Therefore, a full regulatory analysis, that includes the identification and evaluation of cost reducing alternatives to the final rule, has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains a final regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96-354) and an International Trade Impact Assessment. If the reader desires more detailed economic information than this summary contains, then he/she should consult the full regulatory evaluation contained in the docket.

Benefit-Cost Analysis

The regulatory evaluation examines the costs and benefits of this final rule to reclassify U.S. airspace. This rule is intended to simplify airspace designations, achieve international commonality of airspace designations, standardize equipment requirements and associate appropriate pilot certification requirements as well as certain other requirements associated with each proposed airspace designation. These changes are based primarily on recommendations from a National Airspace Review (NAR) task group and will ultimately allow for increased safety and efficiency in the U.S. airspace and air traffic control system.

Costs

The FAA estimates the total incremental cost that will accrue from the implementation of this final rule to be $1.9 million (discounted, in 1990 dollars). Virtually all cost, which is expected to be incurred by the FAA, will accrue from revisions to aeronautical charts, re-education of the pilot community, and revision of air traffic controller training courses. Each one of these factors is briefly discussed below:

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1. Revisions to Aeronautical Charts

A significant cost impact associated with this rule will result from the requirement to change aeronautical charts. These modifications will be incorporated during the regular updating and printing of the charts. Therefore, all costs associated with printing aeronautical charts are assumed to be normal costs of doing business. However, because of dimension and symbol changes that will be needed, the plates used to print the charts will need to be changed, and this will affect most of the aeronautical charts printed.

The total cost of revisions to all charts is estimated by the National Ocean Service based on the summation of the costs of revising each class of the airspace. The total discounted cost is estimated to be $1.2 million.

2. Revision of Air Traffic Training Courses

Manuals, textbooks, and other training materials used to educate FAA controllers will need to be updated to reflect the airspace reclassification. According to the FAA Aeronautical Center in Oklahoma City, lesson plans, visual aids, handouts, laborstory exercises, and tests will need to be revised.

The cost of these revisions is determined by multiplying the total revision time by the hourly cost of the course manager making the changes. The course managers are level GS–14 (step 5) employees with an average loaded annual salary of $72,000. Assuming 2,080 hours per year, their average loaded hourly salary is $35. The cost of the course changes is estimated to be $43,000 (discounted). An additional cost of $10,000 (discounted) will accrue as the result of a one-week seminar and associated travel. This seminar will be necessary to educate course managers about the airspace reclassification. The total cost that will accrue from this factor is estimated to be $43,000 (discounted).

3. Re-education of the Pilot Community

Pilots who are presently certificated to operate in the U.S. airspace will need to become familiar with the airspace reclassification as the result of this rule. This task will be accomplished through a variety of publications, videotapes, and pilot meetings.

The FAA is considering the production of a videotape that will be provided as a public service to industry associations, such as AOPA, ALPA, and NBAA, to inform them of the airspace reclassification. This videotape could be shown at various association meetings to help re-educate the pilot community. The FAA's Office of Public Affairs, estimates that the film will be 20 to 25 minutes long and could be produced at a cost of $75,000 (discounted).

The FAA is also considering the publication of an advisory circular (AC) which will document the new airspace classifications. The AC will be mailed to each registered pilot. It is estimated that one man-week at a level GS–14 (Step 5) will be required to draft the AC and obtain approval in the sponsoring organization, and one GS–14 man-week will be required to obtain FAA approval of the AC. The cost associated with 2 man-weeks at a level GS–14 needed to prepare the AC is estimated to be $2,500 (discounted). This cost was estimated using the average loaded hourly salary of a level GS–14 employee which is $35.

After the AC is approved, it will be mailed to approximately 761,000 registered pilots. Assuming that the AC will be 10 pages long and the cost of reproduction is $0.05 per page, the cost of reproduction will be $346,000 (discounted). Assuming that the shipping and handling charge associated with each copy is $0.29, the cost of shipping and handling is $201,000 (discounted). The cost impact that will result for re-educating the pilot community was estimated by summing the cost of the videotape and the AC, described in the preceding paragraphs. This estimated cost impact is $625,000 (discounted).

Benefits

This final rule is expected to generate benefits in the form of enhanced safety and operational efficiency to the aviation community. These benefits are briefly described, in qualitative terms, below:

1. Increased Safety Due to Better Understanding and Simplification

The FAA believes that the simplified classification in this rule will reduce airspace complexity and thereby enhance safety. This airspace reclassification mirrors the new ICAO airspace designations, except there will not be a U.S. Class F airspace.

This rule also will increase safety in the U.S. since foreign pilots operating aircraft in U.S. airspace will be familiar with the airspace designations and classification system.

Another simplification which is expected to help increase airspace safety is the change that will correlate the class of controlled airspace currently termed a control zone to the airspace of the surrounding area. Currently, several types of airspace are designated around an airport, which makes it difficult for pilots and controllers to determine how the areas are classified and which requirements apply. After the reclassification, the terminology will be more explanatory.

The conversion of statute mile designations to nautical mile designations is intended to further simplify operations. Since the instruments on-board the aircraft are calibrated in nautical miles and aviation charts have representations in nautical miles, this change will eliminate the need for pilots to convert between nautical and statute miles. This simplification will help pilots and controllers to be better able to understand the airspace designations in part 71.

2. Reduced Minimum Distance from Cloud Requirement

This airspace reclassification will designate TCAs as Class B airspace areas. The VFR minimum distance from clouds requirement in this airspace will also change. Currently this distance is 500 feet below, 1,000 feet above, and 2,000 feet horizontal. In Class B airspace, the rule will require that the minimum distance from clouds be "clear of clouds." This change will afford VFR traffic increased opportunities to fly in Class B airspace in more types of weather than they currently have in a TCA. Furthermore, there will be reduced requests for deviation from ATC instruction to maintain cloud clearance. This action will not threaten safety since all aircraft operating in Class B airspace are provided with the appropriate separation.

3. Operation Of Ultralight Vehicles

This rule incorporates NAR task group 1–7.2 recommendations and changes part 103 to correspond to the new airspace designations found in part 71. There will be no decrease in safety because there is no change in the type of airspace in which ultralights are permitted to fly or operate.

Conclusion

Despite the fact that benefits are not quantifiable in monetary terms, the FAA, nonetheless, concludes that the benefits of this rule are expected to outweigh its expected costs.

International Trade Impact Assessment

Since this rule will not affect airspace outside the United States for which the United States is responsible, it is not expected to impose any new operating requirement in that airspace. As such, it will have no affect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of U. S. products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules which may have "a significant cost impact on a substantial number of small entities." The small entities which could be potentially affected by the implementation of this notice are pilot schools.

Training materials used in the courses offered by the pilot schools will have to be modified to reflect the changes of the airspace reclassification. However, pilot schools will not incur any cost impact since the documents they use will be updated as a normal course of business. Thus, there will be no cost impact to those pilot schools classified as small entities. Therefore, this rule will not have a significant cost impact on a substantial number of small entities.

Federalism Implications

The amendments in this final rule will not have substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that these amendments will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this rule.

Conclusion

For reasons discussed in the preamble, and based on the findings in the Regulatory Evaluation Determination and the International Trade Impact Analysis, the FAA has determined that these amendments do not qualify as a major rule under Executive Order 12291. In addition, the FAA certifies that these amendments will not have a significant economic effect on a substantial number of small business entities under the criteria of the Regulatory Flexibility Act. These amendments are considered significant under DOT's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of these amendments, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in its entirety in the regulatory docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

Cross Reference

To identify where existing regulations for part 75 are relocated in existing part 71, the following cross reference lists are provided:

Cross Reference Table

Old section	New section
75.1	71.601.
75.11	71.603.
75.13	71.605.
75.17	Deleted.
75.100	71.607.
75.400	71.609.

New Section	Old Section
71.601	75.1.
71.603	75.11.
71.605	75.13.
71.607	75.100.
71.609	75.400.

To identify where existing regulations for part 71 are relocated in the rule to be effective September 16, 1993, or if the regulations will be relocated in FAA Order 7400.9, the following cross reference lists are provided:

Cross Reference Table

Old section	New section or FAA order 7400.9
71.1	71.1.
71.3	71.73.
71.5	71.75.
71.6	71.77.
71.7	Deleted.
71.9	71.71.
71.11	Deleted.
71.12	71.41.
71.13	71.71.
71.14	71.51.
71.15	71.31.
71.17	71.5.
71.19	71.7.
71.101	Subpart E of FAA Order 7400.9.
71.103	Subpart E of FAA Order 7400.9.
71.105	Subpart E of FAA Order 7400.9.
71.107	Subpart E of FAA Order 7400.9
71.109	Subpart E of FAA Order 7400.9
71.121	71.79.
71.123	Subpart E of FAA Order 7400.9
71.125	Subpart E of FAA Order 7400.9
71.127	Subpart E of FAA Order 7400.9.
71.151	Subpart E of FAA Order 7400.9.
71.161	71.71 and Subpart E of FAA Order 7400.9
71.163	71.71 and Subpart E of FAA Order 7400.9.
71.165	Subpart E of FAA Order 7400.9.
71.171	Subpart D or E of FAA Order 7400.9
71.181	Subpart E of FAA Order 7400.9
71.193	71.33.
71.201	71.901.
71.203	Subpart H of FAA Order 7400.9.
71.207	Subpart H of FAA Order 7400.9.
71.209	Subpart H of FAA Order 7400.9.
71.211	Subpart H of FAA Order 7400.9.
71.213	Subpart H of FAA Order 7400.9.
71.215	Subpart H of FAA Order 7400.9.
71.301	Subpart E of FAA Order 7400.9.
71.401	Subpart B of FAA Order 7400.9.
71.501	Subpart C of FAA Order 7400.9.
71.601	Deleted
71.603	Subpart A of FAA Order 7400.9.
71.605	Subpart A of FAA Order 7400.9.
71.607	Subpart A of FAA Order 7400.9.
71.609	Subpart A of FAA Order 7400.9.

New Section	Old Section
71.1	71.1.
71.5	71.17.
71.7	71.19.
71.9	New.
71.31	71.15.
71.33	71.193.
71.41	71.12.
71.51	71.14.
71.61	New.
71.71	71.9, 71.13, 71.161, 71.163.
71.73	71.3.
71.75	71.5.
71.77	71.6.
71.79	71.121.
71.901	71.201.

FAA Order 7400.9	Old Section
Subpart A	71.603.
Subpart A	71.605.
Subpart A	71.607.
Subpart A	71.609.
Subpart B	71.401.
Subpart C	71.501.
Subpart D or Subpart E	71.171.
Subpart E	71.101.
Subpart E	71.103.
Subpart E	71.105.
Subpart E	71.107.
Subpart E	71.109.
Subpart E	71.123.
Subpart E	71.125.
Subpart E	71.127.
Subpart E	71.151.
Subpart E	71.161.
Subpart E	71.163.
Subpart E	71.165.

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FAA Order 7400.9	Old Section
Subpart E	71.181.
Subpart E	71.301.
Subpart H	71.203.
Subpart H	71.207.
Subpart H	71.209.
Subpart H	71.211.
Subpart H	71.213.
Subpart H	71.215.

List of Subjects

14 CFR Part 1

Air safety, Air transportation, Aviation safety, Safety, Transportation.

14 CFR Part 11

Administrative practice and procedure, Reporting and recordkeeping requirements.

14 CFR Part 45

Air safety, Air transportation, Aviation safety, Safety, Transportation.

14 CFR Part 61

Air safety, Air transportation, Airmen, Aviation safety, Pilots, Students, Safety, Transportation.

14 CFR Part 65

Air safety, Air transportation, Airmen, Airports, Aviation safety, Reporting and recordkeeping requirements, Safety.

14 CFR Part 71

Airspace, Airways, Incorporation by reference.

14 CFR Part 75

Airspace, Airways.

14 CFR Part 91

Air safety, Air traffic control, Air transportation, Airmen, Airports, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 93

Special air traffic rules.

14 CFR Part 101

Air safety, Air transportation, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 103

Air safety, Air transportation, Aircraft, Aviation safety, Recreation and recreation areas.

14 CFR Part 105

Air safety, Air transportation, Aircraft, Airports, Airspace, Aviation safety, Recreation and recreation areas, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carrier, Air safety, Air traffic control, Air transportation, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 127

Air carrier, Air safety, Air transportation, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 135

Air carrier, Air safety, Air traffic control, Air transportation, Aircraft, Airmen, Airspace, Aviation Safety.

14 CFR Part 137

Air safety, Agriculture, Aircraft, Aviation safety.

14 CFR Part 139

Air carrier, Air safety, Air transportation, Aircraft, Airports, Aviation safety.

14 CFR Part 171

Air traffic control, Aircraft, Airports, Airspace, Navigation, Reporting and recordkeeping requirements.

The Rule

In consideration of the foregoing, the Federal Aviation Administration amends SFAR 51–1, SFAR 60, SFAR 62, parts 1, 11, 45, 61, 65, 71, 75, 91, 93, 101, 103, 105, 121, 127, 135, 137, 139, and 171 of Federal Aviation Regulations (14 CFR parts 1, 11, 45, 61, 65, 71, 75, 91, 93, 101, 103, 105, 121, 127, 135, 137, 139, and 171) as follows:

PART 91—[AMENDED]

Part 91 is amended as follows:

SFAR No. 51–1—SPECIAL FLIGHT RULES IN THE VICINITY OF LOS ANGELES INTERNATIONAL AIRPORT

1. The authority citation for Special Federal Aviation Regulation No. 51–1 is revised to read as follows:

Authority: 49 U.S.C. app. 1303, 1348, 1354(a), 1421, and 1422; 49 U.S.C. 106(g).

2. Special Federal Aviation Regulation No. 51–1 is amended by revising section 1 introductory text, paragraphs 2(a) and 2(b) of section 2, and section 3 to read as follows:

Section 1. Applicability: This rule establishes a special operating area for persons operating aircraft under visual flight rules (VFR) in the following airspace of the Los Angeles Class B airspace area designated as the Los Angeles Special Flight Rules Area: * * *

Section 2. * * *

a. The flight must be conducted under VFR and only when operation may be conducted in compliance with § 91.155(a).

b. The aircraft must be equipped as specified in FAR 91.215(b) replying on Code 1201 prior to entering and while operating in this area.

* * * * *

Section 3. Notwithstanding the provisions of § 91.131(a), an air traffic control authorization is not required in the Los Angeles Special Flight Rules Area for operations in compliance with section 2 of this SFAR. All other provisions of § 91.131 apply to operate in the Special Flight Rules Area.

SFAR NO. 60—AIR TRAFFIC CONTROL SYSTEM EMERGENCY OPERATION

3. The authority citation for SFAR No. 60 is revised to read as follows:

Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

4. Special Federal Aviation Regulation No. 60 is amended by revising paragraph (a) of section 3 to read as follows:

* * * * *

3. * * *

(a) Restrict, prohibit, or permit VFR and/or IFR operations at any airport, Class B airspace area, Class C airspace area, or other class of controlled airspace.

* * * * *

SFAR NO. 62—SUSPENSION OF CERTAIN AIRCRAFT OPERATIONS FROM THE TRANSPONDER WITH AUTOMATIC PRESSURE ALTITUDE REPORTING CAPABILITY REQUIREMENT

5. The authority citation for SFAR No. 62 is revised to read as follows:

Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

6. Special Federal Aviation Regulation No. 62 is amended by revising paragraph (a) of section 1 and introductory text of both paragraphs (24) and (25) of section 2 to read as follows:

Section 1. * * *

(a) The airspace within 30 nautical miles of a Class B airspace area primary airport, from the surface upward to 10,000 feet MSL, excluding the airspace designated as a Class B airspace area is referred to as the Mode C veil.

* * * * *

Section 2. * * *

* * * * *

(24) Effective until the establishment of the Washington Tri-Area Class B airspace area or December 30, 1993, whichever occurs first:

* * *

(25) Effective upon the establishment of the Washington Tri-Area Class B airspace area:

* * *

* * * * *

PART 1—DEFINITIONS AND ABBREVIATIONS

7. The authority citation for part 1 is revised to read as follows:

Authority: 49 U.S.C. app. 1347, 1348, 1354(a), 1357(d)(2), 1372, 1421 through 1430, 1432, 1442, 1443, 1472, 1510, 1522, 1652(e), 1655(c), 1657(f); 49 U.S.C. 106(g).

8. Section 1.1 is amended by removing the definition of "airport traffic area," revising the definition of "controlled airspace," and adding the definitions of "Special VFR conditions" and "Special VFR operations" in alphabetical order to read as follows:

§ 1.1 General definitions.

* * * * *

Controlled airspace means an airspace of defined dimensions within which air traffic control service is provided to IFR flights and to VFR flights in accordance with the airspace classification.

Note—Controlled airspace is a generic term that covers Class A, Class B, Class C, Class D, and Class E airspace.

* * * * *

Special VFR conditions mean meteorological conditions that are less than those required for basic VFR flight in controlled airspace and in which some aircraft are permitted flight under visual flight rules.

Special VFR operations means aircraft operating in accordance with clearances within controlled airspace in meteorological conditions less than the basic VFR weather minima. Such operations must be requested by the pilot and approved by ATC.

* * * * *

PART 11—GENERAL RULEMAKING PROCEDURES

9. The authority citation for part 11 is revised to read as follows:

Authority: 49 U.S.C. app. 1341(a), 1343(d), 1348, 1354(a), 1401 through 1405, 1421 through 1431, 1461, 1502; 49 U.S.C. 106(g).

10. Section 11.61 is amended by revising paragraphs (a)(1) and (c) to read as follows:

§ 11.61 Scope.

(a) * * *

(1) Designations of controlled airspace under part 71 of this chapter;

* * * * *

(c) For the purposes of this subpart, "Director" means the Executive Director of System Operations, the Associate Administrator for Air Traffic or the Director, Air Traffic Rules and Procedures Service, or any person to whom the Director has delegated authority in the matter concerned.

* * * * *

PART 45—IDENTIFICATION AND REGISTRATION MARKING

11. The authority citation for part 45 is revised to read as follows:

Authority: 49 U.S.C. app. 1348, 1354, 1401, 1402, 1421, 1423, 1522, 1655(c).

12. Section 45.22 is amended by revising paragraph (a)(3)(i) to read as follows:

§ 45.22 Exhibition, antique, and other aircraft: Special rules.

(a) * * *

(3) * * *

(i) It is operated with the prior approval of the Flight Standards District Office, in the case of a flight within the lateral boundaries of the surface areas of Class B, Class C, Class D, or Class E airspace designated for the takeoff airport, or within 4.4 nautical miles of that airport if it is within Class G airspace; or

* * * * *

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

13. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g).

14. Section 61.95, paragraph (a) and (b) introductory text are revised to read as follows:

§ 61.95 Operations in Class B airspace and at airports located within Class B airspace.

(a) A student pilot may not operate an aircraft on a solo flight in Class B airspace unless—

(1) The pilot has received both ground and flight instruction from an authorized instructor on that Class B airspace area and the flight instruction was received in the specific Class B airspace area for which solo flight is authorized;

(2) The logbook of that pilot has been endorsed within the preceding 90 days for conducting solo flight in that Class B airspace area by the instructor who gave the flight training; and

(3) The logbook endorsement specifies that the pilot has received the required ground and flight instruction and has been found competent to conduct solo flight in that specific Class B airspace area.

(b) Pursuant to § 91.131(b), a student pilot may not operate an aircraft on a solo flight to, from, or at an airport located within Class B airspace unless—

* * * * *

15. Section 61.193 is amended by revising paragraph (b)(4) to read as follows:

§ 61.193 Flight instructor authorizations.

* * * * *

(b) * * *

(4) In accordance with § 61.95, the logbook of a student pilot the flight instructor has instructed authorizing solo flights in a Class B airspace area or at an airport within a Class B airspace area;

* * * * *

16. Section 61.195 is amended by revising paragraph (d)(3) to read as follows:

§ 61.195 Flight instructor limitations.

* * * * *

(d) * * *

(3) For solo flight in a Class B airspace area or at an airport within a Class B airspace area unless the flight instructor has given that student ground and flight instruction and has found that student prepared and competent to conduct the operations authorized.

* * * * *

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

17. The authority citation for part 65 is revised to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g).

18. Section 65.37 is amended by revising paragraphs (f) introductory text and (f)(2) to read as follows:

§ 65.37 Skill requirements: Operating positions.

* * * * *

(f) Each of the following procedures that is applicable to that operating position and is required by the person performing the examination:

* * * * *

(2) The terrain features, visual checkpoints, and obstructions within the lateral boundaries of the surface areas of Class B, Class C, Class D, or Class E airspace designated for the airport.

* * * * *

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, REPORTING POINTS, JET ROUTES, AND AREA HIGH ROUTES

19. The heading for part 71 is revised as set forth above.

19A. The authority citation for part 71 is revised to read as follows:

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Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

20. Section 71.1 is revised to read as follows:

§ 71.1 Applicability.

The complete listing for all jet routes and area high routes can be found in FAA Order 7400.7, Compilation of Regulations, which was last published as of April 30, 1991, and effective November 1, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The approval to incorporate by reference FAA Order 7400.7 is effective as of December 17, 1991 through September 15, 1993. Copies of this order may be obtained from the Document Inspection Facility, APA–220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–3484. Copies may be inspected in Docket Number 24456 at the Federal Aviation Administration, Office of the Chief Counsel, AGC–10, room 915G, 800 Independence Avenue, SW., Washington, DC 20591 weekdays between 8:30 a.m. and 5 p.m. or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC. This section is effective as of December 17, 1991, through September 15, 1993.

* * * * *

21. Section 71.11 is revised to read as follows:

§ 71.11 Control zone.

The control zones listed in subpart F of FAA Order 7400.7 (incorporated by reference, see § 71.1) consist of controlled airspace which, unless otherwise specified, extends upward from the surface of the earth and terminates at the base of the continental control area. Unless otherwise specified, control zones that do not underlie the continental control area have no upper limit. A control zone may include one or more airports and is normally a circular area with extensions as necessary to include instrument approach paths.

22. Section 71.19 is revised to read as follows:

§ 71.19 Bearings; radials; miles.

All bearings and radials in this part are true and are applied from point of origin and all mileages in this part are stated as nautical miles.

23. Subpart M consisting of § 71.601–71.609, is added to read as follows:

Subpart M—Jet Routes and Area High Routes

Sec.
71.601 Applicability.
71.603 Jet routes.
71.605 Area Routes above 18,000 feet MSL.
71.607 Jet route descriptions.
71.609 Area high route descriptions

§ 71.601 Applicability.

The routes described in § 71.607 between high altitude navigational aids or intersections of their signals, are designated as jet routes along which aircraft may be operated between 18,000 feet MSL and flight level 450. The routes described in § 71.609 are designated as area high routes.

§ 71.603 Jet routes.

Each jet route designated in § 71.607 consists of a direct course for navigating between 18,000 feet MSL and flight level 450, inclusive, between the navigational aids and intersections specified for that route.

§ 71.605 Area routes above 18,000 feet MSL.

Each area route designated in § 71.609 consists of a direct course for navigating aircraft at altitudes between 18,000 feet MSL and flight level 450, inclusive, between the waypoints specified for that route.

§ 71.607 Jet route descriptions.

Each jet route description can be found in part 75 of FAA Order 7400.7 (incorporated by reference, see § 71.1).

§ 71.609 Area high route descriptions.

Each area route description can be found in part 75 of FAA Order 7400.7 (incorporated by reference, see § 71.1).

24. Part 71 is revised to read as follows: (Effective September 16, 1993)

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

Subpart A—General; Class A Airspace

Sec.
71.1 Airspace classification.
71.3 [Reserved]
71.5 Reporting points.
71.7 Bearings, radials, and mileages.
71.9 Overlapping airspace designations.
71.31 Class A airspace.
71.33 Class A airspace areas.

Subpart B—Class B Airspace

Sec.
71.41 Class B airspace.

Subpart C—Class C Airspace

Sec.
71.51 Class C airspace.

Subpart D—Class D Airspace

Sec.
71.61 Class D airspace.

Subpart E—Class E Airspace

Sec.
71.71 Class E airspace.
71.73 Classification of Federal airways.
71.75 Extent of Federal airways.
71.77 Extent of area low routes.
71.79 Designation of VOR Federal airways.

Subpart F—[Reserved]

Subpart G—[Reserved]

Subpart H—Reporting Points

Sec.
71.901 Applicability.

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. app. 106(g) 14 CFR 11.69.

Subpart A—General; Class A Airspace

§ 71.1 Airspace classification.

The complete listing of these airspace designations can be found in FAA Order 7400.9, Airspace Reclassification, which is effective September 16, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The approval to incorporate by reference FAA Order 7400.9 is effective as of September 16, 1993, through September 15, 1994. Copies of this order may be obtained from the Document Inspection Facility, APA–220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591 (202) 267–3484. Copies may be inspected in Docket No. 24456 at the Federal Aviation Administration, Office of the Chief Counsel, AGC–10, room 915G, 800 Independence Avenue, SW., Washington, DC 20591 weekdays between 8:30 a.m. and 5 p.m. or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, D.C.

(a) The airspace assignments described in this subpart are designated as Class A airspace areas.

(b) The airspace assignments described in subpart B are designated as Class B airspace areas.

(c) The airspace assignments described in subpart C are designated as Class C airspace areas.

(d) The airspace assignments described in subpart D are designated as Class D airspace areas.

(e) The airspace assignments described in subpart E are designated as Class E airspace areas.

(f) Airspace not assigned in subpart A, B, C, D, E, or H of this part is uncontrolled airspace and is designated as Class G airspace.

§ 71.3 [Reserved]

§ 71.5 Reporting points.

The reporting points listed in subpart H of FAA Order 7400.9 (incorporated by reference, see § 71.1) consist of geographic locations at which the position of an aircraft must be reported in accordance with part 91 of this chapter.

§ 71.7 Bearings, radials, and mileages.

All bearings and radials in this part are true and are applied from point of origin and all mileages in this part are stated as nautical miles.

§ 71.9 Overlapping airspace designations.

(a) When overlapping airspace designations apply to the same airspace, the operating rules associated with the more restrictive airspace designation apply.

(b) For the purpose of this section—

(1) Class A airspace is more restrictive than Class B, Class C, Class D, Class E, or Class G airspace;

(2) Class B airspace is more restrictive than Class C, Class D, Class E, or Class G airspace;

(3) Class C airspace is more restrictive than Class D, Class E, or Class G airspace;

(4) Class D airspace is more restrictive than Class E or Class G airspace; and

(5) Class E is more restrictive than Class G airspace.

§ 71.31 Class A airspace.

The airspace descriptions contained in § 71.33 and the routes contained in subpart A of FAA Order 7400.9 (incorporated by reference, see § 71.1) are designated as Class A airspace within which all pilots and aircraft are subject to the rating requirements, operating rules, and equipment requirements of Part 91 of this chapter.

§ 71.33 Class A airspace areas.

(a) That airspace of the United States, including that airspace overlying the waters within 12 nautical miles of the coast of the 48 contiguous States, from 18,000 feet MSL to and including FL600 excluding the states of Alaska and Hawaii, Santa Barbara Island, Farallon Island, and the airspace south of latitude 25°04'00" North.

(b) That airspace of the State of Alaska, including that airspace overlying the waters within 12 nautical miles of the coast, from 18,000 feet MSL to and including FL600 but not including the airspace less than 1,500 feet above the surface of the earth and the Alaska Peninsula west of longitude 160°00'00" West.

Subpart B—Class B Airspace

§ 71.41 Class B airspace.

The Class B airspace areas listed in subpart B of FAA Order 7400.9 (incorporated by reference, see § 71.1) consist of specified airspace within which all aircraft operators are subject to the minimum pilot qualification requirements, operating rules, and aircraft equipment requirements of part 91 of this chapter. Each Class B airspace area designated for an airport in subpart B of FAA Order 7400.9 (incorporated by reference, see § 71.1) contains at least one primary airport around which the airspace is designated.

Subpart C Class C Airspace

§ 71.51 Class C airspace.

The Class C airspace areas listed in subpart C of FAA Order 7400.9 (incorporated by reference, see § 71.1) consist of specified airspace within which all aircraft operators are subject to operating rules and equipment requirements specified in part 91 of this chapter. Each Class C airspace area designated for an airport in subpart C of FAA Order 7400.9 (incorporated by reference, see §71.1) contains at least one primary airport around which the airspace is designated

Subpart D—Class D Airspace

§ 71.61 Class D airspace.

The Class D airspace areas listed in subpart D of FAA Order 7400.9 (incorporated by reference, see § 71.1) consist of specified airspace within which all aircraft operators are subject to operating rules and equipment requirements specified in part 91 of this chapter. Each Class D airspace area designated for an airport in subpart D of FAA Order 7400.9 (incorporated by reference, see § 71.1) contains at least one primary airport around which the airspace is designated.

Subpart E—Class E Airspace

71.71 Class E airspace.

Class E Airspace consists of:

(a) The airspace of the United States, including that airspace overlying the waters within 12 nautical miles of the coast of the 48 contiguous states and Alaska, extending upward from 14,500 feet MSL up to, but not including 18,000 feet MSL, and excluding—

(1) The Alaska peninsula west of longitude 160°00'00"W.;

(2) The airspace below 1,500 feet above the surface of the earth; and

(3) Prohibited and restricted areas, other than restricted areas listed in subpart E of FAA Order 7400.9 (incorporated by reference, see §71.1).

(b) The airspace areas designated for an airport in subpart E of FAA Order 7400.9 (incorporated by reference, see § 71.1) within which all aircraft operators are subject to the operating rules specified in part 91 of this chapter.

(c) The airspace areas listed as domestic airspace areas in subpart E of FAA Order 7400.9 (incorporated by reference, see § 71.1) which extend upward from 700 feet or more above the surface of the earth when designated in conjunction with an airport for which an approved instrument approach procedure has been prescribed, or from 1,200 feet or more above the surface of the earth when designated in conjunction with segments of airways or routes. When such areas are designated in conjunction with airways or routes, the extent of such designation has the lateral extent identical to that of a Federal airway and extends upward from 1,200 feet or higher unless otherwise specified.

(d) The Federal airways and area low routes described and listed in subpart E of FAA Order 7400.9 (incorporated by reference, see § 71.1).

(e) The airspace areas listed as offshore airspace areas in subpart E of FAA Order 7400.9 (incorporated by reference, see § 71.1) which are designated in international airspace within areas of domestic radio navigational signal or ATC radar coverage, and within which domestic ATC procedures are applied. When designated in conjunction with a route, the extent of such designation is as follows:

(1) Unless otherwise specified, the airspace centered on each jet route segment listed in subpart E of FAA Order 7400.9 (incorporated by reference, see § 71.1) has a vertical extent identical to that of a jet route and a lateral extent identical to that of a Federal airway. Unless otherwise specified, the place names appearing in the descriptions indicate VOR or VORTAC facilities identified by those names.

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(2) Unless otherwise specified, each airspace area has a lateral extent identical to that of a Federal airway and extends upward from 1,200 feet above the surface of the earth.

§ 71.73 Classification of Federal airways.

Federal airways are classified as follows:

(a) Colored Federal airways:
(1) Green Federal airways.
(2) Amber Federal airways.
(3) Red Federal airways.
(4) Blue Federal airways.
(b) VOR Federal airways.

§ 71.75 Extent of Federal airways.

(a) Each Federal airway is based on a center line that extends from one navigational aid or intersection to another navigational aid (or through several navigational aids or intersections) specified for that airway.

(b) Unless otherwise specified:

(1) Each Federal airway includes the airspace within parallel boundary lines 4 miles each side of the center line. Where an airway changes direction, it includes that airspace enclosed by extending the boundary lines of the airway segments until they meet.

(2) Where the changeover point for an airway segment is more than 51 miles from either of the navigational aids defining that segment, and—

(i) The changeover point is midway between the navigational aids, the airway includes the airspace between lines diverging at angles of 4.5° from the center line at each navigational aid and extending until they intersect opposite the changeover point; or

(ii) The changeover point is not midway between the navigational aids, the airway includes the airspace between lines diverging at angles of 4.5° from the center line at the navigational aid more distant from the changeover point, and extending until they intersect with the bisector of the angle of the center lines at the changeover point; and between lines connecting these points of intersection and the navigational aid nearer to the changeover point.

(3) Where an airway terminates at a point or intersection more than 51 miles from the closest associated navigational aid, it includes the additional airspace within lines diverging at angles of 4.5° from the center line extending from the associated navigational aid to a line perpendicular to the center line at the termination point.

(4) Where an airway terminates, it includes the airspace within a circle centered at the specified navigational aid or intersection having a diameter equal to the airway width at that point. However, an airway does not extend into an oceanic control area.

(c) Unless otherwise specified—

(1) Each Federal airway includes that airspace extending upward from 1,200 feet above the surface of the earth to, but not including, 18,000 feet MSL, except that Federal airways for Hawaii have no upper limits. Variations of the lower limits of an airway are expressed in digits representing hundreds of feet above the surface or MSL and, unless otherwise specified, apply to the segment of an airway between adjoining navigational aids or intersections; and

(2) The airspace of a Federal airway, within the lateral limits of a Class E airspace area with a lower floor, has a floor coincident with the floor of that area.

(d) A Federal airway does not include the airspace of a prohibited area.

§ 71.77 Extent of area low routes.

(a) Each area low route is based on a center line that extends from one waypoint to another waypoint (or through several waypoints) specified for that area low route. An area low route does not include the airspace of a prohibited area. All mileages specified in connection with area low routes are nautical miles.

(b) Unless otherwise specified in subpart E of FAA Order 7400.9 (incorporated by reference, see § 71.1), the following apply:

(1) Except as provided in paragraph (2) of this section, each area low route includes, and is limited to, that airspace within parallel boundary lines 4 or more miles on each side of the route center line as described in the middle column of the following table, plus that additional airspace outside those parallel lines and within lines drawn outward from those parallel lines at angles of 3.25°, beginning at the distance from the tangent point specified in the right-hand column of the following table:

Miles from reference facility point to tangent point	Miles from center line to parallel lines	Miles from tangent along parallel line to vertices of 3.25° angles
Less than 17	4	51
17 to, but not including 27	4	50
27 to, but not including 33	4	49
33 to, but not including 38	4	48
38 to, but not including 43	4	47
43 to, but not including 47	4	46
47 to, but not including 51	4	45
51 to, but not including 55	4	44
55 to, but not including 58	4	43
58 to, but not including 61	4	42
61 to, but not including 63	4	41
63 to, but not including 66	4	40
66 to, but not including 68	4	39
68 to, but not including 70	4	38
70 to, but not including 72	4	37
72 to, but not including 74	4	36
74 to, but not including 76	4	35
76 to, but not including 78	4	34
78 to, but not including 79	4	33
79 to, but not including 81	4	32
81 to, but not including 83	4	31
83 to, but not including 84	4	30
84 to, but not including 86	4	29
86 to, but not including 87	4	28
87 to, but not including 88	4	27
88 to, but not including 89	4	26
89 to, but not including 91	4	25
91 to, but not including 92	4	24

Miles from reference facility point to tangent point	Miles from center line to parallel lines	Miles from tangent along parallel line to vertices of 3.25° angles
92 to, but not including 93	4	23
93 to, but not including 94	4	22
94 to, but not including 95	4	21
95 to, but not including 96	4	19
96 to, but not including 97	4	18
97 to, but not including 98	4	17
98 to, but not including 99	4	15
99 to, but not including 100	4	13
100 to, but not including 101	4	11
101 to, but not including 102	4	8
102 to, but not including 105	4	0 (i.e., at tangent point).
105 to, but not including 115	4.25	0 (i.e., at tangent point).
115 to, but not including 125	4.50	0 (i.e., at tangent point).
125 to, but not including 135	4.75	0 (i.e., at tangent point).
135 to, but not including 145	5.00	0 (i.e., at tangent point).
145 to, but not including 150	5.25	0 (i.e., at tangent point).

(2) Each area low route, whose center line is at least 2 miles, and not more than 3 miles from the reference facility, includes, in addition to the airspace specified in subparagraph (1) of this paragraph, that airspace on the reference facility side of the center line that is within lines connecting the point that is 4.9 miles from the tangent point on a perpendicular line from the center line through the reference facility, thence to the edges of the boundary lines described in paragraph (b)(1) of this section, intersecting those boundary lines at angles of 5.15°.

(3) Where an area low route changes direction, it includes that airspace enclosed by extending the boundary lines of the route segments until they meet.

(4) Where the widths of adjoining route segments are unequal, the following apply:

(i) If the tangent point of the narrower segment is on the route center line, the width of the narrower segment includes that additional airspace within lines from the lateral extremity of the wider segment where the route segments join, thence toward the tangent point of the narrower route segment, until intersecting the boundary of the narrower segment.

(ii) If the tangent point of the narrower segment is on the route center line extended, the width of the narrower segment includes that additional airspace within lines from the lateral extremity of the wider segment where the route segments join, thence toward the tangent point until reaching the point where the narrower segment terminates or changes direction, or until intersecting the boundary of the narrower segment.

(5) Where an area low route terminates, it includes that airspace within a circle whose center is the terminating waypoint, and whose diameter is equal to the route segment width at that waypoint, except that an area low route does not extend into an oceanic control area.

(6) Each area low route includes that airspace extending upward from 1,200 feet above the surface of the earth to, but not including, 18,000 feet MSL, except that area low routes for Hawaii have no upper limits. Variations of the lower limits of an area low route are expressed in digits representing hundreds of feet above the surface or MSL and, unless otherwise specified, apply to the route segment between adjoining waypoints used in the description of the route.

(7) The airspace of an area low route within the lateral limits of a 700- or 1,200-foot above the surface Class E airspace area has a floor coincident with the floor of that area.

§ 71.79 Designation of VOR Federal airways.

Unless otherwise specified the place names appearing in the descriptions of airspace areas in Subpart E of FAA Order 7400.9 (incorporated by reference, see § 71.1) designated as VOR Federal airways indicate VOR or VORTAC navigational facilities identified by those names.

Subpart F—[Reserved]

Subpart G—[Reserved]

Subpart H—Reporting Points

§ 71.901 Applicability.

Unless otherwise designated:

(a) Each reporting point listed in Subpart H of FAA Order 7400.9 (incorporated by reference, see § 71.1) applies to all directions of flight. In any case where a geographic location is designated as a reporting point for less than all airways passing through that point, or for a particular direction of flight along an airway only, it is so indicated by including the airways or direction of flight in the designation of geographical location.

(b) Place names appearing in the reporting point descriptions indicate VOR or VORTAC facilities identified by those names.

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

25. The part 75 is removed and reserved.

PART 91—GENERAL OPERATING AND FLIGHT RULES

28. The authority citation for part 91 is revised to read as follows:

Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

27. Section 91.117 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 91.117 Aircraft speed.

(a) Unless otherwise authorized by the Administrator (or by ATC in the case of operations in Class A or Class B airspace), no person may operate an aircraft below 10,000 feet MSL at an indicated airspeed of more than 250 knots (288 mph).

(b) Unless otherwise authorized or required by ATC, no person may operate an aircraft at or below 2,500 feet above the surface within 4 nautical miles of the primary airport of a Class B, Class C, or Class D airspace area at an indicated airspeed of more than 200 knots (230 mph.).

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(c) No person may operate an aircraft in the airspace underlying a Class B airspace area designated for an airport or in a VFR corridor designated through such a Class B airspace area, at an indicated airspeed of more than 200 knots (230 mph).

* * * * *

28. Section 91.123 is amended by revising paragraph (a) to read as follows:

§ 91.123 Compliance with ATC clearances and instructions.

(a) When an ATC clearance has been obtained, a pilot in command may not deviate from that clearance, except in an emergency, unless that pilot obtains an amended clearance. However, except in Class A airspace, this paragraph does not prohibit that pilot from canceling an IFR flight plan if the operation is being conducted in VFR weather conditions. When a pilot is uncertain of an ATC clearance, that pilot must immediately request clarification from ATC.

* * * * *

29. Section 91.126 is added to read as follows:

§ 91.126 Operating on or in the vicinity of an airport in Class G airspace.

(a) *General.* Unless otherwise authorized or required, each person operating an aircraft on or in the vicinity of an airport in a Class G airspace area must comply with the requirements of this section.

(b) *Direction of turns.* When approaching to land at an airport in a Class G airspace area—

(1) Each pilot of an airplane must make all turns of that airplane to the left unless the airport displays approved light signals or visual markings indicating that turns should be made to the right, in which case the pilot must make all turns to the right; and

(2) Each pilot of a helicopter must avoid the flow of fixed-wing aircraft.

(c) *Flap settings.* Except when necessary for training or certification, the pilot in command of a civil turbojet-powered aircraft must use, as a final flap setting, the minimum certificated landing flap setting set forth in the approved performance information in the Airplane Flight Manual for the applicable conditions. However, each pilot in command has the final authority and responsibility for the safe operation of the pilot's airplane, and may use a different flap setting for that airplane if the pilot determines that it is necessary in the interest of safety.

30. Section 91.127 is revised to read as follows:

§ 91.127 Operating on or in the vicinity of an airport in Class E airspace.

(a) Unless otherwise required by part 93 of this chapter or unless otherwise authorized or required by the ATC facility having jurisdiction over the Class E airspace area, each person operating an aircraft on or in the vicinity of an airport in a Class E airspace area must comply with the requirements of § 91.126.

(b) *Departures.* Each pilot of an aircraft must comply with any traffic patterns established for that airport in part 93 of this chapter.

31. Section 91.129 is revised to read as follows:

§ 91.129 Operations in Class D airspace.

(a) *General.* Unless otherwise authorized or required by the ATC facility having jurisdiction over the Class D airspace area, each person operating an aircraft in Class D airspace must comply with the applicable provisions of this section. In addition, each person must comply with §§ 91.126 and 91.127. For the purpose of this section, the primary airport is the airport for which the Class D airspace area is designated. A satellite airport is any other airport within the Class D airspace area.

(b) *Deviations.* An operator may deviate from any provision of this section under the provisions of an ATC authorization issued by the ATC facility having jurisdiction over the airspace concerned. ATC may authorize a deviation on a continuing basis or for an individual flight, as appropriate.

(c) *Communications.* Each person operating an aircraft in Class D airspace must meet the following two-way radio communications requirements:

(1) *Arrival or through flight.* Each person must establish two-way radio communications with the ATC facility (including foreign ATC in the case of foreign airspace designated in the United States) providing air traffic services prior to entering that airspace and thereafter maintain those communications while within that airspace.

(2) *Departing flight.* Each person—

(i) From the primary airport or satellite airport with an operating control tower must establish and maintain two-way radio communications with the control tower, and thereafter as instructed by ATC while operating in the Class D airspace area; or

(ii) From a satellite airport without an operating control tower, must establish and maintain two-way radio communications with the ATC facility having jurisdiction over the Class D airspace area as soon as practicable after departing.

(d) *Communications failure.* Each person who operates an aircraft in a Class D airspace area must maintain two-way radio communications with the ATC facility having jurisdiction over that area.

(1) If the aircraft radio fails in flight under IFR, the pilot must comply with § 91.185 of the part.

(2) If the aircraft radio fails in flight under VFR, the pilot in command may operate that aircraft and land if—

(i) Weather conditions are at or above basic VFR weather minimums;

(ii) Visual contact with the tower is maintained; and

(iii) A clearance to land is received.

(e) *Minimum altitudes.* Each pilot of a large or turbine-powered airplane must—

(1) Unless otherwise required by the applicable distance from cloud criteria, enter the traffic pattern at an altitude of at least 1,500 feet above the elevation of the airport and maintain at least 1,500 feet until further descent is required for a safe landing;

(2) When approaching to land on a runway served by an instrument landing system (ILS), if the airplane is ILS-equipped, fly that airplane at an altitude at or above the glide slope between the outer marker (or point of interception of glide slope, if compliance with the applicable distance from clouds criteria requires interception closer in) and the middle marker; and

(3) When operating an airplane approaching to land on a runway served by a visual approach slope indicator, maintain an altitude at or above the glide slope until a lower altitude is necessary for safe landing.

Paragraphs (e)(2) and (e)(3) of this section do not prohibit normal bracketing maneuvers above or below the glide slope that are conducted for the purpose of remaining on the glide slope.

(f) *Approaches.* Except when conducting a circling approach under Part 97 of this chapter or unless otherwise required by ATC, each pilot must—

(1) Circle the airport to the left, if operating an airplane; or

(2) Avoid the flow of fixed-wing aircraft, if operating a helicopter.

(g) *Departures.* No person may operate an aircraft departing from an airport except in compliance with the following:

(1) Each pilot must comply with any departure procedures established for that airport by the FAA.

(2) Unless otherwise required by the prescribed departure procedure for that airport or the applicable distance from clouds criteria, each pilot of a turbine-powered airplane and each pilot of a large airplane must climb to an altitude of 1,500 feet above the surface as rapidly as practicable.

(h) *Noise abatement.* Where a formal runway use program has been established by the FAA, each pilot of a large or turbine-powered airplane assigned a noise abatement runway by ATC must use that runway. However, consistent with the final authority of the pilot in command concerning the safe operation of the aircraft as prescribed in § 91.3(a), ATC may assign a different runway if requested by the pilot in the interest of safety.

(i) *Takeoff, landing, taxi clearance.* No person may, at any airport with an operating control tower, operate an aircraft on a runway or taxiway, or take off or land an aircraft, unless an appropriate clearance is received from ATC. A clearance to "taxi to" the takeoff runway assigned to the aircraft is not a clearance to cross that assigned takeoff runway, or to taxi on that runway at any point, but is a clearance to cross other runways that intersect the taxi route to that assigned takeoff runway. A clearance to "taxi to" any point other than an assigned takeoff runway is clearance to cross all runways that intersect the taxi route to that point.

32. Section 91.130 is revised to read as follow:

§ 91.130 Operations in Class C airspace.

(a) *General.* Each aircraft operation in Class C airspace must be conducted in compliance with this section and § 91.129. For the purpose of this section, the primary airport is the airport for which the Class C airspace area is designated. A satellite airport is any other airport within the Class C airspace area.

(b) *Traffic patterns.* No person may take off or land an aircraft at a satellite airport within a Class C airspace area except in compliance with FAA arrival and departure traffic patterns.

(c) *Communications.* Each person operating an aircraft in Class C airspace must meet the following two-way radio communications requirements:

(1) *Arrival or through flight.* Each person must establish two-way radio communications with the ATC facility (including foreign ATC in the case of foreign airspace designated in the United States) providing air traffic services prior to entering that airspace and thereafter maintain those communications while within that airspace.

(2) *Departing flight.* Each person—

(i) From the primary airport or satellite airport with an operating control tower must establish and maintain two-way radio communications with the control tower, and thereafter as instructed by ATC while operating in the Class C airspace area; or

(ii) From a satellite airport without an operating control tower, must establish and maintain two-way radio communications with the ATC facility having jurisdiction over the Class C airspace area as soon as practicable after departing.

(d) *Equipment requirements.* Unless otherwise authorized by the ATC having jurisdiction over the Class C airspace area, no person may operate an aircraft within a Class C airspace area designated for an airport unless that aircraft is equipped with the applicable equipment specified in § 91.215.

33. Section 91.131 is revised to read as follows:

§ 91.131 Operations in Class B airspace.

(a) *Operating rules.* No person may operate an aircraft within a Class B airspace area except in compliance with § 91.129 and the following rules:

(1) The operator must receive an ATC clearance from the ATC facility having jurisdiction for that area before operating an aircraft in that area.

(2) Unless otherwise authorized by ATC, each person operating a large turbine engine-powered airplane to or from a primary airport for which a Class B airspace area is designated must operate at or above the designated floors of the Class B airspace area while within the lateral limits of that area.

(3) Any person conducting pilot training operations at an airport within a Class B airspace area must comply with any procedures established by ATC for such operations in that area.

(b) *Pilot requirements.*

(1) No person may take off or land a civil aircraft at an airport within a Class B airspace area or operate a civil aircraft within a Class B airspace area unless—

(i) The pilot in command holds at least a private pilot certificate; or

(ii) The aircraft is operated by a student pilot or recreational pilot who seeks private pilot certification and has met the requirements of § 61.95 of this chapter.

(2) Notwithstanding the provisions of paragraph (b)(1)(ii) of this section, no person may take off or land a civil aircraft at those airports listed in section 4 of appendix D of this part unless the pilot in command holds at least a private pilot certificate.

(c) *Communications and navigation equipment requirements.* Unless otherwise authorized by ATC, no person may operate an aircraft within a Class B airspace area unless that aircraft is equipped with—

(1) *For IFR operation.* An operable VOR or TACAN receiver; and

(2) *For all operations.* An operable two-way radio capable of communications with ATC on appropriate frequencies for that Class B airspace area.

(d) *Transponder requirements.* No person may operate an aircraft in a Class B airspace area unless the aircraft is equipped with the applicable operating transponder and automatic altitude reporting equipment specified in paragraph (a) of § 91.215, except as provided in paragraph (d) of that section.

34. Section 91.135 is revised to read as follows:

§ 91.135 Operations in Class A airspace.

Except as provided in paragraph (d) of this section, each person operating an aircraft in Class A airspace must conduct that operation under instrument flight rules (IFR) and in compliance with the following:

(a) *Clearance.* Operations may be conducted only under an ATC clearance received prior to entering the airspace.

(b) *Communications.* Unless otherwise authorized by ATC, each aircraft operating in Class A airspace must be equipped with a two-way radio capable of communicating with ATC on a frequency assigned by ATC. Each pilot must maintain two-way radio communications with ATC while operating in Class A airspace.

(c) *Transponder requirement.* Unless otherwise authorized by ATC, no person may operate an aircraft within Class A airspace unless that aircraft is equipped with the applicable equipment specified in § 91.215.

(d) *ATC authorizations.* An operator may deviate from any provision of this section under the provisions of an ATC authorization issued by the ATC facility having jurisdiction of the airspace concerned. In the case of an inoperative transponder, ATC may immediately approve an operation within a Class A airspace area allowing flight to continue, if desired, to the airport of ultimate destination, including any intermediate stops, or to proceed to a place where suitable repairs can be made, or both. Requests for deviation from any provision of this section must be submitted in writing, at least 4 days

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before the proposed operation. ATC may authorize a deviation on a continuing basis or for an individual flight.

35. Section 91.155 is revised to read as follows:

§ 91.155 Basic VFR weather minimums.

(a) Except as provided in paragraph (b) of this section and § 91.157, no person may operate an aircraft under VFR when the flight visibility is less, or at a distance from clouds that is less, than that prescribed for the corresponding altitude and class of airspace in the following table:

Airspace	Flight visibility	Distance from clouds
Class A	Not Applicable	Not Applicable.
Class B	3 statute miles	Clear of Clouds.
Class C	3 statute miles	500 feet below. 1,000 feet above. 2,000 feet horizontal.
Class D	3 statute miles	500 feet below. 1,000 feet above. 2,000 feet horizontal.
Class E: Less than 10,000 feet MSL	3 statute miles	500 feet below. 1,000 feet above. 2,000 feet horizontal
At or above 10,000 feet MSL	5 statute miles	1,000 feet below. 1,000 feet above. 1 statute mile horizontal.
Class G: 1,200 feet or less above the surface (regardless of MSL altitude).		
Day, except as provided in § 91.155(b).	1 statute mile	Clear of clouds.
Night, except as provided in § 91.155(b).	3 statute miles	500 feet below. 1,000 feet above. 2,000 feet horizontal.
More than 1,200 feet above the surface but less than 10,000 feet MSL		
Day	1 statute mile	500 feet below. 1,000 feet above. 2,000 feet horizontal.
Night	3 statute miles	500 feet below. 1,000 feet above. 2,000 feet horizontal.
More than 1,200 feet above the surface and at or above 10,000 feet MSL.	5 statute miles	1,000 feet below. 1,000 feet above. 1 statute mile horizontal.

(b) *Class G Airspace.* Notwithstanding the provisions of paragraph (a) of this section, the following operations may be conducted in Class G airspace below 1,200 feet above the surface:

(1) *Helicopter.* A helicopter may be operated clear of clouds if operated at a speed that allows the pilot adequate opportunity to see any air traffic or obstruction in time to avoid a collision.

(2) *Airplane.* When the visibility is less than 3 statute miles but not less than 1 statute mile during night hours, an airplane may be operated clear of clouds if operated in an airport traffic pattern within one-half mile of the runway.

(c) Except as provided in § 91.157, no person may operate an aircraft, under VFR, within the lateral boundaries of the surface areas of Class B, Class C, Class D, or Class E airspace designated for an airport when the ceiling is less than 1,000 feet.

(d) Except as provided in § 91.157 of this part, no person may take off or land an aircraft, or enter the traffic pattern of an airport, under VFR, within the lateral boundaries of the surface areas of Class B, Class C, Class D, or Class E airspace designated for an airport—

(1) Unless ground visibility at that airport is at least 3 statute miles; or

(2) If ground visibility is not reported at that airport, unless flight visibility during landing or takeoff, or while operating in the traffic pattern is at least 3 statute miles.

(e) For the purpose of this section, an aircraft operating at the base altitude of a Class E airspace area is considered to be within the airspace directly below that area.

36. Section 91.157 is revised to read as follows:

§ 91.157 Special VFR weather minimums.

Except as provided in appendix D, section 3 of this part, the following special weather minimums and requirements apply to operations conducted to or from an airport in controlled airspace:

(a) Operations may be conducted only under an ATC clearance—

(1) Within the lateral boundaries of the surface areas of Class B, Class C, Class D, or Class E airspace designated for an airport; and

(2) Except for helicopters, between sunrise and sunset (or in Alaska, when the sun is 6° or more above the horizon) unless—

(i) That person meets the applicable requirements for instrument flight under part 61 of this chapter; and

(ii) The aircraft is equipped as required in § 91.205(d).

(b) Operations may only be conducted clear of clouds.

(c) Except for helicopters, operations may be conducted only when flight visibility is at least 1 statute mile.

(d) No person may take off or land an aircraft (other than a helicopter)—

(1) Unless ground visibility is at least 1 statute mile; or

(2) If ground visibility is not reported, unless flight visibility during landing and takeoff is at least 1 statute mile.

37. Section 91.215 is amended by revising paragraphs (b) and (d) to read as follows:

§ 91.215 ATC transponder and altitude reporting equipment and use.

* * * * *

(b) *All airspace.* Unless otherwise authorized or directed by ATC, no person may operate an aircraft in the airspace described in paragraphs (b)(1) through (b)(5) of this section, unless that aircraft is equipped with an operable coded radar beacon transponder having either Mode 3/A 4096 code capability, replying to Mode 3/A interrogations with the code specified by ATC, or a Mode S capability, replying to Mode 3/A interrogations with the code specified by ATC and intermode and Mode S interrogations in accordance with the applicable provisions specified in TSO C–112, and that aircraft is equipped with automatic pressure altitude reporting equipment having a Mode C capability that automatically replies to Mode C interrogations by transmitting pressure altitude information in 100-foot increments. This requirement applies—

(1) *All aircraft.* In Class A, Class B, and Class C airspace areas;

(2) *All aircraft.* In all airspace within 30 nautical miles of an airport listed in appendix D, section 1 of this part from the surface upward to 10,000 feet MSL;

(3) Notwithstanding paragraph (b)(2) of this section, any aircraft which was not originally certificated with an engine-driven electrical system or which has not subsequently been certified with such a system installed, balloon or glider may conduct operations in the airspace within 30 nautical miles of an airport listed in appendix D, section 1 of this part provided such operations are conducted—

(i) Outside any Class A, Class B, or Class C airspace area; and

(ii) Below the altitude of the ceiling of a Class B or Class C airspace area designated for an airport or 10,000 feet MSL, whichever is lower; and

(4) All aircraft in all airspace above the ceiling and within the lateral boundaries of a Class B or Class C airspace area designated for an airport upward to 10,000 feet MSL; and

(5) All aircraft except any aircraft which was not originally certificated with an engine-driven electrical system or which has not subsequently been certified with such a system installed, balloon, or glider——

(i) In all airspace of the 48 contiguous states and the District of Columbia at and above 10,000 feet MSL, excluding the airspace at and below 2,500 feet above the surface; and

(ii) In the airspace from the surface to 10,000 feet MSL within a 10-nautical-mile radius of any airport listed in appendix D, section 2 of this part, excluding the airspace below 1,200 feet outside of the lateral boundaries of the surface area of the airspace designated for that airport.

* * * * *

(d) *ATC authorized deviations.* Requests for ATC authorized deviations must be made to the ATC facility having jurisdiction over the concerned airspace within the time periods specified as follows:

(1) For operation of an aircraft with an operating transponder but without operating automatic pressure altitude reporting equipment having a Mode C capability, the request may be made at any time.

(2) For operation of an aircraft with an inoperative transponder to the airport of ultimate destination, including any intermediate stops, or to proceed to a place where suitable repairs can be made or both, the request may be made at any time.

(3) For operation of an aircraft that is not equipped with a transponder, the request must be made at least one hour before the proposed operation.

38. Section 91.303 is amended by revising paragraphs (c), (d), and (e) and by adding paragraph (f) to read as follows:

§ 91.303 Aerobatic flight.

* * * * *

(c) Within the lateral boundaries of the surface areas of Class B, Class C, Class D, or Class E airspace designated for an airport;

(d) Within 4 nautical miles of the center line of any Federal airway;

(e) Below an altitude of 1,500 feet above the surface; or

(f) When flight visibility is less than 3 statute miles.

* * * * *

39. Section 91.309 is amended by revising paragraph (a)(4) to read as follows:

§ 91.309 Towing: Gliders.

(a) * * *

(4) Before conducting any towing operation within the lateral boundaries of the surface areas of Class B, Class C, Class D, or Class E airspace designated for an airport, or before making each towing flight within such controlled airspace if required by ATC, the pilot in command notifies the control tower. If a control tower does not exist or is not in operation, the pilot in command must notify the FAA flight service station serving that controlled airspace before conducting any towing operations in that airspace; and

* * * * *

40. Section 91.703 is amended by revising paragraph (a)(1) to read as follows:

§ 91.703 Operations of civil aircraft of U.S. registry outside of the United States.

(a) * * *

(1) When over the high seas, comply with annex 2 (Rules of the Air) to the Convention on International Civil Aviation and with §§ 91.117(c), 91.127, 91.129, and 91.131;

* * * * *

41. Section 91.711 is amended by revising paragraph (c)(1)(i) to read as follows:

§ 91.711 Special rules for foreign civil aircraft.

* * * * *

(c) * * *

(1) * * *

(i) Radio equipment allowing two-way radio communication with ATC when it is operated in controlled airspace; and

* * * * *

42. Section 91.905 is amended by adding § 91.126 and revising §§ 91.127, 91.129, 91.130, 91.131, and 91.135 to read as follows:

§ 91.905 List of rules subject to waivers.

* * * * *

91.126 Operating on or in the vicinity of an airport in Class G airspace.
91.127 Operating on or in the vicinity of an airport in Class E airspace.
91.129 Operations in Class D airspace.
91.130 Operations in Class C airspace.
91.131 Operations in Class B airspace.
* * * * *
91.135 Operations in Class A airspace.
* * * * *

43. Appendix D of part 91 is revised to read as follows:

Appendix D—Airports/Locations: Special Operating Restrictions

Section 1. Locations at which the requirements of § 91.215(b)(2) apply.

The requirements of § 91.215(b)(2) apply below 10,000 feet above the surface within a 30-nautical-mile radius of each location in the following list:

Atlanta, GA (The William B. Hartsfield Atlanta International Airport)
Baltimore, MD (Baltimore Washington International Airport)
Boston, MA (General Edward Lawrence Logan International Airport)
Chantilly, VA (Washington Dulles International Airport)
Charlotte, NC (Charlotte/Douglas International Airport)
Chicago, IL Chicago-O'Hare International Airport)
Cleveland, OH (Cleveland-Hopkins International Airport)
Dallas, TX (Dallas/Fort Worth Regional Airport)
Denver, CO (Stapleton International Airport)
Detroit, MI (Metropolitan Wayne County Airport)
Honolulu, HI (Honolulu International Airport)
Houston, TX (Houston Intercontinental Airport)
Kansas City, KS (Mid-Continent International Airport)
Las Vegas, NV (McCarran International Airport)
Los Angeles, CA (Los Angeles International Airport)
Memphis, TN (Memphis International Airport)
Miami, FL (Miami International Airport)
Minneapolis, MN (Minneapolis-St. Paul International Airport)
Newark, NJ (Newark International Airport)
New Orleans, LA (New Orleans International Airport-Moisant Field)
New York, NY (John F. Kennedy International Airport)
New York, NY (LaGuardia Airport)
Orlando, FL (Orlando International Airport)
Philadelphia, PA (Philadelphia International Airport)
Phoenix, AZ (Phoenix Sky Harbor International Airport)
Pittsburgh, PA (Greater Pittsburgh International Airport)
St. Louis, MO (Lambert-St. Louis International Airport)

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Salt Lake City, UT (Salt Lake City International Airport)
San Diego, CA (San Diego International Airport)
San Francisco, CA (San Francisco International Airport)
Seattle, WA (Seattle-Tacoma International Airport)
Tampa, FL (Tampa International Airport)
Washington, DC (Washington National Airport)

Section 2. Airports at which the requirements of § 91.215(b)(5)(ii) apply.

The requirements of § 91.215(b)(5)(ii) apply to operations in the vicinity of each of the following airports:

Billings, MT (Logan International Airport)

Section 3. Locations at which Special VFR operations are prohibited.

The Special VFR weather minimums of § 91.157 do not apply to the following airports:

Atlanta, GA (The William B. Hartsfield Atlanta International Airport)
Baltimore, MD (Baltimore/Washington International Airport)
Boston, MA (General Edward Lawrence Logan International Airport)
Buffalo, NY (Greater Buffalo International Airport)
Chicago, IL (Chicago-O'Hare International Airport)
Cleveland, OH (Cleveland-Hopkins International Airport)
Columbus, OH (Port Columbus International Airport)
Covington, KY (Greater Cincinnati International Airport)
Dallas, TX (Dallas/Fort Worth Regional Airport)
Dallas, TX (Love Field)
Denver, CO (Stapleton International Airport)
Detroit, MI (Metropolitan Wayne County Airport)
Honolulu, HI (Honolulu International Airport)
Houston, TX (Houston Intercontinental Airport)
Indianapolis, IN (Indianapolis International Airport)
Los Angeles, CA (Los Angeles International Airport)
Louisville, KY (Standiford Field)
Memphis, TN (Memphis International Airport)
Miami, FL (Miami International Airport)
Minneapolis, MN (Minneapolis-St. Paul International Airport)
Newark, NJ (Newark International Airport)
New York, NY (John F. Kennedy International Airport)
New York, NY (LaGuardia Airport)
New Orleans, LA (New Orleans International Airport-Moisant Field)
Philadelphia, PA (Philadelphia International Airport)
Pittsburgh, PA (Greater Pittsburgh International Airport)
Portland, OR (Portland International Airport)
San Francisco, CA (San Francisco International Airport)
Seattle, WA (Seattle-Tacoma International Airport)
St. Louis, MO (Lambert-St. Louis International Airport)
Tampa, FL (Tampa International Airport)
Washington, DC (Washington National Airport)

Section 4. Locations at which solo student pilot activity is not permitted.

Pursuant to § 91.131(b)(2), solo student pilot operations are not permitted at any of the following airports.

Atlanta, GA (The William B. Hartsfield Atlanta International Airport)
Boston, MA (General Edward Lawrence Logan International Airport)
Chicago, IL (Chicago-O'Hare International Airport)
Dallas, TX (Dallas/Fort Worth Regional Airport)
Los Angeles, CA (Los Angeles International Airport)
Miami, FL (Miami International Airport)
Newark, NJ (Newark International Airport)
New York, NY (John F. Kennedy International Airport)
New York, NY (LaGuardia Airport)
San Francisco, CA (San Francisco International Airport)
Washington, DC (Washington National Airport)
Andrews Air Force Base, MD

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

44. The authority citation for part 93 is revised to read as follows:

Authority: 49 U.S.C. app. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2451 *et seq.* 49 U.S.C. 106(g).

45. Section 93.1 is amended by revising paragraph (b) to read as follows:

§ 93.1 Applicability.

* * * * *

(b) Unless otherwise authorized by ATC, each person operating an aircraft shall do so in accordance with the special air traffic rules in this part in addition to other applicable rules in Part 91 of this chapter.

Subparts I, N, O, Q, and R [Removed and Reserved]

46. Part 93 is amended by removing and reserving subparts I(§§ 93.111–93.113), N(§§ 93.161–93.163), O(§§ 93.171–93.175), Q(§§ 93.195–93.199), and R§§ 93.200–93.208).

47. Section 93.151 is amended by revising the introductory text to read as follows:

§ 93.151 Applicability.

This subpart prescribes special air traffic rules and communications requirements for persons operating aircraft, under VFR, below 2,500 feet MSL within the lateral boundaries of the surface area of the Class E airspace area designated for Ketchikan International Airport, Alaska, excluding that airspace below 600 feet MSL and—

* * * * *

PART 101—MOORED BALLOONS, KITES, UNMANNED ROCKETS AND UNMANNED FREE BALLOONS

48. The authority citation for part 101 is revised to read as follows:

Authority: 49 U.S.C. app. 1348, 1354, 1372, 1421, 1442, 1443, 1472, 1510, and 1522.

49. Section 101.33(a) is revised to read as follows:

§ 101.33 Operating limitations.

* * * * *

(a) Unless otherwise authorized by ATC, below 2,000 feet above the surface within the lateral boundaries of the surface areas of Class B, Class C, Class D, or Class E airspace designated for an airport;

* * * * *

PART 103—ULTRALIGHT VEHICLES

50. The authority citation for part 103 is revised to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421(a), 1422, and 1423; 49 U.S.C. 1655(c).

51.–52. Section 103.17 is revised to read as follows:

§ 103.17 Operations in certain airspace.

No person may operate an ultralight vehicle within Class A, Class B, Class C, or Class D airspace or within the lateral boundaries of the surface area of Class E airspace designated for an airport unless that person has prior authorization from the ATC facility having jurisdiction over that airspace.

53. Section 103.23 is revised to read as follows:

§ 103.23 Flight visibility and cloud clearance requirements.

No person may operate an ultralight vehicle when the flight visibility or distance from clouds is less than that in the table found below. All operations in Class A, Class B, Class C, and Class D airspace or Class E airspace designated for an airport must receive prior ATC authorization as required in § 103.17 of this part.

Airspace	Flight visibility	Distance from clouds
Class A	Not applicable	Not Applicable.
Class B	3 statute miles	Clear of Clouds.
Class C	3 statute miles	500 feet below. 1,000 feet above. 2,000 feet horizontal.
Class D	3 statute miles	500 feet below. 1,000 feet above. 2,000 feet horizontal.

Airspace	Flight visibility	Distance from clouds
Class E:		
Less than 10,000 feet MSL	3 statute miles	500 feet below. 1,000 feet above. 2,000 feet horizontal.
At or above 10,000 feet MSL	5 statute miles	1,000 feet below. 1,000 feet above. 1 statute mile horizontal.
Class G:		
1,200 feet or less above the surface (regardless of MSL altitude).	1 statute mile	Clear of clouds.
More than 1,200 feet above the surface but less than 10,000 feet MSL	1 statute mile	500 feet below. 1,000 feet above. 2,000 feet horizontal.
More than 1,200 feet above the surface and at or above 10,000 feet MSL	5 statute miles	1,000 feet below. 1,000 feet above. 1 statute mile horizontal.

PART 105—PARACHUTE JUMPING

54. The authority citation for part 105 is revised to read as follows:

Authority: 49 U.S.C. App. 1348, 1354, and 1421; 49 U.S.C. 106(g).

55.–56. Section 105.19 is revised to read as follows:

§ 105.19 Jumps in or into Class A, Class B, Class C, and Class D airspace.

(a) No person may make a parachute jump, and no pilot in command may allow a parachute jump to be made from that aircraft, in or into Class A, Class B, Class C, and Class D airspace without, or in violation of, the terms of an ATC authorization issued under this section.

(b) Each request for an authorization under this section must be submitted to the nearest FAA air traffic control facility or FAA flight service station and must include the information prescribed by § 105.25(a).

§ 105.20 [Removed and Reserved]

57. Section 105.20 is removed and reserved.

§ 105.21 [Removed and Reserved]

58. Section 105.21 is removed and reserved.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

59. The authority citation for part 121 is revised to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g).

60. Section 121.347 is amended by revising paragraph (a)(2) to read as follows:

§ 121.347 Radio equipment for operations under VFR over routes navigated by pilotage.

(a) * * *

(2) Communicate with appropriate traffic control facilities from any point within the lateral boundaries of the surface areas of Class B, Class C, Class D, or Class E airspace designated for an airport in which flights are intended.

* * * * *

61. Section 121.649 is amended by revising paragraph (c) to read as follows:

§ 121.649 Takeoff and landing weather minimums: VFR: Domestic air carriers.

* * * * *

(c) The weather minimums in this section do not apply to the VFR operation of fixed-wing aircraft at any of the locations where the special weather minimums of § 91.157 of this chapter are not applicable (See part 91, appendix D, section 3 of this chapter). The basic VFR weather minimums of § 91.155 of this chapter apply at those locations.

PART 127—CERTIFICATION AND OPERATIONS OF SCHEDULED AIR CARRIERS WITH HELICOPTERS

62. The authority citation for part 127 is revised to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1421, 1422, 1423, 1424, 1425, 1430; 49 U.S.C. 106(g).

63. Section 127.125 is amended by revising paragraph (b) to read as follows. The introductory text of the section is republished for the convenience of the reader.

§ 127.125 Radio equipment for operations over routes navigated by pilotage.

No person may operate a helicopter over a route that can be navigated by pilotage, unless the helicopter is equipped with the radio equipment needed to perform the following functions under normal operating conditions:

* * * * *

(b) Communicate with ATC towers from any point within the lateral boundaries of the surface areas of Class B, Class D, Class C, or Class D airspace designated for an airport in which flights are intended.

* * * * *

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

64. The authority citation for part 135 is revised to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g).

65. Section 135.205 is amended by revising paragraph (b) introductory text to read as follows:

§ 135.205 VFR: Visibility requirements.

* * * * *

(b) No person may operate a helicopter under VFR in Class G airspace at an altitude of 1,200 feet or less above the surface or within the lateral boundaries of the surface areas of Class B, Class C, Class D, or Class E airspace designated for an airport unless the visibility is at least—

* * * * *

PART 137—AGRICULTURAL AIRCRAFT OPERATIONS

66. The authority citation for part 137 is revised to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1348(c), 1421, and 1427.

67. Section 137.43 is revised to read as follows:

§ 137.43 Operations in controlled airspace designated for an airport.

(a) Except for flights to and from a dispensing area, no person may operate an aircraft within the lateral boundaries of the surface area of Class B, Class C, or Class D airspace designated for an airport unless authorization for that operation has been obtained from the ATC facility having jurisdiction over that area.

(b) No person may operate an aircraft in weather conditions below VFR minimums within the lateral boundaries of a Class E airspace area that extends upward from the surface unless authorization for that operation has been obtained from the ATC facility having jurisdiction over that area.

(c) Notwithstanding § 91.157(a)(2) of this chapter, an aircraft may be operated under the special VFR weather minimums without meeting the requirements prescribed therein.

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PART 139—CERTIFICATION AND OPERATIONS: LAND AIRPORTS SERVING CERTAIN AIR CARRIERS

68. The authority citation for part 139 is revised to read as follows:

Authority: 49 U.S.C. app. 1354(a) and 1432; 49 U.S.C. 106(g).

69. Section 139.323 is amended by revising paragraph (a) to read as follows:

§ 139.323 Traffic and wind direction indicators.

* * * * *

(a) A wind cone that provides surface wind direction information visually to pilots. For each airport in a Class B airspace area, supplemental wind cones must be installed at each runway end or at least at one point visible to the pilot while on final approach and prior to takeoff. If the airport is open for air carrier operations during hours of darkness, the wind direction indicators must be lighted.

* * * * *

PART 171—NON-FEDERAL NAVIGATION FACILITIES

70. The authority citation for part 171 is revised to read as follows:

Authority: 49 U.S.C. app. 1343, 1346, 1348, 1354(a), 1355, 1401, 1421–1430, 1472(c), 1502, and 1522; 49 U.S.C. 106(g).

71. Section 171.9 is amended by revising paragraphs (e)(1) and (e)(2) to read as follows:

§ 171.9 Installation requirements.

* * * * *

(e) * * *

(1) At facilities outside of and not immediately adjacent to controlled airspace, there must be ground-air communications from the airport served by the facility. Separate communications channels are acceptable.

(2) At facilities within or immediately adjacent to controlled airspace, there must be the ground-air communications required by paragraph (e)(1) of this section and reliable communications (at least a landline telephone) from the airport to the nearest FAA air traffic control or communication facility. Paragraphs (e) (1) and (2) of this section are not mandatory at airports where an adjacent FAA facility can communicate with aircraft on the ground at the airport and during the entire proposed instrument approach procedure. In addition, at low traffic density airports within or immediately adjacent to controlled airspace and where extensive delays are not a factor, the requirements of paragraphs (e) (1) and (2) of this section may be reduced to reliable communications (at least a landline telephone) from the airport to the nearest FAA air traffic control or communications facility, if an adjacent FAA facility can communicate with aircraft during the proposed instrument approach procedure, at least down to the minimum en route altitude for the controlled airspace area.

* * * * *

72. Section 171.29 is amended by revising paragraphs (d)(1) and (d)(2) as follows:

§ 171.29 Installation requirements.

* * * * *

(d) * * *

(1) At facilities outside of and not immediately adjacent to controlled airspace, there must be ground-air communications from the airport served by the facility. Voice on the aid controlled from the airport is acceptable.

(2) At facilities within or immediately adjacent to controlled airspace, there must be the ground-air communications required by paragraph (d)(1) of this section and reliable communications (at least a landline telephone) from the airport to the nearest FAA air traffic control or communication facility. Paragraphs (d) (1) and (2) of this section are not mandatory at airports where an adjacent FAA facility can communicate with aircraft on the ground at the airport and during the entire proposed instrument approach procedure. In addition, at low traffic density airports within or immediately adjacent to controlled airspace, and where extensive delays are not a factor, the requirements of paragraphs (d) (1) and (2) of this section may be reduced to reliable communications (at least a landline telephone) from the airport to the nearest FAA air traffic control or communications facility, if an adjacent FAA facility can communicate with aircraft during the proposed instrument approach procedure, at least down to the minimum en route altitude for the controlled airspace area.

73. Section 171.49 is amended by revising paragraph (e) to read as follows:

§ 171.49 Installation requirements.

* * * * *

(e) The facility must have, or be supplemented by (depending on the circumstances) the following ground-air or landline communications services:

(1) At facilities outside of and not immediately adjacent to controlled airspace, there must be ground-air communications from the airport served by the facility. The utilization of voice on the ILS frequency should be determined by the facility operator on an individual basis.

(2) At facilities within or immediately adjacent to controlled airspace, there must be the ground-air communications required by paragraph (e)(1) of this section and reliable communications (at least a landline telephone) from the airport to the nearest FAA air traffic control or communications facility. Paragraphs (e)(1) and (e)(2) of this section are not mandatory at airports where an adjacent FAA facility can communicate with aircraft on the ground at the airport and during the entire proposed instrument approach procedure. In addition, at low traffic density airports within or immediately adjacent to controlled airspace, and where extensive delays are not a factor, the requirements of paragraphs (e)(1) and (e)(2) of this section may be reduced to reliable communications (at least a landline telephone) from the airport to the nearest FAA air traffic control or communications facility, if an adjacent FAA facility can communicate with aircraft during the proposed instrument approach procedure down to the airport surface or at least to the minimum approach altitude.

74. Section 171.113 is amended by revising paragraph (f) to read as follows:

§ 171.113 Installation requirements.

* * * * *

(f) The facility must have the following ground-air or landline communication services:

(1) At facilities outside of and not immediately adjacent to controlled airspace, there must be ground-air communications from the airport served by the facility. The utilization of voice on the SDF should be determined by the facility operator on an individual basis.

(2) At facilities within or immediately adjacent to controlled airspace, there must be ground/air communications required by paragraph (b)(1) of this section and reliable communications (at least a landline telephone) from the airport to the nearest Federal Aviation Administration air traffic control or communications facility.

Compliance with paragraphs (f) (1) and (2) of this section need not be shown at airports where an adjacent Federal Aviation Administration facility can communicate with aircraft on the ground at the airport and during the entire proposed instrument approach procedure. In addition, at low traffic density airports within or immediately adjacent to controlled airspace, and where extensive delays are not a factor, the requirements of paragraphs (f) (1) and (2) of this section may be reduced to reliable communications (at least a landline telephone) from the airport to the nearest Federal Aviation Administration air traffic control or communications facility, if an adjacent Federal Aviation Administration facility can communicate with aircraft during the proposed instrument approach procedure down to the airport surface or at least down to the minimum approach altitude.

* * * * *

75. Section 171.159 is amended by revising paragraphs (e) (1) and (e)(2) as follows:

§ 171.159 Installation requirements.

* * * * *

(e) * * *

(1) At facilities outside of and not immediately adjacent to controlled airspace, there must be ground-air communications from the airport served by the facility. Separate communications channels are acceptable.

(2) At facilities within or immediately adjacent to controlled airspace, there must be the ground-air communications required by paragraph (e)(1) of this section and reliable communications (at least a landline telephone) from the airport to the nearest Federal Aviation Administration air traffic control or communications facility. Separate communications channels are acceptable.

Compliance with paragraphs (e) (1) and (2) of this section need not be shown at airports where an adjacent Federal Aviation Administration facility can communicate with aircraft on the ground at the airport and during the entire proposed instrument approach procedure. In addition, at low traffic density airports within or immediately adjacent to controlled airspace, and where extensive delays are not a factor, the requirements of paragraphs (e) (1) and (2) of this section may be reduced to reliable communications (at least a landline telephone) from the airport to the nearest Federal Aviation Administration air traffic control or communications facility, if an adjacent Federal Aviation Administration facility can communicate with aircraft during the proposed instrument approach procedure down to the airport surface or at least down to the minimum approach altitude.

* * * * *

76. Section 171.209 is amended by revising paragraph (d) to read as follows:

§ 171.209 Installation requirements.

* * * * *

(d) At facilities within or immediately adjacent to controlled airspace and that are intended for use as instrument approach aids for an airport, there must be ground-air communications or reliable communications (at least a landline telephone) from the airport to the nearest Federal Aviation Administration air traffic control or communication facility. Compliance with this paragraph need not be shown at airports where an adjacent Federal Aviation Administration facility can communicate with aircraft on the ground at the airport and during the entire proposed instrument approach procedure. In addition, at low traffic density airports within or immediately adjacent to controlled airspace, and where extensive delays are not a factor, the requirements of this paragraph may be reduced to reliable communications (at least a landline telephone) from the airport to the nearest Federal Aviation Administration air traffic control or communications facility, if an adjacent Federal Aviation Administration facility can communicate with aircraft during the proposed instrument approach procedure, at least down to the minimum en route altitude for the controlled airspace area.

77. Section 171.271 is amended by revising paragraph (e) to read as follows:

§ 171.271 Installation requirements.

(e) The facility must have, or be supplemented by, ground-air or landline communications services. At facilities within or immediately adjacent to controlled airspace and that are intended for use as instrument approach aids for an airport, there must be ground-air communications or reliable communications (at least a landline telephone) from the airport to the nearest Federal Aviation Administration air traffic control or communication facility. Compliance with this paragraph need not be shown at airports where an adjacent Federal Aviation Administration facility can communicate with aircraft on the ground at the airport and during the entire proposed instrument approach

procedure. In addition, at low traffic density airports within or immediately adjacent to controlled airspace, and where extensive delays are not a factor, the requirements of this paragraph may be reduced to reliable communications (at least a landline telephone) from the airport to the nearest Federal Aviation Administration air traffic control or communications facility, if an adjacent Federal Aviation Administration facility can communicate with aircraft during the proposed instrument approach procedure, at least down to the minimum en route altitude for the controlled area.

* * * * *

78. Section 171.323 is amended by revising paragraph (i) to read as follows:

§ 171.323 Fabrication and installation requirements.

* * * * *

(i) The facility must have, or be supplemented by, ground, air, or landline communications services. At facilities within or immediately adjacent to controlled airspace, that are intended for use as instrument approach aids for an airport, there must be ground air communications or reliable communications (at least a landline telephone) from the airport to the nearest FAA air traffic control or communication facility. Compliance with this paragraph need not be shown at airports where an adjacent FAA facility can communicate with aircraft on the ground at the airport and during the entire proposed instrument approach procedure. In addition, at low traffic density airports within or immediately adjacent to controlled airspace, and where extensive delays are not a factor, the requirements of this paragraph may be reduced to reliable communications from the airport to the nearest FAA air traffic control or communications facility. If the adjacent FAA facility can communicate with aircraft during the proposed instrument approach procedure down to the airport surface or at least down to the minimum en route altitude, this would require at least a landline telephone.

* * * * *

Issued in Washington, DC on November 14, 1991.

James B. Busey,

Administrator.

[FR Doc. 91–29809 Filed 12–12–91; 8:45 am]

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Part VI

Department of the Interior

Minerals Management Service

New Alternatives to the Proposed Comprehensive Outer Continental Shelf Natural Gas and Oil Resource Management Program for 1992-1997; Notice of Request for Comments

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

Request for Comments on New Alternatives to the Proposed Comprehensive Outer Continental Shelf (OCS) Natural Gas and Oil Resource Management Program for 1992–1997

AGENCY: Minerals Management Service (MMS), Department of the Interior.

SUMMARY: Comments are requested on the alternative of expanding the area proposed for consideration of leasing and the renaming of the planning area for the Proposed OCS Oil and Gas Lease Sale 149, Cook Inlet.

Additionally, comments are requested on the alternative of selecting St. George Basin and Hope Basin as the two areas for leasing consideration among the five lower potential Alaska planning areas being considered in the Proposed Final 5-Year Comprehensive Program (1992–1997).

DATES: Comments and information must be received within 45 days of the publication of this Notice.

ADDRESS: Comments and information on the above alternatives should be mailed to: Director, Minerals Management Service (MS–4230), 1849 C Street, NW., Washington, DC 20240. Hand deliveries to the Department of the Interior may be made at 1849 C Street, NW., room 2525, Washington, DC. Envelopes or packages should be marked "Comments on Proposed 5-Year Comprehensive Program—Cook Inlet, Hope Basin, and St. George Basin Planning Areas." If any privileged or proprietary information which the respondent wishes to be treated as confidential is submitted, the envelope should be marked "Contains Confidential Information." Under section 18(c)(1) of the OCS Lands Act and 30 CFR 256.19(b), any suggestions from the executive of any affected local government in an affected State should also be submitted to the Governor of such State.

FOR FURTHER INFORMATION CONTACT: For information on the above alternatives telephone Paul Stang or Jan Arbegast, Branch of Program Development and Planning, at (202) 208–3072 or Robert Brock, Regional Supervisor, Leasing and Environment, Alaska OCS Region, at (907) 271–6045.

SUPPLEMENTARY INFORMATION: The MMS has received comments on the Proposed 5-Year Comprehensive Program (1992–1997) and the Request for Interest and Comments for the Proposed Oil and Gas Lease Sale 149, Cook Inlet. Several industry commentors requested that the area proposed for consideration of leasing in Cook Inlet be enlarged based on new geologic and geophysical information.

Consequently, as part of the 5-year program, we are considering enlarging the area to be considered for leasing in Cook Inlet to include approximately 761 blocks consisting of approximately 3.7 million acres, but limiting the number of leases which can be issued in lease Sale 149 to 250 or possibly less. Enlargement of the area for consideration of leasing would provide an opportunity for continuing new and innovative analysis of hydrocarbon potential which is important to the discovery of new domestic reserves. Map 1 shows the area included in the Proposed 5-Year Comprehensive Program and the enlarged area now being considered for inclusion in the Proposed Final 5-Year Comprehensive Program.

Based on comments received on, and industry interest in planning areas of, the Proposed Comprehensive Natural Gas and Oil Resource Management Program for 1992–1997, we are considering narrowing the five lower potential Alaskan planning areas (Norton Basin, Navarin Basin, St. Matthew-Hall, Hope Basin, and St. George Basin) to two planning areas, the Hope Basin and St. George Basin, for leasing consideration in the Proposed Final 5-Year Comprehensive Program (1992–1997). The area proposed for leasing consideration in this alternative, the St. George Basin and the Hope Basin, would be as configured in the Proposed Comprehensive Program (1992–1997), announced in the **Federal Register**, Vol. 56, No. 158, on August 1, 1991, and as depicted on Map 2. Sales in these two areas would be proposed for 1994 and 1997, respectively.

Some local area residents have asked that the planning area be renamed Cook Inlet/Shelikof Strait so that it is clear that Shelikof Strait is part of the planning area. The MMS is considering this request.

Additional comments and recommendations were received on the Proposed Comprehensive Program and Draft Environmental Impact Statement announced in the **Federal Register**, Vol. 56, No. 158, on August 1, 1991. A decision on whether to adopt any or all of these recommendations will be made in conjunction with the Department of the Interior's announcement of the Proposed Final Comprehensive Program in spring 1992.

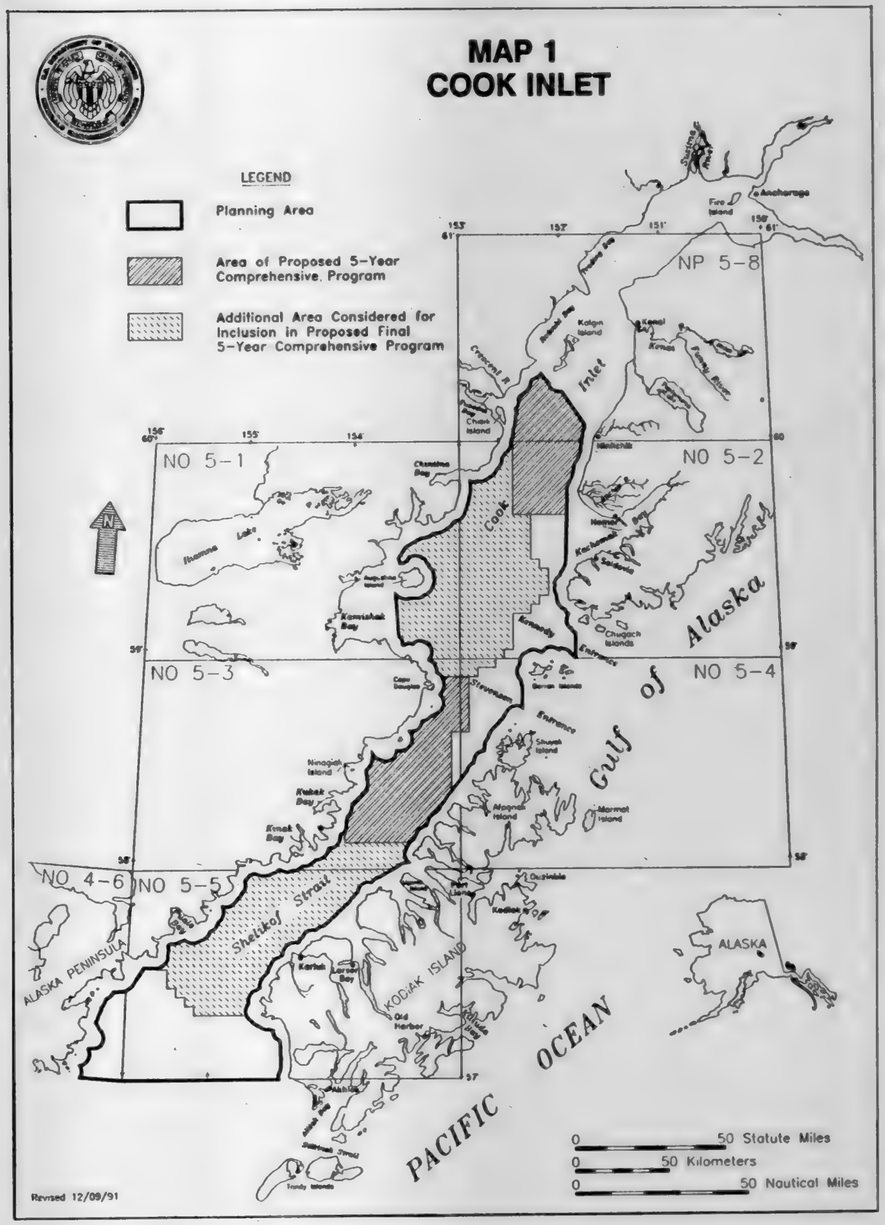
Comments are requested from States, local governments, other interested individuals and groups, the oil and gas industry, and Federal agencies to assist in determining if the area proposed for consideration of leasing for the proposed oil and gas lease Sale 149—Cook Inlet—should be enlarged; if the planning areas should be renamed; and if both the St. George Basin and Hope Basin should be considered for leasing in the Proposed Final Comprehensive Program (1992–1997). In particular, comments are solicited on any geological, biological, or physical characteristics of the areas; potential for discovery of oil and gas in the areas; potential environmental or socioeconomic impacts; potential for effects on the coastal zone if any or all of the alternatives are adopted; or other relevant information.

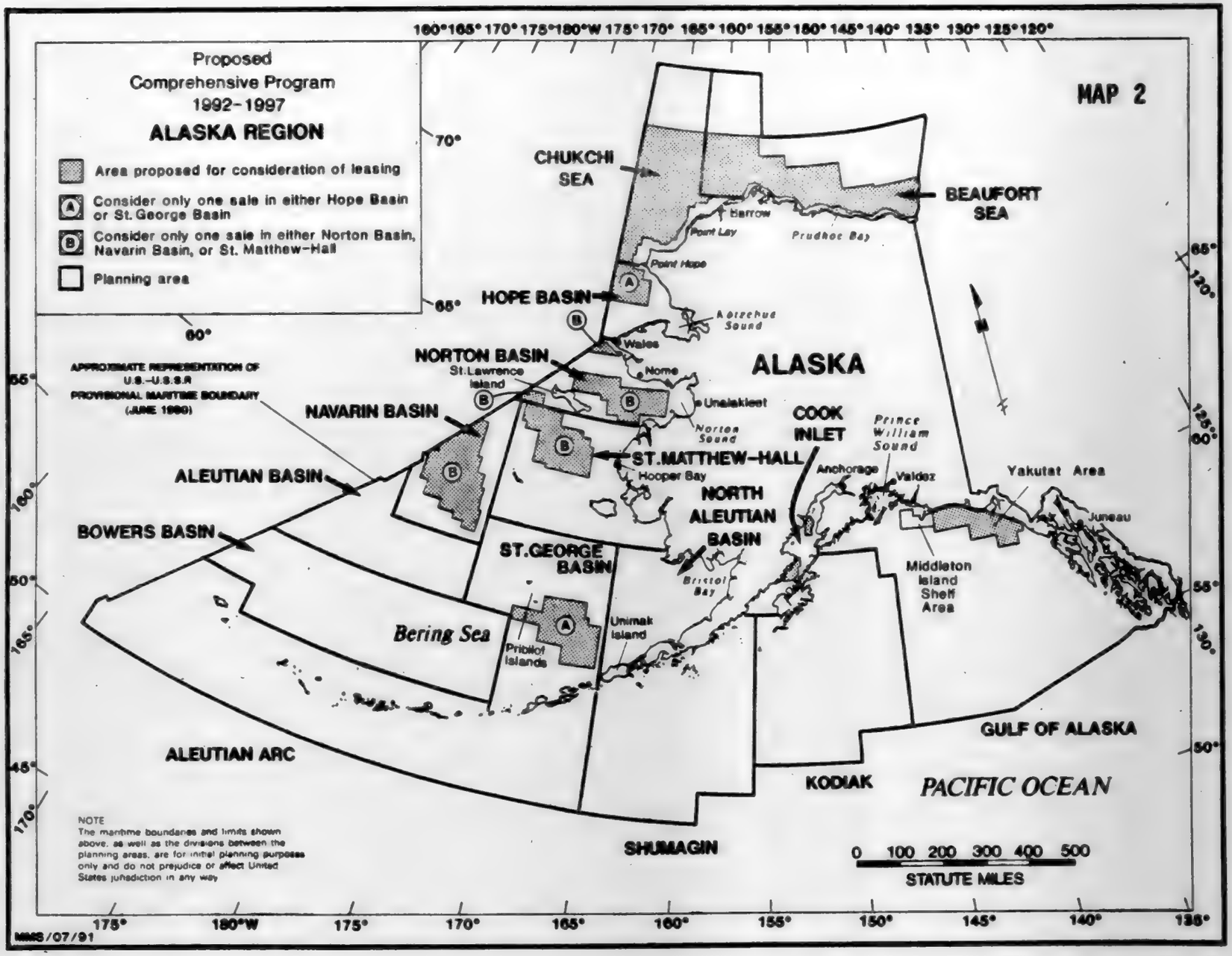
Dated: December 13, 1991.

Scott Sewell,

Director, Minerals Management Service.

BILLING CODE 4310-MR-M





[FR Doc. 91-30158 Filed 12-16-91; 8:45 am]
BILLING CODE 4310-MR-C

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Part VII

The President

Proclamation 6392—Bicentennial of the District of Columbia Month, 1991
Proclamation 6393—
Year of Clean Water, 1992
Clean Water Month, 1992

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Presidential Documents

Title 3—

The President

Proclamation 6392 of December 13, 1991

Bicentennial of the District of Columbia Month, 1991

By the President of the United States of America

A Proclamation

Although it encompasses just 10 square miles, the District of Columbia contains a vast wealth of history and culture—a legacy that befits our Nation's Capital. This year, we celebrate the 200th anniversary of our remarkable Federal city.

Conceived by the Framers of our Constitution, who provided for the establishment of a special district to serve "as the Seat of the Government of the United States," our Nation's Capital began to take shape in 1791. In January of that year, a site was selected for the city under the direction of President George Washington. The following month Andrew Ellicot and Benjamin Banneker, a successful black farmer who was self-taught in engineering, mathematics, and other fields, began to survey the terrain.

Plans for the actual layout of the city reflected the exuberance, pride, and optimism of our young Republic. When he submitted his design to the Congress in December 1791, Major Pierre L'Enfant included numerous provisions for parks, fountains, and wide, sweeping avenues—all reflecting a vision as grand and as ambitious as the American experiment itself.

Over the years, a number of our Nation's leaders took great personal interest in the development of the Federal city. Thomas Jefferson offered advice and sketches for its design, and it was his idea to build a large mall extending from the foot of the hill on which our magnificent United States Capitol now stands. Today the Mall in Washington is surrounded by monuments and museums that honor the brilliant thinkers and brave heroes who have defined and defended the American ideals of liberty and self-government. Many of the museums in our Nation's Capital also contain vast collections of American art and folklore, as well as fascinating displays of U.S. achievements in science, industry, and aviation.

As the seat of government of the United States for 200 years, our Nation's Capital has become a center of American culture and a world-renowned symbol of freedom and democracy. Here is where President John Adams and his successors continued the work that President George Washington and the First Congress had begun in New York. Here is where President Abraham Lincoln labored to preserve our Union; and here is where the Reverend Dr. Martin Luther King, Jr., led the historic march that energized the civil rights movement and reminded America of its promise of liberty and justice for all. Much of our Nation's history has marched through Washington, D.C., and today that journey continues as we engage in the day-to-day process of democratic government.

While our Nation's Capital belongs to all Americans, this occasion is a very special one for the residents of the District of Columbia. Many families have lived in the city for generations, and this bicentennial is also a celebration of their roots.

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At the end of the Civil War, thousands of African Americans came to Washington, making the city a virtual symbol of emancipation and progress. Their accomplishments, reflected in the growth of institutions such as Howard University, helped pave the way for countless others. Today residents of the District of Columbia continue to make outstanding contributions in education, business, science, and the arts. On this occasion, all Americans join them in celebrating 200 years of history and achievement.

The Congress, by House Joint Resolution 356, has designated December 1991 as "Bicentennial of the District of Columbia Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim December 1991 as Bicentennial of the District of Columbia Month. I invite all Americans to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of December, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.

George Bush

[FR Doc. 91-30290
Filed 12-19-91; 11:31 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 6393 of December 13, 1991

Year of Clean Water, 1992

Clean Water Month, 1992

By the President of the United States of America

A Proclamation

Water is essential to every form of life on Earth. Indeed, this vital substance unites our planet's ecosystems, the miraculous yet fragile relationships in nature that sustain each other as well as all human activity. Recognizing the importance of our precious water resources, the United States has made a firm commitment to protecting their physical, chemical, and biological integrity. This year, the 20th anniversary of the Clean Water Act reminds us that we are all stewards of our water resources, and, as such, we are responsible for their preservation and wise use.

Since the enactment of the Clean Water Act in 1972, we have achieved remarkable improvements in many of our Nation's water resources. Twenty years ago, less than half of America's rivers supported fish and shellfish or provided wildlife habitat. Fishing and swimming were restricted in many areas, and drinking water supplies were threatened. Today, however, nearly three-fourths of the Nation's waters support these uses, and many others have significantly improved in quality. Fish and waterfowl have returned to many of our rivers, lakes, and coastal waters.

We have taken great strides during the past two decades, primarily by controlling pollution from sewage treatment plants and industrial facilities. Recent advances in science and technology have enabled us to engage in more effective studies of water pollution—its causes and its effects. These studies, which have often revealed the magnitude of previously underestimated problems, have led to more vigorous and innovative antipollution measures. At the same time, public awareness of the importance of clean water has also increased; now there is more support than ever for protecting and enhancing water quality.

While we can take pride in this progress, many challenges remain. Urban and industrial growth are creating additional sources of pollution while placing increased demands on limited water resources. Contaminated runoff from farmlands as well as city streets is, all too often, degrading our waters and damaging ecosystems. Scientists continue to detect unacceptable levels of pollutants in many bodies of water and in the tissues of finfish and shellfish. All Americans must continue to work together to protect our water resources and the wildlife that depends on them.

We have already discerned the need for new and innovative solutions. Indeed, today we know that the health of aquatic ecosystems must be examined holistically, to determine how various forms of human activity affect water quality. We know that we must protect entire watersheds that feed into our rivers, lakes, and coastal waters. We also recognize that, by preventing pollution at the source, we can protect watersheds and avoid the high economic and environmental costs of treating wastes and restoring ecosystems after pollution has already occurred. Moreover, experience has shown us that our actions must be based on sound science.

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The 20th anniversary of the Clean Water Act marks an important milestone in the history of American environmental protection. However, just as water links each of our planet's ecosystems, water pollution recognizes no boundaries. All Americans and their representatives in all levels of government must work together to promote wise stewardship of this, our "water planet." We must also foster greater cooperation in the international community.

As an expression of our national commitment to these goals, the Congress, by Public Law 101–424, has designated 1992 as the "Year of Clean Water" and October 1992 as "Clean Water Month."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim 1992 as the Year of Clean Water and October 1992 as Clean Water Month. I call upon all Americans to observe this year and month with appropriate programs, ceremonies, and activities. I also ask my fellow Americans to join in setting examples of environmental stewardship in our daily lives.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of December, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.

George Bush

[FR Doc. 91–30291
Filed 12–16–91; 11:34 am]
Billing code 3195–01–M

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To expand the boundaries of Stones River National Battlefield, Tennessee, and for other purposes. (Dec. 11, 1991; 105 Stat. 1682; 3 pages) Price: $1.00

H.R. 2105/Pub. L. 102–226
To designate an area as the "Myrtle Foester Whitmire Division of the Aransas National Wildlife Refuge". (Dec. 11, 1991; 105 Stat. 1685; 1 page) Price: $1.00

H.R. 3909/Pub. L. 102–227
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Rules and Regulations

Federal Register
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Wednesday, December 18, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV-91-438]

South Texas Onions; Amended Expenses and Establishment of Assessment Rate

AGENCY: Agricultural Marketing Service.
ACTION: Final rule.

SUMMARY: This final rule increases the level of authorized expenses and establishes the assessment rate under Marketing Order No. 959 for the 1991–92 fiscal period. Authorization of this budget enables the South Texas Onion Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: August 1, 1991, through July 31, 1992.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–720–2020.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 143 and Order No. 959 (7 CFR part 959), regulating the handling of onions grown in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 34 handlers of South Texas onions under this marketing order, and approximately 47 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of South Texas onion producers and handlers may be classified as small entities.

The budget of expenses for the 1991–92 fiscal period was prepared by the South Texas Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of South Texas onions. They are familiar with the committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses.

Committee administrative expenses of $91,237, recommended in a mail vote completed August 5, 1991, were approved on September 24, 1991, and published in the **Federal Register** on September 30, 1991 (56 FR 49391). The committee subsequently met on October 15, 1991, and unanimously recommended funding for numerous research and promotion projects and adjustments to a number of the previously approved administrative items. The 1991–92 budget of $341,605.67 is $43,605.67 more than the previous year. Major increases are in the manager and field salaries, rent and utilities, field travel, promotion, and research categories.

The committee also unanimously recommended an assessment rate of $0.07 per 50-pound container or equivalent of onions, the same as last season. This rate, when applied to anticipated shipments of 5,019,054 50-pound containers or equivalents, will yield $351,333.78 in assessment income. This, along with $15,759.84 in interest income, will be adequate to cover budgeted expenses. Funds in the reserve as of September 30, 1991, estimated at $342,401, were within the maximum permitted by the order of two fiscal periods' expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** on November 19, 1991 (56 FR 58324). This document contained a proposal to amend § 959.232 to increase the level of authorized expenses and establish an assessment rate for the committee. This rule provided that interested persons could file comments through November 29, 1991. No comments were filed.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the committee needs to have sufficient funds to pay its expenses which are incurred on a

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continuous basis. The 1991–92 fiscal period for the program began on August 1, 1991, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable South Texas onions handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is hereby amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 959.232 is revised to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 959.232 Expenses and assessment rate.

Expenses of $341,605.67 by the South Texas Onion Committee are authorized and an assessment rate of $0.07 per 50-pound container or equivalent quantity of assessable onions is established for the fiscal period ending July 31, 1992. Unexpended funds may be carried over as a reserve.

Dated: December 12, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–30139 Filed 12–17–91, 8:45 am]

BILLING CODE 3410-02-M

RAILROAD RETIREMENT BOARD

20 CFR Part 320

RIN 3220–AA73

Initial Determinations Under the Railroad Unemployment Insurance Act and Review of and Appeals From Such Determinations

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends part 320 of its regulations to provide for a right of notice, intervention and appeal to railroad employers with respect to the payment of claims under the Railroad Unemployment Insurance Act. These changes are required by the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 Title VII of Public Law 100–647.

EFFECTIVE DATES: December 18, 1991.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513 FTS 386–4513, TDD (312) 751–4701, TDD (FTS 386–4701).

SUPPLEMENTARY INFORMATION: Prior to the enactment of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 (Improvement Act), title VII of Public Law 100–677, (102 Stat. 3342, 3757), the contribution rate of employers under the Railroad Unemployment Insurance Act (RUIA) did not vary with the number of claims for unemployment or sickness benefits paid for employees of that employer. The Improvement Act introduced the concept of experience rating into the RUIA. Under experience rating, an employer's tax rate will vary depending on the amount of unemployment or sickness benefits paid to employees employed by the employer in the base year (the calendar year prior to the benefit year). The Improvement Act also provides for the right of employers to challenge the payment of benefits if the claimant was employed in the base year by the employer. These amendments were effective January 1, 1990.

Specifically, section 7104(a) of the Improvement Act adds a provision to section 5(b) of the RUIA which requires that the Board notify a claimant's base-year employer(s) at the time of filing a claim so that the employer(s) may provide information with respect to the claim (§ 320.5). Since the base-year employer(s) will be charged for benefits erroneously paid but waived under part 340 of this chapter, this rule also provides that in making a waiver determination the Board shall notify the claimant's base-year employer(s), and most recent employer, if different, and provide the employer(s) an opportunity to submit information with respect to whether waiver is appropriate (§ 320.11(g)).

Section 7104(b) provides that when a claim is paid, the base-year employer(s) may appeal to the Board for review of such determination. Upon such an appeal the Board may appoint an individual to take evidence and submit a recommended decision. Since most appeals filed by employers under this part will require the appointment of a hearings officer to develop a factual record, the Board under its authority in section 5(d) of the RUIA (dealing with the Board's authority to establish intermediate appellate bodies) requires that before a base-year employer may present this case to the Board, the employer must seek reconsideration from the initial adjudicating unit (§ 320.10). If the decision on reconsideration is unfavorable, the employer may have the case heard before an independent hearings officer (§ 320.12), and if dissatisfied by that decision, may appeal to the Board (§ 320.38). This procedure will ensure that by the time a case reaches the three-member board an adequate record will have been developed. This procedure parallels the procedure presently provided for in this part with respect to an appeal by a claimant from a denial of benefits.

Section 320.2 provides that the term "party" as used in this part includes not only the claimant but also the base-year employer(s) and any person designated as a party during the appellate process provided for in this part. Decisions are binding on all parties with respect to all claims involving the same issues under dispute (§§ 320.32 and 320.42).

Section 320.19 provides that whenever an appeal is taken to a hearings officer the hearings officer shall notify the parties other than the appellant that an appeal has been filed and that they have a right to participate in the proceedings. A party who elects not to participate in the appeal shall be bound by any subsequent decision of the hearings officer and shall have no further right to review.

Likewise, when a party who is aggrieved by a decision of a hearings officer files an appeal with the Board, § 320.40 provides that the Secretary to the Board shall notify all parties to the hearings officer's decision that an appeal has been filed.

Section 320.25(d) provides that in the discretion of the hearings officer and with the approval of the Director of Hearings and Appeals any hearing required under this part may be held by telephone conference rather than "face to face" but only if all parties to the appeal agree. In the case of multiple party appeals where issues on appeal are simple, the use of the "telephone hearing" will provide a prompt and efficient means of fulfilling the requirement for a hearing under this part.

A new § 320.49 is added which provides that for purposes of this part the date of filing shall be the date of receipt at an office of the Board. By agreement between the Board and an employer, any document required to be filed with the Board or any notice required to be sent to the employer may be accomplished by electronic mail.

The rule also makes some technical corrections by eliminating in certain places the phrases "interested party" or "properly interested party"and substituting therefor, simply "party." By definition a "party" to a proceeding under this part is "properly interested" and thus this rule removes this confusing redundancy.

Section 320.9(c) of the proposed rule has been deleted from the final rule and now appears as the last sentence of § 320.11(a). The final rule also corrects certain section references found in the proposed rule.

Finally, on January 28, 1990, provisions in the regulations affording claimants the opportunity for a pre-recovery hearing with respect to waiver requests expired by operation of the sunset provision in § 320.11(k). Consequently, all references to a pre-recovery hearing now present in § 320.11 are removed.

On July 5, 1991, the Board published this rule as a proposed rule [56 FR 30714], inviting comments on or before August 5, 1991. No comments were received.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory impact analysis is required by the Regulatory Flexibility Act (5 U.S.C. 601–611). In addition, the requirements for the collection of information within the meaning of the Paperwork Reduction Act of 1980 have been approved by the Office of Management and Budget.

List of Subjects in 20 CFR Part 320

Railroad employee, Railroad unemployment insurance.

Initial Determinations Under the Railroad Unemployment Insurance Act and Review of and Appeals from Such Determinations.

For the reasons set out in the preamble, title 20, chapter II, part 320 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 320 is revised to read as follows:

Authority: 45 U.S.C. 355 and 362(1).

2. Section 320.1 is revised to read as follows:

§ 320.1 Introduction.

This part explains which units of the Board are authorized to make initial determinations with respect to entitlement to benefits under the Railroad Unemployment Insurance Act and waiver of recovery of overpayments under that Act. This part explains how notice of such determinations is to be communicated to the claimant and to his or her base-year employer(s) and how these determinations may be appealed.

3. A new § 320.2 is added to read as follows:

§ 320.2 Definitions.

As used in this part—

Base-year employer means the railroad employer(s) for whom a claimant worked and earned compensation creditable under the Railroad Unemployment Insurance Act during the base year. The base year is the calendar year immediately preceding the benefit year for which a claim is being filed. A benefit year is generally the period July 1 through the following June 30.

Party means the claimant, the base-year employer(s), or any person so designated under this part.

4. Section 320.5 is revised to read as follows:

§ 320.5 Initial determinations.

An initial determination shall be made with respect to each claim for unemployment or sickness benefits by the appropriate adjudicating office as provided by § 320.6 of this part. Prior to making an initial determination the Board shall provide the claimant's base-year employer(s) and most recent employer if different with notice that a claim has been filed and that the employer(s) has an opportunity to submit information which may be pertinent to the adjudication of the claim. The adjudicating office shall make its determination on the basis of the claimant's application and claim and any relevant information or evidence including any information received from the base-year employer(s). A determination allowing payment of an initial claim shall not establish a presumption that benefits for subsequent claims in the same period of unemployment or sickness are also payable. The Director of Unemployment and Sickness Insurance shall issue instructions with respect to the adjudication of claims and initial determination on such claims. If it is found that only part of the benefits claimed may initially be paid, a partial payment shall be made prior to a final decision on the whole claim.

5. Paragraph (a) of § 320.8 is revised to read as follows:

§ 320.8 Notice of initial determination.

(a) *Benefits payable.* If benefits are payable for a claim, no special notice of the award will be issued to the claimant. A notice of the award will be sent to the base-year employer(s). The amount of benefits due will be certified to the United States Treasury Department for payment.

* * * * *

6. Section 320.10 is revised to read as follows:

§ 320.10 Reconsideration of initial determination.

(a) *Request.* A claimant shall have the right to request reconsideration of an initial determination under § 320.5 of this part which denies in whole or in part his or her claim for benefits. A claimant shall have the right to request reconsideration of a notice of overpayment under § 320.9 of this part. The base-year employer(s) shall have the right to request reconsideration of an initial determination under § 320.5 of this part which awards in whole or in part a claimant's claim for benefits. A reconsideration request shall be made in writing and addressed to the adjudicating office that issued the initial determination and must be received by the adjudicating office no later than 60 days from the date of the notice of the initial decision.

(b) *Review of evidence.* Upon request, the party requesting reconsideration shall have an opportunity to review all evidence and documents that pertain to the initial determination. The Board shall made all reasonable efforts to protect the identity of the source of adverse evidence.

(c) *Notice of decision.* The adjudicating office shall, as soon as possible, render a decision on the request for reconsideration. If a decision rendered by a district office, as the adjudicating office, sustains the initial determination, either in whole or in part, the decision shall be referred to the appropriate regional office for review prior to issuance. The party who requested reconsideration shall be notified, in writing, of the decision on reconsideration no later than 15 days from the date of the decision or, where the regional office has conducted a review of the decision, within 7 days following the completion of the review. If the decision results in denial of benefits, the claimant shall be notified of the right to appeal as provided in § 310.12 of this part. If the decision results in payment of benefits, the base-year employer(s) shall be notified of the right to appeal as provided in § 310.12 of this part.

(d) *Right to further review of initial determination.* The right to further review of a determination made under §§ 310.5 or 320.6 of this part shall be forfeited unless a written request for reconsideration is filed within the time

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period prescribed in this section or good cause is shown by the party requesting reconsideration for failing to file a timely request for reconsideration.

(e) *Timely request for reconsideration.* In determining whether either the claimant or the base-year employer(s) has good cause for failure to file a timely request for reconsideration, the adjudicating office shall consider the circumstances which kept either the claimant or the base-year employer(s) from filing the request on time and whether any action by the Board misled either of them. Examples of circumstances where good cause may exist include, but are not limited to:

(1) A serious illness which prevented the claimant from contacting the Board in person, in writing, or through a friend, relative or other person;

(2) A death or serious illness in the claimant's immediate family which prevented him or her from filing;

(3) The destruction of important and relevant records;

(4) A failure to be notified of a decision; or

(5) The existence of an unusual or unavoidable circumstance which demonstrates that either the claimant or the base-year employer(s) would not have known of the need to file timely or which prevented either of them from filing in a timely manner.

7. Section 320.11 is revised to read as follows:

§ 310.11 Request for waiver of recovery.

(a) *Time limitation.* The claimant shall have 30 days from the date of the notification of the erroneous payment determination in which to file a request for waiver, except that where an erroneous payment is not subject to waiver in accordance with § 340.10(e) of this chapter, waiver may not be requested and recovery will not be stayed. Such requests shall be made in writing and be filed by mail or in person at any Board office. The claimant shall, along with the request, submit any evidence and argument which he or she would like to present in support of his or her case. A request solely for reconsideration of an overpayment shall not be considered a request for waiver under this section but shall be treated as a request for reconsideration under § 320.10 of this part.

b. *Recovery action.* Where a claimant has made a timely request for waiver of recovery, no action will be taken to recover the erroneous payment by setoff against current benefits prior to a decision on such request; *provided however,* That the Board may, prior to a decision, withhold the amount of the erroneous payment from benefit payments under any of the following circumstances:

(1) The claimant admits he or she was at fault in causing the overpayment;

(2) The claimant is found to have committed fraud;

(3) The claimant authorizes recovery by setoff or agrees to repayment; or

(4) The amount of erroneous payment is not subject to waiver or provided for in § 340.10(e) of this chapter.

(c) *Review of evidence.* Upon request, the claimant shall have an opportunity to review all evidence and documents that pertain to the erroneous payment determination.

(d) *Decision.* The Director of Unemployment and Sickness Insurance shall make a decision on the claimant's request for waiver of recovery and shall notify the claimant accordingly. The decision of the Director shall include the basis of the decision, setting forth his or her reasons for the decision including the impact, if any, of any evidence submitted by the base-year or last employer. If the Director decides that waiver of recovery is not appropriate, the adjudicating office shall wait 15 days from the date of the notification of the waiver decision before taking any action to recover the erroneous payment. If the Director decides that recovery should be waived, any amount of the erroneous payment so waived but previously recovered by setoff shall be refunded to the claimant.

(e) *Appeal.* If the Director of Unemployment and Sickness Insurance decides that waiver of recovery is not appropriate, the claimant shall have the right to appeal such decision as provided under § 320.12 of this part.

(f) *Requests made after 30 days.* Nothing in this section shall be taken to mean that waiver of recovery will not be considered in those cases where the request for waiver is not filed within 30 days, but action to recover the erroneous payment will not be deferred if such a request is not timely filed. Further, it shall not be considered that a claimant prejudices his or her request for waiver by tendering all or a portion of the erroneous payment or by selecting a particular method for repaying the debt. However, no waiver consideration will be given to any debt which is settled by compromise.

(g) *Evidence provided by base-year employer(s) and most recent employer, if different.* In making a decision under paragraph (d) of this section, the Director of Unemployment and Sickness Insurance shall consider all evidence of record including any evidence submitted by the claimant's base-year employer(s) and the most recent employer, if different. Where a claimant has requested waiver the Director shall notify his or her base-year employer(s) and the most recent employer, if different, of the right to submit, within 30 days, any information which may be pertinent to the waiver decision.

8. Section 320.12 is revised to read as follows:

§ 320.12 Appeal to the Bureau of Hearings and Appeals.

Any party aggrieved by a decision under § 320.10 of this part or a claimant aggrieved by decision under § 320.11 of this part may appeal such decision to the Bureau of Hearings and Appeals. Such an appeal shall be made by filing the form prescribed by the Board. The appeal must be filed with the Bureau of Hearings and Appeals within 60 days from the date upon which the notice of the decision on reconsideration or waiver of recovery was mailed to either a claimant or the base-year employer(s). If no appeal is filed within the time limits specified in this section, the decision of the adjudicating office under §§ 320.10 or 320.11 of this part shall be considered final and no further review of such decision shall be available unless the hearings officer finds that there was good cause for the failure to file a timely appeal as described in § 320.10 of this part.

9. Section 320.18 is revised to read as follows:

§ 320.18 Hearings officer.

Within a reasonable time after a party has filed a properly executed appeal, the Director of Hearings and Appeals shall appoint a hearings officer to act in the appeal. Such hearings officer shall not have any interest in the parties or in the outcome of the proceeding, shall not have directly participated in the initial determination from which the appeal is made, and shall not have any other interest in the matter which might prevent a fair and impartial hearing. In any case in which employee status or creditability of compensation is an issue, the hearings officer shall receive evidence and report to the Board thereon with recommendations. In all other cases, the hearings officer shall consider and decide the appeal; in each such case where the hearings officer determines that an issue of fact exists, the parties shall have the right to a hearing.

10. A new § 320.19 is added to read as follows:

§ 320.19 Election to participate.

(a) *Claimant files an appeal.* Where the claimant has filed an appeal under § 320.12 of this part the hearings officer shall notify the claimant's base-year employer(s) that such an appeal has been filed and shall provide the base-year employer with a statement of issues on appeal. The hearings officer shall inform the base-year employer(s) that such employer(s) shall have a right to be present at any hearing which is to be held under this part and the right to submit evidence with respect to the issues on appeal. Within 30 days of the date of such notice a base-year employer shall provide the hearings officer with a statement in writing which summarizes the evidence which such employer intends to present with respect to the issues on appeal, which indicates whether the employer wishes to be present at any hearing which may be held, and which designates who will represent the employer with respect to the appeal. An employer who fails to respond in the time prescribed shall be barred from further participation in the appeal and shall forfeit any further right to review as provided for in this part.

(b) *Base-year employer files an appeal.* Where a base-year employer files an appeal under § 320.12 of this part, the hearings officer shall notify the claimant that such an appeal has been filed and shall provide the claimant with a statement of issues on appeal. The hearings officer shall inform the claimant that he or she or a duly authorized representative shall have a right to be present at any hearing which is to be held under this part and the right to submit evidence with respect to the issues on appeal. Within 30 days of the date of such notice the claimant shall file with the hearings officer an election to participate in the appeal. A claimant who fails to file an election in the time prescribed shall be barred from further participation in the appeal and shall forfeit any right of review as provided for in this part.

11. Section 320.25 is amended by striking the words "properly interested" in the first sentence of paragraph (b), and by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 320.25 Hearing of appeal.

* * * * *

(c) *Where no oral hearing required.* Where the hearings officer finds that no factual issues are presented by an appeal, and the only issues raised by the parties are issues concerning the application or interpretation of law, the parties or their representatives shall be afforded full opportunity to submit written argument in support of their position but no oral hearing shall be held.

(d) *Hearing by telephone.* In the discretion of the hearings officer and with the approval of the Director of Hearings and Appeals and agreement of all parties, any hearing required under this part may be conducted by telephone conference.

§ 320.28 [Amended]

12. Section 320.28 is amended by striking the words "properly interested" in the last sentence.

§ 320.30 [Amended]

13. Section 320.30 is amended by striking the word "interested" in the last two sentences.

14. Section 320.32 is revised to read as follows:

§ 320.32 Effect of decision of hearings officer.

A decision of the hearings officer, subject to review as hereinafter provided, shall be binding upon any adjudicating office and upon all parties:

(a) With respect to the initial determination involved, and

(b) With respect to other initial determinations, irrespective of whether they have been appealed, which involved the same parties and which were based upon the same issue or issues determined in the decision of the hearings officer.

15. Section 320.38 is revised to read as follows:

§ 320.38 Appeal to Board from decision of hearings officer.

Any claimant aggrieved by a decision of the hearings officer and any base-year employer(s) whose employee was awarded benefits, who participated in the appeal before the hearings officer, may appeal to the Board for review of the decision.

16. Section 320.39 is revised to read as follows:

§ 320.39 Execution and filing of appeal to Board from decision of hearings officer.

An appeal to the Board from the decision of a hearings officer shall be filed on the form provided by the Board and shall be executed in accordance with the instructions on the form. Such appeal shall be filed within 60 days from the date upon which notice of the decision of the hearings officer was mailed to the parties. The right to further review of a decision of a hearings officer shall be forfeited unless formal final appeal is filed in the manner and within the time prescribed in this section. However, when a party fails to file an appeal before the Board within the time prescribed in this section, the Board may waive this requirement if, along with the final appeal, the party in writing requests an extension of time. The request for an extension of time must give the reasons why the final appeal form was not filed within the time limit prescribed in this section. If in the judgment of the Board the reasons given establish that the party has good cause for not filing the final appeal form within the time limit prescribed, the Board will consider the appeal to have been filed in a timely manner. The Board will use the standards found in § 320.10(e) of this chapter in determining if good cause exists.

(Approved by the Office of Management and Budget under control number 3220–0020)

17. Section 320.40 is revised to read as follows:

§ 320.40 Procedure before Board on appeal from decision of hearings officer.

Upon the filing of an appeal to the Board from a decision of a hearings officer, the Secretary to the Board shall notify all parties to the decision of the hearings officer that an appeal has been filed. The parties shall not have the right to submit additional evidence, except that:

(a) The Board may permit the submission of additional evidence upon a showing by a party that he or she has additional evidence to present which, for valid reasons, he or she was unable to present at an earlier stage;

(b) The Board may request the submission of additional evidence; and

(c) The Board may designate any employee of the Board to take additional evidence and to report his or her findings to the Board. Any such additional evidence shall be submitted in such manner as the Board may indicate and shall be included in the record.

18. Section 320.42 is amended by revising paragraph (b) to read as follows:

§ 320.42 Decision of the Board.

* * * * *

(b) With respect to other initial determinations, irrespective of whether they have been appealed, which involve the same parties and which were based on the same issue or issues determined in the decision of the Board. In a case in which there has been a hearings officer's report, in an appeal involving employee status or the creditability of compensation, the decision of the Board on all issues determined in such decision shall be final and conclusively establish all rights and obligations, arising under the Act, of every party notified as hereinabove provided of his or her right to participate in the proceedings.

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§ 320.45 [Amended]

19. Section 320.45 is amended in paragraph (b) by striking the word "the" before the word "party" in the first sentence and by substituting therefor, the words, "an aggrieved".

20. A new § 320.49 is added to read as follows:

§ 320.49 Determination of date of filing.

For purposes of this part the date of filing of any document or form shall be the date of receipt at an office of the Board. By agreement between a base-year employer and the Board any document required to be filed with the Board or any notice required to be sent to the employer may be transmitted by electronic mail.

Dated: December 10, 1991.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 91-30111 Filed 12-17-91; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Presumptive Disability and Presumptive Blindness

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We are removing § 416.934(k), a regulation section under which we made findings of presumptive disability for people who sought supplemental security income benefits based on disability due to acquired immunodeficiency syndrome (AIDS). Under new procedures, our Social Security Field Offices may make a finding of presumptive disability for any individual with the human immunodeficiency virus (HIV) whose disease manifestations are of listing-level severity, not only those who have been diagnosed with AIDS. Moreover, when we last amended our regulations at § 416.934(k) to extend its expiration date, the appendix to which it referred, appendix 1 to subpart I of the Supplemental Security Income (SSI) regulations, was inadvertently deleted from the Code of Federal Regulations. Inasmuch as our new operating procedures are more inclusive than the policy in § 416.934(k), we believe that, instead of restoring the appendix, the better public policy is to remove § 416.934(k) from our regulations. At the same time, we are also publishing, in a separate section of this **Federal Register**, proposed rules which would revise § 416.933 to include all people who have HIV infection with disease manifestations of listing-level severity.

EFFECTIVE DATE: These rules are effective December 18, 1991.

FOR FURTHER INFORMATION CONTACT: Harry J. Short, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (301) 965-1753.

SUPPLEMENTARY INFORMATION: On December 29, 1989, at 54 FR 53607, we amended our regulations at § 416.934(k) to extend the expiration date for the regulatory authority under which we may make a finding of presumptive disability when a person seeks SSI benefits based on disability due to AIDS, with one or more of the manifestations listed in appendix 1 to subpart I of part 416 of the Code of Federal Regulations (CFR) as diagnosed by a licensed physician. As a result of an error, the appendix was inadvertently deleted from the CFR. We nevertheless continued to make findings of presumptive disability on the basis of AIDS. However, under new operating guidelines, findings of presumptive disability are no longer tied to a diagnosis of AIDS. Any person who is infected with the human immunodeficiency virus (HIV) may be found eligible for presumptive disability benefits if the manifestations of the disease are of listing-level severity, as confirmed by medical evidence. In a separate section of this **Federal Register** we are proposing rules, with a request for public comment, that would codify our new operating procedures.

In this final rule, we are correcting the error that deleted appendix 1 of subpart I of part 416, because § 416.934(k) requires reference to criteria that technically no longer exist within these regulations. We considered restoring the appendix to subpart I, but since it is more restrictive than our new operating procedures, we believe that the better course of action is to delete § 416.934(k).

Under section 1631(a)(4)(B) of the Social Security Act (the Act) and implementing regulations, we may pay a person SSI benefits on the basis of presumptive disability or blindness before we make a formal determination on the issue of whether the person is disabled or blind. Findings of presumptive disability or blindness may be made when the available evidence is not sufficient for a formal determination of disability or blindness but reflects a high degree of probability that the individual will be found disabled or blind when complete evidence is obtained; the individual must also meet the nonmedical requirements for SSI eligibility.

Thus, the law that provides for the payment of benefits based on a finding of presumptive disability or presumptive blindness establishes a means by which we may make payments to some individuals who file for supplemental security income benefits while we are adjudicating their claims. Currently, presumptive disability or blindness payments may be made for no more than 6 months. (Prior to May 1, 1991, the effective date of section 5038 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, presumptive payments could be made for no more than 3 months.)

Findings of presumptive disability or presumptive blindness may be made at our Social Security Field Offices or at the State agencies that make disability determinations for us. The employees at our Social Security Field Offices are not trained disability adjudicators; therefore, they are authorized to make presumptive disability or blindness findings only for certain impairments, which are specified in § 416.934. Under § 416.933, however, presumptive disability and blindness determinations are not limited to the list of specific impairment categories in § 416.934.

Our original intent for the list in § 416.934 was to catalogue a group of impairments that could be the basis for a finding of presumptive disability or blindness based on a claimant's allegations and a Social Security interviewer's observations, without the need for any confirming medical evidence. These specific impairment categories generally include impairments that may be readily observed by a lay interviewer.

Although at times the manifestations of AIDS or of HIV infection are apparent, there are times when they are not. For this reason, § 416.934(k) included a requirement that an allegation of AIDS be confirmed by a diagnosis by a licensed physician.

Disability adjudicators at the State agencies are not confined to the impairments specified in § 416.934; they may make findings of presumptive disability or presumptive blindness in any case in which the evidence is sufficient to establish a high degree of probability that the individual will be found disabled. Section 416.933 shows that any impairment not on the list in

§ 416.934 could be the basis for a finding of presumptive disability or blindness, provided that the decision is based on medical or other information which, though not sufficient for a formal determination of disability, is sufficient to determine that there is a high degree of probability that the individual will be found disabled on consideration of all medical and other evidence.

The rules in §§ 416.933 and 416.934 have enabled us to provide presumptive disability payments to a substantial number of people who are infected by the HIV. Nevertheless, we recognize that the field of study of HIV infection is especially dynamic and that improvements to our rules and procedures are still possible and necessary. For this reason, we recently expanded our operating instructions to help Social Security offices identify individuals who should be found presumptively disabled because of HIV infection at the earliest possible stage in the application process. Social Security offices may now make a finding of presumptive disability for any HIV-infected individual whose disease manifestations are of listing-level severity, based on information obtained from the individual's physician. It is our hope that the new procedures will help us ensure that eligibility for presumptive disability payments is routinely and expeditiously considered for every HIV-infected claimant, both now and in the future.

Under the new procedures, the Social Security office mails a check-block form to the claimant's physician for completion and return to the Social Security office. The form lists manifestations of HIV infection that we currently consider sufficient to establish listing-level severity, including criteria for some of the most rare manifestations of the illness and for considering the functional impact of the illness on individuals who do not demonstrate listing-level severity based on the medical findings alone. Of course, if the Social Security office is unable to make a finding of presumptive disability, the State agency may still make such a finding at any time that the evidence is sufficient to establish a high degree of probability that the individual will be found disabled.

After a presumptive disability finding is made, the State agency completes the development of the evidence and decides the claim using the full sequential evaluation process for determining if the requirements for establishing disability are met. We believe that the check-block form obtained by the Social Security office will also help to expedite the formal determination process at the State agency for individuals who have HIV infection. It will help the State agency pinpoint the kind of evidence it will need to develop for its formal disability determination. In addition, we believe that the check-block design of the form will not be viewed by medical practitioners as onerous or an excessive intrusion into their time. The form is a simple mechanism that quickly provides us with information upon which we can accurately make findings of presumptive disability.

Justification for Final Rule

The Department, even when not required by statute, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553, in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking because such procedures would be unnecessary and contrary to the public interest. Formal notice and comment procedures would be unnecessary in this case since the notice of proposed rulemaking on § 416.933 that is being published in the **Federal Register** will afford the public the opportunity to comment on the general SSA policy and procedures regarding presumptive disability and presumptive blindness for HIV infection and AIDS. In addition, we have concluded that it would be contrary to the public interest to also issue the instant rule through notice and comment rulemaking, since it would delay the correction of § 416.934. The alternative to this regulation would have been to restore Appendix 1 to Subpart I and to return to our former procedures for considering AIDS for presumptive disability purposes. By deleting § 416.934(k) instead and operating under our new and broader procedures, we are including people who have symptomatic HIV infection of listing-level severity, but who are not diagnosed with AIDS.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because this final regulation does not meet any of the threshold criteria for a major rule and a regulatory impact analysis is not required.

Paperwork Reduction Act

This final regulation contains information collection requirements. As required by 2(a) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h), we will submit a copy to the Office of Management and Budget (OMB) for its review. Other organizations and individuals desiring to submit comments on these information collection requirements should direct them to the agency official whose name appears in this preamble and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, room 3208, Washington, DC 20503, Attention: Desk Officer for HHS.

Public reporting burden for this collection of information is estimated to average 10 minutes per response. This includes the time it will take to read the instructions, gather the necessary facts, and fill out the forms, if any. If you have any comments or suggestions on this estimate, or on any other aspect of this proposed rule, write to the Social Security Administration, ATTN: Reports Clearance Officer, 1-A-21 Operations Building, Baltimore, MD 21235, and to the Office of Management and Budget, Paperwork Reduction Project (0960-0000), Washington, DC 20503.

Regulatory Flexibility Act

We certify that this final regulation will not have a significant economic impact on a substantial number of small entities because it affects only individuals and States.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Disability benefits, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: October 1, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: October 22, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

Part 416 of chapter III of title 20 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for subpart I of part 416 is revised to read as follows:

Authority: Secs. 1102, 1614(a), 1619, 1631 (a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383 (a) and (d)(1), and 1383b.

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§ 416.934 [Amended]

2. Section 416.934 is amended by removing paragraph (k).

[FR Doc. 91-30033 Filed 12-17-91; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8367]

RIN 1545-AL29, 1545-AM13, 1545-AN53

Transition Rules for Certain Qualified Business Units Using a Profit and Loss or a Net Worth Method of Accounting for Tax Years Beginning Before January 1, 1987 and the Definition of the Weighted Average Exchange Rate; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations (T.D. 8367), which were published Wednesday, September 25, 1991, (56 FR 48433). The regulations contain final Income Tax Regulations setting forth transition rules for qualified business unit (QBU) branches of United States persons, and regulations providing the definition of the weighted average exchange rate.

EFFECTIVE DATE: Taxable years beginning on or after October 25, 1991.

FOR FURTHER INFORMATION CONTACT: Carol Murphy (202-566-6795, not a toll free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections relate to procedures to be followed by qualified business unit (QBU) branches of United States persons, using a profit and loss or a net worth method of accounting prior to the enactment of subpart J of the Internal Revenue Code of 1986, and final regulations relating to the definition of the weighted average exchange rate.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8367), which were the subject of FR Doc. 91-22856, is corrected as follows:

Paragraph 1. On page 48434, column two, in the authority citation for Part 1, the language "1.987-5 are also issued under 26 U.S.C. 987" is corrected to read "1.987-5 are also issued under 26 U.S.C. 987".

§ 1.987-5 [Corrected]

Par. 2. On page 48436, column three, in § 1.987-5(g), paragraph (ii) of *Example 1*, under *Step 2*, line 3, the language "and $5,000 in 1986 and less than $1,000 dollar" is corrected to read "and $5,000 in 1986 and less than $1,000".

Par. 3. On page 48437, in § 1.987-5(g), paragraph (v) of *Example 2*, line 2, the language "$1,800 (dollar value of remittance) — $7,826 (dollar basis in remittance) = ($8,026) (loss on remittance)" is corrected to read "$1,800 (dollar value of remittance) — $7,826 (dollar basis in remittance) = <$6,026> (loss on remittance)".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-30070 Filed 12-17-91; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Parts 156 and 602

[T. D. 8379]

RIN 1545-AL47

Excise Tax Relating to Gain or Other Income Realized By Any Person on Receipt of Greenmail

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the manner and method of reporting and paying the nondeductible 50 percent excise tax imposed with respect to the receipt of greenmail. This excise tax was added to the Internal Revenue Code of 1986 by the Revenue Act of 1987, as amended by the Technical and Miscellaneous Revenue Act of 1988. The regulations provide recipients of greenmail with the guidance necessary to comply with the reporting requirements for this excise tax.

DATES: The regulations are effective December 18, 1991, and apply to any consideration received after December 22, 1987.

FOR FURTHER INFORMATION CONTACT: Warren Joseph of the Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:CORP:T:R) or telephone 202-566-4430 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545-1049. The estimated average annual burden per respondent/recordkeeper for filing Form 8725 is 6 hours and 55 minutes. The estimated average annual burden per respondent/recordkeeper for §§ 156.6081-1 and 156.6161-1 is .5 hours.

These estimates are an approximation of the average time expected to be necessary for the collections of information. It is based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attention: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget (1545-1049), Paperwork Reduction Project, Washington DC 20503.

Background

This document contains final regulations under subtitle E, chapter 54 of the Internal Revenue Code of 1986. The regulations provide guidance for the proper manner and method of reporting and paying the 50 percent excise tax imposed on a person with respect to the receipt of greenmail. The regulations reflect the addition to the Internal Revenue Code of chapter 54 and section 5881 by section 10228 of the Revenue Act of 1987 (Pub. L. 100-203, 101 Stat. 1330), as amended by section 2004(o) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647, 102 Stat. 3608). On June 10, 1991, the **Federal Register** published a notice of proposed rulemaking (56 FR 26631) proposing a new part 156, Excise Tax on Greenmail, to title 26 of the Code of Federal Regulations. The Internal Revenue Service did not receive any comments on the proposed regulations. No public hearing was requested or held. For this reason, the final regulations adopt the proposed regulations wihtout any substantive changes.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553 (b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805 (f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small business.

Drafting Information

The principal author of these regulations is Warren Joseph of the Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 156

Excise taxes, Greenmail.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, title 26 of the Code of Federal Regulations is amended as follows:

Paragraph 1. A new part 156 is added to read as follows:

PART 156—EXCISE TAX ON GREENMAIL

Subpart A—Tax on Greenmail

Sec.

156.5881-1 Imposition on excise tax on greenmail.

Subpart B—Procedure and Administration

156.6001-1 Notice or regulations requiring records, statements, and special returns.
156.6011-1 General requirement of return, statement, or list.
156.6061-1 Signing of returns and other documents.
156.6065-1 Verification of returns.
156.6071-1 Time for filing returns relating to greenmail.
156.6081-1 Extension of time for filing the return.
156.6091-1 Place for filing chapter 54 (Greenmail) tax returns.
156.6091—2 Exceptional cases.
156.6151-1 Time and place for paying of tax shown on returns.
156.6161-1 Extension of time for paying tax or deficiency.
156.6165-1 Bonds where time to pay tax or deficiency has been extended.

Authority: Sections 6001, 6011, 6061, 6071, 6091, 6161, and 7805 of the Internal Revenue Code of 1986 (26 U.S.C. 6001, 6011, 6061, 6071, 6091, 6161, and 7805), unless otherwise noted.

Subpart A—Tax on Greenmail

§ 156.5881-1 Imposition of excise tax on greenmail.

(a) *In general.* Section 5881 of the Code imposes a tax equal to 50 percent of the gain or other income realized by any person on the receipt of greenmail, whether or not the gain or other income is recognized.

(b) *Transactions occurring on or after March 31, 1988.* For transactions occurring on or after March 31, 1988, greenmail is defined as any consideration transferred by a corporation (or any person acting in concert with the corporation) to directly or indirectly acquire stock of the corporation from any shareholder if:

(1) The transferring shareholder has held the stock (as determined under section 1223) for less than two years before entering into the agreement to transfer the stock,

(2) The shareholder, any person acting in concert with the shareholder, or any person related to the shareholder or to a person acting in concert with the shareholder made or threatened to make a public tender offer for stock of the corporation at some time during the two-year period ending on the date of the acquisition of the stock by the corporation, and

(3) The acquisition is pursuant to an offer that was not made on the same terms to all shareholders.

(c) *Transactions occurring before March 31, 1988.* For transactions occurring before March 31, 1988, greenmail has the same meaning as in paragraph (b) of this section, except that it does not include any consideration transferred by any person acting in concert with the corporation described in that paragraph.

(d) *Effective date.* Generally, section 5881 of the Code applies to consideration received after December 22, 1987, in taxable years ending after that date. However, section 5881 does not apply to any acquisition of stock pursuant to a written binding contract in effect on December 15, 1987, and at all times thereafter before the acquisition.

Subpart B—Procedure and Administration

§ 156.6001-1 Notice or regulations requiring records, statements, and special returns.

(a) *In general.* Any person subject to tax under chapter 54 (Greenmail) of the Code shall keep such complete and detailed records as are sufficient to enable the district director to determine accurately the amount of liability under chapter 54.

(b) *Notice by district director requiring returns, statements, or the keeping of records.* The district director may require any person, by notice served upon him, to make such returns, render such statements, or keep such specific records as will enable the district director to determine whether or not the person is liable for tax under chapter 54 of the Code.

(c) *Retention of records.* The records required by this section shall be kept at all times available for inspection by authorized internal revenue offices or employees, and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

§ 156.6011-1 General requirement of return, statement, or list.

Every person liable for tax under section 5881 of the Code shall file a return with respect to the tax on the form prescribed by the Internal Revenue Service (Form 8725). Each such person shall include therein the information required by the form and the instructions issued with respect thereto.

§ 156.6061-1 Signing of returns and other documents.

Any return, statement, or other document required to be made with respect to a tax imposed by chapter 54 (Greenmail) of the Code or the regulations thereunder shall be signed by the person required to file the return, statement, or other document, or by the persons required or duly authorized to sign in accordance with the regulations, forms, or instructions prescribed with respect to such return, statement, or document. An individual's signature on such a return, statement, or other document shall be prima facie evidence that the individual is authorized to sign the return, statement, or other document.

§ 156.6065-1 Verification of returns.

If a return, statement, or other document made under the provisions of chapter 54 (Greenmail) or of subtitle F of the Code, or the regulations thereunder with respect to any tax imposed by chapter 54, or the form and instructions

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issued with respect to such return, statement, or other document, requires that it shall contain or be verified by a written declaration that it is made under the penalties of perjury, it must be so verified by the person or persons required to sign such return, statement, or other document. In addition, any other statement or document submitted under any provision of chapter 54 or of subtitle F of the Code, or the regulations thereunder with respect to any tax imposed by chapter 54 may be required to contain or be verified by written declaration that is made under the penalties of perjury.

§ 158.6071–1 Time for filing returns relating to greenmail.

(a) *In general.* Returns required by § 158.6011–1 (relating to liability for tax on greenmail under section 5881) shall be filed on or before the ninetieth day following receipt of any portion of the greenmail. Greenmail is considered to be received when gain or other income is realized, as determined according to the taxpayer's method of accounting, without regard to any provision of the Code providing for deferral of recognition.

(b) *Returns relating to greenmail received before the date these regulations become final.* Returns required by § 158.6011–1 that relate to greenmail received on or before December 18, 1991, shall be filed on or before March 18, 1992.

§ 158.6081–1 Extension of time for filing the return.

(a) *Authority to grant extension.* District directors and directors of service centers are authorized to grant a reasonable extension of time for filing any return, statement, or other document that relates to any tax imposed by chapter 54 (Greenmail) of the Code and that is required under the provisions of chapter 54 or the regulations thereunder. However, except in the case of taxpayers who are abroad, such an extension of time shall not be granted for more than 6 months. An extension of time for filing a return shall not extend the time for the payment of the tax or any part thereof unless specified to the contrary in the grant of extension.

(b) *Application for extension.* The application for an extension of time for filing the return shall be addressed to the district director or the director of the service center with whom the return is to be filed and must contain a full recital of the causes for the delay. It should be made before the expiration of the time within which the return otherwise must be filed, and failure to do so may indicate negligence and constitute sufficient cause for denial. It should, where possible, be made sufficiently early to permit consideration of the matter and reply before what otherwise would be the due date of the return.

(c) *Filing of return.* If an extension of time for filing the return is granted, a return shall be filed before the expiration of the period of extension.

§ 158.6091–1 Place for filing chapter 54 (Greenmail) tax returns.

Except as provided in § 158.6091–2 (relating to exceptional cases):

(a) *Individuals, estates, and trusts.* In general, tax returns under chapter 54 of the Code of individuals, estates, and trusts shall be filed with the district director for the internal revenue district in which is located the legal residence or the principal place of business of them person required to make the return.

(b) *Corporations.* In general, tax returns under chapter 54 of the Code of corporations shall be filed with the district director for the internal revenue district in which is located the principal place of business or the principal office or agency of the corporation.

(c) *Partnerships.* In general, tax returns under chapter 54 of the Code of partnerships shall be filed with the district director for the internal revenue district in which is located the principal place of business or the principal office or agency of the partnership.

(d) *Returns of taxpayers outside the United States.* The return of a person (other than a partnership or a corporation) outside the United States having no legal residence or principal place of business or agency in any internal revenue district, or the return of a partnership or a corporation having no principal place of business or principal office or agency in any internal revenue district, shall be filed with the Assistant Commissioner (International), Internal Revenue Service, 950 L'Enfant Plaza South, SW., Washington, DC 20224, unless the principal place of business or the legal residence of such person, or the principal place of business or principal office or agency of the partnership or corporation, is located in the Virgin Islands or Puerto Rico, in which case the return shall be filed with the Assistant Commissioner (International), Internal Revenue Service, Hato Rey, Puerto Rico 00918.

(e) *Returns filed with service centers or by hand carrying.* Notwithstanding paragraph (a), (b), (c), or (d) of this section, unless a return is filed by hand carrying, whenever instructions applicable to tax returns under chapter 54 of the Code provide that the returns be filed with a service center, the returns must be so filed in accordance with the instructions. Returns that are filed by hand carrying shall be filed with the district director (or with any person assigned the administrative supervision of an area, zone, or local office constituting a permanent post of duty within an internal revenue district of such director) in accordance with paragraphs (a), (b), (c), or (d) of this section.

§ 158.6091–2 Exceptional cases.

Notwithstanding the provisions of § 158.6091–1, the Commissioner may permit the filing of any tax return under chapter 54 (Greenmail) of the Code with any internal revenue district.

§ 158.6151–1 Time and place for paying of tax shown on returns.

The tax under chapter 54 (Greenmail) of the Code shown on any return shall, without notice of assessment and demand, be paid to the internal revenue officer with whom the return is filed at the time and place for filing such return (determined without regard to any extension of time for filing the return). For provisions relating to the time and place for filing such return, see § § 158.6071–1 and 158.6091–1. For provisions relating to the extension of time for paying the tax, see § 158.6161–1.

§ 158.6161–1 Extension of time for paying tax or deficiency.

(a) *In general*—(1) *Tax shown or required to be shown on return.* A reasonable extension of the time for payment of the amount of any tax imposed by chapter 54 (Greenmail) of the Code and shown or required to be shown on any return may be granted by the appropriate district director at the request of the taxpayer. The period of such extension shall not exceed 6 months from the date for payment of such tax.

(2) *Deficiency.* The time for payment of any amount determined as a deficiency in respect of tax imposed by chapter 54 of the Code may, at the request of the taxpayer, be extended by the internal revenue officer to whom the tax is required to be paid. The extension may be for a period not to exceed 18 months from the date fixed for payment of the deficiency, as shown on the notice and demand. In exceptional cases, a further extension for a period not in excess of 12 months may be granted. No extension of time for payment of a deficiency shall be granted if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(3) *Extension of time for filing distinguished.* The granting of an extension of time for filing a return does not operate to extend the time for the payment of the tax or any part thereof unless so specified in the extension.

(b) *Certain rules relating to extensions of time for paying income tax to apply.* The provisions of § 1.6161–1 (b), (c), and (d) of this chapter (relating to a requirement for undue hardship, to the application for extension, and to payment pursuant to an extension) shall apply to extensions of time for payment of the tax imposed by chapter 54 of the Code.

§ 158.6165–1 Bonds where time to pay tax or deficiency has been extended.

If an extension of time for payment is granted under section 6161 of the Code, the district director or the director of the service center may, if he deems it necessary, require a bond for the payment of the amount in respect to which the extension is granted in accordance with the terms of the extension. However, the bond shall not exceed double the amount with respect to which the extension is granted. For provisions relating to form of bonds, see the regulations under section 7101 of the Code contained in part 301 of title 26 (Regulations on Procedure and Administration).

PART 602—[AMENDED]

Paragraph 2. The authority citation of 26 CFR part 602 continues to read as follows:

Authority: (26 U.S.C. 7805)

§ 602.101 [Amended]

Paragraph 3. Section 602.101 (c) is amended by adding in the appropriate place in the table:

§ 158.6001–1	1545–1049
§ 158.6011–1	1545–1049
§ 158.6081–1	1545–1049
§ 158.6161–1	1545–1049

Dated: November 21, 1991.

Michael J. Murphy

Acting Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91–30089 Filed 12–17–91; 8:45 am]

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Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV-90-301]

Kiwifruit; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed action would revise the United States Standards for Grades of Kiwifruit. The proposal would redefine discoloration and separate "alligator skin" (rough, checking pattern of the skin) from other forms of discoloration such as black sooty mold. In addition, the definition for maturity would be revised so that procedures other than soluble solids measurement may be used as indices of maturity. The Kiwifruit Administrative Committee (KAC), the marketing order committee representing the kiwifruit growers and packers in California, has requested the USDA make these changes to bring the standards in line with current marketing trends. These changes would improve marketing information and communication between shippers and receivers of kiwifruit. The Agricultural Marketing Service (AMS) has the responsibility to develop and improve standards of quality, condition, quantity, grade, and packaging in order to encourage uniformity and consistency in commercial practices. In addition, these changes would also apply to the regulations issued under Marketing Order No. 920 for Kiwifruit grown in California, and to the requirements for imported kiwifruit.

DATES: Comments must be postmarked or courier dated on or before February 18, 1992.

ADDRESSES: Interested parties are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 2056 South Building, Washington, DC 20090-6456. Comments should make reference to the date and page number of this issue of the Federal Register and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Thomas G. Gambill, at the above address or call (202) 720-5024.

SUPPLEMENTARY INFORMATION: This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "nonmajor" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule for the revision of U.S. Standards for Grades of Kiwifruit will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, the use of these standards is voluntary. Regulations issued under the Marketing Order No. 920 for Kiwifruit grown in California, 7 CFR 920.302, and the requirements under 7 CFR 944.550 for imported kiwifruit incorporate, by reference, the requirements of the U.S. No. 1 grade, except with respect to shape. Although the proposed rule would apply to both domestic handlers and importers of kiwifruit, the proposed changes to the standards should not affect the volume of kiwifruit handled or imported pursuant to the marketing order and import requirements.

The United States Standards for grades of Kiwifruit were last revised in October 1986. The standards are covered under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). Industry representatives have requested that the standards be revised to include new definitions and to further simplify existing terms.

The growers and shippers represented by the KAC requested a revision because the present standards do not, in their judgement, reflect current marketing practices. They believe that this proposed rule would give the industry grade standards that would reflect today's modern marketing and packaging methods.

Specifically, the first recommended change refers to § 51.2340 Classification of Defects. The KAC points out that there are basically two types of discoloration (excluding water staining): Black sooty mold and alligator skin. The proposed standard lessens the amount of black sooty mold allowed and adds alligator skin to this section as a specific defect with specific scoring guides.

The most common defect to be scored under the discoloration defect classification is black sooty mold. Black sooty mold is almost black in color and appears on the fruit after storage. The mold is caused by juice that gets on the belts of the packing equipment during the packing process. Routine cleaning of the packing equipment can normally prevent black sooty mold from ever appearing. When black sooty mold does appear, it is usually on several pieces of fruit in the pack and is very detractive in appearance. According to the KAC, there were several buyer complaints in the 1989/90 season in regard to black sooty mold. In most cases, these complaints were on kiwifruit that had recently passed inspection under the current grade requirements.

In most instances, packers are eliminating black sooty mold by routinely cleaning their packing equipment or by removing any signs of this mold when repacking fruit after it has been in storage. However, the California kiwifruit industry agrees that when black sooty mold is present to the maximum extent currently allowed under the discoloration defect, it is unacceptable and projects a negative impression to kiwifruit buyers and consumers. The KAC unanimously voted to recommend that no black sooty mold (discoloration) be allowed in the U.S. Fancy grade (injury) and to allow lesser amounts in the U.S. No. 1 grade (damage) and U.S. No. 2 grade (serious damage) than are currently allowed in the standards.

Alligator skin is a condition that occurs when the fruit has been exposed to excessive sun and/or the vine was deprived of necessary water. The skin is dark in color, fuzzless, and has a noticeable checking pattern. Currently, there is no specific defect classification in which to score alligator skin except discoloration. Discoloration is scored only when both pattern and color cause a distinct noticeable appearance affecting a specific percentage of the surface. Therefore, if alligator skin covers a large portion or the entire surface of a kiwifruit, which is not uncommon with this defect, it would not be scoreable under the discoloration classification because there would not be enough noticeable difference in both color and pattern.

Alligator skin mainly occurs on fruit in immature vineyards and/or vineyards that have not been cared for properly. Generally, kiwifruit is protected from excessive sun with proper leaf coverage. Immature vineyards may not have enough leaf coverage to adequately protect the fruit. Improper cultural practices, such as not watering the vines enough and pruning too heavily, can also prohibit leaf coverage and let too much sun on the kiwifruit. According to the KAC, the maturing of the vineyard and proper cultural practices can prevent alligator skin.

The KAC has spent numerous hours analyzing kiwifruit and developing defect language that would help eliminate alligator skin without infringing on the concentric growth rings that are common on almost every piece of kiwifruit. Concentric growth rings are rings that appear around the stem end generally believed to be caused by spurts in growth of the kiwifruit. Each proposed defect category for alligator skin includes a free zone of a 1¼" diameter circle centered around the stem cavity to allow for acceptable concentric growth rings. This free zone mainly covers to the shoulders of the fruit. Outside of the free zone, the KAC recommends not more than a ½" diameter circle aggregate area of alligator skin be allowed on a piece of fruit that will grade U.S. Fancy. When the alligator skin allowable becomes a larger area in the case of damage and serious damage, it is easier to measure using a percent of surface covered.

The other proposed change involves the test for maturity. The current definition for mature includes the sentence: "The minimum average soluble solids, unless otherwise specified, shall be not less than 6.5 percent." This sentence makes it mandatory that the soluble solids test be performed at inspection. The California Kiwifruit Commission has contracted with the University of California, Davis over the past several years to conduct tests on the validity of soluble solids in relation to maturity. U.C. Davis concluded that soluble solids measurement is not a reliable means of indicating the ultimate maturity of kiwifruit. The soluble solids reading can be manipulated by storing the fruit for a period of time after harvest before performing the inspection or by withholding water from a vineyard prior to harvest. Also, results have shown that some fruit can test 5.5 percent soluble solids at time of harvest and ripen to a soluble solids level acceptable under the current standards, while some fruit can test 6.5 percent soluble solids and never reach an acceptable level of ripeness. Presently, the standard requires a minimum of 6.5 percent soluble solids, unless otherwise specified, at time of inspection.

U.C. Davis has developed a testing method measuring the total solids of the kiwifruit. According to the Commission, the test is a much more accurate indicator of maturity than the soluble solids test. After three years of testing, the new procedure has consistently resulted in over 90 percent accuracy in indicating ultimate maturity. The KAC will be implementing this test on a voluntary basis in 1990/91. Therefore, the proposal provides that the definition for mature be changed to allow more flexibility in determining maturity and eliminate the required use of the soluble solids test.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

PART 51—[AMENDED]

For reasons set forth in the preamble, it is proposed that 7 CFR part 51 be amended as follows:

1. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended; 7 U.S.C. 1622, 1624, unless otherwise noted.

2. In Subpart—United States Standards for Grades of Kiwifruit, § 51.2335 is amended by redesignating paragraphs (a)(3)(iv) through (xii), (b)(3)(iv) through (xii), and (c)(3)(iv) through (xii) as paragraphs (a)(3)(v) through (xiii), (b)(3)(v) through (xiii), and (c)(3)(v) through (xiii), respectively, and by adding new paragraphs (a)(3)(iv), (b)(3)(iv), and (c)(3)(iv) respectively, to read as follows:

§ 51.2335 Grades.

(a) * * *
(3) * * *
(iv) Alligator skin;
* * * * * *
(b) * * *
(3) * * *
(iv) Alligator skin;
* * * * * *
(c) * * *
(3) * * *
(iv) Alligator skin;
* * * * * *

3. Section 51.2339 is amended by placing the definitions in alphabetical order and by revising the definition of "Mature" to read as follows:

§ 51.2339 Definitions.

* * * * * *

Mature means the fruit has reached the stage of development which will ensure the proper completion of the ripening process.

* * * * * *

4. Section 51.2340 Classification of defects is revised to read as follows:

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§ 51.2340 Classification of defects.

Defects	Injury	Damage	Serious damage
Bruises	When any slight indentation of the fruit or discoloration of the flesh extends more than 1/16 inch (1.6 mm) in depth.	When surface of fruit is indented and discoloration of the flesh extends deeper than 1/8 inch (3.2 mm), or causing slight discoloration exceeding the area of a circle 3/8 inch (9.5 mm) in diameter, or lesser bruises aggregating an area of a circle 3/8 inch (9.5 mm) in diameter which materially detract from the appearance, edible or shipping quality.	When surface of the fruit is indented and discoloration of the flesh extends deeper than 1/4 inch (6.4 mm), or causing discoloration exceeding the area of a circle 1/2 inch (12.7 mm) in diameter, or lesser bruises which seriously detract from the appearance, edible or shipping quality.
Leaf or Limbrubs	When not smooth, or not light colored, or aggregating more than the area of a circle 3/8 inch (9.5 mm) in diameter.	When not smooth, or not light colored, or aggregating more than the area of a circle 1/2 inch (12.7 mm) in diameter.	When smooth and light colored and aggregating more than the area of a circle 1 1/2 inches (38.1 mm) in diameter, or dark or slightly rough and barklike scars aggregating more than the area of a circle 3/4 inch (19.1 mm) in diameter.
Discoloration	When any amount of color and pattern causing a distinct noticeable change in appearance is present (excluding water staining).	When color and pattern cause a distinct noticeable appearance (excluding water staining) aggregating more than the area of a circle 1/2 inch (12.7 mm) in diameter.	When color and pattern cause a distinct noticeable appearance (excluding water staining) aggregating more than the area of a circle 3/4 inch (19.1 mm) in diameter.
Alligator Skin	When a checking pattern causes a noticeable change in appearance aggregating more than the area of a circle 1/2 inch (12.7 mm) in diameter occurring outside a 1 1/4 inch (31.8 mm) diameter circle centered around the stem cavity.	When a checking pattern causes a noticeable change in appearance affecting more than 10% aggregate surface area occurring outside a 1 1/4 inch (31.8 mm) diameter circle centered around the stem cavity.	When a checking pattern causes a notice change in appearance affecting more than 20% aggregate surface area occurring outside a 1 1/4 inch (31.8 mm) diameter circle centered around the stem cavity.
Hail Injury	When unhealed or deep, or aggregating more than the area of a circle 1/16 inch (1.6 mm) in diameter.	When unhealed or deep, or aggregating more than the area of a circle 1/4 inch (6.4 mm) in diameter.	When unhealed or deep, or aggregating more than the area of a circle 1/2 inch (12.7 mm) in diameter
Growth Cracks	When cracked, or more than one in number, or more than 1/8 inch (3.2 mm) in length or depth.	When not healed, or more than one in number, or more than 1/8 inch (3.2 mm) in depth, or more than 3/8 inch (9.5 mm) in length if within the stem cavity, or more than 1/4 inch (6.4 mm) in length if outside the stem cavity.	When not healed and more than 1/8 inch (3.2 mm) in length or depth, or healed and more than 3/16 inch (4.8 mm) in depth, or healed and aggregating more than 5/8 inch (15.9 mm) in length if within the stem cavity, or healed and aggregating more than 1/2 inch (12.7 mm) in length if outside the stem cavity.
Scab	When cracked, or the aggregate area exceeds that of a circle 1/8 inch (3.2 mm) in diameter.	When cracked, or the aggregate area exceeds that of a circle 1/4 inch (6.4 mm) in diameter.	When the aggregate area exceeds that of a circle 1/2 inch (12.7 mm) in diameter.
Scars	When not smooth, or surface of the fruit is depressed more than 1/32 inch (.8 mm), or not light in color, or when exceeding any of the following aggregate areas, or a combination of two or more types of scars, the seriousness of which exceeds the maximum allowed for any one type: (1) Dark or rough scars when the area exceeds that of a circle 1/8 inch (3.2 mm) in diameter; (2) Fairly light colored, fairly smooth scars when the area exceeds that of a circle 1/4 inch (6.4 mm) in diameter; (3) Light colored, smooth scars when the area exceeds that of a circle 1/2 inch (12.7 mm) in diameter.	When not smooth, or surface of the fruit is depressed more than 1/16 inch (1.6 mm), or when exceeding any of the following aggregate areas, or a combination of two or more types of scars, the seriousness of which exceeds the maximum allowed for any one type: (1) Dark or rough scars when the area exceeds that of a circle 1/4 inch (6.4 mm) in diameter; (2) Fairly light colored, fairly smooth scars when the area exceeds that of a circle 1/2 inch (12.7 mm) in diameter; (3) Light colored, smooth scars when the area exceeds that of a circle 3/4 inch (19.1 mm) in diameter.	When the surface of the fruit is depressed more than 3/16 inch (4.8 mm), or when exceeding any of the following aggregate areas, or a combination of two or more types of scars, the seriousness of which exceeds the maximum allowed for any one type: (1) Dark or rough scars when the area exceeds that of a circle 3/4 inch (19.1 mm) in diameter; (2) Not dark or rough when the area exceeds one-fourth of the fruit surface.
Heat, Sprayburn and Sunburn	When the normal color of the skin or flesh is more than slightly changed, or any indentation is present.	When the skin is blistered, cracked or decidedly flattened, or the normal color of the skin or flesh has materially changed, or more than one indentation, or indentation exceeds 3/16 (4.8 mm) in diameter.	When the skin is blistered, cracked or decidedly flattened, or causing any dark discoloration of the flesh, or more than two indentations are present, or the aggregate area of indentations exceeds that of a circle 3/8 inch (9.5 mm) in diameter, or when causing a noticeable brownish or darker discoloration over more than one-fourth of surface.
Scale or Scale Marks	When more than one large scale or scale mark or more than three scales or scale marks of any size are present.	When the aggregate area exceeds that of a circle 1/4 inch (6.4 mm) in diameter.	When the aggregate area exceeds that of a circle 3/8 inch (9.5 mm) in diameter.
Insects	When feeding injury is evident on fruit or any insect is present in fruit.	When feeding injury materially detracts from appearance or any insect is present in fruit.	When feeding injury seriously detracts from appearance or any insect is present in fruit.

Note: Classification of defects guidelines are based on fruit 2 inches or smaller in diameter. Accordingly, *larger fruit* are permitted to have defects relative to their size.

Dated: December 12, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91-30140 Filed 12-17-91; 8:45 am]

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FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052-AB25

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Management of Investments; Liquidity; Interest Rate Risk; Eligible Investments

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board) proposes to amend regulations at 12 CFR part 615 to allow Farm Credit Banks (FCBs), banks for cooperatives (BCs), and Agricultural Credit Banks (ACBs) (collectively, System banks) to hold specified eligible investments, in an amount not to exceed 20 percent of the total outstanding loans of such banks, for: (1) Maintaining a liquidity reserve; (2) investing short-term surplus funds; and (3) reducing interest rate risk (IRR). The FCA also proposes to establish by regulation a liquidity reserve requirement for all Farm Credit System (System) banks. The proposed regulations would require FCBs, BCs, and ACBs to follow certain procedures for measuring and managing interest rate risk in their portfolios. The FCA also proposes to strengthen existing requirements that compel the board of directors of each bank to adopt investment policies and procedures that ensure that the bank's investment activities are conducted in a safe and sound manner. The proposed regulations would enable System banks to achieve greater diversification in their investment portfolios by expanding the list of eligible investments, but would place limits on the amount, maturity, and credit rating of eligible investments.

DATES: Comments should be received on or before February 18, 1992.

ADDRESSES: Comments may be mailed or delivered (in triplicate) to Jean Noonan, General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Michael J. LaVerghetta, Senior Financial Analyst, Technical Support Division, Office of Examination, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4231

or

Richard Katz, Attorney, Regulatory and Legislative Law Branch, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444

SUPPLEMENTARY INFORMATION:

I. General

The FCA proposes to amend its regulations that govern the investment activities of System banks. The existing regulations authorize Farm Credit banks to hold specified investments for the purposes of maintaining sufficient liquidity, investing surplus short-term funds, and managing short-term debt. The current regulation expressly prohibits System banks from maintaining investment portfolios primarily as a means of generating additional income. The proposed regulations would restrict the amount that each FCB, BC, or ACB could invest in certain eligible investments to 20 percent of its total outstanding loans. These eligible investments could only be used to maintain a liquidity reserve, manage short-term surplus funds, and reduce interest rate risk. For the first time, the FCA is proposing regulations that establish a liquidity reserve and requirements for reducing IRR at all System banks. The FCA also proposes to strengthen requirements in the existing regulation that compel the board of directors of each FCB, BC, or ACB to adopt investment policies and procedures that conform with applicable law, and ensure that competent personnel conduct the bank's investment activities in a safe and sound manner. The proposed regulation would expand the list of eligible investments that Farm Credit banks may use to achieve permissible investment objectives. Eligible investments, however, would be subject to percentage of asset limitations, as well as maturity and credit rating requirements.

Several provisions of the Farm Credit Act of 1971 (Act), 12 U.S.C. 2001 *et seq.*, authorize the FCA to regulate the investment activities of System banks. Section 1.2(a) of the Act, 12 U.S.C. 2002, states that all System institutions are subject to FCA regulations. Sections 1.5(10) [1] and 2.1(13)(A) [2] of the Act authorize FCBs and BCs respectively to "buy or sell obligations of, or insured by the United States or any agency thereof, or securities backed by the full faith and credit of any such agency, and make such other investments as may be authorized under regulations issued by the Farm Credit Administration." Section 5.17(a)(4) of the Act, 12 U.S.C. 2252(a)(4), authorizes the FCA to approve the issuance of System debt obligations to fund the authorized operations of Farm Credit banks and associations. Section 5.17(a)(9) of the Act, 12 U.S.C. 2252(a)(9), authorizes the FCA to prescribe rules and regulations necessary or appropriate for carrying out the Act. Furthermore, section 5.17(a)(10), 12 U.S.C. 2252(a)(10), authorizes the FCA to exercise its enforcement powers to ensure the safety and soundness of System institutions.

The FCA now proposes to exercise the powers conferred on it by the above-referenced sections of the Act to amend existing regulations, and to promulgate new regulations, governing the investment activities of Farm Credit banks. The current investment regulations, §§ 615.5135 and 615.5140, have not been substantially revised since they were promulgated by the former Federal Farm Credit Board in 1982. See 47 FR 12136, 12147 (March 22, 1982). The FCA proposed in 1985, and again in 1986 to amend these regulations, however, no final regulations were adopted. See 50 FR 50798 (December 12, 1985); 51 FR 44310 (December 9, 1986). The FCA now withdraws its proposals of December 12, 1985 and December 9, 1986 and offers this proposed regulation.

In the past decade, the investment strategies of all financial institutions, including Farm Credit banks, have been significantly transformed by the development of new financial instruments, the global integration of financial markets, and technological innovations that enhance the ability to manage investment profolios. The FCA is concerned that these financial and technological developments are rendering the current regulations obsolete. Accordingly, the FCA is proposing to revise these regulations so that FCBs, BCs, and ACBs can diversify their investment portfolios and conduct their investment activities prudently in a rapidly changing financial environment.

II. Definitions

Proposed § 615.5131 defines many of the terms that would appear throughout subpart E of part 615. For the most part, proposed § 615.5131 contains definitions of financial instruments that the FCA

[1] 12 U.S.C. 2013(15).

[2] 12 U.S.C. 2122(13)(A).

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proposes either the authorize or prohibit as eligible investments under § 615.5140. These definitions are consistent with terms used by Federal regulators of depository institutions and the securities industry.

Proposed § 615.5131 also defines concepts that are crucial for managing liquidity and interest rate risk exposure. "Liquid investments" means assets that can be promptly converted into cash without substantial loss to the investor. The term "interest rate risk" refers to the impact that interest rate fluctuations have upon the bank's net interest income and market value of equity. The term "net interest income" (NII) refers to the difference between interest income and interest expense, while "market value of equity " (MVE) measures the impact that interest rate changes have on the market value of a bank's assets, liabilities, and off-balance sheet items.

III. Investment Purposes

Currently, § 615.5135(a) restricts the purposes for which Farm Credit banks may hold investment portfolios to maintaining sufficient liquidity, investing short-term surplus funds, and managing short-term debt. The existing regulation also states that "[t]he banks are not authorized to maintain investment portfolios primarily as a means of generating additional income."

The FCA now proposes to amend and redesignate § 615.5135(a) as § 615.5132. As amended, proposed § 615.5132 would limit the size of a bank's investment portfolio to 20 percent of its outstanding loans. The banks would be allowed to hold these investments solely for the purposes of: (1) Complying with the new liquidity reserve requirement in proposed § 615.5134; (2) managing short-term cashflow needs; and (3) reducing interest rate risk pursuant to proposed § 615.5135.

The FCA proposes to allow FCBs, BCs, and ACBs to hold eligible investments in an amount not to exceed 20 percent of their outstanding loans so they will have greater flexibility in managing their assets and liabilities. This approach should enable Farm Credit banks to maintain a liquid pool of investments as a protection against market disruptions. Farm Credit banks are sensitive to fluctuations in interest rates. Carefully planned investment strategies should enable financial institutions to combat maturity mismatches and interest rate fluctuations that could threaten their solvency. The proposed 20-percent formula represents the FCA's best judgment on what is a sufficient amount for System banks to maintain liquidity, reduce IRR, and invest short-term surplus funds.

The proposed limitation on total investment holdings is also designed to prevent FCBs, BCs, and ACBs from engaging in arbitrage activities that are incompatible with their status as a government-sponsored enterprise (GSE), which finances agriculture. Farm Credit banks, as instrumentalities of the United States government, generally have access to the money and capital markets at lower interest rates than their private sector competitors. The FCA does not believe it appropriate for the banks to use their GSE status to borrow funds for the purpose of accumulating large investment portfolios for arbitrage activities. As a result, the proposed regulation would continue to prohibit Farm Credit banks from misusing their GSE status to engage in arbitrage activities.

After careful consideration, the FCA proposes the 20-percent limit on investments to balance these two competing objectives. The proposed regulation would provide management with greater flexibility to reduce risks to bank solvency and liquidity, while simultaneously ensuring that Farm Credit banks do not abuse their GSE status by engaging in arbitrage activities primarily for the purpose of generating additional income.

The investment of short-term surplus funds is one of three authorized activities under the proposed regulation. A Farm Credit bank would be authorized to invest excess funds created during the normal course of operations until such time as maturing debt and expenses become due. The management of surplus funds and short-term debts concern the cashflow needs of the bank. These cashflow needs are used for operational matters that should not result in large investment positions over extended periods of time. The banks have daily access to funds through the sale of short-term debt instruments and, therefore, they have limited needs for holding large amounts of operating funds. Funds held for cashflow purposes should be kept to a minimum and be justified by historical analysis of cashflow needs.

The maintenance of a liquidity reserve and interest rate risk management are the only other investment purposes which are authorized by the proposed regulation. Since the FCA is proposing separate sections of the regulations governing liquidity and interest rate risk management, these issues will be discussed elsewhere in this preamble.

IV. Investment Management

Currently, § 615.5135(b) requires the board of directors of each bank to adopt a policy regarding the management of its investments. The current regulation requires the policy to address the following items: (1) The purpose of the bank's investments; (2) portfolio objectives; (3) liquidity; (4) the size and quality of the investment portfolio; (5) maturity of investments; (6) internal authority to manage investments; (7) reporting and monitoring controls; and (8) other issues as deemed appropriate by the bank.

The FCA now proposes to redesignate § 615.5135(b) as § 615.5133, and to strengthen its requirements. As amended, the proposed regulation would continue to require that the board of directors of each bank adopt policies regarding the management of its investment portfolio. The proposed regulation would also expressly prohibit the board of directors from delegating its responsibility for supervising and reviewing the investment practices of the bank.

Under the proposed regulation, the board of directors would be responsible for adopting written investment policies and procedures that comply with the Act, FCA regulations, and other applicable provisions of law. Additionally, these written policies and procedures should ensure that investment management practices do not expose the bank to excessive levels of risks. More specifically, the proposed rule would require System banks to implement sufficient internal controls to preclude investment activities that would undermine the solvency and liquidity of the bank. The board of directors would also be responsible for ensuring that the portfolio managers conduct the bank's investment activities in accordance with board policies. Section 615.5133 of the proposed regulation would also require the board of directors of each Farm Credit bank to review its investment policies annually, and determine whether current investment strategies are achieving the portfolio objectives. The board should also annually review the quality of all investments in the portfolio.

The proposed regulation would require the board of each bank to address, at a minimum, eight broad areas in an acceptable investment policy. The board of directors of any Farm Credit bank could, in its discretion, adopt additional items which are appropriate for achieving the investment objectives of that bank. These policies should establish

boundaries for decisionmaking and represent the investment objectives of the bank's board of directors.

The proposed regulation would combine existing §§ 613.5135(b) (1) and (2) into a single provision. Proposed § 615.5133(a) would require that the board's policies address the purpose of investments and portfolio objectives. This revision would not substantively change the current requirements. The FCA emphasizes that the board's portfolio objectives should address a long-term view of investment objectives, and provide direction for the portfolio managers.

The existing regulation requires the board to address the bank's liquidity needs in its investment policy. The FCA is proposing a new regulation, § 615.5134, which would establish, for the first time, a liquidity reserve requirement. Accordingly, the FCA proposes to amend current § 615.5135(b)(3) (redesignated as § 615.5133(b)) to require the board's liquidity policy to comply with the requirements of proposed § 615.5134. As amended, proposed § 615.5133(b) would require board policy to identify which investments should be held for liquidity management. The relation between proposed §§ 615.5133(b) and 615.5134 is discussed in greater detail in the section of this preamble concerning liquidity.

Proposed § 615.5133(c) would require the board of directors of each bank to establish policies pertaining to the management of interest rate risk pursuant to § 615.5135 of these proposed regulations. The factors that the board should address in its policy on interest rate risk management are discussed in the preamble to § 615.5135.

The FCA proposes to add to the regulation a requirement that the board of directors for each bank develop appropriate guidelines so that portfolio managers place bank funds only through financially sound brokers, dealers, and financial institutions. The proposed regulation would also require the board to establish the maximum amount of funds that portfolio managers are authorized to invest or place with individual brokers, dealers, or financial institutions. In the aftermath of the recent collapse of major investment firms the financial institutions, the FCA emphasizes that Farm Credit banks must take adequate precautions to ensure that their investment portfolios are diversified and that their funds are only placed through solvent parties.

Accordingly, proposed § 615.5133(d) would require the board of directors to establish criteria to guide portfolio managers in selecting brokers, dealers, and financial institutions where bank funds will be invested. The credit rating and capital position of the broker, dealer, or financial institution are among the factors that board policy should require portfolio managers to consider when investing bank funds. The proposed regulation would require the portfolio managers, at least semiannually, to update and submit for board approval, a list of institutions where bank funds may be invested. Additionally, proposed § 615.5133(e) would require the board of directors to adopt procedures to that portfolio managers routinely monitor and evaluate the financial condition of institutions where bank funds are invested, pursuant to proposed § 615.5140.

Proposed § 615.5133(e) would retain the requirement in current § 615.5135(b)(4) that the board adopt policies concerning the size and quality of investments in the portfolio. The board should structure the investment portfolio in the context of the requirements in proposed § 615.5132 pertaining to liquidity, management of surplus short-term funds, and reduction of interest rate risk. While the maximum size of the investment portfolio would be limited by proposed § 615.5132 to 20 percent of all outstanding loads, the board of directors, as a matter of policy, may choose to maintain a smaller investment portfolio. The size of the liquidity portfolio should be determined by the maturity structure of the bank's liabilities, as computed under the liquidity reserve requirement of proposed § 615.5134. Similarly, the exposure to interest rate risk in the balance sheet should determine the amount of investments maintained for reducing interest rate risk. Furthermore, the board may adopt more stringent requirements concerning the quality of eligible investments than those set forth in proposed regulation § 615.5140.

Section 615.5133(f) of the proposed regulation would require the board to establish risk diversification policies. The objective of this proposed provision is to ensure that the board of directors establish boundaries that would prevent an undue concentration of risk in the bank's investment portfolio. An acceptable risk diversification policy should, at a minimum preclude a bank from concentrating its investments in: (1) Particular types of financial instruments (i.e. mortgage-backed securities or prime commercial paper); (2) individual institutions or securities issued by a particular issuer or obligor; (3) particular industries; or (4) certain geographic regions. The risk diversification policies adopted by the board under proposed § 615.5133(f) should be consistent with the requirements of proposed §§ 615.5140(a) and (b).

Section 615.5133(g) of the proposed regulation would require the investment policies of the board to assign responsibility and accountability for managing the bank's investment portfolio to specific management positions or committees. The objective of this provision is to formalize the investment management process and establish clear lines of responsibility. Section 615.5133(g) of the proposed regulation is similar to current § 615.5135(b)(6).

Section 615.5133(h) of the proposed regulation would continue the requirement in existing § 615.5135(b)(7) that the board of directors of each bank establish formal monitoring controls and reporting requirements. The proposed regulation would add a requirement that the portfolio managers present to the board, on a quarterly basis, a detailed report of investment practices and activities. These quarterly reports should summarize past investment actions, detail the performance of current investments, and project planned investment strategies for the next 12 months. The proposed regulation envisions that the board of directors establish controls to prevent theft, fraud, and unauthorized investment practices. Controls should include dual authorizations for security transactions, audit requirements, approval processes, authorization limits, and separation of duties. Policies established by the board pursuant to proposed § 615.5133(h) should require senior management to monitor market conditions, portfolio values, investment strategies, and investment activities on a continual basis to ensure that risk exposures are prudently managed.

V. Liquidity Reserve Requirement

Liquidity is based upon the ability to fund assets and liabilities. Since the Farm Credit System is funded through the sale of debt obligations, the liquidity of Farm Credit banks depends largely upon daily access to money and capital markets. In the event that access to these money and capital markets is totally or partially denied, Farm Credit banks draw upon their liquidity reserve, which is an emergency source of funds, to meet short-term funding needs, such as retiring maturing debt obligations, making current interest payments, and paying normal operating expenses.

Historically, the size of the liquidity reserve has been influenced by the Federal Reserve Board, the United States Treasury, and external economic

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events. The Farm Credit banks are considerably exposed to the vagaries of the marketplace. When Systemwide debt obligations are in demand by investors, and the basis point spreads to comparable maturity United States Treasury issues are near their historical levels, the Farm Credit banks retain a liquidity reserve to fund their exposure to short-term needs for approximately 15 days. However, during a financial crisis, such as the agricultural credit crisis of 1985–1987, loan defaults accelerate and credit quality deteriorates, while bank earnings decline. As a result, interest rate spreads widen dramatically as investor confidence in Systemwide obligations erodes and the Farm Credit banks experience difficulty raising funds in the money and capital markets. When this situation occurs, the Farm Credit banks increase their liquidity reserve so that they are able to fund their operations for approximately 30 days.

In recent years, the banks, acting in concert through the Board of Directors of the Federal Farm Credit Banks Funding Corporation, established a minimum Systemwide liquidity requirement. Under the current System formula, the Farm Credit banks are required, at a minimum, to maintain a liquidity reserve to fund 50 percent of the principal amount of bonds and interest due within 90 days divided by 3, plus 50 percent of the principal amount of discount notes due within 30 days. In effect, this formula requires all Farm Credit banks to maintain a liquidity reserve sufficient to fund their operations for approximately 15 days.

In practice, most Farm Credit banks maintain considerably more liquidity than this minimum requirement. On the average, System banks exceeded this requirement as of June 30, 1991, by about 1.4 times, while the liquidity at some banks was double or triple this requirement. In recent times, some banks have held liquidity up to 4 to 5 times the minimum liquidity requirement. Some Farm Credit banks claim that this excess liquidity is necessary to: (1) Protect market access; (2) hedge against potential increases in the cost of funding Systemwide debt obligations by using liquidity to bypass a Systemwide debt maturity; or (3) build short-term investment portfolios for the purpose of financing potential increases in loan demand. Some banks issue short-term (under 30 days) discount notes to fund and maintain their liquidity requirements.

From the perspective of FCA, these practices go beyond those needed to provide System liquidity. The practice of using excess liquidity to build and maintain an investment portfolio for generating additional income constitutes an abuse of GSE status. Additionally, the practice of issuing short-term obligations to fund current operations actually increases the bank's short-term debt load, and thus increases the amount of liquidity that a bank must maintain in order to meet the minimum Systemwide liquidity requirement. This practice of using the liquidity reserve to generate additional income can no longer be justified since proposed § 615.5132 would enable each Farm Credit bank to invest an amount, not to exceed 20 percent of its total outstanding loans, in eligible investments pursuant to proposed § 615.5140, for managing liquidity, investing surplus short-term funds and reducing interest rate risk.

Although the FCA endorses the current Systemwide formula which requires all FCBs, BCs, and ACBs to maintain sufficient liquidity to fund a portion of their maturing obligations, interest payments, and discount notes for the next 15 days, the agency, however, believes that this liquidity reserve requirement should not operate as a fixed liquidity level. The proposed regulation would prohibit Farm Credit banks for exceeding the liquidity reserve requirement unless the Farm Credit Administration Board modified or waived the requirement during an emergency.

Accordingly, the FCA proposes § 615.5134, which would require each FCB, BC, and ACB to maintain a liquidity reserve to fund: (1) 50 percent of its bonds and interest due within the next 90 days divided by 3; and (2) 50 percent of discount notes due within the next 30 days. The proposed regulation would also require each Farm Credit bank to calculate its liquidity reserve requirement as of the last calendar day of March, June, September, and December, based upon the average daily balance of outstanding loans during the same quarter. The liquidity reserve requirement would remain in effect until it is recalculated for the next reporting period.

As noted above, Farm Credit banks will not be able to comply with this liquidity reserve requirement if their access to the capital and money markets is impeded during a crisis. Proposed § 615.5134(b) would enable the FCA Board to modify or waive this liquidity reserve requirement by resolution, whenever the FCA determines in its sole discretion, after consultations with the Federal Farm Credit Banks Funding Corporation, that an agricultural, economic, financial, or national defense emergency impedes normal access to the money or capital markets.

VI. Reduction of Interest Rate Risk

The growing complexity and competitiveness of the financial intermediary market, the volatility of interest rates, and the greater diversity of financial instruments complicate the task of bank management. Interest rate fluctuations have a significant impact upon the net interest income (NII) and market value of equity (MVE) of Farm Credit banks. In this context, it becomes clear that changes in interest rates can undermine the solvency of Farm Credit banks. The effective management of IRR, therefore, is among the most difficult challenges facing boards of directors and bank managers.

Today, some Farm Credit banks utilize investments to help manage a part of their IRR. However, current § 615.5135, does not explicitly authorize Farm Credit banks to hold eligible investments for the purpose of managing IRR. The FCA now proposes a new § 615.5135, which identifies IRR management as a permissible investment activity by FCBs, BCs, and ACBs.

Bank management must ascertain the impact that interest rate changes could have on the bank's balance sheet, before it can devise an effective investment strategy that will help insulate the bank from IRR. More specifically, the bank management must determine how sudden changes in interest rates would effect the NII and MVE of the bank. Traditionally, bank management has conducted a series of stress tests to measure the bank's exposure to IRR. One of the most significant stress tests requires the bank to simulate the impact that an instantaneous and sustained 200-basis-points (interest rates shock or shocking) increase and decrease in interest rates would have on a bank's current NII and MVE. The FCA recognizes that in conducting IRR shocking, the assumptions used are of paramount importance and FCA would expect the board of directors to be aware of those assumptions.

Interest rate shock tests provide bank management with a method of measuring the impact of changing interest rates on the bank's balance sheet from one reporting period to the next. Interest rate shocks are primarily used for comparative purposes and are not intended to provide realistic expectations concerning future risk exposures. Shocking enables bank management to gauge the bank's exposure to IRR on a continual basis, and understand its impact on NII and MVE over extended periods of time.

Current FCA policy guidance suggests that each Farm Credit bank should conduct an interest rate shock test as part of its strategy to control IRR.[3] The FCA now proposes to require this test by regulation. Accordingly, proposed § 615.5135(a) would require the board of directors of each bank to adopt IRR management sections under asset/liability management policies which establish interest rate risk (IRR) exposure limits. Additionally, proposed § 615.5135(b) would require all FCBs, BCs, and ACBs to simulate, on a quarterly basis, the impact of an instantaneous and sustained 200-basis-points increase and decrease in interest rates over the next 12 months on the bank's current NII and MVE. Proposed § 615.5135(c) would require each Farm Credit bank to develop, at least every quarter, the following three projections of the impact of interest rate changes on the bank's NII and MVE: (1) A best case scenario; (2) a worst case scenario; and (3) a most likely case scenario. Section 615.5135(d) of the proposed regulation would authorize Farm Credit banks to purchase and hold the eligible investments listed in § 615.5140 of this subpart in order to reduce IRR resulting from the bank's normal lending operations. Under the proposed regulation, each bank would be required to document, prior to purchase, the reasons why a particular investment is needed to meet IRR objectives. Furthermore, the proposed regulation would require subsequent quarterly reports to indicate whether such investments are satisfying the IRR objectives of the bank.

The regulatory limits that would be placed on specific investment categories by proposed § 615.5140 and overall limits based on loan volume pursuant to § 615.5132, should not materially affect IRR practices of the banks because there may be other means for meeting IRR objectives, such as off-balance sheet alternatives, or other asset/liability management techniques.

VII. Eligible Investments

The FCA proposes to expand the list of eligible investments in existing § 615.5140 that Farm Credit banks are authorized to hold in order to meet the requirements of proposed § 615.5132. The FCA also proposes to promote portfolio diversification by establishing percentage limits on most eligible investments that FCBs, BCs, and ACBs could hold at any particular time. The FCA is concerned that investments by Farm Credit banks are, at the present time, unduly concentrated in the commercial banking industry. The FCA is proposing to amend § 615.5140 in order to encourage Farm Credit banks to diversify their investment portfolios.

The expanded list of eligible investments proposed by the FCA are designed to help Farm Credit banks meet the requirements of proposed § 615.5132 pertaining to liquidity, IRR, and the investment of surplus short-term funds. Only investments that can be promptly converted into cash, without significant loss, on an established secondary market are suitable for liquidity, IRR management, and the investment of surplus short-term funds. For these reasons, all eligible investments listed in proposed § 615.5140 share the following characteristics: (1) Short-term maturities or short-term repricing mechanism; (2) a high investment grade credit rating by a nationally recognized credit rating service; and (3) an active and universally recognized secondary market exists for trading of these investments; and (4) these investments are valuable as collateral.

The proposed regulation would continue to require that all eligible investments be denominated in United States dollars. The FCA believes that currency exchange transactions would unduly complicate the already complex tasks of maintaining liquidity, reducing IRR, and investing surplus short-term funds. The FCA is concerned that Farm Credit banks could suffer significant losses if they engage in currency exchange transactions as part of their investment activities. The FCA emphasizes that nothing in proposed § 615.5140(a) would prohibit BCs from exercising their powers to engage in currency exchange transactions for the purpose of financing exports or imports of agricultural products pursuant to section 3.7 of the Act, 12 U.S.C. 2128, and subpart Q of part 614 of these regulations.

A. Obligations of the United States, its Agencies and Instrumentalities

As noted above, sections 1.5(15) and 3.1(13)(A) of the Act authorize FCBs and BCs to invest in obligations issued or insured by the United States or its agencies, as well as securities backed by the full faith and credit of Federal agencies. Existing §§ 615.5140(a) (1)–(8), currently authorize Farm Credit banks to hold obligations issued or fully guaranteed by the United States government, as well as securities issued by the System, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA) and the Tennessee Valley Authority. The FCA notes that obligations of the United States, its agencies, and instrumentalities are suitable for managing liquidity, reducing IRR, and investing short-term surplus funds, because they pose virtually no risk of default, and are marketable investments within the meaning of proposed § 615.5131(i).

The FCA proposes to allow FCBs, BCs and ACBs to hold obligations (other than mortgage-backed securities) issued or fully guaranteed as to both principal and interest by the United States or any of its agencies or instrumentalities. Although explicit references to the obligations of specific Federal agencies or instrumentalities would be deleted from § 615.5140, Farm Credit banks would still be authorized to hold these securities in their investment portfolios. The FCA believes that this proposed amendment will grant Farm Credit banks greater flexibility to invest in obligations issued or guaranteed by the United States, its agencies and instrumentalities.

Proposed § 615.5140(a)(1) would not impose any restrictions on the percentage of Federal obligations that Farm Credit banks could hold in their investment portfolios because these obligations are, from a regulatory perspective, inherently safe and sound.

Mortgage-backed securities (MBS) that are issued by an instrumentality of the United States, would be expressly excluded from coverage under proposed § 615.5140(a)(1). Instead, proposed § 615.5140(a)(2) would authorize Farm Credit banks to hold such MBSs that meet certain requirements. The FCA emphasizes that Farm Credit banks could not rely on proposed § 615.5140(a)(1) for authority to hold MBSs that do not meet the requirements of proposed § 615.5140(a)(2).

B. Mortgage-Backed Securities

Proposed § 615.5140(a)(2) would authorize FCBs, BCs and ACBs to hold MBSs issued by, or fully guaranteed as to principal and interest by the Government National Mortgage Association (GNMA), FNMA, FHLMC, and the Federal Agricultural Mortgage Corporation (Farmer Mac) so long as: (1) All adjustable rate MBSs reprice within 12 months; or (2) All fixed-rate MBSs have an absolute final maturity of 5 years from the time of purchase. The proposed regulation would limit investments in qualified MBSs to 30 percent of the total investment portfolio of the bank.

[3] See bookletter 281–OE (January 15, 1991) Re: Asset/Liability Management Practices.

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A MBS represents a fractional undivided interest in a specific pool of mortgages. The mortgages in the pool collateralize the MBS. Basically, as the mortgages in a pool are repaid, both principal and interest payments are passed through to the investor in proportion (pro rata) to the investor's ownership interest in that pool. In contrast to other securities, the investor lacks certainty about the timing and cashflows from these MBSs because most mortgagors (whose loans underlie the security) have the option to prepay the mortgage at any time.

Each MBS has a stated maturity date, a weighted average maturity (WAM), and a coupon rate. The stated maturity date is the date on which the principal amount of the security, based on the longest contractual maturity of any mortgage in the pool, is due and payable to the registered owner of the MBS. The WAM, which is also referred to as the expected average life, represents an estimate of the weighted average length of time that each dollar of principal will be outstanding. The coupon rate is the stated annual percentage rate of interest paid on a fixed-rate MBS for the remaining amount of principal in the pool.

The term "mortgage-backed securities" is a generic term that refers to securities backed by mortgages including pass-through securities, mortgage-backed bonds, mortgage pay-through securities and collateralized mortgage obligations. As noted earlier, the FCA intends to authorize Farm Credit banks to hold only those MBSs which have little or no risk, and therefore, are suitable for maintaining a liquidity reserve, reducing IRR, and investing surplus short-term funds.

Under proposed § 615.5140(a)(2), Farm Credit banks would only be authorized to hold certain MBSs issued, or guaranteed as to both principal and interest by FNMA, FHLMC, GNMA, or Farmer Mac. The MBSs issued by GNMA are explicitly backed by the full faith and credit of the United States, while MBSs issued by FNMA and FHLMC are implicitly backed by the United States, and accordingly, are rated AAA by nationally recognized credit rating services. The FCA assumes that once Farmer Mac issues MBSs, they will also enjoy a AAA rating. These MBSs possess little or no risk of default to investors. An active and universally recognized secondary market exists for MBSs issued by these Federal instrumentalities. The virtual absence of credit risk and the size of the secondary market establish a significant level of liquidity for MBSs issued or guaranteed by FHLMC, FNMA, and GNMA.

The FCA also proposes to impose short fixed maturities or short-term repricing characteristics on eligible MBSs in order to reduce the bank's exposure to IRR and prepayment risk. Short maturities also encourage Farm Credit banks to maintain liquid and marketable investments. Proposed § 615.5140(a)(2) would allow Farm Credit banks to hold only MBSs backed by: (1) Adjustable rate mortgages (ARMs) which reprice within 12 months; or (2) fixed-rate mortgages (FRMs) with an absolute final maturity of 5 years. Under proposed §§ 615.5131 and 615.5140(a)(2), the "absolute final maturity" of a FRM means that at the time of purchase, the longest contractual maturity of any mortgage remaining in the pool for a fixed-rate MBS shall not exceed 5 years. MBSs, which provide investors with the option to convert the underlying ARMs into FRMs, would not be eligible investments under proposed § 615.5140(a)(2).

The current coupon on fixed-rate MBSs and the 12-month repricing mechanism on adjustable rate MBSs provide the liquidity for this type of investment. Farm Credit banks face greater IRR exposure from fixed-rate MBSs than from adjustable rate MBSs. The FCA recognizes that FRMs with an absolute final maturity of 5 years are in short supply in financial markets. While IRR exposure is higher for a FRM with an absolute maturity of 5 years, than an ARM, such FRMs could, in certain situations, be suitable for a bank's investment strategy to manage IRR.

The FCA proposes to exclude derivative products of MBSs from coverage under proposed § 615.5140(a)(2). The prime derivatives of MBSs are: (1) Stripped Mortgage-Backed Securities (SMBS); and (2) Collateralized Mortgage Obligations (CMO) or Real Estate Mortgage Investment Conduits (REMIC).

SMBSs are created by segregating the monthly principal and interest cashflows from the underlying mortgages or mortgage securities. As a result, two classes of securities are derived from SMBSs. Investors in interest only (IO) SMBSs receive all of the interest cashflows and none of the principal payments from the underlying mortgages. Conversely, principal only (PO) SMBSs pass through to investors all of the principal cashflows, but none of the interest payments from the underlying mortgages.

The price characteristics of all IOs and POs are extremely volatile because interest rate changes impact the prepayment pattern of the underlying mortgages, which in turn, affects the realized maturity of the stripped securities. From the perspective of the FCA, investors in IOs and POs are speculating on future interest rate movements, and how these movements will affect the prepayment pattern of the underlying mortgages, which in turn, impacts the market value of the SMBS. The FCA notes that the SMBS is a relatively new financial instrument, and accordingly, the secondary market for this investment is not well developed. As a result, a SMBS is not a marketable investment for the purposes of proposed § 615.5131(i). For these reasons, the FCA proposes to exclude SMBSs as an eligible investment under proposed § 615.5140(a)(2).

CMOs, or REMICs (hereafter CMOs), are also derivatives of MBSs. CMOs were developed in response to investor concerns about the uncertainty of cashflows resulting from mortgage prepayments. Generally, a CMO is collateralized by MBSs issued or guaranteed by GNMA, FNMA, or FHLMC, and held in trust for CMO investors. In contrast to holders of MBSs, who receive a pro rata share of the cashflow, CMO investors hold different classes (tranches) of the bonds, and are paid in accordance with a predetermined schedule. Tranches are created by segmenting the different cashflows from the pool of mortgages that underlie the CMO. Some tranches consist of the earliest cashflows from the mortgages in the pool, while other tranches contain cashflows from the final years of the underlying mortgages. Since the cashflows from the mortgages in the pool are prioritized among separate tranches, different classes of bonds are created with their own maturity, estimated average life, coupon rate, and prepayment risk characteristics.

Many CMOs have one or more Planned Amortization Class (PAC) tranches, which usually have a fixed monthly principal amortization over a set period of time. PAC tranches, which are designed to meet specific investor requirements, are often illiquid and volatile, and therefore, they are not suitable for managing liquidity or investing surplus short-term funds. While these PCA tranches may be effective in reducing IRR, the universe of PAC tranches available in the marketplace is too diverse for effective regulation.

The PAC tranche transfers the prepayment risk to certain higher risk support or subordinated tranches. As a result of the increased prepayment risk, these support or subordinated tranches display highly volatile average life, yield and market price. for these reasons, the FCA is concerned that these support tranches will expose Farm Credit banks to an unacceptable level of interest rate risk, and therefore, proposes to prohibit Farm Credit banks from investing in CMOs.

C. Negotiable Certificates of Deposit

The FCA proposes several modifications to current § 615.5140(a)(10), which authorizes Farm Credit banks to hold negotiable certificates of deposit (CDs). As discussed earlier, the FCA is concerned that investments by Farm Credit banks are heavily concentrated in commercial banks. The FCA, therefore, believes that remedial measures are needed to ensure that Farm Credit banks diversify their investment portfolios. The existing regulation, § 615.5140(a)(10), imposes no limits on the amount of negotiable CDs that a Farm Credit bank can hold in its investment portfolio. Under proposed (and redesignated) § 615.5140(a)(5), negotiable CDs would be limited to 30 percent of the bank's total investment portfolio.

The FCA proposes other revisions to this regulation so that Farm Credit banks hold only negotiable CDs that are suitable for the purposes of proposed § 615.5132. For the first time, the FCA proposes that all CDs held by Farm Credit banks mature within 1 year or less. The proposed regulation retains the current requirement that Farm Credit bands only hold negotiable CDs. A CD is negotiable if the instrument contains no restrictions on its transferability.

The FCA is aware that FCBs and BCs currently hold negotiable CDs at depository institutions located in the United States and abroad. Essentially, the three classes of CDs are domestic, Yankee and Eurodollar accounts. Domestic CDs are issued inside the United States by commercial banks, savings associations, and credit unions that are chartered by the United States, or any State or territory thereof. Yankee CDs are issued by the United States branch of a foreign bank. Eurodollar CDs are denominated in United States dollars, and are issued in foreign countries by either local banks or the overseas branches of American banks.

The FCA is concerned that the current difficulties in the commercial banking and thrift industry potentially expose Farm Credit banks to undue financial risks on CDs. Accordingly, proposed § 615.5140(b) would prohibit Fram Credit banks from concentrating their CD investments in a limited number of depository institutions. To the extent that a domestic, Yankee, or Eurodollar CD is not insured by an agency of a Federal or national Government, the proposed regulation would require that the depository institution maintain at least a B, or equivalent credit rating by a nationally recognized credit rating service (such as Thompson Bankwatch). The proposed regulation would additionally require the foreign country where Eurodollar CDs are held to maintain an AAA, or equivalent rating for political and economic stability from a nationally recognized credit rating service.

D. Federal Funds

As noted by proposed § 615.5131(f), Federal funds are loans, for 1 business day or under a continuing contract, to a Federally insured depository institution. Federal funds increase the depository institution's reserve account with the Federal Reserve Bank. The proposed regulation would authorize Farm Credit banks to hold Federal funds which mature within 1 business day, or are subject to a callable contract. The short maturity on Federal funds are suitable for managing liquidity and investing surplus short-term funds. The FCA proposes to limit Federal funds investment to 30 percent of the bank's investment portfolio in order to encourage risk diversification.

E. Prime Commercial Paper

Currently, § § 615.5140(a)(11) and (12) authorize Farm Credit banks to hold highly rated prime commercial and finance paper, and limit the investment in each category to 15 percent of the bank's investment portfolio. The FCA proposes to combine existing § § 615.5140(a)(7).

As amended, the term "commercial paper" will henceforth include finance paper. Both commercial and finance paper are unsecured promissory notes which mature within a timeframe that is usually 270 days or less. The issuer of the debt obligation distinguishes commercial paper from finance paper. Finance paper is issued by financial intermediaries, such as bank holding companies, financial companies, insurance companies, and leasing and factoring companies. Commercial paper is issued by commercial corporations such as public utilities, manufacturers, retailers, wholesalers, and transportation companies. Since this distinction is irrelevant to the objectives of these proposed regulations, the FCA proposes to eliminate the dual terminology.

Proposed § 615.5140(a)(6) would continue to authorize Farm Credit banks to only hold prime commercial paper. From a regulatory perspective, commercial paper is compatible with the objectives of proposed § 615.5132 regarding the maintenance of a liquidity reserve, the reduction of IRR, and the investment of surplus short-term funds. Proposed § 615.5140(a)(6) combines the two existing portfolio limits of 15 percent on commercial paper, to create a single limit of 30 percent. The FCA emphasizes that the amount of commercial paper issued by a single issuer would still be subject to the restrictions of proposed § 615.5140(b).

Proposed § 615.5140(a)(6) would not change the requirement in the existing regulation that Farm Credit banks only hold commercial paper that is rated P–1 or A–1 by a nationally recognized credit rating service. In situations where the commercial paper is issued by a foreign corporation, or the overseas subsidiary of a United States corporation, the country where the issuer is incorporated would be required by proposed § 615.5140(a)(6) to receive the highest possible rating (AAA) for political and economic stability from a nationally recognized credit rating service.

F. Corporate Debt Obligations

For the first time, the FCA is proposing to authorize Farm Credit banks to hold corporate debt obligations that: (1) Mature within 3 years or less; (2) are rated in the two highest investment grades (AA or AAA) by a nationally recognized credit rating service; and (3) are not convertible into equity securities. Additionally, the proposed regulation would limit corporate debt obligations to 15 percent of the bank's total investment portfolio.

The FCA believes that this proposed new authority to invest in high quality, short-term corporate debt obligations will encourage Farm Credit banks to diversity their investment portfolios. Also, the FCA is proposing a short-term maturity deadline and a superior credit rating in order to ensure that Farm Credit banks only purchase highly liquid corporate debt obligations with limited IRR. While an obligation rated AA is of lesser credit quality than a AAA-rated instrument, it is still a superior credit risk, and it is cushioned against any potential downgrading to A or BBB rating, which are also regarded as investment grade.

The FCA proposes to prohibit Farm Credit banks from holding corporate debt obligations that are convertible into equity securities, because the agency believes that it is inappropriate for the banks to have an ownership interest in commercial enterprises. The FCA emphasizes that proposed

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§ 615.5140(a)(8) would not prevent the BCs from exercising their powers under section 3.7(b) of the Act, 12 U.S.C. 2128(b), and § 615.5143 to directly purchase an ownership interest in a foreign business entity that facilitates the export or import of agricultural products. Similarly, nothing in proposed § 615.5140(a)(8) would prohibit System institutions from purchasing and holding Class B common stock in Farmer Mac pursuant to section 8.4 of the Act, 12 U.S.C. 2279aa–4 and proposed § 614.5173.

G. Repurchase Agreements

Current § 615.5410(a)(13) authorizes Farm Credit banks to hold repurchase agreements on eligible investments enumerated in this section. This provision would be redesignated as § 615.5140(a)(9). As defined by proposed § 615.5131(p), a repurchase agreement is a transaction where a Fram Credit bank agrees to purchase an eligible security from a vendor, and to sell the same or identical security back to the same party at a later date for a specified price. In effect, these transactions are secured loans. Repurchase transactions usually have a term of 1 day, or are by a continuing contract. Since proposed § 615.5140(a)(9) only authorizes repurchase agreements of eligible investments during short periods of time, the FCA determines that these investments are suitable for the purposes of proposed § 615.5132.

H. State Obligations

The FCA proposes to redesignate current § 615.5140(a)(11), which authorizes Farm Credit banks to hold the full faith and credit obligations of a State, municipality, political subdivision, or agency or instrumentality thereof as § 615.5140(a)(10). The FCA proposes no substantive changes to this provision. The FCA notes that Farm Credit banks enjoy tax-exempt status, and therefore, they rarely invest in tax-exempt State obligations. Instead, Farm Credit associations, which are subject to Federal income tax, occasionally purchase the obligations of the States where they are chartered in order to invest in their communities. The investment authority of associations will be addressed in further detail, later in this preamble.

I. Other Investments

New financial instruments are constantly being developed in financial markets. Many of these new instruments may be suitable for managing liquidity, reducing interest rate risk, and investing surplus short-term funds. The FCA seeks to design proposed § 615.5140(a)(11) so that Farm Credit banks have flexibility to invest in new financial instruments that fulfill the requirements of proposed § 615.5132.

Accordingly, proposed § 615.5140(a)(11) would authorize FCBs, BCs, and ACBs to hold, subject to FCA approval, other financial instruments which: (1) have short maturities; (2) are marketable investments pursuant to proposed § 615.5131; and (3) maintain a high rating from a nationally recognized credit rating service. In the event that proposed § 615.5140(a)(11) is adopted as a final regulation, the FCA would determine on a case-by-case basis whether a new financial instrument meets the requirements of this section.

VIII. Risk Management and Diversification

Proposed § 615.5140(b) would impose a percent of capital limit on investments held by Farm Credit banks with a single obligor, issuer or financial institution. The FCA believes that this restriction is necessary for safety and soundness purposes because it compels Farm Credit banks to diversify their risk. Proposed § 615.5140(b) would limit investments with individual domestic issuers, obligors or financial institutions to 20 percent of the bank's total capital, while investments with each foreign issuer, obligor or financial institution could not exceed 10 percent of a bank's total capital. The political and/or economic risks in many foreign countries justify the more stringent limit on overseas investments. Obligations of, or fully guaranteed as to both principal and interest by, the United States, its agencies and instrumentalities would be exempt from these restrictions.

As discussed earlier, proposed § 615.5133 would require the board of directors of each FCB, BX, or ACB to adopt policies that ensure that portfolio managers invest bank funds only with creditworthy brokers, dealers and financial institutions. Proposed § 615.5140(c) would require each bank to continually perform internal evaluations of the creditworthiness of institutions where bank funds are invested. The proposed regulation would require the banks to subscribe to at least one nationally recognized credit rating service in order to assure that the credit quality of all investments are properly monitored. Acceptable nationally recognized credit rating services would include such organizations as Standard and Poor's, Moody Investor's Services, Fitch, Thompson Bankwatch, Duff and Phelps, and International Bank Credit Association.

While rating services provide an important source of information, Farm Credit banks cannot substitute these ratings for their own credit analysis. The FCA recognizes that the credit rating of the same investment differs from one rating service to another. There may also be a lag time between credit rating services as downgrades or upgrades in ratings occur. Accordingly, proposed § 615.5140(c) would still require management of each bank to exercise their independent credit judgment when evaluating credit rating information.

IX. Investments by Associations

The associations of the System derive their investment authority from the Act Production credit associations (PCAs) and Federal land bank associations (FLBAs) are respectively authorized by sections 2.2(11) and 2.12(17) of the Act, 12 U.S.C. 2073(11) and 2093(17) to "buy and sell obligations of or insured by the United States or of any agency thereof or of any banks of the [System]." PCAs are authorized by section 2.2(10) of the Act, 12 U.S.C. 2073(10) to "invest funds of the association as may be approved by the [FCB] under the regulations of the [FCA] and deposit the current funds and securities of such with the [FCB], a member bank of the Federal Reserve System, or any bank insured under the Federal Deposit Insurance Corporation." FLBAs are authorized by section 2.12(18), 12 U.S.C. 2093(18), to "invest association funds in such obligations as may be authorized in regulations of the [FCA] and approved by the bank and deposit securities and current funds of the association with any member bank of the Federal Reserve System, with the [FCB], or with any bank insured by the Federal Deposit Insurance Corporation."

Existing regulations implement these statutory provisions. Current § 615.5141 permits PCAs to hold eligible investment under § 615.5140, as authorized by the supervising bank. Similarly, existing § 615.5142 allows FLBAs to invest its excess cash in the unsecured obligations of its supervising banks and eligible investments under § 615.5140, as authorized by its supervising bank.

Current § 615.5180 requires the FCBs to semiannually review the investment strategies and investment portfolio of every association in the district. This regulation also requires associations to hold investments listed in § 615.5140, as the FCB instructs. Section 615.5180 requires the FCBs to assist the associations in the management of their investment portfolios.

These three regulations were promulgated before the Agricultural Credit Act of 1987 [4] (1987 Act)

[4] Pub. L. No. 100-233, 101 Stat. 1635 (1988).

restructured the System by merging and consolidating both banks and associations. As a result of the 1986 Act, two new types of associations, the agricultural credit association (ACA) and the Federal land credit association (FLCA) have been created. The FCA proposes to revise its regulations pertaining to the investment activities of System associations to reflect these structural changes.

Current § 615.5180 is the most comprehensive regulation governing the investment activities of the associations. As noted earlier, this regulation requires FCBs to monitor and supervise the investment activities of associations, while associations are permitted to hold investments listed in § 615.5140, subject to FCB approval. This regulation reflects the current relationship between the FCBs and the associations.

The associations receive most of their funding from the FCB in their district. Associations normally use their excess funds to repay direct loan balances with the district bank. Therefore, associations do not maintain large or permanent investment portfolios. Associations do not need to maintain a separate liquidity reserve because they rely upon their district bank for funding.

The FCA proposes to redesignate § 615.5180 as new § 615.5141, and relocate it to subpart E of part 615. Newly redesignated § 615.5141 would be amended to expressly cover PCAs, ACAs, FLCAs, and FLBAs. The FCA also proposes to delete existing §§ 615.5141 and 615.5142 because they are redundant.

X. Divestment of Impermissible Investments

The FCA realizes that some FCBs and BCs may currently hold investments that would no longer be permissible in the event that proposed § 615.5140 is promulgated as a final regulation. Certain investments would become ineligible because they would not comply with the investment criteria (such as credit ratings or maturity deadlines) of proposed § 615.5140(a). Other investments would qualify as eligible investments under proposed § 615.5140, but the bank currently exceeds the percentage limitations that the proposed regulation would impose on a certain category of investments.

Proposed § 615.5142 would require FCBs and BCs either to dispose of all prohibited investments within 6 calendar months from the effective date of the final regulation, or in the alternative, to obtain approval from the director of the Office of Examination for a comprehensive plan to bring the bank's portfolio into compliance with § 615.5140. While the FCA intends that all Farm Credit banks dispose of ineligible investments as quickly as possible, the agency seeks to avoid situations where the banks are exposed to heavy losses. The FCA is aware that many of these investments will either mature or reprice in the near future. As a result, Farm Credit banks should be able to divest of such investments without significant loss. The FCA proposes to delegate to the director of the Office of Examination authority to approve comprehensive compliance plans, submitted by the banks, to divest ineligible investments over a longer period of time. The proposed regulation would require all applications, and all subsequent approvals or denials to be in writing. The director would be required to consider all relevant factors, such as earnings and capital, when deciding whether to approve a compliance plan. An acceptable compliance program would enable a bank to divest of impermissible investments as soon as possible, without substantial loss.

XI. Miscellaneous

The FCA proposes to rename subpart F as "Property and Other Investments" and to redesignate § 615.5150 as § 615.5170, § 615.5151 as § 615.5171, and § 615.5160 as § 615.5172. The FCA proposes to add a new § 615.5173, which would explicitly permit System institutions to purchase and hold Class B common stock in Farmer Mac pursuant to section 8.4 of the Act. These four regulations would become provisions in subpart F.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, part 615 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26; 12 U.S.C. 2013, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6; sec. 301(a) of Pub. L. 100–233.

2. The heading of subpart E is revised to read as follows:

Subpart E—Investment Management

§§ 615.5141 and 615.5142 [Removed]

3. Subpart E is amended by removing §§ 615.5141 and 615.5142.

4. A new § 615.5131 is added to read as follows:

§ 615.5131 Definitions.

(a) *Absolute final maturity* means the date on which the remaining principal amount of a mortgage-backed security is due and payable (matures) to the registered owner. It shall not mean the average life, the expected average life, the duration, or the weighted average maturity.

(b) *Adjustable rate mortgage (ARM)* means a mortgage-backed security that features a predetermined adjustment of the interest rate at regular intervals tied to an index.

(c) *Asset/liability management* means the process used to plan, acquire, and direct the flow of funds through a Farm Credit bank in order to generate adequate and stable earnings and to steadily build equity, while taking reasonable and measured business risks.

(d) *Collateralized mortgage obligation (CMO)* means a multi-class pay-through bond representing a general obligation of issuer backed by mortgage collateral. Each CMO consists of a set of, at least, four tranches of bonds with different maturities and cashflow patterns. An accrual bond is last tranche.

(e) *Interest rate risk* means the risk of loss resulting from the impact of interest rate fluctuations upon the net interest income and market value of equity of a bank.

(f) *Federal funds* means funds sold to or bought from a Federally insured depository institution for 1 business day or under a continuing callable contract which increases or decreases that institution's reserve account of immediately available funds with a Federal Reserve Bank.

(g) *Liquid investments* are assets that can be promptly converted into cash without significant loss to the investor. In the money market, a security is liquid if the spread between bid and ask prices is narrow, and a reasonable amount can be sold at those prices.

(h) *Loans* is defined as in § 621.2(a)(13) of this chapter, and is calculated quarterly (as of the last day of March, June, September, and December) by using the average daily balance of loans outstanding for the previous 90 days.

(i) *Marketable investment* is an asset that can be sold with reasonable promptness at a price that reasonably reflects its fair value in an active and

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universally recognized secondary market.

(j) *Market value of equity* measures the impact that interest rate changes have upon the market value of the bank's assets, liabilities and off-balance sheet items.

(k) *Mortgage-backed securities (MBSs)* means investment securities collateralized with mortgage loans. MBSs provide for ownership of a fractional undivided interest in a specified pool of mortgages. Each MBS has a stated maturity, expected average life, and coupon rate.

(l) *Negotiable certificates of deposit* means a negotiable large-denomination time deposit with a specific maturity, as evidenced by a certificate. *Yankee certificate of deposit* means a certificate of deposit issued in the United States by the American branch of a foreign bank. *Eurodollar certificate of deposit* means a certificate of deposit denominated in United States dollars and issued by an overseas branch of a United States bank or by a foreign bank outside the United States.

(m) *Net interest income* means the difference between interest income and interest expense.

(n) *Prime commercial paper* means an unsecured promissory note of a corporation with a fixed maturity of no more than 270 days that is rated A-1 or P-1 or an equivalent rating by a nationally recognized credit rating service.

(o) *Real estate mortgage investment conduit (REMIC)* means a nontaxable entity (created under the Tax Reform Act of 1986) formed for the sole purpose of holding a fixed pool of mortgages (both residential and commercial) secured by an interest in real property and issuing multiple classes of interests in the underlying mortgages.

(p) *Repurchase agreement* means a transaction where any Farm Credit Bank, bank for cooperatives, or Agricultural Credit Bank agrees to purchase a security from a counterparty and to subsequently sell the same or identical security back to that counterparty for a specified price at a later date.

(q) *Stripped mortgage-backed securities* means securities created by segregating the cashflows from the underlying mortgages or mortgage securities to create two or more new securities, each with a specified percentage of the underlying security's principal payments, interest payments, or combination of the two. In their purest form, stripped mortgage-backed securities represent mortgage-backed securities that have been converted into interest-only securities, where the investor received 100 percent of the interest flows, and principal-only securities, where the investor receives 100 percent of the principal cashflows.

(r) *Total capital* is defined as in Subpart H—Capital Adequacy, § 615.5201(1) of this chapter.

4a. The FCA proposes to redesignate the following sections in part 615 as set forth in the table below:

REDESIGNATION TABLE

Existing section	New section	Subpart
615.5135(a)	615.5132	E
615.5135(b)	615.5133	E
615.5150	615.5170	F
615.5151	615.5171	F
615.5160	615.5172	F
615.5180	615.5141	E

5. Newly redesignated §§ 615.5132 and 615.5133 are revised to read as follows:

§ 615.5132 Investment purposes.

Farm Credit Banks, banks for cooperatives and Agricultural Credit Banks are authorized to hold eligible investments, listed under § 615.5140, in an amount not to exceed 20 percent of the total outstanding loans of such banks, for the purposes of complying with the liquidity reserve requirement of § 615.5134, managing surplus short-term funds, and for reducing interest rate risk under § 615.5135.

§ 615.5133 Investment management.

The board of directors of each Farm Credit Bank, bank for cooperatives, or Agricultural Credit Bank shall adopt written policies regarding the management of the bank's investments that are consistent with the Farm Credit Act of 1971, Farm Credit Administration regulations, and all other applicable statutes and regulations. The board of directors shall also ensure that the bank's investments are safely and soundly managed in accordance with these written policies, and that appropriate internal controls are in place to preclude investment actions that undermine the solvency and liquidity of the bank. The board of directors shall not delegate its responsibility to supervise and review the investment practices of the bank. The board of directors of each Farm Credit Bank, bank for cooperatives, or Agricultural Credit Bank shall, on an annual basis, review these policies, as well as the objectives and performance of the investment portfolio. At a minimum, the written policy should address:

(a) The purpose and objectives of the bank's investment portfolio;

(b) The liquidity needs of the bank pursuant to the requirements of § 615.5134;

(c) Interest rate risk management pursuant to § 615.5135;

(d) Permissible brokers, dealers, and institutions for investing bank funds and limitations consistent with § 615.5140 of this subpart, and the amount of funds that shall be invested or placed with any broker, dealer or institution;

(e) The size and quality of the investment portfolio;

(f) Risk diversification of the investment portfolio;

(g) Delegation of authority to manage bank investments to specific personnel or committees and a statement about the extent of their authority and responsibilities;

(h) Controls to monitor the performance of the bank's investments and to prevent loss, fraud, embezzlement, and unauthorized investments. Quarterly reports about the performance of all investments in the portfolio shall be made to the board of directors.

6. Sections 615.5134 and 615.5135 are added to read as follows:

§ 615.5134 Liquidity reserve requirement.

(a) Each Farm Credit Bank, bank for cooperatives, and Agricultural Credit Bank shall use the eligible investments under § 615.5140 to maintain liquidity sufficient to fund 50 percent of the bank's bonds, notes, and interest due within the next 90 days divided by 3, plus 50 percent of the bank's discount notes due within the next 30 days.

(b) The liquidity reserve requirement shall be calculated quarterly, as of the last day of the months of March, June, September, and December.

(c) The Farm Credit Administration shall modify or waive the liquidity reserve requirement by a resolution of the Farm Credit Administration Board whenever the Farm Credit Administration, determines in its sole discretion, after consultations with the Federal Farm Credit Banks Funding Corporation that an emergency exits. An emergency shall be deemed to exist whenever a financial, economic, agricultural, or national defense crisis impedes the normal access of the Federal Farm Credit Banks Funding Corporation to the capital markets.

§ 615.5135 Reduction of interest rate risk.

(a) The board of directors of each Farm Credit Bank, bank for cooperatives, and Agricultural Credit Bank shall adopt an interest rate risk management section of an asset/liability management policy which establishes interest rate risk exposure limits.

(b) Each Farm Credit Bank, bank for cooperatives and Agricultural Credit Bank shall simulate, on quarterly basis, the impact that a parallel instantaneous and sustained 200-basis-point increase and decrease shift in interest rates would have on net interest income and market value of equity during the next 12 months.

(c) Each Farm Credit Bank, bank for cooperatives and Agricultural Credit Bank shall also quarterly simulate the impact that a best case, worst case, and most likely projection of interest rate changes would have on net interest income and market value of equity during the next 12 months.

(d) Farm Credit Banks, banks for cooperatives and Agricultural Credit Banks are authorized to purchase and hold the eligible investments listed in § 615.5140 of this subpart in order to reduce interest rate risk resulting from the bank's normal lending operations. Prior to purchase, each bank shall evaluate in writing how a proposed eligible investment will reduce its interest rate risk. Subsequent to purchase, the bank shall evaluate and document, at least on a quarterly basis, whether the investment has actually met the objective or reducing interest rate risk.

7. Section 615.5140 is amended by revising the section heading and paragraph (a); redesignating paragraph (b) as paragraph (d); and adding new paragraph (b) and (c) to read as follows:

§ 615.5140 Eligible investments and risk diversification.

(a) In order to comply with §§ 615.5132, 615.5134, and 615.5135 of this subpart, each Farm Credit Bank, bank for cooperatives, and Agricultural Credit Bank is authorized to hold the following eligible investments, denominated in United States dollars:

(1) Obligations of the United States and obligations, other than mortgage-backed securities, issued and guaranteed as to both principal and interest by an agency or instrumentality of the United States;

(2) Mortgage-backed securities issued by or guaranteed as to both principal and interest by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Agricultural Mortgage Corporation not to exceed 30 percent of the bank's investment portfolio, and subject to the following requirements:

(i) The mortgage-backed securities shall either be backed by the full faith and credit of the United States, or be rated not lower than AAA (or equivalent) by a nationally recognized credit rating service;

(ii) The securities shall be backed by either adjustable rate mortgages, that are not convertible into fixed-rate mortgages, with a 12-month repricing mechanism tied to an index, or fixed mortgages with an absolute final maturity of 5 years at time of purchase; and

(iii) Stripped mortgage-backed securities including Interest Only (IO) and Principal Only (PO) classes, and Collateralized Mortgage Obligations (CMO) including Real Estate Mortgage Investment Conduits (REMIC) are not eligible investments for the purpose of this section.

(3) Obligations of the International Bank for Reconstruction and Development (The World Bank);

(4) Bankers Acceptances, not to exceed 30 percent of the bank's total investment portfolio;

(5) Negotiable certificates of deposit in an amount not to exceed 30 percent of the bank's total investment portfolio. Any portion of a domestic or Yankee certificate of deposit that is not insured by either the Federal Deposit Insurance Corporation or the National Credit Union Administration, shall be held in a bank that maintains at least a rating of B, or its equivalent by a nationally recognized credit rating services. Eurodollar certificates of deposit that are not insured by the Federal or national government of the host country shall be held at banks maintaining a rating of B or better, and the country where the account is located shall receive an AAA rating (or equivalent) for political and economic stability from a nationally recognized credit rating service;

(6) Federal funds, as defined in § 615.5131(f), which shall not exceed 30 percent of the bank's total investment portfolio;

(7) Prime commercial paper, as defined by § 615.5131(n) of this subpart, shall not exceed 30 percent of the bank's total investment portfolio. In the event that the prime commercial paper is issued by a corporation located outside the United States, the country where the corporation is incorporated shall maintain a rating for political and economic stability of AAA or its equivalent by a nationally recognized credit rating service.

(8) Corporate debt obligations, not to exceed 15 percent of the bank's investment portfolio, that shall:

(i) Maintain at least a rating of AA, or its equivalent by a nationally recognized credit rating service, and when applicable, the foreign country where the corporate debtor is incorporated shall maintain an AAA rating or its equivalent for political and economic stability.

(ii) Qualify as a marketable investment pursuant to § 615.5131(i);

(iii) Mature within 3 years or less from the time of purchase;

(iv) Not be convertible into equity securities.

(9) Repurchase agreements of eligible investments authorized by this section, which have a term of 1 business day or are by a continuing contract.

(10) Full faith and credit obligations of any State, territory, or possession of the United States, or political subdivision thereof, including any agency, corporation, or instrumentality of any State, territory, possession, or political subdivision thereof, provided that the obligations:

(i) Maintain at least a rating of A, or the equivalent, by a nationally recognized credit rating service;

(ii) Mature within 10 years from the date of purchase; and

(iii) Qualify as marketable investments within the meaning of § 615.5131(i) of this subpart.

(11) Other investments, as authorized by the Farm Credit Administration, that manifest the following characteristics:

(i) A short maturity;

(ii) Qualify as a marketable investment pursuant to § 615.5131(i) of this subpart;

(iii) Maintain a high investment rating by a nationally recognized credit rating service.

(b) Except for eligible investments covered by paragraphs (a) (1) and (2) of this section, each Farm Credit Bank, bank for cooperatives, or Agricultural Credit Bank shall not invest more than:

(1) Twenty (20) percent of its total capital in eligible investments issued by any single institution, issuer, or obligor which is incorporated in, or chartered by, the United States, or any State or territory thereof; or

(2) Ten (10) percent of its total capital for eligible investments issued by any single institution, issuer, or obligor which is incorporated or chartered outside of the United States.

(c) Each Farm Credit Bank, bank for cooperatives, and Agricultural Credit Bank shall perform ongoing evaluations of all eligible investments held in its portfolio. Each bank shall support its evaluation with the most recent credit

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rating of each investment by at least one nationally recognized credit rating service.

8. Newly redesignated § 615.5141 is revised to read as follows:

§ 615.5141 Association investment portfolios.

Each Farm Credit Bank shall review annually as of June 30 of December 31 the investment portfolios of every Federal land bank association, production credit association, agricultural credit association, and Federal land credit association in the district. Associations are authorized to hold eligible investments pursuant to § 615.5140 as authorized by the Farm Credit Bank. Each Farm Credit Bank shall assist the associations in managing their investment portfolios to reduce interest rate risk and to invest surplus short-term funds.

9. A new § 615.5142 is added to read as follows:

§ 615.5142 Disposal of ineligible investments.

Any Farm Credit Bank, bank for cooperatives, or Agricultural Credit Bank that holds investments that are not in compliance with § 615.5140 shall dispose of such investments within 6 months of the effective date of the final regulation unless the director of the Office of Examination approves in writing a comprehensive written plan to comply with § 615.5140. The Office of Examination shall consider whether the proposed plan will enable the bank to dispose of impermissible investments within a reasonable period of time, without a substantial loss to the earnings or capital of the bank.

11. The heading for subpart F is revised to read as follows:

Subpart F—Property and Other Investments

12. A new § 615.5173 is added to read as follows:

§ 615.5173 Stock of the Federal Agricultural Mortgage Corporation.

Banks and associations of the Farm Credit System are authorized to purchase and hold Class B common stock of the Federal Agricultural Mortgage Corporation pursuant to section 8.4 of the Farm Credit Act.

Dated: December 11, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91-30015 Filed 12-17-91; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

RIN 0960-AC06

Federal Old-Age, Survivors, and Disability Insurance; Determining Disability and Blindness; Revision of Part A and Part B of the Listing of Impairments; Endocrine, and Multiple Body Systems; Immune System

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: We are proposing, in the Listing of Impairments in appendix 1 of 20 CFR part 404, subpart P, to establish a new listing section called "Immune System" that will include up-to-date criteria for evaluation of connective tissue diseases, which are now contained in the "Multiple Body Systems" listing, and to establish a listing for the evaluation of human immunodeficiency virus (HIV) infection. We also propose to move the adult listing for obesity from the "Multiple Body Systems" to the "Endocrine System" listing, and to change the name of the "Endocrine System" listing to "Endocrine System and Obesity." The criteria we propose to add describe disorders that are severe enough to prevent a person from performing any gainful activity, or in the case of a child under age 18, disorders which are severe enough to prevent a child from functioning independently, appropriately, and effectively in an age-appropriate manner. The Supplemental Security Income program references the listings.

DATES: To be sure that your comments are considered, we must receive them no later than February 18, 1992.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Martin J. Sussman, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 965-1758.

SUPPLEMENTARY INFORMATION:

Medical criteria for evaluating disability and blindness are found in the Listing of Impairments in appendix 1 of subpart P of Regulations part 404. The Listing of Impairments includes examples of the most commonly occurring medical conditions for persons who file applications for disability benefits. It describes, for each of 13 major body systems, impairments that are considered severe enough to prevent an adult from engaging in substantial gainful activity, or in the case of children under the age of 18, examples of impairments that are severe enough to prevent a child from functioning independently, appropriately, and effectively in an age-appropriate manner. To establish disability under the Social Security Act, the evidence must show that the impairment is expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months. Most of the listed impairments are permanent or are expected to result in death; in some instances, a specific durational requirement is a part of the medical criteria for the impairment (in addition to the 12-month duration requirement that applies to all impairments).

The Listing of Impairments is incorporated into the regulations as appendix 1 to subpart P of part 404 of title 20 of the Code of Federal Regulations. This appendix is divided into two parts, part A and part B. The criteria in part A apply to evaluating impairments of adults but may, in some cases, be appropriate for evaluating impairments in children under age 18. Part B contains medical criteria for the evaluation of impairments in children under age 18 where criteria in Part A do not give appropriate consideration to the particular effects of the disease processes in childhood. Where part A criteria are also repeated in part B, our intent is to eliminate any question about their application to children. In evaluating disability for a child under age 18, part B is used first. If the medical criteria in part B do not apply, then the medical criteria in part A are used. An attempt has been made to maintain in part B, a structural and content relationship with part A counterparts to the extent possible (see §§ 404.1525 and 416.925.)

The Listing of Impairments was revised on December 6, 1985 (50 FR 50068). At that time, as a result of expanded medical advancements in disability evaluation and treatment, and our program experience, we indicated that the listings should be reviewed periodically and updated, and, accordingly, termination dates for the listings ranging from four to eight years were specified. The current "Multiple Body Systems" listings are scheduled to expire on December 6, 1993. We are now proposing to create a new "Immune System" listing in both part A and part B to provide functionally relevant criteria for evaluation of connective tissues diseases, and to add a listing for human immunodeficiency virus (HIV) infection (including acquired immunodeficiency syndrome (AIDS)). We are also proposing to make them effective for five years after the revisions are published as final rules. The listing for obesity will also be revised and moved from the "Multiple Body Systems" listing to the "Endocrine System" listing which will be renamed "Endocrine System and Obesity." We also are proposing to remove the "Multiple Body Systems" listing for adults. We are retaining the "Multiple Body Systems" listing for children, and are proposing to make it effective for five years after the revisions are published as final rules.

The proposed revisions to the connective tissue diseases were developed with the assistance of representatives from professional groups, including the American College of Physicians, the American Rheumatism Association, the Arthritis Foundation, the Lupus Research Institute, the American Society of Internal Medicine, and Federal and State representatives with expertise in the evaluation of connective tissue impairment disability claims. In addition, in developing the proposed Part B criteria for children, the Social Security Administration secured further assistance from medical consultants with expertise in these areas.

The proposed listings for HIV infection were developed with the assistance of various professional organizations, including the Public Health Service's Centers for Disease Control, the Johns Hopkins Hospital, the State of Maryland AIDS Administration, the Department of Veterans Affairs, and Federal representatives with expertise in the evaluation of HIV infection claims.

Human Immunodeficiency Virus (HIV) Infections

The Social Security Administration began receiving disability claims from individuals infected with the AIDS virus shortly after AIDS was first identified in the United States. In 1981, the Centers for Disease Control defined AIDS based on a variety of diseases that encompassed the most severe manifestations observed in infected individuals. Because so little was known in this country about the disease beyond the work of the Centers for Disease Control, the Social Security Administration utilized the Centers for Disease Control's epidemiological definition of AIDS in developing our initial guidelines for determining disability in people with AIDS. These guidelines provided that an individual (1) with a confirmed diagnosis of AIDS, as manifested by one or more of the conditions identified by the Centers for Disease Control, (2) who is not working and (3) meets the other nonmedical requirements for entitlement, would be found to have an impairment of listing-level severity and, therefore, be disabled for Social Security purposes.

However, the Centers for Disease Control and the Social Security Administration view AIDS (and other manifestations of HIV infection) from different perspectives. The CDC defines AIDS for health purposes to enhance their capability for activities such as: Disease reporting and surveillance; epidemiologic studies; prevention and control activities; and public health policy and planning. This definition is intended to include severe illness and those infections with a poorer prognosis but not to be used to determine whether any statutory or legal requirements for disability are met. The Social Security Administration must determine whether the impairment is severe enough to prevent an individual from engaging in any substantial gainful activity for a prescribed period of time. Therefore, the CDC definition of AIDS should not be linked to SSA's determination of disability.

In the initial years of AIDS research (when even the etiology of the disease was not known) we had no alternative but to rely on the Centers for Disease Control's definition of AIDS, one of this country's major sources of information on the infection. With the knowledge we derived from adjudicating disability cases in which AIDS was alleged and the growing body of medical and scientific information, we were able to update and expand our instructions. Since then, we have continued to update and refine our instructions to reflect the escalating array of information available on the manifestations of HIV infection. Recognizing that our basic role differs from that of CDC, we have not been restricted by or tied to their definition of AIDS for evaluating disability claims.

For instance, as early as 1983, clinicians identified a syndrome that for a time was known as AIDS-Related Complex (ARC). The Social security Administration then issued guidelines clarifying that the evaluation of disability was not limited to the Centers for Disease Control's definition of AIDS; that AIDS/ARC claimants, like all disability claimants, must be evaluated on a case-by-case basis and that an individual need not have full-blown AIDS to be found disabled.

Adjudicators were instructed that individuals who have evidence of immune system dysfunction, but do not have a confirmed diagnosis of AIDS, should not automatically be assumed to have an impairment which is not of listing-level severity. Rather, as with any medically determinable impairment, the assessment of severity must take into account all signs, symptoms, and laboratory findings, not only those listed in our criteria. If the listings were still not equalled in severity, adjudicators were instructed to follow the full sequential evaluation process. The adjudicator would proceed to assess the claimant's residual functional capacity and, based on that assessment, determine if the individual retained the capacity to perform past relevant work or, if not, the capacity to do any other work considering age, education, and work experience.

As more information about HIV infection became available and as we increased our adjudicative experience, it became apparent that HIV infection was being manifested by severe impairments that were not encompassed in the Centers for Disease Control's criteria. By 1987, the Social Security Administration issued instructions that provided specific criteria beyond those covered in the Centers for Disease Control's definition for our use in evaluating whether a claimant's impairment(s) is at listing-level severity.

Additionally, we have recently revised and reissued our HIV criteria to reformat the opportunistic infections by type (e.g., viral, fungal, bacterial, protozoan, etc.), thereby making the criteria easier to apply, to include additional criteria to take into account the clinical manifestations and course of the disease in women and children, and to reflect recent data on the correlation of absolute CD4 lymphocyte counts and the percentage of total lymphocytes. We have also realigned and added certain manifestations of HIV infection which

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when paired with functional restrictions result in listing-level severity.

The proposed part A listing, like our existing instructions, recognizes that HIV infection can manifest itself differently in women than in men. Therefore, the proposed listing states that it is important when reviewing the claim of a woman with HIV infection that gynecological problems be considered in assessing the degree of functional impairment. The proposed part B listing, like our existing instructions, recognizes that the disease process may also manifest itself differently in younger children (i.e., under age 13) as compared to older children (i.e., age 13 and over).

Thus, the HIV infection listings included in this proposed rule set out our procedures for determining whether an HIV-positive claimant's impairments are of listing-level severity. To enable us to issue timely revisions as the knowledge of the HIV disease process has evolved, the Social Security Administration has published HIV criteria in the past in procedural instructions. In 1987, we published in the **Federal Register** our intent to publish a proposed listing for AIDS/HIV infection. This proposed listing provides the public with the opportunity to comment formally on our HIV criteria.

Regulatory changes cannot be made outside the Administrative Procedure Act process even if they broaden coverage. Timely updates to these regulations will be particularly critical given the rapidly evolving nature of the HIV disease complex. Therefore, we request specific suggestions from the public on alternatives consistent with the Administration Procedure Act to enable us to issue timely updates to the listing for HIV infection.

In the past, there has been some misunderstanding of our disability guidelines for evaluating HIV claims. We would like to clarify for the public that all our disability rules apply to HIV infection cases in the same way as they do with other cases. Just like any other impairment, all of the symptoms (including pain), signs, and laboratory findings, as well as the effects of medication on the ability to function, are evaluated on a case-by-case basis to determine if an HIV-positive adult is able to engage in substantial gainful activity (or in the case of a child, able to engage in age-appropriate activities). In addition, it is important to understand that the full sequential evaluation process is applied when adjudicating claims from these individuals.

Under the sequential evaluation process, if the medical evidence shows that a person meets the listing criteria (or, as determined by a program physician, has other infections or diseases which are equivalent in severity to the listings), is not working and meets the other nonmedical requirements for entitlement, he or she will be determined to be disabled. If the person has manifestations of HIV infection that are not specifically included in or equivalent in severity to the listings criteria, then we again evaluate all of his or her signs, symptoms, and laboratory findings to determine the person's capacity to engage in substantial gainful activity (or, in the case of a child, to perform age-appropriate activities). For adults, we assess their residual functional capacity and, based on that assessment, determine whether the claimant retains the capacity to perform past relevant work, or, if not, whether the claimant retains the capacity to perform any other work considering his or her age, education, and work experience. If not, the adult is disabled for Social Security purposes. For children, we individually assess their ability to function to determine whether there is a substantial reduction in their ability to function independently, appropriately, and effectively in an age-appropriate manner. If so, the child is disabled for Social Security purposes.

These regulations do not address our presumptive disability criteria for HIV infected claimants. The Act authorizes the Secretary to make presumptive disability (and presumptive blindness) decisions which permit up to 6 months of payments for individuals applying for Supplemental Security Income disability benefits before a formal determination is made on whether the individual is disabled. In accordance with 20 CFR 416.933, we make presumptive disability decisions when the available evidence reflects a high degree of probability that the individual will be found disabled and he or she meets the nonmedical eligibility requirements. As a result, presumptive disability provides a mechanism to provide expedited payments to some needy individuals who file for Supplemental Security Income benefits.

In the case of readily observable impairments (e.g., amputation of extremities), we make presumptive disability decisions without medical evidence. Social Security's field office employees, who are not trained disability adjudicators, are authorized to make presumptive disability determinations for these impairments which are listed in 20 CFR 416.934.

For any impairment not included in the list at § 416.934 a presumptive disability decision must be based on medical evidence or other information which, though not sufficient for a formal determination of disability, is sufficient to determine that there is a high degree of probability that the individual is disabled. Presumptive disability decisions in these cases are made by trained disability adjudicators who are employed by the State Disability Determination Services (these agencies make the formal disability determinations). These presumptive disability decisions can be made at any point in processing a Supplemental Security Income claim when the available evidence shows a high probability of allowance.

The above procedures have enabled the Social Security Administration to provide presumptive disability payments to a substantial portion of both AIDS and HIV symptomatic claimants. Despite the progress made thus far, we recognize that further improvements are still possible. As a result, we are today publishing elsewhere in the **Federal Register** a regulatory package, and formulating administrative procedures, to ensure that eligibility for presumptive disability payments is routinely considered for every HIV-infected claimant.

Other Immune System Listings

The basic concept of the proposed revisions to other immune system listings in sections 14.00 and 114.00 is to deemphasize disease labeling or diagnosis, and place more emphasis on the functional aspects of impairments on a person's ability to work or, in the case of children under age 18, on their ability to grow, develop, and mature within acceptable age-appropriate norms.

The proposed listing criteria in section 14.00 include some listing criteria currently included under the "Multiple Body Systems" (10.00). Hansen's disease (leprosy) has been deleted because of its rarity in the Western Hemisphere. Listing 110.09, Immune deficiency disease, currently under the "Multiple Body Systems" will also be incorporated under 114.00, "Immune System."

Endocrine System and Obesity

We are also proposing to revise the adult listing for obesity and move it from the Multiple Body Systems section (10.00) to the Endocrine System section (9.00). The latter is being renamed "Endocrine System and Obesity." Therefore, all listings currently under 10.00, "Multiple Body Systems," will be placed either under 14.00, "Immune System," or 9.00, "Endocrine System and Obesity."

We are asking individuals who are experts to review the Endocrine System criteria. The criteria for evaluating obesity will be reviewed by these experts and any further revisions to the obesity listing will be made after receiving the individuals' recommendations.

Following is a summary of the proposed changes in each of the body system listings being revised, including changes in the prefaces that introduce each section and that explain how the listing criteria are used in connection with the specific body system.

Revisions to Part A of Appendix I

9.00 Endocrine System and Obesity

We proposed to move the listing for obesity, which is currently Listing 10.10 in the Multiple Body Systems section, to the Endocrine System, which we propose to rename "Endocrine System and Obesity." The listing for obesity would be established as Listing 9.09.

Proposed section 9.00 is an introduction to the listings for endocrine and obesity disorders. This section has been revised to include a discussion of how we approach the evaluation of extreme obesity. The proposed revisions to the introduction and the listing for obesity are based on our experience in evaluating cases of extreme obesity.

9.01 Category of Impairments, Endocrine System and Obesity

We propose to change the heading of 9.01 from "Category of Impairments, Endocrine System" to "Category of Impairments, Endocrine System and Obesity" to reflect the addition of the obesity section to this listing.

9.09 Obesity

We are proposing that the current listing for obesity (10.10) be renumbered 9.09. We are also clarifying the rules based on questions we have received over the years. Hence, we are also proposing that section 9.09A (now 10.10A) will be revised to clarify that the pain, limitation of motion, and evidence or arthritis must be in the same joint or in the spine.

14.00 Immune System

We propose to delete the text and reserve the entry for section 10.00 of part A of the listings, and to establish a new section 14.00, "Immune System." Section 10.00 currently includes impairments that involve multiple body systems: certain connective tissue disorders, Hansen's disease (leprosy), and obesity. We propose to update, expand, and move the criteria for connective tissue disorders to the new section 14.00, "Immune System." We propose to delete Hansen's disease because it is almost nonexistent in the Western Hemisphere. We are also proposing to amend and move obesity to the Endocrine System as Listing 9.09, and to rename that section "Endocrine System and Obesity." Therefore, we propose to reserve section 10.00 without text. (We are retaining section 110.00 of part B, because it contains listings for Down syndrome and other congenital, hereditary, and acquired multiple body system disorders.)

In section 14.00, we propose to expand the criteria for connective tissue disorders to include criteria for polymyositis/dermatomyositis and undifferentiated connective tissue disorder. We also propose to provide criteria for other immune system disorders to include immunoglobulin deficiency syndrome or deficiencies of cell-mediated immunity, and HIV infection.

Sections 14.00A–C describe impairments of the immune system. Section 14.00D introduces the subject of HIV infection and lists some of the information that is important in documenting and evaluating the disease. In this section we explain what is acceptable evidence of HIV infection and when it is needed.

We recognize that the disease can manifest itself differently, and for that reason, we have included a discussion in 14.00D on evaluation of HIV infection in women. We also discuss the need to evaluate the impact of all impairments, as well as the impact of therapy, in the HIV-infected individual.

We also explain that some HIV-infected individuals may have impairments that are less than listing-level severity, but that may still be disabling. Evaluation of these individuals should proceed through the final steps of the sequential evaluation process.

We propose to include all of this information in the introduction to the listing (rather than limiting the discussion to the preamble) to provide specific guidance to adjudicators on these issues pertinent to evaluating individuals with HIV infection.

14.01 Category of Impairments, Immune System

14.02 Systemic Lupus Erythematosus

We propose to move the current Listing 10.04 to section 14.00, renumber it as 14.02, and change the title from "Disseminated lupus erythematosus" to Systemic lupus erythematosus" to conform to the current nomenclature for this disease. We propose to expand and revise the criteria to focus on and delineate severe functional loss. We also propose to remove the requirement that this disorder be established by a positive Lupus Erythematosus (LE) preparation or biopsy or positive Anti-Nuclear Antibody (ANA) test in favor of the currently accepted 1982 criteria of the American Rheumatism Association for classification of this disease cited in proposed 14.00C1. The proposed Listing 14.02A describes disability resulting from failure in a single organ or body system, whereas the proposed Listing 14.02B describes disability resulting from functional loss of lesser severity than in 14.02A in two or more organs or body systems associated with severe constitutional symptoms and signs.

14.03 Systemic Vasculitis

We propose to move the current listing 10.03 to section 14.00, renumber it as 14.03, and change the title from "Polyarteritis or periarteritis nodosa" to "Systemic vasculitis" to correspond with currently accepted medical nomenclature. We also propose to expand this listing to emphasize the spectrum of vasculitic/arteritic syndromes that can lead to work-related functional limitations. These syndromes include classical polyarteritis nodosa, aortic arch arteritis, giant cell arteritis, Wegener's granulomatosis, and vasculitis associated with other connective tissue disorders.

14.04 Systemic Sclerosis and Scleroderma

We propose to move the current Listing 10.05 to section 14.00, renumber it as 14.04, and change the title from "Scleroderma or progressive systemic sclerosis" to "Systemic sclerosis and scleroderma." We propose to delete the term "progressive" from the title because it is redundant. The criteria in proposed Listing 14.04 describe systemic disease of severity that precludes performance of work-related activity for the requisite duration. The proposed criteria provide greater specificity in describing listing-level severity in the extremities and target organs (i.e., lungs, heart, and kidneys).

14.05 Polymyositis or Dermatomyositis

The current listings do not include polymyositis or dermatomyositis. We propose to add this listing to recognize the potential for a disabling work-related functional deficit in some patients with chronic refractory myopathy.

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14.06 Undifferentiated Connective Tissue Disease

We propose to add an undifferentiated connective tissue disease listing because some individuals can be disabled by connective tissue disease that cannot be classified with an exact diagnosis. Since work-related functional limitation does not depend upon the medical diagnostic label but rather the limiting effects of the impairment on an individual, this category was included.

14.07 Immunoglobulin Deficiency Syndrome

We propose to add this listing to provide criteria to evaluate immunoglobulin deficiency syndromes and deficiencies of cell-mediated immunity.

14.08 Humun Immunodeficiency Virus (HIV) Infection

We proposed to add a regulatory listing for HIV infection. The purpose of this proposal is to place in regulations our criteria for HIV infection. This will ensure that the public is aware of our criteria and has the opportunity for formal input regarding how these claims are adjudicated at the listings stage of our sequential evaluation process.

Under these proposed listings, we have included a range of opportunistic diseases, cancers, and conditions that are indicative of listing-level severity in an HIV-infected individual. Those diseases which are considered indicative of severe HIV infection without documentation of the HIV are listed first (14.08A). In 14.08B-L, listed diseases are grouped by type (e.g., fungal, bacterial, viral, protozoan) for ease of reference. Diseases/conditions which must be evaluated in conjunction with an assessment of the HIV-infected individual's functional limitations are listed in 14.08M. We have included explanatory material on the functional criteria used in 14.08 in the preface to the HIV infection listing.

Revisions to Part B of Appendix 1

114.00 Immune System

We propose to expand Part B to include immune system disorders with specific criteria added for evaluation of connective tissue disorders patterned after criteria in Part A 14.00B and Listings 14.02–14.06. Modifications and additions appropriate for characterizing severity of functional loss in children have been included as necessary. We propose to move current listing 110.09 to section 114.00, renumber it as 114.07, and change the title from "Immune deficiency disease" to "Congenital immune deficiency disease."

The criteria for congenital immune system disorders have been described in section 114.00B with greater specificity regarding target organ effects and requisite frequency of severe infections.

Proposed section 114.00C introduces the childhood HIV listings and lists some of the information that is important in documenting and evaluating the disease. In this section we explain what is acceptable evidence of HIV infection and when it is needed, including a specific discussion of acceptable evidence of infection in children under 15 months of age.

We recognize that the disease can manifest itself differently in younger children, and for that reason, we have included in 114.00C a discussion of HIV infection in children. We also discuss the need to evaluate the impact of all impairments, as well as the impact of therapy, in the HIV-infected child.

We also explain that some HIV-infected children may have impairments that are less than listings-level severity, but that may still be disabling. Evaluation of these individuals should proceed through the steps of the sequential evaluation process including an individualized functional assessment.

We have included all of this information in the introduction to the listing (rather than limiting the discussion to the preamble) to provide specific guidance to adjudicators on these issues pertinent to evaluating children with HIV infection.

114.08 Human Immunodeficiency Virus (HIV) Infection

We are proposing to add a new childhood listing for HIV infection. A separate listing is necessary for children because children with HIV infection differ from adults in the mode of infection, clinical manifestation, and course of the disease. Younger children may acquire infection from the mother or from transfusion of contaminated blood or blood products (such as coagulation factors). Rarely, children may become infected as a result of sexual abuse. In addition, survival times are shorter for children infected during gestation, delivery, or during the postpartum period compared to older children and adults. Older children (adolescents) may become infected from contaminated blood or blood products or due to behaviors such as intravenous drug use and unprotected sexual relations. The course and spectrum of disease in children aged 13 and older generally are similar to that of adults.

The childhood listing reflects that, although in children as well as adults, CD4 (T4 lymphocyte) counts decrease as disease progresses, infants and young children have much higher CD4 counts than adults. Even with serious opportunistic infection, young children can have CD4 counts which would fall within the normal range for adults.

As in the adult listing, those diseases that are indicative of severe HIV infection without documentation of the HIV virus are listed first (114.08A). In 114.08B–K, listed diseases are by type (e.g., fungal, bacterial, viral, protozoan, etc.) for ease of reference. The listing also includes diseases/conditions and the functional limitations of these diseases/conditions in HIV-infected children age 13 or younger. The functional criteria are specified by age group (birth to attainment of age 1, age 1 to attainment of age 3, and age 3 to attainment of age 13) and are based on the criteria found in the childhood mental listing (112.00). We have also included criteria (114.08M) for evaluation of diseases/conditions in children age 13 through attainment of age 18 which are similar to those in the adult listing. The functional criteria for these diseases/conditions are also based on the childhood mental listing.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations do not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations will impose no new reporting or recordkeeping requirements subject to clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only States and individuals who are applying for title II or title XVI benefits based on disability. Therefore, a regulatory flexibility analysis is not required.

(Catalog of Federal Domestic Assistance Program No. 93.802, Disability (Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Insurance, Old-Age, Survivors, and Disability insurance, Reporting and recordkeeping requirements, Social security.

Dated: October 1, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: October 22, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

For the reasons set out in the preamble, part 404, subpart P, of chapter III of title 20 of the Code of Federal Regulations is amended to read as set forth below.

1. The authority citation for subpart P of part 404 is revised to read as follows:

Authority: Secs. 202, 205(a), (b), and (d) through (h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 401, 405 (a), (b), and (d) through (h), 416(i), 421 (a) and (i), 422(c), 423, 425, and 1302.

Appendix 1 to Subpart P [Amended]

2. Appendix 1 (Listing of Impairments) to subpart P is amended by adding a new sentence at the end of the fifth paragraph of introductory text to read as follows: The Immune System listings in part A (14.00) and part B (114.00) and the Multiple Body Systems listings in part B (110.00) will no longer be effective on [*insert date 5 years after the publication date of the final rules in the Federal Register*], unless extended by the Secretary or revised and promulgated again.

3. The table of contents for part A of appendix 1 (Listing of Impairments) to subpart P is amended by revising the entry for listing 9.00, reserving the entry for listing 10.00, and adding an entry for listing 14.00 to read as follows:

* * * * *

9.00 Endocrine System and Obesity
10.00 [RESERVED]
11.00 * * *
12.00 * * *
13.00 * * *
14.00 Immune System

4. Part A of appendix 1 (Listing of Impairments) to subpart P is amended by revising the heading for 9.00, Endocrine System, and adding a second paragraph of introductory text, and revising the heading of 9.01, Category of Impairments, Endocrine, to read as follows:

9.00 Endocrine System and Obesity

* * * * *

Long-term massive obesity will usually be associated with disorders of the musculoskeletal, cardiovascular, peripheral vascular, and pulmonary systems, and the occurrence of these disorders is the major cause of disability at the listing level. Extreme obesity results in restrictions imposed by body weight and the additional restrictions imposed by disturbances in other body systems.

9.01 Category of Impairments, Endocrine System and Obesity

* * * * *

5. Part A of appendix 1 (Listing of Impairments) to subpart P is amended by redesignating listing 10.10, Obesity, as listing 9.09, Obesity, and revising the introductory paragraph and paragraph A to read as follows:

9.09 *Obesity*: Weight equal to or greater than the values specified in Table I for males, Table II for females (100 percent above desired level), and one of the following:

A. History of pain and limitation of motion in any weight-bearing joint or spine (on physical examination) associated with findings of medically acceptable imaging techniques of arthritis in the affected joint or spine; or

* * * * *

6. Part A of appendix 1 (Listing of Impairments) to subpart P is amended by removing listing 10.00, Multiple Body Systems, and reserving the entry for listing 10.00.

7. Part A of appendix 1 (Listing of Impairments) to subpart P is amended by adding listing 14.00, Immune System, to read as follows:

14.00 Immune System

A. Listed disorders include impairments involving deficiency of one or more components of the immune system (i.e., antibody-producing B cells; a number of different types of cells associated with cell-mediated immunity including T-lymphocytes, macrophages and monocytes; and components of the complement system).

B. Dysregulation of the immune system may result in the development of a connective tissue disease. Connective tissue diseases include several chronic multisystem disorders which differ in their clinical manifestation, course, and outcome. They generally evolve and persist for months or years, may result in loss of functional abilities, and require long-term, repeated evaluation and management.

Each of these disorders should be differentiated diagnostically by medical history, physical examination, and selected laboratory studies, imaging techniques, and in some instances, tissue biopsy. However, the Social Security Administration will not purchase diagnostic tests or procedures that may involve significant risk, such as biopsies or angiograms. Generally, the medical evidence of record will contain this information.

A clinical record of at least 3 months is necessary for assessment of severity and duration of impairment.

To permit appropriate application of a listing, the specific diagnostic features which should be documented in the clinical record for each of the disorders are summarized for systemic lupus erythematosus (SAL), systemic vasculitis, systemic sclerosis and scleroderma, polymyositis or dermatomyositis, and undifferentiated connective tissue disease.

In addition to the limitations caused by the connective tissue disease per se, the chronic adverse effects of therapy (e.g., corticosteroid-related ischemic necrosis of bone) may result in functional loss.

These disorders may preclude performance of gainful work activities by reason of severe loss of function in a single organ or body system, or lesser degrees of functional loss in two or more organs/body systems associated with severe constitutional symptoms and signs (e.g., severe fatigue, fever, malaise, weight loss).

1. *Systemic lupus erythematosus* (Listing 14.02)—This disease is characterized clinically by constitutional symptoms (e.g., fever, fatigability, anorexia and weight loss), multisystem involvement and, frequently, anemia, leukopenia, or thrombocytopenia. Immunologically, an array of circulating serum auto-antibodies can occur, but are highly variable in pattern. Generally the medical evidence will show that patients with this disease will fulfill The 1982 Revised Criteria for the Classification of Systemic Lupus Erythematosus of the American Rheumatism Association. (Tan, E.M., et al., Arthritis Rheum. 25: 11271–1277, 1982.)

2. *Systemic vasculitis* (Listing 14.03)—This disease occurs acutely in association with adverse drug reactions, certain chronic infections and, occasionally, malignancies. More often it is idiopathic and chronic. There are several clinical patterns, including classical polyarteritis nodosa, aortic arch arthritis, giant cell arthritis, Wegener's granulomatosis, and vasculitis associated with other connective tissue disorders (e.g., rheumatoid arthritis, SLE, Sjogren's syndrome, cryoglobulinemia). Cutaneous vasculitis may or may not be associated with systemic involvement and the patterns of vascular and ischemic involvement are highly variable. The diagnosis is confirmed by angiography or tissue biopsy when the disease is suspected clinically. Most patients who are stated to have this disease will have the results of the confirmatory angiogram or biopsy in their medical records.

3. *Systemic sclerosis and scleroderma* (Listing 14.04)—These disorders constitute a spectrum of disease in which thickening of the skin is the clinical hallmark. Raynaud's phenomena, often severe and progressive, are especially frequent and may be the peripheral manifestation of a generalized vasospastic abnormality in the heart, lungs, and kidneys. The *CREST* syndrome (calcinosis, Raynaud's phenomena, esophageal dysmotility, sclerodactyly, telangiectasia) is a variant which may slowly progress to the generalized process, systemic sclerosis, over years. In addition to skin and blood vessels, the major organ/body system involvement includes the gastrointestinal tract, lungs, heart, kidneys, and muscle. Although arthritis can occur, joint dysfunction results primarily from soft tissue/cutaneous thickening, fibrosis, and contractures.

4. *Polymyositis or dermatomyositis* (Listing 14.05)—This disorder is primarily an inflammatory process in striated muscle which can occur alone or in association with

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other connective tissue disorders or malignancy. Weakness and, less frequently, pain and tenderness of the proximal limb-girdle musculature are the cardinal manifestations. Involvement of the cervical muscles, the cricopharyngeals, the intercostals, and diaphragm occurs in those with severe disease. The diagnosis is supported by elevated serum muscle enzymes (creatine phosphokinase (CPK), serum glutamic oxaloacetic transaminase (SGOT), serum glutamic pyruvic transaminase (SGPT), aldolase), characteristic abnormalities on electromyography, and myositis on muscle biopsy.

5. *Undifferentiated connective tissue disorder* (Listing 14.06)—This listing includes syndromes with clinical and immunologic features of several connective tissue disorders, but which do not satisfy the criteria for any of the disorders described; for instance, the individual may have clinical features of systemic lupus and systemic vasculitis and the serologic findings of rheumatoid arthritis. The correct designation of this disorder is important for assessment of prognosis.

C. Allergic disorders (e.g., asthma or atopic dermatitis) are discussed under the appropriate listing of the affected body system.

D. Human immunodeficiency virus (HIV) infection including acquired immunodeficiency syndrome (AIDS) is caused by a specific retrovirus and is characterized by susceptibility to one or more opportunistic diseases, cancers, or other conditions as described in Listing 14.08. Therefore, any HIV-infected individual, including those with a diagnosis of AIDS, can establish an impairment of listing-level severity by meeting any of the criteria in listing 14.08A–M.

In addition, the criteria listed in 14.08 do not describe the full spectrum of diseases or conditions manifested by HIV-infected individuals. When other diseases or conditions are documented, determine whether the other diseases or conditions carry a level of severity equivalent to the HIV listing criteria (or, as appropriate, any other listing criteria).

The medical evidence should include documentation of HIV infection and specific laboratory evidence of an opportunistic disease, cancer, or other condition. The extent of immune depression correlates with the absolute number of percentage of CD4 (T4) lymphocytes. In general, when the CD4 count is 200 per mm^3 or less (14 percent or less), the susceptibility to opportunistic disease is considerably increased.

Laboratory evidence of HIV infection includes:

1. A serum specimen that contains HIV antibodies, detected by a screening test (e.g., ELISA) and confirmed by a more definitive test (e.g., Western blot, immunofluorescence assay), or

2. A serum specimen that contains HIV antigen, or

3. A lymphocyte culture, positive for HIV, confirmed by a specific test for the antigen (not just detection of reverse transcriptase), or

4. Other test(s) believed to be highly specific for detection of HIV (e.g., polymerase chain reaction (PCR)).

If HIV infection is not documented by the above laboratory evidence, a diagnosis of HIV infection can still be accepted if the individual has a disease predictive of a defect in cell-mediated immunity, and there is no known cause of diminished resistance to that disease. In such cases, full details of the history, clinical course, and results of serological testing, microbiologic cultures, or tissue biopsy must be documented. The documentation of HIV infection will rely on clinical history, physical examination, exclusion of other causes for clinical abnormalities and treating source opinion.

If HIV infection is not documented by the above evidence, an opportunistic disease as listed in 14.08A must be present for listing-level severity to be met.

Pneumocystis carinii pneumonia (14.08 B2) is the most common opportunistic disease associated with HIV infection. Pneumocystis carinii pneumonia is definitively diagnosed by histology or cytology. However, a diagnosis of pneumocystis carinii pneumonia may be based on clinical impressions and response to treatment. Medical judgment must be exercised when pneumocystis carinii pneumonia or other opportunistic diseases are diagnosed without microscopic evidence, to establish an equals the listing decision.

HIV encephalopathy (see 14.08G) is characterized by cognitive and/or motor dysfunction that limit function and progress over weeks and months in the absence of a concurrent illness that could explain the findings.

HIV wasting syndrome (see 14.08H) is characterized by involuntary weight loss (more than 10 percent of baseline body weight) and either chronic diarrhea (2 or more loose stools per day for 2 months or more) or chronic weakness and documented fever (greater than 100.4 °F for the majority of 2 months or longer) in the absence of a concurrent illness that could explain the findings.

Most women with end-stage HIV infection exhibit the typical opportunistic infections and other conditions, such as pneumocystis carinii pneumonia, candida esophagitis, wasting syndrome, cryptococcosis, and toxoplasmosis. However, HIV infection may manifest itself differently in women than in men. Adjudicators must carefully scrutinize the medical evidence and be alert to the variety of medical conditions specific to women which may or may not affect their ability to function in the work place. Examples include, but are not limited to:

1. Vulvovaginal candidiasis ("yeast infection," monilia). Although this condition usually heals quickly with appropriate treatment, in women with weak immune systems the disorder may become chronic or recurrent, painful and respond poorly to therapy. See 14.08M3f.

2. Genital herpes. Although the lesions usually occur in limited areas (such as the cervix), as HIV infection progresses the herpes may involve more widespread anatomical areas and may be chronic or recurrent, painful and resistant to therapy. See 14.08E2.

3. Pelvic inflammatory disease. This is a condition characterized by infection of the pelvic structures usually caused by infection with a sexually transmitted pathogen such as gonococcus (gonorrhea), chlamydia, or mycoplasma. Disease may be facilitated by an intrauterine device (IUD). In women infected with HIV, there may be resistance to therapy and recurrent episodes of inflammation and pain.

These gynecologic manifestations are also present in the general population but may be more severe in the immunosuppressed individual. It is important when evaluating the claim of a woman with HIV infection, that gynecologic problems be considered in assessing the severity of their impairment and their functional limitations.

Gynecologic conditions may or may not severely affect one's ability to function. These conditions should be considered, together with all other conditions, to determine if the impairment equals the severity of the listings.

In evaluating HIV infection, the impact of all impairment(s) must be considered. Many individuals with HIV infection manifest mental signs and symptoms such as anxiety, depression, apathy, and cognitive impairment. Medical evidence should include documentation of mental impairment when pertinent and the impairment(s) should be evaluated under the appropriate listing(s).

The impact of therapy must also be considered. The therapeutic regimens and consequent adverse response to therapy may vary; therefore, each case must be evaluated on an individual basis. It is essential to obtain a specific description of drugs given, dosage, frequency of administration, and a description of the complications or any other adverse response to therapy. In many instances the effect is temporary and/or dose-related; however, on occasion, the adverse effect may be permanent or long-term.

For individuals with HIV infection evaluated under Listing 14.08M, listing-level severity will be assessed in terms of the functional limitations imposed by the impairment. The full impact of signs, symptoms, and laboratory findings on the claimant's ability to function in a work setting must be considered. Important factors to be considered in evaluating the functioning of individuals with HIV infection include, but are not limited to: Symptoms, such as fatigue and pain; characteristics of the illness, such as the frequency and duration of manifestations or periods of exacerbation and remission in the disease course; and the functional impact of treatment for the disease, including the side effects of medication.

To meet the standards in Listing 14.08M, the HIV-infected individual must demonstrate the level of restrictions in at least two of the four general areas of functioning set out in paragraph 14.08M4.

Where "marked" is used as a standard for measuring the degree of functional limitations, it means more than moderate, but less than extreme. A marked limitation may arise when several activities or functions are impaired or even when only one is impaired, so long as the degree of limitation is such as to seriously interfere with the ability to function independently, appropriately, and effectively.

The four general areas of functioning in which the functioning of HIV-infected individuals is to be assessed are: activities of daily living; social functioning; difficulties in completing tasks due to deficiencies in concentration, persistence, or pace; and repeated episodes of deterioration or decompensation in work or work-like settings. These areas of functioning provide a framework for the evaluation of the specific functional limitations of the individual. Functional limitations should always be assessed on a case-by-case basis.

For the first general area of functioning, activities of daily living, marked means that most of the time the individual is unable to perform daily activities independently; Activities of daily living include, but are not limited to, such activities as doing household chores, grooming and hygiene, using a post office, taking public transportation, and paying bills. For example, an HIV-infected person, because of symptoms, such as pain, or the fatigue imposed by the illness or its treatment, or the side effects of medication, may be able to perform some self-care activities but not be able to maintain a household, or take public transportation on a sustained, regular basis or without assistance.

For the second general area of functioning, social functioning (i.e., the individual's capacity to interact appropriately and communicate effectively with others), marked means that most of the time the individual is unable to sustain interaction and communication. For example, an HIV-infected person may be restricted from engaging in social interaction on a sustained basis. These restrictions could also result from HIV- or treatment-induced fatigue or other symptoms or could result from a pattern of exacerbation and remission caused by the illness itself or its treatment.

For the third general area of functioning, marked means that most of the time the individual is unable to sustain concentration, persistence, or pace to permit timely completion of tasks commonly found in work settings. The HIV-infected person may be restricted in this area by the impact of the disease process itself on his or her mental or physical functioning, or both. This could result from extended or intermittent symptoms, such as depression, fatigue, or pain, resulting in a limitation on the ability to concentrate, to persevere at the task, or to perform the task at an acceptable rate of speed. Limitations may also result from the side effects of medication which limit the ability of the person to complete tasks or to sustain activity.

For the fourth general area of functioning, repeated episodes of deterioration or decompensation in work or work-like settings refers to frequent inability to adapt to the work setting or recurrent significant limitations in this ability. This may be caused by manifestations of HIV infection itself, such as its symptoms, or by the frequency and intrusiveness of treatment for the disease. For example, repeated episodes of deterioration could include frequent hospitalizations because of exacerbations of HIV manifestations or medical need to be absent from work imposed on the person because of immunosuppression.

Some individuals infected with HIV are asymptomatic and have no identifiable severe impairment. Other individuals with documented HIV infection may manifest signs and symptoms, such as generalized lymphadenopathy, moderate weight loss, fever, diarrhea, malaise and lethargy, lymphopenia, anemia, thrombocytopenia, or mucosal candidiasis that are less than listing-level severity. Individuals who have an impairment with a level of severity which does not meet or equal the criteria of the listings may or may not have the residual functional capacity to engage in substantial gainful work activity. Evaluation of the impairment of these individuals should proceed through the final steps of the sequential evaluation process (or, as appropriate, the steps in the medical improvement review standard).

14.01 Category of Impairments, Immune System

14.02 *Systemic lupus erythemotosus.* Documented as described in 14.00B1 by a longitudinal clinical record of at least 3 months demonstrating active disease despite prescribed therapy during this period with the expectation that the disease will remain active for 12 months, with:

A. One of the following:

1. Joint involvement as described under the criteria in 1.02; or

2. Muscle involvement as described under the criteria in 14.05; or

3. Ocular involvement as described under the criteria in 2.02, 2.03, 2.04, 2.05, or 2.06; or

4. Respiratory involvement as described under the criteria in 3.02; or

5. Cardiovascular involvement as described under the criteria in 4.02, 4.03, 4.04, 4.05, 4.09, 4.11, 4.12, or 4.13; or

6. Digestive involvement as described under the criteria in 5.02, 5.03, 5.04, 5.05, 5.06, 5.07, or 5.08; or

7. Renal involvement as described under the criteria in 6.02 or 6.06; or

8. Skin involvement as described under the criteria in 8.02; or

9. Neurological involvement as described under the criteria in 11.02, 11.03, 11.04, 11.08, or 11.14; or

10. Mental involvement as described under the criteria in 12.02.

Or

B. Lesser involvement of two or more organs or body systems listed in paragraph A with severe, documented, incapacitating constitutional symptoms and signs (e.g., severe fatigue, fever, malaise, weight loss) despite prescribed treatment. At least one of the organs/body systems must be involved to at least a moderate level of severity over the requisite period of observation of 3 or more months with the expectation that the multisystem severe involvement will persist for at least 12 months.

14.03 *Systemic vasculitis.* Documented as described in 14.00B2, including documentation by angiography or tissue biopsy or other commonly accepted diagnostic tests and a longitudinal clinical record of at least 3 months demonstrating active disease despite prescribed therapy during this period with the expectation that the disease will remain active for 12 months. With:

A. Involvement of a single organ or body system as in 14.02A.

OR

B. Lesser involvement of two or more organs/body systems listed in 14.02A with severe documented constitutional symptoms and signs (e.g. severe fatigue, fever, malaise, weight loss). At least one of the organs/body systems must be involved to at least a moderate level of severity over the requisite period of observation of 3 or more months with the expectation that the multisystem involvement will persist for at least 12 months.

14.04 *Systemic sclerosis and scleroderma.* Documented as described in 14.00B3 by a longitudinal clinical record of at least 3 months demonstrating active disease despite prescribed therapy during this period with the expectation that the disease will remain active for 12 months. With:

A. One of the following:

1. Muscle involvement as described under the criteria in 14.05; or

2. Respiratory involvement as described under the criteria in 3.02; or

3. Cardiovascular involvement as described under the criteria in 4.02, 4.03, 4.04, 4.05, 4.09, 4.11, 4.12, or 4.13; or

4. Digestive involvement as described under the criteria in 5.02, 5.03, 5.04, 5.05, 5.06, 5.07, or 5.08; or

5. Renal involvement as described under the criteria in 6.02 or 6.06.

OR

B. Lesser involvement of two or more organs/body systems listed in 14.04A with documented major constitutional symptoms and signs, (e.g., severe fatigue, fever, malaise, weight loss). At least one of the organs/body systems must be involved to at least a moderate level of severity over the requisite 3 or more months of observation with the expectation that the multisystem involvement will persist for at least 12 months.

OR

C. Generalized scleroderma with digital contractures.

OR

D. Severe Raynaud's phenomena with digital ulcerations, ischemia, or gangrene.

14.05 *Polymyositis or dermatomyositis.* Documented as described in 14.00B4 by a longitudinal clinical record of at least 3 months demonstrating active disease, including severe proximal muscle weakness despite prescribed therapy during this period with the expectation that the disease will remain active for 12 months. With:

A. Severe proximal limb-girdle (shoulder and/or pelvic) muscle weakness as described in 11.12B.

OR

B. Less severe limb-girdle muscle weakness than in 14.05A associated with cervical muscle weakness and one of the following to at least a moderate level of severity:

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1. Impaired swallowing due to cricopharyngeal weakness, or
2. Impaired respiration due to intercostal and diaphragmatic muscle weakness.

OR

C. If associated with malignant tumor, evaluate under 13.00.

OR

D. If associated with generalized connective tissue disease, evaluate under 14.02, 14.03, 14.04, or 14.06.

14.06 *Undifferentiated connective tissue disorders.* Documented as described in 14.00B5 by a longitudinal clinical record of at least 3 months demonstrating active disease despite prescribed therapy during this period with the expectation that the disease will remain active for 12 months, with criteria as described in 14.02A or 14.02B.

14.07 *Immunoglobulin deficiency syndromes or deficiencies of cell-mediated immunity excepting HIV infection.* Associated with systemic infection occurring 3 or more times within a 5-month period.

14.08 *Human immunodeficiency virus (HIV) infection.*

A. If there is no documentation of HIV infection as described in 14.00D and the person has no other cause of immunodeficiency, one or more of the following diseases should be present:

1. Candidiasis of the esophagus, trachea, bronchi, or lungs (demonstrated by biopsy microscopy of a "wet" preparation or culture); or
2. Cryptococcosis, extrapulmonary (demonstrated by culture, antigen detection in the cerebrospinal fluid (CSF), India-ink preparation of the CSF, or by biopsy); or
3. Cryptosporidiosis with diarrhea persisting over 1 month (documented by intestinal biopsy or fecal microscopy); or
4. Cytomegalovirus disease of an organ other than liver, spleen, or lymph nodes (demonstrated by culture or histology); or
5. Herpes simplex virus infection causing a mucocutaneous ulcer that persists longer than 1 month, or bronchitis, pneumonitis, or esophagitis for any duration (demonstrated by culture, histology or cytology); or
6. Lymphoma of the brain (primary) affecting a patient less than 60 years of age; or
7. Mycobacterium avium complex or M. kansasii disease, disseminated (at a site other than or in addition to lungs, skin, or cervical or hilar lymph nodes) demonstrated by culture); or
8. Pneumocystis carinii pneumonia (documented by lung biopsy, microscopy of a "touch" preparation, bronchial washings, or induced sputum); or
9. Progressive multifocal leukoencephalopathy; or
10. Toxoplasmosis of the brain.

OR

B. Documentation of HIV infection as described in 14.00D and one of the following protozoan or helminthic infections:

1. Intestinal cryptosporidiosis (documented by intestinal biopsy or fecal microscopy) that has caused diarrhea for 1 month or more; or
2. Pneumocystis carinii pneumonia (documented by lung biopsy, microscopy of a "touch" preparation, bronchial washings, or induced sputum); or
3. Toxoplasmosis (documented by histology or microscopy of a "touch" preparation) with involvement of an organ other than the liver, spleen, or lymph nodes; or
4. Isosporiasis (documented by intestinal biopsy or fecal microscopy) that has caused diarrhea for a month or more; or
5. Extra-intestinal strongyloidiasis.

OR

C. Documentation of HIV infection as described in 14.00D and one of the following fungal infections:

1. Candidiasis, disseminated (beyond the skin, urinary tract, intestinal tract, or oral or vulvovaginal mucous membranes) or involving the esophagus, trachea, bronchi, or lungs (and demonstrated by microscopy of a "wet" preparation, or observation on endoscopy of white plaques on an erythematous base); or
2. Cryptococcosis, disseminated (beyond the lungs), or involving the central nervous system and demonstrated by culture, antigen detection in the CSF, India-ink preparation of the CSF, or by biopsy); or
3. Disseminated histoplasmosis (beyond the lungs or lymph nodes and demonstrated by culture or biopsy); or
4. Disseminated coccidioidomycosis (beyond the lungs or lymph nodes and demonstrated by culture or histology).

OR

D. Documentation of HIV infection as described in 14.00D and mycobacterial infection, disseminated (beyond the lungs, lymph nodes, or skin) and demonstrated by culture or by microscopy showing acid fast bacilli of a species not identified by culture.

OR

E. Documentation of HIV infection as described in 14.00D and one of the following viral infections:

1. Cytomegalovirus, causing infection of organs other than the liver, spleen, or lymph nodes and demonstrated by culture or histology; or
2. Herpes simplex virus, causing chronic continuous, (longer than 1 month) mucocutaneous infection or infection of the pulmonary or gastrointestinal tracts or encephalitis or disseminated infection demonstrated by culture, histology, or cytology; or
3. Progressive multifocal leukoencephalopathy.

OR

F. Documentation of HIV infection as described in 14.00D and one of the following bacterial infections:

1. Recurrent non-typhoid salmonella bacteremia; or
2. Nocardiosis (demonstrated by culture).

OR

G. Documentation of HIV infection as described in 14.00D and HIV encephalopathy (see 14.00D).

OR

H. Documentation of HIV infection as described in 14.00D and HIV wasting syndrome (see 14.00D).

OR

I. Documentation of HIV infection as described in 14.00D and one of the following neoplasms:

1. Lymphoma of the brain; or
2. Other Non-Hodgkin's lymphoma of B-cell or unknown phenotype and histology indicating either:
   a. Burkitt's or other small noncleaved lymphoma; or
   b. Immunoblastic sarcoma.

Or

J. Documentation of HIV infection as described in 14.00D and one of the following neoplasms:

1. Non-Hodgkin's lymphoma or Hodgkin's disease; or
2. Invasive carcinoma of the cervix, FIGO stage II and beyond.
3. Anal squamous cell carcinoma.

Or

K. Documentation of HIV infection as described in 14.00D and cardiomyopathy as described under the criteria in 4.02, 4.04, or 4.05.

Or

L. Documentation of HIV infection as described in 14.00D and nephropathy as described under the criteria in 6.02 or 6.06.

Or

M. Documentation of HIV infection as described in 14.00D with the criteria listed below. (The level of severity is met when the requirements for both 1 and 4, both 2 and 4, or both 3 and 4 are satisfied.)

1. Impaired cellular immunity as manifested by a CD4(T4) lymphocyte count less than or equal to 200 cells/mm ^{3} (or 14 percent or less lymphocytes); or
2. One or more of the following persistent and/or resistant to therapy:
   a. Pneumonia; or
   b. Pulmonary tuberculosis; or
   c. Bacterial or fungal sepsis; or
   d. Meningitis; or
   e. Septic arthritis; or
   f. Endocarditis; or
   g. Peripheral neuropathy; or
   h. Kaposi's sarcoma;

   Or

3. Two or more of the following persisting over a 2-month period:
   a. Anemia, (hematocrit (HCT) less than or equal to 30 percent); or
   b. Granulocytopenia (absolute neutrophil count less than or equal to 1000/mm ^{3}); or
   c. Thrombocytopenia (less than or equal to 40,000/mm ^{3}); or
   d. Documented fever (greater than or equal to 100.4 °F or 38 °C); or
   e. Weight loss of greater than or equal to 10 percent of baseline; or
   f. Mucosal (including vulvovaginal) candidiasis other than listed in 14.08A1 or 14.08C1; or
   g. Oral hairy leukoplakia; or
   h. Chronic or recurrent Herpes Zoster; or
   i. Persistent dermatological conditions such as eczema, psoriasis; or
   j. Persistent, unresponsive diarrhea; or
   k. Persistent or recurrent radiographically documented sinusitis;

   And

4. At least two of the following:
   a. Market restriction of activities of daily living; or

   b. Marked difficulties in maintaining social functioning; or
   c. **Marked difficulties in completing tasks** in a timely manner due to deficiencies in concentration, persistence, or pace; or
   d. Repeated episodes of decompensation, averaging three times a year or once every four months, lasting two or more weeks each, which cause the individual to deteriorate (which may include loss of adaptive functioning).

8. The table of contents for part B of appendix 1 (Listing of Impairments) to subpart P is amended by adding an entry for listing 114.00 to read as follows:

* * * * *

114.00 Immune System

9. In part B of appendix 1 (Listing of Impairments) to subpart P, Listing 110.00 is amended by removing the last sentence of paragraph B.

10. In part B of appendix 1 (Listing of Impairments) to subpart P, Listing 110.09, Immune deficiency disease, is removed.

11. In part B of appendix 1 (Listing of Impairments) to subpart P, a new Listing 114.00 is added to read as follows:

114.00 Immune System

A. Listed disorders includes impairments involving deficiency of one or more components of the immune system (i.e., antibody-producing B cells; a number of different types of cells associated with cell-mediated immunity including T-lymphocytes, macrophages and monocytes; and components of the complement system).

B. Dysregulation of the immune system may result in the development of a connective tissue disease. Connective tissue diseases include several chronic multisystem disorders which differ in their clinical manifestation, course, and outcome. These disorders are described in Part A, 14.00B. Some of the features of these disorders in children may differ from the manifestation in adults. When the clinical manifestation is the same as that seen in adults, principles and concepts in part A, 14.00B apply. The documentation needed to establish the existence of a connective tissue disorder is medical history, physical examination, selected laboratory studies, imaging techniques and, in some instances, tissue biopsy. (The Social Security Administration will not purchase tissue biopsy. Tissue biopsy, however, will usually be available in the clinical record when it is essential for diagnosis and therapy.) As for adults, a clinical record of at least 3 months is necessary for assessment of severity and duration of impairment.

The growth impairment Listing 100.00 should be used when growth is affected by the disorder or its treatment by immunosuppressive drugs.

In **Kawasaki disease, also known as mucocutaneous lymph node syndrome**, the disease is usually confined to the coronary arteries and impairment should be evaluated under Listing 104.00. Undifferentiated connective tissue disorder should be evaluated under the same criteria as 114.02.

In children the impairment may affect growth development, attainment of age-appropriate skills, and performance of age-appropriate activities. The limitations may be the result of loss of function or failure in a single organ or body system or lesser degrees of functional loss in two or more organs/body systems which in combination with constitutional symptoms and signs (e.g., severe fatigue, fever, malaise, weight loss) results in disabling limitations.

C. Human immunodeficiency virus (HIV) infection including acquired immunodeficiency syndrome (AIDS) is caused by an infection with a specific retrovirus and is characterized by susceptibility to one or more opportunistic diseases, cancers, or other conditions, as designated in Listing 114.08. Therefore, any HIV-infected child, including those with a diagnosis of AIDS, can establish an impairment of listing-level severity by meeting any of the criteria in listing 114.08A–M applicable to his/her age.

In addition, the listed manifestations of HIV infection do not describe the full spectrum of diseases seen in HIV-infected children. When other diseases or conditions are documented, determine whether the other diseases or conditions carry a level of severity equivalent to the HIV listing criteria (or, as appropriate, any other listing criteria).

The medical evidence should include documentation of HIV infection and specific laboratory evidence of an opportunistic disease.

Laboratory evidence of HIV infection includes:

1. A serum specimen that contains HIV antibodies, detected by a screening test (e.g., ELISA) and confirmed by a more definitive test (e.g., Western blot, immunofluorescence assay), or
2. A serum specimen that contains HIV antigen, or
3. A lymphocyte culture, positive for HIV, confirmed by a specific test for the antigen, (not just detection of reverse transcriptase).
4. Other tests believed to be highly specific for detection of HIV (e.g., polymerase chain reaction (PCR)).

Mothers with HIV infection usually transfer HIV antibodies to their newborns and therefore, these infants will have HIV antibodies in their serum. Therefore, this finding does not necessarily in itself establish the presence of HIV infection in the infant. Because the presence of HIV infection in young children can be difficult to confirm, evidence of significantly depressed CD4 counts may also be used to establish that a disease or condition is in fact related to HIV infection. Laboratory evidence of HIV infection for children under 15 months of age includes:

1. A serum specimen that contains HIV antigen, or
2. A blood or CSF culture positive for HIV, confirmed by a specific test for the antigen, or
3. Other tests believed to be highly specific for detection of HIV (e.g., polymerase chain reaction (PCR)), or
4. In children from birth to the attainment of 1 year of age, a CD4 (T4) count of 1500 per mm ^{3} or less, or a CD4 count less than or equal to 20 percent of total lymphocytes, or
5. In children from age 1 to 15 months of age, a CD4 (T4) count of 750 per mm ^{3} or less, or a CD4 count less than or equal to 20 percent of total lymphocytes.

If HIV infection is not documented by the above laboratory evidence, a diagnosis of HIV infection can still be accepted if the individual has a disease predictive of a defect in cell-mediated immunity, and there is no known cause of diminished resistance to that disease. In such cases, full details of the history, clinical course, and results of serological testing, microbiologic cultures, or tissue biopsy must be documented. The documentation of HIV infection will rely on clinical history, physical examination, exclusion of other causes for clinical abnormalities and treating source opinion.

If HIV infection is not documented by the above evidence, an opportunistic disease or condition as listed in 114.08A is necessary to meet or equal the HIV infection listing.

Pneumocystis carinii pneumonia (114.08 B2) is one of the most common opportunistic diseases associated with HIV infection. Pneumocystis carinii pneumonia is definitively diagnosed by histology or cytology. However, a diagnosis of pneumocystis carinii pneumonia may be based on clinical impressions and response to treatment. Medical judgment must be exercised when pneumocystis carinii pneumonia or other opportunistic diseases are diagnosed with microscopic evidence, to establish as equals the listing decision.

Younger children with HIV infection differ from adults in the mode of infection, clinical manifestation, and course of disease. Younger children may acquire infection from the mother or from transfusion of contaminated blood or blood products (such as coagulation factors) or, rarely, as a result of sexual abuse. In addition, survival times are shorter for children infected in the first year of life compared to older children and adults. Older children (adolescents) may become infected from contaminated blood or blood products or due to behaviors such as intravenous drug use and unprotected sexual relations. The course and spectrum of disease in children age 13 and older generally is similar to that of adults. Some children, particularly older children, may exhibit HIV encephalopathy as described in 14.08C and should be evaluated under that listing when applicable. Older children also may exhibit HIV wasting syndrome as described in 14.08H and should be evaluated under that listing when applicable.

The mean age of diagnosis of children infected before or shortly after birth is 17 months but a diagnosis may be made much earlier. The majority develop failure to thrive, pneumonia, enlarged livers and spleens. Infants will commonly have candida infection, failure to thrive, pneumocystis carinii pneumonia (PCP); 2-year-olds may present with parotitis, enlarged lymph nodes, recurrent infections, neurologic problems, and developmental abnormalities.

Although in children, as well as adults, T-helper lymphocyte (CD4) counts decrease as disease progresses, infants and young

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children have much higher CD4 counts than adults. Children with significant immunosuppression can have CD4 counts which would fall within the normal range for adults.

In evaluating HIV infection, the impact of all impairments must be considered. Children with HIV infection may manifest mental signs and symptoms such as anxiety, depression, apathy, and cognitive impairment. Medical evidence should include documentation of mental impairment when pertinent and the impairment(s) should be evaluated under the appropriate listing(s).

The impact of therapy must also be considered. The therapeutic regimens and consequent adverse response to therapy may vary; therefore, each case must be evaluated on an individual basis. It is essential to obtain a specific description of the drugs given, dosage, frequency of administration, and a description of the complications or any other response to therapy. In many instances the effect is temporary and/or dose-related; however, on occasion, the adverse effect may be permanent or long term.

For children with HIV infection evaluated under Listings 114.08L or M, listing-level severity will be assessed in terms of the functional limitations imposed by the manifestations of the impairment. The full impact of signs, symptoms, and laboratory findings on the child's ability to grow, develop, or engage in age-appropriate activities must be considered. Important factors to be considered in evaluating the functioning of children with HIV infection include, but are not limited to: symptoms, such as fatigue and pain; characteristics of the illness, such as the frequency and duration of manifestations or periods of exacerbation and remission in the disease course; and the functional impact of treatment for the disease, including the side effects of medication.

To meet the standards in Listing 114.08L, for children age 12 or younger, the HIV-infected child must demonstrate the appropriate degree and number of limitations for his or her age in Listing 112.02, paragraph B1 (for children age 1 to attainment of age 3) or paragraph B2 (for children age 3 to attainment of age 13), or in any paragraph of Listing 112.12 (for children from birth to the attainment of age 1). To meet the standards in Listing 114.08M, a child age 13 to the attainment of age 18 must demonstrate marked restriction in at least two of the four general areas of functioning in Listing 112.02, paragraph B2.

It must be remembered that children whose impairments do not meet the criteria of the listings for HIV infection may or may not have impairments that are equivalent in severity to these listings and, if not, may or may not have impairments of comparable severity to those that would disable an adult based on an individualized functional assessment (IFA). When an HIV-infected child has a medically determinable impairment that is not listed and does not meet the criteria of any other listing, we will consider whether the child's impairment or combination of impairments is equivalent in severity to any listed impairment. If the child's impairment or impairments do not equal a listing (medically or functionally), an IFA is crucial to the evaluation of whether the child is disabled.

Some children with documented HIV infection may not manifest the specified conditions that are listed in 114.08L or M, but have other signs and symptoms indicative of HIV infection, which affect their ability to grow, develop, or engage in age-appropriate activities.

114.01 Category of Impairments, Immune System

114.02 Systemic lupus erythematosus. Documented as described in Part A, 14.00B1 and Part B 114.00B by a longitudinal clinical record of at least 3 months demonstrating active disease despite prescribed therapy during this period with the expectation that the disease will remain active for 12 months, with:

A. One of the following:

1. Growth impairment as described under the criteria in 100.02 or 100.03; or

2. Musculoskeletal involvement as described under the criteria in 101.02, 101.03, 101.05, or 101.08; or

3. Ocular involvement as described under the criteria in 102.02; or

4. Respiratory involvement as described under the criteria in 103.01; or

5. Cardiovascular involvement as described under the criteria in 104.02, 104.03, 104.05, 104.07, or 104.08; or

6. Digestive system involvement as described under the criteria in 105.03, 105.05, 105.07, or 105.08; or

7. Renal involvement as described under the criteria in 106.02 or 106.06; or

8. Hematologic involvement as described under the criteria in 107.03 or 107.06; or

9. Endocrine involvement as described under the criteria in 109.02, 109.03, 109.04, 109.06, 109.07, 109.08, 109.09, or 109.12; or

10. Skin involvement as described under the criteria in Part A, Listing 8.02; or

11. Neurological involvement as described under the criteria in 111.02, 111.03, 111.06, 111.07, or 111.09; or

12. Mental involvement as described under the criteria in 112.02, 112.03, or 112.04.

OR

B. Lesser involvement of two or more organs or body systems listed in paragraph A with severe, documented, incapacitating constitutional symptoms and signs (e.g., marked fatigue, fever, malaise, weight loss) despite prescribed treatment. At least one of the organs/body systems must be involved to at least a moderate level of severity over the requisite period of 3 or more months with the expectation that the multisystem severe involvement will persist for 12 months.

114.03 *Systemic vasculitis.* Evaluate according to Part A, 14.03 or, if growth impairment, evaluate under the criteria in 100.00.

114.04 *Systemic sclerosis and scleroderma.*

A. Evaluate according to Part A, 14.04, or, if growth impairment, evaluate under the criteria in 100.00.

OR

B. Linear scleroderma with one of the following:

1. Fixed valgus or varus deformities of both hands or both feet; or

2. Marked destruction or marked atrophy of an extremity; or

3. Facial disfigurement from hypoplasia of the mandible, maxilla, or zygoma resulting in an impairment described under the criteria in 112.02, 112.03, 112.04, 112.05, 112.06, 112.07, 112.08, 112.09, 112.10, 112.11, or 112.12; or

4. Seizure disorder as described under the criteria in 111.02 or 111.03.

114.05 *Polymyositis or dermatomyositis.*

A. Evaluate according to Part A, 14.05.

OR

B. With one of the following:

1. Multiple joint contractures; or

2. Diffuse cutaneous calcification with formation of an exoskeleton; or

3. Systemic vasculitis as described in Part A, 14.03.

114.06 *Undifferentiated connective tissue disorder.* Evaluate according to Part A, 14.06.

114.07 *Congenital immune deficiency disease.*

A. Hypogammaglobulinemia or dysgammaglobulinemia, with:

1. Documented, recurrent severe infections occurring at least 3 times during the 5 months prior to adjudication; or

2. An associated disorder such as growth retardation, chronic lung disease, collagen disorder or tumor. Evaluate according to the appropriate body system listing.

OR

B. Thymic dysplastic syndromes (such as Swiss, diGeorge).

114.08 *Human immunodeficiency virus (HIV) infection.*

A. If there is no documentation of HIV infection as described in 114.00C and the child has no other cause of immunodeficiency, one or more of the following diseases should be present:

1. Candidiasis of the esophagus, trachea, bronchi, or lungs (demonstrated by biopsy microscopy of a "wet" preparation or culture); or

2. Cryptococcosis, extrapulmonary (demonstrated by culture, antigen detection in the CSF, India-ink preparation of the CSF, or by biopsy); or

3. Cryptosporidiosis with diarrhea persisting over 1 month (documented by intestinal biopsy or fecal microscopy; or

4. Cytomegalovirus disease of an organ other than liver, spleen, or lymph nodes in a child over 1 month of age (demonstrated by culture or histology); or

5. Herpes simplex virus infection causing a mucocutaneous ulcer that persists longer than 1 month; or bronchitis, pneumonitis, or esophagitis for any duration affecting a child over 1 month of age (demonstrated by culture, histology or cytology); or

6. Lymphoma of the brain (primary); or

7. Lymphoid interstitial pneumonia and/or pulmonary lymphoid hyperplasia (LIP/PLH complex) affecting a child less than 13 years of age (demonstrated by biopsy); or

8. Mycobacterium avium complex or M. kansasii disease, disseminated (at a site other than or in addition to lungs, skin, or cervical or hilar lymph nodes) (demonstrated by culture); or

9. Pneumocystis carinii pneumonia (documented by lung biopsy, mocroscopy of a "touch" preparation, bronchial washings, or induced sputum); or

10. Progressive multifocal leukoencephalopathy; or

11. Toxoplasmosis of the brain affecting a child over 1 month of age.

OR

B. Documentation of HIV infection as described in 114.00C and one of the following protozoan or helminthic infections:

1. Intestinal cryptosporidiosis (documented by intestinal biopsy or fecal microscopy) that has caused diarrhea for a month or more; or

2. Pneumocystis carinii pneumonia (documented by lung biopsy, microscopy or a "touch" preparation, bronchial washings, or induced sputum); or

3. Toxoplasmosis (documented by histology or microscopy of a "touch" preparation) with involvement of an organ other than the liver, spleen, or lymph nodes; or

4. Isosporiasis (documented by intestinal biopsy or fecal microscopy) that has caused diarrhea for a month or more; or

5. Extra-intestinal strongyloidiasis.

OR

C. Documentation of HIV infection as described in 114.00C and one of the following fungal infections:

1. Candidiasis, disseminated (beyond the skin, urinary tract, intestinal tract, or oral or vulvovaginal mucous membranes), or involving the esophagus, trachea, bronchi or lungs (and demonstrated by microscopy of a "wet" preparation, or observation on endoscopy of white plaques on an erythematous base); or

2. Cryptococcosis, disseminated (beyond the lungs), or involving the central nervous system (and demonstrated by culture, antigen detection in the CSF, India-ink preparation of the CSF, or by biopsy); or

3. Disseminated histoplasmosis (beyond the lungs or lymphnodes and demonstrated by culture or biopsy); or

4. Disseminated coccidioidomycosis (beyond the lungs or lymph nodes and demonstrated by culture or by histology).

OR

D. Documentation of HIV infection as described in 114.00C and mycobacterial infection, disseminated (beyond the lungs, lymph nodes, or skin and demonstrated by culture or by microscopy showing acid fast bacilli of a species not identified by culture);

OR

E. Documentation of HIV infection as described in 114.00C and one of the following viral infections:

1. Cytomegalovirus, causing infection of organs other than the liver, spleen, or lymph nodes and demonstrated by culture or histology; or

2. Herpes simplex virus, causing chronic, continuous (longer than 1 month), mucocutaneous infection or infection of the pulmonary or gastrointestinal tracts or encephalitis or disseminated infection demonstrated by culture, histology, or cytology; or

3. Progressive multifocal leukoencephalopathy.

OR

F. Documentation of HIV infection as described in 114.00C and bacterial infections of one of the following types:

1. Multiple or recurrent bacterial infections (i.e., two or more within a 2-year period of time) of the following types affecting a child less than 13 years of age: septicemia, pneumonia, meningitis, bone or joint infection, or abscess of an internal organ or body cavity (excluding otitis media or superficial skin or mucosal abscesses) caused by pyogenic bacteria; or

2. Nocardiosis (demonstrated by culture); or

3. Recurrent non-typhoid salmonella bacteremia.

OR

G. Documentation of HIV infection as described in 114.00C lymphoid interstitial pneumonia and/or lymphoid hyperplasia (LIP/PLH complex) affecting a child less than 13 years of age (documented histologically or by a persistent interstitial pattern on chest x ray for 2 months or more).

OR

H. Documentation of HIV infection as described in 114.00C and one of the following neoplasms:

1. Lymphoma of the brain; or

2. Other non-Hodgkin's lymphoma of B-cell or unknown phenotype and histology indicating either:

a. Burkitt's or other small noncleaved lymphoma; or

b. Immunoblastic sarcoma.

OR

I. Documentation of HIV infection as described in 114.00C and non-Hodgkin's lymphoma or Hodgkin's disease.

OR

J. Documentation of HIV infection as described in 114.00C and progressive neurologic disease resulting in one or more of the following:

1. Loss of previously acquired or marked delay in achieving developmental milestones or intellectual ability; or

2. Impaired brain growth (acquired microcephaly and/or brain atrophy on scan); or

3. Progressive symmetric motor deficits as manifested by two or more of paresis, abnormal tone, pathologic reflexes, ataxia, or gait disturbance.

OR

K. Documentation of HIV infection as described in 114.00C and failure to thrive or a falling off from the age-appropriate range of the projected growth curve. Evaluate under 100.02

OR

L. Documentation of HIV infection as described in 114.00C in children age 12 or younger with the criteria listed below. (The level of severity is met when the requirements for both 1 and 3 are satisfied, or both 2 and 3 are satisfied.)

1. One or more of the following persistent and/or resistant to therapy:

a. Pneumonia; or

b. Pulmonary tuberculosis; or

c. Bacterial or fungal sepsis; or

d. Meningitis; or

e. Septic arthritis; or

f. Endocarditis; or

g. Peripheral neuropathy; or

h. Kaposi's sarcoma;

OR

2. Two or more of the following persisting for at least 2 months:

a. Fever (greater than or equal to 100.4° F or 38° C); or

b. Hepatomegaly; or

c. Splenomegal; or

d. Generalized lymphadenopathy; or

e. Parotitis; or

f. Diarrhea (defined as 3 more loose stools daily or at least two recurrent episodes associated with dehydration); or

g. Persistent dermatological conditions such as eczema, psoriasis, or

h. Weight loss greater than 10 percent; or

i. Persistent or recurrent radiographically documented sinusitis; or

AND

3. For children from birth to attainment of age 1 at least one of the criteria in paragraphs A–E of 112.12; or

For children age 1 to attainment of age 3 at least one of the appropriate age-group criteria in paragraph B1 of 112.02; or

For children age 3 to attainment of age 13, at least two of the appropriate age-group criteria in paragraph B2 of 112.02.

OR

M. Documentation of HIV infection as described in 114.00C in children age 13 or older with the criteria listed below. (The level of severity is met when the requirements for both 1 and 4, both 2 and 4, or both 3 and 4 are satisfied.)

1. Impaired cellular immunity as manifested by a CD4 (T4) lymphocyte count less than or equal to 200 cells/mm ^{3} (or 14 percent or less lymphocytes); or

2. One or more of the following persistent and/or resistant to therapy:

a. Pneumonia; or

b. Pulmonary tuberculosis; or

c. Bacterial or fungal sepsis; or

d. Meningitis; or

e. Septic arthritis; or

f. Endocarditis; or

g. Peripheral neuropathy;

h. Kaposi's sarcoma;

OR

3. Two or more of the following persisting over a 2-month period:

a. Anemia, (Hematocrit (HCT) less than or equal to 30 percent); or

b. Granulocytopenia (absolute neutrophil count less than or equal to 1000/mm ^{3}; or

c. Thrombocytopenia (less than or equal to 40,000/mm^3);or

d. Documented fever (greater than or equal to 100.4°F or 38°C); or

e. Weight loss of greater than or equal to 10 percent of baseline; or

f. Mucosal (including vulvovaginal) candidiasis other than listed in 114.08A1 or 114.08C1; or

g. Oral hairy leukoplakia; or

h. Chronic or recurrent Herpes Zoster; or

i. Persistent dermatological conditions such as eczema, psoriasis; or

j. Persistent, unresponsive diarrhea; or

k. Persistent or recurrent radiographically documented sinusitis;

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AND

4. At least two of the appropriate age-group criteria in paragraph B2 of 112.02.

[FR Doc. 91-30034 Filed 12-17-91; 8:45 am]
BILLING CODE 4190-29-M

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Presumptive Disability and Presumptive Blindness

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: We are proposing to revise § 416.933 of our regulations, which describes how we make findings of presumptive disability or presumptive blindness. The revisions propose to incorporate into the regulations procedures that are now in our operating instructions. These are expanded procedures we have been using to make findings of presumptive disability for people who allege infection with the human immunodeficiency virus (HIV). Our prior rules permitted Social Security Field Offices to make findings of presumptive disability for HIV infection only upon confirmation by a licensed physician that an individual had a diagnosis of acquired immunodeficiency syndrome (AIDS). The proposed revisions will include individuals with HIV infection whose disease manifestations are of listing-level severity. We are also proposing editorial changes to clarify the language of the current rule.

DATES: To be sure that your comments are considered, we must receive them no later than February 18, 1992.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21235, or delivered to the Office of Regulations, Social Security Administration, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Harry J. Short, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (301) 965-1753.

SUPPLEMENTARY INFORMATION: Under section 1631(a)(4)(B) of the Social Security Act (the Act) and implementing regulations, we may pay a person supplemental security income (SSI) benefits on the basis of presumptive disability or blindness before making a formal finding of disability or blindness. Findings of presumptive disability or blindness may be made when the available evidence reflects a high degree of probability that the individual will be found disabled or blind when complete evidence is obtained, and he or she meets the nonmedical eligibility requirements. Currently, presumptive disability or blindness payments may be made for no more than 6 months. (Prior to May 1, 1991, the effective date of section 5038 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508, presumptive payments could be made for no more than 3 months.)

Under the provisions of § 416.933, findings of presumptive disability or presumptive blindness may be made at our Social Security Field Offices or at the State agencies that make disability determinations for us. The employees at our field offices are not trained disability adjudicators; therefore, they are authorized to make findings of presumptive disability or blindness only for certain readily observable impairments (for example, amputation of two limbs), which are specified in § 416.934. Because these impairments are readily observable, presumptive disability or blindness findings under these specific impairment categories may be made without obtaining medical evidence.

Disability adjudicators at the State agencies are specialists in the evaluation of disability and, therefore, are not confined to the impairments specified in § 416.934 when making presumptive disability or blindness findings; they may make findings of presumptive disability or presumptive blindness in any case in which the evidence is sufficient to establish a high degree of probability that the individual will be found disabled.

The list of readily observable impairment categories in § 416.934 previously included a category for AIDS. However, in a separate section of this **Federal Register**, we are publishing a final rule removing § 416.934(k), the provision for finding presumptive disability based on AIDS. Although AIDS was included on the list of readily observable impairments in § 416.934 that do not require confirming medical evidence, the regulation explicitly required confirmation by a licensed physician and was, therefore, different from the other impairment categories. The preamble to the final rule explains in detail our reasons for removing the section. In brief, we are removing it because our current operating procedures are broader in scope than former § 416.934(k), and they allow us to identify individuals who should be found presumptively disabled because of HIV infection at the earliest possible stage in the application process.

These proposed rules would restore to the regulations a provision for establishing presumptive disability for people who have AIDS, but would expand the provision to reflect our current operating instructions. Our current instructions provide that Social Security Field Offices may make findings of presumptive disability for any person who is infected with the HIV—not only those who are diagnosed as having AIDS—based on medical evidence establishing that the person demonstrates disease manifestations of listing-level severity. Thus, the proposed revisions also clarify our policy that in these cases we require medical evidence before we can make a finding of presumptive disability.

We are already using the new operating instructions because we believe that they are an improvement over our former instructions. We are proceeding with regulatory action, however, because we believe that it is vital for the public to be aware of and be able to comment upon these procedures. In the meantime, our new operating instructions provide a means for finding presumptive disability for more people earlier in the process, and, we believe, will also help to expedite the formal determinations of disability in many claims. The operating instructions are designed to be consistent with these proposed rules and are sufficiently flexible that they can be made consistent with any future listing for HIV infection and any future medical research on the illness. Thus, it is our hope that the new procedures will help us ensure that eligibility for presumptive disability payments is routinely and expeditiously considered for every HIV-infected claimant, both now and in the future.

Under the new procedures, the Social Security office mails a check-block form to the claimant's physician for completion and return to the Social Security office. The form lists manifestations of HIV infection that we currently consider sufficient to establish listing-level severity, including criteria for some of the most rare manifestations of the illness and for considering the functional impact of the illness on individuals who do not demonstrate listing-level severity based on the medical findings alone. Of course, if the Social Security office is unable to make a finding of presumptive disability, the State agency may still make such a finding at any time that the evidence is sufficient to establish a high degree of probability that the individual will be found disabled.

After a presumptive disability finding is made, the State agency completes the development of the evidence and decides the claim using the full sequential evaluation process for determining if the requirements for establishing disability are met. We believe that the check-block form obtained by the Social Security office will also help to expedite the formal determination process at the State agency for individuals who have HIV infection. It will help the State agency pinpoint the kind of evidence it will need to develop for its formal disability determination. In addition, we believe that the check-block design of the form will not be perceived by medical practitioners as onerous or as an excessive intrusion into their time, while at the same time it will quickly provide us with information upon which we can accurately make findings of presumptive disability. The use of the check-block form will not preclude full evaluation of the case as provided in our regulations. All relevant evidence will be considered in making the formal disability determination.

In the following section, we describe the specific revisions we are proposing.

Explanation of Proposed Revisions

Section 416.933 How We Make a Finding of Presumptive Disability or Presumptive Blindness.

In the second sentence of § 416.933, we propose to delete the word "severe" from the phrase "readily observable severe impairments." The word "severe" is a technical term in our disability rules that does not have the same meaning as we intend in the context of this sentence.

We propose to add a new third sentence which explains that findings of presumptive disability or blindness based on readily observable impairments may be made at both the Social Security office and the State agency. This is merely a clarification of the intent of the rule.

In the fourth sentences of the proposed rule, which corresponds to the third sentence in the current rule, we propose to delete the words "disability evaluators" and to replace them with the word "us." We then propose to add four new sentence to the end of the paragraph, which would provide that findings of presumptive disability or blindness based on medical evidence will generally be made only by State agencies, but that there is one exception: Social Security Field Offices may make findings of presumptive disability based on medical evidence in cases of individuals who have HIV infection when the medical evidence confirms that the disease manifestations are of listing-level severity. The revision in the fourth sentence and the new language are intended to reflect our current operating procedures for determining presumptive disability in people with HIV infection. Under our current procedures, Social Security Field Offices may make findings of presumptive disability in these cases, but the findings must be based on contact with a physician, as we have already explained above. The last of the proposed new sentences (the eighth sentence in the proposed rule) also reaffirms our policy that the State agency may make a finding of presumptive disability or blindness for any type of impairment and at any stage of the development process at which the medical or other evidence justifies such a finding.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these proposed revisions do not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

This proposed rule contains information collection requirements. As required by section 2(a) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h), we will submit a copy to the Office of Management and Budget (OMB) for its review. Other organizations and individuals desiring to submit comments on these information collection requirements should direct them to the agency official whose name appears in this preamble and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, room 3208, Washington, DC 20503, Attention: Desk Officer for HHS.

Public reporting burden for this collection of information is estimated to average 10 minutes per response. This includes the time it will take to read the instructions, gather the necessary facts, and fill out the forms, if any. If you have any comments or suggestions on this estimate, or on any other aspect of this proposed rule, write to the Social Security Administration, ATTN: Reports Clearance Officer, 1-A-21 Operations Building, Baltimore, MD 21235, and to the Office of Management and Budget, Paperwork Reduction Project (0960-0000), Washington, DC 20503.

Regulatory Flexibility Act

We certify that these proposed regulations, if promulgated, would not have a significant economic impact on a substantial number of small entities because they affect only individuals and States.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Disability benefits, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: October 1, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: October 22, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

Part 416 of chapter III of title 20 of the Code of Federal Regulations is amended to read as follows:

PART 416—[AMENDED]

1. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 1102, 1614(a), 1619, 1631(a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383(a)and (d)(1), and 1383b.

2. Section 416.933 is revised to read as follows:

§ 416.933 How we make a finding of presumptive disability or presumptive blindness.

We may make a finding of presumptive disability or presumptive blindness if the evidence available at the time of the presumptive disability or presumptive blindness decision reflects a high degree of probability that you are disabled or blind. In the case of readily observable impairments (e.g., amputation of extremities, total blindness), we will find that you are disabled or blind for purposes of this section without medical or other evidence. We may make findings of presumptive disability or blindness for these readily observable impairments in either the Social Security office or the State agency. In all other cases, a finding of disability or blindness must

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be based on mdical evidence or other information which, though not sufficient for a formal determination of disability or blindness, is sufficient for us to find that there is a high degree of probability that you are disabled or blind. Findings of presumptive disability or blindness based on medical evidence will generally be made only by the State agency. However, claims involving infection with the human immunodeficiency virus (HIV) are an exception of this rule. If you are infected with the HIV, the Social Security office may make a finding of presumptive disability if medical evidence shows that your disease manifestations are of listing-level severity. In any case, the State agency may make a finding of presumptive disability if the medical evidence or other information reflects a high degree of probability that you are disabled.

[FR Doc. 91-30035 Filed 12-17-91; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 785, and 827

Availability of Petition to Initiate Rulemaking; Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Definitions; Requirements for Permits for Special Categories of Mining; Coal Preparation Plants; Performance Standards.

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of petition to initiated rulemaking and request for comment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the Department of the Interior (DOI) seeks comments concerning the rule changes suggested in a petition, submitted pursuant to the Surface Mining Control and Reclamation Act (SMCRA or the ACT), the amend OSM's regulations governing off-site coal preparation plants. The petition was included in the comments received from the Joint NCA/AMC Committee on Surface Mining Regulations on a proposed rule to amend portions of the permanent program regulations governing coal preparation plants published in the **Federal Register** on September 25, 1991 (56 FR 48714). The petition suggests that OSM amend its rules by revising the definition of "surface coal mining operations" at 30 CFR 700.5 so that the phrase "at or near the mine site" encompasses coal processing and preparation activities and, consistent with the revised definition, to also amend the rules at 30 CFR 785.21(a) and 827.1 by inserting the phrase "at or near the mine site" in those provisions where appropriate. OSM is requesting comments on the merits of the petition and the rule changes suggested in the petition. Such comments will assist the Director of OSM in making the decision whether to grant or deny the petition.

DATES: OSM will accept written comments on the petition until 5 p.m. Eastern time on January 17, 1992.

ADDRESSES: Mail comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131-L, 1951 Constitution Avenue, NW., Washington, DC 20240; or hand-deliver the comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131, 1100 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Suzanne Hudak, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 208-2700.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background and Substance of Petition
III. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments on suggested changes should be specific, should be confined to issues pertinent to the proposed revision, and should explain the reason for the comment. Where practicable, commenters should submit three copies of their comments. Comments received after the close of the comment period see **DATES**) or delivered to an address other than those listed (see **ADDRESSES**) may not necessarily be considered or included in the Administrative Record on the petition.

Availability of Copies

Additional copies of the petition, copies of 30 CFR Parts 700, 785, and 827, and copies of the proposed rule dated September 25, 1991 (56 FR 48714), are available for inspection and may be obtained at the location listed under **ADDRESSES**.

Public Hearing

OSM will not hold a public hearing on the proposed revisions, but OSM personnel will be available to meet with the public during business hours, 9 a.m. to 5 p.m., during the comment period. In order to arrange such a meeting, call or write to the person identified under **FOR FURTHER INFORMATION CONTACT**.

II. Background and Substance of Petition

OSM received a letter on November 22, 1991, from Stuart A. Sanderson, Senior Counsel, and Harold P. Quinn, Jr., Vice President and Counsel, representing the Joint NCA/AMC Committee on Surface Mining Regulations, Coal Building, 1130 17th St., NW., Washington, DC, as a petition for rulemaking. The petitioners requested that the agency propose for comment a rulemaking to revise the definition of "surface coal mining operations" at 30 CFR 700.5 so that the phrase "at or near the mine site" would encompass coal processing and preparation activities and, consistent with the revised definition, to also amend the rules at 30 CFR 785.21(a) and 827.1 by inserting the phrase "at or near the mine site" in those provisions where appropriate. The petition was included in the comments received from the Joint NCA/AMC Committee on a proposed rule to amend portions of OSM's permanent program regulations governing coal preparation plants published in the **Federal Register** on September 25, 1991 (56 FR 48714). The text of the petition appears at the end of this notice.

Under section 201(g) of SMCRA, any person may petition the Director of OSM to initiate a proceeding for the issuance, amendment, or repeal of any of the regulations implementing SMCRA. Under the applicable regulations for rulemaking petitions, 30 CFR 700.12, this notice seeks public comment on the merits of the petition and on the rule changes suggested in the petition.

At the close of the comment period, a decision will be made whether to grant or deny the petition. Under 30 CFR 700.12, the Director shall issue a written decision either granting or denying the petition within 90 days of the date of its receipt. Soon thereafter, notice of that decision will be published in the **Federal Register**. If the petition is granted, rulemaking proceedings will be initiated in which public comment will again be sought before a final rulemaking notice appears. If the petition is denied, no further rulemaking action will occur pursuant to the petition.

III. Procedural Matters

Publication of this notice of the receipt of the petition for rulemaking is a preliminary step in the rulemaking process. If a decision is made to grant the petition, a formal rulemaking process will be initiated. Thus, no regulatory flexibility analysis is needed at this stage, nor is a regulatory impact analysis necessary under Executive Order 12291.

Publication of this notice does not constitute a major Federal action having a significant effect on the human environment for which an environmental impact statement under the National Environmental Policy Act, 44 U.S.C. 4322(a)(C), is needed.

List of Subjects

30 CFR Part 700

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 785

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 827

Coal, Environmental protection, Surface mining.

Dated: December 11, 1991.

Harry M. Snyder,

Director.

Appendix

The text of the petition dated November 13, 1991 (received November 25, 1991), from the Joint NCA/AMC Committee, is as follows:

I. Introduction

Pursuant to the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1211(g), its implementing regulations, 30 CFR 700.12, and the Administrative Procedure Act, 5 U.S.C. 553(e), the National Coal Association and American Mining Congress petition the Director of the Office of Surface Mining (OSM) for certain amendments to 30 CFR 700.5, 785.21, and 827.1 relating to the regulation of coal preparation and processing activities. The proposed amendments will bring greater certainty to the regulatory program.

II. Proposed Amendments and Modifications

Petitioners request the following amendments and modifications to the regulations relating to the definition of surface coal mining operations and the scope of regulations of coal processing and preparation activities:

1. In 30 CFR 700.5, revise the definition of "surface coal mining operations, so that it reads in pertinent part as follows: in situ distillation, or retorting, leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site.

2. Revise the first sentence in 30 CFR 785.21 to read as follows:

(a) This section applies to any person who operates or intends to operate a coal preparation plant in connection with a coal mine and is located at or near the mine site but outside the permit area for that specific mine.

3. Revise 30 CFR 827.1 to read as follows:

This part sets forth requirements for coal preparation plants operated in connection with a coal mine and is located at or near the mine site but outside the permit area for that specific mine.

III. Statement of Facts and Law in Support of Amendments and Modification of Existing Regulations on Coal Processing and Preparation Activities

A. Summary

The amendments and modifications requested by petitioners embody what the United States Court of Appeals for the District of Columbia Circuit expressly endorsed as the "clearly better" interpretation of the definition of surface coal mining operations. See *National Wildlife Federation* v. *Hodel*, 839 F.2d 694, 744 (D.C. Cir. 1988). To this end, the amendments would bring greater regulatory certainty by establishing a more easily discernible test for the scope of regulation by requiring the regulation of coal processing and preparation activities when they are conducted (1) in connection with; and (2) at or near the mine site. SMCRA § 701(28)(A). In essence, these amendments would reestablish the two-prong jurisdictional test adopted initially by the Secretary in Western Engineering, Inc., 86 I.D. 336 (1979). The adoption of the Secretary's former interpretation of the Act, and one endorsed by the Court of Appeals as "clearly better", falls well within the Secretary's discretion under section 701(28) "because the Act permits, but does not require, the Secretary to regulate off-site preparation plants." *National Wildlife Federation* v. *Lujan*, 928 F.2d 453, 462 (D.C. Cir. 1991).

B. The Statute

Section 701(28) of SMCRA defines "surface coal mining operations" in terms of (A) certain activities and (B) certain areas. The activities

> include excavation for the purpose of obtaining coal including such common methods as * * *, and the cleaning, concentrating, or other preparation, loading of coal for interstate commerce at or near the mine site * * *

No dispute exists that the phrase 'at or near the mine site" modifies the "loading of coal." The question remains whether that phrase also modifies "the cleaning, concentrating, or other processing or preparation."

Like the United States Court of Appeals in *NWF* v. *Hodel*, we think the clearly better reading recognizes that "cleaning", "concentrating", "other processing or preparation", and "loading" are a family of post-extraction activities set off from the earlier family of extractive activities by the word "and" which precedes their enumeration; and, that the phrase "at or near the mine site" modifies the entire family of post-extraction coal processing and preparation activities. A textual interpretation which parses the phrase "loading of coal for interstate commerce at or near the mine site" from the preceding post-extraction activities leave these activities floating nonsensically without an object. As the court of appeals noted, "cleaning for example must refer to something, and it seems most natural that it is 'cleaning . . . of coal for interstate commerce at or near the mine site.' " *NWF* v. *Hodel*, 839 F.2d at 744 n. 78.

The legislative history bolsters this "most natural" reading. The Senate Report clarifies that "surface coal mining operations" includes coal processing and preparation only when it occurs at or near the mine site:

> Activities included are excavation to obtain coal by contour, * * * and the *cleaning, or other processing or preparation and loading* for interstate commerce *of coal at or near the mine site.*

[S. Rep. No. 128, 95th Cong., 1st Sess. 98 (1977) (emphasis added)].

This passage is particularly significant because it is the only discussion of this part of the definition of "surface coal mining operations" that appears anywhere in the committee reports on SMCRA.

This "clearly better" and "most natural" reading of the definitions of "surface coal mining operations" originated with the Secretary at the inception of SMCRA implementation. In a long line of cases spanning both the interim and permanent program, the Secretary held that his regulatory jurisdiction does not extend to off-site coal processing and preparation facilities not located "at or near" the mine site. See e.g. Western Engineering, Inc, 86 I.D. 336 (1979); Drummond Coal

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Co., 96 I.D. 196 (1980); Wolverine Coal Co., 87 I.D. 554 (1980); Roberts Brothers Coal Co., 87 I.D. 439 (1980); Falcon Coal Co., 2 IBSMA 406 (1980); The Hoke Co., 2 IBSMA (1981); Thoroughfare Coal Co., 88 I.D. 745 (1981); See also Ann Lorentz Coal Co., 91 I.D. 108 (1984) (coal crushing and sizing facility must be at or near the mine site). Thus, the requisite geographical proximity connoted by the "at or near" language in section 701(28)(A) has long been associated with the determination of the Secretary's regulatory jurisdiction under SMCRA.

C. Functional Analysis

A functional analysis of SMCRA provides further confirmation that regulatory jurisdiction under the Act does not properly extend to coal processing and preparation facilities which are not "as or near" the mine site. Coal preparation plants are fundamentally unlike mines, and instead constitute permanent or longstanding industrial facilities serving a function to facilitate the stream of coal commerce. This function separate from the mining itself becomes even more apparent when considering off-site preparation facilities which engage in commerce with several mines. As OSM notes, "there is nothing in the Act or its history that implies that SMCRA was meant to apply nationwide to all industrial facilities that process coal * * *" 53 FR 47386 (November 22, 1988).

Indeed, both the Act's overarching purpose that mining constitute a temporary land use, and the two principal components to achieve this purpose—permitting and performance standards—simply have no sensical application to long-term industrial facilities like off-site preparation plants conducted independent of a particular mine. First, unlike mining operations which are a temporary use of the land accompanied by reclamation contemporaneous with the mining, independent processing plants constitute long-term industrial facilities which serve a mining region. Second, even a casual textual review of the permitting and performance standards discloses their general inapplicability to this type of facility.

In terms of post-mining land use, the Act's provisions have no reasonable application when applied to an independent off-site coal preparation plant. The regulatory scheme under SMCRA contemplates the contemporaneous reclamation of areas with the eventual attainment of a post-mining land use once all mining and reclamation activities have terminated within the permitted areas. Generally, for a coal mine, the life of the mine and subsequent reclamation activities are centered around the coal reserves to be mined. In sharp contrast stands the independent coal preparation plant whose life extends beyond that of any particular mine, but instead turns upon the coal mining industry within the area it serves. Thus, an independent preparation plant may cease activities for any extended period, but also remain a viable facility for coal mines in the future. Moreover, some of these facilities located in certain transportation corridors may also have utility beyond coal mining, for instance the hauling and transportation of other mineral products and timber.

The application of SMCRA's permitting, bonding, and reclamation provisions do not account for the long-term useful life of such facilities, and instead dictate removal and reclamation of the facility upon the cessation of preparation activities for any extended period to time. See e.g. 30 CFR 785.21(b) (reclamation plan which specifies operation, maintenance, and removal); and, § 827.12(1) (cross-refencing rules for backfilling and grading; contemporaneous reclamation; post-mining land use). As a practical matter, it is not altogether clear what post-mining land use the areas upon which such facilities are located can functionally or economically serve other than the present industrial use. This being the case, what purpose is served by the application of SMCRA's regulatory scheme. Moreover, to the extent the regulatory scheme compels the removal of the facility or change in land use, this will often conflict with the desire of the landowner over which the operator of the coal preparation plant has no control.

The incongruous nature of SMCRA's application to independent preparation plants is further supported by a textual review of the statutory provisions themselves. At least half of the performance standards in section 515(b) which purportedly apply to "all surface coal mine operations" have no application because they either (1) use the terms "coal mining" or "mine-site"; or (2), have no practical application of off-site coal preparation plants not operated as part of the mine site. See *e.g.*, SMCRA sections 515(b)(1), (2), (3), (4), (5), (6), (7), (8), (9), (12), (15), (16), (19), (22), (25). See also section 515(c), (d), and (e).

Similarly, the permit and reclamation plan requirements which implement the performance standards on a site-specific basis also show an obvious incongruity if applied to independent off-site coal preparation plants. For example, under section 507(b), each application for a surface coal mining operation shall contain:

- Every legal owner of the property to be mined, section 507(b)(1);
- The type and description of the types of method of coal mining section 507(b)(7);
- The anticipated or actual starting and termination dates of each phase of the mining operation, section 507(b)(8);
- A statement of those documents upon which the applicant bases his legal right to enter and commence surface mining operations, section 507(b)(9);
- A determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, section 507(b)(11);
- Cross sections, maps showing test borings or core samplings, nature and depth of the various strata of overburden; nature and thickness of any coal or rider seam above the coal seam to be mined; all mineral croplines and the strike and dip of the coal to be mined, section 507(b)(14); and
- Results of test borings or core samplings; analysis of the coal seam to be mined, section 507(b)(15).

Of course, each applicant for a permit must submit a reclamation plan under section 508, and many of these requirements by their own terms apply only to actual coal mining, or have no practical application of off-site independent coal preparation plants;

- Identification of lands subject to mining and the estimated life and the size, sequence, and timing of the subareas for which it is anticipated that individual permits for mining will be sought, section 508(b)(1);
- Uses, capability, and productivity of land prior to mining, section 507(b)(2);
- The use of which is proposed to be made of the land following reclamation; utility and capacity of the reclaimed land, section 507(b)(3);
- Engineering techniques to be used in mining and reclamation; description of major equipment; statement of how permittee plans to comply with each of the requirements set out in section 515, section 507(b)(5);
- Consideration given to maximize the utilization and conservation of the solid fuel resource being recovered so that reaffecting the land in the future can be minimized, section 507(b)(6);
- Detailed estimated timetable for the accomplishment of each major step in the reclamation plan, section 507(b)(7);
- Consideration which has been given to making the "surface mining and reclamation operations consistent with surface owner plans, section 507(b)(8);
- All lands, interest in lands, or options in such interests held by applicant on lands contiguous to the permit, section 507(b)(11);
- Results of test borings, section 507(b)(12); and,
- Measures to be taken during the "mining and reclamation process" to assure protection of surface and ground water from "adverse effects of the mining and reclamation process," section 508(b)(13).

The textual review of the permitting and performance requirements amply demonstrates the functional incongruity and inapplicability of the Act's standards for "surface coal mining operations" to off-site preparation plants. The only standards that could make sense to apply independently are already covered by a more focused environmental statutes for water quality under the Federal Water Pollution Control Act, 33 U.S.C. 1151 (See e.g., 40 CFR 434.20—EPA water pollution standards for coal preparation plans); and, air quality under the Clean Air Act, 42 U.S.C. 1857 *et seq.*

The logic of the regulatory scheme intended by Congress seems rather clear:

1. The mining of coal by various methods is regulated under the Act, and it includes excavation methods such as contour, strip, auger, mountaintop removal, box-cut, open pit area mining; the use of explosives for such excavation; and other recovery technologies such as in-situ distillation, retorting, leaching, or other chemical or physical processing.

2. Post-extractive activities (*i.e.* cleaning, concentrating, or other processing, preparation, or loading) for the benefiction, handling and loading of coal for market are regulated under SMCRA when they occur as part of the mine site already regulated because of the extraction activities, and it is efficient and appropriate to include them incrementally within the permitting scheme for the mine.

3. When such post-extraction activities do not occur as part of the regulated mine site, the independent application of the SMCRA requirements is ill-suited for these types of industrial activities and should be left to the more focused and appropriate state and federal environmental regulatory mechanisms.

Little logic underlies a regulatory approach which follows from the disassociation of the Act's "at or near the mine site" language from the immediately preceding list of post-extractive activities. No statutory purpose appears to justify regulating the loading of coal for interstate commerce only if it occurs at or near the mine site, while regulating coal cleaning or other preparation for market wherever it occurs.

D. Regulatory Certainty

The issue of the proper scope of regulatory jurisdiction over coal preparation plants located away from the mine site can be characterized as nothing less than chaotic and uncertain. The painful history associated with this issue has been documented in OSM's 1988 final rule on "Coal Preparation Plants Not Located Within the Permit Area of a Mine", 53 Fed. Reg. 47384 (November 22, 1988), and the Secretary's Memorandums of Points and Authorities filed in *NWF* v. *Hodel*, Civ. No. 87–1814 (D.D.C.) and *NWF* v. *Lujan*, Civ. No. 89–0136 (D.D.C.). The highlights of this circuitous regulatory history can be summarized as follows:

- During the initial program the Secretary construed the Act to cover coal preparation plants only if they were operated (1) in connection with a mine, *and* (2) located at or near the mine site. See *Western Engineering, Inc.*, supra, and its progeny.
- The permanent program rules changed this interpretation of the Act by removing the proximity language "at or near" from the consideration of the regulation of certain coal preparation plants. 44 FR 15317 (March 13, 1979).
- The definition of coal preparation plants included only those that engage in the separation of coal from its impurities. 30 CFR 701.5 (1980). While some ambiguity lingered, OSM has later claimed that its jurisdiction could extend to crushing, sizing, and screening of coal when it was considered a "support facility". However, even in the 1979 rules, support facilities were regulated only when "close" to the mine. 44 FR 15095. Thus, even under the permanent program rules, a whole class of coal facilities were only regulated when in "geographical proximity" to the mine the facility was operated in connection with.
- A 1980 proposal suggested for the first time that facilities which did not separate coal from its impurities may be regulated even though they were not located "at or near" the mine site. This proposal also sought to clarify that the phrase "at or near" applied only to the loading of coal. 45 FR 42333 (June 24, 1980). This proposal was never adopted.
- In 1983, OSM promulgated definitions for "coal preparation or coal processing" which retained the distinction of the separation of coal from its impurities. Thus, crushing, screening, and sizing activities were only subject to regulation if conducted in connection with a mine *and* at or near the mine site. 48 FR 20392 (May 5, 1983). See also Ann Lorentz Coal Co. 91 I.D. 108 (1984). These rules also continued the use of a "geographical proximity" consideration to determine the jurisdiction over support facilities under section 701(28)(B).
- The federal district court struck down the definition of coal preparation and processing; affirmed the interpretation of section 701(28)(A) that the phrase "at or near the mine site" applies only to loading of coal; and struck down the consideration of geographical proximity to determine the jurisdiction over support facilities under section 701(28)(B). In Re Permanent Surface Mining Regulation Litigation, 21 ERC 1193 (D.D.C. July 6, 1984).
- The Department adopted an interim final rule which applied the district court 1984 decision prospectively with respect to crushing, sizing, and screening facilities. 50 FR 28180 (July 10, 1985). While a challenge to that rule was pending, the United States Court of Appeals for the District of Columbia Circuit issued its decision reversing the district court's holding on the use of geographical proximity as a consideration in determining the Act's coverage of support facilities, *including* coal preparation plants. The appeals court ruled that the Secretary could reasonably construe section 701(28)(B) as extending regulatory coverage to coal preparation plants, under his rule which embodied a geographical proximity consideration, but expressly declined to rule on the proper interpretation of the "at or near" language in section 701(28)(A). *NWF* v. *Hodel*, 839 F. 2d at 744 (We tend to agree with Industry that reading the "at or near" language as modifying processing is the clearly better interpretation of subsection (A). In any event, it is not a question we need to decide . . .).
- In an attempt to reconcile the court of appeals decision, OSM promulgated rules in 1988 to bring its interpretation in conformance with the only basis the appeals court has upheld the regulation of off-site preparation plants. 53 FR 47384 (Nov. 22, 1988). In the agency's own words:

Because the court [of appeals] affirmed the Secretary's authority to regulate off-site coal processing under section 701(28)(B) of SMCRA, it is appropriate for OSMRE to consider the court's approval of the use of a proximity factor in determining the reach of section 701(28)(B). Hence, OSMRE believes that geographic proximity, as well as the functional relationship between mines and coal preparation plants, are proper factors to be considered by regulatory authorities when identifying off-site preparation plants which operate in connection with a coal mine and therefore are subject to SMCRA. 53 FR at 47386.

- Despite the discretionary nature of the Secretary's authority under section 701(28) as noted in the 1988 *NWF* v. *Hodel* decision, the district court somehow overlooked or misread both the regulatory history and the court of appeals decision on the issue, and remanded the rulemaking for the agency to "clarify that proximity may not be the *decisive* factor in deciding to regulate an off-site processing plant." *NWF* v. *Lujan*, 31 ERC 2034, 2050 (D.C.C. August 30, 1990). The underlying rationale for the court's decision is flawed in at least two fundamental respects: First, the court stated that the court of appeals had upheld the district court's earlier ruling that the Secretary must regulate off-site preparation plants; and, (2) that the court of appeals holding on use of proximity considerations pertained only to support facilities other than preparation plants. An objective reading of the *NWF* v. *Hodel* decision discloses that, in fact, only the opposite conclusions can be gleaned from that decision.
- The most recent proposed rulemaking brings the agency back full circle with the proposed deletion of proximity as a factor. Certainly, no one would have expected the agency to respond to the limited holding of

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the district court with a complete elimination of geographical proximity as a consideration in the regulation of off-site preparation plants. This agency response is even more bewildering in view of the recent court of appeals decision which reiterates that its "precedent establishes that section 710(28) gives the Secretary the *discretion* to regulate off-site preparation facilities," inasmuch as "the Act permits, but does not require, the Secretary to regulate off-site coal preparation plants." *NWF* v. *Lujan*, 928 F. 2d 453, 462 (D.C. Cir. 1991) (emphasis in original).

To recap the regulatory history, geographical proximity has always been an element in the determination of SMCRA's jurisdiction over off-site preparation plants. First, under the precedent established during the initial program under Western Engineering, Inc. and its progeny; and, later during the permanent program as established by the only binding precedent of the court of appeals in *NWF* v. *Hodel* and *NWF* v. *Lujan*. The current proposal would completely dismiss this history and precedent and embark upon an unchartered regulatory course which regulates coal processing wherever it occurs under a functional test that becomes even more ill-defined in the absence of the proximity factor the court of appeals found necessary to guide a reasonable causation analysis.

In the absence of the limiting principle of geographical proximity, every coal preparation facility which "could be considered 'but for' result of a surface coal mining operation would be subject to SMCRA regulation." *NWF* v. *Hodel* 839 F.2d at 745. Certainly the principles announced in the 1988 rulemaking regarding the "economic relationship with a mine" or "any other type of integration that exists between a facility of a mine" 53 FR at 47386, now appear open-ended in the absence of the limiting principle of geographical proximity. Moreover, these types of principles alone hardly convey the regulatory certainty one requires to plan and perform under SMCRA's requirements for reclamation and post-mining land use. Under these principles alone, the regulatory status of an independent coal preparation facility will change continuously throughout its life depending upon its "economic relationship" with a mine or mines. In other words, under a "functional test" which ignores geographical proximity, a preparation plant which formerly met such a test would, in all probability, no longer meet the economic integration or functional relationship it had before because of changes in circumstances, such as proportion of coal output received from a mine; ownership changes among the mines and/or preparation plants; changes in markets or contracts for coal purchasing or preparation services among different customers. Greater regulatory certainty can only be found in a functional jurisdictional analysis which includes the considerations of the geographical proximity of the coal preparation plant to the specific mine the plant shares the functional relationship or economic integration. In other words, the coal preparation plant is operated both "in connection with" and "at or near the mine site".

To accomplish this objective for providing greater regulatory certainty and conform the regulatory program with the precedents for the initial and permanent regulatory programs, OSM must initiate rulemaking to adopt the "clearly better" and "most natural" reading of Section 701(28)(A) so that the language "at or near the mine site" modifies "cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce."

Respectfully Submitted,

Harold P. Quinn, Jr.,
Vice President and Counsel, National Coal Association, 1130 17th Street, NW., Washington, DC 20036.
Stuart A. Sanderson,
Senior Counsel, American Mining Congress, 1920 N Street, NW., Washington, DC 20036.

[FR Doc. 91-30181 Filed 12-17-91; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 162

[CGD 85-096]

RIN 2115-AC03

Navigation on Certain Waterways Tributary to the Gulf of Mexico

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On September 26, 1991, the Coast Guard published a notice of proposed rulemaking (NPRM) that concerns navigation on certain waterways tributary to the Gulf of Mexico (56 FR 48773). The Coast Guard is extending the comment period provided in that notice, to run an added 90 days. The Coast Guard expects that this added time will increase public involvement in the rulemaking.

DATES: The Comment period for the proposed rulemaking is extended to, and comments must be received on or before, March 26, 1992.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2, 3406) [CGD 85-096], U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477. Comments will become part of the public docket for this rulemaking and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Harry C. Robertson, Short Range Aids to Navigation Division (202) 267-0405.

SUPPLEMENTARY INFORMATION: The Coast Guard is extending the comment period for the NPRM that concerns navigation on certain waterways tributary to the Gulf of Mexico. The Coast Guard has received several requests for an extension. There are several local organizations, such as the Lower Mississippi River Waterway Safety Advisory Committee and the Towing Safety Advisory Council, that have meetings scheduled over the winter. Members of some of these organizations would like the opportunity to discuss the NPRM in full session before sending their comments to the docket. Therefore, in recognition of the need for meaningful dialogue and information to assist in completing this rulemaking, the Coast Guard is extending the comment period by 90 days.

To date, the Coast Guard has received few substantive comments. It strongly encourages comments on all aspects of this rulemaking. (In particular, it welcomes any suggestions that may help with the Environmental Assessment.) It strongly encourages all that may be affected by its allowing double-wide tows on the Gulf Intracoastal Waterway as a matter of course to send comments. The spectrum of interests is potentially very broad and includes—as well as maritime towing interests and their insurers—individuals, States, and environmental organizations, among others.

Dated: December 12, 1991.

A. Cattalini,

Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 91-30163 Filed 12-17-91; 8:45 am]
BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 91-346, FCC 91-383]

Intelligent Networks

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; notice of inquiry.

SUMMARY: The Commission initiates an inquiry to open public debate on the interrelationship of Open Network Architecture (ONA) with emerging network design. This action will enable the Commission to explore ways in which future local exchange networks can be developed that are as open, responsive, and procompetitive as possible, consistent with other public interest goals, such as ensuring network reliability and integrity and avoiding the imposition of uneconomic costs. The Commission also denies a petition for investigation filed by the Coalition of Open Network Parties (CONAP), except to the extent provided in the Notice of Inquiry.

DATES: Comments must be filed by February 18, 1992. Reply comments are due by March 23, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marian R. Gordon, Policy and Program Planning, Common Carrier Bureau, (202) 632-4047.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Inquiry (FCC 91-383), adopted November 21, 1991, and released December 6, 1991. The full text of this Commission item is available for inspection and copying during normal business hours in the FCC's Docket Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW., Washington, DC 20036.

Summary of Notice of Inquiry

1. The Notice of Inquiry, adopted November 21, 1991, seeks comment on the ways in which future local exchange networks can be developed that are as open, responsive, and procompetitive as possible, consistent with the Commission's other public interest goals, such as ensuring network reliability and integrity and avoiding the imposition of uneconomic costs. The Notice also seeks comment on the appropriate role of regulation in this process.

2. The Notice denies a petition filed by the Coalition of Open Network Architecture Parties (CONAP), except to the extent provided for in the Notice. CONAP petitioned the Commission to investigate, pursuant to section 218 of the Communications Act, the Bell Operating Companies' (BOCs') switching deployment plans in order to assure that the network of the future will be "modular and transparent."

3. The Notice does not restrict the scope of this proceeding, at this stage, to the BOCs. Instead, in the interest of a complete record, the Commission will consider network development issues with respect to all Tier 1 local exchange carriers.

4. The Notice seeks comment on the meaning of modularity in terms of specific network design and the benefits it could confer. Specifically, it seeks comment on: (1) The functions that a modular network could perform; (2) the nature of the various building blocks or modules that make up the system architecture; (3) the manner in which network users could access the system; (4) the approximate costs of developing the system modules; and (5) how network users could monitor and test the system in real time. To the extent feasible, the Notice also seeks comment on possible services that cannot now be obtained, or obtained efficiently, with current network architecture.

5. The Notice seeks comment on whether the potential benefits of increased access by network users in a modular architecture outweigh any costs to the reliability and integrity of the network.

6. The Notice seeks comment on whether Advanced Intelligent Network (AIN), a network architecture that the BOCs are currently evaluating for possible deployment in the 1990's or any other future architecture, should be implemented in a way that provides network users with significantly greater access to the network than currently allowed.

Ordering Clause

7. Pursuant to section 1, 4 (i) and (j), 201-205, 218, and 403 of the Communications Act as amended, 47 U.S.C. 151, 154 (i) and (j), 201-205, 218, and 403, the Commission initiates this inquiry.

8. *It Is Further Ordered That* the Petition for Investigation filed by CONAP is *Denied* Except as provided herein.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-30154 Filed 12-17-91; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-347]

Processing Procedures for Commercial FM Broadcast Applications

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposed to liberalize its rules governing the acceptance and amendment of applications of construct new commercial FM broadcast stations and requests public comment on this proposal. The intended effect of this proposal is to provide commercial FM applicants (who currently have a very limited opportunity to amend defective applications) with a greater opportunity to correct inadvertent errors. Consideration of this rule change is prompted by recent changes in the quality and quantity of commercial FM applications received, and by a decreased need for acceptance criteria to service as a deterrent to speculation.

DATES: Comments must be filed on or before February 3, 1992 and reply comments must be filed on or before March 2, 1992. Comments to the Initial Regulatory Flexibility Analysis must have a separate and distinct heading designating them as such.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Irene Bleiweiss, Audio Services Division, Mass Media Bureau (202) 632-5415.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rule making, MM Docket No. 91-347, adopted on November 21, 1991 and released December 12, 1991. The full text of the notice of proposed rule making is available for inspection and copying during normal business hours in the FCC Media Bureau, Audio Services Division (room 302) 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's copy contractor, Downtown Copy Center, 114 21st Street, NW., Washington, DC 20037, (202) 452-1422.

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Summary of Notice of Proposed Rule Making

1. The Commission initiates this proceeding, on its own motion, to reexamine the rules concerning the acceptance and amendment of applications to construct commercial FM radio stations. Since 1985, the Commission's staff has processed these applications using strict approach known as the "hard look." Under this approach, applicants have only an extremely limited opportunity to correct defects in their applications. The notice of proposed rule making acknowledges recent changes in the quality and quantity of commercial FM applications, and determines that somewhat more lenient corrective amendment standards may now be possible without unduly increasing the burden on the Commission's processing staff. The Commission seeks comment on this tentative conclusion and on several possible alternative processing systems.

2. Under each of the alternatives discussed in the Notice, the Commission would continue to apply current "hard look" tender and acceptability criteria to commercial FM applications. However, in cases where tender and/or acceptability information is missing or defective, applicants would have a new limited opportunity to correct the defect(s). Among the procedures considered to effectuate this change are the processing approach currently used on the TV service, the existing approach in the AM service, and two hybrids of the TV and AM approaches tailored to the higher volume of FM applications received. The Commission proposes to adopt a hybrid approach giving commercial FM applicants one opportunity to correct tender and acceptability defects. Applicants would be required to use this one opportunity to correct all tender and acceptability defects including any that, for whatever reasons, the Commission may not have identified. Applicants not correcting all tender and acceptability defects within this limited opportunity would be dismissed with no further opportunity for corrective amendment. The Commission proposes to apply this approach to all commercial FM applications received after the effective date of any final rules adopted, with no retroactive effect. The Notice also discusses and seeks comment on the effect of the proposal on modification applications and waiver requests, the establishment of minimum filing requirements, and policies concerning uncorrectable defects.

Initial Regulatory Flexibility Analysis

Pursuant to the requirements of the Regulatory Flexibility Act of 1980, the Commission finds as follows:

Reason for Action

The Commission is initiating this rule making proceeding to consider whether to make its rules more liberal with respect to the acceptance and amendment of defective applications to construct commercial FM facilities. Consideration of this rule change is prompted by recent changes in the quality and quantity of these applications.

Objectives

The Commission seeks public comments on its tentative conclusion that the strict "hard look" processing procedures are no longer necessary and on proposals to institute a processing approach that is more forgiving of errors in commercial FM applications.

Legal Basis

The proposed action is authorized under sections 4(i), 4(j), 301, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 301, and 303(r).

Reporting, Recordkeeping and Other Compliance Requirements

No new requirements.

Federal Rules Which Overlap, Duplicate, or Conflict With This Rule

None.

Description, Potential Impact, and Number of Small Entities Involved

The Commission believes that adoption of the proposals set forth in this Notice would benefit small entities interested in acquiring new FM commercial broadcast licenses and small entities already licensed for commercial FM facilities who wish to modify their current authorizations. The proposal would allow such applicants a limited opportunity to amend defective applications to correct inadvertent errors. Currently, these same errors would be unamendable and would result in dismissal of the application. The proposal would result in a small increase in processing time, pending the amendment of defective applications.

Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent With the Stated Objectives

The Notice solicits comments on a variety of alternatives.

List of Subjects in 47 CFR Part 73

FM broadcast stations, Radio broadcasting, Amendment and acceptance of applications.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-30155 Filed 12-17-91; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 56, No. 243
Wednesday, December 18, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

Brunswick Electric Membership Corp.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of No Significant Impact related to a proposed headquarters and operations facility in Brunswick County, North Carolina.

SUMMARY: Notice is hereby given that the Rural Electrification Administration has prepared an Environmental Assessment and made a Finding of No Significant Impact with respect to construction of a new headquarters and operations facility in Brunswick County, North Carolina. The finding is made pursuant to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations (40 CFR parts 1500–1508) and the Rural Electrification Administration Environmental Policies and Procedures, 7 CFR part 1794. Brunswick Electric Membership Corporation has requested financing assistance and project approval from the Rural Electrification Administration to construct the project.

FOR FURTHER INFORMATION CONTACT: Robert M. Quiegel, Environmental Protection Specialist, Environmental Services Branch, Electric Staff Division, Room 1246, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 720-0468.

SUPPLEMENTARY INFORMATION: Brunswick Electric Membership Corporation plans to locate the proposed headquarters and operations facility along U.S. Highway 17 approximately 2 miles southwest of Supply, North Carolina. The facility to be constructed consists of the following:

A 30,000 square foot headquarters office,
A 12,500 square foot operations building,
A 24,000 square foot warehouse,
A 4,000 square foot garage/maintenance building,
A fuel service island with pumps for diesel fuel and gasoline,
Two above-ground fuel storage tanks with a maximum capacity of 6,000 gallons each (one diesel and one gasoline),
A 250 foot, self-supporting, lattice type radio tower,
A pole storage yard and,
Parking spaces for approximately 100 cars and 30 trucks.

Alternatives considered to constructing the project as proposed were no action and remodeling the Brunswick Electric Membership Corporation's existing headquarters facility.

REA has determined that the proposed project is needed because Brunswick Electric Membership Corporation's existing headquarters facility does not have sufficient space to accommodate employees, customers, service equipment, material storage and maintenance operations.

Copies of the Environmental Assessment and Finding of No Significant Impact are available for review at, or can be obtained from, the Rural Electrification Administration at the address provided herein or from Brunswick Electric Membership Corporation, P.O. Box 828, Shallotte, North Carolina 28459.

Dated: December 10, 1991.

George E. Pratt,

Deputy Administrator—Program Operations, Rural Electrification Administration.

[FR Doc. 91-30141 filed 12-17-91; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation – 1992 Panel Wave 2.

Form Number(s): SIPP–12200, SIPP–12205.

Agency Approval Number: 0607–0723.

Type of Request: Revision of a currently approved collection.

Burden: 42,000.

Number of Respondents: 42,000.

Avg Hours Per Response: 1/2 hour.

Needs and Uses: The Survey of Income and Program Participation (SIPP) is designed as a continuing series of national panels of interviewed households which are introduced annually with each panel having a duration of about 2 1/2 years in the survey. The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The core is periodically supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as "topical modules." The topical modules for the 1992 Panel Wave 2 collectively are called the "Personal History" topical module. The individual components are (1) Work Disability History, (2) Education and Training History, (3) Marital History, (4) Migration History, (5) Fertility History, and (6) Household Relationships. Wave 2 interviews will be conducted from June–September 1992.

Affected Public: Individuals or households.

Frequency: Once during the panel.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, 395–7313.

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation – 1991 Panel Wave 5.

Form Number(s): SIPP–11500, SIPP–11503, SIPP–11505.

Agency Approval Number: 0607–0702.

Type of Request: Revision of a currently approved collection.

Burden: 44,100.

Number of Respondents: 29,400.

Avg Hours Per Response: 1/2 hour.

Needs and Uses: The Survey of Income and Program Participation (SIPP) is designed as a continuing series of national panels of interviewed households which are introduced annually with each panel having a duration of about 2 1/2 years in the survey. The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The core is periodically supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as "topical modules." The topical modules for the 1991 Panel Wave 5, collectively called the "Annual Round-up," are identical to the topical

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modules for the 1990 Panel Wave 8. The individual components are (1) Annual Income and Retirement Accounts, (2) Taxes, and (3) School Enrollment and Financing. Wave 5 interviews will be conducted from June–September 1992.

Affected Public: Individuals or households.

Frequency: Twice during the panel.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, 395–7313.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 12, 1991

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 91–30204 Filed 12–17–91; 8:45 am]

BILLING CODE 3510–07–F

International Trade Administration

[A–614–801]

Postponement of Final Antidumping Duty Determination and Rescheduling of Public Hearing: Fresh Kiwifruit From New Zealand

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice.

EFFECTIVE DATE: December 18, 1991.

FOR FURTHER INFORMATION CONTACT: Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–8922.

POSTPONEMENT OF FINAL DETERMINATION: On November 27, 1991, the New Zealand Kiwifruit Marketing Board, the respondent in this proceeding, accounting for all exports of kiwifruit from New Zealand to the United States, requested that the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2) of the Tariff Act of 1930, as amended (the Act). Pursuant to 19 CFR 353.20(b), if exporters who account for a significant proportion of exports of the merchandise under investigation request an extension subsequent to an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing our final determination as to whether sales of fresh kiwifruit from New Zealand have been made at less than fair value until not later than April 10, 1992.

Public Comment.

We are rescheduling the public hearing announced in the Preliminary Determination of Sales at Less Than Fair Value: Fresh Kiwifruit From New Zealand 56 FR 60092, (November 27, 1991) to March 10, 1992, at 10: a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours prior to the scheduled time. In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must now be submitted to the Assistant Secretary no later than March 3, 1992, and rebuttal briefs not later than March 6, 1992. Oral presentations will be limited to issues raised in the briefs in accordance with 19 CFR 353.38(b)

This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: December 11, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 91–30205 Filed 12–17–91; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Depleted and Endangered and Threatened Species: Petitions To Designate Northern Offshore Spotted Dolphins and Depleted Under the Marine Mammal Protection Act and as Threatened Under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of petitions.

DATES: Comments and information must be received by January 17, 1992.

ADDRESSES: Comments should be addressed to Dr. Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Michael Payne (301–427–2322) or Dr. Aleta A. Hohn (301–427–2289), Office of Protected Resources, NMFS.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361–1407) contains provisions for interested parties to petition for a species or stock to be listed as "depleted" (16 U.S.C. 1383b and 5 U.S.C. 553(e)). Section 4 of the Endangered Species Act (ESA) (16 U.S.C. 1531–1543) and 50 CFR part 424 contain provisions allowing interested parties to petition for a species or stock to be listed as threatened or endangered. If a petition presents substantial information, a review is conducted to determine if a species should be designated as depleted (MMPA) or listed as endangered or threatened (ESA). Determinations are made based on the best available scientific data.

Petitions Received

On October 29, 1991, Environmental Solutions International and Greenpeace U.S.A. petitioned NMFS to list the northern offshore spotted dolphin (*Stenella attenuata*) as a "depleted" species or stock under the MMPA. On October 31, 1991, the Center for Marine Conservation petitioned NMFS to list the northern offshore spotted dolphin as a "threatened" species under the Endangered Species Act.

Presentation of Substantial Information

NMFS has determined that each of these petitions presents substantial information indicating that the petitioned action may be warranted. A copy of the information submitted with the petitions is available upon request from the above **ADDRESSES.**

Information Solicited

NMFS believes there is sufficient information for consideration of listing of the northern offshore spotted dolphin as depleted under the MMPA. NMFS will evaluate the merits of listing northern offshore spotted dolphins as threatened or endangered under the ESA. NMFS is soliciting information and comments concerning the petitions to ensure that the review is complete and is based on the best available information. We request that the information and comments be accompanied by (1) supporting documentation such as biological references or reprints of pertinent publications and (2) the person's name, address and association, institution, or business that the person represents.

Dated: December 6, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91–30113 Filed 12–17–91; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Soliciting Public Comment on Bilateral Negotiations During 1992

December 12, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Announcement.

SUPPLEMENTARY INFORMATION:

The U.S. Government anticipates holding negotiations during 1992 concerning expiring bilateral agreements covering certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and apparel from Argentina (March 31, 1992), Brazil (March 31, 1992), Costa Rica (May 31, 1992), Dominican Republic (May 31, 1992), El Salvador (December 31, 1992), Fiji (December 31, 1992), Guatemala (December 31, 1992), Indonesia (June 30, 1992), Jamaica (December 31, 1992), Malaysia (December 31, 1992), Mauritius (September 30, 1992), Nigeria (December 31, 1992), Soviet Union (December 31, 1992), Sri Lanka (June 30, 1992), Uruguay (June 30, 1992) and Yugoslavia (December 31, 1992). (The dates noted in parenthesis are the expiration dates of the agreements.)

Anyone who wishes to comment or provide data or information regarding these agreements, or to comment on domestic production or availability of textiles and apparel affected by these agreements, is invited to submit such comments or information in 10 copies to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC, 20230; ATTN: Helen L. LeGrande.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC. Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreements or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.91–30144 Filed 12–17–91; 8:45 am]

BILLING CODE 3510–DR–F

Amendment and Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

December 12, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending and adjusting limits.

EFFECTIVE DATE: December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6498. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government agreed to increase the designated consultation levels for Categories 219, 317, 350, 659 and 666. In addition, the current limits for certain categories are being adjusted, variously, for swing, carryover and recrediting of carryforward previously applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 53322, published on December 28, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 12, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC

VIA FAX

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 24, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on December 19, 1991, you are directed to amend further the directive dated December 24, 1990, to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Pakistan:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
226/313	80,429,159 square meters.
335	45,900 dozen.
336	183,845 dozen.
340	196,715 dozen.
342	[illegible] 035 dozen.
347/348	442,608 dozen.
352	280,511 dozen.
359–C [2]	529,640 kilograms.
361	2,203,933 numbers.
613/614	9,271,402 square meters.
615	14,187,864 square meters.
636	82,163 dozen.
641	108,350 dozen.
647/648	507,636 dozen.
Sublevels in Group II	
317	5,518,440 square meters.
350	27,500 dozen.
Levels in Group III	
219	4,500,000 square meters.
659	144,600 kilograms.
666	1,400,000 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

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Sincerely,
Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-30143 Filed 12-17-91; 8:45 am]
BILLING CODE 3510-DR-F

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed Option Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures option contract.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has applied for designation as a contract market in options on homeowners futures. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before January 17, 1992.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CBT homeowners insurance option contract.

FOR FURTHER INFORMATION CONTACT: Please contact Steve Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202-254-7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CBT in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the terms and conditions of the proposed contract, or with respect to other materials submitted by the CBT in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on December 12, 1991.

Gerald Gay,
Director.

[FR Doc. 91-30157 Filed 12-17-91; 8:45 am]
BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Special Operations Policy Advisory Group; Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on 16 January 1992 in the Pentagon, Arlington, Virginia to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effective Special Operations and Low-Intensity Conflict forces.

In accordance with section 10(d) of Public Law 92-463, the "Federal Advisory Committee Act," and section 552b(c)(1) of title 5, United States Code, this meeting will be closed to the public.

Dated: December 11, 1991.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-30158 Filed 12-17-91; 8:45 am]
BILLING CODE 3810-01-M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, January 7, 1992; Tuesday, January 14, 1992; Tuesday, January 21, 1992; and Tuesday, January 28, 1992, at 10 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency" (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552bx.c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Dated: December 13, 1991.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-30150 Filed 12-17-91; 8:45 am]
BILLING CODE 3810-01-M

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program Between the Railroad Retirement Board and the Defense Manpower Data Center of the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of a computer matching program between the Railroad Retirement Board (RRB) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD) for public comment.

SUMMARY: DMDC, as the matching agency under the Privacy Act of 1974, as amended, (5 U.S.C. 552a), is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between RRB and DMDC that their records are being matched by computer. The record subjects are delinquent debtors of the RRB who are current or former Federal employees receiving Federal salary or benefit payments and indebted and delinquent in their payment of debts owed to the United States Government under certain programs administered by RRB so as to permit RRB to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

DATES: This proposed action will become effective January 17, 1992, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 400 Army Navy Drive, room 205, Arlington VA 22202-2884. Telephone (703) 614-3027.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), RRB and DMDC have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to assist RRB in identifying and locating those delinquent debtors employed in another Federal agency, including retirees receiving a Federal benefit. RRB will use this information to initiate independent collection of these debts under the Debt Collection Act of 1982 when voluntary payment is not forthcoming or by administrative or salary offset procedures until the obligation is paid in full. These collection efforts will include requests by RRB of the employing agency to apply administrative and/or salary offset procedures until such time as the obligation is paid in full. The parties to this agreement have determined that a computer matching program is the most efficient, effective and expeditious method for accomplishing this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between RRB and DMDC is available upon request to the public. Requests should be submitted to the address caption above or to the Railroad Retirement Board, 844 Rush Street, room 500, Chicago, IL 60611.

Set forth below is a notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on Computer Matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement as required by 5 U.S.C. 552a(r) and an advance copy of this notice was submitted on December 6, 1991, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records about Individuals," Dated December 12, 1985 (50 FR 52736, December 24, 1985). This matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: December 13, 1991.

L. M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

Computer Matching Program Between the Railroad Retirement Board and the Defense Manpower Data Center of the Department of Defense for Debt Collection

A. *Participating agencies:* Participants in this computer matching program are the Railroad Retirement Board (RRB) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). RRB is the source agency, i.e., the agency disclosing the records for the purpose of the match. DMDC is the specific recipient of matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* The propose of the match is to identity and locate delinquent debtors who are current or former Federal employees receiving any Federal salary or benefit payments and indebted and delinquent in their repayment of debts owned to the United States Government under certain programs administered by RRB so as to permit RRB to pursue and collect the debt by voluntary repayments or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

C. *Authority conducting the match:* The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97-365), 31 U.S.C. chapter 37, subchapter I (General) and subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716-3718 Administrative Offset, 5 U.S.C. 5514 Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 136, Assistant Secretaries of Defense, Appointment Powers and Duties Section 206 of Executive order 11222; 4 CFR chapter II, Federal Claims Collection Standards (General Accounting Office-Department of Justice); 5 CFR 550.1101-550.1108 Collection by Offset from Indebted Government Employees (OPM); 20 CFR part 361 Recovery of Debts Owed the United States Government by Employees (RRB); and 20 CFR part 367 Recovery of Debts Owed to the Railroad Retirement Board from other Government Agencies (RRB).

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. This match will involve the RRB record system identified as RRB-42, "Uncollectible Benefit Overpayment Accounts", last published in the **Federal Register** at 49 FR 7900 on March 3, 1984, and amended at 56 FR 47502 on September 19, 1991. The RRB file contains information on approximately 5000 debtors.

2. The DoD will use the system of records identified as S322.11 DLA-LZ, "Federal Creditor Agency Debt Collection Data Base", last published in the **Federal Register** at 52 FR 37495 on October 7, 1987. The DMDC file contains

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information on approximately ten million active duty, retired, and Reserve military members, current and former Federal civilian employees.

3. Both record systems contain appropriate routine use disclosure provisions required by the Privacy Act permitting the disclosure of the affected personal information between the RRB and the DoD. The routine uses are compatible with the purposes for which the information was collected and maintained. Moreover, there will be a disclosure accounting maintained by DMDC for any disclosures from the S322.11 DLA–LZ record system.

E. *Description of computer matching program:* RRB, as the source agency, will provide DMDC with a magnetic tape of individuals who are indebted to the RRB. The tape will contain data elements on individual debtors. DMDC, as the recipient agency, will perform a computer match using all nine digits of the SSN of the RRB file against a DMDC computer data base. Matching records, "hits" based on the SSN, will produce the member's name, service or agency, category of employee, salary or benefit amounts, and current work or home address. Matching records will be returned to RRB. RRB will be responsible for verifying the information and for resolving any discrepancies or inconsistencies on an individual basis. RRB will be responsible for making the final determinations as to positive identification, amount of indebtedness, and recovery efforts as a result of the match. If the debtor is employed by another Federal agency, a request for salary or administrative offset is issued to the employing agency.

F. *Individual notice and opportunity to contest:* It will be the responsibility of RRB to verify and determine whether the data from the DMDC match are consistent with the data from the RRB debtor file, and to resolve any discrepancies or inconsistencies as to positive identification. RRB will screen the initial data to verify that the matched individual is in fact a delinquent debtor not in a repay status. RRB will do this by manually comparing the hit file with the RRB debtor files to verify debtor identity; conducting independent inquiries when necessary to resolve questionable identities; and reviewing records of the suspected debtor's account to confirm that the debt is still in a non-pay status without resolution. Any discrepancies or inconsistencies furnished by DMDC, or developed as the result of the match, such as amount of indebtedness or salaries of hits will be independently investigated and verified by RRB prior to any final adverse action being taken against the individual by RRB. There will be no adverse action taken based on raw hits. Raw hit data will be manually reviewed to ensure the individuals identified are eligible for salary offset.

The debtor is given an opportunity to enter into a voluntary agreement to repay the debt under terms agreeable to RRB. The debtor is given an opportunity to inspect and copy records related to the debt and for review of the decision related to the debt. Requests for copies of the records relating to the debt shall be made no later than 10 days from the receipt by the debtor of the notice of indebtedness.

The debtor is entitled to a 30 day written notification informing the debtor of the circumstances under which the debt occurred, the amount owed, the intent to collect by deduction from pay if the amount owed is not paid in full, and an explanation of other rights of the debtor under the law.

The debtor is also entitled to an opportunity for a hearing concerning the existence or the amount of the debt, or when a repayment schedule is established other than by written agreement concerning the terms of the repayment schedule. The debtor shall be advised that a challenge to either the existence of the debt, the amount of the debt, or the repayment schedule, must be made within 30 days of receipt by the debtor of the notice of indebtedness or within 45 days after receipt of the records relating to the debt, if such records are requested by the debtor.

G. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either and the mandatory 30 days public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and may be repeated no more than once a year. Under no circumstances shall the matching program be implemented before this 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between RRB and DMDC, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

H. *Address for receipt of Public comments or inquiries:* Director, Defense Privacy Office, 400 Army Navy Drive, room 205, Arlington, VA 22202–2884. Telephone (703) 614–3027.

[FR Doc. 91–30160 Filed 12–17–91; 8:45 am]
BILLING CODE 3810–01

Department of the Army

AMCCOM Advance Planning Briefing for Industry

AGENCY: U.S. Army Armament, Munitions, and Chemical Command, (AMCCOM), DoD.

ACTION: Notice of AMCCOM Advance Planning Briefing for Industry (APBI).

SUMMARY: Effective immediately, as a result of Army Materiel Command direction and in accordance with FAR 5.4 and DFARS 205.4, the Advance Planning Briefing for Industry (APBI) system has been established at AMCCOM. This system, which is designed to assure maximum industry access to advance planning information on a fair and equal basis and within the context of procurement integrity, provides 5-year projected requirements for AMCCOM ammunition, weapons, and chemical items, as well as 1-year projected requirements for AMCCOM spare parts. In addition the system contains a listing of upcoming conferences which industry may attend, and various publications which are available for informational purposes.

EFFECTIVE DATE: December 18, 1991.

FOR FURTHER INFORMATION CONTACT: Garry Eichorn, HQ, AMCCOM, ATTN: AMSMC–PPA/APBI, Rock Island, IL 61299–6000, (309) 782–8378/8409 or DSN 793–8378/8409.

SUPPLEMENTARY INFORMATION:

Access to the APBI system may be accomplished through a 1200 Baud modem to phone number (309) 782–7648, which will establish a connection to 1 of 5 APBI access lines. Depress the "enter" key until the "login:" prompt appears on the screen, enter "apbi" in lower case letters, depress the "enter" key again, and a series of survey questions will appear. Answer the survey questions, entering data by depressing the "enter" key. After all the survey questions have been answered, the opening screen to the system will appear. Simply follow the menu instructions for access to the information desired. In addition, two direct terminals have been placed in the reception area located on the 2nd floor, southeast corner of building 350 at the Rock Island Arsenal. Follow the instructions noted above, beginning with the "login" prompt and access will be established.

The information in the system is the most accurate available as of the date notated within the system by each specific category. Please note that updates will be performed periodically and without prior notice. The use of the information within the system is at the customer's own risk. The APBI system is for informational purposes only; the data contained therein does not represent a current solicitation by the Government. The Government is not, and will not, be liable for any actions taken by contractors based on the information provided in the system.

The program is designed to limit individual inquiries to 30 minutes each. Upon expiration of the 30 minute timeframe, customers will be aborted from the system. Should additional time be desired, separate inquiry must be made.

Kenneth L. Denton,
Alternate Army Federal Register Liaison Officer.

[FR Doc. 91–30326 Filed 12–17–91; 8:45 am]
BILLING CODE 3710–08–M

Department of the Navy

Planning and Steering Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory CommitteeAct (5 U.S.C. app. 2), notice is hereby given that the Planning and Steering Advisory Committee will meet January 6, 1992 from 0900 to 1530, at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purposes of this meeting is to discuss topics relevant to SSBN security. The entire agenda will consist of classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that all sessions of the meeting shall be closed to the public because they concern matters listed in 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: LT J. E. Williams (OP-213E), Pentagon, room 4D534, Washington, DC 20350, Telephone Number: (703) 697-8887.

Dated: December 10, 1991.

Wayne T. Baucino,
Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 91–30180 Filed 12–17–91; 8:45 am]
BILLING CODE 3810–AE–F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ES92–19–000, et al.]

Citizens Utilities Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Citizens Utilities Co.

[Docket No. ES92–19–000]

December 9, 1991.

Take notice that on December 2, 1991, Citizens Utilities Company filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authority to issue not more than $250 million of promissory notes on or before January 16, 1994, with a final maturity date no later than January 16, 1995.

Comment date: December 31, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Century Power Corp.

[Docket No. FA88–8–004]

December 10, 1991.

Take notice that on December 4, 1991, Century Power Corporation (Century) tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 3, and Supplement Nos. 1, 2 and 3. Century requeats an effective date of December 26, 1986.

Comment date: December 24, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Acme Power Co.

[Docket No. QF92–28–000]

December 9, 1991.

On December 3, 1991, Acme Power Company (Applicant), of 165 Acme Road, Acme/Ranchester, Wyoming 82839, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Acme, Wyoming, and will include two combustion turbine generators, a heat recovery steam generator, five steam turbine generators, three flash desulphurization gasification units and associated power generating equipment. The electric power production capacity of the facility will be 80 MW. The primary fuel will be waste coal. Construction of the facility will begin on or before July, 1993.

Comment date: 30 days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Gas and Electric Co.

[Docket No. ER92–147–000]

December 10, 1991.

Take notice that on December 9, 1991, Pacific Gas and Electric Company (PG&E) tendered for filing an amendment to the agreement dated October 4, 1991 between PG&E and Puget Sound Power & Light Company (Puget) for the seasonal exchange of capacity and associated energy ("the Exchange Agreement"). The Exchange Agreement was initially filed on November 1, 1991 in this docket and interventions or protests were due by November 22, 1991. None were filed. The amendment to the Exchange Agreement revises the provision dealing with the regulatory and contractual consequences of termination of that agreement. Copies of this filing have been served upon Puget, Bonneville Power Administration and the California Public Utilities Commission.

Comment date: December 20, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of New Hampshire

[Docket Nos. ER91–143–006 and EL91–15–006]

December 10, 1991.

Take notice that on November 20, 1991, Public Service Company of New Hampshire tendered for filing its refund report in compliance with the Commission's order issued October 21, 1991 in the above dockets.

Comment date: December 24, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Cleveland Electric Illuminating Co.

[Docket No. ER92–208–000]

December 10, 1991.

Take notice that on November 26, 1991, Cleveland Electric Illuminating Company tendered for filing copies of CAPCO Basic Operating Agreement as amended October 1, 1991 to replace without interruption the CAPCO Basic Operating Agreement dated as of September 1, 1980.

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Comment date: December 24, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Co. Services, Inc.

[Docket No. ER92-187-000]

December 10, 1991.

Take notice that on November 15, 1991, Southern Company Services, Inc. (SCS), acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (Southern Companies) tendered for filing Amendment No. 1 to the Transition Energy Agreement between Jacksonville Electric Authority, Southern Companies and SCS dated October 15, 1991, and Amendment No. 1 to the Transition Energy Agreement between Florida Power & Light Company, Southern Companies and SCS dated October 16, 1991. SCS also filed, on behalf of Georgia Power Company, Amendment No. 1 to the Plant Robert W. Scherer Unit Number Four Transmission Service Agreement between Jacksonville Electric Authority, Georgia Power Company and SCS dated October 15, 1991. The amendments revise the billing and payment provisions of the referenced agreements to conform to existing practice under other agreements among the parties. Southern Companies request that the Amendments be allowed to become effective on February 1, 1992.

Comment date: December 23, 1991 in accordance with Standard Paragraph E at the end of this notice.

8. Tampa Electric Co.

[Docket No. ER92-213-000]

December 10, 1991.

Take notice that on December 2, 1991, Tampa Electric Company (Tampa Electric) tendered for filing a Letter of Commitment providing for negotiated sales of available power by Tampa Electric to the Utility Board of the City of Key West, Florida (Key West). Tampa Electric states that the Letter of Commitment is submitted as a supplement to Service Schedule J (Negotiated Interchange Service) under the existing agreement for interchange service between Tampa Electric and Key West.

Tampa Electric proposes an effective date of December 4, 1991, for the Letter of Commitment, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Key West and the Florida Public Service Commission.

Comment date: December 24, 1991, in accordance with Standard Paragraph E end of this notice.

9. Brush Cogeneration Partners

[Docket No. QF89-7-001]

December 11, 1991.

On December 10, 1991, Brush Cogeneration Partners tendered for filing an amendment to its filing in this docket.

The amendment provides additional information pertaining primarily to the technical data and the ownership structure of the cogeneration facility.

Comment date: December 20, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. Southern Co. Service, Inc.

[Docket No. ER92-153-000]

December 11, 1991.

Take notice that on December 9, 1991, Southern Company Service, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company, tendered for filing supplemental information in connection with Amendment No. 2 dated October 31, 1991 to The Southern Company System Intercompany Interchange Contract and Allocation Methodology and Periodic Rate Computation Manual ("Manual").

Southern Companies are proposing to revise the Intercompany Interchange Contract and the Manual to simplify the procedure for determining capacity purchases from and sales to the pool, as well as the methodologies used to determine the capability of various types of generating units. Southern Companies request that the amendment be allowed to become effective on January 1, 1992. The supplemental filing contains additional information regarding the revisions incorporated in Amendment No. 2.

Comment date: December 24, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 91-30183 Filed 12-17-91, 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1333-001]

Pacific Gas and Electric Co. California; Availability of Environmental Assessment

December 11, 1991.[1]

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for new license for the existing Tule River Project, located on the Tule River and its tributaries in Tulare County, California, near the town of Porterville, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that approval of the project would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary

[FR Doc. 91-30121 Filed 12-17-91, 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-01587T Wyoming-24]

State of Wyoming; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formations

December 12, 1991.

Take notice that on November 25, 1991, as supplemented on December 9, 1991, the Wyoming Oil and Gas Conservation Commission (Wyoming) submitted the above-referenced notice of determination pursuant to

[1] Supercedes the Commission s Notice of Availability of Environmental Assessment dated November 25, 1991.

§ 271.703(c)(3) of the Commission's regulations, that the Muddy Sand and Dakota Sand Formations within a portion of the Mary Draw Field, Campbell and Converse Counties, Wyoming, qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice covers all of section 26, Township 41 North, Range 72 West, Campbell and Converse Counties, Wyoming.

The notice of determination also contains Wyoming's findings that the referenced portion of the Muddy Sand and Dakota Sand Formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30182 Filed 12-17-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10769-001 Ohio]

Alpyn Creek Development Corp.; Surrender of Preliminary Permit

December 11, 1991.

Take notice that Alpyn Creek Development Corporation, permittee for the Big Ice Creek Energy Storage Project located within the town of Ironton, Lawrence County, Ohio, has requested that its preliminary permit be terminated. The preliminary permit was issued on August 14, 1989, and would have expired on July 31, 1992.

The permittee filed the request on November 21, 1991, and the preliminary permit for Project No. 10769 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30122 Filed 12-17-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA92-1-000]

Coastal States Gas Transmission; Petition for Staff Adjustment Under NGPA Section 502(c)

December 11, 1991.

Take notice that on December 4, 1991, Coastal States Gas Transmission Company (Coastal) filed with the Commission, pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) and part 385 (subpart K) of the Commission's regulations, a petition for adjustment to permit Coastal to use its tariff on file with the Railroad Commission of Texas (Texas Commission) for services performed pursuant to section 311 of the NGPA. Coastal asserts that since it does not render city-gate service, the Commission should authorize an adjustment under section 502(c) of the NGPA to prevent special hardship and inequity that would otherwise result if Coastal were required to submit a § 284.123(b)(2) filing.

In support of its petition, Coastal says that it is an intrastate pipeline which operates natural gas pipeline facilities located in various counties in the State of Texas and is engaged in the transportation of gas subject to the jurisdiction of the Texas Railroad Commission. Coastal's transportation rates are subject to regulation by the Texas Commission and have been filed with the Texas Commission. Specifically, Coastal here seeks an adjustment to allow it to use an existing tariff currently on file with the Texas Commission as the fair and equitable rate for transportation services to be performed under section 311 of the NGPA on certain of its pipeline facilities located in Clay and Wichita Counties, Texas.

Any person desiring to be heard or protest this petition should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 2, 1992. All protests filed will be considered, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules. Copies of this petition are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30123 Filed 12-17-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-189-000]

Midwestern Gas Transmission Co.; Informal Settlement Conference

December 11, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on December 19, 1991, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Arnold H. Meltz (202) 208-0737 or Marc G. Denkinger at (202) 208-2215.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30124 Filed 12-17-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2596-002]

Rochester Gas & Electric Corp.; Filing of Application

December 11, 1991.

Take notice that on December 4, 1991, the Rochester Gas and Electric Corporation filed an application to relicense the Mt. Morris Hydroelectric Project No. 2596-002.

The Mt. Morris Project is located on the Genesee River, in Livingston County, New York. The project consists of a 21-foot-high dam, a 4.5-acre reservoir, and a powerhouse with an installed capacity of 3.881 MW. The licensee proposes to rehabilitate the existing turbine/generating units and replace the turbine runners increasing the capacity from 1.667 MW. The current operating license expires December 31, 1991.

If any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, a request for the study, together with justification for such request in accordance with § 4.32 of the Commission's regulations, must

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be filed no later than 60 days after the date of filing.

Lois D. Cashell,

Secretary

[FR Doc. 91-30125 Filed 12-17-91, 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-224-000, RP89-203-000, RP90-139-000, and RP91-69-000]

Southern Natural Gas Co.; Informal Settlement Conference

December 11, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on December 17, 1991, at 11 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Betsy R. Carr at (202) 208-1240 or James A. Pederson at (202) 208-2158.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30126 Filed 12-17-91, 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2357-003]

Wisconsin Electric Power Co.; Filing of Application

December 11, 1991.

Take notice that on October 21, 1991, the Wisconsin Electric Power Company filed an application to relicense the White Rapids Hydroelectric Project No. 2357-003.

The White Rapids Project is located on the Menominee River, in Menominee County, Michigan and Marinette, Wisconsin. The project consists of a 27-foot-high dam, a 435-acre reservoir, and a powerhouse with an installed capacity of 8.0 MW. The licensee proposes no changes in operation or new construction for the project. The current operating license expires December 31, 1991.

If any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, a request for the study, together with justification for such request in accordance with § 4.32 of the Commission's regulations, must be filed no later than 60 days after the date of filing.

Lois D. Cashell,

Secretary

[FR Doc. 91-30127 Filed 12-17-91, 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Special Research Grant Program Notice 92-2: Pre-Service Teacher Enhancement Program; Inviting Grant Applications

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Energy Research (ER) of the Department of Energy (DOE) announces its interest in receiving, from four-year accredited institutions of higher education, special research grant applications that will support innovative pre-service approaches to encouraging science and mathematics majors to become precollege teachers. Examples of pre-service approaches include but are not limited to: programs which emphasize transfer of research experiences to the classroom; intern programs and in-school activities which provide the potential teacher with quality experiences working under the guidance of a master teacher through college/university-school system collaboration; conferences to explore effective mechanisms to encourage science and math majors, including women, underrepresented minorities and the handicapped, to pursue careers as precollege teachers; programs to encourage high school students to pursue science and mathematics majors with the goal of entering the precollege teaching profession; programs which encourage students majoring in science and mathematics to become elementary school teachers or specialists; and college/university programs which include content specific pedagogy, utilization of faculty who exhibit best teaching strategy and current experience in the precollege classroom, and collaboration between the science/mathematics and education departments.

This program anticipates awarding funds only from FY 1992 appropriations. It is estimated that $400,000 will be available to fund 10-15 new projects with the maximum award being $40,000.

DATES: To permit timely consideration for award in Fiscal Year 1992, formal applications submitted in response to this notice should be received no later than 4:30 p.m., February 12, 1992. No electronic submissions of formal applications will be accepted.

ADDRESSES: Completed formal applications referencing Program Notice 92-2 should be forwarded to: U.S. Department of Energy, Division of Acquisition and Assistance Management, ER-64, Office of Energy Research, Washington, DC 20585. Federal Express address is: U.S. Department of Energy, Division of Acquisition and Assistance Management, ER-64, Office of Energy Research, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Cindy Musick, Program Manager, Office of University and Science Education Programs, ER-80, Office of Energy Research, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-0987.

SUPPLEMENTARY INFORMATION: The DOE is strongly committed to increasing the number of students interested in science, mathematics and technology careers, including an increase in the number of students majoring in science, mathematics and technology who will become precollege teachers. In accordance with 10 CFR 600.7(b)(1), eligibility for awards under this notice is limited to four-year accredited institutions of higher education because students participating in this program must be prepared to teach at the pre-college level upon graduation by attaining certification through an accredited teacher education program. Collaborative efforts are encouraged and may include, but are not limited to: A significant involvement and commitment of the participating local school system(s); enterprises which utilize the scientific and technical expertise of research facilities including the DOE national laboratories and other research contractors, particularly for research experiences; and the broader educational community, including science museums/science centers. Other elements which may strengthen applications include, but are not limited to, the utilization of master mathematics/science teachers; the commitment of the institution of higher education to support this project by providing financial support through the provision of scholarships, forgivable loans or other incentives; academic credit for research or in-school experiences for the participating students; and effective on-campus programs. All applications are required to have an evaluation component which demonstrates the effectiveness of the program.

Information about the development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the ER Special Research Grant Application Kit and Guide. The application kit and guide and copies of 10 CFR part 605 are available from the U.S. Department of Energy, Office of Energy Research, Office of University and Science Education Programs, ER-80, Washington, DC 20585. Telephone requests may be made by calling (202) 586-8949. The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Subject to the availability of appropriated funds, DOE expects to make several grants in FY 1992 to meet the objectives of this program. It is anticipated that $400,000 will be the total funds available in FY 1992. The size of each grant will be limited to a maximum of $40,000.

This notice requests further that the "Detailed Description of Research Work Proposed" component of a complete grant application as established by 10 CFR part 605 should not exceed 15 double-spaced, typed pages. This description of work should include the conceptual design and how that design relates to the program objectives; the target audience(s) the project will serve and efforts planned to serve that audience; the mechanisms to be used to organize and manage the project, including the rules and responsibilities, financial and otherwise, of any partnerships; the monitoring and evaluation plan, including how those plans can be used for possible project modification; the planned outcomes and how these outcomes will be assessed and reported; and the anticipated significance of the project and how it will be confirmed.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 91-30196 Filed 12-17-91, 8:45 am]

BILLING CODE 6450-01-M

Special Research Grant Program Notice 92-6: Generator and Large Motor Applications of Superconductivity

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Program Analysis, Office of Energy Research of the Department of Energy, hereby announces its interest in receiving applications for a Special Research Grant that seek support for conducting a research needs assessment in the area of superconductivity as it relates to electric power generators and large motor applications. The purpose of this activity is to identify and disseminate priority research needs for achieving high efficiency utilization of state of the art development in superconductivity with superior economic, environmental, and performance potential. This project should not focus on topics such as those requiring liquid helium for operation.

Applicants must include a description of the planned methodology that will be used in assessing long term (up to 20 years) research directions, opportunities, priorities, and degrees of difficulty in accomplishing identified research opportunities.

Applicants must enlist the aid of experts from academia and industry to identify, describe, and assess on a worldwide basis, the most promising new (i.e. beyond state of the art) developments, applications, and opportunities in science and technology to facilitate the future utilization of superconductivity for power generators and large motor applications.

APPLICATION INFORMATION: Information about submission of applications, eligibility, limitations, evaluation, selection processes, and other policies and procedures may be found in the Application and Guide for the Special Research Grant Program. The application kit and guide and copies of 10 CFR part 605 are available from Paul Maupin, Office of Program Analysis, Office of Energy Research, U.S. Department of Energy, ER-33, Washington, DC 20585. Instructions for preparation of an application are included in the application kit. Telephone requests may be made by calling (301) 903-4355 or FTS 233-4355. The Catalog of Federal Domestic Assistance number for this program is 81.049.

DATES: Formal applications submitted in response to this notice should be received by March 1, 1992.

ADDRESSES: Formal applications sent by U.S. Mail should be addressed to: U.S. Department of Energy, Office of Energy Research, Division of Acquisition and Assistance Management, ER-64, Washington DC 20585, Attn: Program Notice 92-6. The following address must be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Office of Energy Research, Division of Acquisition and Assistance Management, ER-64/GTN, 19901 Germantown Road, Germantown, MD 20874.

SUPPLEMENTARY INFORMATION: In the United States, efforts to harness superconductivity in high power applications have been made for over 30 years. Due to economies of scale and costs the most likely first impact made by this technology in the energy field will be in the area of power generation and large motor applications. A significant effort to apply superconductivity to large scale components was already underway prior to the rapid development of the higher temperature superconductors. Despite considerable technical success with prototypes of generators and motors, the technology is not strongly pursued in this country.

In contrast, superconducting power generators are currently under development in Japan, Germany, France, and Russia albeit, utilizing the lower temperature superconductors. In Japan alone, a major financial commitment has been made for achieving the national goal of dominating superconducting generator technology (Super GM project). The reason for this commitment is obvious because, although current generators are relatively efficient, an increase in their efficiency can result in reduced fuel consumption and pollutant emissions. Application to other areas such as large motors would amplify the benefits.

To bring the U.S. up to parity with the competition requires a coordinated, multidisciplinary effort from the developmental state to the systems scale. The application of higher temperature superconductors to generators and large motors requires a detailed technical strategy. A careful review and identification of the technical obstacles to be addressed by U.S. science and engineering is of paramount importance to provide an efficient technical plan.

To address the objectives discussed above, the Office of Program Analysis of the Office of Energy Research has coordinated with the DOE Office of Conservation and Renewable Energy and is planning to award a grant for a research needs assessment for generator and large motor applications of superconductivity. The Office of Program Analysis plans to publicly disseminate the results and findings of this research needs assessment in a report. Specific information concerning requirements for the application follow.

The principal investigator of the assessment must be an individual who is competent and accomplished in

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appropriate scientific and technical areas. Competence and accomplishments shall be described in the application which shall address industrial or academic experience, research publications, contributions while serving as an expert, consultant services, honors and awards, and education including advanced degrees and other academic qualifications. The principal investigator also shall be an individual with demonstrated ability to conduct research needs assessments for the utilization of superconductivity in generator and motor applications and manage individual experts and groups of experts in the timely and successful identification, analysis, distillation and documentation of scientific and technical information. These demonstrated abilities shall be documented in the application.

The applicant, in order to address adequately and competently the full scope of this endeavor and at sufficient technical depths in all major topical areas, must enlist the aid of other scientific/technical experts. The application shall provide tentative identification of all proposed experts and their present affiliation. All experts, both foreign and domestic, are to be individuals who are competent and accomplished in a scientific or technical discipline directly related to the research assessment. Technical competence and accomplishments of each expert shall be described in the application and should include the individual's experience, research publications, consultant services, contributions while serving as an expert with other groups, honors and awards, professional experience, and education including advanced degrees and other academic qualifications. The expected contribution of each expert to the assessment's objectives should be identified. The overall technical expertise of the group of experts, when combined with the technical expertise of the principal investigator, should be shown to be adequate to cover the various scientific and technical disciplines involved in the assessment.

These experts will assist the principal investigator in accomplishment of the assessment's objectives, especially in writing major sections of the required final report. They are also expected to conduct technical discussions with other experts, specialists, researchers, and research program managers in the scientific and technical areas; conduct site visits, as a panel, to laboratories and other facilities where research and development directly related to the subject area is conducted and managed; and review and evaluate recent and relevant research including scientific and technical literature.

The initial composition of a group of experts, other consultants, and any subsequent changes must be approved by the Program Manager and Contracting Officer.

Applications also should include the following: a schedule of the assessment's major activities including the tentative content of meetings of various teams of the experts, a description of anticipated site visits to publicly and privately funded facilities, a description of all conferences to be attended as a part of assessment activities, and a description of the methodology for obtaining a peer review of the assessment results.

The applicant is expected to supply the personnel, facilities, and materials necessary to accomplish the objectives of the assessment as described in this notice.

APPLICATION REVIEW AND AWARD INFORMATION: Applications will be reviewed in accordance with the Energy Research Merit Review System, published in the **Federal Register**, March 11, 1991 (56 FR 10244). Subject to the availability of appropriated FY 1992 funds, one grant award at approximately $300,000 is planned. The grant award will be for a 1-year period.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 91-30195 Filed 12-17-91, 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-11084-2]

Solicitation for Environmental Education Grants; Correction

AGENCY: Environmetnal Protection Agency.

ACTION: Notice; correction.

SUMMARY: EPA is correcting errors in the Solicitation Notice for Environmental Education Grants that appeared in the **Federal Register** on December 10, 1991 (56 FR 64513).

FOR FURTHER INFORMATION CONTACT: Mr. George Walker, at (202) 260-4484.

SUPPLEMENTARY INFORMATION: EPA has solicited for applications for grants authorized under section 6 of the National Environmental Education Act (Pub. L. 101-619). The Solicitation Notice contained errors which are discussed briefly below and are corrected by this notice.

Michael E. O'Reilly,

Acting Director, Office of Environmental Education.

The following corrections are made in the Solicitation Notice for Environmental Education Grants published in the **Federal Register** on December 10, 1991 (56 FR 64513).

1. Page 64514, first column of the notice, which states, "Applications must be received by EPA within 60 days of the date that this solicitation notice is published in the **Federal Register**, is revised to read "Applications must be received by EPA within 90 days of the date that this notice is published in the **Federal Register.**"

2. Page 64514, first column, is changed from "A kit may be obtained by * * * calling (703) 847-3036 between 1 p.m. and 5 p.m." to "A kit may be obtained by * * * calling (703) 847-3036 between 9 a.m. and 5 p.m.".

3. On page 64513, third column, answer to Question XI which reads "Activities cannot start before funds are awarded. Start dates are currently targeted for May 1, 1992" should be changed to read "Activities cannot start before funds are awarded. Start dates are currently targeted for June 1992".

[FR Doc. 91-30186 Filed 12-17-91, 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51780; FRL 4008-9]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 25 such PMNs and pfovides a summary of each.

DATES: Close of review periods:

P 92-266, 92-267, 92-268, 92-269, 92-270, 92-271, 92-272, 92-273, 92-274, 92-275, 92-276, February 29, 1992.

P 92-277, 92-278, March 1, 1992.

P 92-279, March 3, 1992.

P 92-280, 92-281, March 1, 1992.

P 92-283, 92-284, 92-285, 92-286, 92-287, 92-288, March 2, 1992.

P 92-289, 92-290, 92-291, March 3, 1992.

Written comments by:

P 92-266, 92-267, 92-268, 92-269, 92-270, 92-271, 92-272, 92-273, 92-274, 92-275, 92-276, January 30, 1992.

P 92-277, 92-278, January 31, 1992.

P 92-279, February 2, 1992.

P 92-280, 92-281, January 31, 1992.

P 92-283, 92-284, 92-285, 92-286, 92-287, 92-288, February 1, 1992.

P 92-289, 92-290, 92-291, February 2, 1992.

ADDRESSES: Written comments, identified by the document control number "[OPTS-51780]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., rm. L-100, Washington, DC, 20460, (202) 260-3532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. E-545, 401 M St., SW., Washington, DC 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 92-266

Manufacturer. Confidential.

Chemical. (S) Fatty acid C_{12-20} and C_{10-20}.

Use/Production. (S) Ingredient in lubricant and formulation. Prod. range: 50,000-100,000 kg/yr.

P 92-267

Manufacturer. Confidential.

Chemical. (G) Halogenated alkyl nitrile.

Use/Production. (G) Heavy metal precipitant. Prod. range: Confidential.

Toxicity Data. Static acute toxicity: time LC50 96h95 mg/l species (rainbow trout).

P 92-268

Manufacturer. Confidential.

Chemical. (G) Polymeric sulfide.

Use/Production. (G) Heavy metal precipitant. Prod. range: Confidential.

Toxicity Data. Static acute toxicity: time LC50 96h95 mg/l species (rainbow trout).

P 92-269

Manufacturer. Confidential.

Chemical. (G) Polymeric sulfide.

Use/Production. (G) Heavy metal precipitant. Prod. range: Confidential.

Toxicity Data. Static acute toxicity: time LC50 96h95 mg/l species (rainbow trout).

P 92-270

Manufacturer. Confidential.

Chemical. (G) Polymeric sulfide.

Use/Production. (G) Heavy metal precipitant. Prod. range: Confidential.

Toxicity Data. Static acute toxicity: time LC50 96h95 mg/l species (rainbow trout).

P 92-271

Manufacturer. Confidential.

Chemical. (G) Halogenated alkyl nitrile.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 92-272

Manufacturer. Confidential.

Chemical. (G) Polyaryl ester.

Use/Production. (G) Lubricant addition. Prod. range: Confidential.

P 92-273

Manufacturer. Confidential.

Chemical. (G) Styrene/hydroxy acrylic polymer, ammonium salt.

Use/Production. (G) Open, nondispersive. Prod. range: confidential.

P 92-274

Manufacturer. Confidential.

Chemical. (G) Tertiary amine salt.

Use/Production. (G) Catalyst for contained use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 8.44 g/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Skin irritation: negligible species (rabbit).

P 92-275

Manufacturer. Bedoukian Research, Inc.

Chemical. (G) Alkyldiene propionate.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 92-276

Manufacturer. Confidential.

Chemical. (G) Aminosilicone.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 16 ml/kg species (rat). Eye irritation: moderate species (rabbit). Skin irritation: moderate species (rabbit).

P 92-277

Manufacturer. Confidential.

Chemical. (G) Polyurethane epoxy resin.

Use/Production. (G) Adhere. Prod. range: Confidential.

P 92-278

Importer. Confidential.

Chemical. (S) Benzoic acid, 4-amino-,ethyl ester, polymer with oxirane.

Use/Import. (S) UV Absorber. Import range: Confidential.

Toxicity Data. Static acute toxicity: time LC50 96h500 mg/l species (golden orfe). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit). Mutagenicity: negative. Skin sensitization: negative species (guines pig).

P 92-279

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.

Chemical. (G) Styrenated hydroxy functional acrylic.

Use/Production. (G) Highly dispersive. Prod. range: Confidential.

P 92-280

Manufacturer. Rohm & Haas Company.

Chemical. (G) Acrylic copolymers A, A1 and A2.

Use/Production. (G) Open nondispersive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (rat). Acute dermal toxicity: LD50 > 2.0 g/kg species (rabbit). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 92-281

Manufacturer. Rohm & Haas Company.

Chemical. (G) Acrylic copolymers A, A1 and A2.

Use/Production. (G) Open nondispersive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (rat). Acute dermal toxicity: LD50 > 2.0 g/kg species (rabbit). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 92-283

Importer. Charkit Chemical Corporation.

Chemical. (G) Substituted spiro oxzine.

Use/Import. (G) Dye. Import range: 10-15 kg/yr.

P 92-284

Manufacturer. Confidential.

Chemical. (G) Urethane acrylic latex.

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Use/Production. (G) Component of coating. Prod. range: 3,000–10,000 kg/yr.

P 92-265

Manufacturer. Confidential.
Chemical. (G) Urethane acrylic latex.
Use/Production. (G) Component of coating. Prod. range: 3,000–10,000 kg/yr.

P 92-266

Manufacturer. Confidential.
Chemical. (G) Urethane acrylic latex.
Use/Production. (G) Component of coating. Prod. range: 3,000–10,000 kg/yr.

P 92-267

Importer. Nagase America Corporation.
Chemical. (S) 6-[(3-Ethoxypropyl)ethylamino)-3'-methyl-2'(phenylamino)-spiro(isobenzofuran-1(3*H*),9'-(9*H*)xanthen)-3-one.
Use/Import. (S) Color former for pressure sensitive paper. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Eye irritation: none species (rabbit). Mutagenicity: negative. Skin irritation: negligible species (rabbit). Skin sensitization: positive species (guinea pig).

P 92-268

Importer. Rohm and Haas Company.
Chemical. (G) Thiolated divinyl benzene/styrene copolymer hydrogenion form.
Use/Import. (G) Contained use. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 5 g/kg species (rabbit). Eye irritation: practically none species (rabbit). Skin irritation: minimal species (rabbit).

P 92-269

Importer. Dow Chemical Corporation.
Chemical. (G) Alkoxysilyl group-terminated polydialkylsiloxane.
Use/Import. (S) Silicone adhesive/sealant. Import range: Confidential.

P 92-270

Manufacturer. Confidential.
Chemical. (G) Poly(alkenyl)succinimido-polyamine fatty acids salts.
Use/Production. (G) Fuel additive. Prod. range: Confidential.

P 92-271

Manufacturer. Confidential.
Chemical. (G) Poly (alkenyl) succinimido, stearate sal.
Use/Production. (G) Fuel additive. Prod. range: Confidential.

Dated: December 12, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91–30184 Filed 12–17–91, 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

[Docket No. 91–58]

Bank Line Limited v. Jet Set Marine, Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Bank Line Limited ("Complainant") against Jet Set Marine, Inc. ("Respondent") was served December 12, 1991. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1), by failing to remit the ocean freight, charges and fees due and payable for a shipment of one container, said to contain a speed boat, engines and accessories, between New York and Port Louis, Mauritius.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by December 14, 1992, and the final decision of the Commission shall issued by April 13, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 91–30136 Filed 12–17–91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Independence Bancorporation, Inc.; Formation of; Acquisition by; or Merger of Bank Holding Companies; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 91-29567) published at page 64633 of the issue for Wednesday, December 11, 1991.

Under the Federal Reserve Bank of Chicago, the entry for Independence Bancorporation, Inc. is amended to read as follows:

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Independence Bancshares, Inc., Independence, Iowa; to merge with First State Bancorporation, Fredrickburg, Iowa, and thereby indirectly acquire Northeast Iowa National Bank, Sumner, Iowa.

Comments on this application must be received by December 24, 1991.

Board of Governors of the Federal Reserve System, December 12, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–30176 Filed 12–17–91, 8:45 am]

BILLING CODE 6210-01-F

Summit Bancorp, Inc., et al.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 8, 1992.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Summit Bancorp, Inc., Akron, Ohio; to acquire Summit Interim Savings Bank, Tallmadge, Ohio pursuant to § 225.25(b)(9) of the Board's Regulation Y, which will be used to acquire the Montrose Branch, Akron, Ohio, and the Tallmadge Branch, Tallmadge, Ohio, of Union Federal Savings Bank, Indianapolis, Indiana. Applicant's subsidiary bank will acquire all of the interim thrift's assets and assume deposit liabilities pursuant to the Oakar Amendment.

Board of Governors of the Federal Reserve System, December 12, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–30177 Filed 12–17–91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

National Institute on Drug Abuse; Meetings

Pursuant to Public Law 92–463, notice is hereby given of a meeting on an advisory committee of the National Institute on Drug Abuse for January 1992.

The National Advisory Council on Drug Abuse will be performing review of applications for Federal assistance; therefore, portions of this meeting will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

A summary of the meeting and a roster of committee members may be obtained from: Ms. Camilla L. Holland, NIDA Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 10–42, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301/443–2755).

Substantive program information may be obtained from the contact whose name, room number, and telephone number is listed below.

Committee Name: National Advisory Council on Drug Abuse.
Meeting Date: January 15–16, 1992.
Place: National Institutes of Health, Building 31 C, Conference Room #6, 9000 Wisconsin Avenue, Bethesda, MD 20892.
Open: January 15, 9 a.m.–1 p.m., January 16, 9 a.m.–3 p.m.
Closed: January 15, 1 p.m.–5 p.m.
Contact: Ms. Sheila Harley Gardner, Room 10A–10, Parklawn Building, Telephone (301) 443–3229.

Dated: December 11, 1991.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91–30149 Filed 12–17–91, 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 91D–0123]

Draft Guideline for Submitting Supporting Chemistry Documentation in Radiopharmaceutical Drug Applications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guideline for the submission of supporting chemistry documentation radiopharmaceutical drug applications. FDA is making the draft guideline available for public comment before developing a final guideline. The draft guideline is intended to furnish drug manufacturers with guidance in submitting to FDA adequate chemistry documentation in marketing applications for radiopharmaceutical drugs.

DATES: Comments by March 18, 1992.

ADDRESSES: Submit written requests for single copies of the draft guideline to the Executive Secretariat Staff (HFD–8), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guideline and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Rebecca H. Wood, Center for Drug Evaluation and Research (HFD–102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4207.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guideline for submitting chemistry documentation in radiopharmaceutical drug applications. This draft guideline is intended to assist drug firms in preparing the chemistry section of marketing applications for radiopharmaceutical drugs under 21 CFR 314.50(d)(1).

A "radioactive drug" or "radiopharmaceutical drug" is any substance defined as a drug in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)) that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any nonradioactive reagent kit or nuclide generator that is intended to be used in the preparation of any such substance. "Radioactive drugs" do not include drugs such as carbon-containing compounds or potassium-containing salts that contain trace quantities of naturally occurring radionuclides.

Radiopharmaceutical drugs are not only unique in their property of radioactivity but in other ways as well. Most radiopharmaceuticals are used as diagnostic agents and contain minute quantities, on a weight basis, of the radioactive drug substance. In addition to chemical impurities, radiopharmaceuticals may contain radioactive impurities, i.e., radionuclidic and radiochemical impurities. Such impurities may have a detrimental effect on both the utility and reliability of the drug as a diagnostic agent, and possibly on the radiation dose to the patient.

Many of the methods used in the preparation of radioactive drugs, e.g., cyclotrons, generators, and the radiolabeling of "kits," are unique to radiopharmaceuticals. Special analytical methods and equipment are needed to measure the total radioactivity of a radiopharmaceutical and the radionuclidic and radiochemical purity and impurities. Special training is required and special precautions must be used in the handling of radioactive drugs. In addition, labeling requirements for radioactive drugs are unique in many respects.

This draft guideline is intended to meet an expressed need by both the radiopharmaceutical industry and the nuclear medicine community for detailed guidance on preparing the

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chemistry section of new drug applications (NDA's) for radiopharmaceuticals. The guideline describes acceptable approaches to the documentation in the NDA of the drug product and drug substance for radiopharmaceuticals. This guideline should be read in conjunction with FDA's other chemistry guidelines pertaining to marketing applications.

FDA is making this draft guideline available for public comment before issuing a final guideline. If, following the receipt of comments, the agency concludes that the draft guideline, as revised, reflects acceptable criteria for use in submitting supporting chemistry documentation in radiopharmaceutical drug applications, the guideline will be made final, and FDA will announce its availability in the **Federal Register**.

The guideline may be useful to drug manufacturers in developing the chemistry documentation section in marketing applications for radiopharmaceutical drugs. A person may follow the guideline or may choose to use alternate procedures even through they are not provided for in the guideline. If a person chooses to use alternate procedures, that person may wish to discuss the matter further with the agency to prevent expenditure of money and effort on activities that may later be determined to be unacceptable by FDA. This guideline does not bind the agency, and it does not create or confer any rights privileges, or benefits for or on any person.

Interested persons may, on or before March 18, 1992, submit written comments on the draft guideline to the Docket Management Branch (address above). FDA will consider these comments in determining whether further amendments to, or revisions of, the guideline are warranted. Two copies of any comments should be submitted, except that individuals may submit one copy.

Dated: November 19, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 91-30150 Filed 12-17-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Hearing: Reconsideration of Disapproval of Iowa State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on February 4, 1992, at 10 a.m.; room 215; New Federal Office Building; 601 East 12th Street; Kansas City, Missouri to reconsider our decision to disapprove Iowa SPA 90-76.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by January 2, 1992.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, suite 110, Security Office Park, 7000 Security Blvd., Baltimore, Maryland 21207, Telephone: (410) 597-3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Iowa State plan amendment (SPA) number 90-76.

Section 1116 of the Social Security Act (the Act) and 42 CFR, part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Iowa submitted Medicaid SPA 90-76 on December 28, 1990, seeking protection under the Deficit Reduction Act (DEFRA) moratorium for a more liberal resource policy which permits aged, blind, and disabled individuals to be eligible for Medicaid while disposing of excess resources, effective November 1985.

The issues in this matter are: (1) Whether Iowa's proposal qualified for protection under the DEFRA moratorium for a more liberal resource policy which permits aged, blind, and disabled individuals to be eligible for Medicaid while disposing of excess resources, effective November 1985; and, (2) whether the Iowa State plan could be expanded to include additional groups other than those mandated under the DEFRA moratorium.

The Secretary is prohibited from taking certain adverse actions against States for using more liberal income and resource methods than those of the cash assistance programs (Aid to Families with Dependent Children and Supplemental Security Income [SSI] for determinations of eligibility for the medically needy and limited categorically needy groups [section 2373(c) of the DEFRA of 1984]). The moratorium covers the period of October 1, 1981 through February 17, 1989. The adverse actions which the Secretary is prohibited from taking do not include disapproving SPAs. Thus, plan material for which a State seeks DEFRA moratorium protection is disapproved as being in violation of the requirements of title XIX which were in effect during the moratorium period. However, moratorium protection against adverse action by the Secretary is granted for the moratorium period.

Prior to the enactment of the DEFRA moratorium, States were not permitted to use resource methodologies which were more liberal than those of the cash assistance programs. (See section 1902(a)(10) of the Act [prior to July 1, 1988].)

In SPA 90-76, Iowa sought protection for a "bona fide effort to sell" policy. This is a policy under which individuals who have excess resources can still be eligible for Medicaid, provided they are making a good-faith effort to sell the excess resources. The SSI program has a similar policy, but under SSI it applies only to a limited number of individuals who meet the requirements for conditional eligibility. Iowa, via SPA 90-76, would apply its policy to individuals who do not meet those requirements. Thus, Iowa's policy is more liberal than SSI's, and so qualified for protection under the DEFRA moratorium.

We looked first to see if the SPA could be approved as part of the State plan with an effective date of November 1985. The proposed SPA could not be approved for retroactive inclusion in the State plan during the moratorium period. That is, section 1902(r)(2) of the Act, which would allow policies in the State plan which are more liberal than under the cash assistance programs, was made effective back to 1982. However, under the regulations at 42 CFR 430.20 and under the corresponding limits contained in the Department's appropriations authority, HCFA cannot retroactively approve a SPA expanding eligibility, coverage, or reimbursement any earlier than the beginning of the quarter in which it was submitted. Therefore, the earliest date that the proposed policy could have been included in the State plan was October 1, 1990. The State's policy was disapproved as part of the State plan during the retroactive period at issue.

We next determined whether the SPA could receive protection under the moratorium since we could not approve it as part of the State plan. Protection under the DEFRA moratorium is limited by the statute to specific eligibility groups. Specifically, the DEFRA moratorium applies only to certain optional categorically needy groups (sections 1902(a)(10)(A)(ii) (IV), (V), or (VI) of the Act), or the medically needy (section 1902(a)(10)(C)(i)(III) of the Act). Iowa did not limit its request for protection to these groups, however. Instead, the State requested DEFRA moratorium protection for all aged, blind, and disabled individuals. Because extension of protection to groups other than those specified above would be contrary to the requirements of the statute, we could not grant protection for groups other than those specified.

Although SPA 90-76 was disapproved, protection under the DEFRA moratorium was granted for those eligibility groups specified above. DEFRA moratorium protection could not be granted for the State's policy as applied to groups other than those specified.

The notice to Iowa announcing and administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Charles H. Palmer,
Director, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114

Dear Mr. Palmer: I am responding to your request for reconsideration of the decision to disapprove Iowa State Plan Amendment (SPA) 90-76.

Iowa submitted SPA 90-76 on December 28, 1990, seeking protection under the Deficit Reduction Act (DEFRA) moratorium for a more liberal resource policy which permits aged, blind, and disabled individuals to be eligible for Medicaid while disposing of excess resources, effective November 1985.

The issues in this matter are: (1) Whether Iowa's proposal qualified for protection under the DEFRA moratorium for a more liberal resource policy which permits aged, blind, and disabled individuals to be eligible for Medicaid while disposing of excess resources effective November 1985; and, (2) whether the Iowa State plan could be expanded to include additional groups other than those mandated under the DEFRA moratorium.

I am scheduling a hearing on your request for reconsideration to be held on February 4, 1992, at 10 a.m.; room 215; 601 East 12th Street; Kansas City, Missouri. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, part 430.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communications which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (410) 597-3013.

Sincerely,

Gail R. Wilensky,

Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18).

(Catalog of Federal Domestic Assistance Program No. 13. 714, Medicaid Assistance Program).

Dated: December 12, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91-30161 Filed 12-17-91; 8:45 am]

BILLING CODE 4120-03-M

Public Health Service

Health Resources and Services Administration; Statements of Organization, Functions and Delegations of Authority

Part H, chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38409-24), August 31, 1982, as amended most recently at 56 FR 47965, September 23, 1991) is amended to reflect the transfer of materiel management functions from the Division of Grants and Procurement Management (HBA46), to the Division of Program Support (HBA42), within the Office of Operations and Management, Office of the Administrator, Health Resources and Services Administration.

Under HB-10, Organization and Functions, delete in its entirety the functional statements for the Division of Program Support (HBA42) and the Division of Grants and Procurement Management (HBA46) and substitute the following:

Division of Program Support (HBA42). For the Office of the Administrator, the Executive Officer: (1) Plans, directs and coordinates administrative management activities; (2) provides administrative management services including personnel, financial, materiel management, and general administrative services; (3) develops and recommends management policies, procedures, systems and practices; (4) provides liaison with the Office of Assistant Secretary for Health on financial, personnel, organization, supply, and other management concerns of the Office of the Administrator; (5) acts for the Associate Administrator for Operations and Management concerning space, parking, and communications management for the headquarters and represents him/her in matters relating to the management of the Parklawn Building complex; and (6) advises on and coordinates administration-wide policies and procedures required to implement General Services Administration and departmental regulations governing materiel management, including transportation, motor vehicle, and utilization and disposal of property.

Division of Grants and Procurement Management (HBA46). (1) Provides leadership in the planning, development, and implementation of policies and procedures for grants, contracts, and other assistance mechanisms; (2) exercises the pole responsibility within HRSA for the award and management of contracts; (3) provides advice and consultation of interpretation and application of Public Health Service and Department of Health and Human Services policies and procedures governing contracts and grants management; (4) develops and issues policy and procedural materials for the Administration's contracts and grants programs; (5) establishes standards and guides for and evaluates contracts and grants management operations throughout the Administration; (6) coordinates the Administration's positions and actions with respect to the audit of grants and contracts, and also coordinates responses to General Accounting Office audit reports and monitors the implementation of General Accounting Office recommendations; (7) provides professional accounting advice relative to the management of grants and contracts; and (8) maintains liaison directly or through the Regional Health Administrators, with grantee and contractor institutions and organizations and with the Office of the Assistant Secretary for Health and other components of the Department.

This reorganization is effective upon date of signature.

Dated: December 2, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91-30147 Filed 12-17-91; 8:45 am]

BILLING CODE 4160-15-M

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, chapter HB (Health Resources and Services Administration) of the

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Statement of Organization, Functions and Delegations of Authority of the Department off Health and Human Services (47 FR 38409–24, August 31, 1982, as amended most recently at 56 FR 50131–32, October 3, 1991) is amended to reflect the abolishment of the Office of Financing Services in the Bureau of Health Care Delivery and Assistance.

Under HB–10, Organization and Functions, amend the functional statements for the Bureau of Health Care Delivery and Assistance (HBC) by deleting the functional statement for the Office of Financing Services (HBC16) in its entirety.

This deletion is effective upon date of signature.

Dated: December 9, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–30148 Filed 12–17–91; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D–91–974; FR 3215–D–01]

Delegation of Authority Under the Fair Housing Act

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: In this notice the Secretary is delegating to the Executive Officer for Administrative Operations and Management, Office of the Secretary, the Secretary's authority under 24 CFR 104.930 (a) and (d) to remand, for further proceedings, an initial decision of an administrative law judge.

EFFECTIVE DATE: December 9, 1991.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Markison, Assistant General Counsel for Administrative Law, Office of the General Counsel, room 10252, Department of Housing and Urban Development, Washington, DC 20410. Telephone: (202) 708–3137 (this is not a toll-free number). The toll-free TDD number for hearing impaired persons is 1–800–543–8294.

SUPPLEMENTARY INFORMATION: Subsection 812(h) of the Fair Housing Act ("the Act"), 42 U.S.C. 3612(h), gives the Secretary of HUD 30 days to review any finding, conclusion, or order issued by an administrative law judge under subsection (g) of section 812 of the Act. The regulations implementing this authority, found at 24 CFR 104.930 (a) and (d), provide that, in connection with such review, the Secretary may affirm, modify or set aside, in whole or in part, the initial decision of the administrative law judge or remand that decision to the administrative law judge for further proceedings.

In this delegation of authority, the Secretary is delegating to the Executive Officer for Administrative Operations and Management, Office of the Secretary, the authority to remand an initial decision of an administrative law judge for further proceedings.

Accordingly, the Secretary delegates the following authority:

Section A—Authority Delegated

To the Executive Officer for Administrative Operations and Management, Office of the Secretary, the authority, under 24 CFR 104.930 (a) and (d), to remand an initial decision of an administrative law judge for further proceedings.

Section B—Authority Excepted

The authority granted in Section A of this delegation may not be redelegated.

Authority: 42 U.S.C. 3601–19; 42 U.S.C. 3535(d).

Dated: December 9, 1991.

Jack Kemp,

Secretary.

[FR Doc. 91–30192 Filed 12–17–91; 8:45 am]

BILLING CODE 4210–32–M

Office of Administration

[Docket No. N–91–3367]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 11, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Report on Tenants Accounts Receivable.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: Under Section 6(c)(4) of the United States Housing Act of 1937, this information is used to assure sound management practices by the Public Housing Agencies (PHAs). The PHAs prepare and submit the form to the HUD Field Offices and HUD uses it to monitor the effectiveness of rent collection procedures employed by PHAs.

Form Number: HUD–52295.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: Semi-annually and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	3,200		2		.25		1,600
Recordkeeping	3,200		1		.05		160

Total Estimated Burden Hours: 1,760.

Status: Reinstatement.

Contact: John T. Comerford, HUD, (202) 708–1872 Jennifer Main, OMB, (202) 395–6880.

Dated: December 11, 1991.

[FR Doc. 91–30193 Filed 12–17–91; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–040–01–4340–02]

Meetings for the Gila Box Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with 43 CFR part 1780, that two meetings of the Gila Box Riparian National Conservation Area (NCA) Advisory Committee will be held.

DATES: Thursday, January 9, 1992, 9:30 a.m.–4:30 p.m., and Thursday, January 23, 1992, 9:30 a.m.–4:30 p.m.

ADDRESSES: BLM Safford District Office, 425 E. 4th St., Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: The NCA Advisory Committee was established by the Arizona Desert Wilderness Act of 1990 to provide input to the Safford District on management of the Gila Box Riparian National Conservation Area (NCA). The Advisory Committee will assist with preparation of the Gila Box Interdisciplinary Activity Plan by identifying issues and concerns, and by assisting with development of the plan using the Limits of Acceptable Change (LAC) planning process.

The January 9 meeting will be used to refine opportunity classes within the National Conservation Area using the LAC process. During the second meeting on January 23, indicators and standards for each opportunity class will be developed.

Both meetings are open to the public. Interested persons may make oral statements to the Committee or may file written statements for consideration by the Committee. Anyone wishing to make an oral statement must contact the BLM Gila Area Manager at least two working days prior to the meeting.

Summary minutes of the meeting will be maintained in the Safford District Office and will be available for public inspection (during regular business hours) within 30 days after each meeting.

FOR FURTHER INFORMATION CONTACT: Meg Jensen, Gila Resource Manager, or Jonathan Collins, Outdoor Recreation Planner, 425 E. 4th St., Safford, Arizona 85546. Telephone (602) 428–4040.

Dated: December 10, 1991.

Ray A. Brady,

District Manager.

[FR Doc. 91–30174 Filed 12–17–91; 8:45 am]

BILLING CODE 4310–32–M

[WY–920–41–5700; WYW121278]

Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Public Law 97–451, 96 Stat. 2462–2466, and Regulations 43 CFR 3106.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW121278 for lands in Converse County, Wyoming, was timely filed and was accomplished by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16 2/3 percent respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW121278 effective September 1, 1991, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 91–30169 Filed 12–17–91; 8:45 am]

BILLING CODE 4310–22–M

[CA–050–09–4212–14; CACA 26636, CACA 7337 WR]

Partial Termination of Small Tract Classification No. 506, Opening of Lands; Trinity County; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice partially terminates Small Tract Classification No. 506 dated January 4, 1957, which classified public land for disposition pursuant to the Small Tract Act of 1938. A portion of the land classified for small tract under classification No. 506 has been found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) as published in the **Federal Register** as a notice of realty action on August 15, 1991 (Vol. 56, No. 158).

EFFECTIVE DATE: January 17, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia Cook, Realty Specialist, Redding Resource Area, 355 Hemsted Drive, Redding, California 96002.

1. The Bureau of Land Management Order of Classification Small Tract No. 506 is hereby terminated insofar as it affects the following described land:

Mount Diablo Meridian

T. 33 N., R. 9 W.,
Sec. 5, lots 52, 53, 56 through 61, S½NE¼, SE¼, and E½SE¼SW¼.
Sec. 8, lot 1.
The area described contains approximately 521.53 acres in Trinity County.

2. At 10 a.m. on January 17, 1992, the land described in paragraph 1 will be open to the operation of the public land laws generally, and to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, and classifications, and the requirements of applicable law.

Mark T. Morse,

Area Manager.

[FR Doc. 91–30170 Filed 12–17–91; 8:45 am]

BILLING CODE 4310–40–M

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[NV-930-92-4212-14; N-55291]

Realty Action; Non-Competitive Sale of Public Lands in Clark County, NV

The following described public land in the City of North Las Vegas, Clark County, Nevada has been determined to be suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is section 203 of Public Law 94-579, the Federal Land Policy and Management Act of 1976 (FLPMA).

Mount Diablo Meridian, Nevada

T. 19 S., R. 61 E.,
Sec. 13, N½, NE¼SW¼, SE¼;
Sec. 14, N½;
Sec. 15;
Sec. 16;
Sec. 17;
Sec. 18, lots 5 to 20, inclusive;
Sec. 19, lots 5 to 18, inclusive;
Sec. 20;
Sec. 21, N½;
Sec. 28, N½NE¼, SW¼NE¼, E½NW¼;
Sec. 29, N½, NE¼SW¼, N½SE¼, SW¼SE¼.
T. 19 S., R. 62 E.,
Sec. 18, lots 1 to 4, inclusive, E½, E½W½;
Sec. 19, lots 1 to 4, inclusive, E½, E½W½;
Sec. 20.
Aggregating 7,534.27 acres (gross).

This parcel of land, situated in Clark County, is being offered as a direct sale to the City of North Las Vegas and is not required for any federal purposes. The sale is consistent with the Bureau's planning system. The sale of this parcel would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-returnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. Oil, gas, sodium, and potassium.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County/ the City of North Las Vegas.

2. Those rights for railroad purposes which have been granted to the Los Angeles and Salt Lake Railroad Company by Permit No. CC-0360 under the Act of March 3, 1875, 18 Stat. 482, 43 U.S.C. 934-939.

3. Those rights for road purposes which have been granted to the Corps of Engineers by Permit No. Nev-045137 under the Act of January 13, 1916, 44 LD 513.

4. Those rights for power line purposes which have been granted to Nevada Power Company by Permit No. NEV-061985 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761) and Nev-067348 under the Act of February 15, 1901 (31 Stat. 790; 43 U.S.C. 959).

5. Those rights for material site and road purposes which have been granted to the Nevada Department of Transportation by Permit No. N-32236 under the Act of August 27, 1958, 72 Stat. 916, 23 U.S.C. 317(A).

6. Those rights for power line purposes which have been granted to Nevada Power Company by Permit No. N-39815, N-42592 and N-49722 under the Act of October 21, 1976, 90 Stat. 2776, 43 U.S.C. 1761.

Publication of this notice in the **Federal Register** shall establish January 1, 1992 as the date the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws. This segregation will terminate upon issuance of a patent or 270 days from the date of segregation, whichever occurs first.

Dated: December 12, 1991.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 91-30146 Filed 12-17-91; 8:45 am]

BILLING CODE 4310-HC-M

National Park Service

Availability of Plan of Operations and Environmental Assessment for Proposed Seismic Survey; LeMarco Operating, Inc., Padre Island National Seashore Kleberg County, TX

Notice is hereby given in accordance with § 9.52(b) of title 36 of the Code of Federal Regulations that the National Park Service has received from LeMarco Operating, Inc., a Plan of Operations for a Proposed Seismic Survey within Padre Island National Seashore, Kleberg County, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment, for a period of 30 days from the publication date of this notice, in the Office of the Superintendent, Padre Island National Seashore, 9405 South Padre Island Drive, Corpus Christi, Texas; and the Southwest Regional Office, National Park Service, 1220 South St. Francis Drive, Room 211, Santa Fe, New Mexico. Copies are available from the Southwest Regional Office, Post Office Box 728, Santa Fe, New Mexico 87504-0728, and will be sent upon request.

Dated: December 12, 1991.

Joseph J. Sovick,

Acting Associate Regional Director, Resources Management, Southwest Region.

[FR Doc. 91-30153 Filed 12-17-91; 8:45 am]

BILLING CODE 4310-70-M

Interim Bison Management Plan, Environmental Assessment; Yellowstone National Park, WY

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of Environmental Assessment.

SUMMARY: In accordance with the National Environmental Policy Act and National Park Service (NPS) regulations, an Environmental Assessment (EA) has been prepared to analyze the environmental impacts of proposed short-term, interim management actions for the control of bison exiting Yellowstone National Park. The interim plan and EA will be in effect until the final Bison Management Plan and Environmental Impact Statement (EIS), described below, is completed. Long-term planning for bison management is the subject of an EIS process that was announced in the **Federal Register** on July 2, 1990. The short-term management actions to be evaluated will deal with the extent and involvement of the NPS in the control of bison. Control of bison is necessary to prevent the spread of the bison-carried brucella organism to domestic cattle outside the park, to reduce property damage, to increase human safety, and to further reduce entrenchment of migratory behavior of the northern bison herd. Three alternatives are considered in the EA; the no action alternative (control bison outside the park through a removal program which includes public hunting), control of bison inside the park, and control of bison outside the park (proposal).

DATES: Comments on the EA should be sent to the Superintendent, Yellowstone National Park, P.O. Box 168, Yellowstone National Park, Wyoming 82190 no later than December 30, 1991.

ADDRESSES: Copies of the EA are available from the Superintendent, Yellowstone National Park, P.O. Box 168, Yellowstone National Park, Wyoming 82190. Copies are also available for review in the Office of Public Affairs, room 155, National Park Service, Rocky Mountain Regional Office, 12795 West Alameda Parkway, Denver, Colorado 80225.

Dated: December 10, 1991.

Robert M. Baker,

Regional Director, Rocky Mountain Region, National Park Service.

[FR Doc. 91-30152 Filed 12-17-91; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-487, 488, 489, 490, and 494 (Final)]

Coated Groundwood Paper From Belgium, Finland, France, Germany, and the United Kingdom

Determination

On the basis of the record[1] developed in the subject investigations, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Belgium, Finland, France, Germany, and the United Kingdom of coated groundwood paper, provided for in subheadings 4810.21.00, 4810.29.00, and 4823.59.40 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective June 13, 1991, following preliminary determinations by the Department of Commerce that imports of coated groundwood paper from Belgium, Finland, France, Germany, and the United Kingdom were being sold at LTFV within the meaning of section 733(b) of the act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 17, 1991 (56 FR 32588). The hearing was held in Washington, DC, on October 30, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these investigations to the Secretary of Commerce on December 11, 1991. The views of the Commission are contained in USITC Publication 2467 (December 1991), entitled "Coated Groundwood Paper from Belgium, Finland, France, Germany, and the United Kingdom: Determination of the Commission in Investigations Nos. 731-TA-487, 488, 489, 490, and 494 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission.

Dated: December 12, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-30189 Filed 12-17-91; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioners Crawford and Nuzum did not participate in these investigations.

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data for Use by Department of Industry, Technology and Commerce, Australia

The Commission has received a request from the Australia Department of Industry, Technology and Commerce for permission to use certain data from the Commission's 1989 and 1990 ICC Waybill Samples.

A copy of the of the request (WB659—12/5/91) may be obtained from the ICC Office of Economics.

The Waybill Sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calender days of the date of this notice. The rules for release of waybill data [Ex Parte 385 (Sub-No. 2)] are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 275-6864.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-30151 Filed 12-17-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

City of Algoma, WI, et al.; Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 6, 1991, a proposed Consent Decree in *United States* v. *City of Algoma, et al.* (Civil Action No. 91-C-1303) was lodged with the United States District Court for the Eastern District of Wisconsin. The proposed Consent Decree concerns the hazardous-waste site known as the Algoma Municipal Landfill ("Algoma") site located near Algoma, Wisconsin. The proposed Consent Decree requires the settlors, which include the City of Algoma and eight generators of hazardous substances sent to the Algoma site, to perform and finance the final remedy set forth in the Record of Decision with respect to the site issued by the U.S. Environmental Protection Agency on September 29, 1990. In addition, the settlors will reimburse the United States for a portion of its response costs associated with the Algoma site. Under the terms of the Consent Decree, the United States will recover approximately $73,000 of its past response costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Environmental Enforcement Section, Department of Justice, P.O Box 7611, Ben Franklin Station, Washington, D.C. 20503, and should refer to *United States* v. *City of Algoma, et al.* and D.J. reference 90-11-2-490.

The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of Wisconsin, Milwaukee, Wisconsin, 517 East Wisconsin Avenue, Milwaukee, Wisconsin; at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Washington, DC 20530 (202) 347-2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $17.50 (25 cents per page

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reproduction cost) payable to the Consent Decree Library.

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-30172 Filed 12-17-91; 8:45 am]

BILLING CODE 4410-01-M

American Cyanamid, et al.; Lodging of Consent Decree Under Comprehensive Environmental Response, Liability, and Compensation Act ("CERCLA")

In accordance with Department policy, 28 CFR 50.7, and section 122(d) of CERCLA, 42 U.S.C. 9622(d), notice is hereby given that on November 27, 1991, a proposed consent decree in *United States* v. *American Cyanamid, et al.*, Civil Action No. 2:91-1185 was lodged with the United States District Court for the Southern District of West Virginia. The proposed consent decree provides that thirteen defendants will perform the work and pay EPA oversight costs for the second operable unit at the Artel Chemical Company Superfund Site, Nitro, West Virginia. The defendants are American Cyanamid Company, E.I. du Pont de Nemours & Co., Inc., Ethyl Petroleum Additives, Inc., Halliburton Services, Hollingsworth & Vose Co., Mobay Corporation, Monsanto Company, Norton International, Inc., P B & S Chemical Company, Polaroid Corporation, PPG Industries, Inc., Specialty Polymers, Inc., and Union Carbide Corporation.

A complaint against the thirteen defendants has been filed concurrently with the decree seeking performance of the second operable unit under section 106 of CERCLA, 42 U.S.C. 9606, and payment of future oversight costs under section 107 of CERCLA, 42 U.S.C. 9607.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Acting Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *American Cyanamid, et al.*, DOJ. Ref. 90-11-3-706.

The proposed consent decree may be examined at the office of the United States Attorney, Southern District of West Virginia, 500 Quarrier Street, Charleston, West Virginia 25332, and at the Region III office of the United States Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania 19107. The decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004, 202-347-7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $13.25 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-30101 Filed 12-17-91; 8:45 am]

BILLING CODE 4410-01-M

Anderson Development Co.; Lodging of Consent Order Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with 42 U.S.C. 9622 and with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent order in *United States* v. *Anderson Development Company*, No. CA 91-CV-76705 DT, has been lodged with the United States District Court for the Eastern District of Michigan, on December 6, 1991. The proposed consent order concerns cleanup of the Anderson Development Company ("ADC") plant site, a hazardous waste site in southeast Adrian, Lenawee County, Michigan. The proposed consent order requires defendant to perform a cleanup at the Site and to pay certain United States Environmental Protection Agency costs.

The Department of Justice will receive for a period for thirty (30) days from the date of this publication comments relating to the proposed consent order. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to United States v. *Anderson Development Company*, D.J. Ref. 90-11-2-595.

The proposed consent order may be examined at the office of the United States Attorney for the Eastern District of Michigan, 817 Federal Building, 231 West Lafayette, Detroit, Michigan 48226, at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, (202) 347-2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $58.75 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-30173 Filed 12-17-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree in United States v. City of Janesville, et al., Under the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 96222(d)(2), and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v.*City of Janesville, et al.*, Civil Action No. 91-0999, was lodged with the United States District Court for the Western District of Wisconsin on Friday, November 22, 1991. This action was brought for the cleanup of the Janesville Disposal facility ("Site"), located in Janesville, Wisconsin, and for the recovery of costs expended by the United States in connection with this Site. The Site includes two waste treatment and disposal facilities listed on the National Priorities List set forth at 40 CFR part 300, appendix B, as well as two other waste disposal facilities.

The proposed consent decree is entered into between plaintiff, the United States, and 62 entities that have been identified as potentially responsible parties ("PRPs") with respect to the Site. Under the proposed decree, a group of six "Settling Defendants" with finance and perform a remedy which the Environmental Protection Agency previously selected for this Site. The main components of the remedial action that will be implemented by Settling Defendants include: (1) Repair or enhancement of caps covering two landfills known as the "1978 Site" and "1985 Site"; (2) collection and flaring of landfill gas; (3) repair or improvement of the leachate collection system for the "1985 Site"; (4) removal of residual wastes from an area known as the "Janesville Ash Beds"; and (5) installation and operation of a groundwater extraction and treatment system. The Settling Defendants responsible for implementing the remedial action include the city of Janesville, which owns the site and operated waste treatment and disposal operations there during the active life of the Site, and five generators that are alleged to have arranged for treatment or disposal of hazardous substances at the Site.

In addition, under the proposed decree, two groups of *de minimis* PRPs would pay approximately $297,000 to the Hazardous Substances Superfund and contribute additional amounts toward the remedial work to be performed by the Settling Defendants. Payments received by the Hazardous Substances Superfund will be applied first toward reimbursement of the $220,000 of response costs previously incurred by the United States in connection with this Site. The remainder will be applied toward costs of the United States overseeing implementation of the consent decree.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *City of Janesville, et al.* DJ Ref #90-11-2-478.

The proposed consent decree may be examined at the Office of the United States Attorney for the Western District of Wisconsin, 120 North Henry Street, Madison, Wisconsin 53703; the Region V Office of the U.S. Environmental Protection Agency, 111 West Jackson Street, Third Floor, Chicago, Illinois 60604; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Washington, 20004 (202-347-2072). A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $73.75 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section.

[FR Doc. 30107 Filed 12-17-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Final Judgment by Consent Pursuant to the Safe Drinking Water Act and the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 4, 1991, a consent decree in *United States* v. *Melvin and Loreitta Manning*, Civil Action No. 3:91CV00228, was lodged with the United States District Court for the Eastern District of Virginia.

The Complaint filed by the United States on April 23, 1991, under section 1414(b) and 1414(g) of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. 300g-3(b) and 300g-3(g) and section 309 (b) and (d) of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 ("CWA"), 33 U.S.C. 1319 (b) and (d), alleged violations of the National Primary Drinking Water Regulations ("NPDWRs"), 40 CFR part 141, promulgated pursuant to section 1401 of the SDWA, 42 U.S.C. 300g-1, and violations of sections 301 and 402 of the CWA, 33 U.S.C. 1311 and 1342. The United States sought civil penalties and injunctive relief pursuant to section 1414(b) of the SDWA, 42 U.S.C. 300g-3(b) and section 309 (b) and (d) of the Clean Water Act, 33 U.S.C. 1319 (b) and (d). The violations occurred at the Manning Mobile Manor in Prince George County, Virginia.

The proposed consent decree requires Melvin and Loreitta Manning (the "Mannings") to pay a civil penalty of $40,000. The Mannings are further required by the consent decree to construct and install the necessary equipment to connect the sewage treatment system to the Prince George County sewer system, and to employ a Consultant to operate and maintain the public water system at the site. The decree includes stipulated penalties for future violations of the consent decree, the SDWA and the CWA.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Melvin and Loreitta Manning*, DOJ Ref. No. 90-5-1-1-3630. The proposed consent decree may be examined at the office of the United States Attorney, Eastern District of Virginia, Main Street Centre, 600 E Main Street, Richmond, Virginia 23219. Copies of the consent decree may also be examined and obtained by mail at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW. Box 1097 Washington, DC 20004 (202-347-7829). When requesting a copy of the consent decree by mail, please enclose a check in the amount of $8.75 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 91-30108 Filed 12-17-91; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Semiconductor Research Corp.; National Cooperative Research Notification

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("Act"), the Semiconductor Research Corporation ("SRC"), on November 4, 1991, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification was filed for the purpose of maintaining the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following companies have been added to SRC: Solid State Measurements, Inc., Pittsburgh, Pennsylvania and Arizona Packaging Software, Inc., Tuscon, Arizona as affiliate members. No other changes have been made in either the membership or planned activities of SRC.

On January 7, 1985, SRC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 30, 1985, 50 FR 4281. The most recent notification of SRC membership changes published in the **Federal Register** with a then current and complete membership list was filed by SRC on October 25, 1989, and published by the Department on November 29, 1989, 54 FR 49123-24. Subsequent notifications filed on February 20, 1990, May 16, 1990, and July 18, 1990, were published on April 5, 1990 (55 FR 12750), June 13, 1990 (55 FR 23989), and August 15, 1990 (55 FR 33389-390), respectively, disclosing only membership changes. Notifications filed on September 24 and October 17, 1990, February 19, 1991, and July 22, 1991, disclosing further membership changes, were published on November 27, 1990 (55 FR 49349), March 15, 1991 (56 FR 11275), and September 12, 1991 (56 FR 46444), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-30109 Filed 12-17-91; 8:45 am]

BILLING CODE 4410-01-M

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Drug Enforcement Administration

Ranzy Weston, Sr., M.D.; Denial of Application for Registration

On August 9, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Ranzy Weston, Sr., M.D. (Respondent), of Augusta, Georgia, proposing to deny his application, executed on February 22, 1990, for registration as a practitioner. The statutory basis for the Order to Show Cause was that Respondent's registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f).

The Order to Show Cause was served on Dr. Weston on August 16, 1991. More than thirty days have passed since the Order to Show Cause was received by Dr. Weston. The Drug Enforcement Administration has received no response from Dr. Weston or anyone purporting to represent him.

Pursuant to 21 CFR 1301.54(d), the Administrator finds that Dr. Weston has waived his opportunity for a hearing. Accordingly, under the provision of 21 CFR 1301.57, the Administrator enters his final order in this matter, based on findings of fact and conclusions of law as hereinafter set forth.

The Administrator finds that in 1987 the State of Georgia initiated an inquiry into Respondent's prescribing practices. The investigating agents warned Dr. Weston that some of his patients were drug abusers who had been prescribed narcotic cough syrups. On three occasions during the period October to December 1987, the Respondent issued prescriptions for the controlled substances Tussionex, a Schedule III narcotic, and a Schedule V narcotic, terpin hydrate with codeine to a State of Georgia undercover agent. At no time did the agent inform the Respondent that there was anything physically wrong with her, but insisted that she was fine and wanted something to relax. The Administrator finds that these prescriptions were not issued for any legitimate medical purpose.

A subsequent investigation revealed that after Respondent's DEA Certificate of Registration expired in 1978, he continued to prescribe controlled substances without authority. The DEA gave written and telephonic notice to Dr. Weston in October 1988, asserting that he had no authority to possess, prescribe or dispense controlled substances. Notwithstanding this notice, Respondent unlawfully wrote ten prescriptions for controlled substances between November 1988 and January 1989.

On October 22, 1988, the Respondent submitted an application for registration. An Order to show Cause proposing to deny the application was issued on March 3, 1989. Dr. Weston submitted a letter response in lieu of requesting a hearing. The then-Administrator of the Drug Enforcement Administration found, after examining the entire record, that Dr. Weston's registration was inconsistent with the public interest and, on June 5, 1989, denied Dr. Weston's application. See Ranzy S. Weston, Sr., M.D., Volume 54, **Federal Register**, at page 24052.

The Administrator finds that Dr. Weston has violated Federal laws relating to controlled substances in that he wrote prescriptions for controlled substances for other than legitimate medical purposes and that he knowingly used an expired DEA number to write prescriptions for controlled substances. Dr. Weston did so after receiving specific warnings concerning his prescribing practices and concerning his use of an expired registration. Dr. Weston, although given the opportunity to request a hearing or to submit a written statement, has failed to do either. Thus the facts recited above stand uncontroverted. Based on those facts, the Administrator concludes that Respondent's registration would be inconsistent with the public interest and that his application for registration must be denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application for registration, executed by Ranzy Weston Sr., M.D., on February 22, 1990, be, and it hereby is, denied. This order is effective December 18, 1991.

Dated: December 9, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91-30114 Filed 12-17-91; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Policy on Selection and Referral Techniques for Employment and Training Programs

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; policy decision.

SUMMARY: This notice announces a policy decision regarding use of the General Aptitude Test Battery (GATB). GATB is an employment aptitude test used mainly by the State-administered public employment service agencies.

This notice announces a policy decision that Employment and Training Administration (ETA) contractors and grantees and programs under the National Apprenticeship Act shall terminate the use of within-group conversion scoring or other race or ethnicity-based adjustments to GATB scores in making selection and referral decisions. ETA contractors and grantees, and programs under the National Apprenticeship Act may, if they so choose, continue to use GATB and its variants, but they remain responsible for assuring that any use they make of GATB scores complies with applicable laws and regulations.

The Department of Labor (DOL or the Department) also will move forward with an aggressive research program to address the concerns identified by the National Academy of Sciences (NAS) and to develop as useful a test as possible.

Background

For several decades, the Employment Service (ES) used special adaptations of the GATB, called Specific Aptitude Test Batteries (SATBs), for selecting applicants for job referral. Developed for some 450 occupations, each SATB consists of the two to four occupationally relevant aptitudes with separate qualifying scores that were set at a level such that they would disqualify job applicants with ability levels similar to the lower third of the workers included in the SATB research samples.

During the early 1980's, the U.S. Employment Service (USES) pilot-tested a new use of the GATB for selecting applicants for job referral, called Validity Generalization (VG). The new procedure used the GATB to assess an applicant's relevant potential for occupational success in virtually any of the 12,000 jobs described in the Dictionary of Occupational Titles. Proponents of the new VG asserted that employment tests were much more generalized than previously thought, i.e., the same test was valid and could be used for more than one job in more than one location and setting. Most of the previously observed differences in a given test's ability to predict performance from one job setting to another were thought to be merely statistical artifacts caused by small sample sizes.

In 1981, USES began encouraging a few State employment service agencies (SESAs) to pilot the use of VG–GATB for all job referrals and to rank candidates according to test scores.

To avoid adverse impact when unvalidated SATBs were used, minority applicants were referred to employers in proportion to their relative numbers or ratio to non-minorities in the local office applicant pool. The same principle was built into the VG–GATB selection process through the method of within-group scoring. Within each applicant group (black, Hispanic, and others), an individual's raw job family scores are translated into percentile scores based on that group's score distribution. This resulted in the same percentage of black and Hispanic applicants receiving the same percentile score as those persons in the "other" category. By combining the percentile scores of individuals in all groups and selecting from the top of the list, applicants are referred in approximate proportion to their relative numbers or ratio within the applicant pool.

Currently, approximately 30 States use the VG–GATB system. In some States it is used in only one office, while in others it is used on a statewide basis. In no office, however, it is being used as the exclusive basis for all or even most of the referrals of workers to employers.

In 1986, questions were raised about the within-group scoring adjustment procedure. Because of the seriousness of these questions, the Department contracted for a special review of VG–GATB by the National Research Council of the National Academy of Sciences.

The NAS stated that it accepted the general thesis of validity generalization, that the results of validity studies can be generalized to many jobs not actually studied, but it urged a cautious approach of generalizing validity only to appropriately similar jobs. Based on some 750 validity studies of various jobs, the NAS found that VG–GATB is likely to be a useful predictor of job performance for a wide variety of jobs similar to those served by the Employment Service system. It characterized the relationship between GATB scores and job performance as "modest," and observed that the relationship is of about the same magnitude for GATB as for other general employment tests.

The NAS found, however, that GATB has certain technical weaknesses that should be corrected. It stressed that research was needed to develop more alternate forms of the GATB for retesting purposes and to replace forms that may have been compromised by falling into examinees' hands. Because the NAS also found the GATB tests to be too "speeded" (i.e., the tests' time limits were thought to be too short relative to the length of the tests), more research was needed to determine whether such short time limits are making it difficult for examinees to demonstrate their true potential and whether such short time limits encourage guessing as a strategy to improve one's score. The NAS also noted an unexplained drop in validities in recent years. It recommended continuing work on measures of job performance, better documentation of recent validity research, and continuing validation research to assure adequate and current occupational coverage, particularly for new and changed occupations.

The NAS concluded that VG–GATB, in its judgment, is of good enough quality and predictive power to play a significant role in Employment Service system referrals, but that it should not be the sole means of referring candidates, nor should it be used to the exclusion of other criteria such as experience and education.

In July 1990, the Department solicited comments from the public on a proposed directive containing revised policy on the use of Validity Generalization (VG) –GATB. 55 FR 30162. The comment period subsequently was reopened and extended through September 24, 1990. 55 FR 35379 (August 29, 1990).

Comments were received from 1,523 respondents. Many opposed the proposed policy that would have required the suspension of the use of the GATB for approximately two years, while the Department conducted research and made modifications to address NAS' concerns. Included among those opposing the proposal were a mix of employers, local apprenticeship councils and their parent unions, professional testing organizations, and several State employment service agencies (SESAs). These respondents felt that VG–GATB provided employers with a more productive work force while helping them to attract qualified minority workers. Respondents on behalf of special worker groups, however, were generally supportive of the proposal, as were a few SESAs. The principal professional organizations involved in testing submitted comments which opposed elimination of the GATB, and asserted that use of the test should be permitted during the research period, on the ground that there are currently no known alternatives that are as valid and economically useful as the GATB. See, for example, comments of the American Psychological Society, the American Phychological Association, and the Society for Industrial and Organizational Psychology, Inc. There was generally no opposition to the proposed GATB research.

Policy Decision

Although the comments on both sides of the issue of whether to retain the within-group scoring system raised thoughtful arguments, the passage of the Civil Rights Act of 1991 obviates the decision. Section 106 of the Act prohibits the use of any scoring system whose effect would be to "adjust the scores of, use different cutoff scores for, or otherwise alter the results of employment related tests on the basis of race, color, religion, sex or national origin." Thus, the Act requires that the use of within-group conversion scoring or other race-, color-, religion-, sex- or national origin-based adjustments to GATB scores for selection and referral by Employment and Training Administration contractors and grantees, and by programs under the National Apprenticeship Act, be terminated, effective immediately. Since the Civil Rights Act of 1991 is effective upon enactment (section 402), such entities shall immediately cease all use of the within-group scoring adjustment in test administration and scoring or for any referral or selection decisions.

The Department will undertake a vigorous program of research and attempt to improve the test, but will not prohibit use of the GATB while the research is being conducted.

There are a wide variety of circumstances and ways in which GATB scores conceivably might be used. ETA contractors and grantees, and programs under the National Apprenticeship Act may, if they so choose, continue to use GATB and its variants. But contractors, grantees, and programs under the National Apprenticeship Act are responsible for assuring that any use they make of GATB scores complies with applicable laws and regulations, including those relating to civil rights.

Should entities affected by this policy decision decide to continue to utilize GATB for selection and referral purposes, rather than solely for counseling purposes, DOL recommends that GATB scores be only one factor in the selection and referral process, with appropriate weight given to other factors (such as past job performance) as well, as suggested by the NAS report.

Based on the findings of the NAS report as to the usefulness of the test as a predictor of performance for a wide variety of jobs, the Department has decided against banning the use of GATB during the research period. The

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Department has concluded that SESAs and other users should be allowed the flexibility to assess their own circumstances and determine whether to continue using the GATB, in appropriate ways, during the interim period while research is undertaken to make improvements in the test.

The Department will conduct a multi-year research study to sharpen the ability of the GATB to predict worker performance on the job and thereby increase worker productivity through the use of better and more accurate job placement techniques. The research study is designed to assure that the GATB is a state-of-the-art assessment tool for referring workers to productive, satisfying employment. The Department's research is designed to make the GATB as accurate a predictor as can be developed with existing research techniques and to make it a fair instrument for assessing all workers' capabilities, making it a comprehensive and job-related assessment tool to meet the needs of America's changing and more competitive job market.

EFFECTIVE DATE: Employment and Training Administration grantees and contractors, and programs under the National Apprenticeship Act, shall implement this revised policy on December 18, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Litman, Acting Director, U.S. Employment Service, Employment and Training Administration, Washington, DC 20210. Telephone (202) 535-0157 (this is not a toll-free number).

Signed at Washington, DC, this 13th day of December, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 91-30206 Filed 12-17-91; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL ACID PRECIPITATION ASSESSMENT PROGRAM

Mission, Goals, and Program Plan, Post 1990

AGENCY: National Acid Precipitation Assessment Program.

ACTION: Notice of Program Plan released for public comment.

SUMMARY: National Acid Precipitation Assessment Program Mission, Goals, and Program Plan, Post 1990.

The National Acid Precipitation Assessment Program (NAPAP) announces the release of its Congressionally-mandated Program Plan for a 60-day public review period.

The Acid Precipitation Act of 1980 and its re-authorization in 1990 mandates a comprehensive national program of policy-oriented research to assess the causes and consequences of acidic deposition and the effectiveness of the recently legislated acid rain controls. NAPAP is directed toward providing technical input for decision-making in the areas of energy production, natural resource management, pollution abatement, and environmental policy. The Program not only links the efforts of the federal agencies, but also coordinates them with the research and monitoring activities of the private sector, state and local governments, and fosters cooperation with the international community.

Initially mandated for ten years by Congress in 1980, NAPAP was re-authorized by title IX of the 1990 Clean Air Act Amendments. Title IV of the Amendments provides for a significant reduction in acid rain precursor emissions. The expanded mission of NAPAP under title IX includes evaluating the effectiveness of title IV. The draft Program Plan describes a coordinated approach to address the mission, goals, and approach for the reauthorized Program.

DATES: Comments must be submitted on or before February 17, 1992.

ADDRESSES: The Program Plan can be ordered free of charge from the National Acid Rain Program, 722 Jackson Place, NW., Washington, DC 20503 or call (202) 296-1002. Comments should be mailed to the same address.

FOR FURTHER INFORMATION CONTACT: Patricia M. Irving, National Acid Precipitation Assessment Program, 722 Jackson Place, NW., Washington, DC 20503, (202) 296-1002.

Patricia M. Irving,

Acting Director.

[FR Doc. 91-30207 Filed 12-17-91; 8:45 am]

BILLING CODE 3126-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Cooperative Agreement to Help Administer Applicant Evaluations

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement with a qualified individual or organization to assist the Endowment's Inter-Arts Program in the administration of on-site artistic and/or administrative evaluations of grant applicants or grantees. The task includes coordinating travel arrangements for designated evaluators, disbursing funds to evaluators, maintaining records, and furnishing reports. Those interested in receiving the Solicitation package should reference Program Solicitation PS 92-02 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 92-02 is scheduled for release approximately January 4, 1991 with proposals due February 3, 1992.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 91-30110 Filed 12-17-91; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR part 70—Domestic Licensing of Special Nuclear Material.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Applications for new licenses and amendments may be submitted at any time. Applications for renewal are submitted every five years. Applications for renewal for certain major fuel cycle facilities are submitted every ten years, with updates of the safety demonstration section submitted every two years. Reports are submitted as events occur. Nuclear material control and accounting information is submitted in accordance with specified instructions.

5. *Who will be required or asked to report:* Applicants for and holders of specific licenses to receive title to, own, acquire, deliver, receive, possess, use, and initially transfer special nuclear material.

6. *An estimate of the number of responses:* 1,209.

7. *An estimate of the total number of hours needed to complete the requirement or request:* An average of approximately 48 hours per response for applications and reports, plus approximately 18 hours annually per recordkeeper. The total industry burden is 61,980 hours.

8. *An indication of whether section 3504(h), Public Law 96-511 applies:* Not applicable.

9. *Abstract:* NRC regulations in 10 CFR part 70 establish procedures and criteria for the issuance of licenses to own, acquire, receive, possess, use, and initially transfer special nuclear material. The information in the applications, reports and records is used by the NRC staff to assess the adequacy of the applicant's physical plant, equipment, organization, training, experience, procedures and plans for protection of public health and safety and the common defense and security.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Paperwork Reduction Project (3150-0009), Office of Information and Regulatory Affairs, NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395-3084.

The NRC Clearance officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 6th day of December 1991.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 91-30164 Filed 12-17-91; 8:45 am]

BILLING CODE 7590-01-M

Receipt of Responses to Request for Licensing Actions Regarding Reclamation Plans for Inactive Uranium Recovery Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Receipt of proposed reclamation schedules for inactive uranium recovery facilities.

1. Description of Federal Action

The NRC is issuing this notice to provide a corrected version of a notice which appeared December 6, 1991. The correction involves the uranium mill operated by Umetco Minerals Corp. in Wyoming.

By letter dated October 22, 1991, from the Director, Uranium Recovery Field Office, Region IV, licensees with inactive uranium mills were requested to propose license amendments to define completion schedules for reclamation of their facilities. This request was made in accordance with a memorandum of understanding (MOU) between the Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC) published in the **Federal Register** on October 25, 1991, (Volume 56, No. 207, pp. 55432-55435). As stipulated in the MOU, the NRC is noticing the receipt of responses to the NRC request of October 22, 1991, from the following NRC licensees:

Licensee	Facility	Docket No.	License
ARCO	Bluewater Mill	40-8903	SUA-1470
Homestake	Milan Mill	40-8903	SUA-1471
Kennecott	L-Bar Mill	40-8904	SUA-1472
Quivira	Ambrosia Lake	40-8905	SUA-1473
United Nuclear Corp.	Church Rock Mill	40-8907	SUA-1475
Utah:			
Atlas	Moab Mill	40-3453	SUA-917
Rio Algom Mining Corp.	Lisbon Mill	40-8084	SUA-1119
Wyoming:			
American Nuclear	Gas Hills	40-4492	SUA-667
Pathfinder Mines	Lucky McMill	40-3259	SUA-672
Petrotomics Company	Shirley Basin	40-6659	SUA-551
Umetco Minerals Corp.	Gas Hills	40-0299	SUA-648
Union Pacific Resources	Bear Creek Mill	40-8852	SUA-1310
Western Nuclear, Inc.	Split Rock Mill	40-1162	SUA-56

The NRC intends to review the above referenced responses, and amend the above referenced licenses to incorporate the reclamation plan milestones as appropriate for each facility. In accordance with the above referenced MOU, the NRC intent to amend each license will be noticed and a 30-day period will be provided for receipt of comments.

2. Contact

Copies of responses from the above licensees are available for inspection at the Uranium Recovery Field Office, 730 Simms, suite 100, Lakewood, Colorado, and at the Public Document Room, 2120 L Street, Washington, DC Comments or questions regarding the responses may be directed to the Director, Uranium Recovery Field Office, P.O. Box 25325, Denver, Co., 80225.

Dated at Denver, Colorado this 5th day of December, 1991.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office, Division of Radiation Safety and Safeguards, Region IV.

[FR Doc. 91-30165 Filed 12-17-91; 8:45 am]

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee (TPSC); Generalized System of Preferences (GSP); Special GSP Review for Central and Eastern Europe; Notice of Review of Product Petitions, Public Hearings and List of Articles To Be Sent to the U.S. International Trade Commission (USITC) for Review; Opportunity for Public Comment on USITC Advice in the 1991 GSP Annual Review

AGENCY: Office of the United States Trade Representative.

SUMMARY: The purpose of this notice is (1) to announce the list of articles that will be considered for designation as eligible for duty-free treatment under the GSP in the Special GSP Review for Central and Eastern European countries; (2) to announce a revised timetable for public hearings on the articles that are being considered for GSP designation in the Special GSP Review; (3) to announce that the list of articles herein will be sent by the United States Trade Representative (USTR) to the USITC to seek advice with respect to modification of the list of eligible articles for GSP; and, (4) to announce an opportunity for public comment on the USITC advice rendered in the 1991 GSP Annual Review.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20506. The telephone number is (202) 395–0971. Public versions of all documents are also available for review by appointment with the USTR Public Reading Room. Documents will be available in the reading room shortly after the filing deadlines. Appointments may be made from 10 a.m. to noon and 1 p.m. to 4 p.m. by calling (202) 395–6186.

SUPPLEMENTARY INFORMATION:

I. Special GSP Review

A. Background

In announcing the Trade Enhancement Initiative for Central and Eastern Europe, the President stated that "(t)he United States will provide substantially expanded market access for Central and East European countries by enhancing the Generalized System of Preferences (GSP)" (White House Press Release, July 12, 1991). The President also stated that he would give "special and expedited consideration" to the GSP benefits for the countries in that region by inviting additional GSP petitions and reviewing previously rejected product petitions. Accordingly, the TPSC initiated the Special GSP Review for Central and Eastern Europe on August 8, 1991 (56 FR 37758), and announced that certain previously denied Central and Eastern Europe petitions would be reviewed pursuant to the GSP regulations (see 15 CFR part 2007, including 15 CFR 2007.0(f)). On September 18, 1991, the TPSC extended the deadline for the submission of petitions in the Special GSP Review to October 18, 1991 FR 47266).

B. Acceptance of Petitions for Review

In the Special GSP Review, petitions were submitted to the GSP Subcommittee of the TPSC by the Governments of Czechoslovakia, Hungary, Poland and Yugoslavia seeking to have: (1) Additional articles designated as eligible for the GSP; or (2) the competitive need limits waived for specific products of a specific beneficiary country. Notice is hereby given of the acceptance for review of petitions requesting modification of the list of articles eligible to receive duty-free treatment under the GSP, as provided for in title V of the Trade Act of 1974, as amended (the 1974 Act) (19 U.S.C. 2461–2465). The TPSC is initiating the review of these petitions and the consideration of articles for designation as eligible GSP articles pursuant to the GSP regulations as set forth at 15 CFR 2007. The products that will be considered for designation as eligible GSP articles in the Special GSP Review are set forth in the Annex to this notice.

As in previous reviews, modifications of the list of articles eligible for GSP duty-free treatment in the Special GSP Review will be considered in accordance with the "graduation" policy. "Graduation" refers to the discretionary removal of a beneficiary country from the GSP program or the discretionary denial of duty-free GSP treatment to a particular product from a particular beneficiary country. Pursuant to this policy, a GSP beneficiary country could be excluded from GSP eligibility on a newly-designated article if that country is found to be sufficiently competitive with respect to that product. Therefore, product designations in the Special GSP Review may be made on a differential basis. Four criteria will be taken into account when any such graduation action is considered: The development level of individual beneficiary countries; their competitive position in the product concerned; the countries' practices relating to trade, investment and worker rights; and the overall economic interests of the United States.

C. Deferral of Decisions on Petitions From Yugoslavia

On December 6, 1991, President Bush announced the suspension of Yugoslavia from eligibility under the GSP program, effective December 24, 1991 (see 56 FR 64467). Therefore, decisions on whether to accept petitions filed by Yugoslavia in the Special GSP Review on products contained in subheadings 4107.10.00, 9401.69.60 and 9401.90.40 of the Harmonized Tariff Schedule of the United States (HTS) will be deferred until such time as Yugoslavia's status under the GSP program changes. At such time that a decision to accept Yugoslavia's petitions is announced, a schedule for public comment, including hearings, will be published.

D. Public Hearings and the Opportunity for Public Comment

The GSP Subcommittee of the TPSC invites submissions in support of or in opposition to the designation of any product listed in this notice as eligible for GSP. Information submitted in connection with this Special GSP Review must be submitted to the GSP Subcommittee at the address listed above. All such submissions should conform to the GSP regulations set forth at 15 CFR 2007. All submissions should identify the product of interest in terms of the current numbering and nomenclature of the HTS and, if possible, the assigned case number that is contained in the annex to this notice.

1. Public Hearings

Public hearings in connection with the Special GSP Review will be held on January 21–23, 1992, beginning at 9 a.m. at a location in Washington, DC to be announced. The hearings will be open to the public and a transcript of the hearings will be made available for public inspection or purchase from the reporting company. No electronic media coverage will be allowed.

Requests to present oral testimony in connection with public hearings should be accompanied by fourteen (14) copies, in English, of all written briefs or statements and should be received by the GSP Subcommittee by 5 p.m. Wednesday, January 8, 1992. All interested parties wishing to make an oral presentation at the hearings must submit the name, address, and telephone number of the witness(es) representing their organization by 5 p.m. Wednesday, January 8, 1992. Oral testimony before the GSP Subcommittee must be in English and will be limited to five-minute presentations that summarize or supplement information contained in briefs or statements submitted for the record.

2. Written Submissions

All submissions must be submitted in fourteen copies (14) in English. Interested parties that do not wish to appear at the public hearing may nonetheless submit pre-hearing briefs by 5 p.m. Wednesday, January 8, 1992. All interested parties may also submit post-hearing briefs by 5 p.m. Wednesday, February 12, 1992. Rebuttal briefs may be submitted by 5 p.m. Friday, February 28, 1992.

As part of the Special GSP Review, advice will be sought from the USITC, and an opportunity will be provided for the public to comment on nonconfidential USITC advice in March 1992. Notice of the availability of the USITC report and the timetable for comment will be published in the **Federal Register**.

3. Information Subject to Public Inspection

All submissions will be subject to public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and other qualifying information submitted in confidence pursuant to 15 CFR 2007.7. Briefs or statements must be submitted in fourteen (14) copies in English. If the document contains business confidential information, fourteen (14) copies of a nonconfidential version of the submission along with fourteen (14) copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each page of the document. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each page (either "public version" or "nonconfidential").

D. List of Articles Which May Be Considered for Designations as Eligible Articles for Purposes of the GSP or for Waiver of the Competitive Need Limit and on Which the USITC Will Be Asked to Provide Advice

On behalf of the President and in accordance with sections 503(a) and 131(a) of the 1974 Act (19 U.S.C. 2463(a) and 2151(a)), the USITC is being furnished with the list of articles published herein for the purpose of securing from the USITC its advice on the probable economic effect on U.S. industries producing like or directly competitive articles, and on consumers, of the modification of the list of articles eligible for GSP.

II. Notice of Opportunity for Public Comment on the USITC Advice Rendered in the 1991 GSP Annual Review

On August 26, 1991, USTR announced which product and country practice petitions were being accepted for further review in the 1991 GSP Annual Review (56 FR 42080). In that notice, it was noted that USTR would seek advice from the USITC on the probable economic effect of the modification of the list of articles eligible for GSP on industries producing like or directly competitive articles and on consumers.

The public version of the USITC advice will be available after December 11, 1991. The report containing the USITC advice is entitled President's List of Articles Which May Be Designated or Modified as Eligible Articles for Purposes of the U.S. Generalized System of Preferences, Report to the President on Investigation Nos. TA–131–17, 503(a)–22 and 332–312, USITC Publication 2464 (December 1991) (hereinafter USITC Publication 2646). After December 11, 1991, USITC Publication 2464 will be available from the USITC by calling the Office of the Secretary of the USITC at (202) 205–1806. USITC Publication 2464 will also available for review by appointment with the USTR Public Reading Room in Washington, DC. Appointments may be scheduled by calling (202) 395–6186.

The GSP Subcommittee of the TPSC hereby notifies interested parties of the opportunity to comment on the public version of the USITC advice. All comments must be submitted to the GSP Subcommittee in accordance with the GSP regulations and the requirements set forth in section I(D) of this notice. Comments on the USITC advice must be received by 5 p.m. Wednesday, January 22, 1992.

David A. Weiss,

Chairman, Trade Policy Staff Committee.

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Case No.	HTS Subheading 1/	Article	Petitioner Government(s) of:
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
		Petitions to add products to the list of eligible articles for the Generalized System of Preferences.	
		Meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal:	
		Meat of swine:	
SCEER-1	0210.12.00	Bellies (streaky) and cuts thereof	Hungary
		Cheese and curd:	
		Other cheese:	
		Goya cheese:	
		[Made from cow's milk and not in original loaves]	
SCEER-2	0406.90.3040	Other	do.
		Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared:	
		Other vegetables; mixtures of vegetables:	
SCEER-3	0712.90.75	Tomatoes	do.
		Hop cones, fresh or dried, whether or not ground, powdered or in the form of pellets; lupulin:	
SCEER-4	1210.10.00	Hop cones, neither ground nor powdered nor in the form of pellets	Czechoslovakia
		Other prepared or preserved meat, meat offal or blood:	
		Of swine:	
		[Hams and cuts thereof; Shoulders and cuts thereof]	
		Other, including mixtures:	
		[Offal]	
		Other:	
		Not containing cereals or vegetables:	
		[Boned and cooked and packed in airtight containers]	
SCEER-5	1602.49.40	Other	Hungary
		Of bovine animals:	
		[Offal]	
		Other:	
		Not containing cereals or vegetables:	
		[Cured or pickled]	
		Other:	
		In airtight containers:	
		[Corned beef]	
SCEER-6	1602.50.20	Other	do.
		Mushrooms and truffles, prepared or preserved otherwise than by vinegar or acetic acid:	
SCEER-7	2003.10.00	Mushrooms	do.
		Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter:	
		Grape juice (including grape must):	
		Concentrated:	
		[Frozen]	
SCEER-8	2009.60.0060	Other	do.
		Wine of fresh grapes, including fortified wines; grape must other than that of heading 2009:	
SCEER-9	2204.10.00	Sparkling wine	do.

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Case No.	HTS Subheading 1/	Article	Petitioner Government(s) of:
		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Wine of fresh grapes, including fortified wines; grape must other than that of heading 2009 (con.):	
		Other wine; grape must with fermentation prevented or arrested by the addition of alcohol:	
		In containers holding 2 liters or less:	
		[Effervescent wine]	
		Other:	
SCEER-10	2204.21.40	Of an alcoholic strength by volume not over 14 percent vol.	Hungary
	or	or	
		Of an alcoholic strength by volume not over 14 percent vol.:	
SCEER-11	2204.21.40(pt.)	If entitled under regulations of the United States Internal Revenue Service to a type designation which includes the name "Tokay" and if so designated on the approved label	do.
		Of an alcoholic strength by volume over 14 percent vol.:	
		[If entitled under regulations of the United States Internal Revenue Service to a type designation which includes the name "Marsala" and if so designated on the approved label]	
SCEER-12	2204.21.80	Other	do.
	or	or	
SCEER-13	2204.21.80(pt.)	If entitled under regulations of the United States Internal Revenue Service to a type designation which includes the name "Tokay" and if so designated on the approved label	do.
		Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liqueurs and other spirituous beverages; compound alcoholic preparations of a kind used for the manufacture of beverages:	
		Spirits obtained by distilling grape wine or grape marc (grape brandy):	
		[Pisco and singani]	
		Other:	
		In containers each holding over 4 liters:	
SCEER-14	2208.20.50	Valued not over $2.38/liter	do.
		Cyclic hydrocarbons:	
		Other:	
SCEER-15	2902.90.50(pt.)	Anthracene; and 1,4-Di(2-methylstyryl)benzene	Czechoslovakia
		Sulfonated, nitrated or nitrosated derivatives of hydrocarbons, whether or not halogenated:	
		Derivatives containing only sulfo groups, their salts and ethyl esters:	
		Other:	
		Aromatic:	
SCEER-16	2904.10.20(pt.)	2-Anthracenesulfonic acid	do.
SCEER-17	2904.10.30(pt.)	Benzenesulfonyl chloride	Poland
		Other:	
SCEER-18	2904.90.35	4,4'-Dinitrostilbene-2,2'-disulfonic acid	Czechoslovakia

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Case No.	HTS Subheading 1/	Article	Petitioner Government(s) of:
		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Phenols; phenol-alcohols:	
		Monophenols:	
		Naphthols and their salts:	
SCEER-19	2907.15.50(pt.)	2-Naphthol (β-Naphthol)	Czechoslovakia; Poland
		Polyphenols:	
SCEER-20	2907.23.00	4,4'-Isopropylidenediphenol (Bisphenol A, Diphenylolpropane) and its salts	Poland
		Halogenated, sulfonated, nitrated or nitrosated derivatives of phenols or phenol-alcohols:	
		Derivatives containing only sulfo groups, their salts and esters:	
SCEER-21	2908.20.10(pt.)	4-Hydroxy-1-naphthalenesulfonic acid (1-Naphthol-4-sulfonic acid)	Czechoslovakia
		Other:	
SCEER-22	2908.20.50(pt.)	1,8-Dihydroxynaphthalene-3,6-disulfonic acid and its disodium salt	do.
		Other:	
		Dinitro-o-cresol and 4-nitro-m-cresol:	
SCEER-23	2908.90.20(pt.)	4,6-Dinitro-o-cresol	do.
		Ketones and quinones, whether or not with other oxygen function, and their halogenated, sulfonated, nitrated or nitrosated derivatives:	
		Ketone-alcohols and ketone-aldehydes:	
		Other:	
		Aromatic:	
SCEER-24	2914.49.10(pt.)	1,2,3-Indantrione monohydrate (Ninhydrin)	do.
		Quinones:	
SCEER-25	2914.61.00	Anthraquinone	do.
		Saturated acyclic monocarboxylic acids and their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives:	
		Other:	
		Acids:	
		Other:	
SCEER-26	2915.90.15(pt.)	Valproic acid	do.
		Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives:	
		Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives:	
		Other:	
		Other:	
		Other:	
SCEER-27	2916.39.60(pt.)	Cinnamic acid	do.
		Polycarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives:	
		Acyclic polycarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives:	
		Other:	
SCEER-28	2917.19.10	Ferrous fumarate	Hungary

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Case No.	HTS Subheading 1/	Article	Petitioner Government(s) of:
		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Carboxylic acids with additional oxygen function and their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives:	
		Carboxylic acids with phenol function but without other oxygen function, their anhydrides, halides, peroxides, peroxyacids and their derivatives:	
		Salicylic acid and its salts:	
		(Suitable for medicinal use)	
SCEER-29	2918.21.50	Other	Poland
		Other:	
		Other:	
SCEER-30	2918.29.50(pt.)	3-Hydroxy-2-naphthoic acid	Czechoslovakia
		Amine-function compounds:	
		Aromatic monoamines and their derivatives; salts thereof:	
		Aniline derivatives and their salts:	
		Other:	
		Other:	
SCEER-31	2921.42.70(pt.)	N-Ethylaniline; N,N-Diethylaniline	Czechoslovakia; Poland
		Aromatic polyamines and their derivatives; salts thereof:	
		Other:	
SCEER-32	2921.59.20	4,4'-Diamino-2,2'-stilbenedisulfonic acid	Czechoslovakia
		Oxygen-function amino-compounds:	
		Amino-aldehydes, amino-ketones and amino-quinones, other than those containing more than one kind of oxygen function; salts thereof:	
		Aromatic:	
		Other:	
SCEER-33	2922.30.20(pt.)	2-Aminoanthraquinone	do.
SCEER-34	2922.30.30(pt.)	1-Aminoanthraquinone; and Ketamine hydrochloride	Czechoslovakia; Hungary
		Amino-acids and their esters, other than those containing more than one kind of oxygen function; salts thereof:	
		Other:	
		Aromatic:	
		Other:	
		Drugs:	
SCEER-35	2922.49.20(pt.)	Benzocaine; Procaine hydrochloride	Czechoslovakia
		Amino-alcohol-phenols, amino-acid-phenols and other amino-compounds with oxygen function:	
		Aromatic:	
		Other:	
		Drugs:	
		Other:	
		Cardiovascular drugs:	
SCEER-36	2922.50.15(pt.)	α-Methyldopa	Hungary
		Carboxyamide-function compounds; amide-function compounds of carbonic acid:	
		Cyclic amides (including cyclic carbamates and their derivatives; salts thereof:	
		Ureines and their derivatives; salts thereof:	
		Aromatic:	
		Other:	
SCEER-37	2924.21.30(pt.)	sym-Diethyldiphenylurea	Czechoslovakia

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		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Carboxyimide-function compounds (including saccharin and its salts) and imine-function compounds:	
		Imines and their derivatives; salts thereof:	
		Aromatic:	
		Other:	
SCEER-38	2925.20.30(pt.)	Diphenylguanidine	Czechoslovakia
		Nitrile-function compounds:	
		Other:	
		Aromatic:	
SCEER-39	2926.90.10(pt.)	Benzonitrile	do.
		Other:	
		Other;	
SCEER-40	2926.90.35(pt.)	p-Chlorobenzonitrile; and Verapamil hydrochloride	Czechoslovakia; Hungary
SCEER-41	2926.90.40(pt.)	o-Chlorobenzonitrile	Czechoslovakia
		Organo-sulfur compounds:	
		Other:	
		Aromatic:	
		Other:	
SCEER-42	2930.90.20(pt.)	N-Cyclohexylthiophthalimide	do.
		Heterocyclic compounds with oxygen hetero-atom(s) only:	
		Lactones:	
		Other lactones:	
		Aromatic:	
SCEER-43	2932.29.40(pt.)	4-Hydroxycoumarin	do.
		Heterocyclic compounds with nitrogen hetero-atom(s) only; nucleic acids and their salts:	
		Compounds containing an unfused pyridine ring (whether or not hydrogenated) in the structure:	
		Other:	
		Other:	
		Drugs:	
SCEER-44	2933.39.35(pt.)	Cyproheptadine hydrochloride	Hungary
		Compounds containing a quinoline or isoquinoline ring-system (whether or not hydrogenated), not further fused:	
		Other:	
		Drugs:	
SCEER-45	2933.40.25(pt.)	Chloroquine diphosphate	do.
		Other:	
SCEER-46	2933.40.50(pt.)	4,7-Dichloroquinoline	do.
		Compounds containing a pyrimidine ring (whether or not hydrogenated) or piperazine ring in the structure; nucleic acids and their salts:	
		Malonylurea (Barbituric acid) and its derivatives; salts thereof:	
SCEER-47	2933.51.50(pt.)	Phenobarbital	do.
		Other:	
		Drugs:	
		Aromatic or modified aromatic:	
		Anti-infective agents:	
SCEER-48	2933.59.26(pt.)	Trimethoprim	do.

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Case No.	HTS Subheading 1/	Article	Petitioner Government(s) of:
		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Heterocyclic compounds with nitrogen hetero-atom(s) only; nucleic acids and their salts (con.):	
		Other:	
		Aromatic or modified aromatic:	
		Other:	
		Drugs:	
		Anti-infective agents:	
SCEER-49	2933.90.27(pt.)	Carbadox	Hungary
		Drugs primarily affecting the central nervous system:	
		Antidepressants, tranquilizers and other psychotherapeutic agents:	
SCEER-50	2933.90.32(pt.)	Imipramine hydrochloride	do.
		Other heterocyclic compounds:	
		Compounds containing a phenothiazine ring-system (whether or not hydrogenated), not further fused:	
SCEER-51	2934.30.10(pt.)	Prochlorperazine maleate; and Promethazine hydrochloride	do.
		Other:	
		Drugs:	
		Antidepressants, tranquilizers and other psychotherapeutic agents:	
SCEER-52	2934.30.20(pt.)	Chlorpromazine hydrochloride	do.
		Other:	
		Aromatic or modified aromatic:	
		Other:	
		Other:	
SCEER-53	2934.90.45(pt.)	2,5-Diphenyloxazole	Czechoslovakia
		Sulfonamides:	
		Other:	
		Drugs:	
		Anti-infective agents:	
SCEER-54	2935.00.35(pt.)	Salicylazosulfapyridine (Sulfasalazine)	do.
		Other:	
SCEER-55	2935.00.46(pt.)	Glyburide; and Furosemide	Hungary
		Provitamins and vitamins, natural or reproduced by synthesis (including natural concentrates), derivatives thereof used primarily as vitamins, and intermixtures of the foregoing, whether or not in any solvent:	
		Vitamins and their derivatives, unmixed:	
SCEER-56	2936.26.00	Vitamin B_{12} (Cyanocobalamin and related compounds with Vitamin B_{12} activity) and its derivatives	do.
		Hormones, natural or reproduced by synthesis; derivatives thereof, used primarily as hormones; other steroids used primarily as hormones:	
		Other hormones and their derivatives; other steroids used primarily as hormones:	
		Estrogens and progestins:	
		Other:	
SCEER-57	2937.92.30(pt.)	Ethynodiol decanoate; D-Norgestrel; and DL-Norgestrel	do.
		Other:	
SCEER-58	2937.99.10(pt.)	Nandrolone phenpropionate	do.
SCEER-59	2937.99.50(pt.)	Nandrolone decanoate; and Pipecurium bromide	do.

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		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Vegetable alkaloids, natural or reproduced by synthesis, and their salts, ethers, esters and other derivatives:	
		Alkaloids of opium and their derivatives; salts thereof:	
		Other:	
		Synthetic:	
SCEER-60	2939.10.20(pt.)	Codeine phosphate	Czechoslovakia
		Ephedrines and their salts:	
SCEER-61	2939.40.10	Pseudoephedrine and its salts	do.
SCEER-62	2939.40.50	Other	do.
	or	or	
SCEER-63	2939.40.50(pt.)	L-Ephedrine hydrochloride	do.
		Antibiotics:	
SCEER-64	2941.40.00	Chloramphenicol and its derivatives; salts thereof	Hungary
		Synthetic organic coloring matter, whether or not chemically defined; preparations as specified in note 3 to chapter 32 of the HTS based on synthetic organic coloring matter; synthetic organic products of a kind used as fluorescent brightening agents or as luminophores, whether or not chemically defined:	
		Synthetic organic coloring matter and preparations based thereon as specified in note 3 to chapter 32 of the HTS:	
		Acid dyes, whether or not premetallized, and preparations based thereon; mordant dyes and preparations based thereon:	
		Other:	
SCEER-65	3204.12.50(pt.)	Mordant Black 11	Czechoslovakia
		Vat dyes (including those usable in that state as pigments) and preparations based thereon:	
		Other:	
SCEER-66	3204.15.50(pt.)	Vat black 27; Vat blue 4, 6, 14, 18, 20; Vat brown 1; Vat green 1, 3; Vat orange 11; Vat red 13; Vat yellow 2	do.
		Synthetic organic products of a kind used as fluorescent brightening agents:	
SCEER-67	3204.20.10	Fluorescent brightening agent 32	do.
SCEER-68	3204.20.50	Other	do.
		Prepared rubber accelerators; compound plasticizers for rubber or plastics, not elsewhere specified or included; antioxidizing preparations and other compound stabilizers for rubber or plastics:	
		Prepared rubber accelerators:	
SCEER-69	3812.10.10	Containing any aromatic or modified aromatic rubber accelerator	do.
		Antioxidizing preparations and other compound stabilizers for rubber or plastics:	
		Containing any aromatic or modified aromatic antioxidant or other stabilizer:	
		[Mixtures of N,N'-diaryl-p-phenylenediamines]	
SCEER-70	3812.30.40	Other	do.
		Composite diagnostic or laboratory reagents, other than those of heading 3002 or 3006:	
		[Containing antigens or antisera]	
SCEER-71	3822.00.50	Other	do.

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Case No.	HTS Subheading 1/	Article	Petitioner Government(s) of:
		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Cellulose and its chemical derivatives, not elsewhere specified or included, in primary forms:	
SCEER-72	3912.20.00	Cellulose nitrates (including collodions)	Czechoslovakia; Hungary
		Synthetic monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm; strip and the like (for example, artificial straw) of synthetic textile materials of an apparent width not exceeding 5 mm:	
		Monofilament:	
		[Racket strings]	
SCEER-73	5404.10.20	Other	Hungary
		Tableware, kitchenware, other household articles and toilet articles, of porcelain or china:	
		Tableware and kitchenware:	
SCEER-74	6911.10.10	Hotel or restaurant ware and other ware not household ware	do.
		Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china:	
		Tableware and kitchenware:	
		[Articles provided for in subheading 6912.00.10]	
		Other:	
		[Hotel or restaurant ware and other ware not household ware]	
		Other:	
		Available in specified sets:	
SCEER-75	6912.00.35	In any pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of chapter 69 of the HTS is not over $38	do.
SCEER-76	6912.00.39	In any pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of chapter 69 of the HTS is over $38	do.
		Other:	
		[Articles provided for in subheadings 6912.00.41 and 6912.00.44]	
SCEER-77	6912.00.45	Cups valued over $5.25 per dozen; saucers valued over $3 per dozen; soups, oatmeals and cereals valued over $6 per dozen; plates not over 22.9 cm in maximum diameter and valued over $6 per dozen; plates over 22.9 but not over 27.9 cm in maximum diameter and valued over $8.50 per dozen; platters or chop dishes valued over $35 per dozen; sugars valued over $21 per dozen; creamers valued over $15 per dozen; and beverage servers valued over $42 per dozen	do.
		[Serviette rings]	
SCEER-78	6912.00.48	Other	do.
		Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):	
		Drinking glasses, other than of glass-ceramics:	
		Of lead crystal:	
SCEER-79	7013.21.20	Valued over $1 but not over $3 each	Czechoslovakia
SCEER-80	7013.21.30	Valued over $3 but not over $5 each	do.

1/ Harmonized Tariff Schedule of the United States.

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Case No.	HTS Subheading 1/	Article	Petitioner Government(s) of:
		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018) (con.):	
		Glassware of a kind used for table (other than drinking glasses) or kitchen purposes other than that of glass-ceramics:	
		Of lead crystal:	
SCEER-81	7013.31.30	Valued over $3 but not over $5 each	Hungary
		Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel:	
		Threaded articles:	
		[Coach screws; Other wood screws; Screw hooks and screw rings; Self-tapping screws]	
		Other screws and bolts, whether or not with their nuts or washers:	
		[Articles provided for in subheadings 7318.15.20 through 7318.15.50, inclusive]	
		Other:	
SCEER-82	7318.15.80	Having shanks or threads with a diameter of 6 mm or more	Poland
		Beryllium, chromium, germanium, vanadium, gallium, hafnium, indium, niobium (columbium), rhenium and thallium, and articles of these metals, including waste and scrap:	
		Other:	
		Unwrought; waste and scrap; powders:	
		[Waste and scrap]	
		Other:	
SCEER-83	8112.91.10	Gallium	Hungary
		Ball or roller bearings, and parts thereof:	
		Ball bearings:	
		[Ball bearings with integral shafts]	
SCEER-84	8482.10.50	Other	Hungary; Poland
		[Tapered roller bearings, including cone and tapered roller assemblies]	
SCEER-85	8482.30.00	Spherical roller bearings	Poland
SCEER-86	8482.40.00	Needle roller bearings	do.
SCEER-87	8482.50.00	Other cylindrical roller bearings	do.
SCEER-88	8482.80.00	Other, including combined ball/roller bearings	do.
		Other clocks:	
		Alarm clocks:	
		[Battery or AC powered]	
		Other:	
		With movement measuring not over 50 mm in width or diameter:	
SCEER-89	9105.19.10	Not constructed or designed to operate for over 47 hours without rewinding	Czechoslovakia
		Other:	
SCEER-90	9105.19.40	Valued not over $5 each	do.

1/ Harmonized Tariff Schedule of the United States.

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Case No.	HTS Subheading 1/	Article	Petitioner Government(s) of:
		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Mattress supports; articles of bedding and similar furnishings (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered:	
		Sleeping bags:	
		[Containing 20 percent or more by weight of feathers and/or down]	
SCEER-91	9404.30.80	Other	Czechoslovakia
		Pencils (other than those pencils of heading 9608), crayons, pencil leads, pastels, drawing charcoals, writing or drawing chalks and tailors' chalks:	
SCEER-92	9609.10.00	Pencils and crayons, with leads encased in a rigid sheath	do.

1/ Harmonized Tariff Schedule of the United States.

[FR Doc. 91-30190 Filed 12-17-91; 8:45 am]
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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30063; International Series No. 352; File No. SR-CBOE-91-36]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Listing of Reduced Value Index Options on the Deutsche Aktien Index ("DAX")

December 11, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 15, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to list and trade index options, pursuant to chapter XXIV of the Exchange's Rules, based on a reduced value of the Deutsche Aktien Index ("DAX" or "Index"). The DAX is a broad-based, capitalization-weighted index of 30 German blue-chip equities listed on the Frankfurt Stock Exchange ("FSE"). The Index options will be cash settled with a European-style exercise and have a value of one U.S. dollar for each reduced value DAX Index point.

The text of the proposed rule is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit the CBOE to list and trade cash-settled, European-style index options based on a reduced value of the DAX. The DAX is a capitalization-weighted index comprised of 30 German blue-chip equities listed on the FSE, the fourth largest stock exchange in the world. The DAX stocks are drawn from a broad base of industries and account for 70 percent of the volume on the FSE.

2. Index Description

a. *Design.* The stocks comprising the DAX are chosen on the basis of market capitalization, trading volume and the early availability of daily opening prices. The DAX is a capitalization-weighted index, in which the capitalization of each stock is calculated based on the "listed" capital of a company. The listed capital of companies in the DAX includes both common and preferred shares, including those shares held in the corporate treasury. This represents a departure from the procedure used to calculate U.S. indexes, such as Standard & Poor's ("S&P") indexes, which are based on the number of outstanding shares of common stock only. The DAX is a "total-return" index, *i.e.*, the index price is adjusted for cash dividends paid on the component securities.

As of September 20, 1991, the 30 stocks which comprise the Index ranged in capitalization from DM 1.1. billion ($679 million) to DM 36.4 billion ($21.8 billion). The stock with the highest capitalization, "Allianz," accounts for about 11 percent of the Index, primarily due to its unusually high share price of about DM 2,023 ($1,214). The median capitalization for the DAX as of this date was DM 6.7 billion ($4.0 billion).[1] The largest 13 stocks in the DAX Index account for approximately 75 percent of the Index's capitalization of DM 335 billion ($201.1 billion). The 30 stocks included in the DAX represent approximately 60 percent of the capitalization of the German equity market.[2]

In general, the stocks with the highest capitalization are the most actively traded. Average trading volume in DAX stocks ranges from approximately 34,000 to 670,000 shares per day, with average daily trading volume for all the stocks in the Index equalling approximately 226,000 shares per day. The Index is composed of ten broad industry groupings, such as chemicals, automobile and insurance companies, among others, which reflect the industry composition of the German equity market.

b. *Calculation and Dissemination.* The DAX is calculated every minute from 10:30 a.m. to 1:30 p.m. Frankfurt time (3:30 a.m. to 6:30 a.m. Chicago time), based on last sale prices of the component stocks. The Index is calculated by the FSE and disseminated over Reuters News Service. The Index price is not disseminated until opening prices are available for at least 15 component stocks, of any size, which together constitute at least 70 percent of the capitalization of the Index. Until each underlying stock opens, the Index is calculated using each stock's previous-day closing price.

As noted above, the DAX is a capitalization-weighted index that reflects changes in the capitalization or market value of the component stocks relative to the capitalization on a base date. The base date for DAX is December 30, 1987, at which time the Index equalled 1000. The capitalization of a particular stock in the DAX is calculated by multiplying the listed capital by the price of the common stock, or the price of the preferred stock if the common stock is not listed.

Since the DAX is a total-return index, the capitalization of each stock is adjusted to reflect its dividend payment on its ex-dividend date. This adjustment is made because German companies usually pay their dividends only once per year (generally in June or July). If not adjusted, the annual dividend payment would result in a significant drop in the Index value at the time when the dividends are paid. Therefore, the dividend adjustment is calculated so that share prices reflect full dividend reinvestment. As calculated by the FSE, adjustments are made by multiplying each stock's capitalization by an adjustment factor particular to each stock price. The resulting "adjusted" capitalization for each of the 30 stocks then is summed and divided by the base date capitalization. The type of adjustment described above is also utilized when a company issues new shares for which the shareholders have preemptive rights, or when any other intra-year adjustments, such as mergers and spinoffs, occur.

The number of "listed" shares of each stock is updated annually in September. At that time, the adjustment factors, mentioned above, which reflect the dividend payments and/or intra-year adjustments are rescaled to 1. To maintain continuity in the Index when this occurs, the Index is adjusted through another calculation. For this calculation, the FSE multiplies the ratio of capitalization (current capitalization divided by base date capitalization) by the "chain index factor." The FSE employs the "chain index factor" to reflect all previous dividend and capitalization adjustments made during the year. In this manner, continuity in the DAX is maintained despite changes in the "listed" shares and rescaling of the individual adjustment factors back to 1.

Finally, the Index level at any point in time is equal to the "adjusted" ratio of the current market capitalization to the base-date capitalization, multiplied by 1000. Accordingly, the Index level equalled 1,616.07 as of the close on September 20, 1991.

c. *Maintenance.* The DAX is maintained by the FSE in conjunction with the Federation of the German Stock Exchanges (composed of 8 German stock exchanges) and the Borsen-Zeitung (an industry newspaper). "Listed" capitalization, as noted above, is updated once per year. Based on the FSE's policy, it will not alter the composition of the DAX unless a stock fails to meet certain criteria, including large market capitalization and trading volume. For instance, since mid-1989 "Feldmuhle Nobel" and "Nixdorf" were replaced in the Index as a result of failure to meet the FSE's criteria. Replacements are generally made from a list of substitute stocks. If there is no company from the same industry group, then other industry stocks may be substituted.

3. Index Options Trading

The Exchange notes that the DAX Index level is high (about 1,625) in relation to listed domestic index levels. The Exchange, therefore, proposes to base trading in its options on a fraction of the value calculated by the FSE. The Exchange anticipates that a U.S. index level of one-tenth of the DAX level would be appropriate. After dividing the DAX by 10 and rounding to the nearest $0.01, the Exchange will disseminate the reduced value of the Index to vendors through the OPRA system.

The value of one U.S. dollar will be assigned to one reduced value Index point, so that the option premium values will change in U.S. dollar terms. This method permits the option premiums to be quoted in U.S. dollars and trading accounts to be denominated in U.S. dollars. All Exchange, Options Clearing Corporation and clearing member systems will be able to accommodate trading and clearance and settlement of the options without alteration. This will facilitate the trading of DAX options by U.S. retail customers.

4. Exercise

The Exchange proposes that DAX options will have a European-style exercise and that they will not trade on the Friday preceding expiration (this corresponds to exercise and trading days of NSX index options). The proposed options will expire on the Saturday following the third Friday of the expiration month. The settlement value for exercise, which is termed the Current Index Value ("CIV"), will be calculated by the FSE based on FSE prices between 12:30 and 1:30 p.m. Frankfurt time (5:30 to 6:30 a.m. Chicago time) on the day following the last day of trading in the expiring contracts. The trading in the expiring contract month will normally cease on a Thursday at 3:15 p.m. Chicago time, unless a holiday occurs. Therefore, the CIV value for exercise of the DAX options will be determined during Friday trading at the FSE. If a stock does not trade during this interval, or if it fails to open for trading, the last available price on the stock will be used in the calculation of the Index, as is done for currently listed indexes. When expirations are moved in accordance with Exchange holidays, such as when the CBOE is closed on the Friday before expiration, the last trading day for expiring options will be Wednesday and the CIV for exercise will be calculated during the Thursday trading session on the FSE, even if it is open on Friday. If the FSE is closed on the Friday before expiration but the CBOE is not, the last trading day for expiring options will be moved up as if the CBOE had a Friday holiday.

The Exchange has designed the procedure for calculating the settlement value for its DAX options with the intent to eliminate the potential to manipulate the underlying markets in order to affect the options settlement value. The FSE calculates and disseminates its CIV for exercise based on the average Index values (excluding the 3 high and the 3 low Index value) taken at each minute in the period from 12:30 p.m. to 1:30 p.m. Frankfurt time. In other words, the CIV, upon which settlements will be based, represents the average of 55 separate prices taken over an hour period. To reflect the reduced-value Index in U.S. dollars, the Exchange's CIV will be equal to the fraction, *i.e.*, 1/10th, of the DAX CIV calculated by the FSE represented in U.S. dollars.

The Exchange feels that this method of settlement, based on an average of Index levels, severely restricts the potential to artificially support or depress the prices of component stocks in order to profit on an options position or positions. More importantly, however, the Exchange believes that the characteristics of the Index, particularly the high capitalization and turnover of DAX component stocks, should preclude manipulative activities. The following discussion provides an example of the price change in the highest capitalization stock within the Index (based on prices as of September 20, 1991 with other stock prices assumed constant) necessary to produce a $2.00 change in a 3-month, at-the-money DAX call option. In order to increase the reduced value DAX call option by about $2.00 (from $6.98 to $9.01), the full value DAX Index would have to increase by 32.43 (from 1617.07 to 1648.50). The change in total Index capitalization would increase from DM 335.1 billion to DM 341.8 billion, a change of DM 6.7 billion. This would translate into an increase in the price of Allianz of DM 373.54. Accordingly, the example illustrates that the price of the top stock in the index would have to increase by 18.5% in order to move the call price by $2.00. As can be seen, it would require a tremendous amount of influence in the underlying market to produce even a small move in the U.S. derivatives market. Further, the highest-weighted stocks in the Index are actively traded outside the FSE, in particular, on the Stock Exchange Automated Quotation System (SEAQ International) of the London Stock Exchange. Therefore, the Exchange feels that the settlement procedure it will apply to this option, coupled with the nature of the stocks in the Index, virtually forecloses any potential for manipulating the proposed DAX options.

5. Exchange Rules Applicable to Stock Index Options

The DAX option, as proposed, will be very similar to the two broad-based S&P Index options presently listed for trading, including position and exercise limits, expiration months, and index multiplier. The Exchange proposes to establish the same position limits which are used for existing stock index options, *i.e.*, 25,000 contracts on either side of the market, provided that no more than 15,000 of such contracts are in the series in the nearest expiration month. The Exchange intends to list a March quarterly cycle of expiration months, and may list two additional long-term options series with two and

[1] In comparison, the median capitalization of the S&P 500 as of September 20, 1991, was $2.2 billion.

[2] The German equity market totals approximately DM 558 billion ($335 billion).

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three years to expiration. The Exchange also has proposed to list series in 2½ point intervals.

The Exchange proposes to amend the following rules to accommodate trading of options on the DAX. Exchange Rule 24.9(c) has been modified to include this Index in the definition of European Style Exercise. Other rules pertinent to this proposed rule change have recently been approved by the Commission.[3]

6. Surveillance of Underlying Trading

The Exchange has a market surveillance agreement with the FSE, which is the largest stock exchange in Germany and the fourth largest in the world. Its membership consists of 130 commercial banks. Exchange "official brokers" determine trade prices in the underlying stocks and are required to set prices at levels that allow for the matching of the largest number of shares. Fraudulent manipulation of stock is a criminal offense in Germany, which, with the cooperation of the FSE, is investigated by the public prosecutor of the State of Hessen. In addition, special rules apply to investigations into insider trading, which rules all FSE members have voluntarily agreed to put into practice. Pursuant to its surveillance agreement, the CBOE will be able to obtain volume, price and recorded transaction times from the records of the FSE, which will provide the Exchange with a means of surveilling the trading of stocks on the FSE underlying the DAX.

7. Economic Rationale

The DAX tracks an equity market that is not currently represented in the domestic derivative markets. DAX options will provide retail and institutional investors with a means to benefit from their forecasts of German equity market performance. the Index will provide a performance measure and evaluation guide for stock portfolios with exposure to the German equity market. Additionally, DAX options could provide an effective means for hedging the risks of German stocks and provide a low cost means of altering the composition of an equity portfolio.

[3] The Commission approved a CBOE proposal to trade options on a Reduced Value FT–SE 100 Index in Securities Exchange Act Release No. 29722 (September 23, 1991), 56 FR 40807. In addition, Exchange proposals to trade options on a Reduced Value Eurotrack 100 Index and Reduced Value Eurotrack 200 Index are pending with the Commission. See Securities Exchange Act Release Nos. 29045 (April 4, 1991), 56 FR 14553 (File No. SR–CBOE–91–08) and 29043 (April 4, 1991), 56 FR 14551 (File No. SR–CBOE–91–09).

8. Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and, in particular, section 6(b)(5), in that it is designed to prevent fraudulent and manipulative acts and practices, and to eliminate the potential to manipulate the underlying markets in order to affect the options' settlement value.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 8, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–30129 Filed 12–17–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30068; File No. SR–CBOE–91–45]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Corrections to Exchange Rule 30.18

December 12, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 20, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Exchange Rule 30.18(a), entitled "General Floor Prohibitions," to make clarifying and clerical corrections. Exchange rule 30.18(a) is intended to prohibit a member from buying or selling a stock on the CBOE when the member or an affiliate has a position in an option or warrant underlying that stock.[1] As currently drafted, however, Exchange Rule 30.18(a) provides that a member or an affiliate cannot buy or sell a security on the CBOE where such member or affiliate "holds such security or has sold or granted an option or warrant on that security * * *." Therefore, as currently drafted, the Rule inappropriately applies when a member or an affiliate holds a long stock position. Accordingly, the CBOE proposes to delete the words "such security" from Exchange Rule 30.18(a) to clarify that a member or an affiliate cannot trade a security on the Exchange only when its holds or has sold or granted an option or warrant on that security.

[1] However, a member may purchase or sell the underlying stock on another exchange.

In addition, the Exchange proposes to amend paragraphs (a) and (b) of Exchange Rule 30.18 to clarify the identity of an affiliate of a member as a "person associated with such member or member organization." The text of the proposal is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

In October 1990, the Commission approved a CBOE proposal establishing listing and trading rules for stocks, rights, warrants and other securities.[2] Exchange Rule 30.18(a) is intended to prohibit a member from buying or selling an underlying stock on the Exchange when the member or an affiliate has a position in the related option. The CBOE proposes to amend Exchange rule 30.18 to make clarifying and clerical corrections. Specifically, the CBOE proposes to delete from Exchange Rule 30.18(a)(i) the words "such security" because that language indicates, incorrectly, that the rule's prohibition applies when the member has a long position in the security. As a result, amended Exchange Rule 30.18(a) clearly sets forth the CBOE's intent when proposing the rule that a member or its affiliates be prohibited from trading a security on the Exchange only when the member or its affiliate holds or has granted an option or warrant on that security.

[2] See Securities Exchange Act Release No. 28556 (October 19, 1990), 55 FR 43233 (order approving File No. SR–CBOE–90–06).

In addition, the Exchange proposes to amend paragraphs (a) and (b) of Exchange Rule 30.18 to define the affiliate of a member as a "person associated with such member or member organization." The proposed definition will conform Exchange Rule 30.18 to the definition proposed by the CBOE for Exchange Rule 1.1(qq), which defines affiliate as a "person associated with a member or associated person of a member." [3]

(2) Basis

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change interprets and clarifies a stated policy practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 8, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–30197 Filed 12–17–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30056; File No. SR–MSE–91–12]

Self-Regulatory Organizations; Order Approving Proposed Rule Change of the Midwest Stock Exchange, Inc., Regarding the Implementation of a Modified Version of the SuperMAX System to Run Concurrently With SuperMAX During the SuperMAX Pilot Program.

December 10, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), on July 23, 1991, the Midwest Stock Exchange ("MSE") filed with the Securities and Exchange Commission ("Commission") a proposed rule change to provide a modified version of the SuperMAX system (referred to by the MSE as "Enhanced SuperMAX") to run concurrently with SuperMAX during the SuperMAX pilot program,[1] currently in effect through May 14, 1992.[2]

Notice of the proposed rule change was given in Securities Exchange Act Release No. 29616 (August 27, 1991), 56 FR 43637. The Commission received no

[1] The filing requested that the proposed rule change be granted accelerated approval. The exchange withdrew its request for accelerated approval on August 15, 1991. See letter from Daniel J. Liberti, Associate Counsel, Midwest Stock Exchange, to Kathryn Natale, Assistant Director, Division of Market Regulation, SEC, dated August 15, 1991.

[2] Securities Exchange Act Release No. 29049 (November 18, 1991).

[3] See File No. SR–CBOE–91–41.

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comments on the proposal. This order grants approval of the proposed rule change.

I. Description of the Proposed Rule Change and Exchange Rationale

The proposed rule change provides for a modified version of the SuperMAX system and will expand the current SuperMAX pilot program by offering the modified version of SuperMAX during the remainder of the pilot program. The modified version of SuperMAX ("Modified SuperMAX") will operate as a separate system and will be available to MSE specialists as an addition, or as an alternative, to SuperMAX. Participation in Modified SuperMAX will be voluntary for specialists and will apply on a stock-by-stock basis for agency market orders of 1,099 shares or fewer in Dual Trading Systems issues. Modified SuperMAX will operate during the trading day from 9 a.m. CST until the close.

Unlike SuperMAX, however, which executes automatically all eligible agency market orders either at the consolidated best bid or offer ("BBO") or at a price that represents a ⅛ price improvement,[3] Modified SuperMAX will stop a market order automatically if its execution at the BBO would create either a double up tick or double down tick. If the execution at the BBO would not result in a double up tick or double down tick, then Modified SuperMAX will execute the order at the BBO. Once a Modified SuperMAX eligible order is stopped, Modified SuperMAX will execute the stopped order based upon the next sale in the primary market.

The Modified SuperMAX algorithm compares the previous last sale price to the next sale price, and considers the direction of the market as evidenced by those sale prices, to determine that price at which the stopped market order will be filled. Modified SuperMAX will execute stopped orders according to the following criteria:

For Stopped Buy Orders:

1. If the next primary market sale is less than or equal to the last previous sale, then the stopped order will be executed at the last previous sale price. If the next primary market sale represents a double down tick or zero minus tick from the last previous sale, however, then the stopped order will be filled at the last previous sale price plus ⅛.

2. If the next primary market sale is greater than the last previous sale, then the stopped order will be executed at the next primary market sale price. If the next primary market sale is inferior to the stop price, however, then the stopped order will be filled at the stopped price (*i.e.*, the offer).

For Stopped Sell Orders:

3. If the next primary market sale is greater than or equal to the last previous sale, then the stopped order will be executed at the last previous sale price. If the next primary market sale represents a double up tick or zero plus tick, however, then the stopped order will be filled at the last previous sale price minus ⅛.

4. If the next primary market sale is less than the last previous sale, then the stopped order will be executed at the next primary market sale price. If the next primary market sale is inferior to the stop price, however, then the stopped order will be filled at the stopped price (*ie.*, the bid).

Modified SuperMAX will not execute an order at the BBO if such execution would result in an out of range execution, nor will Modified SuperMAX provide a fill at a price worse than the stop price.

If a specialist chooses Modified SuperMAX, the criteria outlined above will be followed for all eligible stocks. If a specialist chooses to have Modified SuperMAX run concurrently with SuperMAX, then the size of the agency market order will determine which method of execution to be followed. An order of 599 shares or fewer will execute according to SuperMAX rules; an order of 600 shares to 1,099 shares will execute according to Modified SuperMAX rules. An order will never be subject to execution under the rules of both SuperMAX and Modified SuperMAX.

Any eligible order in a stock included in Modified SuperMAX that is manually presented at the specialist post by a floor broker also must be guaranteed an execution by the specialist pursuant to the above-listed criteria. In the unlikely event that a contra side order that would better the Modified SuperMAX execution is presented at the post, the specialist must adjust the incoming order that was executed pursuant to the Modified SuperMAX criteria.

Certain stocks, depending upon the specific trading characteristics of the issue, may not be appropriate for SuperMAX, and the MSE believes that the specialist is in the best position to determine SuperMAX eligibility. During volatile periods, individual stocks or all stocks may be removed from SuperMAX with the approval of two members of the Committee on Floor procedure.[4]

The MSE represents that Modified SuperMAX will not have any adverse impact upon MSE systems capacity. In fact, the MSE increased its systems capacity in anticipation of the addition of Modified SuperMAX to sufficiently handle any added demands on the system for processing the Modified SuperMAX algorithm.

The purpose of the rule change is to offer a version of the SuperMAX system that will encourage more MSE specialists to use SuperMAX. The MSE intends to expand the existing pilot program for SuperMAX by offering the modified version during the remainder of the SuperMAX pilot.[5] The MSE wants to begin offering Modified SuperMAX in order to evaluate both systems during the SuperMAX pilot program. During the concurrent operation of both pilot programs, specialists will be able to use Modified SuperMAX in addition, or as an alternative, to SuperMAX.

Similar to SuperMAX, Modified SuperMAX does not provide order exposure, but substitutes the algorithm described above that permits price improvement under certain circumstances. Where SuperMAX automatically executes small agency market orders at the BBO or at ⅛ price improvement from the BBO, Modified SuperMAX stops agency market orders if their execution at the BBO would result in a double up tick or double down tick, as measured against the previous last sale price in the primary market. The MSE believes that this feature of Modified SuperMAX provides a fairer and more accurate means of executing market orders than does SuperMAX because executions will be based on the current direction of the market prior to execution. While Modified SuperMAX will not automatically provide a ⅛ betterment on price, it will allow for even better price improvement if current market conditions dictate that such an improvement is warranted.[6]

The MSE believes that Modified SuperMAX fills will have a more reasonable relation to the current market in a stock than does SuperMAX. by waiting for a next sale, rather than executing based solely upon the consolidated BBO, Modified SuperMAX, in effect, requires validation of the displayed market before filling an order. The validation feature of Modified SuperMAX adds a check to a market that may be changing. The MSE believes that this enhancement will benefit customers and specialists alike because it provides a fairer and more accurate price at the time of execution.

In addition, Modified SuperMAX will continue to consider the last primary market sale, which customers look to in assessing the quality of executions on the MSE. However, by also looking to the next sale in the primary market, customers will receive the added benefit of an execution based upon consideration of two primary sales, one of which is the most current market information on that stock.

Modified SuperMAX is a result of the MSE's continuing efforts to offer customers quality fills on its trading floor. The MSE believes that it should contribute to increased order flow to the MSE, thereby making the exchange and its specialists more competitive without using disproportionate systems resources or placing undue burdens upon specialist profitability.

II. Discussion and Conclusion

The Commission has reviewed carefully the MSE's proposed rule change and concludes, for the following reasons, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with section 6(b)(5) of the Act.

The Commission has expressed concerns, most notably in the original SuperMAX approval order,[7] about the possible adverse effects on execution quality of a lack of order exposure. At that time, the Commission emphasized that increased order exposure may provide economic benefits to the securities markets by encouraging enhanced interactions of orders, increased opportunities for best execution of customer orders, and greater intermarket competition for order flow (and, ultimately, increased market efficiencies). The Commission also acknowledged, however, that increased order exposure may impose certain economic costs in terms of execution delay and interjection of manual processing.

The Commission concluded that although SuperMAX orders would not be exposed to the market, SuperMAX's price betterment feature might actually improve the chances that a customer's order would be executed between the bid-ask spread. While Modified SuperMAX will not automatically provide a ⅛ price betterment, it will provide some opportunity for price improvement. In this respect, we note that most automatic execution systems currently in effect, including the MSE's MAX system, provide executions at the quote only. It is hoped that Modified SuperMAX's algorithm will encourage more MSE specialists to use the SuperMAX system, so that its benefits may inure to more customers.

The Commission believes that Modified SuperMAX pricing and execution procedures are consistent with the maintenance of fair and orderly auction markets on national securities exchanges. The execution criteria of Modified SuperMAX should contribute to an orderly market because they help to reduce variations from trade to trade on low volume.

The Commission approves this system on a pilot basis only, and will consider these issues again in the event that the MSE requests permanent approval of Modified SuperMAX. Any request for permanent approval would require, of course, that the MSE submit a rule filing pursuant to rule 19b-4. To help the Commission better evaluate these issues, the MSE must submit, in connection with any request for the permanent approval of Modified SuperMAX, the following data: (1) The number of orders executed in both SuperMAX and Modified SuperMAX during the pilot programs; (2) share and dollar volume for both systems during the pilot programs; (3) a comparison of order executed under SuperMAX, MAX, and Modified SuperMAX, indicating where orders executed under one system would have received a more favorable execution under another system and where use of the last sale price would have provided a superior execution;[8] (4) The number of specialists using each system, and the number of stocks included in each; and (5) the average length of time between receipt of an order and execution under each system.

While the Commission believes that this proposal is less ideal than SuperMAX, the Commission finds that it is consistent with the requirements of section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, That the rule change be, and hereby is, approved on a pilot basis until May 14, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-30198 Filed 12-17-91; 8:45 am]

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[3] The execution criteria for SuperMAX are as follows:

A. Both buy and sell orders in markets quoted with a minimum variation (⅛th spread) or orders that do not meet the criteria in B or C below will be executed based upon the consolidated BBO as the case may be.

B. Buy orders in markets quoted with more than ⅛th spread will be executed at a price ⅛th better than the consolidated best offer if: (a) an execution at the consolidated best offer would create a double up tick based upon the last sale in the primary market; or (b) an execution at the consolidated best offer would result in a greater than a ⅛th price change from the last sale in the primary market.

C. Sell orders in markets quoted with more than a ⅛th spread will be executed at a price ⅛th better than the consolidated best bid if: (a) an execution at the consolidated best bid would create a double down tick based upon the last sale in the primary market; or (b) an execution at the consolidated best bid would result in greater than a ⅛th price change from the last sale in the primary market.

[4] The MSE represented that stocks would only be removed from Modified SuperMAX in the rare instances when the primary market had designated a "fast market." The MSE would broadcast a message indicating that the effected stocks were off SuperMAX. Executions in those stocks would then default into the MAX system.

[5] SuperMAX has been in effect on a pilot basis since May 14, 1990 (See Securities Exchange Act Release No. 20614 (May 14, 1990), 55 FR 20680). It is in effect currently until May 14, 1992 (See Securities Exchange Act Release No. 29849 (November 18, 1991).

[6] The following example demonstrates an instance where Modified SuperMAX would provide a better execution than SuperMAX. For a customer buy order, if the previous sale were at 10¼, and the previous sale before that were at 10, and the market were currently quoted at 10 to 10⅛, Modified SuperMAX would stop the order at 10⅛. If the next sale were at 10¼, Modified SuperMAX would execute the order at 10¼. SuperMAX would have executed the same order at 10⅜.

[7] Securities Exchange Act Release No. 28014 (May 14, 1990), 55 FR 20680.

[8] An objective sampling of stocks using each system would be acceptable.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

December 12, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Intelligent Systems Corporation
Common Stock, $.01 Par Value (File No. 7-7671)

Professional Bancorp, Inc.
Common Stock, $.08 Par Value (File No. 7-7672)

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Orbital Engine Corporation Limited
American Depositary Shares (each representing eight ordinary shares, A. $.50 each) (File No. 7–7673)
Struthers Industries, Inc.
Common Stock, $.10 Par Value (File No. 7–7674)
Bio Whittaker, Inc.
Common Stock, Par Value 1¢ (File No. 7–7675)
General Motors Corporation
Depositary Shares (representing ¼ share of Series B Preferred Stock, $.10 Par Value) (File No. 7–7676)
Office Depot, Inc.
Common Stock, $.01 Par Value (File No. 7–7677)
Owens-Illinois, Inc.
Common Stock, $.01 Par Value (File No. 7–7678)
Plains Resources, Inc.
Common Stock, $.10 Par Value (File No. 7–7679)
British Telecommunications, Plc
Interim American Depositary Shares (File No. 7–7680)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 6, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–30201 Filed 12–17–91; 8:45 am]

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[Release No. 34–30065; File No. SR–NASD–91–41]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Amendments to the Examination, Specifications and Study Outline for the Investment Company and Variable Contract Products ("Series 26") Qualifications Examination

December 11, 1991.

On August 12, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted a proposed rule change to the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b–4 thereunder.[2] The proposal amends the NASD's Series 26 examination which tests knowledge of investment company and variable contract products by adding new questions to reflect both regulatory and business changes in this segment of the securities industry. The number of questions per test has been increased to 100 and the testing time will be two hours. In addition, the proposal amends the study outline and examination specifications for the Series 26 examination. The amendments do not result in any textual changes to the NASD By-Laws, Schedules to the By-Laws, rules, practices or procedures.

Notice of the proposed rule change together with its terms of substance was provided by the issuance of a Commission release (Securities Exchange Act Release No. 29704, September 18, 1991) and by publication in the **Federal Register** (56 FR 46597, September 25, 1991). No comments were received on the proposal. This order approves the proposed rule change.

Pursuant to section 14A(g)(3) of the Act,[3] the NASD is authorized to prescribe standards of training, experience, and competence for persons associated with NASD members. To this end, the NASD has developed examinations that it administers to establish that such persons have attained the requisite levels of knowledge and competence. The NASD periodically reviews the content of the examinations to determine whether amendments are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations. Therefore, the NASD has determined to update the Series 26 examination in light of business and regulatory changes since the examination was last revised. The NASD has indicated that the new examination and study outline will be in use beginning April 1, 1992.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 15A(g)(3) and 15A(b)(8) [4] of the Act and the rules and regulations thereunder. As previously mentioned, section 15A(g)(3) authorizes the NASD to condition the membership of any person associated with an NASD member firm if such person does not meet such standards of training, experience, and competence as are prescribed by the rules of the NASD. To this end, the proposed amendments to the Series 26 examination will assist in ensuring that associated persons are competent and knowledgeable in areas within the scope of the examination. Section 15A(b)(6), in part, requires that the rules of the NASD are designed to protect investors and the public interest. By periodically revising the contents of its qualification examinations to reflect regulatory and business changes, the NASD will help ensure that persons associated with NASD members keep abreast of regulatory changes, thus, fostering protection of investors and the public interest. The Commission believes, for the reasons stated above, that the proposed rule change satisfies these statutory requirements.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, That the above-mentioned proposed rule change be, and hereby is, approved, effective April 1, 1992.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Director.

[FR Doc. 91–30199 Filed 12–17–91; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1) (1988).
[2] 17 CFR 240.19b–4 (1991).
[3] 15 U.S.C. 78o–3(g)(3) (1988).
[4] 15 U.S.C. 78o–3(b)(6) (1988).
[5] 17 CFR 200.30–3 (a) (12) (1991).

[Release No. 34–30062; File Nos. SR–NYSE–91–28 and 91–29]

Self-Regulatory Organizations; Notice of Filing of Two Proposed Rule Changes by New York Stock Exchange, Inc., Relating to Its Floor Member (Series 15) Examination

December 11, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 10, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") two proposed rule changes relating to the Exchange's Floor Member (Series 15) Examination as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The first proposed rule change (File No. SR–NYSE–91–28) consists of the Content Outline for the Exchange's Series 15 Examination while the second proposed rule change (File No. SR–NYSE–91–29) includes the Series 15 Examination Specifications.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Series 15 Examination was created in 1962 as the basic test to be administered to all Floor Members. The Series 15 Exam is a qualifications examination required pursuant to NYSE Rule 304A (Member and Allied Member Examination Requirements) and is intended to ensure that Exchange Floor Members have the basic knowledge necessary to perform their functions and responsibilities. Additional qualification examinations must be successfully completed by members prior to receiving Exchange approval to act as specialists, registered competitive market-makers, competitive traders or Floor officials.[2]

The Series 15 Exam Content Outline was revised by the Exchange in conjunction with a committee comprised of the different categories of Exchange Floor Members. In addition, the Exam Specifications detail the areas covered by the 100 question examination and break down the proportion of examination questions culled from each area.

The statutory basis for the Series 15 Examination Specifications, Content Outline and examination questions is section 6(c)(3)(B) under the Act. Under that section, the Exchange may bar a natural person from becoming a member, if such natural person does not meet such standards of training, experience and competence as are prescribed by the rules of the Exchange. Pursuant to this statutory obligation, the Exchange has developed examinations that are administered to establish that Exchange Floor Members have attained specified levels of competence and knowledge.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the NYSE. All submissions should refer to File Nos. SR–NYSE–91–28 and/or 91–29 and should be submitted by January 8, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–30200 Filed 12–17–91; 8:45 am]

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[1] Additionally, the proposals include the actual examination questions (see letter from Donald van Weezel, Managing Director, Regulatory Affairs, NYSE, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated September 30, 1991).

[2] For example, Compliance Supervisors, as that term is defined in NYSE Rule 342.13(b), must successfully complete the Compliance Official Qualifications (Series 14) Examination which is administered by the Exchange.

[Release No. 34–30064; File No. SR–OCC–91–09]

Self-Regulatory Organizations; the Options Clearing Corporation; Filing of Proposed Rule Change Relating to Establishing a Cross-Margining Program with the Kansas City Board of Trade Clearing Corporation

December 11, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 20, 1991, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (SR–OCC–91–09)

[3] 17 CFR 200.30–3(a)(12) (1990).

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as described in Items I, II, and III below, which items have been prepared by OCC. On October 22, and December 9, 1991, OCC amended the proposal.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will establish a cross-margining program with the Kansas City Board of Trade Clearing Corporation ("KCC").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and statutory basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) General Purpose

The purpose of this rule change is to establish a cross-margining program between OCC and KCC which parallels the existing cross-margining program between OCC and the Chicago Mercantile Exchange ("CME"). A detailed discussion of the OCC–CME Cross-Margining Program is set forth in File Nos. SR–OCC–89–01[2] and SR–OCC–90–01.[3] Because the OCC–KCC Cross Margining Program is virtually identical to the OCC–CME Cross Margining Program, this filing will only discuss the differences between the two programs. OCC accordingly incorporates by reference the description of the legal considerations set forth in File Nos. SR–OCC–89–01 and SR–OCC–90–01.

(2) OCC–KCC Cross-Margining Program

KCC acts as the clearing organization for futures contracts and options on futures contracts for which the Kansas City Board of Trade ("KCBT") has been designate by the CFTC as a contract market. The OCC–KCC Cross Margining Agreement ("OCC–KCC Agreement") provides for cross-margining of both proprietary accounts and non-proprietary accounts of market professionals. The eligible contracts for such cross-margining include KCC-cleared futures on the Value Line Index and OCC-cleared put and call options on the Value Line Index.

Except for the several minor differences in terms and in language, the terms of the OCC–KCC Agreement and of the other required OCC–KCC cross-margining documents are the same as the terms of the OCC–CME Amended and Restated Cross-Margining Agreement ("OCC–CME Amended Agreement") and of the other OCC–CME required cross-margining documents. The minor differences are described below.

Consistent with the requirements of the CFTC, the OCC–KCC Agreement will not permit Clearing Members to designated either the paired proprietary cross-margin accounts or the paired non-proprietary cross-margin accounts or both as cross-margin pledge accounts as contemplated in section 3 of the OCC–CME Amended Agreement. Section 3 of the OCC–KCC Agreement, therefore, is intentionally left blank, and other references to cross-margin pledge accounts are omitted from the OCC–KCC Agreement. This additionally is in accordance with the September 5, 1989, correspondence of Don L. Horwitz, General Counsel, OCC, to Jonathan Kallman, Assistant Director, Division, Commission, concerning the proprietary cross-margining program between OCC and CME (File No. SR–OCC–89–01).

Section 9 of the OCC–KCC Agreement generally requires each clearing organization to maintain, except as otherwise provided for therein, the confidentiality of all information obtained in connection with the OCC–KCC Agreement. The OCC–KCC Agreement provides that one clearing organization has the obligation to notify the other of a request for confidential information. Additionally, the OCC–CME Amended Agreement provides that one clearing organization is obligated to cooperate to a reasonable extent with the other in the event the other determines to seek a protective order against disclosing the confidential information. The OCC–KCC Agreement does not contain this additional obligation.

Section 14 of the OCC–KCC Agreement reflects the information sharing arrangements between OCC and KCC. It specifically provides that one clearing organization must notify the other in the event that such clearing organization receives information which causes it significant concerns over the financial or operation capabilities of a clearing member. The OCC–CME Amended Agreement provides that the CME will advise OCC should any of its clearing members be on its "high risk" list. KCC has informed OCC that it does not have an equivalent listing.

Section 16 of the OCC–KCC Agreement concerns the arbitration of disputes under the OCC–KCC Agreement between OCC and KCC. In contrast to the OCC–CME Amended Agreement, the location of the arbitration proceedings will alternate between Chicago and Kansas City.

Lastly, the Subordination Agreement for OCC–KCC Cross-Margining (Joint Clearing Member) and the Subordination Agreement for OCC–KCC Cross-Margining (Affiliated Clearing Members) have been revised slightly to clarify the subordination arrangements. These revisions were made as a result of discussions between the CME and CFTC in connection with the establishment of the OCC–CME Cross-Margining Program.

The proposed rule change is consistent with the purposes and requirements of section 17A of the Act because it expands the implementation of cross-margining to another significant group of market participants, further enhancing the safety of the clearing system while providing lower clearing margin costs to participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commissions shall:

(a) By order approve such proposed rule change or,

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–91–09 and should be submitted by January 8, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–30130 Filed 12–17–91; 8:45 am]

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[1] In Amendment No. 1, filed October 22, 1991, OCC requested that the Commission defer consideration of the portion of the original filing pertaining to non-proprietary cross-margining until regulatory approval is obtained from the Commission and the Commodity Futures Trading Commission ("CFTC"). Letter from Jean M. Cawley, Staff Counsel, OCC, to Jerry W. Carpenter, Branch Chief, Division of Market Regulation ("Division"), Commission (October 22, 1991).

In Amendment No. 2, filed December 9, 1991, OCC stated that because OCC and KCC had agreed to implement the portions of the original filing pertaining to non-proprietary cross-margining, OCC was requesting that the Commission review all portions of the proposed rule change. Letter from Jean M. Cawley, Staff Counsel, OCC, to Jerry W. Carpenter, Branch Chief, Division, Commission (December 9, 1991).

[2] Securities Exchange Act Release No. 27296 (September 28, 1989), 54 FR 41165 (order approving OCC–CME Cross-Margining Program limited to proprietary positions).

[3] Securities Exchange Act Release No. 29991 (November 28, 1991, 56 FR 61404 (order approving on a temporary basis the expansion of the OCC–CME Cross Margining Program to include futures and options positions of certain market professionals).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

December 12, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Joy Technologies, Inc.
Class A Common Stock, $.01 Par Value (File No. 7–7668)
Shopko Stores, Inc.
Common Stock, $.01 Par Value (File No. 7–7669)
Stop & Shop Companies, Inc.
Common Stock, $.01 Par Value (File No. 7–7670)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 6, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–30202 Filed 12–17–91; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

December 12, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Van Kampen Merritt Ohio Quality Municipal Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–7681)
Van Kampen Merritt Florida Quality Municipal Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–7682)
Van Kampen Merritt New York Quality Municipal Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–7683)
Orbital Engine Corp.
American Depositary Shares (File No. 7–7684)
Owens Illinois, Inc.
Common Stock, $.01 Par Value (File No. 7–7685)
Van Kampen Merritt California Quality Municipal Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–7686)
Jundt Growth Fund, Inc.
Class A Common Stock, $.01 Par Value (File No. 7–7687)
Snyder Oil Corporation
Convertible Exchange Preferred Stock, $.01 Par Value (File No. 7–7688)
Office Depot, Inc.
Common Stock, $.01 Par Value (File No. 7–7689)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 6, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–30203 Filed 12–17–91; 8:45 am]

BILLING CODE 8010–01–M

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[Rel. No. IC-18440; 811-5483]

Association Advisers Fund, Inc.; Application

December 11, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Association Advisers Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 13, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 6, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 40 Rector Street, New York, New York 10006.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified investment company that was organized as a corporation under the laws of Maryland. On February 26, 1988, applicant filed a notification of registration pursuant to the Act. A registration statement under the Securities Act of 1933 Act was filed on February 26, 1988. The registration statement was declared effective on October 3, 1988, and the initial public offering commenced on October 18, 1988.

2. From the time of commencement of its initial public offering, applicant's shares were offered solely through MetLife Securities, Inc. ("MetLife"), the distributor, as investments for members of certain professional associations and other organized groups of persons. By mid-1990, MetLife had determined that in its view, the distribution effort had not succeeded, and informed the applicant's investment adviser of its intention not to proceed further with the distribution effort. The distributor's parent, Metropolitan Life Insurance Company ("Metropolitan"), which had provided the initial seed capital and which held approximately 99% of the Funds' assets, advised applicant of its intention to redeem its shares as soon as practicable.

3. At a meeting held on June 27, 1990, applicant's board of directors determined that in view of MetLife's and Metropolitan's determinations, continued operation of the applicant would not be viable and that further offers and sales of shares should cease. It was further determined by the board that public shareholders should be advised of the events and given the opportunity to redeem their shares at net asset value. As of June 27, 1990, there were 27 shareholders in the fund, other than Metropolitan, with assets totalling approximately $192,000. In July 1990, all public shareholders of the applicant redeemed their shares, after which Metropolitan redeemed its remaining shares. A portion of Metropolitan's redemption proceeds was retained to establish a liquidating reserve ("Reserve") in the amount of $130,000. All unamortized organizational expenses in the amount of $140,802.66 were borne by Metropolitan.

4. At a meeting held on February 22, 1991, applicant's board of directors approved resolutions authorizing the applicant's liquidation and winding up of its affairs.

5. Expenses of approximately $15,000 relating to the liquidation of the applicant are to be paid from the Reserve.

6. There are no securityholders to whom distributions in complete liquidation of their interests have not been made, except as noted above. Applicant has no debts or other liabilities that remain outstanding except those associated with the winding up of its affairs. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

8. Applicant intends to file articles of dissolution under Maryland law after the receipt of an order declaring that applicant is no longer an investment company.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-30131 Filed 12-17-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18439; 811-3995]

Kidder, Peabody Special Growth Fund, Inc.; Application

December 11, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Kidder, Peabody Special Growth Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 29, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 6, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 20 Exchange Place, 8th Floor, New York, New York 10005-3250. Attention: Lawrence H. Kaplan, Esq.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a free at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified investment company that was organized as a corporation under the laws of the State of Maryland. On March 26, 1984, applicant registered under the Act and filed a registration statement pursuant to section 8(b) of the Act. A registration statement under the Securities Act of 1933 was filed and the registration statement was declared effective on July 27, 1984. The initial public offering commenced immediately thereafter.

2. At a meeting held on June 27, 1990, applicant's board of directors adopted a plan of liquidation (the "Plan"). On or about August 16, 1990, applicant mailed proxy materials to its shareholders, who approved the Plan at a special shareholders' meeting held on October 15, 1990.

3. Pursuant to the Plan, applicant converted all portfolio securities and other assets into cash proceeds. Applicant's agency portfolio transactions were placed exclusively with brokers for best price and execution, to whom applicant paid $15,876 in brokerage commissions.

4. On November 8, 1990, applicant had total assets of $13,870,520, comprising 894,087.417 shares at a net asset value of $15.51 per share. On November 13, 1990, applicant distributed substantially all of its assets to its securityholders. Each shareholder received $15.51 per share.

5. Applicant retained approximately $17,446 for payment of expenses, which will not be invested in securities. Such expenses included, but were not limited to, legal fees, accounting fees, printing costs and miscellaneous expenses. Applicant's principal underwriter, Kidder, Peabody & Co. Incorporated, paid the expenses associated with the liquidation of applicant.

6. As of the date of the application, applicant's outstanding liabilities include shareholder servicing and custody fees, auditor's fees, and various miscellaneous expenses, including Commission filing fees. Any remaining liabilities after the use of applicant's remaining assets will be borne by Kidder, Peabody Asset Management, Inc., applicant's investment adviser and administrator.

7. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

8. Applicant intends to file Articles of Dissolution with the State of Maryland as soon as practicable.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-30132 Filed 12-17-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18438; 811-5720]

McKeever Investment Trust; Notice of Application

December 11, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: McKeever Investment Trust.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on form N-8F was filed on June 21, 1991 and an amendment was filed on September 17, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 6, 1991, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, P.O. Box 1548, Medford, Oregon, 97501.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272-2190, or Barry D. Miller, Branch Chief, (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management company organized as a Massachusetts business trust (the "Trust"). Applicant filed a registration statement pursuant to section 8(b) of the 1940 Act and pursuant to the Securities Act of 1933, which registered an indefinite number of shares of common stock. The registration statement became effective on June 9, 1989.

2. Pursuant to resolutions adopted by the applicant's board of trustees on April 1, 1991 and ratified on April 22, 1991, the board determined to: (1) Give notice to shareholders of the proposed liquidation of the Trust; (2) convert the Trust's assets to cash in an orderly manner; (3) liquidate the Trust as of April 30, 1991 by distributing all of the assets of the Trust to the remaining shareholders as of such date; and (4) promptly wind up the affairs of the Trust.

3. On April 5, 1991, applicant sent a letter dated April 3, 1991 to all shareholders notifying them of the liquidation.

4. On various dates between April 8, 1991 and April 30, 1991, shareholders redeemed their shares. All redemptions were executed at net asset value per share as determined on the date of the redemption.

5. Pursuant to the liquidation, applicant's portfolio securities were liquidated at fair market value as needed to meet all redemptions by its shareholders and to convert the Trust's assets into cash to effect a final liquidating distribution. The Trust paid $26,592 in brokerage commissions in connection with the liquidation.

6. All expenses incurred by the Trust in connection with the liquidation were paid by the Trust's investment adviser, CMC Services, Inc. ("CMC"). Unamortized organizational expenses totalling $76,663 were also assumed by CMC on April 30, 1991.

7. Applicant intends to file a certificate of dissolution with the Commonwealth of Massachusetts.

8. As of the date of the application, applicant had no debts or liabilities, and was not a party to any litigation or administrative proceeding.

9. Applicant is engaged only in the business of winding up its affairs.

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For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-30133 Filed 12-18-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1535]

Study Group 5 of the U.S. Organization International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 5 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will hold an open meeting January 10, 1992, in room CR-1-40, in the Engineering Center at the University of Colorado, Boulder, Colorado. The meeting will convene at 9 a.m.

Study Group 5 deals with matters relating to the propagation of radio waves and related noise phenomena in non-ionized media at and above the surface of the earth for the purpose of improving radiocommunication systems. The purpose of the meeting is to review the results of the recent Study Group 5 Working Party meetings and to develop plans for the remainder of the study cycle.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Request for further information should be directed to Dr. John F. Cavanagh, Naval Surface Warfare Center, Dahlgren, Virginia 22448-5000, phone (703) 663-8737.

Dated: December 4, 1991.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 91-30112 Filed 12-17-91; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 1538]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Stability and Load Lines and on Fishing Vessel Safety; Meeting

The Working Group on Stability and Load Lines and on Fishing Vessels Safety of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on January 6, 1992 at 1 p.m. in room 4315 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of this Working Group meeting is to prepare for the 36th Session of the International Maritime Organization (IMO) Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF), which is scheduled for February 3 to 7, 1992.

Items of discussion will include the following: Improved standards for bulk carriers; review of existing ships' standards; subdivision and damage stability of dry cargo ships; New Code of Intact Stability; subdivision and damage stability standards of passenger ships; future revisions to the 1966 Load Line Convention; stability aspects of open-top container ships; safety of fishing vessels, double hull tanker stability; development of the Protocol to the 1977 Torremolinos Convention and the Work Program of SLF 36, and review of reporting requirements on Codes and Assembly resolutions related to the work of the Subcommittee.

Members of the public may attend these meetings up to the seating capacity of the room.

For further information, contact Mr. H.P. Cojeen or Mr. W.M. Hayden at (202) 267-2988; U.S. Coast Guard Headquarters (G-MTH), 2100 Second Street, SW., Washington, DC 20593-0001.

Dated: December 11, 1991.

Geoffrey Ogden, Chairman,

Shipping Coordinating Committee.

[FR Doc. 91-30115 Filed 12-17-91; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 88-079]

Commercial Fishing Industry Vessel Advisory Committee; Subcommittee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92-463; 5 U.S.C. app.2), notice is hereby given of a meeting of the Subcommittee on the Draft Protocol to the 1977 Torremolinos Convention. The meeting will be held on January 23, 1992, at the following address: Coast Guard Vessel Traffic Service Puget Sound, 1519 Alaskan Way South, Bldg. 1, Seattle, WA 98119. The meeting is scheduled to begin at 8:30 a.m. and end at 5 p.m. Attendance is open to the public.

TOPIC: Recommendations regarding the Draft Protocol to the 1977 Torremolinos Convention: The subcommittee will review: The Torremolinos International Convention for the Safety of Fishing Vessels, 1977; the draft Protocol to the 1977 Torremolinos Convention; and the proposed changes to the regulations in the 1977 Torremolinos Convention drafted by the responsible International Maritime Organization (IMO) subcommittees. Upon review, the subcommittee will make recommendations concerning the acceptability of the technical content of the Protocol to the U.S. delegation to the IMO subcommittee on Stability and Load Lines, and on Fishing Vessel Safety (SLF).

FOR FURTHER INFORMATION CONTACT: LCDR Tim Skuby, Merchant Vessel Inspection and Documentation Division, Fishing Vessel/Offshore Activities Branch (G-MVI-4), room 1405, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, (202) 267-2307.

Dated: December 11, 1991.

D.H. Whitten,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91-30162 Filed 12-17-91; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement: Douglas County, NE

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Douglas County, Nebraska.

FOR FURTHER INFORMATION CONTACT: Mr. Philip E. Barnes, District Engineer, Federal Highway Administration, Federal Building, room 220, 100 Centennial Mall North, Lincoln, Nebraska 68508, Telephone: (402) 437-5521. Mr. Arthur Yonkey, Project Development Engineer, Nebraska Department of Roads, P.O. Box 94759, Lincoln, Nebraska 68509, Telephone: (402) 479-4795. J. Daniel Kutilek, Engineering & Planning Manager, Douglas County Engineers Office, 156th West Maple Road, Omaha, Nebraska 68116.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Nebraska Department of Roads and the Douglas County Engineers Office is preparing an environmental impact statement (EIS) for a proposal to provide

a roadway connection on a new location from 72nd Street to Irvington Road (90th Street). The described area is approximately 4.0 miles long and is located in the northwest portion of the Greater Omaha Area, in Douglas County, Nebraska. This proposal is being considered to develop a plan to provide an alternate route for Northwest Radial Highway traffic into and out of downtown Omaha, and to provide for existing and projected traffic demands in the Northwest Omaha Region.

Alternative under consideration include (1) taking no action; and (2) the construction of a four-lane roadway.

No formal scoping meeting is scheduled at this time. A public hearing will be held after the EIS has been made available for public and agency review and comment. Public notice will be given of the time and place of the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action and the EIS should be directed to the FHWA or the Nebraska Department of Roads at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities applies to this program.)

Philip E. Barnes,

District Engineer, Nebraska Division, Federal Highway Administration, Lincoln, NE.

[FR Doc. 91-30171 Filed 12-17-91; 8:45 am]

BILLING CODE 4910-22-M

Discretionary Grants to Support Highway Safety Research

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Announcement of discretionary grants to support highway safety research.

SUMMARY: The FHWA announces a discretionary grant program to support highway safety and solicits applications from U.S. colleges and universities interested in participating in this program.

DATES: Applications shall be received on or before March 20, 1992.

ADDRESSES: Applications shall be submitted to Lise S. Lyles, Office of Contracts and Procurement (HCP-31), Federal Highway Administration, 400 Seventh Street, SW., room 4410, Washington, DC 20590; and shall reference Solicitation Number DTFH61-92-X-00001.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Lise Lyles, Office of Contracts and Procurement, at (202) 366-4229. Programmatic questions relating to this discretionary grant program shall be directed to Jerry A. Reagan, Design Concepts Research Division (HSR-20), at (703) 285-2057.

SUPPLEMENTARY INFORMATION:

Background and Objectives

The FHWA Office of Research and Development is responsible for developing strategies to save lives and reduce injuries and property damage through the prevention and reduction of motor vehicle accidents. The Office of Safety and Traffic Operations Research and Development is currently conducting highway safety research in six High Priority Areas (HPA's): Advanced Traffic Control Devices, Developing Specifications for Retroreflective Devices, Information Resources, Special Highway Users, Highway Safety Design Practices and Criteria, and Improved Highway Travel for An Aging Population.

Advanced Traffic Control Devices provides research and development for traffic control operations to establish and implement safety standards, and to improve traffic control devices for safe and efficient movement of motor vehicles on streets and highways.

Developing Specifications for Retroreflective Devices provides research and development to aid traffic operations personnel in determining whether the combination of lighting, signing, delineation, and signals provide adequate visibility to meet the information needs for a specific driving environment.

Information Resources provides research and development for improved methods for gathering and using accident, geometric design, and traffic count data for highway safety analysis.

Special Highway Users provides research and development for a safe and efficient operating environment for special highway users, such as large trucks, pedestrians and bicyclists.

Highway Safety Design Practices and Criteria promotes research and development to improve highway safety through the development and use of improved geometric design standards and safer roadside hardware.

Improved Highway Travel for An Aging Population provides research and development to address the problems of highway design related to features and operations that involve direct driver interaction.

Additional information on these programs can be found in the FHWA's Research and Development Program (See Annual Progress Report: Executive Summary Fiscal Year 1990, Publication Number FHWA-RD-90-100). This publication may be obtained by contacting Lise S. Lyles at (202) 366-4229.

The Research Projects/Programs in the HPA's are defined through an elaborate and structured procedure for defining research needs. While this program addresses the most important national needs, there is a need to support other promising safety research at U.S. colleges and universities.

Transportation Research Board Special Report 229, 1990, "Safety Research for a Changing Highway Environment" pointed out the need to make "* * *, provision for unsolicited proposals; more flexible funding methods, such as cooperative agreement and grants; and encouragement of small awards to individual researchers * * *." The committee preparing the report also indicated a need to provide funding for graduate programs to train new researchers in fields of highway safety.

This grant program has two objectives: (1) Broaden existing highway safety research at U.S. colleges and universities; and (2) encourage U.S. citizens to seek advanced degrees in highway safety related areas.

FHWA Involvement

The FHWA's Design Concepts Research Division has a limited role in the grants program. The FHWA will:

1. Provide, on an as-available basis, one professional staff person to be designated as the Contracting Officer's Technical Representative to participate in the planning and management of the grant program.

2. Arrange for the review of the research on its completion.

3. Arrange for the students participating in the program to present their findings at the Turner-Fairbank Highway Research Center in McLean, Virginia, or at the Transportation Research Board meeting held each January in Washington, DC.

Period of Support

Grants will be for a one year period.

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Additional one year options to extend grants for up to two additional years, pending availability of funds, will be considered.

Eligibility Requirements

Up to four grants will be made to selected universities in amounts of up to $50,000 to enhance graduate student research in all highway related areas of traffic safety. These areas include geometric and roadside design; traffic control devices; traffic barriers; pedestrian and bicyclist safety; and human factors. Discipline necessary to conduct this research include: Civil engineering, transportation engineering, highway engineering, statistics, physics, structural mechanics, mechanical engineering, materials engineering, computer sciences, human factors, and hazardous materials.

Proposal submittals are limited to universities with current graduate course offerings and/or current research in fields related to highway safety research.

Application Procedure

Each applicant shall submit one original and five copies of its application package to: Federal Highway Administration, Office of Contracts and Procurement, 400 Seventh Street, SW., room 4410, Washington, DC 20590, Attention: Lise S. Lyles, HCP–31. Only complete application packages received on or before March 20, 1992, shall be considered.

Application Contents

The application package shall be submitted with OMB Standard Form 424 (Rev. 4–88, including 424A and 424B), with the required information filled in and the certified assurances included. While the form 424–A deals with budget information, section B identifies budget categories, the available space does not permit a level of detail which is sufficient for a meaningful evaluation of proposed costs. A supplemental sheet shall be provided which presents a detailed breakdown of the proposed costs, as well as any costs which the applicant proposes to contribute in support of this effort.

Research project statements shall include the following:

1. Background discussion of related research and rationale for doing proposed study.
2. Statement of research objective or hypotheses.
3. Description of research method including experimental design, equipment to be used, test procedures, and data analysis techniques.
4. Resources (staff and costs).

The main body of the proposal (points 1–3 above) shall be limited to a maximum of five pages. Longer proposals will be considered an indication of a lack of cost consciousness.

Application Review Process and Criteria

Initially, all applications will be reviewed to confirm that the applicant is an eligible recipient and to ensure that the application contains all the information required by the Application Contents section of this notice.

Each complete application from an eligible recipient will then be evaluated by a Technical Evaluation Committee. Grant proposals will be rated in accordance with the following criteria listed in descending order:

1. Professional vitae of proposed faculty and senior staff members, including participation in national safety committee activities and related research publications.
2. Research project statement(s).
3. Qualifications and availability of candidate graduate students, with preference for students who are U.S. citizens or permanent residents of the U.S.
4. Description of available research facilities.
5. Description of on-going safety related research projects and graduate course offering in safety related areas.
6. University administrative costs associated with the potential grant.

Terms and Conditions of the Award

1. Each Grantee shall produce a research paper suitable for publication in a national journal. Ten copies of each study research paper shall be provided to the FHWA before the oral presentation.
2. Upon invitation, papers will be presented orally by the student conducting the research at the Turner-Fairbank Highway Research Center in McLean, Virginia, or at the annual meeting of the Transportation Research Board held each January in Washington, DC. Oral presentation dates and locations will be arranged through discussions between the FHWA and student advisors.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: December 9, 1991.

T.D. Larson,

Administrator.

[FR Doc. 91–30128 Filed 12–17–91; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 91–56; Notice 1]

Receipt of Petition for Determination That Nonconforming 1986 BMW 518i Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1986 BMW 518i passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1986 BMW 518i that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is January 17, 1992.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that

(I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 (of the Act), and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *."

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R–90–009) has petitioned NHTSA to determine whether 1986 BMW 518i passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1986 BMW 528e. Champagne has submitted information indicating that Bayerische Motoren-Werke A.G., the company that manufactured the 1986 BMW 528e, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner noted that the agency, on its own initiative, has already made a determination of substantial similarity covering 1986 Model 528e vehicles that Bayerische Motoren-Werke A.G. did not certify and offer for sale in the United States (55 FR 47418). It contends that the 518i is substantially similar to the 528e, and "differs mainly in engine size and minor options which go with it." In accounting for the differences between the two vehicles, the petitioner observed the manufacturers such as Bayerische Motoren-Werke A.G. "generally design only a few basic body shell designs which they then equip with a multitude of engine-size and cosmetic or comfort options." The petitioner further surmised that the 518i's absence from the United States market could be attributed to "saleability considerations or legislative restrictions such as the strict emission control requirements in the United States."

Champagne submitted information with its petition intended to demonstrate that the 1986 model 518i, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1986 model 528e that was offered for sale in the United States, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1986 model 518i is identical to the certified 1986 model 528e with respect to compliance with Standards Nos. 102 Transmission Shift Lever Sequence * * *, 103 Defrosting and Defogging Systems, 104 Windshield Wiping and Washing Systems, 105 Hydraulic Brake Systems, 106 Brake Hoses, 107 Reflecting Surfaces, 109 New Pneumatic Tires, 113 Hood Latch Systems, 116 Brake Fluid, 124 Accelerator Control Systems, 201 Occupant Protection in Interior Impact, 202 Head Restraints, 203 Impact Protection for the Driver From the Steering Control System, 204 Steering Control Rearward Displacement, 205 Glazing Materials, 206 Door Locks and Door Retention Components, 207 Seating Systems, 209 Seat Belt Assemblies, 210 Seat Belt Assembly Anchorages, 211 Wheel Nuts, Wheel Discs and Hubcaps, 212 Windshield Retention, 216 Roof Crush Resistance, 219 Windshield Zone Intrusion, and 302 Flammability of Interior Materials.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (d) installation of a high mounted stop lamp.

Standard No. 110 Tire Selection and Rims: Installation of a tire information placard.

Standard No. 111 Rearview Mirrors: Replacement of the passenger's outside rear view mirror, which is convex but does not bear the required warning statement.

Standard No. 114 Theft Protection: Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 Vehicle Identification Number: Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 Power Window Systems: Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 Occupant Crash Protection: (a) Installation of either a U.S.-model seat belt in the driver's position or a belt webbing-actuated microswitch in the driver's seat belt retractor to activate the seat belt warning system; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer.

Standard No. 214 Side Door Strength: Installation of reinforcing beams.

Standard No. 301 Fuel System Integrity: Installation of a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the 1986 model 518i must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 17, 1992.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(II) and (C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50.

Issued on December 11, 1991.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 91–30134 Filed 12–17–91; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 91–57; Notice 1]

Receipt of Petition for Determination That Nonconforming 1989 Volvo 240 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1989

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Volvo 240 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1989 Volvo 240 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is January 17, 1992.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that

> (I) the motor vehicle * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year . . . as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Liphardt & Associates of Ronkonkoma, New York (Registered Importer No. R-90-004) has petitioned NHTSA to determine whether 1989 Volvo 240 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States. The vehicle which Liphardt believes is substantially similar is the 1989 Volvo 240 that was manufactured for importation into and sale in the United States and that was certified by its manufacturers as complying with all applicable safety standards.

Liphardt submitted information with its petition intended to demonstrate that the non-U.S. certified 1989 model 240, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its counterpart that was offered for sale in the United States, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the two models are identical with respect to compliance with Standards Nos. 102 Transmission Shift Lever Sequence * * *, 103 Defrosting and Defogging Systems, 104 Windshield Wiping and Washing Systems, 105 Hydraulic Brake Systems, 106 Brake Hoses, 107 Reflecting Surfaces, 109 New Pneumatic Tires, 111 Rearview Mirrors, 113 Hood Latch Systems, 116 Brake Fluid, 118 Power-Operated Window Systems, 124 Accelerator Control Systems, 201 Occupant Protection in Interior Impact, 202 Head Restraints, 203 Impact Protection for the Driver From the Steering Control System, 204 Steering Control Rearward Displacement, 205 Glazing Materials, 206 Door Locks and Door Retention Components, 207 Seating Systems, 208 Occupant Crash Protection, 209 Seat Belt Assemblies, 210 Seat Belt Assembly Anchorages, 211 Wheel Nuts, Wheel Discs and Hubcaps, 212 Windshield Mounting, 214 Side Door Strength, 216 Roof Crush Resistance, 219 Windshield Zone Intrusion, and 302 Flammability of Interior Materials.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: Recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: Installation of U.S.-model headlamp assemblies.

Standard No. 110 Tire Selection and Rims: Installation of a tire information placard.

Standard No. 114 Theft Protection: Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 Vehicle Identification Number: Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 301 Fuel System Integrity: Installation of a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection canister.

Additionally, the petitioner states that energy absorbers must be added to the bumpers on the non-U.S. certified 1989 model 240 to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 17, 1992.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(II) and (C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50.

Issued on December 11, 1991.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 91-30135 Filed 12-17-91, 8:45 am]

BILLING CODE 4910-59-M

UNITED STATES INFORMATION AGENCY

Democracy in Africa Program; Citizen Exchange Projects

AGENCY: United States Information Agency.

ACTION: Notice—Extension of deadline for request for proposals published November 26, 1991.

SUMMARY: The Office of Citizen Exchanges announces an extension of the deadline for submission of proposals for the program entitled "Democracy in Africa—Citizen Exchange Projects," which was announced in the **Federal Register** on November 26, 1991 (Vol. 56, No. 228, pp. 59973-59976). Program proposals must be received at the U.S. Information Agency by 5 p.m. EST on February 7, 1992. Proposals received after this deadline will not be eligible for consideration. The November 26 announcement requested proposals from public and private not-for-profit organizations for seven projects designed to contribute to mutual understanding between the U.S. and Nigeria and to support Nigerian efforts to foster the development of democracy and a market-guided economy. Please refer to the November 26 RFP and the appropriate Office of Citizen Exchanges concept papers for specific application requirements.

FOR FURTHER INFORMATION CONTACT: The Office of Citizen Exchanges (E/P), United States Information Agency, room 216, 301 4th Street, SW., Washington, DC 20547.

DATES: This action is effective from December 18, 1991, through February 7, 1992.

Dated: December 6, 1991.

Barry Fulton,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-30175 Filed 12-17-91; 8:45 am]

BILLING CODE 8230-01-M

Meeting of Advisory Board for Cuba Broadcasting

The Advisory Board for Cuba Broadcasting will conduct a meeting on December 17, 1991, in the 3rd floor Conference Room, Donohoe Building, 400 6th St., SW., Washington, DC 20547. Below is the intended agenda.

Tuesday, December 17, 1991.

AGENDA

Part One—Closed to the Public

10 a.m. 1. TV Marti Technical Enhancements.

2. Radio Marti Technical Enhancements.

Part Two—Open to the Public

1 p.m. 3. Consideration of Recommendations by the President's Task Force on U.S. Government International Broadcasting.

4. U.S. Government Information Policy in a Post-Castro Cuba—The Future of Radio and TV Marti.

5. Public Testimony.

The Federal Advisory Committee Act (FACA) and implementing regulations provide flexibility regarding the requirement that agendas for Advisory Board meetings be placed in the **Federal Register** 15 days prior to a meeting. The Director has determined that a shorter time period is necessary in this instance to enable the Advisory Board for Cuba Broadcasting to immediately consider recommendations about Radio and TV Marti from the President's Task Force on U.S. Government International Broadcasting. Since public announcement of those recommendations has been uncertain until recently, specific dates for this Advisory Board meeting have been delayed.

Members of the public interested in attending the open portion of the meeting should contact James Skinner, Executive Director to the Advisory Board, as access to the building is controlled. Mr. Skinner can be reached on (202) 401-7312.

Dated: December 12, 1991.

Henry E. Catto;

Director.

[FR Doc. 91-30255 Filed 12-16-91; 9:27 am]

BILLING CODE 8230-01-M

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Sunshine Act Meetings

Federal Register
Vol. 56, No. 243
Wednesday, December 18, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 91-29927.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, December 19, 1991, 10:00 a.m., Meeting Open to the Public.

The following items are added to the agenda:

Title 26 Certification Matters—
Eligibility of Lyndon H. LaRouche, Jr. to Receive Presidential Primary Matching Funds.

Bank Loan Forms, With Explanation and Justification.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219-4155.

Delores Harris,
Administrative Assistant, Office of the Secretariat.

[FR Doc. 91-30336 Filed 12-16-91; 2:26 pm]
BILLING CODE 6715-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on December 13, 1991.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Friday, December 20, 1991.

CHANGES IN THE MEETING: Addition of the following open item to the meeting:

Discussion Agenda: Consideration of whether to hold public meetings regarding the proposed acquisition of Security Pacific, Los Angeles, California, by Bank of America, San Francisco, California.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: December 16, 1991.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 91-30383 12-16-91; 8:45 am]
BILLING CODE 6210-01-M

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 3-92—AMENDED

Notice of Meetings

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Thurs., Dec. 19, 1991 at 10:30 a.m. (vice Wednesday, Dec. 18, 1991, at 10:30 a.m., as published at 56 F.R. 63757, Dec. 5, 1991).

SUBJECT MATTER: Consideration of Proposed Decisions on claims against Iran.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 601 D Street, NW., Room 10000, Washington, DC 20579. Telephone: (202) 208-7727.

Dated at Washington, D.C. on December 13, 1991.

Judith H. Lock,
Administrative Officer.

[FR Doc. 91-30254 Filed 12-16-91; 9:21 am]
BILLING CODE 4410-01-M

NATIONAL COUNCIL ON DISABILITY

Quarterly Meeting and Forum

AGENCY: National Council on Disability.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability. This notice also describes the functions of the National Council. Notice of this meeting is required under section 522(b)(10) of the "Government in Sunshine Act" (P.L. 94-409).

DATES:

Quarterly Meeting

February 24, 1992, 8:30 a.m. to 5:00 p.m.
February 25, 1992, 8:30 a.m. to 5:00 p.m.
February 26, 1992, 8:30 a.m. to 12:00 noon.

LOCATION: Imperial Palace Hotel, 3535 Las Vegas Boulevard South, Las Vegas, Nevada 89109, (800) 634-6441.

FOR FURTHER INFORMATION CONTACT: National Council on Disability, 800 Independence Avenue, SW, Suite 814, Washington, DC 20591, (202) 267-3846, TDD: (202) 267-3232.

The National Council on Disability is an independent federal agency comprised of 15 members appointed by the President of the United States and confirmed by the Senate. Established by the 95th Congress in Title IV of the Rehabilitation Act of 1973 (as amended by Public Law No. 95-602 in 1978), the National Council was initially an advisory board within the Department of Education. In 1984, however, the National Council was transformed into an independent agency by the Rehabilitation Act Amendments of 1984 (Public Law 98-221).

The National Council is charged with reviewing all laws, programs, and policies of the Federal Government affecting individuals with disabilities and making such recommendations as it deems necessary to the President, the Congress, the Secretary of the Department of Education, the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research (NIDRR). In addition, the National Council is mandated to provide guidance to the President's Committee on Employment of People with Disabilities.

The quarterly meeting of the National Council shall be open to the Public. The proposed agenda includes:

Report from Chairperson and Executive Committee
Update on NIDRR
Update on the implementation of the Americans with Disabilities Act
Update on ADA Watch
Update on public policy studies: education; technology; and, health insurance
Committee Meetings/Committee Reports
Unfinished Business
New Business
Announcements
Adjournment

Records shall be kept of all National Council proceedings and shall be available after the meeting for public inspection at the National Council on Disability.

Signed at Washington, DC on December 12, 1991.

Ethel D. Briggs,
Executive Director.

[FR Doc. 91-30250 Filed 12-16-91, 9:21 am]
BILLING CODE 6820-RS-M

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Corrections

Federal Register
Vol. 56, No. 243
Wednesday, December 18, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 90-232]

Brucellosis

Correction

In rule document 91-27924 beginning on page 58635 in the issue of Thursday, November 21, 1991, make the following correction:

On page 58638, in the first column, in amendatory instruction 21, in the first line, "§ 78.1" should read "§ 78.8".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 91172-1272]

Foreign Fishing; Groundfish of the Bering Sea and Aleutian Islands

Correction

In proposed rule document 91-27898 beginning on page 58531 in the issue of Wednesday, November 20, 1991, make the following correction:

On page 58533, in the 2nd column, beginning in the 16th line the sentence should read, "The SSC further cautioned that the declining biomass of the portion of the Aleutian Basin stock that spawns in the vicinity of the Bogoslof Island may inhibit the recovery of the threatened sea lion populations that use the Bogoslof Island rookery site."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 176 and 178

[Docket Nos. 80N-0428 and 82N-0342]

Colorants for Polymers

Correction

In rule document 91-20836, beginning on page 42927, in the issue of Friday, August 30, 1991, make the following corrections:

§ 176.170 [Corrected]

1. On page 42932, in the third column, in § 176.170(b)(2), in the table, under the heading "List of substances", "Calcium suflate" should read "Calcium sulfate".

§ 178.3297 [Corrected]

2. On page 42934:

a. In § 178.3297(e), in the table; in the second column, under the heading "Limitations", in item 3., "4-4'-isopropylidenediphenol-epichlorohydrin" should read "4-4'isopropylidenediphenol-epichlorohydrin".

b. In the first column, under the heading "Substances", "D&C Red No.7 and its lakes", "Kaolin-modified ...", and "7-(2*H*-Naphtho..." should be moved flush to the left margin, "Magnesium silicate (italc)" should read "Magnesium silicate (talc)" and "7-(2*H*-Naphtho[1,2-*d*]triazol-2-yl)-2-phenylcoumarin" should read "7-(2*H*-Naphtho[1,2-*d*]triazol-2-yl)-3-phenylcoumarin".

c. In the second column, in the second item 1., in the first line, "chapter4" should read "chapter".

d. In the second column, in the second item 4., "-vinly" should read "-vinyl". In the same column, four lines down from item 4., "articles" should read "article".

e. In the second column, in the fourth item 2., "§ 177.2460" should read "177.1460".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0428]

Draft of "Points To Consider in Human Somatic Cell Therapy and Gene Therapy;" Availability

Correction

In notice document 91-28604 beginning on page 61022 in the issue of Friday, November 29, 1991, make the following correction:

On page 61022, in the third column, the subject heading should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

RIN 1094-AA40

White Earth Reservation Land Settlement Act of 1985

Correction

In rule document 91-28904 beginning on page 61382, in the issue of Tuesday, December 3, 1991, make the following corrections:

§ 4.350 [Corrected]

1. On page 61384, in the first column, in § 4.350(c)(6), in the third line, "hearings", should read "Hearings".

§ 4.351 [Corrected]

2. On page 61384, in the first column, in § 4.351(b)(1), in the last line, "of" should read "or".

3. On the same page, in the second column in, § 4.351(b)(2)(ii), in the first and third line "know" should read "known".

4. On the same page, in the same column, § 4.351(b)(4), in the seventh line, insert "the" before "including".

§ 4.352 [Corrected]

5. On the same page, in the 3rd column, § 4.352(b)(2), in the 17th line, insert "#" before 2, . In the 25th line, "Community" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-ANE-02, Amendment No. 39-8035, AD 91-20-01]

Airworthiness Directives; General Electric Company (GE) CF6-45/-50 and CF6-80A Series Turbofan Engines

Correction

In rule document 91-25716 beginning on page 55230 in the issue of Friday, October 25, 1991, make the following corrections:

On page 55230, the phrase "CF6-45/-05" should read "CF6-45/-50" where it appears in the following places:

1. In the first column, in the subject heading, in the second line;

2. In the same column, in the **SUMMARY**, in the third line; and

3. In the second column, in the **SUPPLEMENTARY INFORMATION**, in the fifth line.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26433; Amendment No. 91-225]

RIN 2120-AD95

Transition to an All Stage 3 Fleet Operating in the 48 Contiguous United States and the District of Columbia

Correction

In rule document 91-22950 beginning on page 48628 in the issue of Wednesday, September 25, 1991, make the following correction:

§ 91.869 [Corrected]

On page 48659, in the third column, in § 91.869(a), in the fifth line, "December 3, 1996" should read "December 31, 1996".

BILLING CODE 1505-01-D

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federal register

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Part II

Department of Transportation

Coast Guard

33 CFR Part 1
46 CFR Parts 10 and 12
User Fees for Marine Licensing, Certification of Registry and Merchant Mariner Documentation; Reopening of Comment Period; Proposed Rule

33 CFR Part 143
46 CFR Part 2
Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

33 CFR Part 1
46 CFR Parts 10 and 12

[CGD 91-002]

RIN 2115-AD72

User Fees for Marine Licensing, Certification of Registry and Merchant Mariner Documentation; Reopening of Comment Period

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On June 20, 1991 the Coast Guard published in the **Federal Register** (56 FR 28448) a notice of proposed rulemaking to establish fees for Coast Guard services related to merchant marine licenses, certificates of registry, and merchant mariner documents. Because of requests for additional time to comment on the proposed rulemaking, the comment period is being reopened for 60 additional days.

DATES: Comments must be received on or before February 18, 1992.

ADDRESSES: Written comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406) (CGD 91-002), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477 for information about comments.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Lieutenant J.K. Gillespie, Planning Staff (G-MP-1), Office of Marine Safety, Security and Environmental Protection, (202) 267-6923.

SUPPLEMENTARY INFORMATION:

Request for Comments

In the notice of proposed rulemaking published on June 20, 1991, the Coast Guard encouraged interested persons to participate in this proposed rulemaking by submitting written comments, including views, data, or arguments, on the proposal by August 5, 1991. Several persons requested additional time citing the reason that members of the merchant marine are often away from their home port for 30 days or more and a 45 day comment period is not sufficient time to allow for their participation. Further, the Coast Guard has determined that a 45 day comment period may have been insufficient for industry publications to notify their readers of the opportunity to comment on the proposed rule in time for them to do so.

Other persons requested additional time because of other Coast Guard user fees related to commercial vessels. Many persons in the marine industry both own and operate their vessels. Inspection and licensing fees would be the most significant portion of Coast Guard fees impacting persons owning and operating inspected vessels. To allow them opportunity to comment on the cumulative impact of the Coast Guard user fees, the Coast Guard has determined that reopening the comment period coextensive with the comment period for the notice of proposed rulemaking entitled "Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels" (CGD 91-030, published elsewhere in this issue of the **Federal Register**) would be beneficial to this rulemaking. Because of these requests, and the need for more publishing lead time, the comment period is reopened for 60 additional days until February 18, 1992.

Persons submitting comments should include their name and address, identify this rulemaking (CGD 91-002) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The proposed rule may be changed in light of the comments received. All comments received before the expiration of the comment period, including those received between August 5, 1991, and the date of this notice, will be considered before final action is taken on this proposal.

Dated: December 10, 1991.

J.W. Kime,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 91-29963 Filed 12-13-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF TRANSPORTATION

33 CFR Part 143
46 CFR Part 2

[CGD 91-030]

RIN 2115-AD78

Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Omnibus Budget Reconciliation Act of 1990 requires the Coast Guard to establish user fees for Coast Guard services related to the inspection and examination of U.S. and foreign vessels and issuance of Certificates of Inspection, Certificates of Compliance, and related documents. The proposed fees are based on the way the Coast Guard presently conducts vessel inspection activities. This proposal is intended to recover costs of providing certain vessel inspection services.

DATES: Comments must be received on or before February 18, 1992.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406) (CGD 91-030), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: CDR Bruce A. Russell, Chief, Plans and Analysis Branch (G-MP-1), Office of Marine Safety, Security and Environmental Protection (202) 267-6923.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 91-030) and the specific section of this proposal to which each comment applies, and give reasons for each comment. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "**ADDRESSES.**" If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and

place to be announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are CDR Bruce A. Russell, Project Manager, LCDR C. Lahey, Assistant Project Manager, Office of Marine Safety, Security and Environmental Protection; and C.G. Green, Project Counsel, Office of Chief Counsel.

Background and Purpose

The Omnibus Budget Reconciliation Act of 1990 (the Act) amended 46 U.S.C. 2110 to remove long-standing prohibitions against imposing certain user fees. Although, prior to amendment by the Act, section 2110 did not prohibit the Coast Guard from charging fees for inspection of small passenger vessels, sailing school vessels, or foreign mobile offshore drilling units, it did prohibit fees for inspection or examination of all other U.S. and foreign vessels. The Coast Guard did not, therefore, exercise its authority to charge only those select few vessel owners among all those receiving similar Coast Guard services.

Section 2110 now requires the establishment and collection of user fees for Coast Guard services provided under subtitle II of title 46 United States Code. The Coast Guard must establish these fees in accordance with the criteria in section 9701 of title 31 United States Code (General User Fee Statute). That statute requires that the fees charged be fair, and that they be based on the cost to the government, the value of the service provided, the public policy served, and other relevant facts. The Coast Guard proposes to establish fees for inspection and examination of vessels under subtitle II of title 46. The Coast Guard also proposes to establish fees for inspection or examination of foreign mobile offshore drilling units (MODU's) under 43 U.S.C. 1356. These services are essentially the same as inspections and examinations of other foreign vessels under title 46, and it is appropriate to include fees for inspection of these vessels in this rulemaking.

Marine licensing and merchant mariner documentation, vessel documentation, commercial vessel inspections, and vessel plan review and equipment approval are program areas in subtitle II for which fees must be established. This proposal would establish user fees only for Coast Guard services relating to inspection and examination of existing commercial vessels. Fees for other Coast Guard services in subtitle II of title 46 United States Code, including inspection of new vessels for an initial Certificate of Inspection, inspections of vessels during rebuild or major modifications, factory inspections, equipment approvals, and plan review inspections will be the subject of separate rulemaking action.

Inspection fees and licensing fees are the most significant portion of Coast Guard fees impacting persons owning and operating inspected vessels. To allow additional opportunity for comment on the cumulative impact of these two proposals, the Coast Guard is reopening the comment period for CGD 91-002: User Fees for Marine Licensing, Certification of Registry and Merchant Mariner Documentation. The Notice of Reopening of the Comment Period for the Notice of Proposed Rulemaking on marine licensing user fees is published elsewhere in this issue of the **Federal Register**.

The fees proposed in this rulemaking would not be added or credited to Coast Guard appropriations. The Act provides that the proposed fees and charges "shall be deposited in the general fund of the U.S. Treasury as offsetting receipts of the department in which the Coast Guard is operating and ascribed to Coast Guard activities." This means that the fees are not added to current Coast Guard appropriations, and do not directly affect future appropriations for these programs. The Coast Guard considers this to be an advantage, since funding for these programs will be more predictable when based on firm appropriations. Furthermore, operation of the program will not be dependent on the amount collected, which will vary with the condition of the industry and the economy.

Discussion of Proposed Amendments

General Discussion of the Proposal

Section 2110 requires user fees be established for services provided by the Coast Guard under subtitle II of title 46, United States Code. To comply with this mandate, the Coast Guard proposes to amend 46 CFR part 2 to establish the following categories of user fees for Coast Guard inspections and examinations of existing U.S. and foreign commercial vessels:

For U.S. Vessels

(1) An annual inspection fee would be established for commercial vessels, covering all periodic inspections required by various statutes applicable to each category of vessel, including follow-on inspections conducted to ensure continued compliance with required certificates; and,

(a) A $500.00 cap on the annual inspection fee would be established for all non self-propelled tank barges;

(b) An optional (at the owner or operator's election) means of paying a series of annual user fee payments in advance would be provided;

(2) A fee would be established for excursion permit inspections;

(3) For inspections conducted outside the United States, an overseas inspection fee would be established, which would be in addition to the annual inspection fee described in (1) above.

For Foreign Vessels

(1) A fee would be established for the Certificate of Compliance or Letter of Compliance examination and annual tank vessel examination of tankers;

(2) Fees would be established for the Letter of Compliance examination of mobile offshore drilling units operating on the U.S. outer continental shelf;

(3) A fee would be established for control verification examinations of passenger vessels subject to the International Convention for the Safety of Life at Sea, 1974 as amended (SOLAS);

(4) Foreign vessels, operating in U.S. waters, which are not subject to SOLAS but are subject to U.S. commercial vessel safety inspection requirements would be required to pay the same fees paid for inspection services by U.S. vessels.

Section 2110 allows adjustments of fees to accommodate changes in the cost of providing services. The Coast Guard intends to review the fees annually to determine if adjustments or changes to the fees are necessary. The Coast Guard will revise these proposed fees when costs change because of inflation or deflation, there are changes in the services provided, there are improvements in the method and efficiency of providing services, or when otherwise appropriate. New statutes, such as the Oil Pollution Act of 1990, may require the Coast Guard to establish new regulations or make substantive amendments to existing regulations concerning inspections and examinations. When this occurs, the Coast Guard will propose appropriate user fees in each rulemaking.

Consistent with guidance provided by OMB Circular A-25, except where otherwise mandated by statute, the Coast Guard's goal is full cost recovery. The user fees in this proposal would recover less than full program costs. The statutorily-mandated provision in the Act limiting annual user fees for tank barges to $500 results in a cost to the

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Treasury of approximately $2.1 million annually. The proposed user fees for periodic and follow-on inspections were reduced to minimize collection costs and to avoid sizeable inequities in the fee assessment at an annual cost to the Treasury of approximately $3.03 million. As annual workload and cost data is further refined, the Coast Guard will initiate necessary program and regulatory changes to enable full cost recovery.

Section 2110 provides that the fee for a service may also include the cost of collecting the fee. The Coast Guard has not yet determined collection procedures for the proposed fees. Our preliminary estimates indicate that collection costs will be minimal. Collection costs are not included in the fees listed in the proposed regulation. The Coast Guard expects that any adjustment of the proposed fees to cover collection costs will be less than $10 per transaction.

Section 2110 also provides authority to recover "appropriate collection and enforcement costs associated with delinquent payments of the fees." The Coast Guard may employ any government agency (Federal, State, or local) or a private enterprise or business (e.g., collection agency) to recover delinquent fees or civil penalty charges. Since the Coast Guard anticipates collecting fees prior to the services being provided, delinquent payments should not occur in most cases.

Section 2110 allows exemption of certain persons from fees, "if in the public interest." While there are no specific exemptions proposed in this notice of proposed rulemaking, the Coast Guard is interested in comments on exemptions that could be in the public interest, and will consider including appropriate exemptions in the final rule. The public is invited to comment on reasons to establish "public interest" exemptions.

Discussion of Fees

Overview

The proposed fees are based on the cost of Coast Guard resources expended to conduct the inspection and examination services. These resources include inspector hours, travel, administrative support, and training, and are discussed more fully in the Regulatory Evaluation. In developing the proposed fees, the Coast Guard reviewed all specific inspection activities in 46 CFR part 2, as well as the technical requirements for inspections in 46 CFR parts 31, 71, 91, 105, 107, 108, 109, 151, 167, 175, 176, 189, and 190 and in 33 CFR parts 140, 143, 151, 155, and 157.

The inspection workload (inspector hours per inspection) for U.S. vessels and foreign vessels subject to inspection under the laws of the United States varies by type of vessel, by length of vessel within some vessel types, and by number of passengers for some passenger vessels. Based on inspection workload variations, vessels were grouped into 28 categories. With more than 15 types of inspections and 28 vessel types, the Coast Guard calculated that it could establish up to 420 different user fees for over 38,000 inspections and examinations conducted each year just on the U.S. fleet of approximately 12,000 vessels.

To reduce the number of possible inspection user fee categories, the Coast Guard identified patterns in the amount of time it takes to conduct an inspection as a function of inspection type, vessel type and size, number of passengers, and other factors. The three primary inspections, the inspection for certification, annual reinspection, and drydock examination, generally take about the same amount of time for vessels of a particular category. However, there are wide variations in the time it takes to conduct follow-on inspections due to many factors, including but not limited to: Differences in the readiness of the vessel for inspection; knowledge, training, and experience of shipyard personnel and/or the ship's crew; the vessel owner's, or operator's management and operating procedures; coordination with third party contractors; the knowledge and training of the vessel inspector; the nature and extent of repairs; and the extent of any deficiency list to be inspected or cleared. In many cases, the Coast Guard determined that there are no accurate predictors of how long a particular type of inspection would take.

The Coast Guard considered billing for follow-on inspections after the fact at an hourly rate. A requirement to pay a separate fee for each of these inspections would increase administrative work requirements for vessel repair facilities, contractors, and vessel owners to ensure proper authorization of, and application for, inspections. For example, a shipyard could have to contact the vessel owner for authorization to expend funds for inspection of each stage of a repair, modification, or deficiency correction. Development of timekeeping and billing systems for over 38,000 inspections per year would be expensive and administratively burdensome to both the Coast Guard and industry. The estimated $1.75 million annual cost for Coast Guard billing clerks would increase the user fee cost base and result in higher fees for industry. After consideration of a pay-as-you go user fee system for these vessel inspections, the Coast Guard concluded that this alternative would be unworkable.

The Coast Guard then considered establishment of an annual inspection fee for each vessel category. In evaluating this alternative, the Coast Guard determined that the expected aggregate number of hours spent inspecting a vessel in a given category each year could be computed with more accuracy than when attempting to calculate the expected value of a single inspection or type of inspection. An annual fee would eliminate approximately 26,000 fee transactions per year for follow-on and drydock inspections. An annual fee would also provide a predictable annual cost to a vessel owner or operator. The Coast Guard, therefore, considers an annual inspection fee to be the most practical alternative for primary inspections and the follow-on inspections related to them.

In structuring an annual fee which would reasonably reflect the cost basis of the inspection services provided, the Coast Guard examined several alternatives. The primary basis for determining the annual fee is an annual accrual accounting system based on the annual expected value (measured in time) of services provided. The expected value of an inspection service is simply the average time it takes to conduct an inspection multiplied by the probability of the inspection taking place. The annual accrual accounting system sums the expected values of the various inspections conducted for each type of vessel. This process is an algorithm which assumes that the average time to conduct an inspection is representative for that category of vessel; that the distribution of the inspection time about the mean is normal (i.e. not skewed); and that the average has a relatively small standard deviation. This algorithm works well for the primary periodic inspections. It does not work well for the non-periodic inspections. For many of the non-periodic inspections, the standard deviation was found to be several times the mean, rendering the measure inappropriate.

Constructing a user fee based on the full cost average that is not representative or "well-behaved" would result in fees that do not reasonably reflect the cost of the services provided. The burden of paying for services calculated at full cost would be significantly shifted from those receiving extensive services to those receiving far less service. Such a user fee would result in many shipowners requiring less inspection service subsidizing shipowners requiring much more service.

After examining several options, the Coast Guard determined that charging a reasonable percentage of the full cost average for the non-periodic inspections would create fewer inequities. Several approaches to discount the 252 average inspection times (28 vessel types and 9 inspection types) were considered, but no statistical basis simply applied was found.

The Coast Guard then weighted the option of a mixed system—an annual fee for the periodic inspections and billing at an hourly rate for the follow-on inspections—to recover the full costs. The necessary billing system to recover the additional $1.9 million is estimated to cost $1.75 million. These additional billing costs would be passed on to the industry. This option was not considered viable or reasonable.

To avoid establishing a billing system and to ameliorate the inequities, the Coast Guard found that by using 50% of the full cost of the non-periodic inspections, the algorithm would more fairly apportion the inspection costs in each inspection and vessel category.

Fees for the remaining inspections, excursion permits for passenger vessels, the additional charge for overseas inspections, and fees for examinations of foreign vessels would be paid when applying for the particular inspection or examination.

Vessels of foreign countries which are parties to the effective International Convention for the Safety of Life at Sea (SOLAS) are not inspected under U.S. inspection laws. They are examined only to the extent necessary to verify that they have complied with their own nation's laws and the requirements of various treaties. The proposed fees for these examinations are listed by type of examination. However, vessels of countries which are not parties to SOLAS are required to undergo the same inspections as U.S. vessels, and are issued the same Certificate of Inspection. Therefore, the Coast Guard proposes to charge these foreign vessels the same fees for inspection as for U.S. vessels of the same type.

Proposed Fees

Annual Inspection Fees

The Coast Guard proposes to establish a schedule of annual inspection fees for 28 categories of vessels. Payment of the annual inspection fee would establish a privilege of inspection for a specific vessel for all periodic inspections and follow-on inspections of a U.S. vessel or a foreign vessel subject to U.S. inspection laws. The privilege of inspection would extend to all inspections and examinations required for Certificates of Inspection, certificates required under international treaties, and follow-on inspections required to determine compliance with those certificates. The proposed schedule of annual inspection fees was developed using an accrual accounting system based on the annual expected value of inspection services provided.

Commercial vessels are subject to periodic inspections on quarterly, 1 year, 1.5 year, 2 year, 2.5 year, 3 year, 5 year and 10 year intervals as a function of vessel type or service, class, and route (fresh water/salt water and/or the number of months per year certain vessels are operated in fresh water). Some of these requirements date to the 1850's, while some are more recent and are defined by international treaty. Typically, Coast Guard marine inspectors visit each vessel at least once each year to issue the all-encompassing Certificate of Inspection (at a 1, 2 or 3 year interval), to conduct the annual reinspection, or to inspect the vessel's hull. Follow-on inspections to ensure that a vessel remains in compliance with its Certificate of Inspection are also conducted throughout the year. The Coast Guard conducts over 10,000 follow-on inspections annually. The purpose of these inspections vary from one vessel to the next. They typically include, but are not limited to, the following activities:

(a) Certifying that deficiencies noted in a previous inspection have been corrected;

(b) Surveying damaged ship structures, propulsion systems, or failed lifesaving, navigation, or firefighting equipment;

(c) Inspecting, testing, and approving repairs to damaged ship structures, propulsion systems, or failed lifesaving, navigation, or firefighting equipment.

There is a large range of variability in the time required to conduct many follow-on inspections, even within a particular vessel type. Because of this variability within types of follow-on inspections, and to simplify administration and collection of fees, only 50% of the expected value of follow-on inspections were included in the annual fee. This would result in a net reduction in user fee receipts, and cost to the Treasury, of $1.9 million annually.

There are several factors which determine a vessel's inspection intervals for some periodic inspections. The primary factors are whether the vessel's route is salt water or fresh, open water or protected, and how much of the year the vessel operates in each. The Coast Guard is working to simplify hull examination/dry dock requirements. When revised, the Coast Guard expects more consistent requirements overall. This would then allow for application of the accrual algorithm at full cost for many vessel categories. The Coast Guard proposes to charge all vessels for the longest hull examination/dry dock interval as an interim solution. The Coast Guard therefore proposes to charge only at the rate for the longest inspection interval for each category of vessel. This means that all vessels of a given fee category would pay the same amount as the lowest cost vessel of that type. For example, drydock inspection intervals for a small passenger vessel may vary from 1.5 years for a vessel operated exclusively in salt water, to 5 years for a vessel operated exclusively in fresh water. Selecting the longest interval, 5 years, means that the annual expected value of this service is 20% of the cost of a drydock inspection. The expected value would be 67% of the cost of the inspection for the 1.5 year interval. The Coast Guard estimates that use of the longest interval would result in a net reduction in user fees receipts and cost to the Treasury, of $950,000 annually.

Fee Limit for Tank Barges

User fees for inspections of all tank barges (U.S. and foreign) are limited by the Act to a maximum of $500 per year, including collection costs. Annual inspection fees were calculated for tank barges in various service and route categories and were all found to be in excess of $500 ($778–$1015 without collection costs included). The Coast Guard, therefore, proposes to set the annual inspection fees at the statutory limit of $500. Savings to the tank barge industry and cost to the Treasury, because of this statutorily-mandated provision, are estimated at $2.1 million annually.

Optional Prepayment of Annual User Fee

The Coast Guard proposes to establish an optional method of payment to allow a vessel owner/operator to elect to prepay the annual user fee for a period of years, from 3 years up to the design life or expected remaining life of the vessel. The Coast Guard proposes to calculate the prepaid fee by using the net present value of the expected series of annual payments to the Treasury. This means that the payment expected in each future year is

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reduced by a discount factor to an amount which, if deposited in an interest bearing account until the payment year, would equal the payment due. The interest rate would be equal to the 10-year Treasury note rate. This rate is adjusted for inflation, using the projected rate for federal pay increases (4.2%). Once the fee is paid, the privilege of inspection for the period covered by this fee could be capitalized to become part of the value of the vessel. This privilege would be transferable with the vessel to a new owner, but could not be transferred to any other vessel. For a vessel which changes service, becoming a member of a different vessel category, the fee would be recalculated. All remaining credit from the prepaid fee would be applied to establish a privilege of inspection for the vessel in the new category based on the fee for inspection of vessels in the new category. The new fee would be calculated from the date of the first Certificate of Inspection for the vessel's new category, and the ending date of the privilege of inspection already paid for would be adjusted.

As the prepayment of multiple annual user fees is optional, the owner/operator electing to prepay the annual user fee assumes the risk that the annual user fee may go down over time (due to program/statutory changes), that the vessel may not remain in service or that inflation may be less than the projected rate. The government, on the other hand, assumes the risk that the discount rate may exceed the actual rate of interest; that inspection times and other program costs may increase; and that inflation may rise above the projected rate. While the Coast Guard may adjust the time period of the privilege of inspections paid for in advance, fees will not be refunded.

Excursion Permit Fee

Vessel operators desiring to carry passengers in excess of the number listed on the vessel's Certificate of Inspection must apply for an excursion permit. The excursion permit may be issued by the Officer in Charge, Marine Inspection after inspecting the vessel to ensure that the proposed excursion would be safe. The fee for this inspection would be paid upon application for the requested service.

Overseas Inspection Fee

Approximately 40,000 hours in overseas travel time are expended annually in connection with inspection of U.S. commercial vessels. These inspections are conducted overseas at the request of the vessel owner. Owners now compensate the Coast Guard (under 46 U.S.C. 3317) only for travel expenses and per diem, but not for operating costs associated with overseas inspections. Personnel hours expended during travel, waiting time at the inspection destination for a vessel to be ready for inspection, and the cost differential of maintaining offices overseas are included among the costs of providing this service which require this additional fee.

Inspectors are assigned to overseas inspections based on a variety of factors, including experience, availability, and convenience to the Coast Guard, rather than being sent from the nearest location. This results in large variations in travel and delay time which can neither be predicted nor controlled by the inspection applicant.

The Coast Guard proposes to base charges for these overseas inspections on the fact that they are overseas, and not on the location from which the Coast Guard chooses to send an inspector. Therefore, the Coast Guard proposes to charge a flat fee for all overseas inspections, based on apportionment of the additional costs among the inspection and examination activities conducted overseas. The apportioned share for each activity is approximately equal to 50 hours travel and delay time. It is derived from current overseas inspection workload data. Reported workload time for those inspections is limited to a maximum of 8 hours per day. The workload data thus represents actual personnel costs, and does not include off duty time.

Foreign Tankship Fee

Foreign chemical tankships operating in U.S. waters are required to be examined and issued a Certificate (or Letter) of Compliance (COC). The COC is valid for two years. Annual reexaminations of chemical tankers are conducted by a marine inspector and the COC is endorsed. Foreign tankships carrying petroleum products are required to be examined annually and issued an annual Tank Vessel Examination (TVE) Letter. As the time involved to conduct each of these exams is essentially the same, we propose to charge the same user fee for these three types of examinations of foreign tankships.

Foreign Mobile Offshore Drilling Unit Fees

Foreign MODUs are inspected under the authority of the Outer Continental Shelf Lands Act, codified at 43 U.S.C. 1356. The regulation requiring a foreign MODU to obtain a Letter of Compliance is published at 33 CFR 143.210. Since other types of foreign vessels are required to pay fees for inspections and examinations, and U.S. MODUs generally must be inspected by and pay fees to foreign agencies when operating in foreign waters, the Coast Guard proposes to establish user fees for these inspection services provided to foreign MODUs. Fees for foreign MODUs would be collected under the authority of 14 U.S.C. 664 and 31 U.S.C. 9701.

These inspections are conducted under 33 CFR 143.207 and 143.210 to ensure compliance with one of the following: (a) The design and equipment standards for MODU's in 46 CFR Part 108; (b) the design and equipment standards of the documenting nation, if those regulations have been found to meet or exceed U.S. standards; or, (c) the standards issued by the International Maritime Organization.

Inspections conducted to ensure compliance with (a) above are the same inspection services provided to a U.S. MODU, and the fee charged would be the same. Inspections conducted for compliance with categories (b) and (c) above are essentially the same as the examinations for a Certificate of Compliance for other types of foreign vessels, as listed in 46 CFR 2.01–6, and a separate fee is established for these vessels, which have already been certified by another government.

Foreign Passenger Vessel Fee

Passenger vessels from foreign countries which are parties to SOLAS are inspected to verify that they have complied with the laws of the flag state and the controls imposed by the treaty. Over 95% of these foreign passenger vessel control verification examinations are straightforward, are conducted on a regular basis, and are predictable in terms of inspection time spent per examination. A single annual fee is proposed for such control verification examinations. This fixed fee would be applicable to the initial, annual, and reinspection examinations. For the remaining 5%, inspection times are as much as 40 times the mean. At this time, the Coast Guard proposes to charge these vessels the same fee as the 95% which require no significant extra effort.

Inspection of Foreign Vessels not Subject to SOLAS Operating in U.S. Waters

These vessels are inspected under the same regulations and in the same manner as U.S. vessels, and are issued the same Certificates of Inspection as U.S. vessels. User fees proposed for the inspection of these vessels are the same as those for U.S. vessels.

Collection of Fees and Penalties for Failure to Pay

The Coast Guard is presently reviewing a variety of fee collection procedures including cash payment, checks, money orders, credit cards, and electronic payment procedures. Convenience to the applicant will be an important factor in selecting the procedures to be used. Although these administrative details are not required to be subject to notice and comment, the Coast Guard invites comments on desirable features of a collection system. The Coast Guard will include the collection procedure details in the Final Rule. The Coast Guard anticipates that payment would be required before inspection services would be provided.

For failure to pay fees, a civil penalty of up to $5,000 is authorized in 46 U.S.C. 2110. That section also authorizes the Secretary of the Treasury to withhold customs clearance for vessels which fail to pay fees, when requested by the Secretary of Transportation. The Coast Guard also proposes to withhold additional inspection and certification services pending payment of any outstanding fees. The Coast Guard intends to treat checks returned due to insufficient funds as a delinquent payment and to recover appropriate collection and enforcement costs in these cases.

Cost Methodology

The Coast Guard developed fees in this proposal using information from workload analysis studies and data contained in the Coast Guard's Marine Safety Information System (MSIS) and costs of conducting vessel inspection activities at Coast Guard Marine Inspection Offices and Marine Safety Offices.

Vessel inspection user fees for this rulemaking were derived based on the proposition that the fees should generate receipts approximating the total cost of the commercial vessel inspection program, less the cost of those activities which will be the subject of separate rulemakings; activities for which the program director has determined that the imposition of fees would impose an administrative burden which would outweigh the value of the fees; inspections conducted at the sole discretion of the OCMI for enforcement purposes; and inspection costs for tank barges in excess of the statutory $500 annual inspection fee cap imposed by the Act.

The program cost includes the cost of personnel and associated infrastructure necessary to provide the inspection services. These include, but are not limited to: Office space; office equipment and supplies such as telephones, computers and copiers; special training; and other personnel-related costs. The program cost also includes a portion of the annual cost to operate MSIS and local travel costs for inspectors. Using information from a workload analysis study, hourly standard rates provided in the Coast Guard Standard Rate Instruction (COMDTINST 7310.1), and the Coast Guard Staffing Standards Manual (COMDTINST M5312.11), the Coast Guard calculated this total program cost to be approximately $25.4–$27 million, not including any cost of collecting fees. Based on the workload analysis study and this total program cost the Coast Guard calculated a basic hourly rate for inspection services of $87 per qualified inspector hour.

Each proposed fee is calculated as a function of the time the Coast Guard would reasonably expect to spend inspecting or examining a specific category of vessel during an average year, including travel time. Categories were based on vessel type. Where wide variations in inspection time were found, vessel types were subdivided by length, number of passengers, and other criteria to provide increased predictability of inspection time. The proposed fees may be rounded to the nearest $5.00 in the final rule.

This rulemaking proposes to assess approximately $21–$22 million in user fees each year. The $500 annual limit on inspection fees for tank barges, established by the Act, reduces estimated receipts by approximately $2.1 million annually. Several adjustments were introduced to simplify the fee structure, and to minimize the administrative cost to industry and the government of assessing and collecting fees. These include charging for only one-half of follow-on inspection costs, charging only the minimum amount for drydock inspections, charging the same fee for control verification examinations for all foreign passenger vessels, and elimination of fees for minor miscellaneous services. These changes reduce expected collections by $3.2 million per year.

In each instance where a decision was made not to assess a fee for a particular activity, or to assess less than the full cost of an activity, the overhead for that activity was eliminated from the program costs on which fees were based. This procedure ensures that the direct costs and overhead for these activities will not be distributed to the users of other services which are subject to user fees.

Costs for different types of mobile offshore drilling units were developed based on program manager estimates, validated against historical data. Workload data was not originally captured based on type of unit, and further data collection and analysis is required. This analysis may adjust the apportionment of fees among types of drilling units based on the number of hours required to inspect each type, but should not affect the total cost to the industry. The Coast Guard expects to incorporate any adjustments which may be indicated by this analysis in a future rulemaking.

Section by Section Analysis

33 CFR Part 143

The Coast Guard proposes to revise the authority citation for this Part to include statutes related to user fees (i.e., 14 U.S.C. 664, 31 U.S.C. 9701).

Section 143.210—The Coast Guard proposes to revise this section by adding the requirement that the user fee for inspection of a foreign mobile offshore drilling unit (MODU) be submitted with the application for a Letter of Compliance inspection.

46 CFR Part 2

The Coast Guard proposes to revise the authority citation for this Part to include statutes related to user fees (i.e., 14 U.S.C. 664, 31 U.S.C. 9701, 46 U.S.C. 2110).

Section 2.01–1—The proposed amendments to this section require payment of user fees at the time of application for services.

Section 2.01–6—The Letter of Compliance listed in 33 CFR 143.201 is added to the list of certificates issued to foreign vessels in this section. This change is editorial in nature.

Section 2.01–45—This section would be amended to add a requirement for excursion permit fees to be paid when the application for an excursion permit is submitted.

Section 2.01–60—This section would be removed and the substance of the section, dealing with procedures for overtime compensation would be placed in a new Section 2.10–11.

Subpart 2.10—This is a new subpart titled "Fees."

Section 2.10–1—This section would add definitions of vessel types on which fees are based, and definitions of other terms to be used in this part. The vessel definitions are based on other regulations or statutes.

Section 2.10–11—This section is the old § 2.01–60. References to shipping commissioners have been deleted

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because the Coast Guard no longer performs that function. Reference to 46 U.S.C. 382b was changed to 46 U.S.C. 2111 because of partial revision of title 46, United States Code. Reference to part 143 of this chapter was changed to part 9 because part 143 has been redesignated. These changes are editorial in nature.

Section 2.10–13—This section contains a summary of the statutory penalty provisions.

Section 2.10–101—An annual inspection fee is proposed for U.S. commercial vessels and those foreign vessels which are inspected under U.S. law and issued a Certificate of Inspection. The fee for each vessel is based on the expected value of inspection services in an average year for a vessel of that type, size and service. The section describes the inspection services provided under the privilege of inspection established when the fee is paid.

Section 2.10–103—This section would allow vessel owners the option of prepaying the cost of inspections covered by the annual inspection fee for a period up to the expected life of the vessel. The fee for each future year is discounted to the present value of the services to be provided in that year. The fee is discounted using the interest rate of 10% for 10-year Treasury notes, less a projected inflation rate of 4.2%. The section also proposes application procedures for vessel owners desiring to prepay fees.

Section 2.10–105—This section proposes a method of adjusting annual inspection fees when a vessel changes from one fee category to another, and provides that credit will be granted for fees already paid.

Section 2.10–106—This section proposes a fixed fee for excursion permit inspections. The fee would be required only when an excursion permit inspection must be conducted at a time other than the inspection for a Certificate of Inspection.

Section 2.10–107—Any vessel which must be inspected outside the United States, including territories and possessions of the United States would be required to pay a separate fixed fee under this section. This fee is intended to cover the personnel salary and overhead costs associated with travel to inspection sites in foreign countries and delays in transit, as well as an adjustment for the cost of operating offices overseas. The proposed fee would be in addition to travel and lodging expenses for which the Coast Guard is currently reimbursed.

Section 2.10–109—This section proposes fees for inspections of certain foreign vessels.

Section 2.10–110—This section proposes fees for inspections of foreign MODUs inspected under 33 CFR part 143.

Regulatory Evaluation

This proposal is not major under Executive Order 12291, but is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The proposed fees are a deficit reduction measure, mandated by the Omnibus Budget Reconciliation Act of 1990, (the Act) which amended 46 U.S.C. 2110 to remove long-standing prohibitions against charging fees for Coast Guard commercial vessel services.

The Act required the Coast Guard to establish fees for services provided under subtitle II of title 46 United States Code. These services include licensing and documentation of merchant marine personnel, vessel documentation, commercial vessel inspections, and vessel plan review and equipment approval. Although precise cost impacts of these fees require further study, the total cost of these user fees is expected to be less than $45 million. This rulemaking deals only with vessel inspection user fees, which are estimated at $20–$22 million. This is well below the $100 million threshold which would make this a major regulation. Nonetheless, it is significant under the Department of Transportation Regulatory Policies and Procedures because it is an important program change, and the Coast Guard has prepared a regulatory evaluation.

The draft Regulatory Evaluation is available in the docket for inspection or copying where indicated under "**ADDRESSES**." A summary of this evaluation is published as an appendix at the end of this notice of proposed rulemaking.

The evaluation compared the annual cost of the user fees to revenues generated by operating vessels. It concluded that the financial impact on the public, and individuals subject to these user fees, would be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard expects that this regulation will not have a significant impact on a substantial number of small entities. However, the small passenger vessel industry is predominantly made up of small firms. Information on costs, revenues and profits from this industry are not generally available. The Coast Guard is convinced that it has developed a fee structure specifically for this industry which will reduce the impact on owners and operators of smaller passenger vessels. Nevertheless, some passenger vessel owners may be substantially affected by this regulation. Some of the smaller tank barge operators may also be substantially affected, despite the inspection fee limitation imposed by the Act. The Coast Guard requests information from those companies and individuals that believe they will be significantly affected by this rulemaking. Comments should include type of vessel(s), number of vessels owned or operated, size, sales, profits, season of operation, and area of operation, and should be sent to the Marine Safety Council where indicated under "**ADDRESSES**." Based on the information currently available, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains minimal additional collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Existing requirements, for applications for inspection are covered under Office of Management and Budget control number OMB 2115–0141. The additional requirements involve collection of funds, and of such information as is required to calculate the fee due, or to ensure proper collection. These may include account numbers for checking accounts, credit card accounts, or other financial accounts from which payment is made, and addresses, telephone numbers, or other identifying information which will permit follow-up action when an incorrect amount is submitted or a payment instrument fails to clear. A new requirement is established for those persons desiring to pay annual inspection fees for future years in advance. The applicant must send a request in writing to the Coast Guard which furnishes the following information: The vessel's official number or other identifying information, the vessel category, the number of years for which the applicant desires to prepay the annual inspection fee, and the applicant's name and return address. The burden placed on members of the public is considered to be minimal and within the scope of information collection permitted under the existing control numbers.

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612. Based on the information available to it at the present time, the Coast Guard is unable to determine whether the proposed rule would have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The proposal would result in payment of fees by States, State agencies, and local governments for inspection services provided to vessels owned by those entities. The impact of those fees on the agencies owning the vessels do not appear substantial based on the regulatory evaluation, which is summarized in the appendix to this notice. The Coast Guard specifically seeks public comment on the federalism implications of this rulemaking.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. Section 2.B.2 of that instruction excludes "administrative actions and procedural regulations and policies which clearly do not have any environmental impacts." A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "**ADDRESSES**."

Appendix

To assist the reader in understanding the basis for the user fees proposed in this rulemaking, the Coast Guard has attached a summary of the preliminary regulatory evaluation, including the regulatory flexibility analysis, prepared for this rulemaking project. The summary is published as an Appendix to this notice of proposed rulemaking, and will not become part of the final rule. The complete preliminary regulatory evaluation is available in the rulemaking docket for inspection or copying where indicated under "**ADDRESSES**."

List of Subjects

33 CFR Part 143

Continental shelf, Fees, Marine safety, Occupational safety and health, Vessels.

46 CFR Part 2

Fees, Marine safety, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, the Coast Guard proposes to amend title 33, chapter I, subchapter N, part 143 and title 46, chapter I, subchapter A, part 2 as follows:

Title 33—[Amended]

SUBCHAPTER N—OUTER CONTINENTAL SHELF ACTIVITIES

PART 143—DESIGN AND EQUIPMENT

1. The authority citation for part 143 is revised to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 43 U.S.C. 1333(d)(1), 1348(c), 1356; 49 CFR 1.46.

2. Section 143.210 is amended by adding a new paragraph (c) to read as follows:

§ 143.210 Letter of compliance.

* * * * *

(c) To request a Letter of Compliance inspection, the owner of a mobile offshore drilling unit documented under the laws of a foreign nation shall submit an application for inspection of a foreign vessel (CG–986), as described in 46 CFR 2.01–1, to the Officer in Charge, Marine Inspection for the area in which the vessel expects to operate. The application must be accompanied by the inspection fee set out in 46 CFR 2.10–110.

Title 46—[Amended]

SUBCHAPTER A—PROCEDURES APPLICABLE TO THE PUBLIC

PART 2—VESSEL INSPECTIONS

3. The authority citation for part 2 is revised to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 2110, 3306, 3703, 5115, 8105; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; 49 CFR 1.46; Subpart 2.45 also issued under the authority of Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat 1120 (see 46 U.S.C. App. note prec. 1).

4. Part 2 is amended by removing § 2.01–60 from subpart 2.01 and reserving it, and adding a new subpart 2.10 to read as follows:

Subpart 2.10—Fees

Sec.
2.10–1 Definitions.
2.10–11 Overtime compensation.
2.10–13 Penalties.
2.10–101 Annual inspection fee.
2.10–103 Prepayment of annual inspection fees.
2.10–105 Changes in vessel category.
2.10–106 Excursion permit inspection fee.
2.10–107 Overseas inspection fee.
2.10–109 Fees for examinations of foreign vessels.
2.10–110 Fees for inspection of foreign mobile offshore drilling units.

5. Section 2.01–1 is amended by adding paragraph (a)(3) and revising paragraph (b) to read as follows:

§ 2.01–1 Applications for inspections.

(a) * * *

(3) Application forms must be accompanied by applicable fees required under §§ 2.10–107, 2.10–109 or 2.10–110, unless the requested inspection is covered by the annual fee and that fee has been paid. Evidence of payment of inspection fees will be endorsed on or affixed to the Certificate of Inspection, Certificate of Compliance, Letter of Compliance, or Excursion Permit when payment is verified by the Officer in Charge, Marine Inspection.

(b) *To whom submitted.* The completed form must be submitted to the Officer in Charge, Marine Inspection, in the Marine Inspection Office located in, or nearest, the port at which the inspection is to be made. When payment of all applicable fees has been verified, the applicant will be advised in writing when the inspection will be made.

* * * * * *

6. In § 2.01–6 the section heading is revised, existing paragraph (a)(2) is redesignated as paragraph (a)(2)(i) and a new paragraph (a)(2)(ii) is added to read as follows:

§ 2.01–6 Certificates of Compliance issued to foreign vessels.

(a) * * *

(2) (i) * * *

(ii) Letter of Compliance—issued to Foreign Mobile Offshore Drilling Units engaged in Outer Continental Shelf activities under 33 CFR 143.210.

* * * * * *

7. Section 2.01–45 is amended by revising paragraph (b) to read as follows:

§ 2.01–45 Excursion permit.

(a) * * *

(b) The application for an excursion permit is made by the master, owner, or agent of a vessel to the Officer in Charge, Marine Inspection, on Coast Guard Form CG–950, Application for Excursion Permit. The applicant shall include the excursion permit inspection fee required under § 2.10–6 of this part with the application. If, after inspection,

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permission is granted, it is given on Coast Guard Form CG-949, Permission to Carry Excursion Party. The permit describes the vessel, the route over which and the period during which the excursions may be made, and the safety equipment required for the additional persons indicated.

§ 201.01-60 [Removed]

8. Section 2.01-60 is removed and reserved.

9. A new subpart 2.10 is added to read as follows:

Subpart 2.10—Fees

§ 2.10-1 Definitions.

The following definitions will be used for the purpose of assessing fees under this chapter:

All other inspected vessels means an unclassified vessel or any other vessel, not listed above, which is required to be inspected under this chapter.

Drill ship MODU means a mobile offshore drilling unit with a ship shape displacement hull intended for operation in the floating condition.

Freight barge means a non-self-propelled freight vessel.

Freight ship means a self-propelled freight vessel.

Freight vessel means a vessel of more than 15 gross tons that carries freight for hire, except an oceanographic research vessel or an offshore supply vessel.

Industrial vessel means a vessel which, by reason of its special outfit, purpose, design, or function engages in certain industrial ventures. This classification includes such vessels as dredges, cable layers, derrick barges, and construction and wrecking barges, but does not include vessels which carry passengers or freight for hire, oceanographic research vessels, or vessels engaged in the fisheries.

Liquefied gas tankship means a self-propelled vessel equipped with cargo tanks primarily designed to carry liquefied or compressed gasses in bulk.

Mobile offshore drilling unit (MODU) means a vessel capable of engaging in drilling operations for the exploration or exploitation of subsea resources that is: Seagoing and 300 or more gross tons and self-propelled by machinery; seagoing and 100 or more gross tons and non-self-propelled; or more than 65 feet in length and propelled by steam.

Nautical school vessel means a vessel operated by or in connection with a nautical school or an educational institution under section 13 of the Coast Guard Authorization Act of 1986, Public Law 99-640.

Oceanographic research vessel means a vessel that is being employed only in oceanography or limnology or both, or only in oceanographic or limnological research, including marine geophysical and geological surveys, atmospheric research, and biological research.

Offshore supply vessel means a vessel that is propelled by machinery other than steam, that is of at least 15 gross tons and less than 500 gross tons, and that regularly carries goods, supplies, and equipment in support of exploration, exploitation, or production of offshore mineral or energy resources, and is not a small passenger vessel.

Passenger barge means a non-self-propelled passenger vessel, including a prison barge or a barge which carries occupied recreational vehicles.

Passenger ship means a self-propelled passenger vessel.

Passenger vessel means a vessel of at least 100 gross tons carrying at least one passenger for hire.

Sailing school vessel means a vessel of less than 500 gross tons carrying at least 6 individuals who are sailing school instructors or sailing school students, which is principally equipped for propulsion by sail, and which is owned or demise chartered, and operated by an organization which is tax exempt under 26 U.S.C. 501(c)(3), or by a State or political subdivision of a State.

Self-elevating MODU means a mobile offshore drilling unit with movable legs capable of raising its hull above the surface of the sea.

Semi-submersible MODU means a mobile offshore drilling unit with the main deck connected to an underwater hull by columns or caissons, intended for drilling operations in the floating condition.

Small passenger vessel means a vessel of less than 100 gross tons carrying more than 6 passengers and subject to inspection under Subchapter T of this chapter.

Submersible MODU means a mobile offshore drilling unit with the main deck supported over an underwater barge type displacement hull or the main deck connected to an underwater hull of footings by columns or caissons intended for drilling operation in the bottom bearing condition.

Tank barge means any tank vessel not equipped with means of propulsion.

Tank vessel means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue.

Tankship means any tank vessel propelled by power or sail, including an integrated tug and barge designed to operate together only in the pushing mode.

Towing vessel means a commercial vessel engaged in or intending to engage in the service of pulling, pushing or hauling alongside, or any combination of pulling, pushing or hauling alongside.

§ 2.10-11 Overtime compensation.

The owner, master, or agent of a vessel shall pay extra compensation for overtime services performed by civilian officers and civilian employees who may be required to remain on duty between the hours of 5 p.m. and 8 a.m., or on Sundays or holidays, to inspect vessels or vessel equipment, or to perform related services. Overtime compensation is authorized by 46 U.S.C. 2111, and will be computed using the method described in 46 CFR part 9.

§ 2.10-13 Penalties.

(a) A person who fails to pay a fee or charge established under this subpart is liable to the United States Government for a civil penalty of up to $5000 for each violation under 46 U.S.C. 2110.

(b) A person who fails to pay a fee established in this subpart may be required to pay all costs of collection and enforcement of those fees, in addition to any civil penalty assessed.

(c) Any vessel for which the fees established under this part are unpaid may be denied clearance of Customs required by 46 app. U.S.C. 91 and 19 CFR 4.60 and 4.61 until the fee or charge is paid or until a bond is posted for the payment.

§ 2.10-101 Annual inspection fee.

(a) Each vessel for which a Certificate of Inspection (COI) is required must pay the annual inspection fee indicated in Table 2.10-101 for that type of vessel. This annual fee is the only payment required to establish a privilege of inspection for all inspections related to compliance with or reissuance of a Certificate of Inspection. These include inspection for issuance of the COI, except as noted below, reinspections, deficiency inspections, damage surveys, inspection of repairs, hull examinations (dry dock), and other miscellaneous inspections related to the COI or the hull examination. Inspections for a permit to proceed, drydock extension, or a special MARPOL (The International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978) examination are also included in the privilege of inspection. Inspections for an initial COI for a newly constructed vessel, a rebuilt vessel, or a modification of a vessel which requires issuance of a new COI are not within the privilege of inspection, and require a separate fee.

(b) The vessel owner shall pay the annual inspection fee each year on the anniversary date of the Certificate of Inspection, or may prepay the fee for a number of years, from a minimum of three years up to the design life or expected remaining life of the vessel, using the procedures in § 2.10-103 of this subpart.

TABLE 2.10-101.—ANNUAL INSPECTION FEES FOR U.S. VESSELS AND FOREIGN VESSELS INSPECTED FOR A CERTIFICATE OF INSPECTION

Freight Vessel:	
Freight Barge	$955.00
Freight Ship	5411.00
Ready Reserve Fleet Freight Ship	4245.00
Industrial Vessel	2751.00
Mobile Offshore Drilling Unit:	
Drill ship MODU	6712.00
Submersible MODU	4698.00
Self-elevating MODU	4698.00
Semi-submersible MODU	8054.00
Offshore Supply Vessel	1470.00
Oceanographic Research Vessel	4196.00
Ocean-Going Towboat	2915.00
Tank Vessel:	
Tankship	5805.00
Ready Reserve Fleet Tankship	4723.00
Liquefied Gas Tankship	14142.00
Tank Barge	500.00
Small Passenger Vessel or Sailing School Vessel:	
54 feet or less	820.00
longer than 54 feet up to 65 feet	880.00
longer than 65 feet up to 130 feet	1095.00
longer than 130 feet up to 160 feet and less than 150 passengers	1216.00
longer than 130 feet up to 160 feet and 150 passengers or more	2585.00
longer than 160 feet	2585.00
Passenger Barge	2525.00
Passenger Ship:	
Less than 250 feet and less than 150 passengers	3600.00
Less than 250 feet and 150 passengers or more	4054.00
250 feet up to 350 feet	5333.00
longer than 350 feet up to 450 feet	6836.00
longer than 450 feet	14650.00
Nautical School Vessel	7207.00
All other inspected vessels	1032.00

§ 2.10-103 Prepayment of annual inspection fees.

(a) Vessel owners may elect to pay the annual inspection fee for a vessel in advance for a period of years not less than three years, and up to the design life or expected remaining life of the vessel. Prepayment of such fees will establish a privilege of inspection for the vessel for all inspection services covered by the annual fee for the specified number of years.

(b) When the inspection fee has been prepaid for a vessel, the privilege of inspection for that period attaches to the vessel. The privilege of inspection shall run with the vessel if the vessel is sold, and may not be transferred to any other vessel.

(c) The prepayment amount will be discounted to its net present value using the following formula:

$$PV = \sum_{t=0}^{n} \frac{R_o(1+\pi)^t}{(1+i)^t}$$

Where:

PV is the Present Value of the series of annual user fees to be prepaid (the net amount to be prepaid)

R_o is the published user fee of the vessel

i is the interest rate for 10-year Treasury notes on the day the fee is prepaid

π is the rate of inflation (4.2%—based on projected military personnel costs)

n is the total number of years to be prepaid

t is the number of years after prepayment of the fee for each annual increment (t=0, 1, 2, 3 . . . n)

(d) A vessel owner desiring to prepay the annual inspection fee for a vessel must submit a written request for prepayment, specifying the period for which prepayment is to be made, with a copy of the Application for Inspection or must certify the following information: The vessel's official number or other identifying information, the vessel category, and the applicant's name and return address. The request must be mailed to: Commandant (G-MP), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001. The Commandant (G-MP) will then calculate the amount of the fee for the period requested and advise the applicant of payment procedures.

§ 2.10-105 Changes in vessel category.

(a) When a vessel owner desires to change the service in which the vessel operates, the fee for the new category of vessel must be submitted prior to issuance of the COI in the new service. The new fee establishes a privilege of inspection for the vessel which runs for one year from the date the COI is issued for the new category. The prorated value of the vessel's privilege of inspection remaining under the old category will be credited against the annual inspection fee for the new category.

(b) When a vessel owner desires to change the service in which the vessel operates, and annual inspection fees have been prepaid for a period of years, the Officer in Charge, Marine Inspection will notify the Commandant (G-MP) of the requested change of service. The Commandant (G-MP) will adjust the ending date of the prepaid privilege of inspection, and indicate any additional fees to be paid, prior to issuance of the COI in the new service.

§ 2.10-106 Excursion permit inspection fee.

(a) The fee for an inspection for an Excursion Permit issued under § 2.01-45 of this part is $424.00.

(b) Vessel owners desiring inspection for an Excursion Permit shall submit the fee listed in paragraph (a) of this section with the Application for Excursion Permit, Coast Guard Form CG-950 to the OCMI or designated collection agent.

§ 2.10-107 Overseas inspection fee.

In addition to any other fee required by this subpart, a fee of $4586.00 will be charged for vessels inspected outside the United States and its territories. This fee covers the cost of the inspectors' time while travelling, and is in addition to the reimbursement for travel expenses authorized under 46 U.S.C. 3317(b).

§ 2.10-109 Fees for examinations of foreign vessels.

(a) Vessels of foreign countries which are parties to the International Convention for the Safety of Life at Sea, 1974 as amended (SOLAS), will be subject to the fees listed below:

(1) Control Verification examination issued under § 2.01-6(a)(1)	$1,047.00
(2) Letter/Certification of Compliance examination for hazardous cargo vessel issued under § 2.01-6(a)(2)(i); or Tank Vessel Examination Letter issued under § 2.01-6(a)(3)	$1,102.00

(b) Foreign vessels from nations which are not parties to SOLAS will be subject to annual inspection under the laws of the United States, and will be required to pay the annual inspection fee listed in Table 2.10-101 for a vessel of that type.

§ 2.10-110 Fees for inspection of foreign mobile offshore drilling units.

(a) Foreign MODUs which are inspected for issuance of a Letter of Compliance which indicates compliance with the laws of the documenting nation, or which indicates compliance with the design and equipment standards of the International Maritime Organization for mobile offshore drilling units, must pay an inspection fee of $1831.00.

(b) Foreign MODUs which are inspected for issuance of a Letter of Compliance which indicates compliance with the design and equipment standards of 46 CFR part 108 must pay the inspection fee listed in Table 2.10-101 for a vessel of that type.

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J.W. Kime,
Admiral, U.S. Coast Guard, Commandant.
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Conventional Forces in Europe Treaty Implementation Act of 1991. (Dec. 12, 1991, 105 Stat. 1691, 10 pages) Price: $1.00

H.J. Res. 157/Pub. L. 102–229
Dire Emergency Supplemental Appropriations and Transfers for Relief From the Effects of Natural Disasters, for Other Urgent Needs, and for Incremental Cost of 'Operation Desert Shield/Desert Storm' Act of 1992. (Dec. 12, 1991; 105 Stat. 1701, 19 pages) Price: $1.00

H.R. 3576/Pub. L. 102–230
To amend the Cranston-Gonzalez National Affordable Housing Act to reserve assistance under the HOME Investment Partnerships Act for certain insular areas. (Dec. 12, 1991; 105 Stat. 1720; 2 pages) Price: $1.00

H.R. 1476/Pub. L. 102–231
San Carlos Indian Irrigation Project Divestiture Act of 1991. (Dec.12, 1991; 105 Stat. 1722; 11 pages) Price: $1.00

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Miscellaneous and Technical Immigration and Naturalization Amendments of 1991. (Dec. 12, 1991; 105 Stat. 1733; 26 pages) Price: $1.00

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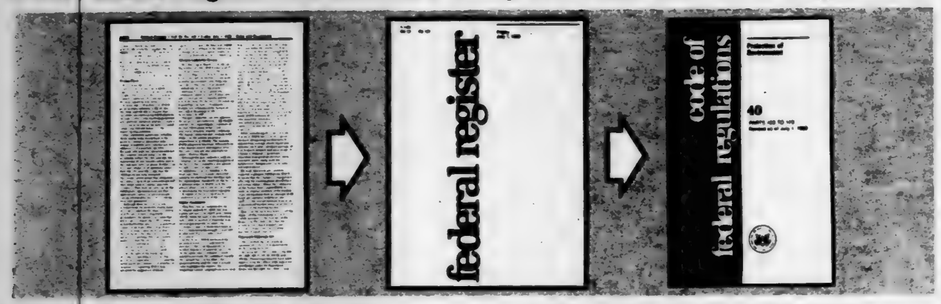
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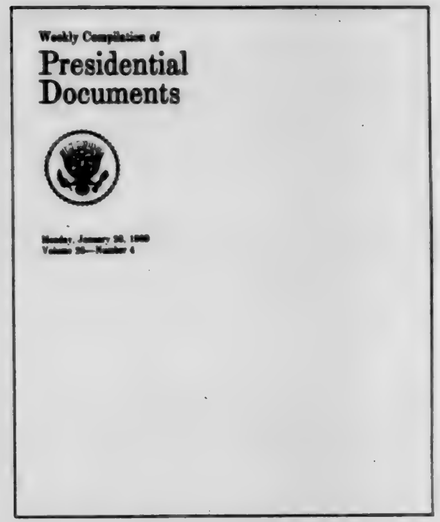
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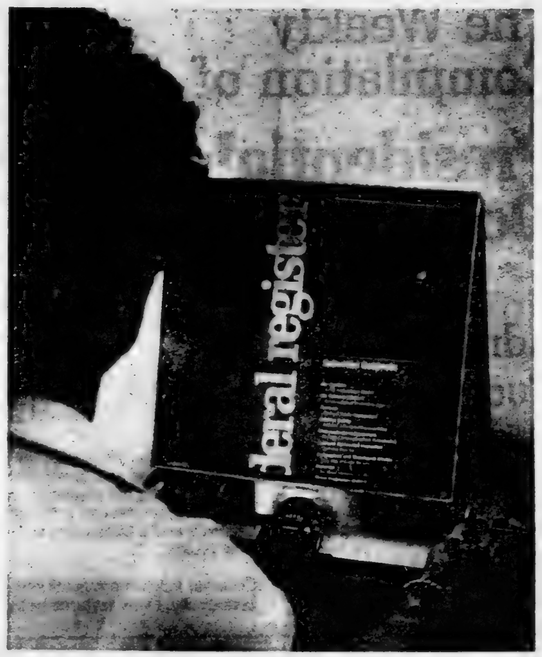
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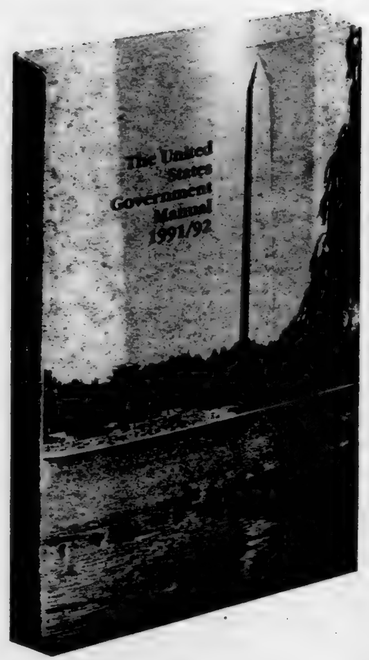
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Presidential Documents

Title 3—

The President

Proclamation 6394 of December 16, 1991

Year of Thanksgiving for the Blessings of Liberty, 1991

By the President of the United States of America

A Proclamation

Thomas Jefferson once noted that the only firm basis of a nation's liberties is the "conviction in the minds of the people that these liberties are . . . the gift of God." By observing the bicentennial of our Bill of Rights as a Year of Thanksgiving for the Blessings of Liberty, we not only give honor where it is due but also reaffirm the moral and spiritual foundation on which this great Republic rests.

Our Nation's Founders were men of faith and conviction, and it was a biblically inspired view of man that led them to declare "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." The ratification of our Bill of Rights in December 1791 signalled their determination to uphold in law these timeless words from our Declaration of Independence.

Our Bill of Rights guarantees, among other basic liberties, freedom of speech and of the press, as well as freedom of religion and association; it recognizes the right to keep and bear arms; and it prohibits unreasonable search and seizure of a person's home, papers, or possessions. The Bill of Rights also states that no person shall be deprived of life, liberty, or property without due process of law, and it establishes fundamental rules of fairness in judicial proceedings, including the right to trial by jury. Two hundred years after its ratification, this extraordinary document is recognized around the world as the great charter of American liberty and democracy. Indeed, as James Madison predicted, the principles enshrined in our Bill of Rights have become for all peoples "fundamental maxims of free government."

Our ancestors fully recognized the value of freedom, and on September 26, 1789, just one day after they agreed on a draft Bill of Rights to be presented to the States for ratification, members of the First Congress requested that President Washington "recommend to the people of the United States a day of public thanksgiving and prayer, to be observed by acknowledging with grateful hearts the many signal favors of Almighty God." Washington, who had favored and even encouraged the observance of such a day, readily issued a proclamation calling upon all Americans to unite in thanksgiving "for the civil and religious liberty with which we are blessed . . . ."

President Washington's call for a national day of Thanksgiving came less than two decades after our Declaration of Independence—and two years before the ratification of our Bill of Rights. How much greater reason do we have now, more than 200 years later, to give thanks! The fledgling republic led by George Washington has not only endured but prospered. Today we can be thankful for the very fact that we have maintained our Constitution and Bill of Rights throughout our Nation's history and for the expansion of freedom and democratic ideals around the world. Today we are also grateful for those brave Americans, past and present, who have been willing to put themselves in harm's way to defend the lives and liberty of others.

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On this wonderful occasion, recalling the words of our first President, let us give thanks for the blessings of liberty, and let us strive—both as individuals and as a Nation—to remain worthy of them, always using our freedom in accordance with the will of that "great and glorious Being" who has so graciously granted and preserved it.

The Congress, by Public Law 101–570, has designated 1991 as a "Year of Thanksgiving for the Blessings of Liberty" and has authorized and requested the President to issue a proclamation in observance of this year.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby urge all Americans to join in observing 1991 as a Year of Thanksgiving for the Blessings of Liberty. Let us show through word and deed—including public and private prayer—that we are grateful for our God-given freedom and for the many other blessings that He has bestowed on us as individuals and as a Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of December, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.

George Bush

[FR Doc. 91–30497
Filed 12–17–91; 2:56 pm]
Billing code 3195–01–M

Editorial note: For the President's remarks on signing this proclamation, see issue 51 of the *Weekly Compilation of Presidential Documents.*

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 931

[Docket No. FV–91–406FR]

Establishment of Administrative Rules and Regulations for Marketing Order Covering Fresh Bartlett Pears Grown in Oregon and Washington

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements handler reporting requirements and communication procedures under Marketing Order No. 931. Several terms are also defined in the rules and regulations for clarity and ease of reference. This final rule is needed to help facilitate administrative operations under the order and provides for the collection and dissemination of valuable statistical information. This action was unanimously recommended by the Northwest Fresh Bartlett Pear Marketing Committee (Committee) established under M.O. 931.

EFFECTIVE DATE: December 19, 1991.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–690–3919.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 931 [7 CFR part 931] regulating the handling of fresh Bartlett pears grown in Oregon and Washington. The Bartlett pear marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of fresh Bartlett pears regulated under this marketing order each season and approximately 1,900 Bartlett pear producers in Washington and Oregon. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The Committee met on May 30, 1991, and unanimously recommended the establishment of administrative rules and regulations covering handler reporting requirements and procedures and communications procedures. The Committee's recommendation also included definitions of terms used in the rules and regulations.

Section 931.60(a) of the order [7 CFR 931.60(a)] provides that the Committee, with the approval of the Secretary, may require that handlers furnish reports of pears received and disposed of and such other information as may be necessary for the Committee to perform its duties under the order.

Pursuant to § 931.60(a), the Committee recommended that rules be established at § 931.120 to require each handler to transmit to the Committee a "Semi-Monthly Report on Destination of Shipments and Assessment Payments" on the first and the fifteenth day of each calendar month during the shipping season (August through January). The estimated number of respondents for this collection of information is 78, with an estimated average reporting burden of 0.75 hours per response and an estimated annual reporting burden of 760 hours. This report will include the following information: (1) The quantity of each variety of pears shipped by that handler during the preceding half month; (2) the date of each shipment; (3) the ultimate destination, by city and state, or city and country; (4) the assessment payment due; and (5) the name and address of such handler.

The Committee recommended that each handler also transmit a weekly packout report each Friday during the shipping season (August through January). The estimated number of respondents for this collection of information is 78, with an estimated average reporting burden of 0.50 hours per response and an estimated annual reporting burden of 507 hours. This report will contain the following information for each variety: (1) The projected total packout; (2) the packout to date; (3) the volume sold export (shipped/not shipped), sold domestic (shipped/not shipped) and shipped auction; (4) the packout to date in controlled atmosphere (C.A.) storage and the volume in C.A. storage which is sold; and (5) the name and address of such handler.

In addition to these reports, the Committee recommended that each handler furnish, upon request of the Committee, a pear size and grade storage report, by variety, which will include the quantity of specific grades and sizes of pears in regular and C.A. storage. The estimated number of respondents for this collection of information is 66, with an estimated average reporting burden of 0.67 hours per response and an estimated annual reporting burden of 59 hours.

These reports contain valuable harvesting, packing and shipping information necessary for the Committee to carry out its program responsibilities and for handlers to make marketing decisions. Some Committee responsibilities include the collection of program assessments from handlers based on the quantities of pears shipped and making determinations as to whether Committee representation and production area

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districts accurately reflect pear production within the districts. The dissemination of the statistical information on production, packout and shipments to the industry by the Committee is essential to the sound and orderly marketing of Northwest fresh Bartlett pears.

The Committee also recommended that the following terms be defined in the rules and regulations for ease of reference and clarity:

Section 931.100 Terms—Each term used in this subpart shall have the same meaning as when used in the marketing agreement and order.

Section 931.101 Marketing agreement—"Marketing agreement" means Marketing Agreement No. 147, as amended regulating the handling of Bartlett pears grown in Oregon and Washington.

Section 931.102 Order—"Order" means Order No. 931, as amended (§§ 931.1 to 931.71), regulating the handling of Bartlett pears grown in Oregon and Washington.

Finally, the Committee recommended that an administrative rule be added addressing marketing agreement and order communications. This rule will appear at § 931.110 (7 CFR 931.110) and will specify that, generally, all reports, applications, submittals, requests, inspection certificates, and communications in connection with the marketing agreement and order shall be forwarded to the Northwest Fresh Bartlett Pear Marketing Committee at 813 SW Alder, suite 601, Portland, Oregon 97205–3182.

Based on the above, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Two of the handler report forms (the "Semi-Monthly Report on Destination of Shipments and Assessment Payments" and the weekly packout report) that are contained in the regulations to be added were approved by the Office of Management and Budget (OMB) in 1989 and were assigned OMB No. 0581–0092. This approval is valid through March 31, 1992. The third report form (the pear size and grade storage report) has been submitted to the OMB for approval based on current information on the number of respondents and estimated burden. Handlers will not be required to complete and submit this report form until it has been approved by the OMB.

Notice of this action was published in the **Federal Register** on October 10, 1991, [56 FR 51180]. The comment period ended October 25, 1991. No comments were received.

After consideration of all available information, including the recommendations made by the committee, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because the requirements included in this final rule need to be implemented as soon as possible. The 1991 shipping season has already begun and no useful purpose would be served by delaying the effective date of this action.

List of Subjects in 7 CFR Part 931

Bartlett pears, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 931 is amended as follows:

Note: These sections will appear in the annual Code of Federal Regulations.

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 931 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new subpart entitled "Subpart—Rules and Regulations" is added following § 931.71 to read as follows:

Subpart—Rules and Regulations

Definitions

Sec.
931.100 Terms.
931.101 Marketing agreement.
931.102 Order.

Communications

931.110 Communications.

Reports

931.120 Reports.

Definitions

§ 931.100 Terms.

Each term used in this subpart, unless otherwise defined, shall have the same meaning as when used in the marketing agreement and order.

§ 931.101 Marketing agreement.

Marketing agreement means Marketing Agreement No. 147, as amended, regulating the handling of Bartlett pears grown in Oregon and Washington.

§ 931.102 Order.

Order means Order No. 931, as amended (§§ 931.1 to 931.71), regulating the handling of Bartlett pears grown in Oregon and Washington.

Communications

§ 931.110 Communications.

Unless otherwise specifically prescribed in this subpart or in the marketing agreement and order, or unless otherwise required by the Committee, all reports, applications, submittals, requests, inspection certificates, and communications in connection with the marketing agreement or order shall be forwarded to:

Northwest Fresh Bartlett Pear Marketing Committee
813 SW Alder, suite 601
Portland, Oregon 97205–3182

Reports

§ 931.120 Reports.

(a) Each handler shall transmit to the Committee on the first and the fifteenth day of each calendar month during the shipping season the "Semi-Monthly Report on Destination of Shipments and Assessment Payments" containing the following information:

(1) The quantity of each variety of pears shipped by that handler during the preceding half month;

(2) The date of each shipment;

(3) The ultimate destination, by city and state, or city and country;

(4) The assessment payment due; and

(5) The name and address of such handler.

(b) Each handler shall transmit to the Committee each Friday during the shipping season the "Weekly Northwest Bartlett Packout Report" containing the following information for each variety:

(1) The projected total packout;

(2) The packout to date;

(3) The volume sold export (shipped/not shipped), sold domestic (shipped/not shipped) and shipped auction;

(4) The packout to date in controlled atmosphere (C.A.) storage and the volume in C.A. storage which is sold; and

(5) The name and address of such handler.

(c) Each handler shall furnish to the Committee, upon request, the "Pear Size and Grade Storage Report" containing the quantity of specific grades and sizes of pears in regular and C.A. storage by variety.

Dated: December 11, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–29998 Filed 12–18–91; 8:45 am]

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7 CFR Parts 1001, 1004, and 1124

[Docket No. AO–14–A65, etc; DA–91–013]

Milk in the New England and Certain Other Marketing Areas; Tentative Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR part	Marketing area	AO Nos.
1001	New England	AO–14–A65
1002	New York-New Jersey	AO–71–A80
1004	Middle Atlantic	AO–160–A68
1005	Carolina	AO–388–A5
1007	Georgia	AO–366–A34
1011	Tennessee Valley	AO–251–A36
1030	Chicago Regional	AO–361–A29
1033	Ohio Valley	AO–166–A62
1036	Eastern Ohio-Western Pennsylvania	AO–179–A57
1040	Southern Michigan	AO–225–A43
1044	Michigan Upper Peninsula	AO–299–A27
1046	Louisville-Lexington-Evansville	AO–123–A63
1049	Indiana	AO–319–A40
1065	Nebraska-Western Iowa	AO–86–A48
1068	Upper Midwest	AO–178–A46
1079	Iowa	AO–295–A42
1093	Alabama-West Florida	AO–386–A12
1094	New Orleans-Mississippi	AO–103–A54
1096	Greater Louisiana	AO–257–A41
1097	Memphis, Tennessee	AO–219–A47
1098	Nashville, Tennessee	AO–184–A56
1099	Paducah, Kentucky	AO–183–A46
1106	Southwest Plains	AO–210–A53
1108	Central Arkansas	AO–243–A44
1124	Pacific Northwest	AO–366–A20
1126	Texas	AO–231–A61
1131	Central Arizona	AO–271–A30
1135	Southwestern Idaho-Eastern Oregon	AO–380–A10
1138	New Mexico-West Texas	AO–335–A37

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rules.

SUMMARY: This tentative decision proposes a special III–A class and price for producer skim milk used to manufacture nonfat dry milk (NFDM) under the New England, Middle Atlantic and Pacific Northwest orders. The decision is based on industry proposals considered at a public hearing held July 30–August 1, 1991. Federal orders classify milk used to produce storable dairy products (hard cheese, butter, and NFDM) in Class III and price it at the Minnesota-Wisconsin (M–W) price. The Class III–A product price formula is provided because it will more adequately reflect the value of milk used to produce NFDM, than is reflected by the M–W price. The changes will facilitate the orderly disposition of the reserve milk supplies associated with these three markets.

The Secretary of Agriculture will determine whether producers favor issuance of the amendments on an interim basis.

DATES: Comments are due on or before January 21, 1992.

ADDRESSES: Comments (six copies) should be filed with the Hearing Clerk, room 1081, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612), requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments will facilitate the orderly disposition of the market's reserve milk supplies.

Prior document in this proceeding:

Notice of Hearing: Issued July 16, 1991; published July 22, 1991 (56 FR 33395).

Notice is hereby given of the filing with the Hearing Clerk of this tentative decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the New England and Certain Other marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulating of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this tentative decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 30th day after publication of this decision in the **Federal Register**. Six copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments and findings and conclusions set forth below are based on the record of a public hearing held at Alexandria, Virginia, on July 20–August 1, 1991, pursuant to a notice of hearing issued July 16, 1991 (56 FR 33395).

The material issues on the record of the hearing relate to:

1. Pricing producer milk used to manufacture butter and nonfat dry milk; and

2. The need for emergency action with respect to issue 1.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Pricing Producer Milk Used To Manufacture Butter and Nonfat Dry Milk

A special III–A class and price should be provided for producer skim milk that is used to manufacture nonfat dry milk (NFDM). Only the New England, Middle Atlantic and Pacific Northwest orders should be revised to incorporate this pricing change.

Twelve cooperative associations (Agri-Mark, Associated Milk Producers Inc. (AMPI), Atlantic Dairy Cooperative (ADC), Darigold Farms (Darigold), Dairymen's Creamery Association (DCA), Dairymen Inc. (DI), Independent Cooperative Milk Producers Association (ICMPA), Maryland and Virginia Milk Producers Association (Maryland-Virginia), Michigan Milk Producers Association (MMPA), Milk Marketing Inc., (MMI), United Dairymen of Arizona (UDA) and Wisconsin Dairies) proposed that 27 Federal milk orders be amended to provide a separate class and price for skim milk and butterfat that is used to produce butter and NFDM. Proponents requested that the amendments be provided on an emergency basis so they could be effective as soon as possible. They also proposed that the amendment be provided on a temporary basis and be subject to review at any hearing that might be held to consider revising the Minnesota-Wisconsin (M–W) price series.

Currently, with the exception of the Pacific Northwest order (Order 124), the orders involved in this proceeding classify milk used to produce storable dairy products (hard cheese, butter and NFDM) in Class III and price it at the M–W price. Order 124 provides a "snubber" product price which applies to milk in such uses wher the price

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established on the basis of such product price formula is lower than the M–W price.

In computing Class III milk prices under the New England, New York-New Jersey and Middle Atlantic orders (Orders 1, 2 and 4, respectively), seasonal adjustments are added to or subtracted from the M–W prices each month. The adjustments add to the M–W prices in the months of seasonally low milk production and high Class I demand and subtract from such prices when milk supplies are abundant and Class I needs are lower. Such plus and minus adjustments balance out annually.

Proponents offered a general statement regarding the proposal. In that statement a witness for the cooperatives contended that the M–W price, which is currently used under Federal orders to establish the value for producer milk that is used to manufacture butter and NFDM, does not properly reflect the value of the products made from such milk. In their opinion, the Class III–A product price formula they proposed, which would reflect monthly changes in market prices for butter and NFDM, would do a much better job than the M–W price in reflecting the marketplace value of milk so used.

At the hearing proponents clarified two aspects of the Class III–A proposal as it appeared in the hearing notice. First, they asked that the formula's NFDM price be the averaged price for Extra Grade NFDM for the Central States production area. They also deleted the fixed $1.22 make allowance figure for coverting 100 pounds of whole milk into butter and nonfat dry milk and proposed instead that the formula provide that the make allowance in effect under the dairy price support program when the Class III–A price is computed be used. They contended that this procedure would be more appropriate because the formula's make allowance would be automatically updated when the allowance is changed (up or down) in connection with the Secretary's duties under the support program.

As modified, the Class III–A price would be calculated by adding the amounts computed by multiplying the Chicago Mercantile Exchange Grade A butter by 4.2 and the Central States Extra Grade nonfat dry milk powder price by 8.2. From that sum the support programs' make allowance (currently $1.22) would be subtracted. The result would be the Class III–A price for producer milk used to produce butter and NFDM.

Proponents intended that the Class III–A price apply to all producer milk which is ultimately used to produce butter or NFDM. It would apply to producer milk that is separated into cream and skim milk if the cream is churned into butter and the skim milk is dried into power. Similarly, producer milk that is first condensed and ultimately dried would be classified as Class III–A milk and so priced under the cooperatives' proposal.

In support of this special class and price for milk used to make butter and NFDM, proponents argued that the M–W price, which is an average of competitive prices paid by Grade B manufacturing plants in Minnesota and Wisconsin, does not properly reflect the value of milk used to make butter and NFDM at all times. Proponents pointed out that the June 1991 M–W price was based on prices paid by 67 plants and most of those plants produced cheese. They noted that Minnesota cheese plants in 1990 accounted for 68 percent of all Grade B milk produced in the State, while such plants represented 88 percent of the manufacturing grade milk production in Wisconsin. Of the total amount of manufacturing grade milk purchased in the 2-state area during 1990, about 60 percent was bought from Wisconsin dairy farmers and 40 percent was purchased from Minnesota producers.

Conversely, proponents pointed out, less than 10 percent of the plants in the M–W survey are producing butter and NFDM. Such plants accounted for only 20 percent of the Minnesota Grade B milk and 1 percent of the Wisconsin manufacturing grade milk. Similarly, plants in Minnesota and Wisconsin produced only 9 percent of the nation's NFDM and 56 percent of the cheddar cheese.

Because of this, proponents argued that their product price formula should be used to establish the price under the orders for milk used to produce butter and NFDM. Based on the cooperatives' proposed formula, the value of milk used to produce butter and NFDM in June 1991 would have been 42 cents below the M–W price.

While butter and powder prices were fairly stable during most of 1991, cheese prices were increasing and driving up M–W prices. From March through August 1991, the M–W price increased $2.00 per hundredweight. These increases resulted primarily from higher market prices for cheese, which increased some 28 cents per pound during that same time period. A 28-cent increase in cheese prices represents a $2.80 per hundredweight increase in the price of milk. This meant that cheese prices could have supported further increases in the M–W price. The proponent cooperatives were especially concerned that the value of milk to produce butter/NFDM versus cheese would become even further misaligned in the future.

Generally, the national production of butter and NFDM has exceeded domestic consumption of these products, so the Federal government has accumulated substantial inventories of both products under the price support program. These government holdings of butter and NFDM, as well as the availability and price of California powder, effectively limit future price increases for these products, whereas no such limit exists for cheese prices.

Market prices for butter and NFDM tended to remain low relative to cheese prices through most of 1991. Butter was in a surplus situation and prices remained at or near the government support level. Prices for NFDM were held down by surplus powder production on the West Coast, where about 60 percent (37 percent in California alone) of the nation's powder is manufactured. Consequently, NFDM prices in the rest of the country increased by an amount equal to the cost of shipping powder from California, some 7 cents per pound or about 60 cents per hundredweight of milk equivalent.

In addition, the government was purchasing large quantities of butter, and as of July 12, 1991, had accumulated 565 million pounds of uncommitted butter inventories available for sale at not less than $1.06 per pound. On the other hand, the government was purchasing only small quantities of NFDM and no cheese. Uncommitted inventories of NFDM and cheese, as of July 19, 1991, totaled 285 and 33 million pounds, respectively. On May 14, 1991, the Government withdrew sales offerings for these two products.

In the event that the government offered to sell its stocks of cheese and NFDM back to the dairy industry it could have resulted in lower NFDM prices relative to cheese prices in view of the wide difference in commercial sales of these products. Total 1990 U.S. commercial disappearance of NFDM, for example, accounted for only 695 million pounds (79 percent) of the more than 877 million pounds produced. Conversely, commercial disappearance of American cheese represented 2.78 billion pounds (96 percent) of the more than 2.89 billion pounds of cheese manufactured. (Official notice is taken of Dairy Products Annual Summary for 1990.)

These marketing circumstances resulted in a substantial tilt between the M–W price (which was largely being

driven by cheese prices) and the value of milk used to produce butter and NFDM. In situations like this, cooperatives and other market suppliers attempt to channel their reserve milk supplies to the most remunerative outlets, which are cheese plants. In certain markets cooperatives have a very limited opportunity to do this either because the cheese plants are not favorably located or the nearby plants do not have sufficient capacity available. In these situations, the residual milk supplies normally end up at plants processing butter and NFDM, which are lower-valued in the marketplace relative to cheese. However, the handlers (primarily cooperatives) responsible for pooling the milk under the order must account to the pool at the cheese-driven M–W price. This reduces the manufacturing margins of butter/NFDM operators.

The manufacturing margins of butter/NFDM operators declined significantly during 1991. For January the margin was 87 cents per cwt. and in September it was minus 10 cents. Also, for the recent 12-month period of October 1990-September 1991, the processing margin averaged only 76 cents per cwt. All such margins are below the $1.22 make allowance that the government uses in connection with its price support activities. These data show that the financial situation for such operators worsened considerably during the year.

In certain markets, cooperatives limited to butter/NFDM manufacturing are marketing the major portion of the market's reserve milk supplies. When this happens, the members of these cooperatives, relative to other producers supplying the market, are actually being penalized because the returns from the manufactured dairy products at prevailing market prices are below the price level at which the association is accountable to the marketwide pool. In such cases, they are bearing an unfair share of the costs associated with disposing of the market's reserve milk supplies.

Comparisons of the net returns from milk used to make butter and powder or cheese with the M–W price indicate a much closer relationship between cheese values and the M–W price than between butter/NFDM values and the M–W price. For the 45-month period of January 1988-September 1991, the value of milk used to make cheese averaged 9 cents per hundredweight above the M–W price while the value of milk for butter/powder manufacturing averaged 31 cents per hundredweight below the M–W price. In 1988, cheese values averaged only 2 cents per hundredweight less than the M–W price whereas butter/powder milk was valued 19 cents lower. The value of milk for cheese was 18 cents above the M–W price in 1989 while butter and nonfat dry milk values were 38 cents higher. In 1990, cheese values averaged 9 cents per hundredweight above the M–W price while butter/powder values were 96 cents below that level. Similarly, for January through September 1991, the returns from cheese processing averaged 11 cents above the M–W price while the returns from milk used to produce butter/NFDM was 52 cents per hundredweight below the M–W price level. The numbers for the last two years clearly indicate why butter/powder processors are complaining.

While the returns established from product prices in the marketplace for milk used to make hard cheeses generally were higher than for milk used to produce butter and NFDM, this was not the case in each of the 45 months surveyed. For example, cheese milk reflected greater values in 27 of the 45 months and milk for butter/powder production reflected higher values in the other months. However, the annual averages mask the wide range of value differences reflected by the dairy product prices. For example, in November 1989 the value of milk for butter/powder production exceeded the value of milk for cheese processing by $1.63 per hundredweight. Just two months later in January 1990, the market prices for dairy products reflected a value of milk to make cheese that was $3.35 per hundredweight greater than the value of milk of butter/powder manufacturing.

With milk prices generally above supports during the 45-month period, there have been dramatic swings in the market prices for cheese and NFDM. Powder prices varied in each year of 1988–1991 by 20, 79, 47 and 9 cents per pound, respectively. On a fluid equivalent basis, such variations reflect annual value changes for milk used to make powder which represent $1.64, $6.48, $3.85 and $.74 per hundredweight, respectively. Also, cheese prices ranged form high to low in each such year by 21, 46, 40 and 28 cents per pound, respectively. Such veriations represent value changes during each year of $2.10, $4.60, $4.00 and $2.80 per hundredweight, respectively.

The foregoing analysis shows that cheese values generally were higher than butter/powder values. However, in some months the opposite was true. It is likely that similar fluctuations will occur in the future. The proponent cooperatives were primarily concerned with protecting their member dairy farmers in situations when they incurred losses because the proceeds from the sale of the butter and powder made from milk would not equal the amount they were charged under the order for such milk. Accordingly, they agreed to share with the market's other dairy farmers any gains associated with butter/NFDM processing operations when market values for such products exceed the Class III price in exchange for sharing their losses in any month when market values for butter and nonfat dry milk are below such price.

Powder prices increased about 20 cents per pound from September to October 1991. If the market prices for powder hold firm, increases of $1.64 per hundredweight for milk used to make butter/NFDM could be expected. If such prices advance further, it is possible that when the Class III–A price becomes effective, the price for skim milk used to make NFDM under the product price formula adopted herein could exceed the skim value of the M–W price.

The dramatic increase in powder prices during October was the result of the hot dry weather in California. Milk production dropped significantly and many dryers ceased operations because of insufficient milk supplies. Commercial buyers were having difficulty locating enough powder to cover their needs. This situation is expected to be temporary, with milk and powder production returning to normal when temperatures cool. (Official notice is taken of the weekly Market News reports issued from August 23, 1991, through November 29, 1991.)

The preceding discussion of market prices for the major Class III dairy products (butter, nonfat dry milk and cheese) shows that these prices do not always move together. The price changes do not always occur in the same month, in the same direction or with the same magnitude. It also shows that cheese prices are influenced primarily by strong demand for cheese and such changes are rapidly reflected in M–W prices because there are extensive cheese manufacturing operations in the 2-State area. However, market prices for NFDM are heavily influenced by marketing conditions in California, as proponents contended. Because of the limited amount of powder processing plants in the Midwest, changes in market prices for powder are not as quickly reflected in M–W pay prices.

It is evident from the foregoing that the market values for NFDM are not appropriately reflected by the M–W price at all times. In recognition of the

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potential for such misalignment problems in the future, it is concluded that a separate class and a separate product price formula should be provided for producer skim milk which is processed into NFDM.

No such special pricing arrangement need be provided for cream which is separated from producer milk and used to manufacture butter. The issue of the appropriate value for butterfat was addressed at a national hearing held in 1990. Dairy industry representatives testified that handlers (cooperatives and pool plant operators) were incurring substantial losses in handling surplus cream. On the basis of that hearing record, the formula for computing butterfat differentials under Federal orders was revised to reflect the more realistic values of butterfat in the marketplace. The change resulted in placing more of the value of cream on the skim milk portion and less value on the butterfat contained in such cream.

The following comparative analyses show how the recent change in the formula to compute the butterfat differential has affected the order values of milk components and alleviated the financial problems facing handlers in disposing of surplus butterfat in cream. From July to August 1991, the M–W price increased 51 cents per hundredweight. Using the new formula to compute the butterfat differential, the butterfat differential went down 2 cents per pound even though the butter price was unchanged from July to August. The lower value for butterfat resulted in an increase of 58 cents per hundredweight in the skim value even though the market price for powder went down fractionally. Consequently, the order value for a 48,000-pound tanker of 40-percent cream actually decreased by $106 from July to August.

Comparatively, if we analyze the same scenario but use the prior formula to compute the butterfat differential (.115× the average wholesale selling price of Grade A 92-score butter at Chicago), an entirely different financial picture unfolds. For instance, since the butter price did not change from July to August, the butterfat differential would be the same in both months. Under the previous formula, the butterfat differential for July would have been 9 cents per pound higher than under the current formula and for August it would have been 11 cents higher. With the butterfat value virtually unchanged, most of the 51-cent increase in the M–W price from July to August would be reflected in the skim value even though the powder price decreased fractionally. If the prior formula were in effect, the order value for a 48,000-pound tanker of 40-percent cream would have increased by $225 from July to August.

The real significance of the monetary change is highlighted by comparing the order values of the 48,000-pound tanker of 40 percent cream in July and August 1991 using the new butterfat differential formula with such values using the prior formula. For instance, using the current butterfat differential, the load of cream would be valued $1,578 and $1,907 lower under the order in July and August, respectively, when compared with using the prior butterfat differential. Thus, the cream and butterfat pricing problems of handlers have been dealt with previously.

There is record evidence to reinforce this conclusion. The Darigold witness testified that the change in the butterfat differential, which became effective under Federal orders in December 1990, made the cooperative's butter operations profitable. An exhibit entered into the record shows that for January–May 1990 Darigold lost $2.3 million manufacturing butter, while in those same months of 1991 the cooperative made $2.2 million churning butter. The Darigold witness attributed the change in the cooperative's financial picture regarding its butter operations to the change in the butterfat differential and stated that he expects the favorable results to continue into the future.

The evidence on this record supports the adoption of a special class and price for skim milk used to manufacture NFDM. The special Class III–A pricing should apply, however, only in a market that meets these criteria: (1) A substantial amount of NFDM is produced; (2) there are no practical cheese outlets available for handlers to use in disposing of the market's reserve milk supplies; and (3) the lower returns from milk used to produce NFDM are not being shared equitably by all producers. For the reasons described later, it is concluded that only the New England, Middle Atlantic and Pacific Northwest markets meet these criteria.

The Class III–A skim value would be computed, by subtracting a processing allowance of 12.5 cents from the powder price and multiplying the result by 9. For Orders 1 and 4, the Extra Grade Powder Price for the Central States production area should be used. For Order 124, the Grade A powder price for the Western production area should be used. In August 1991, the skim value of Class III–A milk would have been $7.27 per hundredweight under Order 1 and $7.29 under Order 4. For Order 124, the skim value would have been $6.89 per hundredweight. This compares with a $7.89 skim value under orders that provided the M–W price as the Class III price and $7.63 under Order 124, which provided a lower butter/powder "snubber" price for Class III milk in that month.

In Orders 1 and 4, the skim values for Class III–A milk would have averaged about 19 cents per hundredweight less in 1990 and about 9 cents per hundredweight less for the first 10 months of 1991 under the new pricing formula adopted herein. For Order 124, the Class III–A skim value would have averaged about 35 cents per hundredweight less in 1990 and 18 cents per hundredweight less during January–October 1991.

The skim values for Class III–A milk under the product formulas provided for Orders 1, 4 and 124 would have averaged somewhat lower than such values for Class III milk in both 1990 and 1991. However, it is noteworthy that for Orders 1 and 4 the values would have been lower in 5 months and higher in 7 months of 1990 and lower in 4 months and higher in 8 months thus far in 1991. For Order 124, skim values under the new formula for NFDM would have been lower in 5 months and higher in 7 months of 1990 and lower in a 6 months and higher in 4 months so far in 1991.

The formula provides a factor of 9 because if 100 pounds of skim milk are dried they will yield 9 pounds of dried product. Such factor is reasonable and widely accepted by the dairy industry. The record indicates that it costs about 12.5 cents a pound to make skim milk powder. A 12.5-cent-per-pound drying cost is compatible with industry experience and also with the processing allowance formerly recognized under the support program in connection with drying whey. Such factor is now used in the computation of the Class II formula price under Federal orders.

The plant operating cost information in this record is not exhaustive. However, there is sufficient data to indicate that the $1.125 make allowance provided in the formula for drying a hundredweight of skim milk into powder is not so high that it would create an incentive for handlers to divert milk to drying plants rather than making the milk available to other plant operators processing dairy products demanded by consumers. On the other hand, it is not so low that such plants would be unable to continue functioning as outlets of last resort for distress milk which exceeds the needs of the market's handlers.

The record also indicates that the California Milk Stabilization Branch regularly collects data on operating costs for the purpose of establishing

make-allowance costs under the State's milk program. The latest survey covered plants that processed 98 percent of the nonfat dry milk processed in that area. The results of that survey indicate that for a wide range of plant volumes the weighted average per pound cost of producing NFDM was 12.87 cents. Using a yield factor of 9, a manufacturing cost of $1.16 per hundredweight of skim milk is reflected.

There was considerable opposition to the cooperatives' proposal. Many of the objections were of a general philosophical nature and opposed changes in all orders. Others specifically opposed the adoption of the proposal in a particular market or markets. Any opposing arguments raised by objectors in connection with a specific market where the new formula is provided will be addressed in the decision when marketing conditions are analyzed with respect to that order. In that regard, the marketing area situations will be reviewed in the same order in which they were presented at the hearing. The general opposing arguments will be dealt with at the end of the findings and conclusions involving the individual markets.

Orders 65 (Nebraska-Western Iowa), 68 (Upper Midwest), and 79 (Iowa) marketing areas. The hearing notice indicated that proposed amendments to the Nebraska-Western Iowa, Upper Midwest and Iowa orders would be considered at this hearing. However, shortly after the hearing opened a fax transmittal of a letter from AMPI, the proponent who requested the inclusion of the proposed changes for these three orders, was received as an exhibit into the record by the Administrative Law Judge. In that letter, AMPI withdrew its support for the Class III–A proposal as it pertains to these three orders. Since no other hearing participant supported the proposed changes for these markets, no further action is necessary.

Order 4 (Middle Atlantic) marketing area. Order 4 should be amended to provide the special Class II–A price. The ensuing findings and conclusions indicate that the criteria set forth previously to justify the need for such changes have been met in this market.

The Class III–A price formula was supported for Order 4 by the Pennmarva Dairymens Federation (which includes ADC, DI, Maryland-Virginia and Valley of Virginia cooperatives); Atlantic Processing Inc. (which includes Mount Joy, Cumberland Valley, ADC and Dairylea cooperatives); and Eastern Milk Producers Cooperative. These cooperatives supply more than 90 percent of the milk pooled under Order 4.

The Order 4 cooperatives embraced the general statement advanced on behalf of the 12 proponent cooperatives for 27 markets and testified specifically about marketing conditions in Order 4. In that regard, the proponents' witness testified that sufficient cheese capacity is not available to Order 4 handlers to dispose of all of the market's reserve milk supplies. He also contended that such handlers must rely on butter/NFDM outlets to efficiently and effectively clear the market of milk supplies which exceed the needs of processors.

He further argued that in performing this market-clearing function in many months cooperatives actually are subsidizing the market's other producers when there is an imbalance between the Class III price under the order for milk used to produce butter and NFDM and the returns the cooperatives receive from the sale of such products in the marketplace. This happens because the cooperative associations are obligated to the marketwide pool for the milk at the Class III price even though the dairy products manufactured from such milk are of lesser value. When this occurs, the market's uniform prices, which are shared by all producers, are artificially inflated by the amount by which the Class III price for the milk exceeds the market value of the products. Any such shortfalls are reflected in the form of lower reblended prices to the member producers of the processing cooperatives, the Order 4 proponents' insisted.

Since there are only two handlers processing NFDM in the Order 4 market, milk used to produce whole milk powder, which would not be a Class III–A products, is included with NFDM to establish a market total for dry milk powders. This results in three or more Order 4 handlers producing all types of dry milk powders, thus the data can be published.

Order 4 has been a 3-class market only since April 1, 1991. During the ensuring April-June quarter Order 4 handlers used 267 million pounds of milk to make all types of powder. This represented almost 17 percent of the milk receipts from producers during those three flush milk production months.

In that same April-June quarter, Order 4 handlers used more of their milk receipts to produce dry milk powers than they did to make hard cheeses. For 1990, 721 million pounds of milk were used to produce dry milk powders while only 633 million pounds of milk were used to make cheese.

There is considerable information in the record which indicates that a substantial amount of NFDM is produced by Order 4 handlers. The total production of NFDM in Order 4 is accounted for by two Pennmarva cooperatives, ADC and Maryland-Virginia. ADC operates a butter, powder and condensed milk processing plant located at Mt. Holly Springs, Pennsylvania. The Holly plant was built in 1977. Such plant has been relied upon to dispose of the market's reserve milk supplies since that time. An evaporator was added in 1984 to expand the plant's operating capacity.

In June 1991, the plant operated at 69 percent of capacity and processed 21.6 million pounds of skim milk into NFDM. This represented 45 percent of the total volume processed at the plant. Most of the plant's other milk receipts were used to produce condensed milk that was disposed of for Class II purposes. The Holly plant's operating cost in June was $1.51 per hundredweight.

In May 1991 the Holly plant operated at 89 percent of capacity and processed 34.8 million pounds of skim milk into NFDM (57 percent of the plant's total volume processed). The 61 million pounds of milk processed by the Holly plant of ADC represented 4.5 percent of the market's producer milk used for manufacturing purposes. The plant operating cost during May was $1.31 per hundredweight.

During the current ADC fiscal year (August 1, 1990 to June 30, 1991) the Holly plant processed 250 million pounds of raw milk into NFDM. The average plant operating cost for the year was $1.52 per hundredweight, utilizing 69 percent of the plant's capacity.

Maryland-Virginia operates the other butter/powder plant in Order 4. The plant is located at Laurel, Maryland. Although no operating cost information was provided for that facility, the witness for Order 4 proponents indicated that the processing operations at Laurel were comparable to those for the Holly plant of ADC. In that regard, he testified that the Laurel plant had similar operating capacity and processed a similar range of dairy products.

In view of the larger quantities of milk that are processed at butter/powder plants to clear the Order 4 market's excess supplies, it would not be feasible for the cooperatives handling such supplies to channel the milk to local cheese plants because there is not adequate cheese plant capacity available to accomplish this.

Actually, more cheese was processed by Order 4 handlers in 1962 than was so processed in 1990. (Official notice is taken of the Annual Summary of Federal

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Milk Order Market Statistics for 1982.) Although 1990 cheese manufacturing by Order 4 handlers was up 10 percent from 1987, the increase was accomplished by utilizing existing capacities more fully because only one new cheese plant has been opened. That was a cream cheese facility with limited capacity which is located in Cumberland County, Pennsylvania.

Currently under Order 4 the negative impact resulting from any disparities between the regulated prices for Class III milk and the marketplace value of the butter and powder produced from such milk has fallen on the members of ADC and Maryland-Virginia because they are the only handlers involved in manufacturing these dairy products. The classification and pricing change adopted herein will better align the price and the value of milk used to produce NFDM. By pooling the value and sharing the proceeds uniformly among all of the market's producers, a more equitable solution will be provided.

As indicated, Order 4 provides seasonal adjustments, which vary from month to month, to Class III prices. These same adjustments should also apply to Class III–A prices.

Order 4 proponents asked that the uniform price for excess milk continue to be the Class III price. It seems reasonable to grant producers' wishes regarding the computation of the excess milk price.

There was only limited opposition to the proposal for Order 4. The National Farmers Organization (NFO), a national bargaining association of dairy farmers that has some milk pooled on this market, contended that the Order 4 cooperatives decided several years ago to invest their members' capital in butter/NFDM manufacturing and that they have been quite profitable as evidenced by the thirteenth checks they have paid to their members over the years. NFO argued that these proponent cooperatives should not ask other producers to take lower prices now because they made bad decisions in the past. The issue in this proceeding, however, is whether the regulated price for milk under the order reasonably reflects the value of the dairy products made from such milk.

One of the major objections raised by opponents was that this pricing change would lower pay prices to producers. Since all of the Order 4 producer milk that is used to make NFDM is processed at the plants of Pennmarva member cooperatives, most, if not all, of any reduction in Order 4 producer prices resulting from the pricing change adopted herein, will be returned to the member producers of ADC and Maryland-Virginia in the form of increased cooperative dividends or reduced processing losses which will result in higher reblended prices.

Order 1 (New England) marketing area. Order 1 should also be amended to provide the special Class III–A price. The following findings show that marketing conditions under the New England order indicate that the criteria defined previously as a basis for justifying adoption of the proposal have been met.

The cooperatives' Class III–A proposal was supported for Order 1 by four dairy farmer cooperatives supplying milk for the New England market. The Agri-Mark witness for Order 1 proponents spoke on behalf of Dairylea, Eastern and St. Albans in addition to Agri-Mark. These four cooperatives represent more than 60 percent of the producers supplying the New England market.

The Order 1 spokesman supported the general statement offered on behalf of the 12 proponent cooperatives which outlined the proposal and explained how the new class and price provisions were intended to work in the 27 orders where the changes were proposed. His testimony focused on why this change should be adopted for the New England market.

The Agri-Mark representative testified that his cooperative assumes the primary responsibility for disposing of the reserve milk supplies associated with Order 1. This is accomplished through the handler's butter/NFDM operation at West Springfield, Massachusetts, which can handle up to 60 million pounds of milk per month and has served as an outlet for the market's reserve milk supplies for more than twenty years. In 1984, the plant's operating capacity was expanded to its present level.

The witness presented information showing significant variations in the amount of milk received for processing at West Springfield. He contended that the plant's receipts of milk vary seasonally, as well as on weekends and holidays. These dramatic swings in milk receipts result in little or no butter/powder production in the late summer to as much as 40 million pounds per month or more in the winter and spring months.

Agri-Mark contended that the large fluctuations in receipts at West Springfield make it impractical for the cooperative to consider investing in a new cheese plant to supplement its cheesemaking capacity at Troy, Vermont. He testified that it would be too inefficient to build a cheese plant with sufficient capacity to handle the milk receipts at peak times while operating at low levels of capacity sometimes and having no milk to process at other times. Cheese plants in New England are unable to operate effectively with such fluctuations, the cooperative's spokesman claimed. They must rely on regular steady flows of milk to operate profitably. He testified that butter/powder plants are able to handle milk components (skim milk and butterfat) better than cheese plants because they are less affected by such variations.

The Agri-Mark witness also claimed that the large fluctuations in receipts at the West Springfield plant result in higher than normal operating costs and sizable losses for his association's members. For the July 1989–June 1990 fiscal year, Agri-Mark's manufacturing costs averaged $1.78 per hundredweight and for the July 1990–June 1991 fiscal year, they averaged $1.43 per hundredweight. Agri-Mark estimated that it will show a $4 million loss in the 1990–1991 fiscal year primarily because of its West Springfield operations.

Proponents' spokesman indicated that the cooperative does not intend to allow these losses to continue. Agri-Mark will do what it must to minimize future losses to its members. He indicated that the cooperative will not make its West Springfield plant available to manufacture the market's residual milk supplies if the order Class III price for milk exceeds the market value of the dairy products produced from such milk.

The Order 1 spokesman further contended that adoption of the proposal would not make the West Springfield operation profitable because Agri-Mark's manufacturing costs far exceed the current support program make allowance of $1.22 per hundredweight. It will, however, minimize the disparity between the order Class III price for milk used to produce butter and powder and the market value of such products.

Agri-Mark testified that disorderly marketing conditions already prevail in the New England market but are likely to deteriorate further if nothing is done. Early in 1991 Agri-Mark began paying 50 cents to $1.00 per hundredweight below the Class III price for milk it bought from outside sources for processing at West Springfield. If the milk handling losses persist, the cooperative intends more drastic action, which could involve downsizing the West Springfield operation somewhat or ultimately closing the plant entirely. If that happens, Agri-Mark testified that it would not take on new members and would aggressively seek new customers in the marketplace.

Record data indicate that 234 million pounds of milk were processed into butter and NFDM at the West Springfield facility in 1990. This represented 4.6 percent of the Order 1 producer receipts in that year and about 10.2 percent of the market's pooled milk used for manufacturing. Thus, it is obvious that the West Springfield butter/powder plant of Agri-Mark is performing a vital role in disposing of the reserve milk supplies associated with the New England market.

The record also shows that three Order 1 cooperative (Agri-Mark, Cabot and St. Albans) were making butter in 1990. Since there are at least three handlers involved in producing butter, the market's data for butter production are available. During 1990, Order 1 handlers used 43.6 million pounds of cream to produce butter. Of that total, 39.7 million pounds (or 91.3 percent) were used for butter manufacturing at Agri-Mark's West Springfield plant.

Since only Agri-Mark and St. Albans are involved in producing NFDM in the New England market, the data for nonfat dry milk are not published. However, since butter and powder production are closely related, it is not unreasonable to assume that the 194 million pounds of skim milk dried at Agri-Mark's West Springfield plant also would represent about 90 percent of the NFDM processed by Order 1 handlers. Based on that assumption, Order 1 handlers would have used about 215 million pounds of skim milk to make NFDM. Such a figure represents 4.2 percent of the Order 1 pooled receipts from dairy farmers during 1990 and 9.4 percent of the market's milk that was used for manufacturing.

Order 1 handlers used between 4 and 5 times as much milk to produce hard cheeses as they did to make butter and NFDM in 1990. Such handlers used 22 percent of their milk supplies to make cheese that year. It is evident that the market's suppliers deliver the milk to West Springfield only if the milk cannot be disposed of to plants making dairy products demanded by consumers.

Agri-Mark has a cheese plant at Troy, Vermont. Since September of 1990 the cooperative has operated the plant 7 days a week because returns from the sale of cheese were far more lucrative than from butter and powder. Agri-Mark testified that even if this proposal had been in effect last year the cooperative would have operated its Troy cheese plant 7 days a week in an attempt to move as much of its milk as possible into cheese.

While there is a significant amount of milk processed into cheese by Order 1 handlers, the more important factor is that there is really no additional cheese processing capacity available nearby to accommodate the milk supplies being manufactured at the butter/powder plants of Agri-Mark and St. Albans.

Furthermore, Kraft testified that due to its inventory position and consumer demand the handler has sold milk away from its cheese plants since April 1991. Kraft buys all the cheese manufactured at Agri-Mark's Troy plant. After the spring flush in 1991, Kraft asked Agri-Mark to cut its plant production schedule at Troy to 5 days a week even though the cooperative wanted to maintain the plant's 7-day work week. At the same time, Kraft reduced its cheese production by 25 percent at its Middlebury, Vermont, plant for the same reasons. This situation is expected to continue through this fall's shipping season. These actions are expected to further limit the amount of Order 1 milk that is processed into cheese. Most, if not all of the milk that is not accommodated at the Middlebury and Troy cheese plants will end up at West Springfield because there really is no other reasonable alternative outlet.

It is possible that the displaced Order 1 milk could be handled at New York cheese plants. However, such dispositions would involve several hundred miles of transportation costs at great expense to dairy farmers. In addition, those handlers will view the milk as distress milk and are likely to offer to buy such milk only at levels below the Class III price. In such cases, the cooperatives' net return may be better at the local butter/powder plants. Also, Kraft is a major cheese manufacturer in New York and it is possible that neither Kraft nor other cheesemakers would be willing and/or able to accommodate additional milk supplies.

The adverse impact resulting from the current disparity between the prices that handlers must account to the pool for the milk used to produce butter and nonfat dry milk and the value of the products made from such milk now falls on the producer members of Agri-Mark and St. Albans because these cooperatives are the only Order 1 handlers making such products in the New England market. Although the change adopted in this decision could lower the blend price slightly to all producers, it is not likely to alter the total money received by Order 1 dairy farmers because the cooperatives' reblended prices would be higher since their processing losses on milk used to produce NFDM would be reduced.

Order 1 provides seasonal adjustments to Class III prices. As proponents requested, the same plus minus adjustments which vary from month to month, will apply to Class III–A prices.

NFO, a bargaining association which does not operate manufacturing plants and markets some milk under Order 1, opposed adoption of the proposal for Order 1. They claimed that Agri-Mark made a bad decision in 1984 when it expanded its West Springfield plant and should not expect the market's other producers to accept lower prices now to cover its butter/powder losses. Actually, in the past the income of cooperatives producing butter and powder have been reduced any time that the Order's Class III price exceeded the market value of the dairy products in the class. In such cases, income is transferred from cooperatives manufacturing butter/NFDM from the market's reserve milk supplies to those not involved with manufacturing such dairy products. Pooling the lower or higher value of milk used to make NFDM and sharing that value among all of the market's dairy farmers will provide a more equitable solution to this problem.

Order 2 (New York-New Jersey) marketing area. The special Class III–A price should not be provided for the New York-New Jersey market. The following findings and conclusions indicate why it is not necessary to revise the classification and pricing provisions of Order 2 for producer skim milk that is used to make NFDM to preserve orderly milk marketing under that order.

The cooperatives' Class III–A proposal was supported for Order 2 by five cooperatives (Agri-Mark, ADC, Dairylea, Eastern and Upstate). These producer groups represent only about one-third of the Order 2 pool milk.

The Eastern spokesman for Order 2 proponents supported the general statement introduced on behalf of the 12 proponent cooperatives and proceeded to show why the special Class III–A price should be provided for Order 2. He testified that even though butter/NFDM manufacturing represents a minor outlet for Order 2 milk and thus would impact producer prices only incidentally, such plants serve as an important last resort outlet for the market's reserve milk supplies.

In 1990, about 6.6 billion pounds of milk received from producers was used for manufacturing purposes. Of this total, Order 2 handlers used only 129 million pounds (1.9 percent) of skim milk to manufacture NFDM. Measured in terms of the total milk pooled, NFDM processing by Order 2 handlers represented only 1.1 percent. Also, Order 2 handlers used 31 percent less

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milk to produce NFDM in 1990 than they did in 1987.

As Order 2 proponents testified, the market's reserve milk supplies primarily are used to produce hard cheeses. During 1990, Order 2 handlers used 3.6 billion pounds of milk to produce cheese. This represents 55 percent of the pool receipts used for manufacturing and 32 percent of the total pool milk. In addition, Order 2 handlers used 3.4 percent more milk to make cheese in 1990 than they did in 1987.

The record also indicates that because of concern about the availability of future Northeast milk supplies, two New York cheese plants recently closed. A plant at Skaneateles Junction was closed last year. Also, about two years ago Leprino Foods Company, a major cheesemaker in Order 2, closed one of its plants and expanded the capacity at its two other plants. It is unclear from the record whether these plants are currently operational. However, it appears that the limiting factor on cheese production in the New York market at the present time is the availability of milk for processing rather than the capacity at cheese plants.

In support of the proposal for Order 2, the Eastern representative contended that if the special pricing formula is adopted for Orders 1 and 4 it will be necessary to adopt the change in the New York-New Jersey market to maintain price alignment among the Federal orders in the Northeast region. It is not anticipated that the price changes resulting from the adoption of this special class and price for milk used to manufacture NFDM under Orders 1 and 4 will be of such magnitude or duration that they will interfere unduly with the price alignment situation of competing handlers in the Northeast.

It is evident from the foregoing that NFDM production is not a significant use of milk under Order 2. While it may provide an outlet of last resort for certain handlers, it is not imperative that the proposal be adopted for this market to preserve orderly marketing, and no order changes are warranted.

Order 124 (Pacific Northwest) marketing area. The special Class III–A price should be provided for the Pacific Northwest market. The ensuing findings indicate why it is necessary to revise the Order 124 classification and pricing provisions to preserve orderly milk marketing under such order. The criteria established previously as a basis for justifying this pricing change have been met in this market.

As indicated, Order 124 provides that the price for Class III milk shall be the M–W price for the month unless the butter/powder "snubber" price results in a lower price. The "snubber" price formula, which provides only a 48–cent make allowance, was the effective price for Class III milk under the Pacific Northwest order for August and September 1991. Also, it was the Class III price for 6 months in 1990.

The Class III–A price formula was supported for Order 124 by Darigold and Farmers Cooperative Creamery (FCC). These two producer groups represent about 77 percent of the milk pooled under the Pacific Northwest order. The Darigold spokesman for Order 124 proponents endorsed the general statement entered into the record on behalf of the 12 proponent cooperatives. He then testified about why this pricing change should be provided under the Pacific Northwest order.

He claimed that the current Federal order system establishes prices for milk used to produce butter and powder that have no relationship to the value of such finished products in the marketplace. Class III prices for milk are higher in some months and lower in others than the value of the butter and powder made from the milk. The witness indicated that in a market that produces as much butter and powder as is the case in Order 124, it would be more appropriate that all producers receive prices which reflect actual milk product values both when they are higher and when they are lower than the present order's Class III prices.

The witness also testified that the nation's powder markets are influenced heavily by California processors who are able to set low market prices because the California State milk order has consistently provided lower Class 4a prices for butter and NFDM, which are based on commodity market values rather than the Federal order Class III prices, which essentially are based on M–W prices.

The ability and willingness of California processors to set low powder market prices is a concern to powder processors who buy milk priced under Federal orders. Order 124 proponents testified that they are caught in the middle between the traditional Federal order concepts and the California State program. He testified that Darigold and FCC have no alternatives for processing their members' milk, so they are forced to suffer losses.

The Darigold witness testified that powder is truly a residual dairy product in that the milk must be processed whether it is or is not profitable to do so. He further contended that in some markets handlers may have the option of redirecting milk from butter-powder plants into cheese plants when the market prices tilt against powder, but in Order 124 there is very little opportunity to do this.

Order 124 proponents insisted that considering the supply and demand conditions in the West the Federal order prices for milk used to produce butter and powder have not been realistic. In their opinion, the Class III–A price formula would correct the situation where Order 124 handlers processing butter and NFDM are forced to "buy high and sell low" in many months.

Darigold's witness testified that the principal reasons for the adoption of this proposal are economic. He indicated that Darigold lost a lot of money on its butter/powder operations over the past few years. During the recent 12-month period of October 1989 through September 1990, the association lost nearly $17 million. He stated that prices for milk used to make butter and powder would have averaged 32 cents lower under proponents' formula during the last three and a half years. This would have lowered the market's blend prices about 12.8 cents per hundredweight. However, in 9 of the 42 months, the market's blend prices would have been higher.

Market data show that 57 percent of the market's 5.7 billion pounds of producer milk in 1990 was priced as Class III milk. About 30 percent of the market's Class III milk was processed into cheese (about 17 percent of all milk pooled). The remaining 70 percent of the Class III milk (40 percent of the pool's receipts) was processed into butter and powder. They also show that Order 124 handlers used 1.9 billion pounds of milk to make NFDM.

There are three milk drying plants currently operating in Order 124. Darigold operates drying plants at Chehalis and Lynden, Washington. FCC operates a powder plant at McMinnville, Oregon. During 1990, 1.745 billion pounds of milk were processed into powder at Darigold's plants at Chehalis and Lynden.

Only about 35 percent of the market's milk supply is needed by fluid operators. The remainder is disposed of by manufacturing processors. There is limited opportunity to process these large amounts of excess milk at other than the powder plants of Darigold and FCC.

Because of the large quantities of milk that are processed into NFDM by Order 124 handlers, it would not be possible for such processors to redirect this milk to cheese plants. If cheese plant capacity had been available over the last three and a half years, the Order 124 cooperatives who lost sizable amounts of money processing powder would

have taken advantage of these facilities because the order pricing was tilted in favor of cheese and against butter/powder manufacturing.

The Darigold witness testified that his cooperative has decided to build a new powder plant at Sunnyside, Washington. He indicated that this may be the first step in possibly a two-stage program which eventually could involve building a new cheese plant. The drying capability must come first because a handler must be able to dry the whey resulting from cheese processing.

In addition, the cooperative handles about 6 million pounds of milk per day at its drying plants. Only about one-third of that total could be accommodated at the new cheese plant. This would still leave Darigold with a sizable amount of milk moving to powder.

The cooperative also indicated that the cheese market in the Western region is very limited for Order 124 handlers. Because of the pricing situation under the California State order, any cheese processed by Darigold would most likely end up being sold to the government under the price support program.

Since only Darigold and FCC are producing butter and NFDM in Order 124, any adverse impact resulting from the differences between the order pricing of milk used to produce such products and the market value falls on the dairy farmer members of these two organizations. Adoption of the Class III–A formula will provide more equitable pricing under the order. It will eliminate the subsidization which takes place now in the months when Darigold and FCC are accounting to the Order 124 pool for the milk at Class III prices which are higher than they receive when the butter and NFDM are sold in the marketplace. In such cases, the money from producers who do not share in the losses associated with NFDM processing will be redistributed to the dairy farmer members whose cooperatives are involved in manufacturing powder.

Similarly, any gains that cooperatives make from processing powder in months when the market value of such product exceeds the Class III price which have not been shared in the past would now be pooled and shared with the market's other dairy farmers. Such a policy is consistent with the concept of marketwide pooling and should contribute to orderly marketing under Order 124 by facilitating the disposition of the market's reserve milk supplies.

The Order 124 proponents suggested that the Class III–A formula proposed by the 12 cooperatives be modified in two respects. First, they asked that "the price per pound of Grade A nonfat dry milk for the Western States production area" as published in Dairy Market News be used instead of "the simple average of the prices per pound of nonfat dry milk for the Central States production area". They also proposed that the order provide that the Class III–A price not exceed the Class I price in any month.

The Western area price for Grade A NFDM should be used to compute the price for the Class III–A milk under the Pacific Northwest order. In view of the extensive powder production in the West and the low price for milk used to make NFDM under the California State program, Order 124 handlers should get the benefit of the somewhat lower powder prices enjoyed by their primary competitors.

The modification proposed whereby the Class III–A price could not exceed the Class I price should not be adopted. No such limit should apply. Proponents indicated their willingness to share any gains from powder processing with other producers thus all such higher values for NFDM should be reflected in producer pay prices.

A proposal was made at the hearing to keep the butter/powder "snubber" price for the remaining Class III uses, because of competition from California's lower prices under State regulation. The remaining Class III uses are essentially butter and cheese. As indicated previously no change is warranted in the pricing of cream used to make butter, since the 1990 amendment to the butterfat differential formula appropriately aligned cream values with the market price of butter. Also, as indicated previously in this decision, the M–W basic formula price tends to reflect the value of milk used to make cheese. Accordingly, the Class III price should be the basic formula price.

Adoption of this pricing change in Order 124 was opposed by three cooperatives representing 280 dairy farmers supplying the market and by three pool distributing plants and two nonpool cheese plants. The primary concern of the opponents was that adoption of this change would lower producer pay prices at a time when dairy farmers are already low.

As indicated in earlier findings, powder market prices have strengthened lately. If that situation continues, it is possible that adoption of this Class III–A pricing change for NFDM could actually add money to the pool. On the other point made by objectors, the M–W price has advanced more than $2.00 per hundredweight since spring and further increases are expected as the dairy product prices continue to advance. These increases have boosted the income of dairy farmers considerably since the hearing.

Opponents also argued that adoption of the proposal would give butter/powder manufacturers a competitive advantage over cheesemakers in procuring milk supplies in this market because the cost for milk at butter powder plants will be reduced while the market prices they received for the products are unchanged. This change is intended to eliminate any disadvantages experienced by handlers processing NFDM by equating the market price for powder and the regulated price of the milk used to make the powder. The Order 124 prices for Class III–A milk would increase when market prices for powder advance and the total value of milk in the pool would go up. Conversely, when powder prices decrease, Class III–A prices would go down and the pool value would go down also. All such overages and shortfalls resulting from powder production would be pooled and shared by all the market's diary farmers. This procedure would eliminate any gains or losses by individual handlers producing NFDM.

Opponents also claimed that adoption of the Class III–A price will provide a guaranteed return for powder operators because with current technology powder can be made for less than $1.22 per hundredweight. All data in this record indicate operating costs in excess of this make allowance at the powder plants involved in this proceeding. It is noted that the California State order periodically computes a make allowance based on processing plant audits, which justified a recent butter/powder allowance of $1.7854 per hundredweight. Hence, the $1.125 make allowance provided herein to dry one hundred pounds of skim milk should not provide a windfall to NFDM manufacturers.

Order 135 (Southwestern Idaho-Eastern Oregon) marketing area. The special Class III–A price need not be provided for Order 135. Orderly marketing can be preserved in this area without the special class and price for producer skim milk used to make NFDM. The following findings and conclusions indicate why no action should be taken.

The Class III–A formula was supported for Order 135 by DCA, Idaho's largest dairy cooperative, which marketed 73 percent of the market's producer milk in June 1991. DCA supported the overall position of the 12 proponent cooperatives and the modification advanced by the Western cooperatives by asking that the Western region powder price be used to establish the value of milk in the product price

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formula. The witness testified that the M–W price, which is the Order 135 Class III price, does not accurately reflect the value of milk used to make butter and NFDM at all times.

In support of the proposal for Order 135, DCA's spokesman cited the Order 135 marketing conditions which he believed would justify the adoption of the product price formula for such market. He testified that DCA has made a concerted effort to increase cheese production during the past five years. These shifts were made in anticipation of cheese providing a stronger and more stable market in terms of value both in light of support prices and commercial demand. Regardless of the Association's best efforts, a significant portion of the market's Class III producer milk was still processed into butter and powder during the first six months of 1991. DCA contends that butter/powder production will continue to play a significant role in disposing of the market's excess Grade A milk supplies.

The witness indicated that the proposed formula will more closely relate the order prices to the values realized from the marketplace when processors sell butter and NFDM than does the prevailing order pricing for such products. DCA's witness testified that the cooperative experienced a $4.7 million operating loss in 1990 as a direct result of low powder prices, which had to be passed on to its members in the form of lower reblended prices which were well below the order's blend prices. He also testified that DCA operates in a market with low Class I use and thus has little opportunity to gain additional revenue from other operations to cover such losses.

Darigold and FCC supported the changes proposed by DCA for Order 135. They took the position that there is a strong marketing relationship between Orders 124 and 135 and that in the future it is possible that the two markets may be merged. Because of the similarities in economic conditions and marketing problems associated with butter and NFDM, the Northwest cooperatives asked that the same price apply under both orders for milk used to make such products.

Market data for Order 135 show that milk used to produce cheese has increased substantially while considerably less milk is used in butter/power manufacturing. During the first six months of 1991, the volume of milk processed into NFDM at DCA's multi-use plant at Caldwell, Idaho, decreased about 52 percent, to about 14 million pounds per month from January–June 1990. DCA's Caldwell plant is the only Idaho plant processing NFDM.

On the other hand, Order 135 handlers processed 62 percent more cheese in 1990 than they did in 1988. This represents a big shift to cheese processing of Order 135 reserve milk supplies, which was most likely aided by the pricing tilt in favor of cheese relative to butter/powder processing during such time.

In addition to DCA's cheese plant at Caldwell there are several other cheese plants in Idaho. The cheese plants at Twin Falls, Gooding and Nampa are regularly used to dispose of the market's reserve milk supplies. The record shows that Kraft operates cheese plants at Blackfoot and Rupert. It also identifies cheese plants at Rexburg, Carey, Richfield and Idaho Falls.

The record shows that DCA receives and processes milk from 132 Grade B producers (about 7 million pounds per month) at its Caldwell cheese plant. Also, the cooperative processes about 200,000 pounds per month of Order 124 milk for Darigold. If other processing arrangements could be made for this milk, which is not pooled under Order 135, additional processing capacity would be available to accommodate reserve milk supplies associated with this market.

Furthermore, only about 15 percent of the market's milk is used for fluid purposes. In the first six months of 1991, the market's uniform prices averaged only 30 cents above the Class III price level in such months. Hence, when a wide disparity between the M–W price and the market value of butter and NFDM develops, the cooperative could elect not to pool the milk. By so doing, DCA would not be required to account to the pool for such milk at the high M–W price. The nonpool milk could be sold to one of the many cheese plants identified earlier. If market demand for cheese is driving up the M–W price, as proponents contend, cheese plants should be actually procuring milk supplies in such months and willing to pay at least the M–W price for it.

The record indicates that the Associations' fluid milk plants get first call on DCA's milk, while the remainder goes to the cheese plant. If not all of the excess milk can be handled at the cheese plant on a given day, then the rest goes to the butter/powder operation. Because the cheese plant and the butter/powder plant are located at the same site, DCA has the processing flexibility within capacity limitations to move milk from butter/powder to cheese when it is economically advantageous to do so and vice versa.

It is evident that DCA has several options to lessen any adverse financial impacts resulting from a misalignment between Class III prices and the market value of butter and nonfat dry milk. Hence, no action should be taken with respect to the Southwestern Idaho-Eastern Oregon market.

DCA asked that the same Class III pricing provisions apply under Order 135 as apply under the Pacific Northwest order. Specially, the cooperative asked that if the "snubber" provisions are retained as a Class III pricing alternative under the Pacific Northwest order, the "snubber" formula should be incorporated under Order 135. Since the "snubber" alternative is eliminated for pricing Class III milk under Order 124, the basic formula price would be the Class III price under both orders.

Order 131 (Central Arizona) marketing area. The Class III–A price should not be provided for the Central Arizona market. Orderly marketing conditions will continue to prevail under this order without providing special pricing for producer skim milk which is used to manufacture NFDM. The ensuing findings and conclusions indicate why no action should be taken with respect to this market.

The Class III–A proposal was supported for Order 131 by a witness from UDA. The proponent cooperative represents about 88 percent of the milk marketed by dairy farmers under the order.

The UDA witness advanced essentially the same arguments made by the other proponents and testified that the M–W price, which is used to price milk used to produce butter and NFDM under Order 131, should be replaced with the proposed product price formula. He claimed that market returns from the sale of these dairy products are not closely related to the M–W price level, which is heavily influenced by cheese values. The market prices for such products do not always move up or down at the same time, in the same direction, or with the same magnitude as the price changes reflected by the M–W price or the cheese market.

The UDA witness testified that the copperative sells its butter and powder at the market prices prevailing in the Western region. Such prices are heavily influenced by the prices established for milk used to produce such products under the California State program, which averaged $1.72 per hundredweight lower than the M–W prices in 1990. Because of this, UDA supported the modification proposed by the Western cooperatives whereby the powder price for the Western area would be used in the formula rather than the price for the Central States production area.

He contended that the order's current pricing situation is extremely costly to the dairy farmer members of UDA. He further claimed that when the cooperative accounts for its milk at the artificially high Class III price, it ends up subsidizing through the pool the nonmembers who represent 12 percent of this market. Such pricing, in effect, penalizes UDA members who have assumed the responsibility for disposing of the market's reserve milk supplies, the cooperative's spokesman claimed.

UDA supplies much of its milk to fluid milk plants regulated under Order 131. The cooperative maintains a processing facility for converting the market's reserve milk supplies into butter and NFDM to assure a market for all of the market's producer milk when production exceeds the needs of customers. The handler's butter/powder plant is located at Tempe, Arizona.

The UDA spokesman testified that with the exception of a cheese plant which is also located at Tempe, there are no viable alternative outlets for the market's reserve milk supplies. The nearest manufacturing plants are located in California and these plants are normally operating at capacity at the same time Order 131 handlers have excess milk.

The record shows that UDA used about 130 million pounds of milk to process NFDM at its Tempe plant during 1990. This represented about 8 percent of the market's total producer milk that year. While this was a significant portion of the market's milk in 1990, there are other factors which must be considered in determining whether special pricing of skim milk used to make NFDM is essential for this market.

First, the record indicates that Schreiber Foods, Inc., operates the only cheese plant in Arizona at Tempe. UDA negotiated a ten-year contract with such cheese plant operator about 4 or 5 years ago. The terms of the contract allow UDA to ship a fixed monthly amount of milk to the cheese plant over the length of the contract. The amount of milk the cooperative could ship to the cheese plant could be increased only if Schreiber decided to increase the plant's capacity.

The Tempe cheese plant capacity was to be increased in September 1991. The UDA spokesman could not provide specific information about the extent of the expansion at the time of the hearing. However, the expansion will give UDA additional flexibility in disposing of their reserve milk supplies in the future by providing an opportunity for the cooperative to get more of its milk into cheese when cheese processing is favorable relative to butter/NFDM manufacturing and vice-versa.

Market information shows that UDA processed only 20 percent of the powder it made during 1990 in the last half of that year. During this time of year, the market's Class I demand generally is up and milk production is seasonally lower. Also, these months are normally when the disparities are greatest between M–W prices, which are driven up by prices for cheese, and the values of milk used to make butter and NFDM. In view of the fact that in the months when such disparities are most severe, UDA's powder operations are rather limited, the resulting impact on the cooperative will be minimized.

Since nearly all of the market's producers belong to UDA and UDA operates the only NFDM plant in the market, any change to Class III–A pricing in this market would have virtually no impact on the net returns to the cooperative. Thus, there is no significant basis for adopting the amendment in this market.

Orders 5 (Carolina), 7 (Georgia), 11 (Tennessee Valley), 46 (Louisville-Lexington-Evansville), 93 (Alabama-West Florida), 94 (New Orleans-Mississippi), 96 (Greater Louisiana), 98 (Nashville), and 99 (Paducah) marketing areas. The nine Southeast orders should not be amended to incorporate the special class price for producer skim milk used to make NFDM. It is not essential to provide this pricing change for these orders to maintain orderly marketing in the region. The ensuing findings identify the reasons to support such conclusion.

DI supported the adoption of the Class III–A proposal for the Southeast orders. The DI witness endorsed the overall reasoning advanced on behalf of the 12 proponent cooperatives concerning the difference between the M–W price, which is the Class III price for milk in these markets, and the marketplace value of butter and NFDM made from such milk. He confined his testimony and evidence in support of the proposal essentially to the marketing conditions prevailing in the nine Southeast markets where his cooperative has member milk pooled.

The DI witness contended that the adoption of the Class III–A price proposed will promote orderly marketing throughout the Southeast by facilitating the disposition of the markets' reserve milk supplies. By providing for uniform returns to producers from the sales of both the high-valued Class I milk as well as the lower-valued dairy products manufactured from milk supplies that are not needed for fluid purposes, the amended orders will carry out the intent of the enabling legislation, in the cooperative's opinion.

The market data covering the production of NFDM for these markets are very limited because there are so few handlers processing this product under the Southeast orders. The information does show, however, that no NFDM was produced during 1990 by handlers regulated under the following five Southeast orders: Carolina, Tennessee Valley, Louisiana-Lexington-Evansville, Greater Louisiana and Nashville. Thus, there is no reason to provide the Class III–A price in these markets.

In each of the other four Southeast markets (Georgia, Alabama-West Florida, New Orleans-Mississippi and Paducah) involved in this proceeding and for the three Florida markets, the data are restricted because fewer than three handlers are involved in processing NFDM. Although the record identifies five plants processing nonfat dry milk in the Southeast, the primary outlets to dispose of the reserve milk supplies in this region are the DI plants at Franklinton, Louisiana; Lewisburg, Tennessee; and Louisville, Kentucky.

The receipts of milk at such plants vary widely. For instance, during the months of July-October 1990, no milk was received at any of the three DI plants. For the most part, these plants are used regularly to clear the markets' reserve milk supplies during the months of March-June when milk supplies tend to be more plentiful relative to the Class I demand.

At its three manufacturing plants, DI receives milk from a wide geographic area, including Florida. Most of the milk is regulated under the Southeast orders. Milk of four other cooperatives (Associated Dairy Farmers, Tampa Independent Dairy Farmers, Southern Milk Sales, and Gulf Coast Dairymen) is regularly processed at such plants. Occasionally, regulated milk from nonmember producers and dairy farmers located in other regions is also processed in addition to some milk that is not regulated.

Marketing conditions in the Southeast differ considerably from other regions of the country. For instance, in the South Atlantic and East South Central regions, which cover the Southeast markets, the 1990 Class I use averaged 85 and 80 percent, respectively. In the other regions of the country, Class I utilizations were as follows: North Atlantic, 47 percent; East North Central, 34 percent; West North Central, 25 percent; West South Central, 54 percent;

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Mountain, 44 percent; and Pacific, 36 percent.

The Southeast region is a deficit milk production area. Milk must be imported regularly from the Midwest to supply the needs of Southeast fluid milk plants in the months of July-October when milk production is seasonally lower and Class I demand is higher. Typically, these are the months when the disparities between the M–W prices and the butter/powder market values are most severe. Normally, no NFDM is processed in this region during these months.

DI used 243 million pounds of skim milk to make NFDM in the months of June 1990–May 1991. This represents less than 2 percent of the deliveries by producers under the Southeast orders during that 12-month period. Furthermore, two-thirds of the skim milk used to produce NFDM at DI's plants was accounted for during the months of February–May when the disparities between Class III prices and marketplace values for butter and powder normally are not as significant.

Handlers regulated under the Southeast orders used 306 million pounds of milk to make cheese in 1990. This represented about 2.5 percent of the deliveries by producers in such markets. However, it reflected a 52 percent increase from 1987 in cheese manufacturing by such handlers.

When DI has milk which exceeds the needs of Southeast fluid milk plants, the cooperative channels such milk to its cheese plant at Glasgow, Kentucky. Although there are numerous other cheese facilities located throughout the region, the cooperative tends to rely on its own plant to the extent possible because the other processors only pay about 8½ times the barrel cheese price, which is below the M–W price for the milk. Because most of the milk in this region is used for fluid purposes, the limiting factor on cheese production may be the availability of milk rather than the capacity available at existing plants. Hence, if a severe misalignment existed, DI possibly could limit its losses by marketing excess milk to cheese plants operated by others. Certainly, in months when demand for cheese in the Midwest is driving up the M–W price it would seem that cheese processors in the Southeast would also be willing to pay higher prices to attract milk supplies.

Also, some of the NFDM manufactured by DI is reused in higher-valued products in connection with the cooperative's other processing operations. For instance, some of the powder it makes is used to fortify the cooperative's finished products and some is used to reconstitute Class I and Class II products. The cooperative also uses NFDM to make ice cream and cottage cheese. Although the record is not specific about how much of DI's powder is reprocessed or converted into other milk products, certainly some of it is so used.

In view of marketing conditions in the Southeast, DI should be able to avoid most if not all of the adverse impacts resulting from the differences between regulated prices for milk used to make butter and powder and the returns from the sales of such products in the marketplace.

Orders 40 (Southern Michigan) and 44 (Michigan Upper Peninsula) marketing areas. The Special Class III–A price should not be provided in the two Michigan markets. Orderly marketing can be preserved in these markets without providing the special class and price for producer skim milk used to make NFDM.

The proposed changes for the Southern Michigan market were supported by a witness representing the two Michigan proponent cooperatives (MMPA and ICMPA). These cooperatives account for about 80 percent of the milk pooled under Order 40.

The MMPA spokesman endorsed the position of the 12 proponent cooperatives concerning the M–W price, which is the price for Class III milk under Order 40. In that regard, he contended that the M–W price does not always properly reflect the value of milk used to manufacture butter and NFDM. He testified specifically about why, in his opinion, this pricing change should be provided in the Southern Michigan market and cited the marketing conditions which he believed would justify the adoption of the Class III–A price formula in Order 40.

The Order 40 proponent cooperatives operate four butter/powder plants located in Michigan. These are the only butter/powder operations in the State. Three of the plants located at Adrian, Constantine and Ovid, are operated by MMPA while the ICMPA butter/powder facility is located at Kalamazoo. These plants function on a standby basis to dispose of any reserve milk supplies associated with the Southern Michigan market.

Proponents' witness stated that there has been a considerable reduction in the volume of producer milk accounted for in butter and NFDM in this market because a new cheese plant has opened in that area. However, there are still occasions when not all of the cooperatives' milk can be directed to cheese plants and these residual supplies end up at the butter/powder plants of MMPA and ICMPA.

Market data for Order 40 show that milk used by such handlers to produce cheese in 1982 represented 12 percent of the market's producer milk and in 1990 such processing accounted for 31 percent of the pooled deliveries by dairy farmers. Conversely, milk used to make NFDM by such handlers represented 23 percent of producer milk in 1982 compared with less than 4 percent in 1990. This indicates a dramatic shift to cheese processing and away from NFDM production by Order 40 handlers.

The record indicates that 107 million pounds of cream was used to produce butter and 184 million pounds of skim milk was used to make NFDM. Such data do not reflect true butter/powder operations where such products are being made from producer milk because, if that were the case, the ratio of the pounds of skim milk used to produce NFDM would be about 10 times greater than the pounds of cream used to produce butter. This compares with less than a 2 to 1 ratio for the Order 40 market in 1990.

This seems to indicate that a large portion of the butter processed by Order 40 handlers most likely was represented by cream transfers from fluid plants supplied by the cooperatives. It likely is explained by the difference between the average butterfat test of producer milk and the distributing plant handlers' Class I finished products. As indicated, the cream and butterfat problems of handlers were corrected when the uniform butterfat differential was adopted for Federal orders on the basis of a national hearing in 1990.

There are three substantial cheese operations in Michigan. Kraft operates a plant at Pinconning and Leprino operates plants at Allendale and Remus. MMPA has negotiated annual contracts with these two large national cheese companies. Under the terms of the contracts, MMPA furnishes minimum volumes of milk, which vary from month to month, to the cheese plants. In setting these minimum supply requirements, the cooperative attempts to recognize its seasonal milk production patterns and Class I demands. If on a given day, MMPA has extra milk, which is above the agreed-upon minimums, it may try to sell the additional milk to Kraft and/or Leprino. However, the cheese plant operators are under no obligation to buy such milk.

Normally, M–W prices tend to be most seriously misaligned with the market values for butter and NFDM when milk supplies trend seasonally lower (July–November). In such months, cheese plants bid up milk prices to assure sufficient supplies in response to the strong consumer demand for cheese. In view of these marketing circumstances, the Michigan cheese plants should be anxious to buy any extra milk of the cooperatives. Also, during these months far less milk was used to produce butter and nonfat dry milk by Order 40 handlers in 1990. For instance, only about one-third of the milk used to produce butter and powder was accounted for in such months.

The previous findings indicate that the cooperatives' problems associated with the use of cream to make butter were ameliorated with the butterfat differential change. The NFDM processing does not appear to be of such magnitude that the special pricing formula is warranted and no action is taken with respect to Order 40.

The Michigan Upper Peninsula order was included in the list of markets involved in this processing. When the MMPA witness finished testifying about marketing conditions in the Southern Michigan market, he stated that his cooperative did not intend to offer any evidence to support the change for Order 44. He also indicated that since Order 44 provides individual handler pooling, no purpose would be served by including this type of pricing provision in that order and no action is taken.

Orders 33 (Ohio Valley), 36 (Eastern Ohio-Western Pennsylvania) and 49 (Indiana) marketing areas. No pricing changes for milk used to produce NFDM should be made in the three Ohio-Indiana orders on the basis of this hearing record.

A witness from MMI testified in support of the Class III–A proposal for these three markets on behalf of MMI and the Hoosier Milk Marketing Agency (Hoosier), which is comprised of MMI and AMPI. MMI represents about 70 percent of the milk pooled on Order 33 and 40 percent of the Order 36 producer milk deliveries. Hoosier represents a majority of the Order 49 milk.

The MMI witness for the proponent cooperatives supported the general statement on the Class III–A price formula presented on behalf of the 12 proponent cooperatives and contended that for the same reasons the special pricing should be provided in the three Ohio-Indiana markets where MMI and Hoosier market milk. He argued that butter/powder processing represents the final usage of milk. He testified that the proposed pricing change is needed to assure an order price for milk used to make butter and NFDM which represents the value of the products made from such milk.

In support of the special price for milk used to make butter and NFDM, the witness for proponents testified that the M–W price, which is the price for Class III milk under these three orders, is not a good indicator of a market-clearing price. In proponents' opinion, the proposed product price formula would more properly reflect the price with such function. He testified that the production of cheese depends on the amount demanded by consumers while the production of butter and NFDM depends on the amount of milk that is not needed for fluid purposes or to make dairy products demanded by consumers.

MMI operates two butter/powder plants in connection with its supply function for these three markets. The plant at Orville, Ohio, is an Order 36 pool plant while the Goshen, Indiana, plant is not pooled. The cooperative receives milk at Goshen that is primarily associated with Order 49 but also receives producer milk that is diverted from Order 33 distributing plants.

To justify this pricing change in these three markets, MMI presented a table showing the receipts of milk at its Goshen and Orville Plants. There were wide fluctuations in the amount of milk received at such plants. Such receipts varied seasonally as well as on weekends and holidays.

While the table presented a detailed daily breakdown of the receipts at such plants, there was no information provided by proponents regarding how the milk received at such plants was utilized. In the absence of such specific use data, the total market information numbers must be relied upon to demonstrate the amount of skim milk used to make NFDM in these three markets.

Market data indicate that the amount of NFDM processed by handlers regulated under the three orders was not extensive. Order 33 handlers used no skim milk to make NFDM in 1990.

Record information shows that Indiana handlers used about 26 million pounds of milk and cream to produce butter and NFDM during 1990. Since Order 49 handlers used 24 million pounds of cream to produce butter, only 2 million pounds of skim milk could have been used to make NFDM.

The market data for Order 36 show that 132 million pounds of milk and cream were used to produce butter and NFDM during 1990. The butterfat content of the milk used to manufacture these two products averaged about 16 percent. They also show that 77 million pounds of skim milk were used to produce NFDM and 55 million pounds of cream were used to make butter. This is a ratio of less than 2 to 1. In a butter/powder operation where such products are being made from producer milk, the ratio would be almost 10 pounds of skim milk to each pound of cream.

The butterfat content of the market's producer milk in 1990 averaged 3.68 percent, while the butterfat content of the market's fluid milk products averaged 2.14 percent. The foregoing analysis indicates that Order 36 handlers processing butter in many instances were receiving separated cream (and no skim) that exceeded the fluid milk needs of distributing plants.

For the most part, there has been a decrease in NFDM processing coupled with an increase in cheese production in these three markets. In 1982, cheese processing by Order 33 handlers represented 5 percent of producer milk and NFDM processing reflected 19 percent of such milk deliveries. In 1990, cheese production accounted for 7 percent of producer milk and NFDM was zero. In 1982, cheese processing by Order 36 handlers represented 19 percent of producer milk and NFDM production accounted for 9 percent. In 1990, cheese production represented 35 percent while NFDM accounted for only 2 percent.

While 1990 cheese production by Order 49 handlers was lower than in 1982, NFDM processing is rather limited because the Indiana market is a deficit milk production area. For instance, Indiana is included in the East North Central region. While the region's average Class I utilization for 1990 was 33.9 percent, Order 49 averaged 60.2 percent. The Indiana Class I use that year was higher for each of the other seven markets except one included in that region. The Class I use percentages ranged from a low of 16 percent for the Chicago Regional market to 70 percent for the Louisville-Lexington-Evansville market. In the months when milk supplies are seasonally lower, milk from outside sources must be imported to fulfill the Class I demand of Indiana distributing plants. Consequently, there is normally very little milk which needs to be processed into the residual dairy products of butter and NFDM.

In addition to its two butter/powder plants, MMI operates a cheese plant at New Wilmington, Pennsylvania, and a Class II operation consisting primarily of condensed and condensed blends at New Bremen, Ohio. These plants are also available to dispose of the reserve milk supplies associated with these three markets. At the time of the hearing, even though cheese prices were more favorable than butter/powder prices, these plants were operating at only 70 to 80 percent of capacity. The

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availability of such plants to process the reserve supplies of these three markets gives MMI the flexibility of shifting its excess milk supplies around among the plants in its system and thereby benefit from any gains it can achieve by so doing. Although transportation could be a limiting factor in maximizing the benefits it realizes from redirecting its supplies, the opportunity to do this certainly presents an advantage to the cooperative.

One additional change in marketing conditions relating to these three markets must not be overlooked. Beatrice Foods Company owned and operated the County Line Cheese plant located at Auburn, Indiana. In connection with the cheese plant, Beatrice was operating a reload facility located nearby at Shipshewana that qualified as a pool supply plant. Both plants are located in northeastern Indiana and they are about 50 miles east of Goshen and 150 miles north of Indianapolis. The supply plant was purchased recently by Hoosier. MMI hopes to become the marketing agent on the 15 to 18 million pounds of milk per month received at the supply plant in addition to the Grade B shippers associated with the cheese plant.

As a part of the purchase agreement, Hoosier agreed to close the cheese plant and not use the plant to manufacture any dairy product for three years. The sale terms agreed to by AMPI and MMI seem to indicate that the cooperatives have no concern about the capacity available to make cheese versus butter/powder in this 3-market area. In view of the foregoing, no action is taken in the three Ohio-Indiana markets.

Orders 97 (Memphis), 108 (Southwest Plains), 108 (Central Arkansas), 120 (Lubbock-Plainview, Texas), 126 (Texas), 132 (Texas Panhandle) and 138 (Rio Grande Valley) marketing areas. The special Class III–A price should not be provided for the 7 Southwest markets on the basis of this record. Orderly marketing can be preserved under these orders without providing this pricing change for skim milk that is used to make NFDM.

A witness from AMPI's Southern Region testified in support of this pricing change for the 7 Southwest markets. Such cooperative represents a majority of the milk pooled on each of these markets with the exception of the Southwest Plains market. In Southwest Plains, AMPI shares the market with Mid-America Dairymen, Inc. (Mid-Am), and these two cooperatives represent a majority of the milk on that market.

The AMPI witness endorsed the product price formula submitted on behalf of the 12 proponent cooperatives that requested the hearing. He testified that the pricing change should be made in the Southwest orders generally for the same reasons it was proposed for the other markets; i.e., to establish order prices for milk used to make butter and NFDM which more appropriately reflect the market value of such products.

In support of the proposal for the Southwest markets, AMPI presented data which showed the estimated impact of this proposal on the uniform prices under such orders. AMPI relied exclusively on this information to demonstrate the need to change the pricing for milk used to make butter and NFDM.

The Southern Region of AMPI operates in these 7 Southwest markets in much the same way that DI operates in the two Southeast regions. In disposing of its reserve milk supplies associated with these markets, AMPI operates five cheese plants in the region. They are located at Mountain View and Mansfield, Missouri; Hillsboro, Kansas, and Muenster and Stephenville, Texas. AMPI operates three butter/NFDM plants to serve such purposes. They are located at El Paso, Texas; and Oklahoma City and Tulsa, Oklahoma. In Sulphur Springs, Texas, AMPI operates a large specialty milk plant which produces butter, butter blends and condensed products plus a small amount of NFDM. During the months of heavy seasonal milk production the last two years, the cooperative used the dryers at the Stephenville, and Muenster cheese plants to make NFDM.

AMPI provides no information regarding the receipts and/or utilization of milk at such plants. The only information concerning receipts and utilization of milk in the record is the product totals for each market. Much of that data is not published because less than three handlers are involved.

Record data show that no NFDM was processed by handlers regulated under the Memphis order (Order 97), which provides for individual handler pooling. This type of pooling arrangement would not allow AMPI or any other handler to share with all of the market's dairy farmers any losses associated with manufacturing NFDM. Thus, no purpose would be served by making such a pricing change in Order 97 and no action is taken with respect to that market.

The notice for this proceeding indicated that proposed amendments to the Lubbock-Plainview, Texas order (Order 120), the Texas Panhandle order (Order 132) and the Rio Grande Valley order (Order 138) would be considered at the hearing. Effective December 1, 1991, these three orders were merged into a new single order which was designated as the "New Mexico-West Texas" marketing area. (Official notice is taken of the Department's final decision issued on August 14, 1991 (56 FR 42240) for such merged markets.

A paragraph from that decision is quoted herein because it provides appropriate insights into marketing conditions under the merged order as they relate to the pricing changes proposed herein.

"Associated Milk Producers, Inc. (AMPI) proposed the marketing area merger and expansion that is adopted herein. AMPI operates a manufacturing plant at El Paso that is pooled under Order 138 and represents virtually all of the dairy farmers who would be producers under the merged order. AMPI also supplies all of the plants operating in the area that would be regulated under the merged order."

Since AMPI represents almost all of the milk pooled under the merged order, the cooperative would be unable to share its gains or losses from processing NFDM with other dairy farmers. No purpose would be served by providing the special Class III–A pricing for milk used to make NFDM in such cases. No action is needed for the merged market.

Additionally, information in the record shows that about 164 million pounds of milk was disposed of at butter/powder plants during 1990 under the three individual orders which were merged on December 1, 1991. It also shows that AMPI hopes to open a new cheese plant at Roswell, New Mexico, by May 1, 1992. That plant is expected to be able to process about 50 million pounds of milk per month or 600 million pounds per year. This additional capacity to make cheese in the Southwest should give AMPI the necessary flexibility to move its milk supplies between cheese and butter/powder manufacturing when market prices favor one over the other.

Similarly, AMPI producers supply all of the milk priced under the Central Arkansas order (Order 108). No NFDM was processed by Order 108 handlers in 1990. For the reasons previously indicated, no action is taken in 5 of the 7 Southwest markets which were noticed for hearing and are either totally supplied by AMPI or so nearly so that the benefits accruing to the proponent cooperative would be insignificant if the proposed pricing change were adopted.

Three cooperative associations provide milk for the Texas market. AMPI represents about 70 percent of the milk pooled under that order. Mid-Am and Southern Milk Sales, Inc. (SMS) have producers whose milk is pooled : n the Texas market also. These two

producer groups did not take a position on the Class III–A proposal for the Texas market.

Market data show that Order 126 handlers used 131 million pounds of skim milk to make NFDM during 1990. This represented only about 2 percent of the market's producer milk deliveries in that year. They also show that Order 126 handlers used 9 times more milk to make cheese than they did to make NFDM.

Also, over the past few years Texas handlers have shifted their milk manufacturing operations from NFDM to cheese. For instance, in 1982 NFDM processing by Texas handlers represented almost 5 percent of producer milk compared with 2 percent in 1990. On the other hand, cheese manufacturing by Texas handlers represented 13 percent of the market's producer deliveries in 1982 compared with 20 percent in 1990.

Information in the record shows that during 1990 about 557 million pounds of milk and cream were disposed of by Texas handlers to make butter and powder or transferred or diverted to plants processing such products. Since Texas handlers only accounted for about 173 million pounds of that manufacturing, a significant portion of the Texas market's reserve milk supplies was processed by other than Texas handlers. Although the record is not specific in this regard, a considerable portion of that milk most likely was processed at the Oklahoma butter/powder plants of AMPI. The cooperative was planning to replace one of its Oklahoma plants with a new butter/powder facility at Winsboro, Texas, to eliminate hauling its excess milk supplies out of Texas in the future. Such new plant will be able to process about 50 million pounds of milk per month. This plant was expected to be operational by the end of 1991.

As previously indicated, AMPI expects to open a new cheese facility in Roswell, New Mexico, by May of 1992. This plant also has a 50-million pound per-month capacity. When these two new AMPI plants are operational, it will give the cooperative 100 million pounds of additional manufacturing capacity each month. The butter/powder plant is located in east Texas and the cheese plant will be located in eastern New Mexico. These new facilities will give AMPI considerably more flexibility in directing its regional milk supplies to cheese plants when the pricing is tilted in favor of cheese and to butter/powder plants when the pricing favors butter/NFDM processing.

Also, the current Texas order provides a credit for handlers to move milk to distant manufacturing plants for processing. Thus, when order pricing favors cheese over butter/powder processing Texas handlers are able to recoup at least part of the transportation costs to haul the excess milk to a cheese plant. It appears that AMPI and other handlers have adequate opportunity to minimize any adverse impacts resulting from the disparities between M–W prices and market values for butter and powder in connection with the Texas market.

AMPI represents about 40 percent of the milk pooled under the Southwest Plains order. The market's other cooperative, Mid-Am, which supplies more milk than AMPI for Order 106, took no position on the Class III–A proposal for this market. The two associations supply more than three-fourths of the market's milk and operate under a common marketing agreement whereby the cooperatives function in concert in supplying the milk needs of handlers regulated under the Southwest Plains order.

During 1990, Order 106 handlers used 38 percent more milk to make cheese than they did in 1987. Cheese production by such handlers has increased almost seven times since 1982. In that year, such processing represented 12 percent of producer deliveries compared with 31 percent for 1990.

As previously indicated, AMPI operates two cheese plants in Southwest Missouri. One is located at Mansfield and the other is located at Mountain View. Mid-Am also operates two cheese plants in that area. One is situated at Monett and the other is located at Mount Vernon.

The major milk production area for the Southwest Plains market is in Southwest Missouri. During 1988 more than 39 percent of the milk pooled under Order 106 originated in that area. (Official notice is taken of Sources of Milk for Federal Order Markets by State and County Issued in May 1990 by USDA–AMS.) The production area surrounds the four cheese plants operated by AMPI and Mid-Am. Milk used by Order 106 handlers to make cheese has been increasing each year and there is nothing in this record to indicate that there is insufficient capacity for this trend to continue in the future.

There are three drying plants in the Order 106 marketing area. AMPI has two drying plants in Oklahoma at Oklahoma City and Tulsa and Mid-Am has a plant at Springfield, Missouri. Since the individual market data for skim milk powder are restricted for Order 106, because less than three handlers are involved in such processing, the best record data available for analyzing marketing conditions are the processing numbers for the West South Central region which includes most of the orders that AMPI proposed to be amended. Since a considerable portion of the excess milk associated with these markets is transferred and/or diverted to manufacturing plants that are regulated under other orders, use of the monthly regional numbers will avoid the possibility of counting the milk as used to produce twice (the order from which the milk was transferred or diverted as well as in the order where the milk was actually processed).

The Southwest region is similar to the Southeast in that a considerable portion of the area's milk supplies is used to meet the fluid needs of distributing plants. Other than for the two Southeast regions, the West South Central area had the next highest Class I use during 1990 at 57 percent. This compares with the following Class I uses in the other regions; North Atlantic, 49 percent; Mountain, 47 percent; Pacific, 38 percent; East North Central, 35 percent; and West North Central, 25 percent.

On a regional basis, during 1990 Southwest order handlers used only 3 percent of their producer milk to make NFDM whereas they used 21 percent of such deliveries to make cheese. In some months, almost no milk was used by Southwest handlers to make NFDM. Such processing was especially light in the months of August-November. As indicated in prior findings, these are the months when the disparity between M–W prices and market values for butter/powder are normally greatest.

Based on the foregoing marketing circumstances in the Southwest, it is difficult to conclude that AMPI's NFDM processing in the future will cause the cooperative severe economic problems. Accordingly, no action is taken in these 7 markets.

Chicago Regional (Order 30) marketing area. The special Class III–A price should not be provided for the Chicago market. The reasons for such conclusion are set forth in the following findings.

The pricing change advanced by the 12 proponent cooperatives for 27 Federal order markets was supported by Wisconsin Dairies for the Chicago market. The proponent cooperative represents only about 10 percent of the dairy farmers and the milk pooled under Order 30.

The proposed amendments for the Chicago order were opposed by five cooperative associations. They were Mid-America Dairymen Inc.; National

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Farmers Organization; Alto Dairy Cooperative; Swiss Valley Farms; and Farmers Union Milk Marketing Cooperative, Inc. Hence, the Class III–A proposal lacks widespread support among producers supplying the Chicago market.

In support of the Class III–A proposal, the witness from Wisconsin Dairies testified that the estimated impact on the Order 30 blend prices resulting from the proposed amendments generally are overstated. He claimed that this happens because of the procedure used by the market administrator to establish the classification of milk which is transferred or diverted from the cooperative's pool supply plants to nonpool plants. At the time handlers file their reports of receipts and utilization in connection with the computation of uniform prices, the classification of such milk is unknown. Since the nonpool plants are not required to file reports, the market administrator must rely on percentages developed on the basis of an audit conducted to verify the classified use of pooled milk at such plants in an earlier month.

To support this conclusion, the witness for the proponent cooperative compared the actual amounts of NFDM produced at its plants at Reedsburg and Sauk City, Wisconsin, with the amounts resulting from use of the percentages. In 1990, about 49 percent of the skim milk reported to have been used to make NFDM at the handler's Reedsburg plant was actually so used. At Sauk City only about 41 percent of the milk reported as used to make NFDM was so disposed of for such purposes. For the first six months of 1991, the percentages were 32 and 27 percent, respectively.

For the most part, the opposing cooperatives objected to the adoption of the proposed pricing formula under any order. However, Mid-Am specifically testified in opposition to the change for the Chicago market. Mid-Am's witness stated that there is a difference in returns from butter/powder sales versus the M–W price. He claimed that this disparity is not new. The same situation existed in the early 70's. In response to that signal, Mid-Am invested large amounts of its members' money converting its butter/powder manufacturing operations to cheese. He contended that it would be unfair to ask Mid-Am's producers to take lower blend prices now after the cooperative spent its money to convert its manufacturing operations to cheese.

The Mid-Am witness testified that there is sufficient cheese capacity available to accommodate the Order 30 reserve milk supplies that are used to produce butter and NFDM. To demonstrate this fact, the witness introduced an exhibit comparing the unused cheese plant capacity in Wisconsin with the amount of Order 30 milk used to make butter/NFDM. He estimated that there was almost six times as much capacity available at Wisconsin cheese plants in 1990 as there was Order 30 milk used to make butter/powder.

As Mid-Am and the other opponents contended, Chicago handlers rely heavily on cheese processing to dispose of the market's reserve milk supplies. Order 30 handlers used 33 times as much milk to produce cheese as they did to make NFDM during 1990. For example, Order 30 handlers used what amounted to 75 percent of the market's producer milk to make cheese whereas only 2 percent of such deliveries were represented by NFDM processing. Similarly, for the fiscal year ended March 31, 1991, Wisconsin Dairies used about 78 percent of its pooled milk to make cheese and less than 4 percent to produce NFDM.

In 1982, cheese processing by Order 30 handlers reflected 65 percent of milk deliveries by dairy farmers and NFDM processing represented 6 percent. In 1990, Order 30 handlers used 54 percent more milk to make cheese than they did in 1982. On the other hand, they used 44 percent less milk in 1990 than they did in 1982 to make NFDM. These numbers indicate that in the last 10 years there has been a dramatic shift from NFDM processing by Order 30 handlers to cheese production.

Class I use by Order 30 handlers averaged only 16 percent in 1990. Thus, there is not much difference between the order's blend prices and the M–W price, which is the market's Class III price. For example, the market's blend prices averaged only about 53 cents higher than the M–W for 1990. In the outlying areas where proponent cooperative has its supply plants at Reedsburg and Sauk City, Wisconsin, the difference between the blend price at those plant locations and the M–W price is less than the minus location adjustment applicable at such plants in some months. In such cases, the cooperative could elect not to pool the plant, which the handler did for its Reedsburg plant in June 1990. This procedure gives Wisconsin Dairies an opportunity to avoid accounting to the pool for Class III milk at the cheese-driven M–W price and receiving lower returns from the marketplace from the sales of the butter and NFDM made from such milk.

Additional Opposing Arguments. At the hearing, Kraft contended that during 1991 Agri-Mark took contradictory positions on the matter of pricing milk used to make butter and powder. At a New York State hearing in May 1991, Agri-Mark supported a proposal to increase the price of milk used to make such products and now was asking the Secretary to lower the price of milk to make butter/NFDM under Federal Orders 1 and 2, counsel argued.

Agri-Mark responded to these accusations by testifying that the main objective of the New York State proposal on behalf of 20,000 dairy farmers was to raise fluid milk prices statewide. The cooperative's representative stated that Agri-Mark attempted to exempt milk used to make surplus dairy products from the price increase but was not successful. Rather than jeopardize the entire proposal, Agri-Mark agreed to higher prices for milk used to make butter and powder which is not sold to the government. The record testimony on this matter suggests that the primary thrust of the New York State proposal concerned price increases for Class I milk. This hearing involves the pricing of milk which is excess to the needs of handlers. The cooperative's position is understandable in view of the circumstances.

Dietrich's Milk Products, Inc., opposed the proposal to establish a special class and price for nonfat dry milk because whole milk powder would not be classified and priced similarly. A witness for the proprietary handler contended that all types of dried milk products should be classified and priced alike. The handler's witness testified that in the past whole milk powder and nonfat dry milk have been consistently classified and priced the same under Federal orders. Changing that relationship by pricing whole milk powder at the M–W price level while pricing nonfat dry milk on the basis of a product formula will seriously disadvantage manufacturers such as Dietrich who process whole milk powder, he claimed.

In an attempt to maintain the two dry milk products in the same class and subject to the same price, at the hearing Dietrich asked that the cooperatives' proposal be modified to include whole milk powder in the new Class III–A. Such modification was ruled to be outside the scope of the hearing by the Administrative Law Judge. Since Dietrich did not file a brief in this proceeding no further action on this issue is needed in this decision.

As indicated, there was considerable opposition to the adoption of this proposal for any market. Many of the arguments raised by the opposition were recognized as a basis for limiting the applicability of the Class III–A price formula adopted herein.

The two most prevalent objections to the proposal, which were aired by most all of the opponents, were: Adoption of the proposal would lower blend prices; and the disparity between order prices for Class III milk and the value of the butter/powder made from such milk is not a new situation. The matter of the impact on producer pay prices was addressed in the three markets where the modified Class III–A price will apply.

The contention of opponents that these disparities have existed in the past is true. However, it is the magnitude of the fluctuations in the product prices in recent years which requires immediate remedial action. The decision highlights the wide range of market prices for powder and cheese during the past four years. Such fluctuations were not prevalent in prior years.

Another comment raised by opponents claimed that since butter, NFDM and cheese are marketed nationally, the milk used to make such products should be in the same class and priced uniformly. This decision finds that the net returns from the sales of butter and powder differ significantly from the returns from sales of cheese. If the returns from the sales of these three major Class III dairy products were in reasonable balance in terms of value, then pricing of Class III milk could remain uniformly priced. Forcing cooperatives performing market-clearing functions to account to the pool at the cheese-driven M–W price for milk they are using to manufacture butter and powder, places the dairy farmer organizations in dire economic situations in some months. In markets where handlers are engaged in extensive powder manufacturing to clear the markets' excess milk supplies and there is little or no opportunity for such persons to divert such milk to cheese, the orders must be amended to recognize the value of milk used to produce nonfat dry milk both when it is higher and when it is lower than the Class III price.

Opponents also argued that this hearing should not have been called because the subject matter of this proceeding should be part of a larger issue which has become known as the "Reform of the Minnesota-Wisconsin Price Series". The entire issue of surplus milk pricing under Federal orders may be further explored next year at the national hearing. However, in view of the wide disparities in the net returns from butter-powder versus cheese, affected handlers should not be expected to wait for corrective action until the completion of a hearing, which has not been scheduled.

Several opponents argued that it is inappropriate to consider changes in Department policy on an emergency basis. Such argument is contrary to the Department's rules of practice and procedure, which clearly recognize the need for emergency rulemaking methods.

Cheesemakers argued that they are facing the same situations as butter/powder manufacturers. This contention cannot be substantiated from the information in this record. The decision estimates the net returns from cheese and butter/powder processing and compares such returns with M–W prices during the last four years. The data show that cheese values have exceeded M–W prices while butter/powder values generally have been below such prices. They also indicate that the disparity has been severe for butter/powder processors in the last two years.

Opponents claimed that the losses from butter/powder processing experienced by the proponent cooperatives represent costs that are associated with balancing the fluid market. They contended that the cooperatives should recover such shortfalls by increasing service charges on fluid milk plants. This proposal was not advanced by proponents as a method to recover the cost of balancing the fluid market but rather as a pricing problem under the orders. This decision relates the order price for milk used to make NFDM with the prices paid for such product in the marketplace. This is accomplished by establishing the Class III–A price directly from the market price for NFDM.

Opponents also argued that the losses claimed by proponents were overstated because revenues from closely related operations at the butter/powder plants were not considered. Several interested parties contended that gains from the following sources: Service charges collected from fluid handlers; by-product cream sales; and condensed operations; should be included in the cooperative's overall profit and loss picture. They insisted that the Secretary should analyze a handler's entire operation (offset any gains against any losses) in determining whether such person had incurred a loss. The change adopted herein is not being made because of the overall financial position of the proponent cooperatives. It is made because the order price for milk is not adequately reflecting the value of the products made from such milk. Even those who opposed the proposal conceptually agreed with that objective.

Several hearing participants argued that adoption of this proposal would damage the market for condensed milk because the manufacturers of Class II products (soft dairy products such as ice cream, etc.) are likely to substitute dry ingredients for condensed milk if this change is made. A very important consideration of soft dairy products manufacturers is maintaining the quality of their products. This is usually accomplished by developing standard product formulas. Once established, processors are reluctant to change the formula or the ingredients used to manufacture such products. The formula provided herein for NFDM will not assure processors of order prices for NFDM which are below the Class II milk price. Rather, it ties the order prices for NFDM directly to the marketplace values of such product. They will move up and down together. The product formula is not expected to provide pricing advantages for NFDM, relative to Class II milk prices of such magnitude or duration that they will encourage handlers to shift to dry ingredients in making Class II products.

Implementation of the Amendments. For the purpose of implementing these amendments, the market administrator will continue to follow the current provisions of the orders to classify producer milk. In addition, the market administrator shall determine the quantity of such producer milk to be priced in Class III–A by prorating receipts from various sources to Class III–A use on the basis of the quantity of receipts of bulk fluid milk products allocated to Class III use at the plant.

2. The Need for Emergency Action With Respect to Issue 1

The hearing notice indicated that evidence would be taken at the hearing to determine whether emergency marketing conditions exist to such an extent that omission of a recommended decision and the opportunity to file exceptions thereto under the rules of practice and procedure is warranted.

All of the proponents asked that this matter be dealt with expeditiously by the Department. They wanted the amendments resulting from the hearing to be completed as soon as possible.

On the other hand, the opponents considered this issue to be too important to be dealt with on an emergency basis, without the opportunity to comment on the Department's findings and conclusions.

The procedure followed herein whereby a tentative decision is being issued accommodates the wishes of both the proponents and the opponents

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of the proposal. This method will enable the amendments to become effective on an interim basis if they are favored by producers supplying the three markets. In addition, it provides an opportunity for interested parties to file their comments regarding the Department's findings and conclusions before a final decision is issued.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when each of the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid interim marketing agreements and orders:

(a) The interim marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the interim marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The interim marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Interim Marketing Agreement and Interim Order Amending the Orders

Annexed hereto and made a part hereof are two documents, an Interim Marketing Agreement regulating the handling of milk, and an Interim Order amending the orders regulating the handling of milk in the aforesaid marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire tentative decision and the interim order and the interim marketing agreement annexed hereto be published in the **Federal Register.**

Determination of Producer Approval and Representative Period

September 1991 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the New England, Middle Atlantic and Pacific Northwest marketing areas is approved or favored by producers, as defined under the terms of each of the orders (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

List of Subjects in 7 CFR Parts 1001, 1004, 1124

Milk.

Signed at Washington, DC, on: December 10, 1991.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

Interim Order Amending the Orders Regulating the Handling of Milk in Certain Specified Marketing Areas

This interim order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas; and the minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the New England, Middle Atlantic and Pacific Northwest marketing areas shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The authority citation for 7 CFR parts 1001, 1004 and 1124 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 1001—MILK IN THE NEW ENGLAND MARKETING AREA

1. Section 1001.40 is amended by revising paragraph (c)(1)(iii) and adding a new paragraph (d) to read as follows:

§ 1001.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk.

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1001.43 is amended by adding a new paragraph (f) to read as follows:

§ 1001.43 General classification rules.

* * * * *

(f) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1001.50 is amended by adding a new paragraph (d) to read as follows:

§ 1001.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States Extra Grade nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times 9, plus the butterfat differential times 35 and rounded to the nearest cent, and subject to the adjustment set forth in paragraph (c) of this section for the applicable month.

4. Section 1001.54 is revised to read as follows:

§ 1001.54 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1001.50(b).

PART 1004—MILK IN MIDDLE ATLANTIC MARKETING AREA

1. Section 1004.40 is amended by revising paragraph (c)(1)(iii) and adding a new paragraph (d) to read as follows:

§ 1004.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk.

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1004.43 is amended by adding a new paragraph (d) to read as follows:

§ 1004.43 General classification rules.

* * * * *

(d) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III use at the plant.

3. Section 1004.50 is amended by revising the section heading and by adding a new paragraph (g) to read as follows:

§ 1004.50 Class and component prices.

* * * * *

(g) *Class III–A price.* The Class III–A price for the month shall be the average Central States Extra Grade nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times 9, plus the butterfat differential value per hundredweight of 3.5 percent milk and rounded to the nearest cent, and subject to the adjustments set forth in paragraph (c) of this section for the applicable month.

4. Section 1004.53 is amended by revising paragraph (a)(2) to read as follows:

§ 1004.53 Announcement of class prices and component prices.

* * * * *

(a) * * *

(2) The Class III and Class III–A prices for the preceding month; and

* * * * *

5. Section 1004.60 is amended by adding a new paragraph (k) to read as follows:

§ 1004.60 Handler's value of milk for computing uniform prices.

* * * * *

(k) Effective January 1, 1992, for producer milk in Class III–A, add or subtract as appropriate an amount per hundredweight that the Class III–A price is more or less, respectively, than the Class III price.

6. Amended § 1004.71(b)(2) by changing the reference "§ 1004.62" to "§ 1004.61".

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

1. Section 1124.40 is amended by revising paragraph (c)(1)(iii) and adding a new paragraph (d) to read as follows:

§ 1124.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk.

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1124.43 is amended by adding a new paragraph (e) to read as follows:

§ 1124.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III use at the plant.

3. Section 1124.50 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 1124.50 Class prices.

* * * * *

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western Grade A nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times 9, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1124.53 is revised to read as follows:

§ 1124.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1124.50(b).

Interim Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ [1] to , all

[1] First and last sections of orders.

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inclusive, of the order regulating the handling of milk in the New England and certain other marketing areas (7 CFR part [2]) which is annexed hereto; and

II. The following provisions:

§ [3] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of September 1991, hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ [3] Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Signature)
(Seal)
By (Name)
(Title)
(Address)
Attest

[FR Doc. 91-29999 Filed 12-18-91; 8:45 am]
BILLING CODE 3410-02-M

[2] Appropriate Part Number.
[3] Next consecutive Section Number.

7 CFR Part 1139
[DA-91-019]

Milk in the Great Basin Marketing Area; Revision of Allowable Diversion Limitation Percentages for Cooperative Association Handlers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Revision of rule.

SUMMARY: This action increases the allowable percentage of a cooperative association's milk supply that may be moved directly from farms to manufacturing plants. This change was requested by Magic Valley Quality Milk Producers, Inc. (MVQMP), a cooperative that represents some producers supplying milk for the Great Basin marketing area. As a result of this action, milk regularly associated with the Great Basin order may be pooled without MVQMP having to incur uneconomic costs for hauling and handling the milk.

EFFECTIVE DATE: December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, 202-720-4829.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Revision of Allowable Diversion Limitation Percentages for Cooperative Association Handlers: Issued November 5, 1991; published November 8, 1991 (56 FR 57298).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action will lessen the regulatory impact of the order on certain milk handlers and will tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the provisions of § 1139.13(d)(4) of the Great Basin order.

Notice of proposed rulemaking was published in the **Federal Register** (56 FR 57298) concerning the proposed revision of allowable diversion limitation percentages for cooperative association handlers. The public was afforded the opportunity to comment on the proposed notice by submitting written data, views, and arguments by November 23, 1991.

Statement of Consideration

Magic Valley Quality Milk Producers, Inc (MVQMP), requested that the percentages of milk that may be diverted by a cooperative association pursuant to § 1139.13(d)(2) of the Great Basin order be increased. Presently, a cooperative association may divert 60 percent of its milk supply in April through August and 50 percent in other months. MVQMP requested that these percentages be increased to 70 percent for April through August and 60 percent in the remaining months.

Within the Great Basin order, § 1139.13(d)(4) provides that the Director may increase or decrease the diversion limitations by up to 10 percentage points if necessary to obtain needed shipments or to prevent uneconomic shipments. The diversion allowances for handlers other than cooperative associations were relaxed under this provision on June 1, 1989.

One letter in opposition to the proposed revision of diversion limitations was received from Western Dairymen Cooperative, Inc. (WDCI). WDCI opposed the proposal on the basis that approval of the request would enable MCQMP to increase both the quantity of producer milk and the quantity of Class III utilization under the Great Basin order. WDCI asserts that the resulting reduction in the uniform price will cause economic distress for its membership. WDCI further maintains that the proposed revision is not necessary to obtain needed supplies or to prevent uneconomic shipments. No other views were received concerning the proposal.

MVQMP is a qualified cooperative association. Until recently, it operated a pool manufacturing plant, which allowed the cooperative to pool all or nearly all of its milk. MVQMP no longer operates the plant, and the diversion limits are not adequate to allow continued pooling of the milk that previously was pooled.

In response to the opposition by WDCI, if the change adversely affects the uniform price, it is because MVQMP has been unable to pool some of its milk for only a few months. If all or most of MVQMP's milk had been pooled in those months, as it was in prior months, then any impact on the uniform price would likely be minimal.

WDCI's letter further states that the milk of MVQMP is not needed to provide an adequate supply of milk for the market, noting that Class I utilization of producer milk for a recent month was only 44.5 percent.

Whether MVQMP's milk was needed or not, the Order in the past has accommodated pooling the milk. The only circumstance that has changed, so far as we can ascertain, is that the cooperative ceased operation of a pool manufacturing plant. Thus, the only other means available for MVQMP to pool the milk would be to first ship it to a pool plant and then transfer it to a nonpool plant for manufacturing. It is a safe assumption, we believe, that to pool the milk in this manner would involve costs incurred solely to maintain pool status. Given the history of pool status for the milk involved, such costs surely would result from uneconomic shipments and handling of milk. Moreover, whether MVQMP's milk moves directly from the farm to a nonpool plant or from the farm to a pool plant and is then transferred to a nonpool plant will have little effect on the uniform price, because the milk would be Class III in any case.

After reviewing all the information available, we can find no basis to conclude that MVQMP will pool any more milk than what had previously been associated with the Great Basin order.

Therefore good cause exists for increasing the percentages of milk that may be diverted by a cooperative association in this market. This will prevent the uneconomic shipments of milk for the purpose of fulfilling current limitation.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, and other available information, it is hereby found and determined that the diversion limitation percentage set forth in § 1139.13(d)(2) should be increased from the present 60 percent in the months of April through August and 50 percent in other months, to 70 percent in the months of April through August and 60 percent in other months.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area;

(b) This revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this revision. One letter in opposition was filed.

Therefore, good cause exists for making this revision effective upon publication of this notice in the **Federal Register**.

List of Subjects in 7 CFR Part 1139

Milk marketing orders.

It is therefore ordered, that part 1139 of title 7 of the CFR is amended as follows:

PART 1139—MILK IN THE GREAT BASIN MARKETING AREA

1. The authority for 7 CFR part 1139 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

§ 1139.13 [Amended]

2. In § 1139.13(d)(2), the second sentence is amended by revising the words "60 percent in the months of April through August and 50 percent in other months" to read "70 percent in the months of April through August and 60 percent in other months".

Signed at Washington, DC, on: December 12, 1991.

Richard M. McKee,
Acting Director, Dairy Division.

[FR Doc. 91-30138 Filed 12-18-91; 8:45 am]
BILLING CODE 3410-02-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

Administration

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is hereby amending its delegation of authority to grant general loan approval authority to various field offices for the purpose of simplication and clarification, for direct and guaranteed business loans, for loans to State and Local Development Companies, for guaranties of section 503 or section 504 debentures issued by certified development companies, and for guaranteeing sureties against a portion of the losses resulting from the breach of bid, payment, or performance bonds on contracts. The amendment further provides that the SBA, through notice to the public published in the **Federal Register**, will increase, decrease, or establish the authority of individual SBA field employees on a case by case basis.

EFFECTIVE DATE: This rule is effective December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, Assistant Administrator for Financial Assistance, (202) 205-6490.

SUPPLEMENTARY INFORMATION: SBA sets forth the delegation of authority, in 13 CFR 101.3-2, for direct and guaranty business loan approval, for the approval of loans to State and Local Development Companies, for the approval of guaranties of section 503 or section 504 debentures issued by certified development companies, and for approval of guaranties of sureties against a portion of the losses resulting from the breach of bid, payment, or performance bonds on contracts by officials in SBA regional, district, or branch offices. SBA is amending this delegation of authority for the purpose of simplication and clarification.

This action delineates the standard delegation of direct and immediate participation business loan approval authority by SBA officials, under section 7(a) of the Small Business Act (15 U.S.C. 636(a)), except loans made pursuant to section 7(a)(13), at $350,000 for a Regional Administrator, Deputy Regional Administrator, Assistant Regional Administrator/Finance & Investment (F&I), District Director, Deputy District Director, Assistant District Director/F&I, and Chief, Financing, District Office (D/O). The standard delegation of authority for a Supervisory Loan Specialist, Financing, D/O and Branch Manager is set at $250,000. In this final rule, SBA reserves the right to publish, by notice in the **Federal Register**, the level of direct or immediate participation loan approval authority for SBA employees in regional, district, or branch offices, based on their education, training, or experience.

The same procedure is used in this final rule to state the delegation of 7(a) guaranty loan approval authority of SBA officers in the regional, district, and branch offices. The standard delegation of guaranty loan approval authority for a Regional Administrator, Deputy Regional Administrator, Assistant Regional Administrator/F&I, District Director, Deputy District Director, Assistant District Director/F&I, and Chief, Financing, D/O is $750,000. The standard delegation of loan approval authority for a Supervisory Loan Specialist, Financing, D/O and Branch Manager is $250,000. SBA reserves the right to publish, by notice in the **Federal Register**, the level of 7(a) guaranty loan approval authority for SBA employees in regional, district, or branch offices, based on their education, training, or experience.

The above described procedure will be used for amending the delegation of authority for SBA's share of projects to be undertaken by State and Local Development Companies, as well. A Regional Administrator, under this final rule, has unlimited loan approval authority for loans to State Development Companies. The standard delegation of loan approval authority, for loans to State Development Companies, for a Deputy Regional Administrator, Assistant Regional Administrator/F&I,

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District Director, Deputy District Director, Assistant District Director for F&I, and Chief, Financing, D/O is $750,000. SBA reserves the right to publish, by notice in the **Federal Register**, the level of loan approval authority, for loans to State Development Companies, for individual SBA employees in regional, district, or branch offices based on their education, training, or experience.

Under this final rule, the standard delegation of loan approval authority for a Regional Administrator, with regard to loans to Local Development Companies, is $1,000,000, with unlimited project cost. The standard delegation of loan approval authority, for loans to Local Development Companies, for an Assistant Regional Administrator/F&I, District Director, Deputy District Director, and Assistant District Director/F&I is $1,000,000, with a project cost not to exceed $2,500,000. The standard delegation of loan approval authority, for loans to Local Development Companies, for a Branch Manager is $750,000, with a project cost not to exceed $2,500,000. The standard delegation of loan approval authority, for loans to Local Development Companies, for a Chief, Financing, D/O is $1,000,000, with a project cost not to exceed $1,000,000. SBA reserves the right to publish, by notice in the **Federal Register**, the level of loan approval authority, for loans to Local Development Companies, for SBA employees in regional, district, or branch offices, based on their education, training or experience.

The procedure delineated above will also be used to amend the delegation of authority for SBA officials in regional, district, or branch offices to approve or decline guarantees of section 503 or section 504 debentures issued by certified development companies. The standard delegation of approval authority for a Regional Administrator, for guarantees of section 503 or section 504 debentures issued by certified development companies, is $1,000,000, with unlimited project cost. The standard delegation of approval authority, for guarantees of section 503 or section 504 of debentures issued by certified development companies, for an Assistant Regional Administrator/F&I, District Director, Deputy District Director, Assistant District Director/F&I is $1,000,000, with a project cost not to exceed $3,000,000. The standard delegation of approval authority for a Branch Manager, with regard to guarantees of section 503 or section 504 debentures issued by certified development companies, is $750,000, with a project cost not to exceed $3,000,000. The standard delegation of approval authority for a Chief, Financing, D/O, for guaranties of section 503 or section 504 debentures issued by certified development companies, is $750,000, with a project cost not to exceed $1,500,000. The standard delegation of approval authority for an Assistant Branch Manager/F&I, for guaranties of section 503 or 504 debentures issued by certified development companies, is $600,000, with a project cost not to exceed $1,500,000. In this final rule, SBA reserves the right to publish, by notice in the **Federal Register**, the level of guaranty approval authority in this area for SBA employees in regional, district, or branch offices, based on their education, training, or experience.

The same procedure will be used to establish the delegation of authority for SBA employees in regional, district, or branch offices to guarantee sureties against a portion of the losses resulting from the breach of bid, payment, or performance bonds on contracts. The standard delegation of authority for a Regional Administrator and a Deputy Regional Administrator, to guarantee sureties against a portion of the losses resulting from the breach of bid, payment, or performance bonds on contracts, is $1,250,000. The standard delegation, to guarantee sureties against a portion of the losses resulting from the breach of bid, payment, or performance bonds on contracts, for a Senior Surety Bond Guarantee Specialist and a Surety Bond Officer is $500,000. SBA reserves the right to publish, by notice in the **Federal Register**, the level of guaranty approval authority in this area for SBA employees in regional, district, or branch offices, based on their education, training, or experience.

Because this final rule governs matters of agency organization, management and personnel and makes no substantive change to the current regulation, SBA is not required to determine if these changes constitute a major rule for purposes of Executive Order 12291, to determine if they have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to do a Federalism assessment pursuant to Executive Order 12612. Finally, SBA certifies that these changes will not impose an annual recordkeeping or reporting requirement on 10 or more persons under the Paperwork Reduction Act (44 U.S.C. ch. 35).

SBA is publishing this regulation governing agency organization, procedure and practice as a final rule without opportunity for public comment pursuant to 5 U.S.C. 553(b)(A).

List of Subjects in 13 CFR Part 101

Administrative practice and procedure, Authority delegations (Government Agencies), Investigations, Organization and functions (Government Agencies), Reporting and recordkeeping requirements.

For the reasons set out in the preamble, part 101 of title 13, Code of Federal Regulations is amended as follows:

PART 101—ADMINISTRATION

1. The authority citation for part 101 continues to read as follows:

Authority: Secs. 4 and 5, Pub. L. 85–536, 72 Stat. 384 and 385 (15 U.S.C. 633 and 634, as amended); sec. 308, Pub. L. 85–699, 72 Stat. 694 (15 U.S.C. 687, as amended); sec. 5(b)(11), Pub. 93–386 (Aug. 23, 1974); and 5 U.S.C. 552.

2. Section 101.3–2 is amended by revising parts I and III to read as follows:

§ 101.3–2 Delegations of authority to conduct program activities in field offices.

* * * * *

Part I—Financing Program

Section A—Loan Approval Authority

1. Business Loans (Small Business Act) (SBAct).

a. To approve or decline direct and immediate participation section 7(a) business loans (except loans made pursuant to section 7(a)(13)) not exceeding the following amounts (SBA share):

	Approval ($)	Decline ($)
(1) Regional Administrator	350,000	350,000
(2) Deputy Regional Administrator	350,000	350,000
(3) Assistant Regional Administrator/F&I	350,000	350,000
(4) District Director	350,000	350,000
(5) Deputy District Director	350,000	350,000
(6) Assistant District Director	350,000	350,000
(7) Chief, Financing, D/O	350,000	350,000
(8) Supervisory Loan Specialist, Financing, D/O	250,000	350,000
(9) Branch Manager	250,000	350,000

SBA may, as it deems appropriate, increase, decrease, or set the level of authority of an individual SBA employee of a regional, district, or branch office, based on education, training, or experience, by publishing a notice, in the **Federal Register**, of any such delegation.

b. *Guaranty loans.* 7(a) business loans (except loans made pursuant to sections 7(a)(12), 7(a)(13), and 7(a)(16)):

	Approve ($)	Decline ($)
(1) Regional Administrator	750,000	750,000
(2) Deputy Regional Administrator	750,000	750,000
(3) Assistant Regional Administrator/ F&I	750,000	750,000
(4) District Director	750,000	750,000
(5) Deputy District Director	750,000	750,000
(6) Assistant District Director/ F&I	750,000	750,000
(7) Chief, Financing Division, D/O	750,000	750,000
(8) Supervisory Loan Specialist, Financing Division, D/O	250,000	750,000
(9) Branch Manager	250,000	750,000

All the listed officials with approval of decline authority of $750,000 shall have the authority to approve or decline pollution control loans up to and including $1,000,000 made under section 7(a)(12) and international trade loans up to and including $1,250,000 made under section 7(a)(16).

SBA may, as it deems appropriate, increase, decrease, or set the level of authority of an individual SBA employee of a regional, district, or branch office, based on education, training, or experience, by publishing a notice, in the **Federal Register**, of any such delegation.

Section B—Other Financing Authority

For all types of loans contained in Section A above, (except loans made pursuant to section 7(a)(13)):

1. Loan Participation Agreements. To enter into individual and blanket loan participation agreements with bank lenders and savings and loan associations:

a. Regional Administrator.
b. Deputy Regional Administrator.
c. Assistant Regional Administrator/F&I.
d. District Director.
e. Deputy District Director.
f. Assistant District Director for F&I.
g. Chief, Financing, D/O.
h. Supervisory Loan Specialist, Financing, D/O.
i. Branch Manager.

SBA may, as it deems appropriate, by published notice in the **Federal Register**, grant to or remove from any individual SBA employee in a regional, district, or branch office, based on education, training, or experience, the authority to enter into individual and blanket loan participation agreements with bank lenders and savings and loan associations.

2. To cancel, reinstate, modify, and amend authorizations:

a. Regional Administrator.
b. Deputy Regional Administrator.
c. Assistant Regional Administrator/F&I.
d. District Director.
e. Deputy District Director.
f. Assistant District Director for F&I.
g. Chief, Financing, D/O (on fully disbursed loans).
h. Supervisory Loan Specialist, Financing, D/O (on fully undisbursed loans).
i. Branch Manager.

SBA may, as it deems appropriate, by published notice in the **Federal Register**, grant to or remove from any individual SBA employee in a regional, district, or branch office, based on education, training, or experience, the authority to cancel, reinstate, modify, and amend authorizations.

3. Disbursement Period Extension. To extend disbursement periods:

a. Without limitations:
(1) Regional Administrator.
(2) Deputy Regional Administrator.
(3) Assistant Regional Administrator/F&I.
(4) District Director.
(5) Deputy District Director.
(6) Assistant District Director for F&I.
(7) Chief, Financing, D/O (on fully disbursed loans).
(8) Branch Manager.

b. For a cumulative total not to exceed six (6) months:
(1) Supervisory Loan Specialist, Financing, D/O (on fully undisbursed loans).

SBA may, as it deems appropriate, by a notice published in the **Federal Register**, grant to or remove from any individual SBA employee in a regional, district, or branch office, based on education, training, or experience, the authority to extend disbursement periods.

4. Service Charges: To approve service charges by participating lenders not to exceed two (2) percent per annum on the outstanding principal balance of construction loans and loans involving accounts receivable and inventory financing:

a. Regional Administrator.
b. Deputy Regional Administrator.
c. Assistant Regional Administrator/F&I.
d. District Director.
e. Deputy District Director.
f. Assistant District Director for F&I.
g. Chief, Financing, D/O (on fully undisbused loans).
h. Supervisory Loan Specialist, D/O (on fully undisbursed loans).

SBA may, as it deems appropriate, by published notice in the **Federal Register**, grant to or remove from any individual SBA employee in a regional, district, or branch office, based on education, training, or experience, the authority to approve service charges by participating lenders, according to the above paragraph.

Section C—Section 7(a)(13) Loan Approval Authority

1. Loans to a State Development Company (Small Business Investment Act) (SBI Act). To approve or decline loans to a state development company not exceeding the following amounts (SBA share):

	Dollars
a. Regional Administrator	(1)
b. Deputy Regional Administrator	(1)
With concurrence in at least one prior recommendation:	
c. Assistant Regional Administrator/F&I	750,000
d. District Director	750,000
e. Deputy District Director for F&I	750,000
f. Assistant District Director for F&I	750,000
g. Chief, Financing, D/O	750,000

[1] Unlimited.

SBA may, as it deems appropriate, increase, decrease, or set the level of authority to approve or decline loans to state development companies for any individual SBA employee in a regional, district, or branch office, based on education, training, or experience, by published notice in the **Federal Register**.

2. Loans to a Local Development Company (SBI Act). To approve or decline loans to a local development company not exceeding the following amounts (SBA share) for each small business concern being assisted, within the project cost limitations shown below:

Note: Project cost applies to the cumulative SBA assistance to a small business concern and its affiliates and not to the additional assistance on which the action is being taken.

	Dollars
a. Unlimited project cost:	
(1) Regional Administrator	1,000,000
b. Overall project cost not exceeding $2,500,000:	
(2) Assistant Regional Administrator/F&I	1,000,000
(3) District Director	1,000,000
(4) Deputy District Director	1,000,000
(5) Assistant District Director/F&I	1,000,000
(6) Chief, Financing, D/O	1,000,000
(7) Branch Manager	750,000

SBA may, as it deems appropriate, increase, decrease, or set the level of authority to approve or decline loans to local development companies for any individual SBA employee of a regional, district, or branch office, based on

education, training, or experience, by published notice in the **Federal Register**.

* * * * *

Part III—Other Financial and Guaranty Programs

Section A—Section 503/504 Debenture Guaranty Approval Authority (Small Business Investment Act)

1. Section 503/504 Certified Development Company Debenture Guaranty Approval Authority (SBI Act). To approve or decline guaranties of section 503 or section 504 debentures issued by certified development companies not exceeding the following amount (SBA share) for each small business being assisted, within the project cost limitations shown below:

Note: Project cost, as used in this part, means the sum of all financial assistance to the small business concern and its affiliates for the construction project under consideration, not just that portion on which the 503/504 debenture guaranty action is being taken.

	Dollars
a. Unlimited project cost:	
(1) Regional Administrator	Unlimited
b. Overall project cost not exceeding $3,000,000:	
(2) ARA/F&I	1,000,000
(3) District Director	1,000,000
(4) Deputy District Director	1,000,000
(5) ADA/F&I	1,000,000
(6) Branch Managers	750,000
c. Overall project cost not exceeding $1,500,000:	
(7) Chief, Financing, D/O	750,000
(8) Assistant Branch Managers/F&I	500,000

SBA may, as it deems appropriate, increase, decrease, or set the level of authority to approve or decline guaranties of section 503 or section 504 debentures issued by certified development companies for any individual SBA employee in a regional, district, or branch office, based on education, training, or experience, by published notice in the **Federal Register**.

Section B—Other 503 Authority

1. Participation Agreements. To decline to enter into participation agreements with lenders:
a. Regional Administrator.
b. Deputy Regional Administrator.
c. Assistant Regional Administrator/F&I.
d. District Director.
e. Deputy District Director.
f. Assistant District Director/F&I.

2. Loan Authorizations.
a. To execute written loan authorizations:
(1) Regional Administrator.
(2) Deputy Regional Administrator.
(3) Assistant Regional Administrator/F&I.
(4) District Director.
(5) Deputy District Director.
(6) Assistant District Director/F&I.
(7) Chief, Financing, D/O.
(8) Branch Managers.
(9) Assistant Branch Managers/F&I.

SBA may, as it deems appropriate, grant to or remove from any SBA employee in a regional, district, or branch office, based upon education, training, or experience, the authority to execute written loan authorizations, by notice published in the **Federal Register**.

b. To cancel, reinstate, modify, and amend authorizations:
(1) Regional Administrator.
(2) Deputy Regional Administrator.
(3) Assistant Regional Administrator/F&I.
(4) District Director.
(5) Deputy District Director.
(6) Assistant District Director/F&I.
(7) Chief, Financing, D/O (before initial disbursement).
(8) Branch Managers.
(9) Assistant Branch Managers/F&I.

SBA may, as it deems appropriate, grant to or remove from any individual SBA employee in a regional, district, or branch office, based upon education, training, or experience, the authority to cancel, reinstate, modify, and amend authorizations, by published notice in the **Federal Register**.

3. Disbursement Period Extensions. To extend disbursement periods:
a. Regional Administrator.
b. Deputy Regional Administrator.
c. Assistant Regional Administrator/F&I.
d. District Director.
e. Deputy District Director.
f. Assistant District Director/F&I.
g. Chief, CED, D/O (on wholly undisbursed loans).
h. Chief, Financing, D/O (on wholly undisbursed loans).
i. Branch Managers.
j. Assistant Branch Managers/F&I.

SBA may, as it deems appropriate, by published notice in the **Federal Register**, grant to or remove from any individual SBA employee in a regional, district, or branch office, based upon education, training, or experience, the authority to extend disbursement periods.

Section C—Surety Guaranty

1. To guarantee sureties against a portion of the losses resulting from the breach of bid, payment, or performance bonds on contracts, not to exceed the following amounts:

	($)
a. Regional Administrator	1,250,000
b. Deputy Regional Administrator	1,250,000
c. Senior Surety Bond Guarantee Specialist	500,000
d. Surety Bond Officer	500,000

SBA may, as it deems appropriate, grant to or remove from any individual SBA employee in a regional, district, or branch office, based on education, training, or experience, the authority to guarantee sureties against a portion of the losses resulting from the breach of bid, payment, or performance bonds on contracts, by notice published in the **Federal Register**.

* * * * *

Dated: December 11, 1991.

Patricia Saiki,
Administrator.

[FR Doc. 91-30208 Filed 12-18-91; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-26-AD; Amdt. 39-8125; AD 92-01-02]

Airworthiness Directives; Fairchild Aircraft SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Fairchild Aircraft SA226 and SA227 series airplanes. This action requires a modification to the parking brake system and recurring inspections of certain landing gear brake system components. Wheel brake system malfunctions have occurred on several of the affected airplanes where regular brake system maintenance had been performed. The actions specified by this AD are intended to prevent wheel brake system malfunctions that could result in a fire in the brake area or possible airplane collision during landing.

DATES: Effective January 16, 1992. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 16, 1992.

ADDRESSES: Fairchild Aircraft Service Bulletin (SB) No. 227-32-017 and SB No. 226-32-049, both dated November 14, 1984, and B.F. Goodrich Service Letter (SL) No. 1498, dated October 26, 1989, that are discussed in this AD may be obtained from the Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279-0490 and B.F. Goodrich Aircraft Wheels and Brakes, P.O. Box 340, Troy, Ohio 45373. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Werner Koch, Aerospace Engineer, Fort Worth Airplane Certification Office, Fort Worth, Texas 76193-0150; Telephone (817) 624-5163.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Fairchild SA226 and SA227 series airplanes was published in the **Federal Register** on May 24, 1991 (56 FR 23817). The action proposed a modification to the parking brake system and recurring inspections of certain landing gear brake system components in accordance with the instructions and criteria in Fairchild Service Bulletin (SB) No. 227-32-017 or Fairchild SB No. 226-32-049, both dated November 14, 1984, whichever is applicable, and B.F. Goodrich Service Letter No. 1498, dated October 26, 1989. .

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the four comments received.

One of the commenters feels that aviation safety would be enhanced by the implementation of the actions of the proposed AD.

Two of the four commenters state that the FAA's determination of 1 hour to perform the proposed AD is underestimated. The manufacturer (Fairchild) estimates that it would realistically take 6 hours to complete the proposed action. The FAA concurs and has rewritten the cost information paragraph in the preamble of the AD accordingly. The actual AD remains unchanged based on this comment.

Three of the four commenters feel that the 50-hour time-in-service (TIS) compliance time to modify the parking brake system is unrealistic and will inadvertently ground a number of the affected airplanes because of the utilization rates of the fleet. For example, an owner may operate 10 of the affected airplanes with an average daily utilization rate of 7 hours TIS a day. Using the revised cost information specified above and the example presented, the operator could bring only 7 of the 10 airplanes in compliance with the proposed AD if he found a maintenance shop that worked seven days a week. In this scenario, three of the airplanes would be grounded until compliance was obtained. The FAA concurs that the compliance time is unrealistic and has determined that 90 calendar days would allow all owners to modify the parking brake without inadvertently grounding their airplanes while still maintaining the same level of safety. The AD has been rewritten accordingly.

Two of the four commenters state that neither the initial nor the repetitive inspections for brake wear on airplanes that are equipped with B.F. Goodrich brakes, part number 2-1203-3, should be covered by this AD action because it would be covered through an operators continuous airworthiness maintenance program. The FAA does not concur and has determined that the inspections are necessary because of the unique design and characteristics of the Goodrich brake assembly. It is common for the brake lining to warp inward or upward toward the brake rotor at the leading and training edges relative to the direction of the rotation of the rotor. This warping is the result of the force caused by the pistons on both ends of the carriers during braking. Warping induces wear at the forward and aft ends of the brake lining pads that is not easily detected through regulator maintenance procedures. As the forward and aft edges of the lining wear very thin, the piston insulators do not emerge straight from the piston cylinders. When the brakes are released, the pistons, which have become cocked in the cylinders, will not relax back into the cylinders and dragging or locked brake condition occurs. In order to avoid this situation, strict adherence to B.F. Goodrich Service Letter (SL) No. 1498, dated October 26, 1989, must be followed. B.F. Goodrich SL No. 1498 identifies specific measurement locations and amplitudes that are not covered through general maintenance. The FAA has determined that the initial inspection can be relieved from 50 hours TIS to 100 hours TIS and the repetitive inspection interval can be relieved from 200 hours TIS to 250 hours TIS to allow maximum flexibility for the operators to accomplish these inspections at other regularly scheduled inspections. The FAA has determined that the same level of aviation safety will be obtained by this change. The AD has been rewritten accordingly.

After reviewing all available information and careful consideration of the comments described above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the changes described above as a result of the comments and minor editorial corrections. These minor changes and corrections will not change the intended meaning of the AD nor add any additional burden upon the public than was already proposed.

It is estimated that 330 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 6 hours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $500 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $273,900.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1), is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

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§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

92-01-02 **Fairchild Aircraft** (formerly Swearingen): Amendment 39-8125; Docket No. 91-CE-28-AD.

Applicability: Model SA226-T airplanes (Serial numbers (S/N) T201 through T275, and T277 through T291), Model SA226-T(B) airplanes (S/N T(B)276, and T(B)292 through T(B)417), Model SA226-AT airplanes (S/N AT001 through AT074), Model SA226-TC airplanes (S/N TC201 through TC419), Model SA227-TT airplanes (S/N TT421 through TT555), Model SA227-AT airplanes (S/N AT423 through AT599), and Model SA227-AC airplanes (S/N AC406, AC415, AC416, and AC420 through AC599), certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent brake system malfunctions that could result in a fire in the brake area or possible airplane collision during landing, accomplish the following:

(a) Within the next 90 calendar days after the effective date of this AD, modify the parking brake system in accordance with the instructions in Fairchild Aircraft Service Bulletin (SB) No. 227-32-017 and SB No. 226-32-049, both dated November 14, 1984, as applicable.

(b) On airplanes equipped with B.F. Goodrich brakes, part number 2-1203-3, within the next 100 hours TIS after the effective date of this AD, and thereafter at intervals not to exceed 250 hours TIS, inspect and conduct measurements in accordance with the instructions in B.F. Goodrich Service Letter No. 1498, dated October 26, 1989. If wear measure exceeds the maximum allowed in accordance with the criteria in B.F. Goodrich Service Letter No. 1498, dated October 26, 1989, prior to further flight, overhaul or replace the brakes in accordance with the instructions in the applicable maintenance manual.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Fort Worth Airplane Certification Office, Fort Worth, Texas 76193-0150. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Airplane Certification Office.

(e) The inspections and modifications required by this AD shall be in accordance with Fairchild Aircraft Service Bulletin (SB) No. 227-32-017 and SB No. 226-32-049, both dated November 14, 1984, and B.F. Goodrich Service Letter (SL) No. 1498, dated October 26, 1989. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279-0490 and B.F. Goodrich Aircraft Wheels and Brakes, P.O. Box 340, Troy, Ohio 45373. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

(f) This amendment (39-8125) becomes effective on January 16, 1992.

Issued in Kansas City, Missouri, on December 12, 1991.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-30251 Filed 12-18-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91-AEA-14]

Revocation of Transition Area; Stone Harbor, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the final rule describing the base of the Stone Harbor, NJ, Transition Area which is being revoked. The final rule was published in the **Federal Register** on October 23, 1991 (56 FR 54784), Airspace Docket No. 91-AEA-14.

EFFECTIVE DATE: 0901 U.T.C. December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553-0857.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 91-25546, Airspace Docket No. 91-AEA-14, published on October 23, 1991 (56 FR 54784), revoked the 700 foot Transition Area at Stone Harbor, NJ. An error was discovered in the base of the airspace being revoked. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the base of the transition area being revoked at Stone Harbor, NJ, as published in the **Federal Register** on October 23, 1991 (Federal Register Document 91-25546; page 54784, columns 2 and 3), is corrected as follows: Replace all occurrences of "700 foot Transition Area" with "1,200 foot Transition Area".

Issued in Jamaica, New York, on November 5, 1991.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 91-30271 Filed 12-18-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-129-AD; Amdt. 39-8114; AD 91-26-03]

Airworthiness Directives; Airbus Industrie Model A300, A310, and A300-600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300, A310, and A300-600 series airplanes, which requires a one-time visual inspection of BF Goodrich slides and slide raft lanyard assemblies, and replacement of release pin lanyards, if necessary. This amendment is prompted by recent reports of breakage of a release pin lanyard, an unauthorized modification of a release pin assembly, and incorrect installation of release pins. The actions specified in this AD are intended to prevent non-deployment of the emergency evacuation slides and/or slide rafts during an emergency evacuation.

DATES: Effective January 27, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 27, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2140; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an

airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A300, A310, and A300-600 series airplanes, was published in the **Federal Register** on July 22, 1991 (56 FR 33396). That action proposed to require a one-time visual inspection of BF Goodrich slides and slide raft lanyard assemblies, and replacement of release pin lanyards, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Both commenters supported the proposal.

The manufacturer, Airbus Industrie, in its comments to the proposal, clarified that the incident involving the incorrect installation of release pins, which was addressed in the preamble to the proposal, had occurred during maintenance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 113 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,215.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-26-03. **Airbus Industrie:** Amendment 39-8114. Docket No. 91-NM-129-AD.

Applicability: Model A300, A310, and A300-600 series airplanes equipped with BF Goodrich emergency evacuation slides and/or slide rafts, certificated in any category.

Compliance: Required as indicated, unless previously accomplished. To prevent non-deployment of the emergency evacuation slides and/or slide rafts during an emergency evacuation, accomplish the following:

(a) Within 120 days after the effective date of this AD, accomplish the following in accordance with Airbus Service Bulletins A300-25-434 (for Model A300 series airplanes), A300-25-6028 (for Model A300-600 series airplanes), and A310-25-2054 (for Model A310 series airplanes), all dated October 22, 1990, as applicable:

Note: These service bulletins reference BF Goodrich Service Bulletin 25-230, dated July 20, 1990, for additional instructions.

(1) Perform a visual inspection of release pin lanyard assemblies for release pins in the early configuration, unauthorized modifications, and incorrect installation and operation. Prior to further flight, replace release pin lanyards in the early configuration, unauthorized modifications, or incorrectly installed or damaged release pin lanyards, if found.

(2) Perform a visual inspection of lanyard cables for evidence of fraying. If frayed lanyards are found, replace the lanyards prior to further flight.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(d) The inspections and replacements required by this AD shall be done in accordance with Airbus Service Bulletins A300-25-434 (for Model A300 series airplanes), A300-25-6028 (for Model A300-600 series airplanes), and A310-25-2054 (for Model A310 series airplanes), all dated October 22, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(e) This amendment (39-8114), AD 91-26-03, becomes effective January 27, 1992.

Issued in Renton, Washington, on December 2, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-30338 Filed 12-18-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-243-AD; Amendment 39-8117; AD 91-26-06]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Airbus Industrie Model A320 series airplanes. This action requires replacement of a certain relay, which cuts off the power supply to the SEC 2 computer and one of the motors for the trimmable horizontal stabilizer (THS) if a discrepancy exists between the commanded trim position and the position calculated by the SEC 2 computer. This amendment is prompted by an incident in which the relay froze in the energized position. The actions specified in this AD are intended to prevent reduced controllability of the airplane due to freezing of the relay in the energized state which, when coupled with an erroneous command from the SEC 2 computer, could result in a runaway of the THS.

DATES: Effective January 3, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 3, 1992.

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Comments for inclusion in the Rules Docket must be received on or before February 18, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-243-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Aerospace Engineer, Standardization Branch, ANM-113; FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2140; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, recently notified the FAA that an unsafe condition may exist on certain Airbus Industrie Model A320 series airplanes. The French DGAC advises that, on a Model A320 series airplane, relay 36 CE 3 froze in the energized position. When both ELAC 1 and ELAC 2 computers are deactivated from the pitch mode, this relay energizes the SEC 2 computer in the pitch mode and supplies power to motor 3 of the trimmable horizontal stabilizer (THS). If a discrepancy exists between the commanded trim position and the position calculated by the SEC 2 computer, the SEC 2 computer deenergizes relay 36 CE 3 and cuts off the power supply to motor 3 of the THS. Should the relay 36 CE 3 freeze in the energized position, the power supply could no longer be cut off which could subsequently result in a runaway stabilizer. This condition, if not corrected, could result in reduced controllability of the airplane due to freezing of relay 36 CE 3 in the energized state which, when coupled with an erroneous command from the SEC 2 computer, could result in the disconnection of ELAC 1 and ELAC 2 computers and a runaway of the THS.

Airbus Industrie has issued All Operator Telex (AOT) 27-03, Revision 3, dated June 12, 1991, which describes procedures for the replacement of relay 36 CE 2, which cuts off the power supply to motor 3 of the THS. The procedures described relate only to airplanes through manufacturer's serial number 109; the manufacturer has installed a redesigned electrical control for motor 3 of the THS that precludes uncommanded trim movements on airplanes with manufacturer's serial numbers 110 and subsequent. The French DGAC has classified this AOT as mandatory and has issued French Airworthiness Directive 91-119-017(B)R1 in order to assure the airworthiness of these airplanes in France.

This airplane model is manufactured in France and type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, the French DGAC has kept the FAA totally informed of the above situation. The FAA has examined the findings of the French DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent loss of controllability of the airplane due to freezing of relay 36 CE 3 in the energized state which, when coupled with an erroneous command from the SEC 2 computer, could result in the disconnection of ELAC 1 and ELAC 2 computers and a runaway of the THS. This AD requires the replacement of relay 36 CE 3, which cuts off the power supply to motor 3 of the THS. The required actions are to be accomplished in accordance with the All Operator Telex previously described.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-243-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-26-06. **Airbus Industrie:** Amendment 39-8117. Docket 91-NM-243-AD.

Applicability: Model A320 series airplanes through manufacturer's serial number 109 on which Modification 21659 (specified in Airbus Industrie Service Bulletin A320-27-1012, Revision 2, dated September 23, 1991) has not been accomplished, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, due to freezing of relay 36 CE 3 in the energized state which, when coupled with an erroneous command from the SEC 2 computer could result in the disconnection of ELAC 1 and ELAC 2 computers and a runaway of the trimmable horizontal stabilizer (THS), accomplish the following:

(a) Install a new STP1 relay (P/N D00030021001000) having a date code newer than or equal to 88/41 A, in accordance with Airbus Industrie All Operator Telex 27-03, Revision 3, dated June 12, 1991, at the applicable time indicated in subparagraph (a)(1), (a)(2), or (a)(3) of this AD.

(1) For airplanes that have accumulated more than 1,400 landings since retrofitted with SEC part number (P/N) B372ABM0606/B372BAM0404: Within 200 landings after the effective date of this AD.

(2) For airplanes that have accumulated at least 800 landings but not more than 1,400 landings since retrofitted with SEC P/N B372ABM0606/B372BAM0404: Prior to the accumulation of 1,600 total landings since retrofitted with SEC P/N B372ABM0606/B372BAM0404.

(3) For airplanes that have accumulated less than 800 landings since retrofitted with SEC P/N B372ABM0606/B372BAM0404: Within 800 landings after the effective date of this AD.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113. The request shall be forwarded through an FAA Principal Avionics Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation required by this AD shall be done in accordance with Airbus Industrie All Operator Telex 27-03, Revision 3, dated June 12, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(e) This amendment (39-8117), AD 91-26-06, becomes effective January 3, 1992.

Issued in Renton, Washington, on December 3, 1991.

Jim Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-30339 Filed 12-18-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-140-AD; Amendment 39-8115; AD 91-26-04]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model ATP series airplanes, which requires an initial modification and repetitive applications of corrosion inhibitor to the nose landing gear (NLG) main fitting, and an eventual final modification of the NLG. This amendment is prompted by recent reports of corrosion found on the NLG main fitting, under the steering cuff upper bearing bush. The actions specified by this AD are intended to prevent reduced structural integrity of the NLG.

DATES: Effective January 27, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 27, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model ATP series airplanes, was published in the **Federal Register** on August 30, 1991 (56 FR 42964). That action proposed to require an initial modification and repetitive applications of corrosion inhibitor to the nose landing gear (NLG) main fitting, and an eventual final modification of the NLG.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 6 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,640.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will

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not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-26-04. British Aerospace: Amendment 39-8115. Docket No. 91-NM-140-AD.

Applicability: Model ATP series airplanes, equipped with nose landing gear (NLG) part number 201049001 or 201278001/002, pre Dowty Aerospace Gloucester modification (c)AC11432 standard, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the NLG, accomplish the following:

(a) Within 60 days after the effective date of this AD, modify the NLG, treat the main fitting of the NLG with corrosion inhibitor, and externally seal the cover sub-assembly in accordance with British Aerospace Service Bulletin ATP-32-33, dated March 1, 1991.

Note: The British Aerospace Service Bulletin references Dowty Aerospace Gloucester Service Bulletin 200-32-143, dated February 20, 1991.

(b) Repeat the application of corrosion inhibitor at intervals not to exceed 6 months from the previous application, in accordance with British Aerospace Service Bulletin ATP-32-33, dated March 1, 1991.

(c) Install Dowty Aerospace Gloucester modification (c)AC11432 on all pre-modification (c)AC11432 NLG's in accordance with British Aerospace Service Bulletin ATP-32-33, dated March 1, 1991, at the later of the times specified in subparagraphs (c)(1) and (c)(2), below:

(1) Prior to the accumulation of 6,000 landings on the NLG since new, or within 3 years from the first flight on the NLG, whichever occurs first; or

(2) Within 12 months after the effective date of this AD.

Note: The British Aerospace Service Bulletin references Dowty Aerospace Gloucester Service Bulletin 200-32-144, dated February 20, 1991, which describes modification (c)AC11432.

(d) Installation of Dowty Aerospace Gloucester modification (c)AC11432 constitutes terminating action for the repetitive applications of corrosion inhibitor required by paragraphs (a) and (b) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(g) The modifications and application of corrosion inhibitor required by this AD shall be done in accordance with British Aerospace Service Bulletin ATP-32-33, dated March 1, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(h) This amendment (39-8115), AD 91-26-04, becomes effective January 27, 1992.

Issued in Renton, Washington, on December 2, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-30340 Filed 12-18-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR PART 71

[Airspace Docket No. 91-AGL-7]

Transition Area Establishment; Cook Municipal Airport, Cook, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to establish the Cook, MN, transition area to accommodate a new nondirectional radio beacon (NDB) Runway 31 Standard Instrument Approach Procedure (SIAP) to Cook Municipal Airport. The SIAP is predicated on a non-federal NDB located on the airport. This action lowers the base of controlled airspace from 1200 to 700 feet above the surface in the vicinity of Cook Municipal Airport. Concurrent with the SIAP publication, the operating status of the airport will change from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 UTC, March 5, 1992.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, August 16, 1991, the Federal Aviation Administration (FAA) proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area near Cook Municipal Airport, Cook, MN (56 FR 40814).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes a transition area near Cook, MN. The transition area is being established to accommodate a new NDB runway 31 SIAP to Cook Municipal Airport, Cook, MN. The SIAP is predicated on a non-federal NDB located on the airport. This action lowers the base of controlled airspace from 1200 to 700 feet above the surface in the vicinity of Cook Municipal Airport. Concurrent with the SIAP publication, the operating status of the airport will change from VFR to IFR.

The development of a new SIAP requires that the FAA establish the designated airspace to ensure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Cook, MN [New]

That airspace extending upward from 700 feet above the surface within a 8.5 mile radius of Cook Municipal Airport (lat. 47°49'30" N., long. 92°41'30" W.), Cook, MN.

Issued in Des Plaines, Illinois on November 22, 1991.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 91-30267 Filed 12-18-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-AGL-6]

Transition Area Establishment; Belle Fourche, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to establish the Belle Fourche, SD, transition area to accommodate a new Nondirectional Radio Beacon (NDB) runway 32 Standard Instrument Approach Procedure (SIAP) to Belle Fourche Municipal Airport. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 UTC, March 5, 1992.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, September 26, 1991, the Federal Aviation Administration (FAA) proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area airspace near Belle Fourche, SD (56 FR 48768).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes a transition area airspace near Belle Fourche, SD, to accommodate a new NDB runway 32 SIAP to Belle Fourche Municipal Airport. The SIAP is predicated on a non-federal NDB located on the airport. This action lowers the base of controlled airspace to 1200 and 700 feet above the surface within the vicinity of Belle Fourche Municipal Airport. Concurrent with the SIAP publication, the operating status of the airport will change from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR).

The development of a SIAP requires that the FAA establish the designated airspace to ensure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Belle Fourche, SD [New]

That airspace extending upward from 700 feet above the surface within a 9.5 mile radius of Belle Fourche Municipal Airport (lat. 44°44'28" N., long. 103°51'40" W.) and that airspace extending upward from 1,200 feet above the surface within a 13 mile radius of Belle Fourche Municipal Airport; excluding the portion which overlies the Spearfish, SD, 700 foot transition area and the portion which overlies the Rapid City, SD, 1,200 foot transition area.

Issued in Des Plaines, Illinois on November 22, 1991.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 91-30268 Filed 12-18-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 26708; Amdt. No. 1470]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on December 6, 1991.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
11/13/91	NM	Taos	Taos Muni	FDC 1/5629	NDB Rwy 4 Orig.
11/13/91	NM	Taos	Taos Muni	FDC 1/5630	VOR/DME–B Amdt. 2.
11/19/91	MO	Excelsior Springs	Excelsior Springs Memi	FDC 1/5984	VOR Rwy 19, Orig.
11/21/91	AZ	Yuma Proving Ground/Yuma	Laguna AAF	FDC 1/5814	COPTER NDB 070 Amdt 1.
11/21/91	AZ	Yuma Proving Ground/Yuma	Laguna AAF	FDC 1/5815	NDB–A Amdt. 1.
11/21/91	AZ	Yuma Proving Ground/Yuma	Laguna AAF	FDC 1/5816	VOR Rwy 6 Amdt. 3.
11/25/91	NY	Buffalo	Greater Buffalo Intl	FDC 1/5845	NDB Rwy 5 Amdt. 10.
11/25/91	NY	Buffalo	Greater Buffalo Intl	FDC 1/5846	ILS Rwy 5 Amdt 13.
11/25/91	NY	Buffalo	Greater Buffalo Intl	FDC 1/5847	ILS Rwy 23 Amdt 28.
11/27/91	WA	Yakima	Yakima Air Terminal	FDC 1/5961	ILS Rwy 27 Amdt 26.

[FR Doc. 91–30265 Filed 12–18–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

15 CFR Part 400

[Order No. 530; Docket No. 21222–1208]

RIN 0625–AA04

Foreign-Trade Zones in the United States; Correction

AGENCY: Foreign-Trade Zones Board, Commerce.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations, which were published Tuesday, October 8, 1991 (56 FR 50790). The regulations related to the authorization and regulation of foreign-trade zones and zone activity in the United States.

EFFECTIVE DATE: November 7, 1991.

FOR FURTHER INFORMATION CONTACT: John J. Da Ponte, Jr., Executive Secretary, Foreign-Trade Zones Board, room 3716, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections, are comprehensive and constitute a complete revision, replacing the present version of 15 CFR part 400.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on October 8, 1991 of the final regulations, which were the subject of FR Doc. 91–24130, is corrected as follows.

§ 400.28 [Corrected]

1. On page 50804, in the third column, in § 400.28, paragraph (a)(8), line three, the number "7" is corrected to read "17".

2. On page 50804, in the third column, in § 400.28, paragraph (a)(8), line seventeen, the number "7" is corrected to read "17".

Dated: December 13, 1991.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 91–30358 Filed 12–18–91; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Name and Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name and address from Biomed Laboratories to Med-Pharmex, Inc., Biomed Laboratories, 325 East Arrow Hwy., suite 502, San Dimas, CA 91773.

EFFECTIVE DATE: December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Benjamin Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8646.

SUPPLEMENTARY INFORMATION: Biomed Laboratories, 438 West Arrow Hwy., Unit 30, San Dimas, CA 91773, has advised FDA of a change of sponsor name and address from Biomed Laboratories to Med-Pharmex, Inc., Biomed Laboratories, 325 East Arrow Hwy., suite 502, San Dimas, CA 91773. The agency is amending the regulations in 21 CFR 510.600 (c)(1) and (c)(2) to reflect this change.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

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2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for "Biomed Laboratories," and by alphabetically adding a new entry "Med-Pharmex, Inc., Biomed Laboratories," and in the table in paragraph (c)(2) in the entry for "051259" by revising the sponsor name and address to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Med-Pharmex, Inc., Biomed laboratories, 325 East Arrow Hwy., suite 502, San Dimas, CA 91773	051259
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
051259	Med-Pharmex, Inc., Biomed Laboratories, 325 East Arrow Hwy., Suite 502, San Dimas, CA 91773.
* * * * *	

Dated: December 13, 1991.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine.

[FR Doc. 91-30263 Filed 12-18-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Sale and Disposal of National Forest System Timber; Log Export and Substitution Restriction Exceptions

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: On August 20, 1990, the President signed into law the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) ("Act"). The Act directs the Secretary of Agriculture to prescribe new regulations to implement this Act on National Forest System Lands. The provisions in this rulemaking concern NFS lands west of the 100th meridian in the contiguous 48 states. This rulemaking implements certain provisions of the Act. This rule continues the existing reporting procedures applicable to timber sale contracts awarded prior to August 20, 1990; amends existing rules for sourcing area disapproval and review procedures; and establishes application procedures for persons applying for a share of the limited amount of unprocessed timber originating from National Forest System lands in the State of Washington that is exempted from the prohibition against indirect substitution.

EFFECTIVE DATE: This rule is effective December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Ronald D. Lewis, Timber Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090. (202) 475-3755.

SUPPLEMENTARY INFORMATION:

Background

The Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) ("Act") was enacted on August 20, 1990. The Department published an interim rule on November 20, 1990 (55 FR 48572) to implement portions of the Act required to be implemented before notice and comment could occur. The interim rule outlined the sourcing area application and approval procedures, detailed the certification procedures for non-manufacturers, sourcing area applicants, and persons with historic export quotas, extended the current surplus species determinations until new determinations can be made, and included definitions pertaining to the provisions in the interim rule. The interim rule asked for comments. The comment period for the interim rule closed on December 20, 1990. On January 29, 1991, the Department published two proposed rules, a comprehensive rule (56 FR 3354) and a rule of more limited scope to implement provisions required to be implemented before the statutory deadline for the comprehensive rule (56 FR 3375). The comment period for the comprehensive rule closed March 15, 1991. The final comprehensive rule will include all regulations published pertaining to the Act.

The comment period for the rule that is more limited in scope closed on February 28, 1991. This rulemaking finalizes the proposed rule of limited scope. This rulemaking:

1. Continues the timber export and substitution reporting procedures required under contracts awarded prior to August 20, 1990;

2. Establishes revised procedures for the disapproval of sourcing area applications and the review of sourcing areas; and

3. Establishes procedures for a person who exports private timber to acquire a limited amount of unprocessed timber originating from National Forest System lands within the State of Washington.

Comments received on the proposed rule of limited scope (56 FR 3375) have been given full consideration. Comments received on the interim rule pertinent to the subjects in this rule were also given full consideration. The Department has made changes to the rule, as proposed, as a result of some of the comments.

Eleven comments were received on the proposed rule and four comments were received on the interim rule that pertain to this proposed rule. Twelve comments were from timber purchasers or timber industry representatives, one comment was from an individual, and two comments were from public interest groups. All responses came from the West—ten from Washington, three from Idaho, and two from Montana.

The following summarizes the relevant comments and suggestions received and the Department's response to these in the final rule.

Comments and Responses by Section of the Proposed Rule

Section 223.48 Restrictions on Export and Substitution of Unprocessed Timber

The proposed rule proposed to amend paragraph (a) of § 223.48 to clarify that contracts awarded prior to August 20, 1990, the date of enactment, remain subject to the timber export and substitution rules at subpart D of part 223. The timber export and substitution reporting procedures required under these contracts remained the same, but paragraphs (a)–(c) were proposed to be redesignated. The proposed rule proposed to add a new paragraph (b) to direct that all contracts awarded on or after August 20, 1990, include a provision making such contracts subject to the new Act. The proposed rule also proposed to add a new paragraph (c) regarding the OMB clearance number for the information collection requirement contained in the rule.

Comment. One respondent expressed concern that contracts awarded prior to August 20, 1990, may incur additional reporting requirements over and above those required by the provisions of these contracts. This respondent suggested that those contract holders be compensated if additional reporting requirements are imposed by this rule. Another respondent stated that the rules in § 223.48 are redundant in that they are already required in all existing contracts.

Response. Contracts awarded prior to August 20, 1990, will continue to be subject only to the annual reporting requirements of the rules under subpart D, pursuant to section 497 of the Act. Section 223.48 of the proposed rule simply repeated the present reporting and recordkeeping requirements of prior contracts and proposed a new paragraph (b) to clarify that contracts awarded on or after August 20, 1990, shall be subject to the reporting and recordkeeping requirements of the new Act, pursuant to section 494 of the Act. Revised § 223.48 of the proposed rule was specifically written to maintain the distinction between contracts awarded prior to enactment of this Act and those awarded on or after enactment.

Comment. Two respondents stated that the regulations (both interim and proposed) provide that all contracts awarded on or after August 20, 1990, are subject to the Act, yet the Act provides that the old substitution rules govern until the regulations regarding substitution are finalized.

Response. Section 494 of the Act states that, unless otherwise stated, the Act is effective upon enactment. Subsection (a)(2)(A) of section 490 of the Act provides, with regard to direct substitution, that contracts entered into on or after August 20, 1990, but before the regulations implementing the Act are issued, are governed by the substitution rules in effect before the new regulations are issued (36 CFR part 223, subpart D). Subsection (b)(2)(D) of section 490 states, with regard to indirect substitution, that contracts entered into for timber from NFS lands in Washington State are governed by the substitution rules in effect before the new regulations are issued. Read together, sections 494 and 490 clearly indicate that the Act's provisions apply to contracts entered into on or after August 20, 1990, except with regard to the substitution provisions; with regard to direct substitution, contracts entered into between August 20, 1990, and the date that final regulations are issued are governed by the substitution rules in effect prior to issuance of the new regulations. Likewise, with regard to indirect substitution, contracts for timber on NFS lands in Washington State that are entered into between August 20, 1990, and the date that final regulations are issued are governed by the substitution rules in effect prior to issuance of the new regulations.

Comment. One respondent commented that timber sale contracts should be governed by rules which applied at the auction date, rather than the award date, because bidders presumably are familiar with and rely on rules in effect on the auction date. The respondent also stated that inequities might occur if new rules are adopted between the bid and award dates, particularly where there is a significant delay between the auction and award, or where new rules contain significant departures from prior rules.

Response. As noted above, subsection (a)(2)(A) of section 490 of the Act states that the old rules governing substitution apply to "a contract entered into between the purchaser and the Secretary" before the date final rules regarding substitution are issued. Subsection (b)(2)(D) of section 490 states that the old rules governing substitution apply to a "a contract entered into between the purchaser and the Secretary" concerning the Forest Service timber purchased in Washington State before the date that final rules regarding indirect substitution are issued. A bid is not a "contract entered into between a purchaser and the Secretary." Rather, a bid is an offer by the purchaser, which may be accepted or rejected by the Secretary. A contract is "entered into" when the Secretary accepts the bid in the award letter. Therefore, in accordance with the statutory language, the award date remains the date on which the new rules regarding substitution apply. For example, if a purchaser bid on a timber sale prior to August 20, 1990, but was not awarded the sale until after that date, the sale would be governed by the rules in effect after August 20, 1990.

Having considered the comments, the Department is adopting § 223.48 as proposed.

Section 223.191 Sourcing Area Disapproval and Review Procedures

General comments. Section 490(c) of the Act provides a limited exemption from the prohibitions against substitution for owners or operators of manufacturing facilities. If a person has a sourcing area approved by the Secretary, it is possible to purchase Federal timber from within the sourcing area and export private timber originating from outside of the sourcing area without violating the prohibitions against substitution. The procedures for submitting sourcing area applications are outlined in § 223.190 of the interim rule, published November 20, 1990 (55 FR 48579). Section 223.191 of the interim rule outlined the disapproval and review procedures (55 FR 48580). The proposed rule proposed to amend § 223.191 of the interim rule to provide more detail in the disapproval and review process for sourcing areas (56 FR 3376).

Comment: One respondent stated that there is confusion as to what constitutes a sourcing area. The respondent suggested that no sourcing area applications be acted upon until after the final rule is published and that the period for comment be extended until a clear meaning is published in a public notice.

Response. The definition of a sourcing area is found in § 490(c) of the Act. Section 223.190 of the interim rule (55 FR 48579) provided additional guidance with regard to the definition of a sourcing area. The Department believes that these provisions adequately address what constitutes a sourcing area.

Comment: One respondent expressed some confusion over the options available to an applicant whose applications has been disapproved. This respondent asked that these options be more clearly stated.

Response. The proposed rule provided an applicant whose sourcing area has been disapproved for failure to meet the geographically and economically separate test with the following phase out options: (1) Cease purchasing Federal timber from within the area disapproved within 15 months of the disapproval notice, as provided in the Act, and continue private log exporting from west of the 100th meridian; or (2) cease exporting private timber from within the sourcing area that would have been approved and continue purchasing Federal timber from within the area that was disapproved, subject to the 125 percent volume limitations provided by the Act during the first 15 months following the disapproval decision. An applicant whose sourcing area is disapproved, who chooses the second option, may begin purchasing Federal timber within the area when the choice is documented by a signed certification as described in paragraph (a)(2)(i).

In the final rule, paragraphs (a) and (b) of § 223.191 of the proposed rule have been consolidated into paragraphs (a) (1) and (2) and edited slightly to clarify these options. Paragraphs (a) (1) and (2) have been modified slightly from that in § 223.191 in the proposed rule to clarify the requirements for the phase-out of private timber exporting. Paragraph (a)(2)(i) is discussed later under "Certifications." Paragraphs (c) (1) and (2) of § 223.191 of the proposed rule have been redesignated as paragraphs (b)(1) (i) and (ii).

The interim rule (55 FR 48572), published November 20, 1990, and the proposed rule addressed in general the disposition of disapproved applications

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for sourcing areas that are submitted after December 20, 1990, or the disapproval upon review of previously disapproved applications. It is clear that section 490(c) of the Act is intended to provide for a reasonable transition period for persons purchasing unprocessed timber originating from Federal lands and also exporting unprocessed timber originating from private lands to modify their business practices to conform with the Act. Several statutory procedures tied to specific dates support this conclusion. Section 490(c) of the Act states that the prohibition against substitution shall not apply within a sourcing area approved by the Secretary if either a person has not exported unprocessed private timber from within the sourcing area in the previous 24 months or the 24-month requirement is waived by the Secretary based on certification by the person that export from within the area would cease by February 20, 1991. Section 490(c)(1) requires that the certification be submitted by November 20, 1990. The Act also states that the general prohibition against direct substitution during the application process does not apply to a person submitting an application within one month after the Secretary prescribed the procedures, or, by December 20, 1990. In other words, the exemptions from the prohibition against substitution apply only to initial applicants.

The choice for disapproved applicants provided in § 490(c)(4), either to export private timber and phase out of Federal timber purchasing, or to purchase Federal timber and phase out of exporting private timber from within the sourcing area that the Secretary would approve, flows from the initial exemptions from substitution. Because the exemptions from substitution do not apply to future applicants, neither would the phase-out process. With regard to the phase out of purchasing Federal timber, future applicants would not be exempted from the general prohibition against direct substitution, and so they would be in violation of the prohibition against substitution if phased out were granted. With regard to the phase out of exporting private timber within the area that would have been approved, not only would applicants not be exempted from the general prohibition against direct substitution, but also they could not receive a waiver from the prohibition against exporting in the sourcing area in the previous 24 months. These applicants would be in violation of both the general substitution provision and the provision prohibiting export within the sourcing area in the previous 24 months if a phase out period were granted. To allow either phase-out option to continue after the initial application period would contradict the express language of the Act to prohibit substitution. Phase-out options also will not be available to persons requesting review of a disapproved sourcing area. Providing a phase out in this instance also contradicts the intent of the Act and could result in a person attempting to extend the 15-month phase-out period by requesting a review of the disapproval. Accordingly, a new paragraph (a)(3) has been added to § 223.191 of the final rule to reflect this clarification. Future applicants or applicants for a sourcing area review will not be provided with an area that would have been approved by the Secretary. The determination of an area that would have been approved is included in the phase-out process in section 490(c)(4)(B) of the Act. Since the phase-out process does not apply to future applicants for a sourcing area or applicants requesting a review of a sourcing area, as explained previously, neither does the determination to the area that would have been approved.

Comment. One respondent asked that the rule clearly state that the deciding official must present the applicant with a map showing the area that would have been approved.

Response. The Department agrees. A new paragraph (c) has been added to § 223.191 of the final rule which states that the area determined by the deciding official which would have been approved shall be drawn on a map and presented to the applicant by the deciding official with the notice of disapproval of the area requested in the application.

Certifications. Subsection (c)(4) of section 490 of the Act permits a person whose sourcing area application has been disapproved, to phase out purchases of unprocessed Federal timber. Subsection (c)(4) also provides procedures for avoiding such purchasing phase-out if a person certifies that he/she will cease exporting private timber originating from within the sourcing area that would have been approved by the Secretary. Accordingly, the applicant has 90 days after receipt of the disapproved application to submit the certificate to cease exporting private timber in order to avoid the required phase-out of Federal timber purchases, pursuant to subsection (c)(4) of section 490 of the Act. The format for the certificate was presented in the proposed rule. In addition, paragraphs (b) (2) and (3) of § 223.191 of the proposed rule proposed to amend § 223.191 of subpart F, published in the interim rule on November 20, 1990 (55 FR 48572), to provide a detailed process for submission of the certificate. These paragraphs have been redesignated as (a)(2) (ii) and (iii) in the final rule.

Comment. Several respondents commented that the certification language should be modified to reflect that the individual signing the certification on behalf of a corporation is doing so in the capacity as an officer or agent of that corporation, not in a personal capacity. In addition, several respondents commented that a corporation's chief executive officer (CEO) should not necessarily be required to sign the certification, since the CEO may have limited detailed knowledge concerning the operation's acquisition and disposition of unprocessed timber. These respondents suggested that an officer or agent of the corporation delegated such authority be permitted to sign the certification on behalf of the corporation, within his or her official capacity.

Response. The certification language does not mean that the corporate officer signing the certification may be held personally liable for violations of the certification. The corporate officer, signing in his or her corporate capacity, would be held liable in that capacity and in accordance with the applicable laws and regulations governing liability of corporate officers.

The certificate must be signed by someone with authority to bind the corporation. Rather than consider a variety of delegations of authority, the Department prefers to have the signature of the official with clear authority to bind the corporation, the CEO. The Department believes that the assurance and administrative convenience of requiring the CEO's signature outweigh the possible inconvenience of obtaining that signature. This requirement is similar to the requirement in 36 CFR 223.171(b)(6) (1990), issued pursuant to the Federal Timber Contract Payment Modification Act (16 U.S.C. 618) (also known as the "Buy Out Act"), with which participating timber purchasers complied. In that regulation, the CEO was required to sign a statement for a corporation certifying to the accuracy of information submitted. The signatory may not have personal knowledge of the information to which he or she is certifying. The signatory must ascertain, however, that the information is true, complete, and accurate to the best of his or her knowledge and belief. The Department has added a statement to the certification to paragraph (a)(2)(i)

(A) and (B) of § 223.191 of the final rule to reflect this clarification.

The certification has been revised to include the agreement to maintain records of all transactions involving acquisition and disposal of unprocessed logs from both private and Federal lands within the area involved in the certification, for 3 years and to make such records available for inspection upon the request of the Regional Forester, or other official to whom such authority has been delegated. The proposed rule provided for this agreement in paragraph (b)(4) of § 223.191 which will not be retained in the final rule.

The certification also has been revised to provide specific notice that the signatory is signing under penalty of perjury pursuant to the False Statements Act (18 U.S.C. 1001).

Comment. Several respondents questioned the priority of disapproved applicants being able to both purchase Federal timber and export private timber from the same area during the phase-out process.

Response. Section 490(c) of the Act specifically provides for a person to purchase Federal timber and to export private timber simultaneously during a transition period. Paragraph (c)(2) provides for an exemption from substitution for initial applicants until the Secretary approves or disapproves the application. Paragraph (c)(4)(B) provides a 15-month period to cease export of unprocessed timber originating from private lands from the geographic area determined by the Secretary for which the application would have been approved. Section 223.191(a) of the final rule provides for this phase-out process.

Comment. One respondent asked how the certification to cease exporting from within the sourcing area in six months (in return for the waiver of the 24-month prohibition against exporting) squares with the certification for disapproved applicants to cease exporting from within the sourcing area that would have been approved in 15 months.

Response. The statutory language and Congressional intent to prevent substitution indicate that the certification to cease exporting from within the sourcing area applies both when the sourcing area is approved and when the applicant whose sourcing area is disapproved participates in the phase-out process.

Section 490(c)(1) of the Act requires the applicant to cease exporting unprocessed private timber originating from private lands "within the sourcing area" for not less than three years in order to be exempt from the 24-month prohibition against exporting from within the sourcing area. This language most likely refers to the sourcing area requested, since the Act requires the certificate to have been submitted before the sourcing areas were adjudicated. If the sourcing area requested is also approved, the certificate becomes redundant because exporting of private timber originating from within an approved sourcing area is prohibited by 490(c)(1)(B) of the Act. The certificate is also inconsistent with the intent of the Act after the sourcing area is approved, since the certificate lasts for three years, whereas a sourcing area (and the attendant prohibition against exporting from within it) may be valid for up to five years before a review.

Paragraph (b)(2) of § 223.191 clarifies that the prohibition against exporting private timber originating from the approved sourcing area shall be in effect as long as the sourcing area remains approved.

The certificate to cease exporting from within the requested sourcing area also applies to a requested sourcing area that is disapproved and whose applicant is participating in either phase-out process. If the certificate did not apply during the phase-out process, the applicant could export private timber and purchase Federal timber that originates from the same area (the requested sourcing area). Congressional intent expressed throughout the Act is to prohibit a person from purchasing Federal timber and exporting private timber from within the same area. Therefore, the prior certification remains in full force and effect through the 15-month phase-out process described in paragraphs (a) and (b) of § 223.191. In the final rule, paragraph (d) has been added to § 223.191 to clarify this point.

If an applicant whose sourcing area is disapproved chooses to phase out of Federal timber purchasing, pursuant to Section 490(c)(4)(A) of the Act, the person may submit a reques' to rescind the certificate after the 15-month phase-out period elapses. The certificate is necessary during the 15-month period in order to comply with Congressional intent to prevent substitution. After the 15 month phase-out period, the applicant will no longer be purchasing Federal timber within the requested sourcing area.

If an applicant chooses to phase out of exporting, pursuant to Section 490(c)(4)(B) of the Act, the certificate applies as written. The certification for disapproved applicants who choose to phase out of exporting requires a phase-out of exporting in 15 months in the area that would have been approved. Often this area will include all or a portion of the sourcing area requested in the application. Rules of statutory construction require that each part of the statute be given meaning. When the certifications are read together, the three-year prohibition against exporting, which begins six months after enactment, applies to the sourcing area requested in the application. Further, the certificate is necessary during the 15-month period in order to prevent purchasing of Federal timber and exporting of private timber from within the same area (the requested sourcing area). The certification concerning the phase-out of exporting in the area that would have been approved applies to the sourcing area that would have been approved, excluding the area requested in the application. Therefore, the certifications and the phase-out process are retained in the final rule.

Sourcing areas that would have been approved. It became apparent during the analysis of the comments received that several respondents were unclear as to the status of the area that would have been approved if the disapproved applicant elected to phase-out of exporting from that area.

Section 490(c)(4) of the Act provides for a person whose application has been disapproved to phase out of exporting from the area that would have been approved and to continue purchasing Federal timber from the area requested in the application, subject to stated volume limitations, during the export phase-out period.

The Act is silent regarding the fate of the sourcing areas that would have been approved after the phase-out period. The Department intends to give meaning to the Act's requirement that the Secretary determine which area would have been approved and to the phase-out provisions of Section 490(c)(4). In deciding to choose the export phase-out option, the applicant has chosen to accept the area that the deciding official stated would have been approved as the person's approved sourcing area. If an applicant whose sourcing area is disapproved does not wish to accept the Secretary's sourcing area that would have been approved and does not phase out of Federal timber purchases, the applicant is in the same position as someone who did not apply for a sourcing area.

The certification to cease exporting in the sourcing area requested will not be approved in this instance. Therefore, in the final rule, paragraph (a)(2)(iv) has been added to § 223.191, stating that when an applicant whose sourcing area has been disapproved submits the certificate to cease exporting within the

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sourcing area in the 15-month phaseout period, the sourcing area that would have been approved becomes an approved sourcing area. Upon certification, the person may begin purchasing Federal timber within the approved sourcing area.

The prohibition against exporting private timber originating from within the area shall be in full force and effect until the area is disapproved through the review process set forth in paragraph (e) of this section.

Disapproval Process

Comment. Several respondents questioned whether the phase out of exporting private timber in the disapproval process (§ 223.191(b) of the proposed rule) applies to someone who has not exported from the area that would have been approved by the Secretary. One of the respondents also asked whether such a person could reapply for a sourcing area that would have been approved if the export phase-out period is inapplicable.

Response. Section 490(c)(4)(B) of the Act provides for a phase out of exporting of unprocessed private timber, "from the geographic area determined by the Secretary for which the application would have been approved." Therefore, the phase out of exporting from the area that the Secretary would have approved does not apply to persons who have not exported from that area.

However, persons who have purchased Federal timber west of the 100th meridian in the 48 contiguous states, but have not exported from the area that would have been approved by the Secretary will be allowed to have the sourcing area that the Secretary would have approved.

Section 490 of the Act is clear that a person who has exported unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 states must have a sourcing area approved by the Secretary in order to purchase timber originating from Federal lands west of the 100th meridian in the contiguous 48 states. Paragraph (a) of section 490 exempts only sourcing areas from the prohibition against direct substitution. Paragraph (b) prohibits the indirect purchase of Federal timber by persons who are prohibited from purchasing Federal timber directly.

Section 490(c)(4), through the phase out of exporting within the sourcing area, provides a transition for persons who have been exporting private timber and purchasing Federal timber west of the 100th meridian in the contiguous 48 states, as discussed previously. Within this phase out provision is the provision regarding the Secretary's determination of the sourcing area that would have been approved. Since the sourcing area applicants who have been exporting outside of a sourcing area must have a sourcing area to continue purchasing Federal timber, it would be inconsistent to deny such applicants a sourcing area that would have been approved in this transition period.

Section 490(c)(4)(B) also requires persons who have exported from within the sourcing area that would have been approved by the Secretary to sign a certification to cease exporting from within that area. It would not be appropriate for persons who have not exported from that area to sign the certificate, since exporting from that area has not occurred.

Section 223.191(a)(2)(i) has been rewritten in the final rule to provide a process whereby an applicant may continue to purchase unprocessed timber originating from Federal lands within the disapproved sourcing area by certifying that he or she will cease exporting unprocessed timber from private lands located within the area that would have been approved (§ 223.191(a)(2)(i)(A) in the final rule); or by certifying that he or she accepts the area that the Secretary would have approved as his or her sourcing area (§ 223.191(a)(2)(i)(B) in the final rule).

Comment. One respondent objected to the requirement that applicants whose applications are disapproved must maintain records of all transactions of both Federal and private timber for three years following receipt of the disapproval notice. The respondent stated that the Act does not have such a requirement, and that this requirement creates unnecessary paperwork.

Response. The maintenance of acquisition and disposition records is necessary for the Department to fulfill its responsibilities to implement and enforce the Act with regard to National Forest System lands. Timber is traded over a several-year period. Time is also needed to track the timber when monitoring for compliance. Given the amount of time that may accrue while timber is traded and being monitored, the Department requested and was granted the maximum amount of time for requiring recordkeeping. The Act provides for the Secretary to draft such regulations as may be necessary to implement the Act. In the final rule, proposed paragraph (b)(4) of § 223.191 has been added to the certification statement in § 223.191(a)(2)(i)(A), maintaining this recordkeeping requirement for those applicants who have been disapproved and choose one of the phase-out options. For those disapproved applicants who do not choose one of the phase-out options, the maintenance of records requirement does not apply.

Review of sourcing areas. Subsection 490(c)(5) of the Act requires that review of approved sourcing areas will occur not less often than every 5 years. Section 223.191(d) of the proposed rule outlined the procedures for review of approved sourcing areas. These proposed procedures for review provided that a tentative date for review would be included in the approval notice. The proposed rule stated that 60 days prior to the tentative review date, the Regional Forester would notify the person of the pending review. The proposed rule also stated that the person must request the review in writing to the Regional Forester not less than 30 days prior to the tentative review date. If the person did not request a review of the sourcing area in accordance with the procedures proposed in § 223.191(d), the sourcing area would terminate on the review date. In addition, the proposed rule stated that the Department would reserve the right to schedule a review at any time during the 5-year period, with 60 days notice.

Comment. Some respondents objected to the termination of an approved sourcing area if the person failed to request a review within 30 days of the tentative review date listed in the approval notice. Several respondents stated that the sourcing area should remain in effect until a review determined otherwise.

Response. The Department agrees with the comments and has eliminated the automatic sourcing area termination provision in the final rule. Paragraph (d) of § 223.191 of the proposed rule has been redesignated as paragraph (e) in the final rule and revised to eliminate the requirement that purchasers must request a review within 30 days of the tentative review date. The purpose of this procedure was to eliminate review of a sourcing area no longer being used without resorting to a formalized review process. The Department has instituted an informal process before the formal review, which is discussed later in this document, so there is no longer any reason for the automatic termination. The final rule provides that sourcing areas being reviewed will continue in full force and effect pending the final review determination.

Comment. One respondent recommended that the Forest Service simply publish notice of the sourcing areas coming up for review and invite comments from persons (including the applicant) who believe that the existing sourcing area should be reapproved, modified, or revoked. Several respondents asked about the timeframe for the review and about the criteria that would be used.

Response. In the final rule, a new paragraph (e)(1) has been added to § 223.191 establishing an informal review procedure that will help expedite review decisions while keeping the public informed of the status of a particular sourcing area.

Subsection 490(c)(5) of the Act requires a review of sourcing areas "in accordance with the procedures prescribed in this title." The relevant procedures in the title are the sourcing area procedures. These procedures envision a formal decision, made "on the record and after an opportunity for a hearing." A formal adjudicatory process normally requires a case or controversy that is ripe for review. If there is no change in the sourcing area, or no disagreement among the parties regarding changes to be made, there is no case or controversy. Therefore, the Forest Service will utilize an informal process unless the parties cannot reach a consensus.

The informal system adopted in § 223.191(e)(1) requires the Regional Forester or other such reviewing official to notify parties of the review date by publication in newspapers of general circulation within the sourcing area. The Forest Service shall review the sourcing area record and provide comment to the reviewing official within the 30-day period following publication of the notice of review. All interested parties may review the sourcing area record and comment within the 30-day period. For 10 working days after the review period, any person submitting comments and the person holding the sourcing area may review the comments. If there is disagreement among those who comment regarding the proper sourcing area, the Forest Service will hold a meeting convenient to the parties that all interested parties may attend. If there is still no agreement among the parties as to the proper sourcing area, then a formal adjudicatory process will occur, in accordance with 5 U.S.C. 554 of the Administrative Procedure Act. Upon institution of a formal adjudicatory process, all written comments submitted in the 30 day period for comments shall become part of the administrative record.

Comment. One respondent said that for long-term planning, the review at less than five years should be for good cause only.

Response. The Act places no restriction on the Department as to when the review will occur; it simply requires a review at least every five years. Likewise, the Act places no standard, such as "good cause," on the occurrence of a review. To assure that sourcing areas accurately reflect purchasing patterns, pursuant to the Act, the Department needs the flexibility to review sourcing areas at any time due to changed circumstances. A new paragraph (e)(3) has been added to § 223.191 in the final rule to clarify that the Department may review a sourcing area at any time prior to the tentative review date at the request of the Forest Service or the person holding the sourcing area. This provision was included as a part of paragraph (d) of § 223.191 in the proposed rule.

Comment. One respondent stated that there should be a presumption in favor of the earlier decision regarding a sourcing area.

Response. There is nothing in the Act regarding a presumption that the current sourcing area remains in effect; in fact, since the Act requires the sourcing area review procedures to be in accordance with the procedures in the Act that were utilized in the initial determination, the statutory language indicates that the review is a *de novo* review (i.e., the review would be conducted as if no prior proceedings has been conducted and evidence in addition to the existing record would be allowed). Therefore, the Department will treat the sourcing area review as a *de novo* review in which all of the elements of a sourcing area must be established.

Comment. Several respondents asked if disapproved sourcing area applications would also be reviewed.

Response. The Act provides only for review of approved sourcing areas pursuant to section 490(c)(5). Paragraph (5) refers to paragraph (3), entitled, Grant of Approval, which discusses the factors used by the Secretary in approving sourcing areas. Therefore, the review will involve all approved sourcing areas and those areas that would have been approved that become approved sourcing areas through the applicant's certification to cease exporting from within that area or certification accepting the area that would have been approved as their sourcing area.

Paragraph (e) of § 223.191 in the proposed rule stated that the reporting and recordkeeping procedures constitute information collection requirements as defined in 5 CFR part 1320 and that the requirements have been approved by the Office of Management and Budget. This information has been redesignated as paragraph (f) and included in the final rule without change. This is a structural change to improve clarity.

Section 223.203 Indirect Substitution Exception for National Forest System Timber From the State of Washington

Section 490 of the Act places limitations on the direct and indirect substitution of unprocessed Federal timber for unprocessed timber exported from private lands. Subsection (b)(2) of section 490 of the Act provides for a limited exception to the prohibition against indirect substitution for unprocessed timber originating from National Forest System lands in the State of Washington. Section 490(b)(2)(i) and (ii) of the Act provide that such limit shall equal:

(i) The amount of such timber acquired by such person, based on the higher of the applicant's actual timber purchasing receipts or the appropriate Federal Agency's records, during fiscal years 1988, 1989, and 1990, divided by three; or

(ii) 15 million board feet, whichever is less, except that such limit shall not exceed such person's proportionate share of 50 million board feet.

Proposed procedures for implementing section 490(b)(2) were set forth in paragraph (b) of 223.203 of the proposed rule, which addressed procedures for applying for a proportionate share of the 50 million board feet purchase limit. These procedures stated that any person who exceeds his/her share of these purchase rights, in any fiscal year, will be in violation of the substitution prohibitions of the Act.

Comments. One respondent objected to the language in the proposed rule that provided for annual renewal of the limited indirect substitution exception for National Forest System timber originating from within Washington State. This respondent stated that the Act and the Congressional Conference Committee Report are silent concerning the application of the limit, and, therefore, the Act must be interpreted to provide a one-time opportunity to phase out of indirect substitution, and not an annual, indirect substitution quota.

Response. Subsection (b)(2) of section 490 of the Act does not specifically address this issue. Therefore, in accordance with the rules of statutory construction, the Department reviewed the language in this provision of the Act to determine Congressional intent. The trading rights indicate an annual, rather than a one-time apportionment. Subsection (b)(2)(C) of section 490 of the

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Act permits any person holding a portion of this limited exception to "sell, trade, or otherwise exchange with any other person" such limited rights, "except that such rights may not be sold, traded, or otherwise exchanged to persons already in possession of such rights obtained under subparagraph (A)." There would be no reason to provide for transfer of rights if they were a one-time opportunity. Thus, a one-time apportionment in the rule would render this trading provision nearly meaningless and of little value because of the small amount of timber volume involved. The general intent of the Act to grant persons trading rights for their proportionate shares of this exception supports the Department's interpretation that this is an annual exception. Therefore, the final rule retains this provision in the certification in 223.203.

Comment. Several timber purchasers commented that some of the specific data required to be submitted in the application for a proportionate share of these limited rights was either irrelevant or not readily available, would be very difficult to reconstruct, and would constitute an unreasonable paperwork burden because records of this type were not required to be kept under the prior rules in the detail being requested. For example, the respondents stated that from whom the Federal timber was acquired is unnecessary information and that it may be difficult to determine from which National Forest within Washington State that timber originated after the fact. These respondents maintained that much of their Federal timber purchases consisted of acquiring specific species and/or grades of logs in large batches or sorts intermixed with State and private logs and not accounted for separately by origin. One respondent suggested that because of the difficulty of reconstructing such records of origin, the applicants should be required to simply certify that, based on available records, it appears that they purchased at least the volumes so specified. Some of these respondents also asked that acquisition records be presented by calendar year instead of by fiscal year, as most businesses maintain their records by calendar year.

Response. The Department agrees with these respondents and has modified the information requested in the final rule to be used in determining proportionate shares of the limited rights. The Department believes that such modification will be adequate to meet the statutory requirements. Accordingly, the information requirements of paragraph (b)(5)(ii) of § 223.203 of the proposed rule will not be adopted in the final rule.

Subsection 490(b)(2)(i) of the Act requires that the Department establish a limited amount of unprocessed timber originating from National Forest System lands from within Washington State which equals the amount of such timber acquired by that person based on the higher of "actual timber purchase receipts" or government records. The Department will determine the applicant's proportionment based on government records. The final rule provides that a person may review the purchase records of the Forest Service prior to the deadline for submission of applications for the exemption. Applicants may voluntarily submit actual timber purchasing receipts if they believe that the actual purchase receipts will result in a higher amount than would result from using government records. The determination will then be based on the purchase receipts, if provided, or government records, whichever is higher. The Department agrees that the reconstruction of purchase records may be difficult. Accordingly, the Department will provide in the final rule that a person's actual timber receipts may be in the form of a certification by a certified public accountant that the records of the person reflect that the specified volumes are accurate. The volumes to report are harvest volumes, except where sales are still open. In the case of open sales, the volumes to report are advertised volumes.

In the final rule, paragraph (b)(5) of § 223.203 of the proposed rule has been redesignated as paragraph (b)(3) and revised to reflect these changes.

A new paragraph (b)(5) has been added to § 223.203 in the final rule, stating that purchasers may voluntarily submit, through verification by a certified public accountant, a summary of total volume and average volume for each of the three fiscal years (1988, 1989 and 1990). Paragraph (b)(5)(i)(C) has been added to provide for the certificate that the certified public accountant must sign to attest to the accuracy of the records reviewed. Paragraph (b)(5)(ii)(D) has been added to state that the accountant's certification must be notarized, must be on company letterhead, and must accompany the applicant's application. The certification in paragraph (b)(3)(ii) of § 223.203 must accompany the application regardless of the use of a certified public accountant to verify the records.

Subsection 490(b)(2)(i) of the Act specifically asks for the amount of timber "during fiscal years 1988, 1989, and 1990." Accordingly, the Department must retain the use of "fiscal year" in the final rule.

Comment. Two respondents questioned the need to provide "substantial evidence" that the prohibition against indirect substitution applies to them as a qualification for a proportionate share of this limited exception. These respondents felt that it should be sufficient for a company to certify that it has indirectly substituted within the three years by having exported timber originating from private lands located west of the 100th meridian in the 48 contiguous States and acquired timber originating from National Forest System lands within Washington State during the same period.

Response. After review of the Act, the Department has concluded that such substantial evidence is not necessary. Accordingly, § 223.203(b)(4) of the proposed rule is not adopted in the final rule. In lieu of substantial evidence, language has been added to the certification accompanying the application (§ 223.203(b)(3)(ii)) that requires an applicant to certify that the prohibition against substitution contained in section 490(b) of the Act applies to such applicant, and that the applicant has purchased NFS timber during fiscal years 1988, 1989 and/or 1990. The certification language also has been reviewed to provide for retaining records of all transactions involving the acquisition of unprocessed timber from Federal lands within the area and to make such records available for inspection upon request by appropriate officials. Further, the certification has been revised to provide specific notice to the signatory that false, incomplete, or incorrect certifications may subject the signatory to the penalty of perjury pursuant to the False Statements Act (18 U.S.C. 1001).

Comment. One respondent stated that the confidentiality of information submitted in an application should be determined in accordance with the Freedom of Information Act.

Response. All requests for information submitted pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990, will be handled according to the Freedom of Information Act, as amended (5 U.S.C. 552), with full consideration of available exemptions from disclosure. The Freedom of Information Act is specific in describing the types of information exempt from public disclosure. Applicants need to be aware that some of the information submitted may be available to the public upon request. The language regarding the confidentiality of the application in paragraph (b)(5) of § 223.203 of the proposed rule has been removed. Any public disclosure of the information provided in an application shall be governed by the provisions of the Freedom of Information Act, the Department's implementing regulations at 7 CFR 1.11, and Executive Order 12600 (June 23, 1987).

Comment. Several respondents voiced concerns on proposed §223.203, similar to those expressed on § 223.191, over the wording of the certification relating to personal liability of corporate officers and the requirement that it be signed only by the chief executive officer of the corporation.

Response. As noted in response to the comment concerning the certification required in § 223.191(a)(2)(i), corporate officers signing in a corporate capacity would be held liable in that capacity and in accordance with all other applicable laws or regulations governing liability of corporate officers. The signatory may not have personal knowledge of the information to which he or she is certifying. The signatory must ascertain, however, that the information is true, complete, and accurate to the best of his or her knowledge and belief. The Department has added a statement to the certification in paragraph (b)(3)(ii) of § 223.203 of the final rule to reflect this clarification. In addition, as at § 223.191(a)(2)(i), the certification language has been revised to provide specific notice of the possibility of the penalty of perjury under the False Statements Act (18 U.S.C. 1001).

Further, the provision of § 223.203(b)(5)(iv) of the proposed rule has been included as a part of the specific certification language in § 223.203(b)(3)(ii) that must be provided by the signatory.

Comment. One respondent urged the Agency to proceed rapidly to receive applications for indirect substitution of proportional shares not to exceed 50 million board feet, if the statutory deadline for limiting indirect substitution is to be met.

Response. Paragraph (b)(6) of § 223.203 of the proposed rule stated that there would be a 20-day period following publication of the final rule in the **Federal Register** for submitting applications. This requirement has been redesignated as § 223.203(b)(4), in the final rule. The Department believes that the 20-day period is the minimum amount of time needed to complete and submit an application. The Department will apportion the 50 million board feet of timber as soon as possible after receipt of the applications.

Comment. One respondent requested that the language of the proposed rule be revised to clarify that a person acquiring rights under this section from a person selling such rights need not submit an application to the Forest Service to acquire these rights.

Response. Subsection 490(b)(2)(C) of the Act requires that a person acquiring these rights may not already be in possession of such rights. Further, the Conference Report (page 252) states that the 15 million board feet limit applies to the acquiring party. The Department does not intend to require prospective purchasers of these rights to apply to the Forest Service for permission prior to making the acquisition. However, the Forest Service must be informed of such transactions in order to monitor compliance with the Act.

Pargaraph (b)(3) of § 223.203 of the proposed rule addressed the issue of acquiring this right. This paragraph has been redesignated in the final rule as § 223.203(c) and revised to include the following provision to address this issue: "Any person selling, trading, or exchanging any or all of the rights obtained under this rule shall advise the Regional Forester of the amount being traded and the name(s) of the person(s) acquiring such rights."

In the final rule, paragraph (c) of § 223.203 of the proposed rule has been redesignated as paragraph (d).

Comment. One respondent suggested the Forest Service maintain a cumulative record for each person holding a portion of this indirect substitution exception to assure that the person does not exceed the allotted shares and to notify the person when the remaining unused shares drop below 100 thousand board feet.

Response. The Department declines to adopt this suggestion. The responsibility to comply with provisions of this Act, including this limited indirect substitution exception, lies with the person holding such exception. The role of the Forest Service is to monitor compliance through the information provided and through regular field surveillance. The Department intends to monitor the transfer of such limited share rights for compliance with the Act.

Comment. One respondent asked whether the Forest Service intended to simply approve or disapprove applications, or whether the Forest Service would approve allocations of the exception which may be different from the amount requested.

Response. The Forest Service intends to apportion the 50 million board feet exception in relation to the amounts supported by the data provided in the applications and the agency's own records. No revision of the proposed rule is needed to address this comment.

General Comments

Comment. One respondent commented that no export of unprocessed timber originating from National Forest System lands within the State of Washington should be allowed.

Response. Except for the provision permitting the exporting of unprocessed Federal timber found to be surplus to domestic processing needs, the Act prohibits such exporting. No revision of the proposed rule is necessary to respond to this comment.

Comment. One respondent commented that the Department should undertake an Environmental Impact Statement to disclose the impact of log exports on forests and forest-dependent communities.

The respondent stated that, "[p]art of the growing demand for National Forest timber results from large corporations that export private timber and then compete against smaller mills for public timber." The respondent's example of this demand is a company competing for public timber on the Colville National Forest. The respondent further stated that timber demand is a factor in the allowable sale quantity in the Forest Service's Land and Resource Management Plan for the Colville National Forest. The respondent recommended that log exports be curtailed or the exporters forego the ability to export logs and purchase timber from NFS lands.

Response. With regard to the comment about increased competition, the intent of the National Environmental Policy Act (NEPA) is to require an analysis of the physical environment *Metropolitan Edison Co.* v. *People Aganist Nuclear Energy*, 460 U.S. 766, 772 (1983). The National Environmental Policy Act requires no particularized assessment of non-environmental factors *Public Utilities Commission of the State of California* v. *Federal Energy Regulatory Commission*, 900 F.2d 269, 282 (DC Cir. 1990), *citing* NEPA section 102, 42 U.S.C. 4332 "(requiring the agency to consider a variety of environmental, not economic factors)."

With regard to the comment about allowable sale quantity, even if these regulations affected public timber demand, projections for demand would be accounted for through long term monitoring and evaluation done as a part of Forest Plans. Further, the decision to sell timber and the assessment of the impacts of such decisions are made through Forest Plans

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and project decisions, not in these regulations.

As noted later in this document, based on an environmental assessment, there is a Finding of No Significant Impact on the quality of the human environment, individually or cumulatively, as a result of these regulations. The environmental assessment is available as a separate document.

Comment. In relation to the regulatory impact of the rule, two respondents commented that the proposed rule imposes significant new requirements on small business timber sale purchasers and other entities.

Response. The proposed rule in and of itself does not impose significant new requirements. The Act establishes these requirements, and this rule is simply implementing the provisions of the Act. The Department has sought to minimize the impact wherever possible in the rules as evidenced by several changes made based on the comments received.

Summary

Having fully considered the comments received on the proposed rule, the Department is adopting a final rule, with the modifications previously described in response to the comments in the preceding paragraphs. This rule supercedes certain provisions of the interim rule published in the **Federal Register** on November 20, 1990, and supplements those sections still in effect.

This rule is effective upon publication. Rulemakings are exempt from the rulemaking procedures of the Administrative Procedures Act in certain circumstances, including matters relating to agency management public property, or contracts (5 U.S.C. 553(a)(2)). The Department did not waive this exemption with regard to the effective date of a rulemaking (36 FR 13894 (July 24, 1971)). This rulemaking relates to agency management, public property and contracts, and therefore is exempt from the 30-day delay between publication of a rule and its effective date. Further, a delayed effective date is not required if a rule is a substantive rule which grants or recognizes an exemption (5 U.S.C. 553(d)(1)). This rule provides certain exemptions from the restrictions on substitution, and therefore may be effective immediately. In addition, a delayed effective date is not required if good cause is found and published with the rule (5 U.S.C. 553(d)(3)). Good cause exists to make this rulemaking effective upon publication due to the many deadlines in the statute requiring monitoring and enforcement.

Environmental Impact

Based on both experience and environmental analysis, this final rule will have no significant effect on the quality of the human environment, individually or cumulatively, and the Forest Service has made a Finding of No Significant Impact (40 CFR 1508.27). This rule only establishes certain administrative procedures to limit the persons qualified to purchase unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States. It does not affect the amount of timber to be sold, where the sales will be located, when they will be operated, the contract period, the contract size, resource protection requirements, or any aspect of on-the-ground contract performance. This rule does not alter the requirement that each timber sale must be analyzed and documented in compliance with the National Environmental Policy Act and its implementing regulations. Copies of the Environmental Assessment and Finding of No Significant Impact may be obtained by writing or calling the person or office listed earlier in this document under **FOR FURTHER INFORMATION CONTACT.**

Controlling Paperwork Burdens on the Public

The application and reporting procedures in §§ 223.48, 223.191, and 223.203 of this rule contain new recordkeeping and reporting requirements as defined in 5 CFR part 1320 and, therefore, impose additional paperwork burdens on the affected public. The Office of Management and Budget (OMB) has approved these requirements for use through March 31, 1994, and assigned them Control Numbers 0596–0021 and 0596–0115.

Regulatory Impact

This rule has been reviewed under USDA procedures and Executive Order 12291. It has been determined that this is not a major rule. The rule will not have an annual effect of $100 million or more on the economy, substantially increase prices, costs for consumers, individual industries, Federal, State or local governments, or geographic regions. Furthermore, the rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule will not limit the amount of National Forest System timber to be offered for sale, restrict competition, or reduce market demand for such timber.

This rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that the action will not have a significant economic impact on a substantial number of small entities. Economic impacts associated with implementation of this rule result directly from the Forest Resources Conservation and Shortage Relief Act and not from the rule itself. The rule imposes no additional requirements on small business timber sale purchasers or other small entities beyond that required by the Forest Resources Conservation and Shortage Relief Act of 1990.

This rule also has been analyzed in accordance with the principles and criteria contained in Executive Order 12630 and it has been determined that the rule does not pose the risk of a taking of constitutionally-protected private property.

List of Subjects in 36 CFR Part 223

Exports, Government contracts, National Forests, Reporting and recordkeeping requirements, and Timber sales.

Therefore, for the reasons set forth in the preamble, part 223 of Chapter II of title 36 of the Code of Federal Regulations is amended as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

1. The authority citation for part 223 is revised to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618, 104 stat. 714–726, 16 U.S.C. 620–620h, unless otherwise noted.

Subpart B—Timber Sale Contracts [Amended]

2. Revise § 223.48 to read as follows:

§ 223.48 Restrictions on export and substitution of unprocessed timber.

(a) Contracts for the sale of unprocessed timber from National Forest System lands located west of the 100th meridian in the contiguous 48 States and Alaska, awarded before August 20, 1990, shall include provisions implementing the Secretary's timber export and substitution regulations at subpart D of this part in effect prior to that data. Such contracts shall also require purchasers to:

(1) Submit annually, until all unprocessed timber is accounted for, a certified report on the disposition of any unprocessed timber harvested from the sale including a description of unprocessed timber which is sold,

exchanged or otherwise disposed of to another person and a description of the relationship with the other person;

(2) Submit annually, until all unprocessed timber from the sale is accounted for, a certified report on the sale of any unprocessed timber from private lands in the tributary area which is exported or sold for export; and

(3) Maintain records of all such transactions involving unprocessed timber and to make such records available for inspection and verification by the Forest Service for up to three (3) years after the sale is terminated.

(b) Contracts for the sale of unprocessed timber from National Forest System lands located west of the 100th meridian in the contiguous 48 States, awarded on or after August 20, 1990, shall include provisions implementing the requirements of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*).

(c) The reporting and recordkeeping procedures in this section constitute information collection requirements as defined in 5 CFR part 1320. These requirements have been approved by the Office of Management and Budget and assigned clearance number 0596–0021.

Subpart F—The Forest Resources Conservation and Shortage Relief Act of 1990 Program [Amended]

3. Revise § 223.191 and add a new § 223.203 to read as follows:

§ 223.191 Sourcing area disapproval and review procedures.

(a) Notwithstanding any other provision of law, an applicant whose sourcing area application was submitted by December 20, 1990, and is disapproved may either phase out of purchasing Federal timber or phase out of exporting unprocessed timber originating from private lands within the sourcing area that would have been approved, as follows:

(1) *Phase-out of Federal timber purchasing.* The applicant may purchase, in the 9-month period after receiving the application disapproval, unprocessed timber originating from Federal lands in the disapproved sourcing area, in an amount not to exceed 75 percent of the annual average of such person's purchases of unprocessed Federal timber in such area during the 5 full fiscal years immediately prior to the date of submission of the application. In the 6-month period immediately following the 9-month period, such person may purchase not more than 25 percent of such annual average, after which time the prohibitions against direct substitution, set forth in § 223.189 of this subpart, shall apply; or

(2) *Phase-out of private timber exporting.* The applicant may continue to purchase unprocessed timber originating from Federal lands within the disapproved sourcing area without being subject to the phase-out of Federal timber purchasing procedures described in paragraph (a) of this section, if the following requirements are met:

(i) The applicant certifies to the Regional Forester or the approving official to whom such authority has been delegated, within 90 days after receiving the disapproval decision, as follows:

(A) An applicant that has exported unprocessed timber originating from private lands from the geographic area that would have been approved will provide a signed certification that reads as follows:

"I have engaged in the exporting of unprocessed private timber originating from private lands located within the geographic area the approving official would have approved as a sourcing area for my manufacturing facility. I desire to continue purchasing unprocessed Federal timber from within such area. I hereby certify that I will cease all exporting of unprocessed timber from private lands located within the area that would have been approved by [the applicant shall insert date 15 months from date of receipt of the disapproval decision]. I agree to retain records of all transactions involving acquisition and disposition of unprocessed timber from both private and Federal lands within the area involved in the certification, for a period of three (3) years beginning on the date of receipt of the disapproval notification, and to make such records available for inspection upon the request of the Regional Forester, or other official to whom such authority has been delegated. I make this certification with full knowledge and understanding of the requirements of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act) and do fully understand that failure to cease such exporting as certified will be a violation of the Act and may subject me to the penalties and remedies for such violation. Further, I fully understand that such violation may subject me to the penalty of perjury pursuant to the False Statements Act (18 U.S.C. 1001). I certify that the information in this certificate is true, complete, and accurate to the best of my knowledge and belief.";

or,

(B) An applicant who has not exported unprocessed timber originating from private lands from the geographic area that the Secretary would have approved will provide a signed certification that reads as follows:

"I have not exported timber originating from private lands within both the sourcing area that the Secretary would have approved and the disapproved sourcing area in the past 24 months, pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*), and I am accepting the area that the Secretary would have approved as my sourcing area. I certify that the information in this certificate is true, complete, and accurate to the best of my knowledge and belief."

(ii) Each certification statement set forth in paragraph (a)(2)(i) of this section must be signed by the person making such certification or, in the case of a corporation, by its chief executive officer; must be on company letterhead; and must be notarized.

(iii) The person signing such certification set forth in paragraph (a)(2)(i)(A) must provide to the Regional Forester the annual volume of timber exported by that person during the five (5) full fiscal years immediately preceding submission of the application, originating from private lands in the geographic area for which the application would have been approved.

(iv) When the applicant submits the certificate, the area the Secretary would have approved, as shown on the sourcing area map provided by the Secretary, because an approved sourcing area. If the certificate is not submitted, the sourcing area that would have been approved does not become an approved sourcing area.

(3) The phase-out of Federal timber purchasing and the phase-out of private timber exporting procedures provided by paragraphs (a)(1) and (a)(2) do not apply to persons submitting sourcing area applications after December 20, 1990, or to persons requesting review of disapproved sourcing areas.

(b) *Limits on purchases and exports.* (1) During the 15-month period following disapproval of a sourcing area, a person who elects to phase-out of private timber exporting as described in paragraph (a)(2) of this section, may not:

(i) Purchase more than 125 percent of the person's annual average purchases of unprocessed timber originating from Federal lands within the person's disapproved sourcing area during the five (5) full fiscal years immediately prior to submission of the application; and,

(ii) Export unprocessed timber originating from private lands in the geographic area determined by the approving official for which the application would have been approved, in amounts that exceed 125 percent of the annual average of that person's exports of unprocessed timber from such private land during the five (5) full years

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immediately prior to submission of the application.

(2) At the conclusion of the 15-month export phase-out period, the prohibition against exporting private timber originating from within the area shall be in full force and effect as long as the sourcing area remains approved, pursuant to subpart F of part 223.

(c) *Presentation of map to applicant whose sourcing area is disapproved.* The area determined by the deciding official that would have been approved shall be drawn on a map and presented to the applicant by the deciding official with the notice of disapproval of the application.

(d) *Effect of prior certification to cease exporting.* An applicant's previous certification to cease exporting beginning February 20, 1991, for a period of three (3) years from within the disapproved sourcing area pursuant to paragraphs (f) and (g) in § 223.189 of this subpart shall remain in full force and effect for persons with approved and disapproved sourcing areas.

(e) *Review process and frequency.* (1) Approved sourcing areas shall be reviewed not less often than every five (5) years. A tentative date for a review shall be included in the deciding official's determination or stated in writing by the Regional Forester following the determination. At least 60 days prior to the tentative review date, the Regional Forester or other such reviewing official shall notify the person holding the sourcing area of the pending review, publish notice of such review in newspapers of general circulation within the sourcing area, and invite comments, to be received no later than 30 days from date of notice, from all interested persons, including the person holding the sourcing area. For 10 working days following the comment period, any person submitting a written comment and the person with the sourcing area may review the comments. If there is disagreement among the persons who submitted written comments regarding the proper sourcing area, the reviewing official shall convene an informal meeting convenient to the persons that all interested persons may attend. If an agreement cannot be reached among the persons, formal administrative adjudication shall occur. The deciding official shall, on the record and after opportunity for a hearing, approve or disapprove the sourcing area being reviewed.

(2) Disapproved sourcing areas shall be reviewed using the process described in paragraph (e)(1) of this section upon resubmission of an application, provided the applicant has accepted the area the Secretary would have approved as a sourcing area pursuant to paragraph (a)(2) of this section.

(3) The Department reserves the right to schedule a review, at the request of the Forest Service or the person holding the sourcing area, at any time prior to the scheduled tentative review date, with 60 days notice.

(4) Sourcing areas being reviewed shall continue in full force and effect pending the final review determination.

(f) *Reporting and recordkeeping procedures.* The reporting and recordkeeping procedures in this section constitute information collection requirements as defined in 5 CFR part 1320. These requirements have been approved by the Office of Management and Budget and assigned clearance number 0596–0115.

§ 223.203 Indirect substitution exception for National Forest System timber from within Washington State.

(a) *Indirect substitution restrictions.* No person may purchase from any other person unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States if such person would be prohibited from purchasing such timber directly from a department or agency of the United States, pursuant to § 490(b) of the Forest Resources Conservation and Shortage Relief Act of 1990.

(b) *Indirect substitution exception for National Forest System timber from within Washington State.* A limited amount of unprocessed National Forest System timber originating from within Washington State may be acquired by a person otherwise covered by the prohibition against indirect substitution, pursuant to section 490(b) of the Act.

(1) The amount of such unprocessed timber shall be limited to whichever is less:

(i) The higher of the applicant's actual purchase receipts for unprocessed timber originating from National Forest System lands within Washington State or the Department's records, during fiscal years 1988, 1989, and 1990, divided by 3; or

(ii) 15 million board feet.

(2) Such limit shall not exceed such person's proportionate share of 50 million board feet; and

(3) To obtain a share of the 50 million board feet exempted from the prohibition against indirect substitution in § 490(b) of the Act, a person must submit an application. Applications shall include at least the following:

(i) The amount of volume exception being requested, in thousand board feet (MFB);

(ii) A signed certification that reads as follows:

"I certify that, except for an approved share of unprocessed Federal timber, in accordance with 36 CFR 223.203, the prohibition contained in section 490(b) of the Act (16 U.S.C. 620b) applies to me. I have exported unprocessed timber originating from private lands from west of the 100th meridian in the 48 contiguous States and have acquired unprocessed timber from National Forest System lands located within Washington State in 1988, 1989 and/or 1990. I certify that the information provided in support of this application is a true, accurate, current and complete statement, to the best of my knowledge and belief. I agree to retain records of all transactions involving the acquisition and disposition of unprocessed timber from Federal lands within the area involved in this application for a period of 3 years beginning on the date the application is approved, and to make such records available for inspection upon the request of the Regional Forester or other official to whom such authority has been delegated. I make this certification with full knowledge and understanding of the requirements of the Act and do fully understand that if this application is approved, the amount of exception granted under this approval may not be exceeded in any one fiscal year, and do fully understand that if such exception is exceeded I will be in violation of the Act (16 U.S.C. 620 *et seq.*), and I may be subject to the penalties and remedies provided for such violation. Further, I do fully understand that such violation may subject me to the penalty of perjury pursuant to the False Statements Act (18 U.S.C. 1001).";

and

(iii) The application listed under this section must be signed by the person making such application or, in the case of a corporation, by its chief executive officer. The application must be on the company's letterhead and must be notarized.

(4) The application made under this section must be mailed to the Regional Forester in Portland, Oregon, no later than January 8, 1992. The applicant will be notified of the approving official's decision by letter. If approved, the amount of the exception will become effective upon publication in the **Federal Register**.

(5) Prospective applicants may review Department records upon request prior to the deadline for submitting applications. An applicant may voluntarily submit information documenting the amount of purchases of unprocessed timber originating from National Forest System lands within Washington State. The Department will then determine which amount is higher, verified by either the Department's records or the applicant's records. The Department will then determine the applicant's portion of the 50 million board feet by determining the lesser of the amount verified by the records or 15 million board feet. The applicant may submit the information documenting the amount of purchases in the following manner:

(i) Actual receipts for purchasing unprocessed timber from National Forest System lands within Washington State; or

(ii) A statement by a certified public accountant of:

(A) A summary by fiscal year for 1988, 1989 and 1990 of the applicant's acquisitions of timber originating from NFS lands in the State of Washington, listing total volume for each of the three fiscal years; and

(B) The average volume for the three fiscal years. The volumes to be reported are the harvest volumes, except in the case of open sales. Advertised volumes must be reported for open sales.

(C) The certified public accountant must certify to the following:

"I certify that under the penalties and remedies provided in § 492 of the Act (16 U.S.C. 620d) and the penalty of perjury provided in the False Statements Act (18 U.S.C. 1001) that the information provided in support of this application is, to the best of my knowledge and belief, a true, accurate, current, and complete statement of [applicant's company's name] National Forest System timber acquisitions originating from within the State of Washington for fiscal years 1988, 1989 and/or 1990."

(D) The certified public accountant's statement and certification must be on the accountant's company letterhead, must be notarized, and must accompany the applicant's application.

(c) The purchase limit right obtained under this rule may be sold, traded, or otherwise exchanged with any other person subject to the following conditions:

(1) Such rights may not be sold, traded, or otherwise exchanged to persons already in possession of such rights;

(2) Any person selling, trading, or exchanging any or all of the rights obtained under this rule shall advise the Regional Forester of the amount being traded and the name(s) of the person(s) acquiring such rights within 15 days of the transaction; and

(3) No person may have or acquire more than 15 million board feet in one fiscal year.

(d) The application procedures in this section constitute information collection requirements a defined in 5 CFR part 1320. These requirements have been approved by the Office of Management and Budget and assigned clearance number 0596–0115.

Dated: September 30, 1991.

James R. Moseley,

Assistant Secretary, Natural Resources and Environment.

[FR Doc. 91–30228 Filed 12–18–91; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AE42

Finality of Decisions

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations on finality of decisions. The intended effect of the amendment is to define the point at which VA decisions become final and binding.

EFFECTIVE DATE: January 21, 1992.

FOR FURTHER INFORMATION CONTACT: John Bissett, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.104(a) and 3.105(a) in the **Federal Register** of July 10, 1990 (55 FR 28234–5). Interested persons were invited to submit written comments, suggestions or objections on or before August 9, 1990. Comments were received from the American Legion, the National Veterans Legal Services Project on behalf of Vietnam Veterans of America, Inc., and a private individual.

One commenter noted that the proposed rule indicated decisions would be binding on all "VA offices", whereas the current rule specifies "VA field offices". He noted there was no explanation for dropping the word "field" from the new rule. The word was inadvertently omitted when the proposed rule was published and has been restored in the final regulation.

Another commenter felt that the regulations should require VA to fully advise the claimant of the decision as well as his or her due process rights, and a third suggested that the proposed regulation violates the provisions of 38 U.S.C. 5104 (formerly 3004) by implying that by granting a claim VA is absolved of its duty to send the claimant written notice. That commenter suggested that the phrase "or when such decision results in payment of monetary benefits" be deleted.

Section 115 of the Veterans' Benefits Amendments of 1989, Public Law 101–237, 103 STAT. 2062 (1989) added section 5104 to title 38, United States Code. That new section requires VA to provide notice to a claimant of any decision affecting provision of benefits; it further establishes certain requirements regarding the content of the notice. VA regulations at 38 CFR 3.103(f) require that VA notices contain certain elements, including notice of procedural and appellate rights. We believe that those provisions adequately address the concerns the commenters raised regarding the content of VA notices. The current rulemaking cannot, nor is it intended to, relieve VA of its statutory and regulatory obligations to advise claimants of its decisions.

The purpose of the current rulemaking is to establish by regulation the point at which a decision becomes final and binding upon all VA field offices. That point is reached when VA issues written notification on any issues for which it is required that VA provide notice to the claimant in accordance with 38 U.S.C. 5104. Once VA issues such notice, the decision may be changed only upon a showing of clear and unmistakeable error upon review by duly constituted appellate authorities.

Upon further consideration, VA believes that the language in the proposed rule concerning the content of the notification is unnecessary and that it could mislead anyone attempting to determine the point at which a VA decision is final and binding. Consequently, we have amended the rule by deleting any reference to the content of the written notice as well as the phrase "or when such decision results in payment of monetary benefits." We have substituted language which focuses on the moment that a VA decision becomes final rather than the content of the notice.

One commenter, noting that under VA regulations "sending" notification is synonymous with "receiving" it, and that the period during which the claimant must perfect a claim or challenge an adverse decision begins on the date that notice is sent, expressed concern that without some provision for mitigating circumstances related to delayed receipt or non-receipt of the notification, this regulation could be restrictively applied. VA does not concur with that assessment. The rules regarding time limits, extension of time limits and the computation of time limits are found at 38 CFR 3.109 and 3.110. We believe that amendments to those

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regulations published in the Federal Register of April 11, 1990, pages 13522–9, provide adequate remedies and protection for the rights of claimants in the event that notification of a VA decision is not received or receipt is delayed.

The same commenter, concerned over the position taken by VA's General Counsel on an appeal filed with the United States Court of Veterans Appeals (COVA), asked whether sending notification of a decision to the claimant's representative constitutes notification to the claimant.

A claimant must file an appeal of a decision by the Board of Veterans Appeals (BVA) with COVA within 120 days of the BVA decision being appealed (38 U.S.C. 7266(a) (formerly 4066(a))). In the COVA case cited (No. 90–316), BVA mailed notice of an adverse decision to the veteran at a previous address, and at the same time mailed a copy to his representative. Several weeks later, the BVA decision was mailed to the veteran's correct address. The veteran filed an appeal with COVA more than 120 days after the notice was mailed to his old address, but within 120 days of the date it had been mailed to his correct address. VA's General Counsel moved to dismiss the appeal on the grounds that the Court lacked jurisdiction because the appeal was not timely filed. COVA, noting that 38 U.S.C. 7104(e) (formerly 4004(e)) requires BVA to "mail a copy of its written decision to the claimant and the claimant's authorized representative (if any) at the last known address" of each, ruled that the appeal was timely filed and dismissed General Counsel's motion. Since there is a similar statutory requirement at 38 U.S.C. 5104(a) concerning notice of VA decisions, sending notice of a VA decision to a claimant's representative does not constitute notice to the claimant.

It appears that the commenter's concern arise from what he perceives to be an uncompromising position adopted by VA in that court proceeding. VA would point out, however, that proceedings before VA and before a court are fundamentally different in concept. VA's procedures for handling benefit claims are, by tradition and regulation, non-adversarial; proceedings before any court are by nature and design adversarial. VA arguments presented in the COVA case cited addressed the issue of COVA's jurisdiction in a specific case based on the unique circumstances in that individual claim. Those arguments should not be construed as representing in any manner a position VA would adopt toward benefit claims in the nonadversarial environment of claims processing.

VA appreciates the comments and suggestions submitted in response to the proposed rule, which is now adopted with the amendments noted above.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulatory, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pension, Veterans.

Approved: November 13, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

1. The authority citation for part 3, subpart A is revised to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.104, paragraph (a) is revised to read as follows:

§ 3.104 Finality of decisions.

(a) A decision of a duly constituted rating agency or other agency of original jurisdiction shall be final and binding on all field offices of the Department of Veterans Affairs as to conclusions based on the evidence on file at the time VA issues written notification in accordance with 38 U.S.C. 3004. A final and binding agency decision shall not be subject to revision on the same factual basis except by duly constituted appellate authorities or except as provided in § 3.105 of this part.

* * * * *

3. In § 3.105, the first sentence of paragraph (a) is revised to read as follows:

§ 3.105 Revisions of decisions.

(a) *Error.* Previous determinations which are final and binding, including decisions of service connection, degree of disability, age, marriage, relationship, service, dependency, line of duty, and other issues, will be accepted as correct in the absence of clear and unmistakable error. * * *

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[FR Doc. 91–30277 Filed 12–18–91; 8:45 am]

BILLING CODE 8320–01–M

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38 CFR Part 3

RIN 2900–AF25

Exclusions From Income

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning exclusions from countable income under the Improved Pension Program. This change is necessary because current regulations inappropriately exclude payments from a specific federal program from countable income for VA purposes. The intended effect of this change is to correct that error.

EFFECTIVE DATE: This amendment is effective January 21, 1992.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.272(k) in the Federal Register of May 31, 1991 (56 FR 24764–5). Interested persons were invited to submit written comments, suggestions or objections on or before July 1, 1991. As no comments were received, the proposed amendment is adopted without change.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.105.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pension, Veterans.

Approved: November 13, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501(a), unless otherwise noted.

§ 3.272 [Amended]

2. In § 3.272(k), introductory text, remove the words "and Older American Community Service Program".

[FR Doc. 91–30275 Filed 12–18–91; 8:45 am]

BILLING CODE 8320–01–M

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38 CFR Part 3

RIN 2900–AF05

Adjudication; Pension, Compensation, and Dependency and Indemnity Compensation Renouncement

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs has amended its adjudication regulations to establish a specific effective date of discontinuance when compensation, pension, or dependency and indemnity compensation benefits are renounced. This amendment is necessary because variations in workload between regional offices caused some claims to be processed less expeditiously than others, resulting, under the previous rules referring to termination as of date of last payment, in different termination dates. The intended effect of this amendment is to establish a uniform termination date when monetary benefits are renounced.

EFFECTIVE DATE: This amendment is effective January 21, 1992.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.500(q) in the Federal Register of June 25, 1991 (56 FR 28849). Interested persons were invited to submit written comments, suggestions or objections on or before July 25, 1991. As no comments were received, the proposed amendment is adopted with a minor technical amendment.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pension, Veterans.

Approved: November 13, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, is revised to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501(a), unless otherwise noted.

§ 3.500 [Amended]

2. In § 3.500(q), remove the words "Date of last payment." and add, in their place, the words "Last day of the month in which the renouncement is received."

[FR Doc. 91–30278 Filed 12–18–91; 8:45 am]

BILLING CODE 8320–01–M

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38 CFR Part 3

RIN 2900–AF42

Active Military Service Certified Under Section 401 of Public Law 95–202

AGENCY: Department of Veterans Affairs.

ACTION: Final regulation.

SUMMARY: The Department of Veterans Affairs (VA) has amended its regulations concerning persons who are included as having served on active duty. The need for this action results from recent decisions of the Secretary of the Air Force that the World War II service of members of the following two groups constitutes active military service in the Armed Forces of the United States for purposes of all laws administered by VA: "Civilian Crewmen of United States Coast and Geodetic Survey Vessels Who Performed Their Service in Areas of Immediate Military Hazard While Conducting Cooperative Operations with and for the United States Armed Forces Within a Time Frame of December 7, 1941, to August 15, 1945" and the "Honorably Discharged Members of the American

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Volunteer Group (Flying Tigers) Who Served During the Period December 7, 1941 to July 18, 1942". The effect of this action is to confer veteran status for VA benefit purposes on former members of these groups who were discharged under honorable conditions.

DATES: The effective dates are April 8, 1991, for § 3.7(x)(20) and May 3, 1991, for § 3.7(x)(21), the respective dates on which the Secretary of the Air Force determined that such service constitutes active duty.

FOR FURTHER INFORMATION CONTACT: Steven Thornberry, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 233–3005.

SUPPLEMENTARY INFORMATION: Section 401 of Public Law 95–202 authorized the Secretary of Defense to determine whether the service of members of civilian or contractual groups shall be considered active duty for the purposes of all laws administered by VA.

A notice of certification of the following group by the Secretary of the Air Force appeared in the **Federal Register** of May 20, 1991, page 23054: Civilian Crewmen of United States Coast and Geodetic Survey Vessels Who Performed Their Service in Areas of Immediate Military Hazard While Conducting Cooperative Operations with and for the United States Armed Forces Within a Time Frame of December 7, 1941, to August 15, 1945.

A notice of certification of the following group by the Secretary of the Air Force appeared in the **Federal Register** of June 6, 1991, page 26072: Honorably Discharged Members of the American Volunteer Group [Flying Tigers] Who Served During the Period December 7, 1941 to July 18, 1942.

VA is issuing a final rule to amend the provisions of 38 CFR 3.7(x). This change is necessary to expand the regulatory provisions in accordance with the April 8, 1991, and May 3, 1991, determinations of the Secretary of the Air Force, which are binding on VA. Because this amendment does not constitute a substantive change, publication as a proposal for public notice and comment is unnecessary.

Since a notice of proposed rulemaking is unnecessary and will not be published, this amendment is not a "rule" as defined in and made subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This amendment will not directly affect any small entity.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more;

(2) It will not cause a major increase in costs or prices;

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There is no affected Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: November 18, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501(a).

2. In § 3.7, paragraphs (x) (20) and (21) are added and the authority citation at the end of § 3.7(x) is revised to read as follows:

§ 3.7 Persons included.

* * * * *

(x) *Active military service certified as such under section 401 of Pub. L. 95–202.*

* * *

(20) Civilian Crewmen of United States Coast and Geodetic Survey Vessels Who Performed Their Service in Areas of Immediate Military Hazard While Conducting Cooperative Operations with and for the United States Armed Forces Within a Time Frame of December 7, 1941, to August 15, 1945.

(21) Honorably Discharged Members of the American Volunteer Group (Flying Tigers) Who Served During the Period December 7, 1941 to July 18, 1942.

(Authority: Pub. L. 95–202, Sec. 401)

[FR Doc. 91–30278 Filed 12–18–91; 8:45 am]

BILLING CODE 8320–01–M

38 CFR Part 3

RIN 2900–AE92

Reduction Because of Hospitalization

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations on reductions of pensions of certain veterans receiving institutional care. These amendments are based on recently enacted legislation and further consideration of previous legislation. The intended effect of these amendments is to minimize pension reductions when VA provides institutional care.

EFFECTIVE DATE: The amendments that pertain to Improved Pension rates for certain veterans receiving institutional care are effective February 1, 1990, the date provided by legislation. The amendments pertaining to veterans receiving Section 306 pension who are institutionalized are effective January 21, 1992.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.454 and 3.551 in the **Federal Register** of February 25, 1991 (56 FR 7630–2). Interested persons were invited to submit written comments, suggestions or objections on or before March 27, 1991. As no comments were received, the proposed amendments are adopted with only minor technical changes. Additionally, 38 CFR 3.501(i), concerning the effective dates for reductions based on institutional care, is amended to provide effective dates for reduction upon readmission, and to conform with the newly adopted amendments to 38 CFR 3.551.

Since the publication of the proposed regulation, section 101 of Veterans' Benefits Programs Improvement Act of 1991, Public Law 102–86, amended 38 U.S.C. 5503 (formerly 3203) to provide for reduction of improved pension to $90 rather than $60 monthly for veterans without dependents effective the first of the month following readmission to a domiciliary or nursing home by VA or at VA expense when the readmission is within six months of a period during which there was a required reduction. This technical amendment to section 111 of the Veterans' Benefits Amendments of 1989, Public Law 101–237, is effective the same date as that legislation, February 1, 1990 (See 56 FR 7630–2). The proposed change to § 3.551(e)(2) has been amended to implement this new statutory provision. Because this amendment implements a statutory change, publication as a proposal for public notice and comment is unnecessary.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 64.104.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pension, Veterans.

Approved: November 13, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, is revised to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.501, paragraphs (i)(3) and (4) are redesignated as paragraphs (6) and (7) respectively, new paragraphs (3), (4) and (5) are added, and paragraphs (1) and (2) are revised to read as follows:

§ 3.501 Veterans.

* * * * *

(i) *Hospitalization.* (1) *Section 3.551(b).* Last day of the sixth calendar month following admission if veteran without dependents.

(2) *Section 3.551(c).* (i) Last day of the second calendar month following admission to domiciliary care if veteran without spouse or child or, though married, is receiving pension at the rate provided for a veteran without dependents. (ii) Last day of the third calendar month following admission for hospital or nursing home care if veteran without spouse or child or, though married, is receiving pension at the rate provided for a veteran without dependents. (iii) Upon readmission to hospital, domiciliary, or nursing home care within 6 months of a period for which pension was reduced under § 3.551(c)(1), the last day of the month of such readmission.

(3) *Section 3.552(b)* Upon readmission to hospital care within 6 months of a period of hospital care for which pension was affected by the provisions of § 3.552(b)(1) and (2) or § 3.552(k) and discharge or release was against medical advice or was the result of disciplinary action, the day preceding the date of such readmission.

(4) *Section 3.551(d)* (i) Last day of the second calendar month following admission to domiciliary care if veteran without spouse or child or, though married, is receiving pension at the rate for a veteran without dependents. (ii) Last day of the third calendar month following admission for hospitalization or nursing home care if veteran without spouse or child or, though married, is receiving pension at the rate for a veteran without dependents.

(iii) Upon readmission to hospital, domiciliary, or nursing home care within 6 months of a period for which pension was reduced under § 3.551(d)(1) or (2), the last day of the month of such readmission.

(5) *Section 3.551(e)* (i) Last day of the third calendar month following admission to domiciliary or nursing home care if veteran without spouse or child or, though married, is receiving pension at the rate for a veteran without dependents. (ii) Upon readmission to domiciliary or nursing home care within 6 months of a period of domiciliary or nursing home care for which pension was reduced under § 3.551(e)(1), the last day of the month of such readmission.

* * * * *

3. In § 3.551 the heading of paragraph (b) is revised, the existing text in paragraph (b) is designated as paragraph (b)(1), and new paragraphs (b)(2) and (b)(3) are added to read as follows:

§ 3.551 Reduction because of hospitalization.

* * * * *

(b) *Old-law pension.* * * *

(2) *Readmission following regular discharge.* Where a veteran has been given an approved discharge or release, readmission the next day to the same or any other VA institution begins a new period of hospitalization, unless the veteran was released for purposes of admission to another VA institution.

(3) *Readmission following irregular discharge.* When a veteran whose award is subject to reduction under this paragraph has been discharged or released from a VA institution against medical advice or as a result of disciplinary action, reentry within 6 months from the date of previous admission constitutes a continuation of that period of hospitalization and the award will not be reduced prior to the first day of the seventh calendar month following the month of original admission, exclusive of authorized absences. Reentry 6 months or more after such discharge or release shall be considered a new admission.

* * * * *

4. In § 3.551 paragraphs (d), (f), and (g) are redesignated as (f), (g), and (h), respectively, a new paragraph (d) is added, paragraph (e) is revised, and the introductory text of redesignated paragraph (h)(1) is revised to read as follows:

§ 3.551 Reduction because of hospitalization.

* * * * *

(d) *Improved pension prior to February 1, 1990.* (1) Where any veteran having neither spouse nor child, or any veteran who is married or has a child and is receiving pension as a veteran without dependents, is being furnished domiciliary care by VA, no pension in excess of $60 monthly shall be paid to or for the veteran for any period after the end of the second full calendar month following the month of admission for such care. (38 U.S.C. 3203(a))

(2) Where any veteran having neither spouse nor child, or any veteran who is married or has a child and is receiving pension as a veteran without dependents, is furnished hospital or

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nursing home care by VA, no pension in excess of $60 monthly shall be paid to or for the veteran for any period after the end of the third full calendar month following the month of admission for such care. (38 U.S.C. 3203(a))

(3) No pension in excess of $60 monthly shall be paid to or for a veteran having neither spouse nor child, or to a veteran who is married or has a child and is receiving pension as a veteran without dependents, for any period after the month in which the veteran is readmitted within 6 months of a period of care for which pension was reduced under paragraph (d)(1) or (2) of this section. (38 U.S.C. 3203(a))

(4) Where improved pension is being paid to a married veteran at the rate prescribed by 38 U.S.C. 521(b) all or any part of the rate payable under 38 U.S.C. 521(c) may be apportioned for a spouse as provided in § 3.454(b). (38 U.S.C. 3203(a))

(5) The provisions of paragraphs (d)(1), (2), and (3) of this section are not applicable to any veteran who has a child, but is receiving pension as a veteran without a dependent because it is reasonable that some part of the child's estate be consumed for the child's maintenance under 38 U.S.C. 522(b).

(6) For the purpose of paragraphs (d)(1), (2), and (3) of this section, if a veteran is furnished hospital or nursing home care by VA and then is transferred to VA-furnished domiciliary care, the period of hospital or nursing home care shall be considered as domiciliary care. Similarly, if a veteran is furnished domiciliary care by VA and then is transferred to VA-furnished hospital or nursing home care, the period of domiciliary care shall be considered hospital or nursing home care.

(e) *Improved pension after January 31, 1990.* (1) Where any veteran having neither spouse nor child, or any veteran who is married or has a child and is receiving pension as a veteran without dependents, is furnished domiciliary or nursing home care by VA, no pension in excess of $90 monthly shall be paid to or for the veteran for any period after the end of the third full calendar month following the month of admission for such care.

(Authority: 38 U.S.C. 3203(a))

(2) No pension in excess of $90 monthly shall be paid to a veteran having neither spouse nor child, or to a veteran who is married or has a child and is receiving pension as a veteran without dependents, for any period after the month in which the veteran is readmitted within six months of a period of domiciliary or nursing home care for which pension was reduced under paragraph (e)(1) of this section.

(3) Where improved pension is being paid to a married veteran at the rate prescribed by 38 U.S.C. 521(b) all or any part of the rate payable under 38 U.S.C. 521(c) may be apportioned for a spouse as provided in § 3.454(b).

(Authority: 38 U.S.C. 3203(a))

(4) For the purposes of paragraph (e)(1) of this section, if a veteran is furnished hospital care by VA and then is transferred to VA-furnished nursing home or domiciliary care, the period of hospital care shall not be considered as nursing home or domiciliary care. Transfers from VA-furnished nursing home or domiciliary care to VA-furnished hospital care then back to nursing home or domiciliary care shall be considered as continuous nursing home or domiciliary care provided the period of hospitalization does not exceed six months. Similarly, if a veteran is transferred from domiciliary or nursing home to a VA hospital and dies while so hospitalized, the entire period of VA care shall be considered as domiciliary or nursing home care. Nursing home or domiciliary care shall be considered as terminated effective the date of transfer to a VA hospital if the veteran is completely discharged from VA care following the period of hospitalization or if the period of hospitalization exceeds six months.

(5) Effective February 1, 1990, reductions of improved pension based on admissions or readmissions to VA hospitals or any hospital at VA expense shall no longer be made except when required under the provisions of 38 CFR 3.552.

(6) The provisions of paragraphs (e)(1) and (2) of this section are not applicable to any veteran who has a child, but is receiving pension as a veteran without a dependent because it is reasonable that some part of the child's estate be consumed for the child's maintenance under 38 U.S.C. 522(b).

* * * * *

(h) *Hospitalization.* (1) *General.* The reduction required by paragraphs (d) and (e), except as they refer to domiciliary care, shall not be made for up to three additional calendar months after the last day of the third month referred to in paragraphs (d)(2) or (e)(1) of this section, or after the last day of the month referred to in paragraphs (d)(3) or (e)(2) of this section, under the following conditions:

* * * * *

§ 3.551 [Amended]

5. In § 3.551(a) in the first sentence after the word "reduction" and before the word "when" add the words "as specified below".

§ 3.551 [Amended]

6. In newly redesignated § 3.551(b)(1) remove the phrase ", *and service pension based on entitlement prior to July 1, 1960*" from the heading.

§ 3.551 [Amended]

7. In the heading to § 3.551(c) remove the words ", *improved pension, and service pension based on entitlement after June 30, 1960*". In § 3.551(c)(1) after the word "furnished" and before the word "domiciliary" add the words "hospital, nursing home or", remove the dollar amount "$60" and add in its place the dollar amount "$50".

§ 3.551 [Amended]

8. In § 3.551 remove paragraphs (c)(2) and (4), (6) and (7), and redesignate paragraphs (c)(3) and (c)(5) as (c)(2) and (c)(3), respectively. In the newly redesignated paragraph (c)(2), remove the words "or (2)".

§ 3.551 [Amended]

9. In newly redesignated § 3.551(c)(2) and (c)(3) remove the dollar amount "$60" wherever it appears, and add in its place the dollar amount "$50".

§ 3.551 [Amended]

10. In newly redesignated § 3.551(h)(2) remove the paragraph designations "(c)(2)", "(c)(3)", and "(g)(1)" wherever they appear, and add, in their place, the paragraph designations "(d)", "(e)", and "(h)(1)", respectively.

§ 3.551 [Amended]

11. In newly redesignated § 3.551(h)(3) after the word "monthly" and before the word "payable" add the phrase "or $90, if reduction is under paragraph (e)(1)".

§ 3.454 [Amended]

12. In § 3.454(b)(1) and (c) remove the dollar amount "$60", wherever it appears, and add, in its place, the dollar amount "$50".

§ 3.454 [Amended]

13. In § 3.454(b)(2) and (d) remove "§ 3.551(c)" and add, in its place, "§ 3.551(d) or (e)(2)".

§ 3.454 [Amended]

14. In § 3.454(d) after the word "monthly" add the words "if reduction is under § 3.551(d) or (e)(2), or $90 monthly if reduction is under § 3.551(e)(1)".

15. In § 3.454 add paragraph (b)(3) and its authority citation to read as follows:

§ 3.454 Veterans disability pension.

* * * * *

(b) * * *

(3) Where the amount of improved pension payable to a married veteran under 38 U.S.C. 521(b) is reduced to $90 monthly under § 551(e)(1) an apportionment may be made to such veteran's spouse upon an affirmative showing of hardship. The amount of the apportionment generally will be the difference between $90 and the rate payable if pension was being paid under 38 U.S.C. 521(c) including the additional amount payable under 38 U.S.C. 521(e) if the veteran is so entitled.

(Authority: 38 U.S.C. 3203(a))

* * * * *

[FR Doc. 91-30274 Filed 12-18-91; 8:45 am]
BILLING CODE 8320-01-M

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38 CFR Part 3

RIN 2900-AE99

Headstone Allowance; Temporary Program of Vocational Training

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning payment of a monetary allowance in lieu of a government-furnished headstone or marker and eligibility for the temporary program of vocational training available to certain pension beneficiaries. These amendments are based on statutory changes which affect these programs. The intended effect of these changes is to expand and extend benefit eligibility.

EFFECTIVE DATE: The amendments are effective December 18, 1989, the date the legislation was signed into law.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.342 and 3.1612 in the **Federal Register** of May 3, 1991 (56 FR 20394-5). Interested persons were invited to submit written comments, suggestions or objections on or before June 3, 1991. It should be noted that section 8041 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, eliminated the payment of the monetary allowance in lieu of VA-provided headstone or marker for deaths occurring on or after November 1, 1990. As no comments were received, the proposed amendments are adopted with only minor technical amendments.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.101 and 64.104.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pension, Veterans.

Approved: November 13, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3, subpart A is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A is revised to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501(a).

2. In § 3.342, in paragraphs (c)(1) and (c)(2) remove the words "age 50" where they appear and add, in their place, the words "age 45"; the authority citation at the end of paragraph (c)(2) is removed; a new paragraph (c)(3) and a new authority citation are added to read as follows:

§ 3.342 Permanent and total disability ratings for pension purposes.

* * * * *

(c) * * *

(3) If a veteran secures employment within the scope of a vocational goal identified in his or her individualized written vocational rehabilitation plan, or in a related field which requires reasonably developed skills and the use of some or all of the training or services furnished the veteran under such plan, not later than one year after eligibility to counseling under § 21.6040(b)(1) of this chapter expires, the veteran's permanent and total evaluation for pension purposes shall not be terminated by reason of the veteran's capacity to engage in such employment until the veteran has maintained that employment for a period of not less than 12 consecutive months.

(Authority: 38 U.S.C. 1524(c))

3. In § 3.1612, paragraph (e)(3) is redesignated as paragraph (e)(4), and paragraph (e)(2)(iii) is redesignated as paragraph (e)(3); paragraphs (b)(3), (c), (e)(1) and (e)(2)(i) are revised and new authority citations are added at the end of those paragraphs to read as follows:

§ 3.1612 Monetary allowance in lieu of a Government-furnished headstone or marker.

* * * * *

(b) * * *

(3) The headstone or marker was purchased to mark the otherwise unmarked grave of the deceased veteran or, if death occurred prior to December 18, 1989, the veteran's identifying information was added to an existing headstone or marker.

(Authority: 38 U.S.C. 2306(d))

* * * * *

(c) *Person entitled to request a Government-furnished headstone or marker.* For purposes of this monetary allowance, the term "person entitled to request a headstone or marker" includes, but is not limited to, the person who purchased the headstone or marker (or if death occurred prior to December 18, 1989, the person who paid for adding the veteran's identifying information to an existing headstone or marker), or the executor, administrator or person representing the deceased's estate.

(Authority: 38 U.S.C. 2306(d))

* * * * *

(e) *Payment and amount of the allowance.*

(1) The monetary allowance is payable as reimbursement to the person entitled to request a Government-furnished headstone or marker. If funds

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of the deceased's estate were used to purchase the headstone or marker or, if death occurred prior to December 18, 1989, to have the deceased's identifying information added to an existing headstone or marker, and no executor or administrator has been appointed, payment may be made to a person who will make a distribution of this monetary allowance to the person or persons entitled under the laws governing the distribution of intestate estates in the State of the decedent's personal domicile.

(Authority: 38 U.S.C. 2306(d))

(2) * * *

(i) Actual cost of acquiring a non-Government headstone or marker or, if death occurred prior to December 18, 1989, the actual cost of adding the veteran's identifying information to an existing headstone or marker; or

(Authority: 38 U.S.C. 2306(d))

* * * * *

[FR Doc. 91-30280 Filed 12-18-91; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Parts 3 and 13

RIN 2900-AF07

Limitation on Compensation Benefits for Certain Incompetent Veterans; Computation of Estate

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication and fiduciary activities regulations concerning the payment of compensation benefits to or for certain incompetent veterans, and the computation of those veterans' estates. This amendment is necessary to implement recently enacted legislation. The intended effect of this amendment is to prohibit the payment of compensation to incompetent veterans without dependents whose estates exceed $25,000, and to clarify how VA will compute the value of the estates of these incompetent veterans.

EFFECTIVE DATE: This amendment is effective November 1, 1990, the date specified in the enacting legislation.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to add a new § 3.853 to 38 CFR and to amend §§ 3.501 and 13.109(d)(5) in the **Federal Register** of June 4, 1991 (56 FR 25399-400). Interested persons were invited to submit written comments, suggestions or objections on or before July 5, 1991. We received one comment from a private individual.

The commenter objected to the proposed regulatory amendments because he believes that, in effect, the statute they implement forces an affected veteran to purchase a home to avoid having his or her benefits terminated. The commenter feels that the regulations should delay termination of benefits until such time as the veteran or his or her fiduciary has exhausted the veteran's procedural due process and appellate rights, or the veteran has an opportunity to purchase a home.

VA does not concur. Section 8001 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, added section 5505 (formerly 3205) to title 38, United States Code to prohibit the payment of compensation benefits to or for an incompetent veteran, having neither spouse, child nor dependent parent, whose estate, excluding the value of the veteran's home, exceeds $25,000 until the estate has been reduced to less than $10,000. By excluding the value of the veteran's home from the estate computation, Congress has expressed its intention that no veteran who owns a home should be forced to sell it in order to have sufficient available assets to meet living expenses until the estate has been reduced to less than $10,000. VA finds no sound basis, however, for inferring that Congress intended different effective dates of termination based on whether or not a veteran owns or purchases a home, whether or not, or to what extent, a veteran elects to exercise his or her procedural due process and appellate rights, or any other reason.

The provisions of 38 CFR 3.105(h)(1) specify that if a request for predetermination hearing is received by VA within 30 days from the date of the notice, benefit payments will continue at the previously established level pending a final determination. If the final determination is that the facts warrant the termination of benefit payments, however, the effective date of termination is governed by the applicable provisions of §§ 3.500 through 3.503. Terminating benefits on the last day of the month in which all factors requiring a statutory termination are present is consistent with VA's regulatory policy for other statutory purposes, e.g., incompetent veterans who are hospitalized, institutionalized or domiciled by the United States under the provisions of § 3.557.

The commenter also believes that these regulations should treat estates that exceed $25,000 by a large amount differently than those that exceed $25,000 by only a small amount since large estates will survive until September 30, 1992, the date that 38 U.S.C. 5505 (formerly 3205) expires, relatively intact.

VA does not concur. The Secretary has broad authority under 38 U.S.C. 501(a) (formerly 210(c)) to make all regulations necessary or appropriate to carry out the laws administered by VA, but only to the extent that these regulations are consistent with the governing statutes. Since 38 U.S.C. 5505 (formerly 3205) makes no distinction based on the amount by which estates exceed $25,000, it is beyond VA's authority to create such a distinction in the implementing regulations.

The proposed regulation (See 56 FR 25399-400), in error, referred to the resumption of compensation payments when the affected veteran's estate was reduced to $10,000. The statutory language is clear (See 38 U.S.C. 5505 (formerly 3205)). Compensation payments are to resume when the affected veteran's estate is reduced to less than $10,000. The final regulation has been appropriately amended.

VA appreciates the comment submitted in response to the proposed rule, which is now adopted with the amendment described above and other minor technical amendments.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 64.109.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

38 CFR Part 13

Surety bonds, Trusts and trustees, Veterans.

Approved: November 13, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 and part 13 are amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, is revised to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.501, new paragraph (n) and its authority citation are added to read as follows:

§ 3.501 Veterans.

* * * * *

(n) *Section 3.853. Incompetents; estate over $25,000.* Incompetent veteran receiving compensation, without spouse, child, or dependent parent, whose estate exceeds $25,000: Last day of the first month in which the veteran's estate exceeds $25,000, but not earlier than November 1, 1990.

(Authority: 38 U.S.C. 5505)

3. The undesignated center heading preceding § 3.850 is revised to read as follows:

Incompetents, Guardianship and Institutional Awards

* * * * *

4. Section 3.853 is added to read as follows:

§ 3.853 Incompetents; estate over $25,000.

(a) Effective November 1, 1990, through September 30, 1992, where a veteran:

(1) Is rated incompetent by VA, and

(2) Has neither spouse, child, nor dependent parent, and

(3) Has an estate, excluding the value of the veteran's home, which exceeds $25,000, further payments of compensation shall not be made until the estate is reduced to less than $10,000. The value of the veteran's estate shall be computed under the provisions of § 13.109 of this chapter. Payment of compensation shall be discontinued the last day of the first month in which the veteran's estate exceeds $25,000.

(b) Where payment of compensation has been discontinued by reason of paragraph (a) of this section, it shall not be resumed for any period prior to October 1, 1992, until VA has received evidence showing the estate has been reduced to less than $10,000, or any criterion of paragraph (a) (1) or (2) of this section is no longer met. Payments shall not be made for any period prior to the date on which the estate was reduced to less than $10,000, or a criterion of paragraph (a) (1) or (2) of this section was no longer met.

(c) If a veteran denied payment of compensation under paragraph (a) of this section is subsequently rated competent for more than 90 days, the withheld compensation shall be paid to the veteran in a lump-sum. However, a lump-sum payment shall not be made to or on behalf of a veteran who, within such 90-day period, dies or is again rated incompetent.

(d) The compensation payments to an incompetent veteran who is hospitalized, institutionalized, or domiciled by the United States, or any political subdivision thereof, are subject to the provisions of § 3.557 of this part.

(Authority: 38 U.S.C. 5505)

PART 13—VETERANS BENEFITS ADMINISTRATION, FIDUCIARY ACTIVITIES

5. The authority citation for part 13 is revised to read as follows:

Authority: 72 Stat. 1114, 1232, as amended, 1237; 38 U.S.C. 501(a), 5502, 5503, 5711, unless otherwise noted.

6. Section 13.109 is amended by revising the section heading, paragraph (d)(5), and the authority citation appearing at the end of the section to read as follows:

§ 13.109 Determination of value of estate; 38 U.S.C. 5503(b)(1)(A) and 38 U.S.C. 5505.

* * * * *

(d) The following will not be included as assets:

* * * * *

(5)(i) *For purposes of determinations under 38 U.S.C. 5503(b)(1)(A).* The value of the veteran's home unless medical prognosis indicates that there is no reasonable likelihood that the veteran will again reside in the home. It may be presumed that there is no likelihood for return when the veteran is absent from the home for a continuous period of 12 months because of the need for care, and the prognosis is void of any expectation for a return to the home.

(ii) *For purposes of determinations under 38 U.S.C. 5505.* The value of the veteran's home.

* * * * *

(Authority: 38 U.S.C. 5505)

* * * * *

[FR Doc. 91-30281 Filed 12-18-91; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 431

[MB-32-N]

RIN 0938-AF36

Medicaid Program: Medicaid Eligibility Quality Control Program

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Response to comments on final rule.

SUMMARY: This document responds to public comments received by the Department on a final rule issued on May 31, 1990, relating to the Department's decision not to publish regulations on the basis of the results of congressionally mandated studies of the quality control systems for the Aid to Families with Dependent Children (AFDC) program and the Medicaid program. The purpose of the studies, which were required by the Consolidated Omnibus Budget Reconciliation Act of 1985, was to examine how best to operate quality control systems in order to obtain information which would allow program managers to improve the quality of administration and provide reasonable data on which to base withholding Federal matching payments for excessive levels of erroneous State payments.

FOR FURTHER INFORMATION CONTACT: Kathy Rama, (301) 966-5929.

SUPPLEMENTARY INFORMATION:

I. Background

The Medicaid Eligibility Quality Control (MEQC) program is a system developed to identify errors in determinations of Medicaid eligibility and to reduce erroneous expenditures in medical assistance payments by

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monitoring eligibility determinations. The system promotes payment accuracy, fiscal responsibility, and program integrity.

On May 31, 1990 (55 FR 22142), we published a final rule that revised certain MEQC requirements. In the preamble to that final rule, we noted that, at the time the notice of proposed rulemaking for the final rule was published (January 26, 1987), certain statutorily required quality control studies had not been completed. The studies were required by section 12301 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Public Law 99–272, as amended by section 1710 of the Tax Reform Act of 1986, Public Law 99–514. The purpose of the studies was to examine how best to operate quality control systems in order to obtain information which would allow program managers to improve the quality of administration and provide reasonable data on which to base withholding Federal matching payments for excessive levels of erroneous State payments.

As a result of receiving numerous State comments that questioned the appropriateness of issuing a final rule before the results of the studies were known, we delayed issuing the final rule until the findings of the studies were available. After considering the findings of the studies, we concluded and stated in the preamble to the final rule that it would not be appropriate to publish additional regulations. We gave our reasons as follows:

First, the current MEQC program is sound and has proved to be efficient and effective in reducing erroneous payments. The primary purpose of the MEQC program is to ensure that those individuals who receive assistance are eligible for services. The substantial reductions in error rates achieved by States demonstrate significant improvements in payment accuracy over time, thus indicating the effectiveness of the program.

Second, we analyzed the MEQC program to respond to specific, identified problems in the current process—not simply theoretical improvements which often entail considerable new costs and the diversion of resources, but do little to actually enhance the program.

Third, based on our analysis, we concluded that the principles and methods of the current program are valid. The concept of a uniform, national error threshold and shared fiscal responsibility for error is fair and equitable. The use of a double sampling methodology involving a State review of a sample of cases followed by a Federal re-review of a subsample of those cases is far more practical and efficient than duplicative, separate systems. It also provides an appropriate sharing of responsibilities and costs to achieve both error reduction and fiscal accountability. The sampling procedures and regression estimation methodology provide statistically valid, essentially unbiased and reliable estimates of payment error rates for corrective action and the calculation of disallowances. The definition and measurement of error are also reasonably balanced and complete.

Fourth, the current quality control focus on payment accuracy, fiscal responsibility, and program integrity has been and continues to be necessary and proper, given the appropriate public concern with high levels of erroneous payments. Quality control is, however, only one component of individual State management improvement efforts and the comprehensive Federal monitoring system designed to assess overall program performance. The MEQC program provides States with information on the frequency, magnitude, and sources of error to guide improvement in payment accuracy. The current MEQC program was never intended to be the only source of information about errors, much less provide comprehensive measures of program performance, such as timeliness, service delivery, efficiency, and effectiveness.

To the extent that program improvements are legitimately needed, we indicated that we would address these areas through appropriate statutory and administrative changes. We invited public comments on this approach.

II. Public Comments and Departmental Responses

In response to our request for public comments, we received correspondence from three State agencies, one private health care agency, and one law firm representing 18 public welfare agencies. Three of the commenters raised issues that were not within the scope for which comments were solicited, and as indicated in the preamble to the final rule, we are not addressing them in this document. Our responses to the remaining comments follow:

Comment: Two commenters recommended that the backlog of past "sanctions" in the Medicaid program be eliminated as had been done in the AFDC program.

Response: The Congress eliminated the backlog of past disallowances in the AFDC quality control program and proposed that the Department revise tolerance levels for AFDC quality control because the number of States which were liable for disallowances and the amount of past disallowances were very large. We believe that the fact that Congress took no similar action in the case of Medicaid disallowances reflects the fact that Congress believes the imposition of such disallowances to be appropriate. Further, we believe the Medicaid disallowances for prior years were established properly based on a sound review and measurement system which includes a separate Medicaid review of any ineligible case identified in the AFDC stratum to determine whether Medicaid eligibility exists.

Comment: One commenter suggested that, for future years, the performance standards be revised so that only States at the extreme of bad performance are "sanctioned."

Response: We do not believe that revisions to the 3 percent performance standard established by Congress would be appropriate. The 1988 national average error rate was 2.0 percent, with 4 States exceeding the 3-percent tolerance; the 1989 national average error rate was 2.1 percent, with five States exceeding the 3-percent tolerance. The national error rates for 1986 and 1987 were 2.5 and 2.2 percent, respectively. State performance is relatively consistent among States. We believe a national uniform error threshold is fair and equitable to States.

Comment: One commenter proposed that "sanctions" should be kept sufficiently low so that they do not endanger the States' ability to provide Medicaid services and recommended a new method of calculating disallowances similar to the sliding scale used in the AFDC program.

Response: Unlike the AFDC program, where error rates, the number of States liable, and disallowance amounts are high, recent error rates in Medicaid have been consistently low. The 1989 2.1 percent national error rate is evidence that States can maintain low error rates through accurate eligibility determinations and effective program management. We believe that current disallowance amounts are sufficiently low and do not endanger the States' ability to provide services.

Comment: Two commenters recommended that performance thresholds applied to States be adjusted to reflect caseloads that are differentially prone to error.

Response: Again, we do not believe that changes in the 3-percent performance standard established by the Congress would be appropriate. States may target effective corrective

actions to reduce the incidence of errors in error prone cases. Further, research provides no scientific basis to make consistent adjustments for case characteristics. Because so little of the variation in error rates between States can be explained by statistical analysis, the selection of specific characteristics for which to make adjustments cannot be empirically determined. The arbitrary selection of different alternative adjustment factors can result in dramatically different, and therefore inequitable, adjustments for States.

Comment: Two commenters suggested that States be rewarded for good performance. One commenter recommended that States with underpayment rates that are lower than the national average be allowed to offset their error rates with this reduction.

Response: Recent error rates in Medicaid have been consistently below the statutory threshold. For this reason, we believe it is not necessary to replace the disallowance process currently required by statute with an alternative system of incentives and disallowances. However, we are currently studying the feasibility of structuring an accountability system for Medicaid negative case actions. In this context, we may consider an incentive for good performance.

Comment: One commenter believes the method for calculating excess resource errors should be adjusted to avoid multiple counting of errors. That is, an excess resource error should be assigned only to the first month of eligibility or until resources are spent down.

Response: Under section 1902(r)(2) of the Act, States have the option to apply more liberal policies in determining income and resource eligibility of specified eligibility groups. If a State elects this option, it must amend its State Medicaid plan in order for MEQC to review cases in accordance with it. If a State has not chosen to use this option, statutory requirements mandate that an individual is ineligible for each month that he or she holds excess resources.

Comment: Two commenters believe States should not be "sanctioned" for errors that are found on the basis of information not available during the eligibility determination.

Response: We disagree with this comment. Although the source used to identify errors may not have been available during the eligibility determination, the factor causing the error did exist. States need to be aware of all errors to develop methods for identifying the error cause during the eligibility determination. States are free to use a variety of methods (e.g., collateral contacts) to verify eligibility. The fact that eligibility information was not obtained from one specific source or that data matches may not contain current information is not sufficient reason to hold the State harmless from an error. We recognize that it is unreasonable to hold States accountable for inaccurate, as opposed to outdated, information provided by a Federal agency that is the originating source of the data. Therefore, we have advised States that, effective October 1, 1990, we will not cite errors resulting from erroneous information provided by a Federal agency that is the primary source of verification. However, we believe that not citing errors that are the State's responsibility would undermine the focus of MEQC on fiscal responsibility and payment accuracy.

Comment: One commenter suggested that States should not be "sanctioned" for errors that result from Federal policy interpretations announced for the first time in MEQC reviews. The commenter recommended that the correctness of a payment be determined in accordance with the State plan or a court order and that States be notified of noncomplying State plans before an error is cited, even if the State must enact a law to remove the inconsistency.

Response: Although the comment implies otherwise, Medicaid payment accuracy is determined in accordance with the approved State plan (and approvable plan amendments) since the plan reflects the terms under which Federal matching payments are made to the State. MEQC case reviews are conducted against the approved State plan, regardless of whether or not it has been revised to reflect changes in the statute or regulation, and errors are not cited unless a plan amendment has been disapproved. However, errors are cited when State policy does not conform to the State plan. States can avoid these errors by ensuring that their policies are consistent with State plan provisions.

Regarding payments made under a court order, we determine that a payment is correct if it is made within the scope of the Medicaid program. HCFA does not provide Federal matching payments for services furnished that are beyond the scope of the Medicaid program unless ordered to do so by the court. We are not adopting this recommendation because we do not believe it is reasonable to amend the statute to make available Medicaid funds for court-ordered services that are beyond the scope of the Medicaid program.

Finally, the MEQC program does not interpret or develop Medicaid policy. Medicaid policy interpretations and guidance are available to all States through the State Medicaid Manual as the official HCFA issuance. States also may contact their HCFA Regional Office for technical assistance on correct policy interpretations and correct policy applications.

Comment: One commenter contended that HCFA should assess and report to the States the level of measurement error and sampling error in MEQC reviews.

Response: Since the commenter does not define "measurement error," we are assuming that the term means statistical sampling error (or precision). Estimates of sampling errors (or precision) are provided to the States upon request.

Comment: One commenter suggested that HCFA incorporate broader measures of performance into the MEQC standards.

Response: We agree that States should assess measures of quality and effectiveness against broad program objectives. However, we do not agree that a single comprehensive performance measurement system is necessary to achieve that goal. A comprehensive performance measurement system would be appropriate only if information is unavailable or inadequate for decisionmaking. This is not the case. The MEQC system is but one of several systems that provides program managers with meaningful information. Other procedures include management information reporting systems, management and program evaluations, audits, demonstration projects, and research studies. Further, States are better able to design their own performance measurement systems under current regulations than would be possible under a federally mandated system. Many States oppose the expanded use of performance standards for fiscal liabilities. Therefore, we are not adopting the commenter's suggestion.

Comment: One commenter recommended that we provide a 6-month grace period on "sanctions" after issuance of final regulations.

Response: We disagree with the commenter. We are bound by statutorily set effective dates. The Congress may provide delayed quality control implementation when it chooses and it has done so recently in the care of qualified Medicare beneficiaries. The Administrative Procedure Act requires public opportunity to comment on proposed regulations and provides for a

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1-month delayed effective date of final regulations. We believe this regulatory process provides adequate notice for States to anticipate proposed program changes and adequate time to implement provisions of the final rule.

Comment: One commenter believed States should be held harmless from MEQC errors if they relied on erroneous information or advice supplied by Federal agencies.

Response: We agree with the commenter. As stated in an earlier response, we have advised States that, effective October 1, 1990, we will hold them harmless from MEQC errors in situations where erroneous information is provided by a Federal agency that is the primary source of verification (e.g., Supplemental Security Income and Retirement and Survivors Disability Income benefit information from the Social Security Administration). Further, the good faith waiver process of the quality control program has always allowed States to request waivers of errors caused by erroneous information supplied by Federal officials reasonably assumed to be in a position to provide such information.

III. Conclusion

In summary, we are reaffirming our decision not to publish regulations based on the results of the quality control studies required by section 12301 of COBRA, as amended by section 1710 of the Tax Reform Act of 1986.

(Sec. 1102 of the Social Security Act (42 U.S.C. 1302))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medical Assistance Programs)

Dated: June 9, 1991.

Gail Wilensky,

Administrator, Health Care Financing Administration.

Approved: October 18, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-30352 Filed 12-18-91; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 87-06]

Actions To Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade

AGENCY: Federal Maritime Commission.

ACTION: Rescission of final rule and termination of proceeding.

SUMMARY: The Federal Maritime Commission ("Commission") published a final rule in this proceeding as 46 CFR 586.2 (1990). In response to a Motion to Terminate Proceedings and Rescind Final Rule filed by Naviera Neptuno, S.A. ("Neptuno"), the Commission is rescinding the final rule and terminating the proceeding.

EFFECTIVE DATES: December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION: The Final Rule in this proceeding, issued pursuant to section 19(1)(b), of the Merchant Marine Act, 1920 ("Section 19"), 46 U.S.C. app. 876(1)(b), found conditions unfavorable to shipping to exist in the U.S./Peru trade ("Trade") as a result of the cargo reservation laws, decrees and policies of the Government of Peru ("GOP"). Decree No. 036-82-TC established the GOP cargo reservation system. Although subsequently amended by other decrees which were themselves later repealed by the GOP, Decree No. 036-82-TC remained in effect and provided the underlying basis for reservation of 50% of commercial cargo for movement on Peruvian-flag or associated vessels, thus denying access to major proportions of cargo by third-flag carriers and restricting the service and choice available to U.S. shippers. The Commission's action in this proceeding was based in large part on Decree No. 036-82-TC.

The Commission's final rule, issued on March 28, 1989, assessed a fee of $50,000 per voyage on several Peruvian-flag carriers. The effective date of the rule was, however, deferred due to political and economic conditions then-existing in Peru, brought to the Commission's attention by the Department of State ("DOS"). See 54 FR 12629 (March 28, 1989); 46 CFR 586.2.

Recent GOP Actions and the Motion

The GOP has recently acted to eliminate the cargo reservation policies and decrees which were the focus of the Commission's proceeding. Supreme Decree No. 020-91-TC, enacted July 3, 1991, cancels a number of previous Supreme Decrees, including *inter alia* Supreme Decree No. 036-82-TC. DOS informed the Commission of these enactments by a letter forwarding a July 15, 1991, Diplomatic Note from the Embassy of Peru in which the GOP suggested that the Commission review and repeal the final rule. Neptuno, a Peruvian-flag carrier subject to the rule, has filed a Motion which describes these filings and events and requests that the Commission rescind the final rule and terminate the proceeding.

Replies to the Motion

The Motion was served on all of the parties who had filed comments in earlier proceedings in this Docket. Nedlloyd Lines ("Nedlloyd") replied to the Motion. In addition, DOS sent a letter confirming that the GOP's "decrees are in effect and have eliminated all cargo preference."

Nedlloyd states that the decrees appear to be a significant and progressive step by the GOP but, nevertheless, suggests that rescission of the final rule would be premature. The basis for Nedlloyd's concern is a $100,000 penalty assessed against Nedlloyd earlier this year by the GOP for alleged violations of cargo reservation laws. Nedlloyd states that it is contesting the penalties, and that, although the GOP has taken no action to collect the penalties, they are still "pending." Nedlloyd suggests that the Commission allow a period in which to monitor GOP transition from cargo reservation by directing interested parties to report on conditions in the Trade in sixty days.

Discussion

Nedlloyed states that its asserted liability for penalties based on alleged violations of the cargo reservation scheme remains outstanding. Nedlloyd further advises, however, that this assertion of liability predates the GOP action to remove the cargo reservation scheme itself and that no enforcement efforts have been undertaken by the GOP.[1] In these circumstances, and given Nedlloyd's continuing ability to seek future action by this agency in light of changes in circumstances, we are reluctant to withhold Commission recognition of the GOP's recent actions.

The GOP enactments reflect the intention, expressed in Decree No. 020-91-TC, to "remove the restrictions affecting shipments by exporters and importers, including abolition of Reservation of Freight to promote shipping * * *." Article 1 of the Decree provides for the removal of administrative restrictions of various kinds affecting maritime shipments by exporters or importers. Article 2 abolishes reservation of freight in favor of Peruvian shipping companies, and article 3 provides for "participation of foreign shipping companies in the transport of Peruvian freight for export or import * * * on the basis of strict reciprocity."[2]

Based on the new Peruvian Decree, the Commission will grant Neptuno's Motion. It appears, indeed, that the GOP has taken concrete and positive steps to remove the conditions unfavorable to shipping in our mutual trade previously found. We therefore rescind the final rule and terminate the proceeding.[3]

List of subjects in CFR Part 586

Cargo vessels; Exports; Foreign relations; Imports; Maritime Carriers; Penalties; Rates and fares; Reporting and recordkeeping requirements.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b); section 10002 of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961); and 46 CFR part 585, part 586 of title 46 of the Code of Federal Regulations is amended as follows:

PART 586—ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE U.S. FOREIGN TRADE

1. The authority citation for part 586 continues to read as follows:

[1] The Commission, of course, would be concerned should efforts be made to belatedly enforce cargo reservation decrees which were the subject of this proceeding. While actual termination of such claims by the GOP would be welcome, the Commission will not speculate further on matters that might concern it in the future in view of the positive achievements in resolving the conditions unfavorable to shipping which were the focus of the proceeding.

[2] Thus, access by non-Peruvian flag carriers will be limited only by denial of access to Peruvian shipping companies to the freight generated in the country of origin of the foreign vessels in question. We note, however, that this proceeding was instituted as a result of concerns of U.S. shippers and shippers' organizations that their access to shipping services was adversely affected by GOP cargo reservation policies and decrees. Among the third-flag carriers affected were Chilean-flag carriers prominent in the movement of refrigerated cargoes. The exclusion of the Chilean-flag carriers arose in the context of a dispute over mutual access to Chilean cargoes by Peruvian-flag carriers. In promulgating its first final rule in this proceeding, 52 FR 46356 (December 7, 1987), the Commission advised that it could not accept as satisfactory a resolution of the matter which incorporated the proposition that regional disputes may be resolved by imposing burdens on U.S. commerce. In effect, the Commission warned, this would allow the GOP to hold the U.S.-Peru trade hostage to obtain concessions elsewhere. We remain committed to the principles earlier enunciated. While it is possible that the language of Article 3 might encompass such an approach to regional problems in the future, a determination to that effect would be speculative at this point. Accordingly, we see no reason in the present context to delay action on the Motion.

[3] This action is, of course, without prejudice to the initiation of further proceedings either on our motion or at the request of any affected third party, should conditions in the Trade warrant.

Authority: 46 U.S.C. app. 876(1)(b); 46 U.S.C. app. 1710a; 46 CFR part 585; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961).

§ 586.2 [Removed]

2. Section 586.2 is removed.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-30227 Filed 12-18-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 90

[PR Docket No. 90-481; FCC 91-339]

Construction, Licensing, and Operation of Private Land Mobile Radio Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Report and Order modifying and clarifying its rules and policies with regard to station construction, station operation, the discontinuance of station operations, license renewal and license reinstatement in the Private Land Mobile Radio Services. The Report and Order also implements a "finder's preference" program to give a dispositive licensing preference to persons that identify licensees that are not in compliance with the Commission's construction and operation rules.

EFFECTIVE DATE: All rules adopted in this proceeding are effective January 21, 1992.

FOR FURTHER INFORMATION CONTACT: Martin Liebman or Rosalind Allen, 202-634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 90-481, FCC 91-339, adopted October 24, 1991, and released November 21, 1991. The full text of this Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, telephone (202) 452-1422.

Summary of Report and Order

1. In the Report and Order in PR Docket No. 90-481, the Commission modifies and clarifies various compliance and licensing rules in the Private Land Mobile Radio Services.

2. First, we clarify our rules regarding the construction and operation of private land mobile radio services. We indicate that the construction of base stations must be in substantial accordance with the parameters specified in a station authorization and that in order to be considered "placed-in-operation", a conventional system must place at least one mobile and one base station in operation by the required deadline, and a trunked system must place at least two mobiles (or a mobile and a control station) and a base station in operation by the required, one-year construction/operation deadline.

3. Second, we clarify our rules regarding the automatic cancellation of licenses. We indicate that license cancel automatically if the licensee permanently discontinues operations for a period of one year or more.

4. Third, we reduce the time period in which a licensee can file for reinstatement and late renewal of an expired license from 180 days to 30 days. Additionally, to make it easier for licensees to file such reinstatement/late renewals, we will permit licensees to file these applications on Forms 574-R and 405-A, as well as the currently required Form 574.

5. Fourth, we establish a new "two-month" database-deletion policy to make frequencies encumbered by expired licenses available for reassignment more rapidly.

6. Finally, we establish a finder's preference program to give an incentive to individuals to assist us in recovering unused channels. Those individuals that provide us with information regarding licensee violations leading to our recovery of channels will be given a dispositive preference to become licensed on the recovered channels.

7. The Report and Order indicates that a preference may only be awarded for the identification of violations of our construction and operation rules and that the preference may only apply to channels that are licensed on an exclusive basis.

8. The Report and Order also provides the procedures that must be followed in filing a finder's preference request and the information that each request must contain.

9. Finally, we indicate that we will deal seriously with any individual that abuses this program or our process, and that such abuse could result in license revocation, monetary forfeiture or possible criminal prosecution.

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Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, a final regulatory flexibility analysis has been prepared and is available for public review as part of the full text of this item. The text is available for inspection and copying during normal business hours in the FCC, Private Radio Bureau, Land Mobile and Microwave Division, Rules Branch (room 5202), 2025 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036, (202) 452–1422.

Paperwork Reduction

The collection of information requirement contained in Rule 90.173(k) has been approved by OMB under Section 3504(h) of the Paperwork Reduction Act. Copies of the submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036, (202) 452–1422. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden may be sent to the Federal Communications Commission, Office of the Managing Director, Paperwork Reduction Project, OMB Control Number 3060–0461, Washington, DC 20554, or to the Office of Management and Budget, Paperwork Reduction Project, OMB Control Number 3060–0461, Washington, DC 20503.

OMB Number: 3060–0461

Title: 47 CFR 90.173(k), Construction, Licensing and Operation of Private Land Mobile Radio Stations (Notice of Proposed Rule Making in PR Docket No. 90–481).

Action: New collection.

Respondents: Businesses (including small businesses), non-profit institutions, local governments.

Estimated Annual Burden: 200 responses; 4.5 hours average burden per response; 900 hours total burden.

Needs and Uses: Persons who provide the Commission with information regarding the violation of certain construction and operation Rules would be granted a licensing preference for any channels recovered as a result of that information. This will aid the Commission's compliance program and make effective use of scarce radio spectrum.

List of Subjects

47 CFR Part 1

Radio.

Action	FCC form No.	Fee amount	Fee type code	Address
• • • • •				
14. Finder's preference requests (see Note D below).	Corresp. FCC 155	105	PDX	Federal Communications Commission, Feeable Correspondence, P.O. Box 358305, Pittsburgh, PA 15251–5305.

• • • • •

Notes: D. The fee for a Finder's Preference Request is $105 per channel.

4. The authority citation for part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

5. 47 CFR 90.119 is amended by adding new paragraph (a)(5) and by revising paragraphs (e)(1) and (h) to read as follows:

§ 90.119 Application forms.

(a) • • •

(5) For reinstatement of an expired license. See also paragraphs (e)(1) and (h) of this section.

• • • • •

(e) • • •

(1) Apply for license renewal (if the reinstatement of renewal does not involve the modification of the station or system license) when the licensee has not received renewal Form 574–R in the mail from the Commission within sixty (60) days of license expiration, and may be used to apply for reinstatement of an expired license (if the reinstatement does not involve the modification of the station or system license).

• • • • •

(h) Form 574–R shall be used to apply for a renewal of an existing authorization and may be used to apply for reinstatement of an expired license, if the renewal or reinstatement does not involve the modification of the station or system license. (Form 574–R is generated by the Commission and is mailed to the licensee prior to the expiration of the license term).

6. 47 CFR 90.127 is amended by adding a last sentence to paragraph (b) to read as follows:

§ 90.127 Submission and filing of applications.

• • • • •

(b) • • • Application for license reinstatement must be filed no later than thirty (30) days after the expiration date of the license. See § 1.4 of this chapter.

• • • • •

7. 47 CFR 90.149 is amended by revising paragraph (a), by redesignating paragraph (c) as paragraph (d), by redesignating paragraph (b) as paragraph (c), and by adding a new paragraph (b), to read as follows:

§ 90.149 License term.

(a) Licenses for stations authorized under this part will be issued for a term not to exceed five years from the date of the original issuance, modification or renewal, provided however that licensees have an additional thirty (30) days to apply for reinstatement of expired licenses.

47 CFR Part 90

Private land mobile radio services, Radio, Station applications and authorizations.

Amendatory Text

47 CFR Parts 1 and 90 are amended as follows:

1. The authority citation for Part 1 continues to read as follows:

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. 47 CFR 1.926 is amended by adding a new paragraph (c) to read as follows:

§ 1.926 Application for renewal of license.

• • • • •

(c) Reinstatement of an expired license in the Private Land Mobile Radio Services may be requested up to thirty (30) days after the expiration date using FCC Form 574, 574–R or 405–A. See § 1.4.

3. 47 CFR 1.1102 is amended by adding a new paragraph (14) and a new Note D to read as follows:

§ 1.1102 Schedule of charges for private radio service.

(b) If no application for reinstatement has been filed as specified in this Part, the authorization shall be deemed to have been automatically cancelled on the date specified on the authorization.

• • • • •

8. 47 CFR 90.155 is amended by revising paragraph (a) and adding new paragraph (c) to read as follows:

§ 90.155 Time in which station must be placed in operation.

(a) All stations authorized under this part, except as provided in paragraph (b) of this section and in §§ 90.629 and 90.631(f), must be placed in operation within eight (8) months from the date of grant or the authorization cancels automatically and must be returned to the Commission.

• • • • •

(c) For purposes of this section, a base station is not considered to be placed in operation unless at least one associated mobile station is also placed in operation. See also §§ 90.633(d) and 90.631(f).

9. 47 CFR 90.157 is amended by revising paragraph (a), by removing paragraph (b) and by redesignating paragraph (c) as new paragraph (b) to read as follows:

§ 90.157 Discontinuance of station operation.

(a) The license for a station shall cancel automatically upon permanent discontinuance of operations and the licensee shall forward the station license to the Commission. Alternatively, the licensee may notify the Commission of the discontinuance of operations of a station by checking the appropriate box on Form 574–R or Form 405–A and requesting license cancellation. Notification of discontinued operation or cancellation shall be sent to: Federal Communications Commission, Gettysburg, PA 17326.

• • • • •

10. 47 CFR 90.173 is amended by adding a new paragraph (k) to read as follows:

§ 90.173 Policies governing the assignment of frequencies.

• • • • •

(k) Notwithstanding any other provisions of this Part, any eligible person may seek a dispositive preference for an exclusive channel assignment in the 220–222 MHz, 470–512 MHz, and 800/900 MHz bands by submitting information that ultimately leads to the recovery of frequencies in these bands. Recovery of such frequencies will come about as a result of information provided regarding the failure of existing licensees to comply with various provisions of §§ 90.155, 90.157, 90.629, 90.631(e) or (f), or 90.633(c) or (d). Preferences will not apply to instances where the targeted channels are those encompassed by the National Plan for Public Safety (the 821–824/866–869 MHz channels) or any Regional Public Safety Plans—unless the requested preference is accompanied by a written statement from the relevant Regional Public Safety Planning Committee indicating that the request is not inconsistent with the Region's Public Safety Plan. The dispositive preference provided for in this paragraph also may be awarded to any person who arranges for an existing licensee to voluntarily request license cancellation because the licensee anticipates that it will be unable to timely construct and place its licensed facilities in operation. See §§ 90.155, 90.629, 90.631 (e) and (f), 90.633 (c) and (d). In the instance of such consensual preferences, both finder and licensee must certify that they have neither given nor received any direct or indirect compensation in connection with the requested license cancellation, and the finder will assume the former licensee's deadline for constructing and placing the licensed facility in operation.

(1) Eligibility for preference—The recipient of a finder's preference must be eligible to be a licensee in the private land mobile services and eligible to be licensed for the channels targeted by the finder's request on either a primary basis or through intercategory sharing—except a finder's preference for occupied channels in the 800 MHz Public Safety Category shall only be available to Public Safety Category eligibles.

(2) Timeliness of finder's request—A preference based on a construction or placed-in-operation violation will not be acceptable for filing until 180 days after the construction deadline of the target licensee. The preference shall not apply to any case scheduled for regular review during the Private Radio Bureau's normal compliance activities or to any case under Commission review or investigation. An applicant that files a timely request for a finder's preference that results in channel recovery, and that also timely submits an application in a form acceptable for filing, will receive a dispositive preference for the recovered channel(s). Where more than one applicant obtains a preference for the same channel(s), we will grant the license to operate on the channel(s) to one of these applicants through our random selection procedures. See § 1.972 of this chapter.

(3) Contents of request—The finder's preference request shall be mailed to the following address: Federal Communications Commission, Feeable Correspondence, P.O. Box 356305, Pittsburgh, PA 15251–5305. See § 1.1102(14) of this chapter. The request shall contain detailed information to establish a *prima facie* violation, including: the name and address of the licensee allegedly violating the applicable rules; the licensee's call sign, frequencies and location of the licensed facility; the Commission Rule(s) that the licensee is allegedly violating, including the dates or benchmarks the licensee has failed to meet; and a detailed statement as to the specific basis for the applicant's knowledge that the licensee is violating the rules specified in this section. General and conclusory statements shall result in the summary dismissal of any such request. All preference requests shall be in the form of a sworn affidavit or a declaration dated and subscribed by the person as true under penalty of perjury as set forth in § 1.16 of this chapter. All preference requests shall certify that a complete copy of the preference request has been served on the target licensee. See § 1.47 of this chapter.

11. 47 CFR 90.175 is amended by revising the introductory paragraph to the section and by adding a new paragraph (f)(15) to read as follows:

§ 90.175 Frequency coordination requirements.

Except for applications listed in paragraph (f) of this section, each application for a new frequency assignment, for a change in existing facilities as listed in § 90.135(a), or for operation at temporary locations in accordance with § 90.137, must include a showing of frequency coordination as set forth below. An application to reinstate a license expired for more than thirty (30) days will be considered as a request for a new frequency assignment. When frequencies are shared by more than one service, concurrence must be obtained from the other applicable certified coordinators.

• • • • •

(f) • • •

(15) Applications timely-filed by recipients of a finder's preference, where the applicant intends to operate at the same site location, and with the same technical parameters as the prior licensee.

12. 47 CFR 90.611 is amended by revising paragraph (d) to read as follows:

§ 90.611 Processing of applications.

• • • • •

(d) Applications for channels in the SMR category that cannot be granted

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due to a lack of available channels in a particular area will be placed on a waiting list for that area. Waiting lists will consist of two groups. The first group will be comprised of applications from existing licensees who, in the area corresponding to the particular waiting list, operate trunked systems with 70 or more mobile units per channel. The second group will be comprised of applications to establish new systems or to obtain additional channels for conventional systems. Applications will be placed in the appropriate group according to filing dates, with the earliest date receiving the highest ranking. All applications in the first group will receive priority over any application in the second group regardless of filing date. When channels become available as a result of either the Commission's compliance activities, a licensee's voluntary and independent request for license cancellation, or failure by the recipient of a finder's preference to timely submit an application in a form acceptable for filing, the highest ranking application(s) will be granted based on the site specified and the Commission's mileage separation standards. An applicant filing a timely request for a finder's preference that results in the recovery of SMR category channels, and that also timely submits an application in a form acceptable for filing, will receive a dispositive preference for those channels over the highest ranking application(s). Where more than one applicant obtains a preference for the same channel(s), we will grant the license to operate on the channel(s) to one of these applicants through our random selection procedures. See § 1.972 of this chapter. Trunked systems that have had authorized channels cancelled due to failure to meet the loading requirements in § 90.631 will not be permitted on the waiting list for a period of six months from the date of the issuance of the superseding license.

* * * * *

13. 47 CFR 90.631 is amended by adding a last sentence to paragraph (f) to read as follows:

§ 90.631 Trunked systems loading, construction and authorization requirements.

* * * * *

(f) * * * For purposes of this section, a base station is not considered to be placed in operation unless at least two associated mobile stations, or one control station and one mobile station, are also placed in operation.

* * * * *

14. 47 CFR 90.633 is amended by revising paragraph (d) to read as follows:

§ 90.633 Conventional systems loading requirements.

* * * * *

(d) If a station is not placed in operation in eight months, except as provided in § 90.629, its license cancels automatically and must be returned to the Commission. For purposes of this section, a base station is not considered to be placed in operation unless at least one associated mobile station is also placed in operation.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-30048 Filed 12-18-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-238; RM-7691]

Radio Broadcasting Services; Colfax, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Dakota Communications, substitutes Channel 273C3 for Channel 272A at Colfax, Washington, and modifies its construction permit for Station KRAO accordingly. See 56 FR 41812, August 23, 1991. Channel 273C3 can be allotted to Colfax in compliance with the Commission's minimum distance separation requirements at the petitioner's requested site without the imposition of a site restriction. The coordinates for Channel 273C3 at Colfax are North Latitute 46-51-43 and West Longitude 117-10-26. Since Colfax is located within 320 kilometers (200 Miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained With this action, this proceeding is terminated.

EFFECTIVE DATE: January 27, 1992.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-238, adopted December 6, 1991, and released December 13, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73.

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 contunues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 272A and adding Channel 273C3 at Colfax.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-30211 Filed 12-18-91; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 56, No. 244
Thursday, December 19, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-43-AD]

Airworthiness Directives; McDonnell Douglas Model DC-3 Series Airplanes, Including Those Modified for Turbo-Propeller Power.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (nprm); reopening of comment period.

SUMMARY: This notice revises an earlier proposed airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-3 series airplanes, which would have required revising inspection procedures, installing a structural modification, and adding models to the applicability. That proposal was prompted by an in-flight wing separation. This action would revise the proposed rule by adding a requirement to perform repetitive visual inspections of those airplanes that are modified to incorporate wing inspection access holes. The actions specified by this proposed AD are intended to prevent degradation of the structural integrity of the airplane.

DATES: Comments must be received no later than January 22, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-43-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The applicable service information may be obtained from McDonnell Douglas Corporation, Technical Publications-Technical Administrative Support, C1-L5B, 3855 Lakewood Boulevard, Long Beach, California 90846. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Lee, Aerospace Engineer, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; telephone (213) 988-5325.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 89-NM-43-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 89-NM-43-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion: A proposal to amend part 39 of the Federal Aviation Regulations to supersede AD 69-15-04, Amendment 39-1396, which is applicable to McDonnell Douglas Model DC-3 series airplanes, was published in the **Federal Register** on March 28, 1991 (56 FR 12490). That proposal would have revised the currently required inspection procedures, required the installation of a structural modification, and added airplanes to the applicability of the rule. That proposal was prompted by reports of in-flight wing separations, apparently due to undetected cracks and subsequent failure of the wing structure. Cracking, if not detected and corrected, could result in degradation of the structural integrity of the airplane.

Since issuance of that proposal, the FAA has determined that it must be revised to include repetitive visual inspections of those airplanes that are modified to incorporate wing inspection access holes. Repetitive visual inspections at intervals of 2,000 hours time-in-service are necessary to detect cracking in a timely manner and to assure the continued airworthiness of these airplanes. Paragraph (a) of the proposed rule has been revised accordingly.

The FAA has also determined that C-52A airplanes (military version) may be subject to the addressed unsafe condition since their design is similar to that of the other affected Model DC-3 series airplanes. Accordingly, the applicability of the proposed rule has been revised to include the C-52A models.

Since these changes would expand the scope of the originally proposed AD, the FAA has determined that it is necessary to reopen the comment period to provide additional time for public comment.

The format of the supplemental proposal has been restructured to be consistent with the standard **Federal Register** style.

There are approximately 2,000 Model DC-3 series airplanes of the affected design in the worldwide fleet. It is estimated that 610 airplanes of U.S. registry would be affected by this AD, that it would take approximately 150 work hours per airplane to accomplish the required initial actions, and that the average labor cost would be $45 per work hour. The cost for required parts is estimated to be $1,000 per airplane. Follow-on action would require approximately 50 work hours per

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airplane at $45 per work hour to accomplish the required inspections. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,727,500 for the first year, or $7,750 per airplane; and $1,372,500 for each year thereafter, or $2,250 per airplane.

These figures are based on an assumption that no airplane has been modified previously in accordance with the requirements proposed in this action.

According to FAA registration records, the mean number of Model DC-3 airplanes registered per owner is about 1.6. Over half of the owners have only one airplane, and the largest number currently operating in a single fleet is 12. There is no easily-available and accurate source of data on the types of businesses in which current U.S. Model DC-3 operators are engaged nor the total number of aircraft of all types that they operate. However, many Model DC-3's are known to be operated by for-hire carriers, especially unscheduled cargo carriers; such use in unscheduled for-hire carriage has been employed here for Regulatory Flexibility Act (RFA) determination purposes.

For air carriers, the FAA defines a "small entity" as one with 9 aircraft (any type) or less, and its criterion for a "significant impact" is at least $3,700 per year for an unscheduled carrier and $51,800 per year for a scheduled carrier operating aircraft of fewer than 60 seats, such as a Model DC-3.

The estimated $7,750 initial modification expenditure that would be required by the proposed AD for even one Model DC-3 converts at 10% (the 10% discount factor required by the Office of Management and Budget for reconciling non-inflation-adjusted future and present expenditure) to an annual equivalent of over $3,700 per year, unless it is considered to apply to a planning period of approximately 2½ years or more. It is thus conceivable that even a single airplane could generate significant costs for a small operator, in terms of the RFA, if the airplane had no economic use (and thus no sale value for future operation) beyond a 2½ year period after the modification, during which there would not have been enough use of the airplane to bring into effect fully or partially offsetting savings from the proposed reduced reinspection requirements.

However, there would seem to be a low likelihood of such an extreme end-of-life cycle scenario for Model DC-3's belonging to a substantial number of small operators, and reinspection cost savings may be projected to completely offset initial expenditures within realistic future lifetimes for existing Model DC-3's (if not in current operators' fleets, then in others to which they might be sold). Savings may be projected to completely offset initial expenditure within a nine-year future period even if the assumed average annual utilization of 667 hours were reduced to 333. Such a period would have added 9×333=2,997 additional hours to the airframe, not an unrealistic increment considering the demonstrated longevity of this type.

Therefore, it is concluded that there is unlikely to be a significant negative economic impact on a substantial number of small entities stemming from the combined effects of the mandatory modification and relaxed inspection provisions of the proposed AD.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-1396 and by adding the following new airworthiness directive:

McDonnell Douglas: Docket 89-NM-43-AD. Supersedes AD 69-15-04, Amendment 39-1396.

Applicability: Model DST, Super DC-3, DC-3, DC-3A, DC-3B, DC-3C, and DC-3D series airplanes; all military versions, C-41, C-41A, C-47, C-47A, C-47B, C-48, C-48A, C-49, C-49A, C-49B, C-49C, C-49D, C-49J, C-49K, C-50, C-50A, C-50B, C-50C, C-50D, C-51, C-52, C-52A, C-52B, C-52C, C-53, C-53B, C-53C, C-53D, C-68, C-117A, C-117D, and R4D series airplanes; including those modified for turbo-propeller power; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent structural failure of the wings, accomplish the following:

(a) For airplanes not modified with the repair or preventive doublers at both wing stations 94.250 and 127.750, in accordance with McDonnell Douglas Service Bulletin 229, any revision; or McDonnell Douglas Service Bulletin 263, any revision through Revision 8, dated December 15, 1971; or McDonnell Douglas Service Rework Drawing SR03578003, dated April 6, 1988; accomplish the following:

(1) Within 900 hours time-in-service after performing the last inspection in accordance with AD 69-15-04, amendment 39-1396, or within one year after the effective date of this AD, whichever occurs first, accomplish the following:

(i) Inspect the wing in accordance with McDonnell Douglas Service Rework Drawing SR03578001, dated March 11, 1988; or McDonnell Douglas Service Rework Drawing SR03578002, Revision A, dated September 26, 1988; for the applicable airplanes, using the visual and X-ray techniques specified. Repeat the visual inspection thereafter at intervals not to exceed 2,000 hours time-in-service.

(ii) Modify the airplane to incorporate access holes, in accordance with McDonnell Douglas Service Rework Drawing SR03548001, Revision A, dated March 7, 1989.

Note: Airplanes previously modified to incorporate access holes do not have to be remodified if visibility and access can be obtained.

(2) Within 2,000 hours time-in-service or two years after the effective date of this AD, whichever occurs first, modify the wing in accordance with McDonnell Douglas Service Rework Drawing SR03578003, dated April 6, 1988.

(b) For airplanes modified to incorporate the repair or preventive doublers at both wing stations 94.250 and 127.750, in accordance with McDonnell Douglas Service Bulletin 229, any revision; or McDonnell Douglas Service Bulletin 263, any revision through Revision 8, dated December 15, 1971; or McDonnell Douglas Service Rework Drawing SR03578003, dated April 6, 1988: Within 2,000 hours time-in-service after the last inspection in accordance with AD 69-15-04, amendment 39-1396, and thereafter at intervals not to exceed 2,000 hours time-in-service, inspect the wing using the visual method specified in McDonnell Douglas Service Rework Drawing SR03578001, dated March 11, 1988; and McDonnell Douglas Service Rework Drawing SR03578002, Revision A, dated September 26, 1988; for the applicable airplanes.

(c) Cracked structure detected during the inspections required by paragraph (a) or (b) of this AD must be repaired or replaced prior to further flight, in accordance with McDonnell Douglas Service Rework Drawing SR03578003, dated April 6, 1988.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of paragraph (a) or (b) of this AD.

(e) An alternative method of compliance or adjustment of compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

Issued in Renton, Washington, on December 4, 1991.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-30269 Filed 12-18-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-AWA-13]

Proposed Establishment of Long Beach Airport Radar Service Area and Alteration of John Wayne Airport/Orange County Airport Radar Service Area; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM), Airspace Docket No. 90-AWA-13, which was published in the **Federal Register** on April 26, 1991 (56 FR 19498). That NPRM proposed to establish an Airport Radar Service Area (ARSA) at Long Beach (Daugherty Field), CA, and to adjust the southwest confines of the John Wayne Airport/Orange County ARSA to accommodate the adjoining Long Beach ARSA. After review of the public comments and the airspace configuration of the Los Angeles Basin, this NPRM is being withdrawn by the FAA because future rulemaking is planned for a comprehensive redesign of the airspace in the Los Angeles Basin.

DATES: The proposed rule is withdrawn on December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, Docket No. 90-AWA-13, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

The Proposed Rule

On April 26, 1991, a Notice of Proposed Rulemaking was published in the **Federal Register** to establish an ARSA at Long Beach (Daugherty Field), CA, and to adjust the southwest confines of the John Wayne Airport/Orange County ARSA to accommodate the adjoining Long Beach ARSA (56 FR 19498).

Summary of Comments

Forty-eight comments were received regarding the proposal. A thorough review of the airspace proposal and the issues raised during the comment period was conducted by the FAA. The common view expressed during the comment period was that the FAA should redesign and simplify the regulatory airspace within the entire Los Angeles Basin. This redesigned airspace should be systematically developed to provide for increased levels of safety and efficiency.

Conclusion

In light of the comments received, it was concluded that the establishment of the Long Beach ARSA would increase the overall airspace complexity in the Los Angeles Basin. Currently, the Los Angeles Basin airspace is composed of 1 terminal control area, 6 airport radar service areas, 25 control tower facilities, and 4 military facilities. The amount and complexity of this airspace dictate a need to modify the entire Los Angeles Basin airspace to make it more compatible with the increasing amount of general aviation and air carrier activity. The NPRM is being withdrawn by the FAA because future rulemaking is planned for a comprehensive redesign of the airspace in the Los Angeles Basin. This future rulemaking would relieve congestion, reduce complexity, reduce controller workload, and make the airspace more compatible for both instrument flight rule and visual flight rule users in this region.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Withdrawal of Proposed Rule

Accordingly, pursuant to the authority delegated to me, the Notice of Proposed Rulemaking, Airspace Docket No. 90-AWA-13, as published in the **Federal Register** on April 26, 1991 (56 FR 19498), is hereby withdrawn.

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

Issued in Washington, DC, on December 10, 1991.

Original signed by:

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket No. RM91-10-000]

Notice of Intent To Establish a Negotiated Rulemaking Committee

Issued December 12, 1991.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of intent to establish a negotiated rulemaking committee.

SUMMARY: The Federal Energy Regulatory Commission (FERC or Commission) proposes to establish a negotiated rulemaking committee to revise and develop a uniform and comprehensive proposed regulation governing *ex parte* communications between persons outside the Commission and Commission officials and employees. The committee's goal will be to develop *ex parte* regulations that allow the maximum amount of information to be available to the Commission, consistent with maintaining the full integrity of the Commission's decisionmaking process. This notice identifies the proposed members of the committee, establishes the committee's agenda, and invites comments on the proposal to establish the negotiated rulemaking committee and on the proposed members of the committee.

DATES: Comments, applications or nominations must be submitted to the Commission no later than January 21, 1992.

ADDRESSES: Comments, applications or nominations should refer to Docket No. RM91-10-000 and must be filed with: Office of the Secretary, Federal Energy Regulatory Commission, 825 North

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Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Schopf, Associate General Counsel, Enforcement and General & Administrative Law, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, Phone: (202) 208–0457.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (FERC or Commission) proposes to establish a negotiated rulemaking committee to revise and develop a uniform and comprehensive proposed regulation governing *ex parte* communications between persons outside the Commission and Commission officials and employees. The proposed committee will focus on the legal and policy issues involved in formulating a new regulation having prospective effect only, and will not investigate or examine specific conduct or allegations in past or pending proceedings. The Commission's current *ex parte* regulations carry forward without substantive change two sets of rules that predate the FERC's creation. These are the old Federal Power Commission regulation, embodied in Rule 2201 of the Commission's Rules of Practice and Procedure (18 CFR 385.2201), and the old Interstate Commerce Commission rules applicable to oil pipeline matters, now reflected in Rule 1415 of the Commission's Rules of Practice and Procedures (18 CFR 385.1415). Over the years, the Commission has addressed particular *ex parte* issues in individual cases and has provided internal guidance on *ex parte* questions to the Commission and the staff. These efforts, however, do not eliminate the need for up-to-date, comprehensive and uniform regulations.

There is a need for clearer guidance as to the scope of the *ex parte* prohibitions in trial-type and adjudicatory proceedings. Clearer standards are necessary, for example, to govern informal consultations between the Commission and our environmental staff and other Federal or state agencies having environmental responsibilities or interests, as well as contacts by the Commission and our staff with applicants and other persons for the purpose of obtaining information necessary to the staff's environmental analysis. Also, while the *ex parte* prohibitions are not applicable to informal general policy rulemakings, additional guidance is necessary regarding the procedures to be followed for assuring that significant off-the-record communications are reflected in the public rulemaking file so that they may be considered in the Commission's notice and comment decisional process.

In the Commission's judgment, negotiated rulemaking procedures are well suited to a comprehensive review of the FERC's *ex parte* regulations. In the Negotiated Rulemaking Act of 1990, Public Law No. 101–648, November 28, 1990, Congress has encouraged the use of techniques designed to give identifiable interests that are significantly affected by a rule an opportunity to participate in the early stages of its development. The early participation of significantly affected interests is likely to improve communication among them, give the Commission and the public access to the shared information and knowledge possessed by the various interests, and lead ultimately to a better rule. Since everyone has a stake in a fair and efficient administrative process at the Commission, we have every reason to expect a good faith negotiation.

The Commission had identified interests that may be significantly affected by the rule. These include various industry groups regulated by the Commission, customer groups, consumer and environmental groups, the Federal Government, state regulatory officials, and the federal energy bar.

The following persons, listed with the group or organization each represents, are proposed as members of the negotiated rulemaking committee:

John Cheatham, III, Esq. Senior Vice President, General Counsel and Secretary, Interstate Natural Gas, Association of America.	Interstate Natural Gas Association of America.
Lorraine Cross, Director, State and Federal Agency Relations, American Gas Association.	American Gas Association.
Richard G. Morgan, Esq., Lane & Mittendorf, Washington, DC	Independent Petroleum Association of America.
A. Scott Anderson, Esq., General Counsel, Texas Independent Producers & Royalty Owners Association.	Texas Independent Producers & Royalty Owners Association.
Charles B. Curtis, Esq., Van Ness, Feldman, Sutcliffe & Curtis, Washington, DC.	Natural Gas Supply Association.
Edward J. Grenier, Jr., Esq., Sutherland, Asbill & Brennan, Washington, DC.	Process Gas Consumers.
Michele F. Joy, Esq., Counsel and Secretary, Association of Oil Pipelines.	Association of Oil Pipelines.
Peter B. Kelsey, Esq., Vice President, Law and Corporate Secretary, Edison Electric Institute.	Edison Electric Institute.
Alan J. Roth, Esq., Spiegel & McDiarmid, Washington, DC	American Public Power Association.
Robert Daileader, Jr., Esq., Nixon, Hargrave, Devans & Doyle, Washington, DC.	National Independent Electric Producers.
John R. Molm, Esq., Troutman, Sanders, Lockerman & Ashmore, Atlanta, GA.	National Hydropower Association.
Charles D. Gray, Esq., Assistant General Counsel, National Association of Regulatory Utility, Commissioners.	National Association of Regulatory Commissioners.
Edwin S. Rothschild, Energy Policy Director, Citizen Action	Citizen Action.
Name	National Wildlife Federation.
Thomas F. Brosnan, Esq., Gallagher, Boland, Meiburger & Brosnan, Washington, DC.	Federal Energy Bar Association.
Dinah Bear, Esq., General Councel, U.S. Council on Environmental Quality.	U.S. Council on Environmental Quality.
Gary U. Edles, Esq., General Counsel Administrative Conference of the United States.	Administrative Conference of the United States.
David N. Cook, Esq., Deputy General Counsel, Federal Energy Regulatory Commission.	Agency Representative.
Michael Schopf, Esq., Associate General Counsel, Enforcement and General & Administrative Law.	Agency Representative.

In addition, any Commissioner may serve *ex officio* as a non-voting member of the committee.[1] Committee meetings will be chaired by an impartial facilitator, who will assist the members of the committee in conducting discussions and negotiations and manage the keeping of minutes and records.

As indicated earlier, the agenda of the committee will be to undertake a comprehensive review of the Commission's *ex parte* regulations and to produce a consensus report for Commission consideration containing a proposed rule meeting the objectives discussed above.[2] The committee's goal will be to develop *ex parte* regulations that allow the maximum amount of information to be available to the Commission, consistent with maintaining the full integrity of the Commission's decisionmaking process. While the Commission may accept all, part or none of the consensus proposal of the committee, it will make a good faith effort to use the consensus report as the basis for the proposed Commission rule that will be published as its NOPR.[3] If the committee fails to reach a consensus on the proposed rule that meets the goal set out by the Commission, it may transmit a report specifying any areas in which it has reached a consensus. The committee may include in a report any other information or material the committee considers appropriate. Any committee member may include as an addendum to the report additional information, recommendations or materials. The committee should transmit its report to the Commission by April 16, 1992. The target date for publication by the Commission of a notice of proposed rulemaking is May 15, 1992.

The Commission will provide appropriate administrative support for the committee, including facilities for committee meetings and necessary related office equipment and clerical assistance. Members of the committee will be responsible for their own expenses of participation in the committee, except that, in accordance with section 7 of the Federal Advisory Committee Act and section 588 of the Negotiated Rulemaking Act, the Commission may pay for a member's reasonable travel and per diem expenses if the member certifies a lack of adequate financial resources to participate in the committee, and the Commission determines that the member's participation is necessary to assure adequate representation of the interest being represented by the member.

Interested persons are invited to comment on the proposal to establish the negotiated rulemaking committee and on the proposed membership of the committee. Persons who believe that they will be significantly affected by the proposed rule and that their interest will not be adequately represented by the committee membership specified in this notice may apply or nominate another person for membership on the committee to represent their interest. Each application or nomination must include—

(1) The name of the applicant or nominee and a description of the identifiable interest such person will represent;

(2) Evidence that the applicant or nominee is authorized to represent that interest;

(3) A written commitment that the applicant or nominee will actively participate in good faith in the development of the proposed rule; and

(4) The reasons that the committee membership proposed in this notice does not adequately represent the interest of the person submitting the application or nomination.

Comments, applications or nominations must be submitted to the Commission no later than January 21, 1992. They should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, and should refer to Docket No. RM91–10–000.

Comments, applications and nominations will be placed in the public files of the Commission and will be available for public inspection at the Commission's Public Reference Room, 941 North Capitol Street NE., Washington, DC 20426, during regular business hours.

If, after considering the comments, applications, and nominations, the Commission decides to establish a negotiated rulemaking committee, it will provide public notice of that fact. The notice will include the final membership of the committee, along with appropriate guidance on the commencement of the negotiated rulemaking process. The Commission reserves the right not to initiate the negotiated rulemaking process or, once initiated, to terminate the process if it determines the process is no longer in the public interest.

By direction of the Commission. Commissioner Trabandt concurred in part and dissented in part with a separate statement attached.

Lois D. Cashell,

Secretary.

Trabandt, Commissioner, concurring in part and dissenting in part

I dissent in part on the instant Notice of Intent (Notice) in opposition to the use of the negotiated rulemaking process for these purposes and also to the inclusion of the informal rulemaking issue in the negotiations, for the reasons discussed below. I concur in the substance of the Notice otherwise, for the reasons discussed below. I discuss these matters in some detail in order that interested parties will have full benefit of the arguments debated by the Commission over the course of the eight month consideration of this negotiated rulemaking (a.k.a. "reg-neg") proposal. Hopefully, this discussion will assist interested parties in fashioning their comments within thirty days.

1. Introduction

At the outset, I want to make three points very clear. First, I want to state categorically my deep respect for the views of Chairman Allday and my fellow Commissioners on this sensitive subject. I recognize fully that this is a matter of judgment that involves a number of factors in terms of fact, law and policy, as well as our own individual personal experiences on these matters. That I have a strong preference for a traditional NOPR does not by any measure suggest any lack of respect for my colleagues' own assessment of those factors or their conclusion.

Second, I am not opposed at all to clarifying the operation of the *ex parte* rules as they apply to adjudications. In fact, I agreed with Commissioner Moler's suggestion to that effect during the *Iroquois* proceeding [1] and *ex parte* investigation last year. As the discussion at the Commission meeting made very clear, all five members of the Commission are willing to put in place such a clarification, and I strongly support that objective.

Third, I am not opposed to the use of the negotiated rulemaking procedure in our regulation of jurisdictional companies in the electric power, hydroelectric, natural gas and oil

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[1] A Commissioner who chooses to address the committee or participate in committee deliberations will represent only his/her own position and not the collective viewpoint of the Commission or the position of any other Commissioner.

[2] For purposes of defining "consensus" on a proposed rule, the Commission intends "consensus" to mean unanimous concurrence among the voting interest represented on the committee, including the agency.

[3] Negotiated Rulemaking Act, section 563(a)(7); S. Rep. No. 97, 101st Cong., 1st Sess. 19 (1989).

[1] 52 FERC ¶ 61,091.

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pipeline industries. In an appropriate case, the negotiated rulemaking procedure would provide a valuable alternative to the traditional NOPR, as the Environmental Protection Agency has found in the past and Congress established by statute in the Negotiated Rulemaking Act of 1990, 5 U.S.C. 581. I look forward with considerable enthusiasm to the initiation of a negotiated rulemaking in one of our regulatory program areas in the near future. And, I am confident that rules fashioned in a negotiated rulemaking procedure can provide the significant advantages over adversarial rulemakings that Congress contemplated, such as (1) increasing the acceptability and improving the substance of rules, (2) making it less likely that the affected parties will resist enforcement or challenge such rules in court, and (3) shortening the amount of time needed to issue final rules. But, at bottom, I am simply not persuaded that this is the appropriate case.

I also believe that it also bears repeating, as I wrote during the Iroquois *ex parte* review and subsequently in formal correspondence to Chairman Dingell of the Committee on Energy and Commerce and Chairman Conyers of the Committee on Government Operations of the U.S. House of Representatives, that we should not let the *ex parte* rules be used as the basis for gagging, intimidating, mushrooming or muzzling us in the conduct of our official offices. I have maintained an "open door" policy since I took the oath of office as a Commissioner on November 4, 1985. Within the limitations of the *ex parte* rules and other applicable Commission regulations, I have met with literally hundreds of company officials, trade association representatives, consumer and environmental organization representatives, U.S. state and local officials, Canadian Federal and provincial officials and other interested groups. I also have attended and spoken at numerous meetings and conferences involving such groups and officials since November 1985.

As I have said before, I consider such communications to be an important function of the Commission and this office, in terms of both explaining Commission policies to interested parties and maintaining an up-to-date understanding of current industry conditions. It also is interesting to note that during the course of the Iroquois project proceedings over the past several years, I met in that fashion, subject to the aforementioned limitations, with various parties who also happened to be supporters or opponents of the project, including representatives of the project, equity owning utilities, various state officials, the Independent Petroleum Association of America and the New England Fuel Institute, among many others. There were no *ex parte* communications from any party related to Iroquois project proceedings in any such meetings or discussions, nor with regard to any other pending adjudication.

2. Why the Negotiated Rulemaking Procedure Is Inappropriate

First, I believe that the *ex parte* issue is a strictly legal matter based on long-settled notices of administrative due process in a series of cases. The *ex parte* prohibition in 18 CFR 385.2201 reflects the current state of the law and there are recent court cases to the same effect. A copy of those regulations is attached for information and reference purposes. (Attachment A). To the extent that those regulations are deemed ambiguous as a result of the experience in *Iroquois*, I can't understand why the Office of General Counsel (OGC) simply doesn't provide the Commission with a set of specific recommendations for appropriate refinements reflecting the perceived imperfections based on *Iroquois*. There is nothing complex or difficult about those questions. Once receiving the OGC recommendations, we could decide which to adopt and the procedural mechanism for that, *i.e.*, an interpretive order or NOPR. It also is interesting that OGC would support use of negotiated rulemaking for *ex parte* matters, while opposing its use for separation of functions issues on the grounds it's an internal matter, even though the latter issue is a constant complaint of industry and the subject of repeated inquiries and confirmation questions from Members of the U.S. Senate Committee on Energy and Natural Resources and others.

I also share the concern expressed by Chairman Synar of the House Subcommittee on Environment, Energy and Natural Resources in his letter of November 13, 1991, to Chairman Allday about the inappropriateness of the negotiated rulemaking process "as a means of formulating revisions to a federal agency's own *ex parte* rules or other standards of conduct," because "(i)nherent in use of the reg-neg process is recognition that the ultimate outcome will entail compromise among the affected parties. With regard to difficult policy matters, that approach is often appropriate and even desirable. But to the extent there are concerns about FERC's *ex parte* rules, I fear that employing this particular procedure may signal those affected by your *ex parte* rules that FERC's standards of conduct are a proper subject for 'consensus' between the Commission and those it regulates. With all due respect, I do not believe any agency's ethical standards should be a matter of compromise and consensus." (Pages 2 and 3.) In fairness, Chairman Allday by letter of November 26, 1991, responded to Chairman Synar and assured him that, "I strongly believe that the Commission would reject any (reg-neg) Committee 'consensus' recommendation that would compromise the integrity of the Commission's decisionmaking process," while otherwise defending the choice of the reg-neg process for this purpose. (Pages 2 and 3.)

Ironically, the real problem with our current *ex parte* regulations is not with the actual text of the regulations, but rather with the OGC interpretations, including particularly those in the Iroquois proceeding. I agree completely with the criticism of those interpretations set forth in Commissioner Moler's dissenting opinion to our July 30, 1990, order in the Iroquois dockets. A copy of that portion of her dissent is attached. (attachment B.) She persuasively set forth the problem created by those interpretations in the hypothetical discussed on the last page of her opinion. I find it very difficult to believe that the Commission cannot remedy those problems with a relatively precise, and even surgical, amendment of the existing regulation, accompanied by a series of specific examples in the pre-ambulatory text to help guide the implementation by the Commission and outside parties. And, that could all be accomplished rather directly and immediately in a traditional NOPR.

Even more ironically, had we just begun that NOPR process last April, when this Notice was first proposed, we would have been done several months ago, with absolutely no extraordinary costs and with full public participation. I continue to wonder, under these circumstances, what the apparent fascination is with the reg-neg approach for the *ex parte* issue. Any why, for all practical purposes, reg-neg is now apparently considered to be the *only* way to tackle this hardly imponderable issue?

Second, it is not at all clear *what* there is for the advisory committee established for the negotiated rulemaking procedure to negotiate about the *ex parte* rules. I think of the situation in the context of three concentric circles. The innermost circle is the strict statutory *ex parte* prohibition, about which there is no confusion and for which there is no discretion on the part of the Commission. As the statutory language and legislative history of the Negotiated Rulemaking Act stipulates, the negotiated rulemaking procedure cannot be used to amend or modify an agency's statutory obligations. So, the advisory committee cannot negotiate any change in our statutory *ex parte* obligations and prohibitions.

The next concentric circle includes the interpretation of those statutory obligations under applicable case law precedent. Once again, I fail to see how a committee of 25 individuals, apparently including non-lawyers as well as lawyers can sit around a table and negotiate an acceptable legal interpretation of applicable case law. In any event, I thought that was why we have an OGC and several hundred attorneys in the first place.

I read last spring that another independent federal agency reportedly paid a New York law firm 50 thousand dollars for a 36-page opinion on the narrow legal issue of when the term of that agency's Chairman expires under applicable law. While that agency apparently has been sharply criticized by Congress for hiring outside counsel and for wasting so much money, at least they got a legal opinion from a highly qualified and very reputable law firm. Here, we would be spending considerably more money in the end to get a legal opinion from an advisory committee selected primarily to represent diverse industry groups, rather than on the basis of their legal expertise in this particular area of the law (although I do *not* mean to suggest at all that the attorneys listed on the proposed committee are not well qualified practitioners generally capable of representing their respective organizations). Perhaps, we should give serious consideration to hiring a law firm as a preferred alternative, if it is perceived that it would be inappropriate for OGC to provide such legal advice directly to the Commission under these circumstances.

The third outer concentric circle would encompass those requirements and prohibitions on communications that would not be imposed as a matter of law by statutory obligations, but would be deemed appropriate or desirable as a matter of policy. Now that conceivably could be something about which lawyers and non-lawyers could debate, and negotiate, and even potentially reach a consensus. I, however, fail to see any advantage to having such a debate, negotiation, and potential consensus proceeding with only the *ex officio* participation of each of the five most vitally interested parties in the subject, *i.e.*, the members of this Commission who must attempt against considerable odds to remain well-informed for our duties and responsibilities, as Congress and the courts clearly and unambiguously intend. In effect, it would be a negotiation without the principals in the negotiation about a matter of policy of critical and quite personal concern to each of them.

To me, that's nonsensical, particularly when we would be intimately involved in the negotiation of a traditional NOPR on this same subject. I also would note that we were actively involved in the *ex parte* issues included in the 10(j) Final Rule on the April 24 agenda. In that rulemaking, we had a NOPR proposal we worked out and extensive public comments, and we made a decision in the final rule after some debate about "neutrality." And, the whole process from start to finish worked out well. Why wouldn't the process work just as well for a traditional *ex parte* NOPR.

As a practical matter, the way these things work, the Commission staff will probably have a strong guiding hand in formulating the proposed rule. I also am concerned that, in the end, our *ex officio* status may not allow us to participate meaningfully in the actual negotiations. While I have considerable respect for the two individual Commission staffers proposed for the Committee to represent the Commission as an institution, I continue to believe that Commissioners should be allowed to participate as full voting members of the committee. And, based on past discussions, I am quite concerned that, in the third, outer concentric circle subject area of discretionary requirements and prohibitions as a matter of policy, there will be serious consideration of phone logs, visitor logs, memoranda of phone conversations, memoranda of meetings and other requirements, all subject to independent OGC review and investigation. In fact, just such a memoranda of meetings procedure with OGC review apparently was imposed on Commission procedure with OGC review apparently was imposed on Commission employees who were interviewed by General Accounting Office employees and Congressional staffers involved in the oversight review of FERC by the Committee on Government Operations of the U.S. House of Representatives.

I also am very concerned, additionally, that it would be proposed that we would be prohibited from discussing with anyone any issue as a general policy matter that also exists in any pending case. Reportedly, certain Commission offices already have implemented such prohibition on discussions with outside visitors. I also have been told, and assume it's true, that there has been opposition to participation by FERC officials in meetings about legislation that involve issues in pending cases, such as our regulation of natural gas gathering systems, based on a claim that *ex parte* restrictions prohibit any such participation.

In effect, we would be prohibited from talking about every contested subject, even as a general policy matter, because it could be an issue in one or another contested case, as almost all subjects of any interest usually are. If confronted with such proposed requirements and prohibitions from our own advisory committee (particularly with the active participation of the Commission staff as our representative), I am very concerned that the Commission will find it politically difficult to justify doing less in its own discretion as a matter of policy.

I also am not as confident as others that the advisory committee will likely stampede on its own initiative, or be stampeded, to a proposal with looser requirements and prohibitions. First, as discussed above, the statutory obligations and interpretations of law are legal matters, which quite simply are not negotiable. So, in the first place, the only real subject matter for negotiation is the discretionary, additional requirements and prohibitions as a matter of policy. Second, I believe there is a widespread perception in the industry that there is a certain "unevenness" in the amount of access and communication available to various companies and law firms at FERC. The perception appears to be that the Commission process is largely closed to many, if not most, groups, but still accessible to some favored entities for various reasons. I do not assert that as a fact in any way, but it is a consistent criticism.

Thus, I believe it is quite possible, if not likely, that an advisory committee might have a majority supporting broad-based informal communication prohibitions to "level" the regulatory playing field, and make any perceived preferential access or communication more difficult to maintain. And that, quite honestly, is my candid assessment of the direction the advisory committee probably would choose (and for which it may even conceivably have Commission staff support). I would suggest that the comments filed in the 10(j) rulemaking procedure on the *ex parte* issue in

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hydro-electric licensing support that conclusion.

Also, a number of industry representatives and FEBA practitioners have informally told me that they agree with that assessment. For example, several natural gas industry groups might be expected to support prohibitions or limitations on all discussions on the theory that pipelines reap the most benefit today of pre-filing conferences and more open discussion. I obviously have no enthusiasm for that result, which would return the Commissioners and their staffs to the "mushroom" status of prior years (a term first printed by the founding publisher of *Gas Daily; i.e.*, keep us in the dark and feed us informational manure), particularly when we could otherwise deal with any necessary refinement of the *ex parte* rules directly, expeditiously, less expensively, and quite responsibly through a regular NOPR.

It also has been argued that another reason to have an advisory committee and a negotiated rulemaking is to give industry the chance to participate in deciding what kind of *ex parte* rule we would have, because they too have interests at stake. If the best guess is that a majority of the members of the advisory committee will want to close down access, because of the "unevenness" consideration, that may serve their perceived self-interest, but it sure doesn't help us. In the alternative, if a majority of the members want to support an open process, they can do that in their comments in response to a traditional NOPR. They don't need a negotiated rulemaking to support that result in any event. Consequently, I fail to see how industry's participation in a negotiated rulemaking will provide any better assurance of getting the "right" result.

Finally, even if there was some persuasive argument for an *ex parte* reg-neg process, which there clearly is not in my judgment, this is decidedly not the time for action. Chairman Synar has asked us to wait until the Subcommittee has completed its investigation and review and makes recommendations on the spectrum of *ex parte* issues in a report early next year. We still have the ongoing Subcommittee investigation of the *Iroquois* matter, but thus far we don't have a concrete clue as to what's involved or the likely result. And, we have just been advised, by letter of December 10, 1991, from Chairman Synar, that the Members of the Commission are going to be called to a hearing to testify about the *Iroquois* matter in mid-January after reviewing the transcripts and other materials developed by the Subcommittee and the General Accounting Office. We also have been advised that there will be more general questions, as a result of the Subcommittee's inquiry, "concerning whether certain changes should be made in the law or in FERC's *ex parte* rules, or whether greater efforts should be undertaken to ensure a more thorough understanding of those rules."

In essence, we're initiating the formal reg-neg notice process *before* we ourselves know what problems may exist under current rules and practices. I personally think that the better part of valor is to delay for a short period until we know the details of the *Iroquois* matter and the Subcommittee report. Then, we can decide exactly how the reg-neg committee should—and perhaps more importantly—and should not proceed in its comprehensive review of our *ex parte* regulations.

3. The Information rulemaking Issue

Chairman Allday's letter of June 11, 1991, in response to Chairman Dingell's letter of May 3, 1991, on the subject of a negotiated rulemaking discusses informal rulemakings, as follows:

> Also, while the *ex parte* prohibitions do not apply to general policy rulemaking, the Commission may wish to consider procedures for assuring that significant off-the-record communications received in a rulemaking proceeding are placed in the public rulemaking file so that they may be considered in the Commission's decisional process. The courts have indicated that even in rulemaking proceedings, an agency may not rely on significant new information that is not in the public file or not officially noticeable. *Action for Children's Television v. FCC*, 564 F.2d 458, 476 (D.C. Cir. 1977); *Sierra Club v. Costle*, 657 F.2d 298, 397, 402–403 (D.C. Cir. 1981). The Administrative Conference of the United States has likewise recognized that contacts with outside sources of information are proper and may be necessary to the full development of a rulemaking but has recommended procedures to require the submission of all written communications and significant oral communication in the public file. (Recommendation No. 77–3, 1 CFR 305.77–3.)

Subsequently, the "Staff Report and Analysis" forwarded by Chairman Allday on June 14, 1991, to the Full Committee in response to Chairman Dingell's letter of May 11, 1991, on the subject of pending energy legislation comes to a different conclusion. The Staff Report and Analysis states, at page 21, as follows:

> *Ex parte Communication*
>
> Under the APA, the rules prohibiting *ex parte* communications apply only to adjudications that by statute must be conducted on the record after hearing. Commission regulations apply these prohibitions to all trial-type cases, regardless of whether an evidentiary hearing is required by statute or merely provided by Commission rule or order. Because, as discussed above, contested rate proceedings are generally set for formal hearing, the *ex parte* rules apply.
>
> Even where informal rulemaking procedures are used, the courts have indicated that similar considerations concerning off-the-record communications may apply. The courts have relied on due process grounds to extend the *ex parte* rules to cover informal rulemaking if they involve conflicting private claims to a valuable privilege. *Sangamon Valley Television Corp. v. United States*, 269 F.2d 21 (D.C. Cir. 1959). In any event, in order to assure fairness, any written communications on the merits in a rulemaking proceeding are placed into the public record *and significant oral communications on the merits are to be summarized in writing and placed into the public record.* These practices are currently being evaluated in a generic proceeding examining whether to revise the Commission's long-standing *ex parte* rules.
>
> (Emphasis added; footnotes omitted.)

Still later, the Commission was advised on one occasion during this debate that there already is such a requirement as a result of the adoption of a March 16, 1988 OGC memorandum, discussed below. Nevertheless, at the Commission meeting of November 27, 1991, Commission staff advised the Commission, in response to my direct questions, that the March 16, 1988 memorandum was purely advisory guidance not legally binding on any Commissioner or Commission employee, apparently then or now. To the best of my knowledge, and I expressly inquired at the November 27 meeting, no Commission employee has every filed a memorandum describing a "significant oral communication" in a rulemaking docket in any event.

What is curious about this discussion is that Commission staff also advised on several occasions that we *already* have a settled requirement and practice of summarizing any "significant oral communications on the merits" in an informal rulemaking proceeding and placing them in the public record. That is curious for two reasons. First, as discussed, the Commission to my knowledge has no such requirement in force today and there is no general practice to that effect. Second, Chairman Allday's May 3 letter makes clear that, "the Commission *may wish to consider* procedures for assuring that significant off-the-record communications received in a rulemaking proceeding are placed in the public rulemaking file so that they may be considered in the Commission's decisional process" (emphasis added);

i.e., on a *prospective* basis in the future. Clearly, there may be some confusion or even a difference of opinion at the Commission about the facts regarding current FERC practices in informal rulemakings. But, that does not begin to tell the whole history and story of the informal rulemaking issue.

Frankly, I was surprised that an early proposal to establish a negotiated rulemaking committee stated that, "there is a need for clearer guidance as to the scope of the *ex parte* prohibitions both in trial-type proceedings *and in informal rulemakings.*" There is absolutely no need for clearer guidance as to the scope of the *ex parte* prohibitions in informal rulemakings, because a matter of law *ex parte* prohibitions apply only to adjudications. The suggestion of *ex parte* prohibitions in informal rulemakings is a clear contradiction in terms, or an oxymoron, as they say. There are no "parties" in informal rulemakings and it is not a trial-type proceeding. And, there simply is no court case or administrative case that says *ex parte* either does or should apply to informal rulemakings.

As the Second Circuit succinctly stated, "*Ex parte* communications • • • with a *judicial or quasi-judicial* body regarding a pending matter are improper and should be discouraged." *PANSY v. FERC*, 743 F. 2d 93, 110 (2nd Cir. 1984) (emphasis added). When undertaking rulemaking, unlike adjudication, the Commission engages in legislation, not adjudication. In the legislative process, which, unlike the judicial, involves generic (not fact-specific) considerations, decision makers must have broad access to information.

It has been argued that even after the Supreme Court's *Vermont Yankee* decision (favoring administrative procedural flexibility in the absence of explicit statutory requirements) the D.C. Circuit held to the contrary—at least, that court found *considerations* of *ex parte* applied to informal rulemaking in *Sierra Club v. Costle*, 657 F.2d 289 (1981), especially the discussion following page 400.

I have read the case and the discussion beginning on page 400. *Sierra Club v. Costle* makes clear that *ex parte*, cannot, by definition, ("by or for one party") apply outside the adjudicatory context. Note 501 points out that "It should not be forgotten that informal rulemaking involves 'interested persons,' rather than 'parties' in the usual adjudicative sense of the term. The concept of 'ex parte' implies a different structure from that involving mere 'interested persons.' One can only have contact without 'parties' present [only] in a proceeding where parties are involved, namely adjudication or formal rulemaking."

Beyond the meaning of Latin terms, I find compelling the practical considerations the court brought up against adopting the judicial norm to legislation. The court cautioned, 657 F.2d at 401:

> As judges we are insulated from these pressures [that ordinarily animate a democratic society] because of the nature of the judicial process in which we participate; but we must refrain from the easy temptation to look askance at all face-to-face lobbying efforts, regardless of the forum in which they occur, merely because we see them as inappropriate in the judicial context. Furthermore, the importance to effective regulation of continuing contact with a regulated industry, other affected groups, and the public cannot be underestimated.

(Footnotes omitted.)

The court, at n.503, cited to a speech by the late Chief Judge McGowan to the effect that, "Anyone with experience of both knows that a courtroom differs markedly in style and tone from a legislative chamber. The customs, the traditions, the mores, if you please, of the processes of persuasion, are emphatically not the same. What is acceptable in one is alien to the other." (*See*, n. 504 on the benefits of outside contacts to policy making in the informal regulatory context.)

While the court did hold that the EPA needed to supplement the record with private comments of "central relevance" to the rule, the court did so on the basis of a requirement in the Clean Air Act, not the Administrative Procedures Act. That still does not bring *ex parte* into play, for just stating the proposition obviates the need for having a negotiated rulemaking on that subject. Indeed, and very importantly for this discussion, the court held, 657 F.2d at 401–402, that Congress explicitly *rejected* applying the rules of adjudication to rulemaking when it amended the Government in Sunshine Act.

A distinguished former Chairman tried unsuccessfully to impose just such an *ex parte*-type limitation for the (in)famous 1988 Electric NOPRs. Her March 16, 1988 memorandum forwarded a memorandum by the General Counsel outlining the rules to be applicable to off-the-record communications between employees of the Commission and outside parties on rulemaking matters. I would note that March 16, 1988, also was the date the Commission issued those Electric NOPRs, and the Chairman distributed her memorandum later on that same date, which was not deemed to be a mere coincidence at all by some of us then on the bench. I perhaps uncharitably characterized the memo at that time as a thinly veiled "gag rule" for those 1988 Electric NOPRs, but I do not agree that the 1988 memo was intended to "open up" our process for those NOPRs, as some have asserted.

The OGC memorandum stated that the courts and the Administrative Conference of the United States have recognized that contacts with outside sources of information may be proper and necessary to the full development of a general policy rule, and that constraints appropriate for adjudication are neither practical nor desirable for rulemaking, citing *Sierra Club v. Costle*, and the Administrative Conference, Recommendation 77–3, 1 CFR 305.77–3. However, to ensure the fairness of Commission procedures and the maintenance of a complete rulemaking record, the memo indicated that any written communications on the merits received after a notice of proposed rulemaking has issued should promptly be placed in the public record. Further, *significant oral communications* on the merits after the issuance of a notice of a proposed rulemaking should be summarized in writing and likewise placed in the public file. And, communications that merely duplicate comments and arguments already in the record need not be placed in the public file.

Similarly, the memo stated that explanatory statements by a Commission official to the public or Congress that objectively summarize the issues in pending cases and describe public actions the Commission has already taken are not comments on the merits and need not be included in the record. Finally, the memo admonished Commissioners and staff advisors that they have a continuing obligation to consider all timely comments in a rulemaking with an open mind, and must base their decisions on information and arguments that are in the rulemaking record or that may be officially noticed, citing *National Advertisers, Inc. v. FTC*, 627 F.2d 1151 (D.C. Cir. 1979), cert denied, 447 U.S. 921 (1980).

Now, once again, as we grapple with the mega-NOPR on natural gas and other major policy issues in electric power regulation and hydroelectric licensing, we may be confronted by yet another proposal to impose *ex parte*-type prohibitions on Commissioners in informal rulemakings. That could not come at a worse time, in my judgment, given the obvious need for all the help we can get from all segments of industry in understanding the complexities of the many issues under review in that NOPR.

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as well as other anticipated rulemakings in the near future in other areas of our regulation. I remain convinced as a matter of policy that the public interest is best served by free and open communications with all interested parties in these important rulemakings, just as was the case in the 1988 Electric NOPRs.

I had hoped that there would be a consensus to affirmatively remove the informal rulemaking issue from the Advisory Committee's charter. However, the instant Notice of Intent does not do so. Rather, it states, "Also, while the *ex parte* prohibitions are not applicable to general policy rulemakings, addition guidance is necessary regarding the procedures to be followed for assuring that *significant off-the-record communications* are reflected in the public rulemaking file so that they may be considered in the Commission's decisional process." (Emphasis added.) First, I would note again that there are *no* procedures of any kind currently in our regulations for any so-called "significant off-the-record communications" in informal rulemakings. As discussed above, the 1988 Chairman's initiative was rejected and abandoned by the Commission at that time. So, we're talking about additional guidance for procedures which do *not* now exist.

Second, I invite the reader's attention to the term in the 1988 OGC memorandum attached to that Chairman's memorandum, which calls for, "significant oral communications on the merits after the issuance of a notice of proposed rulemaking should be summarized in writing and likewise placed in the public file." One need not be a rocket scientist to figure out that the use of the term "significant off-the-record communications" in the instant notice will probably invite yet another effort to have those 1988 "significant oral communications" requirements imposed on us (this time by the reg-neg committee) with regard to informal rulemakings. And, in fact, the 1988 OGC memo could be the starting point for the proposed new requirements, based on this obvious semantical hook.

I also invite the reader's attention to the fact that the key case used in the March 16, 1988, OGC memorandum and cited again in Chairman Allday's June 11, 1991 letter is *Sierra Club* v. *Costle*, 657 F. 2d 289 (1981). It is quite obvious analytically that the 1988 memorandum directly and this Notice implicitly attempt to invoke that case for the same proposition that there must be informal rulemaking requirements/limitations with regard to "significant off-the-record/oral communications." In my judgment, any objective assessment of how we should proceed to address the *ex parte* issue must now, as a result, accept as an operative assumption that there will probably be an effort to use the *Sierra Club* v. *Costle* opinion to impose the 1988 memorandum requirements, or worse, to limit severely our communications in informal rulemakings. I am persuaded that we must affirmatively and unambiguously foreclose any conceivable possibility of that result.

Also, think please for a moment about how such a requirement would work if eventually imposed on us. In essence, there would be a violation of the new regulations if a Commissioner or Commission employee failed to submit a summary in writing to be placed in the public record in the event of a significant oral communication on the merits after the issuance of a NOPR, although communications that merely duplicate comments and arguments already in the record need not be placed in the public file. Consequently, the test for the requirement turns on two prongs. The first is "significant" and when does an oral communication cease to be "insignificant" and reach some threshold level of "significance" in the context of the subject matter of a NOPR. Skilled attorneys could spend endless hours engaging in open debate and associated mind games about the relative significance or insignificance of a particular communication about a particular subject from a particular person at a particular time in the NOPR process.

Once a conclusion is made that an oral communication was, in fact, significant, the second prong and next step in the analysis would be to determine whether the substance of that particular communication had already been introduced into the record. For openers, that exception would not presumably be available at any time prior to the receipt of formal written comments in the rulemaking docket, except as otherwise submitted in stray correspondence (which already would be required to be put in the record). So during that initial 30 to 60 day comment period, *any* "significant" oral communication would have to be summarized in the public file. Thereafter, the requirement would turn on whether the public comments somewhere and somehow would be deemed to have duplicated the specific "significant" communication.

For any major rulemaking, that could involve a laborious and painstaking search, as well as a certain degree of subjective judgment. For example, the Commission received 7500 pages of initial comments from several hundred parties in the Mega–NOPR docket. To be safe, a Commissioner may have to conclude either: (1) not to have any oral communications about any subject arguably encompassed within a NOPR, or even relevant to any subject in it; or (2) to summarize every oral communication in an abundance of caution to avoid being tripped up by disagreements over "significance" or whether it really was already in the record of the rulemaking docket. Those are two options which I would not wish to voluntarily adopt.

The better course of action is to state categorically our view, as a matter of law and policy, that there are no *ex parte* or other prohibitions applicable to informal rulemakings as a matter of law, and we will not consider any such recommendation with regard to informal rulemaking in a NOPR or in a negotiated rulemaking, as a matter of policy. I would note in that regard that the Public Utility Commission of California recently came to that same conclusion in its Interim Opinion Issuing Proposed Rule To Govern *Ex Parte* Communications In Commission Proceedings. Decision 91–07–074, July 31, 1991. Therein, our distinguished sister agency stated as follows, expressly citing and quoting from *Sierra Club* v. *Costle*. (Slip op. 4 and 5.)

2. Legislative Functions

When acting as a Constitutional alternative to or delegate of the Legislature, the Commission operates in a proactive mode, formulating new or revising existing policy via a process, which often (though not always) involves assessing facts of a more generalized nature than those which form the basis of an adjudicative case. We believe that the overwhelming majority of our activities involve legislative functions. Some of our proceedings are exclusively legislative; these proceedings include rulemakings. Pursuant to Rule 14.1 of our Rules or Practice and Procedure, rulemakings solicit public comment on the proposed rule but do not require evidentiary hearings.

Because rulemakings constitute a forum for soliciting public comment, they require an open process which affords us the opportunity to hear and consider conflicting viewpoints. This open process is a fundamental characteristic of a rulemaking, as the United States Court of Appeals for the District of Columbia Circuit observed in 1981:

Under our system of government, the very legitimacy of general policy[ ]making performed by unelected administrators depends in no small part upon the openness, accessibility, and amenability of these officials to the needs and ideas of the public from whom their ultimate authority derives, and upon whom their commands must fall. * * * Furthermore, the importance to effective regulation of continuing contact with a regulated industry, other affected groups, and the public cannot be underestimated. Informal contacts may enable the agency to win needed support for its program, reduce future enforcement requirements by helping those regulated to anticipate and shape their plans for the future, and spur the provision of information which the agency needs. (*Sierra Club* v. *Costle*, 657 F. 2d 298, 400; see also Administrative Law Treatise, Kenneth Culp Davis, 2nd ed., vol. 1 § 6:18, p. 537.)

We concur with this view. Consequently, to enable us to function efficiently in a rulemaking, we believe full and open communication between the participants in the legislative process and the Commission is mandatory. When the Commission is engaged in rulemaking, it is appropriate in the interests of furthering the Commission's proactive policy[ ]making function to neither prohibit *ex parte* communications, nor to require their public disclosure. Therefore, we exclude *ex parte* communications from coverage under the generic rule.

Also, the clear disposition of Congress and the Administration is that our process get opened up and not further inhibited by new informal rulemaking prohibitions. Certainly, Congress is well aware of the current state of the law and Charles Stalon and I both have testified to that effect in the past. Additionally, it has been argued that we should refine our *ex parte* rules, in part, to respond to the amendment to S.341 (now S.1220) on the same subject introduced by Senator Bingaman. I cannot believe that the Senator or his colleagues on the Committee on Energy and Natural Resources have any interest in further inhibiting our ability to attempt to be well-informed about the industries we collectively regulate, particularly with regard to informal rulemaking.

The Commission has also been advised that the need for additional guidance for informal rulemakings closely follows the recommendation of the Administrative Conference of the United States (ACUS), Recommendation 77–3, 1 CFR 305.77–3 (1977), as well as the earlier advice provided by OGC in the March 16, 1988 memorandum. In point of fact, the 1977 ACUS recommendation has been revised to reflect more recent court decisions, as discussed in some detail in Chapter 6 "Off-The-Record Or *Ex Parte* Communications in Rulemaking" of the ACUS "A Guide To Federal Agency Rulemaking," 2nd Edition, 1991. The ACUS concludes that there is no ban on off-the-record communications, as a matter of law, citing *Sierra Club* v. *Costle*.

Admittedly, the ACUS does recommend as a policy matter that agencies consider experimenting with various procedures to disclose oral communications that contain significant information or argument respecting the merits of a proposed rule and discusses current agency practices. And, quite honestly, the 1988 OGC memo arguably reflects the basic thrust of ACUS Recommendation 77–3 and might be deemed by some to be consistent with the 1991 ACUS recommendation. Also, as the Commission staff argued at the November 27, meeting and as discussed in a 1991 ACUS guide, some other agencies have similar rules. Nonetheless, it is clear that there is no legal requirement for such procedures at this time, and the Commission's decision remains a matter of policy discretion (*e.g.*, the third concentric circle discussed above?).

I am also concerned that the ACUS also recommends certain procedures for Executive Branch communications in rulemakings, which could further inhibit the appropriate flow of information on policy matters with the Administration, at just the wrong time. I have been convinced for some time that FERC general policy making needs to be better co-ordinated with Administration energy policy, which we could otherwise frustrate with wholly contrary informal rulemaking. The adoption by this Administration of Federal Government-wide National Energy Strategy only heightens that need, in my judgment.

4. Procedures

a. Commissioner Participation

If a majority is disposed to use negotiated rulemaking for a review of *ex parte* prohibitions, despite the advantages I see in a simple, regular order or NOPR (but hopefully without any suggestion of a prohibition for informal rulemakings and with an express statement to the contrary), the procedures are important. We should avoid any *fait accompli* by insisting that our offices be represented directly in the negotiation process. I, for one, am not persuaded to completely delegate this task (even on adjudications) on the assurance that we'll otherwise be kept informed and have some role in guiding the negotiations. Also, I do not want to see a precedent established that Commissioners are shut out of negotiated rulemakings. If this initiative was a regular, internally developed rulemaking, as I believe it should be, we would be represented by our staffs, if not ourselves, at the table, just as we were for the *ex parte* aspects of the 10(j) rulemaking. That should also be the requirement for negotiated rulemakings as well, particularly when they involve rules to be imposed on us.

Another way of stating that proposition is to recognize that we are vitally interested parties, which the statute and the Administrative Conference of the United States (ACUS) say must be included in the advisory committee. Also, the ACUS says that the agency itself needs to be involved in the negotiations, with representation that should be able to express the agency's views with credibility.

I also would note that the statute calls for open meetings of the advisory committee, public availability of documents, and for any interested member of the public to submit written views to the advisory committee and make an oral presentation at an appropriate time. So, as vitally interested members of the public, as well as Commissioners, we may have certain statutory rights to participate tangentially in the advisory committee deliberations directly or through our separate staffs. But, that, in effect, is playing around the margins of the negotiations. We should have a seat at the bargaining table, because we, as a matter of fact, have vital interests at stake—*i.e.*, our ability to satisfy our sworn oath of office in a well-informed manner.

I am pleased that the majority at least accepted Commissioner Moler's compromise proposal of *ex officio* status for individual Commissioners representing themselves. Consequently, those of us choosing to attend meetings of the reg-neg committee will be able to participate directly in the discussions of the Committee as a matter of right, without being forced to be more vocal members of the general public under the statute. Nonetheless, I would still prefer strongly that individual Commissioners be afforded the right to participate in the negotiations as a full voting member in the efforts to develop a consensus recommendation for the Commission. I also would be very disturbed if this *ex officio* compromise becomes the binding precedent in any future programmatic reg-neg process.

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b. Disposition of the Advisory Committee's Recommendation

The Commission has debated whether to make a binding commitment now that any proposed *ex parte* rule adopted by consensus in the advisory committee would be adopted without modification as the Commission's proposed rule in the subsequent NOPR. I strongly opposed that proposition and, instead, proposed that we adopt a Federal Trade Commission formulation that, "the advisory committee shall engage in direct negotiations to develop *recommendations that will form the basis* for a NOPR" (emphasis added), that we would develop as a proposed rule.

We should not agree that the product of the negotiated rulemaking *ipso facto* becomes the proposed rule. It is palpable "horse hockey" that such a commitment is necessary to provide some incentive for the practicing bar and the industry to participate. Advisory committees serve in almost every agency of the Federal government without any prior assurance that their recommendations will ever be proposed as agency policy or agency recommendations. Also, such a commitment would be a bad precedent in our first negotiated rulemaking under the new law. I would note that the ACUS materials indicate that, in the past, agencies such as EPA have considered themselves legally bound to implement such commitments, once made, on a contract theory approach; so once made, it is not revocable.

We should retain the final authority as to the actual substance of the proposed rule, while giving an assurance only that the recommendations of the advisory committee will be taken into account by us and included as part of the NOPR (but not as the substance of the proposed rule, *per se*). We should not have the burden of proof, so to speak, for modifying or reversing the advisory committee recommendations, which would be the practical result of putting their recommendation in as the proposed rule. I would also note that the 1990 law does not require the adoption of such recommendations as the proposed rule (nor does the Administrative Conference suggest that). In the end, most commentators appreciate that collectively we members of an independent Commission have the responsibility by law to propose rules; and we shouldn't, as a matter of policy, delegate that to an advisory committee, or anyone else.

I am pleased that the majority has adopted a reasonable position on this issue. The Notice states that, "(w)hile the Commission may accept all, part or none of the consensus proposal of the committee, it will make a good faith effort to use the consensus report as the basis for the proposed Commission rule that will be published as its NOPR." (Slip op. at 7.) The Notice also cites to the relevant sections of the statute and related legislative history on this point, which supports that position. On balance, then, the Commission would intend to accord appropriate weight to a consensus Committee recommendation in developing the NOPR, but would not under any circumstances be bound to adopt or propose such a recommendation, in whole or in part.

Additionally, the statute defines "consensus" to mean unanimous concurrence, unless the advisory committee decides itself that there will only be general, but not unanimous concurrence, or any other definition agreed to by members of the advisory committee at the beginning of their efforts. The ACUS materials make clear that one of the threshold considerations by the agency and by members of the advisory committee is what level of concurrence should be required, as a function of the substantive interests of the parties at stake in the negotiations. For me, any recommendations should be the product of unanimous concurrence, if we are to have any obligation to address them. I have no interest in general concurrence, let alone some formulation of majority or super-majority rules, to decide the regulations governing our personal communications.

I am pleased that the majority has adopted in footnote 2 a definition of "consensus" requiring the unanimous concurrence among the voting interests represented on the committee, including the agency. That definition will ensure that the product of these negotiations must constitute a "true consensus" for the Commission in the subsequent NOPR process to accord it due weight as a consensus proposal. Thereby, all participants in the reg-neg process will have an equal and fair opportunity to represent their organizations interest in the negotiation, and no super-majority faction will be able to dictate a consensus proposal for Commission consideration in the NOPR.

c. Scope of the Negotiations

In addition to the issue of informal rulemakings discussed previously, I have serious concerns about any generalized scope of negotiations "to revise and develop a uniform and comprehensive proposed regulation governing *ex parte* communications between persons outside the Commission and Commission officials and employees." The Notice does not state, for example, that the scope of the negotiation is specifically and solely 18 CFR 385.2201, the attached *ex parte* regulation, as it should if that's all we want revised.

The statute also states that the advisory committee has the right to address any other matter the advisory committee determines to be "relevant" to the proposed rule. I'm particularly concerned about where this "relevancy" test could lead as to the scope of the negotiations. For example, the advisory committee conceivably could conclude that the Commission intends a comprehensive review of anything and everything that arguably is "relevant" to *ex parte* regulations, including enforcement. So, it is particularly important that we specify what we want negotiated and what we do not intend to be considered and negotiated, as a critical precautionary protection.

I am pleased that the Notice now states that, "(t)he proposed committee will focus on the legal and policy issues involved in formulating a new regulation having prospective effect only and will not investigate or examine specific conduct or allegations in past or pending proceedings." (Slip op. at 2.) In the face of the Congressional oversight investigation of *ex parte* matters discussed in Chairman Synar's November 13, 1991, and December 10, 1991 letters, it seems prudent to limit now the scope of the reg-neg comprehensive review, particularly since the Commission itself does not yet have a concrete clue as to the *ex parte* problems identified by the Subcommittee under the existing regulations and practice. Additionally, I believe it is the Commission's responsibility to focus the attention of the reg-neg committee on the specific subject matter to be reviewed, rather than await any potential disagreement later in the process.

Furthermore, the statute and the ACUS materials specify that the agency is obligated to provide the advisory committee with a specific set of issues to be considered and negotiated. And, further, the agency should carefully considered how to design the negotiations before they begin, including (among other things) what issues are negotiable; what constraints are imposed on each of these issues by statute and agency policy; what positions will the agency take initially; what is the range of solutions acceptable to the agency; what are the expected needs and positions of the other parties at the table; will the agency offer as a starting point for negotiations its own draft rule? (See generally ACUS Negotiated Rulemaking Sourcebook, 1990, Chapter 6—Negotiating the Rule.)

Before being asked to vote on an Order to Establish A Negotiated Rulemaking, I formally have requested that we have the opportunity to review the Commission staff list of issues, possible options, draft rule, etc. Reviewing the Commission staff documents before considering the draft Notice, and then making sure that the Order specifies precisely what is, and what is not, to be considered by the advisory committee, is the *only* way to ensure that we do not end up with an "unguided institutional missile," or, perhaps even worse, one guided by someone else with differing views.

d. Federal Advisory Committee Act (FACA)

FACA requires that an agency have a general regulation governing advisory committee activities in effect, as a condition precedent to the submission of individual advisory committee charters for review by the General Services Administration (GSA). The GSA final regulations implementing FACA codifies that statutory requirement, as well. The FTC determined that it was required to have the general regulation in place before it initiated action to establish an advisory committee to review its Rule 703. I find nothing in the Negotiated Rulemaking Act that would modify this statutory requirement in FACA, and as it is discussed in the ACUS Sourcebook. Consequently, I would conclude that the Commission should promulgate the general regulation as a first step in any *ex parte* negotiated rulemaking.

I am pleased to note that the Commission staff at the November 27, 1991 Commission Meeting informed the Commission that, concurrent with the public comment period for the instant Notice, Commission staff would take the appropriate steps under the GSA regulations implementing FACA for this reg-neg committee. Those steps are important to ensure that the committee is properly constituted and initiated as a matter of law, before the reg-neg process begins. Any failure to satisfy at the outset all applicable legal requirements, such as the GSA regulations under FACA, would unnecessarily expose the Commission and the reg-neg committee to later criticism and potential challenge.

5. Recommendations

(1) I recommend that FERC consider an alternative approach in the form of a regular NOPR based on internal OGC recommendations for refining the existing regulation, rather than adopt a negotiated rulemaking.

(2) If FERC is going to proceed with a negotiated rulemaking, the Commission should drop any reference to informal rulemakings, and insert in lieu thereof, "The Commission is satisfied that as a matter of law *ex parte* prohibitions do not apply to informal rulemaking and as a matter of policy such prohibitions would be inappropriate. Therefore, the negotiated rulemaking will not consider such prohibitions."

(3) If FERC is going to proceed with a negotiated rulemaking, the Commissioners should be allowed to participate directly in the negotiations.

(4) If FERC is going to proceed with a negotiated rulemaking, there should be no commitment that a consensus recommendation will be promulgated in the NOPR as the proposed rule. Rather, the Commission should only provide assurance that consensus recommendations will be taken into account in our deliberations on the proposed rule and will be reflected in the NOPR. And, a "consensus" must be a true unanimous consensus, including the Commission representatives.

(5) If FERC is going to proceed with a negotiated rulemaking, the Order should specify exactly what's to be negotiated and what's outside the scope; but only after we have the opportunity to review Commission staff draft materials.

(6) If FERC is going to proceed with a negotiated rulemaking, we should satisfy first the FACA requirement for a general advisory committee regulation.

6. Conclusion

I view this Notice as a critical issue for how the Commission will function in the years ahead. I am persuaded that we must retain the ability to discuss general policy (*i.e.*, issues not subject to strict *ex parte* prohibitions in a specific docket) even though the policy issue is involved in particular cases, and to discuss informal rulemakings without any prohibitions based on *ex parte* grounds such as the "significant oral communication" requirement. I hope that FERC can proceed to consider a refinement of the strict *ex parte* rules for adjudications without imposing such prohibitions in informal rulemakings or general policy issues on ourselves or having them *de facto* imposed by the advisory committee.

For these reasons, I concur in part and dissent in part.

Charles A. Trabandt,

Commissioner.

[FR Doc. 91-30244 Filed 12-18-91; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 347

[Docket No. 78N-0021]

RIN 0905-AA06

Skin Protectant Drug Products for Over-the-Counter Human Use; Tentative Final Monograph; Reopening of Administrative Record

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; reopening of administrative record.

SUMMARY: The Food and Drug Administration (FDA) is reopening the administrative record for the rulemaking for over-the-counter (OTC) skin protectant drug products to include data on the ingredient "hard fat." This action is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by February 18, 1992.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 7, 1978 (43 FR 34628) FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC skin protectant drug products together with the recommendations of the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class.

The agency's proposed regulation, in the form of a tentative final monograph, for OTC skin protectant drug products was published in the **Federal Register** of February 15, 1983 (48 FR 6820). Neither the Panel nor the agency considered "hard fat" as an active ingredient for skin protectant uses in either of these publications.

In the **Federal Register** of August 3, 1990 (55 FR 31776) FDA published a final rule, in the form of a final monograph,

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establishing conditions under which OTC anorectal drug products are generally recognized as safe and effective and not misbranded. In that document, FDA included "hard fat" as a "protectant active ingredient" in § 346.14 of the final monograph (21 CFR 346.14). The name "hard fat" has replaced the previously used names: Cocoa butter substitutes, hydrogenated cocoglycerides, and hydrogenated palm kernel glycerides. Hard fat is described in an official monograph in "The United States Pharmacopoeia XXII/The National Formulary XVII" (Ref. 1). The agency found that data submitted in response to the OTC anorectal tentative final monograph demonstrated that 19 grades of ingredients designated commercially as Witepsol ingredients perform in a similar fashion to cocoa butter as a skin protectant. Consequently, the agency classified the Witepsols as monograph protectant ingredients for anorectal use when designated as "hard fat."

On December 1, 1990, the agency received a citizen petition (Ref. 2) requesting that the tentative final monograph for OTC skin protectant drug products be amended to include "hard fat" as a Category I ingredient in such products. The request was based on the agency's action on this ingredient in the final rule for OTC anorectal drug products, as discussed above. The petition requested that the agency reopen the administrative record for the rulemaking for OTC skin protectant drug products to include "hard fat," because the tentative final monograph for those products had been published in 1983. The petition provided suggested labeling for OTC skin protectant drug products containing hard fat as an active ingredient.

FDA has carefully considered the request and believes that it would be appropriate to reopen the administrative record for the rulemaking for OTC skin protectant drug products to include the data and information on hard fat considered in the rulemaking for OTC anorectal drug products. Cocoa butter and hard fat (cocoa butter substitutes) are monograph protectant ingredients in the anorectal final rule. Cocoa butter has been considered in the rulemaking for OTC skin protectant drug products and was proposed as Category I in the tentative final monograph (48 FR 6820 at 6832). Based on agency action in the rulemaking for OTC anorectal drug products, hard fat would be classified as a monograph ingredient in the final monograph for OTC skin protectant drug products. The agency is currently developing this final monograph. Therefore, the agency considers that good cause exists, as stated in 21 CFR 330.10(a)(7)(v), to consider the monograph status of hard fat for skin protectant uses at this time. The labeling for such products, suggested in the petition, will be discussed in the final rule for OTC skin protectant drug products.

Interested persons may on or before February 18, 1992, submit to the Dockets Management Branch (address above) written comments regarding the ingredient hard fat used as a skin protectant active ingredient. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

References

(1) "The United States Pharmacopoeia XXII and The National Formulary XVII," United States Pharmacopeial Convention, Inc., Rockville, MD p. 1931, 1989.

(2) Comment No. CP1, Docket No. 78N–0021, Dockets Management Branch.

Dated: December 11, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 91–30220 Filed 12–18–91; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AF41

Schedule for Rating Disabilities—Dental and Oral Conditions

AGENCY: Department of Veterans Affairs.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Veterans Affairs (VA) is issuing an advance notice of proposed rulemaking (ANPRM) concerning that portion of the Schedule for Rating Disabilities which deals with dental and oral conditions. This ANPRM is necessary because of a General Accounting Office (GAO) study and recommendation that the medical criteria in the rating schedule be reviewed and updated as necessary. The intended effect of this ANPRM is to solicit and obtain the comments and suggestions of various interest groups and the general public on necessary additions, deletions and revisions of terminology and how best to proceed with a systematic review of the medical criteria used to evaluate dental and oral conditions.

DATES: Written comments and submissions in response to this ANPRM must be received by VA on or before February 18, 1992.

ADDRESSES: Interested persons and organizations are invited to submit written comments and suggestions regarding this ANPRM to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington DC 20420. All written submissions will be available for public inspection only in the Veterans Service Unit, room 170 at the above address and only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until February 27, 1992.

FOR FURTHER INFORMATION CONTACT: Bob Seavey, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: In December 1988, GAO published a report entitled VETERANS' BENEFITS: Need to Update Medical Criteria Used in VA's Disability Rating Schedule (GAO/HRD–89–28). After consulting numerous medical professionals and VA rating specialists GAO concluded that a comprehensive and systematic plan was needed for reviewing and updating VA's Schedule for Rating Disabilities (38 CFR part 4). The medical professionals noted outdated terminology, ambiguous impairment classifications and the need to add a number of medical conditions not presently in the rating schedule. VA rating specialists noted that for some disorders they would prefer more medical criteria for distinguishing between various levels of severity and that inconsistent ratings may result when unlisted conditions had to be rated by analogy to other listed disorders. GAO recommended that VA prepare a plan for a comprehensive review of the rating schedule and, based on the results, revise the medical criteria accordingly. It also recommended that VA implement a procedure for systematically reviewing the rating schedule to keep it updated. VA agreed to both recommendations, and this ANPRM is one step in a comprehensive rating schedule review plan which will ultimately be converted into a systematic, cyclical review process.

This ANPRM is the first stage in VA's consideration of what regulatory action to take, if any, with respect to revising and updating that portion of the rating schedule dealing with dental and oral conditions (38 CFR 4.150). Interested organizations and individuals are invited to submit comments and suggestions for revising current medical criteria, adding additional disabilities and/or deleting certain rarely encountered disorders or transferring them to other sections of the rating schedule. Submissions may run the gamut from narrative discussions of individual rating criteria to wholesale format changes and substitute rating schedules. Where changes are suggested, we would also appreciate a recitation as to the scientific or medical authority for such changes. Early submissions will expedite the comment review process and are encouraged.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: November 13, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 91–30279 Filed 12–18–91; 8:45 am]

BILLING CODE 8320–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–359, RM–7835]

Radio Broadcasting Services; Hinesville, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Bullie Broadcasting Corporation proposing the substitution of Channel 284C3 for Channel 284A at Hinesville, Georgia, and modification of its construction permit to specify the higher class channel. Channel 284C3 can be allotted to Hinesville in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.8 kilometers (7.9 miles) west in order to avoid a short-spacing to Station WFYV(FM), Channel 283C, Atlantic Beach, Florida. The coordinates are North Latitude 31–52–18 and West Longitude 81–43–46. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest or require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before February 3, 1992, and reply comments on or before February 18, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: J Geoffrey Bentley, Debra J. Jezouit, Birch, Horton, Bittner, and Cherot, 1155 Connecticut Avenue, NW., suite 1200, Washington, DC 20036 (Attorneys for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rule making, MM Docket No. 91–359, adopted December 4, 1991, and released December 13, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–30209 Filed 12–18–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–358, RM–7867]

Radio Broadcasting Services; Atlantic, Atlantic Beach, and Hatteras, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Robert L. Purcell seeking the allotment of Channel 297C1 to Atlantic Beach, North Carolina, as the community's first local FM transmission service. To accommodate the allotment at Atlantic Beach, Purcell requests the substitution of Channel 233A for unoccupied but applied for Channel 297A at Atlantic, North Carolina, and the substitution of Channel 268A for unoccupied but applied for Channel 232A at Hatteras, North Carolina. Channel 297C1 can be allotted to Atlantic Beach with a site restriction of 28.8 kilometers (17.9 miles) northeast to avoid a short-spacing to Station WNCT–FM, Channel 300C, Greenville, North Carolina, at coordinates North Latitude 34–48–17 and West Longitude 76–27–13. Channel 268A can be allotted to Hatteras without the imposition of a site restriction, at coordinates 35–12–54 and 75–41–30. Channel 233A can be allotted to Atlantic with a site restriction of 0.6 kilometers (0.4 miles) east to avoid a short-spacing to Station WRNS–FM, Channel 236C, Kinston, North Carolina, at coordinates 34–53–30 and 76–20–00.

DATES: Comments must be filed on or before February 3, 1992, and reply comments on or before February 18, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert L. Purcell, 15010 Carrolton Road, Rockville, Maryland 20853 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rulemaking, MM Docket No. 91–358 adopted December 4, 1992, and released December 13, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this

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one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-30210 Filed 12-18-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

Denial of Petition for Rulemaking; International Association of Auto Theft Investigators

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of Petition for Rulemaking.

SUMMARY: This notice denies a petition filed by the International Association of Auto Theft Investigators requesting that this agency promulgate a voluntary standard for manufacturers and owners to mark the major parts of motor vehicles with identifying numbers or symbols. This petition is denied since, based on a recent NHTSA study for Congress, the agency believes it is uncertain that promulgation of a voluntary parts marking standard would further the goals of preventing theft and decreasing the fencing of stolen motor vehicles and parts.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366-1740.

SUPPLEMENTARY INFORMATION: In order to alleviate the growing national problem of motor vehicle theft Congress amended the Motor Vehicle Information and Cost Savings Act in 1984 by adding a new title VI (15 U.S.C. 2021 *et seq.*). Title VI was enacted by Congress as a comprehensive attack on vehicle theft through the following means: A requirement for marking the major component parts of frequently stolen passenger automobiles; increased Federal criminal penalties for vehicle theft; penalties for tampering with the new marking system; tighter controls on the import and export of motor vehicles; and a series of studies examining the new theft prevention program's effectiveness to determine if the program should be modified or expanded.

Section 613 of title VI (15 U.S.C. 2033) authorizes NHTSA to promulgate a voluntary vehicle theft prevention standard that is practicable and provides relevant objective criteria. Under such a standard, persons could voluntarily mark identifying numbers or symbols on major parts of any motor vehicle that they manufacture or own.

In conjunction with title VI, Congress enacted sections 511 and 512 of title 18 of the U.S. Code that, respectively, impose criminal penalties for tampering with an "identification number for a motor vehicle or motor vehicle part" and provide for forfeiture of such vehicles or parts for tampering with the identification numbers. The definition of "identification number" includes a number or symbol that is inscribed or affixed for purposes of identification under title VI.

Pursuant to title VI, NHTSA has promulgated 49 CFR part 541, Federal Motor Vehicle Theft Prevention Standard. That standard requires manufacturers to mark 14 major parts of their passenger automobile car lines that the agency determines are likely to have a high theft rate. Under 49 CFR part 543, Exemption from Vehicle Theft Prevention Standard, manufacturers may obtain exemptions from the parts marking requirements for passenger motor vehicle lines which include, as standard equipment, an antitheft device if the agency concludes that the device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements.

The International Association of Auto Theft Investigators (IAATI) filed a petition dated May 14, 1991, asking that NHTSA promulgate a voluntary parts marking standard, as authorized by section 613 of title VI. IAATI offered the following arguments in support of its petition: That a properly constructed voluntary standard would ameliorate problems in title VI that it believes relate to various compromises in the legislative process; and, that a voluntary standard would "protect" and serve as a guideline for motor vehicle manufacturers that are currently marking vehicles not subject to the theft prevention standard. IAATI further stated that the voluntary standard would, in conjunction with the prohibition against tampering, "protect" markings by vehicle manufacturers that continue to mark vehicles despite obtaining an exemption from parts marking pursuant to 49 CFR part 543. IAATI stated that it encourages continuation of stamping of engines, transmissions, and frames on all vehicles by manufacturers. IAATI also asserted that with the implementation of a voluntary standard, Federal law enforcement officials would be able to prosecute offenders and seize vehicles which have parts marking even though the vehicles are not subject to the mandatory parts marking standard.

After carefully considering each argument for a voluntary parts marking standard, the agency is denying IAATI's petition for a voluntary standard.

In determining whether to initiate action to establish a voluntary parts marking program, NHTSA views the major issue as whether such promulgation would further the goals of title VI. The legislative history of title VI shows that the title was enacted to prevent thefts and decrease the ease with which certain stolen vehicles and their major parts can be fenced. (See House Report 98-1087 part 1 on the Motor Vehicle Theft Law Enforcement Act of 1984, September 26, 1984.)

NHTSA believes that the track record of the existing mandatory parts marking standard is instructive about the likelihood of success of a voluntary standard in furthering the goals of title VI. This belief is based on the similarity that a voluntary standard would have to the existing standard. The success, thus far, of the part 541 prevention standard has been at best inconclusive.

Earlier this year, as required by section 614 of title VI (15 U.S.C. 2034), the agency issued a report to Congress on the effect of the mandatory parts marking standard on motor vehicle theft and recovery. In that report, the agency concluded, based on approximately five years of data, that "no meaningful statement on the effectiveness of parts marking can be made using the available national data sets."

In arriving at this conclusion, the agency considered, among other matters, the potential usefulness of parts marking in aiding criminal prosecution by examining the effects of parts marking on the prosecution, conviction, and sentencing of motor vehicle thieves. The tampering prohibition in 18 U.S.C. 511 and the forfeiture provision in 18 U.S.C. 512 currently apply to identification numbers marked in compliance with the theft prevention standard at 49 CFR part 541. The report showed that between the years 1985 and 1989, out of approximately 150,000 to 200,000 arrests for motor vehicle thefts per year nationwide, at the State and Federal level, Federal prosecutors obtained, for the four year period, a total of 107 convictions for violations of 18 U.S.C. 511. The greatest number of convictions under section 511 in a single year was in 1988, when there were 40 convictions.

Considering the inconclusiveness of the benefits that have accrued from the mandatory parts marking standard, which reflects on the probability of success for a voluntary standard, and considering that if a voluntary standard were to be developed and issued, agency resources would need to be redirected, the agency believes that issuing a voluntary parts marking standard is not warranted at present. Furthermore, no provision of title VI nor part 541 prohibits any manufacturer or owner from marking any vehicle part in any location as long as the markings do not cover or compromise the Federally mandated marking standard for a vehicle subject to part 541.

IAATI also believes that a voluntary marking program would further "protect" vehicle manufacturers that continue to mark vehicles despite obtaining an exemption from parts marking pursuant to 49 CFR part 543. However, the exemption for a manufacturer relieving it of marking the component parts does not mediate the enforcement provisions under title 18 sections 511 or 512.

Additionally, the agency understands, IAATI's desire for manufacturers to continue to stamp engines, transmissions, and frames on all vehicles. However, it is not within the statutory authority of the agency to require manufacturers to stamp these parts, since the statute allows manufacturers to inscribe or affix vehicle identification numbers onto a component part.

For the preceding reasons, there is no reasonable possibility that the requested standard would be issued at the conclusion of a rulemaking proceeding. Therefore, NHTSA denies the petition of the International Association of Auto Theft Investigators to issue a voluntary theft marking standard.

Authority: 15 U.S.C. 2021-2024, 2026 and 2033; delegation of authority at 49 CFR 1.50.

Issued on: December 11, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-30248 Filed 12-18-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB66

Endangered and Threatened Wildlife and Plants; Notice of Public Hearings on Proposed Threatened Status for the Delta Smelt

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearings.

SUMMARY: The Fish and Wildlife Service (Service), under the Endangered Species Act of 1973, as amended (Act), gives notice that public hearings will be held on the proposed threatened status for the delta smelt (*Hypomesus transpacificus*). The hearings will allow all interested parties to submit oral or written comments on the proposal. The proposed rule was published October 3, 1991 at 56 FR 50075.

DATES: The Service has scheduled three public hearings in the following California locations: Thursday, January 9, 1991, in Sacramento; Tuesday, January 14, 1991, in Santa Monica; and Thursday, January 16, 1991, in Visalia. Each public hearing will be held from 1 p.m. to 4 p.m., and from 6 p.m. to 9 p.m. Written comments from all interested parties must be received by January 31 1991. Any comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: The public hearings will be held in the following locations:

- Thursday, January 9, 1991, Radisson Hotel, 500 Leisure Lane, Sacramento, California.
- Tuesday, January 14, 1991, Guest Quarters Suite Hotel, 1707 4th Street, Santa Monica, California.
- Thursday, January 16, 1991, Visalia Convention Center, 303 E. Acequia, Visalia, California.

Written comments and documents should be sent directly to the Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, room E-1803, Sacramento, California 95825-1846. Comments and documents received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: A. Keith Taniguchi, Sacramento Field Office, at the above address (telephone 916/978-4866 or FTS 460-4866).

SUPPLEMENTARY INFORMATION:

Background

The delta smelt is restricted to Suisun Bay and the contiguous Sacramento-San Joaquin estuary (the Delta) in northern California. This fish is threatened by one or more of the following factors: Freshwater exports of Sacramento River and San Joaquin River outflows for agriculture and urban use, introduced nonindigenous aquatic species, agricultural and industrial chemicals, prolonged drought, and stochastic (random) extinction by virtue of its 1-year life span and the small isolated nature of the remaining population. A proposed rule to list the delta smelt as a threatened species with critical habitat was published in the **Federal Register** on October 3, 1991 (56 FR 50075).

Section 4(b)(5)(E) of the Act, as amended (16 U.S.C. 1531 *et seq.*), requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. On November 6, 1991, the Service received a written request for a public hearing from George R. Baumli of the State Water Contractors, Sacramento, California. The Service received 16 additional requests for public hearings within the 45-day time period. As a result, the Service scheduled three public hearings to be held in the following locations:

January 9, 1991—Radisson Hotel, 500 Leisure Lane, Sacramento, California.

January 14, 1991—Guest Quarters Suite Hotel, 1707 4th Street, Santa Monica, California.

January 16, 1991—Visalia Convention Center, 303 E. Acequia, Visalia, California.

Each hearing will be held from 1 p.m. to 4 p.m., and from 6 p.m. to 9 p.m.

Parties wishing to make statements for the record should bring a copy of their statements to the hearing. Written comments will be given the same weight as oral comments. Oral statements may be limited in length, if the number of parties present at the hearings necessitates such a limitation. However, there will not be any limits to the length of written comments or materials presented at the hearings or mailed to the Service. The comment period closes on January 31, 1991. Written comments should be submitted to the Sacramento Field Office (see ADDRESSES section).

Author

The primary author of this notice is A. Keith Taniguchi, Sacramento Field Office see **ADDRESSES** section).

Authority: The authority for this section is the Endangered Species Act (16 U.S.C.

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1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: December 13, 1991.

David L. McMullen,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 91–30257 Filed 12–18–91; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 56, No. 244
Thursday, December 19, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

December 13, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, ORIM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 720–2118.

Revision

• Food and Nutrition Service
Model Food Stamps Periodic Reporting, Notice of Late/Incomplete Reporting, Adequate Notice, Sponsored Aliens, Duplication.
Participation, and Disqualified Recipient Report; FNS–385, 386, 387, 394, 396, 437, 439, 441, 442, and 524.
Recordkeeping; on occasion; monthly; quarterly; semiannually; annually.
Individuals or households; State or local governments; 96,499,081 responses; 21,355,788 hours.
Paul Jones, (703) 305–2476.

Extension

• Food and Safety Inspection Service
Processing Procedures and Cooking Instruction for Cooked, Uncured, Comminuted Meat Patties (9 CFR parts 318 and 320).
Recordkeeping.
Businesses or other for-profit; small businesses or organizations; 680 recordkeepers; 115 hours.
Roy Purdie, (202) 720–5372.

• Food and Nutrition Service
Evaluation of Maryland's Expanded Electronic Benefit Transfer Program.
One time survey.
State or local governments; 28,694 responses; 3,317 hours.
Margaret Andrews, (703) 305–2115.

• Agricultural Marketing Service
Reporting Requirements Under the Regulations Governing Inspection and Certification of processed Fruits and Vegetables and Related Products; FV–159, FV–356, FV–468.
On occasion.
Individuals or households; State or local governments; farms; businesses or other for-profit; Federal agencies or employees; non-profit institutions; small businesses or organizations; 13,062 responses; 670 hours.
James R. Rodeheaver, (202) 720–4693.

• Office of Finance and Management
Uniform Administrative Requirements for Grants and Cooperative Agreements; 7 CFR 3016; SF–424, 269, 272, 272a, 270, 271, 269a, 424a, 424b, 424c, 424d.
Recordkeeping; on occasion; quarterly; annually.
State or local governments; 46,123 responses; 267,766 hours.
Diane Cary, (202) 720–1554.

Reinstatement

• Farmers Home Administration
Form FmHA 1940–59, Settlement Statement, Form FmHA 1940–59.
On occasion.
Businesses or other for-profit; small businesses or organizations; 33,000 responses; 16,500 hours.
Jack Holston, (202) 720–9736.

• Rural Electrification Administration
Accounting Requirements for REA Telephone Borrowers.
Recordkeeping.
Businesses or other for-profit; small businesses or organizations; 900 recordkeepers; 10,800 hours.
Paul Marsden, (202) 720–9551.

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 91–30229 Filed 12–18–91; 8:45 am]

BILLING CODE 3410–01–M

President's Council on Rural America; Meeting

AGENCY: Department of Agriculture.

ACTION: Notice of meeting.

SUMMARY: The Under Secretary for Small Community and Rural Development, Department of Agriculture, is announcing a meeting of the President's Council on Rural America. The meeting is open to the public.

DATES: Meeting on Monday, January 27, 8:30 a.m. to 5 p.m., Tuesday, January 28, 8:30 a.m. to 1 p.m., and Wednesday, January 29, 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in:
Colonial Williamsburg, *January 27 and 28;* The Lodge and Conference Center, rooms D and E.
January 29; The Tidewater Room, 310 South England Street, Williamsburg, Virginia 23187, phone: 1–800–HISTORY x7793 or 7477.

The nearest airports are Williamsburg/Newport News and Richmond International.

FOR FURTHER INFORMATION CONTACT: Jennifer Pratt, Special Assistant to the Council, Office of Small Community and Rural Development, room 5405 South Building, USDA, Washington, DC 20250, (202) 690–2394.

SUPPLEMENTARY INFORMATION: The President's Council on Rural America was established by Executive order on July 16, 1990. Members are appointed by the President and include representatives from the private sector and from State and local governments. The Council is reviewing and assessing the Federal Government's rural economic development policy and will advise the President and the Economic Policy Council on how the Federal Government can improve its rural development policy. The purpose of the meeting is to make decisions on a work plan for the Council task groups. The public may participate by providing written and verbal comments. Written comments may be submitted to Jennifer Pratt.

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Dated: December 3, 1991.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 91-30137 Filed 12-18-91; 8:45 am]

BILLING CODE 3415-07-M

Animal and Plant Health Inspection Service

[Docket No. 91-172]

Receipt of Permit Application for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the application referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, United States Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain a copy of this document by writing to the person listed under **"FOR FURTHER INFORMATION CONTACT."**

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Specialist, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION:

The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason To Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application Number	Applicant	Date Received	Organisms	Field Test Location
91-317-01, renewal of permit 90-332-02, issued on 03-12-91.	DeKalb Plant Genetics	11-13-91	Corn plants genetically engineered to express a phosphinothricin acetyl transferase gene, which confers tolerance to glufosinate and bialaphos herbicides.	Kihei, Hawaii

Done in Washington, DC, this 13th day of December 1991.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-30345 Filed 12-18-91; 8:45 am]

BILLING CODE 3410-34-M

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: January 14-15, 1992.

Place: Capitol Holiday Inn, 550 "C" Street, SW., Washington, DC 20024.

Time: 1:30 p.m. January 14 and 8 a.m. January 15.

Purpose: To provide advice to the Administrator of the Federal Grain Inspection Service with respect to the implementation of the U.S. Grain Standards Act.

The agenda includes: (1) Status of financial matters, (2) Official Commercial Inspection, (3) grain quality activities, (4) status of standards and regulations, (5) international monitoring report, (6) status of research programs, (7) type evaluation program, and (8) other matters.

The meeting will be open to the public. Public participation will be limited to written statements unless permission is received from the Committee Chairman and orally address the Committee. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting, should contact John C. Foltz, Administrator, FGIS, U.S. Department of Agriculture, P.O. Box 96454, Washington, DC 20090-6454, telephone (202) 720-0219.

Dated: December 12, 1991.

John C. Foltz,

Administrator.

[FR Doc. 91-30188 Filed 12-18-91; 8:45 am]

BILLING CODE 3410-EN-M

Food and Nutrition Service

Emergency Food Assistance Program and Soup Kitchens; Availability of Commodities for Fiscal Year 1992

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces: (1) The surplus and purchased commodities that will be available for donation to household under The Emergency Food Assistance Program (TEFAP); and (2) the commodities that will be available to soup kitchens and food banks. The commodities made available under this notice shall be directed to needy persons, including unemployed and homeless persons.

EFFECTIVE DATE: October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Philip K. Cohen, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302-1494 or telephone (703) 305-2660.

SUPPLEMENTARY INFORMATION:

Background and Need for Action

Surplus Commodities

Donations of commodities to needy households were initiated in 1981 as part of efforts to reduce stockpiles of government-owned commodities. These donations responded to concern over the costs to taxpayers of storing vast quantities of foods, while at the same time there were persons in need of food assistance. The Emergency Food Assistance Program was codified in title II of Public Law 98-8, the Emergency Food Assistance Act (EFAA) of 1983, as amended (7 U.S.C. 612c note). Surplus foods made available for distribution under the EFAA are limited to amounts determined by the Secretary to be in excess of the quantities needed to carry out other programs, including Commodity Credit Corporation (CCC) sales obligations and domestic food assistance programs. The Secretary of Agriculture anticipates that the following surplus commodities acquired by the CCC under its price-support activities will be made available in the noted amounts for distribution through TEFAP during Fiscal Year 1992: butter, 72 million pounds; flour, 120 million pounds; and cornmeal, 48 million pounds. The actual types and quantities of commodities made available by the Department may differ from the above estimates because of agricultural production, market conditions and the distribution of these donated foods to other domestic outlets.

Purchased Commodities

In recent years, the supply of available surplus commodities has been drastically reduced. These reductions are the result of changes in the agricultural price-support programs which have brought supply and demand into better balance, and accelerated donations and sales. Congress responded to the reduced availability of surplus commodities with section 104 of the Hunger Prevention Act of 1988, Public Law 100-435, which added sections 213 and 214 to the EFAA. Those sections required the Secretary to annually purchase, process, and distribute commodities for household consumption in addition to those surplus commodities otherwise provided under TEFAP. In section 110 of the Hunger Prevention Act, Congress also required the Secretary to purchase, process and distribute commodities for soup kitchens and food banks.

For Fiscal Year 1992, $120 million has been appropriated for purchasing, processing, and distributing additional commodities for household use. The Department anticipates purchasing for distribution to households through TEFAP during this fiscal year peanut butter, raisins, and the following canned foods: corn, tomatoes, green beans, pears, applesauce, and pork or beef. The amounts of each item purchased will depend on the prices USDA must pay.

For Fiscal Year 1992, $32 million has been appropriated to purchase, process, and distribute commodities for distribution to soup kitchens and food banks. For such outlets, the Department anticipates the purchase of nonfat dry milk, frozen cut-up chicken, frozen ground beef, and the following canned foods: peaches, applesauce, orange juice, corn, green beans, peas, poultry, and pork or beef. The amounts of each item purchased will depend on the prices USDA must pay.

December 12, 1991.

Betty Jo Nelsen,

Administrator.

[FR Doc. 91-30357 Filed 12-18-91; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Lockwood and North Round Valley Timber Sales, Rapid River Roadless Area, Payette National Forest, ID

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: A Notice of Intent to prepare an Environmental Impact Statement (EIS) for the proposed Lockwood and North Round Valley timber sales (Rapid River roadless area, Idaho) was published in the **Federal Register** June 9, 1989 (Vol. 54, No. 110, p. 24726-24727). That notice is hereby revised to show three changes: (1) The name of the EIS, (2) the responsible official, and (3) the projected schedule.

1. The name of the EIS is now the "Lockwood and North Round Valley Timber Sales." (The previous title was, "Proposed Timber Management Entries Into the Rapid River Roadless Area." To many, that name implied development in the Rapid River drainage. In fact, both sales are entirely outside that drainage.)

2. The responsible official is now David Spann, New Meadows District Ranger, Payette National Forest. (It was formerly the Forest Supervisor of Payette National Forest. The change reflects the increased responsibility Payette National Forest has placed on District Rangers for implementing the National Environmental Policy Act (NEPA).

3. The draft EIS is now scheduled for release to the public in January 1992, and the final EIS in May 1992. (The previous schedule was March 1990 for the draft, and September 1990 for the final).

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to David Spann, District Ranger, phone (208) 347-2141; or Pete Walker, Team Leader, phone (208) 634-0629.

Dated: December 10, 1991.

Veto J. LaSalle,

Forest Supervisor.

[FR Doc. 91-30302 Filed 12-18-91; 8:45 am]

BILLING CODE 3410-11-M

Rural Telephone Bank

Notice of Filing Date Extension

AGENCY: Rural Telephone Bank, USDA.

ACTION: Notice of Extension of final date for submitting nominations form.

SUMMARY: Notice is hereby given that Rural Telephone Bank (RTB) stockholders have been granted an extension of time to submit RTB Form 4, Nominations for Directors. This action extends the deadline for submission of RTB Form 4 until December 20, 1991.

ADDRESSES: The nominations form should be mailed to Assistant Secretary, Rural Telephone Bank, U.S. Department of Agriculture, room 4025-S, Washington, DC 20250-1700.

FOR FURTHER INFORMATION CONTACT: Robert Peters, Deputy Assistant Governor, Rural Telephone Bank, (202) 720-9554.

SUPPLEMENTARY INFORMATION:

In letter dated November 8, 1991, stockholders were formally advised of the February, 1992, RTB Board of Directors elections and that nominations were being accepted for the Board. Enclosed with the letter was RTB Form 4 which was to be completed by the stockholder and returned to the RTB no later than December 13, 1991. Stockholders were subsequently advised by letter dated December 2, 1991, that the deadline for submitting RTB Form 4 had been extended until December 20, 1991. Further, to provide the stockholders with additional time to return RTB Form 4, the date for the election of Directors has also been changed from February 12, 1991, to February 18, 1992. (7 U.S.C. *et seq.*)

Dated: December 16, 1991.

Michael M.F. Liu,

Acting Governor.

[FR Doc. 91-30337 Filed 12-18-91; 8:45 am]

BILLING CODE 3410-15-M

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Soil Conservation Service

Central Hampshire Park Critical Area Treatment RC&D Measure Plan, West Virginia

AGENCY: U.S. Department of Agriculture, Soil Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1960; the Council on Environmental Quality Guidelines, (40 CFR part 1500); and the Soil Conservation Service Guidelines, (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Central Hampshire Park Critical Area Treatment RC&D Measure Plan, Hampshire County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, room 301, Morgantown, West Virginia 26505, Telephone (304) 291–4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Notice of a Finding of No Significant Impact

The purpose of the measure is critical area treatment for erosion control. The measure is designed to stabilize by regarding, shaping, and revegetating approximately 3.5 acres of land that has an average erosion rate of 50 tons per acre per year. Conservation practices include rock lined and vegetated waterways, land smoothing, seeding, and mulching.

Central Hampshire Park Critical Area Treatment RC&D Measure Plan, Hampshire County, West Virginia

The Notice of a Finding of No Significant Impact has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

This activity is listed in the Catalog of Federal Domestic Assistance under No. 19.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Dated: December 9, 1991.

Rollin N. Swank,

State Conservationist.

[FR Doc. 91–30306 Filed 12–18–91; 8:45 am]

BILLING CODE 3410–16–M

Finding of No Significant Impact for Frazer Park Watershed, Chester County, SC

Introduction

The Frazer Park Watershed is a federally assisted action authorized for planning under Public Law 83–566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with the development of the watershed plan. This assessment was conducted in consultation with local, State, and Federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Soil Conservation Service, 1835 Assembly Street, room 950, Columbia, South Carolina 29201.

Recommended Action

The proposal requires the clearing and snagging of 5850 feet within the Dry Fork channel and a portion of the adjacent floodplain. The proposed plan will convey the peak flows through the residential area reducing flood damages to existing residential structures. One structure will be relocated outside the watershed. The plan will provide a recreational area which will be utilized by the residents of Frazer Park.

Effect of Recommended Action

The proposed action will reduce identified flood damages in the Frazer Park Watershed significantly by improving the hydrologic capacity of Dry Fork Creek. Streamflow will be stabilized to the extent that designed storm peak discharges will be carried by channel.

A literature review of cultural resources as they relate to the planned components was made. The review concludes that no significant adverse impacts will occur to cultural resources in the watershed when the plan is implemented. If artifacts of archaeological or historical properties which appear to be significant are discovered during construction, they will not be disturbed until onsite consultation and advice is received from the State of South Carolina Archives and History.

Dry Fork Creek is an ephemeral creek and provides no fishery habitat or other significant aquatic habitat. The watershed supports low to medium wildlife habitat areas.

Woody vegetation will be removed from the channel sides and channel bottom. This woody vegetation will be replaced with sod and herbaceous plants. Therefore the loss of brushy vegetation will be temporary. The "edge effect" created as a result of this project action will greatly benefit songbirds and other small wildlife within the habitat area.

A report has been made to the U.S. Fish and Wildlife Service in compliance with section 7 of the Endangered Species Act.

There are no wetlands identified within the project area.

Scenic values will be complemented with the diversity added to the landscape by the installation of the recreational area and the shaping and vegetation of the floodplain.

No significant adverse environmental impacts will result from installations, with the exception of minor inconveniences to local residents during construction.

Alternatives

The planned action is the most practical means of reducing flood damages, controlling sedimentation, and improving water quality. The other alternatives considered dikes, dams, and flood proofing homes in the floodplain.

Consultation—Public Participation

Formal agency consultation began with the initiation of the notification of the State Single Point of Contact for Federal Assistance in December 6, 1989. Agencies were again notified when planning was authorized in January 11, 1991.

Scoping meeting involving an interdisciplinary team was held on May 28, 1987.

The watershed plan and environmental assessment was transmitted to all participating and interested agencies, groups, and individuals for review and comment in December 1991. Public meetings were held during the planning process to keep interested parties informed of the study progress and to obtain public input to the plan and environmental assessment.

Agency consultation and public participation to date has shown no unresolved conflicts with the implementation of the recommended plan. The participation and support by land users in the planning process indicate their commitment in solving the erosion problems.

Conclusion

The environmental assessment summarized above indicates that this federal action will not cause significant local, regional, or national adverse impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the Frazer Park Watershed is not required.

Dated: December 6, 1991.

Billy Abercrombie,

State Conservationist.

[FR Doc. 91–30303 Filed 12–18–91; 8:45 am]

BILLING CODE 3410–16–M

Frazer Park, SC

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR parts 1500–1508); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement (EIS) is not being prepared for flood prevention in Frazer Park, Chester County, South Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Billy Abercrombie, State Conservationist, Soil Conservation Service, 1835 Assembly Street, room 950, Columbia, South Carolina, 29201, telephone (803) 765–5681.

SUPPLEMENTARY INFORMATION: The environmental evaluation of this federally-assisted action indicates that the proposed measure will not cause significant adverse local, regional or national impacts on the environment. As a result of these finding, Mr. Billy Abercrombie, State Conservationist, has determined that the preparation and review of an EIS is not needed.

The proposed action is to reduce flooding and improve flow conditions on 1.1 miles of ephemeral streams in and adjacent to the Frazer Park area.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental evaluation and the environmental assessment are on file and may be reviewed by interested parties at the Soil Conservation Service, 1835 Assembly Street, room 950, Columbia, South Carolina 29201, 803–765–5681.

The FONSI has been sent to interested federal, state, and local agencies and other interested parties. A limited number of copies of the FONSI are available to fill single copy requests.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and Local officials.

Dated: December 6, 1991.

Billy Abercrombie,

State Conservationist.

[FR Doc. 91–30304 Filed 12–18–91; 8:45 am]

BILLING CODE 3410–16–M

Larenim Park Critical Area Treatment and Handicap Facility Development RC&D Measure Plan, West Virginia

AGENCY: U.S. Department of Agriculture, Soil Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR part 1500); and the Soil Conservation Service Guidelines, (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Larenim Park Critical Area Treatment and Handicap Facilities Development RC&D Measure Plan, Mineral County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, room 301, Morgantown, West Virginia 26505, Telephone (304) 291–4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Notice of a Finding of No Significant Impact

The purpose of the measure is critical area treatment and handicap facilities development for erosion control. The measure is designed to stabilize by regrading, shaping, and revegetating approximately 2 acres of land that has an average erosion rate of 50 tons per acre per year. Conservation practices include surface water control, land grading and shaping, heavy use area protection, seeding, and mulching.

Larenim Park Critical Area Treatment and Handicap Facilities Development RC&D Measure Plan, Mineral County, West Virginia

The Notice of a Finding of No Significant Impact has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Dated: December 5, 1991.

Rollin N. Swank,

State Conservationist.

[FR Doc. 91–30305 Filed 12–18–91; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Kentucky Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will

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convene at 2 p.m., and adjourn at 4 p.m. on Friday, January 10, 1992, at the Raddison Plaza, 369 West Vine Street, Lexington, Kentucky 40507. The meeting will include: (1) A planning and informational session for the SAC; (2) a discussion of the status of the Commission; (3) a report on civil rights progress and/or problems in the State; (4) review of plans for a project in Fiscal Year 1992.

Persons desiring additional information, or planning a presentation to the Committee should contact Kentucky Chairperson Thelma Clemons 502/893-1055 or Bobby D. Doctor, Regional Director, Southern Regional Office of the U.S. Commission on Civil Rights at (404/730-2476, TDD 404/730-2481). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Southern Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 13, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-30213 Filed 12-18-91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Certificate of Eligibility for Atlantic Billfishes.

Form Number: None; OMB—0648-0216.

Type of Request: Request for extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

Burden: 260 recordkeepers; 117 recordkeeping hours; average hours per recordkeeper—.45 hours a year.

Needs and Uses: Fish dealers and processors possessing billfish must certify that these billfish have not been caught in a specified management area. The information is used to enforce a prohibition on the commercial sale of billfish from this area.

Affected Public: Businesses or other for profit, small businesses or organizations.

Frequency: Recordkeeping.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ronald Minsk, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 13, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-30261 Filed 12-18-91; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Order No. 545]

Approval for Expansion of Foreign-Trade Zone 122 Nueces County, Texas

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

Whereas, The Port of Corpus Christi Authority, Grantee of Foreign-Trade Zone No. 122, has applied to the Board for authority to expand its general-purpose zone at its port terminal complex in Nueces County, Texas, within the Corpus Christi Customs port of entry;

Whereas, The application was accepted for filing on November 14, 1990, and notice inviting public comment was given in the **Federal Register** on November 27, 1990 (Docket No. 45-90, 55 FR 49317);

Whereas, An examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, The expansion is necessary to improve and expand zone services in the Nueces County area; and,

Whereas, The Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, The Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed on November 14, 1990. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the Army District Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 6th day of December, 1991.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-30359 Filed 12-18-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-428-602]

Brass Sheet and Strip From Germany; Negative Final Determination of Circumvention of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of negative final determination of circumvention of antidumping duty order.

SUMMARY: On August 10, 1990, the Department of Commerce published a negative preliminary determination of circumvention of the antidumping duty order on brass sheet and strip from Germany. The circumvention inquiry covered one manufacturer of this product, Wieland-Werke AG, and the period January 1986 through January 1989.

We gave interested parties an opportunity to comment on the preliminary negative determination. After our analysis of the comment and rebuttal briefs, we have determined that Wieland is not circumventing the order on brass sheet and strip from Germany.

EFFECTIVE DATE: December 19, 1991.

FOR FURTHER INFORMATION CONTACT: David Mason, or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 1990, the Department of Commerce (Department) published in the **Federal Register** (55 FR 32655) a preliminary negative determination of circumvention of the antidumping duty order on brass sheet and strip from Germany. The Department has now completed this inquiry in accordance with section 781(c) of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Antidumping Duty Order

Imports covered by the antidumping duty order are shipments of brass sheet and strip, other than leaded brass and tin brass sheet and strip, from Germany. The chemical composition of the products covered is currently defined in the Copper Development Association (C.D.A.) 200-series of the Unified Numbering System (U.N.S.) C200000 series. Products whose chemical composition is defined by other C.D.A. or U.N.S. series are not covered by this order. During the relevant period of this inquiry, such merchandise was classifiable under item numbers 612.3960, 621.3982, and 612.3986 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item numbers 7409.21.00 and 7409.29.00. TSUSA and HTS item numbers are provided for convenience and for Customs purposes. The written description remains dispositive.

Analysis of Comments Received

We invited interested parties to comment on the preliminary negative determination. We received comments from Wieland-Werke AG (Wieland) and petitioners (the International Association of Machinists and Aerospace Workers, the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Salaried Machine and Furniture Workers, Industrial Union Department, AFL-CIO, and the United Steelworkers of America). We also received rebuttals from both parties listed above. We did not hold a public hearing on this matter since neither party requested one.

Comment 1: Petitioners contend that critical evidence that should have been supplied by the respondent is missing, and in its absence the Department should make an affirmative circumvention determination. Specifically, petitioners point to Wieland's failure to respond to the Department's questions concerning the actual uses to which manganese brass was put by Wieland's customers in the United States, and the expectations of those customers concerning 667-series brass, known as manganese brass.

Petitioners argue that Congress logically expects the Department to ascertain the "actual" characteristics of the merchandise, the "actual" expectations of the ultimate users, the "actual" uses of the merchandise, the "actual" channels of marketing, and the "actual" cost of modification. Anything other than information on actual experience, petitioners claim, would be at odds with Congress' direction that the Department apply "practical measurements" regarding minor alterations. (S. Rep. No. 71, 100th Cong. 1st Sess. 100 (1987).)

Moreover, petitioners contend that Wieland's assertion that it lacks knowledge of its customers' use of the merchandise is not convincing. Petitioners first assert that Wieland probably knew the actual uses to which the product was put and expectations of its customers based upon the orders and specifications for the manganese brass, and by the type of businesses in which its customers were engaged. Secondly, petitioners insist Wieland could have made inquiries concerning its customers' expectations and uses of the brass if Wieland were truly unaware of the actual uses and expectations. Finally, petitioners claim that if Wieland's customers actually used and expected 667-series brass to serve in its normal capacity as an alloy for spot, seam, and butt-resistant welding, rather than as a substitute for 200-series brass, Wieland would have furnished such favorable information to the Department. Consequently, petitioners assert that by withholding data on the actual uses of manganese brass and the expectations of its customers, Wieland has unreasonably deprived the Department of the most vital information in the inquiry. Additionally, petitioners state that the C.D.A.'s skepticism on the interchangeability of 667 or manganese brass with 200-series brass or cartridge brass is of no consequence if, in actuality, Wieland's U.S. customers have used 667-series brass as a substitute for 200-series brass.

To the extent substitution of manganese brass for 200-series brass has taken place, petitioners insist circumvention has occurred, and thus that the Department should make an affirmative determination. Overall, petitioners conclude that, in the absence of essential information on the actual experiences requested, the Department should follow its practice in other proceedings with recalcitrant respondents, and draw the adverse inference that Wieland has been circumventing the antidumping duty order on German brass sheet and strip.

In response, Wieland claims it steadfastly maintained a policy of full cooperation throughout the inquiry and freely provided highly sensitive cost, customer, and marketing data to the Department. Secondly, Wieland maintains that it provided detailed responses to all of the Department's requests, and that it supplemented those responses where appropriate. Third, Wieland states that at no time did the Department indicate that its responses, as supplemented, were in any way deficient or that Wieland was not cooperating in the inquiry. Lastly, Wieland maintains that the information petitioners claim was omitted is not required and, in any event, could not overcome the plain fact that 667-series manganese brass is a wholly separate product from 200-series cartridge brass.

In addition, Wieland asserts there is no support in the statute or legislative history for petitioners' claim that the Department must rely on actual uses of the entries of 667-series brass made. Wieland insists that the objective characteristics and possible uses of a product are strongly indicative of whether that product, as a practical matter, can be substituted for the one covered by an antidumping duty order and thereby determinative of whether circumvention is occurring.

Department's Position: We disagree with petitioners. First, brass of the 667-series existed prior to, and at the time of, the initiation of the investigation on brass sheet and strip. At that time, petitioners specifically sought to include only 200-series brass in the scope of the Department's less than fair value investigation and the International Trade Commission's (ITC) injury determination. In the current inquiry, however, petitioners contend that Wieland is circumventing the order on 200-series brass by its importation of 667-series brass.

The Department has examined the possibility of substitution of 200-series brass with 667-series brass. The Department specifically sought and received information on record from C.D.A. brass metals experts concerning the likelihood and practical effect of such substitution. Based upon this information, the Department has determined that substitution is highly unlikely since under 200-series type applications, 667-series brass is subject to cracking and cannot maintain the

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level of ductility of 200-series brass. Specifically, 200-series brass or cartridge brass is used almost exclusively for bullet shells or ammunition. In this application, the chemical structure of the metal must enable the materials to be drawn, stretched, and formed in order to make a shell which will not crack under firing conditions. Cartridge brass meets this requirement because it has the highest ductility of all the different types of brass. By contrast, 667-series brass does not meet such requirements and would be damaged if used in this application. This distinction has substantial practical implications for substitution. Accordingly, the Department has concluded that an objective standard provides some indication of whether circumvention is occurring in this case and fulfills Congress' dictate that we consider practical measurements.

The record in this case clearly indicates that: (1) 667-series brass existed prior to, and at the time of, the original investigation; (2) petitioners specifically sought to include only 200-series brass in their petition; and (3) there is evidence suggesting that substitution is unlikely because of significant differences in the two products, and there is no evidence indicating that substitution occurred. For these reasons, we cannot find a minor alteration in this case.

Comment 2: Petitioners are concerned that the Department has confused this circumvention inquiry with a scope clarification. Petitioners specifically question the Department's need to focus on a scope clarification analysis in the context of a preliminary determination on circumvention when petitioners, throughout the inquiry, have conceded that 667-series manganese brass was not within the scope of the original investigation.

Department's Position: As petitioners requested, the Department is conducting a circumvention inquiry, not a scope clarification. Indeed, had the petitioners' application not involved allegations of circumvention through minor alterations, it would have been unnecessary to pursue this matter further since the descriptions of the merchandise in the original petition, along with the Department and ITC's final determinations, make clear that 667-series brass is not within the scope of the antidumping duty order covering 200-series brass to the exclusion of other series of brass.

Thus, a matter separate from scope clarification, the Department independently evaluated each of the five criteria under the minor alterations provision as set forth in the legislative history on circumvention (see S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987)). First, the overall characteristics of the 667-series brass differ from those of the 200-series brass. The alloy, which is the essential characteristic of the products, differs between the two so as not to allow product interchangeability. Next, with regard to expectations of ultimate users and the use of the merchandise, we determined that substitution of 667- and 200-series brass is very unlikely and would result in an inferior product for the expected use for 200-series brass. Further, although the same channels of marketing are used for each product and Wieland estimates the costs of the products to be comparable, the Department does not regard this as dispositive and, in any event, these factors are subordinate in this case to overall physical characteristics, customer expectations, and use.

Furthermore, the Department also considered such factors as the circumstances under which manganese brass entered the United States, and the timing and volume of 667-series brass exported to the United States, in determining whether circumvention was occurring in this case. Even though shipments of 667-series brass began after the petition was filed, the quantities were moderate and shipped for test marketing purposes only, which shipments Wieland has since ceased.

Comment 3: Petitioners contend that the Department has drawn an extremely narrow and restrictive reading of the statutory concept of "minor alterations," as evidenced by the Department's reasoning that Wieland is not modifying its 200-series brass, but is instead manufacturing and exporting a different type of brass altogether. According to petitioners, such an interpretation is not supported by the statute. Instead, petitioners maintain that the determination should be based upon whether the class or kind of merchandise has been changed slightly, not whether a particular sale or order has been changed slightly. Petitioners claim that this interpretation is the sort of "practical measurement" that Congress intended.

Moreover, petitioners assert that German manganese brass was only brought to prominence after publication of the antidumping duty order on 200-series brass. Petitioners insist they were unaware of any domestic production or imports of 667-series brass prior to such publication. Accordingly, petitioners conclude they were reasonable in not designating the 667 alloy in their petition. Consequently, petitioners urge that in designating product coverage in their petition they should not be held to anticipate respondent's attempt to circumvent the antidumping duty order with an unusual alloy that respondent had never before sold in the United States.

In response, Wieland contends that 667-series brass is not a minor alteration of brass sheet and strip of the 200-series, but is instead a distinct and separate product. Wieland states that because 667-series brass does not involve a minor alteration of brass subject to the antidumping duty order, shipments of this product did not constitute circumvention.

Wieland maintains that the 667-series brass existed as a separate product at the time the petitioners filed their petition on 200-series brass. Wieland argues, moreover, that petitioners specifically excluded series 600 brass from the original investigation. According to Wieland, 667-series brass has long been recognized as a separate product, and its production by Wieland and sale in the United States is not a mere alteration of an existing product, but rather the production and marketing of an entirely different product. Wieland concludes that this result is clearly outside the reach of the "minor alterations" provision of the Tariff Act and does not represent the type of evasion which Congress sought to address.

In citing to the legislative history of the minor alterations provision, Wieland argues that there are clear distinctions between this case and examples cited in the legislative history. Specifically, Wieland points out that each example cited in the legislative history illustrates the case of a slight modification of an existing product which adds new and often superfluous features to the product, and that these are far different from this brass sheet and strip case which involves the production of an entirely different product, which predates the antidumping investigation, and which exhibits substantially different composition and characteristics.

Secondly, Wieland contends that the Department based its determination not only on each of the factors contained in the legislative history, but on other factors bearing on the circumstances surrounding the investigated entries, and the volume and timing of those entries. Wieland claims that the Department's use and interpretation of these additional criteria is fully consistent with Congress' intent and the Department's practice.

Department's Position: We disagree with petitioners. To accept petitioners' view that circumvention is present in this instance would be tantamount to converting the minor alterations provision of the statute into one covering all alterations, both significant and minor. Such an interpretation would yield arbitrary results since it would reach products which are the result of normal business practices and not the result of circumvention activities.

By contrast, the legislative history states examples to illustrate conduct that constitutes circumvention through minor alterations. Specifically, the legislative history indicates that the application of fire resistance coating to cookware prior to importation, or the addition of a calculation or memory feature to portable electric typewriters prior to importation are clear examples of minor alterations which this circumvention provision is intended to address. Those products may be substituted for each other, whereas 200 and 667 brass may not. Moreover, the legislative history, either through examples or explanation of this provision, does not indicate that distinct products, which existed prior to the issuance of an order, should be included when they differ in significant respects.

Comment 4: Petitioners contend that they have been hampered by their limited access to Wieland's complete response. Specifically, petitioners contend that Wieland's report on its test marketing of 667-series brass in the United States could offer clues concerning the actual uses and expectations of Wieland's U.S. customers and should be made available to the petitioners under an administrative protective order.

Department's Position: Throughout this circumvention inquiry, the Department made available to the petitioners all proprietary data sought by petitioners, with limited exceptions. Accordingly, petitioners received the results of respondent's marketing test under the administrative protective order as contained in respondent's July 11, and September 29, 1989 responses.

Negative Final Determination of Circumvention

After a full examination of the comments received, we determine that Wieland is not circumventing the antidumping duty order on brass sheet and strip from Germany. This circumvention determination is in accordance with section 781(c) of the Tariff Act (19 U.S.C. 1677j) and 19 CFR 353.29 (1991).

Dated: December 11, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 91-30360 Filed 12-18-91; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of application for an amendment to an export trade certificate of review.

SUMMARY: The Office of Export Trading Company Affairs (OETCA), International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination of whether the Certificate should be amended. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89-A0010."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 89-00010, which was issued on May 10, 1991 (56 FR 23284, May 21, 1991).

Summary of the Application

Applicant: Air-Conditioning & Refrigeration Institute, ("ARI"), 1501 Wilson Boulevard, suite 600, Arlington, Virginia 22209. Contact: Renee S. Hancher, Manager of International Trade, Telephone: (703) 524-8800.

Application No.: 89-A0010.

Date Deemed Submitted: December 10, 1991.

Request For Amended Conduct: ARI seeks to amend its Certificate to:

1. Add the following companies as "Members" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Alco Controls Division, Emerson Electric Company; Bristol Compressors, Inc.; Climate Master, Inc., A Subsidiary of LSB Industries; Eaton Corporation, Automotive & Appliance Controls Operation; Edwards Engineering Corporation; E.I. du Pont de Nemours & Company, Fluorochemicals Division; EVAPCO, Inc.; FHP Manufacturing Company, Division of Harrow Products, Inc.; Heat Exchangers, Inc.; Manitowoc Equipment Works, Division of Manitowoc Co., Inc.; Mile High Equipment Company; Mortex Products, Inc.; Parker Refrigeration Components Group, Parker-Hannifin Corporation; Paul Mueller Company; Scotsman Ice Systems; Servend International, Inc.; Superior Coils, Inc.; and Tecumseh Products Company;

2. Delete each of the following companies as a "Member" of the Certificate: Artesian Building Systems, Inc.; A.D. Auriema Inc.; Sundstrand Heat Transfer, Inc., Sundstrand Corp.; and Win-Tron Electronics Ltd.;

3. Change the listing of the company name of the following current "Members" as follows: Change Copeland Corporation to Copeland Corporation, Division of Emerson Electric Company; Kysor-Warren to Kysor/Warren; Lau Industries to Lau; Marvair Company to Crispaire; Sterling Radiator Division, Reed National Corp. to Sterling Radiator, A Division of Mestek, Inc.; Titus Products, Division of Phillips Industries, Inc. to TITUS; Turbotec Products, Inc. to Turbotec Products Inc.; Phillips Industries, Inc. to Tomkins Industries, Inc.; and Halsey Taylor, Scotsman Industries to Halsey Taylor Division, Elkay Manufacturing Company; and

4. Add (a) Refrigerant Recovery/Recycling Equipment; (b) Thermal Storage Equipment; and (c) Ground Source Closed-Loop Heat Pumps (ARI

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Standard 330) as products to be covered by the Certificate.

Dated: December 13, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91-30282 Filed 12-18-91; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Policy Board Advisory Committee; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session on 7–8 January 1992 from 0900 until 1700 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended [5 U.S.C. app. II, (1982)], it has been determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b (c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: December 16, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-30349 Filed 12-18-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Air Force Institute of Technology Board of Visitors, a Subcommittee of the Air University Board of Visitors; Meeting

The Air Force Institute of Technology Board of Visitors, a Subcommittee of the Air University Board of Visitors, will hold an open meeting at 8:30 a.m. on 2 March 1992, in the Commandant's Conference Room (ten seats available), Building 125, Wright-Patterson Air Force Base, Ohio.

The purpose of the meeting is to give the board the opportunity to present to the Commandant, Air Force Institute of Technology, a report of findings and recommendations concerning the Institute's educational programs. The findings of the subcommittee will also be reported to the Commander, Air University, at the next regularly scheduled meeting of the Air University Board of Visitors.

For further information on this meeting, contact Lt. Col. Richard Nissing, Deputy Director, Operations and Plans, Directorate of Operations and Plans, Air Force Institute of Technology, (513) 255-5402 or 4219.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-30333 Filed 12-18-91; 8:45 am]

BILLING CODE 3910-01-M

Air University Board of Visitors; Meeting

The Air University Board of Visitors will hold an open meeting on 12-15 April 1992, beginning at 0810 in the Air University Conference Room, Air University Headquarters, Maxwell Air Force Base, Alabama (10 seats available).

The purpose of the meeting is to give the board an opportunity to review Air University educational programs and to present to the Commander, Air University, a report of their findings and recommendations concerning these programs.

For further information on this meeting, contact Dr. Dorothy D. Reed, Coordinator, Air University Board of Visitors, Headquarters, Air University, Maxwell Air Force Base, Alabama 36112-5001, telephone (205) 953-5159.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-30330 Filed 12-18-91; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board of the Space and C³I Panel of 1992 Summer Study on Global Reach/Global Power will meet on 8-9 Jan 1992 from 8 a.m. to 5 p.m. at HQ/SPACECMD, Peterson AFB, CO.

The purpose of this meeting is to receive presentations and to hold discussions on Air Force Space and C³I projects and programs relevant to Global Reach/Global Power. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-30331 Filed 12-18-91; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Committee on Technology to Support Force Projection: Global Reach—Global Power will meet on 9-10 January 1992 at Phillips Lab, Kirtland AFB, NM, 8 a.m. to 5 p.m.

The purpose of this meeting is to receive briefings and gather information for the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-30332 Filed 12-18-91; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's AFOTEC Advisory Group will meet on 14-15 January 1992, at HQ AFOTEC, Kirtland AFB, NM, 8 a.m. to 5 p.m.

The purpose of this meeting is to receive briefings and gather information for the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-30334 Filed 12-18-91; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Committee on Technology Options for Global Reach—Global Power: 1995-2020 (Mobility Panel) will meet on 16-17 January 1992, at HQ MAC, Scott AFB, IL, 8 a.m. to 5 p.m.

The purpose of this meeting is to receive briefings and gather information for the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-30335 Filed 12-18-91; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Notice of Intent To Prepare a Supplement to the Final Environmental Impact Statement (FEIS) on Navigation Improvement of Ft. Pierce Harbor, FL

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The proposed work consists of increasing the Ft. Pierce Harbor Entrance Channel from the existing 27-foot depth (mlw) by 350-foot width to 30 feet deep by 400 feet wide, increasing the inner channel from the existing 25-foot depth by 200-foot width to 28 feet deep by 250 wide, increasing the depth of the turning basin and berthing areas from the existing 25-foot depth to 28 feet, increasing the size of the turning basin to approximately 22 acres, and constructing a new 250-foot wide by 1250-foot long spur channel north from the turning basin.

EFFECTIVE DATE: December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Jonathan D. Moulding, U.S. Army Corps of Engineers, P.O. Box 4970, Jacksonville, Florida 32232-0019, (904) 791-2286.

SUPPLEMENTARY INFORMATION:

1. The following alternatives will be considered:

a. Ocean disposal of dredged material.

b. Upland disposal of dredged material.

c. Alternative project dimensions.

2a. Comments on alternatives and environmental concerns are invited from any affected Federal, State, and local agencies, affected Indian tribes, and other private organizations and parties.

2b. Significant issues to be analyzed in depth in the EIS that have been identified to date are the rate of recovery of the rocky ledge habitat community in the channel, selection of a disposal site for the dredged material, and water quality effects during construction dredging.

2c. Coordination with appropriate Federal and State agencies is required under provisions of the Endangered Species Act and National Historic Preservation Act.

3. Scoping will be conducted by letter and through a Scoping meeting held in the Ft. Pierce area in January 1992.

4. The Draft Supplement EIS is expected to be available for review in the 3rd Quarter CY 1992.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 91-30329 Filed 12-18-91; 8:45 am]

BILLING CODE 3710-08-M

[AR 55-355]

Military Traffic Management Command, Department of the Army; Defense Traffic Management Regulation (AR 55-355, NAVSUPINST 4600.70, AFR 75-2, MCO P4600.24B, DLAR 4500.3)

AGENCY: Military Traffic Management Command, Department of the Army.

ACTION: Comments on proposal to allow DOD approved classes A&B carriers to trip lease.

SUMMARY: The following are proposed changes to Chapter 33 of the DMTR which prohibits the tripleasing of classes A & B explosives.

DATES: Comment period will end on January 21, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia McCormick, Headquarters, Military Traffic Management Command, ATTN: MTIN, 5611 Columbia Pike, Falls Church, VA 22041-5050, (703) 756-1596.

SUPPLEMENTARY INFORMATION: MTMC is authorized by DOD Directive 5160.53 to develop and maintain procedures for the movement of DOD shipments within the continental United States. MTMC is also required to ensure that DOD shipments are tendered to carriers able to meet DOD requirements at the lowest overall cost. Therefore, the following criteria have been established to ensure responsive service by the carrier industry as well as allow the carriers to maximize the use of equipment. Changes will be incorporated into chapter 33 of the Defense Traffic Management Regulation (DTMR) AR 55-355, NAVSUPINST 4600.70, AFR 75-2, MCO P4600.14B, DLAR 4500.3.

Facts

a. AR 55-355, chapter 33, 33-17, prohibits the use of trip leased commercial vehicles for the transport of Classes A or B ammunition, explosives or poison, or radioactive Yellow III label materials. This requirement was extended to any shipment requiring a Transportation Protective Service (TPS).

b. As a result of two serious incidents it became apparent that DOD needed to make closer checks on carriers and their drivers to ensure that the equipment was in good order and that the drivers were properly trained as to the hazards associated with the commodities. Also, strict control needed to be maintained to ensure minimal impact on the public should an accident occur.

This action will allow: a. Maximization of acceptable equipment in the transport of explosives by relaxing the tripleasing requirement for classes A & B explosives.

b. The integrity of the equipment and the qualifications of the drivers will be maintained by restricting tripleasing with only other DOD approved classes A & B carriers.

c. Minimization of potential shortages in regional areas of approved explosives carriers with adequate equipment and qualified drivers.

d. May increase potential for smaller, regional type carriers to compete in the market. The following criteria will apply: a. Carriers approved by MTMC to handle DOD classes A & B explosives will be authorized to trip lease with other approved carriers of classes A & B explosives.

b. Carriers must agree not to use any approved carrier which has been prohibited, for whatever reason, from participation in this type traffic or DOD traffic in general.

c. Failure on the part of the trip leased carrier, to provide the required safety and/or security for the shipment could result in adverse action against both the prime carrier and the trip leased carrier.

d. Any violations will be handled in accordance with established classes A & B agreement and the Military Traffic Management Command Regulation 15-1, which could result in the carrier not only losing its approval to handle DOD classes A & B but also nationwide action on its participation on all DOD traffic up to 3 years.

Upon adoption of the above, the classes A & B agreement will be revised to incorporate changes, thereby requiring all approved classes A & B carriers to initiate a new agreement.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 91-30328 Filed 12-18-91; 8:45 am]

BILLING CODE 3710-08-M

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DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before January 21, 1992.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: December 16, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Revision.
Title: Summary Data Sheet/Listing Form.
Frequency: Annually.
Affected Public: Individuals, households, State or Local Government, Federal Agencies or employees, and Non-Profit Institutions.
Reporting Burden: Responses—57; *Burden Hours*—855.
Recordkeeping Burden: Recordkeepers—57; *Burden Hours*—4.56.
Abstract: The Department requests this data from State Education Agencies. The information will be used to prepare a State listing of schools in which teaching services will qualify the teachers for Defense/Direct and Perkins Loan Programs. ED will use the information to publish a directory of designated low-income elementary/secondary schools.

Office of Policy and Planning

Type of Review: New.
Title: Drug-Free Schools and Communities Act: Outcomes of DFSCA State and Local Programs.
Frequency: Annually.
Affected Public: Individuals, Households, State or Local Governments.
Reporting Burden: Responses—9,570; *Burden Hours*—4,816.
Recordkeeping Burden: Recordkeepers—0; *Burden Hours*—0.
Abstract: This study will collect data in order to examine the effectiveness of comprehensive School-Based Drug Prevention Programs. The Department will use this information to identify successful drug prevention strategies and in planning future directions for the Drug-Free Schools and Communities Act.

[FR Doc. 91–30387 Filed 12–18–91; 8:45 am]

BILLING CODE 4000–01–M

Notice Inviting Applications for New Awards for Fiscal Year 1992 Under the Drug-Free Schools and Communities Programs

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On September 18, 1991, a combined application notice establishing closing dates for many of the Department's direct grant and fellowship programs was published in the **Federal Register** (56 FR 47270).

On page 47281, change the application deadline date from January 21, 1992 to February 4, 1992, and the applications available date from December 6, 1991 to December 30, 1991, for (1) the Drug-Free Schools and Communities Program—Demonstration Grants to Institutions of Higher Education (CFDA 84.184A); and (2) the Drug-Free Schools Communities Program—Counselor Training Grants Program (CFDA 84.241A).

FOR APPLICATIONS OR INFORMATION CONTACT: The Division of Drug-Free Schools and Communities, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 2133, Washington, DC 20202-6439. Telephone: (202) 401–1258. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 3202, 3203, 3211.

Dated: December 13, 1991.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 91–30388 Filed 12–18–91; 8:45 am]

BILLING CODE 4000–01–M

ENDANGERED SPECIES COMMITTEE

Order and Rulings by Administrative Law Judge From Prehearing Conference Held on December 3–4, 1991, Setting of Discovery and Hearing Schedule, Date of Second Prehearing Conference, Other Hearing-Related Matters

AGENCY: Endangered Species Committee.

ACTION: Notice of Order and Rulings by Administrative Law Judge, Setting of Discovery and Hearing Schedule, Notice of Date and Location for Second Prehearing Conference, and Other Hearing-Related Matters.

SUMMARY: On September 11, 1991 the Bureau of Land Management, Department of the Interior, filed an application with the Secretary of the Interior seeking an exemption from section 7 of the Endangered Species Act that would permit the Bureau to hold timber sales on 44 tracts remaining in the Bureau's 1991 timber sales program in Oregon. See 56 FR 48546, September 25, 1991, the **Federal Register** notice announcing receipt of the application. In accordance with 16 U.S.C. 1536(g) and 50 CFR 452.03, on October 1, 1991 the Secretary of the Interior made certain threshold determinations concerning the application and concluded that the application qualifies for consideration by the Endangered Species Committee. See 56 FR 54562, October 22, 1991, the **Federal Register** notice announcing the Secretary's determinations.

Under 16 U.S.C. 1536(g)(5) the Secretary, who serves as Chairman of the Endangered Species Committee, has 140 days from the date he determines that the application qualifies for consideration to conduct a fact-finding hearing to develop the record from which he will prepare a report to the Committee under 16 U.S.C. 1536(g)(4)–(8) and 50 CFR part 452 and to complete the report and provide it to the Committee. Section 1536(g)(5) permits this 140-day period to be extended upon the mutual agreement of the Secretary and the exemption applicant.

The Secretary of the Interior has designated Harvey C. Sweitzer, an administrative law judge, to conduct the fact-finding hearing. See 56 FR 57633, November 13, 1991. The administrative law judge will be assisted by the staff of the Endangered Species Committee, which will include the Division of General Law, Office of the Solicitor, Department of the Interior, and the Office of Program Analysis, Department of the Interior. The hearing will take place in Portland, Oregon beginning on January 8, 1992 at 9 a.m. at 911 Federal Building (Old Bonneville Power Administration Building), 911 Northeast 11th Street, Portland, Oregon 97208. It is anticipated that the hearing will continue until January 30, 1992. A prehearing conference will take place at the same location on January 7, 1992 at 9 a.m.

The administrative law judge conducted a prehearing conference on December 3–4, 1991, in Portland, Oregon. See 56 FR 57633, November 13, 1991. Participants in the prehearing conference were the Bureau of Land Management, the United States Fish and Wildlife Service, and the groups that timely filed petitions to intervene in accordance with 50 CFR 452.06(b). The prehearing conference dealt with the matters cited in 50 CFR 452.05(b)(1), and resulted in the issuance of a prehearing conference order on December 11, 1991, which set general discovery and hearing schedules, granted of motions to intervene, narrowed specific areas of fact and law to be addressed at the hearing, invited briefs on specific matters of law and procedure, and announced the date of a second prehearing conference to take place immediately prior to the commencement of the hearing.

On December 16, 1991, the administrative law judge issued an addendum to his prehearing order modifying several of the filing deadlines set forth in the December 11 order. Both the December 11 order (as issued by the administrative law judge) and the addendum are set forth below.

Order

A prehearing conference was held in Portland, Oregon on December 3 and 4, 1991, in the above-captioned matter pursuant to 56 FR 57633–36 (Nov. 13, 1991). The following rulings are hereby issued, reflecting and clarifying matters discussed during the conference.

(1.) *Definitions.* As used herein:

(a). "Parties" without qualification, intends parties intervenor (both full and limited) as well as the original parties (BLM and FWS) in the matter.

(b.) "Order of November 26, 1991" intends the Order of that date issued in this matter by the undersigned, a copy of which was served on all parties and potential parties.

(c.) "Filed" means received by mail or personal delivery, or by facsimile transmission, by Administrative Law Judge (ALJ), Office of Hearings and Appeals (OHA), 6432 Federal Building, Salt Lake City, Utah 84138, (801) 524–5539 (fax). If a document is filed by facsimile transmission, the ALJ shall be provided with the actual document by mail or personal delivery as soon as reasonably possible. (It is requested that each document be in duplicate.)

(d.) "Served" means received by mail, personal delivery, or facsimile transmission at the offices of each party's counsel. If by facsimile transmission, counsel shall be provided a copy of the actual document by mail or personal delivery as early as practicable. (Note that 5 copies are also to be sent to Ms. Abate pursuant to 56 FR 57634.)

(2.) *Intervenors.* (a.) Full status as parties intervenor is granted to the following organizations, their petitions to intervene having met the pertinent requirement for intervention:

(i.) The Northwest Forest Resource Council, Western Council of Industrial Workers, Northwest Forestry Association, Western Forest Industries Association, C&D Lumber Co., Swanson Brothers Lumber Co., Rogge Forest Products, Inc., and Pope & Talbot, Inc. (hereinafter collectively referred to as "NFRC");

(ii.) Portland Audubon Society, Lane County Audubon Society, Pilchuck Audubon Society, National Audubon Society, Oregon Natural Resources Council, Headwaters, Sierra Club, The Wilderness Society, Defenders of Wildlife, and National Wildlife Federation (hereinafter collectively referred to as "PAS");

(iii.) Association of O&C Counties, Coos County, Douglas County, Lake County, Polk County and Yamhill County (hereinafter collectively referred to as "O&C Counties");

(iv.) Oregon Land Coalition (OLC).

NFRC, O&C Counties, and OLC shall pool cross-examination to the end that only one counsel shall cross-examine a witness on behalf of the three entities.

(b.) Limited Intervenor status is granted to the State of Oregon (State) pursuant to the oral agreement of the State and the other parties, for the purpose of possible submission of evidence. Evidence shall not be proffered by the State until the original parties and full intervenors have completed their cases in chief, and shall be subject to cross-examination. The State shall not cross-examine witnesses, except that it may cross-examine employees of the State who are called as witnesses by other parties. Its participation in the hearing shall be governed by the same time schedule as governs the other parties.

(c.) Conditional limited intervention status is granted to the Environmental Protection Agency (EPA). Evidence shall not be proffered by EPA until the State has had opportunity to make its proffer. EPA shall not cross-examine witnesses except under extraordinary circumstances upon a showing of good cause. its participation in the hearing shall be governed by the same time schedules as govern the other parties.

(d.) By December 13, 1991, the EPA shall serve the internal memorandum regarding the separation of functions within the EPA which was filed by telefax on December 5, 1991, and shall file and serve a document setting forth;

(i.) The interest of EPA or a division thereof in this proceeding;

(ii.) The anticipated contribution to the determination of the issues in these proceeding to be made by EPA or a division thereof;

(iii.) A description of any communications between any person who has been, is, or will be involved in the representation of EPA or a division thereof in this proceeding and any member of the Endangered Species Committed (ESC) or any employee assisting such ESC member, that have taken place on or after October 1, 1991, and pertained to the substantive issues

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to be reviewed and determined as result of this proceeding.

(iv.) A discussion of whether any such communications may bias any member of the ESC, and

(v.) Any other facts or law bearing upon the propriety of permitting limited intervention by EPA or a division thereof.

(e.) Within 5 days following receipt of EPA's documentation, any party may file and serve a motion for reconsideration of the above Order allowing EPA limited intervenor status.

(f.) On December 2, 1991, the Forest Conservation Council requested withdrawal of its written petition for intervenor status. The request to withdraw is granted.

(3.) *Dispositive motions.* On December 2, 1991, FWS and PAS filed questions, regarding the propriety of reaching a decision on BLM's application. FWS requested that its questions be certified to the Endangered Species Committee for rulings prior to the beginning of the hearing. At the prehearing conference, both FWS and PAS agreed that motions relating to these questions would be filed by December 9. Motions and supporting memoranda were received from FWS and PAS. Response briefs on these issues, subject to the rulings of law set forth in this paragraph, shall be filed and received no later than noon, December 24, 1991. Reply briefs shall be filed and received no later than December 27, 1991.

(4.) *Clarification of issues to be briefed.* In view of the issues raised in the December 9 submissions by FWS and PAS, the following clarifications are set forth for purposes of briefing and ruling on these motions:

(a.) Compliance with the National Environmental Policy Act (NEPA) is relevant in light of section 7(k) of the ESA only to the extent that the applicant must be able to show that "an environmental impact statement which discusses the impacts upon endangered species or threatened species or their critical habitats shall have been previously prepared with respect to any agency action exempted by such order." 16 U.S.C. 1536(k). The parties are invited to submit briefs regarding how section 7(k) is to be interpreted and the relationship of such interpretation of law to the facts to be developed at the hearing. Such briefs shall be filed by December 31, 1991.

(b.) Under the ESA and the regulations, the Secretary of the Interior was required to make specific "threshold" determinations regarding the completeness of the exemption application. 16 U.S.C. 1536(g)(3), (4); 50 CFR 452.03. The Committee may and did convene to examine BLM's application only after a finding by the Secretary that the threshold criteria were met. The ESA and the regulations prescribe the criteria by which the Committee may grant some form of exemption for the proposed action, if any. 16 U.S.C. 1536(h); 50 CFR 453.03. These criteria do not include revisiting the threshold determinations. Accordingly, reexamination of the threshold rulings are not properly within the province of the hearing to be conducted and argument or evidence pertaining thereto may be excluded on the grounds of irrelevancy.

In light of this conclusion of law, the parties are advised that they need not brief or present evidence regarding the issue of the validity or correctness of the threshold rulings, except to the extent that the facts relating to said issue may be relevant to the criteria for determining whether an exemption should be granted, as set forth in 16 U.S.C. 1536(h)(1). As further clarification, the aforementioned conclusion of law applies to the threshold determination, challenged by FWS and PAS in their motions, that BLM and FWS carried out the consultation responsibilities in good faith and made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed agency action.

(c.) The question of whether the BLM should have consulted on the overall Jamison strategy is not at issue in this proceeding. Said question may not be considered in this proceeding because the question is already at issue before the Court of Appeals, Ninth Circuit, on appeal of *Lane County Audubon Society v. Jamison*, Civ. No. 91-61230-HO (D. Or. Sept. 11, 1991).

(d.) Reexamination of the validity of the FWS's jeopardy determinations regarding BLM's 44 proposed FY 1991 timber sales is not properly within the province of the hearing to be conducted.

(5.) *Rules of evidence.* Admissibility of evidence at the hearing will be consistent with the Administrative Procedure Act. See especially 5 U.S.C. 556(d). The Federal Rules of Evidence (FRE) shall be used for guidance, and shall be liberally construed. Irrelevant, immaterial, unreliable, or unduly repetitious evidence shall not be received. Rule 403 (FRE) will be employed in that "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice [etc.] or by considerations of undue delay [etc.]" Hearsay shall be received if it appears reliable and is not otherwise improper. Where a copy of a document is offered without a proffer of the original, the accuracy and authenticity of the document may be assumed unless questioned. Where the ALJ deems an objection to proffered evidence should be considered with regard to weight to be accorded the evidence rather than to its admissibility, the evidence may be received with mention thereof for consideration by the ESC.

(6.) *Witness lists.* Witness Lists shall be filed and served by December 9, 1991. Each party's witness list shall set forth the names, addresses, and qualifications of all witnesses it intends to call at the hearing in this matter and a brief but accurate statement of each witness' expected testimony.

(7.) *Direct evidence.* Direct testimony in support of each party's case in chief shall be reduced to writing, sworn to under oath, and filed and served by December 27, 1991. A copy of each proposed exhibit, or an accurate description of the same, shall accompany said filing and service. (Any objections thereto may be made at the hearing.) Additional direct testimony and exhibits may be submitted after said date in writing or orally at hearing only upon a showing of good cause, to include an explanation of why the need for the same was not reasonably anticipated by December 27, 1991. Testimony recorded on videotape shall not be admitted except under extraordinary circumstances upon a motion demonstrating good cause for admission.

(8.) *Notification of cross-examination.* Each party shall file and serve by January 3, 1992, a list of witnesses which it intends to cross-examine at the hearing. Any witness who is not so listed, although his direct testimony is submitted as aforesaid, need not attend the hearing.

(9.) *Discovery.* Except as otherwise provided herein, rules 26, 33, 34, and 36 of the Federal Rules of Civil Procedure shall govern the conduct of discovery in this proceeding.

(a.) Depositions: Depositions shall not be taken except under extraordinary circumstances upon a motion demonstrating good cause.

(b.) Other Discovery: Any discovery shall ordinarily consist of written interrogatories, requests for production of documents, and requests for admissions. The parties are not required to move for permission to employ these methods of discovery.

(c.) Discovery Requests: Discovery requests shall be served on all parties but shall not be filed with the ALJ nor with the ESC staff. Initial and supplemental discovery requests shall be served by December 9, 1991, and by December 30, 1991, respectively.

(d.) Responses to Discovery Requests: Responses to initial and supplemental discovery requests shall be served by December 20, 1991, and by January 3, 1992, respectively; except that responses to a discovery request filed and served prior to December 5, 1991, shall be filed and served by December 9, 1991.

(e.) Objections to Discovery Requests: Objections to any discovery request shall be filed and served on or before the earlier of January 3, 1992, or 5 days after service of such request upon the party objecting to the request; except that objections to a discovery request filed and served prior to December 5, 1991, shall be filed and served no later than December 9, 1991.

(f.) Responses to Discovery Objections: Responses to such objections shall be filed with and received by the ALJ no later than 3 days following receipt of the objections.

(10.) *Motions; Communications with the Administrative Law Judge.*

(a.) All motions or any other communications by the parties with the ALJ prior to the hearing shall be in writing and duly served. See 50 CFR 452.05(d)(2)(iii).

(b.) Any response to a motion (except a motion relating to discovery) filed with the ALJ shall be filed and served within 5 days after receipt of the motion.

(c.) Any reply to such a response shall be filed and served within 5 days after receipt of the response.

(11.) *Stipulations of fact and law.* The parties and intervenors were unable to agree to any stipulations of fact or law at the prehearing conference. Such stipulations are strongly encouraged, and should be filed as soon as possible.

(12.) *Prehearing conference.* Another prehearing conference shall be held on January 7, 1992, commencing at 9 a.m., in Conference Room C, 911 Federal Building (Old Bonneville Power Administration Building), 911 NE. 11th Street, Portland, Oregon. The prehearing conference shall deal with any additional matters which may aid in the disposition of the proceeding.

(13.) *Time table governing discovery, required documents, and the conduct of the hearing.* For clarity and convenience, the dates for filing and serving certain documents are reiterated in the schedule set forth below, which schedule shall govern the conduct of this proceeding:

(a.) Final witness lists.	December 9, 1991.
(b.) Responses and objections to pre-12/5/91 discovery requests.	December 9, 1991.
(c.) Initial discovery requests.	December 9, 1991.
(d.) Objections to initial discovery requests.	Within 5 days of receipt of request.
(e.) Responses to objections.	Within 3 days of receipt of objection.
(f.) Responses to initial discovery.	December 20, 1991.
(g.) Pre-filed direct testimony & exhibits.	December 27, 1991.
(h.) Supplemental discovery requests.	December 30, 1991.
(i.) Responses and objections to supplemental discovery.	Earlier of January 3, 1992, or 5 days after receipt.
(j.) Lists of witnesses to be called at cross-examination at hearing.	January 3, 1992.
(k.) Pre-hearing conference.	January 7, 1992.
(l.) Hearing commences.	January 8, 1992.

Presentation of evidence and cross-examination shall take place pursuant to the following schedule:

6 days (maximum)	Case in chief of proponents (i.e., BLM, NFRC, O & C Counties, and OLC).
6 days (maximum)	Case in chief of opponents (i.e., FWS and PAS).
1 day (maximum)	Opponents' rebuttal.
1 day (maximum)	Proponents' rebuttal.
1 day (maximum)	Limited intervenors.
1 day (maximum)	Other matters.
(m.) Hearing closes	No later than January 30, 1992.
(n.) Posthearing briefs.	February 7, 1992.

(14.) *Posthearing brief.* Each party may file a posthearing brief. Any such brief shall be filed and served by February 7, 1992. No responses to such briefs shall be allowed.

(15.) *Applicability of November 26, 1991, order.* The Order of November 26, 1991, is vacated to the extent that it is inconsistent with this Prehearing Conference Order. To the extent not so inconsistent, it remains in effect.

(16.) *Reminder.* The parties are strongly encouraged to consult the November 13, 1991, **Federal Register** notice (56 FR 57633, 57634-57636) for guidance regarding the kind of empirical and analytical evidence that should be most beneficial to the ESC in its analysis of the criteria for determination of whether or not an exemption is appropriate.

Harvey C. Sweitzer,
Administrative Law Judge.

Addendum to Prehearing Order

Following review of the prehearing conference order dated December 11, 1991, FWS' motion (filed December 11, 1991) to extend the deadline for filing its response brief regarding the two jurisdictional questions raised by FWS, PAS' motion (filed December 11, 1991) to extend the deadline for filing a reply brief regarding PAS' motion to terminate the proceedings, and FWS' motion (filed December 13, 1991) to clarify said order, and NFRC's opposition (filed December 16, 1991) to the latter motion, the following rulings are entered clarifying, supplementing, and modifying the said order.

1. The docket number for this proceeding is "ESA 91-1" and all future applicable documentation should reference this docket number. An additional letter or number utilized in reference to the petitions for intervention which were filed is now unnecessary.

2. FWS' motion to extend from December 27 to December 30, 1991, the deadline for filing a response brief regarding the two jurisdictional questions raised by FWS is granted.

3. PAS' motion to extend from December 27 to December 30, 1991, the deadline for filing a reply brief regarding PAS' motion to terminate the proceedings is granted.

4. To conform said order to the content of the discussions during the prehearing conference, FWS' motion to clarify said order is granted in that the concluding phrase of paragraph 9(d) of the order is omitted; paragraph 9(d) is thus modified to read: "Responses to Discovery Requests. Responses to initial and supplemental discovery requests shall be served by December 20, 1991, and by January 3, 1992, respectively."

5. As clarification of paragraph 10(a) of said order, the parties are advised that communications with the office of the administrative law judge (ALJ) regarding nonsubstantive matters, such as an inquiry regarding whether a document was received by OHA, may be made by telephone and need not be in writing nor served on other parties or Ms. Barbara Abate of the Office of the Solicitor in Washington, DC.

6. Only one copy, rather than five, of any motion to compel discovery, objection to discovery, or response to objection to discovery, need be provided to Ms. Barbara Abate. For all other

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motions and documents filed with the ALJ, five copies thereof should continue to be sent to Ms. Abate, as provided at 56 FR 57833, 57834.

7. The following sentence is added to paragraph 7 of the order: "Exhibits should be identified by the offering party's abbreviation followed by the applicable number, e.g., 'BLM-1,' 'FWS-1,' etc.

Harvey C. Sweitzer,

Administrative Law Judge.

ADDRESSES: Motions should be filed with Administrative Law Judge Sweitzer, Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 6432 Federal Building, Salt Lake City, Utah 84138. Five copies of all motions and other documents required to be filed with the administrative law judge must be sent to Ms. Barbara Abate, room 6531, U.S. Department of the Interior, Washington, DC 20240. Any documents filed with the administrative law judge must also be served on all participants. The participants' addresses are: (1) Bureau of Land Management, c/o Paul Smyth, Esq., room 6311, Office of the Solicitor, U.S. Department of the Interior, Washington, DC 20240; (2) U.S. Fish and Wildlife Service, c/o Dan Shillito, Esq., room 6560, Office of the Solicitor, U.S. Department of the Interior, Washington, DC 20240; Northwest Forest Resource Council, c/o Mark C. Rutzik, Esq., Preston, Thorgrimson, Shidler, Gates & Ellis, 111 SW. Fifth Avenue, suite 3200, Portland, OR 97204-3688; Portland Audubon Society, c/o Victor M. Sher, Esq., Sierra Club Legal Defense Fund, Inc., 203 Hoge Bldg., 705 Second Avenue, Seattle, WA 981-4-1711; Association of O&C Counties, c/o Kevin Q. Davis, Esq., Stoel, Rives, Boley, Jones & Grey, Standard Insurance Bldg., 900 SW. Fifth Avenue, Suite 2300, Portland, OR 97204-1268; Oregon Lands Coalition, c/o William Perry Pendley, Esq., Mountain States Legal Foundation, 1660 Lincoln Street, suite 2300, Denver, CO 80264; State of Oregon, c/o Melinda L. Bruce, Esq., Assistant Attorney General, Department of Justice, State of Oregon, 1162 Court Street, Salem, OR 97310-0560; Environmental Protection Agency, c/o Anthony F. Guadagno, Esq., Grants Law Branch, Office of General Counsel (LE-132G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Correspondence to the Chairman or the Committee should be addressed to the Executive Secretariat, U.S. Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Copies of the exemption application may be inspected without charge and may be obtained for a fee of $221.00 at the Natural Resources Library, 1st floor, Department of the Interior, 1849 C St., NW., Washington, DC 20240. The Administrative Record can also be reviewed on a laser image storage device at the Library, from 1 p.m. until 5 p.m. Monday through Friday, Federal holidays excepted. In addition, copies of the application are being offered for sale by the Superintendent of Documents, and will also be available for examination free of charge at all U.S. Government Depository libraries. Further, the application and the Administrative Record can be reviewed in Portland, Oregon at the following location from 8-11 a.m. and 1-3 p.m. Pacific time, Monday through Friday, Federal holidays expected: Office of Environmental Affairs, Department of the Interior, 500 NE. Multnomah, St., suite 600, Portland, Oregon 97232-2036. Because of the small size of the reviewing facility, persons wishing to review the documentation should telephone the facility at (503) 231-6157 or FTS 429-6157 to establish a time for the review. Questions concerning the exemption process may be addressed to Jon H. Goldstein at (202) 208-4077 or FTS 268-4077.

Thomas L. Sansonetti,

Counsel, Endangered Species Committee.

[FR Doc. 91-30483 Filed 12-17-91; 2:18 pm]

BILLING CODE 4310-RI5-M

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board.

Date and Time: Wednesday, January 8, 1992, 8:30 a.m.-4:30 p.m.

Location: Crystal Ballroom, Sheraton Carlton Hotel, 923 16th Street and K Street NW., Washington, DC 20006.

Contact: Dr. Robert M. Simon, Designated Federal Officer, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586-7092.

Purpose: The Board was established to serve as the Secretary of Energy's primary mechanism for long-range planning and analysis of major issues facing the Department of Energy. The Board will advise the Secretary on the research, development, energy and national defense responsibilities, activities, and operations of the Department and provide expert guidance in these areas to the Department.

Tentative Agenda

Location: Crystal Ballroom, Sheraton Carlton Hotel, 923 16th Street and K Street, NW., Washington, DC 20006.

Wednesday, January 8, 1992, 8:30 a.m.-4:30 p.m.

8:30 a.m.—Call to order and introductions
Welcoming remarks.
8:45 a.m.—Interim reports by task forces and working group.
10:30 a.m.—Break.
10:45 a.m.—Interim report by task forces and working group.
Noon-1:00 p.m.—Lunch.
1:00 p.m.—Interim reports by task forces and working group.
2:45 p.m.—Break.
3:00 p.m.—Discussion of future SEAB activities.
4:15 p.m.—Public Comment.
4:30 p.m.—Adjourn.

Public Participation: The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Any member of the public who wishes to make an oral statement pertaining to agenda items should contact the Designated Federal Officer at the address or telephone number listed above. Requests must be received before 3 p.m. (e.d.t.) Friday, January 3, 1992, and reasonable provision will be made to include the presentation during the public comment period. It is requested that oral presenters provide 15 copies of their statements at the time of their presentations.

Written testimony pertaining to agenda items may be submitted prior to the meeting. Written testimony must be received by the Designated Federal Officer at the address shown above before 5 p.m. (e.d.t.) Friday, January 3, 1992, to assure that it is considered by Task Force members during the meeting.

Minutes: A transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW. Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays.

Issued: Washington, DC.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 91-30361 Filed 12-18-91; 8:45 am]

BILLING CODE 6450-01-M

Secretary of Energy Advisory Board, Task Force on Radioactive Waste Management; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board Task Force on Radioactive Waste Management.

Date and Time: January 9, 1992, 8:30 a.m.-4 p.m.

Place: Kimball Conference Room, First Floor, National Wildlife Federation, 1400 16th Street, NW. Washington, DC 20036.

Contact: Dr. Daniel S. Metlay, AC-1, Designated Federal Officer. 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-3903.

Purpose: The Secretary of Energy Advisory Board Task Force on Radioactive Waste Management was established in October 1990 to: (1) identify the factors that affect the level of public trust and confidence in Department of Energy programs; (2) assess the effectiveness of alternative financial, organizational, legal, and regulatory arrangements in promoting public trust and confidence; (3) consider the effects on other programmatic objectives, such as cost and timely acceptance of waste, of those alternative arrangements; and (4) provide the Secretary with recommendations and guidance for implementing those recommendations.

Tentative agenda

Thursday, January 9, 1992 8:30 a.m-4 p.m.

8:30 a.m.-9 a.m.—Introduction and Welcome.
9:00 a.m.-10:45 a.m.—Presentations by Office of Civilian Radioactive Waste Management.
10:45 a.m.-11:00 a.m.—Break.
11:00 a.m.-12:00 p.m.—Presentation by Assistant Secretary of Environmental Restoration and Waste Management Leo Duffy.
12:00 p.m.-1:30 p.m.—Lunch break.
1:30 p.m.-3:30 p.m.—Presentations by Office of Environmental Restoration and Waste Management.
3:30 p.m.-4 p.m.—Public comment.
4:00 p.m.—Adjourn.

Public Participation: The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Members of the public are welcome to comment at the meeting on any of these presentations or to provide views on other matters that fall within the scope of the Task Force's Work. It is requested that those individuals provide 15 copies of their statements at the time of their presentation. Members of the public may also submit written comments to Dr. Metlay at the address given above.

Minutes: A transcript of the meeting will be available for public review and copying approximately 30 days following the meeting a the Public Reading Room, 1E-190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m. Monday through Friday except Federal holidays.

Issued: Washington, DC.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 91-30362 Filed 12-18-91; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96-511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254-5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC-556
3. 1902-0075
4. Cogeneration and Small Power Production
5. Extension
6. On occasion
7. Required to obtain or retain a benefit
8. State or local governments, Businesses or other for-profit, Small businesses or organizations
9. 344 respondents
10. 1 reponse
11. 6 hours per response
12. 2,064 hours
13. To encourage small power production and cogeneration, the Public Utilities Regulatory Policies Act of 1978 confers certain benefits on small power production and cogeneration facilities that meet particular ownership and technical criteria. FERC-556 specifies the criteria that must be met and the process for which such benefits may be obtained.

Statutory Authority

Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, December 13, 1991.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91-30363 Filed 12-18-91; 8:45 am]

BILLING CODE 6450-01-M

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of a request submitted for emergency processing by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection listed at the end of this notice to the Office of

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Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*).

The entry contains the following information: (1) The sponsor of the collection; (2) Collection number; (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Under the provisions of 5 CFR 1320.13 and 1320.18, the Agency has requested that the Office of Management and Budget take action within three days of receipt.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration
2. EIA–819
3. N/A
4. Monthly Oxygenate Telephone Report
5. New
6. Monthly
7. Mandatory
8. Businesses or other for-profit; Federal agencies or employees
9. 101 respondents
10. 3 responses
11. .50 hour per response
12. 152 hours
13. This collection will be used to measure the availability of oxygenates in 1992 which can be used to produce finished motor gasoline that meets the Clean Air Act of 1990 requirements.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, December 13, 1991.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91–30364 Filed 12–19–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RP91–161–005]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 13, 1991.

Take notice that Columbia Gas Transmission Corporation (Columbia) on December 4, 1991, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, with the proposed effective date of December 1, 1991:

Second Substitute Eleventh Revised Sheet No. 26C
Second Substitute Second Revised Sheet No. 26D

On November 27, 1991, Columbia filed to place its motion rates in Docket No. RP91–161–000, et al., into effect on December 1, 1991. Subsequent to that filing, Columbia determined that the retainage percentage and the charge for Fuel as set forth on the tariff sheets were inadvertently stated at 2.40% and 5.32c per Dth, respectively, instead of the filed for 2.33% retainage percentage and the revised Fuel Charge of 5.15c per Dth. Therefore, the instant filing is being submitted to reflect the proper retainage percentage and Fuel Charge to be effective December 1, 1991.

Columbia states that copies of the filing were served upon Columbia's jurisdictional customers and interested State commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before December 20, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–30238 Filed 12–18–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM92–6–21–001]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 13, 1991.

Take notice that Columbia Gas Transmission Corporation (Columbia) on December 4, 1991, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, with the proposed effective date of January 1, 1992:

Substitute Second Revised Eleventh Revised Sheet No. 26C
Substitute Second Revised Second Revised Sheet No. 26D

On November 27, 1991, Columbia filed tariff sheets to implement the 1992 Gas Research Institute (GRI) funding unit, as authorized by FERC Opinion No. 365. Subsequent to that filing, Columbia filed to correct an error on certain tariff sheets filed November 27, 1991 at Docket No. RP91–161, to be effective December 1, 1991, which are the underlying sheets to the GRI filing. The instant filing is being submitted to correct those errors and reflect the proper retainage percentage of 2.33% and revised Fuel Charge of 5.15¢ per Dth.

Columbia states that copies of the filing were served on Columbia's jurisdictional customers and interested State commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before December 20, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–30236 Filed 12–18–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI92–9–000]

Grace Petroleum Corp.; Application for Certificate

December 13, 1991.

Take notice that the Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce as described herein, all as more fully described in the application which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 2, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Description
CI92–9–000 (CI78–143) F 11–15–91.	Grace Petroleum Corporation, 6501 North Broadway, Oklahoma City, Oklahoma 73116.	NGC Energy, Inc., Lakeside Field, Bryan County, Oklahoma.	Acreage acquired 4–1–90 from Chevron U.S.A. Inc.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Assignment of acreage; E—Succession; F—Partial Succession.

[FR Doc. 91–30230 Filed 12–18–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP[illegible]–144–002]

Great Lakes Gas Transmission Limited Partnership; Proposed Changes on FERC Gas Tariff

December 13, 1991.

Take notice that Great Lakes Gas Transmission Limited Partnership ("Great Lakes") on December 3, 1991 tendered for filing Substitute Eleventh Revised Sheet No. 53–B to its FERC Gas Tariff, Original Volume No. 2, to be effective June 1, 1991.

Great Lakes states that this tariff sheet is being filed as a substitute to a tariff sheet filed on October 30, 1991 which inadvertently contained an incorrect pagination reference.

Great Lakes states that copies of the filing were served on all of Great Lakes' customers and the Public Service Commissions of Minnesota, Michigan and Wisconsin.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before December 20, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–30239 Filed 12–18–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA92–1–53–002 and TA92–2–53–001]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

December 13, 1991.

Take notice that K N Energy, Inc. ("K N") on December 9, 1991 tendered for filing proposed changes in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers in order to comply with the Commission's Order in K N's Annual PGA requiring restatement of rates to correctly reflect pipeline supplier rates from Colorado Interstate Gas Company. The filing proposes increases (decreases) to K N's rates per Mcf as set forth in the table below:

	Zone 1	Zone 2
CD, SF and WPS Commodity	$(0.0099)	$(0.0099)
D1 Demand	.0002	.0002
D2 Demand	.0005	.0005
WPS Demand	.0004	.0004
IOR Commodity	(0.0091)	(0.0089)

The proposed revisions in PGA gas cost also require refiling tariff sheets filed with K N's annual GRI filing (Docket No. TM92–2–53–000).

K N states that copies of the filing were served upon K N's jurisdictional customers and interested public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before December 20, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–30242 Filed 12–18–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–161–002]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 13, 1991.

Take notice that Northern Natural Gas Company (Northern) on December 6, 1991, tendered for filing to become part of Northern's FERC Gas Tariff, the following tariff sheets:

Third Revised Volume No. 1

Fifth Revised Sheet No. 70B

Original Volume No. 2

Seventh Revised Sheet No. 11.2

Northern states that such tariff sheets, with a proposed effective date of July 26, 1991, are being submitted in compliance with the Commission's November 21, 1991 Order in Docket Nos. RP91–161–000 and RP91–161–001, which amends Northern's Purchased Gas Adjustment clause (PGA) to provide notice to Northern's customers that it intends to

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direct bill or refund its balance in Account 191 in the event of termination or suspension of its PGA.

Northern further states that copies of the filing have been mailed to each of its customers and interested State commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 20, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois C. Cashell,

Secretary.

[FR Doc. 91-30237 Filed 12-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-166-000]

Northwest Pipeline Corp.; Informal Settlement Conference

December 13, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, January 15, 1992, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations [18 CFR 385.214].

For additional information, contact Marc G. Denkinger (202) 208-2215 or Joan Dreskin (202) 208-0738.

Lois D. Cashell,

Secretary

[FR Doc. 91-30233 Filed 12-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-4-17-001]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 13, 1991.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on December 3, 1991 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheet:

Sub Fortieth Revised Sheet No. 50.2

Texas Eastern states that this substitute tariff sheet is being filed for the sole purpose of reflecting the correct Rate Schedule ISS-1 rate on the tariff sheet previously filed on November 25, 1991.

The proposed effective date of the tariff sheet listed above is January 1, 1992.

Texas Eastern states that copies of the filing served on Texas Eastern's jurisdictional customers and interested State commissions. Texas Eastern further states that copies of the filing have also been mailed to all Rate Schedule FT-1 and IT-1 Shippers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before December 20, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30241 Filed 12-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-2-18-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 13, 1991.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on December 10, 1991, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Forty-ninth Revised Sheet No. 10
Forty-ninth Revised Sheet No. 10A
Thirtieth Revised Sheet No. 11
Twentieth Revised Sheet No. 11A
Twentieth Revised Sheet No. 11B

Texas Gas states that these tariff sheets are being filed to comply with the Commission's Letter Order dated December 4, 1991, rejecting Texas Gas's original Annual PGA filing (Docket No. TA92-1-18). Texas Gas states that these tariff sheets reflect changes in projected purchased gas costs and the unrecovered purchased gas cost surcharge pursuant to the Annual PGA provision of the Purchased Gas Adjustment clause of its FERC Gas Tariff and are proposed to be effective February 1, 1992. Texas Gas further states that the proposed tariff sheets reflect a current commodity rate increase of $.1288 per MMBtu from the rates set forth in the quarterly PGA filed September 30, 1991 (Docket No. TQ92-1-18), and a decrease of $(.1193) per MMBtu in the Unrecovered Purchased Gas Cost surcharge. No changes in the demand rates or SGN standby rates are proposed in the instant filing. Texas Gas states that these tariff sheets reflect the same rates as those contained in the Annual filing (Docket No. TA92-1-18) rejected by the Commission.

Copies of the filing were served upon Texas Gas's jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before January 6, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30235 Filed 12-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2239-004-Wisconsin]

Tomahawk Power & Pulp Co.; Notice Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

December 13, 1991.

The license for the Kings Dam Hydro Project No. 2239, located on the Wisconsin River in Lincoln County, Wisconsin expires on July 31, 1993. The statutory deadline for filing an application for new license was July 31, 1991 An application for new license has been filed as follows:

Project No.	Applicant	Contact
P-2239-004	Tomahawk Power & Pulp Company, 610 Jackson Street, Wausau, WI 54401.	John Laughlin, 610 Jackson St., Wausau, WI 54401, (715) 842-4613.

The following is an approximate schedule and procedures that will be followed in processing the application:

Date	Action
Sept. 19, 1991	Commission notified applicant that its application is deficient.
Dec. 19, 1991	Commission's deadline for applicant's response to deficiency request.
Jan. 30, 1992	Commission notifies applicant that its application has been accepted.
Feb. 15, 1992	Commission issues public notice of the accepted application establishing dates for filing motions to intervene and protests.
Dec. 30, 1991	Commission's deadline for applicant for filing a final amendment, if any, to its application.
Mar. 15, 1992	Commission notifies all parties and agencies that the application is ready for environmental analysis.

Upon receipt of all additional information and the information filed in response to the public notice of the acceptance of the application, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Ed Lee at (202) 219-2809.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30231 Filed 12-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-8-29-003]

Transcontinental Gas Pipe Line Corp.; Compliance Filing

December 13, 1991.

On December 6, 1991, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing First Revised Sheet No. 144 to its FERC Gas Tariff, Third Revised Volume No. 1.

Transco proposes to notify its customers via its electronic bulletin board of any rate change proposal filed by North Penn which Transco will track under its Rate Schedule SS-1 within 3 business days following Transco's receipt of notice of such filing.

Transco proposes to file to track a North Penn rate change no later than 15 days following the date Transco receives a copy of the Commission order which accepts and makes effective North Penn's rate change.

Transco has requested that this revised tariff sheet be effective January 5, 1992.

Transco states that copies of the filing were served upon all interested state commissions and all parties to the captioned proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before December 20, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30243 Filed 12-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-15-001]

Wyoming Interstate Co., Ltd.; Tariff Filing

December 13, 1991.

Take notice that Wyoming Interstate Company, Ltd. (WIC), on December 6, 1991, tendered for filing Substitute Original Sheet Nos. 23 and 46 of its First Revised Volume No. 2 Gas Tariff.

WIC states that this filing was made to comply with a Commission Order issued on November 22, 1991, in Docket Nos. RP91-177-003 and RP92-15-000.

This Compliance Filing corrects a reference on Substitute Original Sheet No. 23 and clarifies that changes in receipt point(s) on a firm transportation agreement do not change priority of service date of said agreement. Substitute Original Sheet No. 46 also clarifies that changes in delivery point(s) or an increase in maximum daily quantity trigger a new priority date for those changes to the agreement.

WIC asked for an effective date of October 25, 1991, which is coincidental with the Commission's acceptance of WIC's First Revised Volume No. 2 Tariff.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 20, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30240 Filed 12-18-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4084-4]

Clean Air Act Advisory Committee; Open Meeting

SUMMARY: On November 8, 1990, the U.S. Environmental Protection Agency (EPA) gave notice of the establishment of a Clean Air Act Advisory Committee (CAAAC) (55 FR, No. 217, 46993). This Committee was established pursuant to the Federal Advisory Committee Act (5 U.S.C. app. I) to provide advice to the Agency on policy and technical issues related to the development and implementation of the requirements of the Clean Air Act Amendments of 1990.

OPEN MEETING DATES: Notice is hereby given that the Clean Air Act Advisory Committee will hold an open meeting on January 16, 1992 from 8:30 a.m. to 4:30 p.m., at the Washington Hilton Hotel, 1919 Connecticut Avenue NW., Washington, DC. Seating will be available on a first come, first served basis but should be fully adequate for all members of the public interested in attending.

The meeting will include a discussion of the status of Clean Air Act implementation efforts, and the effective implementation of the Clean Air Act at the state and local level.

INSPECTION OF COMMITTEE DOCUMENTS: Documents relating to the above noted topics will be publicly available at the meeting. Thereafter, these documents, together with the CAAAC meeting minutes will be available for public inspection in EPA Air Docket No. A-90-39 in room 1500 of EPA Headquarters, 401 M Street SW., Washington, DC. Hours of inspections are 8:30 a.m. to 12

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noon and 1:30 to 3:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION concerning the CAAAC or its activities please contact Mr. Paul Rasmussen, Designated Federal Official to the Committee at (202) 260–7430, FAX (202) 260–4185, or by mail at U.S. EPA, Office of program Management Operations (ANR–443), Office of Air and Radiation, Washington, DC 20460.

Dated: December 12, 1991.

William G. Rosenberg,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 91–30324 Filed 12–18–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

FCC Establishes Advisory Committee to Enhance Network Reliability

December 13, 1991.

The Federal Communications Commission has established an Advisory Committee, called the Network Reliability Council, to provide recommendations to the Commission that will help prevent network outages or limit their impact.

In order to ensure a balanced membership on the Council, the Commission will carefully select members on the basis of their technical knowledge and the impact of their activities on network reliability. The members will be chosen so that the largest possible diversity of interests, given the function to be performed, will be represented.

The formation of the Advisory Committee is necessary and in the public interest to prepare and evaluate recommendations to the industry and to the FCC for avoiding, and minimizing the impact of, future network outages.

For additional information, contact Robert Kimball (202) 634–4215.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–30212 Filed 12–19–91; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Port of Oakland et al.;

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200599.

Title: Port of Oakland/NYK Line Nonexclusive, Preferential Assignment Agreement.

Parties:
Port of Oakland,
Nippon Yusen Kaisha.

Synopsis: The Agreement, filed December 11, 1991, provides for the assignment, on a nonexclusive preferential basis, of premises in the Port's Outer Harbor Terminal to Nippon Yusen Kaisha. The term of the Agreement is 15 years, with options to extend the term for two (2) additional periods of two (10) years each. The assigned premises are to be used primarily as a containership terminal.

By Order of the Federal Maritime Commission.

Dated: December 13, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–30226 Filed 12–18–91; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarded License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

RRSH Group, Inc., 8010 NW 66th St., Miami, FL 33166, Officers: Ronald Rivas, Director, Jose Alejandro Hernandez, Director

Seair Export Import Services, Inc., 800 NW 14th St., Miami, FL 33126, Officers: Nicholas I. Tawil, President/Secretary, Rafael Pellerano, Vice President/Treasurer, Manuel J. Rojas, Vice President, Maria Lamadrid, Asst. Treasurer, Erwin Velez, General Manager

American Business Forwarders Corp., 1573 N.W. 93rd Ave., Miami, FL 33172, Officers: Oscar A. Cedeno, President, Maria Angelica Sanchez, Stockholder, Itzel E. Beliz, Stockholder

AMCRO-International Shipping Company, 7503 2nd Ave., North Bergen, New Jersey 07047, Officers: Antun Tomislav Beric, Sole proprietor

S. Johnson & Associates, Inc., 313 E. Beach Ave., Inglewood, CA 90302, Officers: George Barton Johnson, President, Tracy L. Angle, Vice President, Sharon C. Johnson, Secretary/Treasurer

Super Cargo International Services Inc., 2281 NW 82nd Ave., Miami, FL 33126, Officers: Guillermo Giraldo, President, Ligia Giraldo, Stockholder

Air Sea Cargo Corp., 8343 NW 66th St., Miami, Fl 33166, Officers: Hugo Piaggio, President, Winston Salas, Vice President, German Sorni, Stockholder, Ricardo Eliel, Manager

Caliber Customs Brokers and Freight Forwarders, Inc., 1731 Adrian Road, Unit 1, Burlingame, CA 94010, Officer: Frances McRann, President

Gentry International, 14138 Common, Warren, MI 48093, Officers: Steven Gentry, President, Lucy Paplin, Vice President

Spartan Worldwide Delivery, Inc., 206 Front Street, Brooklyn, NY 11201, Officers: Nicholas Rozakis, President, Constantine Vassilakos, Senior Vice President, Vincent Malerba, Senior Vice President, Evan Makar, Vice President

Worldwide International Forwarders, Inc., 11688 150th Court North, Jupiter, FL 33478, Officers: Enrique Carrasco, President/Stockholder, Teresita C. Carrasco, Secretary/Treasurer/Manager.

Dated: December 13, 1991.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–30245 Filed 12–18–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Lee Anne Lewis, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 9, 1992.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Lee Anne Lewis, Englewood, Colorado, and Jerrold G. Hauptman, Lakewood, Colorado; to each acquire an additional 49.76 percent of the voting shares of Centennial National Bank, Englewood, Colorado, for totals of 49.92 percent each.

Board of Governors of the Federal Reserve System, December 13, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–30258 Filed 12–18–91; 8:45 am]

BILLING CODE 6210–01–F

Mid-Wisconsin Financial Services, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 9, 1992.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Mid-Wisconsin Financial Services, Inc., Medford, Wisconsin; to acquire Premier Insurance Services, Inc., Neillsville, Wisconsin, and thereby engage in general insurance agency activities in the cities of Medford, Colby and Neillsville, Wisconsin, all towns with a population not exceeding 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 13, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–30259 Filed 12–18–91; 8:45 am]

BILLING CODE 6210–01–F

San Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 9, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. San Bancorp, Sanborn, Iowa; to acquire 100 percent of the voting shares of Ocheyedan Bancorporation, Ocheyedan, Iowa, and thereby indirectly acquire Ocheyedan Savings Bank, Ocheyedan, Iowa.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. F.S.B., Inc., Superior, Nebraska; to merge with Hardy Insurance Agency, Inc., Hardy, Nebraska, and thereby indirectly acquire Hardy State Bank, Hardy, Nebraska.

Board of Governors of the Federal Reserve System, December 13, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–30260 Filed 12–18–91; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 871 0045]

Roberto Fojo, M.D.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Miami, Florida obstetrician/gynecologist from agreeing with any other physician to withhold or threaten to withhold emergency room services at any hospital, and, for a period of five years, from threatening that any physician would or might withhold such services at any hospital.

DATES: Comments must be received on or before February 18, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Mark Horoschak, FTC/S–3115, Washington, DC 20580, (202) 326–2756.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade

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Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of Roberto Fojo, M.D.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Roberto Fojo, M.D., hereinafter sometimes referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from engaging in the acts and practices being investigated.

It is hereby agreed by and between proposed respondent and his duly authorized attorney and counsel for the Federal Trade Commission That:

1. Proposed respondent Roberto Fojo, M.D. ("Dr. Fojo") is a physician licensed and doing business under and by virtue of the laws of the State of Florida. The mailing address and principal place of business of Dr. Fojo is 1190 Northwest 95th Street, Suite 107, Miami, Florida 33150.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address stated in this agreement shall constitute service. Proposed respondent waives any right he may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. He understands that once the order has been issued, he will be required to file one or more compliance reports showing that he has fully complied with the order. Proposed respondent further understands that he may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered That for the purposes of this order, the following definitions shall apply:

1. "Respondent" means Roberto Fojo, M.D., and his employees, agents and representatives.

2. "Emergency room call services" means being available, as determined by a hospital, to come to the hospital and treat emergency room patients needing medical or surgical services.

II

It is further ordered That respondent, directly or indirectly, or through any corporate or other device, in connection with the provision of health care services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Entering into, continuing, or attempting to enter into or continue, any agreement or understanding, either express or implied, with any physician to withhold or threaten to withhold emergency room call services at any hospital; and

B. For a period of five (5) years from the date this order becomes final, expressly or impliedly threatening that any physician would or might, in concert with any other physician, withhold emergency room call services at any hospital.

Provided that nothing in this order shall prohibit respondent from entering into any agreement with any physician with whom respondent practices medicine in partnership or as a professional corporation, or who is employed by such partnership or professional corporation or by respondent.

III

It is further ordered, That respondent:

A. Distribute a copy of this order and the accompanying complaint, by first class mail within thirty (30) days after this order becomes final, to each hospital at which he has hospital privileges at the time this order becomes final;

B. File a written report with the Commission within sixty (60) days after this order becomes final, and at such other times the Commission may by written notice require, setting forth in detail the manner and form in which respondent has complied and is complying with this order; and

C. Notify the Commission within thirty (30) days of any change in his business address.

In the Matter of Roberto Fojo, M.D., Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from an obstetrician/gynecologist ("Ob/Gyn") who practices in Miami, Florida. The agreement, which has been placed on the public record, has been signed by Roberto Fojo, M.D. ("proposed respondent"). The agreement with the proposed respondent would settle charges by the Federal Trade Commission that he violated section 5 of the Federal Trade Commission Act by conspiring to withhold and threaten to withhold emergency room call services from North Shore Medical Center, Inc. ("North Shore" or "the hospital"), a hospital located in Miami, Florida.

The proposed consent order has been placed on the public record for 60 days for reception of comments by interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

A complaint has been prepared for issuance by the Commission along with the proposed order. It alleges that at the time of the alleged conspiracy, proposed respondent was an Ob/Gyn with medical staff privileges at North Shore and was chairman of North Shore's department of obstetrics and gynecology. The complaint alleges that, as is typically the case at hospitals, in exchange for being allowed to use North Shore's facilities and support personnel without making any payment to the hospital, the physicians on the medical staff of North Shore agree to take emergency room call without receiving payment from the hospital.

The complaint alleges that beginning as early as November 1986, proposed respondent conspired with other Ob/Gyns to withhold and threaten to withhold emergency room call services from North Shore and its patients. It alleges that the aim of the conspirators was to improve their economic arrangement with North Shore by coercing the hospital to release them from their obligation to take emergency room call and to pay in some manner those Ob/Gyns who were willing to take call.

The complaint alleges that, in furtherance of the conspiracy, proposed respondent and other Ob/Gyns voted to remove their names from North Shore's emergency room call roster and to inform North Shore's administration that they would not take emergency room call at North Shore after a certain date. It alleges that the proposed respondent communicated this threat to North Shore's administration. The complaint alleges that by acting in concert, proposed respondent and other conspirators sought to enhance their bargaining power and to reduce the risk that the hospital would terminate their individual hospital privileges if they refused to take call. Loss of medical staff privileges at North Shore would have placed the conspirators at a competitive disadvantage vis-a-vis other Ob/Gyns. The complaint alleges that in January, 1987, all but two members of the Ob/Gyn department at North Shore stopped taking emergency room call.

The complaint alleges that, as a result of the conspiracy, North Shore altered its economic arrangement with the Ob/Gyns and paid them, as well as other physicians on its staff, to take emergency room call from February 1 through June 30, 1987. The complaint alleges that, thereafter, North Shore decided that this arrangement was too expensive and as of July 1, 1987, staffed its emergency room with those few Ob/Gyns who were will to take call in exchange for hospital privileges.

The complaint alleges that proposed respondent's conspiracy has restrained trade unreasonably in the following ways:

a. Restraining competition among the proposed respondent and other Ob/Gyns on the medical staff of North Shore;

b. Coercing North Shore to provide proposed respondent and other Ob/Gyns access to its facilities on more favorable economic terms; and

c. Depriving consumers of the benefits of competition.

The Proposed Consent Order

The consent order is designed to prevent a recurrence of the allegedly illegal conduct. Part I of the proposed order contains definitions of the terms "respondent" and "emergency room call services."

Part II of the proposed order prohibits proposed respondent from entering into or attempting to enter into any agreement or understanding, either express or implied, with any physician to withhold or threaten to withhold emergency room call services at any hospital. Part II of the proposed order also prohibits respondent, for a period of five years, from expressly or impliedly threatening that any physician would or might, in concert with any other physician, withhold emergency room call services at any hospital. Part II of the proposed order provides that the order does not prohibit proposed respondent from entering into any agreement with his employees or with partners in his medical practice.

Part III of the proposed order requires proposed respondent, within thirty days after the proposed order becomes final, to distribute a copy of the order and complaint to certain hospitals. Part III of the proposed order also requires proposed respondent to file a written compliance report with the Commission within sixty days after the order becomes final and to notify the Commission within thirty days of any change in his business address.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the complaint.

Donald S. Clark,

Secretary

[FR Doc. 91-30315 Filed 12-18-91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 902 3268]

Sun Company, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the misrepresentation of the efficacy claims for Sunoco Ultra octane gasoline and would require respondents to maintain materials to substantiate such claims in the future.

DATES: Comments must be received on or before February 18, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joel Winston, FTC/S-4002, Washington, DC 20580, (202) 326-3153.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent

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agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of Sun Company, Inc., a corporation, and Sun Refining and Marketing Company, a corporation.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Sun Company, Inc., and Sun Refining and Marketing Company, corporations ("proposed respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

It is hereby agreed by and between Sun Company, Inc., and Sun Refining and Marketing Company, by their duly authorized officers, and their attorneys, and counsel for the Federal Trade Commission That:

1. Proposed respondent Sun Company, Inc. is a Pennsylvania corporation with its office and principal place of business located at 100 Matsonford Road, Radnor, Pennsylvania 19087.

Proposed respondent Sun Refining and Marketing Company is a Pennsylvania corporation with its office and principal place of business located at Tenn Penn Center, 1801 Market Street, Philadelphia, Pennsylvania 19103.

2. Proposed respondents admit all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All right to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement; and

(d) All claims under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This Agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it, together with the attached draft Complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This Agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the attached draft complaint.

6. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondents: (1) Issue its complaint corresponding in form and substance with the attached draft Complaint and its decision containing the following Order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to Order to proposed respondents' address as stated in this Agreement shall constitute service. Proposed respondents waive any right they might have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or in the Agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondents have read the attached draft Complaint and the following Order. They understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

Part I

It is ordered That respondents Sun Company, Inc., and Sun Refining and Marketing company, corporations, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labelling, packaging, offering for sale, sale or distribution of SUNOCO ULTRA 93.5 and 94 gasolines or any other gasoline in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, about:

(1) The superiority of ULTRA 93.5 and 94 in providing engine power or acceleration for any automobile; or

(2) The relative or absolute attributes or performance of any gasoline with respect to vehicle engine power, acceleration, or any other performance characteristic,

unless at the time of making such representation, respondents possess and rely upon a reasonable basis consisting of competent and reliable scientific evidence which substantiates the representation. For the purposes of this Order, "competent and reliable scientific evidence" shall mean tests, experiments, analysis, research, studies, or other evidence based on the expertise of professionals in the relevant area conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

Provided That, nothing in this Order shall prohibit respondents from truthfully representing the numerical octane rating of any gasoline.

Part II

It is further ordered That for three (3) years after the date of the last dissemination of the representation to which they pertain, respondents shall maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. All materials relied upon to substantiate any claim or representation covered by this Order; and

B. All tests, reports, studies or surveys in respondents' possession or control that contradict any representation of respondents covered by this Order.

Part III

It is further ordered That respondents shall forthwith distribute a copy of this Order to all operating divisions, subsidiaries, franchisees, officers, managerial employees, and all of their employees or agents engaged in the preparation and placement of advertisements or promotional materials covered by this Order and shall obtain from each such employee a signed statement acknowledging receipt of the order.

Part IV

It if further ordered That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation(s) such as a dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation(s) that may affect compliance obligations under this Order.

Part V

It is further ordered That respondents shall, within sixty (60) days after service upon them of this Order and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order form Sun Company, Inc. and its wholly-owned subsidiary, Sun Refining and Marketing Company ("respondents" or "Sun").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns Sun's advertisements for Sunoco Ultra 93.5 and 94 octane gasolines ("Ultra"). The Commission's complaint alleges that Sun's ads represented that Ultra provides superior engine power and acceleration, that would be significant to consumers, for automobiles generally as compared to any other gasoline. According to the complaint, Sun falsely represented that it has a reasonable basis that substantiated that claim.

The consent order contains provisions designed to remedy the violation charged and to prevent respondents from engaging in similar unfair or deceptive practices in the future.

Part I of the order prohibits Sun from making any representation about (1) the superiority of Ultra in providing engine power or acceleration, or (2) the relative or absolute attributes or performance of any gasoline with respect to power, acceleration, or any other performance characteristic, unless respondents have a reasonable basis, consisting of competent and reliable scientific evidence, at the time the claim is made. Part I further provides that nothing in the order prohibits Sun from truthfully representing the numerical octane rating of any gasoline.

Part II of the order requires respondents to maintain and make available to the Commission materials they rely upon to substantiate any claim covered by the order, and tests, reports, studies or surveys that contradict any such claim.

Part III of the order requires respondents to distribute a copy of the order to their corporate branches, officers, and managerial and advertising employees, and to obtain from each such employee a signed statement acknowledging receipt of the order.

Part IV of the order requires respondents to notify the Commission prior to any change in the corporation that may affect compliance obligations arising out of the order.

Part V of the order requires respondents to file compliance reports with the Commission.

This matter does not involve any alleged mislabeling in the posting of octane ratings at service station pumps, and has no relation to the Commission's ongoing investigation to determine compliance by gasoline distributors with the Commission's Octane Posting and Certification Rule, 16 CFR part 306.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

Dissenting Statement of Commissioner Deborah K. Owen in Sun Company, Inc. and Sun Refining and Marketing Company, File No. 902-3268

Deciding whether to accept a consent agreement for public comment involves weighing, among other factors, the potential benefits of securing stronger relief, against the costs and risks inherent in further negotiation and possible litigation. Pinpointing where the correct balance lies is often a formidable challenge, and people who share a dedication to tough law enforcement may reasonably disagree as to where it appropriately falls. In this matter, I believe that the relief obtained is grossly insufficient in light of the respondents' past conduct, and because the total consumer injury arising from the claims involved may be very costly. Accordingly, I dissent from the Commission's decision to accept this consent agreement for public comment.

This is the second time that respondents have tangled with the Commission over ads linking octane and automobile engine performance. In 1974, the Commission ordered respondents' corporate predecessor, Sun Oil Co., to cease and desist from making false performance and uniqueness claims for its gasoline.[1] Since these respondents have a history of self-proclamation as the industry's octane king, I am skeptical that a second, mere "go and do more" consent agreement will have much useful deterrent effect.

Securing stronger relief is certainly called for when there are indications that consumer injury is particularly significant. Consumer injury due to misperceptions about the relation between octane and performance, and the resultant "overbuying" of octane, may be very great. A report released last February by the U.S. General Accounting Office,[2] though cautioning that the existing evidence is not conclusive, suggested that consumers may be spending hundreds of millions of dollars, or more, yearly on unnecessary purchases of higher octane gasolines. Such dollar figures may not be surprising in view of the huge size of the gasoline market. In addition, recognizing the widespread nature of consumer misunderstanding about octane and performance, the Commission recently issued a "Facts for Consumers" bulletin, with the cooperation of the American Automobile Association to help consumers select the octane grade most appropriate for their needs.

I suspect, however, that this admirable effort represents only a small corrective to the consumer misperceptions that ads such as Sunoco's have not merely taken

[1] 84 F.T.C. 247 (1974).

[2] U.S. General Accounting Office, Gasoline Marketing: Premium Gasoline Overbuying May Be Occurring, but Unknown, Report to the Chairman, Subcommittee on Antitrust, Monopolies and Business Rights, Committee on Judiciary, U.S. Senate, February 1991.

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advantage of, but have strongly reinforced.

Based on these considerations, I conclude that the public interest would have been better served if the remedy in this matter had provided stronger incentives to insure compliance with the FTC Act, or had provided other relief that would truly benefit consumers. Query why in this instance, unlike others,[1] the Commission is content to have consumer enlightenment financed with taxpayers' dollars, rather than with the ill-gotten gains of a company that the Commission has found reason to believe has violated the FTC Act—more than once.

[FR Doc. 91-30314 Filed 12-18-91; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Availability of Draft 1992 Revised Classification System for Human Immunodeficiency Virus Infection and Expanded AIDS Surveillance Case Definition for Adolescents and Adults; Extension of Comment Period

AGENCY: Centers for Disease Control (CDC), Public Health Service (PHS), Department of Health and Human Services.

ACTION: Extension of public comment period.

SUMMARY: This notice announces the extension of the review and comment period of a draft document entitled "1992 Revised Classification System for Human Immunodeficiency Virus Infection and Expanded AIDS Surveillance Case Definition for Adolescents and Adults," prepared by the Centers for Disease Control.

DATES: To ensure consideration, written comments on this draft document must be received on or before February 14, 1992.

ADDRESSES: Requests for copies of the draft HIV classification system and expanded AIDS surveillance case definition must be submitted to the National AIDS Clearinghouse, P.O. Box 6003, Rockville, MD 20849-6003; telephone (800) 458-5231. Written comments on this draft document should be sent to the same address for receipt by February 14, 1992.

FOR FURTHER INFORMATION CONTACT: Technical Information Activity, Division of HIV/AIDS, National Center for Infectious Diseases, Centers for Disease Control, Mailstop E-49, 1600 Clifton Road, NE., Atlanta, Georgia, 30333; telephone: (404) 639-2076.

SUPPLEMENTARY INFORMATION: A notice of availability and request for comments on the "1992 Revised Classification System for Human Immunodeficiency Virus Infection and Expanded AIDS Surveillance Case Definition for Adolescents and Adults," was published in the **Federal Register** on November 15, 1991 (56 FR 58059). This notice extends the comment period for written comments on the draft document from December 16, 1991, to February 14, 1992.

Dated: December 13, 1991.

Walter R. Dowdle,

Acting Director, Centers for Disease Control.

[FR Doc. 91-30256 Filed 12-18-91; 8:45 am]
BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 91F-0391]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of *N*-phenylbenzenamine reaction products with 2,4,4-trimethylpentenes, as an antioxidant and/or stabilizer in pressure-sensitive adhesives in contact with food.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1B4286) has been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532-2188. The petition proposes to amend the food additive regulations in § 178.2010, Antioxidants and/or Stabilizers for Polymers (21 CFR 178.2010), to provide for the safe use of *N*-phenylbenzenamine reaction products with 2,4,4-trimethylpentenes, as an antioxidant and/or stabilizer in pressure-sensitive adhesives in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 9, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-30217 Filed 12-18-91; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 89P-0329]

Eggnog Deviating From Identity Standard; Amendment of Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FAD) is announcing that it amending a temporary permit issued to H.P. Hood, Inc., to market test a product designated as "light eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170) by (1) increasing the amount of test product to be distributed, (2) adding one additional plant, and (3) increasing the area of distribution. This amendment will provide the permit holder with a broader base for the collection of data on consumer acceptance of the product.

FOR FURTHER INFORMATION CONTACT: Frederick E. Boland, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0117.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 29, 1989 (54 FR 35725), FDA announced the issuance of a temporary permit under the provisions of 21 CFR 130.17 to H.P. Hood, Inc., 500 Rutherford Ave., Boston, MA 02129, to market test a product designated as "light eggnog." The agency issued the permit to facilitate interstate market testing of a food that deviates from the requirements of a standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341).

The permit covers limited interstate market testing of "light eggnog" that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 0.75 percent, and (2) sufficient vitamin A palmitate is added to ensure that a 4-fluid-ounce serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations.

The permit was amended April 2, 1991 (56 FR 13480), to allow the permit holder to continue experimental market testing of the product pending agency action on a petition to establish a standard of identity for "light (or lite) eggnog." The April 2, 1991, notice invited other firms to participate in the extended market testing under the conditions that applied to H.P. Hood, Inc. FDA also stated in the notice that the market testing includes all products where the milkfat content is reduced by at least 50 percent and the calorie content is reduced by at least ⅓ as compared to regular eggnog.

H.P. Hood, Inc., has requested that FDA amend its temporary permit to provide for an increase of 225,000 quarts (qt) (212,918 liters (L)) of the test product per year and to increase the area of distribution of the product. The company requested this increase to enable it to obtain information about consumer attitudes toward the product in a broader geographic area. This increase will raise the total quantity involved in market testing from 1,300,650 qt (1,230,805 L) to 1,525,650 qt (1,443,723 L) per year. The increase of 225,000 qt (212,918 L) will be processed and packaged at H.P. Hood Plant No. 36-5631, Oneida, NY 14321, and will be distributed in Florida, Georgia, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, and Virginia. FDA finds that this amendment will not alter the substance of the temporary permit (54 FR 35725) and consumers will benefit from continued tests to determine whether a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat is acceptable.

Therefore, under the provision of 21 CFR 130.17(f), FDA is amending the temporary permit by (1) increasing the amount of test product to be distributed by 225,000 qt (212,918 L) per year, (2) adding one additional plant, and (3) fncreasing the area of distribution. All other terms and conditions of this permit remain the same.

Dated: December 6, 1991.

Douglas M. Archer,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-30215 Filed 12-18-91; 8:45 am]
BILLING CODE 4160-01-M

[1] *United States* v. *Sears, Roebuck and Co.*, Civil Action No. 88-3383 TAF (D.C.C. 1989); American Life Nutrition, Inc., *et al.*, FTC Docket No. C-3310.

[Docket No. 91N-0457]

Parexel International Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Parexel International Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of glycerides and polyethylene glycol esters of fatty acids of vegetable origin as excipients in vitamin tablets and liquid formations.

FOR FURTHER INFORMATION CONTACT: C. James Shen, Center for Food Safety and Applied Nutrition (HFF-333), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that Parexel International Corp., One Alewife Place, Cambridge, MA 02140, has filed a petition (FAP 9A4155) on behalf of Gattefosse S. A., Saint-Priest, France. The petition proposes to amend the food additive regulations to provide for the safe use of glycerides and polyethylene glycol esters of fatty acids of vegetable origin as excipients in vitamin tablets and liquid formulations.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 9, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-30214 Filed 12-18-91; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 91F-0449]

Polysar Rubber Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food And Drug Administration (FDA) is announcing that Polysar Rubber Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of hydrogenated butadiene/acrylonitrile copolymers in repeated use food-contact articles.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street NW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B4299) has been filed by Polysar Rubber Corp., 1265 South Vidal St., Sarnia, Ontario, Canada N7T 7M1. The petition proposes to amend the food additive regulations in § 177.2600, Rubber Articles Intended for Repeated Use, (21 CFR 177.2600) to provide for the safe use of hydrogenated butadiene/acrylonitrile copolymers in repeated use food-contact articles.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 9, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-30216 Filed 12-18-91; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 91F-0439]

The Shepherd Color Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The Shepherd Color Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of cobalt aluminate as a colorant for all polymers intended to contact food.

FOR FURTHER INFORMATION CONTACT: Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic

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Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B4296) has been filed by The Shepherd Color Co., P.O. Box 465627, Cincinnati, OH 45246. The petition proposes to amend the food additive regulations in § 178.3297, Colorants for Polymers, (21 CFR 178.3297) to provide for the safe use of cobalt aluminate as a colorant for all polymers intended to contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 9, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-30218 Filed 12-18-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91E-0377]

Determination of Regulatory Review Period for Purposes of Patent Extension; Plendil®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Plendil® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John S. Ensign, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase beings. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Plendil®. Plendil® (felodipine) is indicated for the treatment of hypertension. Plendil® may be used alone or concomitantly with other antihypertensive agents. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Plendil® (U.S. Patent No. 4,264,611) from Aktiebolaget Astra, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated September 18, 1991, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Plendil® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Plendil® is 2,494 days. Of this time, 1,248 days occurred during the testing phase of the regulatory review period, while 1,246 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* September 27, 1984. The applicant claims January 16, 1986, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND became effective September 27, 1984, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* February 26, 1988. FDA has verified the applicant's claim that the new drug application (NDA) for Plendil® (NDA 19-834) was filed on February 26, 1988.

3. *The date the application was approved:* July 25, 1991. FDA has verified the applicant's claim that NDA 19-834 was approved on July 25, 1991.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 2 years of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before February 18, 1992, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before June 17, 1992, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 9, 1991.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 91-30219 Filed 12-18-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Notice of Hearing: Reconsideration of Disapproval of Oklahoma State Plan Amendments (SPAs)

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on January 23, 1992, at 10 a.m.; room 1230; 12th Floor; 1200 Main Tower; Dallas, Texas 75202 to reconsider our decision to disapprove Oklahoma SPAs 89-19 and 90-03.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by January 3, 1992.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, Suite 110, Security Office Park, 7000 Security Blvd., Baltimore, Maryland 21207, Telephone: (410) 597-3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Oklahoma State plan amendments (SPAs) number 89-19 and 90-03.

Section 1116 of the Social Security Act (the Act) and 42 CFR, part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Oklahoma sought approval of SPA 89-19 which would, among other things, limit providers of outpatient psychiatric services for individuals under 21 to hospitals and psychiatric facilities which have inpatient psychiatric programs.

The issue in this matter is whether the State's proposal constitutes a reasonable standard relating to the qualification of providers of outpatient psychiatric services, and thus complies with section 1902(a)(23) of the Act and Federal regulations at 42 CFR 431.51(b). These provisions require that a State plan must provide that any recipient may obtain Medicaid services from any institution, agency, pharmacy, person or organization that is qualified to perform the services. An exception to these requirements is found at 42 CFR 431.51(c), which allows a State to set reasonable standards relating to the qualification of providers.

Oklahoma's proposal to limit providers of outpatient psychiatric services for individuals under 21 to hospitals and psychiatric facilities which have inpatient psychiatric programs is predicated upon a belief that providers of outpatient psychiatric services cannot meet staffing and other program requirements unless they also offer inpatient psychiatric services. HCFA does not agree that it is reasonable to presume that providers of outpatient psychiatric services cannot meet staffing and program requirements relating to these services unless they also provide inpatient psychiatric services. Therefore, HCFA disapproved the amendment because the State's limitation of providers in this manner does not constitute a reasonable standard relating to the qualification of providers of inpatient psychiatric services, in violation of section 1902(a)(23) of the Act and Federal regulations at 42 CFR 431.51(b).

Oklahoma also sought approval of SPA 90-03 which would modify outpatient hospital treatment services under its Medicaid program. Although, this SPA amends material previously submitted in SPA 89-19, the revisions made by SPA 90-03 incorporate the same deficiencies found in SPA 89-19 upon which HCFA based its disapproval. That is, Oklahoma SPA 90-03 similarly proposes to limit providers of outpatient psychiatric hospital services to those hospitals and psychiatric facilities which have inpatient psychiatric programs.

The issue in this matter is whether the State's proposal constitutes a reasonable standard relating to the qualification of providers of outpatient psychiatric services and thus complies with section 1902(a)(23) of the Act and Federal regulations at 42 CFR 431.51(b).

SPA 90-03 revises the material submitted in SPA 89-19, but HCFA believes it does not correct the deficiencies upon which it based the recommendation to disapprove SPA 89-19. HCFA believes Oklahoma's proposal to limit coverage of outpatient psychiatric services to hospitals or facilities which have inpatient psychiatric programs impermissibly restricts providers who may participate under the program because this limitation does not constitute a reasonable standard relating to the qualifications of providers, consistent with 42 CFR 431.51(c). Therefore, HCFA disapproved the amendment because it violates section 1902(a)(23) of the Act and Federal regulations at 42 CFR 431.51(b).

The notice to Oklahoma announcing an administrative hearing to reconsider the disapproval of its SPA's reads as follows:

Mr. Benjamin Demps, Jr.,
Director, Oklahoma Department of Human Services, P.O. Box 25352, Oklahoma City, Oklahoma 73125

Dear Mr. Demps: I am responding to your request for reconsideration of the decision to disapprove Oklahoma State Plan Amendments (SPAs) 89-19 and 90-03.

Oklahoma SPA 89-19 would limit providers of outpatient psychiatric services for individuals under 21 to hospital and psychiatric facilities which have inpatient psychiatric programs. Although, Oklahoma SPA 90-03 amends material previously submitted in SPA 89-19, the revisions made by SPA 90-03 to SPA 89-19 do not correct the deficiencies upon which the Health Care Financing Administration based its disapproval. That is, Oklahoma SPA 90-03 would similarly limit providers of outpatient psychiatric hospital services to those hospitals and psychiatric facilities which have inpatient psychiatric programs.

The issue in the disapproval of SPAs 89-19 and 90-03 is whether the State's proposal constitutes a reasonable standard relating to qualification of providers of outpatient psychiatric services and thus complies with section 1902(a)(23) of the Social Security Act (the Act) and regulations at 42 CFR 431.51(b) and (c). Section 1902(a)(23) of the Act and Federal regulations at 42 CFR 431.51(b) require that a State plan must provide that any recipient may obtain Medicaid services from any institution, agency, pharmacy, person or organization that is qualified to perform the services. 42 CFR 431.51(c) provides an exception to this requirement by allowing a State to set reasonable standards relating to the qualifications of providers.

I am scheduling a hearing on your request for reconsideration to be held on January 23, 1992, at 10:00 a.m.; Room 1230; 12th Floor; 1200 Main Tower; Dallas, Texas 75202. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at

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the hearing. The Docket Clerk can be reached at (410) 597–3013.

Sincerely,
Gail R. Wilensky,
Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: December 13, 1991.
Gail R. Wilensky,
Administrator, Health Care Financing Administration.

[FR Doc. 91–30354 Filed 12–18–91; 8:45 am]
BILLING CODE 4120–03–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–620–02–4110–2410]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0160), Washington, DC 20503, telephone (202) 395–7340.

Title: Geothermal Leasing Reports, 43 CFR 3203.

OMB Approval Number: 1004–0160.

Abstract: Respondents supply information on diligent efforts toward utilization of geothermal resources; bona fide efforts made to produce geothermal resources; and significant expenditure of funds made on the geothermal lease. This information allows the Bureau to determine if the lessee qualifies for a lease extension.

Bureau Form Numbers: None.

Frequency:

Diligent Efforts Report—Yearly
Bona Fide Efforts Report—Every five years
Significant Expenditures Report—Yearly.

Description of Respondents: Individuals, small businesses, and large corporations.

Estimated Completion Time: 2 hours each report.

Annual Responses: 75.

Annual Burden Hours: 150.

Bureau Clearance Officer (Alternate): Gerri Jenkins (202) 653–6105.

Dated: November 5, 1991.
A.A. Sokoloski,
Acting AD, Energy and Mineral Resources.

[FR Doc. 91–30225 Filed 12–18–91; 8:45 am]
BILLING CODE 4310–84–M

[WY–040–92–4320–02]

Rock Springs District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Rock Springs District Grazing Advisory Board.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Rock Springs District Grazing Advisory Board. Notice of this meeting is required under Pub. L. 92–463.

DATE: February 20, 1992, 9:30 a.m. until 4 p.m.

ADDRESS: Bureau of Land Management District Office, Highway 191 North, Rock Springs, Wyoming.

FOR FURTHER INFORMATION CONTACT: Marlowe E. Kinch, District Manager, Rock Springs District Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902–1869, (307) 382–5350.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Introduction and opening remarks.
2. Election of a Chairman and Vice-Chairman.
3. District rangeland monitoring.
4. Lyman Cattle AMP development.
5. Bench Corral Individual AMP development.
6. Henry's Fork AMP revision.
7. Record of Decision—Vegetation Treatment on BLM Lands in Thirteen Western States.
8. Improvements proposed for completion in FY 92 with range betterment (8100) funds.
9. Update on wild horse gathering.
10. Public comment period.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3:30 p.m. and 4 p.m., or file written statements for the Board's consideration. Anyone wishing to make an oral presentation should notify the District Manager, Bureau of Land Management, Highway 191 North, P.O. Box1869, Rock Springs, Wyoming 82902–1869, by February 18, 1992. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Marlowe E. Kinch,
District Manager.

[FR Doc. 91–30320 Filed 12–18–91; 8:45 am]
BILLING CODE 4310–22–M

Bureau of Land Management

ACTION: Emergency Vehicle Closure, Mohave County, Arizona.

SUMMARY: Notice is hereby given that effective immediately all vehicle usage will be limited to existing roads and trails designed and constructed for vehicle traffic, on all public lands within the following described lands, in the Hualapai Mountains, Mohave County, Arizona:

Gila and Salt River Meridian

T. 18 N., R. 16 W.,
Secs. 13, 24, 25, 26, 35, 36.
T. 18 N., R. 15 W.,
Secs. 6, 7, 18.
T. 19 N., R. 14 W.,
Secs. 6, 7, 18.
T. 19 N., R. 15 W.,
All.
T. 19 N., R. 16 W.,
Secs. 1, 12.
T. 20 N., R. 14 W.,
Secs. 18, 19, 30, 31.
T. 20 N., R. 15 W.,
Secs. 7, 8, 9, 10, 13, 14, 15, 17, 18, 19, 21, 22, 23, 24, 26, 27, 31, 32, 33, 34, 35, 36.
T. 20 N., R. 16 W.,
Secs. 12, 14, 24, 25, 36.
Totaling 50, 570 acres.

The purpose of this limitation is to protect the habitat of the Hualapai Mexican vole, a Federally listed endangered species from damage by indiscriminate off-road vehicle use. The action will eliminate further development of de facto roads and trails that are created only as a result of the passage of vehicles, and in so doing will help control habitat loss from erosion caused by motorized vehicles. All major ingress and egress points, along with major internal roads will be signed regarding the vehicle limitations immediately following publication of this notice. Maps of the affected area are available from the Kingman Resource Area office free of charge.

The authority for this action is 43 CFR 8341.2. The emergency order will remain in effect until off-highway vehicle designations can be implemented for the Kingman Resource Area, Phoenix District, Arizona.

FOR FURTHER INFORMATION CONTACT: Jesse J. Juen, Acting Area Manager, Bureau of Land Management, Kingman Resource Area, 2475 Beverly Avenue, Kingman, Arizona 86401 (602) 757–3161.

Dated: December 10, 1991.
William T. Childress,
Acting District Manager.

[FR Doc. 91–30319 Filed 12–18–91; 8:45 am]
BILLING CODE 4310–32–M

[WY–930–4214–10; WYW 125723]

Proposed Withdrawal and Opportunity for Public Meeting; WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed an application to withdraw 440 acres of National Forest System lands for protection of the proposed Burgess Visitor Information Center site while in the final development stages. This notice closes the lands for up to 2 years from location and entry under the United States mining laws. The lands will remain open to mineral leasing and to all other forms of disposition which may by law be made of National Forest System land.

DATE: Comments and requests for a meeting should be received on or before March 19, 1992.

ADDRESSES: Comments and meeting requests should be sent to the Wyoming State Director, BLM, 2515 Warren Avenue, Cheyenne, Wyoming 82001.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, (307) 775–6124.

SUPPLEMENTARY INFORMATION: On October 28, 1991, the U.S. Department of Agriculture filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:.

Sixth Principal Meridian, Wyoming

Bighorn National Forest

T. 56 N., R. 88 W.,
Sec. 29, SE¼SW¼;
Sec. 31, NE¼, NE¼SE¼;
Sec. 32, NW¼, NW¼SW¼.

The areas described contain 440 acres in Sheridan County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period consist of livestock grazing for that time until construction begins.

The temporary segregation of the lands in connection with this withdrawal application shall not affect the administrative jurisdiction over the land, and the segregation shall not have the effect of authorizing any use of the land by the Department of Agriculture.

Dated: December 3, 1991.
F. William Eikenberry,
Associate State Director, Wyoming.

[FR Doc. 91–30316 Filed 12–18–91; 8:45 am]
BILLING CODE 4310–22–M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–759976

Applicant: Omaha's Henry Doorly Zoo, Omaha, NE.

The applicant requests a permit to export 150 straws of semen taken from two captive-born gaurs (*Bos gaurus*) to Imamichi Institute for Animal Reproduction, Saitama, Japan, for artificial insemination of captive-born female gaurs.

PRT–761569

Applicant: Carl J. Hunt, Barstow, CA.

The applicant requests a permit to import two male and two female captive-hatched white-eared pheasants (*Crossoptilon crossoptilon*) from South View Aviaries, Burnaby, BC, Canada, for captive breeding.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4.15) in the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281)

Dated: December 13, 1991.
Margaret Tieger,
Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91–30247 Filed 12–18–91; 8:45 am]
BILLING CODE 4310–55–M

Emergency Exemption; Issuance

On November 22, 1991, the U.S. Fish and Wildlife Service (Service) issued a permit (PRT–763764) to the Wildlife Waystation to import three female Siberian/Bengal tiger (*Panthera tigris*) hybrids. The 30-day public comment period required by section 10(c) of the Endangered Species Act was waived. The Service determined that an emergency affecting the health and life of the tigers existed and that no reasonable alternative was available to the applicant. The tigers would have been euthanized in New Zealand before the 30-day comment period elapsed.

Dated: December 13, 1991.
Margaret Tieger,
Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91–30246 Filed 12–18–91; 8:45 am]
BILLING CODE 4310–55–M

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Availability of Draft Recovery Plans for Solanum drymophilum, Calyptronoma rivalis, Daphnopsis hellerana, and Cornutia obovata for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of draft recovery plans for *Solanum drymophilum, Calyptronoma rivalis, Daphnopsis hellerana,* and *Cornutia obovata*

DATES: Comments on the draft recovery plans must be received on or before February 18, 1992 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plans may obtain copies by contacting the Southeast Regional Office, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303. Written comments and materials regarding the plans should be addressed to Field Supervisor at the Caribbean Field Office, Box 491, Boquerón, Puerto Rico 00622. Comments and materials received are available upon request for public inspection, by appointment, during normal business hours at either of the above-mentioned addresses.

FOR FURTHER INFORMATION CONTACT: Susan Silander, Caribbean Field Office, Box 491, Boquerón, Puerto Rico 00622 (809/851-7297).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Three draft plans for four Puerto Rican plants have been prepared for review. Because *Cornutia obovata* (palo de nigua) and *Daphnopsis hellerana* (no common name) are both found in similar habitats in the limestone hills of the northwestern coast a joint recovery plan has been prepared for these two endangered trees. Only seven individuals of *Corntia obovata* are know to occur in seven different areas. A total of 50 individuals of *Daphnopsis hellerana* are found in three populations in the limestone hills to the west of the San Juan metropolitan area. Among the factors threatening these two species are extensive deforestation and complete elimination of limestone hills by quarrying.

Solanum drymophilum (enrubio) is a small spiny shrub endemic to the lower montane and evergreen seasonal forests of the central and eastern mountains of Puerto Rico. At present only one population of approximately 200 individuals is known to exist. The species has become endangered as a result of deforestation in these mountains, and apparently as a result of intentional eradication of the species in order to avoid possible injury to cattle.

Calyptronoma rivalis (palma de manaca) is an arborescent palm which may reach up to 40 feet in height. It is endemic to Puerto Rico, where it grows along streambanks in the karst region of the island. Three natural populations consisting of approximately 275 individuals are known to occur in Camuy, Quebradillas, and San Sebastian. The species is threatened by flash-flooding caused by deforestation, agricultural expansion and rural development.

All three recovery plans available for review are technical/agency drafts. Among the recovery measures suggested in these documents are land acquisition of privately-owned sites, incorporation of protection measures into Commonwealth Forest management plans, propagation and introduction, research and education.

Public Comments Solicited

The Service solicits written comments on the recovery plans described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 9, 1991.

James P. Oland,

Field Supervisor.

[FR Doc. 91-30321 Filed 12-18-91; 8:45 am]

BILLING CODE 4310-55-M

Environmental Assessment: Buffalo Lake National Wildlife Refuge, Umbarger, TX

AGENCY: Fish and Wildlife Service (FWS), DOI.

ACTION: Notice of availability for review.

SUMMARY: The FWS is issuing this notice to advise that an environmental assessment for the modification of Umbarger Dam at Buffalo Lake National Wildlife Refuge at Umbarger, Randall County, Texas is available for review. A public meeting will be held on January 15, 1992, in the Student Union Ballroom at West Texas State University, Canyon, Texas, at 7 p.m.

DATES: The EA will be available for public review December 19, 1991. Comments should be submitted to the Associate Manager, (OK/TX), Division of Refuges, Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico, by February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. M. Kathleen Wood, Refuge Program Specialist, Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, Telephone (505) 766-2036 (ext. 29).

SUPPLEMENTARY INFORMATION: The objectives of the Umbarger Dam modification are (1) eliminate the dam safety deficiencies, and (2) maintain the amount of downstream flood protection that has historically been provided by the dam. Past studies have shown that there is a good chance that Umbarger Dam could fail under heavy flooding conditions. Such a failure would place hundreds of downstream lives in danger, cause millions of dollars in property damage, and impact other downstream resources. The dam safety deficiencies have been mainly related to an inadequate spillway.

All alternatives currently being considered are intended to protect human health and safety by elimination of the dam safety deficiencies. The preferred alternative achieves the project objectives and is one of the more economical solutions. It does not significantly change the existing environmental conditions and actually increases the level of downstream flood protection over that which presently exists. It is designed to provide a dam and reservoir that should not normally impound water. However, this alternative does not eliminate the possible future operation of the facility as a storage reservoir if a viable water supply is located that could be imported into the basin and if the dam is further modified to perform safely as a storage reservoir. Other alternatives include breaching the dam and modifications to allow operation as a water storage reservoir.

Copies of the EA are available for review at the Buffalo lake National Wildlife Refuge, 1 mile south of Umbarger, P.O. Box 179, Umbarger, Texas 79091; FWS Bridge/Dam Safety Office, 145 Union Avenue, Lakewood, CO 80228; the Southwest Regional Office, FWS, 500 Gold SW, P.O. Box 1306, Albuquerque, NM 87103, and the public libraries in Amarillo and Canyon, Texas.

M. Kathleen Wood,

Refuge Program Specialist, Albuquerque, New Mexico.

[FR Doc. 91-30322 Filed 12-18-91; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree

In accordance with section 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622, and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a complaint was filed on December 3, 1991, in *United States* v. *Anderson, Greenwood & Co. (for Keystone), et al.*, Civil Action No. H-91-3529, in the United States District Court for the Southern District of Texas, Houston Division, and, simultaneously, three Consent Decrees between the United States, Duane Sheridan, and 116 defendants were lodged with the court. These Consent Decrees settle the government's claims in the complaint pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, for (1) injunctive relief to abate an imminent and substantial endangerment to the public health, welfare or the environment because of actual or threatened releases of hazardous substances from a facility located near Hempstead, Waller County, Texas, and known as the "Sheridan Site," and for (2) recovery of response costs incurred by the United States. The complaint alleged, among other things, that certain defendants were owners or operators of the facility at the time of disposal of hazardous substances at the Sheridan Site and that certain defendants were persons who by contract, agreement or otherwise arranged for disposal of hazardous substances at the Site or who arranged for transport of hazardous substances to the Site. The complaint further alleged that the United States has incurred response costs in response to actual or threatened releases of hazardous substances at or from the Sheridan Site.

Under the terms of the proposed Source Control Operable Unit Consent Decree, 111 defendants agree to fund and implement a remedy at the Site that includes bioremediation of sludges and contaminated soil, residue stabilization, installation of a RCRA compliant cap over the pond and dike area, installation of a flexible spur jetty to control erosion of the Brazos River bank, groundwater monitoring, decontamination of all on-site tanks and processing equipment, and treatment of storm water and wastewater before discharge into the Brazos River. The Consent Decree also calls for the defendants to réimburse the United States for $430,000 in past government response costs incurred through December 31, 1988 for oversight at the source control operable unit, and $20,000 for all costs incurred, and to be incurred, with regard to a wildlife mitigation plan.

Under the terms of the proposed Groundwater Operable Unit Consent Decree, 117 defendants (the 111 signatories to the Source Control Operable Unit Consent Decree plus six additional defendants) agree to fund and implement the remedy (i.e., monitor the natural attenuation of contaminants through natural processes such as sorption, dispersion and biodegradation) and pay one hundred percent of the past, present and future costs to the Environmental Protection Agency ("EPA").

Under the terms of the proposed De Minimis Source Control Operable Unit Consent Decree, five defendants (five defendants (five of the six signatories of the Groundwater Operable Unit Consent Decree which failed to sign the Source Control Operable Unit Consent Decree) agree to pay the United States $32,160.00 to be applied toward EPA's future oversight costs.

The Department of Justice will receive comments relating to the proposed Consent Decrees for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *Anderson, Greenwood & Co. (for Keystone), et al.*, D.J. Ref. No. 90-11-2-445.

The proposed Consent Decrees may be examined at the following offices of the United States Attorney and the Environmental Protection Agency:

EPA Region VI

Contact: E. Anne Miller, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 655-2120

United States Attorney's Office

Assistant United States Attorney Civil Division, U.S. Courthouse's & Federal Building, 515 Rusk, 3rd floor, Houston, Texas 77002, (713) 229-2600.

Copies of the proposed Consent Decrees may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004, (202) 347-2072. A copy of the proposed Consent Decrees may be obtained in person or by mail from the Document Center. In requesting a copy of the Decree, please enclose a check in the amount of $202.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Barry M. Hartman,

Acting Assistance Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-30102 Filed 2-18-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given, that on December 2, 1991, a proposed Partial Consent Decree ("Decree") was lodged with the United States District Court for the Northern District of Illinois in *United States* v. *Standard T. Chemical Company, Inc., et al.*, Civil Action No. 89 C 5730 (N.D. Ill.), between the United States—on behalf of the Environmental Protection Agency ("EPA")—and thirteen of the fourteen entities named as parties defendant in this cost recovery action brought under section 107 of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607.

The subject of the Decree is a CERCLA site located on South Cottage Grove in Chicago, Illinois, known as the

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U.S. Scrap Site ("Site"). The proposed Decree provides, *inter alia*, that the settling defendants pay EPA's Hazardous Substance Trust Fund $310,000 (plus interest) in partial reimbursement of past costs incurred by the United States in undertaking various response actions at the Site. Also, the U.S. Army will cause $5,700 to be paid to the Hazardous Substance Trust Fund in reimbursement of costs incurred by EPA at the Site and in resolution of the CERCLA counterclaims threatened and asserted against the United States in this civil action.

The Department of Justice will receive comments relating to the proposed Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Standard T. Chemical Company, Inc., et al.*, D.J. Ref. No. 90-11-3-465. The proposed Decree may be examined at the Office of the United States Attorney for the Northern District of Illinois, Everett McKinley Dirksen Building, room 1500-S, 219 South Dearborn Street, Chicago, IL 60604, or at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave. NW., Box 1097, Washington, DC 20004 (202-347-7829). A copy of the proposed Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $8.25 (25 cents per page reproduction costs) payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environmental & Natural Resources Division, United States Department of Justice.

[FR Doc. 91-30317 Filed 12-18-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act Title III: State Designations of Entities as Dislocated Worker Units

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor is publishing for public information an update of a listing of names, addresses, and telephone numbers of entities designated by States as Dislocated Worker Units.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs, Employment and Training Administration, Department of Labor, room N-4469, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202-535-0577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title III of the Job Training Partnership Act (JTPA) provides that the Department of Labor (Department) shall fund programs for States to assist dislocated workers. Section 311(b)(2) of JTPA provides that a State will designate or create an identifiable State Dislocated Worker Unit (DWU) or office with the capability to respond rapidly, onsite, to permanent plant closures and substantial layoffs throughout the State. The DWU is a key feature of the States' implementation of programs under Title III.

Periodic updates of this listing will be published, based on revisions received by the Department.

Signed at Washington, DC, this 26th day of November, 1991.

Dated:

Roberts T. Jones,

Assistant Secretary of Labor.

Dislocated Worker Units Nationwide

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Mr. Kenneth A. Trucks, Chief
Employment & Training Division
Alabama Department of Economic and Community Affairs
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Telephone: 205-284-8800

Alaska

Mr. William Mailer
JTPA Program Manager
Rural Development Division
Department of Community and Regional Affairs
949 East 36th Avenue, suite 403
Anchorage, Alaska 99508
Telephone: 907-563-1955

Arizona

Mr. manuel F. Mejia
Assistant Director
Division of Employment and Rehabilitation Services
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1300 West Washington, Site Code 901A
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Arkansas

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Arkansas Employment Security Division
P.O. Box 2981
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California

Ms. Virginia Hamilton
Acting Chief, Job Training Partnership Division
Employment & Training Branch
Employment Development Department
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Sacramento, California 95814
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Planner, Dislocated Worker Unit
Governor's Job Training Office
Suite 550
720 South Colorado Boulevard
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State Department of Labor
Dislocated Worker Unit
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Delaware Department of Labor
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Indiana

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Iowa Dept. of Economic Development
200 East Grand Avenue
Des Moines, Iowa 50309
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EDWAA Director
Department of Human Resources
Division of Employment & Training
401 SW Topeka Boulevard
Topeka, Kansas 66603
Telephone: 913-296-5060

Kentucky

Ms. Kathy McDonald
Branch Manager, Dislocated Workers Unit
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275 East Main, 2-West
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Louisiana Department of Labor
Federal Training Program Division
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Special Assistant to Commissioner
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Mississippi

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DWU Director
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DWU, State Job Training Office
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Concord, New Hampshire 03301
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Texas Department of Commerce
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District of Columbia

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Right to Employment Administration
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Republic of Palau

Mr. Augustine Mesebeluu
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Koror, Republic of Palau 96940
Telephone: 488–2507

Virgin Islands

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[FR Doc. 91–30301 Filed 12–18–91; 8:45 am]
BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Performance Review Board

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Notice.

SUMMARY: This notice announces a new appointment of the National Endowment for the Humanities' Performance Review Board

DATES: Effective January 1, 1992, George Farr, Director of the Division of Preservation and Access, has been designated to replace Don Gibson, Director of the Division of Public Programs, as a Member of the SES Performance Review Board until December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Timothy G. Connelly, Director of Personnel, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Lynne Cheney,
Chairperson.

[FR Doc. 91–30252 Filed 12–18–91; 8:45 am]
BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biotic Systems and Resources; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for award. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with proposals, the meeting is closed to the public. These matters are within exemptions (4) and (6) of U.S.C. 552b (c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Biotic Systems and Resources.

Dates & Times: January 13–15, 1992; 8:30 a.m. to 5 p.m.

Location: National Science Foundation, 1800 G Street, NW., Washington, DC 20550; room 543.

Type of Meeting: Closed.

Agenda: Review and evaluate Conservation and Restoration Biology Proposals.

Contact Person: Joann Roskoski, Associate Program Manager, Ecology Program, room 215, National Science Foundation, Washington, DC 20550. (202) 357–9734.

Dated: December 16, 1991.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 91–30283 Filed 12–18–91; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Cross-Disciplinary Activities; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Cross-Disciplinary Activities

Date and Time: January 9, 1992; 8:30 a.m. to 5 p.m.

Place: University of Michigan, Department of Electrical Engineering and Computer Science, Ann Arbor, Michigan 48109.

Type of Meeting: Closed.

Contact Person: John C. Cherniavsky, Head, Office of Cross-Disciplinary Activities, room 436, National Science Foundation, Washington, D.C. 20550. Telephone: (202) 357–7349.

Purpose of Meeting: To provide advice and recommendations concerning a research proposal submitted to NSF for financial support.

Agenda: Site visit to review and evaluate the University of Michigan's research proposal.

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552 b. (c) (4) and (6) the Government in the Sunshine Act.

Dated: December 16, 1991.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 91–30284 Filed 12–18–91; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Design and Manufacturing Systems; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Design and Manufacturing Systems

Date/Time: January 14, 1992—8:30 a.m. to 5 p.m.

Place: Rooms 500-D & E, 1110 Vermont Ave., NW., Washington, DC.

Type of Meeting: Closed.

Agenda: Review and evaluate Manufacturing Processes and Equipment unsolicited proposals.

Contact: Dr. Bruce Kramer, Program Director, Materials Processing and Manufacturing or Dr. Suren Rao, Program Director, Manufacturing Machine and Equipment, Division of Design and Manufacturing Systems, National Science Foundation, room 1128, Washington, DC 20550 (202) 357–7676.

Dated: December 16, 1991.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 91–30289 Filed 12–18–91; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Design and Manufacturing Systems; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because

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the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Design and Manufacturing Systems.
Date/Time: January 21 & 22, 1992—8:30 a.m. to 5 p.m.
Place: Room 500–A, 1110 Vermont Ave., NW., Washington, DC.
Type of Meeting: Closed.
Agenda: Review and evaluate Engineering Design and Computer-Integrated Engineering unsolicited proposals.
Contact: Dr. Louis Martin-Vega, Program Director, Engineering Design or Dr. F. Hank Grant, Program Director, Computer-Integrated Engineering, Division of Design and Manufacturing Systems, National Science Foundation, 1800 G St., NW., room 1128 Washington, DC 20550 (202) 357–5167.

Dated: December 16, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–30296 Filed 12–18–91; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design and Manufacturing Systems; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Design and Manufacturing Systems.
Date/Time: January 28 & 29, 1992—8:30 a.m. to 5 p.m.
Place: National Science Foundation, room 1243, 1800 G St., NW., Washington, DC.
Type of Meeting: Closed.
Agenda: Review and evaluate Operations Research and Production Systems unsolicited proposals.
Contact: Dr. F. Hank Grant, Program Director, Operations Research or Louis A. Martin-Vega, Program Director, Production Systems, Division of Design and Manufacturing Systems, National Science Foundation, 1800 G St., NW., room 1128, Washington, DC 20550 (202) 357–5167.

Dated: December 16, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–30297 Filed 12–18–91; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Earth Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Earth Sciences.
Date and Time: January 27–30, 1992; 8:30 a.m. to 5 p.m.
Place: Room 1242, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.
Type of Meeting: Open.
Contact Person: Dr. James F. Hays, Division Director, National Science Foundation, rm. 602, Washington, DC 20550, Telephone: (202) 357–7958.
Minutes: May be obtained from the contact person listed above.
Purpose of Meeting: To provide advice and recommendations concerning support for research in the Division of Earth Sciences.
Agenda: Reviews of NSF program performance; Long Range Planning for Earth Sciences program.

Dated: December 16, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–30285 Filed 12–18–91; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Earth Sciences; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Earth Sciences.
Date: January 10, 1992.
Time: 8:30 a.m. to 5 p.m.
Place: Room 536, National Science Foundation, 1800 G Street, NW., Washington, DC.
Type of Meeting: Closed.
Agenda: Review and evaluate Research Experiences for Undergraduates Site Applications.
Contact: Dr. Marvin Kauffman, Program Director, Education and Human Resources Program, National Science Foundation, room 602, Washington, DC 20550, (202) 357–7958.

Dated: December 16, 1991.

M. Rebecca Winkler,

Committee Management Officer

[FR Doc. 91–30298 Filed 12–18–91; 8:45 am]

BILLING CODE 7555–01–M

Name: Special Emphasis Panel in Earth Sciences.
Date: January 30, 31, 1992.
Time: 8:30 a.m. to 5 p.m. on Thurs., Jan. 30; 8:30 a.m. to 12 Noon on Fri., Jan. 31.
Place: Room 253, National Science Foundation, 1800 G St., NW., Washington, DC.
Type of Meeting: Closed.
Agenda: Review and evaluate postdoctoral applications.
Contact: Dr. Marvin E. Kauffman, Program Director, Education and Human Resources Program, National Science Foundation, room 602, Washington, DC 20550 (202–357–7958).

Dated: December 16, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–30294 Filed 12–18–91; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis in Earth Sciences; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposal being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Earth Sciences.
Date: January 30, 31, 1992.
Time: 8:30 a.m. to 5 p.m. on Thurs., Jan. 30; 8:30 a.m. to 12 Noon on Fri., Jan. 31.
Place: Room 253, National Science Foundation, 1800 G St., NW., Washington, DC.
Type of Meeting: Closed.
Agenda: Review and evaluate postdoctoral applications.
Contact: Dr. Marvin E. Kauffman, Program Director, Education and Human Resources Program, National Science Foundation, room 602, Washington, DC 20550 (202–357–7958).

Dated: December 16, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–30294 Filed 12–18–91; 8:45 am]

BILLING CODE 7555–01–M

Committee on Equal Opportunities in Science and Engineering; Meeting

Name: Committee on Equal Opportunities in Science and Engineering.
Place: National Science Foundation, 1800 G Street, NW., Washington, DC 20550.
Dates: January 16 and 17, 1992.
Times/Room: January 16: 8:30 a.m.–5 p.m., room 540. January 17: 8:30 a.m.–3 p.m., room 540.
Type of Meeting: Open.
Contact: Mary M. Kohlerman, Executive Secretary of the CEOSE, National Science Foundation, room 1225, Telephone Number: 202–357–7461.
Purpose of Meeting: To focus on the pipeline issues with presentations by persons familiar with the data and studies related to the issues; to discuss concerns regarding data collection; and to learn of NSF's initiatives.
Agenda:
January 16
Presentations/Discussions: 8:30 a.m.–12 p.m.
Lunch: 12 noon
Presentations/Small Group Sessions: 1:30 p.m.–4:15 p.m.
Full Committee Meeting: 4:15 p.m.
January 17
Full Committee Meeting: 8:30 a.m.–9 a.m.
Presentations: 9:00–12 noon
Lunch: 12 noon
Presentations: 1:30 p.m.–2:30 p.m.
Adjournment: 3 p.m.
Summary Minutes: May be obtained from the Executive Secretary at the above address.

Dated: December 16, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–30295 Filed 12–18–91; 8:45 am]

BILLING CODE 7555–01–M

International Programs Review Panel; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: International Programs Review Panel.
Date and Time: January 23–24, 1992, 8:30 a.m. to 5 p.m.
Place: 1110 Vermont Avenue, NW., room 500–B, Washington, DC 20550.
Type of Meeting: Closed.
Contact Person: Janice Cassidy, Program Manager; 1110 Vermont Avenue, NW., room 501, Wasnington, D.C. 20550. Telephone: (202) 653–5802.
Purpose of Meeting: To provide advice and recommendations concerning applications submitted to NSF for financial support.
Agenda: Review and evaluate applications for the Japanese Language Study Program.
Reason for Closing: The applications being review include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 16, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–30292 Filed 12–18–91; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mechanical and Structural Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Mechanical and Structural Systems.
Date and Time: January 16–17, 1992, 8:30 a.m. to 5 p.m.
Place: 1110 Vermont Avenue, NW., rooms 500–A, 500–B, and 500–C, Washington, DC 20550.
Type of Meeting: Closed.
Contact Person: Dr. John Scaizi, Program Director, 1800 G Street, NW., room 1108, Washington, DC 20550. Telephone: (202) 357–9542.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: Review and evaluate Mechanical and Structural Systems unsolicited proposals.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552 b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 16, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–30293 Filed 12–18–91; 8:45 am]

BILLING CODE 7555–01–M

Ocean Sciences Review Panel; Meeting

The National Science Foundation announces the following meeting:

Name: Ocean Sciences Review Panel.
Date and Time: January 21–24, 1992; 8:30 a.m. to 5 p.m.
Place: St. James Hotel, 950 24th Street, NW., Washington, DC 20037, Embassy Room, Board Room, St. James Room, room 116 and room 117.
Type of Meeting: Closed.
Contact Person: Dr. Michael R. Reeve, Head, Ocean Sciences Research Section Room 609, National Science Foundation, Washington, DC 20550, Telephone (202) 357–9601.
Purpose of Meeting: To provide advice and recommendations concerning support for research in oceanography.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary of confidential nature, including technical information: financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

Dated: December 16, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–30282 Filed 12–18–91; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Research Career Development; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Research Career Development.
Date and Time: February 2–4, 1992; 8:30 a.m. to 5 p.m.
Place: Holiday Inn (Crowne Plaza at Metro Center), 775 12th Street, NW., Washington, DC 20005.
Type of Meeting: Closed.
Contact Person: Mary F. Sladek, Program Director, 1800 G Street, NW., room 630, Washington, DC 20550, Telephone: (202) 357–[illegible].
Purpose of Meeting: To provide advice and recommendations concerning nominations to the Presidential Faculty Fellows Program (PFF).
Agenda: Review and evaluate PFF Program nominations.
Reason for Closing: The nominations being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552 b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 16, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–30286 Filed 12–18–91; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Research Career Development; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Research Career Development

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Date and Time: January 9–11, 1992.
January 9, 1992: 7 p.m. to 9 p.m.
January 10, 1992: 8 a.m. to 5:30 p.m.
January 11, 1992: 8 a.m. to 3:30 p.m.
Place: The River Inn, 924 25th Street, NW., suite 105, Washington, DC 20037.
Type of Meeting: Closed.
Contact Person: Dr. Michael M. Frodyma, Program Director, National Science Foundation, room 643, Washington, DC 20550. Telephone: (202) 357-9486.
Purpose of Meeting: To provide advice and recommendations concerning applications submitted to NSF for financial report.
Agenda: Review and evaluate NSF–NATO Postdoctoral Fellowship applications.
Reason for Closing: The applications being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b. (c) (4) and (6) the Government in the Sunshine Act.

Dated: December 16, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–30288 Filed 12–18–91; 8:45 am]

BILLING CODE 7555–01–M

Proposal Review Panel for Undergraduate Science, Engineering, and Mathematics Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings:

Name: Proposal Review Panel for Undergraduate Science, Engineering, and Mathematics Education.
Date and Time: January 22–25, 1992.
January 22nd—7:30 p.m. to 9 p.m.,
January 23rd–24th—8 a.m. to 5 p.m.,
January 25th—8 a.m to 3 p.m.
Place: Holiday Inn (Crowne Plaza), 300 Army Navy Drive, Arlington, VA 22202.
Type of Meeting: Closed.
Contact Person: Dr. Duncan E. McBride, Program Director, 1800 G Street, NW., room G–0639, Washington, DC 20550 Telephone: (202) 357–7051.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: Phase II: Review and evaluate proposals submitted to the Instrumentation and Laboratory Improvement Program.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552 b. (c) (4) and (6) the Government in the Sunshine Act.

Dated: December 16, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–30287 Filed 12–18–91; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Revision
2. The title of the information collection: Personal Qualification Statement—Licensee
3. The form number if applicable: NRC Form 398
4. How often the collection is required: On occasion and every six years (at renewal).
5. Who will be required or asked to report: Individuals requiring a license to operate the controls at a nuclear facility.
6. An estimate of the number of responses: 1867 annually
7. An estimate of the total number of hours needed to complete the requirement or request: 2,333; approximately 1.4 hours per response.
8. An indication of whether section 3504(h), Public Law 96–511 applies: Not applicable
9. Abstract: NRC Form 398 requests detailed information that should be submitted by a licensing candidate when applying for a new or renewal license to operate the controls at a nuclear facility. This information, once collected, would be used for licensing actions and for generating reports on the Operator Licensing Program.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0090), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda J. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 6th day of December 1991.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 91–30310 Filed 12–18–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–213]

Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment of Facility Operating License No. DPR-61, issued to Connecticut Yankee Atomic Power Company (CYAPCO, the licensee), for operation of the Haddam Neck Plant, located in Middlesex County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment will revise various sections of the Technical Specifications (TS) to reflect the conversion to a Zircaloy-clad fuel assembly design and the prohibition of three loop operation for Modes 1 and 2. The Technical Specification changes will allow for the use of Zircaloy-clad fuel assemblies in the reactor core. The proposed action is in accordance with the licensee's amendment request dated June 27, 1991.

The Need for the Proposed Action

During the upcoming refueling for Cycle 17 CYAPCO will begin to use Zircaloy-clad fuel instead of stainless steel clad fuel. The plan needs these TS changes to support the operation of the Haddam Neck Plant for Cycle 17.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. The acceptability of the use of Zircaloy-clad fuel for Cycle 17 was based on NRC's review of considerations in the areas of mechanical, nuclear, and thermalhydraulic design. In addition, the non-loss-of-coolant accident (LOCA) transient analyses have been reevaluated for the Zircaloy-clad fuel design and the plant response has been found to be unaffected. The small and large break analyses is being reviewed by the staff for conformance with 10 CFR 50.46 and appendix K. These TS changes will only allow the Zircaloy-clad fuel to be loaded into the core. The plant will not be allowed to operate with the Zircaloy-clad fuel until the small and large break LOCA analyses are reviewed and approved. In addition, since the reanalyses were not performed for three-loop operation, three-loop operation is not allowed for Cycle 17.

The TS change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the prod TS amendment.

With regard to potential nonradiological impacts, the proposed amendment does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendment, any alternatives with equal or great environmental impact need not be evaluated. The principal alternative to the amendment would be to deny the amendment request. Such action would not enhance the protection of the environment.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Haddam Neck.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this proposed action, see the licensee's letter dated June 27, 1991. This letter is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06547.

Dated at Rockville, Maryland, this 11th day of December 1991.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–30308 Filed 12–18–91; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittees on Safety Philosophy, Technology, and Criteria/ Severe Accidents/Regulatory Policies and Practices; Meeting

The Subcommittees on Safety Philosophy, Technology, and Criteria, Severe Accidents/Regulatory Policies and Practices will hold a joint meeting on January 7–8, 1992, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, January 7, 1992—8:30 a.m. until the conclusion of business

Wednesday, January 8, 1992—8:30 a.m. until the conclusion of business.

The Subcommittees will discuss a number of interrelated proposed staff position papers as follows: (1) Proposed Revision to 10 CFR part 100, Decoupling Siting from Design, (2) Site Characteristics to be Used in part 100 Revision and Large Release Determination, (3) Proposed Definition of a Large Release for Safety Goals Implementation (tentative) and (4) Proposed Revision to TID–14844 to Update Source Term.

Oral statements may be presented by members of the public with the concurrence of the Subcommittees Chairmen; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittees, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairmen's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Dean Houston (telephone 301/492–9521) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: December 13, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91–30311 Filed 12–18–91; 8:45 am]

BILLING CODE 7590–01–M

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[Docket No. 50-213]

In the Matter of Connecticut Yankee Atomic Power Co. (Haddam Neck Plant); Exemption

I

The Connecticut Yankee Atomic Power Company (CYAPCO, the licensee) is the holder of Facility Operating License No. DPR-61 which authorizes operation of the Haddam Neck Plant. The license provides, among other things, that the Haddam Neck Plant is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The plant is a single-unit pressurized water reactor at the licensee's site located in Middlesex County, Connecticut.

II

One of the conditions of all operating licenses for water-cooled power reactors, as specified in 10 CFR 50.54(o), is that primary reactor containments shall meet the containment leakage test requirements set forth in 10 CFR part 50, appendix J. More specifically, Section III.C, in part, requires that:

Section III.C, Type C tests—1. Test method

Type C tests shall be performed by local pressurization. The pressure shall be applied in the same direction as that when the valve would be required to perform its safety function, unless it can be determined that the results from the tests for a pressure applied in a different direction will provide equivalent or more conservative results.

By letters dated April 28 and September 8, 1989 as amended by letter dated October 19, 1990, CYAPCO requested exemptions for eight penetrations from the above requirements. For penetrations P-3 and P-8, CYAPCO has requested an exemption from all requirements of Section III.C and for penetrations P-4, P-14, P-33, P-62, P-78 and P-80, CYAPCO has requested an exemption from Section III.C.1 to allow reverse direction testing.

III

By letters dated April 28 and September 8, 1989, the licensee requested exemptions from the requirements of 10 CFR part 50, appendix J, Section III.C, for 18 penetrations. By letter dated October 19, 1990, the licensee withdrew the exemption request for 10 penetrations. The licensee stated that the 10 penetrations would be modified to meet the requirements in Section III.C. In this section, the staff has evaluated the penetrations separately. Most of these eight penetrations were previously reviewed in the staff's Safety Evaluation for a schedular exemption from Appendix J dated September 29, 1987. The staff's conclusions for each penetration is addressed below. More details are contained in the NRC staff's related Safety Evaluation issued concurrent with this Exemption.

Section III.C, Type C tests

The licensee has requested permanent exemptions for the following penetrations:

P-3—High-Pressure Safety Injection
P-4—Pressurizer Relief Tank Vent
P-14—Vapor Seal Head Tank
P-80—Auxiliary Spray From Fire System

1. Penetration P-3

The containment isolation valves (CIVs) for this penetration consist of five valves in parallel inside containment, four of which are check valves and the fifth a locked-closed manual valve, SI-V-860. The licensee has requested an exemption from the requirement that the check valves be tested with air instead of water and that valve SI-V-860 be exempted from all Type C requirements.

The licensee has shown that all four check valves will be sealed with water at a pressure greater than 1.1 Pa (calculated peak containment pressure during design basis loss of coolant accident [LOCA]) and that the water seal can be maintained for at least 30 days. Based on the above, the staff has concluded that these check valves need not be exempted from the requirements of Section III.C.2 and III.C.3. Local leak rate testing of these check valves with water is an acceptable test for appendix J.

SI-V-860 is a locked-closed manual valve. It is water sealed with an ultimately unlimited supply of seal water from the containment sump. The configuration of the system is such that all leakage through this valve during a LOCA would be water going back into containment. The NRC concludes that any leakage through this valve is of no consequence since it is returned to the containment. Based on the above, the staff concludes that a permanent exemption from all Type C testing requirements of appendix J for valve SI-V-860 is acceptable.

2. P-4—Pressurizer Relief Tank Vent

The licensee has proposed to test CIV WG-TV-1845 in the reverse-direction. The orientation of this valve is such that the reverse-direction testing tends to push the disk out of its seat and therefore tends to provide a more conservative or at least equivalent result when compared to the forward direction testing. However, reverse-direction testing does not include leak testing of the stem packing, body-to-bonnet joint, or a flanged pipe joint on the containment side of the valve.

The licensee has stated there are two compensating factors:

a. The stem/bonnet will be exposed to the Type A test (containment integrated leak rate test) pressure every 3 to 4 years, and

b. The containment side of WG-TV-1845 is normally exposed to the pressurizer relief tank nitrogen blanket pressure of approximately 3 psig during normal power operation.

The staff agrees that the containment integrated leak rate test and the maintenance of the 3 psig overpressure in the pressurizer relief tank during power operation will provide reasonable assurance of the leak-tight integrity of the stem/bonnet boundaries. In addition, the licensee has agreed to soap bubble test the pressurized stem/bonnet boundaries of the valve at the frequency for the Type C test at the pressurizer relief tank pressure and during each Type A tests at Pa. Based on the above, the staff finds that a permanent exemption from the requirement of Section III.C.1, "equivalent of more conservative results" of appendix J is acceptable and, therefore, CIV WG-TV-1845 can be tested in the reverse-direction.

3. P-14—Vapor Seal Head Tank

The licensee has proposed to test CIV DH-TV-1843 in the reverse-direction. This is a 1½-inch double-seated valve with socket weld ends (thus, no pipe flanges to test). It is oriented such that the stem packing and body-to-bonnet joint are included in the reverse-direction testing. The licensee states since this value has a balanced port design, being a double-plug flow control valve, the direction of the pressurization should have no effect on disc/seat leak-tightness. The staff agrees with the licensee's assertion that testing in either direction should give equivalent results. Based on the above, the staff concludes that the reverse-direction testing of this valve is in accordance with the requirements of appendix J and no exemption is needed.

4. P-80—Auxiliary Spray From Fire System

By letter dated September 29, 1987, the staff granted a permanent exemption for this penetration. This exemption did not consider the possibility that the stem/bonnet boundaries on the containment side of CIV RH-MOV-31 may be omitted from reverse-direction testing. The licensee has concluded that this potential leak path needs to be addressed and therefore requested this modification to their exemption. The Type A test procedure blanks and vents the outboard side of RH-MOV-31 to establish proper differential pressure across penetration P-80. However, the inboard side of the RH-MOV-31 may not be exposed to the Type A pressurization if check valve RH-CV-35 (which is not a CIV) inside containment is leak tight. The licensee proposes to amend its Type A test procedures to open a capped line inside containment between RH-MOV-31 and RH-CV-35 to assure direct pressurization of CIV RH-MOV-31 in future containment integrated leak rate tests. In addition, the licensee has agreed to soap bubble check the pressurized stem/bonnet boundaries of the CIV RH-MOV-31 during Type A test. Based on the above, the staff concludes that the previously granted permanent exemption from appendix J is still valid with the added condition that licensee be required to soap bubble check the pressurized stem/bonnet boundaries during the Type A test. The typical acceptance criterion of zero bubbles for such checks would provide a direct indication of the leak-tightness of the stem/bonnet.

IV

Pursuant to 10 CFR 50.12(a)(2), the Commission will not consider granting an exemption unless special circumstances are present. Item (ii) of the subject regulation includes special circumstances where application of the subject regulation is not necessary to achieve the underlying purpose of the rule.

As discussed previously, the NRC has concluded for penetration P-3 that the valve is under a constant water seal during a LOCA by the safety injection systems. The leak rate does not affect the radiological consequences to the public during a LOCA because the system configuration is such that all leakage is returned to the containment. Therefore, the staff concludes that Type C leak testing of penetration P-3 is not necessary to meet the underlying purpose of the rule in that all leakage during a LOCA would be water going into containment rather than air coming out.

For Penetration P-4, the NRC has concluded that the reverse-direction testing in conjunction with the containment integrated leak rate test and the fact that the system design in such that the penetration must maintain a 3 psig overpressure in the pressurizer relief tank, provides adequate assurance that this valve is leak tight. Additionally, the licensee has agreed to soap bubble the stem/bonnet boundaries of the valve at a frequency for the Type C test at the pressurizer relief tank pressure and during the Type A test at Pa. Based on the above, the staff concludes that a permanent exemption for penetration P-4 for reverse-direction testing with the compensatory measures satisfies the underlying purpose of the rule.

For penetration P-80, the staff has concluded that given the system configuration, any significant leakage through this valve into containment would be detected because it would lead to spray down of containment. In a sense this valve is under continuous test (maintenance of the fire water system pressure boundary). The staff has concluded that this system configuration with the reverse-direction Type C test with water provides adequate assurance that this valve is leak tight. The licensee has stated they will flange the fire water system outside of containment and open a capped line inside of containment during the containment integrated leak rate test to assure the CIV RH-MOV-31 will be exposed to the required Type A test differential pressure. In addition, the licensee has agreed to soap bubble the stem/bonnet boundaries during the Type A test. Based on the above, the staff concludes that a permanent exemption for penetration P-80 for reverse-direction testing with the compensatory measures satisfies the underlying purpose of the rule.

V

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12, the exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby approves the following exemption request.

Permanent exemptions are hereby granted from the requirement of 10 CFR part 50, appendix J, Section III.C for penetration P-3 and Section III.C.1 for penetrations P-4 and P-80.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (56 FR 64528).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 11th day of December 1991.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-30309 Filed 12-18-91; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF STATE

[Public Notice 1537]

Secretary of State's Advisory Committee on Private International Law; Study Group on Intercountry Adoption; Meeting

The second meeting of the Study Group on Intercountry Adoption will take place on Friday, January 10, 1992 from 9:30 a.m. to about 5 p.m. in Conference Room 1107 of the State Department building in Washington, DC.

The purpose of the meeting is to review the tentative draft convention on international cooperation and protection of children in respect of intercountry adoption prepared by a special commission on intercountry adoption of the Hague Conference on Private International Law. The tentative draft convention, prepared by this special commission at its session in April/May 1991 and modified by a drafting committee in September 1991, will form the basic working document for the third and last preparatory session of The Hague Conference's special commission on February 3–14, 1992. The results of the February session will be the draft convention that will form the basic working document of the session of The Hague Conference itself (diplomatic conference) in Spring 1993.

Among the questions to be reviewed at the Study Group meeting in January for the purpose of providing guidance to the U.S. delegation to sessions at The Hague are the scope of application of the convention, how to deal with simple adoptions under the law of certain states of origin, how the convention may deal with "independent" or "private" adoptions, the criteria and flexibility of the convention with regard to licensing or accreditation of adoption services providers, the required procedures set out for intercountry adoptions, the recognition of adoptions pursuant to the convention, and the possible need for provisions to deal with the law applicable to certain aspects of intercountry adoptions.

Copies of the relevant documents for the meeting may be requested from the Legal Adviser's Office by contacting Peter H. Pfund at (202) 653–9851, by fax at (202) 632–5283, or by writing the Office of the Legal Adviser (L/PIL),

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Suite 501, 2100 K Street NW., Washington, DC 20037–7180.

The meeting will be held in Conference Room 1107 at the State Department; participants should use only the diplomatic entrance at 22nd and C Streets, NW., for this meeting. Members of the general public may attend up to the capacity of the meeting room. As the room capacity is limited and access to the building is controlled, the office indicated above should be notified no later than Friday, January 3, 1992 of the name, affiliation, address and phone number of persons wishing to attend. Persons whose names have been so notified will be helped in gaining admission to the building on January 10 for the beginning of the meeting. In order to facilitate planning, members of the public are requested to indicate particular issues on which they expect to comment. Persons interested but unable to attend the meeting are welcome to submit written comments or proposals to the address/fax number indicated above.

Dated: December 11, 1991.

Peter H. Ffund,

Vice-Chair, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 91–30316 Filed 12–18–91; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Aviation Services West, Inc.; d/b/a Lake Powell Air Service, d/b/a Cedar City Air Service, d/b/a Kanab Air Service, d/b/a Arizona Air, d/b/a St. George Air Service

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 91–12–23, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that Aviation Services West, Inc. d/b/a Lake Powell Air Service d/b/a Cedar City Air Service d/b/a Kanab Air Service d/b/a Arizona Air d/b/a St. George Air Services is fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, Department of Transportation, 400 Seventh Street, SW., room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than December 30, 1991.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2337.

Dated: December 13, 1991.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 91–30284 Filed 12–18–91; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Proposed Advisory Circular 25.1523–1, Minimum Flightcrew

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of Proposed Advisory Circular (AC) 25.1523–1 and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) which provides a method of compliance with the requirements of § 25.1523 of the Federal Aviation Regulations (FAR) which contain the certification requirements for the determination of minimum flightcrew on transport category airplanes. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before April 20, 1992.

ADDRESSES: Send all comments on proposed AC to: Federal Aviation Administration, attention: Transport Standards Staff, ANM–110, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Transport Standards Staff, at the address above, telephone (206) 227–2127.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under **"FOR FURTHER INFORMATION CONTACT."** Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 25.1523–1 and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Background

In early 1981, the President established a task force on aircraft crew complement which was directed to make "its recommendation whether operation of the new generation of commercial jet transport airplanes by two-person crews is safe and certification of such airplanes is consistent with the Secretary's duty under the certification provisions of the Federal Aviation Act of 1958 to promote flight safety." Several recommendations were made in the Report of the President's Task Force on Aircraft Crew Complement, dated July 2, 1981, including one that suggested that the agency complete and keep current section 187 (Minimum Flightcrew) of FAA Order 8110.8, Engineering Flight Test Guide for Transport Category Airplanes. The agency decided to publish the entire contents of the Order in advisory circulars to make such material formally available to the general public. Advisory Circular 25.1523–1 is one of the ACs developed as a result of this decision.

A notice announcing the availability of and requesting comments on draft AC 25.1523 was published in the **Federal Register** on May 12, 1986 (51 FR 17435). The comment period closed on August 11, 1986. In mid-1987, the FAA met with pilot groups, aircraft manufacturers, operators, and flight attendants to solicit comments and ideas related to crew complement issues. This was done in anticipation of two major certification programs involving new two-pilot aircraft: the McDonnell Douglas MD–11 and the Boeing 747–400. The knowledge gained through this process was effectively used in the 747–400 and MD–11 minimum flightcrew evaluations. As a result of the comments received from industry (both from the original publication of the subject AC and the above-referenced meetings), and recommendations that resulted from the USAF/FAA-sponsored "Workload Measurement Techniques" contract, the draft AC was revised extensively, and is being made available once again for public comment.

Issued in Renton, Washington, on December 11, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 91–30272 Filed 12–18–91; 8:45 am]

BILLING CODE 4910–13–M

Huntsville International Airport, AL; Notice of Intent To Rule on Application

AGENCY: Federal Aviation Administration, DOT.

ACTION: Correction to Notice of Intent to Rule on Application to Impose a Passenger Facility Charge (PFC) at the Huntsville International Airport, Huntsville, Alabama.

SUMMARY: This correction incorporates information from the public agency's application and date which FAA action is required.

In notice document 91–26915 beginning on page 61471 in the issue of Tuesday, December 3, 1991, make the following corrections:

1. In the first column, "March 12, 1992" should read "March 7, 1992".

2. In the second column, "Total Estimated PFC Revenue: $24,617,126" should read "Total Estimated PFC Revenue: $36,472,657".

Issued in Atlanta, Georgia, on December 11, 1991.

Marisue Haigler,

Assistant Manager, Airports Division, Southern Region.

[FR Doc. 91–30270 Filed 12–18–91; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 91–64–IP–No. 1]

Mazda (North America), Inc.; Receipt of Petition for Determination of Inconsequential Noncompliance

Mazda (North America), Inc. (Mazda) of Washington, DC, has determined that some of its vehicles fail to comply with 49 CFR 571.108, "Lamps, Reflective Devices, and Associated Equipment" (Standard No. 108), and has filed an appropriate report pursuant to 49 CFR part 573. Mazda has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

During the period of April 1990 to May 1991, Mazda installed certain rear combination lamps on 43,239, 1990 and 1991 model year MX–5 passenger cars. In the manufacturing process of these rear combination lamps, some lamps lack a sufficient quantity of reflecting paint on the inner surface of the turn signal lamp body. As a result, there is the possibility that the turn signal lamps on these vehicles do not comply with the photometric requirements of Standard No. 108.

Paragraph S5.1.1.11 of Standard No. 108 specifies that a turn signal lamp shall meet a minimum percentage of a corresponding minimum value of lighting intensity for each of 19 designated test points. Paragraph S.5.1.1.12 of Standard No. 108 specifies that a turn signal lamp is not required to meet this minimum photometric value at each test point, if the sum of the percentages of the minimum lighting intensity measured at the test points is not less than those specified for each of five different groups of the test points.

Mazda provided test data on three samples of the subject turn signal lamps, which show that the lamps do not meet minimum intensity requirements at five of the 19 test points specified in S5.1.1.11 of Standard 108. At test point 5U–V the minimum intensity is 113.8 candela (cd), while the minimum values measured on the three lamps ranged from 75.3 cd to 89.6 cd. At test points H–5L, H–V, and H–5R the minimum required value is 130 cd, while the minimum values measured on the three lamps ranged from 108.9 cd to 116.6 cd. At test point 5D–V the minimum required value is 113.8 cd, while the minimum values measured on the three lamps ranged from 94.5 cd to 103.1 cd. In addition to not meeting minimum lighting intensity requirements at these five test points, the data provided by Mazda show that the turn signal lamps do not meet minimum requirements when the test points are grouped as specified in S5.1.1.12.

Mazda supports its petition for inconsequential noncompliance with the following:

1. The overall candela output level provided by the subject turn signal lamps exceeds the minimum value required by Standard 108.

Of the 19 test points, only 5 are below the minimum candela output level, ranging from 66.0 percent to 90.4 percent of the required value. However, the sum of the candela measured at all 19 test points is 22.7 percent to 26.8 percent more than the sum of the required value. The sum of the measured candela ranges from 1365.9 cd to 1410.6 cd, and the sum of the required candela is 1112.4 cd.

Of the five groups of test points specified in S5.1.1.12, only Group Three has a total candela output level which is below the required value. Group Three is 14.2 percent to 17.6 percent less than the required value. However, the sum of the candela output for Group Three, along with that of Groups Two and Four which are close to Group Three, exceeds the required value. The sum of the measured candela for Groups Two, Three, and Four ranges from 1014.2 cd to 1065.6 cd, and the sum of the required values for these three groups is 943.2 cd.

2. "The performance of the subject turn signal lamps is adequate in all regards. To confirm the photometric performance of the subject lamp, Mazda conducted jury evaluation comparing the illumination visibility of the subject lamp with a proper one which provides candela output marginally exceeding [Standard] 108 minimum requirements. In this evaluation, ten observers evaluated the subject lamp with the light turned on and by viewing from each 2, 5, 10, and 30 [meters] backward. There was no difference * * *, and it was judged that [the turn signal lamp] has no problem on visibility and signaling performance."

3. Mazda has not received any owner complaints, field reports, or allegation of hazardous circumstances relating to the illumination or signaling capability of these turn signal lamps.

4. There is no possibility that the performance of the lamps will worsen with vehicle usage.

5. Existence of the manufacturing error which produced this problem was eliminated in May 1991, because an exclusive manufacturing line was set up for the subject lamp at that time.

Interested persons are invited to submit written data, views, and arguments on the petition of Mazda, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the

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Federal Register pursuant to the authority indicated below.

Comment closing date: January 21, 1992.

(15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on December 16, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-30355 Filed 12-18-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: December 21, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557-0186.

Form Number: None.

Type of Review: Extension.

Title: Agricultural Loan Loss Amortization (12 CFR part 35).

Description: Title VIII of the Competitive Equality Banking Act of 1987 permits eligible agricultural banks to amortize losses on qualified agricultural loans. Information to be collected from banks participating in the program is needed to monitor their eligibility, condition and amortization and activities.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer John Ference (202) 447-1177, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

OMB Reviewer: Gary Waxman (202) 395-7340, Officer of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91-30299 Filed 12-18-91; 8:45 am]

BILLING CODE 4810-33-M

Public Information Collection Requirements Submitted to OMB for Review

Date: December 13, 1991.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0052.

Form Number: ATF F. 5130.9.

Type of Review: Extension.

Title: Brewer's Monthly Report of Operations.

Description: ATF F 5130.9 is a periodic report detailing specific operations and activities to account for taxable commodities used in operations. For this reason, ATF F 5130.9 is a method to safeguard tax revenue. ATF F 5130.9 shows taxable and nontaxable removals, overages, shortages and losses at breweries. ATF can pinpoint problems at breweries on a timely basis and take steps to protect the revenue.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 286.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 3,432 hours.

Clearance Officer: Robert N. Hogarth (202) 927-8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91-30300 Filed 12-18-91; 8:45 am]

BILLING CODE 4810-31-M

Bureau of Alcohol, Tobacco and Firearms

Granting of Relief, Federal Firearms Privileges

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF).

ACTION: Notice of granting of restoration of federal firearms privileges.

SUMMARY: The persons named in this notice have been granted restoration of their Federal firearms privileges by the Director, Bureau of Alcohol, Tobacco and Firearms.

As a result, these persons may lawfully acquire, transfer, receive, ship, and possess firearms if they are in compliance with applicable laws of the jurisdiction in which they live.

FOR FURTHER INFORMATION CONTACT: Special Agent in Charge Karl Stankovic, Firearms Enforcement Branch, Firearms Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, (202-927-7770).

SUPPLEMENTARY INFORMATION: In accordance with 18 U.S.C. 925(c), the persons named in this notice have been granted restoration of Federal firearms privileges with respect to the acquisition, transfer, receipt, shipment, or possession of firearms. These privileges were lost by reason of their convictions of crimes punishable by imprisonment for a term exceeding one year or because they otherwise fell within a category of persons prohibited by Federal law from acquiring, transferring, receiving, shipping or possessing firearms.

It has been established to the Director's satisfaction that the circumstances regarding the applicants' disabilities and each applicant's record and reputation are such that the applicants will not be likely to act in a manner dangerous to public safety, and that the granting of the restoration will not be contrary to the public interest.

The following persons have been granted restoration:

Affeldt, Robert Douglas, 203 Wass Street, Fenton, Michigan, convicted on July 9, 1986, in the United States District Court, Flint, Michigan.

Albright, Walter John, 83 Bigelow Street, Pittsburgh, Pennsylvania, convicted on March 11, 1964, in the Court of Oyer, Alleghany County, Pennsylvania.

Barnes, Calvin Wade, Rural Route 5, Box 9, Kemps Trailer Court, Fulton, Missouri, convicted on December 19, 1983, in the Calloway County Circuit Court, Fulton, Missouri.

Beckman, Richard August, 1101 Pearson Parkway, Brooklyn Park, Minnesota, convicted on September 9, 1980, in the Circuit Court of Eau Claire County, Wisconsin.

Bentivegna, Jack Michele, 2444 Cambridge Road, York, Pennsylvania, convicted on September 19, 1980, in the United States District Court, Middle Judicial District of Pennsylvania, Williamsport, Pennsylvania.

Blick, Jerry A., Route 1, Box 209-A, Princeton, Kentucky, convicted on June 12, 1978, in the Caldwell County Circuit Court, Princeton, Kentucky.

Bordner, Daniel Keith, 21725 East Wellesley, Apartment 22, Otis Orchards, Washington, convicted on March 13, 1978, in the Superior Court of Kitsap County, Washington.

Bozung, DeWayne Charles, 921 Jefferson Avenue, Midland, Michigan, convicted on October 28, 1974, in the Twenty-first Judicial Circuit Court of Isabella County, Mt. Pleasant, Michigan.

Burtner, John Marvin, W5404-29 Highway 82E, Mauston, Wisconsin, convicted on October 1, 1985, in the Circuit Court of Juneau County, Mauston, Wisconsin.

Clark, Blake Paul, 13485 Lindsley Road, Saline, Michigan, convicted on April 26, 1965, in the Washtenaw County Court, Ann Arbor, Michigan.

Cobb, Ashley Junior, 728 Decatur Street, Brooklyn, New York, convicted on May 13, 1985, in the United States District Court, Eastern Judicial District of New York.

Coleman, Richard Allen, 1358 North Main Street, Colville, Washington, convicted on August 26, 1983, in the Stevens County Superior Court, Washington.

Colson, Barrington Maxwell Junior, HCR 80, Box 159, Belfast, Maine, convicted on February 28, 1984, in the Waldo County Superior Court, Maine.

Cook, Nicholas John, 5162 North Irish Road, Davison, Michigan, convicted on July 8, 1986, in the United States District Court, Flint, Michigan.

Cox, Coleman Lee, 16 Independence Circle, Forest, Virginia, convicted on July 29, 1985, in the United States District Court, Western Judicial District of Lynchburg, Virginia.

Cravens, James Huel, Route 2, Box 207, Princeton, Kentucky, convicted on November 29, 1971, in the United States District Court, Paducah, Kentucky.

Cromley, John David, 4540 Miramur Northeast, Grand Rapids, Michigan, convicted on May 6, 1986, in the United States District Court, Western Judicial District of Michigan.

Daoust, Conrad Joseph, Box 215, Danforth, Maine, convicted during February 1963, and also on October 10, 1974, in the Franklin County Superior Court, Farmington, Maine.

Davis, Benjamin Roger, Rural Delivery 3, 203 Crestwood Drive, Ebensburg, Pennsylvania, convicted on July 6, 1967, in the United States District Court, Western Judicial District of Pennsylvania.

Dewitt, Gerald Burke, 211 Backer Street, Selma, Alabama, convicted on January 9, 1986, in the Dallas County Circuit Court, Alabama.

Dotzel, Edward Charles, 150 Cedar Street, Cedarville, Illinois, convicted during September 1959, in the United States District Court, Northern Judicial District of Illinois.

Ferguson, Robert Brewster, Seamans Union, Federal Station, Seattle, Washington, convicted on December 4, 1961, in the United States District Court, Western Judicial District of Washington.

Fowler, Dewaine Lee, 2807 Third Street, Woodward, Oklahoma, convicted on January 2, 1959, in the District Court of Woodward County, Oklahoma, and also on January 23, 1962, in the District Court of Blaine County, Watonga, Oklahoma.

Francolini, Leonard, 56 Morgan Road, Canton, Connecticut, convicted on December 4, 1984, in the United States District Court, Bridgeport, Connecticut.

Gartmann, Anthony Edmund, N72 W16706 Good Hope Road, Menomonee Falls, Wisconsin, convicted on April 19, 1961, in the Ozaukee County Circuit Court, Port Washington, Wisconsin.

Goodale, Arthur Uel, 2792 Southeast Helms Avenue, Port St. Lucie, Florida, convicted on May 17, 1974, in the Southern Judicial District Court, Broward County, Florida.

Graham, Keith Leroy, 28919 156th Avenue East, Graham, Washington, convicted on July 14, 1982, in the Western District Court, Tacoma, Washington.

Hilmer, Keith Richard, 1223 Eleventh Street, Beloit, Wisconsin, convicted on November 7, 1974, in the Circuit Court of Oneida County, Rhinelander, Wisconsin.

Horner, Robert Gene, 514 Vintage Trail, Waukee, Iowa, convicted on December 3, 1982, in the United States District Court, Southern Judicial District of Iowa.

Hough, Timothy Joseph, 2611 West 200 Street, Warsaw, Indiana, convicted on November 4, 1979, in the Allen County Superior Court, Fort Wayne, Indiana.

Hudson, Randy Lugene, 1116 West First, Pittsburg, Kansas, convicted on February 11, 1988, in the Eleventh Judicial District Court of Pittsburgh, Crawford County, Kansas.

Hurley, Bobby Dale, 117 Spring, Sikeston, Missouri, convicted on March 14, 1978, in the Circuit Court of Mississippi County, Missouri.

Hutchinson, Harold Bryon, 106 Wilhite, West Monroe, Louisiana, convicted on February 19, 1985, in the United States District Court, Western Judicial District, Monroe, Louisiana.

Jones, Paul E. Junior, Route 1, Box 274, Clinton, Kentucky, convicted on September 25, 1986, in the Fulton County Circuit Court, Hickman, Kentucky.

Kees, C.B., Route 4, Huntingdon, Tennessee, convicted on August 24, 1983, in the United States District Court, Western Judicial District of Tennessee, Jackson, Tennessee.

Kellogg, Terry Glen, E10215 North Reedsburg Road, Baraboo, Wisconsin, convicted on May 29, 1984, in the Sauk County Circuit Court, Baraboo, Wisconsin.

Kunkel, Dennis Allen, Route 2, Box 99, Ellsworth, Wisconsin, convicted October 28, 1982, in the Pierce County Circuit Court, Ellsworth, Wisconsin.

Landry, Reginald Louis, 505 Mire Street, Houma, Louisiana, convicted on August 22, 1984, in the United States District Court, Eastern Judicial District of Louisiana.

Lantrip, Charles Lonnie, 19621 133 Avenue Court East, Graham, Washington, convicted on January 18, 1967, in the Superior Court of Yakima County, Washington.

Lee, Eugene Harvard, 3664 Park Road, Hollywood, Florida, convicted on July 11, 1969, in the United States District Court, Eastern Division, Northern Judicial District of Illinois.

Lee, Russell Wayne, 800 Coulter Road, Sherwood, Arkansas, convicted on January 26, 1986, in the United States District Court, Eastern Judicial District of Arkansas.

Lucas, Robert Donald, 1522 Limetree Lane, Duncanville, Texas, convicted on April 25, 1986, in the United States District Court, Dallas, Texas.

Lund, Charles Albert, 516 South 8th Street, Thermopolis, Wyoming, convicted on June 19, 1981, in the United States District Court of Wyoming.

Mayer, Steven Mark, E10037 Xanadu Road, Wisconsin Dells, Wisconsin, convicted on July 24, 1967, in the Winnebago County Courthouse, Oshkosh, Wisconsin.

Monnot, Dean Francis, Box 637A, River Road, Pickerel, Wisconsin, convicted on September 4, 1985, in the Langlade County Court, State of Wisconsin.

Moore, John Wesley, 134 Westway, Pontiac, Michigan, convicted on September 28, 1953, in the Circuit Court of Genesee County, Flint, Michigan.

Nemmers, Jeffrey Joseph, 5311 South Spruce, Wichita, Kansas, convicted on October 20, 1986, in the District Court of Cowley County, Kansas.

Noel, Theodore Roosevelt, Route 2, Box 346, Florence, Alabama, convicted on November 5, 1963, in the Circuit Court of Lauderdale County, Alabama; and also on March 13, 1972, in the United States District Court, Northern Judicial District of Alabama.

Palecek, David James, 308A Prospect Avenue, Oshkosh, Wisconsin, convicted on January 8, 1980, in the Circuit Court of Winnebago County, Oshkosh, Wisconsin.

Porrazzo, Joseph Robert Junior, 1705 South Irving Place, Carson City, Nevada, convicted on August 11, 1980, in the United States District Court, Central District of California, Los Angeles, California.

Prevette, Lee Edward, Route 4, Box 404, China Grove, North Carolina, convicted on February 21, 1973, in the United States District Court, Chattanooga, Tennessee.

Raminger, Thomas Edward, 234 Oak Street, Binghamton, New York, convicted on June 24, 1960, in the Onondaga County Court, Syracuse, New York.

Renner, Bert Roger, Post Office Box 242, Ridgeland, Wisconsin, convicted on November 6, 1978, and also on May 28, 1982, in the Marathon County Circuit Court, Wausau, Wisconsin.

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Rizzo, Franklin Phillip, 27 Rochaway Turnpike, Lawrence, New York, convicted on April 23, 1987, in the United States District Court, Southern Judicial District of New York.

Rodgers, Richard Wayne, 1134 Rogers Road, Cassett, South Carolina, convicted on June 13, 1983, in the United States District Court, Columbia, South Carolina.

Rolfe, Richard Edwin, 115 North Third Street, Tooele, Utah, convicted on October 11, 1977, in the Third District Court of Tooele County, Utah.

Sanders, Joe Robert, Route 1, Box 197, Red Level, Covington County, Alabama, convicted on March 4, 1988, in the Covington County Circuit Court, Andalusia, Alabama.

Skrinjorich, Dorothy Marie, 434 Old Clairton Road, Clairton, Pennsylvania, convicted on March 1, 1985, in the United States District Court, Western Judicial District of Pennsylvania.

Skrinjorich, Sylvester, 434 Old Clairton Road, Clairton, Pennsylvania, convicted on March 1, 1985, in the United States District Court, Western Judicial District of Pennsylvania.

Smith, Ronald Vincent, 13823 Motter Station Road, Rocky Ridge, Maryland, convicted on July 20, 1976, in the United States District Court, Baltimore, Maryland.

Sovie, Charles James, Box 162, Scotts Bridge Road, Pine, New York, convicted on December 2, 1982, in a General Court Martial, Homestead Air Force Base, Florida.

Stevens, James Clyde, 1030 Church Street, Tiptonville, Tennessee, convicted on October 31, 1963, in the Shelby County Court, Memphis, Tennessee; and also on December 15, 1965, in the Davidson County Court, Nashville, Tennessee.

Stockwell, Barry Lyle, W3890 370th Avenue, Ellsworth, Wisconsin, convicted on August 9, 1984, in the Pierce County Circuit Court, Ellsworth, Wisconsin.

Unkraut, Kenneth Allen, 8216 North Dilcrest Street, Florence, Kentucky, convicted on August 19, 1980, in the United States District Court, Covington, Kentucky.

Van Meter, Beulah Ann, 229 C.L. Ray Road, Smith Grove, Kentucky, convicted on June 27, 1986, in the United States District Court, Bowling Green, Kentucky.

Vincent, Terry Ronald, 3265 Egner Road, Cedar Springs, Michigan, convicted during 1958 and also on August 8, 1960, in the Circuit Court of Montclaim County, Michigan.

Ward, Ronald Fred, 5816 Northwest County Avenue, Canton, Oklahoma, convicted on November 7, 1958, in the District Court of Oklahoma County, Oklahoma.

Wartner, David Melvin, 902 Saddle Ridge, Portage, Wisconsin, convicted on March 13, 1985, in the Columbia County Circuit Court, Portage, Wisconsin.

West, Frank Junior, 14624 179th Avenue, Southeast, Apartment 24, Monroe, Washington, convicted on September 2, 1988, in the Snohomish County Superior Court, Washington.

Wetsell, Raymond Eugene, Rural Delivery 1, Box 223, Venango, Pennsylvania, convicted on December 19, 1986, in the United States District Court for the Western Judicial District of Pennsylvania, Erie, Pennsylvania.

Wojtowicz, Anthony Edward, 460 Lawrence, Prescott, Wisconsin, convicted on November 2, 1987, in the United States District Court, Minneapolis, Minnesota.

Wolfe, Harold Boyd, Box 797, Welch, West Virginia, convicted on February 1, 1984, in the United States District Court, Southern District of West Virginia, Charleston, West Virginia.

Woodford, Melvin Ray Junior, 4646 A.T. Massa Drive, Paducah, Kentucky, convicted on November 5, 1985, in the McCracken County Court, Paducah, Kentucky.

Woods, Roderick Douglas, 401 South 37th Avenue, Hattiesburg, Mississippi, convicted on October 28, 1982, in the United States District Court, Southern Judicial District of Mississippi.

Compliance With Executive Order 12291

It has been determined that this notice is not a "major rule" within the meaning of Executive order 12291, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Signed: November 26, 1991.

Stephen E. Higgins,

Director.

[FR Doc. 91-30347 Filed 12-18-91; 8:45 am]

BILLING CODE 4810-31-M

UNITED STATES INFORMATION AGENCY

Library/Book Fellows Program

AGENCY: United States Information Agency.

ACTION: Notice of intent to negotiate a grant renewal with the American Library Association.

SUMMARY: Subject to the availability of funds, the United States Information Agency (USIA) intends to negotiate a grant renewal, on a noncompetitive basis, with the American Library Association. This grant, in the amount of approximately $400,000, will enable the American Library Association to continue the management of the Library/Book Fellows Program, which places American library and publishing professionals in foreign institutions for periods of four to twelve months to carry out projects important to long-term U.S. and host-country interests. Projects are designed to increase international access to information, and to strengthen mutual understanding between the U.S. and other societies through sharing of professional knowledge and through the development of personal and institutional linkages between American professionals and those of other countries. Under this grant, the American Library Association will recruit, evaluate, and select participants, arrange participants' travel and orientation, and monitor progress and evaluate the effectiveness of each fellowship project.

Overall authority for these exchanges is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87-256 (Fulbright-Hays Act).

PUBLIC RESPONSE: This announcement is not a request for competitive proposals. However, interested persons may indicate their interest and capability to respond to the requirement. Information received as a result of the notice will be considered solely for the purpose of determining whether to open the requirement to competition. A determination not to open the requirement to competition based upon responses to this notice is within the discretion of the United States Information Agency.

DATES: Public response to this notice must be received at the United States Information Agency by 5 p.m., Eastern Standard Time on January 10, 1992. Faxed documents will not be accepted, nor will documents postmarked on January 10, 1991, but received at a later date. The grant period is to begin in January 1992.

ADDRESSES: Public response should be addressed to: United States Information Agency; Reference: Library/Book Fellows Program; Office of the Executive Director E/X; room 336; 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Mary Boone or Helen Amabile, United States Information Agency; Library Programs Division E/CL; room 314; 301 4th St. SW., Washington, DC 20547. Telephone (202) 619-4915.

Dated: December 12, 1991.

Barry Fulton,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-30253 Filed 12-18-91; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 244
Thursday, December 19, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, January 31, 1992.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-30406 Filed 12-16-91; 4:52 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m. Friday, January 24, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-30407 Filed 12-16-91; 4:52 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, January 17, 1992.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-30408 Filed 12-16-91; 4:52 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:00 a.m. Friday, January 10, 1992.

PLACE: 2033 K St., N.W., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-30409 Filed 12-16-91; 4:52 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, January 3, 1992.

PLACE: 2033 K St., N.W., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-30410 Filed 12-16-91; 4:52 pm]

BILLING CODE 6351-01-M

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Corrections

Federal Register
Vol. 56, No. 244
Thursday, December 19, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 768, 771, 772, 773, 774, 775, and 787

[Docket No. 911182-1282]

Establishment of Import Certificate/ Delivery Verification Procedure for Switzerland and Liechtenstein; Removal of Swiss Blue Import Certificate Requirement for Special and General Licenses

Correction

In rule document 91-29440, beginning on page 64478, in the issue of Tuesday, December 10, 1991, make the following correction:

On page 64478, in the third column, under **SUMMARY:**, in the third paragraph, in the first line, "not" should read "now".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Devices and Radiological Health

Correction

In rule document 91-24463 beginning on page 51169 in the issue of Thursday, October 10, 1991, make the following correction:

1. On page 51170, in the second column, in the authority citation for part 5, in the first line, insert "5" in front of "U.S.C. 504,".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 356 and 369

[Docket No. 81N-0033]

RIN 090-AA06

Oral Health Care Drug Products for Over-the-Counter Human Use; Amendments to Tentative Final Monograph to Include OTC Relief of Oral Discomfort Drug Products

Correction

In proposed rule document 91-22749 beginning on page 48302 in the issue of Tuesday, September 24, 1991, make the following corrections:

1. On page 48302, in the second column, in the **SUPPLEMENTARY INFORMATION**, in the first paragraph, in the sixth line from the bottom, "the" should read "this".

2. On page 48305, in the third column, under *B. Comments* ***, in the second full paragraph, in the seventh line, "phenolic" was misspelled.

3. On page 48308, in the second column, in the second full paragraph, in the eighth line, "options" should read "opinions".

4. On page 48314, in the third column, in the paragraph numbered 15, in the tenth line from the bottom, "and" should read "at".

5. On page 48317, in the second column, in the first full paragraph, in the fifth line from the bottom, "even" should read "event".

6. On page 48318, in the first column, in the second full paragraph, in the third line, "the" should read "for".

7. On page 48321, in the first column, in the first full paragraph, in the ninth line, "Panel" was misspelled.

8. On page 48323, in the 3rd column, in the 17th and 18th lines from the top, remove the phrase "that package size limitations supports the comment's contention".

9. On page 48337, in the third column, in the paragraph numbered 33, in the second line from the bottom, "256.62(a)" should read "356.62(a)".

§ 356.56 [Corrected]

10. On page 48345, in the second column, in § 356.56(b)(4)(i), in the second line, insert "oral" after "minor".

11. On page 48346, in § 356.58(c)(1), the heading should read "*For all products containing any ingredient identified in § 356.18.*".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0291]

Order for Transitional Class III Devices; Submission of Safety and Effectiveness Information Under Section 520(l)(5)(A) of the Federal Food, Drug, and Cosmetic Act

Correction

In notice document 91-27426 beginning on page 57960 in the issue of Thursday, November 14, 1991, make the following corrections:

1."Section 520(1)" should read "section 520(l)" in the following places:

A. On page 57960, in the first column, in the subject heading in the fourth line.

B. On the same page, in the third column, in the third line from the bottom.

C. On page 57962, in the first column, in the last paragraph, in the first line.

2.. On the same page, in the third column, in the paragraph numbered 3, in the second line, "3601" should read "360(l)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91M-0368]

Richard Wolf Medical Instruments Corp.; Premarket Approval of Richard Wolf Piezolith E.P.L. Lithotripter, Model 2300

Correction

In notice document 91-24462 beginning on page 51226 in the issue of Thursday, October 10, 1991, make the following corrections:

On page 51226:

1. In the second column, in the **SUMMARY**, in the eighth line, "Piezolith" was misspelled.

2. In the th ' column, under **Opportunity for *****, in the first line, "(231 U.S.C." should read "(21 U.S.C.".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-343-7122-10-D063; CACA 28709]

Proposed Withdrawal and Opportunity for Public Meeting; California

Correction

In notice document 91-23184, beginning on page 49792, in the issue of Tuesday, October 1, 1991, make the following corrections:

On page 49792, in the second column, in the land description for **Mount Diablo Meridian** T. 31 S., R. 46 E., Sec. 3 should read as follows:

Sec. 3, W½ lot 1 of NW¼ and W½ lot 2 of NW¼;.

And on page 49793, in the first column, in the land description for **San Bernardino Meridian** T.11 N., R. 5 E., Sec. 2 should read as follows:

Sec. 2, lot 2 of NW¼ and W½ lot 1 of NW¼;.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-010-4212-13; CACA 28551]

Realty Action: Exchange of Public Land, El Dorado County, CA

Correction

In notice document 91-19454, appearing on page 40621, in the issue of Thursday, August 15, 1991, make the following correction:

In the third column, under **ADDRESSES:**, in the first line, "45 years" should read "45 days".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Certification Relating to Reduced Credits Under the Federal Unemployment Tax Act for 1991

Correction

In notice document 91-28922, beginning on page 63982, in the issue of Friday, December 6, 1991, make the following correction:

On page 63982, in the third column, in the first line under the heading set forth above, "3302(c)92)" should read "3302(c)(2)".

BILLING CODE 1505-01-D

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federal register

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Part II

Environmental Protection Agency

40 CFR Part 61
National Emissions Standards for Hazardous Air Pollutants; Polonium-210 Emissions From Elemental Phosphorus Plants; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL 4034-1]

National Emission Standards for Hazardous Air Pollutants; Polonium-210 Emissions From Elemental Phosphorus Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule announces the Administrator's decision modifying 40 CFR part 61, subpart K, the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for Radionuclide Emissions from Elemental Phosphorus Plants (54 FR 51699 December 15, 1989. In this final rule, subpart K is amended to permit elemental phosphorus plants an alternative means of demonstrating compliance with the standard. Under the previous standard, an elemental phosphorus plant has to ensure that total emissions of polonium-210 from that facility did not exceed 2 curies per year. Under this amendment, an elemental phosphorus plant will be in compliance if it limits polonium-210 emissions to 2 curies per year. However, in the alternative, the plant may demonstrate compliance by: (1) Installing a Hydro-Sonic® Tandem Nozzle Fixed Throat Free-Jet Scrubber System [1] including four scrubber units, (2) operating all four scrubber units continuously with a minimum average over any 6-hour period of 40 inches (water column) of pressure drop across each scrubber during calcining of phosphate shale, (3) scrubbing emissions from all calciners and/or nodulizing kilns at the plant, and (4) limiting total emissions of polonium-210 from the plant to no more than 4.5 curies per year. EPA proposed this modified standard for elemental phosphorus plants as a result of settlement discussions between EPA and the FMC Corporation ("FMC") in *FMC Corporation* v. *U.S. Environmental Protection Agency*, Docket No. 90-1057 in the D.C. Circuit Court of Appeals, a judicial action by FMC challenging subpart K as it was originally promulgated.

DATES: This rule is effective December 13, 1991. The provisions in this rule will be applied immediately to all affected facilities including existing sources. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this amended standard is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication of this rule. Under section 307(b)(2) of the CAA, the provisions which are the subject of today's notice will not be subject to judicial review in any civil or criminal proceedings brought by EPA to enforce these requirements.

FOR FURTHER INFORMATION CONTACT: Craig Conklin, Environmental Standards Branch, Criteria and Standards Division (ANR-460W), Office of Radiation Programs, Environmental Protection Agency, Washington DC 20406. (703) 308-8755.

SUPPLEMENTARY INFORMATION:

Petition for Reconsideration

No objection to this rule which was not raised with reasonable specificity during the public comment period may be raised as part of any judicial review of this rule. If a party contends that it was impracticable to raise an objection during the comment period and that such objection is of central relevance to the outcome of the rule, that party may submit a petition for reconsideration pursuant to Clean Air Act section 307(d)(7)(B).

Docket

The rulemaking record is contained in Docket No. A-91-51 and contains information on pilot scrubber test results, the settlement agreement between EPA and FMC, information considered in determining health effects, and other information used in revising the standard. It also contains all comments received from the public during the comment period. The docket is available for public inspection and copying between 8 a.m. and 3 p.m. on weekdays. A reasonable fee may be charged for copying.

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I. Definitions

A. Terms

Activity—The amount of a radioactive material. It is a measure of the transformation rate of radioactive nuclei at a given time. The customary unit of activity, the curie, is 3.7×10^{10} nuclear transformations per second.

Half-Life—The time in which half the atoms of a particular radioactive substance transform, or decay, to another nuclear form.

Incidence—This term denotes the predicated number of fatal cancers in a population from exposure to a pollutant. Other health effects (non-fatal cancers, genetic, and developmental) are noted separately.

Maximum Individual Risk—The maximum additional cancer risk of a person due to exposure to an emitted pollutant for a 70-year lifetime.

Pathway—A way that radionuclides might contaminate the environment or reach people, e.g. air, water, food.

Radionuclide—A type of atom which spontaneously undergoes radioactive decay.

Source Term—the amount of radioactive material emitted to the atmosphere from a source, either estimated, measured or reported, that is used in the risk assessment.

B. Acronyms

CAA—The Clean Air Act, 42 U.S.C. 7401 *et seq.*

CAAA—The Clean Air Act Amendments of 1990

CFR—Code of Federal Regulations

EDF—Environmental Defense Fund

EPA—United States Environmental Protection Agency

FR—Federal Register

ICRP—International Commission on Radiological Protection

NAAQS—National Ambient Air Quality Standards

NESHAP—National Emission Standard for Hazardous Air-Pollutants

NCRP—National Council on Radiation Protection and Measurements

NRDC—Natural Resources Defense Council, Inc.

OMB—Office of Management and Budget

RCRA—The Resource Conservation and Recovery Act

[1] The Hydro-Sonic® Tandem Nozzle Fixed Throat Free-Jet Scrubber System was developed and patented by Lone Star Steel Company. It is marketed by Lone Star Steel Company and other companies, such as John Zink Company, under non-exclusive licensing agreements with Lone Star Steel Company.

II. Background

A. Standard Setting Under Section 112

On October 31, 1989, EPA promulgated under section 112 of the Clean Air Act, 42 U.S.C. 7412, National Emission Standards for Hazardous Air Pollutants (NESHAPs) to control radionuclide emissions to the ambient air from a number of different source categories, 40 CFR part 61. This rule was published in the **Federal Register** on December 15, 1989 (54 FR 51654). The NESHAPs were promulgated pursuant to a voluntary remand granted by the U.S. Court of Appeals for the DC Circuit. The purpose of the remand was to enable EPA to implement the Court's earlier ruling in *NRDC, Inc.* v. *EPA*, 824 F.2d 1146 (DC Cir. 1987) ("the Vinyl Chloride decision"), which articulated specific legal requirements for promulgation of standards under section 112.

The Vinyl Chloride decision set forth a decision-making framework for promulgation of NESHAPs in which the Administrator makes a determination under section 112 in two steps: First, determine a "safe" or "acceptable" level of risk considering only health-related factors, and second, set a standard that provides an "ample margin of safety," in which costs, feasibility, and other relevant factors in addition to health may be considered.

After proposing and receiving comments on several options by which to define "safe", the Administrator selected an approach, first announced in the final NESHAPs for certain benzene source categories (54 FR 38044 September 14, 1989). Under this approach, the Administrator established a presumption of acceptability for a risk of approximately one in ten thousand to the maximally exposed individual, and a goal to protect the greatest number of persons possible to a lifetime risk level no higher than approximately one in one million. After evaluating existing emissions against this benchmark, other risk information is then considered and a final decision is made about what risk is acceptable. The Agency then considers other information, including economic costs and technical feasibility, along with all of the health-related factors previously used to determine the "safe" level, to set a standard which protects public health with an ample margin of safety.

B. The NESHAP for Elemental Phosphorus Plants

One of the source categories governed by 40 CFR part 61 is Elemental Phosphorus Plants. Subpart K of 40 CFR part 61 ("subpart K") established a 2 curies/year standard for emissions of polonium-210 from such facilities.

Polonium-210 and lead-210 are vaporous waste byproducts that result from the high temperature calcination of phosphate ore at elemental phosphorus plants. Because phosphate ore contains relatively high concentrations of uranium and radium, it also contains significant quantities of polonium-210 and lead-210. The high calcining temperature (1,300 °C volatilizes the lead-210 and polonium-210 from the phosphate rock, resulting in the release of much greater quantities of these radionuclides than of the uranium, thorium, and radium radionuclides. Analyses of doses and risks from these emissions show that polonium-210 and lead-210 are the major contributors, 94.7% and 4.3% respectively, to the risk from radionuclide emissions from elemental phosphorus plants

During the rulemaking that resulted in promulgation of the current subpart K EPA performed a plant-by-plant risk assessment of radionuclide emissions from all eight U.S. elemental phosphorus plants. In that analysis, EPA estimated that the lifetime fatal cancer risk to the maximally exposed individual was approximately 5.7×10^{-4}. Because a reduction in the polonium-210 emissions also results in an equivalent reduction in lead-210 emissions and because polonium-210 emissions account for approximately 95% of the risk from radionuclide emissions, EPA concluded that the total risk from radionuclide emissions could be reduced to the level required by the Agency's NESHAP policy without the need for establishing an emission limit for lead-210.

In applying the Vinyl Chloride decision methodology, EPA selected an acceptable level for emissions of polonium-210 of 2 curies/year, which corresponds to an estimating maximum lifetime risk for any individual of 1×10^{-4}. When it promulgated NESHAPs for radionuclide emissions from Department of Energy facilities, Nuclear Regulatory Commission licensees, underground uranium mines, and inactive uranium mill tailings piles, EPA noted the numerous uncertainties in establishing risk assessment parameters, modelling actual emissions, and estimating the numbers of people exposed and concluded that an estimated maximum risk as high as 3×10^{-4} could be regarded as essentially equivalent to an estimated maximum risk of 1×10^{-4} for purposes of selecting an "acceptable" emission level. In selecting an "acceptable" emission level for polonium-210 emissions from elemental phosphorus plants, EPA concluded that existing emissions were higher than the level which could be deemed acceptable, but EPA did not consider whether specific alternative emission levels between existing levels and 2 curies per year might be deemed acceptable. EPA did not consider the acceptability of emission levels higher than 2 curies/year because it appeared from the available information that a level of 2 curies/year or less could be readily achieved at all facilities by proper installation and operation of available control technology and there was no technology known to the Agency that could achieve some level between existing emissions and 2 curies/year. If the baseline levels were not acceptable, then EPA believed that the next logical choice for an option to be considered was one that was achievable with existing technology and which presented risks about a factor of three below the baseline. As EPA noted when it originally proposed subpart K, see 54 FR 9612, 9625, March 7, 1989, although risks associated with radionuclide emissions exist on a continuum, the Agency selects an acceptable level by considering specific discrete alternative emission levels. The fact that EPA must choose a specific emission level as acceptable does not necessarily mean that alternatives that were not specifically considered and that present risks slightly higher than the chosen level are inherently unacceptable

After selecting an acceptable level of 2 curies/year, EPA then determined that significantly reducing emissions of polonium-210 below 2 curies/year would be very costly and would result in very small incremental risk reductions. For these reasons, EPA concluded that a standard of 2 curies/year would also protect public health with an ample margin of safety

C. Objections to Subport K by FMC Corporation

FMC Corporation operates an elemental phosphorus plant in Pocatello, Idaho, which is the single largest source affected by subpart K. Following promulgation of subpart K, FMC Corporation petitioned for judicial review of the standard pursuant to Clean Air Act section 307(b), *FMC Corporation* v. *U.S. Environmental Protection Agency*, Docket No. 90-1057, United States Court of Appeals for the DC Circuit. The Circuit Court subsequently consolidated the FMC petition with ten other petitions for review of various radionuclide NESHAPs. These consolidated cases are presently being held in abeyance pending further actions by EPA.

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Following publication of the radionuclide NESHAPs on December 15, 1989, EPA received over 25 separate petitions requesting that EPA reconsider some or all of the individual standards incorporated in 40 CFR part 61 pursuant to Clean Air Act section 307(d)(7)(B). In one of these petitions, FMC requested that EPA reconsider the standard for Elemental Phosphorus Plants set forth in subpart K. In its petition, FMC argued that: (1) The Notice of Proposed Rulemaking did not provide adequate notice of the provisions in the final rule, or of the EPA methodology and its application; (2) EPA failed to properly consider intermediate emission levels and the associated acceptable risk levels; (3) EPA based the final rule upon material omitted from the administrative record; (4) new epidemiologic information calls into question EPA estimates of the health risk associated with radionuclide emissions from FMC's Pocatello, Idaho facility; and (5) the rule may not have been validly promulgated because Assistant Administrator William Rosenberg did not have the authority to sign the rule.

At the time FMC submitted its petition for reconsideration, EPA was not persuaded that any of the legal or substantive arguments advanced by FMC provided any basis for reconsideration of the rule. Although EPA acknowledged that it had not considered intermediate emission levels between the baseline emission levels and 2 curies/year in selecting an acceptable risk level, it was not clear why this alleged deficiency in the Agency's analytic process would have any effect on the final standard. EPA assumed at that time that all affected facilities, including the FMC plant in Pocatello, Idaho, could achieve compliance with the 2 curies/year standard by installation of a specific scrubber system manufactured by the John Zink Company, which had proven highly effective in reducing polonium-210 emissions at an elemental phosphorus plant operated by another company. Since EPA knew of no other technology that would achieve a level of emissions in between the baseline and 2 curies/year, EPA did not believe it was reasonable to consider an intermediate emission level as an option for the acceptable risk decision. Subsequently, on April 23, 1990, FMC submitted the results of pilot testing it had performed with the Hydro-Sonic® scrubber system. Based on the results of this pilot testing and on the size and operational characteristics of its Pocatello, Idaho facility, FMC argued that installation of this system at the Pocatello plant might not be sufficient to enable FMC to meet the 2 curies/year standard established by subpart K. These concerns regarding the capabilities of the available scrubber technology made FMC's prior argument that EPA should have considered intermediate emission levels in selecting an acceptable level seem more consequential.

After evaluating the results of the pilot testing of the Hydro-Sonic® scrubber system by FMC, EPA concluded that the pilot test results were equivocal. While it is quite probable that the 2 curies/year standard can be achieved by FMC at its Pocatello, Idaho facility following installation of the scrubber system, it is possible that the resultant reductions in emissions might not be sufficient to achieve this result. Given this uncertainty, the reluctance of FMC to make the large capital investments necessary to install and operate the scrubber system was understandable. After it became apparent to EPA that FMC would be willing to install the Hydro-Sonic® scrubber system at its Pocatello, Idaho facility if it could have reasonable assurance that it could thereby achieve compliance with subpart K, EPA decided to enter into settlement discussions with FMC.

D. Settlement Discussions Between EPA and FMC Corporation

Throughout the settlement discussions between FMC and EPA, the Agency had two principal policy objectives: (1) To have FMC install the Hydro-Sonic® scrubber system, and to achieve the resulting reductions in the risks to human health associated with exposure to polonium-210, as rapidly as possible; and (2) to resolve in a definitive manner all pending disputes between FMC and EPA concerning subpart K. It quickly became apparent that FMC would be willing to forego further litigation concerning subpart K if FMC could be assured that installation and operation of such a scrubber system would result in compliance with subpart K. At that point, the principal task for the negotiators was to establish a set of specifications for installation and operation of the scrubber system which would assure EPA that polonium-210 emissions were being reduced to a level sufficient to provide an ample margin of safety, while still affording FMC engineers an adequate range of operational flexibility.

EPA and FMC ultimately reached agreement on the detailed specifications for the scrubber system which were set forth in the Agency's proposed amendment of subpart K. If an elemental phosphorus plant installs and operates a Hydro-Sonic® scrubber system conforming to those criteria, it will be deemed to be in compliance with subpart K, even if it does not thereby achieve compliance with the underlying standard of 2 curies/year. The standard provides for some operational flexibility, but a plant must strictly adhere to the operating conditions unless it can otherwise reduce emissions to less than 2 curies/year. To ensure that the standard does not unnecessarily constrain affected facilities, alternative operating conditions which can be shown to achieve an overall removal efficiency for polonium-210 equal to or greater than the operating conditions specified by the standard can be used with the prior approval of the EPA Administrator.

Once a tentative settlement agreement was reached between EPA and FMC, EPA published a notice of settlement as required by the Section 113(g) of the 1990 Clean Air Act Amendments. (56 FR 32572, July 17, 1991). A status report and notice of the proposed settlement agreement was also filed and served on all parties in the pending Court of Appeals case, *FMC Corporation* v. *EPA*, Docket No. 90–1057 (DC Cir.), on July 19, 1991. The settlement agreement between EPA and FMC was approved by EPA on August 21, 1991.

Under the settlement agreement between FMC and EPA, and EPA granted FMC's pending petition for reconsideration for the purpose of proposing revisions to modify subpart K. Pursuant to the provisions of the settlement agreement, FMC and EPA filed a joint motion with the DC Circuit Court to sever FMC's petition for review from the remaining consolidated cases and to hold the FMC petition in abeyance pending conclusion of this rulemaking. The D.C. Circuit Court granted this joint motion on September 27, 1991.

If EPA adopts the proposed modification of subpart K set forth in the proposed rule as a final rule, or EPA adopts a final rule which contains provisions which are substantially similar to the proposed modifications, FMC has agreed that it will seek dismissal with prejudice of its pending petition for review of subpart K. In that event, FMC has further agreed that it will waive any right it would otherwise have to seek judicial review of the newly promulgated final rule.

III. Reconsideration of Standard

A. Analytic Methodology

In reconsidering the currently effective subpart K, EPA has utilized the analytic framework required by the Vinyl Chloride decision and has applied the policy concerning acceptable risk established by the Administrator's benzene decision. The Agency's decision to reconsider the emission standard in subpart K should not be construed as an indication that EPA is revisiting or reconsidering the benzene policy, the level of risk determined in that policy to be presumptively safe, or any of the health based regulations issued under that policy.

B. Decision on Acceptable Risk

As stated in the original rule promulgating subpart K, the maximum individual lifetime risk to any individual from baseline emissions is 5.8×10^{-4}. This is clearly higher than the presumptively safe level established by the Administrator's benzene decision. The estimated annual incidence from baseline emissions is 0.091 fatal cancers per year. There are an estimated 8100 people that are exposed to risk levels greater than 1×10^{-4}, and an estimated 424,000 people that are exposed to risk levels greater than 1×10^{-6}.

After examining these factors in the previous rulemaking, the Administrator determined that the risk level represented by the baseline was unacceptable. EPA then estimated that a reduction in polonium-210 emissions to 2 curies/year would reduce the incidence to 0.024, or 1 case every 40 years and expose no one to a risk level greater than 1×10^{-4}. EPA did not consider emission levels between the assumed baseline of 10 curies/year and 2 curies/year in selecting an acceptable or "safe" level. Upon reconsideration, the Agency has now performed risk estimates for five levels of emissions between 2 and 10 curies/years. These estimates are presented in Table 1, along with the risk estimates associated with a baseline emission of 10 curies/year and the current emission limit of 2 curies/year. Based upon these risk estimates a reduction in polonium-210 emissions to 4.5 curies per year would reduce the incidence to 0.048, or 1 case every 21 years and expose no one to a risk level greater than 2.6×10^{-4}. This approximately equals the level that is presumptively safe. Based upon these risk estimates and the uncertainties in establishing parameters for risk assessment and in modelling actual emissions and exposures referred to in the prior rulemaking, the Agency has concluded that the acceptable level of emissions of polonium-210 is a level that limits the maximum individual risk to any individual to 2.6×10^{-4}, represented by an emission level of 4.5 Ci/y $P_{-}210$.

TABLE 1.—ACCEPTABLE LEVEL OF RISK DECISION

	Emissions (Ci/y)						
	2	3	4	4.5	5	6	10
Maximum individual risk (individual)	1×10^{-4}	1.8×10^{-4}	2.3×10^{-4}	2.6×10^{-4}	2.9×10^{-4}	3.5×10^{-4}	5.8×10^{-4}
Incidence within 80 km (deaths/y)	0.024	0.037	0.044	0.048	0.052	0.06	0.091
Risk individual:							
E-2 to E-1	0	0	0	0	0	0	0
E-3 to E-2	0	0	0	0	0	0	0
E-4 to E-3	0	264	700	709	1,950	2,160	8,100
E-5 to E-4	27,000	39,000	54,000	55,000	75,000	76,000	122,000
E-6 to E-5	390,000	380,000	370,000	368,000	347,000	346,000	294,000
less E-6	1.5M	1.4M	1.4M	1.4M	1.4M	1.4M	1.4M

Other Health Impacts: Non-fatal cancers number no more than 5 percent of deaths.

C. Decision on Ample Margin of Safety

In addition to considering the health-related factors discussed above, EPA has also examined the cost and technological feasibility of the various types of emission control technology available to lower polonium-210 emissions from elemental phosphorus plants, as well as the degree of certainty that the available technology will succeed in reducing polonium-210 emissions to 2 curies/year at all affected facilities, in selecting an emission level which will provide an ample margin of safety to protect public health.

EPA accepts the engineering judgment by FMC that a scrubber system installed and operated as specified in the proposed rule presently represents the most practicable technology capable of reducing the polonium-210 emissions at FMC's Pocatello, Idaho elemental phosphorus plant. EPA has also concluded that proper installation and operation of one of the available emission control technologies will be sufficient to reduce emissions to below 2 curies/year at all affected facilities other than the FMC Pocatello, Idaho plant, and that it is quite probable that an emission level below 2 curies/year can be achieved at the FMC Pocatello facility as well. However, even if FMC is unable to reduce polonium-210 emissions to 2 curies/year by installing and operating the specified scrubber system in the specified manner, EPA has concluded that adherence to the specified conditions will reduce polonium-210 emissions sufficiently to provide an ample margin of safety to protect public health, as required by section 112 of the Clean Air Act.

Based on this determination concerning ample margin of safety, EPA is amending the emission standard in subpart K to permit each affected facility to demonstrate compliance either by limiting total polonium-210 emissions to no more than 2 curies per year, or by: (1) Installing a Hydro-Sonic® Tandem Nozzle Fixed Throat Free-Jet Scrubber System including four scrubber units, (2) operating all four scrubber units continuously with a minimum average over any 6-hour period of 40 inches (water column) of pressure drop across each scrubber during calcining of phosphate shale, (3) scrubbing emissions from all calciners and/or nodulizing kilns at the plant, and (4) limiting total emissions of polonium-210 from the plant to no more than 4.5 curies per year. This choice of compliance mechanisms will be available to all affected facilities. However, EPA anticipates that facilities other than the FMC Pocatello, Idaho plant will likely enjoy greater operational flexibility simply by meeting the 2 curies/year limitation.

IV. Responses to Comments

On September 11, 1991, the EPA published in the **Federal Register** proposed revisions to the National Emission Standard for Hazardous Air Pollutants (NESHAP) for polonium-210

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emissions from elemental phosphorus plants. The **Federal Register** notice requested public comments on the revised NESHAP, the risk management approach used to develop the standard and the technological parameters specified in the standard. A public hearing was held in Pocatello, Idaho on September 17, 1991, to give interested parties an opportunity to present their views, and written comments were solicited. Comments were received from 20 private citizens, 3 government agencies, and one affected company. Nineteen of the private citizens stated that the standard should not be relaxed. The government agencies were concerned that FMC adequately demonstrate its arguments, that sufficient information is available to evaluate the proposed rule, and that the proposed rule is reasonable and environmentally sound. FMC was the only affected company to provide comments.

This section of the preamble discusses the legal, policy-related, and technical comments received during the comment period. Many of the commenters provided similar comments and, when possible, these comments have been combined. The following sections are split into discussions of legal/policy-related comments and technical comments. The main position and concerns presented by the commenters are followed by an EPA response to the comments in the context of the final rule.

A. Legal and Policy-Related Comments

Comment: One commenter stated that this special rulemaking was not conducted as a formal negotiated rulemaking because only EPA and FMC were involved.

Response: This rulemaking was never intended to be a formal negotiated rulemaking as defined by the Negotiated Rulemaking Act of 1990. Throughout the discussions between FMC and EPA, the Agency had two principal policy objectives: (1) To reduce the risks to human health associated with polonium–210 emissions; and (2) to resolve all pending disputes between FMC and EPA concerning subpart K. The Agency believed that installation of a Hydro-Sonic® Tandem Nozzle Fixed Throat Free-Jet Scrubber System, as pilot tested by FMC, would achieve the greatest reduction in public health risk. To settle the pending disputes, the Agency believed that a settlement agreement would provide the best assurance of resolving all issues in a timely and environmentally responsible manner. It was always the Agency's intention to conduct the actual rulemaking in accordance with standard public notice and comment procedures.

Comment: A few commenters stated that the publication of the proposed rule one week prior to the public hearing did not provide them enough time to become familiar with the recommended revisions. They felt that simply meeting the legal requirements for providing public notice is not sufficient for obtaining thoughtful public input because most ordinary citizens do not read the **Federal Register**. These commenters believe that advance notification in the local newspapers would have generated more public interest in the hearing and the proposed revisions to the rule.

Response: The complete proposed rule was published in the **Federal Register** on September 11, 1991 (56 FR 46252 September 11, 1991), six days before the September 17, 1991 public hearing in Pocatello, Idaho. However, the proposed substantive changes were also published previously on August 23, 1991 (56 FR 41811 August 23, 1991) in a separate notice of public hearing. Because a public hearing was held, the period for submission of written comments continued until October 17, 1991. EPA believes that all interested parties had sufficient time in which to review the proposed revisions to the rule and provide thoughtful input into this rulemaking.

Comment: One commenter stated that EPA did not coordinate this effort with State, Tribal, or EPA Idaho Operations personnel. This commenter also indicated that EPA's Indian Policy had been violated because the Agency did not take active steps to allow input from the Shoshone-Bannock Tribes of the Fort Hall Reservation.

Response: This comment is not accurate. Personnel from EPA Region 10 were included in the Agency's deliberations concerning settlement discussions and rulemaking activities. The Region 10 Radiation Program Manager provided the Air Quality Planning Section of the Shoshone-Bannock Tribes of the Fort Hall Reservation, on which the FMC facility is located, with a copy of the proposed settlement agreement and an advance copy of the proposed rule, thereby affording the Shoshone-Bannock additional time to review and comment on the document. In fact, a representative of the Air Quality Planning Section provided comments during the public hearing and written comments during the comment period that followed the public hearing.

EPA also notified environmental groups such as the Environmental Defense Fund (EDF) and Natural Resources Defense Council (NRDC) of the proposed rule. Neither the NRDC or EDF expressed any interest in this rulemaking and did not provide any comments. FMC's largest competitor in the elemental phosphorus industry, Monsanto Corporation, was also contacted but did not provide any comments. It is clear that the Agency expended considerable effort to encourage public participation in this rulemaking.

Comment: One commenter expressed concern because the NESHAP for radionuclide emissions from elemental phosphorus plants was exempted from the 1990 Clean Air Act Amendments. Unlike the standards to be promulgated to control other hazardous air pollutants, this standard will not be automatically reviewed and revised as necessary every 8 years. Therefore, the commenter felt that the population surrounding the Pocatello, Idaho, facility will not benefit from new emission control technology developments in the future when better control technology may be reasonably available.

Response: Section 112(q)(2) of the 1990 Clean Air Act Amendments (CAAA) states that no standard shall be established under section 112, as amended by the CAAA of 1990, for radionuclide emissions from elemental phosphorus plants, grate calcination elemental phosphorus plants, phosphogypsum stacks, or any subcategory of the foregoing. Accordingly, those provisions of the new Clean Air Act under which sources emitting hazardous air pollutants will be required to install the Maximum Available Control Technology, and EPA must review such requirements in light of changes in practices, processes, and control technologies every eight years, will not apply with respect to radionuclide emissions from elemental phosphorus plants. However, this does not mean that the pollution control technology at such plants will not be subject to periodic review.

Even though subpart K is not governed by the provision of the CAAA requiring periodic reassessment of NESHAPs, the standard remains subject to review under section 112 as it was in effect prior to the 1990 Clean Air Act Amendments. The costs and capabilities of available control technology may be considered in the second step of the Vinyl Chloride methodology, and are an element in implementation of the policy which the Administrator established in the benzene decision. Thus, the present standard could be revisited in the future if necessary to protect public health with an ample margin of safety. Moreover, to the extent that the work practice and operational provisions of this rule are construed as promulgated under section 112(e)(1) of the previous Clean Air Act, section 112(e)(4) would require EPA to repromulgate such provisions as a quantitative emission standard whenever it becomes feasible to do so.

EPA presently intends to reevaluate subpart K within approximately 2–3 years, after FMC has obtained sufficient operating history with the new scrubbers. This review will involve, at a minimum, a re-assessment of the risks associated with actual polonium–210 emissions, scrubber removal efficiency, and scrubber availability during calciner operations.

In evaluating the effect of the 1990 Clean Air Act on elemental phosphorus plants emissions, it is also helpful to remember that this source category will likely be subject to regulation under the new section 112 to control the emissions of other hazardous air pollutants. If there are substantial improvements in the future in the technology which is available to control such other air pollutants, installation of this technology on elemental phosphorus plants may also yield further reductions in radionuclide emissions.

Comment: One commenter stated that the Agency's analysis of the risks associated with radionuclide emissions from elemental phosphorous plants does not address the cumulative health effects associated with exposure to more than one source of radiation. In particular, the commenter was concerned with the additional risk associated with exposure to phosphogypsum stacks and elemental phosphorus slag.

Response: The Agency agrees that this is a legitimate concern. However, explicitly accounting for overlapping and multiple sources of exposure greatly complicates the calculation of exposures and risks. Since concentrations of radionuclides decline rapidly with distance from the source, it is highly unlikely that any individual could be the most exposed individual for more than one source. In most cases, members of the public who receive the highest dose from one source will receive an increase in risk of less than 1×10^{-6} from other sources.

B. Technical Comments

Comment: Several commenters stated that there is no justification for raising the emission limit for elemental phosphorous plants from 2 curies/year to 4.5 curies/year.

Response: Comments that EPA is raising the emission limit to 4.5 curies/year do not accurately characterize the Agency's action. An elemental phosphorus plant that is emitting more than 2 curies/year but less than 4.5 curies/year will not be in compliance with the new standard unless the facility has installed the specified scrubber technology and is consistently operating the scrubber in conformity with a set of very specific criteria. At most affected facilities, this alternative standard would actually result in emissions lower than 2 curies/year. Even at the FMC facility, EPA expects that the required technology will likely be sufficient to approach if not meet the 2 curies/year standard. The alternative standard reflects the Agency's conclusion that 4.5 curies/year is acceptable, but that sources must do very specific things to reduce exposures further in order to provide an ample margin of safety.

Comment: Several commenters expressed concern that while FMC is a large corporation with several billion dollars in annual income, it will not have to spend any money on pollution control equipment as a result of revised polonium-210 emission limit. This would provide FMC an economic advantage over its competitors that have already installed pollution control equipment and meet the existing standard.

Response: The Agency agrees that, if modification of this standard allowed FMC to forego installation of emissions control technology, FMC would have received an unfair economic advantage over its competitors who have already installed the control technology and met the standard. However, this is not the case. Installation of the Hydro-Sonic® Tandem Nozzle Fixed Throat Free-Jet Scrubber System is explicitly required by the alternative standard. Moreover, FMC is required by its existing compliance agreement with Region 10 to complete installation of the required technology by December 15, 1991. Expenditures by FMC on installation of the scrubber are expected to exceed $16,000,000.

EPA does not believe that modification of the standard provides FMC with any economic advantage over its competitors. If revision of the NESHAP for elemental phosphorus plants conferred an unfair advantage on FMC, EPA would expect that other companies who operate such plants would have objected. However, none of FMC's competitors objected to modification of the standard. Indeed, EPA expects facilities other than the FMC plant in Pocatello, Idaho will enjoy greater operational flexibility because they will be able to comply with the standard without demonstrating they are meeting the stringent operating conditions required by the alternative standard.

Comment: Several commenters discussed the fact that Pocatello is a non-attainment area for PM–10 (fine particulate) emissions and that a doubling of the polonium-210 emission limit would also result in a doubling of the visible emissions from the facility. The commenters stated that the visibility of the mountains in the distance is already obscured by dark gray or brown clouds that are caused by emissions from FMC's facility.

Response: As explained above, EPA is not doubling the limit for polonium-210 emissions. EPA expects that when FMC operates the Hydro-Sonic® scrubber system in accordance with the requirements specified in the rule, the resultant emissions will approach or meet the original limit of 2 Ci/y. EPA also expects that installation and operation of the required scrubber technology will yield substantial new reductions in particulate emissions. Moreover, this rule does not provide FMC any relief from its legal obligation to meet all other applicable standards for airborne emissions.

Comment: One commenter suggested that EPA approve the proposed revisions to the rule. This commenter stated that EPA's enforcement dollars would be better spent on other environmental issues associated with FMC's operations in Pocatello.

Response: The Science Advisory Board (SAB), in its report "Reducing Risk: Setting Priorities and Strategies For Environmental Protection" made several recommendations to the Administrator of the EPA on ways to improve the Agency's ability to address environmental protection issues. Among these was the recommendation that the EPA target its environmental protection efforts on the basis of opportunities for greatest risk reduction. This recommendation is being is aggressively instituted throughout the Agency. EPA believes that all the environmental issues associated with the FMC facility in Pocatello, Idaho, deserve Agency attention regardless of whether it is the use of elemental phosphorus slag in construction, the contamination of water, or the release of hazardous air pollutants into the atmosphere. However, the EPA also believes that, if necessary, priorities should be set in a manner consistent with the SAB's recommendation.

Comment: Many commenters addressed the fact that Monsanto

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Corporation, which is FMC's largest competitor in the elemental phosphorus industry, has already installed similar pollution control equipment at one of its facilities and is meeting the existing standard. They believe that this provides adequate proof that the system can be operated in a manner which meets the existing standard.

Response: The Agency's knowledge of the successful operation of the Hydro-Sonic® scrubber system at the Monsanto facility helped it formulate the scrubber system requirements and operating parameters specified in the rule. However, it is important to remember that the total quantity of polonium-210 emitted is a function not only of the efficiency of emission reduction technology, but also of the total volume of phosphate shale which is calcined. The FMC facility is the largest elemental phosphorus plant presently operating in the U.S. Moreover, the removal efficiency of a scrubber system may vary depending on factors such as particle size, particle velocity, total surface area of the water droplets, etc. Because the particulate emissions from FMC's calciners have a smaller size distribution than those at Monsanto and the polonium-210 tends to be attached to the smaller particles, the scrubber system many not be as efficient in reducing polonium-210 emissions. EPA's analysis of the FMC pilot test results indicates uncertainty regarding whether the system will be as effective as it is at the Monsanto plant.

Comment: One commenter stated that they were not prejudiced against or for the proposed revisions. Their main concerns were: (1) That FMC adequately demonstrate their arguments, (2) that sufficient information is available to evaluate the proposal, and (3) that the proposal is reasonable and environmentally sound.

Response: The Agency believes that it has responded in a careful and responsible manner to FMC's concerns regarding its technical capability to meet the original standard. The information provided by FMC and the EPA Region 10 offices, the analysis of pilot test results analysis performed by the Industrial Studies Branch of the Office of Air Quality Planning and Standards, and the risk assessments performed by the Office of Radiation Programs provide a sound technical basis for a revised standard. If EPA had not been responsive to FMC's concerns regarding its ability to meet the standard, installation of the Hydro-Sonic® system at the FMC facility and the resultant reduction in polonium-210 emissions might have been delayed during the pendency of litigation, perhaps for years.

Comment: Many commenters expressed concern about FMC's intent and ability to operate the scrubbers as contemplated by the revised standard. Several individuals stated their belief that FMC does not operate the existing scrubbers at night. One commenter stated his belief that emissions during breakdown of the scrubber system are not included in the rule, and that uncontrolled emissions during such malfunctions would result in actual emissions greater than 4.5 curies/year. Another commenter expressed concerns about FMC's interruptable power supply and the availability of power for the emission control system during such interruptions.

Response: The Agency is also concerned about how FMC operates the scrubber system once it has been installed. To address these concerns, EPA explicitly included language in the rule that requires: (1) All four scrubber units be operated continuously during the calcining of phosphate shale; (2) the scrubber pressure drop over any 6-hour period must average at least 40 inches (water column); and (3) that emissions from all calciners and/or nodulizing kilns at the plant be scrubbed. This language prohibits FMC from either operating the calciners when the scrubbers are not operational for whatever reason or bypassing the scrubbers. Further, it means that any malfunction of the scrubber system which results in reduced pressure drop must be included in the 6-hour average. In order to meet the standard, EPA expects that FMC will normally operate the scrubbers at a pressure drop significantly exceeding 40 inches, in order to accommodate brief periods when the pressure drop falls below 40 inches, and will shut down the calciners if adequate pressure drop cannot be promptly restored. In addition, FMC has advised EPA that operation of the calciners when the scrubbers are shut down would damage the scrubbers and is therefore not feasible in any case.

Comment: Several commenters questioned the choice of 40 inches as the required average pressure drop for the system. One commenter stated he could not determine whether an average pressure drop of 40 inches represents the best available technology or is merely a negotiated specification. One commenter asserted that the Hydro-Sonic® scrubber system can handle a pressure drop of "close to 58 inches." Another suggested that EPA require an average pressure drop of 60 inches.

Response: As noted above, in order to consistently meet the required 40 inches average pressure drop, FMC will have to operate the system regularly at a pressure drop significantly exceeding 40 inches. The standard does not permit exclusion from the calculation of average pressure drop of periods when the calciners are operating but the scrubbers are malfunctioning or operating at lower efficiency. EPA considers this approach superior to a system which would allow affected facilities to exclude periods of breakdown or malfunction from the calculation, because it avoids disagreements concerning the legitimacy or frequency of reported breakdowns. If EPA were to retain the present approach to calculation of the average and also specify a higher average pressure drop, it would be necessary to verify that the system could be practically operated on a regular basis at pressure drops significantly exceeding that average. Based on the information provided by FMC, EPA has concluded that continuous maintenance of a pressure drop sufficient to achieve an average substantially greater than 40 inches would adversely affect the reliability of the system, as well as greatly increasing energy costs associated with its operation.

Comment: A few commenters expressed concern about the frequency of stack testing, the nature of the records that must be maintained by the plant, the distribution of the annual report, the persons responsible for monitoring facility compliance, and whether or not the public will have access to the annual reports.

Response: Elemental phosphorus plants are required to conduct emissions tests on an annual basis and report the results within 60 days of conducting the test. An emission test shall be performed on each calciner and/or nodulizing kiln and if the emissions are discharged through more than one stack, then each stack must be tested. Each test consists of three runs and the average of the runs is used to calculate the emissions. The phosphate rock processing rate is also determined for each run and averaged. The written test report must include the name and location of the facility; the name of the person responsible for operation of the facility and the name of the person responsible for the report (if different); a description of the effluent control system on each release point and an estimate of its efficiency; the results of the testing, including the results of each sampling run completed; the values used in calculating the emissions and the source of these data; and a certification by a corporate officer of the accuracy and completeness of the test report. FMC will submit its annual test report to EPA's regional office in Seattle, Washington. A copy of this report is also sent to EPA Headquarters in Washington, DC. The regional offices are responsible for inspecting these facilities to determine compliance with the regulations. All annual reports and the results of all compliance monitoring activities are available for public inspection.

Comment: Several commenters recommended that the standard specify the scrubber fluid flow rate because of its importance in determining scrubber removal efficiency. They also recommended that this parameter be continuously monitored and recorded so that system performance could be better evaluated.

Response: The Agency agrees that an adequate flow rate of water into the nozzles is important in maintaining the particulate removal efficiency of the scrubber system. The Agency does not believe that is necessary at this time to specify a particular flow rate or range of flow rates. However, EPA does believe that the performance of the scrubber system can be monitored and evaluated better by FMC and EPA if the flow rate is continuously monitored and recorded by system instrumentation. Accordingly, EPA has decided to incorporate this additional monitoring requirement in the final rule. When compliance monitoring activities are conducted at the FMC facility in Pocatello, Idaho, fluid flow rates will be considered as part of the inspection process. If such inspections suggest that the effectiveness of the scrubbers has been compromised by failure to maintain an adequate flow rate, EPA will direct FMC to correct the problem.

Comment: A few commenters questioned how the radioactivity in the scrubber fluid will be removed and how the sediment in the scrubber fluid pond will be disposed of. They believe that the radionuclide content of the scrubber fluid should be limited in order to maintain a high level of removal efficiency and that disposal of the sediment should be regulated under the NESHAP since the Resource and Conservation Recovery Act (RCRA) does not address radioactivity.

Responses: The Agency agrees that the total dissolved and suspended solids, including radioactive material, in the scrubber fluid must be minimized in order to maintain a high level of efficiency. Because the level of dissolved and suspended solids in the fluid in approximately 2% of the scrubber fluid, the level of radioactive material in the scrubber fluid will also be kept at low enough levels so that the scrubber removal efficiency will not be impacted. The disposal of scrubber fluid pond sediment is of special interest to the Agency because of the naturally occurring radioactive material, polonium-210 and lead-210, which may settle in the pond sediment. Until it can be determined what level of radioactivity can be expected to be found in the pond sediment, the Agency will be closely monitoring this situation.

Comment: One commenter was concerned that the revised standard would allow the Monsanto facility to increase its emissions from less than 2 Ci/y to 4.5 Ci/y. The commenter questioned whether EPA would take action against the Monsanto facility in such circumstances.

Response: Operating experience at the Monsanto facility indicates that operation of the scrubber system at that facility in the manner required by the alternative standard would result in emissions below 2 Ci/y. Moreover, Monsanto originally installed the scrubber system at its facility in order to meet National Ambient Air Quality Standards governing the release of fine particulate material (PM–10 emissions). If Monsanto were to operate its scrubber system in a manner which neither achieved the 2 Ci/y standard nor conformed to the operating criteria specified in the alternative standard, EPA would respond to such a violation in the same manner as a comparable violation at any other facility.

V. Final Rule to Amend Subpart K

A. Description of Final Rule

In accordance with the above discussion, EPA is amending § 61.122 of 40 CFR part 61, subpart K, to permit elemental phosphorus plants an alternative means of demonstrating compliance. As under the present standard, compliance may be demonstrated by limiting total polonium-210 emissions to no more than 2 curies/year. In the alternative, compliance may be conclusively shown by: (1) Installing a Hydro-Sonic® Tandem Nozzle Fixed Throat Free-Jet Scrubber System including four scrubber units, (2) operating all four scrubber units continuously with a minimum average over any 6-hour period of 40 inches (water column) of pressure drop across each scrubber during calcining of phosphate shale, (3) scrubbing emission from all calciners and/or nodulizing kilns at the plant, and (4) ensuring total emissions of polonium-210 from the plant do not exceed 4.5 curies per year. Alternative operating conditions, which can be shown to achieve an overall removal efficiency for emissions of polonium-210 which is equal to or greater than the efficiency which would be achieved under the operating conditions described in (1), (2), and (3) above (and that ensure that total emissions of polonium-210 from the plant do not exceed 4.5 curies per year), may be used with prior approval of the Administrator. Facilities wishing to utilize alternative operating conditions will have to apply for such approval in writing, and the Administrator will act upon such requests within 30 days after receipt of a complete and technically sufficient application. To ensure that the operating conditions specified by the revised standard can be enforced and verified and to enhance the enforceability of the numerical limits in the standard, EPA is also amending § 61.126 to require the continuous measurement of system pressure drop and fluid flow rate when scrubbers are used, and primary and secondary current and voltage in each electric field when an electrostatic precipitator is used.

Although the alternative mechanism for demonstrating compliance with the standard which is incorporated in the final rule is legally available to all elemental phosphorus plants, EPA has concluded that all of the affected facilities except for the FMC plant in Pocatello, Idaho will achieve greater operational flexibility by electing to meet the underlying 2 curies/year limitation. Since the only practical effect of this proposal will be on FMC's Pocatello facility and FMC is already installing the Hydro-Sonic® system at that facility, EPA does not believe that the final rule will provide an inappropriate competitive advantage to the Hydro-Sonic® system. If a large new elemental phosphorus plant were to be constructed in the future or an existing plant were to be modified or expanded so as to raise this issue, EPA would then be prepared to consider any alternative emission control technology that could be shown to offer equivalent or improved performance.

B. Legal Authority

At the outset, it should be noted that section 112(q)(2) of the 1990 Clean Air Act Amendments provides that section 112, as in effect prior to the 1990 Amendments, continues to govern the promulgation of any NESHAP for elemental phosphorus plants. The procedures to be utilized to modify or revise a NESHAP under the old section 112 are the same as the procedures used

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to promulgate the NESHAP in the first place. (Clean Air Act Sections cited in the balance of this discussion are the sections in effect prior to enactment of the 1990 Amendments.)

The revised standard set forth in the final rule affords facilities governed by the standard a choice between: (1) A simple quantitative emission limitation of 2 curies/year of polonium-210, and (2) an alternative quantitative emission limitation of 4.5 curies/year of polonium-210 which is supplemented by detailed and mandatory operation and maintenance requirements intended to provide additional emission reductions. On its face, section 112 appears to establish a dichotomy between "emission standards" promulgated under section 112(b) and "design, equipment, work practice, and operational standards" promulgated under section 112(e). Since any standard promulgated under section 112(e) is "treated as an emission standard" under section 112(e)(5), it appears that this dichotomy may have little ultimate practical significance. Nonetheless, the Agency believes it is necessary to consider which section(s) provide the legal authority to promulgate the final standard.

In those instances where a standard consists exclusively of a quantitative emission limitation, the authority to promulgate the standard is clearly provided by section 112(b). Conversely, when a standard consists exclusively of design, equipment, work practice, and/or operational requirements, such a standard must be promulgated under the authority provided by section 112(e). In the case where a standard is partially quantitative, but is supplemented by operational or work practice requirements, as in this instance, EPA believes that the better interpretation of section 112 is to construe such a "hybrid" standard as an emission standard governed by section 112(b). Nothing in section 112 compels a different conclusion. Moreover, section 302(k) expressly defines an emission standard as "including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction." Finally, since the analytic framework established by the Vinyl Chloride decision authorizes EPA to determine what constitutes an "ample margin of safety" in part on the basis of technological feasibility, it would not be logical for EPA to be precluded from writing an emission standard which reflects the hybrid character of the standard setting process.

In the alternative, the final standard here can be viewed as an emission standard supplemented by a work practice standard promulgated under section 112(e). The Administrator may promulgate a work practice standard under section 112(e) to the extent he determines that "it is not feasible to prescribe or enforce an emission standard."

Section 112(e)(2) defines the phrase "not feasible to prescribe or enforce an emission standard" to include any situation where "the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations." EPA believes that this definition clearly encompasses the factual circumstances here. Of course, the measurement methodology is presently adequate to enable EPA to "enforce" a quantitative emission limit. However, given the uncertainties for the FMC facility regarding the quantitative emission reductions which can be achieved with the available technology, as described above, EPA has determined that it is not practicable to apply measurement methodology to "prescribe" a quantitative emission limit based on the available technology.

To the extent that the work practice and operational provisions of the final standard are construed as promulgated under the authority of section 112(e)(1), section 112(e)(4) requires EPA to repromulgate these provisions as an emission standard whenever it becomes feasible to do so. After FMC has installed the scrubber technology specified by the final rule, and has operated that technology in a variety of circumstances over a period of a few (1–3) years, EPA expects that it will be practicable to prescribe a quantitative emission limit based on the capabilities of the technology.

C. Effective Date

The revisions to the NESHAP for radionuclide emissions from elemental phosphorus plants adopted by this rule are effective immediately upon promulgation. Under section 112(c)(1)(B)(i) of the Clean Air Act, emissions from existing sources which would violate a newly promulgated or revised NESHAP are not prohibited until 90 days after the effective date of the standard. However, in this instance, EPA has decided that it will apply the provisions of the new standard immediately to all facilities including existing sources.

EPA believes that the evident purpose of the 90 day delay for compliance by existing sources embodied in section 112(c)(1)(B)(i) is to afford such sources time to prepare for the imposition of new requirements. Indeed, section 112(c)(1)(B)(i) is phrased as an exception to a general prohibition on emissions violative of a NESHAP. Therefore, EPA doubts that it was intended to apply to those revisions of a standard which relax existing requirements rather than creating new requirements. Although the Administrative Procedure Act (APA) does not formally apply in this instance, an analogous provision in the APA provides support for this interpretation. The general requirement that a substantive rule must be published or served 30 days before its effective date, which is also intended to afford affected parties time to prepare for imposition of the rule, does not apply to "a substantive rule which grants or recognizes an exception or relieves a restriction." 5 U.S.C. 553(d)(1).

In this case, any facility which would be in compliance with the prior standard for radionuclide emissions from elemental phosphorous plants would also be in compliance with the revised standard. The revisions simply offer facilities who elect to rely on them an alternate means of demonstrating compliance. Since the revisions impose no new binding requirements and serve only to create additional flexibility, there is no reason to interpret section 112 as requiring a delay in their applicability. Therefore, EPA will apply the revisions of subpart K incorporated in this rule immediately to all facilities including existing sources.

VI. Miscellaneous

EPA has determined that this action does not constitute a major rule within the meaning of Executive Order 12291 since it is not likely to result in (1) a nationwide annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, a Regulatory Impact Analysis is not being prepared for this action.

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" in connection with any rulemaking for which there is a statutory requirement that a general notice of proposed rulemaking be published. The "initial regulatory flexibility analysis" describes the effect of the proposed rule on small business entities. However, section 604(b) of the Regulatory Flexibility Act provides that section 603 "shall not apply to any proposed * * * rule if the head of the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

EPA believes that the proposed changes, as promulgated, would tend to ease the regulatory burdens associated with provisions of the existing final rule. Therefore, this rule will have no adverse effect on small businesses. For the preceding reasons, I certify that this rule will not have significant economic impact on a substantial number of small entities. This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA written response to those comments are available for public inspection at Docket A–91–51.

List of Subjects for 40 CFR Part 61

Air pollution control, Radionuclides, Reporting and recordkeeping requirements.

Dated: December 13, 1991.

William K. Reilly,

Administrator.

PART 61—[AMENDED]

Part 61 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 61 continues to read as follows:

Authority: Secs. 101, 112, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

Subpart K—National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants

2. Subpart K is amended by revising § 61.122 to read as follows:

§ 61.122 Emission standard.

Emissions of polonium-210 to the ambient air from all calciners and nodulizing kilns at an elemental phosphorus plant shall not exceed a total of 2 curies a year; except that compliance with this standard may be conclusively shown if the elemental phosphorus plant:

(a) Installs a Hydro-Sonic® Tandem Nozzle Fixed Throat Free-Jet Scrubber System including four scrubber units,

(b) All four scrubber units are operated continuously with a minimum average over any 6-hour period of 40 inches (water column) of pressure drop across each scrubber during calcining of phosphate shale,

(c) The system is used to scrub emissions from all calciners and/or nodulizing kilns at the plant, and

(d) Total emissions of polonium-210 from the plant do not exceed 4.5 curies per year.

Alternative operating conditions, which can be shown to achieve an overall removal efficiency for emissions of polonium-210 which is equal to or greater than the efficiency which would be achieved under the operating conditions described in paragraphs (a), (b), and (c) of this section, may be used with prior approval of the Administrator. A facility shall apply for such approval in writing, and the Administrator shall act upon the request within 30 days after receipt of a complete and technically sufficient application.

3. Subpart K is amended by revising § 61.126 to read as follows:

§ 61.126 Monitoring of operations.

(a) The owner or operator of any source subject to this subpart using a wet-scrubbing emission control device shall install, calibrate, maintain, and operate a monitoring device for the continuous measurement and recording of the pressure drop of the gas stream across each scrubber. The monitoring device must be certified by the manufacturer to be accurate within ±250 pascal (±1 inch of water). The owner or operator of any source subject to this subpart using a wet-scrubbing emission control device shall also install, calibrate, maintain, and operate a monitoring device for the continuous measurement and recording of the scrubber fluid flow rate. These continuous measurement recordings shall be maintained at the source and made available for inspection by the Administrator, or his authorized representative, for a minimum of 5 years.

(b) The owner or operator of any source subject to this subpart using an electrostatic precipitator control device shall install, calibrate, maintain, and operate a monitoring device for the continuous measurement and recording of the primary and secondary current and the voltage in each electric field. These continuous measurement recordings shall be maintained at the source and made available for inspection by the Administrator, or his authorized representative, for a minimum of 5 years.

[FR Doc. 91–30307 Filed 12–16–91; 2:25 pm]
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Part III

Department of Education

Fund for Improvement and Reform of Schools and Teaching, The Family-School Partnership Program; Notice Inviting Applications for New Awards for Fiscal Year 1992

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DEPARTMENT OF EDUCATION

[CFDA No: 84.212A]

Fund for the Improvement and Reform of Schools and Teaching: The Family-School Partnership Program; Notice Inviting Applications for New Awards for Fiscal Year 1992

Purpose of Program: To increase the involvement of families in improving the educational achievement of their children.

Eligible Applicants: Local educational agencies eligible to receive a grant under chapter 1 of title I of the Elementary and Secondary Education Act of 1965, as amended.

Deadline for Transmittal of Applications: 3/6/92.

Deadline for Intergovernmental Review: 5/6/92.

Applications Available: 1/14/92.

Available Funds: $2,500,000 (est.)

Estimated Range of Awards: $50,000–$200,000.

Estimated Average Size of Awards: $135,000.

Estimated Number of Awards: 19.

Note: The Department is not bound by any estimates in this notice.

Budget Period: 12 months.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 758.

Priorities—Absolute Priority: Under 34 CFR 75.105(c)(3), 34 CFR 758.4(d) and 34 CFR 758.5 (a) and (b), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that provide training for families on the family's educational responsibilities at the preschool level.

Invitational Priorities: Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1), an application that meets one or more of the following invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—

Projects that will increase the involvement of families in improving the educational achievement of at-risk children;

Invitational Priority 2—

Projects that assist families in their efforts to prepare at-risk children to enter school ready to learn;

Invitational Priority 3—

Projects that form family-school partnerships designed around the accomplishment of the National Education Goals.

Supplementary Information: This program and these priorities complement AMERICA 2000, the President's strategy for moving the nation toward achievement of the National Education Goals. By assisting families in preparing their children to enter school ready to learn, and increasing the family's involvement in the educational achievement of their children, this program will enhance the ability of schools to improve the academic performance of students.

The Secretary is also interested in projects that have the potential to be disseminated by the National Diffusion Network (NDN). The NDN is a dissemination system through which proven exemplary education programs and processes are made available to interested school systems or other educational institutions around the country. In order to become eligible for dissemination by NDN, a project must be proven to be effective. Evidence of project effectiveness must be collected and presented to the Department's Program Effectiveness Panel (PEP). Projects that are judged effective by PEP become eligible to compete for dissemination funds from the NDN. Therefore, the Secretary encourages applicants who are interested in having their projects disseminated by the NDN to include an evaluation plan that will assess effectiveness and impact of project activities with emphasis upon changes in school practices and student performance.

For Applications or Information Contact: Diane Hill, U.S. Department of Education, Fund for the Improvement and Reform of Schools and Teaching, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524. Telephone: (202) 219–1496. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 4821–4823

Dated: December 13, 1991

Diane Ravitch,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 91–30370 Filed 12–18–91; 8:45 am]

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December 19, 1991

Part IV

Nuclear Regulatory Commission

10 CFR Part 19

Exclusion of Attorneys From Interviews Under Subpoena; Rule and Proposed Rule

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 19

RIN 3150-AE09

Exclusion of Attorneys From Interviews Under Subpoena

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revoking its regulations pertaining to exclusion of attorneys from interviews under subpoena. These regulations were vacated upon judicial review by the United States Court of Appeals for the District of Columbia Circuit.

EFFECTIVE DATE: January 21, 1992.

FOR FURTHER INFORMATION CONTACT: Roger K. Davis, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555, telephone (301) 492–1606.

SUPPLEMENTARY INFORMATION: Upon judicial review, the United States Court of Appeals for the District of Columbia Circuit vacated the attorney exclusion portion of the rule, titled "Sequestration of Witnesses Under Subpoena/ Exclusion of Attorneys," which was published by the Commission on January 4, 1990 (55 FR 243). *Professional Reactor Operator Society* v. *United States Nuclear Regulatory Commission*, 939 F.2d 1047 (DC Cir. 1991). Consequently, the NRC is revoking and removing the definition of "exclusion" appearing in 10 CFR 19.3, and the standard and procedures for attorney exclusion appearing in 10 CFR 19.18(b)–(e).

Since this action implements the ruling of the appeals court, the NRC has determined that there is "good cause" for publication of this final rule without a general notice of proposed revocation for comment. See 5 U.S.C. 553(b). However, the NRC is concurrently publishing for comment a proposed rule that would replace the vacated attorney exclusion provisions with a rule that conforms to the guidance of the court.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150–0044.

Regulatory Analysis

This regulatory action is taken in response to the decision of the United States Court of Appeals for the District of Columbia in *Professional Reactor Operator Society* v. *United States Nuclear Regulatory Commission*, 939 F.2d 1047 (D.C. Cir. 1991). The appeals court vacated the attorney exclusion portion of 10 CFR part 19. Consequently, the NRC is revoking the attorney exclusion provisions reported in 10 CFR part 19.

Backfit Analysis

The NRC has determined that a backfit analysis is not required because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 19.

PART 19—NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

1. The authority citation for part 19 continues to read as follows:

Authority: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 19.11 (a), (c), (d), and (e) and 19.12 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 19.13 and 19.14(a) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

§ 19.3 [Amended]

2. In § 19.3, the definition of "Exclusion" is removed.

§ 19.18 [Amended]

3. In § 19.18, paragraphs (b)–(e) are removed and reserved.

Dated at Rockville, Maryland this 13th day of December 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91–30313 Filed 12–18–91; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 19

RIN 3150–AE11

Exclusion of Attorneys From Interviews Under Subpoena

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to provide for the exclusion of counsel from interviews of a subpoenaed witness when that counsel represents multiple interests and there is concrete evidence that such representation would obstruct and impede the investigation. The proposed amendments are designed to ensure the integrity and efficacy of the investigative and inspection process. The proposed amendments are not expected to have any economic impact on the NRC or its licensees. Concurrently, the NRC is publishing a final rule revoking its previously-published attorney exclusion regulations. Those regulations were vacated upon judicial review.

DATES: Comment period expires February 18, 1992. Comments received after this date will be considered if it is practical to do so, but the Commission can only assure consideration of those comments received on or before that date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Servicing Branch.

Deliver comments to: 2120 L Street, NW., Washington, DC, between 7:30 am and 4:15 pm, Monday through Friday.

Comments received may be examined at the NRC Public Document Room, at 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roger K. Davis, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492–1606.

SUPPLEMENTARY INFORMATION: On January 4, 1990 (55 FR 243), the Nuclear Regulatory Commission (NRC) published in the **Federal Register** amendments to its regulations found at 10 CFR Part 19. The NRC published the proposed rule on November 14, 1988 (53 FR 45768). These amendments provided for the sequestration of witnesses compelled by subpoena to appear in connection with NRC investigations or inspections. These amendments also provided for the exclusion of counsel for a subpoenaed witness when that counsel represented multiple interests and there was reasonable basis to believe that such representation would prejudice, impede, or impair the integrity of the inquiry. In addition, the amendments specified responsibilities of the NRC and rights of individual witnesses, licensees and attorneys when exclusion authority was to be exercised.

Both the sequestration provision and the attorney exclusion portion of the rule were challenged in a petition to the United States Court of appeals for the District of Columbia Circuit for judicial review. On July 23, 1991, the court of appeals upheld the sequestration portion of the Commission's rule, vacated the portion on attorney exclusion, and remanded the matter to the Commission for further consideration consistent with the court's opinion. *Professional Reactor Operator Society* v. *United States Nuclear Regulatory Commission*, 939 F.2d 1047 (D.C. Cir. 1991). The provisions of the rule relating to attorney exclusion were the definition of "exclusion" appearing in 10 CFR 19.3 and the standard and procedures for attorney exclusion appearing in 10 CFR 19.18(b)–(e).

The court of appeals found that the "reasonable basis" part of the standard for exclusion of counsel infringed to an impermissible degree on the right to counsel guarantee of the Administrative Procedure Act (APA), 5 U.S.C. 555(b). The court reasoned that it was not free, without express Congressional direction, to expand or contract the right to counsel at investigatory interviews depending on the mission of a particular agency. In a prior interpretation of the APA right to counsel guarantee, the court had ruled that the Securities and Exchange Commission could not exclude an attorney from representing a subpoenaed witness during an interview unless the agency came forward with "concrete evidence" that the counsel's presence would obstruct and impede its investigation. *SEC* v. *Csapo*, 533 F.2d 7, 11 (D.C. Cir. 1976). Since the NRC's "rational basis" standard was less rigorous than the "concrete evidence" requirement stated in *Csapo*, the court vacated the attorney exclusion portion of the NRC rule.

These proposed amendments are, in essence, a logical outgrowth of the court's guidance in *Professional Reactor Operator Society* v. *NRC, supra*. In response to the appeals court decision, the Commission has determined that its statutory responsibilities would be served by adoption of an attorney exclusion rule containing a "concrete evidence" standard. The Commission notes that a number of the commenters on the NRC's earlier proposed rule (53 FR 45768) expressed the view that the proper standard for exclusion of counsel by the NRC was the *Csapo* "concrete evidence" standard.

It is clear that one important means by which the Commission implements its responsibility for ensuring public health and safety is by investigation of unsafe practices and potential violations of the Atomic Energy Act and NRC regulations. *See* 10 CFR Part 19; 10 CFR 1.36. NRC investigators must often interview licensees, their employees, and other individuals having possible knowledge of matters under investigation. Effective identification and correction of unsafe practices or regulatory violations through an investigative or inspection process may depend upon the willingness of individuals having possible knowledge of the practices or violations to speak openly and candidly to Commission officials. In many cases, investigating officials must also conduct extensive and difficult inquiries to determine whether violations were willful and/or whether licensee's management engaged in wrongdoing.

As specified in 10 CFR 19.2, the rule would apply to all interviews under subpoena within the jurisdiction of the Nuclear Regulatory Commission other than those which focus on NRC employees or its contractors. The rule does not apply, however, to subpoenas issued pursuant to 10 CFR 2.720. Although in the discussion that follows we use the terms "licensee" or "licensee's counsel," the rule and its rationale apply as well to "non-licensees" whose activities fall within the jurisdiction of the Commission. Similarly, while much of the discussion most directly concerns interviews conducted under subpoena by the NRC's Office of Investigations, the proposed rule would also apply to NRC inspections and investigations conducted under subpoena by other NRC officials.

The Commission's principal concerns relate to cases in which licensee's counsel or counsel retained by the licensee represent both the licensee or licensee's officials under investigation and other employees who are to be witnesses. In these contexts, the Commission believes that there is potential for inhibiting the candor of witnesses who may be hesitant or unwilling to divulge information against the interests of the licensee or its officials in the presence of the licensee's counsel or counsel retained by the

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licensee. The concern about potential inhibition may be heightened where the counsel intends to tell the employer everything that was said during an interview. It also may be heightened where the matter under investigation concerns whether licensee's employees have been, or are being, harassed or intimidated for raising safety issues. Multiple representation can also raise the concern that a subject of the investigation may learn facts, theories or strategies that are revealed in an interview and then act in ways that would obstruct further steps in the investigation. Consequently, the Commission has had a long-standing concern [1] that, in some instances of multiple representation, the Commission's ability to identify and correct unsafe practices and regulatory violations may be seriously impaired.

The Commission recognizes that neither mere multiple representation nor speculation about a potential for obstruction of an investigation is a sufficient basis to exclude counsel. The Commission does not presume that a witness's retention of counsel who also represents the licensee or other employees necessarily will inhibit that witness from providing information to an NRC inspector or investigator during an interview. It also does not view vigorous advocacy by competent counsel as improper.

Rather, the proposed rule provides direction for handling cases in which there is concrete evidence that the presence of counsel for multiple interests at a witness's interview would obstruct and impede the investigation. The Commission cannot predict in detail what manner of circumstances will arise in particular investigations that will lead to consideration of application of the exclusion rule. However, invocation of the rule would obviously be supported by concrete evidence that the witness would be more forthcoming or candid during the interview if the witness were not represented by counsel who also represents the licensee or other employees. This might involve evidence that the witness would answer in greater detail if there were not an understanding that the counsel would, or might, report the substance of the interview to the licensee or other witness. For instance, evidence that the employee had a concern that his employment would be jeopardized by transmittal of information from the interview to the licensee would surely be relevant. It would also be relevant if there were evidence that the multiple representation would lead to disclosure of the substance of an interview to a future interviewee or subject in the investigation and that this disclosure would have an adverse impact on the investigation.

While there have been particular cases raising questions about means of addressing the perceived impairment of investigations as a result of multiple representation,[2] this rulemaking does not require, or rest upon, a determination of whether past cases have involved concrete evidence of obstruction. The principal bases of this rule are the Commission's policy judgments that: (1) Cases may arise where there will be concrete evidence that the presence of counsel representing multiple interests during an NRC interview would seriously obstruct the NRC investigation; (2) The remedy of exclusion of the counsel from that interview should be available; and (3) The rule should facilitate expeditious and satisfactory consideration of many questions concerning multiple representation during the course of NRC investigations. The Commission notes that the propriety and utility of such a rule, however rarely invoked and applied, was recognized in both *Csapo* and a previous circuit court decision involving the SEC's sequestration rule, although the facts of those cases did not warrant exclusion. *SEC* v. *Csapo*, 533 F.2d 7; *SEC.* v. *Higashi*, 359 F.2d 550, 552 (9th Cir. 1966).

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150–0044.

Regulatory Analysis

The APA affords individuals compelled to submit to agency inquiry under subpoena the right to be accompanied by counsel or other representative of choice. 5 U.S.C. 555(b). Although the right to counsel guarantee of section 555(b) is not to be lightly disturbed, it is not absolute and may be circumscribed within permissible limits when justice requires as when there is concrete evidence that the presence of counsel during an investigative interview would impede and obstruct the agency's investigation.

Questions concerning the scope of the right to counsel have arisen in the context of NRC investigative interviews of licensee employees when the employee is represented by counsel who also represents the licensee or other witnesses or parties in the investigation. Although this arrangement is not improper on its face, the Commission believes that such multiple representation has the potential in some cases of inhibiting the candor of the witnesses and seriously impairing the integrity or efficacy of the NRC investigation. The proposed rule, which delineates NRC responsibilities concerning the availability of the remedy of exclusion of counsel, as well as rights of witness and counsel concerning the presence of counsel during the conduct of interviews, is intended to further expeditious and satisfactory resolution of NRC's inquiry into public health and safety matters. Guidance in this area should reduce delay and uncertainty in the completion of an investigation when certain questions of multiple representation arise. The foregoing discussion constitutes the regulatory analysis for this proposed rule.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule, if promulgated, would not have a significant impact on a substantial number of small entities. The proposed rule, which sets forth rights and limitations on the choice of counsel of licensee employees and other individuals who are compelled to appear before NRC representatives under subpoena, would have no significant economic impact on a substantial number of small entities.

Backfit Analysis

The NRC has determined that a backfit analysis is not required because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discriminations.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 19.

PART 19—NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

1. The authority citation for part 19 continues to read as follows:

Authority: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 19.11(a), (c), (d), and (e) and 19.12 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 19.13 and 19.14(a) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 19.3, the definition of "Exclusion" is added to read as follows:

§ 19.3 Definitions.

* * * * *

Exclusion means the removal of counsel from an interview whenever the NRC official conducting the interview has concrete evidence that counsel's representation of multiple interests will obstruct and impede the particular investigation, inspection or inquiry.

* * * * *

3. In § 19.18, paragraphs (b)–(e) are added to read as follows:

§ 19.18 Sequestration of witnesses and exclusions of counsel in interviews conducted under subpoena.

* * * * *

(b) Any witness compelled by subpoena to appear at an interview during an agency inquiry may be accompanied, represented, and advised by counsel of his or her choice. However, when the agency official conducting the inquiry determines, after consultation with the office of the General Counsel, that the agency has concrete evidence that the investigation or inspection will be obstructed and impeded, directly or indirectly, by an attorney's representation of multiple interests, the agency official may prohibit that attorney from being present during the interview.

(c) The interviewing official is to provide a witness whose counsel has been excluded under paragraph (b) of this section and the witness's counsel a written statement of the reasons supporting the decision to exclude. This statement, which must be provided no later than five working days after exclusion, must explain the basis for the counsel's exclusion.

(d) Within five days after receipt of the written notification required in paragraph (c) of this section, a witness whose counsel has been excluded may appeal the exclusion decision by filing a motion to quash the subpoena with the Commission. The filing of the motion to quash will stay the effectiveness of the subpoena pending the Commission's decision on the motion.

(e) If a witness's counsel is excluded under paragraph (b) of this section, the interview may, at the witness's request, either proceed without counsel or be delayed for a reasonable period of time to permit the retention of new counsel. The interview may also be rescheduled to a subsequent date established by the NRC.

Dated at Rockville, Maryland this 13th day of December, 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91–30312 Filed 12–18–91; 8:45 am]

BILLING CODE 7590–01–M

[1] *See, e.g.*, Report of the Advisory Committee for Review of the Investigation Policy on Rights of Licensee Employees Under Investigation, Sept. 13, 1983. This Report is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

[2] *See, e.g.*, Memorandum dated August 7, 1989, from Ben B. Hayes, Director, Office of Investigations, to James L. Blaha, Assistant for Operations, Office of the Executive Director for Operations. This memorandum is available for inspection at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

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Part V

Small Business Administration

13 CFR Part 123
Disaster—Physical Disaster and Economic Injury Loans; Interim Final Rule

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

Disaster—Physical Disaster and Economic Injury Loans

AGENCY: Small Business Administration.

ACTION: Interim final rule.

SUMMARY: This interim final rule amends SBA's regulations concerning physical and economic injury disaster loans to implement a program for direct loans to small business concerns which have sustained severe economic injury as a result of troop deployments, related to the Persian Gulf conflict, from military installations in the same county or a county contiguous thereto. SBA is publishing this regulation as an interim final rule pursuant to the authority set forth in Public Law 102–190.

EFFECTIVE DATE: This rule is effective December 19, 1991.

ADDRESSES: Written comments should be addressed to Alfred E. Judd, Acting Assistant Administrator for Disaster Assistance, U.S. Small Business Administration, 409 Third Street SW., Eighth Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Alfred E. Judd, (202) 205–6734.

SUPPLEMENTARY INFORMATION: SBA regulations governing physical and economic injury disaster loans are set out in part 123 of title 13, Code of Federal Regulations (CFR). SBA is amending these regulations to add coverage for a program which will provide for direct loans to small business concerns which have sustained economic injury as the result of troop deployments, related to the Persian Gulf conflict, from military installations located in the same county or a county contiguous thereto. (Hereinafter, the term county, as used in this preamble and regulation, shall include other equivalent political subdivisions.)

Section 1087 of Public Law 102–190, the National Defense Authorization Act for Fiscal Years 1992 and 1993, enacted on December 5, 1991, authorizes the Administrator of SBA to make emergency direct loans to small business concerns located in a county in the United States in which at least five small business concerns have suffered severe economic injury as a result of the emergency deployment, after July 31, 1990, in connection with the Persian Gulf conflict, of members and units of the Armed Forces from military installations in or near that county. Public Law 102–190 provides that the source of funding for this program is funds appropriated to the Department of Defense in Public Law 101–511, if and to the extent such funding is available. This interim final rule amends 13 CFR part 123 to implement this program.

Under these regulations, in order to be eligible for a loan pursuant to the authority set forth in section 1087, a small business concern must meet certain criteria established in the statute, as well as SBA's general loan eligibility standards contained in title 13, Code of Federal Regulations, pertaining to economic injury disaster loans. The statute requires that, to be eligible for a loan, a small business concern must have (1) suffered economic injury as a result of the emergency deployment of members and units of the Armed Forces in connection with the Persian Gulf conflict and (2) been unable to obtain credit elsewhere. The relevant general eligibility criteria set forth in 13 CFR 123.40 and 123.41, which describe the eligibility criteria for economic injury disaster loans, also apply to loans made under this authority.

To receive a loan under this program, a small business concern must be located within a county designated, by SBA, pursuant to a Governor's certification, as an area of economic injury resulting from the deployment of troops related to the Persian Gulf conflict. (Hereinafter, the term Governor, as used in this regulation, shall include other equivalent officials.) SBA will require that the Governors of affected states certify that small business concerns in counties within their respective states have suffered such severe economic injury. This certification will be based upon criteria similar to that used by SBA to declare economic injury as a result of a physical disaster. These criteria are described in 13 CFR 123.23(c).

The Governors will be required to submit their certification to the Assistant Administrator for Disaster Assistance, in SBA's Central Office, as well as any additional documentation SBA may require. Such documentation will be similar to the supplemental documentation required by SBA for its economic injury disaster loan program. Thereafter, SBA will expeditiously make designations of eligible areas of economic injury.

A loan made under this program to a small business concern shall not exceed $50,000. The terms and interest rate for loans under this program shall be the same as the terms and interest rate for loans made pursuant to section 7(c)(5)(C) of the Small Business Act [15 U.S.C. 636(c)(5)(C)). The term of a loan made pursuant to this section may not exceed 30 years and the interest rate may not exceed four percent (4%). Further, a small business concern must meet the requirements of SBA's size standard regulations codified at part 121 of the Code of Federal Regulations and other eligibility criteria generally applicable to SBA economic injury disaster loans.

The Administrator's authority to make loans under these regulations shall expire after a 270-day period beginning on the date on which the Administrator first accepts applications for loans under this program.

In accordance with section 1087(g) of Public Law 102–190, SBA is publishing this regulation as an interim final rule effective immediately upon publication. However, SBA will accept written comments concerning this rule suggesting any modifications.

Compliance With Executive Order 12291 and 12612, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Paperwork Reduction Act, 44 U.S.C. Ch. 35

For purposes of Executive Order 12291, SBA certifies that this rule will not constitute a major rule because it is not likely to have an annual effect on the economy of $100 million or more, will not result in a major increase in costs for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and will not have significant adverse effects on competition. SBA makes this certification based upon the fact that the appropriation for the emergency loan program established herein will not exceed $30,000,000 and does not affect State or local government.

For purposes of the Regulatory Flexibility Act, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities for the same reason that it would not be a major rule.

For purposes of the Paperwork Reduction Act, SBA certifies that this rule will impose no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule will not have federalism implications warranting the preparation of a Federalism Assessment

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set out in the preamble, part 123 of title 13, Code of Federal Regulations, is amended as follows:

PART 123—[AMENDED]

1. The authority citation for part 123 is revised to read as follows:

Authority: Sections 5(b)(6), 7 (b), (c), (f) of the Small Business Act, 15 U.S.C. 634(b)(6), 636 (b), (c), (f); Pub. L. 100–590; and Pub. L. 102–190.

2. Section 123.1(a), *Explanation of regulations,* is amended by adding at the end thereof a new sentence to read as follows:

§ 123.1 Explanation of regulations.

(a) * * * Subpart D includes regulations for direct loans to small business concerns which have suffered economic injury as a result of troop deployments, related to the Persian Gulf conflict, from military installations located in the same county or a county contiguous thereto.

* * * * *

3. Part 123 of title 13, Code of Federal Regulations is amended by adding at the end thereof a new subpart D to read as follows:

Subpart D—Persian Gulf Troop Deployment Economic Injury Loans

Sec.
123.60 Introduction.
123.61 Definitions.
123.62 Designation procedure
123.63 Eligibility.
123.64 Terms and conditions of loan.
123.65 Applications for loans.
123.66 Expiration of authority.
123.67 Relationship to SBA disaster loan program
123.68 Funding.
123.69 Other requirements

Subpart D—Persian Gulf Troop Deployment Economic Injury Loans

§ 123.60 Introduction.

Loans to which this subpart applies are available only to eligible small business concerns, as described in § 123.63, located in a county in the United States in which at least five small business concerns have suffered severe economic injury as a result of the emergency deployment, after July 31 1990, of members and units of the Armed Forces from military installations in such county or a county contiguous thereto, in connection with the Persian Gulf conflict. (Hereinafter, the term county, as used in this subpart, shall include other equivalent political subdivisions as defined in § 123.61.)

§ 123.61 Definitions.

For purposes of this section:

(a) The term *county* includes other equivalent political subdivisions such as, but not limited to, parishes, independent cities of, and as defined by, the Commonwealth of Virginia and the City of Baltimore, Maryland, and municipalities of the Commonwealth of Puerto Rico, of a State, territory, or other equivalent jurisdiction within the United States.

(b) The term *credit elsewhere* refers to the availability, based on cash flow and disposable assets of the applicant, of sufficient credit from non-Federal sources on reasonable terms and conditions, taking into consideration prevailing rates and terms in the community in or near where the concern transacts business for similar purposes and periods of time.

(c) The term *severe economic injury* shall have the same meaning as the term "substantial economic injury" defined in 13 CFR 123.41(a).

(d) The term *small business concern* has the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632).

§ 123.62 Designation procedure.

(a) The Governor of a State where a military installation is located may certify to SBA that small business concerns in a county in which a military installation is located, or a county contiguous thereto, have suffered severe economic injury as a result of the emergency deployment, after July 31, 1990, of members and units of the Armed Forces from military installations in the State, in connection with the Persian Gulf conflict. (Hereinafter, the terms Governor and State, as used in this subpart, shall include other equivalent officials and other equivalent jurisdictions.)

(b) The economic injury must be to such a degree as to warrant Federal involvement in the form of subsidized loans. This requirement will be satisfied if at least five (5) small business concerns in the county where the military installation is located, or a county which is contiguous thereto, have suffered such severe economic injury.

(c) The Governor's certification shall further specify each military installation, and the county it is located in and those counties which are contiguous thereto, within his or her respective State from which a deployment occurred sufficient to cause severe economic injury to small business concerns in the same county or counties contiguous thereto.

(d) The Administrator will take final action, and, if the request is approved, publish a notice, in the **Federal Register**, of designation of an area of economic injury.

(e) The Governor's certification, together with all necessary supporting documentation, should be received by the SBA Office of Disaster Assistance, Central Office, within 15 days of the effective date of this regulation. If the Governor's certification is received within the 15-day period, SBA will process the request for designation prior to the beginning of the application filing period. Certifications received after the 15-day period will be processed in an expeditious manner.

§ 123.63 To be eligible for a loan under this program, a small business concern must:

(a) Be located in a county in the United States, which has been designated in accordance with § 123.62;

(b) Have suffered severe economic injury as a result of the emergency deployment of members and units of the Armed Forces, from military installations in that county or a county contiguous thereto, in connection with the deployment of members and units of the Armed Forces during the Persian Gulf conflict;

(c) Be unable to obtain credit elsewhere; and

(d) Be otherwise eligible for SBA economic injury disaster assistance loans pursuant to 13 CFR 123.41(b).

(e) Agricultural enterprises, as defined in § 123.17, are not eligible for loans pursuant to this subpart.

§ 123.64 Terms and conditions of loan.

(a) Any loan made to a small business concern pursuant to this section shall be a direct loan.

(b) A loan made to a small business concern pursuant to this section may not exceed fifty thousand dollars ($50,000).

(c) The interest rate for a loan made pursuant to this section shall not exceed four percent (4%).

(d) The term of a loan made pursuant to this section shall not exceed thirty (30) years.

(e) Repayment ability shall be determined by SBA. Maturity and installment terms shall be established on each loan on the basis of the borrower's ability to pay. In most cases equal monthly installment payments of principal and interest, beginning five (5) months from the date of the note, are required, but other payment terms may be accorded borrowers with seasonal or fluctuating income, and installment payments of varying amounts over the first two (2) years of the loan may be agreed upon if SBA determines that such schedule better reflects the borrower's ability to pay. There is no penalty for prepayment of a direct loan.

(f) SBA will require such collateral as is available for any economic injury loan made pursuant to this subpart which exceeds five thousand dollars ($5,000). When SBA requires an

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applicant to pledge available collateral in accordance with this section, the applicant's refusal to pledge such collateral may justify the decline of a loan. Generally, SBA will not decline a loan where the applicant does not have any fixed amount of collateral available to pledge if there is reasonable assurance of repayment.

§ 123.66 Applications for loans.

(a) To receive a loan pursuant to this section, a small business concern shall submit an application to the SBA Disaster Area Office which serves the area where the small business concern is located. The application form and procedures are as set forth in § 123.7 of this part.

(b) The application filing period for small business concerns seeking a loan will begin 30 days from the effective date of this regulation. Applications will not be available, nor will they be accepted, prior to that date. The filing period ends 180 days after the application filing period commences. Applications cannot be accepted after the 180-day filing period.

(c) The provisions of § 123.12, concerning reconsideration, apply to all loans made pursuant to this subpart. However, any request for reconsideration submitted in accordance with § 123.12(b) must be received by SBA within 30 days of the initial decline. Further, in no event may SBA obligate funds pursuant to this subpart for a loan after the 270-day period has expired. Thus, any application for a loan under this subpart which is not funded at the expiration of the 270-day period, no matter what the circumstances or reasons, cannot and will not be approved.

§ 123.66 Expiration of authority.

The authority of the Administrator of the Small Business Administration to obligate funds for loans pursuant to this subpart shall expire after a 270-day period beginning on the date the application filing period commences (see § 123.65(b)).

§ 123.67 Relationship to SBA Disaster Loan Program.

This program will be administered in a manner similar to the Economic Injury Disaster Loan Program (15 U.S.C. 7(b)) and the regulations promulgated thereunder.

§ 123.68 Funding.

Public Law 102–190 provides that the source of funding for this program is funds appropriated to the Department of Defense in Public Law 101–511, if and to the extent such funding is available.

§ 123.69 Other requirements.

For explanation of regulations, see § 123.1; for fees and charges, see § 123.6(a); for loan authorization and closing requirements, see § 123.8; for loan administration, extension, and liquidation, see §§ 123.13(a) and (b); for civil rights requirements, see § 123.15(a); for books and records requirements, see § 123.18; and for use of proceeds, see § 123.41(g).

Dated: December 12, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91–30388 Filed 12–17–91; 9:19 am]

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December 19, 1991

Part VI

Department of Education

Fund for Improvement and Reform of Schools and Teaching, Schools and Teachers Program; Notice Inviting Applications for New Awards for Fiscal Year 1992

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DEPARTMENT OF EDUCATION

[CFDA No: 84.211A]

Fund for the Improvement and Reform of Schools and Teaching, Schools and Teachers Program; Notice Inviting Applications for New Awards for Fiscal Year 1992

Purpose of Program: To support Schools and Teachers projects that improve educational opportunities for and the performance of elementary and secondary school students and teachers.

Eligible Applicants: State educational agencies, local educational agencies, institutions of higher education, nonprofit organizations, individual public or private schools, consortia of individual schools, and consortia of these schools and institutions.

Deadline for Transmittal of Applications: 3/6/92.

Deadline for Intergovernmental Review: 5/6/92.

Applications Available: 1/14/92.

Available Funds: $1,500,000 (est).

Estimated Range of Awards: $50,000–$250,000.

Estimated Average Size of Awards: $150,000.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Budget Period: 12 months.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 757.

Priorities—Absolute Priority: Under 34 CFR 75.105(c)(3), 34 CFR 757.4(j), and 34 CFR 757.5(a), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects devoted to improving the teacher certification process, especially for schools, school districts, and States facing serious shortages of teachers.

Competitive Preference Priorities: Within the absolute priority specified in this notice, the Secretary, under 34 CFR 75.105(c)(2)(i) and 34 CFR 757.5(b), gives preference to applications that meet one or more of the following competitive preference priorities. Under 34 CFR 757.20(d), the Secretary awards up to 25 points to an application that meets one or more of the competitive preference priorities in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for this program.

Competitive Preference Priority 1—

Projects that benefit students or schools with below-average academic performance;

Competitive Preference Priority 2—

Projects that lead to increased access of all students to a high quality education; or

Competitive Preference Priority 3—

Projects that develop or implement a system for providing incentives to schools, administrators, teachers, students, or others to make measurable progress toward specific goals of improved educational performance.

Invitational Priorities: Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1), an application that meets an invitational priority does not receive competitive or absolute preference over other applications.

Invitational Priority 1—

Projects that recognize in the teacher certification process the importance of the five core subject areas of English, history, geography, mathematics, and science.

Invitational Priority 2—

Projects that provide an alternate route for teacher certification for individuals who have not completed professional education in a traditional teacher training program. The Secretary is interested in projects that involve individuals who have professional experience in fields outside of education, such as government, the military, and human services, and recent college graduates with majors in the liberal arts and sciences.

Invitational Priority 3—

Projects that show the commitment to the project of the applicant and other participating organizations as evidenced by: (1) The contribution of resources by the applicant and any other participating organization; (2) prior work in the areas of concern of the project by the applicant and any other participating organization; and (3) the potential for continuation of the project beyond the period of Federal support.

Supplementary Information: This program and these priorities complement AMERICA 2000, the President's strategy for moving the nation toward achievement of the National Education Goals. By promoting improvements in the preparation of teachers in the five core subjects, and by supporting non-traditional routes of entry into the teaching profession, this program will strengthen the ability of teachers to help students achieve high levels of academic performance.

The Secretary is also interested in projects that have the potential to be disseminated by the National Diffusion Network (NDN). The NDN is a dissemination system through which proven exemplary education programs and processes are made available to interested school systems or other educational institutions around the country. In order to become eligible for dissemination by NDN, a project must be proven to be effective. Evidence of project effectiveness must be collected and presented to the Department's Program Effectiveness Panel (PEP). Projects that are judged effective by PEP become eligible to compete for dissemination funds from the NDN. Therefore, the Secretary encourages applicants who are interested in having their projects disseminated by the NDN to include an evaluation plan that will assess effectiveness and impact of project activities with emphasis upon changes in school practices and student performance.

For Applications or Information Contact: Eleanor Dougherty, U.S. Department of Education, Fund for the Improvement and Reform of Schools and Teaching, 555 New Jersey Avenue, NW., room 522, Washington, D.C. 20208–5524. Telephone: (202) 219–1496. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 4811–4812.

Dated: December 13, 1991

Diane Ravitch,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 91–30371 Filed 12–48–91; 8:45 am]

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December 19, 1991

Part VII

Department of Education

Fund for Improvement and Reform of Schools and Teaching: Schools and Teachers Program—School Level Projects; Notice Inviting Applications for New Awards for Fiscal Year 1992

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DEPARTMENT OF EDUCATION

[CFDA NO. 84.211B]

Fund for the Improvement and Reform of Schools and Teaching: Schools and Teachers Program—School Level Projects; Notice Inviting Applications for New Awards for Fiscal Year 1992

Purpose of Program: To support school-level projects under the Schools and Teachers Program that improve educational opportunities for and the performance of elementary and secondary school students and teachers. The type of applicants who are eligible to apply is what distinguishes the competition for school-level projects from the competition for other types of projects in the Schools and Teachers Program.

Eligible Applicants: Local educational agencies acting as the fiscal agent for a full-time teacher or administrator.

Deadline for Transmittal of Applications: 3/6/92.

Deadline for Intergovernmental Review: 5/6/92.

Applications Available: 1/14/92.

Available Funds: $1,500,000 (est.)

Estimated Range of Awards: $5,000–$125,000.

Estimated Average Size of Awards: $50,000.

Estimated Number of Awards: 30.

Note: The Department is not bound by any estimates in this notice.

Budget Period: 12 months.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 757.

Priorities—Absolute Priorities: Under 34 CFR 75.105(c)(3), 34 CFR 757.4(c), and 34 CFR 757.5(a) and (c), the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under this competition only applications that meet these absolute priorities:

Absolute Priority 1—

School-level projects conducted at an individual school or a consortium of schools, under the direction of a full-time teacher or administrator.

Absolute Priority 2—

Projects that propose to strengthen school leadership and teaching.

Competitive Preference Priorities: Within the absolute priorities specified in this notice, the Secretary, under 34 CFR 75.105(c)(2)(i) and 34 CFR 757.5(b), gives preference to applications that meet one or more of the following competitive preference priorities. Under 34 CFR 757.20(d), the Secretary awards up to 25 points to an application that meets one or more of these competitive preference priorities in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program.

Competitive Preference Priority 1—

Projects that benefit students or schools with below-average academic performance;

Competitive Preference Priority 2—

Projects that lead to increased access of all students to a high quality education; or

Competitive Preference Priority 3—

Projects that develop or implement a system for providing incentives to schools, administrators, teachers, students, or others to make measurable progress toward specific goals of improved educational performance.

Invitational Priorities: Within the absolute priorities specified in this notice, the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1), an application that meets an invitational priority does not receive competitive or absolute preference over other applications:

Invitational Priority 1—

Projects that will contribute to the ability of American students to demonstrate competency in the core subject of history;

Invitational Priority 2—

Projects that focus on the common heritage of the American people, with a special emphasis on the Founding Documents such as the Declaration of Independence, the Constitution, the Bill of Rights, and The Federalist as the source of that heritage;

Invitational Priority 3—

Projects that are designed to promote educational change that improves academic achievement, enhances skills necessary to compete in a global economy, and fosters informed citizenship among all American children;

Invitational Priority 4—

Projects that are directed toward improving education at the elementary level.

Supplementary Information. This program and these priorities support AMERICA 2000, the President's strategy for moving the nation toward achievement of the National Education Goals. By strengthening school leadership and teaching, with particular emphasis on the core subject of history, this program will enhance the ability of the nation's schools to improve the academic performance of students.

The Secretary is also interested in projects that have the potential to be disseminated by the National Diffusion Network (NDN). The NDN is a dissemination system through which proven exemplary education programs and processes are made available to interested school systems or other educational institutions around the country. In order to become eligible for dissemination by NDN, a project must be proven to be effective. Evidence of project effectiveness must be collected and presented to the Department's Program Effectiveness Panel (PEP). Projects that are judged effective by PEP become eligible to compete for dissemination funds from the NDN. Therefore, the Secretary encourages applicants who are interested in having their projects disseminated by the NDN to include an evaluation plan that will assess effectiveness and impact of project activities with emphasis upon changes in school practices and student performance.

For Applications or Information Contact: Anne Fickling, U.S. Department of Education, Fund for the Improvement and Reform of Schools and Teaching, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524. Telephone: (202).219–1496. Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 4811–4812.

Dated: December 13, 1991.

Diane Ravitch,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 91–30372 Filed 12–18–91, 8:45 am]

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Part VIII

Department of Education

Fund for Innovation in Education, Comprehensive School Health Education Program; Notice Inviting Applications for New Awards for Fiscal Year 1992

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.215B]

Fund for Innovation in Education: Comprehensive School Health Education Program; Notice Inviting Applications for New Awards for Fiscal Year 1992

Purpose of Program: To encourage the provision of comprehensive school health education for elementary and secondary students.

Eligible Applicants: State educational agencies, local educational agencies, institutions of higher education, private schools, and other public and private agencies, organizations, and institutions.

Deadline for Transmittal of Applications: 2/14/92.

Deadline for Intergovernmental Review: 4/14/92

Applications Available: 12/23/91.

Available Funds: $2,500,000 (est.).

Estimated Range of Awards: $75,000—$250,000.

Estimated Average Size of Awards: $170,000.

Estimated Number of Awards: 15.

Note: The Department is not bound by any estimates in this notice.

Budget Period: 12 months.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department of General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for Student Rights in Research, Experimental Programs, and Testing in 34 CFR part 98.

Priorities: Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1

Projects to strengthen and expand comprehensive school health education curriculum for elementary school children (K–8). Of particular interest are projects that establish a comprehensive new curriculum that integrates key school health education concepts into all aspects of the school program.

Invitational Priority 2

Projects that improve the training of elementary teachers (K–8) and other appropriate school personnel in comprehensive school health education. Of particular interest are projects that develop and implement new in-service programs for school personnel to expand knowledge of personal health and fitness, nutrition, family health, accident prevention and safety, substance use and abuse, and prevention of communicable diseases.

Invitational Priority 3

Projects involving schools, parents, and communities in planning and implementing comprehensive school health education for elementary school students. Of particular interest are projects that provide opportunities to help parents understand health issues and problems and offer parents ideas for improving their children's health at home. This priority supports an important element of AMERICA 2000, the President's strategy for achieving the National Education Goals, by encouraging schools, parents, and communities to join together to improve the education of children.

Supplementary Information: Within these priorities, the Secretary is particularly interested in projects that provide students with the knowledge and decision-making skills that will enable them to establish healthy behaviors and practices throughout their lives.

The Secretary is also interested in projects that have potential to be disseminated by the National Diffusion Network (NDN). The NDN is a dissemination system through which proven exemplary education programs and processes are made available to interested school systems or other educational institutions around the country. In order to become eligible for dissemination by NDN, a project must be proven to be effective. Evidence of project effectiveness must be collected and presented to the Department's Program Effectiveness Panel (PEP). Projects that are judged effective by PEP become eligible to compete for dissemination funds from the NDN. Therefore, the Secretary encourages applicants who may be interested in having their projects disseminated by the NDN to include an evaluation plan that will assess effectiveness and impact of project activities with emphasis upon changes in school practices and student performance.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in EDGAR, 34 CFR 75.210.

The regulations in 34 CFR 75.210(c) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Plan of Operation: (34 CFR 75.210(b)(3)). Five points are added to this criterion for a possible total of 20 points.

Evaluation Plan: (34 CFR 75.210(b)(6)). Ten points are added to this criterion for a possible total of 15 points.

For Applications or Information Contact: Joe Caliguro, U.S. Department of Education, Fund for the Improvement and Reform of Schools and Teaching, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524. Telephone (202) 219–1496. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC. 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program authority: 20 U.S.C. 3151, 3155.

Dated: December 13, 1991.

Diane Ravitch,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 91–30389 Filed 12–18–91; 8:45 am]

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federal register

Thursday
December 19, 1991

Part IX

Environmental Protection Agency
40 CFR Parts 110 et al.

Department of Defense
Corps of Engineers, Department of the Army
33 CFR Part 328

Department of Agriculture
Soil Conservation Service
7 CFR Part 12

Department of the Interior
Fish and Wildlife Service
50 CFR Chapters I and IV

1989 "Federal Manual for Identifying and Delineating Jurisdictional Wetlands"; Proposed Rules

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 110, 116, 117, 122, 230, 232, 435

[FRL-4084-5]

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 328

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

7 CFR Part 12

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Chapters I and IV

Wetland Identification and Delineation Rule

AGENCIES: Environmental Protection Agency; Corps of Engineers, Department of the Army, DOD; Soil Conservation Service, Agriculture; and Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability; comment period extension.

SUMMARY: The Environmental Protection Agency (EPA), Army Corps of Engineers (Corps), and Soil Conservation Service (SCS) are proposing today to incorporate portions of the Federal Manual for Identifying and Delineating Jurisdictional Wetlands into the regulations governing the agencies' wetland protection programs. The provisions proposed today reflect revisions to the manual proposed on August 14, 1991 (56 FR 40446), and the final rule adopted by the agencies will be consistent with final manual adopted by the agencies after consideration of all public comments on the manual and today's proposal. In addition, in order to ensure adequate opportunity for public input, the above three agencies and the Fish and Wildlife Service are making the field data and other technical references available today for public review and comment. On October 16, 1991 (56 FR 61868), these four agencies extended the comment period on the proposed manual until December 14, 1991. In order to provide notice of today's proposed rule at least 30 days prior to the end of the comment period on the proposed manual, the comment period for both today's rulemaking and the proposed manual will close on January 21, 1992.

DATES: Written comments must be submitted on or before January 21, 1992.

ADDRESSES: Comments should be submitted in writing to: Mr. Gregory Peck, Chief, Wetlands and Aquatic Resources Regulatory Branch, Mail Code (A-104F), U.S. EPA, 401 M Street SW., Washington DC 20460.

FOR FURTHER INFORMATION CONTACT: Specific details are available from Mr. Michael Fritz (EPA) at (202) 260-6013; Ms. Karen Kochenbach (Corps) at (202) 272-0817; Mr. Billy Teels (SCS) at (202) 447-5991; or Mr. David Densmore (FWS) at (703) 358-2182.

SUPPLEMENTARY INFORMATION: On August 14, 1991, the Environmental Protection Agency (EPA), Department of the Army (Army), Soil Conservation Service (SCS) and the Fish and Wildlife Service (FWS) proposed to revise the 1989 Federal Manual for Identifying and Delineating Jurisdictional Wetlands, a technical guidance document which EPA and the Department of the Army have used to interpret and implement their respective wetlands definitions in identifying and delineating wetlands areas (56 FR 40446) (proposed manual). Although the SCS assisted in developing the 1989 manual, the SCS has used criteria that appear in 7 CFR part 12 for the identification of wetlands. In the preamble to those proposed revisions, the agencies stated that it would be appropriate and in the public interest to include parts of the final manual in the Code of Federal Regulations, and stated that the agencies would propose specific regulatory provisions prior to the close of the public comment on the proposal manual. Today's notice proposes such language and solicits comment on the amendments. The agencies will consider all comments submitted by the public on the proposed manual in finalizing the rule proposed today. Thus, comments previously submitted on the proposed manual do not have to be resubmitted in order to have them considered as part of this legislative rulemaking. Similarly, any comments received on today's proposed rule will be considered when the agencies finalize the proposed manual. The provisions of the proposed rule are discussed below.

In addition, following publication of the proposed revisions to the manual on August 14, 1991, the four agencies conducted extensive field testing of the proposed revisions. As part of today's proposed rulemaking, the agencies are establishing a docket that includes comments received from persons outside the agencies, data from the field testing, and technical references relating to wetland characteristics and other technical issues that are relevant to the proposed manual. The docket is open to the public in accordance with the requirements set forth in the Freedom of Information Act (5 U.S.C. 552), and is located at:

EPA-Office of Wetlands, Oceans and Watersheds, 499 S. Capitol St., SW., room 714, Washington, DC 20003, (202) 260-6071.

Information in the docket, including the public comments and the field testing data, will be carefully considered and evaluated by the agencies before today's proposed rulemaking and revisions to the manual are finalized.

While the docket maintained at the address listed above contains a complete, national set of the field testing data, each Corps District also has available for inspection copies of the field data collected during field testing within its particular Corps Division. These copies are available at the following locations:

Alaska District, Corps of Engineers, Building 21-700, Elmendorf Air Force Base, Anchorage, AK 99506-0898, (907) 753-2712.

Albuquerque District, Corps of Engineers, 517 Gold Ave. SW., Albuquerque, NM 87103-1580, (505) 766-2776.

Baltimore District, Corps of Engineers, 31 Hopkins Plaza, Baltimore, MD 21203-1715, (301) 962-3670.

Buffalo District, Corps of Engineers, 1776 Niagara Street, Buffalo, NY 14207-3199, (716) 879-4313.

Charleston District, Corps of Engineers, Federal Building, 334 Meeting Street, Charleston, SC 29403, (803) 724-4330.

Chicago District, Corps of Engineers, 111 N. Canal Street, Chicago, IL 60606, (312) 353-6428.

Detroit District, Corps of Engineers, McNamara Federal Building, 477 Michigan Ave., Detroit, MI 48231-1027, (313) 226-2432.

Ft. Worth District, Corps of Engineers, 819 Taylor St., Fort Worth, TX 76102-0300, (817) 334-2681.

Galveston District, Corps of Engineers, 444 Baracuda Ave., Galveston, TX 77553-1229, (409) 766-3930.

Huntington District, Corps of Engineers, 502 8th St., Huntington, WV 25701-2070, (304) 529-5487.

Honolulu District, Corps of Engineers, Building 230, Fort Shafter, Honolulu, HI 96858-5440 (808) 438-9258.

Jacksonville District, Corps of Engineers, 400 W. Bay St., Jacksonville, FL 32232-0019, (904) 791-1666.

Kansas City District, Corps of Engineers, 601 E. 12th St., Kansas City, MO 64106-2892, (816) 426-3645.

Little Rock District, Corps of Engineers, 700 W. Capitol, Little Rock, AR 72203-0867, (501) 324-5296.

Los Angeles District Corps of Engineers, 300 N. Los Angeles St., Los Angeles, CA 90053-2325, (213) 894-5606.

Louisville District, Corps of Engineers, Federal Building, 600 Dr. M.L. King Place, Louisville, KY 40202, (502) 582-6461.

Memphis District, Corps of Engineers, Clifford Davis Federal Building, Corner of Front & Poplar Streets, Memphis, TN 38103-1894, (901) 544-3471.

Mobile District, Corps of Engineers, 109 St. Joseph St., Mobile, AL 36628-0001, (205) 690-2658.

Nashville District, Corps of Engineers, Estes Kefauver Federal Building & US Court House, 801 Broadway, Nashville, TN 37202-1070, (615) 736-5181.

New Orleans District, Corps of Engineers, Foot of Pryantia Street, New Orleans, LA 70160-0267, (504) 862-2255.

New York District, Corps of Engineers, Jacob K. Javitz Federal Building, New York, NY 10278-0090, (212) 264-3996.

Norfolk, District, Corps of Engineers, Waterford Building, 803 Front St., Norfolk, VA 23510-1096, (804) 441-7056.

Omaha District, Corps of Engineers, 215 N. 17th St., Omaha, NE 68101-4978, (402) 221-4133.

Philadelphia District, Corps of Engineers, U.S. Custom House, 2nd & Chestnut Streets, Philadelphia, PA 19106-2991, (215) 597-2812.

Pittsburgh District, Corps of Engineers, Wm. S. Moorehead Federal Building, 1000 Liberty Ave., Pittsburgh, PA 15222-4186, (412) 644-6872.

Portland District, Corps of Engineers, 319 SW Pine St., Portland, OR 97204, (503) 326-6995.

Rock Island, Clock Tower Building, Rock Island, IL 61201-2004, (309) 788-6361.

Sacramento District, Corps of Engineers, 650 Capitol Mall, Sacramento, CA 95814-4794, (916) 551-2275.

St. Louis District, Corps of Engineers, 210 Tucker Blvd., N., St. Louis, MO 63101-1986, (314) 331-8575.

St. Paul District, Corps of Engineers, 1421 USPO & Custom House, 180 Kellogg Blvd., St. Paul, MN 55101-1479, (612) 220-0375.

San Francisco District, Corps of Engineers, 211 Main St., San Francisco, CA 94105-1905, (415) 744-3036.

Savannah District, Corps of Engineers, Juliett Gordon Law Building, 100 W. Oglethorpe Ave., Savannah, GA 31402-0889, (912) 944-5347.

Seattle District, Corps of Engineers, 4735 Marginal Way South, Seattle, WA 98124-2385, (206) 764-3495.

Tulsa District, Corps of Engineers, 234 South Boulder, Tulsa, OK 74121-0061, (918) 581-7281.

Vicksburg District, Corps of Engineers, Battlefield Mall, Vicksburg, MS 39180-0060 (601) 631-5276.

Walla Walla District, Corps of Engineers, Building 602, City—County Airport, Walla Walla, WA 99362-9265, (509) 522-6720.

Wilmington District, Corps of Engineers, 69 Darlington Ave., Wilmington, NC 28403, (919) 251-4629.

New England Division, Corps of Engineers, 424 Trapelo Road, Waltham, MA 02254-9149, (617) 647-8335.

Background

Four federal agencies are principally involved with wetland identification and delineation: The Corps, EPA, FWS, and SCS. The Corps and EPA are responsible for making jurisdictional determinations of wetlands regulated under the Clean Water Act (CWA) (33 U.S.C. 1252, *et seq.*). The Corps also makes jurisdictional determinations under section 10 of the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 403). Under section 404 of the Clean Water Act, the Secretary of the Army, acting through the Chief of Engineers, is authorized to issue permits for the discharge of dredged or fill material into waters of the United States, including wetlands. EPA has developed the section 404(b)(1) Guidelines, in conjunction with the Army, and has primary responsibility for defining the geographic extent of waters of the United States, including wetlands. The Corps also issues permits for filling, dredging and other construction in certain wetlands under section 10.

Under authority of section 404(m) of the Clean Water Act, as well as the Fish and Wildlife Coordination Act, the FWS reviews applications for these federal permits and provides comments to the Corps on the environmental impacts of proposed work. In addition, the FWS is conducting an inventory of the Nation's wetlands and is producing a series of National Wetlands Inventory maps for the entire country. While the SCS has been involved in wetland identification since 1956, with the passage of the Food Security Act of 1985, as amended (16 USC 3801 *et seq.*), SCS is responsible for wetlands determinations and conservation requirements under this Act.

In January 1989, these four agencies jointly signed a technical guidance manual entitled the Federal Manual for Identifying and Delineating Jurisdictional Wetlands. This document marked the first time the four agencies had developed a uniform approach to identifying and delineating vegetated wetlands (see discussions in the proposed manual; 56 FR 40449). Based upon two years of experience implementing the manual and on comments received from the public in writing and at four public meetings held across the country, the agencies proposed revisions to the 1989 manual on August 14, 1991. The proposed revisions were intended to: (1) Tighten the evidentiary requirements for demonstrating the presence of the three wetland parameters, (2) make it easier for Federal or State agency staff to explain to landowners how wetlands are being delineated, and (3) generally maintain and improve the scientific validity of the agencies' delineation methods.

Determining the appropriate scope of wetlands jurisdiction and the resulting extent to which society will benefit from protection of such areas requires consideration of both scientific and policy issues. For example, determining the appropriate wetland/upland boundary is not always clear-cut from a scientific perspective.

The technical criteria and procedures contained in the manual and this proposed rule are intended, therefore, not only to improve the accuracy of and scientific basis for jurisdictional wetland identifications, but also to achieve the following wetland policy objectives: (1) Conserving wetlands and deriving correlated environmental benefits; (2) interagency consistency in wetland identification; (3) ensuring that regulatory restrictions on the use of property are imposed only where warranted to achieve the ecological objectives of the Clean Water Act, and (4) greater public understanding of and confidence in the wetland identification process, which is essential to the continued success and improvement of Federal wetland programs.

The agencies recognize, therefore, that alternative criteria and procedures should be evaluated not only on their scientific merit, but on their effect on relevant policy considerations. In order to foster public confidence in federal

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wetlands programs, debate over scientific uncertainty must be informed by the need to establish practical wetland identification procedures consistent with overall wetland policies and programs. Because the agencies believe that use of the manual will achieve those policy objectives in a scientifically valid manner, the agencies propose to use the manual and the specific criteria and procedures set out in this proposed rule.

Current Federal Definitions of Wetlands

Several definitions of wetlands have been formulated by the four federal agencies in order to carry out their statutory, regulatory and non-regulatory responsibilities related to wetland protection. The Corps, EPA, and SCS have adopted regulatory definitions of wetlands (see 40 CFR part 110, 40 CFR part 116, 40 CFR part 117, 40 CFR part 122, 40 CFR part 230, 40 CFR part 232, 40 CFR part 435, 33 CFR part 328, and 7 CFR part 12), and today's proposed rule would amend each of these provisions. FWS defines wetlands for purposes of conducting an inventory of the nation's wetlands, but this definition is not regulatory. Therefore, today's proposed rule would not amend any FWS regulations.

Section 404 of the Clean Water Act—EPA and Corps Definition

EPA and the Corps use the following wetlands definition for purposes of administering their responsibilities under the CWA:

> The term wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas (EPA–40 CFR 230.3; December 24, 1980; Corps—33 CFR 328.3, November 13, 1986).

Food Security Act of 1985—SCS Definition

The following wetland definition is used by the SCS for identifying wetlands on agricultural land in assessing farmer eligibility for U.S. Department of Agriculture program benefits under the "Swampbuster" provision of the Act.

> Wetlands are defined as areas that have a predominance of hydric soils and that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, except lands in Alaska identified as having a high potential for agricultural development and a predominance of permafrost soils. (7 CFR 12.2(a)(28))

Like the EPA/ Corps definition, SCS's definition centers on the presence of hydrology, hydrophytic vegetation, and hydric soils. Any area that meets the hydric soil criteria (as defined by the National Technical Committee for Hydric Soils) is considered to have a predominance of hydric soils. Unlike the EPA/Corps definition, this definition specifically excludes wetlands in Alaska which have a high potential for agricultural development and a predominance of permafrost soils.

Fish and Wildlife Service Definition

The FWS, in cooperation with other Federal agencies, state agencies and private organizations and individuals, developed a wetland definition for conducting an inventory of the Nation's wetlands. This definition was published in the FWS's publication, "Classification of Wetlands and Deepwater Habitats of the United States" (Cowardin, et al. 1979);

> Wetlands are lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this classification wetlands must have one or more of the following three attributes: (1) At least periodically, the land supports predominantly hydrophytes; (2) the substrate is predominantly undrained hydric soil, and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year.

This definition includes both vegetated and non-vegetated wetlands, recognizing that some types of wetlands lack vegetation. Examples of non-vegetated wetlands mapped by the FWS's National Wetlands Inventory, but which are not addressed by the regulatory definitions include flats where drastic fluctuations in water level, wave action, turbidity, or high concentration of salts may prevent the growth of hydrophytic vegetation, gravel beaches or rocky shores without vegetation, and seaweed-covered beds.

Summary of Proposed Rule

Under the proposed rule, EPA, Army and SCS would maintain their current regulatory definitions of wetlands. However, a new section would be added to the agencies' regulations which would describe the identifying characteristics of wetlands by incorporating the central components of the proposed manual. In addition, the Army proposes to amend the Code of Federal Regulations to include the entire federal manual (when it is finalized) as an appendix to its regulations. The agencies believe that these proposed changes will heighten the visibility and accessibility to the public of the agencies' wetlands identification and delineation procedures.

EPA notes that regulations applicable to various EPA programs currently contain their own definitions of wetlands. These programs include the regulation of the discharge of oil and hazardous substances under section 311 of the Clean Water Act (see 40 CFR 110.1, 116.3, 117.1), the National Pollutant Discharge Elimination System under section 402 of the Clean Water Act (see 40 CFR 122.2), and effluent guidelines for oil and gas extraction under section 301 of the Clean Water Act (see 40 CFR 435.41). These definitions are substantively identical to the definition used for purposes of the agency's section 404 program (§ 232.2(r)), but contain some minor wording differences. EPA is proposing to delete the current wetlands definitions applicable to the non-section 404 programs and include instead for those programs a reference to the amended definition that will be contained in § 232.2(r). These proposed changes would not substantively alter the regulatory requirements under the agency's non-section 404 programs, but would simply ensure consistency of definitions among EPA programs.

The new regulatory provision that the agencies propose today is entitled "Identifying Characteristics of Jurisdictional Wetlands." (see 33 CFR 328.6, 40 CFR 232.4, 7 CFR 12.31 of proposed rule). As noted above, each of the agencies' regulatory definition of wetlands focuses on three elements: Wetland hydrology, hydrophytic vegetation and hydric soils. The proposed manual implements the regulatory definitions by establishing criteria for determining whether each of these elements is present. Under the proposed manual, an area must meet all three criteria to be a wetland, unless it otherwise qualifies as a wetland under the "exceptions," "problem areas," or "disturbed areas" sections of the proposed manual.

The rule proposed today reflects the content and structure of the proposed manual and therefore does not represent a substantive departure from the guidance material contained in the August 14, 1991 notice. Paragraph (a) of the proposed rule reiterates the approach of the proposed manual in requiring that the hydrology, vegetation and soils criteria must all be met for an area to be a wetland, unless the area qualifies as a wetland under the exception, problem area, or disturbed area provisions of the proposed rule. The proposed rule contains the proposed manual's criteria for determining whether wetland hydrology, hydrophytic vegetation and hydric soils are present (see paragraphs (b)–(d) of each proposed section). In addition, the proposed rule identifies those types of areas which are exceptions, problem areas, and disturbed areas in a manner consistent with the proposed manual. (See paragraphs (e)–(g) of each proposed section).

The agencies caution that today's rule, when it is finalized, should not be applied to the actual identification and delineation of wetlands without the benefit of the finalized delineation manual. The final manual will contain detailed technical guidance describing appropriate procedures for determining whether an area has wetland hydrology, hydric soils and hydrophytic vegetation, as well as for evaluating whether an area qualifies as an exception, problem area or disturbed area. The manual should therefore be followed to ensure that the regulatory requirements that will be established in this rulemaking are properly implemented when making individual delineations.

In the preamble to the proposed manual, the agencies described other alternatives that the agencies were considering adopting in the final manual (*e.g.*, including a "facultative neutral test" as part of the hydrophytic vegetation criterion and expanding the list of the exceptions listed in the proposed manual). See 56 FR 40447–48. In addition to the specific regulatory language proposed today, the agencies will consider all the alternatives discussed in the preamble to the proposed manual when the agencies adopt final regulations after the close of the public comment period, so that the final manual and regulatory provisions will be entirely consistent. Therefore, the agencies request comment on the alternatives discussed in the proposed manual's preamble as well the specific regulatory language being proposed today.

In addition, the agencies also solicit comment on other alternatives that they are considering adopting in the final regulation. As noted above, the criteria contained in the proposed rule are identical to those contained in the proposed manual. The proposed hydric soil criterion references several other documents for determining whether hydric soils are present. For clarity purposes, the agencies are considering adopting an alternative approach that, instead of simply referencing other documents, would include a definition of hydric soils taken from "Hydric Soils of the United States." This criterion would read as follows:

> Hydric soils are present when an area has soils that have developed anaerobic conditions in the upper part due to inundation or saturation from surface or ground water during the growing season. Hydric soils are described with more specificity in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, which appears at Appendix A of this Part, and the Soil Conservation Service's publication, Hydric Soils of the United States (as amended).

The agencies believe that this approach, by containing a substantive standard for determining the presence of hydric soils, may provide a clearer standard than the proposed rule for determining the presence of hydric soils, and therefore solicit comment on the appropriateness of this approach. In addition, this alternative approach would clarify that field verification of the presence of hydric soils may not always be necessary where reliable data has been previously collected and there is sufficient information available to make a conclusive determination regarding the presence of hydric soils.

In addition, the agencies solicit comment on whether the wetland types listed in the "exceptions" and "problem areas" sections of the proposed rule should be an exhaustive list, or merely illustrative of the types of areas that would qualify as wetlands under these provisions.

Executive Order 12291

This proposed regulation makes important revisions to the regulations governing the agencies' wetland protection programs. The proposed revisions are intended to (1) tighten the evidentiary requirements for demonstrating the presence of the three wetland parameters, (2) make the wetland delineation process easier to explain, and (3) improve the accuracy of and scientific basis for jurisdictional wetland identifications. In addition, the proposal is intended to conserve wetlands and ensure that regulatory restrictions on the use of property are imposed only where warranted to achieve the ecological objectives of the Clean Water Act. This rule was submitted to the Office of Management and Budget for Executive Order No. 12291 review.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires agencies to prepare an initial regulatory flexibility analysis for all proposed regulations that have a significant impact on a substantial number of small entities. No regulatory flexibility analysis is required, however, where the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Based on the reasons discussed in the preceding paragraph, we hereby certify, pursuant to 5 U.S.C. 605(b), that this regulation will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3050 *et seq.*, agencies must submit a copy of any rule that contains a collection of information requirement to the Director of the Office of Management and Budget for review and approval. This proposed regulation contains no additional information collection requirements, and therefore the Paperwork Reduction Act is not applicable.

List of Subjects in 40 CFR Parts 110, 116, 117, 122, 230, 232 and 435; 33 CFR Part 328; and 7 CFR Part 12

Wetlands, Water pollution control.

F. Henry Habicht II,

Deputy Administrator, Environmental Protection Agency.

Nancy P. Dorn,

Assistant Secretary (Civil Works), Department of the Army.

Dr. John H. Beuter,

Deputy Assistant Secretary for Natural Resources and Environment, Department of Agriculture.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

For the reasons set out in the preamble, 40 CFR parts 110, 116, 117, 122, 230, 232, and 435, 33 CFR part 328, and 7 CFR part 12 are proposed to be amended as follows:

40 CFR Chapter I—[Amended]

PART 110—DISCHARGE OF OIL

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 1321(b)(3) and (b)(4) and 1361(a); 33 U.S.C. 1517(m)(3).

2. Section 110.1, definition of wetlands, is revised to read as follows:

§ 110.1 Definitions.

* * * * *

Wetlands means those areas defined at § 232.2(r) of this chapter.

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PART 116—DESIGNATION OF HAZARDOUS SUBSTANCES

1. The authority citation for part 116 continues to read as follows:

Authority: 33 U.S.C. 1521 *et seq.*

2. In § 116.3, the definition of navigable waters is revised to read as set forth below, and the definitions are placed in alphabetical order.

§ 116.3 Definitions.

* * * * *

Navigable waters is defined in section 502(7) of the Act to mean "waters of the United States, including the territorial seas," and includes, but is not limited to: (1) All waters which are presently used, or were used in the past, or may be susceptible to use as a means to transport interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide, and including adjacent wetlands; the term "wetlands" as used in this regulation means those areas defined at § 232.2(r) of this chapter. The term "adjacent" means bordering, contiguous or neighboring; (2) tributaries of navigable waters of the United States, including adjacent wetlands; (3) interstate waters, including wetlands; and (4) all other waters of the United States such as intrastate lakes, rivers, streams, mudflats, sandflats and wetlands, the use, degradation or destruction of which affect interstate commerce including, but not limited to:

(i) Intrastate lakes, rivers, streams, and wetlands which are utilized by interstate travelers for recreational or other purposes; and

(ii) Intrastate lakes, rivers, streams, and wetlands from which fish or shellfish are or could be taken and sold in interstate commerce; and

(iii) Intrastate lakes, rivers, streams, and wetlands which are utilized for industrial purposes by industries in interstate commerce.

* * * * *

PART 117—DETERMINATION OF REPORTABLE QUANTITIES FOR HAZARDOUS SUBSTANCES

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 117.1(i)(6) is revised to read as follows:

§ 117.1 Definitions.

* * * * *

(i) * * *

(6) Wetlands adjacent to waters identified in paragraphs (i) (1) through (5) of this section ("Wetlands" means those areas defined at § 232.2(r) of this chapter: *Provided,* That waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States.

* * * * *

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 122 continues to read as follows:

Authority: 33 U.S.C. 1251 *et. seq.*

2. Section 122.2, definition of wetlands, is revised to read as follows:

§ 122.2 Definitions.

* * * * *

Wetlands means those areas defined at § 232.2(r) of this chapter.

* * * * *

PART 230—SECTION 404(b)(1) GUIDELINES FOR SPECIFICATION OF DISPOSAL SITES FOR DREDGED OR FILL MATERIAL

1. The authority citation for part 230 continues to read as follows:

Authority: 33 U.S.C. 1344(b) and 1361(a).

2. Section 230.3(t) is revised to read as follows:

§ 230.3 Definitions.

* * * * *

(t) The term *wetlands* means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Identifying characteristics of jurisdictional wetlands are described in § 232.4 of this chapter. Technical guidance on identifying and delineating wetlands is contained in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (see appendix A of 33 CFR part 328) [1].

PART 232—404 PROGRAM DEFINITIONS; EXEMPT ACTIVITIES NOT REQUIRING 404 PERMITS; WETLAND IDENTIFICATION AND DELINEATION

1. The authority citation for part 232 continues to read as follows:

Authority: 33 U.S.C. 1344.

[1] The text of appendix of 33 CFR part 328 was proposed in the **Federal Register** issue of August 14, 1991 (56 FR 40446).

2. The heading for part 232 is revised as set forth above:

PART 232—404 PROGRAM DEFINITIONS; EXEMPT ACTIVITIES NOT REQUIRING 404 PERMITS; WETLAND IDENTIFICATION AND DELINEATION

3. Section 232.2(r) is revised to read as follows:

§ 232.2 Definitions.

* * * * *

(r) *Wetlands* means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Identifying characteristics of jurisdictional wetlands are described in § 232.4 of this part. Technical guidance on identifying and delineating wetlands is contained in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (see appendix A of 33 CFR part 328)[2].

4. Section 232.4 is added to read as follows:

§ 232.4 Identifying Characteristics of Jurisdictional Wetlands.

(a) Under natural, undisturbed conditions, wetlands generally possess three characteristics: Wetland hydrology, hydrophytic vegetation, and hydric soils. These three criteria, as described in paragraphs (b)–(d) of this section, must be present for an area to be identified as wetlands, unless otherwise specified in paragraphs (e)–(g) of this section.

(b) Wetlands hydrology is present if an area is inundated for 15 or more consecutive days, or saturated from surface or ground water to the surface for 21 or more consecutive days, during the growing season in most years. Wetland hydrology is also present if an area is periodically flooded by tidal water in most years. In the absence of direct measurement of inundation, soil saturation, or tidal flooding, an area meets the wetland hydrology criterion if one of the following indicators are documented:

(1) A minimum of 3 years of hydrologic records, collected during the years of normal rainfall, correlated with long-term hydrologic records for the specific geographic area, that demonstrate the area meets the wetland hydrology criterion; or

[2] See footnote 1 to 40 CFR part 230.3(t).

(2) Aerial photography for a minimum of 5 years that reveals evidence of inundation and/or saturation in most years, correlated with long-term hydrologic records for the specific geographic area, that demonstrates the area meets the wetland hydrology criterion; or

(3) The material presence of one or more primary hydrologic indicators below, which, when considered with evidence of frequency and duration of rainfall or other hydrologic conditions, that provides sufficient evidence to establish that the area meets the wetlands hydrology criterion:

(i) Surface water inundation; or

(ii) Observed free water at the surface in an unlined borehole; or

(iii) Water can be squeezed or shaken from a soil sample taken at the soil surface; or

(iv) Oxidized stains along the channels of living roots (oxidized rhizospheres); or

(v) Sulfidic material within 12 inches of the soil surface; or

(vi) Specific plant morphological adaptation/responses to prolonged inundation or saturation: pneumatophores, prop roots, hypertrophied lenticels, arenchymous tissues, and floating stems and leaves of floating-leaved plants growing in the area (may be observed lying flat on the soil), and buttressed trunks or stems.

(4) If none of the indicators in paragraphs (b)(1), (b)(2), or (b)(3) of this section is present, one or more of the following secondary hydrologic indicators, when used in conjunction with corroborative information (*e.g.*, maps), supports a wetland hydrology determination:

(i) Silt marks (waterborne silt deposits) that indicate inundation; or

(ii) Drift lines; or

(iii) Surface-scoured areas; or

(iv) Other common plant morphological adaptations/responses to hydrology: Shallow root systems and adventitious roots.

(c) Hydrophytic vegetation is present when, under normal circumstances, a frequency analysis of all species within the community yields a prevalence index of less than 3.0 (where obligate wetland = 1.0, facultative wetland = 2.0, facultative = 3.0, facultative upland = 4.0, and upland = 5.0). Hydrophytic vegetation is described with more specificity in the U.S. Fish and Wildlife Service's publication, National List of Plant Species that Occur in Wetlands, which is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC, 20402 (Stock Number 024–010–00682–0).

(d) Hydric soils are present when, based on field verification, an area has:

(1) Soils listed by series in "Hydric Soils of the United States" (as amended), which is available from the Chairperson, National Technical Committee for Hydric Soils, U.S. Department of Agriculture, Soil Conservation Service, South Agriculture Building, room 0054, 14th and Independence Avenue, SW., Washington, DC 20250;

(2) Organic soils (histosols, except foists);

(3) Mineral soils classifying as sulfaquents, hydraquents, or histic subgroups of aquic suborders; or

(4) Other soils that meet the National Technical Committee for Hydric Soils' criteria for hydric soil, which is available from the Chairperson, National Technical Committee for Hydric Soils, U.S. Department of Agriculture, Soil Conservation Service, South Agriculture Building, room 0054, 14th and Independence Avenue, SW., Washington, DC 20250.

(e) Exceptions to the Criteria. Areas satisfying the conditions specified below are wetlands even though they may not meet one of the criteria specified in paragraphs (b)–(d) of this section.

(1) Wetland Hydrology. Pocosins, playas, prairie potholes, and vernal pools are types of wetlands that may not satisfy the hydrology criterion specified in paragraph (b) of this section, but are inundated and/or saturated at the surface for 7 or more consecutive days during the growing season. These wetland types are described with more specificity in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands which appears at appendix A of 33 CFR part 328. Such areas are wetland provided they meet the hydrophytic vegetation and hydric soils criteria contained in paragraphs (c) and (d) of this section.

(2) Hydrophytic Vegetation. Eastern hemlock swamps, white pine bogs, and tamarack swamps are types of wetlands that may not satisfy the hydrophytic vegetation criterion specified in paragraph (c) of this section. These wetland types are described with more specificity in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands which appears at appendix A of 33 CFR part 328. Such areas are wetlands provided they meet the wetland hydrology and hydric soils criteria contained in paragraphs (b) and (d) of this section.

(f) Problem Wetland Areas. Problem wetland areas are those areas which provide wetland functions and values but where evidence of one or more of the criteria contained in paragraphs (b)–(d) of this section may be absent during a limited or extended period of time due to particular characteristics of the soil, vegetation, and hydrology of these areas. Problem areas and the conditions under which they may be wetlands are specified in appendix B of the Federal Manual for Identifying and Delineating Jurisdictional Wetlands which appears at appendix A of 33 CFR part 328.

(g) Disturbed Areas.

(1) Disturbed areas are those areas that previously met the criteria contained under paragraphs (b)–(d) of this section, or previously qualified as a wetland under paragraphs (e)–(f) of this section, but have had vegetation, soils, and/or hydrology altered by recent human activity or natural events such that the required evidence of the affected criteria has been removed. These wetland types are described with more specificity in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands which appears at appendix A of 33 CFR part 328. If a disturbed area is identified as a wetland, field personnel shall document the reasons for determining that the site would have been a wetland but for the disturbance. Such documentation shall include affirmative evidence reasonably supporting a conclusion that the site previously met the requisite criteria.

(2) Areas which have been disturbed by authorized or otherwise legal human activity are wetlands if the activity does not result in the relatively permanent removal of wetland hydrology, hydrophytic vegetation, or hydric soils. The removal of hydrology, vegetation or soils is not relatively pemanent if the affected hydrology, vegetation, or soils reasonably could be expected to return after the cessation of the legal activity. Illegal or unauthorized activities may not eliminate Clean Water Act jurisdiction.

(3) With regard to areas disturbed as a result of natural events (*e.g.*, avalanches, mudslides, fire, volcanic depositions, and beaver dams), the agency shall consider the relative permanence of the change, and whether the area is still functioning as a wetland. If natural events have relatively permanently disturbed an area to the extent that wetland hydrology is no longer present, and therefore hydric soils and hydrophytic vegetation, even if still present, would not be expected to persist at the site, the area is no longer a wetland.

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PART 435—OIL AND GAS EXTRACTION POINT SOURCE CATEGORY

1. The authority citation for part 435 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 435.41(f) is revised to read as follows:

§ 435.41 Specialized definitions.

* * * * *

(f) Wetlands means those areas defined at § 232.2(r) of this chapter.

33 CFR Chapter II—[Amended]

PART 328—DEFINITION OF WATERS OF THE UNITED STATES

1. The authority citation for part 328 continues to read as follows:

Authority: 33 U.S.C. 1344.

2. Section 328(b) is revised to read as follows:

§ 328.3 Definitions.

* * * * *

(b) The term *wetlands* means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Identifying characteristics or jurisdictional wetlands are described in § 328.6. Technical guidance on identifying and delineating wetlands is contained in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (see appendix A of this part).[3]

* * * * *

3. Section 328.6 is added to read as follows:

§ 328.6 Identifying Characteristics of Jurisdictional Wetlands.

(a) Under natural, undisturbed conditions, wetlands generally posses three characteristics: Wetland hydrology, hydrophytic vegetation, and hydric soils. These three criteria, as described in paragraphs (b)–(d) of this section, must be present for an area to be identified as wetlands, unless otherwise specified in paragraphs (e)–(g) of this section.

(b) Wetlands hydrology is present if an area is inundated for 15 or more consecutive days, or saturated from surface or ground water to the surface for 21 or more consecutive days, during the growing season in most years. Wetland hydrology is also present if an area is periodically flooded by tidal water in most years. In the absence of direct measurement of inundation, soil saturation, or tidal flooding, an area meets the wetland hydrology criterion if one of the following indicators are documented:

(1) A minimum of 3 years of hydrologic records, collected during the years of normal rainfall, correlated with long-term hydrologic records for the specific geographic area, that demonstrate the area meets the wetland hydrology criterion; or

(2) Aerial photography for a minimum of 5 years that reveals evidence of inundation and/or saturation in most years, correlated with long-term hydrologic records for the specific geographic area, that demonstrates the area meets the wetland hydrology criterion; or

(3) The material presence of one or more primary hydrologic indicators below, which, when considered with evidence of frequency and duration of rainfall or other hydrologic conditions, that provides sufficient evidence to establish that the area meets the wetlands hydrology criterion:

(i) Surface water inundation; or

(ii) Observed free water at the surface in an unlined borehole; or

(iii) Water can be squeezed or shaken from a soil sample taken at the soil surface; or

(iv) Oxidized stains along the channels of living roots (oxidized rhizospheres); or

(v) Sulfidic material within 12 inches of the soil surface; or

(vi) Specific plant morphological adaptation/responses to prolonged inundation or saturation: pneumatophores, prop roots, hypertrophied lenticels, arenchymous tissues, and floating stems and leaves or floating-leaved plants growing in the area (may be observed lying flat on the soil), and buttressed trunks or stems.

(4) If none of the indicators in paragraphs (b)(1), (b)(2), or (b)(3) of this section is present, one of more of the following secondary hydrologic indicators, when used in conjunction with corroborative information (*e.g.*, maps), supports a wetland hydrology determination:

(i) Silt marks (waterborne silt deposits) that indicate inundation; or

(ii) Drift lines; or

(iii) Surface-scoured areas; or

(iv) Other common plant morphological adaptations/responses to hydrology: Shallow root systems and adventitious roots.

(c) Hydrophytic vegetation is present when, under normal circumstances, a frequency analysis of all species within the community yields a prevalence index of less than 3.0 (where obligate wetland=1.0, facultative wetland=2.0, facultative=3.0, facultative upland=4.0, and upland=5.0). Hydrophytic vegetation is described with more specificity in the U.S. Fish and Wildlife Service's publication, National List of Plant Species that Occur in Wetlands, which is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC, 20402 (Stock Number 024–010–00682–0).

(d) Hydric soils are present when, based on field verification, an area has:

(1) Soils listed by series in "Hydric Soils of the United States" (as amended), which is available from the Chairperson, National Technical Committee for Hydric Soils, U.S. Department of Agriculture, Soil Conservation Service, South Agriculture Building, room 0054, 14th and Independence Avenue, SW., Washington, DC 20250;

(2) Organic soils (histosols, except folists);

(3) Mineral soils classifying as sulfaquents, hydraquents, or histic subgroups of aquic suborders; or

(4) Other soils that meet the National Technical Committee for Hydric Soils' criteria for hydric soil, which is available from the Chairperson, National Technical Committee for Hydric Soils, U.S. Department of Agriculture, Soil Conservation Service, South Agriculture Building, room 0054, 14th and Independence Avenue, SW., Washington, DC 20250.

(e) Exceptions to the Criteria. Areas satisfying the conditions specified below are wetlands even though they may not meet one of the criteria specified in paragraphs (b)–(d) of this section.

(1) Wetland Hydrology. Pocosins, playas, prairie potholes, and vernal pools are types of wetlands that may not satisfy the hydrology criterion specified in paragraph (b) of this section, but are inundated and/or saturated at the surface for 7 or more consecutive days during the growing season. These wetland types are described with more specificity in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands which appears at appendix A of this part. Such areas are wetland provided they meet the hydrophytic vegetation and hydric soils criteria contained in paragraphs (c) and (d) of this section.

(2) Hydrophytic Vegetation. Eastern hemlock swamps, white pine bogs, and tamarack swamps are types of wetlands that may not satisfy the hydrophytic vegetation criterion specified in paragraph (c) of this section. These wetland types are described with more specificity in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands which appears at appendix A of this part. Such areas are wetlands provided they meet the wetland hydrology and hydric soils criteria contained in paragraphs (b) and (d) of this section.

(f) Problem Wetland Areas. Problem wetland areas are those areas which provide wetland functions and values but where evidence of one or more of the criteria contained in paragraphs (b)–(d) of this section may be absent during a limited or extended period of time due to particular characteristics of the soil, vegetation, and hydrology of these areas. Problem areas and the conditions under which they may be wetlands are specified in Appendix 6 of the Federal Manual for Identifying and Delineating Jurisdictional Wetlands which appears at appendix A of this part.

(g) Disturbed Areas (1) Disturbed areas are those areas that previously met the criteria contained under paragraphs (b)–(d) of this section, or previously qualified as a wetland under paragraphs (e)–(f) of this section, but have had vegetation, soils, and/or hydrology altered by recent human activity or natural events such that the required evidence of the affected criteria has been removed. These wetland types are described with more specificity in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands which appears at appendix A of this part. If a disturbed area is identified as a wetland, field personnel shall document the reasons for determining that the site would have been a wetland but for the disturbance. Such documentation shall include affirmative evidence reasonably supporting a conclusion that the site previously met the requisite criteria.

(2) Areas which have been disturbed by authorized or otherwise legal human activity are wetlands if the activity does not result in the relatively permanent removal of wetland hydrology, hydrophytic vegetation, or hydric soils. The removal of hydrology, vegetation or soils is not relatively permanent if the affected hydrology, vegetation, or soils reasonably could be expected to return after the cessation of the legal activity. Illegal or unauthorized activities may not eliminate Clean Water Act jurisdiction.

(3) With regard to areas disturbed as a result of natural events (*e.g.*, avalanches, mudslides, fire, volcanic depositions, and beaver dams), the agency shall consider the relative permanence of the change, and whether the area is still functioning as a wetland. If natural events have relatively permanently disturbed an area to the extent that wetland hydrology is no longer present, and therefore hydric soils and hydrophytic vegetation, even if still present, would not be expected to persist at the site, the area is no longer a wetland.

[3] See footnote 1 to 40 CFR part 230.3(t).

7 CFR Chapter VI—[Amended]

PART 12—HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION

1. The authority citation for part 12 continues to read as follows:

Authority: 16 U.S.C. 3801 *et seq.*

2. Section 12.2(a)(29) is amended by adding at the end of the following two sentences:

§ 12.2 Definitions.

(a) * * *

(29) * * * Wetlands generally include swamps, marshes, bogs and similar areas. Identifying characteristics of jurisdictional wetlands are described in § 12.31(a). Technical guidance on identifying and delineating wetlands is contained in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (see appendix A of 33 CFR part 328).[4]

* * * * *

3. Section 12.31 is amended by removing paragraphs (a) and (b); redesignating existing paragraphs (c) and (d) as (h) and (i), respectively; revising the reference to "(c)(1)" in newly redesignated paragraph (h)(2) to read "(h)(1)"; and adding the following new paragraphs (a) through (g) to read as follows:

§ 12.31 Wetland Identification Criteria

(a) *Criteria.* Under natural, undisturbed conditions, wetlands generally possess three characteristics: Wetland hydrology, hydrophytic vegetation, and hydric soils. These three criteria, as described in paragraphs (b)–(d) of this section, must be present for an area to be identified as wetlands, unless otherwise specified in paragraphs (e)–(g) of this section.

(b) *Wetlands Hydrology.* Wetlands hydrology is present if an area is:

(1) Inundated for 15 or more consecutive days, or saturated from surface or ground water to the surface for 21 or more consecutive days, during the growing season in most years; or

(2) Periodically flooded by tidal water in most years. In the absence of direct measurement of inundation, soil saturation, or tidal flooding, an area meets the wetland hydrology criterion if one of the following indicators are documented:

(i) A minimum of 3 years of hydrologic records, collected during the years of normal rainfall, correlated with long-term hydrologic records for the specific geographic area, that demonstrate the area meets the wetland hydrology criterion; or

(ii) Aerial photography for a minimum of 5 years that reveals evidence of inundation and/or saturation in most years, correlated with long-term hydrologic records for the specific geographic area, that demonstrates the area meets the wetland hydrology criterion; or

(iii) The material presence of one or more primary hydrologic indicators below, which, when considered with evidence of frequency and duration of rainfall or other hydrologic conditions, that provides sufficient evidence to establish that the area meets the wetlands hydrology criterion:

(A) Surface water inundation; or

(B) Observed free water at the surface in an unlined borehole; or

(C) Water can be squeezed or shaken from a soil sample taken at the soil surface; or

(D) Oxidized stains along the channels of living roots (oxidized rhizospheres); or

(E) Sulfidic material within 12 inches of the soil surface; or

(F) Specific plant morphological adaptation/responses to prolonged inundation or saturation: pneumatophores, prop roots, hypertrophied lenticels, arenchymous tissues, and floating stems and leaves of floating-leaved plants growing in the area (may be observed lying flat on the soil), and buttressed trunks or stems.

(3) If none of the indicators in paragraphs (b)(2)(i), (b)(2)(ii), or (b)(2)(iii) of this section is present, one or more of the following secondary hydrologic indicators, when used in conjunction with corroborative information (*e.g.*, maps), supports a wetland hydrology determination:

(i) Silt marks (waterborne silt deposits) that indicate inundation; or

(ii) Drift lines; or

(iii) Surface-scoured areas; or

(iv) Other common plant morphological adaptations/responses to hydrology: shallow root systems and adventitious roots.

(c) Hydrophytic vegetation is present when, under normal circumstances, a frequency analysis of all species within the community yields a prevalence index of less than 3.0 (where obligate wetlands=1.0, facultative wetland=2.0,

[4] See footnote 1 to 40 CFR part 230.3(t).

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facultative=3.0, facultative upland=4.0, and upland=5.0). Hydrophytic vegetation is described with more specificity in the U.S. Fish and Wildlife Service's publication, National List of Plant Species that Occur in Wetlands, which is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC, 20402 (Stock Number 024-010-00652-0).

(d) *Hydric soils.* Hydric soils are present when, based on field verification, an area has:

(1) Soils listed by series in "Hydric Soils of the United States" (as amended), which is available from the Chairperson, National Technical Committee for Hydric Soils, U.S. Department of Agriculture, Soil Conservation Service, South Agriculture Building, room 0054, 14th and Independence Avenue, SW., Washington, DC 20250;

(2) Organic soils (histosols, except foists);

(3) Mineral soils classifying as sulfaquents, hydraquents, or histic subgroups of aquic suborders; or

(4) Other soils that meet the National Technical Committee for Hydric Soils' criteria for hydric soil, which is available from the Chairperson, National Technical Committee for Hydric Soils, U.S. Department of Agriculture, Soil Conservation Service, South Agriculture Building, room 0054, 14th and Independence Avenue, SW., Washington, DC 20250.

(e) *Exceptions to the Criteria.* Areas satisfying the conditions specified below are wetlands even though they may not meet one of the criteria specified in paragraphs (b) through (d) of this section.

(1) *Wetland Hydrology.* Pocosins, playas, prairie potholes, and vernal pools are types of wetlands that may not satisfy the hydrology criterion specified in paragraph (b) of this section, but are inundated and/or saturated at the surface for 7 or more consecutive days during the growing season. These wetland types are described with more specificity in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands which appears at appendix A of 33 CFR part 328. Such areas are wetland provided they meet the hydrophytic vegetation and hydric soils criteria contained in paragraphs (c) and (d) of this section.

(2) *Hydrophytic Vegetation.* Eastern hemlock swamps, white pine bogs, and tamarack swamps are types of wetlands that may not satisfy the hydrophytic vegetation criterion specified in paragraph (c) of this section. These wetland types are described with more specificity in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands which appears at appendix A of 33 CFR part 328. Such areas are wetlands provided they meet the wetland hydrology and hydric soils criteria contained in paragraphs (b) and (d) of this section.

(f) *Problem Wetland Areas.* Problem wetland areas are those areas which provide wetland functions and values but where evidence of one or more of the criteria contained in paragraphs (b)–(d) of this section may be absent during a limited or extended period of time due to particular characteristics of the soil, vegetation, and hydrology of these areas. Problem areas and the conditions under which they may be wetlands are specified in appendix B of the Federal Manual for Identifying and Delineating Jurisdictional Wetlands which appears at appendix A of 33 CFR part 328.

(g) *Disturbed Areas.* (1) Disturbed areas are those areas that previously met the criteria contained under paragraphs (b)–(d) of this section, or previously qualified as a wetland under paragraphs (e)–(f) of this section, but have had vegetation, soils, and/or hydrology altered by recent human activity or natural events such that the required evidence of the affected criteria has been removed. These wetland types are described with more specificity in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands which appears at appendix A of 33 CFR part 328. If a disturbed area is identified as a wetland, field personnel shall document the reasons for determining that the site would have been a wetland but for the disturbance. Such documentation shall include affirmative evidence reasonably supporting a conclusion that the site previously met the requisite criteria.

(2) Areas which have been disturbed by authorized or otherwise legal human activity are wetlands if the activity does not result in the relatively permanent removal of wetland hydrology, hydrophytic vegetation, or hydric soils. The removal of hydrology, vegetation or soils is not relatively permanent if the affected hydrology, vegetation, or soils reasonably could be expected to return after the cessation of the legal activity.

(3) With regard to areas disturbed as a result of natural events (*e.g.*, avalanches, mudslides, fire, volcanic depositions, and beaver dams), the agency shall consider the relative permanence of the change, and whether the area is still functioning as a wetland. If natural events have relatively permanently disturbed an area to the extent that wetland hydrology is no longer present, and therefore hydric soils and hydrophytic vegetation, even is still present, would not be expected to persist at the site, the area is no longer a wetland.

* * * * *

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federal register

Thursday
December 19, 1991

Part X

The President

Proclamation 6395—Basketball Centennial Day, 1991

Executive Order 12783—Extending the President's Council on Rural America

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Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 6395 of December 17, 1991

Basketball Centennial Day, 1991

By the President of the United States of America

A Proclamation

When Dr. James Naismith invented basketball a century ago, he could not have envisioned what would become of the simple game he had devised to entertain his students between the fall football and spring baseball seasons. Today the uniquely American game of basketball is one of the fastest paced and most widely popular team sports in the world.

Dr. Naismith's brainchild has changed dramatically since a janitor helped him hang peach baskets at each end of the gymnasium at the International Young Men's Christian Association Training School in Springfield, Massachusetts. Once played primarily at YMCA facilities, basketball now boasts players and fans around the globe. Breakaway rims and gravity-defying jump shots have replaced the one-handed set shot into wooden receptacles; three-point goals now reward players who can shoot accurately from long range; and more and more women are taking up the game at all levels of competition.

Each of these changes has made basketball more exciting to watch, expanding its appeal to people of all ages and all walks of life. Indeed, few sporting events generate more spirited rivalries than a high school state basketball championship, the NCAA 64-team tournament, or the NBA Finals. Since 1904, when it was introduced as a demonstration sport, basketball has also been a thrilling part of the Olympics. The United States is proud of the many Olympic titles that have been brought home by our American teams, including the 1984 Women's Gold Medal.

In every city and town across the United States, playgrounds and gymnasiums are filled with youngsters who dream of success on the hardwood. However, whether one aspires to play professional ball or simply hopes to win a friendly pickup game, anyone who spends time on the court knows the importance of mastering the fundamentals: dribbling, passing, shooting, and rebounding. Once these skills are developed, an athlete must then learn to coordinate his or her game with the other four players on a squad. This combination of individual achievement and teamwork is what makes the game of basketball both fascinating and rewarding. The great college coach, John Wooden, may have said it best when he explained:

> In basketball, we meet adversity head on. It's so much like life itself: the ups and downs, the obstacles—they make you strong. A coach is a teacher, and like any good teacher, I'm trying to build men.

Like all sports, basketball not only promotes physical health and fitness but also fosters virtues that serve players well on and off the court. On this occasion, we proudly celebrate the 100th anniversary of this uniquely American game.

The Congress, by Public Law 102–210, has designated December 21, 1991, as "Basketball Centennial Day" and has authorized and requested the President to issue a proclamation in observance of this day.

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NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim December 21, 1991, as Basketball Centennial Day. I invite all Americans to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of December, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.

George Bush

[FR Doc. 91-30553
Filed 12-18-91; 11:05 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12783 of December 17, 1991

Extending the President's Council on Rural America

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to extend the President's Council on Rural America, it is hereby ordered that Executive Order No. 12720 is amended by deleting the text of section 3(e) and inserting in lieu thereof "The Council shall terminate on January 16, 1993."

George Bush

THE WHITE HOUSE,
December 17, 1991.

[FR Doc. 91-30554
Filed 12-18-91; 11:06 am]
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Public Laws

102d Congress, 2nd Session, 1992

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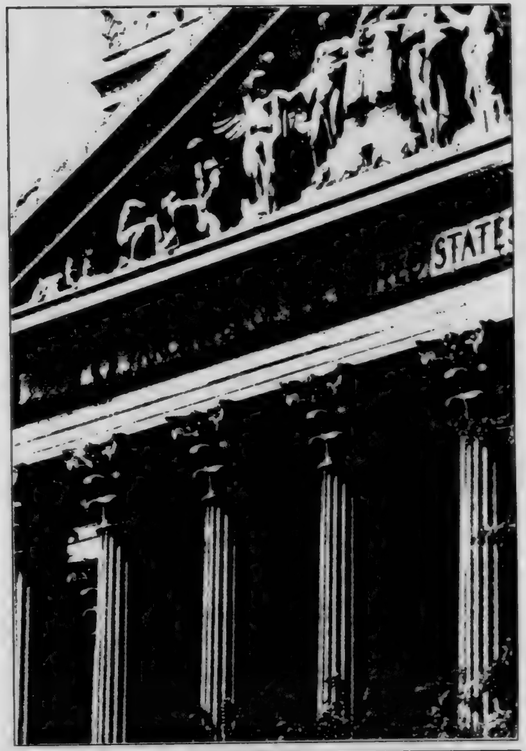
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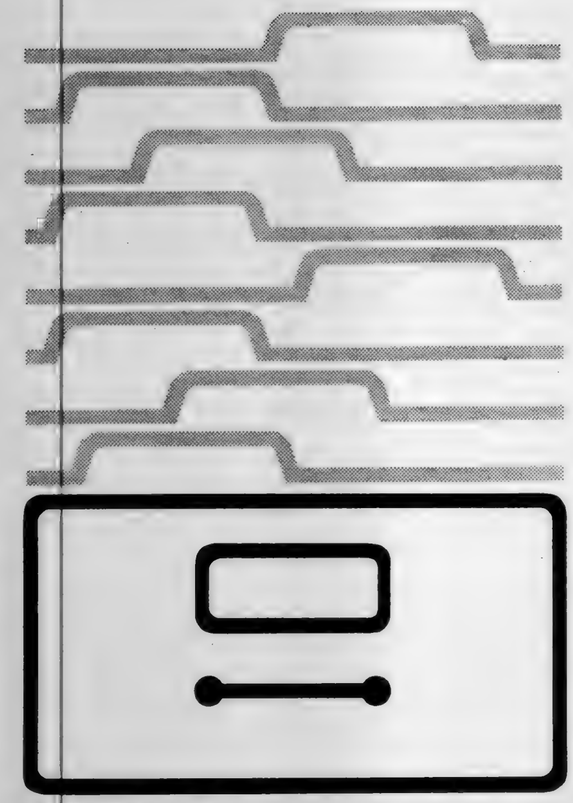
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in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1991

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

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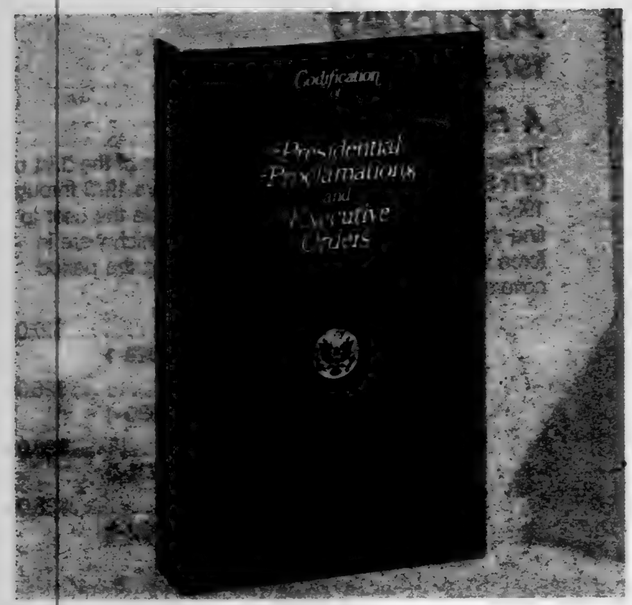
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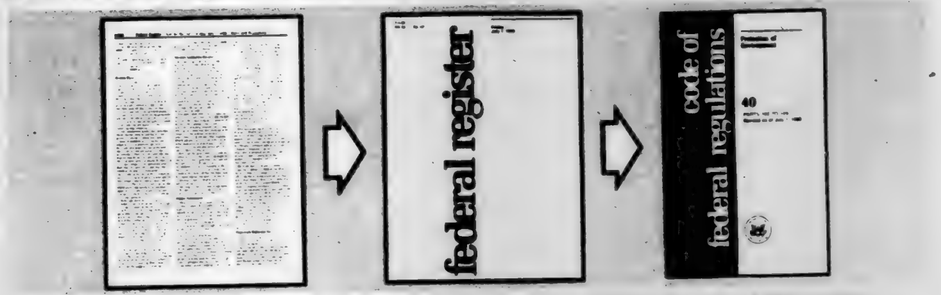
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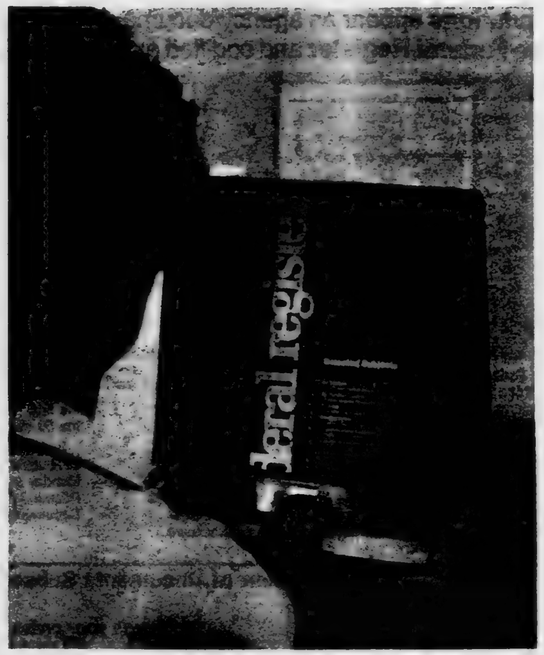
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[CN-91-007]

Amendment to the Cotton Research and Promotion Regulations for Cotton Board Membership

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the Cotton Research and Promotion regulations regarding Cotton Board membership. This amendment establishes procedures for determining the appropriate number of importer representatives to serve as members and alternate members on the Cotton Board. The initial number of importer representatives shall be four, as provided by the amendment to the Cotton Research and Promotion Order. This amendment also provides for the participation of importers in nominating importer members.

EFFECTIVE DATE: December 20, 1991.

FOR FURTHER INFORMATION CONTACT: Craig Shackelford, (202) 720-2259.

SUPPLEMENTARY INFORMATION: These amendments to the regulations regarding Cotton Board membership are issued pursuant to the Cotton Research and Promotion Act Amendments of 1990 and the Cotton Research and Promotion Order which has been amended in order to implement the 1990 amendments to the Act. A proposed rule amending the Order was issued by the Department of Agriculture and published in the **Federal Register**, April 10, 1991 (56 FR 14482). Written comments concerning the April 10 proposed rule were discussed in a proposed amendment to the Order published in the **Federal Register**, July 9, 1991 (56 FR 31289). The proposed amendment to the Order, published July 9, was approved by a majority of cotton importers and producers voting in a referendum conducted July 17–26.

This final rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the Executive Order 12291 since it does not meet the criteria for a major regulatory action contained in that Order.

The Administrator, Agricultural Marketing Service (AMS), has considered the economic impact of this action on small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). There are an estimated 210,000 domestic cotton producers who are presently subject to the regulations regarding Cotton Board membership. In the proposed rule it was stated that there are 35,000 domestic cotton producers. This number was in error for reasons discussed in the proposed Order amendment dated July 9, 1991 (56 FR 31289). There are also an estimated 10,000 importers that will become subject to the regulations. The majority of these producers and importers would be classified as small businesses under the criteria established by the Small Business Administration. The economic impact of this final rule is not expected to be significant. Also, importers who are selected as members to the Cotton Board will serve without compensation but will be reimbursed for necessary expenses, as approved by the Board, incurred by them in performance of their duties under the Order. Accordingly, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements for domestic producers and importers contained in this subpart, have been approved and assigned OMB control number 0581–0093. Individual producers and importers nominated to the Cotton Board will also be required to submit a membership background information sheet previously approved by OMB and assigned OMB control number 0505–0001. The combined estimated number of producer and importer respondents is 32 per year. The estimated number of importer respondents is 8 per year. Each respondent will submit one response when nominated, with an estimated average reporting burden of 0.5 hours per response.

The agency received no comments regarding the proposed amendment to the Cotton Research and Promotion Regulations for Cotton Board Membership published in the **Federal Register** on June 27, 1991 (56 FR 29445). The proposal established procedures for determining how many importer representatives would serve on the Cotton Board and the procedures importers would follow in nominating potential Cotton Board members. The volume of Upland cotton imported and the cotton content of imported products in terms for 480-pound bales or the equivalent thereof was proposed to be used to determine how many additional persons above the minimum number of two, as provided by the proposed Order amendments, would represent importers on the Cotton Board. The proposed rule amending the Order published in the April 10, 1991, **Federal Register** (56 FR 14482) provided that importer membership on the Cotton Board would consist of one member for each one million bales or major fraction (more than one-half) thereof of imported cotton subject to assessment during the period specified in the regulations for determining Board membership. In addition, § 1205.322 of the proposed amendment to the Order provided that the number of cotton importers represented on the Cotton board would in no case be less than two and the percentage of importers represented on the Board would in no case be greater than 20 percent. All importer members appointed would serve out their three-year terms even if the volume of imported cotton should decrease.

Section 1205.322 of the proposed amendment to the Order was changed based on public comments. Five written comments received from importers concerning the proposed provisions for establishment and membership of the Cotton Board objected to the 20 percent cap on importer representation, stating that importers would not receive equitable representation under the proposal. Conversely, one commenter suggested that, initially, importers

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should be limited to two Board members.

The 1990 amendment to the Act provides that when importers are subject to an Order, the Board (in addition to producer representatives) shall be composed of "—an appropriate number of importer representatives on the Cotton Board, as determined by the Secretary, of importers of cotton on which assessments are paid—". In describing producer representation, the Act specifically requires that cotton producers have representation on the Board for each cotton-producing state proportionate to that state's share of total U.S. marketings of cotton. Each cotton-producing state is entitled to at least one representative. The Order provides that producers are entitled to one representative for each one million bales (or major fraction thereof) of cotton produced.

Upon consideration of the concern raised by importers, the agency decided to remove the 20 percent cap, and to establish importer representation on the Board in a manner that would more closely reflect the amount of imported cotton assessed.

For the purpose of the initial implementation of the Order, the agency has determined that importer representation would consist of four members. Upon consideration of the estimated volume of imported cotton that would be subject to assessment, the agency has determined this number to be appropriate. In no case, would importer representation consist of less than two members.

According to statistics prepared by USDA, the total quantity of imported cotton during 1990 was approximately 4.9 million bale equivalents. At this time, our figures indicate that the volume of imported cotton in bale equivalents will be less in 1991.

Total bale equivalents of imported cotton do not accurately reflect the amount of imported cotton on which assessments will be paid because a certain amount of imported cotton will not be subject to assessment. Imported cotton not subject to assessment will include de minimis amounts of cotton as defined in the rules and regulations implementing the Order, U.S. produced cotton reentering the U.S., cotton contained in industrial products, and other product categories which would not be included in the Harmonized Tariff Schedule classification numbers listed in rules and regulations that would implement the Order. It is the agency's view that the volume of cotton not subject to assessment would be one million bale equivalents or more. Therefore, four importer representatives on the Board will result in approximately one representative for each one million bales or bale equivalents of cotton imported and assessed. This closely parallels the formula used for producer representation.

The agency will have better information as to the volume of imported cotton assessed after assessments have been collected for at least one year. To make allowance for fluctuations in the volume of imported cotton subject to assessment, the Order provision enables the Secretary to reduce or expand importer representation on the Board after consultation with organizations representing importers in a manner provided by the rules and regulations implementing the Order.

This rule establishes that in no case, will importers be represented by less than two members. Additional importer members could be added to the Cotton Board after consultation by the Secretary with importer organizations, and after consideration of the average annual volume of imported cotton that would be subject to assessment for five preceding years. To conform with the provisions of the Order, the agency has revised § 1205.402 of the proposed rule which based importer representation on the average annual imports of cotton and cotton-containing products. Representation shall now be based on the average annual imports of cotton and cotton-containing products which are assessed.

Initially, the agency has determined to establish importer representation at four members on the Cotton Board.

Each year in approximately July, the Director of the Cotton Division will contact certified importer organizations, notifying each of the number of importer vacancies to be filled on the Cotton Board.

The Director will work with the certified importer organizations to determine a time and place for all such importer organizations to caucus for nominating importers to serve on the Cotton Board. Each organization will be entitled to have one representative attend the nomination caucus. The representatives of the importer organizations will jointly nominate two qualified persons for each vacant member and alternate member position. These procedures parallel procedures already established for cotton producer nominations. This rule also contains several non-substantive changes for the purpose of clarity and organization as well as additional language in § 1205.402(b) so that it conforms with Order provisions.

Pursuant to the provisions of 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this amendment until 30 days after publication in the **Federal Register** because: (1) Cotton producers and importers voting in a referendum have approved the amendment to the Cotton Research and Promotion Order which the provisions of this regulation, in part, implement; and (2) in accordance with the Act, the amendment should be published as soon as possible.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1205 is amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation for part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

2. Section 1205.402 is revised to read as follows:

§ 1205.402 Determination of Cotton Board membership.

(a) In determining whether any cotton-producing state is entitled to be represented by more than one member of the Cotton Board as provided in § 1205.322, average annual production of Upland cotton in terms of 480-pound net weight bales for the five most recent marketing years will be used as the criteria for determination of such additional members.

(b) In determining whether importers of cotton and cotton-containing products are entitled to be represented by more than a minimum of two members on the Cotton Board as provided in § 1205.322, the average annual volume of imported cotton and the cotton content of imported products on which assessments have been collected will be used as the criteria for determination of such additional members. This volume of cotton will be expressed in terms of 480-pound net weight bales for the five most recent calendar years. The initial importer representation on the Board shall consist of four importer representatives.

(c) All members appointed from a state will be entitled to serve a full three-year term even though it is determined in a subsequent year that a state should have fewer additional members by using the average production of the five most recent marketing years as specified in paragraph (a) of this section.

(d) All members appointed to represent importers will be entitled to serve a full three-year term even though it is determined in a subsequent year that importers should be represented by fewer additional members by using the average volume of imports of cotton and the cotton content of products on which assessments have been collected as specified in paragraph (b) of this section.

(e) Each year the Director shall:

(1) Based on the average annual production of Upland cotton in terms of 480-pound net weight bales for the five most recent marketing years, notify all certified cotton producer organizations in each cotton-producing state of the number of vacancies to be filled by cotton producers on the Cotton Board; and

(2) Based on the average annual volume of imports of cotton and the cotton content of cotton-containing products on which assessments as provided for in § 1205.335 have been collected in terms of 480-pound net weight bales for the five most recent calendar years, notify all certified cotton importer organizations of the number of vacancies to be filled by cotton importers on the Cotton Board.

3. Section 1205.403 is revised to read as follows:

§ 1205.403 Nomination procedure.

(a) The Director shall notify all certified producer organizations within each cotton-producing state and all certified importer organizations of the location, date, and time of the caucus for nominating producer and importer representatives for the Cotton Board as specified in § 1205.324. The Director will designate a representative from the Cotton Division to attend the caucus meeting of cotton producer organizations in each state, and of cotton importer organizations. Each eligible cotton producer organization within each cotton-producing state and each importer organization will be entitled to only one representative at the caucus for the purpose of nominating two qualified persons for each member and for each alternate member to be selected. The representative of a cotton producer organization shall be a cotton producer and resident of such state, an officer or member of the Board of Directors of such organization, and duly and unqualifiedly authorized in writing by such organization to make nominations on its behalf. The representative of an importer organization shall be an importer of cotton and/or products containing cotton, an officer or member of the Board of Directors of such organization, and duly and unqualifiedly authorized in writing by such organization to make nominations on its behalf. The representative of the Director designated to attend the caucus meeting of cotton producer organizations in each state and of cotton importer organizations will ascertain the qualifications and eligibility of each representative of a cotton producer organization or cotton importer organization to participate in said meeting and to make nominations.

(b) Each caucus will be conducted as follows:

(1) The representative from the Cotton Division will act as temporary chairperson and will explain the procedure for nominations and the duties of the Cotton Board;

(2) The representatives in attendance from the certified organizations will then select a chairperson and secretary;

(3) At each caucus there will be presented for nomination and there will be nominated not less than the number of nominees required under the provisions of §§ 1205.322, 1205.324, and 1205.402.

Dated: December 16, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91–30445 Filed 12–19–91; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1944

Multi-Family Housing; Corrections

AGENCY: Farmers Home Administration, USDA.

ACTION: Final Rule; correction.

SUMMARY: The Farmers Home Administration (FmHA) is correcting errors in the final rule published on January 22, 1991 (56 FR 2198) concerning Multi-Family Housing.

EFFECTIVE DATE: October 31, 1991.

FOR FURTHER INFORMATION CONTACT: David J.Villano, Chief, Rural Rental Housing Branch, Multi-Family Housing Processing Division, Farmers Home Administration, USDA, room 5349—South Agriculture Building, Washington, DC 20250, telephone (202) 720–1608.

Accordingly, the final rule published on January 22, 1991, (56 FR 2198) is corrected as follows:

1. The amendatory language and amendatory text in Amendment No. 43 on pages 2236–2238 is corrected to read as follows:

43. Section 1944.215 is revised to read as follows:

§ 1944.215 Special conditions.

(a) *Cost containment.* To help assure low affordable rental and occupancy rates, projects must be economical in construction and not of elaborate design or materials. Cost containment is not to be interpreted as accepting poor design or cheap construction. Projects must provide the features and amenities necessary for the lifestyles of the tenants and members. Consideration must be given to the cost/benefit ratio when evaluating, recommending or requiring specific design features or construction techniques. The following guidelines should be followed when developing projects:

(1) Each State architect/engineer (A/E) should compile and maintain data or spreadsheets on cost/sq. ft., cost/unit, and cost/acre, A/E fees, etc., which are reasonable and customary for the State. Any proposal that exceeds these costs should be carefully evaluated for possible cost reductions. Final determinations must be realistic, interrelated to maintenance and operation costs, and based upon local conditions and common sense. The Building Cost Tracking System may prove helpful.

(2) The elimination or reduction of unnecessary delays in application processing can contribute to cost containment through lower interest and other business expenses on land, inventory, tests, design studies, etc. When reasonable processing timeframes are established, known and followed, appropriate time can be planned for preparing quality application and construction documents. This can result in better instructions to the builder, fewer errors and lower construction costs.

(3) Most materials and systems are available in a range of qualities and prices. The construction documents should be carefully reviewed for specifications that require qualities or grades higher than necessary. These specifications should be accepted only if fully justified and no reasonable alternatives are available.

(4) Designs which encourage standard building material dimensions and reduce waste will be used as much as possible.

(5) State Directors should encourage the use of sites that require a minimum amount of site development. State Directors should also encourage projects with a minimum of 14 units per acre unless the applicant provides documentation supporting a change.

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such as local zoning requirements requiring a different density.

(6) Items such as covered parking and garages can be included in the FmHA loan only when they are required by local codes or ordinances.

(7) Sound judgment and common sense must also be used in construction inspections and final acceptance of projects. Field staff involved in these activities must be careful not to impose additional or unreasonable requirements on the builder that will increase construction costs.

(8) When evaluating projects, life cycle costs will be considered. These costs include: Initial costs, future replacement costs and operation and maintenance costs. The economic lives of alternative designs and materials will be considered. Reductions in initial costs may result in higher life cycle costs.

(9) Management, maintenance and community rooms should not exceed the limitations described in the FmHA Manual of Acceptable Practices (available in any FmHA office). Laundry rooms should be no larger than necessary to accommodate equipment, circulation and areas for sorting and folding clothes.

(b) *Type of housing.* All housing should be designed to:

(1) Be economically constructed and not of elaborate design or materials. All new construction will conform with the applicable development standards of § 1924.5(d)(1) of subpart A of part 1924 of this chapter. As a general rule, the gross square foot living area of new units and related facilities to be constructed with loan funds will be within the ranges listed below. Living area does not include outdoor storage space when unfinished or space for heating and cooling equipment.

Type of unit	Minimum/maximum living area (square feet)
0-Bedroom	350–500.
1-Bedroom	500–650.
2-Bedroom	650–800.
3-Bedroom	800–950.
4-Bedroom	950–1100.

(i) An additional 100 to 120 square feet of living area may be added to the 4-bedroom unit guideline for each bedroom in excess of 4.

(ii) In townhouse units where living area is on two floor levels of the unit, the maximum gross square footage of living area may be exceeded by up to 70 square feet, but only to the extent necessary to accommodate interior stairways.

(iii) Room sizes must be in compliance with the applicable development standard. Minimum room sizes may be determined by the minimum areas in Guide 2 of subpart A of part 1924 of this chapter.

(iv) Additional area to accommodate energy conserving and solar heating elements such as vestibules, heat sinks, solar greenhouses, solar heat storage devices and the like may be allowed in excess of the stated maximum size guidelines. However, such devices, if included, must be justified on a cost effective basis.

(2) Consist of multi-unit type housing with two or more units and appropriate related facilities except for the conversion of section 502 inventory housing as covered in § 1944.212(o) of this subpart, manufactured homes and group homes. Single family structures may be considered for cooperative housing projects if economically feasible.

(3) Be residential in character and be designed to meet the needs of eligible tenants or members. Generally, structures should not be more than three stories high. However, low-rise structures with elevators can be considered when the following conditions exist:

(i) There is a serious shortage of suitable building sites, the number of units needed cannot be built due to lack of space on available suitable sites and other building sites are not available.

(ii) Land costs are such that one- to three-story construction would result in a unit cost and rental/occupancy rates in excess of what eligible tenants and members can afford.

(iii) The number of stories proposed for the structure is compatible with other rental structures in the community. If there are no other low-rise rental structures in the community, the proposed structure must be in character with surrounding structures.

(iv) The cost of the units should compare favorably with one- to three-story construction financed with RRH loans. If the costs are higher, the loan will not be approved until the FmHA State architect or engineer has reviewed the plans, specifications and cost data to assure that further cost savings cannot be achieved without sacrificing the quality and serviceability of the housing.

(v) Elevators will be provided in accordance with the applicable development standards. If elevators are included, the subsoil conditions of the site must be adequate for the installation of elevators and sufficient service personnel must be available in the area for service and repair work.

(4) Provide kitchen and bath facilities consistent with the size of the unit. For example, units with three or less bedrooms typically can be designed with one bath. However, townhouse units with three or more bedrooms where living area is on two floors may contain bath facilities on both levels. Kitchen facilities are required in all units; however, in congregate housing, some or all of the units may have limited facilities, such as a cooktop with a small oven and refrigerator.

(5) Give maximum consideration to energy conservation. To keep operating costs at a minimum, units should be individually metered for utilities unless adequate justification is provided to show that it would be infeasible.

(6) Meet the needs of handicapped tenants in rental projects. At least 5 percent of the units in the project or one unit, whichever is greater, must be accessible to or adaptable for physically handicapped persons. The percentage of the units provided may be modified if an applicant shows, through information obtained from a State, local or independent agency or organization serving handicapped people, that a different percentage of accessible or adaptable units is appropriate. However, at least one accessible unit will be provided. Adaptable units must be constructed in accordance with the Uniform Federal Accessibility Standards, sections 4.34.3 through 4.34.6.

(7) For covered dwellings, handicap accessibility requirements will be met as set forth in section 504 of the Rehabilitation Act of 1973 and the Fair Housing Amendments Act of 1988.

(c) *Deferred principal payments.* (1) When construction is funded by multiple advances from FmHA, principal payments on the loan will be deferred for the period of construction.

(2) When an interim financed loan is closed other than the first day of the month, principal payments will be deferred for the remaining period of the month in which the loan is closed.

(3) When construction is substantially complete and the project is ready for full operation, or the total of principal advances plus accrued interest reaches the MDL, interest on the advances will be accrued to the Amortization Effective Date (AED) and will be capitalized, establishing a new principal (loan) amount.

(4) At loan obligation, the MDL will be established according to § 1944.213(a) of this subpart. When the final advance on the loan is issued or the MDL is reached, the Finance Office will:

(i) Accrue interest on all advances through the last day of the month and capitalize the interest as of the AED. When there is a remaining obligation balance, it will be canceled by the Finance Office.

(ii) Establish the new loan amount and the borrower's monthly payments computed over the remaining term of the loan.

(5) The District Office will:

(i) Contact the applicant and complete Form FmHA 1944–52, "Multiple Family Housing Promissory Note."

(ii) Implement Form FmHA 1944–7, "Interest Credit and Rental Assistance Agreement," at AED or when the project is substantially complete and ready for full operation, whichever is later.

(d) *Refinancing Loans.* Each borrower, except those borrower(s) whose loans were made pursuant to contracts entered into on or after December 15, 1989, must agree to refinance the unpaid balance of the loan when requested by the Agency. The rates and terms of the refinanced loan must be considered reasonable by the Agency to enable the borrower to offer the units to eligible tenants and members at rates within their payment ability. The refinancing of a loan must comply with the restrictions indicated in § 1944.236(b)(5) of this subpart and subpart F of part 1951 of this chapter.

(e) *Loan resolution or loan agreement.* The loan resolution or loan agreement contains provisions of policy and procedure which should be carefully read and fully understood by the applicant. If any provisions are not appropriate to a particular case, proposed substitute language must be approved by FmHA and OGC. Subpart C of Part 1930 provides for the maintenance of certain accounts and the pledge of housing income as security. It contains regulatory provisions governing and giving FmHA power to impose requirements regarding the housing and related operations of the applicant. All sections and requirements determined applicable by OGC will form part of any other loan resolution or agreement that may be submitted by the applicant. These are:

(1) Form FmHA 1944–33, "Loan Agreement."

(2) Form FmHA 1944–34, "Loan Agreement."

(3) Form FmHA 1944–35, "Loan Resolution."

(f) *Cooperative management.* Consideration must be given to the special conditions of a cooperative housing structure concerning management. The following forms of management will be recognized for cooperative housing.

(1) Self-management. The primary management objective for small housing cooperatives. To achieve this, education and training efforts should be an on-going part of their early years of operation. Accordingly, modest educational costs will be permitted in the budget as a subheading under management expenses. It is understood that, in the beginning, it may be necessary to obtain some outside services, such as a bookkeeper. If so, then partial self-management can be considered. It will be necessary for a qualified nonmember (individual or organization) to advise the board during the formative years of the cooperative. Exhibits F and G to this subpart will be used as a guide for determining the qualifications of the adviser.

(2) Partial self-management. Certain management and/or supervisory services contracted from a technical service organization, housing authority, or management firm, etc. If this additional assistance does not enable the cooperative to manage itself, then the ultimate solution will have to be contract management.

(3) Contract management. Professional services contracted for the day-to-day supervision of cooperative operations. The board of directors would develop the policies which would then be administered by the management agent.

(g) *Cooperative membership fee.* Cooperative housing is a form of homeownership. In order to promote a commitment from prospective members, cooperatives will require a membership fee. The membership fee established by the board of directors will be equal to one month's occupancy charge. Once the fee has been established, that amount will be uniformly applied to all members. Members unable to pay a cash membership fee should be permitted to make monthly payments without interest, until the membership fee is paid; however, a cash payment of at least $25 should be required at occupancy. The period of payment on the membership fee should not exceed 12 months.

(h) *Cooperative limited equity.* (1) RCH loans will only be made to cooperatives which limit the accumulation of equity. The limitations are designed to maintain unit availability for low-income people. In addition, all prospective members must have received, prior to becoming an actual member, a statement of the objectives of the cooperative, debts and a declaration describing limited equity and what it will mean to them. Exhibit H of this subpart will be used for this purpose. Limited equity is further described in What is Cooperative Housing? Which is to be given to prospective members.

(2) Inflation equity which accrues on cooperative property is not considered part of members' limited equity and will not be taken from the project when a member vacates the project.

(i) *Interest credits and rental assistance (RA).* (1) Borrowers may receive interest credits if they meet the requirements outlined in exhibit B of subpart C to part 1930 of this chapter.

(2) RA may be provided to eligible tenants and members in eligible projects in accordance with exhibit E to subpart C of part 1930 of this chapter.

(3) At least 95 percent of RA units available for newly constructed projects must be used to assist very low-income tenants and members. Up to 5 percent can be used for low-income tenants and members.

(4) Cooperative members must have sufficient incomes to pay their management reserve charge. RA will not be used for this purpose. Management reserve charge is further described in exhibit A to this subpart.

(j) *Nondiscrimination in use and occupancy.* The borrower will not discriminate or permit discrimination by any agent, lessee or other operator in the use or occupancy of the housing or related facilities because of race, color, religion, age, sex, marital or familial status, handicap or national origin, in accordance with title VIII of the Civil Rights Act of 1968, as amended.

(k) *Eligibility for occupancy.* Loans will be made on the basis of the housing being occupied by eligible tenants and members as defined in § 1944.205 of this subpart. Eligible tenants and members must meet the requirements of exhibit B of subpart C of part 1930 of this chapter.

(l) *Tenant and member certification.* Initial certification and recertifications will be executed on Form FmHA 1944–8, "Tenant Certification," in accordance with exhibit B to subpart C of part 1930 of this chapter.

(m) *Supervision of borrowers.* Supervision will be provided borrowers under subpart C of part 1930 and subpart B of part 1965 of this chapter.

(n) *Establishing profit base on initial investment.* Applicants agreeing to operate on a limited profit basis will be permitted a return not to exceed 8 percent per annum on their initial investment determined at the time of loan approval. This amount will be reflected in the loan agreement or loan resolution and will not be changed once it is determined. The initial investment may exceed the required 3 percent in

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§ 1944.213(b)(2) of this subpart and may include the following:

(1) Cash contributions made by the applicant which, when added to the FmHA loan amount, are not in excess of the security value of the project.

(2) The value of the building site or essential related facilities contributed by the applicant up to the amount which, when added to the FmHA loan amount, is not in excess of the security value of the project. An appraisal will be done by an FmHA employee authorized to make appraisals or an FmHA authorized representative in accordance with applicable FmHA regulations. Value of the applicant's contribution will be determined on an "as is" basis less any amount owed on the property.

(o) *Intergovernmental review.* FmHA will consider comments received in accordance with 7 CFR part 3015, "Intergovernmental Review of Department of Agriculture Programs and Activities," when making decisions on loan applications. (See FmHA Instruction 1940–J, available in any FmHA office.)

(p) *Guidelines for preparing environmental assessments and environmental impact statements.* All projects will comply with subpart G of part 1940 of this chapter.

(q) *National flood insurance.* The provisions of the National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973 and Executive Order 11988, are applicable to FmHA authorities permitting financing of housing now located in, or to be located in, special flood or mudslide-prone areas as designated by the Federal Emergency Management Administration (FEMA). Subpart B of part 1806 of this chapter (FmHA Instruction 426.2) and subpart G of part 1940 of this chapter will apply.

(r) *Location of housing.* (1) The location of the project should expand the supply of decent, safe, and sanitary housing for very low-, low- and moderate-income elderly persons and families in a nondiscriminatory way. The location should promote a greater choice of housing opportunities in the housing market area.

(2) Project locations should promote an equal opportunity for the inclusion of all groups regardless of race, color, religion, sex, national origin, age, marital status or physical or mental handicap thereby opening up nonsegregated housing opportunities for minorities.

(3) Except as otherwise permitted by paragraph (s)(6) of this section, housing projects must be located in residential areas as part of established rural communities where essential public facilities (such as schools, hospitals and generally central water and sewer systems) and services (such as shopping, medical, and pharmaceutical) are readily available in close and convenient proximity to the site. Public facilities and services must be adequate to support the needs of the tenants and members and the housing project. (See FmHA Instruction 1922–B.)

(4) In order to provide housing at the lowest cost possible, preference will be given to loan requests in which specific tracts of land will be donated by States, units of local government, public bodies and nonprofit organizations. The land must be suitable for the proposed housing and meet all FmHA site criteria. In addition, affording such preference must be cost effective.

(5) Noncontiguous rental sites. (i) Noncontiguous sites within the same community may be considered if feasible. Each site must meet all FmHA site criteria and an appraisal must be made on each site in accordance with subpart B to part 1922 of this chapter (available in any FmHA office). The units must be managed under one management plan with one loan agreement/resolution.

(ii) If a small community cannot support a project containing enough units to make it cost effective or in cases involving conversion of 502 inventory units, FmHA will consider a project which includes more than one site in the same or different communities. The State Office and applicant must mutually agree that the location of the sites will not adversely effect the efficiency of management and servicing of the projects. The requirements of paragraph (r)(5)(i) of this section will also apply.

(6) FmHA will consider financing new construction or the purchase and rehabilitation of existing structures (in accordance with § 1944.212(b) of this subpart) located in the downtown business areas of rural communities that have established a comprehensive strategy for meeting their community development and housing needs. That strategy must include the redevelopment, rehabilitation, restoration or revitalization of the downtown business area. The proposed project site must be located within the downtown business redevelopment/revitalization area and the following conditions must be met:

(i) Essential public facilities (such as schools, hospitals and generally central water and sewer systems) and services (such as shopping, medical and pharmaceutical) must be readily available in close and convenient proximity to the site and must be adequate to support the needs of the tenants and members and the housing project.

(ii) The community must have an official short-term community development and housing plan which sets forth its comprehensive strategy for meeting identified community development and housing needs. The plan will include the need for eliminating and preventing economic decay, slums or blight; the need of benefiting the lower-income population; or other community development needs having a particular urgency. The strategy should include a community-wide component which describes the development strategy of the governing body, the major objectives the governing body seeks to accomplish, the priorities it has established, the factors taken into account in selecting areas for treatment and the anticipated public and private sources of funds necessary to conduct the treatment of each area selected. In addition, the plan should contain the following component strategies:

(A) *Neighborhood revitalization:* The strategy for alleviating physical deterioration, maintaining viable neighborhoods and stimulating investment to upgrade neighborhoods affected by blight and deterioration.

(B) *Housing:* The community-wide strategy to improve housing conditions and to meet the housing assistance needs that have been identified. Reference to any current Department of Housing and Urban Development approved housing assistance plan would be helpful as part of this component strategy.

(C) *Economic development:* The strategy for attracting private investment in the business community and for solving the critical problems which may be the result of a stagnating or declining tax base or from population outmigration.

(iii) Evidence must be presented from the local governing body verifying that the community has adopted, through resolution or other official act, the community development and housing plan referenced in paragraph (r)(6)(ii) of this section. A copy of the adopted plan should be made available to FmHA. While it is not necessary that the downtown redevelopment/revitalization area be formally designated as an urban renewal or other similar area, evidence supporting a local determination that the downtown business area meets the criteria established in the community development and housing plan must be maintained in the locality's records. Documentation received from the local governing body must also identify the site or structure involved in the applicant's proposal as part of or essential to the downtown redevelopment/revitalization area.

(iv) Evidence must be presented to FmHA verifying the intended commitment of public and private resources which will be available for completing any other integrally related redevelopment/revitalization activities being undertaken in the downtown business area along with the applicant's proposed project.

(v) Prior review and concurrence must be received from the National Office before the State Director or District Director authorizes the applicant to develop a complete application. All of the information required in paragraph (r)(6) of this section must be provided by the applicant before National Office review.

(7) The property for which a loan is made must be located in a rural area as defined in § 1944.10 of subpart A of part 1944 of this chapter. However, if the area where the site is located has changed from rural to nonrural in accordance with the most current official census figures, preapplications received before the date the area was determined nonrural will be processed as expeditiously as possible and loans closed if the applicants are otherwise eligible.

(s) *Clean Air Act and Water Pollution Control Act Requirements.* When the contract exceeds $100,000, the contractor will comply with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1657(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations 40 CFR part 15 which prohibit the awarding of nonexempt Federal contracts, grants or loans to facilities included on EPA's list of violating facilities. The contractor will report violations to the EPA.

(t) *Concurrence with construction contracts.* A construction contract between the borrower and contractor for development of a project will contain a provision that it is not in full force and effect until the State Director concurs in writing in the form, content and execution of the contract. Before loan closing or before the start of construction, whichever occurs first, the State Director or his/her delegate will concur with the contract form, content and execution by including the following paragraph at the end of the contract:

"The Farmers Home Administration, as a potential lender or insurer of funds to defray the costs of this contract, and without liability for any payments thereunder, hereby concurs with the form, content, and execution of this contract."

Date _____

Farmers Home Administration

By: _____

Title: _____

(u) *Historic preservation requirements.* The District Director must take the necessary action to assure that the applicant will comply with the provisions of subpart F of part 1901 of this chapter. This regulation concerns compliance with the National Historic Preservation Act of 1966, the Archeological and Historic Preservation Act of 1974 (Public Law 93–291), and Executive Order 11593 dated May 13, 1971.

(v) *Uniform Relocation Assistance and Real Property Acquisition Act of 1970.* Public bodies and agencies which have the power of eminent domain and/or condemnation must comply with the requirements of this Act. The applicant must provide assistance for relocation of displaced persons from a site on which a project will be located. FmHA loan funds may be increased over and above the appraised value of the property to cover costs incurred in the relocation of displaced persons. Until instructions are published by the National Office, the Department regulations found at part 21 of this title should be followed and the National Office should be consulted for guidance in developing an RRH or RCH loan for a project affected by this Act. Generally, if there are alternative sites of equal quality which meet the Agency's requirements, the site with the least relocation impact will be selected.

(w) *Rental assistance (RA) and market feasibility.* (1) As evidence of market feasibility, an applicant that proposes a project which is expected to use FmHA RA units will only be required to demonstrate that a market exists for tenants or members eligible for the RA.

(2) To evidence market feasibility for projects which are expected to use RA from sources other than FmHA, applicants will be required to demonstrate that:

(i) The assistance will be provided for at least 5 years.

(ii) A market exists for persons and families eligible for the assistance. The amount of the RA to be provided must be considered when determining the number of families that would be income eligible for the project.

(iii) For the term of the loan remaining after RA is no longer available, an adequate rental market exists for the project without the assistance.

(iv) During the term of the RA contract, the provider will make available the amounts required at least annually.

(x) *Accountability.* Applicants should be made aware of the accountability requirements of persons paid to influence the making of an FmHA housing loan and/or grant as described in subpart S of part 1940 of this chapter.

2. The amendatory language in Amendment No. 58 on page 2245 and the heading preceding it are corrected to read as follows:

Exhibits A–4—A–9 to Subpart E [Redesignated as Exhibits A–5—A–10 to Subpart E]

58. Exhibits A–4, A–5, A–6, A–7, A–8, and A–9 to Subpart E are redesignated as Exhibits A–5, A–6, A–7, A–8, A–9, and A–10, respectively.

Dated: December 12, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91–30356 Filed 12–19–91; 8:45 am]

BILLING CODE 3410–07–M

Animal and Plant Health Inspection Service

9 CFR Part 82

[Docket No. 91–060]

Exotic Newcastle Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Technical amendment.

SUMMARY: We are making a technical amendment to correct an error in the interstate transportation of animals and animal products regulations concerning areas quarantined because of exotic Newcastle disease.

EFFECTIVE DATE: December 20, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. M. A. Mixson, Chief Staff Veterinarian, Emergency Programs Staff, VS, APHIS, USDA, room 746, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8073.

SUPPLEMENTARY INFORMATION:

Background

Exotic Newcastle disease is a contagious, infectious, and communicable disease of birds and poultry. Regulations to eradicate and to prevent the interstate spread of this and other diseases are contained in 9 CFR part 82.

Paragraph (c) of § 82.3 quarantines certain areas because the contagion or vectors of exotic Newcastle disease exist in these areas, or because animals

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and/or live poultry affected with or exposed to exotic Newcastle disease exist in these areas.

During the 1970's and 1980's, certain premises within New York and California were quarantined because of exotic Newcastle disease and added to the list of quarantined areas in § 82.3(c). (At no time were New York and California quarantined in their entirety due to exotic Newcastle disease; only premises within these States were quarantined.)

The last quarantined premises in New York was removed from the list of quarantined areas in § 82.3(c) in a final rule effective May 13, 1983, and published in the **Federal Register** on May 19, 1983 (48 FR 22501, Docket Number 83-062). The last quarantined premises in California was removed from the list of quarantined areas in § 82.3(c) in a final rule effective May 17, 1983, and published in the **Federal Register** on May 23, 1983 (48 FR 22897, Docket Number 83-067).

It has come to our attention that New York and California continue to appear on the list in § 82.3(c), even though no quarantined premises remain in either State. This oversight could create confusion concerning the quarantine status of these States. We are therefore removing paragraph (c) of § 82.3. No areas in the United States are quarantined because of exotic Newcastle disease.

List of Subjects in 9 CFR Part 82

Animal diseases, Chlamydiosis, Exotic Newcastle disease, Ornithosis, Poultry and poultry products, Psittacosis, Salmonella, Quarantine, Transportation.

PART 82—EXOTIC NEWCASTLE DISEASE IN ALL BIRDS AND POULTRY; PSITTACOSIS AND ORNITHOSIS IN POULTRY; POULTRY DISEASE CAUSED BY SALMONELLA ENTERITIDIS

Accordingly, 9 CFR part 82 is amended as follows:

1. The authority citation for part 82 continues to read as follows:

Authority: 21 U.S.C. 111–113, 115, 117, 120, 123–126, 134a, 134b, 135f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 82.3 [Amended]

2. In § 82.3, paragraph (c) is removed.

Done in Washington, DC, this 16th day of December 1991.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-30475 Filed 12-19-91; 8:45 am]

BILLING CODE 3410-34-M

FARM CREDIT ADMINISTRATION

12 CFR Parts 613 and 618

RIN 3052-AB28

Eligibility and Scope of Financing; General Provisions; Financing of Basic Processing and Marketing Activities; Authorized Insurance Services

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), adopts final regulations amending parts 613 and 618 of FCA regulations, that were published as proposed regulations on September 9, 1991, 56 FR 45902. These regulations reflect certain amendments to the Farm Credit Act of 1971 (1971 Act) by the Food, Agriculture, Conservation and Trade Act of 1990 [1] (1990 Farm Bill) pertaining to the throughput requirements for processing and marketing loans and insurance services offered by Farm Credit System (System) institutions. The amendment to part 613 deletes the 20-percent minimum throughput requirement for loans financing and processing and/or marketing operations of eligible farmers, ranchers, and producers or harvesters of aquatic products, and imposes a statutory limitation on the volume of such loans where the throughput provided by the borrower is less than 20 percent. The amendment to part 618 modifies the requirement that all Farm Credit System institutions must offer more than two insurance carriers.

EFFECTIVE DATE: The regulations shall become effective upon the expiration of 30 days after publication during which either or both houses of Congress are in session. Notice of the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT:

Linda C. Sherman, Senior Credit Specialist, Policy and Risk Analysis Division, Office of Examination, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498,

or

Richard A. Katz, Attorney, Regulatory and Legislative Law Branch, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION:

I. General

Prior to the 1990 Farm Bill, sections 1.11(a) and 2.4(a)(1) of the 1971 Act authorized Farm Credit Banks (FCBs) and production credit associations (PCAs) respectively, to make processing and marketing loans to farmers, ranchers, and producers or harvesters of aquatic products if the borrower's agricultural or aquatic operations supplied at least 20 percent of the total processing or marketing (throughput) for which financing was extended. Section 1832 of the 1990 Farm Bill deleted the 20-percent throughput requirement from sections 1.11(a) and 2.4(a)(1) of the 1971 Act, and instead required the borrower's agricultural or aquatic operations to supply "some portion" of the throughput used in the borrower's processing and/or marketing operations. The 1990 Farm Bill also added the following provisions to the 1971 Act concerning processing and marketing loans to borrowers who provide less than 20 percent of the throughput: (1) Such loans by an FCB are limited to 15 percent of its total outstanding loans; and (2) such loans by any direct lender association in the district are restricted to 15 percent of all outstanding retail loans of all such direct lender associations in the district.

Section 1834 of the 1990 Farm Bill modified the requirement in section 4.29 of the 1971 Act that FCBs always approve more than two insurers for each type of insurance program offered to System borrowers throughout the district. Congress recognized "the possibility that System banks may be unable to satisfy the requirement that banks approve more than two insurers for each type of program." [2] As a result, Congress amended section 4.29 of the 1971 Act to require System banks to make a reasonable and good faith effort to attract and approve more than two qualified insurers for each insurance program offered in the district so that the bank or its related associations could offer borrowers at least two insurers.

In response to these statutory changes, the FCA proposed to amend § 613.3045 pertaining to processing and marketing loans, and § 618.8030 regarding insurance services. *See* 56 FR 45902 (September 9, 1991). Comments concerning the proposed amendments to the processing and marketing regulation were received from the Farm Credit Council (FCC), three FCBs, two agricultural credit associations (ACAs), and the American Bankers Association (ABA). The FCC also offered comments about the proposed amendments to § 618.8030 pertaining to insurance services, which were endorsed by all System commenters.

[1] Pub. L. No. 101-624, 104 Stat. 3350 (1990).

[2] H.R. Conf. Rep. No. 916, 101st Cong. 1st Sess. 1133 (1990).

II. Processing and Marketing Loans

A. Minimum Throughput Requirement

1. Comments

The FCA proposed to amend § 613.3045(b)(2) to allow FCBs and direct lender associations to finance the processing and/or marketing operations of farmers, ranchers, and aquatic producers or harvesters whose agricultural or aquatic activities supply, on a sustained basis, some portion of the throughput. The FCA did not propose to otherwise amend § 613.3045(b)(2), which also imposes specific requirements on applicants whose agricultural or aquatic operations supply less than 50 percent of the throughput used in their processing and/or marketing operations. The proposed regulation would continue to require the applicant's processing and/or marketing activities to constitute a logical and actual extension of the borrower's agricultural or aquatic operations for financing vertical integration from the production stage through the processing and/or marketing stage, whenever the applicant's production supplies less than 50 percent of the throughput. Furthermore, FCA did not propose to amend existing § 613.3045(b)(2)(iii) which imposes specific requirements on applicants who supply less than 50 percent of the throughput whenever the ownership of the processing and/or marketing operation differs from the ownership of the basic agricultural or aquatic production operation.

The FCC commented (and the FCBs and ACAs concurred) that the additional requirements that § 613.3045(b)(2) imposes on loans to borrowers who supply less than 50 percent of the throughput, exceed the limits that Congress established by statute. The FCC argued that § 613.3020 imposes sufficient safeguards to prevent FCBs and associations from extending processing and marketing loans to parties who are not bona fide farmers, ranchers, or aquatic producers or harvesters.

The FCC also asserted that FCA would unnecessarily restrict the ability of FCBs and associations to make processing and marketing loans by requiring the borrower to supply some portion of the throughput "on a sustained basis." The FCC concedes, however, that the statute requires the processing and/or marketing operations to be a logical extension of an eligible borrower's agricultural or aquatic operations.

The FCC recommended that the final regulation add proposed §§ 613.3045(b)(2)(ii) and 613.305(c) to existing § 613.3045(a), and eliminate the remainder of the current regulation, including current § 613.3045(c) (redesignated as (e) in the final regulation), which requires all FCBs and associations to develop specific lending policies concerning processing and marketing loans.

2. FCA Response

The FCA disagrees with the FCC's contention that the proposed regulation violates the amended statute because it continues to distinguish between loans where the borrower's agricultural or aquatic activities supply more than 50 percent of the throughput, and loans where the borrower contributes a lesser amount of the throughput. Sections 1.11(a) and 2.4(a)(1) of the Act continue to require processing and marketing operations to be "directly related" to the agricultural or aquatic activities of eligible borrowers in order to be eligible for financing. The FCA interprets "directly related" to require that the processing and marketing operations be a "logical and actual extension" of the agricultural or aquatic activities of eligible borrowers.

When the borrower supplies 50 percent or more of the throughput, FCA's regulations presume that the processing and/or marketing operation is an actual and logical extension of the borrower's agricultural or aquatic production. Borrowers who supply 50 percent or more of the throughput are currently not required to demonstrate that their processing and/or marketing operations are an actual and logical extension of the agricultural or aquatic activities of eligible borrowers in order to qualify for credit from a Farm Credit System institution.

When the throughput declines to below 50 percent, the regulation does not presume that the borrower's marketing and processing operation is directly related to his or her agricultural or aquatic operation. Rather, the regulation requires additional evidence that the operation is directly related to the borrower's agricultural or aquatic production. The FCBs and associations are expected to screen carefully potential processing and marketing borrowers who supply less than 50 percent of the throughput so that the processing and marketing authorities are not used to finance enterprises that are only remotely connected with the financing of agricultural or aquatic production.

As noted above, the FCC requested that FCA delete existing § 613.3045(b)(2)(iii), which imposes certain requirements on borrowers who supply less than 50 percent of the throughput, whenever the ownership of the processing and/or marketing operation differs from the ownership of the basic agricultural or aquatic production operations.

This provision in the existing regulation is intended to qualify an applicant which is wholly owned by eligible borrowers, but may not produce throughput or meet the legal entity test of § 613.3020. Where the processing and/or marketing operation is separate from the basic production unit, the processing and marketing operation may not meet the eligibility requirements of § 613.3020 because it does not produce agricultural products or own agricultural land. However, where the basic processing and/or marketing entity is entirely owned by persons who would be eligible for such financing, individually or as joint borrowers, the existing and proposed regulations would consider the entity, together with its owners, as a "farmer, rancher, or aquatic producer or harvester" for the purposes of determining eligibility for a loan under processing and marketing authorities. The FCA intends to further clarify these issues when it undertakes a more comprehensive review of the eligibility requirements of part 613.

The FCA declines to delete the phrase "on a sustained basis" from the regulation, as eligible borrowers are expected to regularly supply some portion of the agricultural or aquatic produce used in the processing and/or marketing operation. Similarly, while the final regulation redesignates existing § 613.3045(c) as (e), no substantive change is made, as the need for each institution to appropriately monitor and control eligible marketing and processing loans continues to exist.

The FCA believes that the final regulation balances the objectives that Congress set forth in the 1990 Farm Bill. The successful and expanding processing and/or marketing operations of bona fide farmers, ranchers, and aquatic producers or harvesters will now qualify for continued System financing when the borrower's share of the throughput declines below 20 percent. At the same time, the regulation excludes borrowers whom Congress deemed ineligible for loans from FCBs and associations.

B. Restrictions on the Amount of Certain Processing and Marketing Loans

The FCA proposed to implement provisions in the 1990 Farm Bill limiting the amount of processing and marketing

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loans that FCBs and direct lender associations can make to borrowers who supply less than 20 percent of the throughput by redesignating existing § 613.3045 (c) as (e) and adding § 613.3045 (c) and (d) to the existing regulation. Under proposed § 613.3045(c), processing and marketing loans to borrowers who supply less than 20 percent of the throughput would be subject to the three separate limitations below:

(1) Section 613.3045(c)(1) would limit such loans to 15 percent of all outstanding loans made in the district by the FCB and all direct lender associations during the preceding fiscal year;

(2) Section 613.3045(c)(2) would restrict processing and marketing loans (where the throughput is less than 20 percent) by a FCB to 15 percent of all outstanding loans made by the Bank during the preceding fiscal year; and

(3) Section 613.3045(c)(3) would limit such loans by any direct lender association to 15 percent of all outstanding loans made by all direct lender associations in the district during the preceding fiscal year.

In addition, § 613.3045(d) would require each FCB, in conjunction with all associations chartered in the district to identify and monitor eligible marketing and processing loans with less than 20-percent throughput prior to final loan approval in order to ensure that the 15-percent districtwide limit is not exceeded.

The FCC offered no comments on proposed § 613.3045 (c) and (d) because it was unable to forge a consensus position among its members. Instead, two FCBs submitted separate comments on proposed § 613.3045(c)(1). One of the two FCBs and the ABA offered comments on proposed § 613.3045(d).

One FCB suggested that the FCA delete § 613.3045(c)(1), contending the districtwide limit was not authorized by statute. This FCB argued that the 1990 Farm Bill only imposed a districtwide limit on processing and marketing loans (with less than 20-percent throughput) at the association level. The FCB argued that sections 1.11(a)(2) and 2.4(a)(1) of the 1971 Act imposed separate and unrelated limits on such processing and marketing loans by FCBs and associations. The legislative history to the 1990 Farm Bill expressly states that Congress intended to "allow the FCS to lend to marketers and processors" who supplied less than 20 percent of the throughput, but limited such loans to "15 percent of the portfolio of the district bank." However, the FCB commented that this is "an unclear and inconclusive expression of Congressional intent * * * that is in direct conflict with the plain language of the [s]ections 1.11(a)(2) and 2.4(a)(1)." This commenter opined that Congress would have written the statute differently if it really intended to impose a districtwide limitation on these loans.

The FCA disagrees that a districtwide limit on these loans is contrary to the plain language of sections 1.11(a)(2) and 2.4(a)(1) of the 1971 Act. The FCA declines to omit § 613.3045(c)(1) from the regulation because the legislative history clearly indicates that Congress intended to limit processing and marketing loans to borrowers who supply less than 20 percent of the throughput in each district to 15 percent of the portfolio of the district bank. Section 613.3045(c)(1) demonstrates that sections 1.11(a)(2) and 2.4(a)(1) of the 1971 Act can be interpreted together in a manner that is compatible with the legislative history.

Section 1342 of the 1990 Farm Bill establishes limits in both sections 1.11(a) and 2.4(a)(1) of the 1971 Act on processing and marketing loans to borrowers who supply less than 20 percent of the throughput. The Joint Conference Report explains that section 1342 of the 1990 Farm Bill "allows the FCS" to extend credit to the processing and/or marketing operations of borrowers who supply less than 20 percent of the throughput, but "limits the new authority to 15 percent of the portfolio of the district bank." [3] Since the Joint Conference Report describes both provisions as enforcing a single limitation, it is difficult to understand how the commenter can argue that there is a districtwide limit for associations without acknowledging that the Bank is also subject to it.

Comments concerning proposed § 613.3045(c) indicate that System institutions may be confused about which loans comprise the base of "total outstanding loans," for the purposes of determining the districtwide limit. The FCA interprets "total outstanding loans" to refer to bank loans made to borrowers, not loans to associations. Sections 1.11(a) and 2.4(a)(1) of the 1971 Act grant FCBs and associations authority to make retail loans. The FCA believes that the limitation was intended to be related to the Bank volume used in determining the 15-percent districtwide limit. This is similar to the interpretation of limits on rural housing loans in sections 1.11(b) and 2.4(b) of the 1971 Act, which refer to "total outstanding loans" of the FCBs and associations. At the time these retail lending authorities were granted, only the Federal land banks (FLBs) and PCAs could make retail loans. The FCA has always interpreted these limits on rural housing loans as referring to the total of outstanding retail loans. The FCA adopts this interpretation for processing and marketing loans.

According, the FCA has revised proposed § 613.3045(c) in the final regulation to specify that the districtwide limit on this category of processing and marketing loans is based upon the total of all outstanding retail loans made in the district during the preceding fiscal year. More specifically, § 613.3045(c)(1) limits processing and marketing loans where the throughput is less than 20 percent to 15 percent of all outstanding retail loans made by both the FCB and all associations in the district. Furthermore, § 613.3045(c)(2) of the proposed regulation was revised to state more clearly that processing and marketing loans by FCBs to borrowers who supply less than 20 percent of the throughput are restricted to 15 percent of the FCB's total outstanding retail loans.

The final regulation clarifies that "loans" include participation interests, and specifically addresses how the participation of processing and marketing loans between the FCB and its affiliated associations affect the districtwide limitations. Such participation interests may be counted in the loan totals of the FCB or the direct lender association, but not in both places. This change is designed to allow maximum flexibility to the district to make processing and marketing loans to eligible borrowers, wherever they may be located.

Another FCB, in conjunction with the districtwide ACA, expressed concern about the impact of proposed § 613.3045(c) in situations where the direct lending authority in a district was transferred to an ACA or a Federal land credit association (FLCA), but certain long-term mortgages remained at the FCB. These institutions recommended that the FCA amend the proposed regulation so that the association could count the FCB's loans as its own, and thus, increase the amount of processing and marketing loans that the association could make. These commenters suggest that the failure of the FCA to make an exception for this situation would create a "discriminatory and anomalous result [that] cannot be sustained on any legal or policy grounds."

In response to the above concerns, the FCA has revised § 613.3045(c)(3) in the final regulation to allow associations to count, as a part of the association loan total, all performing retail loans on the Bank's books that were originated before the lending authority was transferred. The final regulation, however, excludes nonperforming loans that the FCB has either retained or purchased from an association as a form of financial assistance from the base of "total outstanding loans" that is used to determine the districtwide limit. This change is intended to avoid disadvantaging districts in which long-term lending authority has been transferred out of the Bank, but assets have not.

An FCB also expressed concern that § 613.3045(d) would enable one or two System institutions to monopolize processing and marketing loans (to borrowers who supply less than 20 percent of the throughput) in the district. This commenter felt a small association could become heavily concentrated in these loans without violating the 15-percent limit in § 613.3045(c), and suggested that the FCA amend § 613.3045(d) to require that each institution establish its own limit. Under the FCB's proposal, each FCB and association would base its individual limit on sound credit practices and risk diversification principles.

However, the 1990 Farm Bill clearly imposed districtwide limits on processing and marketing loans to borrowers who supply less than 20 percent of the throughput. The FCA proposed amending § 613.3045(d) to require each FCB and its affiliated associations to equitably allocate such processing and marketing loans among all institutions in the district. The final regulation enables, but does not require, the FCB and the associations in the district to establish specific percentage limits on the amount of processing and marketing loans that each institution can make to borrowers who supply less than 20 percent of the throughput. This equitable allocation of such loans among the direct lenders in the district is intended to prevent any association from concentrating its portfolio in processing and marketing loans or violating the districtwide limit in § 613.3045(c)(3).

The FCA has eliminated the requirement of § 613.3045(d) to develop policies and procedures for monitoring and implementing the limitations of § 613.3045(c). The final regulation merely requires FCBs and associations to identify and monitor loans to ensure that the 15-percent districtwide limit is not exceeded and that processing and marketing loans are equitably allocated among all lenders.

The ABA commented on ways to detect and punish "inadvertent" violations of the 15-percent limit on processing and marketing loans to borrowers who supply less than 20 percent of the throughput. The ABA suggested that the final regulation require all borrowers who obtain processing and marketing loans from Farm Credit System institutions to submit an annual affidavit stating the amount of throughput contributed during the year. The ABA proposed that every FCB, on a quarterly basis, calculate the amount of processing and marketing loans made to borrowers in the district with less than 20-percent throughput and submit a report to the FCA. The ABA recommended the regulations specify procedures for reporting, compiling, calculating, and reviewing information about these loans. The commenter suggested that the FCA add provisions to the regulation to impose personal liability on directors of Farm Credit System institutions that violate the 15-percent limit for processing and marketing loans to borrowers who supply less than 20 percent of the throughput. The ABA contends that loans which exceed the limit are null and void. The commenter further recommended that the contract should warn the borrower that any processing and marketing loan made in violation of the limit is void, and in such event, the borrower would be obligated to immediately refund the principal amount of the loan.

The FCA notes that current underwriting and reporting standards on processing and marketing loans are sufficient to detect any violation of limits on this category of loans. The FCA's enforcement powers are sufficient to remedy situations where System institutions exceed the 15-percent limit. The sanctions proposed by the ABA for inadvertent violations of the districtwide limit appear excessive and unnecessary. The FCA also has not adopted the ABA's suggestion that the regulation punish a borrower for the unintentional mistakes of the lender.

III. Insurance Services

The proposed amendments to § 618.8030 reflect changes to section 4.29 of the 1971 Act by no longer requiring that the banks always approve more than two insurers for each type of insurance program offered to Farm Credit System borrowers. The proposed regulation would require a bank to document its efforts to attract additional qualified insurers for each type of insurance offered whenever it had not approved more than two insurers for each insurance program offered in every State of its chartered territory.

The FCC approved of the proposed regulation and recommended two minor word changes. The FCC suggested the FCA change the word "offer" in the third sentence of § 618.8030(b)(2) to "approve," in order to reflect the requirement in section 4.29 of the 1971 Act that System banks approve, whenever possible, more than two insurers for each type of insurance offered to System borrowers. Similarly, the FCC suggested that the term "approved" in the final sentence of § 618.8030(b)(3)(v) be changed to "selected," because the direct lender "selects and offers" insurers that already have been "approved" by the bank. The FCA adopted these changes suggested by the FCC because they clarify the regulation.

List of Subjects in 12 CFR Parts 613 and 618

Aged, Agriculture, Banks, banking, Civil rights, Credit, Fair housing, Insurance, Marital status discrimination, Religious discrimination, Reporting and recordkeeping requirements, Rural areas, Sex discrimination, Signs and symbols, Technical assistance.

For the reasons stated in the preamble, parts 613 and 618 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 613—ELIGIBILITY AND SCOPE OF FINANCING

1. The authority citation for part 613 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 2.2, 2.4, 2.12, 3.1, 3.7, 3.8, 3.22, 5.9, 5.17; 12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2073, 2075, 2093, 2122, 2128, 2129, 2143, 2243, 2252.

Subpart B—Eligibility To Borrow From Farm Credit Banks, Agricultural Credit Banks, Production Credit Associations, Agricultural Credit Associations and Federal Land Credit Associations

2. Section 613.3045 is amended by revising the first sentence of paragraph (b)(2)(ii); redesignating paragraph (c) as new paragraph (e); and adding new paragraphs (c) and (d) to read as follows:

§ 613.3045 Financing of basic processing and marketing activities.

* * * * * *

(b) * * *

(2) * * *

(ii) The applicant, or as provided for in paragraph (b)(2)(iii) of this section, the applicant processing or marketing unit and its owners, shall produce on a

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[3] *Id*

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sustained basis some portion of the throughput of the basic processing and/or marketing operation sufficient to demonstrate that such operation constitutes a logical and actual extension of the applicant's agricultural or aquatic operation for financing vertical integration from the production stage through the basic processing and/or marketing stage. * * *

* * * * *

(c) Processing and marketing loans to eligible borrowers, who supply on a sustained basis less than 20 percent of the throughput, are subject to the following restrictions:

(1) The aggregate of such marketing and processing loans provided by the Farm Credit Bank and all direct lender associations in each district shall not exceed 15 percent of the total of all outstanding retail loans in the district at the end of the bank's preceding fiscal year;

(2) The aggregate of such marketing and processing loans provided by any Farm Credit Bank shall not exceed 15 percent of all outstanding retail loans made by such bank as a direct lender at the end of its preceding fiscal year. For the purposes of this paragraph, "outstanding loans" may include loan participations bought from or sold to associations in the district, to the extent such participations are not considered as a part of the "aggregate of outstanding loans of all associations" for the purposes of determining the limitation under paragraph (c)(3) of this section; and

(3) The aggregate of such marketing and processing loans provided by any association shall not exceed 15 percent of all outstanding loans of all associations in the district at the end of the preceding fiscal year. For the purposes of this paragraph, "outstanding loans of all associations" may include, to the extent not considered as a part of the retail loan volume of the bank for the purposes of determining the limitations under paragraph (c)(2) of this section:

(i) All performing loans originated by or through associations to which long-term lending authority has been transferred; and

(ii) All loan participations sold by associations to the district bank and all participations purchased by the association from the bank;

(d) Each Farm Credit Bank, in conjunction with all direct lending associations chartered in the district, shall:

(1) Identify and monitor loans subject to the limitations of paragraph (c) of this section sufficiently to ensure that the 15-percent districtwide limit is not exceeded;

(2) Ensure that processing and marketing loans subject to the limitations of paragraph (c) of this section are equitably allocated among all direct lenders in the district; and

(3) Ensure that no retail loan or loan participation is double-counted for the purposes of determining the limitations of paragraph (c) of this section.

* * * * *

PART 618—GENERAL PROVISIONS

3. The authority citation for part 618 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17; 12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252.

Subpart B—Member Insurance

4. Section 618.8030 is amended by revising paragraphs (b)(2) and (b)(3)(v) to read as follows:

§ 618.8030 Authorized insurance services.

* * * * *

(b) * * *

(2) In making insurance available through private insurers, each bank shall approve the programs of more than two insurers for each type of insurance offered in the bank's chartered territory, provided that more than two insurers for each type of insurance have proposed programs to the bank that will, in all likelihood, have long-term viability, and meet the requirements of § 618.8030(b)(3)(i) of this section. The banks shall make a reasonable and good faith effort to attract more than two qualified insurers for each insurance program offered to borrowers in all States of the bank's chartered territory. Where the bank is unable to approve more than two insurers, the bank shall document its efforts to attract additional qualified insurers for the affected insurance program and State. The banks may provide comparative information relating to costs and quality of approved programs and the financial condition of approved companies.

(3) * * *

(v) In making insurance available through approved insurers, the board of directors of the bank or association shall make a reasonable and good faith effort to select and offer at least two approved insurers for each type of insurance made available to the members and borrowers. In the event that the bank or association has selected less than two insurers for any insurance program, such bank or association shall document the reasons why it is unable to offer members and borrowers additional insurers for the affected insurance program.

* * * * *

Dated: December 16, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91-30479 Filed 12-19-91; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 154, 157, 284, 375, and 380

[Docket No. RM90-1-003]

Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities

Issued: December 16, 1991.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; notice of postponement of technical conference.

SUMMARY: By notice issued on November 26, 1991 (56 FR 63648, December 5, 1991), the Federal Energy Regulatory Commission (Commission) set January 7, 1992 as the date for a technical conference on the non-environmental aspects of the final rule issued on September 20, 1991 in Order No. 555. The Commission hereby is postponing the date of that conference until Friday, January 17, 1992. All interested persons are invited to attend and participate.

DATES: The conference will be held on Friday, January 17, 1992 beginning at 10 a.m.; notices of intent to participate should be filed by January 10, 1992 and should indicate the amount of time desired, if any, for a presentation.

ADDRESSES: The conference will be held at the Commission's offices at 810 First Street, NE., Washington, DC; notices of intent to participate should be filed with the Secretary of the Commission, 825 N. Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Secretary of the Commission, (202) 208-0400.

Federal Energy Regulatory Commission

Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities

[Docket No. RM90-1-003]

Postponement of Technical Conference

December 16, 1991.

On November 26, 1991, the Commission issued a notice convening on January 7, 1992 a technical conference on the non-environmental aspects of Order No. 555.[1] Notice is hereby given that the Commission is postponing the date of that technical conference until January 17, 1992. The conference will commence on that date at 10 a.m., at 810 First Street, NE., Washington, DC.

All interested persons are invited to attend and participate. Those wishing to make a presentation must so advise the Secretary of the Commission on or before Friday, January 10, 1992, and indicate an amount of time desired for presentation. Participants will be restricted to lesser periods of time if necessary to afford each participant an opportunity to speak.

Lois D. Cashell,

Secretary

[FR Doc. 91-30402 Filed 12-19-91; 8:45 am]

BILLING CODE 6717-01-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange Visitor Camp Counselor and Training Programs

AGENCY: United States Information Agency.

ACTION: Statement of policy and notice to sponsors of exchange visitor camp counselor and training programs.

SUMMARY: In response to a report of the General Accounting Office entitled "Inappropriate Uses of Educational and Cultural Exchange Visas," dated February 16, 1990, the Agency on July 23, 1990 imposed a moratorium on the designation of new camp counselor programs and directed that currently designated camp counselor programs not expand in any way during the moratorium. 55 FR 29643. A similar moratorium was imposed on exchange visitor training programs on August 13, 1990, 55 FR 32907. This policy statement partially lifts the two moratoria with regard to currently-designated training and camp counselor programs and allows said sponsors to expand their camp counselor and training programs with respect to Soviet and other Eastern European exchange participants. The moratoria on designation of new training and camp counselor programs and on expansion of currently-designated flight training programs shall remain in effect until enactment of the final general provisions and training regulations. Following enactment, priority attention shall be given to applications for designation of new training programs.

EFFECTIVE DATE: This policy statement is effective December 20, 1991.

ADDRESSES: Questions or comments regarding this notice should be addressed to Task Force on Regulatory Reform, Office of the General Counsel, room 700, United States Information Agency, 301 Fourth Street, SW., Washington, DC 20547. Tel. (202) 401-1707.

FOR FURTHER INFORMATION CONTACT: Task Force on Regulatory Reform, Office of the General Counsel, room 700, United States Information Agency, 301 Fourth Street, SW., Washington, DC 20547, Tel. (202) 401-1707.

SUPPLEMENTARY INFORMATION: On February 16, 1990 the General Accounting Office issued a report entitled "Inappropriate Uses of Educational and Cultural Exchange Visas." That report questioned the appropriateness of certain exchange activities conducted under Agency-designated camp counselor and training programs. In response to the GAO report the Agency imposed a moratorium on the designation of new camp counselor programs, 55 FR 29,643 (1990), and on new training programs, 55 FR 32,907 (1990). The moratoria also directed that designated camp counselor and training programs not expand their programs in any way while the moratoria were in effect.

The moratoria were imposed in order to implement a complete reform of the Exchange Visitor Program regulations. In June 1990 the Agency created a Task Force on Regulatory Reform to carry out a review and revision of the regulations, a process which is well underway. On November 25, 1991, the Agency published proposed training regulations as well as proposed "General Provisions" which will affect all exchange visitor programs. 56 FR 59,822 (1991). At the conclusion of the 90-day comment period, the Agency will review all comments submitted by interested parties and will then publish final "General Provisions" and training regulations. Other proposed regulations, such as those dealing with professors, researchers, bio-medical and medical exchangees, will follow shortly. It is anticipated that the entire regulatory reform of the Exchange Visitor Program (22 CFR part 514) will be completed by May, 1992.

The moratoria on exchange visitor training and camp counselor programs have now been in effect for approximately 15 months. During this period vast political and economic changes have taken place in the Soviet Union and in the former Eastern Bloc countries, including the former East Germany. A number of new foreign policy initiatives, such as the Support For East European Democracies (SEED) program, the President's East European Initiative, as well as many private sector initiatives, have demonstrated the need for expanding exchange activities involving those regions.

At the same time, the Agency has been reluctant to designate new programs or allow the expansion of existing programs while it is in the midst of a total regulatory reform effort. It is entirely possible that, if new programs were designated at the present time, those same programs would not be able to comply with the final regulations eventually promulgated by the Agency and would therefore not be able to continue in operation.

Nevertheless, foreign policy considerations override this concern and the Agency has determined that it is in the foreign policy interests of the United States to lift the moratoria on the expansion of currently-designated exchange visitor training and camp counselor programs. Therefore, effective the date of publication of this Notice in the **Federal Register**, currently-designated training and camp counselor programs, with the exception of flight training programs, are permitted to expand the scope of their programs numerically and in terms of the types of exchange activities they offer.

Because the Agency expects to promulgate final "General Provisions" and final training regulations by the Spring of 1992, the moratoria on the designation of new camp counselor and training programs will continue in effect until these final regulations are promulgated. As noted above, the moratorium on expansion of currently-designated flight training programs continues in effect. When such final regulations are promulgated the remainder of the moratoria will be lifted. At such time, all designated programs must re-apply for designation and

[1] Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities, III FERC Stats. & Regs. ¶ 30,928 (1991).

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demonstrate that they are able to comply with the new regulations. Such programs will be permitted to continue their exchange activities pending review of their application for re-designation by the Agency. Those camp counselor and training programs which had applied for designation at the time the moratoria were imposed must also re-apply for designation. The Exchange Visitor Program Services office will give priority to the review of those applications which were pending at the time the moratoria were imposed.

List of Subjects in 22 CFR Part 514

Cultural exchange programs, Practical trainees, International camp counselors, Reporting and recordkeeping requirements.

Dated: December 16, 1991.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 91-30418 Filed 12-20-91; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final Rule, amendments.

SUMMARY: This rule authorizes travel service providers subject to U.S. jurisdiction to engage in certain transactions, for profit or otherwise, concerning the arrangement, promotion, or facilitation of group and individual tours and travel to Vietnam, and limits reimbursement by U.S. subsidiaries incorporated abroad to their foreign national employees for expenses incurred in Vietnam.

EFFECTIVE DATE: December 17, 1991.

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Chief Counsel (tel.: 202/535-6020), or Steven I. Pinter, Chief of Licensing (tel.: 202/535-9449), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: On March 8, 1988, the Office of Foreign Assets Control ("FAC") amended the Foreign Assets Control Regulations ("FACR") in response to the heightened interest in travel to Vietnam. The amendments clarified the restrictions on the transactions in which travel service providers subject to U.S. jurisdiction ("TSP") may engage with respect to travel to and in Vietnam. Authorized transactions were limited to the booking of passage aboard a third-country carrier's flight to or from Vietnam. Sections 500.201 and 500.563 of the FACR prohibited other transactions, such as the arrangement, promotion, or facilitation of group or individual tours, hotel accommodations, ground transportation, local tours and similar travel activities in Vietnam, the entry into business arrangements with Vietnam or its nationals, and the acceptance of fees, commissions, or other compensation with respect to travel to Vietnam. These restrictions applied both to commercial and noncommercial TSP's.

This amendment lifts these restrictions with respect to TSP's both commercial and noncommercial, to permit the arrangement, promotion or facilitation of travel to, from, and within Vietnam by individuals, groups and organizations. TSP's must file monthly reports on certain financial transactions incident to such arrangements. Travel costs prepaid through a TSP must be taken into account in complying with the $200 per diem restriction on a traveler's travel-related expenses pursuant to § 500.563 of the FACR, as amended at 55 FR 31178, August 1, 1990, and 55 FR 49997, December 4, 1990.

This final rule does not authorize TSP's to open offices in Vietnam, nor does it permit TSP's to charter, or sell tickets for use of, American-owned or controlled aircraft to fly into Vietnam. In addition, no direct or single-plane through flights between the United States and Vietnam may be organized or offered for sale, i.e., a change of flight number and equipment in a third country is required. American-owned or controlled aircraft may be used by charter or otherwise, however, to provide transportation for all portions of travel to or from Vietnam except for that leg of the journey going into or out of Vietnam. This final also does not affect the specific licensing requirement for TSP's seeking to conduct tours and private exchange programs to Cambodia, as set forth in § 500.563 of the FACR, 53 FR 7354, March 6, 1988, or to North Korea, as set forth in § 500.569 of the FACR, 54 FR 21, January 3, 1989, as amended in 54 FR 11185, March 17, 1989.

Finally, this final rule amends § 500.564 of the Regulations to clarify that reimbursement by American-owned or controlled foreign firms for expenditures incidental to travel to and in Cambodia, North Korea and Vietnam by their foreign-national employees is limited by the per diem established in § 500.563(a)(2), currently set at $200. *See:* 55 FR 31178, August 1, 1990; 55 FR 49997, December 4, 1990.

Because the FACR involve a foreign affairs function, Executive order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of Subjects in 31 CFR Part 500

Cambodia, North Korea, Reporting and recordkeeping requirements, Travel restrictions, Vietnam.

For the reasons set forth in the preamble, 31 CFR part 500 is amended as follows:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for part 500 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; E.O. 9193, 7 FR 5205, 3 CFR 1938-1943 Cum. Supp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943-1948 Comp., p. 748.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

2. The section heading of § 500.563 is revised as follows: the first sentence of paragraph (c)(1) of § 500.563 is removed and the following two new sentences are added in its place; the first sentence of paragraph (c)(2) of § 500.563 is revised as follows; the second sentence of paragraph (c)(2) of § 500.563 is revised by replacing the words "any foreign country designated under § 500.201 of this part" and "a designated country" with the words "Cambodia and North Korea"; and a new paragraph (c)(3) is added to § 500.563, to read as follows:

§ 500.563 Certain transactions incident to travel to and within Cambodia, North Korea, and Vietnam.

* * * * *

(c) *Travel Service Providers.* (1) Except as provided in paragraph (c)(3) of this section, all transactions by travel service providers are authorized in connection with travel to Vietnam. With respect to Cambodia and North Korea, transactions by travel service providers are authorized only in connection with the booking of passage to and from these countries on behalf of individuals aboard a third-country carrier, i.e., a carrier that is neither owned, controlled, nor chartered by a person subject to the jurisdiction of the United States, an embargoed country, or a national of an embargoed country. * * *

(2) The provision of any service related to travel by individuals to Cambodia and North Korea is prohibited, other than that licensed by paragraph (c)(1) of this section. * * *

(3) Travel service providers are not authorized under this section to enter into transactions incident to opening or maintaining an office in Vietnam, nor may they charter or sell space aboard aircraft owned or controlled by persons subject to the jurisdiction of the United States for any flight to or from Vietnam. Such aircraft may be chartered for travel to points outside Vietnam, but entry into or exit from Vietnam, by charter or otherwise, must be aboard a third-country carrier. No direct or single-plane through flights between the United States and Vietnam may be organized or offered for sale, *i.e.*, a change of flight number and equipment in a third country is required. Travel service providers transferring funds directly or indirectly to Vietnam for purposes authorized in paragraph (c)(1) of this section must submit a monthly report, within 10 days of the end of each calendar month in which such transfers occur, to the Licensing Compliance Section, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Annex, Washington, DC 20220, stating for each such transfer: The amount and nature or purpose of the transfer, the date of the transfer, the financial institution effecting the transfer, and the party to whom the funds were transferred.

* * * * *

§ 500.564 [Amended]

3. Section 500.564 is amended by adding the following words to the end of the paragraph: ", in accordance with the per diem limitation applicable to individuals subject to the jurisdiction of the United States that is set forth in § 500.563(a)(2)."

Dated: December 10, 1991.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: December 13, 1991.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 91-30416 Filed 12-17-91; 11:19 am]

BILLING CODE 4810-25-M

31 CFR Part 550

Libyan Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule; Amendment to the list of specially designated nationals of the Government of Libya.

SUMMARY: The Libyan Sanctions Regulations, 31 CFR part 550 (the "Regulations"), are being amended to remove one name from appendix B, the list of Individuals Determined To Be Specially Designated Nationals of the Government of Libya. Appendix B contains the names of individuals whom the Director of the Office of Foreign Assets Control has determined to be acting or purporting to act directly or indirectly on behalf of the Government of Libya. This list may be expanded or amended at any time.

EFFECTIVE DATE: December 20, 1991.

ADDRESSES: Copies of this list are available upon request at the following location: Office of Foreign Assets Control, U.S. Department of the Treasury, Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief, Enforcement Section, Office of Foreign Assets Control, Tel.: (202) 566-5021.

SUPPLEMENTARY INFORMATION: The Regulations were issued by the Treasury Department to implement Executive Orders No. 12543 (51 FR 875, Jan. 9, 1986) and 12544 (51 FR 1235, Jan. 10, 1986), in which the President declared a national emergency with respect to Libya, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), and ordering specific measures against the Government of Libya. The Regulations were amended by a final rule published in the **Federal Register** (56 FR 20540, May 6, 1991) which added appendix A, the list of Organizations Determined To Be Within the Term "Government of Libya" (Specially Designated Nationals of Libya). The Regulations were amended further by a final rule published in the **Federal Register** (56 FR 37156, Aug. 5, 1991) which removed numerical designations and merged the separate categories in appendix A, added the names of twelve companies to appendix A, and added a new appendix B, "Individuals Determined To Be Specially Designated Nationals of the Government of Libya," to the end thereof.

This rule removes one name from appendix B to part 550. The list consists of individuals whom the Director of the Office of Foreign Assets Control has determined to be acting or purporting to act directly or indirectly on behalf of the Government of Libya, and who thus fall within the definition of the "Government of Libya" contained in § 550.304(a) of the Regulations. The persons included in appendix B are subject to all prohibitions applicable to other components of the Government of Libya. All unlicensed transactions with such persons, or in property in which they have an interest, are prohibited.

The list of specially designated nationals is a partial one since FAC may not be aware of all the persons that might be owned or controlled by the Government of Libya or acting as officers, agents or front organizations for Libya, and which thus qualify as specially designated nationals of the Government of Libya. Therefore, persons engaging in transactions may not rely on the fact that any particular person is not on the specially designated nationals list as evidence that it is not owned or controlled by, or acting or purporting to act directly or indirectly for, the Government of Libya. The Treasury Department regards it as incumbent upon all U.S. persons to take reasonable steps to ascertain for themselves whether persons they enter into transactions with are owned or controlled by the Government of Libya or are acting or purporting to act on its behalf, or on behalf of other countries subject to blocking or transportation-related restrictions (at present, Cambodia, Cuba, Haiti, Iraq, North Korea, and Vietnam).

Pursuant to the Regulations, Dr. Ralf Wojtek was included in appendix B to the Regulations, published in the **Federal Register** on August 5, 1991 (56 FR 37156), as a specially designated national of the Government of Libya. Following a review of additional information it has been determined that Dr. Ralf Wojtek is not within the scope of the definition of the "Government of Libya" as defined in § 550.304(a) of the Regulations; and, therefore, is removed from the list of specially designated nationals of the Government of Libya.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of Subjects in 31 CFR Part 550

Administrative practice and procedure, Banks, Banking, Blocking of assets, Foreign trade, Libya, Penalties, Reporting and recordkeeping requirements, Securities, Specially

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designated nationals, Travel restrictions.

PART 550—LIBYAN SANCTIONS REGULATIONS

For the reasons set forth in the preamble, 31 CFR part 550 is amended as set forth below:

1. The "Authority" citation for part 550 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2349aa–8 & –9; 49 U.S.C. 1514; E.O. 12543, 51 FR 875 (Jan. 9, 1986); E.O. 12544, 51 FR 1235 (Jan. 10, 1986).

APPENDIX B [AMENDED]

2. Appendix B to part 550 is amended by removing the following name: Wojtek, Dr. Ralf, Germany.

Dated: November 14, 1991.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: November 20, 1991.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 91-30412 Filed 12-17-91; 9:40 am]

BILLING CODE 4810-25-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[FRL-4085-3]

Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants; Supplemental Delegation of Authority to Nashville

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; delegation of authority.

SUMMARY: On April 18, 1991, Nashville/Davidson County Metropolitan Health Department requested delegation of authority for the implementation and enforcement of additional categories of Standards of Performance for New Stationary Sources (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS). EPA's Review of Nashville/Davidson County's laws, rules, and regulations showed them to be adequate for the implementation and enforcement of these federal standards, and the agency made the redelegation as requested.

EFFECTIVE DATE: The effective date of the delegation of authority is June 28, 1991.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection at EPA's Region IV Office, 345 Courtland Street, NE., Atlanta, Georgia 30365. All reports required pursuant to the newly delegated standards should not be submitted to the Region IV Office, but should instead be submitted to the following address: Mr. Paul J. Bontrager, P.E., Director, Air Pollution Control Division, Metropolitan Health Department, Nashville/Davidson County, 311 23rd Avenue, North, Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: Leslie Cox of the EPA Region IV Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365. Telephone (404) 347-2864, (FTS) 257-2864.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with sections 110, 111(c)(1), and 112(d)(1) of the Clean Air Act as amended authorizes the Administrator to delegate his authority to implement and enforce the National Standards of Performance for New Sources and the National Emission Standards for Hazardous Air Pollutants to any state which has submitted adequate implementation and enforcement procedures.

On March 25, 1977, EPA initially delegated to Nashville/Davidson County the authority to implement the NSPS and NESHAP. On April 18, 1991, Nashville/Davidson County requested a delegation of authority for implementation and enforcement of the following recently promulgated or revised (denoted by R) NSPS and NESHAP categories found in 40 CFR parts 60 and 61:

40 CFR Part 60

- Subpart D—Fossil-Fuel Fired Steam Generator (R)
- Subpart Da—Electric Utility Steam Generating Unit (R)
- Subpart Db—Industrial-Commercial-Institutional Steam Generating Units (R) except § 60.44b(f), § 60.44b(q), and § 60.49b(a)(4)
- Subpart Dc—Small Industrial-Commercial-Institutional Steam Generating Units except § 60.48c(a)(4)
- Subpart E—Incinerators (R)
- Subpart Ea—Municipal Waste Combustors
- Subpart F—Portland Cement Plants (R)
- Subpart G—Nitric Acid Plants (R)
- Subpart H—Sulfuric Acid Plants (R)
- Subpart I—Asphalt Cement Plants (R)
- Subpart J—Petroleum Refineries (R) except § 60.105(a)(13)(iii) and § 60.106(i)(12) (Revised in 10/2/90 FR, was § 60.106(g)(12))
- Subpart K—Storage Vessels For Petroleum Liquids (R)
- Subpart Ka—Storage Vessels For Petroleum Liquids (R) except § 60.114(a)
- Subpart L—Secondary Lead Smelters (R)
- Subpart M—Secondary Brass and Bronze Production Plants (R)
- Subpart N—Primary Emissions From Basic Oxygen Process Furnaces (R)
- Subpart Na—Secondary Emissions From Basic Oxygen Process Steelmaking Facilities (R)
- Subpart O—Sewage Treatment Plants (R) except § 60.153(e)
- Subpart P—Primary Copper Smelters (R)
- Subpart Q—Primary Zinc Smelters (R)
- Subpart R—Primary Lead Smelters (R)
- Subpart S—Primary Aluminum Reduction Plants (R)
- Subpart T—Phosphate Fertilizer Industry; Wet Process Phosphoric Acid Plants (R)
- Subpart U—Phosphate Fertilizer Industry: Superphosphoric Acid Plants (R)
- Subpart V—Phosphate Fertilizer Industry: Diammonium Phosphate Plants (R)
- Subpart W—Phosphate Fertilizer Industry: Triple Superphosphate Plants (R)
- Subpart X—Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities (R)
- Subpart Y—Coal Preparation Plants (R)
- Subpart Z—Ferroalloy Production Facilities (R)
- Subpart AA—Steel Plants: Electric Arc Furnaces (R)
- Subpart AAa—Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarbonization Vessels (R)
- Subpart BB—Kraft Pulp Mills (R)
- Subpart CC—Glass Manufacturing Plants (R)
- Subpart DD—Grain Elevators (R)
- Subpart GG—Stationary Gas Turbines (R) except § 60.333(b)(2) and § 60.335(f)(1)
- Subpart HH—Lime Manufacturing Plants (R)
- Subpart KK—Lead Acid Battery Manufacturing Plants (R)
- Subpart LL—Metallic Mineral Processing Plants (R)
- Subpart NN—Phosphate Rock Plants (R)
- Subpart PP—Ammonium Sulfate Manufacturing (R)
- Subpart TT—Metal Coil Surface Coating (R) except § 60.466(d)
- Subpart UU—Asphalt Processing and Asphalt Roofing Manufacturing (R) except § 60.474(g)
- Subpart VV—Equipment Leaks of Volatile Organic Compounds (R) except § 60.482-1(c)(2) and § 60.484
- Subpart XX—Bulk Gasoline Terminals (R) except § 60.502(e)(6)
- Subpart BBB—Rubber Tire Manufacturing Industry (R) except § 60.543(C)(2)(iii)(B)
- Subpart DDD—Polypropylene, Polyethylene, Polystyrene and Poly(ethyleneterephthalate) Manufacturing Industries except § 60.562-2(c)
- Subpart III—Volatile Organic Compound Emissions from the Synthetic, Organic, Chemical Manufacturing Industries (SOCMI), Air Oxidation process except § 60.613(e)
- Subpart LLL—Onshore Natural Gas Processing
- Subpart NNN—Volatile Organic Compound Emissions from Synthetic, Organic, Chemical Manufacturing Industries (SOCMI), Distillation Operations except § 60.663(e)
- Subpart OOO—Nonmetallic Mineral Processing Plants (R)
- Subpart PPP—Wool Fiberglass Installation Manufacturing Plants (R)
- Subpart SSS—Magnetic Tape Coating Facilities except § 60.711(a)(16), § 60.713(b)(1)(i), § 60.713(b)(1)(ii), § 60.713(b)(5)(i), § 60.713(d), § 60.715(a), and § 60.716
- Subpart TTT—Industrial Surface Coating (R) except § 60.743(a)(3)(v)(A) and (B), § 60.745(e), § 60.743(a), and § 60.746
- Subpart VVV—Polymeric Coating of Supporting Substrates Facilities

40 CFR Part 61

- Subpart J—Benzene Equipment Leaks (R) except (a)(B)(iii) and § 60.106(i)(12)
- Subpart L—Coke Byproduct Recovery Plants
- Subpart Y—Benzene Storage Vessels

After a thorough review of the Request, the Regional Administrator determined that such a delegation was appropriate for these source categories with the conditions set forth in the original delegation letter of May 25, 1977, and subsequent letters on February 20, 1986; January 28, 1987; September 30, 1987; May 31, 1989; and June 18, 1990.

Nashville/Davidson County sources under the requirements of the subparts listed above will not be under the jurisdiction of the Nashville/Davidson County Metropolitan Health Department.

ACTION: Since review of the pertinent Nashville/Davidson County Laws, Rules, and Regulations showed them to be adequate for the implementation and enforcement of the aforementioned categories of NSPS and NESHAPS, I delegated to the Nashville/Davidson County Metropolitan Health Department my authority for the source categories listed above on June 28, 1991.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

This notice is issued under the authority of sections 101, 110, 111, 112, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7410, 74121, 7412, and 7601).

List of Subjects in 40 CFR Parts 60 and 61

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: Sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 7411 and 7412).

Dated: December 9, 1991.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 91-30465 Filed 12-19-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 414

[BPD-730-IFC]

RIN 0938-AF49

Medicare Program; Payment for Customized Wheelchairs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: Section 4152(c)(4)(B) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) amended section 1834(a)(4) of the Social Security Act to provide that a wheelchair furnished on or after January 1, 1992 is treated as a customized item for payment purposes under part B of Medicare if it meets the definition provided in that paragraph, unless the Secretary develops specific criteria before January, 1, 1992, in which case the Secretary's criteria go into effect. This interim final rule with comment period sets forth the Secretary's criteria that a wheelchair must meet to be considered a customized item.

DATES: *Effective Date:* This final rule is effective on January 1, 1992.

Comment Date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on February 18, 1992.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-730-IFC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201.

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept audio, visual, or facsimile (FAX) copies of comments.

If comments concern information collection or recordkeeping requirements, please address a copy of comments to: Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3001, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron Eydt.

In commenting, please refer to file code BPD-730-IFC. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 245-7890).

FOR FURTHER INFORMATION CONTACT: William Long, (301) 966-5655.

SUPPLEMENTARY INFORMATION:

I. Background

A. Current and Prior Methods of Payment for Durable Medical Equipment

Prior to January 1, 1989, payment for durable medical equipment (DME) was made on the basis of reasonable charges. The reasonable charge was defined as the lowest of: (1) The actual charge for the item; (2) the customary charge; (3) the prevailing charge for the item in the locality; or (4) the inflation-indexed charge (IIC). Medicare carriers were also authorized by regulations at § 405.502(a)(7) to take into account any other factors that may have been relevant in determining the reasonable charge. Further, the charges a carrier deemed reasonable for Medicare payment purposes were not to exceed the comparable charges that were applicable to policyholders and subscribers under that carrier's own private insurance plan. In the case of expensive equipment, carriers were also required to determine whether it would be more economical to rent or purchase the equipment. In the case of customized equipment, payment was not based on customary and prevailing charges, but

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rather, on reasonable charge determinations made by carriers on an item-by-item basis.

Section 4062(b) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) added section 1834 to the Act. Section 1834(a)(1)(B) of the Act limits Medicare payment for durable medical equipment (DME) to the lower of the actual charge for the item or the fee schedule amount effective January 1, 1989. Under sections 1834 (a)(2) through (a)(7) of the Act, equipment is classified into one of six classes for payment purposes: inexpensive or other routinely purchased DME; items requiring frequent and substantial servicing; customized items; prosthetics and orthotics; other expensive items of DME (capped rental); and oxygen and oxygen equipment. Payment for a piece of equipment is determined by the fee schedule for the class into which the piece of equipment falls. The methodology for computing fee schedules and for classifying equipment as belonging to a particular class is also provided for in sections 1834(a) (2) through (10) of the Act.

Under Section 1834(a)(4) of the Act, a lump sum payment for customized equipment continues to be based "upon the carrier's individual consideration" for the customized equipment. Before revision by section 4152(c)(4)(B) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), enacted on November 5, 1990, section 1834(a)(4) of the Act defined customized equipment as equipment "* * * that is uniquely constructed or substantially modified to meet the specific needs of an individual patient, and for that reason cannot be grouped with similar items for purposes of payment. * * *"

B. New Legislation

Section 4152(c)(4)(B) of Public Law 101–508 amended section 1834(a)(4) of the Act of provide that a wheelchair furnished on or after January 1, 1992 is treated as a customized item only if it meets the definition added at the end of section 1834(a)(4) of the Act, that is, "* * * if the wheelchair has been measured, fitted, or adapted in consideration of the patient's body size, disability, period of need, or intended use, and has been assembled by a supplier or ordered from a manufacturer who makes available customized features, modifications, or components for wheelchairs that are intended for an individual patient's use in accordance with instructions from the patient's physician." However, under section 4152(c)(4)(B)(ii) of Public Law 101–508, if the Secretary develops specific criteria before January 1, 1992, the Secretary's criteria apply instead.

II. Provisions of This Interim Final Rule

Carriers have historically used a definition of customized wheelchair in making payment under the reasonable charge system. In deciding whether to incorporate that definition for purposes of the fee schedule payment methodology or to use the definition in section 1834(a)(4) of the Act for wheelchairs furnished after January 1, 1992, we considered the advantages and disadvantages connected with use of each definition:

A. Previous Reasonable Charge and Current Fee Schedule Definition of Customized Equipment

Under the first sentence of section 1834(a)(4) of the Act, we make lump-sum payments for certain items (including wheelchairs) that are uniquely constructed or substantially modified to meet the specific needs of an individual patient. Because of the unique aspects of these items, they cannot be grouped with similar items for purposes of Medicare payment. Payments are based on the carrier's individual consideration of the item. We used this definition of customized equipment before January 1, 1989, and we have continued to use it since the fee schedule methodology became effective on January 1, 1989. Congress' decision in 1987 not to revise the definition or the payment methodology for customized equipment but to continue to use the reasonable charge definition and payment methodology is explained in the House Committee Report (H.R. Rep. No. 391, 100th Cong., 1st Sess. 392 (1987)):

> Some items, consisting primarily of orthotics and prosthetics, must be tailor-made on an individual basis for each patient. They cannot be used by other patients. Consequently, these items should be purchased. Moreover, they may occasionally require some maintenance or servicing, beyond that covered by the manufacturer's or supplier's warranty, and it is appropriate for Medicare to pay these costs as well. However, because each item is unique, these are not easily classified within the existing procedure coding system used by the carriers to process claims. Carriers typically use special codes for this purpose and have to determine the proper payment amount individually for each item. This approach had been working in a reasonably satisfactory manner and would be preserved under the Committee bill.

We note that the basis (both before and after January 1, 1989) for determining whether equipment should be classified as customized was not only that it was tailor-made on an individual basis for each patient but, in addition, that the costs and charges for construction or modification varied widely from one patient to another for the same item. Certain items, while individually constructed (for example, a plaster or foam orthosis molded for a particular patient), may have standard costs and charges. These items can be identified using the HCFA Common Procedure Coding System (HCPCS) or the carrier's local coding system and grouped together for purposes of determining uniform payment. (The HCPCS is a coding system used to describe physician and non-physician services and supplies and is used by carriers for processing claims.) Under the reasonable charge methodology in effect prior to January 1, 1989, carriers calculated customary and prevailing charges in the ordinary way to pay for these items, rather than considering these items customized and making a payment determination on an individual basis. Under the payment methodology in the first sentence of section 1834(a)(4) of the Act, if an item is contained in the HCPCS or is locally coded, and the carrier has established customary and prevailing charges for the item, it is not subject to a carrier's individual consideration since the carrier has demonstrated that it can establish a valid charge screen for the item (that is, the item can be grouped with similar items for payment purposes).

B. Definition of Customized Wheelchair in the Second Sentence of Section 1834(a)(4) of the Act

It appears to us that many standard wheelchairs could fit the definition of customized equipment if the definition in the second sentence of section 1834(a)(4) of the Act were adopted. The first requirement, that "* * * the wheelchair has been measured, fitted, or adapted in consideration of the patient's body size, disability, period of need, or intended use * * *", would appear to apply to all wheelchairs. Even a person of average weight and height would be fitted to a standard size wheelchair (HCPCS code E1130) rather than fitted to a wide, heavy duty wheelchair (HCPCS code E1092). Therefore, a standard size wheelchair meets the first requirement in the section 1834(a)(4) of the Act definition. Similarly, under that definition, a standard amputee wheelchair (HCPCS code E1170) fitted in consideration of the patient's disability as an amputee also would meet the first statutory condition. With regard to the second requirement, that the wheelchair "* * * has been assembled by a supplier or ordered from a manufacturer who makes available customized features, modifications, or components for wheelchairs that are intended for an individual patient's use in accordance with instructions from the patient's physician", the definition in section 1834(a)(4) of the Act only requires that the wheelchair be "ordered from a manufacturer" who makes available customized features for an individual patient. It does not require that a specific wheelchair be customized to an individual patient's particular needs. Virtually all manufacturers make special features or modifications for wheelchairs available for a patient's use. Additionally, we do not believe that "off the shelf" special features or modifications, or components such as a brake extensive, would make the wheelchair a customized product any more than ordering a car with a heavy duty suspension or a larger engine would make the car a customized vehicle. However, we are interested in receiving comments offering suggestions for elaborating and more fully defining the terms "uniquely constructed" and "substantially modified."

C. Administration of Medicare

Although we considered the probable effects of adopting the definition of customized equipment in the second sentence of section 1834(a)(4) of the Act, we see no reason to change the long standing definition of customized wheelchairs. It has worked well. The HCPCS contains 43 different codes to categorize wheelchairs. In addition, we have long recognized, through additional payments, modifications in wheelchairs, such as attachments to convert a wheelchair to a one-arm drive, brake extensions, wheelchair hand rims, anti-tipping devices, adjustable-height detachable arms, reinforced seat upholstery, and safety belts, among others. Should a supplier furnish a wheelchair that cannot be defined by one of the 43 various codes available under the current system or cannot be defined by one of the 43 codes plus the existing codes for modifications, the pricing will be individually considered. HCFA is, in fact, in the process of considering modifications to the wheelchair codes in the HCPCS system, as well as developing utilization guidelines and policies (to be effective no earlier than 1993) which could have the effect of reducing the number of customized wheelchair claims that require individual carrier review.

We estimate that any departure from using the HCPCS system, such as subjecting all claims to an individual consideration, would result in a substantial increased medical equipment cost of $75 million dollars over 5 years, in substantial and unwarranted processing delays, and in an increased carrier workload and administrative cost of approximately $3.37 million over the next 5 fiscal years, because an individual consideration requires both a manual review of each claim and an individual payment determination. Increased individual considerations by carriers would also result in increased variability in payment allowances among carriers.

For these reasons, we will continue using the definition of customized wheelchairs that carriers have always used under the fee schedule payment methodology. Under this definition, customized wheelchairs must be uniquely constructed or substantially modified for a specific patient and, most importantly, be so sufficiently different from one another that they cannot be grouped together for pricing purposes.

As a result of our decision not to use the optional definition of customized wheelchairs in section 1834(a)(4) of the Act, we are adding a new § 414.224 to provide in regulations text a definition for "customized items" (including wheelchairs), based on our discussion above. In addition, this same section allows for a payment for the purchase of certain customized items based on the carrier's case-by-case determination.

We expect that this individual consideration will be a process under which the carrier makes its best judgment concerning the reasonableness of the payment amount. At a minimum, we expect carriers to consider such factors as written documentation on the costs of the item including at least the cost of labor and types of materials used in customizing an item.

III. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final rule that meets one of the E.O. critieria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-base enterprises in domestic or export markets.

The impact on the Medicare program and on DME distributors and manufacturers is expected to be less than $100 million per year over the next five fiscal years. For this reason, we have determined that a regulatory impact analysis meeting the requirements of E.O. 12291 is not required. Therefore, we have no prepared one.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities.

The overall impact of this final rule on the DME industry is expected to be less than $100 million annually; and, in light of the nearly $4.0 billion in annual industry sales of DME, we believe this final rule will not have a significant impact on a substantial number of small entities. Thus, we have determined, and the Secretary certifies, that this final rule does not meet the criteria in the RFA for requiring a regulatory flexiblity analysis. Therefore, we have not prepared one.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. Since we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on the operations of a substantial number of small rural hospitals, we have not prepared a rural hospital impact statement.

IV. Other Required Information

A. Waiver of Prior Public Comment Period and 30-Day Delay in the Effective Date

Because the Secretary is exercising discretion in implementing section 1834(a)(4) of the Act, ordinarily we would publish a notice of proposed rulemaking and afford a period for public comment. However, section 4207(j) of Public Law 101–508 provides that we may issue regulations on an interim final or other basis as may be necessary to implement the provisions of Public Law 101–508. Therefore, in accordance with section 4207(j) of Public Law 101–508, we find good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim basis. We are providing a 60-day period

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for public comment as indicated at the beginning of this rule.

Because of the large number of items of correspondence we normally receive concerning regulations, we cannot acknowledge or respond to the comments individually. However, we will respond to any comments that we receive in the preamble of the final rule.

We also normally provide a delay of 30 days in the effective date for documents such as this. However, we can waive the delay in the effective date for good cause. We find good cause to waive the usual 30-day delay in this instance. The statutory effective date for the provisions included in this rule is January 1, 1992. Moreover, as explained above, it is essential that these provisions have immediate effect so that the long standing definition of customized wheelchairs will remain in effect without interruption. A 30-day delay in the effective date for this rule would cause the optional definition of customized wheelchiars in section 1834(a)(4) of the Act to go into effect on January 1, 1992, resulting in increased cost to the program, as discussed above, as well as administrative difficulties and confusion for suppliers and beneficiaries. Thus, a 30-day delay in the effective date would be contrary to the public interest. Therefore, we find good cause to waive the usual 30-day delay in effective date.

B. Paperwork Reduction Act

Regulations at § 414.224(b) contain information collection requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511). The information collection requirements concern the written documentation on the costs of customized items based on the carrier's individual consideration and judgment of a reasonable payment amount for each item. The respondents who will provide the information include suppliers and manufacturers. This data may also be obtained from wholesale price lists and other such sources of information. Public reporting burden for this collection of information is estimated to be less than 3 minutes per response for photocopying of invoices if the carrier does not already have written documentation, and less than 3 minutes for an estimate of the amount of labor needed to assemble the customized equipment. A document will be published in the **Federal Register** after approval is obtained. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the OMB official whose name appears in the "**ADDRESSES**" section of this preamble.

List of Subjects in 42 CFR Part 414

End-stage renal disease (ESRD), Health professions, Laboratories, Medicare, Reporting and recordkeeping requirements.

42 CFR chapter IV is amended as set forth below:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

SUBCHAPTER B—MEDICARE PROGRAM

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

1. The heading for part 414 is revised to read as set forth above.

2. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1833(a), 1834(a), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395l(a), 1395m(a), 1395hh, and 1395rr).

3. A new § 414.224 is added to subpart D to read as follows:

§ 414.224 Customized items.

(a) *Criteria for a customized item.* To be considered a customized item for payment purposes under paragraph (b) of this section, a covered item (including a wheelchair) must be uniquely constructed or substantially modified for a specific beneficiary and be so different from another item used for the same purpose that the two items cannot be grouped together for pricing purposes.

(b) *Payment rule.* Payment is made on a lump sum basis for the purchase of a customized item based on the carrier's individual consideration and judgment of a reasonable payment amount for each customized item. The carrier's individual consideration takes into account written documentation on the costs of the item including at least the cost of labor and materials used in customizing an item.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 22, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: November 1, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91–30351 Filed 12–19–91; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL MARITIME COMMISSION

46 CFR Part 550

[Docket No. 91–42]

Tariff Filing Notice Requirements; Domestic Offshore Trades; Exemption Under Section 35 of the Shipping Act, 1916

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission amends its regulations governing the publishing, filing and posting of tariffs in domestic offshore commerce pursuant to the Shipping Act, 1916, as amended by the Intercoastal Shipping Act, 1933. This amendment of part 550 partially exempts carriers providing port-to-port service in the domestic offshore trades from the thirty-day notice requirements of 46 U.S.C. app. 844, for any new or amendatory tariff matter that does not increase the shipper's cost of transportation. Carriers may now file such tariff matter on one day's notice. Provisions of the Shipping Act and the Commission's regulations that pertain to any "general decrease in rates" are not affected by this amendment and carriers must continue to comply with those provisions.

DATES: This action is effective December 20, 1991.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5740.

Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5796.

SUPPLEMENTARY INFORMATION: Section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844, requires ocean carriers providing port-to-port service in the domestic offshore trades to file on thirty days' notice any new or amendatory tariff matter, even if it decreases the shipper's cost of transportation. Ocean carriers operating in the foreign commerce of the United States are not subject to this restriction. Section 8 (d) of the Shipping Act of 1984, *id.* 1707, provides that a change in an existing rate that results in a decreased cost to the shipper may become effective upon filing. Moreover, domestic offshore water carriers filing joint-through rates with the Interstate Commerce Commission may file new or reduced rates on one day's notice (49 CFR 112.39(h)(1)).

The Federal Maritime Commission ("FMC" or "Commission") has granted several exemptions to the thirty-day notice requirement to permit carriers serving between the contiguous United States and Puerto Rico, the U.S. Virgin Islands, Alaska and Hawaii to compete with carriers that are not subject to that requirement. *Matson Navigation Co., Inc.—Application for Section 35 Exemption,* —— F.M.C. ——, 24 S.R.R. 1518 (1989); *Tariff Filing Periods—Exemption,* —— F.M.C. ——, 24 S.R.R. 1604 (1989); *Application of Sea-Land Service Inc. For Exemption Under Section 35 of the Shipping Act, 1916,* —— F.M.C. ——, 25 S.R.R. 660 (1990) and *Tropical Shipping & Construction Co. Ltd.—Application for Section 35 Exemption,* —— F.M.C. ——, 25 S.R.R. 1471 (1991); *Application of Trailer Marine Transport Corporation Under Section 35 of the Shipping Act, 1916,* —— F.M.C. ——, 25 S.R.R. 1660 (1991); *Puget Sound Tug & Barge Co.—Application for Section 35 Exemption: Hawaii and Alaska Trades,* No. 91–55 (F.M.C. Nov. 25, 1991).

The Commission believes that the exemptions referred to above have benefitted both shippers and carriers. Shippers benefit because carriers can respond more rapidly to their needs and desires; carriers benefit because they are able to move quickly to meet changes filed by competitors.

It appeared therefore appropriate to grant a general exemption for all carriers in the domestic offshore trades that would supersede the above exemptions and extend their provisions to all domestic offshore trades. To that end, the Commission by notice of October 9, 1991, 56 FR 50,841, proposed to amend its regulations governing the publishing, filing and posting of tariffs in domestic offshore commerce pursuant to section 35 of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. 833a,[1] to partially exempt carriers from the thirty-day requirement. The exemption would permit carriers in the FMC-regulated domestic offshore trades to publish on one day's notice any new or amendatory tariff matter, including rates, charges, regulations, rules and notices, that does not result in an increased cost to the shipper.

Three brief comments on the proposed rule were filed by Crowley Maritime Corporation, Matson Navigation Company, Inc., and Tropical Shipping & Construction Co., Ltd. The comments all supported the proposed rule and suggested no changes. The Commission concludes that the proposed rule meets the standards of section 35 of the 1916 Act, in that it will not substantially impair effective regulation, be unjustly discriminatory, or be detrimental to commerce. Accordingly, subject to the limitation described below, the Commission will adopt the exemption as a final rule.

Although the exemption will permit a carrier to make a change to a tariff rule, regulation or note that could affect a large number of rate items, a carrier may not use the exemption to institute a general decrease in rates on one day's notice.[2] The exemption does not apply to any of the provisions of the 1933 Act and the Commission's regulations that pertain to a general rate decrease. The 1933 Act includes a requirement that any such decrease be filed on sixty days' notice. Rule 67 of the Commission's Rules of Practice and Procedure requires the carrier to accompany any general decrease in rates with testimony and exhibits of such composition, scope and format that they will serve as the carrier's entire direct case in the event the matter is set down for hearing. This exemption does not relieve carriers from complying with those provisions.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it has nonetheless reviewed the rule in terms of this Order and has determined that this rule is not a "major rule" as defined in Executive Order 12291 because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions.

List of Subjects in 46 CFR Part 550

Maritime carriers, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553, sections 18, 35 and 43 of the Shipping Act, 1916, 46 U.S.C. app. 817, 833a and 841a, and section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844, part 550 of title 46, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 550 continues to read as follows:

Authority: 5 U.S.C. 553, 46 U.S.C. app. 812, 814, 815, 817, 820, 833a, 841a, 843, 844, 845, 845a, 845b, and 847.

2. Section 550.1 paragraph (b) is revised to read as follows:

§ 550.1 Exemptions.

(a) * * *

(b) Carriers engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between Alaska, Hawaii, a Territory, District of possession of the United States and any other State, Territory, District or possession of the United States, or between places in the same Territory, District, or possession, may publish on one day's notice any new or amendatory tariff matter that does not result in an increased cost to the shipper. This exemption shall not apply to any decrease which is part of a "general decrease in rates" as defined by section 1 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 843.

§ 550.1 [Amended]

3. Section 550.1, paragraphs (c), (d), (e) and (f) are removed.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–30375 Filed 12–19–91; 8:45 am]

BILLING CODE 6730–01–M

[1] Section 35 provides in pertinent part: The Federal Maritime Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to this Act or any specified activity of such persons from any requirement of the Shipping Act, 1916, or Intercoastal Shipping Act, 1933, where it finds that such exemption will not substantially impair effective regulation by the Federal Maritime Commission, be unjustly discriminatory, or be detrimental to commerce.

[2] Section 1 of the 1933 Act, 46 U.S.C. app. 843, defines a "general decrease in rates" as:

* * * any change in rates, fares, or charges which will (A) result in a decrease in not less than 50 per centum of the total rate, fare, or charge items in the tariffs per trade of any common carrier by water in intercoastal commerce; and (B) directly result in a decrease in gross revenue of such carrier for the particular trade of not less than 3 per centum.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR 25

[CC Docket No. 90-219; FCC No. 91-388]

Routine Licensing of Large Networks of Small Antenna Earth Stations Operating in the 12/14 GHz Frequency Bands

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: This report and order adopts certain revisions and additions to part 25 of the FCC's rules governing the power limitations on very small aperture terminals (VSATs). The Commission initiated this proceeding in the VSAT Notice, 5 FCC Rcd 2778 (1990), 55 FR 18918, May 7, 1990 to consider whether increases beyond the established VSAT power limits could be accommodated. In considering the issue, the Commission surmised that the best method of allowing increases beyond our VSAT power limits was through a mechanism that would also safeguard operations not exceeding our VSAT power limits. We also believed that codifying a VSAT power limitation would help to eliminate any confusion regarding the licensing of non-compliant stations and would increase Commission staff efficiency in processing these applications.

EFFECTIVE DATE: February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Wilbert E. Nixon, Jr. at (202) 634-1624.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in the Matter of Routine Licensing of Large Networks of Small Antenna Earth Stations Operating in the 12/14 GHz Frequency Bands, Common Carrier Docket No. 90-219, FCC No. 91-388, adopted November 21, 1991 and released December 17, 1991. The full text of this document is available for inspection and copying during normal business hours at the Public Reference Room at its headquarters, room 239, 1919 M Street NW., Washington, DC 20554. The complete text of this decision may also be purchased from the FCC's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Public reporting burden for the collections of information is estimated to average 120 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Paperwork Reduction Project (3060-0447), Washington, DC 20554 and to the Office of Management and Budget, Paperwork Reduction Project (3060-0447), Washington, DC 20503.

Summary of Report and Order

1. This report and order adopts certain modifications to part 25 of the Commission's rules governing the power limitations on very small aperture terminals (VSATs). A VSAT network consists of a large number of technically identical small fixed-satellite earth stations that meet specified technical requirements and communicate only with other earth stations in that network through a satellite operating in the 12/14 GHz frequency band. The Commission has approved the operation of many VSAT networks in various network configurations. The most commonly used configuration is the star network configuration in which small remote earth stations communicate among themselves and their central headquarters through a large hub earth station.

2. To avoid interference, particularly to users of adjacent fixed-satellites, the VSAT Order, 51 FR 15067 (April 22, 1986), established an equivalent isotropically radiated power (e.i.r.p.) density limit for digital VSAT inbound transmissions of −14.0 dBW/4 KHz and outbound transmissions of +6.0 dBW/4 KHz per carrier. The Declaratory Order, 2 FCC Rcd 2149 (1987), established an inbound uplink analog transmitter power density limit of −8.0 dBW/4 KHz with a bandwidth of 200 KHz into a 1.2 meter earth station antenna and a maximum outbound transmitted satellite carrier power density of +13.0 dBW/4 KHz. Typically, inbound transmissions entail the use of small remote earth stations transmitting into a larger hub earth station through a satellite. Outbound transmissions typically entail the use of a larger hub earth station transmitting to a smaller remote earth station through a satellite. Several applicants proposed to exceed these limits.

3. In order to accommodate these applicants and protect all other operators, we proposed in the VSAT Notice, among other things, to classify all VSAT station authorization applications in two categories. The first category contained applications for VSATs which are compliant with our current policies as enunciated in the VSAT Order and the Declaratory Order. The second category contained all other VSAT applications. We proposed that Category 2 applicants would be required to conduct the Sharp, Adjacent Satellite Interference Analysis (ASIA) or its equivalent to determine whether and to what degree their non-compliant operation would affect compliant Category 1 operations. As a further safeguard, we proposed that Category 2 applicants be required to provide proof that all potentially affected parties consent to the use of the applicant's higher power density. Also, Category 2 licensees would bear the burden of obtaining operational agreements with future Category 1 potentially affected parties as those parties brought their compliant systems into operation. We adopt the rules proposed in the VSAT Notice with some minor modifications.

Conclusion and Ordering Clauses

4. We take this action today to further streamline our VSAT application processing procedures and to make these procedures more efficient while maintaining adequate safeguards for established compliant operations.

5. Accordingly, pursuant to sections 151, 303 and 403 of the Communications Act, *It is ordered* That part 25 of chapter I of title 47 of the Code of Federal Regulations is amended as set forth below effective February 3, 1992.

6. *It is further ordered* That the Secretary shall cause this Report and Order to be published in the **Federal Register**.

7. *It is further ordered* That the proceedings in CC Docket No. 90-219 are terminated.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Part 25 of the Commission's Rules and Regulations (chapter I of title 47 of the Code of Federal Regulations) is amended as follows:

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for part 25 continues to read as follows:

Authority: Sections 25.101-25.531 issued under sec. 4, 48 stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 101-404, 76 stat. 419-427; 47 U.S.C. 701-744.

2. A new § 25.134 is added to read as follows:

§ 25.134 Licensing Provisions of Very Small Aperture Terminal (VSAT) Networks.

(a) All applications for digital VSAT networks with maximum outbound downlink power densities of +6.0 dBW/4 kHz per carrier and maximum antenna input power densities of −14 dbw/4 kHz will be processed routinely pursuant to Declaratory Order in the Matter of Routine Licensing of Large Networks of Small Antenna Earth Stations Operating in the 12/14 GHz Frequency Bands, 51 FR 15067 (April 22, 1986) (VSAT Order). All applications for analog VSAT networks with maximum outbound downlink power densities of +13.0 dBW/4 kHz per carrier and maximum antenna input power densities of −8.0 dBW/4 kHz shall be processed routinely in accordance with Declaratory Order in the Matter of Routine Licensing of Earth Stations in the 6 GHz and 14 GHz Bands Using Antennas Less than 9 Meters and 5 Meters in Diameter, Respectively, for Both Full Transponder and Narrowband Transmissions, 2 FCC Rcd 2149 (1987) (Declaratory Order).

(b) Each applicant for digital and/or analog VSAT network authorization proposing to use transmitted satellite carrier power densities in excess of +6.0 dBW/4 kHz per carrier and +13.0 dBW/4 kHz, respectively, and/or maximum antenna input power densities of −14.0 dBW/4 kHz and −8.0 dBW/4 kHz, respectively, shall conduct an engineering analysis using the Sharp, Adjacent Satellite Interference Analysis (ASIA) program. Applicants shall submit a complete description of those baseline parameters they use in conducting their analysis and tabular summaries of the ASIA program's output detailing potential interference shortfalls. Applicants shall also submit a narrative summary which must indicate whether there are margin shortfalls in any of the current baseline services as a result of the addition of the new applicant's high power service, and if so, how the applicant intends to resolve those margin shortfalls. Applicants shall submit link budget analyses of the operations proposed along with a detailed written explanation of how each uplink and each transmitted satellite carrier density figure is derived. Applicants shall provide proof by affidavit that all potentially affected parties acknowledge and do not object to the use of the applicant's higher power density.

(c) Licensees authorized pursuant to paragraph (b) of this section shall bear the burden of coordinating with any future applicants or licensees whose proposed compliant VSAT operations, as defined by paragraph (a) of this section, is potentially or actually adversely affected by the operation of the non-compliant licensee. If no good faith agreement can be reached, however, the non-compliant licensee shall reduce its power density levels to those compliant with the VSAT Order or the Declaratory Order, whichever is applicable.

[FR Doc. 91-30486 Filed 12-9-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 94

[General Docket No. 82-243]

Service and Technical Rules for Government and Non-Government Fixed Service Usage of the Frequency Bands 932-935 and 941-944 MHz

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule, 56 FR 63662 (December 5, 1991), that establishes the licensing procedure for the 932-932.5/941-941.5 MHz point-to-multipoint channels.

EFFECTIVE DATE: December 20, 1991.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, 202-653-8114.

SUPPLEMENTARY INFORMATION: In FR Doc. 91-29098, published at 56 FR 63662 (December 5, 1991), the following corrections are made:

1. On page 63662, column 1, sentence 2 of the Summary is corrected to read: "The objective of this action is to facilitate Commission processing of the 932-932.5/941-941.5 MHz applications."

2. On page 63663, column 1, in the Rule Changes, the introductory text of III is corrected to read: "III. Part 94 of title 47 of the Code of Federal Regulations is amended as follows:"

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-30488 Filed 12-19-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 298

[Docket No. 910660-1270]

United States-Canada Fisheries Enforcement Agreement

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of effective date.

SUMMARY: NMFS published a final rule at 56 FR 58184 on November 18, 1991, to implement an agreement between the United States and Canada in which each nation agrees to take appropriate measures to ensure that its nationals do not violate the fisheries laws of the other nation that apply within the other nation's waters. The rule was not made effective at that time, but indicated it would become effective when the United States and Canada exchanged notes.

On December 16, 1991, the United States and Canada exchanged diplomatic notes to bring the United States-Canada Fisheries Enforcement Agreement into force. Therefore, the final rule implementing the United States-Canada Fisheries Enforcement Agreement is made effective at 12:01 a.m., G.m.t., December 17, 1991.

EFFECTIVE DATE: The final rule published November 18, 1991 (56 FR 58184) is effective at 12:01 a.m., G.m.t., December 17, 1991.

FOR FURTHER INFORMATION CONTACT: John D. Kelly, Office of Fisheries Conservation and Management, (301) 427-2337.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 16, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-30392 Filed 12-16-91; 5:05 am]

BILLING CODE 3510-22-M

50 CFR Part 642

[Docket No. 910650-1218]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

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SUMMARY: NMFS closes the commercial fishery in the exclusive economic zone (EEZ) for Spanish mackerel from the Atlantic migratory group. NMFS has determined that the commercial allocation for Atlantic group Spanish mackerel was reached on December 16, 1991. This closure is necessary to protect the overfished Atlantic Spanish mackerel resource.

EFFECTIVE DATES: Closure is effective on December 17, 1991, through March 31, 1992.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–893–3161.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP), as amended, was developed by the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils) under authority of the Magnuson Fishery Conservation and Management Act, and is implemented by regulations at 50 CFR part 642. Catch limits recommended by the Councils and implemented by NMFS for the Atlantic migratory group of Spanish mackerel for the current fishing year (April 1, 1991, through March 31, 1992) set the commercial allocation at 3.50 million pounds.

Under § 642.22(a), NMFS is required to close any segment of the Spanish mackerel commercial fishery when its allocation has been reached, or is projected to be reached, by publishing a notice in the **Federal Register**. NMFS has determined that the commercial allocation of 3.50 million pounds for the Atlantic migratory group of Spanish mackerel was reached on December 16, 1991. Hence, the commercial fishery for Atlantic group Spanish mackerel is closed effective December 17, 1991, through March 31, 1992, the end of the fishing year. The closure applies in the EEZ from the Connecticut/New York border southward to a line extending directly east from the Dade/Monroe County, Florida boundary (25°20.4'N. latitude).

Except for a person aboard a charter vessel, during the closure, no person aboard a vessel permitted to fish under a commercial allocation may fish for, retain, or have in possession in the EEZ Spanish mackerel from the Atlantic migratory group. A person aboard a charter vessel may continue to fish for Spanish mackerel from the Atlantic migratory group under the bag limits set forth in § 642.28(a)(1)(iv), provided the vessel is under charter and the vessel has an annual charter vessel permit issued under § 642.4(a)(3). A charter vessel with a permit to fish on a commercial allocation is under charter when it carries a passenger who fishes for a fee or when there are more than three persons aboard, including operator and crew.

During the closure, Spanish mackerel from the Atlantic migratory group taken in the EEZ, including those harvested under the bag limit, may not be purchased, bartered, traded, or sold. This prohibition does not apply to trade in Spanish mackerel from the Atlantic migratory group that were harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by a dealer or processor.

Other Matters

This action is required by 50 CFR 642.22(a) and complies with E.O. 12291.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 16, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–30391 Filed 12–16–91; 5:05 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register

Vol. 56, No. 245

Friday, December 20, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 795, 870, 872, 873, 874, 875, 876 and 886

RIN 1029–AB49

Abandoned Mine Land Reclamation Fund Reauthorization Implementation

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: In response to requests for more time to submit public comments, the Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) extends until February 21, 1992, the public comment period scheduled to close on January 7, 1992, on the proposed rule published in the November 8, 1991, **Federal Register** (56 FR 57376). The proposed rule amends the abandoned mine land regulations, 30 CFR subchapter R in light of recently enacted changes to title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) of 1977, Public Law 95–87, as amended by Public Law 101–508 (November 5, 1990).

DATES: Written Comments: OSM will accept written comments on the proposed rules until 5 p.m. Eastern Time, February 21, 1992.

Public Hearings: OSM will hold a public hearing on the proposed rules in Washington, DC, St. Louis, Missouri, and Denver, Colorado on February 19, 1992 at 9 a.m. local time. These hearings will supersede both the hearing request process and the January 6, 1992 hearing date as specified in the proposed rule notice of November 8, 1991.

ADDRESSES: Written Comments: Hand deliver to the Office of Surface Mining, Administrative Record, room 5131, 1100 L Street, NW., Washington, DC. Or mail to the Office of Surface Mining, Administrative Record, room 5131L, 1951 Constitution Avenue, Washington, DC 20240.

Public Hearings: Department of the Interior Auditorium, 18th and C Streets, NW., Washington, DC; 1520 Market Street, St. Louis, Missouri; and Brooks Towers, 2nd Floor Conference Room, 1020 15th Street, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: D.M. Lytton, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–208–5365 (Commercial) or 268–5365 (FTS).

SUPPLEMENTARY INFORMATION:

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practical, commenters should submit three copies of their comments (see **ADDRESSES**). Comments received after the closer of the comment period (see **DATES**) may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule. The time, dates, and addresses scheduled for hearings at three locations are specified in this notice (see **DATES** and **ADDRESSES**).

Any person interested in participating at a hearing at a particular location should inform Mr. Lytton (see **FOR FURTHER INFORMATION CONTACT**) either orally or in writing of the desired hearing location by 5 p.m. Eastern Time on January 21, 1992. If no one has contacted Mr. Lytton to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a written copy of their testimony.

Availability of Copies

Copies of these proposed regulations may be obtained from the U.S. Department of the Interior, Administrative Record Room, 1100 L Street, NW., room 5131, Washington, DC 20240, Telephone 202–343–5492 or any of OSM's Field Offices.

Dated: December 16, 1991.

Brent Wahlquist,

Assistant Director, Reclamation and Regulatory Policy.

[FR Doc. 91–30434 Filed 12–19–91; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL10–1–5123; FRL–4085–6]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to approve a request by the State of Illinois to revise its State Implementation Plan (SIP) for sulfur dioxide (SO_2). This proposed revision would correct several defects in the SO_2 compliance determination methodology. USEPA today is proposing to approve this SIP revision because the compliance methodology meets USEPA policy requirements. The approval of this rule would allow USEPA to reinstate the 1.8 pounds SO_2 per million British Thermal Units (lbs SO_2/MMBTU) emission limit for combustion sources in the Chicago and East St. Louis metropolitan areas of Illinois.

USEPA's action is based on a revision request submitted by the State on February 8, 1991, to satisfy the requirements of the Clean Air Act (CAA).

DATES: Comments on this revision and on the proposed USEPA action must be received by January 21, 1992.

ADDRESSES: Copies of the SIP revision request and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Mary Onischak at (312) 353–5954 before visiting the Region V Office.)

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U.S. Environmental Protection Agency, Region V, Regulation Development Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Written comments should be sent to: Jay Bortzer, Chief, Regulation Development Section, Regulation Development Branch (5AR-26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mary Onischak, Regulation Development Section (5AR-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 353-5954.

SUPPLEMENTARY INFORMATION: Section 110(a) of the CAA requires each State to submit to USEPA to a plan to provide for attainment and maintenance of the national ambient air quality standards (NAAQS) within the State. These SIPs are to provide attainment of the primary NAAQS as expeditiously as practicable, but in no case later than three years from the date of plan approval. These requirements have been adopted in 40 CFR part 51, subpart F.

On February 8, 1991, the Illinois Environmental Protection Agency submitted amendments to 35 Illinois Administrative Code (IAC) 214 (sulfur limitations) to USEPA as a revision to the Illinois SIP §§ 214.101 and 214.104). The purpose of this revision is to correct several defects in the SO_2 compliance test methodology. These defects include the lack of a short-term test method, the lack of independent compliance measurements, and the inclusion of "director's discretion" in the SIP.

I. Background/History

USEPA approved the Illinois SO_2 plan on May 31, 1972, (37 FR 10862). The plan included a compliance test methodology which allows most sources to demonstrate compliance with their emission limits through either a stack test or a 2 month average of the sulfur content of their fuel supply. USEPA's policy guidance on compliance testing has gradually evolved since the time Illinois' SO_2 plan was approved. Illinois had not, however, been required by notice of SIP deficiency to update its compliance test methodology.

On September 28, 1978, the Illinois Appellate Court vacated most of the rules in the SO_2 SIP on procedural grounds (*Illinois Chemical Company* v. *PCB, No. 77382 Ill App 3d.*) The compliance test methodology was not among the vacated rules. USEPA issued Illinois a notice of SIP deficiency on July 12, 1979, (44 FR 40723), which ordered the State to submit SIP revisions to replace the vacated SO_2 rules. In 1985 and 1986, the State submitted several SIP revision packages. However, in reviewing these rule packages, USEPA found that the current compliance test methodology would not suffice to enforce the new rules or the NAAQs. USEPA cannot approve SIP revisions which rely on unsatisfactory compliance methods. USEPA then informed Illinois that their new SO_2 rule submittals could not be federally approved until the compliance methodology was updated to meet current policy guidance. In order to comply with the requirements of the July 12, 1979, notice of SIP deficiency, therefore, the State of Illinois had to replace the vacated SO_2 rules and amend the compliance test methodology. This SIP revision was submitted on February 8, 1991, to correct the deficiencies in the current compliance test methodology.

II. SIP Defects Corrected by this Submittal

Short-term Compliance Method Requirements

SIPs must prescribe methods of compliance which can ensure that the short-term NAAQS are not exceeded. The present Illinois SO_2 plan allows sources to demonstrate compliance with their emission limits through 2 month averaging of fuel samples, notwithstanding the existence of stack test results demonstrating noncompliance. Two month fuel averaging cannot ensure attainment and maintenance of the 3 hour and 24 hour SO_2 standards. A July 29, 1987, policy memorandum from the Director of the Office of Air Quality Planning and Standards (OAQPS) to the USEPA Regional Air Division Directors stated that in order to be approvable, SIPs must contain provisions for a stack gas compliance test, and USEPA accepts Method 6 (40 CFR 60, appendix A) stack gas testing as a compliance method for SO_2. Illinois' February 8, 1991, submittal, which specifies stack test Methods 6, 6A, 6B, 6C, and any method established by 40 CFR 60.8, for determining compliance, satisfies this requirement. Furthermore, under 35 IAC 201.282, Illinois can order any source to conduct such stack testing. Stack testing can demonstrate maintenance of the short-term SO_2 standards. Occasional stack testing does not ensure that a source will be in compliance with the NAAQS at all times. Through State rule correction efforts, USEPA is currently working to require all sources to show continuous compliance. In the interim, however, USEPA is proposing to approve Illinois' February 8, 1991, submittal.

Compliance Method Independence

The current SIP implies that results of 2 month fuel averaging which indicate compliance with emission limit requirements may refute a finding of noncompliance by stack gas testing. This is unacceptable, as it could allow a source to exceed its emission limits for short time periods without penalty. As already noted, 2 month fuel supply averaging cannot ensure the protection of the 3 hour primary or 24 hour secondary SO_2 standards. The 1991 submittal states that neither method may refute the other for the determination of noncompliance.

On October 27, 1987, USEPA testified before the IPCB regarding Illinois' compliance test methodology. USEPA recommended that IPCB adopt the proposed compliance test method, which was subsequently submitted to USEPA on February 8, 1991.

On January 19, 1988, USEPA approved a similar compliance test methodology submitted by the State of Indiana. (See 53 FR 1354.) An earlier SIP submittal by Indiana had been disapproved by USEPA because the submittal contained a 30-day fuel quality averaging compliance method which could be used to refute stack test evidence of noncompliance. The subsequently revised Indiana rule included stack testing as an independently enforceable compliance method. Illinois' February 8, 1991, submittal specifies a federally enforceable short-term method of determining compliance, and holds that findings of noncompliance with one compliance method may not be refuted by findings of compliance through the use of other compliance methods.

Director's Discretion

The current SIP allows the Director of the Illinois Environmental Protection Agency to determine other methods of stack gas testing without submitting these methods to USEPA as revisions to the SIP. SIPs which allow "director's discretion" are not approvable by USEPA today. The February 8, 1991, submittal does not allow director's discretion.

III. Relationship to Emission Limits of Rural Illinois SO_2 Sources

There are thirteen sources in rural Illinois that have approved plantwide pounds per hour (lb/hr) SO_2 emission limits, which are coupled with the compliance test methodology in the current SIP. Current USEPA guidance states that compliance test methods must show plantwide compliance with the SO_2 ambient standards, and sources with plantwide "bubbles" must be a better method of determining compliance than stack tests. However, the plantwide lb/hr SO_2 emission limits, rather than the compliance methods specified, are the underlying problem with the Illinois SIP, as it pertains to the thirteen rural SO_2 sources. Compliance with a lb/hr emission limit does not ensure compliance with the standards. A company with a lb/hr limit may use high-sulfur fuel to run plant processes at below-normal capacity. While the facility would be in compliance with its emission limit, the decrease in pollutant plume rise from the lowered operating volume could reduce dispersion and cause NAAQS violations near the plant. Thus, neither a simple stack test nor a continuous emission monitor would ensure protection of the standards at facilities with lb/hr emission limits. USEPA will soon request that Illinois revise the lb/hr limits by incorporating pounds SO_2 per million British Thermal Units (lb/MMBTU) emission limits as well, as discussed below.

IV. Proposed Rulemaking Action and Solicitation of Comments

USEPA proposes to approve the incorporation of 35 IAC §§ 214.101 and 214.104 into the Illinois SIP. This revision meets USEPA policy requirements and satisfactorily corrects several defects in Illinois' SIP, including the lack of a short-term compliance test method, the test methods' ability to refute other noncompliance findings, and the provision for director's discretion.

It is noted that in a May 31, 1991, memorandum entitled "SO_2 Nonattainment Area SIP Guidance: Final Staff Work Product," from John Calcagni, Director, Air Quality Management Division, OAQPS, to the Regional Air Directors, it is stated that all future SO_2 nonattainment area SIPs should specify continuous emission monitoring (CEM) for determining compliance. However, current USEPA policy holds that method involving stack gas tests are acceptable to USEPA. Therefore, USEPA is proposing to approve Illinois' SIP revision. This approval does not insulate Illinois from future compliance policy requirements. Titles I, IV, and V of the 1990 Clean Air Act Amendments will effect changes in the implementation of the SO_2 NAAQS program. In order for all three titles to be carried out as efficiently as possible, USEPA is requiring States nationwide to correct existing enforceability deficiencies in the SIPs. USEPA released the "Yellow Book" in June 1991, which discussed various types of enforcement deficiencies. There are "Yellow Book" deficiencies in the approval portions of the Illinois SO_2 rules; however, these deficiencies will be corrected as part of the upcoming national process to rectify these types of enforceability deficiencies. The State of Illinois was notified by USEPA on June 28, 1991, of the enforceability deficiencies in the SIP and was asked to submit a schedule for correcting them and submitting the corrections as a revision of the SIP.

Public comment is solicited on the proposed SIP revision and USEPA's proposed rulemaking action. Comments received by the date indicated above will be considered in the development of USEPA's final rulemaking action.

The Agency has reviewed this request for revision of the federally approved SIP for conformance with the provisions of the Clean Air Act Amendments enacted on November 15, 1990.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401-7642.

Dated: August 23, 1991.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 91-30484 Filed 12-19-91; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 72, 73, 75, and 77

[FRL-4084-3]

Acid Rain Program: Announcement of Open Meeting on Acid Rain Program Forms

AGENCY: U.S. Environmental Protection Agency (EPA), Office of Air and Radiation (OAR).

ACTION: Proposed rules; forms workshop.

SUMMARY: On December 3, 1991, the EPA published the proposed Acid Rain Program "core" rules pursuant to title IV of the Clean Air Act Amendments of 1990, announcing its intent to conduct public hearings in Washington, DC, San Francisco, CA, and Chicago, Ill. the week of January 6, 1992. (56 FR 63001-63351, Tuesday, December 3, 1991). EPA is adding one additional public meeting in Washington on January 8, 1992, for the sole purpose of reviewing and receiving public comments on the proposed Acid Rain Program standardized forms. The workshop will be a working session for input by the public at large, and in particular will give the regulated community an opportunity to discuss their comments and concerns in detail.

The forms to be discussed include the Acid Rain permit application and compliance plan forms, Acid Rain monitoring plan and emissions monitoring report formats, as well as Acid Rain allowance transfer and new account/new authorized account representative forms. Use of these standardized forms will be required in both Phase I and Phase II of the Acid Rain program in order to ensure national consistency in the program and streamlined processing. Meeting participants should focus their comments on form quality, including identification of inconsistencies between the forms and requirements in the proposed "core" rules, redundancies, and ambiguities in terminology or instructions. EPA urges members of the public to review the forms in advance of the meeting, and to submit completed forms (using real or hypothetical information), with their written comments to the appropriate EPA Air Dockets (*see* references below). These submissions will help EPA assess paperwork burdens, and provide EPA with concrete examples to use for further development of the forms and form completion instructions.

Public comments regarding the substantive provisions of the Acid Rain "core" rules are beyond the scope of the forms meeting, and should be made separately at the public hearings or submitted to the appropriate EPA Air Dockets announced in the Federal Register notice of the "core" rules package on December 3, 1991.

DATES: Notice is hereby given that the Environmental Protection Agency will hold an open meeting to discuss Acid Rain program standard forms, from 8:30 a.m. to 5 p.m. on January 8, 1992.

ADDRESSES: The Acid Rain forms public meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Brian McLean, Director, Acid Rain Division (ANR-445), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (617) 641-5377.

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SUPPLEMENTARY INFORMATION:

Documents: The proposed Acid Rain forms are included in the proposed Acid Rain "core" rules package proposed on Tuesday, December 3, 1991 (56 FR 63001–63351). They are also publicly available for viewing in EPA Air Dockets Number "A–90–38" (Permits Rule), "A–91–43" (Allowance System rule), "A–90–51" (Continuous Emissions Monitoring rule), and "A–91–51" (Continuous Emissions Monitoring rule), and "A–91–68" (Excess Emission rule), in room 1500 of EPA headquarters, 401 M St. SW., Washington, DC. Hours for inspection of the Dockets are 8:30 a.m. to 12 noon and 1:30 p.m. to 3:30 p.m., Monday through Friday. Additional copies of the forms will be available in limited numbers at the public meeting along with a more detailed meeting agenda.

Registration Anyone wishing to present oral comments on the Acid Rain forms and participate in the forms meeting must register not later than January 3, 1991, by calling Gayle Kline at (703) 671–0400. Only limited seating will be available for persons who have not pre-registered, and seats will be provided on a first-come, first-served basis. Oral presentations will be limited to 10 minutes, and will be followed by a roundtable discussion.

Dated: December 13, 1991.

Eileen B. Clausen,

Director, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation.

[FR Doc. 91–30323 Filed 12–19–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

46 CFR Part 514

[Docket No. 90–23]

Tariffs and Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule; extension of time for comments.

SUMMARY: On September 9, 1991, the Federal Maritime Commission published (56 FR 46044) a Proposed Rule (new 46 CFR part 514) which solicited public comment omits proposal for implemention of the Automated Tariff Filing and Information System ("ATFI"). Time for filing comments to the proposed rule was extended to November 8, 1991, for that portion of the proposed rule concerning user charges, proposed § 514.21, and to December 16 with respect to the remainder of the proposed rule (56 FR 55860, October 30, 1991). On December 2, 1991, the Commission published (56 FR 61184) a final rule establishing certain user charges. Twelve conferences have now requested a 14 day extension of time for filing comments to the remainder of the proposed rule. The conferences cite the length and complexity of the proposed rule, a recent need to retain new consultants, and the timing of a meeting scheduled to make final decisions for the conferences. The Commission has determined to grant the conferences' request and extend the comment period to December 30, 1991.

DATES: Comments (original and fifteen copies) due on or before December 30, 1991.

ADDRESSES: Send comments to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: John Robert Ewers, Deputy Managing Director, Federal Maritime Commission, 1100 L Street , NW., Washington DC 20573–0001, (202) 523–5800.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–30376 Filed 12–19–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–348; FCC 91–385]

FM Table of Allotments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rulemaking was initiated to explore changes in the Commission's procedures governing conflicts between rulemaking petitions to amend the FM Table of Allotments and applications for new or modified FM facilities. Currently, there are policies and rules specifying "cut-off" dates with respect to mutually exclusive petitions for rulemaking and with respect to mutually exclusive applications, but none with respect to conflicts between petitions and applications. This approach has often permitted subsequently-filed rulemaking petitions to delay the processing of pending applications. The Commission seeks comment on whether it now imposes undue expense to applicants and costs to the public in delay of service.

DATES: Comments are due by January 22, 1992, and reply comments are due by February 6, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Beverly McKittrick, Mass Media Bureau, Policy and Rules Division, (202) 632–5414.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking in MM Docket No. 91–348, FCC 91–385, adopted November 21, 1991, and released December 16, 1991. The complete text of the Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1114 21st Street, NW., Washington, DC.

Synopsis of Notice of Proposed Rulemaking

1. In this Notice of Proposed Rulemaking, the Commission seeks comment on a number of proposals regarding conflicts between rulemaking petitions to amend the FM Table of Allotments and applications for new or modified FM facilities. Currently, the Commission has policies and rules specifying "cut-off" dates with respect to mutually exclusive petitions for rulemaking and with respect to mutually exclusive applications, but none with respect to conflicts between petitions and applications.

2. The Commission proposes to use the deadline for filing petitions to deny against new and major change FM applications as the cut-off point for rulemaking petitions that conflict with those applications. The Commission seeks comment on this proposal and on whether an earlier cut-off point, such as the close of the filing window or the end of the amendment as of right period, would be preferable. The Commission also proposes to retain cut-off protection for applications that are dismissed until the dismissal is no longer subject to Commission review.

3. For minor change applications, the Commission also proposes to use as the cut-off point for the filing of conflicting petitions a date 30 days after acceptance of the application, unless the application is earlier granted. Finally, the Commission seeks comment on whether the criteria developed in Revision of FM Assignment Policies and Procedures should be applicable in determining whether an application

receives cut-off protection. For example, should the Commission decline to extend cut-off protection to an application for an upgrade against a petition that would provide a first local aural transmission service for a community? The Commission's initial conclusion is that no distinction should be made among various types of applications or petitions. The equities appear to be the same on the applicant's side, *i.e.* investment of time and money in pursuing the application, whether the applicant is seeking a new allotment or an upgrade. The Commission also tentatively concludes that adjudication of whether a particular petition falls within any exception the Commission might adopt would so complicate the administration of a cut-off rule as to obviate the benefits of adopting any such rule. Commenters who disagree should indicate what distinctions the Commission should make and the justifications therefor.

4. Finally, the Commission proposes to make any procedural change effective 30 days after publication in the **Federal Register.** Rulemaking petitions already filed, or filed within 30 days after publication in the **Federal Register** of any rule changes in this proceeding, would be handled under the current procedure. The Commission believes that this 30-day period would provide adequate notice to potential petitioners for new allotments or upgrades while expediting the benefits to the public of any new procedure. The Commission seeks comment on this tentative conclusion.

Initial Regulatory Flexibility Statement

I. Reason for the Action

5. This review is initiated to consider whether it is advisable to adopt new procedures governing conflicts between rulemaking petitions to amend the FM Table of Allotments and applications for new or changed FM facilities.

II. Objectives of the Action

6. The objective of this proceeding is to ensure that such conflicts are settled with minimal expense for applicants and minimal delay in new or improved service to the public.

III. Legal Basis

7. Authority for this action may be found in 47 U.S.C. 154 and 303.

IV. Reporting, Recordkeeping and Other Compliance Requirements

8. Such requirements will vary according to the actions that are adopted as a result of the record established in response to this Notice of Proposed Rulemaking.

V. Federal Rules Which Overlap, Duplicate or Conflict With These Rules

9. There are no rules which would overlap, duplicate or conflict with these rules.

IV. Description, Potential Impact and Number of Small Entities Involved

10. There are a number of radio licensees and potential applicants who would be affected by this proceeding.

VII. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With Stated Objectives

11. In initiating this review of our procedures for settling FM application/petitions for rulemaking disputes, it is intended to reduce the expense and delay that FM applicants now face when conflicting petitions for rulemaking are filed. We seek to minimize the possibility for such conflicts through our proposal to adopt a cut-off point for later-filed conflicting petitions and to retain cut-off protection for applications that are dismissed until the dismissal is final. Although the Commission tentatively finds that the current procedures are no longer the best procedures, the Notice of Proposed Rulemaking invites comments on the validity of this conclusion and on alternative methods for resolving such disputes.

12. The Secretary shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Ex Parte Consideration

13. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

Comment Information

14. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before January 22, 1992, and reply comments on or before February 6, 1992. To file formally in this proceeding, you must file an original and five copies of all comments, replay comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comment, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

15. Authority for this action is contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Amendatory Text

It is proposed to amend part 73 of title 47 of the Code of Federal Regulations as follows:

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. Section 73.208 is amended by revising paragraph (a)(1) and adding a new paragraph (a)(3) to read as follows:

§ 73.208 Reference points and distance computations.

(a)(1) The following reference points must be used to determine distance separation requirements when petitions to amend the Table of Allotments (§ 73.202(b)) are considered:

(i) First, transmitter sites if authorized, or if proposed in applications with cut-off protection pursuant to paragraph (a)(3) of this section;

(ii) Second, reference coordinates designated by the FCC;

(iii) Third, coordinates listed in the United States Department of Interior publication entitled Index to the National Atlas of the United States of America; or

(iv) Last, coordinates of the main post office.

(The community's reference points for which the petition is submitted will normally be the coordinates listed in the above publication.)

* * * * *

(3) Petitions to amend the Table of Allotments that do not meet minimum distance separation requirements to transmitter sites specified in applications will not be considered unless they are filed before:

(i) The deadline for filing Petitions to Deny the application, if the application is for a new facility or major change; or

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(ii) 30 days after acceptance or grant of the application, whichever occurs earlier, if the application is for a minor modification.

* * * * *

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 91-30430 Filed 12-19-91; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

48 CFR Parts 5446 and 5452

DLA Acquisition Regulation; Statistical Process Control

AGENCY: Defense Logistics Agency, DOD.

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Logistics Agency (DLA) proposes to establish a new 48 CFR chapter 54 to contain Defense Logistics Agency acquisition regulations. New parts 5446 and 5452 provide regulatory coverage on the use of Statistical Process Control (SPC) in select contracts. Comments are hereby requested on the proposed coverage which supplements the contract quality requirements of the Federal Acquisition Regulation (FAR) and the Defense FAR Supplement (DFARS) by adding prescriptive language and a contract clause to satisfy the specific needs of DLA. It is required in order to standardize the use of SPC as a quality control tool by the various supply centers in DLA. The primary objective of the coverage, when required, is to encourage the use of SPC as an integral part of a total quality production initiative at contractor facilities aimed at controlling the manufacturing process to assure consistent production of conforming material. The proposed coverage is being published in the **Federal Register** because it is expected to have an effect beyond the internal operating procedures of DLA and, in some cases, a significant cost and administrative impact on contractors, when required.

DATES: Comments should be submitted to the address shown below on or before January 21, 1992, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Logistics Agency, Directorate of Contracting, Policy Branch (DLA-PPR), ATTN: Ms. Ynette Shelkin, Cameron Station, Alexandria, VA 22304-6100.

FOR FURTHER INFORMATION CONTACT: Ms. Ynette Shelkin, Defense Logistics Agency, DLA-PPR (703) 274-6431.

SUPPLEMENTARY INFORMATION:

A. Background

DLA is committed to achieving productivity and quality improvements in the materials it purchases to equip and support its military customers. In the past, DLA relied on end-item inspection to assess the quality of the products it purchased. Now, however, emphasis is being placed on controlling quality in the early stages of product manufacture. SPC is a widely recognized technique that provides for continuous quality assessment and improvement by focusing on the manufacturing process rather than the end-product. Under SPC, contractors periodically monitor their processes by selectively measuring characteristics to determine which processes, if any, should be adjusted so that corrective action can be taken before defects in end-products are produced. This represents a shift away from reliance on detecting defects during end-item inspection to an effective process control that prevents defects during the manufacturing process—part of a continuous quality improvement concept; however, neither the FAR nor the DFARS currently contains regulatory coverage on SPC. The proposed coverage will be included in DLAR 4105.1, which implements and supplements the FAR, the DFARS, and other DOD publications and, pursuant to FAR 1.304, establishes DLA procedures relating to the acquisition of supplies and services under the authority of 10 U.S.C. 137. The supplementary coverage, which includes a new clause, is designed to give contracting officers an effective tool to improve quality when there is a need to control manufacturing operations, processes, characteristics and/or parameters using statistical techniques. The proposed rule will be submitted to the Director of Defense Procurement (DDP) for approval following receipt of public comments in accordance with the Deputy Assistant Secretary of Defense (Procurement) (now DDP) memorandum of 15 September 1989 which states, in part, that "* * * Military Departments and Defense Agencies must submit regulations developed on or after July 22, 1989 directly [to DDP] for approval prior to their becoming effective. This requirement applies to all procurement policies, regulations, procedures, clauses, or forms that have any effect beyond the internal operating procedures of the agency or have a significant impact on contractors or offerors * * *."

B. Regulatory Flexibility Act

The proposed addition of 48 CFR parts 5446 and 5452 may have a significant economic impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because of the additional time and cost involved initially for a contractor to implement an acceptable SPC plan. An Initial Regulatory Flexibility Act (IRFA) Statement has been prepared and is on file at the Defense Logistics Agency, Directorate of Contracting, Policy Branch (DLA-PPR), Cameron Station, Alexandria, VA 22304-6100. In summary, the proposed coverage is required in order to standardize the use of SPC by the various supply centers in DLA. The proposed rule is expected to impact on those small businesses that receive awards for which there is a need to require control of manufacturing operations and processes using statistical techniques, and that are implementing such techniques for the first time. A copy of the IRFA has been submitted to the DLA Defense Acquisition Regulatory (DAR) Council Legal Member. Copies may also be obtained by contacting Ms. Ynette Shelkin at (703) 274-6431. Comments are invited. Comments from small businesses concerning the proposed DLAR coverage will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DLAR Parts 5446 and 5452—Statistical Process Control (SPC) in correspondence.

C. Paperwork Reduction Act

The proposed rule does not impose any reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.* and, as such, the Paperwork Reduction Act does not apply.

List of Subjects in 48 CFR Parts 5446 and 5452

Government procurement.

Therefore, it is proposed that 48 CFR chapter 54, consisting of parts 5446 and 5452, be added to read as follows:

Chapter 54—Defense Logistics Agency, Department of Defense

PART 5446—QUALITY ASSURANCE

PART 5452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

PART 5446—QUALITY ASSURANCE

Authority: 10 U.S.C. 137, FAR subpart 1.3 and DFARS subpart 201.3.

5446.202-90 Statistical process control.

Use the clause at 5452.246-9002, or a similar version, in solicitations and contracts when there is a need to control manufacturing operations, processes, characteristics and/or parameters using statistical techniques.

PART 5452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Authority: 10 U.S.C. 137, FAR subpart 1.3 and DFARS subpart 201.3

Subpart 5452.2—Texts of Provisions and Clauses

5452.246-9002 Statistical Process Control (SPC).

As prescribed in 5446.202-90, insert the following clause:

Statistical Process Control (SPC) (XXX 1991)

In addition to the quality requirements cited in this contract, the contractor shall manage and improve process performance through the evaluation of the quality of the product at the prime contractor and/or subcontractor/vendor facilities, using Statistical Process Control (SPC) techniques. Minimum criteria are established in the American National Standards Institute (ANSI) Z1.1, Z1.2 and Z1.3 or American Society of Quality Control (ASQC) B.1, B.2, and B.3 documents. The use of alternate SPC techniques will be allowed only after information substantiating their adequacy for the particular product/process involved has been forwarded to, and determined to be acceptable by the cognizant Contract Administration Office (CAO). This review and determination of acceptability must be completed prior to implementation of the proposed alternative SPC techniques.

The contractor shall identify the characteristics that it has selected to be controlled through the application of SPC control techniques to the CAO Government Representative for a determination of acceptability prior to the initiation of First Article or normal production. The characteristics requiring control will be those providing the greatest assurance of product conformance to contract requirements. These will be determined through the review of previous production/inspection records and analysis of the processes involved. In addition to the characteristics identified by the contractor, the following Contracting Office designated characteristics will be subjected to SPC control techniques:

_____

_____

_____

Any changes to the initial group of characteristics being controlled through SPC (either contractor or Government designated) will be identified to the CAO Government Representative in writing for review and a determination of acceptability. Proposed changes to Contracting Office designated characteristics will not be implemented until written approval has been received from the Contracting Officer.

A documented plan implementing SPC techniques shall be prepared by the contractor. This plan must be available for review by the Government prior to initiation of First Article or normal production and shall identify as a minimum: Operations where SPC will be implemented; SPC methods to be applied; process capability studies to be completed; methods for control of vendor quality; the sample size and frequency of measurements; the criteria to be used for modifying sample size and frequency of measurements; the audit procedures used to validate the accuracy, adequacy, and interpretation of control charts; training and qualification requirements for personnel involved in SPC; criteria for determining an out-of-control condition; identification of the responsibility for performing measurements and corrective actions; general policy for applying SPC along with goals and commitments regarding SPC; documents and records utilized in the SPC program; and the corrective action procedures to be used and actions to be taken upon statistical signal or an out-of-tolerance condition. This plan is subject to disapproval by the Government following a determination that it lacks the capability to provide control of contract requirements.

All documents/records required by the SPC plan shall be maintained current and be made available for Government review at any time throughout the life of the contract and for five years after final delivery on the contract.

When processes reach a state of statistical control and the product conforms completely to contract requirements, the contractor may request to the Procuring Contracting Officer (PCO), through the CAO, that the contract/specification acceptance sampling requirements be reduced. Previous contractual acceptance sampling criteria will not be changed until the PCO provides written approval. The Government reserves the right to return to original acceptance sampling requirements at any indication of a loss of process control or a degradation in product conformance to contract requirements.

[End of clause]

By Order of the Director.
Gary C. Tucker,
Colonel, USA Staff Director, Administration.
[FR Doc. 91-30224 Filed 12-19-91; 8:45 am]
BILLING CODE 3820-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 911215-1315]

RIN 0648-AD50

Foreign Fishing; Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS publishes a proposed rule that would implement proposed Amendment 8 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI) and proposed Amendment 23 to the FMP for Groundfish of the Gulf of Alaska (GOA), if the amendments are approved by the Secretary of Commerce (Secretary) after review and consideration of public comments. Amendments 18 and 23 to the respective FMPs were prepared by the North Pacific Fishery Management Council (Council) and have been submitted to the Secretary for review under provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

These regulations are proposed to allocate Pacific cod and pollock between inshore and offshore components in the GOA and pollock between inshore and offshore components in the BSAI, as defined in the proposed amendments. Also, these regulations propose to establish a catcher vessel operation area in the BSAI within which pollock harvest by the offshore component during the first part of the fishing year is limited and, during the remainder of the year, prohibited. In addition, a Western Alaska Community Development Quota program is proposed to help develop commercial fisheries in communities on the Bering Sea coast by allowing them exclusive access to up to half of the pollock apportioned to nonspecific

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reserve at the beginning of the fishing year (i.e., 7.5 percent of the total allowable catch (TAC) of pollock in the BSAI area). These actions are intended by the Council to promote management and conservation of groundfish and other fish resources and to further the goals and objectives contained in the FMPs that govern these fisheries.

DATES: Comments are invited on or before February 3, 1992.

ADDRESSES: Comments may be sent to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Commenters are encouraged to submit copies of their comments on the amendments, proposed rule, and supporting analyses to Richard Schaefer, Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1335 East-West Highway, SSMC1 Room 8472, Silver Spring, MD 20910. Individual copies of proposed Amendments 18 and 23 and the draft supplemental environmental impact statement/regulatory impact review/initial regulatory flexibility analysis (DSEIS/RIR/IRFA) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99520.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter, Fishery Management Biologist at 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) off Alaska are managed in accordance with the GOA and BSAI FMPs. Both FMPs were prepared by the Council under authority of the Magnuson Act. The GOA FMP is implemented by regulations appearing at 50 CFR 611.92 for the foreign fishery and at 50 CFR part 672 for the U.S. fishery. The BSAI FMP is implemented by regulations appearing at 50 CFR 611.93 for the foreign fishery and 50 CFR part 675 for the U.S. fishery. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620.

Substantial processing of pollock by several catcher/processor vessels contributed to an early closure of the pollock fishery in the Shelikof Strait District on March 21, 1989 (54 FR 12204; March 24, 1989), effectively preventing inshore components from realizing their anticipated economic benefit from pollock alter in the fishing year. At the April 1989 Council meeting, fishermen and processors from Kodiak Island requested the Council to consider inshore/offshore allocations to prevent future preemption of resources by one industry sector over another.

The Council considered the issues of coastal community development and shoreside preference at its June 1989 meeting and conducted at 45-day scoping process between October 13 and December 8, 1989, to obtain additional proposals from the public (54 FR 46100; November 1, 1989). In December of 1989, the Council adopted the Fishery Planning Committee's suggested management alternatives and added another alternative concerning establishment of an immediate moratorium.

The problem statement adopted by the Council at its April 1990 meeting stated in part, "The Council defines the problem as a resource allocation problem where one industry sector faces the risk of preemption by another." The view was expressed that specified allocations (proportions of TAC for a given target species established by regulation) for inshore and offshore components at the beginning of a fishing year would resolve the preemption problem and better enable operators within those components to plan harvesting and/or processing activity during the fishing year.

Between January 1990 and April 1991, the Council decided to include in its analysis only pollock in the BSAI and Pacific cod and pollock in the GOA. This allowed for more detailed analyses of an inshore/offshore allocation scheme for groundfish species believed to require immediate attention.

In April 1991, the Council rejected a motion to table the inshore/offshore amendment package until the moratorium issue was resolved, an individual fishing quota system based on historical participation in the fisheries was in effect, and an exclusive registration area for pollock was established for the central Gulf of Alaska. The Council reasoned that such a limited access program could not be implemented until 1994, and that the preemption problem needed to be addressed as early as 1992. Additionally, the Council believed that there was no evidence that a limited access program would be effective in resolving the preemption problem.

The first DSEIS/RIR/IRFA for Amendments 18 and 23 was reviewed initially by the Council and its advisory bodies at their April 22–26, 1991, meetings and approved for public distribution and comment. The public comment period began May 10, 1991, and ended June 24, 1991 (56 FR 21675; May 10, 1991). After receiving advice from its advisory bodies and hearing public testimony at its meeting of June 24–29, 1991, the Council constructed and adopted its preferred alternative. At that meeting, the Council also received verbal advice from the Director, Alaska Region, NMFS (Regional Director), and the NOAA Regional Attorney recommending further analyses to supplement the record. The Regional Director and Regional Attorney provided written advice to the Council on supplementing the record by letter dated July 25, 1991. At its August and September 1991 meetings, the Council rejected a motion to rescind its earlier adoption of the preferred alternative, as described below.

The Council has submitted Amendments 18 and 23 to the Secretary for review, approval, and implementation under section 304(a) of the Magnuson Act. A notice of availability for the FMP amendments that requested public comment on these amendments was published on December 12, 1991 (56 FR 64738). A notice of availability of the revised DSEIS was published in the **Federal Register** on November 22, 1991 (56 FR 58905).

A major concern identified during the preliminary review by the Secretary of Amendments 18 and 23 is that the economic analysis submitted by the Council may be fatally flawed. The economic analysis does not appear to contain a full qualitative analysis of costs and benefits expected, should these two amendments be approved by the Secretary. NMFS will conduct a separate economic analysis on the proposed management measures prior to final action to approve, disapprove, or partially disapprove the amendments.

Completion of the preliminary review with publication of the proposed rule for Amendments 18 and 23 does not mean that either of these two amendments will be approved by the Secretary. NMFS invites comment on the consistency of the amendments and the proposed regulations with the Magnuson Act's national standards and other applicable laws. Comments are specifically requested on the adequacy of the economic analysis to support findings of compliance with national standards 2 (best scientific evidence), 4 (fair and equitable allocations), 5 (justification for economic allocations), and 7 (net benefits to the Nation). Information and analysis that bolster or contradict the conclusions in any of the supporting documents are also welcome. Commenters may also address alternatives the Council did not consider but that may have resolved the concerns that prompted these two amendments.

Description of Proposed Management Measures

1. Application of Inshore and Offshore Definitions

The inshore component would be defined as that part of the U.S. groundfish fishery that includes: (a) All shoreside processing facilities; (b) all mothership operators who submit a check-in report under § 672.5(c)(1) during a fishing year that exhibits an intent to process, or actual processing of, Pacific cod or pollock in waters adjacent to the State of Alaska that are shoreward of the EEZ; and (c) all catcher/processors that process less than 18 metric tons of groundfish, round weight, per day and are less than 125 feet (38.1 m) in length overall. The offshore component would be defined as all processor vessels not included under the inshore definition.

Motherships operating under the inshore definition would be required to remain in the geographic location that they report on their first check-in report of the fishing year while they are processing pollock harvested from either the GOA or the BSAI, or Pacific cod harvested from the GOA. This restriction applies on a fishing-year basis and only to the processing of pollock and Pacific cod. A mothership could leave that location to process other species of groundfish not included under Amendments 18 and 23 or other species of fish. However, the mothership must return to the location reported on the first check-in report for processing EEZ pollock or GOA Pacific cod if it processes those species again during the same fishing year.

Processor vessels would not be allowed to catch or process pollock or Pacific cod as both an inshore and offshore operation during the same year. For purposes of this measure, it is the Council's intent that the BSAI area and the GOA are viewed as one area. For example, a mothership would not be allowed to process pollock in the GOA under the inshore definition and in the BSAI area under the offshore definition in the same fishing year. It could operate under the inshore definition to process GOA pollock and then move offshore in the BSAI area in the same fishing year to process Pacific cod caught in the BSAI area or flatfish, since these species are not included in the inshore definition for the BSAI area. However, it would have to return to its original location to process pollock caught in either the BSAI area or the GOA, or Pacific cod caught in the GOA.

2. Inshore/Offshore Allocation of Pollock and Pacific Cod in the GOA

For the GOA, 90 percent of the Pacific cod TAC and 100 percent of the pollock TAC for each fishing year, as specified in the annual notice of specifications for groundfish, is proposed to be allocated to the inshore component of the groundfish fishery. Ten percent of the Pacific cod TAC, and an appropriate percentage of the pollock TAC for bycatch purposes, is proposed to be allocated to the offshore component.

Only the inshore component would be allowed to conduct directed fishing for pollock in the GOA. Nevertheless, under current §§ 672.20 (g) and (h), catcher/processors from the offshore component would be able to retain bycatch amounts of GOA pollock. For a given fishing trip, pollock retention for a vessel in the offshore component must be less than 20 percent by weight (round weight equivalent) of other species retained under current management policies. This provision would allow for the retention and processing of pollock bycatch by the offshore component, until the pollock TAC is reached, and is intended to alleviate unnecessary discard and waste of the resource. Once the quarterly allowance of the GOA pollock TAC is reached for a given regulatory area and district, pollock would be treated as a prohibited species under current § 672.20(c)(3).

The offshore component would be allocated up to 10 percent of the Pacific cod TAC for each regulatory area in the GOA. The Regional Director would determine what proportion of this amount would be necessary as bycatch for directed fishing for other species by the offshore component. After this expected bycatch amount is subtracted from the offshore allocation, the remaining amount may be available to the offshore component for directed fishing purposes. For TAC monitoring purposes in the GOA, the retained bycatch of Pacific cod taken by the offshore component would differ from the retained bycatch of pollock. Retained bycatch of pollock taken by the offshore component in the GOA would be credited to the inshore component, but retained bycatch of Pacific cod by the offshore component would be credited to its 10 percent allocation.

If the Regional Director determines that the inshore component will not be able to process the entire amount of its allocation of pollock or Pacific cod during a fishing year, then NMFS will publish a notice in the **Federal Register** that reallocates the projected unused amount of pollock or Pacific cod to the offshore component.

3. Inshore/Offshore Allocation of Pollock in the BSAI Area

Under Amendment 18, the allocation of BSAI pollock between the inshore and offshore components would be phased in over a 3-year period. In the first year of implementation, the inshore component would receive 35 percent of the pollock TAC and the offshore component would receive the remaining 65 percent. In the second year, BSAI pollock would be allocated between the inshore and offshore components 40 and 60 percent, respectively. In the third and subsequent years, BSAI pollock would be allocated between inshore and offshore components 45 and 55 percent, respectively. The inshore and offshore allocations would be specified for each subarea and each pollock season defined at § 675.20(a)(2)(ii).

According to NMFS records, the inshore component has harvested approximately 16 to 36 percent of the BSAI pollock for domestic annual processing since 1986. Based on the 1990 pre-season domestic processing survey, the 3-year phased allocation scheme would result in a graduated increase in the pollock allocation to the inshore segment up to its late 1989 processing potential. If, during a fishing year, the Regional Director determines that either the inshore or offshore component will not be able to harvest and process the entire amount of pollock allocated to it, then the amount that the Regional Director projects will be unused by one component will be reallocated to the other fishery by notice in the **Federal Register**.

4. Bering Sea Catcher Vessel Operational Area (CVOA)

Amendment 18 proposes to establish a CVOA that would limit access to pollock within the area to catcher vessels delivering to the inshore component. This area is between 163° and 168° W. longitude, south of 56° N. latitude, and north of the Aleutian Islands. During the pollock roe season (January 1–April 15, commonly known as the "A" season), the offshore component would be allowed to take up to 65 percent of its seasonal allowance of pollock from the CVOA. After the offshore component attains 65 percent of its "A" season allowance of pollock from the CVOA, pollock caught within this area may be processed by the offshore component only if the pollock occurs as bycatch in directed fishing for other species. Except for the "A" season allowance of pollock to the offshore

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component, only the inshore component would be permitted to conduct directed fishing for pollock in the CVOA. Pollock harvested outside the CVOA could be delivered to processors in either the inshore or offshore components.

Establishment of the CVOA is intended to address the dependence of the BSAI inshore component on nearby waters for pollock resources, but provides an allowance for some access to this area by the offshore component during the "A" season in recognition of the high economic value of pollock roe obtained by the at-sea processors from this area. The 65-percent allowable take is based on 1989–1990 reported harvests by the offshore sector in this operational area during the first quarter.

If the CVOA is implemented, several current statistical areas would be subdivided, creating new Statistical Areas 551, 557, 558, and 519. These new statistical areas would comprise the CVOA and would provide separate data for monitoring the catch of pollock and other species by inshore and offshore components during the "A" season for pollock in the BSAI.

5. Western Alaska Community Development Quota (CDQ)

If implemented, Amendment 18 would withhold half the amount of BSAI pollock assigned to the nonspecific reserve for allocation to qualifying community development projects in western Alaska. As a result, 7.5 percent of the BSAI pollock TAC would be set aside for purposes of this program at the beginning of the fishing year, and that amount would be reduced as allocations are made to community development projects. Following the end of the third quarter, any portion that is unallocated for western Alaska community development projects would be reapportioned to the nonspecific reserve. During the year, any apportionments from the reserve to pollock, but not for the CDQ program, would be allocated to the inshore and offshore components according to the allocation formula for BSAI pollock for that given fishing year as described under proposed § 675.20(a)(2)(iii).

To be eligible, a community must meet specified criteria and have an approved fisheries development plan. During the first year of implementation, criteria for community eligibility and fishery development plans would be established by the Governor of Alaska, in consultation with the Council, and would be announced in the **Federal Register** following approval by the Secretary.

Actual allocations of pollock to Bering Sea communities under the CDQ program would be announced annually in the **Federal Register** by the Secretary, beginning with the second year of implementation of Amendment 18.

To some extent, the rationale for this community development program is expressed in the Council's Comprehensive Fishery Management Goals that were adopted in 1984. A copy of these goals may be obtained from the Council (see ADDRESSES). Goal 3 calls for promotion of economic stability, growth and self-sufficiency in maritime communities, including the consideration of regional and national benefits derived from improving the opportunities for maritime communities to enhance their self-sufficiency. In addition, the Council concluded during adoption of the CDQ program that these communities would be unlikely to attract the capital investment necessary to develop processing facilities as long as the threat of preemption from offshore catcher/processors exists.

6. Linkage of Amendments 18 and 23 to a Comprehensive Limited Access System

The Council recognizes that Amendments 18 and 23 offer only an interim remedy to the preemption problem confronting the inshore component, including small coastal communities, that is highly dependent on fishing to maintain economic stability. Amendments 18 and 23 do not directly address the problem of overcapitalization in the groundfish fishery. Hence, preemption problems could occur within the inshore sector or even between communities. However, the motion approval by the Council in selecting its preferred alternative reiterates the intent of the Council to develop and implement immediately a moratorium on entry into the fisheries.

The Council made a first step towards limiting access in the groundfish, crab, and halibut fisheries by announcing its intent to develop measures to limit access to those fisheries (55 FR 36302, September 5, 1990; corrected at 55 FR 37729, September 13, 1990). If Amendments 18 and 23 are approved, the amendments and implementing regulations will expire on December 31, 1995. In the motion approving these amendments for Secretarial review, the Council also initiated a research plan for an additional, long-range analysis of problems in the fishery. The Council intends to link the proposed measures that address a preemption problem to a more comprehensive management regime that would address overcapitalization.

Classification

This proposed rule is published under section 304(a)(1)(D) of the Magnuson Act, as amended by Public Law 99–659, which requires the Secretary to publish regulations proposed by the Council within 15 days of receipt of a fishery management plan amendment and regulations. At this time, the Secretary has not determined that the amendments these regulations would implement are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making these determinations, will take into account the data and comments received during the comment period.

The Council prepared a DSEIS for the amendments which currently is under separate review under the requirements of the National Environmental Policy Act. A copy of the DSEIS may be obtained from the Council (see ADDRESSES).

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended, by Public Law 99–659, require the Secretary to publish this proposed rule 15 days after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow procedures of the order.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has initially determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This determination is based on the DSEIS/RIR/IRFA prepared by the Council. The DSEIS/RIR/IRFA concludes that (1) the projected net change in direct income under the preferred alternative ranges from $5 to 15 million between the first and third year of the phased-in allocation, (2) the proposed amendment does not directly affect the technical efficiency of processing operations, (3) consumer prices are unlikely to experience major changes, and (4) the proposed allocation of resource shares in not expected to lead to significant changes in the overall competitiveness or innovative capabilities of the industry, in either the domestic or international market. However, NMFS/NOAA has serious concerns about whether the analyses submitted by the Council in support of the FMP amendments contain a sufficient description of the economic effects of the proposed allocation. Therefore, NMFS will conduct a separate economic analysis of the effects of the proposed management measures on the fishing industry. A copy of the DSEIS/RIR/IRFA may be obtained from the Council see ADDRESSES).

The Assistant Administrator concludes that this proposed rule, if adopted, would have a significant economic impact on a substantial number of small entities. This determination is based on the DSEIS/RIR/IRFA prepared by the Council. The offshore harvesting sector of this industry has expanded under an open access policy, to a point where capacity far exceeds what is necessary to take the allotted quota. Costs are high, and for many vessels, returns are marginal. For some vessels in the offshore component, it is likely that revenue losses would induce business failure. The analysis in the RIR indicates that these revenue losses could be in excess of $20 million, in the aggregate. A copy of this document may be obtained from the Council (see ADDRESSES).

The proposed rule involves a collection-of-information requirement approved by the Office of Management and Budget under the Paperwork Reduction Act (control number 0648–0213).

The Council determined that this rule, if adopted, will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Regional Director has determined that Amendment 18 and its proposed implementing regulations are likely to adversely affect Steller sea lions, a species listed as threatened under the Endangered Species Act. A section 7 consultation has been initiated under the requirements of section 7. A biological opinion is being prepared that will address the effects of Amendment 18 and its proposed implementing regulations. The Regional Director has determined that Amendment 23 and its proposed implementing regulations will not effect endangered or threatened species.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 16, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.2, new definitions of "catcher/processor", "catcher vessel", "inshore", "mothership", "offshore", and "shoreside processing facility", are added in alphabetical order, and the existing definition of "processor vessel" is revised to read as follows:

§ 672.2 Definitions.

* * * * *

Catcher/processor (applicable through December 31, 1995) means any vessel that catches, takes or harvests groundfish and processes groundfish at any time during the fishing year, regardless of whether the vessel engages in either activity jointly or separately.

Catcher vessel (applicable through December 31, 1995) means any vessel that catches, takes or harvests groundfish, but does not process groundfish at any time during any fishing year.

* * * * *

Inshore (applicable through December 31, 1995) means that part of the U.S. groundfish fishery off Alaska that includes:

(1) All shoreside processing facilities;

(2) All motherships that submit a check-in report under § 672.5(c)(1) during a fishing year that exhibits an intent to process pollock that were harvested in the EEZ adjacent to Alaska or Pacific cod that were harvested in the Gulf of Alaska, or actual processing of such pollock or Pacific cod, in waters adjacent to the State of Alaska that are shoreward of the EEZ; and

(3) All catcher/processors that process less than 18 metric tons of groundfish, round weight, per day, and are less than 125 feet (38.1 m) in length overall.

* * * * *

Mothership (applicable through December 31, 1995) means any vessel that processes groundfish, but does not catch, take or harvest groundfish at any time during any fishing year.

* * * * *

Offshore (applicable through December 31, 1995) means all processor vessels in the U.S. groundfish fisheries off Alaska not included in the definition of "inshore."

* * * * *

Processor vessel: (1) (Applicable through December 31, 1995) means, unless otherwise restricted, any vessel that is used for processing groundfish, including catcher/processors and mothership processors.

(2) (Applicable after December 31, 1995), unless otherwise restricted, includes any vessel that is used for, equipped to be used for, or of a type that is normally used for processing, including specifically catcher/processor vessels and mothership processor vessels.

* * * * *

Shoreside processing facility (applicable through December 31, 1995) means any building on land used for processing groundfish or any vessel that is substantially a land structure, taken out of navigation, and has no U.S. groundfish fishing permit, that is used for processing groundfish.

* * * * *

3. In § 672.7, a new paragraph (g) is added to read as follows:

§ 672.7 Prohibitions.

* * * * *

(g) *Applicable through December 31, 1995:* (1) Process pollock that were harvested in the EEZ adjacent to Alaska or Pacific cod that were harvested in the Gulf of Alaska on a mothership operating under the "inshore" definition at § 672.2 in a location other than the first location reported in any fishing year in a check-in notice.

(2) Operate any processor vessel to process pollock or GOA Pacific cod under the "inshore" and "offshore" definitions at §§ 672.2 and 675.2 during the same fishing year.

4. In § 672.20, existing paragraphs (c)(1)(i) and (c)(1)(ii) are redesignated as paragraphs (c)(1)(i)(A) and (c)(1)(i)(B), respectively; new paragraphs (a)(2)(v), (c)(1)(i) introductory text, and (c)(1)(ii) are added; and existing paragraph (c)(2) is revised to read as follows:

§ 672.20 General limitations.

(a) * * *

(b) * * *

(v) *Applicable through December 31, 1995:* (A) The DAP apportionment for pollock in all regulatory areas and for each quarterly reporting period described in paragraph (a)(2)(iv) of this section will be divided into inshore and offshore components. The inshore component will be equal to 100 percent of the pollock DAP in each regulatory area after subtraction of an amount,

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determined by the Regional Director, projected to be caught by the offshore component incidental to directed fishing for other groundfish species. If the Regional Director determines that the inshore component will not be able to process the entire amount of its allocation of pollock during a fishing year, then NMFS will publish a notice in the **Federal Register** that reallocates the projected unused amount of pollock to the offshore component.

(B) The DAP apportionment of Pacific cod in all regulatory areas will be divided into inshore and offshore components. The inshore component will be equal to 90 percent of the Pacific cod DAP in each regulatory area. If the Regional Director determines that the inshore component will not be able to process the entire amount of its allocation of Pacific cod during a fishing year, then NMFS will publish a notice in the **Federal Register** that reallocates the projected unused amount of Pacific cod to the offshore component.

(C) All motherships that operate under the "inshore" definition in § 672.2 and process pollock or Pacific cod that were harvested in the EEZ adjacent to Alaska must remain at the first location reported in any fishing year in the check-in notice required at § 672.5(c)(1)(ii)(C) during the remainder of the fishing year when either pollock or Pacific code are being processed.

* * * * *

(c) * * *

(1) * * *

(i) *Applicable after December 31, 1995:*

* * * * *

(ii) *Applicable through December 31, 1995:* (A) As soon as practicable after consultation with the Council, NMFS will publish a notice in the **Federal Register** specifying for the succeeding fishing year proposed annual TAC amounts of each target species and the "other species" category and apportionments thereof among DAP, JVP, TALFF, and reserves; halibut prohibited species catch amounts; quarterly allowances of pollock; and allocations of Pacific cod TAC to inshore and offshore components for each regulatory area. This notice will also include the dates that directed fishing may commence for each quarterly allowance for pollock. The preliminary specifications will reflect as accurately as possible the projected changes in U.S. harvesting and processing will occur in the coming year. Public comment on these amounts will be accepted by the Secretary for 30 days after the notice is filed for public inspection with the Office of the Federal Register. One-fourth of the preliminary specifications (not including the reserves and the first quarterly allowance of pollock), one-fourth of the inshore and offshore allocations of Pacific cod in each regulatory area, and one-fourth of the habibut prohibited species catch amounts will be in effect on January 1 on an interim basis and will remain in effect until superseded by a notice of final specifications in the **Federal Register**.

(B) *Notice of final specifications.* NMFS will consider comments received on the proposed specifications during the comment period and, after consultation with the Council, will publish a notice in the **Federal Register** specifying the final annual TAC for each target species and the "other species" category and apportionments thereof, final halibut prohibited species catch amounts, final quarterly allowances for pollock, and inshore and offshore allocations of Pacific cod.

(2) *Notices prohibiting directed fishing*—(i) *Applicable after December 31, 1995:* If the Regional Director determines that the amount of a target species or "other species" category apportioned to a fishery or, with respect to pollock, to a quarterly allowance, is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. The amount of a species or species group apportioned to a fishery or, with respect to pollock, to a quarterly allowance, is the amount in Table 1 or, if applicable, Table 2, as these amounts are revised by inseason adjustments, for that species or species group, as identified by regulatory area or district and as further identified according to any allocation of TALFF, the apportionment for JVP, the apportionment for DAP, the quarterly allowance of pollock and, if applicable, as further identified by gear type. In establishing a directed fishing allowance, the Regional Director shall consider the amount of that species or species group or quarterly allowance of pollock that will be taken as incidental catch in directed fishing for other species in the same regulatory area or district. If the Regional Director establishes a directed fishing allowance and that allowance is or will be reached before the end of the fishing year or, with respect to pollock, before the end of the quarter, he will prohibit directed fishing for that species or species group in the specified regulatory area or district. No person may engage in directed fishing in violation of an applicable notice. If directed fishing is prohibited, the amount of any catch of that species or species group equal to or greater than the amount that constitutes directed fishing may not be retained and must be treated as a prohibited species under paragraph (e) of this section.

(ii) *Applicable through December 31, 1995: Notices prohibiting directed fishing.* If the Regional Director determines that the amount of a target species or "other species" category apportioned to a fishery; or with respect to pollock, to a quarterly allowance; or with respect to Pacific cod, to an allocation to the inshore or offshore component; is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. The amount of a species or species group apportioned to a fishery, or with respect to pollock, a quarterly allowance; or with respect to Pacific cod, to an allocation to the inshore or offshore component; is the amount in table 1 or, if applicable, in table 2. These amounts are revised by inseason adjustments, for a given species or species group, as identified by regulatory area or district and as further identified according to any allocation of TALFF, the apportionment of JVP, the apportionment of DAP, the quarterly allowance for pollock, or with respect to Pacific cod, to an allocation to the inshore or offshore component, and, if applicable, as further identified by gear type. In establishing a directed fishing allowance, the Regional Director should consider the amount of that species group, quarterly allowance of pollock, or allocation of Pacific cod to the inshore or offshore component that will be taken as incidental catch in directed fishing for other species in the same regulatory area or district. If the Regional Director establishes a directed fishing allowance and that allowance is or will be reached before the end of the fishing year or, with respect to pollock, before the end of the quarter, he will prohibit directed fishing for the species or species group in the specified regulatory area or district. No person may engage in directed fishing in violation of an applicable notice. If directed fishing is prohibited, the amount of any catch of that species or species group equal to or greater than the amount that constitutes directed fishing may not be retained and must be treated as a prohibited species under paragraph (e) of this section.

* * * * *

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS

5. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

6. In § 675.2, the definitions of "catcher/processor", "catcher vessel", "inshore", "mothership", "offshore", and "shoreside processing facility" are added in alphabetical order; a new paragraph (l) is added to the definition of "statistical area"; and the introductory text of the definition of "statistical area" and the existing definition for "processor vessel" are revised to read as follows:

§ 675.2 Definitions.

* * * * *

Catcher/processor (applicable through December 31, 1995) means any vessel that catches, takes or harvests groundfish and processes groundfish at any time during any fishing year, regardless of whether the vessel engages in either activity jointly or separately.

Catcher vessel (applicable through December 31, 1995) means any vessel that catches, takes or harvests groundfish, but does not process groundfish at any time during any fishing year.

* * * * *

Inshore (applicable through December 31, 1995) means that part of the U.S. groundfish fishery off Alaska that includes:

(a) All shoreside processing facilities:

(b) All motherships that submit a check-in report under § 672.5(c)(1) during a fishing year that exhibits an intent to process pollock that were harvested in the EEZ adjacent to Alaska or Pacific cod that were harvested in the Gulf of Alaska, or actual processing of such pollock or Pacific cod, in waters adjacent to the State of Alaska that are shoreward of the EEZ; and

(c) All catcher/processors that process less than 18 metric tons of groundfish, round weight, per day and are less than 125 feet (38.1 m) in length overall.

* * * * *

Mothership (applicable through December 31, 1995) means any vessel that processes groundfish, but does not catch, take or harvest groundfish at any time during any fishing year.

Offshore (applicable through December 31, 1995) means all processor vessels in the U.S. groundfish fisheries off Alaska not included in the definition of "inshore."

* * * * *

Processor vessel: (a) (Applicable through December 31, 1995) means, unless otherwise restricted, any vessel that is used for processing groundfish, including catcher/processors and mothership processors.

(b) (Applicable after December 31, 1995), unless otherwise restricted, includes any vessel that is used for, or of a type that is normally used for processing, including specifically catcher/processor vessels and mothership processor vessels.

* * * * *

Shoreside processing facility (applicable through December 31, 1995) means any building on land used for processing groundfish or any vessel that is substantially a land structure, taken out of navigation, and has no U.S. groundfish fishing permit, that is used for processing groundfish.

* * * * *

Statistical area means any one of the statistical areas of the Bering Sea and Aleutian Islands management area defined as follows (Figure 2):

* * * * *

(l) *Applicable through December 31, 1995:* (1) Statistical Area 551—that part of Statistical Area 511 that is south of 56°00' N. latitude, east of 165° W. longitude, west of 163° W. longitude and north of the Aleutian Islands.

(2) Statistical Area 557—that part of Statistical Area 517 bounded by straight lines connecting the following coordinates in the order listed: 56° N. latitude, 170° W. longitude; 56° N. latitude, 165° W. longitude; 54°30' N. latitude, 165° W. longitude; 54°30' N. latitude, 167° W. longitude; and 56° N. latitude, 170° W. longitude

(3) Statistical Area 559—that part of Statistical Area 515 that is east of 167°00' W. longitude.

(4) Statistical Area 558—that part of Statistical Area 515 that is east of 168°00' W. longitude and west of 167°00' W. longitude.

* * * * *

7. In § 675.7, a new paragraph (h) is added to read as follows:

§ 675.7 Prohibitions.

* * * * *

(h) *Applicable through December 31, 1995:* (1) Process pollock that were harvested in the EEZ adjacent to Alaska or Pacific cod that were harvested in the Gulf of Alaska on a mothership operating under the "inshore" definition at § 675.2 in a location other than the first location reported in any fishing year in a check-in notice.

(2) Operate any processor vessel to process pollock or GOA Pacific cod under the "inshore" and "offshore" definitions at §§ 672.2 and 675.2 during the same fishing year.

8. In § 675.20, existing paragraphs (a)(7)(i) and (a)(7)(ii) are redesignated as paragraphs (a)(7)(i)(A) and (a)(7)(i)(B), respectively; new paragraphs (a)(2)(iii), (a)(3)(i), (a)(3)(ii), (a)(7)(i) introductory text, and (a)(7)(ii) are added; and paragraph (a)(8) is revised to read as follows:

§ 675.20 General limitations.

(a) * * *

(2) * * *

(iii) *Applicable through December 31, 1995,* the DAP apportionment of pollock in each subarea and each allowance specified according to paragraph (a)(2)(ii) of this section will be divided between inshore and offshore components of the pollock fishery according to the following schedule:

	Inshore (percent)	Offshore (percent)
1992	35	65
1993	40	60
1994	45	55
1995	45	55

(A) If, during a fishing year, the Regional Director determines that either the inshore or offshore component will not be able to harvest and process the entire amount of pollock allocated to it, then the amount that the Regional Director projects will be unused by one component will be reallocated to the other fishery by notice in the **Federal Register.**

(B) The maximum harvest of pollock by the offshore component within the catcher vessel operational area described at § 675.22, during the period January 1, until noon ALT, April 15, will not exceed 65 percent of the pollock allocation to the offshore component for that period.

(C) All motherships that operate under the "inshore" definition in § 675.2 and process pollock or Pacific cod that were harvested in the EEZ adjacent to Alaska must remain at the first location reported in any fishing year in the check-in notice required at § 675.5(c)(1)(ii)(C) during the remainder of the fishing year when either pollock or Pacific cod are being processed.

(3) * * *

(i) *Applicable through December 31, 1995:* One half of the amount of the pollock DAP placed in the reserve for each subarea will be assigned to a Western Alaskan Community Development Quota (CDQ) for each subarea. Portions of the CDQ for each area may be allocated for use by specific western Alaska communities in accordance with community fishery development plans developed by the State of Alaska and approved by the Secretary in consultation with the Council. Amounts of the CDQ that are unallocated on September 30 will

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automatically be added back to the nonspecific reserve.

(ii) *Applicable through December 31, 1995:* Any amounts of the nonspecific reserve that are reapportioned to pollock as provided by paragraph (b) of this section must be divided between the inshore and offshore pollock fisheries in accordance with the allocation schedule described in paragraph (a)(2)(iii) of this section.

* * * * *

(7) *Notices.* (i) *Applicable after December 31, 1995:*

* * * * *

(iii) *Applicable through December 31, 1995:* (A) *Notice of proposed specifications and interim harvest amounts.* As soon as practicable after consultation with the Council, the Secretary will publish a notice in the **Federal Register** specifying, for the succeeding fishing year, proposed annual TAC and initial TAC amounts for each target species and "other species" category and apportionments thereof among DAP, JVP, and TALFF; prohibited species catch allowances established under § 675.21(b); and seasonal allowances of pollock with allocations of those seasonal allowances to inshore and offshore components. The initial TAC for each target species and the "other species" category will be 85 percent of the TAC as provided under paragraph (a)(3) of this section. The proposed specifications will reflect as accurately as possible the projected changes in U.S. harvesting and processing capacity and the extent to which U.S. harvesting and processing will occur during the coming year. The Secretary will accept public comment on the proposed specifications for 30 days after the notice is filed for public inspection with the Office of the Federal Register. One-fourth of each proposed initial TAC and apportionment thereof, one-fourth of each prohibited species catch allowance established under § 675.21(b), and one-fourth of the first seasonal allowance and inshore/offshore allocations of that allowance established under §§ 675.20(a)(2)(i) and (iii), respectively, will be in effect on January 1 on an interim basis and will remain in effect until superseded by a **Federal Register** notice of final specifications.

(B) *Notice of final specifications.* NMFS will consider comments on the proposed specifications received during the comment period and, after consultation with the Council, will publish a notice in the **Federal Register** specifying the final annual TAC for each target species and the "other species" category and apportionments thereof, final prohibited species catch allowances established under § 675.21(b), and final seasonal allowances of pollock DAP and allocations of those seasonal allowances to inshore and offshore components. These final specifications will supersede the interim specifications.

(8)(i) *Applicable after December 31, 1995:* If the Regional Director determines that the amount of a target species or "other species" category apportioned to a fishery, or a seasonal allowance of pollock, is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. The amount of a species or species group apportioned to a fishery is the amount annually specified under paragraph (a)(7) of this section, as revised by inseason adjustments, for that species or species group, or seasonal allowance of pollock as identified by subarea and as further identified according to any allocation of TALFF, the apportionment for JVP, the apportionment for DAP, the quarterly allowance of pollock and, if applicable, as further identified by gear type. In establishing a directed fishing allowance, the Regional Director shall consider the amount of that species or species group or seasonal allowance of pollock that will be taken as incidental catch in directed fishing for other species as the same subarea. If the Regional Director establishes a directed fishing allowance and that allowance is or will be reached before the end of the fishing year or, with respect to pollock, before the end of the fishing season, he will prohibit directed fishing for the species or species group in the specified subarea. No person may engage in directed fishing in violation of an applicable notice. If directed fishing is prohibited, the amount of any catch of that species or species group equal to or greater than the amount that constitutes directed fishing may not be retained and must be treated as a prohibited species under paragraph (c) of this section.

(ii) *Applicable through December 31, 1995:* If the Regional Director determines that the amount of a target species or "other species" category apportioned to a fishery, or a seasonal allowance of pollock, or an allocation of a seasonal allowance of pollock to the inshore or offshore component is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. The amount of a species or species group apportioned to a fishery is the amount specified under paragraph (a)(7) of this section, as revised by inseason adjustments, for that species or species group, or seasonal allowance for pollock as identified by subarea and allocation to inshore and offshore components, and as further identified according to any allocation of TALFF, the apportionment for JVP, the apportionment for DAP, and if applicable, as further identified by gear type. In establishing a directed fishing allowance, the Regional Director shall consider the amount of that species or species group or seasonal allowance for pollock to inshore and offshore components, that will be taken as incidental catch in directed fishing for other species in the same subarea. If the Regional Director establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, or if the inshore or offshore pollock allocation will be reached before the end of the fishing season, the Regional Director will prohibit directed fishing for that species or species group in the specified subarea. No person may engage in directed fishing in violation of an applicable notice. If directed fishing is prohibited, the amount of any catch of that species or species group equal to or greater than the amount that constitutes directed fishing may not be retained and must be treated as a prohibited species under paragraph (c) of this section.

* * * * *

9. In § 675.22, a new paragraph (g) is added to read as follows:

§ 675.22 Time and area closures.

* * * * *

(g) *Catcher vessel operational area (applicable through December 31, 1995).* The offshore component of the groundfish fishery may not conduct directed fishing for pollock at any time in the Bering Sea subarea south of 56° N. latitude, and between 163° and 168° W. longitude, except that during the period January 1 through April 15, the offshore component may conduct directed fishing for pollock for up to 65 percent of the offshore allocation of the Bering Sea subarea for that season.

[FR Doc. 91-30374 Filed 12-16-91; 4:00 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 245
Friday, December 20, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Connecticut Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Connecticut Advisory Committee to the Commission will be convened at 1:30 p.m. on Monday, January 20, 1992, in the Nathan Hale Room of the Sheraton Hotel, 315 Trumbull Street, Hartford, Connecticut.

The purpose of the meeting is to orient the new members of the recently appointed Committee, discuss their civil rights issues, decide on final details for a mid-April forum on campus tensions, and commemorate the achievements of Dr. Martin Luther King, Jr. The meeting will begin at 1:30 p.m. and adjourn at 4:30 p.m.

Persons desiring additional information or wishing to address the Committee during the meeting should contact Committee Chairperson Ivor J. Echols (203/232-7274) or John I. Binkley, Director of the Eastern Regional Division (202/523-5264; TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the Rules and Regulations of the Commission.

Dated at Washington, DC, December 16, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-30443 Filed 12-19-91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council (Council) and its Committees and Shrimp Advisory Panel (AP) will meet on January 13–16, 1992, at the Westin Galleria Hotel, 5060 West Alabama, Houston, TX.

Council

On January 15, 1992, the Council will convene at 8:30 a.m. and recess at 5:30 p.m. Council agenda items and the times allocated for discussion are as follows:

From 8:45 a.m. to 10:45 a.m.: Hear public testimony on Amendment #6 to the Shrimp Fishery Management Plan (FMP) and the Texas closure;

From 10:45 a.m. to noon: Discuss Amendment #6 to the Mackerel FMP;

From 1:30 p.m. to 3 p.m.: Discuss Amendment #6 to the Shrimp FMP;

From 3 p.m. to 3:30 p.m.: Discuss the Texas closure; and

From 3:30 p.m. to 5:30 p.m.: Discuss Amendment #6 to the Mackerel FMP.

The Council will reconvene at 8:30 a.m. on January 16 to continue the following agenda items and adjourn for the day at noon:

From 8:30 a.m. to 9:30 a.m.: Discuss Amendment #6 to the Mackerel FMP;

From 9:30 a.m. to 10 a.m.: Hear a report from the Spiny Lobster Management Committee;

From 10 a.m. to 10:20 a.m.: Hear a report from the Data Collection Committee;

From 10:20 a.m. to 10:30 a.m.: Hear a report from the Red Drum Management Committee;

From 10:30 a.m. to 10:45 a.m.: Hear a report from the Butterfish Management Committee;

From 10:45 a.m. to 11 a.m.: Hear a report from the Habitat Protection Committee;

From 11 a.m. to 12 noon: Hear a report from the Migratory Species Management Committee; the Enforcement and the Director's reports will follow. The Council's meeting will then adjourn.

Committees

On January 13 the Data Collection, Red Drum Management, Spiny Lobster Management, Law Enforcement, Habitat Protection, and the Butterfish Management Committees each will convene at 10 a.m. and adjourn at 5 p.m.

On January 14 the Migratory Species Management, Shrimp, and Mackerel Management Committees will convene at 8 a.m. and adjourn at 5 p.m.

Shrimp AP

On January 13 the Shrimp AP will meet from 8:30 a.m. to 3:30 p.m., to review the 1991 Texas closure analyses, discuss procedures for collecting effort data, and review public hearing comments on Amendment #6 to the Shrimp FMP.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL; telephone: (813) 228-2815.

Dated: December 13, 1991.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-30346 Filed 12-19-91; 8:45 am]

BILLING CODE 3510-22-M

Endangered Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Modification No. 2 to Permit No. 560 (P135B).

Notice is hereby given that pursuant to the provisions of Sections 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and Section 222.25 of the Regulations Governing Endangered Species (50 CFR Part 217-222), Scientific Research Permit No. 560 was issued to James H.W. Hain, Ph.D., Associated Scientists at Woods Hole, Inc., P.O. Box 721, Woods Hole, Massachusetts 02548 on June 27, 1986. The Permit was modified on November 23, 1990, and is further modified as follows:

Delete Special Condition B.8. and replace with the following:

8. This Permit is valid with respect to the taking authorized herein until March 31, 1992.

All conditions currently contained in the Permit remain in effect.

This modification is effective on January 1, 1992.

Documents submitted in connection with Permit No. 518 and Modifications are available for review in the following offices:

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Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, room 7330, Silver Spring, Maryland 20910; and
Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930;
Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: December 13, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-30379 Filed 12-19-91; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of a Scientific Research Permit (P479D).

On September 27, 1991, notice was published in the **Federal Register** (56 FR 49175) that an application has been filed by Dr. Marsha Green, Professor of Psychology, Albright College, P.O. Box 15234, Reading, Pennsylvania 19612-5234, for a Permit to harass up to 65 humpback whales (*Megaptera novaeangliae*) during research activities to assess the impact of vessel traffic on these animals.

Notice is hereby given that on December 13, 1991, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit to the above applicant to harass up to 1200 humpback whales subject to certain conditions set forth therein. The number originally requested was determined insufficient inasmuch as it did not provide for the standard, quantifiable measure of approach effort required under the Permit (i.e., approaches <100 yards and those animals showing signs of being disturbed no matter what the distance are considered "taken" by harassment and counted against the number of animals authorized in the Permit). Consequently, the requested level of 65 takes was insufficient for the authorized studies.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on the finding that the Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Act. This Permit was also issued in accordance with and is subject to Parts 220-222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit and associated documents are available for review in the following offices:

By appointment: Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, Maryland 20910 (301/427-2289);
Coordinator, Pacific Area Office, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Honolulu, Hawaii 96822-2396 (808/955-8831); and
Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415 (213/514-6196).

Dated: December 13, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-30380 Filed 12-19-91; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Modified Permit No. 677 (P442) (Modification No. 1).

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 677 was issued to Audrey Dianne Kopec, Romberg Tiburon Center for Environmental Studies, San Francisco State University, on July 27, 1989 (54 FR 31869). The Permit has been modified to authorize: Harassment of up to 300 additional harbor seals annually during collection of scats; collection of blood samples from an additional 30 of the 100 seals originally authorized to be taken annually; collection of 60cc rather than 30cc of blood from adult seals only; collection of bacterial swabs from 60 of the 100 seals originally authorized, and administration of a small dose of tetracycline to all seals captured. Special Condition B.3 is modified to include the requirement to notify the Southwest Regional Office prior to conducting modified research in order to coordinate activities between all other agencies.

All other conditions currently contained in the Permit remain in effect.

This Modification is effective upon publication in the **Federal Register**.

Documents submitted in connection with the above modification are available for review, by appointment, by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, SSMC1, Room 7324, Silver Spring, Maryland 20910 (301/427-2289); and
Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731-7415 (213/514-6196).

Dated: December 13, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-30381 Filed 12-19-91; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of correction regarding Application for Scientific Research Permit (P171B).

SUMMARY: This notice revises the paragraph under the "Species and Type of Take" section previously published in the **Federal Register** December 4, 1991 (56 FR 63498) to include the applicant's request for authorization to export from the United States to England sloughed skin samples from humpback whales.

Dated: December 13, 1991.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 91-30382 Filed 12-19-91; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Modification No. 5 to Permit No. 629 (P10D).

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216, Public Display Permit No. 629 issued to Sea Life Park, Makapuu Point, Waimanalo, Hawaii 96795 and subsequent Modifications 1-4 is further modified as follows:

Add to Section B.3:

"The authority to import up to four (4) killer whales (*Pseudorca crassidens*), presently being held at Kamogawa Sea World, shall

extend from date of issuance through April 30, 1992."

All other conditions of the original Permit and subsequent modifications shall remain in force.

This modification is effective upon publication in the **Federal Register**.

Documents pertaining to the Permit and its modifications are available for review, by appointment, in the following offices:

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, SSMC#1, Room 7324, Silver Spring, Maryland 29010, (301/427-2289);
Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415, (213/514-6196); and
Pacific Area Office, 2570 Dole Street, Room 106, Honolulu, Hawaii 96822-2396 (808/955-8831).

Dated: December 16, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-30480 Filed 12-19-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List, Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and Deletion from Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have severe disabilities, and deletes from the Procurement List a commodity previously furnished by such agencies.

EFFECTIVE DATE: January 21, 1992.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On September 13, October 25, November 1, and December 2, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 46602, 55288, 56199 and 61234) of proposed addition to and deletion from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities and provide the services at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Robe, Dressing
6532-01-098-8344
6532-01-098-8345

Services

Janitorial/Custodial
Maintenance, Line & Operations Buildings
Springfield, Missouri

Janitorial/Custodial
IRS Philadelphia Service Center
South and North Buildings
11501 and 11601 Roosevelt Boulevard
Philadelphia, Pennsylvania

Laundry Services
Naval Station
Long Beach, California

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletion

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

Accordingly, the following commodity is hereby deleted from the Procurement List:

Ash Receiver, Tobacco
9920-00-682-6757

E.R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 91-30428 Filed 12-19-91; 8:45 am]

BILLING CODE 6820-33-M

Procurement List, Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and a service to be furnished by nonprofit agencies employing persons who are blind or have severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 21, 1992.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and service listed below from nonprofit agencies employing persons who are blind or have severe disabilities.

It is proposed to add the following commodity and service to the Procurement List:

Commodity

Preventive Dentistry Kit, Patient
6520-00-985-8554

Service

Janitorial/Custodial
#3 U.S. Army Reserve Center
400 Dry Hill Road
Beckley, West Virginia

E. R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 91-30429 Filed 12-19-91; 8:45 am]

BILLING CODE 6820-33-M

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COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Rule Amendments Relating to Deposit of Stock as Performance Bond

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Proposed Contract Market Rule Amendments.

SUMMARY: The Chicago Mercantile Exchange ("CME" or "Exchange") has submitted proposed rule amendments to the Commodity Futures Trading Commission ("Commission") for its review. The purpose of the amendments is to add stock to the list of allowable performance bond assets that may be deposited with the CME's Clearing House.

Acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Trading and Markets ("Division"), with the concurrence of the General Counsel, has determined, on behalf of the Commission, that publication of the proposed rule amendments is in the public interest and will assist the Commission in considering the views of interested persons. Accordingly, the Division, on behalf of the Commission, is publishing the proposed rule amendments for public comment.

DATES: Comments must be received on or before January 21, 1992.

FOR FURTHER INFORMATION CONTACT: John C. Lawton, Associate Director, or Elizabeth A. Patterson, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: By letters dated January 7, 1991 and August 30, 1991, the CME submitted proposed amendments to Exchange Rules 821 and 825 for Commission approval pursuant to section 5a(12) of the Commodity Exchange Act. The proposed amendments to Rules 821 and 825 would add equity securities to the list of margin assets that clearing members are permitted to deposit with the Clearing House as margin. The amendments to Rule 825 also would provide that the posting of stock as margin would be subject to terms and conditions prescribed by the Exchange's Clearing House Committee.

The Exchange has stated that the proposed amendments would enable clearing firms that hold portfolios of equity securities to use the securities to meet their performance bond requirements at the CME Clearing House in either the house or customer origin. The proposal would allow clearing firms to meet margin requirements in the customer origin by passing through to the Clearing House securities deposited as margin by their customers.[1]

Under the CME proposal, the Clearing House would accept equity securities only to meet a clearing member's "reserve" performance bond requirement. The Exchange states that this "reserve" requirement would be an amount the CME Margin Committee and Board of Governors determined was advisable for the Clearing House to hold in excess of the "core" margin requirement.

Acting pursuant to the authority delegated pursuant to Commission Regulation 140.96, the Director of the Division, with the concurrence of the General Counsel, has determined, on behalf of the Commission, that publication of these proposed amendments is in the public interest and will assist the Commission in considering the views of interested persons. Accordingly, the Division, on behalf of the Commission, is publishing the proposed rule amendments for public comment. The Commission requests comments on any aspects of the proposed rule amendments that members of the public believe may raise issues under the Act or Commission regulations.

Copies of the CME's submissions are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies may also be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254–6314.

Any person interested in submitting written data, views or comments on the proposed rule amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, Dc 20581 by the specified date.

Issued in Washington, DC on December 16, 1991.

Andrea M. Corcoran,

Director, Division of Trading and Markets.

[FR Doc. 91–30481 Filed 12–19–91; 8:45 am]

BILLING CODE 6351–01–M

[1] Existing CME Rule 827.B. permits clearing members to accept equity securities as margin assets from their customers.

Chicago Mercantile Exchange Proposed Rule Amendments Relating to Deposit of Shares of a Mutual Fund as Performance Bond

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Proposed Contract Market Rule Amendments.

SUMMARY: The Chicago Mercantile Exchange ("CME" or "Exchange") has submitted proposed rule amendments to the Commodity Futures Trading Commission ("Commission") for its review. The purpose of the amendments is to add shares of mutual funds to the list of allowable performance bond assets that may be deposited with the CME's Clearing House and clearing members.

Acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Trading and Markets ("Division"), with the concurrence of the General Counsel, has determined, on behalf of the Commission, that publication of the proposed rule amendments is in the public interest and will assist the Commission in considering the views of interested persons. Accordingly, the Division, on behalf of the Commission, is publishing the proposed rule amendments for public comment.

DATES: Comments must be received on or before January 21, 1992.

FOR FURTHER INFORMATION CONTACT: John C. Lawton, Associate Director, or Christopher K. Bowen, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: By a letter dated April 29, 1991, the CME submitted proposed amendments to Exchange Rules 821, 825 and 827 under section 5a(12) of the Commodity Exchange Act. Currently, Rules 821 and 827 relate to margin requirements and specify the forms of margin that may be accepted by the Clearing House and clearing members. Current rule 825 enumerates the types of "Treasury securities" which may be deposited with the CME Clearing House as margin.

The proposed amendments to Rules 821, 825 and 827 would permit shares of mutual funds to be deposited with the Clearing House and with clearing members as margin. The amendments to Rule 825 and 827 also would require that acceptance of such shares would be subject to terms and conditions prescribed by the Exchange's Clearing House Committee.

The Exchange has stated that the usage of mutual fund shares as margin would offer clearing members and their customers an "income-producing alternative for use as a performance bond asset which will permit deposits and withdrawals (*i.e.*, transfers of shares) with complete finality between clearing members and their customers and between clearing members and the Clearing House at any time during the operating hours of the fund."

Acting pursuant to the authority delegated pursuant to Commission Regulation 140.96, the Director of the Division, with the concurrence of the General Counsel, has determined, on behalf of the Commission, that publication of these proposed amendments is in the public interest and will assist the Commission in considering the views of interested persons. Accordingly, the Division, on behalf of the Commission, is publishing the proposed rule amendments for public comment. The Commission requests comments on any aspects of the proposed rule amendments that members of the public believe may raise issues under the Act or Commission regulations.

Copies of the CME submission are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies may also be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254–6314.

Any person interested in submitting written data, views or comments on the proposed rule amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on December 16, 1991.

Andrea M. Corcoran,

Director, Division of Trading and Markets.

[FR Doc. 91–30482 Filed 12–19–91; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Determinations; Excess Landing Craft Utility (LCUs)

Pursuant to the reporting requirements of section 517 of the Foreign Assistance Act of 1961 (FAA) this document provides notification that during Fiscal Year 1992 the United States Government will transfer to the Government of Colombia four excess Landing Craft Utility (LCU). The total value of the ships is estimated to be $571,000. The original acquisition value of the ships was $1,424,000.

This action is required to ensure that Colombia is afforded the opportunity of obtaining these ships at no cost. These ships are needed to enable the military forces in Colombia to participate in a comprehensive national anti-narcotics enforcement program, by conducting activities within Colombia to prevent the production, processing, trafficking, transportation, and consumption of illicit drugs or other controlled substances.

In accordance with section 517(c) FAA the recipient country will agree in the associated Letter of Offer and Acceptance that it will ensure that these ships will be used primarily in support of anti-narcotics activities.

The Acting Director, Defense Security Assistance Agency, Glenn A. Rudd, certifies that the LCUs are needed by Colombia and determines that there will be no adverse impact on U.S. military readiness as a result of these transfers.

Dated: December 16, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–30396 Filed 12–19–91; 8:45 am]

BILLING CODE 3810–01–M

Determinations; Excess Meals Ready to Eat (MREs)

Pursuant to the reporting requirements of section 517 of the Foreign Assistance Act of 1961 (FAA) this document provides notification that during Fiscal Year 1992 the United States Government will transfer to the Government of Colombia 209,000 excess meals ready to eat (MREs).

These items are required to enable the military forces in Colombia to participate in a comprehensive national antinarcotics enforcement program, by conducting activities within Colombia to prevent the production, processing, trafficking, transportation, and consumption of illicit drugs or other controlled substances. They will be provided at no cost with the exception of transportation charges.

In accordance with section 517(c) FAA the recipient country will agree in the associated Letter of Offer and Acceptance that it will ensure that these items will be used primarily in support of anti-narcotics activities.

The Acting Director, Defense Security Assistance Agency, Glenn A. Rudd, determines that there will be no adverse impact on U.S. military readiness as a result of these transfers.

Dated: December 16, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–30395 Filed 12–19–91; 8:45 am]

BILLING CODE 3810–01–M

Determinations; Excess Meals Ready to Eat (MREs)

Pursuant to the reporting requirements of section 517 of the Foreign Assistance Act of 1961 (FAA) this document provides notification that during Fiscal Year 1992 the United States Government will transfer to the Government of Peru 57,000 excess meals ready to eat (MREs).

These items are required to enable the military forces in Peru to participate in a comprehensive national anti-narcotics enforcement program, by conducting activities within Colombia to prevent the production, processing, trafficking, transportation, and consumption of illicit drugs or other controlled substances. They will be provided at no cost with the exception of transportation charges.

In accordance with section 517(c) FAA the recipient country will agree in the associated Letter of Offer and Acceptance that it will ensure that these items will be used primarily in support of anti-narcotics activities.

The Acting Director, Defense Security Assistance Agency, Glenn A. Rudd, determines that there will be no adverse impact on U.S. military readiness as a result of these transfers.

Dated: December 16, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–30397 Filed 12–19–91; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Academic Certification for Marine Corps Officer Candidate Program, NAVMC Form 10469; OMB No. 0703–0011.

Type of Request: Reinstatement.

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Average Burden Hours/Minutes per Response: 15 minutes.
Response per Respondent: 1.
Number of Respondents: 3,500.
Annual Burden Hours: 875.
Annual Responses: 3,500.
Needs and Uses: This form is used by the Marine Corps as a standardized method of determining the academic eligibility of applicants for all Reserve officer candidate programs.
Affected Public: Individuals or households, businesses or other for-profit.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: December 16, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-30393 Filed 12-19-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER92-118-000, et al.]

Florida Power Corporation, et al.; Electric rate, Small Power Production, and Interlocking Directorate Filings

December 13, 1991.

Take notice that the following filings have been made with the Commission:

1. Florida Power Corporation

[Docket No. ER92-118-000]

Take notice that on December 2, 1991, Florida Power Corporation ("Florida Power") made a filing to clarify information provided in the filing in the above docket made on October 11, 1991.

The filing clarifies the following points: (1) Present versus proposed fuel charges; (2) the difference between the fuel charge for Seminole Electric Cooperative, Inc. ("SECI") versus the fuel charge for the cities of Kissimmee/St. Cloud; (3) SECI's kW allocation; (4) actual versus projected billing comparisons.

Please permit the filing as amended above to become effective on January 1, 1991 as requested in Florida Power's original transmittal letter.

Comment date: December 27, 1991, in accordance with standard Paragraph E end of this notice.

2. PacifiCorp Electric Operations

[Docket No. ER91-553-000]

Take notice that PacifiCorp Electric Operations ("PacifiCorp"), on December 10, 1991, tendered for filing, in accordance with the Commission staff's request, an amended filing of the Electric Supply Agreement ("Agreement") between PacifiCorp and Brigham City Corporation ("Brigham").

The Amendment provides additional information relating to the initial charges for capacity and energy and the escalator used to establish future energy prices.

PacifiCorp respectfully re-news its request for a waiver of prior notice and that an effective date of October 1, 1989 be assigned by the Commission.

Copies of this filing have been supplied to Brigham and the Utah Public Service Commission.

Comment date: December 27., 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Iowa Public Service Company

[Docket No. ER91-686-000]

Take notice that on December 10, 1991, Iowa Public Service Company (IPS) tendered for filing an amendment to the filing an executed Transmission Service Agreement whereby Iowa Public Service Company (IPS) will provide Cedar Falls Utilities (CPU) with transmission service, commencing January 1, 1985, for CFU's share of power and energy from George Neal Generating Station Unit No. 4. This amendment is in the form of a check for $13,080 for Class III rate filing.

IPS respectfully requests a waiver of the Commission's rules so that the Transmission Service Agreement may be approved retroactive to January 1, 1985.

IPS states that copies of this filing were served on Cedar Falls Utilities and the Iowa Utilities Board.

Comment date: December 27, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Montaup Electric Company

[Docket No. ER92-148-000]

Take notice that on November 20, 1991, as supplemented by letter of December 4, 1991, Montaup Electric Company ("Montaup") amended its filing in this docket (1) to clarify the relationship between the two alternative sets of rate schedules included with its filing and (2) to make clear that Montaup will true up its PCAC charges to the extent necessary to reflect the final charges to Montaup resulting from the Ocean State Power No. II proceeding in Docket No. ER91-576-000. Montaup continues to request that its filing be allowed to become effective on January 1, 1992.

Comment date: December 27, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Mississippi Power Company

[Docket No. ER92-218-000]

Take notice that Mississippi Power Company on the 11th day of December, 1991, tendered for filing a revision of the rates included in its FERC Electric Service Tariff, First Revised Volume No. 1. The revised rates would increase revenues from jurisdictional sales by $3,260,497 based on the 12-month period ending December 31, 1992. The charge per delivery point and the kW charge have been increased and the kWh charge has been reduced.

The Company estimates the rate of return on its properties devoted to serving its wholesale all requirements customers to be 7.9971% from revenues which it would receive under the existing rates during the 12-month period ending December 31, 1992. The Company states that such return would be increased to 10.3918% with the increased revenue under the tendered rates.

Posting of the filing has been accomplished with the public utility's jurisdictional customers and the Mississippi Public Service Commission.

Comment date: December 27, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. PacifiCorp Electric Operations

[Docket No. ER92-185-000]

Take notice that PacifiCorp Electric Operations ("PacifiCorp"), on December 11, 1991, tendered for filing an amendment to its November 14, 1991 filing of the Operation and Maintenance Agreement ("Agreement") in this Docket.

The amended filing is being submitted to provide a revised determination of the Transmission Administrative and General Expense Factor utilized to determine the Annual Charge for operation and maintenance service under the Agreement.

PacifiCorp renews its request for waiver of the Commission's regulations in order to allow an effective date of October 1, 1991 to be assigned to the Agreement.

Copies of this amended filing were supplied to Utah Associated Municipal Power Systems, the Utah Public Service Commission and the Public Utility Commission of Oregon.

Comment date: December 27, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Iowa Power Company

[Docket No. ER92-8-000]

Take notice that on December 11, 1991, Iowa Power Co. (Iowa Power) tendered for filing the second amendment to the original filing for this docket dated October 1, 1991.

Iowa Power states that the second amendment to the Interchange Agreement filing provides revised service schedules for Service Schedule B—Participation Power and Energy, Service Schedule C—Peaking Power and Energy, and Service Schedule H—Scheduled Outage and Energy. The amended filing also includes requested cost support for Service Schedule E—Short Term Power and Energy and Service Schedule G—Equalization Power and Energy.

Iowa Power requests an effective date of May 1, 1991, and therefore requests a waiver of the Commission's notice request requirements.

Comment date: December 27, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30404 Filed 12-19-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2727-024 Maine]

Bangor Hydro-Electric Co.; Availability of Environmental Assessment

December 13, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for amendment of license for the Ellsworth Hydroelectric Project. The amendment includes extension of the existing dam by constructing a concrete flood control structure along the downstream toe of the existing embankment and west of the existing gate structure. The proposed structure would function as an emergency spillway to back-up the existing unstable western embankment if overtopped by flood waters in Graham Lake. The project is located on the Deep River in Hancock County, Maine. The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, staff concludes that approval of the amendment of license would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's Offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30232 Filed 12-19-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-01180T]

Arkansas Oil and Gas Commission; NGPA Determination by Jurisdictional Agency Designating Tight Formation

December 16, 1991.

Take notice that on November 12, 1991, the Arkansas Oil and Gas Commission (Arkansas) submitted the above referenced notice of determination to the Commission, pursuant to § 271.703(c)(3) of the Commission's regulations, that the Mansfield Sand within the Mansfield Field, in Sebastian and Scott Counties, Arkansas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). Arkansas defines the Mansfield Sand as those sources of supply which are stratigraphically equivalent to the interval between the subsurface depths of 1,500 feet and 2,058 feet as measured from the electric log on the Diamond Shamrock Corporation No. 1 Chumley well, located 2,040 feet from the south line and 2,695 feet from the east line of Section 2, T4N, R31W, in Sebastian County, Arkansas. The designated area consist of the following portions of land:

Sections (inclusive)	Township & Range
Section 6	T4N, R29W
Sections 1-12	T4N, R30W
Sections 1-5	T4N, R31W
Sections 8-12	T4N, R31W
Sections 31 and 32	T5N, R29W
Sections 31-36	T5N, R30W
Sections 33-36	T5N, R31W

The notice of determination also contains Arkansas' findings that the Mansfield Sand within the subject area meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 7 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30398 Filed 12-19-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-220-000, et al.]

Carnegie Natural Gas Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Carnegie Natural Gas Company

[Docket No. CP92-220-000]

December 11, 1991.

Take notice that on December 6, 1991, Carnegie Natural Gas Company (Carnegie), 800 Regis Avenue, Pittsburgh, Pennsylvania 15236, filed in Docket No. CP92-220-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sell of natural gas, and for permission and approval to abandon such sales upon termination of the underlying service agreement, and permission and approval to abandon service under existing Rate Schedule LVIS, all as more fully set forth in the application which is on file with the

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Commission and open to public inspection.

Carnegie requests a blanket certificate with pre-granted abandonment authority to offer a new interruptible sales service under Rate Schedule SEGSS on a non-discriminatory basis to all existing and prospective jurisdictional customers, both on-system and off-system. Carnegie states that service under Rate Schedule SEGSS would be subject to the availability of capacity and gas supplies in excess of its firm sales obligations.

Carnegie proposes to charge a negotiated rate for the interruptible sales service which would fall between a stated maximum and minimum rate. Carnegie explains that the maximum rate would equal Carnegie's 100 percent load factor rate for firm sales service plus adjustments made pursuant to section 23, 24, and 26 of the General Terms and Conditions of Carnegie's FERC Gas Tariff. Carnegie states that the minimum rate would equal Carnegie's average gas costs as shown on Sheet No. 9 of Carnegie's FERC Gas Tariff, plus variable costs, plus adjustments under sections 24 and 26 of the General Terms and Conditions of Carnegie's FERC Gas Tariff.

Carnegie states that a "no-bump" rule would apply to service under Rate Schedule SEGSS for sales occurring during the summer period April 1 through October 31 of each year. Carnegie explains that, under the "no-bump" rule, SEGSS customers contracting for interruptible gas purchases at the beginning of each summer month would not be displaced during such month by another customer willing to pay a higher rate. Carnegie also explains that during the winter period, November 1 through March 31, an existing SEGSS customer may be displaced by another customer willing to pay a higher rate, subject to the existing customer's right to retain service by agreeing to match or exceed the "bumper's" price.

Carnegie also requests authorization to abandon service under existing Rate Schedule LVIS upon the receipt of authorization to provide interruptible sales service under Rate Schedule SEGSS. Carnegie states that service under Rate Schedule LVIS will no longer be needed as it offers an interruptible sales service inferior to that being offered under Rate Schedule SEGSS.

Carnegie states that this certificate filing is an integral part of the Settlement Agreement filed concurrently with the Commission in Docket Nos. RP88–131–000, *et al.* Carnegie urges the Commission to act expeditiously and grant Carnegie's application to permit service under Rate Schedule SEGSS to commence as soon as possible but, in no event, later than April 1, 1992.

Comment date: December 23, 1991, in accordance with Standard Paragraph F at the end of this notice.

2. Florida Gas Transmission Company

[Docket No. CP92–182–000]

December 12, 1991.

Take notice that on November 15, 1991, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP92–182–000 an application pursuant to sections 7(b) and (c) of the Natural Gas Act for authorization to construct and operate natural gas pipeline facilities which would enable FGT to deliver an average of approximately 825,000 Mcf of additional natural gas per day (Mcfd) to its Florida customers, to provide firm transportation service under new Rate Schedule FTS–2, approval of initial incremental rates and to abandon certain previously certificated facilities, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Specifically, FGT requests authorization to:

(a) Construct facilities necessary to provide incremental market area transportation service averaging 825 MMcfd into Florida. The facilities to be constructed and added to the system include approximately 141,400 horsepower of compression; mainline looping totaling 464.9 miles of 36-inch pipeline, 27.1 miles of 30-inch pipeline, and 80.7 miles of 26-inch pipeline; a west leg pipeline totaling approximately 161 miles of 30-inch pipeline; the St. Petersburg loop, totaling approximately 15.3 miles of 20-inch pipeline; the Sarasota loop, totaling approximately 10.5 miles of 16-inch pipeline and; 5.7 miles of 20-inch pipeline in Brevard County, Florida.

(b) Abandon certificated facilities by removal of 66.8 miles of 24-inch mainline loop, and authorization to replace it with 66.8 miles of 36-inch mainline loop; abandon by removal of 5.7 miles of 20-inch pipeline in Brevard County, Florida, and replacing it with 5.7 miles of 20-inch pipeline; and abandon facilities certificated at Compressor Station No. 5, because such facilities have previously been removed from plant in-service in 1984 and place in-service additional horsepower for compression at Compressor Station No. 5;

(c) Institute a new Rate Schedule FTS–2 under FGT's existing part 284 blanket certificate providing for service on the Phase III expansion facilities, institute a form of Service Agreement for service under Rate Schedule FTS–2 and institute revisions to the General Terms and Conditions applicable to Rate Schedule FTS–2 and service thereunder;

(d) Establish initial incremental rates applicable to firm service under Rate Schedule FTS–2, which would be predicated upon a 20-year levelized cost of service, with a two-part rate structure consisting of a reservation charge and a commodity charge;

(e) Enter into firm transportation service with Southern Natural Gas Company with volumes contracted for at 200 MMcfd in the winter season (November-April) and 300 MMcfd in the summer season (May-October), with the costs of the transportation service to be included in FGT's Phase III rates and the capacity to be treated as an extension of FGT's system; and

(f) Enter into a firm lease agreement with Transcontinental Gas Pipe Line Corporation for service on its Mobile Bay Pipeline, with capacity to be contracted for at 250 MMcfd, with the costs of such lease to be included in FGT's Phase III rates, and with the capacity to be treated as an extension of FGT's system.

In addition, concurrently with the issuance of this Notice Of Application, the Director, Office of Pipeline and Producer Regulation is issuing a data request in order to allow FGT to bring its application in compliance with applicable Commission Regulations. Further, take notice that within 15 days of satisfactory compliance with the data request, a technical conference will be held.

Comment date: January 2, 1992, in accordance with Standard Paragraph F at the end of the notice.

3. Energy Development Corporation, Complainant, v. CNG Transmission Corporation, Respondent.

[Docket No. CP92–213–000]

December 12, 1991.

Take notice that on November 26, 1991, Energy Development Corporation (EDC) filed a Formal Complaint against CNG Transmission Corporation (CNG) pursuant to rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206.

In its complaint, EDC alleges that CNG is engaging in discriminatory actions against EDC by refusing EDC equal access to one of CNG's interstate pipelines located in Southern West Virginia.

Specifically, the complaint alleges that CNG has permitted large shippers of natural gas on CNG's pipeline to install and use artificial compression facilities while denying EDC the same right to install compression facilities.

The complaint further alleges that, as a result of the discriminatory actions referred to above, EDC is being financially harmed and is unable to compete on an equal basis with those producers who have been permitted to use compression.

EDC states that copies of its filing were served on CNG and its counsel of record.

Comment date: December 31, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. El Paso Natural Gas Company

[Docket No. CP92–225–000]

December 13, 1991.

Take notice that on December 9, 1991, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP92–225–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate as jurisdictional facilities certain delivery points that were installed pursuant to section 311 of the Natural Gas Policy Act (NGPA), under the blanket certificate issued in Docket No. CP82–435–000, pursuant to section 7 of the Natural Gas Act (NGA), all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso proposes to convert the authorization for the 28 delivery points listed below from NGPA section 311 to NGA section 7 in order to use the taps for transportation services rendered under El Paso's blanket certificate or case-specific 7(c) certificates. El Paso states that the change in authorization is requested in order to increase flexibility for the use of its facilities in light of changes in the regulations regarding facilities installed under Section 311 authorization.

Delivery point	Location
Howard County Delivery Point.	Howard County, Texas
Mobil Waha Delivery Point.	Pecos County, Texas
Amoco Levelland Plant Delivery Point No. 1.	Hockley County, Texas
Amoco Slaughter Plant Delivery Point.	Hockley County, Texas
Amoco Levelland Plant Delivery Point No. 2.	Hockley County, Texas
Energas Delivery Point	Potter County, Texas
Borger Carbon Black Delivery Point No. 1.	Hutchinson County, Texas
La Paz Pump Meter Station Delivery Point.	La Paz County, Arizona
Gila Pump Meter Station Delivery Point.	Maricopa County, Arizona

Delivery point	Location
Coolidge Pump Meter Station Delivery Point.	Pinal County, Arizona
Tom Mix Pump Meter Station Delivery Point.	Pinal County, Arizona
Hot Spring Pump Meter Station Delivery Point.	Cochise County, Arizona
Lordsburg Pump Meter Station Delivery Point.	Hidalgo County, New Mexico
Anthony Pump Meter Station Delivery Point.	Dona Ana County, New Mexico
Salt Flats Pump Meter Station Delivery Point.	Hudspeth County, Texas
Amoco Wasson Plant Delivery Point.	Yoakum County, Texas
Intersearch Pet Foods/ Border Steel Delivery Point.	El Paso County, Texas
Cochran County Delivery Point.	Cochran County, Texas
Hartley County Delivery Point.	Moore County, Texas
Sun Compressor Fuel Tap Delivery Point.	Coke County, Texas
Cabot Walton Delivery Point.	Winkler County, Texas
Phillips Dune Booster Fuel Tap Delivery Point.	Crane County, Texas
Phillips Credo Booster Station Fuel Supply Delivery Point.	Glasscock County, Texas
Lamb County Delivery Point.	Lamb County, Texas
Kai Farms Tap Delivery Point.	Pima County, Arizona
Bruce Foods Meter Station Delivery Point.	El Paso County, Texas
Southern Union Gas Disposal Fuel Delivery Point.	El Paso County, Texas
Flying J Commercial Development Tap Delivery Point.	El Paso County, Texas

Comment date: January 27, 1992, in accordance with Standard Paragraph G at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP92–228–000]

December 13, 1991.

Take notice that on December 11, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP92–228–000 a request pursuant to § 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate delivery point facilities to accommodate deliveries of natural gas to Kentucky Ohio Gas Acquisition Group (Kentucky-Ohio), a local distribution company, under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee proposes to construct and operate delivery point facilities, consisting of a 4-inch hot tap assembly and interconnecting pipe and measurement facilities, in Greenup County, Kentucky. Tennessee further states that the new delivery point is included under the provisions of a gas transportation agreement dated November 15, 1991, with Kentucky-Ohio, and that all costs, projected to be $103,000, associated with the construction of the new delivery point would be borne by Kentucky-Ohio. Tennessee advises that the agreement provides for deliveries of 1,500 Dekatherms per day on an interruptible basis under Tennessee's Rate Schedule IT.

Comment date: January 27, 1992, in accordance with Standard Paragraph G at the end of this notice.

6. Blue Dolphin Pipe Line Company

[Docket No. CP92–232–000]

December 13, 1991.

Take notice that on December 11, 1991, Blue Dolphin Pipe Line Company (Blue Dolphin), 11 Greenway Plaza, suite 1606, Houston, Texas 77046, filed in Docket No. CP92–232–000 a petition under Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for a declaratory order declaring that its facilities are in fact gathering facilities that are not subject to Commission jurisdiction consistent with section 1(b) of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Blue Dolphin states that it is a wholly-owned subsidiary of Blue Dolphin Energy Company, a Delaware Corporation, whose primary business is transporting natural gas for the account of several producer/shippers. Blue Dolphin states that it owns and operates a short, low pressure, dual-phase, natural gas and oil pipeline extending from a platform located offshore of Texas in the Gulf of Mexico, to an onshore point located on the 105 acre Buccaneer Plant site in Freeport, Texas and then continuing a very short distance to its terminus at the facilities of Dow Chemical Company (Dow) in Freeport. Blue Dolphin states that it holds a certificate of public convenience and necessity issued under section 7 of the Natural Gas Act in Docket No. CP65–323. Blue Dolphin further states that it is an open access, transportation only, non-major interstate pipeline.

It is explained that Blue Dolphin was constructed in the mid-1960s by Shell Oil Company for the sole purpose of delivering crude oil and gas production from the Buccaneer Field to the plants and intrastate operations of Dow, an industrial enduser in Freeport. Blue

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Dolphin indicates that it is regulated by the Commission only because 21 miles of its pipeline is located in the federal offshore waters. Blue Dolphin notes that it makes no sales, has no system supply, has no LDC customers, has no active marketing affiliate, has no take or pay issues, and connects only with a large industrial company. It is asserted that Blue Dolphin's parent is a small producer primarily focused on oil and gas exploration, production, and development activities which has no ownership or other ties to any other regulated or unregulated natural gas pipeline.

Blue Dolphin states that recent Commission decisions have clarified gathering and set forth, on a case by case basis, the relevant criteria to be considered in making determinations as to whether facilities qualify as gathering. Blue Dolphin states that these considerations include: (1) Diameter and/or length of the pipeline, (2) the location of any processing plant or compression, (3) the location of wells along all or part of the pipeline, (4) geographic configuration of the facilities, and (5) operating pressures. Blue Dolphin adds that in an offshore situation, the orientation of the pipeline owner as a small producer and the competitive nature of pipeline's services are relevant.

Blue Dolphin asserts that it meets the recently clarified "primary function" test set forth in *Amerada Hess. et al.*[1] and, in addition, meets all of the physical criteria tests. Blue Dolphin notes that in *Amerada Hess*, the FERC stated that since it is "applying a sliding scale to the length criteria for offshore pipeline situations and even for onshore facilities, the size and length of the line is no longer the major determining factor where other factors lead us to the conclusion that the primary function is gathering." According, Blue Dolphin argues that its physical size should be considered in conjunction with its overall production/gathering history and orientation, its current small business status, as well as the highly competitive nature of its business environment. In addition, Blue Dolphin avers that the public interest would be served if Blue Dolphin were allowed to compete vigorously as a gathering system with the flexibility available to non-jurisdictional enterprises. Based on these considerations, Blue Dolphin requests an expedited order declaring that its facilities are gathering facilities that are not subject to the Commission's jurisdiction consistent with section 1(b) of the Natural Gas Act.

Comment date: January 3, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

[1] 52 FERC ¶ 61,268 (1990).

7. Tennessee Gas Pipeline Company

[Docket No. CP92-219-000]

December 13, 1991.

On December 4, 1991, Tennessee Gas Pipeline Company (Tennessee), filed in Docket No. CP92-219-000 an application pursuant to section 7(b) of the Natural Gas Act for approval to abandon the transportation service it currently renders to ANR Pipeline Company (ANR) under Rate Schedule T-47, to convert the service to transportation service rendered under Tennessee's blanket certificate, and to allow Tennessee to waive the provisions of its tariff to permit ANR to retain the same priority of service as it had under Rate Schedule T-47, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Tennessee notes that the agreement it has with ANR is outdated and results in an inefficient and unfair allocation of the costs and capacity associated with the related service, thus bearing unduly low cost responsibility vis-a-vis other customers receiving comparable services. Tennessee also states that the rates charged ANR are inconsistent with the method used to design rates for its other similar transportation services. As a result, Tennessee's other customers are subsidizing ANR's service. Tennessee, believing that the rate methodology employed for ANR is neither equitable nor a fair assignment of the pipeline's costs responsibility, filed to abandon the initial transportation service rendered under T-47 and to replace it with a comparable service which Tennessee's other customers enjoy.

Comment date: January 3, 1992, in accordance with Standard Paragraph F at the end of this notice.

8. Trunkline Gas Company

[Docket No. CP2-221-000]

December 13, 1991.

Take notice that on December 6, 1991, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston Texas 77251-1642, filed in Docket No. CP92-221-000 an application pursuant to section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon a transportation and exchange service provided to Columbia Gas Transmission Corporation (Columbia Gas) and Columbia Gulf Transmission Company (Columbia Gulf), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline states that by order issued August 6, 1982, in Docket No. CP2-141-000, *et al.* (20 FERC ¶ 62,216), Trunkline was authorized to provide an interruptible transportation and exchange service for Columbia Gas and Columbia Gulf under a transportation and exchange agreement (Agreement) dated December 29, 1981, as amended, and filed with the Commission as Rate Schedule TE-10 of Trunkline's FERC Gas Tariff, Original Volume No. 2. Trunkline further states that under this Agreement, Trunkline agreed to transport on behalf of Columbia Gulf up to 20,000 Mcf of natural gas per day from Eugene Island Block 392, offshore Louisiana, and Columbia Gas agreed to transport on behalf of Trunkline up to 20,000 Mcf of natural gas from West Cameron Block 624, offshore Louisiana. It is indicated that the balancing point is the interconnection between the facilities of Trunkline and Columbia Gulf located near Centerville, St. Mary Parish, Louisiana.

Trunkline states that pursuant to the Agreement, on December 19, 1990, Columbia Gas and Columbia Gulf gave written notice of their election to terminate the Agreement at the end of its primary term, December 31, 1991. Trunkline further states that it requests authority to abandon Rate Schedule TE-10 effective December 31, 1991.

Comment date: January 3, 1992, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to

jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30403 Filed 12-19-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-01851T Texas-15 Addition 2]

State of Texas; NGPA Determination by Jurisdictional Agency Designating Tight Formation

December 16, 1991.

Take notice that on December 6, 1991, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the L Sand member of the Vicksburg Formation underlying a portion of Hildago County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice covers the following acreage:

(A) L. Flores A-576, Porcion 76, Homeville Association Subdivision "D": Block 27—Lots 1 and 6, Blocks 28 thru 31, Block 32—Lots 1, 2 and 3, Block 13—Lots 1, 2 and 3, and Blocks 14 thru 20.

(B) P. Flores A-577, Porcion 77, Homeville Association Subdivision "A": Lots 1 thru 35, 39 thru 42, 49 and 50.

(C) P. Flores A-577, Porcion 77, Homeville Association Subdivision "B": Lots 105 thru 128.

(D) Dionisio Ramirez A-563, Porcion 78, Texan Gardens Subdivision, the most westerly 1/5 of Block 12—Lots 14 thru 17, and the most westerly 1/5 of Block 13—Lots 1 thru 17.

(E) 172.8 acres of land out of Porcion 77, Abstract 75, being the same land described in Deed from F. Davenport to F.V.W. Heard dated May 24, 1931, recorded in Volume 405, Page 68 of the Deed Records of Hidalgo County, Texas.

(F) 78.07 acres of land, more or less, being tract 12 out of the East part of Porcion 77, Pedro Flores Survey Abstract 577, Hidalgo County, Texas; and being more particularly described in Deed dated July 12, 1965, from Augustin Zamora to the Public, recorded in Volume 1126 Page 429 Hidalgo County, Texas.

(G) An additional tract composed of approximately 78 acres lying adjacent to and north of the tract described in (E) above.

The notice of determination also contains Texas' findings that the referenced portion of the L Sand member of the Vicksburg Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30399 Filed 12-19-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-01850T Texas-22 Addition 6]

State of Texas; Determination by Jurisdictional Agency Designating Tight Formations

December 16, 1991.

Take notice that on December 6, 1991, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that certain portions of the Strawn Formation underlying Crockett County, Texas, qualify as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The designated area, containing approximately 19,250 acres, includes all of the Hunt-Baggett, W. (Strawn) and portions of Hunt-Baggett (Strawn North), Ozona SW (Strawn), and Thomason (Strawn) fields. The designated area consists of all sections of Block AAA, T.C.R.R. Survey; all sections in Block I, G.C. & S.F. Survey; the west 411 acres of section 3, all of sections 4, 5 and 6, the west 225 acres of section 7, and the north half and southwest quarter of section 8 of Block J, G.C. & S.F. Survey; sections 22, 26, 31 and 32, the east halves of sections 23 and 25, and the west half of section 27 of Block M, G.C. & S.F. Survey; section 7 of Block NG, G.C. & S.F. Survey; section 20 of Block NG, H. B. Montgomery Survey; sections 21, 22, 29 and 30 of Block QR; the west 324 acres of section 2 Block QR2, Wm. Powell Survey; and section 25 Block ST, H.E. & W.T. Survey, all in Crockett County.

The notice of determination also contains Texas' findings that the referenced portions of the Strawn Formation meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30400 Filed 12-19-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-01752T Texas-2 Addition 3]

State of Texas; NGPA Determination by Jurisdictional Agency Designating Tight Formation

December 16, 1991.

Take notice that on November 20, 1991, as supplemented on December 13, 1991, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant

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§ 271.703(c)(3) of the Commission's regulations, that the Canyon Formation underlying certain portions of Tom Green County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice covers certain lands in the area of the Hercules (Canyon) Field and includes the following surveys:

Survey Name	Section	Abstract
H. Fay	277	187
L. Poock	278	1788
F. A. Gottwald	279	233

The notice of determination also contains Texas' findings that the referenced portion of the Canyon Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30401 Filed 12-19-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-53-000]

Kern River Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

December 13, 1991.

Take notice that on November 29, 1991, Kern River Gas Transmission Company (Kern River) tendered for filing a revised Original Volume No. 1 to its FERC Gas Tariff, in compliance with the Commission's orders of January 24, 1990 and November 2, 1990 in Docket Nos. CP89-2047 and CP89-2048. Kern River proposes a January 31, 1992 effective date.

Kern River states that it revised its tariff provisions concerning renegotiation of the reservation charge, capacity assignment, requests for service and the statement of rates. Kern River further states that it is reflecting in its tariff the terms of the service agreements negotiated between Kern River and Chevron U.S.A. Inc., Shell Western E&P, Inc., Mobil Natural Gas, Inc. and Union Pacific Fuels Company.

Kern River states that service on its pipeline will commence on or about January 31, 1992.

Kern River states that copies of the filing have been served upon all of the jurisdictional transportation customers and on the parties to the prior proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 20, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30234 Filed 12-19-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2212-001—Wisconsin]

Weyerhaeuser Paper Co.; Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

December 13, 1991.

Th license for the Rothschild Dam Hydro Project No. 2212, located on the Wisconsin River in Marathon County, Wisconsin expires on July 31, 1993. The statutory deadline for filing an application for new license was July 31, 1991. An application for new license has been filed as follows:

Project No.	Applicant	Contact
P-2212-001	Weyerhaeuser Paper Co., 200 Grand Avenue, Rothschild, WI 54475.	William V. Dohr, Weyerhaeuser Paper Co., 200 Grand Avenue, Rothschild, WI 54475, (715) 359-3101.

The following is an approximate schedule and procedures that will be followed in processing the application:

Date	Action
October 10, 1991..	Commission notified applicant that its application has been accepted.
October 18, 1991..	Commission issued public notice of the accepted application establishing dates for filing motions to intervene and protests.
December 30, 1991..	Commission's deadline for applicant for filing a final amendment, if any, to its application.
February 15, 1992..	Commission notifies all parties and agencies that the application is ready for environmental analysis.

Upon receipt of all additional information and the information filed in response to the public notice of the acceptance of the application, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Ed Lee at (202) 219-2809.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30405 Filed 12-19-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 91-95-NG]

Niagara Mohawk Power Corp.; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on November 1, 1991, of an application filed by Niagara Mohawk Power Corporation (Niagara Mohawk), requesting blanket authorization to import up to 77 Bcf of natural gas from Canada over a two-year period commencing with the date of first delivery. Niagara Mohawk intends to use existing pipeline facilities within the United States and plans to submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed in Washington, DC, at the address listed below no later than 4:30 p.m., Eastern time, January 21, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478.

FOR FURTHER INFORMATION CONTACT:

Thomas Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-070, FE-53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9590.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Niagara Mohawk, a corporation organized under the laws of the State of New York with its principal place of business in Syracuse, New York, provides natural gas service to nearly 500,000 New York customers and supplies its gas-fired electric generating plants within its system. According to its application, Niagara Mohawk would import gas from a variety of Canadian producers, under both firm and interruptible arrangements and at market responsive prices, for sale to customers in its New York service area. Gas supplied under these arrangements would be transported by TransCanada PipeLines Limited (TransCanada) to the international border near Iroquois, Ontario, where TransCanada's facilities interconnect with the Iroquois Gas Transmission System (Iroquois). Iroquois would transport the imported volumes to CNG Transmission Corporation at Canajoharie, New York, for redelivery to Niagara Mohawk. Niagara Mohawk states the short-term, blanket authority is needed pending an amendment to the utility's application for long-term authority granted conditionally by DOE/FE Opinion and Order No. 351 (Order 351), 1 FE ¶70,260. The arrangement underlying Order 351 was based upon planned purchases from TransCanada and construction by TransCanada of an extension from its mainline to Gananoque, Ontario, to deliver gas to Niagara Mohawk's planned new Trans York Pipeline at the U.S.-Canadian border. The National Energy Board of Canada denied the pipeline extension proposed by TransCanada thus requiring Niagara Mohawk to negotiate amended purchase and transportation arrangements.

The decision on Niagara Mohawk's application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. Niagara Mohawk asserts that gas supplied under the proposed import arrangement would be competitive, needed, and secure. Parties opposing the import arrangement bear the burden of overcoming this assertion.

NEPA Compliance. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures. In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

If is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Niagara Mohawk's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 16, 1991.

Anthony J. Como,

Director, Office of Coal and Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-30447 Filed 12-19-91; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. FE C&E 91-24; Certification Notice—92]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (FUA section 201(a), 42 U.S.C. 8311 (a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to FUA section 201(d), to the

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Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of proposed new electric base load powerplant has filed self/certification in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has filed self-certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Boston Thermal Cogeneration Corporation, Boston, MA	12-09-91	Topping cycle	25	Boston, MA.

Amendments to the FUA on May 21, 1987 (Pub. L. 100-42), altered the general prohibitions to include only new electric base load powerplants and to provide for the self-certification procedure.

Copies of this self-certification may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, or for further information call Myra Couch at (202) 586-6769.

Issued in Washington, DC on December 13, 1991.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 91-30448 Filed 12-19-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed During the Week of November 8 through November 15, 1991

During the Week of November 8 through November 15, 1991, the appeals and applications for exception or other relief listed in the Appendix of this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: December 12, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of November 8 through November 15, 1991]

Date	Name and location of applicant	Case No.	Type of submission
11/12/91	EDG/Rocky Home Dairy, Inc. Hardin, KY	RR311-1	Request for Modification/Rescission in the EDG refund proceeding. If Granted: The August 30, 1991 Decision and Order (Case No. RF311-1) issued to Rocky Home Dairy, Inc., regarding the firm's Application for Refund submitted in the EDG refund proceeding would be modified.
Do	INEL Research Bureau Moscow, ID	LFA-0164	Appeal of an Information Request Denial. If Granted: Inel Research Bureau would receive a waiver of all fees incurred in the processing of the DOE information requested pursuant to the Freedom of Information Act.
11/13/91	Anne S. Kelley Kennewick, WA	LFA-0165	Appeal of an Information Request Denial. If Granted: Anne S. Kelley would receive security records information concerning her Application for a permanent position with Westinghouse Hanford Company.
Do	ARCO/Advance Petroleum Distributing Co., Inc. Washington, DC.	RR304-13	Request for Modification/Rescission in the ARCO refund proceeding. If Granted: The July 22, 1991 Decision and Order (Case No. RF304-2942) issued to Advance Petroleum Dist. Co., Inc., regarding the firm's Application for Refund submitted in the ARCO refund proceeding would be modified.
Do	ARCO/C & C Oil Company, Inc. Washington, DC	RR304-14	Request for Modification/Rescission in the ARCO refund proceeding. If Granted: The July 16, 1990 Decision and Order (Case No. RF304-2373) issued to C & C Oil Company, Inc., regarding the firm's Application for Refund submitted in the ARCO refund proceeding would be modified.
Do	ARCO/Delmarva Oil, Inc. Washington, DC	RR304-18	Request for Modification/Rescission in the ARCO refund proceeding. If Granted: The May 9, 1989 Decision and Order (Case No. RF304-2583) issued to Delmarva Oil, Inc., regarding the firm's Application for Refund submitted in the ARCO refund proceeding would be modified.
Do	ARCO/J.E. Elledge Oil Company, Inc. Washington, DC	RR304-17	Request for Modification/Rescission in the ARCO refund proceeding. If Granted: The July 22, 1991 Decision and Order (Case No. RF304-2941) issued to J.E. Elledge Oil Company, Inc., regarding the firm's Application for Refund submitted in the ARCO refund proceeding would be modified.

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of November 8 through November 15, 1991]

Date	Name and location of applicant	Case No.	Type of submission
Do	ARCO/Kellam Energy, Inc. Washington, DC	RR304-15	Request for Modification/Rescission in the ARCO refund proceeding. If Granted: The October 30, 1989 Decision and Order (Case No. RF304-7567) issued to Kellam Energy, Inc., regarding the firm's Application for Refund submitted in the ARCO refund proceeding would be modified.
Do	ARCO/ Smith Oil Corporation Washington, DC	RR304-16	Request for Modification/Rescission in the ARCO refund proceeding. If Granted: The June 29, 1989 Decision and Order (Case No. RF304-2371) issued to Smith-Shafer Oil Company regarding the firm's Application for Refund submitted in the ARCO refund proceeding would be modified.
Do	ARCO/Smith-Shafer Oil Company Washington, DC	RF304-19	Request for Modification/Rescission in the ARCO refund proceeding. If Granted: The October 19, 1990 Decision and Order (Case No. RF304-2370) issued to Smith-Shafer Oil Company regarding the firm's Application for Refund submitted in the ARCO refund proceeding would be modified.
Do	Texaco/Lenny's Texaco Service Memphis, TN	RR321-85	Request for Modification/Rescission in the Texaco refund proceeding. If Granted: The September 20, 1991 Decision and Order (Case Nos. RF321-14910 and RF321-16752) issued to Lenny's Texaco regarding the firm's Application for Refund submitted in the Texaco refund proceeding would be modified.
Do	Texaco Oliver Brothers' Texaco West Haven, CT	RR321-84	Request for Modification/Rescission in the Texaco refund proceeding. If Granted: The March 22, 1991 Decision and Order (Case Nos. RF321-12536 and RF321-13874) issued to Oliver Brother's Texaco regarding the firm's Application for Refund submitted in the Texaco refund proceeding would be modified.

REFUND APPLICATIONS RECEIVED

Date Received	Name of Refund Proceeding/Name of Refund Applicant	Case No.
11/7/91	Maryville Gulf	RF300-18521
11/7/91	Warren Service Center.	RF300-18522
11/7/91	City of Brownsville	RF300-18523
11/8/91 thru 11/15/91.	Texaco Refund Applications Received.	RF321-17910 thru RF321-17923
11/8/91 thru 11/15/91.	Crude Oil Refund Applications Received.	RF272-90497 thru RF272-90651
11/12/91	Maple Ave Exxon	RF307-10192
11/12/91	Boston Edison Company.	RF307-10193
11/12/91	William H Brown Arco.	RF304-12614
11/12/91	Frederick a Perry	RF304-12615
11/12/91	Perry's Arco Station.	RF304-12616
11/12/91	U.S. Oil Co., Inc.	RF342-22
11/12/91	Bills Clark Station	RF342-23
11/12/91	Wayne's Clark Gas Station.	RF342-24
11/12/91	Donnell's Super 100.	RF342-25
11/12/91	Hughes Clark Oil	RF342-26
11/12/91	Terry's Clark Super 100.	RF342-27
11/12/91	Vern's Clark Super 100.	RF342-28
11/12/91	Gay's Clark Super 100.	RF342-29
11/12/91	Clark Super 100	RF342-30
11/12/91	Ted Harrison Oil Co., Inc.	RF330-56
11/12/91	Nellie Johnson	RF335-51
11/12/91	Federal Paper Board Co.	RF336-34
11/12/91	Conoco, Inc.	RF336-35
11/12/91	Sioux County	RC272-140
11/13/91	Greg's Arco	RF304-12617
11/13/91	Hawk's Service Center, Inc.	RF300-18524
11/13/91	Sinkler, Inc	RF304-12618

REFUND APPLICATIONS RECEIVED—Continued

Date Received	Name of Refund Proceeding/Name of Refund Applicant	Case No.
11/13/91	Lincrest Exxon	RF307-10194
11/13/91	Daniel R. & Pauline Henneberry.	RF335-52
11/14/91	Bertram Spring	RF307-10195
11/14/91	Mulhern Fuel Corp	RF340-27
11/14/91	Grant's TV & Appliance.	RF340-28
11/14/91	Primative Lake Campground.	RF340-29
11/14/91	True Value Hardware.	RF340-30
11/14/91	Blackburn Propane Service.	RF340-31
11/14/91	New Bedford Gas & Edison Light.	RF336-36
11/15/91	Clinton & Elizabeth Exxon.	RF307-10196
11/15/91	Robert J. Quirk	RF300-18525
11/15/91	Doug & James Clark 100.	RF342-31
11/15/91	Odell Adams	RF342-32
11/15/91	Jerry's Super 100	RF342-33
11/15/91	Carl's Clark	RF342-34

[FR Doc. 91-30450 Filed 12-19-91; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of November 15 through November 22, 1991

During the Week of November 15 through November 22, 1991, the applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: December 12, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

REFUND APPLICATIONS RECEIVED

[Week of November 15 to November 22, 1991]

Date received	Name of refund proceeding/Name of refund application	Case No
11/18/91	Vickers/Kansas	RQ1-576
11/18/91	A. C. Wallace Arco	RF304-12619
11/18/91	Sam's Arco	RF304-12620
11/18/91	Scenic Exxon	RF307-10197
11/18/91	American Bitmite, Inc.	RF336-37
11/18/91	Mobile Oil Corporation.	RF336-38
11/18/91	Rhode Island College.	RF336-39
11/18/91	John E. Jones Oil Company.	RF340-32
11/18/91	Bernard Fermanich.	RF342-35

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REFUND APPLICATIONS RECEIVED—Continued

[Week of November 15 to November 22, 1991]

Date received	Name of refund proceeding/Name of refund application	Case No
11/18/91	Grimum Oil Company.	RF342-36
11/18/91	John T. Stephens	RF342-37
11/18/91	Hug's Clark Service, Ltd.	RF342-38
11/18/91	Fowlers Clark Service.	RF342-39
11/18/91	Bobbie Clark Super 100 SL	RF342-40
11/18/91	Maxwell Oil Company.	RF304-12621
11/19/91	Dow's Super 100 Station.	RF342-40
11/19/91	Owens Services Center.	RF342-42
11/19/91	Huey Oil Company	RF330-57
11/18/91	Ocean Spray Cranberries.	RF336-40
11/20/91	Bill's Clark	RF342-43
11/20/91	Dave's Clark Super 100.	RF342-44
11/20/91	Frank Pratko, Jr.	RF307-10198
11/20/91	Ashland Petroleum Corp.	RF339-6
11/21/91	Dan's Super 100	RF342-45
11/25/91	Rutherford William Stockman.	RF342-51
11/25/91	Victor A. Tucci Service.	RF342-52
11/25/91	Darrell Wertz's Clark Service.	RF342-53
11/21/91	Hordaroom Oil Co.	RF330-58
11/21/91	Rice Oil Co.	RF330-59
11/22/91	R & S Oil Co., Inc.	RF330-60
11/21/91	Ronald L. Delg	RF342-46
11/21/91	Wright Industries	RF342-47
11/21/91	Inland Energy Inc.	RF342-48
11/22/91	Six Flag Over Mid-America, Inc.	RF342-49
11/22/91	Jerry's Clark Super 100.	RF342-50
11/15/91 thru 11/22/91.	Texaco Refund Applications Received.	RF321-17924 thru RF321-18056
11/15/91 thru 11/22/91.	Crude Oil Refund Applications Received.	RF272-90552 thru RF272-90781
11/15/91 thru 11/22/91.	Gulf Oil Refund Applications Received.	RF300-16526 thru RF200-16678

[FR Doc. 91-30451 Filed 12-19-91; 8:45 am]
BILLING CODE 6460-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4084-6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before January 21, 1992.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: National Operations and Maintenance Excellence Awards Program Questionnaire (ICR #1287.03.)

Abstract: ICR 1287.03 describes the information requirements associated with the National Operations and Maintenance Excellence Award Program. Under this program, to encourage compliance with wastewater treatment regulations, EPA presents awards to communities with outstanding wastewater plant operations and maintenance.

Municipal officials seeking consideration of their facilities for an award must complete an application questionnaire and may also complete an optional effluent data reporting form. The questionnaire covers facility identification information as well as descriptions of the facilities operations and maintenance. State officials screen the applications and submit them to the EPA Regional Offices. Each Regional Office may then select one facility for each of nine Regional award categories. The Regional Offices may also nominate recipients for National awards. At EPA Headquarters, the nominees' completed questionnaires are reviewed by a selection committee, which selects National award recipients and distributes awards.

Burden Statement: The average burden associated with the National Operations and Maintenance Excellence Award Program Questionnaire is two hours per response. This total includes time for searching existing data sources, and completing and reviewing the collection of information.

Respondents: Publicly-owned treatment works, States.

Estimated No. Of Respondents: 320.

Estimated Total Annual Burden on Respondents: 640 hours.

Frequency of Collection: Annually.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460.

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: December 13, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91-30466 Filed 12-19-91; 8:45 am]
BILLING CODE 6560-50-M

[FRL-4085-5]

Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application for a Reference Method Determination

Notice is hereby given that on November 19, 1991, the Environmental Protection Agency received an application from Dasibi Environmental Corporation, 8310 Capital of Texas Highway, Austin, Texas 78731, to determine if their Model 2108 Chemiluminescent Nitrogen Oxides Analyzer should be designated by the Administrator of the EPA as a reference method under 40 CFR part 53. If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the Federal Register.

Erich W. Bretthauer,

Assistant Administrator for Research and Development.

[FR Doc. 91-30467 Filed 12-19-91; 8:45 am]
BILLING CODE 6560-50-M

[FRL-4084-9]

Public Water Supply Supervision Program; Program Revision for the State of Oregon

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Oregon is revising its approved State Public Water Supply Supervision Primacy Program. Oregon has adopted drinking water regulations for total coliforms and the treatment of surface water. EPA has determined that these sets of State program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties may request a public hearing. A request for public hearing must be submitted by January 21, 1992 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by January 21, 1992, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on her own motion, this determination shall become final and effective January 21, 1992.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Drinking Water Section, Oregon Health Division, 1400 SW 5th Avenue, Portland, Oregon 97201; and

Environmental Protection Agency, Region 10 Library, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Wendy Marshall, EPA, Region 10, Drinking Water Programs Branch, at the Seattle address given above, telephone (206) 553-1890.

Dated: December 11, 1991.

Dana A. Rasmussen,

Regional Administrator.

[FR Doc. 91-30474 Filed 12-19-91; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRL-4085-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 2, 1991 Through December 6, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1991 (56 FR 14096).

Draft EISs

ERP No. D-UAF-L11015-ID Rating LO, Air Force in Idaho Proposal, Mountain Home AFB Composite Wing Establishment, Modification of Airspace to Accommodate Air Force and Air National Guard Flying Activities and Air-to-Ground Training Range Establishment, Elmore County, ID.

Summary: EPA has reviewed the draft EIS and has no objection to the project.

ERP No. DS-AFS-L65137-AK Rating EC2, Tongass Land Management Plan Revision, New Information, Tongass National Forest, AK.

Summary: EPA expressed concerns regarding potential impacts to water quality from timber harvest, road construction, log transfer facilities and mining proposed in the management plan.

Final EISs

ERP No. F-AFS-K61113-CA, Stanislaus National Forest, Land and Resource Management Plan, Implementation, Alpine, Calaveras, Mariposa and Tuolumne Counties, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. FS-AFS-K83000-CA, Plumas National Forest Prototype Project, Augmenting Snow Pack by Cloud Seeding Using Ground Based Dispensers, Additional Information, Implementation, Upper Feather River Basin, Plumas and Sierra Counties, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal letter was sent to the agency.

Dated: December 17, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-30464 Filed 12-19-91; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRL-4085-1]

Environmental Impact Statements; Availability

RESPONSIBLE AGENCY: Office of the Federal Activities, General Information (202) 260-5073 or (202) 260-5075.

Availability of Environmental Impact Statements Filed December 9, 1991 through December 13, 1991 pursuant to 40 CFR 1506.9.

EIS No. 910434, Final EIS, AFS, WA, Lower White Salmon River Wild and Scenic River Management Plan, Columbia River Gorge National Scenic Area Wild and Scenic River System, Implementation, Klickitat County, WA, Due: January 21, 1992, Contact: Steve Mellor (503) 386-2333.

EIS No. 910435, Draft EIS, IBR, OR, Milltown Hill Project, Dam and Reservoir Construction and Operation, Funding and Implementation, Elk Creek Subbasin, Umpqua River Basin, Douglas County, OR, Due: February 10, 1992, Contact: Douglas J. James (208) 334-1208.

EIS No. 910436, Draft EIS, UAF, CA, Mathis Air Force Base Disposal and Reuse, Implementation, Sacramento County, CA, Due: February 4, 1992, Contact: Lic. Tom Bartol (714) 382-4891.

EIS No. 910437, Final EIS, VAD, WA, Seattle-Tacoma Area National Cemetery Construction Alternative Site Selection, Illahee Site in Kitsap County, Sultan Site in Snohomish County and Seatac and Tacoma Sites in King County, WA, Due: January 21, 1992, Contact: George Hermance (202) 233-7060.

EIS No. 910438, Draft Supplement, COE, WV, Winfield Locks and Dam Project, Lock Replacement, Alignment Modifications and Land Purchase, Implementation, near Eleanor, Putnam County, WV, Due: February 3, 1992, Contact: Ben Borda (304) 529-5712.

Amended Notices

EIS No. 910034, Draft EIS, COE, IN, Tillery Hill State Recreation Area Development, Construction, Operation, and Maintenance of Recreation Facilities, Patoka Lake, Orange County, IN, Due: July 31, 1992, Contact: Keith Hoss (502) 582-6015. Published FR 02-08-91—Review period extended.

EIS No. 910405, Final EIS, USN, MS, AL, EMPRESS II (Electromagnetic Pulse Radiation Environment Simulator for Ships) Operation, Gulf of Mexico and Berthing Site Selection, Mobile, AL; Gulfport, MS or Pascagoula, MS, Due: January 21, 1992, Contact: Ltc. Robert Deeme (703) 602-3333. Published FR 08-23-91—Review period extended.

Dated: December 16, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-30463 Filed 12-19-91; 8:45 am]
BILLING CODE 6560-50-M

[FRL-4084-7]

Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Hoechst Celanese Chemical Group, Incorporated

AGENCY: Environmental Protection Agency.

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ACTION: Notice of final decision petition reissuance.

SUMMARY: Notice is hereby given that a reissuance to an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Hoechst Celanese Chemical Group, Incorporated, for the Class I injection wells located at Bay City, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Hoechst Celanese Chemical Group, Incorporated, of the specific restricted hazardous waste identified in the petition reissuance, into the Class I hazardous waste injection wells at the Bay City, Texas facility specifically identified in the reissued petition, for as long as the basis for granting an approval of this petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued October 3, 1991. The public comment period ended on November 18, 1991. All comments have been addressed and have been considered in the final Agency action and there is no Administrative appeal.

DATES: This action is effective as of December 11, 1991.

ADDRESSES: Copies of the reissued petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W-SU), 1445 Ross Avenue, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Oscar Cabra, Jr., Chief Municipal Facilities Branch, EPA—Region 6, telephone (214) 655-7110, (FTS) 255-7110.

Myron O. Knudson,

Director.

[FR Doc. 91-30468 Filed 12-19-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4085-4]

Expert Panel on the Role of Science at EPA; Notice of Open Meeting

Under Public Law 92-463, notice is hereby given that the Expert Panel on the Role of Science at EPA will hold a public meeting on January 6, 1992, at the Loew's L'Enfant Plaza Hotel, 480 L'Enfant Plaza SW., Washington, DC. The meeting will begin at 1:30 p.m. and will end at 2:30 p.m.

The purpose of the meeting will be to discuss the findings and recommendations which the Panel plans to include in its report to the Administrator on the role of science at EPA, and to receive comments from members of the public. Any member of the public wishing to attend the meeting, present an oral statement, or submit a written statement should contact Gail Robarge, Office of Research and development (H-8105), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 260-7669. For further information concerning the Panel or its activities, please contact Ms. Wendy Cleland-Hamnett, Designated Federal Official to the Panel, Office of the Administrator (A-101), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 260-4724. Seating is limited due to the size of the room and will be on a first come basis.

Dated: December 16, 1991.

Wendy Cleland-Hamnett,

Special Assistant to the Administrator.

[FR Doc. 91-30460 Filed 12-19-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4085-9]

Policy Dialogue Committee on Mining Wastes; Notice of Open Meeting

AGENCY: Environmental Protection Agency.

ACTION: FACA Committee Meeting—Policy Dialogue Committee on Mining Wastes.

SUMMARY: As required by Section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of the date and location of the January meeting of the Policy Dialogue Committee on Mining Waste. The purpose of the meeting is to further discuss the key elements of a mine waste program. The meetings are open to the public without advance registration. An opportunity for public comment will be offered at the end of each day of meeting.

DATES: The January meeting will be held on January 23, 1991 from 9 a.m. to 6 p.m. and on January 24, 1991 from 9 a.m. to 3 p.m.

ADDRESSES: The January meeting will be held at the Radisson Inn Maingate, 7501 U.S. 192 West, Kissimmee, Florida.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on substantive aspects of the mining waste program should call Steve Hoffman, Office of Solid Waste, U.S. EPA, (703) 308-8413. Summaries of previous meetings will be made available upon written request to Patricia Whiting, Office of Solid Waste, (OS-323W), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Persons needing further information on administrative matters such as committee arrangement or procedures should contact Deborah Dalton, EPA Consensus and Dispute Resolution Program, (202) 382-5495 or the Committee's facilitator, John Ehrman, The Keystone Center, (303) 468-5822.

Dated: December 17, 1991.

Deborah Dalton,

Designated Federal Official, Deputy Director, Consensus and Dispute Resolution Program, Office of Policy, Planning and Evaluation.

[FR Doc. 91-30470 Filed 12-19-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4084-8]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; Request for Public Comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act ("CERCLA"), notice is hereby given that a proposed administrative cost recovery settlement concerning the Southern Pacific Transportation Company Roseville, California rail yard site was issued by the Agency on November 15, 1991. The settlement resolves an EPA claim under Section 107 of CERCLA against the Southern Pacific Transportation Company ("Southern Pacific"). The settlement requires Southern Pacific to pay at least $530,574.30 to the Hazardous Substances Superfund. Although the response costs incurred by EPA for this site exceed $500,000, EPA may settle this matter without the prior written approval of the Attorney General because EPA is not compromising its claim.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at EPA Region 9 offices located at 75 Hawthorne Street, San Francisco, California.

DATES: Comments must be submitted on or before January 21, 1992.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at EPA Region 9 offices located at 75 Hawthorne Street, San Francisco, California 94105. A copy of the proposed settlement may be obtained at the same address from Elaine Yee (Mail Code: H-7-4), telephone (415) 744-2415. Comments should reference the Southern Pacific Transportation Company Roseville, California facility and EPA Docket No. 92-03 and should be addressed to Elaine Yee (Mail Code: H-7-4) at the above address.

FOR FURTHER INFORMATION CONTACT: Betsy Curnow (415) 744-2378.

Dated: December 2, 1991.

Jeff Zelikson,

Director, Hazardous Waste Management Division, EPA Region 9.

[FR Doc. 91-30471 Filed 12-19-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140168; FRL 4009-2]

Science Applications International Corporation; Access to Trade Secret Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Science Applications International Corporation, of Falls Church, VA, for access to information submitted to EPA pursuant to sections 303, 311, 312, 313, and 322 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), also known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Some of the information may be claimed or determined to be trade secret information.

DATES: Access to the trade secret information submitted to EPA will occur no sooner than December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Steven D. Newburg-Rinn, Chief, Public Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. NE-G008, Mail Stop TS-793, 401 M St., SW., Washington DC 20460, Telephone: 202-260-3757.

SUPPLEMENTARY INFORMATION: Under EPCRA, industry must report information on the presence, use, production, and manufacture of certain chemicals to EPA. Under section 322 of EPCRA, facilities must send trade secrecy claims regarding their section 303, 311, 312, and 313 submittals to EPA. Under contract number 68-D1-0156, Science Applications International Corporation (SAIC), 7600-A Leesburg Pike, Falls Church, VA 22043, will assist the Office of Toxic Substances in processing the information submitted by industry in response to the requirements of sections 303, 311, 312, 313, and 322 of EPCRA. SAIC staff will conduct reviews of EPCRA submissions at the EPCRA Reporting Center where submissions are received and processed. SAIC will review selected submissions for technical accuracy and contact submitters regarding potential discrepancies.

EPA has determined that SAIC will require access to trade secret information under EPCRA to perform their contractual duties, and in doing so, SAIC personnel will sign nondisclosure agreements and follow all required security procedures.

EPA is issuing this notice to inform all submitters of trade secret information under the aforementioned EPCRA sections that EPA will provide SAIC personnel access to trade secret information on a need-to-know basis. All access to EPCRA trade secret information will take place at the EPCRA Reporting Center. Upon termination of their contract or prior to termination of their contract at EPA's request, SAIC will return all material to EPA.

Clearance to access to EPCRA trade secret information under this contract is scheduled to expire on September 30, 1994.

Dated: December 13, 1991.

Linda A. Travers,

Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91-30473 Filed 12-19-1991; 8:45 am]

BILLING CODE 6560-50-F

[OPTS-140167; FRL 4008-1]

Planning Research Corporation; Access to Trade Secret Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Planning Research Corporation, and their subcontractor, Sycom, incorporated of Chantilly, VA, for access to information submitted to EPA pursuant to sections 303, 311, 312, 313, and 322 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), also known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Some of the information may be claimed or determined to be trade secret information.

DATES: Access to the trade secret information submitted to EPA will occur no sooner than December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Steven D. Newburg-Rinn, Chief, Public Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. NE-G008, Mail Stop TS-793, 401 M St., SW., Washington DC 20460, Telephone: 202-260-3757.

SUPPLEMENTARY INFORMATION: Under EPCRA, industry must report information on the presence, use, production, and manufacture of certain chemicals to EPA. Under section 322 of EPCRA, facilities must send trade secrecy claims regarding their section 303, 311, 312, and 313 submittals to EPA. Under contract number 68-01-7361, Sycom, Incorporated (Sycom), 14523 Lee Road, Chantilly, VA 22021, as subcontractor to Planning Research Corporation, assists the Office of Toxic Substances, Information Management Division in design, development, implementation, and maintenance of the Toxic Chemical Release Inventory data base in response to the requirements of sections 303, 311, 312, and 313 of EPCRA. Specifically, Sycom maintains a data base, called the Toxic Chemical Release Inventory, and an associated document tracking system for the purpose of electronically storing data collected by the EPA in accordance with requirements of EPCRA section 313.

EPA has determined that Sycom requires access to trade secret information under EPCRA to carry out their contractual duties, and in doing so, Sycom personnel will sign nondisclosure agreements and follow all required security procedures.

EPA is issuing this notice to inform all submitters of trade secret information under the aforementioned EPCRA sections that EPA will provide Sycom personnel access to trade secret information on a need-to-know basis. All access to EPCRA trade secret information will take place at the EPCRA Reporting Center. Upon termination of their contract, or prior to

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termination of their contract at EPA's request, Sycom will return all material to EPA.

EPA announced clearance to access to EPCRA trade secret information by Planning Research Corporation and Sycom in notices published in the **Federal Register** of June 10, 1988 (53 FR 21916), and September 23, 1991 (56 FR 47959). The latter notice indicated that clearance to access under this contract was expected to expire December 31, 1991. Pursuant to this notice, access to clearance to EPCRA trade secret information under this contract is extended and expected to expire on March 31, 1992. Clearance to access under this notice will be extended for so long as Sycom continues to perform the duties described above pursuant to any contract renewal or other existing contract.

Dated: December 13, 1991.

Linda A. Travers,

Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91-30472 Filed 12-19-91; 8:45 am]

BILLING CODE 6560-50-F

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Proposed Modifications to Employer Information Report (EEO-1) Survey Form and Instructions; Cancellation of Public Hearing

AGENCY: Equal Employment Opportunity Commission.

ACTION: Proposed Change: cancellation of hearing.

SUMMARY: Notice is hereby given that the Commission is cancelling the public hearing on the above proposed modifications of its Employer Information Report (EEO-1) Survey Form and Instructions. The Commission did not receive any notices of intent to give oral testimony at the hearing within the thirty-day time period specified in the hearing notice of October 4, 1991, 56 FR 50333. Therefore, it will not be necessary to hold the hearing.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Survey Division at (202) 663-4958 (voice) or (202) 708-9300 (TDD), Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

Signed this day at Washington, DC.

Dated: December 12, 1991.

For the Commission.

Evan J. Kemp, Jr.,

Chairman.

[FR Doc. 91-30414 Filed 12-19-91; 8:45 am]

BILLING CODE 6570-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 13, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0050.

Title: Application for Ship Radio Inspection or Survey.

Form Number: FCC Form 801.

Action: Revision.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 4,000 responses; .25 hours average burden per response; 1,000 hours total annual burden.

Needs and Uses: The FCC Form 801 is used by licensees to request an inspection of their shipboard radio service and to provide the inspecting office with necessary data to perform the inspection. The revision to this information collection is to incorporate fee processing data into the form. The information is used by FCC personnel to determine if radio stations on-board ships meet required specifications to guarantee public safety, when it is determined that all required specifications are met, a safety certificate is issued.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-30487 Filed 12-19-91; 8:45 am]

BILLING CODE 6712-01-M

Johnson, Andrea, L., et al.; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and state	File No.	MM docket
A. Andrea L. Johnson, Ashtabula, Ohio.	BPH-891207MF	91-356
B. James T. Embrescia, Ashtabula, Ohio.	BPH-891207MG	
C. Lakeland Communications, Ashtabula, Ohio.	BPH-891207ME (Dismissed Herein)	
D. Ashtabula FM Radio, Inc., Ashtabula, Ohio.	BPH-891207MJ (Dismissed Herein)	
E. Ashtabula-Conneaut Communications Company, Ashtabula, Ohio.	BPH-891207MK (Dismissed Herein)	

Issue Heading and Applicant(s)

1. Comparative—A, B.
2. Ultimate—A, B.

II

Applicant, city, and state	File No.	MM docket
A. Faith Bible College, Milton, FL.	BPED-910402MC	91-354
B. Okaloosa Public Radio, Inc., Baker, FL.	BPED-901016MK	

Issue Heading and Applicant(s)

1. Environmental Impact—B.
2. 307(b) Noncommercial Educational—A, B.
3. Contingent Comparative—Noncommercial Education FM—A, B.
4. Ultimate—A, B.

III

Applicant, city, and state	File No.	MM docket No.
A. Showem, Inc., New Port Richey, FL.	BPED-881130ID	91-357
B. Christian Family Cinema, Inc., Crystal River, FL.	BPED-890410MD	
C. Sonlight Public Broadcasting Network, Inc., Homosassa Springs, FL.	BPED-890531ME	

Issue Heading and Applicant(s)

1. Air Hazard—B.
2. (See Appendix)—B.

3. 307(b), Noncommercial Educational—A-C.
4. Contingent Comparative, Noncommercial Educational FM—A-C.
5. Ultimate—A-C.

Appendix

Additional Issue Paragraph

2. To determine whether Christian Family Cinema, Inc. is a qualified educational organization as required by 47 C.F.R. § 73.503(a).

IV

Applicant city, and state	File No.	MM docket No.
A. Interfaith Christian Union, Inc., South Bend, IN.	BPED-890919MD	91-355
B. Cross Country Broadcasting, Inc., South Bend, IN.	BPED-900717MG	

Issue Heading and Applicant(s)

1. Air Hazard
2. Comparative—Noncommercial, Educational FM—A, B.
3. Ultimate—A, B.

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986.

The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036 (Telephone No. (202) 452-1422).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 91-30485 Filed 12-19-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy on EDP Examination, Scheduling, and Report Distribution; Rescission of Statement of Policy

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of Rescission of Statement of Policy.

SUMMARY: This notice rescinds the policy statement concerning EDP examination, scheduling, and report distribution adopted by the FDIC Board of Directors on June 9, 1978 (43 FR 25739, June 14, 1978), as amended on April 23, 1979 (44 FR 26794, May 7, 1979).

EFFECTIVE DATE: December 20, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen A. White, Review Examiner (EDP), Compliance and Special Review Section, Division of Supervision, FDIC, 550 17th Street, NW., Washington, DC 20429, telephone (202) 898-6923.

SUPPLEMENTARY INFORMATION: On September 12, 1991, the Task Force on Supervision of the Federal Financial Institutions Examination Council ("FFIEC") approved, under delegated authority, an EDP Interagency Examination, Scheduling and Distribution Policy. The Division of Supervision of the FDIC has determined that it is in its interest to adopt the FFIEC policy. The FDIC policy statement is no longer necessary and, therefore, is rescinded by the FDIC Board of Directors.

By order of the Board of Directors.

Dated at Washington, DC this 2nd day of December, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91-30415 Filed 12-19-91; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Items Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following items have been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3601, et. seq.). Requests for information, including copies of the collection of information and supporting documentation, may be obtained from Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street, NW., room 12211, Washington, DC 20573, telephone number (202) 523-5866. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Items Submitted for OMB Review

46 CFR Part 550—Publishing, Filing and Posting of Tariffs in Domestic Offshore Commerce

FMC requests an extension of clearance for 46 CFR 550 which provides tariff filing rules for common carriers in the domestic offshore commerce, pursuant to the Shipping Act, 1916, and the Intercoastal Act, 1933. The rule requires that carriers file and keep open for public inspection a schedule of their rates and charges for the transport of cargo. The Commission estimates an annual respondent universe of 168, with a total estimated annual 3,375 manhour burden. Total cost to the Federal Government is estimated at $192,300; total cost to respondents is estimated at $50,200.

46 CFR Part 552—Financial Reports of Vessel Operating Common Carriers by Water in the Domestic Offshore Trades and Related Forms FMC-377 and FMC-378

FMC requests an extension of clearance for regulations which establish methodologies to be used in evaluating rates filed by vessel operating common carriers in the domestic offshore trades who are subject to the Intercoastal Shipping Act, 1933. Total estimated annual burden for 13 tug and barge operators and 20 self-propelled operators is 2559.6 manhours. Total estimated annual cost to the Federal Government is approximately $19,100; total estimated annual cost to respondents is approximately $50,400.

46 CFR Part 553—Financial Exhibits and Schedules of Non-Vessel-Operating Common Carriers in the Domestic Offshore Trades and Related Form FMC-379

FMC requests extension of clearance for regulations which will facilitate the orderly acquisition of data required in those instances where the Commission institutes an investigation and hearing with respect to proposed rate changes by non-vessel operating common carriers in the domestic offshore trades subject to the Shipping Act, 1933. No reports have been received in the past eleven years, therefore, the Commission is estimating a potential estimated

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respondent universe of 10 NVOCCs with an estimated 150 manhours per year. The annual cost to the Federal Government and respondents is nominal because there is no reason to believe that a significant number of reports will be received during the renewal period.

Joseph C. Polking,

Secretary.

[FR Doc. 91-30377 Filed 12-19-91; 8:45 am]

BILLING CODE 6730-01-M

Organization and Functions of the Federal Maritime Commission; C.O. 1, Amdt. No. 17

The following delegation of authority is made to the Director, Bureau of Tariffs, Certification and Licensing, by amending Commission Order 1, section 9, as revised, Specific Authorities Delegated to the Director, Bureau of Tariffs, Certification and Licensing by adding subsection 9.15 to read as follows:

9.15 Authority contained in 46 CFR part 581 to approve requests for permission to correct clerical or administrative errors in the essential terms of filed service contracts. Any proposed denial of such a request shall be forwarded to the Commission for its review and action.

Dated: December 16, 1991.

Christopher L. Koch,

Chairman.

[FR Doc. 91-30436 Filed 12-19-91; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0501]

Drug Export: HibTITER® Haemophilus B Conjugate Vaccine

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Praxis Biologics, Inc., has filed an application requesting approval for the export of the biological product HibTITER® Haemophilus B Conjugate Vaccine (Diphtheria CRM_{197} Protein Conjugate) indicated for the immunization of children 2 months to 59 months of age against invasive disease caused by *Haemophilus influenzae* Type B to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFB-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provide that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Praxis Biologics, Inc., 30 Corporate Woods, Suite 300, Rochester, NY 14623, has filed an application requesting approval for the export of HibTITER® Haemophilus B Conjugate Vaccine (Diphtheria CRM_{197}) Protein Conjugate) indicated for the immunization of children 2 months to 59 months of age against invasive disease caused by *Haemophilus influenzae* Type B to Canada. The HibTITER® Haemophilus B Conjugate Vaccine (Diphtheria CRM_{197} Protein Conjugate) is a sterile solution of a conjugate of oligosaccharides of the capsular antigen of *Haemophilus influenzae* Type B (haemophilus B) and diphtheria CRM_{197} protein (CRM_{197}) dissolved in 0.9 percent sodium chloride.

The application was received and filed in the Center for Biologics Evaluation and Research on November 13, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by December 30, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: December 6, 1991.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 91-30423 Filed 12-19-91; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following committee meetings are announced:

Biological Response Modifiers Advisory Committee

Date, time, and place. January 16, 1992, 10 a.m., and January 17, 1992, 8:30 a.m., Bethesda Holiday Inn, Versailles Ballrooms II, III, and IV, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, January 16, 1992, 10 a.m. to 10:30 a.m., unless public participation does not last that long; open committee discussion, 10:30 a.m. to 4:30 p.m.; closed committee deliberations, January 17, 1992, 8:30 a.m. to 9:30 a.m.; open public hearing, 9:30 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 4:30 p.m.; Anna J. Baldwin, Center for Biologics Evaluation and Research (HFB-5), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates data relating to the safety, effectiveness, and appropriate use of biological response modifiers which are intended for use in the prevention and treatment of a broad spectrum of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 9, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On January 16, 1992, the committee will discuss the use of Oncoscint® (Cytogen Corp.) for the diagnosis of primary and recurrent ovarian carcinoma. On January 17, 1992, the committee will discuss the use of interleukin-2 (Cetus Corp.) for the treatment of metastatic renal cell carcinoma.

Closed committee deliberations. On January 17, 1992, the committee will discuss trade secret or confidential commercial information relevant to pending product license applications in the Center for Biologics Evaluation and Research. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Arthritis Advisory Committee

Date, time, and place. January 23, 1992, 9 a.m., and January 24, 1992, 8:30 a.m., Conference Rms. G, H, and I, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857.

Type of meeting and contact person. Open public hearing, January 23, 1992, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; closed committee deliberations, January 24, 1992, 8:30 a.m. to 4 p.m.; Khairy W. Malek, Center for Drug Evaluation and Research, HFD-9, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3741.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in arthritic conditions.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 9, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On January 23, 1992, the committee will discuss investigational new drug application (IND) IND 31-135/new drug application (NDA) NDA 20-202 for 8-methoxypsoralen/photopheresis for scleroderma (sponsors are Therakos and ICN/Viratek).

Closed committee deliberations. On January 24, 1992, the committee will review and discuss trade secrets and/or confidential information relevant to IND's 30-150 and 22-545. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Ophtalmic Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. January 23 and 24, 1992, 9 a.m., Auditorium, first floor, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, January 23, 1992, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion 4 p.m. to 5 p.m.; open public hearing, January 24, 1992, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion; 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; Daniel W.C. Brown, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1080.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 9, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On January 23, 1992, the committee will discuss general issues relating to approvals of premarket approval applications (PMA's) for intraocular lenses. If discussion of all intraocular lenses and other pertinent issues is not completed on January 23, 1992, discussion will be continued on January 24, 1992. On January 24, 1992, the committee will discuss issues relating to approvals of PMA's for class III surgical and diagnostic devices. Also, there will be a generic discussion and contact lens issues.

Closed committee deliberations. The committee may discuss trade secret and/or confidential commercial information relevant to PMA's for contact lenses, surgical and diagnostic devices, or other ophthalmic devices. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. January 30, 1992, 8:30 a.m., National Institutes of Health, Bldg. 1, Wilson Hall, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 1:30 p.m.; closed committee deliberations, 1:30 p.m. to 5 p.m.; Jack Gertzog, Center for Biologics Evaluation and Research (HFB-5), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20850, 301-443-5455.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 16, 1992 and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss influenza vaccine formulation for the 1992 and 1993 flu season.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to a pending IND. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. January 31, 1992, 8 a.m., Holiday Inn Crown Plaza, Plaza Ballroom, 1750 Rockville Pike, Rockville, MD. If room reservations are made at the Holiday Inn Crown Plaza, please reference group number 8618 to obtain a special group rate.

Type of meeting and contact person. Open public hearing, 8 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 4:30 p.m.; closed presentation of data, 4:30 p.m. to 5 p.m.; Colin M. Pollard, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1194.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulations.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 17, 1992 and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a PMA for a barrier contraceptive device worn by women that also is intended to prevent the transmission of sexually transmitted diseases. The committee may or may not also discuss a PMA for a home uterine activity monitor.

Closed presentation of data. The committee may discuss trade secret and/or confidential commercial information regarding these devices. This portion of the meeting will be

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closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instance not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: December 17, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 91-30460 Filed 12-19-91; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Meeting Correction

On November 15, 1991 (56 FR 58069), the National Institutes of Health (NIH) published a notice of meeting in the Federal Register announcing a public hearing on December 11, 1991, conducted by a subcommittee of the Advisory Committee of the Director, NIH, to receive input about the working document titled "Management of Research Costs: Indirect Costs." The previous notice is hereby corrected to state that the public hearing scheduled on December 11 will be conducted by a panel of Federal employees representing the NIH and the Department of Health and Human Services.

Dated: December 9, 1991.

Bernadine Healy,

Director, NIH.

[FR Doc. 91-30417 Filed 12-19-91; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on November 22, 1991.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of request.)

1. Survey of Physicians Receiving Training From Regional Aids Education and Training Centers—New—A national survey of physicians trained at Regional Aids Education and Training Centers will be conducted to determine residual barriers and impediments to physician involvement in care of patients with Human Immunodeficiency Viral (HIV) disease. This information will be used to plan and develop future medical education strategies and programs. Respondents: Individuals or households; Number of Respondents: 800; Number of Responses per Respondent: 1; Average Burden per Response: .25 hours; Estimated Annual Burden: 200 hours.

2. AIDS Cost and Services Utilization Survey—0937-0190—This survey will obtain health care resources utilization, cost and insurance information from patients with AIDS and other HIV-related illnesses across the country and from their providers. Data will be used to estimate total resources used by patients and variations in patterns of use in order to guide policymakers in decisions regarding allocations of resources. Respondents: Individuals or households, businesses or other for-profit, non-profit institutions, small businesses or organizations.

	Number of respondents	Number of responses per respondent	Number of hours per response
Patient survey	2,094	4	.45
Providers	2,523	1	.59

Estimated annual burden: 5,257 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Date: December 13, 1991.

Sandra K. Mahkorn,

Deputy Assistant Secretary for Public Health Policy.

[FR Doc. 91-30378 Filed 12-19-91; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-57]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the Federal Register, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Robert Conte, Dept. of Army, Military Facilities, DAEN-ZCI-P; rm. 1E671, Pentagon, Washington, DC 20310-2600; (202) 693-4583; (This is not a toll-free number.)

Correction: Property Number 549120003 published in the Notice on December 6, 1991, is now leased.

Dated: December 12, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM; FEDERAL REGISTER REPORT FOR 12/20/91

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. T00220
Fort McClellan
Fort McClellan Co: Calhoun, AL 36205-5000
Location: Take a left turn off Baltzell Gate Road
Landholding Agency: Army
Property Number: 219110041
Status: Underutilized
Comment: 1040 sq. ft.; 1 story wood frame; needs major rehab; termite infested; off-site use only.

Bldg. T00221
Fort McClellan
Fort McClellan Co: Calhoun, AL 36205-5000
Location: Take left turn off Baltzell Gate Road.

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Landholding Agency: Army
Property Number: 219110042
Status: Underutilized
Comment: 4125 sq. ft.; one story wood frame; need major rehab; termite infested; presence of asbestos; off-site use only.

Bldg. T00796
Fort McClellan Co: Calhoun, AL 36205–5000
Location: Intersection of 19th and 20th Streets.
Landholding Agency: Army
Property Number: 219110043
Status: Unutilized
Comment: 1340 sq. ft.; one story wood frame; needs major rehab; presence of asbestos; off-site use only.

Bldg. T00883
Fort McClellan
3rd Avenue
Ft. McClellan Co: Calhoun, AL 36205–5000
Landholding Agency: Army
Property Number: 219110044
Status: Unutilized
Comment: 780 sq. ft.; one story wood frame; needs major rehab; presence of asbestos; off-site use only.

Bldg. T00890
Ft. McClellan
2nd Avenue
Ft. McClellan Co: Calhoun, AL 36205–5000
Landholding Agency: Army
Property Number 219110045
Status: Underutilized
Comment: 1713 sq. ft.; one story wood frame; needs major rehab; presence of asbestos; off-site use only.

Bldg. T00895
Ft. McClellan
3rd Avenue in Area 8 Motor Pool Compound
Ft. McClellan Co: Calhoun, AL 36205–5000
Landholding Agency: Army
Property Number: 219110047
Status: Unutilized
Comment: 100 sq. ft.; one story wood floor with metal walls; off-site use only.

Bldgs. T01121, T01123, T01124
Ft. McClellan
MacArthur Avenue
Ft. McClellan Co: Calhoun, AL 36205–5000
Landholding Agency: Army
Property Numbers 219110048–219110050
Status: Unutilized
Comment: 2400 sq. ft. each; two story wood frame; needs rehab; presence of asbestos; off-site use only.

Bldg. T01125
Ft. McClellan
21st Street and MacArthur Avenue
Ft. McClellan Co: Calhoun, AL 36205–5000
Landholding Agency: Army
Property Number: 219110051
Status: Unutilized
Comment: 2556 sq. ft.; one story wood frame; needs rehab; presence of asbestos; off-site use only.

Bldg. T01394
Ft. McClellan
4th Avenue in Area 13 of Post
Ft. McClellan Co: Calhoun, AL 36205–5000
Landholding Agency: Army
Property Number: 219110052
Status: Unutilized
Comment: 191 sq. ft.; one story tin and lumber building; needs major rehab; off-site use only.

Bldg. T01692
Ft. McClellan
25th Street
Ft. McClellan Co: Calhoun, AL 36205–5000
Landholding Agency: Army
Property Number: 219110053
Status: Unutilized
Comment: 4404 sq. ft.; one story wood frame; needs rehab; presence of asbestos; off-site use only.

Bldgs T02264, T02225—T02268
Ft. McClellan
Ft. McClellan Co: Calhoun, AL 36205–5000
Landholding Agency: Army
Property Numbers: 219110054–219110057
Status: Unutilized
Comment: 684 sq. ft. each; one story wood frame; needs major rehab; electrical hazard; presence of asbestos; off-site use only.

Bldg. T00123
Post Chapel—Fort Rucker
5th Avenue Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219110145
Status: Unutilized
Comment: 4798 sq. ft.; 1 story wood structure; minor repairs; scheduled to be vacated September 1991.

Bldg. T00307
Post Chapel—Fort Rucker
3rd Avenue
Fort Rucker Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219110146
Status: Unutilized
Comment: 3739 sq. ft.; 1 story wood structure; minor repairs; scheduled to be vacated September 1991.

Bldg. T0300
Fort Rucker—Education Facility
3rd Avenue
Fort Rucker Co: Dale, AL 36362–
Landholding Agency: Army
Property Number 219110147
Status: Unutilized
Comment: 1500 sq. ft.; 1 story wood structure; minor repairs; scheduled to be vacated September 1991.

Bldg. T05020—Fort Rucker
3rd Avenue
Fort Rucker Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219120108
Status: Unutilized
Comment: 2500 sq. ft.; one story, possible asbestos, off-site use only.

Bldg. T06901—Fort Rucker
7th Avenue
Fort Rucker Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219120109
Status: Unutilized
Comment: 2350 sq. ft., one story, possible asbestos, needs rehab, off-site use only.

Bldg. T06902—Fort Rucker
7th Avenue
Fort Rucker Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219120110
Status: Unutilized
Comment: 3663 sq. ft., one story, possible asbestos, needs rehab, off-site use only.

Bldg. T06903—Fort Rucker
7th Avenue
Fort Rucker Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219120111
Status: Unutilized
Comment: 3404 sq. ft., one story, possible asbestos, needs rehab, off-site use only.

Bldg. T06917—Fort Rucker
Corner of Division Road & 7th Avenue
Fort Rucker Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219120112
Status: Unutilized
Comment: 16004 sq. ft., two story, possible asbestos, needs rehab, off-site use only.

Bldg. T00108
Fort Rucker
6th Avenue
Fort Rucker Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219120270
Status: Unutilized
Comment: 24992 sq. ft., 1 story wood structure, most recent use— youth center gymnasium, possible asbestos, off-site use only.

Arizona

Bldg. S–306
Yuma Proving Ground
Main Admin. Area—near inter. 1st & D sts
Yuma Co: Yuma/La Paz, AZ 85365–9102
Landholding Agency: Army
Property Number: 219011725
Status: Underutilized
Comment: 2 story wood and stucco frame; needs structural upgrading; portion of 2nd floor vacant.

Bldg. S–1003
Yuma Proving Ground
Main Admin. Area—5th & Barranca Road
Yuma Co: Yuma/La Paz, AZ 85365–9102
Landholding Agency: Army
Property Number: 219011727
Status: Underutilized
Comment: 2227 sq. ft.; two-story wood and stucco frame; 2 floor wood and frame; possible asbestos; bldg. committed to Congress for disposal.

Bldg. S–503
Yuma Proving Ground
Main Admin. Area—2nd St. bet. D & F Sts.
Yuma Co: Yuma/La Paz, AZ 85365–9102
Landholding Agency: Army
Property Number: 219011746
Status: Underutilized
Comment: 2123 sq. ft.; possible asbestos; 2nd floor vacant; structural upgrading needed; bldg. scheduled for renovation and used as community center.

Bldg. S–501
Yuma Proving Ground
Main Admin. Area—D & 2nd Sts.
Yuma Co: Yuma/La Paz, AZ 85365–9102
Landholding Agency: Army
Property Number: 219011747
Status: Unutilized
Comment: 4000 sq. ft.; possible asbestos; scheduled for renovation; to be used as "Army Continuing Education Facility"; 2 floors.

Bldg. S–611
Yuma Proving Ground
Yuma Co: Yuma/La Paz, AZ 85365–9102

Location: Main Administrative Area—Near intersection of 5th and D streets.
Landholding Agency: Army
Property Number: 219013928
Status: Unutilized
Comment: 1840 sq. ft.; 1 story wood and stucco frame; most recent use—child care center.

Bldg. S–1005
Yuma Proving Ground
Yuma Co: Yuma/La Paz, AZ 85365–9102
Location: Main Administrative Area—Near intersection of 7th and F streets.
Landholding Agency: Army
Property Number: 219013930
Status: Unutilized
Comment: 176 sq. ft.; 1 story wood and stucco frame; most recent use—cold storage and refrigeration facility.

Bldg. T67206
U.S. Army Intelligence Center
Fort Huachuca
Sierra Vista Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219120113
Status: Unutilized
Comment: 2546 sq. ft., 1 story wood, most recent use—storage

Bldg. T70224
U.S. Army Intelligence Center
Fort Huachuca
Sierra Vista Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219120140
Status: Unutilized
Comment: 1252 sq. ft., 1 story wood, most recent use—Administrative.

Bldgs. 70117–70120
Fort Huachuca
Sierra Vista Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Numbers: 219120306–219120309
Status: Excess
Comment: 3434 sq. ft. each, 1 story wood structures, presence of asbestos, most recent use—general instructional.

Bldg. 70225—Fort Huachuca
Sierra Vista Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219120310
Status: Excess
Comment: 3813 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose.

Bldg. 83006—Fort Huachuca
Sierra Vista Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219120311
Status: Excess
Comment: 2082 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose.

Bldg. 83007—Fort Huachuca
Sierra Vista Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219120312
Status: Excess
Comment: 2000 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose.

Bldg. 83008—Fort Huachuca
Sierra Vista Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219120313
Status: Excess
Comment: 2192 sq. ft., 2 story wood structure, presence of asbestos, most recent use—admin. gen. purpose.

Bldg. 83015—Fort Huachuca
Sierra Vista Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219120314
Status: Excess
Comment: 2325 sq. ft., 1 story wood structure, presence of absestos, most recent use—admin. gen. purpose.

Arkansas

Fort Chaffee
U.S. Army Garrison
1095 4th Avenue
Barling Co: Sebastian, AR 72905–5000
Landholding Agency: Army
Property Number: 219012811
Status: Underutilized
Comment 3634 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military/training exercises.

Fort Chaffee
U.S. Army Garrison
1094 4th Avenue
Barling Co: Sebastian, AR 72905–5000
Landholding Agency: Army
Property Number: 219012812
Status: Underutilized
Comment 2161 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military/training exercises.

Fort Chaffee
U.S. Army Garrison
1092 4th Avenue
Barling Co: Sebastian, AR 72905–5000
Landholding Agency: Army
Property Number: 219012813
Status: Underutilized
Comment 3321 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military/training exercises.

Fort Chaffee
U.S. Army Garrison
1070 2nd Avenue
Barling Co: Sebastian, AR 72905–5000
Landholding Agency: Army
Property Number: 219013267
Status: Underutilized
Comment 3191 sq. ft.; 2 story wood frame; possible asbestos; selected periods used for military training; most recent use—barracks.

Fort Chaffee
U.S. Army Garrison
260 Taylor Avenue
Fort Chafee Co: Sebastian, AR 72905–5000
Landholding Agency: Army
Property Number: 219110112
Status: Underutilized
Comment 173 sq. ft.; one story; no water or heat in bldg.; most recent use—administration.

Fort Chaffee
U.S. Army Garrison
263 Taylor Avenue
Fort Chaffee Co: Sebastian, AR 72905–5000
Landholding Agency: Army
Property Number: 219110113
Status: Underutilized
Comment: 707 sq. ft.; one story; no water or heat in bldg.; needs rehab; most recent use—storage.

California

Fort Ord
Bldgs. T–1771 thru T–1775
Fort Ord Co: Monterey, CA 93940–
Landholding Agency: Army
Property Numbers: 219010738, 219010740, 219010742–219010745
Status: Unutilized
Comment: 2 story each; possible asbestos, needs extensive repairs.

Bldgs. 606–610, 612–619, 621–629
Parks Reserve Forces Training Area
Dublin Co: Alameda, CA 94129–
Landholding Agency: Army
Property Numbers: 219012855–219012874
Status: Unutilized
Comment: 49500 sq. ft. each; 2 story temporary wood; extensive asbestos present; most recent use—barracks.

Bldgs. 856–869, 875, 881–887, 889–890
Parks Reserve Forces Training Area
Dublin Co: Alameda, CA 94129–
Landholding Agency: Army
Property Numbers: 219012884–219012897, 219012902–219012911
Status: Unutilized
Comment: 63290 sq. ft. each; 2 story temporary wood; extensive asbestos present; most recent use—barracks.

Bldgs. 906, 908–909, 912–919, 924–938, 942–969, 966–969, 971–972, 976–979, 987
Parks Reserve Forces Training Area
Dublin Co: Alameda, CA 94129–
Landholding Agency: Army
Property Numbers: 219012918, 219012923–219012926, 219012929–219012936, 219012938–219012970, 219012975–219012978, 219012980–219012981 219012984–219012987, 219012995
Status: Unutilized
Comment: 11300 sq. ft. each; 1 story temporary wood; extensive asbestos present; most recent use—barracks.

Bldgs. 218–219, 227–229, 237–249, 252–269, 279, 282, 283, 286–289
Parks Reserve Forces Training Area
Dublin Co: Alameda, CA 94129–
Landholding Agency: Army
Property Numbers: 219013002–219013003, 219013011–219013013, 219013021–219013033, 219013036–219013053, 219013062, 219013085–219013089, 219013066–219013071
Status: Unutilized
Comment: 11500 sq. ft. each; 3 story temporary wood; extensive asbestos present; most recent use—barracks.

Bldgs. 920–922, 940–941
Parks Reserve Forces
Training Area
Dublin Co: Alameda, CA 94129–
Landholding Agency: Army
Property Numbers: 219030289–219030291, 219030293–219030294
Status: Unutilized
Comment: 11300 sq. ft. each; 1 story wood frame; needs major rehab; extensive asbestos present.

EM Barracks, T–1201 thru T–1204, T1206, T–1214
Sierra Army Depot
DS Hall Avenue
Herlong Co: Lassen, CA 96113–
Landholding Agency: Army
Property Numbers: 219110117–219110122

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Status: Underutilized
Comment: 5310 sq. ft. each; two story wood frame; security restrictions.
Open Mess & NCO Club, T–1218
Sierra Army Depot
DS Hall Avenue
Herlong Co: Lassen, CA 96113–
Landholding Agency: Army
Property Number: 219110123
Status: Underutilized
Comment: 8694 sq. ft. each; one story wood frame; needs rehab; presence of asbestos; security restrictions.
Bldg. 80
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos Co: Orange, CA 90720–5001
Landholding Agency: Army
Property Number: 219120315
Status: Unutilized
Comment: 1024 sq. ft., 2 story concrete-wood plaster, possible asbestos, off-site use only, most recent use—nose hanger.
Bldg. 95
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos Co: Orange, CA 90720–5001
Landholding Agency: Army
Property Number: 219120316
Status: Unutilized
Comment: 392 sq. ft., 1 story raised portable, off-site use only, most recent use—radar maint. shop.
Bldg. 186
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos Co: Orange, CA 90720–5001
Landholding Agency: Army
Property Number: 219120317
Status: Unutilized
Comment: 998 sq. ft., 1 story steel, off-site use only, most recent use—storage.
Bldg. 196
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos Co: Orange, CA 90720–5001
Landholding Agency: Army
Property Number: 219120318
Status: Unutilized
Comment: 1029 sq. ft., stucco structure, off-site use only, most recent use—storage.
Bldg. 197
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos Co: Orange, CA 90720–5001
Landholding Agency: Army
Property Number: 219120319
Status: Unutilized
Comment: 720 sq. ft., 1 story stucco structure, off-site use only, most recent use—storage, possible asbestos.
Bldgs. 262–263, 285, 288
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos Co: Orange, CA 90720–5001
Landholding Agency: Army
Property Numbers: 219120320–219120323
Status: Unutilized
Comment: 448 sq. ft. trailers, off-site use only, most recent use—storage.

Georgia

Bldgs. 4920, 4921, 4910–4911, 4928
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Numbers: 219010002–219010003, 219010105–219010106, 219010108
Status: Unutilized
Comment: 1888 sq. ft. each; most recent use—barracks; needs rehab.
Bldg. 4915
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219010004
Status: Unutilized
Comment: 1297 sq. ft.; most recent use—headquarters building; needs rehab
Bldg. 4914
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219010005
Status: Unutilized
Comment: 810 sq. ft.; most recent use—arms building; needs rehab
Bldg. 4927
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219010107
Status: Unutilized
Comment: 1888 sq. ft.; most recent use—classrooms; 2-stories; needs rehab
Bldgs. 5288–5290
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Numbers: 219010109–219010111
Status: Unutilized
Comment: 1216 sq. ft. each; most recent use—arms buildings; needs rehab
Bldgs. 5291, 5293–5295
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Numbers: 219010112, 219010114–219010116
Status: Unutilized
Comment: 2529 sq. ft. each; most recent use—dining room; needs rehab
Bldg. 5292
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219010113
Status: Unutilized
Comment: 2525 sq. ft.; most recent use—snack bar; needs rehab
Bldg. 5297
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219010117
Status: Unutilized
Comment: 1080 sq. ft.; most recent use—storehouse; needs rehab.
Bldgs. 5298–5299
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Numbers: 219010118–219010119
Status: Unutilized
Comment: 3759 sq. ft. each; most recent use—general; needs rehab.
Bldgs. 5300, 5302
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Numbers: 219010120, 219010122
Status: Unutilized
Comment: 1400 sq. ft. each; most recent use—day room; needs rehab.
Bldgs. 5301, 5303–5305
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Numbers: 219010121, 219010123–219010125
Status: Unutilized
Comment: 2124 sq. ft. each; most recent use—barracks; needs rehab.
Bldg. 5306
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219010126
Status: Unutilized
Comment: 2406 sq. ft.; most recent use—dining room; needs rehab.
Bldg. 5307
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219010127
Status: Unutilized
Comment: 1216 sq. ft.; most recent use—arms building; needs rehab.
Bldg. 5308
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219010128
Status: Unutilized
Comment: 1680 sq. ft.; most recent use—storehouse; needs rehab.
Bldg. 5309
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219010129
Status: Unutilized
Comment: 1829 sq. ft.; most recent use—clinic; needs rehab.
Bldg. 5310
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219010130
Status: Unutilized
Comment: 3464 sq. ft.; most recent use—diagnostic center; needs rehab.
Bldg. 5311
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219010131
Status: Unutilized
Comment: 5767 sq. ft.; most recent use—post exchange (store); needs rehab.
Bldg. 5315
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219010132
Status: Unutilized
Comment: 2930 sq. ft.; most recent use—hdqts. bldg.; needs rehab.
Bldg. 5316
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219010133
Status: Unutilized
Comment: 1400 sq. ft.; most recent use—day room; needs rehab.
Bldg. 5320
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219010134
Status: Unutilized
Comment: 2124 sq. ft.; most recent use—barracks; needs rehab.
Bldg. 5366–5367
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Numbers: 219010135–219010136
Status: Unutilized

Comment: 3759 sq. ft. each; most recent use—recreation bldg.; needs rehab.
Bldg. 5390
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219010137
Status: Unutilized
Comment: 2432 sq. ft.; most recent use—dining room; needs rehab.
Bldg. 5328
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219010139
Status: Unutilized
Comment: 2486 sq. ft.; most recent use—arms bldg.; needs rehab.
Bldg. 5324
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219010141
Status: Unutilized
Comment: 2124 sq. ft.; most recent use—barracks; needs rehab.
Bldgs. 5323, 5292
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Numbers: 219010142, 219010113
Status: Unutilized
Comment: 2525 sq. ft. ea.; most recent use—dining room; needs rehab.
Bldgs. 5322, 5321
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Numbers: 219010143–219010144
Status: Unutilized
Comment: 2124 sq. ft. each; most recent use—barracks; needs rehab.
Bldgs. 5360, 5361, 5363
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Numbers: 219010145–219010146, 219010148
Status: Unutilized
Comment: 3759 sq. ft.; most recent use—recreation bldg.; needs rehab.
Bldg. 5362
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219010147
Status: Unutilized
Comment: 5559 sq. ft.; most recent use—service club; needs rehab.
Bldg. 5365
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219010150
Status: Unutilized
Comment: 3759 sq. ft.; most recent use—recreation bldg.; needs rehab.
Bldg. 5392
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219010151
Status: Unutilized
Comment: 2432 sq. ft.; most recent use—dining room; needs rehab.
Bldg. 5391
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219010152
Status: Unutilized
Comment: 2432 sq. ft.; most recent use—dining room; needs rehab.
Bldg. 4865
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011447
Status: Unutilized
Comment: 1098 sq. ft., 1 floor, most recent use—storehouse, needs rehab.
Bldgs. 4867–4870
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Numbers: 219011448, 219011450–219011452
Status: Unutilized
Comment: 1888 sq. ft. each, 2 floors; most recent use—trainee barracks; needs rehab/major construction to be habitable.
Bldg. 4871
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011453
Status: Unutilized
Comment: 1507 sq. ft.; 1 floor; most recent use—day room; needs major rehab/construction to be made habitable.
Bldg. 4875
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011455
Status: Unutilized
Comment: 1888 sq. ft.; 2 floors; most recent use—BN classrooms; major rehab/construction required to be habitable.
Bldg. 4872
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011456
Status: Unutilized
Comment: 2183 sq. ft.; 1 floor; most recent use—dining room; major construction required to be made habitable.
Bldg. 4873
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011465
Status: Unutilized
Comment: 2183 sq. ft.; 1 floor; most recent use—dining room; major construction required to be made habitable.
Bldg. 4546
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011466
Status: Unutilized
Comment: 2818 sq. ft.; bldgs in poor condition; major construction needed to be made habitable.
Bldg. 4874
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011467
Status: Unutilized
Comment: 1507 sq. ft.; 1 floor; most recent use—day room; major construction required to be made habitable.
Bldgs. 4877, 4876, 4878, 4880, 4902–4905
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011468, 219011470, 219011472, 219011474, 219011476–219011479
Status: Unutilized
Comment: 1888 sq. ft. each; 2 floors; most recent use—trainee barracks; major rehab/construction required to be habitable.
Bldg. 4545
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011473
Status: Unutilized
Comment: 2818 sq. ft.; bldgs in poor condition; major construction needed to be made habitable.
Bldg. 4906
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011480
Status: Unutilized
Comment: 1507 sq. ft.; 1 floor; most recent use—day room; major construction required to be made habitable.
Bldgs. 4907, 4908
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011481, 219011482
Status: Unutilized
Comment: 2183 sq. ft. each; 1 floor; most recent use—dining room facility; major construction required to be made habitable.
Bldg. 4909
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011483
Status: Unutilized
Comment: 1507 sq. ft.; 1 floor; most recent use—day room; major construction required to be made habitable.
Bldg. 4901
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011484
Status: Unutilized
Comment: 810 sq. ft.; 1 floor; most recent use—other inst st.; major rehab/construction required to be made habitable is required.
Bldg. 4886
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011485
Status: Unutilized
Comment: 794 sq. ft.; 1 floor; most recent use—arms bldg.; major rehab./construction required to be made habitable.
Bldg. 4879
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011486
Status: Unutilized
Comment: 794 sq. ft.; 1 floor; most recent use—arms building; major rehab/construction required to be made habitable.
Bldg. 4549
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011487
Status: Unutilized

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Comment: 794 sq. ft., buildings in poor condition, major construction needed to be made habitable.

Bldg. 4550
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011488
Status: Unutilized
Comment: 289 sq. ft., buildings in poor condition, major construction needed to be made habitable.

Bldg. 4551
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011489
Status: Unutilized
Comment: 4,416 sq. ft., buildings in poor condition, major construction needed to be made habitable.

Bldg. 4552
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011490
Status: Unutilized
Comment: 8,624 sq. ft., buildings in poor condition, major construction needed to be made habitable.

Bldg. 4553
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011491
Status: Unutilized
Comment: 1,440 sq. ft., buildings in poor condition, major construction needed to be made habitable.

Bldg. 4564
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011492
Status: Unutilized
Comment: 3,149 sq. ft., buildings in poor condition, major construction needed to be made habitable.

Bldgs. 4605, 4615
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Numbers: 219011493–219011494
Status: Unutilized
Comment: 915 sq ft., buildings in poor condition, major construction needed to be made habitable.

Bldgs. 4642, 4643
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Numbers: 219011495–219011496
Status: Unutilized
Comment: 3,068 sq ft., buildings in poor condition, major construction needed to be made habitable.

Bldgs. 4747, 4834
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Numbers: 219011497–219011498
Status: Unutilized
Comment: 794 sq ft., each, buildings in poor condition, major construction needed to be made habitable.

Bldg. 4835
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011499
Status: Unutilized
Comment: 1,501 sq ft., building in poor condition, major construction needed to be made habitable.

Bldgs. 4840, 4841
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Numbers: 219011500–219011501
Status: Unutilized
Comment: 2,930 sq ft., building in poor condition, major construction needed to be made habitable.

Bldg. 4843
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011502
Status: Unutilized
Comment: 1,776 sq ft., buildings in poor condition, major construction needed to be made habitable.

Bldg. 4844
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011503
Status: Unutilized
Comment: 3,776 sq ft., buildings in poor condition, major construction needed to be made habitable.

Bldg. 4846
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011504
Status: Unutilized
Comment: 1,455 sq ft., building in poor condition, major construction needed to be made habitable.

Bldg. 4847
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011505
Status: Unutilized
Comment: 900 sq ft., building in poor condition, major construction needed to be made habitable.

Bldg. 4848
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011506
Status: Unutilized
Comment: 804 sq ft., buildings in poor condition, major construction needed to be made habitable.

Bldgs. 4852–4854, 4859–4862
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Numbers: 219011507–219011510, 219011515–219011518
Status: Unutilized
Comment: 1,888 sq ft. each, buildings in poor condition, major construction needed to be made habitable.

Bldg. 4855
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011511
Status: Unutilized
Comment: 1,507 sq ft., buildings in poor condition, major construction needed to be made habitable.

Bldg. 4856
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011512
Status: Unutilized
Comment: 2,183 sq ft., building in poor condition, major construction needed to be made habitable.

Bldg. 4857
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011513
Status: Unutilized
Comment: 2,160 sq ft., building in poor condition, major construction needed to be made habitable.

Bldg. 4858
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011514
Status: Unutilized
Comment: 1,507 sq ft., building in poor condition, major construction needed to be made habitable.

Bldg. 4863
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011519
Status: Unutilized
Comment: 794 sq ft., building in poor condition, major construction needed to be made habitable.

Bldg. 4864
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011520
Status: Unutilized
Comment: 1,292 sq ft., building in poor condition, major construction needed to be made habitable.

Bldg. 4507
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011673
Status: Unutilized
Comment: 1,888 sq ft.; most recent use—barracks, needs substantial rehabilitation, 2 floors.

Bldgs. 4506, 4505
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Numbers: 219011675–219011676
Status: Unutilized
Comment: 2,145 sq ft., each; most recent use—dining facilities, needs substantial rehabilitation, 1 floor.

Bldg. 4487
Fort Benning
Fort Benning Co: Muscogee, GA 31905–

Landholding Agency: Army
Property Number: 219011681
Status: Unutilized
Comment: 1,888 sq ft.; most recent use—telephone exchange bldg.; needs substantial rehabilitation; 1 floor.

Bldg. 4484
Fort Benning
Fort Benning Co: Muscogee, GA
Landholding Agency: Army
Property Number: 219011682
Status: Unutilized
Comment: 1098 sq. ft.; most recent use—storehouse; needs substantial rehabilitation; 1 floor.

Bldg. 4319
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011683
Status: Unutilized
Comment: 2584 sq. ft.; most recent use—vehicle maintenance shop; needs substantial rehabilitation; 1 floor.

Bldg. 4481, 4479
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011685–219011686
Status: Unutilized
Comment: 1507 sq. ft. each; most recent use—administrative (day room); needs substantial rehabilitation; 1 floor.

Bldg. 2414
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011692
Status: Unutilized
Comment: 1472 sq. ft.; most recent use—administrative; needs substantial rehabilitation; 1 floor.

Bldg. 3400
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011694
Status: Unutilized
Comment: 2570 sq. ft.; most recent use—fire station; needs substantial rehabilitation; 1 floor.

Bldg. 2285
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011704
Status: Unutilized
Comment. 4574 sq. ft.; most recent use—clinic; needs substantial rehabilitation; 1 floor

Bldg. 4092
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011709
Status: Unutilized
Comment: 336 sq. ft.; most recent use—inflamable materials storage; needs substantial rehabilitation; 1 floor

Bldg. 4089
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219011710
Status: Unutilized
Comment: 176 sq. ft.; most recent use—gas station; needs substantial rehabilitation; 1 floor

Bldg. 5266
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219012364
Status: Unutilized
Comment: 1400 sq. ft.; one story; most recent use—day room; in poor condition; needs major rehab.

Bldg. 5267–5275, 5277–5283
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219012365, 219012367–219012370, 219012372–219012375, 219012378–219012379, 219012381–219012383, 219012385–219012386
Status: Unutilized
Comment: 2124 sq. ft.; 2 story; most recent use—barracks; poor condition; needs major repair.

Bldg. 4936
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219012388
Status: Unutilized
Comment: 1888 sq. ft.; 2 story; most recent use—barracks; poor condition; needs major rehab.

Bldg. 4937
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219012389
Status: Unutilized
Comment: 2183 sq. ft.; 1 story; most recent use—dining room; poor condition; needs major rehab.

Bldg. 4938
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219012391
Status: Unutilized
Comment: 1320 sq. ft.; one story; most recent use—administrative; poor condition; needs major rehab.

Bldg. 4939
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219012392
Status: Unutilized
Comment: 1800 sq. ft.; one story; most recent use—classrooms; poor condition; needs major rehab.

Bldg. 4951
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219012394
Status: Unutilized
Comment: 2192 sq. ft.; one story; most recent use—storehouse; poor condition; needs major rehab.

Bldg. 4953
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219012395
Status: Unutilized
Comment: 794 sq. ft.; 1 story; most recent use—storehouse; poor condition; needs major rehab.

Bldg. 4954
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219012397
Status: Unutilized
Comment: 1888 sq. ft.; 2 story; most recent use—custody fac.; poor condition; needs major rehab.

Bldg. 4926
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219012398
Status: Unutilized
Comment: 1888 sq. ft.; 2 story; most recent use—classrooms; poor condition; needs major rehab.

Bldg. 4925
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219012400
Status: Unutilized
Comment: 1507 sq. ft.; one story; most recent use—classroom; poor condition; needs major rehab.

Bldg. 4924
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219012401
Status: Unutilized
Comment: 2183 sq. ft.; one story; most recent use—dining room; poor condition; needs major rehab.

Bldg. 4919, 4916, 4929, 4931, 4912, 4933, 4935
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219012403–219012404, 219012406, 219012410, 219012417–219012418, 219012422
Status: Unutilized
Comment: 1888 sq. ft. each; 2 story; most recent use—barroacks; poor condition; needs major rehab.

Bldg. 4917, 4930
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219012405, 219012408
Status: Unutilized
Comment: 810 sq. ft. each; 1 story; most recent use—arms building; poor condition; needs major rehab.

Bldg. 5287
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219012411
Status: Unutilized
Comment: 1216 sq. ft.; 1 story; most recent use—arms building; poor condition; needs major rehab.

Bldg. 4934
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army

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Property Number: 219012419
Status: Unutilized
Comment: 1507 sq. ft.; one story; most recent use—dayroom; needs major rehab.
Bldg. 4032
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219012421
Status: Unutilized
Comment: 794 sq. ft.; 1 story; most recent use—storehouse; needs major rehab.
Bldg. 20701, 20703, 20709, 34402, 35401
Fort Gordon
Augusta Co: Richmond, GA 30905–
Location: Located on Barnes Avenue and 20th street.
Landholding Agency: Army
Property Number: 219014281–219014282, 219014284–219014287
Status: Unutilized
Comment: 4524 sq. ft. each; 2 story wood structure; needs major rehab; off-site use only.
Bldg. 1235, 1236
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219014687–219014688
Status: Unutilized
Comment: 9367 sq. ft.; 1 story building; needs rehab; most recent use—General Storehouse.
Bldg. 1251
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219014689
Status: Unutilized
Comment: 18385 sq. ft.; 1 story building; needs rehab; most recent use—Arms Repair Shop.
Bldg. 2416
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219014904
Status: Unutilized
Comment: 1840 sq. ft.; 1 story building; needs rehab; most recent use—administrative.
Bldg. 2591
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219014906
Status: Unutilized
Comment: 1663 sq. ft.; 1 story building; needs rehab; most recent use—General storehouse.
Bldg. 3005–3010
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219014907–219014912
Status: Unutilized
Comment: 7688 sq. ft. each; 2 story building; needs rehab; most recent use—Barracks.
Bldg. 3060
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219014913
Status: Unutilized
Comment: 1372 sq. ft.; 1 story building; needs rehab; most recent use—General Storehouse.
Bldg. 3081
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219014914
Status: Unutilized
Comment: 2284 sq. ft.; 1 story building; needs rehab; most recent use—Clinic.
Bldg. 4022
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219014915
Status: Unutilized
Comment: 1712 sq. ft.; 1 story building; needs rehab; most recent use—Clinic.
Bldg. 4491
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219014916
Status: Unutilized
Comment: 18240 sq. ft.; 1 story building; needs rehab; most recent use—Vehicle maintenance shop.
Bldg. 4500
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219014917
Status: Unutilized
Comment: 1372 sq. ft.; 1 story building; needs rehab; most recent use—Arms Buildings.
Bldg. 4511
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219014918
Status: Unutilized
Comment: 4720 sq. ft.; 2 story building; needs rehab; most recent use—Barracks.
Bldg. 4633
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219014919
Status: Unutilized
Comment: 5069 sq. ft.; 1 story building; needs rehab; most recent use—Training Building.
Bldg. 4634
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219014920
Status: Unutilized
Comment: 5069 sq. ft.; 1 story building; needs rehab; most recent use—Training Building.
Bldgs. 4646, 4690
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219014921, 219014923
Status: Unutilized
Comment: 1372 sq. ft.; 1 story building; needs rehab; most recent use—General Storehouse.
Bldg. 4649
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219014922
Status: Unutilized
Comment: 2250 sq. ft.; 1 story building; needs rehab; most recent use—Headquarters Building.
Bldg. 4751
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219014924
Status: Unutilized
Comment: 3960 sq. ft.; 1 story building; needs rehab; most recent use—Recreation building.
Bldg. 4752
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219014925
Status: Unutilized
Comment: 2284 sq. ft.; 1 story building; needs rehab; most recent use—Headquarters Building.
Bldg. 95
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219120253
Status: Unutilized
Comment: 1006 sq. ft.; 1 story, most recent use—fire station annex, needs rehab.
Bldg. 1234
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219120254
Status: Unutilized
Comment: 16146 sq. ft.; 2 story, most recent use—officers's club, needs rehab.
Bldg. 1684
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219120255
Status: Unutilized
Comment: 2671 sq. ft.; 1 story, needs rehab; most recent use—administration/general purpose.
Bldgs. 1724, 1827
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Numbers: 219120256, 2190120257
Status: Unutilized
Comment: 943 sq. ft.; 1 story, needs rehab, most recent use—general purpose warehouse.
Bldg. 2150
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219120258
Status: Unutilized
Comment: 3909 sq. ft.; 1 story, needs rehab, most recent use—general inst. bldg.
Bldgs. 2212, 2213
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Numbers: 219120259–219120260
Status: Unutilized
Comment: 4720 sq. ft. each, 2 story, needs rehab; most recent use—drug abuse center
Bldg. 2214
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219120261
Status: Unutilized
Comment: 2253 sq. ft.; 1 story, needs rehab, most recent use—enlisted persons dining room.
Bldg. 2215
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219120262
Status: Unutilized
Comment: 1844 sq. ft.; 1 story, needs rehab, most recent use—day room
Bldg. 2409
Fort Benning

Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219120263
Status: Unutilized
Comment: 9348 sq. ft.; 1 story, needs rehab, most recent use—general purpose warehouse.
Bldg. 2548
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219120264
Status: Unutilized
Comment: 2337 sq. ft.; 1 story, needs rehab, most recent use—clinic w/o beds.
Bldg. 2590
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219120265
Status: Unutilized
Comment: 3132 sq. ft.; 1 story, needs rehab, most recent use—vehicle maintenance shop.
Bldg. 3828
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219120266
Status: Unutilized
Comment: 628 sq. ft.; 1 story, needs rehab, most recent use—general storehouse.
Bldg. 5284
Fort Benning
Fort Benning Co: Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219120267
Status: Unutilized
Comment: 5310 sq. ft.; 2 story, needs rehab, most recent use—trainee barracks.

Indiana

Bldg. 719–1
Indiana Army Ammunition Plant
Charlestown Co: Clark, IN
Landholding Agency: Army
Property Number: 219013578
Status: Underutilized
Comment: 5000 sq. ft.; 1 story brick frame; secured area with alternate access; most recent use—administration.
Bldg. 703–1C
Indiana Army Ammunition Plant
Charlestown Co: Clark, IN
Location: Gate 22 off Highway 22
Landholding Agency: Army
Property Number: 219013761
Status: Underutilized
Comment: 4000 sq. ft.; 2 story brick frame; possible asbestos; most recent use—exercise area.
Bldg. 1011 (Portion of)
Indiana Army Ammunition Plant
End of 3rd Street
Charlestown Co: Clark, IN
Location: East of State Highway 62 at Gate 3
Landholding Agency: Army
Property Number: 219013762
Status: Underutilized
Comment: 4040 sq. ft.; 1 story concrete block frame; possible asbestos; secured area with alternate access; most recent use—office.
Bldg. 1001 (Portion of)
Indiana Army Ammunition Plant
Charlestown Co: Clark, IN
Location: South end of 3rd Street, East of Highway 62 at entrance gate.
Landholding Agency: Army
Property Number: 219013763
Status: Underutilized
Comment: 55630 sq. ft.; 1 story concrete block; possible asbestos; secured area with alternate access; most recent use—cloth bag manufacturing.
Bldg. 720
Indiana Army Ammunition Plant
Charlestown Co: Clark, IN
Landholding Agency: Army
Property Number: 219013765
Status: Underutilized
Comment: 5000 sq. ft.; 2 story brick frame; possible asbestos; secured area with alternate access; most recent use—administrative.

Kansas

Bldg. T–1363
Fort Riley
Fort Riley Co: Geary, KS 66442–
Landholding Agency: Army
Property Number: 219013774
Status: Unutilized
Comment: 3864 sq. ft.; 2 story wood frame; possible asbestos; most recent use—open-bay trainee barracks with gang latrine.
Bldg. T–2080
Fort Riley
Fort Riley Co: Geary, KS 66442–
Landholding Agency: Army
Property Number: 219013775
Status: Unutilized
Comment: 3852 sq. ft.; 2 story wood frame; possible asbestos; most recent use—open-bay trainee barracks with gang latrine.
Bldg. T–2324
Fort Riley
Fort Riley Co: Geary, KS 66442–
Landholding Agency: Army
Property Number: 219013777
Status: Unutilized
Comment: 3422 sq. ft.; 2 story wood frame; possible asbestos; most recent use—open-bay trainee barracks with gang latrines.
Bldg. T–629
Fort Leavenworth—NCO Club Building
Combined Arms Command
Leavenworth Co: Leavenworth, KS 66027–
Landholding Agency: Army
Property Number: 219110146
Status: Unutilized
Comment: 17549 gross sq. ft.; 2 story wood frame; needs rehab; termite infested; possible asbestos; off-site use only.

Kentucky

Bldg. 104
Fort Campbell
Fort Campbell Co: Christian, KY 42223–
Landholding Agency: Army
Property Number: 219010937
Status: Underutilized
Comment: 15066 sq. ft.; two story; possible asbestos; most recent use—barracks.
Bldgs. 126, 141, 147, 149, 161, 165, 167, 169, 143
Fort Campbell
Fort Campbell Co: Christian, KY 42223–
Landholding Agency: Army
Property Numbers: 219010938, 219010940–219010946, 219013139
Status: Underutilized
Comment: 12576 sq. ft. each; two story; possible asbestos; most recent use—storage.
Bldg. 122
Fort Campbell
Fort Campbell Co: Christian, KY 42223–
Landholding Agency: Army
Property Number: 219010939
Status: Underutilized
Comment: 1488 sq. ft.; two story; possible asbestos; most recent use—storage and administration.
Bldg. 2244
Fort Campbell
Fort Campbell Co: Christian, KY 42223–
Landholding Agency: Army
Property Number: 219010948
Status: Underutilized
Comment: 4248 sq. ft.; possible asbestos; two story; most recent use—storage.
Bldg. 3110
Fort Campbell
Fort Campbell Co: Christian, KY 42223–
Landholding Agency: Army
Property Number: 219010950
Status: Unutilized
Comment: 1000 sq. ft.; one story; possible asbestos; most recent use—administration.
Bldgs. 5954, 5956, 5958, 5980
Fort Campbell
Fort Campbell Co: Christian, KY 42223–
Landholding Agency: Army
Property Number: 219010953, 219010956, 219010958, 219010961
Status: Unutilized
Comment: 2179 sq. ft. each; one story; possible asbestos; most recent use—Military Vehicle Maintenance Shop, Organizational.
Bldg. 6605
Fort Campbell
Fort Campbell Co: Christian, KY 42223–
Landholding Agency: Army
Property Number: 219010966
Status: Underutilized
Comment: 1988 sq. ft.; one story; most recent use—storage.
Bldg. 143
Ft. Campbell
Ft. Campbell Co: Christian, KY 42223–
Landholding Number: Army
Property Number: 219013139
Status: Unutilized
Comment: 12576 sq. ft.; 2 story; possible asbestos; most recent use—child care and administration.
Bldg. 3148
Ft. Campbell
Ft. Campbell Co: Christian, KY 42223–
Landholding Agency: Army
Property Number: 219013223
Status: Underutilized
Comment: 2200 sq. ft.; 1 story; possible asbestos; selected periods used for military/training exercises.

Louisiana

Bldg. 417
8th Street
Fort Polk Co: Vernon, LA 71459–5000
Landholding Agency: Army
Property Number: 219012682
Status: Unutilized

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Comment: 7670 sq. ft.; 2 story temporary wood frame; possible asbestos; most recent use—BOQ.
Bldg. 7124
Reserve Road
Fort Polk Co: Vernon, LA 71459–5000
Landholding Agency: Army
Property Number: 219012688
Status: Unutilized
Comment: 2500 sq. ft.; 1 story temporary wood frame; most recent use—recreation room.
Bldgs. 7129–7132, 7134–7135, 7161–7163, 7166–7168
Fort Polk Co: Vernon, LA 71459–5000
Landholding Agency: Army
Property Numbers: 219012689–219012692, 219012694–219012695, 219012699–219012704
Status: Unutilized
Comment: 4957 sq. ft.; 2 story temporary wood frame; possible asbestos; most recent use—barracks.
Bldg. 7143
"D" Avenue
Fort Polk Co: Vernon, LA 71459–5000
Landholding Agency: Army
Property Number: 219012696
Status: Unutilized
Comment: 2250 sq. ft.; 1 story temporary wood frame; possible asbestos; most recent use—dining facility.
Bldg. T–7157
Guard Road
Fort Polk Co: Vernon, LA 71459–5000
Landholding Agency: Army
Property Number: 219012698
Status: Unutilized
Comment: 4357 sq. ft.; 2 story; possible asbestos; most recent use—barracks.
Bldg. 7163
"D" Avenue
Fort Polk Co: Vernon, LA 71459–5000
Landholding Agency: Army
Property Number: 219012705
Status: Unutilized
Comment: 2630 sq. ft.; 1 story temporary wood frame; possible asbestos; most recent use—dining facility.
Bldg. 7184
"D" Avenue
Fort Polk Co: Vernon, LA 71459–5000
Landholding Agency: Army
Property Number: 219012706
Status: Unutilized
Comment: 2630 sq. ft.; 1 story temporary wood frame; possible asbestos; most recent use—dining facility.
Bldg. 7187
"D" Avenue
Fort Polk Co: Vernon, LA 71459–5000
Landholding Agency: Army
Property Number: 219012707
Status: Unutilized
Comment: 2250 sq. ft.; 1 story temporary wood frame; possible asbestos; most recent use—dining facility.
Bldg. 7304
Armored Road
Fort Polk Co: Vernon, LA 71459–5000
Landholding Agency: Army
Property Number: 219012712
Status: Unutilized
Comment: 6103 sq. ft.; 2 story temporary wood frame; most recent use—storage.
Bldg. 7430
1st Street
Fort Polk Co: Vernon, LA 71459–5000
Landholding Agency: Army
Property Number: 219012715
Status: Unutilized
Comment: 4967 sq. ft.; 2 story temporary frame; most recent use—storage.
Bldg. 8026
10th Street
Fort Polk Co: Vernon, LA 71459–5000
Landholding Agency: Army
Property Number: 219012724
Status: Underutilized
Comment: 2580 sq. ft.; 1 story temporary wood frame; most recent use—storage.
Bldg. 8228
12th Street
Fort Polk Co: Vernon, LA 71459–5000
Landholding Agency: Army
Property Number: 219012729
Status: Unutilized
Comment: 2050 sq. ft.; 1 story temporary wood frame; possible asbestos; most recent use—dining facility.
Bldg. 7175
Fort Polk
3rd Street
Fort Polk Co: Vernon, LA 71459–
Landholding Agency: Army
Property Number: 219013770
Status: Excess
Comment: 7527 sq. ft.; temporary wood structure; scheduled for demolition; seriously deteriorated.

Maryland

Bldg. 2030
Aberdeen Proving Ground
Aberdeen City Co: Harford, MD 21005–5001
Landholding Agency: Army
Property Number: 219011418
Status: Unutilized
Comment: 3302 sq ft., one story, possible asbestos.
Bldg. 2174
Aberdeen Proving Ground
Aberdeen City Co: Harford, MD 21005–5001
Landholding Agency: Army
Property Number: 219011419
Status: Unutilized
Comment: 3540 sq ft.; poor condition; utilities disconnected; one story; possible asbestos.
Bldg. 3243
Aberdeen Proving Ground
Aberdeen City Co: Harford, MD 21005–5001
Landholding Agency: Army
Property Number: 219011420
Status: Unutilized
Comment: 11800 sq ft.; possible asbestos, two story, potential utilities.
Bldg. 3244
Aberdeen Proving Ground
Aberdeen City Co: Harford, MD 21005–5001
Landholding Agency: Army
Property Number: 219011421
Status: Unutilized
Comment: 3302 sq ft., one story, possible asbestos, potential utilities.
Bldgs. 3621–3624, 3626–3629, 3634–3637, 3639–3642
Aberdeen Proving Ground
Aberdeen City Co: Harford, MD 21005–5001
Landholding Agency: Army
Property Numbers: 219011422–219011425, 219011427–219011430, 219011435–219011437, 219011439–219011442
Status: Unutilized
Comment: 4720 sq ft. each, two story, possible asbestos, poor condition, utilities disconnected.
Bldg. 3625
Aberdeen Proving Ground
Aberdeen City Co: Harford, MD 21005–5001
Landholding Agency: Army
Property Number: 219011426
Status: Unutilized
Comment: 2031 sq ft., one story, utilities disconnected, poor condition, possible asbestos.
Bldg. 3630
Aberdeen Proving Ground
Aberdeen City Co: Harford, MD 21005–5001
Landholding Agency: Army
Property Number: 219011431
Status: Unutilized
Comment: 1750 sq ft., one story, possible asbestos, poor condition, utilities disconnected.
Bldgs. 3631, 3632
Aberdeen Proving Ground
Aberdeen City Co: Harford, MD 21005–5001
Landholding Agency: Army
Property Numbers: 219011432, 219011433
Status: Unutilized
Comment: 1513 sq ft. each, one story, possible asbestos, poor condition, utilities disconnected.
Bldg. 3633
Aberdeen Proving Ground
Aberdeen City Co: Harford, MD 21005–5001
Landholding Agency: Army
Property Number: 219011434
Status: Unutilized
Comment: 1754 sq ft., one story, utilities disconnected, possible asbestos, poor condition.
Bldg. 3638
Aberdeen Proving Ground
Aberdeen City Co: Harford, MD 21005–5001
Landholding Agency: Army
Property Number: 219011438
Status: Unutilized
Comment: 18880 sq ft., one story, utilities disconnected, possible asbestos, poor condition.
Bldg. 3643
Aberdeen Proving Ground
Aberdeen City Co: Harford, MD 21005–5001
Landholding Agency: Army
Property Number: 219011443
Status: Unutilized
Comment: 1750 sq ft., one story, utilities disconnected, possible asbestos, poor condition.
Bldg. 3644
Aberdeen Proving Ground
Aberdeen City Co: Harford, MD 21005–5001
Landholding Agency: Army
Property Number: 219011444
Status: Unutilized
Comment: 1541 sq ft., one story, utilities disconnected, possible asbestos, poor condition.
Bldg. 3645
Aberdeen Proving Ground
Aberdeen City Co: Harford, MD 21005–5001
Landholding Agency: Army

Property Number: 219011445
Status: Unutilized
Comment: 1541 sq ft., one story, utilities disconnected, possible asbestos, poor condition.
Bldg. 3646
Aberdeen Proving Ground
Aberdeen City Co: Harford, MD 21005–5001
Landholding Agency: Army
Property Number: 219011446
Status: Unutilized
Comment: 1750 sq ft., one story, utilities disconnected, possible asbestos, poor condition.
Bldg. E4736
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford, MD 21010–5425
Landholding Agency: Army
Property Number: 219012621
Status: Unutilized
Comment: possible contamination—under study; potential utilities.
Bldg. 4723
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford, MD 21010–5425
Landholding Agency: Army
Property Number: 219012643
Status: Unutilized
Comment: 3250 sq. ft., potential utilities; poor condition; possible asbestos.
Bldg. 5104
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford, MD 21010–5425
Landholding Agency: Army
Property Number: 219012644
Status: Unutilized
Comment: 624 sq. ft.; trailer; potential utilities; poor condition.
Bldgs. E5878, E5879
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford, MD 21010–5425
Landholding Agency: Army
Property Numbers: 219012652, 219012653
Status: Unutilized
Comment: 213 sq. ft. each; structural deficiencies; possible abestos; and contamination.
Bldg. E5974
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford, MD 21010–5425
Landholding Agency: Army
Property Number: 219012654
Status: Unutilized
Comment: 272 sq. ft.; possible asbestos and contamination; most recent use—headquarters building.
Bldg. 10302
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford, MD 21010–5425
Landholding Agency: Army
Property Number: 219012666
Status: Unutilized
Comment: 42 sq. ft.; possible asbestos; most recent use—pumping station.
Bldg. E5978
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford, MD 21010–5425
Landholding Agency: Army
Property Number: 219012667
Status: Unutilized
Comment: 256 sq. ft.; story; structural deficiencies; possible asbestos and contamination; most recent use—general storehouse.
Bldg. E5975
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford, MD 21010–5425
Landholding Agency: Army
Property Number: 219012667
Status: Unutilized
Comment: 650 sq. ft.; possible contamination; structural deficiencies most recent use—training exercises/chemicals and explosives; potential use—storage.
Bldg. 6928
Taylor Avenue
Fort Meade Co: Anne Arundel, MD 21061–
Landholding Agency: Army
Property Number: 219013605
Status: Unutilized
Comment: 1275 sq. ft.; 1 story frame with basement (216 sq. ft.); possible asbestos; termite damage.
Bldgs. 832, 2815
Fort Meade
Fort Meade Co: Anne Arundel, MD 21061–
Landholding Agency: Army
Property Number: 219013608, 219014855
Status: Unutilized
Comment: 2208 sq. ft.; 1 story wood frame; possible asbestos; needs major rehab.
Bldg. 841
Fort Meade
15th Street
Fort Meade Co: Anne Arundel, MD 21061–
Landholding Agency: Army
Property Number: 219013610
Status: Unutilized
Comment: 3537 sq. ft.; 1 story with balcony; possible asbestos; no furnace; needs major rehab.
Bldg. 2173
Aberdeen Proving Ground
Aberdeen City CO.: Harford, MD 21005–5001
Landholding Agency: Army
Property Number: 219013772
Status: Unutilized
Comment: 3540 sq. ft.; 1 story temporary frame; possible asbestos; most recent use—barracks.
Bldg. 197
Fort George G. Meade
1st and Chisholm Streets
Fort Meade Co: Anne Arundel, MD 20755–
Landholding Agency: Army
Property Number: 219014848
Status: Unutilized
Comment: 7670 sq. ft.; 2 story wood frame; needs rehab; secured area with alternate access; possible asbestos.
Bldg. 4461
Fort George G. Meade
Lewllyn Avenue
Fort Meade Co: Anne Arundel, MD 20755–
Landholding Agency: Army
Property Number: 219014850
Status: Unutilized
Comment: 18,594 sq. ft.; 2 story concrete block; needs rehab; secured area with alternate access; possible asbestos; most recent use—branch exchange.
Bldg. 6599
Fort George G. Meade
Zimborski Road
Fort Meade Co: Anne Arundel, MD 20755–
Landholding Agency: Army
Property Number: 219014852
Status: Unutilized
Comment: 4173 sq. ft.; 1 story wood frame; needs rhab; secured aren with alternate access.
Bldgs. 378, 373
Fort George G. Meade
Fort Meade Co: Anne Arundel, MD 21755–
Landholding Agency: Army
Property Numbers: 219014853, 219014854
Status: Underutilized
Comment: 1144 sq. ft.; 1 story wood frame; secured area with alternate access; possible asbestos: most recent use—storage.
Bldg. 6212
Fort George G. Meade
Rock Avenue
Fort Meade Co: Anne Arundel, MD 20755–
Landholding Agency: Army
Property Number: 219014859
Status: Unutilized
Comment: 2220 sq. ft.; 1 story wood frame; needs rehab; secured area with alternate access; most recent use—storage.
Bldg. 2816
Fort George G. Meade
Chisholm Street
Fort Meade Co: Anne Arundel, MD 20755–
Landholding Agency: Army
Property Number: 219014860
Status: Unutilized
Comment: 1676 sq. ft.; 1 story wood frame; secured area with alternate access; possible asbestos; most recent use—storage.
Bldg. 2817
Fort George G. Meade
Chisholm Street
Fort Meade Co: Anne Arundel, MD 20755–
Landholding Agency: Army
Property Number: 219014861
Status: Underutilized
Comment: 3663 sq. ft.; 1 story wood frame; possible asbestos; secured area with alternate access; most recent use—storage.
Bldgs. 2229, 543, 357, 2413
Fort George G. Meade
Fort Meade Co: Anne Arundel, MD 20755–
Landholding Agency: Army
Property Numbers: 219014863, 219014866, 219014871, 219014875
Status: Unutilized
Comment: 4720 sq. ft. each; 2 story wood frame; needs rehab; secured area with alternate access; possible asbestos.
Bldg. 649
Fort George G. Meade
Chamberlain Street
Fort Meade Co: Anne Arundel, MD 20755–
Landholding Agency: Army
Property Number: 219014864
Status: Underutilized
Comment: 2594 sq. ft.; 1 story wood frame; possible asbestos; secured area with alternate access; needs rehab; most recent use—storage.
Bldg. 269
Fort George G. Meade

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Chisholm Street
Fort Meade Co: Anne Arundel, MD 20755–
Landholding Agency: Army
Property Number: 219014873
Status: Underutilized
Comment: 3537 sq. ft.; 1 story wood frame; possible asbestos; needs rehab; secured area with alternate access; most recent use—storage.

Bldg. 2419
Fort George G. Meade
Behind Bldg 2427—Earnie Pyle Street
Fort Meade Co: Anne Arundel, MD 20755–
Landholding Agency: Army
Property Number: 219014878
Status: Underutilized
Comment: 2441 sq. ft.; 1 story wood frame; needs rehab; possible asbestos; secured area with alternate access; most recent use—arms room.

Bldg. 2426
Fort George G. Meade
Earnie Pyle Street
Fort Meade Co: Anne Arundel, MD 20755–
Landholding Agency: Army
Property Number: 219014880
Status: Unutilized
Comment: 7670 sq. ft.; 1 story wood frame; needs rehab; secured area with alternate access; possible asbestos.

Bldg. 2427
Fort George G. Meade
Earnie Pyle Street
Fort Meade Co: Anne Arundel, MD 20755–
Landholding Agency: Army
Property Number: 219014881
Status: Unutilized
Comment: 8150 sq. ft.; 2 story wood frame; needs rehab; secured area with alternate access; possible asbestos.

Bldg. 2847
Fort George G. Meade
Earnie Pyle Street
Fort Meade Co: Anne Arundel, MD 20755–
Landholding Agency: Army
Property Number: 219014883
Status: Unutilized
Comment: 3663 sq. ft.; 1 story wood frame; possible asbestos; secured area with alternate access; most recent use—gym.

Bldg. 6599
Fort George G. Meade
6599 Zimborski Road
Fort Meade Co: Anne Arundel, MD 20755–5115
Landholding Agency: Army
Property Number: 219030002
Status: Unutilized
Comment: 4173 sq. ft.; 1 story wood frame; possible asbestos; needs major rehab; most recent use—PX exchange facility.

Bldg. 3187
Fort George G. Meade
3187 MacArthur Road
Fort Meade Co: Anne Arundel, MD 20755–5115
Landholding Agency: Army
Property Number: 219030003
Status: Unutilized
Comment: 1914 sq. ft.; 1 story wood frame; possible asbestos; needs major rehab; most recent use—storage.

Bldg. 533
Fort George G. Meade
Fort Meade Co: Anne Arundel, MD 20755–5115
Landholding Agency: Army
Property Number: 219040001
Status: Unutilized
Comment: 6525 sq. ft.; one story; wood frame; possible asbestos; needs major rehab; secured area w/alternate access.

Bldg. 523
Fort George G. Meade
Fort Meade Co: Anne Arundel, MD 20755–5115
Landholding Agency: Army
Property Number: 219040002
Status: Unutilized
Comment: 4307 sq. ft.; one story; wood frame; possible asbestos; needs major rehab; secured area w/alternate access.

Massachusetts

Bldgs. T–2732, T–2281
Fort Devens
Fort Devens Co: Middlesex/Worce, MA 01433–
Landholding Agency: Army
Property Numbers: 219012343–219012344
Status: Unutilized
Comment: 6351 sq. ft. each, wood two stories, most recent use-housing.

Bldgs. T–201
Fort Devens
Fort Devens Co: Middlesex/worce, MA 01433–
Landholding Agency: Army
Property Number: 219012303
Status: Unutilized
Comment: 1000 sq. ft., wood structure-needs rehab, no sanitary facilities, most recent use-company admin/supply.

Minnesota

Le Sueur USAR Center
620 Turill Street
Le Sueur Co: Le Sueur, MN 56058–
Landholding Agency: Army
Property Number: 219013556
Status: Underutilized
Comment: 4316/1325 sq. ft.; 1 story; most recent use—storage

Nevada

Bldgs. 00425–00440
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne Co: Mineral, NV 89415–
Landholding Agency: Army
Property Numbers: 219011946–219011952, 219011954, 219011956, 219011959, 219011961, 219011964, 219011966, 219011970, 219011974, 219011976–219011978, 219011980, 219011982, 219011984, 219011987, 219011990, 219011994, 219011996
Status: Unutilized
Comment: 1310–1640 sq. ft. each, one floor residential, semi/wood construction, good condition.

New York

Bldg. 503
Fort Totten
Ordance Road
Bayside Co: Queeps, NY 11357–
Landholding Agency: Army
Property Number: 219012564
Status: Unutilized
Comment: 510 sq. ft., 1 floor, most recent use-storage, needs major rehab/no utilities.

Bldg. 323
Fort Totten
Story Avenue
Bayside Co: Queens, NY 11359–
Landholding Agency: Army
Property Number: 219012567
Status: Unutilized
Comment: 30000 sq ft., 3 floors, most recent use-barracks & mess facility, needs major rehab.

Bldg. 304
Fort Totten
Shore Road
Bayside Co: Queens, NY 11359–
Landholding Agency: Army
Property Number: 219012570
Status: Unutilized
Comment: 9610 sq. ft., 3 floors, most recent use-hospital, needs major rehab/utilities disconnected.

Bldg. 211
Fort Totten
211 Totten Avenue
Bayside Co: Queens, NY 11359–
Landholding Agency: Army
Property Number: 219012573
Status: Unutilized
Comment: 6329 sq. ft., 3 floors, most recent use-family housing, needs major rehab, utilities disconnected.

Bldg. 322
Fort Totten
Theater Road
Bayside Co: Queens, NY 11359–
Landholding Agency: Army
Property Number: 219012576
Status: Unutilized
Comment: 6288 sq ft., 1 floor, most recent use-theater w/stage, needs major rehab, utilities disconnected.

Bldg. 504
Fort Totten
Ordnance Road
Bayside Co: Queens, NY 11359–
Landholding Agency: Army
Property Number: 219012580
Status: Unutilized
Comment: 480 sq ft., 1 floor, most recent use-storage, no utilities, needs major rehab.

Bldg. 322
Fort Totten
322 Story Avenue
Bayside Co: Queens, NY 11359–
Landholding Agency: Army
Property Number: 219012583
Status: Unutilized
Comment: 30000 sq ft., 3 floors, most recent use-barracks, mess & administration, utilities disconnected, needs rehab.

Bldg. 326
Fort Totten
326 Pratt Avenue
Bayside Co: Queens, NY 11359–
Landholding Agency: Army
Property Number: 219012586
Status: Unutilized
Comment: 6000 sq ft., 2 floors, most recent use-storage, offices & residential, utilities disconnected/needs rehab.

Bldg. 627
U.S. Military Academy—West Point
Pitcher Road, North Dock
Highland Co: Orange, NY 10996–1502
Landholding Agency: Army

Property Number: 219030185
Status: Unutilized
Comment: 23185 sq. ft.; 1 story wood frame; needs rehab; presence of asbestos; most recent use-storage warehouse.

Oklahoma

Bldg. T–931
Fort Sill
931 Fort Sill Blvd.
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011239
Status: Unutilized
Comment: 5174 sq. ft.; structurally unsound; wood frame; 1 floor asbestos; WWII Bldg.

Bldg. T–2530
Fort Sill
2530 Sheridan Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011246
Status: Unutilized
Comment: 3988 sq. ft.; structually unsound; absestos; wood frame; 2 floors, WWII Bldg.

Bldgs. T–2531, T–2532
Fort Sill
2531 Sheridan Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Numbers: 219011248, 219011250
Status: Unutilized
Comment: 1990 sq. ft. each; structurally unsound; asbestos; wood frame, 2 floors, WWII Bldg.

Bldg. T–2533
Fort Sill
2533 Sheridan Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011252
Status: Unutilized
Comment: 1978 sq. ft.; structurally unsound; asbestos; wood frame; 2 floors, WWII Bldg.

Bldgs. T–2544, T–2545 thru T–2548
Fort Sill
2544 Sheridan Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Numbers: 219011253, 219011255, 219011257–219011258, 219011260
Status: Unutilized
Comment: 1994 sq. ft. each; asbestos; wood frame; 2 floors, No operating sanitary facilities; most recent use-barracks.

Bldg. T–2564
Fort Sill
2564 Currie Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011264
Status: Unutilized
Comment: 1165 sq. ft.; asbestos; wood frame; 1 floor; most recent use-administrative/supply.

Bldg. T–2565
Fort Sill
2565 Currie Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011266
Status: Unutilized
Comment: 1196 sq. ft.; asbestos; wood frame; 1 floor, most recent use-administrative/supply

Bldg. T–2566
Fort Sill
2566 Currie Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011267
Status: Unutilized
Comment: 1179 sq. ft.; asbestos; wood frame; 1 floor; most recent use—administrative/supply.

Bldg. T–2601
Fort Sill
2601 Ringold Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011272
Status: Unutilized
Comment: 1600 sq. ft.; 2 story wood frame; possible asbestos; possible structure deficiencies.

Bldg. T–2606
Fort Sill
2606 Currie Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011273
Status: Unutilized
Comment: 2722 sq. ft.; possible asbestos, one floor wood frame; most recent use—Headquarters Bldg.

Bldg. T–2613
Fort Sill
2613 Ringold Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011276
Status: Unutilized
Comment: 4800 sq. ft.; possible asbestos, wood frame, 2 floors; most recent use—barracks.

Bldgs. T–2614, T–2615
Fort Sill
2614 Ringold Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Numbers: 219011278, 219011279
Status: Unutilized
Comment: 3778 sq. ft. each; possible asbestos; wood frame; two floors; most recent use—barracks.

Bldgs. T–2620, thru T–2622, T–2626 thru T–2627
Fort Sill
2620 Ringold Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Numbers: 219011281, 219011283, 219011285, 219011291–219011292
Status: Unutilized
Comment: 2370 sq. ft. each; 2 story wood frame; possible asbestos; possible structure deficiencies.

Bldgs. T–2623
Fort Sill
2623 Ringold Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011287
Status: Unutilized
Comment: 2400 sq. ft.; 2 story wood frame; asbestos; possible structure deficiencies.

Bldgs. T–2624
Fort Sill
2624 Miner Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011288
Status: Unutilized
Comment: 3738 sq. ft.; possible asbestos, wood frame; 2 floors; most recent use—day room.

Bldgs. T–2625, T–2628
Fort Sill
2625 Ringold Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Numbers: 219011289, 219011294
Status: Unutilized
Comment: 3664 sq. ft. each; wood frame; 2 floors; possible asbestos; most recent use—barracks.

Bldgs. T–2629 thru T–2631
Fort Sill
2629 Ringold Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Numbers: 219011296, 219011298, 219011299
Status: Unutilized
Comment: 3664 sq. ft. each; wood frame; 2 floors; possible asbestos, most recent use—barracks.

Bldg. T–2650
Fort Sill
250 Ringold Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011301
Status: Unutilized
Comment: 4021 sq. ft.; 2 story; possible asbestos; possible structure deficiencies.

Bldgs. T–2781
Fort Sill 2781
Ringold Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011312
Status: Unutilized
Comment: 2229 sq. ft.; structurally unsound; wood frame, 2 floors; asbestos.

Bldg. T–2931
Fort Sill
2931 Currie Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011313
Status: Unutilized
Comment: 435 sq. ft.; structurally unsound; asbestos; wood frame; 1 floor.

Bldgs. T–3507
Fort Sill
3507 Sheridan Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011315
Status: Unutilized
Comment: 2904 sq. ft.; possible asbestos; potential heavy metal contamination; wood frame; most recent use—chapel.

Bldgs. T–3508
Fort Sill
3508 Sheridan Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011316
Status: Unutilized
Comment: 1984 sq. ft.; structurally unsound; asbestos; wood frame; 1 floor, WWII Bldg.

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Bldg. T–3514
Fort Sill
3514 Sheridan Road
Lawson Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011322
Status: Unutilized
Comment: 1917 sq. ft.; possible asbestos; wood frame; most recent use—administrative.

Bldg. T–3516
Fort Sill
3516 Pakard Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011324
Status: Unutilized
Comment: 1495 sq. ft.; possible asbestos; wood frame; most revent use—administrative.

Bldg. T–3518
Fort Sill
3518 Sheridan Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011325
Status:
Unutilized Comment: 2345 sq. ft.; possible asbestos; wood frame; most recent use—Headquarters Bldg.

Bldg. T–3524
Fort Sill
3524 Walker St.
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011327
Status: Unutilized
Comment: 1603 sq. ft.; structurally unsound; asbestos; wood frame 1 floor; WWII Bldg.

Bldg. T–3527
Fort Sill
3527 Sheridan Road
Lawton Co: Comanchok, Ok 73503–5100
Landholding Agency: Army
Property Number: 219011328
Status: Unutilized
Comment: 2370 sq. ft.; structurally unsound; asbestos; wood frame; 2 floors; WWII Blg.

Bldg. T–3529
Fort Sill
3529 Sheridan Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011330
Status: Unutilized
Comment: 2370 sq. ft.; structurally unsound; asbestos; wood frame; 2 floors.

Bldg. T–3534
Fort Sill
3534 Tacy Street
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011331
Status: Unutilized
Comment: 2467 sq. ft.; structurally unsound; asbestos; wood frame; 1 floor; WWII Bldg.

Bldg. T–3562
Fort Sill
3562 Packard Street
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011334
Status: Unutilized
Comment: 1027 sq. ft.; possible asbestos; wood frame; most recent use—storage.

Bldg. T–3636
Fort Sill
3636 Scott Street
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011336
Status: Unutilized
Comment: 1618 sq. ft.; 2 story wood frame; possible asbestos; possible structured deficiencies.

Bldg. T–3760
Fort Sill
3760 Tacy Street
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011337
Status: Unutilized
Comment: 2787 sq. ft.; structurally unsound; possible asbestos; one story wood frame.

Bldg. T–3767
Fort Sill
3767 Hartell Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011339
Status: Unutilized
Comment: 2469 sq. ft.; structurally unsound; possible asbestos; one story wood frame.

Bldgs. T–3779, T–3780
Fort Sill
3779 Currie Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Numbers: 219011343, 219011344
Status: Unutilized
Comment: 4720 sq. ft. each; possible asbestos, wood frame, 2 floors, most recent use—barracks.

Bldg. T–3781
Fort Sill
3781 Hartell Blvd.
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011345
Status: Unutilized
Comment: 2781 sq. ft.; structurally unsound, possible asbestos; one story wood frame.

Bldg. 3788
Fort Sill
3788 Tacy Street
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011346
Status: Unutilized
Comment: 2758 sq. ft.; structurally unsound, possible asbestos, one story wood frame.

Bldg. T–4520
Fort Sill
4520 Bragg Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011347
Status: Unutilized
Comment: 1249 sq. ft.; 1 story wood frame, possible asbestos, possible structural deficiencies.

Bldg. T–4363
Fort Sill
4363 McKee Street
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011348
Status: Unutilized
Comment: 1947 sq. ft.; some utilities; possible structural deficiencies; possible asbestos.

Bldg. T–4521
Fort Sill
4521 Wilson Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011352
Status: Unutilized
Comment: 3833 sq. ft.; 1 floor, wood frame, asbestos, most recent use—classroom.

Bldg. T–4375
Fort Sill
4375 Bragg Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011356
Status: Unutilized
Comment: 1102 sq. ft.; structurally unsound; possible asbestos.

Bldg. T–4525
Fort Sill
4524 Wilson Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011363
Status: Unutilized
Comment: 1636 sq. ft.; 1 floor, asbestos, wood frame, most recent use—Exchange Service Outlet.

Bldg. T–4526
Fort Sill
4526 Wilson Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011366
Status: Unutilized
Comment: 3833 sq. ft.; 1 floor, asbestos, wood frame, most recent use—recreation building.

Bldg. T–4387
Fort Sill
4387 Bragg Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011367
Status: Unutilized
Comment: 1968 sq. ft.; no sanitary facilities; structurally unsound; possible asbestos; two story wood frame.

Bldg. P–4489
Fort Sill
4489 Walker Street
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011370
Status: Unutilized
Comment: 1045 sq. ft.; 1 story; concrete block structure, structurally unsound; possible asbestos.

Bldg. T–4498
Fort Sill
4498 Walker Street
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011371
Status: Unutilized
Comment: 1000 sq. ft.; wood frame; one floor; possible asbestos; most recent use—storage.

Bldg. 4528
Fort Sill
4528 Wilson Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011372

Status: Unutilized
Comment: 2741 sq. ft., possible asbestos, possible structural deficiencies, one story wood frame.

Bldg. T–4502
Fort Sill
4502 Wilson Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011376
Status: Unutilized
Comment: 2812 sq. ft.; structurally unsound; possible asbestos; one story wood frame.

Bldg. T–4535
Fort Sill
4535 Hartell Blvd.
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011384
Status: Unutilized
Comment: 2816 sq. ft.; 1 story wood frame, possible asbestos, possible structural deficiencies.

Bldg. T–4510
Fort Sill
4510 Wilson Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011386
Status: Unutilized
Comment: 3006 sq. ft.; asbestos; wood frame; 1 floor; most recent use—medical storage.

Bldg. T–4513
Fort Sill
4513 Wilson Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011389
Status: Unutilized
Comment: 3842 sq. ft.; asbestos; wood frame; 1 floor; most recent use—classroom.

Bldg. T–4548
Fort Sill
4548 Lewis Street
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011398
Status: Unutilized
Comment: 1976 sq. ft.; 1 story wood frame; possible asbestos; structurally unsound.

Bldg. T–4556
Fort Sill
4556 Hartell Blvd.
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011401
Status: Unutilized
Comment: 2308 sq. ft.; possible asbestos; possible structural deficiencies; one story wood frame.

Bldg. T–4558
Fort Sill
4558 Hartell Blvd.
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011403
Status: Unutilized
Comment: 4021 sq. ft.; 2 story wood frame; possible asbestos; possible structural deficiencies.

Bldg. T–4720
Fort Sill
4720 Hartell Blvd.
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011405
Status: Unutilized
Comment: 13225 sq. ft.; visual asbestos; wood frame; 2 floors; most recent use—recreation bldg.

Bldg. T–4550
Fort Sill
4550 Hartell Blvd.
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219013795
Status: Unutilized
Comment: 2750 sq. ft.; 1 story wood frame; possible asbestos; most recent use—headquarters bldg.

Bldg. T–836
Fort Sill
Corner of Macomb Road and Burrell Road
Lawton Co: Comanche, OK 73503–
Landholding Agency: Army
Property Number: 219014328
Status: Unutilized
Comment: 1341 sq. ft.; 1 story wood frame; most recent use—storage; possible asbestos.

Bldg. T–4919
Fort Sill
4919 Post Road
Lawton Co: Comanche, OK 73503–
Landholding Agency: Army
Property Number: 219014842
Status: Unutilized
Comment: 603 sq. ft.; 1 story mobile home trailer; possible asbestos; needs rehab.

Bldg. T–4914
Fort Sill
4914 Post Road
Lawton Co: Comanche, OK 73503–
Landholding Agency: Army
Property Number: 219014843
Status: Unutilized
Comment: 719 sq. ft.; 1 story mobile home trailer; needs rehab; possible asbestos.

Bldg. T–4555
Fort Sill
4555 Hartell Blvd.
Lawton Co: Comanche, OK 73503–
Landholding Agency: Army
Property Number: 219014930
Status: Unutilized
Comment: 3893 sq. ft.; 2 story wood frame; needs rehab; possible asbestos; most recent use—barracks.

Bldg. T–4523
Fort Sill
4523 Wilson Road
Lawton Co: Comanche, OK 73503–
Landholding Agency: Army
Property Number: 219014933
Status: Unutilized
Comment: 1839 sq. ft.; 1 story wood frame; needs rehab; possible asbestos; most recent use—storage.

Bldg. T–4541
Fort Sill
4541 Hartell Blvd.
Lawton Co: Comanche, OK 73503–
Landholding Agency: Army
Property Number: 219014935
Status: Unutilized
Comment: 2340 sq. ft.; 1 story wood frame; needs rehab; possible asbestos; most recent use—administration.

Bldg. T–4552
Fort Sill
4552 Hartell Blvd.
Lawton Co: Comanche, OK 73503–
Landholding Agency: Army
Property Number: 219014936
Status: Unutilized
Comment: 4071 sq. ft.; 2 story wood frame; needs rehab; possible asbestos; most recent use barracks.

Bldg. S–701
Fort Sill
701 Randolph Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219030183
Status: Unutilized
Comment: 19903 sq. ft.; steel/wood frame; 1 story; needs rehab; possible asbestos; most recent use—general instruction building.

South Carolina

Bldg. 5405
Jackson Blvd.
Fort Jackson Co: Richland, SC 29207–
Landholding Agency: Army
Property Number: 219012563
Status: Unutilized
Comment: 4764 sq. ft.; 1 floor; wood frame; needs rehab; to be vacated mid 1990.

Bldg. T–1565
Anderson Street
Fort Jackson Co: Richland, SC 29207–
Landholding Agency: Army
Property Number: 219012668
Status: Unutilized
Comment: 1565 sq. ft.; corregated metal building; most recent use—fueling point; potential use—storage.

Tennessee

Milan Army Ammunition Plant
Area Q—Housing Area Q–27, Q–7, Q–12
Milan Co: Carroll, TN 38358–
Landholding Agency: Army
Property Numbers: 219010559, 219010605, 219010609
Status: Unutilized
Comment: two story; wood frame; temporarily empty due to personnel rotation.

Robert Joel Ridings
US Army Reserve Center
920 Cherokee Avenue
Nashville Co: Davidson, TN 37207–
Landholding Agency: Army
Property Number: 219012667
Status: Excess
Comment: 40,000 sq. ft.; 3.67 acres; concrete block; utilities disconnected; site vandallized.

Area Q—Housing Area—Q20, Q–21, Q–26
Milan Army Ammunition Plant
Milan Co: Carroll, TN 38358–
Landholding Agency: Army
Property Numbers: 219014790, 219110032–219110033
Status: Underutilized
Comment: 2506 sq. ft. each; 2 story wood frame residence.

Area Q—Housing Area—Q28, Q–9, Q–4, Q–15, Q–19
Milan Army Ammunition Plant
Milan Co: Carroll, TN 38358–
Landholding Agency: Army

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Property Numbers: 219110034, 219110102, 219120272, 219120273, 219120274
Status: Underutilized
Comment: 2024 sq. ft. each; 2 story wood frame residence.

Texas

Bldg. T-227
Fort Sam Houston
San Antonio Co: Bexar, TX 78234-
Landholding Agency: Army
Property Number: 219014275
Status: Excess
Comment: 2987 sq. ft.; 1 story wood structure; major rehab needed.

Bldgs. 1189, 1192, T-1193
Fort Sam Houston
Sam Antonio Co: Bexar, TX 78234-
Landholding Agency: Army
Property Numbers: 219014276-219014277, 219014280
Status: Excess
Comment: 9190 sq. ft. each; 1 story wood structure; needs major rehabilitation.

Bldgs. T-4001, T-4004
Fort Sam Houston
San Antonio Co: Bexar, TX 78234-
Landholding Agency: Army
Property Numbers: 219014278, 219014279
Status: Underutilized
Comment: 48000 sq. ft. each; 2 story wood frame building with metal siding; needs rehab; possible asbestos.

11255 SGT F. Markle St.
Biggs Army Airfield
Fort Bliss
El Paso Co: EL Paso, TX 79916-
Landholding Agency: Army
Property Number: 219014694
Status: Unutilized
Comment: 1052 sq. ft.; 1 story cinder block frame; off-site use only; most recent use—storage.

Bldg. 2
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant, TX 76070-
Landholding Agency: Army
Property Number: 219014815
Status: Unutilized
Comment: 94606 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 4
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant, TX 76070-
Landholding Agency: Army
Property Number: 219014816
Status: Unutilized
Comment: 1350 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 17
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant, TX 76070-
Landholding Agency: Army
Property Number: 219014817
Status: Unutilized
Comment: 68 sq. ft.; wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—guard house.

Bldg. 29
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant, TX 76070-
Landholding Agency: Army
Property Number: 219014818
Status: Unutilized
Comment: 5028 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 30
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant, TX 76070-
Landholding Agency: Army
Property Number: 219014819
Status: Unutilized
Comment: 5323 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 18
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant, TX 76070-
Landholding Agency: Army
Property Number: 219014820
Status: Unutilized
Comment: 9560 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 6
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant, TX 76070-
Landholding Agency: Army
Property Number: 219014821
Status: Unutilized
Comment: 1258 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 7
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant, TX 76070-
Landholding Agency: Army
Property Number: 219014822
Status: Unutilized
Comment: 508 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 8
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant, TX 76070-
Landholding Agency: Army
Property Number: 219014824
Status: Unutilized
Comment: 171 sq. ft.; 2 story wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—watch tower.

Bldg. 16
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant, TX 76070-
Landholding Agency: Army
Property Number: 219014825
Status: Unutilized
Comment: 17263 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 19
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant, TX 76070-
Landholding Agency: Army
Property Number: 219014826
Status: Unutilized
Comment: 25399 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 31
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant, TX 76070-
Landholding Agency: Army
Property Number: 219014827
Status: Unutilized
Comment: 1392 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement needs rehab.

Bldg. 9
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant, TX 76070-
Landholding Agency: Army
Property Number: 219014828
Status: Unutilized
Comment: 244 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 25
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant, TX 76070-
Landholding Agency: Army
Property Number: 219014829
Status: Unutilized
Comment: 1320 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—fire house.

Bldg. 10
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant, TX 76070-
Landholding Agency: Army
Property Number: 219014830
Status: Unutilized
Comment: 354 sq. ft.; 2 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 26
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant, TX 76070-
Landholding Agency: Army
Property Number: 219014831
Status: Unutilized
Comment: 3518 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 21
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant, TX 76070-
Landholding Agency: Army
Property Number: 219014832
Status: Unutilized
Comment: 65 sq. ft.; wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—guard house.

Bldg. 22
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant, TX 76070-
Landholding Agency: Army
Property Number: 219014833
Status: Unutilized
Comment: 50581 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 27
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant, TX 76070-
Landholding Agency: Army
Property Number: 219014834
Status: Unutilized
Comment: 228 sq. ft.; 2 story wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—control tower.

Bldg. 32
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant, TX 76070-
Landholding Agency: Army
Property Number: 219014835
Status: Unutilized

Comment: 19546 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

T-4013
Fort Sam Houston
San Antonio Co: Bexar, TX 78334-
Landholding Agency: Army
Property Number: 219030001
Status: Unutilized
Comment: 64067 sq. ft.; 1 story wood frame; needs rehab; limited utilities.

Bldg. 856
Fort Bliss
856 Lufberry Road
El Paso Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219030186
Status: Unutilized
Comment: 1770 sq. ft.; 1 story wood frame; no utilities; needs major rehab; off-site use only.

Bldg. 11253
Fort Bliss
11253 Luke and Markle Street
El Paso Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219030193
Status: Unutilized
Comment: 14389.5 net sq. ft.; 1 story wood frame; no utilities; needs major rehab; off-site use only

Bldg. 11109
Fort Bliss
11109 CSM E. Slewitzke Street, Biggs Field
El Paso Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219110035
Status: Unutilized
Comment: 642 sq. ft.; one story wood frame; needs rehab; off-site use only; most recent use—storehouse.

Bldg. 11195
Fort Bliss
11195 Duncan Street, Biggs Army Airfield
El Paso Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219110036
Status: Unutilized
Comment: 4863 sq. ft.; one story wood frame; needs rehab; off-site use only; most recent use—storage.

Bldg. 4203
Fort Bliss
4203 Ellerthrope Avenue
El Paso Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219110037
Status: Unutilized
Comment: 4200 sq. ft.; one story wood frame; off-site use only; most recent use—bowling center.

Bldg. 4769
Fort Bliss
4769 Burgin Street, Logan Heights
El Paso Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219110038
Status: Unutilized
Comment: 873 net sq. ft.; one story wood frame; off-site use only; most recent use—headquarters building.

Bldg. 4617
Fort Bliss
4617 Gatchell Avenue, Logan Heights
El Paso Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219110039
Status: Unutilized
Comment: 858 sq. ft.; one story wood frame; off-site use only; most recent use—storehouse.

Bldg. 4830
Fort Bliss
4830 Hohenthal Avenue, Logan Heights
El Paso Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219110040
Status: Unutilized
Comment: 915 sq. ft.; one story wood frame; off-site use only; most recent use—storehouse.

Bldg. 640
Fort Bliss
640 Merritt Road
El Paso Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219110058
Status: Unutilized
Comment: 150 sq. ft.; one story metal frame; off-site use only; most recent use—general storehouse.

Bldg. 757
Fort Bliss
757 Merritt Road
El Paso Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219110059
Status: Unutilized
Comment: 495 sq. ft.; one story metal frame; off-site use only; most recent use—general storehouse.

Bldg. 758
Fort Bliss
758 Merritt Road
El Paso Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219110060
Status: Unutilized
Comment: 260 sq. ft.; 1 story metal frame; off-site use only; most recent use—general storehouse.

Bldg. 759
Fort Bliss
759 Merritt Road
El Paso Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219110061
Status: Unutilized
Comment: 260 sq. ft.; one story metal frame; off-site use only; most recent use—general storehouse.

Bldg. 5440
Fort Bliss
5440 Forsyth Road
El Paso Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219110065
Status: Unutilized
Comment: 152 sq. ft.; one story metal frame; off-site use only; most recent use—general storehouse.

Bldg. 7034
7034 Sutherland Street, Lower Beaumont Area
Fort Bliss
El Paso Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219110066
Status: Unutilized
Comment: 430 sq. ft.; one story brick/stucco frame; off-site use only; most recent use—storage shed.

Bldg. 456—Fort Bliss
456 Pershing Road
El Paso Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219120115
Status: Unutilized
Comment: 1770 sq. ft., one story, most recent use—Youth center; off-site use only.

Bldgs. 468-469, 478-479
Fort Bliss
El Paso Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219120116-219120119
Status: Unutilized
Comment: 3540 sq. ft. each, two story wood frame; presence of friable asbestos in boiler room; most recent use—barracks; off-site use only.

Bldg. 4202—Fort Bliss, Tex.
4202 Ellerthorpe Avenue
Logan Heights
El Paso Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219120120
Status: Unutilized
Comment: 2100 sq. ft., one story, needs rehab; most recent use—dental clinic; off-site use only.

Bldg. 4306—Fort Bliss, Tex.
4306 Link Road
El Paso Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219120121
Status: Unutilized
Comment: 4106 sq. ft., one story wood frame; needs rehab; most recent use—Skill Development Center; off-site use only.

Bldg. 4348—Fort Bliss, Tex.
4348 Leo Drive
El Paso Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219120122
Status: Unutilized
Comment: 1829 sq. ft., one story wood frame; most recent use—vehicle maintenance shop; off-site use only.

Bldg. 4349—Fort Bliss, Tex.
4349 Leo Drive
El Paso Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219120123
Status: Unutilized
Comment: 1829 sq. ft., one story wood frame; most recent use—vehicle maintenance shop; off-site use only.

Bldg. 4747—Fort Bliss, Tex.
4747 Grinder Avenue
Logan Heights
El Paso Co: El Paso, TX 79916-
Landholding Agency: Army
Property Number: 219120125
Status: Unutilized
Comment: 488 sq. ft., one story, needs major rehab; off-site use only.

Bldgs. 4749, 4763, 4820, 4839, 4866, 4877
Fort Bliss
El Paso Co: El Paso, TX 79916-
Landholding Agency: Army
Property Numbers: 219120129, 219120131, 219120133, 219120138, 219120140, 219120142
Status: Unutilized

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Comment: 873 net sq. ft. each, one story; most recent use—storage; off-site use only.
Bldg. 4756—Fort Bliss, Tex.
4756 Grinder Avenue
Logan Heights
El Paso Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219120126
Status: Unutilized
Comment: 915 sq. ft., one story wood frame; most recent use—day room; off-site use only.
Bldg. 4781—Fort Bliss, Tex.
4781 Burgin Street
Logan Heights
El Paso Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219120130
Status: Unutilized
Comment: 1266 sq. ft., one story wood frame; presence of friable asbestos; most recent use—sales store; off-site use only.
Bldg. 4825, 4867, 4875, 4925
Fort Bliss, Tex.
El Paso Co: El Paso, TX 79916–
Landholding Agency: Army
Property Numbers: 219120134, 219120139, 219120141, 219120144
Status: Unutilized
Comment: 2169 sq. ft., each, one story wood frame; most recent use—general storage; off-site use only.
Bldg. 4921—Fort Bliss, Tex.
4921 Ketcham Avenue
El Paso Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219120143
Status: Unutilized
Comment: 1361 sq. ft., one story wood frame; possible friable asbestos; most recent use—Day room; off-site use only.
Bldg. 4938—Fort Bliss, Tex.
4938 Burgin Street
El Paso Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219120145
Status: Unutilized
Comment: 1770 sq. ft., one story wood frame; possible friable asbestos; most recent use—storage; off-site use only; limited utilities.
Bldg. 4940—Fort Bliss, Tex.
4940 Burgin Street
El Paso Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219120146
Status: Unutilized
Comment: 1792 sq. ft., one story wood frame; possible friable asbestos; most recent use—storage; off-site use only; limited utilities.
Bldg. 11190—Fort Bliss, Tex.
11190 SGT E. Churchill Street
El Paso Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219120147
Status: Unutilized
Comment: 600 sq. ft., one story wood frame; limited utilities; needs rehab; most recent use—storage; off-site use only.
Bldg. 11191—Fort Bliss, Tex.
11191 SGT E. Churchill Street
El Paso Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219120148
Status: Unutilized
Comment: 1140 sq. ft., one story wood frame; limited utilities; most recent use—storage; off-site use only.

Harlingen USARC
1920 East Washington
Harlingen Co: Cameron, TX 78550–
Landholding Agency: Army
Property Number 219120304
Status: Excess
Comment: 19440 sq. ft., 1 story brick, needs rehab, with approx. 6 acres including parking areas, most recent use—Army Reserve Training Center.

Virginia

Bldgs. T413–T415, T418, T421–T423, T426–T428, T431–T433, T441–T443, T446–T448, T1724, T1726–T1727, T1876–T1877, T2213, T2413–T2415, T2418–T2424, T2427–T2430, T2437–T2439, T2442–T2448, T2451–T2453, T2615–T2616, T1363–T1364, T2208, T2209, T1349–T1351, T1354–T1355, T3042–T3048, T3051–T3054
Fort Pickett
Blackstone Co: Nottoway, VA 23824–
Landholding Agency: Army
Property Numbers: 219010006–219010079
Status: Unutilized
Comment: 4292 sq. ft. each; Selected periods are reserved for military/training exercises.
Bldgs. T435–T438, T440, T1718, T2228, 1662, T2411–T2412, 2431, T2433–T2434, T2455–T2457, T2812–T2814, T2833, T2835–2836, T2838, T2857, T2859, T1367, T1868, 1887, 2205, 2207, 2227, 2228, 2811, 2832, 2834–2835, 2837, 2850, 3016–3017, 3031, 3032–3036, T412, T424–T425, T434, T444, T445, T1880, 2416, T2425, 2416, T2425, T2426, 2440–2441, 2449–2450, 2618, 2619, 2627, 2628, 2642, 2643, 2652, 1357, 1358, 2211, 2220–2221, 2826–2827, 2841–2842, 2850–2851, 3010, 3012, 3025, 3040–3041, 3049, 3050, 3057
Fort Pickett
Blackstone Co: Nottoway, VA 23824–
Landholding Agency: Army
Property Numbers: 219010080–219010104, 219011002, 219011004, 219011005–219011009, 219011011, 219011013, 219011015–219011016, 219011018–219011019, 219011021–219011022, 219011024–219011026, 219011028–219011030, 219011060, 219011064–219011065, 219011067–219011068, 219011070–219011071, 219011073–219011074, 219011076–219011077, 219011079–219011081, 219011083, 219011085–219011086, 219011088–219011089, 219011091, 219011093, 219011096–219011103, 219011105, 219011107, 219011114, 219011116, 219011121, 219011140, 219011143, 219011145–219011147, 219011031
Status: Unutilized
Comment: 2800 sq. ft. each; selected periods are reserved for military/training exercises.
Bldg. 1676
Fort Pickett
Blackstone Co: Nottoway, VA 23930–
Landholding Agency: Army
Property Number: 219010971
Status: Underutilized
Comment: 3300 sq. ft.; Selected periods reserved for military/training exercises; most recent use—Hdqts. Bldg.
Bldg. T2850
Fort Pickett
Blackstone Co: Nottoway, VA 23824–
Landholding Agency: Army
Property Number: 219012797
Status: Underutilized
Comment: 2900 sq. ft.; 1 story; selected periods are reserved for military/training exercises.
Bldg. 1663, 1664, T2617, T2620–T2626, T2629–T2632, 2639, T2640, T2641, 2644–2646, 2647–2648, 2650, 2814, 2815, T2852–T2853, T2854–T2855
Fort Pickett
Blackstone Co: Nottoway, VA 23824–
Landholding Agency: Army
Property Numbers: 219010972, 219010976, 219010979, 219010982, 219010984, 219010987, 219010990, 219010993, 219010995, 219010998, 219011000, 219011003, 219011010, 219011012, 219011014, 219011017, 219011020, 219011023, 219011027, 219011032, 219011033–219011036, 219011038, 219011040, 219011043, 219011046, 219011047
Status: Underutilized
Comment: 4292 sq. ft. each; selected periods are reserved for military/ training exercises, most recent use—barracks.
Bldg. 1677
Fort Pickett
Blackstone Co: Nottoway, VA 23930–
Landholding Agency: Army
Property Number: 219010973
Status: Underutilized
Comment: 3300 sq. ft.; selected periods reserved for military/training exercises; most recent use—Hdqts. Bldg.
Bldgs. 1666, 1667, 1606
Fort Pickett
Blackstone Co: Nottoway, VA 23824–
Landholding Agency: Army
Property Numbers: 219010974–219010975, 219010977
Status: Underutilized
Comment: 1300 sq. ft. each; selected periods are reserved for military/training exercises; most recent use—Hdqts. Bldgs.
Bldg. 1667
Fort Pickett
Blackstone Co: Nottoway, VA 23930–
Landholding Agency: Army
Property Number: 219010978
Status: Underutilized
Comment: 11000 sq. ft.; most recent use—mess hall; selected periods are reserved for military/training exercises.
Bldg. 1686
Fort Pickett
Blackstone Co: Nottoway, VA 23824–
Landholding Agency: Army
Property Number: 219010980
Status: Underutilized
Comment: 11000 sq. ft.; most recent use—mess hall; selected periods are reserved for military/training exercises.
Bldg. 1690
Fort Pickett
Blackstone Co: Nottoway, VA 23824–
Landholding Agency: Army
Property Number: 219010981
Status: Underutilized
Comment: 2300 sq. ft.; selected periods are reserved for military/training exercises; most recent use—storage.
Bldg. 2810
Fort Pickett
Blackstone Co: Nottoway, VA 23824–
Landholding Agency: Army
Property Number: 219010983
Status: Underutilized
Comment: 2900 sq. ft.; 1 story; selected periods are reserved for military/training exercises.
Bldg. 1663, 1664, T2617, T2620–T2626, T2629–T2632, 2639, T2640, T2641, 2644–2646, 2647–2648, 2650, 2814, 2815, T2852–T2853, T2854–T2855
Fort Pickett
Blackstone Co: Nottoway, VA 23824–
Landholding Agency: Army
Property Numbers: 219010972, 219010976, 219010979, 219010982, 219010984, 219010987, 219010990, 219010993, 219010995, 219010998, 219011000, 219011003, 219011010, 219011012, 219011014, 219011017, 219011020, 219011023, 219011027, 219011032, 219011033–219011036, 219011038, 219011040, 219011043, 219011046, 219011047
Status: Underutilized
Comment: 4292 sq. ft. each; selected periods are reserved for military/ training exercises, most recent use—barracks.
Bldg. 1677
Fort Pickett
Blackstone Co: Nottoway, VA 23930–
Landholding Agency: Army
Property Number: 219010973
Status: Underutilized
Comment: 3300 sq. ft.; selected periods reserved for military/training exercises; most recent use—Hdqts. Bldg.
Bldgs. 1666, 1667, 1606
Fort Pickett
Blackstone Co: Nottoway, VA 23824–
Landholding Agency: Army
Property Numbers: 219010974–219010975, 219010977
Status: Underutilized
Comment: 1300 sq. ft. each; selected periods are reserved for military/training exercises; most recent use—Hdqts. Bldgs.
Bldg. 1667
Fort Pickett
Blackstone Co: Nottoway, VA 23930–
Landholding Agency: Army
Property Number: 219010978
Status: Underutilized
Comment: 11000 sq. ft.; most recent use—mess hall; selected periods are reserved for military/training exercises.
Bldg. 1686
Fort Pickett
Blackstone Co: Nottoway, VA 23824–
Landholding Agency: Army
Property Number: 219010980
Status: Underutilized
Comment: 11000 sq. ft.; most recent use—mess hall; selected periods are reserved for military/training exercises.
Bldg. 1690
Fort Pickett
Blackstone Co: Nottoway, VA 23824–
Landholding Agency: Army
Property Number: 219010981
Status: Underutilized
Comment: 2300 sq. ft.; selected periods are reserved for military/training exercises; most recent use—storage.
Bldg. 2810
Fort Pickett
Blackstone Co: Nottoway, VA 23824–
Landholding Agency: Army
Property Number: 219010983

Status: Underutilized
Comment: 3500 sq. ft.; most recent use—recreation; selected periods are reserved for military/training exercises.
Bldg. 2809, 2801
Fort Pickett
Blackstone Co: Nottoway, VA 23824–
Landholding Agency: Army
Property Number: 219010985–219010986
Status: Underutilized
Comment: 1200 sq. ft. each; most recent use—recreation; selected periods are reserved for military/training exercises.
Bldgs. 2802, 2806
Fort Pickett
Blackstone Co.: Nottoway, VA 23824–
Landholding Agency: Army
Property Numbers: 219010988–219010989
Status: Underutilized
Comment: 2,200 sq. ft. each; most recent use—Recreation Bldg; selected periods are reserved for military/training exercises.
Bldgs. 1315, 1310
Fort Pickett
Blackstone Co.: Nottoway, VA 23930–
Landholding Agency: Army
Property Numbers: 219010991–219010992
Status: Underutilized
Comment: 4,038 sq. ft. each; most recent use—housing; selected periods are reserved for military/training exercises.
Bldgs. T1340, T1386, 1309, 2810
Fort Pickett
Blackstone Co.: Nottoway, VA 23824–
Landholding Agency: Army
Property Numbers: 219010994, 219010996–219010997, 219010999
Status: Underutilized
Comment: 2,256 sq. ft. each; most recent use—housing; selected periods are reserved for military/training exercises.
Bldg. T3055
Fort Pickett
Blackstone Co.: Nottoway, VA 23824–
Landholding Agency: Army
Property Number: 219011001
Status: Underutilized
Comment: 2,307 sq. ft.; most recent use—recreation facility; selected periods are reserved for military/training exercises.
Bldgs. 1662, 1655, 1686, 1689, 1691
Fort Pickett
Blackstone Co.: Nottoway, VA 23824–
Landholding Agency: Army
Property Numbers: 219011037, 219011039, 219011041–219011042, 219011044
Status: Underutilized
Comment: 2,500 sq. ft. each; selected periods reserved for military/training exercises; most recent use—Hdqts. Bldg.
Bldgs. 2402, 2889, T2410, 3002, 3005
Fort Pickett
Blackstone Co.: Nottoway, VA 23930–
Landholding Agency: Army
Property Numbers: 219011045, 219011048–219011049, 219011051–219011052
Status: Underutilized
Comment: 1,176 sq. ft. each; selected periods of time reserved for military/training exercises; most recent use—Hdqts. Bldg.
Bldgs. 1607, 2229, 2238–2230, 2373, 2882–2883, 2871, 2872–2873, 2864, 2865, 3061–3062
Fort Pickett
Blackstone Co.: Nottoway, VA 23824–
Landholding Agency: Army
Property Numbers: 219011056, 219011063–219011058, 219011067–219011069, 219011064, 219011066, 219011072, 219011075
Status: Underutilized
Comment: 2,761 sq. ft. each; most recent use—veh. maint. shop; selected periods are reserved for military/training exercises.
Bldgs. 1725, 2000, 2851, 2803, 2817
Fort Pickett
Blackstone Co.: Nottoway, VA 23824–
Landholding Agency: Army
Property Numbers: 219011078, 219011082, 219011087, 219011090
Status: Underutilized
Comment: 2,300 sq. ft. each; most recent use—dining fac; selected periods are reserved for military/training exercises.
Bldgs. 1352, 3026
Fort Pickett
Blackstone Co.: Nottoway, VA 23824–
Landholding Agency: Army
Property Numbers: 219011092, 219011095
Status: Underutilized
Comment: 3,500 sq. ft. each; most recent dining fac; selected periods are reserved for military/training exercises.
Bldg. 1932
Fort Belvoir
Goethals Road
Fort Belvoir Co.: Fairfax, VA 22060–
Landholding Agency: Army
Property Number: 219012310
Status: Unutilized
Comment: 13,780 sq. ft.; 2 floors; most recent use—storage; All utilities have been removed; needs rehab.
Bldg. 2222
Fort Belvoir
Fort Belvoir Co: Fairfax, VA 22060–
Location: West of Foster Road
Landholding Agency: Army
Property Number: 219012315
Status: Unutilized
Comment: 3886 sq. ft. per floor, 2 floors, concrete foundation/frame building; no utilities.
Bldg. 1932
Fort Belvoir
Goethals Road
Fort Belvoir Co.: Fairfax, VA 22060–
Landholding Agency: Army
Property Number: 219012318
Status: Unutilized
Comment: 6,880 sq. ft. per floor, two floors, frame on concrete foundation; possible asbestos; utilities disconnected; quarters.
Bldg. T–6015
U.S. Army Logistics Center & Fort Lee
Shop Road
Fort Lee Co.: Prince George, VA 23801–
Landholding Agency: Army
Property Number: 219012376
Status: Unutilized
Comment: 2,124 sq. ft.; 2 story; most recent use—barracks; poor condition; needs major rehab.
Bldg. T–6018
U.S. Army Logistics Center and Fort Lee
Shop Road
Fort Lee Co.: Prince George, VA 23801–
Landholding Agency: Army
Property Number: 219012386
Status: Unutilized
Comment: 1,575 sq. ft., 1 floor, no utilities, possible asbestos, needs rehab, off site use only.
Bldg. 227
Fort Belvoir
OPS General Purpose
Fort Belvoir Co.: Fairfax, VA 22060–
Location: Off Middleton Road
Landholding Agency: Army
Property Number: 219012555
Status: Unutilized
Comment: 900 sq. ft., 1 floor, most recent use—administration, needs major construction/ rehab.
Bldg. 2222
Fort Belvoir Military Reservation
West of Foster Road
Fort Belvoir Co: Fairfax, VA 22060–
Landholding Agency: Army
Property Number: 219013767
Status: Unutilized
Comment: 3,800 sq. ft.; story concrete and wood; possible asbestos; most recent use—storage.
Bldg. T–12054
U.S. Army Logistics Center and Fort Lee
Logistics Circle
Fort Lee Co: Prince George, VA 23801–
Landholding Agency: Army
Property Number: 219030328
Status: Unutilized
Comment: 4,005 sq ft.; 1 story sheet metal; needs rehab; presence of asbestos; off-site use only.
Bldg. #43-Admin. Gen Purp Bldg
Fort Myer
Washington Avenue
Fort Myer Co: Arlington, VA 22211–
Landholding Agency: Army
Property Number: 219120100
Status: Unutilized
Comment: 1,361 sq ft.; two story, brick/wood siding, needs major rehab, possible asbestos, off-site use only.

Washington

Bldg. 875
East 10th Street & Cabell Road
Vancouver Barracks
Vancouver Co: Clark, WA 98661–3898
Landholding Agency: Army
Property Number: 219011636
Status: Excess
Comment: 13,695 sq ft.; 2 story wood frame, extensive fire damage, Historic property.
Bldg. 701
SE Corner, McClelland & McLoughlin Road
Vancouver Barracks
Vancouver Co: Clark, WA 98661–3900
Landholding Agency: Army
Property Number: 219011639
Status: Unutilized
Comment: 1 story wood frame, needs extensive repairs, Historic property.

Wisconsin

Bldgs. T–1056, T–01027—T–01030, T–01035—T–01040, T–01044, T–01046—T–01053, T–01059, T–01063, T–01069, T–01064, T–01041, T–01057, T–01071—T–01080, T–01062—T–01064
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000

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Landholding Agency: Army
Property Numbers: 219013435, 219013471–219013480, 219013483, 219013485–219013493, 219013497, 219013502, 219013504–219013505, 219013519, 219013521–219013523
Status: Unutilized
Comment: 4,829 sq. ft. each; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10122
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013436
Status: Unutilized
Comment: 1,900 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10123
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013437
Status: Unutilized
Comment: 2,405 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10135
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013438
Status: Unutilized
Comment: 97 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings; most recent use—power plant.

Bldg. T–10136
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013439
Status: Unutilized
Comment: 96 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings; most recent use—power plant.

Bldg. T–10127
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013440
Status: Unutilized
Comment: 1,148 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10119
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013441
Status: Unutilized
Comment: 215 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10137
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013442
Status: Unutilized
Comment: 192 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings; most recent use—power plant.

Bldgs. T–01088—T–01089, T–01090—T–01093, T–01094—T–01097, T–01014
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Numbers: 219013444–219013445, 219013446–219013449, 219013452–219013455, 219013457
Status: Unutilized
Comment: 5,295 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10118
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013450
Status: Unutilized
Comment: 1,250 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10120
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013451
Status: Unutilized
Comment: 1250 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10113
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013456
Status: Unutilized
Comment: 2393 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10121
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013458
Status: Unutilized
Comment: 506 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldgs. T–10100—T–10103, T–10105, T–10107, T–10106
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Numbers: 219013459–219013462, 219013463, 219013465–219013466
Status: Unutilized
Comment: 3844 sq. ft. each; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10108
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013464
Status: Unutilized
Comment: 4105 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10124
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013467
Status: Unutilized
Comment: 3115 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldgs. T–10125—T10126
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013468–219013469
Status: Unutilized
Comment: 3580 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10110
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013470
Status: Unutilized
Comment: 2548 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings; most recent use—vehicle storage.

Bldgs. T–01042, T–01043, T–01045, T–01060—T–01062, T–01022—T–01025, T–01064, T–01085—T–01086
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Numbers: 219013481–219013482, 219013484, 219013494–219013496, 219013515–219013518, 219013520, 219013534–219013535
Status: Unutilized
Comment: 4686 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldgs. T–01065—T–01067
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Numbers: 219013498–219013500
Status: Unutilized
Comment: 4793 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01068
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013501
Status: Unutilized
Comment: 4848 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01032
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000

Landholding Agency: Army
Property Number: 219013503
Status: Unutilized
Comment: 5588 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01054
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013506
Status: Unutilized
Comment: 4184 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01033
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013507
Status: Unutilized
Comment: 5241 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10112
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013508
Status: Unutilized
Comment: 1273 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings; most recent use—morgue.

Bldg. T–01031
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013509
Status: Unutilized
Comment: 4813 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01002
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013510
Status: Unutilized
Comment: 2573 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01010
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013511
Status: Unutilized
Comment: 8799 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10109
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013512
Status: Unutilized
Comment: 2939 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01098
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013513
Status: Unutilized
Comment: 7133 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01099
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013514
Status: Unutilized
Comment: 3296 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01003
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013536
Status: Unutilized
Comment: 3366 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01007
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013537
Status: Unutilized
Comment: 3350 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01005
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013538
Status: Unutilized
Comment: 3253 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01020
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013539
Status: Unutilized
Comment: 4150 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldgs. T–01070, T–01081
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Numbers: 219013540–219013541
Status: Unutilized
Comment: 7133 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldgs. T–01006—T–01007, T–01009, T–01012—T–01013, T–01015—T–01018
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Numbers: 219013542–219013544, 219013546–219013551
Status: Unutilized
Comment: 5295 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01011
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013545
Status: Unutilized
Comment: 4236 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01021
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013552
Status: Unutilized
Comment: 4236 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldgs. T–01004, T–01019
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Numbers: 219013553–219013554
Status: Unutilized
Comment: 2815 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01056
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013555
Status: Unutilized
Comment: 15657 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01000
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013556
Status: Unutilized
Comment: 3378 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings; most recent use—fire station.

Bldg. T–01055
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013557
Status: Unutilized
Comment: 5471 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Land (by State)

Alaska

Nome Army Site

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Nome Co: Nome, AK
Location: Located on shoreline of Norton Sound on Bering Sea.
Landholding Agency: Army
Property Number: 219013779
Status: Underutilized
Comment: 2.2 acres; limited utilities.

Eklutna Dipsersal Site
Fort Richardson
Anchorage Co: Anchorage, AK 99505–
Landholding Agency: Army
Property Number: 219014606
Status: Underutilized
Comment: 500 acres; parkland; environmentally protected.

Arkansas

Pine Bluff Arsenal
Pine Bluff Co: Jefferson, AR 71602–9500
Location: 8 miles north of Pine Bluff on Highway 365
Landholding Agency: Army
Property Number: 219013841
Status: Unutilized
Comment: 1 acre and 3 acres; potential utilities; brush terrain; used as safety buffer; subject to easements.

Illinois

Arlington USAR Center
1515 W. Central Road
Arlington Height Co: Cook, IL 60005–
Landholding Agency: Army
Property Number: 219013921
Status: Underutilized
Comment: 6 acres; access subject to negotiation.

Kansas

Parcel 1
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth, KS 66027–5020
Landholding Agency: Army
Property Number: 219012333
Status: Underutilized
Comment: 14.4+ acres.

Parcel 3
Fort Leavenworth
Combined Arms Center
Fort Leavenorth Co: Leavenworth, KS 66027–5020
Landholding Agency: Army
Property Number: 219012336
Status: Underutilized
Comment: 281+ acres; heavily forested; no access to a public right-of-way; selected periods are reserved for military/training exercises.

Parcel 4
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth, KS 66027–5020
Landholding Agency: Army
Property Number: 219012339
Status: Underutilized
Comment: 24.1+ acres; selected periods are reserved for military/training exercises; steep/wooded area.

Parcel 6
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth, KS 66027–5020
Location: Extreme north east corner of installation in Flood Plain of the Missouri River.
Landholding Agency: Army
Property Number: 219012340
Status: Underutilized
Comment: 1280 acres; selected periods are reserved for military/training exercises.

Parcel F
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth, KS 66027–5020
Landholding Agency: Army
Property Number: 219012552
Status: Unutilized
Comment: 33.4 acres; area is land locked; heavily wooded; periodic flooding.

Minnesota

Land
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey, MN 55112–
Landholding Agency: Army
Property Number: 219120269
Status: Underutilized
Comment: Approx. 25 acres, possible contamination, secured area with alternate access.

Nevada

Parcel A
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral, NV 89415–
Location: At foot of Eastern slope of Mount Grant in Wassuk Range and S.W. edge of Walker Lane
Landholding Agency: Army
Property Number: 219012049
Status: Unutilized
Comment: 160 acres, road and utility easements, no utility hookup, possible flooding problem.

Parcel B
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral, NV 89415–
Location: At foot of Eastern slope of Mount Grant in Wassuk Range and S.W. edge of Walker Lane
Landholding Agency: Army
Property Number: 219012056
Status: Unutilized
Comment: 1920 acres; road and utility easements; no utility hookup; possible flooding problem.

Parcel C
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral, NV 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at Western edge of State Route 359
Landholding Agency: Army
Property Number: 219012057
Status: Unutilized
Comment: 85 acres' road and utility easements; no utility hookup.

Parcel D
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral, NV 89415–
Location: South-southwest of Hawthrone along HWAAP's South Magazine Area at western edge of State Route 359.
Landholding Agency: Army
Property Number: 219012058
Status: Unutilized
Comment: 955 acres; road & utility easements; no utility hookup.

Oklahoma

Parcel No. 8
Fort Gibson Lake
Section 22
Cherokee County, OK
Landholding Agency: Army
Property Number: 219013801
Status: Underutilized
Comment: 5 acres; bushy and timbered; subject to grazing lease.

Parcel No. 9
Fort Gibson Lake
Section 16
Cherokee County, OK
Landholding Agency: Army
Property Number: 219013802
Status: Underutilized
Comment: 7.5 acres; rolling; relatively open; subject to grazing lease; most recent use—recreation.

Parcel No. 10
Fort Gibson Lake
Section 16
Cherokee County, OK
Landholding Agency: Army
Property Number: 219013803
Status: Underutilized
Comment: 36 Acres; rolling; relatively open; subject to grazing lease; most recent use—recreation.

Parcel No. 11
Fort Gibson Lake
Section 16
Cherokee County, OK
Landholding Agency: Army
Property Number: 219013804
Status: Underutilized
Comment: 60.34 acres; semi open with trees; most recent use—recreation.

Parcel No. 12
Fort Gibson Lake
Section 16
Cherokee County, OK
Landholding Agency: Army
Property Number: 219013805
Status: Underutilized
Comment: 6 acres; flat and open; subject to grazing lease; most recent use—recreation.

Parcel No. 13
Fort Gibson Lake
Section 21
Cherokee County, OK
Landholding Agency: Army
Property Number: 219013806
Status: Underutilized
Comment: 7 acres; flat and open; subject to grazing lease; most recent use—recreation.

Parcel No. 17
Fort Gibson Lake
Section 12
Wagoner Co. Co; Wagoner, OK
Landholding Agency: Army
Property Number: 219013807
Status: Underutilized
Comment: 25.09 acres; flat with trees most recent use—recreation.

Parcel No. 18
Fort Gibson Lake
Section 12
Wagoner Co. Co; Wagoner, OK
Landholding Agency: Army
Property Number: 219013808
Status: Underutilized

Comment: 8.77 acres; subject to grazing lease; most recent use—recreation.

Parcel No. 22
Fort Gibson Lake
Section 16 and 21
Wagoner Co. Co; Wagoner, OK
Landholding Agency: Army
Property Number: 219013809
Status: Underutilized
Comment: 177.84 acres; rolling with timbered and open areas; subject to grazing lease; most recent use—recreation.

Parcel No. 32
Fort Gibson Lake
Section 2
Mayes County, OK
Landholding Agency: Army
Property Number: 219013810
Status: Underutilized
Comment: 22 aces; rolling and open; subject to grazing lease; most recent use—recreation.

Parcel No. 33
Fort Gibson Lake
Section 4
Mayes County, OK
Landholding Agency: Army
Property Number: 219013811
Status: Underutilized
Comment: 18 acres; flat and open; subject to grazing lease; most recent use—recreation.

Parcel No. 34
Fort Gibson Lake
Section 34
Mayes County, OK
Landholding Agency: Army
Property Number: 219013812
Status: Underutilized
Comment: 18 acres; hilly-timbered; subject to grazing lease; most recent use—recreation.

Parcel No. 36
Fort Gibson Lake
Section 12
Mayes County, OK
Landholding Agency: Army
Property Number: 219013813
Status: Underutilized
Comment: 19 acres; subject to grazing lease; most recent use—recreation.

Parcel No. 38
Fort Gibson Lake
Section 7 and 8
Mayes County, OK
Landholding Agency: Army
Property Number: 219013814
Status: Underutilized
Comment: 97.39 acres; rolling, partially open with trees; subject to grazing lease; most recent use—recreation.

Parcel No. 40
Fort Gibson Lake
Section 5
Mayes County, OK
Landholding Agency: Army
Property Number: 219013815
Status: Underutilized
Comment: 42 acres; timber; subject to grazing lease; most recent use—recreation.

Parcel No. 41
Fort Gibson Lake
Section 5
Mayes County, OK
Landholding Agency: Army
Property Number: 219013816
Status: Underutilized
Comment: 10 acres; some trees; subject to grazing lease; most recent use—recreation.

Tennessee

Milan Army Ammunition Plant
Milan Co: Carroll, TN 38358-Location: Plant boundary in the northeast corner of the plant & housing area
Landholding Agency: Army
Property Number: 219010547
Status: Excess
Comment: 17.2 acres; right of entry legal constraint

Holston Army Ammunition Plant
Kingsport Co: Hawkins, TN 61299–6000
Landholding Agency: Army
Property Number: 219012338
Status: Unutilized
Comment: 8 acres; unimproved; could provide access; 2 acres unusable; near explosives.

Texas

Land Saginaw Army Aircraft Plt
Saginaw Co: Tarrant, TX 76070-
Landholding Agency: Army
Property Number: 219014814
Status: Unutilized
Comment: 154.3 acres; includes buildings/structures/parking and air strip.

Suitable/Unavailable Properties

Buildings (by State)

Arkansas

S.W. Terry USAR Center
3600 South Pierce Street
Little Rock Co: Pulaski, AR 72204-
Landholding Agency: Army
Property Number: 219014785
Status: Unutilized
Comment: 22350 sq. ft.; 1 story plus mezzanine; masonry frame; possible asbestos in broiler room.

California

P–33 Fort Ord
East Garrison
Fort Ord Co: Monterey, CA 93940-
Landholding Agency: Army
Property Number: 219010723
Status: Unutilized
Comment: 4132 sq. ft.; 1 floor; most recent use—storage

T–88 Fort Ord
East Garrison
Fort Ord Co: Monterey, CA 93940-
Landholding Agency: Army
Property Number: 219010768
Status: Unutilized
Base closure
Comment: 1049 sq. ft.; 1 story; possible asbestos.

Bldg. 228
Parks Reserve Forces Training Area
Dublin Co: Alameda, CA 94129-
Landholding Agency: Army
Property Number: 219013010
Status: Unutilized
Comment: 11500 sq. ft.; 3 story temporary wood; extensive asbestos present; most recent use—barracks.

Bldg. T–220
Artillery Street
Presidio of Monterey Co: Monterey, CA 93940-
Landholding Agency: Army
Property Number: 219014784
Status: Unutilized
Comment: 3343 sq. ft.; 2 story wood frame; most recent use—bowling center.

Bldg. 939
Parks Reserve Forces
Training Area
Dublin Co: Alameda, CA 94129-
Landholding Agency: Army
Property Number: 219030292
Status: Unutilized
Comment: 11300 sq. ft.; 1 story wood frame; needs major rehab; extensive asbestos present.

Georgia

Bldg. 5325
Fort Benning Co: Muscogee, GA 31905-
Landholding Agency: Army
Property Number: 219010140
Status: Unutilized
Comment: 2124 sq. ft.; most recent use—barracks; needs rehab.

Kentucky

Bldgs. 2945, 3165, 3111, 3113
Fort Campbell
Fort Campbell Co: Christian, KY 42223-
Landholding Agency: Army
Property Numbers: 219012542, 219013221, 219013230, 219013231
Status: Underutilized
Comment: 4248 sq. ft. each; 2 story; selected periods are reserved for military/training exercises; possible asbestos

Bldgs. 144, 145
Ft. Campbell
Ft. Campbell Co: Christian, KY 42223-
Landholding Agency: Army
Property Numbers: 219013140-219013141
Status: Underutilized
Comment: 12576 sq. ft. each; 2 story; possible asbestos; most recent use—basic training central issue facility.

Bldgs. 3149, 3143, 3142, 3141
Ft. Campbell
Ft. Campbell Co: Christian, KY 42223-
Landholding Agency: Army
Property Numbers: 219013222, 219013224–219013226
Status: Underutilized
Comment: 2200 sq. ft. each.; 1 story; possible asbestos; selected periods used for military/training exercises.

Bldgs. 3135, 2733, 3132, 3133
Ft. Campbell
Ft. Campbell Co: Christian, KY 42223-
Landholding Agency: Army
Property Numbers: 219013227, 219013229, 219013233–219013234
Status: Underutilized
Comment: 1760 sq. ft. each; 1 story; possible asbestos; selected periods used for military/training exercises.

Bldg. 3134
Ft. Campbell
Ft. Campbell Co: Christian, KY 42223-
Landholding Agency: Army
Property Number: 219013228
Status: Underutilized
Comment: 1880 sq. ft.; 1 story; possible asbestos; selected periods used for military/training.

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Louisiana

Bldg. 8623
12th Street
Fort Polk Co: Vernon, LA 71459-5000
Landholding Agency: Army
Property Number: 219012730
Status: Underutilized
Comment: 4015 sq. ft.; temporary wood frame; most recent use—motor pool maintenance shop.

Massachusetts

Bldg. T-208
Fort Devens
Fort Devens Co: Middlesex/Worce, MA 01433-
Landholding Agency: Army
Property Number: 219012345
Status: Underutilized
Comment: 1000 sq ft., 1 story, wood, most recent use—day room.

Bldg. T-209
Fort Devens
Fort Devens, MA 01433-
Landholding Agency: Army
Property Number: 219030265
Status: Underutilized
Comment: 4070 sq. ft.; 2 story wood frame; needs rehab; most recent use—barracks.

New Jersey

Bldgs. 3315-B, 3316-C, 3329-C, 3329-E, 3346-C, 3349-B, 3349-C, 3350-B, 3350-E, 3350-G, 3356-A thru D
Nelson Family Housing
Harty Road
Fort Dix Co: Burlington, NJ 08640-
Landholding Agency: Army
Property Numbers: 219030194, 219030196, 219030206-219030207, 219030223, 219030227-219030228, 219030230-219030232, 219030235-219030238
Status: Unutilized
Comment: 879 sq. ft.; 2 story residence; structurally deteriorated; possible asbestos.

Bldgs. 3315-C, 3349-E, 3351-C&D, 3356-E
Nelson Family Housing
Harty Road
Fort Dix Co: Burlington, NJ 08640-
Landholding Agency: Army
Property Number: 219030195, 219030229, 219030233-219030234, 219030239,
Status: Unutilized
Comment: 595 sq. ft. each; 1 story residence; structurally deteriorated; possible asbestos.

Bldgs. 3316-A&B, 3317-A, 3322-C, 3319-C, 3323-A&B, 3332-A&B, 3333-E, 3336-F, 3336-E, 3338-B, 3339-A, 3340-A, 3342-A, B, C, D, E, 3345-A, 3348-A, B, C
Nelson Family Housing
Singer Road
Fort Dix Co: Burlington, NJ 08640-
Landholding Agency: Army
Property Numbers: 219030196-219030197, 219030199, 219030201-219030204, 219030208-219030220, 219030222, 219030224-219030226
Status: Unutilized
Comment: 975 sq. ft. each; 2 story residences; structurally deteriorated; possible asbestos.

Bldgs. 3318-A, 3325-A, 3344-B
Nelson Family Housing
Singer Road
Fort Dix Co: Burlington, NJ 08640-
Landholding Agency: Army
Property Numbers: 219030200, 219030205, 219030221
Status: Unutilized
Comment: 1267 sq. ft. each; 2 story residence; structurally deteriorated; possible asbestos.

Bldg. 3357-C
Nelson Family Housing
Lexington Avenue
Fort Dix Co: Burlington, NJ 08640-
Landholding Agency: Army
Property Number: 219030240
Status: Unutilized
Comment: 875 sq. ft.; 2 story residence; structurally deteriorated; possible asbestos.

Bldgs. 3357-D, 3357-E
Nelson Family Housing
Lexington Avenue
Fort Dix Co: Burington, NJ 08640-
Landholding Agency: Army
Property Numbers: 219030241-219030242
Status: Unutilized
Comment: 875 sq. ft.; 2 story residence; structurally deteriorated; possible asbestos.

South Carolina

Bldg. 5485
Marion Avenue
Fort Jackson Co: Richland, SC
Landholding Agency: Army
Property Number: 219013897
Status: Unutilized
Comment: 6303 sq. ft.; 1 story permanent structure; former heating plant; deteriorated condition.

Tennessee

Area Q—Housing Area—Q-1
Milan Army Ammunition Plant
Milan Co: Carroll, TN 38358-
Landholding Agency: Army
Property Number: 219120271
Status: Undertilized
Comment: 2024 sq. ft., 2 story wood frame, most recent use—residence, intermittently used during selected periods.

Area Q—Housing Area—Q-29
Milan Army Ammunition Plant
Milan Co: Carroll, TN 38358-
Landholding Agency: Army
Property Number: 219120275
Status: Underutilized
Comment: 2024 sq. ft., 2 story wood frame, most recent use—residence, intermittently used during selected periods.

Texas

Bldg. 809 Fort Hood
20th Street and Central Avenue
Fort Hood Co: Bell, TX 76544-
Landholding Agency: Army
Property Number: 219120114
Status: Unutilized
Comment: 4779 sq. ft., two story wooden structure, needs major rehab, no latrine facilities.

Utah

Bldg. 101
Tooele Army Depot, North Area
2 miles south of Tooele on State Hwy 36
Tooele Co: Tooele, UT 84074-5008
Landholding Agency: Army
Property Number: 219120305
Status: Underutilized
Comment: 1698 sq. ft., 1 story, most recent use—admin. and supply

Virginia

Bldg. 2809
Fort Pickett
Blackstone Co: Nottoway, VA 23824-
Landholding Agency: Army
Property Number: 219030271
Status: Underutilized
Comment: 3500 sq. ft.; selected periods are reserved for military/training exercises; most recent use—recreation building.

Bldg. 2849
Fort Pickett
Blackstone Co: Nottoway, VA 23824-
Landholding Agency: Army
Property Number: 219030272
Status: Underutilized
Comment: 2900 sq. ft.; selected periods are reserved for military/training exercises; most recent use—dining facility.

Bldgs. 2212, 2417
Fort Pickett
Blackstone Co: Nottoway, VA 23824-
Landholding Agency: Army
Property Numbers: 219030279-219030280
Underutilized
Comment: 2256 sq. ft. ea.; selected periods are reserved for military/training exercises; most recent use—headquarters building.

Bldgs. 1693-1695
Fort Pickett
Blackstone Co: Nottoway, VA 23824-
Landholding Agency: Army
Property Numbers: 219030281-219030283
Underutilized
Comment: 6912 sq. ft. ea.; selected periods are reserved for military/training exercises; most recent use—barracks.

Bldgs. T-3029, 3030, T-3037 thru T-3039
Fort Pickett
Blackstone Co: Nottoway, VA 23824-
Landholding Agency: Army
Property Numbers: 219030284-219030288
Underutilized
Comment: 4292 sq. ft. ea.; selected periods are reserved for military/training exercises; most recent use—barracks.

Bldgs. 1356, 1360-1362, 1668-1675, 1678-1685
Fort Pickett
Blackstone Co: Nottoway, VA 23824-
Landholding Agency: Army
Property Numbers: 219030295-219030314
Underutilized
Comment: 11000 sq. ft. ea.; selected periods are reserved for military/training exercises; most recent use—mess hall.

Suitable/To Be Excessed

Buildings (by State)

California

Bldg. 270
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos Co: Orange, CA 90720-5001
Landholding Agency: Army
Property Number: 219120324
Status: Unutilized
Comment: 90 sq. ft., concrete/aluminum, off-site use only, most recent use—aircraft steam cleaning bldg.

Maryland

Bldg. 101
Walter Reed Army Medical Center

Forest Glen Section
Silver Spring Co: Montgomery, MD 20910-
Landholding Agency: Army
Property Number: 219012678
Status: Underutilized
Comment: 18438 sq. ft.; needs rehab; possible asbestos; building listed on National Historic Register.

Bldg. 104
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery, MD 20910-
Landholding Agency: Army
Property Number: 219012679
Status: Underutilized
Comment: 12495 sq. ft.; needs rehab; possible asbestos; building listed on National Historic Register.

Bldg. 107
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery, MD 20910-
Landholding Agency: Army
Property Number: 219012680
Status: Underutilized
Comment: 4107 sq. ft.; possible structural deficiencies; possible asbestos; historic property.

Bldg. 120
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery, MD 20910-
Landholding Agency: Army
Property Number: 219012681
Status: Underutilized
Comment: 2442 sq. ft.; possible structural deficiencies; possible asbestos; historic property.

Unsuitable Properties

Buildings (by State)

Alabama

80 Bldgs.
Redstone Arsenal
Redstone Arsenal Co: Madison, AL 35898-
Landholding Agency: Army
Property Numbers: 219014000, 219014003-219014005, 219014009, 219014012, 219014015-219014053, 219014055-219014061, 219014064, 219014066, 219014068-219014080, 219014291-219014292, 219110109-219110111, 219120247-219120251, 219130001, 219140614-219140615
Status: Unutilized
Reason: Secured Area

Bldg. P00894
Fort McClellan
3rd Avenue in Area 8 Motor Pool
Fort McClellan Co: Calhoun, AL 36205-5000
Landholding Agency: Army
Property Number: 219110046
Status: Unutilized
Reason: Other
Comment: Gas station

Bldg. T00862
Fort McClellan
Off 21st Street between 2nd & 3rd Avenue
Fort McClellan Co: Calhoun, AL 36205-5000
Landholding Agency: Army
Property Number: 219130019
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Complex A (55 units)
Anniston Army Depot
Wherry Housing—Terrace Homes Apt.
Anniston Co: Calhoun, AL 36201-
Landholding Agency: Army
Property Number: 219130104
Status: Excess
Reason: Other
Comment: Extensive deterioration

Complex B (20 units)
Anniston Army Depot
Wherry Housing—Terrace Homes Apt.
Anniston Co: Calhoun, AL 36201-
Landholding Agency: Army
Property Number: 219130105
Status: Excess
Reason: Other
Comment: Extensive deterioration

Complex C (14 units)
Anniston Army Depot
Wherry Housing—Terrace Homes Apt.
Anniston Co: Calhoun, AL 36201-
Landholding Agency: Army
Property Number: 219130106
Status: Excess
Reason: Other
Comment: Extensive deterioration

Complex D (7 units)
Anniston Army Depot
Wherry Housing—Terrace Homes Apt.
Anniston Co: Calhoun, AL 36201-
Landholding Agency: Army
Property Number: 219130107
Status: Excess
Reason: Other
Comment: Extensive deterioration

Two Bedroom Apt.
Anniston Army Depot
Wherry Housing—Terrace Homes Apt.
Anniston Co: Calhoun, AL 36201-
Landholding Agency: Army
Property Number: 219130108
Status: Excess
Reason: Other

Alaska

Bldgs. 4006, 3705
Fort Wainwright
6th Infantry Division
Fort Wainwright Co: Fairbanks, AK
Landholding Agency: Army
Property Number: 219013778, 219013780
Status: Excess
Reason: Secured Area

Bldg. 603
Fort Richardson
Fort Richardson Co: Anchorage, AK 99505-
Landholding Agency: Army
Property Number: 219014289
Status: Excess
Reason: Secured Area

Bldg. P01024
MARS Station
Fort Wainwright Co: Fairbanks, AK 99703-
Location: Located on North Post; West of 102nd Street and North of Apple Street.
Landholding Agency: Army
Property Number: 219014685
Status: Unutilized
Reason: Floodway

Bldg. 1186
Sentry Station
Fort Wainwright Co: Fairbanks, AK 99703-
Location: Located at Trainor Gate Entrance
Landholding Agency: Army
Property Number: 219014686
Status: Unutilized
Reason: Floodway

Bldgs. 1514, 1546, 1566
Fort Wainwright Co: Fairbanks, AK 99703-
Landholding Agency: Army
Property Number: 219014687-219014689
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 2050
Sentry Station
Fort Wainwright Co: Fairbanks, AK 99703-
Landholding Agency: Army
Property Number: 219014690
Status: Unutilized
Reason: Floodway

Bldgs. 1066, 1062
Officer's Military Housing
Fort Wainwright Co: Fairbanks, AK 99703-
Location: North of Apple Street and West of 100th Street.
Landholding Agency: Army
Property Number: 219014691-219014692
Status: Underutilized
Reason: Floodway

Arizona

49 Bldgs.
Yuma Proving Ground
Yuma Co: Yuma/La Paz, AZ 85365-9102
Landholding Agency: Army
Property Number: 219011738, 219011744-219011745, 219013931-219013958, 219013962-219013984, 219013988-219013989
Status: Underutilized
Reason: Secured Area

32 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino, AZ 86015-
Location: 12 miles west of Flagstaff, Arizona on I-40
Landholding Agency: Army
Property Number: 219014580-219014591
Status: Underutilized
Reason: Secured Area

10 properties: 753 earth covered igloos; above ground standard magazines
Navajo Depot Activity
Bellemont Co: Coconino, AZ 86015-
Location: 12 miles west of Flagstaff, Arizona on I-40.
Landholding Agency: Army
Property Number: 219014592-219014601
Status: Underutilized
Reason: Secured Area

9 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino, AZ 86015-5000
Location: 12 miles west of Flagstaff on I-40
Landholding Agency: Army
Property Number: 219030273-219030274, 219120175-219120181
Status: Unutilized
Reason: Secured Area

Bldgs. 15349, 15388
Fort Huachuca
Sierra Vista Co: Cochise, AZ 85635-
Landholding Agency: Army
Property Number: 219130003-219130004
Status: Excess
Reason: Other
Comment: Extensive deterioration

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Arkansas
Fort Smith USAR Center
Fort Smith
1218 South A Street
Fort Smith Co: Sebastian, AR 72901–
Landholding Agency: Army
Property Number: 219014028
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material
U.S. Army Garrison
Fort Chaffee
428 Ellis Avenue
Fort Chaffee Co: Sebastian, AR 72905–5000
Landholding Agency: Army
Property Number: 219110114
Status: Underutilized
Reason: Other
Comment: Fuel pumphouse
U.S. Army Garrison
Fort Chaffee
1916 1st Avenue
Fort Chaffee Co: Sebastian, AR 72905–5000
Landholding Agency: Army
Property Number: 219110115
Status: Unutilized
Reason: Other
Comment: Fuel pumphouse
U.S. Army Garrison
Fort Chaffee
2520 1st Avenue
Fort Chaffee Co: Sebastian, AR 72905–5000
Landholding Agency: Army
Property Number: 219110116
Status: Unutilized
Reason: Other
Comment: Fuel pumphouse

California
P–12 Fort Ord
East Garrison
Fort Ord Co: Monterey CA, 93940–
Landholding Agency: Army
Property Number: 219010722
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material
16 Bldgs., Fort Ord
Fort Ord Co: Monterey, CA 93940–
Landholding Agency: Army
Property Number: 219010724–219010727, 219010729–219010737, 219010739, 219010741, 219010744
Status: Unutilized
Reason: Secured Area (Some are also within 2000 ft. of flammable or explosive material)
T–1781 Fort Ord
4th St. and 1st Ave.
Fort Ord: Co: Monterey, CA 93940–
Landholding Agency: Army
Property Number: 219010746
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Other environmental Secured Area
Comment: friable asbestos
T–8, T–9, T–10, T–23, T–26, T–27, T–135 Fort Ord
East Garrison
Fort Ord Co: Monterey, CA 93940–
Landholding Agency: Army
Property Number: 219010747, 219010749, 219010754, 219010758, 219010761, 219010765, 219010774
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material
T–1782, T–1783, T–1784, T–1785, T–1786, T–22 Fort Ord
Fort Ord Co: Monterey, CA 93940–
Landholding Agency: Army
Property Number: 219010748, 219010750, 219010752–219010754, 219010755–219010758
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Other environmental
Comment: friable asbestos
T–1801, T–1787 Fort Ord
4th St. and 1st Ave.
Fort Ord Co: Monterey, CA 93940–
Landholding Agency: Army
Property Number: 219010757, 219010921
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area
T–1806, T–1807 Fort Ord
4th St. 2nd Ave.
Fort Ord Co: Monterey, CA 93940–
Landholding Agency: Army
Property Number: 219010759–219010760
Status: Unutilized
Reason: Other environmental Secured Area
Comment: contains friable asbestos
T–2107–2109 Fort Ord
7th St. between 1st and 2nd Ave.
Fort Ord Co: Monterey, CA 93940–
Landholding Agency: Army
Property Number: 219010766–219010767, 219010769
Status: Unutilized
Reason: Secured Area
48 Bldgs. Fort Ord
Fort Ord Co: Monterey, CA 93940–
Landholding Agency: Army
Property Number: 219010775–219010790, 219010792–219010806, 219010808–219010816, 219010818–219010819, 219010821, 219010823–219010824, 219010826, 219010828–219010829
Status: Underutilized
Reason: Secured Area
3 Bldgs. Fort Ord
Fort Ord Co: Monterey, CA 93940–
Landholding Agency: Army
Property Number: 219010791, 219010827, 219010831
Status: Unutilized
Reason: Secured Area
5 Bldgs. Fort Ord
Fort Ord Co: Monterey, CA 93940–
Landholding Agency: Army
Property Number: 219010807, 219010817, 219010820, 219010822, 219010825
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material
Bldgs. P–99, T–324
Fort Hunter Liggett
Jolon Co: Monterey, CA 93944–
Landholding Agency: Army
Property Number: 219012413, 219012420
Status: Unutilized
Reason: Other
Comment: Latrine, detached structure.
Bldgs. P–177, P–178, 325
Fort Hunter Liggett
Jolon Co: Monterey, CA 93928–
Landholding Agency: Army
Property Number: 219012414–219012415, 219012000
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material
Bldg. 18
Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank Co: Stanislaus, CA 95367–
Landholding Agency: Army
Property Number: 219012554
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area
Bldgs. T–323, T–322
Fort Hunter Liggett
Mission Road
Jolon Co: Monterey, CA 93928–
Landholding Agency: Army
Property Number: 219012601–219012602
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material
Comment: Within 2,000 ft of sewage facility.
7 Bldgs.
Fort Ord
Fort Ord Co: Monterey, CA
Landholding Agency: Army
Property Number: 219013574–219013577, 219013579–219013581
Status: Unutilized
Reason: Secured Area
9 Bldgs., Nos. 2–8, 18, 156
Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank Co: Stanislaus, CA 95367–
Landholding Agency: Army
Property Number: 219013582–219013590
Status: Underutilized
Reason: Secured Area
Bldg. T–2880
Fort Ord
13th Street and Corps Pl.
Fort Ord Co: Monterey, CA
Landholding Agency: Army
Property Number: 219013817
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material
Bldgs. T–2438, T–2106, T–2524
Fort Ord
Fort Ord Co: Monterey, CA
Landholding Agency: Army
Property Number: 219013818–219013819, 2190113821
Status: Underutilized
Reason: Secured Area
Bldg. T–2404
Fort Ord
Tenth Street and First Avenue
Fort Ord Co: Monterey, CA
Landholding Agency: Army
Property Number: 219013820
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area
Bldgs. T–1952, T–2004
Fort Ord
Fort Ord Co: Monterey, CA
Landholding Agency: Army
Property Number: 219013822–219013823
Status: Unutilized
Reason: Secured Area
Bldg. T–1705
Fort Ord
Third Street and First Avenue
Fort Ord Co: Monterey, CA
Landholding Agency: Army
Property Number: 219013824
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area
Bldg. T–2409
Fort Ord
Tenth Street and Second Avenue
Fort Ord Co: Monterey, CA
Landholding Agency: Army
Property Number: 219013825
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area
Bldgs. T–2550, T–2527
Fort Ord
Ninth Street and Third Avenue
Fort Ord Co: Monterey, CA
Landholding Agency: Army
Property Number: 219013826–219013827
Status: Underutilized
Reason: Secured Area
10 Bldgs.
Fort Ord
Fort Ord Co: Monterey, CA
Landholding Agency: Army
Property Number: 219013828–219013837
Status: Unutilized
Reason: Secured Area
8 Bldgs.
Fort Ord
Fort Ord Co: Monterey, CA
Landholding Agency: Army
Property Number: 219013838–219013839, 219014294–219014299
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area
9 Bldgs.
Oakland Army Base
Oakland Co: Alameda, CA 94626–5000
Landholding Agency: Army
Property Number: 219013903–219013906, 219120048–219120051, 219140568
Status: Unutilized
Reason: Secured Area
Bldg. S–108
Sharpe Army Depot
Lathrop Co: San Joaquin, CA 95331–
Location: Roth Road
Landholding Agency: Army
Property Number: 219014290
Status: Underutilized
Reason: Secured Area
4 Bldgs.
Fort Ord
Fort Ord Co: Monterey, CA 93941–
Landholding Agency: Army
Property Number: 219014300–219014303
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area
Bldg. S–184
Fort Hunter Liggett
Ft. Hunter Liggett Co: Monterey, CA 93928–
Location: POL Road
Landholding Agency: Army
Property Number: 219014602
Status: Underutilized
Reason: Secured Area
17 Bldgs.
Sierra Army Depot
Herlong Co: Lassen, CA 96113–
Landholding Agency: Army
Property Number: 219014695–219014700, 219014703–219014705, 219014713–219014717, 219014719–219014721
Status: Unutilized
Reason: Secured Area
Bldg. S–369
Sierra Army Depot
Herlong Co: Lassen, CA 96113–
Landholding Agency: Army
Property Number: 219014706
Status: Unutilized
Reason: Other Secured Area
Comment: Detached Latrine
Bldg. P–88
Sierra Army Depot
Road Oil Storage
Herlong Co: Lassen, CA 96113–
Landholding Agency: Army
Property Number: 219014707
Status: Unutilized
Reason: Other
Comment: Oil Storage Tank
P–C0707, P–C0708, P–C0808—Igloo
Sierra Army Depot
Magazine Area
Herlong Co: Lassen, CA 96113–
Landholding Agency: Army
Property Number: 219014708–219014710
Status: Unutilized
Reason: Secured Area
Bldgs. 173, 177, 197
Roth Road—Sharpe Army Depot
Lathrop Co: San Joaquin, CA
Landholding Agency: Army
Property Number: 219014940–219014942
Status: Unutilized
Reason: Secured Area
39 Bldgs., Nos. 3001–3040
Wherry Housing, Title VIII
Sierra Army Depot
Herlong Co: Lassen, CA 96113–
Location: Intersection of Susanville Road and Flagler Blvd.
Landholding Agency: Army
Property Number: 219030128–219030167
Status: Unutilized
Reason: Secured Area
27 Bldgs.
Fort Ord
Fort Ord Co: Monterey, CA 93941–5777
Landholding Agency: Army
Property Number: 219030160–219030182, 219030346–219030360, 219040379–219040381, 219110067–219110072
Status: Unutilized
Reason: Secured Area
Bldgs. S–321, T–136 Sierra Army Depot
Herlong Co: Lassen, CA 96113–
Landholding Agency: Army
Property Number: 219120046–219120047
Status: Unutilized
Reason: Secured Area
7 Bldgs. Fort Ord
Fort Ord Co: Monterey, CA 93941–5777
Landholding Agency: Army
Property Number: 219120052–219120057, 219120099
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area
Bldgs. 13, 171, 178 Riverbank Ammun Plant
5300 Claus Road
Riverbank Co: Stanislaus, CA 95367–
Landholding Agency: Army
Property Number: 219120162–219120164
Status: Underutilized
Reason: Secured Area
Bldg. 61
Los Alamitos Armed Forces Reserve Center
Los Alamitos Co: Orange, CA 90720–5001
Location: Main entrance on Lexington Dr.
Landholding Agency: Army
Property Number: 219120276
Status: Unutilized
Reason: Other
Comment: detached latrine
Bldgs. S–80, S–115, S–133, S–136, S–205
Sharpe Site
Roth Road
Lathrop Co: San Joaquin, CA 95331–
Landholding Agency: Army
Property Number: 219140282–219140286
Status: Unutilized
Reason: Secured Area

Colorado
87 Bldgs.
Pueblo Army Depot
Pueblo Co: Pueblo, CO 81001–
Location: 14 miles East of Pueblo City on Highway 50
Landholding Agency: Army
Property Number: 219012209, 219012211, 219012214, 219012216, 219012221, 219012223–219012224, 219012228–219012228, 219012230–219012237, 219012239–219012257, 219012260–219012278, 219012280–219012288, 219012290–219012296, 219012300, 219012303, 219012743, 219012745, 219012747–219012748, 219014845, 219120058–219120063
Status: Unutilized
Reason: Secured Area
Bldgs. T–9643, T–9644
Fort Carson
Butts Airfield
Colorado Springs Co: El Paso, CO 80913–5023
Landholding Agency: Army
Property Number: 219013603–219013604
Status: Unutilized
Reason: Secured Area

Georgia
Fort Stewart
Sewage Treatment Plant
Ft. Stewart Co: Hinesville, GA 31314–
Landholding Agency: Army
Property Number: 219013922
Status: Unutilized
Reason: Other
Comment: Sewage treatment
Railway Spur and Bridge
Fort Gillem
Forest Park Co: Clayton, GA 30050–
Location: Located on Highway 42, Southeast
Landholding Agency: Army
Property Number: 219014293
Status: Unutilized
Reason: Within airport runway clear zone
Facility 12304
Fort Gordon
Augusta Co: Richmond, GA 30905–
Location: Located off Lane Avenue
Landholding Agency: Army
Property Number: 219014787
Status: Unutilized
Reason: Other

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Comment: Wheeled vehicle grease/ inspection rack
Bldg. 5397
Fort Benning
Ft. Benning Co:
Muscogee, GA 31905–
Landholding Agency: Army
Property Number: 219120268
Status: Unutilized
Reason: Other
Comment: Detached lavatory bldg.
Bldgs. 19719, 19720
Fort Gordon
Augusta Co: Richmond, GA 30905–
Landholding Agency: Army
Property Number: 219140179–219140180
Status: Unutilized
Reason: Other
Comment: Extensive deterioration
25 Bldgs.
Fort Gordon
Augusta Co: Richmond, GA 30905–
Landholding Agency: Army
Property Number: 219140181–219140206
Status: Unutilized
Reason: Other
Comment: Structural damage

Hawaii

PU–01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11
Schofield Barracks
Kolekole Pass Road
Wahiawa Co: Wahiawa, HI 96786–
Landholding Agency: Army
Property Number: 219014836–219014837
Status: Unutilized
Reason: Secured Area.
TMK 1–6–8–8–11
Dillingham Military Reservation
Waialua Co: Wahiawa, HI 96791–
Location: Property adjacent to 68–999 Farrington Highway
Landholding Agency: Army
Property Number: 219014838
Status: Unutilized
Reason: Other environmental
Comment: Civil Defense—Tsunami Inundated area.
TMK 1–6–9–1–29
Dillingham Military Reservation
Waialua Co: Wahiawa, HI 96791–
Location: In Quarry site
Landholding Agency: Army
Property Number: 219014839
Status: Unutilized
Reason: Secured Area.
P–001, PN–05
Kahuku Training Area
Kahuku Training Area Access Road
Kahuku, HI 96731–
Landholding Agency: Army
Property Number: 219030322–219030323
Status: Underutilized
Reason: Secured Area.
P–88
Aliamanu Military Reservation
Honolulu Co: Honolulu, HI 96818–
Location: Approximately 600 feet from Main Gate on Aliamanu Drive.
Landholding Agency: Army
Property Number: 219030324
Status: Unutilized
Reason: Other environmental
Comment: Friable Asbestos.
P–3184 East Range
Schofield Barracks
East Range Road
Wahiawa Co: Wahiawa, HI 96786–
Landholding Agency: Army
Property Number: 219030361
Status: Unutilized
Reason: Secured Area.
Bldg. T–007
Kahuku Training Area
Old Nike Site 2
Kahuku Co: Kahuku, HI 96731–
Landholding Agency: Army
Property Number: 219140567
Status: Unutilized
Reason: Secured Area.

Illinois

576 Bldgs.
Joliet Army Ammunition Plant
Joliet Co: Will, IL 60436–
Landholding Agency: Army
Property Number: 219010153–219010317, 219010319–219010413, 219010415–219010439, 219011750–219011879, 219011881–219011908, 219012331, 219013076–219013138, 219014722–219014781, 219030277–219030278, 219040354, 219140441–219140446
Status: Unutilized
Reason: Secured Area; many within 2000 ft. of flammable or explosive materials; some within floodway.
Bldg. 251
Rock Island Arsenal
Rock Island Co: Rock Island, IL 61299–5000
Landholding Agency: Army
Property Number: 219012357
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Bldg. 725
Fort Sheridan
Highwood Co: Lake, IL 60037–5000
Landholding Agency: Army
Property Number: 219013769
Status: Underutilized
Reason: Secured Area.
Bldgs. 58, 59 and 72, 69, 64, 105
Rock Island Arsenal
Rock Island Co: Rock Island, IL 61299–5000
Landholding Agency: Army
Property Number: 219110104–219110108
Status: Unutilized
Reason: Secured Area.

Indiana

138 Bldgs.
Indiana Army Ammunition Plant (INAAP)
Charlestown Co: Clark, IN 47111–
Landholding Agency: Army
Property Number: 219010913–219010919, 219010925–219010926, 219010929–219010936, 219010952, 219010954–219010955, 219010957, 219010959–219010960, 219010962–219010964, 219010966–219010967, 219010969–219010970, 219011449, 219011454, 219011456–219011457, 219011459–219011464, 219013764, 219013846, 219014608–219014620, 219014622–219014651, 219014653–219014683, 219030315, 219120168–219120171, 219140425–219140440
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
6 Bldgs.
Indiana Army Ammunition Plant
Charlestown Co: Clark, IN 47111–
Landholding Agency: Army
Property Number: 219010920, 219010924, 219010927–219010928, 219014621, 219014652
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.
52 Bldgs.
Newport Army Ammunition Plant
Newport Co: Vermillion, IN 47966–
Landholding Agency: Army
Property Number: 219011584, 219011586–219011587, 219011589–219011590, 219011592–219011627, 219011629–219011636, 219011638–219011641
Status: Unutilized
Reason: Secured Area.
Bldg T–109
Fort Benjamin Harrison
Beaumont Road
Ft. Benjamin Harrison Co: Marion, IN 47216–5450
Landholding Agency: Army
Property Number: 219011648
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Iowa

14 Bldgs.
Iowa Army Ammunition Plant
Middletown Co: Des Moines, IA 52638–
Landholding Agency: Army
Property Number: 219012603, 219012605–219012607, 219012609, 219012611, 219012613, 219012615, 219012620, 219012622, 219012624, 219120172–219120174
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
33 Bldgs.
Iowa Army Ammunition Plant
Middletown Co: Des Moines, IA
Landholding Agency: Army
Property Number: 219013706–219013738
Status: Unutilized
Reason: Secured Area.

Kansas

37 Bldgs.
Kansas Army Ammunition Plant
Production Area
Parsons Co: Labette, KS 67357–
Landholding Agency: Army
Property Number: 219011909–219011945
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material).
324 Bldgs.
Sunflower Army Ammunition Plant
35425 W. 103rd Street
DeSoto Co: Johnson, KS 66018–
Landholding Agency: Army
Property Number: 219040005–219040006, 219040032–219040353
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Floodway; Secured Area
25 Bldgs.
Sunflower Army Ammunition Plant.
35425 W. 103rd Street
DeSoto Co: Johnson, KS 66018–
Landholding Agency: Army
Property Number: 219040007–219040031
Status: Unutilized

Reason: Within 2000 ft. of flammable or explosive material; Floodway.
Bldg. 9002
Sunflower Army Ammunition Plant
35525 W. 103rd Street
DeSoto Co: Johnson, KS 66018–
Landholding Agency: Army
Property Number: 219110073
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
34 Bldgs.
Fort Riley
Ft. Riley Co: Geary, KS 66442–
Landholding Agency: Army
Property Number: 219140207–219140240
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
33 Bldgs.
Sunflower Army Ammunition Plant
35425 West 103rd
Desoto Co: Johnson, KS 66018–
Landholding Agency: Army
Property Number: 219140569–219140577, 219140580–219140592, 219140594, 219140599–219140601, 219140606–219140612
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material; Floodway.
11 Latrines
Sunflower Army Ammunition Plant
35425 West 103rd
Desoto Co: Johnson, KS 66018–
Landholding Agency: Army
Property Number: 219140578–219140579, 219140593, 219140595–219140598, 219140602–219140605
Status: Unutilized
Reason: Other
Comment: Detached Latrine.

Kentucky

Bldg. 120
Lexington-Blue Grass Army Depot
Lexington Co: Fayette, KY 40511–
Location: 12 miles northeast of Lexington, Kentucky.
Landholding Agency: Army
Property Number: 219011661
Status: Unutilized
Reason: Other Secured Area
Comment: Sewage treatment facility.
Bldg. 12
Lexington—Blue Grass Army Depot
Lexington Co: Fayette, KY 40511–
Location: 12 miles Northeast of Lexington, Kentucky.
Landholding Agency: Army
Property Number: 219011663
Status: Unutilized
Reason: Other
Comment: Industrial waste treatment plant.
Spring House
Kentucky River Lock and Dam No. 1
Highway 320
Carrollton Co: Carroll, KY 41008–
Landholding Agency: Army
Property Number: 219040416
Status: Unutilized
Reason: Other
Comment: Spring House.
Building
Kentucky River Lock and Dam No. 4
1021 Kentucky Avenue
Frankfort Co: Franklin, KY 40601–9999
Landholding Agency: Army
Property Nubmer: 219040417
Status: Unutilized
Reason: Other
Comment: Coal Storage.
Building
Kentucky River Lock and Dam No. 4
1021 Kentucky Avenue
Frankfort Co: Franklin, KY 40601–9999
Landholding Agency: Army
Property Number: 219040418
Status: Unutilized
Reason: Other
Comment: Coal Storage.
Barn
Kentucky River Lock and Dam No. 3
Highway 561
Pleasureville Co: Henry, KY 40057–
Landholding Agency: Army
Property Number: 219040419
Status: Underutilized
Reason: Other
Comment: 110 year old barn with crumbled foundation.
9 Bldgs.
Fort Knox
Ft. Knox Co: Hardin, KY 40121–
Landholding Agency: Army
Property Number: 219140557–219140565
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Louisiana

25 Bldgs.
Louisiana Army Ammunition Plant
Doylin Co: Webster, LA 71023–
Landholding Agency: Army
Property Number: 219011668–219011670, 219011691, 219011700, 219011714–219011716, 219011718–219011724, 219011726, 219011728, 219011731, 219011733–219011737, 219012112, 219013571–219013572, 219013862–219013869, 219110124–219110137, 219120287–219120290, 219120303, 219140325–219140328
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material).
Staff Residences
Louisiana Army Ammunition Plant
Doyline Co: Webster, LA 71023–
Landholding Agency: Army
Property Number: 219120284–219120286
Status: Excess
Reason: Secured Area.

Maryland

55 Bldgs.
Aberdeen Proving Ground
Aberdeen City Co: Harford, MD 21005–5001
Landholding Agency: Army
Property Number: 219011408–219011417, 219012608, 219012610, 219012612, 219012614, 219012616–219012617, 219012619, 219012623, 219012625–219012629, 219012631, 219012633–219012635, 219012637–219012642, 219012645–219012651, 219012655–219012664, 219013773, 219014711–219014712, 219030016, 219110140
Status: Unutilized
Reason: Most are in a secured area. (Some are within 2000 ft. of flammable or explosive material) (Some are in a floodway)
P501
Installation #24235
Ballast House
La Plata Co: Charles, MD 20646–
Location: At the end of the access road
Landholding Agency: Army Property Number: 219011643
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
26 Bldgs.
Fort George G. Meade
Fort Meade Co: Anne Arundel, MD 20755–
Landholding Agency: Army
Property Number: 219014789, 219014847, 219040365–219040366, 219040368–219040372, 219120153–219120158, 219130034–219130044
Status: Unutilized
Reason: Secured Area.
Bldg. 10401
Aberdeen Proving Ground
Aberdeen Area
Harford Co: Harford, MD 21005–5001
Landholding Agency: Army
Property Number: 219110138
Status: Unutilized
Reason: Other
Comment: Sewage treatment plant.
Bldg. 10402
Aberdeen Proving Ground
Aberdeen Area
Aberdeen City Co: Harford, MD 21005–5001
Landholding Agency: Army Property Number: 219110139
Status: Unutilized
Reason: Other
Comment: Sewage pumping station.
Bldgs. 142–1467, USARC Gaithersburg 8510 Snouffers School Road
Gaithersburg Co: Montgomery, MD 20879–1624
Landholding Agency: Army
Property Number: 219120009–219120013
Status: Unutilized
Reason: Secured Area.
84 Bldgs. Ft. George G. Meade
Ft Meade Co: Anne Arundel, MD 20755–
Landholding Agency: Army
Property Number: 219130045–219130069, 219140455–219140523
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Massachusetts

Material Technology Lab
405 Arsenal Street
Watertown Co: Middlesex, MA 02132–
Landholding Agency: Army
Property Number: 219120161
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Floodway; secured Area.
14 Bldgs.
Fort Devens
Ft. Devens Co: Middlesex/Worce, MA 01433–
Landholding Agency: Army
Property Number: 219140241–219140254
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Michigan

Bldgs. 602, 604
US Army Garrison Selfridge

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Mt. Clemens Co: Macomb, MI 48043–
Landholding Agency: Army
Property Number: 219012355–219012356
Status: Unutilized
Reason: Within airport runway clear zone; Floodway;
Secured Area.

Detroit Arsenal Tank Plant
28251 Van Dyke Avenue
Warren Co: Macomb, MI 48090–
Landholding Agency: Army
Property Number: 219014605
Status: Underutilized
Reason: Secured Area.

33 Bldgs.
Fort Custer Training Center
2501 26th Street
Augusta Co: Kalamazoo, MI 49102–9205
Landholding Agency: Army
Property Number: 219014947–219014963, 219120001–219120008, 219120447–219140454
Status: Unutilized
Reason: Secured Area.

Minnesota

Bldgs. 113, 575, 598
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey, MN 55112–
Landholding Agency: Army
Property Number: 219120165–219120167
Status: Unutilized
Reason: Secured Area.

Mississippi

Bldgs. 8301, 8303–8305, 9158
Mississippi Army Ammunition Plant
Stennis Space Center Co: Hancock, MS 39529–7000
Landholding Agency: Army
Property Number: 219040438–219040442
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Missouri

Lake City Army Ammo. Plant
59, 59A, 59C, 59B
Independence Co: Jackson, MO 64050–
Landholding Agency: Army
Property Number: 219013666–219013669
Status: Unutilized
Reason: Secured Area.

Building-Stockton Lake Project
Old Mill Area
Co: Cedar, MO 65785–
Landholding Agency: Army
Property Number: 219040414
Status: Unutilized
Reason: Floodway.

Bldg #1, 2, 3
St. Louis Army Ammunition Plant
4800 Goodfellow Blvd.
St. Louis Co: St. Louis, MO 63120–1798
Landholding Agency: Army
Property Number: 219120067–219120069
Status: Unutilized
Reason: Secured Area.

79 Bldgs.
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski, MO 65473–5000
Landholding Agency: Army
Property Number: 219140348–219140424, 219140634–219140635
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Nebraska

13 Bldgs.
Cornhusker Army Ammunition Plant
Grand Island Co: Hall, NE 68802–
Location: 4 miles west (Potash Road)
Landholding Agency: Army
Property Number: 219013849–219013861
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Nevada

124 Bldgs.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral, NV 89415–
Landholding Agency: Army
Property Number: 219011953, 219011995, 219011957–219011958, 219011960, 219011962–219011963, 219011965–219011967, 219011969, 219011971–219011973, 219011975, 219011979, 219011981, 219011983, 219011985–219011986, 219011988–219011989, 219011991–219011993, 219011995, 219012000–219012001, 219012003–219012004, 219012006–219012008, 219012010–219012012, 219012014–219012015, 219012017–219012020, 219012022–219012024, 219012026, 219012027, 219012029–219012030, 219012032–219012033, 219012035–219012036, 219012038–219012040, 219012042–219012043, 219012045–219012048, 219012050–219012055, 219012059–219012107, 219013613–219013614
Status: Unutilized
Reason: Secured Area.

Bldg. 396
Hawthorne Army Ammunition Plant
Bachelor Enlisted Qtrs W/Dining Facilities
Hawthorne Co: Mineral, NV 89415–
Location: East side of Decatur Street-North of Maine Avenue
Landholding Agency: Army
Property Number: 219011997
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area.

64 Bldgs.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral, NV 89415–
Landholding Agency: Army
Property Number: 219012002, 219012005, 219012009, 219012013, 219012016, 219012021, 219012025, 219012028, 219012031, 219012034, 219012037, 219012041, 219012044, 219013615–219013665
Status: Underutilized
Reason: Secured Area (Some within airport runway clear zone; many within 2000 ft. of flammable or explosive material).

62 Concrete Explo. Mag. Stor.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral, NV 89415–
Location: North Mag. Area
Landholding Agency: Army
Property Number: 219120150
Status: Unutilized
Reason: Secured Area.

259 Concrete Explo. Mag. Stor.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral, NV 89415–
Location: South & Central Mag. Areas
Landholding Agency: Army
Property Number: 219120151
Status: Unutilized
Reason: Secured Area.

New Jersey

194 Bldgs.
Armament Res. Dev. & Eng. Ctr.
Picatinny Arsenal Co: Morris, NJ 07806–5000
Location: Route 15 North
Landholding Agency: Army
Property Number: 219010440–219010474, 219010476, 219010478, 219010639–219010721, 219012423–219012475, 219013787, 219014306–219014321, 219030269–219030270, 219140616–219140617
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

12 Bldgs.
Armament Reserve Dev. and Engineering Center
Route 15 North
Picatinny Arsenal Co: Morris, NJ 07806–
Landholding Agency: Army
Property Number: 219012756–219012767
Status: Excess
Reason: Secured Area.

Bldg. 2337
Fort Monmouth
Charles Wood Area
Wall Co: Monmouth, NJ 07719–
Landholding Agency: Army
Property Number: 219012828
Status: Unutilized
Reason: Secured Area.

17 Bldgs. (Evans Area)
Fort Monmouth
Wall Co: Monmouth, NJ 07719–
Landholding Agency: Army
Property Number: 219012829–219012844, 219013785
Status: Unutilized
Reason: Secured Area.

Bldgs. 13–14, 15A, 41, 100, 110–111
Military Ocean Terminal
Bayonne Co: Hudson, NJ 07002–
Location: Foot of 32nd Street and Route 169.
Landholding Agency: Army
Property Number: 219013890–219013896
Status: Unutilized
Reason: Floodway; Secured Area.

New York

Bldgs. 10, 20, 40
Watervliet Arsenal
Watervliet Co: Albany, NY 12189–4050
Landholding Agency: Army
Property Number: 219012514, 219012516, 219012519
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 25
Watervliet Arsenal
Watervliet Co: Albany, NY 12189–4050
Landholding Agency: Army
Property Number: 219012521
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area
Comment: Contamination.

Bldg. 110
Fort Totten
110 Duane Road
Bayside Co: Queens, NY 11359-
Landholding Agency: Army
Property Number: 219012589
Status: Unutilized

Reason: Other
Comment: Contamination.

Ohio

62 Bldgs.
Ravenna Army Ammunition Plant
Ravenna Co: Portage, OH 44266–0297
Landholding Agency: Army
Property Number: 21901476–219012507, 219012509–219012513, 219012515, 219012517–219012518, 219012520, 219012522–219012523, 219012525–219012528, 219012530–219012532, 219012534–219012535, 219012537, 219013670–219013677, 219013781
Status: Unutilized
Reason: Secured Area.

Oklahoma

Bldg. P–2505
Fort Sill
2505 Sheridan Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219011243
Status: Unutilized
Reason: Other
Comment: Latrine, detached structure.

553 Bldgs.
McAlester Army Ammunition Plant
McAlester Co: Pittsburg, OK 74501–5000
Landholding Agency: Army
Property Number: 219011674 219011680, 219011684, 219011687, 219012113, 219013792–219013793, 219013981–219013995, 219014081–219014102, 219014104, 219014107–219014137, 219014139, 219014141–219014159, 219014161–219014162, 219014165–219014216, 219014218–219014274, 219014336–219014559, 219030007–219030127, 219040004
Status: Underutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material).

P–3042, Fort Sill
3042 Austin Road
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 219130060
Status: Unutilized
Reason: Other
Comment: Structurally unsound.

33 Bldgs.
Fort Sill
Lawton Co: Comanche, OK 73503–
Landholding Agency: Army
Property Number: 219140524–219140556
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Oregon

11 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla, OR 97838–
Landholding Agency: Army
Property Number: 219012174–219012176, 219012178–219012179, 219012190–219012191, 219012197–219012198, 219012217, 219012229
Status: Underutilized
Reason: Secured Area.

24 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla, OR 97838–
Landholding Agency: Army
Property Number: 219012177, 219012185–219012186, 219012189, 219012195–219012196, 219012199–219012205, 219012207–219012208, 219012225, 219012279, 219014304–219014305, 219014782, 219014844, 219030362–219030363, 219120032
Status: Unutilized
Reason: Secured Area.

Pennsylvania

Defense Personnel Support Ctr.
2800 South 20th Street
Philadelphia Co: Philadelphia, PA 19101–8419
Landholding Agency: Army
Property Number: 219011664
Status: Underutilized
Reason: Other Environmental; Secured Area
Comment: Friable Asbestos.

Hays Army Ammunition Plant
300 Miffin Road
Pittsburgh Co: Allegheny, PA 15207–
Landholding Agency: Army
Property Number: 219011666
Status: Excess
Reason: Secured Area.

58 Bldgs.
Fort Indiantown GAP
Annville Co: Lebanon, PA 17003–5011
Landholding Agency: Army
Property Number: 219140276–219140324
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

South Carolina

25 Bldgs.—Fort Jackson
Ft. Jackson Co: Richland, SC 29207–
Landholding Agency: Army
Property Number: 219120291–219120302, 219140329, 219140331, 219140333, 219140337–219140346
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. D–5674
Fort Jackson
Ft. Jackson Co: Richland, SC 29207–
Landholding Agency: Army
Property Number: 219140330
Status: Unutilized
Reason: Other
Comment: Detached Latrine.

4 Bldgs.
Fort Jackson
Ft. Jackson Co: Richland, SC 29207–
Landholding Agency: Army
Property Number: 219140332, 219140334–219140336
Status: Underutilized
Reason: Other
Comment: Structural damage.

Tennessee

Bldg. 100
Volunteer Army Ammo. Plant
Chattanooga Co: Hamilton, TN 37422–
Landholding Agency: Army
Property Number: 219010475
Status: Unutilized
Reason: within 2000 ft. of flammable or explosive material; Secured Area.

23 Bldgs.
Volunteer Army Ammo. Plant
Chattanooga Co: Hamilton, TN 37422–
Landholding Agency: Army
Property Number: 219010477, 219010479–219010500
Status: Unutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material).

45 Bldgs.
Milan Army Ammunition Plant
Milan Co: Carroll, TN 38358–
Landholding Agency: Army
Property Number: 219010501, 219010503, 219010505, 219010545, 219010551, 219010554, 219010557, 219010567, 219010569, 219010573, 219010576, 219010596, 219010600–219010602, 219010604, 219010606–219010607, 219010610–219010611, 219010613–219010622, 219010624–219010634, 219010922, 219030317–219030319
Status: Unutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material).

198 Bldgs.
Milan Army Ammunition Plant
Milan Co: Carroll, TN 38358–
Landholding Agency: Army
Property Number: 219010504, 219010506–219010508, 219010510, 219010515, 219010621, 219010523, 219010525–219010528, 219010531, 219010538–219010539, 219010544, 219010546, 219010548–219010550, 219010553, 219010555–219010556, 219010558, 219010561–219010566, 219010568, 219010570–219010572, 219010574–219010575, 219010577–219010582, 219010584–219010586, 219010588–219010595, 219010597, 219010599, 219010635–219010638, 219010923, 219014792–219014795, 219014797, 219014801–219014802, 219014804–219014811, 219030321, 219111001–219110031, 219110074–219111001, 219120182–219120246
Status: Underutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material).

23 Bldgs.
Holtston Army Ammunition Plant
Kingsport Co: Hawkins, TN 61299–6000
Landholding Agency: Army
Property Number: 219012304–219012309, 219012311–219012312, 219012314, 219012316–219012317, 219012319, 219012325, 219012328, 219012330, 219012332, 219012334–219012335, 219012337, 219013789–219013790, 219030268, 219140613
Status: Unutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material).

Texas

Saginaw Army Aricraft plant
Saginaw Co: Tarrant, TX 76079–
Landholding Agency: Army
Property Number: 219011665
Status: Unutilized
Reason: Other
Comment: Easement to city of Saginaw for sewer pipeline ending 5/15/2023.

18 Bldgs.
Lone Star Army Ammunition Plant
Highway 82 West
Texarkana Co: Bowie, TX 75505–0100
Landholding Agency: Army
Property Number: 219012524, 219012529, 219012533, 219012536, 219012539–219012540, 219012542, 219012544–219012545, 219030337–219030345
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

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Bldgs. 0021A, 0027A
Longhorn Army Ammunition Plant
Karnack Co: Harrison, TX 75661–
Location: State highway 43 north
Landholding Agency: Army
Property Number: 219012546, 219012548,
Status: Underutilized
Reason: Secured Area.

Bldg. 14
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant, TX 76070–
Landholding Agency: Army
Property Number: 219014823
Status: Unutilized
Reason: Other
Comment: Pump house.

Bldg. 9042
Possum Kingdom Rec Area
Star Route, Box 200
Grayford Co: Palo Pinto, TX 76045–
Landholding Agency: Army
Property Number: 219040397
Status: Unutilized
Reason: Other
Comment: Detached latrine.

Bldg. 9046
Possum Kingdom Rec Area
Star Route, Box 200
Grayford Co: Palo Pinto, TX 76045–
Landholding Agency: Army
Property Number: 219040399
Status: Unutilized
Reason: Other
Comment: Sewage treatment plant.

Bldg. 9047
Possum Kingdom Rec Araq
Star Route, Box 200
Grayford Co: Palo Pinto, TX 76045–
Landholding Agency: Army
Property Number: 219040400
Status: Unutilized
Reason: Other
Comment: Chlorine Building.

Bldg. 4801
Fort Bliss
4801 Drake Street
El Paso Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219110064
Status: Unutilized
Reason: Other
Comment: Gas Station.

Bldg. 40A Red River Army Depot
Texarkana Co: Bowie, TX 75505–
Landholding Agency: Army
Property Number: 219120084
Status: Unutilized
Reason: Secured Area.

Bldg. T–1191, T–1198 Fort Sam Houston
San Antonio Co: Bexar, TX 78234–5000
Landholding Agency: Army
Property Number: 219120085–219120086
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

27 Ammunition Magazines
Fort Bliss Ammunition Supply Point
El Paso Co: El Paso, TX 79916–
Landholding Agency: Army
Property Number: 219120072–219120098
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 05
Red River Army Depot
16 miles W. of Texarkana, Hwy. 82
Texarkana Col: Bowie, TX 75507–5000
Landholding Agency: Army
Property Number: 219130002
Status: Excess
Reason: Secured Area.

Bldg. 247
Red River Army Depot
18 miles west of Texarkana U.S. Hwy. 82
Texarkana Co: Bowie, TX 75507–5000
Landholding Agency: Army
Property Number: 219140255
Status: Underutilized
Reason: Secured Area.

Utah

21 Bldgs.
Tooele Army Depot
Tooele Co: Tooele, UT 84074–5008
Landholding Agency: Army
Property Number: 219012114–219012115, 219012121, 219012136, 219012140, 219012150, 219012153, 219012159, 219012162, 219012164–219012167, 219012169–219012170, 219012172, 219012752, 219012755, 219030308, 219120031, 219120283
Status: Unutilized
Reason: Secured Area.

18 Bldgs.
Tooele Army Depot
Tooele Co: Tooele, UT 84074–5008
Landholding Agency: Army
Property Number: 219012142–219012144, 219012148–219012149, 219012152, 219012155, 219012156, 219012158, 219012163, 219012171, 219012742, 219012750–219012751, 219014936, 219040003, 219120279, 219120281
Status: Underutilized
Reason: Secured Area.

4 Bldgs.
Dugway Proving Ground
Dugway Co: Toole, UT 84022–
Landholding Agency: Army
Property Number: 219013998–219013999
Status: Underutilized
Reason: Secured Area.

Bldg. 7156
Dugway Proving Ground
Dugway Co: Toole, UT 84022–
Landholding Agency: Army
Property Number: 219014693
Status: Unutilized
Reason: Secured Area.

Bldg. 104
Tooele Army Depot, North Area
Tooele Co: Tooele, UT 84074–5006
Landholding Agency: Army
Property Number: 219120014
Status: Underutilized
Reason: Other
Comment: Extensive deterioration.

13 Bldgs.
Tooele Army Depot, South Area
Tooele Co: Tooele, UT 84074–5008
Landholding Agency: Army
Property Number: 219120015–219120027
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

8 Bldgs.
Dugway Proving Ground
Dugway Co: Tooele, UT 84022–
Landholding Agency: Army
Property Number: 219130008, 219130011–219130013, 219130015–219130018
Status: Underutilized
Reason: Secured Area.

3 Bldgs.
Dugway Proving Ground
Dugway Co: Tooele, UT 84022–
Landholding Agency: Army
Property Number: 219130009–219130010, 219130014
Status: Unutilized
Reason: Secured Area.

Virginia

165 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery, VA 24141–
Location: State Highway 114
Landholding Agency: Army
Property Number: 219010833, 219010836, 219010839, 219010842, 219010844, 219010847–219010880, 219010892–219010912, 219011521–219011577, 219011581–219011583, 219011585, 219011588, 219011591, 219013559–219013570, 219110142–219110143, 219120070–219120071, 219140818–219140833
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

13 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery, VA 24141–
Location: State Highway 114
Landholding Agency: Army
Property Number: 219010834–219010835, 219010837–219010838, 219010840–219010841, 219010843, 219010845–219010846, 219010891, 219011578–219011550
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Other; Secured Area
Comment: Latrine, detached structure.

4 Bldgs.
Fort Belvoir Co: Fairfax, VA 22060–
Landholding Agency: Army
Property Number: 219012547, 219012553, 219012556, 219012562
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

22 Bldgs.
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George, VA 23801–
Landholding Agency: Army
Property Number: 219120033–219120045, 219120160, 219130006–219130007, 219140256–219140261
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Washington

6 Bldgs.
130–228th Street, S.W.
Federal Regional Center (FEMA) Laboratory
Bothell Co: Snohomish, WA 98021–
Landholding Agency: Army
Property Number: 219011637, 219011642, 219011644, 219011646–219011647, 219011649
Status: Unutilized
Reason: Secured Area.

35 Bldgs.
Fort Lewis
Fort Lewis Co: Pierce, WA 98433–5000

Landholding Agency: Army
Property Number: 219011651–219011652, 219011654–219011660, 219011662, 219013782, 219013882–219013885, 219013900, 219013907–219013920, 219110144, 219140566
Status: Unutilized
Reason: Secured Area.

Bldg. 209
Yakima Firing Center
Yakima Co: Yakima, WA 98901–5000
Location: Exit 26 off I–82 on Yakima Firing Center Road
Landholding Agency: Army
Property Number: 219040363
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Wisconsin

6 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk, WI 53913–
Landholding Agency: Army
Property Number: 219011094, 219011209–219011212, 219011217
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Other environmental; Secured Area
Comment: friable asbestos.

154 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk, WI 53913–
Landholding Agency: Army
Property Number: 219011104, 219011106, 219011108–219011113, 219011115–219011117, 219011119–219011120, 219011122–219011139, 219011141–219011142, 219011144, 219011146–219011208, 219011213–219011216, 219011218–219011234, 219011236, 219011238, 219011240, 219011242, 219011244, 219011247, 219011249, 219011251, 219011254, 219011256, 219011259, 219011263, 219011265, 219011268, 219011270, 219011275, 219011277, 219011280, 219011282, 219011284, 219011286, 219011290, 219011293, 219011295, 219011297, 219011300, 219011302, 219011304–219011311, 219011317, 219011319, 219011320–219011321, 219011323
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Other environmental; Secured Area
Comment: friable asbestos.

Bldg. P–10111
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe, WI 54656–5000
Landholding Agency: Army
Property Number: 219013443
Status: Unutilized
Reason: Other
Comment: Structure is boiler plant for hospital.

Bldg. 264
Badger Army Ammunition Plant
Bus Station
Baraboo Co: Sauk, WI 53913–
Landholding Agency: Army
Property Number: 219013784
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

6 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk, WI
Landholding Agency: Army
Property Number: 219013870–219013875
Status: Underutilized
Reason: Secured Area.

5 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk, WI
Landholding Agency: Army
Property Number: 219013876–219013878, 219030275–219030278
Status: Unutilized
Reason: Secured Area.

Land (by State)

Alaska

Dike Range
Fort Wainwright
Fort Wainwright Co: Fairbanks, AK 99703–
Location: 14 miles south of Fairbanks
Landholding Agency: Army
Property Number: 219014684
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Floodway.

Eklutna Mountain & Glacier Training Site
Fort Richardson Co: Anchorage, AK 99505–
Location: 16 miles from Fort Richardson
Landholding Agency: Army
Property Number: 219014788
Status: Unutilized
Reason: Other
Comment: Unexploded ordanance.

Davis Range
Fort Richardson
Fort Richardson Co: Anchorage, AK 99505–
Location: SW Portion of Installation
Landholding Agency: Army
Property Number: 219030267
Status: Underutilized
Reason: Secured Area.

Georgia

Facility EH001
Fort Gordon
Augusta Co: Richmond GA 30905–
Location: Located at the Eisenhower Army Medical Center
Landholding Agency: Army
Property Number: 219014786
Status: Unutilized
Reason: Other
Comment: heliport—concrete pad.

Illinois

Group 66A
Joliet Army Ammunition Plant
Joliet Co: Will, IL 60436–
Landholding Agency: Army
Property Number: 219010414
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Parcel 1
Joliet Army Ammunition Plant
Joliet Co: Will, IL 60436–
Location: South of the 611 Magazine Area, adjacent to the River Road.
Landholding Agency: Army
Property Number: 219012810
Status: Excess
Reason: Within 2000 ft of flammable or explosive material; Floodway.

Parcel No. 2, 3
Joliet Army Ammunition Plant
Joliet Co: Will, IL 60436–
Landholding Agency: Army
Property Number: 219013796–219013797
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Floodway.

Parcel No. 4, 5, 6
Joliet Army Ammunition Plant
Joliet Co: Will, IL 60436–
Landholding Agency: Army
Property Number: 219013798–219013800
Status: Unutilized
Reason: Within 2000 ft of flammable or explosive material; Floodway.

Homewood USAR Center
18760 S. Halsted Street
Homewood Co: Cook, IL 60430–
Landholding Agency: Army
Property Number: 219014067
Status: Underutilized
Reason: Secured Area.

Indiana

Newport Army Ammunition Plant
East of 14th St. & North of S. Blvd.
Newport Co: Vermillion, IN 47966–
Landholding Agency: Army
Property Number: 219012360
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Louisiana

Land
Louisiana Army Ammunition Plant
Doyline Co: Webster, LA
Landholding Agency: Army
Property Number: 219013923
Status: Unutilized
Reason: Other
Comment: barrow pit, predominately under water.

Maryland

Carroll Island
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford, MD 21010–5425
Landholding Agency: Army
Property Number: 219012630
Status: Underutilized
Reason: Floodway; Secured Area.

Graces Quarters
Aberdeen Proving Ground
Edgewood City
Aberdeen City Co: Harford, MD 21010–5425
Landholding Agency: Army
Property Number: 219012632
Status: Underutilized
Reason: Floodway; Secured Area.

Nebraska

Land
Cornhusker Army Ammunition Plant
Potash Road
Grand Island Co: Hall, NE 68802–
Location: 4 miles west of Grand Island.
Landholding Agency: Army
Property Number: 219013785
Status: Underutilized
Reason: Floodway.

New Jersey

Land
Armament Research Development & Eng. Center
Route 15 North

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Picatinny Arsenal Co: Morris, NJ 07806–
Landholding Agency: Army
Property Number: 219013788
Status: Unutilized
Reason: Secured Area.

New York

Watervliet Arsenal
Watervliet Co.: Albany, NY 12189–4050
Location: East of Main Arsenal Reservation
Landholding Agency: Army
Property Number: 219012508
Status: Excess
Reason: Other
Comment: Easement to N.Y. State, 6-lane highway construction.

Oklahoma

McAlester Army Ammo. Plant
McAlester Co: Pittsburg, OK 74501–5000
Location: 10 miles south of McAlester, OK
Landholding Agency: Army
Property Number: 219011671
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

McAlester Army Ammo. Plant
McAlester Co: Pittsburg, OK 74501–
Landholding Agency: Army
Property Number: 219014603
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material.

Pennsylvania

Lickdale Railhead
Fort Indiantown Gap
Lickdale Co: Lebanon, PA 17038–
Landholding Agency: Army
Property Number: 219012359
Status: Excess
Reason: Floodway.

Land
Raystown Lake
Huntingdon Co: Huntingdon, PA
Location: Downstream of Raystown Lake.
Landholding Agency: Army
Property Number: 219040420
Status: Excess
Reason: Other
Comment: Property Landlocked.

Tennessee

Land
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton, TN
Landholding Agency: Army
Property Number: 219013791
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Volunteer Army Ammo. Plant
Chattanooga Co: Hamilton, TN
Location: Area around VAAP—outside fence in buffer zone.
Landholding Agency: Army
Property Number: 219013660
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

McClure Bend
Cordell Hull Dam and Reservoir
Carthage Co: Smith, TN 37030–
Location: Highway 85 to McClure Bend Road.
Landholding Agency: Army
Property Number: 219040412
Status: Underutilized
Reason: Floodway.

Brooks Bend
Cordell Hull Dam and Reservoir
Highway 85 to Brooks Bend Road
Gainesboro Co: Jackson, TN 38562–
Location: Tracts 800, 802–806, 835–837, 900–902, 1000–1003, 1025
Landholding Agency: Army
Property Number: 219040413
Status: Underutilized
Reason: Floodway.

Cheatham Lock and Dam
Highway 12
Ashland City Co: Cheatham, TN 37015–
Location: Tracts E–513, E–512–1 and E–512–2
Landholding Agency: Army
Property Number: 219040415
Status: Underutilized
Reason: Floodway.

Virginia

Fort Belvoir Military Reservation—5.6 Acres
South Post located West of Pohick Road
Fort Belvoir Co: Fairfax, VA 22060–
Location: Right side of King Road
Landholding Agency: Army
Property Number: 219012550
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area
Comment: 5.6 acres.

Wisconsin

Land
Badger Army Ammunition Plant
Baraboo Co: Sauk, WI 53913–
Location: Vacant land within plant boundaries.
Landholding Agency: Army
Property Number: 219013783
Status: Unutilized
Reason: Secured Area.

[FR Doc. 91–30096 Filed 12–19–91; 8:45 am]

BILLING CODE 4310–25–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–940–02–4212–16; N–21720]

Termination of Desert Land Classification; Nevada

December 9, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates desert land classification N–21720.

EFFECTIVE DATE: Termination of the classification is effective with the publication of this document.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520, 702–785–6526.

SUPPLEMENTARY INFORMATION: Pursuant to section 7 of the Taylor Grazing Act (48 Stat. 1272), desert land classification N–21720 is hereby terminated in its entirety. The following described lands are affected by this action:

Mount Diablo Meridian, Nevada

T. 4 S., R. 36 E.,
Sec. 16, SW¼NE¼;
Sec. 21, N½NE¼.

The area described contains 120 acres in Esmeralda County.

The classification was accomplished pursuant to the Desert Land Act (43 U.S.C. 231, as amended) in response to an application. The application was subsequently relinquished. Since there is no longer any desert land application pending on the land, termination of the classification would allow disposal under the authorities. The land is identified in the Esmeralda-Southern Nye Resource Management Plan for disposal.

The land has been and continues to be open to the operation of the public land laws generally, including the mining laws.

Marla B. Bohl,

Acting Deputy State Director, Operations.

[FR Doc. 91–30386 Filed 12–19–91; 8:45 am]

BILLING CODE 4310–HC–M

[UT–920–92–4120–10]

Utah: Public Meeting on Coal Tract Delineation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting on a coal tract delineation.

SUMMARY: In accordance with the responsibility outlined in the Federal Coal Management Regulations (43 CFR part 3400), the BLM will hold a public meeting to discuss and receive comments on a coal tract delineation the BLM and other interested State and Federal agencies have been working on in the Utah portion of the Uinta Southwestern Utah Coal Region. Specifically, the tract being delineated is located in the Crandall Canyon Area on the Manti-LaSal National Forest of the Wasatch Plateau Coal Field in Central Utah.

SUPPLEMENTARY INFORMATION: BLM has received two coal lease applications under the Leasing by Application program in the area being considered for delineation. Any public comments on the proposed delineation before it is finalized will be useful to the Government in considering this area for possible leasing.

DATES: The public is invited to meet with the Government representatives to review the proposal on January 16, 1992, at anytime between 1 and 3:30 p.m.

ADDRESSES: The meeting will be held in the conference room of the BLM Price River Area Office, 900 North 700 East, Price, Utah.

FOR FURTHER INFORMATION CONTACT: Max Nielson, Uinta Southwestern Utah Coal Project Manager, Utah State Office, 324 South State Street, suite 301, P.O. Box 45155, Salt Lake City, Utah 84145–0155, Telephone 801–539–4038.

Dated: December 12, 1991.

James M. Parker,

State Director.

[FR Doc. 91–30435 Filed 12–19–91; 8:45 am]

BILLING CODE 4310–DQ–M

[NV–940–02–4212–24; Nev–0889, Nev–012936, Nev–064866, Nev–065120]

Order Providing for Opening of Lands; Nevada

December 9, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order.

SUMMARY: This order will open 3,125.92 acres of public land to the operation of the public land laws, including all or a portion of the mining laws, the mining leasing laws, and material sale laws. The lands were returned to the United States through private exchange, reconveyance of state selection land, or reconveyance of railroad land.

EFFECTIVE DATE: January 21, 1992.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM, Nevada State Office, P.O. Box 1200, Reno, Nevada 89520, 702–785–6526.

SUPPLEMENTARY INFORMATION:

1. The following described lands were patented to the Central Pacific Railroad and were reconveyed to the United States on August 18, 1930.

Mount Diablo Merdian, Nevada

T. 32 N., R. 37 E.,
Sec. 17, Lot 5.

2. The following described lands were reconveyed to the United States on February 1, 1954, through an exchange with George and Margaret Gove:

Mount Diablo Meridian, Nevada

T. 37 N., R. 38 E.,
Sec. 22, SE¼SE¼.

3. The following described lands were patented to the Central Pacific Railroad company on October 5, 1928, and were reconveyed to the United States on May 8, 1964, through an exchange with John C. Carpenter Jr. and Andrew J. Magnuson:

Mount Diablo Meridian, Nevada

T. 31 N., R. 50 E.,
Secs. 13, 23, 25;
Sec. 27, NE¼, N½SE¼, SE¼SE¼;
Sec. 35.

4. The following described lands were reconveyed to the United States on March 25, 1957, through an exchange with John J. Reed:

Mount Diablo Meridian, Nevada

T. 31 N., R. 56 E.,
Sec. 27, NW¼.

The areas described aggregate 160.000 acres in Elko County, 2,923.35 acres in Eureka County, 40 acres in Humboldt County, and 2.57 acres in Pershing County.

5. All mineral interests in the above described lands were received by the United States with the following two exceptions: The United States received all minerals except oil and gas in T. 31 N., R. 50 E. and received no mineral interests in T. 31 N., R. 56 E., Sec. 27, NW¼.

6. At 10:00 a.m. on January 21, 1992, all the lands except those in T. 31 N., R. 50 E. will be open to the operation of the public land laws, subject to valid existing rights, existing classifications and withdrawals, and requirements of applicable law. All valid applications received prior to or at 10 a.m. on January 21, 1992, will be considered as simultaneously filed. All other applications received will be considered in order in filing. Publication of an order dated October 8, 1964, opened the lands in T. 31 N., R. 50 E. to surface entry effective November 13, 1964.

7. At 10 a.m. on January 21, 1992, the lands will also be open to the operation of the mining and mineral leasing laws as to minerals received as indicated by paragraph 5 above. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 91–30387 Filed 12–19–91; 8:45 am]

BILLING CODE 4310–HC–M

[NV–930–02–4212–11; N–4157]

Decision To Divest Title to Land Patented to the White River Fish and Wildlife Improvement Association, Inc., and To Revest Said Title to the Land in the United States

Dated: December 11, 1991.

On December 11, 1991, the Bureau of Land Management, Nevada State Office, issued the following decision to divest title to a parcel of land from the White River Fish and Wildlife Improvement Association, Inc., and to revest said title in the United States. Because the corporation no longer exists and the trustees are either deceased or cannot be located, the decision is being published herein to give notice before this action becomes final.

Decision

White River Fish and Wildlife Improvement Association, Inc., 828 Kenny Way, Las Vegas, NV 89107

Recreation and Public Purposes Act Patent No. 27–70–0112

(N–4157)

Divestiture of White River Fish and Wildlife Improvement Association's Title—Revestiture of Title in the United States

Pursuant to the provisions of the Recreation and Public Purposes Act (43 U.S.C. 869, *et seq.*), the United States issued Patent No. 27–70–0112, dated May 22, 1970, to the White River Fish and Wildlife Improvement Association, Inc., (hereinafter referred to as the Association) for a 10-acre camp and recreation site on the following-described land:

Mount Diablo Meridian, Nevada

T. 6 N., R. 61 E.,
Sec. 27, S½NE¼SE¼NE¼, N½SE¼SE¼ NE¼.

Subsequent field examinations of the land revealed that the Association was not in compliance with the approved plans of management and development because many of the planned improvements had not been constructed and because the area was in a state of disrepair. Photographs taken of the area in 1991 indicate that the site continues to be in a state of disrepair. Attempts to contact the trustees of the Association revealed that four of the trustees are deceased, and the whereabouts of one trustee, Sherman E. Nugent, is unknown. On December 1, 1984, the Nevada Secretary of State's Office revoked the Association's corporate charter because a list of current officers was not filed.

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One of the conditions of the patent is the reversion of title to the United States if the patentee or its successor does not comply with the provisions of the approved plans of development and management filed with the Bureau of Land Management on January 19, 1970. The patent further states that the Secretary of the Interior or his delegate, after due notice and opportunity for a hearing, may declare the terms of the grant (patent) terminated in whole or in part.

Therefore, on June 26, 1991, the Ely District Manager issued a Notice to the Association at its address of record informing the Association that its failure to comply constituted a violation of the terms of the patent and the Association to show cause why action should not be taken to revest title to the land in the United States. There was no response to the Notice. Therefore, title to the above-described land is hereby divested from the Association and revested in the United States because the Association no longer exists and because the Association has not been in compliance with the approved plans of management and development since 1979, as required by the patent terms.

Within 30 days of the date of receipt of this decision, you have the right of appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations at 43 CFR 4.400. If an appeal is taken, you must follow the procedures outlined in the enclosed Form 1842–1, Information on Taking Appeals to the Board of Land Appeals. Within 30 days after you appeal, you are required to provide a Statement of Reasons to the Board of Land Appeals and a copy to the Regional Solicitor's Office listed in Item 3 on the form. In addition, please provide this office with a copy of your Statement of Reasons. The appellant has the burden of showing that the decision appealed from is in error.

If no appeal is filed within the time specified, this decision will be deemed to have become final and the appropriate records, including the White Pine County records, will be noted regarding extinguishment of the Association's title to the land and revestiture thereof in the United States.

FOR FURTHER INFORMATION CONTACT: Joanna Buel, BLM, Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520, 702–785–6512.

Marla B. Bohl,

Acting Deputy State Director, Operations.

[FR Doc. 91–30385 Filed 12–19–91; 8:45 am]

BILLING CODE 4310–HC–M

Minerals Management Service

Notice to Lessees and Operators and Pipeline Right-of-Way Holders

AGENCY: Minerals Management Service, Interior.

ACTION: Notice to lessees and operators of Federal oil, gas, sulphur, and salt leases and pipeline right-of-way holders (NTL) in the Outer Continental Shelf, Gulf of Mexico OCS Region.

SUMMARY: On May 2, 1991, the Minerals Management Service (MMS), Gulf of Mexico OCS Region (GOMR), published a proposed NTL clarifying historic shipwreck survey requirements and the areas on the Outer Continental Shelf (OCS) where such surveys will be required. A significant reduction was proposed (approximately 50 percent) in the area where historic shipwreck surveys will be required. A more concentrated survey interval was also proposed (i.e., from 150 meters to 50 meters) in high probability areas for historic shipwrecks to better locate, evaluate, and protect historic period wrecks that may occur in these high probability areas.

EFFECTIVE DATE: February 17, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. Richard J. Anuskiewicz (504) 736–2796 or Mr. John R. Greene (504) 736–2865.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public, pursuant to the National Historic Preservation Act of 1966 (Pub. L. 89–665), as amended, the National Environmental Policy Act of 1969 (Pub. L. 91–190), and the OCS Lands Act of 1978 (Pub. L. 95–372), as amended, that the MMS, Gulf of Mexico OCS Region, is amending its historic shipwreck survey requirements. On Thursday, May 23, 1991, a workshop was held at the Minerals Management Service Gulf of Mexico Regional Office in New Orleans, Louisiana. The workshop was attended by representatives from the oil and gas industry and geophysical survey companies, geophysicists, professional marine archaeologists, and archaeologists from Federal and State agencies. Some of the comments presented herein are from the archaeological workshop. Others are in response to formal, written comments sent to the MMS Gulf of Mexico OCS Region regarding the NTL. This final NTL supersedes all other NTL's and Letters to Lessees (LTL's) which relate to archaeological resources in the Gulf of Mexico OCS Region with the exception of the LTL dated November 30, 1990, which instituted the redefined high probability areas for historic period shipwrecks.

Public Comments and Agency Responses

General Comments

Comment: One commenter noted that while the elimination of some 50 percent of the total area, gulf-wide, to be surveyed is proper, the benefit is somewhat offset by tripling the required survey density from 150 meters to 50 meters. The commenter questioned whether the increase in survey density is actually needed unless some anomaly is discovered by a survey under the current survey requirements. Another commenter stated that an increase in survey density should be predicated upon the findings of an initial survey sweep under the currently required 150-meter survey density.

Response: It has been demonstrated that magnetometer survey at a 150-meter linespacing can completely miss a historic period shipwreck. The 1989 MMS-funded study on historic shipwrecks and the evaluation of magnetic anomalies in the northern Gulf of Mexico concluded that the 150-meter survey linespacing methodology cannot differentiate, at an acceptable confidence level, between modern ferromagnetic debris and potential archaeological resources. Given the study conclusions and refinement of the historic shipwreck high probability areas, an increase in the survey linespacing to 50 meters is warranted to better protect a potential resource. Basing an increase in survey density on an inadequate initial sweep would not serve to protect a potential resource.

Specific Comments

Comment: A commenter suggested that any archaeological resource survey requirements should be noted by MMS prior to a lease sale involving a lease with such requirements. The commenter stated that this would be important for both evaluating such leases and scheduling the exploitation of the respective leases.

Response: The MMS Gulf of Mexico OCS Region issued an LTL, dated November 30, 1990, redefining the high probability areas for historic period shipwrecks. The LTL was sent to active lease operators, survey companies, and archaeologists. Included in the package was a refined list of lease blocks having a high probability for the occurrence of historic period shipwrecks. The high probability areas for prehistoric archaeological resources did not change. Identification of these lease blocks may

be made from visuals previously issued by the MMS. In addition, an Information to Lessees (ITL) will be included in each Sale Notice which would direct lessees where to acquire information about which blocks would require an archaeological resource survey. Both the list of redefined high probability areas for historic period shipwrecks and the visuals delineating those areas with a high probability for prehistoric archaeological resources are available from the MMS by request. Under current policy, the MMS provides leaseholders with written notification of the type of archaeological survey needed (if necessary) shortly after awarding the leases. Lessees requiring information as to the type of archaeological survey necessary for specific lease blocks should request such information from the MMS Gulf of Mexico OCS Region.

Comment: A commenter suggested that only targets not considered to be associated with oil and gas activities, fishing activities, and natural phenomena be included in the listing of side-scan sonar targets.

Response: It is useful to have a listing of side scan sonar data associated with the natural and man-made activities addressed in the archaeological survey report. Specific examples would include well locations and geologic outcrops. It is the intent of the NTL not to require a listing of every side-scan sonar feature, but to require a listing of all side-scan sonar contacts which could be related to historic period shipwrecks. The determination of the significance of identified side-scan sonar targets (such as those mentioned in the comments) and their inclusion in the listing of side-scan sonar targets is the responsibility of the professional archaeologists and geophysicists that analyze the data and prepare reports.

Comment: A commenter stated that it would be an imposition from a commercial standpoint to require two adjacent survey lines to be run in different cardinal directions. Further, in certain weather conditions it would not be feasible to accomplish this requirement. It was also stated that unidentified magnetic anomalies which should be shown may not be on adjacent, opposite lines.

Response: The intent of this portion of the NTL is to provide the MMS analysts with data samples which are indicative of data quality taken under differing conditions encountered during the survey. The MMS' remote-sensing survey analysis experience indicates that nearly all surveys have survey lines which have been run in opposite cardinal directions. The MMS is aware that data quality may differ between survey lines that are run with a following sea, versus, those run into a head or quartering sea. Also, the logistics of remote-sensing marine survey suggests that two adjacent lines run in opposite cardinal directions would not be run consecutively. This allows for an interval of time between the running of the survey lines and a subsequent possible change in weather conditions. This would help maximize remote-sensing information and data quality and keep requirements for data submission minimal.

When weather conditions encountered in the survey prevent the acquisition of data on two adjacent survey lines run in different cardinal directions, the preparers of archaeological reports should follow guidelines under the Introduction of the NTL (1.4.). These guidelines state, "When any of the following requirements cannot be met for technical or logistical reasons, an explanation of the problem shall be provided in the archaeological resource report."

In response to the final portion of the comment, it should be noted that the NTL states that whenever possible the magnetometer strip-chart data samples should include unidentified magnetic anomalies. The MMS understands that in many instances two adjacent survey lines will not contain unidentified anomalies.

Comment: A commenter suggested that the section stating "* * * and line direction with Universal Transverse Mercator coordinates, x and y coordinates and latitude/longitude reference points from appropriate regional systems" be changed to read "* * * and line direction in the grid projection in which the lease is described, i.e., UTM, Lambert, TM, etc., that x, y grid coordinates, tics be placed every five inches thereon with geodetic graticules every 60 seconds; and * * * shall be oriented to grid north."

Response: The suggested change will be adopted with the exception that all maps will be oriented to true north.

Comment: A commenter requested that the NTL be specific in its definition of highlighting of sample geophysical survey data versus the annotation of such data. The commenter also requested that MMS state if an unannotated/unhighlighted copy is acceptable.

Response: The MMS understands that highlighting and/or annotating representative sample geophysical survey data as an illustration of the geophysical and/or archaeological analysis of the survey data serves a useful purpose. However, such annotation or highlighting directly on the data sample impedes and delays the interpretation of the few data samples provided in the archaeological survey report. The NTL will be changed to read "* * * any interpretive highlighting or annotation of the sample data shall be on either a separate overlay or a copy of the representative sample data. In no instance should original survey data be highlighted." In those cases where a separate overlay is not used for highlighting or annotation, a second copy of the data sample free of highlighting or annotation should be included in the report.

Comment: A commenter stated that waivers are sometimes granted for magnetometer and side scan sonar hazard survey requirements in deep waters. The commenter stated that these tools are incapable of resolving features which might be indicative of historic shipwrecks in areas of extreme water depths and steep slopes. The commenter requested exception to the requirement for preparation of archaeological reports for specific deep water blocks.

Response: The redefined high probability area for historic period shipwrecks includes deep water blocks which have a high probability for the location of specific shipwrecks. With this increased confidence in the location of these shipwrecks comes the responsibility for protecting these deep water wrecks from impact by oil, gas, sulfur, and salt activities. For this reason, it is necessary that an archaeological report be prepared based on the available geophysical data. The MMS recognizes that, in some cases, due to technical or logistical reasons, data acquisition requirements may not be met. In these few occasions, the MMS will review these instances on a case-by-case basis and make a decision on the probable utility of the data which can be acquired.

Comment: A commenter suggested that variances should be included to provide for use of equipment which may be developed in the future.

Response: The MMS has adopted a conservative approach in the selection of the requisite survey instrumentation to conduct shallow hazard and archaeological resource surveys in the Gulf of Mexico. The present survey instrumentation array, required by the MMS, was adopted as a result of an exhaustive research and testing program and a cooperative evaluation with geophysical survey companies. The new survey methodologies were also derived through an extensive research and testing program which provided a high confidence level for the detection of

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historic period shipwrecks and an examination of geomorphic features for prehistoric archaeological sites.

Provisions in the NTL to allow for equipment which might be developed in the future might encourage the use of undeveloped methodology or unproven instruments in remote-sensing surveys in the Gulf of Mexico. New technological developments and possible corresponding survey methodologies must undergo intensive review by MMS to determine if the new technology is suitable to the survey requirements for protection of archaeological resources.

Comment: A commenter stated that single drill site and platform surveys should be limited to those areas likely to be actually used and questioned whether a 3,000 foot area was excessive.

Response: MMS archaeological analysis experience indicates that a 914 meter (3,000 foot) square area centered on the drill site is a reasonable area to require archaeological resource survey within. Review of side-scan sonar records has indicated numerous examples of jack-up rig tripod and anchoring scars extending for several hundreds of feet from the final location. In addition, surveys on leases which have previous wellsites indicate that the radius of loss or toss of ferromagnetic debris from these sites is generally contained within 457 meters. It should also be noted that the new requirement for site specific surveys over a 914 m (3,000 feet) square area is a significant reduction from the previous requirements under NTL 75–3 (Revision No. 1), which required that an area approximately 1,850 meters square be surveyed.

Comment: A commenter suggested that the need for 50 meter parallel offset survey lines for pipelines within the historic high probability areas should be predicated upon such need as indicated by the centerline survey line.

Response: Pipeline survey parameters were configured as a center line with at least two parallel offsets in order to maximize the protection of archaeological resources. A single, center line survey for pipelines would provide, at best, sufficient magnetometer coverage for 25 to 30 meters (82 feet to 100 feet) on either side of the center line. The pipeline right-of-way corridor extends for 100 feet (or 30 meters) on either side of the center line. (i.e., a 200 feet/60 meter corridor). The proposed right-of-way pipeline may be laid anywhere within the corridor. The area of potential impact from the laying of the pipeline (as demonstrated by surveys over existing pipelines) is, in most cases, greater than 25 meters on either side of the center line. In the case of pipeline lay barges, the area of impact from the anchor array is significantly greater than 25 meters from the center line. A single, center line survey would, therefore, not provide sufficient coverage for protection of potential archaeological resources.

Comment: A commenter expressed concern about the protection of the lessee from liability for damage to a historic or prehistoric site when such lessee has taken all required precautions.

Response: The MMS is mandated by law to require protection of archaeological resources from impact due to mineral exploration and development on the Federal OCS. The required remote-sensing survey methodology and subsequent archaeological analysis and report serve to provide such protection for archaeological resources in the Gulf of Mexico OCS Region. The lessee or right-of-way holder are protected from liability for damage to a historic or prehistoric site when the remote-sensing surveys are performed in accordance with this archaeological NTL.

Comment: A commenter suggested that any data indicating a magnetic anomaly encountered in a pipeline survey should be submitted with the archaeological survey report.

Response: While examination of all unidentified magnetic anomalies encountered in a pipeline survey would be beneficial in analysis, it was felt that inclusion of all anomalies would both be unnecessary and present a long-term problem with storage of the reports. In some extreme cases, it is expected that a single pipeline route could contain several hundred unidentified magnetic anomalies. Pipelines with a hundred or more unidentified anomalies are not expected to be unusual under the new MMS archaeological NTL guidelines. MMS archaeological review of pipeline reports indicates that some pipeline route surveys cover a greater area than required for reasons determined by the operator. In these cases, examination of anomalies which occur on survey lines that could not be impacted would be unnecessary. For these reasons, a decision to require magnetometer data from the center line of the survey was made. This will provide MMS archaeological analysts with sufficient data to review data quality, and provide the analyst with the option to request submission of data for examination, if necessary.

Comment: A commenter contended that it is the responsibility of MMS to assure that the survey reports are adequate to locate any historic or prehistoric archaeological resource.

Response: The MMS agrees. The changes in the methodological procedures presented in the new NTL are designed to increase the ability of the remote-sensing survey to differentiate, at an acceptable level, between modern ferromagnetic debris and potential archaeological resources. By issuing these methodological procedures, the MMS is fulfilling its responsibilities to ensure protection of submerged archaeological resources in the Gulf of Mexico OCS Region.

Comment: A commenter expressed concern that the lessee should be held responsible for preventing damages to historic or prehistoric archaeological resources from its operations only, and not to provide particular protection for, nor monies to recover these resources.

Response: The MMS agrees. Enclosure No. 3 of the new NTL describes the procedures which should be taken should an archaeological resource be located in proximity to proposed operations. These procedures are designed to prevent damage to historic or prehistoric archaeological resources and do not require operators to fund recovery of the resources.

Comment: A commenter questioned why the nominal fix-spacing under navigation requirements was to be no more than 150 meters and the shot points on the postplot map were to be at 152 meter (500 feet) intervals.

Response: We thank the commenter for pointing out this inconsistency. The NTL will be made consistent. Nominal fix-spacing will be no more than 152 meters and shot points will be mapped at 152-meter intervals.

Comment: A commenter questioned whether each of the four copies of an archaeological survey report needed to have the required magnetometer data samples.

Response: The Gulf of Mexico OCS Region has determined that only 3 of the 4 required archaeological survey reports shall include the copies of magnetometer data samples. Accordingly, the NTL will be changed to reflect this comment.

Comment: A commenter asked if the new survey methodology would result in an increased cost for new instrumentation.

Response: The new methodology does not require different instrumentation than was previously required.

Date: November 25, 1991.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico Region.

Outer Continental Shelf Archaeological Resource Requirements for the Gulf of Mexico OCS Region

The Federal Government's responsibilities in archaeological resource management and protection on the Outer Continental Shelf (OCS) are based on the requirements of the National Historic Preservation Act of 1966, as amended, and on other applicable laws and regulations. The Minerals Management Service (MMS) has issued regulations at 30 CFR 250.33(b)(15), 250.33(o), 250.34(b)(8)(v)(A), 250.34(s), 250.157(a)(5), as well as lease stipulations which, if invoked, require OCS operators to conduct surveys and prepare reports designed to fulfill these archaeological resource legal responsibilities. Notices to Lessees and Operators (NTL) Nos. 74–10 and 75–3 were issued by the Gulf of Mexico OCS Region (GOMR) to implement the provisions of the lease stipulations. On October 1, 1982, NTL No. 75–3 was revised and issued by the GOMR to provide guidance on uniformity and consistency of archaeological resource field surveys and reports.

In June 1987, the MMS contracted with Texas A & M University to update and improve a 1977 historic resources study and to broaden the historic shipwreck database. This study was specifically designed to reevaluate the zone of historic shipwreck high probability. In November 1989, the study was completed. Based on the study results, the MMS has redefined the high probability areas for the occurrence of historic shipwrecks. This has resulted in a substantial reduction in the number of lease blocks in the Gulf of Mexico (i.e., approximately 50%) requiring a magnetometer survey. The study also demonstrated a compelling need to increase magnetometer data density in the high probability areas in order that historic shipwreck magnetometer patterns may be recognized. This shall be accomplished by reducing the survey linespacing interval, in the historic shipwreck high probability areas, from 150 meters (m) to 50 m. The NTL is presented as a series of enclosures. Enclosure No. 1. is titled Requirements for Archaeological Field Surveys. Enclosure No. 2. is titled Standards for Archaeological Resource Reports. Enclosure No. 3. is titled Requirements for Mitigation and Operational Restrictions.

The provisions of this NTL shall become effective as of February 17, 1992.

J. Rogers Pearcy,

Regional Director.

Enclosures

Enclosure No 1.

Requirements for Archaeological Resource Field Surveys

I. Introduction

After a lease is issued the GOMR will:

(1) Notify the operator, in writing, if the decision is made to invoke the archaeological resource report requirement portion of the stipulation.

(2) Identify to the operator the type of report (historic shipwreck, historic shipwreck/prehistoric site, or prehistoric site) and the standards that shall be required for compliance.

After notification from the GOMR of the decision to invoke the report requirement of the stipulation, the operator shall conduct the appropriate high-resolution remote sensing survey to determine the potential existence of archaeological resources that may be affected by future lease operations. In most cases, the archaeological resource field survey requirements will be similar to those for surveys conducted for shallow hazards or other purposes. The operator is encouraged to conduct the surveys concurrently. Pipeline right-of-way holders are directed to contact the Regional Supervisor, Leasing and Environment, GOMR, for determination of the type of archaeological resource field survey and report that will be required.

In the letter of invocation, the GOMR may request to be notified at least 72 hours prior to commencement of the survey so that arrangements can be made for observation of field procedures. An archaeologist and geophysicist need not be present while the archaeological resource field survey is being conducted, but they should be involved in survey planning. The survey shall be conducted prior to submitting an Exploration Plan, Development Operations Coordination Document, or pipeline application which proposes bottom disturbing operations.

When any of the following requirements cannot be met for technical or logistical reasons, an explanation of the problem shall be provided in the archaeological resource report.

II. Data Acquisition Instrumentation

Geophysical instrumentation for archaeological resource field surveys shall be representative of the state-of-the-art in technological development and shall be deployed in a manner which minimizes interference among the instrumentation systems. All data recorders shall be interfaced into the navigation system to assure proper integration of information. The equipment operator shall ensure that all instrumentation is adequately tuned and that all recorded data are readable, accurate, and properly annotated.

The following instrumentation shall be utilized in conducting archaeological resource field surveys:

A. Magnetometer. A magnetometer need be used only for historic shipwreck (HS) and historic shipwreck/prehistoric site (HS/PS) surveys. Total field intensity instruments shall be used to determine the possible presence of historic shipwrecks. Data obtained shall be of such quality so as to permit detection and evaluation of magnetic anomalies within the survey area.

The sensor of the magnetometer shall be towed as near as possible to the seafloor; a distance of six meters or less is required. A mechanical or digital depth sensor shall be attached to the magnetometer sensor, and each survey line shall be annotated with tow sensor depth and with the start of the line (SOL) and end of the line (EOL) times.

Magnetometer sensitivity shall be one gamma or less, with the data sampling rate not to exceed one-second intervals. The use of the "zero-mode" setting during magnetometer surveying is prohibited. This surveying mode does not measure the ambient magnetic field as required. Background noise level shall not exceed three gammas peak to peak. Analog strip chart recorders shall be equipped with dual trace pens. Recording scales shall include both 1,000-gamma and 100-gamma full scale, respectively. Shot points and recorder speed must be annotated on the strip charts for each survey line. The GOMR recommends that the strip chart recorder speed be approximately two inches per minute. Whenever possible, the magnetometer should be towed a minimum distance of two and one-half vessel lengths behind the vessel to eliminate the magnetic influence and effect of the vessel.

B. Dual channel side-scan sonar. A dual channel side-scan sonar system shall be used to record continuous planimetric images of the seafloor. The system shall be operated in a manner that provides 100 percent coverage of the seafloor in the survey area. Data obtained should be of such quality so as to permit detection and evaluation of seafloor objects and features within the survey area.

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Whenever possible, the side-scan sonar sensor shall be towed above the seafloor at a distance of 10 to 20 percent of the range of the instrument. The vertical sound beam width shall be appropriate to the water depth, and the horizontal sound beam width shall provide optimum resolution. Tuning should be accomplished in a manner that enhances the echo returns from small nearby objects and features without sacrificing the quality of echo returns from more distant objects and features.

C. Subbottom profiler. A subbottom profiler system shall be used to determine the character of near-surface geological features. Data obtained should be of such quality so as to permit evaluation of these features for determining any possible prehistoric archaeological significance. The system used shall be capable of providing at least one to two meters of resolution within the upper 15 meters of sediment.

D. Depth sounder. Continuous water depth measurements shall be made using a high-frequency narrow-beam sounder. Bathymetric data shall be recorded with a recording sweep appropriate to topography and water depth.

E. Additional investigation. Under certain conditions, MMS may require additional instrumentation and methods such as underwater television; still, video, or movie cameras; divers; remote or manned submersibles; coring; and additional geophysical survey lines. The operator will be notified, by letter, of such requirements at the time of stipulation invocation. Right-of-Way Pipeline holders are directed to contact the Regional Supervisor, Leasing and Environment, to ascertain whether additional instrumentation and methods are required.

III. **Survey Parameters**

The following navigation and survey pattern requirements shall be adhered to when conducting archaeological resource field surveys:

A. Navigation. Navigation for the survey shall be accomplished by using a state-of-the-art continuous positioning system correlated to annotated geophysical records. The system shall have an accuracy of 5 meters or less. The nominal fix spacing shall be no more than 152 meters.

B. Survey Pattern. 1. Lease Surveys—When multuple operations on the lease are planned or probable, it may be advantageous to conduct a lease survey. This survey shall cover the entire area of the lease, as well as that portion external to the lease within which operational activities may cause physical and/or long-term magnetic disturbances. The area of physical disturbances includes, but is not limited to, the area within which drilling vessel anchors may be placed, but does not include the area within which work boat anchors may be placed or the area within which similar minimal disturbances may occur. The survey shall be run along parallel primary lines spaced at a maximum of 50 meters for HS or HS/PS surveys and at a maximum of 300 meters for prehistoric site (PS) surveys with cross-tie lines spaced at a maximum of 900 meters for each type of survey. Tighter line spacing may be required by the GOMR in areas of known significant or potentially significant archaeological resources. The operator will be notified by letter of such requirements at the time of stipulation invocation.

Lease HS and HS/PS surveys which are conducted on lease blocks that have been identified by the letter of invocation as being in water depths greater than 60 m shall have the same survey pattern as lease PS surveys.

2. Single Drill Site/Platform Surveys (Site Specific Surveys)—These surveys shall be run in an area approximately 914 meters (3,000 feet) square centered upon the proposed drill site with primary lines spaced at a maximum of 50 meters for HS or HS/PS surveys or at a maximum of 300 meters for PS surveys with three equidistant cross-tie lines. Additional survey lines may be necessary so that the area surveyed includes the area within which operations may cause physical and/or long-term magnetic disturbances. Tighter line spacing may be required by the GOMR in areas of known significant or potentially significant archaeological resources. The area of physical disturbances includes, but is not limited to, the area within which drilling vessel anchors may be placed, but does not include the area within which work boat anchors may be placed or the area within which similar minimal disturbances may occur. Single drill site/platform surveys are not required in areas where lease surveys have already provided sufficient archaeological coverage of the area.

Site-specific HS and HS/PS surveys which are conducted on lease blocks that have been identified by the letter of invocation as being in water depths greater than 60 m shall have the same survey pattern as site-specific PS surveys.

3. Pipeline surveys. (a) *Right-of-Way Pipelines*—The survey pattern for all right-of-way pipelines shall include a line along the proposed pipeline route (center line) and offset parallel lines (on either side of the center line) spaced at a maximum of 50 meters for HS and HS/PS surveys. For PS surveys, the survey shall include a line along the proposed centerline with offset parallel lines spaced at a maximum of 300 meters. The number of offset parallel lines must be sufficient to provide adequate survey coverage of the area within which operations may cause physical and/or long-term magnetic disturbances. A minimum of two offset parallel lines shall be required. The area of physical disturbances includes, but is not limited to, the area where pipeline lay barge anchors will be placed.

A survey for a right-of-way pipeline which will be laid in an area where an HS or HS/PS survey is required and will be in water depths greater than 60 meters shall include a center line with offset parallel lines spaced at a maximum of 300 meters. The number of offset parallel lines must be sufficient to provide adequate survey coverage of the area within which operations may cause physical and/or long-term magnetic disturbances. A minimum of two offset parallel lines shall be required.

(b) *Lease-Term Pipelines*—Archaeological resource surveys for lease-term pipelines which will be laid within leases that have been previously surveyed at 50 m line spacing interval (i.e., HS, or HS/PS) are not required. Surveys for lease-term pipelines which will be laid within block(s) that have been previously surveyed and are exclusively considered to have a high potential for prehistoric archaeological resources (i.e., PS) are also not required.

In water depths shallower than 60 meters, surveys for lease-term pipelines on leases designated to have a high probability for historic period shipwrecks (i.e., HS, HS/PS) shall be conducted using the survey pattern discussed in paragraph 3(a) for right-of-way pipelines. Previous surveys of these leases at 150 or 300 meter linespacing will not be adequate.

Surveys for lease-term pipelines which will be laid within leases in water depths greater than 60 meters are not required. However, for these pipelines, an archaeological resource report based on data obtained from a previous shallow hazard survey shall be required.

Enclosure No. 2

Standards for Archaeological Resource Reports

I. Introduction

An evaluation and synthesis of data gathered during an archaeological resource survey shall be included in a report prepared and signed by an archaeologist and a geophysicist. Professional personnel in these fields should have credentials and experience sufficient to ensure that they are able to adequately perform the necessary work. As needed, specialists in other fields may participate in data analysis and report preparation.

All original data used to prepare the archaeological resource report shall be maintained by the lessee or permittee and be made available to the GOMR upon request at any time prior to lease termination or pipeline right-of-way relinquishment.

Prior to commencing any drilling, production, or construction operations, the operator/applicant/permittee shall submit to the Regional Supervisor, Field Operations, an original report and three (3) copies to determine the potential existence of any archaeological resource that may be affected by the operations. In the case of historic shipwreck reports, the required representative magnetometer data samples must be included in the original report and two (2) of the three (3) copies. The report shall be based on an assessment of the data from remote-sensing surveys in accordance with the specifications of this NTL, subsequent appropriate LTL's, and other pertinent archaeological and environmental information. Data required for shallow hazard surveys and platform foundation analyses shall generally be sufficient for PS resource reports.

II. Contents of Archaeological Resource Reports

Archaeological resource reports shall include the following information:

A. A description of the area surveyed including lease number(s), block numbers(s), OCS lease area(s), and water depths.

B. A listing of personnel and duties for individuals involved in survey planning, survey conduct, and report preparation.

C. A discussion of the archaeological resource field survey including the following:

(1) A brief description of the navigation system with a statement of its estimated accuracy for the area surveyed.

(2) A brief description of survey instrumentation including scale, sensitivity settings, sampling rate per second, and tow depths where required.

(3) A description of the survey vessel including vessel size, sensor configuration, navigation antenna locations, and cable lengths.

(4) Vessel speed and course changes.

(5) Sea state and weather conditions.

(6) A copy of the original daily survey operations log.

(7) A description of survey procedures including a statement of survey and record quality, a comparison of survey line crossings, and a discussion of any problems which may affect the ability of the report preparation personnel to determine the potential for archaeological resources in the survey area.

D. A navigation postplot map of the survey area at a scale of 1:12,000 showing survey lines, shot points at 152 meter (500 feet) intervals, line direction in the grid projection in which the lease is described, e.g., UTM, Lambert, TM, etc., and x, y grid coordinates and tics placed every five inches thereon with geodetic graticules every 60 seconds. This map, or separate maps at the same scale which also show survey lines, shot points, and line direction, shall be oriented to true north and shall delineate the following, as appropriate:

(1) The horizational and vertical extent of all relict geomorphic features having potential for associated prehistoric sites. Such areas includes, but are not limited to, tidal estuaries, embayments, barrier islands, beach ridge sequences, spits, alluvial terraces, and stream channels. When relict fluvial systems are recorded, the map shall:

(a) Differentiate between generations of channeling when more than one generation is present;

(b) Show any internal channel features such as point bar deposits and terraces;

(c) Delineate any channel margin features such as natural levee ridges; and

(d) Indicate all depths of channel banks and channel axes.

Note: An isopach map of channel fill sediments is often the most efficient means of conveying the above information, but this method alone will not allow differentiation between more than one generation of channeling.

(2) Bathymetry.

(3) All magnetic anomalies and seafloor side-scan sonar contacts of unknown source (i.e., magnetic anomaly, map symbol = ; side-scan sonar contact, map symbol = (SSS). The duration of all magnetic anomalies shall be plotted on the survey map at a scale of 1:12,000.

(4) Sites of proposed oil and gas operations (i.e., proposed well locations, platform sites, and/or pipelines), when available at the time of report preparation.

(5) Sites of former oil and gas operations (i.e., abandoned well locations, platform sites, and/or pipelines).

E. If an analysis of the potential for prehistoric sites within the survey area is required, the report shall include:

(1) A review of current existing literature on the late Pleistocene and Holocene geology, paleogeography and sea level change in the area, marine and coastal prehistory, and previous archaeological resource reports in the area, when available. A list of suggested references will be made available upon request.

(2) A discussion of relict geomorphic features and their archaeological potential to include the following:

(a) The type, age, and association of the features mapped;

(b) The acoustic characteristics of channels and their fill material;

(c) Evidence for preservation or erosion of channel margins;

(d) Evidence for more than one generation of fluvial downcutting; and

(e) The sea level curves used in the assessment.

(3) A discussion of the potential for identification and evaluation of buried prehistoric sites based on the capabilities of current technology in relation to the thickness and composition of sediments overlying the area of a potential site.

F. If an analysis of the potential for historic shipwrecks within the survey area is required, the report shall include, as appropriate, the following:

(1) A current review of existing records for reported shipwreck locations in the survey area and adjacent areas;

(2) A list of the magnetic anomalies with the lease block and survey line location (corrected for sensor offset), gamma intensity, lateral extent (duration), whether the anomaly is characterized by a dipolar or monopolar signature, and magnetometer sensor tow depth of each;

(3) A list of side-scan sonor contacts with the lease block and survey line location (corrected for sensor offset), size, shape, and height of protrusion above the seafloor of each;

(4) A discussion of any magnetic anomalies and side-scan sonar contacts of unknown source in terms of their potential as historic shipwrecks;

(5) A discussion of any correlation between magnetic anomalies or side-scan sonar contacts and known or probable sources;

(6) A discussion of the potential for shipwreck preservation in terms of the effects of past and present marine processes; and

(7) A discussion of the potential for identification and evaluation of potential shipwrecks based on the capabilities of current technology in

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relation to the water depth, probable thickness and composition of sediments overlying the potential shipwreck location, and the preservation potential.

G. Representative data samples, as appropriate, shall be submitted for the following:

(1) A representative sample of subbottom profiler data for each type of relict landform identified. When more than one generation of fluvial channeling is evident, a sample depicting each shall be submitted. Each sample must be readable and include horizontal and vertical scales. Any interpretive highlighting or annotation of the sample data shall be on either a separate overlay or a copy of the representative same data. In no instance should original survey data be highlighted. If relict channel features are referenced in the text of the archaeological report, representative copies of the subbottom profiler record of these geologic features shall be included in the report.

(2) A copy of the side-scan sonar data where contacts representing unidentified objects are recorded. The copies must be readable and shall include the scale. Any highlighting or annotation of the sample data shall be on either a separate overlay or a copy of the representative sample data. In *no* instance should original survey data be highlighted.

(3) Magnetometer data as follows:

(a) for lease surveys and site specific surveys, a clear copy of three complete lines of magnetometer data. Two of these lines shall be representative data samples of primary survey lines and the third survey line shall be a cross-tie line. The primary survey lines shall be adjacent lines and run in two different cardinal directions (e.g., one survey line heading north and the other heading south). Whenever possible these survey lines shall include unidentified magnetic anomalies.

(b) for pipeline surveys (i.e., lease term or right-of-way) that are three miles or longer in length, a clear copy of approximately one-quarter (25%) of the magnetometer data (analog strip chart) for the center line of the survey. For pipeline surveys less than three miles in length, the entire center line magnetometer survey shall be submitted. These data shall include representative samples of unidentified magnetic anomalies (if any) that were recorded on the center line. Sample data may be reduced in size for report reproduction. Data quality must be sufficient to clearly depict both the 1000-gamma and 100-gamma scale traces of the analog strip chart recorder.

H. A summary of conclusions and recommendations supported by the archaeological resource field survey data and archaeological analyses including:

(1) A discussion of known or potential archaeological resources;

(2) Recommendations for avoidance or for further archaeological investigations; and/or

(3) Recommendation that operations be permitted because data recovery negates adverse effects to archaeological resources.

I. A discussion of the data and results from any additional investigations that may be required by the GOMR shall be appended to the archaeological resource report.

III. Review of Archaeological Resource Reports

A. The GOMR will determine whether a report meets the requirements contained in the invocation notification and/or this NTL. The review will be conducted by personnel with archaeological, geophysical, and other appropriate expertise. The GOMR will determine if the survey was performed properly and will evaluate the geophysical interpretations and archaeological conclusions.

B. If the report is not adequate or complete, the GOMR will notify the operator or right-of-way holder, in writing, of the problems and identify the data or information necessary to correct or complete the report.

C. Based on the GOMR review of the report findings, the GOMR will notify the operator or right-of-way holder, in writing, of any mitigating measures or operational restrictions which may be required.

D. A previously submitted archaeological resource report may be acceptable for satisfying the archaeological resource report requirements under a new lease agreement, particularly if the lease falls exclusively within the area of high probability for the occurrence of prehistoric archaeological resources. Prior to submittal of an Exploration Plan or Development Operations Coordination Document, the operator shall submit to the Regional Supervisor, Leasing and Environment, a written request for review of an archaeological report prepared for an expired lease to determine its compliance with current MMS requirements. A clean copy of the report to be reviewed shall be included with the operator's request.

Enclosure No. 3

Requirements for Mitigation and Operational Restrictions

A. When an archaeological resource field survey and report indicate that a potential archaeological resource may be present and lease operations or pipeline right-of-way operations are proposed within its immediate area, the GOMR will require the operator or right-of-way holder to either:

1. Locate the operation so as not to adversely affect the area of the archaeological resource; or

2. Establish to the satisfaction of the GOMR that an archaeological resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the GOMR. A report on the investigation shall be submitted to the GOMR for review.

B. If the GOMR determines that an archaeological resource is present in the area and may be adversely affected by operations, the operator or right-of-way holder will be notified immediately. Under these circumstances, the GOMR is required to engage in additional consultations in accordance with 36 CFR 800.4. The operator or right-of-way holder shall take no action that may adversely affect the archaeological resource until the GOMR has concluded these consultations and has provided the operator with instructions on how to protect the resource.

C. If the operator or right-of-way holder discovers any archaeological resource while conducting operations, a report of the discovery shall be immediately made to the GOMR. The operator or right-of-way holder shall make every reasonable effort to preserve the archaeological resource until the GOMR has issued instructions on how to protect it.

[FR Doc. 91-30444 Filed 12-19-91; 8:45 am]
BILLING CODE 4310-MR-M

INTERNATIONAL BOUNDARY AND WATER COMMISSION

United States and Mexico; United States Section; International Agreement for Permanent Solution of the Safety Problem at the International Bridge of the Americas at El Paso, TX and Ciudad Juarez, Chihuahua; Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of finding of no significant impact.

SUMMARY: Based on an Environmental Assessment, the U.S. Section finds that the proposed action that the United States Government enter into an agreement with the Government of Mexico through the International Boundary and Water Commission (Commission) for a permanent solution to the safety problem at the International Bridge of the Americas (BOTA) at El Paso, Texas, and Ciudad Juarez, Chihuahua, is not a major federal action that would have a significant adverse effect on the quality of the human environment. Therefore, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Final Regulations (40 CFR parts 1500 through 1508); and the U.S. Section's Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981 (46 FR 44083); the U.S. Section hereby gives notice that an environmental impact statement will not be prepared for the proposed project.

FOR FURTHER INFORMATION CONTACT: Mr. M.R. Ybarra, U.S. Section Secretary, International Boundary and Water Commission, United States and Mexico, U.S. Section 4171 North Mesa Street, C-310, El Paso, Texas 79902-1422. Telephone: (915) 534-6698.

Proposed Action

An international agreement between the United States and Mexico is proposed through a Minute of the International Boundary and Water Commission, United States and Mexico, (IBWC) to replace the international Bridge of the Americas at El Paso, Texas—Ciudad Juarez, Chihuahua, in as early a manner as possible, in essentially the same place and configuration as the existing bridge under the terms existing in international treaties and agreements in force. The urgency is due to the structurally deficient condition of the existing bridge.

Alternatives Considered

Four Alternatives were considered:

1. IBWC Rehabilitation of Existing Bridge

The existing bridge would be strengthened by replacing the existing concrete slab, strengthening the piers, and making miscellaneous repairs. While this alternative had merit early in 1991, the present structural condition of the bridge is such that it would not be prudent to give further consideration to this alternative.

2. IBWC Replacement of Existing Bridge

A new Bridge of the Americas (BOTA) would be constructed in the approximately the same place, size, and configuration as the existing bridge. Improvements to lane vehicle widths, commercial lanes and ingress and egress would be undertaken. The bridge would not involve large scale modifications to inspection facilities and associated roadways. Replacement would be in application of the 1963 Chamizal Convention, such that the bridge would continue to be toll-free. The United States and Mexican Governments would equally share in the cost of the part of the bridge that spans the Rio Grande levee to levee, approximately 40 percent of the bridge's length, and the U.S. Government would pay for the cost of replacing the elevated section (the remaining 60 percent of the bridge) that facilitates access to the existing facilities. The United States Section has budget authority to seek appropriations for a replacement bridge and request annual operation and maintenance funding. This alternative, if acceptable to the U.S. Congress for appropriation purposes, and to Mexico, would permit as fast as possible replacement of the bridge, an important factor due to its condition. This alternative is considered as the preferred alternative.

3. Non-IBWC Replacement of Existing Bridge

The IBWC make arrangements for agencies or entities in each country, other than the IBWC, to assume the responsibility for replacing the existing bridge in the configuration, location, and size that such agencies or entities may determine. Tolls, which are contrary to the provisions of the Chamizal Convention, would be necessary to recover the cost of financing a replacement bridge. Tolls would work an economic hardship upon individuals that for years traveled freely back and forth to work and shop in either country. Authorization to construct a replacement bridge in this manner would take considerable time as it would involve a need to arrange financing in both countries and additional lengthy and uncertain bilateral understandings. The structural deficiency of the bridge requires as rapid replacement as possible, and thus this alternative was not preferred.

4. No Action Alternative

This would be a status quo arrangement which is not acceptable. The safety of millions of people who use this bridge would be in continued peril. Without remedial action, the distressed condition of the 24-year old BOTA will continue to deteriorate due to questionable construction materials and the constant and heavy traffic. These factors, among others, precluded giving this alternative further consideration.

Finding of the Environmental Assessment

The Environmental Assessment finds that the preferred alternative does not constitute a major federal action which would cause a significant local, regional or national impact on the environment since it:

(a) Removes the danger of life and property on or under this bridge which a structurally deficient bridge subject to further deterioration represents.

(b) Provides a structurally sound bridge that would serve the commercial and noncommercial needs of an international community.

(c) Effects common to construction alternatives would be short-term. Fugitive dust and equipment emissions would be minimized through implementation of standardized construction practices.

(d) There would not be a significant impact to air quality and all local, state and federal air quality regulations would be followed.

(e) There would not be any impacts to surface water, nor would the construction alternatives impact upon the capabilities of the international Rio Grande Rectification Project to carry flood flows should the need arise during construction.

(f) Construction related impacts on traffic would be short lived.

(g) A replacement bridge would permit continued use of existing and additional inspection facilities now under construction, which include commercial inspection docks capable of handling more than four times the present loaded trucks presently inspected in the El Paso area.

(h) The United States and Mexico would be complying with pertinent provisions of the 1963 Chamizal Convention, including that the bridge would continue to be toll-free and that the cost of the part of the bridge that

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spans the Rio Grande levee to levee be equally shared by the two countries.

(i) A replacement bridge would be constructed in as timely as possible manner.

(j) Would not affect fish and wildlife, including endangered and threatened species in the immediate area of the proposed project.

(k) Would not affect cultural resources listed on or determined to be eligible for listing on the National Register of Historic Places.

On the basis of the Environmental Assessment, a finding of no significant impact is adopted, and unless additional information which may effect this decision is brought to our attention within thirty (30) days of the date of this notice, an environment impact statement will not be prepared.

Dated: December 9, 1991.

Suzette Zaboroski,

Staff Counsel.

[FR Doc. 91-30384 Filed 12-19-91; 8:45 am]

BILLING CODE 4710-03-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31919]

Exemption; Norfolk & Western Railway Co.—Trackage Rights Exemption—Consolidated Rail Corp.

Consolidated Rail Corporation (Conrail) has agreed to grant overhead trackage rights to Norfolk and Western Railway Company (NW) over approximately 2.3 miles of rail line at Fort Wayne, IN. The trackage rights involve: (1) 1.9 miles of Conrail's Fort Wayne Line between milepost 319.1±, via "Mike" Interlocking, and milepost 321.0±, near "Junction" Interlocking; and (2) 0.4 mile of Conrail's GR&I Branch between the connection with Conrail's Fort Wayne Line at milepost 93.3± and the property line between Conrail and NW at and including the connection with NW in the vicinity of "Park" Interlocking at milepost 93.7±.[1]

[1] The trackage rights agreement confers upon NW the right to operate its trains, locomotives, cars, and equipment, including but not limited to equipment in the account of TCS, with its own crews, in overhead service over Conrail between the termini of the involved trackage, with the right to enter or exit also at "Mike" Interlocking. In a proceeding related to this proposed service NW has filed an offer of financial assistance to purchase approximately 0.8 miles of Conrail's Fourth Street Industrial Track in Fort Wayne. See Docket No. AB-167 (Sub-No. 756N), Consolidated Rail Corporation—Abandonment—In Fort Wayne, Allen County, IN.

The trackage rights were to become effective on or soon after December 9, 1991.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: R. Allan Wimbish, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510-2191.

As a condition to the use of the exemption, any employees affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: December 16, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-30437 Filed 12-19-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Georgia:
GA91-4 (Feb. 22, 1991)..... p. All.
Kentucky:
KY91-26 (Feb. 22, 1991)..... p. All.
KY91-27 (Feb. 22, 1991)..... p. All.
KY91-28 (Feb. 22, 1991)..... p. All.
Massachusetts:
MA91-1 (Feb. 22, 1991)..... p. 421, p. 423.
New Jersey:
NJ91-3 (Feb. 22, 1991)..... p. 721, pp. 724, 734.
New York
NY91-2 (Feb. 22, 1991)..... p. 777, pp. 779-780, 785.
NY91-3 (Feb. 22, 1991)..... p. 797, p. 798.
NY91-4 (Feb. 22, 1991)..... p. 807, p. 808.
NY91-5 (Feb. 22, 1991)..... p. 817, pp. 818, 822.
NY91-6 (Feb. 22, 1991)..... p. 827, p. 828.
NY91-7 (Feb. 22, 1991)..... p. 837, pp. 838, 843.
NY91-11 (Feb. 22, 1991)..... p. 885, pp. 886, 886.
NY91-12 (Feb. 22, 1991)..... p. 893, p. 894.
NY91-14 (Feb. 22, 1991)..... p. 911, p. 912.
NY91-15 (Feb. 22, 1991)..... p. 915, p. 916.
NY91-17 (Feb. 22, 1991)..... p. 921, p. 922.
NY91-18 (Feb. 22, 1991)..... p. 931, pp. 932, 934.
NY91-19 (Feb. 22, 1991)..... p. 943, pp. 944-948.
NY91-20 (Feb. 22, 1991)..... p. 949, p. 950.
Rhode Island:
RI91-1 (Feb. 22, 1991)..... p. 1149, p. 1150.
Tennessee:
TN91-1 (Feb. 22, 1991)..... p. 1189, p. 1190.

Volume II

Arkansas:
AR91-1 (Feb. 22, 1991)..... p. 3, p. 4.
AR91-6 (Feb. 22, 1991)..... p. 21, p. 22.
Illinois:
IL91-1 (Feb. 22, 1991)..... p. 69, p. 79.
IL91-2 (Feb. 22, 1991)..... p. 97, pp. 100, 103.
IL91-6 (Feb. 22, 1991)..... p. 133, pp. 134-136b.
IL91-8 (Feb. 22, 1991)..... p. 145, p. 148.
Indiana:
IN91-3 (Feb. 22, 1991)..... p. 279, pp. 280-282.
Kansas:
KS91-11 (Feb. 22, 1991)..... p. 389, p. 390.
Ohio:
OH91-2 (Feb. 22, 1991)..... p. 821, pp. 822-840b.

Volume III

California:
CA91-4 (Feb. 22, 1991)..... p. 75, pp. 89, 97.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 13th day of December 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91-30223 Filed 12-19-91; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 30, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 30, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 9th day of December 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Amerada Hess Corp., Dist. Ofc. (Wkrs)	Tioga, ND	12/09/91	11/27/91	26,635	Oil, Natural Gas.
Amerada Hess Corp., Gas Plant (Wkrs)	Tioga, ND	12/09/91	11/27/91	26,636	Oil and Gas.
American Cyanamid (USWA)	Linden, NJ	12/09/91	11/18/91	26,637	Malathion Insecticide.
American Hunter Exploration Ltd (Wkrs)	Denver, CO	12/09/91	11/20/91	26,638	Oil and Gas.
Colebrook-Terry, Inc. (Wkrs)	Colebrook, PA	12/09/91	11/27/91	26,639	Lingerie Garments.
Custom Optics, Inc. (Wkrs)	Saddlebrook, NJ	12/09/91	11/20/91	26,640	Optical Wear and Supplies.

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APPENDIX—Continued

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Drilex Systems, Inc. (Wkrs)	Casper, WY	12/09/91	11/15/91	26,641	Oil, Gas Drilling.
Drilex Systems, Inc. (Wkrs)	Oklahoma City, OK	12/09/91	11/15/91	26,642	Oil, Gas Drilling.
Duxbak, Inc. (co)	Cambridge, MD	12/09/91	12/01/91	26,643	Men's Apparel.
Duxbak, Inc. (co)	Willards, MD	12/09/91	12/01/91	26,644	Men's Apparel.
Goodyear Tire & Rubber Co. (Wkrs)	Union City, TN	12/09/91	11/26/91	26,645	Orig. Equip. Auto Tires.
Halliburton Services (Wkrs)	Big Springs, TX	12/09/91	11/25/91	26,646	Oilfield Services.
Lancaster Mould Co. (Wkrs)	Lancaster, OH	12/09/91	11/27/91	26,647	Glass Pressware and Container Moulds.
Marine Drilling Co. (Co)	Sugar Land, TX	12/09/91	10/29/91	26,648	Oil, Gas Drilling.
Massillon Stainless Steel (Wkrs)	Massillon, OH	12/09/91	11/24/91	26,649	Finished Stainless Steel Coils.
PPG Industries (Wkrs)	Pittsburgh, PA	12/09/91	11/21/91	26,650	Fabricated Auto products.
Terry Colebrook (Wkrs)	Colebrook, PA	12/09/91	11/27/91	26,651	Lingerie Garments.
Tex/Con Oil & Gas Co. (Co)	Houston, TX	12/09/91	11/21/91	26,652	Oil, Gas Exploration.
Tex/Con Oil & Gas Co. (Co)	Crescent, OK	12/09/91	11/21/91	26,653	Oil, Gas Exploration.
Tex/Con Oil & Gas Co. (Co)	Gorham, KS	12/09/91	11/21/91	26,654	Oil, Gas Exploration.
Tex/Con Oil & Gas Co. (Co)	Portland, TX	12/09/91	11/21/91	26,655	Oil, Gas Exploration.

[FR Doc. 91-30458 Filed 12-19-91; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of November 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,333; Motion Control Industries, Inc., Ridgway, PA

TA-W-26,409; Genicom Corp., Herkimer, NY

TA-W-26,422; Unisys Corp., Roseville, MN

TA-W-26,425; United Coulson Heel Co., Hanover, PA

TA-W-26,404; Chickasha Manufacturing Co., Inc., Chickasha, OK

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-26,369; Teledyne Wisconsin Motor, West Allis, WI

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,411; JE Merit Constructors, Inc., Addy, WY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-26,421; Uinat Oil and Gas, Inc., Roosevelt, UT

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-26,398; The Timkin Co., Canton, OH

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

Affirmative Determinations

TA-W-26,408; General Automotive Specialty Co., North Burnswick, NJ

A certification was issued covering all workers separated on or after December 5, 1991.

TA-W-26,331; Keller Furniture of Indiana, Linton, IN

A certification was issued covering all workers separated on or after September 4, 1990.

TA-W-26,413; Quinn Audio Products, Lake Worth, FL

A certification was issued covering all workers separated on or after September 23, 1990.

TA-W-26,415; Schlumberger, Larose Offshore Office, Cutoff, LA

A certification was issued covering all workers separated on or after January 1, 1991.

TA-W-26,416; Schlumberger, Well Service Office, Belle Chase, LA

A certification was issued covering all workers separated on or after January 1, 1991.

TA-W-26,416A; Schlumberger, Special Service Office, Belle Chase, LA

A certification was issued covering all workers separated on or after January 1, 1991.

TA-W-26,417; Schlumberger, Renovation Center, Belle Chase, LA

A certification was issued covering all workers separated on or after January 1, 1991.

TA-W-26,382; General Electric Aerospace Aircraft Control Systems Dept, Evendale, OH

A certification was issued covering all workers separated on or after October 18, 1990.

TA-W-26,383; General Electric Aerospace Aircraft Control Systems Dept, Bellevue, WA

A certification was issued covering all workers separated on or after October 18, 1990.

TA-W-26,449; The Western Co. of North America, Kilgore, TX

A certification was issued covering all workers separated on or after January 1, 1991.

TA-W-26,400; Adonis Apparel, Inc., Albron, IL

A certification was issued covering all workers separated on or after September 26, 1990.

TA-W-26,384; General Electric Aerospace Aircraft Control Systems Dept, Ft. Wayne, IN

A certification was issued covering all workers separated on or after October 18, 1990.

I hereby certify that the aforementioned determinations were issued during the month of November, 1991. Copies of these determinations are available for inspection in Room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: December 11, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-30459 Filed 12-19-91; 8:45 am]
BILLING CODE 4510-30-M

Tonka Corporation et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of TA-W-26,130, St. Louis Park, MN, Tonka Products Division TA-W-26,133, St. Louis Park, MN, TA-W-26,134, El Paso, TX, and Sales Personnel Operating in the Following States TA-W-26,133A, Ohio, TA-W-26,133B, Illinois, TA-W-26,133C, California, TA-W-26,133D, Washington, TA-W-26,133E, New Jersey, TA-W-26,133F, New York, TA-W-26,133G, Texas.

Parker Brothers Division TA-W-26,143, Beverly, MA, TA-W-26,144, Salem, MA, and Sales Personnel Operating in the Following States TA-W-26,143A, Maine, TA-W-26,143B, New Hampshire, TA-W-26,143C, Nevada, TA-W-26,143D, Florida.

Kenner Products Division TA-W-26,145, Cincinnati, OH, and Sales Personnel Operating in the Following States TA-W-26,145A, Texas, TA-W-26,145B, Missouri, TA-W-26,145C, Michigan.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) The Department of Labor issued a Certification of Eligibility to apply for worker adjustment assistance on October 23, 1991, applicable to all workers of Tonka Corporation, St. Louis Park, Minnesota (TA-W-26,130); Tonka Products Division, St. Louis Park, Minnesota (TA-W-26,133) and El Paso, Texas (TA-W-26,134; Parker Brothers Division, Beverly, Massachusetts (TA-W-26,143) and Salem, Massachusetts (TA-W-26,144); and the Kenner Products Division, Cincinnati, Ohio (TA-W-26,145). The notice was published in the **Federal Register** on November 5, 1991 (56 FR 56530).

New information obtained from the company shows that several sales workers who worked for the Parker Brothers Division and the Kenner Products Division were not included in the certifications. The new information shows that the sales workers for the Parker Brothers Division and the Kenner Products Division worked primarily out of their homes in other States. The intent of the certification is to include all workers who were adversely affected by increased imports of articles like or directly competitive with toys and games. Therefore, the certifications are amended to include the sales workers for the Parker Brothers Division and the Kenner Products Division.

The amended notice applicable to TA-W-26,130; TA-W-26,133; TA-W-26,134; TA-W-26,143; TA-W-26,144 and TA-W-26,145 is hereby issued as follows:

All workers of the following firms of Tonka Corporation: (1) Tonka Corporation, St. Louis Park, Minnesota (TA-W-26,130); (2) Tonka Products Division, St. Louis Park, Minnesota (TA-W-26,133) and (3) El Paso, Texas (TA-W-26,134); (4) Parker Brothers Division, Beverly, Massachusetts (TA-W-26,143) and (5) Salem, Massachusetts (TA-W-26,144; and (6) Kenner Products Division, Cincinnati, Ohio (TA-W-26,145) who became totally or partially separated from employment on or after July 17, 1990, and all Tonka Products Division's sales personnel operating in the following States: Ohio, Illinois, California, Washington, New Jersey, New York and Texas (TA-W-26,133A-G); all Parker Brothers Division's sales personnel operating in the following States: Maine, New Hampshire, Nevada, and Florida (TA-W-26,143A-D); and all Kenner Products Division's sales personnel operating in the following States: Texas, Missouri, and Michigan (TA-W-26,145A-C) who became totally or partially separated from employment on or January 1, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 6th day of December 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-30460 Filed 12-19-91; 8:45 am]
BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

[Exemption Application No. D-8674]

Withdrawal of Notice of Proposed Exemption Involving the PKF-Mark III, Inc. Profit Sharing Plan (the Plan) Located in Newtown, PA

In the **Federal Register** dated October 11, 1991 (56 FR 51410), the Department of Labor published a notice of proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1986. The notice of proposed exemption concerned the prospective sale for cash of an interest in Kings Woods Associates from the Plan to PKF-Mark III, Inc., a party in interest with respect to the Plan.

By letter dated November 15, 1991, the applicant has requested that the exemption application be withdrawn.

Accordingly, the notice of proposed exemption is hereby withdrawn.

Signed at Washington, DC, this 9th day of December, 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91-30457 Filed 12-19-91; 8:45 am]
BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Arts National Council; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the Office of Public Partnership Advisory Panel (State and Regional Section) to the National Council on the Arts will be held on January 9, 1992, from 8:30 a.m.-5:30 p.m. and January 10 from 8:30 a.m.-4:30 p.m. in room M-14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics will include orientation for panelists, application review, discussion of application review process, budget review, guidelines and policy.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel' discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committe Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

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Dated: December 16, 1991.
Yvonne M. Sabine,
Director, Council and Panel Operations, National Endowment for the Arts.
[FR Doc. 91-30420 Filed 12-19-91; 8:45 am]
BILLING CODE 7537-01-M

Media Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Production Prescreening #1 Section)) to the National Council on the Arts will be held on January 7-8, 1991 from 9 a.m.-6:30 p.m. and January 9 from 9 a.m.-6 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: December 16, 1991.
Yvonne M. Sabine,
Director, Council and Panel Operations, National Endowment for the Arts.
[FR Doc. 91-30419 Filed 12-19-91; 8:45 am]
BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of Submission, new, revision, or extension: Revision.

2. Titles of the information collection: 10 CFR part 25—Access Authorization for Licensee Personnel; and 10 CFR part 95—Security Facility Approval and Safeguarding of National Security Information and Restricted Data.

3. The form number if applicable: Not applicable.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: Nuclear facility licensees and other organizations requiring access to NRC classified information.

6. An estimate of the number of responses: 10 CFR part 25—169. 10 CFR part 95—25.

7. An estimate of the total number of hours needed to complete the requirement or request: 10 CFR part 25—.7 per response; 215. 10 CFR part 95—7.8 per response; 513.

8. An indication of whether section 3504(h), Public Law 96-511 applies: Not applicable.

9. Abstract: 10 CFR parts 25 and 95—Licensees and other organizations are required to provide information and maintain records to ensure that an adequate level of protection is provided NRC classified information and material.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs, (3150-0046) (3150-0047), NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-3084. The NRC Clearance Officer is Brenda Jo Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 10th day of December 1991.

For the Nuclear Regulatory Commission.
Gerald F. Cranford,
Designated Senior Official for Information Resources Management.
[FR Doc. 91-30442 Filed 12-19-91; 8:45 am]
BILLING CODE 7590-01-M

Aging Research Information Conference; Meeting

ACTION: Notice of meeting.

SUMMARY: The study of nuclear power plant aging is an important part of the NRC's current research program for understanding aging degradation of structures, components, and systems to assure continued safe operation of nuclear power plants for 40 years or more. The nuclear community worldwide has entered a period when such information on age-related degradation in nuclear power plants is bound to play a vital role in decisions involving plant shut-down or continued operation. The NRC Aging Research Information Conference will provide a forum for exchanging information on age-related degradation of components, systems, and structures. The main objective of this conference is to discuss the results of NRC aging research with industry.

The conference is being organized for NRC by Brookhaven National Laboratory. A panel discussion session will be held on March 27, 1992, to solicit directions for future research work and for utilization of the research results to enhance reliability. Topics to be discussed include effectiveness of maintenance to manage aging, aging degradation, risk evaluation of aging, aging assessment of major reactor coolant pressure boundary components, such as reactor vessels and piping, category I structures, electrical and mechanical components (EDGs, valves, pumps, CB/relays, batteries, battery chargers/inverters, transformers, cables, penetrations, snubbers, heat exchangers, and pressure transmitters), fluid-mechanical and electrical systems (AFW, CRD, SW, RHR, HP-ECC, CCW, RPS, and Class 1E distribution), recordkeeping, residual life evaluation, and codes and standards.

DATES: March 24-27, 1992.

ADDRESS OF CONFERENCE: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD.

ADMISSION: Prior registration is required. A registration fee of $125 is being charged to defray the cost of the meeting. Only the first 500 registrants are assured participation. To register, contact Dr. Mano Subudhi, Brookhaven National Laboratory, Building 130, Upton, New York 11973.

FOR FURTHER INFORMATION CONTACT: Mr. Satish K. Aggarwal, Program Manager, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Phone 301-492-3823. (5 U.S.C. 552(a)).

Dated at Rockville, Maryland, this 12th day of December, 1991.

For the Nuclear Regulatory Commission.
Lawrence C. Shao,
Director, Division of Engineering, Office of Nuclear Regulatory Research.
[FR Doc. 91-30441 Filed 12-19-91; 8:45 am]
BILLING CODE 7590-01-M

Notice of Intent To Amend License Approving Change to a Reclamation Plan for an Inactive Uranium Recovery Facility—Bear Creek

AGENCY: Nuclear Regulatory Commission.

ACTION: Approval of revision to reclamation plan for an inactive uranium recovery facility.

1. Description of Federal Action:
In accordance with a memorandum of understanding (MOU) between the Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC) published in the **Federal Register** on October 25, 1991, (volume 56, No. 207, pp. 55432-55435), NRC hereby notices the intent to approve a request for revisions of a reclamation plan from Bear Creek Uranium Company, a subsidiary of Union Pacific, for their Bear Creek Uranium Mill, Docket No. 40-8452, Source Material License No. SUA-1310.

This request, dated September 30, 1986, and subsequent submittals justifies modification of the reclamation and closure plan approved by the NRC as part of the license renewal on September 28, 1984. The basis for this change is the decrease in the volume of tailings due to premature shut down of the mill.

The NRC staff has reviewed the proposed reclamation plan against current design guidance and has determined that it meets or exceeds the requirements of 10 CFR 40, appendix A. In accordance with the above referenced MOU, a 45-day period will be provided for receipt of comments regarding NRC's intent to amend the Bear Creek Uranium Company license.

As stipulated in the MOU, the NRC is noticing the intent to amend the license. Comments on the proposed action or a request for hearing should be submitted within 45 days of the date of publication of this notice.

2. Contact: Copies of the license amendment request and the staff analysis which is the basis for revision to the license are available for inspection at the Uranium Recovery Field Office, 730 Simms, suite 100, Lakewood, Colorado, and at the Public Document Room, 2120 L Street, NW., Washington, DC. Comments or questions regarding the intended licensing action may be directed to the Director, Uranium Recovery Field Office, P.O. Box 25325, Denver, CO 80225.

Subject: Bear Creek Facility Reclamation Plan.

Dated at Denver, Colorado this 12th day of December, 1991.

For the Nuclear Regulatory Commission.
Edward F. Hawkins,
Deputy Director, Uranium Recovery Field Office, Division of Radiation Safety and Safeguards, Region IV.
[FR Doc. 91-30440 Filed 12-19-91; 8:45 am]
BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Rescission of OMB Circular No. A-120, Guidelines for the Use of Advisory and Assistance Services

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of rescission of OMB Circular No. A-120.

SUMMARY: Notice is hereby given that the Office of Management and Budget (OMB) intends to rescind Circular No. A-120, Guidelines for the Use of Advisory and Assistance Services, upon the issuance in final version of an Office of Federal Procurement Policy (OFPP) Policy Letter on "Management Oversight of Service Contracting". The Policy Letter is being proposed for public comment concurrently with this notice of OMB's intent to rescind Circular No. A-120. The text of the proposed Policy Letter, and a statement of the reasons for replacing Circular No. A-120 with a Policy Letter, is set forth in the separate notice seeking comment on the proposed Policy Letter. The provisions of Circular No. A-120 will remain in effect until publication of a final version of the replacement Policy Letter.

DATES: Comments on the proposed rescission of Circular No. A-120 and its replacement by the proposed Policy Letter on "Management Oversight of Service Contracting" must be received on or before February 18, 1992.

ADDRESSES: Comments should be sent to Dr. Allan V. Burman, Administrator, Office of Federal Procurement Policy, Office of Management and Budget, 725 17th Street, NW., room 9001, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Linda G. Williams, Deputy Associate Administrator, (202) 395-3300. Copies of Circular No. A-120 are available at the address above.

Dated: December 10, 1991.
Allan V. Burman,
Administrator.
[FR Doc. 91-30431 Filed 12-19-91; 8:45 am]
BILLING CODE 3110-01-M

List of Designated Federal Entities and Federal Entities

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: This Notice provides a list of designated Federal entities and Federal entities, as required by the Inspector General Act Amendments of 1988.

FOR FURTHER INFORMATION CONTACT: Suzanne Murrin (telephone: 202-395-6911), Office of Federal Financial Management.

SUPPLEMENTARY INFORMATION: This Notice provides a copy of the 1991 List of Designated Federal Entities and Federal Entities, which the Office of Management and Budget is required to publish annually under the Inspector General Act Amendments of 1988 (Public Law 100-504).

The List is divided into two groups: Designated Federal Entities and Federal Entities. The Designated Federal Entities are required to establish and maintain an Office of Inspector General. The 33 Designated Federal Entities are as listed in the amendments. Hence, the 1991 list of them is unchanged from the 1990 list.

Federal Entities are required to report annually to each House of the Congress and the Office of Management and Budget on audit and investigative activities in their organizations. The amendments define Federal Entities as "any Government controlled corporation (within the meaning of section 103(1) of title 5, United States Code), any Government controlled corporation (within the meaning of section 103(2) of such title), or any other entity in the Executive branch of the Government, or any independent regulatory agency" other than the Executive Office of the President and agencies with statutory Inspectors General. There are four changes in the 1991 list from the 1990 list.

The List was prepared in consultation with the U.S. General Accounting Office.

Harold Steinberg,
Deputy Controller, Office of Federal Financial Management.

Herein follows the text of the 1991 List of Designated Federal Entities and Federal Entities:

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1991 List of Designated Federal Entities and Federal Entities

Public Law 100-504, "The Inspector General Act Amendments of 1988", requires the Office of Management and Budget to publish a list of "Designated Federal Entities" and "Federal Entities" and the heads of such entities. Designated Federal Entities were required to establish an Office of Inspector General before April 17, 1989. Federal Entities are required to report annually to each House of the Congress and the Office of Management and Budget on audit and investigative activities in their organizations.

Designated Federal Entities

1. ACTION—Director
2. Amtrak—Chairman
3. Appalachian Regional Commission—Federal Co-Chairman
4. The Board of Governors, Federal Reserve System—Chairman
5. Board for International Broadcasting—Chairman
6. Commodity Futures Trading Commission—Chairman
7. Consumer Product Safety Commission—Chairman
8. Corporation for Public Broadcasting—Board of Directors
9. Equal Employment Opportunity Commission—Chairman
10. Farm Credit Administration—Chairman
11. Federal Communications Commission—Chairman
12. Federal Deposit Insurance Corporation—Chairman
13. Federal Election Commission—Chairman
14. Federal Housing Finance Board—Chairman
15. Federal Labor Relations Authority—Chairman
16. Federal Maritime Commission—Chairman
17. Federal Trade Commission—Chairman
18. Interstate Commerce Commission—Chairman
19. Legal Services Corporation—Board of Directors
20. National Archives and Records Administration—Archivist of the United States
21. National Credit Union Administration—Board of Directors
22. National Endowment for the Arts—Chairman
23. National Endowment for the Humanities—Chairman
24. National Labor Relations Board—Chairman
25. National Science Foundation—National Science Board
26. Panama Canal Commission—Chairman
27. Peace Corps—Director
28. Pension Benefit Guaranty Corporation—Chairman
29. Securities and Exchange Commission—Chairman
30. Smithsonian Institution—Secretary
31. Tennessee Valley Authority—Board of Directors
32. United States International Trade Commission—Chairman
33. United States Postal Service—Postmaster General

Federal Entities

1. Administrative Conference of the United States—Chairman
2. Advisory Commission on Conferences in Ocean Shipping—Chairman
3. Advisory Commission on Intergovernmental Relations—Chairman
4. Advisory Committee on Federal Pay—Chairman
5. Advisory Council on Historic Preservation—Chairman
6. African Development Foundation—Chairman
7. American Battle Monuments Commission—Chairman
8. Architectural and Transportation Barriers Compliance Board—Chairman
9. Barry Goldwater Scholarship and Excellence in Education Foundation—Chairman
10. Christopher Columbus Quincentenary Jubilee Commission—Chairman
11. Commission for the Preservation of America's Heritage Abroad—Chairman
12. Commission of Fine Arts—Chairman
13. Commission on Agricultural Workers—Chairman
14. Commission on the Bicentennial of the United States Constitution—Chairman
15. Commission on Civil Rights—Chairman
16. Committee for Purchase from the Blind and other Severely Handicapped—Chairman
17. Competitiveness Policy Council—Chairman
18. Defense Nuclear Facilities Safety Board—Chairman
19. Delaware River Basin Commission—U.S. Commissioner
20. Export-Import Bank—President and Chairman
21. Farm Credit System Assistance Board—Chairman
22. Farm Credit System Insurance Corporation—Board of Directors
23. Federal Mediation and Conciliation Service—Director
24. Federal Mine Safety and Health Review Commission—Chairman
25. Federal Retirement Thrift Investment Board—Chairman
26. Franklin Delano Roosevelt Memorial Commission—Chairman
27. Harry S Truman Scholarship Foundation—Chairman
28. Illinois and Michigan Canal National Heritage Corridor Commission—Chairman
29. Institute of Museum Services—Director
30. Inter-American Foundation—Chairman
31. Interagency Council on the Homeless—Chairman
32. International Cultural and Trade Center Commission President
33. Interstate Commission on the Potomac River Basin—Chairman
34. James Madison Memorial Fellowship Foundation—Chairman
35. Japan-U.S. Friendship Commission—Chairman
36. Marine Mammal Commission—Chairman
37. Martin Luther King, Jr. Federal Holiday Commission—Chairman
38. Merit Systems Protection Board—Chairman
39. National Capital Planning Commission—Chairman
40. National Commission on Libraries and Information Science—Chairman
41. National Commission on Migrant Education—Chairman
42. National Commission on Responsibilities for Financing Postsecondary Education—Chairman
43. National Commission to Prevent Infant Mortality—Chairman
44. National Council on Disability—Chairman
45. National Endowment for Democracy—President
46. National Gallery of Art—Board of Trustees
47. National Mediation Board—Chairman
48. National Transportation Safety Board—Chairman
49. Neighborhood Reinvestment Corporation—Chairman
50. Occupational Safety and Health Review Commission—Chairman
51. Office of Government Ethics—Director
52. Offices of Independent Counsels—Independent Counsels
53. Office of Navajo and Hopi Indian Relocation—Chairman
54. Office of Special Counsel—Special Counsel
55. Office of the Nuclear Waste Negotiator—Negotiator
56. Overseas Private Investment Corporation—President
57. Pennsylvania Avenue Development Corporation—Chairman
58. Postal Rate Commission—Chairman
59. Resolution Trust Corporation Oversight Board—Chairperson
60. Selective Service System—Director
61. State Justice Institute—Director
62. Susquehanna River Basin Commission—U. S. Commissioner
63. U.S. Holocaust Memorial Council—Chairman
64. U.S. Institute of Peace—Chairman
65. U.S. Soldiers' and Airmen's Home—Governor
66. Woodrow Wilson International Center for Scholars—Board of Trustees

[FR Doc. 91-30476 Filed 12-19-91; 8:45 am]

BILLING CODE 3110-01-M

Office of Federal Procurement Policy

Policy Letter on Management Oversight of Service Contracting

AGENCY: Executive Office of the President, Office of Management and Budget (OMB), Office of Federal Procurement Policy.

ACTION: The Office of Federal Procurement Policy (OFPP) is requesting comments on a proposed Policy Letter on the "Management Oversight of Service Contracting" to replace OMB Circular No. A-120, "Guidelines for the Use of Advisory and Assistance Services".

SUMMARY: The Federal Government contracts for a wide variety of services from housekeeping and grounds maintenance to highly specialized technical and managerial advice. Such services provide essential support for an agency to successfully accomplish its mission. Accordingly, it is important that the government effectively plans for and manages the use of these contracts.

Over the years, however, both real and perceived problems have been identified with the use of service contracting. The major problem areas—associated primarily with the use of contracts for consulting services—include the lack of competition in the award of these contracts, the potential for conflicts of interest on the part of nonpersonal services contractors, and the failure of the government to exercise adequate control over these contractors.

Although guidance in OMB Circular No. A-120 focuses on defining, controlling, and reporting contracts for advisory and assistance services, discrepancies in reporting and applying effective management controls have continued due to the difficulty in developing a clear definition of the types of services that need more management scrutiny. These definitional and reporting problems have caused the Executive branch to take a new, more comprehensive approach to applying good management practices to the use of service contracting in general.

This proposed Policy Letter focuses on specific types of service contracting problems, encourages better management practices and greater management emphasis to ensure that effective controls are in place, and requires management reports on agencies' compliance. The Policy Letter sets out a series of questions as guidelines for agencies to use in improving controls in the five areas that require increased management scrutiny: Contracting out inherently governmental functions; competition; cost effectiveness; control; and conflicts of interests.

The proposed Policy Letter is applicable to services obtained under service contracts above the small purchase threshold. Requirements for construction are excluded.

Services obtained by personnel appointments and advisory committees are not covered by this Policy Letter as guidance is contained in chapter 304 of the Federal Personnel Manual, the General Services Administration regulations, 41 CFR, part 101-6, and OMB Bulletin No. 89-08, Improved Management of Federal Advisory Committee Operations, issued December 23, 1988.

The proposed Policy Letter requires each agency to designate a senior management official, at the Senior Executive Service level, to be responsible and accountable for ensuring compliance with the provision contained therein. Each agency is also required to establish written management control procedures which outline the senior management official's responsibilities as it relates to the review and approval of requirements for these services, and the process to follow to correct and document any noncompliance with established management controls.

The proposed Policy Letter also gives the senior management official the flexibility of designating certain types of services for a class rather than individual review if it can be justified to the agency head that those services are not subject to abuse in the above problem areas. Guidelines are provided on the types of services that may be reviewed on a class basis.

The reporting requirements in the proposed Policy Letter are designed to ensure that the management controls are implemented properly, that potential abuses and their corrective action are documented, and that any class reviews are justified and documented in agencies' management control procedures. Agencies will be required to continue reporting data on contract actions for services in the Federal Procurement Data System. However, the requirement to separately categorize contracted advisory and assistance services will be eliminated.

COMMENT DATE: Comments must be received on or before February 18, 1992.

ADDRESSES: Comments should be sent to Dr. Allan V. Burman, Administrator, Office of Federal Procurement Policy, Office of Management and Budget, 725 17th Street, NW., room 9001, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Linda G. Williams, Deputy Associate Administrator, (202) 395-3300.

Dated: December 10, 1991.

Allan V. Burman,

Administrator.

Policy Letter 92—to the Heads of Executive Departments and Establishments

Subject: Management Oversight of Service Contracting

1. Purpose. This Policy Letter establishes Government-wide policy, assigns responsibilities, and provides guidance for Executive Departments and agencies in managing the acquisition and use of services.

2. Authority. This Policy Letter is issued pursuant to section 6(a) of the Office of Federal Procurement Policy (OFPP) Act, as amended, codified at 41 U.S.C. 405.

3. Rescission. This Policy Letter supersedes the Office of Management and Budget (OMB) Circular No. A-120, "Guidelines for the Use of Advisory and Assistance Services", dated January 4, 1988.

4. Background. The Federal Government contracts for a wide variety of services, from highly specialized technical, scientific and managerial advice to routine support functions, such as grounds maintenance. Such services provide essential support to agencies in accomplishing their missions. This Policy Letter has been developed to provide a new, more comprehensive approach to managing and using service contracts, and to provide specific guidance on what constitutes good management practices in the use of such contracts.

5. Definition. Services are identifiable tasks to be performed, rather than the delivery of an end item of supply. The term "services" also includes tasks that are delivered under a contract where the

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primary purpose of the contract is to provide supplies.

6. Exclusions. Services that are (1) obtained by personnel appointments and advisory committees, (2) obtained under nonpersonal services contracts that are below the small purchase threshold or (3) are for construction, as defined in part 36 of the Federal Acquisition Regulation, are excluded from coverage under this Policy Letter.

7. Policy. When contracting for services, it is the policy of the Federal Government that:

(1) Services are to be obtained and used in ways that assure that the Government retains control of decision-making authority; and

(2) Effective management practices and controls are applied to prevent abuses of the policies and guidelines contained herein.

8. Good Management Practices. While effective management oversight is required for all types of service contracts, some require less oversight than others, as, for example, such routine services as lawn mowing and food preparation. Conversely, services that tend to affect government decision-making, support or influence policy development, or affect program management are more susceptible to abuse. These, therefore, require a greater level of scrutiny.

The following sections offer guidance to assure that good management practices are being followed. Agencies must review requirements for services contracts either on an individual or a class basis to see if any of the following guidelines apply. If they do apply, and if the response to any of the questions listed below is affirmative, the responsible management official must ensure that procedures are in place to eliminate the potential for abuse. If necessary, the requirement should be returned to the requesting organization for appropriate corrective action.

a. Inherently Governmental Functions. When contracting for services, agencies must:

(1) Not use such contracts to perform inherently governmental functions,

(2) Provide an enhanced degree of management controls and oversight when contracting for functions that directly support the performance of inherently governmental functions, and

(3) Ensure that any final agency action reflects the ideas, analyses, and conclusions of agency officials and the laws and policies of the United States.

If the response to any of the following questions is affirmative, the contract requirement may be for an inherently governmental function:

(1) Will the contract require the contractor to exercise substantial discretion in applying government authority, or use substantial value judgments in making decisions for the government?

(2) Will the contract require the contractor to be involved in monetary transactions and entitlements such as tax collection and revenue disbursements, control of treasury accounts, or the administration of public trusts?

b. Cost Effectiveness. When a valid service requirement exists, agency officials must develop means to satisfy the requirement in the most cost effective manner. If the response to any of the following questions is affirmative, the agency may not be obtaining the requirement in the most cost effective manner:

(1) Is the statement of need so broadly written that it does not validate the need for a specific service?

(2) Is the statement of need so broadly written that it does not permit adequate evaluation of contractor versus in-house performance?

(3) Does the acquisition plan adequately prescribe the choice of contract type, quality assurance plan, competition requirements, and other related requirements to ensure that contractors will have the incentive to control costs under the contract?

(4) Does the acquisition plan adequately address the cost effectiveness of using contractor support (either long term or short term) versus in-house performance?

c. Control. When contracting for highly specialized or technical services, agencies should ensure that sufficient technical expertise is available within the agency. Agency officials need to be able to make sound judgments on what the requirements should be, the estimated costs, and whether the contractor is performing according to the contract terms and conditions. Agency officials must retain control over and remain accountable for policy decisions that may be based, in part, on a contractor's performance and work products. If the response to any of the following questions is affirmative, there may be a control problem:

(1) Will the contractor provide advice, analysis and evaluation, opinions, alternatives, or recommendations that could significantly influence agency policy development or decision-making?

(2) Will the contract result in a long term effort to fulfill some critical agency function?

(3) Is the quality assurance plan overly general, making it difficult to adequately monitor contractor performance?

(4) Is the statement of work so broadly written that it does not specify a contract deliverable or require progress reporting on contractor performance?

(5) Is the cost estimate so general that the contracting office will have difficulty in effectively determining cost reasonableness?

(6) Does the Government have the expertise to evaluate independently the contractor's approach, methodology, results, options, conclusions, or recommendations?

d. Conflicts of Interest. Agency officials must ensure that any potential conflicts of interest are identified and appropriate steps taken to avoid or mitigate them. Service contracts are not to be awarded to any individual or organization which may have an unfair competitive advantage over competing contractors unless every effort is first taken to mitigate such conflict.

If the response to any of the following questions is affirmative, there may be a potential for a conflict of interest:

(1) Will the work under this contract create a significant conflict of interest on a future acquisition?

(2) Is the requirement for support services (such as system engineering or technical direction) such that the potential offerors could have developed the system design specifications or been involved in the production of the system?

(3) Have potential offerors participated in work involving the same program or activity?

(4) Will the contractor be evaluating a competitor's work?

(5) Does the requirement for services require the contractor to evaluate its own products or activities?

(6) Will the work place the contractor in a position to influence broad government decision-making, e.g. developing regulations, that will affect the contractor's current and/or future business?

(7) Will the work under this contract affect the interests of the contractor's other clients?

(8) Are any of the potential offerors former agency officials that were substantially involved in developing the requirement for these services within the past two years?

e. Competition. Full and open competition is one way to reduce the potential for favoritism and conflicts of interest. To maximize competition, the Competition in Contracting Act requires thorough acquisition planning and limits exceptions. The Act provides that lack of advance planning is not adequate justification for sole source contracting. Any justification for a noncompetitive contract should provide a detailed explanation as to why competition can not be achieved. Plans should be made to minimize the number of subsequent noncompetitive awards.

If the response to any of the following questions is affirmative, competition may be unnecessarily limited:

(1) Is the statement of work narrowly defined with unnecessarily restrictive specifications or performance standards?

(2) Is the requirement likely to create a continuous and dependent arrangement with the same contractor?

(3) Is the use of an indefinite quantity or term contract arrangement appropriate to obtain the required services?

(4) Will the requirement be obtained through the use of other than full and open competition?

9. Responsibilities.

a. Heads of Agencies. Agency heads (or their designees) shall:

(1) Designate a Senior Management Official, at the Senior Executive Service level, to be responsible and accountable for assuring that management controls are implemented and monitored to comply with the provisions of this Policy Letter. Consideration should be given to inclusion of this function as a critical element in the Senior Management Official's performance appraisal.

(2) Establish written procedures that outline the Senior Management Official's oversight responsibilities as they relate to the review and approval of requests for services, and the process to follow to correct and document any noncompliance with these good management practices. At a minimum, the procedures should ensure that:

(a) Requirements for services above the small purchase threshold are fully justified in writing, including a statement of need and a certification that the services do not duplicate previously performed work or services and are being obtained in the most cost effective manner;

(b) In-house technical expertise is sufficient to monitor and assess contractor performance, and to retain control over policy decisions and other governmental functions that may be based on the contractor's work products;

(c) Requirements are reviewed to ensure that no inherently governmental functions are being performed by contractors (See OFPP Policy Letter 92-X, "Inherently Governmental Functions");

(d) The agency does not rely on contractors to the point where noncompetitive environments are created;

(e) Organizational and individual conflicts of interests, as defined in OFPP Policy Letter 89-1 "Conflicts of Interest Policies Applicable to Consultants," 54 FR 51805 (1989) are avoided or mitigated;

(f) Contracts are properly administered and monitored to evaluate contractor compliance with contract requirements and performance standards. (See: OFPP Policy Letter 91-2, Service Contracting, 56 FR 15110 (1991), and OFPP's "Government-Wide Guideline on Contract Administration"); and

(g) Data on each contract action for services is reported to the Federal Procurement Data System (FPDS) in accordance with the FPDS Reporting Manual

(3) Ensure that the agency's program for compliance with the Federal Managers' Financial Integrity Act (FMFIA) covers service contracting, and that any disclosed material control weaknesses are reported in agency annual statements of assurance (FMFIA Reports).

(4) Assure that the Agency Procurement Executive, in establishing criteria and performance standards for evaluating the agency's procurement systems in accordance with Executive Order 12352, takes into account the requirements of this Policy letter. The Agency Procurement Executive shall confer with the Senior Management Official regarding compliance with this Policy Letter prior to certifying that the procurement system meets required standards of performance. A copy of the resulting certification shall be provided to the Office of Federal Procurement Policy.

(5) Develop implementation strategies and initiate staff training necessary to assure effective implementation of these policies upon the effective date of this Policy Letter.

b. Agency Senior Management Officials. The Agency Senior Management Official, as designated above, shall:

(1) Prepare and submit an annual report to the Agency Head, with a copy of the Office of Federal Procurement Policy, on agency implementation of the policies and procedures in this Policy Letter. The report shall include:

(a) A description of the agency's management control procedures;

(b) Identification of the types of services, including justification statements and review levels, that are being reviewed on a class basis;

(c) The number and estimated dollar value of requirements for services that were reviewed individually (excluding requirements for class reviews) to ensure compliance with this Policy Letter;

(d) Any changes made in the control process to avoid problems of non-compliance; and

(e) A summary of the findings that relate to the sample of contracts reviewed after contract completion to ensure that contractor performance met contract requirements, and accurate and complete data were reported to the FPDS.

(2) Establish, as necessary, specific review levels to approve requirements for services. At a minimum, approvals should be provided at least one level above the requesting organization and, for fourth quarter requirements, at least two levels above the requesting organization.

(3) Designate, as appropriate, certain types of services for a class review rather than review each requirement individually, as long as that decision is justified, documented, and reported to the Agency Head.

Note: Services that could be reviewed on a class basis are not normally subject to abuse in the five areas of concern set forth in section 8 of this Policy Letter. Such blue collar services as lawn mowing, landscaping, janitorial functions, food preparation, messenger services, building maintenance, reproduction and printing, trash collection, and snow removal are examples of services that may be appropriate for class review.

(4) Define the review levels and class designations in the agency's management control procedures, and assure that any such class reviews or delegations of authority are performed in a manner that will ensure compliance with this Policy Letter.

(5) Conduct periodic and systematic reviews or audits of purchases for services below the small purchase threshold to ensure that abuses are not occurring regarding these acquisitions.

c. Federal Acquisition Regulatory Council. The Federal Acquisition Regulatory Council shall ensure that Government-wide regulations to conform to the policies establishes herein are promulgated in the first Federal Acquisition Circular issued 210 days after the effective date of this Policy Letter.

d. Office of Management and Budget (OMB). OMB, through the President's Council on Integrity and Efficiency, will request that the Inspectors General periodically review established management control procedures to ensure their compliance with this Policy Letter.

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10. Judicial Review. This policy letter is not intended to provide a constitutional or statutory interpretation of any kind and it is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person. It is intended only to provide policy guidance to agencies in the exercise of their discretion concerning Federal contracting. Thus, this policy letter is not intended, and should not be construed, to create any substantive or procedural basis on which to challenge any agency action or inaction on the ground that such action or inaction was not in accordance with this policy letter.

11. Information Contact. For information regarding this Policy Letter contact Linda G. Williams, Deputy Associate Administrator, Office of Federal Procurement Policy, 725 17th Street, NW., Washington, DC, telephone (202) 395–3300.

12. Effective Date. This Policy Letter is effective 30 days after the date of issuance.

Allan V. Burman,

Administrator.

[FR Doc. 91–30016 Filed 12–19–91; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Advisory Committee on Semiconductors

The purpose of the National Advisory Committee on Semiconductors (NACS) is to devise and promulgate a national semiconductor strategy, including research and development. The implementation of this strategy should assure the continued leadership of the United States in semiconductor technology. The Committee will meet on Tuesday, January 7, 1991 at the Office of Science and Technology Policy, Old Executive Office Building, 17th and Pennsylvania Avenue, NW., Washington, DC. The proposed agenda is:

1. Briefing of the Committee on its organization and administration.

2. Discussion by the Committee of a national semiconductor strategy and supporting studies regarding semiconductors.

3. Discussion of the annual report of the Committee.

The meeting will be closed to the public.

A portion of the discussion of Committee organization will necessitate the disclosure of information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will be closed to the public, pursuant to 5 U.S.C. 552b. (c)(6). The discussion of supporting studies related to semiconductor technology and the semiconductor industry will require discussion of confidential commercial information. This portion of the meeting will be closed to the public pursuant to 5 U.S.C. 552b. (c)(4).

Dated: December 17, 1991.

Damar W. Hawkins,

Executive Assistant to D. Allan Bromley, Office of Science and Technology Policy.

[FR Doc. 91–30507 Filed 12–19–91; 8:45 am]

BILLING CODE 3170–02–M

PENSION BENEFIT GUARANTY CORPORATION

Approval of a Collection of Information Under the Paperwork Reduction Act; Procedure for Complying With Statutory Notification Requirement

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of OMB approval.

SUMMARY: The Office of Management and Budget ("OMB") has approved a new collection of information, PBGC Form 200, under the Paperwork Reduction Act. This collection of information implements a statutory requirement to notify the Pension Benefit Guaranty Corporation ("PGBC") of a failure to make a required payment to a single-employer plan covered by title IV of the Employee Retirement Income Security Act of 1974 when the total of unpaid balances of required payments not made when due (including interest) exceeds $1 million. The PBGC needs this information to make decisions regarding enforcement of the statutory lien imposed in favor of the plan for failure to make required contributions. A copy of Form 200 together with the related instructions is appended to this notice.

FOR FURTHER INFORMATION CONTACT: Judith A. Neibrief, Attorney, Office of the General Counsel (Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8850 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.) For copies of Form 200 or assistance with the form or instructions, see the contacts listed in the instructions).

SUPPLEMENTARY INFORMATION:

Background

The Pension Benefit Guaranty Corporation ("PBGC") administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974 ("PPA"), Congress amended the minimum funding standards of section 412 of the Internal Revenue Code of 1986 ("Code") (26 U.S.C. 412) and section 302 of ERISA (29 U.S.C. 1082) by, among other things, adding identical lien provisions as new subsection (n) and new subsection (f), respectively (section 9304(e)(2) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 100–203)). These provisions apply for any post-1987 plan year for which the funded current liability percentage (as defined in Code section 412(1)(8)(B) and ERISA section 302(d)(8)(B)) of a defined benefit plan other than a multiemployer plan (*i.e.*, a single-employer plan) is less than 100 percent.

Section 412(n)(1) of the Code and section 302(f)(1) of ERISA impose a lien in favor of a plan that is subject to the minimum funding standards if (1) any person fails to make a required installment or any other payment required under section 412 of the Code and section 302 of ERISA when due, and (2) the unpaid balance of the required installment or other payment (including interest), when added to the aggregate unpaid balance of all preceding such installments or other payments for which payment was not made when due (including interest), exceeds $1 million. The lien is upon all property and rights to property (whether real or personal) belonging to the person or persons that are liable for required contributions (*i.e.*, a contributing sponsor and each member of the controlled group of which that contributing sponsor is a member).

Any such lien may be perfected and enforced only by the PBGC or, at its direction, by the plan's contributing sponsor or any member of the contributing sponsor's controlled group (Code section 412(n)(5) and ERISA section 302(f)(5)). Therefore, section 412(n)(4) of the Code and section 302(f)(e) of ERISA require persons committing payment failures to notify the PBGC, within 10 days of the due date for the required installment or other required payment, whenever there is a failure to make a required payment and the total of the unpaid balances (including interest) exceeds $1 million.

PBGC Form 200

The PBGC developed PBGC Form 200, Notice of Failure to Make Required Contributions, and related filing instructions, to implement the statutory notification requirement with respect to single-employer plans that are covered by Title IV of ERISA and, on November 15, 1991, notified the public that it had requested Office of Management and Budget ("OMB") approval of this new collection of information (56 FR 58090). The PBGC requested that OMB conduct its review of Form 200 on an expedited schedule of 30 days and published a copy of Form 200, together with the related instructions, as an appendix to the notice. In the notice of request for OMB approval, the PBGC also anticipated publication of today's notice of the collection of information approved by OMB before January 1, 1992, the effective date of the interim final, procedural rule requiring use of Form 200 (56 FR 57977, November 15, 1991).

OMB received no comments that warrant modification of the form and approved Form 200, as submitted by the PBGC, under control number 1212–0041 (expiration date: November 30, 1994). Therefore, Form 200, a facsimile of which is appended to this notice together with filing instructions, must be used for any notice of failure to make required contributions for which the 10-day filing period ends on or after January 1, 1992. (The PBGC will accept photocopies of the appended facsimile form. (See the filing instructions, which also include information on how to request copies of Form 200.))

As explained in the PBGC's prior notice, Form 200 must be filed by a contributing sponsor and, if a contributing sponsor is a member of a parent-subsidiary controlled group of corporations or group of trades or businesses under common control, the parent of such group. (Where there is more than one parent, "parent" refers to the parent at the highest level in the chain of corporations and/or other organizations comprising the group.) Since each member of a controlled group of which a contributing sponsor is a member is liable for payment of all required contributions and installments (Code section 412(c)(11) and ERISA section 302(c)(11)), all members of the controlled group commit a failure described in paragraph (f)(1) and, hence, are subject to the statutory notification requirement. Nevertheless, to minimize the reporting burden, the PBGC (at this time) considers compliance with a requirement to file Form 200 by either a contributing sponsor or a parent to satisfy the notification requirement for all members of the same controlled group as the person who files Form 200. (The PBGC emphasizes that the scope of the filing requirement does not in any way limit the joint and several liability for required payments of each controlled group member, the imposition of the statutory lien on all assets of each controlled group member, or the ability of the PBGC to take all appropriate steps to perfect and enforce the lien.)

In Part I of Form 200, the filer must identify the plan, its administrator, the contributing sponsor or parent filing the form, all members of a controlled group of which the filer is a member (along with a description of the structure of that group), any other contributing sponsor(s), and an authorized contact. In parts II and III, the filer must provide information that the PBGC needs (1) to determine the amount of the statutory lien, (2) to evaluate the funding status of the plan, and (3) to evaluate the financial condition of the filer and members of the same controlled group (if any). Finally, in part IV, an officer (or individual of comparable authority) of the filer must certify the information provided to the enrolled actuary and other information (including documentation) in the filing, and an enrolled actuary would certify the payment failure-related information.

Issued at Washington, DC, this 17th day of December, 1991.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

Appendix

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FILING INSTRUCTIONS FOR NOTICE OF FAILURE TO MAKE REQUIRED CONTRIBUTIONS

PBGC FORM 200

PAPERWORK REDUCTION ACT NOTICE

The PBGC needs this information to make decisions regarding enforcement of a lien imposed by ERISA section 302(f)(1) and Code section 412(n)(1). You are required to provide this notification pursuant to ERISA section 302(f)(4) and Code section 412(n)(4). Confidentiality is limited to that provided under the Freedom of Information Act and the Privacy Act.

The estimated time needed to complete this form is 5.75 hours when a payment failure first results in a total of unpaid balances that exceeds $1 million and 2.75 hours when there is a subsequent payment failure and the total of unpaid balances continues to exceed $1 million. These times are estimated averages that will vary depending on the nature and organizational structure of persons liable for plan contributions (in particular, whether the plan's contributing sponsor is a member of a controlled group and, if so, the size of that group) and on the funding history of the plan.

If you have any comments concerning the accuracy of these time estimates or suggestions for improving the form or these instructions, please send your comments to the Pension Benefit Guaranty Corporation, Office of the General Counsel, (Code 22500), 2020 K Street, N.W., Washington, D.C. 20006-1860 and Office of Management and Budget, OIRA, Attention Desk Officer - PBGC, Room 3001, New Executive Office Building, Washington, D.C. 20503.

INTRODUCTION

ERISA section 302(f) and Code section 412(n) include the same lien provisions relating to a failure to make required contributions to a single-employer plan subject to the minimum funding standards (ERISA section 302/Code section 412) for any post-1987 plan year for which the plan's funded current liability percentage (as defined in ERISA section 302(d)(8)(B)/Code section 412(l)(8)(B)) is less than 100 percent.

There is a lien in favor of the plan if:

(1) any person fails to make a required installment or any other payment required under ERISA section 302 and Code section 412 when due, and

(2) the unpaid balance of the required installment or other payment (including interest), when added to the aggregate unpaid balance of all preceding such installments or other payments for which payment was not made when due (including interest), exceeds $1 million.

The amount of the lien is equal to the lesser of (1) the amount by which the unpaid balances (including interest) described above exceed $1 million or (2) the aggregate unpaid balance of required installments and other payments (including interest) for plan years beginning after 1987 for which payment has not been made when due. This amount is treated as taxes due and owing the United States.

The lien is upon all property and rights to property (whether real or personal) belonging to the person or persons who are liable for required contributions (i.e., a contributing sponsor and each member of the controlled group of which that contributing sponsor is a member). It arises on the 60th day following the due date for the required payment and continues until the last day of the first plan year in which the total of unpaid balances described above no longer exceeds $1 million.

Any lien imposed for failure to make required contributions may be perfected and enforced only by the PBGC or, at its direction, by the plan's contributing sponsor or any member of the contributing sponsor's controlled group. Therefore, ERISA section 302(f)(4)(A) and Code section 412(n)(4)(A) require that the PBGC be notified whenever there is a failure to make a required payment and the total of unpaid balances (including interest) exceeds $1 million. Notice must be provided within 10 days of the due date for the required payment.

To comply with this notification requirement with respect to a single-employer plan that is covered by Title IV of ERISA, the PBGC requires that a contributing sponsor and, if that contributing sponsor is a member of a parent-subsidiary controlled group, the parent, file Form 200 whenever such a failure occurs.

Note: The PBGC's decision not to require (at this time) controlled group members other than contributing sponsors and parents to file Form 200 does not in any way limit the joint and several liability of each controlled group member for required payments (whether the controlled group of which a contributing sponsor is a member is a "parent-subsidiary", "brother-sister", or "combined" group), the imposition of the lien on all assets of each controlled group member, or the ability of the PBGC to take all appropriate steps to perfect and enforce the lien.

The PBGC has restricted Form 200 to information generally needed in its decisionmaking regarding enforcement of a lien imposed by ERISA section 302(f) and Code section 412(n). If the PBGC concludes that it needs additional information in a particular case, it will notify (in writing) the person required to supplement the Form 200 and specify the date by which the additional information must be submitted.

Note: Pursuant to ERISA section 4071, the PBGC may assess a penalty against any person who fails to provide a notice or other material information required under ERISA section 302(f)(4), or any regulations thereunder, within the applicable time limit. The penalty is payable to the PBGC and may not exceed $1000 for each day that the failure continues.

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DEFINITIONS

As used in PBGC Form 200 and these instructions--

"Code" means the Internal Revenue Code of 1986, as amended.

"Contributing sponsor" means the person entitled to receive a deduction under Code section 404(a)(1) for contributions required to be made to the plan under ERISA section 302 and Code section 412.

"Controlled group", for purposes of ERISA section 302(f) and Code section 412(n), means any group treated as a single employer under subsection (b), (c), (m), or (o) of Code section 414.

"Covered by Title IV of ERISA" means that a plan so described is covered by ERISA section 4021(a) and not excluded under ERISA section 4021(b).

"DOL" means the Department of Labor.

"Due date" means the date set forth in ERISA section 302(e) and Code section 412(m) for payment of a required installment and, in the case of a payment other than a required installment, the date such payment is required to be made under ERISA section 302 and Code section 412.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"IRS" means the Internal Revenue Service.

"Parent" means the parent of a "parent-subsidiary" controlled group of corporations or group of trades or businesses under common control (within the meaning of subsection (b) or (c) of Code section 414 and the regulations thereunder). Where there is more than one parent in a "parent-subsidiary" group, the term "parent" refers to the parent at the highest level in the chain of corporations and/or other organizations comprising the group. (For example, if Corporation A owns all of the stock of Corporation B and Corporation C, and Corporation B owns all of the stock of Corporation X, the contributing sponsor, then the "parent" of Corporation X is Corporation A.)

"PBGC" means the Pension Benefit Guaranty Corporation.

"Required installment" means any of the four quarterly contribution payments required for each plan year by ERISA section 302(e) and Code section 412(m).

"Required payment" means a required installment or other payment required under ERISA section 302 and Code section 412.

"SEC" means the Securities and Exchange Commission.

"Single-employer plan" means a defined benefit plan (as defined in ERISA section 3(35)) that is not a multiemployer plan (as defined in ERISA section 4001(a)(3)).

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GENERAL INSTRUCTIONS

The filer should assure that an appropriate response is provided for each item, as follows:

1. If an item requests a date, enter two digits in each box, e.g., enter "07" for July.

2. If responding to an item requires the attachment of documentation or information, mark the attachment to identify the item to which it responds.

No additions or deletions may be made to the certifications.

Who Must File

Form 200 must be filed by (1) a contributing sponsor and (2) if a contributing sponsor is a member of a "parent-subsidiary" controlled group, the parent of such group. However, if a timely and complete Form 200 is properly filed by either a contributing sponsor or the parent, the PBGC will deem the other to have so filed. (As noted above (see "Introduction"), each other member of any controlled group of which a contributing sponsor is a member also is jointly and severally liable for required payments and the PBGC may enforce the statutory lien imposed on its assets.)

When to File

Form 200, including all required documentation and information, must be filed with the PBGC no later than 10 days after the due date for the required payment.

> **Note:** Form 200 must be filed each time there is a failure described in ERISA section 302(f)(1) and Code section 412(n)(1) and the total of unpaid balances of required payments (including interest) exceeds $1 million.

The filing date for Form 200 is the date on which it is received by the PBGC office specified below (see "Where to File"), if it is received no later than 4 p.m. on a weekday other than a Federal holiday. If it is received after 4 p.m. or on a weekend or a Federal holiday, the Form 200 is deemed to be filed on the next regular business day.

In computing the 10-day period, the due date of the payment that resulted in the requirement to notify the PBGC is not included. Form 200 is due 10 days thereafter unless that day is a Saturday, Sunday, or Federal holiday, in which case the 10-day period runs until 4 p.m. on the next day that is not a Saturday, Sunday, or Federal holiday.

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Where to File

Form 200 may be delivered by mail or by hand to:

Pension Benefit Guaranty Corporation
Case Operations and Compliance Department
Room 5500 (Code 45000)
2020 K Street, N.W.
Washington, D.C. 20006-1860

For Copies of PBGC Form 200, Questions, Problems

To request copies of Form 200, contact the PBGC's Control Division (Code 45200) at the address or telephone number shown below.

Those who have questions or problems regarding Form 200 or these instructions may contact:

Pension Benefit Guaranty Corporation
Case Operations and Compliance Department
Administrative Review and Technical Assistance Division
(Code 45400)
2020 K Street, N.W.
Washington D.C. 20006-1860
Telephone: (202) 778-8800

Hearing impaired persons may telephone (202) 778-8859.

These phone numbers are not toll-free numbers, and the PBGC cannot accept collect calls.

Use of Facsimile Forms

The PBGC will accept a reproduction or other facsimile of Form 200 if it presents the same items in the same location. However, any required signature must be an original.

Failure to Timely File

Pursuant to ERISA section 4071, the PBGC may assess a penalty for failure to timely file a complete Form 200. This penalty is payable to the PBGC and may not exceed $1000 a day for each day that the failure continues.

Previously Submitted Information

Because ERISA section 302(f)(4)(A) and Code section 412(n)(4)(A) require that the PBGC be notified each time there is a failure to make a required payment and the total of unpaid balances of required payments (including interest) exceeds $1 million, more than one filing may be required regarding the same plan, and at least some of the information included in a previous Form 200 may continue to be accurate and responsive at the time that a subsequent Form 200 must be filed. It also is possible that information submitted to the PBGC in another context (e.g., in a distress termination filing pursuant to ERISA section 4041(c) or in a notice of a reportable event required by 29 CFR Part 2615) is responsive. Therefore, a filer may respond to an item that calls for previously submitted documentation or other information by identifying the previous submission in which the response was provided.

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SPECIFIC INSTRUCTIONS

Part I. General Plan Information

1a Enter the complete name of the plan as it appears on the plan document.

b Enter the first day of the plan year for which the payment described in item 7a was required.

2 Enter the name, address, and telephone number of the individual or the board or other entity, if any, specifically designated as plan administrator by the terms of the plan or trust agreement. If none is so designated or if a contributing sponsor is so designated, enter the name, address, and telephone number of that contributing sponsor.

3a Enter the name, address, and telephone number of (1) the contributing sponsor that is filing this form or (2) if the parent is filing this form, the controlled group member that is the contributing sponsor. (If the parent is filing and the plan covers the employees of more than one controlled group member, provide information with respect to the controlled group member with the greatest number of participants.)

b Enter the 9-digit employer identification number (EIN) assigned to the contributing sponsor in item 3a by the IRS for income tax purposes and the 3-digit plan number (PN) assigned by the contributing sponsor.

c If the EIN/PN in item 3b is different from that used in earlier filings with the PBGC (including premium and reportable event filings), the DOL, or the IRS, enter the EIN/PN previously reported. (If a different EIN or PN has not been used for this contributing sponsor/plan in previous filings, enter "NA" (not applicable).)

4b If you checked "Yes" to item 4a, enter the name, address, telephone number, and EIN (or "none" if there is no EIN) of the parent (i.e., the filer or the parent of the filer's controlled group). (If the controlled group is a "brother-sister" group, enter "none".)

d If you checked "Yes" to item 4c, attach a statement with (1) the name, address, telephone number, and EIN (or state that there is no EIN) of each other controlled group member and (2) a description of the structure of the controlled group. (The description must include the relationship of each member of the parent-subsidiary, brother-sister, or combined group, as applicable, to the controlled group. For example: "Corporation A, the parent of a parent-subsidiary group of trades or businesses under common control, has three wholly-owned subsidiaries, Corporation B, Corporation C, and Partnership D. Corporation B and Corporation C each owns 50 percent of the stock of Corporation X, the contributing sponsor. Partnership D owns all of the stock of Corporation Y.")

5a Check "Yes" if the plan is maintained by two or more contributing sponsors and all plan assets are available to pay benefits to all plan participants and beneficiaries.

b If you checked "Yes" to item 5a, attach a statement with (1) the name of each contributing sponsor and (2) the address, telephone number, and EIN (or state that there is no EIN) of any contributing sponsor(s) for which this information is not provided in response to previous items.

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6 Enter the name, address, and telephone number of an individual who is an authorized representative of the contributing sponsor or the parent filing this form if this is not the individual signing the certification in item 12.

Part II. Plan Funding Information

Note: An enrolled actuary must certify that the information in items 7 and 8, among other things, conforms to applicable Code and IRS requirements (see item 11).

7a Describe the required payment that was not made when due, resulting in the requirement to notify the PBGC (e.g., "the second quarterly installment for the plan year beginning on July 1, 1991").

8a Enter the total amount, as of the due date in item 7b, of the unpaid balance of the required payment described in item 7a and the aggregate unpaid balance of all preceding required payments for which payment was not made when due (i.e., include in this amount the unpaid balances, including interest, of all required payments for which payment was not made when due).

b Describe how the amount in item 8a was determined, including the actuarial assumptions and methods used if different from the actuarial assumptions and methods used in the plan actuarial valuation report submitted in response to item 9a.

9c Attach a copy of any IRS letter(s) granting or modifying a funding waiver (under ERISA section 303/Code section 412(d)) or an extension of the amortization period (under ERISA section 304/Code section 412(e)) for any plan year, except a letter relating to (1) a waived funding deficiency that has been fully amortized (pursuant to ERISA section 302(b)(2)(C)/Code section 412(b)(2)(C)) or (2) an extended amortization period that has ended if all contributions required pursuant thereto have been made.

d Attach a statement describing any pending request(s) for a funding waiver (under ERISA section 303/Code section 412(d)) and/or for an extension of the amortization period (under ERISA section 304/Code section 412(e)), including the relief requested.

Part III. Contributing Sponsor and Controlled Group Financial Information

10a Attach copies of audited or, if not available, unaudited financial statements that were prepared for the contributing sponsor and each other controlled group member individually, including balance sheets, income statements, statements of cash flows, and notes to financial statements and annual reports. However, if financial statements were only prepared on a consolidated basis for more than one controlled group member, consolidated financial statements and consolidating financial statements or, if not available, consolidating trial balances that identify each controlled group member individually may be attached instead.

Part IV. Certification

11 This certification must be made by an enrolled actuary.

12 This certification must be made by an officer (or an individual of comparable authority in an unincorporated organization) of the contributing sponsor or parent that is filing the Form 200.

PBGC Form 200

Approved OMB 1212-0041
Expires 11/30/94

Notice of Failure to Make Required Contributions

FOR PBGC USE ONLY

File this form to notify the Pension Benefit Guaranty Corporation of a failure to make required contributions (see ERISA section 302(f)(4)(A) and Code section 412(n)(4)(A)) to a single-employer plan that is covered by Title IV of ERISA.

- Do NOT file this form for any other employee benefit plan.
- Do NOT file this form with the Internal Revenue Service.
- Do NOT file this form UNLESS the plan's funded current liability percentage is less than 100 percent.
- Do NOT file this form UNLESS the total of unpaid balances of required payments exceeds $1 million.

PART I. GENERAL PLAN INFORMATION

1a Plan name

b Plan year commencement date

Month Day Year

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2 Plan administrator

Name

Address (number and street)

City or town State ZIP Code

Telephone number___

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6 Authorized contact (if same as individual signing certification in item 12, enter "same")

Name

Address (number and street)

City or town State ZIP Code

Telephone number ( ) \
Area Code

PART II. PLAN FUNDING INFORMATION

7a Describe the required payment that resulted in the requirement to notify the PBGC

b Due date for the required payment described in item 7a

Month Day Year

8a Total of unpaid balances of required payments (including interest)

$

b Describe how the amount in item 8a was determined

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9 Submit the following documentation and information with this form:

a Copy of most recent plan actuarial valuation report;

b Copy of Form 5500, Schedule B, for most recent plan year for which filed;

c Copy of any IRS letter(s) granting or modifying a funding waiver and/or an extension of the amortization period;

d Statement describing any pending request(s) for a funding waiver and/or for an extension of the amortization period.

PART III. CONTRIBUTING SPONSOR AND CONTROLLED GROUP FINANCIAL INFORMATION

10 Submit the following documentation with this form with respect to the contributing sponsor in item 3a and each other member of the same controlled group as that contributing sponsor:

a Copies of financial statements for the most recent three fiscal years for which available and of the most recent interim financial statements;

b Copies of any SEC filings during the past 6 months, including Form 10-K, Form 10-Q, and Form 8-K;

c If any member of the controlled group currently is the subject of a bankruptcy, insolvency, receivership, or similar proceeding, copies of any Statement of Affairs, Disclosure Statement, and Plan of Reorganization (or similar filing(s)) and interim financial reports filed in such proceeding.

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PART IV. CERTIFICATIONS

11 Enrolled Actuary Certification

I certify that, to the best of my knowledge and belief, the information contained in items 7 and 8 of this form is true, correct, and complete and conforms to all applicable laws and regulations. In making this certification, I recognize that knowingly and willfully making false, fictitious, or fraudulent statements to the PBGC is punishable under 18 U.S.C. 1001.

Name (type or print)

Enrollment number

Company/Firm

Address (number and street)

City or town State ZIP Code

Telephone number___

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POSTAL RATE COMMISSION

[Docket No. A92-4]

Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued December 17, 1991.

Before Commissioners: George W. Haley, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; W. H. "Trey" LeBlanc III; H. Edward Quick, Jr.

In the Matter of: Carrothers, Ohio 44823, Christine Sizemore, et al., Petitioners

Docket Number: A92-4.
Name of Affected Post Office: Carrothers, Ohio 44823.
Name(s) of Petitioner(s): Christine Sizemore, et al.
Type of Determination: Closing.
Date of Filing of Appeal Papers: December 11, 1991.
Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)];
2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before December 26, 1991.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.
Charles L. Clapp,
Secretary.

December 11, 1991: Filing of Petition.
December 17, 1991: Notice and Order of Filing of Appeal.
January 6, 1992: Last day for filing of petitions to intervene [see 39 CFR 3001.111(b)].
January 21, 1992: Petitioner's Participant Statement or Initial Brief [see 39 CFR 3001.115(a) and (b)].
February 10, 1992: Postal Service Answering Brief [see 39 CFR 3001.115(c)].
February 25, 1992: Petitioner's Reply Brief should petitioner choose to file one [see 39 CFR 3001.115(d)].
March 3, 1992: Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116].
April 8, 1992: Expiration of 120-day decisional schedule [see 39 CFR 404(b)(5)].

[FR Doc. 91-30461 Filed 12-19-91; 8:45 am]
BILLING CODE 7710-FW-M

[Docket No. A92-3]

Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Before Commissioners: George W. Haley, Chairman; Henry R. Folsom, Vice Chairman; John W. Crutcher; W. H. "Trey" LeBlanc III; H. Edward Quick, Jr.

In the Matter of: Susank, Kansas 67580, Mrs. Wilbert Boese.

Docket Number: A92-3.
Name of Affected Post Office: Susank, Kansas.
Name(s) of Petitioner(s): Mrs. Wilbert Boese.
Type of Determination: Closing.
Date of Filing of Appeal Papers: December 9, 1991.
Categories of Issues Apparently Raised:

1. Effect on the community (39 U.S.C. 404(b)(2)(A)).
2. Effect on postal services (39 U.S.C. 404(b)(2)(C)).
3. Effect on the economic savings of the Postal Service (39 U.S.C. 404(b)(2)(D)).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before December 24, 1991.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission
Charles L. Clapp,
Secretary.

December 9, 1991: Filing of Petition.
December 17, 1991: Notice and Order of Filing of Appeal.
January 6, 1992: Last day for filing of petitions to intervene (see 39 CFR 3001.111(b)).
January 21, 1992: Petitioner's Participant Statement or Initial Brief (see 39 CFR 3001.115 (a) and (b)).
February 10, 1992: Postal Service Answering Brief (see 39 CFR 3001.115(c)).
February 25, 1992: Petitioner's Reply Brief should petitioner choose to file one (see 39 CFR 3001.115(d)).
March 3, 1992: Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116).
April 6, 1992: Expiration of 120-day decisional schedule (see 39 U.S.C. 404(b)(5)).

[FR Doc. 91-30462 Filed 12-19-91; 8:45 am]
BILLING CODE 7715-FW-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30078; File No. SR-GSCC-91-03]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Temporarily Approving a Proposed Rule Change Relating to Comparison and Netting of Non-Member Trades

December 13, 1991.

On July 23, 1991, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-GSCC-91-03) concerning enhancements to its comparison and netting systems. Notice of the proposal was published in the **Federal Register** on September 5, 1991.[2] No comments were received. This order approves the proposal on a temporary basis until December 31, 1992.

I. Description

The proposed rule change would allow GSCC netting members to submit

[1] 15 U.S.C. 73s(b).
[2] Securities Exchange Act Release No. 29627 (August 29, 1991), 56 FR 43950.

to GSCC trading activity of non-members. The proposal effectively would expand the scope of trades eligible for GSCC's comparison and netting systems by allowing GSCC to identify, compare and net trades where one or both sides to the transaction are non-members that have entered into clearing or correspondent arrangements with a GSCC member. The proposal, however, would not result in GSCC's interacting directly with non-members.[3]

The proposal would require that a member, who intends to submit non-member trading activity to GSCC, provide advance notice of its intent to act on behalf of a non-member.[4] Members would be required to provide separate notices listing the non-member correspondents whose trading activity the member will introduce for comparison only, and correspondents whose trading activity the member will introduce into GSCC's system for both comparison and netting. To submit trades to GSCC's netting system, GSCC members must guarantee performance by the non-member and must complete delivery, receipt and payment on netted trades. If the submitting member determines not to guarantee non-member's trades, GSCC will not include those trades in the trade netting system.[5]

In order to identify non-member trades in GSCC's comparison system, the proposal would add two "executing firm" information fields to GSCC's trade data format, allowing the netting member to indicate: (1) The identity of the executing party associated with the submitting member, and (2) the identity of the executing party associated with the contra-party member.[6] Members would continue to submit proprietary trades as usual (*i.e.*, leaving the executing firm fields blank).

In addition to the currently required data, executing firm information would be required to be matched in order for the trade to be compared. GSCC believes that the addition of the new information fields initially may adversely affect successful comparison of trade data.[7] In an effort to avoid any increase in uncompared trades, GSCC would make the following exceptions: (1) If GSCC comparison yields an uncompared trade because of unmatched executing firm information but the trade data agrees in all other respects, GSCC would assume that the executing firm information was incorrectly submitted by one side of the trade, and would compare the trade based on a match between the submitting members; (2) if the identity of the executing firm on one side of a trade is not provided, GSCC would compare the trade assuming that there is no executing firm on that side of the trade; (3) if a trade submitted to GSCC does not identify the contra-party submitting member, but the contra-party executing firm information is provided, and the contra-party submitting member has submitted standing instructions [8] designating that member as the submitting member for the identified contra-party executing firm, GSCC would compare the trade assuming that the GSCC member providing the standing instruction is the contra-party submitting member for the trade. GSCC will designate separately all trades successfully compared that involve an executing firm.

To facilitate comparison of trades submitted against the affiliate [9] of the true executing firm, the proposal would allow GSCC to compare the trade as if it originally had been submitted against the true executing firm. GSCC would resolve the trade provided the submitting member and the affiliated firms have given GSCC a written authorization to make such a substitution.[10]

For example, assume that member *A* submits one side of a trade naming as the contra-party, *B*, (an affiliate of member *C*) and the trade does not compare as submitted. Assume further that the matching side is submitted by member *C*. GSCC will assume that member *A* intended to name member *C* as the contra-party, and GSCC will substitute *C* as the contra-party in the trade data submitted by *A*, and compare the trade as if member *A* had originally submitted against member *C*.

Non-member trades, like member trades, must be submitted by 10:00 p.m. in order to be included in GSCC regular nightly comparison cycle. GSCC will include the status of non-member trades in daily comparison reports provided to members.

To assist members in submitting accurate trade data to GSCC, GSCC would maintain a "translation table" containing GSCC members' internal identifiers for contra-participants and the corresponding GSCC member identifying numbers. Upon the request of a member, GSCC would translate the member's internal contra-participant identifier to a GSCC identifying number to assist members in identifying the contra-party to the trade.

If the submitting member has provided notice to GSCC that it wishes to guarantee the trades of the non-member, trades so submitted and guaranteed would be included in the calculation of the submitting member's clearing fund contribution and other money and securities obligations. The submitting member will be responsible for, among other things, the funds-only and securities settlement portions of its net settlement position attributable to the trades submitted on behalf of the non-member to the same extent as if the submitting member had executed the trade.[11] In addition, the assessment of the risk posed by the submitting member's trading activity would include trading activity with a non-member executing firm if that executing firm's trades are submitted to GSCC for comparison and netting. Finally, GSCC rules regarding the allocation of loss, the assessment of an additional clearing fund deposit, and placing members on surveillance status would include such trading activity. Of course, if a member chooses not to guarantee a trade submitted on behalf of an executing

[3] *See* n. 6, *infra*.
[4] Specifically, GSCC would require that notice of the member's intent to act on behalf of a non-member be given at least three days prior to the initial submission of trade data on behalf of the non-member.
[5] See discussion, *infra* concerning obligations of the submitting member with respect to the netting of non-member trades.
[6] With regard to this part of the proposal, GSCC has represented to the Division of Market Regulation staff that the proposal would not result in GSCC's direct interaction with non-members. Comparisons generated by GSCC would not address the nature of the relationship between an executing firm and the firm submitting trades on its behalf.
[7] On average 22.288 sides (a side is either the purchase or sell piece of a trade) are submitted daily to GSCC for comparison, of which 20.924 sides, with a dollar value of $153.31 billion, are successfully compared. GSCC's average daily comparison rate thus is about 94%. This average is based on data submitted through August, 1991.
[8] As discussed above, GSCC would require a comparison or netting member to provide a standing instruction that the member is to be deemed the submitting member on all trades involving a designated executing firm. If the member has not provided a standing instruction, GSCC will follow its usual reconciliation procedure advising the member that the trade was not successfully compared. GSCC will not undertake to determine the identity of the parties to the trade unless the member has provided a standing instruction.
[9] The term "affiliate" as used in this release and in GSCC's rules means "a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified". 17 CFR 230.405 (1985).
[10] Prior to making any such substitution, GSCC must have on record a standing instruction authorizing GSCC to resolve the trade internally.
[11] In this connection, GSCC will no longer require that trades submitted for comparison and netting be trades that are executed "between members". Accordingly, GSCC is revising its rules to reflect that trades may be netted and novated by GSCC as long as those trades are submitted by a GSCC netting member. GSCC Rules and Procedures, R. 1.

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firm, the trade submitted on behalf of the executing firm would be eligible for GSCC's comparison system but would not be netted or novated by GSCC nor included in the calculation of the submitting member's clearing fund contribution and daily mark requirements.

II. Discussion

The Commission believes that GSCC's proposal will promote the prompt and accurate clearance and settlement of securities transactions consistent with section 17A(b)(3)(A) of the Act.[13] The proposal will enhance GSCC's ability to compare and net U.S. Government securities transactions. The Commission believes that GSCC's proposal facilitates the purposes of the Act, and in particular, the safeguarding of securities and funds which are under GSCC's control, custody, or for which GSCC is responsible by requiring netting members who guarantee the trades of an executing firm to assume financial responsibility for the trading activity.

GSCC has included in the proposed rule change certain exceptions to the requirements for a matched trade that will allow a matched trade to occur when both sides of the trade do not agree as to the executing firm information. GSCC has structured the proposal in this manner to facilitate the successful comparison of trades while avoiding additional uncompared trades because not all GSCC members' internal systems are equipped to accommodate additional information fields.[13]

The Commission believes that GSCC's approach is a reasonable first step in the process of incorporating correspondent activity into a centralized comparison and netting system. Nevertheless, GSCC should encourage its members to be more accurate in the data they submit in order to reduce, and eventually eliminate, the need for GSCC to substitute or supplement data on behalf of members.

Currently, GSCC issues a monthly report to members listing, among other things, the member's compared and uncompared trades and the percentage of trades that entered the net. Under the proposal, the report would reflect the effect of non-member trading activity submitted by the member on the member's comparison rate. The Commission urges GSCC to supplement the currently reported information by tracking the identity of the submitting member and the executing firm and identifying by type of match each trade involving a non-member. This data would provide a basis for GSCC to test the accuracy of member input and to monitor for unusual trading pattern. The information GSCC gathers regarding the comparison activity of members on behalf of non-member firms will be provided to the Commission on a quarterly basis during the temporary approval period.[14]

III. Conclusion

For the reasons stated above, the Commission preliminarily finds that GSCC's proposal is consistent with section 17A of the Act.[15]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[16] that GSCC's proposed rule change (File No. SR–GSCC–91–03) be, and hereby is, approved on a temporary basis through December 31, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jonathan G. Katz,

Secretary.

[FR Doc. 91–30452 Filed 12–19–91; 8:45 am]

BILLING CODE 8010–01–M

[13] 15 U.S.C. 78q–1(b)(3)(A).

[13] All GSCC members, however, will have access through GSCC's daily comparison output report to executing firm information used by GSCC to compare trades, or trade data that was compared under any of the exceptions.

[14] Letter from Jeffrey Ingber, Associate General Counsel and Assistant Secretary, GSCC, to Sonia Burnett, Attorney, Division of Market Regulation, Commission (December 6, 1991).

[15] 15 U.S.C. 78q–1(b)(3)(A).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

[Release No. 34–30077; File No. SR–NASD–91–45]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Amendments to Schedule C to the NASD's By-Laws

December 13, 1991.

The National Association of Securities Dealers, Inc. ("NASD") submitted on August 23, 1991, [1] a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [2] and Rule 19b–4 [3] thereunder to amend Schedule C to the NASD's By-Laws, which sets forth the application review process for new member applications ("the premembership interview process" or "PMI process"), to adopt deadlines for the consideration of applications for membership and to extend the effectiveness of membership restrictions to successors to the ownership or control of the applicant. The proposal amends section 1(a) to provide that the NASD can reject an application after sixty days where the applicant has failed to respond to a request from the NASD for information, or where the applicant has failed to amend a materially inadequate response pursuant to a request from the NASD.[4] In addition, the proposal amends section 1(b) to allow the NASD to reject an application if the applicant does not complete the review process within twelve months of the filing of the application.[5] The proposed rule change also amends section 1(e) to state that all restrictions placed on an applicant's business will remain in effect until modified pursuant to section 3 of part I, and will bind all successors to the applicant.[6] The NASD has requested that the rule go into effect on February 1, 1992, allowing time for the NASD to inform members of the rule's approval in a Notice to Members.

Notice of the filing and the terms of substance of the proposed rule change as modified by amendments 1, 2 and 3, was given by the issuance of a Commission release (Securities Exchange Act Release No. 29701, September 18, 1991) and by publication in the **Federal Register** (56 FR 48258, September 24, 1991).

The Commission received one comment letter on the proposed rule change raising three concerns.[7] First, while the commentator concurs that there is a need to adopt deadlines for consideration of applications for membership, she indicated that 60 days may be insufficient to respond to a request for further information. The commentator suggested that 90 days or longer should be provided for some delays and that an applicant should be able to submit to the NASD District, in writing, a request for an extension for good cause to avoid having its application deemed "materially inadequate" under this rule change. Second, the commentator suggested the NASD District be obligated to schedule the PMI within a specific time frame after the receipt of all information, instead of within a "reasonable" time frame. Third, the commentator requested that pending applications, nearing the 12 month rejection deadline when this rule change goes into effect, be given an extension. The commentator also indicated support for the restrictions/successor provision of this proposal.

In response to the comment letter, the NASD filed Amendment No. 4, addressing the commentator's concerns. The NASD indicated that applicants will be given notice of the deadlines imposed by the proposed amendments and the consequences of the failure to meet the deadlines. Furthermore, the NASD indicated it does not intend to terminate pending applications where the applicant has responded to a request for information by stating that it is in the process of preparing a full response or has indicated it is taking steps to complete all examinations, agreements and other requirements necessary for NASD approval of the membership application. The NASD indicated it intends to terminate applications only if there is no response or if there is clear evidence of dilatory conduct on the part of the applicant.

In response to the commentator's request that the NASD be required to schedule a PMI within a specific time frame, the NASD indicated it does not believe that imposing a strict schedule for processing of applications is appropriate due to the changing regulatory and disciplinary demands on the volunteer committee members on which the NASD relies. The NASD agreed, in response to the commentator's concern regarding pending applications, not to terminate any application which is in process at the time this rule change becomes effective for 6 months following the effective date.[8]

The Commission believes that the NASD has responded adequately to the comment letter. The NASD expressly responded to each concern raised by the commentator and provided a reasonable explanation for the necessity of this rule change. The Commission believes this rule will streamline the application review process, while preserving the fundamental fairness of the PMI process.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder. Specifically, the Commission believes that the proposed rule change is consistent with section 15A(g)(3)(A) of the Act, which allows the NASD to deny or condition membership in the NASD on the member's ability to demonstrate financial responsibility and operational capability pursuant to standards established by the NASD.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved and will go into effect on February 1, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3 (a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 91–30453 Filed 12–19–91; 8:45 am]

BILLING CODE 8010–01–M

[1] The NASD filed five amendments to this proposed rule change, three were filed prior to noticing the proposal. The fourth amendment was filed in response to a comment letter and the fifth amendment was filed to indicate the date this rule will go into effect. These amendments are technical in nature and available for inspection and copying in the Public Reference room.

[2] 15 U.S.C. 78s(b)(1) (1988).

[3] 17 CFR 240.19b–4 (1991).

[4] If an application is materially inadequate the applicant will be notified in writing of the inadequacy and of the information which is required to remedy the inadequacy.

[5] The NASD indicated rejection will not occur if the delay in approval of the application is caused by the NASD.

[6] This amendment codifies the NASD's view that a restrictive agreement is binding on the member firm, not just the principals, and the changes in ownership or control of the member do not operate to remove or reduce the limitations in the restrictive agreement. This amendment emphasizes the NASD's requirement that restrictive agreements can be amended only after the approval of a written application submitted to the District in which the member has its principal place of business.

[7] See letter to Jonathan G. Katz, Secretary, SEC, from Jacqueline H. Halliban, President, National Regulatory Services, Inc., dated October 6, 1991.

[8] The NASD indicated it does not intend to terminate applications simply because they have not been processed to completion within 12 months. As with requests for information, a complete failure to proceed with an application, or obvious dilatory conduct will be necessary before the NASD terminates an application.

[Release No. 34–30080; File No. SR–NASD–91–39]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating To Release of Certain Information Regarding Disciplinary History of Members and Their Associated Persons Via Toll-Free Telephone Listing

December 13, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 12, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends the Resolution of the Board of Governors concerning "Notice to Membership and Press of Suspensions, Expulsions, Revocations and Monetary Sanctions," ("Resolution") at article V, section 1 of the NASD Rules of Fair Practice, by adding language to the effect that the NASD may release certain information contained in the Central Registration Depository ("CRD") System about the employment and disciplinary history of its members and their associated persons in response to telephonic inquiries from the general public via a toll-free telephone listing. The information released may include past and present employment history with NASD members, final disciplinary actions taken by federal or state securities agencies or self-regulatory organizations that relate to securities or commodities transactions and criminal convictions reported on Form U–4 (the Uniform Application for Securities Industry Registration or transfer).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the amendment to the Resolution is to implement the

[1] The NASD subsequently filed Amendment No. 1 and Amendment No. 2 on September 10, 1991 and December 6, 1991 respectively. The terms of substance of which amendments are contained herein.

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provisions of new section 15A(i) of the Act which was enacted by Congress in October 1990. This amendment will permit the NASD to release certain information contained in the CRD System regarding the employment and disciplinary history of its members and their associated persons in response to telephonic inquiries from the general public via a toll-free telephone listing. The NASD will respond to such requests for this information in writing. The NASD will report final disciplinary actions taken by federal or state securities agencies or self-regulatory organizations which relate to securities or commodities transactions and criminal convictions reported on Form BD or Form U–4, and if requested past and present employment history with NASD members. Final disciplinary actions also include civil injunctive orders entered as a result of actions initiated by federal or state regulatory authorities. The NASD procedures will call for a copy of this information to be sent to the person requesting it. The NASD intends to name this program the 800 Number Service Plan (the "Plan"). The information disclosed as disciplinary history reflects the view of the NASD that disciplinary history means final action taken by regulatory authorities. The view is also consistent with the matters that are disclosed under the NASD's Public Disclosure Policy.

The NASD intends that the Plan will operate during normal weekday business hours which will be from approximately 9 a.m. to 5 p.m. Eastern Time. The NASD plans to install 15 to 20 phone lines to handle the incoming calls. If a call comes in after 5 p.m., the caller will hear a tape recording which describes the system's operating hours and offers the caller the option of leaving his name and address and the NASD will send him a request form which can be completed and returned to the NASD for processing. Calls received during operating hours will be sorted by whether the requestor is an individual investor or a commercial requestor. The commercial requestors will be charged a $30 fee for each request made. No fee will be imposed on requests by individual investors. Once the NASD operator has identified the associated person who is the subject of the request, the caller will be advised if this associated person has any disclosable disciplinary history. If there is no disclosable history, the caller will be so advised and will be given the option of receiving a written response from the NASD to that effect. If there is disclosable history, the caller will be so advised; however, the details of such history will not be provided over the phone. The caller will receive a written response which describes the particular events involved. The NASD will disclose the identity of the requestor to the associated person who is the subject of the request and his employer-member. The NASD does not disclose the identity of the requestor if there is no disclosable history for the associated person or if the information request only concerns the member itself. The NASD Board of Governors determined that it was appropriate under these circumstances to disclose the identity of the requestor so that the associated person could have the opportunity to explain or address the disciplinary actions or convictions which are disclosed.

The NASD already has in place a Public Disclosure Program. This program was filed for immediate effectiveness with the SEC in April 1988 (File No. SR–NASD–88–14). Notice of that filing was provided by issuance of a Commission release (Securities Exchange Act Release No. 25604, April 20, 1988) and by publication in the **Federal Register**, (53 FR 14878, April 26, 1988). Under this program the NASD, pursuant to written inquiries, discloses all final disciplinary actions taken by any regulatory authority and criminal convictions disclosed on Form U–4. The identity of the person making such an inquiry is disclosed to the employer member, if applicable.

The NASD believes the proposed rule change is consistent with section 15A(i) under the Act, as amended. In pertinent part, section 15A(i) mandates that a national securities association shall, (1) establish and maintain a toll-free telephone listing to receive inquiries regarding disciplinary actions involving its members and their associated persons, and (2) promptly respond to such inquiries in writing. The NASD believes the proposed amendment is consistent with this section and constitutes good faith compliance with the requirements of this section.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the filing. The Commission specifically requests comment on whether, as the instant rule change proposes, it is appropriate for the associated person who is the subject of the request and his employer-member to receive notice that an investor has made an inquiry, and further for the associated person and employer-member to be provided with the name, address and telephone number of the investor requesting the disciplinary history.

Additionally, the Commission notes that the NASD has proposed to disclose final disciplinary actions taken by federal or state securities agencies or self-regulatory organizations which relate to securities or commodities transactions and criminal convictions reported on Form BD or Form U–4. Final disciplinary actions reported will also include civil injunctive orders entered as a result of actions initiated by federal or state regulatory authorities. In addition to the information proposed for disclosure under the 800 number service, Form U–4 and BD also require that applicants report foreign court or SRO equivalent findings regarding civil litigation in connection with investment related activity, whether initiated by federal or state regulatory authorities or otherwise; and criminal convictions unrelated to securities or commodities. The Commission requests comments on whether the disciplinary information proposed for disclosure is sufficiently inclusive.

Further, the Commission requests that interested persons comment on whether or not the term "commercial requestor," as designated by the NASD for purposes of assessing fees for calls received on the 800 number, need be defined in the proposed rule change.

Finally, the proposed hours of operation for the 800 number are 9 a.m. to 5 p.m. Eastern Time. The Commission requests comments as to whether or not these hours are appropriate or should be modified for West Coast users of the 800 number.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 10, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 91–30454 Filed 12–19–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25430]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

December 13, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 6, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company, et al. (70–7919)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, and its wholly owned nonutility subsidiary, Southern Electric International, Inc. ("SEI"), 100 Ashford Center North, suite 400, Atlanta, Georgia 30338, have filed an application-declaration under section 6(a), 7, 9(a), 10, and 12(b) of the Act and rules 43 and 45 thereunder.

SEI proposes to issue and sell unsecured notes ("Notes") from time to time prior to March 31, 1992, in an aggregate principal amount not to exceed $20 million at any one time outstanding. It is proposed that the Notes may be issued and sold either to Southern or to a lender or lenders other than Southern. The Notes will have maturities of no later than December 31, 2000. It is anticipated that any Notes sold to a lender or lenders other than Southern may be guaranteed by Southern as to principal, premium, if any, and interest.

Notes sold to Southern will bear interest at a rate not to exceed the prime rate in effect on the date of issuance at a bank designated by Southern.

Notes sold to a lender or lenders other than Southern will bear interest at a rate not to exceed 2% over the prime rate at a bank designated by Southern. In connection with any sale to a lender or lenders other than Southern, a commitment fee may be paid not to exceed ½ of 1% of the principal amount of such Note.

It is further proposed that up to $20 million of the Notes issued to Southern may, at Southern's option, be converted to capital contributions to SEI through Southern's forgiveness of the debt represented thereby.

Proceeds from the issuance and sale of the Notes will be used by SEI to meet working capital requirements for SEI's consulting contracts related to its utility and technical services business consulting line, as defined, and certain administrative and general activities associated therewith. In addition, SEI requires working capital to pay SEI's associate companies for services they have provided through SEI to SEI's customers.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–30455 Filed 12–19–91; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Announcement of Receipt of Proposed Restriction on Operations of Stage 2 Aircraft at Minneapolis-St. Paul International Airport in Minneapolis, MN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) has been notified by the Metropolitan Airports Commission (MAC) that it proposes to cap and then prohibit nighttime operations by Stage 2 aircraft weighing over 75,000 pounds at Minneapolis-St. Paul International Airport (MSP). The proposed restriction would cap and then eliminate operations by Stage 2 aircraft between 11 p.m. and 6 a.m. CST or CDT at MSP. MAC has provided notice of the proposed restriction and an opportunity to comment to the public pursuant to the Airport Noise and Capacity Act of 1990 and 14 CFR 161.203.

EFFECTIVE DATE: In its notice, published on December 9, 1991, in the Star Tribune in Minneapolis, Minnesota and Pioneer Press in St. Paul, Minnesota, the Metropolitan Airports Commission indicated that the initial phase of the ordinance restricting operations to their Stage 2 baseline would take effect not earlier than 180 days from the date of publication of MAC's Notice. This date is June 6, 1992. The second phase, a ban on nighttime Stage 2 operations, would take effect on or after that date, as determined by the Commission.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Unruh, Committee Secretary at:

Metropolitan Airports Commission, General Offices, 6040 28th Avenue South, Minneapolis, Minnesota 55450, (612) 726–8100.

Copies of the complete text of the proposed restriction and the supporting analysis may be obtained by phoning or

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writing MAC. These documents are also available for public inspection at MAC's General Offices. Comments to MAC on the proposed restriction should be received by January 23, 1992, 45 days after the MAC publication date.

Issued in Des Plaines, Illinois, December 13, 1991.

W. Robert Billingsley,

Manager, Airports Division, Great Lakes Region.

[FR Doc. 91-30432 Filed 12-19-91; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL AVIATION ADMINISTRATION

Aviation Security Advisory Committee; Meetings

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Aviation Security Advisory Subcommittee Meeting.

SUMMARY: Notice is hereby given of a meeting of the Security Operations Subcommittee of the Aviation Security Advisory Committee..

DATES: The meeting will be held January 7, 1992, from 9 a.m. to 4 p.m..

ADDRESSES: The meeting will be held in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Office of the Assistant Administrator for Civil Aviation Security, ACS, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202-267-9863.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Security Operations Subcommittee of the Aviation Security Advisory Committee to be held January 7, 1992, in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC..

The agenda for the meeting is a discussion on the carriage of weapons aboard aircraft. Attendance at the January 7, 1992 meeting is open to the public but limited to space available. Members of the public may address the committee only with the written permission of the chair, which should be arranged in advance. The chair may entertain public comment if, in its judgment, doing so will not disrupt the orderly progress of the meeting and will not be unfair to any other person. Members of the public are welcome to present written material to the committee at anytime.

Persons wishing to present statements or obtain information should contact the Office of the Assistant Administrator for Civil Aviation Security, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202-267-9863.

Issued in Washington, DC on December 13, 1991.

O.K. Steele,

Assistant Administrator for Civil Aviation Security.

[FR Doc. 91-30433 Filed 12-19-91; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

Petition for a Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received from South Branch Valley Railroad a request for waiver of complaince with a requirement of Federal power brake standards. The petition is described below, including the regulatory provisions involved, and the nature of the relief being requested.

South Branch Valley Railroad

(Waiver Petition Docket Number PB-91-5)

South Branch Valley Railroad (SBVR) seeks a permanent waiver of compliance with certain provisions of the Railroad Power Brakes and Drawbars Regulations (49 CFR part 232). SBVR is requesting that it be permitted to operate a non self-propelled crane without air brakes. The crane was build in 1952 with a straight air brake system only. There is no automatic air brake system on the crane but it does have a brake pipe extending from one end to the other. The carrier proposes to operate the crane in trains under the following conditions:

1. The crane would be operated with a locomotive at one end and an idler car with operating air brakes at the other end.
2. Maximum speed would be 10 mph.
3. The crane would not be interchanged to any other railroad.

The waiver would exclude the crane from the requirements of §§ 232.12 and 232.13 that each car have an operating air brake during the initial terminal road train air brake test and intermediate terminal train air brake test.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number PB-91-5) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before January 27, 1992, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC on December 12, 1991.

Grady C. Cothen, Jr.,

Associate Administrator for Safety.

[FR Doc. 91-30413 Filed 12-19-91; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. 91-1]

Exemptions Potentially Affected by Docket No. HM-181 on Performance Oriented Packaging Standards

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice to exemption holders.

SUMMARY: This notice advises DOT exemption holders to review their exemptions from specific requirements of the Hazardous Materials Regulations to determine whether their exemptions could be eliminated as a result of a final rule published in the **Federal Register** on December 21, 1990, and revisions thereto published as Part II elsewhere in this issue of the **Federal Register** entitled "Performance-Oriented Packaging Standards: Revisions and Responses to Petitions for Reconsideration."

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Office of Hazardous Materials Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590-0001, telephone (202) 366-4535 or Fax No. (202) 366-3753.

SUPPLEMENTARY INFORMATION: Numerous substantive amendments are contained in a final rule published under Docket HM-181 on December 21, 1990 (55 FR 52402) and revisions thereto published as part II elsewhere in this issue of the **Federal Register** entitled "Performance-Oriented Packaging Standards: Revisions and Responses to Petitions for Reconsideration." These changes include hazardous materials descriptions, classification criteria and new packaging requirements.

RSPA sent a notice to persons who hold exemptions, authorizing the use of non-bulk packagings, which are potentially affected by the performance-oriented packaging changes adopted under HM-181. RSPA anticipates the phase-out of exemption packagings no longer necessary due to performance-based standards of the final rule, and has advised exemption holders to reexamine the terms of their exemptions to determine whether they are still necessary. The notice follows:

Notice to Exemption Holders

Our records indicate that you are the holder of a DOT exemption potentially affected by a recent final rule.

On December 21, 1990, the Research and Special Programs Administration (RSPA) published a final rule in the **Federal Register** (55 FR 52402) under Docket HM-181 (herein referred to as "HM-181").

HM-181 makes significant changes to the Hazardous Materials Regulations (Title 49, Code of Federal Regulations, parts 170-180 or "HMR") with respect to hazardous materials descriptions, classification and packaging requirements.

Under HM-181, performance-oriented packaging standards based on United Nations (UN) standards will eventually replace non-bulk DOT packaging specifications. The final rule is effective October 1, 1991. Transitional provisions contained in this final rule generally permit the continued manufacture of non-bulk DOT specification packagings until October 1, 1994 and permit the continued use of these packagings until October 1, 1996. New packaging provisions for materials which are poisonous by inhalation are effective October 1, 1993.

The provisions of HM-181 eliminate the need for many current exemptions and will necessitate the modification of many others. Some exemption packagings partially or fully meet the newly-adopted UN performance standards. Manufacturing and marking them in accordance with HM-181 will eliminate the need for these exemptions. Other exemption packagings may not provide a level of safety equivalent to that provided under the provisions of HM-181 and, therefore, may not be eligible for continued use after HM-181 becomes effective. Other exemptions may require modification based on the new provisions.

We request that you carefully review both HM-181 and your exemption to determine if the exemption can be either terminated before its expiration date or not renewed upon expiration. Please notify RSPA's Office of Hazardous Materials Exemptions and Approvals (OHMEA) if the exemption can be terminated. In instances where you intend to apply for renewal, ensure that the application identifies any modifications necessitated by changes in HM-181 and adequately demonstrates that the modified exemption provides a level of safety equivalent to the new provisions [see 49 CFR 107.103(b)(9)].

OHMEA staff will be independently reviewing current exemptions and renewal applications and may, in some limited instances, notify exemption holders that an exemption will be considered for termination. The exemption holder will be given the opportunity to show cause why such action should not be taken. In general, exemptions would not be terminated prior to the effective dates contained in HM-181.

The changes embodied in HM-181 will appear in the 1991 edition of the HMR. Copies of Docket HM-181 may be purchased from the Government Printing Office.

Due to the diversity of the HM-181 amendments, other exemptions may also be affected. Therefore, all exemption holders are requested to reexamine the terms of their exemptions in view of the changes adopted under HM-181. Comments concerning an exemption should identify the exemption number and be submitted to RSPA's Office of Hazardous Materials Exemptions and Approvals.

Issued in Washington, DC on December 17, 1991.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 91-30438 Filed 10-19-91; 8:45 am]

BILLING CODE 4910-60-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Agreement on Government Procurement, as Implemented by the Trade Agreements Act of 1979, as Amended; Notice of Value of Special Drawing Rights

AGENCY: Office of the United States Trade Representative.

ACTION: Under the authority delegated to the United States Trade Representative by sections 1-104 and 1-201 of Executive Order 12260, I hereby determine that effective on January 1, 1992, the dollar equivalent of 130,000 Special Drawing Right units as referred to in the Agreement on Government Procurement and section 1-104 of Executive Order 12260, and as most recently modified by USTR determination on January 1, 1990 (55 FR 185), is $176,000.00. The $172,000 amount announced effective January 1, 1990, remains in effect through December 31, 1991

This determination may be modified as appropriate.

FOR FURTHER INFORMATION CONTACT: Beverly Fuortes, Director for Government Procurement, Office of the United States Trade Representative (USTR), 600 17th Street, NW., Washington, DC 20506 (202) 395-3063.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 91-30477 Filed 12-19-91; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of

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response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: December 16, 1991.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy, Assistant Secretary for Information, Resources Policies and Oversight.

Extension

1. Application for Exclusion of Children's Income, VA Form 21–0571.
2. The form is used to develop information needed to determine whether a child's income can be excluded from consideration in determining a parent's eligibility for nonservice-connected pension benefits.
3. Individuals or households.
4. 18,750 hours.
5. 45 minutes.
6. On occasion.
7. 25,000 respondents.

[FR Doc. 91–30422 Filed 12–19–91; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 245
Friday, December 20, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEPARTMENT OF JUSTICE

UNITED STATES PAROLE COMMISSION

Public Announcement

Pursuant To The Government In the Sunshine Act

(Public Law 94–409) [5 U.S.C. Section 552b]

DATE AND TIME: Thursday, December 12, 1991, 3:00 p.m., Eastern Daylight Time.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815.

STATUS: Closed—Meeting.

MATTER CONSIDERED: Appeal to the Commission involving one case decided by the National Commissioners pursuant to a reference under 28 CFR Section 2.17. This case was originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release. This was an emergency meeting pursuant to a court order which required immediate consideration by the Commission.

AGENCY CONTACT: Jeffrey Kostbar, Case Analyst, National Appeals Board, United States Parole Commission, (301) 492–5958.

Dated: December 16, 1991.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 91–30571 Filed 15–16–91; 3:52 pm]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

UNITED STATES PAROLE COMMISSION

Record of Vote

(Public Law 94–409) (5 U.S.C. Sec. 552b)

I, Carol Pavilack Getty, Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at three o'clock p.m. on Thursday, December 12, 1991 at the Commission's Central Office, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The purpose of this meeting was an appeal to the Commission involving a case decided by the National Commissioners pursuant to a reference under 28 CFR Section 2.17. This is an emergency meeting pursuant to a court order which required immediate consideration by the Commission. In addition, four Commissioners were present constituting a quorum when a vote to close the meeting was submitted.

Upon motion duly made, seconded, and carried, the following Commissioners voted that Commission business required immediate consideration of the matters discussed and that the meeting be closed: Carol Pavilack Getty, Jasper Clay, Jr., Vincent Fechtel, Jr., and Victor M.F. Reyes.

IN WITNESS WHEREOF, I make this official record of the vote taken for immediate consideration of the matters discussed at the meeting and authorize this record to be made available to the public.

Dated: December 17, 1991.

Carol Pavilack Getty,

Chairman, U.S. Parole Commission.

[FR Doc. 91–30572 Filed 12–16–91; 3:52 pm]

BILLING CODE 4410–01–M

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Corrections

Federal Register
Vol. 56, No. 245
Friday, December 20, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 271

[Amendment No. 335]

Food Stamp Program; Miscellaneous Provisions of the Mickey Leland Memorial Domestic Hunger Relief Act and Food Stamp Certification Policy

Correction

In rule document 91-29017 beginning on page 63592 in the issue of Wednesday, December 4, 1991, make the following correction:

§ 272.1 [Corrected]

On page 63598, in the second column, in § 272.1(g)(120)(ii), the sixth line should read, "§ § 273.2(c)(1), 273.2(i)(3)(i) and 273. 2(k)(1)(i)(D) do not".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

[Amendment No. 337]

Food Stamp Program; Categorical Eligibility and Application Provisions of the Mickey Leland Memorial Domestic Hunger Relief Act

Correction

In rule document 91-29014 beginning on page 63605 in the issue of Wednesday, December 4, 1991, make the following corrections:

§ 273.2 [Corrected]

1. On page 63612, in the second column, in § 273.2(j)(3)(i), after the first line, add "categorical eligibility (February 1, 1991) or local GA"

2. On page 63613, in the first column, in § 273.2(j)(4)(iii)(A), in the sixth line, "on" should read "in". In the next paragraph (B), in the eighth line, "determining" should read "determination".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 414

[FRL-3974-8]

Organic Chemicals, Plastics and Synthetic Fibers Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

Correction

In proposed rule document 91-29177, beginning on page 63897, in the issue of Friday, December 6, 1991, make the following correction:

On page 63897, in the second column, under **DATES:**, in the second line, "1991" should read "1992".

BILLING CODE 1505-01-D

FEDERAL RESERVE SYSTEM

12 CFR Part 221

[Docket No. R-0730]

RIN 7100-AA9

Securities Credit Transactions; Regulations G and U; Transfers of Credit

Correction

In rule document 91-21587, beginning on page 46110, in the issue of Tuesday, September 10, 1991, make the following correction:

§ 221.3 [Corrected]

On page 46111, in the third column, in amendatory instruction 2., in the amendment to § 221.3, in the first line, "paragraphs (l)(1)(i)" should read "paragraphs (i)(1)(i)".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 3500

[Docket No. R-91-1558; FR-2955-P-02]

RIN 2502-AF24

Real Estate Settlement Procedures Act; Regulation X; Section 10 Escrow Account Statements

Correction

In proposed rule document 91-29390, beginning on page 64446, in the issue of Monday, December 9, 1991, make the following correction:

On page 64446, in the third column, in the first full paragraph, in the last line, "1971)." should read "1974).".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-030-4111-10; NMNM 35829]

Order Providing for Opening of Land, Otero County; NM

Correction

In notice document 91-25621, beginning on page 55134, in the issue of Thursday, October 24, 1991, make the following corrections:

1. On page 55134, in the second column, in the land description, under T. 19 S., R. 10 E., in the third line, "Sec. 8, SE¼SE¼;" should read "Sec. 8, SW¼SW¼;".

2. On the same page, in the same column, in T. 20 S., R. 11 E., in Sec. 3, in the last line, "NE¼SE¼," should read "NE¼SW¼,".

3. On the same page, in the 3rd column, under "T. 20 S., R. 12 E.,", in the 11th line, "Sec. 22, W½SE¼;" should read "Sec. 22, W½SW¼;".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-AGL-10]

Modification to Transition Area; Grayling Army Airfield, Grayling, MI

Correction

In rule document 91-28981, beginning on page 61366, in the issue of Tuesday, December 3, 1991, make the following correction:

§ 71.181 [Corrected]

On page 61367, in the second column, in § 71.181, in the fourth line, "440'" should read "44°".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-AGL-8]

Transition Area Alteration; Willmar, MN

Correction

In rule document 91-28917, beginning on page 61367, in the issue of Tuesday, December, 3, 1991, make the following correction:

On page 61368, in the first column, in the date line above the signature, "9" should read "19,".

BILLING CODE 1505-01-D

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federal register

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December 20, 1991

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 106, et al.
Performance-Oriented Packaging Standards; Revisions and Response to Petitions for Reconsideration; Final Rule

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 106, 107, 171, 172, 173, 174, 175, 176, 177, 178, 179, and 180

[Docket Nos. HM–181, HM–181A, HM–181B, HM–181C, HM–181D, HM–142A, HM–189, and HM–204; Amdt Nos. 106–8, 107–23, 171–111, 172–123, 173–224, 174–68, 175–47, 176–30, 177–78, 178–97, 179–45, and 180–3]

RIN 2137–AA01, 2137–AB87, 2137–AB88, 2137–AA10, 2137–AB56, and 2137–AB90

Performance-Oriented Packaging Standards; Revisions and Response to Petitions for Reconsideration

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; revisions and response to petitions for reconsideration.

SUMMARY: This amendment makes revisions to a final rule published in the Federal Register under Dockets HM–181, HM–181A, HM–181B, HM–181C, HM–181D and HM–204 (55 FR 52402, December 21, 1990). That final rule comprehensively revised the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) with respect to hazard communication, classification and packaging requirements. The changes were based on the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations) and RSPA's own initiative. This amendment also addresses a petition for reconsideration to Docket HM–142A, which was incorporated into Docket HM–181 under a final rule issued September 18, 1991 (56 FR 47158).

The intended effect of the final rules published under Docket Nos. HM–181, HM–181A, HM–181B, HM–181C, HM–181D, HM–142A, and HM–204 is to: (1) Simplify and reduce the volume of the HMR; (2) enhance safety through better classification and packaging; (3) promote flexibility and technological innovation in packaging; (4) reduce the need for exemptions from the HMR; and (5) facilitate international commerce. The revisions contained in this document are primarily in response to petitions for reconsideration received to the final rule. This final rule also makes editorial and technical corrections to the December 21, 1990 final rule, to the January 3, 1991 final rule under HM–142A, and to the 1990 49 CFR parts 106–180.

DATES: *Effective:* October 1, 1991. Because the amendments adopted herein clarify and correct certain provisions of the final rule and impose no new regulatory burden on any person, notice and public procedure are unnecessary and these amendments may be made effective without the customary 30 day delay following publication.

Applicability: The incorporation by reference of certain publications listed in these amendments is approved by the Director of the **Federal Register** as of October 1, 1991. Because of the transition period provisions in 49 CFR 171.14, the provisions of § 172.101(l)(1)(ii), which allow up to one year after a change in the Hazardous Materials Table (HMT) to use up stocks of preprinted shipping papers and to ship packages that were marked prior to the change, do not apply to these amendments.

FOR FURTHER INFORMATION CONTACT: Delmer Billings, telephone (202) 366–4488, Office of Hazardous Materials Standards, or Charles Hochman, telephone (202) 366–4545, Office of Hazardous Materials Technology, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

On December 21, 1990 (55 FR 52402), the Research and Special Programs Administration (RSPA) published a final rule under Docket HM–181 which comprehensively revised the HMR (49 CFR parts 171 to 180) with respect to hazard communication, classification, and packaging requirements based on the UN Recommendations. Because of the complexity of the final rule, RSPA extended to 90 days the period for receiving petitions for reconsideration to allow persons affected by the final rule sufficient time to submit petitions. Revised transition period requirements in § 171.14 were published in a separate rulemaking issued on September 18, 1991 (56 FR 47158) to give persons subject to the HMR more time to comply with the revised final rule.

This corrections document incorporates editorial and substantive revisions to the final rule based on careful review of over 250 petitions for reconsideration received by RSPA. It also includes a number of amendments that RSPA has determined are necessary to correct or clarify the final rule. Because the amendments adopted herein clarify and correct certain provisions of the final rule, relieve certain restrictions in those regulations, and impose no new regulatory burden on any person, notice and public procedure are unnecessary and these amendments may be made effective without the customary 30 day delay following publication.

Petitions Received

Numerous petitions recommended revisions to: (1) The transition period in § 171.14 for converting to the new system (these petitions were addressed in the September 18, 1991 revised final rule); (2) the package reuse provisions in § 173.28; (3) non-bulk packaging of liquids poisonous by inhalation in §§ 173.226 and 173.227; (4) generic non-bulk packaging in §§ 173.201–204 and §§ 173.211–213; (5) bulk generic packaging in §§ 173.240–245; (6) segregation of materials by highway carriers in § 177.848; (7) manufacturer package certification and notification requirements in § 178.2; (8) package certification marking requirements in § 178.503; (9) general testing requirements in § 178.601; and (10) alternatives to the leakproofness test in Appendix B to Part 178. The following are RSPA's decisions on those issues that were of most interest to petitioners. A thorough discussion of these issues and all other topics addressed by petitioners can be found in the section-by-section review of this preamble.

Petitions Granted

1. The leakproofness test before reuse required in § 173.28 is adjusted to allow lower test pressures for packagings containing Packing Group II and III materials. To facilitate compliance with this section, RSPA also is requiring new drums intended for reuse to bear permanent thickness marks expressed in millimeters. Requirements for permanent package certification markings appear in § 178.503.

2. Clearer definitions for gases and liquids poisonous by inhalation are added to §§ 171.8, 173.115 and 173.132, for regulatory consistency and to provide better criteria for identifying these materials which are subject to the more stringent hazard communications and packaging requirements in the final rule.

3. Bulk packaging authorizations for materials poisonous by inhalation are restructured for clarity and regulatory consistency.

4. Use of DOT 57 portable tanks is authorized for most Class 3 (flammable liquids) and Class 8 (corrosive) materials. However, prohibitions on the use of this packaging will remain in effect for materials poisonous by inhalation, certain multiple hazard materials and Packing Group I materials.

5. The 25 gram limitation on Division 1.4 materials is eliminated in § 173.50.

6. Selective package testing variations in § 178.601 are broadened to permit, without further design qualification testing, design changes to the exterior dimensions and closure devices of single and composite packagings. Changes are also permitted in the dimensions of outer packagings of combination packagings.

7. Drum leakproofness qualification and production test procedures are expanded to include the alternatives listed in Appendix B to Part 178. The so-called "T-zone" test (solution over part of the seams) is permitted as a production test.

8. Requirements pertaining to infectious substances are revised to specify more appropriate requirements for medical wastes.

Petitions Denied

1. RSPA is denying petitions to change defining criteria for Class 3 liquids and to remove the combustible class definition in § 173.120 and the combustible liquid reclassification option in §§ 173.120 and 173.150.

2. Petitions to relax hazard communications and packaging requirements for materials poisonous by inhalation are denied.

3. Petitions asking RSPA to allow certain materials now assigned packagings required to meet Packing Group III performance level tests, to continue being shipped in non-specification packagings, are denied.

4. RSPA is retaining the basic shipper requirements for assuring package integrity prior to being offered for transportation, including the vibration test standard as a capability specified for all packagings in § 173.24a(a)(5) and the "no identifiable release (without the use of instruments)" criterion in § 173.24(b)(1).

5. The "EX" marking requirements in § 172.320 for Class 1 materials are retained, but additional alternatives are provided.

Several petitioners addressed issues raised in the preamble to Docket HM–181 that are not a part of this rulemaking. The Hazardous Materials Advisory Council (HMAC) suggested improvements pertaining to public input into international regulatory procedures such as more extensive outreach through RSPA's Hazardous Materials Information Exchange (HMIX) service to persons having access to personal computers with modems. This effort is already underway. RSPA's computer bulletin board already contains substantial information about planned meetings on international issues, digests of all UN papers, corrections to the final rule, and other information. HMIX can be accessed by calling 1–800–PLANFOR (in Illinois, call 1–800–367–9592).

One petitioner asked RSPA to clarify when a Competent Authority Approval Certificate is necessary. The petitioner asked if a certificate is required when the HMR already authorizes something for which an international regulation requires Competent Authority approval. For example, under the International Maritime Organization (IMO) International Maritime Dangerous Goods (IMDG) Code, the use of open head drums for Packing Group II and III flammable liquids is only allowed when authorized by the Competent Authority. In these situations, the provisions in the HMR constitute the authorization of the Competent Authority and no further documentation is required.

Except as adopted herein, all petitions for reconsideration received by RSPA regarding issues addressed by the final rule published on December 21, 1990, or the final rule published on January 3, 1991 (Docket HM–142A) are hereby denied. Any subsequent submission regarding issues relating to this rulemaking must be filed as petitions for rulemaking in conformance with 49 CFR 106.31. RSPA anticipates one or more additional notices to address deficiencies in the new requirements, as they are identified. Rulemaking action is also forthcoming concerning intermediate bulk containers (IBCs).

Docket HM–189

This amendment also makes revisions to the 1990 49 CFR parts 107–179. In the past, these amendments have been published in an annual final rule under Docket HM–189 to correct editorial errors and make minor regulatory changes to the HMR. However, because of major revisions to the HMR which occurred in the December 21, 1990 final rule under Docket HM–181, RSPA has decided to incorporate the HM–189 revisions into this final rule.

Section-by-Section Review

This section-by-section review addresses only significant changes. Examples of non-significant changes which are not specifically discussed in the review include: grammatical and typographical errors; changes in reference citations; paragraph redesignations; and minor revisions to enhance clarity and consistency.

Part 107: Hazardous Materials Program Procedures

Section 107.215. This section outlines procedures for filing an application for a waiver of preemption, and paragraphs (b)(6) through (b)(8) are revised to include "Indian tribe" as well as State and political subdivisions for consistency with the final rule published February 28, 1991 under Docket HM–207.

Subpart G, OMB Control Numbers Under the Paperwork Reduction Act, is removed. The provisions of §§ 107.601 and 107.603 are consolidated and now appear as § 171.6. Section 171.6, which sets forth units of measure, is moved to § 171.10. The provisions in § 171.10, which addressed hazardous materials in bulk on board vessels or barges, are removed as they are duplicated in Part 176.

Part 171: General Information, Regulations and Definitions

Section 171.4. This section is removed and reserved.

Section 171.5. This section is removed and reserved.

Section 171.6. This section, which addressed units of measure, is moved to § 171.10. Former subpart G of part 107, which sets forth OMB control numbers, is added in its place.

Section 171.7. Editorial corrections.

Section 171.8. RSPA is adding new definitions for "Hazard zone," "Material poisonous by inhalation," and "State."

The following definitions are revised: "Bulk packaging," "Cryogenic liquid," "Infectious substance (etiologic agent)," "Inner receptacle," "Irritating material," "Maximum net mass,", "Non-bulk packaging," "Packaging,", "Person,", "Technical name," and "United States."

RSPA is removing the following definitions: "Etiologic or infectious substances," "IM Tank Table," "Magnetic materials," "Manufacturer," "Net weight, net mass or net quantity," and "Oxidizer or oxidizing material."

RSPA is adding the definitions for "Hazard zone" and "Material poisonous by inhalation" in the appropriate sequence in § 171.8. Hazard zones determine how materials posing an inhalation-hazard in transportation are described, marked on packages, labeled, placarded and packaged. Materials poisonous by inhalation are defined as a gas meeting the defining criteria in § 173.115(c) and assigned Hazard Zones A, B, C or D in accordance with § 173.116(a), and a liquid meeting the defining criteria in § 173.132(a)(1)(iii) and assigned to Hazard Zone A or B in accordance with § 173.133(a); or any material identified as an inhalation hazard by a special provision in Column 7 of the § 172.101 Table.

Two petitioners recommended that RSPA define "capacity" or "rated capacity" and "total capacity" in § 171.8. For consistency with the UN

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Recommendations and throughout Docket HM–181, RSPA is using the terms "maximum net mass" and "maximum capacity." Therefore, the recommended definitions are not needed. The definition for "maximum net mass" in § 171.8 is revised. "Maximum capacity" is sufficiently descriptive to not warrant a definition.

Another petitioner suggested that the definition for "maximum net mass" and the definition for "net weight, net mass or net quantity" are duplicative, indicating that "net mass" and "maximum net mass" are the same. RSPA agrees. Therefore, for clarification, the definition "Net weight, Net mass, or Net quantity" is removed.

Several petitioners recommended that the definition of "packaging" be revised. One petitioner stated that the first sentence should read: "Packaging means a receptacle which may require an outer packaging * * *" The petitioner stated that the "definition as written does not account for the fact that large articles without their means of initiation, or with their means of initiation containing at least two effective protective features may be carried unpackaged as authorized by item number 49 in the UN Table of Particular Packaging Requirements or Exceptions. Another petitioner stated that "packaging" as defined in § 171.8 is limited to composite or combination packagings and should be revised to refer to all types of packagings, such as cargo tanks and portable tanks. RSPA disagrees, believing there is no need to expand the generic definition of "packaging" to account for the specific functions of "outer packaging." However, consistent with UN Recommendations, RSPA is revising the term "packaging" to mean any components or materials necessary for a "receptacle" to perform its containment function and thus is removing the phrase "which require an outer packaging." The definition as revised is equally applicable to bulk and non-bulk packagings.

The definition of "technical name" is revised to include (under certain conditions) authorized generic microbiological descriptions for use as technical names for "infectious substances" (etiologic agents) shipped to laboratories for testing and analyses, provided they readily identify the general microbiological group.

A definition of "State" is added and the definitions of "person" and "United States" are revised for consistency with § 107.3, as revised in a final rule published under Docket HM–207 on February 28, 1991 (56 FR 6616).

Responsibility associated with the functions of certifying that a packaging complies with subparts L and M of part 178 has been restated and more fully established in § 178.2. In that section, "the person" is the legal entity recognized as responsible for package certification, and the reference to "manufacturer" has been removed. Therefore, RSPA is removing the definition of "manufacturer" in § 171.8. Petitions requesting a new definition of "manufacturer" are discussed in the § 178.2 section review.

Section 171.10. The provisions addressing hazardous materials in bulk on board vessels or barges are removed, as these requirements are contained in § 176.5(d). The requirements addressing units of measure, formerly found in § 171.6, are moved to this section. Numerous petitioners were concerned that RSPA was requiring use of metric units of measurements to indicate total quantities on shipping papers. RSPA adopted metric (or SI units) as the regulatory standard to harmonize with international requirements and in conjunction with DOT's policy to implement the metric system. In the final rule, metric units are indicated for such standards as required construction material thicknesses, size of package markings, label and placard specifications, and package capacities. There is no requirement in § 172.202 that the total quantity of a material be indicated in metric units on shipping papers.

RSPA agrees with recommendations from several petitioners to revise paragraph (c)(2) by adding the following conversion factors for pressure in the Table of Conversion Factors For SI Units: "1 Bar=100 kPa=14.5 psi" and "1 kPa=7.5 mm HG." RSPA is further revising the table by removing references to exponential values indicated by the letter "E" in columns two and three. Suggestions from two petitioners to add a measurement equivalence table identical to that in the International Civil Aviation Organization (ICAO) Technical Instructions because "there are circumstances where an 'exact' conversion of SI units is needed" are not accepted, in the interest of timeliness. Adjustments to the Table of Conversion Factors may be addressed in future rulemaking actions.

Section 171.11. RSPA is revising this section to clarify requirements pertaining to import/export air shipments of materials poisonous by inhalation. References to Division 2.3 and Division 6.1, Packing Group I, materials in paragraph (c) are removed. Paragraph (d)(9) is revised to remove the reference to § 173.3a and require all materials poisonous by inhalation, as defined in § 171.8, to be described, marked and packaged in accordance with the provisions of the final rule. The effect of these changes is to permit materials poisonous by inhalation to be transported under provisions of the ICAO Technical Instructions, subject to certain restrictions. Paragraph (d)(12) is added to clarify that ammonium nitrate fertilizer and ammonium nitrate mixed fertilizer may be transported only if they do not meet the definition for Class 1 (explosive) material.

Section 171.12. Paragraph (b) is reorganized for ease of reference and clarity. One petitioner objected to the changes to this section stating that import shipments stored temporarily in warehouses and then shipped to a final U.S. destination are not addressed by the final rule and that in failing to address incidental storage, shipments which are incidentally stored would have to be brought into full compliance with all of the relevant requirements in the HMR. The petitioner noted that this may present a conflict with the Trade Agreements Act of 1979. RSPA disagrees. The revised provisions of § 171.12(b) still permit shipments from warehouses in the U.S. to the end user in the U.S., under IMDG Code provisions, as long as the initial leg of the shipment, such as from a foreign port to the U.S. warehouse, conformed to IMDG Code provisions.

HMAC recommended that § 171.12(b) specify that shipments made in accordance with the IMDG Code be "certified" in accordance with the Code. This would be consistent with the similar requirement authorizing shipment in accordance with the ICAO Technical Instructions (see § 171.11(a)). RSPA agrees and has revised § 171.12(b) to indicate that a shipment must also be certified in accordance with the IMDG Code.

RSPA is granting HMAC's petition to clarify that IMDG Code descriptions and markings are permitted for materials subject to the IMDG Code, but not subject to DOT requirements, by adding the following sentence to paragraph (b)(3) (herein redesignated as (b)(2)): "However, these materials may be transported in the United States described, marked and labelled in accordance with the IMDG Code."

A petition recommending a revision to paragraph (b)(2), (redesignated as (b)(5)), excepting intermediate bulk containers (IBCs) authorized by the UN from bulk packaging requirements in Docket HM–181, is denied. Until RSPA acts to include IBCs in the HMR, these packagings will continue to be required to conform to existing regulatory

provisions in the HMR. It was pointed out that the text in § 171.12(b)(2) could mistakenly be taken to mean that shippers were being excluded from compliance with all requirements of the IMDG Code applying to bulk shipments. RSPA disagrees. Only the packaging requirements of the HMR are applicable. Hazard communication, stowage, and other requirements may conform to IMDG Code provisions, subject to other § 171.12 restrictions.

A new paragraph (b)(6) is added clarifying that export shipments must conform to the general packaging requirements in §§ 173.24, 173.24a, and 173.28, in addition to any applicable specification requirements, for U.S.-manufactured packagings. Unless packages are emptied and refilled for export, imported foreign-manufactured packagings are not subject to these requirements.

Paragraph (b)(4)(iii) (redesignated as (b)(8)) is revised to permit materials poisonous by inhalation to be transported under IMDG Code provisions, subject to restrictions on packaging and hazard communication.

One petitioner noted that paragraph (b)(4)(iv) (redesignated as (b)(9)), prohibiting Class 7 materials from being shipped under the IMDG Code, is inconsistent with paragraph (d) authorizing use of International Atomic Energy Agency (IAEA) requirements. RSPA is revising paragraph (b)(9) to clarify that Class 7 materials may be shipped under the IAEA provisions of paragraph (d).

In response to a HMAC petition, RSPA is adding a requirement in new paragraph (b)(13), consistent with requirements in § 172.203(j), that the words "Dangerous When Wet" appear on shipping papers for Division 4.3 materials. RSPA is adding a new paragraph (b)(15) to clarify that cylinders not manufactured to DOT specifications must conform to the requirements of §§ 173.301(i) and 173.301(j).

Two petitioners pointed out that paragraph (b) does not include emergency response information requirements in Subpart C of Part 172 but that paragraph (c) does. This oversight is corrected in new paragraph (b)(16). In addition, RSPA is revising paragraph (c) to clarify that the emergency telephone number requirement in § 172.201(d) does not apply to shipments made under the IMDG Code if hazardous materials are not offloaded from a vessel or are offloaded between vessels at a port facility without being transported over a public highway. Several petitioners noted regulatory inconsistencies involving permitted "port area" transport of bulk shipments only under the IMDG Code in § 171.12(b) and (c) and exceptions to vessel requirements in § 176.11. They said § 171.12(c) "seems to allow" transportation of both bulk and non-bulk packagings in compliance with the IMDG Code "in port areas." However, the petitioners added, § 171.12(c) also references part 176 which in § 176.11 allows shipments in compliance with the IMDG Code subject to the limits in § 171.12(b). The petitioners stated that "This effectively prohibits the shipment or receipt, or movement, through a port area of any bulk container which complies only with IMDG." RSPA agrees and is modifying the reference to part 176 in § 171.12(c) so that only "the applicable operational requirements in part 176 that are not addressed in the IMDG Code" apply. The exception indicating when compliance with § 172.201(c) is not required is included in § 171.12(c) and is deleted from § 176.11(a). The reference to § 176.11 is deleted.

Section 171.12a. Several petitioners viewed the provisions in this section as a significant reduction in the acceptance of hazardous materials shipped in accordance with Canadian regulations. One petitioner remarked that, "unlike the current wording of paragraph (d), the final rule does not permit the use of Canadian packagings for the shipment or reshipment of hazardous materials within the US." For example, paragraph (a) as revised in the final rule would prohibit the reshipment of monoethanolamine in a Canadian Transport Commission (CTC)–17E drum from a U.S. warehouse to a U.S. customer because the CTC specifications are not contained in the Canadian Transport of Dangerous Goods (TDG) Regulations. It was also pointed out that standards for portable tanks and tank cars are also presently not contained in the TDG Regulations. The petitioner also asserted that paragraph (b)(13), authorizing only UN certified packagings when required, further restricts use of Canadian packaging.

It should be noted that provisions in § 171.12a are also subject to the transition period requirements in § 171.14. Therefore, Canadian non-bulk packagings which were authorized for use in the United States under § 171.12a as effective prior to October 1, 1991, would still be authorized until October 1, 1996. It is anticipated that, prior to the effective dates of the various provisions for packagings, Canada will have incorporated CTC packaging, portable tank and tank car specifications into the TDG Regulations. RSPA specifically drafted § 171.12a(b)(13) in the manner it appears in the final rule because it appears that Canada may authorize certain non-bulk specification packagings indefinitely, even though those packagings have been replaced with UN performance standards in the U.S. Accepting these packagings indefinitely would be contrary to RSPA's efforts to convert to performance-based requirements for non-bulk packagings. Accordingly, paragraph (b)(13) is revised to clarify that when specification packaging is required by the HMR, TDG-authorized packagings can be used in the U.S. only if they correspond to DOT specifications or UN standards. In addition, paragraph (b)(13) is revised to clarify that cylinders not manufactured to DOT specifications must conform to the requirements of § 173.301(i) and (j).

The Association of American Railroads (AAR) objected to paragraph (b)(4) addressing U.S. requirements for Class 1 explosives. Prior to Docket HM–181, AAR said, "markings of packages containing Class 1 materials in accordance with TDG regulations were acceptable in the U.S. There is no reason to depart from this practice, in effect, requiring Canadian shippers and carriers to incur the cost of placing EX numbers on packages containing new explosives at the U.S./Canadian border." AAR also contended that Subpart C only required approval of "new" explosives and therefore only new Canadian explosives being imported into the United States required approval. RSPA has substantially revised § 172.320 (marking requirements for explosive materials) in response to this and other comments. The complete discussion of these comments is made in association with § 172.320. These changes significantly reduce the impact of § 171.12a(b)(4). RSPA does not agree with AAR contention that approval of only "new" Canadian explosives imported into the United States are subject to the approval process in Subpart C. All Canadian explosives imported into the United States have been, and continue to be, subject to these requirements.

AAR also opposed requirements in paragraph (b)(5) that shipments from Canada of Division 2.3, 2.4 and 6.1 PG I materials must be described and packaged in accordance with Docket HM–181 requirements. RSPA is revising paragraph (b)(5) to permit materials poisonous by inhalation, as defined in § 171.8, to be transported under provisions of the TDG Regulations, subject to HMR packaging requirements and certain hazard communication

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requirements. In some instances, dual marking, labeling and placarding may be necessary to satisfy both sets of regulations. This will facilitate the transborder shipments, while ensuring an acceptable level of safety in transporting these extremely hazardous materials.

Section 171.14. This section was revised in a September 18, 1991 final rule, and further amended in an October 1, 1991 final rule. The section is republished in this amendment for readers' convenience.

Part 172: Hazardous Materials Table, Special Provisions, Hazardous Materials Communications Requirements and Emergency Response Information Requirements

1. Hazardous Materials Table and Special Provisions

Section 172.101: The Hazardous Materials Table (The Table). Numerous petitioners suggested changes to the Table, both substantive and editorial. Those petitions of substantive concern are discussed below. Those petitions that correctly pointed out editorial errors and errors of omission are not discussed below but the regulatory text has been corrected as requested.

Several petitioners requested that "Lead sulfide" be deleted from the Table. The petitioners pointed out that lead sulfide is only regulated as a hazardous substance and should be shipped under the shipping name "Environmentally hazardous substance" or "other regulated material." RSPA concurs with these petitioners and has revised the Table accordingly.

A petitioner requested that a special provision similar to Special Provision A2 in ICAO, be added to the HMR and be placed in the entry for UN0059. Special Provision A2 in ICAO is a method by which products that are otherwise forbidden for transportation by aircraft may be transported by aircraft when approved by the competent authority of the country of origin. RSPA is denying this petition as outside the scope of this rulemaking. An approval provision, as envisioned by the petitioner, to replace existing provisions for applying for exemptions was not proposed nor adopted in the final rule.

One petitioner requested that "propellent, explosive solid, NA024" be allowed to be transported via air freight. RSPA agrees that this material is suitable for transport aboard cargo only aircraft and is revising Column 9B of the Table entry for NA0274 to read "5 kg".

Several petitioners requested that materials listed as a specific proper shipping name in the Table under Class 3, be allowed to be continued to be transported under that specific name when the flash point of the material is in the combustible liquid range. Petitioners pointed out that RSPA allows this for products that are reclassified as a combustible liquid in accordance with § 173.50(f). RSPA concurs with these petitioners and has amended § 172.101(d)(4) to allow materials that meet the definition of combustible liquid to be shipped under the specific proper shipping name that is specified for the Class 3 material.

Several petitioners requested that the entry "Ammonium nitrate, Division 1.1D, UN0222," be removed from the Table. Petitioners stated that this entry could lead to confusion in their industry. RSPA disagrees and denies these petitions. This entry has appeared in the § 172.102 Table for numerous years without causing any confusion. In the final rule, based on comments to the NPRM under docket HM–181, UN0233 was removed from the Table because it was RSPA's opinion that no fertilizer should meet the definition of Class 1. The entry under UN0222 does not include fertilizers and, therefore, should be listed in the Table.

Several petitioners requested that the classification of a particular product be revised, that an additional packing group be added, or that a subsidiary label be added or deleted. Except for materials poisonous by inhalation, the classification of products under Docket HM–181 is in accordance with Revision 6 of the UN Recommendations. Persons taking issue with any of these classifications may petition RSPA to revise the UN classification. This petition should include a UN data sheet as shown in Chapter 1, figure 1.1 of the UN Recommendations and any other information which would justify a change in classification.

Several petitioners requested that Special Provision B1 be added to all Class 3, Packing Group III materials. B1 reads, "[i]f the material has a flash point at or above 38 °C (100 °F) and below 93 °C (200 °F), then the bulk packaging requirements of § 173.241 of this subchapter are applicable. If the material has a flash point of less than 38 °C (100 °F), then the bulk packaging requirements of § 173.242 of this subchapter are applicable." RSPA agrees that this special provision should be applied to every Class 3, Packing Group III material, and has revised the Table accordingly.

A petitioner requested that Special Provision B32 be applied to "Hydrocyanic acid, aqueous solutions not more than 20% hydrocyanic acid, UN1613". The petitioner pointed out that this material is a Hazard Zone B poisonous by inhalation hazard material and that all Hazard Zone B materials had B32. Special Provision B32 has not been applied to this entry because RSPA did not want to authorize this material in cargo tanks or portable tanks. However, the final rule authorized any packaging specified in § 173.244, which includes cargo tanks and portable tanks. Therefore, RSPA is denying the petitioner's request to add Special Provision B32 to UN1613 and is instead adding a new Special Provision B82 which states that cargo tanks and portable tanks are not authorized for the material.

Several petitioners requested that the bulk packaging sections for "Corrosive liquid, n.o.s.—Packing Groups I and III—be revised to read §§ 173.243 and 173.241, respectively, instead of §§ 173.242 and 173.240. RSPA agrees and these entries are revised in the Table accordingly.

Under the final rule, RSPA published seven entries for ammonium nitrate fertilizer (ANF). One of these entries, NA1942, stated that the material must meet the definition in The Fertilizer Institute (TFI) "Definition and Test Procedures for Ammonium Nitrate Fertilizer." The TFI publication was a method to assure that no ANF that meets the definition of a Class 1 material is shipped under one of the ANF shipping descriptions. It was RSPA's intention that an ANF that meets the definition of a Class 1 material should not be shipped under one of the ANF shipping descriptions. However, persons offering an ANF for transportation would be able to bypass this requirement by offering the materials under one of the other ANF shipping descriptions. In addition, RSPA believes that five of the ANF shipping descriptions in the UN Recommendations are confusing and very difficult to use. Therefore, RSPA is removing six of these entries—the Class 9 entry is being retained—and is adding two generic ANF entries. In addition, both of these entries will have a special provision that states that the material must not meet the definition of a Class 1 material. Also, RSPA is revising §§ 171.11, 171.12, and 171.12a to state that an ANF must not meet the definition of a Class 1 material.

Several petitions were received related to the authorizations of IM portable tanks. Petitions were received that requested different IM tanks or the inclusion of an IM Tank as an authorized packaging. The IM tank authorizations in the final rule were based on the UN Recommendations. The IM tank authorizations of the IMDG Code were not considered in the final rule. Therefore, if the UN Recommendations specified a different tank than the IMDG Code, the tank authorized was based on the UN Recommendations, not the IMDG Code.

In addition, for materials poisonous by inhalation, RSPA specified higher integrity tanks than authorized by the UN Recommendations or the IMDG Code. In general, the IM tank authorized for a material poisonous by inhalation is an insulated IM 101 tank with no bottom outlets, a test pressure of 9 bars and with a minimum thickness of either 6.35 mm or 7.62 mm. Considering the hazards posed by materials poisonous by inhalation in transportation, RSPA believes that these are the minimal standards that should be applied to IM portable tanks that transport them.

Based on extensive petitions, RSPA is making numerous changes to the IM tanks that are authorized for hazardous materials that are not poisonous by inhalation. In addition, RSPA is modifying §§ 173.240 and 173.241 to clarify that the IM tanks that are authorized in those sections may be limited by the special provision column of the Table.

RSPA is clarifying that materials that are transported in IM portable tanks in a molten state, must be transported in insulated tanks. This is done by removing the requirement from specific entries in the Table (e.g., T38) and moving the requirement to § 173.32c. Therefore, the requirement applies to all materials transported in IM portable tanks in a molten state.

IM Tank Interim Approvals: Through this **Federal Register** publication, RSPA is revoking the IM portable tank authorizations of the IM tank table and the interim approvals that were issued by RSPA for IM portable tank authorizations. This revocation is effective October 1, 1993, for materials poisonous by inhalation and October 1, 1996, for all other hazardous materials. This revocation of the IM tank authorizations is being done because IM portable tanks are now authorized through the Table and certain specific bulk packaging sections.

One petitioner requested that the alternative proper shipping name "Toluenediamine" be added as an alternative to the proper shipping name "2,4-Toluylenediamine." The petitioner pointed out that this is how the shipping name previously appeared in the Table and that it appears in the List of Hazardous Substances in the appendix to § 172.101. RSPA believes that the alternative spelling of the name "toluenediamine" should be allowed and has revised the table to allow this alternative spelling. RSPA further believes that, when appropriate, use of either the proper shipping name "2,4-toluenediamine" or "2,4-toluylenediamine" would identify the name of the hazardous substance "toluenediamine" and such a proper shipping name would not be subject to the requirements of § 172.203(c)(1).

RSPA received numerous petitions for reconsideration regarding intermediate bulk containers (IBCs), specifically DOT Specification 57 portable tanks. Under Docket HM–181, RSPA did not implement provisions for the IBCs discussed in the UN Recommendations (chapter 16) and the 25th Amendment of the IMDG Code (chapter 26). RSPA will address design requirements, including testing and commodity authorizations, for all types of IBCs currently addressed by the UN and the IMO in a future rulemaking action. However, due to an oversight by RSPA, the commodity authorizations in Docket HM–181 for DOT Specification 57 portable tanks were more restrictive than intended, and this error is corrected.

Under Docket HM–181, it was RSPA's intention to generally allow the use of DOT Specification 57 portable tanks for those Class 3 (flammable liquids) and Class 8 (corrosive materials) commodities that are currently authorized in the HMR and that are (1) not in Packing Group I; (2) not poisonous by inhalation; and (3) do not meet another hazard class except Class 9, combustible liquid or Class 3—Packing Group III. However, a number of commodities meeting these conditions were assigned Special Provision B2 or B4 which forbids the use of DOT Specification 57 portable tanks. In this correction document, RSPA is amending B2 and B4 to remove the prohibition from using DOT Specification 57 portable tanks. For Packing Group I or dual hazard materials, RSPA has added Special Provision B3 or B10, which continue the prohibition of using certain cargo tanks, tank cars and DOT Specification 57 portable tanks.

Several petitioners requested that the numerical designations of commonly used refrigerants be allowed as part of the proper shipping name, as currently allowed under the HMR. The petitioners pointed out that RSPA recognized the acceptability of these codes under Docket HM–166H when it adopted the numerical designations. RSPA agrees and the numerical designations are added in italics to the appropriate entries in the Table, which means that they are allowed but not required to be part of the proper shipping name.

Several petitions were received regarding the classification of certain materials poisonous by inhalation. A few of these petitions did not provide any data. In the absence of new data, RSPA continues to rely on the data it has which shows these materials to be poisonous by inhalation. Other petitioners provided sufficient data to show that "Dimethyl thiophosphoryl chloride," "Nitrogen trifluoride," "Isophorone diisocyanate," "Dichlorodifluoromethane and ethylene oxide mixtures with not more than 12% ethylene oxide," and "Sulfuric acid, containing less than 30% free sulfuric acid" are not materials poisonous by inhalation and RSPA is amending the Table accordingly.

One petitioner provided data that showed that "sulfuryl chloride" is a material poisonous by inhalation and RSPA is amending the Table accordingly. Several petitioners provided data that showed that some materials are not poisonous by inhalation at certain percentages. For those materials, RSPA is revising certain entries in the Table to indicate that if these materials are poisonous by inhalation then they shall be shipped under a generic poisonous by inhalation shipping description; otherwise, these materials are not required to be shipped as poisonous by inhalation. These materials include "Chloroformates n.o.s.," "Carbon dioxide and ethylene mixtures with greater than 6% ethylene oxide," "Diborane mixtures," and "Carbon monoxide and hydrogen mixtures." Although RSPA has changed these entries in the Table, any material which has a special provision in the Table indicating the material to be poisonous by inhalation, which is transported at a percentage where the material no longer meets the definition of poisonous by inhalation, is not subject to the communication requirements of the HMR applicable to poisonous by inhalation hazard materials.

Several petitioners requested that ethylene oxide be reclassified as a flammable gas in lieu of its poison gas classification promulgated under the final rule. Petitioners did not contest that the material is poisonous by inhalation, but rather argued that the classification of ethylene oxide as a poisonous gas would increase their costs exorbitantly. The petitioners argued that the cost of classifying the material as a poisonous gas would increase their costs two to three times because of the insurance, routing and separation requirements for poison gases. In addition, the petitioners were concerned with the public perception of materials labeled with POISON GAS

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labels being shipped into food processing plants or hospitals. Petitioners requested this reclassification for ethylene oxide which is shipped in non-bulk packagings that bear an EPA-approved pesticide label.

RSPA believes that the hazards posed by ethylene oxide are too extreme to allow this product to be classified as a flammable gas instead of a poisonous gas. The fact that other agencies, (i.e., the Environmental Protection Agency, Food and Drug Administration and Occupational Health and Safety Administration) regulate this product because of its hazards to the public supports retention of the poisonous gas classification for this material. Although it is possible that the costs for shipping ethylene oxide will increase, RSPA does not believe that the increase will be nearly as severe as argued by the petitioners. The requirements discussed by petitioners are based on the old poison gas classification of POISON A, not the Docket HM-181 classification of 2.3—which includes a much larger group of materials.

The petitioners also argued that the requirement to separate ethylene oxide by four feet from other flammable liquids and gases will increase the cost to ship the material because the vehicle will have to be moved partially empty. Although ethylene oxide must be separated by four feet from flammable liquids and gases, the intervening space may contain non-hazardous materials or other compatible hazardous materials. RSPA believes that the inhalation hazard posed by ethylene oxide is more severe than its flammability hazard, even in non-bulk or combination packagings. Therefore, RSPA is denying these petitions and is retaining the poisonous gas classification for ethylene oxide.

Several petitioners requested that RSPA reconsider the bulk packaging requirements for bromine. While the petitioners acknowledge that bromine meets the criteria for a material that is poisonous by inhalation, they pointed out that bromine is a unique material that requires special handling. The petitioners also stated that the packagings adopted by RSPA for materials poisonous by inhalation are not appropriate for bromine. Additionally, the petitioners stated that certain requirements, such as outage limits, would conflict with international limits imposed by the International Maritime Organization, Dangerous Goods by Road (ADR), and Carriage of Dangerous Goods by Rail (RID). RSPA agrees with petitioners and is making several changes to the bulk packaging requirements for bromine. The following changes are made:

a. The bulk packaging reference in Column 8C of the § 172.101 Table is changed to § 173.249 from § 173.244.

b. The quantity of bromine that may be loaded into a cargo tank motor vehicle or intermodal portable tank is revised to be consistent with the current HMR, and with international regulations.

c. The special provisions in Column 7 of the § 172.101 Table are revised to remove the insulation requirements for cargo tank motor vehicles and portable tanks and authorize the continued use of packagings which have been used safely for many years. The petitioners pointed out that an insulation jacket on a bromine tank could easily obscure a minor leak and permit tank corrosion to progress undetected until an uncontrollable spill results. In bromine service, an insulation jacket would prohibit routine, continual visual examination of the exterior of a tank. RSPA believes that currently-used bulk packagings will provide the level of packaging integrity sought for PIH materials, without placing an unnecessary burden on the industry.

As requested by a petitioner, the term "n.o.s." is removed from the four aerosol proper shipping names. In addition, the packaging sections for these Table entries are amended to reference § 173.306, in order to allow aerosol containers.

RSPA is making substantial changes to the bulk packaging references in the Table for gases poisonous by inhalation. Many petitioners were confused over which section and/or special provision they were to use. Much of this confusion arose over Special Provision B13 which stated that additional provisions appeared in § 173.314 or § 173.315, in addition to the requirements in § 173.244 or § 173.245. These requirements were in addition to the requirements imposed under an appropriate "B30" and "B70" special provision for cargo tanks and tank cars, respectively. In order to clarify these requirements RSPA is changing the packaging section for these materials (except for former Poison A materials and materials not previously authorized in bulk packagings) to §§ 173.314 and 173.315, and is amending the packagings tables in these sections by adding generic entries for Division 2.3 (Hazard Zones A, B, C and D) materials. The requirements previously found in the appropriate B30 or B70 note are moved to notes in the tables in §§ 173.314 and 173.315. For those former Poison A materials and those materials not previously authorized in bulk, RSPA is referencing § 173.245 as the bulk packaging section and removing all "B notes". Therefore, bulk packagings are only authorized for these commodities under approval by the Associate Administrator for Hazardous Materials Safety.

Several petitioners requested that, for those materials that are required to have their proper shipping name marked on bulk packagings, that only the key words be required to be marked. Examples of the words that the petitioners requested be left out are "aqueous solutions" in the proper shipping name "Hydrogen peroxide, aqueous solutions" and "stabilized" in the proper shipping name "Acetone cyanohydrin, stabilized." RSPA agrees with these petitioners. RSPA is adding paragraph (f) to § 172.302, which does away with the need to remark bulk packagings, if the key words specified in the § 172.101 Table are identical to those marked on the bulk packaging.

RSPA received several petitions regarding the issue of half versus full headshields on tank car tanks. Under Docket HM-175A, RSPA and the Federal Railroad Administration are considering developing regulations to improve the transportation of hazardous materials in tank car tanks. One of the issues being considered is the feasibility of requiring full headshields on tank car tanks. Therefore, RSPA considers those petitions received to Docket HM-181 that requested that certain tanks cars be required to be fitted with full headshields to be outside the scope of this rulemaking. However, there is no prohibition in the HMR on using tank car tanks with full headshields, and it is encouraged.

RSPA received several petitions regarding the packaging requirements for alcoholic beverages. Petitioners pointed out that under the previous requirements, alcoholic beverages which were 140 proof or lower were not subject to the specification packaging requirements of the HMR, but that under Docket HM-181 these materials would be subject to the packaging requirements. The petitioners requested that this packaging exception be retained under this rulemaking. RSPA agrees and is retaining the packaging exception provided for alcoholic beverages.

Many petitioners objected to the insulation requirement for bulk packagings of corrosive materials that are poisonous by inhalation. The petitioners contended that uninsulated tanks with a corrosion allowance provide better or equivalent thermal protection than ¼ inch or ½ inch thick insulated tanks. RSPA is denying these petitions because: (1) they were unsubstantiated by data; and (2) insulation of bulk packagings provides crush ("accident damage protection") as well as thermal protection. However, RSPA is revising special provisions B14 and T38—which require insulation of bulk packagings—in response to a petitioner who requested that: (1) the phrase "completely insulated" be clarified; and (2) the thermal conductance be lowered to 0.075 Btu per hour per square foot per degree fahrenheit differential so that the special provisions are consistent with the requirements for other bulk packagings.

Several petitioners also objected to the requirement for the insulation of bulk packagings for materials poisonous by inhalation that fall within Hazard Zone C. The petitioners argued that this requirement is not consistent with the UN Recommendations or the IMDG Code and is also inconsistent in that it is not required for liquids. The petitioners also argued that there was not sufficient justification of the costs and benefits associated with this requirement.

In Docket HM-181, RSPA determined that the group of materials that were to be considered to be poisonous by inhalation would be larger for gases than for liquids. Under the final rule, only those liquids that fall within Hazard Zones A and B are considered to be poisonous by inhalation while for gases this requirement includes Hazard Zones C and D. RSPA made this decision because of the volatility associated with gases in relation to liquids. Although the packaging requirements for materials poisonous by inhalation are inconsistent with those of the international community, RSPA believes that the hazards associated with these materials in transportation are not adequately addressed by the international regulations and, therefore, RSPA is imposing more stringent packaging requirements.

The petitioners also stated that there was no clear safety reason to require insulation of cargo tanks and portable tanks for materials poisonous by inhalation assigned Hazard Zone C and, in fact, insulation would make routine inspections more difficult and less likely to reveal potential difficulties (i.e., corrosion) that, if left undetected, could lead to transportation incidents. As stated before, the insulation requirement in question provides crush as well as thermal protection of these packagings. In cargo tanks and portable tanks the primary function of the insulation is to serve as a crush protector. Though the insulation could cover up external corrosion, the petitioners did not address the accident resistant characteristics of the insulation, nor did they provide a suitable alternative. Therefore, RSPA is denying those petitions to eliminate the insulation requirements for bulk packagings of Hazard Zone C materials poisonous by inhalation.

In response to petitions for reconsideration made to Docket HM-142A, which has been incorporated into Docket HM-181, RSPA is adding a new entry "Regulated medical waste, 6.2, NA 9275, II" to provide less rigorous requirements for infectious substances which are "regulated medical wastes" as defined in appendix G of part 173. See further discussion of this issue under § 173.134.

2. Subpart C; Shipping Papers

Section 172.202. RSPA agrees with petitions to remove the option in paragraph (a)(2) allowing IMO class and division numbers in parentheses following the numerical hazard class, because § 171.12(b) already allows IMDG descriptions for vessel shipments. Accordingly, the phrases "IMO class and divisions numbers" and "in parentheses" are removed from paragraph (a)(2). For display of the subsidiary hazard class, if any, the phrase "or following the basic description" is added.

One petitioner recommended that paragraph (a)(2) be amended to except materials described as "Combustible liquid, n.o.s." from the requirement to include the hazard class on shipping papers since the hazard class name is included in the proper shipping name. The petitioner stated that this is consistent with the current HMR and would present no safety or enforcement problems. RSPA agrees and is revising paragraph (a)(2) accordingly.

Several petitioners recommended amending the provisions in paragraphs (a)(3) and (a)(4), which require that the "UN or NA" identification number be entered before the packing group. The petitioners stated that the "Packing Group" is an important part of the basic description and, therefore, should follow the hazard class entry as prescribed under the IMDG Code. They stated that, if not amended, two separate entries will be required in their computer data bases, increasing the chance for error. In addition, the petitioners recommended that the letters "PG" for Packing Group be removed because they are not recognized by the ICAO or IMO regulations.

RSPA disagrees, in part, with the petitioners. They are mistaken in their belief that the IMDG Code or ICAO (see 4.1.2 of the ICAO Technical Instructions) requires entry of the "Packing Group" before the identification number. The IMDG Code states in paragraph 9.3.11 that, except for the correct technical name (proper shipping name), hazard class and UN number, which shall appear in that sequence, the location and order in which other elements of information appear on the shipping document are optional. The IMDG Code gives an example of the sequence of the basic elements of a description on shipping documentation as follows: "Formic acid, Class 8, UN1779." The sequence of elements on shipping documentation in § 172.202(a)(3) is consistent with this and remains unchanged. However, the requirement in § 172.202(a)(4) to include the letters "PG" preceding the packing group (e.g., PG I), is being made optional in response to petitions.

Several petitioners asked RSPA to retain current language in § 172.202(a)(4) requiring that, except for empty packagings and compressed gas cylinders, "the total quantity by weight (net or gross as appropriate)" be displayed on the shipping paper. They pointed out that this language may have been inadvertently omitted in Docket HM-181. The petitioners also recommended reinstatement of the examples that are presently shown in the current § 172.202(a)(4) for the total quantity. RSPA agrees that language in the current § 172.202(a)(4) was inadvertently omitted, and accordingly, paragraph (a)(5) is revised to include it. For consistency, the terms "mass" and "capacity" are substituted for "weight" and "volume", respectively. RSPA also is including examples of total quantity in both U.S. standard or customary units and the International System of Units (SI) to indicate that either usage is permitted. For bulk packagings and cylinders, RSPA is requiring some indication of total quantity; for example "10 cylinders" or "1 tank truck."

A petitioner stated that the example of the basic description for a hazardous material on a shipping paper, in § 172.202(b), shows commas between the required elements. However, the petitioner would prefer using a slash(s) "(e.g., //)" between elements of the description, and asked whether this is acceptable. The HMR do not stipulate what methods may be used to separate the elements of a basic description on a shipping paper. RSPA believes that any means of separating the elements of a shipping description is acceptable, such as by spaces, commas, slashes, asterisks, etc., as long as the elements are readily identified.

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AAR recommended eliminating the option in paragraph (d) to permit entry of the technical name between the "proper shipping name and hazard class" or "after the basic description" on a shipping paper. The petitioner stated that the option to enter the technical name between the proper shipping name and hazard class would complicate efforts to improve hazardous materials descriptions. RSPA disagrees. In the current 49 CFR, RSPA permits an option for displaying the technical name of a hazardous material, as specified in §§ 172.202(d) and 172.203(k). In this final rule, RSPA maintains the option to display entry of the technical name either after the proper shipping name or following the basic description (revised § 172.202(d)).

RSPA is revising paragraph (d) to include the following additional description for Class 7 radioactive materials, " 'RADIOACTIVE MATERIAL' unless these words are contained in the proper shipping name."

HMAC recommended adding a new paragraph (f) to allow on shipping papers, abbreviations which appear as authorized descriptions in Column 2 of the § 172.101 table, or in the appendix to the table. Currently, in § 172.201(a)(3), which was unchanged in Docket HM-181, shipping descriptions may contain abbreviations that are specifically authorized or required in the Hazardous Materials Table in § 172.101 or subpart C of part 172. Therefore, RSPA believes adding a new paragraph (f) in § 172.202 to address the use of authorized abbreviations is unnecessary and the petition is denied.

Section 172.203. A petitioner recommended that the requirement in current § 172.203(e) regarding additional shipping paper information be amended to "require" that shipping papers for all empty packagings, not just empty tank cars containing a residue of a hazardous material, contain the words, "Residue: Last Contained * * *" in association with the basic description. The petitioner believes that the permissive wording in § 172.203(e) may lead to confusion, particularly when transporting hazardous materials by water. RSPA disagrees and denies this petition.

HMAC stated that, in § 172.203(i)(2), the entry "skin corrosive only" is no longer required for under deck stowage on cargo ships, and recommended that this paragraph be corrected to reflect this. RSPA agrees and § 172.203(i) is revised accordingly.

The Conference on the Safe Transportation of Hazardous Articles (COSTHA) recommended removal of the "Aerosol" entries from the list of shipping names in paragraph (k)(3), which requires inclusion of the technical name on shipping papers. The petitioner stated that "Aerosols" in the UN, IMO, RID and ADR do not include the "n.o.s." qualifier, and the technical name is also not required on shipping documentation for "Aerosols" under the UN, IMO or ICAO. RSPA agrees and accordingly, is removing the four aerosol n.o.s. proper shipping names from the list in paragraph (k)(3).

Paragraphs (m)(1) and (m)(2) are revised to ensure that materials or mixtures meeting the definition of Division 6.1, Packing Group I or II, are properly described on shipping papers. Paragraph (m)(1) requires the word "poison" to be entered in association with the basic description if the proper shipping name of a Division 6.1 material does not indicate that it is a poison. Similarly, paragraph (m)(2) requires the technical name of a compound or principal constituent of a mixture that causes it to be classified as a poison to be entered on the shipping paper if that technical name is not included in the proper shipping name of the material in the § 172.101 Table.

Paragraph (m)(3) is revised to clarify the distinction between gases and liquids which are poisonous by inhalation that require additional shipping paper entries. It specifies that for materials poisonous by inhalation as defined in § 171.8, the words "Poison-Inhalation Hazard" and the words "Zone A," "Zone B," "Zone C," or "Zone D," for gases, or "Zone A," or "Zone B" for liquids, as appropriate, shall be entered on the shipping paper immediately following the shipping description.

Several petitioners recommended that paragraph (m)(3) be amended to indicate that "hazard zones" do not apply to liquids in Division 6.1, Packing Group II and III materials, and to clarify application of the additional description requirement, "Poison-Inhalation Hazard", on shipping papers for other classes of materials, such as corrosives and flammables, that are inhalation hazards. RSPA agrees and paragraph (m)(3) is revised accordingly. A petitioner suggested that the 1-liter capacity or less shipping paper exception for entering the words "Poison-Inhalation Hazard" for materials poisonous by inhalation be reinstated. The petitioner suggested that less restrictive alternatives may be more appropriate (e.g., apply 1-liter capacity exception to liquids only, not gases; maximum size limitation would be 500 ml; and for combination packaging, require special packaging, such as hermetically sealed outer metal can to contain primary container; and require marking and labeling, but no placarding). RSPA disagrees that the 1-liter shipping paper exception for materials poisonous by inhalation should be reinstated. As discussed in the preamble of the final rule [55 FR 52417], RSPA believes any quantity of a material having an inhalation hazard that is spilled or leaking from a damaged package poses health risks to emergency response personnel. By showing "inhalation hazard" on the shipping paper, as well as packagings, this fact is immediately communicated to emergency responders. For the reasons mentioned above, the 1-liter exception will not be reinstated. Therefore, the additional entry on shipping papers as prescribed in § 172.203(m)(3) is applicable to any quantity of materials poisonous by inhalation.

3. Subpart D; Marking

Section 172.301. Several petitioners recommended adding a new paragraph (a)(3) to permit packages to be marked with required international markings, such as "1.4S", when no label is required for small arms shipped domestically.

Under the HMR, hazardous materials may be transported in the U.S. when shipped in accordance with the regulations under ICAO and IMO (§§ 171.11 and 171.12, respectively). Consequently, the use of labeling and marking under international regulations is not prohibited and is not a violation of the HMR. The following are examples of shipping names not requiring hazard warning labels, as specified in Column 6 in the § 172.101 Table (Docket HM-181), which may be shipped in the U.S. in accordance with international marking and labeling requirements under ICAO or IMO: 1) Cartridges for weapons, blank; (Cartridges, small arms, blank), 1.4S, UN 0014, II; and 2) Cartridges for weapons; inert projectile (Cartridges, small arms), other than blank, 1.4S, UN 0012, II. Therefore, adding a new paragraph (a)(3) in § 172.301 is not necessary.

Section 172.302. One petitioner asked RSPA to amend paragraph (b) to allow marking of proper shipping names on smaller portable tanks in letters "not less than one inch high." The petitioner stated that the two-inch letters specified in § 172.302(b)(3) would be "difficult to fit" on his fleet of tanks with a rated capacity of 660 gallons or less or with a maximum rated gross weight of less than 7,700 pounds. RSPA agrees in principle with this petition and is extending relief, consistent with the placarding exception for "small" portable tanks in § 172.514, to portable tanks having a capacity of less than 3,785 L (1,000 gallons). RSPA also is accepting petitions recommending revision of the cargo tank marking size to require a 50 mm (2 inch) marking. Accordingly, consistent with the 50 mm marking required for cargo tanks in § 172.328(b), paragraph (b)(3) is revised to specify a 50 mm (2 inch) mark for cargo tanks and other bulk packages.

In order to relieve some of the burden associated with remarking bulk packages due to minor changes in shipping names, RSPA is adding a new paragraph (f) stating that a bulk packaging marked with a proper shipping name prior to October 1, 1991, does not have to be remarked if the key words of the old mark are identical to those currently specified in the § 172.101 Table. For example, a tank car marked "ANHYDROUS AMMONIA" need not be remarked "ANHYDROUS AMMONIA, LIQUEFIED."

Section 172.303. Several petitioners stated that the requirements for prohibited marking in paragraph (a), as written, would prohibit the use of terms used generically, such as paint, ink or cotton, from being used in connection with a non-hazardous product, when the name is the same as the hazardous product. They suggested that the matter can easily be solved if "or" is replaced with "and" between the words "shipping name" and "identification number." The effect would be that a package containing a non-hazardous product, whose name is the same as a hazardous product, when not marked with a UN or NA identification number, would not be in violation of the prohibited marking provision. RSPA agrees in principle with petitioners. However, changing the conjunction to "and" would permit either the shipping name or the identification number, but not both to appear on a package. This could lead to confusion. Instead, RSPA is providing an additional exception in paragraph (b) for those shipping names which describe non-regulated materials.

Several petitioners objected, for different reasons, to the exceptions provided in paragraphs (b)(1) and (b)(2). One petitioner objected to allowing non-bulk packages, under certain conditions, to remain marked. The petitioner believes that the exceptions may lead to confusion on the part of carriers, inspectors, enforcement officers, and emergency responders, and stated that requiring removal of marking, or covering the marking would present no burden to industry. RSPA is not aware of problems caused by this exception, which has been in the regulations, at § 173.29(d), for some time.

Another petitioner objected to the requirement to cover or obliterate the marking (§ 172.303(b)(2)) when moving an empty tank car from manufacturing facilities, or to or from cleaning or repair facilities. The petitioner said that, although the concept *not* to have the shipping name shown on a clean empty tank car is noteworthy, strict adherence on a tank car is a problem, recommending that RSPA permit empty, clean tank cars, moving from tank car manufacturing facilities, or to or from tank car cleaning or repair facilities, to remain marked with the hazardous material shipping name and identification number without securely covering or obliterating the marking. RSPA is denying this petition. As with the provision addressed in the previous paragraph, this is a long-standing provision previously found in § 173.29(d). RSPA believes covering of markings on empty bulk packagings is necessary to preclude confusion or unnecessary response on the part of emergency responders.

Section 172.312. Several petitioners recommended revision of requirements in paragraph (a)(2) for display of orientation markings on liquid hazardous materials in non-bulk packagings. They suggested that RSPA specify that the marking only "pictorially" conform to the ISO 780-1985 standard, to allow for commonly used methods of orientation markings on packages containing hazardous materials. They stated, for example, that the orientation marking shown in the ICAO Technical Instructions is widely used and readily recognized and understood. One petitioner recommended that two additional exceptions to the orientation marking requirements in paragraph (a) be included in paragraph (c) for manufactured articles and when the top closure is similar to the bottom closure or seal (e.g., a dry cell battery). The petitioner stated that in such cases the orientation of the inner package is either irrelevant or not applicable with respect to the closures of the inner packagings.

RSPA agrees. Therefore, in § 172.312, paragraph (a) is revised to require that the orientation marking only "pictorially" conform to the ISO 780-1985 standard, and exceptions are added in paragraph (c) for orientation markings for liquids in hermetically-sealed inner packagings and manufactured articles.

Section 172.313. RSPA is revising paragraph (a) to clarify package marking requirements for gases and liquids that are materials poisonous by inhalation as defined in § 171.8. This revision addresses HMAC's request to eliminate the need in paragraph (a) for marking "Inhalation Hazard" on packages containing lesser hazard Division 6.1 liquids.

One petitioner stated that the location for marking the phrase "Inhalation Hazard" on tank cars, as specified in paragraph (a), for a Division 2.3 material or a poisonous liquid, is not appropriate. The petitioner recommended that instead of locating the marking in association with the labels or placards, the marking would better communicate the "inhalation hazard" to emergency response personnel if it were located "in association with the required shipping name." The petitioner stated that because the placard displays the pictorial representation of poison (i.e., symbol of the skull and crossbones), the placement of the required marking is redundant. RSPA believes that locating this warning in association with a proper shipping name, when one is required, is equally as visible as when located near labels or placards. Therefore, RSPA is revising paragraph (a) to permit either location. A petitioner questioned the need to permanently mark the word "POISON" on non-bulk plastic outer packagings, as specified in § 172.313(b), used as single or composite packaging for materials in Division 6.1. The petitioner stated that RSPA had no basis for extending this provision to materials with a relatively low degree of toxicity, and that the provision should be limited to materials in Division 6.1, Packing Groups I and II. RSPA disagrees. Currently, the HMR requires that each polyethylene packaging used as an outside packaging for materials meeting the definition of a poison be permanently marked with the word "POISON" (§ 173.24(d)(4)). RSPA believes that extension of the requirements to permanently mark the word "POISON" on non-bulk plastic outer packagings used as a single or composite packaging for materials in Division 6.1 is necessary. This requirement will help ensure that foodstuffs are not packed in the same drum or package with the poison material. Therefore, the requirements in § 172.313 will remain unchanged in the final rule.

Section 172.320. Several petitions were received regarding the requirement in § 172.320 to mark packages with the approval number (i.e., EX-number) of the explosive contained therein. Products that are not given EX-numbers and for those packages that are marked with national stock numbers or product codes

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that are traceable to the EX-number were excepted from this requirement. Petitioners claimed that this requirement will not enhance safety but will lead to confusion and unnecessary costs and that § 172.320 should be removed from the HMR. In addition, one petitioner stated that they were not aware of "national stock numbers" or "product codes". One petitioner requested that "Jet perforating guns, charged, NA0124 and UN0124" be excepted from this requirement because jet perforating guns are not approved by RSPA, only the charges in the perforating gun are approved. Another petitioner requested that shipments from Canada be excepted from this requirement.

RSPA believes that the requirement to place EX-numbers on packages of Class 1 materials will increase the level of safety associated with transporting Class 1 materials. This marking requirement will facilitate the enforcement of the HMR which will in turn lead to an increase in conformity with these requirements. RSPA recognized that other methods could be used to identify the approval number of a Class 1 material. One of these methods is national stock numbers. National stock numbers are recognized numbers assigned by the Department of Defense to identify commercial products. Another method is the use of a product code. This idea was presented by a petitioner to Docket HM–181A, Notice No. 90–5 who stated that "[t]he name of the manufacturer and the product trade name offer ready identification without reference to the "EX" number. Verification of product approval can be made through referencing of these markings." The markings referred to by this petitioner were those required for commercial explosives in 27 CFR part 55. It is RSPA intention to allow such marking in lieu of the EX-number as long as they are traceable to the EX-number. Therefore, the petitions that requested that § 172.320 be removed are denied.

RSPA is amending § 172.320, for clarity and to allow EX-numbers to be placed on shipping papers in lieu of being marked on packages. This should allow the shipper sufficient flexibility in complying with the requirement to identify that the explosive items being transported have been approved by the Associate Administrator for Hazardous Materials Safety. RSPA is also amending § 172.320 to delete reference to exemption DOT E–9246 because RSPA believes that exception from the EX-number marking requirement should be a part of the exemption rather than an exception built into the regulations.

In addition, RSPA believes that the EX-number requirement should apply to all shipments of Class 1 materials transiting the U.S. Therefore, a petition to except shipments from Canada from these requirements is denied. RSPA is also denying the request that UN0124 and NA0124 be excepted from the EX-number marking requirement. If no EX-number has been given to the article, the number assigned to the charge should be used.

Section 172.326. Several petitioners recommended removal of paragraph (a) requiring portable tanks to be marked on both sides with the proper shipping name of the material being transported. They contended that since portable tanks must also be marked with the ID number of the material together with vehicle placards that "the extraordinary requirement of stencilling the name of each commodity is unnecessary and burdensome in view of the cost involved." Four petitioners cited cost estimates of up to $300 in materials and time to re-apply product markings each time different materials are transported. One petitioner said that uses of most portable tanks "change from product to product." Stencilling the product name may have been appropriate for containers in dedicated service for one or two products, a petitioner pointed out, but this practice is conducted less frequently now. Another petitioner contended that eliminating the product marking requirements in paragraph (a) would create greater efficiencies in the use of these tanks.

One rail carrier urged RSPA to except IM-specification tanks from the marking requirement because IM tanks "are in most respects, similar to other liquid bulk transportation packaging. They differ from cargo tanks only in that they are not rigidly and permanently attached to the vehicle chassis." Other petitioners agreed that marking and placarding of portable tanks "should be the same as cargo tanks."

These petitions are not accepted because RSPA believes that proper shipping name information must be maintained on all portable tanks. Contrary to the contentions of petitioners, this is not a new requirement. For years, the HMR have required all portable tanks to be marked with the proper shipping names of materials contained; and nothing in the existing § 172.326 or in revisions to this section in the final rule requires that the product mark be "stencilled" on the tank. The regulations only require that the proper shipping name be "legibly marked on both sides" in two-inch letters.

IM specification and other portable tanks are treated differently from cargo tanks or rail tank cars with respect to product marking because they often are exposed to significantly different transportation situations involving a greater number of personnel who need the additional information. Unlike other bulk equipment, portable tanks are loaded, transferred between modes, unloaded and frequently maintained in temporary storage awaiting transportation while between modes (i.e., at a pier or railroad ramp). RSPA believes that the proper shipping name applied to both sides of all portable tanks, in addition to required marking of identification numbers, makes product identification more accessible to enforcement and emergency response personnel who may first encounter incidents involving portable tanks.

Paragraph (c) is revised to include the words "containing a hazardous material" following the words "portable tank".

Section 172.330. In response to a petitioner who pointed out that existing requirements in § 172.330(a)(2) to mark tank cars and multi-unit tank car tanks with the identification number specified in the § 172.101 Table, RSPA is adding paragraphs (a)(1)(ii) and (a)(2)(ii) accordingly to require the application of that mark.

Section 172.332. One petitioner recommended that RSPA align the size of the orange panel, which is used to display the identification number marking, with the IMDG Code (i.e., 120 mm X 300 mm) for uniformity. RSPA is concerned that the reduced size of IMDG Code identification markings may make them more difficult to see in emergency response situations. For this reason, the petition is denied.

3. Subpart E: Labeling

Section 172.400a. Several petitioners recommended removing paragraph (a)(1)(i) which provides exceptions for labeling cylinders containing a Division 2.1 or Division 2.2 gas that is not poisonous. One petitioner recommended revising paragraph (1) to except a Division 2.3 (poisonous gas) material from the labeling exceptions. These petitions are denied. The HMR now requires labeling, as specified in § 172.400, for a poisonous gas and, in the final rule under Docket HM–181, extends this requirement to Division 2.3 gases under the UN classification system. Therefore, the exceptions for labeling permitted under paragraph (a) do not apply to a Division 2.3 gases.

COSTHA recommended adding a new paragraph (8) to except from labeling, a material which meets the definition of Division 6.1 (poisonous) material and which conforms to the limited quantity provisions of § 173.153(b). COSTHA believes shippers should not be required to apply POISON or KEEP AWAY FROM FOOD labels for Division 6.1 poisons when packaged in UN combination packagings meeting § 178.601(g)(2).

RSPA disagrees. Limited quantity shipments of poisonous materials are required to be labeled under the HMR. This provision is also extended to limited quantity shipments of Division 6.1 (poisonous) materials under the UN classification system. Exceptions are permitted only under the provisions of exemptions from the regulations. Currently, there are long-standing exemptions authorizing the transportation of limited quantities of poisonous liquids and solids in packagings which are excepted from bearing the POISON label (e.g., DOT–E–7909). RSPA notes that provision is made in § 177.841 for transporting packages bearing POISON or KEEP AWAY FROM FOOD labels with foodstuffs, subject to certain conditions.

Section 172.402. For regulatory clarity, RSPA is reorganizing paragraph (a). In response to a petition, RSPA is relocating § 172.405(b) to § 172.402(b). Existing paragraphs (b) and (c) are redesignated as paragraphs (c) and (d).

Paragraph (d) is revised to require each packaging containing a radioactive material that also meets the definition of one or more additional hazards, except Class 9, to be labeled as a radioactive material as required by § 172.403, and labeled for each additional hazard.

Section 172.405. One petitioner objected to the provision in paragraph (a) to permit, as an option, inclusion of text indicating a hazard on a label, as provided in paragraph (a) for classes 1, 2, 3, 4, 5, 6, and 8. The petitioner stated that there is no safety benefit to eliminating this descriptive language and that the written description is helpful, particularly to casual or temporary dock employees who may not be familiar with the significance of hazard class numbers or pictorial symbols. RSPA disagrees. Section 172.401(c), which is not changed by this final rule, allows packages of hazardous materials bearing labels which are in conformance with the UN Recommendations, ICAO Technical Instructions, IMDG Code, and Canadian TDG Regulations, to be shipped in the U.S. These labels do not have text indicating the hazard, but display pictorial hazard warning symbols, which are internationally recognized. Paragraph (a) provides shippers with the option to use "text," such as used under the HMR, or "symbols," such as used on international labels, to indicate the hazard. Therefore, the provisions in paragraph (a), providing the option to use text or only symbols on labels to indicate the hazard, will remain unchanged in this final rule.

Paragraph (b) is revised to clarify that if an OXIDIZER label is modified to an OXYGEN label, the word "OXYGEN" must appear on the label.

Section 172.406. RSPA is revising paragraph (a)(1)(ii) to require labels to be placed near the proper shipping name, as previously required under § 172.406(a). Several petitioners recommended adding a new paragraph (a)(1)(iii) to clarify that the orientation of labels on a package may be shown either square-on-point or in other orientations dictated by package size. RSPA disagrees. Although it is intended that labels be shown square-on-point, it is often impractical or inadvisable to do so. Other orientations are often necessary, not just because of package size limitations, but also because of package shape. For example, placement of a label on the top head of a drum does not conform to a square-on-point orientation, but is acceptable. Therefore, RSPA denies these petitions. The introductory text of paragraph (e) is revised for clarity.

Section 172.407. Paragraph (d)(4) is revised to delete references to Office of Hazardous Materials Color Charts which are no longer available for public sale. RSPA is reviewing alternative color standards and future rulemaking activity is anticipated.

Section 172.411. A petitioner stated that there was no mention of the use of the EXPLOSIVE subsidiary label, as prescribed in § 172.411. The petitioner suggests that some mention of the EXPLOSIVE subsidiary label be included in § 172.402.

RSPA believes there is no need to include an explanation of the use of the EXPLOSIVE subsidiary label because a material which may have a subsidiary explosive hazard, but is not classed as such, is identified in the § 172.101 Table. Therefore, no further explanation is necessary.

Sections 172.411 through 172.448. Because some of the labels shown in the Docket HM–181 final rule were not correctly displayed, all labels are republished for clarity.

5. Subpart F; Placarding

Section 172.502. In § 172.502, paragraph (b) is reorganized and the exception in paragraph (c) allowing the display of an identification number on a white square-on-point configuration is added as a new paragraph (b)(2).

Section 172.504. Paragraph (c) is revised to exclude all bulk packagings from the "1000 pound exception." This is consistent with requirements in § 172.514(b) that bulk packagings containing residues remain placarded.

Paragraph (f)(4) is revised to include "EXPLOSIVES 1.3" materials. Paragraph (f)(9) is added requiring vehicles transporting combustible liquids in non-bulk packagings that also meet the definition of a Class 9 material to display either the COMBUSTIBLE or Class 9 placard. The COMBUSTIBLE placard need not be applied to vehicles transporting combustible liquids in non-bulk packagings. A new paragraph (g) is added requiring the applicable compatibility group letter to be displayed on placards for shipments of Class 1 explosives by aircraft or vessel.

Several petitioners expressed their concerns regarding placarding for Class 9 materials. They stated that the Class 9 placard should not be required for use in this country due to the fact that the vast majority of these commodities are presently shipped domestically as either ORMs or Consumer commodities, which are excepted from placarding.

The petitioners stated that intrastate motor carriers of materials in the ORM class, other than hazardous wastes, have not been subject to 49 CFR parts 390–397, the Federal Motor Carrier Safety Regulations (FMCSR), because these materials were not subject to placarding. They are concerned with the impact the "Class 9" reclassification and placarding requirements may have on intrastate motor carriers because they may now be subject to the FMCSR. RSPA believes it is necessary to require placards for Class 9 materials both to communicate appropriate information to emergency response personnel, and for uniformity with the international regulations. RSPA notes that intrastate motor carriers transporting hazardous substances in bulk are currently subject to the FMCSR; for example, financial responsibility and commercial driver's license requirements. Since many states have adopted the FMCSR and apply those requirements to intrastate motor carriers, the display of the Class 9 placard will have minimal impact.

One petitioner recommended providing an exception from the placarding requirements, identical to the exception in § 172.504(f)(3), *not* to require display of a NON-FLAMMABLE GAS placard on a motor vehicle if the vehicle is also required to display a POISON GAS placard. RSPA disagrees, and notes that the petitioner provided

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no justification for the requested exception.

Several petitioners recommended excepting "Molten sulfur" from placarding, as required by § 172.504(a). RSPA disagrees with petitioners that use of a Class 9 placard for miscellaneous hazardous materials, which was adopted for uniformity and consistency with the international regulations, will lead to confusion and indecision by emergency response personnel. Currently, the identification number marking "2448" for molten sulfur may be placed on a white square-on-point configuration or orange panel. Under Docket HM–181, the identification number marking may be placed on the Class 9 placard as well. Emergency response personnel are familiar with the placarding system and the use of identification numbers to locate information to assist them in mitigating hazardous materials incidents. RSPA notes that a three-year transition period has been provided to minimize the impacts of placarding changes. Therefore, RSPA sees no justification for excepting "Molten sulfur" from placarding requirements, and these petitions are denied.

Section 172.505. This section is revised for clarity.

Section 172.510. Paragraphs (a)(2) and (a)(3) are revised to remove the words "Packing Group I" for Division 2.3, Hazard Zone A materials. One petitioner recommended that paragraph (d), which was not changed under Docket HM–161, be revised to extend the FUMIGATION placarding requirements to all modes of transportation. RSPA believes the fumigation issue is beyond the scope of this rulemaking. Therefore, no change is made at this time.

Section 172.519. Paragraph (a) is revised to clarify that the Mullen Test, noted in paragraph (a)(2), is intended to be used for placards made of tagboard.

HMAC recommended that the size requirements for placards in paragraph (c) be changed from "at least 273 mm (10.8 inches)" to "a minimum size of 250 mm (9.9 inches)," for consistency with the IMDG Code requirements. RSPA disagrees and is denying this petition. The 273 mm (10.8 inches) size of placards is currently used in the U.S. RSPA is concerned that a reduction in size for placards and, effectively, in the size of identification numbers on placards, may be detrimental to recognition of these important hazard communication elements. The larger placards enable emergency response personnel to identify the hazardous materials from further distances (e.g., poison) when mitigating an incident involving hazardous materials. Another petitioner recommended that § 172.519(f) be limited to shipments made under §§ 171.11, 171.12 and 171.12a. Because of aforementioned concerns, RSPA grants this petition. RSPA notes, however, that it is initiating a rulemaking to address the effectiveness of placarding, as mandated by section 25 of the Hazardous Materials Transportation Uniform Safety Act (HMTUSA). This issue will be raised as part of that rulemaking.

AAR and other petitioners recommended amending the HMR to add a new red over white placard for all flammable liquids with flash points between 23°C and 60°C; that is, a unique placard for all Class 3 Packing Group III materials. They stated that including this requirement in the HMR would have several beneficial effects (i.e., simplify emergency response training and the elimination of train placement requirements for flammable liquids with flash points between 23°C and 38°C). RSPA believes this issue is beyond the scope of this rulemaking.

Sections 172.522 through 172.525. In each section, paragraph (b) is revised to include the compatibility group letter.

Section 172.524. In § 172.524, in paragraph (a), the "1.5 BLASTING AGENTS" placard is revised to show an "*" above the class number for the compatibility group letter, which was inadvertently omitted from the placard display.

Sections 172.522 through 172.560. Because some of the placards shown in the Docket HM–181 final rule were not correctly displayed, all placards are republished for clarity.

Part 173: Shippers, General Requirements for Shipments and Packagings

1. Subpart A; General

Section 173.2a. Two petitioners addressed precedence of hazard with respect to Division 6.1 liquids. For consistency with the IMDG Code and ICAO, HMAC suggested that RSPA revise the table in paragraph (b) to show that "for the purpose of determining the primary hazard class in this paragraph, a Division 6.1, Packing Group III hazard, mixture or solution, may not be taken into account except in the case of a pesticide." RSPA agrees and is adding a new superscript 4 to the Division 6.1, Packing Group III entry, cross referenced with Class 3, Packing Group III, and a footnote to indicate that, for pesticides, only Division 6.1, Packing Group III, takes precedence over Class 3, Packing Group III.

Establishing precedence of hazard in cases of "divergent Packing Groups" troubled two petitioners who asked RSPA to provide more guidance. They assumed, for example, that a mixture of Class 3 Packing Group III and Class 8 Packing Group I liquids (shown in the table to have a Class 8 primary class) would be assigned Packing Group I. RSPA is revising paragraph (a)(8) to clarify this situation.

RSPA also was asked to specify how precedence of hazard is determined for materials meeting the definition of more than two hazards. In these cases, precedence can be determined by deriving the precedence of any two hazard classes and then comparing the result with the third hazard class to establish the order of precedence of hazard. This procedure can be repeated for any number of hazard classes. For example, precedence of hazard for a material meeting the definitions of Class 3, Packing Group II, Class 8, Packing Group II, and Division 6.1, Packing Group III is Class 3, Packing Group II.

Section 173.3. Several petitioners claimed that salvage drums will not consistently pass the three-foot Packing Group III drop test with liquids required in paragraph (c)(1), seriously affecting the availability of these drums for emergency operations. They claimed requiring salvage drums to meet the Packing Group III performance level for liquids will render most current salvage drums obsolete. Other petitioners asserted that required tests for salvage drums may lessen their range of applications. HMAC said the performance capabilities of salvage drums are limited because they are large open head units. A petitioner pointed out, "However, when correctly used, a salvage drum will never be required to hold liquids. All free liquid is required to be absorbed. Existing salvage drums have performed well, and where leakage is present, absorbent material is included within the package."

Another petitioner suggested that a salvage drum tested and marked for solids makes more sense given the new UN entry, "Solids containing flammable liquids, n.o.s." Because the presence of free liquids must be absorbed by absorbent material, he said "the most logical approach is to mark the drum for solids. This is a more understandable marking that would also help reinforce the requirement that there be no free liquid" in the salvage drum at the time it is closed for transport. Recognizing that liquids can settle out of solid materials even if the package is closed with no "free" liquids, one petitioner recommended that RSPA adopt the 20 kPa leakproofness test method requirement for Packing Group II in § 178.604(e)(2) instead of the 35 kPa now required in § 173.3 for liquids in the salvage drum.

RSPA agrees with the principle that a properly used salvage drum with sufficient absorbent material will hold no free liquid and that testing requirements should appropriately address the manner in which salvage drums are actually used. Thus, RSPA is revising paragraph (c)(1) to require salvage drums to withstand testing with liquid solids at the Packing Group III performance level, including a leakproofness test of 20 kPa (3 psi). To ensure the availability of salvage drums for emergency service throughout the U.S. during the transition period, RSPA also is revising paragraph (c)(1) to allow any salvage drums manufactured and marked before October 1, 1993 to pre-HM–181 requirements, to continue in service.

Section 173.4. For international consistency, RSPA accepts a recommendation that the cross-sectional compressive load test in paragraph (a)(6)(ii) be replaced with the compression test specified in § 178.606.

Section 173.9. A proposal by two petitioners to remove references to "rail car" in paragraphs (a) and (b) so that this section would apply to all transport vehicles moving under fumigation is considered beyond the scope of the final rule.

Section 173.12. Paragraph (b) is reorganized for clarity and a new paragraph (b)(5) is added specifying materials not permitted to be shipped in lab packs, including liquids classed in Division 6.1, Packing Group I. Paragraphs (d)(1) and (d)(2) are added stating that technical name requirements on shipping papers and package markings do not apply to lab packs except packagings containing hazardous substances, which must be described as required in § 172.203(c), or Division 6.1 materials subject to requirements in § 172.203(m). HMAC's recommended revision of paragraph (b) to require the words "lab pack" entered in parentheses after the generic description from the § 172.101 Table is considered beyond the scope of the final rule.

Several petitions addressed the meaning in paragraph (a) of "equivalent" open head drum" when a closed head drum is substituted for a open head unit. Petitioners contended that waste disposal firms misinterpret an "equivalent" open head replacement to mean a unit constructed of the same material but without regard for the design and performance specified for the closed head drum. Thus, they interpret paragraph (a) to allow any open head drums, creating potential safety problems. One petitioner said that an "equivalent" open head drum should comply with the part 178 marking and performance requirements that applied to the closed head unit it replaces. RSPA agrees that in cases where an "equivalent" open head drum is selected for the shipment of hazardous wastes, it must meet the performance standards of any originally authorized closed head drum. Therefore, petitions requesting removal of the word "equivalent" are not accepted.

Two petitioners urged RSPA to delete the requirement in paragraph (b) that lab packs be transported for disposal or recovery by highway only, adding that "more and more intermodal transport is being used to carry hazardous waste." They contended that there is no safety reason for restricting lab pack shipments to the highway mode. These petitions are rejected because RSPA has determined in the final rule that more stringent controls are to be placed over the packaging and transport of hazardous wastes and is not electing to broaden the range of permitted lab pack transport beyond the highway mode. However, in the final rule, RSPA is relaxing controlled transport requirements by permitting excepted lab pack shippers to use common highway carriers.

2. Subpart B; Preparation of Hazardous Materials for Transportation

Section 173.21. RSPA is accepting a petition from the Society of Plastics Industry to revise the introductory text to paragraph (f) to clarify that a material with a self accelerated decomposition temperature (SADT) of 50C (122F), that gives off a dangerous quantity of heat or gas, is forbidden in transportation.

Section 173.24. A number of petitioners addressed the determination of "no significant release" or "no identifiable release" as a condition of package integrity before offering shipments for transport. They contended that the criterion "no identifiable release" in paragraph (b)(1) is not universally applicable because not all releases are harmful. One petitioner said paragraph (b)(1) "fails to acknowledge there are degrees of hazard recognized in the three Packing Groups . . . and the technical and economic limitations of packages and equipment." Petitioners suggested revisions to paragraph (b)(1) by requiring "no significant" release or "no release in a quantity that is harmful to persons or the environment." One petitioner recommended restricting the "no identifiable release" requirement to shipments of Class 7, Division 2.3 and Division 6.1 materials.

RSPA believes that a determination of "no release" or "no significant release" or no release based on varying degrees of hazard are unquantifiable, subjective and are not applicable in the regulations. Rather than providing an undeterminable standard of measurement, paragraph (a)(1) establishes a principal shipper responsibility. It requires the person who prepares a properly certified package for transport to use good judgment "without use of instruments" to ensure that the package will not release its contents under conditions normally incident to transportation. Therefore, paragraph (a)(1) remains unchanged in the final rule.

Several petitioners asked RSPA to interpret what may constitute the use of an "instrument" in complying with paragraph (b)(1). They asked, for example, if the application of soap bubbles to detect a leak could be construed as the use of an instrument. In this case, the answer is no. However, RSPA wishes to make it clear that if someone actually uses an "instrument" such as a gas chromatogram or ultrasound technology and detects a leak, it is still a leak, and the packaging is not in compliance with paragraph (b)(1).

The Plastic Drum Institute (PDI) urged RSPA to publish its "Compatibility Test Procedures for Plastic Drum and Receptacles" in the **Federal Register** as a proposed rule to supplement paragraph (e) by addition to and modification of Appendix B to Part 173. This booklet, submitted to RSPA in August 1990, offers an alternative method of compatibility testing and rate of permeation. RSPA will consider adoption of PDI's proposal into the regulations at a later date.

The Organic Peroxides Producers Safety Division (OPPSD) asserted that most temperature-controlled organic peroxides will not survive the 100-day compatibility test at 18 C, and asked RSPA to adopt a UN-recommended preliminary test of samples filled with intended ladings for "a long period of time" without reference to temperature. RSPA does not believe that this proposed procedure is adequate. However, the procedures for testing chemical compatibility and rate of permeation contain a provision for the use of alternative procedures if they are approved by the Associate Administrator for Hazardous Materials Safety. RSPA would consider a specific alternative to the chemical compatibility test for organic peroxides under this

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approval provision if it were submitted to the Associate Administrator.

A petitioner asked RSPA to revise paragraph (e) to make it clearer that the shipper requirement to assure package compatibility with its lading applies to all packagings, not just plastic packaging. The petitioner contended that paragraph (e)(3) gives the impression that non-plastic packagings do not have to be tested for compatibility. RSPA is denying this petition. Paragraph (e)(1) makes it sufficiently clear that persons offering hazardous materials for transportation must ensure that all packagings are compatible with their lading. Paragraph (e)(3) is limited to plastic packagings, and requires testing under certain conditions.

One petitioner objected to paragraph (g) which prohibits venting of packages containing materials likely to evolve toxic, flammable or asphyxiant gases. The petitioner claimed that he has used vented drums for years to ship Class 3 Packing Group III materials "characterized by slow evolution of small amounts of hydrogen gas at ambient temperatures . . . without a single incident resulting in illness or injury because of venting." He added that prohibiting venting in this case "may encourage use of less safe procedures" and that paragraph (g)(2) is not in agreement with the UN Recommendations or the IMDG Code. RSPA agrees that venting of these materials can be permitted under certain circumstances, consistent with international standards. Therefore, paragraph (g)(2) is revised to permit venting when "the evolved gases are not poisonous, or likely to create a flammable mixture with air or be an asphyxiant under normal conditions of transportation."

Paragraph (g)(4) is revised to clarify that venting is permitted if a packaging is designed to preclude an "unintentional" release of hazardous materials.

Section 173.24a. A number of petitioners urged RSPA to remove paragraph (a)(5), requiring that packagings be capable of withstanding a vibration test, until the UN recommends the test and international modal agencies adopt it. They claim the vibration standard, as a domestic exception, will put U.S. shippers at a competitive disadvantage in both domestic and international markets. One petitioner contended that vibration testing has merit only when applied to drums intended for the transport of liquids. Another petitioner questioned the value of vibration testing for explosives packagings. The National Solid Wastes Management Association (NSWMA) said few shippers or carriers of waste materials classed in Class 9 packaged in non-specification packages have the ability to perform a vibration test. NSWMA added, "it is only reasonable that vibration testing should be the responsibility of manufacturers."

The vibration standard in paragraph (a)(5) does not require testing. As stated in the preamble to the final rule, RSPA added the easily reproducible vibration test standard in § 178.608 to the UN-recommended Subpart M tests to account for conditions likely to be encountered in typical domestic transportation environments. Paragraph (a)(5) addresses the suitability of any hazardous materials package exposed to extensive vibration stresses during transportation. The shipper is not required to perform this test. Vibration capability can be based on voluntary testing, on previous experience in the use of design types subjected to high-vibration distribution systems, or on an engineering evaluation of package design and integrity with regard to vibration.

Although vibration testing as a capability is retained in the final rule, RSPA agrees that this test should be adopted as an international standard. Consequently, the U.S. recently proposed inclusion of a similar vibration standard in the UN Recommendations.

Two petitioners expressed concern about permitted use of Packing Group I-tested packagings for Packing Group II or III materials with higher specific gravities. One petitioner pointed out that paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iii), which permit lower hazard but higher specific gravity materials to be shipped in Packing Group I-tested packagings, are inconsistent with paragraph (b)(2) which prohibits a single or composite packaging from containing a solid to a gross mass greater than that marked on the package.

HMAC asserted that higher specific gravity liquids should be permitted in packagings "where the weight of the drum plus contents exceed the maximum design strength of the container if filled to rated capacity." In some of these cases, HMAC said "it will be impossible to obtain the performance rating needed to meet requirements based on full containers using current technology even with the employment of the sturdiest construction material available." HMAC recommended adoption of a formula to determine a maximum allowable net product weight for high specific gravity materials.

RSPA believes paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iii), allowing Packing Group I-tested packagings to contain Packing Group II and III materials when they do not exceed stated specific gravity limits, are consistent with UN recommendations linking package design types with the relative densities of the materials they are intended to contain. However, to remove perceived inconsistencies between the permitted use conversions and the general gross mass standard for solids, paragraph (b)(2) is revised as follows, "Except as otherwise provided in this section, a single or composite non-bulk packaging may not be filled * * *" RSPA is accepting a petition from HMAC to allow heavier solids in packagings rated for higher hazard level liquids, if they meet the specific gravity limits in paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iii). Paragraph (b)(3) is revised accordingly.

One petitioner asked RSPA to re-evaluate the requirement in paragraph (c)(1)(iii) that corrosive materials in bottles be further packed in closed inner receptacles before packing in outer packaging "because it conflicts" with UN Recommendations and ICAO requirements. This petition is not accepted because there already is an exception in § 173.161 for corrosive materials in chemical kits that is consistent with UN Recommendations and ICAO.

Section 173.24b. The five percent outage specified in paragraph (a)(3) for insulated and uninsulated tanks containing Division 6.1 Packing Group I liquids poisonous by inhalation was disputed by one petitioner who claimed "there is no need for an outage requirement above two percent." The petitioner said that over a period of a year, a five percent outage requirement would result in added shipments of these materials "increasing cost and risk due to the extra shipments." RSPA believes the provision is needed to reduce the potential of bulk packages containing poison by inhalation liquids from becoming liquid full in transportation and notes that the petitioner did not provide justification, based on safety considerations, for reducing outage to two percent. Therefore, the five percent outage requirement is retained.

HMAC recommended revising paragraph (d)(2) by removing the density of a material as a factor in determining the maximum weight of lading permitted in a bulk packaging. HMAC said, "In practice, volume is usually the variable that is adjusted to achieve correct lading weight." RSPA agrees and is revising paragraph (d)(2) by removing the phrase "due to its density."

Section 173.25. Paragraph (c) pertaining to poisons being transported in the same motor vehicle with foodstuffs, feed or other edible material, is revised to require a "liquid-tight and dustproof" overpack as specified in § 177.841(e) or in an overpack "which is a UN 1A2, 1B2 or 1N2 drum tested and marked at least for the Packing Group II performance level."

Section 173.28. RSPA reviewed 33 petitions for reconsideration addressing non-bulk package reuse requirements. Eight petitioners urged RSPA to align the 43 kPa (7 psi) leakproofness test requirement before reuse in paragraph (b)(2)(i) with the leakproofness test recommended by the UN and adopted for new drums in § 178.604 of up to 30 kPa (4 psi). Two petitioners asked RSPA to except steel drums in controlled distribution from the test. PDI asserted that the 7 psi test may be suitable for steel drums but is excessive for plastic packagings. PDI claimed that when plastic drums are pressurized to 7 psi, "they are severely deformed." However, The Association of Container Reconditioners-NABADA urged RSPA to retain the 7 psi test, contending that UN recommendations for the leakproofness testing of new drums "are set too low" to adequately detect leaks before reuse.

RSPA is denying petitions to except packaging from the leakproofness test before reuse in controlled distribution or on the basis of special package construction or capacity rating because petitioners offered insufficient data to justify taking such action. Petitioners offered no evidence, for example, that closed distribution systems would eliminate normal transportation stresses on reused drums that may lead to metal fatigue, abrasion of plastic material, denting and puncturing.

In principle, RSPA believes that leakproofness testing prior to reuse, or after reconditioning, provides a verifiable check that drums intended to be reused under normal transportation conditions are capable of maintaining the integrity to which they were originally certified. Thus, noting that the vapor pressure of some Packing Group I materials often exceeds 7 psi, RSPA is requiring reused drums intended to contain Packing Group I materials to withstand a leakproofness test of at least 7 psi. For drums intended to contain materials of lesser hazard that often present significantly less vapor pressure in normal transportation, RSPA is revising paragraph (b)(2)(i) to require the 20 kPa (3 psi) test specified for PG II and III materials in § 178.604(e) (2) and (3) for new drums. RSPA believes 3 psi is an appropriate level of leakproofness testing to avoid distortion of thinner-walled packaging.

RSPA is revising marking provisions in paragraph (b)(2)(ii). Drums reused without reconditioning must be marked with the letter "L" for a drum that successfully passes the leakproofness test specified in paragraph (b)(2)(i), the name and address or symbol of the person conducting the test, and the month and last two digits of the year the test was conducted. This marking conforms, in part, with sections 9.5.4(i) and (j) of the UN Recommendations addressing reconditioner certification. It is a certification that a person who reuses a drum without reconditioning has complied with the requirements of this section.

Eight petitioners opposed requirements in paragraph (b)(4) that metal and plastic drums and jerricans or the outer packagings of composite packagings must meet minimum thickness requirements marked in millimeters on drums intended for reuse. RSPA denies these petitions to remove minimum thickness requirements for the reasons given in the December 21, 1990 final rule (see page 52428).

RSPA accepts suggestions from several plastic package manufacturers to add minimum thickness table entries for 30 and 60 liter plastic drums and retain current minimum thickness requirements for the DOT specification 34 polyethylene drum. Therefore, minimum thickness standards for plastic packagings are revised as follows: 20 liters (L), 1.1 mm (0.03 inch); 30L, 1.1mm (0.03 inch); 60L, 1.8 mm (0.071 inch). Minimum thicknesses for 30L and 60L metal packagings are 0.7 mm (0.028 inch) and 0.9 mm (0.035 inch) respectively. Requirements for 40L, 120L, 220L and 450L plastic and metal packagings remain as specified in the final rule. RSPA also is revising the heading of column 1 of the table of minimum thicknesses in paragraph (b)(4) to indicate "Maximum capacity" which better describes the capacity of a packaging to be completely filled with liquid, and to be consistent with references to "maximum capacity" throughout the final rule, particularly within the manufacturing standards.

Several petitioners objected to the introduction to paragraph (b)(4), requiring drums authorized for reuse to be marked in millimeters with the minimum thickness of the packaging material without also requiring that this mark be made permanent. One petitioner asserted that not requiring a permanent thickness mark on a drum intended for reuse would oblige a person to physically measure that drum against a minimum thickness standard and to re-mark it after each trip throughout the reuse process. RSPA agrees, and is revising the introduction to paragraph (b)(4) by incorporating language from section 9.5.2 of the UN Recommendations stating that the mark indicating package material thickness on drums intended for reuse should be applied in a permanent form (e.g. embossed).

RSPA rejects assertions from several petitioners that a minimum thickness requirement for plastic inner receptacles "is unnecessary" because the strength and durability of a composite packaging "is not derived from the inner liner." RSPA believes that inner plastic packagings are vulnerable to such damage as creasing or puncturing during loading or unloading. PDI also pointed out that very few existing reusable composite drums with liners meeting paragraph (b)(5) requirements are available. In corrections to Docket HM-181, RSPA is retaining a thickness standard for inner plastic liners. However, it is revised to 1.0 mm (0.039 inch) to ensure the ready availability of this inner packaging, by permitting use of a DOT 2SL-type liner.

Section 173.31. Requirements for manway covers are relocated from §§ 173.242 and 173.243 to new paragraph (a)(8).

Section 173.32. HMAC's petition recommending a revision to paragraph (a)(6) authorizing an unlined DOT 51 portable tank constructed of stainless steel to be used in place of a lined DOT 60 portable tank is denied because there is not sufficient justification for taking this action.

Section 173.32b. For international consistency, two petitioners requested a revision of paragraph (b) to allow the two-and-a-half year visual inspection of IM portable tanks to be carried out within three months before or after the specified date. This revision was not proposed in Notice 87-4 and is considered beyond the scope of the final rule.

Section 173.32c. Six petitioners objected to the filling density requirements for portable tanks contained in existing § 173.32c(j) and urged RSPA to remove this requirement. Paragraph (j) specifies that IM portable tanks or compartments with a volume greater that 1,900 gallons may not be loaded to a filling density less than 80 percent by volume. Petitioners asked why RSPA is imposing minimum filling density requirements on portable tank users and not on cargo tank users. One petitioner claimed that the "loading of

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highway cargo tanks at more or less than 80% full has never been required," and that "cargo and portable tanks are very similar in their use and operation." Other petitioners added that there is no evidence to support the 80 percent rule. They recommended that portable tank loading should be regulated as not exceeding maximum gross weight, capacity or approved temperature range as shown on certification plates. Although these comments may or may not be valid, paragraph (j) was not addressed in Notice 87–4, and is not germane to this final rule. Therefore, the petitions are denied.

In addition, RSPA is adding a new paragraph (q) to address insulation requirements for IM portable tanks containing molten materials.

Section 173.33. HMAC suggested a revision to paragraph (f), to state that if a higher integrity tank is constructed of stainless steel, lining should not be required. RSPA believes there is insufficient justification for taking such action. The majority of MC 331 cargo tanks are not made of stainless steel.

Section 173.40. Two petitioners asserted that paragraph (c)(2) requiring that the valve assembly on cylinders intended to contain poisonous materials that are also corrosive "be made gas tight by means of a seal cap * * *" would require the retrofit of millions of cylinders in chlorine service. The petitioners misunderstand that chlorine is not subject to this section. Packaging requirements for chlorine are contained in § 173.304.

The Compressed Gas Association (CGA) asked RSPA to provide more detail regarding the two-meter drop test specified in paragraph (d)(2) to determine the adequacy of valve protection for cylinders containing poisonous liquids. CGA pointed out that ISO is preparing a detailed standard for valve protection caps and guards and recommends that RSPA adopt that standard as an alternative. RSPA acknowledges that this alternative may be considered, but in the context of a future rulemaking action.

3. Subpart C; Definitions, Classification and Packaging for Class 1

In the preamble to the final rule, RSPA stated that in order for an explosive that had been approved under the old HMR to be transported after October 1, 1993, it would have to be reclassified under the new regulations (i.e., Docket HM–181). In addition, RSPA stated that it would provide, upon request, such reclassification. However, RSPA went on to say that all existing explosive competent authority approvals will become invalid on October 1, 1993. This last statement was incorrect. Explosive competent authority approvals will not become invalid on October 1, 1993. Such approvals will remain valid until further notice. In addition, any explosive material that has received a competent authority approval is not required to be reclassed because the approval already provides the new classification for the explosive material.

Several petitioners were concerned over the removal of the entry "ammunition, non-explosive" from the § 172.101 Table. Petitioners stated that if this entry is not retained that their non-hazardous commodities would have to be shipped as Division 1.4 materials. RSPA removed this entry from the § 172.101 Table because an explosive material that is correctly determined to be non-explosive would not be subject to the HMR unless the material meets another hazard class definition. RSPA does not believe that it is necessary to add a section to the HMR that states that if a material does not meet the definition of an explosive that the material is non-explosive. Therefore, RSPA is denying these petitions.

Section 173.50. Several petitioners requested that the 25 gram limitation placed on Division 1.4 devices be removed. Petitioners stated that the limit is arbitrary and inconsistent with the UN Recommendations and that materials that meet the tests for Division 1.4 materials should be classed as a 1.4 material without regard to quantity. Upon further review, RSPA is removing the 25-gram limitation on Division 1.4 materials. RSPA also is revising the definition of Division 1.4 to include substances and devices. As part of the approval process, RSPA will review very closely any device that contains over 25 grams of explosive material and that is recommended for Division 1.4. In addition, RSPA will not allow any such items to be classed by analogy; the devices must be subject to the appropriate tests. This administrative requirement will also be imposed on items that have been approved by a foreign competent authority.

One petitioner objected to the classification of PETN with not less than 25% water as a Division 1.1A material. The petitioner stated that this material should be classed as a 1.1D material as in the UN Recommendations. The petitioner stated that to classify PETN on the basis of the sensitivity level of dry PETN is not correct and that foreign manufacturers have been shipping water-wetted PETN safely for a long time. RSPA is classifying PETN as an initiating explosive, Division 1.1A material, because RSPA has test data to indicate that PETN wetted with 25% water gave positive test results on the UN Test 3(b)(i), BAM Friction Test.

Section 173.56. One petitioner requested that explosives approved by another foreign competent authority be allowed for transportation within the U.S. without further approval from RSPA. RSPA believes that the requirement for a U.S. approval, which existed prior to the amendments promulgated under Docket HM–181, is necessary to ensure the safe transportation of explosive materials in the U.S. Though RSPA accepts approvals issued by foreign competent authorities as the basis for an explosive approval within the U.S., RSPA reserves the right to reject any foreign approval. RSPA believes that the hazards associated with Class 1 materials are so great as to require this degree of government oversight. Therefore, RSPA is denying this petition.

Section 173.62. One petitioner requested that the particular packaging requirement "D13" be amended to state "end closures may be formed from the body material." The petitioner stated that this will allow the continued use of the DOT 23G specification packaging. RSPA does not believe that this change is necessary because as long as the 23G can meet the requirements for a 1G packaging, the 23G will continue to be authorized. Therefore, RSPA is denying this petitioner's request.

Several petitioners requested that numerous packagings be added to several of the packing methods in § 173.62. These packagings, however, are not currently authorized by the UN Recommendations. Therefore, RSPA finds this petition out of the scope of this correction document and denies these petitioners' request. One petitioner requested that the packaging exception provided for government-owned munitions in the Annex to the IMDG Code be incorporated into the HMR. RSPA concurs and has added this exception as paragraph (e) to § 173.62.

Several petitioners requested that Class 1 materials that are sent to packing method E–146 be allowed to be transported under packagings approved by the Associate Administrator for Hazardous Materials Safety. The petitioners stated that this would be in conformance with the UN Recommendations. RSPA agrees and is amending packing method E–146 to authorize the packagings that were noted in the final rule and any packaging approved by the Associate Administrator for Hazardous Materials Safety.

Section 173.63. In this section, RSPA is removing paragraphs (d) and (e) which

specified the conditions under which articles installed with igniters or initiators can be shipped when in the propulsive state. RSPA believes that such articles, which must comply with § 173.62(b)(5) and which states that all explosives shipped in the propulsive state must be protected from accidental initiation, should be allowed to be transported if they are transported in compliance with the general and applicable requirements of the HMR. Concerns for specific articles that could be shipped in the propulsive state can be handled through the approval process.

4. Subpart D; Definitions, Classification, Packing Group Assignments and Exceptions for Hazardous Materials Other than Class 1 and Class 7

Section 173.115. Paragraph (a) is reorganized to clarify the definition of Division 2.1 flammable gas. In response to two petitions, RSPA is revising paragraph (c)(2) to refer to the formula in § 173.133(b)(1)(i) for determining LC50 values for gas mixtures. RSPA also is clarifying that the criteria in paragraph (c) for materials classed in Division 2.3 specifically refer to "gases poisonous by inhalation" which are subject to additional hazard communications and packaging requirements in Parts 172 and 173. In other words, by definition in this section, any Division 2.3 material is also a poison by inhalation hazard material assigned Hazard Zones A through D.

Section 173.120. Several petitioners urged RSPA to remove the combustible class definition in paragraph (b)(1) and the combustible reclassification option in paragraph (b)(2). AAR and other petitioners asserted, as they did in comments to Docket HM–181, that the domestic combustible liquid classification introduces unneeded regulatory complexity, violating the stated aims of the final rule to simplify the HMR. AAR contended that the reclassification option will confuse rail personnel "who prepare shipping documents based on data submitted by a large number of shippers." AAR said the reclassification option will also confuse emergency responders confronted with identical commodities having different hazard classifications.

One petitioner pointed out that materials with flash points of 73° F or higher are presently excepted from specification packaging when shipped in non-bulk containers (§ 173.118(b)), so the option in paragraph (b)(2) offers little to shippers while "violating the principle of consistent hazard communication for these materials." AAR said there are other ways to distinguish between liquids below 100° F and those at or above 100° F. For example, AAR suggested that RSPA could exempt liquids with flash points above 100° F from all regulations or adopt AAR's proposed red over white placard for all Class 3, Packing Group III materials to distinguish between high and low flash point liquids.

RSPA disagrees with petitioners who would eliminate the combustible class altogether, believing that the significant number of domestically regulated materials with flash points between 38° C (100° F) and 93° C (200° F) cannot be ignored. RSPA believes that widespread shipping and in-transit storage practices, geared to the present flammable liquid definition, would be unnecessarily disrupted by another revision of the flammability range for liquid materials. This is both a safety and an economic issue. The reclassification option in paragraph (b)(2) maintains existing domestic practices in effect since 1974 when the Materials Transportation Bureau established the present domestic flammability range under Docket HM–102. In practice, RSPA does not anticipate that companies will extensively choose different flammable/combustible descriptions for domestic shipments. Some initial confusion will ensue as a result of allowing the option, but over the two-year transition period (to October 1, 1993) provided for conversion to the new hazard communication and classification system, carrier personnel, emergency responders, enforcement personnel and others are expected to adapt to the new system.

RSPA is revising paragraphs (b)(1) and (b)(2), defining combustible liquid and offering the reclassification option, by adding the phrase, "* * * that does not meet the definition of any other hazard class, except Class 9." Confusion still exists when a combustible liquid is also a hazardous substance or waste which, under Docket HM–181, are classed as Class 9 materials. The revisions to (b)(1) and (b)(2) make it clear that a flammable liquid can be reclassified as a combustible liquid if it meets no other hazard class, except Class 9. However, according to the precedence of hazards ranking in § 173.2a(a)(9), combustible liquids are ranked over materials classed as Class 9. Therefore, a combustible liquid that is also a hazardous substance or hazardous waste is classified a combustible material and is authorized to be packaged in a strong, tight non-bulk or bulk packaging, subject to the requirements in § 173.150(f)(3).

RSPA also is revising the combustible liquid reclassification option provided in paragraph (b)(2) to state that this option does not apply to materials being offered for air or vessel transportation unless other means of transportation are impracticable (e.g., air service to remote areas inaccessible to highway or rail transport).

One petitioner asked RSPA to delete or more fully justify the second test referred to in paragraph (c)(2) for determining the flash point of mixtures. This [second] test "is counterproductive," the petitioner asserted. "It is costly and time consuming to produce results which might not represent the material being shipped." Revisions to Class 3 testing methods were not proposed in Notice 87–4 and are beyond the scope of the final rule. However, RSPA may address changes in Class 3 test methods in a future rulemaking.

Section 173.124. One petitioner advised RSPA to delete the term "or toxic" from the definition in paragraph (c) of a Division 4.3 (Dangerous when wet) material because it is inconsistent with the definition in the UN Recommendations which refers only to the emission of "flammable gases" when a Division 4.3 material is in contact with water. However, RSPA considers the potential evolution of toxic gases as one of the properties of a Division 4.3 material; therefore, the definition in paragraph (c) is retained in the final rule. HMAC agreed that materials which meet the criteria of toxic gas "should be regulated in Division 4.3," and asked RSPA to petition the UN to include these materials in the UN Recommendations. Consequently, RSPA plans to make that proposal to the UN during the 1991–92 sessions of the Committee of Experts.

Section 173.126. Petitions requesting that 70 produced organic peroxides and formulations not yet tested for generic UN classification be listed separately for domestic shipment only, based on existing test data, are addressed in § 173.225.

Section 173.132. RSPA is adding a sentence to paragraph (a)(1) encouraging the use of test data reported in the chemical test literature as an alternative to conducting tests with laboratory animals whenever possible.

One petitioner asserted that the limit of inhalation toxicity for dusts and mists in paragraph (a)(1)(iii) of not more than 10 mg/L "is unrealistically high." The petitioner contended that "it is difficult to maintain a concentration of dust or mist over 1 mg/L" and recommended that the UN Committee of Experts establish "a lower, more practical concentration level of dusts and mists." RSPA agrees that a better standard

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could be devised and encourages HMAC or individual companies to develop a protocol for presentation to the UN Subcommittee of Experts.

Section 173.133. RSPA revising paragraph (a)(2) to specifically address packing groups and hazard zone assignments for liquids based on the inhalation of vapors. Note 2 to the revised table of hazard zone and packing group assignments clarifies that a liquid classed in Division 6.1, meeting criteria for Packing Group I, Hazard Zones A or B in paragraph (a)(2), "is a material poisonous by inhalation" subject to additional hazard communication requirements in part 172. In other words, by definition in this section, a liquid material poisonous by inhalation is assigned Packing Group I, Hazard Zones A or B.

RSPA also is correcting Figure 1, which graphically displays packing group and hazard zone assignments for both Division 2.3 and 6.1 materials, by deleting Hazard Zones C and D applied to liquids. In paragraph (b)(1)(ii), RSPA is revising the definition for the partial pressure of the i/th component in the formula for estimating the volatility of components in poison mixtures. In the final rule, RSPA neglected to include the reference temperature and pressure of 20C and one atmosphere (atm) respectively.

Section 173.134. In a petition for reconsideration, the National Solid Wastes Management Association (NSWMA) recommended that RSPA revise the definition for infectious substances (etiologic agents) to exclude solid waste or medical waste as defined in 40 CFR 259.10 of the EPA's regulations. The petition was filed under the final rule for Docket HM–142A (56 FR 197, January 3, 1991). On February 22, 1991 (56 FR 7312), RSPA delayed the effective date of the final rule to September 30, 1991, to provide more time to evaluate the petition. In a meeting to obtain clarification of the petition, the NSWMA urged RSPA to reestablish the 50 ml exception for infectious wastes. The NSWMA stated that RSPA's approach to transporting medical waste was inconsistent with the approach taken by other Federal agencies, notably the EPA, and would significantly increase the cost of transporting medical waste for the regulated community, including not-for-profit and small business entities. The NSWMA stated that, contrary to RSPA's preamble discussion in Docket HM–142A that most infectious waste did not contain etiologic agents or was treated on-site to destroy the agent before being transported for disposal, substantial quantities of medical waste are transported off-site for treatment. In support of its statement, the NSWMA noted a statement in EPA's Medical Waste Management in the United States: Second Interim Report to Congress (December 5, 1990, page 34) that only 2 percent of the regulated medical waste shipped off-site (29,600 tons) during the first six months of the EPA's demonstration program was treated prior to shipment. EPA's regulations on medical waste in 40 CFR Part 259 applied in only five States and expired on June 22, 1991, with the end of a two-year demonstration program that EPA established to fulfill its mandate under the Medical Waste Tracking Act of 1988 (MWTA; P.L. 100–582). The MWTA has not been extended. RSPA agrees with the NSWMA that medical waste should be treated differently than most infectious substances.

Docket HM–142A established a definition and packaging provisions for infectious substances and was to serve as a transition to Docket HM–181. On September 18, 1991, RSPA incorporated HM–142A into HM–181 [56 FR 47158]. In addition, in partial response to the NSWMA's request, RSPA extended the 50 ml exception for cultures of infectious substances (etiologic agents), from October 1, 1991, to until October 1, 1992. RSPA anticipated this extension would provide enough time to fully respond to the NSWMA's comments in this correction document. However, after publication of the document in the **Federal Register**, the NSWMA submitted a September 26, 1991 letter asking that RSPA clarify by letter or interim rulemaking that the January 3, and September 18, 1991, final rules "apply to only isolated cultures or stocks such as clinical laboratory specimens and not to 'medical waste' as defined in 40 CFR 259.10(b), 'regulated medical waste' as defined in 40 CFR 259.30(a), and 'mixtures' as defined in 40 CFR 259.31." Because RSPA was unable to publish this correction document in time to respond to the petitioner's substantive concerns, RSPA issued another partial response [56 FR 49830, October 1, 1991] extending the compliance date for hazard communication and classification requirements for all infectious substances until October 1, 1992.

In this correction document, RSPA is revising the requirements pertaining to infectious substances to define and specify more appropriate requirements for regulated medical waste. The definition of a "regulated medical waste" added to appendix G to part 173 is essentially the same definition contained in the former EPA regulations in 40 CFR part 259 and is supported by industry in their recommended guidelines.

As defined in this final rule, "regulated medical waste" includes cultures and stocks of infectious agents, pathological wastes such as human tissues and organs, human blood and blood products, sharps (e.g., discarded hypodermic needles, suture needles, scalpel blades, and blood vials), animal waste such as contaminated carcasses, and biological or contaminated materials from humans and animals.

Since the majority of these wastes are untreated and, thus, may potentially contain infectious substances, RSPA strongly believes that the public and transport personnel be protected from the hazards of these materials during transportation. The packaging requirements for these wastes are consistent with those contained in the former EPA regulations and are used in some States. For a discussion on these requirements, refer to preamble discussion to § 173.197.

After October 1, 1992, shipments of these materials must be accompanied by shipping papers. The packages must be marked "Regulated medical waste" and with the identification number "NA 9275" in accordance with § 172.301, and have affixed the INFECTIOUS SUBSTANCE label prescribed in § 172.432.

Section 173.136. Two petitioners noted that RSPA uses the existing definition of a corrosive material in § 173.240 to define a Class 8 material in paragraph (a), but uses the UN definition of a Class 8 material throughout § 173.137 for assignment of Class 8 packing groups. RSPA currently defines a corrosive material as causing "visible destruction or irreversible alterations in human skin tissues." The UN defines Class 8 material as causing "visible necrosis of the skin tissue." RSPA was asked to apply consistent criterion for Class 8 in both sections. RSPA agrees and is revising both sections to use the existing language of "visible destruction or irreversible alterations . . ." throughout.

HMAC requested a clarification of whether solid materials are addressed in both §§ 173.136 and 173.137, noting that the term "liquids" is used in § 173.136(a)(2) and "substances" is used in § 173.137(c) which implies both liquid and solid materials. Metal corrosion applies only to liquids. The use of the term "substances" in § 173.137(c) is correct because, in these sections, "corrosive material" covers both liquid and solid states.

Section 173.137. A petitioner claimed that under this section, up to three times as many animals could be required in the test specified in this section to determine an appropriate packing group. The petitioner referred to existing requirements (in Appendix A to part 173, paragraph 8) for a "go-no go" test for corrosivity based on a protocol using six test animals. "Since testing (under Docket HM–181) is no longer a 'go-no go' test, it will be harder . . . to not only classify but determine the Packing Groups of similar materials." The petitioner is correct, but under Docket HM–181 no alternative protocol was proposed for Class 8 materials. However, the UN is expected to review this issue in the 1991–92 sessions of the Committee of Experts.

Section 173.140. For clarification, RSPA accepts HMAC's petition to revise the definition of a Class 9 material in paragraph (a) to read, ". . . a material which presents a hazard during transportation, but which does not meet the definition of any other hazard class."

Section 173.150. Asserting that most Division 6.1 Packing Group III materials were previously unregulated, a petitioner requested that RSPA allow Class 3 materials that also meet Division 6.1 Packing Group III criteria to be transported under the limited quantity provisions in paragraphs (b) and (c). This petition is not accepted because RSPA intended to exclude all materials exhibiting subsidiary hazards from qualifying for the limited quantity provisions in this section—except Class 9 materials. RSPA believes there is no justification for singling out the Division 6.1 Packing Group III category for the Class 3 exception. Furthermore, in the final rule, RSPA is imposing more stringent hazard communication and packaging requirements for all poisonous liquids.

Several petitioners, including HMAC, advised RSPA to delete paragraph (f)(1), claiming that the combustible liquid exception in § 173.120(b)(2) and (f)(1) is inconsistent with RSPA's objective to align U.S. rules with UN Recommendations. They said the exception will create a dual classification system and promote inconsistencies between product information sources. For reasons stated above regarding petitions to reconsider § 173.120(b) (1) and (2), RSPA has determined not to delete the domestic combustible liquid exception. AAR points out that § 173.120(b)(2) permits a liquid with a flash point above 100F to be reclassified a combustible liquid if it meets the definition of no other hazard class. But when this reclassification is restated in paragraph (f), no reference is made to other hazard classes. Accordingly, paragraph (f)(1) is revised by adding the phrase "* * * that meets no other hazard class except Class 9."

Three petitioners asked RSPA to delete paragraph (f)(4)(iii) stating that the combustible liquid exception does not apply to materials offered for transportation at a temperature at or above its flash point. They asserted that this provision, addressed in HM–198A, is beyond the scope of the final rule. However, RSPA is maintaining paragraph (f)(4)(iii) because materials shipped in this manner can produce vapors presenting a hazardous ignition source, and must therefore be regulated.

Section 173.152. Two petitioners suggested revising paragraph (b)(1) to provide a 10–pound exception for domestic shipments of Packing Group II oxidizers in strong outer packagings. The petitioners cite two basic products that have been shipped for years in small containers (10 pounds or less) without incident. They say there is no evidence that 2.2–pound shipments provide a greater level of safety than 10–pound shipments. However, a 10–pound exception was not considered under Docket HM–181 and is beyond the scope of the final rule.

Section 173.153. COSTHA urged RSPA to broaden Division 6.1 exceptions to include PG II poison materials and to provide a POISON or KEEP AWAY FROM FOOD labeling exception for combination packagings meeting the selective testing criteria for the so-called "Superpack" in § 178.601(g)(2). In effect, this would retain hazard communication exceptions in COSTHA's current "Poison Pack" exemptions. COSTHA asserted that the absence of a Division 6.1 labeling exception seriously obstructs the domestic distribution of poison materials. Highway carriers, including fast freight and parcel delivery services, refuse to accept packages bearing POISON or KEEP AWAY FROM FOOD labels. Shippers thus experience shipping delays and large surcharges for special pickup service by common carriers of small volume shipments.

RSPA declines to generically expend the exception provided in paragraph (b) to Division 6.1 Packing Group II materials because the objective in the final rule is to fully regulate these materials, especially when shipped with foodstuffs. RSPA points out that there is no basis in existing regulations to grant a labeling exception to Division 6.1 Packing Group II materials. In the existing HMR, poison B liquids, equivalent in degree of hazard to Packing Group II poisons, are subject to labeling requirements. COSTHA's proposal also is inconsistent with UN recommendations and ICAO requirements. In section 6.7, the UN recommends that substances "marked or known to be poison in Packing Groups I, II, III should not be carried in the same * * * conveyances with substances marked or known to be foodstuffs * * *" ICAO requires the POISON label for PG I and II poison liquids and solids and the KEEP AWAY FROM FOOD label for PG III poison liquids and solids. Therefore, labeling exceptions for Division 6.1 Packing Group II poisons will continue to be subject to the exemption process.

Section 173.154. Paragraph (d) is revised to correspond with the existing § 173.245(b). It states that Class 8, Packing Group III materials that are only corrosive to aluminum or steel are excepted from the HMR "when transported by rail or highway in portable tanks, cargo tanks and tank cars constructed of materials that will not react dangerously or be degraded by the corrosive material."

Section 173.155. RSPA is revising paragraph (b) to add a labeling exception to the exceptions provided for limited quantities of miscellaneous materials in Class 9. The labeling exception was inadvertently omitted in the final rule.

Section 173.156. RSPA accepts two petitions requesting removal of the 30 kilogram (66 pound) package gross weight limitation pertaining to limited quantity packaging when applied to domestic-only shipments of ORM-D materials. This would allow ORM-D materials now commonly shipped in stretched-wrapped floor display stands or wire bound shrouded pallets exceeding 30 kg gross weight to continue to be transported that way. Paragraph (b) thus is revised to remove the package weight restriction if ORM-D materials are shipped by a private or contract motor carrier—or by a common carrier vehicle under exclusive use for such service—from a distribution center to a retail outlet.

5. Subpart E: Non-bulk Packaging for Hazardous Materials Other Than Class 1 and Class 7

Section 173.158. Responding to a petitioner's request, RSPA is authorizing a combination packaging with a 4G fiberboard outer packaging for nitric acid of 80 percent or greater concentration. This is consistent with the IMDG Code which allows a 4G outer packaging for all concentrations of nitric acid.

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Section 173.164. A petitioner asked RSPA to revise paragraph (b)(1) to be consistent with Packing Instruction 605 of the ICAO Technical Instructions for manufactured articles containing mercury. This revision would maintain a current exemption excepting mercury shipped in articles from regulation under certain conditions. The petitioner claimed that, "to date, we are not aware of any loss of contents during transportation in connection with this exemption." RSPA accepts this petition and is adding a new paragraph (b)(2) excepting from the requirements of this subchapter, "thermometers, switches and relays, each containing a total quantity of not more that 15 grams of mercury if they are installed as an integral part of a machine or apparatus and so fitted that shock or impact damage" leading to a leakage of mercury is unlikely to occur.

Section 173.173. The National Paint and Coatings Association, HMAC and other petitioners reasserted positions taken in comments to Docket HM–181, urging DOT to except five-gallon DOT Specification 37 open head pails from Subpart M testing. They claimed that the extensively used open-head five-gallon Specification 37 pail cannot pass the Packing Group II drop test, forcing them to use the substantially more expensive Specification 17H packaging that can pass the test. One petitioner recommended a new paragraph (c) authorizing metal drums not over 30 liters and capable of passing Packing Group II tests with solids for Packing Group II or III paint and paint related materials.

Other than citing cost impact, petitioners offered no justification stating why they cannot use packagings capable of meeting the minimum performance levels specified in parts 173 and 178. A number of incidents involving failure of open head five-gallon steel containers have been reported to RSPA. For example, HMIS data shows that between January 1, 1986 and January 1, 1991, 210 five-gallon Specification 37A containers failed during loading/unloading operations or in transportation, many involving shipments of paint and paint related materials. Incidents included failures of welds and seams, closures and basic packaging material. As stated in the preamble, RSPA believes the five-year transition (to October 1, 1996) provided for conversion to UN performance standards gives the paint industry ample time to develop cost-effective packaging capable of passing subpart M tests. Addressing another issue, RSPA is revising paragraph (a) to include "drying" compound among the substances included in the definition of "Paint related material."

Section 173.181. Several petitioners requested revisions to paragraph (c) to liberalize packaging authorizations for pyrophoric materials. Consistent with long-standing shipping practices, another petitioner suggested revisions to paragraph (c) authorizing glass inner bottles in strong tight, firmly cushioned metal cans further packed in fiber drums. Accordingly, paragraph (c) is revised to read, "Steel drums (1A2) or fiber drums (1G) * * * with inner strong tight metal cans * * *." One petitioner recommended that RSPA eliminate references to certain types of metal construction or material thicknesses for inner packagings, for example, specifying metal inner cans constructed of "electrocoated tin plate material not less than 0.015 inch thick," or requiring "tin plate" instead of "metal" separators between each layer of inner containers. RSPA agrees and is revising paragraphs (c) and (c)(3) to remove those specific references.

Section 173.185. The exemption (DOT E–7052) authorizing the shipment of lithium batteries is incorporated into this section and will be terminated on September 30, 1993. Rechargeable lithium batteries and devices or equipment containing lithium batteries may continue to be offered under the terms of the exemption. However, those rechargeable lithium batteries and devices or equipment containing lithium batteries not acknowledged in writing by the Office of Exemptions and Approvals by September 1, 1991 must be approved and shipped in accordance with the requirements in this section. In addition, the devices and equipment containing lithium batteries and rechargeable lithium batteries being shipped under DOT E–7052 must be reidentified in accordance with this section by September 30, 1993.

Consistent with ICAO classification, paragraph (a) is revised to include shipments of "lithium batteries and cells contained in equipment" as requiring approval by the Associate Administrator for Hazardous Materials Safety. RSPA also accepts a petitioner's request to add a new paragraph (k) permitting lithium batteries or cells discharged to below 2 volts to be shipped for testing purposes by highway only. A petitioner's recommendation that RSPA except liquid cathode lithium batteries containing up to one gram of lithium or lithium alloy from regulation is beyond the scope of the final rule.

Section 173.188. Three petitioners, including the Chemical Manufacturers Association (CMA), requested a revision to paragraph (a)(2) permitting phosphorus to be shipped in closed head steel drums (1A1) with capacities of up to 250 liters (66 gallons) and open head steel drums (1A2) with capacities up to 115 liters (30 gallons). They said this would allow use of 55 gallon specification 17C and UN 1A1 drums now authorized in DOT E–7753 for phosphorus shipments. CMA's request also is aligned with CA–910236 permitting international shipments in UN 1A1 drums not exceeding 250 L capacity. RSPA accepts this petition and is revising paragraph (a)(2) accordingly.

Section 173.193. Four petitioners objected to the 250 pound cylinder size limit contained in paragraph (b) and urged RSPA to remove it. They claimed that the cylinder capacity limitation "is not necessary or justified" for these materials, especially for methyl bromide. Petitioners pointed out that requirements for methyl bromide in existing § 173.353 impose no cylinder capacity limit. They said the cylinder size limitation also is inconsistent with the approach RSPA has taken regarding materials poisonous by inhalation packaged in cylinders. Section 173.40 contains no cylinder capacity limits, nor do §§ 173.302, 173.304 and 173.305 for compressed or liquified gases in Hazard Zones A and B. RSPA agrees that the water capacity limit for cylinders should not apply to methyl bromide and is revising paragraph (b) to state that exception.

Citing a long-standing and safe shipping practice, one petitioner asked RSPA to continue to allow methyl bromide and chloropicrin mixtures to be shipped in small packages. Accordingly, RSPA is adding a new paragraph (c) authorizing combination packaging with inside metal cans containing not over 1¾ pounds each of methyl bromide mixtures with up to two percent chloropicrin.

Section 173.197. This section has been added to specify packaging requirements for medical waste. These requirements are effective on October 1, 1992. In paragraph (a), RSPA is providing for the use of packagings conforming to the requirements of part 178 of this Subchapter at the Packing Group II performance level. Paragraph (b) requires that the packagings be capable of passing the testing requirements contained in subpart M of part 178 but excepts the packagings from having to be marked or tested to the UN standards until October 1, 1994. Specifically, the regulations require the use of rigid, leakproof packagings that are impervious to moisture and of

sufficient strength to prevent tearing or bursting under normal conditions of use and handling. Packagings used for medical waste that are sharps (e.g., discarded hypodermic needles, suture needles, pasteur pipettes, scalpel blades, blood vials, culture dishes, and slides), and for fluids in quantities greater than 20 cubic centimeters must meet certain additional requirements. Requiring these packagings to be rigid will preclude the use of double bags not packed in a strong outer packaging. However, RSPA believes the use of rigid packagings offers a more adequate level of safety to the public and transport personnel. This action will provide uniform Federal regulation of regulated medical waste in transportation.

Sections 173.202, 173.203; 173.211 through 173.213. Ten petitioners asked RSPA to add single package authorizations to the generic non-bulk packaging sections for liquids and solids. Among them, the Fiber Drum Technical Council (FDTC) asserted that fiber drums lined with an assortment of plastic, mylar, nylon, polyethylene/oil and other lining materials, strengthened to pass at least the Packing Group II test with liquids, should be authorized domestically for Packing Group II and III liquids and Packing Group I solids. In its petition, FDTC referred to the "1G fiber drum with inner plastic liner" as defined in section 9.6.6.1. of the UN Recommendations. The "lined" 1G fiber drum is distinguished from the "6HG1 composite plastic receptacle with outer fiber drum" described in section 9.6.18 which is authorized internationally for most liquids and solids.

FDTC claimed that fiber drums constructed with linings impervious to various liquid ladings provide better barrier properties than plastic counterparts. They also show good stacking strength and perform better than other packagings in high humidity and temperature environments. FDTC contended there are fewer available polyethylene resin/hazardous material compatibility matches for plastic drums or steel drum coatings. Because single-trip fiber drums can be cost-effectively incinerated, FDTC said they also are a more environmentally acceptable choice of container.

RSPA recognizes that single fiber drums have not been viewed internationally as suitable for transporting liquid hazardous materials because of the high water absorption properties of fiber packaging materials. ICAO and the IMDG Code prohibit use of fiber drums, with or without lining, for corrosive, flammable or poisonous liquids. Under ICAO, fiber drums cannot be used for Packing Group I corrosive or flammable solids, but the lined drum can be used for Packing Group I poison solids. The IMDG Code allows use of the 1G for Packing Group I poison, corrosive and Packing Group II flammable solids.

Based on the extensive, safe domestic use of this packaging for low hazard materials, RSPA believes that lined fiber drums capable of passing at least the Packing Group II performance tests with liquids should be generically authorized for those materials. Special Provision N37 in § 172.102 already authorizes integrally lined fiber drums for such materials as "Compound, cleaning liquid, n.o.s. Packing Group II and III." Consequently, paragraphs (c) in §§ 173.202 and 173.203 are revised to include the lined fiber drum 1G. RSPA also is revising § 173.211(c) to authorize the unlined fiber drum 1G for Packing Group I solids.

A number of petitioners urged RSPA to authorize the 5M1 multiwall paper bag for all hazardous solids in §§ 173.211, 173.212 and 173.213. The Chemical Packaging Committee of the Institute of Packaging Professionals (CPC) noted that existing § 173.365 authorizes the DOT Specification 44D multiwall paper bag for Poison B solids and that bags meeting the 5M1 standard have been successfully used for other solids under various exemptions. COSTHA said that many solids for which packaging in §§ 173.212 and 173.213 is authorized were previously authorized for transport in non-specification packagings, "particularly those in Packing Group III of Division 6.1 and Class 8." COSTHA contended that "safety will not be compromised by authorizing the 5M1 for these materials, provided the bag meets part 178 requirements." HMAC and other petitioners asked RSPA to revise § 173.211(c) to include the water-resistant multiwall paper bag 5M2 for Packing Group I solids.

RSPA notes that the water-resistant 5M2 multiwall bag has gained limited international acceptance. It is authorized by the IMDG Code only for Packing Group II and III Division 6.1 solids. Based on sufficient history of safe shipping, RSPA is authorizing the 5M2 as a domestic exception for all Packing Group II and III solids. However, it has not been adequately demonstrated that multiwall bags which are not water resistant can offer enough protection against moisture leaching in or out of bags containing hazardous solids. RSPA believes the five-year transition period for conversion of most packagings to the performance-based system offers enough time for the industry to improve bag technology. At that time, companies may wish to petition RSPA for a rulemaking with sufficient data to prove a multiwall paper bag 5M1 is an appropriate packaging for hazardous solids.

Section 173.204. Several petitioners asserted that requiring performance-tested packaging for materials previously shipped in non-specification packages is unnecessary and will drive up shipping costs. HMAC and NSWMA both claimed that RSPA has significantly increased packaging requirements for hazardous substances and wastes "when there has been no established history of package failure under current standards" allowing use of strong, tight packaging for substances and wastes meeting no other hazard class. FDTC said that "any packaging suitable for the containment of wastes until disposal should be adequate, especially since the law is clear concerning spills and cleanup." Petitioners suggested that assigning non-specification packaging for these materials under § 173.204 "would maintain today's proven practices," keeping in mind that shippers are still obligated under § 173.24 to offer structurally sound packages for transportation.

FDTC also petitioned RSPA to allow materials now regulated under § 173.249a to continue to be shipped in non-specification packaging. The Council said the non-specification fiber drum now used for cleaning and textile treatment compound liquids, dye intermediates and mining reagents meets National Motor Freight Classification provisions (Item 296), which includes a one-foot drop test, but that this packaging does not pass the 3.9 foot Packing Group II test required for UN certification. FDTC claimed that, over the past 20 years, more than seven million of these drums, valued at over $88 million, have been used safely. "Required use of the 6HG1 plastic-lined fiber composite for many of these materials would result in a $10 per drum or a 60% overall cost increase."

One of RSPA's overall objectives in the final rule has been to improve transportation safety by upgrading package integrity for a number of materials, including hazardous substances and wastes, previously shipped in non-specification packaging. This especially applies to hazardous wastes which too often have been shipped in substandard packagings from waste sites to disposal facilities. Therefore, consistent with international standards, and with certain exceptions

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for waste materials (See § 173.12). RSPA is requiring environmentally hazardous substances and wastes classed in Class 9 to be shipped in packagings meeting at least the Packing Group III performance level.

RSPA is employing the same approach to materials previously regulated under § 173.240a, many of which are consolidated under the "Corrosive liquids, n.o.s." entry and assigned at least Packing Group III packaging. There are very few cases in the final rule where non-specification packaging under § 173.204 is provided, and no provisions are made for non-specification fiber drums. RSPA never intended to except domestically-used fiber drums from the performance standards it adopted. When authorized for use under the UN system, fiber drums must comply with the 1G standard (§ 178.508) and pass the appropriate tests for materials they are intended to contain.

Section 173.224. In response to a petition, RSPA is revising the "Packing Methods for Self-Reacting Materials" chart in paragraph (c) to include "Fiber drum 1G, sift proof" in the "outer packaging" column for the "F5b" entry.

Section 173.225. Several petitioners, including the Organic Peroxides Producers Safety Division (OPPSD) of the Society of the Plastics Industry, urged RSPA to revise paragraph (b) and assign generic UN classifications to 70 unlisted domestically produced organic peroxides and formulations on the basis of limited test data. OPPSD said these materials are transported either under the existing "Organic peroxide, liquid or solution, n.o.s." shipping description or have been tested by the Bureau of Explosives and found to present no hazard. OPPSD added that these 70 products "have been shipped domestically without incident for years." One petitioner asked, "why should many 'old', unlisted, uniquely American organic peroxides and formulations be subject to the battery of UN classification tests prior to DOT approval for transport because there is no provision for them in the European (UN) listing DOT is adopting?" One petitioner added that the generic classification procedure in § 173.128(c) "is potentially burdensome, going far beyond the current process for classifying these materials."

RSPA invested considerable resources over the past five years working with the UN to develop the entire generic organic peroxide classification system and the list presented in the Organic Peroxides Table in paragraph (b). This list was developed from test data provided to the UN working group, including data for many entries from U.S. companies. RSPA continually urged producers, through OPPSD, to check the developing list for new entries, but the response was not positive. As a result, many of the so-called "old" products were not included in the paragraph (b) table. RSPA notes that many organic peroxide compounds and formulations listed specifically by name in the UN table prior to the Sixth edition of the UN Recommendations include U.S.-developed products, not just European products. To address the problem of classifying unlisted products, RSPA suggests that organic peroxides producers submit test data for review and assignment to the appropriate generic types described in § 173.128(b). Producers are encouraged to recommend a more effective mechanism by which a broad range of new formulations can be tested and classed. RSPA believes that over the two-year transition period for conversion to the UN classification system that "old" and new products can be effectively tested and classified.

Responding to a request by OPPSD, RSPA is making a number of editorial changes to the Organic Peroxides Table in paragraph (b), the table of Packagings for Liquid Organic Peroxides in paragraph (d)(1) and the table of Packagings for Solid Organic Peroxides in paragraph (d)(2) for better alignment with UN Recommendations. RSPA also is correcting paragraph (e)(4)(i) by removing the phrase "Type *C*" and inserting "Type B". Thus, samples of untested new organic peroxides or new formulations may be assigned to the generic Type C classification "if the materials pose a level of hazard no greater than that of a Type B organic peroxide."

Two petitioners asked RSPA to revise paragraphs (e)(2) and (e)(3) to permit use of bottom outlets on cargo tanks and portable tanks containing organic peroxides. They asserted that transportation safety would be improved by allowing tanks with bottom outlets. The petitioners claimed that "use of bottom outlets will also facilitate complete unloading of the product with only minimal cleaning." RSPA notes that organic peroxides are assigned to bulk packaging on a case-by-case basis and believes that use of bottom outlets for these materials in portable and cargo tanks cannot be generically established without a thorough safety analysis. However, this issue may be addressed in a future rulemaking if it is based on a sufficient safety analysis.

Section 173.226. Numerous petitions were submitted suggesting changes to §§ 173.226 and 173.227 for the non-bulk packaging of materials poisonous by inhalation, including revised inner and outer package minimum thicknesses, a lower hydrostatic pressure standard for outer drums, a more flexible inner drum closure provision and expanded use of authorized single packaging in dedicated distribution systems. Two petitioners asked RSPA to authorize 16 gauge 1A2 or 1H2 outer packagings meeting Packing Group II performance standards. However, no test or cost data were advanced to support this revision. RSPA accepts several petitions to authorize 16 gauge minimum thickness (0.054 inch) for 1A1 and 1N1 inner packagings over 32 gallons capacity, provided these inner packagings are capable of meeting higher drop test heights or are rated to carry materials of higher specific gravity.

HMAC, CPC and other petitioners urged RSPA to clarify that the 250 kPa (36 psi) hydrostatic test required in § 178.605(d)(3) for Packing Group I liquids does not apply to the outer drum. They claimed that no commercially available open head drum can withstand this test. RSPA agrees that a lower hydrostatic test pressure for open head outer drums is acceptable given that the primary functions of the outer drum are to provide puncture and impact protection to the inner packaging and to contain any poisonous by inhalation hazard material accidentally released from the inner packaging. Therefore, RSPA is revising paragraph (b) to require 1A2 and 1H2 outer drums to withstand the hydrostatic test pressure of 100 kPa (15 psi) specified in § 178.605(d)(1) for Packing Group II liquids. The 550 kPa (80 psi) hydrostatic test pressure specified in paragraph (b)(1) for inner packagings is retained.

Several petitioners recommended revised minimum separation distances between inner and outer drums for the double drum configurations authorized in §§ 173.226 and 173.227. They suggested a "minimum separation of 2.5 cm (1 inch) around the body of the inner drum and at least 2.5 cm on the top and bottom and between inner and outer drums." CMA and other petitioners claimed that, for many years, shippers have successfully used 85-gallon salvage drums with 2.5 cm clearances on sides, top and bottom. "This revision will permit continued use of readily available salvage drums and prevent an unneeded expense in producing and stocking a new drum of larger capacity for a limited number of products." However, no test data has been offered to support this petition. The drum separation requirements in paragraph (b)(5) were not arbitrarily drawn for the final rule. They follow RSPA's 1986 "Guidelines for Packaging Liquids Toxic by Inhalation" and are contained in numerous approvals granted under Docket HM-196.

A petitioner suggested deletion of the requirement in paragraph (c)(2) that inner packagings must have "screw-type" closures. The petitioner contended that there are "better, safer and more effective closures" than the screw-type device required in paragraph (c). RSPA agrees that any closure held in place "by any means capable of preventing back-off or loosening of the closure" is sufficient. Therefore, paragraph (c)(2) is revised by removing the phrase "screw-type closure." This revision also aligns paragraph (c) with section 9.6.2.4 of the UN Recommendations stating that any closure "should be so designed and applied that they will remain secure and leakproof under normal conditions of transport" without specifying a certain type of closure.

Petitions asking RSPA to extend the authorized use of single packagings in dedicated transportation for lower hazard poisonous by inhalation materials (§ 173.227(c)) to Hazard Zone A or B materials are declined because they contravene RSPA's intent in the final rule to impose extraordinary measures to prevent leaks and dispersion of these materials to the atmosphere. Thus, for Hazard Zone A and B materials, the basic double-drum configuration is maintained for all non-bulk transportation.

Section 173.227. Four petitioners requested a revision of paragraph (b) to authorize either 18 gauge 1A2 and 1H2 outer packagings meeting the Packing Group II performance level or a 16 gauge salvage drum equivalent. Other petitioners suggested revising paragraph (b) to allow a 1H2 drum or a 6HA1 composite drum further packed in a 1A2 or 1H2 drum and revising paragraph (b)(3) to add the 1N1 drum to the list of authorized inner packagings. However, no test data was provided to justify taking these actions.

In response to petitioner requests, for reasons given above, RSPA is revising paragraph (b)(1) to require 1A1, 1H2 and 6HA1 outer packagings to withstand the hydrostatic test pressure of 100 kPa specified in § 178.605(d)(1) for Packing Group II liquids.

CMA suggested that RSPA remove either paragraph (b)(2)(ii) requiring a closure to be held in place to prevent backing off, or (b)(2)(iii) requiring a closure to be secured by a cap seal. CMA claimed that requiring a closure that employs both back off protection and a cap seal capable of withstanding 100 kPa would be "a major stumbling block in compliance. There is no current design that would permit installation of back off protection without compromising the cap seal requirement." CMA urges RSPA to require one or the other until a proven combination has been designed and field tested. This petition is not accepted. Two closure manufacturers have indicated to RSPA that paragraph (b)(2) requirements do not constitute serious design problems and can satisfactorily be complied with. Furthermore, specified back off protection and a cap seal capable of withstanding 100 kPa are contained in RSPA's 1986 "Guidelines for Packaging Liquids Toxic by Inhalation" and are incorporated in numerous HM-196 approvals.

A number of petitioners asked RSPA to revise paragraph (c) by adding the 1H1 closed head plastic drum as a single packaging in dedicated transport. They said adding the 1H1 would liberalize the use of plastic single packagings holding prior HM-196 approval—and in cases where poison materials also are corrosive to steel. CMA also cites "satisfactory shipping history of 1H1 plastic drums of phosphorus oxychloride, as well as the favorable experience gained under HM-196 for other products. It is believed that this omission is an error." However, no test data has been offered to show that the 1H1 as a single packaging meets a sufficiently high level of integrity to be authorized for materials poisonous by inhalation, thus these petitions are not accepted. RSPA would consider a petition for rulemaking on this issue based on adequate test data.

6. Subpart F: Bulk Packaging for Hazardous Materials Other Than Class 1 and Class 7

Section 173.240. RSPA is removing the authorizations for AAR Class 203W, 206W and 211W tank car tanks from paragraph (a) because non-specification tanks already are permitted. Several petitioners asked RSPA to revise paragraphs (a) and (b) to refer to a definition of "sift-proof" in § 171.8 as applied to "sift-proof closed rail cars" and "sift-proof closed vehicles." They suggested that the definition include a "tarpaulin-covered open-type vehicle" for ammonium nitrate fertilizers. Petitioners also urged RSPA to maintain existing § 173.182(b)(2) permitting the use of "sift-proof closed or open type motor vehicles" for transporting ammonium nitrate fertilizers. They contended that elimination of § 173.182(b)(2) "would have a serious effect on the explosives and agricultural industries."

When applied to a closed rail car or vehicle, RSPA believes that the term "sift-proof" already is adequately defined under the "no identifiable release" provision in § 173.24(b)(1). It is also RSPA's opinion that tarpaulin-covered open vehicles meet the definition of "closed vehicles." A request to authorize the use of sift-proof bulk bags for solid environmentally hazardous substances is considered beyond the scope of the final rule.

RSPA is not accepting one petitioner's request to revise paragraph (c) to refer to a broader range of "closed bulk packagings" by deleting references to "closed bins." References to "closed bulk packages" in this section, implying inclusion of IBCs and bulk bags, are considered beyond the scope of the final rule.

A number of petitioners, including HMAC, asked RSPA to align §§ 173.240 through 173.244 with the IMDG Code by authorizing IMO type 1, 2 and 5 portable tanks because they believe these tanks offer containment equivalent to DOT's specification IM 101, IM 102 and DOT 51 portable tanks respectively.

Two petitioners asked RSPA to add authorizations for IM-101 and IM-102 portable tanks in § 173.242, authorize the IM-101 in § 173.243 and authorize the IM-101, qualified by T-notes, in § 173.244. Another petitioner said that RSPA granted interim approval to ship molten cyanuric chloride, classed as "Corrosive liquid, poisonous, n.o.s.", in IM 101 portable tanks. The petitioner pointed out that the IMDG Code also authorizes corrosive liquids posing a poisonous subsidiary hazard to be shipped in IMO type 1 tanks.

Except as limited by special provisions in Column 7 of the § 172.101 Table, these tanks already are authorized in §§ 173.240(c) and 173.241(c) because non-specification portable tanks are permitted by these sections to be used for the transport of lesser hazard materials. For clarification, RSPA is revising paragraph (c) in both §§ 173.240 and 173.241 to specifically authorize IM type 1, 2 and 5 and IM 101 and IM 102 portable tanks. However, requests that IMO types 1, 2, and 5 and IM 101 and IM 102 portable tanks be authorized in §§ 173.242 through 173.244 are not accepted. RSPA believes there is not sufficient justification for creating a new packaging scheme for higher hazard materials based solely on IMO recommendations.

Section 173.241. RSPA is removing the special requirements in paragraph (c) for the generic authorization of DOT 57 portable tanks in this section because

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they are inappropriate for this level of hazard.

Section 173.242. For regulatory consistency, RSPA is moving references to DOT Specification 111A100W4 and 111J100W4 tank cars, and Class DOT 103, 104 and 111 tank car tanks in paragraph (a) in §§ 173.242 and 173.243 to the generic section for the qualification, maintenance and use of tank cars (§ 173.31).

Sections 173.243. A petitioner recommended that RSPA remove the requirement in paragraph (a) for gauging devices on Class DOT 103, 104 and 111 tank cars. The petitioner explained that he operates a fleet of 100 insulated DOT-111A100W tank cars built for acrylonitrile service. These cars have no bottom outlets and contain no gauging devices to measure outage through open manways. The petitioner stated, "we feel our operation not only eliminates the need for gauging devices, it is also a safer operation, eliminating a potential leak area." RSPA accepts this petition and paragraph (a) is revised accordingly. Paragraph (b)(2) is revised to remove the authorization for the DOT 406 cargo tank because it is inappropriate for this level of hazard.

Sections 173.243 and 173.244. RSPA is revising paragraph (a) in these sections to properly describe authorized tank car tanks as being "fusion welded" and not "riveted." Therefore, references to "fusion welded" are inserted and references to "riveted tank car tanks" are removed.

Section 173.244. In response to several petitions, RSPA is allowing the use of MC 312 and MC 412 cargo tank motor vehicles subject to the conditions and limitations specified in special provisions B30 and B32. This is in response to several petitioners who argued that heavy walled MC 312 and DOT 412 cargo tanks provide an acceptable level of safety for materials poisonous by inhalation.

Section 173.245. For regulatory consistency, RSPA is adding authorization of tank car tanks and multi-unit tank car tanks when approved by the Associate Administrator for Hazardous Materials Safety.

7. Subpart G: Gases, Preparation and Packagings

Sections 173.302 and 173.304. Under the Docket HM-181 final rule, Column 8B of the § 172.101 Table authorized packagings in §§ 173.302 and 173.304 for various gases which had been reclassified as Division 2.3 materials. However, neither of these two sections was revised in the Docket HM-181 final rule to remove the prohibition against the use of these packagings for poisonous gases. By removing the phrase "or poisonous gas" in these two sections, as appropriate, a Division 2.3 material which is authorized to be packaged in a packaging listed in §§ 173.302 and 173.304 may be so packaged.

Section 173.306. Although not proposed in Docket HM-181, RSPA agrees with COSTHA's petition to add a definition of "flammable aerosol" in the final rule. COSTHA proposed that the definition be added to the defining criteria in § 173.115, but RSPA believes it more appropriately belongs in this section. Accordingly, paragraph (i) is added, incorporating the definition of flammable compressed gas in § 173.300(b)(2), (3) and (4). For consistency, RSPA is revising the limited quantities specified in paragraphs (a)(3)(i) and (b)(1) for metal aerosol containers and foodstuffs and soaps in non-refillable containers as follows, "* * * not exceeding 50 cubic inches capacity (1 liter) * * *." In addition, § 173.306 has been revised to allow Division 6.1 Packing Group III materials to be shipped in accordance with the authorized packagings of this section.

Sections 173.314 and 173.315. These sections are revised in order to clarify the packaging requirements for material poisonous by inhalation. The requirements previously found in § 173.244 and the special provisions for bulk packagings (i.e., B notes) have been moved to these sections. In § 173.315, there are now 4 generic entries for Division 2.3 materials—one corresponding to each hazard zone—and generic entries for Divisions 2.1 and 2.2, which were previously located in § 173.315(a)(2).

Section 173.314. RSPA is revising the table in paragraph (c) amending tank car authorizations for Division 2.3 materials for consistency with special provisions in § 172.102. Several notes to the table are revised by deleting several obsolete provisions. Other notes are edited for clarity. Note 25 to the table is removed as unnecessary since the quantity limitations aboard an aircraft would be exceeded for these packages. Note 16 is removed since it is no longer referenced. Entries for "nitrogen dioxide, liquified" and "ethylene oxide" are added. A fourth column is added captioned "notes". Paragraph (g) is amended by adding a new paragraph (3) referencing additional tank requirements.

HMAC suggested that RSPA revise the paragraph (c) table to include all compressed gases by name, including n.o.s. categories, and to identify notes to the table as appropriate. RSPA developed generic compressed gas entries to cover over 100 materials specifically named in § 172.101, and will retain the generic entries in the final rule. However, some specific compressed gases are listed in the paragraph (c) table because they present hazards requiring added levels of protection.

One petitioner recommended that RSPA remove Note 30 from the entry for "hydrogen chloride" and revise Special Provision B86 to require that new refrigerated liquid tank cars intended to contain this material be equipped with full head shields. The requirement of full head shields for a broader range of hazardous materials in tank cars is being addressed under Docket HM-175A and thus is beyond the scope of the final rule.

Section 173.323. RSPA is accepting a petition recommending removal of the requirement that all copper alloys in package construction material used to contain ethylene oxide be prohibited from contacting the lading, and is revising paragraph (a) accordingly. The petitioner pointed out that ethylene oxide packaging equipped with brass valves has been used for years under DOT E-9047 without incident.

Responding to another petition, RSPA is correcting paragraph (b)(1) to authorize ethylene oxide in 4G fiberboard boxes with inner glass ampules or vials up to a total per package weight of 100 grams (3.5 ounces). RSPA also is revising paragraph (b)(4) to incorporate the existing § 173.124(a)(2) authorizing ethylene oxide to be shipped in cylinders over one gallon and five gallon capacities equipped with pressurizing valves and insulation. The five-gallon cylinder must be equipped with eductor tubes.

The Ethylene Oxide Industry Association (EOI) suggested revising paragraph (b)(5) to authorize ethylene oxide in 1A1 drums meeting the Packing Group III performance standard because that performance level equates to a Division 2.3 Hazard Zone D hazard level. However, this comparison is irrelevant given that only Packing Group I standards apply to the packaging of liquid materials poisonous by inhalation. EOI said reference in paragraph (b)(5) to a drum meeting the Packing Group I performance standard "is inconsistent" with poison gases being evaluated on a hazard zone basis. EOI added that the drum authorized in paragraph (b)(5) essentially is derived from the existing § 173.124 authorizing a DOT Specification 5P drum required to pass a Packing Group II drop test of four feet.

In the final rule, assignment of hazardous materials to non-bulk packagings is based on the packing group system which relates the hazard level of materials to be packaged with the appropriate performance level of the packagings. Non-bulk packaging for all materials poisonous by inhalation, including ethylene oxide classified as a Division 2.3 Hazard Zone C poison gas, has been substantially upgraded in the final rule. Consistent with the generic packaging requirements for Hazard Zone C poison gases in § 173.227, the inner package primarily containing ethylene oxide must be capable of meeting the Packing Group I performance level.

Part 174: Carriage by Rail

Section 174.25. AAR noted that the table in § 174.25(a)(2) does not contain placard notations for Division 6.1 PG III and Class 9 materials, even though rail cars transporting these materials must be placarded. AAR suggested that shipping papers for all placarded rail cars should contain an appropriate placard notation to avoid confusion. RSPA agrees, and the table in paragraph (a)(2) is revised by adding an entry for Division 6.1 PG III materials, and revising the placard notation for Class 9 materials. AAR also recommended that there should be no placard endorsement residues of these materials should excepting tank cars containing a residue of a Division 6.1 PG III or a Class 9 material from the "DANGEROUS" placard endorsement.

Section 174.81. (See § 177.848 for discussion of segregation table issues.)

Section 174.82. AAR and other petitioners asked RSPA to revise paragraph (a), to except all Class 3, PG III materials (flash points between 23° C and 38° C) from required handling of placarded rail cars. AAR asserted that "there is no safety justification for imposing train placement restrictions (on these materials)." Since RSPA is adopting the UN classification system, which does not include a 38° C threshold, AAR suggested, "now is the logical time to exempt all flammable liquids with flash points above 23° C from train placement restrictions." These petitions are considered beyond the scope of Docket HM-181; however, train placement documentation is being addressed in a forthcoming rulemaking action under Docket HM-201A.

Part 176: Carriage by Vessel

Section 176.11. Several petitioners suggested that the reference to "171.12(b)" in § 176.11 was incorrect. Petitioners pointed out that this reference would not allow the shipment of bulk packagings in accordance with the IMDG Code in port areas, which is allowed in § 171.12(c). In the final rule, RSPA did not intend to forbid the movement of IMDG Code bulk packagings in port areas. Therefore, RSPA is amending the reference to § 171.12 by removing the direct reference to paragraph (b). This will allow shippers and carriers to determine which paragraphs of § 171.12 apply to their shipments.

The second sentence of paragraph (a) was intended to state that for Class 1 shipments made in accordance with the IMDG Code, the referenced sections in Part 176 do not apply. The present text is unclear. RSPA is clarifying this sentence by revising it to read, "The requirements of §§ 176.83, 176.84 and 176.112 through 174 are not applicable to shipments of Class 1 (explosive) materials made in accordance with the IMDG Code."

Section 176.76. One petitioner requested that the words containership and barge be added to § 176.76(b). RSPA disagrees. The definitions of trailership and carfloat, which are included in § 176.76(b), include barges. Therefore, RSPA sees no need to include barges in § 176.76(b). Containerships should not be added because they are specially equipped to carry containers, not vehicles. Vehicles should be carried only on vessels that are equipped to carry them. RSPA is denying this petitioner's request.

Section 176.170. Several petitioners requested that the limitation of 5,000 kilograms of Class 1 materials in freight containers of length greater than 6 m in § 176.170 be removed. It is RSPA's concern that freight containers of over 6 m in length could sag and then possibly fail without a proper weight limitation placed on that freight container. The limitation of 5,000 kg, which was developed in an international forum, is believed to be the maximum weight that these freight containers can hold without an unacceptable level of risk of the freight container failing. Therefore, these petitioners' request is denied. However, if a level of safety equivalent to that provided in § 176.170 can be provided, exemption applications submitted in accordance with 49 CFR 107.103 for greater than 5,000 kilograms will be reviewed on a case by case basis.

Section 176.415. RSPA is removing the reference to ammonium nitrate, Division 1.1D, UN0222, from § 176.415(c)(1)(2) and (5). This is being done because the permit requirements for Division 1.1 materials are found in § 176.100.

Part 177: Carriage by Public Highway

Section 177.848. A number of petitioners objected to revisions of the Segregation Table for Hazardous Materials in the final rule, asserting that they are more stringent than existing requirements in § 177.848 for highway and rail operations, and more stringent than requirements for vessel loading. Petitioners claimed that RSPA "failed to consider significant operational differences between the modes" and that revised requirements in §§ 174.81 and 177.848 "impose vast and unnecessary costs." COSTHA questioned the need to align rail and highway segregation requirements with those in the IMDG Code "since the majority of rail and highway shipments are not destined for eventual transport by vessel."

The United Parcel Service (UPS), the Air Transport Association (ATA) and other petitioners said the new segregation restrictions will interfere with long-standing local pickup and delivery operations, create shipment delays, increase the number of vehicles on the road and cause problems at distribution centers and warehouses which stock and ship a wide variety of goods. UPS noted that the required four-foot separation distance for the segregation of many materials indicated by the letter "O" in the table "complements standard palletized shipments, but ignores long-standing practices for loading small packaged materials." HMAC asserted that the new segregation requirements substantially increase the number of hazard classes to which loading restrictions apply.

Most petitioners urged RSPA to reestablish the existing segregation table in § 177.848 for rail and highway operations. The National Motor Freight Traffic Association, ATA and several carriers suggested that if RSPA retains the revised table, the four-foot separation requirement in paragraph (e)(3) should be deleted. Other petitioners recommended removal of the 10 cm minimum height requirement in paragraph (e)(5)(ii). One petitioner recommended that RSPA revise paragraph (e) to allow palletized loads with "O" and "B" segregation requirements to be transported together with a physical barrier such as a load bar, slip sheet or wooden dunnage between the adjacent materials. However, this proposal was never considered in Docket HM-181 and is beyond the scope of the final rule.

Revised segregation requirements in the final rule are intended to improve transportation safety by imposing appropriate controls over the way certain materials are loaded, especially gases and liquids poisonous by

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inhalation. No distinction is made for materials poisonous by inhalation in the existing segregation table. RSPA adopted the segregation table format in section 15.1.16 of the IMDG Code, but not its content, as ATA contended. The IMDG Code employs different separation distances and storage requirements. The Code states in section 15.2.3.1 that dangerous goods which have to be separated from each other should not be carried in the same cargo transport unit, but the Code does not specifically address prohibited co-loading. RSPA determined to impose more stringent segregation requirements for certain materials shipped by rail or highway because these materials are exposed to greater transportation stresses over longer durations (over-the-road vibration and car handling in rail yards).

In response to petitioner requests, RSPA is revising the tables in paragraph (d) in §§ 174.81 and 177.848 by removing letter "O" requirements for Class 3 liquids co-loaded with 4.1, 4.3 and 5.2 materials; and for Division 2.1 flammable gases co-loaded with 4.2, 4.3, 5.1 and 5.2 materials. RSPA also is revising the tables in §§ 174.81 and 177.848 to permit the co-loading of Class 8 (corrosive) liquids with Division 4.3 materials under the less restrictive conditions specified by the letter "O." The tables in both sections are further revised by removing paragraph (e)(5)(ii) specifying letter "B" requirements and removing the letter "B" from the table. The 10 cm minimum height requirement is not limited to palletized materials, and has been moved to paragraph (e)(3). RSPA emphasizes that, in addition to the four-foot separation distance and 10 cm minimum height indicated by the letter "O" in paragraph (e)(3), any other equivalent means may be employed to assure that, in the event of an incident resulting in leakage of materials from packages, commingling of hazardous materials will not occur.

Part 178: Specifications for Packagings

Section 178.2. Several petitioners asked RSPA to clarify the term "manufacturer" as it is applied to the functions of certifying compliance with performance standards under part 178. HMAC observed that paragraph (b) fails to identify any particular person who is required to perform the marking function. The definition of "manufacturer" in § 171.8 also fails to specifically identify such a person. HMAC added that it is unclear why "marking" should be identified as the sole critical factor in determining the "manufacturer" since the process of creating any packaging also includes its design, fabrication, assembly, testing and may include such other functions as maintenance, reconditioning, repair or preparation for transport. HMAC suggested a new definition of "manufacturer" as any person "who designs, manufactures, fabricates, assembles, marks, maintains, reconditions, repairs, tests or prepares a package . . ." Another petitioner said that "most people encountering the term 'manufacturer' would assume it means the actual manufacturer of the packaging," and recommended that RSPA adopt additional terms as necessary to identify other participants in the packaging certification process.

RSPA agrees that responsibility for certifying compliance with part 178 should be more clearly established. However, RSPA believes identification of specifically responsible persons, as HMAC suggested, should be left to the contractual arrangements made by parties who create, close, and test design types. Accordingly, paragraph (b) is revised by removing the reference to "manufacturer" and paragraph (b)(2) is revised to emphasize that "the person" whose name is included in the certification mark required in § 178.503(a)(8) is to be held responsible for compliance with subparts L and M of part 178. In other words, "the person" (manufacturer, shipper, third-party laboratory, or others) who applies the certification mark containing his name, address or symbol is carrying out the function of certifying that the packaging he sells, distributes or uses complies in every respect with the successfully tested design type. For consistency elsewhere in part 178, RSPA is removing references to the "manufacturer" as being solely responsible for package certification.

Two petitioners asked RSPA to make the notification requirements in paragraph (c) a recommendation and not a requirement. They said mandatory notification requirements will add significant expense in time, documentation and delivery of notification. One petitioner claimed, "Within the drum industry, methods of closure are well known." Requiring manufacturers to notify each person to whom packagings are transferred of design shortfalls is essential in a performance standards system in which eventual users are much more involved in package design.

Notification to users of requirements not met at the time of transfer addresses a gap in the Hazardous Materials Regulations by closing a loop of compliance with parts 178 and 173 for persons who certify packagings and persons who prepare them for transportation. Therefore, paragraph (c) is revised to specify that the packaging manufacturer "or other person certifying compliance with the requirements of this part," and each subsequent packaging distributor, must notify users of what remains to be done to prepare (close) packagings built to certified design types for transportation. For example, a drum user could be notified of the type of gasketing described in the design type test documentation for closing a drum built to the successfully tested design type. A combination packaging user could be notified of the type of tape described in the documentation to close an outer 4G fiberboard box. Notification requirements in paragraph (c) directly relate to the shipper's part 173 responsibility to assure that the integrity of packages constructed or assembled according to successfully tested design types is maintained under normal transportation conditions. Paragraph (c) and § 173.24(d) comprise essential safety initiatives in the final rule and are therefore maintained as requirements.

Section 178.3. Seven petitioners addressed the size and location of package certification markings specified in paragraph (a). Four petitioners recommended removal of marking sizes specified in paragraph (a)(4) to allow greater design flexibility and to be consistent with UN Recommendations which do not suggest specific marking sizes. One petitioner urged RSPA to prohibit the placing of markings on the bottoms of packagings "because it makes it very difficult to verify the markings if containers are heavy."

The marking sizes specified in paragraph (a)(4) are intended to provide necessary standardization in the application of legible markings and are consistent with UN Recommendations suggesting "a size relative to the packaging as to be readily visible." With respect to marking location, RSPA encourages the industry to develop its own set of cost-effective standards. The issues of marking size and location are currently being considered by the UN Subcommittee of Experts and any changes to these requirements will be addressed in future rulemaking. A new paragraph (c) is added to clarify that a packaging may be marked in conformance with more than one specification or standard.

Section 178.503. Five petitioners asked RSPA to add a new paragraph (b) to § 178.503 requiring the permanent embossing of drum certification information. NABADA claimed that the lack of permanent certification markings "will result in the obliteration of all

information about the packaging during the reconditioning process * * * severely limiting the potential for use of that drum again." NABADA said the application of a drum mark that can withstand the reconditioning process "enables reconditioners to readily identify drums for sale after the process is completed. Otherwise, reconditioners would have to retest and recertify each unmarked drum for resale with the material intended to be shipped." NABADA asserted this would complicate the business of reconditioning, selecting and reselling drums, substantially adding to product cost.

RSPA accepts a petition from NABADA that, consistent with Section 9.5.2 of the UN Recommendations, "every reusable packaging liable to undergo a reconditioning process which might obliterate the package markings" should bear certain markings in a permanent form (e.g. embossed). Accordingly, RSPA is revising the introductory paragraph (a) to require that the marks specified in paragraphs (a)(1) through (a)(6) and (a)(9) be made permanent.

Responding to suggestions from several petitioners, RSPA also is revising the introductory paragraph (a) to state that a single marking may be applied in one line or in multiple lines if the prescribed sequence is maintained. Paragraph (a) also is revised to recommend use of slash marks (as indicated by examples in paragraph (d)) to present information contained in the certification mark.

Revision of various elements of the package certification mark specified in paragraph (a) was requested by nine petitioners. One petitioner suggested that the introductory notes contained in section 9.5 of the UN Recommendations, defining the purposes and limitations of the certification mark representing a successfully tested packaging design type, be incorporated into paragraph (a). However, RSPA believes the intent of the UN notes is already expressed in part 178 and in §§ 173.24 and 173.24a. Therefore, these notes are not included in § 178.503.

In response to petitioner requests, RSPA is making several revisions to paragraph (a). RSPA is revising introductory paragraph (a) to clarify that marking in a "durable manner" may require some permanent markings. A single marking may be applied in one line or in multiple lines if the prescribed sequence is maintained. Paragraph (a) also is revised to recommend use of slash marks (as indicated by examples in paragraph (d)) to present information contained in the certification mark.

One petitioner claimed that by requiring the marked test pressure to be "rounded off" to the nearest 10 kPa, a packaging could show a test pressure rating that is greater than its performance ability. Accordingly, RSPA is revising paragraph (a)(5)(i) to require the test pressure marked in kilopascals be "rounded down" to the nearest 10 kPa.

Paragraph (a)(7) is revised to more clearly indicate the "state authorizing allocation of the mark" and that the letters "USA" indicate that the packaging is manufactured and marked in the U.S. in compliance with the final rule. Packages marked "USA" must be manufactured in the US. Paragraph (a)(8) is revised to specify that the name and address or symbol of the "person" (i.e., manufacturer, approval agency or others) who applies the mark certifies compliance with subparts L and M of part 178. This reinforces the intent in the final rule to hold the person who certifies a design type responsible for fully complying with part 178 requirements.

Several petitioners asked RSPA to align paragraph (a)(9) with the marking requirements for selective testing Variation II in the Competent Authority approval issued on February 21, 1991 (incorporated into § 178.601(g)(2)(viii) in corrections to the final rule). Accordingly, paragraph (a)(9) is removed and paragraph (a)(2) revised to include the following sentence, "The letter 'V' must follow the packaging identification code on packagings tested in accordance with § 178.601(g)(2); for example, "4GV."

Paragraph (a)(10) is redesignated as (a)(9) and revised to require that the package thickness marking also be applied to packages intended to be reconditioned. One petitioner recommended revising this paragraph to "reflect important differences between head and body thicknesses," and to express "the nominal thickness of material construction used in the heads and body rounded down to the nearest 0.1 mm." As stated in the preamble to the final rule, RSPA is relying on the actual marked thickness of the package to implement authorized reuse requirements in § 173.28. Therefore, the mark specified in redesignated paragraph (a)(9) expresses a stated minimum rather than a permitted range of thicknesses. An example is added to show how the minimum thickness may be displayed when head and body thicknesses are different.

RSPA is adding a new paragraph (a)(10) recommending, but not requiring (because it is not suggested by the UN), a mark indicating the rated capacity of packagings intended to carry liquids.

NABADA claimed that the marking requirement in paragraph (c) will result in dual marking by the reconditioner who reconditions a DOT specification package (marked near the top) that also carries a UN certification mark (usually marked near the bottom). RSPA should remove the phrase "shall be marked by the reconditioner near the marks required in paragraphs (a) (1) through (6)," NABADA said, because it is inconsistent with the existing requirement in § 173.28 to place the reconditioner's mark "within 10 inches of the head." International standards do not specify exact manufacturer or reconditioner certification marking locations, thus, RSPA is not requiring them in paragraph (c). RSPA's intent in paragraph (c) is to require a reconditioner to place his mark "near" the manufacturer's original UN mark for consistency and to be readily visible in relation to the first six performance rating and structural information elements of the manufacturer's mark.

Sections 178.504, 178.505 and 178.506. For consistency with UN Recommendations and the IMDG Code, paragraphs (b)(4), (b)(3) and (b)(3) of each of these sections are revised to recommend, but not require, that steel, aluminum and other metal drums "have at least two expanding rolling hoops." Paragraphs (b)(5), (b)(4) and (b)(4) of these sections also are revised to recommend, but not require, that flanges be mechanically seamed or welded to steel, aluminum and other metal drum bodies.

Sections 178.508, 178.509 and 178.522. One petitioner suggested that these sections be revised to specify maximum total quantity limits for fiber, plastic and composite packagings with inner plastic receptacles. This petition is declined because, in the final rule, RSPA is not specifying non-bulk packaging outage requirements.

Section 178.521. Three petitioners requested that standards in § 178.520(b)(3) authorizing a range of inner-lining materials for water-resistant textile bags (5L3) be applied also to standards for multi-wall water-resistant paper bags (5M2) in § 178.521 (b)(2). Another petitioner claimed that 5M2 standards in paragraph (b)(2) place "a limitation on [design] flexibility and technical innovation of the bag by requiring restrictive placement of water-resistant plies." However, RSPA has insufficient justification at this time to revise UN 5M2 standards. RSPA may consider addressing this issue at a

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future time if provided with additional information.

Section 178.601. Revisions to general testing requirements in § 178.601 drew a substantial number of petitions for reconsideration of the final rule. HMAC urged RSPA not to refer to prescribed subpart M tests in paragraph (a) as "minimum requirements." HMAC claimed that the term "minimum requirements" invites tort litigation plaintiffs "to assert that mere compliance with the precise requirements is 'minimal', less than safe and therefore, constitutes negligence."

RSPA disagrees with the contention that an assertion of "minimum" standards can be construed as a reduction of transportation safety. Packaging requirements in 49 CFR have always been considered "minimum" in that they are designed to ensure an adequate level of safety without imposing excessive regulation. In the final rule, RSPA is not departing from this principle in stating that the tests prescribed in subpart M represent "minimum" performance levels. This means packages expected to carry hazardous materials in "normal" distribution systems must be capable of passing at least the "minimum" test procedures specified in subpart M. To ensure package capability in any given distribution system, it may be desirable to test at higher levels.

Several petitioners were troubled by the meaning of the term "identical" in the definition of a "different packaging" in paragraph (c)(4), and asked that the term be removed. In the preamble to Docket HM–181, RSPA stated that performance tests may be conducted at a single facility to qualify all "identical" packagings produced by the same manufacturer at multiple locations. Although one petitioner agreed with this policy, he said there is little guidance in paragraph (c)(4) regarding the meaning of "identical". The petitioner asked, "Even if the design specifications are the same, even if molds, dies and materials of construction are uniform, can we meet an engineering-derived definition of identical packages" produced at multiple locations?" NABADA interpreted "identical" in paragraph (c)(4) to mean that it is RSPA's intent to demand design-type requalification retests "even if no change in the designer's definition of a design type has been made because the second package is 'not identical to' the first design."

By 'identical", RSPA is not implying that packagings must be produced to the exactitude of design types containing precisely established engineering specifications. In paragraph (c)(4), RSPA intends "identical" to mean a production unit that is alike in every respect with the successfully tested design-type described in detail in the test documentation required in paragraph (k) to be kept by the person who certifies the tested design type. This documentation should incorporate details of "design, package size, material and thickness, manner of construction" and closure recommended by the UN in its definition of design-type. RSPA believes that such documentation should constitute a sufficient level of detail to ensure compliance with Subpart M requirements. If a packaging is being produced by the same manufacturer at multiple sites, the test documentation should be maintained and complied with at those locations.

Several petitioners urged RSPA to revise the design requalification test requirements in paragraph (e) regarding retest intervals. One petitioner requested extending the retest interval for "expensive" stainless steel, nickel or monel packages from one to three years. Another petitioner, claiming low annual production rates, suggested a retest frequency based on the number of units produced. The Aerospace Industries Association (AIA) suggested following the 24-month interval for requalifying combination package design types by subsequent retest intervals of at least 36 months. The Department of Defense (DOD) contended that retest frequency requirements in paragraph (e) "present a significant problem for DOD munitions packaging." DOD said it conducts package production quality control by the use of "specifications, configuration-controlled drawings and/or special packaging instructions (SPIs)" and this procedure is disturbed by the recurring retest intervals imposed by the final rule.

Given the number of locations that may produce packaging in accordance with a given design-type, RSPA generally considers the retest intervals to be the minimum to ensure design-type requalification and will retain them in paragraph (e). However, RSPA agrees that, if fully justified by data showing the need to modify requalification procedures, special circumstances may warrant some modification. Thus RSPA is revising paragraph (e) to allow changes in retest frequency subject to the approval on a case-by-case basis by the Associate Administrator of Hazardous Materials Safety.

Several petitioners, including COSTHA, requested that selective testing in accordance with Variations III, IV and V published in the February 21, 1991 **Federal Register** (56 FR 7076) be incorporated into paragraph (g). COSTHA noted, "There is no logical reason from a safety standpoint to preclude application of (Variations III, IV and V) from the selective testing of packaginga intended for use solely in domestic transport under Docket HM–181." RSPA agrees and therefore is revising paragraph (g) by adding new paragraphs (g)(3), (Variation 3) allowing variations in the external dimensions of single or composite packagings. (g)(4) (Variation 4) allowing variations in the external dimensions of the outer packagings of combination packagings and (g)(5) (Variation 5) allowing variations in the use of closure devices and gasketings. RSPA also is revising paragraph (c)(4) to add a new paragraph (v) to include "packaging which differ only in their lesser design height" in the definition of "design type." The provision was inadvertently omitted from the final rule.

RSPA is revising paragraph (g)(2)(viii) (Variation 2) to allow retention of the full weight of the outer packaging in the marked gross mass of the combination package, and to require the letter "V" to be marked instead of "SP".

The Institute of Makers of Explosives (IME) asked RSPA to revise paragraph (g)(3) (Variation 3) to allow differences in volumetric capacity linked with changes in the density of materials without design requalification of single and composite packagings. IME claimed that "the volume required to package 50 pounds of explosives will vary with the density of the material being packed. [Yet,] in variation 3, RSPA ties volumetric factors (length and width) to mass with no consideration for density." However, to be consistent with selective testing variations already agreed to by the UN, and that are incorporated into paragraph (g), RSPA considers additional variations beyond the scope of the final rule. With sufficient justification, additional selective testing variations may be considered in future rulemakings.

One petitioner urged RSPA to limit substitution of different inner packagings which have not been tested, to surface transportation only. The petitioner said allowing design changes without further testing for packagings intended for air transport that contain materials in Packing Groups I and II "poses an unacceptable degree of risk in this sensitive shipping environment."

For air transport, RSPA believes an adequate level of safety would be achieved if different packagings authorized under all the variations in paragraph (g) meet requirements in § 173.27(c)(1) and (2). Therefore, RSPA is revising the introduction to paragraph (g) to include those requirements.

One petitioner questioned the application of selective testing requirements to § 173.27(c)(3)(i) which authorizes use of a supplementary packaging that meets the pressure requirement for air shipment of liquids when the inner packaging does not itself meet the pressure capability standard in § 173.27(c)(2)(i) (eg., a glass bottle inside a steel drum where the drum meets the pressure requirement). The petitioner assumed that if the supplementary packaging can be considered an inner packaging with respect to selective testing variations in paragraph (g), then any variation of inner receptacles within the supplementary packaging would not be a factor in determining whether or not further testing of the package is required.

A supplementary package could be considered an inner packaging, but RSPA does not agree that this would apply in all cases. It may not be appropriate in many circumstances to consider changes of inner receptacles within a supplementary packaging as being a minor design variation which would not require testing under paragraph (g). Waiving further design testing in these cases would require approval by the Associate Administrator for Hazardous Materials Safety.

Three petitioners urged RSPA to relax requirements in paragraph (k) that design qualification and periodic test records be kept at each location where packagings are manufactured. HMAC and CPC asserted that this requirement "would be burdensome to the chemical packaging industry without providing any additional safety." They said record retention would be especially burdensome to shippers who assemble and fill combination packaging design types at multiple plant locations.

As mentioned above, RSPA believes that maintaining design qualification test documentation at every location where packagings are produced to a successfully tested design type provides essential quality control. In other words, test documentation maintained at every manufacturing site ensures that, on inspection, each production unit conforms to the originally tested design type.

Therefore, RSPA is maintaining test documentation requirements in paragraph (k) for design qualification and periodic retesting. RSPA agrees with one petitioner that test documentation could be contained in a central computer system accessed by all locations where packagings are produced.

Section 178.602. Several petitioners asked RSPA to provide a clearer standard of package "capacity" in paragraph (b), referring to the fill quantity necessary to conduct testing with the product. Accordingly, RSPA is revising paragraph (b) to indicate a required fillable level of 95 percent of "total" capacity for liquids and 98 percent of total capacity for solids.

Six petitioners claimed that the two-percent relative humidity deviation specified in paragraph (d) for the preparation of fiberboard packagings for testing is impractical. One petitioner said this requirement may be obtainable, "but it places a costly burden on a test facility to acquire a precision humidity chamber capable of meeting the two-percent variation." Another petitioner asserted that the variation now required "is unnecessarily restrictive when one considers the dynamic environments in which these packages are transported." Several petitioners asked RSPA to either delete the two-percent variation over the 24-hour conditioning period altogether or require conditioning in an atmosphere of 48 percent relative humidity minimum and a temperature range of 18° C to 29° C.

FDTC suggested that RSPA allow short term relative humidity fluctuations of up to five percent contained in its proposal to the UN Committee of Experts and since adopted by the UN. Consequently, RSPA is revising paragraph (d) to allow fluctuations in relative humidity of plus or minus five percent as long as the readings average plus or minus two percent over the entire 24-hour conditioning period. Any other revision would be inconsistent with the UN Recommendations.

A petitioner asked RSPA to revise paragraph (e) allowing open head drums to undergo production leakproofness testing without first installing removable heads. The petitioner pointed out that during production leakproofness testing, the open end of a drum is sealed as part of the test procedure. Requiring a drum to be tested with the lid in place "would be very time consuming" and offer no better test results. RSPA believes that paragraph 178.604(c)(1) meant to allow for testing packagings without removable heads in place. Therefore, RSPA is modifying paragraph (e) to read, "Except as otherwise provided, each packaging must be closed . . ." and clarifying paragraph 178.604(c)(1) by adding a new sentence which reads, "Removable heads need not be installed during production testing."

Sections 178.603 and 178.605. Responding to a petitioner's request, RSPA is clarifying introductory paragraphs in §§ 178.603 and 178.605 to state that the drop and hydrostatic tests must be conducted for package design type qualification and that retests are to be performed as specified in § 178.601(e).

Section 178.603. To reduce drop testing costs, one petitioner urged RSPA to revise paragraph (a) to allow reuse of samples for the four orientations of the design qualification test which require up to five samples for each drop. He claimed that reuse of a sample package "would actually be a more severe test of the package." The object in the final rule with respect to design requalification is to obtain authentic results by using a minimal but sufficient sampling of packagings out of the production line for each drop orientation.

Other petitioners asked RSPA to extend the reduced sample exception in paragraph (b) for the periodic retesting of stainless steel, nickel or monel to aluminum and steel drums. They said this revision should apply as well to reduced sample exceptions in §§ 178.604(b), 178.605(b), 178.606(b) and 178.608(b). Another petitioner asked RSPA to revise paragraph (b) to allow use of two combination packaging samples for the second and subsequent retests. RSPA is declining to adopt these petitions to extend the general exception, but will consider allowing additional test sample reductions on a case-by-case basis subject to the approval of the Associate Administrator for Hazardous Materials Safety.

RSPA believes there is not sufficient justification for adopting revisions to paragraph (f) for passing the drop test suggested by several petitioners. However, for clarification, RSPA is adopting the Military Traffic Management Command's (MTMC) request to revise paragraph (f)(6) as follows, "No rupture is permitted in packagings for goods in Class 1 which would permit spillage of loose explosive substances or articles from the outer packaging."

One petitioner suggested revising paragraph (a) to align with section 9.7.3.1 of the UN Recommendations to require for other than flat drops, that the center of gravity be vertically over the point of impact. RSPA believes that such a method would be difficult to achieve with a test sample filled to 98% of capacity with the material it is intended to contain. For other than flat drops, RSPA has always maintained that drops oriented to strike diagonally on edge are most effective.

Section 178.604. One petitioner urged RSPA to except high-integrity drums used in controlled distribution systems from leakproofness test requirements altogether. However, this petitioner

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presented no evidence that high-integrity drums, even when utilized in controlled distribution, are subject to any less transportation stress which the minimum test standards prescribed in Subpart M are designed to address. Furthermore, high-integrity drums often carry the most hazardous materials to which appropriate test standards must apply.

RSPA is accepting petitions requesting that the three leakproofness test methods described in appendix B to part 178 be authorized for design qualification together with the full submersion test specified in paragraph (d). Therefore, the introduction to appendix B is revised to state that "the following leakproofness test methods are authorized." The phrase "for other than the original design qualification test" is removed.

The required 30-second test duration to detect leakage from packagings undergoing the helium and pressure differential tests described in paragraphs (1) and (2) of appendix B drew substantial petitioner opposition. Eight petitioners urged RSPA to delete references to the 30-second hold in both tests. They said leakproof testing techniques should not be limited to an arbitrary test duration standard. Instead, emphasis should be placed on the manufacturer's responsibility to adequately perform the leakproof test regardless of test duration.

PDI had recommended the 30-second test duration in comments to Docket HM-181 for the much slower plastic drum production line of the mid-1980s. In its petition, however, PDI said that over the past five years, production line procedures, including the way packaging is leakproof tested, have become more efficient. PDI asserted that the 30-second hold for both tests has "become overly restrictive" and that it would inhibit manufacturers from improving package testing procedures.

Several petitioners claimed that new technical developments in helium testing have rendered the 30-second hold impractical. One petitioner said the 30-second duration requirement for the helium test should be withdrawn because the test equipment he uses effectively examines a drum in about three and a half seconds. Another petitioner uses technology geared to container type, size and the operator's own production pace and requirements. He said the time it takes to effectively conduct a helium test by using this newer technology "will vary, but it certainly does not require 30 seconds to separate minute differences in the pressure." Another petitioner said the 30-second requirement "would impose a production rate of about 100 drums per hour whereas most production rates are geared for 600 or more drums per hour."

The Steel Shipping Container Institute (SSCI) said the 30-second hold requirement for the helium and pressure differential test "is not feasible or consistent with manufacturing processes for steel drums," and that steel pails have been leakproof tested for years in much less than 30 seconds per unit. SSCI pointed out that the UN does not recommend, nor does ICAO or the IMDG Code specify, leakproofness test duration.

RSPA believes that the full submersion leakproofness test prescribed in paragraph (d) must be conducted "for a period of time sufficient to pressurize the interior of the packaging to the specified air pressure" so that legitimate test results occur. The principle of "sufficient duration" is meant to apply as well to the approved alternative tests in appendix B. RSPA will maintain this principle in the final rule. However, RSPA acknowledges that petitioners make a sufficiently good case that leakproofness test methods yielding good results from test durations of less than five seconds have developed for both plastic and steel drum production lines. Accordingly, RSPA is revising paragraphs (1) and (2) of appendix B to remove references to 30 seconds. Therefore, a packaging passes the helium and pressure differential tests if there is no leakage over a sufficient duration to determine leakage of helium or change in pressure differential.

In response to petitioners who claimed that evacuation of a helium testing chamber down to a pressure of 0 kPa is not feasible or consistent with existing practices, RSPA is revising paragraph (1) to require evacuating a test chamber down to 5 kPa or less. Five petitioners asserted that the so-called production line "T-zone test", involving examination of one drum seam under pressure coupled with chime cuts, is at least as effective as testing the entire drum submerged under water as prescribed in paragraph (d). As a standard production line process, SSCI said T-zone tests employ internal air pressures of up to 15 psi coupled with a visual inspection of chime cuts. By contrast, SSCI noted that RSPA has adopted UN recommendations establishing much lower air pressure applications for the full submersion test.

Several SSCI member companies supplemented SSCI's petition to add the T-zone test to the authorized test alternatives in appendix B with T-zone equivalency test data. They compared T-zone test results with those obtained from "submerged under water" and "solution over [all] seams" procedures. To measure equivalency, SSCI said one drum was removed from the production line each hour after being tested by the T-zone method and tested by fully submerging it under water or applying a solution of soap suds over all seams while internal air pressure was applied. One company tested 138 samples this way over 26 production days with no leaks detected. Another company found no leaks among 387 test samples over 52 production days. A third company said that out of 400 drums tested, only four leaking drums were rejected after full submersion testing after having first passed the T-zone test. For all the drums this company sold in 1990, SSCI said that less than one out of every thousand was claimed to be leaking after having left the manufacturing premises. This rate of drum failure is supported by RSPA's HMIS incident reporting data. For example, out of 6,610 incidents involving DOT 17C, 17E, 17F and 17H drums reported to RSPA between January 1981 and January 1991, 185 weld/seam failures were recorded, or about 18 such failures a year.

One petitioner suggested permitting a T-zone test which examines "the entire weld and both seams over a distance of at least three inches on either side of the weld." The petitioner claims this test "should have a reliability of more than 95 percent" relative to the full submersion test specified in paragraph (d). T-zone tests now conducted under approval (eg., SA-811002) involve application of soap solution "over the entire side seam and a distance of not less than eight inches on each side of the side seam along the side chime seam(s)."

Prior to RSPA's jurisdiction over the authorization of hazardous materials packaging, the Association of American Railroads Bureau of Explosives granted drum manufacturers approvals to employ the T-zone test. These approvals have been continued for over 10 years. However, the HMR have always specified production line leakproof testing by applying air pressure to drums restrained under water or with solution over all seams. For example, this requirement is contained in §§ 178.115-13, 178.116-13, 178.117-14, 178.118-14 for DOT specification 17 steel drums and in §§ 178.80-14, 178.81-14, 178.82-14, 178.83-15 and 178.88-13 for DOT specification 5 steel drums. Although drum manufacturers have shown the T-zone test to be a fairly reliable indicator of drum failures, they have not adequately shown this test to be an "equally effective" leakproofness testing method. RSPA notes that companies that conducted the equivalency tests did not evaluate the effectiveness of the T-zone test by using drums that were known to leak. This procedure may have yielded less favorable results.

However, in view of the time it takes to conduct the full submersion leakproofness test in high-volume production lines, and based on data submitted by petitioners, RSPA agrees that a partial solution over seams leakproofness test, with chime cuts, conducted at currently applied test pressure levels (i.e., not less than 7 psi) is an acceptable production line procedure for detecting leaks. Therefore, RSPA is revising Appendix B to permit a production line solution over partial seams leakproofness test for drums intended to be used for all three packing groups, provided packagings are restrained while an internal air pressure of not less than 7 psi is applied. As required under the current approval, packagings must be coated with soap solution over the entire side seam and a distance of not less than eight inches on each side of the side seam along the chime seam(s). Chime cuts must be made on the initial drum at the beginning of each production run and on the initial drum after any adjustment to the chime seamer.

Proposed addition to appendix B of an alcohol spray test for fiber drums and use of a "sensitive commercial pressure gauge" are declined because petitioners did not submit sufficient information to justify taking these actions.

HMAC asked RSPA to revise paragraph (d) to require the use of an inert gas detector to detect leakage in cases where full water submersion would affect the integrity of the packaging. However, RSPA believes the alternatives to full water submersion now authorized for design qualification and production testing should adequately address this problem without any further revision of paragraph (d).

Section 178.606. RSPA is adding a provision to paragraph (b) to permit, under certain conditions, stack testing of the outer packagings of combination packagings without the inner packagings.

Two petitioners asked RSPA to extend the dynamic compression test authorized for periodic retesting in paragraph (c)(2)(ii) to the design qualification stacking test prescribed in paragraph (c). These petitions are declined because, in this final rule, RSPA has determined not to go beyond UN recommendations in mandating any design-type test not contained in chapter 9. Alternative design-type tests yielding equivalent results may be used if approved by the Associate Administrator for Hazardous Materials Safety.

A recommendation by MTMC to add alternative design qualification tests for plastic drums and jerricans, including shorter duration tests in varying temperature or pressure is declined for lack of adequate justification. RSPA is adopting HMAC's suggested revised formula for determining the application of dynamic compression in retesting packagings intended for both liquids and solids. The revised formula takes into account the partial filling of packagings for testing (98% for liquids, 95% for solids).

Section 178.606. Four petitioners recommended removal of the vibration test standard because vibration testing is not now a requirement under international standards. For reasons stated under § 173.24a(a)(5), RSPA is maintaining this capability standard. RSPA is accepting CPC's petition to modify the vibration test method to include the use of rotary motion tables producing the same peak-to-peak vertical double amplitude. CPC said these machines constitute about 95 percent of those available.

RSPA also is revising criteria in paragraph (c) for passing the test by adding the following language, "No test sample should show any deterioration which could adversely affect transportation safety or any distortion liable to reduce packaging strength." This revision is contained in the U.S. proposal to add the vibration test to chapter 9 of the UN Recommendations. It extends to vibration testing, RSPA's intent in Docket HM-181 to emphasize maintenance of package structural integrity during transportation by aligning criteria for passing the vibration test with criteria in § 178.603(f) for passing the drop test and § 178.606(d) for passing the stacking test. It also more closely aligns the vibration capability standard with general requirements for packagings in § 173.24.

Part 179: Specifications for Tank Cars

Section 179.101-1. As requested by one petitioner, the "Insulation" entry requirements for 112A200W, 112A340W, 112A500W, 114A340W, and 114A400W tank car tanks are changed to read "[4] optional".

Section 179.105-7. In response to several petitions, RSPA is amending this section by adding the word "insulated" before "tank car tank" and correcting the reference from section "A8.01" of appendix A of the AAR Specifications for Tank Cars" to "A8.00." In addition, RSPA is allowing the use of smaller pressure relief devices for all materials poisonous by inhalation, rather than limiting this provision to Division 2.3 materials.

Section 179.200-18. Several petitioners suggested a longer implementation period for the stencilling requirements in paragraph (b)(4). RSPA disagrees. These stencils may be applied during the loading process.

Federal Preemption Under the HMTA

Section 105(a)(4) of the HMTA, as amended by the HMTUSA, preempts any non-Federal (i.e., State, political subdivision, or Indian tribe) law or regulation concerning certain "covered subjects" unless the non-Federal requirement is "substantively the same" as the Federal law or regulation on that subject. The "covered subjects" are:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

49 App. U.S.C. 1804(a)(4) (A) and (B)

In a February 28, 1991 final rule (56 FR 8616), RSPA added this new preemption standard to § 107.202 to mirror the statute. Section 105(a)(5) of the HMTA, as amended by the HMTUSA, provides that if DOT issues a regulation concerning any of the covered subjects after the date of enactment of the HMTUSA (November 16, 1990), DOT must determine and publish in the **Federal Register** the effective date of the Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance and not later than two years after the date of issuance.

To the extent that the requirements of Docket HM-181 involve covered subjects, States, political subdivisions, or Indian tribes may only establish, maintain, and enforce laws, regulations, or other requirements concerning such subjects if they are substantively the

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same as the requirements in Docket HM–181. RSPA has determined that the effective date of Federal preemption for these requirements will be October 1, 1993.

Rulemaking Analyses and Notices

A. Executive Order 12291

This final rule has been reviewed under the criteria specified in § 1(b) of Executive Order 12291 and is determined not to be a major rule. However, it is a significant rule under the regulatory procedures of the Department of Transportation (44 FR 11034). This final rule does not impose additional requirements and, in fact, provides relief in some areas. The net result is that costs imposed under the final rule published in the **Federal Register** on December 21, 1990 are reduced, but without a reduction in safety [55 FR 52402]. The original regulatory evaluation of the final rule was reexamined but was not modified because the changes made under this rule provide limited relief and thus will result in minimal economic impact on industry.

B. Executive Order 12612

This action has been analyzed in accordance with Executive Order 12612 ("Federalism"). The HMTA contains an express preemption provision which RSPA is implementing at the minimum level necessary to achieve the objectives of the statute. Therefore, preparation of a Federalism Assessment is not warranted.

C. Impact on Small Entities

Based on limited information concerning size and nature of entities likely to be affected by this rule, I certify this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A regulatory flexibility analysis is available for review in the docket.

D. Paperwork Reduction Act

This amendment imposes no changes to the information collection and recordkeeping requirements contained in the December 21, 1990 final rule, which was approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35.

E. Regulatory Information Number (RIN)

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN numbers contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

F. National Environmental Policy Act

This final rule has been reviewed under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and does not require an environmental impact statement.

List of Subjects

49 CFR Part 106

Administrative practice and procedure, Hazardous materials transportation.

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR chapter I is amended as follows:

PART 106—RULEMAKING PROCEDURES

1. The authority citation for part 106 continues to read as follows:

Authority: 49 App. U.S.C. 1472(h)(1); 49 App. U.S.C. 1672; 49 App. U.S.C. 1803, 1804, 1808; 49 App. U.S.C. 1653, 1657(e); 49 App. U.S.C. 2002.

§ 106.3 [Amended]

2. In § 106.3, in paragraph (a) the wording "Director, Office of Hazardous Materials Transportation" is removed and replaced with "Associate Administrator for Hazardous Materials Safety".

Appendix A [Amended]

3. In part 106, appendix A, in paragraph (a), the wording "Director, Office of Hazardous Materials Transportation" is removed and replaced with "Associate Administrator for Hazardous Materials Safety".

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

4. The authority citation for part 107 continues to read as follows:

Authority: 49 App. U.S.C. 1421(c); 49 App. U.S.C. 1802, 1806, 1808, 1811; 49 CFR 1.45 and 1.53 and app. A of part 1, Public Law 89–670 (49 U.S.C. 1653(d), 1655).

§ 107.1 [Amended]

5. In § 107.1, in paragraph (a), the wording "Office of Hazardous Materials Transportation" is removed and replaced with "Associate Administrator for Hazardous Materials Safety".

6. In § 107.215, paragraphs (b)(6), (b)(7), and (b)(8) are revised to read as follows:

§ 107.215 Application.

* * * * * *

(b) * * *

(6) State why the applicant believes the State, political subdivision or Indian tribe requirements affords an equal or greater level of protection to the public than is afforded by the requirements of the Act or the regulations issued under the Act;

(7) State why the applicant believes the State, political subdivision or Indian tribe requirement does not unreasonably burden commerce; and

(8) Specify what steps the State, political subdivision or Indian tribe is taking to administer and enforce effectively its inconsistent requirement.

§ 107.502 [Amended]

7. In § 107.502, in paragraph (d), the wording "Office of Hazardous Materials Transportation" is removed and replaced with "Associate Administrator for Hazardous Materials Safety".

Subpart G [Removed]

8. In part 107, subpart G, consisting of §§ 107.601 and 107.603, is removed.

§§ 107.3 and 107.402 [Amended]

9. In addition to the amendments set forth above, in §§ 107.3 and 107.402(a), the wording "Director, Office of Hazardous Materials Transportation" is removed and replaced with "Associate Administrator for Hazardous Materials Safety" each place it appears.

§§ 107.401, 107.402, 107.403, 107.404, 107.405 [Amended]

10. In addition to the amendments set forth above, part 107 is amended by removing the wording "Director, OHMT" and replacing it with "Associate Administrator for Hazardous Materials Safety" in the following sections:

(a) § 107.401(b)
(b) § 107.402(b)(8)
(c) § 107.402(c)
(d) § 107.403(a)
(e) § 107.403(b)
(f) § 107.404(a)(3)
(g) § 107.404(b)
(h) § 107.405(a)
(i) § 107.405(b)

§ 107.3 [Amended]

11. In addition to the amendments set forth above, in § 107.3, the definition "OHMT" is removed.

§ 107.317 [Amended]

11a. In addition to the amendments set forth above, in § 107.317(c), the wording "OHMT" is removed and replaced with "Associate Administrator for Hazardous Materials Safety".

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

12. The authority citation for part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, 1818; 49 CFR Part 1.

§ 171.3 [Amended]

13. In § 171.3, in Note 1, in the first sentence, the word "that" is revised to read "to".

§ 171.4 [Removed and Reserved]

14. Section 171.4 is removed and reserved.

§ 171.5 [Removed and Reserved]

15. Section 171.5 is removed and reserved.

16. Section 171.6 is revised to read as follows:

§ 171.6 Control numbers under the Paperwork Reduction Act.

(a) *Purpose and scope.* This section collects and displays the control numbers assigned to the HMR collections of information by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. This section complies with the requirements of 5 CFR 1320.7(f), 1320.12, 1320.13 and 1320.14 (OMB regulations implementing the Paperwork Reduction Act of 1980) for the display of control numbers assigned by OMB to collections of information of the HMR.

(b) *OMB control numbers.* The table in paragraph (b)(2) of this section sets forth the control numbers assigned to collection of information in the HMR by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980.

(1) Column 1 lists the OMB control number assigned to the HMR collections of information. Column 2 contains the Report Title of the approved collection of information. Column 3 lists the part(s) or section(s) in 49 CFR identified or described in the collection of information.

(2) Table.

Current OMB control No.	Title	Title 49 CFR part or section where identified and described
2137–0014	Cargo Tank Specification Requirements.	§§ 107.503, 178.320, 178.337, 178.338, 178.345, 180.417, 180.409.
2137–0018	Portable Tank Inspection and Testing.	§§ 173.24, 173.32, 173.32a, 173.32b, 173.32d
2137–0022	Recordkeeping and Information Collection for Cylinders.	§§ 173.34, 173.303(d)
2137–0034	Hazardous Material Shipping Papers.	Part 172, §§ 172.7(a)(1), 173.22(a)(1), 173.56(b)(1), (d)(1), (e)(2), 173.150(f)(3)(i), 174.10(c), 174.12, 174.25, 174.26(c), 174.114, 175.30, 175.35, 175.703, 176.9, 176.24, 176.27, 176.30, 176.31, 176.36, 176.89, 176.90, 176.95.
2137–0039	Hazardous Materials Incident Report.	§§ 171.15, 171.16.
2137–0051	Rulemaking and Exemption Petitions.	Part 107, Subpart B, §§ 106.31, 107.5, 107.7, 107.103(b)(11), (d).
2137–0510	RAM Transportation Requirements.	§§ 173.22(c), (d), 173.417(a)(5), (b)(3), (4), 173.471(a), 471(d), (f), 173.472, 173.476(a), 173.416(b), 173.473(a), 173.476(b), 173.473(d), (e), 173.478(a), 173.417(b)(4), 173.477, 173.478, 173.415(a), 173.457(b), 173.414(d), 177.825(a), (d).
2137–0542	Cryogenic Liquids Requirements.	§§ 177.816, 177.818, 177.840(h), 173.33(d)(1)(ii).

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Current OMB control No.	Title	Title 49 CFR part or section where identified and described
2137–0557	Approvals for Hazardous Materials.	§§ 107.402, 107.404, 107.300a, 173.300b, 173.51(a), (b)(1), (2), (4), (c), (f), (g), (i), (j)(3), 173.63(c), 173.171(a), (c), 173.180(a), 173.340(a), (b), (c)(4), 173.336, 172.102(c)(B69), 173.21, 173.159(f), 173.3a, 173.4(a)(11), 173.24(e)(3)(iii), 173.128(c)(4), 173.225(b)(4), (c), 173.245(b), 173.334(d), 173.7, 173.806, 176.340, 173.305, 173.315, 173.319, 173.334, 173.185(a)(h)(1), (2), (3)(ii), 173.214, 178.601(g), 178.606(c), 178.608(b)(5), 179.14(b), 172.101(k)(2)(3).
2137–0559	Rail Carriers and Tank Car Tank Requirements.	§§ 173.31(a)(4), 173.31(c)(8), (d), 173.31(d)(4), Table Footnote (l), 173.332(d), 173.336(b)(4), 173.366(a), 173.273(a)(4), 173.247(a)(14), 173.10, 174.9, 174.20, 174.50, 174.61(c), 174.63(d)(1), (2), 174.81 Table Note b, 177.8484(a) Table Note b, 174.114(a), 174.104(c), (e), (f).
2137–0572	Testing Requirements for Packaging.	§§ 178.601(l), 178.0–2(c).
2137–0575	Bulk Packaging Marking Requirements.	§§ 172.332, 172.336.
2137–0580	Emergency Response Communication Standards.	Part 172, Subpart G.

§ 171.7 [Amended]

17. In § 171.7, the following changes are made:

a. In the paragraph (a) heading, the word "*incorporation*" is revised to read "*incorporated*".

b. In paragraph (a)(3), in the table, for the entry for "*General Services Administration*, Federal Specification RR–C–901C", the references "172.302; 172.304" are removed and replaced with "173.302; 173.304; 173.336".

c. In paragraph (b), in the table, for the entry "Emergency Handling of Hazardous Materials in Surface Transportation", the year "1987" is removed and replaced with "1989".

18. In § 171.8, the following definitions are added, revised, or removed, as indicated, in appropriate alphabetical order:

§ 171.8 Definitions and abbreviations.

(Add:)

* * * * *

Hazard zone means one of four levels of hazard (Hazard Zones A through D) assigned to gases, as specified in § 173.116(a) of this subchapter, and one of two levels of hazards (Hazard Zones A and B) assigned to liquids that are poisonous by inhalation, as specified in § 173.133(a) of this subchapter. A hazard zone is based on the LC50 value for acute inhalation toxicity of gases and vapors, as specified in § 173.133(a).

Infectious substance (etiologic agent). See § 173.134 of this subchapter.

* * * * *

Magnetic material. See § 173.21(d) of this subchapter.

* * * * *

Material poisonous by inhalation means:

(1) A gas meeting the defining criteria in § 173.115(c) of this subchapter and assigned to Hazard Zone A, B, C, or D in accordance with § 173.116(a) of this subchapter;

(2) A liquid (other than as a mist) meeting the defining criteria in § 173.132(a)(1)(iii) of this subchapter and assigned to Hazard Zone A or B in accordance with § 173.133(a) of this subchapter; or

(3) Any material identified as an inhalation hazard by a special provision in Column 7 of the § 172.101 Table.

* * * * *

Oxidizer. See § 173.28 of this subchapter.

* * * * *

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, or any other territory or possession of the United States designated by the Secretary.

* * * * *

(Revise:)

* * * * *

Bulk packaging means a packaging, other than a vessel or a barge, including a transport vehicle or freight container, in which hazardous materials are loaded with no intermediate form of containment and which has:

(1) A maximum capacity greater than 450 L (119 gallons) as a receptacle for a liquid;

(2) A maximum net mass greater than 400 kg (882 pounds) or a maximum capacity greater than 450 L (119 gallons) as a receptacle for a solid; or

(3) A water capacity greater than 454 kg (1000 pounds) as a receptacle for a gas as defined in § 173.115 of this subchapter.

* * * * *

Cryogenic liquid. See § 173.115(g) of this subchapter.

* * * * *

Inner receptacle means a receptacle which requires an outer packaging in order to perform its containment function. The inner receptacle may be an inner packaging of a combination packaging or the inner receptacle of a composite packaging.

* * * * *

Irritating material. See § 173.132(a)(2) of this subchapter.

* * * * *

Maximum net mass means the allowable maximum net mass of contents in a single packaging, or as used in subpart M of part 178 of this subchapter, the maximum combined mass of inner packaging, and the contents thereof.

* * * * *

Non-bulk packaging means a packaging which has:

(1) An maximum capacity of 450 L (119 gallons) or less as a receptacle for a liquid;

(2) A maximum net mass of 400 kg (882 pounds) or less and a maximum capacity of 450 L (119 gallons) or less as a receptacle for a solid; or

(3) A water capacity of 454 kg (1000 pounds) or less as a receptacle for a gas as defined in § 173.115 of this subchapter.

* * * * *

Packaging means a receptacle and any other components or materials necessary for the receptacle to perform its containment function in conformance with the minimum packing requirements of this subchapter. For radioactive materials packaging, see § 173.403 of this subchapter.

* * * * *

Person means an individual, firm, copartnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, or government, Indian tribe, or agency or instrumentality of any government or Indian tribe when it offers hazardous materials for transportation in commerce or transports hazardous materials in furtherance of a commercial enterprise, but such term does not include:

(1) The United States Postal Service; or

(2) For the purposes of sections 110 and 111 of the Hazardous Materials Transportation Act (49 App. U.S.C. 1809–1810), any agency or instrumentality of the Federal Government.

* * * * *

Technical name means a recognized chemical name or microbiological name currently used in scientific and technical handbooks, journals, and texts. Generic descriptions are authorized for use as technical names provided they readily identify the general chemical group, or microbiological group. Examples of acceptable generic chemical descriptions are organic phosphate compounds, petroleum aliphatic hydrocarbons and tertiary amines. For proficiency testing only, generic microbiological descriptions such as bacteria, mycobacteria, fungus, and viral samples may be used. Except for names which appear in Subpart B of Part 172 of this subchapter, trade names may not be used as technical names.

* * * * *

United States means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, or any other territory or possession of the United States designated by the Secretary.

* * * * *

(Remove:)

Etiologic or infectious substance
IM Tank Table
Infectious substance
Magnetic materials
Manufacturer
Net weight
Net weight, Net mass or Net quantity
Oxidizer or Oxidizing material

19–20. Section 171.10 is revised to read as follows:

§ 171.10 Units of measure.

(a) General. To ensure compatibility with international transportation standards, most units of measure in this subchapter are expressed using the International System of Units ("SI" or metric). Where SI units appear, they are the regulatory standard. U.S. standard or customary units, which appear in parentheses following the SI units, are for information only and are not intended to be the regulatory standard.

(b) Abbreviations for SI units of measure generally used throughout this subchapter are as shown in paragraph (c) of this section. Customary units shown throughout this subchapter are generally not abbreviated.

(c) Conversion values. (1) Conversion values are provided in the following table and are based on values provided in ASTM E 380–89, "Standard for Metric Practice."

(2) If an exact conversion is needed, the following method should be used.

TABLE OF CONVERSION FACTORS FOR SI UNITS

Measurement	SI to U.S. standard	U.S. standard to SI
Length	1 cm=0.3937008 in	1 in=2.540000 cm
	1 m=3.280840 ft	1 ft=0.3048000 m
Thickness	1 mm=0.03937006 in	1 in=25.40000 mm
Mass (weight)	1 kg=2.204622 lb	1 lb=0.4535924 kg
	1 gr=0.03527397 oz	1 oz=28.34952 gr
Pressure	1 kPa=0.1450377 psi	1 psi=6.894757 kPa
	1 Bar=100 kPa=14.5 psi	1 psi=0.06 Bar
	1 kPa=7.5 mm Hg	
Volume (liquid)	1 l=0.2641720 gal	1 gal=3.785412 l
	1 ml=0.03381402 oz	1 oz=29.57353 ml
	1 m³=35.31466 ft³	1 ft³=0.02831685 m³
Density	1 kg/m³=0.06242797 lb/ft³	1 lb/ft³=16.01846 kg/m³

Abbreviations for units of measure are as follows:
Unit of measure and abbreviation:
(SI): Millimeter, mm; centimeter, cm; meter, m; gram, g; kilogram, kg; kiloPascal, kPa; liter, L; milliliter, ml; cubic meter, m³;
(U.S.): inch, in; foot, ft; ounce, oz; pound, lb; pounds per square inch, psi; gallon, gal; cubic feet, ft³.

21. In § 171.11, paragraphs (c) and (d)(9) are revised and paragraph (d)(12) is added to read as follows:

§ 171.11 Use of ICAO technical instructions.

* * * * *

(c) Is not a forbidden material or package according to § 173.21 of this subchapter or Column 3 of the § 172.101 Table; and

(d) * * *

(9) When a hazardous material, which is subject to the requirements of the ICAO Technical Instructions, is a material poisonous by inhalation (see § 171.8 of this subchapter)—

(i) The shipping description must include the words "Poison-Inhalation Hazard" or "Inhalation Hazard", as required in § 172.203(m) of this subchapter;

(ii) The material must be packaged in accordance with the requirements of this subchapter; and

(iii) The package must be marked in accordance with § 172.313 of this subchapter and labeled with "POISON" or "POISON GAS", as appropriate, in accordance with subpart E of part 172 of this subchapter.

* * * * *

(12) If an ammonium nitrate fertilizer or ammonium nitrate mixed fertilizer, must not meet the definition and criteria of a Class 1 (explosive) material.

22. In § 171.12, paragraph (b) is revised, the last parenthetical sentence of paragraph (c) is revised, and paragraphs (c)(1) and (2) are added to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(b) *IMDG Code.* The IMDG Code sets forth descriptions, classifications, packagings, labeling and vessel stowage requirements. Notwithstanding the provisions of this subchapter, a material which is packaged, marked, classed, labeled, placarded, described, stowed

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and segregated, and certified in accordance with the IMDG Code, and otherwise conforms to the requirements of this section, may be offered and accepted for transportation and transported within the United States. The following conditions and limitations apply:

(1) The provisions of this paragraph (b) apply only if all or part of the transportation is by vessel.

(2) A number of materials listed in the IMDG Code are not subject to the requirements of this subchapter. The provisions of this subchapter do not apply to materials listed in the IMDG Code which are not designated as hazardous materials under this subchapter. These materials may, however, be transported in the U.S. when described, marked and labeled in accordance with the IMDG Code.

(3) A material designated as a hazardous material under this subchapter which is not subject to the requirements of the IMDG Code may not be transported under the provisions of this section.

(4) A forbidden material or package according to § 173.21 of this subchapter or Column 3 of the § 172.101 Table may not be transported under the provisions of this section.

(5) Bulk packagings must conform to the requirements of this subchapter.

(6) For export, packagings must conform to the applicable requirements in §§ 173.24, 173.24a and 173.28 of this subchapter.

(7) A Class 1 material must be classed and approved under the procedures in Subpart C of Part 173 of this subchapter, and packages of Class 1 materials must be marked in accordance with § 172.320 and Part 178 of this subchapter.

(8) When a hazardous material, which is subject to the requirements of the IMDG Code, is a material poisonous by inhalation (see § 171.8 of this subchapter)—

(i) The shipping description must include the words "Poison-Inhalation Hazard" or "Inhalation Hazard", as required in § 172.203(m) of this subchapter;

(ii) The material must be packaged in accordance with the requirements of this subchapter; and

(iii) The package must be marked in accordance with § 172.313 of this subchapter and labeled and placarded with "POISON" or "POISON GAS", as appropriate, in accordance with Subparts E and F, respectively, of Part 172 of this subchapter.

(9) Class 7 materials must conform to the provisions of paragraph (d) of this section.

(10) For a hazardous waste, as defined in this subchapter—

(i) The word "Waste" must precede the proper shipping name on shipping papers and packages; and

(ii) The requirements of § 172.205 of this subchapter with respect to hazardous waste manifests are applicable.

(11) A hazardous substance as defined in this subchapter must conform to the requirements of §§ 172.203(c) and 172.324 of this subchapter.

(12) A poisonous material must conform to the requirements of § 172.203(m) of this subchapter.

(13) For a Division 4.3 material, the words "Dangerous When Wet" must appear in association with the basic description on shipping papers.

(14) Any ammonium nitrate fertilizer or ammonium nitrate mixed fertilizer must not meet the definition and criteria of a Class 1 (explosive) material.

(15) Cylinders not manufactured to DOT specifications must conform to the requirements of § 173.301(i) and (j) of this subchapter.

(16) Shipments of hazardous materials under this section must conform to the requirements for emergency response information as prescribed in subpart G of part 172 of this subchapter.

(c) * * * The requirement in § 172.201(d) of this subchapter for an emergency telephone number does not apply to shipments made in accordance with the IMDG Code if the hazardous material:

(1) Is not offloaded from the vessel;

(2) Is offloaded between ocean vessels at a U.S. port facility without being transported by public highway.

* * * * *

23–24. In § 171.12a, the first sentence in paragraph (b) introductory text, and paragraphs (b)(1), (b)(5) and (b)(13) are revised and paragraph (b)(14) is added to read as follows:

§ 171.12a Canadian shipments and packagings.

* * * * *

(b) *Conditions and limitations.* Notwithstanding the requirements of Parts 172, 173, and 178 of this subchapter, and subject to the limitations of paragraph (a) of this section, a hazardous material that is classed, marked, labeled, placarded, described on a shipping paper, packaged, and offered for transportation in accordance with the Regulations Respecting the Handling, Offering for Transport and Transporting of Dangerous Goods (the Transportation of Dangerous Goods Regulations or TDG Regulations), issued by the Government of Canada, may be offered and accepted for transportation and transported by motor vehicle or rail car. * * *

(1) A number of materials listed in the TDG Regulations may not be subject to the requirements of this subchapter. The provisions of this subchapter do not apply to materials listed in the TDG Regulations which are not designated as hazardous materials under this subchapter. These materials may, however, be transported in the U.S. when described, marked and labeled in accordance with the TDG Regulations.

* * * * *

(5) When a hazardous material, which is a material poisonous by inhalation under the provisions of this subchapter (see § 171.8 of this subchapter), is subject to the requirements of the TDG Regulations—

(i) The shipping description must include the words "Poison-Inhalation Hazard" or "Inhalation Hazard", as required in § 172.203(m) of this subchapter;

(ii) The material must be packaged in accordance with the requirements of this subchapter; and

(iii) The package must be marked in accordance with § 172.313 of this subchapter. Except for a package containing anhydrous ammonia, the package must be labeled and placarded with "POISON" or "POISON GAS", as appropriate, in accordance with subparts E and F, respectively, of part 172 of this subchapter. For shipments of anhydrous ammonia, the shipping paper must contain an indication that the markings, labels and placards have been applied in conformance with the TDG Regulations and this paragraph (b)(5).

* * * * *

(13) When the provisions of this subchapter require that a DOT specification or UN standard packaging must be used for a hazardous material, a packaging authorized by the TDG Regulations may be used only if it corresponds to the DOT specification or UN packaging authorized by this subchapter. Cylinders not manufactured to DOT specifications must conform to the requirements of § 173.301(i) and (j) of this subchapter.

(14) Any ammonium nitrate fertilizer or ammonium nitrate mixed fertilizer must not meet the definition and criteria of a Class 1 (explosive) material.

§ 171.12a [Amended]

25. In addition, in § 171.12a, the following changes are made:

a. In paragraph (a), in the second sentence, the word "either" is added immediately before the word "terminate".

b. In paragraph (b)(4), "§ 173.320" is revised to read "§ 172.320".

26. Section 171.14 is republished to read as follows:

§ 171.14 Transitional provisions for implementing requirements based on the UN recommendations.

(a) *Purpose and scope.* A rule published in the Federal Register on December 21, 1990, effective October 1, 1991, resulted in a comprehensive revision of this subchapter based on the UN Recommendations. The purpose of the provisions of this section is to provide an orderly transition to the new requirements, so as to minimize any burdens associated with them. During a transition period as provided herein, persons may elect to comply with either the applicable old requirements of this subchapter in effect on September 30, 1991, or the new requirements of this subchapter appearing in the December 21, 1990 rule, and the rule published in the Federal Register on September 18, 1991, effective October 1, 1991.

(b) *Transition dates.* The following transition dates apply only to the new requirements in the December 21, 1990 rule:

(1) *October 1, 1991.* On October 1, 1991, the following requirements are effective:

(i) For new explosives, the hazard classification procedures as set forth in subpart C of part 173 (for explosives) of this subchapter and, except for vehicle placarding, hazard communication requirements (i.e., shipping papers, emergency response information, package markings, and labeling) as set forth in part 172 of this subchapter.

(ii) The classification of materials poisonous by inhalation meeting the criteria of Division 2.3 (see § 173.115(c) of this subchapter), which includes materials assigned Special Provision 13 in Column 7 of the § 172.101 Table; Division 6.1 (see § 173.133(a) of this subchapter); or are otherwise identified as poisonous by inhalation through a special provision in Column 7 of the § 172.101 Table. For such materials, the words "Poison-Inhalation Hazard" or "Inhalation Hazard" as required by § 172.203(m) or by Special Provision 13, as appropriate, shall be entered on shipping papers in association with the basic description.

(2) *October 1, 1992.* On October 1, 1992, the following requirements are effective:

(i) Hazard communication requirements of part 172 of this subchapter (including placarding requirements of subpart F of part 172 of this subchapter) for all materials poisonous by inhalation, which includes materials meeting the criteria in §§ 173.115(c) and 173.133(a) of this subchapter or materials otherwise identified as poisonous by inhalation through a special provision (or assigned Special Provision 13) in Column 7 of the § 172.101 Table.

(ii) For infectious substances (etiologic agents), the hazard classification procedures as set forth in § 173.134 of this subchapter and hazard communication requirements (i.e., shipping papers, emergency response information, package markings, and labeling) as set forth in part 172 of this subchapter.

(3) *October 1, 1993.* On October 1, 1993, the following requirements are effective:

(i) Classification and hazard communication requirements in part 172 of this subchapter, other than subpart F (placarding), and part 173 of this subchapter, that were not previously in effect;

(ii) Packaging requirements for all materials meeting the criteria for poisonous by inhalation;

(iii) Modal segregation requirements in §§ 174.81 and 177.848 of this subchapter; and

(iv) All other requirements of the December 21, 1990, rule for which a lengthier transition period is not provided elsewhere in this section.

(4) *October 1, 1994.* On October 1, 1994, the following are effective:

(i) Placarding requirements in subpart F of part 172 of this subchapter that were not previously in effect; and

(ii) Package manufacturing and marking requirements under the provisions of subpart B of 173, and parts 178 and 179 of this subchapter. (DOT specification packagings removed from part 178 of this subchapter by the December 21, 1990, rule may no longer be manufactured.).

(5) *October 1, 1996.* On October 1, 1996, requirements in parts 172 and 173 of this subchapter for maintenance and use of packagings that were not previously in effect are effective. (DOT specification packagings removed from part 178 of this subchapter by the December 21, 1990 final rule and packaging authorizations removed from part 173 of this subchapter by the December 21, 1990 final rule may no longer be used in place of new packaging requirements.).

(c) *Other transitional provisions.*—(1) *Packages filled prior to October 1, 1991.* Notwithstanding the marking and labeling provisions of subparts D and E, respectively, of part 172, and the packaging provisions of part 173 and subpart B of part 172 of this subchapter, a package may be offered for transportation and transported prior to October 1, 2001, if it—

(i) Conforms to the old requirements of this subchapter in effect on September 30, 1991;

(ii) Is filled with hazardous materials prior to October 1, 1991;

(iii) Is marked "Inhalation Hazard", if appropriate, in accordance with § 172.313 of this subchapter or Special Provision 13, as assigned in the § 172.101 Table; and

(iv) Is not emptied and refilled on or after October 1, 1991.

(2) *Transitional placarding provisions.* Until October 1, 1994, placards which conform to specifications for placards in effect on September 30, 1991, may be used in place of the placards specified in subpart F of part 172 of this subchapter, in accordance with the following table:

PLACARD SUBSTITUTION TABLE

Hazard class or division No.	Current placard name	Old (Sept. 30, 1991) placard name
Division 1.1	Explosives 1.1	Explosives A.
Division 1.2	Explosives 1.2	Explosives A.
Division 1.3	Explosives 1.3	Explosives B.
Division 1.4	Explosives 1.4	Dangerous.
Division 1.5	Explosives 1.5	Blasting agents.
Division 1.6	Explosives 1.6	Dangerous.
Division 2.1	Flammable gas	Flammable gas.
Division 2.2	Nonflammable gas	Nonflammable gas.
Division 2.3	Poison gas	Poison gas.
Class 3	Flammable	Flammable
Combustible liquid.	Combustible	Combustible.
Division 4.1	Flammable solid.	Flammable solid.
Division 4.2	Spontaneously combustible.	Flammable solid.
Division 4.3	Dangerous when wet.	Flammable solid W.
Division 5.1	Oxidizer	Oxidizer.
Division 5.2	Organic peroxide.	Organic peroxide.
Division 6.1, PG I and II.	Poison	Poison.
Division 6.1, PG III.	Keep away from food.	(none required).
Class 7	Radioactive	Radioactive.
Class 8	Corrosive	Corrosive.
Class 9	Class 9	(none required.)

(3) *Intermixing old and new requirements.* During the transition periods provided in paragraph (b) of this section, it is recommended that hazard communication requirements be consistent where practicable, i.e., marking, labeling, placarding, and shipping paper descriptions should conform to either the old requirements of this subchapter in effect on September 30, 1991, or new requirements of this subchapter added or revised by the December 21, 1990, rule, without intermixing of communication elements. However, intermixing is permitted, during the applicable transition periods.

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for packaging, hazard communication, and handling provisions, as follows:

(i) A package may be manufactured to the old requirements of this subchapter in effect on September 30, 1991 (e.g., a DOT 17E drum) even if marked and labeled for the hazardous material contained therein under the new requirements of this subchapter appearing in the December 21, 1990 rule;

(ii) A package may be manufactured to the new requirements of this subchapter appearing in the December 21, 1990 rule (e.g., a UN 4G box) even if marked and labeled for the hazardous material contained therein under the old requirements of this subchapter in effect on September 30, 1991;

(iii) If either shipping names or identification numbers are identical, a shipping paper may display the old shipping description even if the package is marked and labeled under the new shipping description;

(iv) If either shipping names or identification numbers are identical, a shipping paper may display the new shipping description even if the package is marked and labeled under the old shipping description;

(v) Either old or new placards may be used during the appropriate placarding transition period regardless of whether old or new shipping descriptions and package markings are used; and

(vi) Either old or new handling requirements, including segregation and stowage, may be used during the applicable transition period (see paragraph (b)(3) of this section).

§ 171.19 [Amended]

27. In § 171.19, the wording "Director, OHMT" is removed and replaced with "Associate Administrator for Hazardous Materials Safety" each place it appears.

§ 171.20 [Amended]

28. In § 171.20, the following changes are made:

a. In paragraph (b), the wording "Director, Office of Hazardous Materials Transportation" is removed and replaced with "Associate Administrator for Hazardous Materials Safety".

b. In paragraphs (a) and (c), the wording "Director, OHMT" is removed and replaced with "Associate Administrator for Hazardous Materials Safety" each place it appears.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS REQUIREMENTS AND EMERGENCY RESPONSE INFORMATION REQUIREMENTS

29. The authority citation for part 172 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR part 1, unless otherwise noted.

30. In § 172.101, paragraphs (c)(10)(i)(E) and (F) are added to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(c) * * *
(10) * * *
(i) * * *

(E) The material is identified by special provision in Column 7 of the § 172.101 Table as a material poisonous by inhalation; however, it no longer meets the definition of poisonous by inhalation or it falls within a different hazard zone than that specified in the special provision; *or*

(F) The material can be appropriately described by a shipping name that describes its intended application, such as "Coating solution", "Extracts, flavoring" or "Compound, cleaning liquid".

* * * * *

§ 172.101 [Amended]

31. In addition, in § 172.101, the following changes are made:

a. In paragraph (c)(8), the paragraph heading is revised to read "*Hazardous substances.*"

b. In paragraph (c)(9), a paragraph heading is added to read "*Hazardous wastes.*"

c. In paragraph (c)(10), the paragraph heading is revised to read "*Mixtures and solutions.*"

d. In paragraph (c)(10)(i) introductory text, the wording "not identified specifically by name," is added immediately after "solution" and before "comprised" and the wording "material shall" is revised to read "material, shall".

e. In paragraph (c)(10)(i)(C), the "or" at the end of the paragraph is removed.

f. In paragraph (c)(10)(i)(D), the period is removed and replaced with a semicolon.

g. In paragraph (c)(10)(ii), the wording "paragraphs (c)(10)(i)(A), (i)(B), (i)(C), and (i)(D) of this section are" is revised to read "paragraph (c)(10)(i) of this section is".

h. In paragraph (c)(11) introductory text, the wording "173.56(e)(1) or 173.114a(g)(2)" is revised to read "or 173.56(e)(1)".

i. In paragraph (c)(12)(i), the wording "Column 5" is revised to read "Column 6".

j. In paragraph (c)(12)(ii), a paragraph heading is added to read: "*Generic or n.o.s. descriptions.*"

k. In paragraph (c)(12)(iii), a paragraph heading is added to read: "*Multiple hazard materials.*"; the wording "or a dual hazard n.o.s. description (e.g., "Flammable liquid, corrosive n.o.s.")" is removed; the wording "(e.g., "Flammable liquid, corrosive n.o.s.")" is added immediately after "shipping description" and before "shall"; and a second sentence is added to read "Except for a pesticide, a subsidiary hazard of Division 6.1, Packing Group III, need not be considered for selecting a shipping description."

l. In paragraph (d)(4), the wording "or has a flash point above 60.5°C (141°F) but below 93°C (200°F)" is added at the end of the sentence.

m. In paragraph (f), the wording "Classes 1, 2 and 7 materials, combustible liquids, and ORM-D materials" is revised to read "Classes 2 and 7 materials and ORM-D materials".

n. In paragraph (i)(3), in the first sentence, the wording "packaging other than IM portable tanks." is revised to read "packagings, subject to the limitations, requirements and additional authorizations of Column 7." The third sentence is revised to read "Additional authorizations and limitations for use of IM portable tanks are set forth in Column 7."

o. In paragraph (i)(3)(i), the wording "for a solid or liquid, respectively" is removed.

p. In paragraph (i)(4), "(i.e.," is revised to read "(e.g.,".

q. In paragraph (l)(2), the word "Any" is revised to read "any" and the wording "Except as otherwise provided in this section," is added at the beginning of the sentence.

32. In § 172.101, the title of the Table, and the Table itself are revised to read as follows:

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or Division (3)	Identification Numbers (4)	Packing group (5)	Label(s) required (if not excepted) (6)	Special provisions (7)	(8) Packaging authorizations (§ 173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or rail car (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	Accelerene, see p-Nitrosodimethylaniline												
	Accumulators, electric, see Batteries, wet *etc.*												
D	Accumulators, pressurized, pneumatic *or* hydraulic (*containing non-flammable gas*).	2.2	NA1956		NONFLAMMABLE GAS.		306	306	None	No limit	No limit	A	
	Acetal	3	UN1088	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	E	
	Acetaldehyde	3	UN1089	I	FLAMMABLE LIQUID	A3, B16, T20, T26, T29.	None	201	243	Forbidden	30 L	E	
A	Acetaldehyde ammonia	9	UN1841	III	CLASS 9		155	204	241	200 kg	200 kg	A	34
	Acetaldehyde oxime	3	UN2332	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	A	
	Acetic acid, glacial *or* Acetic acid solution, *more than 80 per cent acid, by mass.*	8	UN2789	II	CORROSIVE	A3, A6, A7, A10 B2, T8.	154	202	242	1 L	30 L	A	12, 21, 48
	Acetic acid solution, *more than 10 per cent but not more than 80 per cent acid, by mass.*	8	UN2790	II	CORROSIVE	A3, A6, A7, A10 B2, T8.	154	202	242	1 L	30 L	A	112
	Acetic anhydride	8	UN1715	II	CORROSIVE	A3, A6, A7, A10, B2, T8.	154	202	242	1 L	30 L	A	40
	Acetone	3	UN1090	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Acetone cyanohydrin, stabilized	6.1	UN1541	I	POISON	2, A3, B9, B14, B32, B74, B76, B77, N34, T38, T43, T45.	None	227	244	Forbidden	30 L	D	25, 40, 49
	Acetone oils	3	UN1091	II	FLAMMABLE LIQUID	T7, T30	150	202	242	5 L	60 L	B	
	Acetonitrile, see Methyl cyanide												
	Acetyl acetone peroxide with more than 9% by mass active oxygen.	Forbidden											
	Acetyl benzoyl peroxide, solid, or more than 40% in solution.	Forbidden											
	Acetyl bromide	8	UN1716	II	CORROSIVE	B2, T12, T26	154	202	242	1 L	30 L	C	8, 40
	Acetyl chloride	3	UN1717	II	FLAMMABLE LIQUID, CORROSIVE.	A3, A6, A7, N34, T18, T26.	None	202	243	1 L	5 L	B	40
	Acetyl cyclohexanesulfonyl peroxide, more than 82 per cent wetted with less than 12 per cent water.	Forbidden											
	Acetyl iodide	8	UN1898	II	CORROSIVE	B2, T9	154	202	242	1 L	30 L	C	8, 40
	Acetyl methyl carbinol	3	UN2621	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Acetyl peroxide, solid, or more than 25 percent in solution.	Forbidden											
	Acetylene, dissolved	2.1	UN1001		FLAMMABLE GAS		None	303	None	Forbidden	15 kg	D	25, 40, 57
	Acetylene (liquefied)	Forbidden											
	Acetylene silver nitrate	Forbidden											
	Acetylene tetrabromide, see Tetrabromoethane												
	Acid butyl phosphate, see Butyl acid phosphate												
	Acid, sludge, *see* Sludge acid												
	Acridine	6.1	UN2713	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Acrolein dimer, stabilized	3	UN2607	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	40
+	Acrolein, inhibited	6.1	UN1092	I	POISON, FLAMMABLE LIQUID.	1, B9, B12, B14, B30, B42, B72, B77, T38, T43, T45.	None	226	244	Forbidden	Forbidden	D	40
	Acrylamide	6.1	UN2074	III	KEEP AWAY FROM FOOD.	T8	153	213	240	100 kg	200 kg	A	12

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Acrylic acid, inhibited	8	UN2218	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	C	8, 12, 21, 25, 40
	Acrylonitrile, inhibited	3	UN1093	I	FLAMMABLE LIQUID, POISON.	B9, T18, T26	None	201	243	Forbidden	30 L	E	40
	Actuating cartridge, explosive, see Cartridges, power device.												
	Adhesives, *containing a flammable liquid*	3	UN1133	II	FLAMMABLE LIQUID	B52, T7, T30	150	173	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, B52, T7, T30.	150	173	242	60 L	220 L	A	
	Adiponitrile	6.1	UN2205	III	KEEP AWAY FROM FOOD.	T1	153	203	241	60 L	220 L	A	25
	Aerosols, *corrosive, Packing Group II or III, (each not exceeding 1 L capacity).*	2.2	UN1950		NONFLAMMABLE GAS, CORROSIVE.	A34	306	None	None	75 kg	150 kg	A	40, 48, 85
	Aerosols, *flammable, (each not exceeding 1 L capacity).*	2.1	UN1950		FLAMMABLE GAS	N82	306	None	None	75 kg	150 kg	A	40, 48, 85
	Aerosols, *non-flammable, (each not exceeding 1 L capacity).*	2.2	UN1950		NONFLAMMABLE GAS.		306, 307	None	None	75 kg	150 kg	A	48, 85
	Aerosols, *poison, each not exceeding 1 L capacity*	2.2	UN1950		NONFLAMMABLE GAS.	3	306	None	None	Forbidden	Forbidden	A	40, 48, 85
	Air, compressed	2.2	UN1002		NONFLAMMABLE GAS.		306	302	302	75 kg	150 kg	A	
	Air, refrigerated liquid (*cryogenic liquid*)	2.2	UN1003		NONFLAMMABLE GAS, OXIDIZER.		320	316	318, 319	Forbidden	150 kg	A	51
	Air, refrigerated liquid, (*cryogenic liquid*)*non-pressurized.*	2.2	UN1003		NONFLAMMABLE GAS, OXIDIZER.		320	316	318, 319	Forbidden	Forbidden	A	85
	Aircraft evacuation slides, *see* Life saving appliances *etc.*												
D	Aircraft hydraulic power unit fuel tank (*containing a mixture of anhydrous hydrazine and monomethyl hydrazine*) (*M86 fuel*).	3	NA9302	I	FLAMMABLE LIQUID, POISON, CORROSIVE.		None	172	None	Forbidden	30 L	E	
	Aircraft survival kits, *see* Life saving appliances *etc.*												
	Alcoholic beverages	3	UN3065	III	FLAMMABLE LIQUID	B1, N11, T1	150	203	242	5 L	60 L	A	
	Alcohols, n.o.s	3	UN1987	I	FLAMMABLE LIQUID	T8, T31	None	201	243	1 L	30 L	E	
				II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Alcohols, toxic, n.o.s.	3	UN1986	I	FLAMMABLE LIQUID, POISON.	T8, T31	None	201	243	Forbidden	30 L	E	40
				II	FLAMMABLE LIQUID, POISON.	T8, T31	None	202	243	1 L	60 L	B	40
	Aldehydes, n.o.s.	3	UN1989	I	FLAMMABLE LIQUID	T8, T31	None	201	243	1 L	30 L	E	
				II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Aldehydes, toxic, n.o.s.	3	UN1988	I	FLAMMABLE LIQUID, POISON.	T8, T31	None	201	243	Forbidden	30 L	E	40
				II	FLAMMABLE LIQUID, POISON.	T8, T31	None	202	243	1 L	60 L	B	40
	Aldol	6.1	UN2839	II	POISON	T8	None	202	243	5 L	60 L	A	48
D	Aldrin, *liquid*	6.1	NA2762	II	POISON		None	202	243	5 L	60 L	B	
D	Aldrin, *solid*	6.1	NA2761	II	POISON		None	212	242	25 kg	100 kg	A	40
	Alkali metal alloys, liquid, n.o.s.	4.3	UN1421	I	DANGEROUS WHEN WET.	A2, A3, N34	None	201	244	Forbidden	1 L	D	
	Alkali metal amalgams	4.3	UN1389	I	DANGEROUS WHEN WET.	A2, A3, N34	None	201	244	Forbidden	1 L	D	

	Alkali metal amides	4.3	UN1390	II	DANGEROUS WHEN WET.	A6, A7, A8, A19, A20.	None	212	241	15 kg	50 kg	E	40
	Alkali metal dispersions, *or* Alkaline earth metal dispersions.	4.3	UN1391	I	DANGEROUS WHEN WET.	A2, A3	None	201	244	Forbidden	1 L	D	
	Alkaline corrosive liquids, n.o.s., see Caustic alkali liquids, n.o.s.												
	Alkaline earth metal alloys, n.o.s.	4.3	UN1393	II	DANGEROUS WHEN WET.	A19	None	212	241	15 kg	50 kg	E	
	Alkaline earth metal amalgams	4.3	UN1392	I	DANGEROUS WHEN WET.	A19, N34, N40	None	211	242	Forbidden	15 kg	D	
	Alkaloids, liquid, *poisonous*, n.o.s., *or* Alkaloid salts, liquid, *poisonous*, n.o.s.	6.1	UN3140	I	POISON	A4, T42	None	201	243	1 L	30 L	A	
				II	POISON	T14	None	202	243	5 L	60 L	A	
				III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	Alkaloids, solid, n.o.s. *or* alkaloid salts, solid, n.o.s. *poisonous*.	6.1	UN1544	I	POISON		None	211	242	5 kg	50 kg	A	
				II	POISON		None	212	242	25 kg	100 kg	A	
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Alkyl, Aryl *or* Toluene sulfonic acid, liquid, *with more than 5 per cent free sulfuric acid.*	8	UN2584	II	CORROSIVE	B2, T8, T27	154	202	242	1 L	30 L	B	9
	Alkyl, Aryl *or* Toluene sulfonic acid, liquid, *with not more than 5 per cent free sulfuric acid.*	8	UN2586	III	CORROSIVE	T8	154	203	241	5 L	60 L	B	9
	Alkyl, Aryl *or* Toluene sulfonic acid, solid, *with more than 5 per cent free sulfuric acid.*	8	UN2583	II	CORROSIVE		154	212	240	15 kg	50 kg	A	
	Alkyl, Aryl *or* Toluene sulfonic acid, solid, *with not more than 5 per cent free sulfuric acid.*	8	UN2585	III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Alkyl phenols, liquid, n.o.s. (*including C2-C8 homologues*).	6.1	UN3145	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	Alkyl phenols, solid, n.o.s. (*including C2-C8 homologues*).	6.1	UN2430	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Alkylamines, n.o.s, *or* Polyalkylamines, n.o.s., *corrosive.*	8	UN2735	I	CORROSIVE	A3, A6, B10, N34, T42.	None	201	242	0.5 L	2.5 L	A	
				II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A	
				III	CORROSIVE	T8	154	203	241	5 L	60 L	A	
	Alkylamines, n.o.s. *or* Polyalkylamines, n.o.s.corrosive, *flammable.*	8	UN2734	I	CORROSIVE, FLAMMABLE LIQUID.	A3, A6, N34, T8, T31.	None	201	243	0.5 L	2.5 L	A	48
				II	CORROSIVE, FLAMMABLE LIQUID.	T8, T31	None	202	243	1 L	30 L	A	48
	Alkylamines, n.o.s. *or* Polyalkylamines, n.o.s. *flammable, corrosive.*	3	UN2733	I	FLAMMABLE LIQUID, CORROSIVE.	T42	None	201	243	0.5 L	2.5 L	D	40
				II	FLAMMABLE LIQUID, CORROSIVE.	T8, T31	None	202	243	1 L	5 L	B	40
				III	FLAMMABLE LIQUID, CORROSIVE.	B1, T8, T31	None	203	242	5 L	60 L	A	40
	Allethrin, see Pesticides, liquid, toxic, n.o.s.												
	Allyl acetate	3	UN2333	II	FLAMMABLE LIQUID, POISON.	T8	None	202	243	1 L	60 L	E	40
	Allyl alcohol	6.1	UN1098	I	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, B77, T38, T43, T45.	None	227	244	Forbidden	Forbidden	E	40
	Allyl bromide	3	UN1099	I	FLAMMABLE LIQUID, POISON.	T18	None	201	243	Forbidden	30 L	B	40
	Allyl chloride	3	UN1100	I	FLAMMABLE LIQUID, POISON.	T18, T26	None	201	243	Forbidden	30 L	E	40
	Allyl chlorocarbonate, see Allyl chloroformate												
+	Allyl chloroformate	8	UN1722	I	CORROSIVE, POISON.	1, A3, B9, B14, B30, B72, N41, T38, T43, T44.	None	226	244	Forbidden	2.5 L	D	21, 40, 48, 95
	Allyl ethyl ether	3	UN2335	II	FLAMMABLE LIQUID, POISON.	T8	None	202	243	1 L	60 L	E	40

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Allyl formate	3	UN2336	I	FLAMMABLE LIQUID, POISON.	T18, T26	None	201	243	Forbidden	30 L	E	40
	Allyl glycidyl ether	3	UN2219	III	FLAMMABLE LIQUID, POISON.	B1, T7	150	203	242	60 L	220 L	A	
	Allyl iodide	3	UN1723	II	FLAMMABLE LIQUID, CORROSIVE.	A3, A6, N34, T18.	None	201	243	0.5 L	2.5 L	B	40
+	Allyl isothiocyanate, stabilized	6.1	UN1545	II	POISON	2, A3, A7, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	60 L	D	40
	Allylamine	6.1	UN2334	I	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	E	40
	Allyltrichlorosilane, stabilized	8	UN1724	II	CORROSIVE, FLAMMABLE LIQUID.	A7, B2, B6, N34, T8, T26.	None	202	242	Forbidden	30 L	C	12, 21, 40, 48
	Aluminum alkyl halides	4.2	UN3052	I	SPONTANEOUSLY COMBUSTIBLE.	B9, B11, T28, T29, T40.	None	181	244	Forbidden	Forbidden	D	
	Aluminum alkyl hydrides	4.2	UN3076	I	SPONTANEOUSLY COMBUSTIBLE.	B9, B11, T28, T29, T40.	None	181	244	Forbidden	Forbidden	D	
	Aluminum alkyls	4.2	UN3051	I	SPONTANEOUSLY COMBUSTIBLE.	B9, B11, T28, T29, T40.	None	181	244	Forbidden	Forbidden	D	
	Aluminum borohydride *or* Aluminum borohydride in devices.	4.2	UN2870	I	SPONTANEOUSLY COMBUSTIBLE, DANGEROUS WHEN WET.	B11	None	181	244	Forbidden	Forbidden	D	
	Aluminum bromide, anhydrous	8	UN1725	II	CORROSIVE		154	212	240	15 kg	50 kg	A	40
	Aluminum bromide, solution	8	UN2580	III	CORROSIVE	T8	154	203	241	5 L	60 L	A	
	Aluminum carbide	4.3	UN1394	II	DANGEROUS WHEN WET.	A20, N41	None	212	242	15 kg	50 kg	A	
	Aluminum chloride, anhydrous	8	UN1726	II	CORROSIVE		154	212	240	15 kg	50 kg	A	40
	Aluminum chloride, solution	8	UN2581	III	CORROSIVE	T8	154	203	241	5 L	60 L	A	
	Aluminum dross, wet or hot	Forbidden											
	Aluminum ferrosilicon powder	4.3	UN1395	II	DANGEROUS WHEN WET, POISON.	A19	None	212	242	15 kg	50 kg	A	40, 85, 103
	Aluminum hydride	4.3	UN2463	I	DANGEROUS WHEN WET.	A19, N40	None	211	242	Forbidden	15 kg	E	
	Aluminum nitrate	5.1	UN1438	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	
	Aluminum phosphate solution, see Corrosive liquids, n.o.s.												
	Aluminum phosphide	4.3	UN1397	I	DANGEROUS WHEN WET, POISON.	A8, A19, N40	None	211	242	Forbidden	15 kg	E	40, 85
	Aluminum phosphide pesticides	6.1	UN3048	I	POISON	A8	None	211	242	Forbidden	15 kg	E	40, 85
	Aluminum powder, coated	4.1	UN1309	II	FLAMMABLE SOLID		151	212	240	15 kg	50 kg	A	13, 39, 101
				III	FLAMMABLE SOLID		151	213	240	25 kg	100 kg	A	13, 39, 101
	Aluminum powder, uncoated	4.3	UN1396	II	DANGEROUS WHEN WET.	A19, A20	None	212	242	15 kg	50 kg	A	39
	Aluminum resinate	4.1	UN2715	III	FLAMMABLE SOLID		151	213	240	25 kg	100 kg	A	
	Aluminum silicon powder, uncoated	4.3	UN1398	III	DANGEROUS WHEN WET.	A1, A19	None	213	241	25 kg	100 kg	A	40, 85, 103
	Amatols, see Explosives, blasting, type B												

	2-Amino-4-chlorophenol	6.1	UN2673	II	POISON		None	212	242	25 kg	100 kg	A		
	2-Amino-5-diethylaminopentane	6.1	UN2946	III	KEEP AWAY FROM FOOD.	T1	153	203	240	60 L	220 L	A		
	2-(2-Aminoethoxy) ethanol	8	UN3055	III	CORROSIVE	T2	154	203	241	5 L	60 L	A		
	N-Aminoethylpiperazine	8	UN2815	III	CORROSIVE	T7	154	203	241	5 L	60 L	A	12, 48	
	Aminophenols (*o-; m-; p-*)	6.1	UN2512	III	KEEP AWAY FROM FOOD.	T1	153	213	240	100 kg	200 kg	A		
	Aminopropyldiethanolamine, see Alkylamines, n.o.s.													
	n-Aminopropylmorpholine, see Alkylamines, n.o.s.													
	Aminopyridines (*o-; m-; p-*)	6.1	UN2671	II	POISON	T7	None	212	242	25 kg	100 kg	B	12, 40, 48	
I	Ammonia, anhydrous, liquefied *or* Ammonia solutions *relative density less than 0.880 at 15 degrees C in water, with more than 50 per cent ammonia.*	2.3	UN1005		POISON GAS	4	None	304	314, 315	Forbidden	25 kg	D	40, 57	
D	Ammonia anhydrous liquefied or Ammonia solutions, *relative density less than 0.880 at 15 degrees C in water, with more than 50 percent ammonia.*	2.2	UN1005		NONFLAMMABLE GAS.	13	None	304	314, 315	Forbidden	25 kg	D	40, 57	
	Ammonia solutions, *relative density between 0.880 and 0.957 at 15 degrees C in water, with more than 10 per cent but not more than 35 percent ammonia.*	8	UN2672	III	CORROSIVE	T14	154	203	241	5 L	60 L	A	40, 85	
	Ammonia solutions, *relative density less than 0.880 at 15 degrees C in water, with more than 35 per cent but not more than 50 per cent ammonia.*	2.2	UN2073		NONFLAMMABLE GAS.		306	304	314, 315	Forbidden	150 kg	E	40, 57	
	Ammonium arsenate	6.1	UN1546	II	POISON		None	212	242	25 kg	100 kg	A		
	Ammonium azide	Forbidden												
	Ammonium bifluoride, solid, see Ammonium hydrogen fluoride, solid.													
	Ammonium bifluoride solution, see Ammonium hydrogen fluoride, solution.													
	Ammonium bromate	Forbidden												
	Ammonium chlorate	Forbidden												
	Ammonium dichromate	5.1	UN1439	II	OXIDIZER		152	212	242	5 kg	25 kg	A		
	Ammonium dinitro-o-cresolate	6.1	UN1843	II	POISON	T8	None	212	242	25 kg	100 kg	B	36, 65, 66, 77	
	Ammonium fluoride	6.1	UN2505	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	26	
	Ammonium fluorosilicate	6.1	UN2854	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	26	
	Ammonium fulminate	Forbidden												
	Ammonium hydrogen fluoride, solid	8	UN1727	II	CORROSIVE	N34	154	212	240	15 kg	50 kg	A	25, 26, 40	
	Ammonium hydrogen fluoride, solution	8	UN2817	II	CORROSIVE, POISON.	N34, T15	None	202	243	1 L	30 L	B	40, 95	
	Ammonium hydrogen sulfate	8	UN2506	II	CORROSIVE		154	212	240	15 kg	50 kg	A	40	
	Ammonium hydrosulfide, solution, see Ammonium sulfide solution.													
D	Ammonium hydroxide, *see* Ammonia solutions, etc.													
	Ammonium metavanadate	6.1	UN2859	II	POISON		None	212	242	25 kg	100 kg	A		
D	Ammonium nitrate fertilizers	5.1	NA2072	III	OXIDIZER	7	152	213	240	25 kg	100 kg	B	48, 59, 60, 117	
AW	Ammonium nitrate fertilizers: *uniform non-segregating mixtures of nitrogen/phosphate or nitrogen/potash types or complete fertilizers of nitrogen/phosphate/potash type, with not more than 70 per cent ammonium nitrate and not more than 0.4 per cent total added combustible material or with not more than 45 per cent ammonium nitrate with unrestricted combustible material.*	9	UN2071	III	CLASS 9		155	213	240	200 kg	200 kg	A		
D	Ammonium nitrate-fuel oil mixture (containing only prilled ammonium nitrate and fuel oil).	1.5D	NA0331	II	EXPLOSIVE 1.5D		None	62	None	Forbidden	Forbidden	B	1E, 5E, 19E	
	Ammonium nitrate, liquid (*hot concentrated solution*).	5.1	UN2426		OXIDIZER	B5, B17, T25	None	None	243	Forbidden	Forbidden	D	59, 80	
D	Ammonium nitrate mixed fertilizers	5.1	NA2069	III	OXIDIZER	10	152	213	240	25 kg	100 kg	B	48, 59, 60, 117	
	Ammonium nitrate, *with more than 0.2 per cent combustible substances, including any organic substance calculated as carbon, to the exclusion of any other added substance.*	1.1D	UN0222	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E, 19E	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or rail car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Ammonium nitrate, *with not more than 0.2 per cent of combustible substances, including any organic substance calculated as carbon, to the exclusion of any other added substance.*	5.1	UN1942	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	48, 59, 60, 116
	Ammonium nitrite	Forbidden											
	Ammonium perchlorate	5.1	UN1442	II	OXIDIZER	A9	152	212	242	5 kg	25 kg	E	58, 59, 106
	Ammonium perchlorate	1.1D	UN0402	II	EXPLOSIVE 1.1D	107	None	62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Ammonium permanganate, see Permanganates, inorganic, n.o.s.												
	Ammonium persulfate	5.1	UN1444	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	
	Ammonium picrate, *dry or wetted with less than 10 per cent water, by mass.*	1.1D	UN0004	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Ammonium picrate, wetted *with not less than 10 per cent water, by mass.*	4.1	UN1310	I	FLAMMABLE SOLID	A2, N41	None	211	None	0.5 kg	0.5 kg	D	28, 36
	Ammonium polysulfide, solution	8	UN2818	II	CORROSIVE, POISON.	T14	None	202	243	1 L	30 L	B	12, 26, 40, 46, 95
	Ammonium polyvanadate	6.1	UN2861	II	POISON		None	212	242	25 kg	100 kg	A	
	Ammonium silicofluoride, see Ammonium fluorosilicate.												
	Ammonium sulfide solution	8	UN2683	II	CORROSIVE, POISON, FLAMMABLE LIQUID.	T14	None	202	243	1 L	30 L	B	12, 22, 26, 46, 100
	Ammunition, blank, see Cartridges for weapons, blank.												
	Ammunition, illuminating *with or without burster, expelling charge or propelling charge.*	1.2G	UN0171	II	EXPLOSIVE 1.2G		63(b)	62	None	Forbidden	Forbidden	B	
	Ammunition, illuminating *with or without burster, expelling charge or propelling charge.*	1.3G	UN0254	II	EXPLOSIVE 1.3G		63(b)	62	None	Forbidden	Forbidden	B	
	Ammunition, illuminating *with or without burster, expelling charge or propelling charge.*	1.4G	UN0297	II	EXPLOSIVE 1.4G		63(b)	62	None	Forbidden	75 kg	A	24E
	Ammunition, incendiary *liquid or gel, with burster, expelling charge or propelling charge.*	1.3J	UN0247	II	EXPLOSIVE 1.3J		63(b)	62	None	Forbidden	Forbidden	E	7E, 13E, 23E
	Ammunition, incendiary (water-activated contrivances) with burster, expelling charge or propelling charge, see Contrivances, water-activated, etc..												
	Ammunition, incendiary, white phosphorus, *with burster, expelling charge or propelling charge.*	1.2H	UN0243	II	EXPLOSIVE 1.2H		63(b)	62	None	Forbidden	Forbidden	E	8E, 14E, 15E
	Ammunition, incendiary, white phosphorus, *with burster, expelling charge or propelling charge.*	1.3H	UN0244	II	EXPLOSIVE 1.3H		63(b)	62	None	Forbidden	Forbidden	E	8E, 14E, 15E
	Ammunition, incendiary *with or without burster,expelling charge, or propelling charge.*	1.2G	UN0009	II	EXPLOSIVE 1.2G		63(b)	62	None	Forbidden	Forbidden	B	
	Ammunition, incendiary *with or without burster, expelling charge, or propelling charge.*	1.3G	UN0010	II	EXPLOSIVE 1.3G		63(b)	62	None	Forbidden	Forbidden	B	
	Ammunition, incendiary *with or without burster, expelling charge or propelling charge.*	1.4G	UN0300	II	EXPLOSIVE 1.4G		63(b)	62	None	Forbidden	75 kg	A	24E
	Ammunition, practice	1.4G	UN0362	II	EXPLOSIVE 1.4G		63(b)	62	None	Forbidden	75 kg	A	24E
	Ammunition, practice	1.3G	UN0488	II	EXPLOSIVE 1.3G		63(b)	62	None	Forbidden	Forbidden	B	1E, 7E, 25E
	Ammunition, proof	1.4G	UN0363	II	EXPLOSIVE 1.4G		63(b)	62	None	Forbidden	75 kg	A	24E
	Ammunition, rocket, see Warheads, rocket etc.												
	Ammunition, SA (small arms), see Cartridges for weapons, etc..												

	Ammunition, smoke (water-activated contrivances), white phosphorus, with burster, expelling charge or propelling charge, see Contrivances, water-activated, *etc. (UN 0248).*														
	Ammunition, smoke (water-activated contrivances), without white phosphorus or phosphides, with burster, expelling charge or propelling charge, see Contrivances, water-activated, *etc. (UN 0249).*														
	Ammunition, smoke, white phosphorus *with burster, expelling charge, or propelling charge.*	1.3H	UN0246	II	EXPLOSIVE 1.3H		63(b)	62	None	Forbidden	Forbidden	E	6E, 14E, 15E, 17E		
	Ammunition smoke, white phosphorus *with burster,expelling charge, or propelling charge.*	1.2H	UN0245	II	EXPLOSIVE 1.2H		63(b)	62	None	Forbidden	Forbidden	E	6E, 14E, 15E, 17E		
	Ammunition, smoke *with or without burster, expelling charge or propelling charge.*	1.3G	UN0016	II	EXPLOSIVE 1.3G, CORROSIVE.		63(b)	62	None	Forbidden	Forbidden	E	20E		
	Ammunition, smoke *with or without burster, expelling charge or propelling charge.*	1.4G	UN0303	II	EXPLOSIVE 1.4G, CORROSIVE.		63(b)	62	None	Forbidden	75 kg	E	20E		
	Ammunition, smoke *with or without burster, expelling charge or propelling charge.*	1.2G	UN0015	II	EXPLOSIVE 1.2G, CORROSIVE.		63(b)	62	None	Forbidden	Forbidden	E	20E		
	Ammunition, sporting, see Cartridges for weapons, *etc. (UN 0012; UN 0328; UN 0339).*														
	Ammunition, tear-producing, non-explosive, *without burster or expelling charge, non-fuzed.*	6.1	UN2017	II	POISON, CORROSIVE.		None	212	None	Forbidden	50 kg	E	13, 40		
	Ammunition, tear-producing *with burster, expelling charge or propelling charge.*	1.2G	UN0018	II	EXPLOSIVE 1.2G, CORROSIVE, POISON.		63(b)	62	None	Forbidden	Forbidden	E	20E		
	Ammunition, tear-producing *with burster, expelling charge or propelling charge.*	1.3G	UN0019	II	EXPLOSIVE 1.3G, CORROSIVE, POISON.		63(b)	62	None	Forbidden	Forbidden	E	20E		
	Ammunition, tear-producing *with burster, expelling charge or propelling charge.*	1.4G	UN0301	II	EXPLOSIVE 1.4G, CORROSIVE, POISON.		63(b)	62	None	Forbidden	75 kg	E	20E		
	Ammunition, toxic, nonexplosive, *without burster or expelling charge, non-fuzed.*	6.1	UN2016	II	POISON		None	212	None	Forbidden	100 kg	E	13, 40		
	Ammunition, toxic (water-activated contrivances), with burster, expelling charge or propelling charge, see Contrivances, water-activated, *etc.*.														
	Ammunition, toxic *with burster, expelling charge, or propelling charge.*	1.2K	UN0020	II	EXPLOSIVE 1.2K, POISON.		63(b)	62	None	Forbidden	Forbidden	E	2E, 6E, 11E, 17E		
	Ammunition, toxic *with burster, expelling charge, or propelling charge.*	1.3K	UN0021	II	EXPLOSIVE 1.3K, POISON.		63(b)	62	None	Forbidden	Forbidden	E	2E, 6E, 11E, 17E		
	Amyl acetates	3	UN1104	III	FLAMMABLE LIQUID	B1, T1	150	203	241	60 L	220 L	A			
	Amyl acid phosphate	8	UN2819	III	CORROSIVE	T7	154	203	241	5 L	60 L	A			
	Amyl alcohols	3	UN1105	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B			
				III	FLAMMABLE LIQUID	B1, B3, T1	150	203	242	60 L	220 L	A			
	Amyl butyrates	3	UN2620	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A			
	Amyl chlorides	3	UN1107	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B			
	Amyl formates	3	UN1109	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A			
	Amyl mercaptans	3	UN1111	II	FLAMMABLE LIQUID	A3, T8	None	202	242	5 L	60 L	B	95, 102		
	Amyl methyl ketone	3	UN1110	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A			
	Amyl nitrate	3	UN1112	III	FLAMMABLE LIQUID	B1, T1	150	202	242	5 L	60 L	A	40		
	Amyl nitrites	3	UN1113	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E	40		
	Amylamines	3	UN1106	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B			
	n-Amylene	3	UN1108	I	FLAMMABLE LIQUID	T14	150	201	243	1 L	30 L	E			
	Amyltrichlorosilane	8	UN1728	II	CORROSIVE	A7, B2, B6, N34, T8, T26.	None	202	242	Forbidden	30 L	C	40		
	Anhydrous, ammonia *see Ammonia, anhydrous, liquefied.*														
	Anhydrous hydrofluoric acid, see Hydrogen fluoride, anhydrous.														
+	Aniline	6.1	UN1547	II	POISON	T8	None	202	243	5 L	60 L	A	40		
	Aniline hydrochloride	6.1	UN1548	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A			
	Aniline oil, see Aniline.														
	Anisidines	6.1	UN2431	III	KEEP AWAY FROM FOOD.	T1	153	203	241	60 L	220 L	A			
	Anisole	3	UN2222	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A			

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Anisoyl chloride	8	UN1729	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	C	8, 40
	Anti-freeze, liquid, see Flammable liquids, n.o.s.												
	Antimonous chloride, see Antimony trichloride												
	Antimony compounds, inorganic, liquid, n.o.s.	6.1	UN3141	I	POISON	A4, T42	None	201	243	1 L	30 L	A	
				II	POISON	T14	None	202	243	5 L	60 L	A	
				III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	Antimony compounds, inorganic, solid, n.o.s.	6.1	UN1549	I	POISON		None	211	242	5 kg	50 kg	A	
				II	POISON		None	212	242	25 kg	100 kg	A	
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Antimony lactate	6.1	UN1550	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Antimony pentachloride, liquid	8	UN1730	II	CORROSIVE	B2, T8, T26	None	202	242	1 L	30 L	C	8, 40
	Antimony pentachloride, solutions	8	UN1731	II	CORROSIVE	B2, T8, T27	154	202	242	1 L	30 L	C	8, 40
	Antimony pentafluoride	8	UN1732	II	CORROSIVE, POISON.	A3, A6, A7, A10, N3, T12, T26.	None	202	243	Forbidden	30 L	D	40, 96
	Antimony potassium tartrate	6.1	UN1551	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Antimony powder	6.1	UN2871	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Antimony sulfide and a chlorate, mixtures of	Forbidden											
	Antimony sulfide, solid, see Antimony compounds, inorganic, n.o.s.												
D	Antimony tribromide, solid	8	NA1549	II	CORROSIVE		154	212	240	25 kg	100 kg	A	13
D	Antimony tribromide, solution	8	NA1549	II	CORROSIVE	B2	154	202	242	1 L	30 L	C	13
	Antimony trichloride, liquid	8	UN1733	II	CORROSIVE	B2	154	202	242	1 L	30 L	C	40
	Antimony trichloride, solid	8	UN1733	II	CORROSIVE		154	212	240	15 kg	50 kg	A	40
D	Antimony trifluoride, solid	8	NA1549	II	CORROSIVE		154	212	240	25 kg	25 kg	A	13
D	Antimony trifluoride solution	8	NA1549	II	CORROSIVE	B2	154	202	242	1 L	30 L	C	13
	Aqua ammonia, see Ammonia solution, etc.												
	Argon, compressed	2.2	UN1006		NONFLAMMABLE GAS.		306	302	314, 315	75 kg	150 kg	A	
	Argon, refrigerated liquid (*cryogenic liquid*)	2.2	UN1951		NONFLAMMABLE GAS.		320	316	318	50 kg	500 kg	B	
	Arsenic	6.1	UN1558	II	POISON		None	212	242	25 kg	100 kg	A	
	Arsenic acid, liquid	6.1	UN1553	I	POISON	T18, T27	None	201	243	1 L	30 L	B	
	Arsenic acid, solid	6.1	UN1554	II	POISON		None	212	242	25 kg	100 kg	A	
	Arsenic bromide	6.1	UN1555	II	POISON		None	212	242	25 kg	100 kg	A	12, 40
	Arsenic chloride, see Arsenic trichloride												
	Arsenic compounds, liquid, n.o.s. *including arsenates n.o.s.; arsenites, n.o.s.; arsenic sulfides, n.o.s.; and organic compounds of arsenic, n.o.s.*	6.1	UN1556	I	POISON		None	201	243	1 L	30 L	B	40
				II	POISON		None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.		153	203	241	60 L	220 L	B	40
	Arsenic compounds, solid, n.o.s. *including arsenates, n.o.s.; arsenites, n.o.s.; arsenic sulfides, n.o.s.; and organic compounds of arsenic, n.o.s.*	6.1	UN1557	I	POISON		None	211	242	5 kg	50 kg	A	
				II	POISON		None	212	242	25 kg	100 kg	A	
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Arsenic pentoxide	6.1	UN1559	II	POISON		None	212	242	25 kg	100 kg	A	

D	Arsenic sulfide	6.1	NA1557	II	POISON		None	212	242	25 kg	100 kg	A			
	Arsenic sulfide and a chlorate, mixtures of	Forbidden													
	Arsenic trichloride	6.1	UN1560	I	POISON	2, B9, B14, B32, B74, T36, T43, T45.	None	227	244	1L	30L	B	40		
	Arsenic trioxide	6.1	UN1561	II	POISON		None	212	242	25 kg	100 kg	A			
D	Arsenic trisulfide	6.1	NA1557	II	POISON		None	212	242	25 kg	100 kg	A			
	Arsenic, white, solid, see Arsenic trioxide														
	Arsenical dust	6.1	UN1562	II	POISON		None	212	242	25 kg	100 kg	A			
	Arsenical pesticides, liquid, flammable, toxic, n.o.s., *flash point less than 23 degrees C.*	3	UN2760	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40		
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40		
	Arsenical pesticides, liquid, toxic, flammable, n.o.s. *flashpoint not less than 23 degrees C.*	6.1	UN2993	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40		
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40		
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	241	60 L	220 L	A	40		
	Arsenical pesticides, liquid, toxic, n.o.s.	6.1	UN2994	I	POISON	T42	None	201	243	1 L	30 L	B	40		
				II	POISON	T14	None	202	243	5 L	60 L	B	40		
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40		
	Arsenical pesticides, solid, toxic, n.o.s.	6.1	UN2759	I	POISON		None	211	242	5 kg	50 kg	A	40		
				II	POISON		None	212	242	25 kg	100 kg	A	40		
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40		
	Arsenious acid, solid, see Arsenic trioxide														
	Arsenious and mercuric iodide solution, see Arsenic compounds, liquid, n.o.s.														
	Arsine	2.3	UN2188		POISON GAS, FLAMMABLE GAS.	1	None	192	245	Forbidden	Forbidden	D	40		
	Articles, explosive, extremely insensitive *or* Articles, EEI.	1.6N	UN0486	II	EXPLOSIVE 1.6N	101	None	62	None	Forbidden	Forbidden	B			
	Articles, explosive, n.o.s.	1.4S	UN0349	II	EXPLOSIVE 1.4S	101	None	62	None	25 kg	100 kg	A	9E		
	Articles, explosive, n.o.s.	1.4B	UN0350	II	EXPLOSIVE 1.4B	101	None	62	None	Forbidden	Forbidden	A	24E		
	Articles, explosive, n.o.s.	1.4C	UN0351	II	EXPLOSIVE 1.4C	101	None	62	None	Forbidden	Forbidden	A	24E		
	Articles, explosive, n.o.s.	1.4D	UN0352	II	EXPLOSIVE 1.4D	101	None	62	None	Forbidden	Forbidden	A	24E		
	Articles, explosive, n.o.s.	1.4G	UN0353	II	EXPLOSIVE 1.4G	101	None	62	None	Forbidden	Forbidden	A	24E		
	Articles, explosive, n.o.s.	1.1L	UN0354	II	EXPLOSIVE 1.1L	101	None	62	None	Forbidden	Forbidden	E	2E, 8E, 17E		
	Articles, explosive, n.o.s.	1.2L	UN0355	II	EXPLOSIVE 1.2L	101	None	62	None	Forbidden	Forbidden	E	2E, 8E, 17E		
	Articles, explosive, n.o.s.	1.3L	UN0356	II	EXPLOSIVE 1.3L	101	None	62	None	Forbidden	Forbidden	E	2E, 8E, 17E		
	Articles, explosive, n.o.s.	1.1C	UN0462	II	EXPLOSIVE 1.1C	101	None	62	None	Forbidden	Forbidden	B			
	Articles, explosive, n.o.s.	1.1D	UN0463	II	EXPLOSIVE 1.1D	101	None	62	None	Forbidden	Forbidden	B			
	Articles, explosive, n.o.s.	1.1E	UN0464	II	EXPLOSIVE 1.1E	101	None	62	None	Forbidden	Forbidden	B			
	Articles, explosive, n.o.s.	1.1F	UN0465	II	EXPLOSIVE 1.1F	101	None	62	None	Forbidden	Forbidden	E			
	Articles, explosive, n.o.s.	1.2C	UN0466	II	EXPLOSIVE 1.2C	101	None	62	None	Forbidden	Forbidden	B			
	Articles, explosive, n.o.s.	1.2D	UN0467	II	EXPLOSIVE 1.2D	101	None	62	None	Forbidden	Forbidden	B			
	Articles, explosive, n.o.s.	1.2E	UN0468	II	EXPLOSIVE 1.2E	101	None	62	None	Forbidden	Forbidden	B			
	Articles, explosive, n.o.s.	1.2F	UN0469	II	EXPLOSIVE 1.2F	101	None	62	None	Forbidden	Forbidden	E			
	Articles, explosive, n.o.s.	1.3C	UN0470	II	EXPLOSIVE 1.3C	101	None	62	None	Forbidden	Forbidden	B			
	Articles, explosive, n.o.s.	1.4E	UN0471	II	EXPLOSIVE 1.4E	101	None	62	None	Forbidden	75kg	A	24E		
	Articles, explosive, n.o.s.	1.4F	UN0472	II	EXPLOSIVE 1.4F	101	None	62	None	Forbidden	Forbidden	E			
	Articles, pyrophoric	1.2L	UN0380	II	EXPLOSIVE 1.2L		None	62	None	Forbidden	Forbidden	E	2E, 8E, 17E		
	Articles, pyrotechnic *for technical purposes*	1.1G	UN0428	II	EXPLOSIVE 1.1G		None	62	None	Forbidden	Forbidden	B			
	Articles, pyrotechnic *for technical purposes*	1.2G	UN0429	II	EXPLOSIVE 1.2G		None	62	None	Forbidden	Forbidden	B			
	Articles, pyrotechnic *for technical purposes*	1.3G	UN0430	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	Forbidden	B			
	Articles, pyrotechnic *for technical purposes*	1.4G	UN0431	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E		
	Articles, pyrotechnic *for technical purposes*	1.4S	UN0432	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	9E		
	Asbestos, blue or brown, see Blue asbestos *etc.*														
	Asbestos, white, see White asbestos *etc.*														

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Ascaridole (organic peroxide)	Forbidden											
D	Asphalt, *at or above its flashpoint*	3	NA1999	III	None	B1	150	203	242	Forbidden	Forbidden	D	
D	Asphalt, cut back, *see* Tars, liquid, *etc.*												
	Automobile, motorcycle, tractor, or other self-propelled vehicle, engine, or other mechanical apparatus. see Vehicles, self-propelled.												
	Azidic acid (salt of) (dry)	Forbidden											
	Azido guanidine picrate (dry)	Forbidden											
	5-Azido-1-hydroxy tetrazole	Forbidden											
	Azido hydroxy tetrazole (mercury and silver salts)	Forbidden											
	Azido hydroxy tetrazole (mercury and silver salts)	Forbidden											
	3-Azido-1 2-Propylene glycol dinitrate	Forbidden											
	Azidodithiocarbonic acid	Forbidden											
	Azidoethyl nitrate	Forbidden											
	1-Azindinyl phosphine oxide-(tris), see Tris-(1-aziridinyl) phosphine oxide, solution.												
	2,2'-Azodi-(2,4-dimethyl-4-methoxyvaleronitrile	4.1	UN2955	II	FLAMMABLE SOLID		None	224	None	Forbidden	Forbidden	D	2
	2,2'-Azodi-(2,4 dimethylvaleronitrile)	4.1	UN2953	II	FLAMMABLE SOLID		None	224	None	Forbidden	Forbidden	D	2
	1,1'-Azodi-(hexahydrobenzonitrile)	4.1	UN2954	II	FLAMMABLE SOLID		None	224	None	15 kg	50 kg	B	12, 61, 85
	2,2'-Azodi (2-methyl-butyronitrile)	4.1	UN3030	II	FLAMMABLE SOLID		None	224	None	Forbidden	Forbidden	D	2, 61
	Azodiisobutyronitrile	4.1	UN2952	II	FLAMMABLE SOLID, EXPLOSIVES.	41, 53	None	224	None	Forbidden	Forbidden	D	2
	Azotetrazole (dry)	Forbidden											
	Barium	4.3	UN1400	II	DANGEROUS WHEN WET.	A19	None	212	241	15 kg	50 kg	E	
	Barium alloys, pyrophoric	4.2	UN1854	I	SPONTANEOUSLY COMBUSTIBLE.		None	181	None	Forbidden	Forbidden	D	
	Barium azide, *dry or wetted with less than 50 per cent water, by mass.*	1.1A	UN0224	II	EXPLOSIVE 1.1A, Poison.	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E
	Barium azide, wetted *with not less than 50 per cent water, by mass.*	4.1	UN1571	I	FLAMMABLE SOLID, POISON.	A2	None	182	None	Forbidden	0.5 kg	D	28, 36
	Barium bromate	5.1	UN2719	II	OXIDIZER, POISON		None	212	242	5 kg	25 kg	A	56, 58, 106
	Barium chlorate	5.1	UN1445	II	OXIDIZER, POISON	A9, N34, T8	None	212	242	5 kg	25 kg	A	56, 58, 106
	Barium compounds, n.o.s.	6.1	UN1564	I	POISON		None	211	242	5 kg	50 kg	A	
				II	POISON		None	212	242	25 kg	100 kg	A	
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Barium cyanide	6.1	UN1565	I	POISON	N74, N75	None	211	242	5 kg	50 kg	A	26, 40
	Barium hypochlorite *with more than 22 per cent available chlorine.*	5.1	UN2741	II	OXIDIZER	A7, A9, N34	152	212	None	5 kg	25 kg	B	56, 58, 106
	Barium nitrate	5.1	UN1446	II	OXIDIZER, POISON		None	212	242	5 kg	25 kg	A	
	Barium oxide	6.1	UN1884	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Barium perchlorate	5.1	UN1447	II	OXIDIZER, POISON	T8	None	212	242	5 kg	25 kg	A	56, 58, 106
	Barium permanganate	5.1	UN1448	II	OXIDIZER, POISON		None	212	242	5 kg	25 kg	D	56, 58, 69, 106, 107
	Barium peroxide	5.1	UN1449	II	OXIDIZER, POISON		None	212	2	5 kg	25 kg	A	13, 75, 100
	Barium selenate, *see* Selenates *or* Selenites												
	Barium selenite, *see* Selenates *or* Selenites												
D	Barium styphnate	1.1A	NA0473	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E

	Batteries, dry, containing potassium hydroxide solid, *electric storage*	8	UN3028	III	CORROSIVE		None	213	None	25 kg gross.	230 kg gross.	A		
	Batteries, wet, filled with acid, *electric storage*	8	UN2794	III	CORROSIVE		159	159	None	25 kg gross.	No limit	A		
	Batteries, wet, filled with alkali, *electric storage*	8	UN2795	III	CORROSIVE		159	159	None	25 kg gross.	No limit	A		
AW	Batteries, wet, non-spillable, *electric storage*	8	UN2800	III	CORROSIVE		159	159	None	No Limit	No Limit	A		
	Battery fluid, acid	8	UN2796	II	CORROSIVE	A3, A7, B2, B15, N6, N34, T9, T27.	154	202	242	1 L	30 L	B		
	Battery fluid, alkali	8	UN2797	II	CORROSIVE	B2, N6, T8	154	202	242	1 L	30 L	A		
	Battery lithium type, see Lithium batteries etc.													
	Battery, wet, filled with acid or alkali with automobile (or named self-propelled vehicle or mechanical equipment containing internal combustion engine) see Vehicles, self-propelled etc..													
	Battery, wet, with wheelchair, see Wheelchair, electric.													
	Benzene	3	UN1114	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	40	
	Benzene diazonium chloride (dry)	Forbidden												
	Benzene diazonium nitrate (dry)	Forbidden												
	Benzene-1,3-disulfohydrazide, *not more than 52 per cent as a paste.*	4.1	UN2971	II	FLAMMABLE SOLID		None	224	None	15 kg	50 kg	B	12, 61, 85	
	Benzene phosphorus dichloride, see Phenyl phosphorus dichloride.													
	Benzene phosphorus thiodichloride, see Phenyl phosphorus thiodichloride.													
	Benzene sulfohydrazide	4.1	UN2970	II	FLAMMABLE SOLID		None	224	None	15 kg	50 kg	B	12, 61, 85	
	Benzene sulfonyl chloride	8	UN2225	III	CORROSIVE	T8	154	203	241	5 L	60 L	A	40	
	Benzene triozonide	Forbidden												
	Benzenethiol, see Phenyl mercaptan													
	Benzidine	6.1	UN1885	II	POISON		None	212	242	25 kg	100 kg	A		
	Benzoic derivative pesticides, liquid, flammable, toxic, n.o.s., *flash point less than 23 degrees C.*	3	UN2770	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	E		
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B		
	Benzoic derivative pesticides, liquid, toxic, flammable, n.o.s. *flashpoint not less than 23 degrees C.*	6.1	UN3003	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40	
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40	
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	T14	150	203	241	60 L	220 L	A	40	
	Benzoic derivative pesticides, liquid, toxic, n.o.s.	6.1	UN3004	I	POISON	T42	None	201	243	1 L	30 L	B	40	
				II	POISON	T14	None	202	243	5 L	60 L	B	40	
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40	
	Benzoic derivative pesticides, solid, toxic, n.o.s.	6.1	UN2769	I	POISON		None	211	242	5 kg	50 kg	A	40	
				II	POISON		None	212	242	25 kg	100 kg	A		
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A		
	Benzol, see Benzene													
	Benzonitrile	6.1	UN2224	II	POISON	T14	None	202	243	5 L	60 L	A	26, 40	
	Benzoquinone	6.1	UN2587	II	POISON		None	212	242	25 kg	100 kg	A		
	Benzotrichloride	8	UN2226	II	CORROSIVE	B2, T15	154	202	242	1 L	30 L	A	40	
	Benzotrifluoride	3	UN2338	II	FLAMMABLE LIQUID	T2	150	202	242	5 L	60 L	B	40	
	Benzoxidiazoles (dry)	Forbidden												
	Benzoyl azide	Forbidden												
	Benzoyl chloride	8	UN1736	II	CORROSIVE	B2, T9, T26	154	202	242	1 L	30 L	C	8, 40	
	Benzyl bromide	6.1	UN1737	II	POISON, CORROSIVE.	A3, A7, N33, N34, T12, T26.	None	202	243	1 L	30 L	D	13, 40	
	Benzyl chloride	6.1	UN1738	II	POISON, CORROSIVE.	A3, A7, B41, B70, N33, N43, T12, T26.	None	202	243	1 L	30 L	D	13, 40	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Benzyl chloride *unstabilized*	6.1	UN1738	II	POISON, CORROSIVE.	A3, A7, B8, B11, N33, N34, N43, T12, T26.	None	202	243	1 L	30 L	D	13, 20
	Benzyl chloroformate	8	UN1739	I	CORROSIVE	A3, A6, B4, N41, T18, T26.	None	201	242	Forbidden	2.5 L	D	40
	4-(Benzyl(ethyl)amino)-3-ethoxybenzenediazonium zinc chloride.	4.1	UN3037	II	FLAMMABLE SOLID		None	224	None	Forbidden	Forbidden	D	2
	Benzyl iodide	5.1	UN2653	II	POISON	T8	None	202	243	5 L	60 L	B	12, 40, 48
	4-(Benzyl(methyl)amino)3-ethoxybenzenediazonium zinc chloride.	4.1	UN3038	II	FLAMMABLE SOLID		None	224	None	Forbidden	Forbidden	D	2
	Benzyldimethylamine	8	UN2619	II	CORROSIVE	B2, T1	154	202	242	1 L	30 L	A	12, 21, 40, 48
	Benzylidene chloride	6.1	UN1886	II	POISON	T8	None	202	243	5 L	60 L	D	40
	Beryllium compounds, n.o.s.	6.1	UN1566	II	POISON		None	212	242	25 kg	100 kg	A	
	Beryllium nitrate	5.1	UN2464	II	OXIDIZER, POISON		None	212	242	5 kg	25 kg	A	
	Beryllium, powder	6.1	UN1567	II	POISON, FLAMMABLE SOLID.		None	212	242	15 kg	50 kg	A	
	Bifluorides, n.o.s. *solid*	8	UN1740	II	CORROSIVE	N3, N34	None	212	240	15 kg	50 kg	A	25, 26, 40
	Bifluorides, n.o.s. *solutions*	8	UN1740	II	CORROSIVE	N3, N34	None	202	243	1 L	30 L	A	25, 26, 40
	Biphenyl triazonide	Forbidden											
	Bipyridilium pesticides, liquid, flammable, toxic, n.o.s., *flash point less than 23 degrees C.*	3	UN2782	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	E	
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	
	Bipyridilium pesticides, liquid, toxic, flammable, n.o.s. *flashpoint not less than 23 degrees C.*	6.1	UN3015	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	21, 40, 48
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	21, 40, 48
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A	21, 40, 48
	Bipyridilium pesticides, liquid, toxic, n.o.s.	6.1	UN3016	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Bipyridilium pesticides, solid, toxic, n.o.s.	6.1	UN2781	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	bis (Aminopropyl) piperazine, see Corrosive liquid, n.o.s..												
	Bisulfites, inorganic, aqueous solutions, n.o.s.	8	UN2693	III	CORROSIVE	T8	154	203	241	1 L	30 L	A	8, 26, 40
	Black powder, compressed *or* Gunpowder, compressed *or* Black powder, in pellets *or* Gunpowder, in pellets.	1.1D	UN0028	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Black powder *or* Gunpowder, *granular or as a meal*	1.1D	UN0027	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	10E, 26E
	Blasting agent, n.o.s., see Explosives, blasting *etc.*												
	Blasting cap assemblies, see Detonator assemblies, non-electric, *for blasting.*												
	Blasting caps, electric, see Detonators, electric *for blasting.*												
	Blasting caps, non-electric, see Detonators, non-electric, *for blasting.*												

	Bleaching powder, see Calcium hypochlorite mixtures, *etc.*.													
	Blue Asbestos (*Crocidolite*) *or* Brown asbestos (*amosite, mysorite*).	9	UN2212	II	CLASS 9		155	215	240	Forbidden	Forbidden	A	34, 40
	Bombs, photo-flash	1.1F	UN0037	II	EXPLOSIVE 1.1F		63(b)	62	None	Forbidden	Forbidden	E	
	Bombs, photo-flash	1.1D	UN0038	II	EXPLOSIVE 1.1D		63(b)	62	None	Forbidden	Forbidden	B	
	Bombs, photo-flash	1.2G	UN0039	II	EXPLOSIVE 1.2G		63(b)	62	None	Forbidden	Forbidden	B	
	Bombs, photo-flash	1.3G	UN0299	II	EXPLOSIVE 1.3G		63(b)	62	None	Forbidden	Forbidden	B	
	Bombs, smoke, non-explosive, *with corrosive liquid, without initiating device.*	8	UN2028	III	CORROSIVE		None	160	None	Forbidden	50 kg	E	40
	Bombs, *with bursting charge*	1.1F	UN0033	II	EXPLOSIVE 1.1F		63(b)	62	None	Forbiden	Forbidden	E	
	Bombs, *with bursting charge*	1.1D	UN0034	II	EXPLOSIVE 1.1D		63(b)	62	None	Forbidden	Forbidden	B	3E, 7E
	Bombs, *with bursting charge*	1.2D	UN0035	II	EXPLOSIVE 1.2D		63(b)	62	None	Forbidden	Forbidden	B	3E, 7E
	Bombs, *with bursting charge*	1.2F	UN0291	II	EXPLOSIVE 1.2F		63(b)	62	None	Forbidden	Forbidden	E	
	Bombs with flammable liquid, *with bursting charge*	1.1J	UN0399	II	EXPLOSIVE 1.1J		63(b)	62	None	Forbidden	Forbidden	E	7E, 16E, 23E
	Bombs with flammable liquid, *with bursting charge*	1.2J	UN0400	II	EXPLOSIVE 1.2J		63(b)	62	None	Forbidden	Forbidden	E	7E, 16E, 23E
	Boosters with detonator	1.1B	UN0225	II	EXPLOSIVE 1.1B		None	62	None	Forbidden	Forbidden	B	2E, 5E
	Boosters with detonator	1.2B	UN0268	II	EXPLOSIVE 1.2B		None	62	None	Forbidden	Forbidden	E	1E, 7E
D	Boosters with detonator	1.4B	NA0350	II	EXPLOSIVE 1.4B	115	None	62	None	Forbidden	75 kg	A	24E
	Boosters, *without detonator*	1.1D	UN0042	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	
	Boosters, *without detonator*	1.2D	UN0283	II	EXPLOSIVE 1.2D		None	62	None	Forbidden	Forbidden	B	
	Borate and chlorate mixtures, see Chlorate and borate mixtures.												
	Borneol	4.1	UN1312	III	FLAMMABLE SOLID	A1	None	213	240	25 kg	100 kg	A	
+	Boron tribromide	8	UN2692	I	CORROSIVE, POISON.	2, A3, A7, B9, B14, B32, B74, N34, T38, T43, T45.	None	227	244	Forbidden	2.5 L	C	12
	Boron trichloride	2.3	UN1741		POISON GAS, CORROSIVE.	1, B9, B14	None	304	314	Forbidden	Forbidden	E	25, 40
	Boron trifluoride	2.3	UN1008		POISON GAS	2, B9, B14	None	302	314, 315	Forbidden	Forbidden	D	40
	Boron trifluoride acetic acid complex	8	UN1742	II	CORROSIVE	B2, B6, T9, T27.	154	202	242	1 L	30 L	A	
	Boron trifluoride diethyl etherate	8	UN2604	I	CORROSIVE, FLAMMABLE LIQUID.	A19, T8, T26	None	202	243	0.5 L	2.5 L	D	12, 21, 40, 48
	Boron trifluoride dihydrate	8	UN2851	II	CORROSIVE	T9, T27	154	212	240	15 kg	50 kg	B	12, 40, 48
	Boron trifluoride dimethyl etherate	4.3	UN2965	II	DANGEROUS WHEN WET, CORROSIVE, FLAMMABLE LIQUID.	A19, T8, T26	None	202	243	1 L	5 L	D	21, 28, 40, 49, 100
	Boron trifluoride propionic acid complex	8	UN1743	II	CORROSIVE	B2, T9, T27	154	202	242	1 L	30 L	A	
	Box toe gum, see Nitrocellulose *etc.*												
	Brake fluid, *hydraulic*	3	UN1118	II	FLAMMABLE LIQUID	T7, T30	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Bromates, inorganic, n.o.s.	5.1	UN1450	II	OXIDIZER		152	212	242	5 kg	25 kg	A	56, 58, 106
	Bromine azide	Forbidden											
+	Bromine *or* Bromine solutions	8	UN1744	I	CORROSIVE, POISON.	1, A3, A6, B9, B12, B31, B64, B73, B85, N34, N43, T18, T41.	None	226	249	Forbidden	2.5 L	D	12, 40, 66, 74, 89, 90, 95
	Bromine chloride	2.3	UN2901		POISON GAS, CORROSIVE, OXIDIZER.	2, B9, B12, B14.	None	304	314, 315	Forbidden	Forbidden	D	40, 89, 90
+	Bromine pentafluoride	5.1	UN1745	I	OXIDIZER, POISON, CORROSIVE.	1, B9, B14, B30, B72, T38, T43, T44.	None	228	244	Forbidden	Forbidden	D	25, 40, 66, 90
+	Bromine trifluoride	5.1	UN1746	I	OXIDIZER, POISON, CORROSIVE.	2, B9, B14, B32, B74, T38, T43, T45.	None	228	244	Forbidden	Forbidden	D	25, 40, 66, 90
	4-Bromo-1,2-dinitrobenzene	Forbidden											
	4-Bromo-1,2-dinitrobenzene (unstable at 59 deg C.)	Forbidden											
	1-Bromo-3-methylbutane	3	UN2341	III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	1-Bromo-3-nitrobenzene (unstable at 56 deg C)	Forbidden											
	Bromoacetic acid, *solid*	8	UN1938	II	CORROSIVE	A7, N34, T9	154	212	240	15 kg	50 kg	A	
	Bromoacetic acid, *solution*	8	UN1938	II	CORROSIVE	B2, T9	154	202	242	1 L	30 L	A	40
+	Bromoacetone	6.1	UN1569	II	POISON	2	None	193	245	Forbidden	Forbidden	D	40
	Bromoacetyl bromide	8	UN2513	II	CORROSIVE	B2, T9, T26	154	202	242	1 L	30 L	C	B
	Bromobenzene	3	UN2514	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Bromobenzyl cyanides, *liquid*	6.1	UN1694	I	POISON	T18	None	201	243	Forbidden	30 L	D	12, 40
	Bromobenzyl cyanides, *solid*	6.1	UN1694	I	POISON	T18	None	211	241	Forbidden	50 kg	D	12, 40
	2-Bromobutane	3	UN2339	II	FLAMMABLE LIQUID	B1, T1	150	202	242	5 L	60 L	B	40
	Bromochloromethane	6.1	UN1887	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	2-Bromoethyl ethyl ether	3	UN2340	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	40
	Bromoform	6.1	UN2515	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	12, 40, 48
	Bromomethylpropanes	3	UN2342	II	FLAMMABLE LIQUID	T7, T30	150	202	242	5 L	60 L	B	
	2-Bromopentane	3	UN2343	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	2-Bromopropane	3	UN2344	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	40
	3-Bromopropyne	3	UN2345	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	D	40
	Bromosilane	Forbidden											
	Bromotoluene-alpha, see Benzyl bromide												
	Bromotrifluoroethylene	2.1	UN2419		FLAMMABLE GAS		None	304	314, 315	Forbidden	150 kg	B	40
	Bromotrifluoromethane, *R13B1*	2.2	UN1009		NONFLAMMABLE GAS.		306	304	314, 315	75 kg	150 kg	A	
	Brucine	6.1	UN1570	I	POISON		None	212	242	5 kg	50 kg	A	
	Bursters, *explosive*	1.1D	UN0043	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	
	Butadienes, inhibited	2.1	UN1010		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	B	40
	Butane *or* Butane mixtures *see also* Petroleum gases, liquefied.	2.1	UN1011		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	E	40
	Butane, butane mixtures and mixtures having similar properties in cartridges each not exceeding 500 grams, see Receptacles, etc..												
	Butanedione	3	UN2346	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	1,2,4-Butanetriol trinitrate	Forbidden											
	Butanols	3	UN1120	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	tert-Butoxycarbonyl azide	Forbidden											
	Butoxyl	3	UN2708	III	FLAMMABLE LIQUID	B1, T1	150	203	241	60 L	220 L	A	
	Butyl acetates	3	UN1123	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T1	150	202	241	60 L	220 L	A	
	Butyl acid phosphate	8	UN1718	III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
	Butyl alcohols, see Butanols												
	Butyl benzenes	3	UN2709	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	n-Butyl bromide	3	UN1126	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	n-Butyl chloride, see Chlorobutanes												
	n-Butyl chloroformate	6.1	UN2743	I	POISON, CORROSIVE.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	1 L	30 L	A	12, 13, 22, 25, 40, 48, 100
D	sec-Butyl chloroformate	6.1	NA2742	I	POISON, FLAMMABLE LIQUID, CORROSIVE.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	1 L	30 L	A	12, 13, 22, 25, 40, 48, 100
	Butyl ethers, see Dibutyl ethers												
	Butyl ethyl ether, see Ethyl butyl ether												

	n-Butyl formate	3	UN1128	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	tert-Butyl hydroperoxide, more than 90 per cent with water.	Forbidden											
	N-n-Butyl imidazole	6.1	UN2690	II	POISON	T8	None	202	243	5 L	60 L	A	40
+	Tert-Butyl isocyanate	3	UN2484	I	FLAMMABLE LIQUID, POISON.	1, A7, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	30 L	D	40
+	n-Butyl isocyanate	3	UN2485	II	FLAMMABLE LIQUID, POISON.	1, A7, B9, B14, B30, B72, B77, T38, T43, T44.	None	226	244	Forbidden	60 L	D	40
	Butyl mercaptans	3	UN2347	II	FLAMMABLE LIQUID	A3, T8	150	202	242	5 L	60 L	B	26, 95, 102
	n-Butyl methacrylate	3	UN2227	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Butyl methyl ether	3	UN2350	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Butyl nitrites	3	UN2351	I	FLAMMABLE LIQUID	T8	150	202	242	1 L	30 L	E	40
				II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	40
				III	FLAMMABLE LIQUID	B1, T8	150	202	242	60 L	220 L	A	40
	tert-Butyl peroxyacetate, more than 76 per cent in solution.	Forbidden											
	n-Butyl peroxydicarbonate, more than 52 percent in solution.	Forbidden											
	tert-Butyl peroxyisobutyrate, more than 77 per cent in solution.	Forbidden											
	Butyl phosphoric acid, see Butyl acid phosphate												
	5-tert-Butyl-2,4,6-trinitro-m-xylene *or* Musk xylene	4.1	UN2956	III	FLAMMABLE SOLID		None	214	None	Forbidden	Forbidden	D	12
	Butyl vinyl ether, inhibited	3	UN2352	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	40
	Butylacrylate	3	UN2348	III	FLAMMABLE LIQUID	B1, T8, T31	150	202	241	60 L	220 L	A	
	n-Butylamine	3	UN1125	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	40
	N-Butylaniline	6.1	UN2738	II	POISON	T8	None	202	243	5 L	60 L	A	40
	tert-Butylcyclohexylchloroformate	6.1	UN2747	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	A	12, 13, 25, 48
	Butylene *see also* Petroleum gases, liquefied	2.1	UN1012		FLAMMABLE GAS		None	304	314, 315	Forbidden	150 kg	E	40
	1,2-Butylene oxide, stabilized	3	UN3022	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	49
	Butylphenols, liquid	6.1	UN2228	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	Butylphenols, solid	6.1	UN2229	III	KEEP AWAY FROM FOOD.	T7	153	213	240	100 kg	200 kg	A	
	Butylpropionate	3	UN1914	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Butyltoluenes	6.1	UN2667	III	KEEP AWAY FROM FOOD.	T2	153	203	241	60 L	220 L	A	
	Butyltrichlorosilane	8	UN1747	II	CORROSIVE	A7, B2, B6, N34, T8, T26.	None	202	242	Forbidden	30 L	C	12, 21, 40, 48
	1,4-Butynediol	6.1	UN2716	III	KEEP AWAY FROM FOOD.	A1	None	213	240	100 kg	200 kg	A	61, 70
	Butyraldehyde	3	UN1129	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Butyraldoxime	3	UN2840	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Butyric acid	8	UN2820	III	CORROSIVE	T1	154	203	241	5 L	60 L	A	12, 48
	Butyric anhydride	8	UN2739	III	CORROSIVE	T2	154	203	241	5 L	60 L	A	
	Butyronitrile	3	UN2411	II	FLAMMABLE LIQUID, POISON.	T14	None	202	243	1 L	60 L	E	40
	Butyryl chloride	3	UN2353	II	FLAMMABLE LIQUID, CORROSIVE.	T9, T26	None	202	243	1 L	5 L	C	40
	Cabezide	Forbidden											
	Cacodylic acid	6.1	UN1572	II	POISON		None	212	242	25 kg	100 kg	E	26
	Cadmium compounds	6.1	UN2570	I	POISON		None	211	242	5 kg	50 kg	A	
				II	POISON		None	212	242	25 kg	100 kg	A	
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Caesium hydroxide, solid	8	UN2682	II	CORROSIVE		154	212	240	15 kg	50 kg	A	
	Caesium hydroxide solution	8	UN2681	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A	
	Calcium	4.3	UN1401	II	DANGEROUS WHEN WET.		None	212	241	15 kg	50 kg	E	
	Calcium arsenate	6.1	UN1573	II	POISON		None	212	242	25 kg	100 kg	A	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or rail car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Calcium arsenate and calcium arsenite, mixtures, solid	6.1	UN1574	II	POISON		None	212	242	25 kg	100 kg	A	
D	Calcium arsenite, solid	6.1	NA1574	II	POISON		None	212	242	25 kg	100 kg	A	
	Calcium bisulfite solution, see Bisulfites, inorganic, aqueous solutions, n.o.s.												
	Calcium carbide	4.3	UN1402	II	DANGEROUS WHEN WET.	A1, A8, B55, N34.	None	212	241	15 kg	50 kg	B	
	Calcium chlorate	5.1	UN1452	II	OXIDIZER	N34	152	212	242	5 kg	25 kg	A	56, 58, 106
	Calcium chlorate solution	5.1	UN2429	II	OXIDIZER	A2, N41, T8	152	202	242	1 L	5 L	B	56, 58, 106
	Calcium chlorite	5.1	UN1453	II	OXIDIZER	A9, N34	152	212	242	5 kg	25 kg	A	56, 58, 106
	Calcium cyanamide *with more than 0.1 per cent of calcium carbide*	4.3	UN1403	III	DANGEROUS WHEN WET.	A1, A19	None	213	241	25 kg	100 kg	A	
	Calcium cyanide	6.1	UN1575	I	POISON	N79, N80	None	211	242	5 kg	50 kg	A	26, 40
	Calcium dithionite *or* Calcium hydrosulfite	4.2	UN1923	II	SPONTANEOUSLY COMBUSTIBLE.	A19, A20	None	212	241	15 kg	50 kg	E	13
	Calcium hydride	4.3	UN1404	I	DANGEROUS WHEN WET.	A19, N40	None	211	242	Forbidden	15 kg	E	
	Calcium hydrosulfite, *see* Calcium dithionite												
	Calcium hypochlorite, dry *or* Calcium hypochlorite mixtures dry *with more than 39 per cent available chlorine (8.8 per cent available oxygen)*	5.1	UN1748	II	OXIDIZER	A7, A9, N34	152	212	None	5 kg	25 kg	D	48, 56, 58, 69, 106, 115
	Calcium hypochlorite, hydrated *or* Calcium hypochlorite, hydrated mixtures, *with not less than 5.5 per cent but not more than 10 per cent water*	5.1	UN2880	II	OXIDIZER		152	212	240	5 kg	25 kg	A	50, 56, 58, 69, 106
	Calcium hypochlorite mixtures, dry, *with more than 10 per cent but not more than 39 per cent available chlorine*	5.1	UN2208	III	OXIDIZER	A1, A29, N34	152	213	240	25 kg	100 kg	A	56, 58, 69, 106
	Calcium manganese silicon	4.3	UN2844	III	DANGEROUS WHEN WET.	A1, A19	None	213	241	25 kg	100 kg	A	85, 103
	Calcium nitrate	5.1	UN1454	III	OXIDIZER	T2	152	213	240	25 kg	100 kg	A	
A	Calcium oxide	8	UN1910	III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Calcium perchlorate	5.1	UN1455	II	OXIDIZER	T8	152	212	242	5 kg	25 kg	A	56, 58, 106
	Calcium permanganate	5.1	UN1456	II	OXIDIZER		152	212	242	5 kg	25 kg	D	56, 58, 69, 106, 107
	Calcium peroxide	5.1	UN1457	II	OXIDIZER		152	212	242	5 kg	25 kg	A	13, 75, 106
	Calcium phosphide	4.3	UN1360	I	DANGEROUS WHEN WET, POISON.	A8, A19, N40	None	211	242	Forbidden	15 kg	E	40, 85
	Calcium, pyrophoric *or* Calcium alloys, pyrophoric	4.2	UN1855	I	SPONTANEOUSLY COMBUSTIBLE.		None	187	None	Forbidden	Forbidden	D	
	Calcium resinate	4.1	UN1313	III	FLAMMABLE SOLID	A1, A19	None	213	240	25 kg	100 kg	A	
	Calcium resinate, fused	4.1	UN1314	III	FLAMMABLE SOLID	A1, A19	None	213	240	25 kg	100 kg	A	
	Calcium selenate, *see* Selenates *or* Selenites												
	Calcium silicide	4.3	UN1405	II	DANGEROUS WHEN WET.	A19	None	212	241	15 kg	50 kg	B	85, 103
				III	DANGEROUS WHEN WET.	A1, A19	None	213	241	25 kg	100 kg	B	85, 103
	Camphor oil	3	UN1130	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Camphor, *synthetic*	4.1	UN2717	III	FLAMMABLE SOLID	A1	None	213	240	25 kg	100 kg	A	

	Cannon primers, see Primers, tubular														
	Caproic acid	8	UN2829	III	CORROSIVE	T1	154	203	241	5 L	60 L	A			
	Caps, blasting, see Detonators, etc.														
	Carbamate pesticides, liquid, flammable, toxic, n.o.s., *flash point less than 23 degrees C.*	3	UN2758	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40		
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40		
	Carbamate pesticides, liquid, toxic, flammable, n.o.s. *flash point not less than 23 degrees C.*	6.1	UN2991	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40		
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40		
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A	40		
	Carbamate pesticides, liquid, toxic, n.o.s.	6.1	UN2992	I	POISON	T42	None	201	243	1 L	30 L	B	40		
				II	POISON	T14	None	202	243	5 L	60 L	B	40		
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40		
	Carbamate pesticides, solid, toxic, n.o.s.	6.1	UN2757	I	POISON		None	211	242	5 kg	50 kg	A	40		
				II	POISON		None	212	242	25 kg	100 kg	A	40		
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40		
	Carbolic acid, see Phenol, solid *or* Phenol, molten														
	Carbolic acid solutions, see Phenol solutions														
I	Carbon, activated	4.2	UN1362	III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	0.5 kg	0.5 kg	A	12		
I	Carbon, *animal or vegetable origin*	4.2	UN1361	III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	Forbidden	Forbidden	A	12		
	Carbon bisulfide, see Carbon disulfide														
	Carbon dioxide	2.2	UN1013		NONFLAMMABLE GAS.		306	302, 304	302, 314, 315	75 kg	150 kg	A			
	Carbon dioxide and ethylene oxide mixtures *with more than 6 per cent but not more than 25 percent ethylene oxide.*	2.1	UN1041		FLAMMABLE GAS		None	304	314, 315	Forbidden	25 kg	D	40		
	Carbon dioxide and ethylene oxide mixtures *with more than 25 percent ethylene oxide.*	2.3	UN1041		POISON GAS, FLAMMABLE GAS.	6, B9, B14	None	304	314, 315	Forbidden	25 kg	D	40		
	Carbon dioxide and ethylene oxide mixtures *with not more than 6 per cent ethylene oxide.*	2.2	UN1952		NONFLAMMABLE GAS.		None	304	314, 315	75 kg	150 kg	B			
	Carbon dioxide and nitrous oxide mixtures	2.2	UN1015		NONFLAMMABLE GAS.		306	None	244	75 kg	150 kg	A			
	Carbon dioxide and oxygen mixtures	2.2	UN1014		NONFLAMMABLE GAS.		306	None	244	75 kg	150 kg	A			
	Carbon dioxide, refrigerated liquid	2.2	UN2187		NONFLAMMABLE GAS.	B43	308	None	314, 315	50 kg	500 kg	B			
AW	Carbon dioxide, solid *or* Dry ice	9	UN1845	III	None	B12	217	217	240	200 kg	200 kg	C	40		
	Carbon disulfide	3	UN1131	I	FLAMMABLE LIQUID, POISON.	B16, T18, T26, T29.	None	201	243	Forbidden	Forbidden	D	18, 40, 115		
	Carbon monoxide	2.3	UN1016		POISON GAS, FLAMMABLE GAS.	4	None	302	None	Forbidden	25 kg	D	40		
	Carbon monoxide and hydrogen mixture	2.1	UN2600		FLAMMABLE GAS	5	None	302	302	Forbidden	Forbidden	D	40		
D	Carbon monoxide, refrigerated liquid (*cryogenic liquid*).	2.3	NA9202		POISON GAS, FLAMMABLE GAS.	4	None	316	316	Forbidden	Forbidden	D			
	Carbon tetrabromide	6.1	UN2516	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	25		
	Carbon tetrachloride	6.1	UN1846	II	POISON	N36, T8	None	202	243	5 L	60 L	A	40		
	Carbonyl chloride, see Phosgene														
	Carbonyl fluoride	2.3	UN2417		POISON GAS	2	None	302	None	Forbidden	Forbidden	D	40		
	Carbonyl sulfide	2.3	UN2204		POISON GAS, FLAMMABLE GAS.	2, B9, B14	None	304	314, 315	Forbidden	25 kg	D	40		
	Cartridge cases, empty primed, see Cases, cartridge, empty, with primer.														
	Cartridges, actuating, for aircraft ejector seat catapult, fire extinguisher, canopy removal or apparatus, see Cartridges, power device.														
	Cartridges, explosive, see Charges, demolition														

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Cartridges, flash	1.1G	UN0049	II	EXPLOSIVE 1.1G		None	62	None	Forbidden	Forbidden	B	
	Cartridges, flash	1.3G	UN0050	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	75 kg	B	
	Cartridges for weapons, blank	1.1C	UN0326	II	EXPLOSIVE 1.1C		None	62	None	Forbidden	Forbidden	B	
	Cartridges for weapons, blank	1.2C	UN0413	II	EXPLOSIVE 1.2C		None	62	None	Forbidden	Forbidden	B	
	Cartridges for weapons, blank *or* Cartridges, small arms, blank.	1.3C	UN0327	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	
	Cartridges for weapons, blank *or* Cartridges, small arms, blank.	1.4C	UN0338	II	EXPLOSIVE 1.4C		None	62	None	Forbidden	75 kg	A	24E
	Cartridges for weapons, blank *or* Cartridges, small arms, blank.	1.4S	UN0014	II	None	112	None	62	None	25 kg	100 kg	A	9E
	Cartridges for weapons, inert projectile *or* Cartridges, small arms.	1.2C	UN0328	II	EXPLOSIVE 1.2C		None	62	None	Forbidden	Forbidden	B	
	Cartridges for weapons, inert projectile *or* Cartridges, small arms.	1.4C	UN0339	II	EXPLOSIVE 1.4C		None	62	None	Forbidden	75 kg	B	
	Cartridges for weapons, inert projectile *or* Cartridges, small arms.	1.3C	UN0417	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	
	Cartridges for weapons, inert projectile *or* Cartridges, small arms, *other than blank*.	1.4S	UN0012	II	None	112	None	62	None	25 kg	100 kg	A	9E
	Cartridges for weapons, *with bursting charge*	1.1F	UN0005	II	EXPLOSIVE 1.1F		None	62	None	Forbidden	Forbidden	E	
	Cartridges for weapons, *with bursting charge*	1.2F	UN0007	II	EXPLOSIVE 1.2F		None	62	None	Forbidden	Forbidden	E	
	Cartridges for weapons, *with bursting charge*	1.4F	UN0348	II	EXPLOSIVE 1.4F		None	62	None	Forbidden	Forbidden	E	
	Cartridges for weapons, *with bursting charge*	1.4E	UN0412	II	EXPLOSIVE 1.4E		None	62	None	Forbidden	75 kg	A	24E
	Cartridges for weapons, *with bursting charge*	1.1E	UN0006	II	EXPLOSIVE 1.1E		None	62	None	Forbidden	Forbidden	B	
	Cartridges for weapons, *with bursting charge*	1.2E	UN0321	II	EXPLOSIVE 1.2E		None	62	None	Forbidden	Forbidden	B	
	Cartridges, oil well	1.3C	UN0277	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	
	Cartridges, oil well	1.4C	UN0278	II	EXPLOSIVE 1.4C		None	62	None	Forbidden	75 kg	A	24E
	Cartridges, power device	1.3C	UN0275	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	75 kg	B	
	Cartridges, power device	1.4C	UN0276	II	EXPLOSIVE 1.4C	110	None	62	None	Forbidden	75 kg	A	24E
	Cartridges, power device	1.2C	UN0381	II	EXPLOSIVE 1.2C		None	62	None	Forbidden	Forbidden	B	
	Cartridges, power device	1.4S	UN0323	II	EXPLOSIVE 1.4S	110, 112	None	62	None	25 kg	100 kg	A	9E
	Cartridges, safety, blank, *see* Cartridges for weapons, blank (*UN 0014*).												
	Cartridges, safety, *see* Cartridges for weapons, *other than blank or* Cartridges, power device (*UN 0323*).												
	Cartridges, signal	1.3G	UN0054	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	75 kg	B	
	Cartridges, signal	1.4G	UN0312	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E
	Cartridges, signal	1.4S	UN0405	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	9E
D	Cartridges, small arms	ORM-D	None		None	112	230	None	None	30 kg gross.	30 kg gross.	A	
	Cartridges, sporting, see Cartridges for weapons, *other than blank*.												
	Cartridges, starter, jet engine, see Cartridges, power device.												
I	Cases, cartridge, empty with primer	1.4S	UN0055	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	9E
	Cases, cartridges, empty with primer	1.4C	UN0379	II	EXPLOSIVE 1.4C		None	62	None	Forbidden	75 kg	A	24E
	Cases, combustible, empty, without primer	1.3C	UN0447	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	
	Cases, combustible, empty, without primer	1.4C	UN0446	II	EXPLOSIVE 1.4C		None	62	None	Forbidden	75 kg	A	24E
	Casinghead gasoline see Natural gasoline												
AW	Castor beans *or* Castor meal *or* Castor pomace *or* Castor flake.	9	UN2969	II	None		155	204	240	No limit	No limit	E	34, 40, 44, 120
	Caustic alkali liquids, n.o.s.	8	UN1719	I	CORROSIVE	A7, B10, T42	None	201	242	0.5 L	2.5 L	A	
				II	CORROSIVE	B2, T14	154	202	242	1 L	30 L	A	
				III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
	Caustic potash, see Potassium hydroxide *etc.*												

	Caustic soda, (etc.) see Sodium hydroxide *etc.*													
	Celluloid, *in block, rods, rolls, sheets, tubes, etc., except scrap.*	4.1	UN2000	III	FLAMMABLE SOLID		None	213	240	25 kg	100 kg	A		
	Celluloid, scrap	4.2	UN2002	III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	Forbidden	Forbidden	D		
	Cement, see Adhesives *containing flammable liquid*													
	Cerium, *slabs, ingots or rods*	4.1	UN1333	II	FLAMMABLE SOLID	N34	None	212	240	15 kg	50 kg	A		74, 91
	Cerium, *turnings or gritty powder*	4.3	UN3078	II	DANGEROUS WHEN WET.	A1	None	213	242	15 kg	50 kg	E		
	Cesium *or* Caesium	4.3	UN1407	I	DANGEROUS WHEN WET.	A19, N34, N40	None	211	242	Forbidden	15 kg	D		
	Cesium nitrate *or* Caesium nitrate	5.1	UN1451	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A		
D	Charcoal *briquettes, shell, screenings, wood, etc.*	4.2	NA1361	III	SPONTANEOUSLY COMBUSTIBLE.		151	213	240	25 kg	100 kg	A		12
	Charges, bursting, plastics bonded	1.1D	UN0457	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B		
	Charges, bursting, plastics bonded	1.2D	UN0458	II	EXPLOSIVE 1.2D		None	62	None	Forbidden	Forbidden	B		
	Charges, bursting, plastics bonded	1.4D	UN0459	II	EXPLOSIVE 1.4D		None	62	None	Forbidden	75kg	A		24E
	Charges, bursting, plastics bonded	1.4S	UN0460	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A		9E
	Charges, demolition	1.1D	UN0048	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B		3E, 7E
	Charges, depth	1.1D	UN0056	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B		
	Charges, expelling, explosive, for fire extinguishers, see Cartridges, power device.													
	Charges, explosive, commercial *without detonator*	1.1D	UN0442	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B		
	Charges, explosive, commercial *without detonator*	1.2D	UN0443	II	EXPLOSIVE 1.2D		None	62	None	Forbidden	Forbidden	B		
	Charges, explosive, commercial *without detonator*	1.4D	UN0444	II	EXPLOSIVE 1.4D		None	62	None	Forbidden	75 kg	A		24E
	Charges, explosive, commercial *without detonator*	1.4S	UN0445	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A		9E
	Charges, propelling, for cannon	1.2C	UN0414	II	EXPLOSIVE 1.2C		None	62	None	Forbidden	Forbidden	B		1E, 5E
	Charges, propelling, for cannon	1.3C	UN0242	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B		1E, 5E
	Charges, propelling, for cannon	1.1C	UN0279	II	EXPLOSIVE 1.1C		None	62	None	Forbidden	Forbidden	B		1E, 5E
	Charges, propelling, for rocket motors	1.1C	UN0271	II	EXPLOSIVE 1.1C		None	62	None	Forbidden	Forbidden	B		
	Charges, propelling, for rocket motors	1.3C	UN0272	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B		
	Charges, propelling, for rocket motors	1.2C	UN0415	II	EXPLOSIVE 1.2C		None	62	None	Forbidden	Forbidden	B		
	Charges, propelling, for rocket motors, *composite mixture.*	1.1C	UN0273	II	EXPLOSIVE 1.1C		None	62	None	Forbidden	Forbidden	B		
	Charges, propelling, for rocket motors, *composite mixture.*	1.3C	UN0274	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B		
	Charges, propelling, for rocket motors, *composite mixture.*	1.2C	UN0416	II	EXPLOSIVE 1.2C		None	62	None	Forbidden	Forbidden	B		
	Charges, shaped, commercial *without detonator*	1.2D	UN0439	II	EXPLOSIVE 1.2D		None	62	None	Forbidden	75 kg	A		24E
	Charges, shaped, commercial *without detonator*	1.4D	UN0440	II	EXPLOSIVE 1.4D		None	62	None	25 kg	100 kg	A		9E
	Charges, shaped, commercial *without detonator*	1.4S	UN0441	II	EXPLOSIVE 1.4S		None	62	None	Forbidden	Forbidden	B		
	Charges, shaped, commercial, *without detonator*	1.1D	UN0059	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	75 kg	A		24E
	Charges, shaped, flexible, linear	1.4D	UN0237	II	EXPLOSIVE 1.4D		None	62	None	Forbidden	Forbidden	B		
	Charges, shaped, flexible, linear	1.1D	UN0288	II	EXPLOSIVE 1.1D	101	None	62	None	Forbidden	Forbidden	B		1E, 5E
	Charges, supplementary explosive	1.1D	UN0060	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B		40
D	Chemical kit	B	NA1760	II	CORROSIVE		154	161	None	1 L	30 L	B		40
	Chemical kits (*must be classified and labelled according to the hazard class of the constituent(s) and must meet the requirements of special provision 15 in 172.102(c)(1)*).													
	Chloral, anhydrous, inhibited	6.1	UN2075	II	POISON	T14	None	212	243	25 kg	100 kg	D		40
	Chlorate and borate mixtures	5.1	UN1458	II	OXIDIZER	A9, N34	152	212	240	5 kg	25 kg	A		56, 58, 106
	Chlorate and magnesium chloride mixtures	5.1	UN1459	II	OXIDIZER	A9, N34, T8	152	212	240	5 kg	25 kg	A		56, 58, 106
	Chlorate of potash, see Potassium chlorate													
	Chlorate of soda, see Sodium chlorate													
	Chlorates, inorganic, n.o.s.	5.1	UN1461	II	OXIDIZER	A9, N34	152	212	242	5 kg	25 kg	A		56, 58, 106
	Chloric acid solution, *with not more than 10 per cent chloric acid.*	5.1	UN2626	I	OXIDIZER	T25	None	229	243	Forbidden	Forbidden	D		56, 58, 106
	Chloride of phosphorus, see Phosphorus trichloride													
	Chloride of sulfur, see Sulfur chloride													
	Chlorinated lime, see Calcium hypochlorite mixtures, *etc.*.													

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or rail car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Chlorine	2.3	UN1017		POISON GAS	2, B9, B14	None	304	314, 315	Forbidden	Forbidden	D	40, 51, 55, 62, 68
	Chlorine azide	Forbidden											
D	Chlorine dioxide, hydrate, frozen	5.1	NA9191	II	OXIDIZER, POISON		None	229	None	Forbidden	Forbidden	E	
	Chlorine dioxide (not hydrate)	Forbidden											
	Chlorine pentafluoride	2.3	UN2548		POISON GAS, OXIDIZER, CORROSIVE.	1, B7, B9, B14	None	304	314	Forbidden	Forbidden	D	40, 89, 90
	Chlorine trifluoride	2.3	UN1749		POISON GAS, OXIDIZER, CORROSIVE.	1, B7, B9, B14	None	304	314	Forbidden	Forbidden	D	40, 89, 90
	Chlorites, inorganic, n.o.s.	5.1	UN1462	II	OXIDIZER	A7, N34, T8	152	212	242	5 kg	25 kg	A	56, 58, 106
	1-Chloro-3-bromopropane	6.1	UN2688	III	KEEP AWAY FROM FOOD.	T2	153	203	241	60 L	220 L	A	
	3-Chloro-4-diethylaminobenzenediazonium zinc chloride.	4.1	UN3033	II	FLAMMABLE SOLID		None	224	None	15 kg	50 kg	C	
	1-Chloro-1,1-difluoroethane, see Chlorodifluoroethanes.												
	3-Chloro-4-methylphenylisocyanate	6.1	UN2236	II	POISON		None	202	243	5 L	60 L	B	40
	4-Chloro-o-toluidine hydrochloride	6.1	UN1579	III	KEEP AWAY FROM FOOD.		153	213	241	100 kg	200 kg	A	
+	Chloroacetaldehyde	6.1	UN2232	II	POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	5 L	60 L	D	40
	Chloroacetic acid, liquid	8	UN1750	II	CORROSIVE, POISON.	A7, N34, T9, T27.	None	202	243	1 L	30 L	A	40
	Chloroacetic acid, solid	8	UN1751	II	CORROSIVE	A3, A7, N34	None	212	242	15 kg	50 kg	A	40
+	Chloroacetone, stabilized	6.1	UN1695	II	POISON	2, B9, B14, B32, B74, N12, N32, N34, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40
	Chloroacetone (unstabilized)	Forbidden											
+	Chloroacetonitrile	6.1	UN2668	II	POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	60 L	A	12, 26, 40, 48
	Chloroacetophenone (*CN*), *liquid*	6.1	UN1697	II	POISON	A3, N12, N32, N33.	None	202	242	Forbidden	60 L	D	12, 40
	Chloroacetophenone (*CN*), *solid*	6.1	UN1697	II	POISON	A3, N12, N32, N33, N34.	None	212	None	Forbidden	100 kg	D	12, 40
+	Chloroacetyl chloride	8	UN1752	II	CORROSIVE, POISON.	2, A3, A8, A7, B3, B8, B9, B14, B32, B74, B77, N34, N43, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40
	Chloroanilines, liquid	6.1	UN2019	II	POISON	T14	None	202	243	5 L	60 L	A	
	Chloroanilines, solid	6.1	UN2018	II	POISON	T14, T38	None	212	242	25 kg	100 kg	A	
	Chloroanisidines	6.1	UN2233	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Chlorobenzene	3	UN1134	III	FLAMMABLE LIQUID	B1, T1	150	203	241	60 L	220 L	A	
	Chlorobenzol, see Chlorobenzene												
	Chlorobenzotrifluorides	3	UN2234	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	40
	Chlorobenzylchlorides	6.1	UN2235	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	A	

	Chlorobutanes	3	UN1127	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B		
	Chlorocresols, *liquid*	6.1	UN2669	II	POISON	T8	None	202	243	5 L	60 L	A		12
	Chlorocresols, *solid*	6.1	UN2669	II	POISON		None	212	242	25 kg	100 kg	A		12
	Chlorodifluorobromomethane, *R12B1*	2.2	UN1974		NONFLAMMABLE GAS.		306	304	314, 315	75 kg	150 kg	A		
	Chlorodifluoroethanes, *R142b or* Difluorochloroethanes, *R142b*.	2.1	UN2517		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	B		40
	Chlorodifluoromethane and chloropentafluoroethane *mixture with fixed boiling point, with approximately 49 per cent chlorodifluoromethane, R502.*	2.2	UN1973		NONFLAMMABLE GAS.		306	304	314, 315	75 kg	150 kg	A		
	Chlorodifluoromethane, *R22*	2.2	UN1018		NONFLAMMABLE GAS.		306	304	314, 315	75 kg	150 kg	A		
	Chlorodinitrobenzenes	6.1	UN1577	II	POISON	T14	None	212	242	25 kg	100 kg	A		91
	Chloroform	6.1	UN1888	II	POISON	N36, T14	None	202	243	5 L	60 L	A		40
	Chloroformates, n.o.s., *flash point not less than 23 degrees C.*	6.1	UN2742	II	POISON, CORROSIVE.	5	None	202	243	1 L	30 L	A		12, 13, 22, 25, 40, 48, 100
	Chloromethyl ethyl ether	3	UN2354	II	FLAMMABLE LIQUID, POISON.	T8	None	202	243	1 L	60 L	E		40
	Chloromethylchloroformate	6.1	UN2745	II	POISON, CORROSIVE.	T18	None	202	243	1 L	30 L	A		12, 13, 22, 25, 40, 48, 100
	Chloronitroanilines	6.1	UN2237	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A		
+	Chloronitrobenzene, *ortho, liquid*	6.1	UN1578	II	POISON	T14	None	202	243	5 L	60 L	A		
+	Chloronitrobenzenes *meta or para, solid*	6.1	UN1578	II	POISON	T14	None	212	242	25 kg	100 kg	A		
	Chloronitrotoluenes *liquid*	6.1	UN2433	III	KEEP AWAY FROM FOOD.		153	203	241	60 L	220 L	A		
	Chloronitrotoluenes, *solid*	6.1	UN2433	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A		
	Chloropentafluoroethane, *R115*	2.2	UN1020		NONFLAMMABLE GAS.		306	304	314, 315	75 kg	150 kg	A		
	Chlorophenates, liquid	8	UN2904	III	CORROSIVE		154	203	241	5 L	60 L	A		
	Chlorophenates, solid	8	UN2905	III	CORROSIVE		154	213	240	25 kg	100 kg	A		
	Chlorophenols, liquid	6.1	UN2021	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A		
	Chlorophenols, solid	6.1	UN2020	III	KEEP AWAY FROM FOOD.	T7	153	213	240	100 kg	200 kg	A		
	Chlorophenyltrichlorosilane	8	UN1753	II	CORROSIVE	A7, B2, B6, N34, T8, T26.	None	202	242	Forbidden	30 L	C		40
+	Chloropicrin	6.1	UN1580	I	POISON	2, B7, B9, B14, B32, B46, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D		40
	Chloropicrin and methyl bromide mixtures	2.3	UN1581		POISON GAS	2, B9, B14	None	193	314, 315	Forbidden	Forbidden	D		25, 40
	Chloropicrin and methyl chloride mixtures	2.3	UN1582		POISON GAS	2	None	193	245	Forbidden	Forbidden	D		25, 40
	Chloropicrin mixture, flammable (pressure not exceeding 14.7 psia at 115 degrees F flash point below 100 deg F) see Poisonous liquids, flammable, n.o.s.													
	Chloropicrin mixtures, n.o.s.	6.1	UN1583	I	POISON	5	None	201	243	Forbidden	Forbidden	C		40
				II	POISON		None	202	243	Forbidden	Forbidden	C		40
				III	KEEP AWAY FROM FOOD.		153	203	241	Forbidden	Forbidden	C		40
D	Chloropivaloyl chloride	6.1	NA9263	I	POISON, CORROSIVE.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	B		40
	Chloroplatinic acid, solid	8	UN2507	III	CORROSIVE		154	213	240	25 kg	100 kg	A		
	Chloroprene, inhibited	3	UN1991	I	FLAMMABLE LIQUID, POISON.	B57, T15	None	201	243	Forbidden	30 L	D		40
	Chloroprene, uninhibited	Forbidden												
	2-Chloropropane	3	UN2356	I	FLAMMABLE LIQUID	N36, T14	150	201	243	1 L	30 L	E		
	3-Chloropropanol-1	6.1	UN2849	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	A		
	2-Chloropropene	3	UN2456	I	FLAMMABLE LIQUID	A3, N36, T20	150	201	243	1 L	30 L	E		
	alpha-Chloropropionic acid	8	UN2511	III	CORROSIVE	T8	154	203	241	5 L	60 L	A		8

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or rail car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	2-Chloropyridine	6.1	UN2822	II	POISON	T14	None	202	243	5 L	60 L	A	40
	Chlorosilanes, n.o.s.	8	UN2987	II	CORROSIVE	B2	154	202	242	1 L	30 L	C	40
	Chlorosilanes, n.o.s., *flash point not less than 23 degrees C.*	8	UN2986	II	CORROSIVE, FLAMMABLE LIQUID.		None	202	243	1 L	30 L	C	23, 40
	Chlorosilanes, n.o.s. *flashpoint less than 23 degree C.*	3	UN2985	II	FLAMMABLE LIQUID, CORROSIVE.	T18, T26	None	201	243	1 L	5 L	B	40
	Chlorosilanes, n.o.s., *which in contact with water emit flammable gases.*	4.3	UN2988	I	DANGEROUS WHEN WET, FLAMMABLE LIQUID, CORROSIVE.	A2	None	201	244	Forbidden	1 L	D	21, 28, 40, 49, 100
+	Chlorosulfonic acid (*with or without sulfur trioxide*)	8	UN1754	I	CORROSIVE, POISON.	2, A3, A6, A10, B10, B9, B14, B32, B74, T38, T43, T45.	None	227	244	0.5 L	2.5 L	C	8, 40
	Chlorotetrafluoroethane, *R124*	2.2	UN1021		NONFLAMMABLE GAS.		306	304	314, 315	75 kg	150 kg	A	
	Chlorotoluenes	3	UN2238	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Chlorotoluidines *liquid*	6.1	UN2239	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	Chlorotoluidines *solid*	6.1	UN2239	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Chlorotrifluoroethane, *R133a*	2.2	UN1983		NONFLAMMABLE GAS.		306	304	314, 315	75 kg	150 kg	A	
	Chlorotrifluoromethane and trifluoromethane azeotropic mixture *with approximately 60 per cent chlorotrifluoromethane, R503.*	2.2	UN2599		NONFLAMMABLE GAS.		306	304	314, 315	75 kg	150 kg	A	
	Chlorotrifluoromethane, *R13*	2.2	UN1022		NONFLAMMABLE GAS.		306	304	314, 315	75 kg	150 kg	A	
D	Chromic acid, solid	5.1	NA1463	II	OXIDIZER, CORROSIVE.		None	212	242	5 kg	25 kg	A	
	Chromic acid solution	8	UN1755	II	CORROSIVE	B2, T9, T27	154	202	242	1 L	30 L	C	40
	Chromic anhydride, see Chromium trioxide, anhydrous.												
	Chromic fluoride, solid	8	UN1756	II	CORROSIVE		154	212	240	15 kg	50 kg	A	26
	Chromic fluoride, solution	8	UN1757	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A	
	Chromium nitrate	5.1	UN2720	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	
	Chromium oxychloride	8	UN1758	I	CORROSIVE	A3, A6, A7, B10, N34, T12, T26.	None	201	242	0.5 L	2.5 L	C	8, 40, 66, 74, 89, 90
	Chromium trioxide, anhydrous	5.1	UN1463	II	OXIDIZER, CORROSIVE.		None	212	242	5 kg	25 kg	A	
	Chromosulfuric acid	8	UN2240	I	CORROSIVE	A3, A6, A7, B4, B6, N34, T12, T27.	None	201	242	0.5 L	2.5 L	B	8, 9, 40, 66, 74, 89, 90
	Chromyl chloride, see Chromium oxychloride												
	Cigar and cigarette lighters, charged with fuel, see Lighters for cigars, cigarettes, etc..												
	Coal briquettes, hot	Forbidden											
	Coal gas	2.3	UN1023		POISON GAS, FLAMMABLE GAS.	3	None	302	314, 315	Forbidden	25 kg	D	40
	Coal tar distillates, flammable	3	UN1136	II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	

	Coal tar dye, corrosive, liquid, n.o.s, see Dyes, liquid *or* solid, n.o.s. *or* Dye intermediates, liquid *or* solid, n.o.s., *corrosive.*														
	Coating solution	3	UN1139	II	FLAMMABLE LIQUID	T7, T30	150	202	242	5 L	60 L	B			
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A			
	Cobalt naphthenates, powder	4.1	UN2001	III	FLAMMABLE SOLID	A19	151	213	240	25 kg	100 kg	A			
	Cobalt resinate, precipitated	4.1	UN1318	III	FLAMMABLE SOLID	A1, A19	151	213	240	25 kg	100 kg	A			
	Cocculus	6.1	UN1584	II	POISON		None	212	242	25 kg	100 kg	A			
	Coke, hot	Forbidden													
	Collodion, see Nitrocellulose *etc.*														
D	Compounds, cleaning liquid	8	NA1760	I	CORROSIVE	A7, B10, T42	None	201	242	0.5 L	2.5 L	B	40		
				II	CORROSIVE	B2, N37, T14	154	202	242	1 L	30 L	B	40		
				III	CORROSIVE	N37, T7	154	203	241	5 L	60 L	A	40		
D	Compounds, cleaning liquid	3	NA1993	I	FLAMMABLE LIQUID	T42	150	201	243	1 L	30 L	E			
				II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B			
				III	FLAMMABLE LIQUID	B1, B52, T7, T30.	150	203	242	60 L	220 L	A			
D	Compounds, tree *or* weed killing, liquid	8	NA1760	I	CORROSIVE	A7, B10, T42	None	201	242	0.5 L	2.5 L	B	40		
				II	CORROSIVE	B2, N37, T14	154	202	242	1 L	30 L	B	40		
				III	CORROSIVE	N37, T7	154	203	241	5 L	60 L	A	40		
D	Compounds, tree *or* weed killing, liquid	3	NA1993	I	FLAMMABLE LIQUID	T42	150	201	243	1 L	30 L	E			
				II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B			
				III	FLAMMABLE LIQUID	B1, B52, T7, T30.	150	203	242	60 L	220 L	A			
D	Compounds, tree *or* weed killing, liquid	6.1	NA2810	I	POISON		153	201	243	1 L	30 L	B	40		
				II	POISON		153	202	243	5 L	60 L	B	40		
				III	KEEP AWAY FROM FOOD.		153	203	241	60 L	220 L	A	40		
D	Combustible liquid, n.o.s.	Combustible liquid	NA1993	III	None	T1	150	203	241	60 L	220 L	A			
	Components, explosive train, n.o.s.	1.2B	UN0382	II	EXPLOSIVE 1.2B	101	None	62	None	Forbidden	Forbidden	B	1E, 6E		
	Components, explosive train, n.o.s.	1.4B	UN0383	II	EXPLOSIVE 1.4B	101	None	62	None	Forbidden	75 kg	A	24E		
	Components, explosive train, n.o.s.	1.4S	UN0384	II	EXPLOSIVE 1.4S	101	None	62	None	25 kg	100 kg	A	9E		
	Components, explosive train, n.o.s.	1.1B	UN0461	II	EXPLOSIVE 1.1B	101	None	62	None	Forbidden	Forbidden	B	1E, 6E		
	Composition B, see Hexolite, *etc.*														
	Compressed *or* Liquefied gases, flammable, n.o.s.	2.1	UN1954		FLAMMABLE GAS		306	302, 304, 305	314, 315	Forbidden	150 kg		40, 105		
	Compressed *or* Liquefied gases, flammable, toxic, n.o.s. *Inhalation hazard Zone A.*	2.3	UN1953		POISON GAS, FLAMMABLE GAS.	1	None	192	245	Forbidden	Forbidden	D	40, 95		
	Compressed *or* Liquefied gases, flammable, toxic, n.o.s. *Inhalation Hazard Zone B.*	2.3	UN1953		POISON GAS, FLAMMABLE GAS.	2, B9, B14	None	302, 304, 305	314, 315	Forbidden	Forbidden	D	40		
	Compressed *or* Liquefied gases, flammable, toxic, n.o.s. *Inhalation Hazard Zone C.*	2.3	UN1953		POISON GAS, FLAMMABLE GAS.	3, B14	None	302, 304, 305	314, 315	Forbidden	Forbidden	D	40		
	Compressed *or* Liquefied gases, flammable, toxic, n.o.s. *Inhalation Hazard Zone D.*	2.3	UN1953		POISON GAS, FLAMMABLE GAS.	4	None	302, 304, 305	314, 315	Forbidden	Forbidden	D	40		
	Compressed *or* Liquefied gases, n.o.s.	2.2	UN1956		NONFLAMMABLE GAS.		306, 307	302, 304, 305	314, 315	75 kg	150 kg	A			
	Compressed *or* Liquefied gases, toxic, n.o.s. *Inhalation Hazard Zone A.*	2.3	UN1955		POISON GAS	1	None	192	245	Forbidden	Forbidden	D	40		
	Compressed *or* Liquefied gases, toxic, n.o.s. *Inhalation Hazard Zone B.*	2.3	UN1955		POISON GAS	2, B9, B14	None	302, 304, 305	314, 315	Forbidden	Forbidden	D	40		
	Compressed *or* Liquefied gases, toxic, n.o.s. *Inhalation Hazard Zone C.*	2.3	UN1955		POISON GAS	3, B14	None	302, 304, 305	314, 315	Forbidden	Forbidden	D	40		
	Compressed *or* Liquefied gases, toxic, n.o.s. *Inhalation Hazard Zone D.*	2.3	UN1955		POISON GAS	4	None	302, 304, 305	314, 315	Forbidden	Forbidden	D	40		
D	Consumer commodity	ORM-D	None		None		156, 306	156, 306	None	30 kg gross.	30 kg gross.	A			

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or rail car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Contrivances, water-activated, *with burster, expelling charge or propelling charge.*	1.2L	UN0248	II	EXPLOSIVE 1.2L	101	None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
	Contrivances, water-activated, *with burster, expelling charge or propelling charge.*	1.3L	UN0249	II	EXPLOSIVE 1.3L	101	None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
	Copper acetoarsenite	6.1	UN1585	II	POISON		None	212	242	25 kg	100 kg	A	
	Copper acetylide	Forbidden											
	Copper amine azide	Forbidden											
	Copper arsenite	6.1	UN1586	II	POISON		None	212	242	25 kg	100 kg	A	
	Copper based pesticides, liquid, flammable, toxic n.o.s., *flash point less than 23 degrees C.*	3	UN2776	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40
	Copper based pesticides, liquid, toxic, flammable, n.o.s. *flashpoint not less than 23 degrees C.*	6.1	UN3009	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	241	60 L	220 L	A	40
	Copper based pesticides, liquid, toxic, n.o.s.	6.1	UN3010	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Copper based pesticides, solid, toxic, n.o.s.	6.1	UN2775	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	Copper chlorate	5.1	UN2721	II	OXIDIZER	A1	152	212	242	5 kg	25 kg	A	56, 58, 106
	Copper chloride	8	UN2802	III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Copper cyanide	6.1	UN1587	II	POISON		None	204	242	25 kg	100 kg	A	26
	Copper selenate, *see* Selenates *or* Selenites												
	Copper selenite, *see* Selenates *or* Selenites												
	Copper tetramine nitrate	Forbidden											
AW	Copra	4.2	UN1363	III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	Forbidden	Forbidden	A	13, 19, 48, 119
	Cord, detonating, *flexible*	1.1D	UN0065	II	EXPLOSIVE 1.1D	102	63(a)	62	None	Forbidden	Forbidden	B	
	Cord, detonating, *flexible*	1.4D	UN0289	II	EXPLOSIVE 1.4D		None	62	None	Forbidden	75 kg	A	24E
	Cord detonating *or* Fuse detonating *metal clad*	1.2D	UN0102	II	EXPLOSIVE 1.2D		None	62	None	Forbidden	Forbidden	B	
	Cord, detonating *or* Fuse, detonating *metal clad*	1.1D	UN0290	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	
	Cord, detonating, mild effect *or* Fuse, detonating, mild effect *metal clad.*	1.4D	UN0104	II	EXPLOSIVE 1.4D		None	62	None	Forbidden	75 kg	A	24E
	Cord, igniter	1.4G	UN0066	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E
	Cordeau detonant fuse, see Cord, detonating, *etc.*; Cord, detonating, *flexible.*												
	Cordite, see Powder, smokeless												
	Corrosive liquids, flammable, n.o.s.	8	UN2920	I	CORROSIVE, FLAMMABLE LIQUID.	B10, T42	None	201	243	0.5 L	2.5 L	C	12, 21, 25, 40, 48
				II	CORROSIVE, FLAMMABLE LIQUID.	B2, T15, T26	None	202	243	1 L	30 L	C	12, 21, 25, 40, 48
	Corrosive liquids, n.o.s.	8	UN1760	I	CORROSIVE	A7, B10, T42	None	201	243	0.5 L	2.5 L	B	40
				II	CORROSIVE	B2, T14	154	202	242	1 L	30 L	B	40
				III	CORROSIVE	T7	154	203	241	5 L	60 L	A	40

	Corrosive liquids, oxidizing, n.o.s.	8	UN3093	I	CORROSIVE, OXIDIZER.		None	201	243	Forbidden	2.5 L	C	59	
				II	CORROSIVE, OXIDIZER.		None	202	243	1 L	30 L	C	59	
	Corrosive liquids, poisonous, n.o.s.	8	UN2922	I	CORROSIVE, POISON.	A7, B10	None	201	243	0.5 L	2.5 L	B	40, 95	
				II	CORROSIVE, POISON.	B3	None	202	243	1 L	30 L	B	40, 95	
	Corrosive liquids, which in contact with water emit flammable gases, n.o.s.	8	UN3094	I	CORROSIVE, DANGEROUS WHEN WET.		None	201	243	Forbidden	1 L	E		
				II	CORROSIVE, DANGEROUS WHEN WET.		None	202	243	1 L	5 L	E		
	Corrosive solids, flammable, n.o.s.	8	UN2921	I	CORROSIVE, FLAMMABLE SOLID.		None	211	242	1 kg	25 kg	B	12, 24, 25, 48	
				II	CORROSIVE, FLAMMABLE SOLID.		None	212	242	15 kg	50 kg	B	12, 24, 25, 48	
	Corrosive solids, n.o.s.	8	UN1759	I	CORROSIVE		None	211	242	1 kg	25 kg	B		
				II	CORROSIVE		154	212	240	15 kg	50 kg	A		
				III	CORROSIVE		154	213	240	25 kg	100 kg	A		
	Corrosive solids, oxidizing, n.o.s.	8	UN3084	I	CORROSIVE, OXIDIZER.		None	211	240	1 kg	25 kg	C	59	
				II	CORROSIVE, OXIDIZER.		None	212	240	15 kg	50 kg	C	59	
	Corrosive solids, poisonous, n.o.s.	8	UN2923	I	CORROSIVE, POISON.		None	211	242	1 kg	25 kg	B	40, 95	
				II	CORROSIVE, POISON.		None	212	240	15 kg	50 kg	B	40, 95	
	Corrosive solids, self heating, n.o.s.	8	UN3095	I	CORROSIVE, SPONTANEOUSLY COMBUSTIBLE.		None	211	241	1 kg	25 kg	C		
				II	CORROSIVE, SPONTANEOUSLY COMBUSTIBLE.		None	212	242	15 kg	50 kg	C		
	Corrosive solids, which in contact with water emit flammable gases, n.o.s.	8	UN3096	I	CORROSIVE, DANGEROUS WHEN WET.		None	211	241	1 kg	25 kg	E		
				II	CORROSIVE, DANGEROUS WHEN WET.		None	212	242	15 kg	50 kg	E		
DW	Cotton	9	NA1365			W41	None	None	None	No limit	No limit	A		
I	Cotton waste, oily	4.2	UN1364	III	SPONTANEOUSLY COMBUSTIBLE.	N9	None	213	None	Forbidden	Forbidden	A		54
AIW	Cotton, wet	4.2	UN1365				None	204	241	Forbidden	Forbidden	A		
	Coumarin derivative pesticides, liquid, flammable, toxic, n.o.s., *flashpoint less than 23 deg C.*	3	UN3024	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40	
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40	
	Coumarin derivative pesticides, liquid, toxic, flammable, n.o.s. *flashpoint not less than 23 degrees C.*	6.1	UN3025	I	POISON, FLAMMABLE LIQUID.		None	201	243	1 L	30 L	B	40	
				II	POISON, FLAMMABLE LIQUID.		None	202	243	5 L	60 L	B	40	
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1	153	203	241	60 L	220 L	A	40	
	Coumarin derivative pesticides, liquid, toxic, n.o.s.	6.1	UN3026	I	POISON		None	201	243	1 L	30 L	B	40	
				II	POISON		None	202	243	5 L	60 L	B	40	
				III	KEEP AWAY FROM FOOD.		153	203	241	60 L	220 L	A	40	
	Coumarin derivative pesticides, solid, toxic, n.o.s.	6.1	UN3027	I	POISON		None	211	242	5 kg	50 kg	A	40	
				II	POISON		None	212	242	25 kg	100 kg	A	40	
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40	
	Cresols (*o-; m-; p-*)	6.1	UN2076	II	POISON	T8	None	202	243	5 L	60 L	A		
	Cresylic acid	6.1	UN2022	II	POISON	T8	None	202	243	5 L	60 L	A		

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or rail car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
+	Crotonaldehyde, stabilized	3	UN1143	II	FLAMMABLE LIQUID, POISON.	2, B9, B14, B32, B74, B77, T38, T43, T45.	None	227	244	Forbidden	60 L	B	40
	Crotonic acid *liquid*	8	UN2823	III	CORROSIVE		154	203	240	5 L	60 L	A	12, 48
	Crotonic acid, *solid*	8	UN2823	III	CORROSIVE		154	213	240	25 kg	100 kg	A	12, 48
	Crotonylene	3	UN1144	I	FLAMMABLE LIQUID	T20	150	201	243	1 L	30 L	E	
	Cupriethylenediamine solution	8	UN1761	II	CORROSIVE, POISON.	T8, T26	154	202	243	1 L	30 L	A	95
	Cutters, cable, explosive	1.4S	UN0070	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	9E
	Cyanide or cyanide mixtures, dry, see Cyanides, inorganic, n.o.s.												
	Cyanide solutions	6.1	UN1935	I	POISON	B37, T18, T26	None	201	243	1 L	30 L	B	40, 52
				II	POISON	T18, T26	None	202	243	5 L	60 L	A	40, 52
				III	KEEP AWAY FROM FOOD.	T18, T26	153	203	241	60 L	220 L	A	40, 52
	Cyanides, inorganic, n.o.s.	6.1	UN1588	I	POISON	N74, N75	None	211	242	5 kg	50 kg	A	52
				II	POISON	N74, N75	None	212	242	25 kg	100 kg	A	52
				III	KEEP AWAY FROM FOOD.	N74, N75	153	203	241	100 kg	200 kg	A	52
	Cyanogen bromide	6.1	UN1889	I	POISON, CORROSIVE.	1, A6, A8, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	25 kg	D	40
	Cyanogen chloride, inhibited	2.3	UN1589		POISON GAS, FLAMMABLE GAS.	1	None	192	245	Forbidden	Forbidden	D	40
	Cyanogen, liquefied	2.3	UN1026		POISON GAS, FLAMMABLE GAS.	2	None	192	245	Forbidden	Forbidden	D	40
	Cyanuric chloride	8	UN2670	III	CORROSIVE		None	213	240	25 kg	100 kg	A	12, 40, 48
	Cyanuric triazide	Forbidden											
	Cyclobutane	2.1	UN2601		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	B	40
	Cyclobutylchloroformate	6.1	UN2744	II	POISON, CORROSIVE.	T18	None	202	243	1 L	30 L	A	12, 13, 22, 25, 40, 48, 100
	1,5,9-Cyclododecatriene	6.1	UN2518	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	40
	Cycloheptane	3	UN2241	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	40
	Cycloheptatriene	3	UN2603	II	FLAMMABLE LIQUID, POISON.	T14	None	202	243	1 L	60 L	E	40
	Cycloheptene	3	UN2242	II	FLAMMABLE LIQUID	T7	150	202	241	5 L	60 L	B	
	Cyclohexane	3	UN1145	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E	
	Cyclohexanone	3	UN1915	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Cyclohexene	3	UN2256	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	E	
	Cyclohexenyltrichlorosilane	8	UN1762	II	CORROSIVE	A7, B2, N34, T8, T26.	None	202	242	Forbidden	30 L	C	40
	Cyclohexyl acetate	3	UN2243	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
+	Cyclohexyl isocyanate	6.1	UN2488	II	POISON	2, B9, B14, B32, B74, B77, T38, T43, T45.	None	227	244	5 L	60 L	D	40
	Cyclohexyl mercaptan	3	UN3054	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	40, 95, 102
	Cyclohexylamine	8	UN2357	II	CORROSIVE, FLAMMABLE LIQUID.	T8, T26	None	202	243	1 L	30 L	A	12, 21, 40, 48
	Cyclohexyltrichlorosilane	8	UN1763	II	CORROSIVE	A7, B2, N34, T8, T26.	None	202	242	Forbidden	30 L	C	40

	Cyclonite and cyclotetramethylenetetranitramine mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*ed.														
	Cyclonite and HMX mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*.														
	Cyclonite and octogen mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*.														
	Cyclonite, *see* Cyclotrimethylenetrinitramine, *etc.*														
	Cyclooctadiene phosphines, *see* 9-Phosphabicyclononanes.														
	Cyclooctadienes	3	UN2520	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A			
	Cyclooctatetraene	3	UN2358	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B			
	Cyclopentane	3	UN1146	II	FLAMMABLE LIQUID	T14	150	202	242	5 L	60 L	E			
	Cyclopentane, methyl, see Methyl cyclopentane														
	Cyclopentanol	3	UN2244	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A			
	Cyclopentanone	3	UN2245	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A			
	Cyclopentene	3	UN2246	II	FLAMMABLE LIQUID	T13	150	202	242	5 L	60 L	E			
	Cyclopropane, liquified	2.1	UN1027		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	E	40		
	Cyclotetramethylene tetranitramine (*dry or unphlegmatized*) (*HMX*).	Forbidden													
	Cyclotetramethylenetetranitramine, desensitized *or* Octogen, desensitized*or* HMX, desensitized.	1.1D	UN0484	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E		
	Cyclotetramethylenetetranitramine, wetted *or* HMX, wetted *or* Octogen, wetted*with not less than 15 per cent water, by mass.*	1.1D	UN0226	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E		
	Cyclotrimethylenenitramine and octogen, mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*.														
	Cyclotrimethylenetrinitramaie and cyclotetramethylenetetranitramine mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted or desensitized *etc.*.														
	Cyclotrimethylenetrinitramine and HMX mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*.														
	Cyclotrimethylenetrinitramine, desensitized *or* Cyclonite, desensitized *or* Hexogen, desensitized *or* RDX, desensitizede; Hexogen; RDX), desensitized.	1.1D	UN0483	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E		
	Cyclotrimethylenetrinitramine, wetted *or* Cyclonite, wetted *or* Hexogen, wetted *or* RDX, wetted *with not less than 15 percent water by mass.*	1.1D	UN0072	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E		
	Cymenes	3	UN2046	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A			
	Decaborane	4.1	UN1868	II	FLAMMABLE SOLID, POISON.	A19, A20	None	212	None	Forbidden	50 kg	A			
	Decahydronaphthalene	3	UN1147	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A			
	n-Decane	3	UN2247	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A			
	Deflagrating metal salts of aromatic nitroderivatives, n.o.s.	1.3C	UN0132	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	1E, 5E		
	Delay electric igniter, see Igniters														
D	Denatured alcohol	3	NA1987	II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B			
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A			
D	Denatured alcohol	3	NA1986	I	FLAMMABLE LIQUID, POISON.	T8, T31	None	201	243	Forbidden	30 L	E	40		
				II	FLAMMABLE LIQUID, POISON.	T8, T31	150	202	243	1 L	60 L	E	40		
	Depth charges, see Charges, depth														
	Detonating relays, see Detonators, *etc.*														
	Detonator assemblies, non-electric *for blasting*	1.1B	UN0360	II	EXPLOSIVE 1.1B		None	62	None	Forbidden	Forbidden	B	1E, 2E, 6E		
	Detonator assemblies, non-electric, *for blasting*	1.4B	UN0361	II	EXPLOSIVE 1.4B	103	63(f), 63(g)	62	None	Forbidden	75 kg	A	1E, 2E, 6E, 24E		
	Detonators, electric, *for blasting*	1.1B	UN0030	II	EXPLOSIVE 1.1B		63(f), 63(g)	62	None	Forbidden	Forbidden	B			

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Detonators, electric, *for blasting*	1.4B	UN0255	II	EXPLOSIVE 1.4B	103	63(f), 63(g)	62	None	Forbidden	75 kg	A	24E
	Detonators, electric *for blasting*	1.4S	UN0456	II	EXPLOSIVE 1.4S	104	63(f), 63(g)	62	None	25 kg	100 kg	A	9E
	Detonators for ammunition	1.1B	UN0073	II	EXPLOSIVE 1.1B		None	62	None	Forbidden	Forbidden	B	2E, 6E, 25E
	Detonators for ammunition	1.2B	UN0364	II	EXPLOSIVE 1.2B		None	62	None	Forbidden	Forbidden	B	2E, 6E
	Detonators for ammunition	1.4B	UN0365	II	EXPLOSIVE 1.4B	103	None	62	None	Forbidden	75 kg	A	24E
	Detonators for ammunition	1.4S	UN0366	II	EXPLOSIVE 1.4S	104	None	62	None	25 kg	100 kg	A	9E
	Detonators, non-electric, *for blasting*	1.1B	UN0029	II	EXPLOSIVE 1.1B		None	62	None	Forbidden	Forbidden	B	1E, 2E, 6E
	Detonators, non-electric, *for blasting*	1.4B	UN0267	II	EXPLOSIVE 1.4B	103	63(f), 63(g)	62	None	Forbidden	75 kg	B	
	Detonators, non-electric *for blasting*	1.4S	UN0455	II	EXPLOSIVE 1.4S	104	None	62	None	25 kg	100 kg	A	9E
	Deuterium	2.1	UN1957		FLAMMABLE GAS		306	302	None	Forbidden	150 kg	E	40
	Devices, small, hydrocarbon gas powered *or* hydrocarbon gas refills for small devices *with release device*	2.1	UN3150		FLAMMABLE GAS		306	304		Forbidden	150 kg	B	40
	Di-n-amylamine	6.1	UN2841	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	A	
	Di-n-butyl peroxydicarbonate, more than 52 per cent in solution.	Forbidden											
	Di-n-butylamine	8	UN2248	II	CORROSIVE, FLAMMABLE LIQUID.	T8	None	202	243	1 L	30 L	A	12, 21, 48
	2,2-Di-(tert-butylperoxy) butane, more than 55 per cent in solution.	Forbidden											
	Di-(tert-butylperoxy) phthalate, more than 55 per cent in solution.	Forbidden											
	2,2-Di-(4,4-di-tert-butylperoxycyclohexyl) propane, more than 42 per cent with inert solid.	Forbidden											
	Di-2,4-dichlorobenzoyl peroxide, more than 75 per cent with water.	Forbidden											
	1,2-Di-(dimethylamino) ethane	3	UN2372	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Di-2-ethylhexyl phosphoric acid, see Diisooctyl acid phosphate.												
	Di-(1-hydroxytetrazole) (dry)	Forbidden											
	Di-(1-naphthoyl) peroxide	Forbidden											
	a,a'-Di-(nitroxy) methylether	Forbidden											
	Di-(beta-nitroxyethyl) ammonium nitrate	Forbidden											
	Diacetone alcohol	3	UN1148	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Diacetone alcohol peroxides, more than 57% in solution with more than 9% hydrogen peroxide, less than 26% diacetone alcohol and less than 9% water; total active oxygen content more than 9% by mass.	Forbidden											
	Diacetyl, see Butanedione												
	Diacetyl peroxide, solid, or more than 25% in solution.	Forbidden											
	Diallylamine	3	UN2359	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	40
	Diallylether	3	UN2360	II	FLAMMABLE LIQUID, POISON.	N12, T8	None	202	243	1 L	60 L	E	40
	4,4'-Diaminodiphenyl methane	6.1	UN2651	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	p-Diazidobenzene	Forbidden											
	1,2-Diazidoethane	Forbidden											

	2-Diazo-1-naphthol-4-sulpho-chloride	4.1	UN3042	II	FLAMMABLE SOLID, EXPLOSIVE.	53	None	224	None	Forbidden	Forbidden	D		
	2-Diazo-1-naphthol-5-sulpho-chloride	4.1	UN3043	II	FLAMMABLE SOLID, EXPLOSIVE.	53	None	224	None	Forbidden	Forbidden	D		
	1,1'-Diazoaminonaphthalene	Forbidden												
	Diazoaminotetrazole (dry)	Forbidden												
	Diazodinitrophenol (dry)	Forbidden												
	Diazodinitrophenol, wetted *with not less than 40 per cent water or mixture of alcohol and water, by mass.*	1.1A	UN0074	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E		2E, 6E
	Diazodiphenylmethane	Forbidden												
	Diazonium nitrates (dry)	Forbidden												
	Diazonium perchlorates (dry)	Forbidden												
	1,3-Diazopropane	Forbidden												
	Dibenzyl peroxydicarbonate, more than 87 per cent with water	Forbidden												
	Dibenzyldichlorosilane	8	UN2434	II	CORROSIVE	B2, T8, T26	154	202	242	1 L	30 L	C		40
	Diborane	2.3	UN1911		POISON GAS, FLAMMABLE GAS.	1	None	302	None	Forbidden	Forbidden	D		40, 57
	Diborane mixtures	2.1	NA1911		FLAMMABLE GAS	5	None	302	245	Forbidden	Forbidden	D		40, 57
	Dibromoacetylene	Forbidden												
	Dibromobenzene	3	UN2711	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
	1,2-Dibromobutan-3-one	6.1	UN2648	II	POISON		None	202	243	5 L	60 L	B		40
	Dibromochloropropane	6.1	UN2872	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A		
A	Dibromodifluoromethane, *R12B2*	9	UN1941	III	None	T22	155	203	241	100 L	220 L	A		25
	1,2-Dibromoethane, see Ethylene dibromide													
	Dibromomethane	6.1	UN2664	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A		
	Dibutyl ethers	3	UN1149	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
	Dibutylaminoethanol	6.1	UN2873	III	KEEP AWAY FROM FOOD.	T1	153	203	241	60 L	220 L	A		
	N,N'-Dichlorazodicarbonamidine (salts of) (dry)	Forbidden												
	1,1-Dichloro-1-nitroethane	6.1	UN2650	II	POISON	T8	None	202	243	5 L	60 L	A		12, 40, 48
D	3,5-Dichloro-2,4,6-trifluoropyridine	6.1	NA9264	I	POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	A		40, 95
	Dichloroacetic acid	8	UN1764	II	CORROSIVE	A3, A6, A7, B2, N34, T9, T27.	154	202	242	1 L	30 L	A		
	1,3-Dichloroacetone	6.1	UN2649	II	POISON		None	212	243	25 kg	100 kg	B		12, 40, 48
	Dichloroacetyl chloride	8	UN1765	II	CORROSIVE	A3, A6, A7, B2, B6, N34, T8, T26.	154	202	242	1 L	30 L	D		40
	Dichloroacetylene	Forbidden												
	Dichloroanilines, solid *or* liquid	6.1	UN1590	II	POISON	T14	None	202	242	5 L	60 L	A		40
	o-Dichlorobenzene	6.1	UN1591	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A		
	p-Dichlorobenzene	6.1	UN1592	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A		
D	Dichlorobutene	8	NA2920	I	CORROSIVE, FLAMMABLE LIQUID.		None	201	243	0.5 L	2.5 L	C		12, 21, 25, 40, 48
	2,2-Dichlorodiethyl ether	6.1	UN1916	II	POISON, FLAMMABLE LIQUID.	N33, N34, T8	None	202	243	5 L	60 L	A		
	Dichlorodifluoromethane and difluoroethane azeotropic mixture *with approximately 74 per cent dichlorodifluoromethane, R500.*	2.2	UN2602		NONFLAMMABLE GAS.		306	304	314, 315	75 kg	150 kg	A		
	Dichlorodifluoromethane and ethylene oxide mixture, *with not more than 12% ethylene oxide.*	2.2	UN3070		NONFLAMMABLE GAS.		None	304	314, 315	Forbidden	25 kg	D		40
	Dichlorodifluoromethane, *R12*	2.2	UN1028		NONFLAMMABLE GAS.		306	304	314, 315	75 kg	150 kg	A		
	Dichlorodimethyl ether, symmetrical	6.1	UN2249	I	POISON	T25	None	201	243	Forbidden	Forbidden	D		40, 105
	1,1-Dichloroethane	3	UN2362	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B		40
	1,2-Dichloroethane, see Ethylene dichloride													
	Dichloroethyl sulfide	Forbidden												
	Dichloroethylene	3	UN1150	II	FLAMMABLE LIQUID	T14	150	202	242	5 L	60 L	B		

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Dichlorofluoromethane, *R21*	2.2	UN1029		NONFLAMMABLE GAS.		306	304	314, 315	75 kg	150 kg	A	
	Dichloroisocyanuric acid, dry *or* Dichloroisocyanuric acid salts.	5.1	UN2465	II	OXIDIZER	26	152	212	240	5 kg	25 kg	A	13
	Dichloroisopropyl ether	6.1	UN2490	II	POISON	T8	None	202	243	5 L	60 L	B	
	Dichloromethane	6.1	UN1593	III	KEEP AWAY FROM FOOD.	N36, T13	153	203	241	60 L	220 L	A	
	Dichloropentanes	3	UN1152	III	FLAMMABLE LIQUID	B1, T1	150	202	241	60 L	220 L	A	
	Dichlorophenyl isocyanates	6.1	UN2250	II	POISON		None	212	242	25 kg	100 kg	A	25, 40, 48
	Dichlorophenyltrichlorosilane	8	UN1766	II	CORROSIVE	A7, B2, B6, N34, T8, T26.	None	202	242	Forbidden	30 L	C	40
	Dichloropropane, see Propylene dichloride												
	1,3-Dichloropropanol-2	6.1	UN2750	II	POISON	T8	None	202	243	5 L	60 L	A	12, 40, 48
	Dichloropropene	3	UN2047	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	A	
	Dichloropropene and propylene dichloride mixture, see Propylene dichloride.												
	Dichlorosilane	2.3	UN2189		POISON GAS, FLAMMABLE GAS.	2, B9, B14	None	304	314, 315	Forbidden	Forbidden	D	40
	Dichlorotetrafluoroethane, *R114*	2.2	UN1958		NONFLAMMABLE GAS.		306	304	314, 315	75 kg	150 kg	A	
	Dichlorovinylchloroarsine	Forbidden											
	Dicycloheptadiene, *see* Norbornadiene												
	Dicyclohexylamine	8	UN2565	III	CORROSIVE	T8	154	203	241	5 L	60 L	A	
	Dicyclohexylammonium nitrite	4.1	UN2687	III	FLAMMABLE SOLID		153	213	240	25 kg	100 kg	A	45
	Dicyclopentadiene	3	UN2048	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Didymium nitrate	5.1	UN1465	III	OXIDIZER	A1	152	213	240	25 kg	100 kg	A	
D	Dieldrin	6.1	NA2761	II	POISON		None	212	242	0.5 kg	5 kg	A	40
D	Diesel fuel	3	NA1993	III	None	B1	150	203	241	60 L	220 L	A	
	Diethanol nitrosamine dinitrate (dry)	Forbidden											
	2,5-Diethoxy-4-morpholinobenzenediazonium zinc chloride.	4.1	UN3036	II	FLAMMABLE SOLID		None	224	None	15 kg	50 kg	C	2
	Diethoxymethane	3	UN2373	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	3,3-Diethoxypropene	3	UN2374	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	N,N-Diethyl aniline	6.1	UN2432	III	KEEP AWAY FROM FOOD.	T2	153	203	241	60 L	220 L	A	
	Diethyl carbonate	3	UN2366	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Diethyl cellosolve, see Ethylene glycol diethyl ether												
	Diethyl ether *or* Ethyl ether	3	UN1155	I	FLAMMABLE LIQUID	T21	150	201	243	1 L	30 L	E	40
	Diethyl ketone	3	UN1156	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Diethyl peroxydicarbonate, more than 27 per cent in solution.	Forbidden											
	Diethyl sulfate	6.1	UN1594	II	POISON	T14	None	202	243	5 L	60 L	C	
	Diethyl sulfide	3	UN2375	II	FLAMMABLE LIQUID	T14	None	202	243	1 L	60 L	E	
	Diethylamine	3	UN1154	II	FLAMMABLE LIQUID	N34, T8	150	202	242	5 L	60 L	E	
	Diethylaminoethanol	3	UN2686	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
AW	Diethylaminopropylamine	8	UN2684	III	CORROSIVE, FLAMMABLE LIQUID.	B1, B2, T8	154	203	243	5 L	60 L	A	12, 21, 48
	Diethylbenzene	3	UN2049	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Diethyldichlorosilane	8	UN1767	II	CORROSIVE, FLAMMABLE LIQUID.	A7, B6, N34, T8, T26.	None	202	243	Forbidden	30 L	C	21, 40
	Diethylene glycol dinitrate	Forbidden											
	Diethyleneglycol dinitrate, desensitized *with not less than 25 percent non-volatile water-insoluble phlegmatizer, by mass.*	1.1D	UN0075	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 4E, 21E
	Diethylenetriamine	8	UN2079	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A	40

	N,N-Diethylethylenediamine	8	UN2685	III	CORROSIVE, FLAMMABLE LIQUID.	T8	None	202	243	1 L	30 L	A	12, 21, 48
	Diethylgold bromide	Forbidden											
	Diethylthiophosphoryl chloride	8	UN2751	II	CORROSIVE	B2, T8	None	202	242	15 kg	50 kg	D	12, 40
	Diethylzinc	4.2	UN1366	I	SPONTANEOUSLY COMBUSTIBLE.	B11, T28, T40	None	181	244	Forbidden	Forbidden	D	18
	Difluorochloroethanes, *see* Chlorodifluoroethanes												
	Difluoroethane, *R152a*	2.1	UN1030		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	B	40
	1,1-Difluoroethylene, *R1132a*	2.1	UN1959		FLAMMABLE GAS		306	304	None	Forbidden	150 kg	E	40
	Difluorophosphoric acid, anhydrous	8	UN1768	II	CORROSIVE	A6, A7, B2, N5, N34, T9, T27.	None	202	242	1 L	30 L	A	40
	2,3-Dihydropyran	3	UN2376	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	
	1,8-Dihydroxy-2,4,5,7-tetranitroanthraquinone (chrysammic acid).	Forbidden											
	Diiodoacetylene	Forbidden											
	Diisobutyl ketone	3	UN1157	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Diisobutylamine	3	UN2361	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Diisobutylene, isomeric compounds	3	UN2050	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Diisooctyl acid phosphate	8	UN1902	III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
	Diisopropyl ether	3	UN1159	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E	40
	Diisopropylamine	3	UN1158	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Diisopropylbenzene hydroperoxide, more than 72 percent in solution.	Forbidden											
+	Diketene, inhibited	6	UN2521	III	FLAMMABLE LIQUID, POISON.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	60 L	220 L	A	49
	1,1-Dimethoxyethane	3	UN2377	II	FLAMMABLE LIQUID	T13	150	202	242	5 L	60 L	B	
	1,2-Dimethoxyethane	3	UN2252	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Dimethyl carbonate	3	UN1161	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Dimethyl chlorothiophosphate, see Dimethyl thiophosphoryl chloride.												
	2,5-Dimethyl-2,5-dihydroperoxy hexane, more than 82 per cent with water.	Forbidden											
	Dimethyl disulfide	3	UN2381	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	40
	Dimethyl ether	2.1	UN1033		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	B	40
	Dimethyl-N-propylamine	3	UN2266	II	FLAMMABLE LIQUID, CORROSIVE.	T14, T26	None	202	243	1 L	5 L	B	40
	Dimethyl sulfate	6.1	UN1595	I	POISON, CORROSIVE.	2, B9, B14, B32, B74, B77, T38, T43, T45.	None	227	244	Forbidden	2.5 L	D	40
	Dimethyl sulfide	3	UN1164	II	FLAMMABLE LIQUID	T14	None	201	243	1 L	30 L	E	40
	Dimethyl thiophosphoryl chloride	8	UN2267	III	CORROSIVE	T7	None	203	241	5 L	60 L	B	8
	Dimethylamine, anhydrous	2.1	UN1032		FLAMMABLE GAS		None	304	314, 315	Forbidden	Forbidden	D	40
	Dimethylamine solution	3	UN1160	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	4-Dimethylamino-6-(2-dimethylaminoethoxy) toluene-2-diazonium zinc chloride.	4.1	UN3039	II	FLAMMABLE SOLID		None	224	None	Forbidden	Forbidden	D	2
	2-Dimethylaminoacetonitrile	3	UN2378	II	FLAMMABLE LIQUID, POISON.	T8	None	202	243	1 L	60 L	A	26, 40
	Dimethylaminoethyl methacrylate	6.1	UN2522	II	POISON	T8	None	202	243	5 L	60 L	B	40
	N,N-Dimethylaniline	6.1	UN2253	II	POISON	T8	None	202	243	5 L	60 L	A	
	2,3-Dimethylbutane	3	UN2457	II	FLAMMABLE LIQUID	T13	150	202	242	5 L	60 L	E	
	1,3-Dimethylbutylamine	3	UN2379	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Dimethylcarbamoyl chloride	8	UN2262	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A	40
	Dimethylcyclohexanes	3	UN2263	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Dimethylcyclohexylamine	8	UN2264	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A	12, 21, 40, 48
	Dimethyldichlorosilane	3	UN1162	I	FLAMMABLE LIQUID, CORROSIVE.	B77, T15, T26	None	201	243	Forbidden	Forbidden	B	40
	Dimethyldiethoxysilane	3	UN2380	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Dimethyldioxanes	3	UN2707	II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or rail car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Dimethylethanolamine	3	UN2051	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	N,N-Dimethylformamide	3	UN2265	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Dimethylhexane dihydroperoxide (dry)	Forbidden											
+	Dimethylhydrazine, symmetrical	3	UN2382	I	FLAMMABLE LIQUID, POISON.	2, A7, B9, B14, B32, B74, B77, T38, T43, T45.	None	227	244	Forbidden	30 L	E	40
	Dimethylhydrazine, unsymmetrical	6.1	UN1163	I	POISON, FLAMMABLE LIQUID, CORROSIVE.	2, A7, B9, B14, B32, B58, B79, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	21, 40, 49, 61, 100
	2,2-Dimethylpropane *other than pentane and isopentane*	2.1	UN2044		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	E	40
	Dimethylzinc	4.2	UN1370	I	SPONTANEOUSLY COMBUSTIBLE.	B11, B16, T28, T29, T40.	None	181	244	Forbidden	Forbidden	D	18
	Dinitro-o-cresol, *solid*	6.1	UN1598	II	POISON	T14	None	212	242	25 kg	100 kg	A	
	Dinitro-o-cresol, *solution*	6.1	UN1598	II	POISON	T14	None	202	243	5 L	60 L	A	
	1,3-Dinitro-5,5-dimethyl hydantoin	Forbidden											
	Dinitro-7,8-dimethylglycoluril (dry)	Forbidden											
	1,3-Dinitro-4,5-dinitrosobenzene	Forbidden											
	1,4-Dinitro-1,1,4,4-tetramethylolbutanetetranitrate (dry).	Forbidden											
	2,4-Dinitro-1,3,5-trimethylbenzene	Forbidden											
	Dinitroanilines	6.1	UN1596	II	POISON	T14	None	212	242	25 kg	100 kg	A	91
	Dinitrobenzenes, *liquid*	6.1	UN1597	II	POISON	11, T14	None	202	243	5 L	60 L	A	91
	Dinitrobenzenes, *solid*	6.1	UN1597	II	POISON	11	None	212	242	25 kg	100 kg	A	91
	Dinitrochlorobenzene, see Chlorodinitrobenzene												
	1,2-Dinitroethane	Forbidden											
	1,1-Dinitroethane (dry)	Forbidden											
	Dinitrogen tetroxide, liquefied	2.3	UN1067		POISON GAS, OXIDIZER.	1, B7, B12, B14, B45, B46, B61, B66, B67, B77.	None	336	314	Forbidden	Forbidden	D	40, 43
	Dinitroglycoluril	Forbidden											
	Dinitroglycoluril *or* Dingu	1.1D	UN0489	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E, 25E
	Dinitromethane	Forbidden											
	Dinitrophenol, *dry or wetted with less than 15 per cent water, by mass.*	1.1D	UN0076	II	EXPLOSIVE 1.1D, POISON.		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Dinitrophenol solutions	6.1	UN1599	II	POISON	T8	None	202	243	5 L	60 L	A	36
	Dinitrophenol, wetted *with not less than 15 per cent water, by mass.*	4.1	UN1320	I	FLAMMABLE SOLID, POISON.	A8, A19, A20, N41.	None	211	None	1 kg	15 kg	E	28, 36
	Dinitrophenolates *alkali metals, dry or wetted with less than 15 per cent water, by mass.*	1.3C	UN0077	II	EXPLOSIVE 1.3C, POISON.		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Dinitrophenolates, wetted *with not less than 15 per cent water, by mass.*	4.1	UN1321	I	FLAMMABLE SOLID, POISON.	A8, A19, A20, N41.	None	211	None	1 kg	15 kg	E	28, 36
	Dinitropropylene glycol	Forbidden											
	Dinitroresorcinol, *dry or wetted with less than 15 per cent water, by mass.*	1.1D	UN0078	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	4,6-Dinitroresorcinol (heavy metal salts of) (dry)	Forbidden											
	2,4-Dinitroresorcinol (heavy metal salts of) (dry)	Forbidden											
	Dinitroresorcinol, wetted *with not less than 15 per cent water, by mass.*	4.1	UN1322	I	FLAMMABLE SOLID	A8, A19, A20, N41.	None	211	None	1 kg	15 kg	E	28, 36
	3,5-Dinitrosalicylic acid (lead salt) (dry)	Forbidden											

	N,N'-Dinitroso-N,N'-dimethyl terephthalamide *not more than 72% as a paste.*	4.1	UN2973	II	FLAMMABLE SOLID, EXPLOSIVE.	41, 53	None	224	None	Forbidden	Forbidden	D	12, 61
	Dinitrosobenzene	1.3C	UN0406	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Dinitrosobenzylamidine and salts of (dry)	Forbidden											
	N,N'-Dinitrosopentamethylenetetramine *not more than 82% with phlegmatizer.*	4.1	UN2972	II	FLAMMABLE SOLID, EXPLOSIVE.	41, 53	None	224	None	Forbidden	Forbidden	D	12, 61
	2,2-Dinitrostilbene	Forbidden											
	Dinitrotoluenes, *liquid*	6.1	UN2038	II	POISON	T8	None	202	243	5 L	60 L	A	
	Dinitrotoluenes, molten	6.1	UN1600	II	POISON	T14	None	202	243	Forbidden	Forbidden	C	
	Dinitrotoluenes, *solid*	6.1	UN2038	II	POISON	T8	None	212	242	25 kg	100 kg	A	
	1,9-Dinitroxy pentamethylene-2,4, 6,8-tetramine (dry).	Forbidden											
	Dioxane	3	UN1165	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Dioxolane	3	UN1166	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	40
	Dipentene	3	UN2052	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Diphenylamine chloroarsine	6.1	UN1698	I	POISON		None	201	None	Forbidden	Forbidden	D	40
	Diphenylchloroarsine, solid *or* liquid	6.1	UN1699	I	POISON	A8, B14, B32, N33, N34.	None	211	244	Forbidden	15 kg	D	40
	Diphenyldichlorosilane	8	UN1769	II	CORROSIVE	A7, B2, N34, T8, T26.	None	202	244	Forbidden	30 L	C	40
	Diphenylmethane-4,4'diisocyanate	6.1	UN2489	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	A	48, 106
	Diphenylmethyl bromide	8	UN1770	II	CORROSIVE		154	212	240	15 kg	50 kg	D	40
	Diphenyloxide-4,4'disulfohydrazide	4.1	UN2951	II	FLAMMABLE SOLID		None	224	None	15 kg	50 kg	B	12, 61, 65
	Dipicryl sulfide, *dry or wetted with less than 10 per cent water, by mass.*	1.1D	UN0401	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Dipicryl sulfide, wetted *with not less than 10 per cent water, by mass.*	4.1	UN2852	I	FLAMMABLE SOLID	A2, N41	None	211	None	Forbidden	0.5 kg	D	28, 36
	Dipicrylamine, *see* Hexanitrodiphenylamine												
	Dipropionyl peroxide, more than 28 per cent in solution.	Forbidden											
	Dipropyl ether	3	UN2384	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Dipropylamine	3	UN2383	II	FLAMMABLE LIQUID	T6	150	202	242	5 L	60 L	B	
	4-Dipropylaminobenzenediazonium zinc chloride	4.1	UN3034	II	FLAMMABLE SOLID		None	224	None	15 kg	50 kg	C	
	Dipropylketone	3	UN2710	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Disinfectants, corrosive liquid, n.o.s.	8	UN1903	II	CORROSIVE	B2	154	202	242	1 L	30 L	A	
				III	CORROSIVE		154	203	241	5 L	60 L	A	40
	Disinfectants, liquid, n.o.s *poisonous*	6.1	UN3142	I	POISON	A4, T42	None	201	243	1 L	30 L	A	40
				II	POISON	T14	None	202	243	5 L	60 L	A	40
				III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	40
	Disinfectants, solid, n.o.s. *poisonous*	6.1	UN1601	II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	Dispersant gases, n.o.s. *see* Refrigerant gases, n.o.s..												
	Dithiocarbamate pesticides, liquid, flammable, toxic, n.o.s., *flash point less than 23 degrees C.*	3	UN2772	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40
	Dithiocarbamate pesticides, liquid, toxic, flammable, n.o.s. *flashpoint not less than 23 degrees C.*	6.1	UN3005	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	T14	153	203	241	60 L	220 L	A	40
	Dithiocarbamate pesticides, liquid, toxic, n.o.s.	6.1	UN3006	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Dithiocarbamate pesticides, solid, toxic, n.o.s.	6.1	UN2771	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	Divinyl ether, inhibited	3	UN1167	I	FLAMMABLE LIQUID	T14	None	202	241	5 L	60 L	E	40

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
D	Dodecylbenzenesulfonic acid	8	NA2584	II	CORROSIVE	B2	154	202	242	1 L	30 L	B	9
	Dodecyltrichlorosilane	8	UN1771	II	CORROSIVE	A7, B2, B6, N34, T8, T26.	None	202	242	Forbidden	30 L	C	40
	Dry ice, *see* Carbon dioxide, solid												
	Dyes, liquid, n.o.s. *or* dye intermediates, liquid, n.o.s. *corrosive*.	8	UN2801	II	CORROSIVE	11, B2, T14	154	202	242	1 L	30 L	A	23
				III	CORROSIVE	11, T7	154	203	241	5 L	60 L	A	23
	Dyes,liquid, n.o.s *or* dye intermediates, liquid, n.o.s. *poisonous*.	6.1	UN1602	II	POISON		None	202	243	5 L	60 L	A	
				III	KEEP AWAY FROM FOOD.		153	203	241	60 L	220	A	
	Dyes, solid, n.o.s. *or* Dye intermediates, solid, n.o.s. *corrosive*.	8	UN3147	II	CORROSIVE		154	212	240	15 kg	50 kg	A	
				III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Dyes, solid, n.o.s. *or* dye intermediates, solid, n.o.s. *poisonous*.	6.1	UN3143	I	POISON	A5	None	211	242	5kg	50kg	A	
				II	POISON		None	212	242	25 kg	100 kg	A	
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Dynamite, see Explosive, blasting, type A												
	Electrolyte (acid or alkali) for batteries, see Battery fluid, acid *or* Battery fluid, alkali.												
	Engine starting fluid, *with flammable gas*	2.1	UN1960		FLAMMABLE GAS		None	304	None	Forbidden	150 kg	D	40
	Engines, internal combustion, *see* Vehicle, self-propelled.												
	Environmentally hazardous substances, liquid, n.o.s.	9	UN3082	III	CLASS 9	8, T1	155	203	241	None	None	A	
	Environmentally hazardous substances, solid, n.o.s.	9	UN3077	III	CLASS 9	8, B54	155	213	240	None	None	A	
	Epibromohydrin	6.1	UN2558	I	POISON	T18, T26	None	201	243	Forbidden	Forbidden	D	40
	Epichlorohydrin	6.1	UN2023	II	POISON	T14	None	202	243	5 L	60 L	A	40
	1,2-Epoxy-3-ethoxypropane	3	UN2752	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Etching acid, liquid, n.o.s., see Hydrofluoric acid, solution *etc.*.												
	Ethane, compressed	2.1	UN1035		FLAMMABLE GAS		306	304	302	Forbidden	150 kg	E	40
D	Ethane-Propane mixture, refrigerated liquid	2.1	NA1961		FLAMMABLE GAS		None	316	314, 315	Forbidden	Forbidden	D	40
	Ethane, refrigerated liquid	2.1	UN1961		FLAMMABLE GAS		None	None	315	Forbidden	Forbidden	D	40
	Ethanol amine dinitrate	Forbidden											
	Ethanol *or* Ethyl alcohol *or* Ethanol solutions *or* Ethyl alcohol solutions.	3	UN1170	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	A	
				III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Ethanolamine *or* Ethanolamine solutions	8	UN2491	III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
	Ether, see Diethyl ether												
	Ethyl acetate	3	UN1173	II	FLAMMABLE LIQUID	T2	150	202	242	5 L	60 L	B	
	Ethyl acrylate, inhibited	3	UN1917	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	40
	Ethyl alcohol, *see* Ethanol												
	Ethyl aldehyde, see Acetaldehyde												
	Ethyl amyl ketone	3	UN2271	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	N-Ethyl-N-benzylaniline	6.1	UN2274	III	KEEP AWAY FROM FOOD.	T2	153	203	241	60 L	220 L	A	
	Ethyl borate	3	UN1176	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Ethyl bromide	6.1	UN1891	II	POISON	T17	None	202	243	5 L	60 L	B	40
	Ethyl bromoacetate	6.1	UN1603	II	POISON	T14	None	202	243	Forbidden	Forbidden	D	40
	Ethyl butyl ether	3	UN1179	II	FLAMMABLE LIQUID	B1, T1	150	202	242	5 L	60 L	B	
	Ethyl butyrate	3	UN1180	III	FLAMMABLE LIQUID	B1, T1	150	202	242	5 L	60 L	A	

	Ethyl chloride	2.1	UN1037		FLAMMABLE GAS	B63, B77	None	322	314, 315	Forbidden	150 kg	B	40	
	Ethyl chloroacetate	6.1	UN1181	II	POISON	T14	None	202	243	5 L	60 L	A		
	Ethyl chloroformate	6.1	UN1182	I	POISON, FLAMMABLE LIQUID, CORROSIVE.	2, A3, A6, A7, B9, B14, B32, B74, N34, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	21, 40, 100	
	Ethyl-2-chloropropionate	3	UN2935	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
+	Ethyl chlorothioformate	8	UN2826	II	CORROSIVE, POISON.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	1 L	30 L	A	12, 21, 40, 48	
	Ethyl crotonate	3	UN1862	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B		
	Ethyl cyanoacetate	6.1	UN2666	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	A	26	
	Ethyl ether, *see* Diethyl ether													
	Ethyl fluoride	2.1	UN2453		FLAMMABLE GAS		306	304	314, 315	75 kg	150 kg	E	40	
	Ethyl formate	3	UN1190	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E		
	Ethyl hydroperoxide	Forbidden												
	Ethyl isobutyrate	3	UN2385	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B		
+	Ethyl isocyanate	3	UN2481	I	FLAMMABLE LIQUID, POISON.	1, A7, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	30 L	D	40	
	Ethyl lactate	3	UN1192	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
	Ethyl mercaptan	3	UN2363	I	FLAMMABLE LIQUID	T21	None	201	243	Forbidden	30 L	E	95, 102	
	Ethyl methacrylate	3	UN2277	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B		
	Ethyl methyl ether	2.1	UN1039		FLAMMABLE GAS	B63	None	324	314, 315	Forbidden	150 kg	B	40	
	Ethyl methyl ketone *or* Methyl ethyl ketone	3	UN1193	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B		
	Ethyl nitrite solutions	3	UN1194	I	FLAMMABLE LIQUID, POISON.		None	201	None	Forbidden	Forbidden	E	40, 105	
	Ethyl orthoformate	3	UN2524	III	FLAMMABLE LIQUID	B1, T7	150	203	242	60 L	220 L	A		
	Ethyl oxalate	6.1	UN2525	III	KEEP AWAY FROM FOOD.	T1	153	203	241	60 L	220 L	A		
	Ethyl perchlorate	Forbidden												
D	Ethyl phosphonothioic dichloride, anhydrous	6.1	NA2927	I	POISON, CORROSIVE.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	20, 40, 95	
D	Ethyl phosphonous dichloride, anhydrous *pyrophoric liquid.*	6.1	NA2845	I	POISON, SPONTANEOUSLY COMBUSTIBLE.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	18	
D	Ethyl phosphorodichloridate	6.1	NA2927	I	POISON, CORROSIVE.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	20, 40, 95	
	Ethyl propionate	3	UN1195	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B		
	Ethyl propyl ether	3	UN2615	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E		
	Ethyl silicate, see Tetraethyl silicate													
	Ethylacetylene, inhibited	2.1	UN2452		FLAMMABLE GAS		None	304	314, 315	Forbidden	150 kg	B	40	
	Ethylamine	2.1	UN1036		FLAMMABLE GAS	B77	None	321	314, 315	Forbidden	Forbidden	D	40	
	Ethylamine, aqueous solution *with not less than 50 per cent but not more than 70 per cent ethylamine.*	3	UN2270	II	FLAMMABLE LIQUID	T14	150	202	242	5 L	60 L	B	40	
	N-Ethylaniline	6.1	UN2272	III	KEEP AWAY FROM FOOD.	T2	153	203	241	60 L	220 L	A		
	2-Ethylaniline	6.1	UN2273	III	KEEP AWAY FROM FOOD.	T2	153	203	241	60 L	220 L	A		
	Ethylbenzene	3	UN1175	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B		
	N-Ethylbenzyltoluidines solid *or* liquid	6.1	UN2753	III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A		
	2-Ethylbutanol	3	UN2275	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
	2-Ethylbutyl acetate	3	UN1177	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
	2-Ethylbutyraldehyde	3	UN1178	II	FLAMMABLE LIQUID	B1, T1	150	202	242	5 L	60 L	B		
	Ethyldichloroarsine	6.1	UN1892	I	POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(6) Packaging authorizations (§ 173.***) Exceptions	Non-bulk packaging	Bulk packaging	(7) Quantity limitations Passenger aircraft or rail car	Cargo aircraft only	(10) Vessel stowage requirements Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Ethyldichlorosilane	4.3	UN1183	I	DANGEROUS WHEN WET, CORROSIVE, FLAMMABLE LIQUID.	A2, A3, A7, N34, T18, T26.	None	201	244	Forbidden	1 L	D	21, 26, 40, 49, 100
	Ethylene, acetylene and propylene in mixtures, refrigerated liquid containing at least 71.5 per cent ethylene with not more than 22.5 per cent acetylene and not more than 6 per cent propylene.	2.1	UN3138		FLAMMABLE GAS		None	304	314, 315	Forbidden	Forbidden	D	40
+	Ethylene chlorohydrin	6.1	UN1135	II	POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	60 L	A	40
	Ethylene, compressed	2.1	UN1962		FLAMMABLE GAS		306	304	302	Forbidden	150 kg	E	40
	Ethylene diamine dipercholorate	Forbidden											
+	Ethylene dibromide	6.1	UN1605	II	POISON	2, B9, B14, B32, B74, B77, T36, T43, T45.	None	227	244	5 L	60 L	A	40
	Ethylene dibromide and methyl bromide liquid mixtures, see Methyl bromide and ethylene dibromide, liquid mixtures.												
	Ethylene dichloride	3	UN1184	II	FLAMMABLE LIQUID, POISON.	T14	None	202	243	1 L	60 L	B	40
	Ethylene glycol diethyl ether	3	UN1153	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Ethylene glycol dinitrate	Forbidden											
	Ethylene glycol monobutyl ether	6.1	UN2369	III	KEEP AWAY FROM FOOD.	T1	153	203	241	60 L	220 L	A	
	Ethylene glycol monoethyl ether	3	UN1171	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Ethylene glycol monoethyl ether acetate	3	UN1172	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Ethylene glycol monomethyl ether	3	UN1188	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Ethylene glycol monomethyl ether acetate	3	UN1189	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Ethylene oxide and carbon dioxide mixtures, see Carbon dioxide and ethylene oxide mixtures, *etc.*.												
	Ethylene oxide and propylene oxide mixtures, *not more than 30 per cent ethylene oxide.*	3	UN2983	I	FLAMMABLE LIQUID, POISON.	8, A11, N4, N34, T24, T29.	None	201	243	Forbidden	30 L	E	40
	Ethylene oxide, *pure or with nitrogen*	2.3	UN1040		POISON GAS, FLAMMABLE GAS.	3	None	323	323	Forbidden	25 kg	D	40
	Ethylene, refrigerated liquid (*cryogenic liquid*)	2.1	UN1038		FLAMMABLE GAS		None	316	316, 319	Forbidden	Forbidden	D	40
	Ethylenediamine	8	UN1604	II	CORROSIVE, FLAMMABLE LIQUID.	T14	154	202	243	1 L	30 L	A	12, 21, 40, 46
	Ethyleneimine, inhibited	6.1	UN1185	I	POISON, FLAMMABLE LIQUID.	1, B9, B14, B30, B72, B77, N25, N32, T36, T43, T44.	None	226	244	Forbidden	Forbidden	D	40
	Ethylhexaldehyde, see Octyl aldehydes *etc.*												
	2-Ethylhexylamine	8	UN2276	III	CORROSIVE	T2	154	203	241	5 L	60 L	A	12, 21, 40, 46
	2-Ethylhexylchloroformate	6.1	UN2748	II	POISON, CORROSIVE.	T42	None	202	243	1 L	30 L	A	12, 13, 25, 40, 48, 95
	Ethylphenyldichlorosilane	8	UN2435	II	CORROSIVE	A7, B2, N34, T8, T26.	None	202	242	Forbidden	30 L	C	
	1-Ethylpiperidine	3	UN2386	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Ethylsulfuric acid	8	UN2571	II	CORROSIVE	B2, T9, T27	154	202	242	1 L	30 L	C	14
	N-Ethyltoluidines	6.1	UN2754	II	POISON	T14	None	202	243	5 L	60 L	A	46

	Ethyltrichlorosilane	3	UN1196	II	FLAMMABLE LIQUID, CORROSIVE.	A7, N34, T15, T26.	None	201	243	Forbidden	2.5 L	B	40
	Etiologic agent, see Infectious substances, *etc.*)												
	Explosive articles, see Articles, explosive n.o.s. *etc.*.												
	Explosive, blasting, type A	1.1D	UN0081	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E, 19E, 21E
	Explosive, blasting, type B	1.1D	UN0082	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Explosive, blasting, type B *or* Agent blasting, Type B.	1.5D	UN0331	II	EXPLOSIVE 1.5D	105, 106	None	62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Explosive, blasting, type C	1.1D	UN0083	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E, 22E
	Explosive, blasting, type D	1.1D	UN0084	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Explosive, blasting, type E	1.1D	UN0241	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Explosive, blasting, type E *or* Agent blasting, Type E.	1.5D	UN0332	II	EXPLOSIVE 1.5D	105, 106	None	62	None	Forbidden	Forbidden	B	1E, 5E
	Explosive, forbidden. See Sec. 173.51	Forbidden											
D	Explosive pest control devices	1.1E	NA0005	II	EXPLOSIVE 1.1E		None	62	None	Forbidden	Forbidden	E	
D	Explosive pest control devices	1.4E	NA0412	II	EXPLOSIVE 1.4E		None	62	None	Forbidden	75 kg	A	24E
	Explosive substances, see Substances, explosive, n.o.s. *etc.*.												
	Explosives, slurry, see Explosive, blasting, type E												
	Explosives, water gels, see Explosive, blasting, type E.												
	Extracts, aromatic, liquid	3	UN1169	II	FLAMMABLE LIQUID	T7, T30	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Extracts, flavoring, liquid	3	UN1197	II	FLAMMABLE LIQUID	T7, T30	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Fabric with animal or vegetable oil, see Fibers *or* fabrics, *etc.*												
	Ferric arsenate	6.1	UN1606	II	POISON		None	212	242	25 kg	100 kg	A	
	Ferric arsenite	6.1	UN1607	II	POISON		None	212	242	25 kg	100 kg	A	
	Ferric chloride	8	UN1773	III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Ferric chloride, solution	8	UN2582	III	CORROSIVE	B15, T8	154	203	241	5 L	60 L	A	
	Ferric nitrate	5.1	UN1466	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	
	Ferrocerium	4.1	UN1323	II	FLAMMABLE SOLID	A19	151	212	240	15 kg	50 kg	A	
	Ferrosilicon, *with 30 percent or more but less than 90 percent silicon.*	4.3	UN1408	III	DANGEROUS WHEN WET.	A1, A19	None	213	240	25 kg	100 kg	A	13, 40, 85, 103
	Ferrous arsenate	6.1	UN1608	II	POISON		None	212	242	25 kg	100 kg	A	
D	Ferrous chloride, solid	8	NA1759	II	CORROSIVE		154	212	240	15 kg	50 kg	A	
D	Ferrous chloride, solution	8	NA1760	II	CORROSIVE	B3	154	202	242	1 L	30 L	B	40
	Ferrous metal borings, shavings, turnings *or* cuttings *in a form liable to self-heating.*	4.2	UN2793	III	SPONTANEOUSLY COMBUSTIBLE.	A1, A19	None	213	241	25 kg	100 kg	A	
	Fertilizer ammoniating solution *with free ammonia*	2.2	UN1043		NONFLAMMABLE GAS.		306	304	314, 315	Forbidden	150 kg	E	40
AIW	Fibers *or* Fabrics, animal *or* vegetable, n.o.s. *with animal or vegetable oil.*	4.2	UN1373	III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	Forbidden	Forbidden	A	
	Films, nitrocellulose base, from which gelatine has been removed; film scrap, see Celluloid scrap.												
	Films, nitrocellulose base, *gelatine coated (except scrap).*	4.1	UN1324	III	FLAMMABLE SOLID		None	183	None	25 kg	100 kg	D	91
	Fire extinguisher charges, *corrosive liquid*	8	UN1774	II	CORROSIVE	N41	154	202	None	1 L	30 L	A	
	Fire extinguisher charges, expelling, explosive, see Cartridges, power device.												
	Fire extinguishers *containing compressed or liquefied gas.*	2.2	UN1044		NONFLAMMABLE GAS.		306	306	None	75 kg	150 kg	A	
	Firelighters, solid *with flammable liquid*	4.1	UN2623	II	FLAMMABLE SOLID	A19	None	212	None	15 kg	50 kg	A	119
				III	FLAMMABLE SOLID	A1, A19	None	213	None	25 kg	100 kg	A	119
	Fireworks	1.1G	UN0333	II	EXPLOSIVE 1.1G	108	None	62	None	Forbidden	Forbidden	B	
	Fireworks	1.2G	UN0334	II	EXPLOSIVE 1.2G	108	None	62	None	Forbidden	Forbidden	B	
	Fireworks	1.3G	UN0335	II	EXPLOSIVE 1.3G	108	None	62	None	Forbidden	Forbidden	B	
	Fireworks	1.4G	UN0336	II	EXPLOSIVE 1.4G	108	None	62	None	Forbidden	75 kg	A	24E
	Fireworks	1.4S	UN0337	II	EXPLOSIVE 1.4S	108	None	62	None	25 kg	100 kg	A	24E

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or rail car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
W	Fish meal *or* Fish scrap stabilized	9	UN2216	III	None	A1	155	215	218	No limit	No limit	A	88, 120
	Fish meal, unstabilized *or* Fish scrap, unstabilized	4.2	UN1374	II	SPONTANEOUSLY COMBUSTIBLE.	A1, A19	None	212	241	15 kg	50 kg	A	119, 120
	Fissile radioactive materials, see Radioactive material, fissile, n.o.s.												
	Flammable compressed gas, see Compressed air Liquefied gas, flammable, *etc.*.												
	Flammable compressed gas (small receptacles not fitted with a dispersion device, not refillable), see Receptacles, *etc.*.												
	Flammable gas in lighters, *see* Lighters for cigars *or* cigarettes, *with flammable gas.*												
	Flammable liquids, corrosive, n.o.s.	3	UN2924	I	FLAMMABLE LIQUID, CORROSIVE.	T42	None	201	243	0.5 L	2.5 L	E	40
				II	FLAMMABLE LIQUID, CORROSIVE.	T15, T26	None	202	242	1 L	5 L	B	40
				III	FLAMMABLE LIQUID, CORROSIVE.	B1, T15, T26	150	203	242	5 L	60 L	A	40
	Flammable liquids, n.o.s.	3	UN1993	I	FLAMMABLE LIQUID	T42	150	201	243	1 L	30 L	E	
				II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, B52, T7, T30.	150	203	242	60 L	220 L	A	
	Flammable liquids, poisonous, n.o.s.	3	UN1992	I	FLAMMABLE LIQUID, POISON.	T42	None	201	243	Forbidden	30 L	E	40
				II	FLAMMABLE LIQUID, POISON.	T18	None	202	243	1 L	60 L	B	40
	Flammable solids, corrosive, n.o.s.	4.1	UN2925	II	FLAMMABLE SOLID, CORROSIVE.		None	212	242	15 kg	50 kg	D	40
				III	FLAMMABLE SOLID, CORROSIVE.	A1	151	213	242	25 kg	100 kg	D	40
	Flammable solids, n.o.s.	4.1	UN1325	II	FLAMMABLE SOLID		151	212	240	15 kg	50 kg	B	
				III	FLAMMABLE SOLID		151	213	240	25 kg	100 kg	B	
	Flammable solids, poisonous, n.o.s.	4.1	UN2926	II	FLAMMABLE SOLID, POISON.		None	212	242	15 kg	50 kg	B	40
				III	FLAMMABLE SOLID, KEEP AWAY FROM FOOD.	A1	151	213	242	25 kg	100 kg	B	40
	Flares, aerial	1.3G	UN0093	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	75 kg	B	
	Flares, aerial	1.4G	UN0403	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E
	Flares, aerial	1.4S	UN0404	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	24E
	Flares, aerial	1.1G	UN0420	II	EXPLOSIVE 1.1G		None	62	None	Forbidden	Forbidden	B	
	Flares, aerial	1.2G	UN0421	II	EXPLOSIVE 1.2G		None	62	None	Forbidden	Forbidden	B	
	Flares, airplane, see Flares, aerial												
	Flares, signal, see Cartridges, signal												
	Flares, surface	1.1G	UN0418	II	EXPLOSIVE 1.1G		None	62	None	Forbidden	Forbidden	B	
	Flares, surface	1.2G	UN0419	II	EXPLOSIVE 1.2G		None	62	None	Forbidden	Forbidden	B	
	Flares, surface	1.3G	UN0092	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	75 kg	B	
	Flares, water-activated, see Contrivances, water-activated, *etc.*.												
	Flash powder	1.1G	UN0094	II	EXPLOSIVE 1.1G		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Flash powder	1.3G	UN0305	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	Forbidden	B	1E, 5E

	Flue dusts, poisonous, see Arsenical dust													
	Fluoboric acid	8	UN1775	II	CORROSIVE	A6, A7, B2, B15, N3, N34, T15, T27.	154	202	242	1 L	30 L	A		
	Fluoric acid, see Hydrofluoric acid, solution, etc.													
	Fluorine, compressed	2.3	UN1045		POISON GAS, OXIDIZER.	1	None	302	None	Forbidden	Forbidden	D	40	
	Fluoroacetic acid	6.1	UN2642	I	POISON		None	211	242	1 kg	15 kg	E		
	Fluoroanilines	6.1	UN2941	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	A		
	Fluorobenzene	3	UN2387	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B		
	Fluorophosphoric acid anhydrous	8	UN1776	II	CORROSIVE	A6, A7, B2, N3, N34, T9, T27.	None	202	242	1 L	30 L	A		
	Fluorosilicates, n.o.s.	6.1	UN2856	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	26	
	Fluorosilicic acid	8	UN1778	II	CORROSIVE	A6, A7, B2, B15, N3, N34, T12, T27.	None	202	242	1 L	30 L	A		
	Fluorosulfonic acid	8	UN1777	I	CORROSIVE	A3, A6, A7, A10, B6, B10, B41, N3, T9, T27.	None	201	242	0.5 L	2.5 L	D	40	
	Fluorotoluenes	3	UN2388	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	40	
	Forbidden materials. See 173.21	Forbidden												
	Formaldehyde, solutions	8	UN2209	III	None	T1	155	204	240	100 L	220 L	A		
	Formaldehyde, solutions, *flammable*	3	UN1198	III	FLAMMABLE LIQUID	B1, T8	150	203	242	60 L	220 L	A	40	
	Formalin, see Formaldehyde, solutions													
	Formic acid	8	UN1779	II	CORROSIVE	B2, B12, B28, T8.	154	202	242	1 L	30 L	A	40	
	Fracturing devices, explosive, *without detonators for oil wells.*	1.1D	UN0099	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B		
D	Fusee (*railway or highway*)	4.1	NA1325	II	FLAMMABLE SOLID		None	184	None	15 kg	50 kg	B		
	Fuel, aviation, turbine engine	3	UN1863	I	FLAMMABLE LIQUID	T7	150	201	243	1 L	30 L	E		
				II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B		
				III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
D	Fuel oil (*No. 1, 2, 4, 5, or 6*)	3	NA1993	III	FLAMMABLE LIQUID	B1	150	203	241	60 L	220 L	A		
	Fulminate of mercury (dry)	Forbidden												
	Fulminate of mercury, wet, see Mercury fulminate, etc.													
	Fulminating gold	Forbidden												
	Fulminating mercury	Forbidden												
	Fulminating platinum	Forbidden												
	Fulminating silver	Forbidden												
	Fulminic acid	Forbidden												
	Fumaryl chloride	8	UN1780	II	CORROSIVE	B2, T8, T26	154	202	242	1 L	30 L	C	8, 40	
	Furan	3	UN2389	I	FLAMMABLE LIQUID	T19	None	201	242	1 L	30 L	E	40	
	Furfural	3	UN1199	III	FLAMMABLE LIQUID	B1, T1	150	203	241	60 L	220 L	A		
	Furfuryl alcohol	6.1	UN2874	III	KEEP AWAY FROM FOOD.	T2	153	203	240	60 L	220 L	A	26, 74	
	Furfurylamine	3	UN2526	III	FLAMMABLE LIQUID	B1, T1	150	203	241	60 L	220 L	A	40	
	Fuse, detonating, *metal clad, see* Cord, detonating, *metal clad.*													
	Fuse, detonating, mild effect, *metal clad, see* Cord, detonating, mild effect, *metal clad.*													
	Fuse, igniter *tubular metal clad*	1.4G	UN0103	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E	
	Fuse, instantaneous, non-detonating *or* Quickmatch	1.3G	UN0101	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	Forbidden	B		
	Fuse, safety	1.4S	UN0105	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	24E	
	Fusel oil	3	UN1201	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B		
				III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
	Fuses, tracer, see Tracers for ammunition													
	Fuzes, combination, percussion and time, see Fuzes, detonating (*UN 0257, UN 0367*); Fuzes, igniting (UN 0317, UN 0368).													
	Fuzes, detonating	1.1B	UN0106	II	EXPLOSIVE 1.1B		None	62	None	Forbidden	Forbidden	B	2E, 6E	
	Fuzes, detonating	1.2B	UN0107	II	EXPLOSIVE 1.2B		None	62	None	Forbidden	Forbidden	B	2E, 6E	
	Fuzes, detonating	1.4B	UN0257	II	EXPLOSIVE 1.4B	116	None	62	None	Forbidden	75 kg	A	24E	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Fuzes, detonating	1.4S	UN0367	II	EXPLOSIVE 1.4S	116	None	62	None	25 kg	100 kg	A	9E
	Fuzes, detonating, *with protective features*	1.1D	UN0408	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	
	Fuzes, detonating, *with protective features*	1.2D	UN0409	II	EXPLOSIVE 1.2D		None	62	None	Forbidden	Forbidden	B	
	Fuzes, detonating, *with protective features*	1.4D	UN0410	II	EXPLOSIVE 1.4D	116	None	62	None	Forbidden	75 kg	A	24E
	Fuzes, igniting	1.3G	UN0316	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	Forbidden	B	
	Fuzes, igniting	1.4G	UN0317	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	B	
	Fuzes, igniting	1.4S	UN0368	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	9E
	Galactsan trinitrate	Forbidden											
	Gallium	8	UN2803	III	CORROSIVE		None	162	240	20 kg	20 kg	B	48
	Gas drips, *hydrocarbon*	3	UN1864	II	FLAMMABLE LIQUID	T7, T30	150	202	242	5 L	60 L	B	
	Gas generator assemblies (aircraft), *containing a non-flammable non-toxic gas and a propellant cartridge.*	2.2			NONFLAMMABLE GAS.		None	335	None	75 kg	150 kg	A	
D	Gas identification set	2.3	NA9035		POISON GAS	6	None	194	None	Forbidden	Forbidden	D	
	Gas oil	3	UN1202	III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
D	Gasohol (*gasoline mixed with ethyl alcohol, max. 20% alcohol*).	3	NA1203	II	FLAMMABLE LIQUID		150	202	242	5 L	60 L	E	
	Gasoline	3	UN1203	II	FLAMMABLE LIQUID	B33, T8	150	202	242	5 L	60 L	E	
	Gasoline, casinghead, see Natural gasoline												
	Gelatine, blasting, see Explosive, blasting, type A												
	Gelatine dynamites, see Explosive, blasting, type A												
	Germane	2.3	UN2192		POISON GAS, FLAMMABLE GAS.	1	None	192	245	Forbidden	Forbidden	D	40
	Glycerol-1,3-dinitrate	Forbidden											
	Glycerol gluconate trinitrate	Forbidden											
	Glycerol lactate trinitrate	Forbidden											
	Glycerol alpha-monochlorohydrin	6.1	UN2689	III	KEEP AWAY FROM FOOD.	T2	153	203	241	60 L	220 L	A	
	Glyceryl trinitrate, see Nitroglycerin, *etc.*												
	Glycidaldehyde	3	UN2622	II	FLAMMABLE LIQUID, POISON.	T8	150	202	243	1 L	60 L	A	40
D	Grenades, empty primed	1.4S	NA0349	II	None	None	None	62	None	25 kg	100 kg	A	9E
	Grenades, *hand or rifle, with bursting charge*	1.1D	UN0284	II	EXPLOSIVE 1.1D		63(b)	62	None	Forbidden	Forbidden	B	
	Grenades, *hand or rifle, with bursting charge*	1.2D	UN0285	II	EXPLOSIVE 1.2D		63(b)	62	None	Forbidden	Forbidden	B	
	Grenades, *hand or rifle, with bursting charge*	1.1F	UN0292	II	EXPLOSIVE 1.1F		63(b)	62	None	Forbidden	Forbidden	E	
	Grenades, *hand or rifle, with bursting charge*	1.2F	UN0293	II	EXPLOSIVE 1.2F		63(b)	62	None	Forbidden	Forbidden	E	
	Grenades, illuminating, see Ammunition, illuminating, *etc.*.												
	Grenades practice *Hand or rifle*	1.4G	UN0452	II	EXPLOSIVE 1.4G		63(b)	62	None	Forbidden	75 kg	B	
	Grenades, practice, *hand or rifle*	1.4S	UN0110	II	EXPLOSIVE 1.4S		63(b)	62	None	25 kg	100 kg	A	9E
	Grenades, practice, *hand or rifle*	1.3G	UN0318	II	EXPLOSIVE 1.3G		63(b)	62	None	Forbidden	Forbidden	B	
	Grenades, practice, *hand or rifle*	1.2G	UN0372	II	EXPLOSIVE 1.2G		63(b)	62	None	Forbidden	Forbidden	B	
	Grenades, smoke, see Ammunition, smoke, *etc.*												
	Guanidine nitrate	5.1	UN1467	III	OXIDIZER	A1	152	213	240	25 kg	100 kg	A	73
	Guanyl nitrosaminoguanylidene hydrazine (dry)	Forbidden											
	Guanyl nitrosaminoguanylidene hydrazine, wetted *with not less than 30 per cent water, by mass.*	1.1A	UN0113	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E
	Guanyl nitrosaminoguanyltetrazene (dry)	Forbidden											
	Guanyl nitrosaminoguanyltetrazene, wetted *or* Tetrazene, wetted *with not less than 30 per cent water or mixture of alcohol and water, by mass.*	1.1A	UN0114	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E
	Gunpowder, compressed *or* Gunpowder in pellets, *see* Black powder (*UN 0028*).												
	Gunpowder, *granular or as a meal, see* Black powder (*UN 0027*).												

	Hafnium powder, dry	4.2	UN2545	I	SPONTANEOUSLY COMBUSTIBLE.		None	211	242	Forbidden	Forbidden	D			
				II	SPONTANEOUSLY COMBUSTIBLE.	A19, A20, N34	None	212	241	15 kg	50 kg	D			
				III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	25 kg	100 kg	D			
	Hafnium powder, wetted *with not less than 25 per cent water (a visible excess of water must be present) (a) mechanically produced, particle size less than 53 microns; (b) chemically produced, particle size less than 840 microns.*	4.1	UN1326	II	FLAMMABLE SOLID	A6, A19, A20, N34.	None	212	241	15 kg	50 kg	E			
	Halogenated irritating liquids, n.o.s.	6.1	UN1610	I	POISON	T42	None	201	243	Forbidden	Forbidden	D	40		
				II	POISON	T14	None	202	243	5 L	60 L	D	40		
				III	KEEP AWAY FROM FOOD.	T14	153	202	241	60 L	220 L	D	40		
	Hand signal device, see Signal devices, hand														
	Hazardous substances, liquid or solid, n.o.s., see Environmentally hazardous substances, *etc.*.														
D	Hazardous waste, liquid, n.o.s.	9	NA3082	III	CLASS 9		155	203	241	No limit	No limit	A			
D	Hazardous waste, solid, n.o.s.	9	NA3077	III	CLASS 9	B54	155	213	240	No limit	No limit	A			
	Helium, compressed	2.2	UN1046		NONFLAMMABLE GAS.		306	302	302, 314	75 kg	150 kg	A	85		
	Helium-oxygen mixture, see Rare gases and oxygen mixtures.														
	Helium, refrigerated liquid (*cryogenic liquid*)	2.2	UN1963		NONFLAMMABLE GAS.		320	316	318	50 kg	500 kg	B			
	n-Heptaldehyde	3	UN3056	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A			
	Heptanes	3	UN1206	II	FLAMMABLE LIQUID	T2	150	202	242	5 L	60 L	B			
	n-Heptene	3	UN2276	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B			
	Hexachloroacetone	6.1	UN2661	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	B	12, 40		
	Hexachlorobenzene	6.1	UN2729	III	KEEP AWAY FROM FOOD.		153	203	241	60 L	220 L	A			
	Hexachlorobutadiene	6.1	UN2279	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A			
	Hexachlorocyclopentadiene	6.1	UN2646	I	POISON	2, B9, B14, B32, B74, B77, T38, T43, T44.	None	227	244	Forbidden	Forbidden	D	40		
	Hexachlorophene	6.1	UN2875	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A			
	Hexadecyltrichlorosilane	8	UN1781	II	CORROSIVE	A7, B2, B6, N34, T8.	None	202	242	Forbidden	30 L	C	40		
	Hexadienes	3	UN2458	II	FLAMMABLE LIQUID	T7	None	202	242	5 L	60 L	B			
	Hexaethyl tetraphosphate and compressed gas mixtures.	2.3	UN1612		POISON GAS	3	None	334	None	Forbidden	Forbidden	D	40		
	Hexaethyl tetraphosphate *liquid*	6.1	UN1611	I	POISON	A4	None	201	243	1 L	30 L	E	40		
				II	POISON	N76	None	202	243	5 L	60 L	E	40		
				III	KEEP AWAY FROM FOOD.	N77	None	203	241	60 L	220 L	E	40		
	Hexaethyl tetraphosphate, *solid*	6.1	UN1611	I	POISON		None	211	242	Forbidden	15 kg	E	95		
				II	POISON	N76	None	212	242	25 kg	100 kg	E	95		
				III	KEEP AWAY FROM FOOD.	N77	153	213	240	100 kg	200 kg	E	34		
	Hexafluoroacetone	2.3	UN2420		POISON GAS	2, B9, B14	None	304	314, 315	Forbidden	25 kg	D	40		
	Hexafluoroacetone hydrate	6.1	UN2552	II	POISON	T14	None	202	243	5 L	60 L	B	40		
	Hexafluoroethane, *R116*	2.2	UN2193		NONFLAMMABLE GAS.		306	304	314, 315	75 kg	150 kg	A			
	Hexafluorophosphoric acid	8	UN1782	II	CORROSIVE	A6, A7, B2, N3, N34, T9, T27.	None	202	242	1 L	30 L	A			
D	Hexafluoropropylene oxide	2.2	NA1956		NONFLAMMABLE GAS.		306	304	314, 315	75 kg	150 kg	A			
	Hexafluoropropylene, *R1216*	2.2	UN1858		NONFLAMMABLE GAS.		306	304	314, 315	75 kg	150 kg	A			
	Hexaldehyde	3	UN1207	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A			
	Hexamethylene diisocyanate	6.1	UN2281	II	POISON	T14	None	202	243	5 L	60 L	B	13, 40		

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***) Exceptions	Non-bulk packaging	Bulk packaging	(9) Quantity limitations Passenger aircraft or railcar	Cargo aircraft only	(10) Vessel stowage requirements Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Hexamethylene triperoxide diamine (dry)	Forbidden											
	Hexamethylenediamine, solid	8	UN2280	III	CORROSIVE		154	213	240	25 kg	100 kg	A	12, 48
	Hexamethylenediamine solution	8	UN1783	II	CORROSIVE	T8	None	202	243	1 L	30 L	A	
	Hexamethyleneimine	3	UN2493	II	FLAMMABLE LIQUID, CORROSIVE.	T8	None	202	243	1 L	5 L	B	40
	Hexamethylol benzene hexanitrate	Forbidden											
	Hexamine	4.1	UN1328	III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	A	
	Hexanes	3	UN1208	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E	
	2,2',4,4',6,6'-Hexanitro-3,3'-dihydroxyazobenzene (dry).	Forbidden											
	Hexanitroazoxy benzene	Forbidden											
	N,N'-(hexanitrodiphenyl) ethylene dinitramine (dry)	Forbidden											
	Hexanitrodiphenyl urea	Forbidden											
	2,2',3',4,4',6-Hexanitrodiphenylamine	Forbidden											
	Hexanitrodiphenylamine (Dipicrylamine; Hexyl)	1.1D	UN0079	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	2,3',4,4',6,6'-Hexanitrodiphenylether	Forbidden											
	Hexanitroethane	Forbidden											
	Hexanitrooxanilide	Forbidden											
	Hexanitrostilbene	1.1D	UN0392	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Hexanoic acid, see Corrosive liquids, n.o.s.												
	Hexanols	3	UN2282	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Hexatonal, cast	1.1D	UN0393	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	1-Hexene	3	UN2370	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E	
	Hexogen and cyclotetramethylenetetranitramine mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*.												
	Hexogen and HMX mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*.												
	Hexogen and octogen mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*.												
	Hexogen, *see* Cyclotrimethylenetrinitramine, *etc.*												
	Hexolite, *dry or wetted with less than 15 per cent water, by mass.*	1.1D	UN0118	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Hexyl, *see* Hexanitrodiphenylamine												
	Hexyltrichlorosilane	8	UN1784	II	CORROSIVE	A7, B2, B6, N34, T8, T26.	None	202	242	Forbidden	30 L	C	40
	High explosives, see individual explosives' entries												
	HMX, *see* Cyclotetramethylene-tetranitramine, *etc.*												
	Hydrazine, anhydrous *or* Hydrazine aqueous solutions *with more than 64 per cent hydrazine, by mass.*	8	UN2029	I	FLAMMABLE LIQUID, POISON, CORROSIVE.	A3, A6, A7, A10, B16, B53, T25.	None	201	243	Forbidden	2.5 L	D	21, 40, 42, 100
	Hydrazine azide	Forbidden											
	Hydrazine chlorate	Forbidden											
	Hydrazine dicarbonic acid diazide	Forbidden											
	Hydrazine hydrate *or* Hydrazine aqueous solutions, *with not more than 64 per cent hydrazine, by mass.*	8	UN2030	II	CORROSIVE, POISON	B16, B53, T15	None	202	243	Forbidden	30 L	D	40, 42, 82
	Hydrazine perchlorate	Forbidden											
	Hydrazine selenate	Forbidden											
	Hydrides, metal, n.o.s.	4.3	UN1409	I	DANGEROUS WHEN WET	A19, N34, N40	None	211	242	Forbidden	15 kg	D	

	Hydriodic acid, anhydrous, see Hydrogen iodide, anhydrous.													
	Hydriodic acid, solution	8	UN1787	II	CORROSIVE	A3, A6, B2, N41, T9, T27.	154	202	242	1 L	30 L	C	8	
	Hydrobromic acid, anhydrous, see Hydrogen bromide, anhydrous.													
	Hydrobromic acid solution *more than 49% hydrobromic acid.*	8	UN1788	II	CORROSIVE	B2, B15, N41, T9, T27.	154	202	242	Forbidden	Forbidden	C	8	
	Hydrobromic acid solution, *not more than 49% hydrobromic acid.*	8	UN1788	II	CORROSIVE	A3, A6, B2, B15, N41, T9, T27.	154	202	242	1 L	30 L	C	8	
	Hydrocarbon gases, compressed, n.o.s. *or* Hydrocarbon gases mixtures, compressed, n.o.s.	2.1	UN1964		FLAMMABLE GAS		306	302	314, 315	Forbidden	150 kg	E	40	
	Hydrocarbon gases, liquefied, n.o.s. *or* Hydrocarbon gases mixtures, liquefied, n.o.s.	2.1	UN1965		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	E	40	
	Hydrochloric acid, anhydrous, see Hydrogen chloride, anhydrous.													
	Hydrochloric acid, solution	8	UN1789	II	CORROSIVE	A3, A6, B2, B15, N41, T9, T27.	154	202	242	1 L	30 L	C	8	
	Hydrocyanic acid, anhydrous, see Hydrogen cyanide *etc.*.													
D	Hydrocyanic acid, aqueous solutions *less than 5% HCN.*	6.1	NA1613	II	POISON	B12, T18, T26	None	195	243	Forbidden	5 L	D	40	
	Hydrocyanic acid, aqueous solutions *not more than 20% hydrocyanic acid.*	6.1	UN1613	I	POISON	2, B12, B61, B65, B77, B82.	None	195	244	Forbidden	Forbidden	D	40	
	Hydrocyanic acid, liquefied, see Hydrogen cyanide, *etc.*.													
	Hydrocyanic acid (*prussic*), *unstabilized*	Forbidden												
	Hydrofluoric acid and Sulfuric acid mixtures	8	UN1786	I	CORROSIVE, POISON.	A6, A7, B15, B23, N5, N34, T18, T27.	None	201	243	Forbidden	2.5 L	D	40, 95	
	Hydrofluoric acid, anhydrous, see Hydrogen fluoride, anhydrous.													
	Hydrofluoric acid, solution, *more than 60 per cent strength.*	8	UN1790	I	CORROSIVE, POISON.	A6, A7, B4, B12, B15, B23, N5, N34, T18, T27.	None	201	243	0.5 L	2.5 L	D	12, 40, 48, 95	
	Hydrofluoric acid, solution, *not more than 60 per cent strength.*	8	UN1790	II	CORROSIVE, POISON.	A6, A7, B12, B15, N5, N34, T18, T27.	None	202	243	1 L	30 L	D	12, 40, 48, 95	
	Hydrofluoroboric acid, see Fluoboric acid													
	Hydrofluorosilicic acid, see Fluorosilicic acid													
	Hydrogen and Methane mixtures, compressed	2.1	UN2034		FLAMMABLE GAS		306	302	302, 314, 315	Forbidden	150 kg	E	40	
	Hydrogen bromide, anhydrous	2.3	UN1048		POISON GAS, CORROSIVE.	3, B14	None	304	314, 315	Forbidden	25 kg	D	40	
	Hydrogen chloride, anhydrous	2.3	UN1050		POISON GAS, CORROSIVE.	3	None	304	None	Forbidden	Forbidden	D	40	
	Hydrogen chloride, refrigerated liquid	2.3	UN2186		POISON GAS, CORROSIVE.	3, B6, B43	None	None	314, 315	Forbidden	Forbidden	B	40	
	Hydrogen, compressed	2.1	UN1049		FLAMMABLE GAS		306	302	302, 314	Forbidden	150 kg	E	40, 57	
	Hydrogen cyanide, anhydrous, stabilized	6.1	UN1051	I	POISON, FLAMMABLE LIQUID.	1, B12, B61, B65, B77, B82.	None	195	244	Forbidden	Forbidden	D	40	
	Hydrogen cyanide, anhydrous, stabilized, *absorbed in a porous inert material.*	6.1	UN1614	I	POISON	5	None	195	None	Forbidden	Forbidden	D	25, 40	
	Hydrogen fluoride, anhydrous	8	UN1052	I	CORROSIVE, POISON.	3, B7, B12, B46, B71, B77, T24, T27.	None	163	243	Forbidden	Forbidden	D	40, 95	
	Hydrogen iodide, anhydrous	2.2	UN2197		NONFLAMMABLE GAS, CORROSIVE.		306	304	314, 315	Forbidden	Forbidden	D	40	
	Hydrogen iodide solution, see Hydriodic acid, solution.													

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Hydrogen peroxide and peroxyacetic acid mixtures, *with acids, water and not more than 5 per cent peroxyacetic acid, stabilized.*	5.1	UN3149	II	OXIDIZER, CORROSIVE.	A2, A3, A6, B12, B53, T14.	None	202	243	1 L	5 L	D	25, 66, 75, 106
	Hydrogen peroxide, aqueous solutions *with more than 40 per cent but not more than 60 per cent hydrogen peroxide (stabilized as necessary).*	5.1	UN2014	II	OXIDIZER, CORROSIVE.	12, A3, A6, B12, BB53, B80, B81, B85, T14, T37.	None	202	243	Forbidden	Forbidden	D	25, 66, 75, 106
	Hydrogen peroxide, aqueous solutions *with not less than 8 per cent but less than 20 per cent hydrogen peroxide (stabilized as necessary).*	5.1	UN2984	III	OXIDIZER	17, A1, T8, T37	152	203	241	2.5 L	30 L	B	25, 75, 106
	Hydrogen peroxide, aqueous solutions *with not less than 20 per cent but not more than 40 per cent hydrogen peroxide (stabilized as necessary).*	5.1	UN2014	II	OXIDIZER, CORROSIVE.	A2, A3, A6, B12, B53, T14, T37.	None	202	243	1 L	5 L	D	25, 66, 75, 106
	Hydrogen peroxide, stabilized *or* Hydrogen peroxide aqueous solutions, stabilized *with more than 60 per cent hydrogen peroxide.*	5.1	UN2015	I	OXIDIZER, CORROSIVE.	12, A3, A6, B12, B53, B80, B81, B85, T15, T37.	None	201	243	Forbidden	Forbidden	D	25, 66, 75, 106
	Hydrogen, refrigerated liquid (*cryogenic liquid*)	2.1	UN1966		FLAMMABLE GAS		None	316	318, 319	Forbidden	Forbidden	D	40
	Hydrogen selenide, anhydrous	2.3	UN2202		POISON GAS, FLAMMABLE GAS.	1	None	192	245	Forbidden	Forbidden	D	40
	Hydrogen sulfate, see Sulfuric acid												
	Hydrogen sulfide, liquefied	2.3	UN1053		POISON GAS, FLAMMABLE GAS.	2, B9, B14	None	304	314, 315	Forbidden	Forbidden	D	40
	Hydroquinone, liquid	6.1	UN2662	III	KEEP AWAY FROM FOOD.	T8	153	213	240	100 kg	200 kg	A	
	Hydroquinone, solid	6.1	UN2662	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	AA	
	Hydrosilicofluoric acid, see Fluorosilicic acid												
	3-(2-Hydroxyethoxy)-4-pyrrolidin-1-ylbenzenediazonium zinc chloride.	4.1	UN3035	II	FLAMMABLE SOLID		None	224	240	Forbidden	Forbidden	D	2
	Hydroxyl amine iodide	Forbidden											
AW	Hydroxylamine sulfate	8	UN2865	III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Hypochlorite solutions *with more than 5 per cent but less than 16 per cent available chlorine.*	8	UN1791	III	CORROSIVE	N34, T7	154	203	241	5 L	60 L	B	26
	Hypochlorite solutions *with 16 per cent or more available chlorine.*	8	UN1791	II	CORROSIVE	A7, B2, B15, N34, T7.	154	202	242	1 L	30 L	B	26
	Hyponitrous acid	Forbidden											
	Igniter fuse, metal clad, see Fuse, igniter, tubular, metal clad.												
	Igniters	1.1G	UN0121	II	EXPLOSIVE 1.1G		None	62	None	Forbidden	Forbidden	B	
	Igniters	1.2G	UN0314	II	EXPLOSIVE 1.2G		None	62	None	Forbidden	Forbidden	B	
	Igniters	1.3G	UN0315	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	Forbidden	A	
	Igniters	1.4G	UN0325	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E
	Igniters	1.4S	UN0454	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	9E
	3,3'-Iminodipropylamine	8	UN2269	III	CORROSIVE	T8	154	203	241	5 L	60 L	A	
	Infectious substances, affecting animals *only*	6.2	UN2900		INFECTIOUS SUBSTANCE.		196	196	None	50 mL or 50 g.	4 L or 4 kg.	B	
	Infectious substances, affecting humans	6.2	UN2814		INFECTIOUS SUBSTANCE.		196	196	None	50 mL or 50 g.	4 L or 4 kg.	B	
	Inflammable, see Flammable												
	Initiating explosives (dry)	Forbidden											
	Ink, *printer's, flammable*	3	UN1210	II	FLAMMABLE LIQUID	T7, T30,	150	173	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	173	242	60 L	220 L	A	

	Inositol hexanitrate (dry)	Forbidden												
	Insecticide gases *flammable* n.o.s.	2.1	UN1968		FLAMMABLE GAS		None	306	304	314, 315	75 kg	150 kg	D	40
	Insecticide gases, n.o.s.	2.2	UN1968		NONFLAMMABLE GAS.		None	306	304	314, 315	75 kg	150 kg	A	105
	Insecticide gases, toxic, n.o.s.	2.3	UN1967		POISON GAS	3	None	193, 334		245	Forbidden	Forbidden	D	40
	Inulin trinitrate (dry)	Forbidden												
	Iodine azide (dry)	Forbidden												
	Iodine monochloride	8	UN1792	II	CORROSIVE	B6, N41, T8, T26.	None	202	242		Forbidden	50 kg	D	40, 66, 74, 89, 90
	Iodine pentafluoride	5.1	UN2495	I	OXIDIZER, POISON		None	205	243		Forbidden	2.5 L	D	25, 40, 66, 90
	2-Iodobutane	3	UN2390	II	FLAMMABLE LIQUID	T8		150	202	242	5 L	60 L	B	
	Iodomethylpropanes	3	UN2391	II	FLAMMABLE LIQUID	T8		150	202	242	5 L	60 L	B	
	Iodopropanes	3	UN2392	III	FLAMMABLE LIQUID	B1, T8		150	203	241	60 L	220 L	A	
	Iodoxy compounds (dry)	Forbidden												
	Iridium nitratopentamine iridium nitrate	Forbidden												
	Iron chloride, see Ferric chloride													
	Iron oxide, spent, *or* Iron sponge, spent *obtained from coal gas purification.*	4.2	UN1376	III	SPONTANEOUSLY COMBUSTIBLE	B18		None	213	240	Forbidden	Forbidden	E	
	Iron pentacarbonyl	6.1	UN1994	I	POISON, FLAMMABLE LIQUID.	1, B9, B14, B30, B72, B77, T38, T43, T44.		None	192	244	Forbidden	Forbidden	D	40
	Iron sesquichloride, see Ferric chloride													
	Irritating material, see Tear gas substances, *etc.*													
	Isobutane *or* Isobutane mixtures	2.1	UN1969		FLAMMABLE GAS			306	304	314, 315	Forbidden	150 kg	E	40
	Isobutanol *or* Isobutyl alcohol	3	UN1212	III	FLAMMABLE LIQUID	B1, T1		150	203	241	60 L	220 L	A	
	Isobutyl acetate	3	UN1213	II	FLAMMABLE LIQUID	T1		150	202	242	5 L	60 L	B	
	Isobutyl acrylate	3	UN2527	III	FLAMMABLE LIQUID	B1, T1		150	203	242	60 L	220 L	A	
	Isobutyl alcohol, *see* Isobutanol													
	Isobutyl aldehyde, *see* Isobutyraldehyde													
D	Isobutyl chloroformate	6.1	NA2742	I	POISON, FLAMMABLE LIQUID, CORROSIVE.	2, B9, B14, B32, B74, T38, T43, T45.		None	227	244	1 L	30 L	A	12, 13, 22, 25, 40, 48, 100
	Isobutyl formate	3	UN2393	II	FLAMMABLE LIQUID	T1		150	202	242	5 L	60 L	B	
	Isobutyl isobutyrate	3	UN2528	III	FLAMMABLE LIQUID	B1, T1		150	203	242	60 L	220 L	A	
+	Isobutyl isocyanate	3	UN2486	II	FLAMMABLE LIQUID, POISON.	1, B9, B14, B30, B72, T38, T43, T44.		None	226	244	1 L	60 L	D	40
	Isobutyl methacrylate	3	UN2283	III	FLAMMABLE LIQUID	B1, T1		150	203	242	60 L	220 L	A	
	Isobutyl propionate	3	UN2394	III	FLAMMABLE LIQUID	T1		150	203	242	60 L	220 L	B	
	Isobutylamine	3	UN1214	II	FLAMMABLE LIQUID	T8		150	202	242	5 L	60 L	B	40
	Isobutylene *see also* Petroleum gases, liquefied	2.1	UN1055		FLAMMABLE GAS			306	304	314, 315	Forbidden	150 kg	E	40
	Isobutyraldehyde *or* Isobutyl aldehyde	3	UN2045	II	FLAMMABLE LIQUID	T8		150	202	242	5 L	60 L	E	40
	Isobutyric acid	3	UN2529	III	FLAMMABLE LIQUID	B1, T1		150	203	242	60 L	220 L	A	
	Isobutyric anhydride	3	UN2530	III	FLAMMABLE LIQUID	B1, T1		150	203	242	60 L	220 L	A	
	Isobutyronitrile	3	UN2284	II	FLAMMABLE LIQUID, POISON.	T17		None	202	243	1 L	60 L	E	40
	Isobutyryl chloride	3	UN2395	II	FLAMMABLE LIQUID, CORROSIVE.	T9, T26		None	202	243	1 L	5 L	C	40
	Isocyanates, liquid *or* solid, n.o.s. *or* Isocyanate solutions, n.o.s. *boiling point not less than 300 degrees C.*	6.1	UN2207	III	KEEP AWAY FROM FOOD.			153	203	241	60 L	220 L	A	48
	Isocyanates, n.o.s. *or* Isocyanate solutions, n.o.s., *flash point more than 61 degrees C and boiling point less than 300 degrees C.*	6.1	UN2206	II	POISON	T15		None	202	243	5 L	60 L	D	25, 40, 48
	Isocyanates, n.o.s. *or* Isocyanate solutions, n.o.s., *flash point not less than 23 degrees C but not more than 61 degrees C and boiling point less than 300 degrees C.*	6.1	UN3080	II	POISON, FLAMMABLE LIQUID.	T15		None	202	243	5 L	60 L	D	25, 40, 48

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Isocyanates, n.o.s. *or* Isocyanate solutions, n.o.s. (flashpoint less than 23 degrees C).	3	UN2478	II	FLAMMABLE LIQUID, POISON.	5, A3, A7	None	202	243	1 L	60 L	D	40
	Isocyanatobenzotrifluorides	6.1	UN2285	II	POISON	5, T14	None	202	243	5 L	60 L	B	25, 40, 48
	Isoheptenes	3	UN2287	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	
	Isohexenes	3	UN2288	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	E	
	Isooctane, see Octanes												
	Isooctenes	3	UN1216	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Isopentane, *see* n-Pentane												
	Isopentanoic acid, see Corrosive liquids, n.o.s.												
	Isopentenes	3	UN2371	I	FLAMMABLE LIQUID	T20	150	201	243	1 L	30 L	E	
	Isophorone diisocyanate	6.1	UN2290	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	B	40
AW	Isophoronediamine	8	UN2289	III	CORROSIVE	T8	154	203	241	5 L	60 L	A	8
	Isoprene, inhibited	3	UN1218	I	FLAMMABLE LIQUID	T20	150	201	243	1 L	30 L	E	
	Isopropanol *or* Isopropyl alcohol	3	UN1219	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Isopropenyl acetate	3	UN2403	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Isopropenylbenzene	3	UN2303	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Isopropyl acetate	3	UN1220	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Isopropyl acid phosphate	8	UN1793	III	CORROSIVE	T7	154	213	240	25 kg	100 kg	A	
	Isopropyl alcohol, *see* Isopropanol												
	Isopropyl butyrate	3	UN2405	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Isopropyl chloroacetate	3	UN2947	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
+	Isopropyl chloroformate	3	UN2407	I	FLAMMABLE LIQUID, CORROSIVE, POISON.	2, B9, B14, B32, B74, B77, T38, T43, T45.	None	227	244	Forbidden	Forbidden	B	40
	Isopropyl-2-chloropropionate	3	UN2934	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Isopropyl isobutyrate	3	UN2406	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
+	Isopropyl isocyanate	3	UN2483	I	FLAMMABLE LIQUID, POISON.	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	30 L	D	40
	Isopropyl mercaptan, see Propanethiols												
	Isopropyl nitrate	3	UN1222	II	FLAMMABLE LIQUID	T25	150	202	None	5 L	60 L	D	
	Isopropyl phosphoric acid, see Isopropyl acid phosphate.												
	Isopropyl propionate	3	UN2409	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Isopropylamine	3	UN1221	I	FLAMMABLE LIQUID	T20	None	201	243	1 L	30 L	E	
	Isopropylbenzene	3	UN1918	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Isopropylcumyl hydroperoxide, more than 72 per cent in solution.	Forbidden											
	Isosorbide dinitrate mixture *with not less than 60 per cent lactose, mannose, starch or calcium hydrogen phosphate.*	4.1	UN2907	II	FLAMMABLE SOLID		None	212	None	15 kg	50 kg	E	
	Isothiocyanic acid	Forbidden											
	Jet fuel, see Fuel aviation, turbine engine												
	Jet perforating guns, charged *oil well, without detonator.*	1.1D	UN0124	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	
D	Jet perforating guns, charged *oil well, without detonator.*	1.4D	NA0124	II	EXPLOSIVE 1.4D	114	None	62	None	Forbidden	Forbidden	A	24E
	Jet perforators, see Charges, shaped, commercial *etc.*.												
	Jet tappers, without detonator, see Charges, shaped commercial, *etc.*.												

	Jet thrust igniters, for rocket motors or Jato, see Igniters.														
	Jet thrust unit (Jato), see Rocket motors														
	Kerosene	3	UN1223	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A			
	Ketones, liquid, n.o.s.	3	UN1224	I	FLAMMABLE LIQUID	T8, T31	None	201	243	1 L	30 L	E			
				II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B			
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A			
	Krypton, compressed	2.2	UN1056		NONFLAMMABLE GAS.		306	302	None	75 kg	150 kg	A			
	Krypton, refrigerated liquid (*cryogenic liquid*)	2.2	UN1970		NONFLAMMABLE GAS.		320	None	None	50 kg	500 kg	B			
	Lacquer base or lacquer chips, nitrocellulose, dry, see Nitrocellulose, *etc. (UN 2557).*														
	Lacquer base or lacquer chips, plastic, wet with alcohol or solvent, see Nitrocellulose *(UN 2059, UN 2060, UN 2555, UN2556) or* Paint *etc. (UN1263).*														
	Lead acetate	6.1	UN1616	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A			
	Lead arsenates	6.1	UN1617	II	POISON		None	212	242	25 kg	100 kg	A			
	Lead arsenites	6.1	UN1618	II	POISON		None	212	242	25 kg	100 kg	A			
	Lead azide (dry)	Forbidden													
	Lead azide, wetted *with not less than 20 per cent water or mixture of alcohol and water, by mass.*	1.1A	UN0129	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E		
	Lead compounds, soluble, n.o.s.	6.1	UN2291	II	POISON		153	213	240	100 kg	200 kg	A			
	Lead cyanide	6.1	UN1620	II	POISON		None	212	242	25 kg	100 kg	A	26		
	Lead dioxide	5.1	UN1872	III	OXIDIZER	A1	152	213	240	25 kg	100 kg	A	34		
	Lead dross, see Lead sulphate, *with more than 3% free acid.*														
D	Lead mononitroresorcinate	1.1A	NA0473	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E		
	Lead nitrate	5.1	UN1469	II	OXIDIZER, POISON		None	212	242	5 kg	25 kg	A			
	Lead nitroresorcinate (dry)	Forbidden													
	Lead perchlorate, solid *or* solution	5.1	UN1470	II	OXIDIZER, POISON	T8	None	212	242	5 kg	25 kg	A	56, 58, 106		
	Lead peroxide, see Lead dioxide														
	Lead phosphite, dibasic	4.1	UN2989	II	FLAMMABLE SOLID		None	212	240	5 kg	25 kg	B	34		
				III	FLAMMABLE SOLID		151	213	240	15 kg	50 kg	B	34		
	Lead picrate (dry)	Forbidden													
	Lead styphnate (dry)	Forbidden													
	Lead styphnate, wetted *or* Lead trinitroresorcinate, wetted *with not less than 20 per cent water or mixture of alcohol and water, by mass.*	1.1A	UN0130	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E		
	Lead sulfate *with more than 3 per cent free acid*	8	UN1794	II	CORROSIVE		154	212	240	15 kg	50 kg	A			
	Lead trinitroresorcinate, *see* Lead styphnate, *etc.*														
	Life-saving appliances, not self inflating *containing dangerous goods as equipment.*	9	UN3072		None		None	219	None	No limit	No limit	A	120		
	Life-saving appliances, self inflating	9	UN2990		None		None	219	None	No limit	No limit	A	120		
	Lighter replacement cartridges containing liquefied petroleum gases (and similar devices, each not exceeding 65 grams), see Lighters for cigars, cigarettes, *etc. with flammable gas.*														
D	Lighters for cigars, cigarettes, *etc., with lighter fluids.*	3	NA1226	II	FLAMMABLE LIQUID	N10	None	21	None	Forbidden	Forbidden	B			
	Lighters, fuse	1.4S	UN0131	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	9E		
	Lighters *or* Lighter refills (cigarettes) containing flammable gas.	2.1	UN1057		FLAMMABLE GAS	N10	None	21, 308	None	1 kg	15 kg	B	40		
	Lime, unslaked, see Calcium oxide														
	Liquefied gases, *non-flammable charged with nitrogen, carbon dioxide or air.*	2.2	UN1058		NONFLAMMABLE GAS.		306	304	None	75 kg	150 kg	A			
	Liquefied hydrocarbon gas, see Hydrocarbon gases, liquefied, n.o.s., *etc.*														
	Liquefied natural gas, see Methane, *etc. (UN 1972).*														
	Liquefied petroleum gas *see* Petroleum gases, liquefied.														
	Lithium	4.3	UN1415	II	DANGEROUS WHEN WET.	A7, A19, N45	None	212	244	Forbidden	50 kg	E			

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Lithium acetylide ethylenediamine complex, see Substances which in contact with water emit flammable gases.												
	Lithium alkyls	4.2	UN2445	I	SPONTANEOUSLY COMBUSTIBLE.	B11, T28, T40	None	181	244	Forbidden	Forbidden	D	
	Lithium aluminum hydride	4.3	UN1410	I	DANGEROUS WHEN WET.	A19, N40	None	211	242	Forbidden	15 kg	E	
	Lithium aluminum hydride, ethereal	4.3	UN1411	I	DANGEROUS WHEN WET, FLAMMABLE LIQUID.	A2, A3, A11, N34.	None	201	244	Forbidden	1 L	D	40
	Lithium batteries, contained in equipment	9	UN3091	II	CLASS 9	18, A12	None	185	None	See A12	See A12	A	
	Lithium battery, liquid cathode	9	UN3090	II	CLASS 9	A12	None	185	None	See A12	0.5 kg	A	
	Lithium battery, solid cathode	9	UN3090	II	CLASS 9	A12	None	185	None	See A12	0.5 kg	A	
	Lithium borohydride	4.3	UN1413	I	DANGEROUS WHEN WET.	A19, N40	None	211	242	Forbidden	15 kg	E	
	Lithium ferrosilicon	4.3	UN2830	II	DANGEROUS WHEN WET.	A19	None	212	241	15 kg	50 kg	E	40, 85, 103
	Lithium hydride	4.3	UN1414	I	DANGEROUS WHEN WET.	A19, N40	None	211	242	Forbidden	15 kg	E	
	Lithium hydride, fused solid	4.3	UN2805	II	DANGEROUS WHEN WET.	A8, A19, A20	None	212	241	15 kg	50 kg	E	
	Lithium hydroxide, monohydrate *or* Lithium hydroxide, solid.	8	UN2680	II	CORROSIVE		154	212	240	15 kg	50 kg	A	
	Lithium hydroxide, solution	8	UN2679	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A	96
	Lithium hypochlorite, dry *or* Lithium hypochlorite mixtures, dry.	5.1	UN1471	II	OXIDIZER	A9, N34	152	212	240	5 kg	25 kg	A	13, 48, 58, 58, 69, 106, 116
	Lithium in cartridges, see Lithium												
	Lithium nitrate	5.1	UN2722	III	OXIDIZER	A1	152	213	240	25 kg	100 kg	A	
	Lithium nitride	4.3	UN2806	I	DANGEROUS WHEN WET.	A19, N40	None	211	242	Forbidden	15 kg	E	
	Lithium peroxide	5.1	UN1472	II	OXIDIZER	A9, N34	152	212	None	5 kg	25 kg	A	13, 75, 106
	Lithium silicon	4.3	UN1417	II	DANGEROUS WHEN WET.	A19, A20	None	212	241	15 kg	50 kg	A	85, 103
	LNG, see Methane *etc. (UN 1972)*												
	London Purple	6.1	UN1621	II	POISON		None	212	242	25 kg	100 kg	A	
	LPG, see Petroleum gases, liquefied												
	Lye, see Sodium hydroxide, solutions												
	Magnesium alkyls	4.2	UN3053	I	SPONTANEOUSLY COMBUSTIBLE.	B11, T28, T29, T40.	None	181	244	Forbidden	Forbidden	D	18
	Magnesium aluminum phosphide	4.3	UN1419	I	DANGEROUS WHEN WET, POISON.	A19, N34, N40	None	211	242	Forbidden	15 kg	E	40, 85
+	Magnesium arsenate	6.1	UN1622	II	POISON		None	212	242	25 kg	100 kg	A	
	Magnesium bisulfite solution, *see* Bisulfites, inorganic aqueous solutions, n.o.s..												
	Magnesium bromate	5.1	UN1473	II	OXIDIZER	A1	152	212	242	5 kg	25 kg	A	56, 58, 106
	Magnesium chlorate	5.1	UN2723	II	OXIDIZER		152	212	242	5 kg	25 kg	A	56, 58, 106
	Magnesium diamide	4.2	UN2004	II	SPONTANEOUSLY COMBUSTIBLE.	A8, A19, A20	None	212	241	15 kg	50 kg	C	

	Magnesium diphenyl	4.2	UN2005	I	SPONTANEOUSLY COMBUSTIBLE.		None	187	244	Forbidden	Forbidden	C		
	Magnesium dross, wet or hot	Forbidden												
	Magnesium fluorosilicate	6.1	UN2853	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	26	
	Magnesium granules, coated *particle size not less than 149 microns.*	4.3	UN2950	III	DANGEROUS WHEN WET.	A1, A19	None	213	240	25 kg	100 kg	A		
	Magnesium hydride	4.3	UN2010	I	DANGEROUS WHEN WET.	A19, N40	None	211	242	Forbidden	15 kg	E		
	Magnesium *or* Magnesium alloys *with more than 50 per cent magnesium in pellets, turnings or ribbons.*	4.1	UN1869	III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	A	39	
	Magnesium nitrate	5.1	UN1474	III	OXIDIZER	A1, T2	152	213	240	25 kg	100 kg	A		
	Magnesium perchlorate	5.1	UN1475	II	OXIDIZER	T8	152	212	242	5 kg	25 kg	A	56, 58, 106	
	Magnesium peroxide	5.1	UN1476	II	OXIDIZER		152	212	242	5 kg	25 kg	A	13, 75, 106	
	Magnesium phosphide	4.3	UN2011	I	DANGEROUS WHEN WET, POISON.	A19, N40	None	211	None	Forbidden	15 kg	E	40, 85	
	Magnesium, powder *or* Magnesium alloys, powder	4.3	UN1418	II	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.	A19, B56	None	212	241	15 kg	50 kg	A	39	
	Magnesium scrap, see Magnesium, *etc. (UN 1869)*													
	Magnesium silicide	4.3	UN2624	II	DANGEROUS WHEN WET.	A19, A20	None	212	241	15 kg	50 kg	B	85, 103	
	Magnetized material, see section 173.21													
D	Maleic acid	8	NA2215	III	CORROSIVE		154	213	240	25 kg	100 kg	A		
	Maleic anhydride	8	UN2215	III	CORROSIVE	T7	154	213	240	25 kg	100 kg	A		
	Malononitrile	6.1	UN2647	II	POISON		None	212	242	25 kg	100 kg	A	12	
	Maneb *or* Maneb preparations *with not less than 60 per cent maneb.*	4.2	UN2210	III	SPONTANEOUSLY COMBUSTIBLE, DANGEROUS WHEN WET.	A1, A19	None	213	242	25 kg	100 kg	A	34	
	Maneb stabilized *or* Maneb preparations, stabilized *against self-heating.*	4.3	UN2968	III	DANGEROUS WHEN WET.	A1, A19	None	213	242	25 kg	100 kg	B	34	
	Manganese nitrate	5.1	UN2724	III	OXIDIZER	A1	152	213	240	25 kg	100 kg	A		
	Manganese resinate	4.1	UN1330	III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	A		
	Mannitan tetranitrate	Forbidden												
	Mannitol hexanitrate (dry)	Forbidden												
D	Mannitol hexanitrate (Nitromannite), wetted *with not less than 40 percent water, by mass or mixture of alcohol and water*	1.1A	NA0133	II	EXPLOSIVE 1.1A	111	None	82	None	Forbidden	Forbidden	E	1E, 5E	
	Matches, block, see Matches, 'strike anywhere'													
	Matches, fusee	4.1	UN2254	III	FLAMMABLE SOLID		186	186	None	Forbidden	Forbidden	A		
	Matches, safety (*book, card or strike on box*)	4.1	UN1944	III	FLAMMABLE SOLID		186	186	None	25 kg	100 kg	A		
	Matches, strike anywhere	4.1	UN1331	III	FLAMMABLE SOLID		186	186	None	Forbidden	Forbidden	B		
	Matches, wax, Vesta	4.1	UN1945	III	FLAMMABLE SOLID		186	186	None	25 kg	100 kg	B		
	Matting acid, see Sulfuric acid													
D	Medicines, *corrosive, liquid,* n.o.s.	8	NA1760	II	CORROSIVE	B3	154	202	242	1 L	30 L	B	40	
				III	CORROSIVE		154	203	241	5 L	60 L	A	40	
D	Medicines, *corrosive, solid,* n.o.s.	8	NA1759	II	CORROSIVE		154	212	240	15 kg	50 kg	A		
				III	CORROSIVE		154	213	240	25 kg	100 kg	A		
D	Medicines, *flammable, liquid,* n.o.s.	3	NA1993	I	FLAMMABLE LIQUID		150	201	243	1 L	30 L	E		
				II	FLAMMABLE LIQUID		150	202	242	5 L	60 L	B		
				III	FLAMMABLE LIQUID	B1	150	203	242	60 L	220 L	A		
D	Medicines, *flammable, solid,* n.o.s.	4.1	NA1325	II	FLAMMABLE SOLID		151	212	240	15 kg	50 kg	B		
D	Medicines, *oxidizing substance, solid,* n.o.s.	5.1	NA1479	II	OXIDIZER		152	212	242	5 kg	25 kg	B	56, 58, 69, 106	
D	Medicines, *poisonous, liquid,* n.o.s.	6.1	NA2810	I	POISON		153	201	243	1 L	30 L	B	40	
				II	POISON		153	202	243	5 L	60 L	B	40	
				III	KEEP AWAY FROM FOOD.		153	203	241	60 L	220 L	A	40	
D	Medicines, *poisonous, solid,* n.o.s.	6.1	NA2811	I	POISON		153	211	242	5 kg	50 kg	B		
				II	POISON		153	212	242	25 kg	100 kg	B		

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Memtetrahydrophthalic anhydride, see Corrosive liquids, n.o.s.												
	Mercaptans, liquid, n.o.s. *or* Mercaptan mixtures, liquid, n.o.s.	3	UN1228	II	FLAMMABLE LIQUID, POISON.	T14	None	202	243	Forbidden	60 L	B	40, 95, 102
	Mercaptans, liquid n.o.s. *or* Mercaptan mixtures, liquid, n.o.s., *flash point not less than 23 degrees C.*	6.1	UN3071	II	POISON. FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	C	40, 121
	5-Mercaptotetrazol-1-acetic acidd	1.4C	UN0448	II	EXPLOSIVE 1.4C		None	62	None	Forbidden	75 kg	E	1E, 5E
	Mercuric arsenate	6.1	UN1623	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercuric chloride	6.1	UN1624	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercuric compounds, see Mercury compounds, *etc.*												
	Mercuric nitrate	6.1	UN1625	II	POISON	N73	None	212	242	25 kg	100 kg	A	
+	Mercuric potassium cyanide	6.1	UN1626	I	POISON	N74, N75	None	211	242	5 kg	50 kg	A	26
	Mercuric sulfocyanate, see Mercury thiocyanate												
	Mercuril, see Mercury nucleate												
	Mercurous azide	Forbidden											
	Mercurous compounds, see Mercury compounds, etc.												
	Mercurous nitrate	6.1	UN1627	II	POISON		None	212	242	25 kg	100 kg	A	
A, W	Mercury	8	UN2809	III	CORROSIVE		164	164	240	35 kg	35 kg	B	40, 97
	Mercury acetate	6.1	UN1629	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury acetylide	Forbidden											
	Mercury ammonium chloride	6.1	UN1630	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury based pesticides, liquid, flammable, toxic, n.o.s. *flash point less than 23deg C.*	3	UN2778	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	40
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	40
	Mercury based pesticides, liquid, toxic, flammable, n.o.s. *flashpoint not less than 23 degrees C.*	6.1	UN3011	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	T14	153	202	241	60 L	220 L	A	40
	Mercury based pesticides, liquid, toxic, n.o.s.	6.1	UN3012	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Mercury based pesticides, solid, toxic, n.o.s.	6.1	UN2777	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POSION		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	Mercury benzoate	6.1	UN1631	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury bromides	6.1	UN1634	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury compounds, liquid, n.o.s.	6.1	UN2024	I	POISON		None	201	243	1 L	30 L	B	40
				II	POISON		None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.		153	203	241	60 L	220 L	B	40
	Mercury compounds, solid, n.o.s.	6.1	UN2025	I	POISON		None	211	242	5 kg	50 kg	A	
				II	POISON		None	212	242	25 kg	100 kg	A	
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
A	Mercury *contained in manufactured articles*	8	UN2809	I	CORROSIVE		None	164	None	No limit	No limit	B	40
	Mercury cyanide	6.1	UN1636	II	POISON	N74, N75	None	212	242	25 kg	100 kg	A	26

	Mercury fulminate, wetted *with not less than 20 per cent water, or mixture of alcohol and water, by mass.*	1.1A	UN0135	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E	3E, 6E
	Mercury gluconate	6.1	UN1637	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury iodide	6.1	UN1638	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury iodide aquabasic ammonobasic (Iodide of Millon's base).	Forbidden											
	Mercury iodide, *solution*	6.1	UN1638	II	POISON		None	202	243	5 L	60 L	A	
	Mercury nitride	Forbidden											
	Mercury nucleate	6.1	UN1639	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury oleate	6.1	UN1640	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury oxide	6.1	UN1641	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury oxycyanide	Forbidden											
	Mercury oxycyanide, desensitized	6.1	UN1642	II	POISON		None	212	242	25 kg	100 kg	A	26, 91
	Mercury potassium iodide	6.1	UN1643	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury salicylate	6.1	UN1644	II	POISON		None	212	242	25 kg	100 kg	A	
+	Mercury sulfates	6.1	UN1645	II	POISON		None	212	242	25 kg	100 kg	A	
	Mercury thiocyanate	6.1	UN1646	II	POISON		None	212	242	25 kg	100 kg	A	
	Mesityl oxide	-3	UN1229	III	FLAMMABLE LIQUID	B1, T1	None	203	242	60 L	220 L	A	
	Metal alkyl halides, n.o.s.	4.2	UN3049	I	SPONTANEOUSLY COMBUSTIBLE.	B9, B11, T26, T29, T40.	None	181	244	Forbidden	Forbidden	D	
	Metal alkyl hydrides, n.o.s.	4.2	UN3050	I	SPONTANEOUSLY COMBUSTIBLE.	B9, B11, T26, T29, T40.	None	181	244	Forbidden	Forbidden	D	
D	Metal alkyl, solution, n.o.s.	3	NA9195	II	FLAMMABLE LIQUID		150	202	242	1 L	4 L	B	
	Metal alkyls, n.o.s.	4.2	UN2003	I	SPONTANEOUSLY COMBUSTIBLE.	B11, T42	None	181	244	Forbidden	Forbidden	D	
	Metal catalyst, dry	4.2	UN2881	I	SPONTANEOUSLY COMBUSTIBLE.	N34	None	187	None	Forbidden	Forbidden	B	
	Metal catalyst, wetted *with not less than 40 per cent water or other suitable liquid, by mass, finely divided, activated or spent.*	4.2	UN1378	II	SPONTANEOUSLY COMBUSTIBLE.	A2, A8, N34	None	212	None	Forbidden	50 kg	C	
	Metal powders, flammable, n.o.s.	4.1	UN3089	II	FLAMMABLE SOLID		151	212	240	15 kg	50 kg	B	
				III	FLAMMABLE SOLID		151	212	140	25 kg	100 kg	B	
	Metal salts of methyl nitramine (dry)	Forbidden											
	Metaldehyde	4.1	UN1332	III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	A	
	Methacrylaldehyde	3	UN2396	II	FLAMMABLE LIQUID, POISON.	T8	None	202	243	1 L	60 L	E	40
	Methacrylic acid, inhibited	8	UN2531	III	CORROSIVE	T8	154	203	241	5 L	60 L	A	8, 12, 48
	Methacrylonitrile, inhibited	3	UN3079	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	D	12, 40, 48
	Methallyl alcohol	3	UN2614	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Methane and hydrogen, mixtures, see Hydrogen and methane, mixtures, etc.												
	Methane, compressed *or* Natural gas, compressed (*with high methane content*).	2.1	UN1971		FLAMMABLE GAS		308	302	302	Forbidden	150 kg	E	40
	Methane, refrigerated liquid (*cryogenic liquid*)*or* Natural gas, refrigerated liquid (*cryogenic liquid*)(*with high methane content*).	2.1	UN1972		FLAMMABLE GAS		None	None	318	Forbidden	Forbidden	D	40
	Methanol, *or* Methyl alcohol	3	UN1230	II	FLAMMABLE LIQUID, POISON.	T8	None	202	243	1 L	60 L	B	40
	Methazoic acid	Forbidden											
	4-Methoxy-4-methylpentan-2-one	3	UN2293	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	1-Methoxy-2-propanol	3	UN3092	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	44
+	Methoxymethyl isocyanate	3	UN2605	I	FLAMMABLE LIQUID, POISON.	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	30 L	D	40
	Methyl acetate	3	UN1231	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Methyl acrylate, inhibited	3	UN1919	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Methyl alcohol, *see* Methanol												
	Methyl allyl chloride	3	UN2554	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E	
	Methyl amyl ketone, see Amyl methyl ketone												
	Methyl benzoate	6.1	UN2938	III	KEEP AWAY FROM FOOD.	T1	153	203	240	60 L	220 L	A	
	Methyl bromide	2.3	UN1062		POISON GAS	3, B14	None	193	314, 315	Forbidden	25 kg	D	40

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Methyl bromide and chloropicrin mixtures with more than 2 per cent chloropicrin, see Chloropicrin and methyl bromide mixtures.												
	Methyl bromide and chloropicrin mixtures with not more than 2 per cent chloropicrin, see Methyl bromide.												
	Methyl bromide and ethylene dibromide mixtures, liquid.	6.1	UN1647	I	POISON	2, B9, B14, B32, B74, N65, T38, T43, T45.	None	227	244	Forbidden	30 L	C	40
	Methyl bromoacetate	6.1	UN2643	II	POISON	T8	None	202	243	5 L	60 L	D	40
	3-Methyl-1-butene	3	UN2561	I	FLAMMABLE LIQUID	T20	None	201	243	1 L	30 L	E	
	2-Methyl-1-butene	3	UN2459	I	FLAMMABLE LIQUID	T14	None	201	243	1 L	30 L	E	
	2-Methyl-2-butene	3	UN2460	II	FLAMMABLE LIQUID	T14	None	202	242	5 L	60 L	E	
	Methyl tert butyl ether	3	UN2398	II	FLAMMABLE LIQUID	T14	150	202	242	5 L	60 L	E	
	Methyl butyrate	3	UN1237	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Methyl chloride	2.1	UN1063		FLAMMABLE GAS		306	304	314, 315	Forbidden	25 kg	D	40
	Methyl chloride and chloropicrin mixtures, see Chloropicrin and methyl chloride mixtures.												
	Methyl chloride and methylene chloride mixtures	2.1	UN1912		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	D	40
	Methyl chloroacetate	6.1	UN2295	II	POISON	T11	None	202	243	5 L	60 L	C	
	Methyl chlorocarbonate, see Methyl chloroformate												
	Methyl chloroform, see 1,1,1-Trichloroethane												
	Methyl chloroformate	6.1	UN1238	I	POISON, FLAMMABLE LIQUID, CORROSIVE.	1, A3, A6, A7, B9, B14, B30, B72, N34, T39, T43, T44.	None	226	244	Forbidden	Forbidden	D	21, 40, 100
	Methyl-2-chloropropionate	3	UN2933	III	FLAMMABLE LIQUID	B1, T7	150	203	242	60 L	220 L	A	
	Methyl cyanide	3	UN1648	II	FLAMMABLE LIQUID, POISON.	T14	None	202	243	1 L	60 L	B	40
	Methyl cyclohexane	3	UN2296	II	FLAMMABLE LIQUID	B1, T1	150	202	242	5 L	60 L	B	
	Methyl cyclohexanols, *flash point not more than 60.5 degrees C.*	3	UN2617	III	FLAMMABLE LIQUID	B1, T2	150	203	242	60 L	220 L	A	
	Methyl cyclohexanone	3	UN2297	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Methyl cyclopentane	3	UN2298	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Methyl dichloroacetate	6.1	UN2299	III	KEEP AWAY FROM FOOD.	T1	153	203	241	60 L	220 L	A	
	Methyl ethyl ether, see Ethyl methyl ether												
	Methyl ethyl ketone, *see* Ethyl methyl ketone												
	Methyl ethyl ketone peroxide, in solution with more than 9 per cent by mass active oxygen.	Forbidden											
	2-Methyl-5-ethylpyridine	6.1	UN2300	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	Methyl fluoride	2.1	UN2454		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	E	40
	Methyl formate	3	UN1243	I	FLAMMABLE LIQUID	T20	150	201	243	1 L	30 L	E	
+	Methyl iodide	6.1	UN2644	II	POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	5 L	60 L	A	12, 40, 49
	Methyl isobutyl carbinol	3	UN2053	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Methyl isobutyl ketone	3	UN1245	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Methyl isobutyl ketone peroxide, in solution with more than 9 per cent by mass active oxygen.	Forbidden											

	Methyl isocyanate	6.1	UN2480	I	POISON, FLAMMABLE LIQUID.	1, A7, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden.	Forbidden.	D.	26, 40
	Methyl isopropenyl ketone, inhibited	3	UN1246	II	FLAMMABLE LIQUID.	T7	150	202	242	5 L	60 L	B.	
+	Methyl isothiocyanate	3	UN2477	II	FLAMMABLE LIQUID. POISON.	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden.	60 L	A.	
	Methyl isovalerate	3	UN2400	II	FLAMMABLE LIQUID.	T1	150	202	242	5 L	60 L	B.	
	Methyl magnesium bromide, in ethyl ether	4.3	UN1928	I	DANGEROUS WHEN WET. FLAMMABLE LIQUID.		None	201	243	Forbidden.	1 L	D.	
	Methyl mercaptan	2.3	UN1064		POISON GAS, FLAMMABLE GAS.	2, B7, B9, B14	None	304	314, 315	Forbidden.	25 kg	D.	40
	Methyl mercaptopropionaldehyde, see Thia-4-pentanal.												
	Methyl methacrylate monomer, inhibited	3	UN1247	II	FLAMMABLE LIQUID.	T8	150	202	242	5 L	60 L	B.	40
	Methyl nitramine (dry)	Forbidden											
	Methyl nitrate	Forbidden											
	Methyl nitrite	Forbidden											
	Methyl norbornene dicarboxylic anhydride, see Corrosive liquids, n.o.s..												
+	Methyl orthosilicate	3	UN2606	I	FLAMMABLE LIQUID. POISON.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden.	30L	E.	40
D	Methyl parathion *liquid*	6.1	NA3018	II	POISON	N76, T14	None	202	243	Forbidden.	1 L	A.	40
D	Methyl parathion *solid*	6.1	NA2783	II	POISON	N77	None	212	242	25 kg	100 kg	A.	40
D	Methyl phosphonic dichloride	6.1	NA9206	I	POISON, CORROSIVE.	2, A3, B9, B14, B32, B74, N34, N43, T38, T43, T45.	None	227	244	Forbidden.	Forbidden.	C.	
	Methyl phosphonothioic dichloride, anhydrous, see Corrosive liquid, n.o.s..												
D	Methyl phosphonous dichloride, *pyrophoric liquid*	6.1	NA2845	I	POISON, SPONTANEOUSLY COMBUSTIBLE.	2, B9, B14, B16, B32, B74, T38, T43, T45.	None	227	244	Forbidden.	Forbidden.	D.	18
	Methyl picric acid (heavy metal salts of)	Forbidden											
	Methyl propionate	3	UN1248	II	FLAMMABLE LIQUID.	T2	150	202	242	5 L	60 L	B.	
	Methyl propyl ether	3	UN2612	II	FLAMMABLE LIQUID.	T14	150	202	242	5 L	60 L	E.	40
	Methyl propyl ketone	3	UN1249	II	FLAMMABLE LIQUID.	T1	150	202	242	5 L	60 L	B.	
	Methyl sulfate, see Dimethyl sulfate												
	Methyl sulfide, see Dimethyl sulfide												
	Methyl trichloroacetate	6.1	UN2533	III	KEEP AWAY FROM FOOD.	T1	153	203	241	60 L	220 L	A.	
	Methyl trimethylol methane trinitrate	Forbidden											
	Methyl vinyl ketone	3	UN1251	II	FLAMMABLE LIQUID.	T8	150	202	242	5 L	60 L	B.	
	Methylacetylene and propadiene mixtures, stabilized	2.1	UN1060		FLAMMABLE GAS.		306	304	314, 315	Forbidden.	150 kg	B.	40
	Methylal	3	UN1234	II	FLAMMABLE LIQUID.	T14	None	202	242	5L	60 L	E.	
	Methylamine, anhydrous	2.3	UN1061		POISON GAS, FLAMMABLE GAS.	3, B14	None	304	314, 315	Forbidden.	150 kg	B.	40
	Methylamine, aqueous solution	3	UN1235	II	FLAMMABLE LIQUID, CORROSIVE.	B1, T8	150	202	242	5 L	60 L	E.	41
	Methylamine dinitramine and dry salts thereof	Forbidden											
	Methylamine nitroform	Forbidden											
	Methylamine perchlorate (dry)	Forbidden											
	Methylamyl acetate	3	UN1233	III	FLAMMABLE LIQUID.	B1, T1	150	203	242	60 L	220 L	A.	
	N-Methylaniline	6.1	UN2294	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A.	
	alpha-Methylbenzyl alcohol	6.1	UN2937	III	KEEP AWAY FROM FOOD.	T1	153	203	241	60 L	220 L	A.	
	3-Methylbutan-2-one	3	UN2397	II	FLAMMABLE LIQUID.	T1	150	202	242	5 L	60 L	B.	
	N-Methylbutylamine	3	UN2945	II	FLAMMABLE LIQUID.	T8	150	202	242	5 L	60 L	B.	40
	Methylchloromethyl ether	6.1	UN1239	I	POISON, FLAMMABLE LIQUID.	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden.	Forbidden.	D.	40

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Methylchlorosilane	2.3	UN2534		POISON GAS, FLAMMABLE GAS.	2, A2, A3, A7, B9, B14, N34.	None	226	314, 315	Forbidden	25 kg	D	40
D	Methyldichloroarsine	6.1	NA1556	I	POISON	2	None	192	None	Forbidden	Forbidden	D	40, 95
	Methyldichlorosilane	4.3	UN1242	I	DANGEROUS WHEN WET, CORROSIVE, FLAMMABLE LIQUID.	A2, A3, A7, B6, B77, N34, T16, T26.	None	201	243	Forbidden	1 L	D	21, 28, 40, 49, 100
	Methylene chloride, see Dichloromethane												
	Methylene glycol dinitrate	Forbidden											
	2-Methylfuran	3	UN2301	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	E	
	a-Methylglucoside tetranitrate	Forbidden											
	a-Methylglycerol trinitrate	Forbidden											
	5-Methylhexan-2-one	3	UN2302	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Methylhydrazine	6.1	UN1244	I	POISON, FLAMMABLE LIQUID, CORROSIVE.	1, B9, B14, B30, B72, B77, N34, T38, T43, T44.	None	227	244	Forbidden	Forbidden	D	21, 49, 100
	Methylmorpholine	3	UN2535	II	FLAMMABLE LIQUID, CORROSIVE.	B6, T8	None	202	243	1 L	5 L	B	40
	Methylpentadienes	3	UN2461	II	FLAMMABLE LIQUID	T7	150	202	241	5 L	60 L	E	
	2-Methylpentan-2-ol	3	UN2560	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Methylpentanes, see Hexanes												
	Methylphenyldichlorosilane	8	UN2437	II	CORROSIVE	T8, T26	154	202	242	1 L	30 L	C	40
	1-Methylpiperidine	3	UN2399	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Methyltetrahydrofuran	3	UN2536	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	
	Methyltrichlorosilane	3	UN1250	I	FLAMMABLE LIQUID, CORROSIVE.	A7, B6, B77, N34, T14, T26.	None	201	243	Forbidden	2.5 L	B	40
	alpha-Methylvaleraldehyde	3	UN2367	II	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	B	
	Mine rescue equipment containing carbon dioxide, see Carbon dioxide.												
	Mines *with bursting charge*	1.1F	UN0136	II	EXPLOSIVE 1.1F		63(b)	62	None	Forbidden	Forbidden	E	
	Mines *with bursting charge*	1.1D	UN0137	II	EXPLOSIVE 1.1D		63(b)	62	None	Forbidden	Forbidden	B	3E, 7E
	Mines *with bursting charge*	1.2D	UN0138	II	EXPLOSIVE 1.2D		63(b)	62	None	Forbidden	Forbidden	B	3E, 7E
	Mines *with bursting charge*	1.2F	UN0294	II	EXPLOSIVE 1.2F		63(b)	62	None	Forbidden	Forbidden	E	
	Mixed acid, see Nitrating acid, mixtures *etc.*												
	Molybdenum pentachloride	8	UN2508	III	CORROSIVE	T8, T26	154	213	240	25 kg	100 kg	C	40
	Monochloroacetone (unstabilized)	Forbidden											
	Monochloroethylene, see Vinyl chloride, inhibited												
	Monoethanolamine, see Ethanolamine, solutions												
	Monoethylamine, see Ethylamine												
	Morpholine	3	UN2054	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Morpholine, aqueous, mixture, see Corrosive liquids, n.o.s.												
	Motor fuel anti-knock compounds *see* Motor fuel anti-knock mixtures.												
+	Motor fuel anti-knock mixtures	6.1	UN1649	I	POISON, FLAMMABLE LIQUID.	14, B9, B12, B90, T26, T39.	None	201	244	Forbidden	30 L	E	40
	Motor spirit, *see* Gasoline												
	Motor vehicle, see Vehicles, self-propelled												
	Motorcycles, see Vehicles, self-propelled												
	Muriatic acid, see Hydrochloric acid solution												
	Musk xylene, *see* 5-tert-Butyl2,4,6-trinitro-m-xylene												
	Naphtha	3	UN2553	II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	

				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A		
	Naphtha, *petroleum*	3	UN1255	I	FLAMMABLE LIQUID	T6	150	201	243	1 L	30 L	E		
				II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B		
	Naphtha, *solvent*	3	UN1256	II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B		
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A		
	Naphthalene, crude *or* refined	4.1	UN1334	III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	A		
	Naphthalene diozonide	Forbidden												
	Naphthalene, molten	4.1	UN2304	III	FLAMMABLE SOLID	A1, T8	151	213	241	25 kg	100 kg	C		
	Naphthyl amineperchlorate	Forbidden												
	alpha-Naphthylamine	6.1	UN2077	III	KEEP AWAY FROM FOOD.	T7	153	213	240	100 kg	200 kg	A		
	beta-Naphthylamine	6.1	UN1650	II	POISON	T12, T26	None	212	242	25 kg	100 kg	A		
	Naphthylthiourea	6.1	UN1651	II	POISON		None	212	242	25 kg	100 kg	A		
	Naphthylurea	6.1	UN1652	II	POISON		None	212	242	25 kg	100 kg	A		
	Natural gases (with high methane content), see Methane, etc. (*UN 1971, UN 1972*).													
	Natural gasoline	3	UN1257	I	FLAMMABLE LIQUID	T8	150	201	243	1L	30L	E		
				II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E		
	Neohexane, see Hexanes													
	Neon, compressed	2.2	UN1065		NONFLAMMABLE GAS.		308	302	302	75 kg	150 kg	A		
	Neon, refrigerated liquid (*cryogenic liquid*)	2.2	UN1913		NONFLAMMABLE GAS.		320	316	None	50 kg	500 kg	B		
	New explosive or explosive device, see sections 173.51 and 173.56.													
	Nickel carbonyl	6.1	UN1259	I	POISON, FLAMMABLE LIQUID.	1	None	195	None	Forbidden	Forbidden	D	18, 40	
	Nickel cyanide	6.1	UN1653	II	POISON	N74, N75	None	212	242	25 kg	100 kg	A	26	
	Nickel nitrate	5.1	UN2725	III	OXIDIZER	A1	152	213	240	25 kg	100 kg	A		
	Nickel nitrite	5.1	UN2726	III	OXIDIZER	A1	152	213	240	25 kg	100 kg	A	56, 58	
	Nickel picrate	Forbidden												
	Nicotine	6.1	UN1654	II	POISON		None	202	243	5 L	60 L	A		
	Nicotine compounds, liquid, n.o.s. *or* Nicotine preparations, liquid, n.o.s.	6.1	UN3144	I	POISON	A4, T42	None	201	243	1 L	30 L	B	40	
				II	POISON	T14	None	202	243	5 L	60 L	B	40	
				III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	B	40	
	Nicotine compounds, solid, n.o.s. *or* Nicotine preparations, solid, n.o.s.	6.1	UN1655	I	POISON		None	211	242	5 kg	50 kg	B		
				II	POISON		None	212	242	25 kg	100 kg	A		
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A		
	Nicotine hydrochloride *or* Nicotine hydrochloride solution	6.1	UN1656	II	POISON		None	202	243	5 L	60 L	A		
	Nicotine salicylate	6.1	UN1657	II	POISON		None	212	242	25 kg	100 kg	A		
	Nicotine sulfate, *solid*	6.1	UN1658	II	POISON		None	212	242	25 kg	100 kg	A		
	Nicotine sulfate, *solution*	6.1	UN1658	II	POISON	T14	None	202	243	5 L	60 L	A		
	Nicotine tartrate	6.1	UN1659	II	POISON		None	212	242	25 kg	100 kg	A		
	Nitrated paper (unstable)	Forbidden												
	Nitrates, inorganic, n.o.s.	5.1	UN1477	III	OXIDIZER		152	212	240	5 kg	25 kg	A	46	
	Nitrates of diazonium compounds	Forbidden												
	Nitrating acid mixtures spent *with not more than 50 per cent nitric acid.*	8	UN1826	II	CORROSIVE	B2, T12, T27	None	158	242	Forbidden	30 L	D	40	
	Nitrating acid mixtures, spent *with 50 per cent or more nitric acid.*	8	UN1826	I	CORROSIVE, OXIDIZER.	T12, T27	None	158	243	Forbidden	2.5 L	D	40, 66, 89	
	Nitrating acid mixtures *with not more than 50 per cent nitric acid.*	8	UN1796	II	CORROSIVE	B2, T12, T27	None	158	242	Forbidden	30 L	D	40	
	Nitrating acid mixtures *with 50 per cent or more nitric acid.*	8	UN1796	I	CORROSIVE, OXIDIZER.	T12, T27	None	158	243	Forbidden	2.5 L	D	40, 66, 89	
	Nitric acid *other than red fuming with more than 70 percent nitric acid.*	8	UN2031	I	CORROSIVE	B12, B53, T9, T27.	None	158	243	Forbidden	2.5 L	D	110, 111	
	Nitric acid *other than red fuming, with not more than 70 percent nitric acid.*	8	UN2031	II	CORROSIVE	B2, B12, B53, T9, T27.	None	158	242	Forbidden	30 L	D	110, 111	
	Nitric acid, red fuming	8	UN2032	I	CORROSIVE, OXIDIZER, POISON.	2, B9, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40, 66, 74, 89, 90, 95	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Nitric oxide	2.3	UN1660		POISON GAS	2, B12, B37, B46, B50, B60, B77.	None	337	None	Forbidden	Forbidden	D	40
	Nitric oxide and dinitrogen tetroxide mixtures (Nitric oxide and nitrogen dioxide mixtures).	2.3	UN1975		POISON GAS, OXIDIZER.	2, B7, B9, B12, B14, B45, B46, B61, B66, B67, B77.	None	337	None	Forbidden	Forbidden	D	40
	Nitrites, inorganic, n.o.s.	5.1	UN2627	II	OXIDIZER	A33	152	212	None	5 kg	25 kg	A	46, 56, 58
	3-Nitro-4-chlorobenzotrifluoride	6.1	UN2307	II	POISON	T8	None	202	243	5 L	60 L	A	40
	6-Nitro-4-diazotoluene-3-sulfonic acid (dry)	Forbidden											
	Nitro isobutane triol trinitrate	Forbidden											
	N-Nitro-N-methylglycolamide nitrate	Forbidden											
	2-Nitro-2-methylpropanol nitrate	Forbidden											
	Nitro urea	1.1D	UN0147	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	N-Nitrosaniline	Forbidden											
	Nitroanilines (*o-; m-; p-;*)	6.1	UN1661	II	POISON	T14	None	212	242	25 kg	100 kg	A	
	Nitroanisole	6.1	UN2730	III	KEEP AWAY FROM FOOD.	T8	153	213	240	100 kg	200 kg	A	
	Nitrobenzene	6.1	UN1662	II	POISON	T14	None	202	243	5 L	60 L	A	40
	m-Nitrobenzene diazonium perchlorate	Forbidden											
	Nitrobenzenesulfonic acid	8	UN2305	II	CORROSIVE		154	212	240	1 L	30 L	A	
	Nitrobenzol, see Nitrobenzene												
	5-Nitrobenzotriazol	1.1D	UN0385	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Nitrobenzotrifluorides	6.1	UN2306	II	POISON	T8	None	202	243	5 L	60 L	A	40
	Nitrobromobenzenes *liquid*	6.1	UN2732	III	KEEP AWAY FROM FOOD.	T8, T38	153	203	241	60 L	220 L	A	48
	Nitrobromobenzenes *solid*	6.1	UN2732	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	48
	Nitrocellulose, *dry or wetted with less than 25 per cent water (or alcohol), by mass.*	1.1D	UN0340	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	4E, 27E
	Nitrocellulose, *plasticized with not less than 18 per cent plasticizing substance, by mass.*	1.3C	UN0343	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Nitrocellulose, solution, flammable *with not more than 12.6 per cent nitrogen, by mass, and not more than 55 per cent nitrocellulose.*	3	UN2059	II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Nitrocellulose, *unmodified or plasticized with less than 18 per cent plasticizing substance, by mass.*	1.1D	UN0341	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	4E, 27E
	Nitrocellulose, *wetted with not less than 25 per cent alcohol, by mass.*	1.3C	UN0342	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Nitrocellulose with alcohol *not less than 25 per cent alcohol by mass, and not more than 12.6 per cent nitrogen, by dry mass.*	4.1	UN2556	II	FLAMMABLE SOLID		151	212	None	1 kg	15 kg	D	28
	Nitrocellulose with plasticizing *not less than 18 per cent, plasticizing substance, by mass, and not more than 12.6 per cent nitrogen, by dry mass.*	4.1	UN2557	II	FLAMMABLE SOLID		151	212	None	1 kg	15 kg	D	28
	Nitrocellulose with water *not less than 25 per cent water, by mass.*	4.1	UN2555	II	FLAMMABLE SOLID		151	212	None	15 kg	50 kg	E	28
	Nitrochlorobenzene, see Chloronitrobenzenes *etc.*												
	Nitrocresols	6.1	UN2446	III	KEEP AWAY FROM FOODS.		153	213	240	100 kg	200 kg	A	
	Nitroethane	3	UN2842	III	FLAMMABLE LIQUID	B1, T8	150	203	242	60 L	220 L	A	
	Nitroethyl nitrate	Forbidden											

	Nitroethylene polymer	Forbidden													
	Nitrogen, compressed	2.2	UN1066		NONFLAMMABLE GAS.		306	302	314, 315	75 kg	150 kg	A			
	Nitrogen dioxide, liquefied *see* Dinitrogen tetroxide, liquefied.														
	Nitrogen fertilizer solution, see Fertilizer ammoniating solution *etc.*.														
	Nitrogen, mixtures with rare gases, see Rare gases and nitrogen mixtures.														
	Nitrogen peroxide, see Dinitrogen tetroxide, liquefied.														
	Nitrogen, refrigerated liquid (*cryogenic liquid*)	2.2	UN1977		NONFLAMMABLE GAS.		320	316	315	50 kg	500 kg	A			
	Nitrogen tetroxide and nitric oxide mixtures, see Nitric oxide and nitrogen tetroxide mixtures.														
	Nitrogen tetroxide, see Dinitrogen tetroxide, liquefied.														
	Nitrogen trichloride	Forbidden													
	Nitrogen trifluoride	2.2	UN2451		NONFLAMMABLE GAS, OXIDIZER.		None	302	None	Forbidden	25 kg	D	40		
	Nitrogen triiodide	Forbidden													
	Nitrogen triiodide monoamine	Forbidden													
	Nitrogen trioxide	2.3	UN2421		POISON GAS, OXIDIZER.	1	None	336	245	Forbidden	Forbidden	D	40		
	Nitroglycerin, desensitized *with not less than 40 per cent non-volatile water insoluble phlegmatizer, by mass.*	1.1D	UN0143	II	EXPLOSIVE 1.1D, POISON.		None	62	None	Forbidden	Forbidden	B	1E, 4E, 21E		
	Nitroglycerin, liquid, not desensitized	Forbidden													
	Nitroglycerin, solution in alcohol, *with more than 1% but not more than 5% nitroglycerin.*	3	UN3064	II	FLAMMABLE LIQUID	N8	None	202	None	Forbidden	5 L	E			
	Nitroglycerin, solution in alcohol, *with more than 1 percent but not more than 10 percent nitroglycerin.*	1.1D	UN0144	II	EXPLOSIVE 1.1D	20	None	62	None	Forbidden	Forbidden	B	1E, 4E, 21E		
	Nitroglycerin solution in alcohol *with not more than 1 per cent nitroglycerin.*	3	UN1204	II	FLAMMABLE LIQUID	N34, T25	None	202	None	5 L	60 L	B			
	Nitroguanidine nitrate	Forbidden													
	Nitroguanidine *or* Picrite, *dry or wetted with less than 20 per cent water, by mass.*	1.1D	UN0282	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E		
	Nitroguanidine, wetted *or* Picrite, wetted *with not less than 20 per cent water, by mass.*	4.1	UN1336	I	FLAMMABLE SOLID	A8, A19, A20, N41.	None	211	None	1 kg	15 kg	E	28		
	1-Nitrohydantoin	Forbidden													
	Nitrohydrochloric acid	8	UN1798	I	CORROSIVE	A3, B10, N41, T18, T27.	None	201	242	Forbidden	2.5 L	D	40, 66, 74, 89, 90		
	Nitromannite (dry)	Forbidden													
	Nitromannite, wetted, *see* Mannitol hexanitrate, *etc.*														
	Nitromethane	3	UN1261	II	FLAMMABLE LIQUID	T25	150	202	None	Forbidden	60 L	A			
	Nitromuriatic acid, see Nitrohydrochloric acid														
	Nitronaphthalene	4.1	UN2538	III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	A			
	Nitrophenols (*o-; m-; p-;*)	6.1	UN1663	III	KEEP AWAY FROM FOOD.	T8, T38	153	213	240	100 kg	200 kg	A			
	m-Nitrophenyldinitro methane	Forbidden													
	Nitropropanes	3	UN2608	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A			
	p-Nitrosodimethylaniline	4.2	UN1369	II	SPONTANEOUSLY COMBUSTIBLE.	A19, A20, N34	None	212	241	15 kg	50 kg	D	34		
D	Nitrosoguanidine	1.1A	NA0473	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	E	2E, 6E		
	Nitrostarch, *dry or wetted with less than 20 per cent water, by mass.*	1.1D	UN0146	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E		
	Nitrostarch, wetted *with not less than 20 per cent water, by mass.*	4.1	UN1337	I	FLAMMABLE SOLID	A8, A19, A20, N41.	None	211	None	1 kg	15 kg	D	28		
	Nitrosugars (dry)	Forbidden													
	Nitrosyl chloride	2.3	UN1069		POISON GAS, CORROSIVE.	3, B14	None	304	314, 315	Forbidden	Forbidden	D	40		
	Nitrosylsulfuric acid	8	UN2308	II	CORROSIVE	A3, A6, A7, B2, N34, T9, T27.	154	202	242	1 L	30 L	D	40, 66, 74, 89, 90		
	Nitrotoluenes, *liquid o-; m-; p-;*	6.1	UN1664	II	POISON	T14	None	202	243	5 L	60 L	A			
	Nitrotoluenes, *solid m-, or p-*	6.1	UN1664	II	POISON	T14	None	212	242	25 kg	100 kg	A			

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Nitrotoluidines (mono)	6.1	UN2660	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Nitrotriazolone *or* NTO	1.1D	UN0490	II	EXPLOSIVE 1.1D		None	62		Forbidden	Forbidden	B	1E, 5E, 25E
	Nitrous oxide and carbon dioxide mixtures, see Carbon dioxide and nitrous oxide mixtures.												
	Nitrous oxide, compressed	2.2	UN1070		NONFLAMMABLE GAS.		306	304	314, 315	75 kg	150 kg	A	40
	Nitrous oxide, refrigerated liquid	2.2	UN2201		NONFLAMMABLE GAS.	B6	None	None	314, 315	75 kg	150 kg	B	40
	Nitroxylenes, (o-; m-; p-)	6.1	UN1665	II	POISON	T14	None	202	243	5 L	60 L	A	
	Nitroxylol, see Nitroxylenes												
	Nonanes	3	UN1920	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Nonflammable gas, n.o.s., see Compressed *or* Liquefied gases, *etc. (UN 1955, UN 1956).*												
	Nonliquefied gases, see Compressed gases, etc.												
	Nonliquefied hydrocarbon gas, see Hydrocarbon gases, compressed, n.o.s.												
	Nonyltrichlorosilane	8	UN1799	II	CORROSIVE	A7, B2, B6, N34, T8, T26.	None	202	242	Forbidden	30 L	C	40
	2,5 Norbornadiene (Dicycloheptadiene)	3	UN2251	II	FLAMMABLE LIQUID		150	202	241	5 L	60 L	D	
	Nordhausen acid, see Sulfuric acid, fuming *etc.*												
	Octadecyltrichlorosilane	8	UN1800	II	CORROSIVE	A7, B2, B6 N34, T8.	None	202	242	Forbidden	30 L	C	40
	Octadiene	3	UN2309	II	FLAMMABLE LIQUID	B1, T1	150	202	242	5 L	60 L	B	
	1,7-Octadine-3,5-diyne-1,8-dimethoxy-9-octadecynoic acid.	Forbidden											
	Octafluorobut-2-ene	2.2	UN2422		NONFLAMMABLE GAS.		None	304	314, 315	75 kg	150 kg	A	
	Octafluorocyclobutane, *RC316*	2.2	UN1976		NONFLAMMABLE GAS.		None	304	314, 315	75 kg	150 kg	A	
	Octafluoropropane, *R218*	2.2	UN2424		NONFLAMMABLE GAS.		None	304	314, 315	75 kg	150 kg	A	
	Octanes	3	UN1262	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Octogen, *see* Cyclotetramethylene tetranitramine, etc.												
	Octolite *or* Octol, *dry or wetted with less than 15 per cent water, by mass.*	1.1D	UN0266	II	EXPLOSIVE 1.1D		None	62		Forbidden	Forbidden	B	1E, 5E
	Octyl aldehydes, *flammable*	3	UN1191	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
+	tert-Octylmercaptan	6.1	UN3023	II	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	60 L	B	40
	Octyltrichlorosilane	8	UN1801	II	CORROSIVE	A7, B2, B6, N34, T8, T26.	None	202	242	Forbidden	30 L	C	40
	Oil gas	2.1	UN1071		FLAMMABLE GAS		None	304	314, 315	Forbidden	150 kg	D	40
	Oleum, see Sulfuric acid, fuming												
	Organic peroxide type A, liquid or solid	Forbidden											
	Organic peroxide type B, liquid	5.2	UN3101	II	ORGANIC PEROXIDE EXPLOSIVE.	53	None	225	None	Forbidden	Forbidden	D	12, 40
	Organic peroxide type B, liquid, temperature controlled.	5.2	UN3111	II	ORGANIC PEROXIDE EXPLOSIVE.	53	None	225	None	Forbidden	Forbidden	D	2, 40

	Organic peroxide type B, solid	5.2	UN3102	II	ORGANIC PEROXIDE EXPLOSIVE.	53	None	225	None	Forbidden	Forbidden	D	12, 40
	Organic peroxide type B, solid, temperature controlled.	5.2	UN3112	II	ORGANIC PEROXIDE EXPLOSIVE.	53	None	225	None	Forbidden	Forbidden	D	2, 40
	Organic peroxide type C, liquid	5.2	UN3103	II	ORGANIC PEROXIDE.		152	225	None	5 L	10 L	D	12, 40
	Organic peroxide type C, liquid, temperature controlled.	5.2	UN3113	II	ORGANIC PEROXIDE.		None	225	None	Forbidden	Forbidden	D	2, 40
	Organic peroxide type C, solid	5.2	UN3104	II	ORGANIC PEROXIDE.		152	225	None	5 kg	10 kg	D	12, 40
	Organic peroxide type C, solid, temperature controlled.	5.2	UN3114	II	ORGANIC PEROXIDE.		None	225	None	Forbidden	Forbidden	D	2, 40
	Organic peroxide type D, liquid	5.2	UN3105	II	ORGANIC PEROXIDE.		152	225	None	5 L	10 L	D	12, 40
	Organic peroxide type D, liquid, temperature controlled.	5.2	UN3115	II	ORGANIC PEROXIDE.		None	225	None	Forbidden	Forbidden	D	2, 40
	Organic peroxide type D, solid	5.2	UN3106	II	ORGANIC PEROXIDE.		152	225	None	5 kg	10 kg	D	12, 40
	Organic peroxide type D, solid, temperature controlled.	5.2	UN3116	II	ORGANIC PEROXIDE.		None	225	None	Forbidden	Forbidden	D	2, 40
	Organic peroxide type E, liquid	5.2	UN3107	II	ORGANIC PEROXIDE.		152	225	None	10 L	25 L	D	12, 40
	Organic peroxide type E, liquid, temperature controlled.	5.2	UN3117	II	ORGANIC PEROXIDE.		None	225	None	Forbidden	Forbidden	D	2, 40
	Organic peroxide type E, solid	5.2	UN3108	II	ORGANIC PEROXIDE.		152	225	None	10 kg	25 kg	D	12, 40
	Organic peroxide type E, solid, temperature controlled.	5.2	UN3118	II	ORGANIC PEROXIDE.		None	225	None	Forbidden	Forbidden	D	2, 40
	Organic peroxide type F, liquid	5.2	UN3109	II	ORGANIC PEROXIDE.		152	225	225	10 L	25 L	D	12, 40
	Organic peroxide type F, liquid, temperature controlled.	5.2	UN3119	II	ORGANIC PEROXIDE.		None	225	None	Forbidden	Forbidden	D	2, 40
	Organic peroxide type F, solid	5.2	UN3110	II	ORGANIC PEROXIDE.	T42	152	225	None	10 kg	25 kg	D	12, 40
	Organic peroxide type F, solid, temperature controlled.	5.2	UN3120	II	ORGANIC PEROXIDE.		None	225	None	Forbidden	Forbidden	D	2, 40
D	Organic phosphate, Organic phosphate compound, *or* Organic phosphorus compound; mixed with compressed gas.	2.3	NA1955		POISON GAS	3	None	334	None	Forbidden	Forbidden	D	40
	Organochlorine pesticides liquid, flammable, toxic, n.o.s. *flash point less than 23 degrees C.*	3	UN2762	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	
	Organochlorine pesticides, liquid, toxic, flammable, n.o.s. *flashpoint not less than 23 degrees C.*	6.1	UN2995	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A	40
	Organochlorine pesticides, liquid, toxic, n.o.s.	6.1	UN2996	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	242	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Organochlorine pesticides, solid toxic n.o.s.	6.1	UN2761	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	Organophosphorus pesticides, liquid, flammable, toxic, n.o.s., *flash point less than 23 degrees C.*	3	UN2784	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	
	Organophosphorus pesticides, liquid, toxic, flammable, n.o.s. *flashpoint not less than 23 degrees C.*	6.1	UN3017	I	POISON, FLAMMABLE LIQUID.	N76, T42	None	201	243	1 L	30 L	B	40

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or rail car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
				II	POISON, FLAMMABLE LIQUID.	N76, T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, N76, T14	153	203	242	60 L	220 L	A	40
	Organophosphorus pesticides, liquid, toxic, n.o.s.	6.1	UN3018	I	POISON	N76, T42	None	201	243	1 L	30 L	B	40
				II	POISON	N76, T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	N76, T14	153	203	241	60 L	220 L	A	40
	Organophosphorus pesticides, solid, toxic, n.o.s.	6.1	UN2783	I	POISON	N77	None	211	242	5 kg	50 kg	A	40
				II	POISON	N77	None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.	N77	153	213	240	100 kg	200 kg	A	40
	Organotin compounds, liquid, n.o.s.	6.1	UN2788	I	POISON	A3, N33, N34, T42.	None	201	243	1 L	30 L	B	40
				II	POISON	A3, N33, N34, T14.	None	202	243	5 L	60 L	A	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Organotin compounds, solid, n.o.s.	6.1	UN3146	I	POISON	A5	None	211	242	5 kg	50 kg	B	40
				II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	Organotin pesticides, liquid, flammable, toxic, n.o.s., *flash point less than 23deg C.*	3	UN2787	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	
	Organotin pesticides, liquid, toxic, flammable, n.o.s. *flashpoint not less than 23 degrees C.*	6.1	UN3019	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A	40
	Organotin pesticides, liquid, toxic, n.o.s.	6.1	UN3020	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Organotin pesticides, solid, toxic, n.o.s.	6.1	UN2786	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	Orthonitroaniline, see Nitroanilines *etc.*												
	Osmium tetroxide	6.1	UN2471	I	POISON	A8, N33, N34	None	211	242	5 kg	50 kg	B	40
AD	Other regulated substances, liquid, n.o.s.	9	NA3082	III	CLASS 9		155	203	241	No limit	No limit	A	
AD	Other regulated substances, solid, n.o.s.	9	NA3077	III	CLASS 9		155	213	240	No limit	No limit	A	
	Oxalates, *water soluble*	6.1	UN2449	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Oxidizing substances, liquid, corrosive, n.o.s.	5.1	UN3098	I	OXIDIZER, CORROSIVE.		None	201	244	Forbidden	2.5 L	B	34, 56, 58, 69, 106
				II	OXIDIZER, CORROSIVE.		None	202	243	1 L	5 L	D	34, 56, 58, 69, 106
				III	OXIDIZER, CORROSIVE.		152	203	242	2.5 L	30 L	B	34, 56, 58, 69, 106

	Oxidizing substances liquid, n.o.s.	5.1	UN3139	II	OXIDIZER	A2	152	202	242	1 L	5 L	B	56, 58, 69, 106		
	Oxidizing substances, liquid, poisonous, n.o.s.	5.1	UN3099	I	OXIDIZER, POISON		None	201	244	Forbidden	2.5 L	D	56, 58, 95, 106		
				II	OXIDIZER, POISON		None	202	243	1 L	5 L	B	56, 58, 95, 106		
				III	OXIDIZER, KEEP AWAY FROM FOOD.		152	203	242	2.5L	30L	B	56, 58, 95, 106		
	Oxidizing substances, solid, corrosive, n.o.s.	5.1	UN3085	I	OXIDIZER, CORROSIVE.		None	211	242	1 kg	15 kg	D	13, 34, 56, 58, 69, 106		
				II	OXIDIZER, CORROSIVE.		None	212	242	5 kg	25 kg	B	13, 34, 56, 58, 69, 106		
				III	OXIDIZER, CORROSIVE.		152	213	240	25 kg	100 kg	B	13, 34, 56, 58, 69, 106		
	Oxidizing substances, solid, flammable, n.o.s.	5.1	UN3137		OXIDIZER, FLAMMABLE SOLID.		None	214	214	Forbidden	Forbidden				
	Oxidizing substances, solid, n.o.s.	5.1	UN1479	I	OXIDIZER		152	211	242	1 kg	15 kg	B	56, 58, 69, 106		
				II	OXIDIZER		152	212	240	5 kg	25 kg	D	56, 58, 69, 106		
				III	OXIDIZER		152	213	240	25 kg	100 kg	B	56, 58, 69, 106		
	Oxidizing substances, solid, poisonous, n.o.s.	5.1	UN3087	I	OXIDIZER, POISON		None	211	242	1 kg	15 kg	D	56, 58, 69, 95, 106		
				II	OXIDIZER, POISON		None	212	242	5 kg	25 kg	B	56, 58, 69, 95, 106		
				III	OXIDIZER, KEEP AWAY FROM FOOD.		152	213	240	25 kg	100 kg	B	56, 58, 69, 95, 106		
	Oxidizing substances, solid, self heating, n.o.s.	5.1	UN3100		OXIDIZER, SPONTANEOUSLY COMBUSTIBLE.		None	214	214	Forbidden	Forbidden				
	Oxidizing substances, solid, which in contact with water emit flammable gases, n.o.s.	5.1	UN3121		OXIDIZER, DANGEROUS WHEN WET.		None	214	214	Forbidden	Forbidden				
	Oxygen and carbon dioxide mixtures, see Carbon dioxide and oxygen mixtures.														
	Oxygen, compressed	2.2	UN1072		NONFLAMMABLE GAS, OXIDIZER.		306	302	314, 315	75 kg	150 kg	A			
	Oxygen difluoride	2.3	UN2190	1	POISON GAS, OXIDIZER.		None	304	None	Forbidden	Forbidden	D	13, 40		
	Oxygen, mixtures with rare gases, see Rare gases and oxygen mixtures.														
	Oxygen, refrigerated liquid (*cryogenic liquid*)	2.2	UN1073		NONFLAMMABLE GAS, OXIDIZER.		320	316	318	Forbidden	Forbidden	D			
	Paint *including paint, lacquer, enamel, stain, shellac solutions, varnish, polish, liquid filler, and liquid lacquer base.*	3	UN1263	II	FLAMMABLE LIQUID	B52, T7, T30	150	173	242	5 L	60 L	B			
				III	FLAMMABLE LIQUID	B1, B52, T7, T30.	150	173	242	60 L	220 L	A			
	Paint *or* Paint related material	3	UN3066	II	CORROSIVE	B2, N71, T7	154	202	242	1 L	30 L	A			
				III	CORROSIVE	B52, N71, T7	154	203	241	5 L	60 L	A			
	Paint related material *including paint thinning, drying, removing, or reducing compound.*	3	UN1263	II	FLAMMABLE LIQUID	B52, T7, T30	150	173	242	5 L	60 L	B			
				III	FLAMMABLE LIQUID	B1, B52, T7, T30.	150	173	242	60 L	220 L	A			
	Paper, unsaturated oil treated *incompletely dried (including carbon paper).*	4.2	UN1379	III	SPONTANEOUSLY COMBUSTIBLE		None	213	241	Forbidden	Forbidden	A			
	Paraformaldehyde	4.1	UN2213	III	NONE	A1	151	213	240	25 kg	100 kg	A			
	Paraldehyde	3	UN1264	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A			
	Paranitroaniline, solid, see Nitroanilines *etc.*														
D	Parathion	6.1	NA2783	I	POISON	T42	None	201	243	Forbidden	1 L	A	40		
				II	POISON	T14	None	202	243	Forbidden	5 L	A	40		
D	Parathion and compressed gas mixture	2.3	NA1967		POISON GAS	3	None	334	245	Forbidden	Forbidden	E	40		

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or rail car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Paris green, solid, see Copper acetoarsenite												
D	PCB, *see* Polychlorinated biphenyls												
+	Pentaborane	4.2	UN1380	I	SPONTANEOUSLY COMBUSTIBLE, POISON.	1	None	205	245	Forbidden	Forbidden	D	
	Pentachloroethane	6.1	UN1669	II	POISON	T14	None	202	243	5 L	60 L	A	40
	Pentaerythrite tetranitrate (dry)	Forbidden											
D	Pentaerythrite tetranitrate *or* Pentaerythritol tetranitrate *or* PETN, wetted *with not less than 25 per cent water, by mass, or* Pentaerythrite tetranitrate *or* Pentaerythritol tetranitrate *or* PETN, desensitized *with not less than 15 per cent phlegmatizer by mass.*	1.1A	NA0150	II	EXPLOSIVE 1.1A	111, 117	None	62	None	Forbidden	Forbidden	B	1E, 5E
	Pentaerythrite tetranitrate *or* Pentaerythritol tetranitrate *or* PETN, *with not less than 7 per cent wax by mass.*	1.1D	UN0411	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Pentaerythritol tetranitrate, *see* Pentaerythrite tetranitrate, *etc.*												
	Pentamethylheptane	3	UN2286	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Pentan-2,4-Dione	3	UN2310	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	n-Pentanes *or* isopentane	3	UN1265	I	FLAMMABLE LIQUID	T20	150	201	243	1 L	30 L	E	
	Pentanitroaniline (dry)	Forbidden											
	1-Pentol	8	UN2705	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	B	36
	Pentolite, *dry or wetted with less than 15 per cent water, by mass.*	1.1D	UN0151	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Perchlorates, inorganic, n.o.s.	5.1	UN1481	II	OXIDIZER		152	212	242	5 kg	25 kg	A	46, 56
	Perchloric acid, more than 72 per cent acid by mass.	Forbidden											
	Perchloric acid *more than 50 per cent but not more than 72 per cent acid, by mass.*	5.1	UN1873	I	OXIDIZER, CORROSIVE.	A2, A3, N41, T9, T27.	None	201	243	Forbidden	2.5 L	D	66
	Perchloric acid *not more than 50 per cent acid by mass.*	8	UN1802	II	CORROSIVE, OXIDIZER.	N41, T9	None	202	243	Forbidden	30 L	C	66, 89
	Perchloroethylene, see Tetrachloroethylene												
	Perchloromethylmercaptan	6.1	UN1670	I	POISON	2, A3, A7, B9, B14, B32, B74, N34, T38, T43, T45.	None	227	244	Forbidden	30 L	D	40
	Perchloryl fluoride	2.3	UN3083		POISON GAS, OXIDIZER.	3, B12, B14	None	302	314, 315	Forbidden	Forbidden	D	40, 43, 95
	Percussion caps, see Primers, cap type												
	Perfluoro-2-butene, see Octafluorobut-2-ene												
	Perfluoroethylvinyl ether	2.1	UN3154		FLAMMABLE GAS		306	302, 304, 305	314, 315	Forbidden	150 kg	E	40
	Perfluoromethylvinyl ether	2.1	UN3153		FLAMMABLE GAS		306	302, 304, 305	314, 315	Forbidden	150 kg	E	40
	Perfumery products *with flammable solvents*	3	UN1266	II	FLAMMABLE LIQUID	T7, T30	150	202	242	15 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Permanganates, inorganic, n.o.s. (*except ammonium permanganate, the transport of which is prohibited except when approved by the Associate Administrator for Hazardous Materials Safety,y the competent authorities*).	5.1	UN1482	II	OXIDIZER	A30	152	212	242	5 kg	25 kg	D	56, 58, 69, 106, 107

	Peroxides, inorganic, n.o.s.	5.1	UN1483	II	OXIDIZER	A7, A20, N34	None	212	242	5 kg	25 kg	A	13, 75, 106
	Peroxyacetic acid, more than 43 per cent and with more than 6 per cent hydrogen peroxide.	Forbidden											
	Pesticides, liquid, flammable, toxic, n.o.s. (flashpoint less than 23 degrees C).	3	UN3021	I	FLAMMABLE LIQUID, POISON.	B5	None	201	243	Forbidden	30 L	B	
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	
	Pesticides, liquid, toxic, flammable, n.o.s. *flashpoint not less than 23 degrees C.*	6.1	UN2903	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A	40
	Pesticides, liquid, toxic, n.o.s.	6.1	UN2902	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Pesticides, solid, toxic, n.o.s.	6.1	UN2588	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	PETN, *see* Pentaerythrite tetranitrate												
	PETN/TNT, *see* Pentolite, *etc.*												
	Petrol, *see* Gasoline												
	Petroleum crude oil	3	UN1267	I	FLAMMABLE LIQUID	T8, T31	None	201	243	1 L	30 L	E	
				II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Petroleum distillates, n.o.s.	3	UN1268	I	FLAMMABLE LIQUID	T8, T31	150	201	243	1 L	30 L	E	
				II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Petroleum ether, see Petroleum spirit												
	Petroleum gases, liquefied *or* Liquefied petroleum gas.	2.1	UN1075		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	E	40
	Petroleum naphtha, see Naphtha, *petroleum*												
	Petroleum oil	3	UN1270	I	FLAMMABLE LIQUID	T8, T31	None	201	243	1 L	30 L	E	
				II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Petroleum spirit	3	UN1271	I	FLAMMABLE LIQUID	T8	150	201	243	1 L	30 L	E	
				II	FLAMMABLE LIQUID	B1, T8	150	202	242	5 L	60 L	B	
	Phenacyl bromide	6.1	UN2645	II	POISON		None	212	242	25 kg	100 kg	B	40, 48
	Phenetidines	6.1	UN2311	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	Phenol, molten	6.1	UN2312	II	POISON	B14, T8	None	202	243	Forbidden	Forbidden	B	40
+	Phenol, solid	6.1	UN1671	II	POISON	N78, T14	None	212	240	25 kg	100 kg	A	
	Phenol solutions	6.1	UN2821	II	POISON	T14	None	202	243	5 L	60 L	A	
	Phenolsulfonic acid, liquid	8	UN1803	II	CORROSIVE	B2, N41, T8	154	202	242	1 L	30 L	C	14
	Phenoxy pesticides, liquid, flammable, toxic n.o.s., *flash point less than 23 degrees C.*	3	UN2766	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	
	Phenoxy pesticides, liquid, toxic, flammable, n.o.s. *flashpoint not less than 23 degrees C.*	6.1	UN2999	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A	40
	Phenoxy pesticides, liquid, toxic, n.o.s.	6.1	UN3000	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Phenoxy pesticides, solid, toxic, n.o.s.	6.1	UN2765	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or rail car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
+	Phenyl isocyanate	6.1	UN2487	II	POISON	2, A3, B9, B14, B32, B74, B77, N33, N34, T38, T43, T45.	None	227	244	5 L	60 L	D	40
+	Phenyl mercaptan	6.1	UN2337	II	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, B77, T38, T43, T45.	None	227	244	5 L	60 L	B	26, 40
	Phenyl phosphorus dichloride	8	UN2798	II	CORROSIVE	B2, B15, T8, T26.	154	202	242	Forbidden	30 L	B	40
	Phenyl phosphorus thiodichloride	8	UN2799	II	CORROSIVE	B2, B15, T8, T26.	154	202	242	Forbidden	30 L	B	40
	Phenyl urea pesticides, liquid, flammable, toxic, n.o.s., *flash point less than 23 degrees C.*	3	UN2768	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	
	Phenyl urea pesticides, liquid, toxic, flammable, n.o.s., *flash point not less than 23 degrees C.*	6.1	UN3001	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A	40
	Phenyl urea pesticides, liquid, toxic, n.o.s.	6.1	UN3002	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Phenyl urea pesticides, solid, toxic, n.o.s.	6.1	UN2767	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	Phenylacetonitrile, liquid	6.1	UN2470	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	A	26
	Phenylacetyl chloride	8	UN2577	II	CORROSIVE	B2, T8, T26	154	202	242	1 L	30 L	C	40
	Phenylcarbylamine chloride	6.1	UN1672	I	POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	40
	Phenylchloroformate	6.1	UN2746	II	POISON, CORROSIVE.	T12	None	202	243	1 L	30 L	A	12, 13, 25, 40, 48
	m-Phenylene diaminediperchlorate (dry)	Forbidden											
	Phenylenediamines (*o-, m-, p-,*)	6.1	UN1673	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	108
	Phenylhydrazine	6.1	UN2572	II	POISON	T8	None	202	243	5 L	60 L	A	40
	Phenylmercuric acetate	6.1	UN1674	II	POISON		None	212	242	25 kg	100 kg	A	
	Phenylmercuric compounds, n.o.s.	6.1	UN2026	I	POISON		None	211	242	5 kg	50 kg	A	
				II	POISON		None	212	242	25 kg	100 kg	A	
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Phenylmercuric hydroxide	6.1	UN1894	II	POISON		None	212	242	25 kg	100 kg	A	
	Phenylmercuric nitrate	6.1	UN1895	II	POISON		None	212	242	25 kg	100 kg	A	
	Phenyltrichlorosilane	8	UN1804	II	CORROSIVE	A7, B6, N34, T8.	None	202	242	Forbidden	30 L	C	40

	Phosgene	2.3	UN1076		POISON GAS, CORROSIVE.	1, B7, B46	None	192	314	Forbidden	Forbidden	D	40	
	9-Phosphabicyclononanes *or* Cyclooctadiene phosphines.	4.2	UN2940	II	SPONTANEOUSLY COMBUSTIBLE.	A19	None	212	241	15 kg	50 kg	A		
	Phosphine	2.3	UN2199		POISON GAS, FLAMMABLE GAS.	1	None	192	245	Forbidden	Forbidden	D	40	
	Phosphonic acid	8	UN1805	III	CORROSIVE	A7, N34, T7	154	203	241	5 L	60 L	A		
	Phosphoric acid triethyleneimine, see Tri-(1-aziridiyl) phosphine oxide, solution.													
	Phosphoric anhydride, see Phosphorus pentoxide													
	Phosphorous acid, ortho	8	UN2834	III	CORROSIVE	T7	154	213	240	25 kg	100 kg	A	48	
	Phosphorus, amorphous	4.1	UN1338	III	FLAMMABLE SOLID	A1, A19, B1, B9, B12, B26.	None	213	240	25 kg	100 kg	A	74	
	Phosphorus bromide, see Phosphorus tribromide													
	Phosphorus chloride, see Phosphorus trichloride													
	Phosphorus heptasulfide, *free from yellow or white phosphorus.*	4.1	UN1339	II	FLAMMABLE SOLID	A20, N34	None	212	240	15 kg	50 kg	B	74	
	Phosphorus oxybromide	8	UN1939	II	CORROSIVE	B8, N41, N43	None	212	240	Forbidden	50 kg	C	12, 40, 48	
	Phosphorus oxybromide, molten	8	UN2576	II	CORROSIVE	B2, B8, N41, N43, T8, T27.	None	202	242	Forbidden	Forbidden	C	40	
+	Phosphorus oxychloride	8	UN1810	II	CORROSIVE, POISON.	2, A7, B9, B14, B32, B74, B77, N34, T38, T43, T45.	None	227	244	Forbidden	30 L	C	8, 40	
	Phosphorus pentabromide	8	UN2691	II	CORROSIVE	A7, N34	154	202	240	Forbidden	50 kg	B	12, 40, 48	
	Phosphorus pentachloride	8	UN1806	II	CORROSIVE	A7, N34	None	202	240	Forbidden	50 kg	C	40	
	Phosphorus pentafluoride	2.3	UN2198		POISON GAS	1	None	302	None	Forbidden	Forbidden	D	40	
	Phosphorus pentasulfide, *free from yellow or white phosphorus.*	4.3	UN1340	II	DANGEROUS WHEN WET.	A20, B59	None	212	243	15 kg	50 kg	B	74	
	Phosphorus pentoxide	8	UN1807	II	CORROSIVE	A7, N34	154	212	240	15 kg	50 kg	A	10	
	Phosphorus seequisulfide, *free from yellow or white phosphorous.*	4.1	UN1341	II	FLAMMABLE SOLID	A20, N34	None	212	240	15 kg	50 kg	B	74	
	Phosphorus tribromide	8	UN1808	II	CORROSIVE	A3, A6, A7, B2, B25, N34, N43, T8.	None	202	242	Forbidden	30 L	C	8, 40	
+	Phosphorus trichloride	8	UN1809	II	CORROSIVE, POISON.	2, A3, A7, B9, B14, B15, B32, B74, B77, N34, T38, T43, T45.	None	227	244	Forbidden	30L	C	8, 40	
	Phosphorus trioxide	8	UN2578	III	CORROSIVE		154	213	241	25 kg	100 kg	A	12, 48	
	Phosphorus trisulfide, *free from yellow or white phosphorus.*	4.1	UN1343	II	FLAMMABLE SOLID	A20, N34	None	212	240	15 kg	50 kg	B	74	
	Phosphorus white, molten	4.2	UN2447	I	SPONTANEOUSLY COMBUSTIBLE, POISON.	B9, B12, B26, N34, T15, T26, T29.	None	188	243	Forbidden	Forbidden	D		
	Phosphorus (white or red) and a chlorate, mixtures of.	Forbidden												
	Phosphorus, white *or* yellow dry *or* under water *or* in solution.	4.2	UN1381	I	SPONTANEOUSLY COMBUSTIBLE, POISON.	B9, B12, B26, N34, T15, T26, T33.	None	188	243	Forbidden	Forbidden	E		
	Phosphoryl chloride, see Phosphorus oxychloride													
	Phthalic anhydride *with more than .05 per cent maleic anhydride.*	8	UN2214	III	CORROSIVE	T7	154	213	240	25 kg	100 kg	A		
	Phthalimide derivative pesticides, liquid, flammable, toxic, n.o.s., *flash point less than 23 degrees C.*	3	UN2774	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B		
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B		
	Phthalimide derivative pesticides, liquid, toxic, flammable, n.o.s. *flashpoint not less than 23 degrees C.*	6.1	UN3007	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40	
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40	
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	T14	153	203	242	60 L	220 L	A	40	
	Phthalimide derivative pesticides, liquid, toxic, n.o.s.	6.1	UN3008	I	POISON	T42	None	201	243	1 L	30 L	B	40	
				II	POISON	T14	None	202	243	5 L	60 L	B	40	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Phthalimide derivative pesticides, solid, toxic, n.o.s.	6.1	UN2773	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	Picolines	3	UN2313	III	FLAMMABLE LIQUID	B1, T8	150	202	242	5 L	60 L	A	40
	Picric acid, *see* Trinitrophenol, *etc.*												
D	Picric acid, wet, with not less than 10% water	4.1	NA1344	I	FLAMMABLE SOLID	A19, A20, N41	None	211	None	Forbidden	Forbidden	D	
	Picrite, *see* Nitroguanidine, *etc.*												
	Picryl chloride, *see* Trinitrochlorobenzene												
	Pine oil	3	UN1272	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	alpha-Pinene	3	UN2368	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Piperazine	8	UN2579	III	CORROSIVE	T7	154	213	240	25 kg	100 kg	A	12, 48
	Piperidine	3	UN2401	II	FLAMMABLE LIQUID	T2	150	202	242	5 L	60 L	B	
	Pivaloyl chloride, see Trimethyl acetyl chloride												
A	Plastic molding material *in dough, sheet or extruded rope form.*	9		III	CLASS 9		155	213	None	100 kg	200 kg	A	
	Plastic solvent, n.o.s., see Flammable liquids, n.o.s.												
	Plastics, nitrocellulose based, spontaneously combustible, n.o.s.	4.2	UN2006	III	SPONTANEOUSLY COMBUSTIBLE.		None	213	None	Forbidden	Forbidden	C	
	Poisonous gases, n.o.s., see Compressed *or* liquefied gases, flammable *or* toxic, n.o.s.												
	Poisonous liquids, corrosive, n.o.s.	6.1	UN2927	I	POISON, CORROSIVE.	T42	None	201	243	0.5 L	2.5 L	B	40
				II	POISON, CORROSIVE.		None	202	243	1 L	30 L	B	40
	Poisonous liquids, corrosive, n.o.s., *inhalation hazard, Packing Group I, Zone A.*	6.1	UN2927	I	POISON, CORROSIVE.	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	20, 40, 95
	Poisonous liquids, corrosive, n.o.s., *inhalation hazard, Packing Group I, Zone B.*	6.1	UN2927	I	POISON, CORROSIVE.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	20, 40, 95
	Poisonous liquids, flammable, n.o.s.	6.1	UN2929	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T15	None	202	243	5 L	60 L	B	40
	Poisonous liquids, flammable, n.o.s., *inhalation hazard, Packing Group I, Zone A.*	6.1	UN2929	I	POISON, FLAMMABLE LIQUID.	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	20, 40, 95
	Poisonous liquids, flammable, n.o.s., *inhalation hazard, Packing Group I, Zone B.*	6.1	UN2929	I	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	20, 40, 95
	Poisonous liquids, n.o.s.	6.1	UN2810	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	40
	Poisonous liquids, n.o.s. *inhalation hazard, Packing Group I, Zone A.*	6.1	UN2810	I	POISON	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	20, 40, 95
	Poisonous liquids, n.o.s. *inhalation hazard, Packing Group I, Zone B.*	6.1	UN2810	I	POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	D	20, 40, 95
	Poisonous liquids, oxidizing, n.o.s.	6.1	UN3122	I	POISON, OXIDIZER	A4	None	201	243	Forbidden	2.5 L	C	89

				II	POISON, OXIDIZER		None	202	243	1 L	5 L	C	89			
	Poisonous liquids, oxidizing, n.o.s. *Inhalation hazard, packing group I, Zone A.*	6.1	UN3122	I	POISON, OXIDIZER	1, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	2.5 L	C	89			
	Poisonous liquids, oxidizing, n.o.s. *Inhalation Hazard, Packing Group I, Zone B.*	6.1	UN3122	I	POISON, OXIDIZER	2, B9, B14, B32, T38, T43, T45.	None	227	244	Forbidden	Forbidden	C	89			
	Poisonous liquids which in contact with water emit flammable gases, n.o.s..	6.1	UN3123	I	POISON, DANGEROUS WHEN WET.	A4	None	201	243	Forbidden	1 L	E				
				II	POISON, DANGEROUS WHEN WET.		None	202	243	1 L	5 L	E				
	Poisonous solids, corrosive, n.o.s.	6.1	UN2928	I	POISON, CORROSIVE.		None	211	242	1 kg	25 kg	B	40			
				II	POISON, CORROSIVE.		None	212	242	15 kg	50 kg	B	40			
	Poisonous solids, flammable, n.o.s.	6.1	UN2930	I	POISON, FLAMMABLE SOLID.		None	211	242	1 kg	15 kg	B				
				II	POISON, FLAMMABLE SOLID.		None	212	242	15 kg	50 kg	B				
	Poisonous solids, n.o.s.	6.1	UN2811	I	POISON		None	211	242	5 kg	50 kg	B				
				II	POISON		None	212	242	25 kg	100 kg	B				
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A				
	Poisonous solids, oxidizing, n.o.s.	6.1	UN3086	I	POISON, OXIDIZER		None	211	242	1 kg	15 kg	C	89			
				II	POISON, OXIDIZER		None	212	242	15 kg	50 kg	C	89			
	Poisonous, solids, self heating, n.o.s.	6.1	UN3124	I	POISON, SPONTANEOUSLY COMBUSTIBLE.	A5	None	211	241	5 kg	15 kg	C				
				II	POISON, SPONTANEOUSLY COMBUSTIBLE.		None	212	242	15 kg	50 kg	C				
	Poisonous, solids, which in contact with water emit flammable gases, n.o.s..	6.1	UN3125	I	POISON, DANGEROUS WHEN WET.	A5	None	211	241	5 kg	15 kg	E				
				II	POISON, DANGEROUS WHEN WET.		None	212	242	15 kg	50 kg	E				
	Polyalkylamines, n.o.s., *see* Alkylamines, *etc.*															
AW	Polychlorinated biphenyls	9	UN2315	II	CLASS 9	9, N81	155	202	241	100 L	220 L	A	34			
D	Polyester resin kits	5.2	NA2255	II	ORGANIC PEROXIDE.		None	225	245	5 kg	5 kg	D				
	Polyhalogenated biphenyls, liquid *or* Polyhalogenated terphenyls liquid.	9	UN3151	II	CLASS 9		155	204	241	100 L	220 L	A	34			
	Polyhalogenated biphenyls, solid *or* Polyhalogenated terphenyls, solid.	9	UN3152	II	CLASS 9		155	204	241	100 kg	200 kg	A	34			
	Polystyrene beads, expandable, *evolving flammable vapor*..	9	UN2211	III	None		221	221	240	100 kg	200 kg	A	85, 87			
	Potassium	4.3	UN2257	II	DANGEROUS WHEN WET.	A19, A20, B27, N6, N34, T15, T26.	None	212	244	Forbidden	50 kg	D				
	Potassium arsenate	6.1	UN1677	II	POISON		None	212	242	25 kg	100 kg	A				
	Potassium arsenite	6.1	UN1678	II	POISON		None	212	242	25 kg	100 kg	A				
	Potassium bifluoride, *solid*	8	UN1811	II	CORROSIVE, POISON.	N3, N34, T8	154	212	242	15 kg	50 kg	A	25, 26, 40, 95			
	Potassium bifluoride, *solution*	8	UN1811	II	CORROSIVE, POISON.	N3, N34, T8	154	202	242	1 L	30 L	A	26, 40, 95			
	Potassium bisulfite solution, *see* Bisulfites, inorganic, aqueous solutions, n.o.s..															
	Potassium borohydride	4.3	UN1870	I	DANGEROUS WHEN WET.	A19, N40	None	211	242	Forbidden	15 kg	E				
	Potassium bromate	5.1	UN1484	II	OXIDIZER		152	212	242	5 kg	25 kg	A	56, 58, 106			
	Potassium carbonyl	Forbidden														

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Potassium chlorate	5.1	UN1485	II	OXIDIZER	A9, N34	152	212	242	5 kg	25 kg	A	56, 58, 106
	Potassium chlorate mixed with mineral oil, see Explosive, blasting, type C.												
	Potassium chlorate, solution	5.1	UN2427	II	OXIDIZER	A2, T8	152	202	241	1 L	5 L	B	56, 58, 106
	Potassium cuprocyanide	6.1	UN1679	II	POISON		None	212	242	25 kg	100 kg	A	26
	Potassium cyanide	6.1	UN1680	I	POISON	B69, B77, N74, N75, T18, T26.	None	211	242	5 kg	50 kg	B	52
	Potassium dichloro isocyanurate or Potassium dichloro-s-triazinetrione, see Dichloroisocyanuric acid, dry or Dichloroisocyanuric acid salts *etc.*												
	Potassium dithionite *or* Potassium hydrosulfite	4.2	UN1929	II	SPONTANEOUSLY COMBUSTIBLE.	A8, A19, A20	None	212	241	15 kg	50 kg	E	13
	Potassium fluoride	6.1	UN1812	III	KEEP AWAY FROM FOOD.	T8	153	213	240	100 kg	200 kg	A	26
	Potassium fluoroacetate	6.1	UN2628	I	POISON		None	211	242	5 kg	50 kg	E	
	Potassium fluorosilicate	6.1	UN2655	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	26
	Potassium hydrate, see Potassium hydroxide, solid												
	Potassium hydrogen fluoride, see Potassium bifluoride.												
	Potassium hydrogen fluoride solution, see Corrosive liquid, n.o.s..												
	Potassium hydrogen sulfate	8	UN2509	II	CORROSIVE	A7, N34	154	212	240	15 kg	50 kg	A	
	Potassium hydrosulfite, *see* Potassium dithionite												
	Potassium hydroxide, liquid, see Potassium hydroxide solution.												
	Potassium hydroxide, solid	8	UN1813	II	CORROSIVE		154	212	240	15 kg	50 kg	A	
	Potassium hydroxide, solution	8	UN1814	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A	
	Potassium hypochlorite, solution, see Hypochlorite solutions, *etc.*.												
	Potassium, metal alloys	4.3	UN1420	I	DANGEROUS WHEN WET.	A19, A20, B27	None	212	244	Forbidden	50 kg	D	
	Potassium metal, liquid alloy, see Alkali metal alloys, liquid.												
	Potassium metavanadate	6.1	UN2864	II	POISON		None	212	242	25 kg	100 kg	A	
	Potassium monoxide	8	UN2033	II	CORROSIVE		154	212	240	15 kg	50 kg	A	
	Potassium nitrate	5.1	UN1486	III	OXIDIZER	A1, A29	152	212	240	25 kg	100 kg	A	
	Potassium nitrate and sodium nitrite mixtures	5.1	UN1487	II	OXIDIZER	B12, B78	152	212	240	5 kg	25 kg	A	56, 58
	Potassium nitrite	5.1	UN1488	II	OXIDIZER		152	212	242	5 kg	25 kg	A	56, 58
	Potassium perchlorate, solid *or* solution	5.1	UN1489	II	OXIDIZER	T8	152	212	242	5 kg	25 kg	A	56, 58, 106
	Potassium permanganate	5.1	UN1490	II	OXIDIZER	B12	152	212	242	5 kg	25 kg	D	56, 58, 69, 106, 107
	Potassium peroxide	5.1	UN1491	I	OXIDIZER	A20, N34	None	211	None	Forbidden	15 kg	B	13, 75, 106
	Potassium persulfate	5.1	UN1492	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	
	Potassium phosphide	4.3	UN2012	I	DANGEROUS WHEN WET, POISON.	A19, N40	None	211	None	Forbidden	15 kg	E	40, 85
	Potassium salts of aromatic nitro-derivatives, *explosive.*	1.3C	UN0158	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Potassium selenate, *see* Selenates *or* Selenites												

	Potassium selenite, *see* Selenates *or* Selenites													
	Potassium sodium alloys	4.3	UN1422	I	DANGEROUS WHEN WET.	A19, B27, N34, N40, T15, T26.	None	201	244	Forbidden	15 kg	D		
	Potassium sulfide, anhydrous *or* Potassium sulfide *with less than 30 per cent water of crystallization.*	4.2	UN1382	II	SPONTANEOUSLY COMBUSTIBLE.	A19, A20, B16, N34.	None	212	241	15 kg	50 kg	A		
	Potassium sulfide, hydrated *with not less than 30 per cent water of crystallization.*	8	UN1847	II	CORROSIVE		154	212	240	15 kg	50 kg	A	26	
	Potassium superoxide	5.1	UN2466	I	OXIDIZER	A20	None	211	None	Forbidden	15 kg	B	13, 75, 106	
	Powder cake, wetted *or* Powder paste, wetted *with not less than 25 per cent water, by mass.*	1.3C	UN0159	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	1E, 5E	
	Powder cake, wetted *or* Powder paste, wetted *with not less than 17 percent alcohol by mass.*	1.1C	UN0433	II	EXPLOSIVE 1.1C		None	62	None	Forbidden	Forbidden	B	1E, 5E	
	Powder paste, *see* Powder cake, *etc.*													
	Powder, smokeless	1.1C	UN0160	II	EXPLOSIVE 1.1C		None	62	None	Forbidden	Forbidden	B	10E, 26E	
	Powder, smokeless	1.3C	UN0161	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	10E, 26E	
	Power device, explosive, see Cartridges, power device,													
	Primers, cap type	1.4S	UN0044	II	None		None	62	None	25 kg	100 kg	A	9E	
	Primers, cap type	1.1B	UN0377	II	EXPLOSIVE 1.1B		None	62	None	Forbidden	Forbidden	B	2E, 6E	
	Primers, cap type	1.4B	UN0378	II	EXPLOSIVE 1.4B		None	62	None	Forbidden	75 kg	B		
	Primers, small arms, see Primers, cap type													
	Primers, tubular	1.3G	UN0319	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	Forbidden	B		
	Primers, tubular	1.4G	UN0320	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E	
	Primers, tubular	1.4S	UN0378	II	None		None	62	None	25 kg	100 kg	A	9E	
	Projectiles, illuminating, see Ammunition, illuminating, *etc.*													
	Projectiles, *inert with tracer*	1.4S	UN0345	II	EXPLOSIVE 1.4S		63(b)	62	None	25 kg	100 kg	A	3E, 7E, 9E	
	Projectiles, *inert, with tracer*	1.3G	UN0424	II	EXPLOSIVE 1.3G		63(b)	62	None	Forbidden	Forbidden	B	3E, 7E	
	Projectiles, *inert, with tracer*	1.4G	UN0425	II	EXPLOSIVE 1.4G		63(b)	62	None	Forbidden	75 kg	A	3E, 7E, 24E	
	Projectiles, *with burster or expelling charge*	1.2D	UN0346	II	EXPLOSIVE 1.2D		63(b)	62	None	Forbidden	Forbidden	B	3E, 7E	
	Projectiles, *with burster or expelling charge*	1.4D	UN0347	II	EXPLOSIVE 1.4D		63(b)	62	None	Forbidden	75 kg	A	3E, 7E, 24E	
	Projectiles, *with burster or expelling charge*	1.2F	UN0426	II	EXPLOSIVE 1.2F		63(b)	62	None	Forbidden	Forbidden	E		
	Projectiles, *with burster or expelling charge*	1.4F	UN0427	II	EXPLOSIVE 1.4F		63(b)	62	None	Forbidden	Forbidden	E		
	Projectiles, *with burster or expelling charge*	1.2G	UN0434	II	EXPLOSIVE 1.2G		63(b)	62	None	Forbidden	Forbidden	B	3E, 7E	
	Projectiles, *with burster or expelling charge*	1.4G	UN0435	II	EXPLOSIVE 1.4G		63(b)	62	None	Forbidden	75 kg	A	3E, 7E, 24E	
	Projectiles, *with bursting charge*	1.1F	UN0167	II	EXPLOSIVE 1.1F		63(b)	62	None	Forbidden	Forbidden	E		
	Projectiles, *with bursting charge*	1.1D	UN0168	II	EXPLOSIVE 1.1D		63(b)	62	None	Forbidden	Forbidden	B	3E, 7E	
	Projectiles, *with bursting charge*	1.2D	UN0169	II	EXPLOSIVE 1.2D		63(b)	62	None	Forbidden	Forbidden	B	3E, 7E	
	Projectiles, *with bursting charge*	1.2F	UN0324	II	EXPLOSIVE 1.2F		63(b)	62	None	Forbidden	Forbidden	E		
	Projectiles, *with bursting charge*	1.4D	UN0344	II	EXPLOSIVE 1.4D		63(b)	62	None	Forbidden	75 kg	A	3E, 7E, 24E	
	Propadiene, inhibited	2.1	UN2200		FLAMMABLE GAS		None	304	314, 315	Forbidden	150 kg	B	40	
	Propadiene mixed with methyl acetylene, see Methyl acetylene and propadiene mixtures, stabilized.													
	Propane *see also* Petroleum gases, liquefied	2.1	UN1978		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	E	40	
	Propanethiols	3	UN2402	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	E	95, 102	
	n-Propanol *or* Propyl alcohol normal	3	UN1274	II	FLAMMABLE LIQUID	B1, T1	150	202	242	5 L	60 L	B		
D	Propargyl alcohol	3	NA1986	II	FLAMMABLE LIQUID, POISON.		None	202	243	Forbidden	1 L	B	40	
D	Propellant explosive, liquid	1.1C	NA0474	II	EXPLOSIVE 1.1C		None	62	None	Forbidden	Forbidden	B	1E, 5E	
D	Propellant explosive, liquid	1.3C	NA0477	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	1E, 5E	
D	Propellant explosive, solid	1.1C	NA0273	II	EXPLOSIVE 1.1C		None	62	None	Forbidden	5 kg	B		
D	Propellant explosive, solid	1.3C	NA0274	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	5 kg	B		
	Propionaldehyde	3	UN1275	II	FLAMMABLE LIQUID	T14	150	202	242	5 L	60 L	E		
	Propionic acid	8	UN1848	III	CORROSIVE	T7	154	203	241	5 L	60 L	A	22, 48	
	Propionic anhydride	8	UN2496	III	CORROSIVE	T2	154	203	241	5 L	60 L	A	8	
	Propionitrile	3	UN2404	II	FLAMMABLE LIQUID, POISON.	T14	None	201	243	Forbidden	60 L	E	40	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Propionyl chloride	3	UN1815	II	FLAMMABLE LIQUID, CORROSIVE.	T8, T26	None	202	243	1 L	5 L	B	40
	n-Propyl acetate	3	UN1276	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Propyl alcohol, *see* Propanol												
	n-Propyl benzene	3	UN2364	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Propyl chloride	3	UN1278	II	FLAMMABLE LIQUID	N34, T14	None	202	242	Forbidden	60 L	E	
	n-Propyl chloroformate	6.1	UN2740	I	POISON, FLAMMABLE LIQUID, CORROSIVE.	2, A3, A6, A7, B9, B14, B32, B74, B77, N34, T38, T43, T45.	None	227	244	Forbidden	2.5 L	B	21, 40, 48, 100
	Propyl formates	3	UN1281	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
+	n-Propyl isocyanate	3	UN2482	I	FLAMMABLE LIQUID, POISON.	1, A7, B9, B14, B30, B72, T38, T43, T44.	None	226	244	Forbidden	30 L	D	40
	Propyl mercaptan, see Propanethiols												
	n-Propyl nitrate	3	UN1865	II	FLAMMABLE LIQUID	T25	150	202	None	5 L	60 L	D	
	Propylamine	3	UN1277	II	FLAMMABLE LIQUID, CORROSIVE.	N34, T14	None	202	242	5 L	60 L	E	40
	Propylene *see also* Petroleum gases, liquefied	2.1	UN1077		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	E	40
	Propylene chlorohydrin	6.1	UN2611	II	POISON	T9	None	202	243	5 L	60 L	A	12, 40, 48
	Propylene dichloride	3	UN1279	II	FLAMMABLE LIQUID	N36, T1	150	202	242	5 L	60 L	B	
	Propylene oxide	3	UN1280	I	FLAMMABLE LIQUID	A3, N34, T20, T29.	None	201	243	1 L	30 L	E	40
	Propylene tetramer	3	UN2850	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	1,2-Propylenediamine	8	UN2258	III	CORROSIVE	A3, A8, N34, T8.	None	203	243	1 L	30 L	A	12, 20, 40, 48
	Propyleneimine, inhibited	3	UN1921	I	FLAMMABLE LIQUID	A3, N34, T25	None	201	243	1 L	30 L	B	40
	Propyltrichlorosilane	8	UN1816	II	CORROSIVE	A7, B2, B6, N34, T8, T26.	None	202	242	Forbidden	30 L	C	12, 21, 40, 48
	Prussic acid, see Hydrogen cyanide												
	Pyridine	3	UN1282	II	FLAMMABLE LIQUID, POISON.	T8	None	202	243	1 L	60 L	B	21, 100
	Pyridine perchlorate	Forbidden											
	Pyrophoric liquids, n.o.s.	4.2	UN2845	I	SPONTANEOUSLY COMBUSTIBLE.	B11, T42	None	181	244	Forbidden	Forbidden	D	18
	Pyrophoric metals, n.o.s., *or* Pyrophoric alloys, n.o.s.	4.2	UN1383	I	SPONTANEOUSLY COMBUSTIBLE.	B11	None	187	242	Forbidden	Forbidden	D	
	Pyrophoric solids, n.o.s.	4.2	UN2846	I	SPONTANEOUSLY COMBUSTIBLE.		None	187	242	Forbidden	Forbidden	D	
	Pyrosulfuryl chloride	8	UN1817	II	CORROSIVE	B2, T9, T27	154	202	242	1 L	30 L	C	8, 40
	Pyroxylin solution or solvent, see Nitrocellulose												
	Pyrrolidine	3	UN1922	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	40
	Quebrachitol pentanitrate	Forbidden											
	Quicklime, see Calcium oxide												
	Quinoline	6.1	UN2656	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	A	12, 48
	R 114, see Dichlorotetrafluoroethane												
	R 115, see Chloropentafluoroethane												
	R 116, see Hexafluoroethane												
	R 124, see Chlorotetrafluoroethane												
	R 133a, see Chlorotrifluoroethane												

	R 152a, see Difluoroethane														
	R 500, see Dichlorodifluoromethane and difluoroethane, *etc.*.														
	R 502, see Chlorodifluoromethane and chloropentafluoroethane mixture, *etc.*.														
	R 503, see Chlorotrifluoromethane and trifluoromethane, *etc.*.														
	R 12, see Dichlorodifluoromethane														
	R 12B1, see Chlorodifluorobromomethane														
	R 13, see Chlorotrifluoromethane														
	R 13B1, see Bromotrifluoromethane														
	R 14, see Tetrafluoromethane														
	R 21, see Dichlorofluoromethane														
	R 22, see Chlorodifluoromethane														
	Radioactive material, excepted package-articles manufactured from natural *or* depleted uranium *or* natural thorium.		7	UN2910		None		421-1, 424	421-1, 424	421-1, 424			A		
	Radioactive material, excepted package-empty packaging.		7	UN2910		EMPTY		427	427	427			A		
	Radioactive material, excepted package-instruments *or* articles.		7	UN2910		None		421-1, 422	421-1, 422	421-1, 422			A		
	Radioactive material, excepted package-limited quantity of material.		7	UN2910		None		421, 421-1	421, 421-1	421, 421-1			A		
	Radioactive material, fissile, n.o.s.		7	UN2918		RADIOACTIVE		453	417	417			A		40, 95
	Radioactive material, low specific activity *LSA*, n.o.s..		7	UN2912		RADIOACTIVE		421, 422, 424	425	425			A		
	Radioactive material, n.o.s.		7	UN2982		RADIOACTIVE		421, 422, 424	415, 416	415, 416			A		40, 95
	Radioactive material, special form, n.o.s.		7	UN2974		RADIOACTIVE		421, 422	415, 416	415, 416			A		
	Railway torpedo, see Signals, railway track, explosive.														
	Rare gases and nitrogen mixtures		2.2	UN1981		NONFLAMMABLE GAS.		306	302	None	75 kg	150 kg	A		
	Rare gases and oxygen mixtures		2.2	UN1980		NONFLAMMABLE GAS.		306	302	None	75 kg	150 kg	A		
	Rare gases, mixtures		2.2	UN1979		NONFLAMMABLE GAS.		306	302	None	75 kg	150 kg	A		
	RC 318, see Octafluorocyclobutane														
	RDX and cyclotetramethylenetetranitramine, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized.														
	RDX and HMX mixtures, wetted *with not less than 15 percent water by mass or* RDX and HMX mixtures, desensitized *with not less than 10 percent phlegmatizer by mass.*		1.1D	UN0391	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B		1E, 5E
	RDX and Octogen mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*.														
	RDX and Octogen mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*.														
	RDX, see Cyclotrimethylene trinitramine, etc.														
	Receptacles, small, containing gas *flammable, without release device, not refillable and not exceeding 1 L capacity.*		2.1	UN2037		FLAMMABLE GAS		306	304	None	1 kg	15 kg	B		40
	Receptacles, small, containing gas *nonflammable, without release device, not refillable and not exceeding 1 L capacity.*		2.2	UN2037		NONFLAMMABLE GAS.		306	304	None	1 kg	15 kg	B		40
	Red phosphorus, see Phosphorus, amorphous														
	Refrigerant gases, n.o.s.		2.2	UN1078		NONFLAMMABLE GAS:		306	304	314, 315	75 kg	150 kg	A		
D	Refrigerant gases, n.o.s. *or* Dispersant gases, n.o.s.		2.1	NA1954		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	C		40

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or rail car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
D	Refrigerating machine	3	NA1993	III	FLAMMABLE LIQUID		174	174	None	10 L	10 L	A	
D	Refrigerating machines, *containing flammable, non-poisonous, liquefied gas.*	2.1	NA1954		FLAMMABLE GAS		306	306	306	Forbidden	25 kg	C	40
	Refrigerating machines, *containing non-flammable, non-poisonous, liquefied gas.*	2.2	UN2857		NONFLAMMABLE GAS.		306, 307	306	306, 307	Forbidden	450 kg	A	
D	Regulated medical waste	6.2	NA9275	II	INFECTIOUS SUBSTANCE.		197	197	None	Forbidden	Forbidden	E	
	Release devices, explosive	1.4S	UN0173	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	24E
	Resin solution, *flammable*	3	UN1866	II	FLAMMABLE LIQUID	B52, T7, T30	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, B52, T7, T30.	150	203	242	60 L	220 L	A	
	Resorcinol	6.1	UN2876	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Rifle grenade, see Grenades, *hand or rifle, etc.*												
	Rifle powder, see Powder, smokeless (*UN 0160*)												
	Rivets, explosive	1.4S	UN0174	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	9E
	Road asphalt or tar liquid, see Tars, liquid, *etc.*												
	Rocket motors	1.3C	UN0186	II	EXPLOSIVE 1.3C	109	None	62	None	Forbidden	220 kg	B	9E
	Rocket motors	1.1C	UN0250	II	EXPLOSIVE 1.1C	109	None	62	None	Forbidden	Forbidden	B	
	Rocket motors	1.2C	UN0291	II	EXPLOSIVE 1.2C	109	None	62	None	Forbidden	Forbidden	B	
	Rocket motors, liquid fueled	1.2J	UN0395	II	EXPLOSIVE 1.2J	109	None	62	None	Forbidden	Forbidden	E	7E, 16E, 23E
	Rocket motors, liquid fueled	1.3J	UN0396	II	EXPLOSIVE 1.3J	109	None	62	None	Forbidden	Forbidden	E	7E, 16E, 23E
	Rocket motors with hypergolic liquids *with or without an expelling charge.*	1.3L	UN0250	II	EXPLOSIVE 1.3L	109	None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
	Rocket motors with hypergolic liquids *with or without an expelling charge.*	1.2L	UN0322	II	EXPLOSIVE 1.2L	109	None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
	Rockets, line throwing	1.4G	UN0453	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	B	
	Rockets, line-throwing	1.2G	UN0238	II	EXPLOSIVE 1.2G		None	62	None	Forbidden	Forbidden	B	
	Rockets, line-throwing	1.3G	UN0240	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	75 kg	B	
	Rockets, liquid fueled *with bursting charge*	1.2J	UN0398	II	EXPLOSIVE 1.2J		None	62	None	Forbidden	Forbidden	E	7E, 16E, 23E
	Rockets, liquid fueled *with bursting charge*	1.1J	UN0397	II	EXPLOSIVE 1.1J		None	62	None	Forbidden	Forbidden	E	7E, 16E, 23E
	Rockets, *with bursting charge*	1.1F	UN0180	II	EXPLOSIVE 1.1F		None	62	None	Forbidden	Forbidden	E	
	Rockets, *with bursting charge*	1.1E	UN0181	II	EXPLOSIVE 1.1E		None	62	None	Forbidden	Forbidden	B	
	Rockets, *with bursting charge*	1.2E	UN0182	II	EXPLOSIVE 1.2E		None	62	None	Forbidden	Forbidden	B	
	Rockets, *with bursting charge*	1.2F	UN0295	II	EXPLOSIVE 1.2F		None	62	None	Forbidden	Forbidden	E	
	Rockets, *with expelling charge*	1.2C	UN0436	II	EXPLOSIVE 1.2C		None	62	None	Forbidden	Forbidden	B	
	Rockets, *with expelling charge*	1.3C	UN0437	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	
	Rockets, *with expelling charge*	1.4C	UN0438	II	EXPLOSIVE 1.4C		None	62	None	Forbidden	75 kg	A	24E
	Rockets, *with inert head*	1.3C	UN0183	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	
	Rosin oil	3	UN1286	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Rubber solution	3	UN1287	II	FLAMMABLE LIQUID	T7, T30	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Rubidium	4.3	UN1423	I	DANGEROUS WHEN WET.	22, A7, A19, N34, N40, N45.	None	211	242	Forbidden	15 kg	D	
	Rubidium hydroxide	8	UN2678	II	CORROSIVE	T8	154	212	240	15 kg	50 kg	A	
	Rubidium hydroxide solution	8	UN2677	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A	
	Safety fuse, see Fuse, safety												
	Samples, explosive, *other than initiating explosives*		UN0190			113		62	None	Forbidden	Forbidden	E	12E
	Sand acid, see Fluorosilicic acid												

	Seed cake, *containing vegetable oil solvent extractions and expelled seeds, containing not more than 10% of oil and when the amount of moisture is higher than 11%, not more than 20% of oil and moisture combined.*	4.2	UN1386	III	None	N7	None	213	241	Forbidden	Forbidden	A	13
I	Seed cake *with more than 1.5 percent oil and not more than 11 percent moisture.*	4.2	UN1386	III	None	N7	None	213	241	Forbidden	Forbidden	E	13
I	Seed cake *with not more than 1.5 percent oil and not more than 11 percent moisture.*	4.2	UN2217	III	None	N7	None	213	241	Forbidden	Forbidden	A	13
	Selenates *or* Selenites	6.1	UN2630	I	POISON		None	211	242	5 kg	50 kg	E	
	Selenic acid	8	UN1905	I	CORROSIVE	N34	None	211	242	Forbidden	25 kg	A	
	Selenites, *see* Selenates *or* Selenites												
	Selenium disulfide	6.1	UN2657	II	POISON		None	212	242	25 kg	100 kg	A	
	Selenium hexafluoride	2.3	UN2194		POISON GAS	1	None	302	None	Forbidden	Forbidden	D	40
	Selenium nitride	Forbidden											
D	Selenium oxide	6.1	NA2811	I	POISON		None	211	242	5 kg	50 kg	B	
	Selenium oxychloride	8	UN2879	I	CORROSIVE, POISON.	A3, A6, A7, N34, T12, T27.	None	201	243	0.5 L	2.5 L	E	40, 95
	Selenium powder	6.1	UN2658	III	KEEP AWAY FROM FOOD.		152	213	240	100 kg	200 kg	A	
	Self-heating substances, solid, corrosive, n.o.s.	4.2	UN3126	II	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.		None	212	242	15 kg	50 kg	C	
				III	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.		None	213	242	25 kg	100 kg	C	
	Self-heating substances, solid, n.o.s.	4.2	UN3088	II	SPONTANEOUSLY COMBUSTIBLE.		None	212	241	15 kg	50 kg	C	
				III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	25 kg	100 kg	C	
	Self-heating substances, solid, oxidizing, n.o.s.	4.2	UN3127		SPONTANEOUSLY COMBUSTIBLE, OXIDIZER.		None	214	214	Forbidden	Forbidden		
	Self-heating substances, solid, poisonous, n.o.s.	4.2	UN3128	II	SPONTANEOUSLY COMBUSTIBLE, POISON.		None	212	242	15 kg	50 kg	C	
				III	SPONTANEOUSLY COMBUSTIBLE, KEEP AWAY FROM FOOD.		None	213	242	25 kg	100 kg	C	
	Self-propelled vehicle, see Vehicles, self-propelled												
	Self-reactive substances (*aliphatic azocompounds, aromatic sulphohydrazides, N-nitroso compounds, diazonium salts*) Sample, n.o.s.	4.1	UN3031	II	FLAMMABLE SOLID		None	214	None	Forbidden	Forbidden	D	
	Self-reactive substances (*aliphatic azocompounds, aromatic sulphohydrazides, N-nitroso compounds, diazonium salts*), Trial quantities, n.o.s.	4.1	UN3032	II	FLAMMABLE SOLID		None	214	None	Forbidden	Forbidden	D	
	Shale oil	3	UN1288	I	FLAMMABLE LIQUID	T7	None	201	243	1 L	30 L	B	
				II	FLAMMABLE LIQUID	T7, T30	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Shaped charges, commercial, see Charges, shaped, commercial *etc.*												
	Signal devices, hand	1.4G	UN0191	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E
	Signal devices, hand	1.4S	UN0373	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	9E
	Signals, distress,*ship*	1.1G	UN0194	II	EXPLOSIVE 1.1G		None	62	None	Forbidden	Forbidden	B	
	Signals, distress, *ship*	1.3G	UN0195	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	75 kg	B	
	Signals, highway, see Signal devices, hand; Fireworks, type D.												
	Signals, railway track, explosive	1.1G	UN0192	II	EXPLOSIVE 1.1G		None	62	None	Forbidden	Forbidden	B	
	Signals, railway track, explosive	1.4S	UN0193	II	EXPLOSIVE 1.4S		None	62	None	25 kg	100 kg	A	9E
	Signals, ship distress, wateractivated, see Contrivances, water-activated, *etc.*												
	Signals, smoke	1.1G	UN0196	II	EXPLOSIVE 1.1G		None	62	None	Forbidden	Forbidden	B	
	Signals, smoke	1.2G	UN0313	II	EXPLOSIVE 1.2G		None	62	None	Forbidden	Forbidden	B	
	Signals, smoke	1.4G	UN0197	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Signals, smoke	1.3G	UN0487	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	Forbidden	B	1E, 7E, 25E
	Silane	2.1	UN2203		FLAMMABLE GAS		None	302	None	Forbidden	Forbidden	E	40, 57, 104
	Silicofluoric acid, see Fluorosilicic acid												
	Silicon chloride, see Silicon tetrachloride												
	Silicon powder, amorphous	4.1	UN1346	III	FLAMMABLE SOLID	A1	None	213	240	25 kg	100 kg	A	
	Silicon tetrachloride	8	UN1818	II	CORROSIVE	A3, A6, B2, B6, N41, T16, T26, T29.	154	202	242	1 L	30 L	C	8, 40
	Silicon tetrafluoride	2.3	UN1859		POISON GAS, CORROSIVE.	4	None	302	None	Forbidden	25 kg	D	40
	Silver acetylide (dry)	Forbidden											
	Silver arsenite	6.1	UN1683	II	POISON		None	212	242	25 kg	100 kg	A	
	Silver azide (dry)	Forbidden											
	Silver chlorite (dry)	Forbidden											
	Silver cyanide	6.1	UN1684	II	POISON		None	212	242	25 kg	100 kg	A	26, 40
	Silver fulminate (dry)	Forbidden											
	Silver nitrate	5.1	UN1493	II	OXIDIZER		152	212	242	5 kg	25 kg	A	
	Silver oxalate (dry)	Forbidden											
	Silver picrate (dry)	Forbidden											
	Silver picrate, wetted *with not less than 30 per cent water, by mass.*	4.1	UN1347	I	FLAMMABLE SOLID		None	211	None	Forbidden	Forbidden	D	28, 36
	Sludge, acid	8	UN1906	II	CORROSIVE	A3, A7, B2, N34, T9, T27.	None	202	242	Forbidden	30 L	C	14
D	Smokeless powder for small arms (*100 pounds or less*).	4.1	NA1325	I	FLAMMABLE SOLID	16	None	171	None	Forbidden	Forbidden	A	
	Soda lime *with more than 4 per cent sodium hydroxide.*	8	UN1907	III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Sodium	4.3	UN1428	II	DANGEROUS WHEN WET.	A7, A8, A19, A20, B9, B28, B68, N34, T15, T28, T29.	None	212	244	Forbidden	50 kg	D	
	Sodium aluminate, solid	8	UN2812	III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Sodium aluminate, solution	8	UN1819	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A	
	Sodium aluminum hydride	4.3	UN2835	II	DANGEROUS WHEN WET.	A8, A19, A20	None	212	242	Forbidden	50 kg	E	
	Sodium ammonium vanadate	6.1	UN2863	II	POISON		None	212	242	25 kg	100 kg	A	
	Sodium arsanilate	6.1	UN2473	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	
	Sodium arsenate	6.1	UN1685	II	POISON		None	212	240	25 kg	100 kg	A	
	Sodium arsenite, aqueous solutions	6.1	UN1686	II	POISON	T15	None	202	243	5 L	60 L	A	
				III	KEEP AWAY FROM FOOD.	T15	153	203	241	60 L	220 L	A	
	Sodium arsenite, solid	6.1	UN2027	II	POISON		None	212	242	25 kg	100 kg	A	
	Sodium azide	6.1	UN1687	II	POISON	B28	None	212	242	25 kg	100 kg	A	36, 52, 91
	Sodium bifluoride, see Sodium hydrogen fluoride												
	Sodium bisulfate, solid or solution, see Sodium hydrogen sulfate, solid *or* solution.												
	Sodium bisulfite, solution, see Bisulfites, inorganic, aqueous solutions, n.o.s..												
	Sodium borohydride	4.3	UN1426	I	DANGEROUS WHEN WET.	N40	None	211	242	Forbidden	15 kg	E	

	Sodium bromate	5.1	UN1494	II	OXIDIZER		152	212	242	5 kg	25 kg	A	56, 58, 106	
	Sodium cacodylate	6.1	UN1688	II	POISON		None	212	242	25 kg	100 kg	A	26	
	Sodium chlorate	5.1	UN1495	II	OXIDIZER	A9, N34, T8	152	212	240	5 kg	25 kg	A	56, 58, 106	
	Sodium chlorate mixed with dinitrotoluene, see Explosive blasting, type C.													
	Sodium chlorate, solution	5.1	UN2428	II	OXIDIZER	A2, B6, T8	152	202	241	1 L	5 L	B	56, 58, 106	
	Sodium chlorite	5.1	UN1496	II	OXIDIZER	A9, N34, T8	None	212	242	5 kg	25 kg	A	56, 58, 106	
	Sodium chlorite solution *with more than 5 per cent available chlorine.*	8	UN1908	II	CORROSIVE	A3, A6, A7, B2, N34, T8.	154	202	242	1 L	30 L	B	26	
	Sodium chloroacetate	6.1	UN2659	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A		
	Sodium cuprocyanide, solid	6.1	UN2316	I	POISON		None	211	242	5 kg	50 kg	A	26	
	Sodium cuprocyanide, solution	6.1	UN2317	I	POISON	T8, T26	None	201	243	1 L	30 L	B	26, 40	
	Sodium cyanide	6.1	UN1689	I	POISON	B69, B77, N74, N75, T42.	None	211	242	5 kg	50 kg	B	52	
	Sodium 2-diazo-1-naphthol-4-sulphonate	4.1	UN3040	II	FLAMMABLE SOLID		None	224	None	15 kg	50 kg	C	61	
	Sodium 2-diazo-1-naphthol-5-sulphonate	4.1	UN3041	II	FLAMMABLE SOLID		None	224	None	15 kg	50 kg	C	61	
	Sodium dichloroisocyanurate or Sodium dichloro-s-triazinetrione, see Dichloroisocyanuric acid *etc.*.													
	Sodium dinitro-o-cresolate, *dry or wetted with less than 15 per cent water, by mass.*	1.3C	UN0234	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	1E, 5E	
	Sodium dinitro-ortho-cresolate, wetted *with not less than 15 per cent water, by mass.*	4.1	UN1348	I	FLAMMABLE SOLID, POISON.	A8, A19, A20, N41.	None	211	None	1 kg	15 kg	E	28, 36	
	Sodium dithionite *or* Sodium hydrosulfite	4.2	UN1384	II	SPONTANEOUSLY COMBUSTIBLE.	A19, A20	None	212	241	15 kg	50 kg	E	12	
	Sodium fluoride	6.1	UN1690	III	KEEP AWAY FROM FOOD.	T8	153	213	240	100 kg	200 kg	A	26	
	Sodium fluoroacetate	6.1	UN2629	I	POISON		None	211	242	5 kg	50 kg	E		
	Sodium fluorosilicate	6.1	UN2674	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	26	
	Sodium hydrate, see Sodium hydroxide, solid													
	Sodium hydride	4.3	UN1427	I	DANGEROUS WHEN WET.	A19, N40	None	211	242	Forbidden	15 kg	E		
	Sodium hydrogen fluoride	8	UN2439	II	CORROSIVE	N3, N34	154	212	240	15 kg	50 kg	A	12, 25, 26, 40, 48	
	Sodium hydrogen fluoride, *solution*	8	UN2439	II	CORROSIVE	N3, N34	154	202	242	1 L	30 L	A	12, 25, 26, 40	
	Sodium hydrogen sulfate, solid	8	UN1821	III	CORROSIVE		154	213	240	25 kg	100 kg	A		
	Sodium hydrogen sulfate, solution	8	UN2837	II	CORROSIVE	A7, B2, N34, T8, T26.	154	202	242	1 L	30 L	A		
D	Sodium hydrosulfide, solution	8	NA2922	II	CORROSIVE, POISON.	B2	154	202	242	1 L	30 L	B	40, 95	
	Sodium hydrosulfide, *with less than 25 per cent water of crystallization.*	4.2	UN2318	II	SPONTANEOUSLY COMBUSTIBLE.	A7, A19, A20	None	212	241	15 kg	50 kg	A		
	Sodium hydrosulfide *with not less than 25 per cent water of crystallization.*	8	UN2949	II	CORROSIVE	A7	154	212	240	15 kg	50 kg	A	26	
	Sodium hydrosulfite, *see* Sodium dithionite													
	Sodium hydroxide, solid	8	UN1823	II	CORROSIVE		154	212	240	15 kg	50 kg	A		
	Sodium hydroxide solution	8	UN1824	II	CORROSIVE	B2, N34, T8	154	202	242	1 L	30 L	A		
	Sodium hypochlorite, solution, see Hypochlorite solutions *etc.*.													
	Sodium metal, liquid alloy, see Alkali metal alloys, liquid, n.o.s..													
	Sodium methylate	4.2	UN1431	II	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.	A19	None	211	242	15kg	50 kg	B		
	Sodium methylate solutions *in alcohol*	3	UN1289	II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B		
				III	FLAMMABLE LIQUID	B1, T7, T30	150	202	242	60 L	220 L	A		
	Sodium monoxide	8	UN1825	II	CORROSIVE		154	212	240	15 kg	50 kg	A		
	Sodium nitrate	5.1	UN1498	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A		
	Sodium nitrate and potassium nitrate mixtures	5.1	UN1499	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A		
	Sodium nitrite	5.1	UN1500	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	56, 58	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Sodium pentachlorophenate	6.1	UN2567	II	POISON		None	212	242	25 kg	100 kg	A	
	Sodium percarbonate	5.1	UN2467	III	OXIDIZER	27, A1, A29	152	213	240	25 kg	100 kg	A	13
	Sodium perchlorate	5.1	UN1502	II	OXIDIZER	T8	152	212	242	5 kg	25 kg	A	56, 58, 106,
	Sodium permanganate	5.1	UN1503	II	OXIDIZER		152	212	242	5 kg	25 kg	D	56, 58, 69, 106, 107
	Sodium peroxide	5.1	UN1504	I	OXIDIZER	A20, N34	None	211	None	Forbidden	15 kg	B	13, 75, 105
	Sodium persulfate	5.1	UN1505	III	OXIDIZER	A1	152	213	240	25 kg	100 kg	A	
	Sodium phenolate, solid	8	UN2497	III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Sodium phosphide	4.3	UN1432	I	DANGEROUS WHEN WET, POISON.	A19, N40	None	211	None	Forbidden	15 kg	E	40, 85
	Sodium picramate, *dry or wetted with less than 20 per cent water, by mass.*	1.3C	UN0235	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Sodium picramate, wetted *with not less than 20 per cent water, by mass.*	4.1	UN1349	I	FLAMMABLE SOLID	A8, A19, N41	None	211	None	Forbidden	15 kg	E	28, 36
	Sodium picryl peroxide	Forbidden											
	Sodium potassium alloys, see Potassium sodium alloys.												
	Sodium salts of aromatic nitro-derivatives, n.o.s.*explosive.*	1.3C	UN0203	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Sodium selenate, see Selenates *or* Selenites												
D	Sodium selenite	6.1	NA2630	II	POISON		None	212	242	25 kg	100 kg	E	
	Sodium sulfide, anhydrous *or* Sodium sulfide *with less than 30 per cent water of crystallization.*	4.2	UN1385	II	SPONTANEOUSLY COMBUSTIBLE.	A19, A20, N34	None	212	241	15 kg	50 kg	A	
	Sodium sulfide, hydrated *with at least 30 per cent water.*	8	UN1849	II	CORROSIVE	T8	154	212	240	15 kg	50 kg	A	28
	Sodium superoxide	5.1	UN2547	I	OXIDIZER	A20, N34	None	211	None	Forbidden	15 kg	E	13, 75, 105
	Sodium tetranitride	Forbidden											
	Sounding devices, explosive	1.2F	UN0204	II	EXPLOSIVE 1.2F		None	62	None	Forbidden	Forbidden	E	
	Sounding devices, explosive	1.1F	UN0296	II	EXPLOSIVE 1.1F		None	62	None	Forbidden	Forbidden	E	
	Sounding devices, explosive	1.1D	UN0374	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	
	Sounding devices, explosive	1.2D	UN0375	II	EXPLOSIVE 1.2D		None	62	None	Forbidden	Forbidden	B	
	Spirits of salt, see Hydrochloric acid												
	Squibs, see Igniters *etc.*												
	Stannic chloride, anhydrous	8	UN1827	II	CORROSIVE	B2, T8, T26	154	202	242	1 L	30 L	C	8
	Stannic chloride, pentahydrate	8	UN2440	III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	Stannic phosphide	4.3	UN1433	I	DANGEROUS WHEN WET, POISON.	A19, N40	None	211	242	Forbidden	15 kg	E	40, 85
	Steel swarf, *see* Ferrous metal borings, *etc.*												
	Stibine	2.3	UN2676		POISON GAS, FLAMMABLE GAS.	1	None	304	None	Forbidden	Forbidden	D	40
	Storage batteries, wet, see Batteries, *wet etc.*												
	Strontium arsenite	6.1	UN1691	II	POISON		None	212	242	25 kg	100 kg	A	
	Strontium chlorate, solid *or* solution	5.1	UN1506	II	OXIDIZER	A1, A9, N34, T8	152	212	242	5 kg	25 kg	A	56, 58, 106
	Strontium nitrate	5.1	UN1507	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	
	Strontium perchlorate	5.1	UN1508	II	OXIDIZER	T8	152	212	242	5 kg	25 kg	A	56, 58, 106
	Strontium peroxide	5.1	UN1509	II	OXIDIZER		152	212	242	5 kg	25 kg	A	13, 75, 106

Strontium phosphide	4.3	UN2013	I	DANGEROUS WHEN WET, POISON.	A19, N40	None	211	None	Forbidden	15 kg	E	40, 85
Strychnine *or* Strychnine salts	6.1	UN1692	I	POISON		None	211	242	5 kg	50 kg	A	40
Styphnic acid, *see* Trinitroresorcinol, *etc.*												
Styrene monomer, inhibited	3	UN2055	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
Substances, explosive, n.o.s.	1.1L	UN0357	II	EXPLOSIVE 1.1L	101	None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
Substances, explosive, n.o.s.	1.2L	UN0358	II	EXPLOSIVE 1.2L	101	None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
Substances, explosive, n.o.s.	1.3L	UN0359	II	EXPLOSIVE 1.3L	101	None	62	None	Forbidden	Forbidden	E	2E, 8E, 11E, 17E
Substances, explosive, n.o.s.	1.1A	UN0473	II	EXPLOSIVE 1.1A	101, 111	None	62	None	Forbidden	Forbidden	E	2E, 6E
Substances, explosive, n.o.s.	1.1C	UN0474	II	EXPLOSIVE 1.1C	101	None	62	None	Forbidden	Forbidden	B	1E, 5E
Substances, explosive, n.o.s.	1.1D	UN0475	II	EXPLOSIVE 1.1D	101	None	62	None	Forbidden	Forbidden	B	1E, 5E
Substances, explosive, n.o.s.	1.1G	UN0476	II	EXPLOSIVE 1.1G	101	None	62	None	Forbidden	Forbidden	B	1E, 8E
Substances, explosive, n.o.s.	1.3C	UN0477	II	EXPLOSIVE 1.3C	101	None	62	None	Forbidden	Forbidden	B	1E, 5E
Substances, explosive, n.o.s.	1.3G	UN0478	II	EXPLOSIVE 1.3G	101	None	62	None	Forbidden	Forbidden	E	1E, 8E
Substances, explosive, n.o.s.	1.4G	UN0485	II	EXPLOSIVE 1.4G	101	None	62	None	Forbidden	75 kg	E	1E, 5E
Substances, explosive, n.o.s.	1.4S	UN0481	II	EXPLOSIVE 1.4S	101	None	62	None	25 kg	75 kg	A	1E, 5E
Substances, explosive, n.o.s.	1.5D	UN0482	II	EXPLOSIVE 1.5D	101	None	62	None	Forbidden	Forbidden	B	1E, 5E
Substances, explosive, very insensitive, n.o.s., *or* Substances, EVI, n.o.s.	1.4C	UN0479	II	EXPLOSIVE 1.4C	101	None	62	None	Forbidden	75 kg	A	1E, 5E
Substances, explosives, n.o.s.	1.4D	UN0480	II	EXPLOSIVE 1.4D	101	None	62	None	Forbidden	75 kg	A	1E, 5E
Substances which in contact with water emit flammable gases, liquid, corrosive, n.o.s.	4.3	UN3129	I	DANGEROUS WHEN WET, CORROSIVE.		None	201	243	Forbidden	1 L	E	
			II	DANGEROUS WHEN WET, CORROSIVE.		None	202	243	1 L	5 L	E	
			III	DANGEROUS WHEN WET, CORROSIVE.		None	203	242	5 L	60 L	E	
Substances which in contact with water emit flammable gases, liquid n.o.s.	4.3	UN3148	I	DANGEROUS WHEN WET.		None	201	244	Forbidden	1 L	E	40
			II	DANGEROUS WHEN WET.		None	202	243	1 L	5 L	E	40
			III	DANGEROUS WHEN WET.		None	203	243	5 L	60 L	E	40
Substances which in contact with water emit flammable gases, liquid, poisonous, n.o.s.	4.3	UN3130	I	DANGEROUS WHEN WET, POISON.	A4	None	201	243	Forbidden	1 L	E	
			II	DANGEROUS WHEN WET, POISON.		None	202	243	1 L	5 L	E	
			III	DANGEROUS WHEN WET, POISON.		None	203	242	5 L	60 L	E	
Substances which in contact with water emit flammable gases, solid, corrosive, n.o.s.	4.3	UN3131	I	DANGEROUS WHEN WET, KEEP AWAY FROM FOOD. CORROSIVE.	N40	None	211	242	Forbidden	15 kg	E	
			II	DANGEROUS WHEN WET, CORROSIVE.		None	212	242	15 kg	50 kg	E	
			III	DANGEROUS WHEN WET, CORROSIVE.		None	213	241	25 kg	100 kg	E	
Substances which in contact with water emit flammable gases, solid, flammable n.o.s.	4.3	UN3132	I	DANGEROUS WHEN WET, FLAMMABLE SOLID.	N40	None	211	242	Forbidden	15 kg	E	
			II	DANGEROUS WHEN WET, FLAMMABLE SOLID.		None	212	242	15 kg	50 kg	E	
			III	DANGEROUS WHEN WET, FLAMMABLE SOLID.		None	213	241	25 kg	100 kg	E	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Substances which in contact with water emit flammable gases, solid n.o.s..	4.3	UN2813	I	DANGEROUS WHEN WET.	N40	None	211	242	Forbidden	15kg	E	40
				II	DANGEROUS WHEN WET.		None	212	242	15kg	50kg	E	40
				III	DANGEROUS WHEN WET.		None	213	242	25kg	100kg	E	40
	Substances which in contact with water emit flammable gases, solid, oxidizing, n.o.s..	4.3	UN3133		DANGEROUS WHEN WET, OXIDIZER.		None	214	214	Forbidden	Forbidden		
	Substances which in contact with water, emit flammable gases, solid, poisonous, n.o.s..	4.3	UN3134	I	DANGEROUS WHEN WET, POISON.	A5, N40	None	211	242	Forbidden	15kg	E	
				II	DANGEROUS WHEN WET, POISON.		None	212	242	15kg	50kg	E	
				III	DANGEROUS WHEN WET, KEEP AWAY FROM FOOD.		None	213	241	25kg	100kg	E	
	Substances which in contact with water emit flammable gases, solid, self-heating, n.o.s..	4.3	UN3135	I	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.	N40	None	211	242	Forbidden	15 kg	E	
				II	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.		None	212	242	15 kg	50 kg	E	
				III	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.		None	213	241	25 kg	100 kg	E	
	Substituted nitrophenol pesticides, liquid, flammable, toxic, n.o.s., *flash point less than 23 degrees C.*	3	UN2780	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	
	Substituted nitrophenol pesticides, liquid, toxic, flammable, n.o.s. *flashpoint not less than 23 degrees C.*	6.1	UN3013	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	B1, T14	153	203	242	60 L	220 L	A	40
	Substituted nitrophenol pesticides, liquid, toxic, n.o.s..	6.1	UN3014	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Substituted nitrophenol pesticides, solid, toxic, n.o.s..	6.1	UN2779	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	Sucrose octanitrate (dry)	Forbidden											
	Sulfamic acid	8	UN2967	III	CORROSIVE		154	213	240	25 kg	100 kg	A	

I	Sulfur	4.1	UN1350	III	FLAMMABLE SOLID	A1, N20	151	213	240	25 kg	100 kg	A	19, 74
D	Sulfur	9	NA1350	III	CLASS 9	A1, N20	151	213	240	25 kg	100 kg	A	19, 74
	Sulfur and chlorate, loose mixtures of	Forbidden											
	Sulfur chlorides	8	UN1828	I	CORROSIVE	5, A3, B10, B77, N34.	None	201	243	Forbidden	2.5 L	C	8, 40
	Sulfur dichloride, see Sulfur chlorides												
	Sulfur dioxide, liquefied	2.3	UN1079		POISON GAS	3, B14	None	304	314, 315	Forbidden	25 kg	D	40
	Sulfur dioxide solution, see Sulfurous acid												
	Sulfur hexafluoride	2.2	UN1080		NONFLAMMABLE GAS.		306	304	314, 315	75 kg	150 kg	A	
I	Sulfur, molten	4.1	UN2448	III	FLAMMABLE SOLID	B12, B85, T9	None	213	241	Forbidden	Forbidden	C	61
D	Sulfur, molten	9	NA2448	III	CLASS 9	B12, B85, T9	None	213	241	Forbidden	Forbidden	C	61
	Sulfur tetrafluoride	2.3	UN2418		POISON GAS	1	None	302	245	Forbidden	25 kg	D	40
+	Sulfur trioxide, inhibited	8	UN1829	I	CORROSIVE, POISON.	2, A7, B9, B12, B14, B32, B49, B74, B77, N34, T38, T43, T45.	None	227	244	Forbidden	25 kg	A	10, 40
+, D	Sulfur trioxide, uninhibited	8	NA1829	I	CORROSIVE, POISON.	2, A7, B9, B12, B14, B32, B49, B74, B77, N34, T38, T43, T45.	None	227	244	Forbidden	25 kg	A	10, 40
	Sulfuretted hydrogen, see Hydrogen sulfide, liquefied.												
	Sulfuric acid	8	UN1830	II	CORROSIVE	A3, A7, B2, B83, B84, N34, T9, T27.	154	202	242	1 L	30 L	C	14
+	Sulfuric acid, fuming *greater than or equal to 30 percent free sulfur trioxide.*	8	UN1831	I	CORROSIVE, POISON.	2, A3, A6, A7, B9, B14, B32, B74, B77, B84, N34, T38, T43, T45.	None	227	244	Forbidden	2.5 L	C	14, 40
	Sulfuric acid, fuming *less than 30 percent free sulfur trioxide.*	8	UN1831	I	CORROSIVE, POISON.	A3, A7, B84, N34, T18, T27.	None	201	243	Forbidden	2.5 L	C	14, 40
	Sulfuric acid, spent	8	UN1832	II	CORROSIVE	A3, A7, B2, B83, B84, N34, T9, T27.	None	202	242	Forbidden	30 L	C	14
	Sulfuric and hydrofluoric acid mixtures, *see* Hydrofluoric and sulfuric acid mixtures.												
	Sulfuric anhydride, see Sulfur trioxide, inhibited												
	Sulfurous acid	8	UN1833	II	CORROSIVE	B3, T8	154	202	242	1 L	30 L	B	40
+	Sulfuryl chloride	8	UN1834	I	CORROSIVE, POISON.	1, A3, B6, B9, B10, B14, B32, B74, B77, N34, T38, T43, T44.	None	226	244	0.5 L	2.5 L	C	8, 40
	Sulfuryl fluoride	2.3	UN2191		POISON GAS	4	None	304	314, 315	Forbidden	25 kg	D	40
	Tars, liquid *including road asphalt and oils, bitumen and cut backs.*	3	UN1999	II	FLAMMABLE LIQUID	T7, T30	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	
	Tear gas candles	6.1	UN1700	II	POISON, FLAMMABLE SOLID.		None	340	None	Forbidden	50 kg	D	40
	Tear gas cartridges, see Ammunition, tear-producing, *etc.*.												
D	Tear gas devices *with more than 2 per cent tear gas substances, by mass.*	6.1	NA1693	I	POISON		None	340	None	Forbidden	Forbidden	D	40, 95
				II	POISON		None	340	None	Forbidden	Forbidden	D	40, 95
	Tear gas devices, with not more than 2 per cent tear gas substances, by mass, see Aerosols, *etc.*.												
	Tear gas grenades, see Tear gas candles												
	Tear gas substances, n.o.s., liquid	6.1	UN1693	I	POISON		None	201	None	Forbidden	Forbidden	D	40
				II	POISON		None	202	None	Forbidden	5 L	D	40
	Tear gas substances, n.o.s., solid	6.1	UN1693	I	POISON		None	211	None	Forbidden	Forbidden	D	40
				II	POISON		None	212	None	Forbidden	25 kg	D	40
	Tellurium hexafluoride	2.3	UN2195		POISON GAS	1	None	302	None	Forbidden	Forbidden	D	40
	Terpene hydrocarbons, n.o.s.	3	UN2319	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Terpinolene	3	UN2541	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Tetraazido benzene quinone	Forbidden											
	Tetrabromoethane	6.1	UN2504	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A	
	Tetrachloroethane	6.1	UN1702	II	POISON	N36, T14	None	202	243	5 L	60 L	A	40
	Tetrachloroethylene	6.1	UN1897	III	KEEP AWAY FROM FOOD.	N36, T1	153	203	241	60 L	220 L	A	40
	Tetraethyl dithiopyrophosphate	6.1	UN1704	II	POISON		None	212	242	25 kg	100 kg	D	40
	Tetraethyl dithiopyrophosphate and gases in solution *or* tetraethyl dithiopyrophosphate and gas mixtures *LC50 over 200 but not greater than 5000 ppm.*	2.3	UN1703		POISON GAS	6	None	334	245	Forbidden	Forbidden	D	40
	Tetraethyl dithiopyrophosphate and gases in solution *or* Tetraethyl dithiopyrophosphate and gases mixtures *LC50 less than or equal to 200 ppm.*	2.3	UN1703		POISON GAS	1	None	334	245	Forbidden	Forbidden	D	40, 85, 95
D	Tetraethyl lead, liquid	6.1	NA1649	I	POISON, FLAMMABLE LIQUID.		None	201	None	Forbidden	Forbidden	E	40
	Tetraethyl pyrophosphate and compressed gas mixtures *LC50 less than or equal to 200 ppm.*	2.3	UN1705		POISON GAS	1	None	334	245	Forbidden	Forbidden	D	40, 85, 95
	Tetraethyl pyrophosphate and compressed gas mixtures) *LC50 over 200 ppm but not greater than 5000 ppm.*	2.3	UN1705		POISON GAS	6, B9, B14	None	334	314, 315	Forbidden	Forbidden	D	40
D	Tetraethyl pyrophosphate, *liquid*	6.1	NA3018	I	POISON		None	201	243	Forbidden	1 L	A	40
D	Tetraethyl pyrophosphate *solid*	6.1	NA2783	I	POISON	N77	None	211	242	Forbidden	50 kg	A	40
	Tetraethyl silicate	3	UN1292	III	FLAMMABLE LIQUID	B1, T1	150	203	241	60 L	220 L	A	
	Tetraethylammonium perchlorate (dry)	Forbidden											
	Tetraethylenepentamine	8	UN2320	III	CORROSIVE	T2	154	203	241	5 L	60 L	A	B
	Tetrafluoroethylene, inhibited	2.1	UN1081		FLAMMABLE GAS		306	304	None	Forbidden	150 kg	E	40
	Tetrafluoromethane, *R14*	2.2	UN1982		NONFLAMMABLE GAS.		None	302	None	75 kg	150 kg	A	
	1,2,3,6-Tetrahydrobenzaldehyde	3	UN2498	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Tetrahydrofuran	3	UN2056	II	FLAMMABLE LIQUID	T8	None	202	242	5 L	60 L	B	
	Tetrahydrofurfurylamine	3	UN2943	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Tetrahydrophthalic anhydrides *with more than 0.05 percent of maleic anhydride.*	8	UN2698	III	CORROSIVE		154	213	240	25 kg	100 kg	A	
	1,2,3,6-Tetrahydropyridine	3	UN2410	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Tetrahydrothiophene	3	UN2412	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	
	Tetramethylammonium hydroxide	8	UN1835	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	A	
	Tetramethylene diperoxide dicarbamide	Forbidden											
	Tetramethylsilane	3	UN2749	I	FLAMMABLE LIQUID	T21, T26	None	201	243	Forbidden	30 L	D	
	Tetranitro diglycerin	Forbidden											
	Tetranitroaniline	1.1D	UN0207	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E, 19E
+	Tetranitromethane	5.1	UN1510	I	OXIDIZER, POISON	2, B9, B14, B32, B74, T38, T43, T45.	None	227	None	Forbidden	Forbidden	D	40, 66, 105
	2,3,4,6-Tetranitrophenol	Forbidden											
	2,3,4,6-Tetranitrophenyl methyl nitramine	Forbidden											
	2,3,4,6-Tetranitrophenylnitramine	Forbidden											
	Tetranitroresorcinol (dry)	Forbidden											
	2,3,5,6-Tetranitroso-1,4-dinitrobenzene	Forbidden											
	2,3,5,6-Tetranitroso nitrobenzene (dry)	Forbidden											
	Tetrapropylorthotitanate	3	UN2413	III	FLAMMABLE LIQUID	B1, T8	150	202	242	5 L	60 L	A	
	Tetrazene, *see* Guanyl nitrosaminoguanvitetrazene												

	Tetrazine (dry)	Forbidden														
	Tetrazol-1-acetic acid	1.4C	UN0407	II	EXPLOSIVE 1.4C		None	82	None	Forbidden	75 kg	A	1E, 5E
	Tetrazolyl azide (dry)	Forbidden														
	Tetryl, *see* Trinitrophenylmethylnitramine															
	Thallium chlorate	5.1	UN2573	II	OXIDIZER, POISON		None	212	242	5 kg	25 kg	A	56, 58, 106
	Thallium compounds, n.o.s.	6.1	UN1707	III	POISON		None	212	242	25 kg	100 kg	A	
	Thallium nitrate	6.1	UN2727	II	POISON, OXIDIZER		None	212	242	5 kg	25 kg	A	89
	Thallium sulfate, solid	6.1	NA1707	II	POISON		None	211	242	5 kg	50 kg	A	
D	Thia-4-pentanal	6.1	UN2765	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	D	25, 49
	Thioacetic acid	3	UN2436	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Thiocarbonylchloride, see Thiophosgene												
	Thioglycol	6.1	UN2966	II	POISON	T8	None	202	243	5 L	60 L	A	
	Thioglycolic acid	8	UN1940	II	CORROSIVE	A7, B2, N34, T8.	154	202	242	1 L	30 L	A	
	Thiolactic acid	6.1	UN2936	II	POISON	T8	None	212	242	25 kg	100 kg	A	
+	Thionyl chloride	8	UN1836	I	CORROSIVE, POISON.	2, A3, A10, B6, B9, B14, B32, B74, B77, N34, T38, T43, T45.	None	227	244	Forbidden	2.5 L	C	8, 40
	Thiophene	3	UN2414	II	FLAMMABLE LIQUID	T2	150	202	242	5 L	60 L	B	40
+	Thiophosgene	6.1	UN2474	II	POISON	2, A7, B9, B14, B32, B74, N33, N34, T38, T43, T45.	None	227	244	Forbidden	60 L	B	26, 40
	Thiophosphoryl chloride	8	UN1837	II	CORROSIVE	A3, A7, B2, B8, B25, N34, T12.	None	202	242	Forbidden	30 L	C	8, 40
	Thorium metal, pyrophoric	7	UN2975		RADIOACTIVE, SPONTANEOUSLY COMBUSTIBLE.		None	418	None	Forbidden	Forbidden	D	
	Thorium nitrate, solid	7	UN2976		RADIOACTIVE, OXIDIZER.		None	419	None	Forbidden	15 kg	A	
	Tin chloride, fuming, see Stannic chloride, anhydrous.												
	Tin perchloride or Tin tetrachloride, see Stannic chloride, anhydrous.												
	Tinctures, medicinal	3	UN1293	II	FLAMMABLE LIQUID	T8, T31	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	241	60 L	220 L	A	
	Tinning flux, see Zinc chloride												
	Titanium hydride	4.1	UN1871	II	FLAMMABLE SOLID	A19, A20, N34	None	212	241	15 kg	50 kg	E	
	Titanium powder, dry	4.2	UN2546	I	SPONTANEOUSLY COMBUSTIBLE.		None	211	242	Forbidden	Forbidden	D	
				II	SPONTANEOUSLY COMBUSTIBLE.	A19, A20, N5, N34.	None	212	241	15 kg	50 kg	D	
				III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	25 kg	100 kg	D	
	Titanium powder, wetted *with not less than 25 per cent water (a visible excess of water must be present) (a) mechanically produced, particle size less than 53 microns; (b) chemically produced, particle size less than 840 microns.*	4.1	UN1352	II	FLAMMABLE SOLID	A19, A20, N34	None	212	240	15 kg	50 kg	E	
	Titanium sponge granules *or* Titanium sponge powders.	4.1	UN2878	III	FLAMMABLE SOLID	A1	None	213	240	25 kg	100 kg	D	
D	Titanium sulfate solution	8	NA1760	II	CORROSIVE	B2, B15	None	213	242	1 L	30 L	B	40
+	Titanium tetrachloride	8	UN1838	II	CORROSIVE, POISON.	2, A3, A6, B7, B9, B14, B32, B41, B74, N41, T38, T43, T45.	None	227	244	Forbidden	30 L	C	8, 40
	Titanium trichloride mixtures	8	UN2869	II	CORROSIVE	A7, N34	154	212	240	15 kg	50 kg	A	40
	Titanium trichloride, pyrophoric *or* Titanium trichloride mixtures, pyrophoric.	4.2	UN2441	I	SPONTANEOUSLY COMBUSTIBLE, CORROSIVE.	A7, A8, A19, A20, N34.	None	181	244	Forbidden	Forbidden	D	40
	TNT mixed with aluminum, see Tritonal												
	TNT, *see* Trinitrotoluene, *etc.*												
	Toe puffs, *nitrocellulose base*	4.1	UN1353	III	FLAMMABLE SOLID	A1	None	213	240	25 kg	100 kg	D	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Toluene	3	UN1294	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Toluene diisocyanate	6.1	UN2078	II	POISON	T14	None	202	243	5 L	60 L	B	25, 40
	Toluene sulfonic acid, *see* Alkyl, Aryl *or* Toluene sulfonic acid *etc.*.												
	Toluidines *liquid*	6.1	UN1708	II	POISON	T14	None	202	243	5 L	60 L	A	
	Toluidines *solid*	6.1	UN1708	II	POISON		None	212	241	25 kg	100 kg	A	
	2,4-Toluylenediamine *or* 2,4-Toluenediamine	6.1	UN1709	III	KEEP AWAY FROM FOOD.	T7	153	213	240	100 kg	200 kg	A	
	Torpedoes, liquid fuelled, *with inert head*	1.3J	UN0450	II	EXPLOSIVE 1.3J		63(b)	62	None	Forbidden	Forbidden	E	7E, 16E, 23E
	Torpedoes, liquid fuelled, *with or without bursting charge*.	1.1J	UN0449	II	EXPLOSIVE 1.1J		63(b)	62	None	Forbidden	Forbidden	E	7E, 16E, 23E
	Torpedoes *with bursting charge*	1.1E	UN0329	II	EXPLOSIVE 1.1E		63(b)	62	None	Forbidden	Forbidden	B	
	Torpedoes *with bursting charge*	1.1F	UN0330	II	EXPLOSIVE 1.1F		63(b)	62	None	Forbidden	Forbidden	B	
	Torpedoes *with bursting charge*	1.1D	UN0451	II	EXPLOSIVE 1.1D		63(b)	62	None	Forbidden	Forbidden	B	
	Tracers for ammunition	1.3G	UN0212	II	EXPLOSIVE 1.3G		None	62	None	Forbidden	Forbidden	B	
	Tracers for ammunition	1.4G	UN0306	II	EXPLOSIVE 1.4G		None	62	None	Forbidden	75 kg	A	24E
	Tractors, see Vehicles, self propelled												
	Tri-(b-nitroxyethyl) ammonium nitrate	Forbidden											
	Triallyl borate	6.1	UN2609	III	KEEP AWAY FROM FOOD.		153	203	241	60 L	220 L	A	13
	Triallylamine	3	UN2610	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	40
	Triazine pesticides, liquid, flammable, toxic, n.o.s., *flash point less than 23deg C.*	3	UN2764	I	FLAMMABLE LIQUID, POISON.		None	201	243	Forbidden	30 L	B	
				II	FLAMMABLE LIQUID, POISON.		None	202	243	1 L	60 L	B	
	Triazine pesticides, liquid, toxic, flammable, n.o.s. *flashpoint not less than 23 degrees C.*	6.1	UN2997	I	POISON, FLAMMABLE LIQUID.	T42	None	201	243	1 L	30 L	B	40
				II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD, FLAMMABLE LIQUID.	T14	153	203	242	60 L	220 L	A	40
	Triazine pesticides, liquid, toxic, n.o.s.	6.1	UN2998	I	POISON	T42	None	201	243	1 L	30 L	B	40
				II	POISON	T14	None	202	243	5 L	60 L	B	40
				III	KEEP AWAY FROM FOOD.	T14	153	203	241	60 L	220 L	A	40
	Triazine pesticides, solid, toxic, n.o.s.	6.1	UN2763	I	POISON		None	211	242	5 kg	50 kg	A	40
				II	POISON		None	212	242	25 kg	100 kg	A	40
				III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	40
	Tributylamine	8	UN2542	III	CORROSIVE	T2	None	203	241	5 L	60 L	A	
D	(mono-(Trichloro) tetra-(monopotassium dichloro)-penta-s-triazinetrione, dry (*containing over 39% available chlorine*).	5.1	NA2468	II	OXIDIZER		152	212	240	5 kg	25 kg	A	13
	Trichloro-s-triazinetrione dry, containing over 39% available chlorine, see Trichloroisocyanuric acid, dry.												
	Trichloroacetic acid	8	UN1839	II	CORROSIVE	A7, N34	154	212	240	15 kg	50 kg	A	
	Trichloroacetic acid, solution	8	UN2564	II	CORROSIVE	A3, A6, A7, B2, N34, T8.	154	202	242	1 L	30 L	B	5
+	Trichloroacetyl chloride	8	UN2442	II	CORROSIVE, POISON.	1, A3, A7, B9, B14, B30, B72, N34, T38, T43, T44.	None	226	244	Forbidden	Forbidden	D	40

	Trichlorobenzenes, liquid	6.1	UN2321	III	KEEP AWAY FROM FOOD.	T7	153	203	241	60 L	220 L	A		
	Trichlorobutene	6.1	UN2322	II	POISON	T8	None	202	243	5 L	60 L	A	25, 40, 48	
	1,1,1-Trichloroethane	6.1	UN2831	III	KEEP AWAY FROM FOOD.	N36, T7	153	203	241	60 L	220 L	A	40	
	Trichloroethylene	6.1	UN1710	III	KEEP AWAY FROM FOOD.	N36, T1	153	203	241	60 L	220 L	A	40	
	Trichloroisocyanuric acid, dry	5.1	UN2468	II	OXIDIZER		152	212	240	5 kg	25 kg	A	13	
	Trichloromethyl perchlorate	Forbidden												
	Trichlorosilane	4.3	UN1295	I	DANGEROUS WHEN WET, FLAMMABLE LIQUID, CORROSIVE.	A7, N34, T24, T26.	None	201	244	Forbidden	Forbidden	D	21, 28, 40, 49, 100	
	Tricresyl phosphate *with more than 3 per cent ortho isomer.*	6.1	UN2574	II	POISON	A3, N33, N34, T8.	None	202	243	5 L	60 L	A		
	Triethyl phosphite	3	UN2323	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
	Triethylamine	3	UN1296	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	40	
	Triethylenetetramine	8	UN2259	II	CORROSIVE	B2, T8	154	202	242	1 L	30 L	B	40	
	Trifluoroacetic acid	8	UN2699	I	CORROSIVE	A3, A6, A7, B4, N3, N34, T18, T27.	None	201	242	0.5 L	2.5 L	B	12, 40, 48	
	Trifluoroacetylchloride	2.2	UN3057		NONFLAMMABLE GAS, CORROSIVE.	B44	None	304	314, 315	Forbidden	25kg	D	40	
	Trifluorochloroethylene, inhibited, *R1113*	2.1	UN1082		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	B	40	
	Trifluoroethane, compressed, *R143*	2.1	UN2035		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	B	40	
	Trifluoromethane	2.2	UN1984		NONFLAMMABLE GAS.		306	304	314, 315	75 kg	150 kg	A		
D	Trifluoromethane and chlorotrifluoromethane mixture (*constant boiling mixture*) (*R-503*). *See* Refrigerant gases, n.o.s.													
	Trifluoromethane, refrigerated, liquid	2.2	UN3135		NONFLAMMABLE GAS.		306	None	314, 315	50 kg	500 kg	A		
	3-Trifluoromethylaniline	6.1	UN2948	II	POISON	T14	None	202	243	5 L	60 L	A	40	
	2-Trifluoromethylaniline	6.1	UN2942	III	KEEP AWAY FROM FOOD.		153	203	241	60 L	220 L	A		
	Triformoxime trinitrate	Forbidden												
	Triisobutylene	3	UN2324	III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A		
	Triisocyanatoisocyanurate of isophoronediisocyanate, solution, *70 per cent, by mass.*	3	UN2906	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A		
	Triisopropyl borate	3	UN2616	III	FLAMMABLE LIQUID	B1, T8, T31	150	202	242	60 L	220 L	A		
D	Trimethoxysilane	6.1	NA9269	I	POISON, FLAMMABLE LIQUID.	2, B9, B14, B32, B74, T38, T43, T45.	None	227	244	Forbidden	Forbidden	E	40	
	Trimethyl borate	3	UN2416	II	FLAMMABLE LIQUID	T14	150	202	242	5 L	60 L	B		
	Trimethyl phosphite	3	UN2329	III	FLAMMABLE LIQUID	T1	150	203	242	60 L	220 L	A		
	1,3,5-Trimethyl-2,4,6-trinitrobenzene	Forbidden												
+	Trimethylacetyl chloride	8	UN2438	II	CORROSIVE, FLAMMABLE LIQUID, POISON.	2, A3, A6, A7, B3, B9, B14, B32, B74, N34, T38, T43, T45.	None	227	244	1 L	30 L	D	12, 21, 25, 40, 48	
	Trimethylamine, anhydrous	2.1	UN1083		FLAMMABLE GAS		306	304	314, 315	Forbidden	150 kg	B	40	
	Trimethylamine, aqueous solutions *not more than 50 per cent trimethylamine by mass.*	3	UN1297	I	FLAMMABLE LIQUID	T42	150	202	242	5 L	60 L	D	40, 41	
				II	FLAMMABLE LIQUID	B1, T14	150	203	242	60 L	220 L	B	40, 41	
	1,3,5-Trimethylbenzene	3	UN2325	III	FLAMMABLE LIQUID	B1, T1	None	203	242	60 L	220 L	A		
	Trimethylchlorosilane	3	UN1298	I	FLAMMABLE LIQUID, CORROSIVE.	A3, A7, B77, N34, T14, T26.	None	201	243	Forbidden	2.5 L	E	40	
	Trimethylcyclohexylamine	8	UN2326	III	CORROSIVE	T2	154	203	241	5 L	60 L	A	8	
	Trimethylene glycol diperchlorate	Forbidden												
	Trimethylhexamethylene diisocyanate	6.1	UN2328	III	KEEP AWAY FROM FOOD.	T8	153	203	241	60 L	220 L	B		

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Trimethylhexamethylenediamines	8	UN2327	III	CORROSIVE	T7	154	203	241	5 L	60 L	A	B
	Trimethylol nitromethane trinitrate	Forbidden											
	Trinitro-meta-cresol	1.1D	UN0216	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	2,4,6-Trinitro-1,3-diazobenzene	Forbidden											
	2,4,6-Trinitro-1,3,5-triazido benzene (dry)	Forbidden											
	Trinitroacetic acid	Forbidden											
	Trinitroacetonitrile	Forbidden											
	Trinitroamine cobalt	Forbidden											
	Trinitroaniline *or* Picramide	1.1D	UN0153	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Trinitroanisole	1.1D	UN0213	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Trinitrobenzene, *dry or wetted with less than 30 per cent water, by mass.*	1.1D	UN0214	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Trinitrobenzene, wetted *with not less than 30 per cent water, by mass.*	4.1	UN1354	I	FLAMMABLE SOLID	A2, A8, A19, N41.	None	211	None	0.5 kg	0.5 kg	E	28, 36
	Trinitrobenzenesulfonic acid	1.1D	UN0386	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	E	1E, 5E, 19E
	Trinitrobenzoic acid, *dry or wetted with less than 30 per cent water, by mass.*	1.1D	UN0215	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitrobenzoic acid, wetted *with not less than 30 per cent water, by mass.*	4.1	UN1355	I	FLAMMABLE SOLID	A2, A8, A19, N41.	None	211	None	0.5 kg	0.5 kg	E	28, 36
	Trinitrochlorobenzene *or* Picryl chloride	1.1D	UN0155	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitroethanol	Forbidden											
	Trinitroethylnitrate	Forbidden											
	Trinitrofluorenone	1.1D	UN0387	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Trinitromethane	Forbidden											
	1,3,5-Trinitronaphthalene	Forbidden											
	Trinitronaphthalene	1.1D	UN0217	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Trinitrophenetole	1.1D	UN0218	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E, 19E
	Trinitrophenol *or* Picric acid, *dry or wetted with less than 30 per cent water, by mass.*	1.1D	UN0154	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitrophenol, wetted *with not less than 30 per cent water, by mass.*	4.1	UN1344	I	FLAMMABLE SOLID	A8, A19, N41	None	211	None	1 kg	15 kg	E	28, 36, 48
	2,4,6-Trinitrophenyl guanidine (dry)	Forbidden											
	2,4,6-Trinitrophenyl nitramine	Forbidden											
	2,4,6-Trinitrophenyl trimethylol methyl nitramine trinitrate (dry).	Forbidden											
	Trinitrophenylmethylnitramine *or* Tetryl	1.1D	UN0208	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitroresorcinol *or* Styphnic acid, *dry or wetted with less than 20 per cent water, or mixture of alcohol and water, by mass.*	1.1D	UN0219	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitroresorcinol, wetted *or* Styphnic acid, wetted *with not less than 20 per cent water, or mixture of alcohol and water by mass.*	1.1D	UN0394	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	2,4,6-Trinitroso-3-methyl nitraminoanisole	Forbidden											
	Trinitrotetramine cobalt nitrate	Forbidden											
	Trinitrotoluene and Trinitrobenzene mixtures *or* Trinitrotoluene *or* TNT and trinitrobenzene mixtures *or* TNT and hexanitrostilbene mixturesand Hexanitrostilbene mixtures.	1.1D	UN0388	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E, 19E

	Trinitrotoluene mixtures containing Trinitrobenzene and Hexanitrostilbene *or* TNT mixtures containing trinitrobenzene and hexanitrostilbene.	1.1D	UN0389	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitrotoluene *or* TNT, *dry or wetted with less than 30 per cent water, by mass.*	1.1D	UN0209	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Trinitrotoluene, *wetted with not less than 30 per cent water, by mass.*	4.1	UN1356	I	FLAMMABLE SOLID	A2, A8, A19, N41.	None	211	None	0.5 kg	0.5 kg	E	28, 36
	Tripropylamine	3	UN2260	III	FLAMMABLE LIQUID, CORROSIVE.	B1, T8	None	202	243	1 L	5 L	A	40
	Tripropylene	3	UN2057	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Tris-(1-aziridinyl)phosphine oxide, solution	6.1	UN2501	II	POISON	T8	None	202	243	5 L	60 L	A	
	Tris, bis-difluoroamino diethoxy propane (TVOPA)	Forbidden											
	Tritonal	1.1D	UN0390	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Tungsten hexafluoride	2.3	UN2196		POISON GAS	3	None	338	None	Forbidden	Forbidden	D	40
	Turpentine	3	UN1299	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Turpentine substitute	3	UN1300	I	FLAMMABLE LIQUID	T1	None	201	243	1 L	30 L	B	
				II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Undecane	3	UN2330	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Uranium hexafluoride, fissile (*containing more than 1% U-235*).	7	UN2977		RADIOACTIVE, CORROSIVE.		453	417	417			A	
	Uranium hexafluoride, *fissile excepted or non-fissile*	7	UN2978		RADIOACTIVE, CORROSIVE.		421	425	425				
	Uranium metal, pyrophoric	7	UN2979		RADIOACTIVE, SPONTANEOUSLY COMBUSTIBLE.		None	418	None			D	
	Uranyl nitrate hexahydrate solution	7	UN2980		RADIOACTIVE, CORROSIVE.		421, 425	415, 416, 417	415, 416, 417			D	
	Uranyl nitrate, solid	7	UN2981		RADIOACTIVE, OXIDIZER.		None	419	None	Forbidden	15 kg	A	
	Urea hydrogen peroxide	5.1	UN1511	III	OXIDIZER	A1, A7, A28	152	213	240	25 kg	100 kg	A	13
	Urea nitrate, *dry or wetted with less than 20 per cent water, by mass.*	1.1D	UN0220	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Urea nitrate, wetted *with not less than 20 per cent water, by mass.*	4.1	UN1357	I	FLAMMABLE SOLID	A8, A19, N41	None	211	None	1 kg	15 kg	A	28
	Urea peroxide, see Urea hydrogen peroxide												
	Valeraldehyde	3	UN2058	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
	Valeric acid, see Corrosive liquids, n.o.s.												
	Valeryl chloride	8	UN2502	II	CORROSIVE	A3, A6, A7, B2, N34, T8.	154	202	242	1 L	30 L	C	23, 40
	Vanadium oxytrichloride	8	UN2443	II	CORROSIVE	A3, A6, A7, B2, B16, N34, T8, T26.	154	202	242	Forbidden	30 L	C	40
	Vanadium pentoxide, *nonfused form*	6.1	UN2862	II	POISON		None	212	242	25 kg	100 kg	A	
	Vanadium tetrachloride	8	UN2444	I	CORROSIVE	A3, A6, A7, B4, N34, T8, T26.	None	201	242	Forbidden	2.5 L	C	8, 40
AW	Vanadium trichloride	8	UN2475	III	CORROSIVE		154	213	240	25 kg	100 kg	A	40
	Vanadium trioxide, *nonfused form*	6.1	UN2860	II	POISON		None	212	242	25 kg	100 kg	A	
	Vanadyl sulfate	6.1	UN2931	II	POISON		None	212	242	25 kg	100 kg	A	
D	Vehicles, self-propelled *including internal combustion engines or other apparatus containing an internal combustion engine or electric storage battery*(*see also* Wheel chair, electric).	9	None	III	CLASS 9		220	220	None	No limit	No limit	A	
	Very signal cartridge, see Cartridges, signal												
	Vinyl acetate, inhibited	3	UN1301	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Vinyl bromide, inhibited	2.1	UN1085		FLAMMABLE GAS		306	304	None	Forbidden	150 kg	B	40
	Vinyl butyrate, inhibited	3	UN2838	II	FLAMMABLE LIQUID	T7	150	202	242	5 L	60 L	B	
	Vinyl chloride, inhibited	2.1	UN1086		FLAMMABLE GAS	B44	306	304	314, 315	Forbidden	150 kg	B	40
	Vinyl chloroacetate	6.1	UN2589	II	POISON, FLAMMABLE LIQUID.	T14	None	202	243	5 L	60 L	A	
	Vinyl ethyl ether, inhibited	3	UN1302	II	FLAMMABLE LIQUID	A3, T14	None	201	243	1 L	30 L	E	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or rail car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Vinyl fluoride, inhibited	2.1	UN1860		FLAMMABLE GAS	B43	306	304	314, 315	Forbidden	150 kg	E	40
	Vinyl isobutyl ether, inhibited	3	UN1304	II	FLAMMABLE LIQUID	T8	150	202	242	5 L	60 L	B	
	Vinyl methyl ether, inhibited	2.1	UN1087		FLAMMABLE GAS	B44	306	304	314, 315	Forbidden	150 kg	B	40
	Vinyl nitrate polymer	Forbidden											
	Vinyl toluene, inhibited *mixed isomers*	3	UN2618	III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Vinylidene chloride, inhibited	3	UN1303	I	FLAMMABLE LIQUID	T23, T29	150	201	243	1 L	30 L	E	40
	Vinylpyridenes, inhibited	6.1	UN3073	II	POISON, FLAMMABLE LIQUID.	T8	None	212	243	5 L	60 L	B	40
	Vinyltrichlorosilane	3	UN1305	I	FLAMMABLE LIQUID, CORROSIVE.	A3, A7, B6, N34, T14, T26.	None	201	243	Forbidden	2.5 L	B	40
	Warheads, rocket *with burster or expelling charge*	1.4D	UN0370	II	EXPLOSIVE 1.4D		None	62	None	Forbidden	75 kg	A	3E, 7E, 24E
	Warheads, rocket *with burster or expelling charge*	1.4F	UN0371	II	EXPLOSIVE 1.4F		None	62	None	Forbidden	Forbidden	E	
	Warheads, rocket *with bursting charge*	1.1D	UN0286	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	3E, 7E
	Warheads, rocket *with bursting charge*	1.2D	UN0287	II	EXPLOSIVE 1.2D		None	62	None	Forbidden	Forbidden	B	3E, 7E
	Warheads, rocket *with bursting charge*	1.1F	UN0369	II	EXPLOSIVE 1.1F		None	62	None	Forbidden	Forbidden	E	
	Warheads, torpedo *with bursting charge*	1.1D	UN0221	II	EXPLOSIVE 1.1D		None	62	None	Forbidden	Forbidden	B	3E, 7E
	Water reactive substances, n.o.s., see Substances which in contact with water, etc..												
AD	Wheel chair, electric (*spillable or non-spillable type batteries*).	9	None	III	CLASS 9		222	222	None	No limit	No limit	A	
	White acid, see Hydrofluoric acid mixtures												
	White asbestos, (chrysotile, actinolite, anthophyllite, tremolite).	9	UN2590	III	CLASS 9		155	216	240	200 kg	200 kg	A	34, 40
	Wood preservatives, liquid	9	UN1306	II	FLAMMABLE LIQUID	T7, T30	150	202	242	5 L	60 L	B	40
				III	FLAMMABLE LIQUID	B1, T7, T30	150	203	242	60 L	220 L	A	40
	Xenon	2.2	UN2036		NONFLAMMABLE GAS.		306	302	None	75 kg	150 kg	A	
	Xenon, refrigerated liquid (*cryogenic liquids*)	2.2	UN2591		NONFLAMMABLE GAS.		320	None	None	50 kg	500 kg	B	
	Xylenes	3	UN1307	II	FLAMMABLE LIQUID	T1	150	202	242	5 L	60 L	B	
				III	FLAMMABLE LIQUID	B1, T1	150	203	242	60 L	220 L	A	
	Xylenols	6.1	UN2261	II	POISON	T8	None	212	243	25 kg	100 kg	A	
	Xylidines, solid *or* solution	6.1	UN1711	II	POISON	T14	None	202	243	5 L	60 L	A	
	Xylyl bromide	6.1	UN1701	II	POISON	A3, A6, A7, N33.	None	340	None	Forbidden	60 L	D	40
	p-Xylyl diazide	Forbidden											
	Zinc ammonium nitrite	5.1	UN1512	II	OXIDIZER		None	212	242	5 kg	25 kg	E	
	Zinc arsenate *or* Zinc arsenite *or* Zinc arsenate and Zinc arsenite mixtures.	6.1	UN1712	II	POISON		None	212	242	25 kg	100 kg	A	
	Zinc ashes	4.3	UN1435	III	DANGEROUS WHEN WET.	A1, A19	None	213	241	25 kg	100 kg	A	
	Zinc bisulfite solution *see* Bisulfites, inorganic aqueous solutions, n.o.s.												
	Zinc bromate	5.1	UN2469	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	56, 58, 106
	Zinc chlorate	5.1	UN1513	II	OXIDIZER	A9, N34	152	212	242	5 kg	25 kg	A	56, 58, 106
	Zinc chloride, anhydrous	8	UN2331	III	CORROSIVE		None	213	240	25 kg	100 kg	A	
	Zinc chloride, solution	8	UN1840	III	CORROSIVE	T7	154	203	241	5 L	60 L	A	
	Zinc cyanide	6.1	UN1713	I	POISON		None	211	242	5 kg	50 kg	A	26

	Zinc dithionite *or* Zinc hydrosulfite	9	UN1931	III	None		155	204	240	100 kg	200 kg	A	13, 49, 102
	Zinc ethyl, see Diethylzinc												
	Zinc fluorosilicate	6.1	UN2855	III	KEEP AWAY FROM FOOD.		153	213	240	100 kg	200 kg	A	26
	Zinc hydrosulfite, *see* Zinc dithionite												
	Zinc muriate solution, see Zinc chloride, solution												
	Zinc nitrate	5.1	UN1514	II	OXIDIZER		152	212	240	5 kg	25 kg	A	
	Zinc permanganate	5.1	UN1515	II	OXIDIZER		152	212	242	5 kg	25 kg	D	56, 58, 69, 106, 107
	Zinc peroxide	5.1	UN1516	II	OXIDIZER		152	212	242	5 kg	25 kg	A	13, 75, 106
	Zinc phosphide	4.3	UN1714	I	DANGEROUS WHEN WET, POISON.	A19, N40	None	211	None	Forbidden	15 kg	E	40, 85
	Zinc powder *or* Zinc dust	4.3	UN1436	I	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.	A19, N40	None	211	242	Forbidden	15kg	A	
				II	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.	A19	None	212	242	15 kg	50 kg	A	
				III	DANGEROUS WHEN WET, SPONTANEOUSLY COMBUSTIBLE.		None	213	242	25kg	100kg	A	
	Zinc resinate	4.1	UN2714	III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	A	
	Zinc selenate, *see* Selenates *or* Selenites												
	Zinc selenite, *see* Selenates *or* Selenites												
	Zinc silicofluoride, see Zinc fluorosilicate												
	Zirconium, dry, *coiled wire, finished metal sheets, strip (thinner than 254 microns but not thinner than 18 microns).*	4.1	UN2858	III	FLAMMABLE SOLID	A1	151	213	240	25 kg	100 kg	A	
	Zirconium, dry, *finished sheets, strip or coiled wire*	4.2	UN2009	III	SPONTANEOUSLY COMBUSTIBLE.	A1, A19	None	213	240	25 kg	100 kg	D	
	Zirconium hydride	4.1	UN1437	II	FLAMMABLE SOLID	A19, A20, N34	None	212	240	15 kg	50 kg	E	
	Zirconium nitrate	5.1	UN2728	III	OXIDIZER	A1, A29	152	213	240	25 kg	100 kg	A	
	Zirconium picramate, *dry or wetted with less than 20 per cent water, by mass.*	1.3C	UN0236	II	EXPLOSIVE 1.3C		None	62	None	Forbidden	Forbidden	B	1E, 5E
	Zirconium picramate, wetted *with not less than 20 per cent water, by mass.*	4.1	UN1517	I	FLAMMABLE SOLID	N41	None	211	None	1 kg	15 kg	D	28, 36
	Zirconium powder, dry	4.2	UN2008	I	SPONTANEOUSLY COMBUSTIBLE.		None	211	242	Forbidden	Forbidden	D	
				II	SPONTANEOUSLY COMBUSTIBLE.	A19, A20, N5, N34.	None	212	241	15 kg	50 kg	D	
				III	SPONTANEOUSLY COMBUSTIBLE.		None	213	241	25kg	100kg	D	
	Zirconium powder, wetted *with not less than 25 per cent water (a visible excess of water must be present) (a) mechanically produced, particle size less than 53 microns; (b) chemically produced, particle size less than 840 microns.*	4.1	UN1358	II	FLAMMABLE SOLID	A19, A20, N34	None	212	241	15 kg	50 kg	E	
	Zirconium scrap	4.2	UN1932	III	SPONTANEOUSLY COMBUSTIBLE.	N34	None	213	240	Forbidden	Forbidden	D	
D	Zirconium sulfate	8	NA9163	III	CORROSIVE	N34	None	213	240	50 kg	No limit	A	
	Zirconium suspended in a liquid	3	UN1308	II	FLAMMABLE LIQUID		None	202	242	Forbidden	60 L	B	
	Zirconium tetrachloride	8	UN2503	III	CORROSIVE		154	213	240	25 kg	100 kg	A	

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33. In § 172.102, the second sentence in paragraph (a) is revised and paragraphs (a)(1) and (2) are added, and in paragraph (c), the following special provisions are added, revised, or removed as indicated:

a. In paragraph (c)(1), Special Provisions 7, 10, 15, 16, 18, and 20 are added; and Special Provisions 1, 2, 3, 4, 5, 8, 13, 53, 110, 112, and 114 are revised.

b. In paragraph (c)(2), Special Provisions A12 and A34 are added.

c. In paragraph (c)(3), Special Provisions B3, B10, B48, and B82 are added; Special Provisions B2, B4, B5, B11, B14, B16, B26, B30, B31, B32, B33, B37, B58, B59, B66, B67, B68, B74, and B79 are revised; and Special Provisions B13, B34, B35, B36, B40, B51, B73 and B75 are removed.

d. In paragraph (c)(5), Special Provisions N9, N10, N11, N20, N81, and N82 are added and Special Provision N45 is revised.

e. In paragraph (c)(7)(i) table, Special Provision T22 is added; in paragraph (c)(7)(ii), Special Provisions T28, T34, and T37 are added, and Special Provisions T29, T30, and T38 are revised.

§ 172.102 Special provisions.

(a) * * * When a special provision specifies packaging or packaging requirements—

(1) The special provision is in addition to the standard requirements for all packagings prescribed in § 173.24 of this subchapter and any other applicable packaging requirements in subparts A and B of part 173 of this subchapter; and

(2) To the extent a special provision imposes limitations or additional requirements on the packaging provisions set forth in Column 8 of the § 172.101 Table, packagings must conform to the requirements of the special provision.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

1 This material is poisonous by inhalation (see § 171.8 of this subchapter) in Hazard Zone A (see § 173.115(a) or § 173.133(a) of this subchapter), and must be described as an inhalation hazard under the provisions of this subchapter.

2 This material is poisonous by inhalation (see § 171.8 of this subchapter) in Hazard Zone B (see § 173.116(a) or § 173.133(a) of this subchapter), and must be described as an inhalation hazard under the provisions of this subchapter.

3 This material is poisonous by inhalation (see § 171.8 of this subchapter) in Hazard Zone C (see § 173.116(a) of this subchapter), and must be described as an inhalation hazard under the provisions of this subchapter.

4 This material is poisonous by inhalation (see § 171.8 of this subchapter) in Hazard Zone C (see § 173.116(a) of this subchapter), and must be described as an inhalation hazard under the provisions of this subchapter.

5 If this material meets the definition for a material poisonous by inhalation (see § 171.8 of this subchapter), a shipping name must be selected which identifies the inhalation hazard, in Division 2.3 or Division 6.1, as appropriate.

* * * * *

7 An ammonium nitrate fertilizer is a fertilizer formulation, containing 90% or more ammonium nitrate and no more than 0.2% organic combustible material (calculated as carbon), which does not meet the definition and criteria of a Class 1 (explosive) material (See § 173.50 of this subchapter).

8 A hazardous substance that is not a hazardous waste may be shipped under the shipping description "Other regulated substances, liquid *or* solid, n.o.s.", as appropriate. In addition, for solid materials, special provision B54 applies.

* * * * *

10 An ammonium nitrate mixed fertilizer is a fertilizer formulation, containing less than 90% ammonium nitrate and other ingredients, which does not meet the definition and criteria of a Class 1 (explosive) material (See § 173.50 of this subchapter).

* * * * *

13 The words "Inhalation Hazard" shall be entered on each shipping paper in association with the shipping description, shall be marked on each non-bulk package in association with the proper shipping name and identification number, and shall be marked on two opposing sides of each bulk package. Size of marking on bulk package must conform to § 172.302(b) of this subchapter. The requirements of §§ 172.203(m) and 172.505 of this subchapter do not apply.

* * * * *

15 Chemical kits include boxes, cases, etc., containing small amounts of various compatible dangerous goods which are used for medical, analytical or testing purposes and for which exceptions are provided in this subchapter. Inner packagings must not exceed 250 mL for liquids or 250 g for solids and must be protected from other materials in the kit. For transportation by aircraft, any dangerous goods forbidden in passenger aircraft may not be included in these kits. Kits must be packed in wooden boxes (4C1, 4C2), plywood boxes (4D), reconstituted wood boxes (4F), fiberboard boxes (4G) or plastic boxes (4H1, 4H2) which must be marked 'Chemical kits.' Each package shall be classified for the material contained therein; if two or more different classes of material are present the class of the package shall be determined in accordance with § 173.2a of this subchapter. Each package must be labeled according to each substance contained in the package; this includes the primary hazard label and any subsidiary risk labels applicable to each individual substance within the kit. The total quantity of dangerous goods in any one kit must not exceed either 1 L or 1 kg. The total quantity of dangerous goods in any one package must not exceed either 10 L or 10 kg. The packing group assigned to the kit as a whole must be the most stringent packing group assigned to any individual substance contained in the kit.

16 This description applies only to materials that have been classed as Division 1.3.

* * * * *

18 This article and its packaging must be approved by the Associate Administrator for Hazardous Materials Safety.

20 The transport of this substance, when in concentrations of greater than 10% nitroglycerin, is prohibited. Concentrations of below 5% nitroglycerin may be transported as a Class 3 material; see UN 1204 and UN 3064.

* * * * *

53 Packages of these materials must bear the subsidiary risk label, "EXPLOSIVE", unless otherwise provided in this subchapter or through an approval issued by the Associate Administrator for Hazardous Materials Safety, or the competent authority of the country of origin. A copy of the approval shall accompany the shipping papers.

* * * * *

110 Cartridges containing 3.2 grams or less of deflagrating (propellant) explosives installed in a fire extinguisher are not subject to the requirements of this subchapter.

* * * * *

112 "Cartridges, small arms" and "Cartridges, power devices (which are used to project fastening devices)" which have been classed in Division 1.4 Compatibility Group S (1.4S) may be reclassed and offered for domestic transportation as ORM-D material if they are offered for transportation and transported in accordance with the limitations and packaging requirements of § 173.230 of this subchapter.

* * * * *

114 Jet perforating guns, charged, oil well, without detonator may be reclassed to Division 1.4 Compatibility Group D (1.4D) if the following conditions are met:

a. The total weight of the explosive contents of the shaped charges assembled in the guns does not exceed 90.5 kg (200 pounds) per vehicle; and

b. The guns are packaged in accordance with Packing Method US006 as specified in § 173.62 of this subchapter.

* * * * *

(2) * * *

Code/Special Provisions

* * * * *

A12 The quantity of lithium contained in any piece of equipment must not exceed 12 grams per cell and 500 grams per battery for cargo aircraft. No piece of equipment may contain more than 5 kilograms of lithium batteries. Lithium batteries are forbidden for transportation by passenger-carrying aircraft unless approved by the Associate Administrator for Hazardous Materials Safety.

* * * * *

A34 Aerosols containing a corrosive liquid in Packing Group II charged with a gas

are not permitted for transportation by aircraft.

(3) * * *

Code/Special Provisions

* * * * *

B2 MC 306 and DOT 406 cargo tanks are not authorized.

B3 MC 306 and DOT 406 cargo tanks and DOT 57 portable tanks are not authorized.

B4 AAR 206 tank car tanks and MC 306 and DOT 406 cargo tanks are not authorized.

B5 Only ammonium nitrate solutions with 35 percent or less water that will remain completely in solution at a maximum lading temperature of 116°C (240°F) are authorized for the transport in the following bulk packagings: DOT 103 ALW, 111A60 ALW tank car tanks and MC 307, MC 312, DOT 407 and DOT 412 cargo tanks with at least 172 kPa (25 psig) design pressure. The packaging shall be designed for a working temperature of at least 121°C (250°F). Only Specifications MC 304, MC 307 or DOT 407 cargo tank motor vehicles are authorized for transportation by vessel.

* * * * *

B10 AAR 206 tank car tanks, MC 306 and DOT 406 cargo tanks, and DOT 57 portable tanks are not authorized.

B11 Tank car tanks must have a test pressure of at least 2,068.5 kPa (300 psi). Cargo and portable tanks must have a design pressure of at least 1,207 kPa (175 psig).

* * * * *

B14 Each tank, except a multi-unit tank car tank, must be insulated with at least 100 mm (3.9 inches) of cork or other suitable insulation material of sufficient thickness that the overall thermal conductance at 15.5°C (60°F) is not more than 1.533 kilojoules per hour per square meter per degree celsius (0.075 Btu per hour per square foot per degree Fahrenheit) temperature differential. The exterior surface of a carbon steel tank and the interior surface of a carbon steel jacket must be given a protective coating. The jacket must be flashed around all openings so as to be weather-tight.

* * * * *

B16 The lading must be completely covered with nitrogen, inert gas or other inert materials.

* * * * *

B26 Tanks must be insulated. Insulation must be at least 100 mm (3.9 inches) except that the insulation thickness may be reduced to 51 mm (2 inches) over the exterior heater coils. Interior heating coils are not authorized. The packaging may not be loaded with a material outside of the packaging's design temperature range. In addition, the material must be covered with an inert gas or filled with water to the tank's capacity. After unloading, the material must also be covered with an inert gas or filled with water to the entire capacity of the tank.

* * * * *

B30 MC 312, MC 330, MC 331 and DOT 412 cargo tanks and DOT 51 portable tanks must be made of stainless steel, except that steel other than stainless steel may be used in accordance with the provisions of § 173.24b(b) of this subchapter. Thickness of stainless steel for tank shell and heads for cargo tanks and portable tanks must be the greater of 7.62 mm (0.300 inch) or the thickness required for a tank with a design pressure at least equal to 1.5 times the vapor pressure of the lading at 46°C (115° F). In addition, MC 312 and DOT 412 cargo tank motor vehicles must:

a. Be ASME Code (U) stamped for 100% radiography of all pressure-retaining welds;

b. Have accident damage protection which conforms with § 178.345–8 of this subchapter;

c. Have a MAWP or design pressure of at least 87 psig; and

d. Have a bolted ASA manway cover.

B31 Bromine tank cars built prior to December 31, 1990 to DOT105A500W which have been stencilled and valved as DOT105A300W may continue in service.

B32 MC 312, MC 330, MC 331 DOT 412 cargo tanks and DOT 51 portable tanks must be made of stainless steel, except that steel other than stainless steel may be used in accordance with the provisions of § 173.24b(b) of this subchapter. Thickness of stainless steel for tank shell and heads for cargo tanks and portable tanks must be the greater of 6.35 mm (0.250 inch) or the thickness required for a tank with a design pressure at least equal to 1.3 times the vapor pressure of the lading at 46°C (115° F). In addition, MC 312 and DOT 412 cargo tank motor vehicles must:

a. Be ASME Code (U) stamped for 100% radiography of all pressure-retaining welds;

b. Have accident damage protection which conforms with § 178.345–8 of this subchapter;

c. Have a MAWP or design pressure of at least 87 psig; and

d. Have a bolted ASA manway cover.

B33 MC 300, MC 301, MC 302, MC 303, MC 305, MC 306, and DOT 406 cargo tanks equipped with a 1 psig normal vent used to transport gasoline are subject to the following requirements. Based on the volatility class determined by using ASTM D439 and the Reid vapor pressure (RVP) of the particular gasoline, the maximum lading pressure and maximum ambient temperature permitted during the loading of gasoline may not exceed that listed in Table I.

TABLE I—MAXIMUM AMBIENT TEMPERATURE—GASOLINE

ASTM D439 volatility class	Maximum lading and ambient temperature (see note 1)
A (RVP <= 9.0 psia)	131° F
B (RVP <= 10.0 psia)	124° F
C (RVP <= 11.5 psia)	116° F
D (RVP <= 13.5 psia)	107° F
E (RVP <= 15.0 psia)	100° F

Note 1: Based on maximum lading pressure of 1 psig at top of cargo tank.

* * * * *

B37 The amount of nitric oxide charged into any tank car tank may not exceed 1,379 kPa (200 psig) at 21° C (70° F).

* * * * *

B48 Portable tanks in sodium metal service may be visually inspected at least once every 5 years instead of being retested hydrostatically. Date of the visual inspection must be stenciled on the tank near the other required markings.

* * * * *

B58 Notwithstanding the provisions of § 173.244(a) of this subchapter, only DOT 105J300W tank car tanks are authorized. Class 106 and 110 multi-unit tank car tanks are also authorized.

B59 AAR Specification 207A40W, 207A40W6, 207A48W, 207A60W, 207A80W tank car tanks are also authorized provided that the lading is covered in a nitrogen blanket.

* * * * *

B66 Each tank must be equipped with gas tight valve protection caps. Outage must be sufficient to prevent tanks from becoming liquid full at 55°C (130°F). Specification 110A500W tanks must be stainless steel.

B67 Tanks must be lagged with not less than a 100 mm (3.9 inch) thickness of cork. All valves and fittings must be protected by a securely attached cover made of metal not subject to deterioration by the lading, and all valve openings, except safety valve, must be fitted with screw plugs or caps to prevent leakage in the event of valve failure.

B68 Sodium must be in a molten condition when loaded and allowed to solidify before shipment. Outage must be at least 5 percent at 98°C (208°F). Bulk packagings must have exterior heating coils fusion welded to the tank shell which have been properly stress relieved. The only tank car tanks authorized are Class DOT 105 tank cars having a test pressure of 2069 kPa (300 psig) or greater.

* * * * *

B74 Notwithstanding the provisions of §§ 173.243(a) and 173.244(a) of this subchapter, only the following tank car tanks are authorized: DOT 105J300W, 112J340W, 112T340W, 114J340W, 114T340W and 105J300ALW tank car tanks; and Class DOT 106 and 110 multi-unit tank car tanks.

* * * * *

B79 Tank car tanks must have head puncture resistance and thermal protection in accordance with §§ 179.105–4 and 179.105–5 of this subchapter for tanks built before April 1, 1989.

* * * * *

B82 Cargo tanks and portable tanks are not authorized.

* * * * *

(5) * * *

Code/Special Provisions

* * * * *

N9 If the substance is impregnated with less than 5% oil, it is excepted from the labeling requirements of subpart D of this part and the packaging tests of subpart M of part 178 of this subchapter.

N10 Lighters and their inner packagings, which have been approved by the Associate Administrator for Hazardous Materials Safety (see § 173.21(i) of this subchapter), must be packaged in one of the following outer packagings at the Packing Group II

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level: 4C1 or 4C2 wooden boxes; 4D plywood boxes; 4F reconstituted wood boxes; 4G fiberboard boxes; or 4H1 or 4H2 plastic boxes.

N11 This material is excepted for the specification packaging requirements of this subchapter if the material is packaged in strong, tight non-bulk packaging meeting the requirements of subparts A and B of Part 173 of this subchapter.

* * * * *

N20 A 5M1 multi-wall paper bag is authorized if transported in a closed transport vehicle.

* * * * *

N45 Copper cartridges are authorized as inner packagings if the hazardous material is not in dispersion.

* * * * *

N81 Polychlorinated biphenyl items, as defined in 40 CFR 761.3, for which specification packagings are impractical, may be packaged in non-specification packagings meeting the general packaging requirements of subparts A and B of part 173 of this subchapter. Alternatively, the item itself may be used as a packaging if it meets the general packaging requirements of subparts A and B of part 173 of this subchapter.

N82 See § 173.306 of this subchapter for classification criteria for flammable aerosols.

* * * * *

(7) * * *

(i) * * *

IM TANK CONFIGURATIONS

Code	IM tank type	Minimum test pressure (bars)	Bottom outlets	Pressure relief devices
(1)	(2)	(3)	(4)	(5)
*	*	*	*	*
T22	101	6	§ 173.32c(g)(1)	§ 178.270–11(a)(1)(2)
*	*	*	*	*

(ii) * * *

Code/Special Provisions

* * * * *

T28 IM portable tanks in sodium metal service are not required to be hydrostatically retested.

T29 The lading must be completely covered with nitrogen, inert gas or other inert materials.

T30 IM 102 portable tanks without bottom openings or with bottom openings conforming to § 173.32c(g)(1) of this subchapter are authorized for a hazardous material with a flash point of 0°C (32°F) or greater and a vapor pressure not greater than 65.5 kPa (9.5 psia) at 65.6°C (150°F).

* * * * *

T34 The IM Tank authorization is limited to aqueous solutions containing not more than 40% dimethylamine.

* * * * *

T37 IM portable tanks are only authorized for the shipment of hydrogen peroxide solutions in water containing 72 percent or less hydrogen peroxide by weight. Pressure relief devices shall be designed to prevent the entry of foreign matter, the leakage of liquid and the development of any dangerous excess pressure. In addition, the tank shall be designed so that internal surfaces may be effectively cleaned and passivated. Each tank must be equipped with pressure relief devices conforming to the following requirements:

Concentration of hydrogen peroxide solution	Total venting capacity in standard cubic feet per hour (S.C.F.H.) per pound of hydrogen peroxide solution
52 percent or less	11
Over 52 percent but not greater than 60 percent	22
Over 60 percent but not greater than 72 percent	32

T38 Each tank, except a multi-unit tank car tank, must be insulated with at least 100 mm (3.9 inches) of cork or other suitable insulation material of sufficient thickness that the overall thermal conductance at 15.5°C (60°F) is not more than 1.533 kilojoules per hour per square meter per degree celsius (0.075 Btu per hour per square foot per degree Fahrenheit) temperature differential. The exterior surface of a carbon steel tank and the interior surface of a carbon steel jacket must be given a protective coating. The jacket must be flashed around all openings so as to be weather-tight.

* * * * *

§ 172.102 [Amended]

34. In addition, in § 172.102, the following changes are made:

a. In paragraph (b) introductory text, the word "may" is removed.

b. In paragraph (c)(1), in special provision 109, in the first sentence, the wording "Except as provided in § 173.63(d) of this subchapter," is removed and the word "rocket" is revised to read "Rocket".

c. In paragraph (c)(1), in special provision 111, "(1.)A)" is revised to read "(1.1A)".

d. In paragraph (c)(7) introductory text, the wording "the IM Tank Table" is revised to read "IM Tank Configurations".

35. In § 172.202, paragraphs (a)(2), (a)(4), and (a)(5) are revised to read as follows:

§ 172.202 Description of hazardous material on shipping papers.

(a) * * *

(1) * * *

(2) The hazard class or division prescribed for the material as shown in Column 3 of the § 172.101 Table (class names or subsidiary hazard class number may be entered following the numerical hazard class, or following the basic description). The hazard class need not be included for the entry "Combustible liquid, n.o.s.";

(3) * * *

(4) The packing group, in Roman numerals, prescribed for the material in Column 5 of the § 172.101 Table, if any. The packing group may be preceded by the letters "PG" (e.g., "PG II"); and

(5) Except for empty packagings (see § 173.29 of this subchapter), cylinders for Class 2 (compressed gases) materials, and bulk packagings, the total quantity (by net or gross mass, capacity, or as otherwise appropriate), including the unit of measurement, of the hazardous material covered by the description (e.g., "800 lbs", "55 gal.", "3629 kg", or "208 L"). For cylinders for Class 2 (compressed gases) materials and bulk packagings, some indication of total quantity must be shown (e.g., "10 cylinders" or "1 cargo tank").

* * * * *

36. In § 172.203, paragraphs (d)(1)(i) through (d)(1)(v) are redesignated as paragraphs (d)(2) through (d)(6), paragraphs (d)(1)(vi) introductory text and (d)(1)(vi)(A) through (D) are redesignated as paragraphs (d)(7) introductory text and (d)(7)(i) through (iv), paragraphs (d)(1)(vii) and (d)(1)(viii) are redesignated as paragraphs (d)(8) and (d)(9), introductory text is added to paragraph (d) following the heading and paragraph (d)(1) is revised, and paragraphs (i), (k)(3) and (m)(1), (m)(2) and (m)(3) are revised, to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(d) *Radioactive material.* The description for a shipment of a Class 7 (radioactive) material must include the following additional entries as appropriate:

(1) The words "RADIOACTIVE MATERIAL" unless these words are contained in the proper shipping name.

* * * * *

(i) *Transportation by water.* Each shipment by water must have the following additional shipping paper entries:

(1) Identification of the type of packagings such as barrels, drums, cylinders, and boxes.

(2) The number of each type of package including those in a freight container or on a pallet.

(3) The gross mass of each type of package or the individual gross mass of each package.

* * * * *

(k) * * *

(3) Proper shipping names for which the provisions of this paragraph apply are as follows:

Alcohols, toxic, n.o.s.
Articles, explosive, n.o.s.
Caustic alkali liquids, n.o.s.
Combustible liquid, n.o.s.
Compounds, cleaning liquid, *corrosive*
Compounds, cleaning liquid, *flammable*
Compounds, tree *or* weed killing, liquid, *corrosive*
Compounds, tree *or* weed killing, liquid, *flammable*
Compounds, tree *or* weed killing, liquid, *poisonous*
Components, explosive train, n.o.s.
Compressed *or* Liquefied gases, n.o.s.
Compressed *or* Liquefied gases, flammable, n.o.s.
Compressed *or* Liquefied gases, flammable, toxic, n.o.s.
Compressed or Liquefied gases, toxic, n.o.s.
Contrivances, water-activated
Corrosive liquids, flammable, n.o.s.
Corrosive liquids, n.o.s.
Corrosive liquids, oxidizing, n.o.s.
Corrosive liquids, poisonous, n.o.s.
Corrosive liquids, which in contact with water emit flammable gases, n.o.s.
Corrosive solids, flammable, n.o.s.
Corrosive solids, n.o.s.
Corrosive solids, oxidizing, n.o.s.
Corrosive solids, poisonous, n.o.s.
Corrosive solids, self heating, n.o.s.
Corrosive solids, which in contact with water emit flammable gases, n.o.s.
Disinfectants, corrosive, liquid, n.o.s.
Disinfectants, liquid, n.o.s.
Disinfectants, solids, n.o.s.
Dispersant gas, n.o.s.
Dyes, liquid, n.o.s. *or* Dye intermediates, liquid, n.o.s.
Dyes, solid, n.o.s. *or* Dye intermediates, solid, n.o.s.
Environmentally hazardous substances, liquid, n.o.s.
Environmentally hazardous substances, solid, n.o.s.
Flammable liquids, corrosive, n.o.s.
Flammable liquids, n.o.s.
Flammable liquids, poisonous, n.o.s.
Flammable solids, corrosive, n.o.s.
Flammable solids, n.o.s.
Flammable solids, poisonous, n.o.s.
Halogenated irritating liquids, n.o.s.
Hazardous waste, liquid, n.o.s.
Hazardous waste, solid, n.o.s.
Infectious substances, affecting animals
Infectious substances, affecting humans
Insecticide gases, *flammable*, n.o.s.
Insecticide gases, n.o.s.
Insecticide gases, toxic, n.o.s.
Medicines, n.o.s.
Metal powders, flammable, n.o.s.
Organic peroxide type B, liquid
Organic peroxide type B, liquid, temperature controlled
Organic peroxide type B, solid
Organic peroxide type B, solid, temperature controlled
Organic peroxide type C, liquid
Organic peroxide type C, liquid, temperature controlled
Organic peroxide type C, solid
Organic peroxide type C, solid, temperature controlled
Organic peroxide type D, liquid
Organic peroxide type D, liquid, temperature controlled
Organic peroxide type D, solid
Organic peroxide type D, solid, temperature controlled
Organic peroxide type E, liquid
Organic peroxide type E, liquid, temperature controlled
Organic peroxide type E, solid
Organic peroxide type E, solid, temperature controlled
Organic peroxide type F, liquid
Organic peroxide type F, liquid, temperature controlled
Organic peroxide type F, solid
Organic peroxide type F, solid, temperature controlled
Other regulated substances, liquid, n.o.s.
Other regulated substances, solid, n.o.s.
Oxidizing substances, liquid, corrosive, n.o.s.
Oxidizing substances, liquid, n.o.s.
Oxidizing substances, liquid, poisonous, n.o.s.
Oxidizing substances, solid, corrosive, n.o.s.
Oxidizing substances, solid, n.o.s.
Oxidizing substances, solid, poisonous, n.o.s.
Pesticides, liquid, flammable, toxic, n.o.s.
Pesticides, liquid, toxic, flammable, n.o.s.
Pesticides, liquid, toxic, n.o.s.
Pesticides, solid, toxic, n.o.s.
Poisonous liquids, corrosive, n.o.s.
Poisonous liquids, flammable, n.o.s.
Poisonous liquids, n.o.s.
Poisonous liquids, oxidizing, n.o.s.
Poisonous liquids, which in contact with water emit flammable gases, n.o.s.
Poisonous solids, corrosive, n.o.s.
Poisonous solids, flammable, n.o.s.
Poisonous solids, n.o.s.
Poisonous solids, oxidizing, n.o.s.
Poisonous solids, self-heating, n.o.s.
Poisonous solids, which in contact with water emit flammable gases, n.o.s.
Pyrophoric liquids, n.o.s.
Pyrophoric solids, n.o.s.
Pyrophoric metals, n.o.s. *or* Pyrophoric alloys, n.o.s.
Refrigerant gas, n.o.s.
Refrigerant gases, n.o.s.
Rodenticides, n.o.s.
Samples, explosive (*other than initiating explosives*)
Self-heating substances, solid, corrosive, n.o.s.
Self-heating substances, solid, n.o.s.
Self-heating substances, solid, poisonous, n.o.s.
Self-reactive substances, Sample, n.o.s.
Self-reactive substances, Trial quantities, n.o.s.
Substances, explosive, n.o.s.
Substances, explosive, very insensitive (substances, EVI) n.o.s.".
Substances, which in contact with water emit flammable gases, liquid, corrosive, n.o.s.
Substances, which in contact with water emit flammable gases, liquid, n.o.s.
Substances, which in contact with water emit flammable gases, liquid, poisonous, n.o.s.
Substances, which in contact with water emit flammable gases, solid, corrosive, n.o.s.
Substances, which in contact with water emit flammable gases, solid, n.o.s.
Substances, which in contact with water emit flammable gases, solid, oxidizing, n.o.s.
Substances, which in contact with water emit flammable gases, solid, poisonous, n.o.s.
Substances, which in contact with water emit flammable gases, solid, self-heating, n.o.s.
Substances, which in contact with water emit flammable gases, solid, flammable n.o.s.
Tear gas substances, n.o.s. liquid *or* solid

* * * * *

(m) * * *

(1) If a liquid or solid material in a package meets the definition of a Division 6.1, Packing Group I or II, according to this subchapter, and the fact that it is a poison is not disclosed in the shipping name, the word "Poison" shall be entered on the shipping paper in association with the shipping description.

(2) If the technical name of the compound or principal constituent that causes a material to meet the definition of Division 6.1, Packing Group I or II (as defined in § 173.132(a) of this subchapter), or Division 2.3 (as defined

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in § 173.115(c) of this subchapter), is not included in the proper shipping name for the material, the technical name shall be entered on the shipping paper in the manner prescribed in paragraph (k) of this section.

(3) For materials which are poisonous by inhalation (see § 171.8 of this subchapter), the words "Poison-Inhalation Hazard" and the words "Zone A", "Zone B", "Zone C", or "Zone D", for gases or "Zone A" or "Zone B" for liquids, as appropriate, shall be entered on the shipping paper immediately following the shipping description. The word "Poison" need not be repeated if it otherwise appears in the shipping description.

§ 172.203 [Amended]

37. In addition, in § 172.203, the following changes are made:

a. In paragraph (c)(2), in the second sentence, "3" is revised to read "6.1"; and "PG" is removed both places it appears.

b. In paragraph (k) introductory text, "PG" is removed both places it appears; and the last sentence is revised to read "For example, 'Organic peroxide type B, solid, 5.2, UN 3102 (dibenzoyl peroxide, 52–100%)' or 'Organic peroxide type E, solid, 5.2, UN 3108 (dibenzoyl peroxide, paste, <52%)'."

c. In paragraph (k)(1), in the second sentence, "compound" is revised to read "mixtures" both places it appears; and "PG" is removed both places it appears.

d. In paragraphs (k)(2) and (k)(4)(iii), "PG" is removed each place it appears.

e. In paragraph (k)(4)(ii), the reference "§ 172.101(c)(12)" is revised to read "§ 172.101(c)(11)".

f. In paragraph (k)(4)(iv), the last sentence is revised to read "For example: 'Carbamate pesticides, liquid, flammable, toxic, n.o.s., *flash point less than 23°C* (contains Xylene) 3, 6.1, UN 2758, II'."

38. In § 172.302, paragraphs (b)(2) and (b)(3) are revised, and a new paragraph (f) is added to read as follows:

§ 172.302 General marking requirements for bulk packagings.

* * * * *

(b) * * *

(1) * * *

(2) 25 mm (one inch) for portable tanks with capacities of less than 3,785 L (1,000 gallons); and

(3) 50 mm (2.0 inches) for cargo tanks and other bulk packages.

* * * * *

(f) A bulk packaging marked prior to October 1, 1991, in conformance to the regulations of this subchapter in effect on September 30, 1991, need not be remarked if the key words of the proper shipping name are identical to those currently specified in the § 172.101 Table. For example, a tank car marked "ANHYDROUS AMMONIA" need not be remarked "ANHYDROUS AMMONIA, LIQUEFIED".

39. In § 172.303, the introductory text of paragraph (b) is republished, and paragraph (b)(3) is added to read as follows:

§ 172.303 Prohibited marking.

* * * * *

(b) This section does not apply to—

(1) * * *

(2) * * *

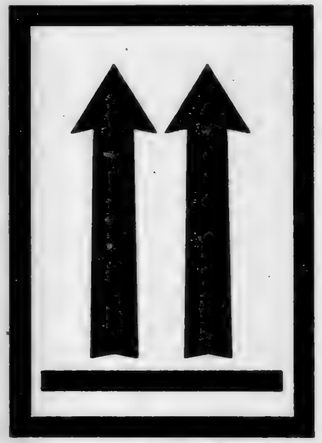
(3) The marking of a shipping name on a package when the name describes a material not regulated under this subchapter.

40. In § 172.312, paragraph (a)(2) is revised, and paragraphs (c)(4) and (c)(5) are added to read as follows:

§ 172.312 Liquid hazardous materials in non-bulk packagings.

(a) * * *

(2) Legibly marked, with package orientation markings that conform pictorially to ISO Standard 780–1985, on two opposite vertical sides of the package with the arrows pointing in the correct upright direction.



Package orientation

(b) * * *

(c) * * *

(4) Liquids contained in manufactured articles (e.g., alcohol or mercury in thermometers) which are leak-tight in all orientations.

(5) A non-bulk package with hermetically-sealed inner packagings.

41. In § 172.313, paragraph (a) is revised to read as follows:

§ 172.313 Poisonous hazardous materials.

(a) For materials poisonous by inhalation (see § 171.8 of this subchapter), the package shall be marked "Inhalation Hazard" in association with the required labels or placards, as appropriate, or shipping name, when required. (See § 172.302(b) of this subpart for size s.

* * * * *

42. In § 172.316, the section heading is revised to read as follows:

§ 172.316 Packagings containing materials classed as ORM–D.

43. Section 172.320 is revised to read as follows:

§ 172.320 Explosive hazardous materials.

(a) Except as otherwise provided in paragraphs (b), (c), (d) and (e) of this section, each package containing a Class 1 material must be marked with the EX-number for each substance, article or device contained therein.

(b) Except for fireworks approved in accordance with § 173.56(j) of this subchapter, a package of Class 1 materials may be marked, in lieu of the EX-number required by paragraph (a) of this section, with a national stock number issued by the Department of Defense or identifying information required by regulations for commercial explosives specified in 27 CFR part 55, if the national stock number or identifying information can be specifically associated with the EX-number assigned.

(c) When more than five different Class 1 materials are packed in the same package, the package may be marked with only five of the EX-numbers, national stock numbers, product codes, or combination thereof.

(d) The requirements of this section do not apply if the EX-number, product code or national stock number of each explosive item described under a proper shipping description is shown in association with the shipping description required by § 172.202(a) of this part. Product codes and national stock numbers must be traceable to the specific EX-number assigned by the Associate Administrator for Hazardous Materials Safety.

(e) The requirements of this section do not apply to the following Class 1 materials:

(1) Those being shipped to a testing agency in accordance with § 173.56(d) of this subchapter;

(2) Those being shipped in accordance with § 173.56(e) of this subchapter, for the purposes of developmental testing;

(3) Those which meet the requirements of § 173.56(h) of this subchapter and therefore are not subject to the approval process of § 173.56 of this subchapter;

(4) Until October 1, 1993, those which are shipped under § 171.19 of this subchapter; and

(5) Those that are transported in accordance with § 173.56(c)(2) of this subchapter and, therefore, are covered by a national security classification currently in effect.

§ 172.326 [Amended]

44. In § 172.326, the following changes are made:

a. In paragraph (c)(1), the wording "containing a hazardous material" is added immediately after "portable tank" and before "must be marked".

b. In paragraph (c)(2), the wording "containing a hazardous material" is added immediately after "portable tank" and before "to a motor carrier".

§ 172.328 [Amended]

45. In § 172.328, in paragraph (c) introductory text, the paragraph heading is revised to read "*QT/NQT markings.*".

46. In § 172.330, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 172.330 Tank cars and multi-unit tank car tanks.

(a) * * *

(1) In a tank car unless the tank car is:

(i) Marked on each side, when required by a special provision to the § 172.101 Table or Part 173 of this subchapter, with the proper shipping name specified for the material in the § 172.101 Table, or with a common name authorized for the material in this subchapter (e.g., "Refrigerant Gas"); and

(ii) Marked on each side and each end, as required by § 172.302 of this subpart, with the identification number specified for the material in the § 172.101 Table.

(2) In a multi-unit tank car tank, unless the tank is marked on two opposing sides, in letters and numerals no less than 50 mm (2.0 inches) high—

(i) With the proper shipping name specified for the material in the § 172.101 Table or with a common name authorized for the material in this subchapter (e.g., "Refrigerant Gas"); and

(ii) With the identification number specified for the material in the § 172.101 Table, unless marked in accordance with §§ 172.302(a) and 172.332 of this subpart.

* * * * *

§ 172.332 [Amended]

47. In § 172.332, in paragraph (a), the reference "172.302," is added immediately after "§§" and before "172.326".

§ 173.334 [Amended]

48. In § 173.334, in paragraph (a), the wording "or DANGEROUS placard." is revised to read "DANGEROUS, or subsidiary hazard placard."

§ 172.336 [Amended]

49. In § 172.336, the following changes are made:

a. The section heading is revised to read as follows:

§ 172.336 Identification numbers; special provisions.

b. In paragraph (b)(1), "100 cm" is revised to read "100 mm".

c. In paragraphs (c)(2) and (c)(3), the wording "144 points" is revised to read "50 mm (2 inches)" each place it appears.

§ 172.400 [Amended]

50. In § 172.400, the following changes are made:

a. In paragraph (a)(3), the wording "capacity or unless" is revised to read "capacity, unless".

b. In the paragraph (b) table, in column 1, the entry "5." is revised to read "5.2".

51. In § 172.402, the introductory text preceding the table in paragraph (a) is revised, paragraphs (b) and (c) are redesignated as (c) and (d), newly designated paragraph (d) is revised, and new paragraphs (b) and (e) are added to read as follows:

§ 172.402 Additional labeling requirements.

(a) *Subsidiary hazard labels.* Each package containing a hazardous material—

(1) Shall be labeled with primary and subsidiary hazard labels as specified in Column 6 of the § 172.101 Table; and

(2) For other than Class 2 or Class 1 materials (for subsidiary labeling requirements for Class 1 materials see paragraph (e) of this section), if not already labeled under paragraph (a)(1) of this section, shall be labeled with subsidiary hazard labels in accordance with the following table:

* * * * *

(b) *Display of hazard class on labels.* The appropriate hazard class or, for Division 5.1 or 5.2 the division number, shall be displayed in the lower corner of a primary hazard label and may not be displayed on a subsidiary label.

* * * * *

(d) *Radioactive Materials.* Each package containing a radioactive material that also meets the definition of one or more additional hazards, except Class 9, shall be labeled as a radioactive material as required by § 172.403 of this subpart and for each additional hazard.

(e) *Class 1 (explosive) Materials.* In addition to the label specified in Column 6 of the § 172.101 Table, each package of Class 1 material that also meets the definition for:

(1) Division 6.1, Packing Groups I or II, shall be labeled POISON; or

(2) Class 7, shall be labeled in accordance with § 172.403 of this subpart.

52. In § 172.405, paragraph (b) is removed, paragraph (c) is redesignated as new paragraph (b) and revised to read as follows:

§ 172.405 Authorized label modifications.

* * * * *

(b) For a package containing Oxygen, compressed, or Oxygen, refrigerated liquid, the OXIDIZER label specified in § 172.426 of this subpart, modified to display the word "OXYGEN" instead of "OXIDIZER", and the class number "2" instead of "5.1", may be used in place of the NON-FLAMMABLE GAS and OXIDIZER labels. Notwithstanding the provisions of paragraph (a) of this section, the word "OXYGEN" must appear on the label.

53. In § 172.406, the headings for paragraphs (a), (b), (c), (e), and (f) are revised, a heading is added to paragraph (d), and paragraph (a)(1)(ii) and the introductory text to paragraph (e) are revised, to read as follows:

§ 172.406 Placement of labels.

(a) *General.* (1) * * *

* * * * *

(ii) Be located on the same surface of the package and near the proper shipping name marking, if the package dimensions are adequate.

(b) *Exceptions.* * * *

* * * * *

(c) *Placement of multiple labels.* * * *

* * * * *

(d) *Contrast with background.* * * *

* * * * *

(e) *Duplicate labeling.* Generally, only one of each different required label must be displayed on a package. However, duplicate labels must be displayed on at least two sides or two ends (other than the bottom) of—

* * * * *

(f) *Visibility.* * * *

54. In § 172.407, paragraph (d)(4) is revised to read as follows:

§ 172.407 Label specifications.

* * * * *

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(d) * * *

(4) (i) A color on a label, upon visual examination, must fall within the color tolerances—

(A) Displayed on color charts conforming to the technical specifications for charts set forth in Table 1 or 2 in appendix A to this part; or

(B) For labels printed on packaging surfaces, specified in Table 3 in appendix A to this part.

(ii) Color charts conforming to appendix A to this part are on display in Room 8421, Nassif Building, 400 Seventh Street, SW., Washington DC 20590–0001.

* * * * *

55. Section 172.411 is revised to read as follows:

§ 172.411 EXPLOSIVE 1.1, 1.2, 1.3, 1.4, 1.5 and 1.6 labels, and EXPLOSIVE Subsidiary label.

(a) Except for size and color, the EXPLOSIVE 1.1, EXPLOSIVE 1.2 and EXPLOSIVE 1.3 labels must be as follows:



(b) In addition to complying with § 172.407, the background color on the EXPLOSIVE 1.1, EXPLOSIVE 1.2 and EXPLOSIVE 1.3 labels must be orange. The "*" shall be replaced with the appropriate division number and compatibility group. The compatibility group letter must be the same size as the division number and must be shown as a capitalized Roman letter.

(c) Except for size and color, the EXPLOSIVE 1.4, EXPLOSIVE 1.5, EXPLOSIVE 1.6 labels, and EXPLOSIVE Subsidiary label must be as follows:

EXPLOSIVE 1.4:



EXPLOSIVE 1.5:



EXPLOSIVE 1.6:



EXPLOSIVE Subsidiary label:



(d) In addition to complying with § 172.407, the background color on the EXPLOSIVE 1.4, EXPLOSIVE 1.5, EXPLOSIVE 1.6, and EXPLOSIVE Subsidiary label must be orange. Except for the EXPLOSIVE subsidiary label, the "*" shall be replaced with the appropriate compatibility group. The compatibility group letter must be shown as a capitalized Roman letter measuring at least 12.7 mm (0.5 inches) in height. Except for the EXPLOSIVE subsidiary label, division numerals must measure at least 30 mm (1.2 inches) in height and at least 5 mm (0.2 inches) in width.

56. Sections 172.415 through 172.417, 172.419, 172.420, 172.422, 172.423, 172.426, 172.427, 172.430 through 172.432, 172.436, 172.438, 172.440, 172.442, 172.446, and 172.448 are republished as follows:

§ 172.415 NON-FLAMMABLE GAS Label

(a) Except for size and color, the NON-FLAMMABLE GAS label must be as follows:



(b) In addition to complying with § 172.407, the background color on the NON-FLAMMABLE GAS label must be green.

§ 172.416 POISON GAS label.

(a) Except for size and color, the POISON GAS label must be as follows:



(b) In addition to complying with § 172.407, the background on the POISON GAS label must be white.

§ 172.417 FLAMMABLE GAS label.

(a) Except for size and color, the FLAMMABLE GAS label must be as foll



(b) In addition to complying with § 172.407, the background color on the FLAMMABLE GAS label must be red.

§ 172.419 FLAMMABLE LIQUID label.

(a) Except for size and color the FLAMMABLE LIQUID label must be as follows:



(b) In addition to complying with § 172.407, the background color on the FLAMMABLE LIQUID label must be red.

§ 172.420 FLAMMABLE SOLID label.

(a) Except for size and color, the FLAMMABLE SOLID label must be as follows:



(b) In addition to complying with § 172.407, the background on the FLAMMABLE SOLID label must be white with vertical red stripes equally spaced on each side of a red stripe placed in the center of the label. The red vertical stripes must be spaced so that, visually, they appear equal in width to the white spaces between them. The symbol (flame) and text (when used) must be overprinted. The text "FLAMMABLE SOLID" may be placed in a white rectangle.

§ 172.422 SPONTANEOUSLY COMBUSTIBLE label.

(a) Except for size and color, the SPONTANEOUSLY COMBUSTIBLE label must be as follows:



(b) In addition to complying with § 172.407, the background color on the lower half of the SPONTANEOUSLY COMBUSTIBLE label must be red and the upper half must be white.

§ 172.423 DANGEROUS WHEN WET label.

(a) Except for size and color, the DANGEROUS WHEN WET label must be as follows:



(b) In addition to complying with § 172.407, the background color on the DANGEROUS WHEN WET label must be blue.

§ 172.426 OXIDIZER label.

(a) Except for size and color, the OXIDIZER label must be as follows:

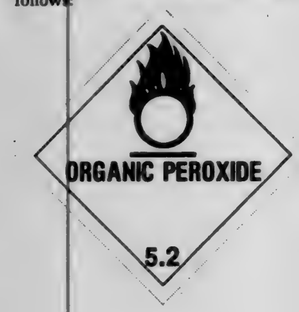


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(b) In addition to complying with § 172.407, the background color on the OXIDIZER label must be yellow.

§ 172.427 ORGANIC PEROXIDE label.

(a) Except for size and color, the ORGANIC PEROXIDE label must be as follows:



(b) In addition to complying with § 172.407, the background color on the ORGANIC PEROXIDE label must be yellow.

§ 172.430 POISON label.

(a) Except for size and color, the POISON label must be as follows:



(b) In addition to complying with § 172.407, the background on the KEEP AWAY FROM FOOD label must be white.

(b) In addition to complying with § 172.407, the background on the POISON label must be white.

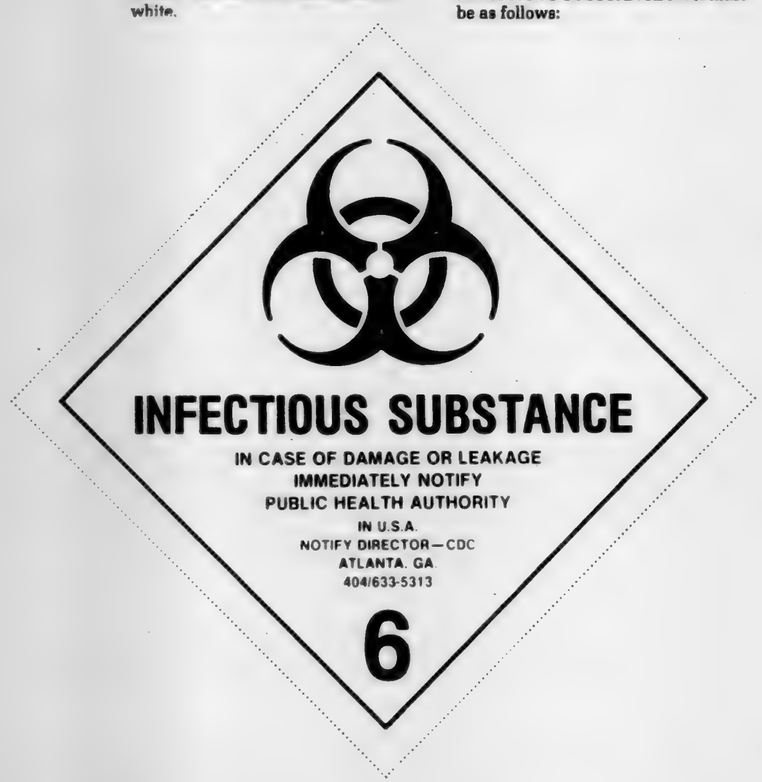
§ 172.431 KEEP AWAY FROM FOOD label.

(a) Except for size and color, the KEEP AWAY FROM FOOD label must be as follows:



§ 172.432 INFECTIOUS SUBSTANCE label.

(a) Except for size and color, the INFECTIOUS SUBSTANCE label must be as follows:



(b) In addition to complying with § 172.407, the background on the INFECTIOUS SUBSTANCE label must be white.

§ 172.436 RADIOACTIVE WHITE-I label.

(a) Except for size and color, the RADIOACTIVE WHITE-I label must be as follows:



(b) In addition to complying with § 172.407, the background on the RADIOACTIVE WHITE-I label must be white. The printing and symbol must be black, except for the "I" which must be red.

§ 172.438 RADIOACTIVE YELLOW-II label.

(a) Except for size and color, the RADIOACTIVE YELLOW-II must be as follows:



(b) In addition to complying with § 172.407, the background color on the RADIOACTIVE YELLOW-II label must be yellow in the top half and white in the lower half. The printing and symbol must be black, except for the "II" which must be red.

§ 172.440 RADIOACTIVE YELLOW-III label.

(a) Except for size and color, the RADIOACTIVE YELLOW-III label must be as follows:



(b) In addition to complying with § 172.407, the background color on the RADIOACTIVE YELLOW-III label must be yellow in the top half and white in the lower half. The printing and symbol must be black, except for the "III" which must be red.

§ 172.442 CORROSIVE label.

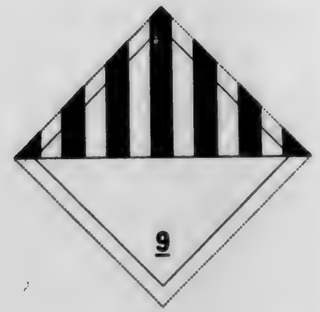
(a) Except for size and color, the CORROSIVE label must be as follows:



(b) In addition to complying with § 172.407, the background on the CORROSIVE label must be white in the top half and black in the lower half.

§ 172.446 CLASS 9 label.

(a) Except for size and color, the "CLASS 9" (miscellaneous hazardous materials) label must be as follows:



(b) In addition to complying with § 172.407, the background on the CLASS 9 label must be white with seven black vertical stripes on the top half. The black vertical stripes must be spaced, so that, visually, they appear equal in width to the six white spaces between them. The lower half of the label must be white with the class number "9" underlined and centered at the bottom.

§ 172.448 CARGO AIRCRAFT ONLY label.

(a) Except for size and color, the CARGO AIRCRAFT ONLY label must be as follows:



(b) The CARGO AIRCRAFT ONLY label must be black on an orange background.

57. In § 172.502, the paragraph heading in (a) is revised, paragraph (b) is revised, paragraph (c) is removed, and paragraph (d) is redesignated as new paragraph (c) and revised to read as follows:

§ 172.502 Prohibited and permissive placarding.

(a) *Prohibited placarding.* * * *

* * * * * *

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(b) *Exceptions.* (1) The restrictions in paragraph (a) of this section do not apply to a bulk packaging, freight container, unit load device, transport vehicle or rail car which is placarded in conformance with the TDG Regulations, the IMDG Code or the UN Recommendations.

(2) The restrictions of paragraph (a) of this section do not apply to the display of an identification number on a white square-on-point configuration in accordance with § 172.336(b) of this part.

(c) *Permissive placarding.* Placards may be displayed for a hazardous material, even when not required, if the placarding otherwise conforms to the requirements of this subpart.

58. In § 172.504, paragraphs (f)(4), (f)(7), and (f)(8) are revised and a new paragraph (g) is added to read as follows:

§ 172.504 General placarding requirements.

* * * * *

(f) * * *

(4) An EXPLOSIVES 1.3, 1.4, 1.5, 1.6 or OXIDIZER placard is not required for Division 1.3, 1.4, 1.5, 1.6 or 5.1 materials on a freight container, unit load device, transport vehicle or rail car which also contains Division 1.1 or 1.2 explosives and is placarded with EXPLOSIVES 1.1 or 1.2 placards, as required.

* * * * *

(7) For domestic transportation of oxygen, compressed or oxygen, refrigerated liquid, the OXYGEN placard in § 172.530 of this subpart may be used in place of a NON-FLAMMABLE GAS placard.

(8) Except for a material classed as a combustible liquid that also meets the definition of a Class 9 material, a COMBUSTIBLE placard is not required for a material classed as a combustible liquid when transported in a non-bulk packaging. For a material in a non-bulk packaging classed as a combustible liquid that also meets the definition of a Class 9 material, the CLASS 9 placard may be substituted for the COMBUSTIBLE placard.

(g) For shipments of Class 1 (explosive) materials by aircraft or vessel, the applicable compatibility group letter must be displayed on the placards required by this section.

§ 172.504 [Amended]

59. In addition, in § 172.504, the following changes are made:

a. In paragraph (e), in Table 1, column 2, a footnote reference "[1]" is added immediately following "RADIOACTIVE" and a footnote is added immediately at the end of the table to read as follows:

"[1] RADIOACTIVE placard also required for exclusive use shipments of low specific activity material in accordance with § 173.425 (b) or (c) of this subchapter.".

b. In paragraph (e), in Table 2, column 2, the word "COMBUSIBLE" is revised to read "COMBUSTIBLE".

c. In paragraphs (a), (b), (f) introductory text, (f)(3) and (f)(5), the wording "motor vehicle" is revised to read "transport vehicle" each place it appears.

d. In paragraph (c) introductory text, the wording "portable tanks, cargo tanks, tank cars," is revised to read "bulk packagings,".

60. In § 172.505, the section heading and paragraph (b) are revised and a new paragraph (d) is added, to read as follows:

§ 172.505 Placarding for subsidiary hazards.

* * * * *

(b) In addition to the RADIOACTIVE placard which may be required by § 172.504(e) of this subpart, each transport vehicle, portable tank or freight container that contains 454 kg (1001 pounds) or more gross weight of fissile or low specific activity uranium hexafluoride shall be placarded with a CORROSIVE placard on each side and each end.

* * * * *

(d) Hazardous materials that possess secondary hazards may exhibit subsidiary placards that correspond to the placards described in this part, even when not required by this part (see also § 172.519(b) (4) of this subpart).

§ 172.505 [Amended]

61. In addition, in § 172.505, in paragraph (a), the wording "in addition to the placards required by § 172.504. Duplication of the POISON or POISON GAS placard is not required." is revised to read "if not so placarded under § 172.504.".

62. In § 172.510, paragraph (c) is revised to read as follows:

§ 172.510 Special placarding provisions: Rail.

* * * * *

(c) *RESIDUE and subsidiary placards.* Each tank car containing the residue of a hazardous material must have each primary placard changed to the corresponding RESIDUE placard. See § 172.505(c) of this subpart for display requirements for subsidiary hazards.

* * * * *

§ 172.510 [Amended]

63. In addition, in § 172.510, the following changes are made:

a. In paragraph (a)(2), the wording "Division 2.3, Packaging Group I, Hazard Zone A" is revised to read "Division 2.3, Hazard Zone A"; and the wording "POISONOUS GAS" is revised to read "POISON GAS".

b. In paragraph (a)(3), the wording "Division 2.3, Packing Group I, Hazard Zone A" is revised to read "Division 2.3, Hazard Zone A"; and the wording "POISONOUS GAS—RESIDUE" is revised to read "POISON GAS—RESIDUE".

64. In § 172.519, paragraph (a)(2) is removed, paragraphs (a)(3) and (a)(4) are redesignated as (a)(2) and (a)(3), respectively, a third sentence is added at the end of newly designated paragraph (a)(2) and paragraph (f) is revised, to read as follows:

§ 172.519 General specifications for placards.

(a) * * *

(2) * * * In addition, each placard made of tagboard must be able to pass a 414 kPa (60 p.s.i.) Mullen test.

* * * * *

(f) *Exceptions.* For a shipment under the provisions of §§ 171.11, 171.12 or § 171.12a of this subchapter, a placard conforming to specifications in the ICAO Technical Instructions, the IMDG Code, or the TDG Regulations, respectively, may be used in place of a corresponding placard which conforms to the requirements of this subpart.

65. In § 172.522, the paragraph (a) placard is republished and paragraph (b) is revised to read as follows:

§ 172.522 EXPLOSIVES 1.1, EXPLOSIVES 1.2 AND EXPLOSIVES 1.3 placards.

(a) * * *



(b) In addition to complying with § 172.519 of this subpart, the background color on the EXPLOSIVES 1.1, EXPLOSIVES 1.2, and EXPLOSIVES 1.3 placards must be orange. The "*" shall be replaced with the appropriate division number and, when required, appropriate compatibility group letter. The symbol, text, numerals and inner border must be black.

66. In § 172.523, the paragraph (a) placard is republished and paragraph (b) is revised to read as follows:

§ 172.523 EXPLOSIVES 1.4 placard.

(a) * * *



(b) In addition to complying with § 172.519 of this subpart, the background color on the EXPLOSIVES 1.4 placard must be orange. The "*" shall be replaced, when required, with the appropriate compatibility group letter. The division numeral, 1.4, must measure at least 64 mm (2.5 inches) in height. The text, numerals and inner border must be black.

67. In § 172.524, the paragraph (a) placard is republished and paragraph (b) is revised to read as follows:

§ 172.524 EXPLOSIVES 1.5 placard.

(a) * * *



(b) In addition to complying with the § 172.519 of this subpart, the background color on EXPLOSIVES 1.5 placard must be orange. The "*" shall be replaced, when required, with the appropriate compatibility group letter. The division numeral, 1.5, must measure at least 64 mm (2.5 inches) in height. The text, numerals and inner border must be black.

68. In § 172.525, the paragraph (a) placard is republished and paragraph (b) is revised to read as follows:

§ 172.525 EXPLOSIVES 1.6 placard.

(a) * * *



(b) In addition to complying with § 172.519 of this subpart, the background color on the EXPLOSIVES 1.6 placard must be orange. The "*" shall be replaced, when required, with the appropriate compatibility group letter. The division numeral, 1.6, must measure at least 64 mm (2.5 inches) in height. The text, numerals and inner bordest be black.

69. In § 172.526, paragraphs (a)(1), (a)(2) and (a)(4) are revised to read as follows:

§ 172.526 Standard requirements for the RESIDUE placard.

(a) * * *

(1) Except as provided in paragraph (a)(3) of this section, the lower triangle of the RESIDUE placard must be black and the word "RESIDUE" must be in white letters approximately 25 mm (1 inch) high, made with approximately 6.3 mm (0.25 inch) stroke.

(2) Except for the RADIOACTIVE, EXPLOSIVES 1.1, 1.2, 1.3, 1.4, 1.5 or 1.6, DANGEROUS, or subsidiary placard required by § 172.505 of this subpart, the RESIDUE placard may be used to display the appropriate identification number in accordance with the provisions of subpart D of this part.

* * * * *

(4) Otherwise, the RESIDUE placard must be as specified in §§ 172.519, 172.528, 172.530, 172.532, 172.542, 172.544, 172.546, 172.547, 172.548, 172.550, 172.552, 172.553, 172.554, 172.558 and 172.560 as appropriate for the residue of the hazardous material being transported and required by this subchapter to be placarded. No other placard may be used as a RESIDUE placard.

* * * * *

§ 172.526 [Amended]

70. In addition, in § 172.526, in paragraph (c)(3), the wording ", and paragraph (a)(10) of appendix B to this part" is removed and a period is added in its place.

71. Section 172.528 is republished as follows:

§ 172.528 NON-FLAMMABLE GAS placard.

(a) Except for size and color, the NON-FLAMMABLE GAS placard must be as follows:

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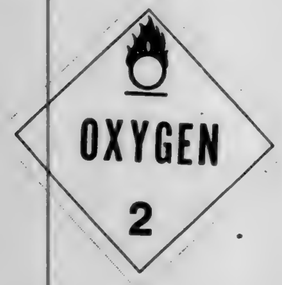


(b) In addition to complying with § 172.519, the background color on the NON-FLAMMABLE GAS placard must be green. The letters in both words must be at least 38 mm (1.5 inches) high. The symbol, text, class number and inner border must be white.

72. Section 172.530 is republished as follows:

§ 172.530 OXYGEN placard.

(a) Except for size and color, the OXYGEN placard must be as follows:



(b) In addition to complying with § 172.519 of this subpart, the background color on the OXYGEN placard must be yellow. The symbol, text, class number and inner border must be black.

73. Section 172.532 is republished as follows:

§ 172.532 FLAMMABLE GAS placard.

(a) Except for size and color, the FLAMMABLE GAS placard must be as follows:



(b) In addition to complying with § 172.519, the background color on the FLAMMABLE GAS placard must be red. The symbol, text, class number and inner border must be white.

74–75. Sections 172.540, 172.542, 172.544, 172.546 through 172.548, 172.550, 172.552 through 172.554, 172.556, 172.558, and 172.560 are republished to read as follows:

§ 172.540 POISON GAS placard.

(a) Except for size and color, the POISON GAS placard must be as follows:



(b) In addition to complying with § 172.519, the background color on the POISON GAS placard must be white. The symbol, text, class number and inner border must be black.

§ 172.542 FLAMMABLE placard.

(a) Except for size and color, the FLAMMABLE placard must be as follows:



(b) In addition to complying with § 172.519, the background color on the FLAMMABLE placard must be red. The symbol, text, class number and inner border must be white.

(c) The word "GASOLINE" may be used in place of the word "FLAMMABLE" on a placard that is displayed on a cargo tank or a portable tank being used to transport gasoline by highway. The word "GASOLINE" must be shown in white.

§ 172.544 COMBUSTIBLE placard.

(a) Except for size and color, the COMBUSTIBLE placard must be as follows:



(b) In addition to complying with § 172.519, the background color on the COMBUSTIBLE placard must be red. The symbol, text, class number and inner border must be white. On a COMBUSTIBLE placard with a white bottom as prescribed by § 172.332(c)(4), the class number must be red or black.

(c) The words "FUEL OIL" may be used in place of the word "COMBUSTIBLE" on a placard that is displayed on a cargo tank or portable tank being used to transport by highway fuel oil that is not classed as a flammable liquid. The words "FUEL OIL" must be shown in white.

§ 172.546 FLAMMABLE SOLID placard.

(a) Except for size and color, the FLAMMABLE SOLID placard must be as follows:



(b) In addition to complying with § 172.519, the background on the FLAMMABLE SOLID placard must be white with seven vertical red stripes. The stripes must be equally spaced, with one red stripe placed in the center of the label. Each red stripe and each white space between two red stripes must be 25 mm (1.0 inches) wide. The letters in the word "SOLID" must be at least 38.1 mm (1.5 inches) high. The symbol, text, class number and inner border must be black.

§ 172.547 SPONTANEOUSLY COMBUSTIBLE placard.

(a) Except for size and color, the SPONTANEOUSLY COMBUSTIBLE placard must be as follows:



(b) In addition to complying with § 172.519, the background color on the SPONTANEOUSLY COMBUSTIBLE placard must be red in the lower half and white in upper half. The letters in the word "SPONTANEOUSLY" must be at least 25 mm (0.98 inches) high. The symbol, text, class number and inner border must be black.

§ 172.548 DANGEROUS WHEN WET placard.

(a) Except for size and color, the DANGEROUS WHEN WET placard must be as follows:



(b) In addition to complying with § 172.519, the background color on the DANGEROUS WHEN WET placard must be blue. The letters in the words "WHEN WET" must be at least 25 mm (1.0 inches) high. The symbol, text, class number and inner border must be white.

§ 172.550 OXIDIZER placard.

(a) Except for size and color, the OXIDIZER placard must be as follows:



(b) In addition to complying with § 172.519, the background color on the OXIDIZER placard must be yellow. The symbol, text, division number and inner border must be black.

§ 172.552 ORGANIC PEROXIDE placard.

(a) Except for size and color, the ORGANIC PEROXIDE placard must be as follows:



(b) In addition to complying with § 172.519, the background color on the ORGANIC PEROXIDE placard must be yellow. The symbol, text, division number and inner border must be black.

§ 172.553 KEEP AWAY FROM FOOD placard.

(a) Except for size and color, the KEEP AWAY FROM FOOD placard must be as follows:

SECTION 172.553(a)



(b) In addition to complying with § 172.519, the background on the KEEP AWAY FROM FOOD placard must be white. The size of the lettering below the word "HARMFUL" must be proportional to that shown. The symbol, text, class number and inner border must be black.

§ 172.554 POISON placard.

(a) Except for size and color, the POISON placard must be as follows:

SECTION 172.554(a)



(b) In addition to complying with § 172.519, the background on the POISON placard must be white. The symbol, text, class number and inner border must be black.

§ 172.556 RADIOACTIVE placard.

(a) Except for size and color, the RADIOACTIVE placard must be as follows:

SECTION 172.556(a)



(b) In addition to complying with § 172.519, the background color on the RADIOACTIVE placard must be white in the lower portion with a yellow triangle in the upper portion. The base of the yellow triangle must be 29 mm ± 5mm (1.1 inches ±z0.2 inches) above the placard horizontal center line. The symbol, text, class number and inner border must be black.

§ 172.558 CORROSIVE placard.

(a) Except for size and color, the CORROSIVE placard must be as follows:

SECTION 172.558(a)



(b) In addition to complying with § 172.519, the background color on the CORROSIVE placard must be black in the lower portion with a white triangle in the upper portion. The base of the white triangle must be 38 mm ± 5mm (1.5 inches ± 0.2 inches) above the placard horizontal center linetext and class number must be white. The symbol and inner border must be black.

§ 172.560 CLASS 9 placard.

(a) Except for size and color the CLASS 9 (miscellaneous hazardous materials) placard must be as follows:

SECTION 172.560(a)



(b) In addition to complying with § 172.519, the background on the CLASS 9 placard must be white with seven black vertical stripes on the top half. The black vertical stripes must be spaced so that, visually, they appear equal in width to the six white spaces between them. The lower half of the placard must be white with the class number 9 underlined and centered at the bottom.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

76. The authority citation for part 173 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR part 1, unless otherwise noted.

§ 173.2a [Amended]

77. In § 173.2a, the following changes are made:

a. In paragraph (a)(8), the wording "The precedence of hazards" is revised to read "The hazard class and packing group".

b. In paragraph (b), in the Precedence of Hazard Table, in the column titled "8, I liquid", the second entry "3" is revised to read "8"; in the column titled "6.1 III", the third entry is revised to read "3"; and a new footnote 4 is added at the end of the table to read as follows: "For pesticides only, where a material has the hazards of Class 3, Packing Group III, and Division 6.1, Packing Group III, the primary hazard is Division 6.1, Packing Group III.".

78. In § 173.3, paragraph (c)(1) is revised to read as follows:

§ 173.3 Packaging and exceptions.

* * * * *

(c) * * *

(1) The drum must be a UN 1A2, 1B2, 1N2 or 1H2 tested and marked for Packing Group III or higher performance standards for liquids or solids and a leakproofness test of 20 kPa (3 psi). Alternatively, a drum manufactured and marked prior to October 1, 1993 as a salvage drum, in accordance with the provisions of this section in effect on September 30, 1991, is authorized. Capacity of the drum may not exceed 450 L (119 gallons).

* * * * *

§ 173.3 [Amended]

79. In addition, in § 173.3, in paragraph (c)(3), in the first sentence, the word "defective" is removed.

§ 173.3a [Removed]

80. Section 173.3a is removed.

81. In § 173.4, paragraph (a)(6)(ii) is revised to read as follows:

§ 173.4 Exceptions for small quantities.

(a) * * *

(6) * * *

(ii) A compressive load as specified in § 178.606(c) of this subchapter.

* * * * *

§ 173.4 [Amended]

82. In addition, in § 173.4, in paragraph (b), the second sentence is removed.

§ 173.10 [Amended]

83. In § 173.10, in paragraph (a), "below 30°C (100°F)" is revised to read "below 38°Ψ (100°F)".

84. In § 173.12, paragraph (b) is revised and paragraph (d) is added to read as follows:

§ 173.12 Exceptions for shipment of waste materials.

* * * * *

(b) *Lab packs.* (1) Waste materials classed as Class or Division 3, 4.1, 4.2, 4.3, 5.1, 6.1, 8, or 9 are excepted from the specification packaging requirements of this subchapter for combination packagings if packaged in accordance with this paragraph and transported for disposal or recovery by highway only. In addition, a generic description from the § 172.101 Table may be used in place of specific chemical names, when two or more chemically compatible waste materials in the same hazard class are packaged in the same outside packaging.

(2) Additional packaging requirements are as follows:

(i) The outer packaging must be a UN 1A2 or UN 1B2 metal drum, a UN 1D plywood drum, a UN 1G fiber drum or a UN 1H2 plastic drum tested and marked at least for the Packing Group III performance level for liquids or solids;

(ii) The inner packagings must be either glass, not exceeding 4 L (1 gallon) rated capacity, or metal or plastic, not exceeding 20 L (5.3 gallons) rated capacity;

(iii) Each outer packaging may contain only one class of hazardous material;

(iv) Inner packagings containing liquid must be surrounded by a chemically compatible absorbent material in sufficient quantity to absorb the total liquid contents; and

(v) Gross weight of the complete package may not exceed 205 kg (452 lbs)

.

(3) *Prohibited materials.* Materials meeting the definition of Division 6.1, Packing Group I, or Division 4.2, Packing Group I, and bromine pentafluoride; bromine trifluoride; chloric acid; and oleum (*fuming sulfuric acid*) may not be packaged or described under the provisions of this paragraph.

(c) * * *

(d) *Technical names for n.o.s. descriptions.* The requirements for the inclusion of technical names for n.o.s. descriptions on shipping papers and package markings, §§ 172.203 and 172.301 of this subchapter, respectively, do not apply to packagings prepared in accordance with paragraph (b) of this section, except as follows:

(1) Packages containing materials meeting the definition of a hazardous substance must be described as required in § 172.203(c) of this subchapter and marked as required in § 172.324 of this subchapter; and

(2) Packages containing hazardous materials subject to the provisions of § 172.203(m) of this subchapter must be described in accordance with § 172.203(m) of this subchapter.

85. In § 173.21, in the introductory text of paragraph (f), the first sentence is revised to read as follows:

§ 173.21 Forbidden materials and packages.

* * * * *

(f) A package containing a material which is likely to decompose with a self-accelerated decomposition temperature (SADT) of 50°C (122°F) or less, or polymerize at a temperature of 54°C (130°F) or less with an evolution of a dangerous quantity of heat or gas when decomposing or polymerizing, unless the material is stabilized or inhibited in a manner to preclude such evolution. * * *

* * * * *

§ 173.21 [Amended]

86. In addition, in § 173.21, the following changes are made:

a. In paragraph (f)(2), in the second sentence, the reference "173.225" is revised to read "§ 173.225".

b. In paragraph (i), in the first sentence, the word "inner" is added immediately after "its" and before "packaging."

§ 173.22 [Amended]

87. In § 173.22, in paragraph (c)(2), the wording "Director, Office of Hazardous Materials Transportation" is removed and replaced with "Associate Administrator for Hazardous Materials Safety".

§ 173.24 [Amended]

88. In § 173.24, the following changes are made:

a. In paragraph (h), the paragraph heading "Outrage and filling limits" is revised to read: "Outage and filling limits".

b. In paragraph (c)(2), the wording "173.6, 173.7" is revised to read "173.7, 173.27".

c. In paragraph (g)(2), the wording "not toxic, flammable or asphyxiant gases;" is revised to read "not poisonous, likely to create a flammable mixture with air or be an asphyxiant under normal conditions of transportation;".

d. In paragraph (g)(3), "identifiable" is revised to read "unintentional".

89. In § 173.24a, paragraph (b)(3) is revised to read as follows:

§ 173.24a Additional general requirements for non-bulk packagings and packages.

* * * * *

(b) * * *

(3) A single or composite non-bulk packaging which is tested and marked for liquid hazardous materials may be filled with a solid hazardous material to a gross mass, in kilograms, not exceeding the rated capacity of the packaging in liters, multiplied by the specific gravity marked on the packaging, or 1.2 if not marked. In addition:

(i) A single or composite non-bulk packaging which is tested and marked for Packing Group I liquid hazardous materials may be filled with a solid Packing Group II hazardous material to a gross mass, in kilograms, not exceeding the rated capacity of the packaging in liters, multiplied by 1.5, multiplied by the specific gravity marked on the packaging, or 1.2 if not marked.

(ii) A single or composite non-bulk packaging which is tested and marked for Packing Group I liquid hazardous materials may be filled with a solid Packing Group III hazardous material to

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a gross mass, in kilograms, not exceeding the rated capacity of the packaging in liters, multiplied by 2.25, multiplied by the specific gravity marked on the packaging, or 1.2 if not marked.

(iii) A single or composite non-bulk packaging which is tested and marked for Packing Group II liquid hazardous materials may be filled with a solid Packing Group III hazardous material to a gross mass, in kilograms, not exceeding the rated capacity of the packaging in liters, multiplied by 1.5, multiplied by the specific gravity marked on the packaging, or 1.2 if not marked.

* * * * *

§ 173.24a [Amended]

90. In addition, in § 173.24a, the following changes are made:

a. In paragraph (b)(2), the words "A single" are revised to read "a single" and the wording "Except as otherwise provided in this section," is added at the beginning of the sentence.

b. In paragraph (b)(5), a period is added at the end of the sentence.

§ 173.24b [Amended]

91. In § 173.24b, the following changes are made:

a. In paragraph (a)(1), "Liquids" is revised to read "Liquids and liquefied gases".

b. In paragraph (a)(3), the wording "Bulk packaging for liquids toxic by inhalation. For a liquid which meets the definition for Division 6.1, Packing Group I, based on inhalation toxicity," is revised to read "Bulk packagings for materials poisonous by inhalation. For a material which meets the definition of poisonous by inhalation (see § 171.8 of this subchapter),".

c. In paragraph (d)(2), the wording "Due to its density, exceeds" is removed and replaced with "Exceeds".

92. In § 173.25, paragraphs (a)(5) and (c) are revised to read as follows:

§ 173.25 Authorized packages and overpacks.

(a) * * *

(5) Packages containing Class 8 (corrosive) materials in Packing Group I or Division 5.1 (oxidizing) materials in Packing Group I may not be overpacked with any other materials.

* * * * *

(c) Hazardous materials which are required to be labeled POISON may be transported in the same motor vehicle with material that is marked or known to be foodstuffs, feed or any edible material intended for consumption by humans or animals provided the hazardous material is marked, labeled, and packaged in accordance with this subchapter, conforms to the requirements of paragraph (a) of this section and is overpacked as specified in § 177.841(e) of this subchapter or in an overpack which is a UN 1A2, 1B2, or 1N2 drum tested and marked for a Packing Group II or higher performance level.

§ 173.27 [Amended]

93. In § 173.27, the following changes are made:

a. In paragraph (c)(2)(i), the wording "produces a pressure" is revised to read "produces a gauge pressure".

b. In paragraph (f), Table 2, Column 2, "1kg" is revised to read "1 kg".

94. In § 173.28, the section heading, paragraphs (b)(2)(i), (b)(2)(ii) and paragraph (b)(4) table are revised to read as follows:

§ 173.28 Reuse, reconditioning and remanufacture of packagings.

* * * * *

(b) * * *

(2) * * *

(i) Retested without failure in accordance with § 178.604 of this subchapter using an internal air pressure (gauge) of at least 48 kPa (7.0 psi) for Packing Group I and 20 kPa (3.0 psi) for Packing Group II and Packing Group III; and

(ii) Marked with the letter "L", with the name and address or symbol of the person conducting the test, and the month and last two digits of the year the test was conducted. Symbols, if used, must be registered with the Associate Administrator for Hazardous Materials Safety.

* * * * *

(4) * * *

Maximum capacity not over	Minimum thickness of packaging material	
	Metal drum or jerrican	Plastic drum or jerrican
20 L	0.6 mm (0.024 inch).	1.1 mm (0.043 inch).
30 L	0.7 mm (0.028 inch).	1.1 mm (0.043 inch).
40 L	0.7 mm (0.028 inch).	1.8 mm (0.071 inch).
60 L	0.9 mm (0.035 inch).	1.8 mm (0.071 inch).
120 L	0.9 mm (0.035 inch).	2.2 mm (0.087 inch).
220 L	0.96 mm (0.038 inch) [1].	2.2 mm (0.087 inch).
450 L	1.8 mm (0.071 inch).	5.0 mm (0.197 inch).

[1] Metal drums or jerricans constructed with a minimum thickness of 0.8 mm (0.03 inch) body and 1.1 mm (0.043 inch) heads are authorized.

* * * * *

§ 173.28 [Amended]

95. In addition, in § 173.28, the following changes are made:

a. In paragraph (b)(4), the wording "marked in millimeters" is revised to read "marked in a permanent manner (e.g., embossed) in millimeters".

b. In paragraph (b)(5), "1.5 mm (0.059 inch)" is revised to read "1.0 mm (0.039 inch)".

96. In § 173.31, paragraph (a)(18) is added to read as follows:

§ 173.31 Qualification, maintenance, and use of tank cars.

(a) * * *

(18) Except for DOT Specification 111A100W4 and 111J100W4 tank car tanks, Class DOT 103, 104, and 111 tank car tanks used to transport materials meeting the definition of a Class 3 material in § 173.120 of this subchapter must have closures for manways so designed that pressure will be released automatically and safely in the process of removing the manway cover.

§ 173.32 [Amended]

97. In § 173.32, in paragraph (a)(5), the wording "the IM Tank Table" is revised to read "§ 172.101(c)(7) of this subchapter" and the section heading is revised to read as follows:

§ 173.32 Qualification, maintenance and use of portable tanks other than Specification IM portable tanks.

98. In § 173.32c, paragraph (q) is added to read as follows:

§ 173.32c Use of Specification IM portable tanks.

* * * * *

(q) If the hazardous material being transported is in a molten state, the tank must be thermally insulated by completely covering it with at least 100 mm (3.94 inches) of cork or other suitable insulation material of sufficient thickness that the overall thermal conductance is not more than 0.080 Btu per hour per square foot per degree Fahrenheit differential.

§ 173.32c [Amended]

99. In § 173.32c, in paragraph (g)(2), the wording "by the IM Tank Table in § 172.102 of this subchapter" is removed and replaced with "through § 172.102(c)(7) of this subchapter".

§ 173.34 [Amended]

100–101. In § 173.34, in paragraph (c)(3), the wording "Director, Office of Hazardous Materials Transportation" is removed and replaced with "Associate Administrator for Hazardous Materials Safety".

Subpart C—Definitions, Classification and Packaging for Class 1

102. The subpart C heading is revised to read as set forth above.

103. In § 173.50, paragraph (b)(4) is revised to read as follows:

§ 173.50 Class 1—definitions.

* * * * *

(b) * * *

(4) *Division 1.4* consists of explosives that present a minor explosion hazard. The explosive effects are largely confined to the package and no projection of fragments of appreciable size or range is to be expected. An external fire must not cause virtually instantaneous explosion of almost the entire contents of the package.

* * * * *

§ 173.50 [Amended]

104. In addition, in § 173.50, in Footnote 1, the word "Probability" is revised to read "probability".

§ 173.54 [Amended]

105. In § 173.54, the following changes are made:

a. In paragraph (a), a period is added at the end of the sentence.

b. In paragraph (j), the wording "the Hazardous Materials Table in § 172.101" is revised to read "the § 172.101 Table".

§ 173.56 [Amended]

106. In § 173.56, the following changes are made:

a. In paragraph (b)(1), the wording "shipping description'" is revised to read "shipping description," and the period between "Mines" and "U.S." is removed and replaced with a comma.

b. In paragraph (g), in the first sentence, the reference "§ 171.12a" is added immediately after "§§ 171.11, 171.12," and before "or 176.11".

c. In paragraph (h)(3), the word "or" is removed and replaced with the word "and".

107. In § 173.58, in paragraph (c)(ii), the word "and" is removed, in paragraph (c)(iii), the period at the end of the paragraph is removed and replaced with the words "; and", and paragraph (c)(1)(iv) is added to read as follows:

§ 173.58 Assignment of class and division for explosives.

* * * * *

(c) * * *

(1) * * *

(iv) The 1.6 Article Bullet Impact Test.

* * * * *

§ 173.58 [Amended]

108. In addition, in § 173.58, in paragraphs (b) introductory text and (b)(2), the wording "DOT Test" is revised to read "DDT Test", both places it appears.

§ 173.59 [Amended]

109. In § 173.59, the wording "N.V.S." in the heading for the term *"Substance, explosive, very insensitive, (Substance, EVI) N.V.S."* is revised to read "N.O.S.".

§ 173.60 [Amended]

110. In § 173.60, in paragraph (b)(8), the wording "rigid plastic box" is revised to read "rigid plastic-lined box".

§ 173.61 [Amended]

111. In § 173.61, in paragraph (d), the wording "UN 0333, 0334, 0335, 0336, and 0337" is revised by adding "UN" immediately before each of the second through fourth numbers.

112. In § 173.62, paragraph (a) is revised and paragraph (e) is added to read as follows:

§ 173.62 Specific packaging requirements.

(a) Except as provided in paragraph (e) of this section, when the § 172.101 Table specifies that an explosive must be packaged in accordance with this section, only non-bulk packagings which conform to the provisions of paragraphs (b), (c) and (d) of this section, and the applicable requirements in §§ 173.60 and 173.61 of this subpart, may be used.

* * * * *

(e) Class 1 (explosive) materials owned by the Department of Defense, packaged prior to January 1, 1988 in accordance with the requirements of this subchapter in effect at that time, are excepted from the requirements of part 178 of this subchapter provided the packagings have maintained their integrity and the goods are declared as government-owned goods packaged prior to January 1, 1988.

§ 173.62 [Amended]

113. In addition, in § 173.62, the following changes are made:

a. In paragraph (b), the word "Table" is added immediately after "of the Explosives" and before "by their" in the second sentence, and in the Explosives Table, in the column entitled "Identification No.", "UN0411E–22(a)" is revised to read "UN0411".

b. In addition, in paragraph (b), the following entries are added to the Explosives Table in appropriate alpha-numerical order:

EXPLOSIVES TABLE

Identification No.	Packing methods
* * * * *	
UN0407	E–25
* * * * *	
UN0448	E–25
* * * * *	
UN0479	E–103
UN0480	E–103
UN0481	E–103
* * * * *	
UN0485	E–103
* * * * *	

c. In paragraph (c), in the Table of Packing Methods, note US006, in paragraph a., a period is added at the end of the sentence; in paragraph e., at the end of the sentence, the wording "provided that:" is added; and in paragraph f.4., the wording "When more one" is revised to read "When more than one".

d. In addition, in paragraph (c), in the Table of Packing Methods, the following changes are made:

1. For E–6(a)(i), the phrase "Rubberized, textile" is removed and replaced with the phrase "Rubberized textile" under the column headed "Inner packagings".

2. For E–8, the phrase "(4G1)," is removed and replaced with the phrase "(4G)," under the column headed "Outer packagings".

3. For E–17, add "47" to the column headed "Particular packing exception/requirement".

4. For E–102, the phrase "13.46" is added to the column headed "Particular packing exception/requirement".

5. For E–103, the phrase "the subchapter" is removed and replaced with the phrase "this subchapter" under the column headed "Inner packagings".

6. For E–106, add a new entry "Drums, Steel, removable head (1A2)." in the column headed "Outer packagings".

7. For E–108, the phrase "Wooded." is removed and replaced with the phrase "Wood." under the column headed "Inner packagings and the phrase "Wooden," is removed and replaced with the phrase "Wood," under the column headed "Outer packagings".

8. For E–121, the phrase "(4G1)" is removed and replaced with the phrase "(4G)" under the column headed "Outer packagings".

9. For E–133, the phrase "outer package" is removed and replaced with the phrase "outer packaging" under the column headed "inner packagings".

10. For E–142, revise the column headed "Particular packing exception/requirement" to read "41, D9, D11".

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11. For E–148(a), E–148(b), and E–148(c), add "D16" to the column headed "Particular packing exception/ requirement".

e. In paragraph (d), in the Table, in entry 22, the word "or" is added immediately after "wood" and before "wool"; in entry D2, the paragraph designator "(a)(1)" is revised to read "(a)(i)"; and a new entry D16 is added as the last entry immediately after D15 to read as follows:

"D16.....	Additional packagings may be approved by the Associate Administrator for Hazardous Materials Safety.".

§ 173.63 [Amended]

114. In § 173.63, the following changes are made:

a. In paragraph (a) introductory text, "(1.4D)" is revised to read "(1.4D)".

b. Paragraphs (d) and (e) are removed and reserved.

115. In § 173.115, paragraphs (a), (c) heading, (c) introductory text, and (c)(2) are revised to read as follows:

§ 173.115 Class 2, Divisions 2.1, 2.2, and 2.3—Definitions.

(a) *Division 2.1 (Flammable gas).* For the purpose of this subchapter, a "flammable gas" (Division 2.1) means any material which is a gas at 20°C (68°F) or less and 101.3 kPa (14.7 psi) of pressure (a material which has a boiling point of 20°C (68°F) or less at 101.3 kPa (14.7 psi) which—

(1) Is ignitable at 101.3 kPa (14.7 psi) when in a mixture of 13 percent or less by volume with air; or

(2) Has a flammable range at 101.3 kPa (14.7 psi) with air of at least 12 percent regardless of the lower limit.

Except for aerosols, the limits specified in paragraphs (a)(1) and (a)(2) of this section shall be determined at 101.3 kPa (14.7 psi) of pressure and a temperature of 20°C (68°F) in accordance with ASTM E681–85, Standard Test Method for Concentration Limits of Flammability of Chemicals. The flammability of aerosols is determined by the tests specified in § 173.306(i) (2), (3), and (4) of this part.

* * * * *

(c) *Division 2.3 (Gas poisonous by inhalation).* For the purpose of this subchapter, a "gas poisonous by inhalation" (Division 2.3) means a material which is a gas at 20°C (68°F) or less and a pressure of 101.3 kPa (14.7 psi) (a material which has a boiling point of 20°C (68°F) or less at 101.3 kPa (14.7 psi)) and which—

(1) * * *

(2) In the absence of adequate data on human toxicity, is presumed to be toxic to humans because when tested on laboratory animals it has an LC50 value of not more than 5000 ml/m³ (see § 173.116(a) of this subpart for assignment of Hazard Zones A, B, C or D). LC50 values for mixtures may be determined using the formula in § 173.133(b)(1)(i) of this subpart.

* * * * *

§ 173.116 [Amended]

116. In § 173.116, in paragraph (a), "Column 5" is revised to read "Column 7".

117. In § 173.120, paragraph (b)(2) is revised to read as follows:

§ 173.120 Class 3—Definitions.

* * * * *

(b) * * *

(2) A flammable liquid with a flash point at or above 38°C (100°F) that does not meet the definition of any other hazard class, except Class 9, may be reclassed as a combustible liquid. This provision does not apply to transportation by vessel or aircraft, except where other means of transportation is impracticable.

* * * * *

§ 173.120 [Amended]

118. In § 173.120, the following changes are made:

a. In paragraphs (a)(1) introductory text, (a)(1)(ii), and (b)(1), "60°C (140°F)" is revised to read "60.5°C (141°F)".

b. In paragraph (b)(1), the wording "hazard class specified in this subchapter and has a flash point" is revised to read "hazard class specified in this subchapter, except Class 9, and has a flash point".

c. In paragraph (c)(2), in the third sentence, "10 percent" is revised to read "10 percent".

§ 173.121 [Amended]

119. In § 173.121, the following changes are made:

a. In the paragraph (a) table, for the entry "III" in column 2, "< 60°C (140°F)" is revised to read "< 60.5°C (141°F)".

b. In the paragraph (b)(1)(iv) table, in Column 3, for the entry "Over 100", "Over −5" is revised to read "Over +5".

§ 173.124 [Amended]

120. In § 173.124, the following changes are made:

a. In paragraphs (a)(3)(ii), the reference "2.2" is revised to read "2.c.(2)".

b. In paragraph (a)(3)(iii), the reference "2.3.2" is revised to read "2.c.(2)".

c. In paragraph (b)(1), the reference "3.1.1 or 3.1.2" is revised to read "3.a.(1) or 3.a.(2)".

d. In paragraph (b)(2), the reference "3.2.1" is revised to read "3.b.(1)".

§ 173.128 [Amended]

121. In § 173.128, the following changes are made:

a. In paragraph (c)(2), the reference "§ 173.223" is revised to read "§ 173.21(f)".

b. In paragraph (d), "Figure 1.1" is revised to read "Figure 11.1".

§ 173.132 [Amended]

122. In § 173.132, the following changes are made:

a. In paragraph (a)(1) introductory text, the wording "(whenever possible, animal test data that has been reported in the chemical literature should be used)" is added immediately after "laboratory animals".

b. In paragraph (a)(1)(iii)(B), the wording "not more than 5000 ml/ms" is revised to read "not more than 5000 ml/m³".

c. In paragraph (b)(1), in the first sentence, "oral" is added immediately after "acute" and before "toxicity", and "adult" is added immediately after "young" and before "albino".

d. In paragraph (b)(2), the word "braiding" is revised to read "abrading".

123. In § 173.133, the section heading and paragraph (a)(2) are revised to read as follows:

§ 173.133 Assignment of packing group and hazard zones for Division 6.1 materials.

(a) * * *

(2)(i) The packing group and hazard zone assignments for liquids (see § 173.115(c) of this subpart for gases) based on inhalation of vapors shall be in accordance with the following Table:

Packing Group	Vapor concentration and toxicity
I (Hazard Zone A).	V > 500 LC_{50} and LC_{50} < 200 mL/M³.
I (Hazard Zone B).	V > 10 LC_{50}; LC_{50} < 1000 mL/m³; and the criteria for Packing Group I, Hazard Zone A are not met.
	V > LC_{50}; LC_{50} < 3000 mL/m³; and the criteria for Packing Group I, are not met.
	V > .2 LC_{50}; LC_{50} < 5000 mL/m³; and the criteria for Packing Groups I and II, are not met.

Note 1: V is the saturated vapor concentration in air of the material in mL/m³ at 20C° and standard atmospheric pressure.

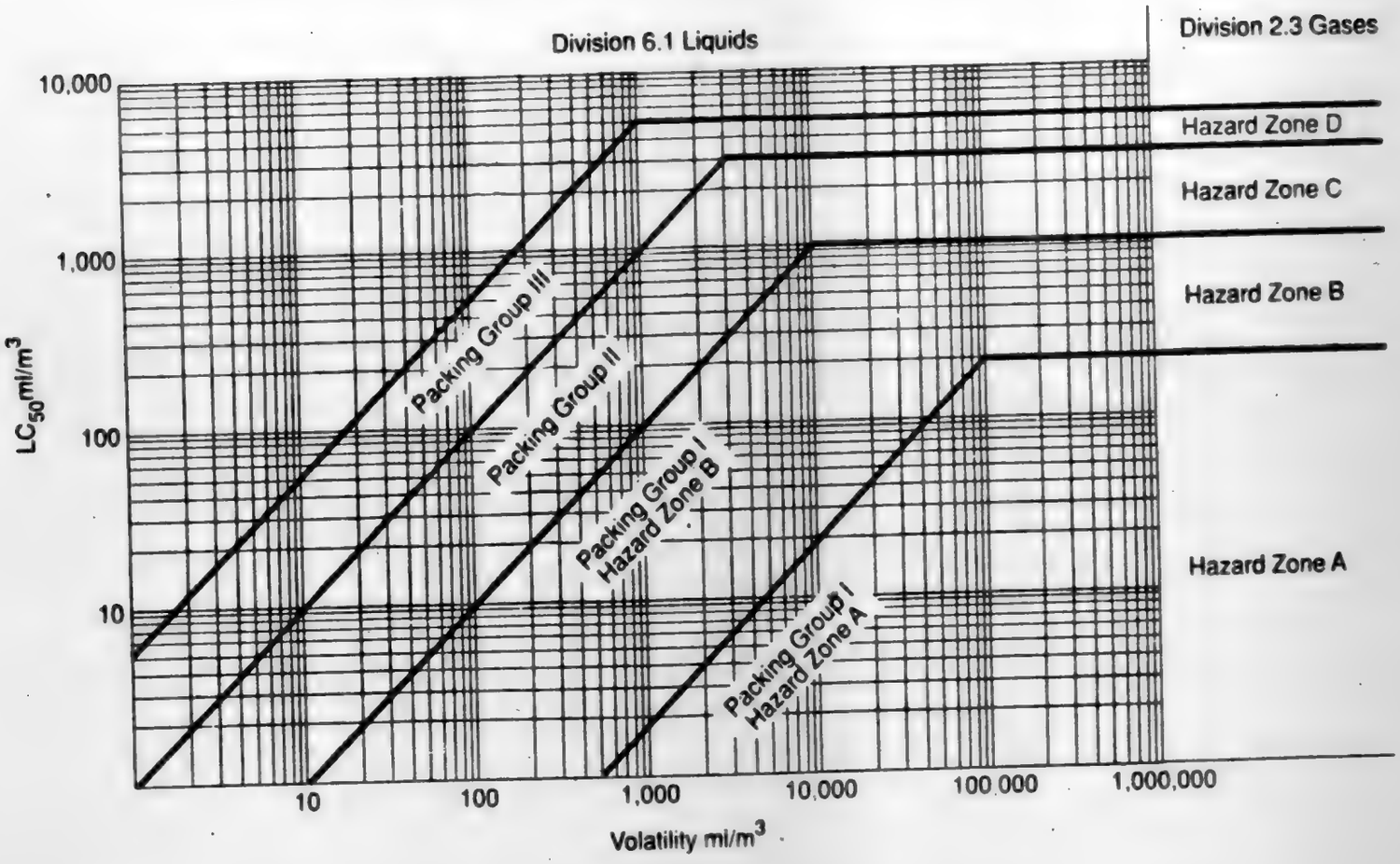
Note 2: A liquid in Division 6.1 meeting criteria for Packing Group I, Hazard Zones A or B stated in paragraph (a)(2) of this section is a material poisonous by inhalation subject to the additional hazard communication requirements in §§ 172.203(m)(3), 172.313 and Table 1 of § 172.504(e) of this subchapter.

(ii) These criteria are represented graphically in Figure I:

BILLING CODE 4910-60-M

Figure 1

Inhalation Toxicity: Packing Group and Hazard Zone Borderlines



BILLING CODE 4910-60-C

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* * * * *

§ 173.133 [Amended]

124. In addition, in § 173.133, the following changes are made:

a. In the paragraph (a)(1) table, in column 4, "<0.5, <2" is revised to read "<0.5, <2".

b. In paragraph (b)(1)(ii), in the formula, "760" is removed and replaced with "101.3".

c. In paragraph (b)(1)(ii), the wording "partial pressure may be calculated" is revised to read "partial pressure of the *ith* component substance in kPa at 20 °C and one atmospheric pressure. Pi may be calculated".

125. In § 173.134, paragraph (a)(4) is added to read as follows:

§ 173.134 Class 6, Division 6.2—Definitions.

(a) * * *

(4) A "regulated medical waste" as defined in Appendix G of this part.

* * * * *

§ 173.134 [Amended]

126. In addition, in § 173.134, in paragraph (a)(1), in the first sentence, the wording "has the potential to cause" is revised to read "causes or may cause".

§ 173.136 [Amended]

127. In § 173.136, in paragraph (b), the wording "paragraph (a) of this section. RSPA may revise its classification or make the material subject to the requirements of this subchapter" is revised to read "paragraph (a) of this section. RSPA may revise its classification or make the determination that the material is not subject to the requirements of this subchapter".

§ 173.137 [Amended]

128. In § 173.137, in paragraphs (a), (b), and (c)(1), the wording "visible necrosis of the skin tissue" is removed and replaced with "visible destruction or irreversible alterations of the skin tissue" each place it appears.

129. Section 173.140 is revised to read as follows:

§ 173.140 Class 9—Definitions.

For the purpose of this subchapter, "miscellaneous hazardous material" (class 9) means a material which:

(a) Has an anesthetic, noxious or other similar property which could cause extreme annoyance or discomfort to a flight crew member so as to prevent the correct performance of assigned duties; and

(b) Meets the definition in § 171.8 of this subchapter for a hazardous substance or a hazardous waste.

130. In § 173.150, paragraphs (f)(1) and (f)(3) (iv) and (vi) are revised to read as follows:

§ 173.150 Exceptions for Class 3 (flammable and combustible liquids).

* * * * *

(f) * * * (1) A flammable liquid with a flash point at or above 38 °C (100°F) that does not meet the definition of any other hazard class, except Class 9, may be reclassed as a combustible liquid. This provision does not apply to transportation by vessel or aircraft, except where other means of transportation is impracticable.

* * * * *

(3) * * *

(iv) Placarding requirements of Subpart F of Part 172 of this subchapter;

(v) * * *

(vi) Reporting incidents as prescribed by §§ 171.15 and 171.16 of this subchapter;

(vii) Packaging requirements of Subpart B of this part and, in addition, non-bulk packagings must comply with requirements of § 173.203; and

* * * * *

§ 173.150 [Amended]

131. In addition, in § 173.150, in paragraph (b)(3), "4.0 L (1 gallon)" is revised to read "5.0 L (1 gallon)".

§ 173.154 [Amended]

132. In § 173.154, in paragraph (d), the wording "packaging constructed" is revised to read "portable tank, cargo tank, or tank car constructed".

§ 173.155 [Amended]

133. In § 173.155, in paragraph (b), in the first sentence, the wording "are excepted from the specification packaging" is revised to read "are excepted from labeling, unless offered or intended for transportation by aircraft, and the specification packaging".

§ 173.156 [Amended]

134. In § 173.156, the following changes are made:

a. In paragraph (b), in the second sentence, the wording "contract motor carrier from a distribution center" is revised to read "contract motor carrier or a common carrier vehicle under exclusive use for such service, from a distribution center to a retail outlet".

b. In addition, in paragraph (b), a third sentence is added at the end of the paragraph to read "Packagings of ORM-D materials shipped in this manner are not subject to the 30 kg (66 pound) gross weight limitation.".

§ 173.158 [Amended]

135. In § 173.158, the following changes are made:

a. In paragraph (e), the wording "4G fiberboard boxes or" is added immediately after "may be packaged in" and before "4C1, 4C2, 4D or 4F wooden boxes".

b. In paragraph (h)(2), the wording "further individually overpacked in tightly closed metal packagings" is added immediately after "capacity".

§ 173.159 [Amended]

136. In § 173.159, in paragraph (d)(1), in the first sentence, "(0.063 mm)" is revised to read "(0.063 inches)".

§ 173.164 [Amended]

137. In § 173.164, the following changes are made:

a. Paragraphs (b)(2) through (b)(4) are redesignated (b)(3) through (b)(5).

b. Paragraph (b)(1) is amended by designating the last sentence as paragraph (b)(2).

c. In newly designated paragraph (b)(2), "also" is removed and the wording "from the requirements of this subchapter" is added immediately after "excepted" and before "if installed", and in newly designated paragraphs (b)(2) and (b)(3)(iv) the semicolon at the end of the sentence is removed and replaced with a period each place it appears.

138. In § 173.171, the introductory paragraph and paragraph (a) are revised to read as follows:

§ 173.171 Smokeless powder for small arms.

Smokeless powder for small arms which has been classed in Division 1.3 may be reclassed as a 4.1 material, for transportation by highway and rail only, subject to the following conditions:

(a) The powder must be examined and approved for a Division 1.3 classification in accordance with § 173.56 of this part;

* * * * *

§ 173.171 [Amended]

139. In addition, in § 173.171, in paragraph (c), in the second sentence, the wording "must be a type" is revised to read "must be of the same type".

§ 173.173 [Amended]

140. In § 173.173, in paragraph (a), in the third sentence, the wording "drying," is added immediately after "thinning," and before "reducing".

§ 173.181 [Amended]

141. In § 173.181, the following changes are made:

a. In paragraph (c) introductory text, the wording "or fiber drums (1G)" is added immediately after "(1A2)" and before "not exceeding"; the wording "strong tight" is added immediately after "each with" and before "inner metal cans"; and the wording "constructed of not less than 0.379 mm (0.015 inch) nominal thickness electro-coated tin plate" is removed.

b. In paragraph (c)(3), "tin" is revised to read "metal".

142. In § 173.185, paragraph (j) introductory text is revised and paragraph (k) is added to read as follows:

§ 173.185 Lithium batteries and cells.

* * * * *

(j) Lithium cells and batteries, for disposal, may be offered for transportation or transported to a permitted storage facility and disposal site by motor vehicle only, if the cells and batteries—

* * * * *

(k) Cells or batteries discharged to below 2 volts, not to exceed 100 cells or batteries per shipment, may be shipped for testing purposes by highway only.

§ 173.185 [Amended]

143. In addition, in § 173.185, the following changes are made:

a. In paragraph (a), the second sentence is revised to read "Rechargeable lithium batteries and cells, devices containing regulated lithium batteries (including lithium batteries contained in equipment) and cells, and lithium batteries and cells which do not otherwise comply with the requirements of this section may not be transported except as approved by the Associate Administrator for Hazardous Materials Safety."

b. In paragraph (i) introductory text, "subpart" is revised to read "subchapter".

c. In paragraphs (j)2) and (j)(3), "Is" is removed and replaced with "Are", both times it appears.

144. In § 173.188, paragraph (a)(2) is revised to read as follows:

§ 173.188 White or yellow phosphorous.

* * * * *

(a) * * *

(2) Steel drums (1A1) not over 250 L (66 gallons) capacity each or steel drums (1A2) not over 115 L (30 gallons) capacity each.

* * * * *

§ 173.192 [Amended]

145. In § 173.192, the following changes are made:

a. In the introductory text, the reference "§ 173.101" is revised to read "§ 172.101".

b. In paragraph (a)(2), "127 kg (280 pounds)" is revised to read "57 kg (125 pounds)".

146. In § 173.193, paragraph (c) is redesignated paragraph (d) and revised; a second sentence is added at the end of paragraph (b); and a new paragraph (c) is added to read as follows:

§ 173.193 Bromoacetone, methyl bromide, chloropicrin and methyl bromide or methyl chloride mixtures, etc.

* * * * *

(b) * * * This capacity does not apply to shipments of methyl bromide.

(c) Methyl bromide mixtures containing up to 2% chloropicrin must be packaged in 4G fiberboard boxes with inside metal cans containing not over one pound each, or inside metal cans with a minimum wall thickness of 0.007 inch containing not over 1¼ pounds each. The one-pound can must be capable of withstanding an internal pressure of 130 psig without leakage or permanent distortion. Vapor pressure of the contents must not exceed 130 psig at 55 °C (130 °F). The 1¼–pound can must be capable of withstanding an internal pressure of 140 psig without leakage or permanent distortion. Vapor pressure of the contents must not exceed 140 psig at 55 °C (130 °F). Cans must not be liquid full at 130 °F. Cans must be constructed of tinplate or lined with suitable material and must have concave or pressure ends.

(d) Cylinders must conform to § 173.40 of this part.

147. In § 173.195, the section heading is revised to read as follows:

§ 173.195 Hydrogen cyanide, anhydrous, stabilized (hydrocyanic acid, aqueous solution).

148. Subpart E is amended by adding § 173.197 to read as follows:

§ 173.197 Regulated medical waste.

(a) Regulated medical waste must be packaged in packagings conforming to the requirements of part 178 of this subchapter at the Packing Group II performance level. The packagings must be:

(1) Rigid;

(2) Leak resistant;

(3) Impervious to moisture;

(4) Of sufficient strength to prevent tearing or bursting under normal conditions of use and handling;

(5) Sealed to prevent leakage during transport;

(6) Puncture resistant for sharps and sharps with residual fluids; and

(7) Break-resistant and tightly lidded or stoppered for fluids in quantities greater than 20 cubic centimeters.

(b) Until October 1, 1994, packages do not have to be marked or tested but must be capable of meeting the requirements in subpart M of part 178 of this subchapter.

§ 173.202 [Amended]

149. In § 173.202, in paragraph (c), the entry "Fiber drum: 1G (with liner)" is added immediately below the entry "Plastic drum: 1H1 or 1H2".

§ 173.203 [Amended]

150. In § 173.203, in paragraph (c), the entry "Fiber drum: 1G (with liner)" is added immediately below the entry "Plastic drum: 1H1 or 1H2".

§ 173.211 [Amended]

151. In § 173.211, in paragraph (c), the entry "Fiber drum: 1G" is added immediately below the entry "Plastic drum: 1H1 or 1H2".

§ 173.224 [Amended]

152. In § 173.224, the following changes are made:

a. In the paragraph (c) table, in columns (2a) and (2b), for each entry, the metric measurements are revised by removing the parentheses, moving the metric measurements to precede the U.S. standard measurements, and adding parentheses around the U.S. standard measurements.

b. In the paragraph (c) table, in column (2b), for the entry F5a, "55 kg (110 lb)" is revised to read "50 kg (110 lb)"; and in the column "Outer packaging", for the entry F5b, the wording "Fiber drum, sift proof 1G" is added.

153. In § 173.225, in paragraph (b), the Organic Peroxides Table is revised to read as follows:

§ 173.225 Packaging requirements and other provisions for organic peroxides.

* * * * *

(b) * * *

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ORGANIC PEROXIDES TABLE

Technical Name	ID Number	Concentration (Mass %)	Diluent (Mass %) A	Diluent (Mass %) B	Diluent (Mass %) I	Water (Mass %)	Packing Method	Temperature(°C) Control	Temperature(°C) Emergency	Notes
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
Acetyl acetone peroxide	UN3105	≤42	≥48			≥8	OP7A			2
Acetyl acetone peroxide as a paste	UN3106	≤32					OP7B			21
Acetyl benzoyl peroxide	UN3105	≤45	≥55				OP7A			
Acetyl cyclohexanesulfonyl peroxide	UN3112	≤82				≥12	OP4B	-10	0	
Acetyl cyclohexanesulfonyl peroxide	UN3115	≤32		≥68			OP7A	-10	0	
tert-Amyl hydroperoxide	UN3107	≤88	≥8			≥6	OP8A			
tert-Amyl peroxybenzoate	UN3105	≤96	≥4				OP7A			
tert-Amyl peroxy-2-ethylhexanoate	UN3115	≤100					OP7A	20	25	
tert-Amyl peroxyneodecanoate	UN3115	≤77		≥23			OP7A	0	10	
tert-Amyl peroxypivalate	UN3113	≤77		≥23			OP5A	10	15	
tert-Amylperoxy-3,5,5-trimethylhexanoate	UN3101	≤100					OP5A			
tert-Butyl cumyl peroxide	UN3106	≤100					OP7A			1,9
n-Butyl-4,4-di-(tertbutylperoxy) valerate	UN3103	>52,≤100					OP5A			
n-Butyl-4,4-di-(tertbutylperoxy) valerate	UN3106	≤52			≥48		OP7B			
tert-Butyl hydroperoxide	UN3103	>72,≤90				≥10	OP5A			
tert-Butyl hydroperoxide	UN3106	≤80	≥20				OP7A			4
tert-Butyl hydroperoxide	UN3109	≤72				≥28	OP8A			14
tert-Butyl hydroperoxide *and* di-tert-butyl peroxide	UN3103	≤82 ≥9				≥7	OP5A			
tert-Butyl monoperoxymaleate	UN3102	>52,≤100					OP5B			
tert-Butyl monoperoxymaleate	UN3103	≤52	≥48				OP6A			
tert-Butyl monoperoxymaleate *as a paste*	UN3106	≤42					OP8B			21
tert-Butyl monoperoxyphthalate	UN3102	≤100					OP5B			
tert-Butyl peroxyacetate	UN3101	>52,≤77	≥23				OP5A			
tert-Butyl peroxyacetate	UN3103	≤52	≥48				OP6A			
tert-Butyl peroxybenzoate	UN3103	>77,≤100	≥22				OP5A			
tert-Butyl peroxybenzoate	UN3105	>52,≤77	≥23				OP7A			1
tert-Butyl peroxybenzoate	UN3106	≤52			≥48		OP7B			
tert-Butyl peroxycrotonate	UN3105	≤77	≥23				OP7A			
tert-Butyl peroxydiethylacetate	UN3113	≤100					OP5A	20	25	
tert-Butyl peroxydiethylacetate *and* tert-Butyl peroxybenzoate	UN3105	≤33 ≥33	≥33				OP7A			
tert-Butyl peroxy-2-ethylhexanoate	UN3113	>52,≤100					OP6A	20	25	
tert-Butyl peroxy-2-ethylhexanoate	UN3117	≤52		≥48			OP6A	20	25	
tert-Butyl peroxy-2-ethylhexanoate *and* 2,2-Di-(tert-butylperoxy)butane	UN3115	≤31 ≤36		≥33			OP7A	35	40	
tert-Butyl peroxy-2-ethylhexanoate *and* 2,2-Di-(tert-butylperoxy)butane	UN3106	≤12 ≤14	≥14		≤60		OP7B			
tert-Butyl peroxyisobutyrate	UN3111	>52,≤77		≥23			OP5A	15	20	
tert-Butyl peroxyisobutyrate	UN3115	≤52		≥48			OP7A	15	20	
tert-Butylperoxy isopropylcarbonate	UN3103	≤77	≥23				OP5A			
tert-Butyl peroxyneodecanoate	UN3115	>77,≤100					OP7A	-5	5	
tert-Butyl peroxyneodecanoate	UN3115	≤77		≥23			OP7A	0	10	
3-tert-Butylperoxy-3-phenylphthalide	UN3106	≤100					OP7B			
tert-Butyl peroxypivalate	UN3113	>67,≤77	≥23				OP5A	0	10	
tert-Butyl peroxypivalate	UN3115	≤67		≥33			OP7A	0	10	
tert-Butylperoxy stearylcarbonate	UN3106	≤100					OP7B			
tert-Butyl peroxy-3,5,5-trimethylhexanoate	UN3105	≤100					OP7A			
3-Chloroperoxybenzoic acid	UN3102	>57,≤86				≥14	OP1B			
3-Chloroperoxybenzoic acid	UN3106	≤57			≥3	≥40	OP7B			
Cumyl hydroperoxide	UN3109	≤90	≥10				OP8A			14
Cumyl peroxyneodecanoate	UN3115	≤77		≥23			OP7A	-10	0	
Cumyl peroxypivalate	UN3115	≤77		≥23			OP7A	-5	5	
Cyclohexanone peroxide(s)	UN3104	≤91				≥9	OP6B			
Cyclohexanone peroxide(s) *as a paste*	UN3106	≤72					OP7B			5, 21
Cyclohexanone peroxide(s)	UN3105	≤72	≥28				OP7A			5
Cyclohexanone peroxide(s)	Exempt	≤32			≤68					
Diacetone alcohol peroxides	UN3115	≤57		≥26		≥6	OP7A	30	35	5
Diacetyl peroxide	UN3115	≤27		≥73			OP7A	20	25	8
Di-tert-amyl peroxide	UN3107	≥100					OP8A			
Dibenzoyl peroxide	UN3102	>52,≤100			≤48		OP2B			3
Dibenzoyl peroxide	UN3102	>78,≤94				≥6	OP4B			3
Dibenzoyl peroxide	UN3104	≤77				≥23	OP6B			
Dibenzoyl peroxide	UN3106	≤62			≥28	≥10	OP7B			
Dibenzoyl peroxide *as a paste*	UN3106	>52≤62					OP7B			21
Dibenzoyl peroxide *as a paste*	UN3108	≤52					OP8B			21
Dibenzoyl peroxide	UN3106	>35,≤52			≥48		OP7B			
Dibenzoyl peroxide	Exempt	≤35			≤65					
Dibenzyl peroxydicarbonate	UN3112	≤87				≥13	OP5B	25	30	
Di-(4-tert-butylcyclohexyl) peroxydicarbonate	UN3114	≤100					OP6B	30	35	
Di-(4-tert-butylcyclohexyl) peroxydicarbonate *as a stable dispersion in water.*	UN3119	≤42					OP8A	30	35	
Di-tert-butyl peroxide	UN3107	≥100					OP8A			
2,2-Di-(tert-butylperoxy)butane	UN3103	≤52	≥48				OP6A			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3101	>80,≤100					OP5A			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3103	>52,≤80	≥20				OP5A			

ORGANIC PEROXIDES TABLE—Continued

Technical Name	ID Number	Concentration (Mass %)	Diluent (Mass %) A	Diluent (Mass %) B	Diluent (Mass %) I	Water (Mass %)	Packing Method	Temperature(°C) Control	Temperature(°C) Emergency	Notes
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
1,1-Di-(tert-butylperoxy)cyclohexane	UN3105	≤52	≥48				OP7A			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3106	≤42	≥13		≥45		OP7B			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3107	≤27	≥36				OP8A			III
2,2-Di-(4,4-tert-butylperoxycyclo hexyl)propane	UN3106	≤42			≥58		OP7B			
Di-n-butyl peroxydicarbonate	UN3115	>27,≤52		≥48			OP7A	-15	-5	
Di-n-butyl peroxydicarbonate	UN3117	≤27		≥73			OP8A	-10	0	II
Di-sec-butyl peroxydicarbonate	UN3113	>52,≤100					OP4A	-20	-10	II
Di-sec-butyl peroxydicarbonate	UN3115	≤52		≥48			OP7A	-15	-5	
Di-(2-tert-butylperoxyisopropyl) benzene(s)	UN3106	>42,≤100			≤57		OP7B			1,9
Di-(2-tert-butylperoxyisopropyl) benzene(s)	Exempt	≤42			≥58					
Di-(tert-butylperoxy)phthalate	UN3105	>42,≤52	≥48				OP7A			
Di-(tert-butylperoxy)phthalate *as a paste*	UN3106	≤52					OP7B			21
Di-(tert-butylperoxy)phthalate	UN3107	≤42	≥58				OP8A			
2,2-Di-(tert-butylperoxy)propane	UN3105	≤52	≥48				OP7A			
2,2-Di-(tert-butylperoxy)propane	UN3108	≤42	≥13		≥45		OP7B			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane	UN3101	>57,≤100					OP5A			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane	UN3106	≤57			≥43		OP7B			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethyl cyclohexane	UN3107	≤57	≥43				OP8A			
Dicetyl peroxydicarbonate	UN3116	≤100					OP7B	20	35	
Dicetyl peroxydicarbonate *as a stable dispersion in water.*	UN3119	≤42					OP8A	30	35	
Di-4-chlorobenzoyl peroxide	UN3102	≤77				≥23	OP5B			
Di-4-chlorobenzoyl peroxide *as a paste*	UN3108	≤52					OP7B			21
Di-4-chlorobenzoyl peroxide	Exempt	≤32			≥66					9
Dicumyl peroxide	UN3110	>42,≤100			≥57		OP8B			
Dicumyl peroxide	Exempt	≤42			≥58					
Dicyclohexyl peroxydicarbonate	UN3112	>91,≤100					OP5B	5	10	
Dicyclohexyl peroxydicarbonate	UN3114	≤91				≥9	OP3B	5	10	
Didecanoyl peroxide	UN3114	≤100					OP6B	15	20	
Di-2,4-dichlorobenzoyl peroxide	UN3102	≤77				≥23	OP5B			
Di-2,4-dichlorobenzoyl peroxide *as a paste with* silicon oil	UN3106	≤52					OP7B			
Di-(2-ethylhexyl) peroxydicarbonate	UN3113	>77,≤100					OP5A	-20	-10	
Di-(2-ethylhexyl) peroxydicarbonate	UN3115	≤77					OP7A	-15	-5	
Di-(2-ethylhexyl) peroxydicarbonate *as a stable dispersion in water.*	UN3117	≤42					OP8A	-15	-5	
Di-(2-ethylhexyl) peroxydicarbonate *as a stable dispersion in water (frozen).*	UN3117	≤42					OP8B	-15	-5	
Diethyl peroxydicarbonate	UN3115	≤27		≥73			OP7A	-10	0	
2,2-Dihydroperoxypropane	UN3102	≤27			≥73		OP5B			
Di-(1-hydroxycyclohexyl) peroxide	UN3106	≤100					OP7B			
Diisobutyryl peroxide	UN3111	>32,≤52		≥48			OP5A	-20	-10	
Diisobutyryl peroxide	UN3115	≤32		≥68			OP7A	-20	-10	
Diisopropyl peroxydicarbonate	UN3112	>52,≤100					OP2B	-15	-5	
Diisopropyl peroxydicarbonate	UN3115	≤52		≥48			OP7A	-10	0	
Diisotridecyl peroxydicarbonate	UN3115	≤100					OP7A	-10	0	
Dilauroyl peroxide	UN3106	≤100					OP7B			
Dilauroyl peroxide *as a stable dispersion in water*	UN3109	≤42					OP8A			
Di-(2-methylbenzoyl) peroxide	UN3112	≤87				≥13	OP5B	30	35	
2,5-Dimethyl-2,5-di-(benzoyl peroxy) hexane	UN3102	>82,≤100					OP5B			
2,5-Dimethyl-2,5-di-(benzoyl peroxy) hexane	UN3106	≤82			≥18		OP7B			
2,5-Dimethyl-2,5-di-(benzoyl peroxy) hexane	UN3104	≤82				≥18	OP5B			
2,5-Dimethyl-2,5-di-(tert-butyl peroxy)hexane	UN3105	>52,≤100					OP7A			
2,5-Dimethyl-2,5-di-(tert-butyl peroxy)hexane	UN3106	≤52			≥48		OP7B			
2,5-Dimethyl-2,5-di-(tert-butyl peroxy)hexyne-3	UN3103	>52,≤100					OP5A			
2,5-Dimethyl-2,5-di-(tert-butyl peroxy)hexyne-3	UN3106	≤52			≥48		OP7B			
2,5-Dimethyl-2,5-di-(2-ethylhexanoylperoxy)hexane	UN3115	≤100					OP7A	20	25	
2,5-Dimethyl-2,5-dihydroperoxyhexane	UN3104	≤82				≥18	OP5B			
2,5-Dimethyl-2,5-di-(3,5,5-trimethylhexanoylperoxy)hexane.	UN3105	≤77	≥23				OP7A			
Dimyristyl peroxydicarbonate	UN3116	≤100					OP7B	20	25	
Dimyristyl peroxydicarbonate *as a stable dispersion in water.*	UN3119	≤42					OP8A	20	25	
Di-n-nonanoyl peroxide	UN3116	≤100					OP7B	0	10	
Di-n-octanoyl peroxide	UN3114	≤100					OP5B	10	15	
Diperoxy azelaic acid	UN3116	≤27			≥73		OP7B	35	40	
Diperoxy dodecane diacid	UN3116	>13,≤42			≥58		OP7B	40	45	
Diperoxy dodecane diacid	Exempt	≤13								
Di-(2 Phenoxyethyl) peroxydicarbonate	UN3102	>85,≤100					OP5B			
Di-(2 phenoxyethyl) peroxydicarbonate	UN3106	≤85				≥15	OP7B			
Dipropionyl peroxide	UN3117	≤27		≥73			OP8A	15	20	
Di-n-propyl peroxydicarbonate	UN3113	≤100					OP4A	-25	-15	
Distearyl peroxydicarbonate	UN3106	≤87			≥13		OP7B			
Disuccinic acid peroxide	UN3102	>72,≤100					OP4B			15
Disuccinic acid peroxide	UN3116	≤72				≥28	OP7B	10	15	16
Di-(3,5,5-trimethyl-1,2-dioxo-lanyl-3) peroxide *as a paste.*	UN3116	≤52					OP7B	30	35	21

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ORGANIC PEROXIDES TABLE—Continued

Technical Name (1)	ID Number (2)	Concentration (Mass %) (3)	Diluent (Mass %) A (4a)	Diluent (Mass %) B (4b)	Diluent (Mass %) I (4c)	Water (Mass %) (5)	Packing Method (6)	Temperature(°C) Control (7a)	Temperature(°C) Emergency (7b)	Notes (8)
Di-(3,5,5-trimethylhexanoyl) peroxide	UN3115	≦82	≧18				OP7A			
Ethyl-3,3-di-(tert-amylperoxy) butyrate	UN3105	≦67	≧33				OP7A			
Ethyl-3,3-di-(tert-butylperoxy) butyrate	UN3103	>77, ≦100					OP5A			
Ethyl-3,3-di (tert-butylperoxy) butyrate	UN3105	≦77	≧23				OP7A			
Ethyl-3,3-di-(tert-butylperoxy) butyrate	UN3106	≦52			≧48		OP7B			
3,3,6,6,9,9-Hexamethyl-1,2,4,5-tetraoxacyclononane	UN3102	>52, ≦100					OP4B			
3,3,6,6,9,9-Hexamethyl-1,2,4,5-tetraoxacyclononane	UN3105	≦52	≧48				OP7A			
3,3,6,6,9,9-Hexamethyl-1,2,4,5-tetraoxacyclononane	UN3106	≦52			≧48		OP7B			
Isopropylcumyl hydroperoxide	UN3109	≦72	≧28				OP8A			14
p-Menthyl hydroperoxide	UN3105	>55, ≦100					OP7A			
p-Menthyl hydroperoxide	UN3109	≦55	≧45				OP8A			14
Methylcyclohexanone peroxide(s)	UN3115	≦67		≧33			OP7A	35	40	
Methyl ethyl ketone peroxide(s)	UN3101	≦52	≧48				OP5A			5
Methyl ethyl ketone peroxide(s)	UN3105	≦45	≧55				OP7A			5
Methyl ethyl ketone peroxide(s)	UN3107	≦40	≧60				OP8A			5,23
Methyl isobutyl ketone peroxide(s)	UN3105	≦62	≧19				OP7A			5
Organic peroxide, solid, temperature controlled	UN3114						OP2B			12
Organic peroxide, liquid, sample	UN3103						OP2A			12
Organic peroxide, liquid, temperature controlled	UN3113						OP2A			12
Organic peroxide, solid, sample	UN3104						OP2B			12
Peroxyacetic acid, type D, stabilized	UN3105	≦43					OP7A			20
Peroxyacetic acid, type E, stabilized	UN3107	≦43					OP8A			20
Peroxyacetic acid, type F, stabilized	UN3109	≦43					OP8A			20
Pinanyl hydroperoxide	UN3105	>55, ≦100					OP7A			
Pinanyl hydroperoxide	UN3109	≦55	≧45				OP8A			14
Tetrahydronaphthyl hydroperoxide	UN3106	≦100					OP7B			
1,1,3,3-Tetramethylbutyl hydroperoxide	UN3105	≦100					OP7A			
1,1,3,3-Tetramethylbutylperoxy-2-ethylhexanoate	UN3115	≦100					OP7A	20	25	
2,4,4-Trimethylpentyl-2-peroxy phenoxyacetate	UN3115	≦37		≧63			OP7A	-10	0	

* * * * *

§ 173.225 [Amended]

154. In addition, in § 173.225, the following changes are made:

a. In paragraph (c)(4)(i), "Type C" is revised to read "Type B".

b. In the § 173.225(d)(1) Table, in the Table heading, the wording "Table 11.2(A)—" is removed.

c. In the § 173.225(d)(1) Table, in the Column 2 heading, the wording "(see 9.4.7)" is removed.

d. In the § 173.225 (d)(1) Table, for the entry "Steel drum", in the columns titled "OP7A" and "OP8A", "60" and "225" are removed and replaced with "60 L" and "225 L", respectively.

e. In the § 173.225(d)(1) Table, for the entry "Fiber drum [3]", in the column titled "OP4A [3]", "5 KG" is removed and replaced with "5/25 kg", and in the column titled "OP5A [2], the term "50 kg" is removed and replaced with "25 kg".

f. In the § 173.225(d)(2) Table, in the Column 2 heading, the wording "(see 9.4.7)" is removed.

g. In the § 173.225(d)(2) Table, the column heading "OP2B [2]" is removed and replaced with the column heading "OP2B [2,3]".

h. In the § 173.225(d)(2) Table, in the column heading "OP5B [2]", for the entries "Plastics receptacle with outer fiberboard box.", "Plastics receptacle with outer plastics drum." and "Plastics receptacle with outer solid plastics box.", "30 kg" is removed and replaced with "25 kg" each place it appears.

i. In the § 173.225(d)(2) Table, in the column heading "OP6B [2]", for the entries "Plastics receptacle with outer fiberboard box.", "Plastics receptacle with outer plastics drums." and "Plastics receptacle with outer solid plastics box.", "60 kg" is removed and replaced with "50 kg" each place it appears.

§ 173.226 [Amended]

155. In § 173.226, the following changes are made:

a. In paragraph (b) introductory text, a new sentence is added after the third sentence to read "Outer 1A2 and 1H2 drums must withstand a hydrostatic test pressure of 100 kPa (15 psi).".

b. In paragraph (c)(2), in the fourth sentence, "screw-type" is removed.

§ 173.227 [Amended]

156. In § 173.227, the following changes are made:

a. In paragraph (b) introductory text, a new sentence is added after the third sentence to read "Outer 1A2 and 1H2 drums must withstand a hydrostatic test pressure of 100 kPa (15 psi).".

b. In paragraph (b)(3)(ii)(D), "(0.625 inch)" is revised to read "(0.0625 inch)".

c. In paragraph (b)(3)(iii)(D), "(0.62 inch)" is revised to read "(0.0625 inch)" and "(0.43 inch)" is revised to read "(0.043 inch)".

157. In § 173.230, paragraphs (b)(1)(v) and (b)(2)(v) are added to read as follows:

§ 173.230 Non-bulk packagings for ORM-D materials.

* * * * *

(b) * * * (1) * * *

(v) Cartridges, power devices which are used to project fastening devices.

(2) * * *

(v) Cartridges, power devices which are used to project fastening devices and 22 caliber rim-fire cartridges may be packaged loose in strong outside packagings.

* * * * *

§ 173.230 [Amended]

158. In addition, in § 173.230, in paragraphs (b)(1)(iii) and (b)(2)(iii), the word "and" is removed; and in paragraphs (b)(1)(iv) and (b)(2)(iv), the period is removed at the end of the sentence and replaced with "; and".

159. In § 173.240, paragraphs (a) and (c) are revised to read as follows:

§ 173.240 Bulk packaging for certain low hazard solid materials.

* * * * *

(a) *Rail cars:* Class DOT 103, 104, 105, 109, 111, 112, 114, or 115 tank car tanks; Class 106 or 110 multi-unit tank car tanks; and metal non-DOT specification, sift-proof tank car tanks and sift-proof closed cars.

* * * * *

(c) *Portable tanks and closed bulk bins*: DOT 51, 52, 53, 56, 57 and 60 portable tanks; IMO type 1, 2 and 5, and IM 101 and IM 102 portable tanks; marine portable tanks conforming to 46 CFR part 64; and sift-proof non-DOT specification portable tanks and closed bulk bins.

160. In § 173.241, paragraph (c) is revised to read as follows:

§ 173.241 Bulk packagings for certain low hazard liquid and solid materials

* * * * *

(c) *Portable tanks*: DOT 51, 52, 56, 57 and 60 portable tanks; IMO type 1, 2 and 5, and IM 101 and IM 102 portable tanks; marine portable tanks conforming to 46 CFR part 64; and non-DOT specification portable tanks suitable for transport of liquids.

§ 173.242 [Amended]

161. In § 173.242, in paragraph (a), the last sentence is removed.

§ 173.243 [Amended]

162. In § 173.243, the following changes are made:

a. In paragraph (a), in the first sentence, the wording "fusion-welded" is added immediately after "115" and before "tank car tanks", and the second, third, and fourth sentences are removed.

b. In paragraph (b)(2), the wording "DOT 406," is removed.

163. In § 173.244, the section heading and paragraph (b) are revised to read as follows:

§ 173.244 Bulk packaging for certain pyrophoric liquids (Division 4.2) and poisonous liquids with inhalation hazards (Division 6.1).

* * * * *

(b) *Cargo tanks:* Specifications MC 330 and MC 331 cargo tank motor vehicles and, except for Division 4.2 materials, MC 312 and DOT 412 cargo tank motor vehicles.

* * * * *

§ 173.244 [Amended]

164. In addition, in § 173.244, in paragraph (a), the wording "fusion-welded" is added immediately after "114" and before "tank car tanks", and the last sentence is removed.

165. In § 173.245, paragraph (a) is added to read as follows:

§ 173.245 Bulk packaging for extremely hazardous materials such as poisonous gases (Division 2.3).

* * * * *

(a) Tank car tanks and multi-unit tank car tanks, when approved by the Associate Administrator for Hazardous Materials Safety.

* * * * *

§ 173.249 [Amended]

166. In § 173.249, the following changes are made:

a. In paragraph (b), two sentences are added at the end of the paragraph to read "The total quantity in one tank may not be less than 88 percent nor more than 96 percent of the volume of the tank. Cargo tanks in bromine service built prior to August 31, 1991 may continue in service under the requirements contained in § 173.252(a)(4) of this part in effect on September 30, 1991.".

b. In paragraph (c), in the first sentence, the word "intermodal" is removed, and a new sentence is added at the end of the paragraph to read "The total quantity in one tank may not be less than 88 percent nor more than 92 percent of the volume of the tank.".

167. In § 173.302, paragraph (h) is added to read as follows:

§ 173.302 Charging of cylinders with non-liquefied compressed gases.

* * * * *

(h) *Poisonous gases.* Packagings containing Division 2.3 materials must conform to the requirements of § 173.40 of this part.

§ 173.302 [Amended]

168. In addition, in § 173.302, the following changes are made:

a. In paragraph (a) introductory text, the wording "(except gas in solution or poisonous gas)" is revised to read "(except gas in solution)".

b. In paragraph (a)(4)(iii), the reference "RR–C–901b" is revised to read "RR–C–901c" each place it appears, and the wording "dated August 1, 1967" is revised to read "dated January 15, 1981".

169. In § 173.304, paragraph (g) is added to read as follows:

§ 173.304 Charging of cylinders with liquefied compressed gas.

* * * * *

(g) *Poisonous mixtures.* Packagings containing Division 2.3 materials must conform to the requirements of § 173.40 of this part.

§ 173.304 [Amended]

170. In addition, in § 173.304, the following changes are made:

a. In paragraph (a) introductory text, the wording "except gas in solution or poisonous gas" is revised to read "except gas in solution".

b. In paragraph (a)(1), the wording "or poisonous material (class A, B, or irritating material)," is revised to read "or poisonous material (Division 6.1 or 2.3).".

c. In paragraph (a)(4)(ii), the reference "RR–C–901b" is revised to read "RR–C–901c" each place it appears.

§ 173.305 [Amended]

171. In § 173.305, the following changes are made:

a. In paragraph (a), the reference "§ 173.300(a)" is removed and replaced with "§ 173.115".

b. In paragraph (d), the wording "any poisonous material, Class A, or irritating material" is revised to read "any poisonous material (Division 6.1 or 2.3)"; and the wording "§ 173.326(a) or § 173.381(a)" is revised to read "§§ 173.115 or 173.132".

172. In § 173.306, paragraph (i) is added to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(i) To determine the flammability of aerosols, the following test method must be applied:

(1) Either a mixture of 13 percent or less (by volume) with air forms a flammable mixture or the flammable range with air is wider than 12 percent regardless of the lower limit. These limits shall be determined at atmospheric temperature and pressure. The method of sampling and test procedure shall be acceptable to the Bureau of Explosives and approved by the Associate Administrator for Hazardous Materials Safety.

(2) Using the Bureau of Explosives' Flame Projection Apparatus, the flame projects more than 18 inches beyond the ignition source with valve opened fully or the flame flashes back and burns at the valve with any degree of valve opening.

(3) Using the Bureau of Explosives' Open Drum Apparatus, there is any significant propagation of flame away from the ignition source.

(4) Using the Bureau of Explosives' Closed Drum Apparatus, there is any explosion of the vapor-air mixture in the drum.

§ 173.306 [Amended]

173. In § 173.306, the following changes are made:

a. In paragraph (a) introductory text, a third sentence is added at the end, and in paragraph (h) introductory text, a new sentence is added immediately after the first sentence, to read "Each package may not exceed 30 kg (66 pounds) gross weight."

b. In paragraphs (a)(3)(i) and (b)(1), the wording "(27.7 fluid ounces)" is

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revised to read "(1 liter)" both places it appears.

c. In paragraph (b) introductory text, the wording "(except poisonous gases as defined by § 173.326)" is revised to read "(except poisonous gases as defined by § 173.115(a)(3) of this part)".

d. In paragraph (b)(3), in the first sentence, the wording "is nonpoisonous and" is revised to read "is, except for Division 6.1 Packing Group III material, nonpoisonous and".

§ 173.308 [Amended]

174. In § 173.308, the following changes are made:

a. In paragraph (a)(1), the wording "2.3 fluid ounces" is revised to read "70 ml (2.3 fluid ounces)".

b. In paragraph (a)(2), "60 °F" is revised to read "15 °C (59 °F)".

c. In paragraph (a)(3), "130 °F" is revised to read "55 °C (131 °F)".

d. In paragraph (c), in the second sentence, the wording "25 feet" is revised to read "8 m (26 feet)".

175. In § 173.314, paragraph (c) is revised and paragraph (g)(3) is added to read as follows:

§ 173.314 Requirements for compressed gases in tank car tanks.

* * * * *

(c) *Authorized gases, filling densities, and tank car tanks.* A compressed gas offered for transportation in a tank car tank must be prepared in accordance with paragraphs (b) through (i) of this section, §§ 172.101, 173.10, 173.24b, and 173.31 of this subchapter, and the following table (for cryogenic liquids, see § 173.319 of this subpart):

Kind of gas	Maximum permitted filling density (see Note 1)	Authorized tank car	Notes
Ammonia, anhydrous, or ammonia solutions >50 percent ammonia	Note 21	105A300W, 112S340W, 114S340W	24
	Note 21	106A500X	
Ammonia, solutions with >35 percent ≤50 percent ammonia by mass	Note 21	105A, 112A, 114A, 111A100W4	
Argon, compressed	Note 20	107A	
Boron trichloride	Note 21	105A300W, 106A500X	
Carbon dioxide, refrigerated liquid	Note 5	105A500W	6
Chlorine	125	105A500W	12, 30
	125	106A500X	
Chlorine trifluoride	Note 21	106A500X, 110A500W	
Chlorine pentafluoride	Note 21	106A500X, 110A500W	
Dimethylamine, anhydrous	59	106A500X	
	61	112T340W, 112J340W	4
	62	105A300W	4, 23
Dimethyl ether	59	106A500X, 110A500W	
	62	105A300W	4, 23
Dinitrogen tetroxide or nitrogen tetroxide (see Nitrogen dioxide)			
Division 2.1 materials not specifically provided for in this table	Note 21	105A, 111A100W4, 112T, 112J, 114T, 114J	4, 13, 23
	Note 21	106A, 110A	7
Division 2.2 materials not specifically identified in this table	Note 21	105A, 109A, 111A100W4, 112A, 114A	13
	Note 21	106A, 110A	7
Division 2.3, Hazard Zone A, materials not specifically identified in this table	None	None	22
Division 2.3, Hazard Zone B, materials not specifically identified in this table	Note 21	105J300W, 112J340W, 112T340W, 114J340W, 114T340W	3, 9
	Note 21	106A, 110A	7
Division 2.3, Hazard Zone C, materials not specifically identified in this table	Note 21	105J300W, 112J340W, 112T340W, 114J340W, 114T340W	3, 9
	Note 21	106A, 110A	7
Division 2.3, Hazard Zone D, materials not specifically identified in this table	Note 21	105J300W, 109A, 112J340W, 112T340W, 114J340W, 114T340W	9, 15
	Note 21	106A, 110A	7
Ethylamine	Note 21	105A100W, 111A100W4, 112J200W, 112T200W, 114J340W, 114T340W	4, 23
	Note 21	106A, 110A	
Helium	Note 20	107A	
Hydrogen	Note 20	107A	2
Hydrogen chloride, refrigerated liquid	Note 18	105A600W	17, 30
Hydrogen sulfide	68	106A800X	7, 8
Methylamine, anhydrous	62	105A300W	4, 23
	61	112T340W, 112J340W	4
	60	106A500X	
Methyl bromide	Note 21	105A100W, 111A100W4	29, 30
	Note 21	106A	7
Methyl chloride	85	112T340W, 112J340W	4
	86	105A300W	4, 23
	84	106A500X	
Methyl mercaptan	82	105A300W	4, 23
	80	106A500X	7
Nitrogen	Note 20	107A	
Nitrogen dioxide, liquefied	Note 21	105A500W	
	Note 21	106A500X, 110A500W	
Nitrosyl chloride	124	105A300W	10, 30
	110	106A800X	7, 11
Nitrous oxide	Note 5	105A500W	6, 30
Oxygen	Note 20	107A	
Phosgene	Note 21	106A500X	7
Sulfur dioxide	125	105A200W	30
	125	106A500X, 110A500W	
Sulfuryl fluoride	120	105A500W	

Kind of gas	Maximum permitted filling density (see Note 1)	Authorized tank car	Notes
Vinyl fluoride, inhibited	Note 19	105A600W	17, 23

Notes:
1 The filling density for liquefied gases is hereby defined as the percent ratio of the weight of gas in the tank to the weight of water that the tank will hold. For determining the water capacity of the tank in pounds, the weight of one gallon of water at 15.55°C (60°F) in air is 8.32828 pounds.
2 Each tank must be equipped with one or more safety relief devices of an approved design. The discharge outlet of each safety relief device must be connected to a manifold having an unobstructed discharge area of at least 1¼ times the total discharge area of the safety relief devices connected to the manifold. All manifolds must be connected to a single common header having an unobstructed discharge outlet pointing upward and extending above top of the car. The header and the header outlet must each have an unobstructed discharge area at least equal to the total discharge area of the manifolds connected to the header. The header outlet must be equipped with an approved ignition device which will instantly ignite any hydrogen discharged through the safety relief device.
3 If the material has a secondary hazard in Division 2.1, then the provisions of Note 4 are applicable.
4 For single unit tank car tanks, interior pipes of loading and unloading valves must be equipped with excess-flow valves of approved design. For single unit tank car tanks built after December 30, 1971, the interior pipes of gaging devices with an opening for the passage of lading exceeding 1.52 mm (0.060 inch) diameter must be equipped with excess flow valves of approved design. The interior pipes of sampling devices must be equipped with excess flow valves of approved design. The protective housing cover must be provided with an opening above each safety relief valve which is concentric with the discharge of the valve and which has an area at least equal to the valve outlet area. Each protective housing cover opening must be provided with a weatherproof cover designed for vertical discharge.
5 The liquid portion of the gas at 0°F must not completely fill the tank.
6 Each tank must be insulated with an approved material of a thickness so that the thermal conductance is not more than 0.03 B.t.u. per square foot, per degree F. differential in temperature per hour, except that the insulation thickness directly over the center sills may be reduced to give thermal conductance not exceeding 0.04 B.t.u. per square foot, per degree F. differential in temperature per hour (this reduction permits an anchorage not exceeding seven inches from top of center sills to bottom of tank). Tank must be equipped with one safety relief valve of approved design set to open at a pressure not exceeding 75 percent of the test pressure of the tank and one frangible disc of approved design set to function at a pressure less than the test pressure of the tank. The discharge capacity of each of these safety relief devices must be sufficient to prevent building up of pressure in the tank in excess of 82.5 percent of the test pressure of the tank. Tanks must be equipped with two pressure-regulating valves of approved design set to open at a pressure not to exceed 350 psi on 105A500–W tanks and at a pressure not to exceed 400 psi on 105A600–W tanks. Each regulating valve and safety relief device must have its final discharge piped to the outside of the protective housing. See § 179.102–1 of this subchapter for additional requirements.
7 Rail freight and highway only. (See §§ 174.204 and 177.834(m) of this subchapter for special requirements.)
8 Each tank must be equipped with adequate safety relief devices of the fusible plug type having a yield temperature not over 76.66°C (170°F), nor less than 69.44°C (157°F). Each device must be resistant to extrusion of the fusible alloy and leak tight at 55°C (130°F). Each valve outlet must be sealed by a threaded cap or a threaded solid plug. In addition, all valves must be protected by a metal cover.
9 Except for materials with a secondary hazard in Division 2.1, DOT 105J300ALW tank cars are also authorized.
10 Tanks and any ancillary equipment in contact with the lading, such as manhole covers, venting, loading and discharge valves, safety relief valves, check valves, and eduction pipes, must be made of metal or clad with metal not subject to rapid deterioration by the lading. Cork must be used as an insulating material.
11 Nitrosyl chloride must be transported in nickel-clad tanks with safety relief devices incorporating a fusible plug set to function at a temperature 79.44°C (175°F). Safety relief devices must be vapor tight at 54.44°C (130°F).
12 Interior pipes of liquid discharge valves must be equipped with excess flow valves of approved design. The quantity of chlorine loaded into a single-unit tank car tank must not be loaded in excess of the normal lading weights nor in excess of 90 tons. Tank car tanks built to DOT 105A500W may be stenciled either DOT 105A300W or DOT 105A500W with the size and type of safety relief device required by the stenciled specification.
13 If the commodity meets the definition of a refrigerant gas or dispersant gas in § 173.115(j) of this part, tank car tanks must be marked "DISPERSANT GAS" or "REFRIGERANT GAS" or with the proper shipping name.
14 Lading must be covered with a dry inert gas padding to render the vapor space nonflammable at 105°F.
15 If the material has a secondary hazard in Division 2.1, then Class DOT 109A tank car tanks are not authorized. Specification DOT 112 tank car tanks must conform to Class DOT 112T or DOT 112J requirements and DOT 114 tank car tanks must conform to Class DOT 114T or DOT 114J requirements. The provisions of Notes 4 and 23 are also applicable.
16 [Reserved]
17 See paragraph (g) of this section.
18 89 percent maximum to 80.1 percent minimum at a maximum test pressure of 90 psig, when offered for transportation.
19 59.6 percent maximum to 53.6 percent minimum at a maximum test pressure of 105 psig, when offered for transportation.
20 The gas pressure at 54.44°C (130°F) in any noninsulated Class DOT 107A tank may not exceed 7/8 of the marked test pressure, except that a tank may be charged with helium to a pressure 10 percent in excess of the marked maximum gas pressure at 54.44°C (130°F) of each tank.
21 See § 173.24b of this subchapter.
22 See § 173.24b of this subchapter.
23 Class 105 tanks must meet 105J requirements if: (1) the tank was built after August 31, 1981; or (2) the tank exceeds 18,500 gallons and was built before September 1, 1981. Class 111 tanks must meet 111J requirements if the tank exceeds 18,500 gallons. Class DOT 111 tank cars built after March 1, 1984 are not authorized for the transportation of Division 2.1 materials.
24 Class 105 tanks must meet 105S requirements if: (1) the tank was built after August 31, 1981; or (2) the tank exceeds 18,500 gallons and was built before September 1, 1981.
25 [Reserved]
26 [Reserved]
27 [Reserved]
28 [Reserved]
29 DOT 111A100W4 tank car tanks built after September 30, 1991 are not authorized.
30 Class 105 tanks must meet 105J requirements if the tank was built after September 30, 1991.

* * * * *

(g) * * *

(3) See § 179.102–17 of this subchapter for additional requirements.

* * * * *

§ 173.314 [Amended]

176. In addition, in § 173.314, the following changes are made:

a. In paragraph (a), the reference "§ 173.300" is revised to read "§ 173.115".

b. In paragraph (b)(3), "For cars" is revised to read "For tanks".

c. In paragraph (b)(6), "approved by the AAR Tank Car Committee" is removed.

177. In § 173.315, paragraph (a)(2) is removed; the section heading is revised; the Table in paragraph (a) is amended by revising, removing and adding in alphabetical order the following entries, and by revising and adding in numerical order the following notes to the Table, as indicated; and the last sentence of introductory text in paragraph (c) is revised to read as follows:

§ 173.315 Compressed gases in cargo tanks and portable tanks.

(a) * * *

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Kind of gas	Maximum permitted filling density: Percent by weight (see note 1)	Maximum permitted filling density: Percent by volume (see par. (f) of this section	Specification container required: Type (see note 2)	Specification container required: Minimum design pressure (psig)
[REVISE]				
Chlorine	125	See Note 7	DOT-51, MC-330, MC-331.	225; See Notes 4 and 8.
Methyl mercaptan	80	90	DOT-51, MC-330, MC-331; See Note 23.	100.
Sulfur dioxide (tanks not over 1,200 gallons water capacity)	125	87.5	DOT-51, MC-330, MC-331; See Note 24.	150; See Note 4.
Sulfur dioxide (tanks over 1,200 gallons water capacity)	125	87.5	DOT-51, MC-330, MC-331; See Note 24.	125; See Note 4.
Sulfur dioxide (optional portable tank 1,000–2,000 pounds water capacity, fusible plug).	125	See Note 6	DOT-51; See Note 24.	225.
[ADD]				
Ammonia, anhydrous or Ammonia solutions with greater than 50 percent ammonia (see Notes 14 and 17).	56	82, See Note 5	DOT-51, MC-330, MC-331; See Notes 12 and 17.	265; See Note 17.
Ammonia solutions with more than 35 percent but not more than 50 percent ammonia.	See par. (c) of this section.	See Note 7	DOT-51, MC-330, MC-331; see Note 12.	100; See par. (c) of this section.
Dimethylamine, anhydrous	59	See Note 7	DOT-51, MC-330, MC-331.	150.
Division 2.1, materials not specifically provided for in this table	See par. (c) of this section.	See Note 7	DOT-51, MC-330, MC-331.	See Note 18.
Division 2.2, materials not specifically provided for in this table	See par. (c) of this section.	See Note 7	DOT-51, MC-330, MC-331.	See Note 19.
Division 2.3, Hazard Zone A, materials not specifically provided for in this table.	See par. (c) of this section.	See Note 7	DOT-51, MC-330, MC-331; See Note 23.	See Note 20.
Division 2.3, Hazard Zone B, materials not specifically provided for in this table.	See par. (c) of this section.	See Note 7	DOT-51, MC-330, MC-331; See Note 23.	See Note 20.
Division 2.3, Hazard Zone C, materials not specifically provided for in this table.	See par. (c) of this section.	See Note 7	DOT-51, MC-330, MC-331; See Note 24.	See Note 21.
Division 2.3, Hazard Zone D, materials not specifically provided for in this table.	See par. (c) of this section.	See Note 7	DOT-51, MC-330, MC-331; See Note 25.	See Note 22.
Methylamine, anhydrous	60	See Note 7	DOT-51, MC-330, MC-331; See Note 24.	See Note 22.
Trimethylamine, anhydrous	57	See Note 7	DOT-51, MC-330, MC-331.	150.
[REMOVE]				
"Anhydrous ammonia"				
"Anhydrous dimethylamine"				
"Anhydrous monomethylamine"				
"Anhydrous trimethylamine"				
"Ammonia solution"				

* * * * *

[REVISE]

* * * * *

Note 4: Material must be steel. Packagings must have a corrosion allowance of 20 percent or 0.10 inch, whichever is less, added to the metal thickness. The minimum wall thickness for chlorine packagings is 0.300 inch for stainless steel or 0.625 inch for carbon steel, including corrosion allowance.

Note 8: Chlorine packagings may be shipped only if the contents are to be unloaded at one unloading point.

Note 12: No aluminum, copper, silver, zinc or an alloy of any of these metals shall be used in packaging construction where it comes into contact with the lading.

* * * * *

[ADD]

* * * * *

Note 18: The minimum packaging design pressure must not be less than the vapor pressure at the reference temperature of the lading plus one percent or 173.4 kPa (25 psig), whichever is less.

Note 19: The minimum packagings design pressure must not be less than the vapor pressure at the reference temperature of the lading.

Note 20: The minimum packaging design pressure must not be less than 1.5 times the vapor pressure of the lading at 46°C (115°F).

Note 21: The minimum packaging design pressure must not be less than 1.3 times the vapor pressure of the lading at 46°C (115°F).

Note 22: The minimum packaging design pressure must not be less than 1.1 times the vapor pressure of the lading at 46°C (115°F).

Note 23: Packagings must be made of stainless steel except that steel other than stainless steel may be used in accordance with the provisions of § 173.24b(b) of this part. Thickness of stainless steel for shell and heads must be the greater of 7.62 mm (0.300 inch) or the thickness required for the packaging at its minimum design pressure.

Note 24: Packagings must be made of stainless steel except that steel other than stainless steel may be used in accordance with the provisions of § 173.24b(b) of this part. Thickness of stainless steel for shell and heads must be the greater of 8.35 mm (0.250 inch) or the thickness required for the packaging at its minimum design pressure.

Note 25: Packagings must be made of stainless steel except that steel other than stainless steel may be used in accordance with the provisions of § 173.24b(b) of this part. Thickness for shell and heads must be as calculated for the packaging at its minimum design pressure.

* * * * *

(c) * * * The outage and filling limits for liquefied gases must be as prescribed in § 173.24b of this part, except that this requirement does not apply to:

* * * * *

§ 173.318 [Amended]

178. In § 173.318, in the parenthetical expression in paragraph (e), the wording "(see §§ 173.33(d)(1)(ii) and 178.338–9(b) of this subchapter)" is revised to read "(see paragraph (g)(3) of this section and § 178.338–9(b) of this subchapter)".

179. In § 173.323, paragraphs (b)(1) and (b)(4) are revised to read as follows:

§ 173.323 Ethylene oxide.

* * * * *

(b) * * *

(1) In 4G fiberboard boxes with inner glass ampoules or vials. Total quantity of ethylene oxide may not exceed 100 grams (3.5 ounces) per package. The completed package must be capable of passing Packing Group I performance tests.

* * * * *

(4) In specification cylinders, as authorized for any compressed gas except acetylene. Pressurizing valves and insulation are required for cylinders over 4 L (1 gallon) capacity. Eductor tubes must be provided for cylinders over 19 L (5 gallons) capacity. Cylinders must be seamless or welded steel (not brazed) with a nominal capacity of no more than 115 L (30 gallons) and may not be liquid full below 82 °C (180 °F). Before each refilling, each cylinder must be tested for leakage at no less than 103.4 kPa (15 psig) pressure. In addition, each cylinder must be equipped with a fusible type relief device with yield temperature of 69 °C to 77 °C (157 °F to 170 °F). The capacity of the relief device and the effectiveness of the insulation must be such that the charged cylinder will not explode when tested by the method described in CGA Pamphlet C–14 or other equivalent method.

* * * * *

§ 173.323 [Amended]

180. In addition, in § 173.323, in paragraph (a), the wording "copper, silver mercury or any of their alloys" is revised to read "silver mercury or any of its alloys or copper", and a sentence is added immediately after the first sentence to read: "Copper alloys may be used only where gas mixtures do not contain free acetylene at any concentration that will form copper acetylene.".

181. In § 173.421–1, the section heading and paragraph (a) are revised to read as follows:

§ 173.421–1 Additional requirements for excepted packages containing Class 7 (radioactive) materials.

(a) Excepted packages prepared for shipment under the provisions of §§ 173.421, 173.422, 173.424, or 173.427 of this subpart must be certified as being acceptable for transportation by having a notice enclosed in or on the package, included with the packing list, or otherwise forwarded with the package. This notice must include the name of the consignor or consignee and the statement "This package conforms to the conditions and limitations specified in 49 CFR 173.421 for radioactive material, excepted package-limited quantity of material, UN2910; 49 CFR 173.422 for radioactive material, excepted package—instruments or articles, UN2910; 49 CFR 173.424 for radioactive material, excepted package—articles manufactured from natural or depleted uranium or natural thorium, UN2910; or 49 CFR 173.427 for radioactive material, excepted package—empty packaging, UN2910," as appropriate.

* * * * *

§ 173.421–2 [Amended]

182. In § 173.421–2, paragraph (d) is removed.

§ 173.465 [Amended]

183. In § 173.465, in paragraph (d), "¶f" is revised to read "of".

§ 173.471 [Amended]

184. In § 173.471, in the parenthetical following paragraph (g), the last sentence "The information collection requirements contained in paragraph (e) were approved under control number 2137–0514." is removed.

§§ 173.22, 173.34, 173.300 [Amended]

185. In addition to the amendments set forth above, part 173 is amended by removing the phrase "Office of Hazardous Materials Transportation" and, inserting in its place, the phrase "Associate Administrator for Hazardous Materials Safety" in the following sections:

(a) Section 173.22a(b)
(b) Section 173.34(e)(1)(iv)
(c) Section 173.300a(b)(1)
(d) Section 173.300a(e)
(e) Section 173.300b(b)(1)

§§ 173.471, 173.473 [Amended]

186. In addition to the amendments set forth above, part 173 is amended by removing the phrase "OHMT" and, inserting in its place, the phrase "the Associate Administrator for Hazardous Materials Safety" in the following sections:

(a) Section 173.471(f)
(b) Section 173.473(a)(1)
(c) Section 173.473(a)(3)

§§ 173.11, 173.32a, 173.34, 173.300a, 173.300b, 173.300c, 173.305, 173.315, 173.457 [Amended]

187. In addition to the amendments set forth above, part 173 is amended by removing the phrase "Director, OHMT" and, inserting in its place, the phrase "Associate Administrator for Hazardous Materials Safety" each place it appears in the following sections:

(a) Section 173.11(a)
(b) Section 173.32a(c)
(c) Section 173.32a(d)
(d) Section 173.32a(h) introductory text
(e) Section 173.32a(h)(2) introductory text
(f) Section 173.32a(h)(3)
(g) Section 173.34(e)(6)
(h) Section 173.34(i)
(i) Section 173.34(i)(4)(i)
(j) Section 173.34(l) introductory text
(k) Section 173.34(l)(2)
(l) Section 173.34(l)(3)
(m) Section 173.300a(c)
(n) Section 173.300a(d)
(o) Section 173.300a(e)
(p) Section 173.300a(g)
(q) Section 173.300a(h)
(r) Section 173.300a(i)
(s) Section 173.300b(c)
(t) Section 173.300b(d)
(u) Section 173.300b(e)
(v) Section 173.300b(f)
(w) Section 173.300b(g)
(x) Section 173.300c(a) introductory text
(y) Section 173.300c(b)
(z) Section 173.305(c)(1)
(aa) Section 173.315(i)(12)
(bb) Section 173.457(b)(4)

Appendix B [Amended]

188. In appendix B to part 173, in paragraph 6., the phrase "a height of 1.2 meters (3.94 feet) onto solid concrete" is removed and replaced with the phrase "a height determined in accordance with § 178.603(d) of this subchapter onto a rigid non-resilient, flat and horizontal surface".

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Appendix E [Amended]

189. In appendix E to part 173, in 2.c.(3)(A), the reference "2.3.2" is revised to read "2.c.(2)".

190. Appendix G is added to part 173 to read as follows:

Appendix G to Part 173—Definition of Regulated Medical Waste

1. *General*

A "regulated medical waste" is a waste material listed in the following table that is—

(a) Generated in the diagnosis, treatment (e.g., provision of medical services), or immunization of human beings or animals;

(b) In research pertaining thereto; or

(c) In the production or testing of biologicals.

TABLE—REGULATED MEDICAL WASTE

Waste class	Description
(1) Cultures and Stocks.	Cultures and stocks of infectious agents and associated biologicals, including: cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines; and culture dishes and devices used to transfer, inoculate, and mix cultures.
(2) Pathological Wastes.	Human pathological wastes, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers.
(3) Human Blood and Blood Products.	(1) Liquid waste human blood; (2) products of blood; (3) items saturated and/or dripping with human blood; or (4) items that were saturated and/or dripping with human blood that are now caked with dried human blood; including serum, plasma, and other blood components, and their containers, which were used or intended for use in either patient care, testing and laboratory analysis or the development of pharmaceuticals. Intravenous bags are also included in this category.
(4) Sharps.	Sharps that have been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes (regardless of presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips.
(5) Animal Waste.	Contaminated animal carcasses, body parts, and bedding of animals that were know to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals, or testing of pharmaceuticals.
(6) Isolation Waste.	Biological waste and discarded materials contaminated with blood, excretion, exudates, or secretions from humans who are isolated to protect others from certain highly communicable disease, or isolated animals known to be infected with highly communicable diseases.
(7) Unused Sharps.	The following unused, discarded sharps: hypodermic needles, suture needles, syringes, and scalpel blades.

Note: The term "solid waste" includes solid, semi-solid, or liquid materials, but does not include domestic sewage materials identified in the requirements of the Environmental Protection Agency contained in 40 CFR 261.4.

2. *Exceptions*

(a) The following wastes are excepted from the requirements for regulated medical waste:

(i) Hazardous waste identified or listed under the regulations in 40 CFR part 261;

(ii) Household waste, as defined in 40 CFR 261.4(b)(1);

(iii) Ash from incineration of regulated medical waste once the incineration process has been completed;

(iv) Residues from treatment and destruction processes of regulated medical waste once the waste has been both treated and destroyed; or

(v) Human corpses, remains, and anatomical parts that are intended for interment or cremation.

(b) Samples of regulated medical waste transported off-site by EPA or State-designated enforcement personnel for enforcement purposes are excepted from the requirements of this subchapter during the enforcement proceeding.

(c) Until October 1, 1992, cultures of etiologic agents of 50 milliliters (1.666 fluid ounces) or less total quantity in one outside package are not subject to any requirements of this subchapter if the items as packaged do not contain any material otherwise subject to the requirements of parts 171 through 180 of this subchapter.

PART 174—CARRIAGE BY RAIL

191. The authority citation for part 174 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1808; 49 CFR part 1.

§ 174.25 [Amended]

192. In § 174.25, the following changes are made:

a. In paragraph (a)(2), the table is amended by adding the entry "Division 6.1 PG III" immediately above the entry for "Class 7" in Column 1; adding "Placarded KEEP AWAY FROM FOOD" immediately above the entry "Placarded RADIOACTIVE" in Column 2; and adding "(None)" immediately above the entry "Radioactive material" in Column 3. For the entry "Class 9", in Column 2 "(None)" is revised to read "Placarded CLASS 9". In the last entry, in Column 1, the wording "a residue of a combustible liquid" is revised to read "a residue of a combustible liquid, a residue of a Division 6.1 PG III material, or a residue of a Class 9 material"; and in Column 3, "(None." is revised to read "(None).".

b. In paragraph (b)(1)(i), the wording "or § 172.102 (when authorized)" is removed.

c. In paragraph (c), "Naptha" is revised to read "Naphtha".

§ 174.67 [Amended]

193. In § 174.67, in paragraph (a)(3), the word "high" is added immediately after "(3.9 inches)" and after "(2 inches)".

194. In § 174.81, the Segregation Table in paragraph (d) and paragraph (e)(5) are revised to read as follows:

§ 174.81 Segregation of hazardous materials.

* * * * *

(d) * * *

SEGREGATION TABLE FOR HAZARDOUS MATERIALS

Class or Division	Notes	1.1, 1.2	1.3	1.4	1.5	1.6	2.1	2.2	2.3 gas Zone A	2.3 gas other than Zone A	3	4.1	4.2	4.3	5.1	5.2	6.1 liquids PG I Zone A	7	8 liquids only
Explosives 1.1 and 1.2	A	•	•	•	•	•	X	X	X	X	X	X	X	X	X	X	X	X	X
Explosives 1.3		•	•	•	•	•	X		X	X	X	-	X	X	X	X	X		X

SEGREGATION TABLE FOR HAZARDOUS MATERIALS—Continued

Class or Division		Notes	1.1, 1.2	1.3	1.4	1.5	1.6	2.1	2.2	2.3 gas Zone A	2.3 gas other than Zone A	3	4.1	4.2	4.3	5.1	5.2	6.1 liquids PG I Zone A	7	8 liquids only
Explosives	1.4		•	•	•	•	•	O		O	O	O		O				O		O
Very insensitive explosives.	1.5		•	•	•	•	•	X	X	X	X	X	X	X	X	X	X	X	X	X
Extremely insensitive explosives.	1.6		•	•	•	•	•													
Flammable gases	2.1		X	X	O	X				X	O							O	O	O
Non-toxic, non-flammable gases.	2.2		X			X														
Poisonous gas Zone A.	2.3		X	X	O	X		X				X	X	X	X	X	X			X
Poisonous gas other than Zone A.	2.3		X	X	O	X		O				O	O	O	O	O	O			O
Flammable liquids	3		X	X	O	X				X	O						O	X		
Flammable solids	4.1		X			X				X	O							X		O
Spontaneously combustible materials.	4.2		X	X	O	X				X	O							X		X
Dangerous when wet materials.	4.3		X	X		X				X	O							X		O
Oxidizers	5.1	A	X	X		X				X	O							X		O
Organic peroxides	5.2		X	X		X				X	O							X		O
Poisonous liquids PG I Zone A.	6.1		X	X	O	X		O				X	X	X	X	X	X			X
Radioactive materials.	7		X			X		O												
Corrosive liquids	8		X	X	O	X		O		X	O		O	X	O	O	O	X		

* * * * *

(e) * * *

(5) The note "A" in the second column of the Table means that, notwithstanding the requirements of the letter "X", ammonium nitrate fertilizer may be loaded or stored with Division 1.1 (Class A explosive) materials.

* * * * *

§ 174.81 [Amended]

195. In addition, in § 174.81, the following changes are made:

a. In paragraph (b), the reference "§ 171.12" is revised to read "§ 176.83(b)".

b. In paragraph (e)(3), the wording "unless separated by a distance of 1.2 m (4 feet) in all directions, or separated" is revised to read "unless separated by a distance of 1.2 m (4 feet) in all directions and packages maintained, such as on pallets, at a minimum height of 10 cm off the floor of the transport vehicle, or separated".

c. In paragraph (h), in the first sentence, the wording "were of the lower division." is revised to read "were of the lower numerical division (i.e., Division 1.1 being lower than Division 1.2).".

§ 174.82 [Amended]

196. In § 174.82, in paragraph (a), "Class 6" is revised to read "Division 6.1".

§ 174.83 [Amended]

197. In § 174.83, in paragraph (b)(2), "PG I," immediately following "Division 2.3 (" is removed.

§ 174.84 [Amended]

198. In § 174.84, "PG I," immediately following "Division 2.3 (" is removed.

§ 174.200 [Amended]

199. In § 174.200, in paragraph (c)(4), "(129°F)" is revised to read "(129°F)".

PART 175—CARRIAGE BY AIRCRAFT

200. The authority citation for part 175 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1807, 1808; 49 CFR part 1.

§ 175.10 [Amended]

201. In § 175.10, the following changes are made:

a. In paragraph (a)(4)(ii), "47 ml" is revised to read "470 ml".

b. In paragraphs (a)(2) and (a)(15), the wording "Director, Office of Hazardous Materials Transportation" is removed and replaced with "Associate Administrator for Hazardous Materials Safety".

§ 175.320 [Amended]

202. In § 175.320, in paragraph (b)(9), "(49 feet)" is revised to read "(50 feet)".

§ 175.701 [Amended]

203. In § 175.701, in paragraph (c) introductory text, the wording "Director, OHMT" is removed and replaced with "Associate Administrator for Hazardous Materials Safety" each place it appears.

PART 176—CARRIAGE BY VESSEL

204. The authority citation for part 176 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53, app. A to part 1.

§ 176.5 [Amended]

205. In § 176.5, in paragraph (a), the wording "paragraphs (b) and (e) of this section" is revised to read "paragraph (b) of this section".

§ 176.11 [Amended]

206. In § 176.11, in paragraph (a), in the first sentence, the reference "§ 171.12(b)" is removed and replaced with "§ 171.12", and the second sentence is revised to read "The requirements of §§ 176.83, 176.84, and 176.112 through 176.174 are not applicable to shipments of Class 1 (explosive) materials made in accordance with the IMDG Code."

§ 176.30 [Amended]

207. In § 176.30, in paragraph (a)(5)(i), "§ 172.101 of this subchapter; or" is revised to read "the § 172.101 Table; or".

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§ 176.69 [Amended]

208. In § 176.69, in paragraph (a), the wording "Class 9 (miscellaneous hazardous materials) materials)" is revised to read "Class 9 (miscellaneous hazardous) materials)".

§ 176.74 [Amended]

209. In § 176.74, in paragraph (c), the wording "(miscellaneous hazardous materials) materials" is revised to read "(miscellaneous hazardous) materials".

§ 176.76 [Amended]

210. In § 176.76, in paragraph (a)(2), the second sentence is amended by revising "Restraint" to read "restraint" and by adding the word "Vertical" at the beginning of the sentence.

§ 176.83 [Amended]

211. In § 176.83, the following changes are made:

a. In paragraphs (a)(7) (i) and (ii), "all" is revised to read "All" both places it appears.

b. In paragraph (f), in Table 176.83(f), under the heading "Open versus open, On deck" the third entry "One container spaces" is revised to read "One container space".

c. In paragraph (g)(2), "for trailerships" is revised to read "For trailerships".

d. In paragraph (g), in Table 176.83(g), under the heading "Closed versus open, Under deck", the fourth entry "At least 6 meters" is revised to read "At least 6 meters or one bulkhead" and, under the heading "Open versus open, On deck", the third entry "At least 6 meters or one bulkhead" is revised to read "At least 6 meters".

212. In § 176.84, the section heading is revised; and in paragraph (b), in the table, provision "115" is revised to read as follows:

§ 176.84 Other requirements for stowage and segregation for cargo vessels and passenger vessels.

* * * * *

(b) *Table of provisions:*

Code	Provisions
*	* * * * *
115	If packaged in glass or earthenware inner packagings in wooden or fiberboard outer packagings, the maximum quantity on any vessel is 500 kg (equivalent to 450 liters).
*	* * * * *

§ 176.84 [Amended]

213. In addition, in § 176.84, the following changes are made:

a. In paragraph (c)(2), in the Table, in Note 20E, the reference "§ 172.84(c)(5)" is revised to read "§ 176.84(c)(3)".

b. In paragraph (c)(3)(ii)(A), the wording "steel portable magazines or steel portable magazines" is revised to read "steel portable magazines or steel freight containers".

§ 176.99 [Amended]

214. In § 176.99, the wording "(Class A explosive)" is revised to read "(Class A and B explosives)".

§ 176.132 [Amended]

215. In § 176.132, in paragraph (a)(2), the word "battening" is revised to read "Battening".

§ 176.136 [Amended]

216. In § 176.136, in paragraph (c), in the first sentence, "UN" is added immediately before each number, beginning with "0015".

§ 176.146 [Amended]

217. In § 176.146, in paragraphs (d)(1) and (d)(2), the word "an" is revised to read "An" both places it appears.

§ 176.156 [Amended]

218. In § 176.156, in paragraph (d), the reference "§172.602" is revised to read "§ 172.602".

§ 176.170 [Amended]

219. In § 176.170, the following changes are made:

a. In paragraph (a), the wording "regarded a magazine" is revised to read "regarded as a magazine".

b. In paragraph (c), the wording ", and a non-metallic lining." is added before the period at the end of the sentence.

c. In paragraph (e), a comma is added after the wording "On vessels".

§ 176.205 [Amended]

220. In § 176.205, in paragraph (b)(7), the third sentence is revised to read "It must consist of two layers of corrosion-resistant metal wire of 20 x 20 mesh or finer, spaced not less than 1 cm (0.4 inch) or more than 4 cm (1.6 inches) apart."

§ 176.305 [Amended]

221. In § 176.305, in paragraph (d)(2), the third sentence is revised to read "It must consist of two layers of corrosion-resistant metal wire of 20 x 20 mesh or finer, spaced not less than 1 cm (0.4 inch) or more than 4 cm (1.6 inches) apart."

§ 176.315 [Amended]

222. In § 176.315, in paragraph (a), the wording "79,800 liters (21,081 U.S. gallons)" is revised to read "79,500 liters (21,000 U.S. gallons)".

§ 176.410 [Amended]

223. In § 176.410, in paragraph (b), the wording "(miscellaneous hazardous materials)" is removed.

224. In § 176.415, paragraphs (c)(1), (c)(2), and (c)(5) are revised to read as follows:

§ 176.415 Permit requirements for Division 1.5 (blasting agents), ammonium nitrates, and certain ammonium nitrate fertilizers.

* * * * *

(c) * * *

(1) If the material is ammonium nitrate fertilizer, Division 5.1 (oxidizer), UN2070; or Explosives, blasting, type E, Division 1.5 (blasting agents) compatibility group D, UN0332 in combustible packaging or in a rigid packaging with combustible inside packaging, it must be loaded or unloaded at a facility remote from populous areas or high value or high hazard industrial facilities so that in the event of fire or explosion loss of lives and property may be minimized;

(2) If the material is an ammonium nitrate fertilizer, Division 5.1 (oxidizer), UN2070, containing more than 60 percent ammonium nitrate; or ammonium nitrate fertilizer, Division 5.1 (oxidizer), UN2070 in rigid packagings with combustible inside packagings, it must be loaded or unloaded at a facility removed from congested areas or high value or high hazard industrial facilities;

* * * * *

(5) If the material is ammonium nitrate fertilizer, Division 5.1 (oxidizer), UN2070; an ammonium nitrate fertilizer, Division 5.1 (oxidizer) containing more than 60 percent ammonium nitrate; or a Division 1.5 (blasting agents) compatibility group D material in non-rigid combustible packaging and loaded in freight containers or transport vehicles, it may be loaded or unloaded at a non-isolated facility provided that facility is approved by the COTP.

§ 176.415 [Amended]

225. In addition, in § 176.415, the following changes are made:

a. In paragraphs (a)(1), (b)(1) and (b)(5), the word "container" is revised to read "packaging".

b. In paragraph (a)(2), the wording "(miscellaneous hazardous materials) material" is removed.

c. In paragraph (b)(6), the wording "(miscellaneous hazardous materials)" is removed.

d. In paragraph (c)(3), at the end of the sentence, the word "and" is removed; and in paragraph (c)(4), at the end of the last sentence, the period is removed and replaced with "; and".

§ 176.704 [Amended]

226. In § 176.704, in paragraph (f), the wording "Office of Hazardous Materials Transportation (OHMT)" is removed and replaced with "Associate Administrator for Hazardous Materials Safety".

227. In § 176.905, paragraph (k) is revised to read as follows:

§ 176.905 Motor vehicles or mechanical equipment powered by internal combustion engines.

* * * * *

(k) When motor vehicles with fuel in their tanks are stowed in a closed freight container, their battery cables must be disconnected and secured away from the battery terminals and the following warning must be affixed to the access doors: "WARNING—MAY CONTAIN EXPLOSIVE MIXTURES WITH AIR—KEEP IGNITION SOURCES AWAY WHEN OPENING." The warning must be on a contrasting background and must be readily legible from a distance of 8 meters (26 feet).

PART 177—CARRIAGE BY PUBLIC HIGHWAY

228. The authority citation for part 177 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 49 CFR part 1.

§ 177.825 [Amended]

229. In § 177.825, in paragraph (f) introductory text, the wording "Director, Office of Hazardous Materials Transportation" is removed and replaced with "Associate Administrator for Hazardous Materials Safety".

§ 177.844 [Amended]

230. In § 177.844, in the section heading, the section number "§ 117.844" is revised to read "§ 177.844".

231. In § 177.848, the Segregation Table in paragraph (d) and paragraph (e)(5) are revised to read as follows:

§ 177.848 Segregation of hazardous materials.

* * * * *

(d) * * *

SEGREGATION TABLE FOR HAZARDOUS MATERIALS

Class or division	Notes	1.1 1.2	1.3	1.4	1.5	1.6	2.1	2.2	2.3 gas zone A	2.3 gas other than zone A	3	4.1	4.2	4.3	5.1	5.2	6.1 liquids PG I zone A	7	8 liquids only
Explosives 1.1 and 1.2	A	•	•	•	•	•	X	X	X	X	X	X	X	X	X	X	X	X	X
Explosives 1.3		•	•	•	•	•	X		X	X	X		X	X	X	X	X		X
Explosives 1.4		•	•	•	•	•	O		O	O	O		O	X	X	X	O		O
Very insensitive explosives. 1.5		•	•	•	•	•	X	X	X	X	X	X	X	X	X	X	X	X	X
Extremely insensitive explosives. 1.6		•	•	•	•	•													
Flammable gases 2.1		X	X	O	X				X	O							O	O	O
Non-toxic, non-flammable gases. 2.2		X			X														
Poisonous gas Zone A. 2.3		X	X	O	X		X				X	X	X	X	X	X			X
Poisonous gas other than Zone A. 2.3		X	X	O	X		O				O	O	O	O	O	O			O
Flammable liquids 3		X	X	O	X				X	O					O		X		
Flammable solids 4.1		X			X				X	O							X		O
Spontaneously combustible materials. 4.2		X	X	O	X				X	O							X		X
Dangerous when wet materials. 4.3		X	X		X				X	O							X		O
Oxidizers 5.1	A	X	X		X				X	O							X		O
Organic peroxides 5.2		X	X		X				X	O							X		O
Poisonous liquids PG I Zone A. 6.1		X	X	O	X		O				X	X	X	X	X	X			X
Radioactive materials. 7		X			X		O												
Corrosive liquids 8		X	X	O	X		O		X	O		O	X	O	O	O	X		

* * * * *

(e) * * *

(5) The note "A" in the second column of the Table means that, notwithstanding the requirements of the letter "X", ammonium nitrate fertilizer may be loaded or stored with Division 1.1 (Class A explosive) materials.

* * * * *

§ 177.848 [Amended]

232. In addition, in § 177.848, the following changes are made:

a. In paragraph (b), the reference "§ 171.12" is revised to read "§ 176.83(b)".

b. In paragraph (e)(3), the wording "unless separated by a distance of 1.2 m (4 feet) in all directions, or separated" is revised to read "unless separated by a distance of 1.2 m (4 feet) in all directions and packages maintained, such as on pallets, at a minimum height of 10 cm off the floor of the transport vehicle, or separated".

c. In paragraph (h), in the first sentence, the wording "were of the lower division." is revised to read "were of the lower numerical division (i.e., Division 1.1 being lower than Division 1.2).".

§ 177.870 [Amended]

233. In § 177.870, in paragraph (e), "(99.2 pounds)" is revised to read "(99 pounds)".

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§§ 177.821, 177.825, 177.826, 177.838 [Amended]

234. In addition to the amendments set forth above, part 177 is amended by removing the phrase "Director, OHMT" and, inserting in its place, the phrase "Associate Administrator for Hazardous Materials Safety" each place it appears in the following sections:

(a) Section 177.821(f)
(b) Section 177.825(b)(1)(iii)(A)
(c) Section 177.825(b)(1)(iii)(B)
(d) Section 177.826(a)
(e) Section 177.838(g)

PART 178—SPECIFICATIONS FOR PACKAGINGS

235. The authority citation for part 178 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1, unless otherwise noted.

236. In § 178.2, the section heading, paragraph (b), and the introductory text of paragraph (c) are revised to read as follows:

§ 178.2 Applicability and responsibility.

* * * * *

(b) *Specification markings.* When this part requires that a packaging be marked with a DOT specification or UN standard marking, marking of the packaging with the appropriate DOT or UN markings is the certification that—

(1) Except as otherwise provided in this section, all requirements of the DOT specification or UN standard, including performance tests, are met; and

(2) All functions performed by, or on behalf of, the person whose name or symbol appears as part of the marking conform to requirements specified in this part.

(c) *Notification.* Except as specifically provided in §§ 178.337–18 and 178.345–10 of this part, the manufacturer or other person certifying compliance with the requirements of this part, and each subsequent distributor of that packaging shall—

* * * * *

§ 178.2 [Amended]

237. In addition, in § 178.2, in paragraph (c)(1)(ii), the wording "any closures needed" is revised to read "any closures, including gaskets, needed".

238. In § 178.3, a new paragraph (c) is added to read as follows:

§ 178.3 Marking of packagings.

* * * * *

(c) Where a packaging conforms to more than one UN standard or DOT specification, the packaging may bear more than one marking, provided the packaging meets all the requirements of each standard or specification. Where more than one marking appears on a packaging, each marking must appear in its entirety.

§ 178.33a [Amended]

239. In § 178.33a, in the section heading, "Specification 2O" is revised to read "Specification 2Q".

Subpart B [Amended]

240. Subpart B of part 178 is amended by redesignating § 178.34–4 as § 178.360–4 and transferring it to subpart K.

§ 178.45–17 [Amended]

241. In § 178.45–17, in paragraph (e), the wording "Office of Hazardous Materials Transportation" is removed and replaced with "Associate Administrator for Hazardous Materials Safety".

§ 178.65–14 [Amended]

242. In § 178.65–14, in paragraph (d), the wording "Office of Hazardous Materials Transportation" is removed and replaced with "Associate Administrator for Hazardous Materials Safety".

§ 178.270–2 [Amended]

243. In § 178.270–2, in paragraph (b), the wording "and the IM tank table" is removed.

§ 178.270–5 [Amended]

244. In § 178.270–5, in paragraph (d), the wording "in the IM Tank Table," is revised to read "in this subchapter,".

245. In § 178.503, paragraph (a)(9) is removed; paragraph (a)(10) is redesignated as (a)(9); paragraph (a) introductory text and paragraph (a)(7) are revised; and a new paragraph (a)(10) is added to read as follows:

§ 178.503 Marking of packagings.

(a) The manufacturer shall mark every packaging that is required to conform to a UN standard of this subpart in a durable and clearly visible manner. Every reusable packaging liable to undergo a reconditioning process which might obliterate the packaging marks must bear the marks specified in § 178.503 (a)(1) through (a)(6) and (a)(9) in a permanent form (e.g., embossed) able to withstand the reconditioning process. A marking may be applied in a single line or in multiple lines provided the correct sequence is respected. As illustrated by the examples in paragraph (d) of this section, slash marks should be used to present the following information in the sequence presented:

* * * * *

(7) The state authorizing allocation of the mark. The letters 'USA' indicate that the packaging is manufactured and marked in the United States in compliance with the provisions of this subchapter;

* * * * *

(10) Rated capacity of the packaging expressed in liters may be marked.

* * * * *

§ 178.503 [Amended]

246. In addition, in § 178.503, the following changes are made:

a. In paragraph (a)(1), the wording "for metal receptacles" is revised to read "for embossed metal receptacles".

b. In paragraph (a)(2), a new sentence is added after the first sentence to read "The letter "V" must follow the packaging identification code on packagings tested in accordance with § 178.601(g)(2); for example, "4GV".".

c. In paragraph (a)(5)(i), the word "off" is revised to read "down".

d. In paragraph (a)(8), the wording "with the UN standard" is revised to read "with subpart L and subpart M of this part".

e. In newly designated paragraph (a)(9), the wording "or reconditioning" is added immediately after "reuse" and before "as"; and a sentence is added at the end of the paragraph to read: "Where a drum is constructed with different head and body thicknesses, the different thicknesses may be marked (e.g., "1.2–1.0" for drums having different head and body thicknesses, and "0.8–1.0–1.2" for drums having different top head, body and bottom head thicknesses, respectively); and".

f. In paragraph (b), the word "only" is added immediately after "applied" and before "to the removable head".

§ 178.504 [Amended]

247. In § 178.504, the following changes are made:

a. In paragraph (b)(4), in the first sentence, the wording "must have at least either two" is revised to read "may have at least two".

b. In paragraph (b)(5), in the fourth sentence, the wording "Closure flanges must be mechanically seamed" is revised to read "Closure flanges may be mechanically seamed".

§ 178.505 [Amended]

248. In § 178.505, the following changes are made:

a. In paragraph (b)(3), in the first sentence, the wording "must have at least either two" is revised to read "may have at least two".

b. In paragraph (b)(4), in the fourth sentence, the wording "Closure flanges must be welded in place" is revised to read "Closure flanges may be welded in place".

§ 178.506 [Amended]

249. In § 178.506, the following changes are made:

a. In paragraph (b)(3), in the first sentence, the wording "must have at least either two" is revised to read "may have at least two".

b. In paragraph (b)(4), in the fourth sentence, the wording "Closure flanges must be welded in place" is revised to read "Closure flanges may be welded in place".

§ 178.520 [Amended]

250. In § 178.520, in paragraph (b)(3), the wording "or metalized film or foil" is added before the period and immediately after "plastic material".

§ 178.521 [Amended]

251. In § 178.521, in paragraph (b)(2), in the third sentence, the word "also" is added immediately after "must" and before "be placed".

252. In § 178.601, paragraph (g)(2)(vii) is removed; paragraph (g)(2)(viii) is redesignated as (g)(2)(vii); paragraph (g)(3) is redesignated as (g)(7); newly designated paragraph (g)(2)(vii) is revised; and paragraphs (c)(4)(v) and (g)(3) through (g)(6) are added to read as follows:

§ 178.601 General requirements.

* * * * *

(c) * * *

(4) * * *

(v) Packagings which differ from the design type only in their lesser design height.

* * * * *

(g) * * *

(2) * * *

(vii) Packagings must be marked in accordance with § 178.503 of this part as having been tested to Packing Group I performance for combination packagings. The marked maximum gross mass may not exceed the sum of the mass of the outer packaging plus one half the mass of the filled inner packagings of the tested combination packaging. In addition, the marking required by § 178.503(a)(2) of this part must include the letter 'V'."

(3) *Variation 3.* Packagings other than combination packagings which are produced with reductions in external dimensions (i.e., length, width or diameter) of up to 25 percent of the dimensions of a tested packaging may be used without further testing provided an equivalent level of performance is maintained. The packagings must, in all other respects (including wall thicknesses), be identical to the tested design-type. The marked gross mass (when required) must be reduced in proportion to the reduction in volume.

(4) *Variation 4.* Variations are permitted in outer packagings of a tested design-type combination packaging, without further testing, provided an equivalent level of performance is maintained, as follows:

(i) Each external dimension (length, width and height) is less than or equal to the corresponding dimension of the tested design-type;

(ii) The structural design of the tested outer packaging (i.e. methods of construction, materials of construction, strength characteristics of materials of construction, method of closure and material thicknesses) is maintained;

(iii) The inner packagings are identical to the inner packagings used in the tested design type except that their size and mass may be less; and they are oriented within the outer packaging in the same manner as in the tested packaging;

(iv) The same type or design of absorbent materials, cushioning materials and any other components necessary to contain and protect inner packagings, as used in the tested design type, are maintained. The thickness of cushioning material between inner packagings and between inner packagings and the outside of the packaging may not be less than the thicknesses in the tested design type packaging; and

(v) Sufficient additional cushioning material is used to take up void spaces and to prevent significant movement of the inner packagings.

An outer packaging qualifying for use in transport in accordance with all of the above conditions may also be used without testing to transport inner packagings substituted for the originally tested inner packagings in accordance with the conditions set out in Variation 1 in paragraph (g)(1) of this section.

(5) *Variation 5.* Single packagings (i.e., non-bulk packagings other than combination packagings), that differ from a tested design type only to the extent that the closure device or gasketing differs from that used in the originally tested design type, may be used without further testing, provided an equivalent level of performance is maintained, subject to the following conditions (the qualifying tests):

(i) A packaging with the replacement closure devices or gasketing must successfully pass the drop test specified in § 178.602 in the orientation which most severely tests the integrity of the closure or gasket;

(ii) When intended to contain liquids, a packaging with the replacement closure devices or gasketing must successfully pass the leakproofness test specified in § 178.603, the hydrostatic pressure test specified in § 178.605, and the stacking test specified in § 178.606.

Replacement closures and gasketings qualified under the above test requirements are authorized without additional testing for packagings described in paragraph (g)(3) of this section. Replacement closures and gasketings qualified under the above test requirements also are authorized without additional testing for different tested design types packagings of the same type as the originally tested packaging, provided the original design type tests are more severe or comparable to tests which would otherwise be conducted on the packaging with the replacement closures or gasketings. (For example: The packaging used in the qualifying tests has a lesser packaging wall thickness than the packaging with replacement closure devices or gasketing; the gross mass of the packaging used in the qualifying drop test equals or exceeds the mass for which the packaging with replacement closure devices or gasketing was tested; the packaging used in the qualifying drop test was dropped from the same or greater height than the height from which the packaging with replacement closure devices or gasketing was dropped in design type tests; and the specific gravity of the substance used in the qualifying drop test was the same or greater than the specific gravity of the liquid used in the design type tests of the packaging with replacement closure devices or gasketing.)

(6) The provisions in Variations 1, 2, and 4 in paragraphs (g)(1), (2) and (4) of this section for combination packagings may be applied to packagings containing articles, where the provisions for inner packagings are applied analogously to the articles. In this case, inner packagings need not comply with § 173.27(c)(1) and (c)(2) of this subchapter.

* * * * *

§ 178.601 [Amended]

253. In addition, in § 178.601, the following changes are made:

a. In paragraph (c)(4)(iii), the word "or" is removed; and in paragraph (c)(4)(iv), the period at the end of the sentence is removed and replaced with "; or".

b. In paragraph (e), a new sentence is added after the first sentence to read "Changes in retest frequency are subject to the approval of the Associate Administrator for Hazardous Materials Safety.".

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c. In paragraph (g) introductory text, a second sentence is added at the end to read "For air transport, packagings must comply with § 173.27(c)(1) and (c)(2) of this subchapter.".

d. In paragraph (g)(2)(vi), the word "and" is added at the end of the paragraph.

e. In paragraph (h), the wording "or test intervals," is added immediately after "methods," and before "other than".

f. In paragraph (k) introductory text, the word "manufacturer" is removed and replaced with the wording "person who certifies the tested design type".

254. In § 178.602, paragraph (a) is revised to read as follows:

§ 178.602 Preparation of packagings and packages for testing.

(a) Except as otherwise provided in this subchapter, each packaging and package must be closed in preparation for testing and tests must be carried out in the same manner as if prepared for transportation, including inner packagings in the case of combination packagings.

* * * * *

§ 178.602 [Amended]

255. In § 178.602, the following changes are made:

a. In paragraph (b), the first sentence is revised to read "For the drop and stacking test, inner and single-unit receptacles must be filled to not less than 95 percent of maximum capacity (see § 171.8 of this subchapter) in the case of solids and not less than 98 percent of maximum capacity in the case of liquids.".

b. In paragraph (d)(1), the wording "; or" is removed at the end of the paragraph and replaced with a period; and a new sentence is added to read "Average values should fall within these limits. Short-term fluctuations and measurement limitations may cause individual measurements to vary by up to ± 5 percent relative humidity without significant impairment of test reproducibility;".

c. In paragraph (d)(2), the wording "; or" is removed at the end of the paragraph and replaced with a period; and a new sentence is added to read "Average values should fall within these limits. Short-term fluctuations and measurement limitations may cause individual measurements to vary by up to ± 5 percent relative humidity without significant impairment of test reproducibility; or".

d. In paragraph (e), in the first sentence, the wording "Except as otherwise provided," is added immediately before the wording "Each packaging", and the word "Each" is revised to read "each".

256. In § 178.603, a heading is added to paragraph (a); and paragraphs (a) introductory text and (f)(6) are revised to read as follows:

§ 178.603 Drop test.

(a) *General.* The drop test must be conducted for the qualification of all packaging design types and performed periodically as specified in § 178.601(e). The number of drops required and the packages' orientations are as follows:

* * * * *

(f) * * *

(6) No rupture is permitted in packagings for materials in Class 1 which would permit spillage of loose explosive substances or articles from the outer packaging.

§ 178.603 [Amended]

257. In § 178.603, the following changes are made:

a. In paragraph (b), a sentence is added at the end of the paragraph to read "Exceptions for the number of steel and aluminum packaging samples used for conducting the drop test are subject to the approval of the Associate Administrator for Hazardous Materials Safety.".

b. In paragraph (c), in the first sentence, "−180° C (0° F)" is revised to read "−18° C (0° F)" and a sentence is added at the end of the paragraph to read "Test samples prepared in this way are not required to be conditioned in accordance with § 178.602(d).".

c. In paragraphs (e)(1)(iii) and (e)(2)(i)(C), "0.8 m (3 feet)" is revised to read "0.8 m (2.6 feet)".

d. In paragraph (e)(2)(ii)(B), "1.0 m (3 feet)" is revised to read "1.0 m (3.3 feet)".

§ 178.604 [Amended]

258. In § 178.604, the following changes are made:

a. In paragraph (b)(2), a sentence is added at the end of the paragraph to read "Exceptions for the number of samples used in conducting the leakproofness test are subject to the approval of the Associate Administrator for Hazardous Materials Safety.".

b. In paragraph (c)(1), a sentence is added at the end of the paragraph to read "Removable heads need not be installed during production testing.".

c. In paragraph (d), in the last sentence, the wording ", or if approved by the Associate Administrator for Hazardous Materials Safety" is removed.

259. In § 178.605, in paragraph (a), the paragraph heading and the first sentence are revised to read as follows:

§ 178.605 Hydrostatic pressure test.

(a) *General.* The hydrostatic pressure test must be conducted for the qualification of all metal, plastic, and composite packaging design types intended to contain liquids and be performed periodically as specified in § 178.601(e). * * *

* * * * *

§ 178.605 [Amended]

260. In addition, in § 178.605, in paragraph (b), a sentence is added at the end of the paragraph to read "Exceptions for the number of aluminum and steel sample packagings used in conducting the hydrostatic pressure test are subject to the approval of the Associate Administrator of Hazardous Materials Safety.".

§ 178.606 [Amended]

261. In § 178.606, the following changes are made:

a. In paragraph (a), "packages" is revised to read "packaging design types".

b. In paragraph (b), two sentences are added at the end of the paragraph to read "Exceptions for the number of aluminum and steel sample packagings used in conducting the stacking test are subject to the approval of the Associate Administrator of Hazardous Materials Safety. Notwithstanding the provisions of § 178.602(a) of this subpart, combination packagings may be subjected to the stacking test without their inner packagings, except where this would invalidate the results of the test."

c. In paragraph (c)(2)(ii), in the second sentence, the word "drum" is revised to read "packaging", and the first line of the formula is revised to read as follows:

"Liquids: $A=(n-1)\ [w+\ (s \times v \times 8.3 \times .98)]\ \times 1.5$; Solids: $A=(n-1)\ [w+\ (s \times v \times 8.3 \times .95)]\ \times 1.5$".

d. In paragraph (d), in the third sentence, the wording "strength or cause instability in stacks of packages." is revised to read "strength, cause instability in stacks of packages, or cause damage to inner packagings likely to reduce safety in transportation.".

§ 178.608 [Amended]

262. In § 178.608, the following changes are made:

a. In paragraph (b)(2), the wording "or rotary" is added immediately after "vertical" and before "double-amplitude".

b. In paragraph (c), a sentence is added at the end of the paragraph to read "No test sample should show any deterioration which could adversely affect transportation safety or any distortion liable to reduce packaging strength."

263. In addition to the amendments set forth above, Part 178 is amended by removing the phrase "Director, OHMT" and, inserting in its place, the phrase "Associate Administrator for Hazardous Materials Safety" in the following sections:

(a) Section 178.33–9(a)(2)
(b) Section 178.33a–9(a)(2)
(c) Section 178.36–3
(d) Section 178.36–20(a)(3)
(e) Section 178.37–3
(f) Section 178.37–20(a)(3)
(g) Section 178.38–3
(h) Section 178.38–20(a)(2)
(i) Section 178.39–3
(j) Section 178.39–19(a)(2)
(k) Section 178.42–3
(l) Section 178.42–14(a)(2)
(m) Section 178.44–3
(n) Section 178.44–23(a)(2)
(o) Section 178.45–3
(p) Section 178.46–3
(q) Section 178.46–15(a)(2)
(r) Section 178.47–3
(s) Section 178.47–21(a)(2)
(t) Section 178.50–3
(u) Section 178.50–19(a)(2)
(v) Section 178.51–3
(w) Section 178.51–19(a)(2)
(x) Section 178.53–3
(y) Section 178.53–18(a)(2)
(z) Section 178.55–3
(aa) Section 178.55–20(a)(2)
(bb) Section 178.56–3
(cc) Section 178.56–19(a)(2)
(dd) Section 178.57–3
(ee) Section 178.57–20(a)(3)
(ff) Section 178.58–3
(gg) Section 178.58–21(a)(2)
(hh) Section 178.59–3(a)
(ii) Section 178.59–18(a)(2)
(jj) Section 178.60–3(a)
(kk) Section 178.60–22(a)(2)
(ll) Section 178.61–3
(mm) Section 178.61–20(a)(2)
(nn) Section 178.65–3(a)
(oo) Section 178.65–3(b)
(pp) Section 178.65–3(c)
(qq) Section 178.68–3
(rr) Section 178.68–19(a)(2)
(ss) Section 178.270–2(c)
(tt) Section 178.352–6(a)(3)
(uu) Section 178.358–5(b)(5)
(vv) Section 178.362–6(b)

264. In appendix B to part 178, the following changes are made:

a. In the introductory text, the wording "for other than the original design qualification tests" is removed.

b. In paragraph (1), in the second sentence, "0 kPa" is revised to read "5 kPa", "100 kPa" is revised to read "95 kPa", and the word "drum" is revised to read "packaging".

c. In paragraph (1), in the fourth sentence, the wording ", but not less than 30 seconds" is removed.

d. In paragraph (1), in the last sentence, the wording "from the packaging during 30 seconds of testing" is removed.

e. In paragraph (2), the last sentence is revised to read, "A packaging passes the pressure differential test if there is no change in measured internal pressure.".

f. A new paragraph (4) is added to read as follows:

Appendix B to Part 178—Alternative Leakproofness Test Methods

* * * * *

(4) *Solution over partial seams test.* For drums, the following test may be used: The packaging must be restrained while an internal air pressure of 48 kPa (7.0 psig) is applied; the method of restraint may not affect the results of the test. The packaging must be coated with a soap solution over the entire side seam and a distance of not less than eight inches on each side of the side seam along the chime seam(s). The test must be conducted for a period of time sufficient to pressurize the interior of the packaging to the specified air pressure and to determine if there is leakage of air from the packaging. A packaging passes the test if there is no leakage of air from the packaging. Chime cuts must be made on the initial drum at the beginning of each production run and on the initial drum after any adjustment to the chime seamer. Chime cuts must be maintained on file in date order for not less than six months and be made available to a representative of the Department of Transportation on request.

PART 179—SPECIFICATIONS FOR TANK CARS

265. The authority citation for part 179 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1, unless otherwise noted.

§ 179.101–1 [Amended]

266. In § 179.101–1, in the table in paragraph (a), the following changes are made:

a. In the "Insulation" requirement entry for 112A200W, 112A340W, 112A400W, 112A500W, 114A340W, and 114A400W, the wording "[4.13] Optional" is revised to read "[4] optional".

b. In Footnote 4, the wording "tank manway nozzle" is revised to read "tank, manway nozzle".

§ 179.105–7 [Amended]

267. In § 179.105–7, in the paragraph (c) introductory text, the following changes are made:

a. The wording "a tank car tank" is revised to read "an insulated tank car tank".

b. The wording "Division 2.3 (poisonous gas) material" is revised to read "material poisonous by inhalation (see § 171.8 of this subchapter)".

c. The reference "A8.01" is revised to read "A8.00".

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

268. The authority citation for part 180 continues to read as follows:

Authority: 49 App. U.S.C. 1803; 49 CFR Part 1.

§ 180.409 [Amended]

269. In § 180.409, in paragraph (b)(2), the wording "Director, Office of Hazardous Materials Transportation" is removed and replaced with "Associate Administrator for Hazardous Materials Safety".

§ 180.415 [Amended]

270. In § 180.415, in the last sentence in paragraph (b), the wording "10–85" is revised to read "10–95" and the year "1985" is revised to read "1995".

Issued in Washington, DC on November 19, 1991, under authority delegated in 49 CFR part 1.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 91–28240 Filed 12–19–91; 8:45 am]
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Part III

Department of Education

34 CFR Part 325
State Systems for Transition Services for Youth with Disabilities; Final Rule, and Notice Inviting Applications for New Awards for Fiscal Year 1992

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DEPARTMENT OF EDUCATION

34 CFR Part 325

RIN 1820-AA90

State Systems for Transition Services for Youth with Disabilities

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary establishes regulations for a new program authority enacted in the Education of the Handicapped Act Amendments of 1990. The regulations would enable the Secretary to make one-time, 5-year grants, on a competitive basis, to State vocational rehabilitation agencies and State educational agencies that submit joint applications to develop, implement, and improve transition services for youth with disabilities from age 14 through the age they exit school. The regulations make provisions for a State educational agency, whose vocational rehabilitation agency does not choose to participate, to jointly apply with one other State agency that provides transition services; describe how grant funds must be used; describe which applications will be given preference; and provide selection criteria for making grant awards.

EFFECTIVE DATE: These regulations take effect either 45 days after publications in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of the regulations call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: William Halloran, Secondary and Transition Branch, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW, Switzer Building, room 4625, Washington, DC 20202-2734. Telephone: (202) 732-1112 or V/TDD (202) 732-1100.

SUPPLEMENTARY INFORMATION: These regulations implement the new program authority in section 626(e) of part C of the Individuals with Disabilities Education Act (IDEA), as amended by Public Law 101-476, and provide selection criteria for making grant awards. Grants under these regulations will bring together resources from a variety of sources including local education agencies, postsecondary training programs, State agencies, the private sector, rehabilitation agencies, local and State employment agencies, local Private Industry Councils, and families of students with disabilities and their advocates. In keeping with AMERICA 2000, the President's strategy to meet the National Education Goals, these resources will be used to provide transition services that will prepare students for responsible citizenship, further learning, and productive employment in our modern economy. Except for the selection criteria, the proposed regulations primarily set forth the statutory requirements for this program.

The statute requires States that receive grants to:

- Increase the availability, access, and quality of transition assistance through the development and improvement of policies, procedures, systems, and other mechanisms for youth with disabilities and their families as those youth prepare for and enter adult life.
- Improve the ability of professionals, parents, and advocates to work with those youth in ways that promote the understanding of and the capability to successfully make the transition from 'student' to 'adult'.
- Improve working relationships among education personnel, both within LEAs and in postsecondary training programs, relevant State agencies, the private sector (especially employers), rehabilitation personnel, local and State employment agencies, local Private Industry Councils (PICS) authorized by the Job Training Partnership Act (JTPA), and families of students with disabilities and their advocates to identify and achieve consensus on the general nature and specific application of transition services to meet the needs of youth with disabilities.
- Create an incentive for accessing and using the expertise and resources of programs, projects, and activities related to transition funded through this section and with other sources.

Section 602(a)(19) of IDEA defines "transition services" as a coordinated set of activities for a student, designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must be based upon the individual student's needs, taking into account the student's preferences and interests, and must include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

These regulations constitute a step in implementing the AMERICA 2000 strategy for achieving the National Education Goals agreed to by the President and the Governors.

One aspect of the President's strategy is to foster better and more accountable schools. Under these regulations, the Secretary will seek to identify innovative approaches that will improve today's schools by enhancing services to assist youth with disabilities to successfully achieve transition services.

Analysis of Comments and Changes

On June 11, 1991, at 56 FR 26856, the Secretary published in the **Federal Register**, a Notice of Proposed Rulemaking for the State Systems for Transition Services for Youth with Disabilities. Twelve respondents commented on the proposed regulations.

Comment: Three commenters stated that the selected criterion under quality of key personnel addressing the recruitment of underrepresented populations should become a discrete subsection containing two criteria: (a) Recruitment of underrepresented populations as staff in proposed projects; and (b) recruitment of underrepresented populations to be served by the proposed projects. Another commenter stated that the selection criteria should be revised to include points for existing staff assigned to the project who are members of underrepresented populations.

Discussion: The Secretary agrees that the needs of underrepresented populations should apply to both the staffing of the project and youth with disabilities to be served through project activities. However, those factors are already well covered by the selection criteria. The quality of key personnel criterion includes a component for recruitment of underrepresented populations. In addition, the extent of need and expected impact selection criterion requires the applicant to describe how the State will address the needs of youth with disabilities from minority backgrounds. The recruitment and employment of project personnel would include existing staff who are recruited to serve as project personnel.

Change: None.

Comment: Four commenters indicated that the State educational agency should be designated as the lead agency, both fiscally and programmatically, in all joint applications submitted for the purpose of emphasizing that funds be used to help States implement the new transition requirement in part B. Another commenter indicated that a clearer statement is necessary to stress that the State educational agency must always be a party to the joint application.

Discussion: The statute provides for submission of a joint application and does not provide for designation of a lead agency. In addition, the Secretary wants to provide flexibility to States in administering the grant. However, language has been added to the regulations to clarify that the State educational agency must always be a party to the joint application. Language also has been added to require that States use funds to assist the State educational agency in implementing the new transition requirement under part B of the IDEA.

Change: The changes have been made in § 325.2 and § 325.3 of the regulations.

Comment: Three commenters indicated that the one-time five year grants to assist States to implement and improve transition services for youth with disabilities should not be limited to a single competition.

Discussion: The authorizing legislation stipulates that the Secretary shall make one-time, five year grants on a competitive basis to States. The one-time limitation applies to States receiving grants rather than a single competition.

Change: None.

Comment: One commenter suggested that the regulations require a recipient State to disseminate to educators, rehabilitation professionals, youth and their families information on the benefits and incentives for employment contained in the Social Security Disability Program.

Discussion: The Secretary agrees with the commenter and has expanded the plan of operation selection criterion to require the applicant to develop procedures to ensure that youth who are potentially eligible for the entitlement programs of the Social Security Administration, will be provided information and referral services.

Change: The change has been incorporated into the selection criteria in § 325.21(c): Plan of Operation.

Comment: One commenter recommended adding a parenthesis to the definition of "youth with disabilities" to read "Youth with disabilities means individuals with disabilities from age 14 (or younger, where appropriate) through the age they exit school."

Discussion: The definition of "youth with disabilities" contained in the regulations is from the authorizing legislation.

Change: None.

Comment: One commenter indicated that evaluation should not be delayed to the fifth year of the grant, but should be an on-going process. The commenter indicated that the fifth year of the grant should not be devoted exclusively to evaluation.

Discussion: The Secretary agrees with the commenter that evaluation should be an on-going process throughout the five years of the grant and that the fifth year should not be devoted exclusively to evaluation. Evaluation is a required activity in the fifth year, but project activities are not limited to evaluation in that year. Likewise, evaluation activities may be conducted in the first through the fourth years even though they are not specifically mentioned.

Change: Change made to determine the quality of the plan for evaluating the project throughout the entire grant, leading to the required fifth year evaluation.

Comment: One commenter suggested that States be allowed to select some but not all of the criteria to be used to evaluate their applications.

Discussion: Applicants may choose to emphasize different criteria in their applications, however the Secretary must evaluate the quality of applications based on all the selection criteria in the regulation.

Change: None.

Comment: One commenter stated that if indirect cost rates are to be compared as part of the grant application review process, it should be stated in the criteria.

Discussion: The Secretary does not compare indirect cost rates in the application review process.

Change: None.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities. Because these regulations would affect only States and State agencies, the regulations would not have an impact on small entities. States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 325

Grants program, State, State education agencies, Transition services, Vocational rehabilitation, Youth with disabilities.

(Catalog of Federal Domestic Assistance Number 84.158, Secondary Education and Transition Services for Youth with Disabilities.)

Dated: November 1, 1991.

Lamar Alexander,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by adding a new part 325 to read as follows:

PART 325—STATE SYSTEMS FOR TRANSITION SERVICES FOR YOUTH WITH DISABILITIES PROGRAM

Subpart A—General

Sec.

325.1 What is the State Systems for Transition Services for Youth with Disabilities Program?
325.2 Who is eligible for a grant?
325.3 How must States use funds under this program?
325.4 What regulations apply?
325.5 What definitions apply?

Subpart B—How Does a State Apply for a Grant?

325.10 What must an application include?

Subpart C—How Does the Secretary Make a Grant?

325.20 How does the Secretary evaluate an application?
325.21 What selection criteria does the Secretary use?

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Subpart D—What Conditions Must Be Met After a Grant?

325.30 What other conditions must be met by a grantee under this program?

Authority: 20 U.S.C. 1425(e), unless otherwise noted.

Subpart A—General

§ 325.1 What is the State systems for transition services for youth with disabilities program?

This program provides assistance to States to develop, implement, and improve systems to provide transition services for youth with disabilities from age 14 through the age they exit school.

(Authority: 20 U.S.C. 1425(e)(1))

§ 325.2 Who is eligible for a grant?

Under this program the Secretary may make a one-time, five-year grant—

(a) To a State educational agency and a State vocational rehabilitation agency that submit a joint application; or

(b) If a vocational rehabilitation agency does not choose to participate, to a State educational agency and a State agency that provides transition services to individuals who are leaving programs under the Act, that submit a joint application.

(Authority: 20 U.S.C. 1425(e)(2))

§ 325.3 How must States use funds under this program?

Agencies that receive grants under this program shall use grant funds to—

(a) Increase the availability, access, and quality of transition assistance through the development and improvement of policies, procedures, systems, and other mechanisms for youth with disabilities and their families as those youth prepare for and enter adult life;

(b) Improve the ability of professionals, parents, and advocates to work with those youth in ways that promote the understanding of and the capability to successfully make the transition from student to adult;

(c) Improve working relationships among education personnel, both within LEAs and in postsecondary training programs, relevant State agencies, the private sector (especially employers), rehabilitation personnel, local and State employment agencies, local Private Industry Councils authorized by the Job Training Partnership Act, and families of students with disabilities and their advocates to identify and achieve consensus on the general nature and specific application of transition services to meet the needs of those youth;

(d) Create an incentive for accessing and using the expertise and resources of programs, projects, and activities related to transition funded under this program and with other sources;

(e) Create incentives for the implementation of lasting State-wide system changes in the transition of students with disabilities to postsecondary training, education, and employment; and

(f) Assist the State education agency in implementing the requirement in section 602(a)(20)(D) of the Act that the student's individualized education program include a statement of needed transition services for students, beginning no later than age 16 and annually thereafter (and, if determined appropriate for the individual, beginning at age 14), including, if appropriate, a statement of the interagency responsibilities or linkages, (or both) before the student leaves the school setting.

(Authority: 20 U.S.C. 1425(e)(3))

§ 325.4 What regulations apply?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR—

(1) Part 75 (Direct Grant Programs);

(2) Part 77 (Definitions that Apply to Department Regulations);

(3) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(4) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(5) Part 81 (General Education Provisions Act—Enforcement);

(6) Part 82 (New Restrictions on Lobbying);

(7) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and

(8) Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this Part 325.

(Authority: 20 U.S.C. 1425(e))

§ 325.5 What definitions apply?

(a) *Definition in the Act.* The following term used in this part is defined in section 602(a)(19) of the Individuals with Disabilities Education Act:

Transition services

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Application
EDGAR
Grant
Local education agency (LEA)
Project
Secretary
State
State educational agency (SEA)

(c) *Other Definitions.* The following definitions also apply to this Part:

"Act" means the Individuals with Disabilities Education Act.

"Youth with disabilities" means individuals with disabilities from age 14 through the age they exit school.

(Authority: 20 U.S.C. 1425(e))

Subpart B—How Does a State Apply for a Grant?

§ 325.10 What must an application include?

An application under this program must include the following:

(a) A description of how the State educational agency and State vocational rehabilitation agency or other State agency will use—

(1) The first year, if necessary, to plan how to implement transition services;

(2) The second through fourth years to develop and implement transition services; and

(3) The fifth year to evaluate transition services.

(b) A description of how the grant funds will be used during the planning period and phased out during the evaluation period to ensure the continuation of transition services.

(c) A description of the current availability, access, and quality of transition services for eligible youth and a description of how, over five years, the State will improve and expand the availability, access, and quality of transition services for youth with disabilities and their families as those youth prepare for and enter adult life.

(d) A description of how the State will improve and increase the ability of professionals, parents, advocates, and youth to promote the understanding of and the capability to successfully make the transition from student to adult.

(e) A description of how the State will improve and increase working relationships among education personnel, both with LEAs and in postsecondary training programs, relevant State agencies, the private sector (especially employers), rehabilitation personnel, local and State employment agencies, local Private Industry Councils authorized by the Job Training Partnership Act, students with disabilities, their families, and their advocates to identify and achieve consensus on the general nature and specific application of transition services to meet the needs of youth with disabilities.

(f) A description of how the State will use grant funds as an incentive for accessing and using the expertise and resources of programs, projects, and activities related to transition funded through this program and with other sources.

(g) A description of how the State will address, in whole or in part, the needs of youth with disabilities from minority backgrounds.

(Approved by the Office of Management and Budget under control number 1820–0028)

(Authority: 20 U.S.C. 1410(b), 1425(e)(4)(A))

Subpart C—How Does the Secretary Make a Grant?

§ 325.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application submitted under this program on the basis of the criteria in § 325.21.

(b) The Secretary awards up to 100 points under these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1425(e))

§ 325.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate the quality of an application submitted under this part:

(a) *Extent of need and expected impact* (20 points). The Secretary reviews each application to determine the justification for the proposed activities in the State based on the State need for and expected impact from the activities to develop, implement, and improve systems to provide transition services for youth with disabilities from age 14 through the age they exit school. The Secretary looks for information that provides—

(1) A description of the current availability, access, and quality of transition services for eligible youth and a description of how, over five years, the State will improve and expand the availability, access, and quality of transition services for youth with disabilities and their families as those youth prepare for and enter adult life;

(2) A description of how the State will improve and increase the ability of professionals, parents, advocates, and youth to promote the understanding of and the capability to successfully make the transition from student to adult;

(3) A description of how the State will improve and increase working relationships among education personnel, both within LEAs and in postsecondary training programs, relevant State agencies, the private sector (especially employers), rehabilitation personnel, local and State employment agencies, local Private Industry Councils authorized by the Job Training Partnership Act, students with disabilities, their families, and their advocates to identify and achieve consensus on the general nature and specific application or transition services to meet the needs of youth with disabilities;

(4) A description of how the State will use grant funds as an incentive for accessing and using the expertise and resources of programs, projects, and activities related to transition funded under this program and with other sources; and

(5) A description of how the State will address the unique needs of youth with disabilities from minority backgrounds.

(b) *Technical soundness* (25 points). The Secretary reviews each application to determine the technical soundness of the project and whether the applicant has the capacity to achieve lasting statewide change, including a description of how the State will—

(1) Target resources to school settings, such as providing access to rehabilitation counselors for students with disabilities who are in school settings;

(2) Target a substantial amount of grant funds, received under this program, to program evaluation and documentation of, and dissemination of information about, transition services as well as to improve the capacity for case management;

(3) Provide incentives for interagency and private sector resource pooling and otherwise investing in transition services, especially in the form of cooperative agreements, particularly with Private Industry Councils authorized by the Job Training Partnership Act and local branches of State employment agencies;

(4) Provide for early, ongoing information and training for those involved with or who could be involved with transition services—professionals, parents, youth with disabilities, including self-advocacy training for those youth, and advocates for those youth as well as Private Industry Councils authorized by the Job Training Partnership Act and local branches of State employment agencies;

(5) Provide for the early and direct involvement of all relevant parties, including Private Industry Councils authorized by the Job Training Partnership Act and local branches of State employment agencies, in operating and planning improvements in transition services, and the early and direct involvement of all relevant parties in planning and implementing transition services for individual youth;

(6) Provide access to training for eligible youth that matches labor market needs in their communities;

(7) Integrate transition services with relevant opportunities in communities, including those sponsored by Private Industry Councils authorized by the Job Training Partnership Act and local employment agencies;

(8) Clearly define the services and service delivery system that will result from the project. The State must have analyzed in detail how these will differ from the current services and current delivery system;

(9) Identify all relevant barriers to implementing the proposed statewide changes and identify and propose appropriate strategies for eliminating those barriers;

(10) Use an evaluation plan for transition services that is outcome oriented, that focuses on individual youth-focused benefits, and that is based on standard sources of information such as the individualized education programs required by the IDEA;

(11) Disseminate annually information about project activities and procedures and information from project evaluation activities, including information regarding effective strategies and obstacles to achieving project goals, to the organizations described in § 325.30, and to other interested organizations within the State; and

(12) Ensure that, if appropriate and no later than age 22, eligible youth who participate in transition services under this program would be served as appropriate in the State section 110 program, the title VI, part C program, or the title VII, part A program, authorized under the Rehabilitation Act of 1973, as amended.

(c) *Plan of operation* (20 points). The Secretary reviews each application for information that shows the quality of the plan of operation for the project, including—

(1) An effective plan of management delineating the roles of both participating agencies and ensures proper and efficient administration of the project;

(2) A clear description of how the objectives of the project relate to the purpose of the program;

(3) The way the joint applicants plan to use their resources and personnel to achieve each objective;

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(4) A description of how all State and other agencies whose cooperation and participation are necessary for statewide implementation are actively collaborating in project management;

(5) A description of how the joint applicants will provide for the direct participation of youth with disabilities and parents in the planning, development, and implementation of the project;

(6) A description of the procedures to be used to ensure that youth and their families who are potentially eligible for the disability programs of the Social Security Administration are provided information, training, and referral services;

(7) A description of how the first year will be used to plan, if necessary, how to implement transition services, the second through fourth years to develop and implement transition services, and the fifth year to evaluate statewide services;

(8) Whether the budget is adequate to support the project and costs are reasonable in relation to the objectives of the project; and

(9) The extent to which grant funds will be used during the planning period and phased out during the evaluation period to ensure the continuation of transition services.

(d) *Quality of key personnel* (25 points, distributed as indicated).

(1) The Secretary reviews each application for information that shows the qualifications of key personnel the applicant plans to use on the project, including information that shows—

(i) The qualifications of the project director (8 points); and

(ii) The qualifications of each of the other key personnel to be used in the project, including experience and training in fields related to the objectives of the project (7 points).

(2) In determining the qualifications of each person referred to in paragraphs (d)(1) (i) and (ii) of this section the Secretary also considers—

(i) The time that each person will commit to the project;

(ii) Experience and training in conducting, documenting, and applying the types of activities to be conducted; and

(iii) Knowledge of the results and findings of relevant projects and potential for application of this information in addressing the need for transitional services to youth with disabilities.

(3) Recruitment of underrepresented populations (10 points). The Secretary reviews each application for information that shows effective efforts are being made to recruit members of underrepresented populations as project staff, including—

(i) Strategies to recruit employees who are members of underrepresented populations, including members of racial or ethnic minority groups and individuals with disabilities; and

(ii) Procedures to provide training and other necessary support to retain and advance qualified personnel from underrepresented populations.

(e) *Evaluation* (10 points). The Secretary reviews each application to determine the quality of the plan for evaluating the project throughout the entire grant, leading to the required fifth year evaluation. The Secretary reviews factors including—

(1) The adequacy of the applicant's plan to determine the effectiveness of the project in achieving measurable changes in State policy, programs, and services that improve systems providing transition services for youth with disabilities.

(2) The adequacy of the applicant's plan to determine the effectiveness and timeliness in completion of the managerial procedures and objectives of the project's plan of operation; and

(3) The procedures for recording, reviewing, analyzing, and interpreting for relevant audiences, data generated through conducting project activities.

(Approved by the Office of Management and Budget under control number 1820-0028)

(Authority: 20 U.S.C. 1425(e))

Subpart D—What Conditions Must Be Met After a Grant?

§ 325.30 What other conditions must be met by a grantee under this program?

(a) The Secretary, if appropriate, requires grantees to prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of those procedures, findings, and information.

(b) The Secretary requires delivery of those reports, as appropriate, to—

(1) The regional and Federal resource centers, the clearinghouses, and the technical assistance to parents programs assisted under parts C and D of the Act;

(2) The National Diffusion Network;

(3) The ERIC Clearinghouse on the Handicapped and Gifted;

(4) The Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health;

(5) Appropriate parent and professional organizations;

(6) Organizations representing individuals with disabilities; and

(7) Such other networks as the Secretary may determine to be appropriate.

(c) Each grantee shall participate in the evaluation conducted by the institution of higher education or nonprofit public or private organization supported to implement Section 626(f)(3)(A) of the Act.

(Approved by the Office of Management and Budget under control number 1820-0028)

(Authority: 20 U.S.C. 1410(g), 1425(f)(3))

[FR Doc. 91-30365 Filed 12-19-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.158]

Secondary Education and Transitional Services for Youth With Disabilities Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1992

Purpose of Program: The purpose of this program is to provide Federal assistance to States to develop, implement, and improve systems to provide transition services for youth with disabilities from age 14 through the age they exit school.

Eligible Applicants: Eligible applicants are State educational agencies, State vocational rehabilitation agencies, and other State agencies that provides transition services to individuals leaving school under the Individuals with Disabilities Education Act (IDEA) programs that submit a joint application.

Deadline for Transmittal of Applications: March 13, 1992.

Deadline for Intergovernmental Review: May 13, 1992.

Applications Available: December 20, 1991.

Available Funds: $4,169,000.

Estimated Range of Awards: $400,000–$500,000.

Estimated Size of Awards: $450,000.

Estimated Number of Awards: 9.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations, 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86; and (b) the regulations for this program in 34 CFR part 325, as amended and published in this issue of the **Federal Register**.

For Applications or Information Contact: Joseph Clair, Division of Education Services, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building, room 4622), Washington, DC 20202. Telephone: (202) 732-4503 (voice) or (202) 732-1169 (TDD).

Program Authority: 20 U.S.C. 1425(e)

Dated: December 16, 1991.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 91-30366 Filed 12-19-91; 8:45 am]

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Friday
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Part IV

Department of Labor

Mine Safety and Health Administration

Fee Adjustments for Testing, Evaluation, and Approval of Mining Products; Notice

VOL 56 ISS 245 DEC 20 1991 UMI

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Fee Adjustments for Testing, Evaluation, and Approval of Mining Products

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of fee adjustments.

SUMMARY: This notice revises the Mine Safety and Health Administration's (MSHA) user fees for testing, evaluation, and approval of certain products manufactured for use in underground mines. These fees are based on Fiscal Year 1991 data and reflect changes in approval processing operations as well as costs incurred to process approval actions.

DATES: These fee schedules are effective from January 1, 1992, through December 31, 1992. Approval applications postmarked before January 1, 1992, will be chargeable under the fee schedules as published on December 18, 1990.

FOR FURTHER INFORMATION CONTACT: Robert W. Dalzell, Chief, Approval and Certification Center, R.R. 1, Box 251, Triadelphia, West Virginia 26059.

SUPPLEMENTARY INFORMATION: In general, MSHA has computed the revised fees based on the cost to the government to provide testing, evaluation, and approval of products manufactured for use in underground mines. On May 8, 1987 (52 FR 17506), MSHA published a final rule, 30 CFR Part 5—Fees for Testing, Evaluation, and Approval of Mining Products, which established the specific procedures for fee calculation, administration, and revisions. This revised fee schedule is established in accordance with the procedures of that rule.

Two new approval programs introduced during Fiscal Year 1991 are Acceptances for Monitor and Power Systems (MAPS) and Equipment Covering Material. MAPS approvals are subject to the hourly rates under Other A&CC Services, Action 15 for MAPS, and equipment covering material approvals are subject to the hourly rates under part 18, Action 15. All multiple-shot blasting units must now be submitted under 30 CFR Part 7—Testing by Applicant or Third Party.

Dated: December 13, 1991.

William J. Tattersall,

Assistant Secretary of Mine Safety and Health.

FEE SCHEDULE EFFECTIVE 01-01-92 (BASED ON FY 1991 DATA)

30 CFR part No.	Part and action title	Hourly rate	Flat rate	Application fee
7	Product Testing by Third Party			
	13 Approval Evaluation—Battery Assemblies	$40		$100
	12 Approval Evaluation—Brattice and Ventilation Tubing	41		100
	12 Approval Evaluation—Multiple-Shot Blasting Units	39		100
	14 Approval Extension—Battery Assemblies	36		100
	14 Approval Extension—Brattice and Ventilation Tubing	39		100
	14 Approval Extension—Multiple-Shot Blasting Units	39		100
	40 Stamped Notification Acceptance Program (SNAP)		240	
15	Explosives			
	12 Approval Evaluation [1]	42		100
	Permissibility Tests for Explosives:			
	Weigh-in		420	
	Physical Exam: First size		295	
	Chemical Analysis		1,797	
	Air gap—Minimum Product Firing Temperature		418	
	Air gap—Room Temperature		320	
	Pendulum friction test		148	
	Detonation Rate		320	
	Gallery Test 7		4,917	
	Gallery Test 8		3,537	
	Toxic Gases (Large Chamber)		732	
	Permissibility Tests for Sheathed Explosives:			
	Physical Examination		126	
	Chemical Analysis		1,044	
	Gallery Test 9		1,944	
	Gallery Test 10		1,944	
	Gallery Test 11		1,944	
	Gallery Test 12		1,944	
	Drop Test		648	
	Temperature Effects/Detonation		672	
	Toxic Gases		580	
	14 Approval Extension	42		100
18	Electric Motor Driven Equipment and Accessories			
	12 Approval—Machine Evaluation [1]	42		100
	Approval—Machine Testing:			
	Explosion Test	32		
	Surface/Temperature Test	31		
	Impact Test	31		
	Thermal Shock Test	33		
	Product flame Test	41		
	12 Approval—Instruments (testing included)	37		100
	12 Approval—Shearer Evaluation	42		100
	14 Approval Extension—Machine Evaluation [1]	41		100
	Approval Extension—Machine Testing:			
	Explosion Test	32		
	Surface/Temperature Test	31		
	Impact Test	31		
	Thermal Shock Test	33		
	Product flame Test	41		

FEE SCHEDULE EFFECTIVE 01-01-92 (BASED ON FY 1991 DATA)—Continued

30 CFR part No.	Part and action title	Hourly rate	Flat rate	Application fee
	14 Approval Extension—Instruments (testing included)	37		100
	14 Approval Extension—Shearer Evaluation	39		100
	15 Acceptance Evaluation [1]	39		100
	Acceptance Testing:			
	Explosion Test	32		
	Surface/Temperature Test	31		
	Impact Test	31		
	Thermal Shock Test	33		
	Product flame Test	41		
	Cable/splice test	40		
	Cable Flame Test	41		
	Dielectric Test	43		
	Compressibility test (asbestos substitutes)	41		
	16 Certification Evaluation [1]	36		100
	Certification Testing:			
	Explosion Test	32		
	Surface/Temperature Test	31		
	Impact Test	31		
	Thermal Shock Test	33		
	Product flame Test	41		
	17 Acceptance Extension	36		100
	18 Certification Extension [1]	36		100
	Certification Extension Testing:			
	Explosion Test	32		
	Surface/Temperature Test	31		
	Impact Test	31		
	Thermal Shock Test	33		
	Product flame Test	41		
	21 Field Modification	45		100
	23 Field Approval		81	
	26 Permit—Machines [1]	42		100
	Permit Testing:			
	Explosion Test	32		
	Surface/Temperature Test	31		
	Impact Test	31		
	Thermal Shock Test	33		
	Product flame Test	41		
	26 Permit—Instruments (testing included)	42		100
	30 Intrinsic Safety Determination (testing included)	43		100
	31 Intrinsic Safety Determination Extension (testing included)	42		100
	32 Simplified Certification [1]	36		100
	Simplified Certification Testing:			
	Explosion Test	32		
	Surface/Temperature Test	31		
	Impact Test	31		
	Thermal Shock Test	33		
	Product flame Test	41		
	34 Simplified Certification Extension [1]	36		100
	Simplified Certification Ext. Testing:			
	Explosion Test	32		
	Surface/Temperature Test	31		
	Impact Test	31		
	Thermal Shock Test	33		
	Product flame Test	41		
	40 Stamped Notification Acceptance Program (SNAP)		240	
	41 Longwall Approval	40		100
	42 Longwall Approval Extension	40		100
19	Electric Cap Lamps			
	12 Approval (testing included)	42		100
	14 Approval Extension (testing included)	39		100
	40 Stamped Notification Acceptance Program (SNAP)		240	
20	Electric Mine Lamps			
	12 Approval (testing included)	39		100
	14 Approval Extension (testing included)	38		100
	40 Stamped Notification Acceptance Program (SNAP)		240	
21	Flame Safety Lamps			
	12 Approval (testing included)	39		100
	14 Approval Extension (testing included)	39		100
	40 Stamped Notification Acceptance Program (SNAP)		240	
22	Portable Methane Detectors			
	12 Approval (testing included)	36		100
	14 Approval Extension (testing included)	36		100
	40 Stamped Notification Acceptance Program (SNAP)		240	
23	Telephones and Signaling Devices			
	12 Approval (testing included)	39		100
	14 Approval Extension (testing included)	36		100
	40 Stamped Notification Acceptance Program (SNAP)		240	

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FEE SCHEDULE EFFECTIVE 01-01-92 (BASED ON FY 1991 DATA)—Continued

30 CFR part No.	Part and action title	Hourly rate	Flat rate	Application fee
24	Single-Shot Blasting Units			
	12 Approval (testing included)	43		100
	14 Approval Extension (testing included)	43		100
	40 Stamped Notification Acceptance Program (SNAP)		240	
26	Lighting Equipment for Illumination			
	12 Approval (testing included)	42		100
	14 Approval Extension (testing included)	42		100
	40 Stamped Notification Acceptance Program (SNAP)		240	
27	Methane Monitoring Systems			
	16 Certification (testing included)	41		100
	18 Certification Extension (testing included)	36		100
	40 Stamped Notification Acceptance Program (SNAP)		240	
28	D.C. Current Fuses			
	12 Approval (testing included)	44		100
	14 Approval Extension (testing included)	44		100
	40 Stamped Notification Acceptance Program (SNAP)		240	
29	Portable Dust Analyzers and Methane Monitors			
	12 Approval (testing included)	39		100
	14 Approval Extension (testing included)	39		100
	40 Stamped Notification Acceptance Program (SNAP)		240	
31	Diesel Mine Locomotives			
	12 Approval	39		100
	14 Approval Extension	39		100
32	Mobile Diesel-Powered Equipment for Noncoal Mines			
	12 Approval	39		100
	14 Approval Extension	39		100
	16 Certification Evaluation [1]	39		100
	Certification Testing:			
	Emissions Test	41		
	Pre/post test preparation	39		
	18 Certification Extension Evaluation [1]	39		100
	Certification Extension Testing:			
	Emissions Test	41		
	Pre/post test preparation	39		
33	Dust Collectors			
	12 Approval Evaluation without Cert. of Performance [1]	43		100
	Approval testing:			
	Dust Collector Test	46		
	14 Approval Extension Evaluation [1]	42		100
	Approval Extension Testing:			
	Dust Collector Test	46		
	16 Certification Evaluation [1]	42		100
	Certification Testing:			
	Dust Collector Test	46		
	18 Certification Extension [1]	42		100
	Certification Extension Testing:			
	Dust Collector Test	46		
	21 Field Modification	41		100
	29 Dust Collector Approval with Cert. of Performance	43		100
	40 Stamped Notification Acceptance Program (SNAP)		240	
35	Fire-Resistant Hydraulic Fluids			
	12 Approval (Testing included)	39		100
	14 Approval Extension (Testing included)	39		100
36	Mobile Diesel-Powered Equipment			
	12 Approval	43		100
	14 Approval Extension	42		100
	16 Certification—Engine Evaluation [1]	37		100
	Certification—Engine Testing:			
	Emissions Test	46		
	Explosion Test	40		
	Surface Temperature/Safety Controls Test	38		
	Pre/post Test Preparation	45		
	18 Certification Extension—Engine Evaluation [1]	37		100
	Certification Extension—Engine Testing:			
	Emissions Test	46		
	Explosion Test	40		
	Surface Temperature/Safety Controls Test	38		
	Pre/post Test Preparation	45		
	21 Field Modification	43		100
	27 Certification—Diesel Components Evaluation [1]	38		100
	42 Certification—Diesel Components Testing:			
	Emissions Test	46		
	Explosion Test	40		
	Water Consumption/Cooling Efficiency Test	40		
	Surface Temperature/Safety Controls Test	38		
	Pre/post Test Preparation	45		
	28 Certification Extension—Diesel Components Evaluation [1]	40		100

FEE SCHEDULE EFFECTIVE 01-01-92 (BASED ON FY 1991 DATA)—Continued

30 CFR part No.	Part and action title	Hourly rate	Flat rate	Application fee
	Certification Extension—Diesel Components Testing:			
	Emissions Test	46		
	Explosion Test	40		
	Water Consumption/Cooling Efficiency Test	40		
	Surface Temperature/Safety Controls Test	38		
	Pre/post Test Preparation	45		
	40 Stamped Notification Acceptance Program (SNAP)		240	
74	Coal Mine Dust Personal Sampler Units			
	12 Approval	39		100
	Other A&CC Services			
	15 Acceptance—Overcurrent Relays (Testing included)	39		100
	15 Statement of Test and Evaluation (ST&E)		35	100
	15 Monitor and Power System (MAPS) (Testing included)	39		100
	15 Acceptance—Ground Check Monitor/Ground Wire Devices (Testing included)	40		100
	17 Acceptance Extension—Overcurrent Relays	39		100
	17 Acceptance Extension—Interim Criteria	39		100
	17 Statement of Test and Evaluation (ST&E) Extension		20	
	17 Acceptance Extension—Ground Check Monitor/Gr. Wire Devices	39		100
	20 Stamped Revision Acceptance (SRA) [2]		205	
	24 Acceptance—Panic Bar	38		100
	33 Generic Statement of Test and Evaluation (ST&E)	39		100
	37 Acceptance—Interim Criteria [1]	38		100
	Interim Criteria Testing:			
	Product Flame Test	40		
	40 Stamped Notification Acceptance (SNAP)/Gr. Check Monitor and Ground Wire Device		240	
	40 Stamped Notification Acceptance (SNAP) ST&E		28	
	41 Approval—Longwall Area Lighting	40		100
	42 Approval Extension—Longwall Area Lighting	39		100
	50 Mine Wide Monitoring System (MWMS) Evaluation		283	
	52 Mine Wide Monitoring System (MWMS) Barrier Classification		155	
	54 Mine Wide Monitoring System (MWMS) Senior Classification		163	
	00 Retesting for approval as a result of post-approval product audit [3]			

[1] Note: Full approval fee consists of evaluation cost plus applicable test costs.
[2] Note: Fee covers SRA application accompanied by up to 5 documents.
[3] Note: Fee based upon the approval schedule in effect at the time of retest.

Note: When testing and evaluation is required at locations other than MSHA's premises, the applicant shall reimburse MSHA for traveling, subsistence, and incidental expenses of MSHA's representation in accordance with standardized government travel regulations. This reimbursement is in addition to the fees charged for evaluation and testing.

[FR Doc. 91-30411 Filed 12-19-91; 8:45 am]
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Part V

Department of the Interior

Bureau of Indian Affairs

List of Rejected Statute of Limitations Claims; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

List of Rejected Statute of Limitations Claims

Dated: December 16, 1991.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of rejected claims.

SUMMARY: This notice lists certain potential pre-1966 Indian damage claims which have been rejected for litigation by the Secretary of the Interior pursuant to the Indian Claims Limitation Act of 1982. This notice also contains a list of claims which the Bureau of Indian Affairs considers resolved.

DATES: To file an action in court, on any claim contained on the list of rejected claims, tribes, groups, and individual Indians must file such action no later than December 20, 1992.

FOR FURTHER INFORMATION CONTACT:

Aberdeen Area Director, Bureau of Indian Affairs, 115 4th Avenue SE., Aberdeen, South Dakota 57401–4382, Telephone (605) 226–7343;

Albuquerque Area Director, Bureau of Indian Affairs, 615 1st Street NW., Box 26567, Albuquerque, New Mexico 87125–6567, Telephone (505) 766–3170;

Anadarko Area Director, Bureau of Indian Affairs, WCD Office Complex, Box 368, Anadarko, Oklahoma 73005–0368, Telephone (405) 247–6673;

Billings Area Director, Bureau of Indian Affairs, 316 North 26th Street, Billings, Montana 59101–1397, Telephone (406) 657–6315;

Eastern Area Director, Bureau of Indian Affairs, 3701 N. Fairfax Drive, suite 260/Mailroom, Arlington, VA 22203, Telephone (703) 235–2571;

Juneau Area Director, Bureau of Indian Affairs, P.O. Box 25520, Juneau, Alaska 99802–5520, Telephone (907) 586–7177;

Minneapolis Area Director, Bureau of Indian Affairs, 331 Second Avenue South, Minneapolis, Minnesota 55401–2241, Telephone (612) 349–3631;

Muskogee Area Director, Bureau of Indian Affairs, 5th & West Okmulgee, Muskogee, OK 74401–4898, Telephone (918) 687–2296;

Navajo Area Director, Bureau of Indian Affairs, P.O. Box 1060, Gallup, NM 87305–1060, Telephone (505) 863–9501;

Phoenix Area Director, Bureau of Indian Affairs, 1 North First Street, P.O. Box 10, Phoenix, Arizona 85001–0010, Telephone (602) 241–2305;

Portland Area Director, Bureau of Indian Affairs, 911 NE 11th Ave., Portland, OR 97232–4169, Telephone (503) 231–6702;

Sacramento Area Director, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825–1884, Telephone (916) 978–4691.

SUPPLEMENTARY INFORMATION: The Indian Claims Limitation Act of 1982, Public Law 97–394 (96 Stat. 1966, 1976) extends the statute of limitations governing pre-1966 Indian damage claims (28 U.S.C. 2415) which was due to expire on December 31, 1982. A claim subject to the statute of limitations is an Indian claim for money damages which arose prior to July 18, 1966. Claims against the United States are not governed by this law, only money damage claims against persons, corporations, states, or any other entities except the Federal Government. Claims for title to land are also not governed by this statute of limitations. This notice is required by section 5(c) of the Act.

Pursuant to sections 3 and 4 of the Indian Claims Limitation Act of 1982, lists of all potential Indian damage claims, which had at any time been identified by or submitted to the Bureau of Indian Affairs under the Department of the Interior's Statute of Limitations Program, were published in the **Federal Register** at 48 FR 13698, on March 31, 1983, amended at 48 FR 15008, on April 6, 1983; and at 48 FR 51204, on November 7, 1983, amended at 49 FR 518, on January 4, 1984. Excluded from these lists were claims which were erroneously identified as claims and those which had no legal merit whatsoever.

When rejecting any claim or category of claims included on the published lists, the Secretary must send a report to the appropriate tribe whose rights or the rights of whose members could be affected by the rejection. The report must identify each separate claim being rejected, list the names of potential plaintiffs and defendants, if known or reasonably ascertainable, and briefly set forth the reason or reasons for rejection. A written notice of rejection must be sent to individual Indian claimants if their identities and addresses are known or reasonably ascertainable from Bureau of Indian Affairs records. After a report has been forwarded to a tribe, the Secretary must publish a notice in the **Federal Register** identifying the claims covered in the report. By the terms of the Indian Claims Limitation Act of 1982, any right of action on any claim appearing on the following list of claims, which have been rejected and reported accordingly by the Secretary, shall be barred unless a complaint is filed in accordance with the date established in the "**DATE**" section of this notice. A list of claims which the Bureau of Indian Affairs considers resolved follows the list of rejected claims.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

BILLING CODE 4310-02-M

MINNEAPOLIS AREA REJECTED CLAIMS:

F53-407-0303	F53-407-0534A			

MUSKOGEE AREA REJECTED CLAIMS:

G07-908-0078	G09-907-0003			
G09-907-0007		G09-907-0015	G09-907-0019	
	G09-907-0028	G09-907-0030	G09-907-0037	G09-907-0038
G09-907-0039	G09-907-0040	G09-907-0041	G09-907-0043	G09-907-0044
G09-907-0045	G09-907-0046	G09-907-0047	G09-907-0048	G09-907-0051
G09-907-0052	G09-907-0053	G09-907-0054	G09-907-0058	G09-907-0059
G09-907-0060	G09-907-0061	G09-907-0065		G09-907-0067
G09-907-0068	G09-907-0069	G09-907-0070		G09-907-0071
	G09-907-0072	G09-907-0073	G09-907-0074	G09-907-0075
G09-907-0076	G09-907-0078	G09-907-0079	G09-907-0081	G09-907-0082
G09-907-0083	G09-907-0084	G09-907-0085	G09-907-0086	G09-907-0087
G09-907-0088	G09-907-0089	G09-907-0091	G09-907-0093	G09-907-0096
G09-907-0097	G09-907-0099	G09-907-0100	G09-907-0101	G09-907-0102
G09-907-0106	G09-907-0107	G09-907-0110	G09-907-0111	G09-907-0114
G09-907-0115	G09-907-0117	G09-907-0119	G09-907-0120	G09-907-0129
G09-907-0134	G09-907-0137	G09-907-0139	G09-907-0143	G09-907-0149

ALBUQUERQUE AREA REJECTED CLAIMS:

M20-703-0001	M20-703-0007	M20-703-0008	M20-703-0009	M20-703-0010
M20-703-0014	M20-703-0017	M20-703-0018	M20-704-0001	M20-704-0003
M20-704-0006	M20-704-0007	M20-704-0008	M20-704-0009	M20-704-0010
M20-704-0011	M20-706-0001	M20-706-0002	M20-706-0003	M20-706-0004
M20-706-0005	M20-706-0006	M20-706-0009	M20-706-0011	M20-706-0013
M20-706-0014	M20-712-0003	M20-712-0005	M20-712-0009	M20-712-0010
M20-712-0015	M20-720-0003	M20-720-0004	M20-720-0005	M25-709-0014
M25-709-0021	M25-709-0052	M25-709-0053	M25-709-0054	M25-709-0055
M25-709-0056	M25-709-0057	M25-709-0058	M25-713-0005	M25-713-0065
M25-713-0066	M25-713-0137	M25-713-0146	M25-713-0147	M25-714-0138
M25-714-0400	M25-716-0096	M25-716-0100	M25-716-0101	M60-702-0031
M60-702-0032	M60-702-0034	M60-702-0035	M60-702-0036	M60-702-0037
M60-702-0038	M60-702-0039	M60-702-0040	M60-702-0041	M60-702-0042
M60-702-0043	M60-702-0044	M60-702-0046	M60-702-0047	M60-702-0053
M60-702-0054	M60-702-0055	M60-702-0056	M60-702-0057	M60-702-0141
M60-702-0142	M60-702-0143	M60-702-0144	M60-702-0145	M60-702-0146
M60-702-0147	M60-702-0148	M60-702-0149	M60-702-0150	M60-702-0151
M60-702-0152	M60-702-0153	M60-702-0154		

PORTLAND AREA REJECTED CLAIMS:

P00-000-0070	P00-000-0074	P03-101-0016	P03-101-0081	P03-101-0093
P03-101-0094	P03-101-0095	P03-101-0096	P03-101-0097	P03-101-0098
P03-101-0099	P03-101-0100	P03-101-0101	P03-101-0102	P03-101-0146
P03-101-0147	P03-101-0148	P03-101-0149	P03-101-0150	P03-101-0151
P03-101-0152	P03-101-0153	P03-101-0154	P03-101-0155	P03-101-0156
P03-101-0157	P03-101-0158	P03-101-0159	P03-101-0160	P03-101-0161
P03-101-0162	P03-101-0163	P03-101-0164	P03-101-0165	P03-101-0251
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P03-101-0259	P03-101-0260	P03-101-0261	P03-101-0262	P03-101-0266
P03-101-0267	P03-101-0268	P03-101-0269	P03-101-0270	P03-101-0271
P03-101-0272	P03-101-0273	P03-101-0275	P03-101-0292	P03-101-0294
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P05-181-0009M	P05-181-0009N	P05-181-0009O	P05-181-0009P	P05-181-0009Q
P05-181-0009R	P05-181-0009S	P05-181-0009T	P05-181-0009U	P05-181-0009V
P05-181-0009W	P05-181-0009X	P05-181-0009Y	P05-181-0025	P05-181-0026
P05-181-0051	P05-181-0052	P05-181-0055	P05-181-0056	P05-181-0056A
P05-181-0057	P05-181-0057A	P05-181-0058	P05-181-0059	P05-181-0061
P05-181-0062	P05-181-0063	P05-181-0064	P05-181-0065	P05-181-0066
P05-181-0067	P05-181-0068	P05-181-0069	P05-181-0070	P05-181-0071
P05-181-0073	P05-181-0074	P05-181-0075	P05-181-0076	P05-181-0077
P05-181-0078	P05-181-0080	P05-181-0082	P05-181-0085	P05-181-0086
P05-181-0087	P05-181-0088	P05-181-0089	P05-181-0090	P05-181-0091
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P05-182-0032A	P05-182-0032B	P05-182-0032C	P05-182-0032D	P05-182-0032E
P05-182-0032F	P05-182-0032G	P05-182-0032H	P05-182-0032I	P05-182-0032J
P05-182-0032K	P05-182-0032L	P05-182-0032M	P05-182-0032N	P05-182-0032O
P05-182-0032P	P05-182-0032Q	P05-182-0034	P05-182-0035	P05-182-0036
P05-182-0038	P05-182-0039	P05-182-0040	P05-182-0042	P05-182-0044
P05-182-0046	P05-182-0047	P05-182-0048	P05-182-0049	P05-182-0050
P05-182-0051	P05-182-0052	P05-182-0053	P05-182-0054	P05-182-0055
P05-182-0056	P05-182-0057	P05-182-0058	P05-182-0059	P05-182-0060
P05-182-0061	P05-182-0062	P05-182-0064	P05-182-0065	P05-182-0066
P05-182-0068	P05-182-0112	P05-182-0129	P05-182-0153	P05-182-0158
P05-182-0161	P05-182-0169	P05-182-0180	P05-182-0180A	P05-182-0180C
P05-182-0180D	P05-182-0180E	P05-182-0180F	P05-182-0180G	P05-182-0180H
P05-182-0180I	P05-182-0180J	P05-182-0180K	P05-182-0180L	P05-182-0180M
P05-182-0180N	P05-182-0180O	P05-182-0180P	P05-182-0180Q	P05-182-0180R
P05-182-0180S	P05-182-0180T	P05-182-0180U	P05-182-0180V	P05-182-0180W
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P05-182-0182	P05-182-0183	P05-182-0184	P05-182-0186	P05-182-0187
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P09-144-0038	P10-107-0006	P10-107-0007	P10-107-0008	P10-107-0009
P10-109-0006	P10-109-0008	P10-109-0009	P10-109-0010	P10-109-0011
P10-109-0019	P10-110-0022	P10-110-0024	P10-110-0025	P10-110-0026
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P13-203-0011	P13-203-0012	P13-203-0013	P13-203-0014	P13-203-0015
P13-203-0016	P13-203-0017	P13-203-0018	P13-203-0019	P13-203-0023
P13-203-0028	P13-203-0055	P13-203-0057	P13-203-0060	P13-203-0072
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P13-203-0126	P13-203-0129	P13-203-0130	P13-203-0131	P13-203-0132
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P13-203-0145	P13-203-0146	P13-203-0147	P13-203-0148	P13-203-0150
P13-203-0151	P13-203-0152	P13-203-0153	P13-203-0154	P13-203-0155
P13-203-0156	P13-203-0159	P13-203-0160	P13-203-0161	P13-203-0162
P13-203-0163	P13-203-0164	P13-203-0165	P13-203-0167	P13-203-0168
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C55-204-0046	C55-204-0047	C55-204-0049	C55-204-0050	C55-204-0051
C55-204-0052	C55-204-0056	C55-204-0057	C55-204-0065	C55-204-0066
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C55-204-0085	C55-204-0092	C55-204-0095	C55-204-0107	C55-204-0108
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F53-405-0039	F53-405-0040	F53-405-0041	F53-405-0042	F55-430-0022
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M20-711-0063	M20-711-0071	M20-711-0086	M20-711-0101	M25-708-0002
M25-708-0005	M25-708-0006	M25-708-0007	M25-708-0008	M25-708-0009
M25-708-0010	M25-708-0011	M25-713-0138	M25-713-0139	M25-713-0140
M25-713-0141	M45-751-0004	M45-751-0005	M45-751-0006	M45-751-0007
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Part VI

Department of Energy

Public Utility Regulatory Policies Act; Gas and Electric Utilities Covered in 1992; Notice

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DEPARTMENT OF ENERGY

[Docket No. FE-R-79-43B]

Office of Fossil Energy; Electric and Gas Utilities Covered in 1992 by Titles I and III of the Public Utility Regulatory Policies Act of 1978 and Requirements for State Regulatory Authorities to Notify the Department of Energy

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice.

SUMMARY: Sections 102(c) and 301(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA) require the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each electric utility and gas utility to which Titles I and III of PURPA apply during such calendar year. The 1992 list is published here as two separate tabulations. Appendix A lists the covered utilities by State and appendix B lists them alphabetically.

Each State regulatory authority is required, pursuant to sections 102(c) and 301(d) of PURPA, to notify the Secretary of Energy of each electric utility and gas utility on the list for which such State regulatory authority has ratemaking authority. In addition, written comments are requested on the accuracy of the list of electric utilities and gas utilities.

DATES: Notifications by State regulatory authorities and written comments must be received by no later than 4:30 p.m. on February 15, 1992.

ADDRESSES: Notifications and written comments should be forwarded to: Department of Energy, Office of Coal and Electricity, FE-52, 1000 Independence Avenue, SW., room 3F-070, Docket No. FE-R-79-43B, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Steven Mintz, Office of Coal and Electricity, Fossil Energy, Department of Energy, 1000 Independence Avenue SW., room 3F-070, FE-52, Washington, DC 20585, Telephone 202/586-9506.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 102(c) and 301(d) of PURPA, Public Law 95-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*), hereinafter referred to as the "Act," the Department of Energy (DOE) is required to publish a list of utilities to which titles I and III of PURPA apply in 1992.

State regulatory authorities are required by the Act cited above to notify the Secretary of Energy as to their ratemaking authority over the listed utilities. The inclusion or exclusion of any utility on or from the list does not affect the legal obligations of such utility or the responsible authority under the Act.

The term "State regulatory authority" means any State, including the District of Columbia and Puerto Rico, or a political subdivision thereof, and any agency or instrumentality, which has authority to fix, modify, approve, or disapprove rates with respect to the sale of electric energy or natural gas by any utility (other than such State agency). In the case of a utility for which the Tennessee Valley Authority (TVA) has ratemaking authority, the term "State regulatory authority" means the TVA.

Title I of PURPA sets forth ratemaking and regulatory policy standards with respect to electric utilities. Section 102(c) of title I requires the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each electric utility to which title I applies during such calendar year. An electric utility is defined as any person, State agency, or Federal agency that sells electric energy. An electric utility is covered by title I for any calendar year if it had total sales of electric energy for purposes other than resale in excess of 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year. An electric utility is covered in 1992 if it exceeded the threshold in any year from 1976 through 1990.

Title III of PURPA addresses ratemaking and other regulatory policy standards with respect to natural gas utilities. Section 301(d) of title III requires the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each gas utility to which title III applies during each calendar year. A gas utility is defined as any person, State agency, or Federal agency, engaged in the local distribution of natural gas and the sale of natural gas to any ultimate consumer of natural gas. A gas utility is covered by title III if it had total sales of natural gas for purposes other than resale in excess of 10 billion cubic feet during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year. A gas utility is covered in 1992 if it exceeded the threshold in any year from 1976 through 1990.

In compiling the list published today, the DOE revised the 1991 list (55 FR 52016, December 18, 1990) upon the assumption that all entities included on the 1991 list are properly included on the 1992 list unless the DOE has information to the contrary. In doing this, the DOE took into account information included in public documents regarding entities which exceeded the PURPA thresholds for the first time in 1990. The DOE believes that it will become aware of any errors or omissions in the list published today by means of the comment process called for by this Notice. The DOE will, after consideration of any comment and other information available to the DOE, provide written notice of any further additions or deletions to the list.

II. Notification and Comment Procedures

No later than 4:30 p.m. on February 15, 1992, each State regulatory authority must notify the Department of Energy in writing of each utility on the list over which it has ratemaking authority. Five copies of such notification should be submitted to the address indicated in the "**ADDRESSES**" section of this Notice and should be identified on the outside of the envelope and on the document with the designation "Docket No. FE-R-79-43B." Such notification should include:

1. A complete list of electric utilities and gas utilities over which the State regulatory authority has ratemaking authority;

2. Legal citations pertaining to the ratemaking authority of the State regulatory authority; and

3. For any listed utility known to be subject to other ratemaking authorities within the State for portions of its service area, a precise description of the portion to which such notification applies.

All interested persons, including State regulatory authorities, are invited to comment in writing, no later than 4:30 p.m. on February 15, 1992, on any errors or omissions with respect to the list. Two copies of such comments should be sent to the address indicated in the "**ADDRESSES**" section of this Notice and should be identified on the outside of the envelope and on the document with the designation "Docket No. FE-R-79-43B." Written comments should include the commenter's name, address and telephone number.

All notifications and comments received by the DOE will be made available, upon request, for public inspection in the Freedom of Information Reading Room, room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

III. List of Electric Utilities and Gas Utilities

Appendices A and B contain two different tabulations of the utilities that meet PURPA coverage requirements. As stated above, the inclusion or exclusion of any utility on or from the lists does not affect its legal obligations or those of the responsible State regulatory authority under PURPA.

Appendix A contains a list of utilities which are covered by PURPA. These utilities are grouped by State and by the regulatory authority within each State. Also included in this list are utilities which are covered by PURPA but which are not regulated by the State regulatory authority. This tabulation, including explanatory notes, is based on information provided to the DOE by State regulatory authorities in response to the December 18, 1990, **Federal Register** notice (55 FR 52016) requiring each State regulatory authority to notify the DOE of each utility on the list over which it has ratemaking authority, public comments received with respect to that notice, and information subsequently made available to the DOE.

The utilities classified in appendix A as not regulated by the State regulatory authority in fact may be regulated by local municipal authorities. These municipal authorities would be State agencies as defined by PURPA and thus have responsibilities under PURPA identical to those of the State regulatory authority. Therefore, each such municipality is to notify the DOE of each utility on the list over which it has ratemaking authority.

In appendix B, the utilities are listed alphabetically, subdivided into electric utilities and gas utilities, and further subdivided by type of ownership: Investor-owned utilities, publicly-owned utilities, and rural cooperatives.

The changes to the 1991 list of electric and gas utilities are as follows:

Additions:

- Arkansas Valley Electric Cooperative Corp. (AR)
- City of Bryan (TX)
- Cajun Electric Power Cooperative (LA)
- Carroll Electric Cooperative Corporation (AR)
- Clinton Utilities Board (TN)
- Cullman Electric Cooperative (AL)
- Linn County RECA (IA)
- Mississippi County Electric Cooperative Corp. (AR)
- Oregon Trail Electric (OR)
- Tri-County Electric Cooperative, Inc. (TX)

(Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*)).

Issued in Washington, DC on December 12, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

Appendix A

All gas utilities listed below had natural gas sales, for purposes other than resale, in excess of 10 billion cubic feet in any year from 1976–1990.

All electric utilities listed below had electric energy sales, for purposes other than resale, in excess of 500 million kilowatt-hours in any year from 1976–1990.

State: Alabama

Regulatory Authority: Alabama Public Service Commission.

Gas Utilities

Investor-Owned:
- Alabama Gas Corporation
- Mobile Gas Service Corporation

Electric Utilities

Investor-Owned:
- Alabama Power Company

The following covered utilities within the State of Alabama are not regulated by the Alabama Public Service Commission:

Electric Utilities

Publicly-Owned:
- Athens Utilities
- Decatur Electric Department
- Dothan Electric Department
- Florence Electric Department
- Huntsville Utilities

Rural Electric Cooperatives:
- Cullman Electric Cooperative
- Joe Wheeler Electric Membership Corporation
- Rural Electric System

State: Alaska

Regulatory Authority: Alaska Public Utilities Commission.

Gas Utilities

Investor-Owned:
- Enstar Natural Gas Company

Electric Utilities

Rural Electric Cooperatives:
- Chugach Electric Association

Publicly-Owned:
- Anchorage Municipal Light & Power Department

State: Arizona

Regulatory Authority: Arizona Corporation Commission.

Gas Utilities

Investor-Owned:
- Southern Union Gas Company
- Southwest Gas Corporation

Electric Utilities

Investor-Owned:
- Arizona Public Service Company
- Tucson Electric Power Company

Publicly-Owned:
- Trico Electric Cooperative, Inc.

Rural Electric Cooperative:
- Duncan Valley Electric Cooperative, Inc.

The following covered utilities within the State of Arizona are not regulated by the Arizona Corporation Commission:

Electric Utilities

Publicly-Owned:
- Salt River Project Agricultural Improvement and Power District

State: Arkansas

Regulatory Authority: Arkansas Public Service Commission.

Gas Utilities

Investor-Owned:
- Arkansas-Louisiana Gas Company
- Arkansas-Oklahoma Gas Corporation
- Arkansas Western Gas Company

Electric Utilities

Investor-Owned:
- Arkansas Power and Light Company
- Empire District Electric Company
- Oklahoma Gas and Electric Company
- Southwestern Electric Power Company

Rural Electric Cooperatives:
- Arkansas Valley Electric Cooperative Corporation
- Carroll Electric Cooperative Corporation
- First Electric Cooperative Corporation
- Mississippi County Electric Cooperative Corporation

The following covered utility within the State of Arkansas in not regulated by the Arkansas Public Service Commission:

Publicly-Owned:
- North Little Rock Electric Department

State: California

Regulatory Authority: California Public Utilities Commission.

Gas Utilities

Investor-Owned:
- Pacific Gas and Electric Company
- San Diego Gas and Electric Company
- Southern California Gas Company
- Southwest Gas Corporation

Electric Utilities

Investor-Owned:

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Pacific Gas and Electric Company
Pacific Power and Light Company
San Diego Gas and Electric Company
Sierra Pacific Power Company
Southern California Edison Company

The following covered utilities within the State of California are not regulated by the California Public Utilities Commission:

Electric Utilities

Publicly-Owned:
Anaheim Public Utilities Department
Burbank Public Service Department
Glendale Public Service Department
Imperial Irrigation District
Los Angeles Department of Water and Power
Modesto Irrigation District
Palo Alto Electric Utility
Pasadena Water and Power Department
Riverside Public Utilities
Sacramento Municipal Utility District
Santa Clara Electric Department
Turlock Irrigation District
Vernon Municipal Light Department

Gas Utilities

Publicly-Owned:
Long Beach Gas Department

State: Colorado

Regulatory Authority: Colorado Public Utilities Commission.

Gas Utilities

Investor-Owned:
Greeley Gas Company
Kansas-Nebraska Natural Gas Company
People's Natural Gas Company, Division of Utilicorp United, Inc.
Public Service Company of Colorado
Publicly-Owned:
Colorado Springs Department of Utilities (Jurisdiction only sales to another gas utility)

Electric Utilities

Investor-Owned:
Public Service Company of Colorado
Southern Colorado Power, Division of Centel

The following covered utilities within the State of Colorado are not regulated by the Colorado Public Utilities Commission:

Gas Utilities

Publicly-Owned:
Colorado Springs Department of Utilities (except sales to another gas utility)

Electric Utilities

Publicly-Owned:
Colorado Springs Department of Utilities
Rural Electric Cooperatives:
Intermountain Rural Association
Moon Lakes Electric Association

State: Connecticut

Regulatory Authority: Connecticut Department of Public Utility Control.

Gas Utilities

Investor-Owned:
Connecticut Natural Gas Corporation
Southern Connecticut Gas Company
Yankee Gas Service Company

Electric Utilities

Investor-Owned:
Connecticut Light and Power Company
United Illuminating Company
Publicly-Owned:
Groton Public Utilities

State: Delaware

Regulatory Authority: Delaware Public Service Commission.

Gas Utilities

Investor-Owned:
Delmarva Power and Light Company

Electric Utilities

Investor-Owned:
Delmarva Power and Light Company

State: District of Columbia

Regulatory Authority: Public Service Commission of the District of Columbia.

Gas Utilities

Investor-Owned:
Washington Gas Light Company

Electric Utilities

Investor-Owned:
Potomac Electric Power Company

State: Florida

Regulatory Authority: Florida Public Service Commission.

Gas Utilities

Investor-Owned:
City Gas Company of Florida
Peoples Gas System

Electric Utilities

Investor-Owned:
Florida Power and Light Company
Florida Power Company
Gulf Power Company
Tampa Electric Company

The Florida Public Service Commission has rate structure jurisdiction over the following utilities:

Publicly-Owned:
Gainesville Regional Utilities
Jacksonville Electric Company
Kissimmee Utility Authority
Lakeland Department of Electric and Water
Ocala Electric Authority
Orlando Utilities Commission
Tallahassee, City of
Rural Electric Cooperatives:
Clay Electric Cooperative
Lee County Electric Cooperative
Sumter Electric Cooperative, Inc.
Withlacoochee River Electric Cooperative

State: Georgia

Regulatory Authority: Georgia Public Service Commission.

Gas Utilities

Investor-Owned:
Atlanta Gas Light Company
United Cities Gas Company

Electric Utilities

Investor-Owned:
Georgia Power Company
Savannah Electric and Power Company

The following utilities within the State of Georgia are not regulated by the Georgia Public Service Commission:

Electric Utilities

Publicly-Owned:
Albany Water, Gas & Light Commission
Dalton Water, Light & Sink
Rural Electric Cooperatives:
Cobb Electric Membership Corporation
Flint Electric Membership Corporation
GreyStone Power Electric Membership Corporation
Jackson Electric Membership Corporation
North Georgia Electric Membership Corporation
Swanee Electric Membership Corporation
Walton Electric Membership Corporation

State: Hawaii

Regulatory Authority: Hawaii Public Utilities Commission.

Electric Utilities

Investor-Owned:
Hawaii Electric Light Company
Hawaiian Electric Company, Inc.
Maui Electric Company

State: Idaho

Regulatory Authority: Idaho Public Utilities Commission

Gas Utilities

Investor-Owned:
Intermountain Gas Company
Washington Water Power Company

Electric Utilities

Investor-Owned:
Idaho Power Company
Pacific Power and Light Company
Utah Power and Light Company
Washington Water Power Company

State: Illinois

Regulatory Authority: Illinois Commerce Commission.

Gas Utilities

Investor-Owned:
Central Illinois Light Company
Central Illinois Public Service Company
Illinois Power Company
Iowa-Illinois Gas and Electric Company
North Short Gas Company
Northern Illinois Gas Company
Panhandle Eastern Pipeline Company
Peoples Gas, Light, and Coke Company

Electric Utilities

Investor-Owned:
Central Illinois Light Company
Central Illinois Public Service Company
Commonwealth Edison Company
Interstate Power Company
Iowa-Illinois Gas and Electric Company
Union Electric Company

The following covered utility within the State of Illinois is not regulated by the Illinois Commerce Commission:

Electric Utilities

Publicly-Owned:
Springfield Water, Light and Power Department

State: Indiana

Regulatory Authority: Indiana Utility Regulatory Commission.

Gas Utilities

Investor-Owned:
Indiana Gas Company
Northern Indiana Public Service Company
Southern Indiana Gas and Electric Company
Publicly-Owned:
Citizens Gas and Coke Utility

Electric Utilities

Investor-Owned:
Indiana and Michigan Power Company
Indianapolis Power and Light Company
Northern Indiana Public Service Company
PSI Energy
Southern Indiana Gas and Electric Company
Publicly-Owned:
Richmond Power and Light

State: Iowa

Regulatory Authority: Iowa Utilities board.

Gas Utilities

Investor-Owned:
Interstate Power Company
Iowa Electric Light and Power Company
Iowa-Illinois Gas and Electric Company
Iowa Southern Utilities Company
Midwest Gas, Division of Iowa Public Service Company
Peoples Natural Gas Company, Division of Utilicorp United, Inc.
United Cities Gas Company, Great River Division

Electric Utilities

Investor-Owned:
Interstate Power company
Iowa Electric Light and Power Company
Iowa-Illinois Gas and Electric Company
Iowa Power Incorporated
Iowa Southern Utilities Company
IPS Electric, Division of Iowa Public Service Company
Union Electric Company
Rural Electric Cooperatives:
Linn County RECA

The Iowa Utilities Board has service and safety regulation over the following utilities:

Publicly-Owned
Muscatine Power and Water
Omaha Public Power District

State: Kansas

Regulatory Authority: Kansas State Corporation Commission

Gas Utilities

Investor-Owned:
Anadarko Production Company
Arkansas-Louisiana Gas Company
Gas Service Company
Greeley Gas Company
Kansas-Nebraska Natural Gas Company
Kansas Power and Light Company
Panhandle Eastern Pipeline Company
Peoples Natural Gas Company, Division of Utilicorp United, Inc.
Union Gas System Inc.

Electric Utilities

Investor-Owned:
Empire District Electric Company
Kansas City Power and Light Company
Kansas Gas and Electric Company
Kansas Power and Electric Company
Southwestern Public Service Company
Western Power Division of Centel
Rural Electric Cooperatives:
Midwest Energy Incorporated

The following covered utility within the State of Kansas is not regulated by the Kansas State Corporation Commission:

Electric Utilities

Publicly-Owned:
Kansas City Board of Public Utilities

State: Kentucky

Regulatory Authority: Kentucky Energy Regulatory Commission.

Gas Utilities

Investor-Owned:
Columbia Gas of Kentucky, Inc.
Louisville Gas and Electric Company
Union Light, Heat and Power Company
Western Kentucky Gas Company

Electric Utilities

Investor-Owned:
Kentucky Power Company
Kentucky Utilities Company
Louisville Gas and Electric Company
Union Light, Heat and Power Company
Rural Electric Cooperatives:
Green River Electric Corporation
Henderson-Union Rural Electric Cooperative Corporation

The following covered utilities within the State of Kentucky are not regulated by the Kentucky Energy Regulatory Commission:

Bowling Green Municipal Utilities
Owensboro Municipal Utilities
Pennyrile Rural Electric Cooperative Corporation
Warren Rural Electric Cooperative Corporation
West Kentucky Rural Electric Cooperative Corporation

State: Louisiana

Regulatory Authority: Louisiana Public Service Commission

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Entex, Inc.
Gulf States Utilities Company
Louisiana Gas Service Company
Trans Louisiana Gas Company
Publicly-Owned:
New Orleans Public Service, Inc.

Electric Utilities

Investor-Owned:
Central Louisiana Electric Company
Gulf States Utilities Company
Louisiana Power and Light Company

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(West Bank)
Southwestern Electric Power Company
Rural Electric Cooperatives:
Cajun Electric Power Cooperative
Dixie Electric Membership Corporation
Southwest Louisiana Electric Membership Corporation

The following covered utilities within the State of Louisiana are not regulated by the Louisiana Public Service Commission:

Electric Utilities

Publicly-Owned:
Lafayette Utilities System
New Orleans Public Service, Inc.

State: Maine

Regulatory Authority: Maine Public Utilities Commission.

Electric Utilities

Investor-Owned:
Bangor Hydro-Electric Company
Central Maine Power Company

State: Maryland

Regulatory Authority: Maryland Public Service Commission.

Gas Utilities

Investor-Owned:
Baltimore Gas and Electric Company
Washington Gas Light Company

Electric Utilities

Investor-Owned:
Baltimore Gas and Electric Company
Conowingo Power Company
Delmarva Power and Light—Company of Maryland
Potomac Edison Company
Potomac Electric Power Company
Rural Electric Cooperatives:
Southern Maryland Electric Cooperative, Inc.

State: Massachusetts

Regulatory Authority: Massachusetts Department of Public Utilities.

Gas Utilities

Investor-Owned:
Bay State Gas Company
Boston Gas Company
Colonial Gas Energy System
Commonwealth Gas Company

Electric Utilities

Investor-Owned:
Boston Edison Company
Cambridge Electric Light Company
Commonwealth Electric Company
Eastern Electric Company
Western Massachusetts Electric Company

State: Michigan

Regulatory Authority: Michigan Public Service Commission.

Gas Utilities

Investor-Owned:
Consumers Power Company
Michigan Consolidated Gas Company
Michigan Gas Company
Southeastern Michigan Gas Company
Wisconsin Public Service Corporation

Electric Utilities

Investor-Owned:
Consumers Power Company
Detroit Edison Company
Indiana and Michigan Electric Company
Michigan Power Company
Northern States Power
Upper Peninsula Power Company
Wisconsin Electric Power Company
Wisconsin Public Service Corporation

The following covered utilities within the State of Michigan are not regulated by the Michigan Public Service Commission:

Gas Utilities

Investor-Owned:
Battle Creek Gas Company

Electric Utilities

Publicly-Owned:
Lansing Board of Water and Light

State: Minnesota

Regulatory Authority: Minnesota Public Utility Commission.

Gas Utilities

Investor-Owned:
Interstate Power Company
Midwest Gas, Division of Iowa Public Service Company
Minnegasgo—Division of Arkla, Inc.
Northern Minnesota Utilities-Division of UtiliCorp United, Inc.
Northern States Power Company
Peoples Natural Gas Company—Division of UtiliCorp United, Inc.

Electric Utilities

Investor-Owned:
Interstate Power Company
Minnesota Power and Light Company
Northern States Power Company
Otter Tail Power Company
Rural Electric Cooperative:
Dakota Electric Association

The following covered utilities within the State of Minnesota are not regulated by the Minnesota Public Service Commission:

Electric Utilities

Publicly-Owned:
Rochester Department of Public Utilities
Rural Electric Cooperatives:
Anoka Electric Cooperative

State: Mississippi

Regulatory Authority: Mississippi Public Service Commission.

Gas Utilities

Investor-Owned:
Entex, Inc.
Mississippi Valley Gas Company

Electric Utilities

Investor-Owned:
Mississippi Power and Light Company
Mississippi Power Company

The following covered utilities within the State of Mississippi are not regulated by the Mississippi Public Service Commission:

Electric Utilities

Rural Electric Cooperatives:
Alcorn County Electric Power Association
Coast Electric Power Association
4-County Electric Power Association
Singing River Electric Power Association
Southern Pine Electric Power Association
Tombigbee Electric Power Association
Tupelo Water & Light Department

State: Missouri

Regulatory Authority: Missouri Public Service Commission.

Gas Utilities

Investor-Owned:
Associated Natural Gas Company
Gas Service Company
Kansas Power & Light Company
Laclede Gas Company Consolidated
Missouri Public Service Company
Union Electric Company

Electric Utilities

Investor-Owned:
Arkansas Power & Light Company
Citizens Electric Company
Empire District Electric Company
Kansas City Power and Light Company
Missouri Public Service Company
St. Joseph Light and Power Company
Union Electric Company

The following covered utilities within the State of Missouri are not regulated by the Missouri Public Service Commission:

Gas Utilities

Investor-Owned:
Williams Natural Gas Company
Publicly Owned:
Springfield City Utilities

Electric Utilities

Publicly-Owned:
Independence Power and Light Department
Springfield City Utilities

State: Montana

Regulatory Authority: Montana Public Service Commission.

Gas Utilities

Investor-Owned:
Montana-Dakota Utilities Company
Montana Power Company

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
Montana-Dakota Utilities Company
Montana Power Company
Pacific Power and Light Company
Washington Water Power Company

State: Nebraska

Regulatory Authority—Nebraska Public Service Commission.

The Commission does not regulate the rates and service of the gas and electric utilities of the State of Nebraska.

The following covered utilities within the State of Nebraska are not regulated by the Nebraska Public Service Commission:

Electric Utilities

Publicly-Owned:
Lincoln Electric System
Nebraska Public Power District
Omaha Public Power District

Gas Utilities

Investor-Owned:
Gas Service Company
Iowa Electric Light and Power Company
Midwest Gas, division of Iowa Public Service Company
Minnegasco—Division of Arkla, Inc.
Northwestern Public Service Company
Peoples Natural Gas Company, Division of Utilicorp United, Inc.

The governing body of each Nebraska municipality exercises ratemaking jurisdiction over gas utility rates, operations and services provided by a gas utility within its city or town limits. These municipal authorities would be State agencies as defined by PURPA, and thus have responsibilities under PURPA identical to those of the State regulatory authority.

Publicly-Owned:
Metropolitan Utilities District of Omaha

State: Nevada

Regulatory Authority: Nevada Public Service Commission.

Gas Utilities

Investor-Owned:
Southwest Gas Corporation

Electric Utilities

Investor: Owned:
Idaho Power Company
Nevada Power Company
Sierra Pacific Power Company

State: New Hampshire

Regulatory Authority: New Hampshire Public Utilities Commission.

Gas Utilities

Investor-Owned:
EnergyNorth Natural Gas, Inc.

Electric Utilities

Investor-Owned:
Public Service Company of New Hampshire
Rural Electric Cooperatives:
New Hampshire Electric Cooperative, Inc.

State: New Jersey

Regulatory Authority: New Jersey Board of Public Utilities.

Gas Utilities

Investor-Owned:
Elizabethtown Gas Company
New Jersey Natural Gas Company
Public Service Electric and Gas Company
South Jersey Gas Company

Electric Utilities

Investor-Owned:
Atlantic City Electric Company
Jersey Central Power and Light Company
Public Service Electric and Gas Company
Rockland Electric Company

State: New Mexico

Regulatory Authority: New Mexico Public Service Commission.

Gas Utilities

Investor-Owned:
Gas Company of New Mexico

Electric Utilities

Investor-Owned:
El Paso Electric Company
Public Service Company of New Mexico
Southwestern Public Service Company
Texas-New Mexico Power Company
Rural Electric Cooperative:
Duncan Valley Electric Cooperative, Inc.
Lea County Electric Cooperative, Inc.

State: New York

Regulatory Authority: New York Public Service Commission.

Gas Utilities

Investor-Owned:
Brooklyn Union Gas Company
Columbia Gas of New York, Inc.
Consolidated Edison Company of New York
Long Island Lighting Company
National Fuel Gas Distribution Corporation
New York State Electric and Gas Corporation
Niagara Mohawk Power Corporation
Orange and Rockland Utilities
Rochester Gas and Electric Corporation

Electric Utilities

Investor-Owned:
Central Hudson Gas and Electric Corporation
Consolidated Edison Company of New York
Long Island Lighting Company
New York State Electric and Gas Corporation
Niagara Mohawk Power Corporation
Orange and Rockland Utilities
Rochester Gas and Electric Corporation

The following covered utility within the State of New York is not regulated by the New York Public Service Commission:

Electric Utilities

Publicly-Owned:
Power Authority of New York

State: North Carolina

Regulatory Authority: North Carolina Utilities Commission.

Gas Utilities

Investor-Owned:
North Carolina Natural Gas Corporation
Piedmont Natural Gas Company
Public Service Company, Inc. of North Carolina

Electric Utilities

Investor-Owned:
Carolina Power and Light Company
Duke Power Company
Nantahala Power & Light Company
Virginia Electric and Power Company

The following covered utilities within the State of North Carolina are not regulated by the North Carolina Utilities Commission:

Electric Utilities

Publicly-Owned:
Fayetteville Public Works

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Commission
Greenville Utilities Commission
High Point Electric Utility Department
Rocky Mount Public Utilities
Wilson Utilities Department
Rural Electric Cooperatives:
Blue Ridge Electric Membership Corporation
Rutherford Electric Membership Corporation

State: North Dakota

Regulatory Authority: North Dakota Public Service Commission.

Gas Utilities

Investor-Owned:
Montana Dakota Utilities Company
Northern States Power Company

Electric Utilities

Investor-Owned:
Montana Dakota Utilities Company
Northern States Power Company
Otter Tail Power Company

State: Ohio

Regulatory Authority: Ohio Public Utilities Commission.

Gas Utilities

Investor-Owned:
Cincinnati Gas and Electric Company
Columbia Gas of Ohio, Inc.
Dayton Power and Light Company
East Ohio Gas Company
National Gas and Oil Company
West Ohio Gas Company

Electric Utilities

Investor-Owned:
Cincinnati Gas an Electric Company
Cleveland Electric Illuminating Company
Columbus and Southern Ohio Electric Company
Dayton Power and Light Company
Monongahela Power Company
Ohio Edison Company
Ohio Power Company
Toledo Edison Company

The following covered utilities within the State of Ohio are not regulated by the Ohio Public Utilities Commission:

Electric Utilities

Publicly-Owned:
Cleveland Division of Light and Power
Rural Electric Cooperative:
South Central Power Company

State: Oklahoma

Regulatory Authority: Oklahoma Corporation Commission.

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Arkansas-Oklahoma Gas Corporation
Gas Service Company
Lone Star Gas Company
Oklahoma Natural Gas Company
Southern Union Gas Company
Union Gas System, Inc.

Electric Utilities

Investor-Owned:
Empire District Electric Company
Oklahoma Gas and Electric Company
Public Service Company of Oklahoma
Southwestern Public Service Company
Rural Electric Cooperative:
Cotton Electric Cooperative

Gas Utilities

Investor-Owned:
Cities Service Gas Company

State: Oregon

Regulatory Authority: Public Utility Commission of Oregon.

Gas Utilities

Investor-Owned:
Cascade Natural Gas Corporation
Northwest Natural Gas Company

Electric Utilities

Investor-Owned:
Idaho Power Company
Pacific Power and Light Company
Portland General Electric Company

The following covered utilities within the State of Oregon are not regulated by the Public Utility Commission of Oregon:

Electric Utilities

Publicly-Owned:
Central Lincoln People's Utility District
Clatskanie People's Utility District
Eugene Water and Electric Board
Springfield Utility Board
Rural Electric Cooperatives:
Oregon Trail Electric
Umatilla Electric Cooperative Association

State: Pennsylvania

Regulatory Authority: Pennsylvania Public Utility Commission.

Gas Utilities

Investor-Owned:
Carnegie Natural Gas Company
Columbia Gas of Pennsylvania, Inc.
Equitable Gas Company
National Fuel Gas Distribution Corporation
North Penn Gas Company
Pennsylvania Gas and Water Company
Peoples Natural Gas Company
Philadelphia Electric Company
T.W. Phillips Gas and Oil Company
UGI Corporation

Electric Utilities

Investor-Owned:
Duquesne Light Company
Metropolitan Edison Company
Pennsylvania Electric Company
Pennsylvania Power Company
Pennsylvania Power and Light Company
Philadelphia Electric Company
UGI—Luzerne Electric Company
West Penn Power Company

The following covered utility within the State of Pennsylvania is not regulated by the Pennsylvania Public Utility Commission:

Gas Utilities

Publicly-Owned:
Philadelphia Gas Works

State: Puerto Rico

Regulatory Authority: Puerto Rico Public Service Commission.

The following covered utility within Puerto Rico is not regulated by the Puerto Rico Public Service Commission:

Electric Utilities

Publicly-Owned:
Puerto Rico Electric Power Authority

State: Rhode Island

Regulatory Authority: Rhode Island Public Utilities Commission.

Gas Utilities

Investor-Owned:
Providence Gas Company

Electric Utilities

Investor-Owned:
Blackstone Valley Electric Company
Narragansett Electric Company

State: South Carolina

Regulatory Authority: South Carolina Public Service Commission.

Gas Utilities

Investor-Owned:
Carolina Pipeline Company
Piedmont Natural Gas Company
South Carolina Electric and Gas Company

Electric Utilities

Investor-Owned:
Carolina Power and Light Company
Duke Power Company
South Carolina Electric and Gas Company

The following covered utilities within the State of South Carolina are not regulated by the South Carolina Public Service Commission:

Electric Utilities

Publicly-Owned:

South Carolina Public Service Authority
Rural Electric Cooperatives:
Berkeley Electric Cooperatives, Inc.
Palmetto Electric Cooperatives, Inc.

State: South Dakota

Regulatory Authority: South Dakota Public Utilities Commission.

Gas Utilities

Investor-Owned:
Midwest Gas, division of Iowa Public Service Company
Minnegasco, Inc.
Montana-Dakota Utilities Company
Northwestern Public Service Company

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
IPS Electric, division of Iowa Public Service Company
Montana-Dakota Utilities Company
Northern States Power Company
Northwestern Public Service Company
Otter Tail Power Company

The following covered utility within the State of South Dakota is not regulated by the South Dakota Public Service Commission:

Electric Utilities

Publicly-Owned:
Nebraska Public Power District

State: Tennessee

Regulatory Authority: Tennessee Public Service Commission.

Gas Utilities

Investor-Owned:
Chattanooga Gas Company
Nashville Gas Company

Electric Utilities

Investor-Owned:
Kingsport Power Company

The following covered utilities within the state of Tennessee are not regulated by the Tennessee Public Service Commission.

Electric Utilities

Publicly-Owned:
Bristol Tennessee Electric System
Chattanooga Electric Power Board
Clarksville Department of Electricity
Cleveland Utilities
Greeneville Light and Power System
Jackson Utility Division—Electric Department
Johnson City Power Board
Knoxville Utilities Board
Lenoir City Utilities Board
Memphis Light, Gas and Water Division
Murfreesboro Electric Department
Nashville Electric Service
Sevier County Electric System
Rural Electric Cooperatives:
Appalachian Electric Cooperative
Cumberland Electric Membership Corporation
Duck River Electric Membership Cooperative
Gibson County Electric Membership Corporation
Meriwether Lewis Electric Cooperative
Middle Tennessee Electric Membership Corporation
Southwest Tennessee Electric Membership Corporation
Tri-County Electric Membership Corporation
Upper Cumberland Electric Membership Corporation
Volunteer Electric Cooperative

Gas Utilities

Publicly-Owned:
Memphis Light, Gas and Water Division

State: Tennessee

Regulatory Authority: Tennessee Valley Authority.

Electric Utilities

Public-Owned:
Bowling Green Municipal Utilities
Bristol Tennessee Electric System
Chattanooga Electric Power Board
Clarksville Department of Electricity
Cleveland Utilities
Clinton Utilities Board
Decatur Electric Department
Florence Electric Department
Greeneville Light and Power System
Huntsville Utilities
Jackson Utility Division-Electric Department
Johnson City Power Board
Knoxville Utilities Board
Lenoir City Utilities Board
Memphis Light, Gas and Water Division
Morristown Power System
Murfreesboro Electric Department
Nashville Electric Service
Sevier County Electric System
Rural Electric Cooperatives:
Alcorn County Electric Company Association
Appalachian Electric Cooperative
Cumberland Electric Membership Corporation
Duck River Electric Membership Corporation
4-County Electric Power Association
Gibson County Electric Membership Corporation
Holston Electric Cooperative
Joe Wheeler Electric Membership Corporation
Meriwether Lewis Electric Cooperative
Middle Tennessee Electric Membership Corporation
North Georgia Electric Membership Corporation
Pennyrile Rural Electric Cooperative Corporation
Sequachee Valley Electric Cooperative
Southwest Tennessee Electric Membership Corporation
Tombigbee Electric Power Association
Tri-County Electric Membership Corporation
Upper Cumberland Electric Membership Corporation
Volunteer Electric Cooperative
Warren Rural Electric Cooperative Corporation
West Kentucky Rural Electric Cooperative Corporation

State: Texas

Regulatory Authority: Texas Public Utility Commission.

Electric Utilities

Investor-Owned:
Central Power and Light Company
El Paso Electric Company
Gulf States Utilities Company
Houston Lighting and Power Company
Southwestern Electric Power Company
Southwestern Electric Service Company
Southwestern Public Service Company
Texas-New Mexico Power Company
TU Electric
West Texas Utilities Company
Publicly-Owned:
Brownsville PUB
Lower Colorado River Authority
Rural Electric Cooperatives:
Bluebonnet Electric Cooperative, Inc.
Guadalupe Valley Electric Cooperative, Inc.
Pedernales Electric Cooperative, Inc.
Sam Houston Electric Cooperative, Inc.
Tri-County Electric Cooperative, Inc.

The governing body of each Texas municipally exercises exclusive original jurisdiction over electric utility rates, operations and services provided by an electric utility (whether privately owned or publicly owned), within its city or town limits, unless the municipality has surrendered this jurisdiction to the Texas Public Utility Commission. The Commission hears *de novo* appeals from the decision of such municipalities. These municipal authorities would be State agencies as defined by PURPA, and thus have responsibilities under

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PURPA identical to those of a State regulatory authority.

The municipality owned electric utilities listed below are not under the commission's original ratemaking jurisdiction:

Electric Utilities

Publicly-Owned:
Austin Electric Department
Bryan, City of
Garland Electric Department
Lubbock Power and Light
San Antonio City Public Service Board

State: Texas

Regulatory Authority: Railroad Commission of Texas.

Gas Utilities

Investor-Owned:
Atmos Energy Corporation
Entex, Inc.
Lone Star Gas Company, a division of ENSEARCH Corporation
Southern Union Company

The governing body of each Texas municipality exercises exclusive original ratemaking jurisdiction over gas utility rates, operations, and services provided by a gas utility within its city or town limits subject to appellate review by the Railroad Commission of Texas. These municipal authorities would be State agencies as defined by PURPA and thus have responsibilities under PURPA identical to those of a State regulatory authority.

The following covered utilities within the State of Texas are not regulated by the Railroad Commission of Texas. (The Railroad Commission's appellate authority does not extend to municipally owned gas utilities.)

Gas Utilities

Publicly-Owned:
City Public Service Board (San Antonio)

State: Utah

Regulatory Authority: Utah Public Service Commission.

Gas Utilities

Investor-Owned:
Mountain Fuel Supply Company

Electric Utilities

Investor-Owned:
Utah Power and Light Company
Rural Electric Cooperatives:
Atmos Energy Corporation
Moon Lake Electric Association

State: Vermont

Regulatory Authority: Vermont Public Service Board.

Electric Utilities

Investor-Owned:
Central Vermont Public Service Corporation
Green Mountain Power Corporation
Public Service Company of New Hampshire

State: Virginia

Regulatory Authority: Virginia State Corporation Commission.

Gas Utilities

Investor-Owned:
Columbia Gas of Virginia, Inc.
Commonwealth Gas Services, Inc.
Northern Virginia Natural Gas
Virginia Natural Gas

Electric Utilities

Investor-Owned:
Appalachian Power Company
Delmarva Power and Light Company
Old Dominion Power Company
Potomac Edison Company
Virginia Electric and Power Company
Rural Electric Cooperatives:
Northern Virginia Electric Cooperative
Rappahannock Electric Cooperative

The following covered utilities within the State of Virginia are not regulated by the Virginia State Corporation Commission:

Gas Utilities

Publicly-Owned:
City of Richmond, Virginia, Department of Public Utilities

Electric Utilities

Publicly-Owned:
Danville Water, Gas & Electric

State: Washington

Regulatory Authority: Washington Utilities and Transportation Commission.

Gas Utilities

Investor-Owned:
Cascade Natural Gas Corporation
Northwest Natural Gas Company
Washington Natural Gas Company
Washington Water Power Company

Electric Utilities

Investor-Owned:
Pacific Power & Light Company
Puget Sound Power & Light Company
Washington Water Power Company

The following covered utilities within the State of Washington are not regulated by the Washington Utilities and Transportation Commission:

Electric Utilities

Publicly-Owned:
Port Angeles Light and Water Department
Public Utility District No. 1 of Benton County
Public Utility District No. 1 of Chelan County
Public Utility District No. 1 of Clark County
Public Utility District No. 1 of Cowlitz County
Public Utility District No. 1 of Douglas County
Public Utility District No. 1 of Franklin County
Public Utility District No. 1 of Grays County
Public Utility District No. 1 of Lewis County
Public Utility District No. 1 of Snohomish County
Public Utility District No. 2 of Grant County
Richland Energy Service Department
Seattle City Light Department
Tacoma Public Utilities—Light Division

State: West Virginia

Regulatory Authority: West Virginia Public Service Commission.

Gas Utilities

Investor-Owned:
Equitable Gas Company
Hope Gas Incorporated
Mountaineer Gas Company

Electric Utilities

Investor-Owned:
Appalachian Power Company
Monongahela Power Company
Potomac Edison Company
Wheeling Electric Company

State: Wisconsin

Regulatory Authority: Wisconsin Public Service Commission.

Gas Utilities

Investor-Owned:
Madison Gas and Electric Company
Northern States Power Company
Wisconsin Fuel and Light Company
Wisconsin Gas Company
Wisconsin Natural Gas Company
Wisconsin Power and Light Company
Wisconsin Public Service Corporation

Electric Utilities

Investor-Owned:
Madison Gas and Electric Company
Northern States Power Company
Wisconsin Electric Power Company
Wisconsin Power and Light Company
Wisconsin Public Service Corporation

State: Wyoming

Regulatory Authority: Wyoming Public Service Commission.

Gas Utilities

Investor-Owned:
Cheyenne Light, Fuel and Power Company
Kansas-Nebraska Natural Gas Company
Montana-Dakota Utilities Company
Mountain Fuel Supply Company

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
Montana-Dakota Utilities Company
Pacific Power and Light Company
Utah Power and Light Company
Rural Electric Cooperative:
Tri-County Electric Association, Inc.

Appendix B

Electric Utilities

All utilities listed below had electric energy sales, for purposes other than resale, in excess of 500 million kilowatt hours in any year from 1976–1990. The utilities listed more than once have sales in more than one State, and those States are indicated by abbreviations in parentheses.

Investor-Owned:
Alabama Power Company
Appalachian Power Company (VA)
Appalachian Power Company (WV)
Arizona Public Service Company
Arkansas Power & Light Company (AR)
Arkansas Power & Light Company (MO)
Atlantic City Electric Company
Baltimore Gas & Electric Company
Bangor Hydro-Electric Company
Black Hills Power & Light Company (MT)
Black Hills Power & Light Company (SD)
Black Hills Power & Light Company (WY)
Blackstone Valley Electric Company
Boston Edison Company
Cambridge Electric Light Company
Carolina Power & Light Company (NC)
Carolina Power & Light Company (SC)
Central Hudson Gas & Electric Company
Central Illinois Light Company
Central Illinois Public Service Company
Central Louisiana Electric Company
Central Maine Power Company
Central Power & Light Company
Central Vermont Public Service Corporation
Cincinnati Gas & Electric Company
Citizens Electric Corporation
Cleveland Electric Illuminating Company
Columbus and Southern Ohio Electric Company
Commonwealth Edison Company
Commonwealth Electric Company
Connecticut Light & Power Company
Conowingo Power Company
Consolidated Edison Company of New York
Consumers Power Company
Dayton Power & Light Company
Delmarva Power & Light Company (DE)
Delmarva Power & Light Company (VA)
Delmarva Power & Light Company of Maryland
Detroit Edison Company
Duke Power Company (NC)
Duke Power Company (SC)
Duquesne Light Company
Eastern Electric Company
El Paso Electric Company (NM)
El Paso Electric Company (TX)
Empire District Electric Company (AR)
Empire District Electric Company (KS)
Empire District Electric Company (MO)
Empire District Electric Company (OK)
Florida Power Corporation
Florida Power & Light Company
Georgia Power Company
Green Mountain Power Company
Gulf Power Company
Gulf States Utilities Company (LA)
Gulf States Utilities Company (TX)
Hawaii Electric Light Company
Hawaiian Electric Company Inc.
Houston Lighting and Power Company
Idaho Power Company (ID)
Idaho Power Company (NV)
Idaho Power Company (OR)
Illinois Power Company
Indiana & Michigan Power Company (IN)
Indiana & Michigan Power Company (MI)
Indianapolis Power & Light Company
Interstate Power Company (IA)
Interstate Power Company (IL)
Interstate Power Company (MN)
Iowa-Illinois Gas & Electric Company (IA)
Iowa-Illinois Gas & Electric Company (IL)
Iowa Power Incorporated
Iowa Southern Utilities Company
IPS Electric, division of Iowa Public Service Co. (IA)
IPS Electric, division of Iowa Public Service Co. (SD)
Jersey Central Power & Light Company
Kansas City Power & Light Company (KS)
Kansas City Power & Light Company (MO)
Kansas Gas & Electric Company
Kansas Power & Light Company
Kentucky Power Company
Kentucky Utilities Company
Kingsport Power Company
Long Island Lighting Company
Louisiana Power & Light Company
Louisville Gas & Electric Company
Madison Gas & Electric Company
Massachusetts Electric Company
Maui Electric Company
Metropolitan Edison Company
Michigan Power Company
Minnesota Power & Light Company
Mississippi Power Company
Mississippi Power & Light Company
Missouri Public Service Company
Monongahela Power Company (OH)
Monongahela Power Company (WV)
Montana-Dakota Utilities Company (MT)
Montana-Dakota Utilities Company (ND)
Montana-Dakota Utilities Company (SD)
Montana-Dakota Utilities Company (WY)
Montana Power Company
Nantahala Power & Light Company
Narragansett Electric Company
Nevada Power Company
New Orleans Public Service, Inc.
New York State Electric & Gas Corporation
Niagara Mohawk Power Company
Northern Indiana Public Service Company
Northern States Power Company (MI)
Northern States Power Company (MN)
Northern States Power Company (ND)
Northern States Power Company (SD)
Northern States Power Company (WI)
Northwestern Public Service Company
Ohio Edison Company
Ohio Power Company
Oklahoma Gas & Electric Company (AR)
Oklahoma Gas & Electric Company (OK)
Old Dominion Power Company
Orange & Rockland Utilities
Otter Tail Power Company (MN)
Otter Tail Power Company (ND)
Otter Tail Power Company (SD)
Pacific Gas & Electric Company
Pacific Power & Light Company (CA)
Pacific Power & Light Company (ID)
Pacific Power & Light Company (MT)
Pacific Power & Light Company (OR)
Pacific Power & Light Company (WA)
Pacific Power & Light Company (WY)
Pennsylvania Electric Company
Pennsylvania Power & Light Company
Pennsylvania Power Company
Philadelphia Electric Company
Portland General Electric Company
Potomac Edison Company (MD)
Potomac Edison Company (VA)
Potomac Edison Company (WV)

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Potomac Electric Power Company (DC)
Potomac Electric Power Company (MD)
PSI Energy (IN)
Public Service Company of Colorado
Public Service Company of New Hampshire (NH)
Public Service Company of New Hampshire (VT)
Public Service Company of New Mexico
Public Service Company of Oklahoma
Public Service Electric and Gas Company
Puget Sound Power & Light Company
Rochester Gas & Electric Corporation
Rockland Electric Company
St Joseph Light & Power Company
San Diego Gas & Light Company
Savannah Electric & Power Company
Sierra Pacific Power Company (CA)
Sierra Pacific Power Company (NV)
South Carolina Electric & Gas Company
Southern California Edison Company
Southern Colorado Power Division of Centel (CO)
Southern Indiana Gas & Electric Company
Southwestern Electric Power Company (AR)
Southwestern Electric Power Company (LA)
Southwestern Electric Power Company (TX)
Southwestern Electric Service Company
Southwestern Public Service Company (KS)
Southwestern Public Service Company (NM)
Southwestern Public Service Company (OK)
Southwestern Public Service Company (TX)
Tampa Electric Company
Texas-New Mexico Power Company
Toledo Edison Company
TU Electric
Tucson Electric Power Company
UGI-Luzerne Electric Division
Union Electric Company (IA)
Union Electric Company (IL)
Union Electric Company (MO)
Union Light, Heat & Power Company
United Illuminating Company
Upper Penninsula Power Company
Utah Power & Light Company (ID)
Utah Power & Light Company (UT)
Utah Power & Light Company (WY)
Virginia Electric & Power Company (NC)
Virginia Electric & Power Company (VA)
Washington Water Power Company (ID)
Washington Water Power Company (MT)
Washington Water Power Company (WA)
West Penn Power Company
West Texas Utilities Company
Western Massachusetts Electric Company
Western Power Division of Centel (KS)
Wheeling Electric Company
Wisconsin Electric Power Company (MI)
Wisconsin Electric Power Company (WI)
Wisconsin Power & Light Company
Wisconsin Public Service Corporation (MI)
Wisconsin Public Service Corporation (WI)

Publicly-Owned:
Albany Water, Gas & Light Commission (GA)
Anaheim Public Utilities Department (CA)
Anchorage Municipal Light & Power Department (AK)
Athens Utilities (AL)
Austin Electric Department (TX)
Bowling Green Municipal Utilities (KY)
Bristol Tennessee Electric System (TN)
Brownsville Public Utility Board (TX)
Bryan, City of (TX)
Burbank Public Service Department (CA)
Central Lincoln People's Utility District (OR)
Chattanooga Electric Power Board (TN)
Clarksville Department of Electricity (TN)
Clatskanie People's Utility District (OR)
Cleveland Division of Light & Power (OH)
Cleveland Utilities (TN)
Clinton Utilities Board (TN)
Colorado Springs Department of Utilities (CO)
Dalton Water, Light & Sink (CA)
Danville Water, Gas & Electric (VA)
Decatur Electric Department (AL)
Dothan Electric Department (AL)
Eugene Water & Electric Board (OR)
Fayetteville Public Works Commission (NC)
Florence Electric Department (AL)
Gainesville Regional Utilities (FL)
Garland Electric Department (TX)
Glendale Public Service Department (CA)
Greenville Light & Power System (TN)
Greenville Utilities Commission (NC)
Groton Public Utilities (CT)
High Point Electric Utility Dept. (NC)
Huntsville Utilities (AL)
Imperial Irrigation District (CA)
Independence Power & Light Department (MO)
Jackson Utility Division-Electric Department (TN)
Jacksonville Electric Authority (FL)
Johnson City Power Board (TN)
Kansas City Board of Public Utilities (KS)
Kissimmee Utility Authority (FL)
Knoxville Utilities Board (TN)
Lafayette Utilities System (LA)
Lakeland Department of Electric and Water (FL)
Lansing Board of Water and Light (MI)
Lenoir City Utilities Board (TN)
Lincoln Electric System (NE)
Los Angeles Department of Water and Power (CA)
Lower Colorado River Authority (TX)
Lubbock Power & Light (TX)
Memphis Light, Gas & Water Division (TN)
Modesto Irrigation District (CA)
Morristown Power System (TN)
Murfreesboro Electric Dept. (TN)
Muscatine Power & Water (IA)
Nashville Electric Service (TN)
Nebraska Public Power District (NE)
Nebraska Public Power District (SD)
North Little Rock Electric Department (AR)
Ocala Electric Authority (FL)
Omaha Public Power District (IA)
Omaha Public Power District (NE)
Orlando Utilities Commission (FL)
Owensboro Municipal Utilities (KY)
Palo Alto Electric Utility (CA)
Pasadena Water & Power Department (CA)
Power Authority of New York (NY)
Port Angeles Light & Water Department (WA)
Public Utility District No. 1 of Benton County (WA)
Public Utility District No. 1 of Chelan County (WA)
Public Utility District No. 1 of Clark County (WA)
Public Utility District No. 1 of Cowlitz County (WA)
Public Utility District No. 1 of Douglas County (WA)
Public Utility District No. 1 of Franklin County (WA)
Public Utility District No. 1 of Grays Harbor County (WA)
Public Utility District No. 1 of Lewis County (WA)
Public Utility District No. 1 of Snohomish County (WA)
Public Utility District No. 2 of Grant County (WA)
Puerto Rico Electric Power Authority
Richland Energy Services Department (WA)
Richmond Power & Light (IN)
Riverside Public Utilities (CA)
Rochester Department of Public Utilities (MN)
Rocky Mount Public Utilities (NC)
Sacramento Municipal Utility District (CA)
Salt River Project Agricultural Improvement and Power District (AZ)
San Antonio City Public Service Board (TX)
Santa Clara Electric Department (CA)
Seattle City Light Department (WA)
Sevier County Electric System (TN)
South Carolina Public Service Authority
Springfield City Utilities (MO)
Springfield Utility Board (OR)
Springfield Water, Light & Power Department (IL)
Tacoma Public Utilities—Light Division (WA)
Trico Electric Cooperative, Inc. (AZ)
Tallahassee, City of (FL)
Tupelo Water & Light Department (MS)
Turlock Irrigation District (CA)
Vernon Municipal Light Department (CA)
Wilson Utilities Department (NC)

Rural Electric Cooperatives:
Alcorn County Electric Power Association (MN)
Anoka Electric Cooperative (MN)
Appalachian Electric Cooperative (TN)
Arkansas Valley Electric Cooperative Corporation (AR)
Berkeley Electric Cooperative (SC)
Bluebonnet Electric Cooperatives, Inc., (TX)
Blue Ridge Electric Membership Corporation (NC)
Cajun Electric Power Cooperative (LA)
Carroll Electric Cooperative Corporation (AR)
Chugach Electric Cooperative (AK)
Clay Electric Cooperative (FL)
Coast Electric Power Association (MS)
Cobb Electric Membership Corporation (GA)
Cotton Electric Cooperative (OK)
Cullman Electric Cooperative (AL)
Cumberland Electric Membership Corporation (TN)
Dakota Electric Association (NM)
Dixie Electric Membership Corporation (LA)
Duck River Electric Membership Corporation (TN)
Duncan Valley Electric Cooperative, Inc. (AZ, NM)
First Electric Cooperative Corporation (AR)
Flint Electric Membership Corporation (GA)
4-County Electric Power Association (MS)
Gibson County Electric Membership (TN)
Green River Electric Corporation (KY)
GreyStone Power Corporation (GA)
Guadalupe Valley Electric Cooperative, Inc. (TX)
Henderson-Union Rural Electric Cooperative Corporation
Holston Electric Cooperative (TN)
Intermountain Rural Electric (CO)
Jackson Electric Membership Corporation (GA)
Joe Wheeler Electric Membership Corporation (AL)
Lea County Electric Cooperative, Inc. (NM)
Lee County Electric Cooperative (FL)
Linn County Rural Electric Cooperative Association (IA)
Meriwether Lewis Electric Cooperative (TN)
Middle Tennessee Electric Membership Corporation (TN)
Midwest Energy Incorporated (KS)
Mississippi County ECG (AR)
Moon Lake Electric Association (CO)
New Hampshire Electric Cooperative, Inc. (NH)
Northern Virginia Electric Cooperative (VA)
North Georgia Electric Membership Corporation (GA)
Oregon Trail Electric
Palmetto Electric Cooperative, Inc. (SC)
Pedernales Electric Cooperative Corporation, Inc. (TX)
Pennyrile Rural Electric Cooperative Corporation (KY)
Rappahannock Electric Cooperative (VA)
Rural Electric System (AL)
Rutherford Electric Membership Corporation (NC)
Sam Houston Electric Cooperative, Inc. (TX)
Sawnee Electric Membership Corporation (GA)
Sequachee Valley Electric Cooperative (TN)
Singing River Electric Power Association (MS)
South Central Power Company (OH)
Southern Maryland Electric Cooperative, Inc. (MD)
Southern Pine Electric Power Association (MS)
Southwest Louisiana Electric Membership Corporation (LA)
Southwest Tennessee Electric Membership Corporation (TN)
Sumter Electric Cooperative (FL)
Tombigbee Electric Power Association (MS)
Tri-County Electric Association, Inc. (WY)
Tri-County Electric Cooperative, Inc. (TX)
Tri-County Electric Membership Corporation (TN)
Umatilla Electric Cooperative Association (OR)
Upper Cumberland Electric Membership Corporation (TN)
Volunteer Electric Cooperative (TN)
Walton Electric Membership Corporation (GA)
Warren Rural Electric Cooperative Corporation (KY)
West Kentucky Rural Electric Cooperative Corporation (KY)
Withlacoochee River Electric Cooperative (FL)

Federal Agencies:
Bonneville Power Administration (OR)
Tennessee Valley Authority (TN)
Western Area Power Administration (CO)

Gas Utilities

All gas utilities listed below had natural gas sales, for purposes other than resale, in excess of 10 billion cubic feet in any year from 1976–1990. The utilities listed more than once have sales in more than one State and those States are indicated by abbreviations in parentheses.

Investor-Owned:
Alabama Gas Corporation
Anadarko Production Company
Arkansas-Louisiana Gas Company (AR)
Arkansas-Louisiana Gas Company (KS)
Arkansas-Louisiana Gas Company (LA)
Arkansas-Oklahoma Gas Corporation (OK)
Arkansas-Oklahoma Gas Corporation (AR)
Arkansas Western Gas Company
Associated Natural Gas Company (MO)
Atlanta Gas Light Company
Atmos Energy Corporation
Baltimore Gas & Electric Company
Battle Creek Gas Company
Bay State Gas Company
Boston Gas Company
Brooklyn Union Gas Company
Carnegie Natural Gas Company
Carolina Pipeline Company
Cascade Natural Gas Corporation (OR)
Cascade Natural Gas Corporation (WA)
Central Illinois Light Company
Central Illinois Public Service Company
Chattanooga Gas Company (TN)
Cheyenne Light, Fuel and Power Company
Cincinnati Gas and Electric Company
City Gas Company of Florida
Colonial Gas Energy System
Columbia Gas of Kentucky, Inc.
Columbia Gas of New York, Inc.

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Columbia Gas of Ohio, Inc.
Columbia Gas of Pennsylvania, Inc.
Columbia Gas of Virginia, Inc.
Commonwealth Gas Company
Commonwealth Gas Service Incorporated
Commonwealth Gas Services, Incorporate
Connecticut Natural Gas Corporation
Consolidated Edison Company of New York, Inc.
Consumers Power Company
Dayton Power & Light Company
Delmarva Power & Light Company (DE)
East Ohio Gas Company
Elizabethtown Gas Company
EnergyNorth Natural Gas, Inc.
Enstar Natural Gas Company
Entex Inc. (LA)
Entex Inc. (MS)
Entex Inc. (TX)
Equitable Gas Company (PA)
Equitable Gas Company (WV)
Gas Company of New Mexico
Gas Service Company (KS)
Gas Service Company (MO)
Gas Service Company (NE)
Gas Service Company (OK)
Greeley Gas Company (CO)
Greeley Gas Company (KS)
Gulf States Utilities Company
Hope Gas, Incorporated
Illinois Power Company
Indiana Gas Company
Intermountain Gas Company
Interstate Power Company (IA)
Interstate Power Company (MN)
Iowa Electric Light & Power Company (IA)
Iowa Electric Light & Power Company (NE)
Iowa-Illinois Gas & Electric Company (IA)
Iowa-Illinois Gas & Electric Company (IL)
Iowa Power & Light Company
Iowa Southern Utilities Company
Kansas-Nebraska Natural Gas Company (CO)
Kansas-Nebraska Natural Gas Company (KS)
Kansas-Nebraska Natural Gas Company (WY)
Kansas Power & Light Company
KN Energy, Inc.
Laclede Gas Company Consolidated
Lone Star Gas Company (OK)
Lone Star Gas Company, a division of ENSERCH Corp. (TX)
Long Island Lighting Company
Louisiana Gas Service Company
Louisville Gas & Electric Company
Madison Gas & Electric Company
Michigan Consolidated Gas Company
Michigan Gas Company
Midwest Gas, Division of Iowa Public Service Company (IA)
Midwest Gas, Division of Iowa Public Service Company (MN)
Midwest Gas, Division of Iowa Public Service Company (NE)
Midwest Gas, Division of Iowa Public Service Company (SD)
Minnegasco—Division of Arkla, Inc. (MN)
Minnegasco—Division of Arkla, Inc. (NE)
Minnegasco—Division of Arkla, Inc. (SD)
Mississippi Valley Gas Company
Missouri Public Service Company
Mobile Gas Service Corporation
Montana-Dakota Utilities Company (MT)
Montana-Dakota Utilities Company (ND)
Montana-Dakota Utilities Company (SD)
Montana-Dakota Utilities Company (WY)
Montana Power Company
Mountaineer Gas Company
Mountain Fuel Supply Company (UT)
Mountain Fuel Supply Company (WY)
Nashville Gas Company
National Fuel Gas Distribution Corporation (NY)
National Fuel Gas Distribution Corporation (PA)
National Gas and Oil Company
New Jersey Natural Gas Company
New Orleans Public Service, Inc.
New York State Electric & Gas Corporation
Niagara Mohawk Power Company
North Carolina Natural Gas Corporation
North Shore Gas Company
Northern Illinois Gas Company
Northern Indiana Public Service Company
Northern Minnesota Utilities-Division of UtiliCorp United, Inc.
Northern Natural Gas Company (KS)
Northern Natural Gas Company (NE)
Northern States Power Company (MN)
Northern States Power Company (ND)
Northern States Power Company (WI)
North Penn Gas Company
Northwest Natural Gas Company (OR)
Northwest Natural Gas Company (WA)
Northwestern Public Service Company (NE)
Northwestern Public Service Company (SD)
Oklahoma Natural Gas Company
Orange & Rockland Utilities
Pacific Gas & Electric Company
Panhandle Eastern Pipeline Company (IL)
Panhandle Eastern Pipeline Company (KS)
Pennsylvania Gas & Water Company
Peoples Gas, Light and Coke Company
Peoples Gas System
Peoples Natural Gas Company
Peoples Natural Gas Company, Division of UtiliCorp United, Inc. (CO)
Peoples Natural Gas Company, Division of UtiliCorp United, Inc (IA)
Peoples Natural Gas Company, Division of UtiliCorp United, Inc. (KS)
Peoples Natural Gas Company, Division of UtiliCorp United, Inc. (MN)
Peoples Natural Gas Company, Division of UtiliCorp United, Inc. (NE)
Philadelphia Electric Company
Piedmont Natural Gas Company (NC)
Piedmont Natural Gas Company (SC)
Providence Gas Company
Public Service Company of Colorado
Public Service Company of North Carolina
Public Service Electric and Gas Company
Rochester Gas & Electric Corporation
San Diego Gas & Electric Company
South Carolina Gas & Electric Company
South Jersey Gas Company
Southwestern Michigan Gas Company
Southern California Gas Company
Southern Connecticut Gas Company
Southern Indiana Gas & Electric Company
Southern Union Company (TX)
Southern Union Gas Company (AZ)
Southern Union Gas Company (OK)
Southwest Gas Corporation (AZ)
Southwest Gas Corporation (CA)
Southwest Gas Corporation (NV)
Trans Louisiana Gas Company
T.W. Phillips Gas and Oil Company
UGI Corporation
Union Electric Company
Union Gas System, Inc. (KS)
Union Gas System, Inc. (OK)
Union Light, Heat & Power Company (KY)
United Cities Gas Company (GA)
United Cities Gas Company, Great River Division
Virginia Natural Gas
Washington Gas Light Company (DC)
Washington Gas Light Company (MD)
Washington Gas Light Company (VA)
Washington Natural Gas Company
Washington Water Power Company (ID)
Washington Water Power Company (WA)
West Ohio Gas Company
Western Kentucky Gas Company
Williams Natural Gas Company
Wisconsin Fuel & Light Company
Wisconsin Gas Company

Wisconsin Natural Gas Company
Wisconsin Power and Light Company
Wisconsin Public Service Corporation (MI)
Wisconsin Public Service Corporation (WI)
Yankee Gas Services Company (CT)

Publicly-Owned:

Citizens Gas & Coke Utility (IN)
City of Richmond, Department of Public Utilities (VA)
City Public Services Board (San Antonio) (TX)
Colorado Springs, Department of Utilities (CO)
Long Beach Gas Department (CA)
Memphis Light, Gas & Water Division (TN)
Metropolitan Utilities District of Omaha (NE)
Philadelphia Gas Works (PA)
Springfield City Utilities (MO)

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December 20, 1991

Part VII

Department of Transportation

Coast Guard

33 CFR Part 117

Drawbridge Operation Regulations; Potomac River, District of Columbia; Notice of Proposed Rulemaking

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

CGD-90-064

RIN 2115-AD71

Drawbridge Operation Regulations; Potomac River, District of Columbia

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Federal Highway Administration, the Maryland and Virginia Departments of Transportation, and the District of Columbia Department of Public Works, the Coast Guard proposes to change the regulations that govern operation of the Woodrow Wilson Memorial Bridge across the Potomac River, mile 103.8, at Alexandria, Virginia. This change would further restrict the hours during which the drawbridge may open for vessel traffic. The proposed changes to these regulations are intended to provide for regularly scheduled openings for the reasonable needs of navigation, while reducing traffic congestion related to the openings.

DATES: Comments must be received on or before February 3, 1992.

A public hearing will be held on January 28, 1992, at 7 p.m.; requests to present oral testimony must be received on or before January 24, 1992.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments and other materials referenced in this notice will be available for inspection and copying at the above address, room 507 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Comments may be hand-delivered to this address.

A public hearing will be held at Thomas A. Edison High School Auditorium, 5801 Franconia Road, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at 804-398-6222.

SUPPLEMENTARY INFORMATION:

Request for Comments and Notice of Public Hearing

Interested persons are invited to participate in this rulemaking by submitting written comments or data. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD-90-064), and give reasons for concurrence with or any recommended changes to the proposal. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

A public hearing will be held to give the bridge owner, waterway users, the motoring public and other interested parties the opportunity to present data, views, and comments verbally or in writing concerning a proposed permanent change to the regulations governing the operation of the Woodrow Wilson Memorial Bridge across the Potomac River at Alexandria, Virginia.

The hearing will be informal. Representatives from the Coast Guard will preside at the hearing, make a brief opening statement and announce the procedures to be followed. Speakers are encouraged to provide written copies of their verbal comments to the hearing officer at the time of the hearing. A verbatim transcript of the hearing, as well as written comments received outside of the hearing will be available for public review at the offices of the Fifth Coast Guard District, room 507, approximately 30 days after the hearing date. Transcripts of the hearing will be made available for purchase upon request to the court reporting services at the conclusion of the hearing. All comments, whether received in writing or presented verbally at the hearing will be fully considered before final agency action is taken.

The Commander, Fifth Coast Guard District, will evaluate all communications received and recommend a final course of action based on comments and data received.

Drafting Information

The drafters of this notice are Ann B. Deaton, Project Officer, and CAPT M.K. Cain, Project Attorney.

Background and Purpose

The current published regulations for the Woodrow Wilson bridge are found in 33 CFR 117.255 and provide that the bridge will not open for any vessel (except large commercial vessels needing tidal considerations) from 6 a.m. to 10 a.m. and from 3 p.m. to 8 p.m., Monday through Friday. The few larger commercial vessels needing tidal considerations are allowed openings between 6 a.m. and 6:30 a.m., between 9 a.m. and 10 a.m., between 3 p.m. and 4 p.m. and between 6:30 p.m. and 8 p.m. This existing regulation results in periods of no openings on weekdays from 6:30 a.m. to 9 a.m. and from 4 p.m. to 6:30 p.m. In addition, the existing regulation allows openings at any time for all vessels on weekends and Federal holidays. This regulation has been in effect since August 2, 1988. There were no requests to change it until the fall of 1990 when the bridge was operating under a temporary schedule to allow repairs to the bridge.

The formal request to permanently change these regulations was received from the Maryland and Virginia Departments of Transportation and the District of Columbia Department of Public Works, and would allow openings for all commercial ships only between 12 midnight and 4 a.m., 7 days a week. Their proposal would allow no openings for recreational boats at any time, and no consideration would be given for large commercial ships needing to transit the river at high tide stages due to their deeper drafts.

On August 2, 1990, a temporary deviation from the existing permanent regulations was published in the **Federal Register** (55 FR 31384) to facilitate emergency repairs to the bridge's electrical systems. That emergency deviation expired on September 21, 1990. On September 20, 1990, temporary regulations were issued which modified the restrictions on bridge openings authorized by the temporary deviation; they were effective on September 22, 1990. Those temporary regulations were published in the **Federal Register** October 1, 1990 (55 FR 39962) and they remained in effect until January 25, 1991. In conjunction with the temporary regulations that were effective on September 22, 1990, the Coast Guard published supplementary information on the temporary regulations with a request for comments in the October 1, 1990 **Federal Register** (55 FR 39963). Comments were received through October 16, 1990. Although many comments were received, the majority of them related to the matter of a change to the current published permanent regulations and not to the temporary regulations for which comments were being solicited. In general, there were no comments of a new or significant nature relating to the temporary regulations to cause the Coast Guard to amend the temporary regulations at issue. On December 21, 1990, temporary regulations were issued to allow the bridge owner to complete the ongoing repairs to the bridge. These temporary regulations were effective on January 25, 1991, and remained in effect until April 1, 1991. They were published in the **Federal Register** on January 8, 1991 (56 FR 635). On March 22, 1991, the Commander, Fifth Coast Guard District issued new temporary regulations to allow the bridge owner additional time needed to complete the extensive ongoing repairs to the bridge. These regulations became effective on April 1, 1991, and remained in effect until May 31, 1991 when repairs were completed.

Normally, upon completion of repairs, the bridge would revert to the permanent rule in 33 CFR 117.255. However, since the Coast Guard had received a formal request to severely restrict openings of the bridge due to the growing needs of today's vehicular traffic, the Coast Guard has issued temporary deviations from the permanent rules, with request for comments, under the provisions of 33 CFR 117.43. The first temporary rule was published on June 4, 1991 (56 FR 25369) to evaluate Alternative P of the opening schedules being considered for a permanent change in the regulations. It was effective from June 1, 1991, through July 30, 1991. A second temporary rule was published on July 29, 1991 (56 FR 35816) to evaluate Alternative NA. It was effective from July 31, 1991, through September 28, 1991. A third temporary rule was published on September 27, 1991 (56 FR 49145) to evaluate a slight modification to Alternative NA. This modification moved the noon opening opportunities for recreational vessels to 11 a.m. It was effective from September 29, 1991, through November 27, 1991. A further modification to Alternative NA, extending the opening periods for deep-draft commercial vessels, was published on November 26, 1991 (56 FR 59880) and is effective from November 28, 1991 through January 27, 1992. The Coast Guard anticipates publishing further temporary rules to evaluate alternative opening schedules, or re-evaluate the effect of schedules previously published when imposed at different times of the year, until permanent rules are adopted.

In addition to publication of the documents listed above, the Coast Guard and the Federal Highway Administration co-hosted a meeting on September 14, 1990, with all parties known to be interested in the operation of this bridge. The meeting was attended by representatives of state and local governments, highway users, commercial and recreational vessel operators, the Virginia Pilot Association, Robinson Terminals and local trade organizations. Although the purpose of the meeting was to discuss the temporary opening schedule of the bridge during repairs, many comments actually related to the attendees' positions concerning permanent changes to the bridge's operating schedule. On December 11, 1990, at the request of representatives of Robinson Terminals of Alexandria, Virginia, the Commander, Fifth Coast Guard District met with those representatives at his office in Portsmouth, Virginia to hear their views concerning the operation of the Wilson Bridge during the temporary repair period. Again, on August 1, 1991, at the request of representatives of Robinson Terminals of Alexandria, Virginia, the Commander, Fifth Coast Guard District met with those representatives at his office in Portsmouth, Virginia, to hear their views concerning the temporary rule that was in effect through July 30, 1991.

The Woodrow Wilson Bridge links Maryland, Virginia, and the District of Columbia. Originally, it was planned as part of a multi-lane freeway circling the Nation's Capital which was designated the "Capital Beltway". In 1964, the Woodrow Wilson Bridge, as part of the "Beltway", was a 6-lane bascule-span bridge which accommodated both highway and marine traffic. In 1976, Interstate 95 was routed along the eastern portion of the "Beltway" and across the Woodrow Wilson Bridge. During this time vehicular traffic increased and by 1988 the average daily traffic count across the bridge was 150,000.

Because of the growth in vehicular traffic, bridge openings for passage of vessels aggravate highway congestion on Interstate 95 (the Beltway) and connecting roads in the vicinity of the bridge. If an opening occurs during periods of heavy traffic, it can take considerable time before it is again flowing smoothly. The disruption of traffic can continue long after the bridge has been closed and vehicular traffic across the bridge has resumed. As a result, the Coast Guard has received a joint request from the Maryland and Virginia Departments of Transportation, and the District of Columbia Department of Public Works to permanently change the regulations governing operation of this bridge by severely limiting the hours during which the bridge may open for vessel traffic.

On the Potomac River, there are three major classes of vessel traffic that require draw openings. The largest class is termed "Sail/Pleasure" and includes sailboats and other pleasure craft. The second class termed "Freighter/Tug" includes freighters, tugboats and other commercial ships. The third class termed "Navy/Government" includes Navy and Coast Guard ships, survey ships, and other government vessels. For purposes of this rulemaking, the third class of vessels is considered to belong to the commercial classification, which results in two major classifications of vessels—commercial and recreational.

Vehicular traffic on the bridge is categorized by trip purpose and vehicle type. Vehicular traffic has been termed "commercial" and "non-commercial." "Commercial" vehicles mainly are trucks engaged in commercial activity. "Non-commercial" vehicles are those used for commuting, recreation, and business purposes.

The bridge currently opens for vessel traffic about 400 times per year. Of these openings, about 100 are for commercial and government vessels. The remainder are for recreational craft. Several of the commercial vessels have deeper drafts which require their occasional transit of the river through the Woodrow Wilson drawbridge at high tide stages due to shoaling at several points in the river downstream from the Woodrow Wilson Bridge.

Interstate 95 and the Woodrow Wilson Bridge serve as a commuting route for many, resulting in substantial peak usage periods during normal commuting hours. The bridge itself is a traffic constriction due to eight lanes of traffic merging onto a 6-lane bridge. Vehicle speeds decrease whenever there is more than moderate traffic, even in the absence of accidents, construction or other obstructions. Accidents or other obstructions have caused extensive traffic backups on a routine basis. In addition, extreme traffic congestion resulted twice during the summer of 1990 when the bridge malfunctioned and became stuck in the open position.

The bridge statutes require that all bridges over navigable waters of the United States provide for the reasonably free navigation of the waterway over which they are constructed (33 U.S.C. 494). Regulatory action is necessary for the Coast Guard to meet its responsibility for insuring that drawbridges are operated in a manner that is in the public interest. In discharging this responsibility, the Coast Guard strives to promulgate regulations that provide the best balance between the reasonable needs of marine and surface transportation using bridges.

In an effort to compile as much information on the impacts of different opening schedules on both highway and marine traffic as possible, the Coast Guard undertook an extensive study of various opening schedule options as part of its overall investigation of the facts to identify an opening schedule that would be as equitable as possible. Given the intense interest in the operation of this bridge, the Coast Guard contracted a consultant with expertise in transportation studies to conduct a detailed analysis of various alternative opening schedules to determine an appropriate balance between vessel and vehicular levels of

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service, with consideration of social, economic, and environmental impacts.

Economic considerations are not the sole determining factor in developing a schedule that the Coast Guard considers to best balance the needs of both marine and highway traffic. In addition to economic factors such as total vessel and vehicular delay costs for various schedules, the Coast Guard must also consider other factors, some quantifiable, and some not. Among these other factors are: relative numbers of vessels transiting the waterway requiring openings of the bridge; actual numbers and times of bridge openings; the natural characteristics of the waterway which may present navigational limitations for certain vessels such as shoaling, water depth or tidal restrictions; protection of present and future commerce on the waterway; and the rights of vessels to use navigable waters of the United States. These factors also include numbers of vehicles crossing the bridge; peak vehicular traffic periods; demonstrated growth in vehicular traffic volumes; adequacy of bridge capacity for current traffic volumes; inherent vehicular traffic congestion in heavily populated metropolitan areas; and extraneous causes for traffic congestion other than bridge openings such as constriction caused by merging from a wider highway onto a narrower bridge, accidents, vehicle breakdowns, and roadway construction.

The bridge itself carries about 160,000 vehicle trips per day. Although the river is used by both commercial and recreational vessels, the volume of river traffic is small measured in numbers of vessel transits and especially as compared to vehicular traffic. During the relatively unrestricted period from October 1989 to September 1990, the bridge opened about 377 times to allow the passage of about 403 vessels, of which approximately 35% were commercial. This would indicate an average of slightly more than one opening a day, however, this could be misleading. A review of the bridge opening logs for the same period, revealed that for several periods, one in excess of two weeks, there were no openings at all. At another time, a maximum of ten openings occurred in a single day. As expected, the low number of openings occurred in the winter months and the frequent openings were for recreational vessels during the boating season. It appears that the timing of the openings is the critical issue. Designing a schedule for when openings for vessel traffic are permitted requires consideration of the competing needs of both vessels and motorists. The primary objective is to find an opening schedule that would help minimize the total delays to both while considering the other salient factors discussed above. An additional objective is to develop an alternative that will provide reasonable access to the river for commercial vessels while substantially reducing the number of openings for recreational vessels.

The Coast Guard recognizes the need to provide for periods when the bridge will not open for the passage of vessels in order to accommodate vehicular traffic during peak commuting hours, and similar, but less congested periods of weekend traffic. Balanced against motor vehicle needs are the requirement that commercial vessels have reasonable access to facilities upstream of the bridge and the requirement that recreational vessels requiring the bridge to open not be so restricted as to amount to virtual denial of access.

It is clear that the bridge creates a problem for both vehicle and vessel traffic, and no solution to the operating schedule problem will fully benefit both. The regulatory impact analysis concluded that avoiding bridge openings not only during the rush hours, 5–9 a.m. and 3–7 p.m., but also during the hour immediately prior to rush hours when traffic is building, will reduce vehicle delays. Restricting vessel transits to other than peak periods is clearly beneficial to highway traffic. Midday openings cause much less vehicle delay than peak openings.

The analysis also concluded that permitted opening intervals distributed around the clock, rather than concentrated in the middle of the night, will reduce vessel delay and its associated costs.

There are several alternatives which would strike a reasonable balance between vehicle and vessel needs. Two major issues in consideration of these alternatives were the need to avoid peak vehicular use period openings when possible and the need to give consideration to all marine traffic, including recreational and deep-draft vessels.

Initially, twenty-four alternatives were developed. Included in this initial list were the various temporary regulations which had been in effect to allow repairs to the bridge. Based upon current vehicular use of the bridge, it was considered infeasible to revert to a less restrictive opening schedule than currently exists as published in 33 CFR 117.255. Completely closing the drawbridge to marine navigation was considered unreasonable. Also considered unreasonable was any schedule which would not permit midday openings for both commercial and recreational boats, any schedule which would allow unlimited openings for vessel traffic, or a schedule which would not consider the special needs of deep-draft vessels transiting the river which require high-tide stages for transits.

Through successive refinements of the initial list, six alternatives were chosen for a preliminary analysis. Based upon the results of that preliminary analysis, eight additional alternatives were developed which, when combined with the original six alternatives, provide a range of fourteen alternatives. Through additional refinements, six of these alternatives were discarded because of their close similarity to other alternatives being analyzed or because the benefits gained by one mode of transportation were so minimal compared to the exorbitant costs levied on the other mode of transportation. This process narrowed the list of alternatives for detailed analysis to eight. An additional three alternatives were then developed. These eleven alternatives were referred to as Alternatives A, B, F, I, J, L, LA, LB, N, NA, and P. The letters designating the alternatives have no significance other than as reference keys.

Alternative A is the existing permanent regulation as listed in CFR, title 33, § 117.255. This is the alternative to which all other alternatives should be compared. Alternative B extends the time the drawbridge would remain closed during the rush hour traffic. Alternative F excludes openings for recreational vessels and only allows commercial vessels to open the bridge between midnight and 4 a.m. (This is the regulation proposed by the Maryland and Virginia Departments of Transportation, and the District of Columbia Department of Public Works). Alternatives I, J, L, LA, LB, N, NA, and P are all variations on the windows of bridge openings allowed throughout the day.

The following paragraphs describe these alternatives:

Alternative A. The bridge will open for recreational and commercial vessels with 1 hour notice Monday through Friday from 8 p.m. through 6 a.m. and from 10 a.m. to 3 p.m. The bridge will open for tidal commercial vessels with 1 hour notice Monday through Friday from 6:30 p.m. to 6:30 a.m. and from 9 a.m. to 4 p.m. The bridge will open for all vessels on Saturdays, Sundays, and Federal holidays with 1 hour notice at any time

Alternative B. The bridge will open for recreational and all commercial vessels with 1 hour notice Monday through Friday from 8 p.m. to 5 a.m. and from 10 a.m. to 2 p.m. The bridge will open for tidal commercial vessels with 1 hour notice Monday through Friday from 7 p.m. to 5 a.m. and from 10 a.m. to 2 p.m. The bridge will open for all vessels with 1 hour notice on Saturdays, Sundays and Federal holidays from 9 p.m. to 6 a.m. and from 10 a.m. to 2:30 p.m.

Alternative F. The bridge will open for all commercial vessels including tidal vessels 7 days a week from 12 midnight to 4 a.m. The bridge will not open for recreational vessels.

Alternative I. The bridge will open for recreational and all commercial vessels with 2 hours notice Monday through Friday from 8 p.m. to 5 a.m. The bridge will open for tidal commercial vessels with 2 hours notice Monday through Friday from 7 p.m. to 5 a.m. The bridge will open for all vessels with 2 hours notice on Saturdays, Sundays, and Federal holidays from 8 p.m. to 8 a.m.

Alternative J. The bridge will open for recreational vessels with 2 hours notice Monday through Friday from 8 p.m. to 5 a.m. and from 10 a.m. to 1 p.m. The bridge will open for all commercial vessels with 2 hours notice Monday through Friday from 7 p.m. to 5 a.m. and from 10 a.m. to 1 p.m. The bridge will open for recreational vessels with 2 hours notice on Saturdays, Sundays, and Federal holidays from 8 p.m. to 7 a.m. The bridge will open for all commercial vessels with 2 hours notice on Saturdays, Sundays and Federal holidays from 4 p.m. to 8 a.m.

Alternative L. The bridge will open for recreational vessels with 2 hours notice Monday through Friday from 8 p.m. to 5 a.m. and from 10 a.m. to 1 p.m. The bridge will open for all commercial vessels with 2 hours notice Monday through Friday from 7 p.m. to 5 a.m. and from 10 a.m. to 1 p.m. The bridge will open for all vessels with 2 hours notice on Saturdays, Sundays and Federal holidays from 8 p.m. to 8 a.m.

Alternative LA. The bridge will open for recreational vessels with 2 hours notice Monday through Friday from 8 p.m. to 5 a.m. and at 12 noon. the bridge will open for all commercial vessels with 2 hours notice Monday through Friday from 7 p.m. to 5 a.m. and from 10 a.m. to 1 p.m. The bridge will open for all vessels with 2 hours notice on Saturdays, Sundays and Federal holidays from 8 p.m. to 8 a.m.

Alternative LB. The bridge will open for recreational vessels with 2 hours notice Monday through Friday from 10 p.m. to 5 a.m. and from 10 a.m. to 1 p.m. The bridge will open for all commercial vessels with 2 hours notice Monday through Friday from 9 p.m. to 5 a.m. and from 10 a.m. to 1 p.m. The bridge will open for recreational vessels with 2 hours notice on Saturdays, Sundays and Federal holidays from 10 p.m. to 8 a.m. The bridge will open for all commercial vessels with 2 hours notice on Saturdays, Sundays and Federal holidays from 9 p.m. to 8 a.m.

Alternative N. The bridge will open for recreational vessels with 2 hours notice Monday through Friday from 12 midnight to 4 a.m. and at 12 noon. The bridge will open for all commercial vessels with 2 hours notice Monday through Friday from 9 p.m. to 5 a.m. and from 10 a.m. to 2:30 p.m. The bridge will open for recreational vessels with 2 hours notice on Saturdays, Sundays, and Federal holidays from 12 midnight to 6 a.m. and at 12 noon and 9 p.m. The bridge will open for all commercial vessels with 2 hours notice on Saturdays, Sundays and Federal holidays from 9 p.m. to 6 a.m. and from 10 a.m. to 2:30 p.m.

Alternative NA. The bridge will open for recreational vessels with 2 hours notice Monday through Friday from 12 midnight to 4 a.m. and at 12 noon. The bridge will open for all commercial vessels with 2 hours notice Monday through Friday from 12 midnight to 4 a.m., from 9 a.m. to 2 p.m., and from 7 p.m. to midnight. The bridge will open for recreational vessels with 2 hours notice on Saturdays, Sundays, and Federal holidays from 12 midnight to 6 a.m., at 12 noon, and at 9 p.m. The bridge will open for all commercial vessels with 2 hours notice on Saturdays, Sundays, and Federal holidays from 12 midnight to 2 p.m. and from 7 p.m. to 12 midnight.

Alternative P. The bridge will open for recreational vessels with 2 hours notice Monday through Friday from 12 midnight to 4 a.m. and if requested, one opening at 12 noon and one opening at 9 p.m. The bridge will open for all commercial vessels with 2 hours notice Monday through Friday from 9 a.m. to 2 p.m. and from 7 p.m. to 4 a.m. The bridge will open for recreational vessels with 2 hours notice on Saturdays, Sundays, and Federal holidays from 12 midnight to 6 a.m., and if requested, one opening at 10 a.m., one opening at 1 p.m., and one opening at 9 p.m. The bridge will open for all commercial vessels with 2 hours notice on Saturdays, Sundays, and Federal holidays from 12 midnight to 6 a.m., 9 a.m. to 2 p.m., and from 7 p.m. to 12 midnight.

Alternative A was rejected because that is the existing permanent regulation, and it is clear that we cannot revert to that relatively less restrictive opening schedule under current circumstances. This alternative results in higher vehicle delays and lower vessel delays than any of the other alternatives. It provides the least reasonable balance between vehicles being delayed for bridge openings and delay costs to vessels transiting the bridge.

Alternative F was rejected because it severely restricts vessel traffic on the river producing an unreasonable balance between vessel and vehicle delay costs. This alternative would also require annual dredging costs of $117,000 which could have adverse environmental impacts and excludes the larger recreational vessels from transiting the bridge. The Coast Guard considers it unreasonable to deny access to waterfront areas of Virginia and the District of Columbia by recreational vessels unable to transit the bridge in a closed position.

Alternatives I, J, L, LA, and LB all were rejected as unreasonable because each schedule provides no midday opening for commercial or recreational vessels on weekends. Alternative I provides no opening on weekdays either. Alternatives J, L, and LB also provide three hour midday windows of opening opportunity for recreational vessels on weekdays. These windows can result in multiple openings within a short time period causing severe and undesirable vehicle traffic disruption. Since the vast majority of openings of the Woodrow Wilson Bridge have been shown to be for recreational vessels, multiple opening opportunities for these vessels during windows of time as opposed to point openings at one specified hour would be far more disruptive to vehicular traffic. Resumption of normal traffic flow can take many more hours to occur under a multiple opening scenario, as opposed to the time required with a single predetermined opening time.

Alternative B was rejected because it also provides window openings for recreational vessels on weekdays and weekends.

Alternative N avoided peak traffic hours and allowed for midday openings for both recreational and commercial (including deep draft commercial) vessels. However, it provided for opening windows up to 5 a.m. on weekdays which is when peak traffic has already begun. Additionally, Alternative N restricted vessels in the evenings between 7 p.m. and 9 p.m. when traffic was declining and on weekends between 6 a.m. and 9 a.m. when traffic density was low. These

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restrictions added substantially to vessel delay costs which resulted in rejection of Alternative N.

Discussion of Proposed Regulations

This elimination process left Alternatives NA and P for consideration. While each of these alternatives strikes a balance between highway and vessel needs, the Coast Guard has chosen to propose Alternative NA as being the most equitable balance of openings in this give and take situation. Both alternatives allow midday openings weekdays and weekends and windows of openings only up to 4 a.m. on weekdays, thereby avoiding openings during and just prior to peak morning traffic hours. However, Alternative P provides five point openings for recreational vessels as opposed to three point openings under Alternative NA. Although the majority of openings of the Woodrow Wilson Bridge are for recreational vessels, Alternative NA is preferred over Alternative P because it substantially reduces potential vehicular delay costs caused by additional openings while still providing reasonable access for recreational vessels.

Since the number of commercial vessels transiting the river on a yearly basis (freighters, tugs, Navy, Coast Guard, etc.) is known to remain low and fairly constant from year-to-year, any schedule that allows reasonable access to the river for these vessels to conduct their business while avoiding peak vehicular periods should have little effect on highway traffic. Alternative NA doubles the length of no opening periods provided by the current published regulations on weekdays from 2½ hours to 5 hours during both morning and afternoon/evening peak traffic periods. Under the current published regulations, unlimited openings are available on signal for all vessels on Saturdays, Sundays, and Federal holidays twenty-four hours a day. Alternative NA will reduce the number of hours available for openings for recreational vessels on weekends from twenty-four to eight, a 66% decrease; for commercial vessels a reduction in the number of hours from 24 to 19, approximately a 21% decrease. As compared to the present permanent rule and many of the alternatives considered, Alternative NA will reduce the number of opening opportunities for recreational vessels which have been shown to cause the majority of openings, while still providing these vessels reasonable access to the river and keeping available opening times well away from peak traffic hours.

Alternative NA appears to meet all the Coast Guard's criteria for a regulation that reasonably balances the needs of both highway and vessel traffic, and should substantially improve vehicular traffic problems directly attributable to bridge openings. Alternative NA has two distinct advantages over other alternatives considered. First, due to the recreational vessel point openings, the total number of openings will be greatly reduced, probably about 50% or more. Second, the remaining openings will occur during less disruptive times than in the past.

During the period from June 1, 1991 through July 30, 1991, a temporary schedule identical to that of Alternative P was placed in effect for the Woodrow Wilson Bridge to see if that schedule resulted in substantial improvements in vehicular traffic flow without unreasonably restricting marine traffic. A review of the bridgetender's logs from the period June 1, 1991, through June 30, 1991, showed approximately a 50% decrease in the number of bridge openings compared to the number of bridge openings during the same period in 1990 when the existing permanent regulation was in effect. This data also showed approximately a 60% decrease in the number of openings for recreational boats under the temporary rule compared to the permanent rule in effect last June.

On July 31, 1991 a temporary schedule identical to Alternative NA was placed in effect for a period of 60 days. On September 29, 1991 a slight modification of the temporary schedule effective on July 31, 1991 was placed into effect for a period of 60 days. This schedule is essentially Alternative NA except that the noon opening opportunities for recreational vessels were moved to 11 a.m. The Coast Guard will evaluate all the temporary schedules placed in effect after June 1, 1991 as data becomes available.

Regulatory Evaluation

This proposal is not a major under Executive Order 12291 but is considered significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979) due to the high level of public interest in the operation of the drawbridge.

A draft Regulatory Impact Analysis is available in the docket for inspection or copying where indicated under **ADDRESSES.** Under Alternative A which is the current published regulation, the delay cost to vehicular traffic is estimated to be $1,327,000. Under Alternative NA, delay costs to vehicular traffic would be $981,000, an estimated savings of $346,000 in delay costs for vehicular traffic in comparison to the existing regulation. The Coast Guard considers this a conservative estimate. Others have estimated the savings in delay costs to be as great as $1,500,000. Under Alternative NA, estimated delay costs for vessels would be $134,000, an estimated net increase of $94,000 in delay costs for vessels incomparison to the existing permanent regulation (Alternative A). Highway accident costs associated with the bridge openings are estimated to be $110,000 annually under Alternative NA, a decrease of $40,000 from the existing regulation. The Coast Guard is cooperating with the responsible highway agencies to implement accident avoidance strategies that are anticipated to further reduce accidents and their related costs.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the U.S. Coast Guard must consider whether proposed rules will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The impact of the commercial vessel delays will not affect small entities. The impact of the vehicle delays is spread over such a large number of vehicles that the impact on any small entity is minimal.

Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that preparation of an environmental impact statement is not necessary. An environmental assessment was prepared in accordance with Commandant Instruction M16475.1B and is in compliance with the National Environmental Policy Act of 1969 (Pub. L. 91–190) and the Council on Environmental Quality Regulations dated November 29, 1978. All of the alternative have negligible, if any, impacts on the environment. None of the proposed bridge opening alternative are expected to have a significant effect on the human environment. The Environmental Assessment and a Finding of No Significant Impact are available for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridge.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117, to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.255, paragraph (a)(2) is revised to read as follows:

§ 117.255 Potomac River.

(a) * * *

(1) * * *

(2) Need not open:

(i) Except as provided in paragraph (a)(1) of this section, for the passage of any vessel unless at least two hours advance notice is given to the bridgetender at (202) 727–5522.

(ii) For the passage of any vessel from 4 a.m. to 9 a.m. and from 2 p.m. to 7 p.m., on Mondays through Fridays other than Federal holidays.

(iii) For the passage of any vessel from 2 p.m. to 7 p.m. on Saturdays, Sundays, and Federal holidays.

(iv) For the passage of recreational vessels from 4 a.m. to 12 midnight with the exception of one opening at 12 noon, if requested, on Mondays through Fridays other than Federal holidays.

(v) For the passage of recreational vessels from 6 a.m. to 12 midnight with the exception of one opening at 12 noon, if requested, and one opening at 9 p.m., if requested, on Saturdays, Sundays, and Federal holidays.

* * * * *

Dated: December 16, 1991.

J. W. Kime,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 91–30434 Filed 12–19–91; 8:45 am]

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Part VIII

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 550
Libyan Sanctions Regulations; Final Rule Amendments

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 550

LIBYA SANCTIONS REGULATIONS

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule, amendments.

SUMMARY: The Office of Foreign Assets Control is amending the Libyan Sanctions Regulations by revoking a general license which authorized transfers to the Government of Libya between offshore third-country banks to be cleared through domestic banks in the United States. With the revocation of this general license, any transfer instructions indicating a direct or indirect interest of the Government of Libya, including routing through a Libyan government-controlled financial institution to persons or companies in Libya, require the U.S. bank holding the instructions to deposit the funds into a blocked account. All funds in which a direct or indirect Libyan government interest is indicated and which come into the possession or control of any

of law regardless of their origin or destination unless licensed by the Office of Foreign Assets Control. This action is being taken to further tighten sanctions against Libya due to continuing Libyan support for terrorism.

EFFECTIVE DATE: 10:00 p.m., EST, December 19, 1991

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Chief Counsel, tel.: (202) 535-6020, or Steven I. Pinter, Chief of Licensing, tel.: (202) 535-9449, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION: The Libyan Sanctions Regulations, 31 C.F.R. Part 550 (the "Regulations"), were issued by the Treasury Department in implementation of Executive Order 12543 of January 7, 1986 (51 FR 865, January 9, 1986) and Executive Order 12544 of January 8, 1986 (51 FR 1235, January 10, 1986). Section 550.514 of the Regulations, revoked by this final rule, permitted transfers between two non-Libyan foreign banks located outside of the United States to clear through accounts located in the United States for ultimate credit to the Government of Libya.

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Effective at 10:00 p.m., EST, December 19, 1991, instructions held or received by domestic banks for unlicensed transactions involving property in which a Libyan government interest is indicated must result in the deposit of the funds into a blocked account pursuant to §§ 550.209 and 550.511 of the Regulations. Similarly, where the transfer instructions indicate an unlicensed transfer through a Government of Libya-controlled financial institution, regardless of the remitter or ultimate beneficiary, the funds are blocked by operation of law pursuant to Executive Order 12544 and § 550.209 of the Regulations. The blocking requirements apply to all domestic banks, including U.S. branches and subsidiaries of foreign banks, and foreign branches of banks organized under the laws of any U.S. jurisdiction, and to all other U.S. persons. Regulations, §§ 550.209, 550.308, 550.317. The action taken in this final rule will impede Libya's ability to use U.S. dollars as the primary currency for oil trading and other purposes.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed

rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., does not apply.

List of Subjects in 31 C.F.R. Part 550: Banks and banking, Blocking of assets, Libya, Reporting and recordkeeping requirements

For the reasons set forth in the preamble, 31 CFR chapter V, part 550, is amended as set forth below:

PART 550--LIBYAN SANCTIONS REGULATIONS

1. The "Authority" citation for part 550 continues to read as follows:

Authority: 50 U.S.C. 1701 et seq.; E.O. 12543, 51 FR 875, January 9, 1986; E.O. 12544, 51 FR 1235, January 10, 1986.

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Subpart E--Licenses, Authorizations, and Statements of Licensing Policy

1. Section 550.514 is removed and reserved.

Dated: December 12, 1991

Richard Newcomb

R. Richard Newcomb,

Director,

Office of Foreign Assets Control

Approved: December 12, 1991

Nancy L. Worthington for

~~Peter K. Nunez~~, 12 . 1991

Nancy L. Worthington

Acting Assistant Secretary (Enforcement)

[FR Doc. 91-30723 Filed 12-19-91; 5:05 pm]
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S. 1891/Pub. L. 102–239

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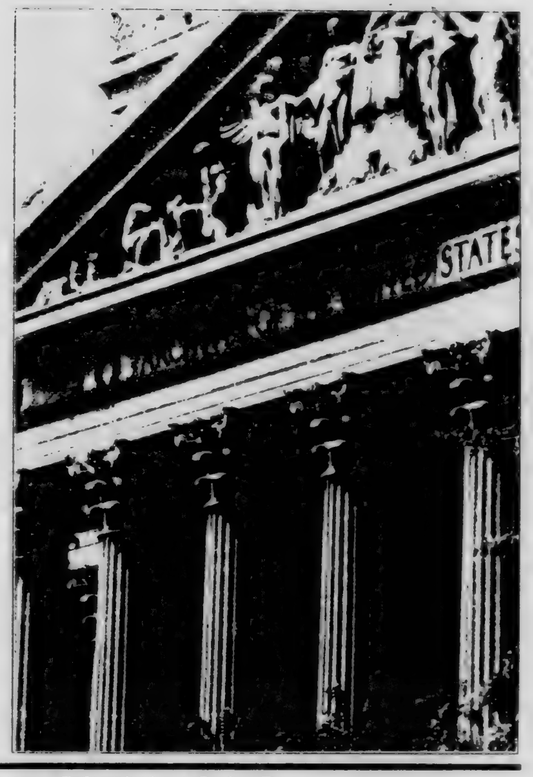
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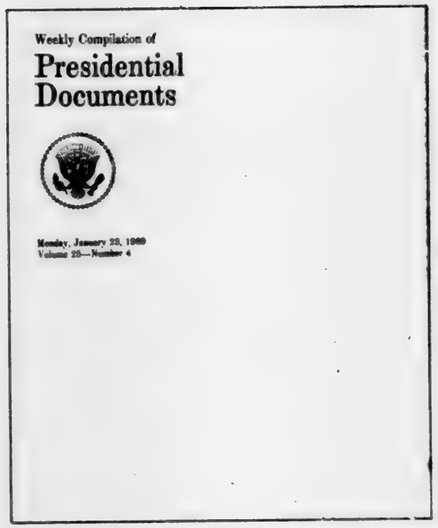
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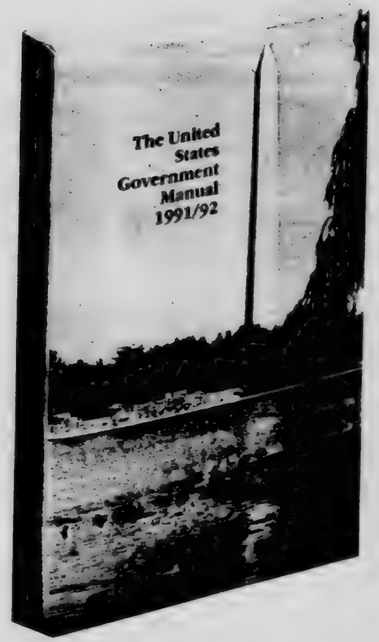
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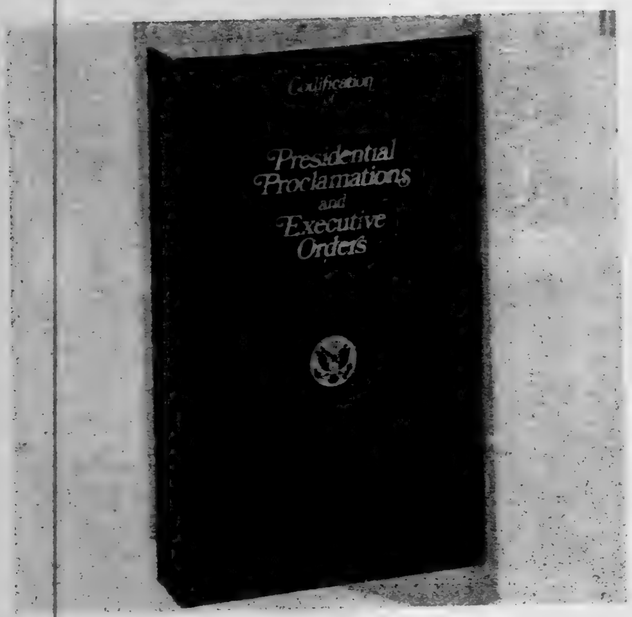
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Presidential Documents

Title 3—

The President

Executive Order 12784 of December 19, 1991

Delegation of Authority Regarding the Naval Petroleum and Oil Shale Reserves

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3 and sections 7427 and 7428 of title 10 of the United States Code, and in order to meet the goals and requirements of the Naval Petroleum and Oil Shale Reserves, it is hereby ordered as follows:

Section 1. The functions vested in the President by sections 7427 and 7428 of title 10 of the United States Code are delegated to the Secretary of Energy.

Sec. 2. On or before June 30, 1994, the Secretary of Energy shall prepare and submit to the President a comprehensive report of the agreements and programs executed under the authority granted under this order. The authority delegated herein expires on October 2, 1994.

George Bush

THE WHITE HOUSE,
December 19, 1991.

[FR Doc. 91-30745
Filed 12-19-91; 4:25 pm]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 56, No. 246
Monday, December 23, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 725]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from December 20 through December 26, 1991. Consistent with program objectives, such action is needed to establish and maintain orderly marketing conditions for fresh California-Arizona navel oranges for the specified week. Regulation was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

EFFECTIVE DATES: Regulation 725 (7 CFR part 907) is effective for the period from December 20 through December 26, 1991.

FOR FURTHER INFORMATION CONTACT: Christian D. Nissen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–1754.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the "Act."

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,000 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented about 79 percent of the total production in 1990–91. District 2 is located in the southern coastal area of California and represented almost 18 percent of 1990–91 production; District 3 is the desert area of California and Arizona, and it represented slightly less than 3 percent; and District 4, which represented slightly less than 1 percent, is northern California. The Committee's revised estimate of 1991–92 production is 64,600 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 32,895 cars during the 1990–91 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic fresh (regulated) market is a preferred market for California-Arizona navel oranges while the export market continues to grow. The Committee has estimated that about 68 percent of the 1991–92 crop of 64,600 cars will be utilized in fresh domestic channels (43,650 cars), with the remainder being exported fresh (14 percent), processed (16 percent), or designated for other uses (2 percent). This compares with the 1990–91 total of 16,675 cars shipped to fresh domestic markets, about 51 percent of that year's crop. In comparison to other seasons, 1990–91 production was low because of a devastating freeze that occurred during December 1990.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to producers. Producers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual producers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and

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enhance producer revenue. Prices for navel oranges tend to be relatively inelastic at the producer level. Thus, even a small variation in shipments can have a great impact on prices and producer revenue. Under these circumstances, strong arguments can be advanced as to the benefits of regulation to producers, particularly smaller producers.

The Committee adopted its marketing policy for the 1991–92 season on June 25, 1991. The Committee reviewed its marketing policy at district meetings as follows: Districts 1 and 4 on September 24, 1991, in Visalia, California; and District 2 and 3 on October 1, 1991, in Ontario, California. The Committee subsequently revised its marketing policy at a meeting on October 15, 1991. The marketing policy discussed, among other things, the potential use of volume and size regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This marketing policy is available from the Committee or Mr. Nissen. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on December 17, 1991, in Newhall, California, to consider the current and prospective conditions of supply and demand and recommended, with 7 members voting in favor, 3 opposing, and 1 abstaining, that 800,000 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions and weather and transportation conditions.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1991–92 marketing policy. The recommended amount of 800,000 cartons compares to the 900,000 specified in the Committee's shipping schedule. However, the Department, based on its independent analysis, and information provided by the Committee, has revised the recommendation and established volume regulation in the amount of 950,000 cartons. Of the 950,000 cartons, 91.11 percent or 865,545 cartons are allotted for District 1, and 8.89 percent or 84,455 cartons are allocated for District 3. Handlers in Districts 2 and 4 will not be regulated as they are not shipping a sufficient quantity of navel oranges to warrant volume regulation at this point in the season.

During the week ending on December 12, 1991, shipments of navel oranges to fresh domestic markets, including Canada, totaled 2,030,000 cartons compared with 2,252,000 cartons shipped during the week ending on December 13, 1990. Export shipments totaled 151,000 cartons compared with 220,000 cartons shipped during the week ending on December 13, 1990. Processing and other uses accounted for 356,000 cartons compared with 489,000 cartons shipped during the week ending on December 13, 1990.

Fresh domestic shipments to date this season total 6,372,000 cartons compared with 9,527,000 cartons shipped by this time last season. Export shipments total 833,000 cartons compared with 1,035,000 cartons shipped by this time last season. Processing and other use shipments total 1,236,000 cartons compared with 2,042,000 cartons shipped by this time last season.

For the week ending December 12, 1991, regulated shipments of navel oranges to the fresh domestic market were 2,017,000 cartons on a adjusted allotment of 2,077,000 cartons which resulted in net undershipments of 60,000 cartons. Regulated shipments for the current week (December 13 through December 19) are estimated at 1,900,000 cartons on an adjusted allotment of 1,829,000 cartons. Thus, overshipments of 71,000 cartons could be carried forward into the week ending on December 26, 1991.

The average f.o.b. shipping point price for the week ending on December 12, 1991, was $10.08 per carton based on a reported sales volume of 1,619,000 cartons. The season average f.o.b. shipping point price to date is $10.47 per carton. The average f.o.b. shipping point prices for the week ending on December 13, 1990, was $8.58 per carton; the season average f.o.b. shipping point price at this time last year was $9.24.

The Department's Market News Service reported that, as of December 17, demand for first grade 72–88s sizes is moderate, very good for other sizes. Prices for first grade 56s are slightly higher, while prices for other sizes are reported as about steady.

Committee members discussed implementing volume regulation at this time, as well as different levels of allotment. It was reported that poor weather conditions are hampering harvesting in District 1, and that maturity problems are continuing to affect some districts. Due to these problems, several members stated they expected carryovers from the week ending December 19. Another member stated that demand will be limited due to Christmas. It was also recommended that Districts 2 and 4 remain open in light of the relatively small early maturity requests. Three Committee members favored open movement at this time, while the majority of Committee members favored the issuance of general maturity allotment.

According to the National Agricultural Statistics Service, the 1990–91 season average fresh equivalent on-tree price for California-Arizona navel oranges was $7.75 per carton, 119 percent of the season average parity equivalent price of $6.52 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1991–92 season average fresh on-tree price is estimated at $6.33 per carton, about 85 percent of the estimated fresh on-tree parity equivalent price of $7.44 per carton.

Limiting the quantity of navel oranges that may be shipped during the period from December 20, through December 26, 1991, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

A proposed rule regarding the implementation of volume regulation and a proposed shipping schedule for California-Arizona navel oranges for the 1991–92 season was published in the September 30, 1991, issue of the **Federal Register** (56 FR 49432). The Department is currently in the process of analyzing comments received in response to this proposal and, if warranted, may finalize that action this season. However, issuance of this final rule implementing volume regulation for the regulatory week ending on December 26, 1991, does not constitute a final decision on that proposal.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until December 17, 1991, and this action needs to be effective for the regulatory week which begins on December 20, 1991. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

PART 907—[AMENDED]

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.1025 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 907.1025 Navel Orange Regulation 725.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from December 20 through December 26, 1991, is established as follows:

(a) District 1: 865,545 cartons;
(b) District 2: unlimited cartons;
(c) District 3: 84,455 cartons;
(d) District 4: unlimited cartons.

Dated: December 18, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–30631 Filed 12–19–91; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R-0736]

Home Mortgage Disclosure; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; Correction.

SUMMARY: The Board published a final rule concerning annual reporting requirements for home mortgage disclosure on November 26, 1991, that contains an error in amendatory instruction 3 preceding § 203.4.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: W. Kurt Schumacher, Staff Attorney, Division of Consumer and Community Affairs, at 202-452-2412; for the hearing impaired *only*, contact Dorothea Thompson, Telecommunications Device for the Deaf, at 202-452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

In **Federal Register** rule (FR Doc. 91-28336) published at page 59853, column 3, of the issue for Tuesday, November 26, 1991, make the following correction:

On page 59857, column 2, amendatory instruction 3 in part 203 is corrected to read as follows:

"3. Section 203.4 is amended by revising the introductory text of paragraph (a) to read as follows:".

Board of Governors of the Federal Reserve System, December 17, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-30548 Filed 12-20-91; 8:45 am]

BILLING CODE 6210-01-F

12 CFR Part 229

[Regulation CC; Docket No. R-0717]

RIN 7100-AB01

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; correction.

SUMMARY: The Board published a final rule for its Regulation CC regarding deposits to nonproprietary ATMs on Tuesday, February 26, 1991. The Board's publication contained errors in some of the amendatory instructions. The Board is publishing technical corrections to those instructions.

EFFECTIVE DATE: September 1, 1990.

FOR FURTHER INFORMATION CONTACT: Stephanie Martin, Senior Attorney (202/452-3198), Legal Division. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf, at (202/452-3544). Board of Governors of the Federal Reserve System, Washington, DC 20551.

In the Board's Final Rule regarding its Regulation CC (Federal Reserve Docket No. R-0717, FR Doc. 91-4460) published at page 7799 of the issue for Tuesday, February 26, 1991, make the following corrections:

PART 229—[CORRECTED]

1. On page 7801, column 3, in part 229, amendatory instruction 2 is revised to read as follows: "In § 229.12, paragraphs (a), (b) introductory text, (b)(4), (c)(1) introductory text, the first and third sentences of paragraphs (d), and (f) are revised to read as follows:"

2. On page 7802, column 2, in appendix E to part 229, amendatory instruction 4(a) is revised to read as follows: "In the Commentary to § 229.12, the last sentence of paragraph (a), the second paragraph of paragraph (b), and paragraph (f) are revised to read as follows:"

By order of the Board of Governors of the Federal Reserve System, December 17, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-30549 Filed 12-20-91; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORATION

Federal Aviation Administration

14 CFR Parts 71 and 73

[Airspace Docket No. 90-AWP-2]

Establishment of Restricted Areas R-2535A and R-2535B; San Nicolas Island, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Restricted Areas R-2535A and R-2535B San Nicolas Island, CA. Currently, Warning Area W-289 overlies San Nicolas Island. Because the U.S. Government owns the Island, and the Navy controls it, the airspace over and within 12 miles of San Nicolas Island is U.S. domestic airspace. A restricted area is, therefore, the appropriate airspace designation. The Continental Control Area is also amended to include both areas.

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EFFECTIVE DATE: 0901 U.T.C., March 5, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Ullom, Military operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7683.

SUPPLEMENTARY INFORMATION:

History

On July 31, 1990, the FAA proposed to amend parts 71 and 73 of the Federal Aviation Regulations (14 CFR parts 71 and 73) to establish restricted areas R–2535A and R–2535B and to amend the Continental Control Area to include both areas (55 FR 31066). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, these amendments are the same as those proposed in the notice. Sections 71.151 and 73.25 of parts 71 and 73 of the Federal Aviation Regulations were republished in FAA Handbook 7400.7 and FAA Handbook 7400.8 dated November 1, 1991.

The Rule

These amendments to parts 71 and 73 of the Federal Aviation Regulations establish Restricted Areas R–2535A and R–2535B, San Nicolas Island, CA. Currently, warning area W–289 overlies San Nicolas Island. The U.S. Government owns the island, and the U.S. Navy controls the land. Therefore, the airspace over and within 12 miles of San Nicolas Island is domestic airspace and a restricted area is the appropriate airspace designation. Activities to be conducted in the restricted areas are the same as those currently being conducted in the warning area. They include simulated weapons deliveries, bombing profiles, ground based missile intercept missions, special meteorological sampling rocket launches, and ground and airborne based laser weapons tests. The Continental Control Area is amended to include R–2535A and R–2535B. Additionally, W–289 is amended by separate action to exclude the airspace which coincides with R–2535A and R–2535B.

Environmental Review

In compliance with the National Environmental Policy Act of 1969 (NEPA), the U.S. Navy evaluated the environmental impacts resulting from the establishment of Restricted Areas R–2535A and R–2535B. The Navy determined the impacts to be negligible, and also determined that the action qualified for a categorical exclusion from environmental review under the Navy's procedures. Accordingly, the reasons for the categorical exclusion were documented, and further environmental assessment was not accomplished. The activities to be conducted in the new restricted areas are identical to the activities currently conducted in the same airspace. The action will have no effect other than maintenance of the status quo, either on the airspace included in the restricted areas, or on surrounding airspace and air routes used for the handling of civil air traffic by ATC. The controlling agency, the Los Angeles Air Route Traffic Control Center, does not routinely route traffic through the area. Accordingly, the establishment of the restricted areas will have no effect on current air traffic procedures or on the routing or altitude of civil aircraft operations in the area.

Based upon the environmental documentation developed by the Navy, no change in the Navy's activities in the area resulting from the establishment of R–2535A and R–2535B, and the FAA's review of the ATC procedures in effect in the area before and after adoption of the two restricted areas, the FAA finds that there will be no significant impact on the environment as a result of this action.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental control area, and Restricted areas.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, parts 71 and 73 of the Federal Aviation Regulations (14 CFR parts 71 and 73) are amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, REPORTING POINTS, JET ROUTES, AND AREA HIGH ROUTES

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.151 [Amended]

2. § 71.151 is amended as follows:

R–2535A San Nicolas Island, CA [New]

R–2535B San Nicolas Island, CA [New]

PART 73—SPECIAL USE AIRSPACE

3. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510, 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.25 [Amended]

4. § 73.25 is amended as follows:

R–2535A San Nicolas Island, CA [New]

Boundaries: Beginning at lat. 33°20'10" N., long. 119°31'10" W.; to lat. 33°18'18" N., long. 119°26'29" W.; to lat. 33°10'10" N., long. 119°31'10" W.; to lat. 33°12'00" N., long 119°35' 30" W.; to lat. 33°14'20" N.; long. 119°37'40" W.; to lat. 33°16'40" N., long. 119°36'10" W.; to lat. 33°19'10" N., long. 119°37'10" W.; to the point of beginning.

Designated altitudes: Surface to 100,000 feet MSL.

Time of designation: 0600–2200 local time Monday–Friday; other times by NOTAM at least 24 hours in advance.

Controlling agency: FAA, Los Angeles ARTCC.

Using agency: U.S. Navy, Commander, Pacific Missile Test Center, Point Mugu, CA.

R–2535B San Nicolas Island, CA [New]

Boundaries: Beginning at lat. 33°18'18" N., long. 119°26'29" W.; to lat. 33°17'40" N., long. 119°24'50" W.; to lat. 33°13'50" N., long. 119°21'50" W.; to lat. 33°10'10" N., long. 119°24'20" W.; to lat 33°10'10" N., long. 119°29'40" W.; to lat 33°10'10" N., long. 119°31'10" W.; to the point of beginning.

Designated altitudes: Surface to 100,000 feet MSL.

Time of designation: 0600–2200 local time Monday–Friday; other times by NOTAM at least 24 hours in advance.

Controlling agency: FAA, Los Angeles ARTCC

Using agency: U.S. Navy, Commander, Pacific Missile Test Center, Point Mugu, CA.

Issued in Washington, DC, on December 13, 1991.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91–30531 Filed 12–20–91; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") and the French Commission des Operations de Bourse ("COB") have amended the side letter dated June 6, 1990 between the Commission and the COB, which facilitates the operation of the Mutual Recognition Memorandum of Understanding between the Commission and the COB. Specifically, the Commission and COB have agreed to revise paragraph 2 of the Side Letter to reflect the use of subordinated debt to fulfill net equity requirements for French firms.

EFFECTIVE DATE: December 23, 1991.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang Esq., or Robert H. Rosenfeld, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: On June 6, 1990, the Commodity Futures Trading Commission and the French Commission des Operation de Bourse entered into a Mutual Recognition Memorandum of Understanding ("MRMOU"). See 55 FR 23902 (June 13, 1990). This arrangement generally will permit all products of one jurisdiction to be offered to customers located in the other jurisdiction, subject to certain conditions specified in the MRMOU. Further, the arrangement will permit brokers licensed in one jurisdiction to sell the products of that jurisdiction to customers located in the other jurisdiction, generally by complying with the rules of the licensing jurisdiction, and with requirements agreed to by the Commission and the COB.

The Commission and COB also entered into a Side Letter dated June 6, 1990 ("Side Letter"), see 55 FR 23907, for the purpose of facilitating the operation of the MRMOU and to further clarify certain conditions imposed for the implementation of the MRMOU. Paragraph 2 of the Side Letter articulates certain requirements applicable to French and United States firms concerning prudential requirements which are a condition to the recognition of firms under the MRMOU. Among other matters, paragraph 2(a) of the Side Letter as agreed on June 6, 1990 stated that a member of the Marche a Terme International de France ("MATIF") firm must maintain net equity as required under the Conseil du Marche a Terme ("CMT") General Regulation provided that, according to such regulation, no subordinated debt or guarantee may be substituted for such net equity in order to meet the minimum capital requirements. See 55 FR at 23908.

By letter dated September 17, 1991 the COB notified the Commission that the CMT General Regulation establishing the French capital requirements (CMT Rule R86–01) had been amended by CMT Rule R91–20, July 23, 1991. Consistent with CMT rules, members of MATIF may use subordinated debt as regulatory capital.

The Commission believes that there is no reason why French firms may not, consistent with the MRMOU, utilize subordinated debt as regulatory capital as permitted under CMT rules, and has agreed with the COB to amend the Side Letter.

Accordingly, by this Order the Commission, consistent with Article VI of the MRMOU, the Commission is amending paragraph 2 of the Side Letter to the MRMOU to read as follows:

2. Prudential Requirements

(a) In the case of an Authorized Person, such Person will maintain net equity as required under the CMT General Regulation, provided that, according to such regulation, no guarantee may be substituted for such net equity in order to fulfill the minimum capital requirements, *i.e.*, (currently) FF 7.5 million for non clearing members, FF 50 million for individual clearing members, and FF 375 million for general clearing members, and provided, further, that, if a more stringent financial requirement is imposed by the European Economic Community on European investment firms, the Authorized Person will meet such requirement;

List of Subjects in 17 CFR Part 30

Commodity futures; commodity options; foreign futures and foreign options.

PARTS 30 [AMENDED]

17 CFR part 30 is amended as follows:

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c, and 12a.

APPENDIX C TO PART 30 [AMENDED]

2. Appendix C to part 30 is amended by revising the existing entry concerning Annex E to the Mutual Recognition Memorandum of Understanding in its entirety to read as follows:

Authorized Persons as designated in Annex E to the Mutual Recognition Memorandum of Understanding

FR date and citation: June 13, 1990, 55 FR 2390; December 23, 1991.

Issued in Washington, DC on December 17, 1991.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 91–30502 Filed 12–20–91; 8:45 am]

BILLING CODE 6351–01–M

17 CFR Part 30

Foreign Futures and Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is issuing this Order pursuant to which option contracts on the Notional Bond, 3-month PIBOR and the 3-month EURODEM futures contracts traded on the Marche a Terme International de France ("MATIF") may be offered or sold to persons located in the United States. This Order is issued pursuant to: (1) Commission rule 30.3(a), 17 CFR 30.3(a) (1991), which makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States; and (2) the procedures established in the Commission's Order issued on June 6, 1990, 55 FR 23902 (June 13, 1990) (Mutual Recognition Memorandum of Understanding ("MRMOU") with the French Commission des Operations de Bourse).

EFFECTIVE DATE: January 22, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Rosenfeld, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following order:

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Order Pursuant to the Mutual Recognition Memorandum of Understanding with the French Commission des Operations de Bourse and Rule 30.3(a), Under Which Certain Option Contracts Traded on the Marche a Terme International de France may be Offered or Sold in the United States Thirty Days after Publication of this Notice in the Federal Register.

Pursuant to sections 2(a)(1), 4(b) and 4c of the Commodity Exchange Act ("Act"), 7 U.S.C. 2, 6(b) and 6c (1988), and part 30 of the Commission's Rules and Regulations, the Commission has entered into a Mutual Recognition Memorandum of Understanding ("MRMOU") with the French Commission des Operations de Bourse ("COB"). 55 FR 23902 (June 13, 1990). Among other things, this arrangement provides a mechanism pursuant to which certain option products traded on the Marche a Terme International de France ("MATIF") may be offered or sold to customers resident in the United States thirty days after publication in the Federal Register of a notice specifying the particular option contracts to be offered or sold.

By letters dated September 17 and October 2, 1991, respectively, the COB and MATIF requested that option contracts based on the Notional Bond, 3-month PIBOR and the 3-month EURODEM futures contracts be approved pursuant to the MRMOU for offer or sale in the United States. Based upon the foregoing, and pursuant to the terms of the MRMOU, the Commission hereby publishes this Order in the Federal Register pursuant to which the particular option contracts specified herein may be offered or sold thirty days after the publication of this Order.

Accordingly, pursuant to Commission rule 30.3(a), 17 CFR 30.3(a) (1991), and article II, paragraph 2(b) and article V, paragraph 8 of the MRMOU signed by the Commission on June 6, 1990 (55 FR 23902 (June 13, 1990)), and subject to the terms and conditions specified in the MRMOU, the Commission hereby issues this Order pursuant to which option contracts based on the Notional Bond, 3-month PIBOR and the 3-month EURODEM futures contracts traded on the MATIF may be offered or sold to persons located in the United States thirty days after publication of this Order in the Federal Register.

Lists of Subjects in 17 CFR Part 30

Commodity futures, Commodity options, Foreign commodity options.

Amendment of Appendix B

Accordingly, 17 CFR part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a.

2. Appendix B to part 30 is amended by revising the following entry to read as follows:

APPENDIX B—OPTION CONTRACTS PERMITTED TO BE OFFERED OR SOLD IN THE U.S. PURSUANT TO § 30.3(a)

Exchange	Type of contract	FR date and citation
Marche a Terme International de France	Option Contracts on Notional Bond, 3-month PIBOR and 3-month EURODEM Futures Contracts.	December 23, 1991; 56 FR ____

Issued in Washington, DC on December 17, 1991.

Joan A. Webb,

Secretary of the Commission.

Editorial note: This contract will not appear in the Code of Federal Regulations.

Traded Option Contract on the Notional Bond

Option Type:

—American options.

—Buy options (calls) and sell options (puts).

Type of Operators:

In addition to the usual operators, there are "market-makers" who undertake to:

—quote the buy and sell premiums for each strike price open.

—issue upon request up to 20 option contracts for each quoted price.

Underlying Contract: A "notional bond" future.

Premium:

—The option price or premium is expressed as a percentage of the contract's nominal value to two decimal places.

—The premium is paid by the option buyer and is collected by the option seller.

Trading Unit: An option bears on one futures contract.

Quotation: Premium quotation.

Example: a premium of 2.15 is equivalent to 2.15%×500,000=10,750 FRF.

Minimum Price Movement (Tick): 0.01%×5,000,000=50 FRF.

Strike Price:

—When a delivery month begins trading, 9 strike prices are initially listed: the round strike price that is closest to the price of the underlying contract as well as the four immediately higher prices and the four immediately lower prices.

—The difference between two strike prices is set at 100 basis points.

Example: 87.00/88.00/89.00 . . .

Expiration Dates:

—The expiration dates correspond to the 4 quarterly delivery months of the notional bond futures contract (March, June, September and December).

—The close (or last quotation day) occurs on the last Friday of the month preceding the corresponding delivery month of the notional bond. (The last Thursday starting with the March 1991 delivery month.)

—A delivery month on the option contract is opened simultaneously with a delivery month on the futures contract.

Exercise Procedure:

—In case of exercise, the option seller must buy from (in the case of a put) or sell to (in the case of a call) the buyer a firm futures contract, at the option strike price.

—Options that are in-the-money on the option expiration date are automatically exercised.

—Options that are at-the-money and out-of-the-money on their expiration dates are automatically abandoned.

Trading Procedure: Open outcry: from 9:04 am to 4:30 pm.

There Is No Price Fluctuation Limit

Initial Margin:

MATIF S.A. has the option seller set aside an amount as initial margin corresponding to the loss that would result from the most unfavorable change in the liquidation of its overall net position in one trading day. This initial margin is revised on a daily basis.

NB: The characteristics described in this document were applicable on January 1, 1991, but are subject to modification.

Option Contract on Three-Month Eurodem

Option Type:

—American options.

—Buy options (calls) and sell options (puts).

Type of Operators:

In addition to the usual operators, there are some market-makers who undertake to:

—quote the buy and sell premiums for each open strike price,

—issue upon request up to 50 option contracts for each quoted price.

Underlying Contract: A "3-month Eurodem" future.

Premium:

—The option price, or premium, is expressed as a percentage of the nominal contract value, to three decimal places, by reference to the deposit duration, *i.e.*, 90 days.

—The premium is paid by the option buyer and is collected by the option seller.

Trading Unit: An option bears on one futures contract.

Quotation: Quotation of the premium.

Example: A premium of 0.655% is worth 0.00655×1,000,000×90/360=1,637.5 DM.

Minimum Price Movement (Tick): 0.005%×1,000,000×90/360=12.5 DM.

Strike Price:

—When a delivery month begins trading, 15 strike prices are initially listed: the strike price that is closest to the price of the underlying contract, the 7 immediately lower strike prices and the 7 immediately higher strike prices.

—The difference between two strike prices is set at 10 basis points.

Example: . . . 91.60/91.70/91.80/ . . .

Expiration Dates:

—The expiration dates correspond to the 4 quarterly delivery months of the 3-month Eurodem futures contract: March, June, September and December.

—Delivery months for options open and close simultaneously with delivery months for the underlying futures contract.

Exercise Procedure.

—If an option is exercised, the option seller must buy from (in the case of a put) or sell to (in the case of a call) the buyer a firm futures contract, at the option strike price

—Options that are "in-the-money" on the option expiration date are automatically exercised.

—Options that are "at-the-money" and "out-of-the-money" on their expiration dates are automatically abandoned.

Trading Procedure: Open outcry from 9:10 a.m. to 3:50 p.m.

No Daily Price Fluctuation Limit

Initial Margin:

MATIF S.A. has the option seller set aside, as initial margin, a sum corresponding to the loss that would result from the most unfavorable change in the liquidation value of the option seller's overall net-position for one trading day. This initial margin is revised daily.

NB: The characteristics described in this document are those applying on June 1, 1990, but they are subject to modification.

3-Month Pibor Traded Option Contract

Option Type:

—American options.

—Buy options (calls) and sell options (puts).

Type of Operators:

In addition to the usual operators, there are some market-makers who undertake to:

—Quote the buy and sell premiums for each open strike price,

—Issue upon request up to 20 option contracts for each quoted price.

Underlying Contract: A "3-month PIBOR" future.

Premium:

—The option price, or premium, is expressed as a percentage of the nominal contract value, to three decimal places, with reference to the deposit duration, *i.e.*, 90 days.

—The premium is paid by the option buyer and is collected by the option seller.

Trading Unit: An option bears on one futures contract.

Quotation: Premium quotation.

Example: a premium of 0.200% is worth 0.002%×5,000,000×90/360=2,500 FRF

Minimum Price Movement (Tick): 0.005%×5,000,000×90/360=62.50 FRF

Strike Price:

—When delivery month begins trading, 15 strike prices are initially listed: the strike price that is closest to the price of the underlying contract, as well as the 7 immediately lower prices and the 7 immediately higher.

—The difference between two strike prices is 10 basis points.

Example: . . . 92.00/92.10/92.20 . . .

Expiration Dates:

—The expiration dates of the options correspond to the four quarterly delivery months of the 3-month PIBOR futures contract: March, June, September and December.

—The opening and the closing of a delivery month for PIBOR options are simultaneous with those of the underlying futures contract.

Exercise Procedure:

—If an option is exercised, the option seller must buy from (in the case of a put) or sell to (in the case of a call) the buyer a firm futures contract at the option strike price.

—Options that are "in-the-money" on the option expiration date are automatically exercised.

—Options that are "at-the-money" and "out-of-the-money" on their expiration dates are automatically abandoned.

Trading Procedure: Open outcry from 9 am to 3:30 pm.

There is no Daily Price Fluctuation Limit

Initial Margin:

MATIF S.A. calls from the option seller an amount corresponding to the loss that would result from the most unfavorable change in the liquidation value of the seller's overall net position in one trading day. This initial margin is revised daily.

NB: The characteristics described in this document are those applying on June 1, 1990, but are subject to modification.

[FR Doc. 91-30503 Filed 12-20-91; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 3

[Docket No. 91N-0257]

Assignment of Agency Component for Review of Premarket Applications; Extension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to February 21, 1992, the period for submission of comments on the final rule for assignment of agency component for review of premarket applications (56 FR 58754, November 21, 1991). FDA is taking this action in response to a request to extend the comment period for an additional 60

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days to allow more time to comment on this rule.

DATES: Written comments by February 21, 1992.

ADDRESSES: Submit written comments to the Docket Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edwin V. Dutra, Jr., Office of the Commissioner (HF–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1306.

SUPPLEMENTARY INFORMATION: In the Federal Register of November 21, 1991 (56 FR 58754), FDA issued a final rule describing how the agency will determine which component within FDA will have primary jurisdiction for the premarket review and regulation of: (1) A combination drug, device, or biologic product or (2) any drug, device, or biologic product where the center with primary jurisdiction is unclear or in dispute. This rule describes how to identify the agency's assigned review component which will, in most cases, eliminate the need for a sponsor to obtain approval from more than one FDA component for a combination product. The rule became effective on the date of publication, however, comments could be submitted on the rule through December 23, 1991.

On December 10, 1991, the Health Industry Manufacturers Association (HIMA) requested a 60-day extension in which to file written comments. HIMA contended that the extension was necessary because the final rule has widespread ramifications and it will take the additional time to assemble the interested parties and provide meaningful comments. HIMA's membership includes many firms that will be directly affected by the final rule.

FDA has carefully considered the request by HIMA. The agency believes that the additional time for the preparation and submission of meaningful comments from affected firms is in the public interest. The agency also notes that, because this is a final rule already in effect, the additional time for comments will not delay implementation of the Congressionally mandated procedures contained in the rule. Therefore, interested persons may, on or before February 21, 1992, submit to the Dockets Management Branch (address above) written comments on this rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the office above between 9 a.m. and 4 p.m., Monday though Friday.

Dated: December 17, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 91–30542 Filed 12–20–91; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8380]

RIN 1545–AP75

Treatment of Partnership Liabilities

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the treatment of partnership liabilities. The final regulations reflect changes to the applicable tax law made by section 79 of the Tax Reform Act of 1984. The regulations affect partnerships and their partners, and are necessary to provide them with guidance needed to comply with the applicable tax law.

EFFECTIVE DATE: These regulations are effective December 28, 1991, and generally apply to liabilities incurred or assumed by a partnership on or after December 28, 1991.

FOR FURTHER INFORMATION CONTACT: Mary A. Berman at (202) 566–3440 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545–1090. The estimated annual burden per respondent varies from 3 minutes to 8 minutes, depending on individual circumstances, with an estimated average of 5 minutes.

The estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224 and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Introduction

This document adds new regulation §§ 1.752–0 through 1.752–5 to the Income Tax Regulations (26 CFR part 1) under section 752 of the Internal Revenue Code of 1986 and removes existing §§ 1.752–0T through 1.752–4T.

Background

Proposed and temporary regulations under section 752 were published on December 30, 1988, and amended on November 21, 1989, and July 26, 1991, ("temporary regulations"). This document removes the temporary regulations effective December 27, 1991. On July 26, 1991, the Internal Revenue Service published proposed regulations simplifying the temporary regulations and addressing several issues raised by commentators with respect to the temporary regulations. Written comments were received and a public hearing was held on September 17, 1991.

Explanation of Provisions

I. Sharing Recourse Liabilities

The final regulations provide that a partnership liability is a recourse liability to the extent that any partner bears the economic risk of loss for that liability, and a partner's share of any recourse liability of the partnership equals the portion, if any, of the economic risk of loss for the liability that is borne by the partner. The final regulations also provide that a partner bears the economic risk of loss for partnership liability to the extent that the partner or related person would be obligated to make a contribution or payment with respect to a partnership liability (and would not be entitled to be reimbursed for the contribution or payment by another partner, a person related to another partner, or the partnership) if the partnership constructively liquidates. In a constructive liquidation the following events are deemed to occur: (A) All of the partnership's liabilities become due and payable in full, (B) with the exception of property contributed to secure a partnership liability, all of the partnership's assets (including money) become worthless, (C) the partnership disposes of all of its assets in a fully taxable transaction for no consideration (other than relief from certain liabilities), (D) the partnership allocates its items of income, gain, loss, deduction, and credit for the year among the partners, and (E) the partnership completely liquidates. The constructive liquidation approach is used to determine who bears the economic risk of loss for a partnership liability taking into account the manner in which the partners have agreed to share economic losses and taking into account all arrangements among the partners, related persons, and the partnership.

II. Sharing Nonrecourse Liabilities

The final regulations provide that, if no partner bears the economic risk of loss for a partnership liability, the liability is a nonrecourse liability of the partnership. The partners generally share nonrecourse liabilities in accordance with their interests in partnership profits. However, the final regulations require that the nonrecourse liabilities of a partnership be allocated among the partners first to reflect the partners' shares of any partnership minimum gain (within the meaning of section 704(b)) and any gain that would be allocated to the partners under section 704(c) (or in the same manner as section 704(c) in connection with a revaluation of partnership property) if the partnership disposed of (in a taxable transaction) all partnership property subject to one or more nonrecourse liabilities of the partnership in full satisfaction of the liabilities and for no other consideration.

III. Modifications To Proposed Regulations

After full consideration of the comments and the statements made at the public hearing, the following actions were taken with respect to the proposed regulations issued on July 26, 1991:

A. Guarantee of Interest Rule

Section 1.752–2(e) of the proposed and final regulations contains a guarantee of interest rule generally providing that if one or more partners guarantee the payment of more than 25 percent of the total interest that will accrue on an otherwise nonrecourse partnership liability during its term, the loan is deemed to be recourse to those partners to the extent of the present value of the guaranteed future interest payments. To the extent that the guarantee of interest is subject to a contingency, the principles of § 1.752–2(b)(4) apply.

The final regulations added a de minimis exception to the guarantee of interest rule that generally parallels the de minimis exception to the rule for a guarantee of a nonrecourse loan by a partner or related person.

B. Economic Risk of Loss Analysis

Section 1.752–2(b)(2) of the proposed regulations provides that, for purposes of the constructive liquidation analysis, gain or loss on the deemed disposition of the partnership's assets is computed as follows: (1) If the creditor's right to repayment of a partnership liability is limited solely to one or more assets of the partnership, gain or loss is recognized in an amount equal to the difference between the amount of the liability that is extinguished by the deemed disposition and the tax basis in those assets; and (2) a loss is recognized equal to the remaining tax basis of all of the partnership's assets not taken into account in (1). The final regulations clarify that the use of book value rather than tax basis for purposes of the constructive liquidation analysis is appropriate if tax basis and book value differ by reason of adjustments made under section 704(c) and the section 704(b) regulations.

C. Pledged Assets

Section 1.752–2(h)(1) of the proposed regulations provides that a partner is considered to bear the economic risk of loss for a partnership liability to the extent of the value of any of the partner's separate property (other than an interest in the partnership) that is pledged as security for the partnership liability. This provision has been clarified in the final regulations as applying to a related person's separate property that is pledged as security, as well as that of a partner.

Section 1.752–2(h)(2) of the proposed and final regulations provides that a partner is considered to bear the economic risk of loss for a partnership liability to the extent of the value of any property that the partner contributes to the partnership solely for the purpose of securing a partnership liability. The rule governing when property is contributed solely for the purpose of securing a partnership liability is modified in the final regulations. The purpose of the modification is to provide some flexibility in applying the rule in situations where allocations are mandated by the provisions of section 704 and the regulations thereunder.

D. Partner's Share of Nonrecourse Liabilities

The proposed and final regulations require that the nonrecourse liabilities of a partnership be allocated among the partners first to reflect the partners' shares of any partnership minimum gain, then to reflect any gain that would be allocated to the partners under section 704(c), and finally in accordance with the partners' interests in partnership profits. The partnership agreement may specify the partners' interests in partnership profits provided the interests so specified are reasonably consistent with allocations (which have substantial economic effect under the section 704(b) regulations) of some significant item of partnership income or gain. Alternatively, nonrecourse liabilities in excess of those allocated to reflect partnership minimum gain and section 704(c) gain ("excess nonrecourse liabilities") may be allocated among the partners in accordance with the manner in which it is reasonably expected that the deductions attributable to those nonrecourse liabilities will be allocated. The final regulations provide that excess nonrecourse liabilities need not be allocated under the same method each year.

E. De Minimis Rules

Section 1.752–2(d) of the proposed and final regulations provides de minimis exceptions to the general economic risk of loss analysis in certain situations when a partner is the lender or guarantor. One of the requirements of the de minimis rules in the proposed regulations was that a partner maintain a 10 percent or less interest in each item of partnership income, gain, loss, deduction, and credit for any taxable year of the partnership. The final regulations clarify that the de minimis rules apply only as long as the partner maintains a 10 percent or less interest in each item of partnership income, gain, loss, deduction, or credit for every taxable year that the partner is a partner in the partnership.

Some commentators suggested that the 10 percent requirement of the de minimis rule be eliminated. After full consideration of the comments, the requirement has not been eliminated. The legislative history of section 752 indicates that regulations under this section should apportion partnership liabilities based on the manner in which the partners, and persons related to the partners, share the economic risk of loss for the liabilities (other than bona fide nonrecourse liabilities). H.R. Rep. No. 861, 98th Cong., 2d Sess. 869 (1984). The de minimis rule is a narrow exception to the general risk of loss analysis, applying only when a partner who is in the business of lending money and whose relationship to the partnership is primarily that of a lender also owns a small equity interest in the partnership. Because it is limited to these narrow

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circumstances, the exception provided by the de minimis rule does not distort the economic risk of loss analysis.

F. Effective Dates

The final regulations are effective for liabilities incurred or assumed by the partnership on or after December 28, 1991. The final regulations provide a partnership with an election to apply the regulations to all of its liabilities to which the provisions of §§ 1.752–1 through 1.752–4 do not otherwise apply as of the beginning of the first taxable year of the partnership ending on or after December 28, 1991. Several commentators have suggested that there is some confusion regarding the treatment of certain situations under the effective date rules of the temporary and final regulations. The following addresses the comments received and is not intended to be a complete restatement of the effective date provisions.

First, regulations under section 752 are generally effective based on the date liabilities are incurred. As a result, a partnership with liabilities incurred in different periods may allocate basis to its partners under different sets of regulations: (1) § 1.751–1 (TD 6175 and TD 6500) (the "old" regulations); (2) § 1.752–0T to § 1.752–4T (TD 8237, TD 8274, and TD 8355) (the "temporary" regulations); and (3) the final regulations contained in this document.

Second, if a grandfathered partnership liability is materially modified, it loses its grandfathering and becomes subject to a different set of regulations, depending on when the material modification occurs. Third, a nonrecourse liability incurred or assumed by a partnership prior to March 1, 1984, is not governed by the temporary or final regulations unless an election has been made to apply the temporary or final regulations to the liability or unless a material modification of the liability has occurred. If a liability incurred or assumed by the partnership prior to March 1, 1984, is guaranteed by a partner after March 1, 1984, the liability is not governed by the temporary or final regulations. Similarly, if a third-party nonrecourse liability incurred or assumed by a partnership prior to January 30, 1989, is guaranteed by a related person after January 30, 1989, and again assuming no election is made to apply the temporary or final regulations to the liability, the liability is not governed by the temporary or final regulations. In addition, the subsequent guarantee by a partner of a liability incurred or assumed by the partnership prior to March 1, 1984, or the subsequent guarantee by a related person of a liability incurred or assumed by the partnership prior to January 30, 1989, is not considered a material modification of the liability for purposes of applying the regulations under section 752.

Special Analyses

These final regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required.

It is hereby certified that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that these rules do not have a significant impact on a substantial number of small entities. Therefore, a final Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking for the regulations was submitted to the Small Business Administration for comment on the impact of the rules on small business.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805 * * *.

Par. 2. Sections 1.752–0T through 1.752–4T are removed.

Par. 3. Sections 1.752–0 through 1.752–5 are added to read as follows:

§ 1.752–0 Table of Contents.

This section lists the captions that appear in §§ 1.752–1 through 1.752–5.

§ 1.752–1 Treatment of partnership liabilities.

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(e) Property subject to a liability.
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(1) In general.
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§ 1.752–3 Partner's share of nonrecourse liabilities.

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§ 1.752–4 Special rules.

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(b) Related person definition.
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(i) In general.
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(A) In general.
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§ 1.752–5 Effective dates and transition rules.

(a) In general.
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(1) In general.
(2) Time and manner of election.
(c) Effect of section 708(b)(1)(B) termination on determining date liabilities are incurred or assumed.

§ 1.752–1 Treatment of Partnership Liabilities.

(a) *Definitions.* For purposes of section 752, the following definitions apply:

(1) *Recourse liability defined.* A partnership liability is a recourse liability to the extent that any partner or related person bears the economic risk of loss for that liability under § 1.752–2.

(2) *Nonrecourse liability defined.* A partnership liability is a nonrecourse liability to the extent that no partner or related person bears the economic risk of loss for that liability under § 1.752–2.

(3) *Related person.* Related person means a person having a relationship to a partner that is described in § 1.752–4(b).

(b) *Increase in partner's share of liabilities.* Any increase in a partner's share of partnership liabilities, or any increase in a partner's individual liabilities by reason of the partner's assumption of partnership liabilities, is treated as a contribution of money by that partner to the partnership.

(c) *Decrease in partner's share of liabilities.* Any decrease in a partner's share of partnership liabilities, or any decrease in a partner's individual liabilities by reason of the partnership's assumption of the individual liabilities of the partner, is treated as a distribution of money by the partnership to that partner.

(d) *Assumption of liability.* Except as otherwise provided in paragraph (e) of this section, a person is considered to assume a liability only to the extent that:

(1) The assuming person is personally obligated to pay the liability; and

(2) If a partner or related person assumes a partnership liability, the person to whom the liability is owed knows of the assumption and can directly enforce the partner's or related person's obligation for the liability, and no other partner or person that is a related person to another partner would bear the economic risk of loss for the liability immediately after the assumption.

(e) *Property subject to a liability.* If property is contributed by a partner to the partnership or distributed by the partnership to a partner and the property is subject to a liability of the transferor, the transferee is treated as having assumed the liability, to the extent that the amount of the liability does not exceed the fair market value of the property at the time of the contribution or distribution.

(f) *Netting of increases and decreases in liabilities resulting from same transaction.* If, as a result of a single transaction, a partner incurs both an increase in the partner's share of the partnership liabilities (or the partner's individual liabilities) and a decrease in the partner's share of the partnership liabilities (or the partner's individual liabilities), only the net decrease is treated as a distribution from the partnership and only the net increase is treated as a contribution of money to the partnership. Generally, the contribution to or distribution from a partnership of property subject to a liability or the termination of the partnership under section 708(b) will require that increases and decreases in liabilities associated with the transaction be netted to determine if a partner will be deemed to have made a contribution or received a distribution as a result of the transaction.

(g) *Example.* The following example illustrates the principles of paragraphs (b), (c), (e), and (f) of this section.

Example. Property contributed subject to a liability; netting of increase and decrease in partner's share of liability. B contributes property with an adjusted basis of $1,000 to a general partnership in exchange for a one-third interest in the partnership. At the time of the contribution, the partnership does not have any liabilities outstanding and the property is subject to a recourse debt of $150 and has a fair market value in excess of $150. After the contribution, B remains personally liable to the creditor and none of the other partners bears any of the economic risk of loss for the liability under state law or otherwise. Under paragraph (e) of this section, the partnership is treated as having assumed the $150 liability. As a result, B's individual liabilities decrease by $150. At the same time, however, B's share of liabilities of the partnership increases by $150. Only the net increase or decrease in B's share of the liabilities of the partnership and B's individual liabilities is taken into account in applying section 752. Because there is no net change, B is not treated as having contributed money to the partnership or as having received a distribution of money from the partnership under paragraph (b) or (c) of this section. Therefore B's basis for B's partnership interest is $1,000 (B's basis for the contributed property).

(h) *Sale or exchange of a partnership interest.* If a partnership interest is sold or exchanged, the reduction in the transferor partner's share of partnership liabilities is treated as an amount realized under section 1001 and the regulations thereunder. For example, if a partner sells an interest in a partnership for $750 cash and transfers to the purchaser the partner's share of partnership liabilities in the amount of $250, the seller realizes $1,000 on the transaction.

(i) *Bifurcation of partnership liabilities.* If one or more partners bears the economic risk of loss as to part, but not all, of a partnership liability represented by a single contractual obligation, that liability is treated as two or more separate liabilities for purposes of section 752. The portion of the liability as to which one or more partners bear the economic risk of loss is a recourse liability and the remainder of the liability, if any, is a nonrecourse liability.

§ 1.752–2 Partner's share of resources liabilities.

(a) *In general.* A partner's share of a recourse partnership liability equals the portion of that liability, if any, for which the partner or related person bears the economic risk of loss. The determination of the extent to which a partner bears the economic risk of loss for a partnership liability is made under the rules in paragraphs (b) through (j) of this section.

(b) *Obligation to make a payment.* (1) *In general.* Except as otherwise provided in this section, a partner bears the economic risk of loss for a partnership liability to the extent that, if the partnership constructively liquidated, the partner or related person would be obligated to make a payment to any person (or a contribution to the partnership) because that liability becomes due and payable and the partner or related person would not be entitled to reimbursement from another partner or person that is a related person to another partner. Upon a constructive liquidation, all of the following events are deemed to occur simultaneously:

(i) All of the partnership's liabilities become payable in full;

(ii) With the exception of property contributed to secure a partnership liability (see § 1.752–2(h)(2)), all of the partnership's assets, including cash, have a value of zero;

(iii) The partnership disposes of all of its property in a fully taxable transaction for no consideration (except relief from liabilities for which the creditors's right to repayment is limited solely to one or more assets of the partnership);

(iv) All items of income, gain, loss, or deduction are allocated among the partners; and

(v) The partnership liquidates.

(2) *Treatment upon deemed disposition.* For purposes of paragraph (b)(1) of this section, gain or loss on the deemed disposition of the partnership's assets is computed in accordance with the following:

(i) If the creditor's right to repayment of a partnership liability is limited solely to one or more assets of the partnership, gain or loss is recognized in an amount

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equal to the difference between the amount of the liability that is extinguished by the deemed disposition and the tax basis (or book value to the extent section 704(c) or § 1.701–1(b)(4)(i) applies) in those assets.

(ii) A loss is recognized equal to the remaining tax basis (or book value to the extent section 704(c) or § 1.704–1(b)(4)(i) applies) of all the partnership's assets not taken into account in paragraph (b)(2)(i) of this section.

(3) *Obligations recognized.* The determination of the extent to which a partner or related person has an obligation to make a payment under paragraph (b)(1) of this section is based on the facts and circumstances at the time of the determination. All statutory and contractual obligations relating to the partnership liability are taken into account for purposes of applying this section, including:

(i) Contractual obligations outside the partnership agreement such as guarantees, indemnifications, reimbursement agreements, and other obligations running directly to creditors or to other partners, or to the partnership;

(ii) Obligations to the partnership that are imposed by the partnership agreement, including the obligation to make a capital contribution and to restore a deficit capital account upon liquidation of the partnership; and

(iii) Payment obligations (whether in the form of direct remittances to another partner or a contribution to the partnership) imposed by state law including the governing state partnership statute.

To the extent that the obligation of a partner to make a payment with respect to a partnership liability is not recognized under this paragraph (b)(3), paragraph (b) of this section is applied as if the obligation did not exist.

(4) *Contingent obligations.* A payment obligation is disregarded if, taking into account all the facts and circumstances, the obligation is subject to contingencies that make it unlikely that the obligation will ever be discharged. If a payment obligation would arise at a future time after the occurrence of an event that is not determinable with reasonable certainty, the obligation is ignored until the event occurs.

(5) *Reimbursement rights.* A partner's or related person's obligation to make a payment with respect to a partnership liability is reduced to the extent that the partner or related person is entitled to reimbursement from another partner or a person who is a related person to another partner.

(5) *Deemed satisfaction of obligation.* For purposes of determining the extent to which a partner or related person has a payment obligation and the economic risk of loss, it is assumed that all partners and related persons who have obligations to make payments actually perform those obligations, irrespective of their actual net worth, unless the facts and circumstances indicate a plan to circumvent or avoid the obligation. See § 1.752–2(j).

(c) *Partner or related person as lender*—(1) *In general.* A partner bears the economic risk of loss for a partnership liability to the extent that the partner or a related person makes (or acquires an interest in) a nonrecourse loan to the partnership and the economic risk of loss for the liability is not borne by another partner.

(2) *Wrapped debt.* If a partnership liability is owed to a partner or related person and that liability includes (*i.e.*, is "wrapped" around) a nonrecourse obligation encumbering partnership property that is owed to another person, the partnership liability will be treated as two separate liabilities. The portion of the partnership liability corresponding to the wrapped debt is treated as a liability owed to another person.

(d) *De minimis exceptions*—(1) *Partner as lender.* The general rule contained in paragraph (c)(1) of this section does not apply if a partner or related person whose interest (directly or indirectly through one or more partnerships including the interest of any related person) in each item of partnership income, gain, loss, deduction, or credit for every taxable year that the partner is a partner in the partnership is 10 percent or less, makes a loan to the partnership which constitutes qualified nonrecourse financing within the meaning of section 465(b)(6) (determined without regard to the type of activity financed).

(2) *Partner as guarantor.* The general rule contained in paragraph (b)(1) of this section does not apply if a partner or related person whose interest (directly or indirectly through one or more partnerships including the interest of any related person) in each item of partnership income, gain, loss, deduction, or credit for every taxable year that the partner is a partner in the partnership is 10 percent or less, guarantees a loan that would otherwise be a nonrecourse loan of the partnership and which constitute qualified nonrecourse financing within the meaning of section 465(b)(6) (without regard to the type of activity financed) if the guarantor had made the loan to the partnership.

(e) *Special rule for nonrecourse liability with interest guaranteed by a partner*—(1) *In general.* For purposes of this section, if one or more partners or related persons have guaranteed the payment of more than 25 percent of the total interest that will accrue on a partnership nonrecourse liability over its remaining term, and it is reasonable to expect that the guarantor will be required to pay substantially all of the guaranteed future interest if the partnership fails to do so, then the liability is treated as two separate partnership liabilities. If this rule applies, the partner or related person that has guaranteed the payment of interest is treated as bearing the economic risk of loss for the partnership liability to the extent of the present value of the guaranteed future interest payments. The remainder of the stated principal amount of the partnership liability constitutes a nonrecourse liability. Generally, in applying this rule, it is reasonable to expect that the guarantor will be required to pay substantially all of the guaranteed future interest if, upon a default in payment by the partnership, the lender can enforce the interest guaranty without foreclosing on the property and thereby extinguishing the underlying debt. The guarantee of interest rule continues to apply even after the point at which the amount of guaranteed interest that will accrue is less than 25% of the total interest that will accrue on the liability.

(2) *Computation of present value.* The present value of the guaranteed future interest payments is computed using a discount rate equal to either the interest rate stated in the loan documents, or if interest is imputed under either section 483 or section 1274, the applicable federal rate, compounded semi-annually. The computation takes into account any payment of interest that the partner or related person may be required to make only to the extent that the interest will accrue economically (determined in accordance with section 446 and the regulations thereunder) after the date of the interest guarantee. If the loan document contains a variable rate of interest that is an interest rate based on current values of an objective interest index, the present value is computed on the assumption that the interest determined under the objective interest index on the date of the computation will remain constant over the term of the loan. The term "objective interest index" has the meaning given to it in section 1275 and the regulations thereunder (relating to variable rate debt instruments). Examples of an objective interest index include the prime rate of a designated financial institution, LIBOR (London Interbank Offered Rate), and the applicable federal rate under section 1274(d).

(3) *Safe harbor.* The general rule contained in paragraph (e)(1) of this section does not apply to a partnership nonrecourse liability if the guarantee of interest by the partner or related person is for a period not in excess of the lesser of five years or one-third of the term of the liability.

(4) *De minimis exception.* The general rule contained in paragraph (e)(1) of this section does not apply if a partner or related person whose interest (directly or indirectly through one or more partnerships including the interest of any related person) in each item of partnership income, gain, loss, deduction, or credit for every taxable year that the partner is a partner in the partnership is 10 percent of less, guarantees the interest on a loan to that partnership which constitutes qualified nonrecourse financing within the meaning of section 465(b)(6) (determined without regard to the type of activity financed). An allocation of interest to the extent paid by the guarantor is not treated as a partnership item of deduction or loss subject to the 10 percent or less rule.

(f) *Examples.* The following examples illustrate the principles of paragraphs (a) through (e) of this section.

Example 1. Determining when a partner bears the economic risk of loss. A and B form a general partnership with each contributing $100 in cash. The partnership purchases an office building on leased land for $1,000 from an unrelated seller, paying $200 in cash and executing a note to the seller for the balance of $800. The note is a general obligation of the partnership, *i.e.*, no partner has been relieved from personal liability. The partnership agreement provides that all items are allocated equally except that tax losses are specially allocated 90% to A and 10% to B and that capital accounts will be maintained in accordance with the regulations under section 704(b), including a deficit capital account restoration obligation on liquidation. In a constructive liquidation, the $800 liability becomes due and payable. All of the partnership's assets, including the building, are deemed to be worthless. The building is deemed sold for a value of zero. Capital accounts are adjusted to reflect the loss on the hypothetical disposition, as follows:

	A	B
Initial contribution	$100	$100
Loss on hypothetical sale	(900)	(100)
	($800)	$0

Other than the partners' obligation to fund negative capital accounts on liquidation, there are no other contractual or statutory payment obligations existing between the partners, the partnership and the lender. Therefore, $800 of the partnership liability is classified as a recourse liability because one or more partners bears the economic risk of loss for non-payment. B has no share of the $800 liability since the constructive liquidation produces no payment obligation for B. A's share of the partnership liability is $800 because A would have an obligation in that amount to make a contribution to the partnership.

Example 2. Recourse liability; deficit restoration obligation. C and D each contribute $500 in cash to the capital of a new general partnership, CD. CD purchases property from an unrelated seller for $1,000 in cash and a $9,000 mortgage note. The note is a general obligation of the partnership, *i.e.*, no partner has been relieved from personal liability. The partnership agreement provides that profits and losses are to be divided 40% to C and 60% to D. C and D are required to make up any deficit in their capital accounts. In a constructive liquidation, all partnership assets are deemed to become worthless and all partnership liabilities become due and payable in full. The partnership is deemed to dispose of all its assets in a fully taxable transaction for no consideration. Capital accounts are adjusted to reflect the loss on the hypothetical disposition, as follows:

	C	D
Initial contribution	$500	$500
Loss on hypothetical sale	(4,000)	(6,000)
	($3,500)	($5,500)

C's capital account reflects a deficit that C would have to make up to $3,500 and D's Capital account reflects a deficit that D would have to make up of $5,500. Therefore, the $9,000 mortgage note is a recourse liability because one or more partners bear the economic risk of loss for the liability. C's share of the recourse liability is $3,500 and D's share is $5,500.

Example 3. Guarantee by limited partner; partner deemed to satisfy obligation. E and F form a limited partnership. E, the general partner, contributes $2,000 and F the limited partner, contributes $8,000 in cash to the partnership. The partnership agreement allocates losses 20% to E and 80% to F until F's capital account is reduced to zero, after which all losses are allocated to E. The partnership purchases depreciable property for $25,000 using its $10,000 cash and a $15,000 recourse loan from a bank. F guarantees payment of the $15,000 loan to the extent the loan remains unpaid after the bank has exhausted its remedies against the partnership. In a constructive liquidation, the $15,000 liability becomes due and payable. All of the partnership's assets, including the depreciable property, are deemed to be worthless. The depreciable property is deemed sold for a value of zero. Capital accounts are adjusted to reflect the loss on the hypothetical disposition, as follows:

	E	F
Initial contribution	$2,000	$8,000
Loss on hypothetical sale	(17,000)	(8,000)
	($15,000)	$0

E, as a general partner, would be obligated by operation of law to make a net contribution to the partnership of $15,000. Because E is assumed to satisfy that obligation, it is also assumed that F would not have to satisfy F's guarantee. The $15,000 mortgage is treated as a recourse liability because one or more partners bear the economic risk of loss. E's share of the liability is $15,000, and F's share is zero. This would be so even if E's net worth at the time of the determination is less than $15,000, unless the facts and circumstances indicate a plan to circumvent or avoid E's obligation to contribute to the partnership.

Example 4. Partner guarantee with right of subrogation. G, a limited partner in the GH partnership, guarantees a portion of a partnership liability. The liability is a general obligation of the partnership, *i.e.*, no partner has been relieved from personal liability. If under state law G is subrogated to the rights of the lender, G would have the right to recover the amount G paid to the recourse lender from the general partner. Therefore, G does not bear the economic risk of loss for the partnership liability.

Example 5. Bifurcation of partnership liability; guarantee of part of nonrecourse liability. A partnership borrows $10,000, secured by a mortgage on real property. The mortgage note contains an exoneration clause which provides that in the event of default, the holder's only remedy is to foreclose on the property. The holder may not look to any other partnership asset or to any partner to pay the liability. However, to induce the lender to make the loan, a partner guarantees payment of $200 of the loan principal. The exoneration clause does not apply to the partner's guarantee. If the partner paid pursuant to the guarantee, the partner would be subrogated to the rights of the lender with respect to $200 of the mortgage debt, but the partner is not otherwise entitled to reimbursement from the partnership or any partner. For purposes of section 752, $200 of the $10,000 mortgage liability is treated as a recourse liability of the partnership and $9,800 is treated as a nonrecourse liability of the partnership. The partner's share of the recourse liability of the partnership is $200.

Example 6. Wrapped debt. I, an individual, purchases real estate from an unrelated seller for $10,000, paying $1,000 in cash and giving a $9,000 purchase mortgage note on which I has no personal liability and as to which the seller can look only to the property for satisfaction. At a time when the property is worth $15,000, I sells the property to a partnership in which I is a general partner. The partnership pays for the property with a partnership purchase money mortgage note of $15,000 on which neither the partnership nor any partner (or person related to a partner) has personal liability. The $15,000 mortgage

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note is a wrapped debt that includes the $9,000 obligation to the original seller. The liability is a recourse liability to the extent of $6,000 because I is the creditor with respect to the loan and I bears the economic risk of loss for $6,000. I's share of the recourse liability is $6,000. The remaining $9,000 is treated as a partnership nonrecourse liability that is owed to the unrelated seller.

Example 7. Guarantee of interest by partner treated as part recourse and part nonrecourse. On January 1, 1992, a partnership obtains a $4,000,000 loan secured by a shopping center owned by the partnership. Neither the partnership nor any partner has any personal liability under the loan documents for repayment of the stated principal amount. Interest accrues at a 15 percent annual rate and is payable on December 31 of each year. The principal is payable in a lump sum on December 31, 2006. A partner guarantees payment of 50 percent of each interest payment required by the loan. The guarantee can be enforced without first foreclosing on the property. When the partnership obtains the loan, the present value (discounted at 15 percent, compounded annually) of the future interest payments is $3,508,422, and of the future principal payment is $491,578. If tested on that date, the loan would be treated as a partnership liability of $1,754,211 ($3,508,422 × .5) for which the guaranteeing partner bears the economic risk of loss and a partnership nonrecourse liability of $2,245,789 ($1,754,211 + $491,578).

Example 8. Contingent obligation not recognized. J and K form a general partnership with cash contributions of $2,500 each. J and K share partnership profits and losses equally. The partnership purchases an apartment building for its $5,000 of cash and a $20,000 nonrecourse loan from a commercial bank. The nonrecourse loan is secured by a mortgage on the building. The loan documents provide that the partnership will be liable for the outstanding balance of the loan on a recourse basis to the extent of any decrease in the value of the apartment building resulting from the partnership's failure properly to maintain the property. There are no facts that establish with reasonable certainty the existence of any liability on the part of the partnership (and its partners) for damages resulting from the partnership's failure properly to maintain the building. Therefore, no partner bears the economic risk of loss, and the liability constitutes a nonrecourse liability. Under § 1.752-3, J and K share this nonrecourse liability equally because they share all profits and losses equally.

(g) *Time-value-of-money considerations*—(1) *In general.* The extent to which a partner or related person bears the economic risk of loss is determined by taking into account any delay in the time when a payment or contribution obligation with respect to a partnership liability is to be satisfied. If a payment obligation with respect to a partnership liability is not required to be satisfied within a reasonable time after the liability becomes due and payable, or if the obligation to make a contribution to the partnership is not required to be satisfied before the later of—

(i) The end of the year in which the partner's interest is liquidated, or

(ii) 90 days after the liquidation,

the obligation is recognized only to the extent of the value of the obligation.

(2) *Valuation of an obligation.* The value of a payment or contribution obligation that is not required to be satisfied within the time period specified in paragraph (g)(1) of this section equals the entire principal balance of the obligation only if the obligation bears interest equal to or greater than the applicable federal rate under section 1274(d) at the time of valuation, commencing on—

(i) In the case of a payment obligation, the date that the partnership liability to a creditor or other person to whom the obligation relates becomes due and payable, or

(ii) In the case of a contribution obligation, the date of the liquidation of the partner's interest in the partnership.

If the obligation does not bear interest at a rate at least equal to the applicable federal rate at the time of valuation, the value of the obligation is discounted to the present value of all payments due from the partner or related person (*i.e.*, the imputed principal amount computed under section 1274(b)). For purposes of making this present value determination, the partnership is deemed to have constructively liquidated as of the date on which the payment obligation is valued and the payment obligation is assumed to be a debt instrument subject to the rules of section 1274 (*i.e.*, the debt instrument is treated as if it were issued for property at the time of the valuation).

(3) *Satisfaction of obligation with partner's promissory note.* An obligation is not satisfied by the transfer to the obligee of a promissory note by a partner or related person unless the note is readily tradeable on an established securities market.

(4) *Example.* The following example illustrates the principle of paragraph (g) of this section.

Example. Value of obligation not required to be satisfied within specified time period. A, the general partner, and B, the limited partner, each contributes $10,000 to partnership AB. AB purchases property from an unrelated seller for $20,000 in cash and a $70,000 recourse purchase money note. The partnership agreement provides that profits and losses are to be divided equally. A and B are required to make up any deficit in their capital accounts. While A is required to restore any deficit balance in A's capital account within 90 days after the date of liquidation of the partnership, B is not required to restore any deficit for two years following the date of liquidation. The deficit in B's capital account will not bear interest during that two-year period. In a constructive liquidation, all partnership assets are deemed to become worthless and all partnership liabilities become due and payable in full. The partnership is deemed to dispose of all its assets in a fully taxable transaction for no consideration. Capital accounts are adjusted to reflect the loss on the hypothetical disposition, as follows:

	A	B
Initial contribution	$10,000	$10,000
Loss on hypothetical sale	(45,000)	(45,000)
	(35,000)	(35,000)

A's and B's capital accounts each reflect deficits of $35,000. B's obligation to make a contribution pursuant to B's deficit restoration obligation is recognized only to the extent of the fair market value of that obligation at the time of the constructive liquidation because B is not required to satisfy that obligation by the later of the end of the partnership taxable year in which B's interest is liquidated or within 90 days after the date of the liquidation. Because B's obligation does not bear interest, the fair market value is deemed to equal the imputed principal amount under section 1274(b). Under section 1274(b), the imputed principal amount of a debt instrument equals the present value of all payments due under the debt instrument. Assume the applicable federal rate with respect to B's obligation is 10 percent compounded semiannually. Using this discount rate, the present value of the $35,000 payment that B would be required to make two years after the constructive liquidation to restore the deficit balance in B's capital account equals $28,795. To the extent that B's deficit restoration obligation is not recognized, it is assumed that B's obligation does not exist. Therefore, A, as the sole general partner, would be obligated by operation of law to contribute an additional $6,205 of capital to the partnership. Accordingly, under paragraph (g) of this section, B bears the economic risk of loss for $28,795 and A bears to economic risk of loss for $41,205 ($35,000 + $6,205).

(h) *Partner providing property as security for partnership liability*—(1) *Direct pledge.* A partner is considered to bear the economic risk of loss for a partnership liability to the extent of the value of any the partner's or related person's separate property (other than a direct or indirect interest in the partnership) that is pledged as security for the partnership liability.

(2) *Indirect pledge.* A partner is considered to bear the economic risk of loss for a partnership liability to the extent of the value of any property that the partner contributes to the partnership solely for the purpose of securing a partnership liability. Contributed property is not treated as contributed solely for the purpose of securing a partnership liability unless substantially all of the items of income, gain, loss, and deduction attributable to the contributed property are allocated to the contributing partner, and this allocation is generally greater than the partner's share of other significant items of partnership income, gain, loss, or deduction.

(3) *Valuation.* The extent to which a partner bears the economic risk of loss as a result of a direct pledge described in paragraph (h)(1) of this section or an indirect pledge described in paragraph (h)(2) of this section is limited to the fair market value of the property at the time of the pledge or contribution.

(4) *Partner's promissory note.* For purposes of paragraph (h)(2) of this section, a promissory note of the partner or related person that is contributed to the partnership shall not be taken into account unless the note is readily tradeable on an established securities market.

(i) *Treatment of recourse liabilities in tiered partnerships.* If a partnership (the "upper-tier partnership") owns (directly or indirectly through one or more partnerships) an interest in another partnership (the "lower-tier partnership"), the liabilities of the lower-tier partnership are allocated to the upper-tier partnership in an amount equal to the sum of the following—

(1) The amount of the economic risk of loss that the upper-tier partnership bears with respect to the liabilities; and

(2) Any other amount of the liabilities with respect to which partners of the upper-tier partnership bear the economic risk of loss.

(j) *Anti-abuse rules*—(1) *In general.* An obligation of a partner or related person to make a payment may be disregarded or treated as an obligation of another person for purposes of this section if facts and circumstances indicate that a principal purpose of the arrangement between the parties is to eliminate the partner's economic risk of loss with respect to that obligation or create the appearance of the partner or related person bearing the economic risk of loss when, in fact, the substance of the arrangement is otherwise.

Circumstances with respect to which a payment obligation may be disregarded include, but are not limited to, the situations described in paragraphs (j)(2) and (j)(3) of this section.

(2) *Arrangements tantamount to a guarantee.* Irrespective of the form of a contractual obligation, a partner is considered to bear the economic risk of loss with respect to a partnership liability, or a portion thereof, to the extent that:

(i) The partner or related person undertakes one or more contractual obligations so that the partnership may obtain a loan;

(ii) The contractual obligations of the partner or related person eliminate substantially all the risk to the lender that the partnership will not satisfy its obligations under the loan; and

(iii) One of the principal purposes of using the contractual obligations is to attempt to permit partners (other than those who are directly or indirectly liable for the obligation) to include a portion of the loan in the basis of their partnership interests.

The partners are considered to bear the economic risk of loss for the liability in accordance with their relative economic burdens for the liability pursuant to the contractual obligations. For example, a lease between a partner and a partnership which is not on commercially reasonable terms may be tantamount to a guarantee by the partner of a partnership liability.

(3) *Plan to circumvent or avoid the obligation.* An obligation of a partner to make a payment is not recognized if the facts and circumstances evidence a plan to circumvent or avoid the obligation.

(4) *Example.* The following example illustrates the principle of paragraph (j)(3) of this section.

Example. Plan to circumvent or avoid obligation. A and B form a general partnership. A, a corporation, contributes $20,000 and B contributes $80,000 to the partnership. A is obligated to restore any deficit in its partnership capital account. The partnership agreement allocates losses 20% to A and 80% to B until B's capital account is reduced to zero, after which all losses are allocated to A. The partnership purchases depreciable property for $250,000 using its $100,000 cash and a $150,000 recourse loan from a bank. B guarantees payment of the $150,000 loan to the extent the loan remains unpaid after the bank has exhausted its remedies against the partnership. A is a subsidiary, formed by a parent of a consolidated group, with capital limited to $20,000 to allow the consolidated group to enjoy the tax losses generated by the property while at the same time limiting its monetary exposure for such losses. These facts, when considered together with B's guarantee, indicate a plan to circumvent or avoid A's obligation to contribute to the partnership. The rules of section 752 must be applied as if A's obligation to contribute did not exist. Accordingly, the $150,000 liability is a recourse liability that is allocated entirely to B.

§ 1.752-3 Partner's share of nonrecourse liabilities.

(a) *In general.* A partner's share of the nonrecourse liabilities of a partnership equals the sum of paragraphs (a)(1) through (a)(3) of this section as follows—

(1) The partner's share of partnership minimum gain determined in accordance with the rules of section 704(b) and the regulations thereunder;

(2) The amount of any taxable gain that would be allocated to the partner under section 704(c) (or in the same manner as section 704(c) in connection with a revaluation of partnership property) if the partnership disposed of (in a taxable transaction) all partnership property subject to one or more nonrecourse liabilities of the partnership in full satisfaction of the liabilities and for no other consideration; and

(3) The partner's share of the excess nonrecourse liabilities (those not allocated under paragraphs (a)(1) and (a)(2) of this section) of the partnership as determined in accordance with the partner's share of partnership profits. The partner's interest in partnership profits is determined by taking into account all facts and circumstances relating to the economic arrangement of the partners. The partnership agreement may specify the partners' interests in partnership profits for purposes of allocating excess nonrecourse liabilities provided the interests so specified are reasonably consistent with allocations (that have substantial economic effect under the section 704(b) regulations) of some other significant item of partnership income or gain. Alternatively, excess nonrecourse liabilities may be allocated among the partners in accordance with the manner in which it is reasonably expected that the deductions attributable to those nonrecourse liabilities will be allocated. Excess nonrecourse liabilities are not required to be allocated under the same method each year.

(b) *Examples.* The following examples illustrate the principles of paragraph (a) of this section.

Example 1. Partner's share of nonrecourse liabilities. The AB partnership purchases depreciable property for a $1,000 purchase money note that is nonrecourse liability under the rules of this section. Assume that this is the only nonrecourse liability of the partnership, and that no principal payments are due on the purchase money note for a year. The partnership agreement provides that all items of income, gain, loss, and deduction are allocated equally. Immediately after purchasing the depreciable property, the partners share the nonrecourse liability equally because they have equal interests in partnership profits. A and B are each treated as if they contributed $500 to the partnership to reflect each partner's increase in his or her share of partnership liabilities (from $0 to $500). The minimum gain with respect to an

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item of partnership property subject to a nonrecourse liability equals the amount of gain that would be recognized if the partnership disposed of the property in full satisfaction of the nonrecourse liability and for no other consideration. Therefore, if the partnership claims a depreciation deduction of $200 for the depreciable property for the year it acquires that property, partnership minimum gain for the year will increase by $200 (the excess of the $1,000 nonrecourse liability over the $800 adjusted tax basis of the property). See section 704(b) and the regulations thereunder. A and B each have a $100 share of partnership minimum gain at the end of that year because the depreciation deduction is treated as a nonrecourse deduction. See section 704(b) and the regulation thereunder. Accordingly, at the end of that year, A and B are allocated $100 each of the nonrecourse liability to match their shares of partnership minimum gain. The remaining $800 of the nonrecourse liability will be allocated equally between A and B ($400 each).

Example 2. Excess nonrecourse liabilities allocated consistently with reasonably expected deductions. The facts are the same as in *Example 1* except that the partnership agreement provides that depreciation deductions will be allocated to A. The partners agree to allocate excess nonrecourse liabilities in accordance with the manner in which it is reasonably expected that the deductions attributable to those nonrecourse liabilities will be allocated. Assuming that the allocation of all of the depreciation deductions to A is valid under section 704(b), immediately after purchasing the depreciable property, A's share of the nonrecourse liability is $1,000. Accordingly, A is treated as if A contributed $1,000 to the partnership.

§ 1.752-4 Special rules.

(a) *Tiered partnerships.* An upper-tier partnership's share of the liabilities of a lower-tier partnership (other than any liability of the lower-tier partnership that is owed to the upper-tier partnership) is treated as a liability of the upper-tier partnership for purposes of applying section 752 and the regulations thereunder to the partners of the upper-tier partnership.

(b) *Related person definition.*—(1) *In general.* A person is related to a partner if the person and the partner bear a relationship to each other that is specified in section 267(b) or 707(b)(1), subject to the following modifications:

(i) Substitute "80 percent or more" for "more than 50 percent" each place it appears in those sections;

(ii) A person's family is determined by excluding brothers and sisters; and

(iii) Disregard sections 267(e)(1) and 267(f)(1)(A).

(2) *Person related to more than one partner.*—(i) *In general.* If, in applying the related person rules in paragraph (b)(1) of this section, a person is related to more than one partner, paragraph (b)(1) of this section is applied by treating the person as related only to the partner with whom there is the highest percentage of related ownership. If two or more partners have the same percentage of related ownership and no other partner has a greater percentage, the liability is allocated equally among the partners having the equal percentages of related ownership.

(ii) *Natural persons.* For purposes of determining the percentage of related ownership between a person and a partner, natural persons who are related by virtue of being members of the same family are treated as having a percentage relationship of 100 percent with respect to each other.

(iii) *Related partner exception.* Notwithstanding paragraph (b)(1) of this section (which defines related person), persons owning interests directly or indirectly in the same partnership are not treated as related persons for purposes of determining the economic risk of loss borne by each of them for the liabilities of the partnership. This paragraph (iii) does not apply when determining a partner's interest under the de minimis rules in §§ 1.752-2 (d) and (e).

(iv) *Special rule where entity structured to avoid related person status.*—(A) *In general.* If—

(*1*) A partnership liability is owed to or guaranteed by another entity that is a partnership, an S corporation, a C corporation, or a trust;

(*2*) A partner or related person owns (directly or indirectly) a 20 percent or more ownership interest in the other entity; and

(*3*) A principal purpose of having the other entity act as a lender or guarantor of the liability was to avoid the determination that the partner that owns the interest bears the economic risk of loss for federal income tax purposes for all or part of the liability;

then the partner is treated as holding the other entity's interest as a creditor or guarantor to the extent of the partner's or related person's ownership interest in the entity.

(B) *Ownership interest.* For purposes of paragraph (b)(2)(iv)(A) of this section, a person's ownership interest in:

(*1*) A partnership equals the partner's highest percentage interest in any item of partnership loss or deduction for any taxable year;

(*2*) An S corporation equals the percentage of the outstanding stock in the S corporation owned by the shareholder;

(*3*) A C corporation equals the percentage of the fair market value of the issued and outstanding stock owned by the shareholder; and

(*4*) A trust equals the percentage of the actuarial interests owned by the beneficial owner of the trust.

(C) *Example. Entity structured to avoid related person status.* A, B, and C form a general partnership, ABC. A, B, and C are equal partners, each contributing $1,000 to the partnership. A and B want to loan money to ABC and have the loan treated as nonrecourse for purposes of section 752. A and B form partnership AB to which each contributes $50,000. A and B share losses equally in partnership AB. Partnership AB loans partnership ABC $100,000 on a nonrecourse basis secured by the property ABC buys with the loan. Under these facts and circumstances, A and B bear the economic risk of loss with respect to the partnership liability equally based on their percentage interest in losses of partnership AB.

(c) *Limitation.* The amount of an indebtedness is taken into account only once, even though a partner (in addition to the partner's liability for the indebtedness as a partner) may be separately liable therefor in a capacity other than as a partner.

(d) *Time of determination.* A partner's share of partnership liabilities must be determined whenever the determination is necessary in order to determine the tax liability of the partner or any other person. See § 1.705-1(a) for rules regarding when the adjusted basis of a partner's interest in the partnership must be determined.

§ 1.752-5 Effective dates and transition rules.

(a) *In general.* Unless a partnership makes an election under paragraph (b)(1) of this section to apply the provisions of §§ 1.752-1 through 1.752-4 earlier, §§ 1.752-1 through 1.752-4 apply to any liability incurred or assumed by a partnership on or after December 28, 1991, other than a liability incurred or assumed by the partnership pursuant to a written binding contract in effect prior to December 28, 1991 and at all times thereafter. For liabilities incurred or assumed by a partnership prior to December 28, 1991 (or pursuant to a written binding contract in effect prior to December 28, 1991 and at all times thereafter), unless an election to apply these regulations has been made, see §§ 1.752-0T to 1.752-4T, set forth in 26 CFR 1.752-0T through 1.752-4T as contained in 26 CFR edition revised April 1, 1991, (TD 8237, TD 8274, and TD 8355) and § 1.752-1, set forth in 26 CFR 1.752-1 as contained in 26 CFR edition revised April 1, 1988 (TD 6175 and TD 6500).

(b) *Election.*—(1) *In general.* A partnership may elect to apply the provisions of §§ 1.752-1 through 1.752-4

to all of its liabilities to which the provisions of those sections do not otherwise apply as of the beginning of the first taxable year of the partnership ending on or after December 28, 1991.

(2) *Time and manner of election.* An election under this paragraph (b) is made by attaching a written statement to the partnership return for the first taxable year of the partnership ending on or after December 28, 1991. The written statement must include the name, address, and taxpayer identification number of the partnership making the statement and contain a declaration that an election is being made under this paragraph (b).

(c) *Effect of section 708(b)(1)(B) termination on determining date liabilities are incurred or assumed.* For purposes of applying this section, a termination of the partnership under section 708(b)(1)(B) will not cause partnership liabilities incurred or assumed prior to the termination to be treated as incurred or assumed on the date of the termination.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. Section 602.101(c) is amended by removing the citation "1.752-4T . . . 1545-1090" and adding the following citation to read as follows: "1.752-5 . . . 1545-1090."

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

Approved: December 5, 1991.

Kenneth W. Gideon,
Assistant Secretary of the Treasury.

[FR Doc. 91-30596 Filed 12-20-91; 8:45 am]
BILLING CODE 4830-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2603

Freedom of Information Act; Exemption (4)

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: On October 30, 1991, the Pension Benefit Guaranty Corporation ("PBGC") published an interim final rule amending its Freedom of Information Act ("FOIA") regulations to include designation and notification procedures for records containing information that, pursuant to exemption (4), the PBGC may not be required to make available to the public. These supplementary provisions assure that submitters of trade secrets and privileged or confidential business information have an opportunity to explain to the PBGC why the information should not be made available in response to a request under the FOIA. The PBGC invited the public to submit comments on its designation and notification procedures until November 29, 1991, the effective date of the interim final rule. The agency received no comments during this period, and it now is republishing the amendments as a final rule.

EFFECTIVE DATE: December 23, 1991.

FOR FURTHER INFORMATION CONTACT: Judith Neibrief, Attorney, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8850, or E. William FitzGerald, PBGC Disclosure Officer, Communication and Public Affairs Department (Code 3800), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8839 (202-778-8859 for TTY and TTD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1001 *et seq.* As a Government corporation, the PBGC is subject to the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, which, among other things, establishes requirements for making agency records available to the public. Part 2603 of the PBGC's regulations (29 CFR part 2603), Examination and Copying of Pension Benefit Guaranty Corporation Records, implements the FOIA and the agency's policy to disseminate information to the public and, insofar as is compatible with the discharge of its responsibilities and consistent with law, to disclose information in its records upon request to members of the public.

These regulations set forth, in § 2603.8, the PBGC's policy of disclosure and, in §§ 2603.15 through 2603.23, restrictions on the disclosure of various records. The restrictions implement paragraphs (1) through (9) of section 552(b), which specify matters to which the FOIA does not apply. [Paragraphs (1) through (9) of section 552(b) are referred to, here and in the regulations, as exemptions (1) through (9), in that order.]

Where requests involve records to which access may be refused under an FOIA exemption and § 2603.15 of the regulations does not prohibit making the information available, the PBGC's policy is to disclose information, but only to the extent that an authorized agency officer determines disclosure will further the public interest and will not impede the discharge of any PBGC function. Under § 2603.16(b) of the regulations, the factors that must be considered in making such a determination include the public interest in protecting citizens against the dissemination of information concerning them which is privileged or has been submitted by them on a confidential basis and in preventing the disclosure of information which would handicap, obstruct, or jeopardize effective performance of the PBGC's functions.

The regulations for particular FOIA exemptions include § 2603.16, which addresses exemption (4): Matters that are "trade secrets and commercial or financial information obtained from a person and privileged or confidential * * *." Insofar as denial of access is not mandatory under the Trade Secrets Act or other restrictions set forth in § 2603.15, paragraph (a) of § 2603.16 requires that, in applying the policy expressed in §§ 2603.8 and 2603.16, there be a balancing of the right of the public to know how the Government operates against the Government's need to keep information in confidence and the right of a person from which information was obtained to have privileges and confidences respected.

On October 29, 1991 (56 FR 55817), the PBGC published an interim final rule (effective November 29, 1991) that expanded the guidance previously provided in § 2603.16. Paragraph (f) of that section now further explains the considerations that pertain to information protected by exemption (4) and describes the practices PBGC employs when requests for records may involve such information. In particular, the amended regulations specify procedures by which persons and entities can assert that they are "submitter(s)" of "confidential commercial information" (as defined in § 2603.2 (d) and (e) of the regulations) and can object to PBGC disclosure of arguably protected information in response to an FOIA request (§ 2603.16(f) (2) and (3), respectively).

As the PBGC stated when it issued the interim final rule (56 FR 55817-18), the PBGC's practices in this area have evolved over time. In 1982, the PBGC adopted guidance issued by the Office of Information and Privacy of the U.S. Department of Justice as a matter of policy. Since then it has assured that whenever the agency may be required to

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release arguably protected information, the submitter first has an opportunity to explain why disclosure could cause substantial competitive harm. The PBGC subsequently reviewed its practices for conformity with the procedures mandated by Executive Order 12600 (52 FR 23781, June 25, 1987). The interim final rule codified PBGC practices by specifying designation and notification procedures which assure informed consideration of requests for information that arguably is protected from disclosure under exemption (4).

Based on its experience in implementing exemption (4), the PBGC concluded that the provisions it adopted accommodate the interests of both those submitting and those requesting material in agency records. As amended, the PBGC's procedures provide a structure that is sufficiently flexible to enable the agency to continue to resolve many issues informally. As previously noted (56 FR 55818), to the extent permitted by law, the agency intends to provide sufficient time, under the circumstances, to respond to its notifications. However, in view of the time limit provisions of the FOIA (see section 552(a)(6)) and its regulations (see §§ 2603.45 through 2603.47), the amended regulations do not assure a minimum number of days (but do provide for reasonable time) for objecting to disclosure or before disclosure after a decision to grant a request.

The amendments made by the interim final rule further elaborated agency policy and practices for processing certain records and requests. Nevertheless, the PBGC provided an opportunity for interested members of the public to comment on its designation and notification procedures for implementing exemption (4) of the FOIA, and it committed itself to the issuance of a superseding final rule to incorporate any modifications found appropriate in response to comments received by November 29, 1991 (the effective date of the interim final rule). Having received no comments during this period, the PBGC is now adopting, as a final rule without change, the amendments issued on October 29, 1991. Since this action merely adopts as a final rule amendments previously made (and already in effect), the PBGC finds, for good cause, that further notice and procedure is unnecessary, and it is effective immediately. (5 U.S.C. 553 (b) and (d).)

E.O. 12291

The PBGC previously determined that this is not a "major rule" for purposes of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; create a major increase in costs for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2603

Freedom of information.

PART 2603—EXAMINATION AND COPYING OF PENSION BENEFIT GUARANTY CORPORATION RECORDS

In consideration of the foregoing, the interim final rule amending 29 CFR part 2603 which was published at 56 FR 55818 on October 30, 1991, is adopted as a final rule without change.

Authority: 5 U.S.C. 552; 29 U.S.C. 1302(b)(3); E.O. 12600, 52 FR 23781.

Issued in Washington, DC, this 17th day of December 1991.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 91-30601 Filed 12-20-91; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 203, and 206

Oil and Gas Product Valuation Regulations

December 16, 1991.

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of training seminars.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that it will present training seminars at the locations and dates identified below, on oil and gas transportation and gas processing allowance regulations that were published in the **Federal Register** on January 15, 1988 (53 FR 1184 and FR 1230, respectively). The seminars will address specific issues regarding transportation and processing allowances, the reporting requirements, billing, and reporting problems encountered since the regulations became effective March 1, 1988.

DATES: See Supplementary Information.

ADDRESSES: See Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Mr. James P. Morris, Chief, Allowance Accounting Section, Transportation and Processing Branch, Royalty Valuation and Standards Division (303) 231-3729, or (FTS) 326-3729.

SUPPLEMENTARY INFORMATION: The oil and gas product valuation regulations that were published in the **Federal Register** on January 15, 1988, amended and clarified existing regulations governing the valuation of oil and gas for royalty computation purposes. The regulations govern the methods by which value is determined when computing oil or gas royalties under Federal (onshore or Outer Continental Shelf) and Indian (tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma).

The training seminars will include discussions on the following topics:

Day 1:

- Specific issues contained in the transportation and processing allowance regulations.
- The reporting problems encountered.
- Systems development and billing procedures.
- Appeal procedures.

Day 2:

- Information collection requirements and reporting forms (MMS-4109, "Gas Processing Allowance Summary Report;" MMS-4110, "Oil Transportation Allowance Report;" and MMS-4295 "Gas Transportation Allowance Report") required to support oil and gas transportation and processing allowance deductions from royalties due.
- Instructions on how to properly complete the forms.

Location and Dates

The seminars will be held from 8:30 a.m. to 4:30 p.m. on Day 1 and from 8:30 a.m. to 12 p.m. on Day 2 on the dates and at the locations shown below:

Dates	Locations
January 15-16, 1992	Sheraton Hotel & Conference Center, 3600 Union Boulevard, Lakewood, Colorado 80228, (303) 987-2000.

Dates	Locations
February 5-6, 1992	Embassy Suites Hotel, 9090 Southwest Freeway, Houston, Texas 77074, (713) 995-9123.
February 11-12, 1992	Dallas Marriott Park Central, 7750 L.B.J. Freeway at Coit Road, Dallas, Texas 75251, (214) 233-4421.
February 19-20, 1992	Sheraton Century Center Hotel, 1 North Broadway, Oklahoma City, Oklahoma 73102, (405) 235-2780.
February 26-27, 1992	Best Western Sally Port Inn, 2000 N. Main, Roswell, New Mexico 88201, (505) 622-7430.

Registration and Reservations

Persons interested in attending one of these seminars should contact Ms. Anna Aytes of our office at (303) 231-3396 or (FTS) 326-3396 at least 1 week prior to the date of the session you wish to attend. Due to space limitations, the number of attendees may be limited at each seminar location and will be provided on a first-come-first-serve basis. Persons interested in hotel reservations should contact the hotel directly at the telephone number(s) identified above.

If insufficient interest is shown in attending any of the individual training sessions, such sessions may be canceled and alternate arrangements will be made for those who expressed interest.

Dated: December 17, 1991.

Jimmy W. Mayberry,

Acting Associate Director for Royalty Management.

[FR Doc. 91-30528 Filed 12-20-91; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 40a

Defense Contracting; Reporting Procedures on Defense Related Employment

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This rule is the fiscal year 1991 revision of the section listing DoD contractors receiving contract awards of $10 million or more. This part is published to comply with the provisions of section 1, Public Law 97-295, October 12, 1982; 10 U.S.C. 2397.

EFFECTIVE DATE: September 30, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. J.R. Sungenis, Director, Directorate for Information Operations and Reports, Washington Headquarters Services, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202-4302 Telephone (703) 746-0334.

List of Subjects in 32 CFR Part 40a

Armed Forces, Conflict of interests, Government employees, Government procurement, Reporting and recordkeeping requirements.

Accordingly, 32 CFR part 40a is revised to read as follows:

PART 40a—DEFENSE CONTRACTING: REPORTING PROCEDURES ON DEFENSE RELATED EMPLOYMENT

Authority: 10 U.S.C. 2397.

§ 40a.1 Department of Defense contractors receiving awards of $10 million or more.

Fiscal Year 1991

A2 Construction Co., Inc.
A&S Tribal Industries
AAI Corp.
AAR Brooks & Perkins Corp.
ABB Flakt, Inc.
ACC Construction Co. Inc.
AEL Defense Corp.
AM General Corp.
AMCA International Construction Corp.
AT&T Communications, Inc.
AV Technology Corp.
Abbott Laboratories
Accudyne Corp.
Action Mfg. Co.
Advanced Marine Enterprises
Aepco, Inc.
Aerojet
Aeromritime Mediterranean Corp.
Aeroquip Corp.
Aerosonic Corp.
Aerospace Corp., The
Afram Lines, Ltd., USA
Agip Petroli SPA
Agusta International SA
Ahntech, Inc.
Air Transport International
Air Treads, Inc.
Airfoil Textron
Aksarben Foods, Inc.
Al Harbi Trading & Contracting
Al Khudair Contracting Est.
Al Maqam Contracting
Al Rashid Trading & Contracting
Alabama Power Co.
Alascom, Inc.
Alberici J.S. Construction Co.
Aleman Food Servics, Inc.
Aleutian Constructors
Alisud Handling SPA
All Bann Enterprises, Inc.
All Star Maintenance, Inc.
Alliant Techsystems, Inc.
Allied Petro Inc.
Allied Signal Aerospace Co.
Allied Signal, Inc.
Amerada Hess Corp.
America West Airlines, Inc.
American Airlines, Inc.
American Apparel Brands
American Auto Carriers
American Construction Co., Inc.
American Cyanamid Co., Inc.
American Dredging Co.
American Fuel Cell & Coated Fabrics
American Insurance Co., The
American Management Systems, Inc.
American President Lines, Ltd.
American Systems Corp.
American Systems Engnr. Corp.
American Telephone & Telegraph Co.
American Trans Air & Connie Kalitta Services
Ameriqual Foods, Inc.
Ametek, Inc.
Amoco Corp.
Amron Corp.
Amstar Corp.
Analysis & Technology, Inc.
Analytic Science Corp., The
Analytic Services, Inc.
Analytical Systems Engineering Corp.
Anderson, Roy Corp.
Andrulis Research Corp.
Applied Technology Associates, Inc.
Aqua Chem, Inc.
Aral AG
Arcata Associates, Inc.
Arco Products Co.
Arinc Research Corp.
Armada Hoffler Construction Co.
Armar Shipowning Trading Co.
Armored Vehicle Technologies Assoc.
Armtec Defense Products Co.
Arral Industries, Inc.
Arrow Air, Inc.
Ashland Oil, Inc.
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Triwell Marketing & Refining, Inc.
Truetech, Inc.
Turtle Mountain Mfg. Co.
UNC, Inc.
URS Co.
U.S. Oil & Refining Co.
U.S. Sprint Communications Co.
Uniformed Services Benefit Plans
Union Carbide Chemical & Plastics Co.
Union Corp.
Union Explosives Rio Tinto SA
Union Underwear Co., Inc.
Uniroyal, Inc.
Unisys Corp.
Unisys Defense Systems, Inc.
United Airlines, Inc.
United Engineers & Constructors
United International Engineers
United Technologies Corp.
United Telecontrol Electronics
Universal Energy Systems, Inc.
Universal Maritime Service
University of California
University of Dayton
University of Illinois
University of Maryland
University of Pittsburgh
University of Southern California
University of Texas System
University of Washington
Upjohn Co., The
Urban General Contractors, Inc.
Urdan Industries USA, Inc.
Utah Construction & Development
Utah Power & Light Co.
Utah State University
VF Corp.
VSE Corp.
Valentec International Corp.
Valmac Industries, Inc.
Vanee Foods Co.
Varian Associates, Inc.
Varo, Inc.
Vector Research, Inc.
Veda, Inc.
Vickers, Inc.
Victory Maritime, Inc.
Viereck Co., Inc.
Vinnell Corp.
Vinnell Corp., Brown & Root JV
Virtexco Corp.
Vitin Garment Mfg. Co.
Vitro Corp.
Vitronics, Inc.
Wang Laboratories, Inc.
Warehouses Service Agency
Waterman Steamship Corp.
Watkins Johnson Co.
Wellco Enterprises, Inc.
Western Petroleum Co.
Western Pioneer, Inc.
Western Union Corp.
Westinghouse Electric Corp.
Westinghouse Furniture Systems
Westmont Industries
Weston, Roy F., Inc.
Whitesell Green, Inc.
Whittaker Corp.
Wilcox Electric, Inc.
Willard Marine, Inc.
Willbros Butler Engineers, Inc.
Williams International Corp.
Wingler Sharp Architects & Planners
Wisconsin Physicians Service Insurance
Wood Hopkins Contracting Co.
Woodward, Clyde Consultants
Work Wear Corp., Inc.
World Airways, Rosenbalm Aviation, Key Airlines, American Airlines, Evergreen International & Emery Worldwide JV
Wright Associates, Inc.
Wyeth Ayerst Laboratories, Inc.
Wyle Laboratories
Wylie, C.E. Construction Co.
Xerox Corp.
Yordi Construction, Inc.
Young & Rubicam, Inc.
Zachry, H.B. Co.
Zantop International Airlines
Zenith Data Systems, Corp.
Zenith Electronics Corp.
Zertotherm, Inc.

Dated: December 17, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-30508 Filed 12-20-91; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PARTS 260 AND 265

[FRL-4063-9]

Hazardous Waste Management System: Amendments to Interim Status Standards for Downgradient Ground-Water Monitoring Well Locations at Hazardous Waste Facilities

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On January 18, 1991, the Environmental Protection Agency ("EPA" or "the Agency") proposed to amend 40 CFR § 265.91 to allow alternate placement of hydraulically downgradient monitoring wells at interim status facilities where existing physical obstacles prevent installations at the limit of the waste management area. EPA is today promulgating a final rule implementing amendments to §§ 260.10 and 265.91. Today's rule is necessary to allow facilities to install alternate ground-water monitoring wells in certain circumstances where they are unable to avoid existing physical obstacles. Today's rule provides that the owner or operator of an existing facility may demonstrate that an alternate hydraulically downgradient monitoring well location will meet several criteria. This demonstration must be certified by a qualified ground-water scientist. Today's rule also promulgates a definition of "qualified ground-water scientist."

EFFECTIVE DATE: These regulations become effective June 23, 1992.

ADDRESSES: The official docket for this rulemaking (Docket No. F-91-DGWF-FFFFF) is located in room M2427, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and is available for viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding federal holidays. The public must make an appointment to review docket materials, and should call the docket clerk at (202) 260-9327 for appointments. The public may copy, free of charge, a maximum of one hundred pages of material from any one regulatory docket. Additional copies are $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information about this rulemaking, contact the RCRA Hotline, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424-9346 (toll free) or (703) 920-9810 in the Washington, DC metropolitan area. For technical information contact Hugh R. Davis, Office of Solid Waste (OS-341), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260-7656.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority
II. Background
III. Summary of Today's Final Rule
IV. Public Comments on NPRM
V. State Authorizations
VI. Regulatory Requirements

I. Authority

These regulations are issued under the authority of sections 1006, 2002(a), 3001, 3004, 3005, and 3015 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, (42 U.S.C. 6905, 6912(a), 6921-6927, 6924, 6925, 6930, 6934, 6935, 6937-6939, and 6974).

II. Background

On May 19, 1980, EPA promulgated comprehensive standards under 40 CFR part 265 for owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDFs) that qualify for interim status (45 FR 33153). A facility owner or operator who has fully complied with the requirements for interim status specified in section 3005(e) of RCRA and 40 CFR 270.70 may comply with the part 265 regulations in lieu of part 264 pending final disposition of the permit application. Part 265, subpart F contains ground-water monitoring requirements applicable to owners and operators of interim status landfills, surface impoundments, and land treatment facilities.

Several challenges to the 1980 interim status regulations are currently pending before the United States Court of Appeals for the District of Columbia Circuit, including a challenge to the ground-water monitoring requirements of 40 CFR 265.91(a)(2) (*Shell Oil Co.* v. *EPA*, D.C. Cir. No. 80-1532 and consolidated cases). Petitioners in Shell Oil have requested review of whether the requirement in § 265.91(a)(2) to locate hydraulically downgradient wells "at the limit of the waste management area" is arbitrary and capricious or otherwise not in accordance with law. They have explained to the Agency that they believe § 265.91(a) should be amended to allow alternate placement of hydraulically downgradient monitoring wells where existing physical obstacles prevent well installation at the limit of the waste management area. The Agency entered

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into a settlement agreement requiring it to make best efforts to propose and promulgate this change. Pursuant to the agreement, the Agency proposed to amend the well placement requirements for interim status facilities on January 18, 1991 (56 FR 2108). This proposal was consistent with the amendments to the well location requirements for permitted facilities (§ 264.95) proposed in the Federal Register on July 26, 1988 (53 FR 21860).

III. Summary of Today's Final Rule

The following is a summary of the amendments made in today's rule. The details of these amendments are discussed in section IV of this preamble "Public Comments on NPRM" and supporting background documents. With the exceptions noted below, the final rule generally adopts the amendments proposed.

Sections 265.91(a) (1) and (2) currently require interim status facility owners and operators to install and operate a ground-water monitoring system consisting, in part, of at least three hydraulically downgradient monitoring wells located at the limit of the waste management area. The number, locations, and depths of these wells must ensure detection as early as possible of any statistically significant amounts of hazardous waste or hazardous waste constituents that migrate from the waste management area to the uppermost aquifer.

The EPA proposed on January 18, 1991 (56 FR 2108) to amend the well placement requirements for interim status facilities to a form consistent with the proposed amendments to § 264.95 for permitted TSDFs. The Agency received comments on this proposed rule and is today publishing the final rule adding § 265.91(a)(3) in response to those comments. Detailed responses to major comments are given below in Section IV of this preamble.

Specifically, § 265.91(a)(3) provides that the owner or operator of an existing facility may demonstrate that an alternate hydraulically downgradient monitoring well location will meet several criteria outlined below. The demonstration must be in writing and kept at the facility. The demonstration must be certified by a qualified ground-water scientist (discussed below) and establish that: (1) An existing physical obstacle prevents monitoring well installation at the hydraulically downgradient limit of the waste management area; (2) the selected alternate downgradient location is as close to the waste management area as practical; and (3) the location ensures detection that is as early as possible, given the alternate location, of any statistically significant amounts of hazardous waste or hazardous constituents that migrate from the waste management area to the uppermost aquifer. EPA believes that alternate locations for downgradient wells meeting these criteria will protect human health and the environment by continuing to ensure the earliest possible detection of any migrating contaminants.

In addition to geologic features, buildings, highways, or railroads, the Agency believes that factors affecting the safety of personnel may also qualify as "physical obstacles". For example, the presence of overhead or underground electrical cables and wires, underground storage tanks and associated piping, and underground pipelines may prevent a safe well installation at the hydraulically downgradient limit of the waste management area at some sites. In these cases an alternate well location should be selected that insures detection of any statistically significant increases in constituent concentrations in the uppermost aquifer as early as possible.

Alternate locations of downgradient wells are not appropriate when physical obstacles at the limit of the waste management area may be avoided. For example, moving a well laterally from a physical obstacle, to a position still adjacent to the waste management area, may avoid the need for an alternate well location. However, the Agency does not intend to require placement of monitoring wells where installation or sampling would substantially raise the level of risk posed to individuals involved in those activities or where placement would require an extreme disruption to normal facility operations.

Today's rule also limits the availability of alternate locations of downgradient wells to units existing on the effective date of this amendment and to units subsequently made subject to interim status by new listings or expansions of the characteristics. Owners or operators of new, expanding or replacement units are not eligible to select alternate downgradient monitoring well locations as a result of physical obstacles. New, expanding, or replacement units can and should be designed to ensure that physical obstacles do not impede monitoring well placement at the downgradient limit of the waste management area. The Agency believes that wells placed at the hydraulically downgradient limit of the waste management area generally provide the greatest assurance of immediate detection.

In the proposed rule, demonstrations of the need for and location of alternate hydraulically downgradient monitoring wells must have been certified by a "qualified geologist or geotechnical engineer." Certifications by qualified geologists or geotechnical engineers are currently required under two interim status provisions: Section 260.90(c) demonstrations for waiver of ground-water monitoring requirements, and ground-water assessment plans submitted to the Regional Administrator under § 265.93(d)(2). Given the largely self-implementing interim status program, certification is necessary to provide the oversight to ensure technically sound decision-making with regard to hydrogeologic conditions. Several commenters, as is discussed in more detail below, felt that a "qualified geologist or geotechnical engineer" may not be appropriate for certifying alternate well demonstrations. The Agency agrees in general with these comments and is requiring in this rule that demonstrations of the necessity and location of alternate hydraulically downgradient monitoring wells must be certified by a "qualified ground-water scientist." This rule also promulgates a definition of "qualified ground-water scientist" in § 260.10. This definition is essentially the same, and is used for similar purposes as the definition of "qualified ground-water scientist" promulgated for solid waste disposal facilities (56 FR 50978).

IV. Public Comments on NPRM

EPA received comments in response to the notice of proposed rulemaking (NPRM) issued on January 18, 1991 (56 FR 2108). This section summarizes the major comments received and discusses how the Agency addressed specific concerns in the final rule. Additional discussion of comments received is provided in a separate response to comment document available in the docket for this rule.

A. Future Interim Status Units

Several commenters stated that some existing units that are not currently managing hazardous waste may be drawn into interim status because they are managing a waste that is identified as hazardous in the future. The commenters felt that these units, as well as units existing as of the date of the final rule, may be subject to physical constraints that necessitate alternative well placement. EPA agrees with the commenters that units existing as of the date of the final rule and those units that obtain interim status through future

rulemakings are eligible for alternate downgradient well placement.

B. New, Expanding and Replacement Units

The Agency received comments both in favor and against applying the alternate well location standard to new, expanding and replacement units. Several commenters argued that alternate downgradient well placement should be allowed for new, replacement and lateral expansions of existing units. These commenters argued that facilities may not be able to avoid physical obstacles which impede the placement of monitoring wells at the downgradient limit of the waste management area of new or expanding units.

The Agency continues to believe that alternate downgradient monitoring wells must be limited to existing units with existing physical barriers. Flexibility is necessary to address conditions existing prior to the effective date of this or future rulemakings. The Agency believes that planning on the part of the owner or operator will enable them to meet the performance standard of installing, operating, and maintaining a ground-water monitoring system capable of detecting releases of hazardous constituents. The Agency continues to believe that wells placed at the hydraulically downgradient limit of the waste management area have the highest probability of meeting this standard.

This rule, by only allowing alternate well locations for existing units, will not prevent the construction of new, expanding, or replacement units. Nor will it significantly impede the design of such units where physical obstacles are present. New, expanding, and replacement units can and must be designed with adequate space between the edge of the unit and any physical obstacle such that well installation equipment can be driven and operated in that space. In general, wells can be drilled in narrow spaces, such as has been done in the area between two existing surface impoundments. A facility replacing a unit with alternate well locations will be able to install new wells at the limit of the waste management area without losing a significant portion of the unit's waste management capacity. Additional design changes, such as increasing the depth of the waste management unit, may be made during the excavation and construction of the replacement unit to enable the owner/operator to recoup any capacity lost to well placement.

C. Professional Certification

In the proposed rule, the facility owner or operator must obtain certification of the alternate well location demonstration by a "qualified geologist" or "qualified geotechnical engineer." The proposed rule described the Agency's view of the qualifications of a "qualified geologist" and "qualified geotechnical engineer". Several commenters felt that a "qualified geologist or geotechnical engineer" may not be appropriate for certifying alternate well demonstrations. Commenters cited that certain geologists and geotechnical engineers are not qualified to perform hydrogeological assessments, to install ground-monitoring wells or to perform other ground-water related work. Commenters also felt that qualified hydrogeologists may not meet either of the Agency's definitions. One commentor suggested that the appropriate title for the individual certifying an alternate well demonstration was a "qualified ground water professional."

We agree in general with these comments and have modified the final rule in response. The final rule requires that alternate downgradient well location demonstrations be certified by a "qualified ground-water scientist", instead of a "qualified geologist or geotechnical engineer." This new definition is broader than the two definitions in the proposed rule. Thus, qualified individuals more clearly include hydrogeologists as well as geologists and geotechnical engineers. As commenters noted, a geologist or geotechnical engineer with a baccalaureate may not be qualified to perform hydrogeological assessments. The definition of "qualified ground-water scientist" in the final rule gives criteria, such as additional courses, that may render such an individual qualified. The Agency believes that specialized coursework and training should include physical geology, ground-water hydrology or hydrogeology, and pertinent environmental chemistry (e.g., organic chemistry, inorganic chemistry, soil chemistry, aquatic chemistry, or low temperature geochemistry).

The Agency agrees with commenters that the Agency description of the certifying individual should be defined in the regulations. In this rule, EPA is adding the following definition of "qualified ground-water scientist" to § 260.10. "A qualified ground-water scientist means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in ground-water hydrology and related fields as may be demonstrated by state registration, professional certification, or completion of accredited university courses that enable that individual to make sound professional judgments regarding ground-water monitoring and contaminant fate and transport." The Agency replaced the term "hydrogeological processes" from the proposed rule with "ground-water monitoring" in the final definition because the latter term more accurately describes the expertise required for the purposes of this definition.

The Agency believes that as the ground-water profession is multidisciplinary, this definition is not overly prescriptive and provides necessary flexibility. The Agency plans to revise other ground-water related certification provisions in 40 CFR part 265 so that they are consistent with the § 260.10 definition for qualified ground-water scientist in a future rulemaking.

Commenters also recommended specific certifying organizations. While the Agency does include professional certification in its definition of a qualified ground-water scientist, it does not agree that this definition must include certification by any specific organizations. The definition provides that the certification (or other experience) must demonstrate that the individual has sufficient training and experience in ground-water hydrology to make professional judgements regarding ground-water issues. Although the Agency does not endorse any specific organizations that provide certifications, it included certification as one of the methods to demonstrate the qualifications of the certifying individual.

D. Immediate Detection

The proposed rule required that an alternate location be as close to the downgradient limit of waste management area as possible while ensuring immediate detection of releases. Several commentors argued that an alternate well location, which is at a distance from the downgradient limit of the waste management area, will not be able to immediately detect releases. The Agency agrees with this comment. The Agency continues to believe that wells placed at the downgradient limit of the waste management area are optimally located to detect releases. The goal of today's rule is to require monitoring wells with alternate locations to detect releases as soon as possible. Accordingly, the final rule does not contain the phrase "immediate detection" and instead,

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requires that the "* * * location ensures detection that, given the alternative location, is as early as possible * * *"

Commentors also requested clarification of the use of the word "practical" in the phrase, "the selected alternate downgradient location is as close to the limit of waste management area as practical." There are various circumstances, many site specific, that determine how close a well may be installed to an obstacle. No generic regulatory standard could provide meaningful guidance on all of the factors that might be relevant to an individual, site-specific decision. In general, EPA believes that a well should be installed as close to the obstacle as physically possible without (1) affecting the performance of the well; (2) damaging the obstacle; and, (3) endangering the installation or sampling crews. For example, a well should not be installed so close to a pipeline that it might damage the pipeline or cause contamination of the well. Similarly, a drilling crew must maintain a distance during well installation from obstacles, such as buried product storage tanks or electrical cables, that ensures their safety. The owner or operator should discuss any factors that influence the positioning of the well in his or her certified demonstration.

V. State Authorizations

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have independent enforcement authority.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA requirements apply in authorized States in the interim.

B. Effect on State Authorizations

Today's rule is not effective in authorized States since the requirements are not being imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. Thus, the requirements will be effective only in those States that do not have final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

Section 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect more stringent Federal program changes, and must subsequently submit the modification to EPA for approval. Generally, these authorized State programs must be revised to adopt those changes in a Federal program that are more stringent or broader in scope than existing Federal standards.

For those Federal program changes that are less stringent or reduce the scope of the Federal program, Sates are not required to modify their programs (see § 271.1(k)). Today's rule reduces the stringency of § 265.91(a). Therefore, authorized States may, but are not required, to modify their programs to adopt requirements equivalent or substantially equivalent to those in today's rule. Because today's requirements are less stringent than the existing Federal requirements, it is unlikely that any authorized State has equivalent requirements.

VI. Regulatory Requirements

A. Regulatory Impact Analysis

Exexcutive Order 12291 requires EPA to determine whether a new regulation will be "major" and, if so, that a Regulatory Impact Analysis be conducted. A major rule is defined as a regulation that is likely to result in:

1. An annual effect on the economy of $100 million or more;

2. A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or

3. Significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Agency has determined that today's rule is not a major rule, because it does not meet the above criteria. Today's action adds flexibility to the current interim status ground-water monitoring requirements, and does not impose further resource burdens on the regulated community.

B. Paperwork Reduction Act

The information collection and recordkeeping requirements in this proposed rule have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Recordkeeping burden on the public for this proposal is estimated at 1800 hours for the respondents, with an average of 20 hours per response. These burden estimates include all aspects of the recordkeeping effort and may include time for reviewing instructions, searching existing data sources, and gathering and maintaining necessary data.

List of Subjects in 40 CFR Parts 260 and 265

Administrative practice and procedure, Ground-water monitoring, Hazardous materials, Hazardous waste, and Reporting and recordkeeping requirements.

Dated: December 9, 1991.

F. Henry Habicht II,

Acting Administrator.

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

2. In § 260.10 by adding in alphabetical order the following definition:

§ 260.10 Definitions.

* * * * *

Qualified Ground-Water Scientist means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in ground-water hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgements regarding ground-water monitoring and contaminant fate and transport.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

2. In § 265.91 by adding paragraph (a)(3) to read as follows:

§ 265.91 Ground-water monitoring system.

(a) * * *

(3) The facility owner or operator may demonstrate that an alternate hydraulically downgradient monitoring well location will meet the criteria outlined below. The demonstration must be in writing and kept at the facility. The demonstration must be certified by a qualified ground-water scientist and establish that:

(i) An existing physical obstacle prevents monitoring well installation at the hydraulically downgradient limit of the waste management area; and

(ii) The selected alternate downgradient location is as close to the limit of the waste management area as practical; and

(iii) The location ensures detection that, given the alternate location, is as early as possible of any statistically significant amounts of hazardous waste or hazardous waste constituents that migrate from the waste management area to the uppermost aquifer.

(iv) Lateral expansion, new, or replacement units are not eligible for an alternate downgradient location under this paragraph.

* * * * *

[FR Doc. 91-30187 Filed 12-20-91; 8:45 am]

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40 CFR Part 280

[FRL-4086-5]

Underground Storage Tanks Containing Petroleum; Financial Responsibility Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today promulgating a rule to amend the financial responsibility requirements for underground storage tanks (USTs) containing petroleum that appeared in the **Federal Register** on October 26, 1988 (53 FR 43322), as amended October 31, 1990 (55 FR 46022). Specifically, this rule modifies the compliance dates under 40 CFR 280.91(d). Under the modification, all petroleum marketing firms owning 1 to 12 USTs at more than one facility or fewer than 100 USTs at a single facility and non-marketers with net worth of less than $20 million are required to comply with the requirements of 40 CFR part 280 subpart H—Financial Responsibility—by December 31, 1993. Today's rule extends the deadline from the previous date of October 26, 1991. This change will provide additional time for the development of financial assurance mechanisms (especially State assurance funds) to enable this group to comply.

EFFECTIVE DATE: The amendment to 40 CFR 280.91(d) contained in this rulemaking is effective December 23, 1991.

ADDRESSES: The public docket for this rule is in room M2427, U.S. EPA, 401 M St., SW., Washington, DC 20460. Call (202) 260-9327 for an appointment to review docket materials.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424-9346 (toll free) or (703) 920-9810 in Virginia. For technical questions, contact Andrea Osborne in the Office of Underground Storage Tanks at (703) 308-8883.

SUPPLEMENTARY INFORMATION: On October 26, 1988, EPA promulgated financial responsibility requirements applicable to owners and operators of underground storage tanks (USTs) containing petroleum (53 FR 43322). In the final rule, EPA established a phased schedule of compliance for owners and operators of petroleum USTs. Petroleum marketing firms with 1 to 12 USTs at more than one facility or fewer than 100 USTs at a single facility, local government entities, and non-marketers whose net worth is less than $20 million were required to comply with the financial responsibility requirements by October 26, 1990. The principal reason for adopting the phased compliance approach was to provide the time necessary for providers (including private insurance companies and States intending to establish State assurance funds) of financial assurance mechanisms to develop new policies and programs or conform their policies and programs with EPA requirements. (See 53 FR 43324.)

On October 31, 1990, EPA published regulations (55 FR 46022) extending for one year (to October 26, 1991) the compliance deadline for marketers with 1 to 12 USTs at more than one facility or fewer than 100 USTs located at a single facility and non-marketers whose net worth is less than $20 million. The compliance deadline for local governments was extended until one year after the promulgation of a final rule providing additional mechanisms for local governments. Additional mechanisms for local governments were proposed on June 18, 1990 (55 FR 24892).

Since October 1990, EPA has continued to monitor the development of financial assurance markets, especially (1) insurance for corrective action and third party liability and (2) State assurance funds, to determine whether financial assurance mechanisms are becoming available to satisfy the needs of the regulated community. Based on this on-going review, EPA believes that tank owners required to comply by October 26, 1991, need additional time to meet insurers' standards for coverage. Also, States need additional time to develop State assurance funds, to submit them to EPA for review and approval as financial assurance mechanisms, and to make any modifications necessary for approval. Therefore, EPA is extending the compliance date for marketers with 1 to 12 USTs at more than one facility or fewer than 100 USTs at a single facility and non-marketers whose net worth is less than $20 million from October 26, 1991 to December 31, 1993. The Agency believes that this 26-month extension for Category IV tank owners will provide adequate time for tank owners and operators to obtain assurance. By October 1990, when the deadline was previously extended, EPA had approved 14 State assurance funds and had begun to review 11 State assurance funds that were submitted to EPA for approval. (It is important to note that upon submission of a State assurance fund, the fund is considered to be approved unless and until EPA disapproves it.) During the subsequent 12 months, an additional 13 State assurance funds

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have been approved by EPA to serve as financial responsibility compliance mechanisms. Currently, 27 State assurance funds have been approved by EPA and an additional 9 State assurance funds have been submitted to EPA for approval. EPA expects State assurance fund development to continue during the 26-month extension. The Agency notes, however, that States are not required to develop assurance funds and that several States have indicated that they do not intend to develop State fund programs. Nevertheless, EPA anticipates that the extension will allow all States intending to develop State funds adequate time to do so.

Additionally, States will have more time to develop and implement financial assistance programs (e.g., direct loan programs, loan guarantee programs, grant programs) which help owners and operators pay for technical improvements such as tank upgrading, which, in turn, helps owners and operators qualify for insurance. Four States—Alaska, Hawaii, Maryland, and Washington—indicated that they have or are developing State financial assistance programs, and that an extension would provide more time for qualified owners and operators to obtain financial assistance to upgrade their UST facilities to meet insurance underwriting criteria. Finally, extension of the compliance deadline to December 31, 1991 will relate the compliance deadline for Category IV owners and operators to the final compliance date for implementation of release detection. Implementation of a release detection program is a critical element of the underwriting criteria for many insurers, and the ability to demonstrate that tanks are not leaking will allow more owners and operators to obtain insurance. Under EPA's phased schedule for release detection, all owners and operators must implement release detection no later than December 23, 1993.

I. Authority

These regulations are issued under the authority of Sections 2002, 9001, 9002, 9003, 9004, 9005, 9006, 9007, and 9009 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6912, 6991, 6991a, 6991b, 6991c, 6991d, 6991e, 6991f, and 6991h).

II. Effective Date

This rule will be effective on December 23, 1991 pursuant to 5 U.S.C. 553(d). This rule may be made effective immediately because it extends a deadline for compliance in existing regulations and therefore is a "substantive rule which grants or recognizes an exemption or relieves a restriction." 5 U.S.C. 553(d)(1). The Agency also finds that there is good cause to make the rule effective immediately because the regulated community does not need time to come into compliance. 5 U.S.C. 553(d)(3).

III. Background

When devising the phased compliance approach, the Agency wanted to achieve the best balance between the need to demonstrate financial responsibility for UST releases and the time necessary for owners and operators to obtain assurance mechanisms. The Agency attempted to establish compliance dates that were as early as possible, considering the type of assurance different types of facilities were likely to obtain. Petroleum marketers owning or operating 1,000 or more USTs and non-marketers with more than $20 million in tangible net worth were required to comply by January 24, 1989, based primarily on their ability to qualify for self-insurance. Petroleum marketers with 100 to 999 USTs were required to comply by October 26, 1989. These marketers were estimated to be relatively more likely to be able to obtain insurance; some of them were also expected to qualify as self-insurers. Petroleum marketers owning 13 to 99 USTs at more than one facility were originally required to comply by April 26, 1990. However, on May 2, 1990, the Agency published a rule (55 FR 18568) extending this compliance date to April 26, 1991. These marketers were thought to be less likely to be able to obtain insurance than members of the October 26, 1989, compliance group. Petroleum marketers owning or operating fewer than 13 USTs at more than one facility or owning or operating only one facility with fewer than 100 USTs, and UST owners and operators who were not petroleum marketers (including local government entities) were required to comply by October 26, 1990. This group was expected to rely primarily on State assurance funds for compliance. On October 31, 1990, EPA extended the compliance deadline for one year for small marketers (marketers with fewer than 13 USTs or fewer than 100 USTs at a single facility) and small non-marketers (non-marketers with less than $20 million in net worth). This extension was based on the rate of development of State assurance funds. In addition, EPA extended the compliance deadline for local governments until one year after publication of a final rule with additional mechanisms for local governments to demonstrate compliance. Additional mechanisms for local governments were proposed on June 18, 1990 (55 FR 24692). The deadline for compliance by local governments is not affected by this rule.

Through monitoring the development of financial assurance mechanisms, the Agency has learned more about the way insurers operate in the UST insurance market. EPA now believes that the extended compliance date of October 26, 1991 for Category IV tank owners (marketers owning 1 to 12 USTs or fewer than 100 USTs at one facility and non-marketers whose net worth is less than $20 million) did not allow adequate time for compliance. When devising the original and revised phased compliance schedule, the Agency expected that members of this compliance group would rely on insurance and State assurance funds. The Agency had originally believed that 24 months from promulgation of the final financial responsibility rule would provide adequate time for owners and operators to upgrade their USTs to meet insurers' requirements and for States to develop and submit assurance funds to EPA. Since promulgation of the 1988 final rule, however, EPA has learned that tank owners and operators require additional time to comply with conditions imposed on them by the insurance industry. Some of these conditions include operation of only tanks younger than 15 years of age, clean site conditions, a reliable method of leak detection, etc. For example, some insurers have informed EPA that they have rejected UST coverage applications because of existing contamination, poor tank management, and inadequate leak detection monitoring. Many members of this compliance group may not be able to meet these standards by October 26, 1991, and thus would be required to seek an alternative financial assurance mechanism.

On August 14, 1991, EPA proposed to extend the compliance deadline for this group (56 FR 40292). EPA based the proposal on its understanding that more members of this compliance group than the Agency had originally projected must rely on State assurance funds, rather than on insurance, to demonstrate compliance with the financial responsibility requirements. EPA believed that, in order for owners and operators to rely on State assurance funds as compliance mechanisms, States must have more time to submit their State assurance funds to EPA for approval.

At this time, EPA has approved 27 State assurance funds to serve as financial responsibility compliance mechanisms that provide full or partial coverage; 9 more have formally

submitted their State assurance funds to EPA for approval.

In addition to State assurance funds, which serve as financial responsibility compliance mechanisms, some States, such as Alaska, Hawaii, Oregon, Washington, and Maryland, are developing financial assistance programs, such as grant programs and loan programs, to assist UST owners in upgrading their facilities to meet insurance underwriting standards. The State of Washington has also implemented a reinsurance program, under which the State relies on private insurers to sell insurance but provides reinsurance coverage to limit the insurers' risk and reduce premium costs.

Comments on the proposed rule were received from 57 commenters. A Response to Comments Document is in the public docket for the rule. Most commenters supported the extension of the compliance deadline for Category IV owners and operators. Commenters asserted that the proposed extension would allow the time needed for owners and operators seeking insurance to meet insurers' standards for coverage. They also stated that an extension would allow the time necessary for States that do not have State assurance funds or financial assistance programs to develop such funds and programs; whereas in States where these funds and programs exist, the extension would provide States with more time to develop outreach programs, and would provide owners and operators with more time to participate.

Some commenters argued against extending the compliance deadline, however, stating that affordable private insurance is available to both marketers and nonmarketers, and that an extension would discourage UST owners from taking the necessary steps toward compliance and would undermine the credibility of the UST program. Some of the comments regarding the availability and affordability of insurance in certain States were countered directly by comments from UST owners in those States that they were able to obtain only minimal pollution liability coverage, with high deductibles, and that the costs for this coverage were prohibitive. Some of the commenters opposing a general extension acknowledged that an extension was justified in States without State assurance funds.

One commenter, who removed tanks before the proposal to extend the compliance deadline, argued that an additional extension places those who have already complied with the regulations at a competitive disadvantage with respect to those who have not. The Agency believes that this situation is an unfortunate result of the regulatory development process, but is not indicative of the potential effects on the majority of the regulated community. The Agency is unable to determine whether an extension is necessary until near the deadline for compliance, however, and so is unable to provide more advanced notice of the extension. This difficulty is exacerbated by statutory requirements to obtain public participation in the rulemaking process, which further restricts EPA's ability to provide definitive answers about forthcoming changes in the regulations. The Agency regrets any problems experienced by specific UST owners and operators as a result of the changes in the regulatory deadline.

Regarding the length of an extension, many commenters supported the proposal to extend the compliance deadline to December 31, 1992. One commenter proposed a shorter extension of the deadline to allow States more time to develop State assurance funds, yet not undermine the financial responsibility requirements through excessive delay of compliance deadlines. Several commenters favored an extension until December 31, 1993. These included the Hawaii Department of Health, which requested the extra time to implement its loan program for UST owners, and the National Air Transportation Association, which advocated synchronizing the compliance schedule for financial responsibility requirements with that for release detection requirements. Other commenters also suggested longer extensions; two of these requested an indefinite extension.

Based on a review of the comments, EPA has decided to extend the compliance date to December 31, 1993, for small petroleum marketing firms (those with fewer than 13 USTs or fewer than 100 USTs at a single facility) and nonmarketers with net worth of less than $20 million. This 26-month extension will allow all States that intend to develop State assurance funds or financial assistance programs to do so, and will allow UST owners and operators in these States to participate. It will also delay the need for meeting financial responsibility requirements until after the December 22, 1993 compliance deadline for release detection under 40 CFR 280.40. Installing release detection may be a requirement for obtaining insurance in some areas; this extension will assure that all UST owners seeking insurance would have already complied with Federal release detection requirements. The Agency notes that the extension provided by this rule does not preclude States from adopting an earlier deadline; in those States where a State assurance fund exists, States may find it appropriate to maintain the previous deadlines for compliance with financial responsibility requirements. This final rule applies to the Federal compliance date only, and does not preclude different State compliance deadlines.

Several commenters requested that the extension be broadened to include owners and operators in compliance Category III, which were required to have complied by April 26, 1991. Commenters argued that these owners and operators are also having difficulty obtaining insurance or otherwise demonstrating financial responsibility, and that extending the compliance deadline for owners and operators in Category IV only would place owners and operators in Category III at a competitive disadvantage. EPA believes, however, that owners and operators with financial assurance mechanisms may have an advantage over competitors without these mechanisms since the infrequent, unknown and possibly large costs associated with a leak may be greater than the regular, known, and possibly smaller costs of the financial assurance mechanism. In addition, EPA analysis suggests that up to 80% of the owners and operators in Category III have already obtained assurance mechanisms through State funds and private insurance. The Agency emphasizes that its intention has been and continues to be to require demonstration of financial responsibility at the earliest date reasonably achievable, which for Category III has already passed. UST owners and operators in Category III were required to have demonstrated compliance with the financial responsibility requirements more than six months ago. The Agency believes that "extending" the deadline at this time would penalize those owners and operators who have made a good faith effort to comply with the requirements.

Several commenters argued for special treatment for USTs owned by Indian Tribes and for USTs located on tribal lands. The commenters claimed that these USTs are not covered by State assurance funds, are not eligible for coverage by the LUST Trust Fund, are located in geographic regions that offer a low potential for contamination of groundwater supplies, and have limited access to insurance. While Indian Tribes cannot get State program grants or LUST Trust Fund Cooperative Agreements (as States can), they are eligible to receive LUST Trust Fund

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dollars from EPA under certain circumstances. State financial assurance funds do not necessarily exclude tribally-owned tanks; however, since States do not have taxing powers over tribal lands, States cannot collect the taxes and fees that are usually required for participation and access to these State funds unless the Tribe or individual owner opts to pay the fee voluntarily to participate in the fund.

The Agency anticipates that the extension will provide additional time for many owners and operators of USTs located on tribal lands to obtain financial assurance mechanisms. Nevertheless, EPA acknowledges the concerns expressed by these commenters. As discussed below, EPA intends to continue to monitor the development of financial assurance mechanisms during the extension period to determine whether specific groups of UST owners and operators, including owners and operators of USTs located on tribal lands, may require additional consideration.

USTs directly owned or operated by Tribal governments are not within the scope of this rule because the Agency treats them as local governments for the purposes of the financial responsibility requirements. Tribal governments will be eligible to use the new mechanisms being developed for local governments by the Agency and will be required to comply within 12 months of publication of the new mechanisms for demonstrating financial responsibility.

IV. Discussion of Options Considered But Not Proposed

In addition to the proposed rule, EPA considered, but did not propose, two additional options to grant relief to UST owners and operators. Under the first option, a subset of those entities currently required to comply by October 26, 1991 would be granted an additional extension. Under the second option, any UST facility meeting certain Federally-specified conditions as determined by the States would receive an extension.

Under the first option, retail marketers in Category IV that provided essential services such as being the sole source of petroleum products for a rural community and whose tanks posed minimal environmental risks would be granted an extension of the compliance deadline of up to 90 days following the final date for compliance with the technical standards for new tanks (i.e., March 22, 1999). Owners and operators must generally meet these technical requirements (which include tank upgrading, leak detection, etc.) to qualify for private insurance.

If EPA were to adopt the second option, EPA would extend the federal deadline for any facility, regardless of its compliance category, if the State made certain findings based on federally determined criteria. The extension would last up to 90 days following the final date for compliance with the technical standards for new tanks (March 22, 1999). The specified criteria could include facilities that (1) had been identified by States as entities in need of an extension, (2) sold petroleum products on a retail basis, (3) were the sole provider of a class of petroleum transportation fuels (e.g., gasoline or diesel fuel) within a 25-mile radius, and (4) met certain environmental criteria such as that the underground storage tank not be too close to groundwater or that the percentage of the local population that relies on groundwater as their drinking water source not exceed a certain number. Under this option, the federal extension could be granted to local governments, especially those in isolated rural areas that provide essential community services (e.g., public health and safety). Additionally, EPA could allow extensions for Indian tribes owning and operating USTs on Indian lands or to owners and operators of USTs on Indian lands that provided essential services.

Most commenters opposed Option 1. Some claimed that the definitions of "rural" or "sole source provider" would prove unworkable. Others claimed that non-marketers have an equivalent need for an extended compliance deadline. A few commenters stated that the definitions could provide some firms with unfair competitive advantages. A few commenters supported Option 1. Commenters in favor of Option 1 stated that current UST regulations are reducing the retail availability of petroleum products in rural areas where retail outlets for these products may already be scarce. Commenters also proposed definitions of "rural area" for EPA to consider if the Agency were to propose Option 1.

Many more commenters supported Option 2, under which any facility unable to comply with the financial responsibility deadline, or having difficulty in obtaining financial assurance, could be granted an extension in States where certain findings are made based on Federally-determined criteria. Others advocated extensions when neither State assurance funds, financial assistance programs, nor affordable insurance were available. Some commenters challenged the use of "sole provider" as a criterion, while others suggested definitions for "sole provider" for EPA's consideration if the Agency were to propose Option 2. Commenters also proposed environmental criteria to be considered for use under Options 1 or 2.

Three commenters requested that EPA review the special circumstances of tribal governments and of UST owners and operators on tribal lands. The commenters noted that Indian tribes do not impose taxes and therefore do not have the financial resources to self-insure. At the same time, they said that State assurance funds generally do not apply to tribes, because States do not have the authority to levy and collect taxes on Indian lands. EPA acknowledges the concerns expressed by these commenters. EPA intends to use the time available during this extension period to continue to monitor the development of financial assurance mechanisms and to determine whether specific groups of UST owners and operators, including owners and operators of USTs located on tribal lands, may require additional consideration. Under today's rule, however, category IV USTs on Tribal lands that are not owned by Tribal governments must demonstrate financial responsibility by December 31, 1993.

USTs directly owned or operated by Tribal governments are not within the scope of today's rule. The Agency treats Indian Tribes as local governments for the purposes of the financial responsibility requirements. Consequently, USTs owned by Tribal governments will be required to comply within one year of the publication of the final rule providing additional mechanisms for local governments to demonstrate financial responsibility; these mechanisms were proposed on June 18, 1990 (55 FR 24692).

EPA appreciates the efforts of commenters in providing information relative to Options 1 and 2. These comments suggest that some specific classes or categories of UST owners or facilities may face exceptional or unique difficulty in complying with the financial responsibility requirements by December 31, 1993. Although neither option is being adopted in today's rule, EPA is continuing to review how and whether some variation of Option 2 should be adopted. EPA will use the 26 month period provided by today's rule to continue to monitor the development of programs to assist the most affected segments of the regulated community and to determine whether additional relief may be necessary. If further relief is determined to be appropriate, after considering all statutory, environmental, economic, and programmatic concerns, EPA will determine the best method, if any, to provide the relief. The Agency believes, however, that more information will be necessary to characterize fully the segments that may require further assistance and to develop appropriate criteria. To obtain this information, EPA intends to continue its dialogue with States and the regulated community.

V. Economic Impacts

This section provides an estimate of the economic impacts of the proposed rule. Because the proposed rule will not cause an annual impact on the economy of $100 million or more and will not cause an increase in the costs of production or the prices charged by the affected community, a Regulatory Impact Analysis is not required. Instead, EPA has prepared an economic impact analysis to estimate the number of affected facilities and the costs to affected facilities under the proposed and alternate options, and has evaluated the impacts on small entities as required by the Regulatory Flexibility Act.

A. Economic Impact Analysis

The economic analysis examines the potential economic effects of extending the compliance deadline. It provides an estimate of the number of potentially affected entities, a comparison of the financial condition of affected entities with and without a State assurance fund, and an analysis of rural stations.

EPA analyses have suggested that a large number of USTs and UST-owning entities are subject to the October 26, 1991 deadline. Of the approximately 1.7 million USTs subject to the technical and financial responsibility standards, about 790,000 are owned by petroleum marketers with 12 or fewer USTs, by marketers that own or operate fewer than 100 USTs at a single facility, or by non-marketers with net worth of less than $20 million. These USTs are located at about 216,000 facilities, and are owned by about 213,000 firms (for an average of 3.8 USTs per owner). As a result, the extension of the compliance deadline will affect a significant proportion of the UST-owning population.

The development of State assurance funds and State financial assistance programs provides relief to UST owners and operators, particularly those with fewer facilities and USTs. Small service stations (including single-outlet stations) required to obtain private insurance or otherwise cope with cleanup costs without State aid face potentially severe impacts. EPA estimates that 45 percent of small stations could suffer severe financial distress, and 41 percent could fail. (The figure for severe financial distress includes those firms that would fail; thus, about 90 percent of those firms suffering financial distress would fail.) Small stations in rural areas may be even more heavily affected, because they tend to have a smaller revenue base and are less financially robust than stations in metropolitan areas.

In general, State assurance funds can reduce instances of failure over the next ten years if their deductibles are small enough. State assurance funds with $10,000 deductibles can reduce failures from 41 percent to only 14 percent. State assurance funds with $50,000 deductibles are predicted to reduce failures by a much smaller amount. State financial assistance programs that help firms upgrade their USTs can also help by alleviating some of the burden associated with obtaining insurance.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act generally requires all federal agencies to review the impact of their regulations to determine whether the regulations will have a significant economic impact on a substantial number of small entities. If so, the Agency must prepare a Regulatory Flexibility Analysis. EPA believes that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed extension of the compliance date will provide relief to members of this compliance group by allowing them additional time to comply with the financial responsibility requirements. Accordingly, the Agency has concluded that the law does not require a Regulatory Flexibility Analysis, and certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 280

Administrative practice and procedure, Environmental protection, Hazardous materials insurance, Oil pollution, Penalties, Petroleum, Reporting and recordkeeping requirements, State program approval, Surety bonds, Underground storage tanks, Water pollution control.

Dated: December 16, 1991.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, part 280 of title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 280—TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS (UST)

1. The authority citation for part 280 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), and 6991(h).

2. Section 280.91 is amended by revising paragraph (d) to read as follows:

§ 280.91 Compliance dates.

* * * * *

(d) All petroleum UST owners not described in paragraphs (a), (b), or (c) of this section, excluding local government entities: December 31, 1993.

[FR Doc. 91-30581 Filed 12-20-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 205

RIN 0970-AA81

Aid to Families With Dependent Children and Adult Assistance Programs; Computer Matching and Privacy Protection Act

AGENCY: Administration for Children and Families (ACF), HHS.

ACTION: Interim final rule.

SUMMARY: This interim final rule applies to State agencies administering the Aid to Families with Dependent Children (AFDC) Program under title IV-A and the Adult Assistance Programs under titles I, X, XIV, and XVI (Aid to the Aged, Blind, or Disabled) of the Social Security Act. It implements provisions of the Computer Matching and Privacy Protection Act of 1988 and the Computer Matching and Privacy Protection Amendments of 1990, amending the requirement for independent verification of computer match findings before imposing any adverse action(s).

DATES: Comments must be received on or before January 22, 1992.

EFFECTIVE DATE: December 23, 1991.

ADDRESSES: Comments should be submitted in writing to the Assistant Secretary for Children and Families, Attention: Mr. Mack A. Storrs, Director, Division of Policy, Office of Family Assistance, Fifth Floor, 370 L'Enfant

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Promenade, SW., Washington, DC 20447. Comments may be inspected between 8 a.m. and 4:30 p.m. during regular business days by making arrangements with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Mr. Mack Storrs, Director of Policy, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401-9289.

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act of 1988 (CMPPA) defines a matching program as

"• • • any computerized comparison of—(i) two or more automated systems of records or a system or records with non-Federal records for the purpose of—(I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers or services with respect to cash, on in-kind assistance or payments under Federal benefit programs • • •"

Current Federal-State computer matching activities, as well as any proposed Federal matches to be performed by State agencies for the purpose of establishing or verifying the eligibility of applicants for and recipients of AFDC and Adult Assistance, meet the criteria of a "matching program" as described in the CMPPA. State-developed matching activities involving a comparison with other State or non-Federal records are exempt from the verification requirements set forth in these rules.

Regulatory Provisions

Prior to the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), the CMPPA required States to provide a 30-day notice before adverse actions (i.e., denying, reducing, suspending, or terminating assistance payments) could be taken as a result of the findings of a computer match. The OBRA-90 amendments authorize programs that have in their statute or regulations a different time period for notification (e.g., a 10 day timely notice period) to substitute that other period. If no such notice requirement is provided, the program must adopt a 30-day notice period before adverse action can be taken as a result of the findings of a computer match. Since the AFDC and Adult Assistance programs are bound by the 10-day timely notice requirement at § 205.10(a)(4)(i)(A), this 10-day period will apply to adverse actions based on computer match findings.

The CMPPA requires State agencies to independently verify the computer match information in order to confirm its accuracy. It expressly prohibits a recipient agency from taking an adverse action(s) against an individual prior to independently verifying the accuracy of the information. The OBRA-90 amendments also preclude the imposition of an adverse action against an individual until the agency has independently verified the findings of the computer match. However, the amendments also provide for a waiver procedure where a State can accept the match information without prior independent verification provided that the applicable Federal Data Integrity Board determines, in accordance with guidelines by the Office of Management and Budget, that: (1) Information provided by certain identified agencies is restricted to identification and amount of benefits paid by the source agency under a Federal benefit program; and (2) that there is a high degree of confidence in the accuracy of the information provided. The regulations at § 205.56(b) have been amended to reflect these new requirements.

The provisions currently found at § 205.56(b) pertaining to unearned income information for the Internal Revenue Service (IRS) have also been revised. Specific procedures for the verification of IRS information will be set forth in agreements developed by IRS.

The CMPPA also requires that the appropriate verification procedures be set out in agreements negotiated between matching agencies and matching providers. Such agreements must then be approved by the Federal agency Data Integrity Boards. Section 205.56 has been revised to incorporate this requirement.

Regulatory Procedures

Justification for Dispensing with Notice of Proposed Rulemaking

The amendments to the regulation are being published in interim final form. The Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, if the Department for good cause finds that Notice of Proposed Rulemaking is unnecessary, impractical or contrary to the public interest, it may dispense with such notice if it incorporates a brief statement in the interim final regulation of the reasons for doing so.

The Department finds that there is good cause to dispense with Notice of Proposed Rulemaking with respect to these changes. We find that publication of this regulation in proposed form would be unnecessary. This regulation is procedural and generally implements the statutory provisions. While Notice of Proposed Rulemaking is being waived, we are interested in comments regarding any changes which should be made to these interim rules. We will review any comments that are received within 30 days from the date of publication of this interim final rule and, if appropriate, we will publish final rules with any necessary changes.

Executive Order 12991

These interim final rules have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required because these regulations will not: (1) Have an annual effect on the economy of $100 million or more; (2) impose a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

This rule does not require any information collection activities and therefore, no approval is necessary under the Paperwork Reduction Act.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96-354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. The primary impact of these proposed rules is on State governments and individuals. Therefore, we certify that these rules, if promulgated, will not have a significant economic impact on a substantial number of small entities because they affect benefits to individuals and payments to States. Thus, a regulatory flexibility analysis is not required.

(Catalog of Federal Domestic Assistance Programs 13.780, Assistance Payments-Maintenance Assistance.)

List of Subjects in 45 CFR Part 205

Computer technology, Grant programs—social programs, Privacy, Public assistance programs, Reporting and recordkeeping requirements, Wages.

Dated: August 28, 1991.

Jo Anne B. Barnhart,

Assistant Secretary for Children and Families.

Approved: October 22, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

Part 205 of chapter II, title 45, Code of Federal Regulations is amended as set forth below:

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

1. The authority citation for part 205 is revised to read as follows:

Authority: 5 U.S.C. 552a note; 42 U.S.C. 602, 603, 606, 607, 611, 1302, 1306(a), and 1320b-7

2. Section 205.56 is amended by revising paragraph (b) to read as follows:

§ 205.56 Requirements governing the use of income and eligibility information.

• • • • •

(b)(1) State agencies shall not take any adverse action to terminate, deny, suspend or reduce benefits to an applicant or recipient, based on information produced by a Federal computer matching program that is subject to the requirements in the Computer Matching and Privacy Protection Act (CMPPA) unless:

(i) The information has been independently verified in accordance with the independent verification requirements set out in the State agency's written agreement as required by § 205.58 or

(ii) The independent verification requirement has been waived by the Department's Data Integrity Board.

(2) The CMPPA defines a matching program as any computerized comparison of:

(i) Two or more automated systems of records or a system of records with non-Federal records for the purpose of:

(A) Establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

(B) Recouping payments or delinquent debts under such Federal benefit programs, or

(ii) Two or more automated Federal personnel or payroll system of records or a system of Federal personnel or payroll records with non-Federal records.

• • • • •

3. Section 205.58 is amended by revising paragraphs (a) and (b)(4) to read as follows:

§ 205.58 Income and eligibility information; specific agreements required between the State agency and the agency supplying the information.

(a) A State plan under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that, in carrying out the requirements of §§ 205.55 and 205.56, the State agency will enter into specific written agreements as described in paragraph (b) of this section with those agencies providing income and eligibility information. Agreements with Federal agencies are subject to the approval by the appropriate Federal Data Integrity Boards. The agreements will contain the procedure to be used in requesting and providing information.

(b) • • •

(4) The type of information and reporting periods for which information will be provided and the verification methodologies to be used;

• • • • • •

[FR Doc. 91-29724 Filed 12-20-91; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 556

[Docket No. 75-21; Notice 3]

RIN 2127-AE30

Exemption for Inconsequential Defect or Noncompliance

AGENCY: National Highway Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: A manufacturer which determines that its motor vehicle or motor vehicle equipment fails to comply with a Federal motor vehicle safety standard or contains a safety-related defect may, under part 556, Exemption for inconsequential defect or noncompliance, petition to be exempted from the obligation under the National Traffic and Motor Vehicle Safety Act to notify owners and remedy the noncompliance or defect, upon a showing that the noncompliance or defect is inconsequential as it relates to motor vehicle safety. Under part 573, Defect and noncompliance reports, a manufacturer making a noncompliance or defect determination must, within 5 working days of that determination, file a report with NHTSA. The final rule adopted by this notice requires a manufacturer petitioning under part 556 to attach a copy of its part 573 report with its petition.

DATES: The effective date of the final rule is January 22, 1992.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA [202-366-5263].

SUPPLEMENTARY INFORMATION: Under 49 CFR 573.5(a), "Each manufacturer shall furnish a report to the NHTSA" for each noncompliance with a Federal motor vehicle safety standard or each safety related defect in the vehicles or motor vehicle equipment that he manufactures "that he or the Administrator determines to exist." Section 573.5(b) requires that the manufacturer submit the report "not more than 5 working days after" a noncompliance or safety related defect "has been determined to exist." A manufacturer making such a determination is required by the National Traffic and Motor Vehicle Safety Act to notify its purchasers and to remedy the noncompliance or the safety related defect. However, under 49 CFR 556.4(a), the manufacturer may file a petition with the Administrator for a determination that the noncompliance or safety related defect is inconsequential as it relates to motor vehicle safety. Such petition must be filed within 30 days after the determination. If the petition is granted, the manufacturer is excused from the obligation to notify and remedy.

It is clear that if a noncompliance or safety related defect does not exist, the obligation to notify and remedy does not arise. Thus § 556.4(a) extends the right to petition only to "A manufacturer who has determined the existence, in a motor vehicle or item of replacement equipment that he produces, of a defect related to motor vehicle safety or a noncompliance with an applicable Federal motor vehicle safety standard • • •". In other words, the right extends only to a manufacturer which has the related obligation to file a part 573 report.

On occasion, the fact that a manufacturer must determine the existence of a noncompliance before the manufacturer can file a part 556 petition does not appear clear to manufacturers seeking an inconsequentiality determination. When the agency receives a petition, but no part 573 report relating to the noncompliance or defect forming the basis for the petition, the agency must take time to obtain the manufacturer's determination of noncompliance before it can consider the petition. This delay is not in the

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interest of safety in those instances in which the Administrator ultimately denies the petition because it is important that notification and remedy begin as soon as practicable after the denial. Although the agency believes that the relationship between part 573 and part 556 is presently unambiguous, it wishes to make the relationship even clearer by explicitly providing in part 556 that a petitioning manufacturer is required to submit a copy of its part 573 report as part of its petition. It is therefore adding that requirement as § 556.4(b)(6) (the regulation already requires the manufacturer to submit its petition in three copies; thus, three copies of the report will also be required).

In accordance with 5 U.S.C. 553(b)(3)(A) and (B), because the amendment is procedural in nature and does not alter the existing requirement to submit part 573 reports containing defect or noncompliance determinations, it is hereby found for good cause shown that notice and public procedure thereon are unnecessary, and the amendment is effective thirty days after its publication in the **Federal Register**.

Rulemaking Analyses

A. Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

After considering the impacts of this rulemaking action, NHTSA has determined that the action is not major within the meaning of Executive Order 12291 "Federal regulation", nor significant under Department of Transportation regulatory policies and procedures. The action does not involve any substantial public interest or controversy. There is no substantial effect upon State and local governments. There is no substantial impact upon a major transportation safety program. Therefore, a full regulatory evaluation analyzing the economic impact of the final rule has not been prepared.

B. Regulatory Flexibility Act

The agency has also considered the effects of this action in relation to the Regulatory Flexibility Act. I certify that this action will not have a significant economic impact upon a substantial number of small entities. The economic impact of providing additional copies of a report that is already required, is not significant. This action will also not affect the price of new motor vehicles or motor vehicle equipment.

C. Executive Order 12612 (Federalism)

The agency has analyzed the action in accordance with the principles and criteria contained in Executive Order 12612 "Federalism" and determined that the action does not have sufficient Federalism implications to warrant the preparation of a federalism Assessment.

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The action will not have a significant effect upon the environment.

List of Subjects in 49 CFR Part 556

Motor vehicle safety, motor vehicles, motor vehicle equipment.

In consideration of the foregoing, 49 CFR part 556 is amended as follows:

PART 556—[AMENDED]

1. The authority citation for part 556 continues to read as follows:

Authority: 15 U.S.C. 1417; delegation of authority at 49 CFR 1.50.

§ 556.4 [Amended]

2. In Section 556.4, new paragraph (b)(6) is added to read as follows:

* * * * *

(b) * * *

(6) Be accompanied by three copies of the report the manufacturer has submitted, or is submitting, to NHTSA in accordance with part 573 of this chapter, relating to its determination of the existence of safety related defect or noncompliance with an applicable safety standard that is the subject of the petition.

* * * * *

Issued on December 10, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-30492 Filed 12-20-91; 8:45 am]

BILLING CODE 4510-59-M

Proposed Rules

Federal Register
Vol. 56, No. 246
Monday, December 23, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1435

Sugar and Crystalline Fructose Marketing Allotment Regulations for Fiscal Years 1992 Through 1996

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document announces a 30-day extension of time, until February 3, 1992, for comments on the proposed rule published in the **Federal Register** on December 2, 1991 (56 FR 61191). The proposed rule set forth proposed regulations for standby marketing allotments on sugar and crystalline fructose.

DATES: All comments on the proposed rule must be submitted on or before February 3, 1992 in order to be assured of consideration.

ADDRESSES: Comments should be mailed or delivered to Dean Ethridge, Deputy Administrator for Program Planning and Development (DAPPD), Agricultural Stabilization and Conservation Service (ASCS), room 3090, South Agriculture Building, P.O. Box 2415, U.S. Department of Agriculture, Washington, DC 20250. Comments received may also be inspected at room 3741, South Agriculture Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC between 9 a.m. and 4:30 p.m., Monday through Friday except holidays.

FOR FURTHER INFORMATION CONTACT: Robert D. Barry, Assistant to the Deputy Administrator for Program Planning and Development, ASCS; telephone (202) 720-3391.

SUPPLEMENTARY INFORMATION: Part VII of subtitle B of title III of the Agricultural Adjustment Act of 1938, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990, provided for the imposition of marketing allotments on sugar processed from domestically produced sugarcane and sugar beets and on crystalline fructose manufactured from corn, during the fiscal years 1992 through 1996, if imports of sugar would otherwise be less than 1.25 million short tons, raw value. On December 2, 1991 the Commodity Credit Corporation published a proposed rule setting forth proposed regulations to implement these "standby" marketing allotments.

The proposed rule provided for a 30-day period for public comments; such comments were required to be received on or before January 2, 1992 in order to be assured of consideration. Representatives of the sugar and crystalline fructose industries have requested that this comment period be extended by 30 days, to February 3, 1992, due to the pending revision of several marketing allotment provisions by the Food, Agriculture, Conservation, and Trade Act Amendments of 1991, the recent intensification of negotiations on agricultural policy reforms in the Uruguay Round of multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT), and the onset of the holiday season. In the interests of receiving the fullest possible public comment on the proposed regulations, CCC will grant this request.

Notice

Notice is hereby given that the period of time for submitting comments on the proposed rule published on December 2, 1991 (56 FR 61191) is extended to February 3, 1992.

Signed the 17th day of December, 1991, in Washington, DC.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-30587 Filed 12-20-91; 8:45 am]

BILLING CODE 3410-05-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-56]

Richard P. Grill; Filing of a Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of petition for rulemaking.

SUMMARY: Mr. Richard P. Grill requests that the Nuclear Regulatory Commission (NRC) amend its regulations that establish general design criteria for nuclear power plants, as necessary, to add lightning induced and other electrical transients to the required list of phenomena that licensed nuclear power plants and other nuclear facilities must be designed to withstand safely. The petitioner requests that the NRC require licensees of nuclear power plants and other nuclear facilities to consider the effect of electrical transients on the operability and reliability of nuclear safety related systems and potential accident scenarios analyses.

DATES: Submit comments by February 21, 1992. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch. For a copy of the petition, write: Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, Washington, DC 20555, Telephone: (301) 492-7758 or Toll Free: 800-368-5642.

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SUPPLEMENTARY INFORMATION:

Background

The NRC has received a petition for rulemaking submitted by Richard P. Grill. The petition was assigned Docket No. PRM–50–56 on August 19, 1991. The petitioner has requested that the NRC amend appendix A to 10 CFR part 50, "General Design Criteria for Nuclear Power Plants," to add lightning induced and other electrical transients to the required list of phenomena that licensed nuclear power plants and other nuclear facilities must be designed to withstand. The petitioner has requested that the NRC modify Design Criteria 2, 13, 14, 17, 18, 19, 21, 22, 23, 24, 29, 63 and 64 of appendix A to 10 CFR part 50 to require licensees of nuclear power plants and other nuclear facilities to consider the effect of electrical transients on the operability and reliability of nuclear safety related systems and potential accident scenarios analyses. The requested amendment would also require licensees to take whatever actions are necessary to assure that electrical transients cannot compromise the safety of the facility and the health and safety of the public. The petitioner requests that these design requirements be mandatory for all new license applications as well as for license renewal for operating plants. The petitioner requests that the Commission first conduct the research necessary to develop a technical basis for issuing the regulations and for supplying guidance to its licensees.

The Petitioner

The petitioner was formerly the Chief, Site Safety Branch, Division of Reactor Licensing, U.S. Atomic Energy Commission in the late 1960's and early 1970's. In 1976, petitioner accepted a position with the NRC, in the Environmental Standards Branch.

The petitioner contends that some members of the staff of the Atomic Energy Commission and the Nuclear Regulatory Commission have urged that a comprehensive study be conducted to quantify the potential risk and consequences from electrical transients since the late 1960's. As the Branch Chief responsible for analysis of the hazards posed by natural phenomena on nuclear power plants, the petitioner actively sought to have the electrical transient issue addressed. After joining the NRC in 1976, the petitioner renewed efforts to have the issue addressed. These efforts included a direct appeal to the Commission. As a result, a Draft Regulatory Guide and Value/Impact Statement, entitled "Lightning Protection for Nuclear Power Plants," was issued for public comment by the Commission in August 1979. The draft guide was submitted to the Advisory Committee on Reactor Safeguards (ACRS) for review and a final draft version was submitted to the ACRS in February 1981. The guide (which had not received NRC Staff consensus) was discussed at the February 5–7, 1981, ACRS meeting. The ACRS returned the regulatory guide to the staff for further action and recommended that the NRC Staff utilize consultants to provide the necessary expertise for this specialized subject. A final version of this Regulatory Guide was never published.

The petitioner contends that the draft Regulatory Guide was weak on justification because the studies necessary to show whether or not electrical transients posed a threat had not been done. In fact, page 10 of the guide states "The staff has not reviewed the surge protection aspects of nuclear power plants and, therefore, is not thoroughly familiar with the present practices used for the protection of systems important to safety from transient overvoltages."

Need for the Suggested Amendments

The petitioner believes that potential effects of transient electrical surges on the integrity of safety related control and monitoring systems have not been rigorously analyzed nor have any implications for safety been factored into preventative design conservatisms. The petitioner states that, to his knowledge, no commercial nuclear power plant design in the United States has ever been thoroughly studied to see what effect the range of electrical transients from lightning strikes, switching surges, or other sources, might have on the facility. The petitioner asserts that a complete analysis of this issue has never been conducted by the NRC.

The petitioner contends that because the effects of lightning and other electrical transients have not been analyzed, the effects were not considered in the development of General Design Criteria or Safety Class 1 specifications. Therefore, the design or electrical safety sensing and control systems may not have utilized equivalent levels of conservatism now found in the remainder of the facility.

According to the petitioner, lightning strikes and switching surges are relatively common occurrences at or near electrical generating stations and their associated transmission lines. Generating station designers have long known electrical transients could damage generators or other equipment and interrupt electrical service. All generating stations are protected to some level against a transient's gross effects as a matter of prudent economics. Lightning arresters, for example, are provided to decouple massive electrical surges on a transmission line resulting from a lightning strike. Protective devices, however, do not assure protection of more delicate control circuits or instrumentation from the pulse the arrester allows to pass before interrupting the transient.

The petitioner states that transients can also enter the circuitry by any number of alternate paths from outside or inside the plant. These transients can enter directly on electrical supply and instrumentation lines from direct contact with a source of electricity or by induced currents generated by electromagnetic impulse (EMP) phenomena in the atmosphere (lightning, nuclear detonations), switching procedures, ferromagnetic effects or electromagnetic emission from other adjacent equipment, i.e., radio or radar transmitters, arc welders, thyristor dimmer switches, radio frequency heaters, electric motors, etc. These transients are not considered crucial for conventional generating stations as the maximum consequence is plant shutdown and a resultant loss of revenue. The transients could be extremely important for a nuclear powered station, however, as the bottom line in this case could be the health and safety of the public, not dollars.

The petitioner also states that as safety related control systems at nuclear facilities have become more complex and sophisticated, their vulnerability to electrical transients has increased. Relatively sturdy vacuum tubes used in earlier plants have been replaced, first by transistors and more recently by solid state integrated logic systems. These later systems can be disrupted by quite small fluctuations of current.

The petitioner contends that industry standards have been developed for protection of conventional electrical and electronic circuits because of the vulnerability of these electronic systems. According to the petitioner, the NRC does not require the use of even these conventional standards much less require more rigorous standards commensurate with the safety consequences of failure of nuclear power plant protective systems. Therefore, the petitioner doubts that the electrical/electronic definition of "Safety Class 1" is as equally rigorous and reassuring as that for other design parameters.

The petitioner contends that members of the NRC Staff have indicated that they are aware of several incidents which have occurred in nuclear power plants that can be attributed to lightning effects such as the shut down of the Humbolt Bay plant and the explosion in the off-gas system of Vermont Yankee.

The Solution

The petitioner requests that the NRC amend its regulations pertaining to General Design Criteria for Nuclear Power Plants, as necessary, to add lightning induced and other electrical transients to the required list of phenomena that licensed nuclear power plants and other nuclear facilities must be designed to safely withstand. The petitioner requests licensees be required to take whatever actions are necessary to assure such transients cannot compromise the safety of the facility and the health and safety of the public.

According to the petitioner, other Government agencies, such as the Defense Nuclear Agency and the Defense Communications Agency, have devoted significant resources to investigation of surge disruption in similarly complex electronic circuitry. While the transients investigated in these studies originate from sources other than natural phenomena, such as EMP from postulated nuclear explosions, the effects on circuitry are similar. The petitioner further states that the analytical tools already developed by these agencies could be modified for use by the NRC and the commercial nuclear industry to determine the magnitude of this potential threat and to suggest remedial courses of action, should they be necessary.

Petitioner suggests that the NRC answer a simple question posed over 20 years ago "Do electrical transients produced by lightning or other causes present a significant hazard to the safety of nuclear facilities? Specifically, the petitioner suggests that the NRC take the following actions:

1. Initiate a research study to determine the current state of knowledge of lightning and other electrical surge protection. Assemble the results of this study into a comprehensive reference report.

2. Initiate another study to identify and quantify potential consequences of all types of electrical transiets on licensed nuclear power plants and other nuclear facilities.

3. Prepare and publish a rule in the Federal Register to require that each relevant NRC licensee analyze and modify, if necessary, its facility to assure safety related nuclear systems will not be compromised by electrical transients.

4. Utilizing these studies, licensee experience and analysis, and relevant industry standards, develop electrical transient protection guidance specifically tailored to the exceptionally high reliability requirements of nuclear facility safety related control systems.

5. In order to assure prompt resolution of other nuclear safety issues, determine why the NRC was so reluctant to address this issue.

The Petitioner's Suggested Amendments

The petitioner has requested a generic amendment to the general design criteria provisions for nuclear power plants, 10 CFR Part 50.

I. The amendment would—

1. Revise Design Criteria 2, 13, 14, 17, 18, 19, 21, 22, 23, 24, 29, 63 and 64 of appendix A, to require licensees of nuclear power plants and other nuclear facilities to consider the effect of electrical transients on the operability and reliability of nuclear safety related systems and potential accident scenario analyses.

2. Require licensees to take whatever actions are necessary to assure such transients cannot compromise the safety of the facility or the health and safety of the public; and

3. Be mandatory for all new license applications as well as for license renewals of existing plants.

II. The petitioner suggests that prior to proceeding with the suggested amendments the Commission must first conduct the research necessary to develop a technical basis for issuing the regulations and for supplying guidance to its' licensees.

Request for Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing discussion.

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Dated at Rockville, Maryland, this 17th day of December 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91–30576 Filed 12–20–91; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–CE–90–AD]

Airworthiness Directives; Beech 90, 99, and 100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would supersede AD 91–12–12, which currently requires a one-time inspection of the rudder trim tab drainage area for proper drainage provisions on certain Beech 90, 99, and 100 series airplanes, and subsequent modification if correct drainage provisions do not exist. The Federal Aviation Administration has determined that the actions specified by AD 91–12–12 should also apply to other serial numbered airplanes currently not affected by this AD. The actions specified by the proposed AD are intended to prevent structural damage or imbalance to the rudder caused by improper drainage of water from the rudder trim tab.

DATES: Comments must be received on or before February 3, 1992.

ADDRESSES: Beech Service Bulletin No. 2365, Revision 1, dated December 1991, may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–90–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Don Campbell, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4128; Facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the

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proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-90-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Airworthiness Directive (AD) 91-12-12, Amendment 39-7023 (56 FR 26020, June 6, 1991), currently requires a one-time inspection of the drainage area of the rudder trim tab for proper drainage provisions on certain Beech 90, 99, and 100 series airplanes, and subsequent modification if correct drainage provisions do not exist. The actions are accomplished in accordance with Beech Service Bulletin No. 2365, dated January 1991.

The ending serial number on the Model C90A airplanes in the applicability of AD 91-12-12 is LJ-1244. Since the AD has become effective (May 21, 1991), the Federal Aviation Administration (FAA) has determined that the actions specified by AD 91-12-12 should apply to all Model C90A airplanes up to and including serial number LJ-1280. The manufacturer (Beech) has since issued Service Bulletin No. 2365, Revision 1, dated December 1991, which incorporates the revised serial number applicability.

The FAA has examined the above situation, reviewed all available information related to the circumstances described above, and has decided that further AD action should be taken to incorporate all Model C90A airplanes up to and including serial number LJ-1280 into the current AD action. Since the condition described is likely to exist or develop in other Beech 90, 99, and 100 series airplanes of the same type design, the proposed AD would retain the requirements of AD 91-12-12, but would expand the applicability of the Model C90A airplanes. The proposed actions would be accomplished in accordance with the instructions in Beech Service Bulletin No. 2365, Revision 1, dated December 1991. It would supersede AD 91-12-12, Amendment 39-7023.

It is estimated that 2,068 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 hour per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $113,740. However, AD 91-12-12 required the same actions as the proposed AD on 2,032 airplanes. The proposed AD would pose an additional cost impact of $1,980 (36 airplanes times 1 hour at $55) than that already required by AD 91-12-12.

The regulations proposed herein would not have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposed to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 91-12-12, Amendment 39-7023 (56 FR 26020, June 6, 1991), and adding the following new AD:

Beech: Docket No. 91-CE-90-AD.

Applicability: Models 65-90, 65-A90, 65-A90-1, 65-A90-2, 65-A90-3, 65-A90-4, B90, and C90 airplanes (all serial numbers (S/N)); Model C90A airplanes (S/N LJ-1063 through LJ-1280); Models E90, H90, 99, 99A, A99A, B99, C99, 100, A100, and B100 airplanes (all S/N), certificated in any category.

Compliance: Required within the next 150 hours time-in-service after the effective date of this AD, unless already accomplished (AD 91-12-12, Amendment 39-7023).

To prevent structural damage or imbalance to the rudder caused by improper drainage of water from the rudder trim tab, accomplish the following:

(a) Inspect the rudder trim tab for proper moisture drainage provisions in accordance with the instructions in Beech Service Bulletin No. 2365, Revision 1, dated December 1991. If the correct drainage provisions do not exist, prior to further flight, modify the rudder trim tab in accordance with the instructions in the referenced service bulletin.

Note: Except for a change in the applicability paragraph, the requirements of this AD are the same as AD 91-12-12, Amendment 39-7023, which is superseded by this action.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request of Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085; or may examine this document at the FAA, Central Region Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on December 17, 1991.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-30527 Filed 12-20-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 220

Collection From Third Party Payers of Reasonable Costs of Healthcare Services

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the DoD regulation that implements 10 U.S.C. 1095. This statute generally provides for collection by the United States from third party payers of reasonable costs of healthcare services provided in facilities of the Uniformed Services to DoD beneficiaries who are also beneficiaries under the third party payer's plan. This proposed rule would implement recent legislative amendments to section 1095 that expanded the third party collection authority to cover outpatient services, automobile liability and no-fault insurance policies, and Medicare supplemental insurance plans. Active duty members are included in collections from automobile liability and no-fault insurance carriers. The proposed rule would also revise methods for determining reasonable costs for inpatient care services.

DATES: Comments must be received by February 21, 1992.

ADDRESSES: Comments should be sent to: Office of the Deputy Assistant Secretary of Defense (Health Services Operations), Attn: Operations and Management Support, room 3E343, The Pentagon, Washington, DC 20301-1600.

FOR FURTHER INFORMATION CONTACT: CDR Steven D. Olson, MSC, USN at (703) 693-2570.

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted 10 U.S.C. 1095 as part of the Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99-272, section 2001(a)(1), to permit the Department of Defense to collect from third party payers reasonable inpatient hospital care costs incurred on behalf of most DoD health care beneficiaries. This legislation was based on the premise that private health care plans should not avoid payment for inpatient healthcare services provided to their beneficiaries solely because those beneficiaries also happen to be entitled to space available care in military facilities. To implement this statute, DoD issued a proposed rule October 8, 1986, and a final rule September 25, 1987.

After several years of experience, Congress indicated its disappointment regarding the relatively low level of collections being made under the program. As one step to address this, in 1989, Congress amended the statute to provide that funds collected, rather than being turned over to the general treasury, would be credited to the appropriations account supporting the facility that provided the care. Public Law 101-189, section 727. The intent of this amendment was to provide an incentive for facilities of the Uniformed Services to aggressively implement this program.

Improved implementation was also the objective of regulatory revisions promulgated by DoD in 1990. A proposed rule was issued January 16, 1990, 55 FR 1473, and a final rule, May 29, 1990, 55 FR 21,742. The result was a significantly revised regulation setting forth DoD's interpretations of key statutory provisions and related requirements and procedures.

Two government reports in 1990 are also noteworthy as background. The DoD Inspection General released an exhaustive audit report calling for a much more active collection program. I.G. Audit No. 9PR-0031. Draft versions of this report stimulated much of the 1990 rule making activity. On a related front, the General Accounting Office issued a report entitled, "Military Health Care: Recovery of Medical Care Costs From Liable Third Parties Can Be Improved." This report addressed collections in tort liability cases, such as automobile accident cases, under the Federal Medical Care Recovery Act (FMCRA), and recommended expanding that authority to cover no-fault automobile insurance policies and to permit retention of collected funds at the facility that provided the care.

These two reports stimulated further Congressional action in 1990. In the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, section 713, Congress made three significant changes to 10 U.S.C. 1095. First, Congress expanded the collection authority to cover outpatient services. The original statute only covered impatient hospital care. Second, based on the GAO report, Congress supplemented current legal authority to collect in tort liability cases with new authority to also collect from no-fault insurance carriers. Congress folded both the pre-existing tort liability case authority and the new no-fault authority under the framework of section 1095, thus allowing retention of funds collected at the facility in both types of cases. Third, reacting to one of the Inspector General's recommendations, Congress expanded section 1095 to cover Medicare supplemental insurance plans. Similar statutory changes (but not including the outpatient care provision) were made in the Department of Defense Appropriations Act of FY 1991, Public Law 101-511, section 8075.

The Senate Appropriations Committee explained its proposed provision, which was enacted, as one which:

> Would allow the Department of Defense to collect from Medicare supplemental insurance policy carriers and from automobile liability and no-fault insurance carriers for treatment of eligible patients in military hospitals. As an incentive for military hospitals to make these collections, net proceeds would remain at the collecting medical facility. (S. Rept. 101-521, p. 48.)

In making these statutory revisions, Congress clearly expressed its intent regarding the operation of the third party collection program. The Conference Committee Report on the Authorization Act said "the conferees are disappointed to note" the "major flaws" in the program identified by the Inspector General, which if not corrected, could result in a failure "to collect approximately $318 million from primary health insurance plans for fiscal years 1990 through 1994." The Conference Report concluded:

> The conferees expect that the Department of Defense will correct these deficiencies, and will aggressively implement the expanded authority provided in this section. (H. Conf. Rept. 101-923, p. 618.)

This proposed rule is to implement the expanded authority. It is important to note that Active Duty beneficiaries are excluded from third party collections except in cases involving automobile liability and no-fault insurance. In addition, the proposed rule will revise current methods for calculating reasonable costs of inpatient hospital care services.

II. Provisions of the Proposed Rule

A. Outpatient Services

1. Expansion of Authority

The recent statutory amendment added outpatient services to the section 1095 collection program by replacing the previous references to "inpatient hospital care" with the new authority to collect for all "healthcare services." We

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propose to make a comparable revision to the regulation at various places. Specifically, this change would be made in the heading for part 220, §§ 220.1, 220.2, 220.8 and 220.9.

2. Per Visit Rate

Another proposed revision to § 220.8 involves the calculation of reasonable costs for outpatient services. Congress addressed this by authorizing "all-inclusive per visit rates" as the basis for outpatient services collections section 1095(f)(2). Based on this authority, DoD proposes to adopt this method for computing reasonable costs for most outpatient care. Thus, collections for most outpatient services will be based on a standard per visit fee, representing the average cost in facilities of the Uniformed Services of an outpatient visit. Multiple outpatient visits on the same day to different clinics will result in one charge for each clinic visit. Multiple visits on the same day to the same clinic will only have one charge. As a general rule, the standard per visit amount will be all-inclusive. No additional charge will be made for routine laboratory, radiology, pharmacy or other services provided in conjunction with an outpatient visit. A separate charge for same day/ambulatory surgery will be published annually.

However, when the provision of services is at the request of a provider outside of the Military Health Service System (MHSS) rather than in conjunction with an outpatient visit at a military medical treatment facility (MTF), charges shall be made for certain high cost ($100 or more) ancillary services and procedures such as laboratory, radiology, pharmacy, pulmonary function, cardiac catheterization, hemodialysis, hyperbaric medicine, electrocardiography, electroencephalography, electroneuromyography, pulmonary function, inhalation and respiratory therapy and physical therapy services. For example, patients seen by civilian practitioners under the CHAMPUS program often obtain prescribed laboratory and radiology tests as well as prescription drugs from a local MTF. DoD Partnership Program providers acting in their MHSS role are not considered outside providers for this purpose.

The per visit rate, described above, will not vary based on the precise medical procedures involved in the visit. The rate for certain outside provider requested high cost ancillary services, however, will be based on the cost of the type of service provided. The particular high cost services, drugs or procedures covered by the special rule will be published annually, along with the rate applicable to each service.

The adoption of this method of computing costs of third party collection conforms to the method currently followed in cases in which private payment is required, including automobile accident cases under the Federal Medical Care Recovery Act. In addition, it will rely upon the same data and computation systems as were used to establish the per diem rates that have been used for inpatient hospital services collections under this program. Also, this method provides a simple, economical method for third party collections. As in the case of the per diem amounts, the applicable visit charge, the same day/ambulatory surgery charge, and the rates for externally requested high cost ancillary services shall be updated and published annually. For treatment rendered in fiscal year 1992, the standard per visit amount is $77.

3. Effective Date

A new § 220.6(d) is proposed to reflect the Congressional effective date for the expansion of the third party collection program to outpatient care. It would not apply to plans that have been in continuous effect without amendment or renewal since prior to the effective date of the statutory amendment (November 5, 1990), to the extent that such plans clearly exclude payment to the Federal government for care in military facilities.

4. Timetable for Actual Billings

In issuing this proposed rule, our purpose is to establish all regulatory requirements that will be needed to carry out this expansion to the program. However, with respect to outpatient services billings, we note that for most facilities of the Uniformed Services, a number of internal systems adjustments are not completed that are necessary to the operation of the program. Therefore, in some areas of the country, actual billings for outpatient services will not promptly follow completion of the rule making activity. Activities are permitted to back bill for care provided between the effective date of this rule and the provision of internal systems to implement the program.

B. Medicare Supplemental Insurance Plans

1. Extension of Collection Authority

The current § 220.6(b) excludes Medicare supplemental insurance plans from section 1095. Based on the recent Congressional action, we propose to include such plans in the program by amending § 220.6 and the definition section (to be redesignated as § 220.12). In addition, we propose to add a new § 220.10 concerning special rules applicable to Medicare supplemental insurance plans.

2. Services Covered

Because Medicare is excluded as a third party payer under this program, and because Medicare supplemental insurance plans generally define themselves relative to the primary Medicare coverage, there is a need for a special rule for third party collections from Medicare supplemental plans for care provided in facilities of the Uniformed Services. Congress provided the special rule. The House Armed Services Committee, which originated this provision, explained:

> In authorizing collection from Medicare supplemental policies, the committee intends that the right of the United States to collect would be comparable to the obligation that the third party payer would incur if the healthcare services were provided under Medicare.

H. Rept. 101–665, p. 214; see also H. Conf. Rept. 101–923, p. 618. Similarly, the Appropriations Act general provision states that in connection with Medicare supplemental policies:

> The facility of the uniformed services shall be treated as if it were a Medicare eligible provider and the services provided as if they were Medicare-covered services.

Public Law 101–511, section 8075.

The basic policy Congress wants to put in place is that Medicare supplemental plans should be no better or worse off when their insured beneficiaries receive care in a facility of the Uniformed Services than those plans are when their insured beneficiaries receive care from civilian providers. In this way, these plans do not enjoy a windfall when their insured beneficiaries receive care in a facility of the Uniformed Services. Our proposed § 220.10(a) adopts a general policy consistent with this Congressional intent.

3. Inpatient Charges

The proposed rule goes on to apply the above general philosophy in the context of inpatient hospital care. To do so, notice must be taken of the liability of a Medicare supplemental insurance carrier in the usual civilian hospital context, which is to pay the inpatient deductible amount for hospital services under Medicare Part A and the 20% cost share for professional services under Medicare Part B. The Medicare inpatient deductible is an initial amount, set by statute at $520 in 1987 and updated annually thereafter (the 1991 amount is $628), followed by additional amounts beginning on the 61st day of care in long-stay cases. Based on this, in the typical case, the Medicare supplemental insurance carrier would be responsible for the initial inpatient deductible amount for hospital services, 20% of the professional services provided, and additional amounts after the 61st day. The proposed § 220.10(b), consistent with the Congressional policy, establishes this as the maximum liability of the Medicare supplemental insurance carrier.

4. Outpatient Charges

Similarly, the proposed § 220.10(c) would establish the rule that a Medicare supplemental policy would be responsible for the Medicare Part B professional deductible amount (the first $100 per year), plus 20% of the outpatient charges for remaining services that are within the Medicare program's scope of services. The normal outpatient charges would apply with respect to services not covered by Medicare but within the scope of the supplemental policy. Under Medicare, after the deductible is met, the beneficiary cost share for outpatient care is 20%; this then becomes the responsibility of the Medicare supplemental plan. Thus, as an example based on this provision, in FY 1992, the amount that would be collected from a Medicare supplemental insurance plan for a normal visit, after the $100 deductible has been met, would be 20% of the $77 per visit cost, or $15.

The amount payable from a Medicare supplemental insurance plan for ancillary services and procedures ordered by an outside provider would be based on 20% of the charges for that service or procedure.

5. Medicare Claim not Required

In regard to claims procedures, another special rule is necessary to accomplish the outcome intended by Congress. The usual procedure for Medicare supplemental carriers is to accept claims only after the primary claim has been processed and paid by Medicare. In this way, the remaining liability, which becomes the responsibility of the supplemental policy, is apparent. However, a different process is required in section 1095 cases because there will be no claim to Medicare. Instead, the third party payer is statutorily required to accept the claim as involving Medicare covered services from an authorized provider.

This is not a significant imposition because the nature of the liability and the amount involved are readily apparent or determined, based on standard, pre-set per diem or per visit amounts and the standard Medicare inpatient deductible. Thus, the third party payer's liability is not a function of complex calculations that can only be made after action by the primary payer; it is straightforward and easily determined based on information presented with the claim.

6. Effective Date

Proposed § 220.10(e) reflects the statutory effective date of the expansion of the § 1095 authority to cover Medicare supplemental plans. The provision is similar to that mentioned above in connection with outpatient services.

C. Automobile Liability and No-Fault Automobile Insurance Policies

1. Extension of Collection Authority

In the recent statutory amendments, Congress amended the definition of "third party payer" to include policies issued by "an automobile liability insurance or no-fault insurance carrier" section 1095(h)(1). We propose to make a comparable amendment in proposed § 220.12. Most of the normal rules and procedures of part 220 will apply to these types of cases. However, as with Medicare supplemental plans, some special rules are needed in connection with automobile liability and no-fault policies.

2. Active Duty Members Covered

The first special rule is that the third party collection authority in automobile cases applies to active duty members. The usual rule of section 1095 is that active duty members are excluded. This is likely based on the fact that active duty members typically do not have other health insurance. However, under the Federal Medical Care Recovery Act, automobile liability cases have long followed a different rule, which Congress has now adopted for automobile cases under the third party collection program. Section 1095(i)(1). Thus, under proposed § 220.11(a), medical services provided in a facility of the Uniformed Services to an active duty member in cases in which a third party automobile liability insurance or no-fault insurance carrier is a responsible payer, the carrier has a duty to pay.

3. Relation to Federal Medical Care Recovery Act

Under the Federal Medical Care Recovery Act (FMCRA), Public Law 87–693 (42 U.S.C. 2651 *et seq.*), the United States has a right to collect in cases "creating a tort liability upon some third person." 42 U.S.C. 2651(a). In the recent amendments, Congress intended to expand collection authority to no-fault insurance cases and to bring both tort liability and no-fault cases under the framework of section 1095. However, in cases based on tort liability, Congress did not intend to reinvent a new body of law on determining tort liability. Tort liability is determined by state law. The House Armed Services Committee stated that the statutory amendment "would not affect the current tort liability recovery authority governed by the Medical Care Recovery Act." H. Rept. 101–665, p. 214. Similarly, the Appropriations Act general provision makes clear that in automobile insurance cases, "should tort liability be a basis for payment, the standards of the Federal Medical Care Recovery Act * * * shall apply." Public Law 101–511, section 8075.

Proposed § 220.11(b) sets forth our proposed interpretation that in tort liability cases, section 1095 and the FMCRA provide concurrent authority and that in such section 1095 cases, matters regarding the determination of tort liability shall be governed by the same substantive standards as would be applied under the FMCRA (i.e., state law). In addition, the Department of Justice FMCRA regulations, 28 CFR part 43, shall apply to these concurrent authority cases. The FMCRA, however, has no relevance to section 1095 collections involving no-fault insurance carriers. Finally, in both types of cases under section 1095, other matters and procedures, such as the amount billed, billing procedures, etc., are governed by part 220.

4. Effective Date

Proposed § 220.11(c) reflects the effective date enacted by Congress for the extension of section 1095 collection authority to automobile liability insurance and no-fault insurance carriers. It is the same as that referenced above for Medicare supplemental policies and outpatient services.

D. Inpatient Services

1. Rate Structure

DoD has historically used a single rate for reimbursement for various healthcare services. The rate has taken the form of a single per diem charge, per visit charge or procedure charge and has been based on the actual costs of rendering healthcare services as reflected in the Medical Expense and Performance Reporting System

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(MEPRS). MEPRS is the standard expense reporting system for all fixed medical treatment facilities (MTFs) within the Department of Defense (DoD) and is the accepted source of healthcare information for Congress and offices and agencies of the Executive Branch. A single rate has the advantage of administrative simplicity and enables use by all MTFs including those with limited automated capabilities. Although a single rate based on the average cost of healthcare services results in some paying more than actual cost, others pay less and the assumption is that the over and under payments offset each other and collections approximate costs.

It is DoD's intent to transition to a multiple rate structure. The proposed multiple rates will result in charges that more closely approximate the actual costs of delivering specific categories of medical services, such as surgical care, obstetrical care, pediatric care, etc., while maintaining the simplicity still needed by most MTFs because of limited automated support. The movement to multiple rates is an interim step toward patient level rates based on a classification system such as Diagnosis Related Groups.

As with the single rate, data to support computation of multiple rates will be obtained from MEPRS data consolidated from all DoD MTFs. Cost data will be aggregated for each of the clinical services identified below and an average cost computed for each clinical service. This average cost shall form the basis for the rates established for reimbursement for healthcare services under the provisions of the TPC program. Patients treated in an intensive care unit any time during the 24 hour nursing period shall be charged the intensive care per diem charge in lieu of a charge for the clinical service to which the patient is currently assigned.

a. *Medical Care Services:* Includes Internal Medicine, Cardiology, Dermatology, Endocrinology, Gastroenterology, Hematology, Nephrology, Neurology, Oncology, Pulmonary and Upper Respiratory Disease, Rheumatology, Physical Medicine, Clinical Immunology, HIV III—Acquired Immune Deficiency Syndrome (AIDS), Infectious Disease, Allergy, and Medial Care Not Elsewhere Classified.

b. *Surgical Care Services:* Includes General Surgery, Cardiovascular and Thoracic Surgery, Neurosurgery, Ophthalmology, Oral Surgery, Otolaryngology, Pediatric Surgery, Plastic Surgery, Proctology, Urology, Peripheral Vascular, Trauma Service, Head and Neck Service and Surgical Care Not Elsewhere Classified.

c. Obstetrical and Gynecological Care.

d. Pediatric Care: Includes Pediatrics, Nursery, Adolescent Pediatrics and Pediatric Care Not Elsewhere Classified.

e. Orthopaedic Care: Includes Orthopaedics, Podiatry and Hand Surgery.

f. Psychiatric Care and Substance Abuse Rehabilitation.

g. Family Practice Care.

h. Burn Unit Care.

i. Medical Intensive Care/Coronary Care.

j. Surgical Intensive Care.

k. Neonatal Intensive Care.

l. Organ and Bone Marrow Transplants.

In accordance with current practice, the per diem rate for each of the above categories of care shall be subdivided into three categories: Hospital charges, Professional charges, and Ancillary charges.

The effective date for implementation of a multiple rate schedule shall be April 1, 1992.

E. Standard Billing Forms

DoD has elected to follow the generally accepted practice of standardizing the use of billing forms to prepare bills for both inpatient and outpatient medical care and services rendered to dependents and retirees. The MTF shall use the DD Form 2502, "Uniform Billing for Inpatient Hospital Costs" (UB82), to prepare bills for inpatient and outpatient care to third party payers. UB82 data element usage shall be consistent with the standards defined by the National Uniform Billing Committee. If updated versions of the UB82 become nationally accepted, the DoD will update their version of the form.

F. Definitions

Proposed § 220.12 would revise current § 220.10 in connection with the definition of several key terms used in part 220. These proposed definitions are straightforward and self-explanatory.

III. Regulatory Procedures

This proposed rule is not a major rule under Executive Order 12291. It would not have a impact of $100 million or other significant economic impacts. Similarly, the rule does not significantly affect a substantial number of small entities within the meaning of the Regulatory Flexibility Act. As stated above, for the most part, this proposed rule would simply incorporate into the third party collection program regulation the recently enacted statutory requirements and establish basic procedures for their implementation.

This is a proposed rule. We invite public comments on all matters covered by this proposal.

List of Subjects in 32 CFR Part 220

Claims, Health insurance, Medical records.

For the reasons stated in the preamble, 32 CFR part 220 is proposed to be amended as follows:

PART 220—COLLECTION FROM THIRD PARTY PAYERS OF REASONABLE COSTS OF HEALTHCARE SERVICES

1. The authority citation for part 220 is proposed to be revised to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 1095.

2. The heading for part 220 is revised as set forth above.

3. Section 220.1 is proposed to be revised to read as follows:

§ 220.1 Purpose and applicability.

This part implements the provisions of 10 U.S.C. 1095. In general, 10 U.S.C. 1095 establishes the statutory obligation of third party payers to reimburse the United States the reasonable costs of healthcare services provided by facilities of the Uniformed Services to most Uniformed Services medical care beneficiaries who are also covered by a third party payer's plan. This part establishes the Department of Defense interpretations and requirements applicable to all healthcare services subject to 10 U.S.C. 1095.

4. Section 220.2 is proposed to be amended by revising paragraph (a) to read as follows:

§ 220.2 Statutory obligation of third party payer to pay.

(a) *Basic rule.* Pursuant to 10 U.S.C. 1095(a)(1), a third party payer has an obligation to pay the United States the reasonable costs of healthcare services provided in any facility of the Uniformed Services to a Uniformed Services beneficiary who is also a beneficiary under the third party payer's plan. The obligation to pay is to the extent that the beneficiary would be eligible to receive reimbursement or indemnification from the third party payer if the beneficiary were to incur the costs on the beneficiary's own behalf.

* * * * *

5. Section 220.3 is proposed to be amended by revising paragraph (b)(1) to read as follows:

§ 220.3 Exclusions impermissible.

* * * * *

(b) *General rules.* * * *

(1) Express exclusions or limitations in third party payer plans that are inconsistent with 10 U.S.C. 1095(b) are inoperative.

* * * * *

6. Section 220.6 is proposed to be amended by revising paragraph (b) and adding a new paragraph (d) to read as follows:

§ 220.6 Certain payers excluded.

* * * * *

(b) *Supplemental plans.* CHAMPUS (see 32 CFR part 199) supplemental plans and income supplemental plans are excluded from any obligation to pay under 10 U.S.C. 1095.

* * * * *

(d) *Third party payer plans prior to November 5, 1990, in connection with outpatient care.* The provisions of 10 U.S.C. 1095 and this section concerning outpatient services are not applicable to third party payer plans:

(1) That have been in continuous effect without amendment or renewal since prior to November 5, 1990; and

(2) For which the facility of the Uniformed Services or other authorized representative of the United States makes a determination, based on documentation provided by the third party payer, that the policy or plan clearly excludes payment for such services. Plans entered into, amended or renewed on or after November 5, 1990, are subject to this section, as are prior plans that do not clearly exclude payment for services covered by this section.

7. Section 220.8 is proposed to be revised to read as follows:

§ 220.8 Reasonable costs.

(a) *Per diem rates—In general.* As authorized by 10 U.S.C. 1095(f)(1), the computation of reasonable costs for purposes of collections for inpatient hospital care under 10 U.S.C. 1095 and this part shall be based on per diem rates. The per diem charge shall be equal to the inpatient full reimbursement rate, as provided in paragraphs (b) and (c) of this section. Per diem rates shall be updated and published annually. For purposes of billing third party payers other than automobile liability and no-fault insurance carriers, per diem rates shall be subdivided into three categories:

(1) Hospital charges.

(2) Professional charges.

(3) Ancillary charges.

(b) *Unified per diem rates for care provided prior to April 1, 1992.* For inpatient hospital care provide prior to April 1, 1992, the computation of reasonable costs shall be based on the unified per diem full reimbursement rate for all clinical categories of hospital care. For purposes of this paragraph (and paragraph (c) of this section), charges for patients hospitalized before and after the April 1 start date shall be based on the determination method in effect for the respective periods of hospitalization.

(c) *Clinical groups per diem rates for care provided on or after April 1, 1992.* For inpatient hospital care provided on or after April 1, 1992, the computation of reasonable costs shall be based on the per diem full reimbursement rate applicable to the clinical category of services involved. Patients treated in an intensive care unit any time during the 24 hour nursing period shall be charged the intensive care per diem charge in lieu of a charge to the clinical service to which the patient is currently assigned. For this purpose, the clinical groups are as follows:

(1) Medical Care Services. This includes internal medicine, cardiology, dermatology, endocrinology, gastronenterology, hematology, nephrology, neurology, oncology, pulmonary and upper respiratory disease, rheumatology, physical medicine, clinical immunology, HIV III—Acquired Immune Deficiency Syndrome (AIDS), infectious disease, allergy, and medical care not elsewhere classified.

(2) Surgical Care Services. This includes general surgery, cardiovascular and thoracic surgery, neurosurgery, ophthalmology, oral surgery, otolaryngology, pediatric surgery, plastic surgery, proctology, urology, peripheral vascular, trauma service, head and neck service and surgical care not elsewhere classified.

(3) Obstetrical and Gynecological Care.

(4) Pediatric Care. This includes pediatrics, nursery, adolescent pediatrics and pediatric care not elsewhere classified.

(5) Orthopaedic Care. This includes orthopaedics, podiatry and hand surgery.

(6) Psychiatric Care and Substance Abuse Rehabilitation.

(7) Family Practice Care.

(8) Burn Unit Care.

(9) Medical Intensive Care/Coronary Care.

(10) Surgical Intensive Care.

(11) Neonatal Intensive Care.

(12) Organ and Bone Marrow Transplants.

(d) *Medical services and subsistence charges included.* Medical services charges pursuant to 10 U.S.C. 1078 or subsistence charges pursuant to 10 U.S.C. 1075 are included in the claim filed with the third party payer pursuant to 10 U.S.C. 1095. For any patient of a facility of the Uniformed Services who indicates that he or she is a beneficiary of a third party payer plan, the usual medical services or subsistence charge will not be collected from the patient to the extent that payment is received from the payer. Thus, except in cases covered by § 220.8(j), payment of the claim made pursuant to 10 U.S.C. 1095 will satisfy all of the third party payer's obligation arising from the inpatient hospital care provided by the facility of the Uniformed Services on that occasion.

(e) *Per visit rates.* As authorized by 10 U.S.C. 1095(f)(2), the computation of reasonable costs for purposes of collections for most outpatient services shall be based on an all-inclusive per visit rate. The per visit charge shall be equal to the outpatient full reimbursement rate and includes all routine ancillary services. A separate charge will be calculated for cases that are considered same day/ambulatory surgeries. These rates shall be updated and published annually.

(f) *Same day/ambulatory surgery rate.* The same day/ambulatory rate will be established pursuant to paragraph (c)(2) of this section.

(g) *Special rule for services ordered and paid for by a facility of the Uniformed Services but provided by another provider.* In cases where a facility of the Uniformed Services purchases ancillary services or procedures, from a source other than a Uniform Services facility, the cost of the purchased services will be added to the per diem or per visit rate. Examples of ancillary services and other procedures covered by this special rule include (but are not limited to): Laboratory, radiology, pharmacy, pulmonary function, cardiac catheterization, hemodialysis, hyperbaric medicine, electrocardiography, electroencephalography, electroneuromyography, pulmonary function, inhalation and respiratory therapy and physical therapy services.

(h) *Special rule for certain high cost ancillary services ordered by outside providers and provided by a facility of the Uniformed Services.* (1) If a Uniformed Services facility provides certain high cost ancillary services, prescription drugs or other procedures based on a request from a source other than Uniformed Services facility and are not incident to any outpatient visit or inpatient services, the reasonable cost will not be based on the usual per visit or per diem rate. Rather, a separate standard rate shall be established based on the cost of the particular high-cost service, drug or procedure provided.

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(2) This special rule applies only to services, drugs or procedures having a cost of at least $100. The reasonable cost for the services, drugs or procedures to which this special rule applies shall be calculated and published annually.

(i) *Special rule for PRIMUS and NAVCARE clinics.* The Uniformed Services maintain certain contracts clinics called PRIMUS clinics by the Army and Air Force and NAVCARE clinics by the Navy. These are outpatient clinics which provide only primary care services. Services provided by these clinics are paid for by a facility of the Uniformed Service, of which the PRIMUS or NAVCARE clinic is considered operationally to be an extension. A separate, uniform per visit charge, representing the average cost to the Department of Defense for a visit in all PRIMUS and NAVCARE clinics shall be the basis of the charge for these clinics. This rate shall be calculated and published annually.

(j) *Special rule for former Public Health Service facilities.* In connection with the former Public Health Service facilities described in § 220.12(c), the computation of reasonable costs for purposes of collections under 10 U.S.C. 1095 and this part may differ from such computations under § 220.8. Reasonable costs for such facilities shall be determined by the Department of Defense based on approximate government costs for similar services under CHAMPUS.

(k) *Special rule for Partnership Program providers.* In cases in which the professional provider services are provided under the Partnership Program (or similar program operated under the authority of 10 U.S.C. 1096), the professional charges component of the total per diem rate will be deleted, as applicable, from the claim from the facility of the Uniformed Services. The third party payer will receive a claim for professional services directly from the individual healthcare provider, who is not an employee or agent of the Department of Defense. Such claims are not covered by 10 U.S.C. 1095 or this part, but are governed by statutory and regulatory requirements of the CHAMPUS program (see 32 CFR part 199). The same is true for professional services provided on an outpatient basis under the Partnership Program.

(l) *Alternative determination of reasonable costs.* Any third party payer that can satisfactorily demonstrate a prevailing rate of payment in the same geographic area for the same or similar aggregate groups of services that is less than the per diem or per visit rate (or other amount as determined under paragraphs (f) through (k) of this section) of the facility of the Uniformed Services may, with the agreement of the facility of the Uniformed Services (or other authorized representatives of the United States), limit payments under 10 U.S.C. 1095 to that prevailing rate for that aggregate category of services. The determination of the third party payer's prevailing rate shall be based on a review of valid contractual arrangements with other facilities or providers constituting a majority of the services for which payment is made under the third party payer's plan. This paragraph does not apply to cases covered by § 220.11.

8. Section 220.9 is proposed to be amended by revising paragraph (b) to read as follows:

§ 220.9 Rights and obligations of beneficiaries.

* * * * *

(b) *Availability of healthcare services unaffected.* The availability of healthcare services in any facility of the Uniformed Services will not be affected by the participation or nonparticipation of a Uniformed Services beneficiary in a health care plan of a third party payer. Whether or not a Uniformed Services beneficiary is covered by a third party payer's plan will not be considered in determining the availability of healthcare services in a facility of the Uniformed Services.

* * * * *

9. Section 220.10 is proposed to be redesignated as § 220.11 and revised and new §§ 220.10 and 220.12 are proposed to be added to read as follows:

§ 220.10 Special rules for Medicare supplemental plans.

(a) *Statutory obligation of Medicare supplemental plans to pay.* The obligation of a Medicare supplemental plan to pay shall be determined as if the facility of the Uniformed Services were a Medicare-eligible provider and the services provided as if they were Medicare-covered services. In general, Medicare supplemental plans are responsible for amounts comparable to beneficiary out-of-pocket costs under normal operation of the Medicare program.

(b) *Inpatient hospital care charges.* Notwithstanding the provisions of § 220.8 of this part, charges to Medicare supplemental plans for inpatient hospital care services provided to beneficiaries of such plans shall not, for any admission, exceed the sum of:

(1) The Medicare inpatient hospital deductible amount.

(2) The Medicare inpatient hospital coinsurance amount (if any); and

(3) 20 percent of the professional charge subdivision of the applicable per diem rate, multiplied by the number of days of care provided.

Only one deductible charge shall be made per hospital admission, except that in the case of an admission that occurs within 60 days of the discharge from a prior admission, no second deductible charge shall be made.

(c) *Outpatient care charges.* Notwithstanding the provisions of § 220.8, the payment responsibility of Medicare supplemental plans for outpatient care services shall be as follows:

(1) For outpatient services within the Medicare program's scope of services, the responsibility of Medicare supplemental plans shall be to pay the amounts charged pursuant to § 220.8, up to the beneficiary's annual Part B professional deductible amount.

(2) After reaching the beneficiary's annual Part B deductible, the amount for remaining outpatient services within the Medicare program's scope of services, the responsibility of Medicare supplemental plans shall be to pay 20 percent of the rates established pursuant to § 220.8.

(3) For outpatient services not within the Medicare program's scope of services but covered by the Medicare supplemental plan, the responsibility of Medicare supplemental plan shall be to pay the amounts charged pursuant to § 220.8.

(d) *Medicare claim not required.* Notwithstanding any requirement of the Medicare supplemental plan policy, a Medicare supplemental plan may not refuse payment to a claim made pursuant to this section on the grounds that no claim has previously been submitted by the provider or beneficiary for payment under the Medicare program.

(e) *Exclusion of Medicare supplemental plans prior to November 5, 1990.* This section is not applicable to Medicare supplemental plans:

(1) That have been in continuous effect without amendment since prior to November 5, 1990; and

(2) For which the facility of the Uniformed Services (or other authorized representative of the United States) makes a determination, based on documentation provided by the Medicare supplemental plan, that the plan agreement clearly excludes payment for services covered by this section. Plans entered into, amended or renewed on or after November 5, 1990, are subject to this section, as are prior plans that do not clearly exclude payment for services covered by this section.

§ 220.11 Special rules for automobile liability insurance and no-fault automobile insurance.

(a) *Active duty members covered.* In addition to Uniformed Services beneficiaries covered by other provisions of this part, this section also applies to active duty members of the Uniformed Services. As used in this section, "beneficiaries" includes active duty members.

(b) *Effect of concurrent applicability of the Federal Medical Care Recovery Act.*

(1) *In general.* In many cases covered by this section, the United States has a right to collect under both 10 U.S.C. 1095 and the Federal Medical Care Recovery Act (FMCRA), Public Law 87–693 (42 U.S.C. 2651 et seq.). In such cases, the authority is concurrent and the United States may pursue collection under both statutory authorities.

(2) *Cases involving tort liability.* In cases in which the right of the United States to collect from the automobile liability insurance carrier is premised on establishing some tort liability on some third person, matters regarding the determination of such tort liability shall be governed by the same substantive standards as would be applied under the FMCRA including reliance on state law for determinations regarding tort liability. In addition, the provisions of 28 CFR part 43 (Department of Justice regulations pertaining to the FMCRA) shall apply to claims made under the concurrent authority of the FMCRA and 10 U.S.C. 1095. All other matters and procedures concerning the right of the United States to collect shall, if a claim is made under the concurrent authority of the FMCRA and this section, be governed by 10 U.S.C. 1095 and this part.

(c) *Exclusion of automobile liability insurance and no-fault automobile insurance plans prior to November 5, 1990.* This section is not applicable to automobile liability insurance and no-fault automobile insurance plans:

(1) That have been in continuous effect without amendment since prior to November 5, 1990; and

(2) For which the facility of the Uniformed Services (or other authorized representative of the United States) makes a determination, based on documentation provided by the third party payer, that the policy or plan clearly excludes payment for services covered by this section. Plans entered into, amended or renewed on or after November 5, 1990, are subject to this section, as are prior plans that do not clearly exclude payment for services covered by this section.

§ 220.12 Definitions.

(a) *Automobile liability insurance.* Automobile liability insurance means insurance against legal liability for health and medical expenses resulting from personal injuries arising from operation of a motor vehicle. Automobile liability insurance includes:

(1) Circumstances in which liability benefits are paid to an injured party only when the insured party's tortious acts are the cause of the injuries; and

(2) Uninsured and underinsured coverage, in which there is a third party tortfeasor who caused the injuries (i.e., benefits are not paid on a no-fault basis), but the insured party is not the tortfeasor.

(b) *CHAMPUS supplemental plan.* A CHAMPUS supplemental plan is an insurance, medical service or health plan exclusively for the purpose of supplementing an eligible person's benefit under CHAMPUS. (For information concerning CHAMPUS, see 32 CFR part 199.) The term has the same meaning as set forth in the CHAMPUS regulation (32 CFR 199.2).

(c) *Facility of the Uniformed Services.* A facility of the Uniformed Services means any medical or dental treatment facility of the Uniformed Services (as the term is defined in 10 U.S.C. 101(43)). Contract facilities such as Navy NAVCARE clinics and Army and Air Force PRIMUS clinics that are funded by a facility of the Uniformed Services are considered to operate as an extension of the local military treatment facility and are included within the scope of this program. Facilities of the Uniformed Services also include several former Public Health Services facilities that are deemed to be facilities of the Uniformed Services pursuant to section 911 of Public Law 97–99 (often referred to as "Uniformed Services Treatment Facilities" or "USTFs").

(d) *Healthcare services.* Healthcare services include inpatient, outpatient, and designated high-cost ancillary services.

(e) *Insurance, medical service or health plan.* Any plan or program that provides compensation or coverage for expenses incurred by a beneficiary for health or medical services and supplies. It includes:

(1) Plans or programs offered by insurers, corporations, organized health care groups or other entities.

(2) Plans or programs for which the beneficiary pays a premium to an issuing agent as well as those plans or programs to which the beneficiary is entitled as a result of employment or membership in, or association with, an organization or group; and

(3) Medicare supplemental insurance plans.

(f) *Medicare supplemental insurance plan.* A Medicare supplemental insurance plan is an insurance, medical service or health plan exclusively for the purpose of supplementing an eligible person's benefit under Medicare. The term has the same meaning as "Medicare supplemental policy" under Medicare program regulations (42 CFR 403.205).

(g) *No-fault insurance.* No-fault insurance means an insurance contract providing compensation for health and medical expenses relating to personal injury arising from the operation of a motor vehicle in which the compensation is not premised on who may have been responsible for causing such injury. No-fault insurance includes personal injury protection and medical payments benefits in cases involving personal injuries resulting from operation of a motor vehicle.

(h) *Third party payer.* A third party payer is an entity that provides an insurance, medical service or health plan by contract or agreement. It includes:

(1) State and local governments that provide such plans.

(2) Insurance underwriters and private employers (or employer groups) offering self-insured or partially self-insured and/or partially underwritten health insurance plans; and

(3) Automobile liability insurance and no-fault insurance carriers.

(i) *Third party payer plan.* A third party payer plan is any plan provided by a third party payer, but not an income supplemental plan or workers compensation plan.

(j) *Uniformed Services beneficiary.* For purposes of this part, a Uniformed Services beneficiary is any person who is covered by 10 U.S.C. 1074(b), 1076(a), or 1076(b). For purposes of § 220.11 (but not for other sections), a Uniformed Services beneficiary also includes active duty members of the Uniformed Services.

Dated: December 18, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-30394 Filed 12-20-91; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 261 and 290

RIN 0596-AB02

Cave Resources Management

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the Federal Cave Resources Protection Act of 1988 which requires the identification, protection, and maintenance, to the extent practical, of significant caves on National Forest System lands. The proposed rule would establish criteria to be considered in identification of significant caves. It would also integrate cave management into existing forest planning and management processes, protect cave resource information to prevent vandalism and disturbance of significant caves, and establish general prohibitions to protect cave resources from abuse and degradation. Public comment is invited on the proposed rule.

DATES: Comments must be received in writing by March 23, 1992.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2350), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

The public may inspect comments received on this proposed rule in the Office of the Director, Recreation, Cultural Resources, and Wilderness Management Staff, fourth floor, central wing, Auditors Building, 201 Fourteenth Street SW., Washington, DC between the hours of 8:30 a.m. and 4:30 p.m. Those wishing to inspect comments are encouraged to call ahead (202-205-1313) to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Susan Rutherford, Recreation, Cultural Resources, and Wilderness Management Staff, (202) 205-1313.

SUPPLEMENTARY INFORMATION:

Background

The Federal Cave Resources Protection Act of 1988 (16 U.S.C. 4301-4309; 102 Stat. 4546), hereafter referred to as the "Act", seeks to secure, protect, and preserve significant caves on Federal lands for the perpetual use, enjoyment, and benefit of all people. The Act also seeks to foster increased cooperation and exchange of information between governmental authorities and those who utilize caves located on Federal lands for scientific, educational, or recreational purposes. The Act establishes the policy that Federal lands be managed in a manner which protects and maintains, to the extent practicable, significant caves. Finally, the Act requires the Secretary of Agriculture to issue such regulations as he deems necessary to achieve the purposes of the Act on National Forest System lands. The regulations are required to include, but need not be limited to, criteria for the identification of significant caves.

This proposed rulemaking would establish criteria to be considered in the identification of significant caves located on National Forest System lands and for carrying out other provisions of the Act relating to protecting significant caves and fostering cooperation and exchange of information between governmental authorities and those who utilize caves.

An advance notice of proposed rulemaking was published in the **Federal Register** on March 3, 1989 (54 FR 9066), inviting comments on what should be included in a proposed rule, and particularly requesting suggestions as to criteria for determining what constitutes a significant cave. A total of nine comments were received in response to that notice: four from agencies of State government, two from business entities, two from individuals, and one from a Federal agency.

Respondents identified resource values that they felt should be considered in determining the significance of caves. These included the presence and type of water; archaeological, cultural, and historic resources; biological resources, including bat guano; recreational values; and the amount and degree of past use or evidence of vandalism. Others urged that the concept of "significance" be carefully circumscribed, that care should be taken to make sure that not all caves be labeled significant, that surface uses and particularly mineral exploration and development not be unduly restricted by cave regulations, and that access to significant caves not be limited to just special interest groups. Some respondents addressed the need for sufficient funding to maintain caves that are used for recreation; others suggested the establishment of a permit system for regulating access to significant caves, while others urged that access not be regulated at all.

All of these comments were carefully considered during the preparation of this proposed rulemaking, except those comments that addressed funding which is beyond the scope of this rulemaking.

Proposed Rule

During consideration of rules that might be needed to implement the Federal Cave Resources Protection Act, the Forest Service has carefully examined the provisions of the Act in the context of existing agency cave management policy as well as existing Federal regulations governing administration of National Forest System lands.

Prior to passage of the Act, the Forest Service managed caves in accordance with general authorities established by the Organic Act of 1897 (16 U.S.C. 551), the Antiquities Act of 1906 (16 U.S.C. 431 *et seq.*), the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa *et seq.*), the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*), and the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*). Agency cave management policy focused on managing caves as nonrenewable resources to maintain their values; balancing surface resource management and cave use with protection of cave values; and incorporating cave management activities, considerations, and prescriptions in Forest Plans. These policies are generally consistent with the Act and will be revised and strengthened as necessary to accord with the Act and regulations issued pursuant to the Act.

There are currently no regulations for the determination of significant caves on National Forest System lands. The current mechanism for protecting cave resources from destruction and damage is found in 36 CFR part 261—Prohibitions, which sets forth acts and conduct prohibited on National Forest System lands and areas where persons are subject to civil or criminal penalty.

In considering implementing regulations, the Forest Service has placed a high priority on coordinating its approach with the U.S. Department of the Interior (USDI) agencies and on reaching agreement with USDI agencies on an interagency approach to identification of significant cave resources.

Based on its review of existing regulation and policy, consideration of comments received in response to the advance notice and consultation with other agencies and cave interests, the Forest Service proposes to establish a new part 290 and amend part 261 in title 36 of the Code of Federal Regulations for the issuing of cave resource protection rules. A discussion of the major provisions of the proposed rules follows.

Section 290.1—Purpose and Scope

This section states that the purpose of the rule is to implement the Act and, in conjunction with rules at part 261, to provide the basis for managing and protecting cave resources on National Forest System lands.

Section 290.2—Definitions

This section is an alphabetical listing of terms and definitions used in the proposed rule. These definitions are needed for consistency in the interpretation of cave-related terms. The definitions came from a variety of sources including the Act, the existing policy in the Forest Service Manual, and from consultation with interested publics and other agencies. These definitions are essentially the same as those being proposed for adoption by USDI.

Section 290.3—Determining Significant Caves

The Secretary of Agriculture will cooperate and consult with the Secretary of the Interior to devise similar procedures for the listing of significant caves. Proposed procedures to nominate, evaluate, and determine significant caves for listing are available for public review and comment. A copy of the proposed procedures may be obtained by writing or calling the person listed under **FOR FURTHER INFORMATION.** A call for nominations will be published in a **Federal Register** notice.

For caves located on National Forest System lands, determination of significance would be made by the Regional Forester and incorporated into forest plans. Nomination and evaluation after the initial listing of significant caves would be accomplished on a continuing basis through forest plan amendments and revisions.

(a) *Criteria for the Identification of Significant Caves.* The identification of the criteria for determining significance is required by the Act. Six criteria are proposed to be considered in the determination of whether a cave should be listed as significant. These criteria are the cave's biota, cultural resources, hydrology, geologic/mineralogic/paleontologic resources, educational/scientific value, and recreational value. These proposed criteria reflect recommendations received in response to the advance notice of proposed rulemaking (54 FR 9066) and are essentially the same as those being proposed by USDI.

(b) *Records and documentation.* This paragraph would require a written document for each significant cave be made by the appropriate official and retained as a permanent record. The minimum documentation is described. A list of significant caves on National Forest System lands would be maintained as an appendix to individual forest plans. The specific location of cave(s) would be confidential pursuant to section 5 of the Act and under the provisions of § 290.4 of this rule.

Section 290.4—Confidentiality of Cave Information

In order to protect cave resources, the Forest Service shall not make the specific location of any significant cave available to the public under the Freedom of Information Act (5 U.S.C. 552) unless certain conditions are met. This section describes the extent of the information that would be confidential, conditions that must be met for the release of locational information, who would make the decision, and the informational requirements for gaining access to confidential data about significant caves or caves for which determination of significance is pending. Based upon the authority found at section 5 of the Act, decisions to disclose confidential cave information would be made at the sole discretion of the authorized officer, as identified in § 290.2 of this rule, and would not be subject to further administrative review or appeal.

The provisions of this section use essentially the same language as the statute except that confidentiality of cave location would be extended to caves which have been nominated but for which final determination is pending. This extension would ensure that cave information given to the Forest Service during the cave nomination process would remain confidential and the cave's resources would be protected until a determination of significance is made.

The Act limits access to confidential cave data to Federal and State governmental agencies, or to bona fide educational and research institutions. This section prescribes these limits but also includes individuals or organizations involved in assisting the Forest Service in cave management activities. This is proposed to strengthen and promote individual and organization cooperative efforts in management of caves on National Forest System lands.

To provide protection of cave resources as required by section 7(a) of the Act, the Forest Service also proposes to revise the general prohibitions at 36 CFR part 261, Subpart A as follows:

Section 261.2—Definitions

This section would be amended to include the definitions for "cave" and "cave resources".

Section 261.6—Fish and Wildlife

The prohibitions relating to fish and wildlife would be amended to prohibit altering the free movement of any animal or plant life into or out of a cave.

Section 261.9—Property

The prohibitions relating to property would be amended to prohibit certain activities affecting cave resources without a special use authorization.

Section 261.10—Occupancy and Use

The prohibitions against discharging firearms in existing areas would be expanded to prohibit discharging a firearm into or within any cave.

Subpart B of part 261 authorizes forest officers to prohibit specific acts by written, posted order. To protect cave resources, it is proposed to amend the rules of subpart B as follows:

Section 261.58—Occupancy and Use

When provided by an order, it would be prohibited to deposit any bodily waste in caves except into receptacles provided for that purpose.

Environmental Impact

Based on environmental analysis, this proposed rule would not have a significant effect on the human environment; therefore, an environmental impact statement will not be prepared. Copies of the environmental assessment and finding of no significant impact may be obtained by writing or calling the persons or offices listed under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT.**

Controlling Paperwork Burdens on the Public

The information required by the proposed rule constitutes new information collection requirements as defined in 5 CFR part 1320, Controlling Paperwork Burdens on the Public. In accordance with those rules and the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the Forest Service has requested Office of Management and Budget review and approval of the information requirements for submitting nominations for significant cave determinations and for requesting access to confidential cave information. The agency estimates that each person will spend an average of one hour preparing and submitting the information required to gain access to confidential cave information. Reviewers wishing to comment on the proposed information requirements in §§ 290.3 and 290.4 of this proposed rule are encouraged to send their written

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views to the Forest Service and to: Regulatory Desk Officer (FS), Office of Information and Regulatory Affairs, Attention: Docket Library, room 3201 NEOB, Washington, DC 20503.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12291 on Federal Regulations. It has been determined that this is not a major rule. The rule will not have an effect of $100 million or more on the economy, substantially increase prices or costs for consumers, industry, or State or local governments, nor adversely affect competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete in foreign markets. In short, little or no effect on the National economy will result from this rule, since this action consists primarily of technical and administrative changes to the rules to accommodate provisions of the Federal Cave Resources Protection Act.

Moreover, this rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities.

Finally, this proposed rule has been considered in light of Executive Order 12630 which requires the preparation of a Takings Implication Assessment, or TIA, for agency actions which may present the risk of a taking of private property. Since this proposed rule governs the administration of federally owned lands, private property rights will not be affected and neither a TIA nor further analysis under the Executive Order is necessary.

List of Subjects

36 CFR Part 261

Crime, Law enforcement, and National forests.

36 CFR Part 290

Caves, National forests.

Therefore, for the reasons set forth in the preamble, it is proposed to amend chapter II of title 36 of the Code of Federal Regulations as follows:

1. Add a new part 290 to read as follows:

PART 290—CAVE RESOURCES MANAGEMENT

Sec.
290.1 Purpose and scope.
290.2 Definitions.
290.3 Determining significant caves.
290.4 Confidentiality of cave information.
290.5 Information requirements.

Authority: 16 U.S.C. 4300–4309; 102 Stat. 4546.

§ 290.1 Purpose and scope.

The rules of this part implement the requirements of the Federal Cave Resources Protection Act (16 U.S.C. 4301–4309), hereafter the "Act". The rules apply to cave management on lands owned in fee title by the United States which are administered as part of the National Forest System. These rules, in conjunction with rules at 36 CFR part 261, provide the basis for identifying and protecting significant caves on National Forest System lands in accordance with the Act.

§ 290.2 Definitions.

For the purposes of this subpart, the terms listed in this section have the following meaning:

Authorized officer means the Forest Service employee delegated the authority to approve an action described in this part. Generally, this will be a Regional Forester, Forest Supervisor, or District Ranger depending on the scope and level of the duty to be performed.

Cave means any naturally occurring void, cavity, recess, or system of interconnected passages which occurs beneath the surface of the earth or within a cliff or ledge (including any cave resource therein, but not including any vug, mine tunnel, aqueduct, or other manmade excavation) and which is large enough to permit an individual to enter, whether or not the entrance is naturally formed or manmade. Such term shall include any natural pit, sinkhole, or other feature which is an extension of a cave entrance.

Cave resources mean any materials or substances occurring naturally in caves on National Forest System lands, such as animal life, plant life, paleontological resources, historical resources, sediments, minerals, speleogens, and speleothems.

Secretary means the Secretary of Agriculture.

Significant cave means a cave located on National Forest System lands that have been evaluated by the authorized officer and determined to have biotic, cultural, mineralogic, paleontologic, geologic, hydrologic, or other resources that have important value for scientific, educational, or recreational purposes.

Vug means a small cavity in a vein or in rock, usually lined with crystals.

§ 290.3 Determining significant caves.

(a) *Nominations for initial and subsequent listings.* The Secretary of Agriculture shall cooperate and consult with the Secretary of the Interior to devise a similar nomination process for the initial listing of significant caves and shall give public notice of the nomination process. Subsequent determinations shall be made through the forest plan amendment or revision process (36 CFR part 219).

(b) *Criteria for the Identification of Significant Caves.* A significant cave on National Forest System lands shall possess one or more of the following features, characteristics, or values, which are deemed by the authorized officer to be unusual, significant, or otherwise meriting special management.

(1) *Biota.* The cave provides habitat for cave-dependent organisms or animals. The cave contains species or subspecies of flora or fauna native to caves, that occur in large numbers or variety, are sensitive to disturbance, or are found on State or Federal sensitive, threatened, or endangered species lists.

(2) *Cultural.* The care contains historical properties or archeological resources (as described in 36 CFR 800.2) which are eligible for or listed on the National Register of Historic Places.

(3) *Geologic/Mineralogic/Paleontologic.* The cave possesses one or more of the following features:

(i) Fragile or outstanding examples of geologic or mineralogic features or features useful for study.

(ii) Deposits of sediments or features useful for evaluating past events.

(iii) Paleontologic resources with potential to contribute important scientific knowledge.

(4) *Hydrologic.* The cave is a part of a hydrologic system or contains water which is important to humans, biota, or development of cave features.

(5) *Recreational.* The cave provides or could provide recreational opportunities by virtue of challenge or scenic values.

(6) *Educational or Scientific.* The cave offers opportunities for educational or scientific use; or the cave is virtually in a pristine state, lacking evidence of human disturbance or impact; or the length, volume, total depth, pit depth, height, or similar measurements are worthy of note.

(c) *Records and documentation.* The authorized officer shall evaluate the criteria in (b) above in making a determination as to whether a cave is significant. If deemed significant, the authorized officer shall document the significant cave's location, resource values which justified the significant classification, and other pertinent data. This documentation shall be retained as a permanent record in accordance with the confidentiality provision in Section 5 of the Act. The listing of significant caves for a forest will be maintained in that forest's management plan, except that information concerning the specific location of a significant cave may not be made available to the public unless the provisions of § 290.4 of this rule are satisfied.

§ 290.4 Confidentiality of cave information.

(a) No Forest Service employee shall disclose the specific location of a significant cave or a cave which has been nominated but final determination is pending, unless the authorized officer determines that disclosure will further the purposes of the Act and will not create a substantial risk of harm, theft, or destruction to cave resources.

(b) Notwithstanding subsection (a) above, the authorized officer may make confidential cave information available to employees of a Federal or State governmental agency having a direct programmatic interest in such information, or a bona fide educational or research institute having a demonstrated need for information pursuant to cave program activities. For the purposes of this Act, "employees of a Federal or State governmental agency" shall include individuals or organizations assisting with cave management activities under State or Federal Government auspices. To request information, such entities shall make a written request to the authorized officer which includes the following:

(1) A legal description of the area for which the information is sought;

(2) A statement of the purpose for which the information is sought; and

(3) Written assurances that the requesting party will maintain the confidentiality of the information and protect the cave and its resources.

(c) Decisions to permit or deny access to confidential cave information are made at the sole discretion of the authorized officer and are not subject to further administrative review or appeal under 5 U.S.C. 552 or 36 CFR part 217 or § 251.82.

§ 290.5 Information requirements.

The information required to obtain access to confidential cave information represents a new information requirement as defined in 5 CFR part 1320, Controlling Paperwork Burdens on the Public. In accordance with those rules and the Paperwork Reduction Act of 1980 as amended (44 U.S.C. 3507), the Forest Service has requested Office of Management and Budget review and approval of the information required to be addressed to obtain access to confidential cave information (§ 290.4). Preparation of a request to access confidential cave information is estimated to take one hour. Reviewers who wish to comment on this information requirement should submit their views to the Chief of the Forest Service at the address listed earlier in this document as well as to the Forest Service Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

PART 261—PROHIBITIONS

2. Revise the authority citation for part 261 to read as follows:

Authority: 16 U.S.C. 551; 16 U.S.C. 472; 7 U.S.C. 1011(f); 16 U.S.C. 1246(i); 16 U.S.C. 1133(c)–(d)(1); 16 U.S.C. 4300, 4307.

Subpart A—General Prohibitions

3. Revise § 261.2 by adding the following definitions alphabetically to read as follows:

§ 261.2 Definitions.

* * * * *

Cave means any naturally occurring void, cavity, recess, or system of interconnected passages which occurs beneath the surface of the earth or within a cliff or ledge (including any cave resource therein, but not including any vug, mine tunnel, aqueduct, or other manmade excavation) and which is large enough to permit an individual to enter, whether or not the entrance is naturally formed or manmade. Such term shall include any natural pit, sinkhole, or other feature which is an extension of a cave entrance.

Cave resources means any materials or substances occurring naturally in caves on National Forest System lands, such as animal life, plant life, paleontological resources, historical resources, sediments, minerals, speleogens, and speleothems.

* * * * *

4. Revise § 261.8 by adding by adding a new paragraph (e) to read as follows:

§ 261.8 Fish and Wildlife.

* * * * *

(e) Curtail the free movement of any animal or plant life into or out of a cave.

* * * * *

5. Revise § 261.9 by adding a new paragraph (j) to read as follows:

§ 261.9 Property.

* * * * *

(j) Excavating, damaging, or removing any cave resource from a cave without a special use authorization.

6. Revise paragraph (d) of § 261.10 to read as follows:

§ 261.10 Occupancy and use.

* * * * *

(d) Discharging a firearm or any other implement capable of taking human life, causing injury, or damaging property as follows:

(1) In or within 150 yards of a residence, building, campsite or occupied area;

(2) Across or on a Forest Development road or body of water adjacent thereto, or in any manner or place whereby any person or property is exposed to injury or damage as a result in such discharge; or

(3) Into or within any cave.

* * * * *

Subpart B—Prohibitions in Areas Designated by Order

7. Revise § 261.58 by adding a new paragraph (dd) to read as follows:

§ 261.58 Occupancy and use.

* * * * *

(dd) Depositing any body waste in caves except into receptacles provided for that purpose.

* * * * *

Dated: December 17, 1991.

George M. Leonard,
Associate Chief.

[FR Doc. 91–30509 Filed 12–20–91; 8:45 am]
BILLING CODE 3410-11-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM91–1]

Rules of Practice and Procedure

AGENCY: Postal Rate Commission.

ACTION: Proposed Rulemaking; Establishing Date for Additional Comments.

SUMMARY: The Commission has solicited suggestions from interested persons for improvements in the Commission's rules of practice. At the request of a party, the Commission is establishing January 29, 1992, as the date for additional comments.

DATES: Additional comments responding to the advance notice of proposed rulemaking must be submitted on or before January 29, 1992.

ADDRESSES: Comments and correspondence should be sent to Charles L. Clapp, Secretary of the Commission, suite 300, 1333 H Street, NW., Washington, DC 20268–0001 (telephone: 202/789–6840).

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FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street, NW., Washington, DC 20268–0001 (telephone: 202/789–6820).

SUPPLEMENTARY INFORMATION: The Commission issued an advance notice of proposed rulemaking on June 14, 1991, inviting interested parties to submit comments on possible ways of improving the Commission's rules of practice. 56 FR 28850 (June 25, 1991). The Commission has granted two requests from the Postal Service for extensions of time for comments. 56 FR 4213–14 (Aug. 29, 1991); 56 FR 42713–14 (Oct. 29, 1991). The date that has been established for comments is December 30, 1991.

On December 11, 1991, Advertising Mail Marketing Association (AMMA) filed a motion requesting that the date for filing comments be extended to January 29, 1992. AMMA says that the time needed for parties' consideration of a report by the Institute of Public Administration (referenced by the Commission at 56 FR 56955 (Nov. 7, 1991)) warrants an extension of time.

The Commission understands the parties' requirements for adequate time to consider the issues involved in this proceeding. The comments will be more helpful if the parties give careful consideration when making their suggestions. A number of parties, including AMMA,[1] have already presented comments, which the Commission is using in its ongoing consideration of the issues involved in this proceeding. We believe that, independent of the parties' further evaluation and subsequent comments on the topics noted by AMMA in its motion for an extension, work may proceed on the suggestions already presented and those submitted by the December 30, 1991, deadline. The practical problem before us is to balance the need for further evaluation with the equally important need to make progress in this docket.

In order to give AMMA and other parties the time AMMA believes is necessary, we will accept additional comments through January 29, 1992. However, we strongly encourage all parties to observe the December 30, 1991, deadline. Parties who have filed comments before the January 29, 1992, deadline are welcome to file additional comments on that date.

[1] AMMA was called Third Class Mail Association when it filed Comments on October 25, 1991.

Issued by the Commission on December 17, 1991.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 91–30579 Filed 12–20–91; 8:45 am]

BILLING CODE 7710–FW–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 440 and 441

[MB–41–P]

RIN 0938–AF12

Medicaid Program; Required Coverage of Nurse Practitioner Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule—

- Requires State Medicaid agencies to furnish nurse practitioner services to categorically needy recipients;
- Gives State Medicaid agencies the option of furnishing nurse practitioner services to all medically needy recipients;
- Requires State Medicaid agencies to cover the services regardless of whether the nurse practitioner is under the supervision of, or associated with, a physician or other health care provider;
- Sets forth the requirements that a nurse practitioner must meet in order to qualify as a pediatric and family nurse practitioner; and
- Provides for the Medicaid agency to pay the nurse practitioner directly under an independent provider agreement or through the employing provider.

This proposed rule is necessary to confirm Medicaid regulations to the provisions of sections 1905(a)(21) and 1902(a)(10)(A) of the Social Security Act, as amended by section 6405 of the Omnibus Budget Reconciliation Act of 1989.

The purpose of the amendments is to ensure that nurse practitioner services are made available to all or most Medicaid recipients.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on February 21, 1992.

ADDRESSES: Mail written comments to the following address: Health Care Financing Administration, Department of Health and Human Services Attention: MB–41–P, P.O. Box 26676, Baltimore, Maryland 21207

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept audio or video comments on facsimile (FAX) copies of comments. In commenting, please refer to file code MB–41–P. Comments received timely will be available for public inspection as they are received, beginning approximately 3 weeks after publication of this document, in room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Robert Wardwell, (301) 966–5659.

SUPPLEMENTARY INFORMATION:

I. Background

Title XIX of the Social Security Act (the Act) provides authority for States to establish Medicaid programs to provide medical assistance to needy individuals. Section 1902(a)(10) of the Act describes most of the groups of individuals to whom medical assistance may be provided under two broad classifications: The categorically needy (section 1902(a)(10)(A)) and the medically needy (section 1902(a)(10)(C)). The categorically needy classification is further divided in two subgroups: The mandatory categorically needy which, generally, States with Medicaid programs must cover (section 1902(a)(10)(A)(i)); and the optional categorically needy which States, at their option, may cover (section 1902(a)(10)(A)(ii)). Coverage of the medically needy group is also at States' option. Section 1905 of the Act defines medical assistance and specifies the services that constitute medical assistance.

Nurse practitioners are recognized as important contributors in meeting the nation's health care needs by (1) improving the quality and accessibility of health care services; (2) increasing the productivity of medical practices and institutions; and (3) lessening the load on physicians, particularly in underserved areas. These practitioners have been accepted in a wide range of settings under many different payment methods, have the potential to reduce health care costs, and play legitimate

roles in the health care system. Nurse practitioner services furnished by certified pediatric nurse practitioners (CPNPs) or certified family nurse practitioners (CFNPs) can be especially useful for certain groups for whom health care services are currently inaccessible or inadequate. These include—

- Persons living in medically underserved rural and inner-city areas, or in group homes or nursing homes;
- Well children and pregnant women; and
- The chronically ill.

II. Statutory Provisions

In order to increase the availability and accessibility of nurse practitioner services to eligible Medicaid recipients, Congress enacted on December 19, 1989 the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239). Specifically, section 6405 of Public Law 101–239 added section 1905(a)(21) to the Act, and made a conforming amendment to section 1902(a)(10)(A) of the Act, which requires that a State plan for medical assistance must provide services furnished by CPNPs and CFNPs to the categorically needy.

Nurse practitioner services are mandated for all categorically needy eligibility groups except certain groups of aged, blind and disabled, that is, qualified Medicare beneficiaries and qualified working disabled individuals who are only entitled to Medicare Part A and Part B premiums, deductible, and coinsurance, or only Part A or only Part B premiums.

In addition, under section 1902(a)(10)(C), States may provide nurse practitioner services to the medically needy. The medically needy option allows States to provide Medicaid to individuals and families who have too much income and, in some instances, too many resources to be eligible as categorically needy.

Section 6405 of Public Law 101–239 amended section 1905(a)(21) of the Act to require States to pay nurse practitioners for their services, whether or not those practitioners are under the supervision of, or associated with, a physician or other health care provider. The statute has the effect of requiring that States offer "direct" payment to CPNPs and CFNPs as one of the payment options. In other words, the State plan must provide that the CPNP and CFNP may enter into an independent provider agreement with the State Medicaid agency. As an alternative method of payment, the State plan must provide that the CPNP and CFNP be paid through the employing provider.

Payment levels for nurse practitioner services are not specifically provided for in Public Law 101–239 or in these proposed regulations. General rules on payment levels for Medicaid services, including those furnished by nurse practitioners are set forth in 42 CFR part 447—Payment for Services; therefore, additional regulations are not necessary.

States have previously had the option to pay nurse practitioners directly for their services. Most States have the legislative authority to implement this option; however, only a few States have actually done so. There are a few States that do not have the legislative authority or have restricted authority.

Under section 6405 of Public Law 101–239, States are required to offer nurse practitioners the option of direct payment with State Medicaid agencies for services furnished. These statutory provisions became effective July 1, 1990 and were implemented throughout manual instructions. The instructions were published in the State Medicaid Manual, Part 4, Services, in August 1990 (Transmittal Number 48). Therefore, since July 1, 1990, States have been required to offer direct payment to nurse practitioners for their services as the statute requires.

The House Budget Committee report (H.R. Rep. No. 247, 101st Cong., 1st Sess. (1989)) that accompanied Public Law 101–239 did not provide any further explanatory or clarifying information regarding required coverage of nurse practitioner services. There are no current Medicaid regulations specifying how States may pay for nurse practitioners' services.

III. Provisions of the Proposed Regulations

In accordance with sections 1902(a)(10)(A) and 1905(a)(21) of the Act, we would amend 42 CFR parts 440 and 441. Part 440 sets forth the general provisions for all services. Part 441 sets forth the requirements and limits applicable to particular services.

We propose to add a new § 440.166 to define "nurse practitioner services" as including those services that are furnished within the scope of practice authorized by State law or regulations, by a practitioner who meets the requirements for a CPNP or a CFNP, regardless of whether the nurse practitioner is under the supervision of, or associated with, a physician or other health care provider.

We would require a certified pediatric nurse practitioner to meet all of the following requirements:

- Be currently licensed to practice in the State as a registered professional nurse;
- In the State in which he or she furnishes the services, meets the State requirements for qualification of pediatric nurse practitioners or nurse practitioners; and
- Be currently engaged in a pediatric nurse practice within the scope of applicable State law.

We would require a certified family nurse practitioner to meet all of the following requirements:

- Be currently licensed to practice in the State as a registered professional nurse;
- In the State in which he or she furnishes the services, meets the State requirements for qualification of family nurse practitioners or nurse practitioners; and
- Be currently engaged in a family nurse practice within the scope of applicable State law.

We would give States discretion in defining "currently engaged." In this way, States can tailor the definition to suit their individual needs.

Section 1905(a)(21) of the Act authorizes the Secretary to define "certified pediatric nurse practitioner" and "certified family nurse practitioner". To expand access to children in all States, we have elected to consider a CPNP or a CFNP to be any nurse practitioner licensed by State law and engaged in pediatric or family practice, respectively, consistent with the State law. We believe these requirements would increase accessibility to health care while assuring the delivery of quality services.

Section 440.166(d) would permit a certified nurse practitioner to be paid by the Medicaid agency, under an independent provider agreement, or through the employing provider, as set forth in § 441.22(c).

Current manual instructions establish more stringent standards than these proposed regulations in that they require nurse practitioners to be certified by national accrediting bodies. Pediatric nurse practitioners must be certified by the American Nurses' Association (ANA) or by the National Board of Pediatric Nurse Practitioners and Associates (NBPNP). Family nurse practitioners must be certified by the ANA. Several States do not require accreditation by national groups in order to practice as a CPNP or CFNP. The ANA and the NBPNP would prefer that we require their certification of pediatric and family nurse practitioners. However, the proposed rule would give States the flexibility to decide whether to require that pediatric or family nurse practitioners be certified by national accrediting organizations such as the

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ANA, or the NBPNP, or be recognized by the States' Boards of Nursing to ensure that the necessary, formal education and training from an accredited nursing program has been satisfactorily completed. This flexibility is offered since some States' Boards of Nursing specify certain criteria, other than testing, that nurse practitioners must meet to practice in the State.

We would revise § 440.210 to include nurse practitioner services, to the extent they are authorized under State law or regulations, as a required service for the categorically needy.

We propose to add a new § 440.225 to specify that any service that is not required as a mandatory service for the categorically needy (§ 440.210) or the medically needy (§ 440.220) may be furnished under the State plan at the State's option.

We would amend part 441, subpart A, which sets forth the requirements and limits applicable to particular services. We propose to amend § 441.10 to cite sections 1902(a)(10)(A) and 1905(a)(21) of the Act as the authority for furnishing nurse practitioner services. In addition, we propose to make technical changes to § 441.10 that are unrelated to the nurse practitioner provision.

We propose to add a new § 441.22 to require that, to the extent nurse practitioners are authorized to practice under State law or regulations, the State plan must meet the following requirements:

- Provide that nurse practitioner services are furnished to the categorically needy.
- Specify whether those services are furnished to the medically needy.
- Provide that the nurse practitioner—

  May enter into an independent provider agreement; or

  Be paid through the employing provider.

As noted above, the requirements of the law have been implemented through manual instructions (State Medicaid Manual, Part 4—Services). In accordance with the statute, States have been required to offer direct payment for nurse practitioner services since July 1, 1990. We will issue revised manual instructions if we publish these proposed requirements as a final rule.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are notable to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and, if we proceed with the final rule, we will respond to the comments in the preamble of the final rule.

V. Information Collection Requirements

This rule contains no information collection requirements. Consequently, this rule need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980.

(44 U.S.C. 3501 et seq.)

VI. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, physicians and all nurse practitioners who work on a consulting basis or are self-employed are considered to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 11029(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This proposed rule would require State Medicaid agencies to make direct payment available to CPNPs and CFNPs. This means that the State plan must provide that the nurse practitioner may enter into an independent provider agreement with the State Medicaid agency, for those services furnished which the CPNP and CFNP are legally authorized to perform under State laws or regulations, regardless of whether the nurse practitioner is under the supervision of, or associated with, a physician or other health care provider. This proposed rule is designed to increase access to certain services for children by mandating direct payment for CPNP and CFNP services even when they are not furnished under the direct supervision of a physician. This may happen particularly in rural and inner city areas where there is a shortage of doctors. We estimate that the impact on program costs due to this proposed rule would be minimal for several reasons. Initially, the total number of these types of nurse practitioners is small. In addition, we believe many of the nurse practitioners currently employed by physicians, hospitals, and clinics may not elect to bill directly for their services because States often pay nurse practitioners at a lower rate than they pay physicians for the same services, so the total fiscal effect on program costs appears to be negligible.

This proposed rules would not meet the $100 million criterion nor would it meet the other E.O. 12291 criteria. Therefore, this proposed rule is not a major rule under E.O. 12291, and an initial regulatory impact analysis is not required.

For similar reasons, we are not preparing analyses for either the RFA of section 1102(b) of the Act since we have determined, and the Secretary certifies, that this proposed rule would not result in a significant economic impact on a substantial number of small entities and would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

List of Subjects

42 CFR Part 440

Grant programs-health, Medicaid.

42 CFR Part 441

Family planning, Grant programs-health, Infants and children, Medicaid, Penalties, Prescription drugs, Reporting and recordkeeping requirements.

42 CFR chapter IV would be amended as follows:

PART 440—SERVICES: GENERAL PROVISIONS

A. Part 440 is amended as follows:

1. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart A—Definitions

2. A new § 440.166 is added to read as follows:

§ 440.166 Nurse practitioner services.

(a) *Definition of nurse practitioner services. Nurse practitioner services* means services that are furnished within the scope of practice authorized by State law or regulations, by a practitioner who meets the requirements for a certified pediatric nurse practitioner or a certified family nurse practitioner, regardless of whether the nurse practitioner is under the supervision of, or associated with, a physician or other health care provider.

(b) *Requirements for certified pediatric nurse practitioner.* The practitioner must be a registered professional nurse who meets all of the following requirements:

(1) Is currently licensed to practice in the State as a registered professional nurse.

(2) In the State in which he or she furnishes the services, meets the State requirements for qualification of pediatric nurse practitioners or nurse practitioners.

(3) Is currently engaged in a pediatric nurse practice within the scope of applicable State law.

(c) *Requirements for certified family nurse practitioner.* The practitioner must be a registered professional nurse who meets all of the following requirements:

(1) Is currently licensed to practice in the State as a registered professional nurse.

(2) In the State in which he or she furnishes the services, meets the State requirements for qualification of family nurse practitioners or nurse practitioners.

(3) Is currently engaged in a family nurse practice within the scope of applicable State law.

(d) *Payment for nurse practitioner services.* In accordance with § 441.22(c) of this subchapter, which concerns payment for nurse practitioner services, the Medicaid agency may pay for nurse practitioner services by paying the—

(1) Nurse practitioner under an independent provider agreement; or

(2) Provider employing the nurse practitioner.

Subpart B—Requirements and Limits Applicable to All Services

3. In § 440.210, paragraphs (a) introductory text and (a)(1) are revised to read as follows:

§ 440.210 Required services for the categorically needy.

(a) A State plan must specify that, at a minimum, categorically needy recipients are furnished the following services:

(1) The services defined in §§ 440.10 through 440.50, 440.70, and (to the extent nurse-midwives and nurse practitioners are authorized to practice under State law or regulation) the services defined in §§ 440.165 and 440.166, respectively.

* * * * *

4. A new § 440.225 is added to read as follows:

§ 440.225 Optional services.

Any of the services defined in subpart A of this part, that are not required under §§ 440.210 and 440.220 may be furnished under the State plan at the State's option.

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

B. Part 441 is amended as follows:

1. The authority citation for part 441 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart A—General Provisions

2. Section 441.10 is revised to read as follows:

§ 441.10 Basis.

This subpart is based on the following sections of the Act which state requirements and limits on the services specified or provide Secretarial authority to prescribe regulations relating to services:

Section 1102 for end-stage renal disease (§ 441.40).

Section 1138(b) for organ procurement organization services (§ 441.13(c)).

Section 1902(a)(10)(A) and 1905(a)(21) for nurse practitioner services (§ 441.22).

Section 1902(a)(10)(D) and 1907(a)(7) for home health services (§ 441.15).

Section 1903(i)(1) for organ transplant procedures (§ 441.35).

Section 1903(i)(5) for certain prescribed drugs (§ 441.25).

Section 1903(i)(6) for prohibition (except in emergency situations) of FFP in expenditures for inpatient hospital tests that are not ordered by the attending physician or other licensed practitioner (§ 441.12).

Section 1905(a)(4)(C) for family planning (§ 441.20).

Section 1905(a)(12) and (e) for optometric services (§ 441.30).

Section 1905(a)(17) and (m) for nurse-midwife services (§ 441.21).

Section 1905(a) (following (a)(18)), for prohibition of FFP in expenditures for certain services (§ 441.13).

3. A new § 441.22 is added to read as follows:

§ 441.22 Nurse practitioner services.

To the extent that nurse practitioners are authorized to practice under State law or regulations, the State plan must meet the following requirements:

(a) Provide that nurse practitioner services are furnished to the categorically needy.

(b) Specify whether those services are furnished to the medically needy.

(c) Provide that the nurse practitioner—

(1) May enter into an independent provider agreement and be paid directly through that agreement; or

(2) Be paid through the employing provider.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program).

Dated: August 23, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: October 23, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-30353 Filed 12-20-01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91-65; Notice 1]

RIN 2127-AE15

Federal Motor Vehicle Safety Standards; Burnish Procedures and Recovery Requirements for Air Braked Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice responds to a petition for rulemaking submitted by Rockwell International requesting that the agency amend two aspects of Standard No. 121, Air Brake Systems: the adjustment procedure for brake burnish during road testing and the recovery requirement for truck and bus front brakes.

As to brake burnish, the proposal would allow up to three brake adjustment during the burnish procedure at intervals specified by the vehicle manufacture and at the conclusion of burnishing. The agency tentatively concludes that this amendment would

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bring the road test burnish procedures closer to conditions found in actual vehicle usage, particularly given the anticipated use of a new generation of non-asbestos brake block which may experience lining swell early in the burnish tests.

As to the recovery requirement, the proposal would no longer require front axle brakes on trucks and buses to comply with the minimum pressure requirements related to the brake chamber. The agency tentatively concludes that this amendment would improve brake performance by removing a regulation that prevents the use of larger brakes on front axles.

DATES: *Comments.* Comments must be received on or before March 9, 1992.

Proposed Effective Date. The proposed amendments would become effective 30 days after publication of a final rule in the **Federal Register**.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Richard C. Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–5274).

SUPPLEMENTARY INFORMATION:

Background

1. Burnish Requirements

Standard No. 121, Air Brake Systems (49 CFR 571.121), specifies road tests and dynamometer tests to measure whether air brakes on vehicles comply with the standard's performance requirements. Among the requirements applicable to vehicles with air brakes are "burnish" procedures conducted at the outset of both road testing and dynamometer testing. A burnish procedure consists of a series of brake applications (hereafter referred to as "snubs") that serve to break in the brakes on a new vehicle. The burnish procedures are intended to simulate the break-in of the brakes under normal driving conditions.

Under the current road test burnish procedures, two options, "a" and "b," are available until September 1, 1993 (see S6.1.8.1.) Brakes on vehicles manufactured on or after that date must be burnished under option "b." The burnish procedures in both options consist of 500 brake applications. In addition, both options specify that the brakes be adjusted during the burnish procedure, if necessary, in accordance with the manufacturer's recommendations, after the 125th, 250th, and 376th snubs and after burnish is completed.

There are two principal differences between the options. First, in option "a," the snubs are made to slow the vehicle to 20 miles per hour (mph) from speeds ranging from 40 mph to 60 mph; while all the snubs in option "b" slow the vehicle from 40 mph to 20 mph. Second, in option "a," the maximum temperature of the hottest brake on the vehicle is not permitted to exceed 550° F, while option "b" does not contain provisions about the maximum permissible brake temperature.

A dynamometer test to measure mechanical force is also specified in Standard No. 121 (see section S6.2.6). Before the dynamometer test, brakes are burnished by making 400 stops from 40 mph at a deceleration of 10 fsps. For these brake applications, the standard specifies that the "initial brake temperature" shall be within a stated range. "Initial brake temperature" is defined as "the average temperature of the service brakes on the hottest axle of the vehicle 0.2 mile before any brake application."

The current burnish procedures resulted from a rulemaking conducted in response to a petition from International Harvester (IH) that culminated in a final rule published on March 14, 1988 (49 FR 8191.) IH had petitioned the agency to amend the burnish procedures to take account of the differing characteristics of disc and drum brake systems. In considering new burnish procedures, the agency issued a notice of proposed rulemaking (NPRM) (48 FR 29560; June 27, 1983) and a supplemental notice of proposed rulemaking (SNPRM) (50 FR 21313; May 23, 1985) to amend the pre-road testing burnish procedures in Standard Nos. 105 and 121. The NPRM proposed that if the temperature of the hottest brake exceeded 550° F at a snub condition of 40 to 20 mph, then the remaining snubs would be run from 40 to 20 mph without regard to the brake temperature. The NPRM also proposed to specify brake adjustments at equal intervals during the burnish. For the road test burnishes, the adjustments would be made manually after the 125th, 250th, and 375th snubs, in accordance with the manufacturer's recommendation. For the dynamometer test burnishes, the brakes would be adjusted manually after the 100th, 200th, and 300th snubs. This proposal incorporated past agency interpretations and preambles stating that brake adjustments are permitted during burnish. Such adjustments are made to account for the effects of high temperature and for uneven wear on different brakes.

In response to comments and additional information available to the agency, the agency issued the SNPRM to set forth four alternative methods for amending the burnishing procedures. The approach that was ultimately adopted was based primarily on agency testing indicating that brakes on heavy duty vehicles should be burnished by 500 snubs slowing the vehicle from 40 to 20 mph, without regard to brake temperatures generated during the burnish. The agency again solicited comments about the need for manual adjustments, and proposed that such adjustments be made at specified intervals in accordance with the manufacturer's recommendations. In response to comments critical of specifying the adjustments at designated intervals, the agency explained that such an approach would result in more repeatable test results by standardizing the procedures to be followed by all parties.

The final rule adopted the SNPRM's proposal about brake adjustments, as proposed. In the final rule, the agency explained that standardizing intervals at which adjustments could be made would reduce a potential source of variability.

2. Brake Recovery During Dynamometer Testing

Section S5.4 specifies requirements that foundation brake assemblies must meet during dynamometer tests for retardation, brake power, and recovery. These requirements are specified to achieve the required deceleration. During brake recovery, the chamber pressure for non-antilock systems must be within the range of 85 to 20 psi. The purpose of the 85 psi requirement at the high end of the test specification is to ensure that the brakes can recover from the elevated test temperatures. These elevated temperatures can cause the brakes to fade and may also permanently alter the physical characteristics of the brake block material. This provision ensures that there has not been a permanent change in the physical condition of the brake block material which requires a higher pedal force or air pressure. The purpose of the 20 psi requirement at the low end of the test specification is to check for overly aggressive brake blocks with an unstable coefficient of friction resulting from the exposure to high temperature conditions.

Petition

On January 8, 1991, Rockwell International (Rockwell) submitted a petition for rulemaking, requesting that the agency amend two aspects of Standard No. 121: (1) The adjustment procedure for brake burnish during road testing, and (2) the recovery requirement for truck and bus front brakes.

In regard to brake burnish, Rockwell explained that it has experienced problems with dragging brakes during the early part of the burnish. The brake drag has resulted from overheating of the brake linings and drums to the extent that the test was stopped because of the concern due to excessive temperatures. These problems were caused by the automatic slack adjustors adjusting to the expanding hot drum and by the initial swell of the lining that occurs under testing. For Rockwell's brake design, which employs non-asbestos brake blocks, lining swell occurs early in burnish, typically around the 50th snub. While a manual adjustment would alleviate the problem of lining swell, the first manual adjustment is not allowed under the current requirements until the 125th snub. Accordingly, Rockwell requested that to permit readjustment at the time of the initial swell, the standard should not specify the exact snub numbers at which brakes can be manually adjusted. Instead, the requirements should allow four manual adjustments, if necessary. The petition did not request changes to the brake adjustment provisions in the dynamometer test.

In regard to brake recovery, Rockwell stated that the 20 psi requirement results in brake size and input power being limited because if a brake's performance level is too high, the pressure will be less than 20 psi. This limitation historically has had minor impact because recovery typically has fallen in the mid-range. However, this provision hampers the trend toward designing vehicles with larger front axle brakes, a trend which the agency has encouraged to improve brake performance. Rockwell requested that the standard be amended to exclude truck and bus front axle brakes from the minimum pressure requirements to allow use of larger brake sizes and input powers. The petitioner stated that the concern about early lock-up would generally not apply to front axle brakes because of the dynamic weight transfer to front axles during deceleration.

Agency Proposal

General

After conducting its initial review, NHTSA previously granted each part of the petition and, in this notice, has decided to propose amendments to Standard No. 121 to effectuate the petition.

First, the burnish requirements in the road test conditions and dynamometer test conditions would be amended to allow up to three brake adjustments during the burnish procedure, at intervals specified by the vehicle manufacturer, and a final adjustment at the conclusion of burnishing. This would modify the current burnish requirement which allows adjustments, but only at intervals specified in the regulation. The agency has also decided to propose amending the brake adjustment provisions for dynamometer tests to obtain consistency in its regulation, even though the petitioner did not request this change. This proposal also anticipates the potential need for future rulemaking on this issue.

Second, the brake recovery requirement would be amended to exclude front brakes of trucks and buses from the minimum pressure requirement. This proposal would remove a requirement that appears to impede the development of larger front brakes on heavy vehicles. Accordingly, this rulemaking would be consistent with the agency's policy of encouraging vehicles designed with front brakes that do a larger share of the total braking. This goal is explained in reports about the agency's testing of heavy vehicles at the Vehicle Research and Testing Center (VRTC) ("NHTSA Heavy Duty Vehicle Brake Research Program Report No. 1, "Stopping Capability of Air Braked Vehicles," (DOT HS 806 736, April 1985) and Report No. 9, "Stopping Distances of 1988 Heavy Vehicles.")

Burnish Procedure

As with all the Federal Motor Vehicle Safety Standards, Standard No. 121 is designed to evaluate the real-world experiences of motor vehicles. The agency established the burnish procedures to simulate the break-in that brakes get when they are initially used on the public roads. The 1988 amendments in large part succeeded in bringing the road test burnish procedure closer to conditions found in actual vehicle usage, especially for disc brakes.

After evaluating the Rockwell petition, the agency tentatively concludes that it may be necessary to modify the burnish procedures to account for the new generation of non-asbestos brake blocks. Unlike conventional asbestos brake blocks, these new types of brake blocks respond to elevated temperatures with increased swelling. One potential way to alleviate the problem of lining swell would be to allow manual brake adjustment during the burnish tests when swelling occurs. Accordingly, the agency is proposing to amend the adjustment schedule in S6.1.8.1 to permit adjustment at intervals specified by the vehicle manufacturer. The agency requests comments about the need for and appropriateness of this proposal.

In the 1988 rulemaking about burnish, NHTSA considered the timing for manual brake adjustment. At the time, the agency decided to specify the intervals at which manual adjustments could be made. Specifically, manual adjustments were permitted after the 125th, 250th, and 375th snubs and after completing the burnish, with each adjustment made in accordance with the manufacturer's recommendations. In specifying the adjustments at designated times, the agency was attempting to standardize the procedures to be followed by all parties. The agency was concerned that if it did not specify how often and when adjustment could be made, the standard might incorporate a potential source of variability.

In response to the problems identified by the Rockwell petitions, NHTSA has reevaluated the need to specify the intervals between snubs. The agency tentatively concludes that the standard need not specify the intervals at which such adjustments could be made. Specifying the adjustment intervals might provide somewhat greater uniformity among vehicles because all brakes that need adjustment during burnishing would be adjusted at the same time. However, such a procedure does not take into account the differences among brake systems, i.e., while the Rockwell system apparently needs adjustment early in the testing, a different system may need adjustments later in the process. Given that each brake system may need adjustment at different times (or not at all), the agency now tentatively concludes that it is not appropriate to specify a particular adjustment schedule for all brake designs. An alternative approach would be for the agency to propose the initial adjustment at an earlier point (e.g., the 50th snub) but retain the other adjustment intervals. The agency requests comments about how best to prescribe the adjustment schedule to allow flexibility to accommodate new brake designs, while ensuring that the agency can enforce the burnish requirements.

As mentioned above, Rockwell did not petition to change the adjustment cycle intervals specified in S6.2 "Dynamometer test conditions." In terms of adjustment during burnish, that

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provision states that "The brakes shall be adjusted three times during the burnish procedure, after 100, 200, and 300 stops, and at the conclusion of the burnishing, in accordance with the manufacturer's recommendation" (see S6.2.6.) The agency notes that the temperature rise during burnishing is not so significant a problem during the dynamometer test because the large cooling fans used with that stationary test provide greater cooling than the road test's ambient wind conditions. Nevertheless, the agency has decided to propose amending the brake adjustment provisions for dynamometer tests to obtain consistency between its provisions about burnish. This proposal also anticipates the potential need for future rulemaking on this issue.

The agency is also proposing to change the definition for "initial brake temperature." While the present definition is appropriate for road testing situations, it is not appropriate for dynamometer testing because the dynamometer test is a stationary test fixture rather than an over-the-road vehicle. The present definition which refers to initial brake temperature, as the average temperature of the service brakes on the hottest axle of the vehicle 0.2 mile before any brake application, is being extended to include the equivalent of 0.2 miles in terms of time (i.e., 12 seconds) on the dynamometer. The time of 12 seconds is equivalent to the distance of 0.2 miles at sixty miles per hour. The agency welcome comments about this proposed modification to the definition of initial brake temperature.

Brake Chamber Pressure During Recovery

Section S5.4.3. currently specifies provisions about a vehicle's brake recovery during the dynamometer testing. Within two minutes after completing the brake power tests, the brake of a vehicle (other than either front axle brake of a truck-tractor) must be capable of making 20 consecutive stops from 30 mph at a deceleration rate of 12 ft/s/s at one minute intervals. During these stops, the service line air pressure needed to attain the deceleration rate must not be more than 85 lb/in ^{2} and not less than 20 lb/in ^{2} for a non-anti-lock brake system. The lower limit is 12 lb/in ^{2} for brakes controlled by an antilock system.

These pressure requirements of the brake chamber during recovery serve two purposes. The 85 psi requirement at the high end of the test specification ensures that brakes can recover from the elevated temperatures which cause brakes to fade. Such high temperatures may also permanently alter the physical characteristics of the brake block material. Accordingly, this test ensures that there has not been a permanent change in the brake block material's physical condition requiring a higher pedal force of air pressure. The 20 psi requirement at the low end of the specification checks for overly aggressive brake blocks with an unstable coefficient of friction resulting from exposure to high temperature conditions. One effect of the 20 psi requirement is to prevent the use of larger brakes on the front axle because such systems may go below the fixed lower pressure limit. This is so because an inverse relationship exists between air pressure and brake size (i.e., a lower air pressure such as one under 20 psi is capable of activating a larger brake system.)

After reviewing the situation in light of Rockwell's petition, the agency has decided to propose amending the requirement so that front axle brakes on trucks and buses would no longer have to comply with the minimum pressure requirements for the brake chamber during the recovery tests. Such an amendment would remove a regulation that may impede the use of larger brakes on front axles. In terms of brake performance, a major agency priority has been to encourage large front brakes, a measure which results in improved braking performance through the ability of the front brakes to compensate for the forward transfer of weight that occurs during braking. This agency policy is set forth in the VRTC test studies cited above and the agency's report to Congress entitled "Improved Brake Systems for Commercial Vehicles" (PB91–182600). This report may be examined at the agency's Technical Reference Office, room 5108, at no charge. It is available from the National Technical Information Service (NTIS), Springfield, VA 22161 for a small charge. Along with the agency's interest in encouraging larger front brakes, vehicle manufacturers are increasingly equipping their vehicles with larger front axles, bearings, and brakes to improve their vehicles' overall durability and performance. The agency requests comments about the need for this amendment.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The main effect of the burnish proposal would be to provide burnish procedures that are more representative of the actual "break-in" that vehicle brakes typically receive while in use on the nation's roads, without favoring any particular braking system design. In particular, allowing adjustment consistent with the manufacturer's recommended adjustment schedule would more fully account for differences among brake systems. The main effect of the proposal about recovery requirements would be to remove a restriction that prevented the installation of better performing front brakes.

The proposed amendment of the burnish procedures would not result in any significant cost increase because it serves to provide greater flexibility to manufacturers during the burnish testing. The agency anticipates that the rulemaking's costs would be less than $1.00 per vehicle. The agency estimates that it would take approximately one and one half hours in labor time to conduct the test: One hour to set up the test by plumbing the test gauges into the front axle brake system and another ½ hour for running and recording data. At a labor cost of $30 per hour and the testing of four units for each axle design, the agency expects the cost to be approximately $180 per test. This cost would be allocated among 200 to 1000 vehicles with a given axle design, resulting in a cost of $0.18 to $0.90 per vehicle. The proposed amendment to the recovery requirements would result in a cost savings because front axle brakes on trucks and buses would no longer have to comply with certain requirements. The agency welcomes comments about the costs associated with the test procedure.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. Few of the truck tractor manufacturers or brake manufacturers affected by this rulemaking are small entities. Some of the trailer manufacturers may qualify as small entities. However, as explained above, this rule would not significantly increase the production or certification costs for those manufacturers that do qualify as small entities. Small organizations and governmental jurisdictions which purchase these vehicles would not be affected since the cost impacts of this rule would be minimal, as described above. Accordingly, a regulatory flexibility analysis has not been performed.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws would be affected.

National Environmental Policy Act

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency proposes to amend Standard No. 121, Air Brake Systems, in title 49 of the Code of Federal Regulations at part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.121 [Amended]

2. In § 571.121, would be revised by amending the following definition as follows:

* * * * *

Initial brake temperature means the average temperature of the service brakes on the hottest axle of the vehicle 0.2 mile before any brake application in the case of road tests, or 12 seconds before any brake application in the case of dynamometer testing.

* * * * *

§ 571.121, S5.4.3 [Amended]

3. In § 571.121, S5.4.3 would be revised to read as follows:

S5.4.3 *Brake recovery.* Except as provided in S5.4.3(a) and (b), starting 2 minutes after completing the tests required by S5.4.2, the brake of a vehicle shall be capable of making 20 consecutive stops from 30 mph at an average deceleration rate of 12 ft/s/s, at equal intervals of 1 minute measured from the start of each brake application. The service line air pressure needed to attain a rate of 12 ft/s/s shall be not more than 85 lb/in^2 and not less than 20 lb/in^2, for a brake not subject to the control of an antilock system, or 12 lb/in^2 for a brake subject to the control of an antilock system.

S5.4.3(a) Notwithstanding S5.4.3, neither front axle brake of a truck-tractor is subject to the requirements set forth in S5.5.3.

S5.4.3(b) Notwithstanding S5.4.3, neither front axle brake of a bus or a truck other than a truck-tractor is subject to the requirement set forth in S5.4.3 prohibiting the service line air pressure from being less than 20 lb/in^2 for a brake not subject to the control of an antilock system.

§ 571.121, S6.1.8.1 [Amended]

4. In § 571.121, S6.1.8.1 would be revised to read as follows:

S6.1.8.1 Vehicles manufactured before September 1, 1993 may be burnished according to the procedures set forth in S6.1.8.1(a) or S6.1.8.1(b) of this section, at the manufacturer's option. vehicles manufactured on or after September 1, 1993 shall be burnished according to the procedures set forth in S6.1.8.1(b) of this section.

(a) With the transmission in the highest gear appropriate for the series given in Table IV, make 500 brake applications at a deceleration rate of 10 fsps, or at the vehicle's maximum deceleration rate if less than 10 fsps, in the sequence specified. Except where an adjustment is specified, after each brake application, accelerate to the next speed specified and maintain that speed until making the next brake application at a point 1 mile from the initial point of the previous brake application. If a vehicle cannot attain any speed specified in 1 mile, continue to accelerate until the specified speed is reached or until the vehicle has traveled 1.5 miles from the initial point of the previous brake application, whichever occurs first. If during any of the brake applications specified in Table IV, the hottest brake reaches 550 °F, make the remainder of the 500 brake applications from that snub condition, except that a higher or lower snub condition shall be used as necessary to maintain an after-stop temperature of 500 °F ± 50 F. However, if at a snub condition of 40 to 20 mph, the temperature of the hottest brake exceeds 550 °F, make the remainder of the 500 brake applications from that snub condition, without regard to brake temperature. The brakes may be adjusted up to three times during the burnish procedure, at intervals specified by the vehicle manufacturer, and may be adjusted at the conclusion of the burnishing, in accordance with the manufacturer's recommendation. Any automatic pressure limiting valve is in use to limit pressure as designed, except that any automatic front axle pressure limiting valve is bypassed if the temperature of the hottest brake on a rear axle exceeds the temperature of the hottest brake on a front axle by more than 125 °F. A bypassed valve is reconnected if the temperature of the hottest brake on a front axle exceeds

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the temperature of the hottest brake on a rear axle by 100 °F or more.

TABLE IV

Series	Snubs	Snub conditions (Highest speed indicated, miles per hour)
1	175	40-20.
2	25	45-20.
3	25	50-20.
4	25	55-20.
5	250	60-20.

(b) With the transmission in the highest gear appropriate for a speed of 40 mph, make 500 snubs between 40 mph and 20 mph at a deceleration rate of fsps, or at the vehicle's maximum deceleration rate if less than 10 fsps. Except where an adjustment is specified, after each brake application accelerate to 40 mph and maintain that speed until making the next brake application at a point 1 mile from the initial point of the previous brake application. If the vehicle cannot attain a speed of 40 mph in 1 mph, continue to accelerate until the vehicle reaches 40 mph or until the vehicle has traveled 1.5 miles from the initial point of the previous brake application, whichever occurs first. An automatic pressure limiting valve is in use to limit pressure as designed. The brakes may be adjusted up to three times during the burnish procedure, at intervals specified by the vehicle manufacturer, and may be adjusted at the conclusion of the burnishing, in accordance with the manufacturer's recommendation.

§§ 571.121, S6.2.6 [Amended]

5. In § 571.121, S6.2.6 would be revised to read as follows:

S6.2.6 Brakes are burnished before testing as follows: Place the brake assembly on an inertia dynamometer and adjust the brake as recommended by the brake manufacturer. Make 200 stops from 40 mph at a deceleration of 10 fsps, with an initial brake temperature on each stop of not less than 315 °F and not more than 385 °F. Make 200 additional stops from 40 mph at a deceleration of 10 fsps with an initial brake temperature on each stop of not less than 450 °F and not more than 550 °F. The brakes may be adjusted up to three times during the burnish procedure, at intervals specified by the vehicle manufacturer, and may be adjusted at the conclusion of the burnishing, in accordance with the manufacturer's recommendation.

Issued on: December 16, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-30493 Filed 12-20-91; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB73

Endangered and Threatened Wildlife and Plants; Proposed Rule for Five Plants and Morro Shoulderband Snail from Western San Luis Obispo County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended, (Act), for five plants and one land snail: *Arctostaphylos morroensis* (Morro manzanita), *Cirsium fontinale* var. *obispoense* (Chorro Creek bog thistle), *Clarkia speciosa* ssp. *immaculata* (Pismo clarkia), *Eriodictyon altissimum* (Indian Knob mountainbalm), *Suaeda californica* (California sea-blite), and Morro shoulderband snail (*Helminthoglypta walkeriana*). Morro manzanita and Indian Knob mountainbalm inhabit the maritime chaparral community primarily between the cities of Morro Bay and Arroyo Grande in San Luis Obispo County, California. Chorro Creek bog thistle is restricted to seep areas in serpentine soils primarily around San Luis Obispo. Pismo clarkia is found on pockets of dry sandy soils between San Luis Obispo and Arroyo Grande. California sea-blite is restricted to the upper intertidal marsh zone around Morro Bay. The five plant taxa are threatened by one or more of the following: Residential development, road maintenance activities, competition from alien plants, recreational activities, grazing, water diversions, dredging, and perhaps stochastic (i.e., random) extinction by virtue of the small, isolated nature of the remaining populations. Morro shoulderband is limited to pre-Flandrian sand dunes at the southern end of Morro Bay and is threatened by destruction of habitat, competition with the common garden snail, and perhaps stochastic extinction. The proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for the plants and the snail. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by February 21, 1992. Public hearing requests must be received by February 6, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Office Supervisor, U.S. Fish and Wildlife Service, Ventura Office, 2140 Eastman Avenue, suite 100, Ventura, California, 93003. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Steven Chambers, Office Supervisor, at the above address or at 805-644-1766 (commercial) or 983-6040 (FTS).

SUPPLEMENTARY INFORMATION:

Background

Morro manzanita, Chorro Creek bog thistle, Pismo clarkia, Indian Knob mountainbalm, California sea-blite, and Morro shoulderband are endemic to the western portion of San Luis Obispo County, California. Morro manzanita and Indian Knob mountainbalm occur as components of several coastal plant communities, referred to as central coastal scrub, central maritime chaparral, and coast live oak woodland by Holland (1986). Chorro Creek bog thistle is found primarily on more inland sites, near seeps associated with serpentine soils. Pismo clarkia is a component of grasslands that form a mosaic with chaparral and oak woodlands. California sea-blite is found in association with the northern coastal salt marsh community (Holland 1986) around Morro Bay. Morro shoulderband is found within the central coastal dune scrub community (Holland 1986) on the south end of Morro Bay. These communities have also been described by Holland and Keil (1990) and by MacDonald, Griffin, Hanes, Barbour and Johnson, and Mooney in Barbour and Major (1988).

The natural communities of western San Luis Obispo County have undergone a number of changes resulting from both human-caused activities and natural occurrences. The rapid urbanization of urban communities around Morro Bay, the San Luis Obispo area, and the Pismo Beach area has already eliminated the proposed plants and the snail in portions of their ranges. Starting in the 1940's, the configuration of Morro Bay itself was altered by construction of a breakwater that resulted in the connection of Morro Rock to the mainland north of the Bay, construction

of a marina, the deposition of sediments from two watersheds (Los Osos Creek and Chorro Creek), and the dredging of waterways within the Bay (Gerdes *et al.* 1974). Since 1935, the spit that envelops the southern portion of the Morro Bay has also been displaced 90 feet landward as a result of windblown sand into the interior of the Bay (Josselyn *et al.* 1989). Further urban development and other anthropogenic activities such as recreation, grazing, and utility construction threaten the remaining occurrences of these plants and the snail.

Discussion of the Six Species Proposed for Listing

Morro manzanita (*Arctostaphylos morroensis*) was first described by Albert E. Wieslander and Beryl O. Schreiber in 1939 (Wieslander and Schreiber 1939) based on a specimen collected in Hazard Canyon, south of Morro Bay, which is now within the boundaries of Montana de Oro State Park. This name has been conserved by McMinn (1939), Abrams (1951), Munz (1968), and Hoover (1970).

This handsome shrub of the heath family (Ericaceae) reaches 1.5 to 4 meters (m) (5 to 13 feet (ft)) high. Morro manzanita has oblong to ovate leaves that are grey-green to olive-green and 2.5 to 4 centimeters (cm) (1 to 1.5 inches (in)) long, with petioles 2 to 6 millimeters (mm) (0.08 to 0.20 in) long. The white to pinkish flowers are 5 to 8 mm (0.2 to 0.3 in) long and form orange-brown fruits 8 to 13 mm (0.3 to 0.5 in) in diameter. Morro manzanita is distinguished from other manzanitas in the area by the following characters: The bark of the trunk is a shaggy grey to brown and the leaf blades are cuneate to rounded or truncate at the base, with the lower surface paler and usually somewhat tomentose (bearing short, wooly hairs). Occasional specimens of Morro manzanita have exhibited an auriculate (ear-shaped appendage) leaf base and a leaf petiole short to lacking—characters more representative of the rare Arroyo de la Cruz manzanita (*Arctostaphylos cruzensis*). Recent work by Holland *et al.* (1990) has clarified the distinctness of the taxon and its relation to Arroyo de la Cruz manzanita.

The distribution of Morro manzanita has been tied to the presence of soils derived from ancient sand dunes, referred to as Baywood fine sands, which were deposited during the Pleistocene epoch when sea levels 300 feet lower than current levels allowed large volumes of sand to blow inland into the Los Osos Valley. Over half of the area covered by Baywood fine stands have been subject to urban development, primarily by the communities of Los Osos, Baywood Park, and Cuesta-by-the-Sea on the south and east sides of Morro Bay. The total number of individuals of Morro manzanita was recently estimated to be 2,000 (McLeod 1991).

Chorro Creek bog thistle (*Cirsium fontinale* var. *obispoense*) is one of two rare subspecies of *Cirsium fontinale*, which was first described by Edward L. Greene in 1886 as *Cnicus fontinalis*. Six years later, he transferred the plant to the genus *Carduus*, and in 1901 Jepson transferred the plant to the genus *Cirsium*. In 1938, J.T. Howell described the var. *obispense* based on plants collected at Chorro Creek 2 years earlier (Abrams and Ferris 1960).

Chorro Creek bog thistle is a rugged short-lived perennial herb of the aster family (Asteraceae). First year plants form a rosette that reaches up to a meter (3.3 ft) in diameter; in the second or third year, the plant produces a branching stalk up to 2 m (6.6 ft) in height and bearing numerous heads of whitish to pinkish-lavender tinged flowers. It is separated from other thistles that occur in the area on the basis of its nodding flower heads and glandular hairs on the leaves.

Chorro Creek bog thistle is restricted to open seep areas on serpentine soil outcrops. It is known from only eight locations; seven are to the south and west of San Luis Obispo, and one is 30 miles to the northwest near San Simeon. The type locality was surveyed for Chorro Creek bog thistle in 1985; the thistle was not located and is assumed to be extirpated, probably by cattle grazing (Rocco 1981). Extant populations are threatened by grazing and proposed water diversions, and may also be declining due to several years of drought conditions. At the time of the last surveys in 1986, the total number of individuals numbered less than 3,000 (Friedman 1987).

Indian Knob mountainbalm (*Eriodictyon altissimum*) was first collected on Indian Knob by Philip V. Wells in 1960, and was described by him 2 years later (Wells 1962). This diffusely branched evergreen shrub of the waterleaf family (Hydrophyllaceae) reaches a height of 2 to 4 m (6.6 to 13 ft). The sticky leaves are long (6 to 9 cm (2.4 to 3.5 in)) and narrow (2 to 4 mm (0.08 to 0.20 in)); the lavender flowers (1.1 to 1.5 cm (0.4 to 0.6 in) long) are arranged in coiled clusters, and produce numerous tiny (0.4 mm (0.02 in) long) seeds. As with other fire-adapted chaparral plants, Indian Knob mountainbalm produces new growth primarily from rhizomatous suckers. Only one other narrow-leaved *Eriodictyon* occurs in southern California; *E. angustifolium* occurs in the New York Mountains in the eastern Mojave Desert.

Indian Knob mountainbalm occurs within coastal maritime chaparral and oak woodlands and co-occurs with Morro manzanita in several locations. Vanderwier (1987) did a detailed study of the chaparral and woodland communities at the type locality for Indian Knob mountainbalm. Only six stands are known, which range from the south end of Morro Bay to Indian Knob, between San Luis Obispo and Arroyo Grande. Because the rugged character of the terrain in the Irish Hills (between Morro Bay and Indian Knob) has precluded extensive botanical surveying, there is the possibility that other strands of Indian Knob mountainbalm may occur in this area. With the discovery of an extension of the stand at Indian Knob 2 years ago, the largest known stand comprises 350 individuals (Lynn Dee Oyler, Botanical Consultant, pers. comm., 1991). Currently, the total number of individuals of Indian Knob mountainbalm is less than 600 (Bittman 1985; Oyler, pers. comm., 1991).

Pismo clarkia (*Clarkia speciosa* ssp. *immaculata*), a member of the four o'clock family (Onagraceae), was first collected in Carpenter Canyon by Frank Lewis and Margaret Ensign Lewis in 1947. They published a monograph on the genus *Clarkia* in 1955 (Lewis and Lewis 1955) in which they described the plant for the first time. The plant is an erect or decumbent herb, with branched stems up to 5 decimeters (dm) long; the petals are white or cream-colored at the base, streaking into pinkish or reddish-lavender in the upper part and 1.5 to 2.5 cm (0.6 to 1.0 in) long. It is distinguished from the subspecies *speciosa* by its larger flowers and the pattern of petal color. In his flora of San Luis Obispo County, Hoover (1970) notes the geographical separation between Pismo clarkia and the subspecies, the latter which occurs north of San Luis Obispo from the Santa Lucia range to the Salinas River drainage.

Pismo clarkia is found on pockets of dry sandy soils, possibly ancient sand dunes, within grassy openings in chaparral and oak woodlands. The 4 extant populations are located between San Luis Obispo and Arroyo Grande and together support less than 3,000 individuals of Pismo clarkia (Myers 1987). At least one historical population has been extirpated by residential development, and extant populations are threatened by continuing

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development, road maintenance activities, and possibly grazing.

California sea-blite (*Suaeda californica*) is a succulent-leaved perennial plant of the goosefoot family (Chenopodiaceae). It was first described by Sereno Watson in 1874 based on a collection made in the salt marshes of San Francisco Bay. Amos Heller published the name *Dondia californica* in 1898, recognizing the genus name that had been used by Michel Adanson in 1763; however, the name *Suaeda* has been conserved by the International Rules of Nomenclature (Abrams 1944). Philip Munz (1959) recognized several previously recognized taxa as subspecies of *Suaeda californica*. With this treatment, he described the range of California sea-blite as extending from San Francisco Bay south to Lower (Baja) California. Ferren and Whitmore (1983) noted that much of what had been identified as *Suaeda californica* in southern California and Baja California, Mexico, is a distinct taxon, which they named *Suaeda esteroa*. While both species occur in the upper intertidal zone, *Suaeda californica* is a shrub with radially symmetrical flowers belonging to the section *Limbogermen*, and *Suaeda esteroa* is an herbaceous perennial with bilaterally symmetrical flowers belonging to the section *Heterosperma*. Further study revealed that the only extant populations of *Suaeda* that resemble the type specimen of *Suaeda californica* are those that occur in the vicinity of Morro Bay. In his pending revision of the genus, Ferren will restore full species status to the taxon to *Suaeda californica*.

California sea-blite is currently known to occur at three locations, all within Morro Bay, where it is restricted to the upper intertidal zone within coastal marsh habitat. The shrubs are discontinuously distributed in a narrow band around the Bay adjacent to other marsh plants including pickleweed (*Salicornia* sp.), saltgrass (*Distichlis* sp.), rush (*Juncus acutus*), Jaumea (*Jaumea carnosa*), and the federally endangered salt marsh birds-beak (*Cordylanthus maritimus* ssp. *maritimus*). Field surveys are planned for the spring of 1992 and will include the marsh at Elkhorn Slough in Monterey Bay, the only other location considered to be potential habitat for California sea-blite left on the coast of California (Dirk Walters, Botanical Consultant, pers. comm., 1991). Currently, the known extent of California sea-blite comprises less than 500 individuals.

The Morro shoulderband (*Helminthoglypta walkeriana*) is a member of the land snail family (Helminthoglyptidae). The Morro shoulderband was first described in 1911 as *Helix walkeriana* by Henry Hemphill (Hemphill 1911) based on collections he made "Near Morro, California"; he also described a subspecies of *Helix walkeriana*, *Helix* var. *morroensis*, from "near San Luis Obispo City" based on sculptural features in the shell (Roth 1985). Field (1930) transferred the taxon to the genus *Helminthoglypta*.

The Morro shoulderband appears to be most closely related to the surf shoulderband (*Helminthoglypta fieldi* Pilsbry, 1930), which occurs in coastal dune habitats south of the San Luis Range to Point Arguello and therefore is disjunct from the morro shoulderband. Shell features used to separate the two species include papillation over most of the body whorl, a more domed spire, and half or more of the umbilicus being covered by the apertural lip in the Morro shoulderband (Roth 1985).

The Morro shoulderband co-occurs with another helminthoglyptid snail, the Big Sur shoulderband (*Helminthoglypta umbilicata* Pilsbry, 1897). Its more globose shape and incised spiral grooves distinguish the Morro shoulderband from this species (Roth 1985). The brown garden snail (*Helix aspersa*) also occurs with the Morro shoulderband, but has a marbled pattern on its shell that distinguishes it from the Morro shoulderband, which has a single, narrow band.

Morro shoulderband is restricted to sandy soils of coastal dune and coastal sage scrub communities near Morro Bay. Surveys by Roth in 1985 resulted in the discovery of only six live Morro shoulderbands, while empty shells were much more numerous. While cautioning that not enough data were available to make a more accurate estimate, Roth speculated that at that time, there may have been as few as several hundred individuals in the remaining population of Morro shoulderband.

Previous Federal Action

Federal government actions on three of the five plants began as a result of section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and included *Arctostaphylos morroensis* as threatened, *Eriodictyon altissimum* as endangered, and *Clarkia speciosa* ssp. *immaculata* as endangered. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and its intention thereby to review the status of the plant taxa named therein. The above 3 taxa were included in the July 1, 1975 notice. On June 16, 1976, the Service published a proposal in the **Federal Register** (42 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. *Eriodictyon altissimum* was included in the June 16, 1976, **Federal Register** document.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the June 6, 1976, proposal, along with four other proposals that had expired.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Arctostaphylos morroensis*, *Clarkia speciosa* ssp. *immaculata*, and *Eriodictyon altissimum* as category 1 species, and *Cirsium fontinale* var. *obispoense* as a category 2 species. Category 1 species are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals, while category 2 species are those for which data in the Service's possession indicate listing is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently known or on file to support proposed rules. On November 28, 1983, the Service published in the **Federal Register** a supplement to the Notice of Review (48 FR 53640); the plant notice was again revised September 27, 1985 (50 FR 39526). *Arctostaphylos morroensis* and *Eriodictyon altissimum* were included in both of these revisions as category 1 species; *Clarkia speciosa* ssp. *immaculata* and *Cirsium fontinale* var. *obispoense* were included as category 2 species. On February 21, 1990, (55 FR 6184) the plant notice was again revised, and *Arctostaphylos morroensis*, *Clarkia speciosa* ssp. *immaculata*, and *Eriodictyon*

oltissimum were all included as category 1 species, and *Cirsium fontinale* var. *obispoense* was included as a category 2 species.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Eriodictyon altissimum*, *Arctostaphylos morroensis*, and *Clarkia speciosa* ssp. *immaculata*, because the 1975 Smithsonian report had been accepted as a petition. In October of 1983, 1984, 1985, 1986, 1987, 1988, 1989, and 1990, the Service found that the petitioned listing of the above 3 taxa was warranted but precluded by other higher priority listing actions. Publication of this proposal constitutes the final finding for the petitioned action.

The portion of this proposal to list *Suaeda californica* (California sea-blite) is largely based on scientific and commercial information on the species, unpublished reports by Ferren, unpublished reports from the California Department of Fish and Game (CDFG) (1991), and information gathered from several botanists, including Mr. Dirk Walters and Mr. Malcolm McLeod.

A reevaluation of the existing data on the status of *Circium fontinale var. obispoense* (Chorro Creek bog thistle) and threats to its continued existence provides sufficient information to support proposing this species for listing as endangered.

The Service entered into a contract with the Sierra Club Foundation, San Francisco, California, to investigate the status of California land snails. A final report dated August 25, 1975, contained data indicating that several of the snails studied were imperiled species in need of protection. On April 28, 1976, the Service proposed endangered or threatened status for 32 land snails in the **Federal Register** (41 FR 17742); this proposal included the Morro shoulderband (under the common name "banded dune snail") as endangered. The proposed rulemaking that included proposed endangered status for the Morro shoulderband was withdrawn for procedural reasons on December 10, 1979 (44 FR 70796). This withdrawal was the result of the 1978 amendments to Act which substantially modified procedures for listing endangered and threatened species.

The Service undertook a status review of the mollusc in 1984, which resulted in the report by Roth (1985). Based on the new information contained in the status report, Morro shoulderband appeared as a category 1 species in the May 22, 1984, **Federal Register** Animal Notice of Review (40 FR 675), and the January 6, 1989, **Federal Register** Animal Notice of Review (54 FR 573).

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Arctostaphylos morroensis* Wies. & Schreib. (Morro manzanita), *Cirsium fontinale* var. *obispoense* J. T. Howell (Chorro Creek bog thistle), *Clarkia speciosa* Lewis & Lewis ssp. *immaculata* Lewis & Lewis (Pismo clarkia), *Eriodictyon altissimum* Wells (Indian Knob mountainbalm), *Suaeda californica* Wats. (California sea-blite), and Morro shoulderband (*Helminthoglypta walkeriana*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Morro manzanita is scattered within coastal maritime chaparral and oak woodland communities, ranging from the northeast side of Morro Bay to the south end of Montana de Oro State Park, a distance of less than 10 miles. The distribution of Morro manzanita around Morro Bay has been tied to the distribution of Baywood fine sands (ancient wind-blown beach sands) that are also habitat for the endangered Morro Bay kangaroo rat. Approximately half the habitat for Morro manzanita is owned and managed by the State of California (Montana de Oro State Park) but is still subject to alteration. Groves of non-native *Eucalyptus* trees that were planted in the early 1900's are encroaching on nearby stands of Morro manzanita (Holland *et al.* 1990). Park management plans call for removal of at least portions of the Eucalyptus groves (California Department of Parks and Recreation 1988), but to date these plans have not been initiated. A current proposal to install a trans-Pacific telephone cable will likely extirpate Morro manzanita within Hazard Canyon (Army Corps of Engineers (ACOE) 1991). The remaining habitat for Morro manzanita is in private ownership on lands that surround the communities of Morro Bay, Baywood Park, and Los Osos. Expansion of these communities has already extirpated Morro manzanita habitat, and much of the remaining habitat is slated for residential development (LSA Associates 1990, Keil 1990, Holland 1990, San Luis Obispo County 1991) and sewage treatment ponds (Morro Group 1989).

Indian Knob mountainbalm, like Morro manzanita, is scattered within coastal maritime chaparral and oak woodland communities, primarily near Morro Bay. Five of six extant stands occur within a few square miles of each other, from the south side of the community of Los Osos to the north end of Montana de Oro State Park. Each of these stands comprises less than 50 plants. A sixth stand is found 15 miles to the southeast on Indian Knob, between San Luis Obispo and Arroyo Grande; at 350 individuals, it comprises the largest stand. Two of the Morro Bay stands are on lands owned and managed by Montana de Oro State Park, and co-occur with Morro manzanita in Hazard Canyon. Portions of these two stands may be extirpated by the installation of a trans-Pacific telephone cable (ACOE 1991). Other stands in the Morro Bay area occur on private land and are threatened by residential development. One stand occurs on a parcel that is used by the community of Los Osos to evaporate sewage sludge and apparently is being closely monitored by local botanists (Bittman 1985). Surface mining of tar sands was proposed for the Indian Knob area several years ago (Vanderwier 1987). While the proposal is currently not being pursued, there may be economic inventive to do so in the future. Currently, the parcel is being grazed by livestock. As with other members of this genus, Indian Knob mountainbalm is thought to be adapted to surface disturbance, specifically to periodic fire within the chaparral community. Field botanists have noted that most stands of Indian Knob mountainbalm are mature to senescent in age, and that appropriate management, including prescribed burns, may be needed to revitalize the stands (Bittman 1985).

Chorro Creek bog thistle is restricted to open seep areas in serpentine soil outcrops. Owing to its narrow habitat requirements, it probably has never been abundant. Most of Chorro Creek bog thistle is distributed between Morro Bay and San Luis Obispo. One of the two largest populations is found on Pennington Creek, a tributary of Chorro Creek, on lands managed as a biological reserve by California Polytechnic University, San Luis Obispo. Despite the

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University's objective to maintain the reserve in its natural state, illegal grazing from an adjacent cattle allotment apparently has occurred (V.L. Holland, Biological Sciences Department Chair, California Polytechnic University, San Luis Obispo, pers. comm., 1991). The type locality for Chorro Creek bog thistle was surveyed for the plant in 1986; no plants were found, and the population is presumed to be extirpated (Friedman 1987). The other large population is found near Laguna Lake in the upper Los Osos Valley watershed on lands partially owned by the City of San Luis Obispo. This population has been subjected to cattle grazing, and nearby urbanization has resulted in increased recreational use and an increase in alien plant species. Just recently, the city fenced off a small portion of the habitat to remove grazing pressures from the thistle (Tina Hall, The Nature Conservancy, pers. comm., 1991). Four other small populations occur within 5 miles of Laguna Lake. Two of these are remote enough that few human-induced threats currently exist, but the other two are on lands that are slated for development (Friedman 1987, Morro Group 1988). One small isolated population occurs along San Simeon Creek, approximately 30 miles northwest of the Pennington Creek population. This population occurs on private lands that are currently being grazed. Developments being proposed for adjacent parcels may remove water from the San Simeon Creek watershed (San Luis Obispo County 1991). Since Chorro Creek bog thistle depends on moisture from seeps, it would be threatened by any proposal to divert water from the watershed above the seeps.

Pismo clarkia is restricted to pockets of dry sandy soils within chaparral and oak woodlands south of San Luis Obispo, between the town of Edna and Arroyo Grande. All four extant populations are located on private lands. The most recent surveys revealed that the two largest populations, each supporting about 2,000 individuals, were subject to cattle grazing and to road grading where it occurs along roadsides (CDFG 1991). A third small population from the type locality consists of less than 100 individuals and is subject to the effects of roadside traffic, road grading, and herbicide spraying. A fourth population was partially extirpated by residential development and has been reduced to about 100 individuals. Of four other historical locations, two were extirpated by residential development, and two were extirpated by undetermined causes—most likely mowing and other secondary impacts associated with urban development (Myers 1987).

California sea-blite is discontinuously distributed around the upper intertidal zone of Morror Bay where it is concentrated in three stands. One stand is located on tidal flats within Morro Bay State Beach. A second stand, consisting of only six plants, is located within Sweet Springs Marsh. The third population is located within Montana de Oro State Park. All three stands are threatened by recreational activity on the tidal flats and erosion owing to changing hydrologic conditions in the intertidal zone. Sedimentation of the Bay from the Los Osos Creek and Chorro Creek watersheds has altered the abundance and distribution of marsh habitat on the east side of the bay. Dredging of the bay may also alter subsurface currents and affect shoreline stability. California sea-blite was collected from a fourth location just north of Morro Bay, but has not been seen there since 1929 (Ferren, pers. comm., 1991). The type locality, on Alameda Island in the San Francisco Bay, has long since been altered by urbanization as has much of coastal marsh habitat along the central California coast.

The following discussion of habitat and range of the Morro shoulderband is summarized from the report by Roth (1985). The Morro shouldberband formerly occupied primarily coastal dune scrub habitat along approximately 5 miles of dunes extending into Morro spit, at Baywood Park, San Luis Obispo, sites between Morro Bay and Cayucos, and probably along Morro Bay in the vicinity of Cuesta-by-the Sea. The snail and its habitat have been eliminated by residential and other development from Baywood Park, Cuesta-by-the-Sea, San Luis Obispo, and the sites between Cayucos and Morro Bay. Recent evidence of living Morro shoulderbands have been found only at a few sites within 2 miles of one another in coastal dune scrub habitat. This habitat has been degraded by off-road vehicle activity and maturation of the dune vegetation.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not currently known to be a factor for the five plants, but unrestricted collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity as a result of this proposal. The Morror shoulderband's extremely limited range and numbers and its taxonomic distinctness make it highly vulnerable to recreational or scientific collectors.

C. Disease or Predation

In efforts to control alien species of thistle, the San Luis Obispo County Agriculture Department introduced the seed-head weevil (*Rhinocyllus conicus*) to several sites in San Luis Obispo County in the early 1980's. Initial reports from field botanists indicated that the seed-headed weevils were foraging upon Chorro Creek bog thistle. However, more recent observations indicate that since the length of the flowering season of the thistle far exceeds the egg-laying period of the weevil, predation probably accounts for only a small reduction in seed availability (Charles Turner, Research Botanist, Agricultural Research Services, U.S. Department of Agriculture, pers. comm., 1991). No data exist on the effects of disease on the other plant taxa.

Grazing by livestock is believed to have caused the extirpation of Chorro Creek bog thistle at the type locality on Chorro Creek (Rocco 1981). Of eight extant sites, half are on private lands that are being grazed. Pismo clarkia has been subject to livestock grazing at two of the four extant locations. Unlike Chorro Creek bog thistle, however, observations of field botanists indicate that Pismo clarkia may be able to sustain a certain amount of grazing by livestock (Dunn in litt. 1987).

During his survey for Morro shoulderband, Hill (1974) noted that many of the empty large subadult shells contained vacant sarcophagid fly puparia, which suggested to Roth (1985) that "mortality from parasitoid infestation often occurs before *Helminthoglypta walkeriana* reaches breeding condition" (Roth 1985). Roth also documented one freshly dead snail that had been killed by a rodent.

D. The Inadequacy of Existing Regulatory Mechanisms

Under the Native Plant Protection Act (chapter 1.5 section 1900 *et seq.* of the Fish and Game Code) and California Endangered Species Act (chapter 1.5 section 2050 *et seq.*), the California Fish and Game commission has listed Pismo clarkia and Indian Knob mountainbalm as endangered; Morro manzanita and Chorro Creek bog thistle will be considered for State listing in the near future (Sandra Morey, botanist, Endangered Plant Program, California Department of Fish and Game, pers. comm). Though both statutes prohibit the "take" of State-listed plants (chapter 1.5 section 1908 and section 2080), State law appears to exempt the taking of such plants via habitat modification or land use change by the landowner. After the California Department of Fish and Game notifies a landowner that a State-listed plant grows on his or her property, State law evidently requires only that the landowner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such plant" (chapter 1.5 section 1913).

Morrow shoulderband is not specifically protected under State or local law and is thus not specifically included in State Park management plans. Collection of this species is prohibited, however, on State Park land except by permit. This protection applies only to individuals and does not prevent the effects of indirect human disturbance, such as recreational activities, from harming this species and its habitat.

E. Other Natural or Manmade Factors Affecting its Continued Existence

The introduction and invasion by alien plants of coastal sage scrub and maritime chaparral communities has adversely affected native flora and fauna, including the Morro manzanita and the Morro shoulderband. Williams and Williams (1984) tracked changes in abundance and frequency of 16 taxa in a coastal dune scrub community over a 10-year period on the sand spit of Morro Bay. They observed that differences in successional patterns in wind, lee, and ridge habitats were correlated with wind conditions, stabilization of dunes over time, and seed dispersal strategies of certain taxa. At the same time, they noted that seafig (*Mesembryanthemum chilense*) had increased in both wind and lee positions on the spit and suggested that over time seafig would supplant native species throughout the dune system.

Stands of Morro manzanita within Montana de Oro State Park are being overtopped by spreading *Eucalyptus* plantations that were planted in the early 1900's. Morro manzanita is not able to survive such encroachment, owing to reduction in available soil moisture, increased shading, and the effects of growth-inhibiting terpenes that are released from the *Eucalyptus* (Holland *et al.* 1990). The General Plan for Montana de Oro State Park (California Department of Parks and Recreation 1988) calls for the removal of exotic species, including *Eucalyptus*; however, a removal program has not yet been initiated.

As briefly mentioned above under Factor A, Chorro Creek bog thistle occurs in several areas grazed by livestock. Grazing and trampling by livestock, coupled with mesic to hydric conditions around seeps, favors growth of alien plants, once they have become established. Unlike alien thistle taxa, it is unlikely that the Chorro Creek bog thistle is able to compete with other alien plants.

The Morro shoulderband may be experiencing competition from the brown garden snail (*Helix aspersa*). The brown garden snail, presumed to be an escapee from an adjacent golf course and housing development, has established feral populations on the spit of Morro Bay. Roth (1985) discussed several factors that may be the basis for such competition. While estivation sites and food preferences for the two snails differ, competition for shelter sites may limit the numbers of Morro shoulderband. Apparently, the coastal dune scrub community within the survey area is mature to the point that lower limbs of the large older shrubs may be too far off the ground to offer good shelter. Roth found both snails occasionally using alien seafig as well as pieces of particleboard for shelter sites and suggested that more preferred shelter sites were unavailable. Increasing development surrounding the State Parks will increase threats from this and other exotic animals and plants that disperse from developed areas.

At least several Morro shoulderband individuals have been killed as a result of controlled burning of coastal scrub that was carried out to improve habitat for the endangered Morro Bay kangaroo rat within Montana de Oro State Park. Park staff are aware of the presence of the snails and have conducted pre-burn searches for them, but have not detected any in the areas that have been burned since Roth's first reported fire-caused mortalities (Vince Cicero, Park Ecologist, pers. comm., 1991). Drought and/or heat may have contributed to egg mortality in the Morro shoulderband (Roth 1985). Other snail taxa that occur within California's areas of Mediterranean climate copulate, oviposit, and undergo an active growth phase during the rainy season. Roth found intact but desiccated *Helminthoglypta* eggs "scattered in considerable numbers" within the survey area, though the species could not be determined. Roth suggested that this represented several years' accumulation of egg deposits whose viability may have been lowered by drought and/or heat conditions (Roth 1985).

Several of the plants and the Morro shoulderband are also threatened with stochastic (i.e., random) extinction due to the small size and isolation of the remaining populations. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals of these species. Depressed seed viability has recently been documented by Holland in some stands of Morro manzanita (Holland *et al.* 1990). Annual plants, such as Pismo clarkia, and short-lived perennial plants, such as Chorro Creek bog thistle, are subject to wide fluctuations in population numbers from year to year. Such taxa may have difficulty in maintaining a viable population size after a series of poor seed production years. While California sea-blite is a perennial plant, the low number of individuals and restricted range of the plant within the widely fluctuating hyrdrologic conditions in Morro Bay also subject it to stochastic extinction.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. These six taxa are vulnerable to one or more of the following threats: Habitat destruction, residential development, road maintenance activities, competition from alien plants or the common garden snail, recreational activities, grazing, water diversions, dredging, and perhaps stochastic extinction. Based on the Service's evaluation of the status and threats facing these species, the preferred action is to propose endangered status for Morro manzanita, Chorro Creek bog thistle, Pismo clarkia, Indian Knob mountainbalm, California sea-blite, and Morro shoulderband.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these species. Because the five plants face numerous anthropogenic threats (see Factor A in "Summary of Factors Affecting the Species") and the five plants occur at least in part on private land, the publication of precise maps and descriptions of critical habitat in the **Federal Register** would make these plants more vulnerable to incidents of take or vandalism and, therefore, could contribute to the decline of these species and increase enforcement problems. The proper agencies have been notified of the locations and management needs of these plants. Landowners will be

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notified of the location and importance of protecting habitat of these species.

As discussed under "Summary of Factors Affecting the Species," Morro shoulderband is vulnerable to several activities, some of which could be carried out by an individual or few people (e.g., the removal of specimens for scientific or personal collections). This activity can be difficult to regulate and control because it can be done in a fairly discreet manner. Its extremely restricted range, small population size, and lack of escape mechanisms make the Morro shoulderband extremely vulnerable to extinction as a result of even a limited collection effort. The precise pinpointing of localities that would result from publication of critical habitat descriptions and maps in the Federal Register would increase enforcement problems because this species would be more vulnerable to collection as well as vandalism to its habitat. The California Department of Parks and Recreation is already aware of the snail's presence.

Protection of these species' habitats will be addressed through the recovery process and through the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for the five plants and the Morro shoulderband is not prudent at this time, because such designation likely would increase the degree of threat from vandalism, collecting, or other human activities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered species set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; remove and reduce to possession the species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such endangered plant species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. With respect to Morro shoulderband, these prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.22 and 17.23 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits for endangered wildlife are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, for incidental take in connection with otherwise lawful activities, and economic hardship under certain circumstances.

Requests for copies of the regulations on listed plants and wildlife and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2104 or FTS 921–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to Morro manzanita, Pismo clarkia, Indian Knob mountainbalm, California sea-blite, Chorro Creek bog thistle, and Morro shoulderband;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Office Supervisor of the Ventura Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation.

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order, under "Snails", to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

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Species: Common name	Species: Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
SNAILS							
Snail, Morro shoulderband	*Helminthoglypta walkeriana*	U.S.A. (CA)	NA	E		NA	NA

3. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the plant families indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

(h) * * *

Species: Scientific name	Species: Common name	Historic range	Status	When listed	Critical habitat	Special rules
Asteraceae—Aster family:						
Cirsium fontinale var. *obispoense*	Chorro Creek bog thistle	U.S.A. (CA)	E		NA	NA
Chenopodiaceae—Goosefoot family:						
Suaeda californica	California sea-blite	U.S.A. (CA)	E		NA	NA
Ericaceae—Heath family:						
Arctostaphylos morroensis	Morro manzanita	U.S.A. (CA)	E		NA	NA
Hydrophyllaceae—Waterleaf family:						
Eriodictyon altissimum	Indian Knob mountainbalm	U.S.A. (CA)	E		NA	NA
Onagraceae—Evening-primrose family:						
Clarkia speciosa ssp. *immaculata*	Pismo clarkia	U.S.A. (CA)	E		NA	NA

Dated: November 19, 1991.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

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BILLING CODE 4310-55-M

Notices

Federal Register
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Monday, December 23, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Information Collection Submitted to the Office of Management and Budget for Review

AGENCY: ACTION.

ACTION: Information collection submitted to the Office of Management and Budget for review.

SUMMARY: This notice sets forth certain information about an information collection proposal by ACTION, the Federal domestic volunteer agency. Under the Paperwork Reduction ACT (44 U.S.C., chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose record keeping requirements. ACTION has submitted two copies of the attached information collection proposal to OMB. OMB and ACTION will consider comments on the proposed collection of information and record keeping requirements. ACTION is requesting an expedited review by OMB with final action by January 15, 1992 so that the approved forms will be ready for data collection beginning January 15, 1992.

DATES: OMB and ACTION will accept comments received on or before January 22, 1992.

ADDRESSES: Send comments to both.

Janet A. Smith, Clearance Officer, ACTION, 1100 Vermont Ave, NW., Washington, DC 20525, Tel: 202/606-5245.

And

Daniel Chenok, Desk Officer for ACTION, Office of Management and Budget, 3002 New Executive Office Bldg., Washington, DC 20503, Tel: 202/395-7316.

SUPPLEMENTARY INFORMATION:

Office of Action Issuing Proposals: Program Analysis and Evaluation Division.

Title of Forms: Evaluation of VISTA Recruitment Campaign.

Need and Use: ACTION seeks to evaluate the success of its Congressionally mandated campaign to increase the number of recent college graduates applying the VISTA.

Type of Request: New.

Respondent's Obligation to Reply. Voluntary.

Frequency of Collection: The "Volunteering after College" Survey will be conducted twice, once in January, 1992 and again in April–June, 1992. The "Survey of Recent Applicants" will be sent to every recent college graduate (or graduate-to-be) who applies to VISTA between November 1, 1991 and August 1, 1992.

Estimated Number of Annual Responses: 3,950.

Average Burden Hours per Response: .25 hours.

Estimated Annual Reporting or Disclosure Burden: 987.5 hours.

Janet Smith,

Clearance Officer, ACTION.

Signed in Washington, DC, December 13, 1991.

Jane A. Kenny,

Director, ACTION.

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SURVEY 1
COLLEGE JUNIORS AND SENIORS

SURVEY SERIAL #: ___ ___ ___ (1 2 3) INTERVIEWER #: ___ ___ ___ (4 5 6)

TELEPHONE # CALLED: ___ - ___ - _____ DATE: __/__/__ (MM DD YY)

IMPORTANT NOTE: ONLY TEXT IN lowercase LETTERS ARE TO BE READ TO RESPONDENTS. PROBES ARE IN PARENTHESES. MATERIAL NEVER READ TO RESPONDENTS IS IN UPPER CASE.

INTRODUCTION

Hello. My name is _____ and I am calling from ACTION, the Federal Domestic Volunteer Agency. We are a small agency in the U. S. Government that supports volunteer activities. We are conducting a national survey of college students to find out how much students know about full-time volunteer service opportunities that are open to college graduates. Let me assure you that I am not trying to recruit you, ask for donations, or try to sell you anything. We are only interested in getting information about your opinions.

SCREENING

Are you a junior or senior in college this year?

YES 1
NO 2

Is there a college junior or senior at this number?

WHEN SELECTED PERSON ANSWERS REPEAT INTRODUCTION AND CONTINUE WITH INTERVIEW

YES 1
NO. 2

TERMINATE WITH: Thank you. Sorry to have bothered you. Goodbye.

Your number was drawn in a random sample of students from the entire nation. Your answers are confidential. In addition, the information you furnish is voluntary; you do not have to answer any of my questions.

The survey will take no more than 5 to 15 minutes. I want to add that I would be happy to answer any questions you might have about the study, either now or later.

Do you have the time now to complete the survey?

YES 1
NO 2 May we schedule a time for me to call back when it will be more convenient for you?

YES 1
NO 2 Thank you. END THE INTERVIEW.

When may I call you back? RECORD AGREED UPON DATE, TIME, AND TERMINATE THIS SESSION.

DATE: __/__/__ (mm dd yy) TIME: _____

Thank you. I will call you back at (REPEAT TIME) on (REPEAT DATE).

Let me begin by saying thank you, in advance, for talking with me about volunteer service.

Now, let me start by asking a few general questions about what you know about opportunities for full-time volunteer service after college.

Q-1 Do you know the names of any programs that offer full-time volunteer service for recent college graduates?

YES 1
NO 2

Q-1A (IF YES) What names do you recall? CIRCLE THE NAMES IN COL. 1

(IF NO) There are several programs available. I am going to read you a list.

There are several other programs available. I will read you a list.

Q-2 Please tell me which ones you have ever seen or heard anything about? (READ LIST IN COL. 1, EXCLUDING ANY CIRCLED IN Q-1, AND CIRCLE ALL THAT APPLY IN COL. 2.)

IF RESPONDENT FAILS TO IDENTIFY ANY ON THE LIST, SKIP TO THE LAST PAGE AND COMPLETE THE BACKGROUND SECTION.

Q-3 Which ones did you see or hear something about recently, in the last 3 months? LIST THE NAMES CIRCLED IN COL. 2 AND CIRCLE ALL POSITIVE RESPONSES IN COL. 3

Q-4 Of the ones you have identified, which ones might you ask for information about opportunities for volunteers? LIST THE NAMES CIRCLED IN COLUMNS 1 AND 2 AND CIRCLE ALL POSITIVE RESPONSES IN COL. 4

CIRCLE ALL THAT APPLY IN EACH COLUMN

	(1) VOLUNTEER PROGRAMS (RECALL W/O PROMPT)	(2) HEARD ABOUT	(3 IN LAST 3 MONTHS	(4) ASK FOR INFO?
1	Christian Service Corps	1	1	1
2	Coalition for the Homeless	2	2	2
3	Habitat for Humanity	3	3	3
4	Heifer Project International	4	4	4
5	Jesuit Volunteer Corps	5	5	5
6	Mennonite Voluntary Service	6	6	6
7	Operation Cross Roads Africa	7	7	7
8	Partners of the Americas	8	8	8
9	Peace Corps	9	9	9
10	Teach for America	10	10	10
11	Vista	11	11	11
12	Ymca of the USA	12	12	12
13	OTHER1:_____	13	13	13
14	OTHER2:_____	14	14	14
15	OTHER3:_____	15	15	15

IF THE RESPONDENT IDENTIFIES VISTA, CONTINUE TO NEXT PAGE

IF THE RESPONDENT DID NOT IDENTIFY VISTA, GO TO LAST PAGE AND COMPLETE BACKGROUND SECTION.

IF THEY IDENTIFIED VISTA IN Q-1 OR Q-2:

ACTION, the agency sponsoring this survey, operates the VISTA program and is currently involved in a national campaign to increase college students awareness of VISTA.

With this is mind, I would like to learn more about how you learned of the VISTA program.

Q-5 Let me ask you first, have you seen information on VISTA in any publications, newspapers, or magazines?

YES 1
NO . . . . . 2 GO TO Q-6 ON NEXT PAGE

Q-5A (IF YES) Do you remember in what publications you saw the information on VISTA?

YES 1
NO . . . . 2 GO TO Q-6 ON NEXT PAGE

Q-5B Where? CIRCLE THE RESPONSE. PROBE: Did you see information anywhere else?

A CAMPUS NEWSPAPER 1
A LOCAL NEWSPAPER. 2
NEWSWEEK 3
PEOPLE 4
TIME 5
U. 6
U.S. NEWS & WORLD RPT. 7
CAMPUS OUTREACH NEWSLETTER 8
OTHER:_____. . . .9

Q-5C IF THEY IDENTIFIED ANY SOURCE IN THE PRECEDING ITEM, ASK: Do you remember anything you liked or disliked about the VISTA information you saw? PROBE: Pictures, headlines, text?

YES 1
NO . . . . 2 GO TO Q-6 ON NEXT PAGE

Q-5D What was it? RECORD ANSWER VERBATIM IN BOX. LABEL AS LIKE OR DISLIKE.

LIKES AND/OR DISLIKES:

Q-6 Have you seen or heard anything about VISTA on radio or television?

YES 1
NO . . . . . 2 GO TO Q-7 ON NEXT PAGE

Q-6A (IF YES) Do you remember where you might have seen or heard something about VISTA?

YES 1
NO . . . . 2 GO TO Q-7 ON NEXT PAGE

Q-6B Where? CIRCLE THE RESPONSE. PROBE: Did you see information anywhere else?

RADIO ADVERTISEMENT. 10
RADIO NEWS REPORT. 11
TELEVISION ADVERTISEMENT 12
TELEVISION NEWS REPORT 13
VIDEO TAPE 14
OTHER:_____. . . 15

Q-6C IF THEY IDENTIFIED ANY SOURCE IN THE PRECEDING ITEM, ASK: Do you remember anything you liked or disliked about the VISTA information you saw? PROBE: Pictures, sound, music, text?

YES 1
NO . . . . 2 GO TO Q-7 ON NEXT PAGE

Q-6D What was it? RECORD ANSWER VERBATIM IN BOX. LABEL AS LIKE OR DISLIKE.

LIKES AND/OR DISLIKES:

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Q-7 Have you seen any posters advertising VISTA?

YES 1
NO . . . . . 2 GO TO Q-8 ON NEXT PAGE

Q-7A (IF YES) Do you remember where you saw the VISTA poster?

YES 1
NO . . . . 2 GO TO Q-8 ON NEXT PAGE

Q-7B Where? CIRCLE THE RESPONSE. PROBE: Did you see VISTA posters anywhere else?

IN A STUDENT UNION 16
IN A DORM AREA 17
IN A CLASSROOM AREA. 18
ON A BULLETIN BOARD ON CAMPUS. 19
IN A RECRUITMENT OFFICE. 20
IN A PLACEMENT OFFICE. 21
IN A VOLUNTEER OFFICE. 22
IN A CAMPUS MINISTRY 23
IN A FINANCIAL AID OFFICE. 24
AT AN AGENCY WHERE YOU PLAN TO VOLUNTEER . 25
AT AN ACTION OFFICE. 26
OTHER: _____ 27

Q-7C IF THEY IDENTIFIED ANY SOURCE IN THE PRECEDING ITEM, ASK: Do you remember anything you liked or disliked about the VISTA poster you saw? PROBE: Colors, message, theme, layout?

YES 1
NO . . . . 2 GO TO Q-8 ON NEXT PAGE

Q-7D What was it? RECORD ANSWER VERBATIM IN BOX. LABEL AS LIKE OR DISLIKE.

LIKES AND/OR DISLIKES:

Q-8 Have you obtained any brochures about the VISTA program?

YES 1
NO . . . . . 2 GO TO Q-9 ON NEXT PAGE

Q-8A (IF YES) Do you remember where you got the brochure?

YES 1
NO . . . . 2 GO TO Q-9 ON NEXT PAGE

Q-8B Where? CIRCLE THE RESPONSE. PROBE: Did you get a VISTA brochure anywhere else?

IN A STUDENT UNION. 38
IN A DORM AREA. 39
IN A CLASS AREA 40
ON A BULLETIN BOARD ON CAMPUS 41
IN A RECRUITMENT OFFICE 42
IN A PLACEMENT OFFICE 43
IN A VOLUNTEER OFFICE 44
IN A FINANCIAL AID OFFICE 45
IN A CAMPUS MINISTRY. 46
AT AN AGENCY WHERE YOU PLAN TO VOLUNTEER. . . . 47
AT AN ACTION OFFICE 48
OTHER:_____ 49

Q-8C IF THEY IDENTIFIED ANY SOURCE IN THE PRECEDING ITEM, ASK: Do you remember anything you liked or disliked about the VISTA brochure you saw? PROBE: Colors, message, theme, layout?

YES 1
NO . . . . 2 GO TO Q-9 ON NEXT PAGE

Q-8D What was it? RECORD ANSWER VERBATIM IN BOX. LABEL AS LIKE OR DISLIKE.

LIKES AND/OR DISLIKES:

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Q-9 Have you talked with anyone, either in person or by telephone, about the VISTA program?

YES 1
NO . . . . . 2 GO TO Q-10 ON NEXT PAGE

Q-9A (IF YES) Do you remember who you have talked with about VISTA?

YES 1
NO . . . . 2 GO TO Q-10 ON NEXT PAGE

Q-9B Who? CIRCLE THE RESPONSE. PROBE: Did you talk with anyone else?

A VISTA RECRUITER. 28
AN AGENCY WHERE YOU PLAN TO VOLUNTEER . . . 29
A FRIEND 30
A FAMILY MEMBER. 31
A PLACEMENT OFFICER. 32
A CAMPUS MINISTER. 33
A FINANCIAL AID OFFICER. 34
A FACULTY ADVISOR. 35
ANOTHER FACULTY MEMBER, NOT ADVISOR. 36
OTHER:_____ . . . 37

Q-9C IF THEY IDENTIFIED ANY SOURCE IN THE PRECEDING ITEM, ASK: Do you remember anything you liked or disliked about this experience? PROBE: Was their information accurate? Were they able to answer your questions?

YES 1
NO . . . . 2 GO TO Q-10 ON NEXT PAGE

Q-9D What was it? RECORD ANSWER VERBATIM IN BOX. LABEL AS LIKE OR DISLIKE.

LIKES AND/OR DISLIKES:

Q-10 We have now established how you learned about VISTA. I would like to ask you next about the information or messages, or any part of the messages, you have received about VISTA. By a message I mean a slogan, a catch phrase, an idea, or concept, something that you might identify with VISTA. Do you remember the content of the message, or any part of the message, you first saw or heard about VISTA?

YES 1
NO. . . . . 2 GO TO Q-14 AT BOTTOM OF PAGE

Q-11 What do you remember? WRITE IN THE SPACE BELOW A VERBATIM RECORD. USE PROBES, E.G.:Is there anything else you recall?

CONTENT OF THE MESSAGE:

Q-12 I would like to know how you responded to this message. Your feelings might have ranged from very positive to very negative. How did you feel about this message? Were your feelings

a) very positive, inspiring you to learn more about the program 1
b) positive, but not wanting more information 2
c) neutral, not positive or negative. 3
d) negative, but only mildly so 4
e) negative, causing feelings of revulsion or distaste 5

Q-12A Why? PROBE: What was it about the message that caused you to feel this way? RECORD ANSWER VERBATIM

REASON FOR REACTION:

Q-13 When did you first see or hear this message about VISTA? IF THEY CANNOT RECALL EXACTLY, PROBE: Was it before September, 1991 or since then?

BEFORE SEPTEMBER, 1991 1
BETWEEN SEPTEMBER, 1991 AND NOW. 2

DOESN'T REMEMBER WHEN 3

Q-14 Did you learn about VISTA in time to include it as an option for after your graduation from college?

YES. 1
NO 2

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Q-15 Do you know what VISTA Volunteers do? PROBE FOR A RESPONSE BY, E.G.: This is not a true-false quiz. You may use whatever words you choose.

NO. . . . . 1 SKIP TO TOP OF NEXT PAGE
YES 2

RECORD VERBATIM RESPONSE

WHAT VISTA VOLUNTEERS DO:

Q-16 How likely are you to consider becoming a VISTA volunteer after graduation from college? Would you say you are

Very likely. 1
Somewhat likely. 2
Neither likely nor unlikely. 3
Somewhat unlikely. 4
Very unlikely. 5

I am going to read to you six statements about VISTA Volunteer service. For each please indicate whether you strongly agree, agree, disagree, or strongly disagree with the statement.

	STRONGLY DISAGREE	DISAGREE	NEUTRAL	AGREE	STRONGLY AGREE
Q-17 Becoming a VISTA volunteer would help me make contacts that would be important in my professional career					
Q-18 Becoming a VISTA volunteer would help me decide what career I want to pursue.					
Q-19 Becoming a VISTA volunteer would help me gain self-confidence					
Q-20 Becoming a VISTA volunteer would allow me to make an important contribution to my community					
Q-21 Becoming a VISTA volunteer would allow me to make an important contribution to my country					
Q-22 Becoming a VISTA volunteer is for someone else, not me.					

I am now going to read six facts about VISTA. After each one, please tell us if you already knew that about the VISTA program.

Q-23 Did you know that volunteers receive a stipend of about $7,000 per year?

YES 1
NO 2

Q-24 Did you know that volunteers only need to make a one year commitment to VISTA?

YES 1
NO 2

Q-25 Did you know that volunteer opportunities are with local sponsors, not national ones?

YES 1
NO 2

Q-26 Did you know that volunteer opportunities exist throughout the country? (Circle your answer)

YES 1
NO 2

Q-27 Did you know that VISTA means you can defer payment on some student loans? (Circle your answer)

YES 1
NO 2

Q-28 Did you know that volunteers receive training for their assignment? (Circle your answer)

YES 1
NO 2

Q-29 We would like to know if there are any other aspects of VISTA Volunteer service that hold meaning for you. Is there anything else about VISTA that is important to you?

YES 1
NO. . . . . 2 GO TO NEXT PAGE

Q-29A Tell me about it. PROBE: Is there anything you particularly like or dislike about (this/these)? RECORD ANSWER VERBATIM.

OTHER IMPORTANT FEATURES OF VISTA:

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BACKGROUND INFORMATION

To insure that a variety of students are among our respondents, we ask you to respond to the following demographic questions.

Q-30 What is your race? Are you?

American Indian or Alaskan Native. 1
Asian or Pacific Islander. 2
Black. 3
White. 4

Q-31 Are you of Hispanic origin?

YES 1
NO. 2

Q-32 (IF NOT APPARENT) What is your sex?

FEMALE. 1
MALE. 2

Q-33 What is your class? Junior or Senior?

JUNIOR. 1
SENIOR. 2

Q-34 How old are you?

_____ YEARS

Q-35 What college or university do you attend?

_____NAME OF INSTITUTION

Q-36 What is your major?

_____MAJOR

Q-37 In an average week during the current school year, how many hours do you spend volunteering for a non-profit organization? This could be either on your own, through a campus organization or through a national program.

_____NUMBER OF HOURS PER WEEK

Do you have any comments or questions about this survey? RECORD ANSWER VERBATIM.

That ends our interviews. Thanks. If you would like more information about VISTA, you may call our 800 number, 1-800-424-8867.

VISTA RECRUITMENT: A SURVEY OF RECENT APPLICANTS

This survey is part of a large research effort to help ACTION, the Federal domestic volunteer agency, better understand factors affecting VISTA recruitment. Please answer all the questions. Your answers are strictly confidential. All reporting will deal with summary data and contain no information that could identify you.

The information you furnish is voluntary. None of the information you provide will be used to evaluate your application for VISTA service.

You will note that a number appears in the bottom, right-hand corner on the back of the questionnaire. This number will be used to match your completed survey with your name on the sample roster. We are following this procedure for one reason only, to identify non-respondents, to whom follow-up letters will be sent.

If you wish to comment on any questions or qualify your answers , please use the space in the margins. We will read your comments and take them into account.

Thank you for applying to VISTA and for your help in completing our research.

[VISTA logo here]

Office of Policy Research and Evaluation
ACTION
Washington, DC 20525

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Q-1 How have you acquainted yourself with the VISTA program? Read through the following list and circle the number in front of every item that identifies a way you have learned about VISTA. (Circle all that apply)

NEWSPAPERS AND MAGAZINES: In which publication(s) have you seen information on VISTA?

1 CAMPUS NEWSPAPER
2 LOCAL NEWSPAPER
3 NEWSWEEK
4 PEOPLE
5 TIME
6 U
7 U.S. NEWS & WORLD REPORT
8 CAMPUS OUTREACH NEWSLETTER
9 OTHER:_____

ELECTRONIC MEDIA: What have you seen or heard about VISTA?

10 RADIO ADVERTISEMENT
11 RADIO NEWS REPORT
12 TELEVISION ADVERTISEMENT
13 TELEVISION NEWS REPORT
14 VIDEO TAPE
15 OTHER:_____

VISTA POSTERS: Where have you seen posters located?

16 STUDENT UNION
17 DORM AREA
18 CLASS AREA
19 BULLETIN BOARD ON CAMPUS
20 RECRUITMENT OFFICE
21 PLACEMENT OFFICE
22 VOLUNTEER OFFICE
23 CAMPUS MINISTRY
24 FINANCIAL AID OFFICE
25 AGENCY WHERE YOU PLAN TO VOLUNTEER
26 ACTION OFFICE
27 OTHER:_____

PERSON-TO-PERSON: Who has talked with you about VISTA?

28 VISTA RECRUITER
29 AGENCY WHERE YOU PLAN TO VOLUNTEER
30 FRIEND
31 FAMILY MEMBER
32 PLACEMENT OFFICER
33 CAMPUS MINISTER
34 FINANCIAL AID OFFICER
35 FACULTY ADVISOR
36 OTHER FACULTY, NOT ADVISOR
37 FORMER VISTA VOLUNTEER
38 CURRENT VISTA VOLUNTEER
39 OTHER:_____

BROCHURES ABOUT VISTA: Where have you obtained brochures?

40 STUDENT UNION
41 DORM AREA
42 CLASS AREA
43 BULLETIN BOARD ON CAMPUS
44 RECRUITMENT OFFICE
45 PLACEMENT OFFICE
46 VOLUNTEER OFFICE
47 FINANCIAL AID OFFICE
48 CAMPUS MINISTRY
49 AGENCY WHERE YOU PLAN TO VOLUNTEER
50 ACTION OFFICE
51 OTHER:_____

Q-2 Can you remember how you first learned about VISTA? (Circle one answer)

1 NO
2 YES

Q-2A Identify from the above list how you first learned about VISTA and write its number in this box

CODE NUMBER FOR FIRST SOURCE OF INFORMATION ABOUT VISTA [ ]

Q-3 We want to know which sources had the most influence on your decision to apply to VISTA. Who or what was most, second, and third influential in your decision to apply to VISTA? (Put the appropriate number from the above list in each box)

[ ] MOST INFLUENTIAL SOURCE OF INFORMATION ABOUT VISTA

[ ] SECOND MOST INFLUENTIAL SOURCE OF INFORMATION

[ ] THIRD MOST INFLUENTIAL SOURCE OF INFORMATION

Q-4 When did you first learn about VISTA? (Circle one)

1 BEFORE SEPTEMBER, 1991
2 BETWEEN SEPTEMBER 1991 AND NOW
3 DON'T REMEMBER WHEN

Q-4A When did you apply to VISTA? __/__ MONTH AND YEAR
mm yy

Q-5 Do you remember the message, or any part of the message, you first saw or heard about VISTA? (Circle one)

1 NO
2 YES

Q-5A When you first learned about VISTA, what was the primary message you read or heard? (Write in the space below a word-for-word or paraphrased recollection of what you heard)

MESSAGE FIRST SEEN OR HEARD ABOUT VISTA:

Q-5B Do you remember anything you particularly liked or disliked about the information you first received about VISTA? Its clarity, message, theme, layout?

1 YES
2 NO GO TO Q-6 BELOW

Q-5C What was it? (Record your answer in the space below)

LIKES AND/OR DISLIKES:

Q-6 After first learning about VISTA, did you ask for any additional, written information on the VISTA program? (Circle one)

1 NO GO TO Q-7 ON NEXT PAGE
2 YES, I ASKED FOR MORE INFO ON VISTA

Q-6A (If yes) How did you make your request for more information? (Circle all that apply)

1 BY CALLING A TOLL-FREE VISTA NUMBER
2 BY CALLING AN ACTION STATE OFFICE
3 BY MAILING AN AD COUPON, TEAR CARD, OR POST CARD TO VISTA
4 BY MAILING A PERSONAL LETTER
5 BY DIRECT, IN-PERSON REQUEST
6 OTHER:_____

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Q6B Who did you ask for more information and did they provide the information?

(Circle all that apply in each column)

Who did you ask?	Who Sent the Info?	
1	1	AGENCY WHERE I PLAN TO VOLUNTEER
2	2	ACTION/VISTA STATE OFFICE
3	3	ACTION/VISTA IN WASHINGTON, DC
4	4	VISTA RECRUITER
5	5	OTHER:_____
6	6	DON'T KNOW

Q-6C Did you read the VISTA literature? (Circle one)

1 NO

2 YES

Q-6D (If yes) Did the information in the literature answer your questions about VISTA? (Circle one)

1 NO, ANSWERED NONE OF MY QUESTIONS
2 YES, ANSWERED SOME OF MY QUESTIONS
3 YES, ANSWERED MOST OF MY QUESTIONS
4 YES, ANSWERED ALL OF MY QUESTIONS

Q-6E Do you remember anything you particularly liked or disliked about the information you received from VISTA? Its clarity, message, theme, layout?

1 YES
2 NO GO TO Q-7 BELOW

Q-6F What was it? (Record your answer in the space below)

LIKES AND/OR DISLIKES:

Q-7 What reasons or information convinced you to apply to VISTA? (Circle all that apply)

1 THE SPECIFIC VOLUNTEER ASSIGNMENT OFFERED TO ME
2 THE FINANCIAL BENEFITS
3 THE HELP VISTA WOULD GIVE MY CAREER
4 THE OPPORTUNITY TO HELP OTHERS
5 MY INTEREST IN VOLUNTEERING
6 PERSONAL, PRIVATE REASONS
7 HEALTH BENEFITS
8 OTHER:_____

We are now going to list some facts about VISTA. After each one, please tell us whether or not you already knew that about VISTA.

Q-8 Did you know that volunteers receive a stipend of about $7,000 per year? (Circle your answer)

1 YES
2 NO

Q-9 Did you know that volunteers only need to make a one-year commitment to VISTA? (Circle your answer)

1 YES
2 NO

Q-10 Did you know that volunteer opportunities are with local sponsors, not national ones? (Circle your answer)

1 YES
2 NO

Q-11 Did you know that volunteer opportunities exist throughout the country? (Circle your answer)

1 YES
2 NO

Q-12 Did you know that serving as a VISTA Volunteer would allow you to defer payment on some student loans? (Circle your answer)

1 YES
2 NO

Q-13 Did you know that volunteers receive training for their assignment? (Circle your answer)

1 YES
2 NO

We now would like to learn about your direct experiences with VISTA.

Q-14 Did a VISTA recruiter visit your campus in the last six months? (Circle one)

1 DON'T KNOW
2 NO
3 YES

Q-14A (If yes) Did you talk with the VISTA recruiter? (Circle one)

1 NO
2 YES

Q-15 Have you been notified by VISTA that they have approved your application to become a VISTA Volunteer?

1 NO
2 YES

Q-15A (If yes) Are you currently serving as a VISTA Volunteer?

1 NO
2 YES

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Q-16 Did you apply to any other organizations offering full-time, volunteer or community service opportunities? (Circle one)

1 NO

2 YES

Q-16A (If yes) Which organizations did you apply to? (Circle all that apply)

1 CHRISTIAN SERVICE CORPS
2 COALITION FOR THE HOMELESS
3 HABITAT FOR HUMANITY
4 HEIFER PROJECT INTERNATIONAL
5 JESUIT VOLUNTEER CORPS
6 MENNONITE VOLUNTARY SERVICE
7 OPERATION CROSS ROADS AFRICA
8 PARTNERS OF THE AMERICAS
9 PEACE CORPS
10 TEACH FOR AMERICA
11 YMCA OF THE USA
12 OTHER:_____

BACKGROUND

We would like to know a little more about those applicants to VISTA responding to our survey. Your answers to the following questions will help us better recruit a variety of persons to VISTA.

Q-17 What is your race? (Circle one)

1 AMERICAN INDIAN OR ALASKAN NATIVE
2 ASIAN OR PACIFIC ISLANDER
3 BLACK
4 WHITE

Q-18 Are you of Hispanic origin? (Circle one)

1 YES
2 NO

Q-19 What is your sex? (Circle one)

1 FEMALE
2 MALE

Q-20 How old are you?

_____ YEARS

Q-21 What college or university do you (or did you most recently) attend?

_____NAME OF INSTITUTION

Q-22 What is (or was) your major?

_____MAJOR

Q-21 Were you a college graduate at the time you submitted your application to VISTA?

1 YES
2 NO

Q-23A What was your class status at the time you applied to VISTA? (Circle one)

1 JUNIOR
2 SENIOR

Q-24 In what year did (or will) you graduate from college?

_____ YEAR OF GRADUATION

Q-25 In an average week during the past school year, how many hours did you spend volunteering for a non-profit organization? This could have been either on your own, through a campus organization or through a national program?

_____NUMBER OF HOURS PER WEEK

Is there anything else you would like to tell us about the factors that influenced your decision to apply to VISTA? If so, please use this space for that purpose.

Also, we would appreciate any comments you wish to make that you think may help us in future efforts to recruit recent college graduates to VISTA. You write them here or in a separate letter.

Thank you for completing this questionnaire. Please return the completed questionnaire in the stamped, addressed envelope provided for this purpose.

[FR Doc. 91-30350 Filed 12-20-91; 8:45 am]
BILLING CODE 6050-28-C

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DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Correction of the List of Applicants for Designation in the Quincy (IL) Area, and Extension of the Comment Period

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice Correction and Extension of Comment Period.

SUMMARY: The notice published in the December 2, 1991, **Federal Register** inadvertently omitted the name of one designation applicant for the geographic area presently assigned to Anthony L. Marquardt dba Quincy Grain Inspection & Weighing Service (Quincy). FGIS is correcting that notice by adding John H. Oliver, Inc., dba Keokuk Grain Inspection Service (Keokuk) to the list of applicants. FGIS also is extending the comment period to January 28, 1992, to provide interested persons sufficient time to submit comments on the two applicants.

DATES: Comments must be postmarked on or before January 28, 1992.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36HDUNN]. ATTMAIL and FTS2000MAIL users may respond to !A36HDUNN. Telecopier users may send responses to the automatic telecopier machine at 202-720-1015, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-720-8525.

SUPPLEMENTARY INFORMATION:

In the December 2, 1991, **Federal Register** (56 FR 61223), FGIS named and asked interested persons to submit comments on the applicant for designation in the Quincy area. Comments were to be postmarked on or before January 16, 1992. The December **Federal Register** listed Quincy as the only applicant. The name of the second applicant, Keokuk was inadvertently omitted. Keokuk applied for designation to service the entire Quincy area.

FGIS is publishing this notice to correct the omission and extend the comment period to provide interested persons the opportunity to present comments concerning both applicants for designation. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicants written notification of the decision.

FGIS is extending the comment period to January 28, 1992, to provide interested persons sufficient time to submit comments on the two applicants.

CORRECTION: In FR Doc. 91-28414, beginning on page 61223 (56 FR 61223) in the issue of Monday, December 2, 1991, make the following corrections:

1. On page 61223, in the second column, under "SUPPLEMENTARY INFORMATION," in the second paragraph, insert the following as the new third sentence. "Anthony L. Marquardt dba Quincy Grain Inspection & Weighing Service (Quincy), and John H. Oliver, Inc., dba Keokuk Grain Inspection Service (Keokuk), the only applicants, each applied for the entire available area."

2. On page 61223, in the second column, under "SUPPLEMENTARY INFORMATION:," in the third paragraph, in the first and second sentences, the word "applicant" should read "applicants"; and

3. On page 61223, in the second column, under "SUPPLEMENTARY INFORMATION:," in the third paragraph, in the second sentence, the word "this" should read "these."

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: December 12, 1991

J. T. Abshier,

Director, Compliance Division

[FR Doc. 91-30446 Filed 12-20-91; 8:45 am]

BILLING CODE 3410-EN-F

Forest Service

Shamrock Timber Sale Analysis; Stikine Area, Tongass National Forest, Petersburg Ranger District, Petersburg, AK; Intent To Prepare an Environmental Impact Statement

The United States Department of Agriculture, Forest Service will contract to prepare an Environmental Impact Statement (EIS) to evaluate a proposal to make available approximately 10 million board feet (MMBF) to 40 MMBF of National Forest timber to contribute towards meeting market demands for timber products in Southeast Alaska. The proposed action is road construction and timber harvest in Value Comparison Units (VCU's) 436, 438 and 429 of Management Areas S11 and S13, on Kupreanof Island in southeast Alaska. This area, encompassing approximately 108,000 acres, has been allocated by the Tongass Land Management Plan to Land Use Designation (LUD) IV, in which management emphasis is primarily on commodity or market resources.

Providing for a continuous flow of natural resources is the mission of the Forest Service. In addition to providing a sustained supply of wilderness, recreation, forage, wildlife, water and fish, providing wood products to local industry is a responsibility of the USDA Forest Service. To meet this, as well as additional commitments, in a timely and efficient manner, the Shamrock Implementation Analysis will be a contracted effort.

A reasonable range of alternatives will be developed by the contractor, including a No Action alternative. The Forest Service will select the preferred alternative. No road building or timber harvest would occur under the No Action alternative. Since the demand for timber is currently high in southeast Alaska, it is likely that these activities would occur in other locations on the Stikine Area if a No Action alternative were selected for this location.

The nature of the decision to be made is whether and how to make available timber to meet market demands in southeast Alaska, while also providing a combination of recreation, water, wildlife and fish for the needs of society, now and into the future. The Stikine Area Forest Supervisor will decide: (a) How much volume to make available; (b) the location and design of timber harvest units; (c) the location and design of associated mainline and local road corridors, and; (d) mitigation measures and enhancement opportunities for resources other than timber.

This Notice of Intent constitutes the beginning of the scoping process. Upon award of the contract, the contractor will become responsible for the scoping process, and will subsequently arrange meetings and issue scoping letters, etc. to provide opportunities for review and input throughout the National Environmental Policy Act process. At the time of contract award, the prime contractor's name and address will be published as part of a revision to this NOI to act as the contact for public input from that time forward.

A Draft EIS is projected for issuance approximately 14 months after award of the EIS contract. Award is expected to occur in February of 1992. Issuance of the Final EIS for the project area is projected to occur approximately 19 months after award of the contract.

The comment period on the Draft EIS will be 45 days from the date the Environmental Protection Agency's Notice of Availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the Draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality regulations for implementing the procedural provisions of the National Environment Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of Draft EIS' must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the Final EIS. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service and the contractor at a time when they can meaningfully consider the comments and respond to them in the Final EIS.

The responsible official for the decision is the Stikine Area Forest Supervisor, Tongass National Forest, Alaska Region, Petersburg, Alaska.

Questions and written comments and suggestions concerning the analysis at this time should be sent to Carol Jensen, Team Leader, USDA Forest Service, P.O. Box 1328, Petersburg, AK 99833 (phone 907/772-3871).

Dated: December 10, 1991.

Laura Nelson,

Acting Forest Supervisor.

[FR Doc. 91-30558 Filed 12-20-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket Nos. 0115-01 and 0115-02]

Correction of Action Affecting Export Privileges: Daniel Iturri, Individually and Doing Business as Sumisystem

Notice of Correction and Order

In the Matter of: Daniel Iturri, individually as doing business as Sumisystem, Respondent.

On September 4, 1991, I affirmed an August 8, 1991, recommended Decision and Order on Default of the Administrative Law Judge in the above-referenced cases of Daniel Iturri, individually and doing business as Sumisystem. That Action was published at 56 FR 46407 on September 12, 1991. Upon a review of the reprinted Decision and Order, Mr. Iturri's and Sumisystem's addresses in the caption entitled "Appearances for the Respondent" should read: Cullen 5375 (1431) Capital Federal, Republica Argentina, and Rodriquez Pena 453, P.B. "B" (1020), Capital Federal, Republica Argentina. These correct addresses did appear in the "Order" section of the Administrative Law Judge's Decision and Order on Default, which was published at 56 FR 46410.

The address which was inadvertently published in the "Appearances for the Respondent" caption, Centenera 886, 1424 Buenos Aires, Argentina, is the address of an Argentine company named Decware. The Agency dismissed all charges against Decware after determining that it was not involved in this matter. Decware is not, in any way, subject to the Agency's Final Order disposing of the above-referenced cases.

This correction shall be published in the **Federal Register.**

Dated: December 17, 1991.

Joan M. McEntee,

Acting Under Secretary for Export Administration.

[FR Doc. 91-30535 Filed 12-20-91; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings and suspension agreements with November anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: December 23, 1991.

FOR FURTHER INFORMATION CONTACT: Roland L. MacDonald, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with § 353.22(a)(1) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements, with November anniversary dates.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews not later than November 30, 1992.

Antidumping duty proceedings and firms	Periods to be reviewed
Germany:	
Drycleaning Machinery A428-037: Bowe Reinigungs-eng. Waschereitechnik GmbH	11/1/90-10/31/91
Japan:	
Light Scattering Instrument A-588-813: Otsuka Electronics	7/10/90-10/31/91
Titanium Sponge A-588-020: Toho Titanium, Showa Denko K.K., Osaka Titanium Company, Ltd	11/1/90-10/31/91
Bicycle Speedometers A588-036: Tsuyama Mfg. Co	11/1/90-10/31/91
People's Republic of China:	
Barium Chloride A-570-007: China National Chemical Import and Export Corporation Corporation (Sinochem)	10/1/90-9/30/91
Countervailing Duty Proceedings	
Peru:	
Deformed Steel Concrete, Reinforcing Bar C-333-502	1/1/90-12/31/90

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Antidumping duty proceedings and firms	Periods to be reviewed
Suspended Investigations	
Republic of Singapore:	
Refrigeration Compressors	
C-559-001	4/1/90-3/31/91

Interested parties must submit applications for administrative protective orders in accordance with §§ 353.34(b) and 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) and 355.22(c) (1989).

Dated: December 9, 1991.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 91-30537 Filed 12-20-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-802]

Amendment to Final Results and Termination in Part of Antidumping Duty Administrative Review: 3.5" Microdisks and Coated Media Thereof From Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

EFFECTIVE DATE: December 23, 1991.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1766.

AMENDED FINAL RESULTS OF REVIEW: On November 15, 1991, the Department of Commerce published in the **Federal Register** (56 FR 58040) the final results of its administrative review of the antidumping finding (54 FR 13406) of 3.5 inch microdisks and coated media thereof from Japan. After publication of our final results, one respondent, Sony, alleged that the Department had made clerical errors when calculating the margin for its exporter sales price (ESP) transactions. Sony alleged that clerical errors had been made regarding the inclusion of a duplicative subtraction command in the home market price string, the changing of clipping levels for certain merchandise, and the omission of an execution command for inputing sales-specific data. Except for changing the clipping levels, we agree with Sony and have corrected the ministerial errors (see, Memorandum to Francis J. Sailer, Deputy Assistant Secretary for Investigations, dated December 2, 1991).

As a result of our correction of the clerical errors, we have determined that a weighted-average margin of 5.86 percent (not 6.68 percent as originally published) exists for Sony for the period September 29, 1988, through March 31, 1990.

The Department will instruct the Customers Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

A cash deposit requirement of 5.86 percent is effective for all shipments by Sony of the covered merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This notice is published in accordance with 705(e) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.28(c).

Dated: December 16, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 91-30539 Filed 12-20-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-508-802]

Preliminary Results of Antidumping Duty Administrative Reviews: Oil Country Tubular Goods From Israel

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

EFFECTIVE DATE: December 23, 1991.

FOR FURTHER INFORMATION CONTACT: Vincent P. Kane or Carole A. Showers, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2815 or (202) 377-3217, respectively.

PRELIMINARY RESULTS:

Background

On March 6, 1987, the Department published in the *Federal Register* (52 FR 7000) an antidumping duty order on oil country tubular goods from Israel. On March 28, 1990, and March 8, 1991, the sole respondent, Middle East Tube Company (METCO), requested that the Department conduct administrative reviews for the periods March 1, 1989, through February 28, 1990, and March 1, 1990, through February 28, 1991, in accordance with 19 CFR 353.22(a). We published notices of initiation of these antidumping duty administrative reviews on April 27, 1990 (55 FR 17792) and April 18, 1991 (56 FR 15856). The Department is conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act"). We are publishing the preliminary results of both of these administrative reviews concurrently in this notice. If these reviews proceed as expected, we will issue final results on or before March 3, 1992.

On July 3, 1990, we issued a questionnaire to METCO. On August 23, 1990, METCO requests an extension to submit its response. The Department granted an extension until October 15, 1990. Meanwhile, on September 27, 1990, METCO requested another extension to submit its response. The Department granted another extension until November 13, 1990, at which time, METCO submitted its response. The Department issued a supplemental questionnaire to METCO on April 24, 1991. On June 5, 1991, METCO submitted its supplemental response.

Scope of Review

The products covered by this review are oil country tubular goods (OCTG) which are hollow steel products of circular cross section intended for use in the drilling for oil or gas. These products include oil well casing and tubing of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API (such as proprietary) specifications.

OCTGs are included under Harmonized Tariff Schedule of the United States (HTS) subheadings 7304.20.20, 7304.20.40, 7304.20.50, 7304.20.60, 7304.20.70, 7304.20.80, 7304.39.00, 7304.59.60, 7304.59.80, 7305.31.40, 7306.20.20, 7306.20.30, 7306.20.60, 7306.20.80, and 7306.30.50. Since many of the HTSUS statistical reporting numbers applicable to OCTG changed during the two review period, we are also including, in addition to the subheadings, all of the statistical reporting numbers that applied to OCTG at any time during these review periods. During the review periods of March 1, 1989, to February 28, 1990, and March 1, 1990, to February 28, 1991, OCTG were included under HTS statistical reporting numbers 7304.20.2000, 7304.20.4000, 7304.20.5010, 7304.20.5050, 7304.20.6010, 7304.20.6050, 7304.20.7000, 7304.20.8000, 7304.39.0025, 7304.39.0040, 7304.39.0050, 7304.39.0060, 7304.39.0070, 7304.39.0075, 7304.39.0090, 7304.59.6000, 7304.59.8000, 7305.31.4000, 7306.20.2000, 7306.20.3060, 7306.20.6010, 7306.20.6050, 7306.20.8010, 7306.20.8050, 7306.30.5040, 7306.30.5050, 7306.30.5055, 7306.30.5060, 7306.30.5065, 7306.30.5070, 7306.30.5075, 7306.30.5080, 7306.30.5085, and 7306.30.5090. Although the HTS subheadings and statistical reporting numbers are provided for convenience and Customs purposes, our written description remains dispositive.

Products referred to as "drill pipe" are not included within the scope of these reviews. (See Oil Country Tubular Goods from Israel; Initiation of Antidumping Duty Investigation (51 FR 11963, April 8, 1986); Final Determination of Sales at Less than Fair Value; Oil Country Tubular Goods from Israel (52 FR 1511, January 17, 1987); and Amended Antidumping Duty Order; Oil Country Tubular Goods from Israel (53 FR 23370, April 8, 1988)). Drill pipe are lengths of heavy, seamless, round tubing with special threaded connectors called tool joints, conforming to API specification 5D for drill pipe. Individual pipe lengths are normally 30 feet or more in length.

Period of Reviews

These preliminary results cover the review periods March 1, 1989, to February 28, 1990, and March 1, 1990, to February 28, 1991. For the period March 1, 1989, to February 28, 1990, METCO made no shipments of the subject merchandise to the United States.

United States Price

For the review period March 1, 1990, to February 28, 1991, we based United States price on purchase price, in accordance with section 772(b) of the Act, because all sales made by METCO were made to an unrelated purchaser prior to importation into the United States and because exporter's sales price sales were not indicated by other circumstances. We used the date of the sales agreement between METCO and its purchasers as the date of sale for purposes of these reviews.

We calculated the purchase price based on the C&F, packed price. We made deductions, where appropriate, for foreign inland freight, ocean freight, and loading charges. We increased METCO's purchase price by the amount of any countervailing duties imposed on the merchandise pursuant to section 701 of the Act to offset export subsidies.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on constructed value, since there were no sales of OCTG either in the home market or for export to third countries. We used the constructed value data submitted by METCO and made the following adjustments to reflect METCO's actual cost of production for OCTG: (1) We did not use METCO's financial expenses because these expenses were incurred on borrowings from the parent firm; instead, we allocated a proportional amount of the parent's net financial expenses (offset by financial income related to the general operations of the parent); (2) we disallowed a claim for a reduction in raw material costs based on credit terms extended by the supplier of the raw material; and (3) we used the actual raw material yield in producing the subject merchandise rather than the average yield for the production line used to produce the merchandise.

The constructed value includes the material and fabrication expenses incurred to produce the product sold for export to the United States. Since the selling, general, and administrative ("SG&A") expenses were greater than the statutory minimum of ten percent, we used actual SG&A expenses of the company. Because actual profit was less than eight percent, the statutory minimum profit of eight percent was added.

We made a circumstances of sale adjustment for credit expenses incurred on the sale for export to the United States by adding the per ton amount of these credit expenses to the constructed value and by deducting from constructed value the per ton amount of short-term interest expenses included in METCO's parent company's financial expenses. Short-term interest expenses were used as an estimate of the customer carrying costs included in the financial expenses.

Currency Conversion

We made currency conversions from new Israeli shekels to U.S. dollars in accordance with 19 CFR 353.60(a), using the end of quarter exchange rate from the International Monetary Fund's Statistical Yearbook, as certified rates from the Federal Reserve Bank of New York were not available.

Preliminary Results of the Reviews

We preliminarily determine that the following margins exist:

Manufacturer/ Exporter	Time period	Margin (percent)
METCO	3/1/89—2/28/90	[1] 11.96
All others	3/1/89—2/28/90	[1] 11.96
METCO	3/1/90—2/28/91	21.40
All others	3/1/90—2/28/91	21.40

[1] No shipments during the period of review; margin taken from the less than fair value investigation.

The Department will issue appraisement instructions concerning METCO directly to the U.S. Customs Service upon completion of this administrative review.

Furthermore, the following deposit requirements will be effective upon publication of the final results of these administrative reviews for all shipments of OCTG from Israel entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for METCO will be that established in the final results of the 1990/91 administrative review; (2) if the exporter is not a firm covered by these reviews or the original investigation, but the manufacturer is covered by these reviews or the original investigation, the cash deposit rate will be that established for the manufacturer in the final results of the 1990/91 review; and (3) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in these reviews and who are unrelated to the reviewed firm will be the "All Others" rate established in the final results of the 1990/91 administrative review. This rate represents the rate for METCO determined in the 1990/91 administrative review. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

In accordance with 19 CFR 353.38, we will hold a public hearing, if requested, at 10 a.m. on January 30, 1992, at the U.S. Department of Commerce, Room 3708, to afford interested parties an opportunity to comment on these preliminary results. Interested parties who wish to request a hearing must submit a written request within ten days of the date of publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed.

In addition, ten copies of the business proprietary version and five copies of

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the nonproprietary version of case briefs must be submitted to the Assistant Secretary no later than January 16, 1992. Ten copies of the business proprietary version and five copies of the nonproprietary version and five copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than January 23, 1992. At the hearing, an interested party may make a presentation only on arguments included in that party's briefs.

In no hearing is requested, interested parties still may comment on these preliminary results in the form of case and rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 353.38 and will be considered if submitted within the time limits specified in this notice.

This administrative review and notice are in accordance with section 751(a)(1) of the Act and 19 CFR 353.22(c)(5).

Dated: December 16, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-30597 Filed 12-20-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-533-804]

Preliminary Affirmative Countervailing Duty Determination: Bulk Ibuprofen From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 23, 1991.

FOR FURTHER INFORMATION CONTACT: Paulo F. Mendes or Stephanie L. Hager, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-5050 or 377-5055 respectively.

PRELIMINARY DETERMINATION:

Case History

On August 26, 1991, the Department published its notice of initiation of the countervailing duty investigation on bulk ibuprofen (ibuprofen) from India (56 FR 42028). Since initiation of this investigation the following events have occurred. On August 30, 1991, we presented a questionnaire to the Government of India (GOI) and the Indian exporter of ibuprofen. On September 16, 1991, the United States International Trade Commission issued its preliminary determination that imports of ibuprofen from India materially injure or threaten material injury to, a U.S. industry. On October 7, 1991, and November 15, 1991, we received questionnaire responses from the GOI and Cheminor Drugs Limited (Cheminor), the only Indian exporter of ibuprofen to the United States.

Scope of the Investigation

The product covered by this investigation is bulk ibuprofen from India. Ibuprofen, a white powder, is a non-steroidal anti-inflammatory agent which also has analgesic and antipyretic activity. It is used in the symptomatic treatment of acute and chronic rheumatoid arthritis, osteoarthritis, primary dysmenorrhea and for the relief of mild to moderate pain. The chemical description of ibuprofen is 2-(4-isobutylphenyl) propionic acid, $C_{13}H_{18}O_2$. The product covered by this investigation does not include ibuprofen sold in tablet, capsule or similar forms for direct human consumption. Ibuprofen is provided for in the Harmonized Tariff Schedule (HTS) subheading 2916.39.15. Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of the Programs

For purposes of this preliminary determination, the period for which we are measuring subsidies (the period of investigation) is April 1, 1990 through March 31, 1991, which corresponds to Cheminor's fiscal year.

A. Programs Preliminarily Determined to be Countervailable

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters in India of ibuprofen under the following programs:

1. Preferential Export Financing Through Packing Credits

The Reserve Bank of India, through commercial banks, provides "packing" credits or pre-shipment loans to exporters. With these pre-shipment loans, exporters may purchase raw materials to produce goods for export based on the presentation of a confirmed purchase order. In general, the pre-shipment loans are granted for a period of up to 180 days. Because only exporters are eligible for these pre-shipment loans, we determine that they are countervailable to the extent that they are provided at preferential rates.

During the period of investigation, the interest rate on pre-shipment export loans was 7.5 percent per annum. According to the respondents, the average short-term interest rate in India during the period of investigation was 16.5 percent. We compared this benchmark to the interest rate charged on pre-shipment loans under the program and found that the interest rate charged was lower than the benchmark. Therefore, we determine that loans provided under this program are countervailable.

To calculate the benefit bestowed by these loans, we followed the short-term loan methodology which has been applied consistently in our past determinations and is described in more detail in the Subsidies Appendix attached to the notice of Cold-Rolled Carbon Steel Flat-Rolled Products From Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (49 FR 18006, April 26, 1984); see also, *Alhambra Foundry* v. *United States*, 626 F. Supp. 402 (CIT 1985).

We compared the amount of interest actually paid during the period of investigation to the amount that would have been paid at the benchmark rate. The difference between these amounts is the benefit, which we allocated to Cheminor's total exports. On this basis, we calculated an estimated net subsidy of 2.17 percent *ad valorem*.

2. Preferential Post-Shipment Financing

The Reserve Bank of India, through commercial banks, provides post-shipment financing loans to exporters. The purpose of post-shipment financing is to enable exporters to extend favorable payment terms such as deferred payment, to the foreign purchaser. Post-shipment financing loans may not exceed a period of 180 days. Because only exporters are eligible for the post-shipment loans, we determine that they are countervailable to the extent that they are provided at preferential interest rates.

The rate of interest for post-shipment financing was 8.65 percent per annum during the period of investigation. For the reasons stated in the section on pre-shipment loans, we are using 16.5 percent as our short-term interest rate benchmark. We compared this benchmark to the interest rate charged on post-shipment export loans and found that the interest rate charged under this program was lower than the benchmark. Therefore, we determine that loans provided under this program are countervailable.

To calculate the benefit, we followed the same short-term methodology discussed above. We divided the benefit by Cheminor's exports to the United States. On this basis, we calculated an estimated net subsidy of 1.69 percent *ad valorem*.

3. Import Tax Deduction for Exporters (Section 80HHC)

For tax returns filed during the period of investigation, the GOI allowed exporters to claim a tax deduction related to their export sales. This tax deduction was calculated by dividing export sales by total sales and then multiplying the resulting figure by the exporter's profit as shown in the tax return. This amount is then deducted from taxable profits.

Because this program is only available to exporters, we preliminarily determine it to be countervailable. To calculate the benefit, we multiplied the income tax deduction of Cheminor by its actual income tax rate and divided the result by its total exports. On this basis, we calculated an estimated net subsidy of 6.13 percent *ad valorem*

4. Cash Compensatory Support (CCS)

The GOI established the CCS program as a mechanism to rebate indirect taxes on exported merchandise. The rebate for "drug and drug intermediates," covering ibuprofen, was set at a maximum of 15 percent for the period of investigation, and was paid as a percentage of the FOB invoice price. This rate was based on the audited results of a 1989 survey of the members of the basic Chemicals, Pharmaceuticals & Cosmetics Export Promotion Council of India (CHEMEXCIL), administered by the Ministry of Commerce and the CHEMEXCIL. This survey is intended to be updated every three years. Although ibuprofen exporters were not specifically covered by the survey, CHEMEXCIL's members account for approximate 80 percent of total exports of "drug and drug intermediates."

To determine whether an indirect tax rebate system confers a subsidy, we apply for following analysis. (See, Preliminary Affirmative Countervailing Duty Determination: Textile Mill Products and Apparel From Indonesia, 49 FR 49672, December 21, 1984.) First, we examine whether the system is intended to operate as a rebate of both indirect taxes and import duties. Next, we analyze whether the government properly ascertained the level of the rebate. Finally, we review whether the rebate schedules are revised periodically in order to determine if the rebate amount reflects the amount of duty and indirect taxes paid.

Based on the Department's previous examination of the CCS program (See, e.g., Certain Iron Metal Castings From India: Final Results of Countervailing Duty Administrative Review, 55 FR 1976, January 16, 1991.), we preliminarily determine that the CCS confers a countervailable benefit only to the extent that it rebates duties and/or indirect taxes on non-physically incorporated items.

Upon examination of the inputs into ibuprofen, we preliminarily determine that only certain inputs are physically incorporated. Therefore, to determine the extent of the over-rebate to Cheminor, we first calculated a unit export price. Next, we calculated the indirect tax on physically incorporated inputs as a percentage of the unit export price to determine the allowable CCS rebate rate. Comparing the allowable rate to Cheminor's actual CCS rebate rate, we calculated an estimated net subsidy of 6.04 percent *ad valorem*.

On July 3, 1991, the Ministry of Commerce suspended the CCS program. Consistent with our policy of taking into account measurable program-wide changes that occur before the preliminary determination, we are taking into account the suspension of the CCS program. Therefore, for purposes of the preliminary determination, the cash deposit rate for this program is equal to zero.

5. Import Duty Exemptions Available Through Advance Licenses

Advance licenses are available to exporters, to enable them to import raw material inputs used in the production of exports duty-free. Recipients of advance licenses are obligated under the terms of the license to export the products produced with the duty-free imports. The amount of imports allowed under an advance license is closely linked to the amount of exports to be produced.

We consider the use of the advance licenses to be equivalent to a duty drawback program insofar as customs duties are not paid on physically incorporated, imported products used in the production of exports. However, where imported inputs are not physically incorporated into the exported product, we consider the duty savings afforded by the advance license to be a countervailable export subsidy.

Cheminor claims that certain imported chemicals, including catalysts and solvents, are used in the production process and are needed to produce ibuprofen. Therefore, Cheminor contends that the Department should not apply its physical incorporation test rigidly, and should find non-countervailable the duty-free treatment of these inputs.

The Department has previously addressed the issue of catalysts and solvents and found them not to be physically incorporated into the exported product (See, e.g., Oleoresins of Paprika From Spain: Preliminary Results of Administrative Review of Countervailing Duty Order, 46 FR 61684, December 18, 1981; Ferroalloys From Spain: Final Results of Administrative Review of Countervailing Duty Order, 48 FR 34493, July 29, 1983).

Consistent with these earlier cases, we preliminarily determine that catalysts and solvents are not physically incorporated in ibuprofen and duty-free treatment of these inputs confers a countervailable subsidy. To calculate the benefit attributable to the duty savings on imported inputs not physically incorporated into ibuprofen, we used the data from an advance license provided in Cheminor's response. First, we calculated the duty savings related to inputs not physically incorporated into ibuprofen. Next, we divided the duty savings by the volume of ibuprofen committed to be exported under the advance license, and multiplied this result by the total volume of ibuprofen exports. Finally, we divided this duty savings amount by the value of total exports of ibuprofen to all markets. On this basis, we calculated an estimated net subsidy of 33.72 percent *ad valorem*.

B. Programs Preliminarily Determined Not To Be Used

1. Import Replenishment License
2. Excessive Drawback of Import Duties
3. Grants Under the Market Development Assistance (MDA) Program
4. Diesel Oil Subsidies
5. Sales of Additional Licenses
6. Grants Under the Central Investment Subsidy Scheme (CISS)
7. Transportation Subsidies
8. Extension of Free Trade Zones
9. Import Duty Exemptions Available to 100 Percent Export Oriented Units
10. Preferential Waste Disposal Rates

Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of bulk ibuprofen from India which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond for all entries of this merchandise equal to 43.71 percent *ad valorem* for bulk ibuprofen produced and exported by

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Cheminor and all other manufacturers, producers and exporters in India of bulk ibuprofen. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Our final determination is scheduled for February 26, 1992. If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department's final determination.

Public Comment

In accordance with 19 CFR 355.38, we will hold a public hearing, if requested, on February 20, 1992, at 2:15 p.m. in room 3708, to afford interested parties the opportunity to comment on this preliminary determination. Interested parties who wish to request or to participate in the hearing must submit a request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of issues to be discussed. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

In addition, ten copies of the business proprietary version and five copies of the non-proprietary version of case briefs must be submitted to the Assistant Secretary no later than February 10, 1992. Ten copies of the business proprietary version and five copies of the non-proprietary version of rebuttal briefs must be submitted to the Assistant Secretary no later than February 18, 1992. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal brief. If no hearing is requested, interested parties still may comment on these preliminary results in the form of case and rebuttal briefs. Written arguments should be submitted in accordance with section 355.38 of the Commerce Department's regulations and will be considered if received within the time limits specified above.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)) and 19 CFR 355.15.

Dated: December 13, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 91-30598 Filed 12-20-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-223-601]

Certain Cut Flowers From Costa Rica; Final results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On October 25, 1991, the Department of Commerce published the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on certain cut flowers from Costa Rica. We have now completed that review and have determined that the signatories have complied with the terms of the suspension agreement during the period January 1, 1990 through December 31, 1990.

EFFECTIVE DATE: December 23, 1991.

FOR FURTHER INFORMATION CONTACT: Millie Mack or Jeff Laxague, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC; telephone (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On October 25, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 55285) the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation regarding certain cut flowers from Costa Rica (52 FR 1356; January 13, 1987). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of Costa Rican miniature (spray) carnations, standard carnations and pompon chrysanthemums. This merchandise is currently classifiable under the Harmonized Tariff Schedule items 0603.10.30 and 0603.10.70. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers 37 producers and exporters of the subject merchandise. These 37 producers and exporters, along with the Government of Costa Rica (GOCR) and the Association of Costa Rican Flower Growers (ACOFLOR), are the signatories to the suspension agreement (see appendix A of this notice for a listing of the 37 signatory producers and exporters).

The review covers the period January 1, 1990 through December 31, 1990, and six programs: (1) Tax Credit Certificates (CAT); (2) Certificates for Increasing Exports (CIEX); (3) Income Tax Exemptions for Export Earnings; (4) Exporter Credit for Sales Tax and Consumption Tax on Certain Domestic Purchases; (5) Exporter Exemptions for Taxes and Duties on Imports; and (6) Accelerated Depreciation.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

As a result of our review, we determine that the signatories have complied with the terms of the suspension agreement for the period January 1, 1990 through December 31, 1990.

The agreement can remain in force only as long as shipments from the signatories account for at least 85 percent of imports of the subject cut flowers into the United States. Our information indicates that the 37 signatory companies accounted for substantially all of the imports into the United States of this merchandise during the review period.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Alan M. Dunn,

Assistant Secretary for Import Administration.

Appendix A—List of Signatory Producers and Exporters

1. American Flower Corporation, S.A.
2. Flores del Cerro
3. Agroflor de Paraiso, S.A.
4. Hermelink y Garces, S.A.
5. Tico Flor, S.A.
6. Cooexflo R.L.
7. Compania Agricola Flex, S.A.
8. Flor Bella, S.A.
9. Exporflor de Cartago, S.A.
10. Lianpa, S.A.
11. Floricultura de Costa Rica, S.A.
12. Vivero El Zamorano, S.A.
13. Flores de Iztaru, S.A.
14. Inversiones Costa Flor, S.A.
15. Coopeflor
16. Euroflores, S.A.
17. Flores y Follajes del Tirol, S.A.
18. Flores del Volcan CRP, S.A.
19. Goreza, S.A.
20. Llano Claro, S.A.
21. Ornamentales Cargil, S.A.
22. Floricultura La Colina, S.A.
23. Flores Intercontinentales, S.A.
24. Fincas Nabori, S.A.
25. Flores de Coris, S.A.
26. Florex, S.A.
27. C.R.B. Internacional, S.A.
28. Flores del Caribe, S.A.
29. Zurqui Flor de Costa Rica, S.A.
30. Rio Tapezco Ltda.
31. Jardin Botanico LDL de Costa Rica, S.A.
32. Tropiflor de la Montana, S.A.
33. Floricultura Santa Rosa, S.A.
34. Corporacion Rica Flor, S.A.
35. Intertec, S.A.
36. Accoreo, S.A.
37. Floricultura Cartaginesa

[FR Doc. 91-30536 Filed 12-20-91; 8:45 am]

BILLING CODE 3510-DS-M

*** [C-570-816]**

Postponement of Preliminary Countervailing Duty Determination: Oscillating Fans and Ceiling Fans From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: December 23, 1991.

FOR FURTHER INFORMATION CONTACT: Ross L. Cotjanle or Carole Showers, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at (202) 377-3534 or 377-3217, respectively.

Postponement

On December 9, 1991, Lasko Metal Products, Inc., petitioner in this investigation, requested that the Department postpone the preliminary determination in accordance with section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). Accordingly, we are postponing the date of the preliminary determination until not later than March 16, 1992.

This notice is published pursuant to section 703(c)(2) of the Act and 19 CFR 355.15(c).

Dated: December 16, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-30538 Filed 12-20-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Application for Scientific Research Permit (P283B).

Notice is hereby given that Ms. Janice M. Straley, P.O. Box 273, Sitka, Alaska 99835, has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the regulations governing endangered fish and wildlife permits (50 CFR parts 217-222).

Species and Type of Take: The applicant requests a Permit to harass annually, over a five year period, up to 500 humpback whales (*Megaptera novaeangliae*), some of which may be harassed more than one time, during observational/photo-identification studies, and feeding behavior/prey distribution studies using a remotely-operated vehicle (ROV); and up to 200 killer whales (*Orcinus orca*) and 20 minke whales (*Balaenoptera acutorostrata*) during opportunistic observation/photo-identification studies. The applicant also requests authorization to import and export, on an opportunistic basis, specimen material from dead, stranded or beached humpback, killer, and/or minke whales for biological, chemical, and/or genetic analysis. The purpose of the proposed research is to document individual humpback whales and associated feeding behaviors and prey distribution in Alaska waters, and to enhance the body of knowledge with respect to killer and minke whales.

Location of Activity: The proposed activities will be conducted year-round in southeastern Alaska waters.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application, should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

By appointment: Office of Protected Resources, Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20910 (301/713-2289).

Director, Alaska Region, National Marine Fisheries Service, NOAA, 709 West 9th Street, Federal Bldg., Juneau, Alaska 99802.

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115.

Dated: December 17, 1991.

Nancy Foster,

Director, Office of protected Resources.

[FR Doc. 91-30495 Filed 12-20-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China; Correction

December 18, 1991.

A notice published in the **Federal Register** on November 29, 1991 (56 FR 60977, line 2) stated that overshipment charges of 64,121 kilograms would be applied to the 1992 limit for Category 369-S. This amount should be corrected to 80,871 kilograms.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-30541 Filed 12-20-91; 8:45 am]

BILLING CODE 3510-DR-F

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Establishment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Indonesia

December 18, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–9480. For information on embargoes and quota re-openings, call (202) 377–3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as no agreement has been reached on a mutually satisfactory solution on Category 443, the United States Government has decided to control imports in this category for the prorated period beginning on December 27, 1991 and extending through June 30, 1992.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Indonesia, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990; and 56 FR 60101, published on November 27, 1991). Also see 56 FR 56198, published on November 1, 1991.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 18, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated September 25 and October 3, 1985, as amended, between the Governments of the United States and Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 27, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 443, produced or manufactured in Indonesia and exported during the period beginning on December 27, 1991 and extending through June 30, 1992, in excess of 25,631 numbers.

Textile products in Category 443 which have been exported to the United States on and after July 1, 1991 shall remain subject to the Group II limit, and its subgroup, established for the period July 1, 1991 through June 30, 1992.

Imports charged to this category limit for the ninety-day period beginning on September 28, 1991 and extending through December 26, 1991, shall be charged against that level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

For the import period September 28, 1991 through November 3, 1991, there are zero charges to be made to Category 443.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–30540 Filed 12–20–91; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF EDUCATION

[CFDA No. 84.023]

Research in Education of Individuals With Disabilities Program; Applications for New Awards for Fiscal Year 1992

Purpose of Program: To advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services, including professionals in regular education environments, to provide children with disabilities effective instruction and enable them to successfully learn.

Eligible Applicants: State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations.

Deadline for Transmittal of Applications: March 6, 1992.

Applications Available: December 31, 1991.

Available Funds: $750,000

Estimated Number of Awards: 10

Estmated Size of Awards: Up to $75,000

NOTE: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 324, as amended on October 22, 1991 at 56 FR 54697–54698.

Priority: Under 34 CFR 75.105(c)(3) and 34 CFR 324.10 the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this program only applications that meet this absolute priority:

Absolute Priority: Advancing and Improving the Research Knowledge Base (CFDA 84.023A)

This priority supports a wide range of research and related activities that support innovation, development, exchange, and use of advancements in knowledge and practice designed to contribute to the improvement of instruction and learning of infants, toddlers, children, and youth with disabilities.

Invitational Priorities: Within this Absolute Priority, the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Pilot studies, projects that employ new methodologies, descriptive studies, projects to advance assessment, projects that synthesize state-of-the-art research and practice, projects for research dissemination and utilization, and projects that analyze extant data bases. The Secretary further encourages studies that use these approaches to address the needs of infants, toddlers, children and youth with disabilities from racial or ethnic minority groups.

This program complements AMERICA 2000, the President's strategy for helping the nation achieve the six National Education Goals, by improving our understanding of how to enable children with disabilities to reach the highest levels of educational performance envisioned by the goals.

FOR APPLICATIONS OR INFORMATION CONTACT: Linda Glidewell, U.S. Department of Education, 400 Maryland Avenue, SW., room 3524 Switzer Building, Washington, DC 20202–2641. Telephone: (202) 732–1099. Deaf and hearing impaired individuals may call (202) 732–6153.

Program Authority: 20 U.S.C. 1441–1443.

Dated: December 17, 1991.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 91–30506 Filed 12–20–91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM92-9-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

December 17, 1991.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on December 13, 1991, tendered for filing proposed changes in its FERC Gas Tariff, as set forth in the revised tariff sheets:

Proposed to be Effective January 1, 1992

Volume No. 1
Substitute Third Revised Sheet No. 64
Volume No. 2
Sub 1 Rev Sheet No. 334

Algonquin states that these revised tariff sheets are being submitted to incorporate the Gas Research Institute Adjustment ("GRI Adjustment") for the calendar year 1992 into Rate Schedules FTP and X–35. The GRI Adjustment was approved by the Commission in Opinion No. 365 in Docket No. RP92–170–000, issued October 1, 1991 (57 FERC ¶ 61,010). The instant filing is being made pursuant to Section 28 of the General Terms and Conditions of Algonquin's FERC Gas Tariff, Third Revised Volume No. 1.

Algonquin also states that on November 13, 1991 in Docket No. CP88–185–011, as supplemented on November 20, 1991, Algonquin filed an application to amend a certificate of public convenience and necessity granted to Algonquin by Commission Letter Order issued on July 2, 1990 (52 FERC ¶ 61,001) for Rate Schedule FTP. Tariff sheets reflecting the amendment were accepted by Commission Letter Order dated November 27, 1991 (57 FERC ¶ 62,164). Also on November 27 in Docket No. TM92–8–20–000 ("Initial GRI filing"), Algonquin filed to incorporate the GRI Adjustment for the calendar year 1992 into all of its then-effective rate schedules. As Algonquin did not receive notice of the Commission's approval in Docket No. CP88–185–011 until after the GRI filing was made, Sheet No. 64 is being revised herein to incorporate the 1992 GRI adjustment.

Algonquin further states that also included herein is a revised tariff sheet No. 334 for Rate Schedule X–35 that incorporates the 1992 GRI Adjustment and technical modifications to the format of the rate sheet. These modifications were agreed upon during discussions with FERC Staff and had not been finalized at the time of the initial GRI filing.

Algonquin states that the proposed effective date of these tariff sheets is January 1, 1992.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 24, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–30511 Filed 12–20–91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-160-003]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

December 17, 1991.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf) on November 27, 1991 tendered for filing revised changes in its FERC Gas Tariff, First Revised Volume No. 1 to become effective December 1, 1991.

Columbia Gulf states that it is filing the referenced tariff sheets in order to place into effect the rates and tariff provisions suspended by Commission Order issued June 28, 1991 in this proceeding.

The tariff sheets encompass Columbia Gulf's rate filing herein of May 31, 1991, with adjustments to its cost of service to (1) reflect only the costs of facilities which are projected to be in service by November 30, 1991; and (2) reflect the level of purchased gas costs in the most recent Purchased Gas Cost Adjustment filing of Columbia Gas Transmission Corporation (Columbia Transmission), filed in Docket No. TQ92–1–21–001 on October 25, 1991.

Columbia Gulf states that copies of the filing were served on Columbia Gulf's jurisdictional customers and interested state commissions and to each of the parties set forth on the official service list in the above-referenced proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before December 23, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 91–30512 Filed 12–20–91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP90-111-000 and RP91-204-000]

East Tennessee Natural Gas Co.; Informal Settlement Conference

December 17, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on January 9, 1992, at 10:30 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC for the purpose of exploring the possible settlement of the above-referenced dockets. The conference will continue on January 10, 1992, if necessary.

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Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, (18 CFR 385.214).

For additional information, contact Donald A. Heydt at (202) 208–0740 or Irene Szopo at (202) 208–1602.

Lois D. Cashell,

Secretary.

[FR Doc. 91–30513 Filed 12–20–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM92–7–4–000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

December 17, 1991.

Take notice that on December 10, 1991, Granite State Gas Transmission, Inc. (Granite State) 300 Friberg Parkway, Westborough, Massachusetts 01581 tendered for filing Ninth Revised Sheet No. 25 in its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates for effectiveness on January 1, 1992.

According to Granite State, it provides a storage service for Bay State Gas Company under its Rate Schedule GSS with storage capacity provided in a facility operated by CNG Transmission Corporation (CNG). It is further stated that Granite State's Rate Schedule GSS tracks changes made by CNG under its Rate Schedule GSS pursuant to which Granite State obtains storage capacity from CNG.

Granite State further states that on November 27, 1991, in Docket No. TM92–22–000, CNG filed Tenth Revised Sheet No. 34 in its FERC Gas Tariff, First Revised Volume No. 1, revising the Injection Charge in its Rate Schedule GSS, effective November 1, 1991. According to Granite State, its filing tracks in its Rate Schedule GSS the change made by CNG in its rates for Rate Schedule GSS service.

Granite State states that copies of its filing were served on Bay State Gas Company and the regulatory commissions of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 285.211 and 385.214). All such motions or protests should be filed on or before December 23, 1991. Protests will be considered by the Commission in determining the appropriate action to the taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–30514 Filed 12–20–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP92–241–000]

Kern River Gas Transmission Co.; Application

December 16, 1991.

Take notice that on December 16, 1991, Kern River Gas Transmission Company (Applicant), P.O. Box 2511, Houston, Texas, 77252–2511, pursuant to section 7 of the Natural Gas Act, as amended, and part 157 of the Regulations of the Federal Energy Regulatory Commission (Commission), filed in Docket No. CP92–241–000, an application for a temporary certificate of public convenience and necessity authorizing the installation of, and a permanent certificate of public convenience and necessity authorizing the construction and operation of, certain tap and meter facilities on Kern River's interstate pipeline system as more fully described in the application which is on file at the Commission and available for public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 23, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken on the request for a permanent certificate but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Pursuant to section 7(c) of the Natural Gas Act, the Commission may act on the application for a temporary certificate without awaiting or considering any protests or intervention.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time requested herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented.

Lois D. Cashell,

Secretary.

[FR Doc. 91–30509 Filed 12–20–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM92–3–25–000]

Mississippi River Transmission Corp., Rate Change Filing

December 17, 1991

Take notice that on December 13, 1991 Mississippi River Transmission Corporation (MRT) tendered for filing Thirteenth Revised Sheet No. 4A.2 to be effective January 13, 1992 to its FERC Gas Tariff, First Revised Volume No. 1.

MRT states that the purpose of the instant filing is to reflect the flowthrough of take-or-pay cost reductions from Trunkline Gas Company (Trunkline) in their Docket No. RP91–54–000 *et al.* MRT states that the reductions have been allocated to MRT's customers in accordance with MRT's June 26, 1991 Stipulation and Agreement on the Allocation and Recovery of Transition Costs from Upstream Pipelines (Settlement) approved by Commission Order dated July 25, 1991. MRT states that Thirteenth Revised Sheet No. 4A.2 reflects a reconciliation of take-or-pay amounts paid to Trunkline by MRT compared to take-or-pay amounts collected by MRT from its jurisdictional customers.

MRT states that a copy of this filing has been mailed to each of MRT's jurisdictional customers and to the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR § 385.214. All such protests should be filed on or before December 24, 1991. Protests will be considered by the Commission in determining the appropriation action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–30515 Filed 12–20–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ92–4–25–001]

Mississippi River Transmission Corp.; Rate Change Filing

December 17, 1991.

Take notice that on November 21, 1991 Mississippi River Transmission Corporation (MRT) tendered for filing First Revised Sixty-Seventh Revised Sheet No. 4, and First Revised Twenty-Sixth Revised Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective November 13, 1991.

On November 12, 1991 MRT filed an out-of-cycle Purchased Gas Adjustment (PGA) proposed to be effective November 13, 1991 in Docket No. TQ92–4–25–000. MRT recently discovered that the November 12 filing contained an error in tariff sheet pagination and also a rounding error in the commodity cost of gas in rates reflected on the bottom of Sheet Nos. 4 and 4.1.

MRT states that the purpose of this filing is to resubmit its out-of-cycle tariff sheets to be effective November 13, 1991 with the correct tariff sheet pagination and to correct the commodity cost of gas in rates reflected at the bottom of the tariff sheets. MRT also states that the instant filing is identical in all other respects to the previous out-of-cycle PGA filing submitted in Docket No. TQ92–4–25–000. MRT requests that the Commission close the related Docket No. TQ92–4–25–000 and accept the tariff sheets proposed herein.

MRT also states that a copy of this filing has been served on all of MRT's jurisdictional sales customers and the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 23, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–30516 Filed 12–20–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP92–240–000]

Mojave Pipeline Co.; Application

December 16, 1991.

Take notice that on December 13, 1991, Mojave Pipeline Company (Mojave), P.O. Box 1188, Houston, Texas, 77001, filed in Docket No. CP92–240–000 pursuant to section 7(c) of the Natural Gas Act and subpart A of part 157 of the Commission's regulations, an application for a certificate of public convenience and necessity authorizing the construction and operation of certain tap and metering facilities on Mojave's interstate pipeline system, as more fully described in the application which is on file at the Commission and available for public inspection. As part of this filing, Mojave also has filed an application for a temporary certificate authorizing the construction of such facilities.

Mojave currently holds an optional expedited certificate that authorizes Mojave to construct and operate a pipeline system extending from Arizona to near Bakersfield in Kern County, California. Mojave also holds blanket certificates authorizing Mojave to construct and operate certain appurtenant facilities and to provide open access natural gas transportation services. See Mojave Pipeline Company., 47 FERC ¶ 61,200 (1989); *Mojave Pipeline Company.*, 50 FERC ¶ 61,089 *reh'g denied*, 51 FERC ¶ 61,195 (1990) (the "Certificate Orders").

Under the Certificate Orders, Mojave and Kern River Gas Transmission Company ("Kern River") were authorized to construct, operate, and obtain an undivided joint ownership interest in certain pipeline facilities (the "Common Facilities") to be located in Kern County, California.[1] Mojave owns a 1/11 interest in the Common Facilities and Kern River owns 7/11.

Of the 21 delivery points currently contemplated to be located on the Common Facilities, 11 will be constructed and operated either by solely by Mojave or jointly by Mojave and Kern River. These are the delivery points for which Mojave requests certificate authority. As projected on page 3 of Exhibit K to Mojave's Application to Amend Certificate of Public Convenience and Necessity, filed on August 30, 1991, in Docket No. CP89–1, the cost of these facilities will be approximately $5 million. The delivery points and the status of their construction are listed below.

Delivery point	Status of construction
1. Coolwater	Not commenced.
2. Boron	Not commenced.
3. Kern River	Partially complete.
4. Sycamore/KRCC	Partially complete.
5. Kern Front	Not commenced.
6. SoCal	Partially complete.
7. S. Midway	Partially complete.
8. Midway-Mideet	Partially complete.
9. Midway	Partially complete.
10. N. Midway	Partially complete.
11. 17–Z	Partially complete.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 23, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken on the request for a permanent certificate but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Pursuant to section 7 of the Natural Gas Act, the Commission may act on Mojave's request for temporary authorization

[1] Under the Construction, Operations and Maintenance Agreement dated August 29, 1989, among Mojave, Kern River and MPOC (the "CO&M Agreement"), the Common Facilities are being constructed and operated by MPOC as agent for Mojave and Kern River. The CO&M Agreement was submitted to the Commission as part of Exhibit M to its amended certificate application filed September 1, 1989, in Docket No. CP89–1.

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without awaiting or considering any intervention or protest.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time requested herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30510 Filed 12-20-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EL91-28-000 and EL91-54-000]

North Carolina Electric Membership Corporation and Brunswick Electric Membership Corp. v. Carolina Power & Light Co.; Initiation of Proceeding and Refund Effective Date

December 17, 1991.

Take notice that on December 6, 1991, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL91-54-000 under section 206 of the Federal Power Act, as amended by the Regulatory Fairness Act of 1988.

The refund effective date in Docket No. EL91-54-000 will be 60 days after publication of this notice in the **Federal Register.**

Lois D. Cashell,

Secretary.

[FR Doc. 91-30517 Filed 12-20-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-4-59-001]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 17, 1991.

Take notice that Northern Natural Gas Company (Northern), on December 12, 1991, tendered for filing changes in its FERC Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff).

The calculation of the November 1991 Index Price shown on 1 Revised Twentieth Revised Sheet No. 4H of Northern's Volume No. 1 Tariff incorporated an incorrect price; as such, the November 1991 Index Price should be $1.6430 rather than $1.6470 as previously filed by Northern. Therefore, Tariff Sheet Sub. 1 Rev. Twentieth Revised Sheet No. 4H. filed by Northern on December 11, 1991, reflects such change to be effective December 1, 1991.

Northern states that copies of the filing were served on Northern's jurisdictional sales customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before December 23, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30518 Filed 12-20-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-103-011]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

December 17, 1991.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on December 11, 1991 tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Fourth Revised Sheet No. 32-AK
Second Revised Sheet No. 32-AL
Second Revised Sheet No. 32-BO
First Revised Sheet No. 32-BP

The subject tariff sheets bear a proposed effective date of December 11, 1991.

Panhandle states that on March 22, 1990 it submitted a Stipulation and Agreement in connection with the above-referenced proceedings. The Commission issued an order on November 26, 1991 which approved the Stipulation and Agreement. Pursuant to Ordering Paragraph (B) of the November 26, 1991 Order, Panhandle is submitting the revised tariff sheets referenced above to remove § 6.8(c) from Rate Schedules PT-Interruptible and PT-Firm.

Panhandle states that a copy of this filing has been sent to all affected sales and transportation customers, affected State Commissions and all parties on the service lists in the referenced proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 23, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30519 Filed 12-20-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-203-000]

Tennessee Gas Pipeline Co.; Informal Settlement Conference

December 17, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on January 6, 1992, at 1 p.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the purpose of exploring a possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Donald Williams at (202) 208-0743 or Dennis H. Melvin at (202) 208-0042.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30520 Filed 12-20-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-11-006]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

December 17, 1991.

Take Notice that on December 11, 1991, United Gas Pipe Line Company (United) tendered for filing the following corrected tariff sheet to be effective October 1, 1989:

First Revised Volume No. 1

First Substitute Ninetieth Revised Sheet No. 4

United states that the above referenced tariff sheet is being filed to correct an error in the preparation of Substitute Revised Tariff Sheet No. 4 as filed September 18, 1991 in Docket No. TA90-1-11-004.

United states that the substitute tariff sheet is being mailed to its jurisdictional sales customers and to interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 23, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30521 Filed 12-20-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2357-003—Wisconsin/Michigan]

Wisconsin Electric Power Co.; Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

December 17, 1991.

The license for the White Rapid Hydro Project No. 2357, located on the Menominee River in Marinette County, Wisconsin and Menominee County, Michigan, expires December 31, 1993. The statutory deadline for filing an application for new license was December 31, 1991. An application for new license has been filed as follows:

Project No.	Applicant	Contact
2357-003..	Wisconsin Electric Power Company, 231 West Michigan Street, P.O. Box 2046, Milwaukee, WI 53201.	Richard G. Fuller, Wisconsin Electric Power Company, 1401 South Carpenter Ave., Iron Mountain, MI 49801.

The following is an approximate schedule and procedures that will be followed in processing the application:

Date	Action
January 10, 1992	Commission notifies applicant that its application has been accepted and specifies the need for additional information and due date.
January 25, 1992	Commission issues public notice of the accepted application establishing dates for filing motions to intervene and protests.
April 15, 1992	Commission's deadline for applicant for filing a final amendment, if any, to its application.

Upon receipt of all additional information and the information filed in response to the public notice of the acceptance of the application, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Robert Bell at (202) 219-2806.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30522 Filed 12-20-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of November 22 Through November 29, 1991

During the week of November 22 through November 29, 1991, the appeals and applications for other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt of an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: December 17, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of November 22 through November 29, 1991]

Date	Name and location of applicant	Case No.	Type of Submission
11/21/91	Gulf/Lutherville Gulf Sparks, Maryland	RR300-115	Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The October 25, 1991 Dismissal Letter (Case No. RF300-11528) issued to Lutherville Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
11/25/91	Foundation for Fair Contracting Sacramento, California	LFA-0166	Appeal of an Information Request Denial. If Granted: The November 5, 1991 Freedom of Information Request Denial issued by the Western Area Power Administration would be rescinded, and the Foundation for Fair Contracting would receive access to deleted names, home addresses and social security numbers contained in the certified payroll record.
Do	Harry S. Hardin, III New Orleans, Louisiana	LFA-0167	Appeal of an Information Request Denial. If Granted: The October 22, 1991 Freedom of Information Request Denial issued by the Strategic Petroleum Reserve Project Management Office would be rescinded, and Harry S. Hardin, III would receive access to DOE information.
Do	Leslie Vallie Golden, Colorado	LFA-0168	Appeal of an Information Request Denial. If Granted: The November 7, 1991 Freedom of Information Request Denial issued by the Western Area Power Administration would be rescinded, and Leslie Vallie would receive access to DOE information.
11/26/91	Gulf/Grammer's Gulf Atlantic Beach, Florida	RR300-116	Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The November 6, 1990 Dismissal Letter (Case No. RF300-12170) issued to Grammer's Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund processing.

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LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of November 22 through November 29, 1991]

Date	Name and location of applicant	Case No.	Type of Submission
Do	Gulf/Greive Oil Company Washington, DC	RR300-119	Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The October 29, 1989 Decision and Order (Case No. RF300-6039) issued to Greive Oil company would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Huron Oil company, Inc. Washington, DC	RR300-118	Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The January 25, 1991 Decision and Order (Case No. RF300-9303) issued to Huron Oil company, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Vlach's Gulf Woodbridge, Virginia	RR300-117	Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The October 25, 1991 Dismissal Letter (Case No. RF300-11794) issued to Vlach's Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Texaco/Albemarle Road Texaco Charlotte, North Carolina	RR321-91	Request for Modification/Rescission in the Texaco Refund Proceeding. If Granted: The September 5, 1991 Dismissal Letter (Case No. RF321-4133) issued to Albemarle Road Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Do	Texaco/Bob's Texaco Lincoln, Nebraska	RR321-90	Request for Modification/Rescission in the Texaco Refund Proceeding. If Granted: The September 24, 1991 Dismissal Letter (Case No. RF321-3561) issued to Bob's Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Do	Texaco/Christie's Texaco Austin, Texas	RR321-94	Request for Modification/Rescission in the Texaco Refund Proceeding. If Granted: The July 25, 1991 Dismissal Letter (Case No. RF321-5253) issued to Christie's Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Do	Texaco/Dow Chemical Company Washington, DC	RR321-96	Request for Modification/Rescission in the Texaco Refund Proceeding. If Granted: The October 22, 1991 Decision and Order (Case No. RF321-10745) issued to Dow Chemical Company would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Do	Texaco Kautz Texaco Pittsburgh, Pennsylvania	RR321-89	Request for Modification/Rescission in the Texaco Refund Proceeding. If Granted: The July 25, 1991 Dismissal Letter (Case No. RF321-3300) issued to Kautz Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
11/28/91	Texaco/Port Malabar Texaco Palm Bay, Florida	RR321-87	Request for Modification/Rescission in the Texaco Refund Proceeding. If Granted: The September 6, 1991 Decision and Order (Case No. RF321-4500) issued to Port Malabar Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
11/26/91	Texaco/Simpson's Texaco Charlotte, North Carolina	RR321-92	Request for Modification/Rescission in the Texaco Refund Proceeding. If Granted: The Dismissal Letter September 5, 1991 (Case No. RF321-4180) issued to Simpson's Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Do	Texaco/University Texaco Memphis, Tennessee	RR321-86	Request for Modification/Rescission in the Texaco Refund Proceeding. If Granted: The October 31, 1991 Decision and Order (Case No. RF321-11592 & RF321-17162) issued to University Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Do	Texaco/William Turner's Texaco Tulsa, Oklahoma	RR321-93	Request for Modification/Rescission in the Texaco Refund Proceeding. If Granted: The July 25, 1991 Dismissal Letter (Case No. RF321-3375) issued to William Turner's Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Do	Texaco/Ysleta Texaco El Paso, Texas	RR321-95	Request for Modification/Rescission in the Texaco Refund Proceeding. If Granted: The July 25, 1991 Dismissal Letter (Case No. RF321-5246) issued to Ysleta Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
11/27/91	TexacoStark & Doolin Texaco Memphis, Tennessee	RR321-97	Request for Modification/Rescission in the Texaco Refund Proceeding. If Granted: The July 25, 1991 Dismissal Letter (Case No. RF321-3992) issued to Stark & Doolin Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Do	ARCO/Wilbanks Oil company Washington, DC	RR304-20	Request for Modification/Rescission in the ARCO Refund Proceeding. If Granted: The August 30, 1991 Decision and Order (Case No. RF304-6236) issued to Wilbanks Oil company would be modified regarding the firm's application for refund submitted in the ARCO refund proceeding.
11/29/91	Texaco/Emmett's Texaco San Antonio, Texas	RR321-98	Request for Modification/Rescission in the Texaco Refund Proceeding. If Granted: The June 17, 1991 Dismissal Letter (Case No. RF321-202) issued to Emmett's Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of November 22 through November 29, 1991]

Date	Name and location of applicant	Case No.	Type of Submission
Do	Texaco/Portel Service Center Ormond Beach, Florida	RR321-100	Request for Modification/Rescission in the Texaco Refund Proceeding. If Granted: The April 24, 1990 Dismissal Letter (Case No. RF321-1204) issued to Portel Service Center would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Do	Texaco/Trusty's Texaco Memphis, Tennessee	RR321-99	Request for Modification/Rescission in the Texaco Refund Proceeding. If Granted: The April 20, 1991 Dismissal Letter (Case No. RF321-1862) issued to Trusty's Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Do	Texaco/Yeagy's Texaco Idaville, Pennsylvania	RR321-88	Request for Modification/Rescission in the Texaco Refund Proceeding. If Granted: The August 2, 1991 Dismissal Letter (Case No. RF321-3587) issued to Yeagy's Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week of November 22 to November 29, 1991]

Date received	Name of refund proceeding/Name of refund application	Case No.
11/25/91	Vickers/Kansas	RQ1-577
11/25/91	Rutherford William Stockman.	RF342-51
11/25/91	Victor A. Tucci Service.	RF342-52
11/25/91	Darrell Wertz's Clark Service.	RF342-53
11/25/91	J & D Propane Service.	RF340-33
11/25/91	Genes Exxon	RF307-10199
11/26/91	William D. Tarrant, Jr.	RF342-54
11/26/91	Jerry's Clark	RF342-55
11/27/91	Chuck's Clark	RF342-56
11/27/91	Monsauto Co	RF332-10
11/29/91	Steve's Clark Service.	RF342-57
11/29/91	Marty's Clark Service.	RF342-58
11/29/91	Joe's Clark	RF342-59
11/29/91	Texas Utilities Fuel Company.	RF332-11
11/29/91	Dom's Arco	RF304-12626
11/25/91	Terhune L.P. Gas Co.	RF139-209
11/25/91	Wilder & Son, Inc	RF139-210
11/25/91	Mayfair Servicenter.	RF304-12622
11/25/91	Chuck's Arco Station.	RF304-12623
11/25/91	Gus Budin	RF304-12624
11/22/91 thru 11/29/91.	Texaco Refund Applications Received.	RF321-18059 thru RF321-18075
11/22/91 thru 11/29/91.	Crude Oil Refund Applications Received.	RF272-90782 thru RF272-90819
11/22/91 thru 11/29/91.	Gulf Oil Refund Applications Received.	RF300-18679 thru RF300-18704

[FR Doc. 91-30595 Filed 12-20-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4086]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paper work Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before January 22, 1992.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: National Emission Standard for Hazardous Air Pollutants (NESHAP) for Beryllium (Subpart C)—Information Requirements (EPA No. 0193.04, OMB No. 2060-0092).

Abstract: This ICR is for an extension of an existing information collection in support of NESHAP requirements as established by the Clean Air Act. Specifically, under 40 CFR 61.07-61.10 and 40 CFR 61.30-61.34, owners or operators of sources subject to the NESHAP for beryllium must demonstrate compliance through either an initial test of stack emissions, or ambient air monitoring (unless a waiver of emission testing is obtained under 40 CFR 61.13). The information collected will be used by the EPA for monitoring, inspection, and enforcement efforts directed at ensuring source compliance with the NESHAP.

Prior to commencement of operations, owners or operators of new sources subject to this NESHAP must submit an application for approval of construction that includes: (1) The name and address of the applicant, (2) the location or proposed location of the source, and (3) technical information describing the source. Once approved, the owners or operators must notify EPA of the anticipated and actual start-up dates at the source.

While owners or operators of new sources must conduct an initial emission test, owners or operators of existing sources may, as an alternative, seek approval from the EPA to conduct continuous compliance monitoring. Owners and operators of new and existing sources conducting an initial emission test must: (1) Notify EPA at least 30 days prior to the date of the test, and (2) record and report the test results to EPA. Calculations estimating new emission levels must be reported whenever a change in plant operations might elevate emissions.

Owners or operators of existing sources seeking EPA approval to perform continuous ambient air monitoring must submit a report that includes: (1) A description of the locations and physical characteristics of the sampling area, (2) the design, methods, and techniques used in sampling and estimating emissions, (3) a description of the process used to design the air sampling network, and (4) three years of air quality monitoring data. If the request is granted, the owner or operator must submit a monthly report on beryllium concentrations measured at all sampling sites.

Presently, only about 24 sources, out of an estimated 236 subject to this NESHAP, conduct continuous compliance monitoring. The EPA does

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not anticipate any expansion in the regulated community over the next three years. Owners and operators of subject sources must maintain records related to compliance for a two year period.

Burden Statement: Public reporting burden for this collection of information is estimated to average 8 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the collection of information. Public recordkeeping burden is estimated to average 62.5 hours, annually.

Respondents: Businesses or other for-profit organizations.

Estimated Number of Respondents: 24.

Estimated Number of Responses Per Respondent: 12.

Estimated Total Annual Burden on Respondents: 3,741 hours.

Frequency of Collection: Monthly for ambient monitoring, on occasion for initial emission testing.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: December 17, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91–30585 Filed 12–20–91; 8:45 am]

BILLING CODE 6560–50–M

[AMS–FRL–4086–4]

Regulation of Fuels and Fuel Additives: Standards for Reformulated Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of application for extension of the reformulated gasoline program to Connecticut, New Hampshire and Virginia.

SUMMARY: This notice published the application of the Governors of the States of Connecticut, New Hampshire, and Virginia to have the prohibition set forth in section 211(k)(5) of the Clean Air Act (the Act) applied in their respective states. Under section 211(k)(6) the Administrator of EPA shall apply the prohibition against the sale of gasoline which has not been reformulated to be less polluting in an ozone nonattainment area upon the application of the governor of the state in which the nonattainment area is located.

DATES: The effective date of the prohibition described herein is January 1, 1995 (see the Supplementary Information section of today's notice for a discussion of the possible delay of this date).

ADDRESSES: Materials relevant to this notice are contained in Public Docket No. A–91–02. This docket is located in room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC. 20460. The docket may be inspected from 8:30 a.m. until 12 noon and from 1:30 p.m. until 3 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT:

Joanne I. Goldhand, U.S. EPA (SDSB–12), Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668–4504.

SUPPLEMENTARY INFORMATION:

I. Background

As part of the Clean Air Act Amendments of 1990, Congress added a new subsection (k) to section 211 of the Clean Air Act. Subsection (k) prohibits the sale of gasoline that EPA has not certified as reformulated ("conventional gasoline") in the nine worst ozone nonattainment areas beginning January 1, 1995. To be certified as reformulated a gasoline must comply with the following formula requirements: Oxygen content of at least 2.0 percent by weight benzene content of no more than 1.0 percent by volume; no heavy metals (with a possible waiver for metals other than lead); and the inclusion of deposit preventing additives. The gasoline must also achieve toxic and volatile organic compound emissions reductions equal to or exceeding the more stringent of a specified formula fuel or a performance standard.

Section 211(k)(10)(D) defines the areas covered by the reformulated gasoline program as the nine ozone nonattainment areas having a 1980 population in excess of 250,000 and having the highest ozone design values during the period 1987 through 1989. Applying those criteria, EPA has determined the nine covered areas to be the metropolitan areas including Los Angeles, Houston, New York City, Baltimore, Chicago, San Diego, Philadelphia, Hartford and Milwaukee. Under section 211(k)(10)(D) any area reclassified as a severe ozone nonattainment area under section 181(b) is also to be included in the reformulated gasoline program.

Any other ozone nonattainment area may be included in the program at the request of the governor of the state in which the area is located. Section 211(k)(6)(A) provides that upon the application of a governor, EPA shall apply the prohibition against selling conventional gasoline in any area in the governor's state which has been classified under subpart 2 of part D of title I of the Act as a Marginal, Moderate, Serious or Severe ozone nonattainment area.[1] Subparagraph 211(k)(6)(A) further provides that EPA is to apply the prohibition as of the date the "deems appropriate, not later than January 1, 1995, or 1 year after such application is received, whichever is later." In some cases the effective date may be extended for such an area as provided in section 211(k)(6)(B) based on a determination by EPA that there is "insufficient domestic capacity to produce" reformulated gasoline. Finally, EPA is to publish a governor's application in the **Federal Register**.

EPA has used the regulatory negotiation process on the requirements for reformulated gasoline. A notice of proposed rulemaking was published July 9, 1991 (56 FR 31176). Since that time the regulatory negotiation advisory committee reached consensus on an outline for the reformulated gasoline program. A supplemental notice of proposed rulemaking will be published shortly which describes the consensus of the advisory committee. This supplemental notice will also describe the certification program for reformulated gasoline, the credits program for exceeding certain requirements and the enforcement program, among other elements.

II. The Governors' Requests

EPA received an application from the Hon. Lowell P. Weicker, Jr., Governor of Connecticut, for that state to be included in the reformulated gasoline program. His application is set out in full below.

[State of Connecticut Letterhead]

October 28, 1991.

The Honorable William Reilly,
Administrator,
U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460.

Dear Mr. Reilly: I am writing at this time to request that, in accordance with section 211(k)(6) of the Clean Air Act, you extend the reformulated gasoline requirements of section 211(k)(5) to the entire State of Connecticut.

All of Connecticut is nonattainment with respect to ozone. Statewide use of reformulated gasoline will contribute greatly to our ability to meet both our obligations under the Act for emission reductions by 1996 and our longer term attainment objectives.

In addition to supporting the use of this cleaner fuel throughout Connecticut, I believe that its widespread use across all of the Ozone Transport Region should be considered.

The responsibility for fulfilling any state role in the implementation of this and other air quality related fuel programs resides in our Bureau of Air Management. Your office should feel free to get in contact with Carl S. Pavetto, Chief, Bureau of Air Management at (203) 566–2506.

I look forward to working with you as we undertake the challenging task of achieving clean air and thank you in advance for your assistance on the important step represented by this request.

Sincerely,

s/Lowell P. Weicker, Jr.,

Governor.

EPA also received an application from the Hon. Judd Gregg, Governor of New Hampshire, for the nonattainment areas in that state to be included in the reformulated gasoline program. His application is set out in full below.

[State of New Hampshire Letterhead]

October 22, 1991.

William K. Reilly, Administrator,
U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Dear Administrator Reilly: Pursuant to the provisions of section 211(k) of the Clean Air Act as amended, I am informing you that those areas of New Hampshire classified as Ozone Nonattainment Areas intend to participate in the reformulated gasoline program. In New Hampshire, these areas include the New Hampshire portion of the Boston-Lawrence-Salem MA/NH[2] CMSA, the New Hampshire potion of the Portsmouth-Dover-Rochester NH/ME MSA, and the Manchester, New Hampshire MSA plus the remainder of Hillsborough, Merrimack, and Rockingham Counties not included in the Boston or Portsmouth metropolitan areas. Presently New Hampshire portions of the Boston CMSA and the Portsmouth MSA are classified serious and the Manchester MSA plus the remainder of the three Counties are classified marginal.

Of the steps available to the State of New Hampshire to comply with the Clean Air Act, the reformulated gasoline option will enable our state to achieve the emission reductions mandated by the Clean Air Act while having the least negative impact on our industry, small businesses and consumers.

If you have any questions or would like to discuss these issues further, please call or have your staff contact Commissioner Robert W. Varney at (603) 271–3503.

Sincerely,

s/Judd Gregg

Governor.

EPA also received an application from the Hon. Lawrence Douglas Wilder, Governor of Virginia, for the nonattainment areas in that state to be included in the reformulated gasoline program. His application is set out in full below.

[Commonwealth of Virginia Letterhead]

Mr. William K. Reilly, Administrator,
U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Dear Mr. Reilly: As you know, the Clean Air Act Amendments of 1990 impose significant air pollution control requirements on the states. After analyzing the benefits of various control measures and options, I am requesting that the U.S. Environmental Protection Agency require the sale of reformulated gasoline in Virginia's nonattainment areas as provided for under Section 211 (k) of the new Clean Air Act.

We have concluded that the benefits of the associated emissions reduction demonstrate this to be a cost effective control measure that will both improve air quality and provide a basis for maintaining air quality with future economic growth.

The reformulated gasoline program should be required in those ozone nonattainment areas which are located in the Metropolitan Statistical Areas, the Northern Virginia Nonattainment Area (serious), the Richmond Nonattainment Area (moderate), and the Hampton Roads Nonattainment Area (marginal)[3]

Wish best wishes, I am

Very truly yours,

s/Lawrence Douglas Wilder.

cc: The Honorable Elizabeth H. Haskell, Mr. Wallace N. Davis, Mr. Richard Rykowski, Mr. Edwin B. Erickson.

III. Action

Pursuant to the governors' letters and the provisions of section 211(k)(6), the prohibitions of subsection 211(k)(5) will be applied to the entire state of Connecticut and the nonattainment areas in New Hampshire and Virginia classified Marginal or worse (except Smyth County, Virginia) beginning January 1, 1995 (except as provided above). The application of the prohibitions to these areas cannot take effect any earlier than January 1, 1995 under section 211(k)(5) and cannot take effect any later than January 1, 1995, under section 211(k)(6)(A), unless the Administrator extends the effective date by rule under section 211(k)(6)(B).

Dated: December 13, 1991.

William K. Reilly,

Administrator.

[FR Doc. 91–30583 Filed 12–20–91; 8:45 am]

BILLING CODE 6560–50–M

[1] EPA recently promulgated such designations pursuant to section 107(d)(4) of the Act (56 FR 56694; November 6, 1991).

[2] This area is referred to as the Boston-Lawrence-Worcester nonattainment area in the Federal Register notice describing the areas (56 FR 56694). (Footnote added)

[3] These areas are designated in the November 6, 1991 notice the "Washington Area," the "Richmond-Petersburg Area" and the "Norfolk-Virginia Beach-Newport News Area," respectively (56 FR 56663–4). Therefore, the only nonattainment area in Virginia to which this request does not apply is Smyth County. (footnote added)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Proposal To Conduct a Pilot Survey of Americans With Disabilities in Private Industry

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of proposal to conduct a sample survey of establishments in private industry to determine the disability status of their employees.

SUMMARY: As part of its new responsibility in administering title I of the Americans with Disabilities Act of 1990 (ADA), the Commission plans to conduct a pilot survey of the disability status of all employees working at a number of private establishments, randomly selected from the files of the Employer Information Report (EEO–1) survey. In the stage prior to enactment of ADA, it was noted that there were no precise or accurate data that the Commission could rely on to cite statistics on Americans with disabilities, and to estimate and project the number of those individuals with disabilities who were employed part-time or full-time. Better data were therefore needed and it was decided that a pilot survey would be a reliable and cost-effective way in which to establish a mechanism to collect such data. This pilot survey was thus designed to assess the extent to which individuals with disabilities are employed in private industry, the kinds of jobs they hold, and whether or not they work full-time or part-time. Such information will assist in policy evaluations and assessments with regard to employees with disabilities, not only for the Commission but for other agencies that have program responsibilities under ADA. The survey will also serve as the basis for future decisions about data collection under ADA and as a pilot test of the questionnaire, data collection procedures, and the validity and adequacy of the data collected.

DATES: Written comments must be submitted on or before February 21, 1992. A public hearing concerning these proposed changes will be held on a date

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and at a time and place to be announced.

ADDRESSES: Comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507. Copies of comments submitted by the public will be available for review at the Commission's library, room 6502, 1801 L Street, NW., Washington, DC between the hours of 9:30 a.m. and 5 p.m. Any comments should additionally be filed with the Office of Management and Budget (See "Paperwork Reduction Act" below).

As a convenience to commenters, the Executive Secretariat will accept public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll-free number.) Only public comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat Staff at (202) 663–4078. (This is not a toll-free number.)

Persons wishing to present their views orally should notify the Commission of their desire to do so, in writing, no later than January 22, 1992 with a request to Frances Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507. The request should include a written summary of the remarks to be offered.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division at (202) 663–4958 (voice) or (202) 708–9300 (TDD).

SUPPLEMENTARY INFORMATION: The authority for data collection is by reference in ADA to the authority contained in 709(c) of Title VII of the Civil Rights act of 1964, as amended. The pilot survey that is proposed does not initiate any recordkeeping or reporting requirements but is part of the pre-rule making process.

The questionnaire used in the survey is a one-page form, designed to collect data on limitations of common activities, use of aids, and medical history. Data will also be reported by job category and by full-time and part-time employment status. Employees rather than employers will complete the questionnaire and all responses will be voluntary and anonymous. Employers will be requested to distribute the questionnaires to their employees. Provide a drop-off location for receipt of completed questionnaires and return the completed questionnaires to the Commission.

Mailout for this survey is planned for August 1992 with a filing deadline on or about September 30, 1992. It is expected that approximately 1,500 establishments will be included in the probability sample and that these establishments will cover about 420,000 employees, to whom a questionnaire would be made available.

Paperwork Reduction Act

This proposed pilot survey contains information collection subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act. It is estimated that nationwide a one-time reporting burden would equal approximately 42,000 hours. The one-time processing cost to the government is estimated to equal $200,000. As required by the Paperwork Reduction Act, the Equal Employment Opportunity Commission is submitting a request to the Office of Management and Budget (OMB) that it approve this information collection. Organizations or individuals desiring to submit comments for consideration by OMB on this information collection should address them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Joseph Lackey.

The Commission also certifies under 5 U.S.C. 605(b) enacted by the Regulatory Flexibility Act (Pub. L. No. 96–354), that this pilot survey will not result in significant impact on a substantial number of small employers, and that a regulatory flexibility analysis therefore is not required. Small employers are not affected because the EEO–1 is limited to employer with 100 or more employees and government contractors with 50 or more employees and contract amount of at least $50,000.00.

The Commission hereby publishes this proposal for public comment.

Signed at Washington, DC this 18th day of December, 1991.

For the Commission.

Evan J. Kemp, Jr.,

Chairman.

[FR Doc. 91–30802 Filed 12–20–91; 8:45 am]

BILLING CODE 6750–06–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Port of Portland, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200465–001.

Title: Port of Portland/Star Shipping Terminal Agreement.

Parties:

Port of Portland
Star Shipping, Inc.

Synopsis: This Agreement, filed December 13, 1991, provides for an extension through February 29, 1992, of the current terminal use agreement between the parties.

Agreement No.: 212–010386–021.

Title: Argentina/U.S. Atlantic Coast Ports Pool Agreement.

Parties:

American Transport Lines, Inc.
A. Bottacchi S.A. de Navegacion C.F.I.I.
Empresa Lineas Maritimas Argentinas S.A.
Columbus Line
Companhia de Navegacao Lloyd Brasileiro.

Synopsis: The proposed amendment (1) deletes A. Bottacchi S.A. de Navegacion C.F.I.I. as a party to the Agreement; (2) adds Companhia Maritima Nacional and Empresa de Navegacao Alianca S.A. as parties to the Agreement; (3) changes the name of the Agreement to Argentina/U.S. Atlantic & Gulf Ports Pool Agreement; (4) provides for share ceilings; (5) provides for two six month pool periods in 1992; and (6) makes other technical changes. The parties have requested a shortened review period.

Agreement No.: 212–010388–016.

Title: U.S. Atlantic Coast/Argentina Agreement

Parties:

Empresa Linesas Maritimas Argentinas S.A.
A. Bottacchi S.A. de Navegacion C.F.I.I.
American Transport Lines, Inc.

Synopsis: The proposed amendment deletes A. Bottacchi S.A. de Navegacion C.F.I.I. as a party to the Agreement; (2) adds Columbus Line, Empresa de Navegacao Alianca S.A., Companhia de Navegacao Lloyd Brasileiro and Companhia Maritima Nacional as parties to the Agreement; (3) changes the name of the Agreement to U.S. Atlantic and Gulf Ports/Argentina Pool Agreement; provides for share ceilings; (5) provides for two six month pool periods in 1992; and (6) makes other technical changes. The parties have requested a shortened review period.

Dated: December 17, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary

[FR Doc. 91–30501 Filed 12–20–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

December 16, 1991.

Background

Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public)

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829)

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503 (202–395–7340)

Final Approval Under OMB Delegated Authority of the Extension, With Revisions, of the Following Report(s)

Report Title: Report of Condition for Foreign Subsidiaries of U.S. Banking Organizations.

Agency form number: FR 2314a, b and c.

OMB Docket Number: 7100–0073.

Frequency: Quarterly and Annually.

Reporters: Foreign Subsidiaries of U.S. Banks, Bank Holding Companies, and Edge and Agreement Corporations.

Annual reporting hours: 4098.

Estimated average hours per response: 1.00 to 4.00.

Number of respondents: 1192. Small businesses are not affected.

General description of report: This information collection is mandatory (12 U.S.C. 324, 602, 625 and 1844(c)) and is given confidential treatment (5 U.S.C. 552(b)(8)).

The reports collect information on the assets, liabilities, off-balance sheet items, and earnings from all direct or indirect foreign subsidiaries of U.S. banking organizations. The data are used to monitor the growth and activities of the subsidiaries and to supervise the overall operation of the parent organization. The proposed revisions are designed to make the reports more consistent with the parent organizations' reports of condition and income and to improve the System's surveillance of overseas banking operations.

Board of Governors of the Federal Reserve System, December 16, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91–30550 Filed 12–20–91; 8:45 am]

BILLING CODE 6210–01–M

Chemical Banking Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 13, 1992.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Chemical Banking Corporation, New York, New York; to engage *de novo* through its subsidiary, CBC Interim Federal Savings Bank 2, New York, New York, in operating a savings institution pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. First Bancshares of Natchitoches, Inc., Natchitoches, Louisiana; to engage *de novo* in originating loans for itself or for others of the type made by a mortgage company pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in Natchitoches, Bienville, DeSoto, Grant, Rapides, Red River, Sabine, Vernon, Winn, and Jackson Parish, Louisiana.

Board of Governors of the Federal Reserve System, December 17, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–30545 Filed 12–20–91; 8:45 am]

BILLING CODE 6210–01–F

First Central Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

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Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 13, 1992.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Central Bancshares, Inc., Lenoir City, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of First Central Bank, Lenoir City, Tennessee.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Firstar Corporation, Milwaukee, Wisconsin, and Firstar Corporation of Illinois, Milwaukee, Wisconsin; to merge with First Geneva Banqueshares, Inc., Geneva, Illinois, and thereby indirectly acquire First National Bank of Geneva, Geneva, Illinois.

2. Old State Bank Corporation, Fremont, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of The Old State Bank of Fremont, Fremont, Michigan.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Galatia Bancorp, Inc., Galatia, Illinois; to acquire 100 percent of the voting shares of The First National Bank of Metropolis, Metropolis, Illinois.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Citizens Bank Group, Inc., Minneapolis, Minnesota; to become a bank holding company by acquiring 97.2 percent of the voting shares of Citizens State Bank of St. James, St. James, Minnesota.

Board of Governors of the Federal Reserve System, December 17, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-30546 Filed 12-20-91; 8:45 am]

BILLING CODE 6210-01-F

First Community Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 13, 1992.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Community Bancshares, Inc., Knob Noster, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Sweet Springs Bancshares, Inc., Sweet Springs, Missouri, and thereby indirectly acquire Chemical Bank, Sweet Springs, Missouri; Bancshares of Knob Noster, Knob Noster, Missouri, and thereby indirectly acquire The Bank of Knob Noster, Knob Noster, Missouri; and Ionia Bancshares, Inc., Windsor, Missouri, and thereby indirectly acquire First Community Bank, Windsor, Missouri.

In connection with this application, Applicant also proposes to engage in the sale of general insurance in a town of less than 5,000 in population purusant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. This activity will be conducted in Knob Noster, Missouri.

Board of Governors of the Federal Reserve System, December 13, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-30547 Filed 12-20-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of February 1992:

Name: National Advisory Committee on Rural Health.

Date and Time: February 10-12, 1992; 8:30 a.m.

Place: The Doubletree Hotel, 101 North Main Street, McAllen, Texas 78501.

The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary with respect to the delivery, financing, research, development and administration of health care services in rural areas.

Agenda: During this meeting, the Committee intends to address the theme, "Rural and Migrant Health Issues Along the Texas-United States/Mexican Border." The Committee will also be touring rural clinics and medical facilities in Starr County, Texas and will visit several colonias along the border in the Rio Grande Valley. Finally, the Committee will continue shaping its agenda for and developing recommendations to be included in the Fifth Report to the Secretary.

The meeting is open to the public, however, no transportation will be provided to the site visits.

Anyone requiring information regarding the subject Council should contact Mr. Jeffrey Human, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Services Administration, room 14-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-0835.

Persons interested in attending any portion of the meeting should contact Ms. Arlene Granderson, Director of Operations, Office of Rural Health Policy, Health Resources and Services Administration, Telephone (301) 443-0835.

Agenda Items are subject to change as priorities dictate.

Dated: December 17, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA

[FR Doc. 91-30603 Filed 12-20-91; 8:45 am]

BILLING CODE 4160-15-M

Advisory Council; Meeting; Correction

In Federal Register Document 91-29580 appearing at page 64638 in the issue for Wednesday, December 11, 1991, the January 13-14, 1992, meeting of the "HRSA AIDS Advisory Committee" has been rescheduled. The meeting will be on March 5-6, 1992, in Conference Room 6. All other information is correct as appears.

Dated: December 17, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91-30604 Filed 12-20-91; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting of Blood Diseases and Resources Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, February 27-28, 1992, Building 31C, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20814.

The entire meeting will be open to the public on February 27, from 9 a.m. to 5 p.m. and on February 28, from 9 a.m. to adjournment, to discuss the status of the Blood Diseases and Resources program needs and opportunities. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Fann Harding, Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Federal Building, room 5A08, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-1817, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: December 13, 1991.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 91-30523 Filed 12-20-91; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of the Cardiology Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Cardiology Advisory Committee, National Heart, Lung, and Blood Institute, January 9-10, 1992, Building 31C, Conference Room 8, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public on January 9 from 9 a.m. to 5 p.m. and on January 10 from 8:30 a.m. to adjournment. Attendance by the public will be limited to space available. Topics for discussion will include a review of the research programs relevant to the Cardiology area and consideration of future needs and opportunities.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, room 4A21, Building 31, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

Michael J. Horan, M.D., Associate Director for Cardiology, Division of Heart and Vascular Diseases; National Heart, Lung, and Blood Institute; room 320, Federal Building, Bethesda, Maryland 20892, (301) 496-5421, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 93.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: December 13, 1991.

Sue Feldman,

NIH Committee Management Officer.

[FR Doc. 91-30524 Filed 12-20-91; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 56 FR 61258-9, December 2, 1991) is amended to reflect the following changes in the Office of the Director, National Institutes of Health (NIH): (1) In the Office of Research Services (ORS) (HNAA): (a) establish the Office of Administrative Management (OAM) (HNAA3) and the Office of the Director, OAM, (HNAA31); (b) retitle the Division of Space Management (DSM) (HNAA5) to the Division of Space and Facility Management (DSFM) (HNAA5) and establish the Office of the Director, DSFM (HNAA51); and (c) retitle the Division of Technical Services (DTS) (HNAA8) to the Division of Support Services (DSS) (HNAA8) and establish the Office of the Director, DSS (HNAA81). The creation of an organizational focal point for internal ORS administrative responsibilities and the alignment of facility management activities within one division will enable the Associate Director for Research Services to manage the ORS more effectively and efficiently and to fulfill his responsibility in providing services to the NIH.

Section HN-B, Organization and Functions, is amended as follows: (1) Under the heading *Office of Research Services (HNAA)*, insert the following:

Office of Administrative Management (HNAA3). (1) Directs, coordinates, and conducts administrative management activities of the ORS by providing

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assistance in areas of financial management, personnel/human resource management, equal employment opportunity, procurement, information technology and evaluation, and planning and program analysis; (2) advises the Associate Director for Research Services and ORS Division Directors on developments in management and their implications and effects on program management; (3) develops policies on administrative management and prepares and issues procedures and guidelines for implementation of administrative policies and requirements; (4) directs a program of travel consultation and service including overseeing the NIH travel contract, domestic travel services, teleticketing services, government bills of lading and civilian permanent change of station; and (5) serves as the ORS focal point for the coordination, preparation, and analysis of a wide variety of management and administrative reports and other documents associated with NIH, PHS, and DHHS.

Office of the Director, Office of Administrative Management (HNAA31). Plans and directs the activities of the Office of Administrative Management in the areas of personnel, budget, systems analysis, human resource management, travel, equal employment opportunity, procurement, administrative policies and procedures, management and program analysis, and overall administration.

(2) Under the heading *Division of Space Management (HNAA5)*, delete the title and functional statement in their entirety and substitute the following:

Division of Space and Facility Management (HNAA5). (1) Advises the Associate Director for Research Services, the Director, NIH, and OD and ICD staff on matters related to the comprehensive nationwide space management program that provides policy oversight of laboratory, clinical, office, and storage space; (2) oversees ad hoc facilities such as the NIH Credit Union, banks, child care facilities, and the Recreation and Welfare Association; and (3) provides telecommunications, sanitation, and conference services to the NIH.

Office of the Director, Division of Space and Facility Management (HNAA51). Plans, coordinates, and directs the activities of the Division of Space and Facility Management in the areas of space policy and oversight, management of ad hoc facilities, telecommunications, sanitation, and conference services.

(3) Under the heading *Division of Technical Services (HNAA8)*, delete the title and functional statement in their entirety and substitute the following:

Division of Support Services (HNAA8). Serves as the organizational focal point in providing specialized services to the National Institutes of Health in the areas of printing, reproduction, and mail services.

Office of the Director, Division of Support Services (HNAA81). Plans, coordinates, and manages the activities of the Division, including printing, reproduction, and mail services.

Dated: December 5, 1991.

Bernadine Healy,

Director, NIH.

[FR Doc. 91–30586 Filed 12–20–91; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–67182]

Utah; Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease UTU–67182 for lands in Grand County, Utah, was timely filed and required rentals and royalties accruing from August 1, 1991, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of lease UTU–67182 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective August 1, 1991, subject to the original terms and conditions and the increased rental and royalty rates cited above.

Robert Lopez,

Chief, Minerals, Adjudication Section.

[FR Doc. 91–30526 Filed 12–20–91; 8:45 am]

BILLING CODE 4310–DQ–M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for Osterhous Milkvetch (Astragalus Osterhoutii) and Penland Beardtongue (Penstemon Penlandii) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for Osterhout milkvetch (*Astragalus osterhoutii*) and Penland beardtongue (*Penstemon penlandii*). These plans occur on public and private lands in Middle Park near Kremmling in Grand County, Colorado. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before February 21, 1992 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the State Supervisor's Office, Fish and Wildlife Enhancement, 730 Simms Street, room 290, Golden, Colorado 80401, telephone (303) 236–2675, or the Western Colorado Fish and Wildlife Enhancement Suboffice, 529 25½ Road, Suite B–113, Grand Junction, Colorado 81515, telephone (303) 243–2778. Written comments and materials regarding this recover plan should be sent to the State Supervisor at the Golden address given above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the Golden address above.

FOR FURTHER INFORMATION CONTACT: Keith Rose at the Grand Junction address above (303) 243–2778.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal Agencies also will take these comments into account in the course of implementing approved recovery plans.

Astragalus osterhoutii and *Penstemon penlandii*, were listed as endangered on July 13, 1989 (54 FR 29658), due to potential threats to these species in their limited habitats. These plants are endemic to Middle Park near Kremmling in Grand County, Colorado. They occur on desert badlands with fragile soils. This habitat is very vulnerable to surface disturbance. Threats include the proposed Muddy Creek Reservoir north of Kremmling, and habitat destruction from surface disturbances by oil and gas drilling and off-road vehicles. Recovery activities planned for these species will focus on protecting existing and potential habitats, conducting surveys to locate additional habitats or populations, and conducting studies on the species' ecology. Given the species limited habitat, it is unlikely that either downlisting or delisting of the species will occur in the foreseeable future.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the recover plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

(Notice of Availability of a Draft Recovery Plan for Osterhout Milkvetch (*Astragalus osterhoutii*) and Penland beardtongue (*Penstemon penladii*)).

[FR Doc. 91–30529 Filed 12–20–91; 8:45 am]

BILLING CODE 4310–55–M

Preparation of an Environmental Impact Statement on the Proposed Water Acquisition Program for Lahontan Valley Wetlands, Churchill County, NV

AGENCY: U.S. Fish and Wildlife Service (Interior).

ACTION: Notice of intent and meeting.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to acquire, convey, and manage sufficient water and water rights to maintain on a long-term average, 25,000 acres of primary wetland habitat within Lahontan Valley Wetlands located in Churchill County, Nevada. The water acquisition program would commence in 1993. The Service is mandated through a number of laws, regulations, and international treaties to preserve, protect, enhance, and manage natural ecosystems for the benefit of fish and wildlife and their habitat.

Specific direction is provided under section 206 of Public Law 101–618, title II—Truckee-Carson-Pyramid Lake Settlement Act (Act) (November 16, 1990) for the Service to acquire additional water and to expand the Stillwater National Wildlife Refuge (Refuge) to approximately 77,520 acres to be managed for the purposes of: (1) Maintaining and restoring natural biological diversity within the Refuge; (2) providing for the conservation and management of fish and wildlife and their habitats within the Refuge; (3) fulfilling the international treaty obligations of the United States with respect to fish and wildlife; and (4) providing opportunities for scientific research, environmental education, and fish and wildlife oriented recreation.

The Service (through the Department of the Interior) has also been directed (by November 16, 1993) to report to Congress on the potential social, economic, and environmental effects of the water rights purchase program authorized by the Act.

In response to this direction, the Service intends to prepare an environmental impact statement (EIS). This notice describes the proposed action and tentative lists of resource areas with potential issues or concerns, and possible alternatives. It outlines the scoping process that will be employed in preparation of the document, and identifies the Service's officials to whom questions and comments concerning the proposed action and the EIS may be directed.

DATES: Public scoping meetings will be held at the following locations on the dates and times indicated: Fallon Convention and Visitors Center, 100 Campus Way, Fallon, Nevada, January 28, 1992, from 7 to 10 p.m.; and Holiday Inn, 1000 E. 6th, Reno, Nevada, January 29, 1992, from 7 to 10 p.m.

ADDRESSES: Stillwater National Wildlife Refuge, P.O. Box 1236, Fallon, NV 89406; and U.S. Fish and Wildlife Service, Water Rights Acquisition Planning Office (WRAP), 2600 SE 98th Avenue, suite 130, Portland, OR 97266.

FOR FURTHER INFORMATION CONTACT: Ron Anglin, Refuge Manager, Stillwater National Wildlife Rufuge, at the above address regarding refuge management and implementation actions at 702–423–5128; or Jackie Campbell, WRAP, at the above address regarding information, comments, or questions related to the EIS and the National Environmental Policy Act process at 503–231–6850 or FTS 8–429–6850.

Interested persons are encouraged to attend the meetings to identify and discuss major issues, concerns, opportunities, and alternatives that should be addressed in the EIS. The facilitated public scoping meetings will begin with presentations related to the proposed water acquisition program for Lahontan Valley Wetlands under Public Law 101–618 and the proposed delivery system that would convey acquired water to the primary wetland habitat areas within Lahontan Valley. Under an open house meeting format, there will be an opportunity for interested citizens, organizations, and agencies to provide input into the EIS planning process. Written comments may also be submitted. The end of the public comment period will be February 14, 1992. Interested persons are reminded that the primary purpose of the scoping process is to identify, rather than debate, the significant issues related to the proposed action. Additional public meetings will be held, if warranted, on later dates in order to provide opportunities to comment on the draft EIS.

SUPPLEMENTARY INFORMATION: Section 206 of Public Law 101–618 (Act), states that the Secretary of the Interior (Secretary) is authorized and directed, in conjunction with the State of Nevada (State) and such other parties as may provide water and water rights for the purposes of section 206, to acquire by purchase or other means water and water rights, with or without the lands to which such rights are appurtenant, and to transfer, hold, and exercise such water and water rights and related interests to sustain, on a long-term average, approximately 25,000 acres of primary wetland habitat within Lahontan Valley Wetlands, Churchill County, Nevada, in accordance with

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specified provisions of the Act. "Primary wetland habitat" is defined as wetland habitat managed under provisions of the Act with a combination of prime water delivered, upon call, from Newlands Project (Project) facilities and other available sources of quality waters. The three primary wetland habitat areas are identified as the Stillwater Wildlife Management Area (includes the Refuge), Carson Lake and Pasture, and Fallon tribal land wetlands.

The Act further authorizes the Secretary to convey to the State, Federal land in the area known as Carson Lake and Pasture for use by the State as a wildlife refuge. Prior to and as a condition of such transfer, the Secretary and the State shall execute an agreement, in consultation with affected local interests, ensuring that the Carson Lake and Pasture shall be managed in a manner consistent with applicable international agreements and designation of the area as a component of the Western Hemisphere Shorebird Reserve Network. The area shall be eligible for receipt of water through Newlands Project facilities.

Since 1900, wildlife habitat (especially wetlands), in Lahontan Valley has been reduced significantly in both quantity and quality. Water availability for wetlands has been severely reduced by upstream demands for water and the results of various court decrees affecting water delivery to and use within the Newlands Project. None of the three primary wetland habitat areas were granted water rights when they were established or identified. Wetlands have been maintained primarily by return flows from the irrigation project and occasional spills from Project dams.

As return flows from the Project decreases as a result of mandated, increased efficiency of the Newlands Project, concentrations of total dissolved solids and other contaminants in wetland waters increase. Degradation of water quality diminishes the quality and viability of wetland habitat. The Service's underlying purpose or goal is to maintain and restore natural biological diversity within the Refuge and within the other identified primary wetland habitat areas in Lahontan Valley. The objectives necessary to meet this goal include, but may not be limited to, the acquisition of sufficient water (up to 125,000 acre-feet) via acquisition of water rights, which would be available on call from Newlands Project facilities, or via other available sources of quality waters, so that wetland habitat within Lahontan Valley may be restored and preserved for the long-term protection and management of fish and wildlife resources.

The Service recognizes an underlying need to acquire and convey sufficient water to restore and maintain at least 14,000 acres of high quality, primary wetland habitat within the Refuge. Currently, the Nevada Department of Wildlife has a target of acquiring sufficient water to manage approximately 10,200 acres of wetlands within the Carson Lake area of Lahontan Valley. The Fallon Paiute-Shoshone Tribes have a target of maintaining approximately 800 acres of wetlands on tribal lands. Water rights acquired for Fallon Indian Reservation wetlands would be managed by the Service, in consultation with the Fallon Tribes. If, for any reason, the State is unable to meet their target, the Service proposes to acquire the necessary additional water to maintain 10,200 acres of wetlands in the Carson Lake area to be managed by the State.

A tentative list of alternatives that would allow the Service to meet the identified need includes the acquisition of water rights (with or without the lands to which such rights are appurtenant) through a variety of means including: (1) Purchase from willing sellers; (2) leases; (3) transfers; (4) public and private donation. Other available sources of quality water will be discussed. Alternatives for a water delivery system to convey acquired water to the identified primary wetland habitat areas will also be discussed.

The following tentative list of resource areas (with potential issues, concerns, and opportunities) that could potentially be impacted by implementation of the proposed action will be discussed in detail in the EIS: (1) Agricultural production; and (2) contaminant levels; (3) groundwater and surface water supply; (4) local economy and social values; (5) recreational use; and (6) wetland habitat and management which includes: water quality, quantity, and regimes; flora; migratory and resident wildlife; fishery resources; and threatened and endangered species. Additional issues, concerns, and alternatives identified during the public scoping process will also be addressed in the EIS.

Dated: December 16, 1991.

Marvin L. Plenert,

Regional Director.

[FR Doc. 91-30530 Filed 12-20-91; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31967]

MidSouth Corporation—Continuance in Control Exemption—MidSouth Rail Corporation, MidLouisiana Rail Corporation, Southrail Corporation and Tennrail Corporation

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, the continuance in control by MidSouth Corporation (MidSouth) of its newly organized subsidiary, TennRail Corporation (TRC), upon the latter's becoming a carrier. MidSouth and TRC have entered into an agreement in principle with Packaging Corporation of America (PCA) and PCA's wholly owned subsidiary, The Corinth and Counce Railroad (CCR), for the purchase by TRC of substantially all of CCR's assets.[1] The transaction is expected to be consummated on or soon after December 20, 1991. MidSouth currently owns: (1) MidSouth Rail Corporation, a class II carrier; (2) MidLouisiana Rail Corporation, a class III carrier; and (3) SouthRail Corporation, a class II carrier. The exemption is subject to employee protective conditions.

DATES: This exemption is effective on December 23, 1991. Petitions to reopen must be filed by January 13, 1992.

ADDRESSES: Send pleadings referring to Finance Docket No. 31967 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and

(2) Petitioner's representative: Laurence R. Latourette, 1350 New York Avenue, NW., suite 800, Washington, DC 20005-4797.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927-5267 (TDD for hearing impaired: (202) 927-5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927-5721.)

Decided: December 17, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-30544 Filed 12-20-91; 8:45 am]

BILLING CODE 7035-01-M

[1] By notice of exemption in Finance Docket No. 31966, *TennRail Corp.—Acquisition and Operation Exemption—Corinth & Counce RR. Co.*, served December 9, 1991, the Commission exempted TRC's acquisition and operation of CCR's 28-mile rail line, by purchase and acceptance of assignment of rail operating rights. The line to be purchased is located between Corinth, MS (milepost 0.0), and Counce, TN (milepost 16.0). The line to be acquired through assignment of rail operating rights is located between Sharp, MS (milepost 10.0), and Yellow Creek Port, MS (milepost 20.0). In addition, TRC will acquire from CCR: (i) 10 miles of yard track on the Corinth-to-Counce line; (ii) locomotives; (iii) rolling stock (by assignment of leases); and (iv) all track material and other equipment inventories. The transaction is scheduled to take place on or soon after December 20, 1991. After the notice becomes effective, TRC will institute operations and become a Class III railroad subject to the jurisdiction of the Commission.

[Finance Docket No. 31962]

Union Pacific Railroad Company and Chicago and North Western Transportation Company—Joint Relocation Project Exemption

On December 5, 1991, Union Pacific Railroad company (UP) filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate a line of railroad in Douglas County, NE. The joint project involves: (1) The relocation of UP's line between Fall City Subdivision, at milepost 0.00, and Council Bluffs Subdivision, at milepost 5.80; (2) the grant by Chicago and North Western Transportation company (CNW) of interim overhead trackage rights to UP over an approximately 4,497-foot segment of CNW line between mileposts 0.20 and 1.20; [1] and (3) the construction by UP of two connector tracks of 700 and 2,461 feet, respectively, connecting UP's line with the two termini of the line segment described in (2) above. The transaction was to have been consummated on or soon after December 12, 1991.

The line relocation will enable UP to eliminate a more circuitous routing into a congested area of Omaha to the UP rail yard at Council Bluffs, IA, and back to the junction of the UP east-west route which is parallel to the CNW east-west route.

The Commission will assume jurisdiction over the construction component of a relocation project only where the proposal involves, for example, a change in service to shippers, expansion into new territory, or a change in existing competitive situations. See, *Generally*, Denver & R.G.W.R. Co.—Jt. Proj.) Relocation over BN, 4 I.C.C.2d 95 (1987). Under these standards, the joint relocation project, including the incidental construction component, qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to the use of this exemption, any employees affected by the trackage rights agreement will be protected by the conditions in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stray the transaction. Pleadings must be filed with the Commission and served on: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE 68179.

Dated: December 17, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-30543 Filed 12-20-91; 8:45 am]

BILLING CODE 7035-01-M

[1] This grant of interim trackage rights anticipates the eventual acquisition of the line segment by UP as well as of certain real estate extending between the west side of 42nd Street and a point located west of Dahlman Avenue, including CNW track No. 1.

UP's verified notice indicates (and the parties agreement provides) that CNW will seek authorization from the Commission to abandon a line between milepost 0.00, at Summit, and milepost 5.8, at Dodge Street, in Omaha, including the line segment.

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514-4305. If you anticipate commenting on form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

New Collection

(1) Child Protection Restoration & Penalties Enhancement Act of 1990.

(2) None, Criminal Division.

(3) Recordkeeping.

(4) Individuals or households, small businesses or organizations. 18 U.S.C. 2257 requires the Attorney General to issue regulations to carry out this section; agents of the Attorney General may inspect the records to ascertain compliance.

(5) 180,000 annual responses at .083 hours per response.

(6) 15,000 annual burden hours.

(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Dated: December 17, 1991.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 91-30525 Filed 12-20-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Cercla In United States v. U.T. Alexander Et Al., (Malone Settlement)

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on December 13, 1991, a proposed Consent Decree settling the

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United States' case against Malone Trucking Company in *United States* v. *U.T. Alexander et al.*, Civil Action No. G–86–267 was lodged with the United States District Court for the Southern District of Texas.

The Complaint in this enforcement action was filed under Sections 106 and 107 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. 9606 and 9607, on July 18, 1986, against numerous generators and transporters, including Malone Trucking Company, in the Texas City, Texas area. It seeks injunctive relief and reimbursement of costs incurred by the United States in responding to the release or threat of release of a hazardous substance from the Motco (formerly Petro Processors) site in Lamarque, Texas.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *U.T. Alexander et al.*, D.J. No. 90–11–3–74.

The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of Texas, 515 Rusk Avenue, Third Floor, Houston, Texas 77002 and the United States Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 1097, 601 Pennsylvania Avenue, NW., Washington, DC 20004. In requesting a copy please enclose a check in the amount of $3.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–30555 Filed 12–20–91; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Open Software Foundation, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act") Open Software Foundation, Inc. ("OSF") on October 28, 1991, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The additional notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On August 8, 1988, OSF and the Open Software Foundation Research Institute, Inc. (the "Institute") filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 7, 1988 (53 FR 34594). On November 4, 1988, February 2, 1989, May 3, 1989, July 28, 1989, October 26, 1989, January 22, 1990, April 19, 1990, July 24, 1990, October 22, 1990, January 28, 1991, April 25, 1991, and July 25, 1991, OSF filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on November 25, 1988 (53 FR 47773), February 23, 1989 (54 FR 7893), August 25, 1989 (54 FR 3507), August 25, 1989 (54 FR 35408), November 29, 1989 (54 FR 49123), April 18, 1990 (55 FR 14193), May 21, 1990 (55 FR 20861), September 27, 1990 (55 FR 39528), December 28, 1990 (55 FR 53368), March 25, 1991 (56 FR 12387), June 13, 1991 (56 FR 27273), and August 29, 1991 (56 FR 42757), respectively.

Additionally, a correction notice to the June 13, 1991 notice was published on July 11, 1991 (56 FR 31675).

The identities of the new, non-voting members of OSF are listed below, no new voting members have been added as of this filing:

Member	Date
University of British Columbia, Vancouver, British Columbia.	7/19/91
Fallmann und Bauernfeind, Linz-Puchneau A–4040, Austria.	7/22/91
Kwangwoon University—IE Lab, Seoul, South Korea.	7/25/91
Tech University Vienna, Vienna, a1040, Austria.	7/25/91
University of Auckland, Auckland, New Zealand.	7/25/91
University of Missouri—Kansas City, Kansas City, MO.	7/25/91
Centre de Recherche Public—Centre University, Luxembourg L1511, Luxembourg.	7/31/91
Charles Schwab & Co., Inc., San Francisco, CA.	7/31/91
Communication Culture Research, Hanover 1D–3000, Germany.	8/01/91
Institute Superieur D'Info et D'Automati, Vandoeuvre Les Nancy 54506, France.	01/01/91
TRW, Inc., Carson, CA 90746	8/01/91
Seoul National University, Seoul 151–742, South Korea.	8/02/91
University of Notre Dame, Notre Dame, IN 46556.	8/02/91
Victoria University of Wellington, Wellington, New Zealand.	8/02/91
Household International, Prospect Heights, IL 60070.	8/05/91
Banyan Systems, Inc., Westboro, MA 01581.	8/07/91
Spring/United Management Company, Kansas City, MO 64105.	8/23/91
Bell Communications Research, Piscataway, NJ 08854.	8/27/91
Georgia Pacific Corp., Atlanta, GA 30303.	9/04/91
Olivetti Systems and Networks, Ivrea 10015, Italy.	9/06/91
OGAWA Laboratory, Tokyo 184, Japan	9/23/91
Veritas Software Corporation, Santa Clara, CA 95404.	10/08/91
Persetel (Pty) Ltd., Houston, TX 77042	10/09/91

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–30557 Filed 12–20–91; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—Smart House, L.P.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Smart House, L.P. has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the identities of additional parties to the Smart House Project ("the Project") and changes in the status of certain participants in the Project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the additional parties to the Project, those which have ceased to be involved in the Project, and those whose relationship to the Project has changed, are given below.

The following parties previously were participating in the venture under initial negotiation and confidentiality agreements or joint confidentiality agreements and now have executed, and are participating under, research and licensing agreements:

Eaton Corporation (Milwaukee, WI)
Dynamac Computer Products, Inc. (Denver, CO)
Plexus Corporation (Neenah, WI)
INNCOM International, Inc. (Old Lyme, CT)
The Watt Stopper, Inc. (Santa Clara, CA)
USPower Climate Control, Inc. (Allentown, PA)
Multiplex Technology, Inc. (Brea, CA)

The following entities, which formerly were participating under research and licensing agreements, no longer are involved in the venture:

Dormont Manufacturing Company (Pittsburgh, PA)
Robertshaw Controls Company (Richmond, VA)

The following additional parties are participating in the venture under initial negotiation and confidentiality agreements or joint confidentiality agreements and are in the process of negotiating research and licensing agreements:

LiteTouch Inc. (Salt Lake City, UT)
The Siemon Company (Watertown, CT)
PDI Corporation (Annapolis, MD)
Home Automation, Inc. (Metairie, LA)
Marine Development Corporation (Richmond, VA)
Universal Electronics Inc. (Peninsula, OH)
Klockner-Moeller Corporation (Franklin, MA)

The following entities, which formerly were participating under initial negotiation and confidentiality agreements or joint confidentiality agreements, no longer are involved in the venture:

Cherokee International, Inc. (Tustin, CA)
Figaro USA, Inc. (Wilmette, IL)
Macurco Inc. (Englewood, CO)
Regal Technologies Ltd. (Englewood, CO)
Leviton Manufacturing Company, Inc. (Little Neck, NY)
Radionics, Inc. (Salinas, CA)
Aritech Corporation (Framingham, MA)
Gilbert Engineering Company, Inc. (Phoenix, AZ)
Sonance—A Division of Dana Innovations (San Clemente, CA)
Transcience (Stamford, CT)
Teletrol Systems, Inc. (Manchester, NH)
Raychem Corporation (Menlo Park, CA)
W.H. Brady Company (Milwaukee, WI)
Telestate International (Plano, TX)
Honeywell Corporation (Minneapolis, MN)
Intelligen Inc. (San Marcos, CA)
AM Communications, Inc. (Quakertown, PA)
Challenger Electrical Corporation (Raleigh, NC)

The following additional parties are participating in the venture under affiliate agreements or similar arrangements:

Simpson Electric Company (Elgin, IL)
Ward Manufacturing, Inc. (Blossburg, PA)
Production Diagnostics, Inc. (Arlington, TX)
RMC Research, Inc. (Union, NJ)

The following parties previously were participating in the venture under initial negotiation and confidentiality agreements and now have executed, and are participating under, affiliate agreements:

Staubli Corporation (Duncan, SC)
M.B. Sturgis, Inc. (Maryland Heights, MI)

The following additional parties are participating as advisors to the venture:

Southern California Gas Company (Los Angeles, CA)
Canadian Automated Buildings Association (Ottawa, Ontario)

No other changes have been made in either the membership or the planned activities of the Project.

On June 14, 1985, the predecessor in interest to Smart House, L.P. filed the original notification pursuant to section 6(a) of the Act. On September 13, 1985, January 9, 1986, April 28, 1986, July 30, 1986, December 16, 1986, April 8, 1987, June 30, 1987, August 25, 1987, December 4, 1987, February 22, 1988, April 5, 1988, October 27, 1988, June 27, 1989, February 26, 1990, August 1, 1990, and January 31, 1991, Smart House, L.P. or its predecessor in interest filed additional written notifications. The Department of Justice published notices in the **Federal Register** in response to these additional notifications on October 10, 1985 (50 FR 41428), on January 28, 1986 (51 FR 3520), on May 16, 1986 (51 FR 18049), on August 28, 1986 (51 FR 30724), on January 15, 1987 (52 FR 1678), on May 8, 1987 (52 FR 17490), July 30, 1987 (52 FR 28494), on September 22, 1987 (52 FR 35596), on January 5, 1988 (53 FR 166), on March 21, 1988 (53 FR 9154), on May 3, 1988 (53 FR 15750), on December 8, 1988 (53 FR 49614), on August 23, 1989 (54 FR 35091), on April 9, 1990 (55 FR 13199), on September 6, 1990 (55 FR 36711), and on March 15, 1991 (56 FR 11273), respectively.

The principal business address of the Smart House Project is 400 Prince George's Center Boulevard, Upper Marlboro, Maryland 20772–8731.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–30556 Filed 12–20–91; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 91–69; Exemption Application No. D–8722, et al.]

Grant of Individual Exemptions; Martens, Ryan and Steadman, M.D.'s P.C. Employees Pension Plan III, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition, the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Martens, Ryan and Steadman, M.D.'s P.C., Employees Pension Plan III (the Plan) Located in New York, New York

[Prohibited Transaction Exemption 91–69; Exemption Application No. D–8722]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed purchase by the Plan of

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certain improved real property (the Property) from Anna M. Ryan (Mrs. Ryan), a disqualified person with respect to the Plan, provided the Plan pays the lesser of $173,900 [1] or the fair market value of the Property at the time of the purchase, less a sales commission which may have otherwise have been paid by Mrs. Ryan in a sale of the Property to an unrelated party.[2]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 2, 1991 at 56 FR 49911/49912.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Data Arts and Sciences, Inc. Pension Plan and Data Arts and Sciences, Inc. Profit-Sharing Plan (together, the Plans) Located in Natick, Massachusetts

[Prohibited Transaction Exemption 91–70; Exemption Application Nos. D–8661 and D–8662]

Exemption

The restrictions of sections 406(a), 406 (b)(1), and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) a loan by the Plans (the Loan) of no more than $190,000 to the Strathmore Realty Trust (Strathmore), a party in interest with respect to the Plans, and (2) the personal guarantees of Strathmore's obligations under the Loan by Bjorn E. Nordemo and John C. Travers, who are parties in interest with respect to the Plans; provided that (a) the Loan does not exceed 25 percent of the Plans' assets at any time, and (b) all terms of the Loan are at least as favorable to the Plans as those which the Plans could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 23, 1991 at 56 FR 54901.

[1] This figure represents the fair market value of the Property determined by an independent qualified appraiser as of July 29, 1991 less a 6% sales commission, which it is represented is the standard real estate brokerage commission for a sale of this type in the State of Connecticut.

[2] Because Dr. Ryan, the husband of Mrs. Ryan, is the only participant in the Plan, there is no jurisdiction under title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under title II of the Act pursuant to section 4975 of the Code.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Lauterbach, Borschow and Company, P.C. Defined Benefit Pension Plan and Trust (the Plan) Located in El Paso, TX

[Prohibited Transaction Exemption 91–71; Exemption Application No. D–8688]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) shall not apply to the proposed extension of credit by the Plan to L and B Realty Company, a disqualified person with respect to the Plan, in connection with the Plan's acquisition of a promissory note from the Resolution Trust Corporation, provided the terms of the transaction are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.[3]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 6, 1991 at 56 FR 56668.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 9th day of December, 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 91–30456 Filed 12–20–91; 8:45 am]

BILLING CODE 4510–29–M

[3] Because Mr. Bernard Lauterbach is the sole participant in the Plan, there is no jurisdiction under title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under title II of the Act pursuant to section 4975 of the Code.

NATIONAL CREDIT UNION ADMINISTRATION

Community Development Revolving Loan Program for Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Notice of application.

SUMMARY: The National Credit Union Administration ("NCUA") will accept applications for participation in the Community Development Revolving Loan Program For Credit Unions through March 31, 1992. Application procedures are set forth in part 705 of NCUA's Rules and Regulations ("Community Development Revolving Loan Program for Credit Unions").

ADDRESSES: Applications to participate in the Program should be submitted to: NCUA, Community Development Revolving Loan Program for Credit Unions, 1776 G Street NW., Washington, DC 20456.

DATES: Applications must be received by March 31, 1992.

FOR FURTHER INFORMATION CONTACT: Ronald N. Lewandowski at the above address or telephone (202) 682–9780.

SUPPLEMENTARY INFORMATION: Part 705 of NCUA's Regulations implements the Community Development Revolving Loan Program for Credit Unions (the "Program"). The purpose of the Program is to make reduced rate loans to both federally and state-chartered credit unions serving low-income communities so that the credit unions may provide needed financial services and help to stimulate the economy in the communities they serve.

This Notice is published pursuant to § 705.9 of NCUA's Regulations stating that NCUA will provide notice in the **Federal Register** when funds in the Program are available for loans, and the time period during which applications for participation in the Program will be accepted. Funds are currently available for loans. Applications for participation in the Program will be accepted through March 31, 1992. Credit unions wishing to participate in the Program should refer to part 705 of NCUA's Regulations for the application procedures and program requirements. Only credit unions currently in existence may apply.

By the National Credit Union Administration Board on December 16, 1991.

Becky Baker,

Secretary, NCUA Board.

[FR Doc. 91–30591 Filed 12–20–91; 8:45 am]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Safety Research; Meeting

The Subcommittee on Safety Research will hold a meeting on January 14, 1992, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, January 14, 1992—8:30 a.m. Until the Conclusion of Business

The Subcommittee will hold a round-table discussion on the scope, nature and approach of a proposed Committee report on the research program of NRC's Office of Nuclear Regulatory Research.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

The Subcommittee may hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding this matter.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 301/492–8558) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: December 16, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91–30574 Filed 12–20–91; 8:45 am]

BILLING CODE 7590–01–M

Request for Comments on the Compatibility of Agreement States Programs With NRC Regulatory Programs

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for Comments of Interested Parties.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) may relinquish its authority to regulate certain materials under the Atomic Energy Act (AEA) to States through an Agreement process. The Commission is reviewing its practices concerning implementation of the requirements in the AEA to assure that the Agreement States' programs are compatible with the NRC's. The Commission has received recommendations from the Agreement States in this regard. The purpose of this notice is to seek comments and recommendations from the full spectrum of interested parties on how the NRC should proceed in implementing this requirement for compatibility to assure an effective regulatory partnership with the Agreement States.

DATE: Comment period expires February 3, 1992. Comments received after this date will be considered if it is practical to do so but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send written comments to Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch. Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 and 4:15 Federal workdays.

FOR FURTHER INFORMATION CONTACT: Cardelia Maupin, State Agreements Program, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–0312.

SUPPLEMENTARY INFORMATION:

Introduction

Section 274 of the Atomic Energy Act was enacted by Congress on September 23, 1959 to recognize the interests of the States in the safe use of atomic energy, to clarify the respective responsibilities of State and Federal Governments, and to provide a mechanism for States to enter into formal agreements with the Atomic Energy Commission (AEC), and later, its successor, the Nuclear Regulatory Commission (NRC), under which the States assume regulatory authority over byproduct, source, and small quantities of special nuclear materials, collectively referred to as agreement materials. The mechanism by which the NRC discontinues and the States assume regulatory authority over agreement materials is an agreement between the Governor of a State and the Commission. Before entering into an Agreement, the Governor is required to certify that the State has a regulatory program that is adequate to protect the public health and safety and compatible with NRC programs. In addition, the Commission must perform an independent evaluation and make a finding that the State's program is adequate from the health and safety standpoint and compatible with Commission's regulatory program.

Background

In considering the issue of "compatibility of Agreement State Programs," [1] it is important to examine and understand the regulatory atmosphere prior to the passage of section 274 of the Atomic Energy Act in 1959. Prior to the enactment of the Atomic Energy Act of 1954, nuclear energy activities in the United States were largely confined to the Federal Government. The Act made it possible for private commercial firms to enter the field for the first time. Because of the hazards associated with nuclear materials, Congress determined that

[1] Background information on the Agreement State Programs and NRC's compatibility policy are available for inspection and copying at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC, telephone (202) 634–3273. Ask to see SECY–91–039 and State Programs-General file, October 31, 1991, ACN—#9111060163.

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these activities should be regulated under a Federal licensing system to protect the health and safety of workers in the nuclear industry and the public. The AEC and later its successor, the NRC, was the Federal agency charged with this responsibility.

Although the protection of the public's health and safety had traditionally been a State responsibility, the Atomic Energy Act of 1954 did not specify a role for the States in nuclear matters. Because the Atomic Energy Act of 1954 was silent in this area, many States developed their own regulatory programs for these materials, which included requirements for registration and inspection. Thus, many States were independently defining their roles in the regulation of nuclear materials. These programs were varied in nature and sometimes conflicted with the Federal regulations. Thus, section 274 of the Atomic Energy Act was enacted by Congress in 1959. Emphasis was placed on the importance of and the need for compatibility between Federal and State nuclear regulatory programs. This was the beginning of Agreement State Programs. Subsection 274d states, in part, that "The Commission shall enter into an agreement under Subsection b of this section with any State if * * * the Commission finds that the State program is in accordance with the requirements of Subsection o and in all other respects compatible with the Commission program for regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement." Further, Subsection q of section 274 states that "the Commission is authorized and directed to cooperate with the States in the formulation of standards for protection against hazards of radition to assure that States and Commission programs for protection against hazards of radiation will be coordinated and compatible."

It is important to realize that NRC's relationship with Agreement States is not one in which NRC's regulatory responsibilities are delegated to the State. Rather, the authority is relinquished to the Agreement States and NRC works in partnership with the States. The NRC's responsibilities for assuring adequacy and compatibility are on a programmatic level. NRC does not have case-by-case concurrence in the States' regulatory actions. However, in conducting periodic reviews of Agreement State programs for adequacy and compatibility, NRC does review licensing and regulatory actions taken by the State as indicators of the program's status. NRC also normally performs compatibility reviews of changes to the State's regulations before they are issued in order to minimize additional rulemaking for the States should NRC have concerns about the changes. The NRC program reviews also consider whether the States have taken timely action to adopt rules which have been designated a matter of compatibility.

Implementation

The term "compatibility" was not defined by Congress in its development of section 274. With no definition of compatibility provided in the Atomic Energy Act, the Commission sought to implement the section 274 Agreement State Programs using the legislative history and the language of the amendment for guidance. Historically, compatibility decisions were made on a case-by-case basis and the agency's compatibility policies and practices developed by accretion. Most of the radiation protection standards for a program are defined in the regulations. Consequently, much of the focus and controversy over compatibility matters involve proposed regulations. In 1984, in order to provide guidance to the staff and to better implement the term "compatibility," NRC's State Programs Office adopted internal written procedures, "Internal Procedures, B. Policy, B.7—Criteria for Compatibility Determinations." In the B.7 internal procedures, State Programs categorized pertinent NRC rules according to the degree of uniformity necessary between NRC and Agreement State requirements. Four categories were established as follows:

Division 1 Rules constitute those provisions of the NRC regulations that States are required to adopt, essentially verbatim, into their regulations. For example, these rules include maximum permissible dose limits, definition of basic radiation terminology, radiation sign and symbols, and legal definitions.

Division 2 Rules are other provisions in NRC rules that the States must address in their regulations because these rules include basic principles of radiation safety and regulatory functions. However, the language does not have to be identical to the NRC rules, provided the underlying principles are the same. The States may adopt more stringent rules than the NRC in this area.

Division 3 Rules are those provisions in NRC regulations which would be appropriate for Agreement States to adopt, but which do not require any degree of uniformity between NRC and Agreement States rules.

Division 4 Rules are certain regulatory functions which are reserved to the NRC pursuant to the Atomic Energy Act and 10 CFR part 150.

Appendix A to these internal procedures contain a "Categorization of NRC Rules by Compatibility Type." These categorizations are decided by the staff and Commission on a case-by-case basis.

Discussion

NRC's responsibility for assuring compatible programs encompasses the entire Agreement State's program, including licensing activities as diverse as medical uses of radiopharmaceuticals, industrial uses of gauges, low-level waste disposal sites, and university research. The compatibility of Agreement State Regulatory Programs with NRC's regulatory programs has been the center of many recent policy discussions. Questions have been raised recently by the Commission [2] and by the Organization of Agreement States (OAS) regarding the issue of compatibility. The Agreement States have been increasingly concerned over the direction of various NRC actions in which provisions of NRC regulations have been translated into requirements for the States. Concern regarding NRC's approach to compatibility was most recently highlighted in the public response to the Commission's Below Regulatory Concern (BRC) policy statement published on July 3, 1990 (55 FR 27522). In light of this and other concerns, the Commission has placed a moratorium on the implementation of the policy statement in order to seek more information from all affected parties on BRC-related issues, including compatibility. NRC's pending reconsideration of the general compatibility issue will not affect the moratorium on the BRC policy statement. That moratorium continues to be in effect.

In November 1990, the OAS approved creation of a Task Force to more thoroughly articulate the concerns of the States regarding compatibility. On March 13, 1991 the OAS provided the Commission a copy of the Task Force report on compatibility.[3] On June 11, 1991 the Commission was briefed by the OAS Task Force on its report. As result of that briefing, the NRC staff was requested to seek the comments of interested parties other than regulatory (e.g. materials users and waste generators) on the general matter of compatibility and the advantages and disadvantages of a uniform national approach to radiation safety matters. The NRC staff was also directed to seek comments on appropriate mechanisms to provide the Agreement States flexibility to address local needs and conditions.

In gathering this information, the Commission is particularly interested in comments in response to the following questions:

1. As noted above, Congress established the Agreement State program in part because of the various and conflicting programs being implemented by States. Do you believe that there should be a uniform national approach to radiation safety matters? Should the scope of uniformity be narrowly focused or comprehensive? Please explain the advantages and disadvantages of views expressed.

2. As indicated in the description of the four Divisions for compatibility decisions on regulations, compatibility can be implemented in a tiered manner, with the ranging from being identical to complete Agreement State Flexibility.

a. Is the tiered approach described in the Divisions a reasonable approach for regulations? For programs as a whole?

b. What areas of Agreement State radiation control and protection should be identical to those of the NRC and why?

c. What areas of Agreement State radiation control and protection should be allowed to be different from those of the NRC and why? Should the differences include: more stringent standards? less stringent standards? more comprehensive requirements? or less comprehensive requirements? Please explain the basis for your views.

3. What mechanisms should the NRC use to allow Agreement States to have flexibility to address local needs or conditions? What factors should the Commission consider in balancing local needs or conditions and interstate or international commerce concerns or other national interests?

4. Should Agreement States be given a greater degree of flexibility in fashioning their own standards for low-level waste disposal, in view of the State's increased responsibility in this area, according to the Low-Level Radioactive Waste Policy Amendments Act of 1985?

5. Provided the issue of compatibility is fully aired in rulemaking notices, is the current comment process sufficient for continuing dialogue with those persons outside the NRC/Agreement State regulatory partnership? If not, what alternative would you suggest and why?

6. Should the NRC develop exemption criteria for an Agreement State that does not adopt a rule deemed a matter of compatibility, as described for NRC's Division 1 and 2 rules, if an Agreement State requests such an exemption? What Factors should be considered in the criteria to assure that the exemption is justified?

Paperwork Reduction Act Statement

This request for comments does not constitute information collection under the exception from the definition of information contained in 5 CFR 1320.7(j)(4) and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501).

Dated at Rockville, Maryland, this 16th day of December , 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91-30577 Filed 12-20-91; 8:45 am]

BILLING CODE 7590-01-M

[2] The staff has prepared a report entitled "Evaluation of Agreement State Compatibility Issues," identified as SECY-91-039 dated February 12, 1991, which discusses, among other topics, different policy factors and program review areas which might be considered in developing a policy on compatibility. For additional background information to assist you in responding to these questions, this report is available in the NRC Public Document Room.

[3] This report and a related letter dated January 24, 1991, are available in the NRC Public Document Room. Single copies are available upon request. They may be obtained by writing to Cardelia Maupin, State Agreements Program, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555 or by telephoning (301) 504-3112.

[DOCKET No. 50-322]

Long Island Lighting Co.; Consideration of Issuance of an Order Authorizing Decommissioning a Facility and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an order to Facility Operating License No. NPF-82, issued to Long Island Lighting Company (LILCO, the licensee), for the Shoreham Nuclear Power Station, Unit 1 (SNPS) located in Suffolk County, New York. The order would involve approval of the SNPS Decommissioning plan.

On June 28, 1989, LILCO, the owner of SNPS, entered into an agreement with the State of New York. This settlement agreement between LILCO and New York State specifies that LILCO will transfer ownership of SNPS to Long Island Power Authority (LIPA), an entity of New York State. LIPA will decommission SNPS. All spent fuel has been transferred from the reactor to the spent fuel pool and License No. NPF-82 has been amended to possess-but-not-operate status. This Order would allow the immediate dismantlement of the reactor pressure vessel and internals, contaminated systems, and plant structures (DECON). LIPA further intends to remove all radioactive waste generated during decommissioning of SNPS offsite and return the facility to unrestricted use. With respect to fuel disposition, LIPA has proposed two fuel disposal options. The first and preferred option is to ship the fuel to another utility for use (Nine Mile Point, Unit 2), and the second option is to ship the fuel for reprocessing in Europe in accordance with International Atomic Energy Agency regulations. Therefore, fuel disposal is not considered part of the decommissioning actions at SNPS.

The Plan also analyzes potential accidents at the facility and the controls established for radiation protection and the prevention of the release of radioactivity from the site. A supplement to the SNPS environmental Report submitted with the Decommissioning Plan analyzes the environmental impacts of the DECON deommissioning option.

Before issuance of the proposed Order, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By January 22, 1992, the Licensee may file a request for a hearing with respect to issuance of the order to the subject facility and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555 and at the local public document room, Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786-9697. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing

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Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature or the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the order under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Seymour H. Weiss: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to W. Taylor Reveley, III, Esq., Hunton and Williams, River Front Plaza, East Tower, 951 East Byrd Street, Richmond, VA 23219–4074, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding office or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application dated January 2, 1991, and the Decommissioning Plan dated December 29, 1990 as supplemented on August 26, November 27 and December 6, 1991, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786–9697.

Dated at Rockville, Maryland, this 17th day of December 1991.

For the Nuclear Regulatory Commission.

Stewart W. Brown,

Project Manager, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91–30559 Filed 12–20–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–333]

Power Authority of the State of New York; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License, No. DPR–59, issued to the Power Authority of the State of New York (the licensee), for the operation of the James A. FitzPatrick Nuclear Power Plant in Oswego County, New York.

Identification of Proposed Action

The amendment would consist of changes to the Technical Specifications (TS) that would authorize an increase to the storage capacity of the spent fuel pool from 2244 fuel assemblies to 2797 fuel assemblies.

The amendment to the TS is responsive to the licensee's application dated May 31, 1990, as supplemented October 31, 1990, December 5, 1990, June 26, 1991, July 12, 1991, July 16, 1991, and September 19, 1991. The Commission's staff has prepared an Environmental Assessment of the Proposed Action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Expansion of the Spent Fuel Pool, Facility Operating License No. DPR–59, Power Authority of the State of New York, James A. FitzPartrick Nuclear Power Plant, Docket No. 50–333," dated December 13, 1991.

Summary of Environmental Assessment

The "Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel" (NUREG–0575), Volumes 1–3, concluded that the environmental impact of interim storage of spent fuel was negligible and the cost of the various alternatives reflects the advantage of continued generation of nuclear power with the accompanying apart fuel storage. Because of the differences in design, the FGEIS recommended evaluating spent fuel pool expansions on a case-by-case basis.

For the James A. FitzPatrick Nuclear Power Plant, the expansion of the storage capacity of the spent fuel pool will not create any significant additional radiological effects or non-radiological environmental impacts.

The additional whole body dose that might be received by an individual at the site boundary is well within regulatory limits and is not significant. The additional whole body dose that might be received by an individual at the site boundary is well within regulatory limits and is not significant. The occupational radiation dose for the proposed operation of the expanded spent fuel pool is estimated to be less than three percent of the total annual occupational radiation exposure for this facility.

The only non-radiological impact affected by the spent fuel pool expansion is the waste heat rejected. The increase in total plant waste heat is insignificant. There is no significant environmental impact attributed to the waste heat from the plant due to the spent fuel poorly expansion.

Finding of no Significant Impact

The staff has reviewed the proposed spent fuel pool expansion to the facility relative to the requirements set forth in 10 CFR part 51. Based on this assessment, the staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that the issuance of the proposed amendment to the license will have no significant impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, no environmental impact statement needs to be prepared for this action. For further details with respect to this action, see (1) the application for amendment to the Technical Specifications dated May 31, 1990, as supplemented October 31, 1990, December 5, 1990, Jnne 26, 1991, July 12, 1991, July 16, 1991, and September 19, 1991, (2) the FGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG–0575), the Final Environmental Statement for James A. FitzPatrick dated March 1973 and (4) the Environmental Assessment dated.

These documents are available for public inspection at the Commission Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York.

Dated at Rockville, Maryland, this 13th day of December 1991.

For the Nuclear Regulatory Commission.

Francis J. Williams Jr.,

Acting Director, Project Directorate I–I, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–30560 Filed 12–20–91; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

Merrifield Facility; Cancellation of Commission Visit

December 17, 1991.

Notice is hereby given that the Postal Rate Commission staff visit to the Merrified, Virginia, post office scheduled for December 18, 1991, appearing in the **Federal Register** of December 13, 1991, at page 65105 (FR Doc. 91–29833), has been postponed indefinitely.

Charles L. Clapp,

Secretary.

[FR Doc. 91–30578 Filed 12–20–91; 8:45 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer—Kenneth Fogash (202) 272–2142.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20549.

New

Small Business Information Interviews, File No. 270–362

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted for OMB approval a request to interview up to 150 persons or entities concerning obstacles to capital raising by small businesses and the application of the Commission's rules to small businesses. These interviews are necessary to gain a greater understanding and appreciation of the burden that the Commission's registration and periodic reporting requirements have on capital raising by small businesses. Each interview is estimated to require one burden hour.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 10, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–30505 Filed 12–20–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30084; File No. SR–NASD–91–56]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Payment of NASDAQ Entry Fees With Listing Application

December 16, 1991.

The National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted on October 28, 1991, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] The proposal amends Part IV of Schedule D to the NASD By-Laws [3] to require companies which apply for listing on the NASDAQ Stock Market to pay all entry fees at the time of application for inclusion in the system.

Notice of the proposed rule change together with the language of the proposal was provided by the issuance of a Commission release (Securities Exchange Act Release No. 29916, November 7, 1991) and by publication in the **Federal Register** (56 FR 57912, November 14, 1991). No comments were received with respect to the proposed rule change.

The NASD currently collects fees from applicants for inclusion in the NASDAQ Stock Market in two steps: first, the $1,000 non-refundable application processing fee; and second, the entry fee, which is collected on or after the company's entry into the system. The NASD has determined that collecting the processing and entry fee at the time an application is submitted would allow insurers entering the NASDAQ Stock

[1] 15 U.S.C. 78s(b)(1) (1988.

[2] 17 CFR 240.19b–4 (1990).

[3] NASD Securities Dealers Manual, Schedule D to the By-Laws, Part IV, ¶¶ A&C, CCH ¶¶ 1614 and 1616.

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Market through a public offering to incorporate the entry fee into the syndicate expenses of the offering. The New York and American Stock Exchanges currently employ a similar process for applicant companies.[4] The rule proposal also adds new subsections to Sections A and C to provide that if an application is withdrawn or not approved, the entry fee, except for the non-refundable processing fee, will be refunded.[5] The Commission agrees with the NASD that collecting the processing and entry fees at the time an application is submitted would reduce its administrative burden and avoid the delisting of companies which enter the system but subsequently fail to pay the entry fee.

Section 15A(b)(5)[6] of the Act requires, in part, that the rules of the NASD provide for the equitable allocation of dues, fees, and other charges among issuers and other persons using any facility or system which the Association operates or controls. The Commission believes that the joining of the application and listing fee at the time an issuer applies for inclusion in the NASDAQ system is consistent with the requirements of section 15A(b)(5). Furthermore, because an issuer will be refunded its listing fee if it is not included in the system, the Commission believes that the proposal is consistent with section 15A(b)(9) of the Act, which requires that the rules of the Association not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change, SR–NASD–91–56, be, and hereby is, approved.

[4] See American Stock Exchange Guide, Volume 2, Listing Standards, Policies and Requirements, Section 340, CCH ¶ 10,040; New York Stock Exchange Listed Company Manual, Listing Fees Section 802.

[5] The rule proposal also amends sections B and D of part IV relating to annual fees to conform the language of those sections to that in sections A and C as proposed. Specifically, the NASD is clarifying that it is referring to "classes of securities" in its fee structure, as opposed to "a security." The instant rule proposal does not change the annual fees in said sections B and D.

[6] 15 U.S.C. 78*o*–3 (1988).

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–30568 Filed 12–20–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30082; File No. SR–NASD–91–46]

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Appointment of Executive Representatives

December 16, 1991.

On August 23, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted to the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder.[2] The proposal amends article III, section 3 of the NASD By-Laws[3] regarding the appointment by member firms of "executive representatives" to the NASD.[4] Article III, section 3 of the NASD By-Laws requires member firms to appoint one executive representative who is responsible for voting and acting for the member in all affairs of the NASD. As amended, section 3 will require that only persons of authority in a member firm who are members of the firm's senior management and registered principals may be designated as the executive representative to the NASD.

Notice of the proposed rule change, as amended, together with its terms of substance was provided by the issuance of a Commission release (Securities Exchange Act Release No. 29906, November 6, 1991) and by publication in the **Federal Register** (56 FR 57713, November 13, 1991). No comments were received on the proposal. This order approves the proposed rule change.

The current qualification requirements for executive representatives are both broad and optional, and in the past according the NASD, have led to the designation or persons who have limited authority in their firms. Since all important communications between the NASD and its members firms are directed to executive representatives, who are eligible to cast votes for their respective firms, the NASD is concerned that important matters may not be directed to the appropriate person at each firm.

In order to address this concern, the NASD proposal will amend article III, section 3 of the By-Laws to require that only persons who are members of the senior management of the member firm and registered principals may be designated as the executive representative to the NASD. Moreover, the word "preferably" is to be deleted with the result that compliance with the provision will become mandatory.

In addition, the executive representative designated by a member firm is currently identified as the firm's "contact person" in the Form BD and in the Central Registration Depository ("CRD"). In order to distinguish between the role of the executive representative and the member's contact person, who may be different from the executive representative, the NASD will maintain an executive representative list separately from the firm contact list in the CRD. This additional administrative procedure will help assure that the executive representative will receive all important NASD communications and that routine CRD notices will be directed to the appropriate person(s) at the member firm. Further, the NASD's Notice to Members announcing the Commission's approval of the instant rule change will include an executive representative form to be completed by all members in order to designate their executive representative. The NASD will request that the executive representative form be filed with the Secretary's Office of the NASD prior to the date that the rule change becomes effective. As requested by the NASD, the rule change will become effective 120 days after Commission approval in order to provide time for the filing of the executive representative form.

Prior to filing the proposed amendment with the Commission, the NASD published the proposal for member comment in Notice to Members 91–9 (February 1991). Two commentators, both affiliated with insurance company members, were critical of the proposal, noting that in their companies, persons other than senior management were most qualified to handle the executive representative's duties. In its filing with the Commission, the NASD stated that it was aware that where the entire insurance company is a member, there may be circumstances where the most appropriate person to be designated "executive representative" is in the middle management of the company but is acting as senior management of the company's securities operations. The NASD believes it is an appropriate interpretation of the proposed rule that, upon review, the NASD may permit an insurance company member to appoint as executive representative the most appropriate employee, registered as a principal, who is in an equivalent position to senior management in charge of the insurance company's securities operations. The NASD has, therefore, determined to include in the Notice to Members announcing approval of this rule change the clarification that insurance company members may request advice from the NASD's Membership and Qualifications Department regarding the applicability of this rule to their particular circumstances.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular the requirements of section 15A(b)(4) of the Act[5] which requires that the "association assure a fair representation of its members in the selection of its directors and administration of its affairs * * *." The Commission believes that the NASD has responded adequately to the initial comments of its insurance company affiliate members and that the proposed amendment will help ensure that all NASD member firms continue to receive important communications from the Association.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–30504 Filed 12–20–91; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] NASD Securities Dealers Manual, By-Laws, CCH, ¶ 1133.

[4] The NASD also filed amendment No. 1 to the proposed rule change on September 27, 1991 and amendment No. 2 on October 7, 1991. Amendment No. 1, made at the request of the Commission staff, clarifies the NASD's interpretation of the proposed rule change as it may, in certain circumstances, apply to insurance company members. Amendment No. 2 provides the results of the NASD membership vote on the proposed rule (1,923 in favor, 177 against, 12 not voting, and 15 unsigned).

[5] 15 U.S.C. 78*o*–3(b)(4) (1988).

[6] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–30086; File No. SR–NYSE–90–40]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Rules 116.40, 123A.43 and 13 Regarding Procedures for Handling Market-on-Close Orders on Expirations Fridays

December 17, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 7, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.

Notice of the proposed rule change was first provided in Securities Exchange Act Release No. 28452 (September 19, 1990), 55 FR 38342 (September 26, 1990). The Commission received three comment letters on the proposal.[1] Because a substantial period of time has elapsed since the original publication of this notice in the **Federal Register**, the Commission is re-publishing this notice to solicit any additional comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks to modify current NYSE procedures for handling and executing market-on-close ("MOC") orders[2] on expiration Fridays[3] as provided in Exchange Rule 116.40 by allowing for partial executions of MOC orders with the approval of a Floor Governor when significant imbalances occur. The proposal would also amend NYSE Rules 123A.43 and 13 to conform the language of these rules with the proposed amendments to NYSE Rule 116.40.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change to NYSE Rules 116.40, 123A.43 and 13 is to allow for partial executions of MOC orders where significant imbalances exist which can contribute to, or exacerbate, excess market volatility at the close on expiration Fridays.[4] Currently NYSE Rule 116.40 requires specialists to execute MOC orders in their entirety unless trading in the stock has been halted,[5] or the order contains a restriction that cannot be met, such as the instruction that the order be executed on a "minus" tick, which renders the order non-executable if the closing transaction is on a "plus" tick.[6]

[1] *See* letters to Jonathan G. Katz, Secretary, SEC, from Dexter D. Earle, Partner, Goldman, Sachs & Co., dated October 18, 1990; R. Sheldon Johnson, Managing Director, Morgan Stanley & Co., Inc., dated October 25, 1990; and Michael Schwartz, Chairman, Committee on Options Proposals, dated November 14, 1990.

[2] Pursuant to current NYSE Rule 13, an MOC order is defined as a market order which is to be executed in its entirety at the closing price, on the Exchange, of the stock named in the order, and if not so executed, is to be treated as cancelled.

[3] "Expiration Friday" is the one Friday per month on which stock index futures, stock index options and options on stock index futures (collectively, "derivative instruments") expire.

[4] The current procedures for handling and executing MOC orders on monthly expiration Fridays originally were approved by the Commission for a one year pilot program beginning in November, 1988. The pilot program subsequently has been extended through October 31, 1992. [See Securities Exchange Act Release Nos. 26293 (November 17, 1988), 53 FR 47599 and 26408 (December 29, 1988), 54 FR 343 (approving File No. SR-NYSE–88–37); 27448 (November 16, 1989), 54 FR 48343 (noticing and granting accelerated approval to File No. SR-NYSE–89–38); 28564 (October 22, 1990), 55 FR 43427 (noticing and granting accelerated approval to File No. SR-NYSE–90–49); and 29971 (October 28, 1991), 56 FR 56434 (noticing and granting accelerated approval to File No. SR-NYSE–91–31).] The expiration Friday procedures apply to 52 pilot stocks on a list consisting of the 50 highest-weighted Standard & Poor's ("S&P") 500 index stocks, based on market values, and any of the 20 Major Market Index ("MMI") stocks not among the 50 highest-weighted stocks.

[5] For example, trading may be halted to allow for the dissemination of material information about a security (a regulatory, or news pending, trading halt) or because of a sudden influx of orders for a security (an order imbalance trading halt). Trading also may be halted when the Dow Jones Industrial Average [a service mark of Dow Jones & Company, Inc.] ("DJIA") reaches a value 250 or more points below its closing value on the previous trading day. See NYSE Rule 80B.

[6] A "minus" tick (or downtick) refers to a sale price lower than the last "regular way" sale of the security. A "plus" tick (or uptick) is the reverse.

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The Exchange is concerned that imbalances of MOC orders on expiration Fridays which must be executed (unless trading is halted or a tick condition cannot be met) may result in significant price swings at the close, which add to investor concerns about excess market volatility and the orderliness of the Exchange market.

On expiration Friday, July 20, 1990, cancellations or reductions of MOC orders entered prior to 3 p.m., and the entry in large size of offsetting MOC orders, reversed previously published buy-side imbalances in many of the 52 pilot stocks, placing significant selling pressure on these stocks, without a corresponding opportunity to attract contra-side buying interest. The resulting sharp decline in the DJIA (35 points during the last hour of trading) adds to investor perceptions that the markets have become unduly volatile, particularly on expiration days.[7]

Under the proposed rule change, the specialist would be permitted to give partial execution to the MOC orders he is holding where the depth of the contra side interest is not sufficient for all such orders to be executed in their entirety. The specialist would be permitted, with the prior approval of a Floor Governor, to give partial executions of MOC orders by assigning 100 shares in turn to each MOC order on the imbalance side of the market up to the total number of shares of the imbalance to be filled. Where the number of shares to be executed against the imbalance is not sufficient to permit the assignment of 100 shares to each MOC order on the imbalance side, the specialist would assign 100 shares to such orders based on their order of receipt. The unexecuted portion of any MOC order will be deemed to be canceled. The proposed amendments would be applicable to MOC orders only on expiration Fridays.[8]

While the proposed rule change can be expected to help minimize excess market volatility on the close, the Exchange continues to believe that the settlement of derivative index products based on the opening price on the Exchange provides a more orderly means of ensuring that an appropriate equilibrium is reached as to buying and selling interest. Exchange opening procedures provide for dissemination of price indications where a substantial price change is anticipated. These procedures allow for a minimum of 15 minutes between a first indication and a stock's opening, with re-indications as appropriate, and ensure that a sudden influx of orders on one side of the market will not have an immediate, sudden effect on a stock's price, as may occur during the compressed time period at the close of the trading day on expiration Friday.

At the present time there are a total of six derivative instrument products whose settlement is based on the NYSE opening price: one version of the Chicago Board Options Exchange's ("CBOE") S&P 500 option contract ("NSX"); the Chicago Mercantile Exchange's ("CME") S&P 500 index futures contract and the options on that index future contract (except as noted below); and three contracts traded on the New York Futures Exchange related to the NYSE Composite Index. The following derivative instruments base their settlement value on the closing NYSE price on expiration Fridays: one version of the CBOE S&P 500 options contract ("SPX") and the S&P 100 options contract ("OEX"); the CME's options on the S&P 500 futures contract (non-quarterly); the American Stock Exchange's XMI option contract and the options contract on its Institutional Index ("XII"); the CBOT MMI index futures contract and options thereon; the Kansas City Board of Trade Value Line futures contract; the Philadelphia Stock Exchange's options contract on the Value Line Index, options contract on the Utility Index, options contract on Over-the-Counter ("OTC") Stock Index ("XOC"), and the Philadelphia Board of Trade's futures contract on the XOC (inactive).

The Exchange's opening procedures have proven to be very effective in minimizing any excess volatility that may be associated with the expiration of those derivative index products whose settlement value is based on the NYSE opening price. The Exchange is continuing to urge that the settlement value of all derivative index products be based on the NYSE opening price.

2. Statutory Basis

The basis under the Act for this proposed rule change is section 6(b)(5) which requires that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-90-40 and should be submitted by January 13, 1992.

[7] The Commission notes that there have been several expirations since the July 1990 expiration which have experienced volatility at the close (*e.g.*, the October 1990 expiration Friday).

[8] The auxiliary closing procedures on Expiration Fridays for the pilot stocks are described in detail in an Information Memo distributed to the NYSE membership each month. Generally, the current procedures preclude (1) entry of any MOC orders relating to the liquidation of any positions that relate to a trading strategy involving any derivative instrument after 3:00 p.m. and (2) entry of other MOC orders after the imbalance publication unless they offset the imbalance.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-30569 Filed 12-20-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30087; File No. SR-PSE-91-48]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by Pacific Stock Exchange, Inc., Relating to New Listing Criteria—Rule 2.3(t)

December 17, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 11, 1991, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, and II below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 3.2 to provide listing requirements to accommodate securities not otherwise covered under existing PSE Rules.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[9] 17 CFR 200.30-3(a)(12) (1990).

[1] The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

[2] The proposed amendments to Rule 3.2 will be codified as Rule 3.2(t).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

(a) *Listing Guidelines.* During the past several years, the Exchange has added provisions to its listing criteria to accommodate securities that could not be readily categorized under the Exchange's traditional listing requirements for common and preferred stocks, bonds, and warrants. For example, the Exchange has recently adopted specific requirements covering foreign currency and index warrants.[3]

Today, more so than at any time in the past, issuers and underwriters are proposing to list new types of securities. These securities may contain features borrowed from more than one category of currently listed securities (*e.g.* fixed face amount debt securities incorporating an opportunity for equity appreciation and fixed amount payment certificates based on the price level of the issuer's equity securities). Such securities are often designed to achieve more than one objective in connection with a specific corporate transaction, and, on occasion, have involved assets or categories of what traditionally may not have been segregated or used as collateral for a particular issue. As a consequence, such securities may take a variety of forms depending upon the particular objective(s) being sought, as well as general market conditions.

The Exchange believes it is necessary to provide added flexibility in its listing requirements to accommodate such multi-faceted and/or multi-purpose issues without having to continually add new provisions to its listing requirements. The proposed amendments to Rule 3.2 are intended to allow the Exchange added flexibility to consider the listing of new securities on a case-by-case basis, in light of the suitability of the issue for auction market trading. However, the proposed new Rule 3.2 requirements are not intended to accommodate the listing of securities that raise significant new regulatory issues.[4]

The numerical listing criteria in proposed Rule 3.2(t) are intended to accommodate major issuers with assets of at least $100 million and stockholders' equity of at least $10 million. These requirements substantially exceed Rule 3.2 standard listing requirements.[5] Such issuers generally will be expected to meet an earnings requirement equal to pre-tax income of at least $750,000 in the last fiscal year or in two of the three last fiscal years.[6] Issuers not meeting these requirements generally will be required to have assets of at least $200 million and stockholders' equity of $10 million, or, alternatively, assets of at least $100 million and stockholders' equity of at least $20 million.

The public distribution requirements in proposed Rule 3.2(t) shall be 1,000,000 trading units and at least 400 beneficial holders, except that when trading is expected to occur in much larger than average trading units (*e.g.*, $1,000 principal amount), a minimum of 100 holders will be expected. The aggregate market value of issues listed under proposed Rule 3.2(t) will be expected to be at least $20 million.

Where such an issue contains cash settlement provisions, settlement will be required to be made in U.S. dollars. And, where the instrument contains mandatory redemption provisions, the redemption price must be at least $3 per unit.

The Exchange will apply the requirements for continued listing contained in Rule 3.5 to proposed Rule 3.2(t) securities as appropriate, in light of the specific nature of the securities (*e.g.*, debt/equity characteristics).

(b) *Membership Circular.* Securities listed for trading under proposed Rule 3.2(t) are likely to possess characteristics common to both debt, equity, and derivative instruments. For this reason, prior to trading securities admitted to listing under Rule 3.2(t), the

[3] See, *e.g.*, Securities Exchange Act Release No. 28034 (May 22, 1990), 55 FR 22001 (order approving PSE proposal to list and trade index warrants based on established market indices, both domestic and foreign).

[4] The Commission notes that the proposed listing of securities that raise significant new regulatory issues would require a separate filing with the Commission pursuant to Rule 19b-4 under the Act. For example, securities that have raised significant new regulatory issues in the past include Americus Trusts [*See* Securities Exchange Act Release No. 21863 (March 18, 1985), 50 FR 11972 (March 28, 1985) (file No. SR-Amex-84-35)]; currency warrants [See Securities Exchange Act Release No. 24555 (June 5, 1987), 52 FR 22570 (June 12, 1987) (File No. SR-Amex-87015) (proposal to list warrants on foreign currencies)]; index warrants [*See* Securities Exchange Act Release No. 26152 (October 3, 1988), 53 FR 39832 (October 12, 1988) (order approving File No. SR-Amex-87-27) (listing guidelines for foreign currency and index warrants) and Securities Exchange Act Release No. 27565 (December 22, 1989), 55 FR 376 (January 4, 1990) (File No. SR-Amex-89-22) (proposal to list index warrants based on the Nikkei Stock Average)]; and unbundled stock units ("USUs") [See File Nos. SR-NYSE-88-39 and 88-40 (proposals to list USUs and constituent securities, subsequently withdrawn by the NYSE)].

[5] For example, the standard listing requirements of Rule 3.2 currently require, among other things, total net tangible assets of $1 million.

[6] See letter from David P. Semak, Vice President, Regulation, PSE, to Laurie E. Petrell, Division of Market Regulation, SEC, dated December 13, 1991.

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Exchange will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the membership providing guidance regarding member firm compliance responsibilities when handling transactions in such securities. In determining whether such a membership circular is necessary, the Exchange will consider such characteristics of the issue as: Unit size and term; cash-settlement; exercise or call provisions; characteristics that may affect payment of dividends and/or appreciation potential; whether the securities are primarily of retail or institutional interest; and such other features of the issue that might entail special risks not normally associated with securities currently listed on the Exchange.

(2) Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld form the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-91-48 and should be submitted by January 13, 1992.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the PSE's proposal to amend Rule 3.2 provide listing requirements to accommodate certain new types of securities which cannot be readily categorized under the PSE's existing listing requirements is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) of the Act.[7] Specifically, the Commission believes the proposal is consistent with the section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers, or dealers. In this regard, the Commission believes that the proposed guidelines applicable to the listing of new, innovative securities will provide the flexibility desired by the PSE, while helping to ensure that only the more financially substantial companies are eligible to have their new products listed on the Exchange. Proposed Rule 3.2(t), therefore, should provide a more efficient and expedient process for listing new securities, and will protect investors and the public interest by ensuring that the financial products listed on the Exchange have met predetermined financial criteria set forth by the Exchange,[8] an important consideration due to the additional or contingent financial obligations created by these instruments.

In addition, the Commission believes that the portion of proposed Rule 3.2(t) relating to the membership circular addresses the additional regulatory concerns raised by these products. These novel products, by combining features of debt, equity, and securities derivative products, may be more risky and complex than straight stock, bond, or equity warrants. The Commission believes, therefore, that the portion of the proposed rule change requiring the Exchange to evaluate the nature and complexity of each issue in order to determine whether to distribute a membership circular indicating member firm compliance responsibilities will provide the PSE with the ability to address, in a flexible manner, any potential sales practice problems and questions that may arise in connection with these new issues. Moreover, the Commission believes that the distribution of this circular should help to ensure that only customers with an understanding of the specific risks attendant to the trading of particular securities products trade these products on their brokers' recommendations. In this regard, the membership circular requirement will help to ensure that investors and the public interest are protected when the new products are traded on the Exchange.

Finally, the Commission believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act because it relates only to those securities which are similar to products currently listed for trading on the Exchange. If a new product raises novel or significant regulatory issues, the PSE must file a proposed rule change so that the Commission would have an opportunity to review the regulatory structure for the product.[9]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The Commission has approved substantially similar proposed rule changes submitted by the American Stock Exchange, Inc. ("Amex"), the New York Stock Exchange, Inc. ("NYSE"), the Cincinnati Stock Exchange, Inc. ("CSE"), and the Chicago Board Options Exchange, Inc. ("CBOE"), all of which adopted listing criteria for hybrid securities.[10] In addition, the Commission recently approved proposals submitted by the PSE, the NYSE, and the Midwest Stock Exchange ("MSE") to adopt listing criteria to trade CVRs, which are akin to the type of hybrid products the PSE proposal would include.[11] The Commission did not receive any comments on those proposals, or on the Amex, NYSE, CSE or CBOE hybrid products filings. In light of the lack of new regulatory issues raised by the PSE proposal, the Commission believes it is in the public interest to approve it on an accelerated basis so that the PSE will be able to compete with the other exchanges for hybrid securities.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [12] that the proposed rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-30570 Filed 12-20-91; 8:45 am]

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[7] 15 U.S.C. 78f (1988).

[8] This standard, however, would not preclude the PSE from submitting specific standards for other companies to have similar securities traded on the Exchange.

[9] See note 4, *supra.*

[10] See Securities Exchange Act Release Nos. 27753 (March 1, 1990), 55 FR 8624 (March 8, 1990) (order approving File No. SR-Amex-89-29); 28217 (July 18, 1990), 55 FR 30056 (order granting accelerated approval to File No. SR-NYSE-90-30); 28528 (October 11, 1990), 55 FR 42112 (order approving File No. SR-CSE-90-11); and 28662 (November 30, 1990), 55 FR 50428 (order approving File No. SR-CBOE-90-29).

[11] See Securities Exchange Act Release Nos. 28558 (October 22, 1990), 55 FR 43238 (order approving File No. SR-PSE-90-34); 28072 (May 30, 1990), 55 FR 23166 (order approving the NYSE proposal to list CVRs on the Exchange); and 28143 (June 25, 1990), 55 FR 27317 (granting accelerated approval to the MSE's proposal to list CVRs).

[12] 15 U.S.C. 78s(b)(2) (1988).

[Investment Company Act Rel. No. 18443; International Series Rel. No. 353; 812-7833]

G.T. Global Growth Series, et al.; Notice of Application

December 16, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: G.T. Global Growth Series, G.T. Investment Funds, Inc. and G.T. Investment Portfolios, Inc., and any existing or future series thereof (the "Funds"); G.T. Capital Management, Inc. ("G.T. Capital"); G.T. Global Financial Services, Inc. ("G.T. Global"); and any registered investment company or series thereof which in the future are advised by G.T. Capital or any of its affiliates or for which G.T. Global or any of its affiliates would serve as principal underwriter.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3) and rule 13d3-1.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting them to invest in equity and convertible debt securities of foreign issuers that, in each of their most recent fiscal years, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter or investment adviser ("foreign securities companies") in accordance with the conditions of the proposed amendments to Rule 12d3-1.

FILING DATE: The application was filed on December 9, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 10, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 50 California Street, San Francisco, CA 94111.

FOR FURTHER INFORMATION CONTACT: C. David Messman, Senior Attorney, at (202) 272-2813, or Barry D. Miller, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are each open-end management investment companies registered under the Act. G.T. Capital serves as investment manager and administrator to each of the Funds and G.T. Global serves as distributor for each of the Funds.

2. Applicants wish to invest in the equity and convertible debt securities of foreign issuers that, in each of their most recent fiscal years, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser.

3. Applicants seek relief from section 12(d)(3) of the Act and rule 12d3-1 thereunder to invest in the equity securities of foreign securities companies to the extent permitted in the proposed amendments to Rule 12d3-1. See Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

Applicants' Legal Conclusions

1. Section 12(d)(3) of the Act prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3-1 under the Act provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities-related activities, provided the acquisitions satisfy certain conditions set forth in the rule.

2. Subparagraph (b)(4) of Rule 12d3-1 provides that "any equity security of the issuer * * * (must be) a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." While "margin security" status is generally available only to securities that are traded principally in United States markets, the Board of the Governors of the Federal Reserve System amended Regulation T in 1990 to include "foreign margin stock[s]." However, because the requirements for inclusion on the Board's "List of Foreign Margin Stocks" are generally more restrictive than the requirements from inclusion on its "List of Marginable OTC Stocks," securities issued by many foreign securities companies are not "foreign margin stocks," and thus are not "margin securities" under Regulation T. See 12 CFR § 220.2(i) and (q)(6). Accordingly, applicants seek an exemption from the "margin security" requirements of rule 12d3-1.

3. Proposed amended rule 12d3-1 provides that the "margin security" requirement would be excused if the acquiring company purchases the equity securities of foreign securities companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

Applicants' Condition

Applicants agree to the following condition in connection with the relief requested: Applicants will comply with the provisions of the proposed amendments by rule 12d3-1 (Investment Company Act Release No. 17096 (Aug. 3, 1989); 54 FR 33027 (Aug. 11, 1989)) and as such amendments may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-30561 Filed 12-20-91; 8:45 am]

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[Rel. No. IC-18446; 811-4224]

Oppenheimer Ninety-Ten Fund; Notice of Application

December 17, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Oppenheimer Ninety-Ten Fund ("Ninety-Ten").

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 18, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 13, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Two World Trade Center, New York, NY 10048-0203.

FOR FURTHER INFORMATION CONTACT: Eva Marie Carney, Senior Attorney, at (202) 504-2274, or Max Berueffy, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified investment company organized as a Massachusetts business trust. On February 8, 1985, applicant filed a notification of registration on Form N-8A. On that same date, applicant filed a registration statement on Form N-1A pursuant to section 8(b) of the Act. On November 20, 1985, the registration statement was declared effective and the public sale of applicant's shares commenced.

2. On March 7, 1991, the board of trustees of applicant approved an agreement and plan of reorganization (the "Plan"), whereby all of the assets of Ninety-Ten (other than a cash reserve needed to pay applicant's liabilities and liquidation expenses) would be exchanged for shares of the Oppenheimer Asset Allocation Fund (File No. 811-3864) ("Asset Allocation"), and these shares would be distributed to applicant's shareholders. In approving the Plan, applicant's trustees, including the disinterested trustees, determined that applicant's reorganization would be in the best interests of its shareholders and would not dilute their interests. The trustees considered that combing applicant with Asset Allocation could produce economies of scale which may be reflected in reduced cost per share, resulting in net benefits to applicant's shareholders.

3. The Plan was submitted to applicant's shareholders for approval; on June 20, 1991, a majority of the shareholders approved the Plan at a special meeting of shareholders.

4. Under the Plan, the reorganization of applicant was contingent on the approval by shareholders of Oppenheimer Premium Income Fund ("Premium Income") of a substantially similar plan pursuant to which Premium Income's assets would also be acquired by Asset Allocation. On June 20, 1991, a majority of the shareholders of Premium Income approved their fund's reorganization plan.

5. On June 21, 1991, pursuant to the Plan, applicant transferred substantially all of its assets to Asset Allocation in exchange for shares of Asset Allocation on a *pro rata* basis. This transfer and exchange of assets was based on the relative net asset values of applicant and Asset Allocation.

6. At the close of business on June 20, 1991, immediately preceding the reorganization, applicant had 604,649.410 shares outstanding, with an aggregate net asset value of $6,566,490.09 and a net asset value per share of $10.863513.

7. Expenses incurred in connection with the reorganization, including legal and accounting fees, printing, transfer agency, filing and proxy solicitation costs, totaled $32,257. Applicant assumed $24,650 of these expenses; Asset Allocation assumed the remainder.

8. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no outstanding debts or other liabilities. Applicant is not a party to any litigation or administrative proceeding.

9. Applicant will effect its dissolution with the proper Massachusetts authorities on issuance of an order of deregistration.

10. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 91-30566 Filed 12-20-91, 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18447; 811-2759]

Oppenheimer Premium Income Fund; Notice of Application

December 17, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Oppenheimer Premiums Income Fund ("Premium Income").

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 18, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 13, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Two World Trade Center, New York, NY 10048-0203.

FOR FURTHER INFORMATION CONTACT: Eva Marie Carney, Senior Attorney, at (202) 504-2274, or Max Berueffy, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified investment company initially organized on July 27, 1977 as a Maryland corporation under the name "Oppenheimer Options Fund, Inc." On February 1, 1986, applicant reorganized under its present name as a Massachusetts business trust. On August 11, 1977, applicant filed a notification of registration on Form N-8A. On that same date, applicant filed a registration statement on Form N-1A pursuant to section 8(b) of the Act. On September 28, 1977, the registration statement was declared effective and the public sale of applicant's shares commenced.

2. On March 7, 1991, the board of trustees of applicant approved an agreement and plan of reorganization (the "Plan"), whereby all of the assets of Premium Income (other than a cash reserve needed to pay applicant's liabilities and liquidation expenses) would be exchanged for shares of the Oppenheimer Asset Allocation Fund (File No. 811-3864) ("Asset Allocation"), and these shares would be distributed to applicant's shareholders. In approving the Plan, applicant's trustees, including the disinterested trustees, determined that applicant's reorganization would be in the best interests of the shareholders and would not dilute their interests. The trustees considered that combining applicant with Asset Allocation could produce economies of scale which may be reflected in reduced costs per share, resulting in net benefits to applicant's shareholders.

3. The Plan was submitted to applicant's shareholders for approval; on June 20, 1991, a majority of the shareholders approved the Plan at a special meeting of shareholders.

4. Under the Plan, the reorganization of applicant was contingent on the approval by shareholders of Oppenheimer Ninety-Ten Fund ("Ninety-Ten") of a substantially similar plan pursuant to which Ninety-Ten's assets would also be acquired by Asset Allocation. On June 20, 1991, a majority of the shareholders of Ninety-Ten approved their fund's reorganization plan.

5. On July 12, 1991, pursuant to the Plan, applicant transferred substantially all of its assets to Asset Allocation in exchange for shares of Asset Allocation on a *pro rata* basis. This transfer and exchange of assets was based on the relative net asset values of applicant and Asset Allocation.

6. At the close of business on July 11, 1991, immediately preceding the reorganization, applicant had 8,500,335,480 shares outstanding, with an aggregate net asset value of $156,922,613.91 and a net asset value per share of $18.460755.

7. Expenses incurred in connection with the reorganization, including legal and accounting fees, printing, transfer agency, filing and proxy solicitation costs, totaled $82,629. Applicant assumed $75,022 of these expenses; Asset Allocation assumed the remainder.

8. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no outstanding debts or other liabilities. Applicant is not a party to any litigation or administrative proceeding.

9. Applicant will effect its dissolution with the proper Massachusetts authorities on issuance of an order of deregistration.

10. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 91-30565 Filed 12-20-91, 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18444; 811-3576]

Oppenheimer Regency Fund; Notice of Application

December 17, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Oppenheimer Regency Fund ("Regency").

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 18, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 13, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Two World Trade Center, New York, NY 10048-0203.

FOR FURTHER INFORMATION CONTACT: Eva Marie Carney, Senior Attorney, at (202) 504-2274, or Max Berueffy, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified investment company originally organized on September 2, 1982 as a Maryland corporation under the name "Oppenheimer Regency Fund, Inc." On April 30, 1987, applicant reorganized under its present name as a Massachusetts business trust. On October 5, 1982, applicant filed a notification of registration on Form N-8A. On that same date, applicant filed a registration statement on Form N-1A pursuant to Section 8(b) of the Act. On December 30, 1982, the registration statement was declared effective and the public sale of applicant's shares commenced.

2. On March 7, 1991, the board of trustees of applicant approved an agreement and plan of reorganization (the "Plan"), whereby all of the assets of Regency (other than a cash reserve needed to pay applicant's liabilities and liquidation expenses) would be exchanged for shares of the Oppenheimer Target Fund (Filed No. 811-3105) ("Target"), and these shares would be distributed to applicant's shareholders. In approving the Plan, applicant's trustees, including the disinterested trustees, determined that applicant's reorganization would be in the best interests of its shareholders and would not dilute their interests. The trustees considered that combining applicant with Target could produce

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economies of scale which may be reflected in reduced costs per share, resulting in net benefits to applicant's shareholders.

3. The Plan was submitted to applicant's shareholders for approval; on June 20, 1991, a majority of the shareholders approved the Plan at a special meeting of shareholders.

4. Under the Plan, the reorganization of applicant was contingent on the approval by shareholders of Oppenheimer Directors Fund ("Directors") of a substantially similar plan pursuant to which Directors' assets would also be acquired by Target. On June 20, 1991, a majority of the shareholders of Directors approved their fund's reorganization plan.

5. On June 21, 1991, pursuant to the Plan, applicant transferred substantially all of its assets to Target in exchange for shares of Target on a *pro rata* basis. This transfer and exchange of assets was based on the relative net asset values of applicant and Target.

6. At the close of business on June 20, 1991, immediately preceding the reorganization, applicant had 8,994,820.710 shares outstanding, with an aggregate net asset value of $121,609,975.69 and a net asset value per share of $13,518.861.

7. Expenses incurred in connection with the reorganization, including legal and accounting fees, printing, transfer agency, filing and proxy solicitation costs, totaled $77,532. Applicant assumed $69,925 of these expenses; Target assumed the remainder.

8. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no outstanding debts or other liabilities. Applicant is not a party to any litigation or administrative proceeding.

9. Applicant will effect its dissolution with the proper Massachusetts authorities on issuance of an order of deregistration.

10. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 91-30567 Filed 12-20-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18448; 811-2854]

Oppenheimer Directors Fund; Notice of Application

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Oppenheimer Directors Fund ("Directors").

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 18, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 13, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Two World Trade Center, New York, NY 10048-0203.

FOR FURTHER INFORMATION CONTACT: Eva Marie Carney, Senior Attorney, at (202) 504-2274, or Max Berueffy, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified investment company originally organized on May 23, 1978 as a Maryland corporation under the name "Oppenheimer Directors Fund, Inc." on February 1, 1987, applicant reorganized under its present name as a Massachusetts business trust. On July 31, 1978, applicant filed a notification of registration on Form N-8A. On that same date, applicant filed a registration statement on Form N-1A pursuant to section 8(b) of the Act. On December 28, 1978, the registration statement was declared effective and the public sale of applicant's shares commenced.

2. On March 7, 1991, the board of trustees of applicant approved an agreement and plan of reorganization (the "Plan"), whereby all of the assets of Directors (other than a cash reserve needed to pay applicant's liabilities and liquidation expenses) would be exchanged for shares of the Oppenheimer Target Fund (File No. 811-3109) ("Target"), and these shares would be distributed to applicant's shareholders. In approving the Plan, applicant's trustees, including the disinterested trustees, determined that applicant's reorganization would be in the best interests of its shareholders and would not dilute their interests. The trustees considered that combining applicant with Target could produce economies of scale which may be reflected in reduced costs per share, resulting in net benefits to applicant's shareholders.

3. The Plan was submitted to applicant's shareholders for approval; on June 20, 1991, a majority of the shareholders approved the Plan at a special meeting of shareholders.

4. Under the Plan, the reorganization of applicant was contingent on the approval by shareholders of Oppenheimer Regency Fund ("Regency") of a substantially similar plan pursuant to which Regency's assets would also be acquired by Target. On June 20, 1991, a majority of the shareholders of Regency approved their fund's reorganization plan.

5. On June 21, 1991, pursuant to the Plan, applicant transferred substantially all of its assets to Target in exchange for shares of Target on a *pro rata* basis. This transfer and exchange of assets was based on the relative net asset values of applicant and Target.

6. At the close of business on June 19, 1991, immediately preceding the reorganization, applicant had 5,505,275.640 shares outstanding, with an aggregate net asset value of $110,821,198.87 and a net asset value per share of $20.128166.

7. Expenses incurred in connection with the reorganization, including legal and accounting fees, printing, transfer agency, filing and proxy solicitation costs, totaled $76,496. Applicant assumed $68,889 of these expenses; Target assumed the remainder.

8. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no outstanding debts or other liabilities. Applicant is not a party to any litigation or administrative proceeding.

9. Applicant will effect its dissolution with the proper Massachusetts authorities on issuance of an order or deregistration.

10. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-30563 Filed 12-20-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18441; 811-5158]

Tappan Zee Currency Shares, Inc.; Application for Deregistration

December 16, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Tappan Zee Currency Shares, Inc. (the "Fund").

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on August 2, 1990 and amended on June 24, 1991, July 19, 1991, October 16, 1991 and December 12, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 13, 1992 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for laywers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 575 Fifth Avenue, 17th Floor, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504-2283, or Max Berueffy, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant was organized as a Maryland Corporation and is registered as an open-end non-diversified management investment company under the Act. On May 8, 1987, applicant filed a notification of registration on Form N-8A. On August 6, 1987, applicant filed a registration statement on form N-1A. This registration statement never became effective for the purposes of the Securities Act of 1933, and applicant never made a public offering of its shares.

2. At a meeting held on December 11, 1989, applicant's board of directors approved a plan of liquidation and dissolution. On December 27, 1989, applicant's sole shareholder, an overseas institutional investor, was paid an extraordinary dividend consisting of all of applicant's remaining net investment income and capital gains. On December 28, applicant's sole shareholder redeemed all of its shares and received a final distribution of $28,861,251, that represented the net asset value of the shares minus a redemption fee of $72,801 and liquidation expenses of $2,000.

3. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any liquidation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-30564 Filed 12-20-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18442; 811-5598]

The Whitestone Fund, Inc.; Application for Deregistration

December 16, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Whitestone Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on August 2, 1990 and amended on June 24, 1991, July 19, 1991, October 16, 1991 and December 12, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 13, 1992 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 575 Fifth Avenue, 17th Floor, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504-2283, or Max Berueffy, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant was organized as a Maryland Corporation and is registered as an open-end non-diversified management investment company under the Act. On June 23, 1988, applicant filed a notification of registration on Form N-8A. On September 21, 1988, applicant filed a registration statement on Form N-1A. This registration statement never became effective for the purposes of the Securities Act of 1933, and applicant never made a public offering of its shares.

2. At a meeting held on January 23, 1990, applicant's board of directors approved a plan of liquidation and dissolution. On January 25, 1990, applicant's only shareholders, two overseas institutional investors, were paid an extraordinary dividend consisting of all of applicant's remaining net investment income and capital gains. On February 1, 1990, applicant's

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shareholders redeemed their shares, one receiving $18,388,441.65 and the other $9,574,500.94 for a total of $27,962,942.59. Liquidation expenses of $10,000 were split pro rata between the two shareholders.

3. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-30562 Filed 12-20-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 91-12-25; Docket 47724]

Application of Atlantic Coast Airlines for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Atlantic Coast Airlines fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than December 26, 1991.

ADDRESSES: Objections and answers to objections should be filed in Docket 47724 and addressed to the Documentary Services Division (C-55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P-56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-2340.

Dated: December 16, 1991.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs

[FR Doc. 91-30491 Filed 12-20-91; 8:45 am]

BILLING CODE 4910-26-M

Federal Aviation Administration

[Summary Notice No. PE-91-42]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 12, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR rule 11).

Issued in Washington, DC, on December 16, 1991.

Denise D. Castaldo,

Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 21780
Petitioner: Civil Air Patrol Inc.
Sections of the FAR Affected: 14 CFR 61.118
Description of Relief Sought: To continue to allow the members of the Civil Air Patrol Inc., (CAP) holding private pilot certificates to be reimbursed fuel, oil, and maintenance expenses while serving on official CAP missions.

Docket No.: 22822
Petitioner: T.B.M., Inc.
Sections of the FAR Affected: 14 CFR 91.116 and 91.45
Description of Relief Sought: To renew Exemption No. 5204 from § 91.116 of the Federal Aviation Regulations. This exemption, if granted, would apply to § 91.45. It would continue to permit T.B.M., Inc., and its subsidiary, Butler Aircraft Company, to conduct ferry flights with one engine inoperative on its McDonnell Douglas DC-6/DC-7 aircraft, without obtaining a special flight permit for each flight.

Docket No.: 25053
Petitioner: Crew Pilot Training, Inc.
Sections of the FAR Affected: 14 CFR
Description of Relief Sought: To rescind the restrictions that were levied in the grant of Exemption No. 5011B and grant relief from the 2 hours of pilot flight training stipulated in Condition 6 of Exemption No. 5011B.

Docket No.: 25403
Petitioner: CCAir, Inc.
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378
Description of Relief Sought: To allow CCAir, Inc., to continue to use foreign original equipment manufacturers to perform maintenance services outside the United States on parts and components used on CCAir, Inc.'s British Aerospace Jetstream Model 3101 and Short Brothers model MD 3-60 aircraft, subject to conditions.

Docket No.: 26475
Petitioner: Felts Field Aviation, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought: To consider Denial of Exemption No. 5331 from § 43.3(g) of the Federal Aviation Regulations. This exemption, if granted, would allow appropriately trained crew members and line service personnel employed by Felts Field Aviation, Inc., to change aircraft cabin configurations by removing aircraft passenger seats and replacing them with stretcher racks, oxygen racks, and baby isolettes.

Docket No.: 26686
Petitioner: Evergreen International Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.583(a)(2)
Description of Relief Sought: To authorize Evergreen International Airlines, Inc. to operate their DC-8, DC-9, B-727 and B-747 cargo aircraft while transporting employees of Evergreen International Airlines, Inc., on board the aircraft.

Docket No.: 26662
Petitioner: Aloha Airlines
Sections of the FAR Affected: 14 CFR 121.585 (b)(3) and (d)(6)
Description of Relief Sought: To allow Aloha Airlines to seat passengers in exit row seating who do not understand the English language and who cannot follow oral directions unassisted in the event of an emergency.

Dispositions of Petitions

Docket No.: 19634
Petitioner: Douglas Aircraft Company
Sections of the FAR Affected: 14 CFR 121.310(d)(4)
Description of Relief Sought/ Disposition: To extend indefinitely Exemption No. 3055, as amended, from Section 121.310(d)(4) of the Federal Aviation Regulations. This exemption allows operators of Douglas Model DC-8 series aircraft to operate these aircraft in passenger-carrying operations without a cockpit control device for each emergency light as required by § 121.310(d)(4), when the operator complies with the conditions in the exemption.
GRANT, November 29, 1991, Exemption No. 3055F

Docket No.: 25120
Petitioner: Singapore Airlines
Sections of the FAR Affected: 14 CFR 21.197(C)
Description of Relief Sought/ Disposition: To remove by amendment the N118KD aircraft from the list of aircraft covered under Exemption No. 4792.
GRANT, December 5, 1991, Exemption No. 4792C

Docket No.: 25550
Petitioner: The Department of the Army
Sections of the FAR Affected: 14 CFR 91.169(c) [formerly § 91.83(c)]
Description of Relief Sought/ Disposition: To allow the U.S. Army to select alternate airports in accordance with its own regulations, as opposed to the criteria prescribed by § 91.169(c).
GRANT, November 25, 1991, Exemption No. 5368

Docket No.: 25892
Petitioner: British Aerospace, Inc.
Sections of the FAR Affected: 14 CFR 61.56(b)(1), 61.57 (c) and (d); 61.58(c)(1) and (d); 61.63(d) (2) and (3); 61.67(d)(2); 61.157(d) (1) and (2) and (e) (1) and (2); Appendix A of Part 61; and Appendix H of Part 121
Description of Relief Sought/ Disposition: To extend Exemption No. 5110 from §§ 61.56(b)(1), 61.57 (c) and (d); 61.58(c)(1) and (d); 61.63(d) (2) and (3); 61.67(d)(2); 61.157(d) (1) and (2) and (e) (1) and (2); Appendix A of Part 61; and Appendix H of Part 121 of the Federal Aviation Regulations. The exemption permits British Aerospace, Inc. to use FAA-approved simulators to meet certain training and testing requirements.
GRANT, November 27, 1991, Exemption No. 5110A

Docket No.: 25973
Petitioner: Simulator Training, Inc.
Sections of the FAR Affected: 14 CFR 63.37(b) (1), (2), (3), and (4)
Description of Relief Sought/ Disposition: To permit Simulator Training, Inc. students applicants, for flight engineer certificate with a class rating and who have not received at least 5 hours of flight training in the duties of a flight engineer to substitute training that combines 5 hours of line observation, under the supervision of a qualified flight engineer instructor, time with a line oriented flight training (LOFT) program consisting of two LOFT sessions of 2 hours each, in STI's FAA-approved visual flight simulator.
DENIAL, November 26, 1991, Exemption No. 5369

Docket No.: 26297
Petitioner: Fairchild Aircraft Corporation
Sections of the FAR Affected: 14 CFR 91.531(a)(3)
Description of Relief Sought/ Disposition: To permit FAC's type-rated company pilots to conduct airplane production test flights and experimental test flights in SA-227 commuter category airplanes without a second-in-command.
PARTIAL GRANT, November 25, 1991, Exemption No. 5367

Docket No.: 26618
Petitioner: American Airlines
Sections of the FAR Affected: 14 CFR 121.359(e)
Description of Relief Sought/ Disposition: To permit American Airlines and its pilots to operate 12 McDonnell Douglas Corporation MD 82/83 (MD-82/83) aircraft without the pilots of the aircraft using a boom microphone, below 18,000 feet sea level, that is connected to, and would record on, a cockpit voice recorder that has been installed on those aircraft.
DENIAL, November 25, 1991, Exemption No. 5371

[FR Doc. 91-30533 Filed 12-20-91; 8:45 am]

BILLING CODE 4910-13-M

Gulfport-Biloxi Regional Airport, Mississippi; Notice of Intent To Rule on Application

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Intent to Rule on application to impose and use the revenue from a Passenger Facility Charge (PFC) at the Gulfport-Biloxi Regional Airport, Gulfport, Mississippi.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Gulfport-Biloxi Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and 14 CFR part 58.

On December 16, 1991, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Gulfport-Biloxi Regional Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 4, 1992.

DATES: Comments must be received on or before January 22, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA/Airports District Office, 120 North Hangar Drive, suite B, Jackson, Mississippi 39208-2306.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bruce A. Frallic, Executive Director, of the Gulfport-Biloxi Regional Airport Authority at the following address: Gulfport-Biloxi Regional Airport Authority, Post Office Box 2127, Gulfport, Mississippi 39505.

Comments from air carriers and foreign air carriers may be in the same form as provided to the Gulfport-Biloxi

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Regional Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Elton E. Jay, Principal Engineer, FAA/Airports District Office, 120 North Hangar Drive, suite B, Jackson, Mississippi 39208–2306; telephone number (601) 965–4628. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 1, 1992.

Proposed charge expiration date: May 31, 1995.

Total estimated PFC revenue: $891,000.

Brief description of proposed project(s): Terminal building improvements: construct access/service roads; acquire pavement sweeper; clearing and grubbing; land acquisition; electrical vault rehabilitation; relocate maintenance building; cargo ramp site preparation; expand air carrier ramp; master plan update; overlay Runways 13/31 and 17/35.

Availability of Application

Any person may inspect the application in person at the FAA office listed above. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the office of the Gulfport-Biloxi Regional Airport Authority.

Issued in Atlanta, Georgia, on December 16, 1991.

Stephen A. Brill,

Manager, Airports Division, Southern Region.

[FR Doc. 91–30534 Filed 12–20–91; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Technical Management Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. appendix I), notice is hereby given for the meeting of the RTCA Technical Management Committee to be held January 14, 1992, at the National Business Aircraft Association, 1200 18th Street, NW., Washington, DC, commencing at 10 a.m.

The agenda for this meeting is as follows: (1) Opening remarks and introductions; (2) Elect TMC chairman; (3) Establish committee administrative procedures; (a) Balloting in lieu of meeting; (b) TMC alternate members; (4) Review and approve revised terms of reference for special committees; (a) SC–135, Environmental Conditions and Test Procedures for Airborne Equipments; (b) SC–162, Aviation Systems Design Guidelines for Open Systems Interconnection (OSI); (c) SC–172, Future Air-Ground Communications Improvements in the VHF Aeronautical Band (118–131 MHZ); (5) Consider for approval DO–181A, Minimum Operational Performance Standards for Air Traffic Control Radar Beacon System Mode Select (ATCRBS/MODE S) Airborne Equipment; (6) Implement new special committee on FAA–STD–G2100E, Ground System Electronics Procurement Specification, SC–175; (7) Review of special committee progress; (8) Take action on recommendations of ad hoc Committee on RTCA technical matters; (9) Other business; (10) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 12, 1991.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 91–30532 Filed 12–20–91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

December 17, 1991.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0078.

Form Number: CF 1302 and CF 1302A.

Type of Review: Extension.

Title: Cargo Declaration and Cargo Declaration (Outward with Commercial Forms).

Description: Customs forms 1302 and 1302A are used by the master of a vessel to list all inward cargo on board and for the clearance of all cargo on board with commercial forms.

Respondents: Businesses or other for-profit.

Estimated Number of Responses: 5,600.

Estimated Burden Hours Per Response: 5 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 11,662 hours.

Clearance Officer: Ralph Meyer (202) 566–4019, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91–30573 Filed 12–20–91; 8:45 am]

BILLING CODE 4820-02-M

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986): Bahrain, Iraq, Jordan, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, United Arab Emirates, Yemen, Republic of.

Dated: December 17, 1991.

Kenneth W. Gideon,

Assistant Secretary for Tax Policy.

[FR Doc. 91–30500 Filed 12–20–91; 8:45 am]

BILLING CODE 4810-25-M

[Department Circular—Public Debt Series—No. 39–91]

Treasury Notes of December 31, 1993, Series AJ–1993

Washington, December 16, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $13,500,000,000 of United States securities, designated Treasury Notes of December 31, 1993, Series AJ–1993 (CUSIP No. 912827 D5 8), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated December 31, 1991, and will accrue interest from that date, payable on a semiannual basis on June 30, 1992, and each subsequent 6 months on December 31 and June 30 through the date that the principal becomes payable. They will mature December 31, 1993, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $5,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulates governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulates governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, Wednesday, December 18, 1991, prior to 12:00 noon, Eastern Standard time, for noncompetitive tenders and prior to 1:00 p.m., Eastern Standard time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, December 17, 1991, and received no later than Tuesday, December 31, 1991.

3.2. The part amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $5,000,000. A noncompetitive bidder may not have entered into an agreement, not make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of competitive tenders.

3.4. The following institutions may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished: depository institutions, as described in section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)); and government securities broker/dealers, registered with the Securities and Exchange Commission that are registered or noticed as government securities broker/dealers pursuant to section 15C(a)(1) of the Securities and Exchange Act of 1934, as amended by the Government Securities Act of 1986. Others are permitted to submit tenders only for their own account.

3.5. Tenders from bidders who are making payments by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

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3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in section 3.5. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Tuesday, December 31, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Friday, December 27, 1991. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT — account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 91-30659 Filed 12-19-91; 11:59 am]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 40-91]

Treasury Notes of December 31, 1996, Series W-1996

Washington, December 16, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $9,000,000,000 of United States securities, designated treasury Notes of December 31, 1996, Series W-1996 (CUSIP No. 912827 D6 6), hereafter referred to as Notes. the Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be terminated in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated December 31, 1991, and will accrue interest from that date, payable on a semiannual basis on June 30, 1992, and each subsequent 6 months on December 31 and June 30 through the date that the principal becomes payable. They will mature December 31, 1996, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Thursday, December 19, 1991, prior to 12:00 noon, Eastern Standard time, for noncompetitive tenders and prior to 1 p.m., Eastern Standard time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, December 18, 1991, and received no later than Tuesday, December 31, 1991.

3.2 The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $5,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive closing time for receipt of competitive tenders.

3.4. The following institutions may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished: depository institutions, as described in section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)); and government securities broker/dealers, registered with the Securities and Exchange Commission that are registered or noticed as government securities broker/dealers pursuant to section 15C(a)(1) of the Securities and Exchange Act of 1934, as amended by the Government Securities Act of 1986. Others are permitted to submit tenders only for their own account.

3.5. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in section 3.5. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Tuesday, December 31, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Friday, December 27, 1991. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of

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pledged to pay, in legal tender, principal and interest on the Notes.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 91-30660 Filed 12-19-91; 11:59 am]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

Summer Institute for English-as-a-Foreign-Language Educators from Francophone and Lusophone Africa

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs of the United States Information Agency requests proposals for a Summer Institute for African educators in the field of English-as-a-Foreign-Language (EFL). The general objective of the Summer Institute is to support and encourage the upgrading of the teaching of English at the secondary school level in French and Portuguese speaking African countries. The Summer Institute will focus on improvement of skills for teaching EFL and on development of skills for training and evaluating teachers of EFL.

Participants will be individuals who teach, administer, or supervise secondary school level programs in EFL from French and Portuguese speaking African countries. USIA asks for detailed proposals from U.S. not-for-profit institutions of higher education which have an acknowledged reputation in the field of training teachers of EFL, special expertise in handling cross-cultural programs, and experience with African educators. Subject to availability of funds, one grant will be awarded to conduct a 1992 Summer Institute .

DATES: Deadline for proposals: All proposals must be received at the U.S. Information Agency by 5 p.m. EST on February 4, 1992. Faxed documents will not be accepted, nor will documents postmarked February 4, 1992, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. The Summer Institute should be programmed to encompass about 45 days beginning on or about Friday, July 10, 1992, and ending on or about Saturday, August 22, 1992. Institutions may propose minor variations in beginning and ending dates to coincide with local Summer Session academic calendars. No funds may be expended until a grant agreement is signed with USIA's Office of Contracts.

ADDRESSES: The original and 15 copies of the completed application, including required forms should be submitted by the deadline to: U.S. Information Agency, Ref: Summer Institute for EFL Educators from Francophone and Lusophone Africa, Office of the Executive Director, E/X, room 357, 301 4th St., SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact Ann J. Martin at the U.S. Information Agency, Academic Exchange Programs Division, E/AEA, room 232, 301 4th St. SW., Washington, DC 20547, telephone (202) 619-5355, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION:

Overview

The Bureau of Educational and cultural Affairs of the United States Information Agency (USIA) solicits proposals for a Summer Institute for African secondary school teachers, trainers of secondary school teachers and supervisors/inspectors of English-as-a-Foreign-Language (EFL). Depending upon availability of funds, approximately 25 teachers selected from French and Portuguese speaking African countries will participate in the Institute. Participants will be individuals who teach, administer, or supervise secondary school level programs in EFL.

USIA asks for detailed proposals from U.S. institutions of higher education which have an acknowledged reputation in the field of teaching teachers of English-as-a-Foreign-Language (EFL), special expertise in handling cross-cultural programs, and experience with African educators.

Notice: Applicant organizations should demonstrate a proven record (at least four years) of experience in international exchange.

The general objective of the Institute is to support and encourage the upgrading of the teaching of English at the secondary school level in French and Portuguese speaking African countries. The specific objectives of the 1992 Summer Institute are to improve skills for teaching EFL, to develop skills for training and evaluating teachers of EFL, and to stimulate initiative to assume leadership in national EFL programs. To meet the needs of the various participants, two concurrent academic components within the same Institute should be designed: One for secondary level classroom teachers with responsibilities in curriculum planning and course material development; and one for teacher trainers with responsibilities in supervision and staff training.

Authority for this exchange is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87-256 (Fulbright-Hays Act). The Fulbright-Hays Act seeks to increase mutual understanding between the people of the United States and people of other countries. Pursuant to the Bureau of Educational and Cultural Affairs authorizing legislation, programs must maintain a non-political character, be balanced and representative of the diversity of American political, social and cultural life; maintain scholarly integrity and meet the highest standards of academic excellence.

Guidelines

Time Frame: The Summer Institute should be programmed to encompass about 45 days beginning on or about Friday, July 10, 1992, and ending on or about Saturday, August 22, 1992. Institutions may propose minor variations of no more than 10 days in beginning and ending dates to coincide with local Summer Session academic calendars. Please explain why a variation in dates is proposed and demonstrate improvements in program quality and cost effectiveness that may be achieved thereby.

Proposed Budget: A comprehensive line item budget must be submitted with the proposal by the application deadline. Specific guidelines for budget preparation are available in the application packet (see instructions above to obtain packet). Experience with similar institutes indicates that the cost to USIA for the Summer Institute for EFL Educators from Francophone and Lusophone Africa should probably not exceed $125,000.

Eligibility of African Participants: Participants will be selected by the U.S. Information Agency. Minimum qualifications for all participants will be a two-year teacher training diploma beyond secondary school. Many participants will hold the equivalent of BA/BS degrees from their national education systems.

Few participants will have visited the United States previously. In view of this, an initial orientation to the university community and a brief introduction to U.S. society and education should be considered an integral part of the Institute and should be held on the first two or three days of the program.

Program Description: The applicant is asked to design a two part program:

(a) A five-week academic program at the university with emphasis on methodology and teaching techniques in EFL which will meet the special needs of secondary school teachers and teacher trainers from Africa. The program should include a variety of formats such as discussion sessions, lectures, workshops, and practicums. Lengthy lectures should be kept to a minimum.

(b) A one-week escorted cultural and educational tour of Washington, DC, planned, arranged, and conducted by the Program Director and principal university staff. The tour should be seen as an integral part of the program, complementing and reinforcing the academic material. Programming in Washington should include a half-day briefing session at the U.S. Information Agency. Proposals may include cultural and educational visits en route to Washington, if such stops contribute to program quality and are cost effective.

The academic program should provide time for interaction with American students, faculty, and administrators, and the local community to promote mutual understanding between people of the United States and people of African countries. In this regard, the Institute should incorporate cultural features such as community and cultural activities, field trips to places of local interest, home stays with families in the area (with other secondary educators if possible), and events which will bring the participants into contact with Americans from a variety of backgrounds.

Program Objectives: The U.S. institution should plan to conduct an initial needs assessment of participants and should be prepared to adjust program emphasis as necessary to respond to participants' concerns for teaching EFL. Specific areas to address in the Institute follow:

1. EFL teaching methodology in theory and practice.

2. Improvement of pedagogical skills, including classroom management and discipline, with particular attention to the management of large classes of 50 or more students.

3. Development of curriculum materials during the Institute which can be used in the participants' respective countries. To the extent possible, Institute materials should be chosen and/or designed to be useful upon returning to Africa.

4. For teacher trainers: Enhancement of teacher training skills; evaluation and observation of classroom teachers; development of in-service training programs for teachers; designing and conducting workshops to train EFL teachers.

5. Specialized discussions of the nuances and idiomatic expressions common to American English, as well as particular difficulties of grammar and pronunciation for French or Portuguese learners of English.

6. Introduction to computer based word processing with emphasis on hands-on experience. Participants should be encouraged to improve their writing and editing skills through the flexibility provided by common word processing programs.

7. Visits to on-going EFL classes in local educational or community centers, providing participants with opportunities to practice EFL teaching skills.

8. Involvement of participants in American culture through community/cultural activities. This should include interaction with Americans from a variety of backgrounds.

9. On-going evaluation and adjustment of program components accordingly, as well as evaluation of the entire Institute.

10. Adaptability to the different needs of the two groups; that is, to teachers and to teacher trainers.

Program Administration: All Institute programming and administrative logistics, management of the academic program and the cultural tour, local travel, and on-site university arrangements, including enrolling participants as members of Teachers of English to Speakers of other Languages (TESOL) will be the responsibility of the Institute grantee. USIA will be responsible for all communications to and from the U.S. Information Service posts in Africa, which submit nominations to the Academic Exchange Programs Division and are responsible for all international travel. USIA will provide the university with participants' curriculum vitae and itineraries and be available to offer any advice or guidance the university may find useful.

The African participants will arrive directly at the campus site from their home countries. Actual arrival dates may be spread out over a four-day period, from Wednesday to Saturday, depending upon airline flight schedules from each country. It is expected that the university program staff will make arrangements to have participants met upon arrival at the airport nearest the university campus. Plans for receiving and housing participants will need to take the variation in arrival dates into account. Departures will be from Washington, DC. The program staff will have to plan for transportation to airports and differing lengths of stay before departure.

The host institution is responsible for arrangements for lodging, food and maintenance for participants while at the host institution and in Washington. The host institution should strive to balance cost effectiveness in accommodations and meal plans with flexibility for differing diets and personal habits among the participants.

Application Requirements (Refer to Application Packet): Proposals must be submitted within deadline and provide a detailed plan in response to the objectives and needs outlined above. Applicants should draw imaginatively on the full range of resources offered by their universities but may involve outstanding professionals from other universities or organizations. The overall quality and effectiveness of the Institute hinges upon administrative and organizational competence to manage interactions between African educators and Americans.

The proposal package must include one original and fifteen copies. Each proposal must be presented as follows:

1. A completed and signed cover sheet for grant applications which will be provided in the application packet.

2. An abstract of the proposed Summer Institute not to exceed two double-spaced pages.

3. A narrative not to exceed twenty double-spaced pages. The detailed narrative should outline the structure and organization of Institute courses and must include a day-by-day agenda for classes and supplementary activities, in accordance with program objectives outlined above. Plans for lodging and meals should be discussed in this section. Discuss how the applicant will conduct an initial needs assessment of the specific program participants and adjust program emphasis as necessary. Also note plans to identify appropriate books and readings to be distributed to participants on arrival or to be sent to them upon their return home as follow-up to Institute themes. At the option of the grant applicant, lists of readings may be included in an appendix. A plan for institutional evaluation of the project should also be included.

4. A budget in the prescribed format outlining specific expenditures. Refer to the application packet for format.

5. Appendices must contain the following information:

a. Academic/professional resumes of program director(s), instructors, consultants, and program staff (not to exceed two double-spaced pages for each).

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b. Evidence of the institution's activities in substantive academic programs which train EFL teachers.

c. Demonstrations of the institution's experience with similar international exchange projects.

d. Option items for appendices are reading lists and examples of evaluation instruments.

5. Completed forms in support of the proposal. See application packet for the following forms: Bureau of Educational and Cultural Affairs Grant Application Cover Sheet; Assurance of Compliance; Certification Regarding Drug-Free Workplace Requirements; Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion; Disclosure of Lobbying Activities.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, the budget office and the contracts office. Eligible proposals may also be reviewed by the Office of the General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. Quality, rigor, and appropriateness of proposed syllabus to the program objectives of the Institute.

2. Institutional capacity. Proposed personnel and institutional resources should be adequate and appropriate to achieve a substantive academic and pedagogical EFL program.

3. Potential for program excellence and/or track record of applicant institution. The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants.

4. Multiplier effect/impact. Proposed program should contribute to mutual understanding and sharing of information about Africa among American faculty and students, as well as to understanding and information about the U.S. among the African participants.

5. Evaluation plan. Proposals should provide a plan for evaluation by the grantee institution at the conclusion of the Summer Institute.

6. Evidence of strong on-site administrative and managerial capabilities for international visitors with specific discussion of how managerial and logistical arrangements will be undertaken.

7. The experience of the staff assigned to the Institute in a cross-cultural context.

8. Effective use of community and regional resources.

9. A well-thought out and comprehensive cultural tour to complement the academic program.

10. Cost-effectiveness. Administrative components of the grant should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about May 1, 1992. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: December 17, 1991.

Barry Fulton,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-30592 Filed 12-20-91; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 246
Monday, December 23, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 56, page 65109, December 13, 1991.

PREVIOUSLY ANNOUNCED DATE OF MEETING: December 19, 1991.

CHANGES: The Commission added consideration of revisions to the proposed budget for fiscal year 1993 to the Agenda for December 19, 1991. The Commission decided that agency business required adding this matter without the normal seven days notice.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue Bethesda, MD 20207 301-504-0800.

Dated: December 18, 1991.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 91-30705 Filed 12-19-91; 2:25 pm]

BILLING CODE 6355-01-M

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Corrections

Federal Register
Vol. 56, No. 246
Monday, December 23, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001, 1004, and 1124

[Docket No. AO-14-A65, etc; DA-91-013]

Milk in the New England and Certain Other Marketing Areas; Tentative Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

Correction

FR Doc. 91-29999, concerning milk in the New England and certain other areas, was published on page 65801 in the issue of Thursday, December 19, 1991. It was incorrectly published in the Rules section and should have appeared in the Proposed Rules section of the Federal Register.

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

Abacus Broadcasting Corp. et al.; Applications for Consolidated Hearing

Correction

In notice document 91-29493, beginning on page 64514, in the issue of Tuesday, December 10, 1991, make the following correction:

On page 64514, in the table at the bottom of the page, in the "MM Docket No." column, "1-350" should read "91-350".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 422

RIN 0960-AD06

Earnings and Benefit Statements

Correction

In proposed rule document 91-29137 beginning on page 63893 in the issue of Friday, December 6, 1991, make the following corrections:

1. On page 63893, in the third column, in the first full paragraph, in the sixth line from the bottom, insert "or" after "wages".

2. On the same page, in the same column, in the last paragraph, in the sixth line from the bottom, "1955" should read "1995"; and in the fourth line from the bottom, insert ending quotation marks after "individuals" and the following phrase: "who attain age 60 during that fiscal year. We will also advise individuals".

§ 404.811 [Corrected]

3. On page 63895, in the first column, in § 404.811:

a. In paragraph (b)(1), in the first line, "taxes" should read "taxed"; and in the third line, insert "of" after "as";

b. In paragraph (b)(3), in the third line, insert "for" after "have"; and

c. In paragraph (b)(5), in the first line, "for" should read "of".

BILLING CODE 1505-01-D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2617

Determination of Plan Sufficiency and Termination of Sufficient Plans

Correction

In proposed rule document 91-27551, beginning on page 58014, in the issue of Friday, November 15, 1991, make the following corrections:

1. On page 58015, in the first column, in the fourth line, "on" should read "in".

2. On the same page, in the second column, in the second full paragraph, in the first line, "defined" should read "define".

3. On page 58016, in the third column, in the first full paragraph, in the fifth line, "failed" should read "filed".

4. On the same page, in the same column, in the third full paragraph, eight lines from the bottom, "excepts" should read "expects".

5. On page 58017, in the first column, in the second full paragraph, four lines from the bottom, "this" should read "thus".

§ 2617.40 [Corrected]

6. On the same page, in the second column, the section heading should read as set forth above. And in § 2617.40(b), in the last line, "affective" should read "effective".

§ 2617.41 [Corrected]

7. On the same page, in the third column, in § 2617.41(b), in the last line, after "receipt" insert ")".

§ 2617.42 [Corrected]

8. On page 58018, in the first column, in § 2617.42(d)(3), in the second line, "terminated" should read "terminate".

BILLING CODE 1505-01-D

federal register

Monday
December 23, 1991

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Public and Indian Housing Youth Sports Program; Notice of Funding Availability

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-91-3364; FR-3159-N-01]

Public and Indian Housing Youth Sports Program; Funding Availability

AGENCY: Office of the Assistant Secretary for Public and Indian Housing HUD.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: This NOFA announces HUD's FY 1992 funding of $8,250,000 for the Youth Sports Program (YSP) to be used for sports, cultural, educational, recreational, or other activities designed to appeal to youth as alternatives to the drug environment in public or Indian housing projects. In the body of this document is information concerning the purpose of the NOFA, applicant eligibility, available amounts, selection criteria, and application processing, including how to apply and how selections will be made.

DATES: Application is due on or before January 23, 1992.

FOR FURTHER INFORMATION CONTACT: Jose Marquez, Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1197 or 708-3502. A telecommunications device for deaf persons (TDD) is available at (202) 708-0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2577-0140. The public reporting burden for each of these collections of information is estimated to include the time for reviewing and instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Information on the estimated public reporting burden is provided as follows:

Section of NOFA affected	Number of respondents	Number of Respondents per response	Total annual responses	Hours per response	Total hours
III (entire)	500	1	500	24	12,000
Total Annual Reporting Burden					12,000

I. Purpose and Substantive Description

(a) Authority

This program is authorized by section 520 of the National Affordable Housing Act (NAHA) (approved November 28, 1990, Pub. L. 101-625).

A NOFA for FY 1991 Youth Sports funding was published in the **Federal Register** of October 28, 1991, (56 FR 55584). That NOFA stated, at 56 FR 55584, that if FY 1992 Youth Sports program funds were made available in the near future, as was anticipated, the Department expected to make FY 1992 Youth Sports funds available under the same terms as those set forth in the FY 1991 NOFA. If the timing permitted, the Department would publish a **Federal Register** notice for the FY 1992 funds that applied the terms of the FY 1991 NOFA to them, combined the application process for the FY 1991 and FY 1992 funds, and if necessary, extended the application due date to provide at least 30 days after the FY 1992 **Federal Register** notice to submit applications. This notice is published for the purpose of accomplishing those goals. Accordingly, except for the explanation of the amount of funding available, the terms of this NOFA are identical to those of the FY 1991 Youth Sports Program NOFA. These terms are set out below for the convenience of applicants.

(b) Allocation Amounts

Section 520(k) of the NAHA provides that five percent of any funding appropriated for the Drug Elimination Program shall be available for Youth Sports Program grants. The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (approved October 28, 1991, Public Law 102-139, hereinafter, 92 App. Act) appropriated $165 million for the Drug Elimination Program in FY 1992. Accordingly, $8.25 million is the amount available for the Youth Sports Program for Fiscal Year 1992. Program funds are to be used for sports, cultural, educational, recreational, or other activities designed to appeal to youth as alternatives to the drug environment in public or Indian housing projects.

Because of the limited amount of funding appropriated for this program, and to ensure that the program is implemented on a broad, nationwide basis, each applicant may submit only one application. The maximum annual Youth Sports amount per applicant is $125,000. As more fully explained below, applicants must supplement grant funds with an amount of funds from non-Federal sources equal to or greater than 50 percent of the amount provided by the grant.

(c) Eligibility

(1) Eligible Applicants

Funding for this program in FY 1992 is limited to PHAs and IHAs. Although section 520 of NAHA lists seven categories of entities qualified to receive grants (States; units of general local government; local park and recreation districts and agencies; public housing agencies (PHAs); nonprofit organizations providing youth sports services programs; Indian tribes; and Indian housing authorities (IHAs)), the 92 App. Act limited the funding for the Drug Elimination Program to PHAs and IHAs only. Since the funding of the Youth Sports Program is dependent on the appropriation for the Drug Elimination Program, the limitations that apply to Drug Elimination affect Youth Sports as well. Therefore, for FY 1992 only PHAs and IHAs are eligible applicants for Youth Sports Program Funding.

In designing an activity for funding, PHA and IHA applicants shall consult with RMCs/RCs where they exist, and with other entities that would be eligible for funding under this program, as listed

above, with at least two years of experience in designing or operating sports, cultural, recreational, educational or other activities for youth. Eligible local entities that are affiliates of national organizations may rely on the experience of the national organization for this purpose. These consultations will provide applicants with valuable resident input and will involve entities with experience in designing and implementing the eligible types of activities under this program with PHA and IHA applicants that may not have this type of experience. These experienced entities may establish a sub-contracting relationship, in accordance with 24 CFR part 85, with the PHA/IHA if deemed appropriate by the grantee to further their public/private partnership. This consultation process will also provide entities that are not PHAs or IHAs with a greater appreciation and understanding of the operations and problems of public and Indian housing projects. The end result will be more effective program activities that make more efficient use of program funds. This result is expected because it draws upon and combines the expertise of PHA and IHA applicants with respect to the operations and problems of public and Indian housing projects, and the expertise of other entities with respect to designing and implementing youth activities.

(2) Eligible Activities

Youth Sports Program funds may be used to assist in carrying out sports, cultural, recreational, educational or other activities for youth in any of the following manners:

(i) Acquisition, construction, or rehabilitation of community centers, parks, or playgrounds is an eligible activity under the Youth Sports Program.

(A) Acquisition, construction or rehabilitation costs shall not be approved unless the applicant demonstrates the need for the type of facilities to be assisted by the grant (section III.(a)(3) of this NOFA).

(B) Facilities that receive Youth Sports funding must be used primarily for youth from the public or Indian housing projects in which the funded facility is operated (section III.(a)(2)(ii) and III.(a)(10)(iii) of this NOFA).

(C) Facilities (community centers, parks, or playgrounds) acquired, constructed, or rehabilitated under this program must be on or immediately adjacent to the premises of the public housing project identified in the application for assistance under this program. In the case of Indian Housing Authorities, the applicant must specify how youth from IHA projects will have access to the facility, since IHAs often cover large areas (section III.(a)(9) of this NOFA).

(D) Facilities receiving Youth Sports funding must comply with any applicable local or tribal building requirements for recreational facilities (section III.(a)(2)(iii) of this NOFA).

(E) Facilities receiving Youth Sports funding must be used exclusively for Youth Sports activities commensurate with the extent of the Youth Sports funding, unless a waiver is obtained from HUD. For example, if a facility is funded 60 percent by a Youth Sports grant, then it must be used at least 60 percent for Youth Sports activities, unless a waiver is obtained from HUD.

(F) In accordance with the requirements of 24 CFR 8.21, facilities should be designed and constructed to be readily accessible to and usable by individuals with handicaps. Alterations to existing facilities shall, to the maximum extent feasible, be made readily accessible to and usable by individuals with handicaps.

(G) In accordance with the requirements of 24 CFR 8.20, no qualified applicant with handicaps shall, because a recipient's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefit of, be excluded from participation in, or otherwise be subjected to discrimination in the program.

(ii) Redesigning or modifying public spaces in public or Indian housing projects to provide increased utilization of the areas by Youth Sports activities is an eligible activity under this program.

(A) The construction of sports facilities on public or Indian housing property to implement Youth Sports activities is permitted under this program. These facilities may include, but not be limited to, baseball diamonds, basketball courts, football fields, tutoring centers, swimming pools, soccer fields, public or Indian housing community centers, and tennis courts.

(iii) Provisions of public services, including salaries and expenses for staff of youth sports programs, cultural activities, educational programs relating to drug abuse, and sports and recreation equipment are eligible activities under this program.

(A) Educational programs for youth relating to illegal drug use are permitted under this section. The program must be formally organized and provide the knowledge and skills youth need to make informed decisions on the potential and immediate dangers of drug abuse and involvement with illegal drugs. Grantees may contract with drug education professionals to provide the appropriate training or workshops. These educational programs may be part of organized sports activities or other eligible youth activities.

(B) Activities providing an economic/educational orientation for Youth Sports Program participants are eligible for funding as public services. These activities must provide, for public or Indian housing youth, the opportunities for interaction with, or referral to, higher educational or vocational institutions, and develop the skills of program participants to pursue educational, vocational, and economic goals. These activities may also provide public or Indian housing youth the opportunity to interact with private sector businesses in their community with the purpose of promoting the development of educational, vocational, and economic goals in public or Indian housing youth.

(C) The cost of the initial purchase of sports and recreation equipment to be used by program participants is permitted under this program.

(D) Cultural and recreational activities, such as ethnic heritage classes, art, dance, drama and music appreciation and instruction programs are eligible Youth Sports Program activities.

(E) Youth leadership skills training for program participants is permitted under this program. These activities must provide opportunities designed to involve public and Indian housing youth in peer leadership roles in the implementation of program activities, for example, as team or activity captains, counselors to younger program participants, assistant coaches, and equipment or supplies managers. Grantees may contract with youth trainers to provide services which may include training in peer pressure reversal, resistance or refusal skills, goal planning, parenting skills, and other relevant topics.

(F) Transportation costs directly related to Youth Sports activities (for example, leasing a vehicle to transport a Youth Sports team to a game) are eligible program expenses.

(G) The purchase of vehicles under this program is prohibited.

(H) Liability insurance costs directly related to Youth Sports activities are eligible program expenses.

(3) Threshold requirements for funding.

Every activity proposed for funding under the Youth Sports Program must satisfy each of the following requirements or it will not be considered for funding:

(i) The activity must be operated as, in conjunction with, or in furtherance of,

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an organized program or plan designed to eliminate drugs and drug-related problems in the public or Indian housing project or projects for which the activity is proposed. (See, section III.(a)(7), below, of this NOFA.)

(ii) The activity for which funding is sought must be conducted with respect to public or Indian housing sites that HUD determines have a substantial problem regarding the use or sale of illegal drugs.

(A) The determination required in paragraph (ii) will be made on the basis of information submitted in the applicant's plan as described below in "Checklist of Application Submission Requirements," section III.(a)(7).

(iii) The activities or facilities funded by Youth Sports grants must serve primarily youth from the public or Indian housing projects for which the activities or facilities are operated. (See, section III.(a)(10), below.)

(v) Applicants must be able to supplement the amount provided by a grant under the Youth Sports Program with an amount of funds from non-Federal sources equal to or greater than 50 percent of the amount provided by the grant. (See, section III.(a)(2)(ii), below.) Funds from non-Federal sources are funds the applicant receives for the Youth Sports activities identified in its application from the following:

(A) States;

(B) Units of general local government or agencies of such governments;

(C) Indian tribes;

(D) Private contributions;

(E) Any salary paid to staff to carry out the Youth Sports activities of the applicant, computed as follows:.

(1) Only that portion of staff salaries representing time that will be spent on new and additional duties directly involved with Youth Sports activities may qualify as funds from non-Federal sources;

(2) Staff salaries that are paid with Youth Sports funds do not qualify as funds from non-Federal sources for the purpose of this program;

(F) The value of the time and services contributed by volunteers to carry out the program of the grant recipient to be determined as follows:

(1) Except as set out in paragraph (2), below, the value of time and services contributed by volunteers is to be computed on the basis of five dollars per hour;

(2) Where the volunteer is a professional or a person with special training performing a service directly related to the profession or special training, the value of the service is to be computed on the basis of the usual and customary hourly rate paid for the service in the community where the Youth Sports activity is located;

(G) The value of any donated material, equipment, or building, computed on the basis of the fair market value of the donated item(s) at the time of the donation;

(1) The applicant must document the fair market value of donated items by referencing bills of sale, advertised prices, or appraisals, not more than one year old and taken from the community where the item or the Youth Sports activity is located (whichever is more appropriate), of identical or comparable items;

(H) The value of any lease on a building, or part of a building, computed on the basis of the fair market value of a lease for similar property similarly situated.

(1) The applicant must document the fair market value of a lease by referencing an existing, or no more than one year old, lease from the building involved; or evidence, such as advertisements or appraisals, of the value of leases for comparable buildings.

(vi) Grant funds provided under this program and any State, tribal, or local funds used to supplement grant funds under this program may not be used to replace other public funds previously used, or designated for use, for the purpose of this program. (See section III.(a)(2)(vi).

(d) Selection Criteria

Each application for a grant award that is submitted in a timely manner to the local HUD field office or, in the case of IHAs, to the appropriate HUD Office of Indian Programs, and that otherwise meets the requirements of this NOFA, will be evaluated. An application must receive a minimum score of 75 points out of the maximum 110 points awardable under this competition to be eligible for funding. Grants will be awarded to the three highest-ranked, eligible PHA applications within each region. In addition, grants will be awarded to the three highest-ranked, eligible IHA applications on a nation-wide basis. All of the remaining eligible applications, both PHAs and IHAs, will then be placed in overall nation-wide ranking order, with the remaining funds granted in order of rank until all funds are awarded. If FY 1992 funds are subsequently made available under the terms of this NOFA, a comparable process of PHA regional, IHA, and nationwide awards will be followed as specified in a **Federal Register** notice announcing the availability of the additional funds. The following criteria will be used to evaluate eligible applications:

(1) The extent to which the Youth Sports activities to be assisted with the grant address the particular needs of the area to be served by the activities and employs methods, approaches, or ideas in the design or implementation of the activities particularly suited to fulfilling the needs (whether such methods are conventional or unique and innovative). (Maximum points: 30). In assessing this criterion, HUD will consider the following factors:

(i) The appropriateness of the applicant's methods, approaches, or ideas in addressing the particular needs of the area to be served by the program, as reflected in the description of the services to be provided by the applicant's proposed Youth Sports Program (section III.(a)(3) of this NOFA); (10 points)

(ii) The resources committed to each activity and service (section III.(a)(5) of this NOFA) proposed for funding in the application; (10 points)

(iii) An estimate of the number of youth from public or Indian Housing projects that will be involved in the applicant's proposed activities, in accordance with section III.(a)(8) of this NOFA. (5 points)

(iv) The applicant's explanation of the procedures that will be followed to ensure that the Youth Sports activities will serve primarily youth from the public or Indian housing project in which the program to be assisted by a grant is operated, as required by section III.(a)(10)(iii). (5 points)

(2) The technical merit of the application of the qualified applicant. (Maximum points: 10). In assessing this criterion HUD will consider the following factors:

(i) The quality and thoroughness of the statement required in the application (section III.(a)(6) of this NOFA) regarding the extent to which the applicant's proposed Youth Sports activities meet the selection criteria for this program; (10 points)

(3) The qualifications, capabilities, and experience of the personnel and staff of the sports program who are critical to achieving the objectives of the program as described in the application. (Maximum points: 15). In assessing this criterion HUD will consider the following factors:

(ii) The position descriptions of staff critical to achieving the objectives of the applicant's program, required under section III.(a)(10)(ii) of this NOFA; (10 points)

(ii) The nature of the duties volunteers will perform, required under section III.(a)(10)(ii) of this NOFA. (5 points)

(4) The capabilities, related experience, facilities, and techniques of the applicant for carrying out its youth sports program and achieving the objectives of its program as described in the application, and the potential of the applicant for continuing the youth sports program. (Maximum points: 20) In assessing this criterion HUD will consider the following factors:

(i) The related experience of the applicant, as evidenced by its staff, and of the entity consulted by the applicant in preparing its application, in conducting the type of activities, in public or Indian housing, for which funding is requested (section III.(a)(10)(i) and (ii) of this NOFA). (5 points)

(ii) The appropriateness, in terms of need, size, location, and suitability, of the facilities to be used for youth activities (section III.(a)(9) of this NOFA). (5 points)

(iii) The applicant's workplan and implementation schedule for the Youth Sports activities for which funding is sought (section III.(a)(4) of this NOFA). (5 points)

(iv) The extent of the resources committed to continue the operation of Youth Sports activities and facilities beyond the grant term included in the applicant's description of plans to continue the Youth Sports activities in the future, as required in section III.(a)(12) of this NOFA. (5 points)

(5) The severity of the drug problem at the local public or Indian housing site for the Youth Sports program and the extent of any planned or actual efforts to rid the site of the problem. (Maximum points: 10) In assessing this criterion HUD will consider the following factors:

(i) The extent of the drug-related problems at the housing projects to be assisted, as established in the applicant's plan required by section III.(a)(7) of this NOFA. (5 points)

(ii) The extent of any planned or actual efforts to rid the housing projects to be assisted of their drug-related problem, as described in the applicant's plan required by section III.(a)(7) of this NOFA. (5 points)

(6) The extent to which local sports organizations or sports figures are involved. (Maximum points: 5 points) In assessing this criterion, HUD will consider the following factor:

(i) The documentation provided in the application of the level of on-site or other participation by local sports, cultural, recreational, educational, or other community organizations or figures that is focused on the specific youth activities for which the application is prepared (section III.(a)(11) of this NOFA). (5 points)

(7) The extent of the coordination of proposed activities with local resident management groups or resident associations (where such groups exist) and coordination of proposed activities with ongoing programs of the applicant that further the purposes of the Youth Sports program. (Maximum points: 10) In assessing this criterion, HUD will consider the following factors:

(i) The applicant's description of its consultations with resident management groups or resident associations, where they exist, and residents, as required by section III.(a)(7) of this NOFA; (5 points)

(ii) The extent to which the applicant demonstrates the relationship of the Youth Sports activities with other existing anti-drug activities, if any, in the housing projects to be assisted as reflected in the applicant's plan required by section III.(a)(7) of this NOFA. (5 points)

(8) The extent of non-Federal contributions that exceed the fifty percent amount of such funds required. (Maximum points: 5) In assessing this criterion, HUD will consider the following factor:

(i) The applicant's budget describing the share of the costs of the applicant's Youth Sports Program provided by a grant under this program and the share of the costs provided from funds from non-federal sources and other resources, such as the number of volunteers and volunteer hours committed, submitted in accordance with section III.(a)(5) of this NOFA. (5 points)

(9) The extent to which the applicant demonstrates local government or tribal support for the program. (Maximum points: 5) In assessing this criterion, HUD will consider the following factor:

(i) The applicant's description of local or tribal government support as evidenced by contributions from these entities listed under section III.(a)(5) of this NOFA. (5 points)

II. Application Process

(a) An application package may be obtained from the local HUD field office or by calling HUD's Drug Information and Strategy Clearinghouse on 800–245–2691. The application package contains information on all exhibits and certifications required under this NOFA.

(b) The deadline for the submission of grant applications under this NOFA is January 23, 1992. In order to be eligible, the original and two copies of the application must be physically received by the close of business on the deadline date at the local HUD field office or, in the case of IHAs, in the local HUD Office of Indian Programs, with jurisdiction over the PHA or IHA. Attention: Public Housing Division Director, or Office of Indian Programs Director. A list of these offices is included as Appendix 1 to this NOFA. It is not sufficient for an application to bear a postage date within the submission time period. Applications submitted by facsimile are not acceptable.

III. Checklist of Application Submission Requirements

(a) Each application for a grant under this program must include the following:

(1) Standard Grant Application Forms SF–424 and SF–424A with narrative showing breakdown by program and cost, to include all equipment.

(2) The following certifications, executed by the CEO of the applicant:

(i) A certification that the applicant will supplement the amount provided by a grant under this program with an amount of funds from non-federal sources equal to or greater than 50 percent of the amount provided by the grant;

(ii) A certification that the activities or facilities funded by the Youth Sports grant will serve primarily youth from the public or Indian housing projects in which the activities or facilities are operated;

(iii) A certification that facilities receiving Youth Sports funding comply with any applicable local or tribal building requirements for recreational facilities;

(iv) A certification that the applicant will maintain a drug-free workplace in accordance with the requirements of the Drug-Free Workplace Act of 1988, 24 CFR part 24, subpart F (Applicants may submit a copy of their most recent drug-free workplace certification, which must be dated within the past year.);

(v) A certification and disclosure in accordance with the requirements of section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989), as implemented in HUD's interim final rule published in the **Federal Register** on February 26, 1990 (55 FR 6736). (This statute generally prohibits recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific, contract, grant, or loan.);

(vi) A certification that grant funds provided under this program and any State, tribal, or local funds used to supplement grant funds under this program will not be used to replace

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other public funds previously used, or designated for use, for the purpose of this program;

(vii) A certification that the applicant has assessed its potential liability arising out of Youth Sports activities, has considered any limitations on liability under State, local or tribal law, and that, upon being notified of a Youth Sports grant award, the applicant will obtain adequate insurance coverage to protect itself against any potential liability arising out of the eligible activities under this program;

(viii) A certification that the applicant will comply with Title VI of the Civil Rights Act of 1964 and section 504 of the Rehabilitation Act of 1973.

(3) A description of the nature of the services to be provided by the applicant's proposed Youth Sports Program, including an explanation of the way in which the activities or facilities proposed for funding address the particular needs of the area to be served by the program.

(4) A workplan with an 18 months maximum task timeline providing an implementation schedule for the Youth Sports activities.

(5) A budget describing the financial and other resources committed to each activity and service of the program. The budget must identify the share of the costs of the applicant's Youth Sports activities provided by a grant under this program and provide a narrative describing how the share of the costs provided from other sources of funds (e.g. local or tribal government, corporations, individuals), including funds from non-Federal sources, will be obtained.

(6) A statement regarding the extent to which the applicant's proposed Youth Sports activities meet the selection criteria in section I.(d), above.

(7) A plan designed to eliminate drugs and drug-related problems on the premises of the housing projects proposed for funding. Applicants are given a choice to satisfy this requirement in one of two ways. First, an applicant may submit a current-year plan prepared for the housing projects in accordance with 24 CFR 961.15 as a part of a Drug Elimination Program grant. In this case, the applicant must indicate how its proposed Youth Sports activities will be operated as, in conjunction with, or in furtherance of the § 961.15 plan. The other choice is that an applicant may submit an abbreviated plan prepared for this NOFA as follows:

(i) The plan must describe the drug-related problems in the projects that are proposed for funding under this program, using:

(A) Objective data, if available, from the local police precinct or the PHA's or IHA's records on the types, number and sources of drug-related crime in the projects proposed for assistance. If crime statistics are not available at the project or precinct level, the applicant may use other reliable, objective data including those derived from the records of Resident Management Corporations (RMCs), Resident Corporations (RCs), or other resident associations. The data should cover the past one-year period and, to the extent feasible, should indicate whether these data reflect a percentage increase or decrease in drug-related crime over the past several years.

(B) Information from other sources which have a direct bearing on drug-related problems in the projects proposed for assistance. Examples of these data are: resident/staff surveys on drug-related issues or on-site reviews to determine drug activity; vandalism costs and related vacancies attributable to drug-related crime; information from schools, health service providers, residents and police.

(ii) The plan must include a narrative discussion of the applicant's current activities, if any, to eliminate drug-related problems in the targeted projects. Any efforts being undertaken by community and governmental entities, residents of the project, Resident Management Corporations (RMCs), Resident Corporations, (RCs), other resident associations, or any other entities to address the drug-related problems in the projects proposed for assistance must be described. The applicant must also indicate how its proposed Youth Sports activities will be operated as, in conjunction with, or in furtherance of the other activities described in the plan.

(8) An estimate of the number of youth involved.

(i) The applicant must provide the total estimated number of youth involved for each proposed activity and participating in youth leadership assignments (for example, team managers, assistant managers, team captains) computed on an annual and, if applicable, a session or seasonal basis (for example, classes or league sports may be organized in sessions or seasons that run for a certain number of weeks or months, or more activities may take place and more youth may be involved on weekends than on weekdays).

(ii) The total estimated number given for each activity must be further broken down by categories of age (e.g., 5–8 years old, 9–12 years old, etc.), sex (male, female, co-ed), and residency in public or Indian housing.

(9) A description of the facilities used.

(i) Facilities to be used for Youth Sports activities must be described in the application with regard to their dimensions, location, and the number of youth that can be accommodated at one time.

(A) In the case of an Indian housing project, if a facility to be acquired, constructed, or rehabilitated is not located on or immediately adjacent to the premises of the project to be assisted, the application must specify how youth from the Indian housing project will have access to the facility (e.g., transportation will be provided, transportation service is readily available.)

(ii) Where applicable, the application must provide a detailed explanation of all facility acquisition, construction, rehabilitation, operation, redesign or modification proposed for funding under this program.

(A) The application must specify what percent of the facility will be used for youth activities (as opposed to, for example, senior citizen or adult activities). This percentage may not be less than the percentage of Youth Sports funding provided for the facility.

(iii) The application must identify the entity that will be responsible for the operation of any facility funded by a Youth Sports grant.

(10) A description of the organization of the applicant's proposed Youth Sports program, which must detail:

(i) The consultations entered into by the applicant with RMCs/RCs, where they exist, and other entities experienced in the design and implementation of the type of proposed youth sports activities;

(ii) The position descriptions of the staff that will be responsible for managing and operating the Youth Sports activities must be included in the application; if volunteers are involved, their number, job descriptions, and hours per week of involvement must be included;

(iii) The procedures that will be followed to ensure that the Youth Sports activities or facilities will serve primarily youth from the public or Indian housing project in which the program to be assisted by a grant is operated must be explained in the application.

(11) A description of the extent of involvement of local sports organizations or sports figures.

(i) The applicant must provide documentation of the level of on-site or other participation by local and nationally affiliated sports organizations, except as provided in section (ii) below, with at least two years of organizational and operational experience. These may include, but are not limited to, strictly sports organizations, such as, Little Leagues, Midnight Basketball, or professional teams. Participation by cultural, recreational, or educational organizations is also permissible. The participation of these groups must be focused on the youth activities for which the application is prepared.

(ii) The applicant may demonstrate the involvement of local or national sports, cultural, recreational or educational figures, such as athletes, coaches, artists, entertainers and teachers in place of, or in addition to, the participation of organizations. The participation of these figures must be focused on the youth activities for which the application is prepared.

(12) A description of plans and resources to continue the Youth Sports activities beyond the grant term under this program, including the commitment of entities (e.g., local and tribal governments, corporations, community organizations) and individuals to continue their involvement in the applicant's Youth Sports activities and facilities.

IV. Corrections to Deficient Applications

(a) HUD will notify an applicant, in writing, of any curable technical deficiencies in the application. The applicant must submit corrections in accordance with the information specified in HUD's letter within 14 calendar days from the date of receipt of HUD's letter notifying the applicant of any such deficiency.

(b) Curable technical deficiencies relate to items that:

(1) Are not necessary for HUD review under selection criteria/ranking factors; and

(2) Cannot be submitted after the application due date has expired, to improve the substentive quality of the proposal. An example of a technical deficiency would be the failure of an applicant to submit a certification with its proposal.

V. Other Matters

(a) *Environmental Impact.* A Finding of No Significant Impact (FONSI) with respect to the environment for the FY 1991 NOFA has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. Since the requirements of this FY 1992 NOFA are exactly identical to those of the FY 1991 NOFA, and since the same application processing dates apply to both, the FONSI prepared for the FY 1991 NOFA will apply to this NOFA as well. The FONSI is available for public inspection and copying from 7:30 to 5:30 weekdays in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20401. HUD will review all applications and their proposed activities in accordance with the environmental requirements of 24 CFR part 50.

(b) *Federalism Impact.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions of this NOFA do not have "federalism implications" within the meaning of the Order. The NOFA implements a program that provides positive sports, cultural, recreational, educational or other activities designed to appeal to youth as alternatives to the drug environment in public and Indian housing, and makes available grants to PHAs and IHAs to help them implement these activities. As such, the program helps PHAs and IHAs to combat serious drug-related crime problems in their projects, thereby strengthening their role as instrumentalities of the States. Further review under the Order is also unnecessary since the NOFA generally tracks the statute and involves little implementing discretion.

(c) *Family Impact.* The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this NOFA have the potential for significant positive impact on family formation, maintenance and general well-being within the meaning of the Order. The NOFA implements a program that provides positive sports, cultural, recreational, educational, or other activities designed to appeal to youth as alternatives to the drug environment in public and Indian housing, and makes available grants to PHAs and IHAs to help them implement these activities. As such, the program is intended to improve the quality of life of public and Indian housing project residents by reducing the incidence of drug-related crime and should have a strong positive effect on family formation, maintenance and general well-being for PHAs and IHAs selected for funding. Further review under the Order is also not necessary since the NOFA essentially tracks the authorizing legislation and involves little exercise of HUD discretion.

(d) *Section 102 HUD Reform Act.* On March 14, 1991, the Department published in the **Federal Register** a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (24 CFR part 12, 56 FR 11032). Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department.

Since HUD makes assistance under this program available on a competitive basis, part 12 requires HUD to:

—Ensure that documentation and other information regarding each application submitted to the Department are sufficient to indicate the basis upon which assistance was provided or denied. HUD must make this material available for public inspection for a five-year period. (§ 12.14(b)) HUD will provide further guidance on how this material may be accessed in a later Notice published in the **Federal Register**.

—Publish a Notice in the **Federal Register** at least quarterly indicating the recipients of the assistance. (§ 12.16(a))

Subpart C of the rule requires applicants that seek assistance from HUD for a specific project or activity must make the disclosures required under § 12.32. This subpart will be made effective through later publication of a Notice in the **Federal Register**. Since it will apply to applications solicited on or after the effective date of the Notice, this NOFA is not subject to its provisions.

(e) *Section 103 HUD Reform Act.* HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her

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Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

(f) *Section 112 HUD Reform Act.* Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

Any questions regarding the rule should be directed to Arnold J. Haiman, Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with rule may be obtained from the local HUD office.

Authority: Sec. 520, National Affordable Housing Act (approved November 28, 1990, Pub. L. 101–625); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: December 16, 1991.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 91–30499 Filed 12–20–01; 8:45 am]

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federal register

Monday
December 23, 1991

Part III

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 83

Procedures for Establishing That an American Indian Group Exists as an Indian Tribe; Extension of Public Comment Period on Proposed Rule

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 83

Procedures for Establishing That an American Indian Group Exists as an Indian Tribe

December 13, 1991.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Extension of public comment period on proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) of the Department of the Interior extends until January 17, 1992, the public comment period on the proposed rule published in the September 18, 1991, Federal Register at 56 FR 47320. The proposed rule would revise 25 CFR part 83 to improve and clarify the system for considering petitions from Indian groups seeking acknowledgment as Indian tribes. The proposed revisions would clarify the procedures for petitioners, eliminate some of the problems that have arisen that were not covered by the existing regulations, and improve the quality of future petitions. The comment period for the proposed rule was scheduled to close on December 17, 1991. The BIA has received several requests from interested parties for more time to thoughtfully respond to the proposed revisions. In response to these requests, the Department is extending the comment period 30 days. Comments will now be accepted until January 17, 1992.

DATES: The BIA will accept written comments on the proposed rule until January 17, 1992.

ADDRESSES: Comments may be mailed to: Bureau of Indian Affairs, Branch of Acknowledgment and Research, MS–2612 Main Interior Building (MIB), 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Holly Reckord, Acting Chief, Branch of Acknowledgment and Research, Bureau of Indian Affairs, 1849 C Street, NW., Mail Stop 2612–MIB, Washington, DC 20240, (202) 208–3592.

SUPPLEMENTARY INFORMATION: On September 18, 1991 (56 FR 47320) the Department published proposed revisions to 25 CFR part 83 to improve and clarify the system for considering petitions from Indian groups seeking acknowledgment as Indian tribes. The proposed revisions would clarify the procedures for petitioners, eliminate some of the problems that have arisen that were not covered by the existing regulations, and improve the quality of future petitions. The comment period for the proposed rule was scheduled to close on December 17, 1991. The BIA has received several requests from interested parties for more time to thoughtfully respond to the proposed revisions. In response to these requests, the Department is extending the comment period 30 days. Comments will now be accepted until January 17, 1992.

Copies of the proposed rule may be obtained by calling Holly Reckord, Acting Chief, Branch of Acknowledgment & Research at (202) 208–3592.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91–30496 Filed 12–20–91, 8:45 am]

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federal register

Monday
December 23, 1991

Part IV

Department of Education

34 CFR Part 668
Student Assistance General Provisions; Rule and Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 668

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the audit requirements set out in 34 CFR 668.23 to permit institutions of higher education to submit audits conducted in accordance with Office of Management and Budget (OMB) Circular A–133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations" as published in the **Federal Register** on March 16, 1990, at 55 FR 10019. Audits made in accordance with OMB Circular A–133 may be submitted instead of the other audits specified under 34 CFR 668.23.

EFFECTIVE DATE: These regulations take effective either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. However, the amendment to § 668.23(d) will not become effective until the information collection requirements contained in that section have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Wendy L. Macias, Program Specialist, Pell Grant Policy Section, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW. (Regional Office Building 3, room 4318), Washington, DC 20202–5346. Telephone (202) 708–7888. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Secretary is amending § 668.23(d) to address the publication of Office of Management and Budget Circular A–133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations." The Circular provides policy guidance to Federal agencies for establishing uniform requirements for audits of awards provided to institutions of higher education and other nonprofit organizations. The Office of Management and Budget (OMB) published the final version of Circular A–133 in the **Federal Register** on March 16, 1990 (55 FR 10019). Circular A–133 was developed to cover colleges, universities, and other nonprofit organizations that are excluded from coverage under the Single Audit Act of 1981, Public Law 98–502. Currently, § 668.23(d) states that an audit conducted in accordance with the Single Audit Act of 1981 satisfies the audit requirements contained in paragraph (c). The Secretary is amending this section to state that an audit conducted in accordance with Circular A–133 also satisfies the audit requirements contained in paragraph (c) of § 668.23. The reference in the regulations is to Circular A–133 as published in the **Federal Register** on March 16, 1990. If Circular A–133 is amended at some future date the Department will adopt those amendments in a separate document. The Secretary has reviewed Circular A–133 and determined that there is no present need for any Department exceptions from its substance. The Secretary has also determined that compliance with the OMB Circular A–133 guidelines should be extended to all entities subject to the audit requirements set forth in 34 CFR 668.23. The Secretary understands that some institutions that are required to submit audits under 34 CFR 668.23 have been required to prepare Circular A–133 audits for other agencies due to their participation in other Federal programs. By permitting these institutions to submit the Circular A–133 audits for purposes of 34 CFR 668.23, the Secretary is relieving a restriction and reducing a regulatory burden on these entities.

Waiver of Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act, 20 U.S.C. 1232(b)(2)(A), and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, since an institution may already be required to prepare an A–133 audit due to its participation in other Federal programs, no additional burden will be imposed upon any entity subject to audit reporting requirements set out in 34 CFR 668.23. Further, OMB adopted Circular A–133 only after providing a full opportunity for public comment. (See 53 FR 45744, November 10, 1988.) Accordingly, the Secretary finds that soliciting further public comment with respect to these regulations is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in that order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a serious economic impact on a substantial number of small entities. The small entities affected by these proposed regulations are small institutions of postsecondary education. These regulations make only technical modifications. Furthermore, these changes will not increase institutions' workload, or costs associated with administering the Title IV, HEA programs and therefore will not have a serious economic impact on a substantial number of small entities.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid.

(Catalog of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; Consolidation Program, 84.032; Guaranteed Student Loan Program, 84.032; PLUS Program, 84.032; Supplemental Loans for Students Program, 84.032; College Work-Study Program, 84.033; Perkins Loan Program, 84.038; Pell Grant Program, 84.063; State Student Incentive Grant Program, 84.069)

Dated: September 4, 1991.

Lamar Alexander,

Secretary of Education.

The Secretary amends part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

2. Section 668.23 is amended by revising paragraph (d) to read as follows:

§ 668.23 Audits, records, and examinations.

* * * * *

(d) The Secretary considers the audit requirement in paragraph (c) of this section to be satisfied by an audit conducted in accordance with—

(1) The Single Audit Act (Chapter 75 of title 31, United States Code); or

(2) Office of Management and Budget Circular A–133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations."

* * * * *

[FR Doc. 91–30389 Filed 12–20–91, 8:45 am]

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DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840-AB19

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions regulations. These proposed regulations are needed to implement statutory changes, including changes required by the Omnibus Budget Reconciliation Act of 1989, the Department of Defense Authorization Act, 1987, and the Compact of Free Association. These proposed regulations also would make necessary technical modifications and enhance program integrity in the student financial assistance programs authorized by title IV of the Higher Education Act of 1965, as amended (Title IV, HEA programs).

DATES: Comments must be received on or before February 6, 1992.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Ms. Carney M. McCullough, Chief, Pell Grant Policy Section, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW. (Regional Office Building 3, room 4318), Washington, DC 20202-5346.

FOR FURTHER INFORMATION CONTACT: Wendy L. Macias, Program Specialist, Pell Grant Policy Section, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW. (Regional Office Building 3, room 4318), Washington, DC 20202-5346. Telephone (202) 708-7888. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Student Assistance General Provisions regulations implement requirements that are common to the participation of postsecondary institutions in the title IV, HEA programs. The title IV, HEA programs include the Pell Grant, Stafford Loan (formerly Guaranteed Student Loan (GSL)), PLUS, Supplemental Loans for Students (SLS), Consolidation, State Student Incentive Grant (SSIG), Income Contingent Loan (ICL), Perkins Loan, College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) programs. The last three programs are known collectively as the "campus-based programs." These proposed regulations take into account changes to paragraph designations made as a result of the publication of final regulations published in the **Federal Register** on July 31, 1991 (56 FR 36682).

SUMMARY OF PROPOSED CHANGES

I. Subpart A—General

Section 668.2 General Definitions

The Secretary is proposing technical amendments to clarify the definitions of several of the title IV, HEA programs, consistent with the November 20, 1990 Notice of Proposed Rulemaking for the Guaranteed Student Loan programs. First, the Secretary is proposing to remove the name and current definition of the "Guaranteed Student Loan (GSL) Program" and refer to that program as the "Stafford Loan Program". The Secretary is also proposing revised, more descriptive definitions for the Stafford Loan Program and the SLS, PLUS, and Consolidation programs. Third, the Secretary is proposing a new definition of the Guaranteed Student Loan (GSL) programs which would include the Stafford Loan, SLS, PLUS and Consolidation programs. The Secretary is proposing these changes to reflect a statutory change. The Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Public Law 100-297, renamed the "Guaranteed Student Loan Program" authorized under title IV-B of the HEA as the Robert T. Stafford Loan Program.

Section 668.7 Eligible Student

The Secretary is proposing several amendments to § 668.7. These changes are being made to address a statutory change, and to provide consistent standards with regard to the effect of a defaulted loan on a student's eligibility for title IV, HEA program assistance. In addition, the Secretary is requesting comments on § 668.7(e) regarding the possible development of specific conditions under which a student who has previously defaulted on a title IV, HEA loan may be eligible for additional assistance.

The first group of proposed changes implements statutory and technical amendments to the regulations governing student eligibility under § 668.7(a). First, the Secretary is proposing to amend § 668.7(a)(1)(ii) in accordance with amended section 484(b) of the HEA to state that a student who is enrolled or accepted for enrollment at an eligible institution in a teacher certification program that is required for employment is eligible for assistance under the GSL programs.

Second, the Secretary is proposing to amend § 668.7(a)(4) in order to conform with the Compact of Free Association (Public Law 99-239) and Public Law 100-369. At the time of publication of the current regulations, the Compact of Free Association intended to create three new political entities from the Trust Territory of the Pacific Islands—the Republic of Palau, the Federated States of Micronesia, and the Marshall Islands. In anticipation of this change in status, the regulations listed the territories separately from the "Trust Territory of the Pacific Islands" category to ensure that citizens of these territories would continue to be eligible for title IV, HEA assistance after ratification of the Compact of Free Association. Although the Federated States of Micronesia and the Marshall Islands did change status, the Republic of Palau did not. Thus, the proposed regulations seek to clarify the current status of the Republic of Palau, the Federated States of Micronesia, and the Marshall Islands. Since the Republic of Palau remains the only Trust Territory of the Pacific Islands, the name Palau would be added in parentheses after the "Trust Territory of the Pacific Islands" category. The proposed regulations would continue to list the Federated States of Micronesia and the Marshall Islands separately.

In addition, the original Compact of Free Association limited eligibility for title IV, HEA program assistance to citizens of the Federated States of Micronesia and citizens of the Marshall Islands who were postsecondary students on the day of ratification. This eligibility was limited to four years. These provisions have been amended by Public Law 100-369 which extends eligibility for title IV, HEA program assistance to citizens of the Federated States of Micronesia and citizens of the Marshall Islands who were not postsecondary students on the day of ratification and removes the four year limit on aid.

Third, the Secretary proposes to amend § 668.7(a)(6) to correct a previous omission by adding the requirement that a student does not owe, and certifies that he or she does not owe, a refund on a Perkins Loan due to an overpayment in order to be eligible to receive title IV, HEA program assistance.

Fourth, the Secretary is proposing to amend § 668.7(a)(9) to require a student to certify that he or she has not borrowed in excess of title IV loan limits in order to be eligible to receive additional title IV, HEA program assistance. Currently, in order for a student to be eligible, the institution that the student attends must determine that he or she has not borrowed in excess of title IV loan limits; however, the student is not required to certify to this fact. The proposed certification requirement would implement a policy that is already in effect (this requirement is included as part of the "Statement of Educational Purpose/Certification Statement on Refunds and Default" found on all Student Aid Reports) and is similar to the requirements of § 668.7(a)(6) and (7) that require a student to certify that he or she does not owe a refund on a grant and is not in default on a loan.

The second group of proposed changes implements statutory and technical changes to § 668.7(d).

First, the Secretary is proposing to remove references to scholarship programs in § 668.7(d) (which currently delineates the conditions under which a student who owes a refund of a grant or scholarship due to an overpayment is eligible to receive assistance under a title IV, HEA program) as the Byrd Scholarship Program is no longer covered by the Student Assistance General Provisions regulations. Further, the Secretary proposes to correct a previous omission to amend §§ 668.7(d) and 668.7(d)(2) to add the Perkins Loan Program to the list of programs in which a student may owe a refund due to an overpayment and still be eligible to receive assistance under a title IV, HEA program under the conditions listed in § 668.7(d), since the conditions under which a student who owes a refund on a Perkins Loan due to an overpayment is eligible to receive assistance are the same as those delineated for a student who owes a refund on a SEOG or SSIG due to an overpayment.

In the third group of proposed changes, the Secretary is proposing to make additional technical amendments to § 668.7 (e) and (f). One of these changes is the clarification that a defaulted loan has been fully repaid by the student no longer would be considered in default for the purposes of student eligibility. This proposed change allows a student who had previously defaulted on a title IV loan to reestablish eligibility for title IV, HEA program assistance if he or she subsequently fully repays the loan. This exception exists as a condition of loan eligibility in regulations governing the GSL programs (34 CFR 682.201(e)(4)), but the Secretary published proposed regulations for 34 CFR part 682 on November 20, 1990, that omit this provision from the GSL program regulations. The Secretary is proposing to transfer this exception from the Guaranteed Student Loan regulations to the Student Assistance General Provisions and extend the provisions to apply to all title IV, HEA programs. Thus, under these proposed regulations, a student who is otherwise eligible, and is or has been in default on a loan made under any title IV, HEA program, may be eligible to receive title IV, HEA program assistance if: (1) He or she has made satisfactory arrangements to repay the loan, (2) he or she has fully repaid the loan, or (3) for a student who had been in default on a loan made under the GSL, PLUS, SLS, or Consolidation program, the loan has been rehabilitated and sold under section 428F of the HEA. In addition, the Secretary is amending § 668.7(e) by adding an additional subparagraph (1)(ii)(C) to clarify that a loan that has been rehabilitated and sold under section 428F of the HEA no longer would be considered to be in default for the purposes of student eligibility. This proposed change is required by the Omnibus Budget Reconciliation Act of 1989, which amended section 428F(b)(3) of the HEA.

Finally, the Secretary is proposing to modify paragraph (f) of the current regulations with regard to bankruptcy. The current regulations provide that a student is considered not to be in default on a title IV loan if that loan is discharged in bankruptcy. Therefore, under current regulations, a student who has defaulted on a title IV loan and has had that loan discharged in bankruptcy, would still be considered eligible for title IV loan and grant programs. The Secretary is proposing to continue to apply this provision to applicants under the Pell Grant, SEOG, SSIG and CWS programs. However, a student who has defaulted on a title IV loan and applies for a loan made under the Stafford, SLS, Perkins Loan, or ICL programs would be considered ineligible for any loan assistance because of the prior default, even if he or she files or has filed for bankruptcy, or has had the prior loan discharged in bankruptcy, unless he or she makes satisfactory arrangements to repay that loan.

The Bankruptcy Act, 11 U.S.C. 525, provides that the Federal Government may not discriminate against a bankrupt person in the awarding of certain licenses, grants, and other benefits. At the time that current regulations were adopted, there was no controlling, authoritative precedent interpreting the effect of 11 U.S.C. 525 on the consideration of applications for assistance under government-sponsored or financed credit programs. Therefore, the Secretary considered an otherwise eligible student who is in default on a title IV, HEA loan discharged in bankruptcy to still be eligible to receive additional title IV, HEA program assistance, loans as well as grants.

However, case law has now held that section 525 of the Bankruptcy Act does not apply to student loans. *See Goldrich v. New York State Higher Education Services Corporation*, 771 F.2d 28 (2nd Cir. 1985); *In re Richardson*, 17 B.R. 925 (E.D. Pa. 1982). In light of the distinction drawn in these cases between grants and loans, and the congressional directive underlying section 484(a)(3) of the HEA, that persons should not be given additional loan assistance if they have not honored their previous repayment commitments, the Secretary now believes that the current regulations unduly restrict the consideration of that default in determining whether a defaulted borrower qualifies for a new title IV, HEA student loan.

Although the Secretary recognizes that section 484(a)(3), enacted by Congress well after 11 U.S.C. 525, could reasonably be read to bar all subsequent title IV, HEA program assistance to a title IV loan defaulter, such a broad reading would conflict with Congress's intention, as explained in these cases, to have section 525 of the Bankruptcy Act apply only to government grants and not to qualification for loans or loan guarantees. The Secretary accepts that distinction as a sound basis for revising the current regulations. Thus, the Secretary regards a borrower who is in default as presenting an unacceptable credit risk—whether his or her loan was previously discharged in bankruptcy or whether the borrower has filed for but not yet received a discharge in bankruptcy—in determining that borrower's eligibility for further loan assistance under title IV of the HEA. However, that risk is minimized if the borrower has made satisfactory arrangements to repay that loan, has repaid the loan in full, or has had the loan rehabilitated under section 428F of the HEA.

In addition, the Secretary is requesting comments on whether § 668.7(e) should be revised to establish the specific conditions under which a student who has previously defaulted on a title IV loan may be eligible for additional assistance. Currently, institutions and guarantee agencies are using a variety of standards to determine when a student has made satisfactory arrangements to repay a defaulted title IV loan. These standards vary from three payments, or the payment of a specific amount, to full

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repayment of the defaulted loan. The Secretary is interested in knowing whether the existence of multiple policies regarding satisfactory repayment arrangements creates confusion among defaulted borrowers and increases the difficulty of developing a coordinated national policy to attack the problem of student loan defaults, or whether the flexibility obtained with multiple policies is considered useful as a collection tool by holders of loans. Under one alternative, § 668.7(e) would be changed to allow an otherwise eligible student who has defaulted on a title IV loan to receive assistance under the title IV, HEA programs if the student makes 12 consecutive monthly payments to a lender (for a Stafford, PLUS, or SLS loan) or 12 consecutive monthly payments to an institution (for a National Defense/Direct loan or Perkins loan). This approach ensures that (1) the borrower recognizes that he or she has an obligation to repay that defaulted loan, (2) the borrower is making a good-faith effort in meeting that obligation, and (3) the borrower has become accustomed to making regular loan payments. The Secretary is considering including this option in the final regulations in order to apply a consistent standard of satisfactory repayment arrangements in the title IV, HEA programs. Alternatively, the Secretary is considering including an option proposed as a result of public comment in a subsequent NPRM in order to apply a consistent standard of satisfactory repayment arrangements in the title IV, HEA programs.

Section 668.8 Eligible Program

The Secretary is proposing a technical change to modify the circumstances under which a program of study by correspondence qualifies as an eligible program at a vocational school. The modification, which would require completion in a correspondence program of at least 300 clock hours, corresponds to a similar provision in the definition of a vocational school in § 600.7(a)(3)(iii) of the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended.

II. Subpart B—Standards for Participation in title IV, HEA Programs

Section 668.13 Factors of Financial Responsibility

The Secretary proposes to require an institution to submit, upon the Secretary's request, an audited and certified financial statement of the institution for its latest two fiscal years. Under current regulations, while the Secretary may require an audited statement from any institution, in practice the Secretary often allows the submission of unaudited statements that are attested to for accuracy by the ownership or chief executive officer of an institution. Under this proposal, the Secretary would require an audited statement each time that an institution seeks initial or continued certification to participate in a title IV, HEA program. The Secretary believes that an audited statement gives a more accurate indication of the financial position of an institution than an unaudited financial statement, which is purely the representation of the management or ownership of the institution. Further, this requirement would permit the Secretary to standardize the Department's evaluation of the financial condition of institutions, so that all institutions may be judged on the same basis. Under this proposal the Secretary considers this audit requirement to be satisfied by an audit conducted in accordance with the Single Audit Act of 1981, Public Law 98–502 or the Office of Management and Budget Circular A–133 "Audits of Institutions of Higher Education and Other Nonprofit Organizations." The submission of audits conducted in accordance with the Single Audit Act and Circular A–133 also satisfy the audit requirements contained in paragraph (c) § 668.23, Audits, records, and examinations.

Section 668.22 Distribution Formula for Institutional Refund and for Repayments of Disbursements Made to the Student for Noninstitutional Costs

The Secretary is proposing to amend the definition of institutional refund in § 668.22(a)(2) to prevent an institution from including an unpaid balance that was scheduled to be paid by cash from a student, when the institution determines the amount that the institution may retain for the portion of the payment period that the student actually attended. The proposed regulations would require that the student's full expected payment to the institution be taken into consideration before the amount of the institutional refund is calculated.

Current Distribution Formula

Under the current regulations, when a student withdraws, drops out, or is expelled before he she has paid his or her institutional charges for the payment period, those institutional charges that were scheduled to be paid for by the student are actually paid by title IV, HEA program assistance instead of the student. Furthermore, under the current regulations, a student who has not paid all of his or her institutional charges prior to dropping out receives more title IV, HEA program assistance than a student who has paid his or her institutional charges in full. These inequities are illustrated in the following example:

Example A: Current Title IV distribution Formula for Institutional Refunds

Situation: Students A, B, and C are enrolled in the same eligible program, which charges $3,000 for the payment period. The students all receive $2,500 in Title IV, HEA program assistance. All are scheduled to pay $500 from their own resources to meet the full $3,000 in institutional charges.

The students drop out on the same day. Student A has paid nothing. Student B has only paid $250. Student C has paid the full $500. Under the institution's refund policy, the institution is entitled to retain $1,500 for the portion of the payment period that the student was actually enrolled at the institution.

Currently, under § 668.22(a)(2) of the regulations, an institution calculates an institutional refund by subtracting the amount retained for the student's actual period of enrollment (which is calculated according to the institution's refund policy) from the amount paid for institutional charges by cash and/or financial aid. The institutional refunds for the three students in this example are calculated as follows:

Determination of Refund	Student A	Student B	Student C
Amount paid by cash	$0	$250	$500
Plus			
Amount paid by Title IV (excluding CWS)	2,500	2,500	2,500
Equals			
Total amount paid	2,500	2,750	3,000
Minus			
Amount retained for institutional charges	1,500	1,500	1,500
Equals			
Amount of institutional refund	1,000	1,250	1,500

Then, under § 668.22(a)(3) of the regulations, the institution determines the portion of the institutional refund that must be returned to the Title IV, HEA programs by multiplying the amount of the institutional refund by the fraction in § 668.22(a)(3)(ii). In this example, the amounts of the students' institutional refunds that must be returned to the Title IV, HEA programs are currently determined as follows:

DISTRIBUTION OF INSTITUTIONAL REFUND TO THE TITLE IV, HEA PROGRAMS

	Student A	Student B	Student C
Amount of Institutional Refund	$1,000	$1,250	$1,500
Multiplied by			
Total Title IV aid for the payment period	2,500	2,500	2,500
Total financial aid for the payment period	2,500	2,500	2,500
Equals			
Amount returned to Title IV	1,000	1,250	1,500

The example shows that Student A, who paid none of the $500 he was expected to pay, actually received a larger portion of title IV, HEA program assistance, $1,500, ($2,500 awarded minus $1,000 refunded to the title IV, HEA programs) than Student C, $1,000, ($2,500 awarded minus $1,500 refunded to the title IV, HEA programs), who paid all of the $500 she was expected to pay.

The Secretary believes that the current regulations treat students who diligently pay their bills on time unfairly and reward students who are negligent in making their payments, because title IV, HEA program assistance pays for institutional costs that the students were expected to pay from their own resources. The Secretary believes that when this situation occurs under the current regulations, it contradicts the basic assumption of the title IV refund distribution formula that the student's own resources are expended before title IV, HEA program assistance is used. Furthermore, the Secretary believes that the title IV, HEA programs should no longer be the guarantor of credit extended by an institution to its students and therefore is proposing to revise the definition of institutional refund in § 668.22(a)(2) to eliminate this situation.

Proposed New Distribution Formula

In order to address this inequity in the definition of institutional refund, the Secretary is proposing that an institution must exclude any unpaid amount that the student was obligated to pay for the payment period from the amount that the institution retains for institutional charges.

The Secretary proposes that before calculating the institutional refund of a student who received assistance under any title IV, HEA program (other than the CWS Program), an institution must first determine whether the student has fully paid his or her scheduled cash payment for institutional charges for that payment period. If a student has not fully paid the amount that he or she was scheduled to pay, an institution must deduct that unpaid amount from the amount an institution may retain under its refund policy before calculating the institutional refund amount. If the unpaid amount is equal to or greater than the amount that an institution may retain under its refund policy for a student's actual period of enrollment, then an institution must return all of the assistance from the title IV, HEA programs (other than the CWS Program) credited to the student's account for institutional charges for the payment period.

Example B: Proposed Title IV Distribution Formula for Institutional Refunds

Using the same situtation provided in Example A, the institutional refunds for the three students under the proposed regulations would be calculated as follows:

Step One: Determine if the student owes any cash amount for the payment period.

Determination of Refund	Student A	Student B	Student C
Student's scheduled payment	$500	$500	$500
Minus			
Amount paid by the student	0	250	500
Equals			
Amount student owes toward scheduled payment	500	250	0

Under the proposed regulations, the preliminary step in the refund distribution process is to determine whether the student has satisfied his or her financial obligation to the institution prior to having dropped out, withdrawn, or been expelled. In this example, all students were obligated to pay $500 to the institution for institutional charges in the payment period. Student C paid this obligation in full, while Student B paid only half and Student A paid nothing. This information will be used in the next step.

Step Two: Subtract amount student owes from the amount that the institution may retain under its refund policy.

	Student A	Student B	Student C
Amount institution may retain for institutional charges under its institutional refund policy	$1,500	$1,500	$1,500
Minus			
Amount student owes toward scheduled payment	500	250	0
Equals			
Amount institution may retain for instructional charges	1,000	1,250	1,500

Under the second step of the proposed regulations, the institution would subtract the amount of the student's unpaid obligation, which was determined in the previous step, from the amount that the institution is entitled to retain under the institution's refund policy. By excluding this unpaid obligation, the proposed regulations ensure that the student must fulfill his or her original obligation to the institution for the payment period, and also ensure that the institution, rather than the Federal Government, assumes all of the risk for its extension of credit to the student for the payment period.

Step Three: Determine amount of institutional refund.

	Student A	Student B	Student C
Amount paid by the student (from Step 1)	$0	$250	$500
Plus			
Amount paid by Title IV (excluding CWS)	2,500	2,500	2,500
Equals			
Total amount paid	2,500	2,750	3,000
Minus			
Amount institution may retain for institutional charges (from Step 2)	1,000	1,250	1,500
Equals			
Amount of institutional refund	1,500	1,500	1,500

Note that under the proposed regulations, this step would not differ from the current regulations. The Secretary is not proposing to change the provisions under which an institution determines how much of the institutional refund must be returned to the title IV, HEA programs.

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Likewise, the amount of the students' institutional refund that must be returned to the title IV, HEA programs under the proposed regulations would continue, as under the current regulations, to be determined by multiplying the amount of the institutional refund by the fraction in proposed § 668.22(a)(5)(ii), as follows:

DISTRIBUTION OF INSTITUTIONAL REFUND TO THE TITLE IV, HEA PROGRAMS

	Student A	Student B	Student C
Amount of institutional refund	$1,500	$1,500	$1,500
Multiplied by			
Total title IV aid for the payment period	2,500	2,500	2,500
Total financial aid for the payment period	2,500	2,500	2,500
Equals			
Amount returned to title IV	1,500	1,500	1,500

Under the proposed regulations all three students ultimately would receive the same amount of title IV, HEA program assistance ($1,000), unlike example A, and the same amount of assistance would be returned to the title IV, HEA programs. Note, however, that under these proposed regulations, Student A would owe $500 to the institution and Student B would owe $250 to the institution after the institutional refund has been returned to the title IV, HEA programs, as follows:

	Student A	Student B	Student C
Amount student owes to institution	$500	$250	$0

The amount that the student owes to the institution plus the amount that the student has already paid to the institution equals the amount that the institution originally charged the student for that payment period.

The Secretary believes that this proposed change would establish a more equitable method of treating students with similar circumstances than the distribution method defined in the current regulations. In addition, this proposed change would ensure that a student's own resources are expended before title IV, HEA program assistance is expended and would reaffirm the principle that a student and his or her family are primarily responsible for financing that student's education.

III. Subpart C—Statement of Educational Purpose and Selective Service Registration Status

Section 668.33 Statement of Registration Status

The Secretary is proposing to amend § 668.33(b) of these regulations to provide an additional condition under which an institution may waive the requirement that a student file a Statement of Registration Status. Under the current regulations, an institution may waive the requirement for a student to file a Statement of Registration Status if the institution has clear and unambiguous evidence that a student is not required to register with the Selective Service. The Secretary is proposing to amend these regulations to permit an institution to waive the requirement for a student to file a Statement of Registration Status if the student (a) failed to register with the Selective Service when required and is now 26 years old or older, and (b) provides to the institution an advisory opinion that he obtained from the Selective Service System that demonstrates that he did not knowingly and willfully fail to register. The institution may accept this advisory opinion unless the institution has uncontroverted evidence that the student in fact did knowingly and willfully fail to register. This change is required by the Department of Defense Authorization Act, 1987, which amended section 12 of the Military Selective Service Act (50 U.S.C. App. 462). The amended statute provides that no person may be denied any Federal benefit if he failed to register with Selective Service, if the requirement for him to register has terminated or become inapplicable, and if he can demonstrate by a preponderance of evidence that he did not knowingly and willfully fail to register. If an institution waives the requirement that a student file a Statement of Registration Status under this provision, the institution must document its determination.

Section 668.34 Model Statement of Educational Purpose and Registration Status

The Secretary is proposing to amend § 668.34 to remove reference to scholarship programs from the Statement of Educational Purpose as the only scholarship program this was applicable to, the Byrd Scholarship Program, is no longer covered by the Student Assistance General Provisions regulations. Further, the Secretary is proposing to amend the Statement of Registration Status to expressly refer to residents of Palau under the condition "I am a permanent resident of the Trust Territory of the Pacific Islands" and remove the reference to Palau under the condition, "I am a citizen of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau." (See the discussion for the proposed change to § 668.7(a)(4) explaining the need to clarify the current status of the Republic of Palau [as it continues to be a part of the Trust Territory of the Pacific Islands], the Federated States of Micronesia, and the Marshall Islands.)

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a serious economic impact on a substantial number of small entities. The small entities affected by these proposed regulations are small institutions of postsecondary education. These regulations make only technical modifications and reduce potential abuse in the title IV, HEA programs. However, these changes will not substantially increase institutions' workload, or costs associated with administering the Title IV, HEA programs and therefore will not have a serious economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

Sections 668.8, 668.13, 668.22, 668.33 and 668.34 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Annual public reporting burden for this collection of information is estimated to average 4.11 hours per response for 19,410 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4318, Regional Office Building 3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays. To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid.

(Catalog of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; Consolidation Program, 84.032; Guaranteed Student Loan Program, 84.032; PLUS Program, 84.032; Supplemental Loans for Students Program, 84.032; College Work-Study Program, 84.033; Perkins Loan Program, 84.038; Pell Grant Program, 84.063; State Student Incentive Grant Program, 84.069; Income Contingent Loan Program, 84.228)

Dated: September 4, 1991.

Lamar Alexander,

Secretary of Education.

The Secretary proposes to amend part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

§ 668.1 [Amended]

2. In § 668.1, remove the words "Guaranteed Student Loan (GSL)" from paragraph (c)(4) and add, in their place, the words "Stafford Loan"; and remove the word "Loan" from paragraph (c)(7).

3. Section 668.2(b) is amended by removing the definition of the "Guaranteed Student Loan (GSL) Program"; by revising the definitions of the "PLUS Program", "Supplemental Loans for Students (SLS) Program" and "Consolidation Loan Program"; and by adding in alphabetical order new definitions for the "Guaranteed Student Loan Programs" and "Stafford Loan Program" to read as follows:

§ 668.2 General definitions.

* * * * *

Consolidation Program: The loan program authorized by title IV–B of the HEA which encourages the making of loans to borrowers for the purpose of consolidating their repayment obligations, with respect to loans received by those borrowers while they were students, under the Stafford Loan, PLUS (as in effect prior to October 17, 1986), SLS, and Perkins Loan Programs, and under the Health Professions Student Loan (HPSL) Program authorized by subpart II of part C of title VII of the Public Health Service Act.

* * * * *

Guaranteed Student Loan (GSL) Programs: The loan programs authorized under title IV–B of the HEA, including the Stafford Loan, PLUS, Supplemental Loans for Students (SLS), and Consolidation Programs, in which lenders use their own funds to make loans to enable students or their parents to pay the costs of the student's attendance at postsecondary institutions.

* * * * *

PLUS Program: The loan program authorized by title IV–B of the HEA which encourages the making of loans to parents of dependent students.

* * * * *

Stafford Loan Program: The loan program authorized by title IV–B of the HEA which encourages the making of loans to undergraduate, graduate, and professional students.

* * * * *

Supplemental Loans for Students (SLS) Program: The loan program authorized by title IV–B of the HEA which encourages the making of loans to graduate, professional, independent undergraduate, and certain dependent undergraduate students.

4. Section 668.7 is amended by revising paragraphs (a)(1)(ii), (a)(4) (iii) and (iv), (a)(6), (a)(9) introductory text, (d) introductory text, (d)(2) introductory text, (e) introductory text, (e)(1)(ii), (e)(2)(ii), and (f) to read as follows:

§ 668.7 Eligible student.

(a) * * *

(1) * * *

(ii) For purposes of the GSL programs—

(A) Enrolled as at least a half-time student in a course of study necessary for enrollment in an eligible program for no longer than one twelve-month period; or

(B) Enrolled or accepted for enrollment in a program at an eligible institution necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State;

* * * * *

(4) * * *

(iii) Is a permanent resident of the Trust Territory of the Pacific Islands (Palau); or

(iv) For purposes of the Pell Grant, SEOG, and CWS programs—

(A) Is a citizen of the Federated States of Micronesia; or

(B) Is a citizen of the Marshall Islands;

* * * * *

(6) Except as provided in paragraph (d) of this section, does not owe, and certifies that he or she does not owe, a refund on a grant or loan awarded under the Pell Grant, Perkins Loan, SEOG, or SSIG programs. A student owes a refund on a grant or loan if the student receives a grant or loan overpayment. A student receives a grant or loan overpayment if the student's grant or loan payments exceed the amount he or she is eligible to receive or use;

* * * * *

(9) As determined by the institution that he or she attends, has not borrowed, and certifies that he or she has not borrowed—

* * * * *

(d) *Refund of a grant or loan overpayment.* Notwithstanding paragraph (a)(6) of this section, a student who owes a refund on a Pell Grant, Perkins Loan, SEOG, or SSIG due to an overpayment is eligible to receive assistance under a title IV, HEA program under the following conditions:

* * * * *

(2) *Perkins Loan, SEOG or SSIG overpayment.* If an institution makes a Perkins Loan, SEOG or SSIG overpayment to a student, that student is eligible to receive assistance under a title IV, HEA program if—

* * * * *

(e) *Default on a loan.* Notwithstanding paragraph (a)(7) of this section, a student who is or has been in default on any loan made under the National

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Defense/Direct Student Loan, Perkins Loan, ICL, or GSL programs is eligible to receive assistance under a title IV, HEA program under the following conditions:

(1) * * *

(ii)(A) The Secretary, for a federally insured loan or a Stafford Loan that has been assigned to Department of Education, or a guarantee agency, for a loan guaranteed by that agency, determines that the student has made satisfactory arrangements to repay that loan;

(B) The loan has been paid in full; or

(C) The loan has been rehabilitated and sold under 428F of the HEA.

(2) * * *

(ii)(A) The institution that made the loan or the Secretary, if the loan has been assigned to the Department of Education, certifies that the student has made satisfactory arrangements to repay that loan; or

(B) The loan has been paid in full.

(f) *Effect of discharge of a title IV, HEA program loan in bankruptcy.* (1) For purposes of determining a student's eligibility for a grant under the Pell Grant, SEOG, and SSIG programs, and employment compensation provided under the CWS Program, the Secretary does not consider that a student is in default on a loan made under any title IV, HEA program, if that loan is discharged in bankruptcy.

(2) For purposes of determining a student's eligibility for a loan under any title IV, HEA program, the Secretary considers a student who has previously defaulted on a loan made under any of those programs and who has, while in default, filed for relief in bankruptcy or received a discharge for that loan in bankruptcy, to remain in default unless the student is considered eligible in accordance with paragraph (e) of this section.

5. Section 668.8 is amended by revising paragraph (a)(2)(v)(D) to read as follows:

§ 668.8 Eligible program.

(a) * * *

(2) * * *

(v) * * *

(D) In the case of a program of study by correspondence, requires not less than an average of 12 hours of preparation each week over each 12-week period and completion of a minimum of 300 clock hours in not less than six months; and

* * * * *

6. Section 668.13 is amended by removing paragraph (f); redesignating paragraphs (g) through (k) as paragraphs (f) through (j) respectively; removing the term "(g)(1)" from newly redesignated paragraph (f)(2) and adding, in its place, the term "(f)(1)"; and revising paragraph (e) to read as follows:

§ 668.13 Factors of financial responsibility.

* * * * *

(e) The Secretary determines whether an institution is financially responsible in accordance with paragraphs (b), (c), and (d) of this section by evaluating documents submitted by the institution and information obtained from other sources, including outside sources of credit information. To enable the Secretary to make this determination, an institution shall, upon the request of the Secretary, submit for its two latest complete fiscal years a financial statement of the institution, prepared in accordance with generally accepted accounting principles and audited and certified by an independent, licensed, certified public accountant in accordance with generally accepted auditing standards. The statement must contain a balance sheet and the related statements of income, earnings, and cash flows. The Secretary may also require the institution to submit the accountant's work papers. The Secretary considers the audit requirement in this paragraph to be satisfied by an audit conducted in accordance with—

(1) The Single Audit Act (Chapter 75 of Title 31, United States Code); or

(2) Office of Management and Budget Circular A–133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations."

* * * * *

7. Section 668.22 is amended by revising paragraph (a) to read as follows:

§ 668.22 Distribution formula for institutional refund and for repayments of disbursements made to the student for noninstitutional costs.

(a) *Repayment of institutional refunds of title IV, HEA programs.* (1) An institution shall return a portion of the refund owed to a student to the title IV, HEA programs if—

(i) The student officially withdraws, drops out, or is expelled from the institution on or after his or her first day of class of a payment period; and

(ii) The student received assistance for the payment period under any title IV, HEA program other than the CWS Program.

(2) For purposes of this section, an institutional refund means the amount paid for institutional charges for a payment period minus the amount that the institution may retain under paragraph (a)(3) of this section for the portion of the payment period that the student was actually enrolled at the institution.

(3) An institution may not include any unpaid amount of a scheduled cash payment in determining the amount that the institution may retain for institutional charges. A scheduled cash payment is the amount of institutional charges that is not paid by financial aid for the payment period. In determining the amount that the institution may retain for the portion of the payment period during which the student was actually enrolled, an institution shall—

(i) Compute the unpaid amount of a scheduled cash payment by subtracting the amount paid by the student for that payment period from the scheduled cash payment for the payment period; and

(ii) Subtract the unpaid amount of the scheduled cash payment from the amount that may be charged by the institution according to the institution's refund policy.

(4) An institution shall return the total amount of title IV, HEA program assistance (other than amounts received from the CWS Program) paid for institutional charges for the payment period if the unpaid amount of the student's scheduled cash payment is greater than or equal to the amount which may be retained by the institution under the institution's refund policy.

(5) The portion of the refund that an institution shall return to the title IV, HEA program(s) is the lesser of—

(i) The amount of assistance received under the title IV, HEA programs other than under the CWS Program for the payment period; or

(ii) The amount obtained by multiplying the institutional refund by the following fraction:

$$\frac{\text{Total amount of title IV, HEA program assistance (exclusive of CWS Program earnings) awarded for the payment period.}}{\text{Total amount of assistance (exclusive of all work earnings) awarded for the payment period.}}$$

* * * * *

8. Section 668.33 is amended by revising paragraphs (a)(1)(ii) and (b) to read as follows:

§ 668.33 Statement of Registration Status.

(a) * * *

(1) * * *

(ii) Certify the institutional portion of the application under the GSL programs.

* * * * *

(b) An institution may waive the requirement that a student file a Statement of Registration Status if the institution determines, based on clear and unambiguous evidence that—

(1) The student is not required to be registered with Selective Service; or

(2) The student—

(i) Was required to be registered with Selective Service prior to age 26;

(ii) Is now at least 26 years old or older;

(iii) Failed to register with Selective Service prior to age 26; and

(iv) Demonstrates to the institution that he did not knowingly and willfully fail to register with the Selective Service. The Secretary considers that a student satisfies this requirement by obtaining and presenting to the institution an advisory opinion from the Selective Service System that does not dispute the student's claim that he did not knowingly and willfully fail to register, and the institution does not have uncontroverted evidence that the student knowingly and willfully failed to register.

* * * * *

§ 668.34 [Amended]

9. In § 668.34 the STATEMENT OF EDUCATIONAL PURPOSE is amended by removing the phrase ", or scholarship" and adding the word "or" before the words "work study". The STATEMENT OF REGISTRATION STATUS is amended by removing the phrase ", or the Republic of Palau" and adding the word "(Palau)" after the words "Pacific Islands" and by removing the comma after the words "Marshall Islands" and adding in its place, the word "or".

§§ 668.7, 668.23 [Amended]

10. In 34 CFR part 668 remove the term "PLUS, SLS," in the following places:

(a) Section 668.7(a) introductory text; and

(b) Section 668.23(c)(1).

§§ 668.7, 668.8, 668.32 [Amended]

11. In 34 CFR part 668 remove the term ", PLUS, or SLS" in the following places:

(a) Section 668.7(a)(1)(ii), (a)(3)(ii)(B), and (a)(11)(v);

(b) Section 668.8(a)(1)(iii) and (a)(2)(vi);

(c) Section 668.32(a) introductory text and (a)(2).

§§ 668.7, 668.22 [Amended]

12. In 34 CFR part 668 remove the term ", GSL, PLUS, or SLS" and add, in its place, the term "or GSL" in the following places:

(a) Section 668.7(a)(9)(i); and

(b) Section 668.22(b)(3)(i).

§§ 668.7, 668.22, 668.23 [Amended]

13. In 34 CFR part 668 remove the term ", PLUS, and SLS" in the following places:

(a) Section 668.7(c) introductory text;

(b) Section 668.22(b)(3)(ii), (c)(1) and (e)(4); and

(c) Section 668.23(f)(1)(iv).

§ 668.15, 668.19, 668.51, 668.55, 668.57, 668.59, 668.60 [Amended]

14. In 34 CFR part 668 remove the term "GSL" and add, in its place, the words "Stafford Loan" in the following places:

(a) Section 668.15 (a)(1) and (f)(1);

(b) Section 668.19(a)(4)(ii)(A), (c)(4), and (c)(10);

(c) Section 668.51(a)(2) and (d);

(d) Section 668.55(c) introductory text;

(e) Section 668.57(d)(5) introductory text;

(f) Section 668.59(c) introductory text, (c)(1)(ii), and (e); and

(g) Section 668.60(b) introductory text and (d).

§§ 668.15, 668.19, 668.56, 668.58, 668.59, 668.60, 668.61, 668.90 [Amended]

15. In 34 CFR part 668 remove the term "GSL" and add, in its place, the words "Stafford Loan" in the following places:

(a) Section 668.15(b) introductory text, (b)(1) (i) and (ii), and (e);

(b) Section 668.19(a)(3) (iii) and (iv), (a)(4)(i), and (a)(4)(ii) introductory text;

(c) Section 668.56(b) introductory text, (b)(1) introductory text, (b)(2) introductory text, and (b)(3);

(d) Section 668.58(c);

(e) Section 668.59(d);

(f) Section 668.60(b)(1)(i)(C), and (D), (b)(1)(ii), and (b)(3);

(g) Section 668.61(b); and

(h) Section 668.90(a)(3)(iii).

§§ 668.20, 668.22 [Amended]

16. In 34 CFR part 668 remove the term ", GSL, PLUS, and SLS" and add, in its place, the term "and GSL" in the following places:

(a) Section 668.20(c) introductory text and (d)(2); and

(b) Section 668.22 (e)(5) and (e)(6).

§§ 668.54, 668.55, 668.58 [Amended]

17. In 34 CFR part 668 remove the term "GSL" and add, in its place, the word "Stafford" in the following places:

(a) Section 668.54(a)(2)(i);

(b) Section 668.55 (c)(1), (c)(2), and (d)(2); and

(c) Section 668.58 (a)(1)(iii), (a)(2)(iii) (A) and (B), (a)(2)(iv), (d)(1), and (d)(2).

§§ 668.94, 668.95 [Amended]

18. In 34 CFR part 668 remove the term "Guaranteed Student Loan or PLUS" and add, in its place, the term "GSL" in the following places:

(a) Section 668.94(a)(4); and

(b) Section 668.95(b)(1) introductory text.

§ 668.7 [Amended]

19. In § 668.7, paragraphs (a)(7), (a)(9)(ii), and (e) introductory text are amended by removing the term "GSL, PLUS, SLS, or Consolidation Loan" and adding, in its place, the term "or GSL".

20. In § 668.7, paragraph (e)(1) introductory text is amended by removing the terms ", *PLUS, SLS, or Consolidation Loan*" and ", PLUS, SLS, or Consolidation Loan".

§ 668.12 [Amended]

21. In § 668.12, paragraph (a)(1)(ii) is amended by removing the term ", SLS, or PLUS".

§ 668.19 [Amended]

22. In § 668.19, paragraph (c)(4) is amended by removing the words "Consolidation Loan" and adding, in their place, the word "Consolidation".

23. In § 668.19 paragraph (a)(4)(ii)(B) is amended by removing the term "PLUS, SLS, Consolidation Loan,".

§ 668.22 [Amended]

24. In § 668.22, paragraph (b)(1) is amended by removing the term ", GSL, PLUS, or SLS program" and adding, in its place, the term "or GSL programs".

25. In § 668.22, paragraph (c)(2) is amended by removing the term "GSL, PLUS, or SLS program" and adding, in its place, the term "the GSL programs".

26. In § 668.22, paragraph (e)(2) is amended by removing the term ", PLUS, or SLS program" and adding, in its place, the word "programs".

§ 668.23 [Amended]

27. In § 668.23, paragraph (a) introductory text is amended by removing the term "PLUS (34 CFR part 682), SLS,".

§ 668.51 [Amended]

28. In § 668.51, paragraph (a)(1) is amended by removing the term "Guaranteed Student Loan (GSL)" and adding, in its place, the words "Stafford Loan".

§ 668.57 [Amended]

29. In § 668.57, paragraph (d)(5) introductory text is amended by removing the term "*GSL*" and adding, in its place, the words "*Stafford Loan*".

§ 668.60 [Amended]

30. In § 668.60, paragraph (e)(2) is amended by removing the term "GSL loan application" and adding, in its place, the words "Stafford loan application".

31. In § 668.60, paragraph (e)(2) is amended by removing the term "GSL check" and adding, in its place, the words "Stafford loan check".

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§ 668.83 [Amended]

32. In § 668.83, paragraph (d)(3) is amended by removing the words "Guaranteed Student Loan Programs" each place they appear and adding, in their place, the term "GSL programs".

§ 668.94 [Amended]

33. In § 668.94(c)(2), paragraph (c)(2) is amended by removing the term "Guaranteed Student Loan and PLUS" and adding, in its place, the term "GSL".

Appendix D to 34 CFR part 668 [Amended]

34. In appendix D to 34 CFR part 668, the introductory paragraph is amended by removing the term "GSL" and adding, in its place, the words "Stafford Loan".

35. In appendix D to 34 CFR part 668, remove the term "GSL" and add, in its place, the word "Stafford" in the following places:

(a) III.4

(b) III.5. (a)(3)(i)(B)

36. In appendix D to 34 CFR part 668, section III.5. (a) introductory text and (b) introductory text are amended by removing the term "GSL" and adding, in its place, the words "Stafford Loan".

37. In appendix D to 34 CFR part 668, section III.5. (a)(1) introductory text is amended by removing the term "GSL and SLS program" and adding, in its place, the term "Stafford and SLS".

38. In appendix D to 34 CFR part 668, section III.5. (a)(2) introductory text is amended by removing the term "GSL and SLS loan" and adding, in its place, the term "Stafford Loan and SLS".

39. In appendix D to 34 CFR part 668, section III.5. (a)(3)(i)(A) is amended by removing the term "GSL or SLS program" and adding, in its place, the term "Stafford Loan or SLS".

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Part V

Department of Transportation

Federal Transit Administration

FTA Fiscal Year 1992 Formula Grant Apportionments; Notice

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FTA Fiscal Year 1992 Formula Grant Apportionments

AGENCY: Federal Transit Administration (FTA) (formerly the Urban Mass Transportation Administration), DOT.

ACTION: Notice.

SUMMARY: The Federal Transit Administration is pleased to publish in this Notice the first apportionments under the landmark reauthorization of the Federal transit program, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), signed into law by President Bush on December 18, 1991. In addition to publishing the apportionments, this Notice also explains significant changes in the Act affecting the formula programs. The legislation also renames the Urban Mass Transportation Administration (UMTA) the Federal Transit Administration (FTA), and the Urban Mass Transportation Act of 1964 (the UMT Act) the Federal Transit Act (the FT Act).

In a Notice published in the Federal Register on November 18, 1991, the FTA stated its intention to delay apportionment of funds made available under the Department of Transportation and Related Agencies Appropriations Act, 1992, until after passage of the reauthorization bill then pending. This Notice includes the apportionment of Fiscal Year 1992 formula funds, based both on the 1992 DOT Appropriations Act and relevant provisions of the ISTEA.

Limitations on the use of operating assistance are also included in this Notice, as well as other pertinent information.

FOR FURTHER INFORMATION CONTACT: The appropriate FTA Regional Administrator for grant specific information and issues; or Janet Lynn Sahaj, Chief, Resource Management and State Programs Division, Office of Capital and Formula Assistance, for general information concerning sections 3, 9, 18 or 16(b)(2) formula apportionments; or Robert F. Kirkland, Chief, Resource Management Division, Office of Planning, for general information concerning the sections 8 and 26(a)(2) planning programs, Department of Transportation, Federal Transit Administration, at 400 Seventh Street, SW., room 9301, Washington, DC 20590, (202) 366–2053.

SUPPLEMENTARY INFORMATION: As a result of the ISTEA, the trend toward delivery of FTA's program resources by formula apportionment continues. All activities are now allocated by formula with the exception of: (1) Section 3 capital grants for new systems, (2) Section 3 capital grants for bus and bus related projects, and (3) the national portion of the planning and research program (sections 6, 8, 10, 11, and 20). Approximately 76 percent of the FTA program resource is now delivered by formula apportionment. New construction of the Washington, DC area metrorail system is financed by a separate authorization not included under the ISTEA.

Under the ISTEA, section 3 funds for capital investment in rail (i.e., fixed guideway) modernization projects are apportioned to specified urbanized areas on a statutory formula basis for the first time. These apportionments are included in this Notice. Similarly, funds appropriated for planning by Metropolitan Planning Organizations (MPO's) under section 8 are apportioned by statutory formula for the first time. The apportionments are to the States for allocation by them to their urbanized areas or portions thereof. These funds were formerly apportioned by administrative formula, some to States for reallocation to MPO's and some direct to MPO's. Also published with this Notice are formula apportionments to the States under a new consolidated program under section 26(a)(2) for State planning and research, utilizing the authorities of sections 6, 8, 10, 11, and 20. States formerly received some section 8 funds by administrative formula for their own use.

Other tabulations pertain to programs for which apportionments have been published in previous years. The largest of these is the section 9 program which provides capital and operating assistance in urbanized areas. The counterpart program for nonurbanized areas is section 18 which is apportioned to the States for allocation by them. Funds appropriated for the section 16(b)(2) program are also apportioned to the States for allocation by them to private non-profit associations to provide capital assistance for transportation service for elderly persons and persons with disabilities.

Appropriations for Formula Programs

Section 3038 of the ISTEA provides that if the funds authorized from the Mass Transit Account of the Highway Trust fund exceed $1,900,000,000, then all amounts authorized must be reduced proportionately. Since the Trust Fund authorizations total $1,904,000,000, all amounts, including the section 3 and section 9B authorizations, were reduced by approximately two-tenths of one percent.

In Fiscal Year 1992, a total of $536,869,748 of Section 3 funds was made available for fixed guideway modernization projects. A total of $1,520,000,000 in General Funds was made available for the sections 9 and 18 programs. An additional $408,849,265 in Trust Funds has been made available under section 9B (the capital only formula program funded from the Mass Transit Account). $5,000,000 was made available for the Rural Transit Assistance Program (RTAP), and $54,884,454 was made available for the section 16(b)(2) program. In addition, $43,688,025 was made available for the section 8 program, and $8,961,134 was made available for the new section 26(a)(2) program.

Project Management Oversight

Section 23 of the FT Act allows the Secretary of Transportation to use not more than one-half of one percent of the funds made available for Fiscal Year 1992 under sections 3, 9, 9B, 18, the National Capital Transportation Act, as amended, and section 103(e)(4) of title 23, United States Code (Interstate Transfer), and an additional one quarter of one percent of Section 3 funds, to contract with any person to oversee the construction of any major project under such programs and to conduct safety, procurement, management and financial reviews and audits. Therefore, one-half of one percent of the funds appropriated for Fiscal Year 1992 under sections 9 (including 9B) and 18, and three quarters of one percent of section 3 funds have been reserved for this purpose before distribution of remaining funds.

Section 3 Program

Section 3 Fixed Guideway Modernization

The ISTEA made significant changes to the allocation of Section 3 rail modernization funds. These funds are now allocated by formula rather than on a discretionary basis as in past years.

The term fixed guideway modernization replaces the term rail modernization. Statutory percentages are established to allocate the first $497,700,000 to eleven legislatively specified fixed guideway areas. The next $70,000,000 is allocated one-half to these eleven urbanized areas and one-half to all other urbanized areas with fixed guideways at least 7 years old, on the basis of the Section 9 fixed guideway tier formula factors. Any remaining funds are allocated to all of these urbanized areas as one universe.

The formula is implemented for the first time in this Notice.

A total of $532,643,225 (after the three-quarter percent set-aside) is available for allocation to the specified urbanized areas for Fiscal Year 1992 under the section 3 fixed guideway modernization program. This Notice contains a table which shows these distributions.

A list of urbanized areas with fixed guideway systems at least 7 years old was developed during the legislative process and is being used for the Fiscal Year 1992 apportionment. A request for this information is being incorporated into the section 15 data reporting system and the first results will be ready for the Fiscal Year 1994 apportionments. For Fiscal Year 1993, urbanized areas over 200,000 in population which are not included in the Fiscal Year 1992 apportionment may send a statement to FTA's Office of Capital and Formula Assistance describing their fixed guideway service, the date revenue service commenced, and a request to be included in future fixed guideway modernization apportionments.

Section 3 fixed guideway modernization funds apportioned under this section must be used for capital projects related to such fixed guideway systems.

Sections 9 and 9B Programs

Section 9

Under the 1992 DOT Appropriations Act, a total of $1,520,000,000 in General Funds was appropriated for Fiscal Year 1992 for the sections 9 and 18 programs. An additional $408,849,265 has been made available under section 9B (the capital only formula program funded from the Mass Transit Account). Of this total amount ($1,928,849,265), one half of one percent, or $9,644,246, has been set aside under the provisions of section 23. Of the remaining $1,919,205,019, under the provisions of the ISTEA, 94.5 percent, or $1,813,648,743, is made available to the section 9 program (including section 9B); and 5.5 percent, or $105,556,276 is made available to the Section 18 program.

Additional Section 9 Formula Funding

In addition to the new appropriated Fiscal Year 1992 section 9 formula funds of $1,404,799,478, after the one-half percent set aside for sections 9 and 9B, the Section 9 apportionment also includes $9,887,525 in deobligated sections 5 and 9 funds and section 9 funds that were never obligated in Fiscal Year 1988 and have become available for reapportionment under the section 9 program as provided for under section 9(o).

Section 9B Program

A total of $408,849,265 has been allocated for Section 9B. In addition to these Fiscal Year 1992 appropriated funds, the section 9B apportionment also includes $13,485 in section 9B funds that were never obligated in Fiscal Year 1988 and have become available for reapportionment under the section 9B program. Thus the total amount being apportioned for section 9B is $408,862,750. These section 9B funds cannot be used for operating assistance, but are otherwise treated as section 9 funds. In grant applications, amounts applied for under Section 9B should be clearly shown.

Total Section 9 Fiscal Year 1992 Apportionments

This Notice provides tables which reflect both the amounts apportioned under the section 9 program (General Fund) and the section 9B program (Trust Fund). After the one-half percent set aside ($9,113,612), the amounts appropriated under section 9 ($1,404,799,478) and section 9B ($404,849,265) total $1,813,648,743. The funds to be reapportioned, described in the previous paragraphs, in the amount of $9,901,010 were then added. Thus, the total amount being apportioned for section 9 (including section 9B) is $1,823,549,753.

Changes to Section 9 under the ISTEA

ISTEA makes certain changes to the section 9 formula program. The formula factors do not change; however, the percentage distribution does change. Section 9 funding totals 94.5 percent of the total formula program down from 97.07 percent previously due to an increase in the previous allocation to Section 18 from 2.93 percent to 5.5 percent. Areas under 200,000 in population receive 9.32 percent of the amount appropriated for Section 9 compared to 8.90 percent under the old law. Larger areas receive 90.68 percent compared to 91.10 percent under the old law.

The following are other changes to the program: (a) Funds which cannot be used for payment of operating expenses in areas over 200,000 in population may be used for highway projects in a transportation management area if the MPO approves of such use and the Secretary determines the fund share not needed for ADA purposes, and if funds used for the State or local share of such highway projects are eligible to fund either highway to transit projects. (b) If revenue vehicle miles are reduced but the same frequency of service is provided to the same number of riders, the apportionment to the affected areas will not be reduced. (c) Recipients must spend not less than one percent of Section 9 funds on transit security, which is broadly defined, unless the recipient certifies that such expenditures are not necessary. (d) The inflation adjustment for operating assistance has been extended to all urbanized areas, not just those under 200,000 in population, except that such increase may not exceed the percentage increase in section 9 funding each year over the previous year. (e) A provision in response to a situation in Seattle permits FTA-funded ferries to be operated outside the urbanized area to permit periodic maintenance.

Changes Resulting from the 1990 Census Data

A number of changes in the Fiscal Year 1992 apportionment result from the fact that 1990 U.S. Census data has been used for the first time in these apportionments. A statutory exception was made for two areas which lost population and changed from urbanized to nonurbanized status in the 1990 census. Enid, Oklahoma, and Danville, Illinois, are retained in the section 9 program for urbanized areas in Fiscal Year 1992 but will be phased into the rural population base and eligible for section 18 beginning in Fiscal Year 1993.

Thirty-five new urbanized areas have been designated by the Census Bureau. These newly urbanized areas are included in the Governor's apportionment for urbanized areas under 200,000 in population and are no longer eligible for inclusion in Section 18 grants obligated in Fiscal Year 1992 and beyond. In three instances, two previously recognized urbanized areas merged to form one larger urbanized area. The title of an urbanized area includes the name of its largest city or place and may include additional city names. In a number of instances, the title has been modified.

The population and density figures used in calculating the section 9 formula and the population figures used in the section 18 formula are from the 1990 Census.

Section 15 Data Used for Section 9 Apportionments

Data submitted for the section 15 1990 Report Year has been used to calculate the section 9 apportionments for urbanized areas over 200,000 in population. Section 15 reports are being submitted and processed more rapidly and thus current Section 15 data can be used for the apportionments.

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Section 9 Fiscal Year 1992 Apportionments to the Governors

For all urbanized areas under 200,000 in population within each State, one figure is provided for the Governor's apportionment. In accordance with section 9 of the FT Act, these apportionments are not made to individual urbanized areas but are made to the Governors for use within all urbanized areas between 50,000 and 200,000 in population, as needed. FTA has administered the section 9 program in this fashion from its inception, and it parallels FTA's procedures under the former Section 5 program.

For technical assistance purposes, and in compliance with the FT Act, this Notice also contains the amount attributable to each urbanized area above 50,000 in population within the State.

Section 9 Operating Assistance Limitations

In addition to the Fiscal Year 1992 apportionments, included in this Notice is a listing of the Fiscal Year 1992 limitations on the amount of section 9 funds that may be used for operating assistance.

The ISTEA made a number of changes in the section 9 operating assistance limitations. The operating assistance limitations for all urbanized areas have been increased, under provisions of section 9(k)(2)(B) of the FT Act, to reflect the increase in the Consumer Price Index (CPI) for all urban consumers during the most recent calendar year. The CPI Detailed Report, December 1990, published by the Department of Labor, indicates the calendar year 1990 CPI increase for all urban consumers is 6.1 percent. This 6.1 percent increase was applied against the base operating assistance limitation calculated under section 9(k)(2)(A). The increase in operating assistance for the urbanized areas of Fort Lauderdale and Miami, Florida, was made permanent in the ISTEA and is reflected in the operating assistance limitations.

A provision of the ISTEA also increases the operating assistance limitation for the Chicago, Illinois-Northwestern Indiana urbanized area by $700,000. Such funds apply to the PACE people mobilizer project, and are reflected in the limitations.

In addition, the 35 new urbanized areas designated by the 1990 Census have been given an operating assistance limitation of two-thirds of their apportionment, consistent with the provisions of section 9(k)(2)(A) of the FT Act. These increases result in an overall national Fiscal Year 1992 authorized operating assistance limitation level of $995,937,566.

However, the 1992 DOT Appropriations Act limits the nationwide availability for operating assistance to a maximum of $802,278,000 for funds under the 1992 DOT Appropriations Act. Accordingly, the operating assistance limitation published in this Notice takes into account both the 1992 DOT Appropriations Act and the ISTEA. That is, the higher operating assistance limitation of the FT Act ($995,937,566) has been reduced to the $802,278,000 required by the 1992 DOT Appropriations Act by taking a pro rata reduction across all categories of grantees.

Statewide Operating Assistance Limitations

The 1990 DOT Appropriations Act added a new provision regarding operating assistance limitations. It specifies that in any case in which a statewide agency or instrumentality is responsible under State laws for the financing, construction and operation, directly by lease, contract or otherwise, of public transportation services, and when such statewide agency or instrumentality is the designated recipient of FTA funds, and when the statewide agency or instrumentality provides service among two or more urbanized areas, the statewide agency or instrumentality shall be allowed to apply for operating assistance up to the combined total permissible amount of all urbanized areas in which it provides service, regardless of whether the amount for any particular urbanized area is exceeded. In doing so, FTA will not reduce the amount of operating assistance allowed for any other state or local transit agency or instrumentality within the urbanized area affected. In short, this permits the statewide agency to combine all of the operating assistance limitations within the State. This provision became effective with the Fiscal Year 1990 section 9 apportionments. Thus, the operating assistance limitations for each urbanized area are not constrained by the availability of general funds for any one particular urbanized area.

State Governors Apportionments Grants

FTA encourages State agencies to be the applicant for section 9 funds on behalf of urbanized areas under 200,000 in population. With the State acting as applicant, funding for several urbanized areas could be combined in a single grant.

Section 18 and RTAP Programs

Section 18 Program

The Fiscal Year 1992 section 18 apportionment totals $106,840,817. This Notice provides a table which contains the State apportionments.

In addition to the appropriated Fiscal Year 1992 formula funds of $105,556,276, after the one-half percent set aside, the Section 18 Fiscal Year 1992 apportionment also includes $961,347 in prior year deobligated funds and funds which were never obligated and therefore have lapsed to the States to which they were originally apportioned. In addition, $323,194 in unobligated funds which were originally set aside under section 23 in Fiscal Year 1988, but which have not been used, are being redistributed to the States with the Fiscal Year 1992 apportionments.

Under a provision of the ISTEA each State must spend no less than 5 percent of its Fiscal Year 1992 section 18 apportionment for the development and support of intercity bus transportation, unless the Governor certifies to the Secretary that the intercity bus service needs of the State are being adequately met. Fiscal Year 1992 Section 18 grant applications must reflect this level of programming for intercity bus or include a certification from the Governor. The percentage required to be spent on intercity bus transportation will rise to 10 percent in Fiscal Year 1993 and 15 percent in Fiscal Year 1994 and beyond.

RTAP Program

The Fiscal Year 1992 Rural Transit Assistance Program (RTAP) allocations to the States totalling $4,250,000 are also included in this Notice. Of the $5,000,000 appropriated for the RTAP program in Fiscal Year 1992, eighty-five percent, or $4,250,000 is allocated to the States to undertake research, training, technical assistance, and other support services to meet the needs of transit operators in nonurbanized areas. No prior year funds are being reallocated with the Fiscal Year 1992 funds. These funds are to be used in conjunction with the States' administration of the section 18 formula assistance program. The remainder of the RTAP funds are made available by FTA in direct contracts to carry out the RTAP National Program.

Section 16(b)(2) Program

A total of $54,934,964 is apportioned to the States for Fiscal Year 1992 under the section 16(b)(2) program. The table shows each State's apportionment. The apportionment includes $54,884,454 of the Fiscal Year 1992 appropriation, and $50,510 in funds not obligated in Fiscal Year 1991.

Some changes were made to the section 16(b)(2) program in the ISTEA. FTA's practice of allocating the funds to the States to be administered through a program of projects has been incorporated in the Act. The funds are now statutorily apportioned to the States for capital assistance for transportation for elderly persons and persons with disabilities.

While the assistance is still intended primarily for private non-profit organizations, public bodies that coordinate services for the elderly and disabled, or any public body that certifies to the State that non-profits in the area are not readily available to carry out the services, may now receive section 16(b)(2) funds through the State. Vehicles may be leased to local public bodies for section 16(b)(2) services.

Meal delivery services are permitted under both section 16(b)(2) and Section 18, if such services do not interfere with passenger transportation.

Eligible capital expenses may include, at the option of the recipient, the acquisition of transportation services under a contract, lease, or other arrangement.

Section 16(b)(2) funds may be transferred by the Governor to supplement Section 9 or Section 18 funds during the last 90 days of availability of the funds. These and other legislative changes will be more fully described in forthcoming program guidance.

Section 16(b)(2) was previously allocated to the states based on an administrative formula. The ISTEA requires formula apportionment of the section 16(b)(2) funds to the State. The formula uses 1990 Census data for persons aged sixty-five and over. Suitable 1990 Census data regarding persons with disabilities by State is not yet available, so 1980 Census data previously used in the administrative formula has been retained.

Sections 8 and 26(a)(2) Programs

Section 8 Urbanized Area Program

The Fiscal Year 1992 Section 8 apportionment to States for Metropolitan Planning Organizations (MPO's) to be used in urbanized areas totals $43,688,025. A basic allocation of eighty percent of this amount, $34,950,420, is distributed to the States based on urbanized area population for State distribution to each urbanized area, or parts thereof, within each State. A supplemental allocation of the remaining twenty percent, $8,737,605, is also provided to the States based on a FTA administrative formula to address planning needs in the larger, more complex urbanized areas. These procedures are a change from the FTA's historical administration of this program. Formerly, Section 8 transportation planning grant funds were provided through an administratively developed formula to the States and to urbanized areas through designated MPO's.

This Notice provides a table which contains the final State apportionments for the combined basic and supplemental allocations. Each State, in cooperation with the MPO's, must develop an allocation formula for the combined apportionment which distributes these funds to MPO's representing urbanized areas, or parts thereof, within the State. This formula, to be approved by the FTA, must ensure to the maximum extent practicable, that no MPO is allocated less than the amount it received by administrative formula under section 8 in Fiscal Year 1991.

MPO costs incurred from the date of this Notice until grant award to the State for eligible section 8 planning activities (FTA C8100.1A chapter II, section 2) may be reimbursed, subject to statutory and administrative procedures and to the availability of funds.

Section 26(a)(2) State Planning and Research Program

The Fiscal Year 1992 apportionment for the State section 26(a)(2) Planning and Research program totals $8,961,134. This Notice provides a table which contains the final State apportionments. This is a new consolidated program which is apportioned to the States for purposes of sections 6, 8, 10, 11, and 20 of the ISTEA, which included such activities as planning, technical studies and assistance, demonstrations, management training, and cooperative research. In addition, a State may authorize a portion of these funds to be used to supplement Section 8 funds allocated by the State to its urbanized areas, as the respective State deems appropriate. Costs incurred by the State from the date of this Notice until grant award may be reimbursed, subject to statutory and administrative procedures and to the availability of funds.

Data Used for Sections 8 and 26(a)(2) Apportionments

Population data received from the U.S. Bureau of the Census from the 1990 Census was used in calculating sections 8 and 26(a)(2) apportionments. The Section 8 funding provided to urbanized areas in each State by administrative formula in Fiscal Year 1991 was used as a "hold harmless" base in calculating funding to each State.

Period of Availability of Funds

The funds apportioned to urbanized areas under section 9 in this Notice will remain available to be obligated by FTA to recipients for three (3) fiscal years following Fiscal Year 1992. Any of these apportioned funds unobligated at the close of business on September 30, 1995, will revert to FTA for reapportionment under section 9. Funds apportioned to nonurbanized areas under section 18, including RTAP funds, will remain available for two (2) fiscal years following Fiscal Year 1992. Any such funds remaining unobligated at the close of business on September 30, 1994, will revert to FTA for reapportionment among the States. Funds allocated to States under section 16(b)(2) in this Notice must be obligated by September 30, 1992. Any such funds remaining unobligated as of this date will revert to FTA for reapportionment among the States.

Quarterly Approval of Grants

The FTA has established a quarterly approval and release cycle for processing all formula grants. In previous fiscal years, only section 9, Interstate Transfer, and Federal Aid Urban Systems (FAUS) grants were processed on a quarterly basis, while sections 8, 16(b)(2) and 18 were processed on a bi-monthly basis. Beginning in Fiscal Year 1992, all sections 3 fixed guideway modernization, 8/26(a)92), 9, 16(b)(2), 18, Interstate Transfer, and Federal-Aid Urban Systems (FAUS) grants will be processed on a quarterly basis. Applicants should submit completed applications to the appropriate FTA Regional Office by the first business day of each review cycle. If the application is complete, FTA will approve and release the grant by the end of the quarterly cycle.

Given the lateness of the final apportionments this Fiscal Year, the first quarter grants will be released on January 15, 1992. The only factor which would delay FTA's approval of the project would be a failure by the Department of Labor (DOL) to issue a 13(c) certification where such certification is a prerequisite to a grant approval. Incompleted applications will not be processed, but if the missing components are supplied, will be reconsidered in the next quarter.

For an application to be considered complete, all appropriate ancillary activities such as inclusion of the project in a locally approved Transportation

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Improvement Program (TIP), intergovernmental reviews, environmental reviews, all applicable civil rights, anti-drug, and clean air requirements, and submission of all requisite certifications and documentation must be in approvable form with all required documentation and submissions on hand, except for the 13(c) certification which is issued by DOL.

If completed applications are submitted to FTA no later than the first business day of the quarter, FTA will then award grants by the last business day of the quarter.

The Department of Labor (DOL) has advised FTA that the staff of the Amalgamated Transit Union (ATU), which represents approximately 85 percent of unionized mass transit employees, will be at their Triennial Convention between September 19–27, 1992 and thus will not be available to develop new 13(c) arrangements or review grant applications with previously existing 13(c) arrangements. DOL anticipates this may interfere with the processing of any section 13(c) certificates that require ATU input during that period. Grantees who normally submit applications during the fourth quarter should be aware of this situation and should seriously consider submitting their applications in an earlier quarter in order to avoid this problem. This is particularly true for those grantees with lapsing funds which must be obligated before the end of the fiscal year.

It is the policy of FTA to expedite grant application reviews and maximize program delivery by reducing the number of grant applications. To this end, FTA strongly encourages grant applicants to submit only one application per fiscal year per formula program (i.e., section 9, section 18, etc.). The single application should contain the fiscal year's capital, planning and operating elements. During recent years, most grantees have adopted the one grant per fiscal year approach; however, there are a number of grantees who still submit more than one application per fiscal year. While FTA recognizes that there may be extenuating circumstances which would necessitate an applicant to submit more than one application per year and will process these applications on a case-by-case basis, applicants are encouraged to comply with the one grant per fiscal year approach.

Formula Grant Application Procedures

Applications for section 3 fixed guideway modernization funds should be submitted to the appropriate FTA Regional Office. Applications for section 9 funds should be submitted to the appropriate FTA Regional Office in conformance with FTA Circular 9030.1A, published September 18, 1987. Applications for Section 18 funds should be submitted to the appropriate FTA Regional Office in conformance with FTA Circular 9040.1B, published July 1, 1988. Applications for section 16(b)(2) funds should be submitted to the appropriate FTA Regional Office in conformance with Circular 9070.1B, published July 1, 1988. A unified State application for sections 8 and 26(a)(2) funds should be submitted to the appropriate Regional Office. Copies of the circulars are available from each FTA Regional Office.

Issued on: December 18, 1991.

Brian W. Clymer,

Administrator.

BILLING CODE 4910-57-M

FISCAL YEAR 1992 FTA SECTION 3 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO URBANIZED AREAS FOR FIXED GUIDEWAY MODERNIZATION

URBANIZED AREAS	APPORTIONMENT
New York	$183,835,980
Southwestern Connecticut	28,145,360
Northeastern New Jersey	52,083,899
Chicago/Northwestern Indiana	80,800,287
Philadelphia/Southern New Jersey	60,502,662
Boston	40,236,657
San Francisco	35,427,367
Pittsburgh	13,831,761
Cleveland	9,901,635
* Baltimore	8,735,676
New Orleans	1,770,330
	$515,271,613
Los Angeles	1,243,860
**Washington D.C	5,679,067
Seattle	2,184,998
Atlanta	2,555,030
San Diego	1,057,764
San Jose	866,919
Providence	432,852
Dayton	646,111
Tacoma	95,008
Wilmington	149,658
Trenton	162,547
Lawrence-Haverhill	221,636
Chattanooga	14,669
**Baltimore	668,594
Buffalo	214,931
Miami	1,377,969
	$17,571,612
TOTAL	$532,843,225

* Apportionment is calculated based on Section 15 data attributable to commuter rail serving Baltimore and Washington, D.C. urbanized areas only.

** Apportionment does not include commuter rail serving Baltimore and Washington, D.C. urbanized areas.

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FISCAL YEAR 1992 FTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO URBANIZED AREAS OVER 1,000,000 IN POPULATION

URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
Atlanta, GA	19,498,640	5,635,357	25,133,997
Baltimore, MD	15,398,178	4,450,272	19,848,450
Boston, MA	41,416,988	11,970,043	53,387,031
Chicago, IL-Northwestern IN	104,960,099	30,334,821	135,294,920
Cincinnati, OH-KY	7,084,673	2,047,562	9,132,235
Cleveland, OH	13,148,459	3,800,074	16,948,533
Dallas-Fort Worth, TX	17,236,346	4,981,526	22,217,872
Denver, CO	10,566,567	3,053,874	13,620,441
Detroit, MI	19,679,422	5,687,607	25,367,029
Ft Lauderdale-Hollywood-Pompano Bch, FL	9,659,073	2,791,596	12,450,669
Houston, TX	20,165,090	5,827,969	25,993,059
Kansas City, MO-KS	5,306,439	1,533,630	6,840,069
Los Angeles, CA	87,939,314	25,415,594	113,354,908
Miami-Hialeah, FL	18,010,309	5,205,212	23,215,521
Milwaukee, WI	8,883,534	2,567,456	11,450,990
Minneapolis-St. Paul, MN	11,270,058	3,257,192	14,527,250
New Orleans, LA	8,174,554	2,362,551	10,537,105
New York, NY-Northeastern NJ	321,183,644	92,826,197	414,009,841
Norfolk-Virginia Beach-Newport News, VA	5,492,826	1,587,496	7,080,322
Philadelphia, PA-NJ	59,136,610	17,091,242	76,227,852
Phoenix, AZ	9,530,153	2,754,336	12,284,489
Pittsburgh, PA	18,035,947	5,212,621	23,248,568
Portland-Vancouver, OR-WA	10,537,537	3,045,484	13,583,021
Riverside-San Bernardino, CA	4,601,082	1,329,771	5,930,853
Sacramento, CA	6,101,081	1,763,293	7,864,374
San Antonio, TX	8,858,337	2,560,173	11,418,510
San Diego, CA	17,681,234	5,110,104	22,791,338
San Francisco-Oakland, CA	59,208,208	17,111,934	76,320,142
San Jose, CA	12,832,091	3,708,639	16,540,730
San Juan, PR	6,650,975	1,922,217	8,573,192
Seattle, WA	21,798,366	6,300,009	28,098,375
St. Louis, MO-IL	10,689,233	3,089,325	13,778,558
Tampa-St. Petersburg-Clearwater, FL	7,885,154	2,278,911	10,164,065
Washington, DC-MD-VA	43,817,177	12,663,729	56,480,906
TOTAL	$1,042,437,398	$ 301,277,817	$1,343,715,215

FISCAL YEAR 1992 FTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO URBANIZED AREAS 200,000 TO 1,000,000 IN POPULATION

URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
Akron, OH	2,727,312	788,229	3,515,541
Albany-Schenectady-Troy, NY	3,975,909	1,149,090	5,124,999
Albuquerque, NM	2,723,583	787,151	3,510,734
Allentown-Bethlehem-Easton, PA-NJ	2,067,701	597,593	2,665,294
Anchorage, AK	1,394,892	403,141	1,798,033
Ann Arbor, MI	1,912,274	552,672	2,464,946
Augusta, GA-SC	978,880	282,909	1,261,789
Austin, TX	5,976,242	1,727,211	7,703,453
Bakersfield, CA	1,827,245	528,097	2,355,342
Baton Rouge, LA	1,512,934	437,257	1,950,191
Birmingham, AL	2,610,542	754,481	3,365,023
Bridgeport-Milford, CT	3,053,843	882,600	3,936,443
Buffalo-Niagara Falls, NY	7,126,654	2,059,694	9,186,348
Canton, OH	983,708	284,304	1,268,012
Charleston, SC	1,536,060	443,941	1,980,001
Charlotte, NC	2,933,545	847,833	3,781,378
Chattanooga, TN-GA	1,284,021	371,098	1,655,119
Colorado Springs, CO	1,753,523	506,791	2,260,314
Columbia, SC	1,390,277	401,808	1,792,085
Columbus, GA-AL	955,196	276,064	1,231,260
Columbus, OH	5,751,032	1,662,122	7,413,154
Corpus Christi, TX	1,593,554	460,557	2,054,111
Davenport-Rock Island-Moline, IA-IL	1,439,470	416,026	1,855,496
Dayton, OH	5,837,845	1,687,213	7,525,058
Daytona Beach, FL	1,078,669	311,749	1,390,418
Des Moines, IA	1,415,136	408,993	1,824,129
Durham, NC	902,333	260,787	1,163,120
El Paso, TX-NM	3,922,031	1,133,517	5,055,548
Fayetteville, NC	768,790	222,190	990,980
Flint, MI	1,575,726	455,406	2,031,132
Fort Myers-Cape Coral, FL	1,114,144	322,002	1,436,146
Fort Wayne, IN	1,184,933	342,461	1,527,394
Fresno, CA	2,680,760	774,775	3,455,535
Grand Rapids, MI	2,071,161	598,592	2,669,753
Greenville, SC	1,085,052	313,594	1,398,646
Harrisburg, PA	1,308,187	378,083	1,686,270
Hartford-Middletown, CT	4,607,596	1,331,655	5,939,251
Honolulu, HI	11,171,062	3,228,580	14,399,642
Indianapolis, IN	4,468,697	1,291,511	5,760,208
Jackson, MS	1,018,525	294,367	1,312,892
Jacksonville, FL	3,803,294	1,099,200	4,902,494
Knoxville, TN	1,255,489	362,853	1,618,342
Lansing-East Lansing, MI	1,576,276	455,565	2,031,841
Las Vegas, NV	3,066,192	886,169	3,952,361
Lawrence-Haverhill, MA-NH	1,792,926	518,179	2,311,105
Lexington-Fayette, KY	1,109,636	320,699	1,430,335
Little Rock-North Little Rock, AR	1,360,351	393,158	1,753,509
Lorain-Elyria, OH	758,383	219,183	977,566
Louisville, KY-IN	5,374,812	1,553,390	6,928,202

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FISCAL YEAR 1992 FTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO URBANIZED AREAS 200,000 TO 1,000,000 IN POPULATION

URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
Madison, WI	2,428,749	701,941	3,130,690
McAllen-Edinburg-Mission, TX	687,870	198,803	886,673
Melbourne-Palm Bay, FL	1,689,620	488,321	2,177,941
Memphis, TN-AR-MS	4,860,167	1,404,650	6,264,817
Mobile, AL	1,285,773	371,605	1,657,378
Modesto, CA	1,486,676	429,669	1,916,345
Montgomery, AL	813,696	235,168	1,048,864
Nashville, TN	3,005,117	868,517	3,873,634
New Haven-Meriden, CT	4,927,968	1,424,246	6,352,214
Ogden, UT	1,513,238	437,345	1,950,583
Oklahoma City, OK	2,496,047	721,390	3,217,437
Omaha, NE-IA	3,201,718	925,337	4,127,055
Orlando, FL	4,199,792	1,213,794	5,413,586
Oxnard-Ventura, CA	1,954,994	565,018	2,520,012
Pensacola, FL	909,530	262,866	1,172,396
Peoria, IL	1,188,111	343,379	1,531,490
Providence-Pawtucket, RI-MA	8,415,629	2,432,226	10,847,855
Provo-Orem, UT	1,273,147	367,956	1,641,103
Raleigh, NC	1,268,712	366,675	1,635,387
Reno, NV	1,612,686	466,087	2,078,773
Richmond, VA	3,410,889	985,790	4,396,679
Rochester, NY	4,050,923	1,170,769	5,221,692
Rockford, IL	973,580	281,377	1,254,957
Salt Lake City, UT	6,791,668	1,962,880	8,754,548
Sarasota-Bradenton, FL	1,823,971	527,151	2,351,122
Scranton-Wilkes-Barre, PA	1,868,432	540,001	2,408,433
Shreveport, LA	1,251,340	361,653	1,612,993
South Bend-Mishawaka, IN-MI	1,241,014	358,669	1,599,683
Spokane, WA	2,817,964	814,428	3,632,392
Springfield, MA-CT	3,490,943	1,008,927	4,499,870
Stockton, CA	1,597,245	461,625	2,058,870
Syracuse, NY	3,030,141	875,750	3,905,891
Tacoma, WA	4,216,198	1,218,536	5,434,734
Toledo, OH-MI	3,307,838	956,008	4,263,846
Trenton, NJ-PA	2,170,483	627,297	2,797,780
Tucson, AZ	4,020,872	1,162,085	5,182,957
Tulsa, OK	2,296,558	663,735	2,960,293
West Palm Bch-Boca Raton-Delray Bch, FL	6,461,215	1,867,374	8,328,589
Wichita, KS	1,645,997	475,715	2,121,712
Wilmington, DE-NJ-MD-PA	2,827,321	817,133	3,644,454
Worcester, MA-CT	2,287,257	661,046	2,948,303
Youngstown-Warren, OH	1,306,874	377,703	1,684,577
TOTAL	$ 235,924,366	$ 68,185,185	$ 304,109,551

FISCAL YEAR 1992 FTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
ALABAMA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 2,549,017	$ 736,699	$ 3,285,716
Anniston, AL	245,863	71,058	316,921
Auburn-Opelika, AL	197,252	57,008	254,260
Decatur, AL	225,127	65,065	290,192
Dothan, AL	189,076	54,646	243,722
Florence, AL	263,443	76,138	339,581
Gadsden, AL	232,815	67,287	300,102
Huntsville, AL	739,166	213,628	952,794
Tuscaloosa, AL	456,275	131,869	588,144
ALASKA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$	$	$
ARIZONA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 404,819	$ 116,997	$ 521,816
Yuma, AZ-CA (AZ)	404,819	116,997	521,816
ARKANSAS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 973,922	$ 281,476	$ 1,255,398
Fayetteville-Springdale, AR	268,773	77,679	346,452
Fort Smith, AR-OK (AR)	365,895	105,748	471,643
Pine Bluff, AR	247,265	71,463	318,728
Texarkana, TX-AR (AR)	91,989	26,586	118,575
CALIFORNIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 14,921,016	$ 4,312,368	$ 19,233,384
Antioch-Pittsburg, CA	843,811	243,872	1,087,683
Chico, CA	368,414	106,477	474,891
Davis, CA	447,310	129,279	576,589
Fairfield, CA	543,192	156,990	700,182
Hemet-San Jacinto, CA	453,166	130,971	584,137
Hesperia-Apple Valley-Victorville, CA	578,023	167,056	745,079
Indio-Coachella, CA	274,015	79,194	353,209
Lancaster-Palmdale, CA	972,411	281,039	1,253,450
Lodi, CA	380,735	110,037	490,772
Lompoc, CA	233,779	67,565	301,344
Merced, CA	415,695	120,141	535,836

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FISCAL YEAR 1992 FTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
CALIFORNIA:			
Napa, CA	434,355	125,534	559,889
Palm Springs, CA	541,032	156,365	697,397
Redding, CA	312,825	90,411	403,236
Salinas, CA	823,399	237,973	1,061,372
San Luis Obispo, CA	389,949	112,701	502,650
Santa Barbara, CA	1,273,853	368,160	1,642,013
Santa Cruz, CA	658,561	190,333	848,894
Santa Maria, CA	599,280	173,199	772,479
Santa Rosa, CA	1,161,886	335,800	1,497,686
Seaside-Monterey, CA	780,758	225,649	1,006,407
Simi Valley, CA	739,038	213,592	952,630
Vacaville, CA	448,665	129,670	578,335
Visalia, CA	512,469	148,110	660,579
Watsonville, CA	282,316	81,593	363,909
Yube City, CA	450,476	130,193	580,669
Yuma, AZ-CA (CA)	1,603	464	2,067
COLORADO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 2,749,304	$ 794,583	$ 3,543,887
Boulder, CO	611,793	176,816	788,609
Fort Collins, CO	509,512	147,255	656,767
Grand Junction, CO	290,069	83,834	373,903
Greeley, CO	407,545	117,786	525,331
Longmont, CO	371,422	107,345	478,767
Pueblo, CO	558,963	161,547	720,510
CONNECTICUT:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 9,336,714	$ 2,698,430	$ 12,035,144
Bristol, CT	433,304	125,230	558,534
Danbury, CT-NY (CT)	1,590,860	459,780	2,050,640
New Britain, CT	811,426	234,512	1,045,938
New London-Norwich, CT	652,865	188,687	841,552
Norwalk, CT	1,679,664	485,445	2,165,109
Stamford, CT-NY (CT)	2,113,531	610,836	2,724,367
Waterbury, CT	2,055,064	593,940	2,649,004
DELAWARE:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 207,386	$ 59,937	$ 267,323
Dover, DE	207,386	59,937	267,323

FISCAL YEAR 1992 FTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
FLORIDA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 6,320,890	$ 1,826,821	$ 8,147,711
Deltona, FL	210,144	60,735	270,879
Fort Pierce, FL	503,426	145,497	648,923
Fort Walton Beach, FL	488,028	141,047	629,075
Gainesville, FL	625,481	180,772	806,253
Kissimmee, FL	291,338	84,200	375,538
Lakeland, FL	639,389	184,792	824,181
Naples, FL	420,812	121,620	542,432
Ocala, FL	282,668	81,695	364,363
Panama City, FL	424,204	122,600	546,804
Punta Gorda, FL	277,405	80,174	357,579
Spring Hill, FL	212,060	61,288	273,348
Stuart, FL	370,033	106,944	476,977
Tallahassee, FL	712,990	206,063	919,053
Titusville, FL	204,083	58,983	263,066
Vero Beach, FL	258,465	74,700	333,165
Winter Haven, FL	400,364	115,711	516,075
GEORGIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 2,767,408	$ 799,817	$ 3,567,225
Albany, GA	342,763	99,063	441,826
Athens, GA	328,655	94,985	423,640
Brunswick, GA	189,111	54,656	243,767
Macon, GA	614,411	177,573	791,984
Rome, GA	192,788	55,718	248,506
Savannah, GA	803,825	232,316	1,036,141
Warner Robins, GA	295,855	85,506	381,361
HAWAII:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 735,638	$ 212,609	$ 948,247
Kailua, HI	735,638	212,609	948,247
IDAHO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 1,455,842	$ 420,757	$ 1,876,599
Boise City, ID	890,855	257,469	1,148,324
Idaho Falls, ID	319,363	92,300	411,663
Pocatello, ID	245,624	70,988	316,612

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AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
ILLINOIS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 6,891,416	$ 1,991,708	$ 8,883,124
Alton, IL	360,346	104,144	464,490
Aurora, IL	1,009,335	291,711	1,301,046
Beloit, WI-IL (IL)	46,056	13,311	59,367
Bloomington-Normal, IL	580,620	167,807	748,427
Champaign-Urbana, IL	819,408	236,819	1,056,227
Crystal Lake, IL	328,942	95,068	424,010
Danville, IL	222,895	64,420	287,315
Decatur, IL	461,176	133,286	594,462
Dubuque, IA-IL (IL)	10,743	3,105	13,848
Elgin, IL	728,118	210,436	938,554
Joliet, IL	841,854	243,306	1,085,160
Kankakee, IL	330,420	95,496	425,916
Round Lake Beach-McHenry, IL-WI (IL)	479,411	138,556	617,967
Springfield, IL	672,092	194,243	866,335
INDIANA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 3,889,387	$ 1,124,084	$ 5,013,471
Anderson, IN	314,338	90,848	405,186
Bloomington, IN	469,159	135,593	604,752
Elkhart-Goshen, IN	470,154	135,881	606,035
Evansville, IN-KY (IN)	871,009	251,732	1,122,741
Kokomo, IN	316,589	91,499	408,088
Lafayette-West Lafayette, IN	629,430	181,913	811,343
Muncie, IN	462,677	133,720	596,397
Terre Haute, IN	356,031	102,898	458,929
IOWA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 2,117,193	$ 611,896	$ 2,729,089
Cedar Rapids, IA	657,968	190,161	848,129
Dubuque, IA-IL (IA)	320,268	92,562	412,830
Iowa City, IA	379,120	109,571	488,691
Sioux City, IA-NE-SD (IA)	350,119	101,189	451,308
Waterloo-Cedar Falls, IA	409,718	118,413	528,131
KANSAS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 1,028,017	$ 297,111	$ 1,325,128
Lawrence, KS	389,311	112,516	501,827
St. Joseph, MO-KS (KS)	3,213	929	4,142
Topeka, KS	635,493	183,666	819,159

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AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
KENTUCKY:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 810,242	$ 234,170	$ 1,044,412
Clarksville, TN-KY (KY)	98,852	28,569	127,421
Evansville, IN-KY (KY)	121,408	35,089	156,497
Huntington-Ashland, WV-KY-OH (KY)	242,096	69,969	312,065
Owensboro, KY	347,886	100,543	448,429
LOUISIANA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 2,399,388	$ 693,454	$ 3,092,842
Alexandria, LA	350,131	101,192	451,323
Houma, LA	246,269	71,175	317,444
Lafayette, LA	605,856	175,100	780,956
Lake Charles, LA	486,639	140,645	627,284
Monroe, LA	462,725	133,734	596,459
Slidell, LA	247,768	71,608	319,376
MAINE:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 1,044,211	$ 301,790	$ 1,346,001
Bangor, ME	214,553	62,008	276,561
Lewiston-Auburn, ME	249,306	72,053	321,359
Portland, ME	533,149	154,087	687,236
Portsmouth-Dover-Rochester, NH-ME (ME)	47,203	13,642	60,845
MARYLAND:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 1,161,302	$ 335,630	$ 1,496,932
Annapolis, MD	378,250	109,319	487,569
Cumberland, MD-WV (MD)	201,151	58,134	259,285
Frederick, MD	272,922	78,878	351,800
Hagerstown, MD-PA-WV (MD)	308,979	89,299	398,278
MASSACHUSETTS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 4,599,617	$ 1,329,348	$ 5,928,965
Brockton, MA	840,211	242,832	1,083,043
Fall River, MA-RI (MA)	819,538	236,857	1,056,395
Fitchburg-Leominster, MA	332,046	95,966	428,012
Hyannis, MA	237,099	68,524	305,623
Lowell, MA-NH (MA)	1,040,091	300,599	1,340,690
New Bedford, MA	901,330	260,496	1,161,826
Pittsfield, MA	214,641	62,034	276,675

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STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
MASSACHUSETTS:			
Taunton, MA	214,661	62,040	276,701
MICHIGAN:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 3,924,953	$ 1,134,361	$ 5,059,314
Battle Creek, MI	327,786	94,735	422,521
Bay City, MI	366,220	105,842	472,062
Benton Harbor, MI	264,887	76,556	341,443
Holland, MI	297,293	85,921	383,214
Jackson, MI	366,010	105,781	471,791
Kalamazoo, MI	790,390	228,433	1,018,823
Muskegon, MI	482,092	139,331	621,423
Port Huron, MI	317,291	91,701	408,992
Saginaw, MI	712,984	206,061	919,045
MINNESOTA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 1,398,738	$ 404,253	$ 1,802,991
Duluth, MN-WI (MN)	340,313	98,355	438,668
Fargo-Moorhead, ND-MN (MN)	196,817	56,882	253,699
Grand Forks, ND-MN (MN)	43,138	12,467	55,605
La Crosse, WI-MN (MN)	21,130	6,107	27,237
Rochester, MN	383,922	110,959	494,881
St. Cloud, MN	413,418	119,483	532,901
MISSISSIPPI:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 1,200,737	$ 347,029	$ 1,547,766
Biloxi-Gulfport, MS	743,424	214,859	958,283
Hattiesburg, MS	231,694	66,963	298,657
Pascagoula, MS	225,619	65,207	290,826
MISSOURI:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 1,654,728	$ 478,239	$ 2,132,967
Columbia, MO	326,679	94,415	421,094
Joplin, MO	229,403	66,301	295,704
Springfield, MO	770,718	222,748	993,466
St. Joseph, MO-KS (MO)	327,928	94,775	422,703

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AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
MONTANA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 1,101,642	$ 318,388	$ 1,420,030
Billings, MT	424,841	122,785	547,626
Great Falls, MT	396,216	114,511	510,727
Missoula, MT	280,585	81,092	361,677
NEBRASKA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 1,224,749	$ 353,968	$ 1,578,717
Lincoln, NE	1,171,777	338,658	1,510,435
Sioux City, IA-NE-SD (NE)	52,972	15,310	68,282
NEVADA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$	$	$
NEW HAMPSHIRE:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 1,487,138	$ 429,802	$ 1,916,940
Lowell, MA-NH (NH)	3,044	880	3,924
Manchester, NH	623,470	180,191	803,661
Nashua, NH	498,558	144,089	642,647
Portsmouth-Dover-Rochester, NH-ME (NH)	362,066	104,642	466,708
NEW JERSEY:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 1,126,721	$ 325,637	$ 1,452,358
Atlantic City, NJ	812,154	234,723	1,046,877
Vineland-Millville, NJ	314,567	90,914	405,481
NEW MEXICO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 613,559	$ 177,327	$ 790,886
Las Cruces, NM	340,832	98,505	439,337
Santa Fe, NM	272,727	78,822	351,549
NEW YORK:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 3,404,424	$ 983,923	$ 4,388,347
Binghamton, NY	854,571	246,982	1,101,553

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AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
NEW YORK:			
Danbury, CT-NY (NY)	11,582	3,347	14,929
Elmira, NY	350,910	101,418	452,328
Glens Falls, NY	241,291	69,736	311,027
Ithaca, NY	243,545	70,388	313,933
Newburgh, NY	316,237	91,396	407,633
Poughkeepsie, NY	664,301	191,992	856,293
Stamford, CT-NY (NY)	78	23	101
Utica-Rome, NY	721,909	208,641	930,550
NORTH CAROLINA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 5,526,423	$ 1,597,207	$ 7,123,630
Asheville, NC	426,547	123,278	549,825
Burlington, NC	309,438	89,431	398,869
Gastonia, NC	453,078	130,946	584,024
Goldsboro, NC	235,292	68,002	303,294
Greensboro, NC	974,597	281,671	1,256,268
Greenville,NC	270,944	78,306	349,250
Hickory, NC	258,368	74,672	333,040
High Point, NC	435,726	125,930	561,656
Jacksonville, NC	420,684	121,583	542,267
Kannapolis, NC	303,686	87,769	391,455
Rocky Mount, NC	242,786	70,169	312,955
Wilmington, NC	397,070	114,758	511,828
Winston-Salem, NC	798,207	230,692	1,028,899
NORTH DAKOTA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 1,073,892	$ 310,370	$ 1,384,262
Bismarck, ND	309,646	89,492	399,138
Fargo-Moorhead, ND-MN (ND)	447,855	129,436	577,291
Grand Forks, ND-MN (ND)	316,391	91,442	407,833
OHIO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 2,952,563	$ 853,330	$ 3,805,893
Hamilton, OH	610,290	176,382	786,672
Huntington-Ashland, WV-KY-OH (OH)	155,408	44,915	200,323
Lima, OH	333,534	96,396	429,930
Mansfield, OH	321,991	93,059	415,050
Middletown, OH	419,568	121,260	540,828
Newark, OH	255,651	73,887	329,538
Parkersburg, WV-OH (OH)	37,858	10,942	48,800
Sharon, PA-OH (OH)	24,961	7,214	32,175
Springfield, OH	485,385	140,283	625,668

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AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
OHIO:			
Steubenville-Weirton, OH-WV-PA (OH)	174,603	50,462	225,065
Wheeling, WV-OH (OH)	133,314	38,530	171,844
OKLAHOMA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 629,459	$ 181,922	$ 811,381
Enid, OK	169,905	49,105	219,010
Fort Smith, AR-OK (OK)	8,061	2,330	10,391
Lawton, OK	451,493	130,487	581,980
OREGON:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 2,396,743	$ 692,690	$ 3,089,433
Eugene-Springfield, OR	1,128,214	326,068	1,454,282
Longview, WA-OR (OR)	7,502	2,168	9,670
Medford, OR	348,650	100,765	449,415
Salem, OR	912,377	263,689	1,176,066
PENNSYLVANIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 6,265,387	$ 1,810,779	$ 8,076,166
Altoona, PA	428,016	123,702	551,718
Erie, PA	1,101,106	318,234	1,419,340
Hagerstown, MD-PA-WV (PA)	3,772	1,090	4,862
Johnstown, PA	394,681	114,068	508,749
Lancaster, PA	995,466	287,703	1,283,169
Monessen, PA	270,878	78,287	349,165
Pottstown, PA	257,067	74,296	331,363
Reading, PA	1,162,124	335,869	1,497,993
Sharon, PA-OH (PA)	179,950	52,008	231,958
State College, PA	374,601	108,265	482,866
Steubenville-Weirton, OH-WV-PA (PA)	1,308	378	1,686
Williamsport, PA	314,002	90,751	404,753
York, PA	782,416	226,128	1,008,544
PUERTO RICO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 5,788,239	$ 1,672,864	$ 7,461,103
Aguadilla, PR	506,345	146,340	652,685
Arecibo, PR	473,126	136,739	609,865
Caguas, PR	1,239,146	358,129	1,597,275
Cayey, PR	366,375	105,887	472,262
Humacao, PR	317,067	91,636	408,703
Mayaguez, PR	681,245	196,888	878,133

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STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
PUERTO RICO:			
Ponce, PR	1,516,109	438,165	1,954,274
Vega Baja-Manati, PR	688,826	199,080	887,906
RHODE ISLAND:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 368,415	$ 106,477	$ 474,892
Fall River, MA-RI (RI)	84,461	24,410	108,871
Newport, RI	283,954	82,067	366,021
SOUTH CAROLINA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 1,559,963	$ 450,850	$ 2,010,813
Anderson, SC	209,802	60,635	270,437
Florence, SC	215,795	62,368	278,163
Myrtle Beach, SC	226,299	65,404	291,703
Rock Hill, SC	240,289	69,447	309,736
Spartanburg, SC	418,872	121,059	539,931
Sumter, SC	248,906	71,937	320,843
SOUTH DAKOTA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 774,633	$ 223,879	$ 998,512
Rapid City, SD	246,688	71,296	317,984
Sioux City, IA-NE-SD (SD)	6,917	1,999	8,916
Sioux Falls, SD	521,028	150,584	671,612
TENNESSEE:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 1,198,728	$ 346,448	$ 1,545,176
Bristol, TN-VA (TN)	112,043	32,382	144,425
Clarksville, TN-KY (TN)	273,188	78,955	352,143
Jackson, TN	206,781	59,762	266,543
Johnson City, TN	315,197	91,096	406,293
Kingsport, TN-VA (TN)	291,519	84,253	375,772
TEXAS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 11,100,232	$ 3,208,111	$ 14,308,343
Abilene, TX	393,773	113,806	507,579
Amarillo, TX	730,458	211,112	941,570
Beaumont, TX	502,363	145,190	647,553
Brownsville, TX	730,308	211,068	941,376
Bryan-College Station, TX	489,122	141,363	630,485

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AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
TEXAS:			
Denton, TX	264,191	76,355	340,546
Galveston, TX	280,275	81,003	361,278
Harlingen, TX	358,877	103,720	462,597
Killeen, TX	686,465	198,397	884,862
Laredo, TX	867,096	250,602	1,117,698
Lewisville, TX	304,980	88,143	393,123
Longview, TX	300,066	86,723	386,789
Lubbock, TX	854,639	247,002	1,101,641
Midland, TX	374,439	108,217	482,656
Odessa, TX	415,361	120,045	535,406
Port Arthur, TX	453,129	130,960	584,089
San Angelo, TX	389,392	112,540	501,932
Sherman-Denison, TX	194,887	56,325	251,212
Temple, TX	221,261	63,947	285,208
Texarkana, TX-AR (TX)	178,550	51,603	230,153
Texas City, TX	474,587	137,162	611,749
Tyler, TX	371,161	107,270	478,431
Victoria, TX	257,298	74,362	331,660
Waco, TX	560,475	161,984	722,459
Wichita Falls, TX	447,079	129,212	576,291
UTAH:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 221,857	$ 64,120	$ 285,977
Logan, UT	221,857	64,120	285,977
VERMONT:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 389,297	$ 112,512	$ 501,809
Burlington, VT	389,297	112,512	501,809
VIRGINIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 2,584,117	$ 746,843	$ 3,330,960
Bristol, TN-VA (VA)	79,767	23,054	102,821
Charlottesville, VA	371,608	107,399	479,007
Danville, VA	210,992	60,979	271,971
Fredericksburg, VA	247,726	71,596	319,322
Kingsport, TN-VA (VA)	15,060	4,352	19,412
Lynchburg, VA	353,452	102,152	455,604
Petersburg, VA	448,127	129,515	577,642
Roanoke, VA	857,385	247,796	1,105,181

FISCAL YEAR 1992 FTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
WASHINGTON:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 2,442,093	$ 705,797	$ 3,147,890
Bellingham, WA	287,732	83,159	370,891
Bremerton, WA	557,397	161,095	718,492
Longview, WA-OR (WA)	243,457	70,362	313,819
Olympia, WA	433,642	125,328	558,970
Richland-Kennewick-Pasco, WA	452,347	130,734	583,081
Yakima, WA	467,518	135,119	602,637
WEST VIRGINIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 1,876,903	$ 542,448	$ 2,419,351
Charleston, WV	755,031	218,214	973,245
Cumberland, MD-WV (WV)	9,029	2,610	11,639
Hagerstown, MD-PA-WV (WV)	2,281	659	2,940
Huntington-Ashland, WV-KY-OH (WV)	423,915	122,517	546,432
Parkersburg, WV-OH (WV)	272,643	78,797	351,440
Steubenville-Weirton, OH-WV-PA (WV)	117,291	33,898	151,189
Wheeling, WV-OH (WV)	296,713	85,753	382,466
WISCONSIN:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 5,138,273	$ 1,485,028	$ 6,623,301
Appleton-Neenah, WI	940,957	271,949	1,212,906
Beloit, WI-IL (WI)	201,671	58,285	259,956
Duluth, MN-WI (WI)	88,325	25,527	113,852
Eau Claire, WI	368,522	106,507	475,029
Green Bay, WI	714,572	206,521	921,093
Janesville, WI	271,225	78,387	349,612
Kenosha, WI	493,852	142,730	636,582
La Crosse, WI-MN (WI)	392,061	113,311	505,372
Oshkosh, WI	342,174	98,893	441,067
Racine, WI	762,810	220,462	983,272
Round Lake Beach-McHenry, IL-WI (WI)	286	83	369
Sheboygan, WI	322,378	93,171	415,549
Wausau, WI	239,440	69,202	308,642
WYOMING:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$ 537,904	$ 155,461	$ 693,365
Casper, WY	246,750	71,314	318,064
Cheyenne, WY	291,154	84,147	375,301
TOTAL	$ 136,325,239	$ 39,399,748	$ 175,724,987

	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
OVER 1,000,000 IN POPULATION	1,042,437,398	301,277,817	1,343,715,215
200,000-1,000,000 IN POPULATION	235,924,366	68,185,185	304,109,551
50,000-200,000 IN POPULATION	136,325,239	39,399,748	175,724,987
NATIONAL TOTALS	$ 1,414,687,003	$ 408,862,750	$ 1,823,549,753

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FISCAL YEAR 1992 FTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

LIMITATION FOR URBANIZED AREAS OVER 1,000,000 IN POPULATION		LIMITATION FOR URBANIZED AREAS 200,000 TO 1,000,000 IN POPULATION	
URBANIZED AREA	LIMITATION	URBANIZED AREA	LIMITATION
Atlanta, GA	$6,068,717	Akron, OH	2,300,829
Baltimore, MD	9,713,473	Albany-Schenectady-Troy, NY	2,231,552
Boston, MA	18,236,996	Albuquerque, NM	1,562,143
Chicago, Il-Northwestern IN	51,072,503	Allentown-Bethlehem-Easton, PA-NJ	2,333,162
Cincinnati, OH-KY	5,261,537	Anchorage, AK	761,428
Cleveland, OH	9,626,869	Ann Arbor, MI	978,304
Dallas-Fort Worth, TX	8,632,845	Augusta, GA-SC	779,322
Denver, CO	5,893,578	Austin, TX	1,467,602
Detroit, MI	21,372,219	Bakersfield, CA	956,927
Ft Lauderdale-Hollywood-Pompano Bch, FL	7,329,916	Baton Rouge, LA	1,278,744
Houston, TX	9,071,304	Birmingham, AL	2,348,959
Kansas City, MO-KS	4,458,217	Bridgeport-Milford, CT	2,039,329
Los Angeles, CA	57,003,726	Buffalo-Niagara Falls, NY	5,986,068
Miami-Hialeah, FL	8,373,127	Canton, OH	1,126,738
Milwaukee, WI	5,455,492	Charleston, SC	1,068,262
Minneapolis-St. Paul, MN	7,274,074	Charlotte, NC	1,287,810
New Orleans, LA	6,598,631	Chattanooga, TN-GA	970,831
New York, N.Y.-Northeastern NJ	132,016,635	Colorado Springs, CO	963,753
Norfolk-Virginia Beach-Newport News, VA	4,191,482	Columbia, SC	1,090,583
Philadelphia, PA-NJ	31,779,915	Columbus, GA-AL	817,138
Phoenix, AZ	4,699,894	Columbus, OH	4,341,578
Pittsburgh, PA	9,486,262	Corpus Christi, TX	857,543
Portland-Vancouver, OR-WA	4,395,482	Davenport-Rock Island-Moline, IA-IL	1,115,797
Riverside-San Bernardino, CA	2,512,253	Dayton, OH	2,888,980
Sacramento, CA	3,474,423	Daytona Beach, FL	774,828
San Antonio, TX	4,571,722	Des Moines, IA	1,086,724
San Diego, CA	7,294,770	Durham, NC	798,635
San Francisco-Oakland, CA	19,423,183	El Paso, TX-NM	1,777,440
San Jose, CA	6,599,096	Fayetteville, NC	734,953
San Juan, PR	7,500,377	Flint, MI	1,511,678
Seattle, WA	6,163,460	Fort Myers-Cape Coral, FL	564,420
St. Louis, MO-IL	9,576,609	Fort Wayne, IN	1,077,905
Tampa-St. Petersburg-Clearwater, FL	5,214,118	Fresno, CA	1,450,577
Washington, DC-MD-VA	16,861,201	Grand Rapids, MI	1,533,201
TOTAL	$517,204,104		

FISCAL YEAR 1992 FTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

LIMITATION FOR URBANIZED AREAS 200,000 TO 1,000,000 IN POPULATION--(CONTINUED)

URBANIZED AREA	LIMITATION	URBANIZED AREA	LIMITATION
Greenville, SC	741,073	Pensacola, FL	750,824
Harrisburg, PA	1,119,212	Peoria, IL	1,046,128
Hartford-Middletown, CT	2,271,262	Providence-Pawtucket, RI-MA	4,702,822
Honolulu, HI	2,812,907	Provo-Orem, UT	806,260
Indianapolis, IN	3,779,508	Raleigh, NC	723,494
Jackson, MS	893,465	Reno, NV	834,054
Jacksonville, FL	2,002,549	Richmond, VA	1,916,324
Knoxville, TN	890,675	Rochester, NY	3,071,916
Lansing-East Lansing, MI	1,149,752	Rockford, IL	962,688
Las Vegas, NV	1,364,829	Salt Lake City, UT	2,429,649
Lawrence-Haverhill, MA-NH	844,882	Sarasota-Bradenton, FL	1,254,210
Lexington-Fayette, KY	1,281,638	Scranton-Wilkes-Barre, PA	1,723,617
Little Rock-North Little Rock, AR	1,024,814	Shreveport, LA	1,044,602
Lorain-Elyria, OH	773,072	South Bend-Mishawaka, IN-MI	1,141,132
Louisville, KY-IN	3,860,036	Spokane, WA	1,107,307
Madison, WI	986,035	Springfield, MA-CT	2,011,783
McAllen-Edinburg-Mission, TX	819,189	Stockton, CA	1,328,383
Melbourne-Palm Bay, FL	696,481	Syracuse, NY	1,886,065
Memphis, TN-AR-MS	3,577,439	Tacoma, WA	1,561,657
Mobile, AL	996,903	Toledo, OH-MI	2,227,342
Modesto, CA	981,150	Trenton, NJ-PA	1,966,571
Montgomery, AL	1,014,393	Tucson, Arizona	1,647,689
Nashville, TN	1,658,643	Tulsa, OK	1,560,057
New Haven-Meriden, CT	2,291,605	West Palm Bch-Boca Raton-Delray Bch, FL	1,661,982
Ogden, UT	692,618	Wichita, KS	1,349,633
Oklahoma City, OK	2,295,641	Wilmington, DE-NJ-MD-PA	1,996,096
Omaha, NE-IA	2,354,334	Worcester, MA-CT	1,152,188
Orlando, FL	1,732,371	Youngstown-Warren, OH	1,775,000
Oxnard-Ventura, CA	1,343,521		
TOTAL			$144,693,213

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FISCAL YEAR 1992 FTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

STATE LIMITATION FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE	LIMITATION	STATE	LIMITATION
ALABAMA	2,964,920	NEBRASKA	1,179,022
ALASKA	0	NEVADA	0
ARIZONA	311,402	NEW HAMPSHIRE	1,400,623
ARKANSAS	1,201,691	NEW JERSEY	1,748,582
CALIFORNIA	10,233,214	NEW MEXICO	521,152
COLORADO	2,767,320	NEW YORK	4,344,399
CONNECTICUT	6,835,774	NORTH CAROLINA	5,728,620
DELAWARE	143,562	NORTH DAKOTA	1,045,613
FLORIDA	4,743,988	OHIO	3,693,749
GEORGIA	3,264,633	OKLAHOMA	815,521
HAWAII	715,971	OREGON	2,144,227
IDAHO	1,218,369	PENNSYLVANIA	7,718,210
ILLINOIS	8,375,491	PUERTO RICO	4,983,455
INDIANA	4,609,728	RHODE ISLAND	370,566
IOWA	2,674,914	SOUTH CAROLINA	1,524,392
KANSAS	1,143,457	SOUTH DAKOTA	787,429
KENTUCKY	956,278	TENNESSEE	1,335,888
LOUISIANA	2,811,994	TEXAS	11,566,010
MAINE	1,216,421	UTAH	153,579
MARYLAND	1,130,734	VERMONT	367,704
MASSACHUSETTS	6,034,947	VIRGINIA	3,024,952
MICHIGAN	4,940,774	WASHINGTON	2,169,515
MINNESOTA	1,641,423	WEST VIRGINIA	2,725,455
MISSISSIPPI	1,364,197	WISCONSIN	5,920,763
MISSOURI	1,813,411	WYOMING	693,923
MONTANA	1,302,721		
		TOTAL	$140,380,683

OVER 1,000,000 IN POPULATION	$517,204,104
200,000-1,000,000 IN POPULATION	144,693,213
50,000-200,000 IN POPULATION	140,380,683
NATIONAL TOTALS	$802,278,000

FISCAL YEAR 1992

FTA SECTION 18 FORMULA APPORTIONMENTS AND

RURAL TRANSIT ASSISTANCE PROGRAM (RTAP) ALLOCATIONS

TO THE STATES FOR NONURBANIZED AREAS

STATE	SECTION 18 APPORTIONMENT	RTAP ALLOCATION	STATE	SECTION 18 APPORTIONMENT	RTAP ALLOCATION
ALABAMA	2,553,387	89,672	NEBRASKA	1,033,261	66,054
ALASKA	380,765	55,916	NEVADA	337,344	55,241
AMERICAN SAMOA	54,271	10,843	NEW HAMPSHIRE	893,199	63,878
ARIZONA	1,171,014	68,194	NEW JERSEY	1,277,085	69,842
ARKANSAS	2,041,327	81,716	NEW MEXICO	1,003,982	65,599
CALIFORNIA	4,982,213	127,409	NEW YORK	4,495,492	119,847
COLORADO	1,063,503	66,524	NORTH CAROLINA	4,775,541	124,198
CONNECTICUT	964,698	64,989	NORTH DAKOTA	506,433	57,869
DELAWARE	240,669	53,739	NORTHERN MARIANAS	50,293	10,781
FLORIDA	3,202,786	99,762	OHIO	4,861,832	125,539
GEORGIA	3,733,323	108,005	OKLAHOMA	2,025,160	81,465
GUAM	154,497	12,400	OREGON	1,650,255	75,640
HAWAII	419,009	56,510	PENNSYLVANIA	5,423,425	134,264
IDAHO	845,337	63,134	PUERTO RICO	1,620,690	75,181
ILLINOIS	3,370,732	102,372	RHODE ISLAND	207,613	53,226
INDIANA	3,308,584	101,406	SOUTH CAROLINA	2,390,182	87,137
IOWA	2,128,114	83,065	SOUTH DAKOTA	617,302	59,591
KANSAS	1,692,847	76,302	TENNESSEE	3,085,452	97,939
KENTUCKY	2,794,521	93,419	TEXAS	6,514,245	151,214
LOUISIANA	2,311,271	85,911	UTAH	467,949	57,271
MAINE	1,115,278	67,328	VERMONT	551,921	58,575
MARYLAND	1,392,371	71,633	VIRGIN ISLANDS	118,129	11,835
MASSACHUSETTS	1,492,199	73,184	VIRGINIA	2,735,552	92,503
MICHIGAN	4,041,130	112,788	WASHINGTON	1,916,767	79,781
MINNESOTA	2,325,437	86,131	WEST VIRGINIA	1,629,804	75,322
MISSISSIPPI	2,269,325	85,259	WISCONSIN	2,816,111	93,754
MISSOURI	2,708,535	92,083	WYOMING	393,865	56,120
MONTANA	684,790	60,640			
TOTAL				$ 106,840,817	$ 4,250,000

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FISCAL YEAR 1992 FTA SECTION 16(b)(2) APPORTIONMENTS

AMOUNTS APPORTIONED TO THE STATES

STATE	APPORTIONMENT		APPORTIONMENT
ALABAMA	$952,765	NEBRASKA	454,113
ALASKA	159,608	NEVADA	313,419
AMERICAN SAMOA	52,024	NEW HAMPSHIRE	309,899
ARIZONA	842,461	NEW JERSEY	1,697,032
ARKANSAS	677,785	NEW MEXICO	373,323
CALIFORNIA	4,906,464	NEW YORK	3,767,489
COLORADO	620,672	NORTH CAROLINA	1,373,830
CONNECTICUT	787,723	NORTH DAKOTA	257,779
DELAWARE	247,098	NORTHERN MARIANAS	51,828
DISTRICT OF COLUMBIA	248,540	OHIO	2,278,768
FLORIDA	3,631,894	OKLAHOMA	771,611
GEORGIA	1,156,198	OREGON	704,383
GUAM	130,613	PENNSYLVANIA	2,876,080
HAWAII	312,067	PUERTO RICO	642,782
IDAHO	304,640	RHODE ISLAND	353,111
ILLINOIS	2,324,001	SOUTH CAROLINA	745,811
INDIANA	1,167,030	SOUTH DAKOTA	274,997
IOWA	753,786	TENNESSEE	1,101,368
KANSAS	630,413	TEXAS	2,752,388
KENTUCKY	870,975	UTAH	348,591
LOUISIANA	866,634	VERMONT	224,797
MAINE	369,909	VIRGIN ISLANDS	132,142
MARYLAND	920,158	VIRGINIA	1,137,292
MASSACHUSETTS	1,370,817	WASHINGTON	981,289
MICHIGAN	1,835,812	WEST VIRGINIA	540,283
MINNESOTA	930,906	WISCONSIN	1,081,970
MISSISSIPPI	635,746	WYOMING	194,355
MISSOURI	1,206,197		
MONTANA	281,298	TOTAL	$54,934,964

FISCAL YEAR 1992 FTA SECTION 8 AND SECTION 26(a)(2) APPORTIONMENTS

STATE	SECTION 8 APPORTIONMENT FOR MPOs	SECTION 26(a)(2) APPORTIONMENT FOR STATE PLAN/RESEARCH
Alabama	$382,550	$98,113
Alaska	174,752	44,806
Arizona	695,544	141,626
Arkansas	174,752	44,806
California	7,444,988	1,357,932
Colorado	568,302	126,793
Connecticut	510,412	130,945
Delaware	174,752	44,806
District/Col	235,531	44,806
Florida	2,380,768	542,702
Georgia	842,954	173,869
Hawaii	174,752	44,806
Idaho	174,752	44,806
Illinois	2,552,313	452,110
Indiana	619,648	143,582
Iowa	196,010	50,265
Kansas	226,547	54,315
Kentucky	271,412	68,086
Louisiana	469,052	118,805
Maine	174,752	44,806
Maryland	1,014,122	190,974
Massachusetts	1,236,847	252,238
Michigan	1,593,518	309,939
Minnesota	647,016	126,426
Mississippi	174,752	44,806
Missouri	715,481	148,384
Montana	174,752	44,806
Nebraska	174,752	44,806
Nevada	189,457	48,582
New Hampshire	174,752	44,806
New Jersey	2,165,294	353,507
New Mexico	174,752	44,806
New York	4,397,094	752,711
North Carolina	522,287	133,994
North Dakota	174,752	44,806
Ohio	1,505,319	354,970
Oklahoma	281,548	72,218
Oregon	316,326	75,722
Pennsylvania	1,952,600	384,326
Rhode Island	174,752	44,806
South Carolina	296,538	76,078
South Dakota	174,752	44,806
Tennessee	461,112	118,271
Texas	2,967,402	606,403
Utah	274,262	70,362
Vermont	174,752	44,806
Virginia	975,887	204,213
Washington	777,960	171,420
West Virginia	174,752	44,806
Wisconsin	557,791	131,426
Wyoming	174,752	44,806
Puerto Rico	473,347	113,325
TOTAL:	$43,688,025	$8,961,134

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December 23, 1991

Part VI

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Notice; Grants and Cooperative Agreements; Availability, etc.: Comprehensive Program Plan for 1992 FY

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DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Final Comprehensive Plan for Fiscal Year 1992

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of Final Comprehensive Plan for Fiscal Year 1992.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is publishing this Notice of its Final Comprehensive Plan for Fiscal Year 1992.

FOR FURTHER INFORMATION CONTACT: Marilyn Silver, Information Dissemination Unit (202) 307–0751. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 204(b)(5)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, (hereinafter called the JJDP Act), 42 U.S.C. 5614(b)(5)(A), the Administrator of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing a final plan describing the funding activities which OJJDP intends to carry out during Federal Fiscal Year 1992. The final plan includes activities specified in part C (42 U.S.C. 5651–54, 5659–62, and 5665–65(a)) and part D (42 U.S.C. 5667–67a) of title II of the JJDP Act. The final plan takes into consideration comments received during the 45-day period beginning with the publication of the proposed plan, in the **Federal Register** on September 26, 1991. This publication concludes with a summary of the substantive comments received and the responses of OJJDP to those comments.

The 1984 Amendments to the JJDP Act established in OJJDP a Missing and Exploited Children's Program (title IV of the JJDP Act, also called the Missing Children's Assistance Act). Programs and activities proposed for funding under the Missing and Exploited Children's Program are not included in this Final Comprehensive Plan for Fiscal Year 1992. A statement of Missing Children's Program priorities will be published in the **Federal Register** for public comment as required by Section 406(a) of the JJDP Act, 42 U.S.C. 5776(a).

The actual solicitations of grant applications will be published separately, at a later date, in the **Federal Register**. No proposals, concept papers, or other forms of application should be submitted at this time.

Introduction

Juvenile justice professionals face tough challenges in the 1990s. Based on an analysis of 1990 FBI arrest statistics, it is estimated that last year police made 2.2 million arrests of youth under the age of 18. Between 1986 and 1990 the number of juveniles arrested for violent crime increased nearly 38 percent. (Arrest of Youth 1990, OJJDP, forthcoming.) Offenders are younger, more violent and more often than not, involved with drugs. Gangs terrorize communities large and small with little sign of abatement on the horizon. During the past decade, our youth population declined by 11 percent, while the number of juvenile custody admissions climbed 19.2 percent. (National Juvenile Custody Trends: 1978–1989, OJJDP, forthcoming.) The National Crime Survey report on teenage victimization indicates an alarming increase. The family unit continues to falter, while the institutions that have served to sustain order and tranquility in society, e.g., the school, the church, and the home, have been unable to slow the rising ride of lawlessness.

Despite these alarming statistics, the war on drugs is being waged effectively. We see refreshing evidence of a decline in adolescent cocaine use by 49 percent over the past two years, and an overall reduction of drug use by 11 percent during the same period of time. (See pages 5 and 11 of the National Drug Control Strategy, published in February, 1991, by the Federal Office of National Drug Control Policy.)

The primary responsibility for law enforcement rests with State and local governments. Federal responsibility is necessarily limited by the Constitution, yet, there is an appropriate Federal role as defined by Congress in the JJDP Act of 1974. The juvenile justice system can be strengthened, special projects or innovative solutions to problems advanced, training and technical assistance provided and research undertaken.

It is with this limited role in mind that the 1992 Program Plan is proposed. We deliberately focus our resources on a wide variety of program objectives including schools, youth services, community-based programs, law enforcement, courts, prosecution, alternative sanctions, corrections, detention, and probation, with the purpose of strengthening and improving the juvenile justice system.

But whatever improvements we make in the system, the tide of delinquency will not abate until the American family is rebuilt and restored. To do this will require the dedicated efforts of everyone. It is only when we make progress as a society in this area that we will make progress in diminishing juvenile delinquency and the victimization of our children.

The basic premise of the juvenile justice system remains sound. When the first juvenile court was established in 1899, its founders were clear in its purpose. "The care, trust, custody and discipline of a child shall approximate as nearly as may be that which should be given by its parents," a tall order for the 1990s. The OJJDP Program Plan seeks to help professionals in every part of the juvenile justice system to improve their methods, techniques and theories while at the same time encouraging Americans everywhere to come together as families and communities in a united effort to instill principles of right and wrong, discipline and character. As President Bush stated on September 12, 1991 in his remarks at the Veterans Administration Hospital,

> People think the problem in our world is crack or suicide or babies having babies; and those are symptoms. The disease is a kind of moral emptiness, though. And we cannot continue producing generations born numbly into despair, finding solace in a needle or a vile. If, as President, I had the power to give just one thing to this great country, it would be the return of an inner moral compass nurtured by the family and valued by society.

Fiscal Year 1992 Program Planning Activities

The OJJDP program planning process for Fiscal Year 1992 is closely coordinated with the Assistant Attorney General and the Bureau components of the Office of Justice Programs (OJP). In addition, the following steps are taken:

- Internal review of existing programs by OJJDP staff;
- Review of information and data from OJJDP grantees and contractors;
- Review of information contained in State comprehensive plans;
- Review of comments made by youth services providers, juvenile justice practitioners, and researchers.
- Consideration of suggestions made by juvenile justice policymakers concerning State and local needs; and
- Consideration of all comments received during the period of public comment on the Proposed Comprehensive Plan.

Discretionary Program Activities

Discretionary Grant Continuation Policy

OJJDP has listed those part C and part D projects currently funded and eligible for continuation funding in Fiscal Year 1992. Continuation funding

consideration for new projects for previously funded discretionary grant programs will be based upon several factors. These include: Availability of funds, the extent to which the project responds to the applicable requirements of the JJDP Act, responsiveness to OJJDP and OJP Fiscal Year 1992 program priorities, compliance with performance requirements of prior grant years, compliance with OJP fiscal and regulatory requirements, and any special conditions of award. Continuation funding for a new budget period within an existing project period depends upon grantee compliance with established conditions of eligibility for additional budget period funding, and achievement of the prior year's objectives.

With the exception of part D of the JJDP Act (42 U.S.C. 5667-5667a) and training programs funded under section 244 of the JJDP Act (42 U.S.C. 5654), all programs recommended for continuation funding for a new project period must be found to be of outstanding merit through a peer review process in order to be eligible for an award without competition. Training programs otherwise eligible for continuation award without competition will require a written determination by the Administrator that the applicant is uniquely qualified to provide the proposed training services and that other qualified sources are not as capable of providing such services.

Proposed Programs

The programs listed below are arranged in accordance with the OJP priorities:

—Gangs and Violent Offenders
—Victims
—Community Policing and Police Effectiveness
—Intermediate Sanctions and User Accountability
—Drug Prevention
—Evaluations
—Intensive Prosecution and Adjudication
—Money Laundering and Financial Investigation (Asset Forfeiture) [1]
—Information Systems, Support and Statistics

The following are brief summaries of each of the new and continuation programs planned for Fiscal Year 1992. The specific programs to be funded within each category are subject to change without notice.

[1] No programs are listed herein under this priority, inasmuch as it does not pertain to juvenile justice issues.

Gangs and Violent Offenders

$3,242,139

New Programs

Juvenile Justice System Handling of Sex Offenses and Offenders

$200,000

Research with adult sex offenders has shown that many began their offending behavior as juveniles. Within the past decade, the juvenile justice system has begun to address the problem of juvenile sex offenders. To understand and improve the system's ability to address such offenses effectively, OJJDP will begin a study of the juvenile justice system's response to juvenile sex offenders. This grant will assess the type and nature of these responses. This assessment will examine the flow of sex offenders through the system from initial contact to adjudication and disposition. In this regard, there is little known about the relationship between various types of sex offenses and the sanctions or treatment approaches employed by the justice system. The project will also assess the justice system's response to different types of offenses from voyeurism and exhibitionism to violent assault and rape. The results from this study will indicate the direction of future efforts to improve the juvenile justice system's response to the problem. Applications will be solicited competitively.

Gang Prevention and Intervention

$800,000

The objective of this program is to reduce gang violence in a selected number of cities through legal suppression, community mobilization and early intervention with gangs. It is anticipated that awards would be made for programs in the selected cities. Each city would choose the particular model that best fits its needs from among the promising program models which OJJDP identifies. The specific models will represent an integration of the best approaches identified in the OJJDP sponsored programs: the Gang Suppression and Intervention program; Boys and Girls Clubs of America's Targeted Outreach with a Gang Component and the Serious Habitual Offender Comprehensive Action Program. Applications will be solicited competitively.

Continuations

Youth Gang Intervention Training

$400,000

This is a collaborative interagency program between OJJDP and the Federal Law Enforcement Training Center. The objectives of this training program are: (1) To provide a process for community leaders to recognize the benefits of cooperatively developing strategies to address the problems resulting from gang and drug activities; (2) to promote an awareness and recognition of (a) the problems of gangs and drugs, (b) justice system practices, (c) behavior patterns of gangs and gang members, and (d) current system practices and demonstration projects; (3) to provide strategies and techniques for public and private interagency partnerships dealing dynamically with community gang and drug related problems; (4) to clarify and document the legal roles, responsibilities and issues relating to an interagency approach to the prevention, intervention and suppression of these illegal activities of youth gangs; (5) to encourage leadership and innovation in the management and resolution of gang and drug problems; and (6) to develop or improve the response capacity to issues involving gangs and drugs through an effective interagency model which matches resources to demands.

National Youth Gang Clearinghouse

$225,139

The contract to Digital Systems Research, Inc., provides funding for OJJDP's National Youth Gang Clearinghouse. The Gang Clearinghouse will (1) gather and disseminate current information on model programs for combating violent juvenile gangs; (2) gather and disseminate current statistical and descriptive information on violent juvenile gangs; and (3) assist in the coordination of Federal, State and local gang program development, and training and technical assistance efforts through providing information to the field on relevant programs and activities. Applications will not be solicited competitively. This program will be administered by the current contractor.

Private Sector Options for Juvenile Corrections

$300,000

The American Correctional Association is currently implementing this private sector options program which is designed to help improve the quality of juvenile correctional services by providing technical assistance to corrections administrators in analyzing existing services, redesigning service delivery, and developing a competitive process for delivering services to private providers. Supplemental funds will be used to expand the number of sites receiving technical assistance from six

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to ten. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

School Safety

$250,000

This is a collaborative interagency program between OJJDP and Department of Education. The purpose of this program is to provide training and technical assistance on school safety to elementary and secondary schools, as well as to identify methods to diminish crime, violence, and illegal drug use in schools and on school campuses, with special emphasis on outreach to ethnic minorities and gang-related crime. The National School Safety Center (NSSC) maintains a library and clearinghouse with specialized information; provides research on school safety issues; and develops publications and training programs. OJJDP will work with NSSC over the next year to facilitate transition of the Center toward self-sufficiency. The Department of Education is supporting this transition with a transfer of $400,000 of Fiscal Year 1991 funds for expenditure in Fiscal Year 1992. These funds will strengthen the focus on prevention of drug abuse and violence in schools. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Targeted Outreach With a Gang Prevention and Intervention Component

$400,000

This program is designed to enable local Boys and Girls Clubs to prevent youth from entering gangs and to intervene with gang members who are very early in their careers in an effort to divert them away from gangs toward more constructive programs. The National Office of Boys and Girls Clubs will provide training and technical assistance to the 33 existing sites, and add six to eight new gang prevention and intervention sites throughout the country. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Schools and Jobs Are Winners

$150,000

This gang prevention program in Philadelphia focuses on high school students in grades 10 and 11 who are in gangs; have family members who belong to gangs; are involved with drugs or alcohol use; were abused or neglected; or were arrested by police. The project will also include funding by the Private Industry Council of Philadelphia. The goals of the project are to prevent high school students from dropping out of school and joining gangs by providing educational, recreational and social services, and by providing supportive services to families of at-risk youth and extremely disadvantaged youth. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Serious Habitual Offender Comprehensive Action Program (SHOCAP)

$517,000

SHOCAP is an information and case management program on the part of police, probation, prosecution, social service, school, and corrections authorities that which the juvenile justice system to focus additional attention on juveniles who repeatedly commit serious crimes, with particular attention given to providing relevant case information for more informed sentencing dispositions. The training and technical assistance provider is assisting 20 jurisdictions with the implementation of this model by providing intensive training and follow-up technical assistance. In addition four new sites will be developed.

The provider also serves as a clearinghouse for information on the model, to which non-participating jurisdictions may have access. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Victims

$1,225,000

Continuations

*Permanent Families for Abused and Neglected Children**

$225,000

This is a national project to prevent unnecessary foster care placement of abused and neglected children, to reunify the families of children already in care, and to ensure permanent adoptive homes when reunification is impossible. The purpose of this project is to ensure that foster care is utilized only as a last resort and temporary solution for children. Accordingly, the project is designed to ensure that government's responsibility to children in foster care is duly acknowledged by all appropriate disciplines. The project will continue to call upon judges, social service personnel, citizen volunteers, attorneys, and others to recognize and resolve the problems of children in foster care. Project activities include national training programs for judges, social service personnel, citizen volunteers and others in the Reasonable Efforts Provision of 42 U.S.C. 671(a)(15); training in selected Lead States; and development of model questions to guide risk assessment. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

*Advocacy for Abused and Neglected Children**

$1,000,000

The National Court Appointed Special Advocates Association (NCASAA) provides training and technical assistance to local and statewide programs. It assists in program development; advocates for the best interest of abused and neglected children; publicizes the Court Appointed Special Advocate (CASA) concept which helps recruit volunteers; develops management systems and standards to improve local CASA operations; provides a resource library and resource services; gathers and publishes information about the needs of the CASA network and operation; develops cooperative relationships with other national and regional organizations; and performs a variety of related services in furtherance of its goal of assuring that every child who needs one has a CASA. There are now 412 CASA programs in 47 States, with 15,000 volunteers. There are 12 statewide programs mandated and State-funded, and 23 State associations and networks offering support services to their State's program. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

The Investigation and Prosecution of Child Abuse

$300,000

This is a collaborative intra-agency program between OJJDP and the Office for Victims of Crime (OVC) in which OVC is providing all of the funding. This program is designed to provide training and technical assistance to prosecutors and related professionals on the issue of child abuse prosecution. The project also serves as a clearinghouse for child abuse prosecution information. The trial manual entitled "The Investigation and Prosecution of Child Abuse" will be updated and republished. Case law on issues of child abuse prosecution will also be updated and made available through the clearinghouse. At least one National training event will be held, and the recipient will also participate in several State-level training sessions during the supplemental grant period. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Community Policing and Police Effectiveness

$447,000

Continuations

Juvenile Justice Training for Law Enforcement Personnel (Glynco)

$447,000

This project provides technical assistance and training to promote a better understanding of the juvenile justice system to Federal, State and local law enforcement agencies. Five training programs are offered through this project, namely: Police Operations Leading to Improved Children and Youth Services (POLICY) which has two components: POLICY I introduces law enforcement executives to management strategies in order to integrate juvenile services into the mainstream of their operations, while POLICY II helps mid-level managers build on these strategies and demonstrates step-by-step methods to improve police productivity in the juvenile justice area. The Child Abuse and Exploitation Investigative Techniques program provides law enforcement officers with state-of-the-art approaches for building a case against those individuals charged with child abuse, sexual exploitation, or the abduction of children. Managing Juvenile Operations provides a series of training programs for police executives who demonstrate simple, yet effective methods to increase departmental efficiency and effectiveness by integrating juvenile services into the mainstream of police activity. School Administrators for Effective Police, Probation, and Prosecutors Operations Leading to Improved Children and Youth Services (SAFE POLICY) brings together the chief executives of schools, law enforcement, prosecution, and probation to promote interagency cooperation and coordination in dealing with youth-related problems. This program will be implemented under the current interagency agreement.

Intermediate Sanctions and User Accountability

$750,000

New Programs

Juvenile Restitution

$200,000

OJJDP plans to support a juvenile restitution training and technical assistance program. The project design will be based on practitioner recommendations regarding the current needs in the field. A survey is being initiated by the Office to determine how best to expand and institutionalize restitution as a viable juvenile justice disposition. In addition to the survey, it is anticipated that a "working group" will be convened to map out the future course of OJJDP's support for optimum development of the various components of restitution. These components will include community service, victim reparation (also victim-offender mediation), offender employment and supervision, employment development, and possible new program elements designed to establish restitution as a major aspect in our efforts to improve the juvenile justice system. Applications will be solicited competitively.

Enhancing Enforcement Strategies for Juvenile Impaired Driving Due to Drug and Alcohol Abuse

$100,000

This is a collaborative interagency program between OJJDP and the National Highway Traffic Safety Administration. NHTSA's funding level commitment for this program is not yet final. The dollar amount of this program represents only OJJDP's portion. The purpose of this program is to enhance the juvenile justice system's coordination and responsiveness to delinquent youth involved in drinking and driving. Based on documentation of low arrest and citation problems as they pertain to youth impaired driving, as well as information about enforcement obstacles and effective enforcement strategies, an award is being made to develop training and technical assistance materials for the various juvenile justice system components (i.e., police officers, judges, prosecutors, probation officers, etc.). The materials will address the issues related to effective enforcement of impaired driving laws as they pertain to juveniles and the juvenile justice system. The materials will be tested in five jurisdictions across the country. Based on practical use, they will then be edited and prepared for replication and dissemination. Applications will not be solicited competitively.

Continuations

Demonstration of Post Adjudication: Non-Residential Intensive Supervision Program

$150,000

The National Council on Crime and Delinquency (NCCD) was funded to implement the Intensive Supervision Program which was designed to identify and assess effective intensive supervision programs; provide the capability of select jurisdictions to implement an effective program model; and to disseminate information about the initiative. The assessment report has been completed and the training and technical assistance materials have been completed in draft. Support for this program will supplement NCCD's current award and provide funds for technical assistance and training for six to eight jurisdictions that are interested in implementing the intensive supervision programs model developed by NCCD. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Drug Testing Guidelines

$150,000

The primary purpose of this project is to develop a comprehensive curriculum in close coordination with the National Institute of Justice, consisting of drug identification, screening and testing which will assist juvenile justice systems in educating policymakers and training managers through training and technical assistance. This program, "Training and Technical Assistance Curriculum for Drug Identification, Screening and Testing in the juvenile justice system," offers a plan for providing training and technical assistance to selected juvenile justice systems throughout the country. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Testing Juvenile Detainees for Illegal Drug Use

$150,000

The intent of this program is to assess, develop, test, and disseminate information on new and innovative approaches to test for illegal drug use among juvenile detainees. The purpose of the program is to improve resource allocation and treatment services for youth in detention by developing more

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accurate and complete information on the use of illegal drugs. The world of drug testing is technical and complex, as are the issues revolving around the decision to test juveniles for illegal drug use. OJJDP has recognized the complexity of the situation and embarked on this initiative, among others, to provide guidance and leadership to the field in this area.

This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Drug Prevention

$7,885,000

New Programs

Professional Development for Youth Workers

$200,000

The primary purpose of this initiative is to establish and promote professional development of youth and juvenile justice system providers through a formal and continued training program. The program will be designed to include an inventory of existing training programs and their effectiveness, a needs assessment survey of training, the development of several curricula areas, the design of a dissemination strategy, and finally, an implementation plan for the second year of a two-year program. The end product is an expertly designed set of curricula which can be adapted for use in a broad range of juvenile justice and youth care training programs. The overall goals of the program will be to enhance professionalism for those persons to whom society has delegated responsibility in treating and caring for our nation's troubled youth. Such individuals include foster parents for "acting-out" adolescents, staff in a range of community based residential care facilities, juvenile correctional officers, probation officers, truant officers, and security personnel in youth facilities. Applications will be solicited competitively.

Native American Alternative Community-Based Program

$300,000

This is a collaborative interagency program between OJJDP and the Administration on Native Americans in the Department of Health and Human Services. The purpose of this program is to develop community-based alternative programs for Native American youth who have been adjudicated delinquent, and to develop a reentry program for Native American delinquent returning from institutional placement. The program will use the information being gathered by the American Indian Law Center in its study of Native American juvenile justice systems to develop this initiative. A multi-component design will be developed which will integrate the critical elements of the OJJDP Intensive Supervision and Aftercare programs with cultural elements that have traditionally been utilized by the Native Americans to control and rehabilitate offending youth. As planned, the program would be tested in up to two sites. Applications will be solicited competitively.

Program for Chronic Status Offenders

$140,000

The grant will underwrite the replication in Philadelphia of the program for chronic status offenders conducted in West Milton, Pennsylvania. That program seeks to effect change in juvenile delinquent behavior (including addressing possible family dysfunction), stabilizing the offender's behavior at home and in the community, promoting positive substitutes for antisocial acts, and implementing individualized educational plans for those needing more than mainstream education can afford.

This program offers an efficient and effective alternative to the "too-little"/"too-much" syndrome as it applies to chronic status offenders and emergent delinquents. In lieu of probation alone or residential treatment, the day care program employs a broad spectrum of counseling techniques to enhance life skills and employment opportunities, while providing intensive treatment for pre- and post-adjudicatory delinquents and status offenders. Applications will not be solicited competitively.

Continuations

Drug Abuse Prevention—Technical Assistance Voucher Project

$200,000

This project will provide technical assistance to 15–25 neighborhood-based organizations which have established anti-drug abuse projects, and will enhance their capacity to serve high-risk youth and serious juvenile offenders. Neighborhood groups will apply to the grantee for vouchers ranging from $1,000 to $10,000, depending on their needs. They will present their own plans and designs for the requested technical assistance, which will be evaluated and refined by the grantee. This method of delivery will allow these neighborhood groups to secure technical assistance inexpensively from sources which are compatible with both their programs and their specific community characteristics. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Intensive Community-Based Aftercare Program

$200,000

This program is designed to develop a juvenile aftercare model which can be tested in the juvenile justice system. Under this program, an assessment has been completed and a final draft assessment report has been submitted to OJJDP. A model juvenile aftercare program, which builds on the assessment material, has been developed and related policies and procedures have been completed in draft. This next stage of funding will provide training and technical assistance for up to four sites in the aftercare model. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Research on the Causes and Correlates of Delinquency and Non-Delinquency

$1,680,000

This longitudinal cohort study by three coordinated projects, has been directed toward improving the knowledge base of positive, delinquent, or drug using behaviors of juveniles in the context of the family, school and the individual. Factors are being identified that promote, as well as inhibit, involvement in delinquency, leading to the effective design of intervention activities. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Reaching At-Risk Youth in Public Housing

$300,000

This is a collaborative interagency program between OJJDP and the Department of Housing and Urban Development. Boys and Girls Clubs of America have established seven Boys and Girls Clubs in public housing across the nation under the existing cooperative agreement with OJJDP. HUD's funding level commitment for this program is not yet final. The dollar amount of this program represents only OJJDP's portion. These programs are designed to provide needed services to the high-risk youth who live in public housing, thereby preventing their involvement in delinquency, drug and alcohol abuse and gang involvement. During Fiscal Year 1992 additional sites will be established and training and technical assistance will be made available to other Boys and Girls Clubs and public housing authorities who wish to establish Clubs. Also, as part of this program, the Boys and Girls Clubs developed a curriculum on their targeted public housing outreach program for the Federal Bureau of Investigation's Drug Reduction Coordinators. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

The Congress of National Black Churches: National Anti-Drug Abuse Program

$150,000

The overall plan for this program calls for the development and implementation of a national public awareness and mobilization strategy to address the problem of drug abuse and drug abuse prevention in targeted communities across the United States. The goals of the national mobilization strategy are to summon, focus and coordinate the leadership of the Black religious community in cooperation with the Department of Justice, other federal agencies and organizations to help mobilize groups of community residents to combat effectively drug abuse and drug-related criminal and antisocial activities. The program is currently operating in 10 cities. This award will provide funding to extend the program in from 10 to 15 additional cities. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Effective Strategies in the Extension Service Network, Phase II

$75,000

This is a collaborative interagency program between the Office of Juvenile Justice and Delinquency Prevention (OJJDP), Department of Justice; the National Highway Traffic Safety Administration (NHTSA), Department of Transportation; and the Extension Service, Department of Agriculture in which OJJDP and NHTSA are providing the funding. NHTSA's funding level commitment for this program is not yet final. The dollar amount of this program represents only OJJDP's portion. The purpose of this program is to establish worthwhile community collaborations through a defined, established training program and technical assistance provided by the U.S. Department of Agriculture's Extension Service Network. These collaborations will focus on youth substance abuse, impaired driving and other delinquent behavior. Training and technical assistance will be based on the Community Systemwide Response (CSR) planning process, a training curriculum that presents a planning and organization strategy which communities can use to assess and respond to their current juvenile drug and alcohol abuse and impaired driving programs. The CSR also provides information about the most promising systemwide technologies in drug abuse prevention and treatment. Applications will not be solicited competitively.

Field-Initiated Programs

$550,000

OJJDP is proposing continuation of its program designed to increase the capacity of State and local governments, public and private youth-serving agencies, and neighborhood organizations or community groups to prevent delinquency, develop and use alternatives to the juvenile justice system, and improve the administration of juvenile justice. This program will provide competitive awards to practitioners, policymakers and researchers who have innovative ideas which address areas that do not fall within the scope of other proposed programs. The award of these grants will be closely coordinated with the priorities of the Office of Justice Programs. Any grant funded under this program will follow a regular cycle of application, peer review and competitive selection. Additional applications will be solicited to implement new activities in this continuation program in Fiscal Year 1992.

Law-Related Education (LRE) [2]

$3,200,000

OJJDP has funded since 1979 a national law-related education (LRE) effort. The Law-Related Education National Training and Dissemination Program involves five national LRE projects and programs which operate in 47 States. The purpose of this program is to provide training and materials to State and local school jurisdictions to encourage and guide them in establishing LRE delinquency prevention programs in the curricula of grades kindergarten through 12 and in juvenile justice settings. Grantees will be encouraged to place emphasis on drug abuse prevention programs in primary, middle and secondary schools in minority communities. The major components of the program are: Coordination and management, training and technical assistance, preliminary assistance to future sites, public information, program development, and assessment. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Satellite Prep School Program and Early Elementary Schools for Privatized Public Housing

$400,000

This is a collaborative interagency program between OJJDP and the Department of Housing and Urban Development and is being coordinated with the Department of Education. The purpose of this program is to establish an early elementary school program to help prevent and deter children who reside in public housing developments from participation in delinquent acts and to reduce the potential for their involvement in lives of crime, especially drug related crime, gang activities, alcohol and/or drug abuse. The Prep-School Program's mission is the establishment of preparatory elementary schools for kindergarten to fourth grade children living in public housing developments. The Prep-School Program will begin with one demonstration site in the Ida B. Wells Housing Development, Chicago, Illinois. The Prep-School will be established and operated as an early intervention educational model based upon the Marva Collins Westside Preparatory School educational philosophy, curriculum and teaching techniques. The other partner in this effort is the Chicago Housing Authority. The fiscal year 1992 funds awarded to the Chicago Housing Authority will be used for the Prep-School operational expenses and continued training and technical assistance. The U.S. Department of Housing and Urban Development funds will be used for renovations to create the space for school. This program will be implemented by the current grantees. No additional applications will be solicited in Fiscal Year 1992.

Career Development

$90,000

This is a collaborative interagency program between OJJDP and the U.S. Department of the Interior. This program gives high-risk youths an opportunity to assess their interest in and potential for careers in the Criminal Justice System or the National Park Service. The purpose

[2] Selected programs contained in this document are being funded at the direction of Congress either as amendments to the JJDP Act legislation or directions contained in the Office's appropriation documents. An asterisk identifies this and other congressionally mandated programs contained in this document.

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of Law Enforcement Exploring is to educate and involve youth in police or other justice system operations, to interest them in possible law enforcement careers, and to build understanding between youth and law enforcement personnel. An added program component in Fiscal Year 1990 was the introduction of youths to career opportunities in the National Park Service. The youths participating in the Exploring Program render hands-on assistance to their host agencies or organizations (State and local police departments, U.S. Park Service, U.S. Customs, etc.). The youths also receive hands-on training from their host agencies. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Partnership Plan, Phase V (Cities in Schools)

$400,000

This is a collaborative interagency program between OJJDP, the U.S. Department of Labor, and the U.S. Departments of Health and Human Services and Commerce. The dollar amount of this program represents only OJJDP's portion. The funding level commitment for the other agencies are not yet final. This program is a continuation of a national school dropout prevention model that is being implemented by Cities In Schools, Inc. (CIS). CIS provides training and technical assistance to States and local communities to enable them to adapt and implement the CIS dropout prevention model. The model focuses social, employment, mental health and other resources on high-risk youths and their families at the school level. Individualized plans are developed for each youth, and needed remedial education, social and other services are provided to the youths and their families. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Evaluations

$790,000

New Programs

Effectiveness of Juvenile Offender Treatment: What Works Best and for Whom?

$50,000

OJJDP seeks to determine what forms of treatment are most effective for individual juvenile offenders. The initial project will determine the feasibility of a program of collection and review of data, previous studies, and current literature. Treatment, in this context, could range from release, restitution, community service, and probation to incarceration. The aim is to determine, insofar as possible, what forms of treatment and sanctions are most effective, and for which types of juvenile offenders. The resulting findings would be made available to the juvenile courts in order to provide officials with the necessary data to assist them in selecting treatment options for juvenile offenders. Applications will be solicited competitively.

Continuations

Independent Evaluations

$640,000

The Office awarded a contract to conduct independent evaluations of selected OJJDP-funded programs. This will establish a concerted, continuous effort to learn, in the following order of priority: Efficacy, cost-effectiveness, and impact of the discretionary programs. Reported findings, including strengths, weaknesses and other assessment data, will be made available to all concerned. The following criteria will determine the priority of programs selected for evaluation: (1) Continuations in order of number of years of funding and total expenditures; (2) new action programs being tested to serve as possible models, and (3) new and continuing programs requiring decisions regarding continuation. This program will be implemented by the current contractor. No additional applications will be solicited in Fiscal Year 1992.

Fellowship Program

$100,000

Acting through the National Institute for Juvenile Justice and Delinquency Prevention, OJJDP will continue a Fellowship Program which will provide grants of varying amounts to individuals for independent scholarly study in the field of juvenile delinquency. The Fellowship Program includes the Graduate Research Fellowship and the Summer (short term) Research Fellowship. Each fellowship program selection will be based on a competitive review and evaluation of proposals for independent study on policy-relevant issues in the juvenile justice field which are closely coordinated with the Office of Justice Programs priority areas. (See OJP priorities under *Proposed Programs* in earlier sections of this notice.) The OJJDP fellowships are open to juvenile justice practitioners, new Ph.D.s, graduate students, and senior researchers. Each fellowship application will be expected to meet the criteria specified in the procedures and requirements of the OJJDP Fellowship Program. Fellowships will vary in length and amount. Additional applications will be solicited competitively to implement new activities in this continuation program in Fiscal Year 1992.

Intensive Prosecution and Adjudication

$3,528,263

New Programs

Improvement in Correctional Education for Juvenile Offenders

$100,000

This is a collaborative interagency program between OJJDP and the U.S. Department of Education. The primary purpose of this program is to assist juvenile corrections administrators in planning and implementing educational services for detained and incarcerated juvenile offenders. This will be accomplished by the development of minimum educational standards and specific approaches to improving correctional education. OJJDP will seek joint funding for the program from the Department of Education. Applications will be solicited competitively.

A Study To Examine the Delay in Juvenile Sanctions

$75,000

The problems created by delays in juvenile treatment and sanctions are not well documented because of the lack of research. Since the Supreme Court decision in *In Re Gault*, 387 U.S. 1 (1969), procedural requirements in juvenile hearings have become more formal. Crowded civil and criminal calendars often delay juvenile hearings. The decision in *United States v. Furey*, 500 F.2d 338 (2d Cir. 1974), and a number of State cases have held that juveniles have a constitutional right to a speedy trial. In line with this right, the Institute of Judicial Administration and the American Bar Association published *Standards for Juvenile Justice* in 1977 that recommended ideal time limits for juvenile systems to function appropriately and effectively. Delays, directly and many times adversely, affect juveniles and are also wasteful of judicial resources. OJJDP will fund a study to determine the extent of unnecessary delays and whether they are excessive; the cause of the delays; and their effect on the juveniles and system administration. As a result, recommendations will be offered for improvement. Applications will be solicited competitively.

Juvenile Justice Personnel Improvement

$100,000

The propose of this applied research program is to raise the quality of the key juvenile justice personnel, such as probation officers and detention and corrections counselors, who have direct one-on-one contact with juveniles on an on-going basis. Juvenile justice succeeds or fails as a result of the highly interpersonal relations that are established by these professionals. Unfortunately, turnover rates among these professionals are excessively high. The obvious effects of such turnover are disruption on administration and increasing costs of recruitment and training. However, of possibly greater seriousness are the effects of the juveniles who are confused by a succession of youth workers. Many of these youth have begun to form meaningful relationships with a juvenile justice professional only to be abruptly placed with a different person. Despite the high turnover rates, there are capable and experienced staff professionals who stay, are satisfied, and do excellent work. The object of this program is to learn how to increase the number of professionals who achieve such stability and longevity in their careers.

The initial project will include an assessment of the descriptions of the functions, knowledge, and skill requirements of these personnel. A study of turnover rates in a representative sample of jurisdictions and agencies will be initiated. The goal of the overall program, which will be completed in a continuation, will be the development of guides for the implementation of personnel programs that will result in the recruitment and retention of competent and satisfied personnel. Applications will be solicited competitively.

Juvenile Court Technical Assistance and Training on Child Abuse and Neglect Cases

$500,000

The purpose of this program is to design and implement model national standards and to develop a national training curriculum to improve the handling of child abuse and neglect cases in juvenile court. Training and Technical Assistance will be the primary method of transferring the model material to local and state court systems. This program is authorized under a specific congressional provision in Section 223 of Public Law 101-647 (104 Stat. 4791). The grantee is the National Council of Juvenile and Family Court Judges. No additional applications will be solicited in Fiscal Year 1992.

Continuations

Juvenile Court Training

$1,100,270

The primary purpose of this project is to allow the National Council of Juvenile and Family Court Judges to continue to refine the training presently offered and to provide technical assistance. The training objectives are to supplement law school curricula, provide judges with current information on developments in juvenile and family case law and make available options for sentencing and treatment. Specifically, emphasis will be placed on the areas of drug testing, gangs and violence, intermediate sanctions, as well as responding to the problems of unemployability, illiteracy and family dysfunction. This project will provide foundation training both to newly elected or appointed judges and to experienced judges who have been recently assigned to the juvenile or family court bench. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Court Management Training

$35,000

The purpose of this training is to develop and enhance skills of juvenile court personnel who manage the day-to-day operations of juvenile court intake, detention facilities, juvenile court processing, and juvenile court data systems. The focus will be upon improved development and functioning of these systems within the juvenile court through upgrading skills of management staff. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Technical Assistance to the Juvenile Courts

$392,993

The National Center for Juvenile Justice (NCJJ), the current grantee, is the research division of the National Council of Juvenile and Family Court Judges. The general areas in which assistance will be provided include: Court administration and management, program development, court decision making, legal opinions, due process, and case law. Emphasis will be placed on intermediate sanctions such as boot camps, and on appropriate dispositional alternatives for handling juveniles involved in gang activity. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Improving Literacy Skills of Institutionalized Juvenile Delinquents

$100,000

This is a collaborative interagency program between OJJDP and the Department of Education. Many juvenile delinquents in correctional institutions have a serious need to develop basic reading and writing skills. This program will improve the literacy levels of juvenile residents in these facilities while creating a national network of trained reading teachers and volunteers available to juvenile correctional facilities. The program will include training, technical assistance, and development of curricula for use by staff of detention and corrections facilities. The program should improve correctional education and the delivery of appropriate services to incarcerated juveniles. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Improving Conditions of Confinement: Training for Juvenile Corrections Staff

$800,000

This is a collaborative interagency program between OJJDP and NIC. OJJDP will continue the development of a comprehensive training program for juvenile corrections and detention staff through an interagency agreement (IAA) with the National Institute of Corrections (NIC). The program is being designed to develop a core curriculum to provide training for juvenile corrections and detention administrators and mid-level management personnel in such areas as drug testing and gang activity and overcrowding. It is anticipated that the juvenile corrections core training will be conducted at the NIC Academy and that the more issue-oriented training will be done regionally. This program will be implemented under the existing interagency agreement.

Juvenile Justice Training for Prosecutors

$125,000

This project's activities include designing and implementing policy development workshops for chief prosecutors, and for juvenile unit chiefs in prosecutor's offices, to support their role in the juvenile court processing of delinquents, including offenders. Materials will be collected for the preparation of a training manual on policy issues pertaining to the prosecution of juvenile offenders. The project will also continue to issue a

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newsletter. To date, the National District Attorneys Association has presented five highly rated workshops designed to expand prosecutor involvement in juvenile justice. The training provided by the project addresses organizational leadership, management, and change. A major goal of the project is to make juvenile matters a priority concern in prosecutors' offices. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Training and Technical Assistance for Juvenile Detention and Corrections Agencies

$250,000

This project will continue to provide technical assistance and training to juvenile correctional and detention agencies. It will also provide a national forum on juvenile corrections to include representatives from the juvenile court judges and juvenile probation offices; develop a juvenile facility construction handbook; develop a behavior management training package; and complete the development of standards for all juvenile justice facilities. Emphasis will be placed on intermediate sanctions for handling juveniles involved in drug-related offenses and gang activities. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Juvenile Corrections Industries Venture Program

$150,000

The purpose of this program is to assist juvenile corrections agencies in establishing joint ventures with private businesses and industries in order to provide new opportunities for the vocational training of juvenile offenders. The grantee has performed an assessment of corrections industries ventures programs, developed a policies procedures manual, and produced training technical assistance materials. It is now in the process of selecting four to eight juvenile corrections agencies to participate in the training and technical assistance on the corrections venture models. The Fiscal Year 1992 funding will increase the number of sites receiving training and technical assistance. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Information Systems, Support and Statistics

$4,375,299

New Program

Telecommunications Technology for Training and Information Dissemination

$100,000

The purpose of this program is to take advantage of the newly developed technology of satellite communications by examining the feasibility of using this medium for the training and dissemination activities of OJJDP. Funds under this program would support a feasibility study to determine: (1) What programs currently being implemented by OJJDP would best land themselves to satellite technology; (2) what modes of the technology (e.g., teleconferencing, closed circuit satellite television, etc.) would best suit the needs of our target audiences and the government; and (3) what cost benefits could the agency realize through application of satellite communications. Additionally, the program would fund one pilot project as a demonstration effort to gather additional information on implementation issues, reaction of the field, and assessment of the medium for training and dissemination activities of OJJDP. Application will be solicited competitively.

Continuations

National Juvenile Court Data Archive

$611,998

This program collects, processes, analyzes, and disseminates available data concerning the nation's juvenile courts. The Archive collects automated data and published reports from juvenile courts throughout the nation. Using the automated data, the Archive produces comprehensive reports on the activities of the juvenile courts. These reports examine resources expended, referral, offenses, intake, and disposition. These reports also examine specialized topics such as minorities in juvenile courts, gang-related offenses, or specific offense categories. The Archive also provides direct assistance to jurisdictions in analyzing their juvenile court data, yielding better case flow management and more effective allocation of resources. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Juvenile Justice Data Resources

$55,000

This is an interagency agreement between OJJDP and the University of Michigan. This program addresses the need to enhance the availability of juvenile justice data sets and to improve OJJDP's analytic capability. In order to make the data more widely available, this project assures that data are understandable and accurate, or "clean." This project also ensures that the data are fully documented to be of use to researchers and others. OJJDP will conduct cross analyses of data sets to add to the knowledge and understanding necessary for improved policy decisions. Improved computer capabilities will give OJJDP access to past data sets thus permitting the study of trends. This program will be implemented under the current interagency agreement.

Research Program on Juveniles Taken Into Custody

$450,000

This continuing statistical program produces an annual report to OJJDP and the Congress containing a detailed summary and analysis of the most recent data available regarding the numbers and characteristics of juveniles taken into custody. A major objective of this program is to develop individual-based data collection systems which are more responsive to the statutory requirements and the needs of the field. There are two projects under this program: One with the U.S. Census Bureau and the other with the National Council on Crime and Delinquency (NCCD). NCCD's role in this program is to refine the data collection design and procedures; develop, in concert with the Census Bureau, technical assistance and training materials; continue the feasibility testing; and analyze juvenile corrections data and prepare reports. No additional application will be solicited in Fiscal Year 1992.

Juveniles Taken Into Custody

$150,000

This is an interagency agreement with the U.S. Bureau of the Census in which OJJDP is providing all of the funds. The Juveniles Taken into Custody (JTIC) program is conducted in collaboration with the National Council on Crime and Delinquency (NCCD). The Census Bureau contributes to the refinement of the program design, provides training and technical assistance, and is responsible for all aspects of data collection and processing. Automated data tapes containing detailed, case-level data on juveniles admitted to and released from State juvenile correctional custody during a given year are submitted to the Census Bureau for processing. The data are analyzed by NCCD.

Children in Custody Census

$300,000

This is a collaborative interagency program between the U.S. Bureau of the Census and OJJDP in which OJJDP is providing all or a major portion of the funds. This biennial census of public and private juvenile detention and correctional facilities is conducted by the Census Bureau to describe the subject facilities in terms of their resident populations as well as their programs and physical characteristics. This program will be implemented with the existing interagency agreement. No additional applications will be solicited in Fiscal Year 1992.

Juvenile Justice Statistics and Systems Development

$550,000

The purpose of this program is to improve national and sub-national (State and local) statistics on juvenile justice as well as decision making and management information systems (MIS) within the juvenile justice system. The project is divided into two tracks, the National Statistics Track (NST) and Systems Development Track (SDT). The NST is helping to formulate a comprehensive National Juvenile Justice Statistics program which will include a series of regular reports on the extent and nature of juvenile offending and victimization and the justice system's response. A major product will be a *Report to the Nation on Juvenile Crime and Victimization.* The SDT will assess juvenile justice agencies' decision making, needs, and capabilities to generate and use information; develop models for decision making and related MIS; and develop and provide training and technical assistance to promote the adoption of model systems in test sites. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Study to Evaluate Conditions in Juvenile Detention and Correctional Facilities

$250,000

This national study of conditions of confinement in juvenile facilities will give facility administrators, agency directors, State policymakers and Congress a systematic overview of the field. The study has involved a review and assessment of secure juvenile detention centers, reception and diagnostic centers, training schools, farms, ranches, and camps operated by public and private agencies in all fifty States. State and local officials will be able to use the information from the study to refine their programs, services, facilities and policies and to provide better information on conditions of confinement and quality of life linked to overcrowding. A major product of this study will be a summary of the results and a report to Congress on the conditions existing within juvenile detention and correctional facilities, including recommendations for the improvement of those conditions. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Juvenile Justice Clearinghouse

$780,301

The Clearinghouse provides support services to OJJDP in preparing the Office's publications; collecting, synthesizing, and disseminating information on all aspects of juvenile delinquency; and preparing specialized responses to information requests from the juvenile justice field. A toll-free number is maintained for information requests. This program will be implemented by the current contractor. No additional applications will be solicited in Fiscal Year 1992.

National Coalition of State Juvenile Justice Advisory Groups

$500,000

The National Coalition of State Juvenile Justice and Delinquency Prevention Advisory Groups was established in 1983 as an organization that would support and facilitate the purposes and functions of state juvenile justice and delinquency prevention groups. In 1984 Congress also required the National Coalition to prepare and submit an Annual Report to the President, the Congress, and the OJJDP Administrator which reviews Federal policies regarding juvenile justice and delinquency prevention. The Coalition is also authorized to disseminate information, data, standards, and advanced techniques. Applications will not be solicited competitively.

OJJDP Technical Assistance Support Contract

$628,000

The purpose of this project is to provide technical assistance and support to OJJDP, the National Institute for Juvenile Justice and Delinquency Prevention, OJJDP grantees, and the Coordinating Council on Juvenile Justice and Delinquency Prevention on all research, program development, evaluation, training, and research activities. This program will be implemented by the current contractor. No additional applications will be solicited in Fiscal Year 1992.

Discussion of Comments

OJJDP published its proposed Comprehensive Plan for Fiscal Year 1992 in the **Federal Register** on September 26, 1991, for a 45-day period of public comment. The Office received 52 letters commenting on the proposed plan. All comments have been considered in the development of this Final Comprehensive Plan for Fiscal Year 1992.

The majority of the letters OJJDP received provided positive comments about the overall plan or its programs. Among the program areas that received the most interest and support was the juvenile justice system's handling of sex offenses and offenders.

The following is a summary of the substantive comments and the responses by OJJDP. Unless otherwise indicated, each comment was made by a single respondent.

1. *Comment:* While 22 comments were received in support of the Juvenile Sexual Offenders Program, one respondent asserted that the facts concerning the juvenile justice system handling of juvenile sexual offenders are already known and therefore no further research is needed.

Response: Our review of recent literature on the subject indicates that information on the juvenile justice system's response to these offenses is not complete. Funding cannot be allocated to correct weaknesses in the system's response until these weaknesses can be clearly identified. Professionals working in the system often indicate that these offenses are under-reported.

2. *Comment:* OJJDP should examine not only efficiency issues, but should focus on alternatives such as mediation and that too often programs such as the Study to Examine Delays in Juvenile Sanctions merely suggest more funding rather than recommended ways of making the system more efficient.

Response: This program is designed to assess delays from the time the juvenile first enters the system, is arrested or taken into custody, to the adjudication and disposition segments of the process. This program is not intended to make recommendations regarding the types of dispositions that should be used. Moreover, through the Restitution Education, Specialized Training and Technical Assistance Program (RESTTA) OJJDP has supported victim-offender mediation for several years.

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3. *Comment:* OJJDP should make use of personality profiling techniques, in several aspects of the Program Plan, maintaining that delinquency prevention must include proactive responses and that personality profiling will get to the root of the problem.

Response: The idea of personality profiling may have some merit. OJJDP may look into this approach in the future. However, limited budget resources for Fiscal Year 1992 prevent OJJDP from including this suggestion in the plan.

4. *Comment:* OJJDP received comments with regard to the proposed program on the Effectiveness of Juvenile Offender Treatment. One respondent suggested that each State should compile information on its treatment programs, as the circumstances will vary, partly due to the area and environment in which the individual offender lives.

Response: This initial program will basically be a feasibility study for conducting a meta-analytical survey on the various treatment programs at a later date.

5. *Comment:* Some noted the study should evaluate the application of programs so that information on costs, efficiency, effectiveness, and other management issues can be distributed to professionals in the field.

Response: We agree with these comments and will make every effort to ensure that these components are included in both stages of this program.

6. *Comment:* While the Office received supportive comments on its planned Juvenile Justice Personnel Improvement initiative, one respondent suggested the study should relate the effectiveness and innovativeness of personnel to their length of service.

Response: OJJDP will take these recommendations under consideration as we develop the Personnel Improvement program.

7. *Comment:* Two comments recommended specific types of treatment responses to juvenile sexual offenses.

Response: The announced program is to assess the juvenile justice system's response to the problem. The development of new treatment responses is beyond its scope.

8. *Comment:* In two cases respondents urged a long-term approach to juvenile sexual offender research.

Response: Longitudinal studies are beyond the scope, both in terms of time and funding, of this project. However, the need for future research, including longitudinal studies, will be explored.

9. *Comment:* Two respondents spoke of the need to assist victims of juvenile sexual offenses.

Response: The purpose of this program is to provide a concentrated focus on juvenile sexual offenders. We feel that it would reduce this concentrated focus to include the additional subject of services to victims of sexual offenses. The Office of Victims of Crime has recently funded a project titled: "Looking Back, Moving Forward: A Multidisciplinary Approach to Law Enforcement and Sexual Assault" which specifically addresses child sexual assault victims.

10. *Comment:* OJJDP funds should be more readily available to Indian Tribes. The respondent suggested that funding should be calculated by a formula similar to that used for calculating assistance for U.S. Territories.

Response: The OJJDP Act requires the Administrator to provide funds for programs of Indian Tribes which perform law enforcement functions according to a mandated formula based upon the proportion of the State youth population under 18 years of age which resides in geographical areas where tribes perform law enforcement functions. This is a statutorily mandated pass-through program and the Office cannot institute an alternative procedure.

Recognizing the need to provide ways to improve the juvenile justice system for Native American youth, the Office is providing technical assistance to the Bureau of Indian Affairs on juvenile justice issues. In addition, OJJDP is undertaking a program to develop community-based alternative programs for Native American youth who have been adjudicated delinquent. The Office is also supporting research on the juvenile justice systems in American Indian and Alaskan native communities. Culturally relevant alternatives to incarceration are under development. The information gained in these efforts will assist the Office in developing and implementing future programs to prevent delinquency and improve the juvenile justice system in Native American communities.

11. *Comment:* A respondent representing State interests commented that OJJDP must, as a first priority, continue to assist States to come into compliance or maintain compliance with the following mandates of the JJDP Act: (1) Deinstitutionalization of status offenders; (2) separation of incarcerated adults and juveniles; (3) removal of juveniles from adult jails and lockups; (4) reduction of minority overrepresentation; and, pass-through of funds of Indian Tribes having law enforcement functions. This respondent further suggested that OJJDP discretionary funds should be redirected to program focused on these mandates.

Response: As a result of the OJJDP Formula Grants Program, there has been a continued reduction in the confinement of juveniles in adult jails and lockups and in the secure detention of status offenders. There now exists a strong consensus that juveniles should not be confined in adult jails and lockups and that status offenders should not be held in secure detention. In most participating States, the jailing of juveniles and secure detention of status offenders are no longer widespread practices with violations having been reduced to specific jurisdictions or geographic areas.

As required by the JJDP Act, each participating State and Territory is developing a plan to reduce the proportion of juveniles detained or confined in secure facilities who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population. The State efforts are being supported by several OJJDP discretionary grants which focus on assisting communities to identify the extent and nature of overrepresentation of minorities and develop guidelines for responding to the problem. In addition, the Office is providing training for law enforcement personnel relative to racial, cultural and ethnic issues. Implementation of the Indian Tribe pass-through requirement is being enhanced by discretionary grant programs such as the proposed Native American Alternative Community-Based Program.

While OJJDP recognizes the importance of providing discretionary funds to enhance achievements made by the States through the Formula Grant Program, the Office is constrained by a limited budget and is required to address all of the specific programmatic requirements of the JJDP Act by funding research, special emphasis, and training and technical assistance grants in a wide variety of mandated areas ranging from prevention to treatment.

12. *Comment:* OJJDP has provided no promise of research on status offenders or the processes and effects of law on the processes of legal socialization and inculcation of democratic ideals. This respondent also commented that OJJDP's proposed priorities offer little or no promise of assistance in development of service models, training or technical assistance in these areas. The respondent also suggested that it would be useful for OJJDP to support the development of a structure to enhance interjurisdictional studies of law impact, as related to children and families, and to promote related research, training, and public service.

Response: OJJDP appreciates the concern about the needs of status offenders and calls attention to the research project entitled Deinstitutionalization of Status Offenders II, initially funded in 1987, and not yet completed. The University of Southern California at Los Angeles is currently completing the final report of this study, which is expected in March 1992. This study should provide some direction to OJJDP in determining the kind of focus needed in relation to the status offender problem. Similarly, the respondent's comments did not account for OJJDP funding of over 26 million dollars for Law Related Education programs over the past 13 years in response to Congressional earmarks. An additional $3.2 million dollars will be made available to Law Related Education Programs in Fiscal Year 1992. This program, which focuses upon the processes of legal socialization and inculcation of democratic ideals, provides training, education to juveniles, and technical assistance. It also developed a new service model in Fiscal Year 1991, which made law related education programs available to youth in a selected number of correctional institutions. With respect to evaluation, the law Related Education program has had a process evaluation in place for a number of years, and an impact evaluation is projected.

While increased information regarding the impact of laws on children and families from an interjurisdictional perspective would be potentially useful, given a very limited amount of resources for research and discretionary programs, OJJDP has opted to focus these very limited funds upon issues and problems which affect problems related to the juvenile justice system, as they affect care and custody issues and the delivery of services to juveniles and their families.

13. *Comment:* In OJJDP's development of drug related initiatives and satellite technology, the Agency should take care to build upon existing projects funded by the U.S. Department of Education, the Department of Housing and Urban Development, the Office of Substance Abuse Prevention, and other Federal agencies; and use resources available through these agencies and coordinate planning and implementation with them as well.

Response: We agree with the respondent. As a matter of standard practice, OJJDP coordinates its planning with other Federal agencies involved in areas such as drug prevention programs, drug testing, gang intervention and prevention and other similar programs and projects, as a requirement of the Concentration of Federal Effort provisions of the JJDP Act, as well as in the interest of maximizing the use of limited Federal resources.

14. *Comment:* One respondent urged more focus on preventive programs, identified programs which improve academic performance as critical to prevention of school dropouts, and expressed the concern that the proposed discretionary program activities should allow for local discretion for innovation in approaches to reducing and preventing juvenile delinquency.

Response: OJJDP appreciates the respondent's concerns regarding investment in innovative approaches to preventing delinquency, and the need for flexibility and local discretion in identifying these approaches. The Office shares this concern, and the respondent's attention is directed to the second round of Field Initiated Programs in the area of Prevention. The program was developed for the express purpose of stimulating local initiative, and innovation in programming. The program seeks good ideas and innovative concepts.

15. *Comment:* Several respondents emphasized the need for support of substance abuse control, and of drug testing programs for juveniles.

Response: OJJDP agrees that treatment of substance abuse problems is a priority need area for Federal support and that drug testing programs can facilitate treatment. Treatment of substance abusers is funded under a number of OJJDP programs, including support for intensive supervision, innovative treatment approaches of restitution and special training opportunities for youth work professionals. With regard to drug testing, OJJDP's Fiscal Year 1992 plan will provide continuation funding to develop a training curriculum which builds upon previous efforts in testing programs funded in previous years.

16. *Comment:* Several respondents expressed support for continuation funding in the area of juvenile restitution.

Response: OJJDP will fund a juvenile restitution training and technical assistance project, which will incorporate the most advanced approaches in restitution programing, including victim-offender mediation, community service, accountability-based treatment, innovative use of sanctions, offender supervision, and work involvement.

17. *Comment:* Two respondents noted the need for cultural/ethnic differences and sensitivity training.

Response: OJJDP will support a three year training development and implementation project in the area of cultural differences. The training curriculum will be made available to juvenile justice agencies nationwide.

18. *Comment:* One respondent expressed particular interest in OJJDP's program support for youth career development.

Response: The respondent's comments will be forwarded to the Exploring Division of the Boy Scouts of America and to the National Park Service, the two OJJDP supported service providers for career development in law enforcement and conservation, respectively.

19. *Comment:* Training programs should be on-going and done with the development of independent training modules to include court personnel, law enforcement officers, and prosecutors, and should promote system-wide participation.

Response: The OJJDP agrees with this recommendation and it corresponds with the Office's training mission. The OJJDP provides ongoing court personnel training through the National Council of Juvenile and Family Court Judges at the Reno College. In addition the Office provides ongoing training for juvenile corrections and detention through the American Correctional Association. The OJJDP also provides a law enforcement training program which includes courses on Police Operations Leading to Improved Children and Youth Services (POLICY I and POLICY II), Safe Policy, Child Abuse, Gangs and Drugs, and Managing Juvenile Operations. For the past several years, the Office has also supported the training of prosecutors through a grant with the National District Attorney's Association entitled "Juvenile Justice Training for Prosecutors." Each of these efforts has independent training modules and conducts interdisciplinary training sessions.

20. *Comment:* Law Enforcement training and technical assistance should have more money and should be of higher priority; and that a new program area entitled "Community-Based Policing Teams" should be established to work in high risk areas.

Response: The law enforcement training program has been highly successful as well as cost effective. In Fiscal Year 1991, 1,882 law enforcement personnel were involved in training and technical assistance. As the quality of the program largely relies upon the

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instructors, all of whom are practicing law enforcement officials, expansion would not be possible without sacrificing quality since they each have only a measured amount of time to devote to instruction in this program. While we appreciate the concern to train increased numbers, we believe that it is important to safeguard the quality of the program by maintaining a group of highly skilled law enforcement officials as the instructors for this program. While OJJDP's law enforcement training program, hopefully, improves the quality of community based policing, the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, provides no statutory authority for the use of funds for tactical law enforcement activities.

21. *Comment:* Two respondents raised the issue of the omission in the plan of any programs that relate specifically to the role of the public defenders or legal advocates for delinquent youth in the juvenile justice system.

Response: Limited resources have not enabled OJJDP to cover all areas of the juvenile justice system. OJJDP will consider including programs related to defense services in future program plans.

22. *Comment:* Some respondents also urged the expansion of programs noted in the plan to include defense services, e.g.: The Field Initiated Program should be expanded to include public defender offices which have innovative programs on sentencing advocacy.

Response: There is nothing in the Field Initiated Program that excludes a public defender service from applying. Such a program would fall under the OJP priority Prosecution and Adjudication.

24. *Comment:* A respondent noted the substantial training and technical assistance resources that are available and funded through various Federal agencies. This respondent pointed out that "more can be done to avail OJJDP professionals of the multitude of national resources for training, technical assistance, research and evaluation on program effectiveness on drug issues by requiring that funded activities demonstrate a capacity to access and collaborate with existing Federally and State funded programs for the prevention and intervention of alcohol and other drug use."

Response: OJJDP supports the idea that there should be greater coordination of the utilization of existing technical assistance and training resources and evaluation results by the recipients of its awards. We also agree with the idea of requiring the recipients to demonstrate a capacity to access these resources from Federal or State programs. However, we do not feel that all of the responsibility should fall only on the recipients of awards. Federal and State agencies need to increase their efforts to disseminate this critical information about resources, evaluation results and training and technical assistance.

24. (a). *Comment:* The Office of Juvenile Justice and Delinquency Prevention should, to the extent possible, utilize the public schools, public school programs and public school personnel to initiate and implement programs designed to further its objectives.

Response: OJJDP recognizes the importance of public schools and their personnel in working with youth who encounter the juvenile justice system. Several past and present OJJDP programs have been implemented through the public schools, e.g.: The Alternative School Program in the early 1980s, the Cities in Schools dropout prevention program and the Cities in Schools/Burger King Academy alternative school program have all been based in public schools.

25. *Comment:* Proposed programs with regard to gangs and drug prevention should use the schools.

Response: The programs that OJJDP has developed in the gang and drug areas call for comprehensive community-wide approaches that include close coordination between the various systems and a key role for the schools in serving the children in these programs.

26. *Comment:* Alternative Education should be a priority for the 1992 fiscal year.

Response: Although OJJDP is not allocating its limited resources to alternative education in Fiscal Year 1992, it has devoted substantial resources to support an expanding alternative education network through the Cities in Schools/Burger King Academy program. Seventeen alternative schools were established under this program with OJJDP funds, and the Burger King Corporation may continue to support this effort.

27. *Comment:* Health education issues are not addressed in the plan.

Response: While health education may not be specifically addressed in the plan, programs such as Cities in Schools are dealing with teen pregnancy, AIDS and drug related problems. OJJDP has also funded the Prevention and Intervention of Illegal Drug Use and AIDS program which is currently completing an assessment report and training materials.

28. *Comment:* The above respondent addressed several important design issues with regard to the Enhancing Enforcement Strategies for Juvenile Impaired Driving Due to Drug and Alcohol Abuse, e.g.: Effectuating close coordination with schools, developing a curriculum that emphasizes volunteers.

Response: The suggestions in this comment were all accepted and will be considered in the design of the Enforcement Strategies program.

29. *Comment:* The above respondent provided several comments on the nature and scope of the proposed gang intervention and suppression program, suggesting such things as: the models should be available to medium-sized and smaller cities and rural areas; comprehensive approaches should be utilized; and the suppression component (law enforcement activities which impact on gangs) ought to be focused on information systems management.

Response: The primary focus of the work that OJJDP has been doing with gangs over the past several years has been on intervention with or suppression of criminal activity by gangs. The multi-component model that has been developed by the University of Chicago under an award from OJJDP is primarily focused on intervention and such suppression. However, the model also addresses community mobilization and community involvement in this process. In addition, the model addresses programs for chronic as well as emerging gang communities. Consequently it can be adapted to smaller cities and rural areas. The suppression approach which OJJDP intends to combine with the above noted model is called Serious Habitual Offender Community Action Program (SHOCAP). It relies heavily on an organizational development approach and information systems management and sharing of information between system organizations.

30. *Comment:* "The group was curious as to why a new program is listed with a grantee already designated."

Response: The Pennsylvania group that is designated to receive this award has developed a very innovative approach to dealing with chronic status offenders. This award will permit the determination as to whether this model is transferable to another jurisdiction; however, the proposal will be required to undergo a peer review and must be found to be of outstanding merit before being funded.

31. *Comment:* The respondent identifies the crucial need for improved correctional education in short term detention facilities and makes several suggestions with regard to curriculum and teaching materials.

Response: OJJDP intends to address both detention and training school educational programs under this effort. The suggestions as to the nature and scope of the program for detention facilities are very helpful and OJJDP will take them under consideration as it develops this program.

32. *Comment:* A respondent notes that someone in his local sheriff's office is seeking local funds to establish a "Children's Safety Village," and comments that "OJJDP's School Safety Program has a clearinghouse of information she would be happy to develop into the curriculum being established at the present time."

Response: OJJDP is pleased that the respondent feels that materials available from the National School Safety Center would be helpful to her in developing a local program. The National School Safety Center's purpose is to aid local officials attempting to improve safety of the schools.

33. *Comment:* The law-related education (LRE) program should provide training and technical assistance to agencies who handle juveniles who are adjudicated delinquent and committed to correctional facilities.

Response: OJJDP has required the LRE grantees to provide training and technical assistance resources to this population for the past two years. In fact, at the present time, 16 pilot sites are using LRE in a variety of juvenile justice settings. From the positive experiences learned from these pilot sites, OJJDP intends to disseminate the results so that State Offices of LRE will expend resources for this population of youth.

34. *Comment:* Another respondent, recently out of high school, indicated that law-related education was the most informative and factual class taken in his schooling and recommended continued funding of the program.

Response: OJJDP will invest a major portion of its Fiscal Year 1992 discretionary budget, $3.2 million, in LRE.

35. *Comment:* Two respondents recommended that OJJDP give added focus in its programs to the role of the family and the community. Specifically, the respondents asked that OJJDP place a stronger emphasis on family and community involvement in our LRE program rather than emphasize the curricula of grades K–12 by considering the funding of the National Student/Parent Mock Election project.

Response: OJJDP will give close and careful consideration to funding the mock election project in this funding cycle.

36. *Comment:* One respondent commented favorably on OJJDP's plans to conduct a feasibility study of telecommunications usage for the Office. The respondent also recommended that a newsletter be developed and associated with a teleconference system once it has been established.

Response: OJJDP will consider the use of a newsletter should the feasibility study indicate that telecommunications technology be employed by the Office.

37. *Comment:* There is no need for a program addressing professional development of youth workers and it appears to be an effort to evaluate youth workers in higher positions.

Response: OJJDP has heard from numerous sources that there is a need for the program. The aim of the effort is not to evaluate youth workers in higher positions but to provide training opportunities for youth workers at all levels.

38. *Comment:* A respondent endorsed OJJDP plans for the program on professional development of youth workers and stressed that the need is serious. Additionally, the respondent enumerated six types of training programs that should be considered by a grantee assessing the field including these examples: Community development strategies, dealing with diversity, and handling aggression.

Response: OJJDP will pass along the recommendation to the grantee selected to conduct an assessment of training needs of youth workers.

39. *Comment:* Concern was expressed that OJJDP had not placed any emphasis on discretionary programs in the area of overrepresentation of minority youth in secure facilities in the 1992 program plan; and that program funding for research, technical assistance, and pilot programs is needed by States, if progress is to be made in this area.

Response: In September 1991, OJJDP funded five pilot sites and a technical assistance provider under the incarceration of Minorities Program to address the overrepresentation of minority youth in secure facilities. This discretionary grant program is a 36-month initiative and was designed to build upon the current work being performed by States participating in the OJJDP Formula Grants Program regarding the overrepresentation of minority youth in secure facilities. In addition, the Special Emphasis Division is currently sponsoring a Native American Alternative Community-Based Program for Fiscal Year 1992.

The OJJDP will continue to provide support, leadership, and technical assistance to assist States in complying with the mandates of the Act, as it has done with deinstitutionalization of status offenders in secure facilities, separation of juveniles from adults in adult serving facilities, and removal of juveniles from adult lockups and adult jails.

40. *Comment:* One respondent expressed concern that OJJDP program priorities appear to be driven by the Office of Justice Program (OJP) priorities rather than the priorities of the JJDP Act. Further, the concern included the almost exclusive attention devoted to gangs and drugs.

Response: The priorities of the JJDP Act were not ignored in the development of the program plan. The planning process is coordinated with the Assistant Attorney General and the Bureau components of the OJP. It is also based on input from juvenile justice practitioners representing all areas of the juvenile justice system. In addition, priorities were established and have traditionally been established by the initiatives proposed by the Attorney General and President. It is the intention of OJJDP to encompass the concerns and priorities of the Juvenile Justice Practitioners and the President of the United States, while maintaining the integrity of the mandates of the JJDP Act.

41. *Comment:* OJJDP should provide financial support to Private Non-Profit Victim Service Agencies to support their efforts to assist victims, families, law enforcement and communities in the prevention and recovery of missing children.

Response: OJJDP's concern for the issues related to missing and exploited children can best be expressed by the fact that prior to the legislative enactment of title IV, The Missing Children's Act, OJJDP had embarked on an ambitious effort to establish a national resource center and clearinghouse on missing and exploited children issues to aid and assist parents and public and private agencies to better understand and address this problem. OJJDP's Missing and Exploited Children Comprehensive Action Program (MCAP), is a program designed to train and prepare non-profit agencies in ways to improve services to jurisdictions that wish to address the issue of missing and exploited children in their community.

42. *Comment:* The OJJDP program proposal for Information System, Support and Statistics does not go far enough. Two of the major initiatives of this category (the Juvenile Court Data Archive and Juvenile Justice Data Resources) are heavily dependent on the States for information. Most States are

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not in a position to respond adequately to the national need for data. OJJDP needs to direct funding toward the development of prototypical juvenile information management systems for use by juvenile courts and correctional agencies.

Response: One of our initiatives for this fiscal year, the Juvenile Justice Statistics System Development Programs, is designed to address the concern. The purpose of the program is to improve national, State and local statistics on juvenile justice as well as decision making and management information systems within the juvenile justice system. Several of the approaches will be to assess juvenile justice agencies' decision making, needs and capabilities to generate and use information. Models will be developed for decision making and Management Information Systems (MIS). Training and technical assistance to promote the adoption of the model systems in test sites will be available.

43. *Comment:* The OJJDP activities being addressed under this program plan appear to be mostly restorative as opposed to preventive approaches. If OJJDP intends to improve the system and the tide of delinquency, OJJDP needs to begin by taking new and innovative approaches to *preventing* juvenile delinquency. OJJDP should address issues that *cause* youth to take the wrong path.

Response: OJJDP agrees that more new and innovative approaches to preventing juvenile delinquency need to be initiated to improve the system and reverse the tide of delinquency. To this end, OJJDP has funded the Satellite Prep-School Program to assist children who are raised in public housing development environments and may be in need of preventive intervention. These children face a disproportionate rate of school failure, poverty, gang and other related violence, delinquency, incarceration, and premature death. The Satellite Program seeks to establish an early elementary school program to help prevent and deter children who reside in public housing developments from participation in delinquent acts and to reduce the potential for their involvement in lives of crime, especially drug related crime, gang activities, alcohol and/or drug abuse. The Satellite Prep-School Program will establish an early elementary Pre-School on the premises of housing developments for kindergarten to fourth grade children. The program will improve the education and lives of the children, parents and residents of public housing developments. OJJDP also funds the Cities in Schools dropout prevention program which fosters disadvantaged youths' improved development, thereby tending to prevent delinquency.

44. *Comment:* One respondent observed on page 48995 that among the ten top priority areas listed by the OJP to be funded in Fiscal Year 1992; "Gangs" would launch three new programs, "Evaluation" will have one new program; Drug Prevention will have three new programs and Prosecution and Adjudication will initiate four new programs. The respondent found this approach "inconsistent" citing that no new programs are planned in the other priority areas.

Response: The list does not rank priorities for OJJDP. The list represents priorities for the entire Office of Justice Programs whereas the programs being considered for funding reflect Office of Juvenile Justice and Delinquency Prevention (OJJDP) determinations. These determinations are predicated on OJJDP's assessment of system needs and the limited availability of funds to support new programs. The program selections also take into account programs being supported from other sources and programs to be continued by OJJDP.

45. *Comment:* One commentator suggested a rewording on page 48998 on the "Congress of National Black Churches: National Anti-Drug Abuse Program."

Response: That suggestion has been adopted. The sentence which indicated that the program would "combat the supply problem of drug abuse" has been deleted. The language has been changed to "combat the problems of drug abuse and related criminal and anti-social activities."

46. *Comment:* The view that the number of youth commitments for drug selling and trafficking will continue to rise and that such offenders are a part of America's drug problem. The respondent recommends that the proposed comprehensive plan for Fiscal Year 1992 include plans for the development of treatment models designed to rehabilitate drug sellers and traffickers.

Response: While the Office has several initiatives that address substance abuse and juveniles there is no program that specifically addresses the treatment of sellers and traffickers. Budgetary constraints make it impossible for the Office to focus as sharply as may be desirable on various categories of treatment. However, the Department of Health and Human Services has established an Office of Treatment Improvement with which the OJJDP works closely. The possibility of having that Office consider such a program will be pursued.

47. *Comment:* There are three areas of concern that have had particularly adverse effects in Suffolk County, as well as numerous other jurisdictions, where the respondent would like to see discretionary funding made available in fiscal year 1992 for a multi-disciplinary program. These three areas involve violent adolescent offenders, juvenile substance abusers and juvenile sex abusers.

Response: Two of the three areas of concern, violent adolescent offenders and juvenile substance abusers, are listed as OJP priority areas and are included in the OJJDP program plan for Fiscal Year 1992. These inclusions may be found under Gangs and Violent Offenders, which lists five programs focusing in these areas; Drug Prevention, which includes four programs; and Drug Testing, which includes two programs.

Juvenile sex abusers will be addressed under a new program entitled, Juvenile Justice System Handling of Sex Offenses and Offenders.

48. *Comment:* Community Based Policing and Police Effectiveness and Victims programs should receive higher priority ratings.

Response: The OJP priorities reflect critical issues that this agency has identified to concentrate its resources and coordinate the efforts of the component Bureaus. Being priorities, all are considered for program development within OJP.

49. *Comment:* The program "Teens, Crime and the Community," which hopes to "reduce teen victimization by actively engaging teens in helping improve their school environment" should be combined with the "National School Center," which provides training and technical assistance on school safety to elementary and secondary schools and performs related functions.

Response: While it would seem that there might be some merit to this suggestion, a closer examination of both programs results in OJJDP's conclusion that this would not be feasible. The "Teens, Crime and the Community Program" deals with school children, while the National School Safety Center is very different and provides training and technical assistance to schools, law enforcement personnel, judges, and other professionals. NSSC maintains a clearinghouse of information for its constituency, some of which might be used by the "Teens, Crime and the Community" program. The focus of these two programs is very different.

Robert W. Sweet, Jr.,
Administrator, Office of Juvenile Justice and Delinquency Prevention.

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Part VII

Department of the Interior

Bureau of Indian Affairs

Notice; Grants and Cooperative Agreements; Availability, etc.: Small Tribes Program

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Small Tribes Grant Program

December 16, 1991.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability of discretionary grant funds for small federally recognized Indian tribes.

SUMMARY: The Bureau of Indian Affairs invites applications from small Indian tribes within the contiguous 48 United States and Alaska, population 1500 or less Indian people residing on or near the applicant tribe's reservation or community, for a grant program. The purpose of this grant program is to permit small tribes to improve their capabilities to manage and administer tribal governmental affairs as well as federal and tribal programs. Grant awards will be made on a competitive basis under criteria, terms, and conditions set forth in this announcement. Grants awarded under this announcement are authorized by section 103 of the Indian Self-Determination and Education Assistance Act of 1975, Public Law 93-638, as amended by Public Law 100-472, Public Law 101-301 and Public Law 101-644. This notice is published in exercise of the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

DATES: The closing date for submission of applications under this announcement is February 21, 1992.

FOR FURTHER INFORMATION CONTACT: George Clark, (202) 208-1708 or Denise Homer, (202) 208-5727, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, room 4627, 1849 C Street, NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

A. Purpose of the Grant Program

The purpose of this grant program is to provide financial support to enable small Indian tribes to meet the administrative needs necessary to develop, improve, and/or maintain tribal government functions as well as tribal service delivery systems. To accomplish this purpose, the Bureau of Indian Affairs announces the availability of a $2.599 Million small tribes grant program which is more responsive to the needs of small Indian tribes. The program is designed to meet the needs of three (3) categories of small tribes, as follows:

(1) Development Component

This program component is for small Indian tribes without basic management systems and without experience operating under such systems; small Indian tribes not heretofore contracting or applying for grants; tribes of villages in consortia which want to contract or receive grants on their own;

(2) Basic Small Tribes Component

This program component is for small Indian tribes experiencing problems operating programs and operating properly under basic management systems (this is the basic Core Management type program component);

(3) Expansion/Enhancement Component

This program component is for small Indian tribes which, for the most part, have eliminated their administrative and management problems and want to plan for the expansion or the enhancement of governmental functions as well as for the expansion or enhancement of service delivery systems but do not have the capability or the resources to do so.

B. Eligibility Criteria

(1) Developmental Component

Small tribes applying for a grant under this component shall meet the following criteria:

(a) Only the governing body of a small Indian tribe may apply for, or authorize a multi-tribal organization to apply for, a grant under this announcement;

(b) Only a Federally recognized Indian tribe with a population of 1500 or less who resides on or near the applicant tribe's reservation or community and has a leadership empowered under the tribe's system of government to act on behalf of the tribe may apply for a grant under this announcement.

(c) In addition to the basic eligibility criteria in (a) and (b), above, to be eligible for a grant under this component a tribe must satisfy at least three (3) of the following:

(i) Have an active tribal government;

(ii) Have a tribal office;

(iii) Lack financial resources to meet its core administrative or management needs;

(iv) Have inadequate or ineffective management systems.

(2) Basic Small Tribes Component

Small tribes applying for a grant under this component shall meet all of the following criteria:

(a) Only the governing body of a small Indian tribe may apply for, or authorize a multi-tribal organization to apply for, a grant under this announcement;

(b) Only a Federally recognized Indian tribe with a population of 1500 or less who resides on or near the applicant tribe's reservation or community and has a leadership empowered under the tribe's system of government to act on behalf of the tribe may apply for a grant under this announcement.

(c) The tribe must lack financial resources to meet its core administrative or management needs.

(d) The tribe must have inadequate management systems, or problems operating thereunder.

(3) Expansion/Enhancement Component

Small tribes applying for a grant under this component shall meet all of the following criteria:

(a) Only the governing body of a small Indian tribe may apply for, or authorize a multi-tribal organization to apply for, a grant under this announcement;

(b) Only a Federally recognized Indian tribe with a population of 1500 or less who resides on or near the applicant tribe's reservation or community and has a leadership empowered under the tribe's system of government to act on behalf of the tribe may apply for a grant under this announcement.

(c) In addition to the basic eligibility criteria in (a) and (b), above, tribes applying for a grant under this component must provide a copy of their current organization-wide Single Audit Report prepared in accordance with the Single Audit Act of 1984 (Pub. L. 98-502), as implemented through OMB Circular A-128. Such audit report must be free of any significant or material weaknesses.

C. Content of Application.

(1) Applications for a grant in response to this announcement shall follow the application requirements set forth in Office of Management and Budget Circular A-102, Uniform Requirements for Assistance to State and Local Governments (The Common Rule), and as implemented within the Department of the Interior in 43 CFR part 12. Under part IV of Standard Form 424, Program Narrative Statement, applicants shall provide the following:

(a) Developmental Component

(i) In addition to the basic eligibility criteria in Section B(1), above, tribal applicants must provide a statement of specific needs or problems to be addressed under the proposed grants which may include, but not be limited to, the following:

(A) Staff

—Tribal Administrator

—Clerical/Bookkeeper

(B) Training of Tribal Officials and Staff

(C) Management Systems/Includes Certification

(D) Funds to cover office costs, such as:

—Supplies

—Equipment/Furniture

—Telephone

—Utilities

—Space

Postage

(ii) A description of how the grant funds will be used to overcome the problems or meet the needs which have been identified.

(iii) A schedule for the start and projected completion dates for actions or efforts to be taken to resolve problems or meet needs identified under the proposed grants.

(iv) A description of the personnel required, if any, to carry out grant activities and/or objectives; also provide position descriptions which include qualifications for education and experience.

(v) A detailed description of how grant funds will be used, if applicable, in coordination with, or to supplement, grants and/or contracts or funds from other agencies.

(vi) A budget justification which indicates how grant funds will be used to carry out the actions or efforts and achieve the goals and objectives of the proposed grant.

(b) Basic Small Tribes Component

(i) In addition to the basic eligibility criteria in section B(2), above, to be eligible to receive a grant under this component tribes must furnish documents such as audits, reports, and correspondence which indicate difficulties in performance of Federal and State grants, programs and contracts, examples include, but are not limited to, the following:

(A) Current audit report indicates serious financial management problems;

(B) Delinquency in making progress or financial status reports;

(C) Failure to close-out program grants or contracts which are no longer in operation;

(D) Problems in achieving current or past grant or contract program goals or objectives.

(ii) Tribal applicants may propose to meet their respective core administrative or management needs in a variety of ways. Tribes must provide a statement of specific needs or problems to be addressed under the proposed grant which may include, but not be limited to, the following:

(A) Employ an administrator and/or necessary support staff;

(B) Employ a bookkeeper;

(C) Hire a "Circuit Rider" accountant, administrator, planner and/or key staff position to meet the needs of a multi-tribal consortium;

(D) Employ staff to address specific managerial problems under a one-time only grant;

(E) Retain an accountant to prepare for the conduct of annual independent audits and/or to correct current or past audit deficiencies.

(iii) A statement of specific needs and/or problems to be addressed under the proposed grants.

(iv) A description of how the grant funds will be used to overcome the problems or meet the needs which have been identified.

(v) A schedule for the start and projected completion dates for actions or efforts to be taken to resolve problems or meet needs identified under the proposed grants.

(vi) A description of the personnel required, if any, to carry out grant activities and/or objectives; also provide position descriptions which include qualifications for education and experience.

(vii) A detailed description of how grant funds will be used, if applicable, in coordination with, or to supplement, grants and/or contracts or funds from other agencies.

(viii) A budget justification which indicates how grant funds will be used to carry out the actions or efforts and achieve the goals and objectives of the proposed grant.

(c) Expansion/Enhancement Component

(i) Tribal applicants may propose to meet their respective expansion or enhancement needs in a variety of ways. Such grants may be used by a tribe to centralize or consolidate all of its administrative functions, to consolidate or integrate Federal programs serving the tribe as well as formulate short and long range plans for tribal governmental development including enhancing a tribes' ability to exercise it's authority.

(ii) Expansion/enhancement grants permit, but are not limited to, the following:

(A) Monitor, evaluate, plan and design or redesign Federal programs serving the tribe;

(B) Assume more control over programs designed to serve tribal populations, diminishing Federal domination over programs serving Indians;

(C) To assist tribes in their efforts to reduce dependence on Federal grants or contracts for services, income, and employment opportunities.

(iii) A work statement of how the applicant will accomplish the goals and objectives under the proposed grant.

(iv) A description of how the grant funds will be used to meet the goals and objectives identified under the proposed grant.

(v) A schedule for the start and projected completion dates for actions or efforts to be taken to meet the goals and objectives identified under the proposed grant.

(vi) A description of the personnel required, if any, to carry out grant activities and/or objectives; also provide position descriptions which include qualifications for education and experience.

(vii) A detailed description of how grant funds will be used, if applicable, in coordination with, or to supplement, grants and/or contracts or funds from other agencies.

(viii) A budget justification which indicates how grant funds will be used to carry out the actions or efforts and achieve the goals and objectives of the proposed grant.

(2) The applicant must indicate how other available resources such as tribal income, other Bureau grants or capacity building grants from other agencies will be committed to complement or support this effort.

(3) The applicant must make a written commitment to incorporate and maintain the positive results expected from the grant and to maintain sound management systems.

(4) The applicant must certify that no elected tribal official will receive a salary or any other form of compensation from a grant under this announcement.

(5) If a tribe's application is prepared by an outside consultant, the application must indicate the role of the grant preparer to the tribe during the grant period; e.g., will the preparer be funded through the proceeds of the grant as a consultant, full time employee, part time employee, etc.

(6) The grantee must agree in its application to submit quarterly financial status and progress reports;

(7) Progress and accomplishment reports for a prior year grant must be submitted with an application for a continuation grant. Reports will be used in the rating of continuation grant applications, appropriations permitting, since subsequent grants will include performance as a criteria for grant renewal.

(8) The applicant must complete a Certificate Regarding Drug-Free Workplace Requirements.

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(9) The grant funds awarded under this announcement may be used as matching shares for any other Federal or non-Federal grant programs which contribute to the purposes for which these grants are made.

D. Application Review and Rating

Applications submitted in response to this announcement will be received and rated as follows:

(1) Agency Office Responsibility

Applications shall initially be submitted to the appropriate Agency Superintendent for review and comment, with a recommendation to approve or disapprove the application to insure that the application is consistent with the conditions set forth in sections A, B, and C of this announcement. The Superintendent upon receipt of the application shall:

(a) Acknowledge in writing receipt of the application within five (5) calendar days of its arrival at the Agency office.

(b) Review the application for completeness of information and, within ten (10) calendar days, request any additional information which may be required to conduct a review of the application.

(c) If the application is sufficiently complete, forward it to the Area Director with comments and recommendations to approve or disapprove within fifteen (15) calendar days.

(d) In instances where disapproval of an application is recommended, the Superintendent shall provide detailed reasons for the recommendation.

(2) Area Office Responsibility

Upon receipt of the application the Area Director shall:

(a) Within fifteen (15) calendar days, conduct a review of each application for consistency with sections A, B, and C of this announcement, in this review the Area Director shall utilize the comments and recommendations from the Agency Superintendent.

(b) Upon completion of the application review process the Area Director shall rate each application based on the criteria set forth in sections A, B, and C of this announcement in accordance with the following guidelines:

	Points
(i) *Developmental component.* (A) Criteria—the applicant can document or demonstrate it satisfies 3 or more of the needs contained in Section B(1).	____ (0–35)
(B) Work statement—the application work plan describes in detail how it will satisfy the goals and objectives of the proposed grant. The work plan contains a schedule of activities, which if executed properly will accomplish the goals and objectives of the proposed grant.	____ (0–35)
(C) Budget justification—the application contains a line item budget with a separate narrative explaining each cost item and how such costs are reasonable.	____ (0–10)
(D) Management or Self-Monitoring System—the application indicates how the grantee will monitor progress in achieving grant objectives and how corrective action will be taken, if necessary.	____ (0–20)
(ii) *Basic small tribes component.* (A) Purpose—applications most consistent with the purpose of this component of the program will receive higher ratings than those which are for the purpose of purchasing professional expertise or equipment. An application for staff with a sound position description would rate higher than one used to hire a consultant since a good staff person will enable the grantee to meet the grant objectives on a more permanent basis.	____ (0–10)
(B) Need/Problem statement—the applicant can document or demonstrate it satisfies all of the criteria contained in section B(2).	____ (0–30)
(C) Work statement—the application work plan describes in detail how it will meet the needs or overcome problems cited in (B), above. The work plan contains a schedule of activities, which if executed properly will accomplish the objectives and goals of the proposed grant.	____ (0–35)
(D) Budget justification—the application contains a line item budget with a separate narrative explaining each cost item and how such costs are reasonable.	____ (0–10)
(E) Management or Self-Monitoring system—the application indicates how grantee will monitor progress in achieving grant objectives and how corrective action will be taken, if necessary.	____ (0–15)
(iii) *Expansion/Enhancement component.* (A) Purpose—applications most consistent with the purpose of this component of the program will receive higher ratings than those which are for the purpose of purchasing professional expertise or equipment.	____ (0–20)
(B) Rationale or Justification statement—the applicant can document or demonstrate it satisfies all of the criteria contained in section B(3).	____ (0–25)
(C) Work statement—the application work plan describes in detail how it will meet the needs or overcome problems cited in (B), above. The work plan contains a schedule of activities which if executed properly will accomplish the objectives and goals of the proposed grant.	____ (0–30)
(D) Budget justification—the application contains a line item budget with a separate narrative explaining each cost item and how such costs are reasonable.	____ (0–15)
(E) Management or Self-Monitoring system—the application indicates how grantee will monitor progress in achieving grant objectives and how corrective action will be taken, if necessary.	____ (0–10)

(c) Upon completion of the application review and rating process the Area Director shall, within fifteen (15) calendar days, initiate one of the following actions:

(i) Approve the application for funding based on the Superintendent's recommendation and the Area Office review and rating process.

(ii) Disapprove the application based on the Area Office review and rating process. Notify the applicant by explanatory letter of the decision to disapprove the application, advising the applicant of its appeal rights.

E. Other Conditions

(1) Appeals from administrative decisions made by the Bureau of Indian Affairs shall be made under provisions as set forth in 25 CFR, part 2.

(2) Unresponsive applications will not be reviewed or rated, and there shall be no appeal rights for non-funding of such applications. An unresponsive application is an application without a current tribal council or governing body resolution; an application requesting a grant where the anticipated grant outcomes have no relationship to the purposes of these grants; e.g., to fund and/or augment the funding of a wildlife and parks program grant, etc.

(3) Applicants should submit an original and two copies of their applications.

(4) No indirect cost funds shall be provided for grants under this announcement.

G. *Submission of Applications.* Applications submitted in response to this announcement must be:

(1) Postmarked no later than midnight February 21, 1992, if mailed;

(2) Received in the Agency office no later than the close of business February 21, 1992, if hand delivered.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91-30589 Filed 12-20-91; 8:45 am]

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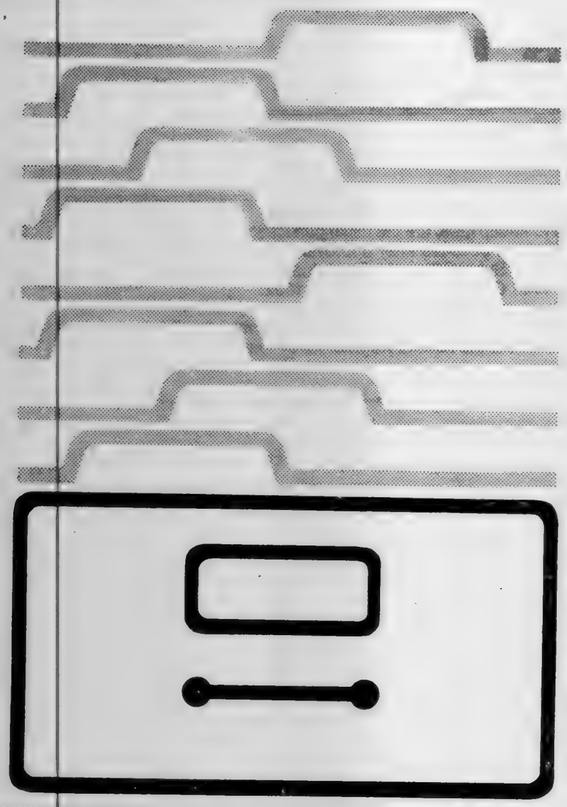
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 82

[Docket No. 91-132]

Exotic Newcastle Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of final rule.

SUMMARY: We are affirming without change a rule that amended the regulations concerning exotic Newcastle disease to specify our policy and procedures in cooperative programs concerning eradication of the disease from populations of birds and poultry. The rule affirmed by this action was necessary to clarify the procedures used for the control and eradication of exotic Newcastle disease.

EFFECTIVE DATE: January 23, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. Maurice A. Mixson, Chief Staff Veterinarian, Emergency Programs Staff, VS, APHIS, USDA, room 810, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20872, 301–436–8073.

SUPPLEMENTARY INFORMATION:

Background

In a rule published in the **Federal Register** on October 9, 1980 (45 FR 67052–67055) and made effective on that date, we amended the regulations regarding exotic Newcastle disease in order to clarify procedures for the protection of poultry and bird industries against the disease with minimal disruption to owners, producers, dealers, and other aviculturists.

We solicited comments for a 60-day period, ending December 8, 1980. The comment period was then extended for 30 days until January 7, 1981 (45 FR 80813). We received a total of 15 comments, representing bird and poultry industry associations, a State department of agriculture, a humane society, and members of the general public.

One commenter supported the rule as written. The remainder of the commenters either recommended changes to the rule, or addressed issues outside the scope of the rule. The comments that requested changes to the rule or made other recommendations are discussed below.

Four commenters requested that we not take final action on the rule without first holding a public conference to discuss exotic Newcastle disease. We are making no changes based on these comments. We do not believe a public conference would elicit any information not already available. Meetings have been conducted in the past regarding APHIS's policies on exotic Newcastle disease, and our rule includes a number of provisions that are consistent with industry recommendations. However, we are fully willing to attend any national industry-sponsored meetings for further discussions of policies regarding exotic Newcastle disease.

Two commenters stated that velogenic Newcastle disease should not be classified as exotic. In our rule, we characterized as exotic only that velogenic Newcastle disease that is viscerotropic. Velogenic viscerotropic Newcastle disease is not endemic to the United States and is therefore rightfully classified as exotic.

In our rule, we included provisions for special consideration of endangered species of birds. Two commenters recommended that special consideration also be given to protecting genetic stock. Although we are making no changes based on these comments, we are in the process of carefully evaluating the issue of genetic stock and will take whatever action is appropriate.

One respondent stated that pigeons should be considered the primary source of exotic Newcastle disease. We are not aware of any studies that support this conclusion. During the 1971–1973 major outbreak of exotic Newcastle disease in California, a total of 9,446 free-flying wild birds, including pigeons, were collected and tested. It was concluded from this testing that free-flying wild birds were not a factor in the spread of exotic Newcastle disease.

A number of commenters addressed issued outside the scope of our rule, including the advisability of a total ban on the importation of birds, the feasibility of requiring the vaccination of birds prior to their importation, and elimination of indemnity payments for birds affected with exotic Newcastle disease. We are making no changes based on these comments.

The rationale we set forth for the changes made in our October 9, 1980, document was based on the exotic Newcastle disease risk at that time. That risk continues to exist today. We are therefore affirming the provisions of our October 9, 1980, rule without change.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

The regulatory amendments being affirmed in this final rule have been in effect for a number of years and require no changes to current industry practice.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

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List of Subjects in 9 CFR Part 82

Animal diseases, Chlamydiosis, Exotic Newcastle disease, Ornithosis, Poultry and poultry products, Psittacosis, Salmonella, Quarantine, Transportation.

PART 82—EXOTIC NEWCASTLE DISEASE IN ALL BIRDS AND POULTRY; PSITTACOSIS AND ORNITHOSIS IN POULTRY; POULTRY DISEASE CAUSED BY SALMONELLA ENTERITIDIS

Accordingly, we are affirming, without change, the final rule amending 9 CFR Part 82 that was published at 45 FR 67052–67055 on October 9, 1980.

Authority: 21 U.S.C. 111–113, 115, 117, 120, 123–126, 134a, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 19th day of December 1991.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–30669 Filed 12–23–91; 8:45 am]

BILLING CODE 3410–34–M

9 CFR Part 113

[Docket No. 91–158]

Viruses, Serums, Toxins, and Analogous Products; Revision of Standard Requirements; Technical Amendment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Technical amendment.

SUMMARY: We are making a technical amendment to the Standard Requirement for Erysipelothrix Rhusiopathiae Bacterin in the regulations that set forth standard requirements for the evaluation of veterinary biological products. This amendment removes an outdated reference to a swine potency test and removes a reserved paragraph in § 113.119. This document corrects material published in a final rule in the Federal Register on June 6, 1985, and in a correction to a final rule published in the Federal Register on July 1, 1986.

EFFECTIVE DATE: December 24, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245.

SUPPLEMENTARY INFORMATION:

Background

The regulations at 9 CFR part 113 set forth the standard requirements to be used by licensed establishments in the evaluation of veterinary biological products. A final rule published in the Federal Register on June 6, 1985 (50 FR 23791, Docket No. 84–127), revised the standard requirements for eight veterinary biological products, including Erysipelothrix Rhusiopathiae Bacterin. Our intention in that final rule was to replace one mouse potency test with an improved mouse potency test, and to remove the swine potency test. (See Supplementary Information, Background, 50 FR 23792, column 2, first paragraph.) We intended to add the improved mouse test to 9 CFR 113.104(c), remove the alternate mouse test from paragraph (d), and delete the swine potency test from paragraph (e). However, neither the mouse test in paragraph (d) nor the swine test in paragraph (e) were actually removed in the rule portion of that document.

A correction was published in the Federal Register on July 1, 1986 (51 FR 23731, Docket No. 86–054), removing the mouse test from paragraph (d), but reserving the paragraph for later use. It did not remove the swine test from paragraph (e).

No changes were made in these paragraphs in the regulations when a final rule was published in the Federal Register on August 31, 1990 (55 FR 3556), redesignating § 113.104 as § 113.119.

Therefore, we are correcting § 113.119 to remove paragraphs (d) and (e).

List of Subjects in 9 CFR Part 113

Animal biologics.

Accordingly, 9 CFR part 113 is amended as follows:

PART 113—STANDARD REQUIREMENTS

1. The authority citation for part 113 is revised to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

§ 113.119 [Amended]

2. In § 113.119, paragraphs (d) and (e) are removed.

Done in Washington, DC, this 19th day of December 1991.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–30666 Filed 12–23–91; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 910813–1313]

Commerce Control List; Listing of Entries in Numerical Order

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule.

SUMMARY: On August 29, 1991, the Bureau of Export Administration (BXA) published an interim rule in the Federal Register (56 FR 42824) that established the Commerce Control List (CCL), Supplement No. 1 to § 799.1 of the Export Administration Regulations (EAR). The August 29, 1991, interim rule implemented a totally revised International Industrial List that had been developed by the Coordinating Committee for Multilateral Export Controls (COCOM). Because the revised Industrial List used a completely new method of categorizing items, BXA developed a new numbering system for both the Industrial List items and those items controlled for foreign policy, nuclear, or other reasons.

In order to assist exporters in locating the appropriate Export Control Classification Number (ECCN), BXA generally placed ECCNs that controlled items for missile technology or nuclear reasons immediately following related Industrial List items in the CCL. For example, ECCN 1A22B (a missile technology entry) was placed immediately following ECCN 1A02A (an Industrial List entry) because both entries controlled composite structures and laminates. While this approach enabled ECCNs that contained related items to be grouped together, it also had a negative effect. Many non-Industrial List items were listed out of numerical order. In the example cited above, for instance, ECCN 1A02A (the Industrial List entry) was followed by ECCN 1A22B (the missile technology entry), which was followed by ECCN 1A03A (another Industrial list entry).

In order to avoid confusion in locating entries on the CCL, this interim rule places in numerical order all of the non-Industrial List entries that were formerly out of sequence. The Export Control Classification Numbers assigned to these non-Industrial List entries have not been changed. This rearrangement of entries will not make locating related ECCNs more difficult because each Industrial List entry that was formerly followed by a related, but out of sequence, non-Industrial List entry will now be followed by a note that will identify related non-Industrial List entries that are controlled for missile technology or nuclear reasons.

EFFECTIVE DATE: December 24, 1991.

FOR FURTHER INFORMATION CONTACT: Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377–3856.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005 and 0694–0010.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, or inapplicable because this regulation involves a foreign and military affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in interim form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, part 799 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

1. The authority citation for 15 CFR part 799 is revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986); Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242 of March 10, 1978, 92 Stat. 141 (42 U.S.C. 2139a); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990); Notice of November 14, 1991 (56 FR 58171).

PART 799—[AMENDED]

§ 799.1 [Amended]

2. Section 799.1(b)(1) is amended:

a. By revising the phrase "from 1 to 0" in the introductory text to read "from 1 to 10"; and

b. By revising the item "0—Miscellaneous" at the end of the list to read "10—Miscellaneous".

Supplement No. 1 to § 799.1 [Amended]

3. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 1 (Materials), a Related ECCNs note is added immediately following ECCN 1A02A, as follows:

Related ECCNs: See 1A22B for MT controls on "composite" structures or laminates, not controlled by 1A02A, that are usable in "missile" systems.

4. In Supplement No. 1 to § 799.1 (the Commerce Control List), the ECCNs listed below are transferred to the correct numerical order within each of the following categories:

Category 1—Materials

A. Equipment, Assemblies and Components
ECCNs: 1A22B, 1A44B, 1A45B, and 1A46B
B. Test, Inspection and Production Equipment
ECCNs: 1B21B and 1B28B
C. Materials
ECCNs: 1C21B, 1C22B, 1C27B, and 1C50E

Category 2—Materials Processing

B. Test, Inspection and Production Equipment
ECCNs: 2B41E, 2B24B, and 2B46B

Category 3—Electronics Design, Development and Production

A. Equipment, Assemblies and Components
ECCNs: 3A41E, 3A42E, and 3A43B

Category 4—Computers

A. Equipment, Assemblies and Components
ECCN: 4A21B

Category 6—Sensors

A. Equipment, Assemblies and Components
ECCNs: 6A22B, 6A42B, 6A43B, 6A28B, 6A29B, and 6A30B
D. Software
ECCNs: 6D21B and 6D22B
E. Technology
ECCNs: 6E21B and 6E22B

Category 7—Navigation and Avionics

A. Equipment, Assemblies and Components
ECCNs: 7A21B, 7A22B, 7A23B, 7A24B, 7A25B, and 7A26B
B. Test, Inspection and Production Equipment
ECCN: 7B22B
E. Technology
ECCNs: 7E21B and 7E22B

Category 9—Propulsion Systems and Transportation Equipment

A. Equipment, Assemblies and Components
ECCNs: 9A21B and 9A22B
B. Test, Inspection and Production Equipment
ECCNs: 9B21B, 9B23B, 9B24B, 9B25B, 9B26B, and 9B27B
E. Technology
ECCN: 9E21B

5. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 1 (Materials), a Related ECCNs note is added immediately following ECCN 1B01A, as follows:

Related ECCNs: See 1B21B for MT controls on equipment, not controlled by 1B01A, for the production of fibers, prepregs, preforms or composites.

6. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 1 (Materials), a Related ECCNs note is added immediately following ECCN 1B18A, as follows:

Related ECCNs: See 1B28B for MT controls on equipment for the production of propellants not controlled by 1B18A.

7. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 1 (Materials), a Related ECCNs note is added immediately following ECCN 1C01A, as follows:

Related ECCNs: See 1C21B for MT controls on other materials for reduced observables, not controlled by 1C01A, for applications usable for missile systems and subsystems.

8. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 1 (Materials), a Related ECCNs note is

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added immediately following ECCN 1C02A, as follows:

Related ECCNs: See 1C22B for MT controls on tungsten, molybdenum, and alloys of these metals, not controlled by 1C02A, in the form of uniform spherical or atomized particles for the fabrication of rocket motor components.

9. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 1 (Materials), a Related ECCNs note is added immediately following ECCN 1C07A, as follows:

Related ECCNs: See 1C27B for MT controls on ceramic or graphite materials, not controlled by 1C07A, usable in missile systems.

10. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 1 (Materials), a Related ECCNs note is added immediately following ECCN 1C10A, as follows:

Related ECCNs: See 1C50E for NP/FP controls on fibrous and filamentary materials not controlled by 1C10A.

11. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 2 (Materials Processing), a Related ECCNs note is added immediately following ECCN 2B01A, as follows:

Related ECCNs: See 2B41E for NP controls on "numerically controlled" machine tools not controlled by 2B01A.

12. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 2 (Materials Processing), a Related ECCNs note is added immediately following ECCN 2B04A, as follows:

Related ECCNs: See 2B24B for MT/NP controls on "isostatic presses" not controlled by 2B04A.

13. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 2 (Materials Processing), a Related ECCNs note is added immediately following ECCN 2B06A, as follows:

Related ECCNs: See 2B46B for NP controls on dimensional inspection systems not controlled by 2B06A.

14. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 3 (Electronics Design, Development and Production), a Related ECCNs note is added immediately following ECCN 3A01A, as follows:

Related ECCNs: See 3A41E, 3A42E, and 3A43B for NP controls on capacitors, superconducting solenoidal electromagnets, and switching devices not controlled by 3A01A.

15. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 4 (Computers), a Related ECCNs note is added immediately following ECCN 4A01A, as follows:

Related ECCNs: See 4A21B for MT controls on electronic computers and related equipment, not controlled by 4A01A, that are designed or modified for airborne applications.

16. In Supplement No. 1 § 799,1 (the Commerce Control List), Category 6 (Sensors), a Regulated ECCNs note is added immediately following ECCN 6A02A, as follows:

Related ECCNs: See 6A22B and 6A42B for MT/NP controls on photosensitive components and electron tubes not controlled by 6A02A.

17. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 6 (Sensors), a Related ECCNs note is added immediately following ECCN 6A03A, as follows:

Related ECCNs: See 6A43B for NP controls on cameras, components, and photographic recording media not controlled by 6A03A.

18. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 6 (Sensors), a Related ECCNs note is added immediately following ECCN 6A08A, as follows:

Related ECCNs: See 6A28B, 6A29B, and 6A30B for MT controls on any of the following items not controlled by 6A08A: radar and laser radar systems, precision tracking systems, and integrated electronic systems for radar cross section measurement.

19. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 6 (Sensors), a Related ECCNs note is added immediately following ECCN 6D01A, as follows:

Related ECCNs: See 6D21B for MT controls on "software" specially designed for the "development" or "production" of equipment controlled by 6A02.a.1, a.3, and a.4, 6A22, 6A07.b and c, 6A28, or 6A30.

20. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 6 (Sensors), a Related ECCNs note is added immediately following ECCN 6D02A, as follows:

Related ECCNs: See 6D22B for MT controls on "software" specially designed for the "use" of equipment controlled by 6A02.a.1, a.3, and a.4, 6A22, 6A07.b and c, 6A2B, or 6A30.

21. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 6 (Sensors), a Related ECCNs note is added immediately following ECCN 6E01A, as follows:

Related ECCNs: See 6E21B for MT controls on technology for the "development" of equipment controlled by 6A22, 6A28, 6A29, or 6A30.

22. In Supplement No. 1 to Section 799.1 (the Commerce Control List), Category 6 (Sensors), a Related ECCNs note is added immediately following ECCN 6E02A, as follows:

Related ECCNs: See 6E22B for MT controls on technology for the "production" of equipment controlled by 6A22, 6A28, 6A29, or 6A30.

23. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 6 (Sensors), a Related ECCNs note is added immediately following ECCN 6E03A, as follows:

Related ECCNs: See 6E23B for MT controls on technology for the "use" of euipment controlled by 6A02.a.1, a.3, and a.4, 6A22, 6A07.b and c, 6A08, 6A28, 6A29, or 6A30.

24. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 7 (Navigation and Avionics), a Related ECCNs note is added immediately following ECCN 7A01A, as follows:

Related ECCNs: See 7A21B for MT controls on accelerometers, not controlled by 7A01A, that are designed for use in inertial navigation systems or in guidance systems of all types.

25. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 7 (Navigation and Avionics), a Related ECCNs note is added immediately following ECCN 7A02A, as follows:

Related ECCNs: See 7A22B for MT controls on gyros not controlled by 7A02A.

26. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 7 (Navigation and Avionics), a Related ECCNs note is added immediately following ECCN 7A03A, as follows:

Related ECCNs: See 7A23B for MT controls on inertial or other equipment, not controlled by 7A03A, using accelerometers or gyros described in 7A21B or 7A22B, and systems incorporating such equipment.

27. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 7 (Navigation and Avionics), a Related ECCNs note is added immediately following ECCN 7A04A, as follows:

Related ECCNs: See 7A24B for MT controls on gyro-astro compasses not controlled by 7A04A.

28. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 7 (Navigation and Avionics), a Related ECCNs note is added immediately following ECCN 7A05A, as follows:

Related ECCNs: See 7A25B for MT controls on Global Positioning System (GPO), or other satellite receivers, not controlled by 7A05A.

29. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 7 (Navigation and Avionics), a Related ECCNs note is added immediately following ECCN 7A06A, as follows:

Related ECCNs: See 7A26B and 7A27B for MT controls on any of the following equipment that is not controlled by 7A06A: airborne radar, airborne laser radar systems, and passive sensors for determining bearing to specific electromagnetic sources.

30. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 7 (Navigation and Avionics), a Related ECCNs note is added immediately following ECCN 7B02A, as follows:

Related ECCNs: See 7B22B for MT controls on reflectometers and specially designed test, calibration, and alignment equipment and "production equipment".

31. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 7 (Navigation and Avionics), a Related ECCNs note is added immediately following ECCN 7E01A, as follows:

Related ECCNs: See 7E21B for MT controls on technology, not controlled under 7E01A, for the "development", "production", or "use" of equipment or "software" controlled under Category 7 for MT reasons.

32. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 7 (Navigation and Avionics), a Related ECCNs note is added immediately following ECCN 7E02A, as follows:

Related ECCNs: See 7E22B for MT controls on design technology for the protection of avionics and electrical subsystems against electromagnetic pulse (EMP) and electromagnetic interference (EMI) hazards from external sources.

33. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 9 (Propulsion Systems and Transportation Equipment), a Related ECCNs note is added immediately following ECCN 9A01A, as follows:

Related ECCNs: See 9A21B and 9A22B for MT controls on gas turbine aero engines not controlled by 9A01A, and for vehicles designed or modified for transporting or handling missile systems.

34. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 9 (Propulsion Systems and Transportation Equipment), a Related ECCNs note is added immediately following ECCN 9B01A, as follows:

Related ECCNs: See 9B21B for MT controls on specially designed production facilities and equipment, not controlled by 9B01A, for the systems, sub-systems, and components in missile systems.

35. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 9 (Propulsion Systems and Transportation Equipment), a Related ECCNs note is added immediately following ECCN 9B03A, as follows:

Related ECCNs: See 9B23B for MT controls on servo valves designed to operate in vibration environments.

36. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 9 (Propulsion Systems and Transportation Equipment), a Related ECCNs note is added immediately following ECCN 9B04A, as follows:

Related ECCNs: See 9B24B for MT controls on pumps, for liquid propellants, designed to operate in vibration environments.

37. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 9 (Propulsion Systems and Transportation Equipment), a Related ECCNs note is added immediately following ECCN 9B05A, as follows:

Related ECCNs: See 9B25B for MT controls on wind tunnels, and on related control systems, instrumentation, and automated data acquisition and processing equipment not controlled by 9B05A.

38. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 9 (Propulsion Systems and Transportation Equipment), a Related ECCNs note is added immediately following ECCN 9B06A, as follows:

Related ECCNs: See 9B26B for MT controls on vibration test equipment not controlled by 9B06A.

39. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 9 (Propulsion Systems and Transportation Equipment), a Related ECCNs note is added immediately following ECCN 9B07A, as follows:

Related ECCNs: See 9B27B for MT controls on test benches/stands capable of handling solid or liquid propellant rockets or rocket motors.

40. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 9 (Propulsion Systems and Transportation Equipment), a Related ECCNs note is added immediately following ECCN 9E01A, as follows:

Related ECCNs: See 9E21B for MT controls on technology, not controlled under 9E01A, for the "development", "production", or "use" of items controlled under Category 9 for MT reasons.

41. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 0 (Miscellaneous) is amended by revising the category heading that follows ECCN 9E96G and by adding a Note immediately following the heading, as follows:

Category 10—Miscellaneous

Note: Note that the Export Control Classification Numbers (ECCNs) in Category 10 begin with the number "0", instead of the number "10". This is done to ensure that every ECCN on the Commerce Control List has the same number of characters (five). Maintaining the same number of characters for every ECCN will assist exporters who use ECCNs in their computerized recordkeeping activities.

* * * * *

Dated: December 18, 1991.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 91-30593 Filed 12-23-91; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 401

RIN 0960-AC79

Blood Donor Locator Service

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: We are issuing these final regulations to govern the Blood Donor Locator Service, which we will establish and conduct, as required by section 8008 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647). Under these regulations, we will furnish to participating States at their request the last known personal mailing address (residence or post office box) of blood donors whose blood donation shows that they are or may be infected with the human immunodeficiency virus (HIV) which causes acquired immune deficiency syndrome, if the State or an authorized blood donation facility has been unable to locate the donors. If our records or those of the Internal Revenue Service (IRS) contain an adequate personal mailing address for the donor, we will provide it to the State so that the State or the blood donation facility can inform the donor that he or she may need medical care and treatment.

DATES: These rules are effective December 24, 1991.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, room 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-8471.

SUPPLEMENTARY INFORMATION: Section 8008 of Public Law 100-647, the Technical and Miscellaneous Revenue Act of 1988, amended section 205(c)(2) of the Social Security Act (the Act) and added section 1141. Section 8008 requires the Secretary of Health and Human Services (the Secretary) to establish and conduct a Blood Donor Locator Service (BDLS) under the direction of the Commissioner of Social Security. The purpose of the BDLS is to provide an additional means by which States and authorized blood donation

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facilities can notify blood donors whose blood donations show that they are or may be infected with HIV which causes acquired immune deficiency syndrome and, therefore, may need medical care and treatment. The statute permits States to require a blood donor to furnish his or her social security number to a State agency or to an authorized blood donation facility. An authorized blood donation facility is one which, as required by sections 205(c)(2)(D)(iii)(I) and 1141(h)(1)(B) of the Act, is licensed or registered by the Food and Drug Administration. With the social security number, an authorized blood donation facility may request the State, pursuant to an arrangement with the Secretary, to contact the BDLS to obtain the donor's personal mailing address (residence or post office box). The State agency may also make such a request to the BDLS on its own behalf.

The Social Security Administration (SSA), on behalf of the Secretary, will enter into arrangements with an agency of an interested State under which SSA will accept requests for the last known personal mailing addresses (residence or post office box) of blood donors whose blood donations show that they are or may be infected with HIV. The State agency will be the agency within the State that has the duty or authority under State law relating to the public health, or otherwise has the duty or authority under State law to regulate blood donations.

Sections 1141 (a) and (b) of the Act provide that a State or an authorized blood donation facility within a State may request and receive from the BDLS address information concerning a blood donor who is or may be infected with HIV. Subsection (e) of section 1141 of the Act provides that the Secretary, in carrying out his duties and functions under the statute, shall enter into arrangements with State agencies for an agency to accept and to transmit to the Secretary and transmit to authorized blood donation facilities the requested information. We provide in these regulations that SSA, on behalf of the Secretary, will conduct the BDLS by arrangements with a State agency in each State which chooses to participate. Under these arrangements, the State agency will agree to accept requests for address information from authorized blood donation facilities and forward the requests to the BDLS. The State agency with which we will enter into arrangements may also submit a request for address information on its own behalf to the BDLS.

Section 1141(e)(1) of the Act provides that the Secretary shall enter into arrangements with State agencies to accept and to transmit to the Secretary requests for address information under this section and to accept and to transmit such information to authorized persons. We believe this provision provides authority for us to establish the BDLS so that it will only respond to requests for address information from State agencies with which we have entered into arrangements. The BDLS will not provide address information in response to requests from any person located in a State with which we have not entered into such arrangements, and the BDLS will not respond directly to blood donor facilities. We believe that this approach will foster the efficient and effective implementation of section 1141. The State agencies with which we will enter into these arrangements will be familiar with other State agencies and with blood donor facilities within their respective States which may qualify as authorized persons that may request address information under the statute. The State agencies with which we will enter into these arrangements will be able to assist the BDLS by verifying the qualifications of a blood donation facility as an authorized person and helping to monitor the compliance of authorized persons with these regulations.

We will process a request from the participating State agency if the State or the authorized blood donation facility cannot locate the donor at the address he or she provided at the time of the blood donation. After we receive an address request from a participating State agency, we will check our records of beneficiaries. If we do not have a current personal mailing address for the blood donor in question, we will forward the request to the IRS, which will check its tax records. Section 8008(c) of Public Law 100–647 also provides that the Secretary of the Treasury must give us taxpayer mailing address information when we need such information to comply with a BDLS request.

The BDLS provisions of the Act require that an authorized blood donation facility must provide for notification procedures and counseling of blood donors with positive antibody HIV tests. The legislative history of section 1141 of the Act indicates that Congress expects blood donation facilities which use the BDLS to make reasonable efforts at notification, but does not expect facilities to use extraordinary means to reach individuals who may have moved out of the area in which the facility is located. The legislative history further indicates that blood donation facilities would be permitted to use existing counseling programs or referrals to provide counseling for these donors and that new counseling programs would not be required. H.R. Rep. No. 100–795, 100th Cong., 2d Sess. 620 (1988).

Section 205(c)(2) of the Act as amended by section 8008 of Public Law 100–647 allows States to require anyone who donates blood within that State to furnish his or her social security number to the State or to an authorized blood donation facility. States and authorized blood donation facilities may utilize social security numbers for identification of blood donors. The social security number will be required information in requests to us for the donor's address.

Section 8008 of Public Law 100–647 also provides for stringent safeguards to protect the confidentiality and security of records of blood donors when address information is requested from the BDLS. These measures apply to States and authorized blood donation facilities that use the BDLS. They provide that State agencies and authorized blood donation facilities which use the BDLS must have a system for standardizing records pertaining to BDLS requests, must store blood donors' addresses and related blood donor records in a secure area that is safe from access by unauthorized persons, must restrict access to the records to persons whose duties require access and to whom disclosure may be made, must destroy identifying information after the donor has been notified, and must report to us, when requested, the procedures used to ensure confidentiality. We list these safeguards in these final regulations. We also provide in these final regulations that States and authorized blood donation facilities that use the BDLS must explain the applicable confidentiality standards and sanctions to personnel who will have access to any records pertaining to BDLS requests.

In addition to the confidentiality and security requirements for States and authorized blood donation facilities, section 8008 of Public Law 100–647 and these regulations state that SSA is required to destroy all identifying information in its records related to the address request after the BDLS has responded to the requesting State agency. Similarly, under section 8008 the IRS must destroy its records related to the request after it has responded to us in those situations where we requested the address from IRS tax records because our records did not contain a current personal mailing address. We also state in these regulations that under section 8008 there are criminal penalties for unauthorized disclosure of information related to a blood donor. These criminal penalties will apply to any official or employee of the Federal Government, a State, or an authorized blood donation facility.

To monitor compliance with the confidentiality and security requirements of the statute and these regulations regarding address information received from the BDLS and related blood donor records, we provide in these regulations that we reserve the right to make onsite inspections of State agencies and authorized blood donation facilities. We also describe other measures we may take to ensure that the safeguards required by the law are being met. Section 1141(d)(5) of the Act requires that an authorized person, as defined in section 1141(h)(1) of the Act, which receives address information from the BDLS must furnish a report to the Secretary at such time and containing such information as he may prescribe, describing the procedures established and utilized for ensuring the confidentiality of address information provided by the BDLS and related blood donor records. Under the statute and these regulations, an authorized person, after receiving address information from the BDLS and either notifying or attempting to notify the donor, must destroy the address information and any record, list or compilation it established in connection with the request that indicates directly or indirectly the identity of the donor with respect to whom the request for address information was made.

Participation in the BDLS by State agencies and blood donation facilities is voluntary, but participants must agree to comply with the provisions of the statute and these regulations. If the address request of an authorized person does not comply with the statute and these regulations, we will not disclose address information, and the authorized person will have 60 days after receiving our notice of refusal to provide the address information within which to request administrative review. In these regulations, we explain the review process, including the timeframe within which we will process the request for review.

Public Law 100–647 requires the BDLS to furnish the "mailing address" of a blood donor who is or may be infected with HIV, but does not define the term "mailing address". Because of the sensitive nature of the information disclosed through the use of the BDLS, we will consider a donor's "mailing address" to be his or her personal mailing address (residence or post office box). Therefore, we will not release any other address, such as an employment address.

We are deleting the material currently in subpart F of 20 CFR part 401 relating to the disclosure of wage information for the Aid to Families with Dependent Children Program because this material is obsolete. Subpart F implemented section 411 of the Social Security Act, and section 411 was repealed by section 2651 of Public Law 98–369 (1984).

Discussion of Comments

On October 10, 1990, we published proposed rules in the **Federal Register** at 55 FR 41200 with a 60-day comment period. We received comments from four organizations involved with blood donations, two State Departments of Health, and an individual. The commenters, while supporting the BDLS, raised several questions and made suggestions that convinced us that several changes from the proposed rules were necessary. The comments and our responses are discussed below. Where more than one commenter addressed the same issue, we have discussed the issue and provided a single response.

Comment: Several commenters suggested that we should expand the locator service to include donors whose blood donation shows that they have other disease markers and to transfusion recipients who have been potentially exposed to HIV or these other disease agents.

Response: We have not adopted these comments because the statutory authority we have to conduct the locator service only authorizes us to provide address information for blood donors whose blood donations show that they are, or may be, infected with HIV. We, therefore, have no legal basis for extending the BDLS to other blood donors or to transfusion recipients.

Comment: One comment we received recommended that we revise proposed § 401.600(b)(2)(iii) to clarify that blood donation facilities would be permitted to use referrals to provide counseling services for donors infected with HIV.

Response: We believe that the Act and the congressional intent as stated in H.R. Rep. No. 100–795, 100th Cong., 2d Sess. 621 (1988) support this recommended change. We accordingly are modifying the final regulations to clarify that new counseling programs would not be required and that a blood donation facility may use existing programs or referrals to provide these services.

Comment: Several commenters questioned and objected to the requirement in proposed § 401.600(g)(5) that blood donation facilities would have to destroy the address information received from the BDLS and any related blood donor records after notifying or attempting to notify the donor without keeping a copy of this information for their files. Two commenters expressed the view that this requirement appears to be in conflict with regulations of the Food and Drug Administration that require blood centers to maintain blood donor records for a minimum of five and a half years. One commenter requested that the phrase "related blood donor records" be clarified.

Response: We appreciate these comments and we have revised § 401.600(g)(5) to clarify the information and the records that blood donation facilities and State agencies must destroy pursuant to section 1141 of the Act to protect the confidentiality of both the address information received from the BDLS and the records that are created when a request is made for this information.

Section 1141(d)(6) of the Act states that authorized persons "shall * * * destroy such address information and related blood donor records, upon completion of their use in providing the notification for which the information was obtained, so as to make such information and records undisclosable." The term "related blood donor records" is defined in section 1141(h)(1) as "any record, list or compilation which indicates, directly or indirectly, the identity of any individual with respect to whom a request for address information has been made pursuant to this section." Thus, that term refers to records related to the address request to the BDLS and does not refer to records which the Food and Drug Administration requires blood donation facilities to compile and maintain.

In their report on this legislation, the Committee on Ways and Means of the House of Representatives explains that blood donors would be protected by permitting access to address information only by State agencies and blood donation facilities meeting the requirements for confidentiality and security, and that the agencies and facilities that receive addresses through the BDLS "would be required to restrict access to blood donor records, provide for their security, and destroy them after use." See H.R Rep. No. 195, 100th Cong., 2d Sess. 621 (1988). The Committee explained further that the Secretary and the Secretary of the Treasury, as well as State agencies and blood donation facilities, would be required to destroy blood donor records after the address

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information was transmitted. Thus section 1141(d)(6) prohibits blood donation facilities from retaining the information they receive from the BDLS and adding it to the donor records which they maintain for Food and Drug Administration purposes. The address information is to be used to attempt notification, and then destroyed.

Because, as noted above, the term "related blood donor records" does not include the records which the blood donation facilities must maintain for Food and Drug Administration purposes, the destruction of the address information does not mean the destruction of records required by the FDA. Although we believe that the proposed rule was consistent with the regulations of the Food and Drug Administration codified at 21 CFR 606.160(d) concerning the retention of records, in light of the public comments, we have clarified our final rules concerning this requirement.

Finally, we note that if a blood donation facility contacts a donor, using address information furnished by the BDLS, and the donor consents to having his or her address in other records maintained by the facility, the facility would not be legally precluded from updating its records and adding the correct address.

Comment: One organization expressed concern that it would not be able to use the BDLS in a given State if the State did not enter into a participation agreement with us, even though the organization meets the definition of an "authorized person."

Response: As we explain in the preamble, we believe that section 1141(e) of the Act supports the policy reflected in these regulations under which we will furnish address information only through arrangements with participating State agencies.

Comment: Several commenters requested that we clarify the provision in § 401.600(g)(6) of the proposed regulations concerning the onsite inspections we may conduct.

Response: We agree with the comment that the proposed rule did not clearly state that these onsite inspections would be for the limited purpose of determining whether the safeguards we have established for ensuring the confidentiality of address information received from the BDLS and related blood donor records are being met. We have modified paragraph (6) of § 401.600(g) to clarify that these inspections will be limited to this purpose.

Comment: One organization stated that our onsite inspections of blood donation facilities made pursuant to § 401.600(g)(6) should be announced in advance and clearly justified.

Response: We expect, that as a general rule, we will announce onsite inspections in advance and that such inspections will not be made frequently, and only when we believe that they are necessary or appropriate. See section 1141(d)(4) of the Act.

Comment: One organization suggested that we require that requests to the BDLS be sent to us by certified mail to avoid a breach in confidentiality.

Response: We do not believe there is an adequate need or justification for such a requirement. We believe instead that confidentiality can be best maintained through administrative controls within the agencies and organizations involved in the BDLS.

Comment: An organization suggested that blood donors not be required to furnish their social security numbers because some donors fear an invasion of privacy. One State's Department of Health says that State law prohibits blood donor facilities from disclosing the social security number of an unconsenting donor and the State currently has no statutory authority to require a donor's release of his or her social security number as a prerequisite to donating blood. Another organization pointed out that the requirement for a statement of HIV infection on a request to the BDLS was an unnecessary requirement.

Response: Section 1141(c) of the Act provides that a request to the BDLS must include the donor's social security number. Also, section 205(c)(2)(D)(i) of the Act provides that a State and an authorized blood donation facility may use social security numbers to identify blood donors. That section of the Act also provides that a State may require a blood donor to furnish the donor's social security number to the State or to an authorized blood donation facility. As a practical matter, SSA and IRS need the number to search their records for the donor's address. For these reasons, the final regulations require a blood donor's social security number as necessary information in a request to the BDLS. We have also retained in the final rules the requirement that a request for address information must contain a statement that the donor has tested positive for HIV or that the history of subsequent use of the donated blood or blood products indicates that the donor has or may have HIV. We believe that this information is necessary to ensure that we comply with the statutory restrictions that are applicable when we receive a request for address information that may be disclosed through the BDLS.

Comment: An organization asked how blood centers can be assured that SSA will maintain confidentiality and destroy records of donor information after processing has been completed.

Response: We intend to comply fully with the provisions of section 1141 on confidentiality and destruction of records, and we assume IRS will do the same. Both we and the IRS have decades of experience in maintaining, and disposing of, sensitive personal information in a manner that protects its confidentiality.

Comment: A State Department of Health noted that the BDLS should not undermine the State's efforts to maintain strict confidentiality and requested more information on procedures of the BDLS.

Response: As indicated in response to other comments, the BDLS rules on confidentiality are not intended to conflict with existing State procedures and Federal regulations on confidentiality of blood donor records. States will be contacted by Social Security Administration regional offices after these final rules have been published.

Except as indicated above, we are publishing the proposed rules essentially unchanged as final regulations.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291, because the costs, if any, are expected to be negligible. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only the release of addresses of certain blood donors. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

Section 401.600(d) of these final regulations imposes reporting requirements on the public, which are subject to Office of Management and Budget (OMB) clearance pursuant to the Paperwork Reduction Act of 1980. OMB has approved this information collection and assigned number 0960-0501.

(Catalog of Federal Domestic Assistance Program—No listing)

List of Subjects in 20 CFR Part 401

Administrative practice and procedure; Aid to families with dependent children; Freedom of information; Medicare; Old-Age, Survivors, and Disability Insurance; Privacy; Supplemental Security Income.

Dated: August 5, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: September 10, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subparts B and F of part 401 of 20 CFR chapter III are revised as follows:

PART 401—DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION

1. The authority citation for subpart B is revised to read as follows:

Authority: Secs. 205(a), 1102, 1106, and 1141 of the Social Security Act; 5 U.S.C. 552 and 552a, 8 U.S.C. 1360, 26 U.S.C. 6103, 30 U.S.C. 923, 42 U.S.C. 405(a), 1302, 1306, and 1341.

2. Section 401.205 is revised to read as follows:

§ 401.205 Disclosures required by law.

We disclose information when a law specifically requires it. The Social Security Act requires us to disclose information for certain program purposes. These include disclosures to the Office of Inspector General, HHS, the parent Locator Service, and to States pursuant to an arrangement regarding use of the Blood Donor Locator Service. Also, there are other laws which require that we furnish other agencies information which they need for their programs. These include the Department of Veterans Affairs for its benefit programs, the Immigration and Naturalization Service to carry out its duties regarding aliens, the Railroad Retirement Board for its benefit programs, and to Federal, State, and local agencies administering Aid to Families with Dependent Children, Medicaid, unemployment compensation, food stamps, and other programs.

3–5. Subpart F is revised to read as follows:

Subpart F—Disclosures of Addresses by Blood Donor Locator Service

Authority: Secs. 205(c)(2), 1102, and 1141 of the Social Security Act; 42 U.S.C. 405(c)(2), 1302, and 1341, and 26 U.S.C. 6103.

§ 401.600 Blood Donor Locator Service

(a) *General.* We will enter into arrangements with State agencies under which we will furnish to them at their request the last known personal mailing addresses (residence or post office box) of blood donors whose blood donations show that they are or may be infected with the human immunodeficiency virus which causes acquired immune deficiency syndrome. The State agency or other authorized person, as defined in paragraph (b) of this section, will then inform the donors that they may need medical care and treatment. The safeguards that must be used by authorized persons as a condition to receiving address information from the Blood Donor Locator Service are in paragraph (g) of this section, and the requirements for a request for address information are in paragraph (d).

(b) *Definitions.* State means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of Northern Marianas, and the Trust Territory of the Pacific Islands.

Authorized person means—

(1) Any agency of a State (or of a political subdivision of a State) which has duties or authority under State law relating to the public health or otherwise has the duty or authority under State law to regulate blood donations; and

(2) Any entity engaged in the acceptance of blood donations which is licensed or registered by the Food and Drug Administration in connection with the acceptance of such blood donations, and which provides for—

(i) The confidentiality of any address information received pursuant to these rules and section 1141 of the Social Security Act and related blood donor records;

(ii) Blood donor notification procedures for individuals with respect to whom such information is requested and a finding has been made that they are or may be infected with the human immunodeficiency virus; and

(iii) Counseling services for such individuals who have been found to have such virus. New counseling programs are not required, and an entity may use existing counseling programs or referrals to provide these services.

Related blood donor records means any record, list, or compilation established in connection with a request for address information which indicates, directly or indirectly, the identity of any indivudal with respect to whom a request for address information has been made pursuant to these rules.

(c) *Use of social security number for identification.* A State or an authorized person in the State may require a blood donor to furnish his or her social security number when donating blood. The number may then be used by an authorized person to identify and locate a donor whose blood donation indicates that he or she is or may be infected with the human immunodeficiency virus.

(d) *Request for address of blood donor.* An authorized person which has been unable to locate a blood donor at the address he or she may have given at the time of the blood donation may request assistance from the State agency which has arranged with us to participate in the Blood Donor Locator Service. The request to the Blood Donor Locator Service must—

(1) Be in writing;

(2) Be from a participating State agency either on its own behalf as an authorized person or on behalf of another authorized person;

(3) Indicate that the authorized person meets the confidentiality safeguards of paragraph (g) of this section; and

(4) Include the donor's name and social security number, the addresses at which the authorized person attempted without success to contact the donor, the date of the blood donation if available, a statement that the donor has tested positive for the human immunodeficiency virus according to the latest Food and Drug Administration standards or that the history of the subsequent use of the donated blood or blood products indicates that the donor has or may have the human immunodeficiency virus, and the name and address of the requesting blood donation facility.

(Approved by the Office of Management and Budget under control number 0960-0501.)

(e) *SSA response to request for address.* After receiving a request that meets the requirements of paragraph (d) of this section, we will search our records for the donor's latest personal mailing address. If we do not find a current address, we will request that the Internal Revenue Service search its tax records and furnish us any personal mailing address information from its files, as required under section 6103(m)(6) of the Internal Revenue Code. After completing these searches, we will provide to the requesting State agency either the latest mailing address available for the donor or a response stating that we do not have this information. We will then destroy the records or delete all identifying donor information related to the request and maintain only the information that we will need to monitor the compliance of authorized persons with the confidentiality safeguards contained in paragraph (g) of this section.

(f) *SSA refusal to furnish address.* If we determine that an authorized person

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has not met the requirements of paragraphs (d) and (g) of this section, we will not furnish address information to the State agency. In that case, we will notify the State agency of our determination, explain the reasons for our determination, and explain that the State agency may request administrative review of our determination. The Commissioner of Social Security or a delegate of the Commissioner will conduct this review. The review will be based on the information of record and there will not be an opportunity for an oral hearing. A request for administrative review, which may be submitted only by a State agency, must be in writing. The State agency must send its request for administrative review to the Commissioner of Social Security, 6401 Security Boulevard, Baltimore, MD 21235, within 60 days after receiving our notice refusing to give the donor's address. The request for review must include supporting information or evidence that the requirements of these rules have been met. If we do not furnish address information because an authorized person failed to comply with the confidentiality safeguards of paragraph (g) of this section, the State agency will have an opportunity to submit evidence that the authorized person is now in compliance. If we then determine, based on our review of the request for administrative review and the supporting evidence, that the authorized person meets the requirements of these rules, we will respond to the address request as provided in paragraph (e) of this section. If we determine on administrative review that the requirements have not been met, we will notify the State agency in writing of our decision. We will make our determination within 30 days after receiving the request for administrative review, unless we notify the State agency within this 30-day time period that we will need additional time. Our determination on the request for administrative review will give the findings of fact, the reasons for the decision, and what actions the State agency should take to ensure that it or the blood donation facility is in compliance with these rules.

(g) *Safeguards to ensure confidentiality of blood donor records.* We will require assurance that authorized persons have established and continue to maintain adequate safeguards to protect the confidentiality of both address information received from the Blood Donor Locator Service and related blood donor records. The authorized person must, to the satisfaction of the Secretary—

(1) Establish and maintain a system for standardizing records which includes the reasons for requesting the addresses of blood donors, dates of the requests, and any disclosures of address information;

(2) Store blood donors' addresses received from the Blood Donor Locator Service and all related blood donor records in a secure area or place that is physically safe from access by persons other than those whose duties and responsibilities require access;

(3) Restrict access to these records to authorized employees and officials who need them to perform their official duties related to notifying blood donors who are or may be infected with the human immunodeficiency virus that they may need medical care and treatment;

(4) Advise all personnel who will have access to the records of the confidential nature of the information, the safeguards required to protect the information, and the civil and criminal sanctions for unauthorized use or disclosure of the information;

(5) Destroy the address information received from the Blood Donor Locator Service, as well as any records established in connection with the request which indicate directly or indirectly the identity of the individual, after notifying or attempting to notify the donor at the address obtained from the Blood Donor Locator Service; and

(6) Upon request, report to us the procedures established and utilized to ensure the confidentiality of address information and related blood donor records. We reserve the right to make onsite inspections to ensure that these procedures are adequate and are being followed and to request such information as we may need to ensure that the safeguards required in this section are being met.

(h) *Unauthorized disclosure.* Any official or employee of the Federal Government, a State, or a blood donation facility who discloses blood donor information, except as provided for in this section or under a provision of law, will be subject to the same criminal penalty as provided in section 7213(a) of the Internal Revenue Code of 1986 for the unauthorized disclosure of tax information.

[FR Doc. 91-30610 Filed 12-23-91; 8:45 am]
BILLING CODE 4160-29-M

Food and Drug Administration

21 CFR Part 106

[Docket No. 87N-0402]

Infant Formula Record and Record Retention Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its infant formula regulations with respect to records, and retention of records, that relate to various subjects, including, but not limited to, microbiological and nutrient testing, manufacturers' audits, and consumer complaints. This action is in response to the 1986 infant formula amendments to the Federal Food, Drug, and Cosmetic Act (the act). The amended regulations will help ensure a safe, wholesale, and sanitary sole source of nutrition for infants.

EFFECTIVE DATE: April 22, 1992.

FOR FURTHER INFORMATION CONTACT: Janice F. Oliver, Center for Food Safety and Applied Nutrition (HFF-310), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0167.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 26, 1989 (54 FR 3783), FDA proposed to amend the record retention requirements in its infant formula regulations. This proposal was required to implement those provisions of the Drug Enforcement, Education, and Control Act of 1986 (Pub. L. 99-570) that are known as "the 1986 infant formula amendments" (the 1986 amendments) to the act. The agency proposed to provide for the retention of all records covered by 21 U.S.C. 350a(b)(4)(A) and (g). These records include, but are not limited to, all records:

1. Necessary to document that the food packaging materials used comply with section 402(a) of the act;
2. Pertaining to nutrient premixes;
3. Necessary to document compliance with proper quality control procedures;
4. Necessary to document appropriate nutrient levels in each batch of infant formula;
5. Necessary to document required infant formula nutrient testing at the final product stage;
6. Pertaining to distribution of infant formula;
7. Necessary to document microbiological quality and purity of infant formula;

8. Necessary to document each scheduled audit; and
9. Necessary to document appropriate handling of infant formula complaints.

In addition, the proposed amendments set out administrative requirements on where and how, and for what length of time, the records are to be maintained.

The proposal did not deal with the records that would need to be retained to demonstrate compliance with good manufacturing practices (referred to as "current good manufacturing practices," or "CGMP's," in this document) for infant formula. The agency intends to issue a proposal on CGMP's, and that proposal will include all necessary record and record retention requirements relevant to CGMP's.

Interested persons were given until March 27, 1989, to comment on the proposal. FDA received comments from a trade association suggesting several modifications to the proposed rule. A summary of the comments and FDA responses is set forth below.

II. General Comments

1. One comment suggested that proposed § 106.100(a) (21 CFR 106.100(a)) be revised to delete the summary list of records. The comment contended that the proposed summary was inconsistent with other FDA record retention provisions, added nothing substantive to the regulation, and created ambiguity.

The agency agrees with the comment and has revised § 106.100(a) accordingly. It has also made minor editorial changes in this provision.

2. One comment requested that FDA clarify the meaning of the phrase "shall maintain" that is used throughout the regulation. The comment interpreted this phrase to mean that manufacturers must maintain records either that they create or that come into their possession as a result of doing business. However, the comment objected if the phrase was intended to require that infant formula manufacturers obtain records created by companies other than the manufacturers themselves that would not come into the manufacturers' hands in the normal course of business. The comment was specifically concerned about a manufacturer's obligation to obtain all premix records.

The agency agrees that manufacturers need not obtain all records from other companies, and that infant formula manufacturers cannot be expected to obtain all premix testing records. Therefore, FDA has revised proposed § 106.100(c)(3) to reflect 21 U.S.C. 350a(b)(4)(A)(iii). It is the obligation of the premix supplier to maintain all records necessary to confirm the accuracy of all premix certifications and guarantees of analysis. Revised § 106.100(c)(3) is renumbered as § 106.100(d).

However, the regulations will require that infant formula manufacturers retain those certifications and guarantees of analysis that they receive from premix suppliers (21 U.S.C. 350a(b)(4)(A)(ii)) and all results of testing that the manufacturer or its contractors conduct to ensure that each nutrient premix is in compliance with the premix certificate and guarantee and all other specifications such as those pertaining to potential contaminants routinely provided by premix suppliers.

3. One comment noted that the 1986 amendments use the term "batch" and not "lot" and suggested that the term "batch" be used in lieu of the term "lot" wherever it appears in the regulation. The comment stated that the existing quality control regulations define "in-process batch."

The agency agrees with the comment and has revised § 106.100 accordingly.

4. One comment requested an additional 60 days to comply with the final rule. The comment contended that 120 days were needed to achieve effective planning and proper implementation of the new requirements.

The agency has decided to accept this comment. While this final rule does not impose any testing or manufacturing requirements, it does require that records be maintained in a specific manner. The agency agrees with the comment that compliance with the requirement of these regulations will be facilitated by a longer compliance period. Therefore, FDA concludes that a 120-day implementation date is more reasonable than the 60-day implementation date that FDA proposed, and has revised the effective date accordingly.

III. Food-Packaging Materials

5. One comment suggested that § 106.100(b) be revised to identify food-packaging material as "primary" food-packaging material to clarify that § 106.100(b) applies only to packaging materials that come into contact with the product.

The agency disagrees. Section 106.100(b) applies to all packaging materials that may cause an infant formula to be adulterated under section 402(a)(2)(C) of the act, whether or not the material comes into direct contact with the product. For example, adhesives and other components of packaging laminates that do not themselves come into direct contact with food have been shown to migrate to foods packaged therein, particularly when thermal processing is involved. However, to clearly identify the packaging materials to which § 106.100(b) applies, the agency has modified this section to read, "The manufacturer shall maintain all records that pertain to food-packaging materials subject to 21 CFR 174.5 and that bear on whether such materials would cause an infant formula to be adulterated within the meaning of section 402(a)(2)(C) of the act." Section 174.5 defines substances that, under conditions of CGMP, may be safely used as components of articles that contact food and the limitations on the use of these substances.

6. One comment questioned a manufacturer's responsibility to obtain all records resulting from tests by manufacturers of proprietary package coating materials.

As stated in the response to comment 2, manufacturers need not obtain all records from other companies. The agency, when necessary, can obtain information on proprietary package coating materials directly from packaging manufacturers. Infant formula manufacturers need only to obtain certification from their suppliers that the materials meet FDA requirements.

IV. Recall Records

7. One comment pointed out that the citation in proposed § 106.100(f) referring to subpart D of 21 CFR part 7 (Infant Formula Recall requirements) should be revised to reflect the change made in the final rule (54 FR 4006; January 27, 1989) subsequent to the publication of the proposal on § 106.100. The revised citation is subpart E of 21 CFR part 107.

The agency agrees with the comment and has revised what is now § 106.100(g) to refer to subpart E of 21 CFR part 107.

V. Microbiological Testing Records

A. The Proposal

In the preamble to the proposal published January 26, 1989 (54 FR 3783), FDA discussed specific microbiological guidelines for determining the microbiological quality and safety of infant formula. In addition, the agency referenced specific methods for making these determinations. However, FDA did not include the specific microbiological levels and methodology in the proposed codified material. Because of the way in which this material was presented, the comments reflected confusion as to the meaning of the proposal.

The comments to the proposal:

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a. Objected to the testing for *Listeria monocytogenes;*

b. Suggested modification of the test for *Bacillus cereus;*

c. Suggested alternative testing for *Escherichia coli;*

d. Objected to the testing for *Clostridium perfringens;* and

e. Suggested a revised guideline that incorporates acceptable and unacceptable levels for each microorganism.

Comments regarding the microbiological guidelines in the proposal interpreted these guidelines as requiring testing for each identified organism, by a specific method, and as providing that if the level of an organism exceeded the guideline, the product would be judged to be violative. This interpretation is not correct.

The agency intended, through the proposal, to alert manufacturers and consumers to the fact that:

1. The 1986 amendments provided FDA investigators with authority to review all records pertaining to microbiological testing;

2. The overall microbiological quality and safety of the infant formula is the responsibility of the manufacturer, and that the agency had specific guidelines that it would use in judging product safety and quality on a case-by-case basis; and

3. The agency would use specific methods for microbiological testing. The agency listed these methods so that manufacturers could use them in their quality control procedures if they desired.

The agency did not include the specific microbiological levels in the proposed regulation because it believed that the scientific advances occurring at the time may require changes in the levels at some time in the future. However, at this time, the levels that the agency included in the preamble to the January 26, 1989 proposal, with the modifications suggested by comments, appear as appropriate as they did 3 years ago. Moreover, FDA has no reason to believe that there will be any need to change these levels in the near future.

B. The Record Requirement

To clarify this section of the regulation, the agency has revised § 106.100(h) (proposed as § 106.100(g)) to delete references to specific microorganisms and mention of the need to submit any alternate microbiological testing procedures. The regulation simply requires that a manufacturer maintain all records that pertain to the microbiological quality and purity of raw materials and finished powdered infant formula.

FDA intends to propose to adopt levels for microorganisms as factors to assure the quality and safety of infant formula in the CGMP regulation that FDA will publish soon.

C. Comments on the Microbiological Guidelines

Although FDA is not changing the proposed levels, the agency is revising the microbiological guidelines in response to the comments it has received. The revised guidelines will provide manufacturers with information on the levels of microorganisms that FDA considers to be acceptable for infant formulas. The following is a response to the comments on microbiological quality and safety that FDA has received.

8. One comment objected to the number of units to be sampled and the three-tier sampling plan for microbiological testing that FDA set out in the preamble to the proposal. The comment also objected to the need for different sampling plans for different microorganisms and suggested that compositing samples should be permitted to reduce the number of necessary analyses. The comment stated that the level of sampling and testing identified in the preamble would impose a financial burden on manufacturers that is not reflected in FDA's economic impact study.

The agency advises that manufacturers that wish to comply with the agency's microbiological guidelines need not use the sampling plan described in the preamble to the proposal for § 106.100. In the proposal, FDA identified the sampling plans and analytical methods that it will use in judging the microbiological safety and quality of powdered infant formula. The agency did not provide this information to delineate what methods or sampling plans may or may not be used by manufacturers. Manufacturers are free to use whatever sampling plans, methods, or steps within a method (such as compositing) that they believe are appropriate and that would be judged by scientific experts to be comparable to methods used by FDA.

9. One comment objected to what it saw as a requirement in proposed § 106.100(g) to test for *L. monocytogenes* because *L. monocytogenes* has not been found in infant formula. The comment did, however, acknowledge the public health significance of *L. monocytogenes* in milk products and suggested the recognition of alternate suitable methodology for *L. monocytogenes* if the agency decides to retain this requirement in the final rule.

As stated above, the agency has deleted all references to specific microorganisms in § 106.100(h) (proposed as 106.100(g)), and therefore testing for *L. monocytogenes* is not required by this final rule. However, because of the public health significance of *L. monocytogenes* in milk products, and the potential for this contaminant to be present in infant formula even though it has not actually been found, the agency will continue to test for *L. monocytogenes* in infant formula as well as for all the other microorganisms listed in Table 1. The microbiological guidelines presented in Table 1 at the end of this section will continue to contain a reference to *L. monocytogenes.*

With respect to the methodology used to test for *L. monocytogenes,* as stated in comment 8, a manufacturer is free to utilize whatever method it believes is appropriate. FDA cited in the preamble to the proposal the method that it intends to use when testing for *L. monocytogenes.* That method had been published in the **Federal Register** of November 1, 1988 (53 FR 44148), and corrected February 24, 1989 (54 FR 7995).

10. One comment suggested that what it saw as a proposed requirement to test for *B. cereus* should be modified to require testing only when test results for Aerobic Plate Count (APC) are equal to or greater than 1,000 organisms per gram.

As stated above, the agency has deleted all reference to specific microorganisms in § 106.100(h) (proposed as § 106.100(g)), and therefore testing for *B. cereus* is not required in this final rule. However, the agency has revised the microbiological guidelines presented in Table 1 at the end of this section to include *B. cereus* testing when an APC of 1,000 organisms per gram or more is found. *B. cereus* is one of the organisms that contributes to the microbiological level determined by the APC. The guideline for *B. cereus* is 1,000 organisms per gram. If the APC equals or exceeds 1,000 organisms per gram, the *B. cereus* level may exceed the guideline, and thus *B. cereus* testing should be conducted.

11. One comment suggested that what it saw as the testing requirement in proposed § 106.100(g) for *E. coli* be revised to provide greater flexibility and reduced cost by giving manufacturers the option to initially test for: (1) coliforms, (2) fecal coliforms, or (3) *E. coli.* The comment suggested that, if the agency were to accept this revision, it should provide that a manufacturer who elects to test initially for coliforms, and gets test results that are equal or greater

than 3 organisms per gram, must then test for the presence of fecal coliforms and *E. coli.* The comment also recommended that if this suggestion is accepted, the microbiological guidelines for coliform should be 10 organisms per gram, and the microbiological guidelines for fecal coliform and *E. coli* should be less than three organisms per gram. The comment advised that these suggestions are consistent with the International Commission on Microbiological Specifications for Foods and the Codex Alimentarius Commission recommendations.

As stated above, the agency has deleted all reference to specific microorganisms in § 106.100(h) (proposed as § 106.100(g)), and therefore testing for coliforms, fecal coliforms, or *E. coli* is not required in this final rule.

However, the agency agrees that providing the initial alternative of testing for coliforms or for fecal coliforms or *E. coli* is appropriate for the microbiological guidelines presented in Table 1 at the end of this section, provided that testing for fecal coliforms and *E. coli* is incorporated when coliform testing results are equal to or greater than three organisms per gram. Manufacturers are advised that the method the agency uses when testing for coliforms and fecal coliforms is presented in the Bacteriological Analytical Manual 1984, 6th edition, chapter 5. Therefore, FDA has revised the microbiological guidelines (presented in Table 1 at the end of this section) to provide the flexibility to test initially for either coliforms or fecal coliforms or *E. coli.* If coliform results equal or exceed three organisms per gram, the manufacturer should test for fecal coliforms and *E. coli.* If the product is initially tested for fecal coliforms or *E. coli,* and the results exceed the acceptable level of microorganisms per gram of dry product or "M" value, the product should be considered to have failed the test.

12. One comment suggested that the proposed testing requirement for *C. perfringens* in each batch be omitted because: (1) the organism is unable to multiply in the presence of oxygen; and (2) the organism is highly unlikely to proliferate during powdered infant formula processing, in the finished product form, or in feedings prepared from powdered infant formula.

As stated above, the agency has deleted all reference to specific microorganisms in § 106.100(h) (proposed as § 106.100(g)), and therefore testing for specific microorganism is not required by this final rule. However, the agency agrees that the combined testing for *Salmonella, L. monocytogenes, S. aureus, B. cereus,* APC, coliforms, fecal coliforms, and *E. coli* is sufficient to establish the microbiological safety and purity of an infant formula. Therefore, FDA has deleted *C. perfringens* from the microbiological guidelines presented at the end of this section.

13. One comment suggested that a product surveillance plan with two categories (acceptable (A) and unacceptable (U)) be established as the Infant Formula Microbiological Guidelines in lieu of the microbiological guidelines proposed in the preamble to the proposal. The comment suggested that test results indicating levels of microorganisms between A and U can be used as an alert to the manufacturer to investigate the raw materials and processing procedures to determine the necessary steps needed to reduce the microbiological levels.

The agency does not believe that it is useful to provide a listing of the microbiological levels that have no relation to inadequate quality or to health concerns and, therefore, to the possible initiation of regulatory action. The agency samples and tests infant formula to confirm that the product is acceptable for infant consumption. FDA is likely to view any level of organisms that is less than the level identified in Table 1 to acceptable. It is likely to view any level that exceeds the levels identified in Table 1 as representing a potential health or quality concern.

Therefore, based on comments 7 through 12, FDA had revised Table 1—Infant Formula Microbiological Guidelines—as follows:

TABLE [1].—INFANT FORMULA MICROBIOLOGICAL GUIDELINES

Bacteria	M [1]
1. *Salmonella*	0
2. *Listeria monocytogenes*	0
3. Coliform [**]	10
4. Fecal coliform [**]	3
5. *Escherichia coli* [**]	0
6. *Staphylococcus aureus*	0
7. *Bacillus cereus* [2]	10^3
8. Aerobic Plate Count (APC)	10^4

(M is the acceptable level of microorganisms per gram of the dry product).

[1] Fails test if any unit exceeds the value M.

[2] *B. cereus* testing should be performed if APC results equal or exceed 10^3.

[**] Product may be tested initially for either coliforms or fecal coliforms or *E. coli.* Additional testing for fecal coliforms and *E. coli* should be performed if coliform results equal or exceed three organisms per gram. If the product is initially tested for fecal coliforms or *E. coli,* and the results exceed the M value, the product fails the test.

VI. Audit Records

14. One comment objected to proposed § 106.100(i), which requires that the audit records available for agency review must include written assurances from the manufacturer that regulatory scheduled audits by appropriately trained individuals are being conducted, and that the complete audit plans and procedures for the firm have been followed. The comment recommended that the proposed requirement be revised to read, "Upon request, a manufacturer must provide to FDA written assurance that regularly scheduled audits by appropriately trained individuals are being conducted." The comment further stated that it is unclear what "complete audit plans and procedures" means, and that the suggested change merely tracks the explicit language of the 1986 amendments.

The agency believes that a statement merely certifying that an audit has taken place is not sufficient to meet the requirement in the 1986 amendments "to provide to FDA written assurance" or regularly scheduled audits. The purpose of an audit is to determine whether the firm is complying with CGMP's, including quality control procedures, designed to prevent adulteration of infant formula (21 U.S.C. 350a(b)(2)(B)(iv)). FDA must be in a position to determine whether the audit conducted by a firm is adequate to fulfill this function. Therefore, the agency must know what the firm includes in its audit, what manufacturing practices and quality control procedures are to be audited (plans), and how, or by what methods, they are actually audited (procedures). The agency acknowledges that it does not have authority to obtain the results of the audit. Without knowledge of what is included in a firm's audit, however, the agency cannot determine whether the firm is complying with the act.

FDA has revised § 106.100(j) (proposed as § 106.100(i)) to define "audit plans" as the identification of the specific manufacturing and quality control procedures to be included in the audit, and "audit procedures" as the methods used to review each manufacturing and quality control procedure. Audits should include at least an annual review of all production, notification, and recordkeeping deviations from the firm specifications or standard operating procedures as well as a review of the functioning of production equipment, including computers; of microbiological and chemical contaminant controls for raw materials and final product; or nutrient level controls for raw materials and final product; and of controls on formulation and processing changes.

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VII. Complaint Records

15. One comment requested that proposed § 106.100(j)(2) be revised to remove the provisions that relate to when an investigation into a complaint is necessary and to what must be included in the complaint file when an investigation is not necessary. The comment suggested revised wording to clarify that an investigation is not required for every complaint and to remove contradictory language regarding the definition of a "complaint."

The agency does not agree that it is appropriate to remove the provision that establishes when an investigation is necessary. This provision is appropriate to promote uniformity among manufacturers and to inform manufacturers of the types of complaints that FDA considers to warrant an investigation. However, FDA does agree that an investigation is not necessary for every complaint. The 1986 amendments are clear that FDA should be concerned with complaints and the investigation of complaints "* * * which may reveal the possible existence of a hazard to health." To be consistent with this provision, FDA has revised what is now § 106.100(k)(2) to state: "When a complaint shows that a hazard to health possibly exists, the manufacturer shall conduct an investigation into the validity of the complaint. When such an investigation is conducted, the manufacturer shall include in the complaint file the determination as to whether a hazard to health exists and the basis for that determination. No investigation is necessary when the manufacturer determines that there is no possibility of a hazard to health. When no investigation is necessary, the manufacturer shall incude in the complaint file the reasons that an investigation was found to be unnecessary and the name of the responsible person making that determination."

With respect to the suggestion that there is "contradictory language" regarding the definition of a complaint, the comment did not identify the language to which it was referring, and the agency was not able to identify any contradictory language. Therefore, FDA has not made any changes in response to this aspect of the comment.

16. One com nent objected to the requirement in proposed § 106.100(j)(4) that complaint files be maintained in two classes: (1) those complaints alleging that the infant became ill from consuming the product or required treatment by a health care provider; and (2) those complaints that involve a possible existence of a hazard to health but do not refer to an infant becoming ill or to the need for treatment by a health care provider. The comment stated that this requirement is unnecessarily burdensome, would increase the manufacturer's administrative expenses without serving any real purpose, and goes beyond FDA regulation of other products.

The agency disagrees. The 1986 amendments require that complaint files be maintained. Any system established to review and investigate product experience will involve reports of greater and lesser concern. The need to separate those reports of greater concern and importance is essential for the administrative efficiency of the system. This final rule establishes a uniform system for manufacturers to follow in creating such a separation. Therefore, FDA is retaining this requirement as proposed in what is now § 106.100(k)(4).

17. One comment objected to the requirements in proposed § 106.100(j)(5) that each complaint file maintained by the manufacturer include: "All the associated manufacturing records and complaint investigation records needed to evaluate the complaint." The comment stated that requiring all the associated manufacturing records would increase each complaint file to an unmanageable size without providing any increased ability to detect a problem, if one exists. The comment suggested revising the proposed requirement to permit the complaint file to include: "By reference or copy, the following items: complaint investigations records, follow up actions, review of manufacturing records when necessary, and other findings and conclusions."

The agency agrees that requiring all associated manufacturing records in each complaint file may result in large complaint files. However, the agency has a need, and is required by the 1986 amendments, to review and evaluate infant formula complaints. Therefore, the agency has concluded that all records needed to evaluate a complaint must be made readily available to the investigator.

However, FDA recognizes that the records need not be immediately available. Therefore, FDA has revised what is now § 106.100(k)(5)(v) to require that the complaint file include: "By reference or copy, all the associated manufacturing records needed to evaluate the complaint. When copies of such records are not maintained in the complaint file, they must be available within 24 hours when requested by an FDA official." Permitting the manufacturer 24 hours to obtain a requested file will ensure that FDA investigators have access to the records necessary to evaluate a complaint in a reasonable amount of time but not require that each file routinely include all associated records. This approach of obtaining records within 24 hours has been used by the agency in low acid canned food inspections, and manufacturers have met this limitation.

18. One comment objected to the requirement in proposed § 106.100(j)(6) that all records necessary to evaluate a complaint (particularly those that originate at the production site) be readily available for inspection at one alternate facility. The comment requested that the requirement of immediate availability of all records at one facility be omitted.

This comment reflects the fact that most infant formula manufacturers have several production sites but evaluate and investigate consumer complaints at only one facility. This facility may or may not be the production site for the product that is the subject of a complaint. The evaluation of consumer complaints at one facility permits the use of a specialized staff devoted to this activity, but it may also have the effect of separating the complaint review from the production records. It is therefore necessary either to permit sufficient time for manufacturers to obtain the files from the production facility for review by an FDA investigator or to require that all records be maintained at one facility.

The agency agrees that immediate availability of all records at one facility may be overly burdensome to manufacturers. The revision of the final rule to permit 24 hours for manufacturers to provide all records establishes a timeframe for providing the records necessary for agency review that is acceptable to the agency, yet will not result in an unnecessarily burdensome requirement for manufacturers. In addition, the final rule has retained the provision making electronic retrieval of records from other locations a means of meeting the requirements of this regulation (§ 106.100(l)). Thus, all records need not be routinely maintained at one site if they can be retrieved from production sites when an FDA investigator has need to review such files. However, the provision that permits manufacturers to maintain records of consumer complaints at one centralized facility does not permit manufacturers to refuse to permit FDA to review existing consumer complaint files that are maintained at facilities other than the centralized facility. All consumer complaint files, including summaries and any other reports or files, maintained at the production facility or at any other facility must be made available to investigators. Section 106.100(k)(6) has been clarified to reflect this fact.

VIII. Record Retention

19. One comment objected to the provision in proposed § 106.100(m) that requires that manufacturers retain records for 1 year after the expiration of the shelf life of the infant formula or 3 years from the date of manufacture, whichever is longer. The comment suggested deletion of the requirement to retain records for 3 years from the date of manufacture. The comment stated that this provision exceeded FDA authority under the 1986 amendments.

The agency disagrees. The statute states in 21 U.S.C. 350a(4)(B)(i) that "* * * records shall be retained for at least 1 year after the expiration of the shelf life * * *." It does not limit retention of records to a maximum of 1 year after the expiration of the shelf life. The 3-year requirement from the date of manufacture is thus consistent with the statute. It is also consistent with 21 CFR 113.100 which requires the retention of processing records for low-acid canned foods, including liquid infant formula, for the same amount of time. Therefore, by retaining the requirement as proposed in what is now § 106.100(n), FDA is establishing a single record retention period for all infant formula records.

IX. Record for Public Health Evaluation

20. One comment suggested deleting proposed § 106.100(n), which requires that manufacturers maintain quality control records that contain sufficient information to permit a public health evaluation of any batch of infant formula. The comment stated that, as written, this section is duplicative, unnecessary, and confusing and can be interpreted to require that quality control records must be maintained ad infinitum.

The agency disagrees. This requirement is identical to the requirement in § 106.100(a) in the existing infant formula quality control regulation. Because the existing § 106.100 will be eliminated when this final rule becomes effective, inclusion of proposed § 106.100(n) merely continues the existing quality control requirement. The comment did not provide any showing that the existing provision causes duplication and confusion, and the agency is not aware of any duplication or confusion that has resulted from this provision. For this reason FDA is retaining § 106.100(n), renumbered as § 106.100(o), as proposed.

X. Editorial Suggestions

21. Minor editorial revisions were suggested to refer to "manufacturers" rather than "manufacturers of infant formula" and to "the act" rather than the Food, Drug, and Cosmetic Act because these terms are defined in other paragraphs in part 106.

The agency agrees with these comments and has revised § 106.100 accordingly. It has also made several additional minor editorial changes in this regulation.

XI. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule on January 26, 1989 (54 FR 3783). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

XII. Economic Impact

In accordance with the Regulatory Flexibility Act (Pub. L. 96–354) and Executive Order 12291, the economic effects of this rule have been analyzed. FDA believes most of the records required by this rule are currently being maintained, and that those records concerning activity mandated by the 1986 amendments would be maintained in the absence of this rule. The additional cost of maintaining the complaint files in the required manner is also expected to be minimal. Finally, the additional burden posed by the 3 years from the date of manufacture record retention requirement is expected to be minimal; the statute itself requires retention of records for 1 year past the shelf-life of the product, and the average shelf-life for powdered and liquid infant formula is 2 and 1.5 years respectively. Furthermore, liquid infant formula, which comprises 90 percent of the market, is already required to retain records for 3 years from date of manufacture under the low acid canned food regulations. FDA accordingly expects the overall cost of this rule to be minimal.

Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action. Further in accordance with Executive Order 12291, FDA certifies that this final rule will not result in a major rule as defined by that order.

XIII. Paperwork Reduction Act of 1980

Section 106.100 of this final rule contains collection of information requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA submitted a copy of this final rule to the Office of Management and Budget (OMB) for its review of this collection of information requirements. These requirements have been approved under OMB number 0910–0256.

Other organizations and individuals desiring to submit comments on the collection of information requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB Rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Desk Officer for FDA.

List of Subjects in 21 CFR Part 106

Food grades and standards, Infants and children, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 106 is amended to read as follows:

PART 106—[AMENDED]

1. The authority citation for 21 CFR part 106 continues to read as follows:

Authority: Secs. 201, 412, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 350a, 371).

2. Section 106.100 is revised to read as follows:

§ 106.100 Records.

(a) Every manufacturer of infant formula shall maintain the records specified in this regulation in order to permit the Food and Drug Administration to determine whether each manufacturer is in compliance with section 412 of the Federal Food, Drug, and Cosmetic Act (the act).

(b) The manufacturer shall maintain all records that pertain to food-packaging materials subject to § 174.5 of this chapter and that bear on whether such materials would cause an infant formula to be adulterated within the meaning of section 402(a)(2)(C) of the act.

(c) The manufacturer shall maintain all records that pertain to nutrient premix testing that it generates or receives. Such records shall include, but are not limited to:

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(1) Any results of testing conducted to ensure that each nutrient premix is in compliance with the premix certificate and guarantee and specifications that have been provided to the manufacturer by the premix supplier, including tests conducted when nutrients exceed their expiration date or shelf life (retest date).

(2) All certificates and guarantees given by premix suppliers concerning the nutrients required by section 412(i) of the act and § 107.100 of this chapter.

(d) The premix supplier shall maintain the results of all testing conducted to provide all certificates and guarantees concerning nutrient premixes for infant formulas. Such records shall include but are not limited to:

(1) The results of tests conducted to determine the purity of each nutrient required by section 412(i) of the act or § 107.100 of this chapter and any other nutrient listed in the certificate and guarantee;

(2) The weight of each nutrient added;

(3) The results of any quantitative tests conducted to determine the amount of each nutrient certified or guaranteed; and

(4) The results of any quantitative tests conducted to identify the nutrient levels present when nutrient premixes exceed their expiration date or shelf life (retest date).

(e) The manufacturer shall maintain all records necessary to ensure proper nutrient quality control in the manufacture of infant formula products. Such records shall include the results of any testing conducted to verify that each nutrient required by section 412(i) of the act or § 107.100 of this chapter is present in each batch of infant formula at the appropriate concentration. This requirement pertains to ingredients, in process batch and finished product from the time of manufacture through its expiration date.

(f) The manufacturer shall maintain all records necessary to ensure required nutrient content at the final product stage. Such records shall include, but are not limited to, testing results for vitamins A, B_1 (thiamine), C, and E for each batch of infant formula. "Final product stage" means the point in the manufacturing process prior to distribution at which the infant formula is homogenous and not subject to further degradation from the manufacturing process.

(g) The manufacturer shall maintain all records pertaining to distribution of the infant formula. Such records shall include, but not be limited to, all information and data necessary to effect and monitor recalls of the manufacturer's infant formula products in accordance with subpart E of part 107 of this chapter.

(h) The manufacturer shall maintain all records pertaining to the microbiological quality and purity of raw materials and finished powdered infant formula.

(i) [Reserved]

(j) The manufacturer shall maintain all records pertaining to regularly scheduled audits, including audit plans and procedures. Audit plans identify the specific manufacturing and quality control procedures to be reviewed. Audit procedures are the methods used to review the manufacturing and quality control procedures. Records of audits shall include the information and data necessary for a determination as to whether the manufacturer complies with the current good manufacturing practices and quality procedures identified in parts 106, 107, 109, 110, and 113 of this chapter. The records shall include written assurances from the manufacturer that regularly scheduled audits are being conducted by appropriately trained individuals who do not have any direct responsibility for the manufacture or production of infant formula, and that the complete audit plans and procedures for the firm have been followed. The actual written reports of the audits need not be made available.

(k) The manufacturer shall maintain procedures describing how all written and oral complaints regarding infant formula will be handled. The manufacturer shall follow these procedures and shall include in them provisions for the review of any complaint involving an infant formula and for determining the need for an investigation of the possible existence of a hazard to health.

(1) For purposes of this section, every manufacturer shall interpret a "complaint" as any communication that contains any allegation, written or oral, expressing dissatisfaction with a product for any reason, including concerns about the possible existence of a hazard to health and about appearance, taste, odor, and quality. Correspondence about prices, package size or shape, or other matters that could not possibly reveal the existence of a hazard to health shall not, for compliance purposes, be considered a complaint and therefore need not be made available to an FDA investigator.

(2) When a complaint shows that a hazard to health possibly exists, the manufacturer shall conduct an investigation into the validity of the complaint. Where such an investigation is conducted, the manufacturer shall include in its file on the complaint the determination as to whether a hazard to health exists and the basis for that determination. No investigation is necessary when the manufacturer determines that there is no possibility of a hazard to health. When no investigation is necessary, the manufacturer shall include in the record the reason that an investigation was found to be unnecessary and the name of the responsible person making that determination.

(3) When there is a reasonable possibility of a causal relationship between the consumption of an infant formula and an infant's death, the manufacturer shall, within 15 days of receiving such information, conduct an investigation and notify the agency as required in § 106.120(b).

(4) The manufacturer shall maintain in designated files all records pertaining to the complaints it receives. The manufacturer shall separate the files into two classes:

(i) Those complaints that allege that the infant became ill from consuming the product or required treatment by a physician or health-care provider.

(ii) Those complaints that may involve a possible existence of a hazard to health but do not refer to an infant becoming ill or the need for treatment by physician or a health care provider.

(5) The manufacturer shall include in a complaint file the following information concerning the complaint:

(i) The name of the infant formula;

(ii) The batch number;

(iii) The name of complainant;

(iv) A copy of the complaint or a memo of the telephone conversation or meeting and all correspondence with the complainant;

(v) By reference or copy, all the associated manufacturing records and complaint investigation records needed to evaluate the complaint. When copies of such records are not maintained in the complaint file, they must be available within 24 hours when requested by an FDA official.

(vi) All actions taken to follow up on the complaint; and

(vii) All findings and evaluations of the complaint.

(6) The manufacturer should maintain the files regarding infant formula complaints at the establishment where the infant formula was manufacturer, processed, or packed. When the manufacturer wishes to maintain all consumer complaints for the entire firm at one location other than at the facility where an infant formula was manufactured, processed, or packed, the manufacturer may do so as long as all records required by this section are available within 24 hours of request for inspection at that facility. However, all records of consumer complaints, including summaries, any reports, and any files, maintained at the manufacturing facility or at any other facility shall be made available to investigators for review and copying upon request.

(l) The manufacturer shall make readily available for authorized inspection all records required under this part or copies of such records. Records shall be available at any reasonable time at the establishment where the activities described in such records occurred. (Infant formula complaint files may be maintained at one facility, as provided in § 106.100(k)(6), if all required records are readily available at that facility.) These records or copies thereof shall be subject to photocopying or other means of reproduction as part of such inspection. Records that can be immediately retrieved from another location by electronic means shall be considered as meeting the requirements of this paragraph.

(m) Records required under this part may be retained either as original records or as true copies such as photocopies, microfilm, microfiche, or other accurate reproductions of the original records. Where reduction techniques, such as microfilming are used, suitable reader and photocopying equipment shall be readily available.

(n) Production control, product testing, testing results, complaints, and distribution records necessary to verify compliance with parts 106, 107, 109, 110, and 113 of this chapter, or with other appropriate regulations, shall be retained for 1 year after the expiration of the shelf life of the infant formula or 3 years from the date of manufacture, whichever is greater.

(o) The manufacturer shall maintain quality control records that contain sufficient information to permit a public health evaluation of any batch of infant formula.

David A. Kessler,

Commissioner of Food and Drugs.

Dated: September 27, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services

[FR Doc. 91-30716 Filed 12-23-91; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lincomycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of two new animal drug applications (NADA's); one held by Ag-Mark, Inc., and the other held by Quali-Tech, Inc. The NADA's provide for the manufacture of Type B medicated feeds containing lincomycin. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA's.

EFFECTIVE DATE: January 3, 1992.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855, 301-295-8749.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of NADA 133-035 held by Ag-Mark, Inc., P.O. Box 127, Teachey, NC 28464 and NADA 132-925 held by Quali-Tech, Inc., 318 Lake Hazeltine Dr., Chaska, MN 55318-1093. These NADA's provide for the manufacture of Type B medicated feeds containing lincomycin.

This final rule removes 21 CFR 558.325 (a)(8) and (a)(14) to reflect the withdrawal of approval of these NADA's.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.325 [Amended]

2. Section 558.325 *Lincomycin* is amended by removing and reserving paragraphs (a)(8) and (a)(14).

Dated: December 17, 1991.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 91-30717 Filed 12-23-91; 8:45 am]

BILLING CODE 4160-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2610

Payment of Premiums: Correction

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule that appeared in the **Federal Register** of Friday, October 18, 1991 (at 52 FR 52192), amending the Pension Benefit Guaranty Corporation's regulation on Payment of Premiums (29 CFR part 2610) to reflect a statutorily mandated increase in the PBGC premium rates applicable to single-employer plans. The amendment omitted a change to the premium rate figures in one section of the regulation. This action is needed to correct that omission.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; 202-778-8850 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On October 18, 1991 (52 FR 52192), the Pension Benefit Guaranty Corporation ("PBGC") published in the **Federal Register** an amendment to its regulation on Payment of Premiums (29 CFR part 2610) to reflect a statutorily mandated increase in the PBGC premium rates applicable to single-employer plans. The amendment omitted a change to the premium rate figures in 29 CFR 2610.24(d). Accordingly, FR Doc. 91-25141, appearing on page 52192 in the issue of October 18, 1991, is corrected by adding, at the bottom of column 1 on page 52193, the following:

PART 2610—[AMENDED]

§ 2610.24 [Amended]

5. Section 2610.24 is amended by revising the words "the lesser of $34 or" in paragraph (d) thereof to read "$34 (for premium payment years beginning in 1988, 1989, or 1990) or $53 (for premium payment years beginning on or after January 1, 1991) or, if less,".

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Dated: December 18, 1991.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 91-30699 Filed 12-23-91; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

Availability of Department of the Navy Records and Publication of Department of the Navy Documents Affecting the Public

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: This rule sets forth amended regulations pertaining to the Department of the Navy's Freedom of Information Act Program. The rule reflects changes in the Secretary of the Navy Instruction 5720.42 series from which it is derived.

EFFECTIVE DATE: December 24, 1991.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris M. Lama (OP-09B30P), Office of the Chief of Naval Operations, Washington, DC 20350-2000, Telephone: (703) 614-2004/2817.

SUPPLEMENTARY INFORMATION: Pursuant to the authority cited below, the Department of the Navy amends 32 CFR part 701, subparts A, B, C, and D derived from the Secretary of the Navy Instruction 5720.42 series, which implements within the Department of the Navy the provisions of Department of Defense Directives 5400.7 and 5400.7-R series, Department of Defense Freedom of Information Act Program (32 CFR part 286). This rule is being published by the Department of the Navy for guidance and interest of the public in accordance with 5 U.S.C. 552(a)(1). It has been determined that invitation of public comment on these changes to the Department of the Navy's implementing instruction prior to adoption would be impracticable and unnecessary, and it is therefore not required under the public rulemaking provisions of 32 CFR parts 286 and 701, subpart E. Interested persons, however, are invited to comment in writing on this amendment. All written comments received will be considered in making subsequent amendments or revisions to 32 CFR part 701, subparts A, B, C, and D, or the instruction upon which it is based. Changes may be initiated on the basis of comments received. Written comments should be addressed to Mrs. Doris M. Lama (OP-09B30P), Office of the Chief of Naval Operations, Washington, DC 20530-2000. It has been determined that this final rule is not a "major rule" within the criteria specified in section 1(b) of Executive order 12291 and does not have substantial impact on the public.

List of Subjects in 32 CFR Part 701

Administrative practice and procedure, Freedom of Information, Privacy.

Accordingly, 32 CFR part 701 is amended as follows:

PART 701—AVAILABILITY OF DEPARTMENT OF THE NAVY RECORDS AND PUBLICATION OF DEPARTMENT OF THE NAVY DOCUMENTS AFFECTING THE PUBLIC

1. The authority citation for 32 CFR part 701 continues to read as follows:

Authority: 5 U.S.C. 552.

2. Subparts A, B, C, and D are revised to read as follows:

Subpart A—Department of the Navy Freedom of Information Act Program

Sec.
701.1 Purpose.
701.2 Applicability.
701.3 Definitions.
701.4 Policy.
701.5 Responsibility and authority.
701.6 Format and procedures for requesting information under FOIA.
701.7 Procedures for processing FOIA requests.
701.8 Records requiring special handling.
701.9 For Official Use Only.
701.10 FOIA appeals/judicial actions.
701.11 Publication, indexing, and public inspection of certain classes of records.

Subpart B—FOIA Exemption Guidelines

701.21 General.
701.22 Exemption (b)(1).
701.23 Procedures for processing classified documents.
701.24 Exemption (b)(2).
701.25 Exemption (b)(3).
701.26 Exemption (b)(4).
701.27 Exemption (b)(5).
701.28 Exemption (b)(6).
701.29 Exemption (b)(7).
701.30 Exemption (b)(8).
701.31 Exemption (b)(9).

Subpart C—Addresses for Department of the Navy Records and Locations for Public Inspection

701.31 Addresses for requests for Department of the Navy records.
701.32 Locations at which Department of the Navy records are available for public inspection.

Subpart D—Fee Guidelines

701.40 FOIA Fees.
701.41 Definitions.
701.42 Application.
701.43 Fee restrictions.
701.44 Fee waivers.
701.45 Fee assessment.
701.46 Aggregating requests.
701.47 Effect of the Debt Collection Act of 1982 (Pub. L. 97-365).
701.48 Computation of fees.
701.49 Collection of fees.
701.50 Search time costs.
701.51 FOIA fee remittance/receipt controls.
701.52 Technical data fees.
701.53 Other technical data records.

* * * * *

Subpart A—Department of the Navy Freedom of Information Act Program

§ 701.1 Purpose.

Subparts A, B, C, and D of this part implement the Freedom of Information Act (5 U.S.C. 552), and the Department of Defense Directives 5400.7 and 5400.7-R series[1], Department of Defense Freedom of Information Act Program, (See 32 CFR part 286) and promote uniformity in the Department of the Navy Freedom of Information Act (FOIA) Program. It is written to provide guidance to members of the public on how and where to submit FOIA requests and appeals within the Department of the Navy.

§ 701.2 Applicability.

Subparts A, B, C, and D of this part apply throughout the Department of the Navy. It governs disclosure of agency records to "any person," which means that any individual, to include foreign citizens, partnerships, corporations, associations and foreign, state, or local governments, may use the FOIA to obtain information. The exception to that policy is that it does not apply to Federal agencies or to fugitives from justice.

(a) *Requests from state or local government officials.* Requests from state or local government officials for naval records are treated the same as any other requester.

(b) *Requests from foreign governments.* Requests from foreign governments for naval records are treated the same as any other requester. However, requests from foreign governments that do not invoke the FOIA shall be referred to appropriate foreign disclosure channels and the requester so notified.

(c) *Privileged release to U.S. Government officials.* Naval records may be authenticated and released to U.S. Government officials if they are requesting them on behalf of Federal governmental bodies, whether

[1] Copies may be obtained if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1053, 5801 Tabor Avenue, Philadelphia, PA 19120.

legislative, executive, administrative, or judicial. For example:

(1) To a committee or subcommittee of Congress, or to either House sitting as a whole.

(Note: Requests from Members of Congress who are not seeking records on behalf of a Congressional Committee, Subcommittee, or either House sitting as a whole, but on behalf of their constituents, are treated the same as any other requester).

(2) To the Federal courts, whenever ordered by officers of the court as necessary for the proper administration of justice.

(3) To other Federal agencies, both executive and administrative, as determined by the head of a naval activity or designee.

In those instances, naval activities shall mark the records as "Privileged" and "Exempt from Public Disclosure." Any special handling instructions shall also be annotated on the records. Because such releases are not made under the provisions of the FOIA, they do not impact on future decisions to release/deny requests for the same records to other requesters.

(d) *Publication and public availability of special classes of records.* The requirements of 5 U.S.C. 552 that certain classes of Department of the Navy regulatory, rulemaking, and organizational records must be published in the **Federal Register** for the guidance of the public and made available for public inspection and copying are implemented in 32 CFR part 701, subpart C.

(e) *Public affairs regulations.* Subparts A, B, C, and D of this part are intended to complement, not restrict, the conduct of Department of the Navy public affairs, media relations, community relations and internal relations functions and practices authorized in Secretary of the Navy Instruction 5720.44 series, "Department of the Navy Public Affairs Regulations." Should the practices authorized in that instruction conflict in any respect, the provisions of these subparts shall be controlling.

(f) *U.S. Navy Regulations.* Release of a record to a member of the public under FOIA shall be deemed to have occurred in the discharge of official duties (Article 1120, U.S. Navy Regulations (1990)). Process a request by a member of the public under the instructions outlined in Section 3 of Chapter 11, U.S. Navy Regulations.

(g) *Other directives.* The following directives, and other directives and instructions cited in part 701, to the extent they do not conflict, provide additional information relating to subparts A, B, C, and D of this part. Should the practices authorized in the directives conflict in any respect, the provisions of these subparts shall be controlling.

(1) Marine Corps Manual, paragraph 1015 (NOTAL); Marine Corps Order P5720.56, Availability to the Public of Marine Corps Records (NOTAL); and for Headquarters, U.S. Marine Corps, HQO P5000.12, Chapter 10 (NOTAL) and HQO 5720.9 (NOTAL).

(2) Federal Personnel Manual, chapters 293, 294, 297, 335, 339, and 713 (NOTAL)—release of information from active and inactive civilian personnel records.

(3) Manual of the Medical Department, U.S. Navy (NAVMED P-117), Chapters 23-70 through 23-79 (NOTAL) release of information from active and inactive medical records.

(4) JAGINST 5800.7C, Manual of the Judge Advocate General (JAGMAN), Chapter V (NOTAL).

(h) *Relationship between FOIA and the Privacy Act (PA).* Not all requesters are knowledgeable of the appropriate statutory authority to cite when requesting records. In some instances, they may cite neither Act, but will imply one or both Acts. For those reasons, the following guidelines are provided to ensure that requesters receive the greatest amount of access rights under both Acts.

(1) Requesters who seek records about themselves contained in a PA system of records and who cite or imply PA, will have their requests processed under the provisions of PA (see subpart F of this part).

(2) Requesters who seek records about themselves which are not contained in a PA system of records and who cite or imply PA, will have their requests processed under FOIA provisions, since they have no access under PA.

(3) Requesters who seek records about themselves which are contained in a PA system of records and who cite or imply FOIA or both Acts will have their requests processed under the time limits of FOIA and the exemptions and fees of PA. That is appropriate since greater access will be received under PA.

(4) Requesters who seek access to agency records and who cite or imply PA and FOIA, will have their requests processed under FOIA.

(5) Requesters who seek access to agency records and who cite or imply FOIA, will have their requests processed under FOIA.

If the requester has failed to cite the appropriate Act, naval activities shall apprise the requester in the final response under which Act his/her request was processed.

§ 701.3 Definitions.

(a) *FOIA request.* A written request for Department of the Navy records, made by "any person," including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a Federal agency or a fugitive from the law that either explicitly or implicitly invokes 5 U.S.C. 552, Department of Defense Directives 5400.7 and 5400.7-R series, "Department of Defense Freedom of Information Act Program" (see 32 CFR part 286) and/or subparts A, B, C, and D of this part.

(b) *Agency record.* (1) The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and in Department of the Navy's possession and control at the time a FOIA request is made.

(2) The following are not included in this definition:

(i) Objects or articles, such as structures, furniture, paintings, sculpture, three-dimensional models, vehicles, equipment, and parts of wrecked aircraft and ships, whatever their historical value, or value as evidence.

(ii) Administrative tools by which records are created, stored, and retrieved, if not created or used as sources of information about organizations, policies, functions, decisions, or procedures of a naval activity. Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium are not agency records (that does not include the underlying data which is processed and produced by such software and which may in some instances be stored with the software). Exceptions to this position are outlined in § 701.3(b)(3).

(iii) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(iv) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

(v) Information stored within a computer for which there is no existing computer program for retrieval of the requested information.

(3) In some instances, computer software may have to be treated as a

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agency record and processed under the FOIA. Such situations are rare and shall be treated on a case-by-case basis. Examples of when computer software may have to be treated as an agency record are:

(i) When the data is embedded within the software and cannot be extracted without the software. In that situation, both the data and the software must be reviewed for release or denial under FOIA.

(ii) Where the software itself reveals information about organizations, policies, functions, decisions, or procedures of a naval activity, such as computer models used to forecast budget outlays, calculate retirement system costs, or optimization models or travel costs.

Review exemptions (b)(4) and (b)(5) at § 701.28 and § 701 27 of subpart B of this part for guidance on release determinations of computer software.

(4) A record must exist and be in the possession and control of the Department of the Navy at the time of the request to be considered subject to this part and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request.

(5) If unaltered publications and processed documents, such as regulations, manuals, maps, and related geophysical materials are available to the public through an established distribution system with or without charge, the provisions of 5 U.S.C. 552(a)(3) normally do not apply and they need not be processed under the FOIA. Normally, documents disclosed to the public by publication in the **Federal Register** also require no processing under the FOIA. In such cases, naval activities should direct the requester to the appropriate source to obtain the record.

(c) *Release authority.* Release authorities are commanding officers and heads of Navy and Marine Corps shore activities or their designee that are authorized to furnish copies of records under their cognizance for which no FOIA exemption applies.

(d) *Initial Denial Authority (IDA).* An official who has been granted authority to withhold records under FOIA, either in whole or in part, based on the FOIA exemptions. IDAs may also grant or deny requests for reduction or waiver of fees. See § 701.5 for a list of IDAs.

(e) *Appellate authority.* The Secretary of the Navy (SECNAV) has delegated his appellate authority to the Navy Judge Advocate General (NJAG) and the General Counsel (OGC) to rule on administrative appeals of denials of FOIA requests for information under their cognizance, as outlined in § 701.10.

(f) *Administrative appeal.* A request by a member of the general public, made under FOIA, asking the appellate authority to reverse the IDA's decision to withhold all or part of a requested record or to deny a request for waiver or reduction of fees. A requester may also file an administrative appeal for non-response to a FOIA request within the statutory time limits or for a "no record" response if he/she believes an adequate search was not conducted.

(g) *Public interest.* Public interest is official information that sheds light on a naval activity's performance of its statutory duties because it falls within the statutory purpose of FOIA in informing citizens about what their government is doing. That statutory purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files that reveals little or nothing about an agency's or official's own conduct.

(h) *Electronic data.* Electronic data are those records and information which are created, stored, and retrieved by electronic means. This does not include computer software, which is the tool by which to create, store, or retrieve electronic data.

(i) *Naval Nuclear Weapons Information (NNWI).* Information, classified or unclassified, which may be Restricted Data or Formerly Restricted Data, that relate to the production and utilization of nuclear weapons and/or nuclear weapon delivery systems. NNWI can be subdivided into three major categories:

(1) The production of nuclear weapons/delivery systems, such as research and development, design, manufacture, cost, testing, inventory, and arrangement of nuclear weapons/delivery systems.

(2) The utilization of nuclear weapons/delivery systems, such as operations, employment, command and control, training, administration, readiness and readiness inspections, allocations, stockpile, capabilities, transportation, logistics, storage, location, maintenance, and repair of nuclear weapons/delivery systems.

(3) Areas common to both nuclear weapons/delivery systems production and utilization, such as characteristics, effects, performance, vulnerabilities, reliability, safety, security (including physical security and administrative procedures), and accidents of nuclear weapon/delivery systems.

§ 701.4 Policy.

It is Department of the Navy policy to make its records available to requesters in accordance with FOIA. When requested, Navy and Marine Corps activities shall assist requesters in complying with the administrative requirements necessary to request materials sought under the Act.

(a) *Openness with the public.* The public has a right to information concerning the activities of its government. Department of the Navy policy is to conduct its activities in an open manner and to provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A Department of the Navy record requested by a member of the public who follows rules established by proper authority shall only be withheld when it is exempt from mandatory public disclosure based on one or more of the nine FOIA exemptions.

(b) *Avoidance of procedural obstacles.* Naval activities shall ensure that procedural matters do not unnecessarily impede a requester from obtaining Department of the Navy records promptly. Naval activities shall provide assistance to requesters to help them understand and comply with procedures established by this instruction. Fees shall not be used to discourage requesters (see subpart D of this part).

(c) *Prompt action on requests.* When a requester complies with the procedures established in this instruction for obtaining naval records, the request shall receive prompt attention. A reply shall be dispatched within 10 working days, unless a delay is authorized. If a naval activity has a significant number of requests (i.e., 10 or more), the requests shall be processed in order of receipt. This, however, does not preclude a naval activity from acting on a request which can be easily answered, regardless of its ranking within the order of receipt. A naval activity may also expedite action on a request regardless of its ranking within the order of receipt upon a showing of exceptional need or urgency. Exceptional need or urgency is determined at the discretion of the activity processing the request.

(d) *Use of exemptions/discretionary release.* Department of the Navy policy is to make records publicly available, unless they qualify for withholding under one or more of the nine FOIA exemptions (see subpart B of this part for an in-depth review of the exemptions). Naval activities may elect

to make a discretionary release. A discretionary release to one requester may, however, preclude the withholding of similar information under a FOIA exemption if subsequently requested by the same individual or someone else. Suggest the following language be included with the discretionary release of any record that could be subject to withholding:

> The information you requested is subject to being withheld under section (b) of the Freedom of Information Act. The release of this material to you by the Department of the Navy is discretionary and does not constitute a waiver of our right to claim this exemption for similar records in the future.

Additionally, a discretionary release is generally not appropriate for records exempt from disclosure under exemptions (b)(1)—classified; (b)(3)—exempted by statute; (b)(4)—trade secret/proprietary; (b)(6)—personal privacy; and (b)(7)(C)—personal information contained in investigatory records which if released would constitute an unwarranted invasion of privacy. Exemptions (b)(4), (b)(6), and (b)(7)(C) cannot be claimed for information which was supplied by the requester of the information.

(e) *Public domain.* Nonexempt records released under this instruction are considered in the public domain. Exempt records released under this instruction or other statutory or regulatory authority may be considered to be in the public domain only when their release constitutes a waiver of a FOIA exemption. When release does not constitute such a waiver, such as disclosure to a properly constituted advisory committee or a Congressional Committee, the released records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, this instruction applies if the same individual seeks the records in a private or personal capacity.

(f) *Creating a record.* (1) A record must exist and be in the possession and control of the Department of the Navy at the time of the search to be considered subject to FOIA. Mere possession of a record does not presume departmental control; such records, or identifiable portions, should be referred to the originating activity for direct response to the requester. There is no obligation to create or compile a record to satisfy a FOIA request. A naval activity may, however, compile a new record if it is a more useful response to the requester, or less burdensome to the naval activity than providing existing records, and the requester does not object. The cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which would be charged for providing the existing record. See subpart D of this part for fees.

(2) With respect to electronic data, the issue of whether records are actually or merely extracted from an existing database is not always readily apparent. Consequently, when responding to FOIA requests for electronic data where creation of a record, programming, or particular format are questionable, naval activities should apply a standard of reasonableness (i.e., if the capability exists to respond to a request, and the effort would be a "business as usual" approach, then the request should be processed; however, the request need not be processed when the capability to respond does not exist without a significant expenditure of resources, thus not being a normal "business as usual" approach). In such instances, the requester is advised that no record exists and the FOIA does not require agencies to create or compile a record to satisfy a FOIA request.

(g) *Reasonably segregable information.* FOIA requires that all "reasonably segregable" information must be released when the meaning of these portions is not distorted by deletion of the denied portions, and when it reasonably can be assumed that a skillful and knowledgeable person could not reasonably reconstruct the excised information. When a record is denied in whole, the response to the requester will specifically state that it is not reasonable to segregate portions of the record for release.

(h) *Special mail services.* Naval activities are authorized to use registered mail, certified mail, certificates of mailing, and return receipts. However, this use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence.

(i) *Authentication of records released under FOIA.* In addition to the requirements of FOIA, records provided under FOIA shall be authenticated when necessary to fulfill an official governmental or other legal function. Authentication will be made with an appropriate seal. This service is not included in the FOIA fee schedule and naval activities may charge $5.20 for each authentication.

§ 701.5 Responsibility and authority.

(a) *Chief of Naval Operations (CNO).* CNO is designated as the official responsible for administering and supervising the execution of 5 U.S.C. 552 and Department of Defense Directives 5400.7 and 5400.7-R series, Department of Defense Freedom of Information Act Program (see 32 CFR part 286). CNO has designated the Assistant Vice Chief of Naval Operations (OP-09B30) as principal Department of the Navy FOIA Coordinator to:

(1) Set Department of the Navy policy on the provisions of the FOIA.

(2) Serve as principal advisor on all FOIA matters.

(3) Oversee the administration of the FOIA program, which includes preparing the Department of the Navy Annual FOIA Report for submission to Congress.

(4) Develop a Navy-wide FOIA training program and serve as training-oversight manager.

(5) Conduct staff assistance visits within the Department of the Navy to review compliance with 5 U.S.C. 552 and subparts A, B, C, and D of this part.

(6) Set Department of the Navy policy on the marking, handling, safeguarding and transmission of documents marked "For Official Use Only."

(b) *Commandant of the Marine Corps (CMC).* CMC is responsible for administering and supervising the execution of this instruction within the Marine Corps. The Commandant has designated the Director, Manpower Management Information Systems Division (HQMC (Code MI)) as the FOIA Coordinator for Headquarters, U.S. Marine Corps.

(c) *FOIA coordinator.* Each addressee is responsible for implementing and administering a FOIA program under this instruction. Each addressee shall designate a FOIA Coordinator to:

(1) Serve as principal point of contact on FOIA matters.

(2) Provide training for activity/command personnel on the provisions of 5 U.S.C. 552 and subparts A, B, C, and D of this part.

(3) Issue an implementing instruction which designates the activity's FOIA Coordinator and Initial Denial Authority(ies), provides guidance on the marking, handling, and safeguarding of documents marked FOUO, FOIA records disposition, and FOIA processing procedures.

(4) Review internal directives, practices, and procedures, including those for forms and records, for conformity with this instruction, when applicable.

(5) Compile input and submit consolidated Annual FOIA Report to Echelon 2 FOIA Coordinator, who, in turn, will provide consolidated report to CNO (OP-09B30).

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(6) Review activity conformance with the marking, handling, transporting, and safeguarding of FOUO information.

(7) Provide guidance on handling FOIA requests and the scope of the FOIA exemptions.

(8) Review subpart C of this part and provide CNO (OP-09B30) with updated information, as appropriate.

(9) Conduct staff assistance visits within command and lower echelon commands to ensure compliance with FOIA.

(10) Echelon 2 FOIA Coordinators shall provide CNO (OP-09B30) with a complete listing of all FOIA Coordinators under their jurisdiction. Such information should include activity name and address, office code, name of FOIA Coordinator, and commercial and autovon telephone numbers.

(d) *Release Authorities.* (1) The role of the release authority is to respond to requests for documents under his/her cognizance for which no FOIA exemption applies. Release authorities are commanding officers and heads of all Navy and Marine Corps activities (departmental and field).

(2) Release authorities are required to coordinate with officials having cognizance over the subject matter of the requested record, if there is a question as to its releasability. However, if it is determined that a requested record requires withholding, in whole or in part, the release authority must refer the documents along with recommendations regarding release to the initial denial authority (IDA) in the chain of command. If geographically isolated, the release authority may forward the request to another IDA, if so authorized by the IDA in the chain of command.

(3) For records which are part of the Navy's Privacy Act (PA) systems of records, the record custodian specified in the systems notice is the appropriate authority to respond to the request.

(e) *Initial Denial Authorities (IDAs).* (1) The IDA role is to deny and grant requests, either in whole or in part, for documents or records under his or her cognizance; to grant one 10-working day formal extension to the time limit for responding to FOIA requests; and to deny requests to waive or reduce FOIA fees when the information sought relates to matters within their respective geographical areas of responsibility or chain of command.

(2) Within the Department of the Navy, the following chief officials, their respective vice commanders, deputies, and their principal assistants are designated as IDAs.

(i) Department of the Navy: Civilian Executive Assistants; CNO; CMC; Chief of Naval Personnel; Commanders of the Naval Systems Commands, Naval Intelligence Command, Naval Security Group Command, and Naval Computer and Telecommunications Command; Chief, Bureau of Medicine and Surgery; Auditor General of the Navy; Naval Inspector General; Director, Office of Civilian Personnel Management; Chief of Naval Education and Training; Commander, Naval Reserve Force; Chief of Naval Research; Commander, Naval Oceanography Command; heads of DON Staff Offices, Boards, and Councils; Flag Officers. NJAG and his Deputy, and the OGC and his Deputies, are excluded from this grant of authorization. While the NJAG and OGC are not Initial Denial Authorities, they are authorized to further delegate the authority conferred here to other senior officers/officials within NJAG and OGC.

(ii) Initial Denial Authorities may choose to delegate initial denial authority to those major activities under their control that receive voluminous requests. Such action is discretionary and should be limited.

(iii) For the shore establishment:

(A) All officers authorized under Article 22, Uniform Code of Military Justice (UCMJ), or designated in section 0120, Manual of the Judge Advocate General, to convene general courts-martial.

(B) Commander, Naval Investigative Service Command and Deputy Commander, Naval Legal Service Command.

(iv) In the Operating Forces: All officers authorized by Article 22, UCMJ, or designated in section 0120, Manual of the Judge Advocate General (JAGINST 5800.7C), to convene general courts-martial.

§ 701.6. Format and procedures for requesting information under FOIA.

(a) *Minimum requirements.* In an effort to eliminate any unnecessary burdens on members of the public, the Department of the Navy does not require requesters to complete a specific form to file a FOIA request. A request can be written or typed, but at a minimum should:

(1) Be in writing and indicate expressly, or clearly imply, that it is a request under 5 U.S.C. 552, Department of Defense Directives 5400.7 and 5400.7-R, Department of Defense Freedom of Information Act Program (see 32 CFR part 286), or subparts A, B, C, and D of this part. Verbal requests are not honored.

(2) Contain a reasonable description of the particular record(s) requested to enable naval personnel to locate or identify the particular record(s) desired with a reasonable amount of effort.

(3) Contain a clear statement of the requester's willingness to pay all fees or those up to a specified amount if the fees are expected to exceed the minimum fee waiver threshold, or provide satisfactory evidence that he or she is entitled to a waiver or reduction of such fees.

(b) *Identification of addressees.* To expedite processing of requests, requesters should submit written requests directly to the naval activity having cognizance over the records and clearly show all addressees within the Department of the Navy, Department of Defense, or other Federal agency to whom that or a similar request was also sent. That procedure will reduce processing time requirements and ensure better inter and intra-agency coordination. Naval activities are under no obligation to establish procedures to receive hand delivered requests.

(c) *Reasonably describe the record(s) being sought.* Identification of the record being sought is the responsibility of the requester. The requester must provide a description of the document that enables the Government to locate the record with a reasonable amount of effort. FOIA does not authorize "fishing expeditions." If a request does not contain a reasonable description, the naval activity shall advise the requester of the defect and when possible assist the requester in reframing the request. Naval activities are not obligated to act on the request until the requester responds with more specificity. When practical, naval activities shall assist the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with FOIA.

(1) The following guidelines are provided for "fishing expedition" requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories—file related and event related. File related includes information on the type of record (e.g., memorandum, letter, etc.), title, index citation, subject area, date the record was created, and originator. Event related includes the circumstances resulting in the record's creation or date and circumstances surrounding the event the record covers.

(2) Generally, a record is reasonably described when the description contains sufficient file related information to permit an organized non-random search of the activity's filing arrangements and existing retrieval systems, or when the record contains sufficient event related information needed to conduct such a search.

(3) The following guidelines deal with requests for personal records. Ordinarily, when personal identifiers are provided only in connection with a request for records concerning the requester, only records retrievable by personal identifiers need be searched. Search for such records may be conducted under PA procedures (see subpart F of this part). No record may be denied that is releasable under FOIA.

(4) The previous guidelines notwithstanding, the decision of a naval activity concerning reasonableness of description must be based on knowledge of its files. If the description enables naval personnel to locate the record with reasonable effort, the description is adequate. However, if a naval activity receives a request not "reasonably described" it shall notify the requester of the defect and provide guidance on specificity required to begin a search.

(d) *Fees.* (1) Fees may not be used to discourage requesters. If fees are expected to exceed the minimum fee waiver threshold of $15.00, the requester is required to address fees in the request, i.e., a willingness to pay all fees or those up to a specified amount, or request a waiver/reduction of fees.

(2) To assist naval activities in determining assessable fees, requesters are encouraged to identify the fee category for which they wish to be considered. If the requester believes he/she qualifies for a waiver/reduction of fees, requesters are required to provide specific justification regarding qualification for a waiver so that decision can be rendered. See Subpart D of this Part 701 for further information on fees.

(e) *Treatment of requests which do not meet the minimum requirements.* (1) In those instances when a request does not meet the minimum requirements, naval activities should nonetheless return the requests within 10 working days and advise the requester of how to perfect the request. Naval activities may contact the requester by telephone to refine the request. For example, if a requester has failed to "reasonably describe" the records being sought, he/she may be asked to provide identifying data such as location, timeframe, originator, background information, etc., to enable a search. If the requester has failed to mention fees and fees are applicable, the requester should be provided an estimate of the cost involved in processing the request. When practicable, naval activities are encouraged to contact requesters to clarify what they are seeking.

(2) If a request fails to qualify within this instruction but the requested record is available and releasable in its entirety, the responding official may provide a copy of the record if he or she determines it to be in the best interest of the activity. This provision is within the sole and exclusive discretion of the responsible official of the activity concerned and does not create an exception to or grounds for waiver of the minimum requirements.

§ 701.7 Procedures for processing FOIA requests.

(a) *Control system.* All requests for records which cite or imply the FOIA must be entered into a formal control system, either manual or computerized, that is designed to track the request from receipt to response. Information contained in the tracking system should at a minimum include the name of the requester, the date of the request, the date the request was received, suspense date, and the date the response was made. This will ensure that the requester is apprised of the status of his/her request within 10 working days and will provide required information should the requester challenge the processing of his/her request.

(1) *Receipt controls.* At a minimum, date stamp the request upon receipt, establish a suspense control record and follow-up procedures, and conspicuously stamp or label the request "FREEDOM OF INFORMATION ACT REQUEST" to indicate priority handling throughout processing. Naval activities are encouraged to assign a FOIA Case Number for each request and to apprise the requester of the number assigned. This number is an effective tool for tracking, filing, and retrieving the request.

(2) *Forwarding controls.* As a rule, requests forwarded to another activity for action should have the letter of referral and envelope conspicuously stamped or labeled "FREEDOM OF INFORMATION ACT REQUEST" and a record shall be kept of the request, and the date and activity to which it was forwarded.

(b) *Time limits.* Once a request has been received by a naval activity having cognizance over the requested record(s), that activity has 10 working days (excluding Saturdays, Sundays, and legal holidays) to issue a letter which advises the requester of the action to be taken on the request (i.e., documents are denied; documents are released; documents will be released within a specific timeframe). If a naval activity is unable to comply with the request within the 10 working day timeframe, then a formal or informal time extension must be pursued and a letter forwarded to the requester advising of the extension.

(1) A formal time extension letter is issued in those instances where an activity requires up to an additional 10 working days to respond to a request because of the need to:

(i) *Search.* The need to search for and collect records located in whole or part at places separate from the activity processing the request;

(ii) *Examine.* The need to search for, collect, and examine a substantial number of records responsive to a request; or,

(iii) *Consult.* The need to consult with another naval activity or federal agency with a substantial interest in the determination of the request.

(2) A formal time extension response must be issued by the IDA within 10 working days of receipt of the request, describe the circumstance(s) for the delay, and indicate the anticipated date for a substantive response.

(3) In those instances where it appears the request might be ultimately denied, in whole or in part, the appellate authority (i.e., NJAG or OGC) may be consulted by expeditious means prior to authorizing a formal extension.

(4) In those instances when it is anticipated the normal statutory time limits (including the statutory time extension) are insufficient to provide a response, the IDA shall acknowledge the request in writing prior to the expiration of the normal statutory time limits (including the statutory time extension), describe the circumstance(s) requiring the delay and indicate the anticipated date for the substantive response. The requester shall be advised that an appeal may be made to the cognizant appellate authority within 60 calendar days or await a substantive determination by a specified date. It shall be made clear that such an agreement does not prejudice the right of the requester to appeal an adverse substantive determination.

(5) In those unusual cases where the statutory time limits cannot be met and no informal extension has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester, with notification that the delay may be treated as an initial denial with a right to appeal, or that the requester may agree to await a substantive response by an anticipated date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made. Further, naval activities should be advised that the requester still

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retains the right to treat this delay as a defacto denial with full administrative remedies.

(6) Informal extension of time limits—a recommended alternative is to negotiate an informal extension of time with the requester. The advantages include the ability to agree on a mutually acceptable date to respond that exceeds 10 working days, and the letter of confirmation does not require the signature of an IDA. Additionally, it does not impact on the additional days the appellate authority may take when responding to an appeal.

(c) *Decision to release records.* Release authorities may release records under their cognizance which do not qualify for denial under FOIA exemptions. Such responses should be made within the applicable time limits of FOIA and should be processed as follows:

(1) If the requested records are releasable in their entirety, release authorities should forward the records to the requester and advise of any applicable fees.

(2) If the requested records are releasable in their entirety but not yet available, the release authority should notify the requester the request has been approved and the requested records will be forwarded by a specified date.

(3) If the request for examination of records is approved, notify the requester of the time and place.

(d) *Processing documents originated by/created for another activity.* (1) If an official receives a request for records that he or she holds, but which were originated by another naval activity, the official shall normally coordinate with that activity prior to referring the FOIA request and copies of the requested documents to the originator for direct response. The naval activity that initially received the request is responsible for notifying the requester of the referral. The originating naval activity shall not release or deny such records without prior consultation with the referring naval activity.

(2) If an official receives a request for records that he or she holds, but were created for another naval activity or government agency, the official shall refer the FOIA request and copies of the requested documents to that activity/agency for direct response, after coordination and concurrence. The activity/agency may have an equally valid interest in withholding the record as the naval activity that created it. In such referrals, the naval activity should provide a recommendation concerning release with the referral. The naval activity that initially received the request is responsible for notifying the requester of the referral.

(e) *Processing misdirected requests.* Requesters are not always aware of the correct activity to address a FOIA request.

(1) A request received by a naval activity having no records responsive to the request shall only be referred to another naval activity if the activity contacts the naval activity and confirms its cognizance over the requested information. When a member of the public complies with the procedures established in this instruction for obtaining records, the request shall receive prompt attention and a reply dispatched within 10 working days, unless a delay is authorized. Each naval activity is responsible for developing procedures to ensure the expeditious handling, prompt retrieval, and review of requested records. The 10 working day time limit commences upon receipt of the request by the cognizant activity.

(2) If the cognizant official is unable to respond to the requester within the statutory time limit, he or she may seek a formal or informal extension of time.

(3) If a naval activity has a significant number of requests (e.g., 10 or more), the requests generally will be processed in order of receipt. But a naval activity may commence action on an easily answered request, regardless of its ranking within the order of receipt.

(f) *Decision to deny records in whole or in part.* To deny a requested record that is in the possession and control of the Department of the Navy, it must be determined that the record is included in one or more of the nine categories of records exempt from mandatory disclosure as provided by the FOIA and addressed at subpart B of this part.

(1) Because release authorities cannot deny information, they must forward responsive documents along with their release determination to an IDA for consideration and response to the requester. In those instances, the release authority will apprise the requester that his/her request and responsive documents were referred to the activity having cognizance over the documents for a release determination and direct response to the requester. The referral to an IDA shall include a copy of the request, documents responsive to the request, recommendation on partial/total denial, and supporting rationale for the exemption(s) claimed.

(2) When an IDA receives a referral from a subordinate activity recommending a FOIA request be denied in whole or in part, or receives a FOIA request for documents under his/her cognizance, the IDA shall take one of the following actions within 10 working days:

(i) Deny or release the requested information. If an IDA determines the record contains information which is not releasable under FOIA, and any releasable information contained in the record is not reasonably segregable from the non-releasable information, notify the requester of the exemption(s) claimed and provide procedures to be followed should the requester decide to appeal the determination to appellate authority.

(ii) If unable to respond within the applicable time limits, explain the reason(s) for the delay to the requester, with notification that he or she may treat this delay as an initial denial with a right to submit an administrative appeal to the cognizant appellate authority, or that the requester may agree to await a substantive determination by a specified date. It shall be made clear that any such agreement does not prejudice the right of the requester to appeal an adverse substantive determination.

(iii) If an IDA determines that the requester's claimed entitlement to waiver/reduction of fees is not warranted, IDAs shall notify the requester of such determination, provide the reason(s) for the denial, and advise the requester of the right to appeal the determination to the cognizant appellate authority within 60 calendar days. If the requester appeals the denial to waive/reduce fees, the release of the records may be withheld until the fee is paid or the appellate authority grants a waiver/reduction of fees.

(3) IDAs are responsible for maintaining copies of initial denials in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation.

(g) *Excising documents.* (1) *Classified documents.* Since FOIA requires that all reasonably segregable portions of documents be released to the requester, there will be instances when portions of documents which contain classified markings are subject to release. In these instances, naval activities shall cross through the classified markings that appear at the top and bottom of the document and cross through any classified paragraph markings that are being released. This practice is necessary to eliminate any appearance that a "classified" document was released.

(2) *Unclassified documents.* Naval activities are encouraged to "blank out" and bracket the denied information and annotate the exemption(s) claimed. This practice will permit the requester to easily identify information being withheld and the basis for withholding.

(h) *"Other Reasons" for not releasing a record.* Besides denying a records in whole or in part, there are six "other reasons" for not releasing a record. In most instances, these "other reason" responses do not constitute a denial of information and therefore do not require the signature of an IDA. They are:

(1) *Transferred request.* Requester advised that his/her request and/ or requested documents have been transferred to another naval activity or federal agency having cognizance over the requested information for action and direct response.

(2) *Lack of records.* Requester advised that a search of files held by the naval activity has resulted in a failure to locate any responsive records. Such response now requires that a requester be advised of his/her right to appeal the adequacy of the search to the cognizant appellate authority. The response does not normally require the signature of an IDA.

(3) *Failure of requester to reasonably describe records being sought.* Requester advised that his/her request requires specificity with regard to description of the records being sought to enable the naval activity to conduct a reasonable search. Such responses generally apprise the requester of the kind of specificity required.

(4) *Other failures by requester to comply with published rules and/or directives.* Requester advised that he/she has failed to comply with established rules/directives, such as failure to agree to pay fees, and therefore the request is being returned for refinement.

(5) *Withdrawal.* Requester contacted the naval activity by telephone or letter and advised he/she wishes to cancel the request or appeal.

(6) *Not an agency record.* Requester advised the information/records he/she seeks is not an agency record as defined by § 701.3 of Subpart A.

(i) *Consultation/coordination.* The Department of the Navy processes thousands of FOIA requests annually. Because there is no central repository for records and no central release/denial authority, proposed responses shall be properly coordinated and appropriate officials consulted prior to a response being made to the requester. Specifically:

(1) Naval activities and federal agencies with a substantial interest in the subject matter of the requested records should be consulted prior to release or denial of information.

(2) Public affairs officers or the Chief of Information (CHINFO) should be consulted when a FOIA request is received from a news media representative, the records requested are considered newsworthy, or a denial of a request is expected to be publicly challenged. CHINFO should be promptly notified of any release having evident public affairs implications and a copy of the request and response should be provided.

(3) The appropriate JAG attorney or field counsel should be consulted on the interpretation and application of this instruction where a denial of a request is expected to be judicially challenged.

(j) *Response to the requester.* (1) Initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 10 working days after receipt of the request by the official designated to respond. When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

(2) When a decision is made to release a record, a copy should be made available promptly to the requester once he or she has complied with preliminary procedural requirements.

(3) When a request for a record is denied in whole or in part, the official designated to respond shall inform the requester in writing of the IDA's name, rank, and title, shall cite the specific exemption(s) that apply in sufficient detail, and provide the requester with the name and address of the appellate authority, should the requester desire to file an appeal. When claiming exemption "(b)(1)," IDAs shall to the extent reasonably feasible, provide the requester with a summary of the applicable criteria for classification. Additionally, the marking "For Official Use Only" on a requested document does not constitute a basis for denial. Rather, it alerts the reviewer that the document may contain information which is protectible under exemptions (b)(2) through (b)(9). It is up to the reviewing official to advise the requester of the applicable exemptions and to release all "reasonably segregable" information.

(k) *Fees.* The final response to the requester should contain information on the fee status of the request. Generally, information shall reflect one or more of the following conditions:

(1) "The fees for processing your request total $. Please forward your check or money order made payable to the Treasurer of the United States to this office within 30 days." Subpart D of this part addresses when fees may be collected in advance of forwarding the documents.

(2) All fees have been received.

(3) Fees have been waived because they fall below the automatic fee waiver threshold.

(4) A request for waiver/reduction of fees has been denied.

(5) Fees have been waived or reduced from a specified amount to another specified amount because the rationale provided in support of a request for waiver has been accepted.

(6) Fees due in a specified amount have not been received (see subpart D of this part for specific information on FOIA fees and fee rates for technical data).

§ 701.8 Records requiring special handling.

The following actions shall be taken on requests for:

(a) *Classified records.* (1) If a naval activity receives a request for information whose existence or nonexistence is itself classifiable under Executive Order 12356, 50 U.S.C. 401, the naval activity shall refuse to confirm or deny the existence or nonexistence of the requested information.

(2) If a naval activity receives a request for documents in its custody that were classified by another agency, or which contains information classified by another agency, it shall refer the request and copies of the requested documents to the originating agency for processing, and may, after consultation with the originating agency inform the requester of the referral. Referred records shall be identified consistent with security requirements. In cases where the originating agency determines they can neither confirm nor deny the existence or nonexistence of the requested information, the referring agency shall deny the request.

(3) If a naval activity receives a request for classified records or information originated by another naval activity, for which the head of the activity is not the classifying authority under OPNAV Instruction 5520.1 series, "Department of the Navy Information and Personnel Security Program Regulation," the request, copies of the requested documents, and a recommendation concerning release (if appropriate) shall promptly be readdressed and forwarded to the official having classification authority for the subject matter. That official will make a release determination concerning the classified information and notify the requester, or the activity originally receiving the request, in 10 working days of that determination. The naval activity that initially received the request has responsibility for notifying

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the requester of the referral. Referred records shall only be identified to the extent consistent with security requirements.

(b) *Naval Investigative Service (NIS) reports.* The Commander, Naval Investigative Service Command (COMNISCOM) is the release/denial authority for all NIS reports. Accordingly, a request for a NIS report shall be promptly readdressed and forwarded to COMNISCOM and the requester notified of the referral. Direct liaison with COMNISCOM prior to the referral is encouraged.

(c) *Naval Inspector General reports.* (1) The Naval Inspector General (NAVINSGEN) is the release/denial authority for all investigations and inspections conducted by or at the direction of NAVINSGEN and for any records held by any command that relate to Navy hotline complaints that have been referred to the NAVINSGEN. Accordingly, such requests shall be promptly readdressed and forwarded to NAVINSGEN and the requester notified of the referral. Requests for local command Inspector General reports which have not been referred to the NAVINSGEN may be released by the local command.

(2) The Deputy Naval Inspector General for Marine Corps Matters (DNIGMC) is the release authority for all investigations conducted by the DNIGMC. Requests for local Marine Corps command Inspector General reports shall be coordinated with the DNIGMC.

(d) *Manual of the Judge Advocate General (JAGMAN) investigative reports and courts-martial records.* NJAG is the release/denial authority for all JAGMAN investigative reports and courts-martial records. Requests for JAGMAN investigative reports and courts-martial records shall be promptly readdressed and forwarded to NJAG and the requester notified of the referral.

(e) *Mishap Investigation Reports (MIRs).* The Commander, Naval Safety Center (COMNAVSAFECEN) is the release/denial authority for all requests for mishap investigation reports. Requests for mishap investigation reports shall be promptly readdressed and forwarded to COMNAVSAFECEN and the requester notified of the referral.

(f) *Naval Audit Service reports.* The Auditor General of the Navy is the release/denial authority for all Naval Audit Service reports. Requests for audit reports shall be promptly readdressed and forwarded to the Auditor General and the requester notified of the referral.

(g) *Technical documents controlled by distribution statements.* A request for a technical document to which "Distribution Statement B, C, D, E, F, or X" (see OPNAVINST 5510.1 series) is affixed shall be promptly readdressed and forwarded to the "controlling DOD office" for review and release determination. The naval activity that initially received the request is responsible for notifying the requester of the referral. Direct liaison with the cognizant official prior to referral is encouraged.

(h) *Records originated by other government agencies.* When a request for records originated by an agency outside the Department of the Navy is received, promptly readdress and forward the request along with copies of the requested documents to the cognizant agency and notify the requester of the referral. That may be accomplished by sending a copy of the referral letter, less attachments, to the requester. The 10 working day time limit begins when the request is received by the cognizant agency. If additional guidance is required, contact CNO (OP-09B30) or CMC (Code MI-3), as appropriate. Direct liaison with the cognizant agency is encouraged to ensure expeditious handling of the request.

(i) *National Security Council (NSC)/ White House Documents.* The Director, NSC is the release/denial authority for NSC documents or White House files. Requesters seeking NSC or White House documents should be notified to write directly to the NSC or White House for such documents. Department of the Navy documents in which NSC or the White House has a concurrent reviewing interest shall be forwarded to the Office of the Assistant Secretary of Defense (Public Affairs) (OASD(PA)), ATTN: Directorate for Freedom of Information and Security Review (DFOISR), which shall effect coordination with the NSC or White House, and return the documents to the originating activity after review and a release determination is made. NSC or White House documents discovered in a naval activity's files which are responsive to a FOIA request shall be forwarded to the Director, Freedom of Information and Security Review, OASD(PA), for subsequent coordination with the NSC or White House and returned to the naval activity for a release determination. Additionally, in such instances an information copy should be provided to CNO (OP-09B30).

(j) *Naval Telecommunications Procedures (NTP) publications.* The Commander, Naval Computer and Telecommunications Command (COMNAVCOMTELCOM) is the release/denial authority for NTP publications. Requests for NTP publications shall be promptly readdressed and forwarded to COMNAVCOMTELCOM and the requester notified of the referral. Direct liaison with COMNAVCOMTELCOM prior to referral is encouraged.

(k) *Naval Nuclear Weapons Information (NNWI).* The release/denial of requests for NNWI require special handling:

(1) *Release of NNWI.* Naval activities identifying NNWI which they believe qualifies for release, shall forward the request, responsive documents, and supporting rationale to the CNO (OP-09B30) who will coordinate with appropriate Navy staffs and OASD(PA) regarding release.

(2) *Denial of NNWI.* Naval activities identifying NNWI which qualifies for denial under one or more FOIA exemptions shall forward the request, responsive documents, and supporting rationale to the IDA having cognizance over the requested information.

(3) *No Record Response.* Naval activities receiving requests for NNWI where no records are found shall respond directly to the requester (the definition of NNWI appears at Subpart A, § 701.3).

(l) *Naval Nuclear Propulsion Information (NNPI).* The Director, Naval Nuclear Propulsion Program (OP-OON/ NAVSEA 08) is the release/denial authority for all information concerning NNPI. Naval activities receiving such requests are responsible for searching their files for responsive records. If no documents are located, the naval activity should respond to the requester and provide OP-OON with a copy of the request and response. If documents are located, the request, responsive documents, and a recommendation regarding release should be promptly readdressed to the CNO (OP-OON/ NAVSEA 08) who will ensure proper coordination and review. If information is deemed releasable, in whole or in part, CNO (OP-00N/NAVSEA 08) will forward it to OASD(PA) for staffing through Defense activities prior to release to the requester. Denials need not be processed through OASD(PA).

(m) *Medical quality assurance documents.* The Chief, Bureau of Medicine and Surgery (BUMED) is the release/denial authority for all naval medical quality assurance documents as defined by Title 10, United States Code, Section 1102. Requests for medical quality assurance shall be promptly readdressed and forwarded to BUMED and the requester notified of the referral.

(n) *Records of a non-U.S. Government source.* (1) When a request is received for a record that was obtained from a non-U.S. Government source, or for a record containing information clearly identified as provided by a non-U.S. Government source, the source of the record or information (known as "the submitter" for proprietary data under FOIA exemption (b)(4)) shall be promptly notified of the request and afforded reasonable time (e.g., 30 calendar days) to present any objections concerning release, unless it is clear that there can be no valid basis for objection. That practice is required for FOIA requests for data not deemed clearly exempt from disclosure under exemption (b)(4). If, for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and established that it would be made available to the public upon request, there is no obligation to notify the source. Any objections shall be evaluated. The final decision to disclose information claimed to be exempt under exemption (b)(4) shall be made by an official equivalent in rank to the official who would make the decision to withhold that information under FOIA. When a substantial issue has been raised, the naval activity may seek additional information from the source of the information and afford the source and requester reasonable opportunities to present their arguments on legal and substantive issues prior to making an agency determination. When the source advises he or she will seek a restraining order or take court action to prevent release of the record or information, the requester shall be notified and action on the request normally shall not be taken until after the outcome of that court action is known. When the requester brings court action to compel disclosure, the submitter shall be promptly notified of this action.

(2) The coordination provisions of this paragraph also apply to any non-U.S. Government record in the possession and control of the Department of the Navy from multinational organizations, such as the North Atlantic Treaty Organization (NATO) and North American Air Defense (NORAD), or foreign governments. Coordination with foreign governments will be made through the Department of State.

(o) *Government Accounting Office (GAO) documents.* On occasion, the Department of the Navy receives FOIA requests for GAO documents containing Department of the Navy information, either directly from requesters, or as referrals from the GAO. Since the GAO is outside the Executive Branch and therefore not subject to FOIA, all FOIA requests for GAO documents containing Department of the Navy information will be processed by the Department of the Navy. In those instances when a requester seeks a copy of an unclassified GAO report, naval activities may apprise the requester of its availability from the Director, GAO Distribution Center, ATTN: DHISF, P.O. Box 6015, Gaithersburg, MD 20877-1450 under their cash sales program.

(p) *Mailing lists.* Frequent FOIA requests are received for mailing lists of the home addresses and/or duty station addresses of naval personnel.

(1) A list of home addresses is not releasable without the individuals' consent because it is a clearly unwarranted invasion of the individuals' personal privacy, and therefore, may be withheld from disclosure under 5 U.S.C. 552(b)(6), see subpart B of this part.

(2) Unclassified information about service members may be withheld when disclosure "would constitute a clearly unwarranted invasion of personal privacy" under FOIA (exemption (b)(6) applies). Disclosure of lists of names and duty addresses or duty telephone numbers of members assigned to units that are stationed in foreign territories, routinely deployable, or sensitive, constitutes a clearly unwarranted invasion of personal privacy. Disclosure of such information poses a security threat to those service members because it reveals information about their degree of involvement in military actions in support of national policy, the type of naval unit to which they are attached, and their presence or absence from their households. Release of such information aids the targeting of service members and their families by terrorists or other persons opposed to implementation of national policy. Only an extraordinary public interest in disclosure of this information can outweigh the need and responsibility of the Navy to protect the tranquility and safety of service members and their families who repeatedly have been subjected to harassment, threats, and physical injury. Units covered by this policy are:

(i) Those units located outside the 50 states, District of Columbia, Commonwealth of Puerto Rico, Guam, U.S. Virgin Islands, and American Samoa.

(ii) Routinely deployable units. Those units that normally deploy from homeport or permanent station on a periodic or rotating basis to meet operational requirements or participate in scheduled exercises. This includes routinely deployable ships, aviation squadrons, operational staffs, and all units of the Fleet Marine Force (FMF). Routinely deployable units do not include ships undergoing extensive yard work or whose primary mission is support of training, e.g., yard craft and auxiliary aircraft landing training ships.

(iii) Units engaged in sensitive operations. Those units primarily involved in training for or conduct of covert, clandestine, or classified missions, including units primarily involved in collecting, handling, disposing, or storing of classified information and materials. This also includes units engaged in training or advising foreign personnel. Examples of units covered by this exemption are nuclear power training facilities, SEAL Teams, Security Group Commands, Weapons Stations, and Communication Stations.

(3) Except as otherwise provided, lists containing names and duty addresses of DOD personnel, both military and civilian, who are assigned to units in the Continental United States (CONUS) and U.S. territories shall be released regardless of who has initiated the request.

(4) Exceptions to this policy must be coordinated with the CNO (OP-09B30) or CMC (MI-3) prior to responding to requests, including those from Members of Congress. The foregoing policy should be considered when weighing the releasability of the address or phone number of a specifically named individual.

§ 701.9 For Official Use Only (FOUO).

FOUO is a marking which is placed on documents to alert the holder that they contain information that may be withheld under exemptions (b)(2) through (b)(9) of the FOIA. Because FOUO is not a security classification, exemption (b)(1) does not apply.

(a) *Prior FOUO application.* The prior application of FOUO is not a conclusive basis for withholding a record requested under FOIA. When such a record is requested, it shall be evaluated to determine whether FOIA exemptions apply in withholding all or portions of the record. Information which is reasonably segregable and does not fall under a FOIA exemption(s) must be released to the requester.

(b) *Historical papers.* Records such as notes, working papers, and drafts retained as historical evidence of Department of the Navy actions have no special status apart from FOIA exemptions.

(c) *Time to mark records.* The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under FOIA that do not bear

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such markings, shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

(d) *Distribution statement.* Information in a technical document that requires a distribution statement under OPNAVINST 5510.1 series, "Department of the Navy Information and Personnel Security Program Regulation," shall bear that statement and may be marked FOUO, as appropriate.

(e) *Location of markings.* (1) An unclassified document that contains FOUO information shall have FOR OFFICIAL USE ONLY typed, stamped, or printed in capital letters centered at the bottom on the outside of the front cover (if any), on each page containing FOUO information, and on the outside of the back cover (if any).

(2) An unclassified directive that contains FOUO information shall have FOR OFFICIAL USE ONLY typed, stamped, or printed in capital letters centered at the bottom on the outside of the front cover (if any), on each page of the directive top and bottom, and on the outside of the back cover (if any).

(3) Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

(4) Within a classified or unclassified document, an individual page that contains FOUO information, but does not contain classified information, shall have FOR OFFICIAL USE ONLY typed, stamped, or printed in capital letters centered at the top and bottom edge of the page.

(5) Other records, such as photographs, films, cassette tapes, movies, or slides, shall be marked FOR OFFICIAL USE ONLY so that a recipient or viewer knows the status of the information.

(6) Unclassified automatic data processing (ADP) media with FOUO information shall be marked as follows:

(i) An unclassified deck of punched or aperture cards with FOUO information shall be marked as a single document with FOR OFFICIAL USE ONLY marked on the face of the first and last card, and on the top of the deck.

(ii) An unclassified magnetic tape, cassette, or disk pack that contains FOUO information shall have FOR OFFICIAL USE ONLY marked externally on a removable label. The resulting hard copy report or computer printout shall reflect the FOR OFFICIAL USE ONLY marking on the top and bottom of each page. It may be accomplished by using a programmable header or marking the hard copy manually.

(7) FOUO material transmitted outside the Department of the Navy requires an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer: "This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemption(s)...apply(ies)."

(f) *Release and transmission procedures.* Until FOUO status is terminated, the following release and transmission instructions apply:

(1) FOUO information may be disseminated within Department of the Navy activities and between officials of the Department of the Navy and contractors and grantees who conduct official business for the Department of the Navy or Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

(2) Department of the Navy holders of FOUO information may convey such information to officials in other departments or agencies of the executive and judicial branches to fulfill a governmental function, subject to any limitations contained in the Privacy Act (PA) (see Subpart F of this Part 701), pertaining to disclosure of personal information from PA record systems. When transmitting these records, ensure they are marked FOR OFFICIAL USE ONLY, and the recipient is advised the information has been exempt from public disclosure under FOIA and that special handling instructions do or do not apply. For purposes of disclosing records, Department of Defense is the "agency."

(3) Records released to Congress or the GAO should be reviewed to see if the information warrants FOUO status. If not, prior FOUO markings shall be removed. If the withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect it against public disclosure for reasons that are explained.

(4) Each part of electronically transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation "FOUO" before the beginning of the text. Such messages shall be transmitted per communications security procedures in ACP-121 (United States Supplement 1, "Communication Instructions") for FOUO information.

(g) *Transporting FOUO information.* Records which contain FOUO information shall be transported in a manner that precludes disclosure of contents. If not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments that otherwise qualify under postal regulations may be sent fourth-class mail.

(h) *Safeguarding FOUO information.* (1) During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to non-governmental personnel.

(2) At the close of business, FOUO records shall be stored to preclude unauthorized access. Filing such material with other unclassified records in unlocked files, desks, or similar containers is adequate when U.S. Government or government contractor internal building security is provided during non-duty hours. When internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles, such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of the PA (see Subpart F of this Part 701) shall meet the safeguards for that group of records as outlined in the PA systems notice.

(3) Guidance for safeguarding media marked FOUO and processed by an ADP system, activity, or network is addressed in OPNAVINST 5239.1 series, "Department of the Navy Automatic Data Processing Security Program."

(i) *Termination.* The originator or other competent authority, such as an IDA or appellate authority, will terminate FOUO markings or status when the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified as practical. Upon notification, holders shall remove the FOUO markings. Records in file or storage need not be retrieved solely for that purpose.

(j) *Disposal.* (1) Non-record copies of FOUO material (including hard copy reports and computer printouts) may be destroyed by tearing each copy into pieces to preclude reconstructing, and disposed in regular trash containers. When local circumstances or experience indicates that this destruction method is insufficient, local authorities may direct other methods while considering the additional expense balanced against the sensitivity of FOUO information in the records. FOUO information on unclassified magnetic storage media shall be disposed of by overwriting the media one time with any one character. Storage areas within an ADP system (internal memory, buffers, registers, and similar storage areas) may be cleared by using a hardware clear switch, a power-on reset cycle, or a program designated to overwrite the storage area.

(2) Record copies of FOUO documents shall be disposed of following the disposal standards established under the Records Disposal Manual for the particular kind of record.

(k) *Unauthorized disclosure.* The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of Department of the Navy information classified for security purposes. However, appropriate administrative or disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the PA may result in civil and criminal sanctions against responsible person(s). The naval activity that originated the FOUO information shall be informed of its unauthorized disclosure.

§ 701.10 FOIA appeals/judicial actions.

(a) *How to file an appeal.* The following guidelines should be followed by individuals wishing to appeal a denial of information, a request for waiver/reduction of fees, or a "no record" response:

(1) The appeal must be received by the cognizant appellate authority (i.e., NJAG or OGC) within 60 days of the date of the response.

(2) The appeal letter must be in writing and requesters should provide a copy of the IDA's response when filing a written appeal to the Navy's appellate authorities (OGC or NJAG, depending on subject matter), regarding an IDA's decision that a record is exempt in whole or in part or because a naval activity denied a request for a waiver/reduction of fees. The requester should include a copy of the denial letter and provide supporting rationale on why the appeal should be granted. The requester may appeal a "no records" response if he/she believes an adequate search of files was not conducted.

(b) *Time of receipt.* The time limits for responding to a FOIA appeal commence when the appeal reaches the office of the appellate authority having jurisdiction over the record. Misdirected appeals should be referred expeditiously to the proper appellate authority.

(c) *Appellate authorities.* (1) Responsibility and authority. NJAG and OGC are authorized to adjudicate appeals made to the Secretary of the Navy (SECNAV) on denials of requests for copies of Department of the Navy records or portions thereof, or refusals to waive or reduce fees on matters within their respective areas of cognizance. That includes the authority to release or withhold records, or portions thereof, waive or reduce fees, and to act as required by SECNAV for appeals under 5 U.S.C. 552 and subparts A, B, C, and D of this part. NJAG and OGC are further authorized to delegate this authority to a designated Assistant NJAG and the Principal Deputy OGC, respectively, under such terms and conditions as they may deem appropriate.

(2) Respective areas of cognizance. As delineated in SECNAV Instructions 5430.25D and 5430.27A (NOTAL), the respective areas of cognizance of NJAG and OGC for providing legal services for the Department of the Navy are:

(i) NJAG. In addition to military law, all matters except those falling under the cognizance of OGC.

(ii) OGC. Business and commercial law aspects of:

(A) Acquisition, custody, management, transportation, taxation, and disposition of real and personal property and the procurement of services, including the fiscal, budgetary, and accounting aspects thereof; excepting, however, tort claims and admiralty claims arising independently of contracts, and matters relating to the naval petroleum reserves;

(B) Operations of the Military Sealift Command, excepting tort and admiralty claims arising independently of contracts;

(C) Office of the Comptroller of the Navy;

(D) Naval Computer and Telecommunications Command;

(E) Patents, inventions, trademarks, copyrights, royalty payments, and similar matters;

(F) Procurement of foreign military sales, co-production and cooperative research and development and related agreements, NATO standardization agreements, and matters relating to the Arms Exports Control Act;

(G) Department of the Navy litigation before the Armed Services Board of Contract Appeals; and,

(H) Civilian personnel law matters on employing present and former Navy civilian employees.

(d) *Addresses for appeals.* Appeals should be addressed to the cognizant appellate authority. The addresses of the SECNAV's designees are:

(1) Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400.

(2) General Counsel, Navy Department, Washington, DC 20360-5110.

(e) *Time limits for filing FOIA appeals.* (1) The requester should file the appeal so it reaches the appellate authority not later than 60 calendar days from the date of the initial denial letter. At the end of 60 calendar days, the case may be considered closed; however, the requester may file litigation for denial of the appeal. If the requester was provided several incremental determinations for a single request, the time limit for filing the appeal begins when the requester receives the last response. Records which are denied shall be retained for a period of six years to meet the statute of limitations of claims requirement.

(2) Final determinations on appeals shall normally be made within 20 working days after receipt.

(f) *Delay in responding to a FOIA appeal.* If additional time is needed due to unusual circumstances, the final decision may be delayed for the number of working days (not to exceed 10), that were not utilized as additional time for responding to the initial request. If a determination cannot be made and the requester is notified within 20 working days, the appellate authority shall acknowledge to the requester in writing the date of receipt of the appeal, circumstances for the delay, and anticipated date for substantive response. Requesters may be advised that if the delay exceeds the statutory extension or is for reasons other than "unusual circumstances," they may consider their administrative remedies exhausted. Further, requesters should be advised that they may wait for a substantive response without prejudicing their right to judicial remedy. The appellate authority shall continue to process the case expeditiously whether or not the requester seeks a court order for release of the record(s). A copy of any response provided subsequent to filing of a complaint shall be forwarded to the Department of Justice.

(g) *Action upon receipt.* Upon receipt of a FOIA appeal, NJAG or OGC shall inform the cognizant IDA of receipt of the appeal. The appellate authority will seek documentation from the IDA from which to make a determination. Normally, the IDA will be requested to forward a copy of the initial request, a copy of the response, a copy of excised

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and unexcised documents, and supporting rationale for continued withholding (if applicable) to the appellate authority within 10 working days.

(h) *Consultation/coordination.* (1) The Assistant for Naval Investigative Matters and Security (OP-09N) may be consulted to resolve inconsistencies or disputes involving classified records.

(2) Direct liaison with appropriate officials within the Department of the Navy and other interested federal agencies is authorized at the discretion of the appellate authority, who also coordinates with appropriate Department of Defense officials and Justice as prescribed by directives of the Secretary of Defense (SECDEF).

(3) SECNAV or appropriate Civilian Executive Assistants shall be consulted and kept advised of cases with unusual implications. CHINFO shall be consulted and kept advised on cases having public affairs implications.

(i) *Response to the requester.* (1) When an appellate authority makes a determination to release all or a portion of records withheld by an IDA, a copy of the records released should be promptly forwarded to the requester after compliance with any procedural requirements, such as payment of fees.

(2) Final denial to provide a requested record or to approve a request to waive or reduce fees must be made in writing by the appellate authority. The response shall include the following:

(i) An explanation of the basis for the denial including the applicable statutory exemption(s) invoked.

(ii) If the final denial is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order, is based on a declassification review, and the review confirmed the continuing validity of the security classification.

(iii) The response shall advise the requester that the material denied does not contain reasonably segregable portions.

(iv) The response shall advise the requester of the right to judicial review.

(v) The final denial shall include the name and title of the official responsible for the denial.

(vi) An information copy, less attachments, should be provided to CNO (OP-09B30).

(j) *Judicial actions.* A requester may seek an order from a U.S. District Court to compel release of a record after exhaustion of administrative remedies, i.e., the IDA or appellate authority denied release or when a naval activity failed to respond within the prescribed time limits.

(1) Burden of proof. The naval activity has the burden of proof to justify its refusal to provide a record. The court evaluates the case de novo (anew) and may examine any requested record in camera (in private) to determine whether the denial was justified.

(2) Actions by the court.

(i) When a naval activity fails to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, the court may retain jurisdiction and allow the naval activity additional time to complete its review of the records.

(ii) If the court determines that the requester's complaint is substantially correct, it may require the United States to pay reasonable attorney fees and other litigation costs.

(iii) When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions whether civilian personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit Systems Protection Board will conduct an investigation to determine whether or not disciplinary action is warranted. The naval activity is obligated to take the action recommended by the special counsel.

(iv) When a naval activity fails to comply with the court order to produce records that have been withheld improperly, the court may punish the responsible official for contempt.

(3) Non-United States Government source information. A requester may bring suit in a U.S. District Court to compel the release of records obtained from a non-government source or records based on information obtained from a non-government source. The source shall be notified promptly of the court action. If the source advises that it is seeking court action to prevent release, the naval activity shall defer answering or otherwise pleading to the complaint as long as permitted by the Court or until a decision is rendered in the court action initiated by the source, whichever is sooner.

§ 701.11 Publication, indexing, and public inspection of certain classes of records.

Secretary of the Navy Instruction 5720.45[2], "Indexing, Public Inspection, and Federal Register Publication of Department of the Navy Directives and other Documents Affecting the Public," assigns the heads of Department of the Navy components, Commanders of the Naval Systems Commands, and the Military Sealift Command responsibilities for executing the following additional requirements on records under their respective cognizance:

(a) Publication of certain classes of Department of the Navy organizational, regulatory, policy, procedural, interpretative, and substantive records on a current basis in the **Federal Register**, for the guidance of the public.

(b) Maintenance of current indexes of various classes of records which are precedential for decisions affecting members of the public, and publication of such indexes at least quarterly or making them available to the public by other authorized means.

(c) Making the above records and indexes regularly available for public inspection and copying at naval locations.

[2] Copies may be obtained if needed, from the Commanding Officer, U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120-5099.

Subpart B—FOIA Exemption Guidelines

§ 701.21 General.

(a) The FOIA is a disclosure statute whose goal is an informed citizenry. Because of this records are considered to be releasable unless they contain information that qualifies for withholding under one or more of the nine FOIA exemptions. The exemptions are identified as 5 U.S.C. 552 number (b)(1) through (b)(9).

(b) Even though a document may contain information which qualifies for withholding under one or more FOIA exemptions, FOIA requires that all "reasonably segregable" information be provided to the requester, unless the segregated information would have no meaning. In other words, redaction is not required when it would reduce the balance of the text to "unintelligible gibberish."

(c) The decision to withhold information in whole or in part based on one or more of the FOIA exemptions requires the signature of an Initial Denial Authority (IDA). See paragraph (e) of § 701.5 for a listing of IDAs.

(d) The following types of records may be withheld in whole or in part from public disclosure under FOIA, unless otherwise prescribed by law. A discretionary release to one requester may preclude the withholding of the same records under a FOIA exemption if the record is subsequently requested by someone else. In applying exemptions,

the identity of the requester and the purpose for which the record is sought are irrelevant with the exception that an exemption may not be invoked where the particular interest to be protected is the requester's interest.

§ 701.22 Exemption (b)(1).

Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under criteria established by Executive Order (i.e., Executive Order 12356) and implemented by regulations. Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in OPNAVINST 5510.1H, "Department of the Navy Information and Personnel Security Program Regulation" apply. In addition, this exemption shall be invoked when the following situations are apparent:

(a) The fact of the existence or nonexistence of a record would itself reveal classified information. In that situation, naval activities shall neither confirm nor deny the existence or nonexistence of the record being requested. A "refusal to neither confirm nor deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no record" response when a record does not exist, and a "refusal to neither confirm nor deny" when a record does exist will itself disclose national security information. That kind of response is referred to as a "Glomar" denial.

(b) Information that concerns one or more of the classification categories established by Executive order and OPNAVINST 5510.1 series, "Department of the Navy Information and Personnel Security Program Regulation," shall be classified if its unauthorized disclosure, either by itself or in the context of other information, reasonably could be expected to cause damage to the national security.

§ 701.23 Procedures for processing classified documents.

(a) The threshold for claiming exemption (b)(1) is that the document is properly and currently classified. Because of that, naval activities should normally refer requests for classified documents to the activity that originally classified the information. If the referring activity has an interest in the matter, they should also provide the receiving activity with a release determination. The receiving activity will then conduct a declassification review and apprise the requester of their determination, i.e., documents are properly and currently classified and therefore must be denied; portions of the documents are releasable; etc. Only an official authorized under § 701.5 to deny requests and who has cognizance over the classified matters in the records, may deny records. Such denial must be based on an approved security classification guide issued under OPNAVINST 5510.1 series or OPNAVINST 5513 series; resource document originated by another naval activity or government agency; an original classification determination with written justification for classification, and the justification remains valid; or, not readily identifiable, but classification is believed warranted because of classification criteria in OPNAVINST 5510.1 series, "Department of the Navy Information and Personnel Security Program."

(b) Material that is not classified at the time of the FOIA request may undergo a classification review to determine whether the information should be classified (ensure strict compliance with the provisions of OPNAVINST 5510.1 series regarding classification of information after receipt of a FOIA request).

(c) Executive Order 12356 provides that "information shall be classified as long as required by national security considerations, and time frame no longer triggers automatic declassification."

(d) If the original classifier of a record receives a request for the record and upon review determines that there is no basis for continued classification, either in whole or part, the record or portions of it should be declassified. The document also undergoes another review to determine whether any other FOIA exemptions apply to the declassified information.

(e) In some instances, the compilation of unclassified information may result in the classification of the record as a whole. This is called the "mosaic" approach—the concept that apparently harmless pieces of information, when assembled together could reveal a damaging picture.

§ 701.24 Exemption (b)(2).

Those related solely to the internal personnel rules and practices of an agency. This exemption has two profiles, high (b)(2) and low (b)(2).

(a) Records qualifying under high (b)(2) are those containing or constituting statutes, rules, orders, manuals, directives, and instructions the release of which would allow circumvention of the records thereby substantially hindering the effective performance of a significant function of the Department of the Navy. Examples include:

(1) Those operating rules, guidelines, and manuals for Department of the Navy investigators, inspectors, auditors, or examiners that must remain privileged in order for the naval activity to fulfill a legal requirement.

(2) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

(3) Computer software, the release of which would allow circumvention of a statute or Department of the Navy rules, regulations, orders, manuals, directives, or instructions. In this situation, the use of the software must be closely examined to ensure the possibility of circumvention exists.

(4) Security classification guides.

(b) Records qualifying under the low (b)(2) profile are those that are trivial and housekeeping in nature for which there is no legitimate public interest or benefit to be gained by release, and it would constitute an administrative burden to process the request in order to disclose the records. Examples include, rules of personnel's use of parking facilities or regulation of lunch hours, statements of policy as to sick leave, and trivial administrative data such as file numbers, mail routing stamps, initials, data processing notations, brief references to previous communication, and other like administrative markings.

§ 701.25 Exemption (b)(3).

Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or under criteria established by that statute for withholding or referring to particular types of matters to be withheld. Authorization or requirement may be found in the statute itself or in Executive orders or regulations authorized by, or in implementation of a statute. Examples include:

(a) National Security Agency Information Exemption, Pub. L. 86-36, Section 6.

(b) Patent Secrecy, 35 U.S.C. 181-188—any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(c) Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162.

(d) Communication Intelligence, 18 U.S.C. 798.

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(e) Authority to Withhold From Public Disclosure Certain Technical Data, 10 U.S.C. 130.

(f) Confidentiality of Medical Quality Records: Qualified Immunity Participants, 10 U.S.C. 1102.

(g) Physical Protection of Special Nuclear Material: Limitation on Dissemination of Unclassified Information, 10 U.S.C. 128. This statute prohibits the unauthorized dissemination of unclassified information pertaining to security measures, including security plans, procedures, and equipment for the physical protection of special nuclear material.

(h) Protection of Intelligence Sources and Methods, 50 U.S.C. 403(d)(3).

(i) 42 U.S.C. 4582—alcohol abuse prevention/rehabilitation. Records of the identity, diagnosis, prognosis, or treatment of any patient maintained in connection with the performance of any drug abuse prevention function conducted, regulated, or directly assisted by any department or agency of the U.S., unless expressly authorized.

(j) Examples of statutes which DO NOT qualify under exemption (b)(3) include: 5 U.S.C. 552(a), Privacy Act; 17 U.S.C. 101 et. seq, Copyright Act; 18 U.S.C. 793, Gathering, Transmitting or Losing Defense Information; 18 U.S.C. 794, Gathering or Delivering Defense Information to Aid Foreign Governments; 18 U.S.C. 1905, Trade Secrets Act; and, 28 U.S.C. 1498, Patent and Copyright Cases.

§ 701.26 Exemption (b)(4).

Those containing trade secrets or commercial or financial information that a naval activity receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information, impair the government's ability to obtain necessary information in the future, or impair some other legitimate government interest. Examples include:

(a) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged such as trade secrets, inventions and discoveries, or other proprietary data.

(b) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(c) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(d) Financial data provided in confidence by private employers in connection with local wage surveys used to fix and adjust pay schedules applicable to the prevailing wage rate for employees within the Department of the Navy.

(e) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(f) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, or developed in part with federal funds and in part at private expense, where the contractor or subcontractor retains a legitimate proprietary interest in the data under 10 U.S.C. 2320-2321 and DOD Federal Acquisition Regulation Supplement (DFARS), subpart 27.4. Technical data developed exclusively with federal funds may be withheld under exemption (b)(3) if it meets the criteria of 10 U.S.C. 130.

(g) Computer software which is copyrighted under the Copyright Act of 1976 (17 U.S.C. 106), the disclosure of which would have an adverse impact on the potential market value of a copyrighted work.

Note: The status of unit prices in awarded in government contracts, once a controversial issue, has become more settled with recent court decisions. The courts have held that disclosure of unit prices would not directly reveal confidential proprietary information, such as a company's overhead, profit rates, or multiplier, and that the possibility of competitive harm was thus too speculative.

§ 701.27 Exemption (b)(5).

Those records containing internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decision-making process of an agency, whether between agencies or between Department of Defense and Department of the Navy components, except as provided in § 701.27 number (b) through (e). Also exempted are records pertaining to the attorney-client privilege and the attorney work-product privilege.

(a) Examples include:

(1) Nonfactual portions of staff papers, to include after-action reports and situation reports containing staff evaluations, advice, opinions, or suggestions.

(2) Advice, suggestions, or evaluations prepared on behalf of Department of the Navy individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups formed for the purpose of obtaining advice and recommendations.

(3) Nonfactual portions of evaluations by Department of the Navy personnel of contractors and their products.

(4) Information of a speculative, tentative, or evaluative nature on proposed plans to procure, lease, or otherwise acquire and dispose of materials, real estate, facilities, or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate government functions.

(5) Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the Government's negotiating position or other commercial interests.

(6) Records that are exchanged among agency personnel and between Department of the Navy, Department of Defense, or other agencies in preparation for anticipated administrative proceeding by an agency or litigation before any federal, state, or military court, as well as records that qualify for the attorney-client privilege.

(7) Portions of official reports of inspection, reports of the Inspector Generals, audits, investigations, or surveys pertaining to safety, security, of the internal management, administration, or operation of one or more naval activities, when these records have traditionally been treated by courts as privileged against disclosure in litigation.

(8) Computer software meeting the standards of § 701.3(b)(3) which is deliberative in nature, the disclosure of which would inhibit or chill the decision making process. In that situation, the use of software must be closely examined to ensure its deliberative nature.

(9) Planning, programming, and budgetary information which is involved in the defense planning and resource allocation process.

(b) If any such intra- or interagency record or reasonably segregable portion of such record would be made available routinely through the "discovery process" (the legal process by which litigants obtain information from each other relevant to the issues in a trial or hearing) in the course of litigation with Department of the Navy, such record, should not be withheld even though discovery has not been sought in actual litigation. If, the information could only be made available through the discovery process by special order of the court based on the needs of a litigant balanced against the interests of the Department of the Navy in maintaining its confidentiality, the record or document need not be made available under this instruction. Consult with legal counsel to determine whether exemption (b)(5) material would be routinely made available through the discovery process.

(c) Intra- or interagency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely available through "discovery" and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(d) A direction or order from a superior to a subordinate contained in internal communication cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

(e) An internal communication on a decision subsequently made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

§ 701.28 Exemption (b)(6).

Information in personnel and medical files, and similar files, that if disclosed to the requester would result in a clearly unwarranted invasion of personal privacy. Release of information about an individual contained in a Privacy Act (PA) system of records that would constitute a clearly unwarranted invasion of privacy is prohibited, and could subject the releaser to civil and criminal penalties.

(a) Examples of files other than personnel and medical files containing similar personal information include:

(1) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(2) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(b) Home addresses are normally not releasable without the consent of the individuals concerned. In addition, lists of Department of the Navy military and civilian personnel's names and duty addresses who are assigned to units that are sensitive, routinely deployable, or stationed in foreign territories can constitute a clearly unwarranted invasion of personal privacy.

(1) Privacy interest. A privacy interest may exist in personal information even though the information has been disclosed at some place and time. If personal information is not freely available from sources other than the Federal Government, a privacy interest exists in its nondisclosure. The fact that the Federal Government expended funds to prepare, index and maintain records on personal information, and the fact that a requester invokes FOIA to obtain these records indicates the information is not freely available.

(2) Published telephone directories, organizational charts, rosters and similar materials for personnel assigned to units that are sensitive, routinely deployable, or stationed in foreign territories are withholdable under exemption (b)(6).

(c) This exemption is relevant to a request for information that is intimate to an individual or that possibly could have adverse effects upon that individual or his or her family if disclosed. Subpart F of this Part 701 lists several examples of non-derogatory information about the official character of a naval member or employee that can routinely be disclosed to a member of the public without constituting a clearly unwarranted invasion of personal privacy of the individual concerned.

(d) Individuals' personnel, medical, or similar files may be withheld from them or their designated legal representative only to the extent consistent with PA.

(e) When determining whether a release is "clearly unwarranted," the public interest in release must be balanced against the sensitivity of the privacy interest threatened. For example, lists of names and duty addresses of Department of the Navy personnel (civilian and military) assigned to units that are sensitive, routinely deployable, or stationed in foreign territories must be withheld because release could aid in the targeting of Department of the Navy employees and their families by terrorists. See paragraph (p) of § 701.8 regarding requests for mailing lists.

(f) When withholding information solely to protect the personal privacy of the subject of the record, information should not be withheld from that individual or from his or her designated representative. The personal privacy of others discussed in that record may constitute a basis for deleting reasonably segregable portions of the record even when providing it to the subject of the record. This exemption shall not be exercised in an attempt to protect the privacy of a deceased person but may be used to protect the privacy of the deceased person's family.

(g) Individual's personnel, medical, or similar file may be withheld from them or their designated legal representative only as consistent with SECNAVINST 5211.5C, "Personal Privacy and Rights of Individuals Regarding Records Pertaining to Themselves."

(h) A clearly unwarranted invasion of the privacy of the persons identified in a personnel, medical, or similar record may constitute a basis for deleting those reasonably segregable portions of that record, even when providing it to the subject of the record. When withholding personal information from the subject of the record, legal counsel should first be consulted.

§ 701.29 Exemption (b)(7).

Records or information compiled for law enforcement purposes, (i.e., civil, criminal, or military law, including the implementation of Executive orders or regulations issued pursuant to law). This exemption may be invoked to prevent disclosure of documents not originally created for, but later gathered for law enforcement purposes.

(a) This exemption applies, however, only to the extent that production of such law enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings (5 U.S.C. 552(b)(7)(A));

(2) Would deprive a person of the right to a fair trial or an impartial adjudication (5 U.S.C. 552(b)(7)(B));

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record (5 U.S.C. 552(b)(7)(C));

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(i) This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, naval activities shall neither confirm nor deny the existence or non-existence of the record being requested.

(ii) A refusal to "neither confirm nor deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no records" response when a record does not exist and a "refusal to neither confirm nor deny" when a record does exist will itself disclose personally private information.

(iii) Refusal to "neither confirm nor deny" should not be used when the person whose personal privacy is in jeopardy has provided the requester with a waiver of his or her privacy rights; or, the person whose personal privacy is in jeopardy is deceased, and the agency is aware of that fact.

(4) could reasonably be expected to disclose the identity of a confidential source, including a source within the DON, a state, local, or foreign agency or authority, or any private institution which furnishes information on a confidential basis; could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation (5 U.S.C. 552 (b)(7)(D));

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, if such disclosure could reasonably be expected to risk circumvention of the law (5 U.S.C. 552(b)(7)(E)); or,

(6) Could reasonably be expected to endanger the life or physical safety of any individual (5 U.S.C. 552(b)(7)(F)).

(b) Examples include:

(1) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proceedings.

(2) The identity of firms or individuals investigated for alleged irregularities involving contracting with Department of Defense or Department of the Navy when no indictment has been obtained nor any civil action filed against them by the United States.

(3) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within Department of Defense, or a lawful national security intelligence investigation conducted by an authorized agency or office within Department of Defense. National security intelligence investigations include background security investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(c) The right of individual litigants to investigate records currently available by law.

(d) When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by SECNAVINST 5211.5C, "Personal Privacy and Rights of Individuals Regarding Records Pertaining to Themselves."

(e) Exclusions. Excluded from this exemption are the following two situations:

(1) Whenever a request is made which involves access to records or information compiled for law enforcement purposes, and the investigation or proceeding involves a possible violation of criminal law where there is reason to believe that the subject of the investigation or proceeding is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, naval activities may, during only such times as those circumstances continue, treat the records or information as not subject to exemption 7. In such situation, the response to the requester will state no records were found.

(2) Whenever informant records maintained by a criminal law enforcement organization within DON under the informant's name or personal identifier, the naval activity may treat the records as not subject to exemption 7, unless the informant's status as an informant has been officially confirmed. If it is determined that the records are not subject to exemption 7, the response to the requester will state no records were found.

§ 701.30 Exemption (b)(8).

Exempts those records contained in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

§ 701.31 Exemption (b)(9).

Exempts those records containing geological and geophysical information and data, including maps, concerning wells.

Subpart C—Addresses for Department of the Navy records and locations for public inspection

§ 701.31 Addresses for requests for Department of the Navy records.

The following addresses delineate the location of commonly requested information. Members of the public are encouraged to write directly to the official having cognizance over the record(s), as it will expedite processing. When the official having custody of the record is not known, the request should be addressed to the originating official or the official having primary responsibility for the subject matter involved. The following are the most commonly requested types of records:

(a) *Audit reports.* Send requests for internal audit matters to the Auditor General of the Navy, P.O. Box 1206, Falls Church, VA 22041-0206.

(b) *Chaplain Corps.* Send requests for religious affairs matters to the Chief of Chaplains, Navy Department, Washington, DC 20370-2000.

(c) *Civilian personnel records.* (1) Send requests for personnel records of current civilian employees, or those separated from Federal employment less than 30 days, to the employing installation marked for the attention of the civilian personnel officer.

(2) Send requests for individuals formerly employed by the Department of the Navy, or separated from Federal employment for more than 30 days, to the Director, National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118.

(d) *Contractual/procurement records and related matters.* (1) Send requests for copies of Navy procurement directives and Defense Federal Acquisition Regulations (DFARs) to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(2) Send requests for copies of current contracts to the contracting officer or head of the procurement activity when known. If unknown, submit requests for Navy contracts to the Chief of Naval Operations (OP-09B30), Pentagon, Washington, DC 20350-2000 and Marine Corps contracts to the Deputy Chief of Staff for Installations and Logistics, U.S. Marine Corps, Washington, DC 20380-0001.

(e) *Courts-martial records.* (1) Send requests for records of trial by general courts-martial, or special courts-martial which resulted in a bad conduct discharge, or involving commissioned officers to the Judge Advocate General, Code 20, 200 Stovall Street, Alexandria, VA 22332-2400.

(2) Send requests for records of trial by summary courts-martial or special courts-martial not involving a bad conduct discharge to the officer having supervisory authority in the review process.

(f) *Naval Inspector General Reports.* Send requests for Navy hotline complaints and all other investigations and inspections conducted by the NAVINSGEN to the Navy Inspector General, Navy Department, Washington, DC 20370-2001. Send requests for local command Inspector General reports to the local IG office.

(g) *Investigative records.* (1) Send requests for NIS investigatory records and related matters to the Commander, Naval Investigative Service Command, Washington, DC 20388-5000.

(2) Send requests for JAG Manual investigative reports to the Judge Advocate General (Code 33), Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400.

(3) Send requests for mishap investigative reports to the Commander, Naval Safety Center (Code 50), Naval Air Station, Norfolk, VA 23511-5796.

(h) *Legal matters.* (1) General Counsel legal matters. Those relating to the acquisition, custody, management, transportation, taxation, and disposition of real and personal property, and the procurement of services, including the fiscal, budgetary, and accounting aspects thereof, excepting, however, tort claims and admiralty claims arising independently of contract, and matters relating to the naval petroleum reserves; operations of the Military Sealift Command, excepting tort and admiralty claims arising independently of contract; the Office of the Comptroller of the Navy; procurement matters in the field of patents, inventions, trademarks, copyrights, royalty payments, and similar matters, including those in the Defense Federal Acquisition Regulations (DFARs), and Navy procurement directives; and, industrial security claims and litigation should be directed to the Office of Counsel of the concerned activity. If unknown, submit to the General Counsel, Navy Department, Washington, DC 20360.

(2) Judge Advocate General legal matters. In addition to military law, all matters except those outside the jurisdiction of the General Counsel should be directed to the Judge Advocate General, 200 Stovall Street, Alexandria, VA 22332-2400.

(i) *Medical records.* (1) Send requests for inpatient medical treatment records of active duty Navy and Marine Corps personnel and their dependents to the medical treatment facility where the patient is or was treated. The records are held for two years and then retired to the National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132-5100.

(2) Send requests for outpatient medical treatment records of active duty Navy and Marine Corps personnel and their dependents to the military treatment facility attached to the command at which they are assigned.

(3) Send requests for outpatient medical records of Navy personnel separated (discharged, retired, or deceased) for less than 4 months to the Commanding Officer, Naval Reserve Personnel Center, New Orleans, LA 70149-7800. After four months, send requests to Director, National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132-5100. Send requests for dependents' outpatient records to the last medical facility where treatment was provided if within 2 years of sponsor's release/separation from the service. After the 2 years, send requests to Director, National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132-5100.

(4) Send requests for outpatient medical records of Marine Corps personnel separated (discharged, retired, or deceased) for less than four months to Director, Marine Corps Reserve Support Center, 10950 El Monte Street, Overland Park, KS 66211-1408. After four months, send requests to Director, National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132-5100. Requests for dependents' outpatient records should be addressed to the last medical facility where treatment was provided if within 2 years of active duty member's release/separation from the service. After two years, send requests to Director, National Personnel Records Center, (Military Records Center), 9700 Page Avenue, St. Louis, MO 63132-5100.

(5) When the location of a military member or dependent's medical record is not known, send requests to Chief, Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372-5120.

(6) Send requests for medical records of drilling reservists to the reserve centers where they are assigned.

(7) Send requests for medical records of inactive or retired reservists to Commanding Officer, Naval Reserve Personnel Center, New Orleans, LA 70149-7800.

(8) *Civilian employee medical records.* Send requests to the medical facility where the person is/was treated. After 2 years, send requests to Director, National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118.

(j) *Military personnel records.* (1) Send requests for records of active duty Navy personnel, or those separated (discharged, retired or deceased for up to 1 year) to Chief, Bureau of Naval Personnel, Navy Department, Washington, DC 20378-5000 and for Marine Corps personnel to Commandant of the Marine Corps, (Code MM), Navy Department, Washington, DC 20380-0001.

(2) Send requests for records of Navy and Marine Corps personnel separated (discharged, retired or deceased) for more than 1 year and inactive reservists to Director, National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132-5100.

(3) Send requests for former officer personnel separated prior to 1902 and former enlisted personnel separated prior to 1885 to Chief, Military Reference Branch, Military Archives Division, National Archives, Washington, DC 20408.

(4) Send requests for records of drilling reservists to the member's servicing personnel support unit.

(5) Send requests for records of inactive duty reservists who still have an obligation to the Navy to the Commanding Officer, Naval Reserve Personnel Center, New Orleans, LA 70149-7800.

(6) Send requests for records of separated reservists who have not retired to the Director, National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132-5100.

(7) Send requests for records of retired reservists to the Commanding Officer, Naval Reserve Personnel Center, New Orleans, LA 70149-7800.

(k) *Publications.* (1) Send requests for unclassified instructions, other than Secretary of the Navy Instructions, issued under the Department of the Navy's directives issuance system and subject index thereof (NAVPUBINST 5215.1B) to the Commanding Officer, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120-5099.

(2) Send requests for all SECNAVINSTs and OPNAVINSTs marked FOUO or classified to the CNO (OP-09B30), Pentagon, Washington, DC 20350-2000.

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(3) Send requests for Marine Corps directives, publications, and manuals to Commandant of the Marine Corps, (Code AR), Navy Department, Washington, DC 20380-0001.

(4) Send requests for military specifications, standards, and handbooks to the Commanding Officer, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120-5099.

(l) *Research records.* Send requests for records regarding basic research and grants to the activity having custody of the record. If unknown, send to the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000.

(m) *Systems commands.* (1) *Aeronautical weapon systems.* Send requests for information on aeronautical weapon systems, associated subsystems and related systems and equipment to the Commander, Naval Air Systems Command, Naval Air Systems Command Headquarters, Washington, DC 20361-0001.

(2) *Facilities.* Send requests for information on facilities and land management (design, construction, and maintenance; utilities; housing; and real estate matters) to the Commander, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332-2300.

(3) *Ships.* Send requests for information on ships and ordnance materials to the Commander, Naval Sea Systems Command, Naval Sea Systems Command Headquarters, Washington, DC 20362-5101.

(4) *Space and Naval Warfare.* Send requests for information on development technologies regarding battle force architecture and engineering, space communications, navigation, undersea and ocean surveillance, oceanographic matters, anti-submarine warfare, information transfer systems, and information management systems to the Commander, Space and Naval Warfare Systems Command, Washington, DC 20363-5100.

(5) *Supply.* Send requests for information on naval supply matters to the Commander, Naval Supply Systems Command, Naval Supply Systems Command Headquarters, Washington, DC 20376-5000 and for Marine Corps supply matters to the Commandant of the Marine Corps, (Code L), HQ USMC, Washington, DC 20380-0001.

(n) *Ships decklogs.* Send requests for ships decklogs originating after 30 June 1945 to the Director, Naval Historical Center, Ships' Histories Section, Washington Navy Yard, Washington, DC 20374. Those originated prior to 1945 are held by the Chief, Military Reference Branch, Military Archives Division, National Archives, Washington, DC 20408.

(o) *Supply catalogs.* Send requests for Navy and Federal supply catalogs, master cross-reference indexes, and related cataloging publications (cataloging handbooks such as H2-1 and H2-3 and Federal manuals for supply cataloging, such as M1-1, -2 and -3) to Superintendent of Documents, United States Government Printing Office, Washington, DC 20402-9325.

(p) *Technical reports.* Send requests for unclassified technical reports or publications to the Director, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 20402.

(q) *Unknown.* If requesters are unable to determine the official having cognizance over the requested records, they should send their request for naval matters to the Chief of Naval Operations, (Code 09B30), Pentagon, Washington, DC 20350-2000 and Marine Corps matters to Commandant of the Marine Corps, HQMC (Code MI-3), Navy Department, Washington, DC 20380-0001.

§ 701.32 Locations at which Department of the Navy records are available for public inspection.

(a) *Navy Department Library.* The Navy Department Library is located at the Washington Navy Yard, Building 44, 9th and M Streets, SE, Washington, DC 20374-0571.

(1) *Hours of Operation.* 9 a.m. to 4 p.m., Monday through Friday, except holidays.

(2) *Type of Materials Held.* The library has 130,000 volumes of information of interest to the Navy, such as naval and general history, international law and diplomacy, naval architecture and shipbuilding, naval customs and traditions, naval shore stations, yards and bases, uniforms, insignia, awards and flags, geography, travel and guide books, aviation, Navy music, etc. Also contained are approximately 5,000 rare book collections. Additionally, the library has an index by subject matter of materials held, i.e., NAVPUBINST 5215.1B, Consolidated Subject Index, a quarterly publication which lists instructions originated by Washington Headquarters organizations and Marine Corps directives system checklist of directives distributed outside Headquarters, U.S. Marine Corps. The library is equipped with desks and study carrels for library users and has specialized devices to facilitate research, such as microfilm reader/printers, copy machines, and outlets for tape recorders.

(b) *Defense Reading Room.* The Defense Reading Room is located in Room 2E165 of the Pentagon, Washington, DC 20310-1400. Due to building security, upon arrival at the Pentagon, call 695-3973 to arrange for an escort to the Reading Room.

(1) *Hours of Operation.* 8 a.m. to 4 p.m., Monday through Friday, except holidays.

(2) *Type of Materials Held.* Microfiche copies of indexes and decisional documents regarding Navy Discharge Review Board and Board for Correction of Naval Records proceedings.

(c) *Law Library of the Judge Advocate General.* The law library is located at the Hoffman Building 2, Room 9S47, 200 Stovall Street, Alexandria, VA 22332-2400.

(1) *Hours of Operation.* 9 a.m. to 4 p.m., Monday through Friday, except holidays.

(2) *Type of Materials Held.* The library has published and unpublished decisions of the Navy-Marine Corps Court of Military Review, Navy and Marine Corps directives, miscellaneous superseded manuals, and courts-martial orders and the Navy Department Bulletin.

Subpart D—Fee Guidelines

§ 701.40 FOIA Fees.

(a) *Background.* The FOIA Reform Act of 1986 brought about significant changes on how FOIA fees are assessed. Subpart D of this part highlights in detail the changes made and conforms with the Office of Management and Budget (OMB) Uniform Fee Schedule and Guidelines which were issued as a result of the Reform Act. OMB guidelines for fees reflect direct costs for search, review (in the case of commercial requesters), and duplication of documents, collection of which are permitted by FOIA.

(b) *DD Forms 2086/2086-1.* Naval activities are encouraged to utilize DD Forms 2086/2086-1 to track costs for each FOIA request processed, unless a standard processing cost can be computed for routine kinds of requests. The form is designed to track all costs and is utilized to compile fee information for the Annual FOIA Report. While not all costs can be charged to the requester for recoupment, they are nonetheless reportable as they provide Congress with an indepth look at the costs and time the Navy is expending to process FOIA requests.

(c) *Scope.* (1) The guidelines set forth below are not intended to imply that fees must be charged for providing information to the public in the routine course of business, nor are they meant as a substitute for any other schedule of fees, such as those in NAVCOMPTMAN, Vol. 3, CH-339, which does not supersede the collection of fees under FOIA.

(2) Subpart D of this part does not supersede fees chargeable under a statute specifically setting the level of fees for particular types of records. A "statute specifically providing for setting the level of fees for particular types of records" means any statute that enables a government agency, such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set and collect fees. Naval activities should ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory based fee schedule programs such as GPO or NTIS, inform requesters of the steps necessary to obtain records from those sources.

(c) *Resolution of fees.* The issue of fees should be resolved prior to a naval activity expending resources to process a FOIA request. Specifically, a requester should have an opportunity to decide whether or not to pursue a request if fees are applicable and the requester has failed to agree to pay those fees. There have been instances where naval activities have worked a costly request only to be told by the requester that it is no longer needed, since it will result in a cost. Additionally, if a requester has agreed to pay fees up to a specified amount and the costs of processing the request will exceed those fees, naval activities must resolve the issue of additional fees prior to continuing with the processing of the request.

(d) *Responses.* Naval activities shall ensure that final responses to the requester address FOIA fees.

§ 701.41 Definitions.

The following definitions set forth the parameters for determining FOIA fees:

(a) *Direct costs.* Direct costs means those expenditures a naval activity actually incurs in searching for, reviewing (in the case of commercial requesters), and duplicating documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the employee's basic rate of pay plus 16 percent of that rate to cover benefits), and the costs of operating duplicating machinery. Not included are overhead expenses such as costs of space, heating, or lighting the facility where records are stored.

(b) *Search time.* Search time includes all time spent looking for material responsive to a request and a page-by-page or line-by-line identification (if necessary) of material in the document to determine if it, or portions thereof, are responsive to the request. Naval activities should ensure that searches are efficient and completed in the least expensive manner to minimize costs to the naval activity and the requester. For example, naval activities should not do a line-by-line search when duplicating an entire document containing responsive information would be less expensive and quicker to comply with the request. Time spent reviewing documents to determine whether to apply one or more of the statutory exemptions is not search time, but review time.

(c) *Duplication.* Duplication refers to the process of making a copy of a document in response to a FOIA request. Copies can be paper copy, microfiche, audiovisual, or machine readable documentation (e.g., magnetic tape or disc). Every effort will be made to ensure that the copy provided is in a form reasonably usable by requesters. If copies are not clearly usable, the requester will be notified that their copy is the best available and the agency's master copy will be made available for review upon appointment. For duplicating of computer tapes and audiovisuals, the cost, including the operator's time shall be charged. If a naval activity estimates that assessable duplication charges may exceed $25, it shall notify the requester of the estimate, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such notice shall offer the requester the opportunity to confer with naval personnel to reformulate the request to meet his or her needs at a lower cost.

(d) *Review.* Review time refers to examining documents responsive to a FOIA request to determine whether one or more of the statutory exemptions permit withholding. It also includes processing the documents for disclosure, such as excising them for release. Review does not include time spent resolving general legal or policy issues on applying the exemptions. Charges may be assessed only for the initial review. Naval activities may not charge for reviews during an administrative appeal of an exemption already applied. Records or portions of records withheld in full under an exemption subsequently determined not to apply, may be reviewed again to determine the applicability of other exemptions not previously considered and the costs for such a subsequent review could be assessed.

(e) *Commercial use request.* A commercial use request is a request from or on behalf of one seeking information for a use or purpose that furthers the commercial, trade, or profit interest of the requester. In determining whether a requester belongs to this category, naval activities must determine the requester's use of the documents requested. Naval activities should seek additional clarification before assigning the request to a specific category when doubting the intended use of the requester, or where the use is not clear from the request itself.

(f) *Educational institution.* An educational institution is a preschool, public or private elementary or secondary school, institution of graduate higher education, institution of undergraduate higher education, institution of professional education, and an institution of vocational education operating a program(s) of scholarly research.

(g) *Non-commercial scientific institution.* A non-commercial scientific institution is operated solely for conducting scientific research the results of which are not intended to promote any particular product or industry and not operated on a "commercial" basis.

(h) *Representative of the news media.* Representative of the new media is a person actively gathering news for an entity organized and operated to publish or broadcast news to the public. "News" means information about current events or of current interest to the public. Examples of news media entities include television or radio station broadcasting to the public at large and publishers of periodicals when qualifying as disseminators of "news" who make their products available for purchase or subscription by the general public. Those examples are not all-inclusive. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services) alternative media would be included in this category. "Free-lance" journalists may be considered as working for a news organization if they can demonstrate a basis for expecting publication by that organization, even if not actually employed. Proof may be by publication contract, but naval activities may also look to the requester's past publication record in making this determination. Representatives of the news media do not include private libraries, private repositories of Government records, or middlemen such as information vendors or data brokers.

(i) *All other requesters.* All other requesters refers to persons who do not qualify as an educational institution, non-commercial scientific institution, representative of the news media, or

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commercial use requester. An example is a nonprofit organization.

§ 701.42 Application.

(a) *Commercial requesters.* When records are requested for commercial use, fees shall be assessed to recover reasonable standard charges for document search, review, and duplication. Requesters must reasonably describe the records sought. When naval activities review a request for documents for commercial use, they should assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters, are not entitled to 2 hours of free search time and 100 free pages of reproduction of documents. However, fees totaling $15 or less must be waived. Commercial requesters are not normally entitled to a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. Because use of the requested material is the exclusive determining criteria, a commercial enterprise may make a request that is not for commercial use. It is also possible that a nonprofit organization could make a request for commercial use. Such situations must be addressed on a case-by-case basis.

(b) *Educational institution requesters.* When a request is made by an educational institution whose purpose is scholarly research fees shall be limited to reasonable standard charges for document duplication (excluding charges for the first 100 pages). Requesters must reasonably describe the records being sought and must show that the request is made under the auspices of a qualifying institution and that the records are not sought for commercial use, but in furtherance of scholarly research.

(c) *Non-commercial scientific institution requesters.* When the request is made by a non-commercial scientific institution whose purpose is scientific research fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages). Requesters must reasonably describe the records sought and must show that the request is being made under the auspices of a qualifying institution and that records are not sought for commercial use, but in furtherance of scientific research.

(d) *Representatives of the news media.* (1) When the request is made by a representative of the news media, fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages). Requesters must reasonably describe the records sought.

(2) Representatives of the news media must meet the criteria defined in paragraph (h) of § 701.41, and the request must not be made for commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. For example, a request by a newspaper for records relating to an investigation of a defendant in a current criminal trial of public interest could be presumed to be a request from an entity eligible for inclusion in this category, and entitled to records at the cost of duplication alone (excluding charges for the first 100 pages).

(3) "Representative of the news media" does not include private libraries, private repositories of Government records, or middlemen, such as information vendors or data brokers.

(e) *All other requesters.* Naval activities shall charge requesters who do not fit into any of the above categories fees to recover the full direct cost of search and duplicating records, except the first 2 hours of search time and the first 100 pages of duplication shall be furnished without charge. Requesters must reasonably describe the records sought. Requests from subjects about themselves will continue to be treated under the fee provisions of 5 U.S.C. 552a, which permit fees only for duplication. Naval activities are reminded that this category of requester may be eligible for a waiver or reduction of fees if disclosure of the information is in the public interest.

§ 701.43 Fee restrictions.

(a) A naval activity may not charge fees if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. Except for requesters seeking documents for a commercial use, naval activities shall provide the first 2 hours of search time and the first 100 pages of duplication without charge. For example, for a request (other than one from a commercial requester) involving 2 hours and 10 minutes of search time and 105 pages of documents, a naval activity would recover the cost of only ten minutes of search time and five pages of duplication. If this processing cost was equal to or less than the cost to the naval activity for billing the requester and processing the fee collected (i.e., $15), no charges would result.

(b) Requesters are entitled to the first 2 hours of search and 100 pages of duplication without charge once per request. Consequently, if after completing its portion of a request, a naval activity, refers the request to another naval activity to act on their portion of the request, the referring naval activity shall inform the recipient of the amount of search time and duplication cost to date so the final Navy response will address all fees in the processing of the request. For referrals to other federal agencies or Department of Defense components, if the naval costs of processing the request are chargeable based on fee guidelines, the fees should be collected from the requester and the recipient of the referral advised of the fee status of the request. If the fees are not chargeable based on the fee guidelines, the recipient of the referral should be advised of the naval fees associated with the processing of the request.

(c) In determining the "cost of collecting a fee" consider administrative costs to the naval activity of receiving and recording a remittance, and processing the fee for deposit in the Treasury Department's special account. The Treasury's cost to handle such remittance is negligible and shall not be considered in a naval activity's determination.

(d) To determine cost, "pages" refers to standard size paper copies normally 8 1/2" x 11" or 11" x 14". Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printouts, meets the restriction.

(e) For computer searches, the first 2 free hours will be determined by the salary scale of the individual doing the computer search. For example, when the direct costs of the computer central processing unit, input-output devices, and memory capacity equal $24 (2 hours of equivalent search at the clerical level), computer costs in excess of that amount are chargeable as computer search time.

§ 701.44 Fee waivers.

(a) When the naval activity determines that waiver or reduction of fees is in the public interest, documents will be furnished without charge or at a reduced charge. It is in the public interest when furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the Department of the Navy, and is not primarily in the commercial interest of the requester.

(b) Fees shall be waived automatically for all requesters when direct costs for a FOIA request total $15 or less.

(c) Decisions to waive or reduce fees that exceed the automatic fee waiver threshold shall be made on a case-by-case basis when:

(1) Disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government."

(i) Subject of the request. Naval activities should analyze whether the subject matter of the request involves issues which will significantly contribute to the public understanding of the operations or activities of the Department of the Navy. Requests for records in the possession of the Department of the Navy originated by non-government organizations and sought for their intrinsic content rather than informative value will not likely contribute to public understanding of the operations or activities of the Department of the Navy. Examples of such records are press clippings, magazine articles, or records forwarding a particular opinion or concern from a member of the public regarding a naval activity. Similarly, disclosures of records of considerable age may or may not bear directly on the current activities of the Department of the Navy; however, the age of a particular record shall not be the sole criteria for determining the value of a document. These requests must be closely reviewed while considering the requester's stated purpose for the records and the potential for public understanding of the operations and activities of the Department of the Navy.

(ii) Informative value of the information to be disclosed. Naval activities should analyze the substantive contents of a record or portion of the record to determine whether disclosure is meaningful and will inform the public on Department of the Navy's operations or activities. While the subject of a request may contain information on operations or activities of the Department of the Navy, it may not have great potential for contributing to a meaningful understanding of these operations or activities. An example would be a heavily redacted record, with only random words, fragmented sentences, or paragraph headings. A determination as to whether that type of record will contribute to the public understanding of the operations or activities of the Department of the Navy must be weighed against the requester's intended use. Another example is disclosure of information already in the public domain or nearly identical information may add no meaningful new information on Department of the Navy operations and activities.

(iii) Contribution to the public's understanding from disclosure. Disclosure contributes to the public's understanding when disclosure will inform or have the potential to inform the public, rather than the individual requester or small segment of interested persons. The requester's identity determines whether the requester has the capability and intention to disseminate the information to the public. Assertions of plans to write a book, research a particular subject, doctoral desertion work, or indigency are insufficient. Requester must demonstrate the capacity to disclose the information in a manner informative to the general public. Requesters should describe their qualifications, nature of their research, purpose of the requested information, and intended means of dissemination to the public.

(iv) The significance of the contribution to public understanding. Naval activities must assess the significance or impact of disclosure against the current level of public knowledge or understanding prior to the disclosure. In other words, will disclosure on a current subject of wide public interest be unique in contributing previous unknown facts, thereby enhancing public knowledge, or will it basically duplicate what is already known by the general public. Naval activities shall not make value judgments whether the information is important enough to be made public.

(2) Disclosure of the information "is not primarily in the commercial interest of the requester."

(i) Existence and magnitude of a commercial interest. If the request is a commercial interest, naval activities should address the magnitude of that interest to see if the requester's commercial interest is primary, as opposed to any secondary personal or non-commercial interest. In addition to profit-making organizations, individual persons or other organizations may have a commercial interest in obtaining certain records. Where it is difficult to determine whether this is a commercial requester, naval activities may infer it from the requester's identity and circumstances of the request. The requester's commercial benefit must clearly override any personal or nonprofit interest to apply FOIA commercial standards.

(ii) The primary interest in disclosure. Once a requester's commercial interest has been determined, naval activities should then determine if disclosure would be primarily in that interest. That requires balancing the commercial interest of the request against any public benefit derived as a result of that disclosure. Where the public interest served is beyond that of the requester's commercial interest, a waiver or reduction of fees would be appropriate. Conversely, even if a significant public interest exists and the relative commercial interest of the requester is greater than the public interest, then a waiver or reduction of fees would be inappropriate. For example, while news media organizations have a commercial interest as business organizations, their role of disseminating news to the public can ordinarily be presumed to be of a primary interest. Therefore, any commercial interest is secondary to the primary interest in serving the public. Similarly, scholars writing books or engaged in other forms of academic research may recognize a commercial benefit, either directly or indirectly (through the institution they represent); however, normally such pursuits are primarily undertaken for educational purposes, and charging a fee would be inappropriate. Conversely, data brokers or others who compile government information for marketing can normally be presumed to primarily have a commercial interest.

(iii) The above factors and examples are not all inclusive. Each fee decision must be considered on a case-by-case basis the merits of the information provided in each request. When the decision to charge, reduce, or waive the fee cannot be clearly resolved, naval activities should rule in favor of the requester.

(d) The following additional circumstances describe situations where waiver or reduction of fees are most likely warranted:

(1) A record is voluntarily created to preclude an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested.

(2) A previous denial of records is reversed in total, or in part, and the assessable costs are not substantial (e.g., $15 - $30).

§ 701.45 Fee assessment.

(a) Fees may not be used to discourage requesters. FOIA fees are limited to standard charges for direct document search, review (in the case of commercial requesters), and duplication.

(b) To be responsive as possible to FOIA requests while minimizing unwarranted costs to the taxpayer, naval activities shall:

(1) Analyze each request to determine the category of the requester. If the

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naval activity's determination of the category of the requester is different than that claimed by the requester, the naval activity will:

(i) Notify the requester that additional justification should be provided to support the category claimed, and that a search for responsive records will not be initiated until agreement on the category of the requester. Absent further category justification from the requester and a reasonable period of time (i.e., 30 calendar days), the naval activity shall render a final category determination and notify the requester of the determination, including administrative appeal rights.

(ii) Advise the requester that a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs for the category determined by the naval activity.

(2) Requesters must submit a fee declaration appropriate for these categories:

(i) Commercial requesters must indicate a willingness to pay all search, review, and duplication costs.

(ii) Educational or non-commercial scientific institution or news media representatives. Requesters must indicate a willingness to pay duplication charges in excess of 100 pages, if more than 100 pages of records are desired.

(iii) All others. Requesters must indicate a willingness to pay assessable search and duplication costs if more than 2 hours of search effort or 100 pages of records are desired and the resultant fees will exceed the $15 fee waiver threshold.

(3) If the above conditions are not met, then the request need not be processed and the requester shall be so informed within 10 working days.

(4) As described above, naval activities must be prepared to provide an estimate of assessable fees to the requester. While searches vary among naval activities and an estimate is often difficult prior to an actual search, requesters desiring estimates are entitled to them before committing to a willingness to pay. Should naval activity costs exceed the amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the amount agreed to shall not be charged without the requester's agreement.

(5) A naval activity may not require advance payment of any fee (i.e., payment before work is commenced or continued on a request) unless the requester previously failed to timely pay fees or the agency determined that the fee exceeds $250. A timely fashion is 30 calendar days from the date of billing by the naval activity.

(6) Where a naval activity estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250, the naval activity should notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payments, or require an advance payment of an amount up to the full estimated charges for requesters without a history of payment.

(7) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 calendar days from the date of the billing), the naval activity may require the requester to pay the full amount owed, plus any applicable interest, or demonstrate that the fee had been paid, and to make an advance payment of the full amount of the estimated fee before the naval activity begins to process a new or pending request. Interest will be at the rate prescribed in 31 U.S.C. 3717 and confirmed with respective accounting and finance offices.

(8) After all work is completed on a request and the documents are ready for release, naval activities may request payment prior to forwarding the documents if there is no payment history on the requester or if the requester has previously failed to pay a fee in a timely fashion (i.e., within 30 calendar days of the billing). If the requester fails to pay in a timely fashion, paragraph (b)(7) of § 701.45 applies. Naval activities may not hold documents ready for release pending payment from requesters with a history of prompt payment.

(9) When naval activities act under § 701.45 number (b)(1) through (7), FOIA time limits (10 working days from receipt of initial requests and 20 working days from receipt of appeals, plus permissible extensions of time) begin after the naval activity has received a willingness to pay fees or fee payments, if appropriate.

(10) Naval activities may charge for time spent in searching for records, even if that search fails to locate records responsive to the request. Naval activities may also charge search and review (in the case of commercial requesters) time if records located are determined to be exempt from disclosure. In practice, if the naval activity estimates that search charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance a willingness to pay fees up to the estimated amount. Such notice shall offer the requester the opportunity to confer with the naval activity with the object of reformulating the request to meet his or her needs at a lower cost.

§ 701.46 Aggregating requests.

Except for commercial requesters, a naval activity may not charge for the first 2 hours of search time or for the first 100 pages of reproduction. A requester may not file multiple requests at the same time each seeking portions of a document or documents to avoid payment of fees. When a naval activity reasonably believes that a requester or, a group of requesters acting in concert is attempting to break a request into a series of requests to evade fees the naval activity may aggregate the requests and charge accordingly. In determining whether it is reasonable to aggregate the requests, consider the time period of the requests. For example, it would be reasonable to presume that multiple requests of this type made within a 30-day period had been made to avoid fees. It is harder to make that presumption for requests over a longer time period. Before aggregating requests from more than one requester, naval activities must have a concrete basis to conclude that the requesters are acting in concert to avoid payment of fees. Naval activities may not aggregate multiple requests from one requester on unrelated subjects.

§ 701.47 Effect of the Debt Collection Act of 1982 (Pub. L. 97-365).

The Debt Collection Act of 1982 (Pub. L. 97-365) provides for a minimum annual rate of interest on overdue debts to the Federal Government. Naval activities may charge an interest penalty for fees outstanding 30 days from the date of billing (the first demand notice). The interest rate shall be as prescribed in 31 U.S.C. 3717. Naval activities should verify the current interest rate with respective accounting and finance offices. After one demand letter has been sent and 30 calendar days have lapsed with no payment, naval activities may submit the debt to the respective accounting and finance offices for collection under the Debt Collection Act of 1982.

§ 701.48 Computation of fees.

The fee schedule in Subpart D of this part shall be used to compute search, review (in the case of commercial requesters), and duplication costs for processing FOIA requests. Costs shall be computed on time actually spent. Time-based and dollar-based minimum charges for search, review (in the case of commercial requesters), and duplication are not authorized.

§ 701.49 Collection of fees.

Collect FOIA fees when providing the documents to the requester when the requester specifically states that costs are acceptable or acceptable up to a specified amount. Collection may not be made in advance unless the requester has failed to pay previously assessed fees within 30 calendar days from the date of the billing by the naval activity, or the naval activity determines the fee will be in excess of $250.

§ 701.50 Search time costs.

The following schedules outline authorized fees:

(a) *Manual search.*

Type	Grade	Hourly Rate
Clerical	E9/GS8 and below	$12
Professional	01-06/GS9-GS/GM15	25
Executive	07/GS/GM16/ES1 and above.	45

(b) *Computer search.* Computer search is based on the direct cost of the central processing unit, input-output devices, and memory capacity of the computer configuration. The cost of computer search is based on the computer operator/programmer's time in determining how to conduct and subsequently executing the search and is charged at the rate of a manual search.

(c) *Duplication costs.*

Type	Cost per Page
Pre-printed material (i.e., unaltered directives, publications)	$.02
Office copy (i.e., xeroxed copies)	.15
Microfiche	.25
Computer copies (tapes or re-prints)	Actual cost [1]

[1] This means the cost of duplicating the tape or printout, which includes the operator's time and cost of the tape.

(d) *Review time (only applies in the case of commercial requesters).*

Type	Grade	Hourly Rate
Clerical	E9/GS8 and below	$12
Professional	01-06/GS9-GS/GM15	25
Executive	07/GS/GM16/ES1 and above.	45

(e) *Audiovisual documentary materials.* Compute search costs as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

(f) *Other records.* Compute direct search and duplication cost for any record not described above as described for audiovisual documentary material.

(g) *Costs for special services.* Complying with requests for special services is at the discretion of the naval activity. FOIA and its fee structure do not cover these kinds of services. Naval activities may recover the costs of special services asked for by the requester after agreement has been obtained from the requester to pay for one or more of the following services:

(1) Certifying that records are true copies.

(2) Sending records by special methods such as express mail, etc.

§ 701.51 FOIA fee remittance/receipt controls.

(a) Naval activities shall implement procedures to track FOIA fee remittances. At a minimum, the tracking system should include the name of the requester, company (if applicable), amount of fee charged (identify by total and breakdown, i.e., $250: $100 search, $50.00 review, $100 reproduction), date and serial number of correspondence to the requester which seeks the fee remittance, date remittance received, number of check, date sent to local disbursing office, and copy of NAVCOMPT Form 2277. This tracking system can be manual or automated and should be designed to identify outstanding FOIA remittances so that follow-up letters can be sent advising the requester that his/her account requires prompt action.

(b) Naval activities shall advise requesters to make their check/money order payable to the Treasurer of the United States. Upon receipt of a check/money order, the receiving activity shall submit a NAVCOMPT Form 2277, Voucher for Disbursement and/or Collection, and the check/money order to the local disbursing office for processing. "FOIA Receipt Account Number 3210" shall be annotated on the NAVCOMPT Form 2277 when processing all FOIA fees, except those received by naval industrially-funded (NIF) and non-appropriated funded (NAF) activities.

(c) Remittances received by NIF activities shall be made payable to the activity and the requester should indicate on the check "FOIA Remittance." The remittance shall be deposited in the NIF activity account.

(d) Remittances received by NAF activities shall be made payable to the activity and the requester should indicate on the check "FOIA Remittance." The remittance shall be deposited in the NAF activity account.

§ 701.52 Technical data fees.

(a) *General.* Technical data, recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). This term does not include computer software or data incidental to contract administration, such as financial and/or management information. Technical data requiring release under FOIA, shall be released after the requester pays all reasonable costs for search, duplication, and review of the records to be released.

(b) *Definition.* Technical data means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). This term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(c) *Retention of funds.* Naval activities shall retain fees received from releasing technical data. The funds shall be available for the same purpose and the same time period as the appropriation from which the costs were incurred in complying with the request. Reasonable costs are the full costs to the Government of rendering the service, or fair market value of the service, whichever is greater. Fair market value shall be determined by commercial rates in the local geographical area. In the absence of a known market value, charges shall be based on recovery of full costs to the Government. The full cost includes all direct and indirect costs to conduct the search and to duplicate records responsive to the request. This cost is different from the direct costs allowable under the FOIA.

(d) *Waiver.* Naval activities shall waive the payment of costs for technical data when greater than the costs required for release of this same information under FOIA, if:

(1) The request is made by a United States citizen or a United States corporation who certifies that the technical data requested is needed to submit an offer, or determine capability

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of submitting an offer. The technical data must relate to the product which will be provided to the United States or a contractor with the United States. However, naval activities may require the citizen or corporation to pay a deposit of not more than the cost of complying with the request, which will be refunded upon submission of an offer by the citizen or corporation;

(2) The release of technical data is requested to comply with an international agreement; or,

(3) The naval activity determines that waiver is in the interest of the United States.

(e) *Fee rates.* (1) Search time is computed as follows:

(i) Manual Search.

Type	Grade	Hourly Rate
Clerical (Minimum Charge)	E9/GS8 and below	$13.25 8.30

Professional and Executive hourly rate of fees are established at actual hourly rate prior to search. A minimum charge will be established at 1/2-hourly rates.

(ii) Computer search is the total cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The wage for the computer analyst/operator determining how to conduct and subsequently executing the search will be recorded as part of the computer search and is at the same rate of the manual search scale.

(2) Duplication costs are as follows:

Type	Cost
Aerial photographs, specifications, permits, charts, blueprints, and other technical documents	$2.50 each
Engineering data (microfilm):	
Aperture cards:	
Silver duplicate negative (When keypunched and verified)	$.75 per card .85 per card
Diazo duplicate negative (When keypunched and verified)	.65 per card .75 per card
35mm roll film	$.50 per frame
16mm roll film	.45 per frame
Paper prints (engineering drawings)	$1.50 each
Paper reprints of microfilm indices	.10 each

(3) Review time is computed as follows:

Type	Grade	Hourly Rate
Clerical (Minimum Charge)	E9/GS8 and below	$13.25 8.30

Professional and Executive hourly rate of fees are established at actual hourly rate prior to review. A minimum charge will be established at 1/2-hourly rates.

§ 701.53 Other technical data records.

Charges for services not specifically provided above are at the following rates:

Type	Cost
Minimum charge for office copy (up to six images)	$3.50
Each additional image	.10
Each typewritten page	3.50
Certification and validation with seal	5.20
Hand-drawn plots and sketches, each hour or fraction thereof	12.00

Dated: December 18, 1991.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CCGD13 91-06]

Drawbridge Operation Regulations; Umpqua River, OR

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Oregon Department of Transportation (ORDOT), the Coast Guard is changing the regulations governing the U.S. 101 highway bridge across the Umpqua River, mile 11.1, at Reedsport, Oregon. This change requires that at least two hour's advance notice be given for opening the drawspan of this bridge at all times for the passage of vessels. This amendment is being made because of a marked decrease in requests for bridge openings. This regulation change should relieve the bridge owner of the burden of having a person constantly available to open the draw while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation change becomes effective on January 23, 1992.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch (Telephone: (206) 553–5864).

SUPPLEMENTARY INFORMATION: On September 23, 1991, the Coast Guard published a proposed rule (56 FR 47932) concerning the amendment. The Commander, Thirteenth Coast Guard District, also published the proposal as a public notice dated September 30, 1991. In each notice interested persons were given until November 7, 1991, to submit comments.

Drafting Information

The drafters of this notice are: Austin Pratt, project officer, and Lieutenant Deborah K. Schram, project attorney.

Discussion of the Comments

No objections to the proposed rule change were received.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

The regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this rule change is expected to be so minimal that a full regulatory evaluation is unnecessary. Navigation and marine-related businesses would not be significantly affected by this action because the present trend of infrequent drawspan openings is expected to continue into the future. Since the economic impact of this regulation change is expected to be minimal, the Coast Guard certifies that it will not have a significant impact on a substantial number of small entities.

Environmental Impact

This action has been reviewed by the Coast Guard and has been determined to be categorically excluded from further environmental documentation in accordance with paragraph 2.B.2.g.(5) of the NEPA Implementing Procedures COMDTINST M16475.1B. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of 33, Code of Federal Regulations is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.893 is amended by revising paragraph (a) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.893 Umpqua River

(a) The draw of the US 101 Bridge, mile 11.1, at Reedsport, Oregon, shall open on signal if at least two hours notice is given.

* * * * *

Dated: December 9, 1991.

J.E. Vorbach,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 91–30701 Filed 12–23–91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Port Arthur, Texas Regulation 90-03]

Safety Zone Regulations; Calcasieu Channel and Industrial Canal, Calcasieu River, Lake Charles, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the existing safety zone in the turning basin of the Industrial Canal, Calcasieu River, Lake Charles, LA. The safety zone is necessary to safeguard vessels, personnel and property against the accidental release of liquefied natural gas (LNG) at the Trunkline LNG Terminal. Revising the existing safety zone will accurately reflect the hazardous areas of the turning basin and ensure public safety while allowing the public to continue to fish in one of the prime fishing areas in the Calcasieu River.

EFFECTIVE DATE: January 23, 1992.

FOR FURTHER INFORMATION CONTACT: LCDR Gilbert Kanazawa, Supervisor, MSD Lake Charles, LA at (318) 433–3765 or FTS: 687–7226.

SUPPLEMENTARY INFORMATION: On August 2, 1991, the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (Vol. 56 No. 149 FR page 37052). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of these regulations are Lieutenant Commander Gilbert Kanazawa and Lieutenant Junior Grade Gary Messmer, project officers for the Captain of the Port and Lieutenant Wilson, Project Attorney, Eighth Coast Guard District Legal Office, New Orleans, Louisiana.

Discussion of Comments

The Coast Guard did not receive any comments on the revision of the safety zone.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The users of the Port of Lake Charles fall into four main categories; Commercial Shipping, Commercial Fishing Vessels, Small Passenger Boats and Pleasure Boats. Since this zone is actually reducing the area encompassed in an already existing safety zone, there should be no adverse impact on harbor use. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Vessels, Waterways.

Final Regulations

In consideration of the foregoing part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. Section 165.805, paragraph (a) is revised to read as follows:

§ 165.805 Calcasieu Channel and Industrial Canal, Calcasieu River, Lake Charles, LA

(a) The waters and waterfront facility located within the area described by the following boundaries constitutes a safety zone:

(1) When a Liquefied Natural Gas (LNG) vessel is moored at Trunkline LNG facility: Beginning at the west side property line at position 30°06'38"N, 93°17'34"W, a line extending in an eastward direction and 50 feet from shore to a point 50 feet west of mooring dolphin #1, then due south to a line running in an eastward direction and 50 feet south of the moored LNG vessel to a line running due north to a point 50 feet east of mooring dolphin #13; and then a line extending in an eastward direction and 50 feet from shore to the end of the turning basin.

(2) When an LNG vessel is not moored at the Trunkline LNG facility: Beginning at the west side property line at position 30°06'38"N, 93°17'34"W, a line extending in an eastward direction and 50 feet from shore to a point 50 feet west of mooring dolphin #1, then a continuous uniform line extending 50 feet outside of all facility docks and structures to a point 50 feet east of mooring dolphin #13; and then a line extending in an eastward direction and 50 feet from shore to the end of the turning basin.

* * * * *

Dated: 12 December 1991.

J.L. Robinson,

Captain, U.S. Coast Guard, Captain of the Port, Port Arthur, TX.

[FR Doc. 91–30702 Filed 12–23–91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[NC-053; FRL-4066-2]

Designation of Areas for Air Quality Planning Purposes; North Carolina: Redefinition of Attainment Areas From Statewide to County-by-County

AGENCY: Environmental Protection Agency (EPA).

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ACTION: Final rule.

SUMMARY: EPA today approves revisions to 40 CFR part 81 for North Carolina. EPA today is changing the description of NO_2 attainment areas in the State of North Carolina at the request of the Department of Environment, Health and Natural Resources. Attainment status designations included in 40 CFR 81.334 will now be listed on a county-by-county basis rather than under the generally inclusive term "Statewide". This change is anticipated to make it easier for North Carolina to track increment consumption in connection with prevention of significant deterioration of air quality.

EFFECTIVE DATE: This action will be effective February 24, 1992, unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the material submitted by North Carolina may be examined during normal business hours at the following locations:

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365;

Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 North Salisbury St., Raleigh, North Carolina 27604.

FOR FURTHER INFORMATION CONTACT: Benjamin Franco of the EPA Region IV Air Programs Branch at 404–347–2864 (FTS–257–2864) and at the above address.

SUPPLEMENTARY INFORMATION: On August 13, 1991, the North Carolina Department of Environment, Health and Natural Resources submitted a request for an amendment to 40 CFR 81.334. This amendment will provide a listing for NO_2 attainment status on a county-by-county basis rather than under the generally inclusive term "Statewide". This redefinition of attainment areas will make it easier for North Carolina to track increment consumption in connection with the prevention of significant deterioration of air quality. Prior to this redefinition, the first permit application filed within "Statewide" could trigger a baseline air quality determination for the entire state. Listing attainment areas on a county-by-county basis in 40 CFR 81.334 will allow baseline dates to be triggered separately for individual counties and will therefore, not restrict growth unnecessarily.

Since this notice simply redefines attainment areas on a county-by-county basis, no areas are being redesignated by this action.

Final Action

EPA is today approving the revision to 40 CFR 81.334. This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective February 24, 1992. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 24, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2).]

Under 5 U.S.C. 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table (3) action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). The Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: December 9, 1991.

Patrick M. Tobin,

Acting Regional Administrator.

Part 81 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart C—Section 107 Attainment Status Designations

2. Section 81.334, is amended by revising the attainment status designation table "North Carolina—NO_2" to read as follows:

§ 81.334 North Carolina.

* * * * *

NORTH CAROLINA—NO_2

Designated areas	Does not meet primary standards	Cannot be classified or better than national standards
Alamance County		X
Alexander County		X
Alleghany County		X
Anson County		X
Ashe County		X
Avery County		X
Beaufort County		X
Bertie County		X
Bladen County		X
Brunswick County.		X
Buncombe County.		X
Burke County		X
Cabarrus County		X
Caldwell County		X
Camden County		X
Carteret County		X
Caswell County		X
Catawba County		X
Chatham County		X
Cherokee County		X
Chowan County		X
Clay County		X
Cleveland County		X
Columbus County		X
Craven County		X
Cumberland County.		X
Currituck County		X
Dare County		X
Davidson County		X
Davie County		X
Duplin County		X
Durham County		X
Edgecombe County.		X
Forsyth County		X
Franklin County		X
Gaston County		X
Gates County		X
Graham County		X
Granville County		X
Greene County		X
Guilford County		X
Halifax County		X
Harnett County		X

NORTH CAROLINA—NO_2—Continued

Designated areas	Does not meet primary standards	Cannot be classified or better than national standards
Haywood County		X
Henderson County.		X
Hertford County		X
Hoke County		X
Hyde County		X
Iredell County		X
Jackson County		X
Jones County		X
Lee County		X
Lenoir County		X
Lincoln County		X
McDowell County		X
Macon County		X
Madison County		X
Martin County		X
Mecklenburg County.		X
Mitchell County		X
Montgomery County.		X
Moore County		X
Nash County		X
New Hanover County.		X
Northampton County.		X
Onslow County		X
Orange County		X
Pamlico County		X
Pasquotank County.		X
Pender County		X
Perquimans County.		X
Person County		X
Pitt County		X
Polk County		X
Randolph County		X
Richmond County		X
Robeson County		X
Rockingham County.		X
Rowan County		X
Rutherford County.		X
Sampson County		X
Scotland County		X
Stanly County		X
Stokes County		X
Surry County		X
Swain County		X
Transylvania County.		X
Tyrrell County		X
Union County		X
Vance County		X
Wake County		X
Warren County		X
Washington County.		X
Watauga County		X
Wayne County		X
Wilkes County		X
Wilson County		X

[FR Doc. 91–30584 Filed 12–23–91; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 300

[FRL 4037–4]

National Oil and Hazardous Substances Pollution Contingency Plan; Deletion of Sites From the National Priorities List; Five-Year Reviews

AGENCY: Environmental Protection Agency.

ACTION: Notice of policy change.

SUMMARY: The Environmental Protection Agency (EPA) is today revising its policy with respect to the deletion of sites from the National Priorities List (NPL) under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA). Agency policy had linked deletion from the NPL with the "five-year reviews" conducted pursuant to section 121(c) of CERCLA. EPA has now determined that the two processes (deletion and five-year review) should be managed separately.

EFFECTIVE DATE: December 24, 1991.

FOR FURTHER INFORMATION CONTACT: Murray Newton, Chief, State and Local Coordination Branch, Office of Emergency and Remedial Response, OS–22OW, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 at (703) 308–8380 or the RCRA/Superfund Hotline from 8:30 a.m. to 7:30 p.m., Monday–Friday, toll free at 1–(800)–424–9346 or in Washington, DC at 382–3000.

SUPPLEMENTARY INFORMATION: EPA initiates the deletion process for a National Priorities List (NPL) site only after the Agency determines that no further response action is necessary (other than operation and maintenance of the remedy). Moreover, although the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), provides neither criteria nor a procedure for deletions, EPA has imposed upon itself a careful and fully documented process for deleting sites from the NPL. See National Contingency Plan (NCP), 40 CFR 300.425(e).

CERCLA section 121(c) mandates that the Administrator review the remedial action taken at certain sites "no less often than each 5 years after initiation of such action to assure that human health and the environment are being protected by the remedial action being implemented." This "five-year review" requirement is separate from, and unaffected by, the deletion process; that is, since section 121(c) makes no reference to either the NPL or to deletion from it, sites requiring five-year review must have that review regardless of whether they are still on the NPL.

In early 1989, the Administrator directed a comprehensive review of the Superfund program, subsequently published in June 1989 as "A Management Review of the Superfund Program," also referred to as the Superfund Management Review (SMR). The SMR included many recommendations, one of which was that EPA modify its deletion process such that no site would be deleted from the NPL until at least one "five-year review" had been conducted at the site following final cleanup. This recommendation was integrated into Agency policy in the preamble to the NCP (55 FR 8666, 8699; March 8, 1990).

Subsequent experience and analysis, however, have shown EPA that tying these two independent processes (five-year review and NPL deletion) is unnecessary and potentially confusing. The policy requires EPA to retain sites on the NPL which are otherwise eligible to be deleted, but which stay on the list solely because they await a five-year review after completion of response action. EPA is concerned that keeping on the NPL sites at which no further response action is necessary invites confusion about the meaning and importance of the NPL. It is also unnecessary in terms of ensuring protectiveness. Where there is "a significant release" at a deleted site, the site may be restored to the NPL "without application of the hazard ranking system." See CERCLA section 105(e) and 40 CFR 300.425(e)(3) (55 FR 8848; March 8, 1990). Consequently, the Agency has determined that the public is better served by de-linking these two processes.

The Agency's decision to return to the previous policy in no way compromises or diminishes the protection CERCLA affords the public health and environment, since all sites requiring five-year reviews will receive them. Further, in order to ensure that the public knows which sites require five-year reviews, EPA intends to create and publish a "monitoring list" which identifies such sites regardless of whether they are on the NPL or have been remediated and deleted from it.

Accordingly, effective immediately, EPA may delete sites from the NPL when applicable deletion criteria have been satisfied, and will not retain sites in the NPL solely because they are subject to five-year review.

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Dated: November 22, 1991.

William K. Reilly,

Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 91-30582 Filed 12-23-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6917

[OR-943-4214-10; GP2-018; ORE-03644]

Partial Revocation of the Bureau of Land Management Order Dated January 24, 1956; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Bureau of Land Management order insofar as it affects 40 acres of public land withdrawn for Bureau of Reclamation's Rogue River Basin Project. The land is no longer needed for reclamation purposes. The revocation is needed to permit disposal of the land through land exchange under section 206 of the Federal Land Policy and Management Act of 1976. This action will open the land to surface entry and mining subject to other segregations of record. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: January 23, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Bureau of Land Management Order dated January 24, 1956, which withdrew public land for reclamation project purposes, is hereby revoked insofar as it affects the following described land:

Willamette Meridian

T. 35 S., R. 6 W.,
Sec. 14, NW¼SE¼.

The area described contains 40 acres in Josephine County.

2. At 8:30 a.m., on January 23, 1992, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on January 23, 1992 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 8:30 a.m., on January 23, 1992, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: December 13, 1991.

Dave O' Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-30650 Filed 12-23-91; 8:45 am]

BILLING CODE 4310-33-M

43 CFR Public Land Order 6918

[OR-943-4214-10; GP2-038; OR-44954]

Public Land Order No. 6880, Correction; Withdrawal of National Forest System Lands for Pringle Falls Experimental Forest and Research Natural Area; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will correct the error in the land description in Public Land Order No. 6880.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

The land description in Public Land Order No. 6880, 56 FR 49416, September 30, 1991, is hereby corrected as follows:

The land description reads "T. 21 SW., R. 9 E.," and is hereby corrected to read "T. 21 S., R. 9 E.,".

Dated: December 13, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-30654 Filed 12-23-91; 8:45 am]

BILLING CODE 4310-33-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket No. 90-132, FCC No. 91-390]

Competition in the Interstate Interexchange Marketplace

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Memorandum Opinion and Order revises the cut-off date for the grandfathering of Tariff 12 options with inbound service to include Tariff 12 options filed before September 1, 1991. The effect of this order will be to benefit consumers who had completed or substantially completed negotiations for Tariff 12 options with inbound service prior to August 1, 1991.

EFFECTIVE DATE: November 25, 1991.

FOR FURTHER INFORMATION CONTACT: Andy Lachance, (202) 632-4047, Policy and Program Planning Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: On August 1, 1991, we adopted Report and Order in this docket that modified certain of our regulations and policies to reflect the growth of competition in the interstate interexchange marketplace (56 FR 55235, October 25, 1991). We there found, *inter alia*, that the lack of 800 number portability is an impediment to full competition in 800 services and that AT&T may have the ability to leverage market power in 800 or inbound services in order to gain an advantage in the provision of other services. Accordingly, we prohibited AT&T from including in contract-based tariffs and future Tariff 12 options any 800 service or inbound component. However, in light of our order in the 800 access proceeding limiting the lack of 800 number portability to approximately 18 months, and in order to avoid serious customer dislocation, we decided to grandfather Tariff 12 options on file as of August 1, 1991, and to require AT&T to permit customers to terminate these packages without termination liabilities at the time that 800 numbers became portable.

In the week following our adoption of the Report and Order, AT&T filed 15 additional Tariff 12 options. Each of these options contains an inbound component in violation of the prohibition adopted in our Report and Order.

Upon reconsideration, we find that the public interest will be served by revising the grandfathering date to include Tariff 12 options that contain inbound service filed before September 1, 1991. In adopting August 1, 1991, as the cut-off date for the grandfathering provision in the Report and Order, we sought to establish a date that would not be arbitrary by requiring us to evaluate the status of negotiations or the relative burdens of renegotiations for Tariff 12 options that were not filed by that date. We were also concerned that allowing AT&T a window of opportunity in which to negotiate and file additional Tariff 12 options with inbound components would undermine the effectiveness of our bundling restriction.

We are now in a better position to evaluate the effect that grandfathering options filed during a limited period after August 1 will have on the policies we adopted in the Report and Order. In order for AT&T to have filed these options within thirty days after the adopting of the Report and Order, we believe that the lengthy negotiations typically required to develop such options would have to have been completed or substantially completed by August 1, 1991. Under the circumstances, denying these customers the opportunity to reap the fruits of their negotiations would be unduly harsh and unfair. Additionally, we conclude that a limited extension of the grandfathering date, which would allow only this small number of additional Tariff 12 options to become effective, is consistent with our goal of avoiding customer disruption and will not significantly affect competition in the marketplace or undermine the policy concerns underlying the bundling restrictions.

Ordering clause

1. Accordingly, it is ordered that, pursuant to authority contained in section 4 of the Communications Act of 1934, as amended, 47 U.S.C. 154, and § 1.108 of the Commissions Rules, 47 CFR 1.108, the August 1, 1991 cut-off date of grandfathering provision of the Report and Order is hereby extended, effective immediately upon release of this Memorandum Option and Order, to include Tariff 12 options filed before September 1, 1991.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-30644 Filed 12-23-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 911194-1294]

Summer Flounder Fishery; Corrections

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; corrections.

SUMMARY: This document corrects errors in the emergency interim rule for the Fishery Management Plan for the Summer Flounder Fishery, which was published December 5, 1991 (56 FR 63685).

EFFECTIVE DATE: December 2, 1991.

FOR FURTHER INFORMATION CONTACT: Richard G. Seamans, Jr., Senior Resource Policy Analyst, 508-281-9244, or Phil Williams, NMFS, National Sea Turtle Coordinator, 301-713-2322.

In rule document 91-29179 beginning on page 63685, in the issue of Thursday, December 5, 1991, make the following corrections:

1. The **SUMMARY**, on page 63685, in the third column, on the 27th line from the top of the page, insert the words "off North Carolina" after the words "of the fishery".

2. In the **SUPPLEMENTARY INFORMATION** section, on page 63688, in the third column, on the first line, insert the words "off North Carolina" after the word "waters".

3. In the **SUPPLEMENTARY INFORMATION** section, on page 63688, in the third column, on the tenth line from the bottom of the page, insert the words "the Council and" after the words "consultation with".

4. In the **SUPPLEMENTARY INFORMATION** section, on page 63689, in the first column, on the 28th line from the bottom of the page, insert the words "the Council and" after the word "with"; and on the 12th line from the bottom of the page, insert the words "the Council and" after the words "consult with".

5. In the **SUPPLEMENTARY INFORMATION** section, on page 63689, in the second column, on the seventh line from the top of the page, insert the words "the Council and" after the words "consult with"; and on the 21st line from the top of the page, insert the words "the Council and" after the words "consult with".

§ 625.24 [Corrected]

6. In the regulatory text, on page 63691, in the second column, in § 625.24(b), in the sixth line, insert the following: "or, if the net is not long enough for such a measurement, the terminal ⅓ of the net, measured from the terminus of the codend to the head rope," after the word "net".

§ 625.26 [Corrected]

7. In the regulatory text, on page 63691, in the third column, in § 625.26(c)(1), after the second sentence, insert a new sentence to read: "For purposes of this section, this area is referred to as Federal waters."

§ 625.26 [Corrected]

8. On the same page, in the same column, in § 625.26(c)(2), in the third line, insert the words "the Council and" after the words "after consultation with".

§ 625.26 [Corrected]

9. In the regulatory text, on page 63692, in the first column, in § 625.26(c)(2), in the 14th line from the top of the page, insert the words "of Federal waters" after the word "area".

§ 625.26 [Corrected]

10. On the same page, in the same column, in § 625.26(d), in the fifth line, insert the words "the Council and" before the words "the Director".

§ 625.26 [Corrected]

11. In the regulatory text, on page 63692, in the second column, in § 625.26(e), in the fifth line, insert the words "the Council and" after the words "consultation with";

12. On the same page, in the same column, in § 625.26(f)(1), in the fourth line, insert the words "the Council and" after the words "after consultation with".

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91-30552 Filed 12-19-91; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 658

[Docket No. 91930-1305]

RIN 0648-AE34

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS amends the regulations that implement the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) to modify, temporarily, the boundary of the Tortugas shrimp sanctuary to reduce the

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area closed to trawl fishing. This action enables fishermen to harvest marketable-sized shrimp during specified periods from three small areas that otherwise would be closed.

EFFECTIVE DATES: April 11, 1992, through September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813–893–3161.

SUPPLEMENTARY INFORMATION: The shrimp fishery managed under the FMP and its implementing regulations at 50 CFR part 658, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Under the FMP, the Director, Southeast Region, NMFS (Regional Director), may modify by no more than 10 percent the geographical scope of the Tortugas shrimp sanctuary specified at 50 CFR 658.22, after (1) consultation with the Gulf of Mexico Fishery Management Council (Council), (2) consideration of specified criteria, and (3) determination that benefits may be increased or adverse impacts decreased by the modification.

The Regional Director, after consulting with the Council and considering the criteria for modifying the sanctuary, determined that small portions of the sanctuary that periodically contain harvestable shrimp should be opened for varying lengths of time during the period April 11, 1992, through September 30, 1992. The areas to be opened are less than 10 percent of the geographical scope of the sanctuary. These openings will increase the benefits for fishermen by optimizing the yield of shrimp. This temporary geographic modification is consistent with Objective 1 of the FMP because it provides temporary economic relief to the stressed fishermen while continuing to optimize the yield of shrimp recruited to the fishery.

The full rationale for opening these small portions of the sanctuary and the recent history of previous openings were discussed in the proposed rule (56 FR 50844, October 9, 1991) and are not repeated here. No comments were received on the proposed rule. The proposed rule is adopted as final without change.

Endangered Species Impacts

A consultation conducted in accordance with section 7 of the Endangered Species Act for similar openings of the Torgugas shrimp sanctuary in 1991 concluded that this action would not adversely affect the populations of endangered or threatened species such as sea turtles. That conclusion remains valid.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that this rule is consistent with the national standards and other provisions of the Magnuson Act and other applicable law.

The Council prepared a regulatory impact review (RIR) for this rule. Based on the RIR, the Assistant Administrator determined that the rule is not major under E.O. 12291.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities because the geographical area affected by this rule is small and, as a result, the number of shrimp trawlers affected in the Gulf-wide fishery is not substantial. As a result, a regulatory flexibility analysis was not prepared.

The Council prepared an environmental assessment (EA) for this rule and, based on the EA, the Assistant Administrator concluded that there will be no significant impact on the human environment as a rule of this rule.

Amendment 1 to the FMP authorizes the Regional Director, under specified conditions and restrictions, to modify the boundaries of the Tortugas shrimp sanctuary, as is being done in this rule. When Amendment 1 was approved, a determination was made with such modifications would be consistent to the maximum extent practicable with the approved coastal zone management program of Florida, the only state affected by this rule. Consequently, a new consistency determination under the Coastal Zone Management Act is not required.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 658

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 18, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 658 is amended as follows:

PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 658 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 658.22, effective from April 11, 1992, through September 30, 1992, the existing text is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 658.22 Tortugas shrimp sanctuary.

* * * * *

(b) The provisions of paragraph (a) of this section notwithstanding:

(1) Effective from April 11, 1992, through September 30, 1992, that part of the Tortugas shrimp sanctuary seaward of a line connecting the following points is open to trawl fishing: from point T at 24°47.8'N. latitude, 82°01.0'W. longitude to point U at 24°43.83'N. latitude, 82°01.0'W. longitude (on the line denoting the seaward limit of Florida's waters); thence along the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11439, to point V at 24°42.55'N. latitude, 82°15.0'W. longitude; thence north to point W at 24°43.6'N. latitude, 82°15.0'W. longitude (see figure 1).

(2) Effective from April 11, 1992, through July 31, 1992, that part of the Tortugas shrimp sanctuary seaward of a line connecting the following points is open to trawl fishing: from point W to point V, both points as specified in paragraph (b)(1) of this section, to point G, as specified in paragraph (a) of this section (see figure 1).

(3) Effective from May 26, 1992, through July 31, 1992, that part of the Tortugas shrimp sanctuary seaward of a line connecting the following points is open to trawl fishing: from point F, as specified in paragraph (a) of this section to point Q at 24°46.7'N. latitude, 81°52.2'W. longitude (on the line denoting the seaward limit of Florida's waters); thence along the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11439, to point U and north to point T, both points as specified in paragraph (b)(1) of this section (see figure 1).

[FR Doc. 91–30700 Filed 12–23–91; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register

Vol. 56, No. 247

Tuesday, December 24, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Chapter IV

[Document No. 0335s]

Sales Closing, Cancellation, Termination for Indebtedness, and Contract Change Dates

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice to provide additional time for public comment.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby publishes this notice to advise all interested parties that it is extending the time allowed for public comment and suggestions on the Sales Closing, Cancellation, Termination for Indebtedness, and Contract Change Dates. The intended effect of this notice is to give the public additional time to make responses and comments on FCIC's consideration of changes of the sales closing, cancellation, termination and contract change dates to dates earlier than those presently established by FCIC.

On Wednesday, November 6, 1991, FCIC published an advance notice of proposed rulemaking with request for comments in the **Federal Register** at 56 FR 56605, to solicit public comment regarding FCIC's consideration of changing the sales closing, cancellation, termination and contract change dates to dates earlier than those presently established by the FCIC.

Written comments, data, and opinions on the proposed rule were originally requested by not later than December 6, 1991.

Several commenters, expressing concern that there would not be sufficient time to assemble data and in-depth analysis, asked FCIC to be allowed a slightly longer comment period. FCIC, in response to these requests, has extended this period of public comment until January 21, 1992.

DATES: Written comments, data, and opinions on this proposed rule published at 56 FR 56605 must be submitted not later than January 21, 1992, to be sure of consideration.

ADDRESSES: Written responses should be sent to Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250.

All written comments received pursuant to this notice, and to the proposed rule at 56 FR 56605, will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (703) 235–1168.

Done in Washington, DC on December 3, 1991.

Jane A. Wittmeyer,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 91–30612 Filed 12–23–91; 8:45 am]

BILLING CODE 3410–08–M

7 CFR Part 401

[Amendment No. 66; Doc. 0036–S]

ASCS Farm Program Payment Yield Option

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice to provide additional time for public comment.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby publishes this notice to advise all interested parties that it is extending the time allowed for public comment and suggestions on the ASCS Farm Program Payment Yield Option proposed to be issued for the 1992 crop year. The intended effect of this notice is to give the public additional time to make responses and comments on this proposed rule.

On Friday, November 8, 1991, FCIC published a notice of proposed rulemaking in the **Federal Register** at 56 FR 57296, to add new provisions permitting the amount of insurance for certain crops to be based on the adjusted yield which the Agricultural Stabilization and Conservation Service (ASCS) has established for the farming unit ("ASCS yield"), rather than the recorded and appraised yield ("Appraised yield") as established by FCIC.

Written comments, data, and opinions on the proposed rule were originally requested by not later than December 9, 1991.

Several commenters, expressing concern that there would not be sufficient time to assemble data and in-depth analysis, asked FCIC to be allowed a slightly longer comment period. FCIC, in response to these requests, has extended this period of public comment until January 21, 1992.

DATES: Written comments, data, and opinions on the proposed rule published at 56 FR 57296 must be submitted not later than January 21, 1992, to be sure of consideration.

ADDRESSES: Written responses should be sent to Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250.

All written comments received pursuant to this notice, and to the proposed rule published at 56 FR 57296, will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (703) 235–1168.

Done in Washington, DC on December 3, 1991.

Jane A. Wittmeyer,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 91–30613 Filed 12–23–91; 8:45 am]

BILLING CODE 3410–08–M

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Rural Telephone Bank

7 CFR Part 1610

Rural Electrification Administration

7 CFR Parts 1717 and 1744

Review and Revision of Rural Electrification Administration and Rural Telephone Bank Loan Documents and Lien Accommodation Procedures

AGENCY: Rural Electrification Administration, and Rural Telephone Bank, USDA.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Rural Electrification Administration (REA) and the Rural Telephone Bank (RTB) published an advance notice of proposed rulemaking on Monday, December 2, 1991, (56 FR 61201), indicating their intention to consider possible revisions that may be desirable in the forms and content of REA Telephone, REA Electric and RTB mortgages and related loan documents, including lien accommodation procedures. The notice provided an opportunity for interested parties to forward comments to REA until January 2, 1992. REA and RTB now propose to extend the comment period until March 2 1992.

DATES: Comments must be received by REA or carry a postmark or equivalent by March 2, 1992.

ADDRESSES: Written comments should be addressed to William F. Albrecht, Director, Program Support Staff, U.S. Department of Agriculture, Rural Electrification Administration, room 2234–S, 14th & Independence Avenue, SW., Washington, DC 20250–1500. REA requires a signed original and 3 copies of all comments (7 CFR 1700.30(e)). All comments received will be made available for public inspection at room 2238–S (address as above) during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Deputy Director, Program Support Staff, U.S. Department of Agriculture, Rural Electrification Administration, room 2234–S, at the above address. Telephone: (202) 720–9550.

SUPPLEMENTARY INFORMATION: REA and RTB published an advance notice of proposed rulemaking on Monday, December 2, 1991, (56 FR 61201), indicating their intention to consider possible revisions that may be desirable in the forms and content of REA Telephone, REA Electric and RTB mortgages and related loan documents, including lien accommodation procedures. REA has received several requests to extend the comment period of this notice to allow more time for consideration of the complex issues involved in these documents. It has been determined that an extension of time would be beneficial and the comment period is hereby extended from January 2, 1992, until March 2, 1992.

Authority: 7 U.S.C. 901–950(b); Pub. L. 99–591; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72. 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

Dated: December 13, 1991.

Michael M.F. Liu,

Acting Administrator.

[FR Doc. 91–30630 Filed 12–23–91; 8:45 am]

BILLING CODE 3410–15–M

Farmers Home Administration

7 CFR Part 1942

Rural Business Enterprise Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend the Agency's policies and procedures governing the administration of Industrial Development Grants. This action is necessary to implement legislation that establishes a program of grants for broadcasting systems and legislation requiring projects not be subject to a dollar limitation. This action is necessary to remove passthrough grants to businesses as eligible under the program, revises the grant selection priorities, and adds training as an eligible use of grant funds when used for technical assistance purposes. This action is necessary to change the name of the program to more accurately reflect the program purpose and make other clarifications to administrative procedures. Additional conforming amendments will be included for other rules contained in 7 CFR at the final rule stage to reflect the change of the name of the program.

DATE: January 23, 1992.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250–0700.

FOR FURTHER INFORMATION CONTACT: Nancy Spiker, Program Management Branch, Community Facilities Division, FmHA, USDA, room 6304–S, Washington, DC 20250, Telephone: (202) 720–1490.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined to be nonmajor since the annual effect of the economy is less than $100 million and there will be no increase in costs or prices for consumers, individual industries, organizations, governmental agencies or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, the Administrator has determined that this action would not have a significant economic impact on a substantial number of small entities because the action will not affect a significant number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

Paperwork Reduction Act

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Public reporting burden for this collection of information is estimated to vary from 30 minutes to 40 hours per response, with an average of 1.7 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

Background

FmHA proposes this action to implement a provision of Public Law 101–624, which establishes a program of grants for broadcasting systems and Public Law 102–142, which requires projects not be subject to a dollar limitation. This action also changes the name of the program to more accurately reflect the program purpose and removes passthrough grants to businesses as eligible under the program. The action adds training as an eligible use of grant funds when used for technical assistance purposes, revises the grant selection priorities to allow a more equitable distribution of grant funds, and makes other clarifications to administrative procedures. FmHA will also make additional conforming amendments for other rules contained in 7 CFR at the final rule stage to reflect the change of the name of the program.

Program Affected

This program, Rural Business Enterprise Grants, is listed in the Catalog of Federal Domestic Assistance as Industrial Grants under Number 10.424. The FmHA program and projects which are affected by this instruction are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. FmHA conducts intergovernmental consultation in the manner delineated in FmHA Instruction 1940–J.

List of Subjects in 7 CFR Part 1942

Business and industry; Grant programs—Housing and community development; Industrial park; Rural areas.

Therefore, as proposed, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for part 1942 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart G—Rural Business Enterprise Grants

2. The title of subpart G of part 1942 is revised to read: "Rural Business Enterprise Grants."

3. Section 1942.304 is revised to read as follows:

§ 1942.304 Definitions.

Project. The result of the use of program funds, i.e., a facility whether constructed by the applicant or a third party from a loan with grant funds, technical assistance, startup operating costs or working capital. A revolving fund established in whole or in part with grant funds will also be considered a project for the purpose of intergovernmental and Environmental Review under § 1942.310, paragraphs (b) and (c), as well as the specific uses of the revolving funds.

Regional Commission grants. Grants made from funds made available to FmHA by the Appalachian Regional Commission (ARC) or other Federal Regional Commissions designated under title V of the Public Works and Economic Development Act of 1965.

Rural and Rural Area. Includes all territory of a State, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, or the Commonwealth of the Mariana Islands, that is not within the outer boundary of any city having a population of fifty thousand or more and its immediately adjacent urbanized and urbanizing areas with a population density of more than one hundred persons per square mile, as determined by the Secretary of Agriculture according to the latest decennial census of the United States.

Rural Business Enterprise (RBE) grants. Grants made to finance and facilitate development of small and emerging private business enterprises in rural areas. Grants are made from FmHA funds under authority of the Consolidated Farm and Rural Development Act, as amended, section 310B (7 U.S.C. 1932).

Small and emerging private business enterprise. Generally any private business which will employ 50 or fewer new employees and has less than $1 million in projected gross revenues and has or will utilize technological innovations and commercialization of new products that can be produced/manufactured in rural areas and new processes that can be used in such production.

Technical Assistance. A function performed for the benefit of a private business enterprise and is a problem solving activity such as market research, product and/or service improvement, feasibility study, etc.

Television demonstration program. Television programming developed to demonstrate the effectiveness of providing information on agriculture and other issues of importance to farmers and other rural residents.

Urbanized Area. An area immediately adjacent to a city having a population of 50,000 or more which, for general social and economic purposes, constitutes a single community and has a boundary contiguous with that of the city. Such community may be incorporated or unincorporated and extend from the contiguous boundary(ies) to recognizable open country, less densely settled areas, or natural boundaries such as forests or water. Minor open spaces such as airports, industrial sites, recreational facilities, or public parks shall be disregarded. Outer boundaries of an incorporated community extend at least to its legal boundaries. Cities which may have a contiguous border with another city but are located across a river from such city and are recognized as a separate community and are not otherwise considered a part of an urbanized or urbanizing area, as defined in this section, are not in a nonrural area.

Urbanizing Area. A community which is not now, or within the foreseeable future not likely to be, clearly separate from an independent of a city of 50,000 or more population and its immediately adjacent urbanized areas. A community is considered "separate from" when it is separated from the city and its immediately adjacent urbanized area by open country, less densely settled areas, or natural barriers such as forests or water. Minor open spaces such as airports, industrial sites, recreational facilities, or public parks shall be disregarded. A community is considered "independent of" when its social and economic structure (e.g., government; educational, health, and recreational facilities; and business, industry tax base, and employment opportunities) is not primarily dependent on the city and its immediately adjacent urbanized area.

§ 1942.305 [Amended]

4. Section 1942.305(a)(1) is amended in the first sentence by changing the word "ID" to read "RBE."

5. Section 1942.305 is amended by adding new paragraph (a)(3) and revising paragraphs (b)(3)(i), (iii), (iv), and (v) to read as follows:

§ 1942.305 Eligibility and priority.

(a) * * *

(3) Grants may be made to statewide private nonprofit public television systems whose coverage is predominantly rural. An eligible applicant must be organized as a private nonprofit public television system.

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licensed by the Federal Communications Commission, and operate statewide and within a coverage area that is predominantly rural.

(b) * * *

(3) * * *

(i) *Population.* Proposed project(s) will primarily be located in a community of (1) between 15,000 and 25,000 population—5 points, (2) between 5,000 and 15,000 population—10 points, (3) under 5,000 population—15 points.

* * * * *

(iii) *Experience.* Applicant has evidence of at least 5 years of successful experience in the type of activity proposed in the application for funds under this subpart. Evidence of successful experience may be (1) a description of experience supplied and certified by the applicant, or (2) a letter of support from appropriate local elected officials explaining the applicant's experience. Experience—10 points.

(iv) *Other.* (A) Applicant has evidence that small business development will occur by startup or expansion as a result of the activities to be carried out under the grant. Written evidence of commitment by small business must be provided by FmHA—25 points.

(B) Applicant has evidence of substantial commitment of funds from nonfederal sources for proposed project. An authorized representative of the source organization of the nonfederal funds must provide evidence that the funds are available and will be used for the proposed project. More than 50 percent of the project costs from nonfederal sources—15 points, more than 25 percent but less than 50 percent of project costs from nonfederal sources—10 points, between 5 percent and 25 percent of project costs from nonfederal sources—5 points.

(C) For a grant to establish a revolving fund, the applicant provides evidence to FmHA through loan applications or letters from businesses that the loans are needed by small and emerging businesses in the proposed project area—25 points.

(D) The anticipated development, expansion, or furtherance of business enterprises as a result of the proposed project will create and/or save jobs associated with the affected businesses. The number of jobs must be evidenced by a written commitment from the business to be assisted. One job per each $10,000 or less in grant funds expended—10 points. One job per each $25,000 to $10,000 in grant funds expended—5 points.

(E) The proposed grant project is consistent with, and does not duplicate, economic development activities for the project area under an existing community or economic development plan covering the project area. If no local plan is in existence for the project area, an areawide plan may be used. The plan used must be a plan adopted by the appropriate governmental officials/entities as the area's community or economic development plan. Appropriate plan references and copies of appropriate sections of the plan, as well as evidence of plan adoption by appropriate governmental officials should be provided to FmHA. Project is reflected in a plan—5 points.

(F) Grant projects utilizing funds available under this subpart of less than $100,000—25 points, $100,000 to $200,000—15 points, more than $200,000 but not more than $500,000—10 points.

(G) For grants for television demonstration programs, points will be distributed if the grant request contains justification for a need for the information to be provided—25 points.

(v) *Discretionary.* In certain cases when a grant is an initial grant for funding under this Subpart and is not more than $500,000, FmHA may assign up to 50 points in addition to those that may be assigned in paragraphs (b)(3)(i) through (iv) of this section. Use of these points must include a written justification such as geographic distribution of funds, criteria which will result in substantial employment improvement, mitigation of economic distress of a community through the creation or saving of jobs or emergency situations. For grants of less than $100,000—50 points, $100,000 to $200,000—30 points, more than $200,000 but not more than $500,000—20 points.

§ 1942.306 [Amended]

6. Section 1942.306(a) is amended in the introductory text by changing the phrase "and develop" to read "and/or develop."

7. Section 1942.306 is amended by revising paragraphs (a)(3), (a)(4), (a)(7), and (b), and adding (a)(8) to read as follows:

§ 1942.306 Purposes of grants.

(a) Grant funds may be used to finance and/or develop small and emerging private business enterprises in rural areas including, but not limited to, the following:

* * * * *

(3) loans for startup operating cost and working capital.

(4) technical assistance for private business enterprises.

* * * * *

(7) providing financial assistance to third parties through a loan.

(8) training, when necessary, in connection with technical assistance.

(b) Grants, except grants for television demonstration programs, may be made only when there is a reasonable prospect that they will result in development of small and emerging private business enterprises.

* * * * *

8. Section 1942.307 is amended by removing paragraph (b), redesignating paragraph (c) to (b), and adding new paragraphs (a)(4) and (a)(5) to read as follows:

§ 1942.307 Limitations on use of grant funds.

(a) * * *

(4) For programs operated by cable television systems.

(5) To fund a part of a project which is dependent on other funding unless there is a firm commitment of the other funding to ensure completion of the project.

* * * * *

§ 1942.310 [Amended]

9. Section 1942.310(a) is amended in the third sentence by removing the word, "ID."

10. Section 1942.310 is amended by adding two sentences to the end of paragraph (b)(4); and by revising the introductory text of paragraph (c)(1) to read as follows:

§ 1942.310 Other considerations.

* * * * *

(b) * * *

(4) * * * If the preapplication reflects only one specific project which is specifically identified as the third party recipient for financial assistance, FmHA may perform the appropriate environmental assessment in accordance with the requirements of subpart G of part 1940 of this chapter, and forego initiating a Class II assessment with no public notification. However, the applicant must be advised that if the recipient or project changes after the grant is approved, the project to be assisted under the grant will undergo the applicable environmental review and public notification requirements in Subpart G of Part 1940 of this chapter.

* * * * *

(c) * * *

(1) If a proposed grant is for more than $1 million and will increase direct employment by more than 50 employees, the applicant will be requested to provide a written indication to FmHA which will enable FmHA to determine that the proposal will not result in a project which is calculated to, or likely to, result in:

* * * * *

§ 1942.310 [Amended]

11. Section 1942.310(c)(4) is amended in the first sentence by removing the word, "ID."

12. Section 1942.311 is amended by revising the last sentence in paragraph (a)(1) to read as follows:

§ 1942.311 Application processing.

(a) * * *

(1) * * * The applicant shall use SF 424.1, "Application for Federal Assistance (For Non-Construction)," or SF 424.2, "Application for Federal Assistance (For Construction)," as applicable when requesting financial assistance under this program.

* * * * *

§ 1942.313 [Amended]

13. In § 1942.313, paragraph (a)(2) is amended by changing the word "ID" to "RBE"; and paragraph (a)(4) is amended by removing "/grants" from the end of the sentence.

14. Section 1942.314 is amended by revising the section heading and adding a new paragraph (g) to read as follows:

§ 1942.314 Grants to provide financial assistance to third parties, television demonstration projects, and technical assistance programs.

* * * * *

(g) For technical assistance and television demonstration program projects, the scope of work should include a budget based on the budget contained in the application, modified or revised as appropriate, which includes salaries, fringe benefits, consultant costs, indirect costs, and other appropriate direct costs for the project.

§ 1942.314 [Amended]

15. Section 1942.314(e) is amended by changing the word "ID" to "RBE."

§ 1942.315 [Amended]

16. Section 1942.315(b) is amended by removing "interim financing" from the last sentence.

November 29, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91-30671 Filed 12-23-91; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD1 91-141]

Drawbridge Operation Regulations Charles River, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Metropolitan District Commission (MDC), the Coast Guard is considering a change to the regulations governing the Craigie Bridge over the Charles River at mile 1.0 between Boston and Cambridge, Massachusetts, by permitting periods when advance notice for an opening is required. Additionally, the Coast Guard is revising the regulations for the Charles River to remove obsolete regulatory provisions, correct inconsistencies, and reflect physical changes that have occurred to the waterway.

DATES: Comments must be received on or before February 7, 1992.

ADDRESSES: Comments should be mailed to Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, NY 10004-5073. The comments and other materials referenced in this notice will be available for inspection and copying at the above address and room 628 at the John Foster Williams Building, 408 Atlantic Avenue, Boston, Massachusetts. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to these addresses.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668-7170.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, the specific section of this proposal to which each comment applies, and give reasons for concurrence with or any recommended changes in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped self-addressed post card or envelope.

The Commander, First Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander (obr), First Coast Guard District at either address under ADDRESSES. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are John McDonald, project officer, and Lieutenant Commander John Astley, project attorney.

Background and Purpose

The Metropolitan District Commission (MDC), requested a change to the regulations for the Craigie Bridge, which, presently, opens on signal except during the morning and evening rush hours from 6:15 a.m. thru 9:10 a.m. and from 3:15 p.m. thru 6:30 p.m., respectively, excluding Sundays and legal holdiays. The MDC has requested that in addition to the existing regulations, that commercial and recreational vessels give 24 hours advance notice for bridge openings to the MDC, from December 1 to March 31. This request is being made because of the limited number of openings during the winter months, and to relieve the bridge owner of the burden of having personnel constantly available to open the draw. Additionally, the present drawbridge regulations for the Charles River do not adequately reflect changes that have occurred since various portions of the regulations were instituted.

Paragraph (a)(1), which gives the requirements for sound signals for bridge openings as two prolonged blasts followed by two short blasts is being changed to comply with the sound signals required for an opening as stated in § 117.15, which is one prolonged blast followed by one short blast. This change will eliminate this discrepancy.

Paragraph (a)(3), which refers to the level of the tide at the Charlestown Navy Yard, will be deleted, the relocation and construction of the MDC Charles River Lock and Dam, at mile 0.5, makes the Charles River non-tidal where these bridges are located.

Paragraph (f) which gives the operating hours for the Lechemere Canal Bridge will be deleted because the Lechemere Canal Bridge was replaced with a fixed bridge in 1986.

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Paragraph (g) which gives the operating hours for the Broad Canal Bridges and paragraph (h) which states that the draws of the Broad Canal Bridges need not open for the passage of vessels contradict each other, therefore, paragraph (g) will be deleted and paragraph (h) will be retained but will be listed as paragraph (f) in this revised regulation.

Discussion of Proposed Amendments

The Craigie Bridge over the Charles River between Boston and Cambridge, has vertical clearances of 13' above normal pool elevation. The current regulations for the Craigie Bridge are that the bridge shall open on signal; except that, from 6:15 a.m. to 9:10 a.m. and from 3:15 p.m. to 6:30 p.m., excluding Sundays and legal holidays, the draw need not be opened for the passage of vessels. The proposed regulations will retain the provisions for maintaining the bridge in the closed position during peak traffic periods in the morning and evening rush hours. Additionally, the MDC has requested that at least a 24 hour notice be given by commercial and recreational vessels to open the bridge from December 1 to March 31. There have been only a limited number of openings requested during the proposed time period for the past several years.

Paragraph (a)(1), which gives the requirements for sound signals for bridge openings as two prolonged blasts followed by two short blasts is being changed to comply with the sound signals required for an opening as stated in § 117.15, which is one prolonged blast followed by one short blast.

Paragraph (a)(3), which refers to the levels of the tide at the Charlestown Navy Yard, will be deleted because the MDC lock and dam has been relocated downstream of the bridges making the section of the Charles River where the bridges are located to be non-tidal.

The regulations for the Commercial Avenue Bridge across the Lechemere Canal will be deleted because this bridge was replaced by a fixed span highway bridge in 1986.

The Broad Street Bridges were closed by regulation in 1984 by adding paragraph (h), which indicates that the bridge need not open for the passage of vessels; however, paragraph (g) was not deleted and it states the operating hours for the bridge which contradicts paragraph (h). The intended purpose was to allow this bridge to remain in the closed position as stated in paragraph (h). Therefore, paragraph (g) will be deleted. The wording of paragraph (h) will be retained but it will appear as paragraph (f) in the revised regulations.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. This opinion is based on the fact that the regulation will not prevent the mariners from transiting the Craigie Bridge but just require advance notice for openings during the winter months.

Small Entities

The Coast Guard expects the economic impact of this proposal to be minimal on all entities since there have been limited openings during the requested period for advance notice for several years. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this proposed regulation does not have sufficient federalism implications to warrant preparation of a federal assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESS.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.591 is revised to read as follows:

§ 117.591 Charles River and its tributaries.

(a) The following requirements apply to all bridges across the Charles River and its tributaries:

(1) Public vessels of the United States, state or local vessels used for public safety and vessels in distress shall be passed through the draw of each bridge as soon as possible without delay at any time. The opening signal from these vessels is four or more short blasts or a whistle or horn, or a radio request.

(2) The owners of these bridges shall provide and keep in good legible condition clearance gauges for each draw with figures not less than 12 inches high designed, installed and maintained according to the provisions of paragraph 118.160 of this chapter.

(3) Trains and locomotives shall be controlled so that any delay in opening the draw span shall not exceed ten minutes. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, that train may continue across the bridge and must clear the bridge interlocks before stopping.

(4) Except as provided in paragraph (b) through (f) of this section, the draws shall open on signal.

(b) The draw of the Charlestown Bridge, mile 0.4 at Boston, need not be opened for the passage of vessels.

(c) The draw of the Massachusetts Bay Transportation Authority/Amtrak Bridge, mile 0.8, at Boston, shall open on signal; except that from 6:15 a.m. to 9:10 a.m. and 4:15 p.m. to 6:30 p.m., excluding Sundays and legal holidays, the draw need not be opened for the passage of vessels.

(d) The draw of the Massachusetts Bay Transportation Authority (East Cambridge Vaiduct) railroad Bridge, mile 1.0 at Boston, need not be opened for the passage of vessels. However, the operating machinery of the draw shall be maintained in an operable condition.

(e) The draw of the Metropolitan District Commission Bridge, mile 1.0 at Boston, shall operate as follows:

(1) Open on signal; except that, from 6:15 a.m. to 9:10 a.m. and 3:15 p.m. to 6:30 p.m., daily, excluding Sundays and legal holidays, the draw need not open for the passage of vessels.

(2) From December 1 to March 31, the draw shall open on signal after a 24 hour advance notice is given by calling the telephone number posted at the bridge.

(f) The draws of the bridges across Broad Canal, mile 0.0, need not open for the passage of vessels. However, the draws shall be returned to operable condition within one year after notification by the District Commander to do so.

3. Appendix A to part 117 is amended to add the entries for the Charles River under the State of Massachusetts to read as follows:

APPENDIX A TO PART 117.—DRAWBRIDGES EQUIPPED WITH RADIOTELEPHONES

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling working Channel	Calling working Channel
Massachusetts						
Charles River	0.6	Charlestown	Charles River Dam, MDC	WHV 988	16	13
	1.0	Boston	Craigie, MDC	WHV 989	16	13

Dated: December 12, 1991.

K.W. Thompson,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 91–30703 Filed 12–23–91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 155

[CGD 91-034/90-068]

RIN 2115-AD81 and 66

Vessel Response Plans and Carriage and Inspection of Discharge-Removal Equipment

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting of negotiated rulemaking committee on oil spill response plans.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), the Coast Guard is providing a contingent notice of the first meeting of the Oil Spill Response Plan Negotiated Rulemaking Committee to negotiate issues relating to oil spill response plans. This meeting is being announced pending a final decision by the Coast Guard on proceeding with negotiated rulemaking.

DATES: The first meeting of the negotiated rulemaking committee will be held from January 8–10, 1992, between 9 a.m. and 4 p.m. EST, unless a notice is published prior to the date cancelling the meeting.

ADDRESSES: The meeting will be held in room 4234 at DOT Headquarters, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For information concerning the establishment of the negotiated rulemaking committee, contact the convener, Judith Kaleta, Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, at (202) 366–4400 between 9 a.m. and 5:30 p.m. EST, Monday through Friday, except federal holidays.

For information concerning the substantive aspects of oil spill response plans and the carriage of removal equipment by tank vessels, contact LCDR Glenn Wiltshire, Project Manager, OPA 90 Staff (G–MS–1), at (202) 267–6740 between 7 a.m. and 3:30 p.m., Monday through Friday, except federal holidays.

SUPPLEMENTARY INFORMATION: The Coast Guard published a notice of intent to form a negotiated rulemaking committee on November 18, 1991 (56 FR 58202), and a notice with supplemental information on November 29, 1991 (56 FR 60949). These notices indicated that the Coast Guard is considering establishment of a negotiated rulemaking committee to assist the Coast Guard in developing portions of the regulations for tank vessel oil spill response plans and carriage of removal equipment required under sections 311(j)(5) and (j)(6)(B) of the Federal Water Pollution Control Act (33 U.S.C. 1321 *et seq.*) (FWPCA), as amended by section 4202 of the Oil Pollution Act of 1990 (Pub. L. 101–380) (OPA 90). The notices also identified interests that would potentially be affected by the rulemaking. The Coast Guard solicited comments to be submitted by December 18, 1991, on the issues raised in the notices and on applications or nominations for required by the Federal Advisory Committee Act, the committee charter was submitted to and approved by the General Services Administration.

Because of the statutory deadlines imposed for issuance of these rules by OPA 90, the Coast Guard anticipates making a decision on the establishment of a negotiated rulemaking committee soon after the close of the comment period. In the event that the Coast Guard decides to establish a negotiated rulemaking committee, the first committee meeting will begin on January 8, 1992 at 9 a.m. EST. Interested persons may call (202) 267–6739 commencing December 30, 1991 for further information. All applicants for membership will also be notified directly. If the Coast Guard does not establish a negotiated rulemaking committee, it will publish a notice to that effect.

The purpose of this meeting is to: (1) Discuss the charter, goals, and missions of the committee; (2) present the issues to be considered by the committee; (3) complete the membership selection process and (4) approve organizational protocols by which the committee will operate. At the first meeting, the Coast Guard will provide a training session for the committee on the negotiation and rulemaking process, and present the relevant provisions of the FWPCA, as amended by OPA 90. Attendance is open to the interested public. Persons wishing to present oral statements at the meeting should so notify the Project Manager no later than the day before the meeting. Any member of the public may present a written statement to the committee at any time. Additional information may be obtained from LCDR Glenn Wiltshire, Project Manager, OPA 90 Staff (G–MS–1), U.S. Coast Guard, Washington, DC 20593–0001, or by calling (202) 267–6740.

Dated: December 19, 1991.

D.H. Whitten,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91–30841 Filed 12–20–91; 1:26 pm]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OAQPS # CA-12-13-5337; FRL-4086-9]

Approval and Promulgation of Implementation Plans, California State Implementation Plan Revision; Placer County Air Pollution Control District and San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) adopted by the Placer County Air Pollution Control District ("Placer") on September 25, 1990 and the San Diego County Air Pollution Control District ("San Diego") on July 3, 1990. The California Air Resources Board submitted these revisions on April 5, 1991. The revisions concern Placer's Rule 223, Can Coating, which controls the emission of volatile organic compounds (VOCs) from can coating operations, Placer's Rule 410, Recordkeeping for Volatile Organic Compound Emissions, which contains recordkeeping and test method provisions, and San Diego's Rule 67.4, Metal Container, Metal Closure, and Metal Coil Coating Operations, which controls the emission of VOCs from can and coil coating operations. EPA has evaluated the revisions to Placer's Rules 223 and 410 and San Diego's Rule 67.4 and is proposing a limited approval under sections 110(k)(3) and 301(a) of the Clean Air Act Amendments of 1990 (CAAA) because these revisions strengthen the SIP. At the same time, EPA is proposing a limited disapproval of Placer's Rules 223 and 410 and San Diego's Rule 67.4 because the rules do not fully meet the Part D, section 182(a)(2)(A) requirement of the CAAA.

DATES: Comments must be received on or before January 23, 1992.

ADDRESSES: Comments may be mailed to: Esther Hill, Northern California, Nevada and Hawaii Rulemaking Section (A–5–4), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814.

Placer County Air Pollution Control Agency, 11464 B Avenue, Auburn, CA 95603.

San Diego County Air Pollution Control Agency, 9150 Chesapeake Drive, San Diego, CA 92123–1095.

FOR FURTHER INFORMATION CONTACT: Doris Lo, Northern California, Nevada and Hawaii Rulemaking Section (A–5–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1187, FTS: 484–1187.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act that included the San Diego County Air Pollution Control District ("San Diego"). 43 FR 8964, 40 CFR 81.305. On September 12, 1979, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act (CAA or the Act) that included the Placer County Air Pollution Control District ("Placer"). 44 FR 53081, 40 CFR 81.305. Because neither San Diego nor Placer were able to reach attainment by the statutory attainment date of December 31, 1982, California requested, and EPA approved, an extension of the attainment date to December 31, 1987. CAA Section 172(a)(2). Neither Placer nor San Diego attained the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California that Placer's and San Diego's portions of the California State Implementation Plan (SIP) were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP–Call). On November 15, 1990, the Clean Air Act Amendments of 1990 (CAAA) were enacted. Public Law 101–549, 104 Stat. 1399, codified at 42 U.S.C. §§ 7401–7671q. In section 182(a)(2)(A) of the CAAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas classified as marginal or above and requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP–Call used that guidance to indicate the necessary corrections for specific nonattainment areas. Placer is classified as serious and San Diego is classified as severe [2]; therefore, these two areas are subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on April 5, 1991, including the rules being acted on in this notice. This notice addresses EPA's proposed action for Placer's Rule 223, Can Coating, Placer's Rule 410, Recordkeeping for Volatile Organic Compound Emissions, and San Diego's Rule 67.4, Metal Container, Metal Closure, and Metal Coil Coating Operations. These submitted rules were found to be complete on May 21, 1991 pursuant to EPA's completeness criteria set forth in 40 CFR part 51 appendix V [3] and are being proposed for limited approval and limited disapproval.

Rule 223 controls the emission of volatile organic compounds (VOCs) from can coating operations. Rule 410 contains recordkeeping requirements and test method requirements which are referenced by Placer's volatile organic compound (VOC) rules, and Rule 67.4 controls the emission of VOCs from can and coil coating operations. VOCs contribute to the production of ground level ozone and smog. Rules 223 and 67.4 were originally adopted as part of Placer's and San Diego's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and have been revised in response to EPA's SIP–Call and the section 182(a)(2)(A) CAAA requirement. Rule 410 is a new rule which has been adopted to meet EPA's SIP–Call and the section 182(a)(2)(A) CAAA requirement. The following is EPA's evaluation and proposed action for Placer's Rules 223 and 410 and San Diego's Rule 67.4.

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988), and the existing control technique guidelines (CTGs).

[2] Placer and San Diego were redesignated nonattainment and classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAAA. See 56 FR 56694 (November 6, 1991).

[3] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the amended Act. See 56 FR 42216 (August 26, 1991).

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAAA, EPA regulations and EPA policy. These requirements are found in section 110 and Part D of the CAAA and in 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans), and guidance referred to in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of reasonably available control technology (RACT) for stationary sources of VOC emissions. This requirement was carried forth from the preamended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents which specify the minimum requirements that a rule must contain in order to be approved into the SIP. Under the amended Act, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to Rule 223 and to Rule 67.4 is entitled, "Surface Coating (Volume II—Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks)", EPA document # EPA–450/2–77–008. Further interpretations of EPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

Placer's submitted Rule 223, Can Coating, includes the following revisions from the current SIP rule:

—Specification of test methods for determining the VOC, water and exempt solvent content of coatings;
—Specification of recordkeeping requirements by referencing Rule 410, Recordkeeping for VOC Emissions (see below);
—Deletion of provisions which allow for alternative emission control plans;
—Addition of new coating categories and more stringent VOC limits;
—Revision of the VOC definition to include compounds which have been exempted by EPA as negligibly reactive;
—Deletion of past compliance dates;
—Addition of new definitions;
—Language modifications and rule reorganization for clarity.

Placer's Rule 410, Recordkeeping for Volatile Organic Compound Emissions is a new rule which was adopted to address the lack of recordkeeping provisions that are found in Placer's SIP-approved VOC rules, such as Rule 223. Rule 410 also contains some definitions and test methods for compliance determinations.

San Diego's submitted Rule 67.4, Metal Container, Metal Closure, and Metal Coil Coating Operations, includes the following revisions from the current SIP rule:

—Specification of test methods for determining the VOC, water and exempt solvent content of coatings;
—Addition of add-on control requirements;
—Specification of recordkeeping requirements;
—Deletion of provisions which allow for alternative emission control plans;
—Addition of new coating categories and more stringent VOC limits;
—Revision of the VOC definition to include compounds which have been exempted by EPA as negligibly reactive;
—Deletion of past compliance dates;
—Addition of new definitions;
—Revision of the Rule title.

EPA has evaluated Placer's submitted Rules 223 and 410 and San Diego's submitted Rule 67.4 for consistency with the CAAA, EPA regulations and EPA policy and has found that the revisions address and correct many deficiencies previously identified by EPA. These corrected deficiencies have resulted in clearer, more enforceable rules. Furthermore, the addition of more stringent coating limits in submitted Rules 223 and 67.4 should lead to more emission reductions.

Although the approval of Placer's Rules 223 and 410, and San Diego's Rule 67.4, will strengthen the SIP, these rules still contain deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of Part D of the CAAA. For Placer's submitted Rule 223, the remaining deficiencies involve the allowance of non-specified test methods and the approvality of Rule 410 and its recordkeeping requirements. For Placer's submitted Rule 410, the remaining deficiencies involve the allowance of non-specified test methods. For San Diego's Rule 67.4, the remaining deficiencies involve the allowance of non-specified test methods and an incorrectly specified capture efficiency test method. Because of these deficiencies, the rules are not approvable pursuant to the section 182(a)(2)(A) requirement of part D of the CAAA because they are not conistent with the interpretation of the section 172 requirement as found in the aforementioned Blue Book and may lead to enforceability problems.

Because of the above deficiencies, EPA cannot grant full approval of these rules under section 110(k)(3) and Part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the rules are not being fully approved under 110(k)(3) and part D of the CAAA since they do not meet the section 182(a)(2)(A) requirement. Thus, in order to strengthen the SIP, EPA is proposing a limited approval of Placer's submitted Rules 223 and 410 and San Diego's submitted Rule 67.4 under section 110(k)(3) and 301(a) of the CAAA.

At this same time, EPA is also proposing a limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAAA, and, as such, the rules do not fully meet the requirements of Part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18 month period referred to in section 179(a) will begin at the time EPA publishes final notice of this disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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This action has been classified as a table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: December 12, 1991.

John Wise,

Acting Regional Administrator.

[FR Doc. 91–30692 Filed 12–23–91; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3800

RIN 1004–AB 99

[WO–680–4130–02 24 1A]

Surface Management Regulations; Extension of Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of comment period.

SUMMARY: The notice of intent to propose rulemaking that would amend subpart 3809 of 43 CFR part 3800 was published in the **Federal Register** on October 23, 1991 (56 FR 54815), with the comment period ending January 3, 1992. The comment period is being extended to January 15, 1992, in response to public requests.

DATES: The period for submission of comments is hereby extended to January 15, 1992. Comments received or postmarked after this date may not be considered in developing the proposed rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street, NW., Washington, DC 20240. Comments will be available for public review in room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Bob Anderson, (916) 978–4735.

Dated: December 16, 1991.

Richard Roldan,

Deputy Assistant Secretary of the Interior.

[FR Doc. 91–30656 Filed 12–23–91; 8:45 am]

BILLING CODE 4310–84–M

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB52

Endangered and Threatened Wildlife and Plants: Notice of Reopening of Comment Period During the 6-Month Extension on the Proposed Rule for Eutrema Penlandii (Penland Alpine Fen Mustard)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; Notice of reopening of comment period during the 6-month extension.

SUMMARY: Because of requests by a number of private individuals, the U.S. Fish and Wildlife Service (Service) gives notice of reopening the comment period on the proposed determination of threatened status for the plant species *Eutrema penlandii* (Penland alpine fen mustard). This species is endemic to the Mosquito Range in the central Rocky Mountains of Colorado. Reopening the comment period will allow comments on this proposal from all interested parties.

DATES: Comments will now be received until February 7, 1992.

ADDRESSES: Written comments and materials should be sent to the State Supervisor, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, 730 Simms Street, room 290, Golden, Colorado 80401. Comments and materials and the complete file for this notice will be available for public inspection, by appointment, during normal business hours at the above address or at the Western Colorado Suboffice, 529–25 1/2 Road, suite B–113, Grand Junction, Colorado 81505–6199.

FOR FURTHER INFORMATION CONTACT: Lee Carlson, State Supervisor, at the Golden address (303–231–5280 or FTS 554–5280).

SUPPLEMENTARY INFORMATION:

Background

Eutrema penlandii (Penland alpine fen mustard) is endemic to the Mosquito Range in the central Rocky Mountains of Colorado. Prior to this past summer, there were eight known occurrences over a 40-kilometer (25 miles) length. *Eutrema penlandii* was proposed for listing as a threatened species on October 15, 1990 (55 FR 41725). A 6-month extension of time for the listing was published on October 28, 1991 (56 FR 55487), bringing the listing deadline to April 15, 1992. A 30-day comment period was granted from October 28, 1991, to November 27, 1991.

Alma London Joint Venture, a mining company, disagreed with the Service's depiction of habitat requirements for *Eutrema penlandii*. They conducted an independent study of the distribution and abundance of the plant species during the summer of 1991. Further, Colorado College of Colorado Springs conducted a study of pH requirements of *Eutrema penlandii* during the summer of 1991. Both groups prepared reports which were submitted to the Service to be used in the decision concerning final listing.

There were numerous requests to extend the comment period and allow interested parties to review and comment on the work conducted by Alma London Joint Venture and Colorado College. it is because of these requests that the Service is extending the comment period for 45 days. Anyone who wishes to review and comment on the reports should contact Lee Carlson, State Supervisor (see "**ADDRESSES**" section).

Upon review of the reports and all pertinent comments received, the Service will decide either to continue with the final listing of the species or to withdraw the proposal for *Eutrema penlandii* as provided under Section 4(b)(6)(B)(i) of the Endangered Species Act.

Author

The primary author of this notice is Lee Carlson (see "**ADDRESSES**" above).

Authority

The authority for this section is the Endangered Species Act of 1973 (16 U.S.C. et seq.).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: December 16, 1991.

Galen L. Buterbaugh,

Regional Director, Fish and Wildlife Service

[FR Doc. 91–30636 Filed 12–23–91; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 56, No. 247
Tuesday, December 24, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TR–92–01]

Federal State Marketing Improvement Program; Program Continuation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice inviting applications for Fiscal Year 1992 Grant Funds under the Federal-State Marketing Improvement Program (FSMIP).

SUMMARY: Notice is hereby given that the Federal-State Marketing Improvement Program was allocated $1,250,000 in the Federal Budget for Fiscal Year 1992. Funds remain available for this program. States interested in obtaining funds under the program are invited to submit proposals for marketing studies. Only State Departments of Agriculture or State Agencies are eligible for these funds.

DATES: Applications will be accepted until September 1992.

ADDRESSES: Proposals may be sent to Dr. Harold S. Ricker, Assistant Director, Federal-State Marketing Improvement Program, Transportation and Marketing Division, AMS, USDA, room 4006-South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Dr. Harold S. Ricker, (202) 720–2704.

SUPPLEMENTARY INFORMATION: The Federal-State Marketing Improvement Program is authorized under section 204(b) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). The program is a matching fund program designed to assist State Departments of Agriculture or State Agencies in conducting feasibility studies related to the marketing or agricultural products. Organizations interested in conducting a marketing study should contact their State Department of Agriculture Marketing Division to discuss their proposal. Mutually accepted proposals must be submitted through the State Office and be accompanied by a completed Standard Form 424 and a detailed budget statement. FSMIP funds may not be used for advertising or the purchase of equipment and facilities. Guidelines may be obtained from your State Department of Agriculture or the above AMS contact.

In terms of objectives, the States are encouraged to submit proposals regarding: (1) Studies to identify new crops, markets, and marketing systems for agricultural products, both domestically and internationally; (2) studies to improve efficiency of the marketing system to enhance competitiveness and profitability; and, (3) studies to help maintain product quality through new handling, processing, and distribution techniques. Proposals addressing other marketing objectives will also receive consideration.

The Federal-State Marketing Improvement Program is listed in the "Catalog of Federal Domestic Assistance" under No. 10.156 and subject agencies must adhere to title VI of the Civil Rights Act of 1964 which bars discrimination in all Federally assisted programs.

Done at Washington, DC this day of December 19, 1991.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 91–30670 Filed 12–23–91; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

[Docket No. 91–173]

National Boll Weevil Cooperative Control Program; Availability of Final Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice advises the public that the Animal and Plant Health Inspection Service has prepared and is making available a final environmental impact statement (FEIS) for the National Boll Weevil Cooperative Control Program. We sent the FEIS to the Environmental Protection Agency on December 18, 1991.

ADDRESSES: Requests for copies of the FEIS should be addressed to: Nancy Sweeney, Project Leader, Environmental Analysis and Documentation, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Copies of the FEIS also may be obtained at any of the following locations:

1. Southeastern Regional Office: A.S. Elder, Regional Director, 3505 25th Avenue, Building 1 North, Gulfport, MS 39501. (601) 863–1813.

2. South Central Regional Office: Robert L. Williamson, Regional Director, 3505 Boca Chica Boulevard, suite 360, Brownsville, TX 78521–4065, (512) 548–2750/51/52/53.

3. Western Regional Office: James Reynolds, Regional Director, 9580 Micron Avenue, suite 1, Sacramento, CA 95827, (916) 551–3220.

A copy of the FEIS may be reviewed at the APHIS Reading Room, USDA (reference copy only): Room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC 20250, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: William Grefenstette, Operations Officer, Operational Support, Planning and Design, Plant Protection and Quarantine, APHIS, USDA, room 816, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8716.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 1989, we published in the **Federal Register** (54 FR 31710–31711, Docket No. 89–134), a notice announcing the availability of a draft environmental impact statement (EIS) for the National Boll Weevil Cooperative Control Program. The notice also requested comments on or before October 2, 1989. On October 12, 1989, we published in the **Federal Register** (54 FR 41859–41860, Docket No. 89–168), a notice extending the comment period on the draft EIS to November 3, 1989. In response to some of the comments received, we published a notice in the **Federal Register** on August 2, 1991, (56 FR 37073, Docket No. 91–111) announcing the availability of a supplement to the EIS to further address the impacts the program may have in Alabama and on endangered and

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threatened species across the Cotton Belt. The notice also requested comments on the supplement on or before September 16, 1991.

The final environmental impact statement (FEIS) considers and responds to all comments received on the draft EIS and its supplement that were received on or before the stated deadlines.

Pursuant to § 1506.9 of the regulations of the Council on Environmental Quality (40 CFR 1506.9), we transmitted the FEIS to the Environmental Protection Agency on December 18, 1991.

Done in Washington, DC, this 19th day of December 1991.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-30664 Filed 12-23-91; 8:45 am]

BILLING CODE 3410-34-M

[Docket 91-169]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The assessments provide a basis for the conclusion that the field testing of these genetically engineered organisms will not present a risk of the introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on the findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Petrie, Program Specialist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, 20782 (301) 436-7612. For copies of the environmental assessments and findings of no significant impact, write Mr. Clayton Givens at this same address. The documents should be requested under the permit number listed below.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit applications, APHIS assessed the impact on the environment of releasing the organisms under the conditions described in the permit applications. APHIS concluded that the issuance of the permits listed below will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of the following permits to allow the field testing of genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
91-218-03	University of California, Davis	11-04-91	Apple plants genetically engineered to express an insecticidal crystal protein of *Bacillus thuringiensis* subsp. *kurstaki* HD-73.	Stanislaus County, California.
91-205-02	Petoseed Research Center	11-19-91	Tomato plants genetically engineered to express polygalacturonase (PG), pectiesterase (PE), and ethylene forming enzyme as antisense genes.	Hendry County, Florida.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 19th day of December 1991.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-30668 Filed 12-23-91; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 91-181]

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that three applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, United States Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain a copy of this document by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Specialist, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason To Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organism	Field test location
91-322-01	North Caroline State University	11-18-91	Tobacco plants genetically engineered to express a coat protein of a highly aphid-transmissible strain of tobacco etch virus (TEV).	Wake County, North Carolina.
91-324-01	Frito-Lay, Incorporated	11-20-91	Potato plants genetically engineered to express a *Bacillus thuringiensis* subsp. *tenebrionis* (Btt) gene, for tolerance to the Colorado potato beetle.	Oneida County, Wisconsin.
91-324-03	Frito-Lay, Incorporated	11-20-91	Potato plants genetically engineered to express a chitinase gene, for resistance to *Rhizoctonia solani*.	Oneida County, Wisconsin.

Done in Washington, DC, this 19th day of December 1991.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-30665 Filed 12-23-91; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 91-175]

Availability of List of U.S. Veterinary Biological Product and Establishment Licenses, and U.S. Veterinary Biological Product Permits, Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice is to advise the public of veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service, during the months of October and November 1991. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to notify interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the listing.

FOR FURTHER INFORMATION CONTACT: Joan Montgomery, Program Assistant, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-4873. For copies of the list or to be placed on the mailing list, write to Ms. Montgomery at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment and U.S. Veterinary Biological Product Permits.

Each month the Veterinary Biologics section of Biotechnology, Biologics, and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the lists for October and November 1991. The monthly lists are also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under **FOR FURTHER INFORMATION CONTACT.**

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Done in Washington, DC, this 19th day of December 1991.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-30667 Filed 12-23-91; 8:45 am]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

[Document No. 0331s]

Request for Comments on Methodology for Yield Determinations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice to provide additional time for public comment.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby publishes this notice to advise all interested parties that it is extending the time allowed for public comment and suggestions on the Request for Comments on Methodology for Yield Determinations. The intended effect of this notice is to give the public additional time to make responses and comments on the FCIC methodology for Yield Determinations.

On Friday, November 8, 1991, FCIC published a notice with request for comments in the **Federal Register** at 56 FR 573111, to solicit public comment, suggestions, and analytical studies concerning procedures to determine average yields for crop insurance purposes.

Written comments, data, and opinions on this notice were originally requested by not later than December 8, 1991.

Several commenters, expressing concern that there would not be sufficient time to assemble data and in-depth analysis, asked FCIC to be allowed a slightly longer comment period. FCIC, in response to these requests, has extended this period for public comment until January 21, 1992.

DATES: Written comments, data, and opinions on the proposed rule published at 56 FR 57311 must be submitted not later than January 21, 1992, to be sure of consideration.

ADDRESSES: Written responses should be sent to Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250.

All written comments received pursuant to this notice, and to the request for comments on the methodology for yield determinations at 56 FR 57311, will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

Done in Washington, DC on December 3, 1992.

Jane A. Wittmeyer,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 91-30614 Filed 12-23-91; 8:45 am]

BILLING CODE 3410-08-M

Packers and Stockyards Administration

Deposting of Stockyards

Notice is hereby given that the livestock markets named herein, originally posted on the dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer come within the definition of a stockyard under the Act and are therefore no longer subject to the provisions of the Act.

	Facility No., name, and location of stockyard	Date of posting
AL-180	Marion Stockyard, Marion, AL.	Apr. 9, 1990.
GA-208	Hugh Watson Stockyard, Gainesville, GA.	Jan. 29, 1991.
GA-178	R&T Livestock Company, Milton, GA.	Feb. 17, 1975.
TN-165	Jonesborough Livestock Market, Inc., Telford, TN.	Jan. 7, 1970.
WA-111	Lynden Auction Market, Inc., Lynden, WA.	Jan. 18, 1980.

This notice is in the nature of a change relieving a restriction and, thus, may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure. This notice is given pursuant to section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and is effective upon publication in the **Federal Register**.

Done at Washington, DC this 17th day of December, 1991.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 91-30663 Filed 12-23-91; 8:45 am]

BILLING CODE 3410-KD-M

Soil Conservation Service

Muddy Creek-Orderville Watershed, UT; Intent To Prepare an Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR, part 1500); and the Soil Conservation Service Guidelines (7 CFR, part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives the notice that an environmental impact statement is being prepared for the Muddy Creek-Orderville Watershed, Kane County, Utah.

FOR FURTHER INFORMATION CONTACT: Francis T. Holt, State Conservationist, Soil Conservation Service, P.O. Box 11350, Salt Lake City, Utah, 84147-0350, telephone (801) 524-5050.

SUPPLEMENTARY INFORMATION: An Environmental Assessment (EA) has been prepared for this federally assisted action. During the review of this Environmental Assessment concerns surfaced that this project would significantly impact the environment. As a result of these concerns, Frank Holt, State Conservationist, has determined that an Environmental Impact Statement (EIS) should be prepared and reviewed for this project.

Copies of the Environmental Assessment can be obtained by calling (801) 524-5054 or writing the Soil Conservation Service at P.O. Box 11350, Salt Lake City, UT 84147-0350.

The purpose of the action is watershed protection. The watershed is presently in a degrading condition, due to accelerating sheet, rill and gully erosion rates. This erosion is permanently damaging the long-term productivity of the watershed to support plant and animal life. It is also causing off-site damage by yielding salt-bearing sediment to the East Fork of the Virgin River, a part of the Colorado River System.

The Soil Conservation Service is presently seeking information and comments on the scope of issues to be addressed and alternatives and impacts to be considered in the EIS from agencies, groups and individuals.

Items that have raised a high level of concern either in the original

Environmental Assessment or from comments received from reviewers include: Erosion and sedimentation, the use of chaining as a land management procedures, water quality, plant cover, economic analysis, future grazing impacts, wildlife habitat, threatened and endangered species, archaeology sites, change in hydrologic regime, downstream salinity impacts, riparian protection, wilderness, Native American religious sites, success of vegetative treatment, diversity of plants included in the proposed seed mix and use of hazardous chemicals.

The Soil Conservation Service invites written comments and suggestions on the scope of issues related to this proposal. For most effective use in preparing the EIS, information and comments should be received in the SCS office by October 30, 1991.

A meeting to receive oral comments on the scope of issues to be addressed and alternatives and impacts to be considered will be held at the Kane County Courthouse in Kanab on Wednesday, October 16, beginning at 7 p.m.

Interested people are invited to visit with Soil Conservation Service personnel at the State Office, room 4012, Federal Building, 125 S. State St., Salt Lake City or the Field Office, 82 N. 100 East, Cedar City during the EIS process.

Another formal comment period will be held during the review of the draft EIS. The comment period on the draft EIS will begin with publication of the Notice of Availability in the **Federal Register** and extend for 45 days from that date. The draft is scheduled to be completed in March of 1992.

The final EIS is expected to be released in June 1992. Frank Holt, State Conservationist, who is the responsible official will then make a decision regarding this proposal after considering the comments, responses and environmental consequences discussed in the Final EIS.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: September 12, 1991.

Francis T. Holt,

State Conservationist.

[FR Doc. 91-30647 Filed 12-23-91; 8:45 am]

BILLING CODE 2410-16-M

DEPARTMENT OF COMMERCE

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent 4,416,871, "Inhibition by Peptides of Tolerance to and Physical Dependence on Morphine" to Bio-Fine Pharmaceuticals, Inc., having a place of business at Las Vegas, NV. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention relates to novel compositions and to methods for inhibiting the development of tolerance to and dependence on drugs of the opioid type without substantial alteration of their analgesic effects. More particularly, the invention relates to compositions comprising opioid drugs and certain peptides and to administration of these compositions to obtain the desired inhibiting effect. In a specific aspect, the invention relates to pretreatment with certain peptides followed by daily administration of the peptide during chronic morphine treatment.

The availability of the invention for licensing was published in the **Federal Register** Vol 47, No. 196, p. 44605 (1982). A copy of the above-identified patent may be purchased for $1.50 from Box 9, US Patent and Trademark Office, Washington, DC 20231.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Papan Devnani (telephone 703/487-4732), Center for Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151. Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by NTIS within sixty (60) days of this notice will be considered.

Douglas J. Campion,

Center for Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 91-30628 Filed 12-23-91; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Meeting of the Advisory Council on Dependent's Education

AGENCY: Department of Defense Dependents Schools (DoDDS), Office of the Secretary of Defense.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Dependent's Education (ACDE). It also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act. Although the meeting is open to the public, because of space constraints, anyone wishing to attend the meeting should contact the point of contact listed below.

DATES: January 24, 1992, 9 a.m. to 4:30 p.m. and January 25, 1992, 9 a.m. to 3 p.m.

ADDRESSES: January 24, The Pentagon, room 3E869, Washington, DC; January 25, Embassy Suites Hotel, Adams Morgan Room, 1402 Eads Street, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms Marilyn Witcher, Public Affairs Officer, DoD Dependents Schools, 1225 Jefferson Davis Highway, Crystal Gateway #2, suite 1500, Arlington, Virginia 22202; Telephone number: 703-746-7846.

SUPPLEMENTARY INFORMATION: The Advisory Council on Dependents' Education is established under title XIV, section 1411, of Public Law 95-561, Defense Dependents' Education Act of 1978, as amended by title XII, section 1204(b)(3)-(5), of Public Law 99-145, Department of Defense Authorization Act of 1986 (20 U.S.C., Chapter 25A, section 929, Advisory Council on Dependents' Education). The Council is cochaired by designees of the Secretary of Defense and the Secretary of Education. In addition to a representative of each of the Secretaries, 12 members are appointed jointly by the Secretaries. Members include representatives of educational institutions and agencies, professional

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employee organizations, unified military commands, school administrators, parents of DoDDS students, and one DoDDS student. The Director, DoDDS, serves as the Executive Secretary of the Council. The purpose of the Council is to advise the Secretary of Defense and the DoDDS Director about effective educational programs and practices that should be considered by DoDDS and to perform other tasks as may be required by the Secretary of Defense. The agenda includes discussions about the national goals for education, academic achievement encouragement, education of handicapped dependents, communications throughout the system, increased parental involvement, results of the biennial parent survey, drawdown planning, and responses to the recommendations made by the Council during its July meeting.

Dated: December 18, 1991.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-30677 Filed 12-23-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meeting: 6-7 January 1992.

Time: 0800-1600.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on the Comanche International will meet for discussions on the mission of the group, issues surrounding the development, and plans for future operations of the group. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraphs (1) and (4) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed is so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695-0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-30736 Filed 12-23-91; 8:45 am]

BILLING CODE 3710-08-M

Notice of Open Meeting

AGENCY: Board of Visitors, United States Military Academy, DoD. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following meeting:

Name of Committee: Board of Visitors, United States Military Academy.

Date of Meeting: 3 February 1992.

Place of Meeting: Washington, DC.

Start Time of Meeting: 9 a.m.

Proposed Agenda: Election of officers; selection of Executive Committee; scheduling of meetings for remainder of year; and identification of areas of interest for 1992. All proceedings are open.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Stephen R. Furr, United States Military Academy, West Point, NY 10996-5000, (914) 938-2626.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 91-30618 Filed 12-23-91; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

National Advisory Council on Educational Research and Improvement; Meeting

AGENCY: National Advisory Council on Educational Research and Improvement, Education.

ACTION: Full council meeting of the National Advisory Council on Educational Research and Improvement.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Educational Research and Improvement. This notice also describes the functions of the Council. Notice of this meeting is required section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: January 14, 1992, 9 a.m. to 5 p.m. Meeting will take place in Munzer Hall Conference Room, Defense Language Institute, Monterey, California. Meeting will continue at the Monterey Marriott, Los Angeles Room, Mezzanine Level, on January 15, 9 a.m.—5 p.m., January 16, 1:30 p.m.—6 p.m., and January 17, 8 a.m.—4:30 p.m.

ADDRESSES: Defense Language Institute, Building 618, The Presidio, Monterey, CA 93944-5006. Monterey Marriott, 350 Calle Principal, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: Mary Grace Lucier, Executive Director, National Advisory Council on Educational Research and Improvement, 330 C Street, SW., Washington, DC 20202-7579, (202) 732-4504.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Educational Research and Improvement is established under section 405 of the 1972 Education Amendments, Public Law 92-318, as amended by the Higher Education Amendments of 1986, Public Law 99-498, (20 U.S.C. 1221e). The Council is established to advise the President, the Secretary of Education and the Congress on policies and activities carried out by the Office of Educational Research and Improvement (OERI).

The meeting of the Council is open to the public. Individuals who wish to attend the portion of the meeting at the Defense Language Institute are advised to contact the Council office and leave their names and affiliations no later than January 10, 1992. The proposed agenda includes briefings by personnel of the Defense Language Institute (January 14); speakers on the topics of global competitiveness and second language learning (January 15); formulation of recommendations by Council members (January 16); and presentations on school-business partnerships and California's multicultural history curriculum (January 17).

Records are kept of all Council Proceedings and are available for public inspection at the Office of the National Advisory Council on Educational Research and Improvement, 330 C Street, SW., suite 4076, Washington, DC 20202-7579, from 9 a.m. to 5 p.m. Monday through Friday.

Dated: December 19, 1991.

Mary Grace Lucier,

Executive Director.

[FR Doc. 91-30681 Filed 12-23-91; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

State Student Incentive Grant Program

AGENCY: Department of Education.

ACTION: Notice of the closing date for the receipt of state applications for fiscal year 1992.

SUMMARY: The Secretary gives notice of the closing date for the receipt of State applications for fiscal year 1992 funds under the State Student Incentive Grant (SSIG) Program. This program, through matching formula grants to States for student awards, provides a nationwide delivery system of grants for students with substantial financial need.

A State that desires to receive SSIG funds for any fiscal year must have an agreement with the Secretary as provided for under the authorizing law and must submit an application through the State agency that administered its SSIG Program on July 1, 1985.

The Secretary is authorized to accept applications from the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Commonwealth of Northern Mariana Islands, the Virgin Islands, and the Republic of Palau, provided it remains a trust territory. (The future eligibility of the Republic of Palau will be determined by the provisions of the Compact of Free Association.) Authority for this program is contained in sections 415A through 415E of the Higher Education Act of 1965, as amended (HEA). (20 U.S.C. 1070c-1070c-4).

CLOSING DATE FOR TRANSMITTAL OF APPLICATIONS: An application for fiscal year 1992 SSIG Program funds must be mailed or hand-delivered by February 24, 1992.

APPLICATIONS DELIVERED BY MAIL: An application sent by mail must be addressed to the U.S. Department of Education, Office of Student Financial Assistance, 400 Maryland Avenue, SW., Washington, DC 20202-5447, Attention: Mr. Fred Sellers, Chief, State Grant Section, room 4018, ROB #3.

An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a Commercial Carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office. The Department of Education encourages applicants to use registered or at least first-class mail.

Each late applicant will be notified that it cannot be assured that its application will be considered for fiscal year 1992 funding.

APPLICATIONS DELIVERED BY HAND: An application that is hand-delivered must be taken to the U.S. Department of Education, Office of Student Financial Assistance, 7th and D Streets, SW., room 4018, GSA Regional Office Building #3, Washington, DC. Hand-delivered applications will be accepted between 8 a.m. and 4:30 p.m. daily (Washington, DC time), except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

PROGRAM INFORMATION: The Secretary requires an annual submission of an application for receipt of SSIG funds. In preparing an application, each State agency should be guided by the table of allotments provided in the application package.

State allotments are determined by the statutorily mandated formula and are not subject to negotiations. The States may also request a share of reallotments, in addition to their basic allotments, contingent upon the availability of such funds from allotments to any States unable to use all their basic allotments. In fiscal year 1991, all 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam participated in the SSIG assistance delivery network.

APPLICATION FORM: The required application form for receiving SSIG Program funds will be mailed to officials of appropriate State agencies at least 30 days before the closing date. Applications must be prepared and submitted in accordance with the HEA and the program regulations cited in this notice. The Secretary strongly urges that applicants not submit information that is not requested.

APPLICABLE REGULATIONS: The following regulations are applicable to the SSIG Program:

(1) The SSIG Program regulations (34 CFR part 692).

(2) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 76 (State-Administered Programs), part 77 (Definitions that Apply to Department Regulations), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 82 (New Restrictions on Lobbying) and part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(3) The regulations in 34 CFR part 604 that implement section 1203 of the HEA (Federal-State Relationship Agreements).

(4) The Student Assistance General Provisions in 34 CFR part 668.

FOR FURTHER INFORMATION: For further information contact Mr. Fred Sellers, Chief, State Grant Section, Office of Student Financial Assistance, U.S. Department of Education, Washington, DC 20202-5447; telephone (202) 708-4607. (20 U.S.C. 1070c-1070c-4).

Dated: December 18, 1991.

(Catalog of Federal Domestic Assistance Number 84.069, State Student Incentive Grant Program)

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 91-30629 Filed 12-23-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance to the Colorado Department of Health for Administration and Enforcement of a State Hazardous Waste Management Program

AGENCY: Rock Flats Office, DOE.

ACTION: Notice of intent to award noncompetitive financial assistance to the Colorado Department of Health.

SUMMARY: Pursuant to the statutory authorities of section 646 of the Department of Energy Authorization Act (Pub. L. 95-91) and the Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 97-258), the Department of Energy, Rocky Flats Office, gives notice of its plan to award approximately $500,000 to the Colorado Department of Health for reimbursement of costs incurred in the first year of a five-year Interagency Agreement (IAG) between the Department of Energy (DOE), Environmental Protection Agency (EPA), and Colorado Department of Health (CDH). The State of Colorado received authorization from EPA to administer and enforce a State hazardous waste management program. CDH is the State agency designated to oversee the assessment and remediation activities at Rocky Flats Plant which include permitting and closure plans, approval of statements of work and work plans, the selection of remedial actions for each operable unit, the taking of samples, ensuring that work is being performed properly and in accordance with the terms of the IAG.

FOR FURTHER INFORMATION CONTACT: Dorothy Gross, Contract Specialist, U.S. DOE, Rocky Flats Office, Contracts and Services Division, P.O. Box 928, Golden, CO 80402-0928, Grant Number DE-FG34-92RF00215.

Robert M. Nelson, Jr.,

Manager.

[FR Doc. 91-30706 Filed 12-23-91; 8:45 am]

BILLING CODE 6450-01-M

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Federal Energy Regulatory Commission

[Project No. 120-007, et al.]

Hydroelectric Applications; Southern California Edison Co., et al.; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection.

1a. *Type of Application:* Amendment of License.

b. *Project No.:* 120-007.

c. *Date Filed:* 11/29/91.

d. *Applicant:* Southern California Edison Company.

e. *Name of Project:* Big Creek No. 3 Project.

f. *Location:* On the San Joaquin River, in Fresno, Tulare, and Kern Counties, California. The project affects lands of the United States within the Sierra National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. E. Martinez, Manager of Hydro Generation, Southern California Edison Company, P.O. Box 800, Rosemead, CA 91770 (818) 302–1564.

i. *FERC Contact:* Paul Shannon, (202) 219–2866.

j. *Comment Date:* January 31, 1992.

k. *Description of Amendment:* Southern California Edison Company (SCEC) requests approval of an as-built exhibit M for the Big Creek No. 3 Project. The as-built exhibit M states that the generator for Unit 5 was installed in 1980 at a capacity of 36,000-kW. This is 1000-kW greater than the authorized capacity of the unit. Also, between 1979 and 1985, SCEC rewound the remaining four generators. These factors increased the installed generating capacity of the project from the authorized 141,500-kW to 177,450-kW. Between 1982 and 1985, SCEC also renovated four of the five project turbines by replacing their turbine runners and seal rings. These renovations increased the total hydraulic capacity of the project from the authorized 3,095 cfs to 3,450 cfs.

1. *This notice also consists of the following standard paragraphs: B, C, and D2.*

2a. *Type of Application:* Transfer of License.

b. *Project No.:* 2899–025.

c. *Date filed:* October 28, 1991.

d. *Applicants:* Twin Falls Canal Company (Twin), North Side Canal Company (North), and Milner Dam, Inc. (Milner).

e. *Name of Project:* Milner Hydroelectric Project.

f. *Location:* On lands administered by the Bureau of Land Management on the Twin Falls Main Canal and Snake River in Twin Falls, Cassia, Jerome, and Minidoka Counties, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Twin Falls Canal Company, P.O. Box 326, Twin Falls, ID 83303–0326, (208) 733–6731; North Side Canal Company, Ltd., 921 North Lincoln Avenue, Jerome, ID 83338, (202) 324–2319.

i. *FERC Contact:* Mr. Michael Strezelecki, (202) 219–2827.

j. *Comment Date:* February 3, 1992.

k. *Description of Project:* On December 15, 1988, a license was issued to Twin and North for the construction, operation, and maintenance of the Milner Hydroelectric Project. The project consists of the Milner dam and reservoir, a canal, a forebay, a penstock, and two powerhouses with a total installed capacity of 58 MW. Twin and North request approval to transfer the license to Milner.

1. *This notice also consists of the following standard paragraphs:* B and C.

3a. *Type of Application:* Amendment to Major License Application.

b. *Project No.:* 4715–003.

c. *Dated filed:* July 2, 1990.

d. *Applicant:* Long Lake Energy Corporation.

e. *Name of Project:* Felts Mills.

f. *Location:* On the Black River in Jefferson County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* F. Joseph Feyder, 420 Lexington Ave., suite 540, New York, NY 10170, (212) 986–0440.

i. *FERC Contact:* Charles T. Raabe (202) 219–2811.

j. *Deadline Date:* February 3, 1992.

k. *Description of Project:* The project, as currently proposed, would consist of a Lower Dam development and an Upper Dam Development. The two developments are about 1.1 miles apart. The existing Middle Dam, except the submerged wood crib dam, would be demolished. The existing abandoned mill at the Lower Dam would also be demolished.

(A) The Lower Dam development would consist of: (1) An about 2,160-foot-long and 25.5-foot-high concrete gravity dam, consisting of a right bank section, a fuse plug dike section, an auxiliary gated spillway section, a powerhouse section, and a left bank retaining wall section; (2) a reservoir with water surface area of 142 acres, a gross storage capacity of 850 acre-feet, and a normal water surface elevation of 588.5 feet; (3) a forebay approximately 70 feet long, 70 feet wide, and 36 feet deep; (4) a powerhouse containing two generating units with a total installed capacity of 8,133 kW; (5) a tailrace approximately 600 feet long and 70 feet wide; (6) a powerhouse yard with security fence; (7) an about 260-foot-long access road to the powerhouse; (8) a rockfill embankment on the south shore; (9) a 13.8-kV transmission line, approximately 1,600 feet long; and (10) appurtenant facilities.

(B) The Upper Dam development would consist of: (1) An about 510-foot-long and 26.5-foot-high concrete gravity dam, consisting of an existing modified spillway section with canoe chute, a new gated spillway section, an approach chanel spillway section, a gated ice sluice section, and a powerhouse section; (2) a reservoir with a water surface area of 220 acres, a gross storage capacity of 1,100 acre-feet, and a water surface elevation of 608.9 feet; (3) an about 390-foot-long, 70-foot-wide, and 50-foot-deep power canal with trash boom and security fence; (4) a powerhouse containing two generating units with a total installed capacity of 5,030 kW; (5) a tailrace; approximately 100 feet long and 70 feet wide; (6) an about 140-foot-long access road to the powerhouse; (7) an about 90-foot span bridge across the power canal; (8) a 13.8-kV transmission line approximately 10,560 feee long; and (9) appurtenant facilities.

The project would have a total installed capacity of 13,163 kW. The applicant estimates that the average annual generation would be 62,570,000 kWh.

1. *This notice also consists of the following standard paragraphs:* A4, and B1.

m. *Availability Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371.

4a. *Type of Application:* Surrender of License.

b. *Project No.:* 8418–004

c. *Dated filed:* November 20, 1991.

d. *Applicants:* U.S. Tungsten Corporation.

e. *Name of Project:* Pine Creek Water Power Project.

f. *Location:* On an unnamed tributary of Morgan Creek partly within Inyo National Forest in Inyo County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Tim Scott, General Manager, U.S. Tungsten Corporation, Pine Creek Road, route 2, Bishop, California 93514, (619) 387–2501.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment Date:* January 27, 1992.

k. *Description of Project:* On January 31, 1986, a license was issued to the Umetco Minerals Corporation for the construction, operation, and maintenance of the Pine Creek Water Power Project. On March 19, 1987, the license was transferred to the U.S. Tungsten Corporation. The project would utilize water emanating from fissures formed during the Licensee's tunneling and mining operations and would consist of two penstocks, two powerhouses, and a tailrace.

The license surrender is requested because the project is not financially feasible.

1. *This notice also consists of the following standard paragraphs:* B and C.

5a. *Type of Application:* Application to Amend exhibit R (recreation plan) of the Project License.

b. *Project No.:* 10254–012.

c. *Date Filed:* November 21, 1991.

d. *Applicant:* Consolidated Hydro Southeast Inc.

e. *Name of Project:* Upper Pelzer Hydroelectric Project.

f. *Location:* Anderson County, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contract:* Kathy Dority, Consolidated Hydro Southeast Inc., P.O. Box 512, Greenville, SC 29602–0512, (803) 233–8567.

i. *FERC Contact:* Dan Hayes, (202) 219–2660.

j. *Comment Date:* January 22, 1992.

k. *Description of Project:* Consolidated Hydro Southeast Inc. has filed an application with the Federal Energy Regulatory Commission to amend its project recreation plan. The licensee proposes to delete a parking area at its Upper Pelzer Fishing Access Area from its recreation plan. Consultation with the S.C. Highway Department has revealed that the parking area is unsuitable for parking and pedestrian use due to the sharp curves in the road at that area. Pedestrian access to the river will be maintained, but parking will not be permitted at the site.

l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

6a. *Type of Application:* Minor License.

b. *Project No.:* 10552–002.

c. *Date Filed:* May 13, 1991.

d. *Applicant:* Contractors Power Group, Inc.

e. *Name of Project:* Mile 28 Water Power Project.

f. *Location:* On the Bureau of Reclamation's Milner-Gooding Canal, off Snake River, in Jerome County, Idaho. Section 7, T8S, R20E, Boise Meridian.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. John J. Straubhar, P.E., P.O. Box 820, Twin Falls, ID 83303, (202) 788–0484.

i. *FERC Contact:* Mr. Surender M. Yepuri, P.E., (202) 219–2847.

j. *Deadline Date:* February 17, 1992.

k. *Status of Environmental Analysis:* This application is not ready for an environmental analysis at this time—see attached paragraph D8.

l. *Description of Project:* The proposed project, within the canal with the exception of the transmission line, would consist of: (1) A 240-foot-long concrete diversion/overflow spillway; (2) a 34-foot-wide, 55-foot-long powerhouse containing two Kaplan Turbine/generator units with a total rated capacity of 1.5 MW; (3) a 1200-foot-long tailrace channel; (4) a 150-foot-long, 35-kV transmission line connecting to a local distribution line; and (4) appurtenant facilities.

The project would have an estimated annual output of 5.8 GWh and would cost $1,700,000 in 1991 dollars to construct.

m. *Purpose of Project:* Power generated would be sold to a local utility.

n. *This notice also consists of the following standard paragraphs:* A2, A9, B1, and D8.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at (1) J.J. Straubhar, 1061 Blue Lakes North, suite 204, Twin Falls, ID 83303; telephone (208) 734–8833; and (2) Jerome Public Library, Jerome, ID.

7a. *Type of Application:* Minor License.

b. *Project No.:* 11128–000.

c. *Date filed:* April 10, 1991.

d. *Applicant:* Odell Hydroelectric Co.

e. *Name of Project:* Brooklyn.

f. *Location:* On the Upper Ammonoosuc River in the community of Groveton in the Town of Northumberland, in Coos County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory Cloutier, RR 1, Box 2, Jefferson, NH 03583, (603) 586–4506.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Deadline Date:* Deadline set by paragraph D9.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The proposed project would consist of: (1) An existing 4-foot-high rock-filled, timber crib Red Dam; (2) an existing reservoir with a surface area of 66 acres at surface elevation 882.8 m.s.l. and a storage capacity of 200 acre-feet; (3) an existing 16-foot-high rock-filled, timber crib Brooklyn Dam; (4) an existing reservoir with a surface area of 26 acres at elevation 877.8 m.s.l. and a storage capacity of 50 acre-feet; (5) an existing powerhouse at Brooklyn Dam containing 2 proposed generating units with a total rated capacity of 530 kW; (6) a tailrace; (7) a proposed 150-foot-long transmission line; and, (8) appurtenant facilities. The existing dams and facilities are owned by James River Paper Company, Inc. The average annual energy generation is estimated to be 2,190 MWh and the estimated cost of redevelopment of these facilities is $880,000.

m. *Purpose of Project:* Power produced would be sold to a local power company.

n. *This notice also consists of the following standard paragraphs:* A4 and D9.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the offices of Odell Hydroelectric Co., RR 1, Box 2, Jefferson, NH 03583 or by calling (603) 586–4506.

8a. *Type of Application:* Minor License.

b. *Project No.:* 11132–000.

c. *Date filed:* April 26, 1991.

d. *Applicant:* Consolidated Hydro Maine, Inc.

e. *Name of Project:* Eustis Dam.

f. *Location:* On the North Branch of the Dead River near Eustis in Franklin County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

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h. *Applicant Contact:* Mr. Wayne E. Nelson, RR 2, Box 690 H Industrial Ave., Sanford, ME 04073, (207) 490–1980.

i. *FERC Contact:* Ms. Julie Bernt (202) 219–2814.

j. *Deadline Date:* January 24, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E.

l. *Description of Project:* The proposed project would consist of: (1) An existing 15-foot-high concrete gravity dam owned by the applicant, (2) a 178-foot-long ogee type spillway; (3) an existing reservoir with a surface area of 73.5 acres at surface elevation 1,161 feet m.s.l. and a storage capacity of 570 acre-feet; (4) an existing powerhouse containing one generating unit with a rated capacity of 250 kW; (5) a bedrock tailrace; and (6) appurtenant facilities. The average annual energy generation is estimated to be 1,600 MWh. There is no new construction; therefore, there are no project costs.

m. *Purpose of Project:* Power produced would be sold to a local power company.

n. *This notice also consists of the following standard paragraphs:* A2, A9, B2, and E.

9a. *Type of Application:* Minor License.

b. *Project No.:* 11142–000.

c. *Date Filed:* May 3, 1991.

d. *Applicant:* Consolidated Hydro Maine, Inc.

e. *Name of Project:* Estes Lake Dam.

f. *Location:* On the Mousam River, York County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Wayne E. Nelson, RR2 Box 690 H Industrial Avenue, Sanford, ME 04073, (207) 490–1980.

i. *FERC Contact:* Michael Dees (202) 219–2807.

j. *Deadline Date:* January 22, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached standard paragraph E.

l. *Description of Project:* The existing project consists of the following: (1) A concrete-capped cut stone dam eight to 40 feet high and 726 feet long, with a left abutment dike about six feet high and 115 feet long; (2) an impoundment with a surface area of 474 acres and a normal water surface elevation of 214 feet msl; (3) a wooden/brick and masonry powerhouse housing two hydropower units with a combined capacity of 775 kW; (4) a tailrace excavated from bedrock with cut stone sidewalls; (5) a 2,000 kVA transmission line five miles long; and (6) appurtenant facilities. The average annual energy generation is 3.8 GWh and is sold to Central Maine Power Company. The project facilities are owned by the applicant.

m. *Purpose of Project:* The purpose of the project is to generate electric energy for sale.

n. *This notice also consists of the following standard paragraphs:* A2, A9, B2 and E.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371.

p. Federal, State, and local agencies may obtain a copy of the application directly from the applicant.

10a. *Type of Application:* Major License.

b. *Project No.:* 11151–000.

c. *Date Filed:* May 28, 1991. This notice supersedes the notice issued November 14, 1991, for this project.

d. *Applicant:* Energy Alternatives of North America, Inc.

e. *Name of Project:* Williams Dam.

f. *Location:* On the East Fork of the White River near Bedford in Lawrence County, Indiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. C. Scott Hitchcock, P.O. Box 21, Kohler, WI 53044, (414) 452–2624.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Deadline Date:* Dealine set by paragraph D9.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The proposed project would consist of: (1) An existing 25-foot-high concrete dam owned by the State of Indiana; (2) a reservoir with a surface area of 200 acres at surface elevation of 475 feet m.s.l. and a storage capacity of 1,000 acre-feet; (3) a new powerhouse with intake openings at an existing powerhouse substructure containing four generating units each rated at 470 kW; (4) a 1¾–miles long transmission line; and (5) appurtenant facilities. The project would have an estimated annual output of 10,660 MWh and would cost $2,800,000 to construct.

m. *Purpose of Project:* The power produced would be sold to a local power company.

n. *This notice also consists of the following standard paragraphs:* A4 and D9.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction from Mr. Hitchcock at P.O. Box 21, Kohler, WI or by calling (414) 452–2624.

11a. *Type of Application:* Minor License.

b. *Project No.:* 11169–000.

c. *Date Filed:* July 25, 1991.

d. *Applicant:* H&H Properties.

e. *Name of Project:* Avalon Dam.

f. *Location:* On the Mayo River, Rockingham County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact:* Mr. Tim Henderson, H&H Properties, 1240 Springwood Church Road, Gibsonville, NC 27249, (919) 449–5054.

i. *FERC Contact:* Mary C. Golato (202) 219-2804.

j. *Deadline Date:* February 13, 1992.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached D4.

l. *Description of Project:* The proposed Avalon Dam Hydroelectric Project consists of three new turbine-generator units, and their accessory control and transmission equipment, installed at an existing dam, power canal, penstock and powerhouse development.

In detail, the project would consist of: (1) An existing masonry gravity spillway dam about 360 feet long and 22 feet high maximum, to be crested with new 1-foot-high flashboards; (2) a left abutment masonry dam about 40 feet long and 33 feet high maximum; (3) a right abutment masonry headgate structure, about 56 feet long and 30 feet high; (4) a reservoir with a surface area of about 12.1 acres and gross storage of 126 acre-feet at a level of 625.5 mean sea level; (5) an existing power canal about 1,800 feet long, 20 to 26 feet wide, and 8 to 12 feet deep, connecting the headgate structure to; (6) an existing masonry intake for a steel penstock 9 feet in diameter and 160 feet long; (7) an existing masonry powerhouse 24 feet wide, 70 feet long and 25 feet high; (8) new powerhouse equipment consisting of one single-runner Francis unit and generator rated at 200 kilowatts (kW), and a second double-runner Francis unit and generator rated at 580 kW, both units discharging into an existing tailrace; (9) a new instream flow turbine-generator unit related 60 kW, located at the upstream end of the power canal, and discharging at the toe of the dam; (10) a 1.4-kilovolt transmission line about 1,280 feet long; and (11) appurtenant facilities.

m. *Purpose of Project:* Generated power would be used solely by Duke Power Company.

n. *This notice also consists of the following standard paragraphs:* A3, A9, B1, and D4.

o. *Available Locations of Applications:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at Mr. Tim Henderson, H&H Properties, 1240 Springwood Church Road, Gibsonville, NC 27249, (919) 449–5054 and at May Memorial Library, 342 South Spring Street, Burlington, NC 27215.

12a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11179–000.

c. *Date Field:* August 27,1991.

d. *Applicant:* Faulkner Land and Livestock Inc.

e. *Name of Project:* Freeway Drop.

f. *Location:* At the Little Wood River, on lands administered by the Bureau of Land Management, on the North Side Canal Company's canal system, in Elmore County, Idaho. Township 5 S Range 11, 12, 13 and 14 E Sections 20, 23, 24, 25, 26, 27, 28, 29, and 30.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Michael Arkoosh, 714 Third Avenue East, Goodling, ID 83330, (208) 934–4817.

i. *FERC Contact:* Michael Spender at (202) 219–2846.

j. *Comment Date:* February 6, 1992.

k. *Description of Project:* The proposed project would consist of: (1) An existing 6-foot-high concrete dam on the Little Wood River; (2) an existing 18.5-mile-long, 16-foot-wide canal; (3) a 10-foot-high earthen diversion dam on the canal; (4) a 36-inch-diameter, 14,000-foot-long penstock; (5) a powerhouse containing a generating unit with a capacity of 1,575 kW and an estimated annual generation of 7.5 GWh; and (6) a 250-foot-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $10,000.

l. *Purpose of Project:* Project power will be sold to Idaho Power Company.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

13a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11201–000.

c. *Date filed:* November 6, 1991.

d. *Applicant:* Peak Power Corporation.

e. *Name of Project:* Butte Pumped Storage Hydroelectric Project.

f. *Location:* At the abandoned Berkeley Pit copper mine superfund site within the city of Butte, in Silver Bow County, Montana. T3N, R7W in sections 6, 7, 8, 17, and 18.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Rick S. Koebbe, Vice President, Peak Power Corporation, 10 Lombard Street, Suite 410, San Francisco, CA 94111, (415) 362–0887.

i. *FERC Contact:* Michael Strzelecki, (202) 219–2827.

j. *Comment Date:* February 14, 1991.

k. *Description of Project:* The proposed pumped storage project would consist of: (1) A 60-foot-high earthen dam and 63-acre upper reservoir at the abandoned mine dump area; (2) a 10-foot-diameter, 3,000-foot-long penstock connecting the upper reservoir with the lower reservoir; (3) an 80-acre lower reservoir utilizing Montana Resource's existing abandoned Berkeley mine pit; (4) a powerhouse containing two 50-MW generating units; (5) a 4,000-foot-long, 100-kV transmission line interconnecting with an existing Montana Power Company transmission line; (6) a water treatment facility; and (7) appurtenant facilities. The water source for the proposed project would be groundwater and mining wastewater effluent.

No new access roads will be needed to conduct the studies. The approximate cost of the studies would be $200,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

14a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11202–000.

c. *Date filed:* November 7, 1991.

d. *Application:* Willard C. Lipe, William M. Allen, Jr., and James M. Jackson.

e. *Name of Project:* Edwards Falls Project.

f. *Location:* On Limestone Creek at Edwards Falls, in the Town of Manlius, in the County of Onondaga, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* William M. Allen, Jr., R.D.1, Cardner Road, New Woodstock, NY 13122 (315) 662–3125.

i. *FERC Contact:* Mary C. Golato (202) 219–2804.

j. *Comment Date:* February 21, 1992.

k. *Description of Project:* The proposed project would consist of the following facilities: (1) An existing 19-foot-high dam; (2) an existing mill pond at the dam approximately 4 acres in surface area, a very limited storage capacity, and a normal maximum elevation of 720 feet above mean sea level; (3) a proposed 4-foot-diameter penstock 750 feet long; (4) a new powerhouse consisting of two new turbines having a total installed capacity of 400 kilowatts; (5) a proposed 480-volt 3-phase transmission line 300 feet long; and (6) appurtenant facilities. The dam is owned by Enders Road Development Corporation and the average annual generation is estimated as 2.0 million kilowatthours. The applicant expects the cost of the studies to be minimal.

l. *This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.*

15a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11203–000.

c. *Date filed:* November 13, 1991.

d. *Applicant:* Blackfeet Tribe of the Blackfeet Indian Reservation.

e. *Name of Project:* Swift Dam Hydroelectric Project.

f. *Location:* Partially on Bureau of Land Management property of Birch Creek in Pondera County, Montana. T28N, R10W in sections 22, 23, 26, 27, 28, 33, and 34.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Donald G. Kittson, Blackfeet Legal Department, P.O. Box 849, Browning, MT 59417.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment Date:* February 17, 1992.

k. *Competing Application.* Swift Dam Hydroelectric Project (FERC No. 11159–000) Pondera County Canal & Reservoir Co.

l. *Description of Project:* The proposed project would consist of: (1) The existing 200-foot-high Swift dam and 500-acre Swift Reservoir owned by the Pondera County Canal & Reservoir Company; (2) a powerhouse containing two generators with a total installed capacity of 2.2 MW; (3) a 100-foot-long transmission line interconnecting with an existing Glacier Electric Cooperative transmission line; and (4) appurtenant facilities.

No new access roads will be needed to conduct the studies. The approximate cost of the studies under the permit would be $100,000.

m. *This notice also consists of the following standard paragraphs: A8, A10, B, C, and D2.*

16a. *Type of Application.* Preliminary Permit.

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b. *Project No.* 11204–000.
c. *Date filed:* November 18, 1991.
d. *Applicant:* Magic Irrigators, Inc.
e. *Name of Project:* Hertzinger Hydroelectric Project.
f. *Location:* On Salmon Falls Creek, Tributary to the Snake River, in Twin Falls County, Idaho, near the town of Buhl. Township 9, Range 13 East, section 1, Boise Meridian.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* John J. Straubhar, P.E., P.O. Box 620, Twin Falls, ID 83303, (208) 734–8633.
i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219–2842.
j. *Comment Date:* February 13, 1991.
k. *Description of Project:* The proposed project would consist of: (1) The applicant's existing 10-foot-high 85-foot-long rock-fill dam; (2) an intake structure; (3) a 2,400-foot-long water conveyance system consisting of a 2,000-foot-long canal, a 200-foot-long flume, and a 200-foot-long penstock; (4) a powerhouse containing two generating units with a total installed capacity of 175 kilowatts; (5) a tailrace; (6) a switchyard; and (7) a 34.5 kilovolt, 2,400-foot-long transmission line tying into an existing utility line.

The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $20,000. No new roads will be needed for the purpose of conducting these studies.

l. *Purpose of Project:* Project power will be sold to a local utility.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, D2.

Standard Pargraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intents. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. or B2. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION",

"COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D4. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (60 days from December 6, 1991 for Project No. 11169). All reply comments must be filed with the Commission within 105 days from the date of this notice (105 days from December 6, 1991 for Project No. 11169).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervenings; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

D8. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All flings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (60 days from December 6, 1991 for Project No. 11128 and 60 days from November 26, 1991 for Project No. 11151). All reply comments must be filed with the Commission within 105 days from the date of this notice (105 days from December 6, 1991 for Project No. 11128 and 105 days from November 26, 1991 for Project No. 11151).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be

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sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

E. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: December 17, 1991, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30619 Filed 12-23-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES92-22-000]

Cambridge Electric Light Co.; Application

December 18, 1991.

Take notice that on December 13, 1991, Cambridge Electric Light Company filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authority to issue not more than $25 million of short-term debt on or before December 31, 1993, with a final maturity date no later than December 31, 1994.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 27, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30626 Filed 12-23-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-97-000]

Central Louisiana Electric Co., Inc.; Filing

December 18, 1991.

Take notice that on November 15, 1991, Central Louisiana Electric Company (CLECO) tendered for filing supplemental cost support information to its October 7, 1991 filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 31, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30624 Filed 12-23-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-143-009]

CNG Transmission Corp., Proposed Changes in FERC Gas Tariff

December 18, 1991.

Take notice that CNG Transmission Corporation ("CNG"), on December 13, 1991, pursuant to section 4 of the Natural Gas Act and part 154 of the Commission's regulations, filed tariff sheets to comply with the Commission's November 29, 1991 order in this proceeding.

CNG states that the purpose of its filing is to implement volumetric transportation and storage rate reductions equivalent to its previously filed sales commodity rate reductions in this proceeding, as required by the Commission. The proposed effective dates are December 1, 1991, and January 1, 1992.

CNG states that it has provided copies of its filing to its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Louis D. Cashell,

Secretary.

[FR Doc. 91-30623 Filed 12-23-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES92-21-000]

Commonwealth Electric Co.; Application

December 18, 1991.

Take notice that on December 13, 1991, Commonwealth Electric Company filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authority to issue not more than $100 million of short-term debt on or before December 31, 1993, with a final maturity date no later than December 31, 1994.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 27, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30625 Filed 12-23-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-16-001]

El Paso Natural Gas Co.; Compliance Filing

December 18, 1991.

Take notice that on December 12, 1991, El Paso Natural Gas Company ("El Paso") tendered for filing with the Federal Energy Regulatory Commission ("Commission") certain tariff sheets to be included in its FERC Gas Tariff, Second Revised Volume No. 1, in compliance with ordering paragraph (A) of the Commission's "Order Accepting Tariff Sheet Subject to Refund and Conditions," issued November 27, 1991 at Docket No. RP92-16-000.

El Paso states that on October 28, 1991, at Docket No. RP92-16-000, it filed Third Revised Sheet No. 100B, reflecting the confidential nature of the negotiated Gas Cost Inventory Charge and Gas Cost Ceiling Charge rates for Southwest Gas Corporation under El Paso's Rate Schedule GIC. Such rates were effective November 1, 1991 with El Paso requesting confidential treatment of the rates until December 1, 1991.

El Paso states that ordering paragraph (A) of the Commission's November 27, 1991 order, provided for acceptance of Third Revised Sheet No. 100B to be effective November 1, 1991, subject to El Paso filing within fifteen (15) days of the date of the order, revised, separately stated rates and tariff language as stated in the order. The Commission found that El Paso's request to keep its rates confidential from its competitors for a month was acceptable, but found that El Paso had not separately stated its gas and non-gas costs in its statement of actual rates to be charged as previously ordered. In addition, the Commission stated that the confidential treatment of the Gas Inventory Charge rate applies only to gas costs. El Paso was directed to state publicly the non-gas cost component of its rate in its tariff and under the headings "Gas Cost Ceiling Charge" and "Has Inventory Charge," to substitute the word "Negotiated" for "Confidential." Further, the Commission directed El Paso to amend its tariff to state that the gas cost component rate is filed with the Commission and may be inspected at the end of the applicable month, unless otherwise ordered pursuant to § 388.112 of the Commission's Regulations.

Accordingly, El Paso states that it is submitting tariff sheets which reflect the changes required by the Commission's November 27, 1991 order.

El Paso respectfully requests waiver of the Commission's Regulations, as appropriate, in order that tendered Substitute Third Revised Sheet No. 100B and First Revised Sheet No. 281 may become effective November 1, 1991 and tendered 1st Rev Fourth Revised Sheet No. 100B may become effective December 1, 1991.

El Paso states that copies of the filing were served upon all parties of record at Docket No. RP92-16-000 and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30621 Filed 12-23-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-54-000]

North Penn Gas Co.; Petition for Limited Waiver of the Base Rate Restatement Requirement

December 18, 1991.

Take notice that on December 6, 1991, North Penn Gas Company (North Penn) filed a petition asking the Commission to waive the requirement (under 18 CFR 154.303(e)) that it file a base rate restatement by January 31, 1922.

North Penn represents that it is negotiating a settlement [1] that would allow it to provide all jurisdictional services under a blanket certificate at rates that would be derived from retail rates established by the Pennsylvania Public Utility Commission. Assuming the Commission approves the settlement, North Penn's rates would no longer be set by the Commission and North Penn would not have to file a base rate restatement. Accordingly, North Penn asks that the Commission waive this filing deadline, so that it not have to divert resources to prepare a restatement filing that will likely have no effect. North Penn asks the Commission to rule expeditiously on its petition, given that the restatement is due on January 31, 1992.

North Penn states that copies of the filing have been served upon its wholesale customers and the Pennsylvania Public Utility Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30622 Filed 12-23-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-55-000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

December 18, 1991.

Take notice that on December 16, 1991, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance Tenth Revised Sheet No. 13 to become a part of its FERC Gas Tariff, Second Revised Volume No. 1.

On December 16, 1991, Northwest filed its Annual Report and Cost-of-Service Study to establish a revised Facility Charge and an Amortizing

[1] In Docket Nos. RP91-111-000, CP91-2649-000, and SA91-8-000.

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Adjustment relating to Rate Schedule T–1. The December 16 proposal was prepared in accordance with the provisions of Northwest's December 6, 1989 Amended Compliance Filing (RP88–47 *et al*) which was accepted by the Commission on December 19, 1989.

Northwest requests waiver of the Commission's regulations to permit an effective date of February 1, 1992. A copy of this filing is being mailed to all jurisdictional customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–30620 Filed 12–23–91; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 91–100–NG]

Mobil Natural Gas Inc.; Application To import Natural Gas, Including LNG

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas, including LNG.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on November 19, 1991, of an application filed by Mobil Natural Gas Inc. (MNGI) for blanket authorization to import up to 100 Bcf of natural gas, including liquified natural gas (LNG), over a two-year term beginning on the date of first delivery after February 15, 1991, the date MNGI's current blanket import authorization expires. MNGI intends to utilize existing pipeline and LNG facilities for the transportation of the volumes to be imported and would submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, January 23, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9394.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503.

SUPPLEMENTARY INFORMATION: MNGI is a Delaware corporation with its principal place of business in Houston, Texas. MNGI is a marketer of natural gas in the United States and Canada and a wholly owned subsidiary of Mobil Fairfax Inc. MNGI has an existing blanket import authorization, issued on February 16, 1990, in DOE Opinion and Order No. 385 (1 FE ¶ 70,305) which expires on February 15, 1992. MNGI is requesting that the applied for authorization be granted no later than the expiration date of its current authorization.

MNGI proposes to import natural gas and LNG under competitive spot and short-term arrangements based on market conditions. MNGI would import for its own account or as an agent for the account of others.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that imports made under this arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of MNGI's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 19, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–30707 Filed 12–23–91; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4086–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 23, 1992.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Survey of Wood Furniture Manufacturers for the Purpose of Developing a National Emissions Standard for Hazardous Air Pollutants (NESHAP) for the Wood Furniture Manufacturing Industry (EPA ICR #1607.01). This is a new information collection.

Abstract: This information collection is a one-time survey of manufacturers of wood furniture. Respondents will be selected by sampling within Standard Industrial Classification (SIC) codes 2434, 2511, 2512, 2517, 2519, 2521, 2531, and 2541. The survey requests information on the processes involved in manufacturing wood furniture, the sources and quantities of emissions of hazardous air pollutants (HAP's), and the technologies in use by the industry to control such emissions. EPA will use the data from this survey to establish the maximum achievable control technology (MACT) floor as required under section 112(d) of the Clean Air Act. The results from this survey will also be used to define subcategories for the industry. Thirty of the respondents will be asked to complete a more extensive survey which requests more detailed information on operating parameters and processes. EPA will use this information to define and develop model plants for the industry.

Burden Statement: The public reporting burden for this collection of information is estimated to average 16.2 hours per response. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Manufacturers of wood furniture.

Estimated Annual No. of Respondents: 894.

Estimated No. of Responses per Respondent: One.

Estimated Total Annual Burden: 14,483 hours.

Frequency of Collection: Once.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Please include the ICR number in any correspondence.

Dated: December 18, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91–30691 Filed 12–23–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4086–6]

Expert Panel Workshop

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of workshop on potential hazards associated with municipal solid waste recycling.

SUMMARY: This notice announces the second expert panel workshop to be held by the Environmental Criteria and Assessment Office (ECAO-Cin) of EPA's Office of Health and Environmental Assessment. This workshop will focus on expert panel review of the workshop review draft report titled, Potential Hazards Associated with Municipal Solid Waste Recycling.

DATES: The workshop will be held on January 7, 1992, from 1 p.m. to 5 p.m. and January 8, 1992, from 8 a.m. to 4 p.m. at the Drawbridge Inn, I–75 and Buttermilk Pike, Fort Mitchell, Kentucky.

ADDRESSES: ILSI Risk Science Institute under a Cooperative Agreement with EPA is providing logistical support and cochairing the workshop. Members of the public are invited to attend as observers. Seating is restricted. Individuals wishing to attend are urged to contact Diane Dalisera, 1126 Sixteenth Street, NW., Washington, DC 20036; Telephone (202) 659–3306. The workshop review draft will be available for public inspection at the workshop, and observers will have an opportunity to make brief comments at the end of each day.

FOR FURTHER INFORMATION CONTACT: Eletha Brady-Roberts, U.S. Environmental Protection Agency, Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office (MS–190), Cincinnati, Ohio 45268; telephone (513) 569–7662 or (FTS) 684–7662.

SUPPLEMENTARY INFORMATION: Emissions from Municipal solid waste (MSW) recycling have become a matter of great public interest. However, the potential adverse effects on human health and the environment are as yet unexplored. The purpose of this project is to develop a document that describes the potential hazards of MSW recycling practices and to make this information available to solid waste managers in a form that will assist them in making decisions.

The MSW components that are highlighted in this document are as follows: Aluminum, bi-metal cans (steel/tin), glass, paper, and plastics (HDPE, PET, and PVC). A general overview of recycling practices (collection, sorting, and transportation) and the hazards associated with each practice will be included. A more detailed discussion of recycling technologies for each component and the potential hazards

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associated with the processes will be provided.

Dated: December 12, 1991.

Erich Bretthauer,

Assistant Administrator for Research and Development.

[FR Doc. 91-30693 Filed 12-23-91; 8:45 am]

BILLING CODE 6560-50-M

[OPP-42068; FRL-3940-8]

Missouri Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to approve amendments to the Missouri State Plan.

SUMMARY: The State of Missouri has submitted to EPA proposed amendments to the Missouri State Plan for Certifying Pesticide Applicators. Missouri is proposing the amendments to bring the Plan in line with their amended Missouri Pesticide Use Act which became effective on January 1, 1990, and their amended Rules which became effective on January 1, 1990 and July 1, 1990. Proposed amendments to the Plan include, but are not limited to, establishment of a pesticide technician license, authority to assess civil penalties against individuals violating the Act, establishment of a passing score for an examination, and expansion of applicator and dealer recordkeeping requirements.

DATES: Written comments must be submitted on or before January 23, 1992.

ADDRESSES: Address comments identified by the docket control number OPP-42068 to David A. Ramsey, Toxics and Pesticides Branch, Air and Toxic Substances Division, Region VII, U. S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, KS 66101.

Copies of the proposed amended plan are available for review at the following locations during normal business hours:

1. Division of Plant Industries, Missouri Department of Agriculture, 1616 Missouri Boulevard, Jefferson City, MO 65101.
2. Toxics and Pesticides Branch, U. S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101.
3. Field Operations Division (H7506C), Office of Pesticide Programs, rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, Telephone: (703) 308-5805.

FOR FURTHER INFORMATION CONTACT: David Ramsey (314) 638-5223.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of section 11(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, U. S. C. 136(b) and 40 CFR part 171, Missouri has requested EPA approval of amendments to their Certification Plan for Applicators of Restricted Use Pesticides. The Plan was originally approved by EPA on January 13, 1978.

Missouri is proposing establishment of a pesticide technician license for persons working under the direct supervision of commercial applicators in the category of Ornamental and Turf Pest Control and subcategories of General Structural Pest Control and Termite Pest Control. Applicants for a pesticide technician license must have successfully completed verifiable training approved by the director of the department of agriculture.

Missouri is proposing the establishment of a civil penalty authority over individuals violating provisions of the Missouri Pesticide Use Act and regulations issued thereunder. The director will have the authority to assess a civil penalty for each violation and, in addition, may order that restitution be made to any person.

Missouri is proposing a passing score of 70 percent on each examination required for certification of commercial applicators, noncommercial applicators, and public operators.

Lastly, Missouri is proposing the expansion of pesticide applicator and dealer recordkeeping requirements. Certified commercial applicators shall be required to maintain records for the use of any pesticide.

Dated: November 27, 1991.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 91-30325 Filed 12-23-91; 8:45 am]

BILLING CODE 6560-50-F

[PF-556; FRL-4008-1]

DowElanco; Notice of Filing of Food Additive Petition for Chlorpyrifos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from DowElanco a food additive petition (FAP 6H5505) requesting the establishment of a tolerance for residues of the insecticide chlorpyrifos, per se, in or on all food items (other than those already covered by a higher tolerance as a result of use on growing crops) in food service establishments where food and food products are prepared and served, as a result of the application of chlorpyrifos in microencapsulated form as a crack and crevice or spot treatment.

ADDRESSES: By mail, submit written comments identified by the document control number, [PF-556], to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM-19), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-6386.

SUPPLEMENTARY INFORMATION: This notice announces that EPA has received from DowElanco, P.O. Box 1706, Midland, MI, a food additive petition (FAP 6H5505) proposing to amend 40 CFR 185.1000 by establishing a food additive regulation for the microencapsulated form of the insecticide chlorpyrifos [O,O-diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate]. The petitioner subsequently amended the petition by proposing a tolerance of 0.1 part per million (ppm) for residues of chlorpyrifos, per se, in or on all food items (other than those already covered by a higher tolerance as a result of use on growing crops) in food service establishments when food and food products are prepared and served.

Authority: 21 U.S.C. 346a and 348.

Dated: December 16, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-30771 Filed 12-23-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0003.
Title: Application for Amateur Radio Station and Operator License.
Form Number: FCC Form 610.
Action: Revision.
Respondents: Individuals or households.
Frequency of Response: On occasion reporting.
Estimated Annual Burden: 95,050 responses; .166 hours average burden per response; 15,778 hours total annual burden.
Needs and Uses: The FCC Form 610 is used to apply for a new, renewal, or modified amateur radio station and operator license. The revision to this information collection consists of minor changes on the form including instructions for physicians who certify that an individual is unable to pass a telegraphy examination. Commission personnel use the data to determine eligibility for a radio station authorization and to issue a radio station/operator license. Data is also used by Compliance personnel in conjunction with Field Engineers for enforcement and interference purposes.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-30643 Filed 12-23-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 91-60]

Southern Steam, Inc., as Agent for Wallenius Transroll v. Consolidated American Group; Filing of Complaint and Assignment

Notice is given that a complaint filed by Southern Steam Incorporated ("Complainant") against Consolidated American Group ("Respondent") was served December 18, 1991. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1), by failing to pay the ocean freight on a shipment of synthetic staple fiber between Norfolk, Virginia and Sao Paulo, Brazil.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by December 18, 1992, and the final decision of the Commission shall be issued by April 19, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 91-30632 Filed 12-23-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

[Dkt 9216]

Hoechst Celanese Corporation, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a German company and its U.S. subsidiaries, for a period of ten years from entering into any agreement, with any producer of acetal products, to allocate, divide or restrict competition in markets for acetal products. In addition, the consent order prohibits the respondents from using certain restrictions to limit competition from Daicel Chemical Industries and Polyplastics Company of Japan, their partners in a joint venture.

DATES: Complaint issued November 17, 1988. Order issued November 26, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Rhett Krulla, FTC/S-3302, Washington, DC 20580. (202) 326-2608.

SUPPLEMENTARY INFORMATION: On Wednesday, September 4, 1991, there was published in the **Federal Register**, 56 FR 43771, a proposed consent agreement with analysis In the Matter of Hoechst Celanese Corporation, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 91-30689 Filed 12-23-91; 8:45 am]

BILLING CODE 6750-01-M

[Dk. 9200]

Removatron International Corporation, et al.; Prohibited Trade Practice and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: This order reopens the proceeding and modifies the Commission's 1988 final order—requiring respondents to cease making certain claims about their hair-removal device—by setting aside a provision requiring an affirmative disclosure in conjunction with certain efficacy claims. However, the respondents are still prohibited by the order from making unsubstantiated hair-removal claims.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street, & Pennsylvania Avenue, NW., Washington, DC 20580.

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DATES: Final order issued November 4, 1988. Modifying order issued November 20, 1991.

FOR FURTHER INFORMATION CONTACT: Thomas Massie, FTC/S-4631, Washington, DC 20580. (202) 326-2982.

SUPPLEMENTARY INFORMATION: In the Matter of Removatron International Corporation, et al. The prohibited trade practices and/or corrective actions as set forth at 54 FR 1160, are set aside, in part, as noted in the order that follows.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 36 Stat. 719, as amended; 15 U.S.C. 45, 52)

Order Reopening the Proceeding and Modifying Cease and Desist Order

On July 23, 1991, Removatron International Corporation and Frederick E. Goodman (Petitioners) filed a petition pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and rules 2.51 and 3.72 of the Commission's Rules of Practice, 16 CFR 2.51 and 3.72, to reopen the proceeding and modify the final cease and desist order issued against them by the Commission on November 4, 1988, in Docket No. 9200 (111 F.T.C. 206), and upheld by the United States Court of Appeals for the First Circuit on September 11, 1989, in *Removatron International Corp.* v. *F.T.C.*, 884 F.2d 1489 (1st Cir. 1989).

The final order in this matter was the product of litigation concerning unsubstantiated claims of permanent or long-term (as opposed to temporary) hair removal for the Removatron radio frequency energy (RFE) tweezer-type apilation device. Part I.A of the order prohibits Petitioners from making permanent as long-term hair removal representations with respect to their RFE epilator unless they possess and rely upon competent and reliable scientific evidence that substantiates such representation. The order defines competent and reliable scientific evidence as adequate and well-controlled, double-blind clinical testing conforming to acceptable designs and protocols and conducted by a person or persons qualified by training and experience to conduct such testing. Part I.B of the order prohibits Petitioners, for a period of five (5) years, from representing that their RFE epilator is intended to or is able to remove hair unless the following disclosure is also made:

Important: There is no reliable evidence that (name of device treatments) provides anything more than temporary hair removal.

The request to reopen the proceeding to set aside Part I.B of the order was filed on July 23, 1991. The request was placed on the public record for thirty days for the purpose of receiving public comment on July 29, 1991. No comments were received during the comment period.

Standard for Reopening a Final Order of the Commission

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be altered, modified, or set aside if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require.[1] A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of the order inequitable or harmful to competition. *Louisiana Pacific Corp.*, Docket No. C-2958, Letter to John C. Hart (June 5, 1986) at 4. See, S. Rep. No. 96-500, 96th Cong., 2d Sess. 9 (1979) (significant change or changes causing unfair disadvantage); see *Phillips Petroleum Co.*, Docket No. C-1088, 78 F.T.C. 1573, 1575 (1971) (modification not required for changes reasonably foreseeable at time of consent applications); *Pay Less Drugstores Northwest, Inc.*, Docket No. C-3039, Letter to H.B. Hummelt (Jan. 22, 1982) (changed condition must be unforeseeable, create severe competitive hardship and eliminate dangers order sought to remedy) (unpublished); see also *United States* v. *Swift & Co.*, 286 U.S. 106, 119 (1932) ("clear showing" of changes that eliminate reasons for order or such that order causes unanticipated hardship).

The language of section 5(b) plainly anticipates that the burden is on the requester to make "a satisfactory showing" of changed conditions to obtain reopening of the order. *See also Gautreaux* v. *Pierce*, 535 F. Supp. 423, 426 (N.D. Ill. 1982) (requester must show "exceptional circumstances, new, changed or unforeseen at the time the decree was entered"). The legislative history also makes clear that the requester has the burden of showing, by means other than conclusory statements, why an order should be modified.[2] If the Commission determines that the requester has made the necessary showing, the Commission must reopen the order to determine whether the modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the requester fails to meet its burden of making the satisfactory showing of changed conditions required by the statute. The requester's burden is not a light one in view of the public interest in repose and finality of the Commission orders. *See Federated Department Stores, Inc.* v. *Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality); *Bowman Transportation, Inc.* v. *Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 296 (1974) ("sound basis for * * * (not reopening) except in the most extraordinary circumstances"); *RSR Corp.* v. *FTC*, 656 F.2d 718, 721-22 (D.C. Cir. 1981) (applying *Bowman Transportation* standard to FTC order).

Changed Conditions of Fact Warrant Reopening the Order

Petitioners have requested that the Commission reopen and modify the order because changed conditions of fact and the public interest require such action. For the reasons described below, changes of fact warrant reopening and modifying the order against Petitioners. Having reopened and modified the order on the basis of changes of fact, the Commission does not reach the issue of whether the public interest warrants reopening.

Petitioners rely on a clinical study entitled "Evaluation of the Effect of Radio-Frequency Energy Delivered by the Removatron Hair Removal Device on Hair Regrowth" to support their request that Part I.B of the order be set aside. The study was conducted by Nellie Konnikov, M.D., Assistant Professor of Dermatology, Tufts University School of Medicine; Chief, Dermatology Section, Boston VA Hospital; and Director, Dermatology Residency Program, Tufts-New England Medical Center. Dr. Konnikov concluded that Removatron's RFE device "appears to provide a safe, painless, and effective approach to the troublesome problem of unwanted hair." Dr. Konnikov bases this conclusion on her observation that contrary to the hair regrowth on the control sites, 46% of the facial hairs treated with the Removatron device could be considered with reasonable medical certainty to have been permanently removed.

Petitioners have also submitted the qualified opinion of a Medical Officer of the Food and Drug Administration's (FDA) Center for Devices and Radiological Health that the Konnikov study provides reasonable assurance of the efficacy of the Removatron RFE device. The Medical Officer, in a reference to the Standards for the Treatment of Permanent Hair Removal of the International Guild of Professional Electrologists, found that the range of effectiveness was in the minimum bracket of 40-50%—and the number of hairs studied per person was low. Consequently, he recommended that a statistical analysis of the study be conducted before the study could be pronounced and unqualified final determination that there is adequate evidence of safety and effectiveness of the Removatron device.[3]

Petitioners also had Dr. Eugene Van Scott, a dermatologist who testified as an expert on behalf of complaint counsel at the trial of this matter, review the Konnikov study. Dr. Van Scott stated that overall the study reported was designed quite well and the results appeared to be valid. However, he questioned whether the papilla was destroyed, the generally accepted definition of permanent hair removal.

Based on the foregoing, Petitioners argue that they have sufficient evidence on which to base representations of efficacy, i.e., that Removatron's RFE device permanently removes hair. We do not agree. Arguably, the Konnikov study provides some evidence of permanent hair removal but it is by no means dispositive of this key issue. Supporting opinions are qualified, including that additional evidence will be required to substantiate permanent removal claims.

Dr. Van Scott's review of the Konnikov study is especially instructive. First, Dr. Scott proposes three possible effects of RFE on the hair follicles' ability to grow hair, only one of which suggests the irreparable destruction of the papilla, the accepted definition of permanent removal. A second hypothesis is that the Removatron device merely extends the resting phase of the hair's growth period, the hair taking longer to grow back. A third hypothesis is that the Removatron device damages but does not destroy the papilla, causing the hair to grow back finer and shorter, so that it is no longer conspicuous but resembles the hair normally found in the affected region. The Konnikov study does not support the conclusion that permanent hair removal is the correct hypothesis among these three. Therefore, more study is needed.

Nevertheless, Dr. Van Scott has stated that he is convinced that RFE does something more than temporary hair removal. In his letter to the Petitioner Goodman, Dr. Van Scott wrote:

> In my judgment this study does a great deal to satisfy the earlier criticisms and reservations regarding the effects of RFE on hair. In this regard consideration should be given however to positioning the claims for RFE, that is, "permanent removal" versus "diminishment of hirsutism" or some such statement to indicate that conspicuous hairs are eradicated, or conspicuous hairs fail to regrow. To insist on "permanent removal" invites the controversy over permanent destruction. In fact, if RFE can restore follicles to a state of normalcy (for the skin region involved) that is, convert follicles from producing coarse, long hairs to follicles producing short, fine hairs—which is suggested by the study of Dr. Konnikov—this would be cosmetically more desirable than trying to achieve baldness for the region. The result would be to normalize hair for that region.

Dr. Van Scott believes the study is evidence that something more profound than temporary hair removal is occurring.

Part I.B of the Order Should Be Set Aside

Although the evidence presented is insufficient to substantiate a permanent removal representation, Part I.B does not require the same level of evidence to demonstrate a changed condition of fact. Since the evidence now demonstrates that Removatron's RFE epilation device achieves something more than temporary hair removal, Petitioners have shown that there is no need now for Part I.B of the order and that its continued application would be inequitable or harmful to competition.

It is Therefore Ordered That the proceeding is hereby reopened and that Part I.B of the final order effective November 10, 1989, in Docket No. 9200 is hereby set aside.

By the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91-30690 Filed 12-23-91; 8:45 am]

BILLING CODE 6750-01-M

[1] Section 5(b) provides, in part:

> [T]he Commission shall reopen any such order to consider whether such order (including any affirmative relief provision contained in such order) should be altered, modified, or set aside, in whole or in part, if the person, partnership, or corporation involved files a request with the Commission which makes a satisfactory showing that changed conditions of law or fact require such order to be altered, modified, or set aside, in whole or in part.

The 1980 amendment to Section 5(b) did not change the standard for order reopening and modification, but "codifie[d] existing Commission procedures by requiring the Commission to reopen an order if the specified showing is made," S. Rep. 96-500, 96th Cong., 2d Sess. 9-10 (1979), and added the requirement that the Commission act on petitions to reopen within 120 days of filing.

[2] The legislative history of amended section 5(b), S. Rep. No. 96-500, 96th Cong., 2d Sess. 9-10 (1979), states:

> Unmeritorious, time-consuming and dilatory requests are not to be condoned. A mere facial demonstration of changed facts or circumstances is not sufficient . . . The Commission, to reemphasize, may properly decline to reopen an order if a request is merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order.

[3] The FDA, to our knowledge, has never conducted this statistical study. The FDA did compare the Konnikov study to the Standards of the International Guild of Professional Electrologists and determined there was not substantial equivalence between the RFE device and electrolysis.

GENERAL SERVICES ADMINISTRATION

[GSAR Notice 5-324]

General Services Administration Acquisition Regulation; Revised GSA Forms 3504 and 3507

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice.

SUMMARY: Notice is hereby given that GSAR Change 32 revised and illustrated the October 1991 editions of GSA Form 3504, Service Contract Clauses and GSA Form 3507, Supply Contract Clauses. Copies of the forms may be obtained from the Director of the Office of GSA Acquisition Policy (VP), 18th & F Sts., NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: John Joyner, Office of GSA Acquisition Policy (202) 501-1224.

Dated: December 16, 1991.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 91-30649 Filed 12-23-91; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Technical Assistance Workshops in February, March, April and May, 1992

OFFICE: Office for Treatment Improvement.

ACTION: Notice of generic technical assistance workshops.

SUMMARY: This notice sets forth the schedule and proposed agenda for the forthcoming five (5) regional technical assistance workshops to assist prospective applicants in responding to future grant announcements from the Office for Treatment Improvement (OTI). Generic technical assistance will be offered to prospective applicants.

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The proposed schedule for the workshops is contingent on the level of interest expressed by potential attendees through pre-registration.

Region/Date/Location

Public Health Service Region IX, San Francisco, CA, February 13–14, 1992
Sir Frances Drake Hotel on Union Square, 450 Powell Street, San Francisco, CA 94102, (415) 392–7755
Public Health Service Region IV, Atlanta, GA, March 25–26, 1992
The Atlanta Hilton and Towers, 255 Courtland Street, Atlanta, GA 30303, (404) 659–2000
Public Health Service Region VIII, Denver, CO April 9–10, 1992
The Westin Hotel Tabor Center, 1672 Lawrence Street, Denver, CO 80202, (303) 572–9100
Public Health Service Region III, Washington, DC, April 30–May 1, 1992
Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008, (202) 234–0700
Public Health Service Region V, Chicago, IL, May 14–15, 1992
The Palmer House, 17 East Monroe Street, Chicago, IL 60603, (312) 726–7500

Time

Day 1—Pre-registration and small group orientation will be held 6 to 8 p.m. OTI staff and reviewer participants will be available for informal discussions.

Day 2—The workshops will begin at 8:30 a.m. and adjourn at 5 p.m.

Agenda Highlights include:

Strategies for Successful Grant Submission and General Principles of the Review and Award Process
Technical/Practical Aspects of the Grant Application Process including: completing forms, program narrative, budget justification, management and evaluation
OTI Reviewer Participant Panel
Mock Review Panel
Questions and Answers

Status of Workshops: Open to prospective OTI grant applicants.

For further details including pre-registration information contact: Technical Resources, Incorporated, 3202 Tower Oaks Blvd., Rockville, Maryland 20852, (301) 770–7658.

Purpose

The Office for Treatment Improvement, Division of Review will sponsor general assistance workshops for perspective applicants responding to future OTI grant announcements.

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91–30715–Filed 12–23–91; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

Advisory Committee for Injury Prevention and Control: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC), announces the following committee meeting:

Name: Advisory Committee for Injury Prevention and Control (ACIPC).

Time and Date: 8 a.m.–5 p.m., February 3, 1992, 8 a.m.–12 noon, February 4, 1992.

Place: Centers for Disease Control, Auditorium A, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Committee will continue to make recommendations on policy, strategy, objectives, and priorities including the balance and mix of intramural and extramural research; advise on the development of a national plan for injury prevention and control, the development of new technologies and their application; and review progress toward injury prevention and control.

Matters to be Discussed: The Committee will discuss building the field of injury control, progress in developing a national agenda for injury control, accomplishments of the CDC injury control program, community guidelines for the prevention of youth violence, tracking injury control objectives for the Year 2000, an update of the external cause of injury coding of hospital discharges, extramural research grants, and state based surveillance and intervention programs.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: John F. Finklea, M.D., Executive Secretary, ACIPC, Division of Injury Control, National Center for Environmental Health and Injury Control, CDC, 1600 Clifton Road, NE, Mailstop F–36, Atlanta, Georgia 30333, telephone 404/488–4690 or FTS 236–4690.

Dated: December 18, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91–30634 Filed 12–23–91; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 91N–0473]

AG–Mark, Inc., and Quali-Tech, Inc.; Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of two animal drug applications (NADA's) held by Ag-Mark, Inc., and Quali-Tech, Inc. The NADA's provide for the manufacture of Type B medicated feeds containing lincomycin. The firms requested withdrawal of approval of the NADA's because an NADA is no longer required to manufacture or distribute the Type B medicated feed. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the regulations by removing and reserving the portions of the regulation that reflect approval of the NADA's.

DATES: January 3, 1992.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855, 301–295–8749.

SUPPLEMENTARY INFORMATION: Ag-Mark, Inc., P.O. Box 127, Teachey, NC 28464 and Quali-Tech, Inc., 318 Lake Hazeltine Dr., Chaska, MN 55318–1093, are the sponsors of NADA's 133–035 and 132–925, respectively. The firms requested the withdrawal of approval of the NADA's because an NADA is no longer required to manufacture or distribute the Type B medicated feed (See 51 FR 7382, March 3, 1986, and 55 FR 23423, June 8, 1990).

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR part 5.84), and in accordance with § 514.115 Withdrawal of approval of applications (21 CFR 514.115), notice is given that approval of NADA's 133–035 and 132–925 and all supplements and amendments thereto is hereby withdrawn, effective January 3, 1992.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending 21 CFR 558.325 by removing and reserving paragraphs (a)(8) and (a)(14) to reflect the withdrawal of the approval.

Dated: December 17, 1991.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 91–30718 Filed 12–23–91; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–340–02–4333–02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be directed to the Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395–7340.

Title: Access to Confidential Cave Data.
OMB approval number: Not yet assigned.
Abstract: Respondents supply information relating to requests for confidential cave data. This information is used to decide whether to grant access to this data as required under section 5 of the Federal Cave Resources Protection Act of 1988.
Bureau form number: None.
Frequency: Information relating to access to confidential cave data is submitted from the requesting organization as they identify need for the data.
Descriptionof respondents: Federal and State governmental agencies and their cooperators, and bona fide educational and research institutions.
Estimated completion time: One-half hour.
Annual responses: 200.
Annual burden hours: 100.
Bureau Clearance Officer (Alternate): Gerri Jenkins, 202–653–6105.

Dated: December 4, 1991.

Kemp Conn,

Acting Assistant Director—Land and Renewable Resources.

[FR Doc. 91–30652 Filed 12–23–91; 8:45 am]

BILLING CODE 4310–84–M

[WO–340–02–4333–02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be directed to the Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395–7340.

Title: Nomination of Significant Caves.
OMB approval number: Not yet assigned.
Abstract: Respondents supply information on caves on Federal lands. This information is used to help determine which caves will be listed as significant as required under section 4 of the Federal Cave Resources Protection Act of 1988.
Bureau form number: None.
Frequency: Information for the nomination of significant caves is collected on a one-time basis for each cave.
Description of respondents: Individuals or organizations that are interested in the protection of cave resources located on Federal lands.
Estimated completion time: 3 hours.
Annual responses: 500.
Annual burden hours: 1500.
Bureau Clearance Officer (Alternate): Gerri Jenkins, 202–653–6105.

Dated: December 4, 1991.

Kemp Conn,

Acting Assistant Director—Land and Renewable Resources.

[FR Doc. 91–30653 Filed 12–23–91; 8:45 am]

BILLING CODE 4310–84–M

[ES–020–02–4112–16]

Intent To Prepare an Environmental Assessment; Proposed Oil Well Site, Broward County, FL

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Assessment (EA) on a proposed oil well site in Broward County, Florida and notice of public meeting.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM), Jackson District and the Bureau of Indian Affairs (BIA), Eastern Area Office, as joint lead agencies, will be directing the preparation of an EA to be prepared by a third party contractor concerning a proposed oil well site on the Federal Miccosukee Indian Reservation in Broward County, Florida.

DATES: A public meeting will be held beginning at 5 p.m. on January 23, 1992 at the Fort Lauderdale Airport Hilton, 1870 Griffin Road, Dania, Florida. The meeting will be held to accept oral and written comments concerning the proposal. The comments will be used to identify issues and concerns considered in the preparation of the EA. Written comments will be accepted until February 14, 1992.

ADDRESSES: Comments should be sent to the District Manager, Bureau of Land Management, 411 Briarwood Drive, suite 404, Jackson, Mississippi 39206; Attn: Sid Vogelpohl.

FOR FURTHER INFORMATION CONTACT: Sid Vogelpohl (BLM) (601) 977–5400 or Jim Harriman (BIA) (703) 235–3177.

SUPPLEMENTARY INFORMATION:

1. Proposed Action.

On January 17, 1991, Shell Western E&P, Inc. (SWEPI) submitted an "Application for Permit to Drill" an exploratory well to the Bureau of Land Management. The proposed well is on the Miccosukee Indian Reservation in Broward County, Florida. The well is identified as the SWEPI Miccosukee 3–1 The site is located directly north of Interstate 75 and west of the L–28 Canal adjacent to Water Conservation Area 3A. The proposed site is on grasslands currently used for cattle grazing. The well is proposed to be drilled to a depth of 18,800 feet and would be a directional well with the bottom hole location approximately 4,600 feet east of the surface site. The location of the bottom hole would be underneath that portion of Water Conservation Area 3A located within the boundary of the Miccosukee Indian Reservation.

The drill site would be approximately square and utilize about five acres. A four-foot high berm, constructed of fill and topped with lime rock, would encompass the entire location. The proposed access road would start from a point approximately four miles north of I–75 off the Snake Road. The road would run east approximately two miles on an existing field road and then south approximately four miles on an existing field road and then south approximately

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four miles on an existing road adjacent to and immediately west of the L-28 Canal.

2. Alternatives

It is anticipated that the alternatives will concentrate on evaluation of alternate drill sites and road routes with the objective of identifying the potential environmental impacts of alternatives, if any, relative to the proposed action. The alternatives must meet the criteria of being feasible in terms of environmental considerations as well as technological and geological considerations.

3. Public Participation

The public was invited on March 22, 1991 to identify issues and concerns which are specifically related to the proposed drilling activity. This public comment period ended on May 3, 1991. All comments previously provided have been maintained and do not need to be resubmitted.

Agencies and the public are also invited and encouraged to provide oral and/or written comments at the public meeting. Comments should specifically describe environmental issues or concerns which the commenter believes the EA should address. Any additional written comments should be sent, by the date noted above, to the BLM District Manager at the address noted above.

4. Availability of the EA

The time of completion of the EA is estimated to be October 1992.

Dated: December 17, 1991.

Donald H. Sweep,

Jackson District Manager, BLM.

[FR Doc. 91-30657 Filed 12-23-91; 8:45 am]

BILLING CODE 4310-GJ-M

[CA-010-02-4212-13; CACA-28683]

Realty Action; Proposed Land Exchange in Madera, Mariposa, Merced, Monterey, Fresno, and San Benito Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; exchange of public and private lands in Madera, Mariposa, Merced, Monterey, Fresno, and San Benito Counties, California (CACA-28683).

SUMMARY: The following described public lands are being considered for exchange to CAL-BLMX, Inc., under section 206 of the Federal Land Policy Management Act of 1976 (43 U.S.C. 1716). Some parcels have been identified for exchange of the surface estate while other parcels are identified for exchange of both surface and mineral estate.

NOTE: Not all the land identified below will be included in the exchange. Some parcels may be deleted to eliminate possible conflicts that could arise during processing. Additional lands previously identified for exchange to CAL-BLMX, Inc. and published in the **Federal Register** on March 30, 1990 may also be included in the exchange. The final selection of properties will be made to achieve comparable values between the offered and selected lands.

SELECTED PUBLIC LANDS: The following parcels are identified for exchange of both surface and mineral estate:

Mount Diablo Meridian, California

T. 5S., R. 19E.,
Sec. 32; Portion SE ¼.
T. 5S., R. 20E.,
Sec. 28; N½SW¼, NW¼SE¼.
T. 6S., R. 18E.,
Sec. 36; N½NW¼, SW¼NW¼, NW¼SW¼.
T. 6S., R. 19E.,
Sec. 1; SE¼NW¼;
Sec. 5; Portion NE¼;
Sec. 6; Lots 2 & 3, SW¼NE¼, SE¼NW¼;
Sec. 7; SE¼NE¼;
Sec. 8; N½NW¼, SW¼NW¼.
T. 6S., R. 20 E.,
Sec. 27; Lots 17 & 18.
T. 6S., R. 21E.,
Sec. 29; Lots 7, 10, 15.
T. 7S., R. 21E.,
Sec. 5; SW¼NE¼;
Sec. 16; N½SE¼;
Sec. 31; Lots 14 & 15.
T. 7S., R. 22E.,
Sec. 19; Lot 5.
T. 8S., R. 18E.,
Sec. 34; Lots 4 & 5.
T. 8S., R. 20E.,
Sec. 2; NE¼SE¼.
T. 8S., R. 21 E.,
Sec. 12; E½, E½NW¼, NE¼SW¼;
Sec. 13; NE¼NE¼.
T. 8S., R. 22E.,
Sec. 7; Lot 1, NE¼NW¼;
Sec. 9; SW¼NW¼.
T. 9S., R. 19E.,
Sec. 20; NW¼NE¼.
T. 9S., R. 22E.,
Sec. 6; Lot 11.
T. 11S., R. 23E.,
Sec. 2; SW¼NE¼;
Sec. 3; NE¼SW¼.
T. 11S., R. 24E.,
Sec. 22; SW¼SE¼.
T. 12S., R. 23E.,
Sec. 15; E½SE¼;
Sec. 22; E½NE¼.
T. 12S., R. 24E.,
Sec. 22; NE¼SW¼.
T. 13S., R. 24E.,
Sec. 8; SE¼SE¼, Lots 17 & 18;
Sec. 9; SW¼SW¼;
Sec. 24; SW¼SE¼.
T. 13S., R. 25E.,
Sec. 10; NE¼SW¼;
Sec. 13; NE¼SW¼;
Sec. 24; N½SE¼, SW¼SE¼;
Sec. 25; W½NE¼, S½NW¼, NE¼SW¼, NW¼SE¼.
T. 13S., R. 26E.,
Sec. 7; W½NE¼;
Sec. 19; NE¼SW¼.

Total Acres = 2,823.44 acres more or less.

The following parcels are identified for exchange of only the surface estate:

Mount Diablo Meridian, California

T. 13S., R. 9E.,
Sec. 34; SW¼NE¼.
T. 14S., R. 7E.,
Sec. 13; SW¼NE¼, SE¼NW¼.
T. 14S., R. 8E.,
Sec. 16; Lots 1 & 5.
T. 14S., R. 9E.,
Sec. 2; Lots 3 & 4, S½NW¼, S½SW¼;
Sec. 3; Lots 1, 2, 6, 7, 8, 9, 10, & 13;
Sec. 4; Lots 1, 2, 3, 4, 7, 10, & 14;
Sec. 10; Lot 1;
Sec. 11; NW¼NW¼;
Sec. 12; Lots 3, 4, 6, 9, 10, 11, & 16;
Sec. 13; Lots 1, 6, 7, 8, 9 & 10.
T. 14., R. 10E.
Sec. 6; Lots 9 & 18;
Sec. 7; Lots 5, 6, 7, & 8, SE¼NW¼, E½SW¼, W½SE¼;
Sec. 18; Lot 8, NE¼NE¼, E½NW¼.
T. 16S., R. 4E.,
Sec. 7; Lot 1;
Sec. 18; Lots 6, 7, 9 & 10, SE¼SW¼, SW¼SE¼;
Sec. 19; Lots 1, 2, 3, 4, 7, 8, 9 & 16;
Sec. 20; NW¼NW¼, SW¼SW¼.
T. 16S., R. 6E.,
Sec. 21; E½SE¼;
Sec. 22; SW¼;
Sec. 28; E½NW¼, E½SW¼, SW¼SW¼, SE¼;
Sec. 29; NW¼SE¼, SE¼SE¼;
Sec. 32; SE¼NE¼;
Sec. 33; All;
Sec. 34; W½W½
T. 17S., R. 6E.,
Sec. 3; Lot 4.
T. 17S., R. 7E.,
Sec. 34; E½SE¼.
T. 17S., R. 11E.,
Sec. 17; Lots 6, 10, 11, 14 & 15;
Sec. 20; Lots 3, 7 & 10;
Sec. 21; Lots 6, 10, 11, 14 & 15;
Sec. 22; Lots 9, 10, 11, 12, 13, 14 & 15;
Sec. 23; Lots 5, 6 & 8;
Sec. 24; Lots 8, 9, 10, 11 & 12;
Sec. 27; Lots 5, 6, 7, 8, 11 & 12;
Sec. 28; Lots 5, 6, 14 & 15;
Sec. 29; Lots 1 & 8;
Sec. 33; Lots 2 & 3;
Sec. 34; Lot 3.
T. 17S., R. 12E.,
Sec. 19; Lots 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 19 & 20;
Sec. 20; Lots 11, 12, 13, 14 & 15;
Sec. 29; NW¼.
T. 18S., R. 7E.,
Sec. 4; SE¼NE¼, NE¼SE¼;
Sec. 10; SE¼NW¼.
T. 18S., R. 9E.,
Sec. 33; S½SE¼.
T. 18S., R. 10E.,
Sec. 13; portion of E½E½W½.
T. 19S., R. 6E.,
Sec. 23; NW¼SE¼.

T. 20S., R. 10E.,
Sec. 5; Lot 9.
T. 20S., R. 11E.,
Sec. 25; Lot 1;
Sec. 34; Lot 1, 2 & 6.
T. 21S., R. 13E.,
Sec. 7; Lot 4, SE¼;
Sec. 8; NW¼SW¼;
Sec. 17; SW¼NE¼, W½NW¼, SE¼SE¼;
Sec. 18; E½NE¼, SW¼NE¼;
Sec. 20; E½NE¼;
Sec. 21; W½NW¼, SE¼NW¼, SE¼SE¼;
Sec. 22; SW¼SW¼.
T. 22S., R. 12E.,
Sec. 18; Lot 1.
T. 22S., R. 13E.,
Sec. 1; W½SW¼;
Sec. 11; N½NE¼;
Sec. 12; N½NW¼, SE¼NW¼.
T. 22S., R. 14E.,
Sec. 7; NE¼SW½;
Sec. 8; SW¼NW¼.

Total acres = 8,437.65 acres more or less.

In exchange for these lands, the Federal Government will acquire the surface estate of non-Federal lands in Fresno and San Benito Counties from CAL-BLMX, Inc. described as follows:

Mount Diablo Meridian, California

T. 15S., R.12E.,
Sec. 33; NW¼SW¼, SE¼SW¼.
T. 16S., R. 12E.,
Sec. 3; SE¼;
Sec. 4; W½NW¼, NW¼SW¼;
Sec. 6; E½W½;
Sec. 9; NE¼NE¼, SW¼NE¼, N¼SW¼;
Sec. 11; SE¼;
Sec. 12; W½SW¼, SE¼SW¼;
Sec. 13; NW¼NW¼;
Sec. 14; N½N½, S½NW¼, SW¼NE¼, SE¼;
Sec. 15; N½NW¼, W½NE¼;
Sec. 16; All;
Sec. 22; NE¼NW¼, S½N½, N½S½, SW¼SE¼, S½SW¼.
T. 16S., R. 13E.,
Sec. 14; All;
Sec. 16; All;
Sec. 22; N½NW¼, NE¼;
Sec. 24; S½, NE¼, NW¼;
Sec. 26; NE¼, N½NW¼;
Sec. 36; NE¼, E½NW¼, NW¼NW¼, E½SW¼, SE¼.
T. 16S., R. 14E.,
Sec. 30; Lots 1, 2, 3, 4, E½, E½;NW¼, E½SW¼;
Sec. 32; All.
T. 17S., R. 12E.,
Sec. 36; W½NE¼, NE¼NE¼, NW¼, S½S½, NW¼SW¼.
T. 17S., R. 13E.,
Sec. 12; SW¼;
Sec. 16; All;
Sec. 20; SW¼SW¼;
Sec. 23; W½NE¼, NE¼NE¼, SW¼, W½SE¼;
Sec. 24; NE¼, NW¼SE¼;
Sec. 25; All;
Sec. 26; S½;
Sec. 27; All;
Sec. 28; All;
Sec. 29; All;
Sec. 30; Lots, 1, 2, 3, 4, E½E½;
Sec. 31; Lot 1. NE¼NE¼;
Sec. 32; All;
Sec. 33; All;
Sec. 34; W½, E½E½;
Sec. 35; All;
Sec. 36; N½, SW¼.
T. 17S., R. 14E.,
Sec. 4; Lots 1, 2, 3, 4, 5, 6, 7, 8, S½;
Sec. 6; Lots 1, 2, 10, 11, E½SE¼;
Sec. 8; E½NW¼, S½;
Sec. 10; S½;
Sec. 14; W½;
Sec. 16; All;
Sec. 18; E½NW¼, NE¼SW¼, NW¼SE¼;
Sec. 20; N½, SW¼, W½SE¼;
Sec. 22; NW¼;
Sec. 26; All;
Sec. 28; N½, N½SE¼, S½SE¼SE¼;
Sec. 29; N½;
Sec. 30; N½;
Sec. 33; NE¼NE¼NE¼;
Sec. 34; N¼N½;
Sec. 35; N¼N½;
Sec. 36; N¼NW¼NE¼, Port. N½NE¼N E¼, N½N½NW¼.
T. 18S., R. 10E.,
Sec. 23; E½NE¼.
T. 18S., R. 13E.,
Sec. 1; Lots 1, 2, 3, 4, S½N½, S½;
Sec. 2; Lots 1, 2, 3, 4, S½N½, S½;
Sec. 3; Lots 1, 2, 3, 4, S½N½, S½;
Sec. 4; Lots 1, 2, 3, 4, S½N½, SW¼;
Sec. 5; Lots 1, 2, 3, 4, S½N½, S½;
Sec. 6; Lots 1, 2, 3, 4, 5, SE¼NE¼;
Sec. 12; N½N½.

Total = 23,507.95 acres more or less.

The federal government will also acquire both the surface and mineral estate of non-Federal lands in San Benito County from CAL-BLMX, Inc. described as follows:

Mount Diablo Meridian, California

T. 18 S., R. 11 E.,
Sec. 16; S½SW¼, NE¼SW¼, SE¼.

Total = 280 acres.

SUPPLEMENTARY INFORMATION: The primary purpose of this exchange is (1) to acquire habitat for several threatened or endangered species including the San Joaquin woollythreads (*Lembertia congdonii*), San Benito evening primrose *Camissonia benitensis*), giant kangaroo rat (*Dipodomys ignens*), blunt-nosed leopard lizard (*Gambelia silus*), and San Joaquin kit fox (*Vulpus macrotis mitica*), (2) to enhance regional biodiversity objectives by acquiring disjunct Mojave Desert vegetation, unique stands of turbinella oak and turbinella oak/blue oak hybrids, and a cross-section of Diablo Range ecosystems ranging from Jeffrey/Coulter/Digger pine forests to alkali desert shrub communities, (3) to acquire significant prehistoric archaeological sites, (4) to acquire six miles of riparian habitat, and (5) to enhance public recreation opportunities by acquiring key parcels that improve public access to existing public lands.

Federal lands identified for disposal are generally small isolated parcels without public access and with low public resource values. The exchange is consistent with the Bureau's land use plans for the lands involved. The public interest will be well served by making the exchange.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

(1) A reservation to the United States for a right-of-way for ditches and canals constructed under the authority of the Act of August 28, 1890 (43 U.S.C. 945).

(2) Authorized pipelines, power lines, roads, highways, telephone lines, minerals leases, and any other authorized land uses will be identified as prior existing rights.

(3) All necessary clearances for archaeology, rare plants and animals shall be completed prior to conveyance of title.

(4) Grazing operations that will have their allotments affected by this exchange are entitled to a 2-year adjustment period. However, a lessee may waive this 2-year notice.

This notice, as provided in 43 CFR 2201.1(b), shall segregate the public lands that are being considered for this exchange. By publication of this notice, those vacant, unappropriated and unreserved public lands described above are segregated from settlement, location and entry under the public lands laws, including the mining laws, but not the mineral leasing laws. The segregative effect shall terminate upon issuance of patent, or upon publication in the **Federal Register** of a termination of the segregation, or two (2) years from the date of this notice, whichever occurs first. This action is necessary while eliminating conflicting encumbrances on the public lands during exchange processing.

Detailed information concerning the exchange, including the environmental assessment, is available at the Hollister Resource Area Office, 20 Hamilton Court, Hollister, CA 95023.

For a period of 45 days from publication of this notice in the Federal Register, interested parties may submit comments to the Area Manager, Hollister Resource Area at the above address. Comments should specify the specific parcel affected by the comment. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this action will become the final determination.

FOR FURTHER INFORMATION CONTACT: Steve Addington, Hollister Resource

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Area Office, (406) 637–8183 or at the address above.

Robert E. Beehler,

Hollister Area Manager.

[FR Doc. 91–30651 Filed 12–23–91; 8:45 am]

BILLING CODE 4310–41–M

[WY–940–4730–12]

Filing of Plats of Survey: Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 51 N., R. 96 W., accepted December 11, 1991

T. 51 N., R. 71 W., accepted December 11, 1991

T. 51 N., R. 95 W., accepted December 11, 1991

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s).

These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 2515 Warren Ave., Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $2.00 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, surveys and subdivisions.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: December 11, 1991.

John P. Lee,

Chief, Branch, of Cadastral Survey.

[FR Doc. 91–30615 Filed 12–23–91; 8:45 am]

BILLING CODE 4310–22–M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget Paperwork Reduction Project (FWS–002), Washington, DC 20503, telephone 202–395–7340.

Title: Importation Certification for Live Fish and Fish Eggs, 50 CFR 16.13.

OMB Approval Number: N/A.

Abstract: Regulations found in 50 CFR 16.13, implement the Lacey Act, and require that shipments to the United States of live fish and fish eggs, gametes, or uneviscerated dead fish of the family Salmonidae be accompanied by a certificate in English stating that the shipment has been inspected at its origin and is free of certain fish pathogens. These certificates must be singed by an individual previously approved and listed by the Director of the U.S. Fish and Wildlife Service. This certification supports protective regulations to prevent the introduction of certain listed fish pathogens into the United States that may cause disease in wild or cultured fish. The information on the certificate informs U.S. customs and Fish and Wildlife inspectors, located at the ports of entry, of the contents an origins of the shipment, its routing, and its destination, the weight of the shipment, the date the fish lots were inspected for listed pathogens, the location where laboratory diagnostic work was done, and arrival dates.

Service Form Number: No form required.

Frequency: On occasion.

Description of Respondents: Business or other for profit, non-profit institutions, and small businesses or organizations.

Estiamted Completion Time: 20 minutes.

Annual Responses: 180.

Annual Burden Hours: 60.

Service Clearance Officer: James E. Pinkerton, 703–358–1943, Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: November 13, 1991.

Noreen K. Clough,

Acting Assistant Director—Fisheries.

[FR Doc. 91–30616 Filed 12–23–91; 8:45 am]

BILLING CODE 4310–55–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1018–0005), Washington, DC 20503, telephone 202–395–7340.

Titie: Bird Band Recovery Report.

OMB Approval Number: 1018–0005.

Abstract: The use of banding and band recovery information is one of the most important tools used in the preparation of annual United States and Canadian hunting and shooting regulations. Form 3–1807 is used by licensed bird banders and professional wildlife agency personnel on the recovery of Service bands and markers used on marked birds that were shot, found dead, found injured, and foreign retraps. The information collected is also used by Federal, State and private conservation organizations and the Canadian Wildlife Service for the proper management of migratory birds in North America.

Service Form Number: 3–1807.

Frequency: On occasion.

Description of Respondents: Individuals and households, Federal, State, and Provincial personnel.

Estimated Completion Time: 3 minutes.

Annual Responses: 50,000.

Annual Burden Hours: 2,500.

Service Clearance Officer: James E. Pinkerton, 703–358–1943, Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: November 21, 1991.

David Olsen,

Assistant Director—Refuges and Wildlife.

[FR Doc. 91–30617 Filed 12–23–91; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Farmington Wild and Scenic River Study, Massachusetts and Connecticut, Farmington River Study Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. app. 1 s. 10), that a meeting of the Farmington River Study Committee will be held Thursday, February 13, 1992.

The Committee was established pursuant to Public Law 99–590. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Farmington River segments. The meeting will convene at 7:30 p.m. at the Barkhamsted Elementary School (cafeteria), Barkhamsted, Ct. (The Elementary School is located on route 318 in Pleasant Valley, just west of the intersection with route 181 and the Farmington River.)

Agenda

I. Welcome, introductions—Skip Rogers.

II. Approval of minutes from 11/7/91 meeting.

III. Water Resources Subcommittee—Discussion regarding instream flow study.

IV. River Conservation Planning Subcommittee—Update on local activity (town meetings, zoning regulations, etc.).

V. Update on preparation of Draft Study Report.

VI. Opportunity for public comment.

VII. Other business.

A. Next meeting dates and locations.

B. Reappointments.

Dated: December 16, 1991.

Carol F. Aten,

Acting Regional Director.

[FR Doc. 91–30719 Filed 12–23–91; 8:45 am]

BILLING CODE 4310–70–M

Gettysburg National Military Park Advisory Commission

AGENCY: Gettysburg National Military Park Advisory Commission, National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the second meeting of the Gettysburg National Military Park Advisory Commission.

DATES: January 30, 1992.

TIME: 1 p.m.–3 p.m.

INCLEMENT WEATHER RESCHEDULE DATE: None.

ADDRESSES: Holiday Inn, 516 Baltimore Street, Gettysburg, Pennsylvania 17325.

FOR FURTHER INFORMATION CONTACT: Jose A. Cisneros, Superintendent, Gettysburg National Military Park, P.O. Box 1080, Gettysburg, Pennsylvania 17325.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Advisory Commission, Gettysburg National Military Park, P.O. Box 1080, Gettysburg, Pennsylvania 17325. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Gettysburg National Military Park located at 95 Taneytown Road, Gettysburg, Pennsylvania 17325.

John Bond,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 91–30682 Filed 12–23–91; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; NHL Boundaries

December 18,1991.

The National Park Service has been working to establish boundaries for all National Historic Landmarks for which no specific boundary was identified at the time of designation and therefore are without a clear delination of the amount of property involved. The results of such designation make it important that we define specific boundaries for each landmark.

In accordance with the National Historic Landmark program regulations part 36 CFR 65, the National Park Service notifies owners, public officials and other interested parties and provides them with an opportunity to make comments on the proposed boundaries.

The 60-day comment period on the attached National Historic Landmark has ended, and the boundaries have been established. Copies of the documentation of the landmark and its boundaries, including maps, may be obtained from Jerry L. Rogers, Associate Director, Cultural Resources, and Keeper of the National Register of Historic Places, National Park Service, P.O. Box 37127, Washington, DC 20013–7127, Attention: Chief of Registration (Phone: 202–343–9536).

Carol D. Shull,

Chief of Registration, National Register of Historic Places, Interogency Resources Division.

Approved boundaries for: Wailua Complex of Heiau, Kauai Island, Hawaii, Designated a Landmark on December 12, 1962.

This property consists of the following five heiaus located on the Wailua River:

Geographical Data

Map A: Quadrangle name: USGS Kapaa, Hawaii 7.5' (1983).

Quadrangle scale: 1:24000.

Hikinaakala Heiau/Hauola Place of Refuge and Petroglyphs

Acreage of nominated property: 2.3 acres.

UTM References: A: Zone 04; Easting 465135; Northing 2438000.

Malae Heiau

Acreage of nominated property: 2 acres.

UTM References: A: Zone 04; Easting 464750; Northing 2438090.

Holoholoku Heiau and Pokhaku Hoohanau

Acreage of nominated property: 1 + acre.

UTM References: A: Zone 04; Easting 464700; Northing 2438680.

Poliahu Heiau

Acreage of nominated property: 1 + acre.

UTM References: A: Zone 04; Easting 463022; Northing 2438380.

Bellstone

Acreage of nominated property: 10 sq. ft.

UTM Reference: A: Zone 04; Easting 463650; Northing 2438660.

[FR Doc. 91–30673 Filed 12–23–91; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; NHL Boundaries

December 18, 1991.

The National Park Service has been working to establish boundaries for all

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National Historic Landmarks for which no specific boundary was identified at the time of designation and therefore are without a clear delineation of the amount of property involved. The results of such designation make it important that we define specific boundaries for each landmark.

In accordance with the National Historic Landmark program regulations 36 CFR part 65, the National Park Service notifies owners, public officials and other interested parties and provides them with an opportunity to make comments on the proposed boundaries.

The 60-day comment period on the attached National Historic Landmarks has ended, and the boundaries have been established. Copies of the documentation of the landmark and its boundaries, including maps, may be obtained from Jerry L. Rogers, Associate Director, Cultural Resources, and Keeper of the National Register of Historic Places, National Park Service, P.O. Box 37127, Washington, DC 20013–7127, Attention: Chief of Registration (Phone: 202–343–9536).

Carol D. Shull,

Chief of Registration, National Register of Historic Places, Interagency Resources Division.

Approved Boundaries for: Long Wharf and Custom House Block National Historic Landmark, Boston, Massachusetts, Designated a Landmark on November 13, 1966.

Beginning at the intersection of the outer line of the southern bulkhead of Long Wharf and a line of convenience parallel to and 40 feet west of the west wall of the brick warehouse known as the Chart House; Thence, northerly along said line of convenience 180 feet to a point; thence; easterly along a second line of convenience drawn at a right angle to the first approximately 170 feet to the northern bulkhead of Long Wharf; thence easterly along the outer line of said northern bulkhead of Long Wharf (approximately 430 feet), southerly along the the outer line of the eastern bulkhead of Long Wharf (approximately 220 feet), and westerly along the outer line of the southern bulkhead of Long Wharf (approximately 580 feet) to the point of beginning.

[FR Doc. 91–30672 Filed 12–23–91; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Proposed NHL Boundaries

December 18, 1991.

The National Park Service has been working to establish boundaries for all National Historic Landmarks for which no specific boundary was identified at the time of designation, and therefore, are without a clear delineation of the amount of property involved. The results of such designation make it important that we define specific boundaries for each landmark.

In accordance with the National Historic Landmark program regulations 36 CFR part 65, the National Park Service notifies owners, public officials and other interested parties and provides them with an opportunity to make comments on the proposed boundaries.

Comments on the proposed boundaries will be received for 60 days after the date of this notice. Please address replies to Jerry L. Rogers, Associate Director, Cultural Resources, and Keeper of the National Register of Historic Places, National Park Service, P.O. Box 37127, Washington, DC 20013–7127, Attention: Chief of Registration (202) 343–9536. Copies of the documentation of the landmarks and their proposed boundaries, including maps may be obtained from that same office.

Carol D. Shull,

Chief of Registration, National Register of Historic Places, Interagency Resources Division.

Proposed boundaries for:

Skagway and White Pass District
Skagway-Angoon-Yakutat Division, Alaska
Designated a Landmark on June 13, 1962

Commencing at Bench Mark "Shaft" in T28S, R59E, Copper River Meridian (CRM), the boundary follows a line one-half mile east of the center of the Skagway River in a northerly direction to the confluence of the White Pass Fork. From the confluence the boundary runs one-half mile east of the center of the roadbed of the White Pass and Yukon Railway to Monument 116 on the Alaska-Canada border and then northwest along the border to a point one-half mile west of Monument 117. From this point the boundary follows a line one-half mile west of the center of White Pass Fork in a southerly direction to the confluence of the Skagway River, thence along a line one-half mile west of the center of the Skagway to Bench Mark "Sharp", and from this point southwest to Bench Mark "Shaft." For the purposes of this description, in case more than one river channel exists, the center of eastern most channel represents the 'center of the Skagway River'. In the case of the White Pass Fork, the "center of the fork" is the center of the western channel.

[FR Doc. 91–30686 Filed 12–23–91; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Proposed NHL Boundaries

December 18, 1991.

The National Park Service has been working to establish boundaries for all National Historic Landmarks for which no specific boundary was identified at the time of designation, and therefore, are without a clear delineation of the amount of property involved. The results of such designation make it important that we define specific boundaries for each landmark.

In accordance with the National Historic Landmark program regulations 36 CFR Part 65, the National Park Service notifies owners, public officials and other interested parties and provides them with an opportunity to make comments on the proposed boundaries.

Comments on the proposed boundaries will be received for 60 days after the date of this notice. Please address replies to Jerry L. Rogers, Associate Director, Cultural Resources, and Keeper of the National Register of Historic Places, National Park Service, P.O. Box 37127, Washington, DC 20013–7127, attention: Chief of Registration (202) 343–9536. Copies of the documentation of the landmarks and their proposed boundaries, including maps may be obtained from that same office.

Carol D. Shull,

Chief of Registration, National Register of Historic Places, Interagency Resources Division.

Proposed boundaries for:

Lower Klamath National Wildlife Refuge
Siskiyou County, California, and Klamath County, Oregon
Designated a Landmark on January 12, 1965

The Landmark boundary coincides with the legal boundaries of the Lower Klamath Wildlife Refuge.

[FR Doc. 91–30687 Filed 12–23–91; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Proposed NHL Boundaries

December 18, 1991.

The National Park Service has been working to establish boundaries for all National Historic Landmarks for which no specific boundary was identified at the time of designation, and therefore, are without a clear delineation of the amount of property involved. The results of such designation make it important that we decline specific boundaries for each landmark.

In accordance with the National Historic Landmark program regulations 36 CFR part 65, the National Park Service notifies owners, public officials and other interested parties and provides them with an opportunity to make comments on the proposed boundaries.

Comments on the proposed boundaries will be received for 60 days after the date of this notice. Please address replies to Jerry L. Rogers, Associates Director, Cultural Resources, and Keeper of the National Register of Historic Places, National Park Service, P.O. Box 37127, Washington, DC 20013–7127, Attention: Chief of Registration (202) 343–9536. Copies of the documentation of the landmarks and their proposed boundaries, including maps may be obtained from that same office.

Carol D. Shull,

Chief of Registration, National Register of Historic Places, Interagency Resources Division.

Proposed boundaries for:

Chilkoot Trail and Dyea Taiya River Valley, Alaska Designated a Landmark on June 16, 1978

Beginning at Bench Mark "Lame" in T28S R59E, Copper River Meridian (CRM), thence in a northerly direction along a line one-half mile east of the center of the Taiya River to a point on the U.S. Canadian Border one-half mile southeast of Monument 120 in T25S, R60E, CRM, thence northwest along the U.S.-Canadian border for a distance of one mile, thence in a southerly direction along a line one-half mile west of the center of the Taiya River to a point due west of Bench Mark "Lame," thence due east to Bench Mark "Lame." Where the Taiya River has more than one channel running side-by-side, the "center" of the river is the center of the easternmost channel for purposes of the eastern boundary line of this description and the "center" of the river is the center of the westernmost channel for purposes of the western boundary line of this description.

[FR Doc. 91–30688 Filed 12–23–91; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 14, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by January 8, 1992.

Carol D. Shull,

Chief of Registration, National Register.

ALASKA

Wrangell-Peterburg Borough-Census Area

CHUGACH (Ranger Boat), Federal Government Dock, Wrangell Narrows, Petersburg, 91001937

ARIZONA

Coconino County

Cooper Ridge Lookout Tree (National Forest Fire Lookouts in the Southwestern Region TR), N of jct. of Alt. US 89 and AZ 67, Kaibab NF, Fredonia vicinity, 91001962

Corral Lake Lookout Tree (National Forest Fire Lookouts in the Southwestern Region TR), Roughly 30 mi. SE of Fredonia, Kaibag NF, Fredonia vicinity, 91001954

Fracas Lookout Tree (National Forest Fire Lookouts in the Southwestern Region TR), Roughly 30 mi. SE of Fredonia, Kaibab NF, Fredonia vicinity, 91001955

Grandview Lookout Tree (National Forest Fire Lookouts in the Southwestern Region TR), S of Grandview Pt., Grand Canyon NP, in Kaibab NF, Grand Canyon vicinity, 91001945

Hull Tank Lookout Tree (National Forest Fire Lookouts in the Southwestern Region TR), Se of Grandview Pt., Grand Canyon NP, in Kaibab NF, Grand Canyon vicinity, 91001947

Little Mountain Lookout Tree (National Forest Fire Lookouts in the Southwestern Region TR), Roughly 30 mi. SE of Fredonia, Kaibab NF, Fredonia vicinity, 91001950

Summit Mountain Lookout Tree (National Forest Fire Lookouts in the Southwestern Region TR), Off Perkinsville Rd. SE of Williams, Kaibab NF, Williams vicinity, 91001948

Tater Point Lookout Tree (National Forest Fire Lookouts in the Southwestern Region TR), Forest Rd. 240 E of AZ 67, S of Alt. US 89, Kaibab NF, Fredonia vicinity, 91001946

Telephone Hill Lookout Tree (National Forest Fire Lookouts in the Southwestern Region TR), Off AZ 67 S of jct. with Alt. US 89, Kaibab NF, Fredonia vicinity, 91001952

Tipover Lookout Tree (National Forest Fire Lookouts in the Southwestern Region TR), NW of N. Rim Entrance Station, Grand Canyon NP, in Kaibab NF, Fredonia vicinity, 91001953

Tusayan Lookout Tree (National Forest Fire Lookouts in the Southwestern Region TR), W of US 180, SW of Tusayan, Kaibab NF, Tusayan vicinity, 91001951

CALIFORNIA

Sacramento County

Sacramento Air Depot Historic District, McClellan Air Force Base, North Highlands vicinity, 91001989

DISTRICT OF COLUMBIA

District of Columbia State Equivalent

Franciscan Monastery and Memorial Church of the Holy Land, 1400 Quincy St., NE., Washington, 91001943

Watterston House, 224 2nd St., SE., Washington, 91001942

FLORIDA

Orange County

Twin Mounds Archaeological Districts, Address Restricted, Sorrento vicinity, 91001957

KANSAS

Douglas County

Vermilia-Boener House, NW of jct. of US 24, US 59 and US 40, Lawrence vicinity, 91001961

MASSACHUSETTS

Middlesex County

Shirley Village Historic District, Roughly bounded by Center, Harvard, Leominster and Shaker Rds., Shirley, 91001958

MINNESOTA

Hennepin County

Ogden Apartment Hotel, 66—68 S. 12th St., Minneapolis, 91001956

MISSOURI

Atchison County

St. Oswald's Protestant Episcopal Church, MO EE S of jct. with MO 46, Skidmore vicinity, 91001959

MONTANA

Big Horn County

Camp Four, 11 mi. NE of Fort Smith on Fort Smith—Hardin Co. Rd., Fort Smith vicinity, 91001940

Broadwater County

State Bank of Townsend, 400 Broadway, Townsend, 91001941

Gallatin County

Green, Jesse R., Homestead, 6 mi. NE of Trident, Trident vicinity, 91001939

Judith Basin County

Meadowbrook Stock Farm, US 87, Hobson vicinity, 91001938

NEW YORK

Broome County

Highland Park Carousel (Broome County Carousels MPS), Highland Park, Cooper Rd., Endwell vicinity, 91001963

Johnson, C. Fred, Park Carousel (Broome County Carousels MPS), C. Fred Johnson Park, Johnson City, 91001968

Johnson, George F., Recreation Park Carousel (Broome County Carousels MPS), George F. Johnson Recreation Park, Binghamton, 91001967

Johnson, George W., Park Carousel (Broome County Carousels MPS), George W Johnson Park, Endicott, 91001964

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Ross Park Carousel (Broome County Carousels MPS), Ross Park, Binghamton, 91001966
West Endicott Park Carousel (Broome County Carousels MPS), West Endicott Park, Endicott vicinity, 91001965

NORTH CAROLINA

Forsyth County

Washington Park Historic District, Roughly bounded by Leonard St., Acadia Ave., Sunnyside Ave., Broad St., Bond St. and Washington Park, Winston-Salem, 91001980

[FR Doc. 91-30611 Filed 12-23-91; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. MC-5 (Sub-No. 2) Ex Parte No. 159 (Sub-No. 1)]

Motor Carrier and Freight Forwarder Insurance Procedures and Minimum Amounts of Liability

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

SUMMARY: The Commission reminds the public that its rules prohibit companies that fail to pay delinquent insurance filing processing fees from making additional security filings with the Commission pending collection of delinquent accounts.

EFFECTIVE DATE: January 5, 1992.

FOR FURTHER INFORMATION CONTACT: E.C. Fernandez, (202) 927-5638, or Jean Jackson, (202) 927-6327 [TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: Commission records indicate that numerous companies filing certificates of insurance under credit accounts with the Commission have delinquent accounts. In an effort to collect these delinquent fees the Commission, on December 4, 1991, sent letters to delinquent account holders demanding payment, proof of payment, or proof of any affirmative defense to payment by January 5, 1992. The letter enclosed supporting documentation. The letter also indicated that failure to comply would result in freezing of the account, rejection of future certificate filings, and Commission pursuit of all available remedies. See Insurance Procedures and Minimum Amounts of Liability, 133 M.C.C. 273 (1983). The Commission anticipates prompt compliance to minimize costly and burdensome pursuant of alternatives by the Commission and disruption to the insurance companies and their customers.

Decided: December 18, 1991.

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-30645 Filed 12-23-91; 8:45 am]
BILLING CODE 7035-01-M

JUDICIAL CONFERENCE OF THE UNITED STATES

Proposed Amended Rules for the Processing of Certificates That a Judicial Officer Might Have Engaged in Impeachable Conduct

AGENCY: Judicial Conference of the United States.

ACTION: Request for comments.

SUMMARY: The Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders proposes an amendment to its rules for the Processing of Certificates that a Judicial Officer Might Have Engaged in Impeachable Conduct, adopted in September, 1987. The recommended change implements the recent amendment to the Judicial Conduct and Disability Act, 28 U.S.C. 372(c)(6)(B), vesting the Conference with authority to originate its own determination to the House of Representatives, without the necessity of referral or certification by a circuit judicial council under section 372(c)(7), that consideration of impeachment may be warranted, where a judge has been convicted of a felony and has exhausted or waived all means of direct review thereof.

DATES: Written comments on these rules should be received on or before January 31, 1992.

ADDRESS: Comments should be mailed to the Office of the General Counsel, Administrative Office of the United States Courts, Washington, DC 20544.

FOR FURTHER INFORMATION CONTACT: William R. Burchill, Jr., General Counsel, Administrative Office of the United States Courts, Washington, DC 20544, telephone: FTS/202 633-6127.

Rules for the Processing of Certificates From Judicial Councils That a Judicial Officer Might Have Engaged in Impeachable Conduct

The conference approved the following amended Rules for the Processing of Certificates from Judicial Councils that a Judicial Officer Has Engaged in Conduct that Might Constitute Grounds for Impeachment:

1. When a certificate from a judicial council that a judicial officer has engaged in conduct that might constitute grounds for impeachment is premised entirely upon a judgment of conviction in a criminal case, or when the Judicial Conference is otherwise informed that a judge or judicial officer has been convicted of a felony, and the judgment has become final by the exhaustion or termination of all rights of direct judicial review, the Judicial Conference, in its discretion, may accept the final judgment as conclusive and, without notice to the accused judicial officer, may make its own determination by a majority vote as to whether or not it will forward a final certificate to the House of Representatives of the United States Congress.

2. Except when the Judicial Conference of the United States determines that the full Conference should act upon the matter pursuant to Rule 1, all such certification matters shall be referred to in the first instance, by the Conference or its Executive Committee, to an *ad hoc* committee of Conference members or to the Committee to Review Circuit Council Conduct and Disability Orders for processing and the preparation of a report with recommendations back to the Conference.

3. When a certification proceeding is referred to a committee for a report and recommendation as provided in Rule 2, the relevant committee shall (1) provide the accused judicial officer with a copy of the certificate and a copy of all papers filed with the Judicial Conference in support of the certificate unless a copy of all such documents has previously been furnished to the accused judicial officer, or (2) in its discretion, make all such papers available for inspection by the judicial officer and his or her counsel in the Administrative Office in Washington, DC, or some other convenient, designated place.

4. The accused judicial officer shall have sixty days within which to file a written response to the certificate. The sixty-day period will begin to run when (1) a copy of all relevant papers is furnished or made available for inspection, or (2) when he or she is given written notice of the right to file such a written response, whichever later occurs. For good cause, the committee may extend the time within which a written response may be filed.

5. The Committee may receive written argument from a complainant if the committee determines that it may be assisted by such receipt.

6. Oral argument ordinarily will not be allowed, but may be allowed if the committee determines that it would be assisted by it.

7. In the preparation and filing of the written response and in oral argument, if allowed, the judicial officer is entitled to representation by counsel of choice at his or her expense.

8. (a) If the Judicial Conference or its committee determines that additional investigation is necessary or appropriate, notice that such investigation will be conducted will be given in advance to the accused judicial officer. The notice will be given at least ten days in advance of the commencement of the investigation, unless an emergency situation requires an earlier commencement of investigatory measures.

(b) During the course of any such investigation, the accused judicial officer will be afforded those opportunities as provided in 28 U.S.C. 372(c)(11)(B), and the complainant will be afforded those opportunities as provided in 28 U.S.C. 372(c)(11)(C).

(c) At the conclusion of any such investigation, the investigation panel will file a written report, a copy of which will be furnished the accused judicial officer or made available for his or her inspection and, if the committee decides that it is appropriate, to the complainant. The report of the investigation will be made a part of the record, and the time within which the accused judicial officer may file a written response will not begin to run before a copy of the report is furnished to or made available for inspection by the judicial officer.

9. The committee will file with the Conference a report, including a recommendation or recommendations. The report will be received by the Conference as the reports of other of its committees. The Conference may adopt the report, including its recommendations, in its entirety, or adopt it in part and reject it in part.

10. Since the committee's report is an internal document and an accused judicial officer will already have been given an opportunity to file a full written response to the certificate, a copy of the committee's report need not be furnished to him.

L. Ralph Mecham,

Director.

[FR Doc. 91-30609 Filed 12-23-91; 8:45 am]
BILLING CODE 2210-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 12, 1991, a proposed Consent Decree in *United States* v. *Atochem North America, Inc.*, Civil No. 05533(T), was lodged with the United States District Court for the District of New Jersey. The complaint in this action was filed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, to recover costs incurred by the Environmental Protection Agency ("EPA") in taking response actions at the Myers Property Superfund Site ("Site") located in Franklin Township, Hunterdon County, New Jersey.

The proposed Consent Decree embodies an agreement by the potentially responsible party at the Site to pay the United States $2,700,000.00 for past response costs incurred by EPA in connection with the Site. It also requires the potential responsible party to perform the remedial work selected by EPA for Operable Unit I, i.e.: (1) Evacuation and treatment of the contaminated soils, followed by backfilling of the treated soil; (2) decontamination of building surfaces; and (3) interim extraction of contaminated groundwater from the zone of highest contaminant concentration, on-site treatment of the extracted groundwater, and reinjection of the treated water. The proposed Consent Decree also provides for the potentially responsible party to pay for all but the first $800,000 of EPA's costs in overseeing this work, and requires that the potentially responsible party conduct a Focused Groundwater Feasibility Study to evaluate additional, "final" remedial alternatives, if any, for the bedrock water-bearing zone.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Atochem North America, Inc.*, DOJ No. 90-11-2-662.

The proposed Consent Decree may be examined at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-7829).

A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, DC 20004. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $13.25 (25 cents per page reproduction cost) for the Consent Decree.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 91-30607 Filed 12-23-91; 8:45 am]
BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Cercla

In accordance with Department Policy, 28 CFR 50.7, and pursuant to section 122(i) of CERCLA, 42 U.S.C. 9622(i), notice is hereby given that a proposed consent decree in *United States* v. *City of North Miami, Florida*, Civil Action No. 91-2834 was lodged with the United States District of Florida on December 12, 1991. This agreement resolves a judicial enforcement action brought by the United States against the defendant pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607.

The proposed decree provides that the City of North Miami will design, construct, and operate a remedial action to intercept ammonia leachate that is migrating from the Munisport Landfill into a mangrove preserve. The United States alleges that this ammonia leachate is toxic to certain organisms that inhabit the mangrove preserve, and that the leachate presents or may present an imminent and substantial endangerment to the environment. The City denies that such endangerment exists, but has agreed to perform the remedial measures selected by EPA in order to resolve this lawsuit. The proposed decree also requires that the City of North Miami reimburse the Hazardous Substances Superfund in the amount of $140,000 a partial reimbursement of funds expended by EPA at the site, and that the City pay EPA's oversight costs (up to stated amounts).

The Department of Justice will receive for a period of (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment

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and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. City of North Miami, Florida*, D.O.J. Ref. 90-11-3-624.

This Consent Decree may be examined at the offices of the United States Attorney, Southern District of Florida, 155 South Miami Avenue, Miami, Florida 33130, at the Office Regional Counsel, EPA, 345 Courtland Street, NE., Atlanta, Georgia 30365, and at the Offices of the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, room 1535, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. The proposed consent decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, Box 1097, NW., Washington, DC 20004, (202) 347-7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $12.75 (25 cents per page reproduction costs) payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 91-30606 Filed 12-23-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.
The title of the recordkeeping/reporting requirement.
The OMB and/or Agency identification numbers, if applicable.
How often the recordkeeping/reporting requirement is needed.
Whether small businesses or organizations are affected.
An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
The number of forms in the request for approval, if applicable.
An abstract describing the need for the uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills (202-523-5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 (202-395-6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Revision

Employment and Training Administration

Characteristics of the Insured Unemployed.
1205-0009.
ETA 227.
Quarterly.
State or local governments.
53 respondents; 212 total hours; 20 minutes per form.
1 form.

This report is the only source of current, consistent, demographic information on the UI claimant population. The age, sex, race/ethnic, industry, and occupation variables identify important claimant cohorts for legislative, economic and social planning purposes and evaluation of the UI program on the Federal and State levels.

Extension

Employment Standards Administration

Request from Claimant for Information on Earnings, Dual Benefits, Dependents, and Third Party Settlement.
1215-0151.
CA-1032.
Annually.
Individual or households.
50,000 respondents; 16,667 total hours; ⅓ hour per response. 1 form.

The CA-1032 is used to obtain information from claimants receiving compensation on the Division of Federal Employees' Compensation periodic disability roll. This information is necessary to ensure that the compensation being paid is correct.

Signed at Washington D.C. this 17th day of December, 1991.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 91-30638 Filed 12-23-91; 8:45 am]

BILLING CODE 4510-30-M

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: January 8, 1992, 10 am—12 noon, rm. S-4215 A&B, Department of Labor Building, 200 Constitution Ave., NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

FOR FURTHER INFORMATION CONTACT: Fernand Lavallee, Director, Trade Advisory Group, Phone: (202) 523-2752.

Signed at Washington, DC this 13th day of December, 1991.

Shellyn G. McCaffrey,

Deputy Under Secretary, International Affairs.

[FR Doc. 91-30641 Filed 12-23-91; 8:45 am]

BILLING CODE 4510-28-M

Employment and Training Administration

[TA-W-26,112]

Outokumpu American Brass, Kenosha, WI; Negative Determination Regarding Application for Reconsideration

By an application dated November 21, 1991, one of the workers requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on September 25, 1991 and published in the **Federal Register** on October 22, 1991 (56 FR 54588).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the workers produce copper mill products.

The worker claims that the Department used only 1990 import data for determining whether the increased import criterion of the Group Eligibility Requirement was met. The worker also claims that Outokumpu is petitioning the Department of Commerce on anti-dumping suit.

The Department's denial was based on the fact that the increased import criterion as well as the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act were not met. Investigation findings show that U.S. imports of copper mill products decreased in the first half of 1991 compared to the same period in 1990 as well as in 1990 compared to 1989.

The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey of major declining customers shows that the customers who imported copper mill products accounted for an insignificant portion of the subject firm's sales decline during the period under investigation.

Although the Department of Commerce found in 1986 that Canadian and Korean companies were guilty of dumping brass plates and thereby injuring the domestic industry, this, in itself, would not provide a basis for a worker group certification at a particular plant. Further, the Kenosha plant does not produce brass plates.

Company officials at Outokumpu stated that sales and production declines and worker separations at Kenosha are the result of the slow economy especially for automobiles and the need to be more efficient in order to compete against all companies, especially domestic companies.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 13th day of December 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-30639 Filed 12-23-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,608]

Rockwell International Corporation T/A Division New Castle, PA; Revised Determination on Reopening

On June 21, 1991, the Department issued a Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance to workers of Rockwell International Corporation, T/A Division in New Castle, Pennsylvania. The notice was published in the **Federal Register** on June 28, 1991 (56 FR 29717).

The workers were also denied on reconsideration. The notice of negative determination on reconsideration was issued on October 21, 1991.

The Department, at the request of Local 4194 of the United Steelworkers, reopened the investigation for workers of Rockwell International Corporation in New Castle, Pennsylvania.

New findings show that workers producing front axle components in Departments #22, #24, #31, #32, #34, #40 and #42 at the Rockwell International Corporation in New Castle, Pennsylvania were separated from employment as a result of corporate outsourcing of components to foreign companies in Europe, Canada and Mexico. Investigation findings show that Rockwell had increased company imports of axle components in the first quarter of 1991.

Other findings on reopening show substantial declines in production and employment from September 1990 to September 1991 in the above mentioned Departments at New Castle.

Other findings show that workers in Departments #33, Knuckle Machining (high volume); #35, Knuckle Machining (low volume) and #51, Front Axle Assembly were not significantly impacted by imports. The findings show that all knuckle machining at New Castle is scheduled to be transferred to other domestic plants. Further, the loss of the P-Van and GMT 455 axles to a domestic firm who foreign sources the axles did not account for a significant portion of assembly production in Department 51, Front Axle Assembly.

Conclusion

After careful consideration of the new facts obtained on reopening it is concluded that increased imports of articles like or directly competitive with front axle components produced by Rockwell International Corporation in New Castle, Pennsylvania contributed importantly to the total or partial separation of workers at Rockwell International. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers in Departments #22, #24, #31, #32, #34, #40, and #42 at the Rockwell International Corporation in New Castle, Pennsylvania who became totally or partially separated from employment on or after September 1, 1990 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 13th day of December 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services Unemployment Insurance Service.

[FR Doc. 91-30640 Filed 12-23-91; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Shipyard Employment Standards Advisory Committee Meeting

AGENCY: Occupational Safety and Health Administration (OSHA).

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Shipyard Employment Standards Advisory Committee, established under the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C., App. I) and section 7(b) of the Occupational Safety and Health Act, (29 U.S.C. 656(b)), will convene on February 4, 1992, at 8:30 a.m., at the Holiday Inn at the Embarcadero, 1355 North Harbor Drive, San Diego, California 92101. The

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meeting will adjourn on February 5, 1992, at approximately 4 p.m. The public is encouraged to attend.

The agenda is as follows:

I. Call to Order.
II. Review the transcripts of November 20 & 21, 1991, meeting.
III. Discussion of the following standards:
(a) AD–HOC Committee Report on 29 CFR part 1915, Subpart G, Materials Handling and Storage (Final Review)
(b) AD–HOC Committee Report on 29 CFR part 1915, Subpart P, Fire Protection
(c) AD–HOC Committee Report on 29 CFR part 1915, Subpart Q, Hazardous Materials
(d) Subpart L, Electrical
1). 1926 subpart K (Temporary wiring)
2). 1910 subpart S (Electrical)
(e) 29 CFR part 1915, subpart F, General Working Conditions
IV. New Business. Discussion of the following standards, as time permits.
(a) Proposed 29 CFR part 1915, subpart Z, Lead.

Time permitting, the Committee will consider oral presentations relating to agenda items. Persons wishing to address the Committee should submit a written request to Mr. Thomas Hall (address below) by the close of business, January 24, 1992. The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation, and an estimate of the amount of time needed.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, room N–3647, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–8617.

Signed at Washington, DC, this 18th day of December 1991.

Gerard F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 91–30675 Filed 12–23–91; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Exemption Application No. D–8775, et al.]

Prohibited Transaction Exemption 91–72; Grant of Individual Exemptions; Anthony J. Bernardo, Jr. D.D.S., P.A. Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposes to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, authority 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;
(b) They are in the interests of the plans and their participants and beneficiaries; and
(c) They are protective of the rights of the participants and beneficiaries of the plans.

Anthony J. Bernardo, Jr., D.D.S., P.A., Profit Sharing Plan (the Plan), Located in Wilmington, Delaware

(Prohibited Transaction Exemption 91–72; Exemption Application No. D–8775).

Exemption

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale for cash of a parcel of real property (the Property) from the Plan to Anthony J. Bernardo, Jr. and Mary Ann Bernardo, parties in interest with respect to the Plan, provided the Plan receives no less than the greater of $105,000 or the fair market value of the Property at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 23, 1991, at 56 FR 54900.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

General Motors Hourly-Rate Employees Pension Plan; and the General Motors Retirement Program for Salaried Employees (together, the Plans), Located in New York, New York

(Prohibited Transaction Exemption 91–73; Exemption Application Nos. D–8577 and D–8578)

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the purchase on December 19, 1990 by the Plans of a commercial mortgage note (the Note), which is secured by a first deed of trust against certain improved real property, from The Prudential Insurance Company of America, a party in interest with respect to the Plans, for $200,786,511, provided that such amount was not greater than the fair market value of the Note on the date of purchase.

EFFECTIVE DATE: The effective date of this exemption is December 19, 1990.

NOTICE TO INTERESTED PERSONS: The applicant represents that it was unable to notify interested persons within the time period specified in the **Federal Register** notice published on October 2, 1991. The applicant states that all interested persons were notified, in the manner agreed upon between the applicant and the Department, by November 8, 1991. Interested persons were advised that they had until December 9, 1991 to comment on the proposed exemption.

WRITTEN COMMENTS: The Department received four written comments from interested persons. However, the commenters did not address any specific issues relating to the transaction for which the applicant requests an exemption. Therefore, after consideration of the entire record, the Department has determined to grant the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 2, 1991 at 56 FR 49912.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department at (202) 523–8883. (This is not a toll free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or § 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 19th day of December 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 91–30674 Filed 12–23–91; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–8769, et al.]

Proposed Exemptions; Otologic Medical Services, P.C. Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Otologic Medical Services, P.C. Profit Sharing Plan (the Plan) Located in Iowa City, IA; Proposed Exemption

[Application No. D–8769]

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed purchase, by the account of Dr. Guy E. McFarland (the Account) under the Plan, of a 50 percent undivided interest (the Interest) in a parcel of undeveloped real property (the Property) from Dr. Guy E. McFarland and his wife Bonita, joint owners of the Interest and disqualified persons with respect to the Plan, provided the purchase price does not exceed the fair market value of the Interest on the date of the purchase.

Summary of Facts and Representatives

1. The Plan is a profit-sharing plan which permits each Plan participant to control the investment of the Account. The Plan has approximately 11 participants, including Dr. McFarland

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who is a 33⅓ percent owner of the corporation maintaining the Plan. As of August 1, 1990, the Account's balance amounted to approximately $1,600,000.

2. In July of 1989, Dr. McFarland purchased the Property which is located at Section 36 NewPort Township in Johnson County, Iowa, from an unrelated party. Subsequently, Dr. McFarland sold a 50% undivided interest in the Property to Dr. Neal N. Lewellyn, an unrelated party. The Property includes cropland as well as grazing and wooded areas.

3. Michael J. Cilek (Mr. Cilek), an independent real estate appraiser properly qualified and licensed to conduct appraisals in the State of Iowa, has determined by applying appraisal principles to comparable property values, that the fair market value of the Interest, as of September 12, 1991, was $279,300. Mr. Cilek states that less than one percent of his yearly gross income has become derived from his business with Dr. McFarland.

4. The applicant represents that the purchase of the Interest would serve to diversify the assets of the Account. The applicant further represents that he believes the Property (and the Interest therein) offer significant potential for appreciation. It is proposed that the Account will pay a lump sum of cash for the Interest on the purchase date. The applicant states that before the purchase is consummated, an updated appraisal will be performed to determine the fair market value of the Interest as of that date. In addition, the applicant represents that the Account will not pay any commissions or other expenses to effect the proposed purchase.

5. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because: (a) The proposed purchase price will be equal to the fair market value of the Interest as of the purchase date; (b) the proposed purchase will not exceed 25 percent of the value of the Account and (c) the only Plan participant affected by the proposed purchase will be Dr. McFarland, and he desires to consummate the purchase.

Notice to Interested Persons: Since the only Plan assets involved in the proposed transaction are those in the Account and since Dr. McFarland is the only participant affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and hearing requests on the proposed exemption are due 30 days after the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Berger of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

River Oaks & Trust Company Group Trust for Qualified Trusts of Employee Benefits Plans (ROTC Group Trust) Located in Houston, TX; Proposed Exemption

[Application Nos. D-8738, D-8741 and D-8742]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed series of cash loans not to exceed $811,703, made from time to time, (the Loans) to the ROTC Group Trust by the River Oaks Trust Company (ROTC), a party in interest with respect to the qualified employee benefit plans (the Plans) that participate in the ROTC Group Trust, provided (1) no collateral is required of, and no interest charges or other expenses are incurred by, the ROTC Group Trust or the Plans; (2) the proceeds of the Loans are used only to honor written requests of the Plans for withdrawals from the ROTC pooled investment funds which have invested in Sentinel Real Estate Fund (SRE Fund); (3) the Loans are in lieu of the periodic redemptions that have been suspended by the SRE Fund; (4) repayment of the Loans is restricted to cash obtained from the SRE Fund by the ROTC Group Trust pursuant to redemption requests; and (5) funds received from the SRE Fund in excess of the amount of the Loans will be retained by the ROTC Group Trust and then allocated to the Plans that participate in the ROTC Group Trust's investments in the SRE Fund.

Summary of Facts and Representations

1. The applicant is ROTC, a Texas chartered trust company located in Houston, Texas. ROTC does not function as a bank and therefore, does not accept deposits. It is owned by River Oaks Bancorporation, Inc.,[1] a Delaware corporation organized as a bank holding company under the Bank Holding Company Act 1956, as amended, located in Houston, Texas, and which in turn is owned by Compass Bancshares, Inc., a Texas corporation, organized as a bank holding company under the Bank Holding Company Act of 1956, as amended, located in Houston, Texas. The owner of Compass Bancshares, Inc. is Central Bancshares of the South, Inc., a Delaware corporation located in Birmingham, Alabama, and organized in 1970 as a bank holding company under the Bank Holding Company Act of 1956, as amended.

ROTC, the only affiliate of Compass Bancshares, Inc. with trust powers in the state of Texas, performs as trustee and investment manager in a fiduciary capacity as defined in the Act, through its establishment and operation of the ROTC Group Trust. The ROTC Group Trust maintains eight different collective or pooled investment funds providing a variety of investments for 42 participating Plans. Only three of the eight investment funds of the ROTC Group Trust will be involved in the Loans because of their direct or indirect investments in the SRE Fund. The three investment funds are the ROTC Keogh Balanced Growth Fund (the Keogh Fund), the ROTC Real Estate Fund (the Real Estate Fund), and the ROTC Corporate Balanced Fund [2] (the Corporate Balanced Fund; collectively, the Funds).

2. The SRE Fund is a group trust located in New York, N.Y. and formed for the purpose of providing pension and profit sharing trusts which are exempt from federal income taxation with a vehicle for pooling a portion of their funds for investment in real estate and interests in real estate. The SRE Fund is not related to ROTC or any affiliates of ROTC. It commenced operations on October 1, 1976, pursuant to the terms of a Trust Agreement and is subject to the applicable provisions of the Act. At the time of its commencement, the SRE Fund entered into an Investment Management Agreement with Sentinel Real Estate Corporation (SREC). Under the terms of this agreement, SREC is responsible for the acquisition, management, and disposition of all investments of the SRE Fund, as well as performance of the day-to-day administrative operations. Beneficial interests held by investors in the SRE Fund are designated as units (Units) and

[1] River Oaks Bancorporation, Inc. also owns River Oaks Bank located in Houston, Texas.

[2] The Corporate Balanced Fund has indirectly invested in the SRE Fund by its investments in the Real Estate Fund which is in turn invested in the SRE Fund.

are marketed to qualified employee benefit plans and their tax exempt trusts. The number of Units each investor is issued is determined by dividing the value of the funds invested by an investor in the SRE Fund by the Unit net asset value of the SRE Fund as of its most recent quarterly valuation date.

In accordance with the terms of the SRE Fund, investors may only dispose of their Units in the SRE Fund by requesting in writing a redemption from the SRE Fund of all or a portion of their respective Units. Prior to March 1990, requests for redemption were completed in 30 days after receiving the request by the SRE Fund. This prompt reaction to redemption requests changed during 1990. During March, June, and September 1990, ROTC Group Trust requested redemption of its entire investment in the SRE Fund. On each occasion only a partial, minimal redemption was made by the SRE Fund. Subsequently to the partial redemptions, the SRE Fund notified ROTC Group Trust that no additional Units would be redeemed because of the lack of liquidity in the real estate markets. The SRE Fund declared a moratorium in 1990 on the redemption of its Units for an indefinite period.

As of June 30, 1991, the applicant represents that the current market value of the 2.89 Units held by the Keogh Fund was $176,896 and the current market value of the 10.36 Units held by the Real Estate Fund was $634,807. The Corporate Balanced Fund, which offers a balanced investment opportunity for small Plans by investing its assets in the other funds of the ROTC Group Trust, is not directly invested in Units of the SRE Fund. Units in the SRE Fund held by the Real Estate Fund also indirectly represent assets invested by the Corporate Balanced Fund in the Real Estate Fund.

3. The applicant seeks an exemption from the prohibited transaction provisions of the Act to permit it to make the Loans from time to time to the ROTC Group Trust in amount not to exceed $811,703, which represents the fair market value of the SRE Fund Units, as of June 30, 1991, held by the ROTC Group Trust. The Loans will vary according to the liquidity needs of the Plans and will be activated only in response to written requests for redemption from the respective, independent fiduciaries of the Plans invested in the Funds holding directly or indirectly Units of the SRE Fund. All of the Loans will be interest-free and uncollateralized. The Loans will be in the form of written notes with repayment of principal generated only from proceeds realized from the redemption of Units in the SRE Fund by the ROTC Group Trust. The value of redemptions will be determined by the net asset value of the Units of the SRE Fund, which will continue to be valued quarterly, and thus the value of the Units held by the ROTC Group Trust will fluctuate. Any deficiencies in the SRE Fund redemptions will be compensated by the Loans from ROTC. The applicant represents that if the redemption of the Units in the SRE Fund produces funds in excess of the Loans, such excess funds will be retained by the ROTC Group Trust and allocated to the respective Plans invested in the Funds holding Units of the SRE Fund on the date of the distribution of the excess funds by the SRE Fund.

If the redemption of the Units in the SRE Fund does not produce sufficient funds to repay the Loans, ROTC will waive the repayment of the Loans. ROTC will absorb any losses and not look to any other source for repayment Also, the applicant represents that the Loans will not cause the Plans to incur any costs or expenses.

4. The applicant represents that the sole purpose of the Loans is to protect the interests of the participants and beneficiaries of the Plans by providing liquidity to the Plans that are invested in the Funds of the ROTC Group Trust which are invested in the illiquid SRE Fund. The Loans will enable the Plans to pay benefits and defray reasonable expenses of administering the Plans, as well as diversify investments of the Plans. The independent fiduciaries of the Plans will act independently of the ROTC Group Trust when activating the Loans by their respective redemption requests. The applicant also represents that the decisions for redemption by the independent fiduciaries of the Plans will be the sole and controlling basis for making the Loans.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons (a) the Loans will be evidenced by written instruments with no provision for the payment of interest; (b) the proposed transactions protects the Plans and their participants and beneficiaries from the lack of liquidity of the SRE Fund; (c) repayment of the Loans is limited to the cash proceeds received from the redemption of Units issued by the SRE Fund and no other assets of the Funds will be affected or used for repayment; and (d) upon redemption of Units issued by the SRE Fund, any proceeds received in excess of the Loans will be allocated to the Plans that are then invested in the Funds of the ROTC Group Trust on the date of such excess funds are received.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Pilgrim's Pride Retirement Savings Plan (the Plan) Located in Pittsburg, TX; Proposed Exemption

[Application No. D-8819]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to: (1) The proposed cash sale of two parcels (herein identified as Parcels #10 and #11) of improved and unimproved real property by the Plan to Pilgrim's Pride Corporation (the Employer), a party in interest with respect to the Plan; and (2) the proposed cash sale of nine other parcels (herein identified as Parcels #1 through #9) of improved and unimproved real property by the Plan to the Employer; provided the following terms and conditions are met: (a) The terms of the sales are not less favorable to the Plan than similar terms negotiated at arm's length between unrelated third parties; (b) the aggregate sales price of Parcels #10 and #11, as determined by an independent, qualified appraiser, on the date of the sale; and (c) the aggregate sales price of Parcels #1 through #9 is the greater of $559,900 or the sum of the fair market values of Parcels #1 through #9, as determined by an independent, qualified appraiser, on the date of the sale.[3]

Summary of Facts and Representations

1. The Employer is a corporation organized under the laws of the State of Delaware but has its principal place of business at 1105 Texas Ave., Pittsburg, Texas. The Employer is engaged in the breeding, feeding, and raising of chickens and in the processing, packaging, and selling, in the wholesale and retail markets, of commercially prepared cooked and uncooked chicken and of chicken byproducts.

[3] For purposes of this proposed exemption references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

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2. The Plan is a tax qualified profit sharing plan, pursuant to section 401(a) of the Code and is the successor to a profit sharing plan established on January 1, 1969, for employees of Netex Poultry Company, Inc., the predecessor of the Employer. As of June 30, 1990, the Plan had an estimated 6,184 participants and assets totaling $12,384,560.

The assets of the Plan are held in a tax exempt trust (the Trust), pursuant to section 501(a) of the Code. The current trustees of the Trust (the Trustees) are Lonnie A. Pilgrim (Mr. Pilgrim), Clifford E. Butler (Mr. Butler), and Robert L. Hendrix (Mr. Hendrix). Charles L. Black served as a former trustee of the Trust. Each of the current Trustees are employees, officers, and shareholders of the Employer. Mr. Pilgrim owns approximately 79% of the outstanding shares of the Employer and is its chief executive officer. Mr. Butler and Mr. Hendrix together own less than 1% of the outstanding shares of the Employer.

3. It is represented that the Trust on behalf of the Plan owns eleven (11) parcels (the Parcels) of improved and unimproved real property. The Parcels were purchased by the Plan from unrelated third party sellers on various dates from February 26, 1974 through June 1, 1982. The aggregate purchase price paid by the Plan for the Parcels was approximately $376,744. It is represented that the Parcels were purchased as investments to be held indefinitely by the Plan. All of the Parcels are located either in the agricultural area surrounding the Employer's principal place of business in Pittsburg, Texas or near the Employer's facilities in Mt. Pleasant, Texas.[4] The aggregate value of the Parcels constitutes approximately 4.6% of the assets of the Plan.

4. Parcels #1 through #5 are located in Camp County, Texas. Parcels #1 and #2 are described as unimproved rural farm land, consisting of 159.38 acres and 65.4 acres, respectively. Parcel #3 contains 30 acres and is improved with a residential building. It is represented that the quality and condition of the existing structures on Parcels #4 and #5 add no contributory value and that these parcels are considered as unimproved land consisting of 31.7 acres and 55 acres, respectively.

[4] The Department notes that the Trustees' decisions to acquire and hold the Parcels are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. The Department, herein, is not proposing relief for any violation of the provisions of Part 4, Subtitle B, Title I of the Act which may have arisen, as a result the Plan's investment in, or continued holding of, the Parcels.

The Employer has taken certain actions with respect to Parcels #1 through #5. It is represented that some or all of these Parcels were fertilized, mowed, cleared of brush and trash, and improved with repaired or new fences. In addition, the Employer paid the taxes, the insurance premiums, and other expenses on these Parcels. It is represented that income to offset a portion of these expenses has been generated from silage crops grown on Parcels #1, #3, #4, and #5 and from rental of the residence on Parcel #3. The Employer maintains that it has not otherwise made use of or benefited from its actions with respect to Parcels #1 through #5.

5. Parcels #6 through #11 are located in Mt. Pleasant, Titus County, Texas. Parcels #6, #7, and #8 are zoned for heavy manufacturing. Parcel #6 is improved with a concrete tile shop building and asphalt paving. Parcel #7 is improved with a steel frame metal building and asphalt paving. Parcel #8 is improved with asphalt paving only. Parcels #9, #10, and #11 are zoned single family residential. Parcel #9 is improved with a storm drain and concrete paving. Parcel #10 is improved with a chain link fence. Parcel #11 is unimproved.

It is represented that since the Plan acquired them, the Employer or its predecessor have occupied Parcels #6, #7, #9, #10, and #11 under the terms of annual or month to month written leases executed between the Plan and the Employer or its predecessor. In the case of Parcel #8, the Employer has occupied and used the land as a parking lot for trucks, but no formal written lease has been found to document the arrangement. It is represented that the Employer pays an aggregate monthly rental of $427.14 for using or leasing Parcels #6 through #11.[5]

6. It is represented that effective July 1, 1991, the Employer amended the Plan in order to provide for participant directed investments, pursuant to section 404(c) of the Act and the proposed regulations (56 FR 10724, March 13, 1991). The Employer has selected several mutual fund options from which participants may choose. In order to fully implement the change to participant directed accounts, it is represented that all assets under the Plan must be liquidated and invested in the mutual fund options. Until this can be accomplished, the Plan will incur administrative expense in separately accounting for the Parcels.

In order to avoid this expense to the Plan, the Employer proposes to purchase Parcels #1 through #9 from the Plan for an aggregate cash price which is the greater of $559,900 or the sum of the fair market values of the Parcels, as determined by an independent, qualified appraiser, on the date of sale. It is represented that with the exception of Parcels #10 and #11 which were appraised by independent qualified appraisers (see, paragraph no. 7 below) at $3,000 and $2,700, respectively, the value of all of the Parcels has appreciated over time. The Employer represents that with respect to Parcels #10 and #11, the Plan will be made whole. In this regard, the Employer will pay in cash the greater of $14,308, the Plan's total cost in acquiring Parcels #10 and #11 ($7,500 and $6,808, respectively) or the sum of the fair market values of Parcels #10 and #11, as determined by an independent, qualified appraiser, on the date of the sale.

In selling the Parcels to the Employer, the Plan would also avoid the likelihood of a third party sale at a discount and/or the risk of providing financing for any sale of the Parcels to an outside purchaser. In addition, it is represented that the liquidity of the Plan would be enhanced by the sale of the Parcels to the Employer. It is represented that the Employer will bear the costs and expenses of obtaining the exemption and of notifying interested persons.

7. Bob G. Derryberry, ARA, ASA, and William H. Manning, MAI, independent, qualified third party appraisers with Bob Derryberry and Associates, in Garland, Texas inspected each of the Parcels and prepared an appraisal report dated June 24, 1991. In this appraisal report, they estimated the value of the Parcels, as unencumbered by any existing leases with the Employer. The appraisers represent that the fair market value of the Parcels, as of May 16, 1991, was $565,000.

Because of proximity of the Parcels to the Employer's facilities and the applicability of the Parcels in the operation of the Employer's business, the appraisers were asked to address whether the Parcels have a higher value to the Employer than they would to an unrelated third party purchaser. Accordingly, the June appraisal report was supplemented by information provided in a letter from the appraisers, dated October 21, 1991. In this letter, the appraisers represent that the appraised value of the Parcels, in this case, reflects the same fair market value, regardless of whether the purchaser is the Employer or an unrelated third party.

[5] The Employer recognizes that the leasing and use of the Parcels may have constituted prohibited transactions under the Act. As a result, the Employer represents that within 60 days of the date of the grant of this proposed exemption, they will file the FORM 5330 with the Internal Revenue Service, and will pay any applicable excise tax deemed to be due and owing with respect to such leasing and use. The Employer will also pay to the Plan the excess, if any, of the fair market rental, as determined by an independent, qualified appraiser, with respect to such leasing and use over the actual amount paid to the Plan, plus interest.

8. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The sale of the Parcels will be a one time transaction for cash;

(b) The Plan will avoid incurring expenses caused by the necessity of separately accounting for the Parcels in the context of a participant directed account plan, pursuant to section 404(c) of the Act;

(c) The Plan will avoid the likelihood of sale at a discount to a third party, and/or the risk of providing financing for such a purchase;

(d) The aggregate sales price for Parcels #10 and #11 will be the greater of $14,303, the Plan's total cost in acquiring Parcels #10 and #11, or the sum of the fair market values of Parcels #10 and #11, as determined by an independent, qualified appraiser, on the date of the sale;

(e) The aggregate sales price for Parcels #1 through #9 will be the greater of $559,900 or the sum of the fair market values of Parcels #1 through #9, as determined by an independent, qualified appraiser, on the date of the sale; and

(f) The liquidity of the Plan will be enhanced by the sale.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, involving statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 19th day of December 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91-30680 Filed 12-23-91; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

Licensing Support System Advisory Review Panel; Renewal

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of renewal of the Licensing Support System Advisory Review Panel (LSSARP) for a period of two years.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission has determined that renewal of the charter for the LSSARP for the two year period commencing December 16, 1991 is in the public interest in connection with duties imposed on the Commission by law. This action is being taken in accordance with the Federal Advisory Committee Act after consultation with the Committee Management Secretariat, General Services Administration.

The purpose of the LSSARP is to provide advice to (1) the Department of Energy on the fundamental issues of design and development of an electronic information management system to be used to store and retrieve documents relating to the licensing of a geologic repository for the disposal of high-level radioactive waste, and (2) the Nuclear Regulatory Commission on the operation and maintenance of the system. This electronic information management system is known as the Licensing Support System (LSS).

Membership on the Panel is drawn from those interests that will be affected by the use of the LSS, including the Department of Energy, the NRC, the State of Nevada, Tribal interests, affected units of local governments in Nevada, and the nuclear industry. Federal agencies with expertise and experience in electronic information management systems also participate on the Panel.

Further information regarding the LSS Advisory Review Panel may be obtained from Marilee Rood, Office of the LSS Administrator, NRC, Washington, DC 20555; telephone: (301) 504-4003.

Dated: December 18, 1991.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 91-30061 Filed 12-23-91; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Improved Light Water Reactors; Meeting

The Subcommittee on Improved Light Water Reactors will hold a meeting on January 22, 1992, room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, January 22, 1992—8:30 a.m. Until the Conclusion of Business

The Subcommittee will review SECY-91-300 and the related draft safety evaluation report for chapter 10 of the EPRI's Requirements Document for evolutionary designs.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify

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the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will hear presentations by the hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Dr. Medhat El-Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: December 18, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91–30662 Filed 12–23–91; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Boiling Water Reactors; Meeting

The Subcommittee on Advanced Boiling Water Reactors will hold a meeting on January 23-24, 1992, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, January 23, 1992—8:30 a.m. until the conclusion of business.

Friday, January 24, 1992—8:30 a.m. until the conclusion of business.

The Subcommittee will review SECY–91–294 and SECY–91–309 addressing two drafting safety evaluation reports related to different chapters of the GE/Standard Safety Analysis Report for the ABWR design and other related issues.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made. During the initial portion of the meeting, the Subcommittee, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the General Electric, NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Dr. Medhat M. El-Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: December 18, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91–30698 Filed 12–23–91; 8:45 am]

BILLING CODE 7590–01–M

State of Maine: Staff Assessment of Proposed Agreement Between the Nuclear Regulatory Commission and the State of Maine

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Proposed Agreement with the State of Maine.

SUMMARY: The U.S. Nuclear Regulatory Commission is publishing for public comment the NRC staff assessment of a proposed agreement received from the Governor of the State of Maine for the assumption of certain of the Commission's regulatory authority pursuant to section 274 of the Atomic Energy Act of 1954, as amended. Comments are requested on the public health and safety aspects of the proposal.

Exemptions from the Commission's regulatory authority, which would implement this proposed agreement, have been published in the **Federal Register** and codified as part 150 of the Commission's regulations in Title 10 of the Code of Federal Regulations.

DATES: Comments must be received on or before January 2, 1992.

ADDRESSES: Submit comments to the Chief, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, Washington, DC 20555. Comments may also be delivered to 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Monday through Friday. Copies of comments received by NRC may be examined at the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC. A copy of the proposed agreement, program narrative, including the referenced appendices, applicable State legislation and Maine regulations, is available for public inspection in the NRC's Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC, telephone: (202) 634–3273.

FOR FURTHER INFORMATION CONTACT: Kathleen N. Schneider, State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301–492–0320.

SUPPLEMENTARY INFORMATION: Assessment of Proposed Maine Program to Regulate Certain Radioactive Materials pursuant to section 274 of the Atomic Energy Act of 1954, as amended (the Act).

The Commission has received a proposal from the Governor of Maine for the State to enter into an agreement with the NRC whereby the NRC would relinquish and the State would assume certain regulatory authority pursuant to section 274 of the Act.

Section 274e of the Act requires that the terms of the proposed agreement be published for public comment once each week for four consecutive weeks. Accordingly, this notice will be published four times in the **Federal Register**.

I. Background

A. Section 274 of the Act provides a mechanism whereby the NRC may transfer to the States certain regulatory authority over agreement materials [1]

[1] A. Byproduct materials as defined in 11e.(1)
B. Byproduct materials as defined in 11e.(2)
C. Source materials; and
D. Special nuclear materials in quantities not sufficient to form a critical mass

when a State desires to assume this authority and the Governor certifies that the State has an adequate regulatory program, and when the Commission finds that the State's program is compatible with that of the NRC and is adequate to protect the public health and safety. Section 274g directs the Commission to cooperate with the States in the formulation of standards for protection against radiation hazards to assure that State and Commission programs for radiation protection will be coordinated and compatible. Further, section 274j provides that the Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

B. In a letter dated March 5, 1990, Governor John P. McKernan, Jr. of the State of Maine requested that the Commission enter into an agreement with the State pursuant to section 274 of the Act. The Governor certified that the State of Maine has a program for control of radiation hazards which is adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State of Maine desires to assume regulatory responsibility for such materials. The text of the proposed agreement is shown in Appendix A to this document.

The specific authority requested is for (1) byproduct material as defined in section 11e.(1) of the Act, (2) source material, and (3) special nuclear material in quantities not sufficient to form a critical mass. The State does not wish to assume authority over (1) land disposal of source, byproduct and special nuclear material received from other persons; and (2) uranium recovery activities (byproduct material as defined in section 11e(2)). The State, however, reserves the right to apply at a future date to NRC for an amended agreement to assume authority in these areas. The nine articles of the proposed agreement—

Lists the materials covered by the agreement.

Lists the Commission's continued authority and responsibility for certain activities.

Allows for future amendment of the agreement.

Allows for certain regulatory changes by the Commission.

References the continued authority of the Commission for common defense and security for safeguard purposes.

Pledge the best efforts of the Commission and the State to achieve coordinated and compatible programs.

Recognizes reciprocity of licenses issued by the respective agencies.

Sets forth criteria for termination or suspension of the agreement.

Specifies the effective date of the agreement.

C. Maine Radiation Protection Act, sections 671 through 690, the enabling statute for the Maine Department of Human Services, authorizes the Department to issue licenses to, and perform inspections of, users of radioactive materials under the proposed agreement and otherwise carry out a total radiation control program. Maine regulations for radiation protection were adopted on January 1, 1986, with revisions dated January 1, 1988 and December 1, 1990, under authority of the enabling statute and provide standards, licensing, inspection, enforcement and administrative procedures for agreement and non-agreement materials. In addition, editorial revisions recommended by NRC are presently under consideration in Maine and are expected to be finalized in November 1991. Pursuant to Maine's regulations, section C.19, the regulations will apply to agreement materials on the effective date of the agreement. In addition to the material covered under the proposed agreement, the regulations provide for the State to license and inspect users of naturally-occurring and accelerator-produced radioactive materials.

D. The NRC staff assessment finds the proposed Maine program will provide adequately for public health and safety.

II. NRC Staff Assessment of the Proposed Maine Program for Control of Agreement Materials

Reference: Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement.[2]

Objectives

1. *Protection.* A State regulatory program shall be designed to protect the health and safety of the people against radiation hazards.

Based upon the analysis of the State's proposed regulatory program, the staff believes the Maine proposed regulatory program for agreement materials is adequately designed to protect the health and safety of the public against radiation hazards.

Reference: Maine Program Statement, Application for Agreement State Status.

[2] NRC Statement of Policy published in the Federal Register January 23, 1961 (46 FR 7540–7546), a correction was published July 10, 1961 (46 FR 36969) and a revision of Criterion 9 published in the Federal Register July 21, 1983 (48 FR 33376).

Radiation Protection Standards

2. *Standards.* The State regulatory program shall adopt a set of standards for protection against radiation which shall apply to byproduct, source and special nuclear materials in quantities not sufficient to form a critical mass.

Statutory authority to formulate and promulgate rules for controlling exposure to sources of radiation is contained in the enabling statute. In accordance with that authority, the State adopted radiation control regulations on January 1, 1986, and with revisions dated January 1, 1988, and December 1, 1990, which include radiation protection standards which would apply to byproduct, source and special nuclear materials in quantities not sufficient to form a critical mass upon the effective date of an agreement between the State and the Commission pursuant to Section 274b of the Atomic Energy Act of 1954, as amended. In addition, editorial revisions recommended by NRC are presently under consideration by the State and are expected to be finalized in November 1991.

Reference: State of Maine Rules Relating to Radiation Protection Parts A, B, C, D, E, G, J, K, L, Letter dated October 15, 1991.

3. *Uniformity in Radiation Standards.* It is important to strive for uniformity in technical definitions and terminology, particularly as related to such things as units of measurement and radiation dose. There shall be uniformity on maximum permissible doses and levels of radiation and concentrations of radioactivity, as fixed by 10 CFR part 20 of the NRC regulations based on officially approved radiation protection guides.

Technical definitions and terminology contained in the Maine Radiation Control Regulations including those related to units of measurement and radiation doses are uniform with those contained in 10 CFR part 20.

Reference: State of Maine Rules Relating to Radiation Protection Sections A.2, D.2, E.3, G.2, K.3, L.2.

4. *Total Occupational Radiation Exposure.* The regulatory authority shall consider the total occupational radiation exposure of individuals, including that from sources which are not regulated by it.

The Maine regulations cover all sources of radiation within the State's jurisdiction and provide for consideration of the total radiation exposure of individuals from all sources of radiation in the possession of a licensee or registrant.

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Reference: State of Maine Rules Relating to Radiation Protection Sections D.2 to D.7.

5. *Surveys, Monitoring.* Appropriate surveys and personnel monitoring under the close supervision of technically competent people are essential in achieving radiological protection and shall be made in determining compliance with safety regulations.

The Maine requirements for surveys to evaluate potential exposures from sources of radiation and the personnel monitoring requirements are uniform with those contained in 10 CFR part 20.

References: State of Maine Rules Relating to Radiation Protection Sections D.9, D.10 and D.15.

6. *Labels, Signs, Symbols.* It is desirable to achieve uniformity in labels, signs, and symbols, and the posting thereof. However, it is essential that there be uniformity in labels, signs, and symbols affixed to radioactive products which are transferred from person to person.

The prescribed radiation labels, signs and symbols are uniform with those contained in 10 CFR parts 20, 30 thru 32 and 34. The Maine posting requirements are also uniform with those of 10 CFR part 20.

References: State of Maine Rules Relating to Radiation Protection Sections C.6.E, C.6.F, C.11.D, D.11 and D.12.

7. *Instruction.* Persons working in or frequenting restricted areas shall be instructed with respect to the health risks associated with exposure to radioactive materials and in precautions to minimize exposure. Workers shall have the right to request regulatory authority inspections as per 10 CFR 19.16 and to be represented during inspections as specified in 10 CFR 19.14.

The Maine regulations contain requirements for instructions and notices to workers that are uniform with those of 10 CFR part 19.

Reference: State of Maine Rules Relating to Radiation Protection Section J.

8. *Storage.* Licensed radioactive material in storage shall be secured against unauthorized removal.

The Maine regulations contain a requirement for security of stored radioactive material.

Reference: State of Maine Rules Relating to Radiation Protection Section D.14.

9. *Radioactive Waste Disposal.*

(a) Waste disposal by material users. The standards for the disposal of radioactive materials into the air, water and sewer, and burial in the soil shall be in accordance with 10 CFR part 20. Holders of radioactive material desiring to release or dispose of quantities or concentrations of radioactive materials in excess of prescribed limits shall be required to obtain special permission from the appropriate regulatory authority.

Requirements for transfer of waste for the purpose of ultimate disposal at a land disposal facility (waste transfer and manifest system) shall be in accordance with 10 CFR part 20.

The waste disposal standards shall include a waste classification scheme and provisions for waste form, applicable to waste generators, that is equivalent to that contained in 10 CFR part 61.

(b) Land Disposal of waste received from other persons. The State shall promulgate regulations containing licensing requirements for land disposal of radioactive waste received from other persons which are compatible with the applicable technical definitions, performance objectives, technical requirements and applicable supporting sections set forth in 10 CFR part 61. Adequate financial arrangements (under terms established by regulation) shall be required for each waste disposal site licensee to ensure sufficient funds for decontamination, closure and stabilization of a disposal site. In addition, Agreement State financial arrangements for long-term monitoring and maintenance of a specific site must be reviewed and approved by the Commission prior to relieving the site operator of licensed responsibility (Section 151(a)(2), Pub. L. 97–425).

The Maine regulations contain provisions relating to the disposal of radioactive materials into the air, water and sewer and burial in soil which are essentially uniform with those of 10 CFR part 20. Waste transfer and manifest system requirements for transfer of waste for ultimate disposal at a land disposal facility are included in the Maine regulations. The waste disposal requirements include a waste classification scheme and provisions for waste form equivalent to that in 10 CFR part 61.

Maine does not plan on seeking authority for the regulation of land disposal of source, byproduct and special nuclear material received from other persons.

References: State of Maine Rules Relating to Radiation Protection Sections D.7, and D.16 to D.26.

10. *Regulations Governing Shipment of Radioactive Materials.* The State shall to the extent of its jurisdiction promulgate regulations applicable to the shipment of radioactive materials, such regulations to be compatible with those established by the U.S. Department of Transportation and other agencies of the United States whose jurisdiction over interstate shipment of such materials necessarily continues. State regulations regarding transportation of radioactive materials must be compatible with 10 CFR part 71.

The Maine regulations are uniform with those contained in NRC regulations 10 CFR part 71.

References: State of Maine Rules Relating to Radiation Protection Section L.

11. *Records and Reports.* The State regulatory program shall require that holders and users of radioactive materials (a) maintain records covering personnel radiation exposures, radiation surveys, and disposals of materials; (b) keep records of the receipt and transfer of the materials; (c) report significant incidents involving the materials, as prescribed by the regulatory authority; (d) make available upon request of a former employee a report of the employee's exposure to radiation; (e) at request of an employee advise the employee of his or her annual radiation exposure; and (f) inform each employee in writing when the employee has received radiation exposure in excess of the prescribed limits.

The Maine regulations require the following records and reports of the licensees and registrants:

(a) Records covering personnel radiation exposures, radiation surveys, and disposals of materials.
(b) Records of receipt and transfer of materials.
(c) Reports concerning incidents involving radioactive materials.
(d) Reports to former employees of their radiation exposure.
(e) Reports to employees of their annual radiation exposure.
(f) Reports to employees of radiation exposure in excess of prescribed limits.

Reference: State of Maine Rules Relating to Radiation Protection Sections A.4, D.27, D.29, D.30, and J.4.

12. *Additional Requirements and Exemptions.* Consistent with the overall criteria here enumerated and to accommodate special cases and circumstances, the State regulatory authority shall be authorized in individual cases to impose additional requirements to protect health and safety, or to grant necessary exemptions which will not jeopardize health and safety.

The Maine Radiation Control Program is authorized to impose upon any licensee or registrant by rule, regulation, or order such requirements in addition to those established in the regulations as it deems appropriate or necessary to minimize danger to public health and safety or property.

Reference: State of Maine Rules Relating to Radiation Protection Section A.7.

The Department may also grant such exemptions from the requirements of the regulations as it determines are authorized by law and will not result in undue hazard to public health and safety or property.

Reference: State of Maine Rules Relating to Radiation Protection Section A.3.

Prior Evaluation of Uses of Radioactive Materials

13. *Prior Evaluation of Hazards and Uses, Exceptions.* In the present state of knowledge, it is necessary in regulating the possession and use of byproduct, source and special nuclear materials that the State regulatory authority require the submission of information on, and evaluation of, the potential hazards and the capability of the user or possessor prior to his receipt of the materials. This criterion is subject to certain exceptions and to continuing reappraisal as knowledge and experience in the atomic energy field increase. Frequently there are, and increasingly in the future there may be, categories of materials and uses as to which there is sufficient knowledge to permit possession and use without prior evaluation of the hazards and the capability of the possessor and user. These categories fall into two groups—those materials and uses which may be completely exempt from regulatory controls, and those materials and uses in which sanctions for misuse are maintained without pre-evaluation of the individual possession or use. In authorizing research and development or other activities involving multiple uses of radioactive materials, where an institution has people with extensive training and experience, the State regulatory authority may wish to provide a means for authorizing broad use of materials without evaluating each specific use.

Prior to the issuance of a specific license for the use of radioactive materials, the Maine Radiation Control Program will require the submission of information on, and will make an evaluation of, the potential hazards of such uses, and the capability of the applicant.

References: State of Maine Rules Relating to Radiation Protection Sections C.7 and C.17 and the Maine Program Statement

Provision is made for the issuance of general licenses for byproduct, source and special nuclear materials in situations where prior evaluation of the licensee's qualifications, facilities, equipment and procedures is not required. The regulations grant general licenses under the same circumstances as those under which general licenses are granted in the Commission's regulations.

References: State of Maine Rules Relating to Radiation Protection Sections C.5 and C.6.

The Maine regulations contain provisions for exempting of certain source and other radioactive materials and devices containing radioactive materials. These exemptions, for materials covered by the agreement, are the same as those granted by NRC regulations.

References: State of Maine Rules Relating to Radiation Protection Sections C.2 and C.3.

14. *Evaluation Criteria.* In evaluating a proposal to use radioactive materials, the regulatory authority shall determine the adequacy of the applicant's facilities and safety equipment, his training and experience in the use of the materials for the purpose requested, and his proposed administrative controls. States should develop guidance documents for use by license applicants. This guidance should be consistent with NRC licensing and regulatory guides for various categories of licensed activities.

In evaluating a proposal to use agreement materials, the Maine Radiation Control Program will determine that:

(1) The applicant is qualified by reason of training and experience to use the material in question for the purpose requested in accordance with the regulations in such a manner as to minimize danger to public health and safety or property;

(2) The applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property; and

(3) The issuance of the license will not be inimical to the health and safety of the public.

Other special requirements for the issuance of specific licenses are contained in the regulations.

References: State of Maine Rules Relating to Radiation Protection Sections C.8 to C.11 and the Maine Program Statement.

15. *Human Use.* The use of radioactive materials and radiation on or in humans shall not be permitted except by properly qualified persons (normally licensed physicians) possessing prescribed minimum experience in the use of radioisotopes or radiation.

The Maine regulations require that the use or radioactive materials (including sealed sources) on or in humans shall be by a physician having substantial experience in the handling and administration of radioactive material and, where applicable, the clinical management of radioactive patients.

Reference: State of Maine Rules Relating to Radiation Protection Sections G.66 to G.76.

Inspection

16. *Purpose, Frequency.* The possession and use of radioactive materials shall be subject to inspection by the regulatory authority and shall be subject to the performance of tests, as required by the regulatory authority. Inspection and testing is conducted to determine and to assist in obtaining compliance with regulatory requirements. Frequency of inspection shall be related directly to the amount and kind of materials and type of operation licensed, and it shall be adequate to insure compliance.

Maine materials licensees will be subject to inspection by Radiation Control Program, Division of Health Engineering, the Department of Human Services. Upon instruction from the Department, licensees shall perform or permit the Department to perform any reasonable test and survey the Department considers appropriate or necessary. The frequency of inspections is dependent upon the type and scope of the licensed activities and will be at least as frequent as inspections of similar licensees by NRC. Generally, inspections will be unannounced.

References: State of Maine Rules Relating to Radiation Protection Sections A.5, A.6, A.7 and J.5.A; Maine Program Statement.

17. *Inspection Compulsory.* Licensees shall be under obligation by law to provide access to inspectors.

Maine regulations state that licensees shall afford the Department, at all reasonable times, opportunity to inspect sources of radiation and the premises and facilities wherein such sources of radiation are used or stored.

Reference: State of Maine Rules Relating to Radiation Protection Section A.5.

18. *Notification of Results of Inspection.* Licensees are entitled to be advised of the results of inspections and to notice as to whether or not they are in compliance.

Following Radiation Control Program inspections, each licensee will be notified in writing of the results of the

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inspection. The letters and written notices indicate if the licensee is in compliance and if not, list the areas of noncompliance.

Reference: Maine Program Statement.

Enforcement

19. *Enforcement.* Possession and use of radioactive materials should be amenable to enforcement through legal sanctions, and the regulatory authority shall be equipped or assisted by law with the necessary powers for prompt enforcement. This may include, as appropriate, administrative remedies looking toward issuance of orders requiring affirmative action or suspension or revocation of the right to possess and use materials, and the impounding of materials; the obtaining of injunctive relief; and the imposing of civil or criminal penalties.

The Maine Radiation Control Program is equipped with the necessary powers for prompt enforcement of the regulations. Where conditions exist that create a clear presence of a hazard to the public health that requires immediate action to protect human health and safety, Maine may issue orders to reduce, discontinue or eliminate such conditions. The Radiation Control Program actions may also include impounding of radioactive material, imposition of a civil penalty, revocation of a license, and requesting the State Attorney General to seek injunctions and convictions for criminal violations.

References: State of Maine Rules Relating to Radiation Protection Sections A.7, A.8, A.9, Part B and C.22; Maine Radiation Protection Act Sections 688 and 690; Maine Program Statement.

Personnel

20. *Qualifications of Regulatory and Inspection Personnel.* The regulatory agency shall be staffed with sufficient trained personnel. Prior evaluation of applications for licenses or authorizations and inspections of licensees must be conducted by persons possessing the training and experience relevant to the type and level of radioactivity in the proposed use to be evaluated and inspected. This requires competency to evaluate various potential radiological hazards associated with the many uses of radioactive material and includes concentrations of radioactive materials in air and water, conditions of shielding, the making of radiation measurements, knowledge of radiation instruments—their selection, use, and calibration—laboratory design, contamination control, other general principles and practices of radiation protection, and use of management controls in assuring adherence to safety procedures. In order to evaluate some complex cases, the State regulatory staff may need to be supplemented by consultants or other State agencies with expertise in geology, hydrology, water quality, radiobiology, and engineering disciplines.

To perform the functions involved in evaluation and inspection, it is desirable that there be personnel educated and trained in the physical and/or life sciences, including biology, chemistry, physics and engineering, and that the personnel have had training and experience in radiation protection. For example, the person who will be responsible for the actual performance of evaluation and inspection of all of the various uses of byproduct, source and special nuclear material which might come to the regulatory body should have substantial training and extensive experience in the field of radiation protection. It is desirable that such person have a bachelor's degree or equivalent in the physical or life sciences, and specific training in radiation protection.

It is recognized that there will also be persons performing a more limited function in evaluation and inspection. These persons will perform the day-to-day work of the regulatory program and deal with both routine situations as well as some which will be out of the ordinary. These persons should have a bachelor's degree or equivalent in the physical or life sciences, training in health physics, and approximately two years of actual work experience in the field of radiation protection.

The foregoing are considered desirable qualifications for the staff who will be responsible for the actual performance of evaluation and inspection. In addition, there will probably be trainees associated with the regulatory program who will have an academic background in the physical or life sciences as well as varying amounts of specific training in radiation protection but little or no actual work experience in this field. The background and specific training of these persons will indicate to some extent their potential role in the regulatory program. These trainees, of course, could be used initially to evaluate and inspect those applications of radioactive materials which are considered routine or more standardized from the radiation safety standpoint, for example, inspection of industrial gauges, small research programs, and diagnostic medical programs. As they gain experience and competence in the field, trainees could be used progressively to deal with the more complex or difficult types of radioactive material applications. It is desirable that such trainees have a bachelor's degree or equivalent in the physical or life sciences and specific training in radiation protection. In determining the requirement for academic training of individuals in all of the foregoing categories proper consideration should be given to equivalent competency which has been gained by appropriate technical and radiation protection experience.

It is recognized that radioactive materials and their uses are so varied that the evaluation and inspection functions will requires skills and experience in the different disciplines which will not always reside in one person. The regulatory authority should have the composite of such skills either in its employ or as its command, not only for routine functions, but also for emergency cases.

(a) Number of Personnel.

There are approximately 110 NRC specific licenses in the State of Maine. Under the proposed agreement, the State would assume responsibility for about 105 of these licenses. The Division of Health Engineering is currently staffed with 8 professional persons

Donald Hoxie—Director, Division of Health Engineering. Responsible for the overall supervision of four State-wide regulatory programs, including the Radiological Health Program.

Wallace Hinckley—Assistant Director of Health Engineering. Responsible as Assistant Director for the overall supervision of four Statewide regulatory programs, including the Radiation Control Program.

Wellington Clough Toppan, Jr.—Manager, Radiation Control Program. Responsible for overall supervision of the Radiation Control Program, which regulates x-ray equipment and radionuclide users and conducts environmental monitoring of nuclear power facilities.

Rober Schell—Nuclear Engineering Specialist, Radiation Control Program. Responsible for environmental surveillance of and emergency planning for Maine Yankee Atomic Power Company.

David Breau—Sanitary Engineer II, Drinking Water Program. Responsible for review and approval of engineering plans for water treatment facilities. Backup staff available to the Radiation Control Program.

Linda A. Plausquellic—Radiation Specialist, Radiation Control Program. Performs compliance inspections and registration for x-ray machines. Assists in radioactive materials licensing program.

Jay Carl Hyland—Health Physicist, Radiological Health Program. Responsible for radioactive materials licensing and inspection program.

Cheryl Baker—Chemist II. Responsible for implementation of all radiological testing.

(b) Training.

The academic and specialized short course training for those persons involved in the administration, licensing and inspection of radiation control program is shown below:

Donald C. Hoxie—B.S. Chemical Engineering, University of Maine, M.S. Radiological Health, Rutgers University.

U.S. Public Health Service, Basic Radiological Health. Two week course in 1960.

Oak Ridge Associated Universities, Health Physics Course. A 10-week course ending May 1961.

Brookhaven National Laboratory, Health Physics Training. A 4-week course ending September 1966.

Conference of Radiation Control Program Directors, Training for Radiation Therapy Inspections. November 3–25, 1984.

Conference of Radiation Control Program Directors, Training for Radon Control. November 28–29, 1986.

Wallace W. Hinckley—B.S., Civil Engineering, University of Maine.

University of Oklahoma, NIOSH Course. Safety and Health. January 8 to March 30, 1973.

Federal and Emergency Management Agency. Radiological Emergency Response Planning. 1974 and 1978.

Federal Emergency Management Agency. Basic Radiological Defense Officers Course. Course I, March 7, 1975. Course II, March 14, 1975.

Harvard University, Basic Radiation Protection. April 4–8, 1977.

Harvard University, Environmental Surveillance. May 16–20, 1977.

Harvard University, Planning for Nuclear Emergencies. June 13–17, 1977.

U.S. Nuclear Regulatory Commission, Oak Ridge Associated Universities, Health Physics and Radiation Protection. A 5-week course ending April 14, 1978.

Federal Emergency Management Agency, Radiological Emergency Response Course. August 19–29, 1980.

Federal Emergency Management Agency, Radiological Accident Assessment Course. February 2–6, 1981.

Wellington Clough Toppan, Jr.—B.S., Civil Engineering, Norwich University, M.S., Environmental Engineering, Clarkson College of Technology, M.P.A., Public Administration, University of Maine at Orono.

Federal Emergency Management Agency, Radiological Emergency Response Planning. May 18–22, 1981.

Federal Emergency Management Agency, Basic Radiological Defense Officers. September 8–11, 1981.

Federal Emergency Management Agency, Radiological Accident Assessment. August 23–27, 1982.

New England Radiological Health Committee, Radiological Laboratory Workshop I. April 24–25, 1984.

Federal Emergency Management Agency, Radiological Emergency Response. September 12–21, 1984.

Conference of Radiation Control Program Directors, Training for Radiation Therapy Inspections. October 23–25, 1984.

U.S. Nuclear Regulatory Commission, Health Physics and Radiation Protection. February 3 to March 8, 1985.

New England Radiological Health Committee, Radiological Laboratory Workshop II. April 30 to May 2, 1985.

U.S. Nuclear Regulatory Commission, Introduction to Licensing Practices and Procedures. September 23–27, 1985.

Conference of Radiation Control Program Directors, Health Issues of Non Ionizing Radiation. October 29–30, 1985.

U.S. Environmental Protection, Indoor Radon Workshop. January 21–23, 1986.

U.S. Nuclear Regulatory Commission, Medical Uses of Radionuclides. March 15–20, 1987.

U.S. Nuclear Regulatory Commission, Pressurized Water Reactor Technology. April 28 to May 1, 1987.

U.S. Nuclear Regulatory Commission, Nuclear Transportation Course. August 17–21, 1987.

Southern Maine Vocational Technical School, Radon Mitigation Course. April 12–14, 1988.

Robert J. Schell—B.S., Bioengineering, University of Illinois.

United States Air Force Course, Bioenvironmental Engineering. March 18 to June 21, 1985.

Federal Emergency Management Agency, Radiological Emergency Response. October 16–26, 1985.

U.S. Nuclear Regulatory Commission, Introduction to Health Physics. February 10 to March 14, 1986.

Federal Emergency Management Agency, Radiological Response Planning. June 2–6, 1986.

Federal Emergency Management Agency, Radiologic Accident Assessment. July 14–18, 1986.

University of Massachusetts Medical Center, Medical X-Ray Inspection, August 19–22, 1986.

U.S. Nuclear Regulatory Commission, Medical Uses of Radionuclides. September 8–12, 1986.

U.S. Nuclear Regulatory Commission, PWR Technology. February 23–27, 1987.

U.S. Nuclear Regulatory Commission, CE Technology. June 1–12, 1987.

U.S. Nuclear Regulatory Commission, Inspection Procedures. June 6–10, 1988.

U.S. Nuclear Regulatory Commission, Safety Aspects of Industrial Radiography. August 1–5, 1991.

Federal Emergency Management Agency, Advanced Radiological Accident Assessment. January 23–27, 1989.

David P. Breau—B.S., Civil Engineering, University of Maine at Orono.

Federal Emergency Management Agency, Basic Radiological Defense Officers Course. September 8–11, 1981.

Federal Emergency Management Agency, Nuclear Power Plant Offsite Accident Assessment Course. May 13–17, 1985.

U.S. Nuclear Regulatory Commission, Reactor Theory Operations and Emergency Planning. June 18–21, 1985

Federal Emergency Management Agency, X-Ray Training. October 16–17, 1985.

Conference of Radiation Control Program Directors, Health Issues of Non Ionizing Radiation. October 29–30, 1985.

Federal Emergency Management Agency, Radiological Emergency Response Course. August 20–29, 1986.

U.S. Nuclear Regulatory Commission, Medical Use of Radionuclides. September 8–12, 1986.

U.S. Nuclear Regulatory Commission, Inspection Procedures Course. September 15–19, 1986.

U.S. Nuclear Regulatory Commission, Health Physics and Radiation Protection. July 20 to August 21, 1987.

U.S. Nuclear Regulatory Commission, Licensing and Practices and Procedures. September 21–25, 1987.

Linda A. Plusquellic—Maine Central Institute, The John Hopkins Hospital School of Radiologic Technology, University of Maine, working toward B.S., Public Administration.

New England Radiological Health Committee, Radon's Impact on State Radiation Control Programs. October 28–29, 1986.

U.S. Department of Health and Human Resources, Medical X-Ray Protection. March 23–27, 1987.

U.S. Department of Health and Human Resources, Basic Course for Investigators: Diagnostic X-Ray. April 27 to May 7, 1987.

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Federal Emergency Management Agency, Radiological Emergency Response Course. September 9–18, 1987.
U.S. Nuclear Regulatory Commission, Inspection Procedures Course. September 25–29, 1989.
U.S. Nuclear Regulatory Commission, Medical Uses of Radionuclides. March 18–22, 1991.
Jay Carl Hyland—B.S., Engineering Physics, University of Maine, Orono.
Maine Emergency Management Agency, Fundamentals Course for Radiological Monitors. November 30 to December 1, 1988.
U.S. Nuclear Regulatory Commission, Medical Uses of Radionuclides. March 27–31, 1989.
Federal Emergency Management Agency, Radiological Accident Assessment. May 22–26, 1989.
U.S. Nuclear Regulatory Commission, Inspection Procedures Course. June 19–23, 1989.
U S. Nuclear Regulatory Commission, Health Physics and Radiation Protection. July 10 to August 11, 1989.
U.S. Nuclear Regulatory Commission, Nuclear Transportation. August 14–18, 1989.
Federal Emergency Management Agency, Radiological Emergency Response Course. August 23 to September 1, 1989.
U.S. Nuclear Regulatory Commission, Special Topics Workshop. November 27 to December 1, 1989.
U.S. Nuclear Regulatory Commission, Licensing Practices and Procedures. June 11–15, 1990.
U.S. Nuclear Regulatory Commission, Special Topics Workshop. August 27–29, 1990.
U.S. Nuclear Regulatory Commission. Safety Aspects of Industrial Radiography. September 24–28, 1990.
Cheryl Baker—B.S., Chemistry University of Maine, Orono. U.S. Nuclear Regulatory Commission, Radiochemistry. February 9–13, 1981.
Public Health Laboratory, Radiation Safety in the Laboratory. July 28, 1983.
Federal Emergency Management Agency, Radiological Accident Assessment. March 5–9, 1984.
New England Radiological Health Committee, Radiological Laboratory Workshop. April 24–25, 1984.
Oak Ridge Associated Universities, Health Physics and Radiation Protection. July 9 to August 10, 1984.
New England Radiological Health Committee, Radiation Therapy Inspections. October 23–25, 1984.
New England Radiological Health Committee, Radiological Laboratory Workshop. April 30 to May 2, 1985.
New England Radiological Health Committee, Non Ionizing Radiation. October 29–30, 1985.
New England Radiological Health Committee, Radon's Impact on State Programs. October 28–29, 1986.
New England Radiological Health Committee, Radiological Laboratory Workship. May 5–7, 1987.

Reference: Maine Program Statement.

21. *Conditions Applicable to Special Nuclear Material, Source Material and Tritium.* Nothing in the State's regulatory program shall interfere with the duties imposed on the holder of the materials by the NRC, for example, the duty to report to the NRC, on NRC prescribed forms (1) transfers of special nuclear material, source material and tritium and (2) periodic inventory data.

The State's regulations do not prohibit or interfere with the duties imposed by the NRC on holders of special nuclear material owned by the U.S. Department of Energy or licensed by NRC, such as the responsibility of licensees to supply to the NRC reports of transfer and inventory.

Reference: State of Maine Rules Relating to Radiation Protection Section A.1.

22. *Special Nuclear Material Defined.* Special nuclear material, in quantities not sufficient to form a critical mass, for present purposes means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; uranium 233 in quantities not exceeding 200 grams: Plutonium in quantities not exceeding 200 grams; or any combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination should not exceed "1" (i.e., unity). For example, the following quantities in combination would not exceed the limitation and are within the formula, as follows:

175 (grams contained U–235)/350
50 (grams U–233)/200
50 (grams Pu) = 1/200

(This definition is subject to change by future Commission rule or regulation.)

The definition of special nuclear material in quantities not sufficient to form a critical mass, as contained in the Maine regulations, is uniform with the definition in 10 CFR Part 150.

Reference: State of Maine Rules Relating to Radiation Protection Section A.2.A(62), Definition of Special Nuclear Material in Quantities Not Sufficient to Form a Critical Mass.

Administration

23. *Fair and Impartial Administration.* State practices for assuring the fair and impartial administration of regulatory law, including provision for public participation where appropriate, should be incorporated in procedures for:

(a) Formulation of rules of general applicability;

(b) Approving or denying applications for licenses or authorization to possess and use radioactive materials, and

(c) Taking disciplinary actions against licensees.

The Maine statute and regulations provide for administrative and judicial review of actions taken by the Division of Health Engineering which includes the Maine Radiation Control Program.

Reference: Maine Administrative Procedure Act. State of Maine Rules Relating to Radiation Protection Sections A.9, A.11, C.22, and J.

24. *State Agency Designation.* The State should indicate which agency or agencies will have authority for carrying on the program and should provide the NRC with a summary of that legal authority. There should be assurances against duplicate regulation and licensing by State and local authorities, and it may be desirable that there be a single or central regulatory authority.

The Maine Department of Human Services in which the Maine Radiation Control Program is located has been designated as the State's radiation control agency.

References: Maine Radiation Protection Act, Section 674.1 and 686.

25. *Existing NRC Licenses and Pending Applications.* In effecting the discontinuance of jurisdiction, appropriate arrangements will be made by NRC and the State to ensure that there will be no interference with or interruption of licensed activities or the processing of license applications, by reason of the transfer. For example, one approach might be that the State, in assuming jurisdiction, could recognize and continue in effect, for an appropriate period of time under State law, existing NRC licenses, including licenses for which timely applications for renewal have been filed, except where good cause warrants the earlier reexamination or termination of the license.

Maine regulations have provisions for NRC licensees to possess a like license issued under the Maine regulations and the Maine Act. These licenses will expire either 90 days after receipt from the Agency of a notice of expiration of such license or on the date of expiration specified in the NRC license, whichever is earlier.

Reference: State of Maine Rules Relating to Radiation Protection Section C.19.

26. Relations With Federal Government and Other States. There should be an interchange of Federal and State information and assistance in connection with the issuance of regulations and licenses or authorizations, inspection of licensees, reporting of incidents and violations, and training and education problems.

The proposed agreement declares that the State will use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against the hazards of radiation and to assure that the State's program will continue to be compatible with the Commission's program for the regulation of like materials.

Reference: Proposed Agreement between the State of Maine and the Nuclear Regulatory Commission. Article VI.

27. Coverage, Amendments, Reciprocity. The proposed Maine agreement provides for the assumption of regulatory authority over the following categories of materials within the State:

(a) Byproduct material, as defined by Section 11e.(1) of the Atomic Energy Act, as amended.

(b) Source materials.

(c) Special nuclear materials in quantities not sufficient to form a critical mass.

Reference: Proposed Agreement. Article I.

Provision has been made by Maine for the reciprocal recognition of licenses to permit activities within Maine of persons licensed by other jurisdictions. This reciprocity is like that granted under 10 CFR part 150.

Reference: State of Maine Rules Relating to Radiation Protection Section 3.X.

28. NRC and Department of Energy Contractors. The State's regulations provide that certain NRC and DOE contractors or subcontractors are exempt from the State's requirements for licensing and registration of sources of radiation which such persons receive, possess, use, transfer, or acquire.

Reference: State of Maine Rules Relating to Radiation Protection Section A.3.B.

III. Staff Conclusion

Section 274d of the Atomic Energy Act of 1954, as amended, states:

The Commission shall enter into an agreement under subsection b of this section with any State if:

(1) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

(2) The Commission finds that the State program is in accordance with the requirements of subsection o. and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed amendment.

The staff has concluded that the State of Maine meets the requirements of section 274 of the Act. The State's statutes, regulations, personnel, licensing, inspection and administrative procedures are compatible with those of the Commission and adequate to protect the public health and safety with respect to the materials covered by the proposed agreement. Since the State is not seeking authority over uranium milling activities, subsection o. is not applicable to the proposed Maine agreement

Dated at Rockville, Maryland, this 22nd day of November 1991

For the U.S. Nuclear Regulatory Commission.

Carlton Kammerer,

Director, Office of State Programs

Appendix A—Agreement Between the United States Nuclear Regulatory Commission and the State of Maine for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and section 161 of the Act with respect to byproduct materials as defined in sections 11e.(1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, The Governor of the State of Maine is authorized under Maine Revised Statutes Annotated section 284 to enter into this Agreement with the Commission; and,

Whereas, The Governor of the State of Maine certified on March 5, 1990, that the State of Maine (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and,

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the State recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to this Agreement; and

Whereas, This Agreement is entered into pursuant to the provisions of the Act, as amended;

Now Therefore, it is hereby agreed between the Commission and the Governor of the State, acting in behalf of the State, as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under chapters 6, 7, and 8, and section 161 of the Act with respect to the following materials:

A. Byproduct materials as defined in section 11e.(1) of the Act;

B. Source materials; and

C. Special nuclear materials in quantities not sufficient to form a critical mass.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:

A. The construction and operation of any production or utilization facility;

B. The export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

C. The disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

D. The disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or

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potential hazards thereof, not be so disposed of without a license from the Commission;

E. The land disposal of source, byproduct and special nuclear material received from other persons; and,

F. The extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material.

Article III

This Agreement may be amended, upon application by the State and approval by the Commission, to include the additional area(s) specified in Article II, paragraph E or F, whereby the State can exert regulatory control over the materials stated herein.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under subsection 161 b. or i. of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will use its best efforts to cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible. The State will use its best efforts to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of like materials. The State and the Commission will use their best efforts to keep each other informed of proposed changes in their respective rules and regulations and licensing, inspection and enforcement policies and criteria, and to obtain the comments and assistance of the other party thereon.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any Agreement State. Accordingly, the Commission and the State agree to use their best efforts to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of section 274 of the Act. The Commission may also, pursuant to section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgement of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance with section 274 of the Act.

Article IX

This Agreement shall become effective on _____, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Augusta, Maine, in triplicate, this _____, 1991.

For the U.S. Nuclear Regulatory Commission.

Ivan Selin,
Chairman.

For the State of Maine.

John R. McKernan, Jr.,
Governor.

[FR Doc. 91-30696 Filed 12-23-91; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 030-20541, License No. 52-21350-01, EA 91-171]

Alonso and Carus Iron Works, Inc., Cantano, PR; Order Modifying License (Effective Immediately)

I

Alonso and Carus Iron Works, Inc. (ACIW or Licensee), is the holder of Byproduct Material License No. 52-21350-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 34. The license authorizes the Licensee to receive, possess, and utilize sealed sources of iridium-192, not to exceed 100 curies per source, in industrial radiographic exposure devices. The license was issued on August 18, 1983, was renewed on November 15, 1988, and is due to expire on November 30, 1993.

II

Under 10 CFR 34.43(b), during radiographic operations, personnel are required to perform a survey after each exposure to determine that the sealed source is returned to the fully shielded position. In addition, 10 CFR 34.42, in conjunction with 10 CFR 20.203(c), requires, in part, that personnel conspicuously post each high radiation area with a sign or signs bearing the radiation caution symbol and the words "Caution High Radiation Area."

Jose A. Ruiz-Carlo is a radiographer and is named on the license as the Assistant Radiation Safety Officer. During an NRC inspection on October 10, 1091, an NRC inspector counseled Mr. Ruiz regarding the importance of performing radiation surveys of the radiographic exposure device, in accordance with 10 CFR 34.43(b), after each exposure to determine that the sealed source has been returned to its shielded position. Additionally, the NRC inspector advised Mr. Ruiz to use proper radiation survey technique and exercise more precise survey methods when approaching the radiographic exposure device after each exposure. Mr. Ruiz assured the inspector that he would use better technique and methods when performing such surveys in future radiographic operations.

On October 11, 1991, the NRC inspector observed Mr. Ruiz conducting radiographic operations at San Juan Airport, San Juan, Puerto Rico. Contrary to the above referenced NRC requirements:

(1) Mr. Ruiz conducted radiographic operations on at least three occasions without performing surveys of the radiographic exposure device to determine that the sealed source had been returned to its fully shielded position after each source exposure. A portable survey meter was located approximately 10 feet from the exposure device, but Mr. Ruiz failed to use the survey meter after each exposure; and

(2) Mr. Ruiz failed to post signs for the high radiation area when the radiographic source was exposed.

On October 18, 1991, the NRC inspector contacted Mr. Ruiz by telephone and discussed what he had observed on October 11, 1991. Additionally, the inspector discussed with Mr. Ruiz the October 10, 1991, conversation regarding the importance of radiation surveys and the use of proper technique when approaching radiographic exposure devices. Mr. Ruiz did not deny the failure to perform required surveys on October 11, 1991, and admitted to the inspector that he performed an initial survey after the first radiographic exposure but failed to conduct any subsequent surveys. Mr. Ruiz offered no further explanation for his actions.

III

Mr. Ruiz is experienced, trained, and knowledgeable concerning NRC requirements pertaining to surveys and to securing the sealed source in the fully shielded position after each exposure. Mr. Ruiz has been an authorized user of licensed material for over seven years. Additionally, Mr. Ruiz has served as an Assistant Radiation Safety Officer at ACIW for over three years and, therefore, is responsible in part for assuring that the Licensee meets NRC requirements. The NRC inspector directly observed Mr. Ruiz violating survey requirements within 24 hours of an earlier specific conversation between the inspector and Mr. Ruiz regarding the required surveys. Mr. Ruiz subsequently admitted to the inspector that he failed to perform the required surveys.

The performance of licensed activities requires meticulous attention to detail by responsible personnel to ensure that licensed activities are conducted safely and in accordance with Commission requirements. This attention to detail is particularly important during the performance of industrial radiography, given the activity levels of the radioactive sources. The failure to properly control the use of radiography devices through the performance of necessary radiation surveys and posting of high radiation areas could result in significant exposures to the public, including the Licensee's employees. Willful violation of requirements designed to protect the public health and safety cannot be tolerated.

While the NRC investigation of this matter is continuing, it appears, based on the above, that Mr. Ruiz willfully failed to meet inportant safety requirements designed to protect the public health and safety, including that of the Licensee's employees. As a result of this willful violation to perform surveys and the failure to comply with posting requirements, the NRC does not have reasonable assurance that Mr. Ruiz will comply with regulatory requirements.

Consequently, I lack the requisite reasonable assurance that, with Mr. Ruiz as a radiographer, a supervisor of radiographers, the Radiation Safety Officer, or an Assistant Radiation Safety Officer, the Licensee's current operations under License No. 52-21350-01 can be conducted in compliance with the Commission's requirements and that the health and safety of the public, including the Licensee's employees, will be protected. Therefore, I have determined that License No. 52-21350-01 should be modified to prohibit the utilization of Mr. Jose A. Ruiz-Carlo in certain licensed activities. Furthermore, pursuant to 10 CFR 2.202 (56 FR 40664 (August 15, 1991)), I have concluded that the public health, safety, and interest require that this Order be immediately effective pending further NRC action based upon the evaluation of the results of the NRC investigation.

IV

According, pursuant to section 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 34, *It Is Hereby Ordered, Effective Immediately, That License No. 52-21350-01 Is Modified To Include the Following Conditions:*

Alonso and Carus Iron Works, Inc., shall not utilize Mr. Jose A. Ruiz-Carlo as a radiographer, a supervisor of radiographers, or as a Radiation Safety Officer, including an Assistant Radiation Safety Officer, until further NRC action based upon the results of its investigation of this matter.

The Regional Administrator, Region II, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

V

In accordance with 10 CFR 2.202, the Licensee must, and Mr. Jose A. Ruiz-Carlo or any other person adversely affected by this Order may, submit an answer to this Order under oath or affirmation within 20 days of the date of this Order. Within the same time period, such persons may request a hearing, which may be included in the answer. The answer may consent to the Order. Unless the answer consents to the Order, the answer shall specifically admit or deny each allegation or charge made in the Order, set forth the matters of fact and law on which the Licensee, Mr. Jose A. Ruiz-Carlo, or other person adversely affected relies, and the reasons are to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 2055. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II at 101 Marietta Street, NW., suite 2900, Atlanta, Georgia 30323, and to the Licensee if the answer or hearing request is by a person other than the Licensee or Mr. Ruiz requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee, Mr. Jose A. Ruiz-Carlo, or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

VI

In the absence of any request for hearing, this Order shall be final 20 days from the date of this Order without further order or proceedings.

An Answer or a Request for Hearing Shall not Stay the Immediate Effectiveness of this Order.

Dated at Rockville, Maryland this 13th day of December 1991.

For the Nuclear Regulatory Commission.

James Lieberman,
Director, Office of Enforcement.

[FR Doc. 91-30694 Filed 12-23-91; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-220 and 50-410]

Niagara Mohawk Power Corp.; Nine Mile Point Nuclear Station, Unit Nos. 1 and 2; Exemption

I

Niagara Mohawk Power Corporation (NMPC or the licensee) is the holder of

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Facility Operating Licenses Nos. DPR–63 and NPF–54, which authorize operation of Nine Mile Point Nuclear Station (the facility), at steady-state reactor power levels not in excess of 1850 megawatts thermal for Unit No. 1 and 3323 megawatts thermal for Unit No. 2. The licenses provide, among other things, that they are subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facilities consist of two boiling water reactors located at the licensee's site in Oswego County, New York.

II

Section 50.54(q) of 10 CFR part 50 requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans which meet the standards of 10 CFR 50.47(b) and the requirements of Appendix E to 10 CFR part 50. Section IV.F.2 of appendix E requires that each licensee at each site shall annually exercise its emergency plan.

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), are (1) authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances. Section 50.12(a)(2)(ii) of 10 CFR Part 50 describes the special circumstances for an exemption where the application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. The underlying purpose of appendix E, Section IV.F.2, is to demonstrate that the emergency plan is adequate and capable of being implemented, and that the state of emergency preparedness provides reasonable assurance that adequate protective measures can be taken in the event of a radiological emergency.

III

By letter dated September 19, 1991, the licensee requested an exemption from the requirement of 10 CFR part 50, appendix E, section IV.F.2, to conduct an annual exercise of the Nine Mile Point Emergency Plan in 1991. The licensee also submitted additional information by letter dated November 14, 1991, in response to the NRC staff's request for additional information dated October 23, 1991. The licensee had planned to conduct an exercise of its emergency plan on October 1, 1991, with the partial participation of State and local emergency response organizations. The scheduled exercise was an annual licensee off-year exercise and the Federal Emergency Management Agency (FEMA) was not scheduled to observe the exercise. The previous emergency preparedness exercise at the Nine Mile Point Nuclear Station, conducted on October 2, 1990, was also a partial participation exercise. A full participation exercise with the State of New York and Oswego County was conducted on August 7, 1991, at the James A. Fitzpatrick Nuclear Power Plant, which is immediately adjacent to the Nine Mile Point Nuclear Station. The licensee requested that an exemption be granted because the requirement to perform an exercise of the Nine Mile Point Emergency Plan in 1991 was not necessary to achieve the underlying purpose of the emergency planning rule in that the emergency plan was adequately exercised and demonstrated in 1991 in the licensee's response to the Unit 2 loss of annunciators event that occurred on August 13, 1991. The schedule for future exercises will not be affected by this one-time exemption.

To support its request, the licensee provided the following information to the NRC as an attachment to the September 19, 1991, exemption request:

Niagara Mohawk's response to the Site Area Emergency exercised the major portions of the Nine Mile Point Nuclear Station's emergency response capabilities in the manner described by the 10 CFR 50.47(b)14 requirement for periodic exercises. The Site Area Emergency tested the adequacy of timing and content of implementing procedures and methods, emergency equipment and communications networks, and ensured that emergency response organization personnel are familiar with their duties. The following are specific supporting examples:

1. During the Site Area Emergency, all emergency response facilities were activated. The Site Emergency Plan was satisfactorily implemented.

2. A full staff of radiological and dose assessment personnel evaluated effluent monitors and directed survey teams. Actual soil, air and water samples were taken and the dose assessment computer program model was run using the default values of the Unit 2 Updated Safety Analysis Report.

3. Oswego County officials activated the Oswego County Emergency Operations Center and established the necessary traffic control points for site access control. New York State representatives activated the New York State Emergency Operations Center and participated at the County Emergency Operations Center. Niagara Mohawk, Oswego County and New York State representatives briefed the general public, through the news media at the Joint News Center. Also, Niagara Mohawk, New York State, and Oswego County continually conferred on protective actions.

4. The Resident Inspectors, a Region I Radiological Inspector, and two Region I Security Inspectors observed the Site Area Emergency directly. An Augmented Inspection Team (AIT), including a Region I Senior Emergency Preparedness Inspector, immediately investigated the event.

5. Niagara Mohawk held a formal critique, attended by the Augmented Inspection Team's Senior Emergency Preparedness Inspector, to evaluate the emergency response and to identify areas in need of improvement. The critique participants concluded that the emergency response had been satisfactorily implemented in a professional manner.

The only significant area for improvement identified by Niagara Mohawk was personnel accountability. Personnel accountability was not initiated in a timely manner. As a corrective action, Security supervisors have been given specific direction to initiate personnel accountability as soon as station evacuation announcement is made. Otherwise, all the objectives for an emergency exercise listed in our June 28 letter were satisfactorily accomplished during the emergency response.

Niagara Mohawk has consulted with Oswego County and New York State officials concerning an exemption from the October 1, 1991 exercise. Both authorities concurred with our request for exemption

On August 13, 1991 at approximately 5:48 a.m., Nine Mile Point Unit 2 experienced a loss of control room annunciators, loss of Balance of Plant (BOP) instrumentation, a turbine/generator trip, and an automatic reactor scram. The loss of annunciators and BOP instrumentation resulted from a loss of five (5) non-safety-related uninterruptible power supplies when the phase B main transformer failed. The turbine/generator trip was also caused by failure of the phase B main transformer. The turbine/generator trip provided an automatic reactor scram. At 6 a.m., a Site Area Emergency was declared based upon the emergency action level criteria of S-EAP–2, "Classification of Emergency Conditions," being exceeded.

At 6:22 a.m., power was restored to the annunciators and instrumentation and reactor shutdown was verified. At 7:06 a.m., the plant commenced a normal cooldown using secondary systems and achieved cold shutdown at 6:46 p.m. AT 7:42 p.m., the Site Area Emergency was terminated and a recovery plan was implemented.

A Region I Augmented Inspection Team (AIT) was dispatched to the site to verify the circumstances and evaluate the significance of the event. Among the charter of AIT activities was the task of evaluating operator response and reviewing the adequacy of both the Niagara Mohawk and Power Authority of the State of New York (FitzPatrick) emergency response. The licensee's Site Emergency Plan was effectively implemented to protect public health and safety. One non-cited violation was identified regarding notification of onsite emergency response organization personnel. Other concerns were also identified with regards to the site access of incoming personnel and accountability of personnel within the protected area. The licensee is taking appropriate corrective actions to resolve these items. Due to the potential safety significance and regulatory questions raised by the event, the AIT was upgraded to an NRC Incident Investigation Team on August 15, 1991. However, the emergency preparedness aspects of the event were assigned to Region I. The findings of Region I regarding emergency preparedness are documented in Inspection Reports 50–220/91–19 and 50–410/91–19, dated November 5, 1991.

In response to the August 13, 1991, event, the following key elements of the Nine Mile Point emergency plan were demonstrated:

- Classification of the event in accordance with the emergency plan implementing procedures.
- Notification of State, local and Federal emergency response organizations and personnel.
- Activation, staffing and operation of the emergency response facilities including the Control Room, Technical Support Center, Operational Support Center, Emergency Operations Facility, NMPC Corporate Emergency Operations Center, Joint News Center, Oswego County Emergency Operations Center, and the New York State Emergency Operations Center.
- Communications between emergency facilities, principal response organizations and emergency personnel.
- Accident assessment involving the methods, systems and equipment necessary for assessing and monitoring the actual consequences of the event, including both an engineering assessment of plant status and an assessment of radiological consequences.
- Media and public information dissemination through the issuance of press releases and the conduct of press briefings at the Joint News Center.
- Recovery planning, including the formation of a recovery organization, identification of resource and the development of recovery actions.

Licensee response activities included the development of initial and followup messages to offsite organizations; continuous communication with the NRC; station accountability; security access control; dispatch of inplant, onsite, and offsite monitoring teams; formulation of offsite dose projections, including the determination of meteorological dispersion; collection and analysis of environmental samples; analysis of inplant radioactivity levels; and interfacing with State and local emergency operations personnel. Although protective action recommendations for the public were not required to be issued based on plant parameters and field monitoring information, the necessity for issuing such recommendations was considered by the licensee during the course of the event.

After the August 13, 1991, event, the licensee conducted a critique of the emergency response effort. The licensee developed a list of "opportunities for improvement" resulting from the implementation of the Nine Mile Point Emergency Plan under actual conditions. The licensee has established an action plan to evaluate and address this list of "opportunities for improvement."

In addition to the response to the August 13, 1991, event, other licensee activities related to the demonstration of emergency preparedness in 1991 included a Casualty Control Drill conducted on February 26, 1991, a practice drill conducted on August 1, 1991, quarterly fire drills for each shift of the onsite Fire Department, a Site Emergency Accountability drill conducted on April 30, 1991, an Offsite Fire/Offsite Medical/Off-Hours Notification drill conducted on June 4, 1991, an Environmental Monitoring drill conducted on October 9, 1991, and an Off-Hours Notification/Station Evacuation drill on October 29, 1991. For each of these drills, the licensee conducted an evaluation and initiated corrective actions to address items identified as "opportunities for improvement."

The most recent NRC Systematic Assessment of Licensee Performance (SALP) Report for Nine Mile Point issued on August 2, 1991, for the period March 1, 1990, through March 31, 1991, indicated good overall licensee performance. Specifically, in the functional area of emergency preparedness, licensee performance was rated Category 1, indicating a superior level of performance. Inspection activities conducted since the SALP report indicate no change in level of performance regarding emergency preparedness.

IV

Based on a review of the licensee's request for an exemption from the requirement to conduct an exercise of the Nine Mile Point Emergency Plan in 1991, the NRC staff finds that the underlying purpose of the regulation has been achieved through the licensee's response to the August 13, 1991, event. The licensee fully activated and staffed its emergency response facilities and performed all necessary response actions under actual conditions. Both onsite and offsite emergency response organizations were involved in the event. The response to the August 13, 1991, event tested the adequacy of the emergency plan implementing procedures, tested emergency equipment and communications networks, and provided a unique opportunity to ensure that emergency organization personnel were familiar with their duties. The licensee has identified corrective actions to improve the level of emergency preparedness at the Nine Mile Point Nuclear Station through critiques with emergency personnel following the event. The licensee has established an action plan which NRC Region I will monitor progress on and evaluate in future inspections. The NRC staff concludes that the licensee satisfactorily demonstrated the adequacy of the Nine Mile Point Emergency Plan and its capability of being implemented in the response to the August 13, 1991, event. Thus, a further exercise in 1991 is not necessary to achieve the underlying purpose of the rule. The requested exemption from the requirement of 10 CFR part 50, appendix E, section IV.F, to perform an exercise of the Nine Mile Point Emergency Plan in 1991, will not adversely affect the overall state of emergency preparedness at the Nine Mile Point site because the emergency plan was adequately exercised and demonstrated during the licensee's response to the August 13, 1991, event.

For these reasons, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption requested by the licensee's letter dated September 19, 1991, as discussed above, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and that special circumstances are present as set forth in 10 CFR 50.12(a)(2)(ii).

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this Exemption will have no significant impact on the environment (October 31, 1991, 56 FR 56105). A copy of the licensee's request for exemption and supporting documentation is available for public inspection at the Commission's Public Document Room, 2120 L Street, Washington, DC 20555 and at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126. Copies may be obtained upon written request to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—I/II.

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This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 16th day of December 1991.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-30695 Filed 12-23-91; 8:45 am]

BILLING CODE 7590-01-M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meetings on Thursday and Friday, January 16 and 17, 1992 at the Grand Hotel, 2350 M Street NW., Washington, DC, 202-429-0100. Thursday's meeting will be in the Ballroom on the lower conference level and Friday's meeting will be in room V. At these meetings, the Commission will focus on recommendations to be included in its next annual report, due to Congress April 1, 1992.

ADDRESSES: The Commission is located at 2120 L Street NW. in suite 510, Washington, DC. The telephone number is 202/653-7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, 202/653-7220.

SUPPLEMENTARY INFORMATION: Information about the exact agenda for the public meetings can be obtained on Friday, January 10, 1992. Copies of the agenda can be mailed at that time. Please direct all requests for the agenda to the Commission's receptionist.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 91-30670 Filed 12-23-91; 8:45 am]

BILLING CODE 6820-SE-M

POSTAL RATE COMMISSION

[Docket No. A92-5]

Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued December 18, 1991.

Before Commissioners: George W. Haley, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; W. H. "Trey" LeBlanc III; H. Edward Quick, Jr.

In the Matter of: Skene, Mississippi 38775 (Matt Dakin III, Petitioner).

Docket Number: A92-5.

Name of Affected Post Office: Skene, Mississippi 38775.

Name(s) of Petitioner(s): Matt Dakin III.

Type of Determination: Closing.

Date of Filing of Appeal Papers: December 17, 1991.

Categories of Issues Apparently Raised:

1. Effect on the community (39 U.S.C. 404(b)(2)(A));

2. Effect on postal services (39 U.S.C. 404(b)(2)(C))

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before January 2, 1992.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Cyril J. Pittack,

Acting Secretary.

Appendix

December 17, 1991—Filing of Petition
December 18, 1991—Notice and Order of Filing of Appeal
January 13, 1992—Last day for filing of petitions to intervene (see 39 CFR 3001.111(b))
January 21, 1992—Petitioner's Participant Statement or Initial Brief (see 39 CFR 3001.115(a)
February 10, 1992—Postal Service Answering Brief (see 39 CFR 3001.115(c))
February 25, 1992—Petitioner's Reply Brief should petitioner choose to file one (see 39 CFR 3001.115(d))
March 3, 1992—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3002.116)
April 15, 1992—Expiration of 120-day decisional schedule (see 39 U.S.C. 404(b)(5))

[FR Doc. 91-30655 Filed 12-23-91; 8:45 am]

BILLING CODE 7710-FW-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30085; File No. SR-DTC-91-21]

Self-Regulatory Organizations; Depository Trust Company; Order Approving a Proposed Rule Change Relating to the Cancellation of Pending Deliver Orders in the Next-Day Funds Settlement and Same-Day Funds Settlement Systems

December 16, 1991.

On September 26, 1991, The Depository Trust Company ("DTC") filed a proposed rule change (File No. SR-DTC-91-21) with the Securities and Exchange Commission ("Commission") under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The proposed rule change relates to DTC's Pending Transaction Inquiry ("PEND") function. The Commission published notice of this proposed rule change in the **Federal Register** on October 21, 1991. No public comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposal establishes procedures whereby delivering DTC participants, through the PEND function of their Participant Terminal System ("PTS") screen, may cancel pending (recycling) deliver orders in the next-day funds settlement ("NDFS") and same-day funds settlement ("SDFS") systems that they no longer want DTC to process.[1] Under the PEND cancel function, a participant may cancel any non-Continuous Net Settlement (CNS) pending deliver order to which that participant is the deliverer. Neither SDFS payment orders nor deliver orders involving securities undergoing reorganizational activity may be cancelled. The cancel function is designed to allow a participant to cancel erroneous deliver orders. A participant may have directed a deliver order to the wrong participant or may have directed the order to the correct participant but entered the wrong amount or the wrong security. The cancel function eliminates unnecessary movements and the associated risk by allowing a delivering party to cancel such deliver orders unilaterally.

After a participant cancels a pending deliver order, DTC sends the participant a ticket confirming the cancellation and identifying the transaction by quantity, dollar amount and CUSIP numbers. Cancelled transactions are displayed on PEND's inquity screen for the remainder of the day on which they are cancelled.

II. Discussion

The Commission believes that DTC's proposal is consistent with Section 17A of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions and enhances the safeguarding of funds and securities in DTC's possession or under its control. Accordingly, for the reasons discussed below, the Commission is approving the proposal.

The purpose of the PEND cancel option is to allow participants to cancel erroneous deliver orders and thus prevent the need to redeliver such orders and reduce the risk associated with erroneous deliveries. While some participants may use the PEND cancel option to cancel deliver orders that are not erroneous, this in no way alters underlying obligations between the parties, including the obligation to deliver securities or funds to another party, either through DTC or by some other delivery mechanism.

The Commission believes that DTC has sufficient capacity to handle any potential volume increase associated with the PEND cancel function. DTC has represented that the cancel function will account for approximately 100 activities per day; thus, the function can easily be accommodated within DTC's present projected capacity. Furthermore, DTC has considered the effect of the program on controls place to prevent unauthorized access to and misuse of its automated system.[2] DTC has concluded that the program raises no new issues of computer security and that its existing controls are adequate.

In the SDFS system, a securities delivery may be blocked if the participant has exceeded its net debit cap [3] or its collateral monitor [4] limit. Under DTC's current rules, to unblock a recycling delivery, a participant may increase its net debit cap or collateral by wiring additional funds or securities to DTC, or by waiting for a delivery to its account that reduces its net debit cap or collateral monitor to a level that allows the delivery to occur. Without a cancellation feature, erroneous blocked deliveries may prevent the execution of other deliveries. Allowing participants to cancel erroneous blocked or pending deliveries will permit other deliver orders to occur without increasing DTC's risk exposure.

In the NDFS and SDFS systems, a deliver order may pend until sufficient securities are in the participant's account to allow the completion of the delivery. In the SDFS system, deliver orders are deleted at the end of the day, but many times these erroneous delivery orders are executed late in the day, often too late for redelivery. Through the PEND cancel function, however, a participant may cancel an erroneous delivery order and avoid the delay and risk involved in seeking the return of erroneous deliver orders. In addition, DTC will report to participants all deliver orders that have been cancelled as a result of the PEND cancel function. Thus, DTC participants will have an audit trail of their cancellations. Therefore, the Commission believes that the PEND cancel function promotes the prompt and accurate clearance and settlement of securities and the safeguarding of funds and securities in DTC's custody or control or for which it is responsible, particularly where a participant enters an erroneous delivery instruction.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and, in particular, with section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, That the proposed rule change (File No. SR-DTC-91-21) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-30627 Filed 12-23-91; 8:45 am]

BILLING CODE 8010-01-M

[1] Currently, the PEND function recycles certain deliver orders when the system is unable to act on a participant's instructions. A deliver order in the NDFS system will pend or recycle if there are insufficient securities in the participant's DTC account to make the delivery. A deliver order in the SDFS system will pend if the participant has a collateral monitor deficiency, a debit cap deficiency or a share deficiency at DTC.

[2] See Letter from Jack R. Wiener, Associate Counsel, DTC, to Ester Saverson, Branch Chief, Division of Market Regulation, SEC (September 27, 1991).

[3] A debit cap is the maximum debit a participant may accumulate at one time in the SDFS system. When a participant reaches its debit cap, it may not send additional deliver orders in the SDFS system until its debit is reduced below the cap. See DTC Rule 1 and rule 9(A).

[4] Collateral monitor is the sum of the net debit or net credit in a participant's SDFS settlement account and the collateral value in any account within an Account Family or allocated to an Account Family. See DTC rule 1 and rule 9(A).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

December 18, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Owens-Illinois, Inc.
Common Stock, $.01 Par Value (File No. 7-7690)
Nerco, Inc.
Common Stock, No Par Value (File No. 7-7691)
Jundt Growth Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-7692)
The Presley Co.'s
Common Stock, $.01 Par Value (File No. 7-7693)
General Motors Corporation
Depositary Shares (each representing ¼ of a share of Series B Preference Stock, $25.00 Par Value) (File No. 7-7694)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 10, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority

Jonathan G. Katz,

Secretary.

[FR Doc. 91-30685 Field 12-23-91; 8:45 am]

BILLING CODE 8010-01-M

VOL 56 ISS 247 DEC 24 1991 UMI

Issuer Delisting; Application To Withdraw From Listing and Registration; Greiner Engineering, Inc., Common Stock, $0.50 Par Value (File No. 1-6082)

December 18, 1991.

Greiner Engineering, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reason alleged in the application for withdrawing this security from listing and registration include the following:

The Company's Common Stock also currently is listed on the Pacific Stock Exchange ("PSE") and effective at the opening of business on December 20, 1991, the Company's common stock commenced trading on the New York Stock Exchange ("NYSE") as well. In making the decision to withdraw the Common Stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the listing of the Common Stock on the NYSE and the PSE, as well as on the Amex. The Company does not see any particular advantage in the continued trading of the Common Stock on the Amex, in addition to its trading on the NYSE and the PSE, and believes that such continued listing would fragment the market for its Common Stock.

Any interested person may, on or before January 10, 1992, submit by letter to the Secretary of the Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-30683 Filed 12-23-91; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application To Withdraw From Listing and Registration; (US West, Inc., Common Stock, No Par Value) File No. 1-8611

December 18, 1991.

US West, Inc. ("Company") has filed an application with the Securities and Exchange Commission, pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Boston Stock Exchange, Inc. ("BSE"); Midwest Stock Exchange, Inc. ("MSE"); Pacific Stock Exchange, Inc. ("PSE"); and Philadelphia Stock Exchange, Inc. ("Phlx").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, it intends to retain the listing of the Common Stock from the BSE, MSE, PSE, and Phlx where there is limited trading.

Any interested person may, on or before January 10, 1992 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-30684 Filed 12-23-91; 8:45 am]

BILLING CODE 8010-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 247
Tuesday, December 24, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 56 F.R. 64001.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Friday, January 3, 1992.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission has postponed the open meeting to discuss Rule 4.7—proposed rules on accredited investors to Tuesday, January 14, 1992. Also, added to that meeting are the final rules for Guidelines 1. The meeting will be held at 10:00 a.m. in the Lower Level Hearing Room.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-30749 Filed 12-19-91; 4:30 pm]

BILLING CODE 6351-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby give that at 10:03 a.m. on Thursday, December 19, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of a certain insured bank.

Recommendations concerning administrative enforcement proceedings.

Recommendation regarding the liquidation of depository institutions' assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,767
Community National Bank and Trust Company of New York New York City (Oakwood), New York

Application of First Interstate Bank, Ltd., Los Angeles, California, for consent to indirectly acquire through its subsidiary all outstanding stock of First Interstate Portfolio Services Limited, Great Britain.

Application of United Security Bank, National Association, Fresno, California, for consent to convert the Savings Association Insurance Fund insured deposits of the Fresno Branch of University Savings Bank, Newport Beach, California, to Bank Insurance Fund insured deposits upon the acquisition of the Fresno Branch by United Security Bank, National Association.

Matter relating to the Corporation's corporate activities.

Requests for waiver of the cross-guaranty provisions of the Federal Deposit Insurance Act.

Personnel Matters.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), Chairman William Taylor, and Vice Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: December 19, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-30748 Filed 12-19-91; 4:38 pm]

BILLING CODE 6714-01-M

NUCLEAR REGULATORY COMMISSION

DATES: Weeks of December 23 and 30, 1991 and January 6 and 13, 1992

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland

STATUS: Open and Closed

MATTERS TO BE CONSIDERED:

Week of December 23

There are no Commission meetings scheduled for the Week of December 23.

Week of December 30—Tentative

There are no Commission meetings scheduled for the Week of December 30.

Week of January 6—Tentative

Friday, January 10

11:30 a.m.
Affirmative/Discussion and Vote (Public Meeting) (if needed)

Week of January 13—Tentative

Thursday, January 16

9:30 a.m.
Collegial Discussion of Items of Commissioner Interest (Public Meeting)
2:30 p.m.
Periodic Briefing on EEO Program (Public Meeting)

Friday, January 17

10:00 a.m.
Briefing on Status of Implementation of Safety Goal Policy Statement (Public Meeting)
11:30 a.m.
Affirmative/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing on Progress of Research in the Area of Organization and Management (Public Meeting)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meeting call (recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504-1661.

Dated: December 19, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91-30867 Filed 12-19-91; 2:39 pm]

BILLING CODE 7590-01-M

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Corrections

Federal Register
Vol. 56, No. 247
Tuesday, December 24, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[CN-91-003]

Amendment to the Cotton Research and Promotion Order

Correction

In rule document 91-29454, beginning on page 64470, in the issue of Tuesday, December 10, 1991, make the following correction:

§ 1205.324 [Corrected]

On page 64472, in the third column, in § 1205.324, in the last line, "The eligible" should be removed. On the following page (64473), the remainder of that sentence, consisting of the first six and 1/2 lines at the top of the page, should also be removed.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 910373-1297]

RIN 0651-AA45

Revision of Patent and Trademark Fees

Correction

In rule document 91-29887, beginning on page 65142, in the issue of Friday, December 13, 1991, make the following corrections:

1. On page 65142, in the 3rd column, under *Statutory Provisions*, in the 17th line, "August 26," should read "August 27,".

2. On page 65145, in the first column, in the fourth full paragraph, in the fourth line, "of" should read "or".

3. On the same page, in the second column, in the first full paragraph, in the tenth line, "are" should read "and".

4. On the same page, in the third column, under *37 CFR 1.26 Refunds*, in the last line, "they" should read "the".

5. On page 65146, in the second column, under *37 CFR 2.6 Trademark Fees*, in the eighth line, "(c)-(l1)" should read "(c)-(l)".

6. On page 65150, in the third column, in the ninth full paragraph, in the ninth line, there should be a period after "title".

§ 1.12(d) [Corrected]

7. On page 65151, in the third column, in § 1.12(d), in the ninth line, "of" should read "or".

§ 2.6 [Corrected]

8. On page 65155, in the second column, in § 2.6(a)(15), in the first line, "of" should read "to".

9. On the same page, in the third column, in § 2.6(b)(4), in the third line, "(ii) Regular service" should read "(i) Regular service".

10. On the same page, in the same column, in § 2.6(b)(8), in the first line, remove the comma after "Marginal".

11. On page 65156, in the first column, in the first full paragraph, in the last line, "dates.)" should read "dates).".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91E-0357]

Determination of Regulatory Review Period for Purposes of Patent Extension; Survanta®

Correction

In notice document 91-27142 beginning on page 57525 in the issue of Tuesday, November 12, 1991, make the following corrections:

1. On page 57525, in the third column, in **SUPPLEMENTARY INFORMATION**, in the first paragraph, in the last line "and" should read "an".

2. On page 57526, in the first column, in the first full paragraph, in the eighth line, remove "of".

3. On the same page, in the second column, in the second paragraph, in the second line, "in" should read "is".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91M-0395]

Baxter Healthcare Corp.; Premarket Approval of the Carpentier-Edwards® Bioprosthesis Models 2625 (Aortic) and 6625 (Mitral)

Correction

In notice document 91-27145 appearing on page 57527 in the issue of Tuesday, November 12, 1991, make the following corrections:

1.In the second column, in the last paragraph, in the second line "360(d)(3)" should read "360e(d)(3)"

2. In the third column, in the last paragraph, in the third line, "3603(d)" should read "360e(d)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administraion

[Docket No.91E-0327]

Determination of Regulatory Review Period for Purposes of Patent Extension; Ventak® P AICD™ Model 1600

Correction

In notice document 91-27143 beginning on page 57529 in the issue of Tuesday, November 12, 1991, make the following corrections:

1. On page 57529, in the third column, in the subject heading in the third line, "Ventak*" was misspelled.

2. On page 57530, in the first column, in **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the sixth line, "beings" should read "begins".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Final Funding Priorities for Grants for Faculty Development in Family Medicine

Correction

In notice document 91-27219, beginning on page 57661, in the issue of Wednesday, November 13, 1991, make the following correction:

On page 57662, in the second column, in the file line at the end of the document, "FR Doc. 91-27214" should read "FR Doc. 91-27219".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

Correction

In notice document 91-29386 appearing on page 64278 in the issue of Monday, December 9, 1991, make the following corrections:

1. In the second column, under entry 4, in the fourth line "74.213" should read "75.213".

2. In the same column, under entry 5, in the fourth line "74.202" should read "75.202".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-18397; 812-7670]

Boston Financial Tax Credit Fund Plus, a Limited Partnership, et al.; Application

Correction

In notice document 91-27095, beginning on page 57544, in the issue of Tuesday, November 12, 1991, make the following correction:

On page 57548, in the first column, in the file line at the end of the document, "FR Doc. 91-27025" should read "FR Doc. 91-27095".

BILLING CODE 1505-01-D

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Part II

Department of Health and Human Services

Public Health Service; Office of the Assistant Secretary for Health; Agency for Health Care Policy and Research; Alcohol, Drug Abuse, and Mental Health Administration; National Institutes of Health; Centers for Disease Control; Agency for Toxic Substances and Disease Registry; Indian Health Service; Health Resources and Services Administration; and Food and Drug Administration

Privacy Act of 1974; Annual Publication of Systems of Records

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Office of the Assistant Secretary for Health

Privacy Act of 1974; Annual Publication of Systems of Records Notices

AGENCY: Public Health Service, HHS.

ACTION: Publication of minor changes to systems of records notices.

SUMMARY: In accordance with Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," the Office of the Assistant Secretary for Health (OASH) in the Public Health Service (PHS) has reviewed its system notices and determined that there are no changes.

SUPPLEMENTARY INFORMATION: OASH has completed the annual review of its systems of records. Since the publication of January 11, 1991, OASH has made no changes to its inventory of systems of records that affect the public's right or need to know. A Table of Contents of active systems of records is published below. The complete text of the system notices was last published in the Office of the Federal Register's 1989 biennial Compilation of Privacy Act Issuances.

Dated: October 21, 1991.

Wilford J. Forbush,

Director, Office of Management.

Office of the Assistant Secretary of Health

Table of Contents

09–37–0001 Office of the Assistant Secretary for Health Correspondence Control System, HHS/OASH/OM.
09–37–0002 PHS Commissioned Corps Personnel Records, HHS/OASH/OM.
09–37–0003 PHS Commissioned Corps Medical Records, HHS/OASH/OM.
09–37–0005 PHS Commissioned Corps Board Proceedings, HHS/OASH/OM.
09–37–0006 PHS Commissioned Corps Grievance, Investigatory, and Disciplinary Files, HHS/OASH/OM.
09–37–0008 PHS Commissioned Corps Unofficial Personnel Files and Other Station Files, HHS/OASH/OM.
09–37–0017 Proceedings of the Board for Correction of Public Health Service Commissioned Corps Records, HHS/OASH/OM.
09–37–0020 Office of Minority Health Grants Records System, HHS/OASH/OMH.
09–37–0022 Records of Health Experts Maintained by the Office of International Health, HHS/OASH/OIH.

[FR Doc. 91–25897 Filed 12–23–91; 8:45 am]
BILLING CODE 4160–17–M

Agency for Health Care Policy and Research

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Department of Health and Human Services (HHS); Public Health Services (PHS); Agency for Health Care Policy and Research (AHCPR).

ACTION: Annual Publication of Revisions to PHS Privacy Act System Notices.

SUMMARY: The Agency for Health Care Policy and Research (AHCPR) is publishing this notice in accordance with Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," which requires that agencies review each system of records annually and publish any minor changes in the **Federal Register.**

AHCPR has completed the annual review of its systems of records and is publishing below (1) a table of contents which lists all active systems of records in AHCPR, and (2) those minor changes which affect the public's right of need to know, such as changes in the system location of records or the address of system managers.

Dated: December 13, 1991.

J. Jarrett Clinton,

Administrator.

Table of Contents

09–35–0001 Grants Records System, HHS/AHCPR/OM
09–35–0002 National Medical Expenditure Survey, HHS/AHCPR/CGHSIR
09–35–0003 AIDS Cost and Service Utilization Survey (ACSUS), HHS/AHCPR/CGHSER

09–35–0001

SYSTEM NAME:

Grants Record System, HHS/AHCPR/OM.

Minor changes have been made to this system notice. The following categories should be revised:

SYSTEM LOCATION:

Grants Management Branch, Office of Management, AHCPR, Executive Office Center, Suite 601, 2101 East Jefferson Street, Rockville, Maryland 20852–4993.

SYSTEM MANAGER AND ADDRESS:

Chief, Grants Management Branch, Executive Office Center, Suite 601, 2101 East Jefferson Street, Rockville, Maryland 20852–4993.

09–35–0002

SYSTEM NAME:

National Medical Expenditure Survey, HHS/AHCPR/CGHSIR.

Minor changes have been made to this system notice. The following categories should be revised:

SYSTEM LOCATION:

Division of Medical Expenditure Studies, Center for General Health Services Intramural Research, AHCPR, Executive Office Center, Suite 501, 2101 East Jefferson Street, Rockville, Maryland 20852–4993.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Medical Expenditure Studies, Center for General Health Services Intramural Research, AHCPR, Executive Office Center, Suite 501, 2101 East Jefferson Street, Rockville, Maryland 20852–4993.

09–35–0003

SYSTEM NAME:

AIDS Cost and Service Utilization Survey (ACSUS), HHS/AHCPR/CGHSER.

Minor changes have been made to this system notice. The following categories should be revised:

SYSTEM LOCATION:

Division of Cost and Financing, Center for General Health Services Extramural Research, AHCPR, Executive Office Center, Suite 502, 2101 East Jefferson Street, Rockville, Maryland 20852–4993.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Cost and Financing, Center for General Health Services Extramural Research, AHCPR, Executive Office Center, Suite 502, 2101 East Jefferson Street, Rockville, Maryland 20852–4993.

[FR Doc. 91–30494 Filed 12–23–91; 8:45 am]
BILLING CODE 4160–90

Alcohol, Drug Abuse, and Mental Health Administration

Privacy Act of 1974: Annual Publication of Revisions to PHS Privacy Act Systems Notices

AGENCY: Department of Health and Human Services (DHHS); Public Health Service (PHS); Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA).

ACTION: Privacy Act: Annual Publication of Revisions to Privacy Act System Notices.

SUMMARY: ADAMHA is publishing this document to meet the requirement of Section 3.a (8) of Appendix I to OMB Circular No. A–130, "Federal Responsibilities for Maintaining Records about Individuals," which requires that agencies review each system of records annually and publish any minor changes in the **Federal Register** (FR). ADAMHA has reviewed all of its active Privacy Act systems of records and is publishing the resulting revisions.

SUPPLEMENTARY INFORMATION: ADAMHA has completed the annual review of its systems or records' notices and is publishing below those minor changes which affect the public's right or need to know.

1. Changes:

The following minor changes have been made to systems of records as follows:

a. 09–30–0036

System Name:

Alcohol, Drug Abuse, and Mental Health Epidemiologic and Biometric Research Data, HHS/ADAMHA/OA.

System Manager(s) and Address:

Director, Division of Applied and Services Research, National Institutes of Mental Health, Room 18C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857
Director, Division of Clinical Research, National Institutes of Mental Health, Room 10–105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857
Director, Division of Biometry and Epidemiology, National Institute on Alcohol Abuse and Alcoholism, Room 14C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, 20857
Director, Division of Clinical and Prevention Research, National Institute on Alcohol Abuse and Alcoholism, Room 14C–10, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857
Director, Division of Clinical Research, National Institute on Drug Abuse, Room 10A–38, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857
Director, Division of Epidemiology and Prevention Research, National Institute on Drug Abuse, Suite 615, Rockwall II Building, 5600 Fishers Lane, Rockville, Maryland 20857
Director, Division of Applied Research, National Institute on Drug Abuse, Room 9A–54, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

b. 09–30–0039

SYSTEM NAME:

Drug Abuse Treatment Outcome Study (DATOS), HHS/ADAMHA/NIDA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Voluntary adult clients of federally funded treatment programs, including Treatment Alternative Street Crime (TASC) Programs of the Department of Justice, who requested to be included in TOPS from 1979 through 1986. New data collected from voluntary adult and juvenile (ages 12–18) clients of public and privately funded treatment programs beginning in 1991 and will continue through 1995.

2. Readers who notice any errors or omissions in the ADAMHA system of records' notices are invited to bring them to my attention at the following address: Alcohol, Drug Abuse, and Mental Health Administration, 5600 Fishers Lane, Room 12–105, Rockville, Maryland 20857.

Dated: November 4, 1991.

Joseph R. Leone,

Executive Officer, Alcohol, Drug Abuse, and Mental Health Administration.

3. Table of Contents

The following is a list of system notices which ADAMHA currently maintains:

09–30–0004 Intramural Research Program Records of Research Performed on In- and Out-Patients with Various Types of Mental Illness, HHS/ADAMHA/NIMH; publ. **Federal Register**, Vol. 48, No. 230, p. 53785.
09–30–0020 Patient Records on PHS Beneficiaries (1935–1974) and Civilly Committed Drug Abusers (1967–1978), HHS/ADAMHA/NIDA; publ. **Federal Register**, Vol. 49, No. 244, p. 49181.
09–30–0022 National Institute on Drug Abuse, Addiction Research Center, Federal Prisoner and Non-Prisoner Patient Files, HHS/ADAMHA/NIDA; publ. **Federal Register**, Vol. 48, No. 230, p. 53816.
09–30–0023 Records of Contracts Awarded to Individuals, HHS/ADAMHA/OA; publ. **Federal Register**, Vol. 49, No. 106, p. 22713.
09–30–0027 Grants and Cooperative Agreements: Research, Research Training, Research Scientist Development, Education, Demonstration, Fellowship, Clinical Training, Community Services, HHS/ADAMHA/OA; publ. **Federal Register**, Vol. 49, No. 106, p. 22714.
09–30–0029 Records of Guest Workers, HHS/ADAMHA/OA; publ. **Federal Register**, Vol. 48, No. 230, p. 53823.
09–30–0030 Records of Visiting Fellows, HHS/ADAMHA/OA; publ. **Federal Register**, Vol. 48, No. 230, p. 53824.
09–30–0033 Correspondence Files, HHS/ADAMHA/OA; publ. **Federal Register**, Vol. 48, No. 230, p. 53825.
09–30–0035 Three Mile Island Mental Health Survey Respondents Record, HHS/ADAMHA/NIMH; publ. **Federal Register**, Vol. 47, No. 198, p. 45459.
09–30–0036 Alcohol, Drug Abuse, and Mental Health Epidemiologic and Biometric Research Data HHS/ADAMHA/OA; publ. **Federal Register**, Vol. 49, No. 206, p. 42670.
09–30–0037 Psychotherapy of Opiate-Dependent Individuals, HHS/ADAMHA/NIDA; publ. **Federal Register**, Vol. 48, No. 230, p. 53828.
09–30–0038 Subject-Participants in Pharmacokinetic Studies on Drugs of Abuse, HHS/ADAMHA/NIDA; publ. **Federal Register**, Vol. 48, No. 230, p. 53829.
09–30–0039 Drug Abuse Treatment Outcome Study (DATOS) HHS/ADAMHA/NIDA; publ. **Federal Register**, Vol. 48, No. 230, p. 53830 and **Federal Register**, Vol. 54, No. 221, p. 47865.
09–30–0041 Subject-Participants in Drug Abuse Research Studies Supporting New Drug Applications, HHS/ADAMHA/NIDA; publ. **Federal Register**, Vol. 48, No. 112, p. 26672.
09–30–0043 Shipment Records of Drugs of Abuse to Authorized Researchers, HHS/ADAMHA/NIDA; publ. **Federal Register**, Vol. 48, No. 230, p. 53832.
09–30–0047 Patient Records on Chronic Mentally Ill Merchant Seamen Treated at Nursing Homes in Lexington, Kentucky, (1942 to Present), HHS/ADAMHA/NIMH; publ. **Federal Register**, Vol. 51, No. 226, p. 42395.
09–30–0048 Intramural Research Program Records of In- and Out-Patients With Various Types of Alcohol Abuse and Dependence, Relatives of Patients With Alcoholism, and Healthy Volunteers, HHS/ADAMHA/NIAAA; publ. **Federal Register**, Vol. 51, No. 226, p. 42396.
09–30–0049 Consultant Records Maintained by ADAMHA Contractors, HHS/ADAMHA/OA; publ. **Federal Register**, Vol. 52, No. 195, p. 37660.
09–30–0050 Clinical Research: Patient Medical Records, HHS/ADAMHA/NIMH; publ. **Federal Register**, Vol. 53, No. 81, p. 15142.

[FR Doc. 91–27463 Filed 12–23–91; 8:45 am]
BILLING CODE 4160–20

National Institutes of Health

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Public Health Service, DHHS.

ACTION: Privacy Act: Annual republication of notices of revised systems of records.

SUMMARY: The National Institutes of Health (NIH) has conducted a comprehensive review of all Privacy Act systems of records and is publishing the

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resulting revisions. None of the revisions meet the OMB criteria for a new or altered system of records requiring an advance period for public comment. These changes are in compliance with Circular A-130, Appendix 1. The notices republished below are complete and accurate as of November 1, 1991.

SUPPLEMENTARY INFORMATION: The following information summarizes the current status of systems of records which had minor modifications during 1991 and lists all systems maintained by NIH:

A. SYSTEM NAME.

The following system has been updated to reflect a change in the name of the system:

09-25-0036, Extramural Awards: IMPAC (Grant/Contract/Cooperative Agreement Information), HHS/NIH/DRG.

B. SYSTEM LOCATION.

The following systems have been updated to reflect a change in the system locations. These changes do not affect the access by the individual to the individual's records.

09-25-0033, International Activities: Fellowships Awarded by Foreign Organizations, HHS/NIH/FIC.
09-25-0035, International Activities: Health Scientist Exchange Programs, HHS/NIH/FIC.
09-25-0060, Clinical Research: Division of Cancer Treatment Clinical Investigations, HHS/NIH/NCI.
09-25-0069, NIH Clinical Center Admissions of the National Cancer Institute, HHS/NIH/NCI.
09-25-0112, Grants and Cooperative Agreements: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD.
09-25-0115, Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID.
09-25-0118, Contracts: Professional Services Contractors, HHS/NIH/NCI.
09-25-0121, International Activities: Senior International Fellowships Program, HHS/NIH/FIC.
09-25-0151, Administration: Public Health Service ALERT Records Concerning Individuals Under Investigation for Possible Misconduct in Science or Subject to Sanctions for Such Misconduct, HHS/PHS/NIH.
09-25-0165, National Institutes of Health Acquired Immunodeficiency Syndrome (AIDS) Research Loan Repayment Program, HHS/NIH/OD.

C. CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM.

There are no changes in this category.

D. CATEGORIES OF RECORDS.

The following system has been updated to reflect a change in the categories of records in the system. This change does not alter the character or purpose of the system.

09-25-0124, Administration: Pharmacology Research Associates, HHS/NIH/NIGMS.

E. AUTHORITY.

There are no changes in this category.

F. STORAGE.

The following systems have been updated to reflect a change in the method of storing the records:

09-25-0077, Biological Carcinogenesis Branch Human Specimen Program, HHS/NIH/NCI.
09-25-0140, International Activities: International Scientific Researchers in Intramural Laboratories at the National Institutes of Health, HHS/NIH/FIC.

G. RETRIEVAL.

The following system has been updated to reflect a change or clarification in the method of retrieving the records.

09-25-0140, International Activities: International Scientific Researchers in Intramural Laboratories at the National Institutes of Health, HHS/NIH/FIC.

H. SAFEGUARDS.

The following system has been updated to reflect a change in the safeguards:

09-25-0140, International Activities: International Scientific Researchers in Intramural Laboratories at the National Institutes of Health, HHS/NIH/FIC.

I. RETENTION AND DISPOSAL.

There are no changes in this category.

J. SYSTEM MANAGER(S) AND ADDRESS(ES).

The following systems have been updated to reflect a change in the system manager or the address of the system manager. These changes do not affect the access by the individual to the individual's records.

09-25-0010, Research Resources: Registry of Individuals Potentially Exposed to Microbial Agents, HHS/NIH/NCI.
09-25-0016, Clinical Research: Collaborative Perinatal Project, HHS/NIH/NINDS.
09-25-0028, Clinical Research: Patient Medical Histories, HHS/NIH/NINDS and HHS/NIH/NIDCD.
09-25-0033, International Activities: Fellowships Awarded by Foreign Organizations, HHS/NIH/FIC.
09-25-0035, International Activities: Health Scientist Exchange Programs, HHS/NIH/FIC.
09-25-0054, Administration: Property Accounting, HHS/NIH/ORS.
09-25-0060, Clinical Research: Division of Cancer Treatment Clinical Investigations, HHS/NIH/NCI.
09-25-0069, NIH Clinical Center Admissions of the National Cancer Institute, HHS/NIH/NCI.
09-25-0077, Biological Carcinogenesis Branch Human Specimen Program, HHS/NIH/NCI.
09-25-0091, Administration: General Files on Employees, Donors and Correspondents, HHS/NIH/NEI.
09-25-0112, Grants and Cooperative Agreements: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD.
09-25-0115, Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID.
09-25-0118, Contracts: Professional Services Contractors, HHS/NIH/NCI.
09-25-0121, International Activities: Senior International Fellowships Program, HHS/NIH/FIC.
09-25-0129, Clinical Research: Clinical Research Studies dealing with Hearing, Speech, Language and Chemosensory Disorders. HHS/NIH/NIDCD.
09-25-0142, Clinical Research: Records of Subjects in Intramural Research, Epidemiology, Demography and Biometry Studies on Aging, HHS/NIH/NIA.
09-25-0143, Biomedical Research: Records of Subjects in Clinical, Epidemiologic and Biometric Studies of the National Institute of Allergy and Infectious Diseases, HHS/NIH/NIAID.
09-25-0148, Contracted and Contract-Related Research: Records of Subjects in Clinical, Epidemiological and Biomedical Studies of the National Institute of Neurological Disorders and Stroke and the National Institute on Deafness and Other Communication Disorders, HHS/NIH/NINDS and HHS/NIH/NIDCD.
09-25-0151, Administration: Public Health Service ALERT Records Concerning Individuals Under Investigation for Possible Misconduct in Science or Subject to Sanctions for Such Misconduct, HHS/PHS/NIH.
09-25-0156, Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Institutes of Health, HHS/NIH/OD.
09-25-0161, Administration: NIH Consultant File, HHS/NIH/DRG.
09-25-0165, National Institutes of Health Acquired Immunodeficiency Syndrome (AIDS) Research Loan Repayment Program, HHS/NIH/OD.

K. RECORD ACCESS.

The following system has been updated to reflect a change in the record access procedures.

09-25-0112, Grants and Cooperative Agreements: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD.

L. NOTIFICATION PROCEDURES.

The following systems have been updated to reflect a change in the office, official, and/or address to write to to determine whether or not the system contains a record about the individual.

09-25-0028, Clinical Research: Patient Medical Histories, HHS/NIH/NINDS and HHS/NIH/NIDCD.
09-25-0046, Clinical Research: Catalog of Clinical Specimens from Patients, Volunteers and Laboratory Personnel, HHS/NIH/NIAID.
09-25-0048, Clinical Research: Serology-Epidemiology Parasite Research, HHS/NIH/NIAID.
09-25-0087, Administration: Employees and Consultants, HHS/NIH/NIAID.
09-25-0115, Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID.
09-25-0143, Biomedical Research: Records of Subjects in Clinical, Epidemiologic and Biometric Studies of the National Institute of Allergy and Infectious Diseases, HHS/NIH/NIAID.
09-25-0129, Clinical Research: Clinical Research Studies dealing with Hearing, Speech, Language and Chemosensory Disorders. HHS/NIH/NIDCD.
09-25-0148, Contracted and Contract-Related Research: Records of Subjects in Clinical, Epidemiological and Biomedical Studies of the National Institute of Neurological Disorders and Stroke and the National Institute on Deafness and Other Communication Disorders, HHS/NIH/NINDS and HHS/NIH/NIDCD.

M. THE FOLLOWING SYSTEMS HAVE BEEN CHANGED FOR CLARITY AND EDITING PURPOSES.

In addition, the language in the sections on Safeguards, Record Access Procedure, and Contesting Record Procedure for the systems listed in the Table of Contents has been edited to improve the clarity and specificity of the system notice and/or to incorporate standardized language to achieve uniformity.

09-25-0001, Clinical Research: Patient Records, HHS/NIH/NHLBI.
09-25-0011, Clinical Research: Blood Donor Records, HHS/NIH/CC.
09-25-0012, Clinical Research: Candidate Normal Volunteer Records, HHS/NIH/CC.
09-25-0016, Clinical Research: Collaborative Perinatal Project, HHS/NIH/NINDS.
09-25-0028, Clinical Research: Nervous System Studies, HHS/NIH/NINDS.
09-25-0028, Clinical Research: Patient Medical Histories, HHS/NIH/NINDS and HHS/NIH/NIDCD.
09-25-0031, Clinical Research: Serological and Virus Data in Studies Related to the Central Nervous System, HHS/NIH/NINDS.
09-25-0037, Clinical Research: Baltimore Longitudinal Study of Aging, HHS/NIH/NIA.
09-25-0038, Clinical Research: Patient Data, HHS/NIH/NIDDK.
09-25-0039, Clinical Research: Diabetes Mellitus Research Study of Southwestern American Indians, HHS/NIH/NIDDK.
09-25-0040, Clinical Research: Southwestern American Indian Patient Data, HHS/NIH/NIDDK.
09-25-0042, Clinical Research: National Institute of Dental Research Patient Records, HHS/NIH/NIDR.
09-25-0044, Clinical Research: Sensory Testing Research Program, HHS/NIH/NIDR.
09-25-0046, Clinical Research: Catalog of Clinical Specimens from Patients, Volunteers and Laboratory Personnel, HHS/NIH/NIAID.
09-25-0048, Clinical Research: Serology-Epidemiology Parasite Research, HHS/NIH/NIAID.
09-25-0053, Clinical Research: Vision Studies, HHS/NIH/NEI.
09-25-0099, Clinical Research: Patient Medical Records, HHS/NIH/CC.
09-25-0100, Clinical Research: Neuropharmacology Studies, HHS/NIH/NINDS.
09-25-0106, Personnel: Guest Researchers/Student Scientists/Special Volunteers/Scientists Emeriti, HHS/NIH/DPM.
09-25-0112, Grants and Cooperative Agreements: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD.
09-25-0124, Administration: Pharmacology Research Associates, HHS/NIH/NIGMS.
09-25-0133, Clinical Research: Kidney Transplant Histocompatibility Study (KTHS), HHS/NIH/NIAID.
09-25-0153, Biomedical Research: Records of Subjects in Biomedical and Behavioral Studies of Child Health and Human Development, HHS/NIH/NICHD.

N. ORGANIZATION NAME CHANGE.

There are no changes in this category.

O. DELETED SYSTEMS OF RECORDS.

The following systems of records which appeared in the 1990 annual publication are now being deleted because:

09-25-0002, Clinical Research: Patient Phonocardiogram Records, HHS/NIH/NHLBI.

The technology (phonocardiography) used in this research study is no longer in use in the NHLBI; all records have been destroyed.

09-25-0003, Administration: Authorized Radionuclide Users File, HHS/NIH/ORS and 09-25-0008, Administration: Radiation Workers Monitoring, HHS/NIH/ORS.

These systems were consolidated into a single automated system 09-25-0166 title published in the **Federal Register** on September 26, 1991, Vol. 56, No. 187, p 48806.

09-25-0133, Clinical Research: Kidney Transplant Histocompatibility Study (KTHS), HHS/NIH/NIAID.

The study for which the system was established had been completed and the records were no longer required. The records have been destroyed in compliance with the NIH Records Control Schedule.

The following four systems that add a new routine use concerning the disclosure of information that an individual is infected with the human immunodeficiency virus (HIV) under certain limited circumstances were inadvertently omitted from the 1990 annual publication. This new routine use was published in the **Federal Register**, as noted, and incorporated into these systems, as follows:

09-25-0001, Clinical Research: Patient Records, HHS/NIH/NHLBI, publ. **Federal Register**, Vol. 55, Number 101, May 24, 1990.
09-25-0011, Clinical Research: Blood Donor Records, HHS/NIH/CC, publ. **Federal Register**, Vol. 55, Number 101, May 24, 1990.
09-25-0069, NIH Clinical Center Admissions of the National Cancer Institute, HHS/NIH/NCI, publ. **Federal Register**, Vol. 55, Number 101, May 24, 1990.
09-25-0099, Clinical Research: Patient Medical Records, HHS/NIH/CC, publ. **Federal Register**, Vol. 55, Number 101, May 24, 1990.

The following is a list of active systems of records maintained by NIH.

Table of Contents.

09-25-0001, Clinical Research: Patient Records, HHS/NIH/NHLBI, publ. **Federal Register**, Vol. 55, Number 101, May 24, 1990.
09-25-0005 Administration: Library Operations and User I.D. File, HHS/NIH/OD, publ. **Federal Register**, Vol. 56, No. 79, April 24, 1991, p. 18630.
09-25-0007, Administration: NIH Safety Glasses Issuance Program, HHS/NIH/ORS, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09-25-0010, Research Resources: Registry of Individuals Potentially Exposed to Microbial Agents, HHS/NIH/NCI, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09-25-0011, Clinical Research: Blood Donor Records, HHS/NIH/CC, publ. **Federal Register**, Vol. 55, Number 101, May 24, 1990.
09-25-0012, Clinical Research: Candidate Normal Volunteer Records, HHS/NIH/CC, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09-25-0014, Clinical Research: Student Records, HHS/NIH/CC, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09-25-0015, Clinical Research: Collaborative Clinical Epilepsy Research, HHS/NIH/NINDS, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09-25-0016, Clinical Research: Collaborative Perinatal Project HHS/NIH/NINDS, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09-25-0028, Clinical Research: Nervous System Studies, HHS/NIH/NINDS, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09-25-0028, Clinical Research: Patient Medical Histories, HHS/NIH/NINDS and HHS/NIH/NIDCD, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09-25-0031, Clinical Research: Serological and Virus Data in Studies Related to the Central Nervous System, HHS/NIH/NINDS, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09-25-0033, International Activities: Fellowships Awarded by Foreign Organizations, HHS/NIH/FIC, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.

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09–25–0034, International Activities: Scholars-in-Residence Program, HHS/NIH/FIC, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0035 International Activities: Health Scientist Exchange Programs, HHS/NIH/FIC, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0036, Extramural Awards: IMPAC (Grant/Contract/Cooperative Agreement Information), HHS/NIH/DRG, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0037, Clinical Research: The Baltimore Longitudinal Study of Aging, HHS/NIH/NIA, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0038, Clinical Research: Patient Data, HHS/NIH/NIDDK, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0039, Clinical Research: Diabetes Mellitus Research Study of Southwestern American Indians, HHS/NIH/NIDDK, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0040, Clinical Research: Southwestern American Indian Patient Data, HHS/NIH/NIDDK, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0041, Research Resources: Scientists Requesting Hormone Distribution, HHS/NIH/NIDDK, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0042, Clinical Research: National Institute of Dental Research Patient Records, HHS/NIH/NIDR, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0044, Clinical Research: Sensory Testing Research Program, HHS/NIH/NIDR, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0046, Clinical Research: Catalog of Clinical Speciments from Patients, Volunteers and Laboratory Personnel, HHS/NIH/NIAID, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0048, Clinical Research: Serology-Epidemiology Parasite Research, HHS/NIH/NIAID, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0053, Clinical Research: Vision Studies, HHS/NIH/NEI, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0054, Administration: Property Accounting, HHS/NIH/ORS, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0057, Clinical Research: Burkitt's Lymphoma Registry, HHS/NIH/NCI, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0060, Clinical Research: Division of Cancer Treatment Clinical Investigations, HHS/NIH/NCI, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0067, Clinical Research: National Cancer Incidence Surveys, HHS/NIH/NCI, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0069, NIH Clinical Center Admissions of the National Cancer Institute, HHS/NIH/NCI, publ. **Federal Register**, Vol. 55, Number 101, May 24, 1990.
09–25–0074, Clinical Research: Division of Cancer Biology and Diagnosis Patient Trials, HHS/NIH/NCI, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0075, Administration: Institutions Submitting Assurances for Protection from Research Risks and Animal Welfare, HHS/NIH/OD/OER, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0077, Biological Carcinogenesis Branch Human Specimen Program, HHS/NIH/NCI, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0078, Administration: Consultant File, HHS/NIH/NHLBI, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0087, Administration: Employees and Consultants, HHS/NIH/NIAID, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0091, Administration: General Files on Employees, Donors and Correspondents, HHS/NIH/NEI, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0093, Administration: Administration Authors, Reviewers and Members of the Journal of the National Cancer Institute, HHS/NIH/NCI, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0096, Contracts: National Cancer Institute Contract Management System Principal Investigators, Project Officers and Contract Specialists, HHS/NIH/NCI, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0099, Clinical Research: Patient Medical Records, HHS/NIH/CC, publ. **Federal Register**, Vol. 55, Number 101, May 24, 1990.
09–25–0100, Clinical Research: Neuropharmacology Studies, HHS/NIH/NINDS, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0102, Administration: Grants Associates Program Working Files, HHS/NIH/DRG, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0105, Administration: Health Records of Employees, Visiting Scientists, Fellows, Contractors and Relatives of Inpatients, HHS/NIH/OD, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0106, Administration: Executive Secretariat Correspondence Records, HHS/NIH/OD, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0108, Personnel: Guest Researchers/Student Scientists/Special Volunteers/Scientists Emeriti, HHS/NIH/DPM, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0112, Grants and Cooperative Agreements: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0115, Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0118, Contracts: Professional Services Contractors, HHS/NIH/NCI, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0121, International Activities: Senior International Fellowships Program, HHS/NIH/FIC, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0124, Administration: Pharmacology Research Associates, HHS/NIH/NIGMS, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0126, Clinical Research: National Heart, Lung, and Blood Institute Epidemiological and Biometric Studies, HHS/NIH/NHLBI, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0128, Clinical Research: Neural Prosthesis and Biomedical Engineering Studies, HHS/NIH/NINDS, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0129, Clinical Research: Clinical Research Studies Dealing with Hearing, Speech, Language and Chemosensory Disorders, HHS/NIH/NIDCD, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0130, Clinical Research: Studies in the Division of Cancer Cause and Prevention, HHS/NIH/NCI, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0134, Clinical Research: Epidemiology Studies, National Institute of Environmental Health Sciences, HHS/NIH/NIEHS, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0140, International Activities: International Scientific Researchers in Intramural Laboratories at National Institutes of Health, HHS/NIH/FIC, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0142, Clinical Research: Records of Subjects in Intramural Research, Epidemiology, Demography and Biometry Studies on Aging, HHS/NIH/NIA, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0143, Biomedical Research: Records of Subjects in Clinical, Epidemiologic and Biometric Studies of the National Institute of Allergy and Infectious Diseases, HHS/NIH/NIAID, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0145, Clinical Trials and Epidemiological Studies Dealing with Visual Disease and Disorders in the National Eye Institute, HHS/NIH/NEI, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0148, Contracted and Contract-Related Research: Records of Subjects in Clinical, Epidemiological and Biomedical Studies of the National Institute of Neurological Disorders and Stroke and the National Institute on Deafness and Other Communication Disorders, HHS/NIH/NINDS and HHS/NIH/NIDCD, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0151, Administration: Public Health Service ALERT Records Concerning Individuals Under Investigation for Possible Misconduct In Science or Subject to Sanctions for Such Misconduct, HHS/PHS/NIH, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0152, Biomedical Research: Records of Subjects in National Institute of Dental Research Contracted Epidemiological and Biometric Studies, HHS/NIH/NIDR, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0153, Biomedical Research: Records of Subjects in Biomedical and Behavioral Studies of Child Health and Human Development, HHS/NIH/NICHD, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0154, Biomedical Research: Records of Subjects in Cancer Studies of the Division of Cancer Prevention and Control, HHS/NIH/NCI, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0156, Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Institutes of Health, HHS/NIH/OD, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0158, Administration: Records of Applicants and Awardees of the NIH Intramural Research Training Awards Program, HHS/NIH/OD, publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0160, United States Renal Data System (USRDS), HHS/NIH/NIDDK publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0161, Administration: NIH Consultant File, HHS/NIH/DRG publ. **Federal Register**, Vol. 56, No. 8, January 11, 1991.
09–25–0165, National Institutes of Health Acquired Immunodeficiency Syndrome (AIDS) Research Loan Repayment Program, HHS/NIH/OD, publ. **Federal Register**, August 5, 1991, Vol. 56, No. 150, p. 37223.
09–25–0166, Administration: Radiation Safety Information, HHS/NIH/ORS, publ. **Federal Register**, September 26, 1991, Vol. 56, No. 187, p. 48806.

Dated: December 12, 1991.

Bernadine P. Healy,

Director, National Institutes of Health.

09–25–0001

SYSTEM NAME:

Clinical Research: Patient Records, HHS/NIH/NHLBI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 10, 9000 Rockville Pike, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients of the National Heart, Lung, and Blood Institute (NHLBI) under study at the National Institutes of Health (NIH).

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical histories, diagnostic studies, laboratory data, treatment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241(e), 287, 287a.

PURPOSE(S):

(1) For use by physicians in evaluation and treatment of patients under study at NIH. (2) To furnish patient data to patients, their families, and with patients' consent, to their private physicians.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. Clinical research data are made available to approved or collaborating researchers, including HHS contractors and grantees.

2. Certain diseases and conditions, including infectious diseases, may be reported to appropriate representatives of State or Federal Government as required by State or Federal law.

3. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

4. (a). PHS may inform the sexual and/or needle-sharing partner(s) of a subject individual who is infected with the human immunodeficiency virus (HIV) of their exposure to HIV, under the following circumstances: (1) The information has been obtained in the course of clinical activities at PHS facilities carried out by PHS personnel or contractors; (2) The PHS employee or contractor has made reasonable efforts to counsel and encourage the subject individual to provide the information to the individual's sexual or needle-sharing partner(s); (3) The PHS employee or contractor determines that the subject individual is unlikely to provide the information to the sexual or needle-sharing partner(s) or that the provision of such information cannot reasonably be verified; and (4) The notification of the partner(s) is made, whenever possible, by the subject individual's physician or by a professional counselor and shall follow standard counseling practices.

(b). PHS may disclose information to State or local public health departments, to assist in the notification of the subject individual's sexual and/or needle-sharing partner(s), or in the verification that the subject individual has notified such sexual or needle-sharing partner(s).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card index, laboratory books, computer memory.

RETRIEVABILITY:

Indexed by name or patient number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to authorized physicians and their assistants.

2. Physical Safeguards: Records are kept in secure locked metal or wood file cabinets and, in some instances, in locked offices.

3. Procedural Safeguards: Access to files is strictly controlled by files staff. Access to computerized records is controlled by keyword codes available only to authorized users.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific conditions on disposal.

SYSTEM MANAGER(S) AND ADDRESS:

National Heart, Lung, and Blood Institute, Administrative Officer, Division of Intramural Research, Building 10 Room 7N218, 9000 Rockville Pike, Bethesda, MD 20892.

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NOTIFICATION PROCEDURE:

To determine if a record exists, contact: National Institutes of Health, Privacy Act Coordinator, NHLBI, Building 31, Room 5A08, 9000 Rockville Pike, Bethesda, MD 20892.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORDS ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and specify the information to be contested, the corrective action sought, and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Referring physicians, hospitals and medical centers, patients and families, results of procedures and tests of NIH patients.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0005

SYSTEM NAME:

Administration: Library Operations and User I.D. File, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system of records is an umbrella system comprising separate sets of records located in National Institutes of Health (NIH) facilities in Bethesda, Maryland, or facilities of contractors of the NIH. Write to the appropriate system manager listed below for list of current contractor locations.

National Institutes of Health, Building 10, Room 1L07, 9000 Rockville Pike, Bethesda, MD 20892,
and
National Institutes of Health, Building 12A, Room 3018, 9000 Rockville Pike, Bethesda, MD 20892,
and
National Institutes of Health, Building 38, Room 1S33, 8600 Rockville Pike, Bethesda, MD 20894,
and
National Institutes of Health, Building 38A, Room 4N419, 8600 Rockville Pike, Bethesda, MD 20894,
and
National Technical Information Service, Accounting Department, 8001 Forbes Place, Room 208F, Springfield, Virginia 22151.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Users of Library Services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, organization, address, phone number, user code and identification number; and when applicable, credit card number and billing information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 301 of the Public Health Service Act, describing the general powers and duties of the Public Health Service relating to research and investigation (42 U.S.C. 241).

PURPOSE OF THE SYSTEM:

To monitor library material, services, and circulation control; to provide user documentation; and to provide billing information to the National Technical Information Service (NTIS).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. Disclosure may be made to contractors and staff to monitor library material, services, circulation control; to provide user documentation; and to process or refine the records. Recipients are required to maintain Privacy Act safeguards with respect to those records.

4. Disclosure may be made to the NTIS for billing individuals for certain library services.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on computer tape and disc, microfiche, paper and file cards.

RETRIEVABILITY:

Records are retrieved by name, user code and/or identification number.

SAFEGUARDS:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to Library staff members who need to verify that Library identification cards have been issued to those Library users requesting services such as MEDLINE and other computer online bibliographic searches, translations and interlibrary loans. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager. The contractor maintains a list of personnel having authority to access records to perform their duties.

2. Physical Safeguards: The offices housing the cabinets and file drawers for storage of records are locked during all library off-duty hours. During all duty hours offices are attended by employees who maintain the files. The contractor has secured records storage areas which are not left unattended during the working hours and file cabinets which are locked after hours.

3. Procedural Safeguards: Access to the file is strictly controlled by employees who maintain the files. Records may be removed from files only at the request of the system manager or other authorized employees. Access to computerized records is controlled by the use of security codes known only to authorized users. Contractor personnel receive instruction concerning the significance of safeguards under the Privacy Act.

These practices are in compliance with the standards of Chapter 45-13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45-13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B-361), item 8000-D-2, which allows records to be kept until superseded or for a maximum period of 6 years. Refer to the NIH Manual Chapter for specific conditions on disposal.

SYSTEM MANAGER AND ADDRESS:

The Policy Coordinating Official for this system is the Management Analyst, Office of Administration; National Library of Medicine; Building 38, Room 2N21; 8600 Rockville Pike; Bethesda, MD 20894.

Chief, Reference and Bibliographic Services Section, Library Branch, National Center for Research Resources, National Institutes of Health, Building 10, Room 1L21, 9000 Rockville Pike, Bethesda, MD 20892,
and
Librarian, Division of Computer Research and Technology, National Institutes of Health, Building 12A, Room 3018, 9000 Rockville Pike, Bethesda, MD 20892,
and
Chief, Public Services Division, Library Operations, National Library of Medicine, National Institutes of Health, Building 38, Room 1S33, 8600 Rockville Pike, Bethesda, MD 20894,
and
Chief, Medlars Management Section, Bibliographic Services Division, Library Operations, National Institutes of Health, National Library of Medicine, Building 38A, Room 4N419, 8600 Rockville Pike, Bethesda, MD 20894.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested, the corrective action sought, and the reasons for the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Individual, NIH Library ID card data.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0010

SYSTEM NAME:

Research Resources: Registry of Individuals Potentially Exposed to Microbial Agents, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Executive Plaza North, Room 540, 6130 Executive Blvd., Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals potentially exposed to biohazardous microbial agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Microbial agents registry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241.

PURPOSE OF THE SYSTEM:

(1) To serve as a base for health and safety for individuals and organizations involved in use of potentially hazardous agents. (2) To identify potential hazards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORAGE, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, on magnetic tape, and 3380 disks.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Employees authorized to use the records include professional staff in the Biological Carcinogenesis Branch who have been informed of the need for maintaining confidentiality of the records.

2. Physical Safeguards: Office records are kept in closed cabinets in offices which are locked during off-duty hours.

3. Procedural Safeguards: Access to the file is strictly controlled by the system manager and his designee, and records may be removed from files only

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at the request of the system manager or other authorized employee. Access to computerized records is controlled by the use of security codes known only to the authorized users.

The particular safeguards implemented at each site are developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS.hf: 45–13, and part 6, "ADP Systems Security", of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361): item 7000–B–1 for exposure incident files, which does not allow records to be destroyed. Refer to the NIH Manual Chapter for specific retention instructions.

SYSTEM MANAGER AND ADDRESS:

National Cancer Institute, Division of Cancer Etiology, Program Director, Research Resources, Biological Carcinogenesis Branch, Executive Plaza North, Room 540, 6130 Executive Blvd., Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Information is obtained from individuals and/or organizations providing specimens.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0011

SYSTEM NAME:

Clinical Research: Blood Donor Records, HHS/NIH/CC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Department of Transfusion Medicine, National Institutes of Health, Building 10, Room 1C711, 9000 Rockville Pike, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Donors of blood and blood components to be used in the NIH Clinical Center for patient infusions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Past donations, blood types, phenotypes. Laboratory results of hepatitis testing, serologic reactions on all blood samples, donations of blood or blood components.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

"Preparation of Biological Products" of the Public Health Service Act (42 U.S.C. 263).

PURPOSE OF THE SYSTEM:

(1) To provide a means for contacting blood donors for patient care and research. (2) To provide a medical history of all donors for the transfusion records of each blood unit.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors and their staff in order to accomplish the purposes for which the records are collected. The recipients are required to comply with the requirements of the Privacy Act with respect to such records.

2. Certain diseases and conditions, including infectious diseases, may be reported to State or Federal government as required by State or Federal law.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

5. (a). PHS may inform the sexual and/or needle-sharing partner(s) of a subject individual who is infected with the human immunodeficiency virus (HIV) of their exposure to HIV, under the following circumstances: (1) The information has been obtained in the course of clinical activities at PHS facilities carried out by PHS personnel or contractors; (2) The PHS employee or contractor has made reasonable efforts to counsel and encourage the subject individual to provide the information to the individual's sexual or needle-sharing partner(s); (3) The PHS employee or contractor determines that the subject individual is unlikely to provide the information to the sexual or needle-sharing partner(s) or that the provision of such information cannot reasonably be verified; and (4) The notification of the partner(s) is made, whenever possible, by the subject individual's physician or by a professional counselor and shall follow standard counseling practices.

(b). PHS may disclose information to State or local public health departments, to assist in the notification of the subject individual's sexual and/or needle-sharing partner(s), or in the verification that the subject individual has notified such sexual or needle-sharing partner(s).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in a computer file, on donor cards, and on microfilm.

RETRIEVABILITY:

Records are retrieved by a unique control number assigned to each individual donor.

SAFEGUARDS:

Access is granted only to authorized employees in the Department of Transfusion Medicine including physicians, nurses, technologists, computer operators, and the department's administrative officer.

1. Authorized Users: Access is granted only to authorized employees of the Department of Transfusion Medicine including physicians, nurses technologists, computer operators and the secretary to the Chief.

2. Physical Safeguards: Record facilities are locked when system personnel are not present.

3. Procedural Safeguards: Access to manual files is limited to authorized users. Access to computerized records is controlled by the use of security codes known only to the authorized users.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 3000–E–50. Refer to the NIH Manual Chapter for specific conditions on disposal.

SYSTEM MANAGER AND ADDRESS:

Chief, Department of Transfusion Medicine, National Institutes of Health, Building 10, Room 1C711, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

To obtain access to a record, contact the system manager at the address specified above. Requesters should provide the same information as is required under the notification procedures above. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Data are collected from the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0012

SYSTEM NAME:

Clinical Research: Candidate Normal Volunteer Records, HHS/NIH/CC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Work Department, National Institutes of Health, Building 10, Room 1C121–B, 9000 Rockville Pike, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Normally healthy individuals who volunteer to participate in NIH studies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Program application, health questionnaire and record of participation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 263.

PURPOSE OF THE SYSTEM:

(1) To determine suitability for participation in the normal volunteer program, (2) to document remuneration of normal volunteers, (3) to provide a record of participation to be used (a) in writing letters of recommendation/reference for the volunteer, and (b) preparing reports on the normal volunteer program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PROGRAM OF SUCH USES:

1. Clinical research data are made available to approved or collaborating researchers, including HHS contractors and grantees.

2. Certain diseases and conditions, including infectious diseases, may be reported to appropriate representatives of State or Federal Government as required by State or Federal law.

3. Information may be used to respond to congressional inquiries for constituents concerning admission to the NIH Clinical Center.

4. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Program applications and health questionnaires are stored in file folders. Records of participation are stored on index cards.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, procedural safeguards such as the following:

1. Authorized Users: Access is granted only to the Normal Volunteer Program staff and to NIH physicians who have requested the recruitment of volunteers for their clinical research projects.

2. Physical Safeguards: Access to the files is strictly controlled by the files

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staff. Records may be removed from the file only at the request of the system manager or other authorized employees. Record facilities are locked when system personnel are not present.

3. Procedural Safeguards: Access to the files is strictly controlled by the files staff. Records may be removed from the file only at the request of the system manager or other authorized employees.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 3000–E–61, which allows records to be kept until superseded or for a maximum period of 3 years. Refer to the NIH Manual Chapter for specific conditions on disposal.

SYSTEM MANAGER AND ADDRESS:

Assistant Chief, Normal Volunteer Program, National Institutes of Health, Building 10, Room 1C121–B, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

To obtain access to a record, contact: Assistant Chief, Normal Volunteer Program, National Institutes of Health, Building 10, Room 1C121–B, 9000 Rockville Pike, Bethesda, MD 20892 and provide the information described under Notification Procedures above. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested, the corrective action sought, and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Volunteer, sponsoring contractor.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0016

SYSTEM NAME:

Clinical Research: Collaborative Perinatal Project, HHS/NIH/NINDS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Federal Building, NIH, 7550 Wisconsin Ave., Bethesda, MD 20892.

Write to the system manager at the address below for the address of any Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Women in the perinatal study of NIH during their pregnancies, their children, husbands, fathers of children and other family members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical histories and examinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289a, 289c.

PURPOSE OF THE SYSTEM:

Biomedical and behavioral research by HHS scientists to discover leads to the developmental disorders of childhood by relating events of pregnancy, labor and delivery, infancy and early childhood to subsequent development of the child.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record may be disclosed for a research purpose, when the Department: (A) has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

2. Certain diseases and conditions, including infectious diseases, may be reported to appropriate representatives of State or Federal Government as required by State or Federal by law.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, on punch cards and magnetic tape, computer printouts, and on microfilm.

RETRIEVABILITY:

Records are retrieved by identifying number assigned to the mother.

SAFEGUARDS:

1. Authorized Users: Employees who maintain records in this system are instructed to grant access to HHS researchers and data processing support staff only upon receiving an approved written request from the System Manager which specifies the data to be received and the intended use of the data. A list of authorized users is maintained.

2. Physical Safeguards: Records are in an area with no other use which is locked when system is not in use.

3. Procedural Safeguards: Personnel having access are trained in Privacy requirements. Records of access to the system are maintained. Records are used in the system area or other designated work area.

This system of records will be protected according to the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 3000–G–4, which does not allow records to be destroyed. Refer to the NIH Manual Chapter for specific retention instructions.

SYSTEM MANAGER AND ADDRESS:

Chief, Developmental Neurology Branch, National Institute of Neurological Disorders and Stroke (NINDS), Federal Building, NIH, 7550 Wisconsin Avenue, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: Chief, Administrative Services Branch, NINDS, Building 31, Room 8A49, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing, a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested, the corrective action sought, and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Mother, child, father, biomedical examiners, hospital and clinic records, schools.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0025

SYSTEM NAME:

Clinical Research: Nervous System Studies, HHS/NIH/NINDS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 36, Room 5B20, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

Write to the system manager at the address below for the address of any Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Research patients in NIH-related studies having nervous system disorders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical and demographic data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289a, 289c.

PURPOSE OF THE SYSTEM:

Clinical research by HHS scientists on patients with special diseases of the nervous system, with particular emphasis on those diseases known or thought to be caused by slow or latent viruses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Clinical research data are made available to approved or collaborating researchers, including HHS contractors and grantees.

2. Certain diseases and conditions, including infectious diseases, may be reported to appropriate representatives of State or Federal Government as required by State or Federal law.

3. Information may be used to respond to congressional inquiries for constituents concerning admission to the NIH Clinical Center. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the

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claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, on magnetic tape, and on computer print-out sheets.

RETRIEVABILITY:

Records are retrieved by name, disease and attending physician name.

SAFEGUARDS:

1. Authorized Users: Employees who maintain records in this system are instructed to grant access only to scientists on the staff of the Central Nervous System Studies Laboratory and their assistants.

2. Physical Safeguards: Records are kept in a locked location.

3. Procedural Safeguards: Personnel having access to system are informed of Privacy Act requirements.

This system of records will be protected according to the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

Chief, Central Nervous System Studies Lab., Building 36, Room 5B21, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, contact: Chief, Administrative Services Branch, NINDS, Building 31, Room 8A49, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing, a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Attending physicians.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0028

SYSTEM NAME:

Clinical Research: Patient Medical Histories, HHS/NIH/NINDS and HHS/NIH/NIDCD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 10 & Building 31, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

Write to the system manager at the address below for the address of any Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present patients of the National Institute of Neurological Disorders and Stroke (NINDS) and the National Institute on Deafness and Other Communication Disorders (NIDCD), and individuals being referred for admission to the NIH Clinical Center.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical histories and diagnoses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289a, 289c.

PURPOSE OF THE SYSTEM:

Clinical research on various diseases of the nervous system and hearing, hearing loss, and communication disorders by HHS scientists and their authorized collaborators, with the specific aim of improving patient care and treatment by evaluating therapeutic procedures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Clinical research data are made available to approved or collaborating researchers, including HHS contractors and grantees. Certain diseases and conditions, including infectious diseases, may be reported to appropriate representatives of State or Federal Government as required by State or Federal law.

2. Information may be used to respond to congressional inquiries for constituents concerning admission to the NIH Clinical Center.

3. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

1. Authorized Users: Employees who maintain records in this system are instructed to grant access only to HHS researchers and their authorized collaborators.

2. Physical Safeguards: Records are kept locked in a file cabinet when not in use and in a location which is locked during non-working hours.

3. Procedural Safeguards: Records are returned to the files at the close of each working day and are used only in the system location or in a designated work area.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

Director of Intramural Research, NINDS, Building 10, Room 5N214, NIH, 9000 Rockville Pike, Bethesda, MD 20892

and

Director of Intramural Research, NIDCD, Building 31, Room 3C06, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, contact:

Chief, Administrative Services Branch, NINDS, Building 31, Room 8A49, NIH, 9000 Rockville Pike, Bethesda, MD 20892

or

Chief, Administrative Management Branch, NIDCD, Building 31, Room 3C21, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine. An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing, a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested, the corrective action sought, and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Referring and attending physicians, hospital records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0031

SYSTEM NAME:

Clinical Research: Serological and Virus Data in Studies Related to the Central Nervous System, HHS/NIH/NINDS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 36, Room 5B21, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of any Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients with possible perinatal, acute or chronic diseases and normal volunteers in NIH-related studies pertaining to the central nervous system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Clinical records, laboratory test results for viruses, pathology and identifications and characterizations of etiological agents of diseases under study, and curriculum vitae.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289h.

PURPOSE OF THE SYSTEM:

Clinical research by HHS scientists and their authorized collaborators and research on blood serum, specifically to discover the role of infections (particularly those caused by a virus) in diseases of the central nervous system and also to study the role of vaccines in these diseases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Clinical research data are made available to approved or collaborating researchers, including HHS contractors and grantees.

2. Certain diseases and conditions, including infectious diseases may be reported to appropriate representatives of State or Federal Government as required by State or Federal law.

3. Information may be used to respond to Congressional inquiries for constituents concerning admission to the NIH Clinical Center.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

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POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in laboratory notebooks, papers, file folders, cinematography and photography.

RETRIEVABILITY:

Records are retrieved by name and number.

SAFEGUARDS:

1. Authorized Users:
Employees who maintain records in this system are instructed to grant access only to HHS scientists and their assistants and authorized collaborators.
2. Physical Safeguards: Records are kept in cabinets which are locked at all times that system is not in use, in a location which is also locked when system is not in use.
3. Procedural Safeguards: Personnel having access to system have been trained in Privacy Act requirements. Records are used in a designated work area and the system location is attended at all times during working hours.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

Deputy Chief, Laboratory of Central Nervous Systems Studies, Intramural Research Program, Building 36, Room 5B21, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, contact: Chief, Administrative Services Branch, NINDS, Building 31, Room 8A49, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Hospital records, volunteers and laboratory data.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0033

SYSTEM NAME:

International Activities: Fellowships Awarded by Foreign Organizations, HHS/NIH/FIC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 31, Room B2C29, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of any Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. citizens qualified in health-related sciences submitting applications through NIH for fellowships for study abroad.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications and associated records and reports.

PURPOSE OF THE SYSTEM:

To perform scientific reviews and evaluations of applicants' suitability of referral to awarding organization in foreign countries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 USC 2421.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. After review by the operating agency review panel the applications and all supporting documents are forwarded to the foreign organizations or agencies making awards.
2. In addition, such application may be made available to authorized employees and agents of the Federal Government for purposes of investigations, inspections and audits, and, in appropriate cases, to the Department of Justice for prosecution under civil and criminal laws.
3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.
4. Disclosure may be made to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name and fellowship number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. Authorized users: Employees who maintain records in this system are instructed to grant regular access only to FIC program staff. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical safeguards: The records are maintained in locked file cabinets, and offices are locked during off-duty hours.

3. Procedural safeguards: Access to file rooms and files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employees.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), items 2300–320–5, which allows records to be destroyed after a maximum period of 6 years after the close of a case. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

Fogarty International Center, Chief, International Research Awards Branch, National Institutes of Health, Building 31, Room B2C29, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Requests for notification of or access to records should be addressed to the system manager, as listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Applicants and persons supplying references.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0035

SYSTEM NAME:

International Activities: Health Scientist Exchange Programs, HHS/NIH/FIC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 31, Room B2C11, 9000 Rockville Pike, Bethesda, MD 20892.

Write to system manager at the address below for the address of the Federal Records Center where records may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. citizens applying for participation in health scientist exchange programs through NIH.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications and associated records and reports, including curricula vitae and letters of reference.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2421.

PURPOSE OF THE SYSTEM:

To maintain records necessary to administer health scientist exchange programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.
2. To qualified experts not within the definition of Department employees as prescribed in Department Regulations for opinions as a part of the application review process.
3. Information is furnished to pertinent staff of the relevant foreign ministry for acceptance purposes.
4. Applications are made available to authorized employees and agents of the Federal Government for the purpose of inspections and audits, and, in appropriate cases, to the Department of Justice for investigation under civil and criminal laws.
5. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to FIC program staff. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Records are kept in locked file cabinets. Offices are locked during off-duty hours.

3. Procedural Safeguards: Access to files is strictly controlled by files staff. Files may be removed only at the request of the system manager or other authorized employee.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records"

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(HHS Records Management Manual, Appendix B–361), items 2300–320–5, which allows records to be destroyed after a maximum period of 6 years after the close of a case. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

National Institutes of Health, Program Specialist, Health Scientist Exchange Programs, International Coordination and Liaison, Branch, FIC, Building 31, Room B2C11, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to system manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Information is obtained from applicants and individuals who supply references.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0036

SYSTEM NAME:

Extramural Awards: IMPAC (Grant/Contract/Cooperative Agreement Information), HHS/NIH/DRG.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20892
and
Building 12, NIH Computer Center, 9000 Rockville Pike, Bethesda, MD 20892,
and
For information pertaining to the chartered advisory groups of the National Institutes of Health: Building 1, Room B1–56, 9000 Rockville Pike, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicant and Principal Investigators; Program Directors; NRSA Trainees and Fellows; Research Career Awardees; and Chartered Advisory Group Members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications, awards, associated records, trainee appointments, and current and historical information pertaining to chartered advisory groups.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241c, 58 Stat. 691c and d repealed.

PURPOSE OF THE SYSTEM:

(1) To support centralized grant programs of the Public Health Service. Services are provided in the areas of grant application assignment and referral, initial review, council review, award processing and grant accounting. The data base is used to provide complete, accurate, and up-to-date reports to all levels of management.

(2) To maintain communication with former fellows and trainees who have incurred a payback obligation through the National Research Service Award Program.

(3) To maintain current and historical information pertaining to the establishment of chartered advisory groups of the National Institutes of Health and the appointment of their members.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to the National Technical Information Service (NTIS), Department of Commerce, for dissemination of scientific and fiscal information on funded awards (abstract of research projects and relevant administrative and financial data).

2. Disclosure may be made to the cognizant audit agency for auditing.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. Disclosure may be made to qualified experts not within the definition of Department employees as prescribed in Department Regulations for opinions as a part of the application review process.

5. Disclosure may be made to a Federal agency, in response to its request, in connection with the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision in the matter.

6. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

7. The Department contemplates that it may contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor will be required to maintain Privacy Act safeguards with respect to such records.

8. Disclosure may be made to the grantee institution in connection with performance or administration under the conditions of the award.

9. Disclosure may be made to the Department of Justice, or to a court or other tribunal, from this system of records when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on discs and magnetic tapes.

RETRIEVABILITY:

Records are retrieved by name, application, grant or contract ID number.

SAFEGUARDS:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to PHS extramural staff. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Physical access to DRG work areas is restricted to DRG employees.

3. Procedural Safeguards: Access to source data files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employee. Access to computer files is controlled by the use of registered accounts, registered initials, keywords, etc. The computer system maintains an audit record of all attempted and successful requests for access.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 4000–A–2, which allows records to be destroyed when no longer needed for administrative purposes. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGERS AND ADDRESSES:

Chief, Information Systems Branch, Division of Research Grants, Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20892
and
For information pertaining to the chartered advisory groups of the National Institutes of Health:
NIH Committee Management Officer, Building 1, Room B1–56, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists write to:
Privacy Act Coordinator, Division of Research Grants, Westwood Building, Room 449, 5333 Westbard Avenue, Bethesda, MD 20892
and
For information pertaining to the chartered advisory groups of the National Institutes of Health:
NIH Committee Management Officer, Building 1, Room B1–56, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Individual, individual's educational institution and references.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0037

SYSTEM NAME:

Clinical Research: Baltimore Longitudinal Study of Aging, HHS/NIH/NIA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 12, 9000 Rockville Pike, Bethesda, MD 20892
and
Chief, Longitudinal Studies Branch, IRP, NIA, Gerontology Research Center, 4940 Eastern Avenue, Baltimore, MD 21224.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Voluntary participants in the Gerontology Research Center (GRC) Longitudinal Study of Aging.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical histories, psychological and physical test results.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 USC 241, 289k–2, k–4. Health Research Extension Act of Pub. L. 99–158.

PURPOSE OF THE SYSTEM:

Research on the human aging process.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating

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researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Certain diseases and conditions, including infectious diseases, may be reported to appropriate representatives of State or Federal Government as required by State or Federal law.

3. Information may be used to respond to congressional inquiries for constituents concerning admission to the NIH Clinical Center.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders and on computer files, and on microfiche.

RETRIEVABILITY:

Records are retrieved by ID number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to the clinical, research and support staff of the GRC. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Hard copy files are kept in locked file cabinets.

3. Procedural Safeguards: Access to manual files is strictly controlled by files staff. Files may be removed only at the request of the system manager or other authorized employee. Access to computer files is controlled through security codes known only to authorized users.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

Chief, Longitudinal Studies Branch, IRP, National Institutes of Health, Gerontology Research Center, GRC, 4940 Eastern Avenue, Baltimore, MD 21224.

NOTIFICATION PROCEDURE:

Write to System Manager to determine if a record exists. The requestor must also verify his or her identity by providing either a notarization of the request or a written certification that the requestor is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

Individuals seeking notification of or access to medical records should designate a representative (including address) who may be a physician, other health professional, or other responsible individual, who would be willing to review the record and inform the subject individual of its contents, at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Individuals, research staff, test results.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0038

SYSTEM NAME:

Clinical Research: Patient Data, HHS/NIH/NIDDK.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health
Building 10, Room 9N222
9000 Rockville Pike
Bethesda, MD 20892

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients of the National Institute of Diabetes, and Digestive and Kidney Diseases (NIDDK).

CATEGORIES OF RECORDS IN THE SYSTEM:

Patient history, demographic data, miscellaneous correspondence with patients.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 USC 241, 281a, 289c.

PURPOSE OF THE SYSTEM:

(1) Care and treatment of patients with arthritic, metabolic or digestive diseases; (2) Experimentation and investigation on the etiology, treatment and prevention of arthritic, metabolic or digestive diseases; (3) Administration of these clinical and research programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Certain diseases and conditions, including infectious diseases, may be reported to appropriate representatives of State or Federal Government as required State or Federal law.

3. Information may be used to respond to congressional inquiries for constituents concerning admission to the NIH Clinical Center.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders and on magnetic tape.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to physicians, scientists and support staff of the NIDDK whose duties require the use of such information. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Records are kept in a limited access area. Offices are locked during off-duty hours. Input data for computer files is coded to avoid individual identification.

3. Procedural Safeguards: Access to manual files is strictly controlled by files staff. Files may be removed only at the request of the system manager or other authorized employee. Access to computer files is controlled through security codes known only to authorized users. Access codes are changed frequently.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

National Institutes of Health, Chief, Clinical Investigations, NIDDK, Building 10, Room 9N222, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURES:

To determine if a record exists write to: National Institutes of Health, Administrative Officer, Building 31, Room 9A46, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Patients.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0039

SYSTEM NAME:

Clinical Research: Diabetes Mellitus Research Study of Southwestern American Indians, HHS/NIH/NIDDK.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 12, 9000 Rockville Pike, Bethesda, MD 20892
and
Chief, Phoenix Clinical Research Section, Phoenix Area Indian Hospital, Room 541, Phoenix, Arizona 65016.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Southwestern American Indians and Caucasian spouses of some who were participants in the NIH Diabetes Mellitus Research Study.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, demographic data, patient history and control numbers.

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289a, 289c.

PURPOSE OF THE SYSTEM:

(1) To gain information on high prevalence of diabetes, arthritis, gall bladder and related diseases among Southwestern American Indians; (2) For statistical analysis to investigate frequency and distribution of the above disorders; (3) Data is shared with the Indian Health Service which has primary care responsibility for American Indians.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Certain diseases and conditions, including infectious diseases, may be reported to appropriate representatives of State or Federal Government as required by State or Federal law.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tapes.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to scientists and statistical staff of the Epidemiology Branch, National Institute of Diabetes, and Digestive and Kidney Diseases (NIDDK). Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Input data for computer files is coded immediately after collection to avoid individual identification. Records are kept in a limited access area equipped with a monitored burglar alarm system.

3. Procedural Safeguards: Access is strictly controlled through security codes known only to authorized users. Access codes are changed following departure of any authorized user.

The particular safeguards implemented at each site are developed in accordance with Chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45–13, and part 6, ADP Systems Security, of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 3000–C–3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

National Institutes of Health, Chief, Phoenix Clinical Research Section, Phoenix Area Indian Hospital, Room 541, Phoenix, Arizona 85016.

NOTIFICATION PROCEDURE:

To determine if a record exists write to: Administrative Officer, National Institute of Diabetes, and Digestive and Kidney Diseases, NIH, Building 31, Room 9A46, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Patients.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0040

SYSTEM NAME:

Clinical Research: Southwestern American Indian Patient Data, HHS/NIH/NIDDK.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Phoenix Area Indian Hospital, Room 541, Phoenix, Arizona 85016.

Write to system manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients of the National Institute of Diabetes, and Digestive and Kidney Diseases (NIDDK) being treated at the Phoenix Area Indian Hospital.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical history, treatment schedules, diagnostic records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 USC 241, 289a, 289c.

PURPOSE OF THE SYSTEM:

(1) Used by clinicians and support staff of the Phoenix Clinical Research Section for treatment of NIDDK patients, and for research related to such treatment.

(2) Records are forwarded to the Indian Health Service which maintains records after patient discharge in case follow-up or later treatment is necessary.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Certain diseases and conditions, including infectious diseases, may be reported to appropriate representatives of State or Federal Government as required by State or Federal law.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name and patient number.

SAFEGUARDS:

1. Authorized Users: Personnel screen users to prevent unauthorized access.

2. Physical Safeguards: Records are maintained in secured areas and containers.

3. Procedural Safeguards: Charge-out records are maintained on records charged out from the files.

RETENTION AND DISPOSAL:

Records are retained and destroyed according to the same standards that apply to other medical records of the Indian Health Service.

SYSTEM MANAGER AND ADDRESS:

Chief, Phoenix Clinical Research Section, Phoenix Area Indian Hospital, Room 541, 4212 North 16th Street, Phoenix, Arizona 85016.

NOTIFICATION PROCEDURE:

To determine if a record exists write to: National Institutes of Health, Administrative Officer, NIDDK, Building 31, Room 9A46, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Clinicians of the Phoenix Clinical Research Section.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0042

SYSTEM NAME:

Clinical Research: National Institute of Dental Research Patient Records, HHS/NIH/NIDR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 10, Room 1B01, 9000 Rockville Pike, Bethesda, MD 20892.

Write to system manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients and other participants in current and past research projects of the National Institute of Dental Research (NIDR).

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical and dental histories, dental pathologies and therapies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 301, 401, 405 and 453 of the Public Health Service Act (42 U.S.C. 241, 281, 284, 285h). These sections establish the National Institute of Dental Research and authorize the conduct and support of dental and oral research and related activities.

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PURPOSE OF THE SYSTEM:

(1) To record the diagnosis and treatment of patients with diseases of the mouth, tongue, teeth and surrounding tissues; (2) To record the normal condition of the mouth, tongue, teeth and surrounding tissues of individuals referred to the dental clinic; (3) To provide clinical data for research into the etiology, treatment and prevention of oral diseases; (4) For review and planning of the NIDR clinical program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the clinical and research purposes for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Certain diseases and conditions, including infectious diseases, may be reported to appropriate representatives of State or Federal Government as required by State or Federal law.

3. Information may be used to respond to congressional inquiries for constituents concerning admission to the NIH Clinical Center.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, when a claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name and hospital ID number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to dentists, physicians, dental hygienists, dental assistants and other health care personnel involved in the care and treatment of patients in the NIDR dental clinic, and to referring professionals. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Records are stored in a cabinet which is locked at all times when not in use.

3. Procedural Safeguards: Access is controlled by clerical staff of the Dental Clinic during clinic hours, and by the Officer of the Day when the clinic is closed.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

National Institutes of Health, Chief, Clinical Investigations and Patient Care Branch, NIDR, Building 10, Room 1N–113, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists contact: NIDR Privacy Act Coordinator, Building 31, Room 2C–35, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine. An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Individual, parents or guardians.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0044

SYSTEM NAME:

Clinical Research: Sensory Testing Research Program, HHS/NIH/NIDR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 10, Room 1–N–114, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Infants, children and adults participating in the Sensory Testing Research Program of the National Institute of Dental Research (NIDR).

CATEGORIES OF RECORDS IN THE SYSTEM:

Test results, extracts from medical records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 301, 401, 405 and 453 of the Public Health Service Act (42 U.S.C. 241, 281, 284, 285h). These sections establish the National Institute of Dental Research and authorize the conduct and support of dental and oral research and related activities.

PURPOSE OF THE SYSTEM:

(1) To record the medical/dental histories of individuals participating in the Sensory Testing Research Program; (2) To record the results of chemosensory tests of individuals participating in the Sensory Testing Research Program; (3) For research on sensitivity to oral nasal stimulation; (4) For review and planning of the Clinical Investigations and Patient Care Branch program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees, referring health professionals and collaborating researchers and their staff in order to accomplish the clinical and research purposes for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Certain diseases and conditions, including infectious diseases, may be reported to appropriate representatives of State or Federal Government as required by State or Federal law.

3. Information may be used to respond to congressional inquiries for constituents concerning admission to the NIH Clinical Center.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, when a claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, data books and in a mini-computer maintained by the NIDR Scientific Systems Section.

RETRIEVABILITY:

Records are retrieved by name, date of observation and age of subject.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to Clinical Investigations Section staff, to scientist colleagues by invitation of the principal investigator and to referring professionals. Other one time and special access by other employees is granted on a need to know basis as specifically authorized by the System Manager.

2. Physical Safeguards: Records are stored in rooms which are locked at all times when not in use. Computer terminals are in secured areas. Access to computer file is controlled by software protection codes associate with each site.

3. Procedural Safeguards: Access is controlled by Clinical Investigation Section staff.

These safeguards are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

Research Psychologist, Clinical Investigations, NIDR, Building 10, Room 1N114, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists contact: NIDR Privacy Act Coordinator, 9000 Rockville Pike, Building 31, Room 2C–35, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine. An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

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RECORD SOURCE CATEGORIES:

Subject individual, cooperating clinician or health agency, family members.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0046

SYSTEM NAME:

Clinical Research: Catalog of Clinical Specimens from Patients, Volunteers and Laboratory Personnel, HHS/NIH/NIAID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 7, Rooms 106 and 202, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients, volunteers, laboratory personnel in the National Institute of Allergy and Infectious Diseases (NIAID).

CATEGORIES OF RECORDS IN THE SYSTEM:

Clinical specimens, attendant data and laboratory results.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289a, 289c.

PURPOSE OF THE SYSTEM:

For diagnostic and epidemiologic studies of viral respiratory diseases and hepatitis, conducted by NIAID staff.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Certain diseases and conditions, including infectious diseases, may be reported to appropriate representatives of State or Federal Government as required by State or Federal law.

3. Information may be used to respond to congressional inquiries for constituents concerning admission to the NIH Clinical Center.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, when a claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in data books.

RETRIEVABILITY:

Records are retrieved by name, patient or study number.

SAFEGUARDS:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to HHS scientists conducting research, and staff whose duties require the use of such information. Other one time and special access by other employees is granted on a need to know basis as specifically authorized by the System Manager.

2. Physical Safeguards: Data books are kept in locked rooms. Offices are locked during off-duty hours.

3. Procedural Safeguards: Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the System Manager or other authorized employee.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B-361), item 3000-G-3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

Chief, Respiratory Viruses Section, LID, NIAID, Building 7, Room 106, NIH, 9000 Rockville Pike, Bethesda, MD 20892; and

Chief, Hepatitis Virus Section, NIAID, Building 7, Room 202, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: Privacy Act Coordinator, NIAID, Control Data Building, Room 4C-01, 6003 Executive Blvd., Rockville, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedure above. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained directly from individual participants and from medical records, field study records, and clinical research observations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0046

SYSTEM NAME:

Clinical Research: Serology-Epidemiology Parasite Research, HHS/NIH/NIAID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Rocky Mountain Laboratories, NIH, Hamilton, MT 59840.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Blood or parasite donors participating in serology-epidemiology parasite research of the National Institute of Allergy and Infectious Diseases (NIAID).

CATEGORIES OF RECORDS IN THE SYSTEM:

Results of blood tests and possible case histories.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289a, 289c.

PURPOSE OF THE SYSTEM:

For serologic and epidemiologic studies on parasitic and rickettsial diseases (Rocky Mountain spotted fever, in particular) conducted by NIAID staff.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Certain diseases and conditions, including infectious diseases, may be reported to appropriate representatives of State or Federal Government as required by State or Federal law.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, when a claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to HHS scientists conducting research, and staff whose duties require the use of such information. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Offices are locked during off-duty hours.

3. Procedural Safeguards: Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employee.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B-361), item 3000-G-3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

Chief, Rocky Mountain Operations Branch, Rocky Mountain Laboratories, NIH, Hamilton, MT 59840.

NOTIFICATION PROCEDURE:

To determine if a record exists write to Privacy Act Coordinator, NIAID, Control Data Building, Room 4C-01, 6003 Executive Blvd., Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

Individuals seeking notification of or access to medical records should designate a representative (including address) who may be a physician, other health professional, or other responsible individual, who would be willing to review the record and inform the subject individual of its contents, at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedure above. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Personal physician of donor and state health departments.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0053

SYSTEM NAME:

Clinical Research: Vision Studies, HHS/NIH/NEI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 10, Room 10N202, CC, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients and subjects in the National Eye Institute research studies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical history as relevant to vision research.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289i, 289k.

PURPOSE OF THE SYSTEM:

(1) To gather photographic evidence of various stages or progressions of certain visual disorders; (2) To record certain diagnostic test results (such as color vision testing) in the compilation of empirical data to support research evaluations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Information may be used to respond to Congressional inquiries for constituents concerning admission to the NIH Clinical Center.

3. Certain diseases and condition, including infectious diseases, may be reported to appropriate representatives of State or Federal Government as required by State or Federal law.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file cabinets.

RETRIEVABILITY:

Records are retrieved by name and cross referenced by anatomical entity.

SAFEGUARDS:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to HHS scientists conducting research and physicians treating the patient whose records are involved. Other one time and special access by other employees is granted on a need to know basis as specifically authorized by the system manager.

2. Physical Safeguards: File cabinets are in locked rooms and access to files is strictly controlled.

3. Procedural Safeguards: Specifically, records may be removed from files only at the request of the System Manager or authorized employees.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

National Institutes of Health, Clinical Director, NEI, Building 10, Room 10N–202, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, contact: Executive Officer, NEI, Building 31, Room 6A07, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Medical examinations conducted by and under the direction of the research investigators.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0054

SYSTEM NAME:

Administration: Property Accounting, HHS/NIH/ORS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 13, Room 2E43, 9000 Rockville Pike, Bethesda, MD 20892; and

National Institutes of Health, Computer Center, Building 12, 9000 Rockville Pike, Bethesda, MD 20892; and

National Institutes of Health, Building 31, Room B1C06, 9000 Rockville Pike, Bethesda, MD 20892; and

National Institute of Environmental Health Sciences, Office of Facilities Engineering, 102–01, P.O. Box 12233, Research Triangle Park, N.C. 27709.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the National Institutes of Health who are issued tools or card keys.

CATEGORIES OF RECORDS IN THE SYSTEM:

Property management.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 5 U.S.C. 5901; 5 U.S.C. 7903; 40 U.S.C. 318a; 42 U.S.C. 241.

PURPOSE OF THE SYSTEM:

Used for tool and card keys issuance and control.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

3. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, and on magnetic media.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to officials whose duties require use of the information. Other one time and special access by other employees is granted on a need to know basis as specifically authorized by the system manager.

2. Physical Safeguards: Textual records are stored in offices which are locked when not in use.

3. Procedural Safeguards: Computer files are password protected.

This system of records will be protected according to the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 1300–C–14, which allows records to be destroyed after all listed credentials are accounted for or 3 months after the return of credentials to the issuing office. Refer to the NIH Manual Chapter for specific instructions.

SYSTEM MANAGER AND ADDRESS:

For tools: National Institutes of Health, Administrative Officer, DES, Building 13, Room 13/2E43, 9000 Rockville Pike, Bethesda, MD 20892.

For card keys: National Institutes of Health, Chief, Crime Prevention Section, Security Branch, DS, ORS, Building 31, Room B3B16, 9000 Rockville Pike, Bethesda, MD 20205.

National Institute of Environmental Health Sciences, Chief, Office of Facilities Engineering, 102–01, P.O. Box 12233, Research Triangle Park, NC 27709.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Data is obtained from the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0060

SYSTEM NAME:

Clinical Research: Division of Cancer Treatment Clinical Investigations, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, 8601 Old Georgetown Road, Bethesda, MD 20892; and

Frederick Cancer Research and Development Center, Building 426, Frederick, MD 21701; and

National Cancer Institute, Biological Response Modifiers Program (BRMP), 501 W. 7th Street, Suite #3, Frederick, MD 21701; and

National Cancer Institute, Navy Hospital, Building 8, Room 3146, Bethesda, MD 21614; and

National Cancer Institute, Division of Cancer Treatment, Cancer Therapy

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Evaluation Program, Executive Plaza North, Room 707, Bethesda, MD 20892

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All patients who have been hospitalized or seen in outpatient clinics on treatment research protocols in the National Cancer Institute.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 USC 241, 281, 282.

PURPOSE(S) OF THE SYSTEM:

(1) Patient care and treatment. (2) Clinical and epidemiological research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. Disclosure may be made to a contractor when the Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tapes, microcomputer disks, index cards, microfiche, and manual paper records.

RETRIEVABILITY:

Records are retrieved by patient name or number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to physicians, scientists and support staff of the National Cancer Institute, or its contractors, whose duties require the use of such information. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Records are kept in a limited access area. Offices are locked during off-duty hours. Input data for computer files is coded to avoid individual identification.

3. Procedural Safeguards: Access to manual files is strictly controlled by files staff. Files may be accessed only at the request of the system manager or other authorized employee. Access to computer files is controlled through security codes known only to authorized users. Access codes are changed frequently.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

Head, Biostatistics and Data Management Section, National Institutes of Health, 8601 Old Georgetown Road, Bethesda, MD 20892; and

Chief, Clinical Research Branch, Biological Response Modifiers Program, Frederick Cancer Research and Development Center, 501 W. 7th Street, Suite #3, Frederick, MD 21701; and

Navy Hospital, Deputy Branch Chief, NCI—Naval Medical Oncology Branch, Building 8, Room 5101, Bethesda, MD 20814; and

Head, Drug Management and Authorization Section, Cancer Therapy Evaluation Program, Division of Cancer Treatment, National Cancer Institute, Executive Plaza North, Room 707, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to system manager for the appropriate location to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Hospital medical records, referring physician, referring hospitals, clinical laboratories, patient contact, and Central Tumor Registries.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0069

SYSTEM NAME:

NIH Clinical Center Admissions of the National Cancer Institute, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Executive Plaza North, Rooms 400 and 439, 6130 Executive Blvd., Bethesda, MD 20892; and

National Institutes of Health, Division of Computer Research and Technology, Building 12A, 9000 Rockville Pike, Bethesda, MD 20892; and

WESTAT, Inc., STSC Building, Suite 402, 2115 E. Jefferson Street, Rockville, MD 20852; and

Survey Research Associates, Inc., 6115 Falls Road, Baltimore, MD 21209

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former cancer patients and their family members admitted to the NIH Clinical Center or the National Cancer Institute (NCI).

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical histories, reports and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 285a

PURPOSE OF THE SYSTEM:

National Cancer Institute physicians and supporting staff are involved in research on the cause and diagnosis of disease and the treatment of patients, requiring the maintenance of working files to chart progress, responses to treatment, etc.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. Disclosure may be made to a contractor when the Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

5. (a). PHS may inform the sexual and/or needle-sharing partner(s) of a subject individual who is infected with the human immunodeficiency virus (HIV) of their exposure to HIV, under the following circumstances: (1) The information has been obtained in the course of clinical activities at PHS facilities carried out by PHS personnel or contractors; (2) The PHS employee or contractor has made reasonable efforts to counsel and encourage the subject individual to provide the information to the individual's sexual or needle-sharing partner(s); (3) The PHS employee or contractor determines that the subject individual is unlikely to provide the information to the sexual or needle-sharing partner(s) or that the provision of such information cannot reasonably be verified; and (4) The notification of the partner(s) is made, whenever possible, by the subject individual's physician or by a professional counselor and shall follow standard counseling practices.

(b). PHS may disclose information to State or local public health departments, to assist in the notification of the subject individual's sexual and/or needle-sharing partner(s), or in the verification that the subject individual has notified such sexual or needle-sharing partner(s).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders and on computer files.

RETRIEVABILITY:

Records are retrieved by identification number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to physicians, scientists and support staff of the National Cancer Institute and the Clinical Center whose duties require the use of such information. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Records are kept in limited access areas. Offices are locked during off-duty hours. Input data for computer files is coded to avoid individual identification.

3. Procedural Safeguards: Access to manual files is strictly controlled by files staff. Files may be accessed only at the request of the system manager or other authorized employee. Access to computer files is controlled through security codes known only to authorized users. Access codes are changed frequently.

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These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

National Institutes of Health, National Cancer Institute, Division of Cancer Etiology, Epidemiology and Biostatistics Program, Chief, Family Studies Section, Environmental Epidemiology Branch, Executive Plaza North, Suite 439, Bethesda, MD 20892; and

Acting Chief, Clinical Genetics Section, Clinical Epidemiology Branch, Executive Plaza North, Suite 400, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to system manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Patients' personal physicians, NIH staff treating the patients or performing tests, requested outside records, and patients themselves.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0077

SYSTEM NAME:

Biological Carcinogenesis Branch Human Specimen Program, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Executive Plaza North, Rm. 540, 6130 Executive Blvd., Bethesda, MD 20892 and at private organizations under contract. Write to the system manager for a list of current locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Cancer and other patients, and normal donors of biopsy and tumor specimens, who are seen at clinically-oriented organizations under contract to the National Cancer Institute. Both adults and children are covered.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical history and diagnostic information about the donor, information on the type of specimen, location of repository (if specimen is stored before use), and distribution record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 USC 241, 281, 282: "Research and Investigation," "National Cancer Institute," and "Cancer Research and Other Activities."

PURPOSE(S) OF THE SYSTEM:

(1) For cancer research, using by-products of cancer treatment, such as biopsy and tumor specimens that would normally be discarded, to allow interpretation of experimental results; (2) To project future research needs; (3) To monitor and evaluate the NCI distribution system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The Department contemplates that it may contract with a private firm for storage and preservation of specimens. Records necessary for identification, retrieval and research use will be disclosed to such a contractor. The contractor will be required to comply with the requirements of the Privacy Act with respect to such records.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder, magnetic tape, and discs.

RETRIEVABILITY:

Retrieved by name of donor and cross-referenced by identifying number, procurement source, and various epidemiological characteristics.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel,

physical and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to physicians, scientists and support staff of the National Cancer Institute, or its contractors, whose duties require the use of such information. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Records, computers and computer terminals are kept in limited access areas. Offices are locked during off-duty hours. Input data for computer files is coded to avoid individual identification.

3. Procedural Safeguards: Access to manual files is strictly controlled by files staff. Files may be accessed only at the request of the system manager or other authorized employee. Access to computer files is controlled through security codes known only to authorized users.

Contractor compliance is assured through inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records in this system are instructed to make no disclosure of the records except as authorized by the system manager.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

Program Director, Research Resources, Biological Carcinogenesis Branch, Division of Cancer Etiology, NCI, National Institutes of Health, Executive Plaza North, Room 540, 6130 Executive Blvd., Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Specimen Report Form filled out by the organization providing specimens.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0087

SYSTEM NAME:

Administration: Employees and Consultants, HHS/NIH/NIAID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 31, Room 7A32, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former key professional employees of the Institute and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Press releases, curriculum vitae, nominations for awards and photographs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241(d) 289a.

PURPOSE OF THE SYSTEM:

For background records to provide public announcements on National Institute of Allergy and Infectious Diseases (NIAID) Council members, advisors and guest lecturers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to staff whose duties require the use of such information. Authorized users are located in the Office of the Director, NIAID. Other one time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

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2. Physical Safeguards: Records in this system are stored in file folders which are kept in locked cabinets. The room is locked during off-duty hours.

3. Procedural Safeguards: Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employee.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B-361), item 1100-G. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Communications, National Institutes of Health, Building 31, Room 7A32, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: National Institutes of Health, Privacy Act Coordinator, NIAID, Control Data Bldg., Room 4C-01, 6003 Executive Blvd., Rockville, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as record notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the System Manager at the address above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Individuals and newspaper clippings.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0091

SYSTEM NAME:

Administration: General Files on Employees, Donors and Correspondents, HHS/NIH/NEI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 31, Room 6A03, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Donors of gifts, employees, correspondents of the National Eye Institute (NEI).

CATEGORIES OF RECORDS IN THE SYSTEM:

Budget, administrative services, correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 USC 289i.

PURPOSE(S) OF THE SYSTEM:

(1) To identify certain donors of unconditional gifts to the National Eye Institute; (2) To record certain delegations and permit holders; (3) To maintain a mailing list of persons in the vision research community; (4) To provide service or information to specific requesters; (5) To communicate with collaborating investigators in vision research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name and subject area.

SAFEGUARDS:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to staff with designated responsibilities directly related to the purpose for which the records are kept. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Records are kept in locked offices.

3. Procedural Safeguards: Access to files is strictly controlled. Records may be removed from files only at the request of the system manager or other authorized employee.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B-361), items: 1100-M-1; 1700-C-1; and, 1900-F-3. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

National Eye Institute, Executive Officer, Building 31, Room 6A07A, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: National Eye Institute, Records Management Officer, Building 31, Room 6A17, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Individuals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0099

SYSTEM NAME:

Clinical Research: Patient Medical Records, HHS/NIH/CC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Patient Medical Records, Building 10, Room 1N208, 9000 Rockville Pike, Bethesda, MD 20892

and at private organizations under contract. Write to the system manager for a list of current locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Registered Clinical Center patients. Some individuals not registered as patients but seen in Clinical Center for diagnostic tests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical treatment records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 USC 241, 248: "Research and Investigation," and "Hospitals, Medical Examinations, and Medical Care."

PURPOSES(S) OF THE SYSTEM:

(1) To provide a continuous history of the treatment afforded individual patients in the Clinical Center; (2) To provide a data base for the clinical research conducted within the hospital.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Information may be used to respond to Congressional inquiries for constituents concerning their admission to NIH Clinical Center.

2. Social Work Department may give pertinent information to community agencies to assist patients or their families.

3. Referring physicians receive medical information for continuing patient care after discharge.

4. Information regarding diagnostic problems, or having unusual scientific value may be disclosed to appropriate medical or medical research organizations or consultants in connection with treatment of patients or in order to accomplish the research purposes of this system. For example, tissue specimens may be sent to the Armed Forces Institute of Pathology; X-rays may be sent for the opinion of a radiologist with extensive experience in a particular kind of diagnostic radiology. The recipients are required to maintain Privacy Act safeguards with respect to these records.

5. Records may be disclosed to representatives of the Joint Commission on Accreditation of Hospitals conducting inspections to ensure that the quality of Clinical Center medical record-keeping meets established standards.

6. Certain diseases and conditions, including infectious diseases, may be reported to appropriate representatives of State or Federal Government as required by State or Federal law.

7. Medical information may be disclosed to tumor registries for maintenance of health statistics.

8. The Department contemplates that it may contract with a private firm for transcribing, updating, copying, or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor will be required to comply with the requirements of the Privacy Act with respect to such records.

9. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

10. (a). PHS may inform the sexual and/or needle-sharing partner(s) of a subject individual who is infected with the human immunodeficiency virus (HIV) of their exposure to HIV, under the following circumstances: (1)The information has been obtained in the course of clinical activities at PHS facilities carried out by PHS personnel or contractors; (2)The PHS employee or contractor has made reasonable efforts to counsel and encourage the subject individual to provide the information to the individual's sexual or needle-sharing partner(s); (3) The PHS employee or contractor determines that the subject individual is unlikely to provide the information to the sexual or needle-sharing partner(s) or that the provision of such information cannot reasonably be verified; and (4) The notification of the partner(s) is made, whenever possible, by the subject individual's physician or by a professional counselor and shall follow standard counseling practices.

(b). PHS may disclose information to State or local public health departments, to assist in the notification of the subject individual's sexual and/or needle-sharing partner(s), or in the verification that the subject individual has notified such sexual or needle-sharing partner(s).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders and/or on microfiche, and on computer tapes.

RETRIEVABILITY:

Records are retrieved by unit number and patient name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Employees maintaining records in this system are instructed to grant regular access only to physicians and dentists and other health

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care professionals officially participating in patient care, to contractors, or to NIH researchers specifically authorized by the system manager.

2. Physical Safeguards: All record facilities are locked when system personnel are not present.

3. Procedural Safeguards: Access to files is strictly controlled by the system manager. Records may be removed only by system personnel following receipt of a request signed by an authorized user. Access to computerized records is controlled by the use of security codes known only to the authorized user. Codes are user- and function-specific.

Contractor compliance is assured through inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records in this system are instructed to make no disclosure of the records except as authorized by the system manager.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 3000–E–22, which allows records to be kept until no longer needed for scientific reference. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

Chief, Medical Record Department, National Institutes of Health, Building 10, Room 1N208, 9000 Rockville Pike, Bethesda, Md. 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the system manager at the above address. The requester must provide tangible proof of identity, such as a driver's license. If no identification papers are available, the requester must verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. The representative may be a physician, or other health professional, or other responsible individual. The subject individual will be granted direct access unless it is determined that such access is likely to have an adverse effect on him or her. In that case, the medical/dental record will be sent to the designated representative.

The individual will be informed in writing if the record is sent to the representative.

A parent or guardian who requests notification of or access to a child's/incompetent person's record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child/incompetent person as well as his/her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably identify the specific reports and related dates pertaining to the information to be released. There may be a fee for reproducing more than 20 pages of material. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the system manager and reasonably identify the record and specify the information to be contested, and state the corrective action sought and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Referring physicians, other medical facilities (with patient's consent), patients, relatives of patients.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT.

None.

09–25–0100

SYSTEM NAME:

Clinical Research: Neuropharmacology Studies, HHS/NIH/NINDS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 36, Room 5A06, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients in National Institute of Neurological and Communicative Disorders and Stroke (NINDS) related studies concerning aspects of neuropharmacology.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 USC 241, 289a, 289c.

PURPOSE OF THE SYSTEM:

Clinical research on the pharmacology in various diseases of the central nervous system and on the effectiveness and action of drugs as given to treat these diseases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to protect such records from improper disclosure.

2. Information may be used to respond to Congressional inquiries for constituents concerning admission to the NIH Clinical Center. Certain diseases and conditions, including infectious diseases, may be reported to appropriate representative of State or Federal Government as required by State or Federal law.

3. Referrals may be made of assignments of research investigators and project monitors to specific research projects to the Smithsonian Institution to contribute to the Smithsonian Science Information Exchange, Inc.

4. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in laboratory notebooks, file folders and on index cards.

RETRIEVABILITY:

Records are retrieved by name, diagnosis, date of laboratory determination.

SAFEGUARDS:

1. Authorized Users: Employees who maintain records in this system are instructed to grant access only to physicians and scientists working within a specific NIH laboratory.

2. Physical Safeguards: Records are kept in a cabinet and locations which are locked during non-working hours.

3. Procedural Safeguards: Persons having access to the system are trained in Privacy Act requirements. Records are used either in the system location or a designated work area. Records are returned to cabinets at the end of each working day. System location is attended at all times during working hours.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Intramural Research, NINDS, Building 10, Room 5N214, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists write to: Chief, Administrative Services Branch, Building 31, Room 8A49, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures.

Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Other medical, scientific and educational institutions; individual physicians in private practice.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0108

SYSTEM NAME:

Personnel: Guest Researchers/Student Scientists/Special Volunteers/Scientists Emeriti, HHS/NIH/DPM.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Office of the Associate Director for Intramural Affairs, Building 1, Room 103, 9000 Rockville Pike, Bethesda, MD. 20892.

Systems and Actions Branch, Division of Personnel Management, Building 31, Room B3C27, 9000 Rockville Pike, Bethesda, MD 20892.

Personnel and Administrative Offices of the National Institutes of Health (NIH).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals using NIH facilities who are not NIH employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal information including name, address, date and place of birth, education, employment, purpose for which NIH facilities are desired, outside sponsor, and NIH sponsor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241(a)(2), 42 U.S.C. 282(b)(10), and 42 U.S.C. 284(b)(1)(k).

PURPOSE OF THE SYSTEM:

To determine eligibility to use NIH facilities, to document the individual's presence at NIH, and to record that the individual is not an employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to U.S. Office of Personnel Management for program evaluation purposes; to General Accounting Office for fund disbursement determinations.

2. Disclosure may be made to institutions providing financial support.

3. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the request of that individual.

4. Disclosure may be made to the Department of Justice or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of

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the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

For each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. Authorized Users: Access is granted only to personnel staff, administrative office staff and management officials directly involved in the administration of the Guest Researcher, Special Volunteer and Scientist Emeriti programs.

2. Physical Safeguards: Record facilities are locked when system personnel are not present.

3. Procedural Safeguards: Access to files is strictly controlled by system personnel. Records may be removed from the file only with the approval of the system manager or other authorized employees.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 2300–320–3(a), which allows records to be destroyed after a maximum period of 2 years after the individual completes work at NIH. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

National Institutes of Health, Chief, Systems and Actions Branch, Division of Personnel Management, Building 31, Room B32C07, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists and where it is located, contact: National Institutes of Health, Division of Personnel Management, Privacy Act Coordinator, Building 31, Room 1C39, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Contact the Personnel Officer or Administrative Officer in whose office the record is located and provide verification of identity as described under notification procedure above. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Subject individual, NIH sponsor, funding institution.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0112

SYSTEM NAME:

Grants and Cooperative Agreements: Research, Research Training, Fellowship and Construction Applications and Related Awards, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

See Appendix I.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Grant applicants and Principal Investigators; Program Directors; Institutional and Individual Fellows; Research Career Awardees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grant applications and review history, awards, financial records, progress reports and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

"Research and Investigation," "National Library of Medicine," "National Cancer Institute," "National Heart, Lung and Blood Institute," "National Institute of Dental Research," "National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases," "National Institute of Neurological Diseases and Stroke, and Other Institutes," "National Institute of Child Health and Human Development," "National Institute of General Medical Sciences," "National Eye Institute," and "National Institute on Aging," of the Public Health Service Act, (42 U.S.C. 241, 276, 281, 287, 288, 289(a), (d), (e), (i), 289(k–2)).

PURPOSE(S) OF THE SYSTEM:

1. Information provided is used by NIH staff for review, award, and administration of grant programs.

2. Information is also used to maintain communication with former fellows who have incurred an obligation through the National Research Service Award Program.

3. Staff may also use curriculum vitae to identify candidates who may serve as ad hoc consultants or committee and council members in the grant peer review process.

4. As a part of the cost analysis of a proposed grant, a budget review is conducted of the percentage of time and effort listed under personnel category, equipment and supply categories, and other items listed under "other" category.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made of assignments of research investigators and project monitors to specific research projects to the National Technical Information Service (NTIS), Department of Commerce, to contribute to the Smithsonian Science Information Exchange, Inc.

2. Disclosure may be made to the cognizant audit agency for auditing.

3. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the

Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

4. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

5. Disclosure may be made to qualified experts not within the definition of Department employees as prescribed in Department Regulations, 45 CFR 50.2, for opinions as a part of the application review and award administration processes.

6. Disclosure may be made to a Federal agency, in response to its request, in connection with the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

7. A record may be disclosed for a research purpose, when the Department: (A) has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected; or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

8. Disclosure may be made to a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in a system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records;

9. Disclosure may be made to the grantee institution in connection with the review of an application or performance or administration under the terms and conditions of the award, or in connection with problems that might arise in performance or administration if an award is made on a grant proposal.

10. Disclosure may be made to the profit institution's president or official responsible for signing the grant application in connection with the review or award of a grant application and in connecuon with the administration and performance of a grant under the terms and conditions of the awards.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12):

Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

The Department may disclose to consumer reporting agencies information on individuals who have failed to meet payback obligations incurred under awards made under authority of the National Research Service Awards Program (41 U.S.C. 2891–1). Information disclosed includes data identifying the individual, the amount, status and history of the obligation, and that the obligation arose from an award made under the National Research Service Awards Program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file folders, on computer tapes and discs, cards and in notebooks.

RETRIEVABILITY:

Retrieved by name and grant number.

SAFEGUARDS:

A variety of physical and procedural safeguards are implemented, as appropriate, at the various locations of this system:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to officials whose duties require use of the information. These officials include review groups, grants management staff, other extramural program staff, health scientist administrators, data processing and analysis staff and management officials with oversight responsibilities for extramural programs. Other one-time and special access is granted on an individual basis as specifically authorized by the system manager. Authorization for access to computerized files is controlled by the system manager or designated official and is granted on a need-to-know basis. Lists of authorized users are maintained.

2. Physical Safeguards: Secured facilities, locked rooms, locked cabinets, personnel screening; records stored in order of grant numbers which are randomly assigned.

3. Procedural Safeguards: Access to file rooms and files is strictly controlled by files staff or other designated officials; charge-out cards identifying users are required for each file used; inactive records are transferred to controlled storage in Federal Records Center in a timely fashion; retrieval of records from inactive storage is controlled by the system manager or designated official and by the NIH Records Management Officer; computer files are password protected and access is actively monitored by the Computer Center to prevent abuse. Employees are given specialized training in the requirements of the Privacy Act as applied to the grants program.

These particular safeguards are developed in accordance with Chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS hf: 45–13, and Part 6, "ADP Systems Security", of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), items: 4000–B–1; 4000–B–4; 4000–C–1 and, 4600–D–1. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

See Appendix II.

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NOTIFICATION PROCEDURE:

Write to official at the address specified in Appendix II to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Write to the official at the address specified in Appendix IV to obtain access to a record, and provide the same information as is required under the Notification Procedures above. Requesters should also reasonably specify the record contents being sought.

Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified in Appendix II, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Information submitted by applicant; supplemented by outside reviewers and internal staff.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix I—System Location

National Cancer Institute, Executive Plaza South, Suite T–42, 6120 Executive Boulevard, Bethesda, MD 20892.
National Heart, Lung, and Blood Institute, Westwood Building, Room 4A09, 5333 Westbard Avenue, Bethesda, MD 20892.
National Library of Medicine, Building 38A, Room 5N509, 8600 Rockville Pike, Bethesda, MD 20894.
National Institute of Allergy and Infectious Diseases, Chief, Grants Management Branch, DEA, Control Data Bldg., Room 4B–21, 6003 Executive Blvd., Rockville, MD 20892.
National Institute of Allergy and Infectious Diseases, Chief, Management Information Systems Section, FMISB, OAM, Westwood Building, Room 733, 5333 Westbard Avenue, Bethesda, MD 20892.
National Institute of Diabetes and Digestive and Kidney Diseases, Westwood Building, Room 610, 5333 Westbard Avenue, Bethesda, MD 20892.
National Institute of Arthritis and Musculoskeletal and Skin Diseases, Westwood Building, Room 5A03, 5333 Westbard Avenue, Bethesda, MD 20892.
National Institute of Child Health and Human Development, Landow Building, Room 6A21, 7910 Woodmont Avenue, Bethesda, MD 20892.
National Institute on Aging, Gateway Building, Room 2N–212, 7201 Wisconsin Avenue, Bethesda, MD 20892.
National Institute of Dental Research, Grants Management Officer, Westwood Building, Room 518, Bethesda, MD 20892.
National Institute of Environmental Health Sciences, Grants Management Officer, Building 2, Room 204, 104 Alexander Drive, Research Triangle Park, NC 27709.
National Institute of General Medical Sciences, Grants Management Officer, Westwood Building, Room 953, 5333 Westbard Avenue, Bethesda, MD 20892.
National Institute of Neurological Disorders and Stroke, Federal Building, Room 10A12, 7550 Wisconsin Avenue, Bethesda, MD 20892.
National Institute on Deafness and Other Communication Disorders, Room 400B, Executive Plaza South, 620 Executive Boulevard, Rockville, MD 20852.
National Eye Institute, Building 31, Room 6A47, 9000 Rockville Pike, Bethesda, MD 20892.
National Center for Research Resources, Westwood Building, Room 853, 5333 Westbard Avenue, Bethesda, MD 20892.
National Center for Nursing Research, Building 31, Room 5B06, 9000 Rockville Pike, Bethesda, MD 20892.
Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

Appendix II—System Manager and Address

National Cancer Institute, Grants Management Analyst, Executive Plaza South, Suite 234, 6120 Executive Boulevard, Bethesda, MD 20892.
National Heart, Lung, and Blood Institute, Chief, Grants Operations Branch, Division of Extramural Affairs, Westwood Building, Room 4A10, 5333 Westbard Avenue, Bethesda, MD 20892.
National Heart, Lung, and Blood Institute, Administrative Officer, Division of Extramural Affairs, Westwood Building, Room 7A11, Bethesda, MD 20892.
National Library of Medicine, Associate Director for Extramural Programs, Building 38A, Room 5N505, 8600 Rockville Pike, Bethesda, MD 20894.
National Institute of Allergy and Infectious Diseases, Chief, Grants Management Branch, DEA, Control Data Bldg., Room 4B–21, 6003 Executive Blvd., Rockville, MD 20892.
National Institute of Allergy and Infectious Diseases, Chief, Management Information Systems Section, FMISB, OAM, Westwood Building, Room 733, 5333 Westbard Avenue, Bethesda, MD 20892.
National Institute of Arthritis and Musculoskeletal and Skin Diseases, Grants Management Officer, Westwood Building, Room 407, 5333 Westbard Avenue, Bethesda, MD 20892.
National Institute of Diabetes and Digestive and Kidney Disease, Grants Management Officer, Room 639, Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20892.
National Institute of Child Health and Human Development, Chief, Office of Grants & Contracts, Executive Plaza North Room 501, 6130 Executive Building, Bethesda, MD 20892.
National Institute on Aging, Grants Management Officer, Gateway Building, Room 2N–212, 7201 Wisconsin Avenue, Bethesda, MD 20892.
National Institute of Dental Research, Grants Management Officer, NIDR, Westwood Building, Room 518, 5333 Westbard Avenue, Bethesda, MD 20892.
National Institute of Environmental Health Sciences, Grants Management Officer, Building 2, Room 204, 104 Alexander Drive, Research Triangle Park, NC 27709.
National Institute of General Medical Sciences, Grants Management Officer, NIGMS, Westwood Building, Room 953, Bethesda, MD 20892.
National Institute of Neurological Disorders and Stroke, Grants Management Officer, Federal Building, Room 1004A, Bethesda, MD 20892.
National Institute on Deafness and Other Communication Disorders, Grants Management Officer, Executive Plaza South, Room 400B, 630 Executive Boulevard, Rockville, MD 20852.
National Center for Nursing Research, Grants Management Officer, Building 31, Room 5B06, 9000 Rockville Pike, Bethesda, MD 20892.
National Eye Institute, Grants Management Officer, Building 31, Room 6A48, 9000 Rockville Pike, Bethesda, MD 20892.
National Center for Research Resources, Director, Office of Grants and Contracts Management, Westwood Building, Room 853, 5333 Westbard Avenue, Bethesda, MD 20892.

Appendix III—Notification Procedures

National Cancer Institute, See Appendix II.
National Heart, Lung, and Blood Institute, Privacy Act Coordinator, Building 31, Room 5A08, Bethesda, MD 20892.
National Library of Medicine, See Appendix II.
National Institute of Allergy and Infectious Diseases, See Appendix II.
National Institute of Diabetes and Digestive and Kidney Diseases, Administrative Officer, Building 31, Room 9A46, 9000 Rockville Pike, Bethesda, MD 20892.
National Institute of Child Health and Human Development, See Appendix II.
National Institute of Aging, See Appendix II.
National Institute of Dental Research, NIDR Privacy Act Coordinator, Building 31, Room 2C–35, 9000 Rockville Pike, Bethesda, MD 20892.
National Institute of Environmental Health Sciences, See Appendix II.
National Institute of General Medical Sciences, See Appendix II.

National Institute of Neurological Disorders and Stroke, See Appendix II.
National Institute on Deafness and Other Communication Disorders, See Appendix II.
National Eye Institute, See Appendix II.
National Center for Nursing Research, See Appendix II.
National Center for Research Resources, See Appendix II.

Appendix IV—Records Access Procedures

National Cancer Institute, Privacy Act Coordinator, Building 31, Room 10A30, 9000 Rockville Pike, Bethesda, MD 20892.
National Heart, Lung, and Blood Institute, See Appendix III.
National Library of Medicine, See Appendix II.
National Institute of Allergy and Infectious Diseases, Privacy Act Coordinator, Control Data Bldg., Room 4C–01, Rockville, MD 20892.
National Institute of Diabetes and Digestive and Kidney Diseases, See Appendix II.
National Institute of Child Health and Human Development, See Appendix II.
National Institute on Aging, See Appendix II.
National Institute of Dental Research, Grants Management Officer, Westwood Building, Room 518, 5333 Westbard Avenue, Bethesda, MD 20892.
National Institute of Environmental Health Sciences, See Appendix II.
National Institute of General Medical Sciences, Privacy Act Coordinator, Westwood Building, Room 9A05, Bethesda, MD 20892.
National Institute of Neurological Disorders and Stroke, Chief, Administrative Services Branch, Building 31, Room 8A49, 9000 Rockville Pike, Bethesda, MD 20892.
National Institute on Deafness and Other Communication Disorders, Chief, Administrative Management Branch, Building 31, Room 3C21, 9000 Rockville Pike, Bethesda, MD 20892.
National Eye Institute, Administrative Officer, Building 31, Room 6A31, 9000 Rockville Pike, Bethesda, MD 20892.
National Center for Research Resources, Privacy Act Coordinator, Westwood Building, Room 10A15, 5333 Westbard Avenue, Bethesda, MD 20892.

09–25–0115

SYSTEM NAME:

Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Control Data Bldg., Room 3A01, 6003 Executive Blvd., Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consultants and Clinical Investigators under National Institute of Allergy and Infectious Diseases (NIAID) Investigational New Drug Applications.

CATEGORIES OF RECORDS IN THE SYSTEM:

Curriculum vitae.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289a.

PURPOSE OF THE SYSTEM:

(1) To maintain a record of the investigators under Investigational New Drug (IND) applications. (2) To appoint consultants to the Clinical Research Subpanel (CRS).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in books.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to NIAID staff whose duties require the use of such information. Authorized users are located in the Clinical and Regulatory Affairs Section, Division of Microbiology and Infectious Diseases, NIAID. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards: Building is locked during off-duty hours.

3. Procedural Safeguards: Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employee.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 1100–G. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

Chief, Clinical and Regulatory Affairs Section, DMID, NIAID, Control Data Bldg., Room 3A–01, 6003 Executive Blvd., Rockville, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: NIAID Privacy Act Coordinator, Control Data Bldg., Room 4C–01, 6003 Executive Blvd. Rockville, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as record notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and

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reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Individuals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0118

SYSTEM NAME:

Contracts: Professional Services Contractors, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 31, Room 3A52, DCT, 9000 Rockville Pike, Bethesda, MD 20892.
Building 31, Room 3A22, OD, 9000 Rockville Pike, Bethesda, MD 20892.
Building 31, Room 10A10, DEA, 9000 Rockville Pike, Bethesda, MD 20892.
Building 31, Room 3A05, DCBDC, 9000 Rockville Pike, Bethesda, MD 20892.
Building 31, Room 11A11, DCE, 9000 Rockville Pike, Bethesda, MD 20892.
Building 31, Room 10A50, DCPC, 9000 Rockville Pike, Bethesda, MD 20892.
Write to System Manager at the address below for the address of the Federal Records Center where records may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals under contract with the National Cancer Institute.

CATEGORIES OF RECORDS IN THE SYSTEM:

Professional Services Contracts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 USC 241(d), 281.

PURPOSE OF THE SYSTEM:

Used by staff for general administrative purposes to assure compliance with contract program requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

1. Authorized Users: Access is limited to authorized personnel (system manager and staff).

2. Physical Safeguards: Records are maintained in offices which are locked when not in use.

3. Procedural Safeguards: Access to files is strictly controlled by system manager and staff.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual, Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 2800–A–4, which allows records to be destroyed after a maximum period of 6 years and 3 months after final payment. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

Administrative Officer, DCT, Building 31, Room 3A52, 9000 Rockville Pike, Bethesda, MD 20892.

Administrative Officer, OD, National Institutes of Health, Building 31, Room 11A35, 9000 Rockville Pike, Bethesda, MD 20892.

Administrative Officer, DEA, Building 31, Room 10A10, 9000 Rockville Pike, Bethesda, MD 20892.

Administrative Officer, DCBDC, Building 31, Room 3A05, 9000 Rockville Pike, Bethesda, MD 20892.

Administrative Officer, DCE, Building 31, Room 11A11, 9000 Rockville Pike, Bethesda, MD 20892.

Administrative Officer, DCPC, Building 31, Room 10A50, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to the appropriate System Manager listed above to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures.

Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Individuals in the system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0121

SYSTEM NAME:

International Activities: Senior International Fellowships Program, HHS/NIH/FIC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Building 31, Room B2C39, 9000 Rockville Pike, Bethesda, MD, 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for Senior International Fellowships.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications and associated records and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 242 e.

PURPOSE OF THE SYSTEM:

For award and administration of fellowships to outstanding faculty members in midcareer from U.S biomedical research and educational institutions for study abroad.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Each fellow's home institution receives a notice of award and funding for the fellowship.

2. Applications are made available to authorized employees and agents of the US, including the General Accounting Office for purposes of investigations, inspections and audits, and in appropriate cases, to the Department of Justice for proper action under civil and criminal laws.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and computer discs.

RETRIEVABILITY:

Name and fellowship number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to Fogarty International Center (FIC) program staff. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

2. Physical Safeguards. The records are stored in locked file cabinets and offices are locked during off-duty hours.

3. Procedural Safeguards. Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employees. For computerized records access is controlled by the use of security codes known to authorized users and access codes are changed periodically. The computer system maintains an audit record of all requests for access.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 2300–320–7, which allows records to be destroyed after a maximum period of 6 years after the close of a case. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

Chief, International Research Awards Branch, Fogarty International Center, National Institutes of Health, Building 31, Room B2C39, 9000 Rockville Pike, Bethesda, Md. 20892.

NOTIFICATION PROCEDURE:

Requests for notification of or access to records should be addressed to the system manager, listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a 5,000 dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Information obtained from applicants and persons supplying recommendations through the Division of Research Grants.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0124

SYSTEM NAME:

Administration: Pharmacology Research Associates, HHS/NIH/NIGMS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Westwood Building, Room 919, 5333 Westbard Avenue, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records are stored.

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for positions as Pharmacology Research Associates with the Institutes of General Medical Sciences (NIGMS).

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual application forms, academic transcripts, reprints and references, curriculum vitae and salary adjustment memorandum for fellows.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 209.

PURPOSE(S) OF THE SYSTEM:

For review, award and administration of the Pharmacology Research Associate Program (PRAT).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

By name of applicant.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical, and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain the system are instructed to grant access only to authorized personnel (System Manager and staff assigned to the program).

2. Physical Safeguards: The records are maintained in locked file cabinets when not in use and system location is locked during non-working hours.

3. Procedural Safeguards: Access to files is strictly controlled by responsible individuals who have been instructed in the Privacy Act requirements. Records are returned to the locked cabinets when not in use.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 2300–320–2(a). Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

Director, PRAT Program, Pharmacological Sciences, NIGMS Westwood Building Room 919, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to System Manager and provide the following information: applicant's name and date of application.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under notification procedure above, and reasonably identify the record, and specify the information to be contested, the corrective action sought. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Information obtained from applicants, university registrars, and persons supplying recommendations through the PRAT Program. Salary adjustment memos from preceptors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0129

SYSTEM NAME:

Clinical Research: Clinical Research Studies Dealing With Hearing, Speech, Language and Chemosensory Disorders, HHS/NIH/NIDCD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institute on Deafness and Other Communication Disorders (NIDCD), 6120 Executive Boulevard, Rockville, MD 20852.

And at hospitals, medical centers, universities and educational settings under contract. Inactive records may be stored at a Federal Records Center. A list of locations is available upon request from the System Manager at the address below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients and normal volunteers participating in clinical research studies dealing with hearing, speech, language and chemosensory disorders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical findings, clinical research data, medical and educational histories and research data on the hearing, speech, language, cognition and chemosensory systems of subjects being tested.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289a, 289c.

PURPOSE OF THE SYSTEM:

Clinical research on the disorders of speech, language, and hearing to discover factors leading to these disorders and to improve prevention, diagnoses, and treatment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for

which the records are collected. The recipients are required to protect such records from improper disclosure.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Name or identifier code.

SAFEGUARDS:

1. Authorized Users: Employees who maintain the system are instructed to grant access only to the principal investigator and staff assigned to a particular project, and to other authorized personnel (project officer, contracting officer).

2. Physical Safeguards: Records are locked in cabinets when not in actual use and system location is locked during non-working hours.

3. Procedural Safeguards: Personnel having access to system are trained in Privacy Act requirements. Records are returned to locked file cabinets at end of working day.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Communication Sciences and Disorders, NIDCD Executive, Plaza South, Room 400B, 6120 Executive Boulevard, Rockville, MD 20852.

NOTIFICATION PROCEDURE:

Write to: Chief, Administrative Management Branch, NIDCD, Building 31, Room 3C21, 9000 Rockville Pike, Bethesda, Maryland 20892 and ask if a file exists with your name in studies of the Division of Communication Sciences and Disorders. Please supply the following information:

1. Approximate date and place of examination and/or treatment.

2. Name of the study, if known.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to system manager and reasonably identify the record, specify the information to be contested, and state the corrective action sought and the reasons for the correction. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Information provided by patients, patients' families, hospital records, school records, and clinical investigators.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0140

SYSTEM NAME:

International Activities: International Scientific Researchers in Intramural Laboratories at the National Institutes of Health, HHS/NIH/FIC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Fogarty International Center, Building 16A, Room 101, 9000 Rockville Pike, Bethesda, MD 20892, and Division of Computer Research and Technology, Building 12A, Room 3061, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Ancillary records are located in the Office of the Associate Director for Intramural Affairs, laboratories, administrative and personnel offices where participants are assigned. Write to System Manager at the address below for the address of the Federal Records Center where records are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Health scientists at all levels of their postdoctoral or equivalent research careers who are invited to the National Institutes of Health for further training or to conduct research in their biomedical specialties under the auspices of FIC's administration of International Activities. Most of these scientists are foreign, however some may be resident aliens or U.S. citizens.

Individuals in these categories include Visiting Associates, Visiting Scientists, Foreign Special Experts who are employees and Visiting Fellows, Guest Researchers, Exchange Scientists, International Research Fellows, Fogarty Scholars, Special Volunteers, Adjunct Scientists and Residents who are not employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

History of fellowship, employment and/or stay at NIH; education, immigration data and references. For payroll purposes, social security numbers are requested of all applicants accepted into the program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 242l and Section 307 of the Public Health Service Act.

PURPOSE OF THE SYSTEM:

To document the individual's presence at the NIH, to record immigration

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history of the individual in order to verify continued eligibility in existing programs, and to meet requirements in the Code of Federal Regulations (8 CFR, parts 8 and 22, "Aliens and Nationality").

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Information is made available to authorized employees and agents of the U.S. Government including, but not limited to, the General Accounting Office, the Internal Revenue Service, and the FBI and Immigration and Naturalization Service, Department of Justice, for purposes of investigations, inspections and audits.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

3. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders and on file cards, computer tapes, computer disks and microfilm.

RETRIEVABILITY:

By name, country of citizenship, institution, fellowship number, social security number, visa and immigration status, program category, dates of stay at NIH, NIH component, and home address.

SAFEGUARDS:

A variety of safeguards is implemented for the various sets of records included under this system according to the sensitivity of the data they contain.

1. Authorized Users: NIH administrative and personnel staff screened by FIC staff to access information on a need-to-know basis. Only FIC staff are authorized to add, change, or delete data. Other authorized users may only read data, with the exception of designated computer programmers who have specific permission to make necessary programming changes.

2. Physical Safeguards: The records are maintained in locked file cabinets, and offices are locked during off-duty hours.

3. Procedural Safeguards: Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employees. For computerized records, access is controlled by the use of security codes known only to authorized users; access codes are changed periodically. The computer system maintains an audit record of all requests for access.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 2300–320, which allows records to be destroyed after a maximum period of 6 years after the close of a case. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

Chief, International Services and Communications Branch, Building 16A, Room 101, Fogarty International Center, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

NOTIFICATION PROCEDURE:

Requests for notification of or access to records should be addressed to the system manager as listed above. Verification of identity is required.

RECORD ACCESS PROCEDURE:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official listed under notification procedure above, and reasonably identify the record, and specify the information to be contested, and state the corrective action sought and the reasons for the correction. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD ACCESS CATEGORIES:

Subject individuals and other federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0142

SYSTEM NAME:

Clinical Research: Records of Subjects in Intramural Research, Epidemiology, Demography and Biometry Studies on Aging, HHS/NIH/NIA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records included in this system will be located in hospitals and clinics, research centers and research foundations, and in facilities of the National Institute on Aging (NIA) in Bethesda, MD. They may be stored at Federal Records Centers. A list of locations is available upon request from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants in these studies will include: (1) Individuals whose physical, genetic, social, psychological, cultural, economic, environmental, behavioral, pharmacological, or nutritional conditions or habits are studied in relationship to the normal aging process and/or diseases and other normal or abnormal physical or psychological conditions of the aged, and (2) normal volunteers who are participants in such studies.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system will consist of a variety of health, demographic, and statistical information resulting from or contained in research findings, medical histories, vital statistics, personal interviews, questionnaires, or direct observations. The system will also include records of current addresses of study participants, and correspondence from or about participants in the studies. When supplied on a voluntary basis, Social Security numbers will also be included.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority is provided by Sections 301, Research Contracting, and 463–4, Health Research Extension Act of 1985, Pub. L. 99–158.

PURPOSE(S) OF THE SYSTEM:

The National Institute on Aging will use the data collected: (1) In research projects on (a) the health status of individuals and changes in health status over time, (b) the incidence and prevalence of certain diseases and problems of the aged in certain populations, and (c) the changes that take place as individuals age; (2) and for program planning and evaluation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Records may be disclosed to HHS contractors, collaborating researchers and their staffs in order to accomplish the basic research purpose of this system. The recipients will be required to maintain Privacy Act safeguards with respect to such records.

2. Data may be disclosed to organizations deemed qualified by the Secretary to carry out quality assessment, medical audits or utilization review.

3. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

4. In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosure may be made to the Department of Justice for the purpose of obtaining its advice.

5. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

6. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders, magnetic tapes or discs, punched cards, or bound notebooks. Stored data may include textual, photographic, X-ray, or other material.

RETRIEVABILITY:

Information will be retrieved by personal identifiers such as name, code number and/or Social Security number, when this is supplied on a voluntary basis.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. Authorized Users: Access will be limited to principal investigators, collaborating researchers and necessary support staff.

2. Physical Safeguards: Hard copy data will be maintained in locked file cabinets. Information stored in computer systems will be accessible only through proper sequencing of signal commands and access codes specifically assigned to the Project Officer or contractor.

3. Procedural Safeguards: Access to the information will be controlled directly by the Project Officer or his or her representative at remote locations, and by the system manager at NIA locations. Contractors and collaborating researchers will be notified that they are subject to the provisions of the Privacy Act, and will be required to make formal agreements to comply with these provisions.

The particular safeguards implemented in each project are developed in accordance with Chapter 45–13 and supplementing Chapter PHS hf: 45–13 of the HHS General Administration Manual and Part 6, ADP Systems Security, of the HHS Information Resources Management Manual, and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual, Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

Associate Director, Epidemiology, Demography and Biometry Program, National Institute on Aging, Gateway Building, Suite 3C321, 7201 Wisconsin Avenue, Bethesda, MD 20892.

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NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address below and provide the following information in writing:

1. Full name at time of participation in the study,
2. Date of birth,
3. Home address at the time of study,
4. The facility where the examination was given or where information was collected,
5. Approximate date or dates of participation,
6. Name of study, if known,
7. Current name, address and telephone number.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical or dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Contact the system manager at the above address and provide the same information as outlined under the notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the System Manager at the above address. The contestor must reasonably identify the record, specify in writing the information being contested, and state the corrective action sought and the reasons for the correction. The right to contest records is limited to information which is incomplete, irrelevant, incorrect or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Information will be obtained directly from individual participants and from medical and clinical research observations, or indirectly from existing source documents such as disease registries.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0148

SYSTEM NAME:

Contracted and Contract-Related Research: Records of Subjects in Clinical, Epidemiological and Biomedical Studies of the National Institute of Neurological Disorders and Stroke and the National Institute on Deafness and Other Communication Disorders, HHS/NIH/NINDS and HHS/NIH/NIDCD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

At National Institutes of Health facilities in Bethesda, Maryland, and at hospitals, medical schools, universities, research institutions, commercial organizations, state agencies, and collaborating Federal agencies. Inactive records may be retired to Federal Records Centers. A list of locations is available upon request from the respective System Managers of the subsystems included in this notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients with neurological diseases, communicative disorders, stroke, hearing loss, chemosensory deficits, and related diseases; normal, healthy volunteers who serve as controls for comparison with patients; relatives of patients; and other individuals whose characteristics or conditions are suited for possible connections with the occurrence of the diseases and disorders under investigations. Subject individuals include both adults and children.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of clinical, biomedical, and epidemiological information resulting from or contained in direct observations, medical records and other histories, vital statistics reports, records on biological specimens (e.g., blood, urine, etc.), personal interviews, questionnaires, progress reports, correspondence, or research findings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 241, Research and Investigation, and 289a, Establishment of Institutes, of the Public Health Service Act (42 U.S.C. 301, 431).

PURPOSE OF THE SYSTEM:

This system will be used to support (1) contracted and contract-related epidemiological, clinical and biometric investigations into the causes, nature, outcome, therapy, prevention and cost of neurological and communicative disorders, hearing loss, chemosensory deficits, and stroke; (2) review and evaluation of the progress of these research projects, and identification and planning for improvements or for additional research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to protect such records from improper disclosure.

2. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments, medical audits or utilization review.

3. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

4. In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosures may be made to the Department of Justice for the purpose of obtaining its advice.

5. The Department contemplates that it may contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor will be required to maintain Privacy Act safeguards with respect to such records.

6. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

7. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders, computer-accessible forms (e.g. tapes or discs), punched cards, bound notebooks, microfilm, charts, graphs and X-rays.

RETRIEVABILITY:

Information is retrieved by name and/or patient identification number.

SAFEGUARDS:

1. Authorized Users: Access to or disclosure of information is limited to collaborating researchers, contractors and employees, and other authorized biomedical researchers who are involved in the conduct, support or review and evaluation of the research activities supported by this system.

2. Physical Safeguards: Data are kept in secured areas (e.g. rooms which are locked when not in regular use, buildings with controlled access). Data stored in computer-accessible form is accessed through the use of key words known only to principal investigators or authorized personnel; all other information is stored in locked files.

3. Procedural Safeguards: Contractors and collaborating or other researchers are required to comply with the provisions of the Privacy Act and with HHS Privacy Act regulations.

These and other appropriate safeguards are implemented in each project in accordance with Chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45–13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual, Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGERS AND ADDRESSES:

NINDS and NIDCD research activities are divided, functionally and administratively. In effect, there are six subsystems within this single umbrella system. NINDS has five programs and NIDCD one. System Managers have been designated for each subsystem as follows:

Director, Division of Communication Sciences and Disorders, NIDCD, NIH, Executive Plaza South, Room 400B, 620 Executive Boulevard, Rockville, MD 20852.

and

Director, Division of Fundamental Neurosciences, NINDS NIH, Federal Building, Room 916, 7550 Wisconsin Avenue, Bethesda, MD 20892.

and

Director, Division of Convulsive, Developmental and Neuromuscular Disorders, NINDS, NIH, Federal Building, Room 816, 7550 Wisconsin Avenue, Bethesda, MD 20892.

and

Director, Division of Demyelinating Atrophic, and Dementing Disorders, NINDS, NIH, Federal Building, Room 810, 7550 Wisconsin Avenue, Bethesda, MD 20892.

and

Director, Division of Stroke and Trauma, NINDS, NIH, Federal Building, Room 8A08, 7550 Wisconsin Avenue, Bethesda, MD 20892.

and

Director, Division of Intramural Research, NIH, Building 10, Room 5N14, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to:

NINDS Privacy Act Coordinator, Federal Building, Room 816, 7550 Wisconsin Avenue, Bethesda, MD 20892.

or

NIDCD Privacy Act Coordinator, Building 31, Room 3C02, 9000 Rockville Pike, Bethesda, MD 20892.

and provide the following information:

1. System name,
2. Complete name and home address at the time of the study,
3. Birth date,
4. Facility conducting the study,
5. Disease type (if known),
6. Approximate dates of enrollment in the research study.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

Individuals seeking notification of or access to medical records should designate a representative (including address) who may be a physician, other health professional, or other responsible individual, who would be willing to review the record and inform the subject individual of its contents, at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) of whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

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RECORD ACCESS PROCEDURE:

Same as notifications procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the system manager and reasonably identify the record, specify the information being contested and state the corrective action sought and the reasons for the correction. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Information in these records is obtained directly from individual participants, and from physicians, research investigators and other collaborating persons, and from medical records and clinical research observations at hospitals, HHS agencies, universities, medical schools, research institutions, commercial institutions, state agencies, and collaborating Federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0151

SYSTEM NAME:

Administration: Public Health Service ALERT Records Concerning Individuals Under Investigation for Possible Misconduct in Science or Subject to Sanctions for Such Misconduct, HHS/PHS/NIH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Science Integrity National Institutes of Health (NIH) Building 31 Room B1C39 9000 Rockville Pike Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects may include (1) researchers currently or formerly employed by the Federal Government; (2) individuals being considered for appointment to Public Health Service (PHS) advisory committees; (3) investigators on research grants, fellowships, cooperative agreements, or contracts awarded by any PHS agency, ("Investigators" may include principal investigators, co-investigators, program directors, trainees, recipients of career awards or fellowships, or other individuals who conduct or are responsible for research or research training funded by PHS.); (4) research investigators, such as guest workers, not employed by PHS but who conduct research in PHS facilities or are closely associated with research conducted by PHS; (5) other individuals, such as subgrantees, subcontractors or assistants on research or research training grants, contracts or cooperative agreements, who by training, experience, occupation or other qualifications are potential candidates for research or research training grants, contracts, cooperative agreements or other benefits.

Such individuals would be subjects of records in this system if they fall within either of the following two categories:

(1) Subjects of formal investigations for scientific misconduct or serious misappropriation of Federal research funds, if the PHS Agency-level/Staff Office Misconduct Policy Officer has determined that the alleged misconduct is serious enough, or that the investigation has produced sufficient information, to warrant attention when a PHS agency considers awarding research or research training funds or other benefits to such individuals.

(2) Subjects of sanctions imposed as a result of determinations that scientific misconduct or serious misappropriation of Federal research funds has occurred. Such sanctions include (a) actions affecting eligibility for research and training awards, such as special conditions for receipt of an award, suspension or termination of an award, or debarment of an individual; (b) actions affecting eligibility for appointment to a committee which advises PHS; (c) special restrictions on regulated research, such as disqualification from eligibility to use investigational drugs or special conditions for protection of human research subjects; and (d) termination of employment or other disciplinary action against an employee of PHS.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to investigations or findings of misconduct in science and to actions that PHS has taken in connection with such investigations or findings. Misconduct in science is defined as (1) the serious deviation, such as fabrication, falsification, or plagiarism, from accepted practices in proposing, conducting and reporting the results of research; or (2) the material failure to comply with Federal requirements affecting specific aspects of the conduct of research, e.g., the protection of human subjects and the welfare of laboratory animals.

In addition to records relating to misconduct in science, the system includes records relating to investigations or findings of serious misappropriation of Federal research funds—e.g., diversion of such funds to personal use. It does not include records documenting normal business transactions between a PHS agency and an awardee institution, except to the extent that such records are directly relevant to consideration of the fitness of an individual to receive a PHS award or other benefit.

The system consists of two subsystems which contain the following types of records:

(1) Records on pending or ongoing investigations identifying the alleged misconduct; the individual and/or institution under investigation; any present, past or pending research, and/or research training awards; PHS agencies or offices involved, and the organization responsible for the investigation.

(2) Records summarizing sanctions imposed because of a finding of misconduct, which adversely affect the individual's eligibility for research or research training awards or other benefits for a specified period of time.

Either subsystem may contain responses from subject individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for this system comes from the legislation which authorizes PHS to make awards for biomedical research and research training, and from PHS's concomitant responsibility to assure both that funds disbursed under awards are spent for authorized purposes and that recipients of such funds conform to all appropriate laws and regulations. (Public Health Service Act: 42 U.S.C. 241, 242b, 242c, 242l, 242m, 247c, 281–289h, 290aa–9, 290bb, 290bb–1, 290cc, 300a–2 300b–1–b–3, 300c–12, 300z–7, as these provisions relate to awards for biomedical research and research training; Occupational Safety and Health Act: 29 U.S.C. 669).

PURPOSE OF THE SYSTEM:

This system of records enables PHS agencies to discharge effectively their responsibilities in the award and administration of research and training grants, cooperative agreements and contracts, while protecting the privacy and other rights of individuals under investigation or sanction for scientific misconduct or misappropriation of funds. The ALERT system is used to collect, control and disseminate to PHS agency officials on a need-to-know basis

information that an individual (1) is under investigation for possible misconduct in science or misappropriation of funds, or a decision has been made to undertake such an investigation; or (2) has been subjected to a sanction at the conclusion of an investigation for misconduct or misappropriation of funds.

Specifically,

(1) PHS records the existence of such sanctions in the system so that PHS agencies can track and implement the sanctions, for example by refusing to accept an application or proposal from a debarred person. In addition, PHS informs members of technical merit review groups of actions taken if the disclosure bears directly on the scientific merit of an application or proposal under consideration or the fiscal integrity of the investigator or applicant, or if necessary to ensure an unbiased review by providing an accurate account of the case, for example, when information concerning the conduct investigated has been disclosed by other sources, such as the press or other communications media. PHS does not use this system to make decisions on imposition of sanctions.

(2) When investigative findings fail to confirm an instance of misconduct or show that any misconduct was not of sufficient importance to warrant imposing sanctions, leading to a decision not to impose any sanctions, (a) the individual's name is removed from the ALERT system of records and the individual is notified in writing; (b) responsible PHS agency officials are notified of the outcome; (c) if any interim administrative sanctions had been imposed, they are lifted; and (d) if a competing application or proposal from the individual is pending or anticipated in the near future, the Misconduct Policy Officer of the relevant agency consults with officials responsible for review of the application or proposal to identify and resolve any concerns that might affect the objectivity of the review. For example, technical merit review groups would be informed of the outcome of the investigation if there were reason to believe that reviewers had received incomplete or misleading information about the case.

(3) PHS agencies use ALERT system records on pending or ongoing investigations to make informed decisions on appropriate actions regarding awards of research, research training and related activities or other benefits to individuals under investigation as follows: (a) PHS agency officials responsible for the award of research funds, in consultation with the PHS agency-level Misconduct Policy Officer, weigh information on investigations in deciding whether to take interim administrative action, such as delaying, restricting or denying award of research funds. Any interim action is taken with a view towards protecting the rights of all parties involved and minimizing disruption to an ongoing project, the awardee institution, and the activities of those involved in the project. (b) To obtain independent advice on appropriate actions with respect to potential competing awards to individuals or organizations under investigation, these officials or their designees inform the members of the appropriate National Advisory Council or Board, advisory bodies legally established to advise PHS on funding of research projects, of the existence and status of an investigation. Such disclosure is made in closed session when the Council or Board is considering the funding of research by the individual or institution. To avoid influencing Technical Reviews, PHS will not inform members of scientific review groups about instances of possible misconduct or ongoing investigations. However, if a given case has received such extensive publicity that review of an application or proposal may be compromised, the responsible PHS agency official may defer the review or inform the reviewers of the status of PHS's activities with respect to the possible misconduct.

(4) The PHS Committee on Misconduct in Science, and individual PHS Agency/Staff Office Misconduct Policy Officers, review ALERT records in order to inform appropriate officials within their organizations who are responsible for deciding on the actions described in other items of this section.

(5) PHS Committee Management Officers may review records in the system concerning candidates for appointment to advisory committees in order to make informed decisions about making, delaying or denying appointments.

(6) Upon request, the system manager may disclose information to PHS agency officials who are considering hiring a subject individual.

(7) When a research activity within PHS (i.e., intramural research activity) is the subject of an investigation by a PHS regulatory agency, information on that investigation in this system may be communicated to the PHS intramural officials responsible for the research activity.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. PHS may notify responsible officials of awardee institutions or organizations when, in connection with an investigation or finding of misconduct by an individual employed by or affiliated with the institution or organization, a PHS agency takes an action affecting research and research training awards to the institution or organization. Information disclosed will be limited to the name of the subject individual, description of the action and the reasons for it.

2. Information may be disclosed to qualified experts not within the definition of Department employees as prescribed in Department Regulations to the extent the information is pertinent to the review of applications by those experts.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. Disclosure may be made from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) HHS employee in his or her individual capacity or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name of the individual under investigation or subject to sanction.

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SAFEGUARDS:

1. Authorized Users: Records are available only to the system manager, PHS Agency-level/Staff Office Misconduct Policy Officers, the Deputy Director for Extramural Research and Training, NIH, and other responsible PHS agency officials considering the award of funds for research, research training or related activities or other benefits to a subject individual or institution, the appointment of a subject individual to an advisory committee, the hiring of a subject individual, or the management of a PHS agency research activity under investigation. Any disclosure to other individuals must be authorized by the system manager.

2. Procedural Safeguards: Access to records is strictly controlled by the system manager and the officials specified under "Authorized Users." Individuals who receive disclosures from this system are informed that the information is confidential. They are instructed to address all questions and inquiries from any party either to the system manager or to the appropriate Misconduct Policy Officer for reply. Disclosures to Boards, Councils or review groups are made in sessions which are closed to the public. In addition, PHS staff and others not directly responsible for a potential award may be barred when a Board or Council considers an ALERT case, if they would not have been informed about the case otherwise. Only the PHS Committee on Misconduct in Science or individual PHS agency-level Misconduct Policy Officers, acting on the advice of the system manager, may authorize additions, alterations or deletion of records in this system.

3. Physical Safeguards: Records are kept in locked file cabinets in offices which are locked when not attended. Special measures, commensurate with the sensitivity of the records, are taken to prevent unauthorized copying or disclosure of records.

These practices are in compliance with the standards of chapter 45–13 of the HHS General Administration Manual and supplementary chapter PHS hf: 45–13.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 4000–E–3, which allows records on an investigation in progress to be retained until the investigation is completed. If the investigation results in a determination that no misconduct occurred, or that any misconduct was not significant enough to warrant official sanction, the record relating to that investigation is destroyed. If an investigation results in official sanction, a record of such sanction is maintained for the duration of the sanction and is then destroyed. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

Deputy Director, Office of Science Integrity, National Institutes of Health, Building 31, Room B1C39, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Individuals are routinely notified in writing when they become the subject of a record in this system, unless a law enforcement agency has instructed PHS not to do so. Subject individuals are also informed routinely when their records are deleted from the system. Individuals may request notification by writing to the system manager at the address above; provide your full name and state that the inquiry concerns Privacy Act system of records number 09–25–0151. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a fine of not more than five thousand dollars.

RECORD ACCESS PROCEDURE:

Individuals may write to the system manager at the address above and provide the same information as required for notification. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Write to the system manager and reasonably identify the record and the information being contested; and state your reasons for requesting the change, along with supporting information to show that the record is untimely, incomplete, irrelevant or inaccurate. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Information in these records is obtained from subject individuals, awardee institutions or organizations, PHS agencies and organizations responsible for investigations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0153

SYSTEM NAME:

Biomedical Research: Records of Subjects in Biomedical and Behavioral Studies of Child Health and Human Development, HHS/NIH/NICHD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records included in this system are located in hospitals and clinics, research centers, educational institutions, commercial organizations, local and State agencies, and other Executive Branch agencies of the Federal Government under contract to the National Institute of Child Health and Human Development (NICHD), and in NICHD facilities in Bethesda, Maryland. Inactive records may be stored at Federal Records Centers. A list of specific locations and contractors is available upon request from the System Manager, whose address is listed below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants in these studies include adults and children (a) who are presently or have been treated by the NICHD, (b) whose physical, genetic, social, economic, environmental, behavioral or nutritional conditions or habits are being studied by the NICHD, or (c) normal volunteers who have agreed to provide control data for purposes of comparison.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of clinical, medical, and statistical information collected in biomedical and behavioral research studies, such as medical histories, vital statistics, personal interviews, questionnaires, current addresses of study participants, radiographs, records on biological specimens, study models, and correspondence from or about participants in these studies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 301, Research and Investigation, and section 441, National Institute of Child Health and Human Development, of the Public Health Service Act as amended (42 U.S.C. sections 241, 289d).

PURPOSE(S) OF THE SYSTEM:

This system is used: (1) For program review, evaluation, planning, and administrative management for research on child health and human development; (2) to monitor the incidence, prevalence or development of the disease, condition, behavior, or health status under investigation; (3) to determine the relation of various factors (e.g., social, economic, environmental, physical, and medical) to the occurrence of the disease, condition, development, behavior, or health status under investigation; (4) to identify abnormal disease, condition, or health status and inform the Centers for Disease Control (CDC) or the Food and Drug Administration (FDA) of the existence of such conditions. CDC uses this information in fulfilling its congressionally mandated responsibility for the monitoring of disease and prevention of epidemics. FDA uses this information in carrying out its congressional mandate for controlling certain potentially harmful products.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff for the purpose of analyzing data and preparing scientific reports and articles in order to accomplish the research purpose for which the records are collected. The recipients are required to comply with the requirements of the Privacy Act with respect to such records.

2. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessment, medical audits or utilization review.

3. The Department contemplates that it may contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor will be required to comply with the requirements of the Privacy Act with respect to such records.

4. Certain diseases and conditions, including infectious diseases, may be reported to appropriate representatives of State or Federal Government as required by State or Federal law.

5. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

6. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

7. In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders, microfilm, magnetic tapes or disks, punched cards, or bound notebooks.

RETRIEVABILITY:

Information is retrieved by name and/or a participant identification number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to contractor personnel; consultants to the contractor; the NICHD project officer; and NICHD employees whose duties require the use of such information. One time and special access to the data is controlled by the System Manager, the NICHD Project Officer, and the Contract and/or Project Director.

2. Physical Safeguards: Records are stored in locked files or secured areas. Computer terminals are in secured areas.

3. Procedural Safeguards: Names and other identifying particulars are deleted when data from original records is encoded for analysis. Encoded data is indexed by code numbers. Tables linking these code numbers with actual identifiers are maintained separately. Code numbers and identifiers are linked only if there is a specific need, such as alerting the volunteer subjects to any findings in the study that might affect their health. Data stored in computers is accessed through the use of passwords/keywords known only to the principal investigators or authorized personnel. These passwords/keywords are changed frequently.

The particular safeguards implemented in each project will be developed in accordance with Chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS hf: 45–13; Part 6, "ADP Systems Security," of the HHS ADP Systems Manual, and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

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RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows records to be kept as long as they are useful in scientific research. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

Chief, Contracts Management Branch, NICHD, Executive Plaza North, Room 610H, 6130 Executive Blvd., North Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: NICHD Privacy Act Coordinator, Building 31, Room 2A–17, 9000 Rockville Pike, Bethesda, MD 20892, and provide the following information in writing:

1. Full name and address at time of participation in the study.
2. Name or description of the study.
3. Location and approximate dates of participation.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of, or access to, a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, the medical record of a child or incompetent person shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify his or her relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURES:

Same as notification procedure above. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURES:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained directly from individual participants, medical and clinical research observations, and other federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0156

SYSTEM NAME:

Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Institutes of Health, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system of records is an umbrella system comprising separate sets of records located either in the organizations responsible for conducting evaluations or at the sites of programs or activities under evaluation. Locations include National Institutes of Health (NIH) facilities in Bethesda, Maryland, or facilities of contractors of the NIH. Write to the appropriate System Manager below for a list of current locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are those who provide information or opinions that are useful in evaluating programs or activities of the NIH, other persons who have participated in or benefitted from NIH programs or activities; or other persons included in evaluation studies for purposes of comparison. Such individuals may include (1) participants in research studies; (2) applicants for and recipients of grants, fellowships, traineeships or other awards; (3) employees, experts and consultants; (4) members of advisory committees; (5) other researchers, health care professionals, or individuals who have or are at risk of developing diseases or conditions studied by NIH; (6) persons who provide feedback about the value or usefulness of information they receive about NIH programs, activities or research results; (7) persons who have received Doctorate level degrees from U.S. institutions; (8) persons who have worked or studied at U.S. institutions that receive(d) institutional support from NIH.

CATEGORIES OF RECORDS IN THE SYSTEM:

This umbrella system of records covers a varying number of separate sets of records used in different evaluation studies. The categories of records in each set depend on the type of program being evaluated and the specific purpose of the evaluation. In general, the records contain two types of information: (1) Information identifying subject individuals, and (2) information which enables NIH to evaluate its programs and services.

(1) Identifying information usually consists of a name and address, but it might also include a patient identification number, grant number, Social Security Number, or other identifying number as appropriate to the particular group included in an evaluation study.

(2) Information used for evaluation varies according to the program evaluated. Categories of evaluative information include personal data and medical data on participants in clinical and research programs; personal data, publications, professional achievements and career history of researchers; and opinions and other information received directly from individuals in evaluation surveys and studies of NIH programs.

The system does not include any master list, index or other central means of identifying all individuals whose records are included in the various sets of records covered by the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for this system comes from the authorities regarding the establishment of the National Institutes of Health, its general authority to conduct and fund research and to provide training assistance, and its general authority to maintain records in connection with these and its other functions (42 U.S.C. 203, 241, 289l–1 and 44 U.S.C. 3101).

PURPOSE OF THE SYSTEM:

This system supports evaluation of the policies, programs, organization, methods, materials, activities or services used by NIH in fulfilling its legislated mandate for (1) conduct and support of biomedical research into the causes, prevention and cure of diseases; (2)

support for training of research investigators; (3) communication of biomedical information.

This system is not used to make any determination affecting the rights, benefits or privileges of any individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors and collaborating researchers, organizations, and State and local officials for the purpose of conducting evaluation studies or collecting, aggregating, processing or analyzing records used in evaluation studies. The recipients are required to protect the confidentiality of such records.

2. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments, medical audits or utilization review.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. The Department may disclose information from this system of records to the Department of Justice, to court or other tribunal, or to another party before such tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders, bound notebooks, or computer-accessible media (e.g., magnetic tapes or discs).

RETRIEVABILITY:

Information is retrieved by name and/or participant identification number within each evaluation study. There is no central collection of records in this system, and no central means of identifying individuals whose records are included in the separate sets of records that are maintained for particular evaluation studies.

SAFEGUARDS:

A variety of safeguards are implemented for the various sets of records in this system according to the sensitivity of the data each set contains. Information already in the public domain, such as titles and dates of publications, is not restricted. However, sensitive information, such as personal or medical history or individually identified opinions, is protected according to its level of sensitivity. Records derived from other systems of records will be safeguarded at a level at least as stringent as that required in the original systems. Minimal safeguards for the protection of information which is not available to the general public include the following:

1. Authorized Users: Regular access to information in a given set of records is limited to NIH or to contractor employees who are conducting, reviewing or contributing to a specific evaluation study. Other access is granted only on a case-by-case basis, consistent with the restrictions required by the Privacy Act (e.g., when disclosure is required by the Freedom of Information Act), as authorized by the system manager or designated responsible official.

2. Physical Safeguards: Records are stored in closed or locked containers, in areas which are not accessible to unauthorized users, and in facilities which are locked when not in use. Records collected in each evaluation project are maintained separately from those of other projects. Sensitive records are not left exposed to unauthorized persons at any time. Sensitive data in machine-readable form may be encrypted.

3. Procedural Safeguards: Access to records is controlled by responsible employees and is granted only to authorized individuals whose identities are properly verified. Data stored in mainframe computers is accessed only through the use of keywords known only to authorized personnel. When personal computers are used, magnetic media (e.g. diskettes) are protected as under Physical Safeguards. When data is stored within a personal computer (i.e., on a "hard disk"), the machine itself is treated as though it were a record, or records, under Physical Safeguards. Contracts for operation of this system of records require protection of the records in accordance with these safeguards; NIH project and contracting officers monitor contractor compliance. These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 1100–C–2. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGERS AND ADDRESSES:

See Appendix 1.

Policy coordination for this system is provided by: Director, Division of Planning and Evaluation, Office of Science Policy and Legislation, National Institutes of Health, Building 31, Room 4B25, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the official of the organization responsible for the evaluation, as listed in Appendix 2. If you are not certain which component of NIH was responsible for the evaluation study, or if you believe there are records about you in several components of NIH, write to: NIH Privacy Act Coordinator Building 31, Room 3B07 9000 Rockville Pike Bethesda, MD 20892.

Requesters must provide the following information:

1. Full name, and name(s) used while studying or employed;

2. Name and location of the evaluation study or other NIH program in which the requester participated or the institution at which the requester was a student or employee, if applicable;

3. Approximate dates of participation, matriculation or employment, if applicable.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for

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acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, other health professional, or other responsible individual, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURES:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained directly from individual participants; from systems of records 09–25–0036, "Grants: IMPAC (Grants/Contract Information), HHS/NIH/DRG;" 09–25–0112, "Grants: Research, Research Training, Fellowship and Construction Applications and Awards, HHS/NIH/OD"; NSF–6, "Doctorate Record File", NSF–43, "Doctorate Work History File" (previously entitled "NSF–43, "Roster and Survey of Doctorate Holders in The United States" and other records maintained by the operating programs of NIH; the National Academy of Sciences, professional associations such as the AAMC and ADA, and other contractors; grantees or collaborating researchers; or publicly available sources such as bibliographies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT: NONE.

Appendix 1—System managers

National Institutes of Health, Office of the Director, Director, Division of Planning and Evaluation Office of Science Policy and Legislation Building 31, Room 4B25 9000 Rockville Pike Bethesda, MD 20892.
National Institutes of Health, Office of the Director, Director, Division of Personnel Management Building 1, Room B1–60 9000 Rockville Pike Bethesda, MD 20892.
National Heart, Lung, and Blood Institute (NHLBI) Director, Office of Program Planning & Evaluation Building 31, Room 5A03 Bethesda, MD 20892.
National Library of Medicine (NLM) Assistant Director for Planning and Evaluation Building 38, Room 2S18 Bethesda, MD 20894.
National Eye Institute (NEI) Associate Director, Office of Science Policy and Legislation Building 31, Room 6A27 Bethesda, MD 20892.
National Cancer Institute (NCI) Public Health Educator, OCC, NCI National Institutes of Health Building 31, Room 4B43 Bethesda, MD 20892.
National Institute on Aging (NIA), Chief, Office of Planning, Analysis, Technical Information and Evaluation, Federal Building, Room 6A09, 7550 Wisconsin Avenue, Bethesda, MD 20892.
National Institute of Allergy and Infectious Diseases (NIAID), Chief, Evaluation and Reporting Section, Policy Analysis and Legislation Branch, Office of Administration Management, Building 31, Room 7A52, Bethesda, MD 20892.
National Institute of Child Health and Human Development (NICHD), Chief, Office of Science Policy and Analysis, Building 31, Room 2A10, Bethesda, MD 20892.
National Institute on Deafness and Other Communication Disorders, Chief, Program Planning and Health Reports Branch, Building 31, Room 3C35, 9000 Rockville Pike, Bethesda, MD 20892.
National Institute of Dental Research (NIDR), Chief, Office of Planning Evaluation, and Communications, Building 31, Room 2C36, Bethesda, MD 20892.
National Institute of Environmental Health Sciences (NIEHS) Program Analyst, Office of Program Planning and Evaluation, P.O. Box 12233, Research Triangle Park, N.C. 27709.
National Institute of General Medical Sciences (NIGMS), Chief, Office of Program Analysis, Westwood Building, Room 934, 5333 Westbard Avenue, Bethesda, MD 20892.
Fogarty International Center (FIC), National Institutes of Health, Assistant Director for Planning, Evaluation and Public Affairs, Building 31, Room B2C32, Bethesda, MD 20892.
Division of Research Grants (DRG), Assistant Director for Special Projects, Westwood Building, Room 457, 5333 Westbard Avenue, Bethesda, MD 20892.
National Center for Research Resources (NCRR), Evaluation Officer, Office of Science Policy, Westwood Building, Room 8A03, Bethesda, MD 20892.
National Center for Nursing Research (NCNR), Chief, Office of Planning, Analysis and Evaluation, Building 31, Room 5B13, Bethesda, MD 20892.

Appendix 2—Notification and Access Officials

NIH, Office of the Director, Associate Director for Science, Policy and Legislation, Building 1, Room 137, 9000 Rockville Pike, Bethesda, MD 20892.
National Institutes of Health, Office of the Director, Director, Division of Personnel Management, Building 1, Room B1–60, 9000 Rockville Pike, Bethesda, MD 20892.
National Heart, Lung, and Blood Institute (NHLBI), Privacy Act Coordinator, Building 31, Room 5A29, Bethesda, MD 20892.
National Library of Medicine (NLM), Assistant Director for Planning and Evaluation, Building 38, Room 2S18, Bethesda, MD 20894.
National Eye Institute (NEI), Executive Officer, Building 31, Room 6A25, Bethesda, MD 20892.
Fogarty International Center (FIC), National Institutes of Health, Assistant Director for Planning, Evaluation and Public Affairs, Building 31, Room B2C32, Bethesda, MD 20892.
Division of Research Grants (DRG), Assistant Director for Special Projects, Westwood Building, Room 457, 5333 Westbard Avenue, Bethesda, MD 20892.
National Center for Research Resources (NCRR), Evaluation Officer, Office of Science Policy, NIH, Westwood Building, Room 8A03, Bethesda, MD 20892.
National Cancer Institute, Privacy Act Coordinator, National Institutes of Health, Building 31, Room 10A30, Bethesda, MD 20892.

09–25–0161

SYSTEM NAME:

Administration: NIH Consultant File, HHS/NIH/DRG.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system of records is an umbrella system comprising separate sets of records located in each of the NIH organizational components or facilities of contractors of the NIH.

Division of Computer Research and Technology, Data Management Branch, Building 12A, Room 4041B, National Institutes of Health, Bethesda, Maryland 20892.

Write to the appropriate system manager listed in Appendix I for a list of current locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consultants who provide the evaluation of extramural grants and cooperative agreement applications and

research contract proposals, including the NIH Reviewers' Reserve.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, resumes, curriculum vitae (C.V.s), areas of expertise, publications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 301 of the Public Health Service Act, describing the general powers and duties of the Public Health Service relating to research and investigation, and Section 402 of the Public Health Service Act, describing the appointment and authority of the Director of the National Institutes of Health, (42 USC 241 and 282).

PURPOSE OF THE SYSTEM:

This umbrella system comprises separate sets of records located in each of the NIH organizational components or facilities of contractors of the NIH. These records are used: (1) To identify and select experts and consultants for program reviews and evaluations; and (2) To identify and select experts and consultants for the review of special grant and cooperative agreement applications and research contract proposals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. Disclosure may be made to the Department of Justice or to a court or other tribunal from this system of records, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. Disclosure may be made to contractors to process or refine the records. Contracted services may include transcription, collation, computer input, and other records processing.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored in file folders and computer tapes and disks.

RETRIEVABILITY:

Records are retrieved by name, address, or expertise.

SAFEGUARDS:

1. Authorized Users: Data on computer files is accessed by keyword known only to authorized users who are NIH or contractor employees involved in managing a review or program advisory committee, conducting a review of extramural grant applications, cooperative agreement applications, or research contract proposals, performing an evaluation study or managing the consultant file. Access to information is thus limited to those with a need to know.

2. Physical Safeguards: Rooms where records are stored are locked when not in use. During regular business hours rooms are unlocked but are controlled by on-site personnel.

3. Procedural Safeguards: Names and other identifying particulars are deleted when data from original records are encoded for analysis. Data stored in computers is accessed through the use of keywords known only to authorized users.

This system of records will be protected according to the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, and Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 1100–G. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

The policy coordinator for this system is also the system manager listed for the Division of Research Grants.

Chief, Physiological Sciences Review Section, Referral and Review Branch, Division of Research Grants, Westwood Building, Room 203A, 5333 Westbard Avenue, Bethesda, Maryland 20892,

and

See Appendix I.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the appropriate system manager as listed in Appendix I.

The requestor must also verify his or her identity by providing either a notarization of the request or a written certification that the requestor is whom he or she claims to be. The request should include: (a) Full name, and (b) appropriate dates of participation.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requestors should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, reasonably identify the record, specify the information to be contested, and state the corrective action sought with supporting information. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Subject individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix I: System managers

Office of the Director (OD), Extramural Programs Management Officer, Building 1, Room 328, Bethesda, MD 20892.
National Center for Research Resources (NCRR), Director, Office of Review, Westwood Building, Room 10A14, Bethesda, MD 20892.
National Cancer Institute (NCI), Chief, Review Logistics Branch, Westwood Building, Room 850, Bethesda, MD 20892.
National Eye Institute (NEI), Review and Special Projects Officer, Building 31, Room 6A06, Bethesda, MD 20892.
National Heart, Lung, and Blood Institute (NHLBI), Associate Director for Review, Westwood Building, Room 557A, Bethesda, MD 20892.
National Institute on Aging (NIA), Chief, Scientific Review Office, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892.
National Institute of Allergy and Infectious Diseases (NIAID), Deputy Director, Division of Extramural Activities, Control Data Bldg., Room 4C–03, 6003 Executive Blvd., Rockville, MD 20892.

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National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS), Chief, Grants Review Branch, Westwood Building, Room 5A07, Bethesda, MD 20892.
National Institute of Child Health and Human Development (NICHD), Director, Division of Scientific Review, Executive Plaza North, Room 520, Bethesda, MD 20892.
National Institute on Deafness and Other Communication Disorders (NIDCD), Chief, Scientific Review Branch, Executive Plaza South, Room 400B, 620 Executive Boulevard, Rockville, MD 20852.
National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), Chief, Review Branch, Westwood Building, Room 408, Bethesda, MD 20892.
National Institute of Dental Research (NIDR), Chief, Scientific Review Branch, Westwood Building, Room 519, Bethesda, MD 20892.
National Institute of Environmental Health Sciences (NIEHS), Deputy Director, Division of Extramural Research and Training, P.O. Box 12233, Research Triangle Park, NC 27709.
National Institute of General Medical Sciences (NIGMS), Chief, Office of Review Activities, Westwood Building, Room 9A18, Bethesda, MD 20892.
National Institute of Neurological Disorders and Stroke (NINDS), Chief, Scientific Review Branch, Federal Building, Room 9C10A, Bethesda, MD 20892.
National Center for Nursing Research (NCNR), Executive Secretary, NRRC and NACNR, Building 31, Room 5B19, Bethesda, MD 20892.
National Library of Medicine (NLM), Chief, Biomedical Information Support Branch, Building 38A, Room 5S522, Bethesda, MD 20894.
National Center for Human Genome Research (NCHGR), Chief, Office of Scientific Review, Building 38, Room 6N613, Bethesda, MD 20892.
Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), Associate Director for Referral and Review, Parklawn Building, Room 13-103, Rockville, MD 20857.

09-25-0165

SYSTEM NAME:

National Institutes of Health Acquired Immune Deficiency Syndrome (AIDS) Research Loan Repayment Program, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None

SYSTEM LOCATION:

Office of AIDS Research (OAR), National Institutes of Health, Building 31, Room 5C12, 9000 Rockville Pike, Bethesda, Maryland 20892.
Division of Computer Research and Technology (DCRT), National Institutes of Health, Building 12A, Room 4037, 9000 Rockville Pike, Bethesda, Maryland 20892.
Division of Financial Management (DFM), Operations Accounting Branch, National Institutes of Health, Building 31, Room B1B55, 9000 Rockville Pike, Bethesda, Maryland 20892.

Write to the System Manager at the address below for the address of any Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for, who have been approved to receive, who are receiving, and who have received funds under the NIH AIDS Research LRP; and individuals who are interested in participation in the NIH AIDS Research LRP.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, Social Security number; service pay-back obligations, standard school budgets, educational loan data including deferment and repayment/delinquent/default status information; employment data; professional and credentialing history of licensed health professionals including schools of attendance; personal, professional, and demographic background information; employment status verification (which includes certifications and verifications of continuing participation in AIDS research); Federal, State and local tax information, including copies of tax returns.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 487A (42 USC 288-1) of the PHS Act, as amended, directing the NIH to establish and implement a program of educational loan repayment for qualified health professionals who agree to conduct, as employees of NIH, AIDS research. The provisions of section 338B of the PHS Act (42 USC 2541-1), as amended, governing the NHSC loan repayment program, are incorporated except as inconsistent. The Internal Revenue Code at 26 USC 6109 requires the provision of the SSN for the receipt of loan repayment funds under the NIH AIDS Research LRP.

PURPOSE(S) OF THE SYSTEM:

(1) To identify and select applicants for the NIH AIDS Research LRP.

(2) To monitor loan repayment activities, such as payment tracking, deferment of service obligation, and default.

(3) To assist NIH officials in the collection of overdue debts owed under the NIH AIDS Research LRP. Records may be transferred to system No. 09-15-0045, "Health Resources and Services Administration Loan Repayment/Debt Management Records System, HHS/HRSA/OA," for debt collection purposes when NIH officials are unable to collect overdue debts owed under the NIH AIDS Research LRP.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. Disclosure may be made to the Department of Justice or to a court or other tribunal from this system of records, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State, or local, charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

4. NIH may disclose records to Department contractors and subcontractors for the purpose of collecting, compiling, aggregating, analyzing, or refining records in the system. Contractors maintain, and are also required to ensure that subcontractors maintain, Privacy Act safeguards with respect to such records.

5. NIH may disclose information from this system of records to private parties such as present and former employers, references listed on applications and associated forms, other references and educational institutions. The purpose of such disclosures is to evaluate an individual's professional accomplishments, performance, and educational background, and to determine if an applicant is suitable for participation in the NIH AIDS Research LRP.

6. NIH may disclose information from this system of records to a consumer reporting agency (credit bureau) to obtain a commercial credit report to assess and verify the ability of an individual to repay debts owed to the Federal Government. Disclosures are limited to the individual's name, address, Social Security number and other information necessary to identify him/her; the funding being sought or amount and status of the debt; and the program under which the applicant or claim is being processed.

7. NIH may disclose from this system of records a delinquent debtor's or a defaulting participant's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim, and the agency or program under which the claim arose, as follows:

a. To another Federal agency so that agency can effect a salary offset for debts owed by Federal employees; if the claim arose under the Social Security Act, the employee must have agreed in writing to the salary offset.

b. To another Federal agency so that agency can effect an unauthorized administrative offset; i.e., withhold money, other than federal salaries, payable to or held on behalf of the individual.

c. To the Treasury Department, Internal Revenue Service (IRS), to request an individual's current mailing address to locate him/her for purposes of either collecting or compromising a debt, or to have a commercial credit report prepared.

8. NIH may disclose information from this system of records to another agency that has asked the Department to effect a salary or administrative offset to help collect a debt owed to the United States. Disclosure is limited to the individual's name, address, Social Security number, and other information necessary to identify the individual to information about the money payable to or held for the individual, and other information concerning the offset.

9. NIH may disclose to the Treasury Department, Internal Revenue Service (IRS), information about an individual applying for loan repayment under any loan repayment program authorized by the Public Health Service Act to find out whether the applicant has a delinquent tax account. This disclosure is for the sole purpose of determining the applicant's creditworthiness and is limited to the individual's name, address, Social Security number, other information necessary to identify him/her, and the program for which the information is being obtained.

10. NIH may report to the Treasury Department, Internal Revenue Service (IRS), as taxable income, the written-off amount of a debt owed by an individual to the Federal Government when a debt becomes partly or wholly uncollectible, either because the time period for collection under the statute of limitations has expired, or because the Government agrees with the individual to forgive or compromise the debt.

11. NIH may disclose to debt collection agents, other Federal agencies, and other third parties who are authorized to collect a Federal debt, information necessary to identify a delinquent debtor or a defaulting participant. Disclosure will be limited to the individual's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim, and the agency or program under which the claim arose.

12. NIH may disclose information from this system of records to any third party that may have information about a delinquent debtor's or a defaulting participant's current address, such as a U.S. post office, a State motor vehicle administration, a professional organization, an alumni association, etc., for the purpose of obtaining the individual's current address. This disclosure will be strictly limited to information necessary to identify the individual, without any reference to the reason for the agency's need for obtaining the current address.

13. NIH may disclose information from this system of records to other Federal agencies that also provide loan repayment at the request of these Federal agencies in conjunction with a matching program conducted by these Federal agencies to detect or curtail fraud and abuse in Federal loan repayment programs, and to collect delinquent loans or benefit payments owed to the Federal Government.

14. NIH may disclose from this system of records to the Department of Treasury, Internal Revenue Service (IRS): (1) A delinquent debtor's or a defaulting participant's name, address, Social Security number, and other information necessary to identify the individual; (2) the amount of the debt; and (3) the program under which the debt arose, so that IRS can offset against the debt any income tax refunds which may be due to the individual.

15. NIH may disclose information provided by a lender to other Federal agencies, debt collection agents, and other third parties who are authorized to collect a Federal debt. The purpose of this disclosure is to identify an individual who is delinquent in loan or benefit payments owed to the Federal Government.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 USC 552a(b)(12):

Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 USC 1681a(f)) or the Federal Claims Collection Act of 1966 (31 USC 3701(a)(3)). The purposes of these disclosures are: (1) To provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records, and (2) to enable NIH to improve the quality of loan repayment decisions by taking into account the financial reliability of applicants, including obtaining a commercial credit report to assess and verify the ability of an individual to repay debts owed to the Federal Government. Disclosure of records will be limited to the individual's name, Social Security number, and other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, computer tape, discs, and file cards.

RETRIEVABILITY:

Records are retrieved by name, Social Security number, or other identifying numbers.

SAFEGUARDS:

1. Authorized Users: Data on computer files is accessed by keyword known only to authorized users who are NIH employees responsible for implementing the NIH AIDS Research LRP. Access to information is thus limited to those with a need to know.

2. Physical Safeguards: Rooms where records are stored are locked when not in use. During regular business hours rooms are unlocked but are controlled by on-site personnel. Security guards perform random checks on the physical security of the data.

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3. Procedural and Technical Safeguards: A password is required to access the terminal and a data set name controls the release of data to only authorized users. All users of personal information in connection with the performance of their jobs (see Authorized Users, above) protect information from public view and from unauthorized personnel entering an unsupervised office.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, the Department's Automated Information System Security Handbook, and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361), item 2300–537–1. Refer to the NIH Manual Chapter for specific disposition instructions.

SYSTEM MANAGER AND ADDRESS:

Director, NIH AIDS Research Loan Repayment Program, Office of AIDS Research, National Institutes of Health, Building 31, Room 5C12, 9000 Rockville Pike, Bethesda, Maryland 20892.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the System Manager listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be. The request should include: (a) Full name, and (b) appropriate dates of participation. The requester must also understand that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURES:

Write to the System Manager specified above to attain access to records and provide the same information as is required under the Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosure of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the System Manager specified above and reasonably identify the record, specify the information to be contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Subject individual; participating lending institutions; educational institutions attended; other Federal agencies; consumer reporting agencies/credit bureaus; and third parties that provide references concerning the subject individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0166

SYSTEM NAME:

Administration: Radiation Safety Information, HHS/NIH/ORS.

SECURITY CLASSIFICATION:

None

SYSTEM LOCATION:

Radiation Safety Branch, Division of Safety, Office of Research Services, NIH, Building 21, 9000 Rockville Pike, Bethesda, MD. 20892.

Write to System Manager at the address below for the address of the contractor or the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NIH employees using radioactive materials or radiation producing machinery, contractor employees who provide service to the Radiation Safety Branch and any other individuals who could potentially be exposed to radiation or radioactivity as a result of NIH operations and who, therefore, must be monitored in accordance with applicable regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, birth dates, Social Security Numbers, titles, training data, exposure data, materials usage data, incident data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, regarding the general powers and duties of the Public Health Service relating to research and investigation; 5 U.S.C. 7902 regarding agency safety programs; and 42 U.S.C. 2201, regarding general duties of the Nuclear Regulatory Commission including the setting of standards to cover the possession and use of nuclear materials in order to protect health.

PURPOSE(S) OF THE SYSTEM:

1. To provide adequate administrative controls to assure compliance with NIH radiation safety policies and all appropriate regulations governing the use of radiation sources by NIH.

2. To assure legal compliance with requirements of Nuclear Regulatory Commission to maintain internal and external radiation exposure data and any radiation incident follow-up reports.

3. To monitor personnel exposures in order that they be maintained at the lowest levels reasonably achievable.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. Disclosure may be made to the Department of Justice or to a court or other tribunal from this system of records, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States of any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. Disclosure may be made to contractors to provide services to the Radiation Safety Program, for the purpose of processing or refining the records. Contracted services may include transcription, collation,

computer input, and other records processing. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

4. Disclosure may be made to officials of the United States Nuclear Regulatory Commission which, by Federal regulation, licenses, inspects and enforces the regulations governing the use of radioactive materials.

5. Radiation exposure and/or training and experience history may be transferred to new employer.

6. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Records are maintained in file cabinets or in a computer database maintained by the Radiation Safety Branch (RSB). Records may be stored in file folders, magnetic tapes, magnetic disks, optical disks and/or other types of data storage devices.

RETRIEVABILITY:

Records are retrieved by name, unique RSB assigned identification number, or social security number.

SAFEGUARDS:

1. Authorized Users: Employees who maintain this system are instructed to grant regular access only to RSB staff, authorized contractor personnel, U.S. Nuclear Regulatory Commission Inspectors, Radiation Safety Committee Members, other appropriate NIH administrative and management personnel with a need to know. Access to information is thus limited to those with a need to know.

2. Physical Safeguards: Rooms where records are stored are locked when not in use. During regular business hours, rooms are unlocked but are controlled by on-site personnel. Individually identifiable records are kept in locked file cabinets or rooms under the direct control of the Project Director.

3. Procedural Safeguards: Names and other identifying particulars are deleted when data from original records are encoded for analysis. Data stored in computers is accessed through the use of keywords known only to authorized users. The computer terminals are in secured areas and keywords needed to access data files will be changed frequently.

4. Technical Safeguards: Computerized records are accessible only through a series of code or keyword commands available from and under direct control of the Project Director or his/her delegated representatives. The computer records are secured by a multiple level security system which is capable of controlling access to the individual data field level. Persons having access to the computer database can be restricted to a confined application which only permits a narrow "view" of the data. Data on computer files is accessed by keyword known only to authorized users who are NIH or contractor employees involved in work for the program.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, supplementary Chapter PHS hf: 45–13, the Department's Automated Information Systems Security Program Handbook, and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361): item 1300–B–9 for exposure incident files, which allows records to be destroyed after 10 years; and item 1300–B–10 for radiation exposure records, which does not allow disposal at this time. Refer to the NIH Manual Chapter for specific retention and disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Support Services Unit, Radiation Safety Services Section, Radiation Safety Branch, DS, ORS, Building 21, Room 104, 9000 Rockville Pike, Bethesda, Maryland 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the system manager as listed above.

The requestor must also verify his or her identity by providing either a notarization of the request or a written certification that the requestor is whom he or she claims to be. The request should include: (a) Full name, and (b) appropriate dates of participation.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requestors should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosure of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, reasonably identify the record, specify the information to be contested, and state the corrective action sought with supporting information. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Subject individual, previous employers and educational institutions, contractors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 91–30194 Filed 12–23–91; 8:45 am]
BILLING CODE 4191–01–M

Centers for Disease Control

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Centers for Disease Control, HHS.

ACTION: Publication of minor changes to notices of systems of records.

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SUMMARY: In accordance with the Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," the Centers for Disease Control (CDC) is publishing the table of contents and minor changes to its notices of systems of records.

SUPPLEMENTARY INFORMATION: CDC has completed the annual review of its systems of records and is publishing below the table of contents and those minor changes which affect the public's right or need to know, such as clarifications of categories of individuals covered by systems, changes in the system location of records, or the designation and address of system managers.

Centers for Disease Control

1. Table of Contents

A. The following CDC active systems of records were last published in the **Federal Register**, 51 FR 42449, November 24, 1986:

09–20–0000 Cooperative Mycoses Study, HHS/CDC/NCID.
09–20–0001 Certified Interpreting Physician File, HHS/CDC/NIOSH.
09–20–0055 Administrative Files for Research/Demonstration and Training Grants, and Cooperative Agreements Applications, HHS/CDC/NIOSH.
09–20–0059 Division of Training Mailing List, HHS/CDC/NIOSH.
09–20–0089 Studies of Treatment of Tuberculosis and Other Mycobacterioses, HHS/CDC/NCPS.
09–20–0090 Studies of Testing for Tuberculosis and Other Mycobacterioses, HHS/CDC/NCPS.
09–20–0096 Records of Tuskegee Study Health Benefit Recipients, HHS/CDC/NCPS.
09–20–0102 Alien Mental Waiver Program, HHS/CDC/NCPS.
09–20–0103 Alien Tuberculosis Follow-up Program, HHS/CDC/NCPS.
09–20–0106 Specimen Handling for Testing and Related Data, HHS/CDC/NCID.
09–20–0112 CDC Exchange Visitor and Guest Researcher Records, HHS/CDC/PMO.
09–20–0113 Epidemic Investigation Case Records, HHS/CDC/NCID.
09–20–0117 Medical and Test Record Results of Individuals Involved in NIOSH Laboratory Studies, HHS/CDC/NIOSH.
09–20–0118 Study at Work Sites Where Agents Suspected of Being Occupational Hazards Exist, HHS/CDC/NIOSH.
09–20–0136 Epidemiologic Studies and Surveillance of Disease Problems, HHS/CDC/NCID.
09–20–0137 Passport File, HHS/CDC/IHPO.
09–20–0138 Epidemic Intelligence Service Officers Files, HHS/CDC/EPO.
09–20–0147 Occupational Health Epidemiological Studies, HHS/CDC/NIOSH.
09–20–0149 Morbidity Studies in Coal Mining, Metal and Non-metal Mining and General Industry, HHS/CDC/NIOSH.
09–20–0153 Mortality Studies in Coal Mining, Metal and Non-metal Mining and General Industry, HHS/CDC/NOISH.
09–20–0154 Medical and Laboratory Studies, HHS/CDC/NIOSH.
09–20–0157 Clinical Laboratory Personnel Proficiency Test Results (Medicare), HHS/CDC/PHPPO.
09–20–0159 Records of Subjects in Certification, Testing, Studies of Personal Protective Devices, and Accident Investigations, HHS/CDC/NIOSH.
09–20–0160 Records of Subjects in Health Promotion and Education Studies, HHS/CDC/NCCDPHP.
09–20–0161 Records of Health Professionals in Disease Prevention and Control Training Programs, HHS/CDC/NCPS.
09–20–0162 Records of Subjects in Agent Orange, Vietnam Experience, and Selected Cancers Studies, HHS/CDC/NCEHIC.

B. The following active CDC systems were last published in the **Federal Register**, 51 FR 42368, November 24, 1986:

09–20–0163 Applicants for National Center for Health Statistics Technical Assistance, HHS/CDC/NCHS. (Formerly numbered 09–37–0009.)
09–20–0168 Curricular Vitae of Consultants to the National Center for Health Statistics, HHS/CDC/NCHS. (Formerly numbered 09–37–0014.)
09–20–0169 Users of Health Statistics, HHS/CDC/NCHS. (Formerly numbered 09–37–0014.)

C. The following CDC active systems were last published in the **Federal Register**, 49 FR 37692, September 25, 1984:

09–20–0164 Health and Demographic Surveys Conducted in Probability Samples of the United States Population, HHS/CDC/NCHS. (Formerly numbered 09–37–0010.)
09–20–0165 Health Manpower Inventories and Surveys, HHS/CDC/NCHS. (Formerly numbered 09–37–0011.)
09–20–0166 Vital Statistics for Births, Deaths, Fetal Deaths, Marriages, and Divorces Occurring in the United States During Each Year, HHS/CDC/NCHS. (Formerly numbered 09–37–0012.)
09–20–0167 Health Resources Utilization Statistics, HHS/CDC/NCHS. (Formerly numbered 09–37–0013.)

2. Four of CDC's centers have been retitled during 1991 to include "National" in their organizational names. The newly titled centers are:

National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP)
National Center for Environmental Health and Injury Control (NCEHIC)
National Center for Infectious Diseases (NCID)
National Center for Prevention Services (NCPS).

Additionally, the formerly titled Division of Tuberculosis Control, NCPS, has been renamed the Division of Tuberculosis Elimination.

These new organizational titles represent minor changes in the system name, system location, and system manager and address categories of the following systems: 09–20–0000, 0920–0089, 09–20–0090, 09–20–0096, 09–20–0102, 09–20–0103, 09–20–0106, 09–02–0113, 09–20–0136, 09–20–0160, 09–20–0161, and 09–20–0162. CDC will utilize the next comprehensive republication of notices to describe the systems in their entirety.

To provide an example of these changes, the revised categories of system 09–20–0136 are published below:

09–20–0136

SYSTEM NAME:

Epidemiologic Studies and Surveillance of Disease Problems, HHS/CDC/NCID. Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

SYSTEM LOCATION:

National Center for Infectious Diseases, Bldg. 1, Rm. 6013, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

San Juan Laboratories, National Center for Infectious Diseases, Centers for Disease Control, San Juan, Puerto Rico 00936.

National Center for Prevention Services, 1600 Freeway Park, Rm. 313, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

National Center for Environmental Health and Injury Control, Chamblee Bldg. 27, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Epidemiology Program Office, Bldg. 1, Rm. 5009, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Public Health Practice Program Office, Executive Park, Bldg. 24, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

National Center for Chronic Disease Prevention and Health Promotion, Koger/Rhodes Bldg., Room 4004, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

A list of contractor sites where individually identifiable data are currently located is available upon request to the appropriate system manager.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Center for Infectious Diseases, Bldg. 1, Rm. 6013, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Director, National Center for Prevention Services, 1600 Freeway Park, Rm. 310, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Director, National Center for Environmental Health and Injury Control, Chamblee Bldg. 27, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Director, Epidemiology Program Office, Bldg. 1, Rm. 5009, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Director, Public Health Practice Program Office, Executive Park, Bldg. 24, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Director, National Center for Chronic Disease Prevention and Health Promotion, Koger/Rhodes Bldg., Room 4004, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Policy coordination is provided by: Director, Office of Program Support, Bldg. 1, Rm. 2011, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

* * * * *

3. The following systems are amended to reflect changes in the system location of records or the system manager and address category:

09–20–0102

SYSTEM NAME:

Alien Mental Waiver Program, HHS/CDC/NCPS.

Minor alterations have been made to this system notice. The following category is revised in its entirety:

* * * * *

SYSTEM LOCATION:

Medical Screening Section, Division of Quarantine, National Center for Prevention Services, 1644 Freeway Office Park, Rm. 1330, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

* * * * *

09–20–0112

SYSTEM NAME:

CDC Exchange Visitor and Guest Researcher Records, HHS/CDC/PMO.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

SYSTEM LOCATIONS:

Personnel Management Office, Bldg. 1, Rm. 1035, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

National Personnel Records Center (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118.

* * * * *

SYSTEM MANAGER AND ADDRESS:

Director, Personnel Management Office, Bldg. 1, Rm. 1035, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

* * * * *

09–20–0160

SYSTEM NAME:

Records of Subjects in Health Promotion and Education Studies, HHS/CDC/NCCDPHP.

Minor Alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

SYSTEM LOCATION:

National Center for Chronic Disease Prevention and Health Promotion, Koger/Rhodes Bldg., Rm. 4004, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

* * * * *

SYSTEM MANAGER AND ADDRESS:

Director, National Center for Chronic Disease Prevention and Health Promotion, Koger/Rhodes Bldg., Rm. 4004, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

* * * * *

4. The following system notice has been updated to clarify and more accurately describe the categories of individuals and the purpose sections within the system:

09–20–0102

SYSTEM NAME:

Alien Mental Waiver Program, HHS/CDC/NCPS.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Immigrant aliens with waivers of excludability who have or have had a physical or mental disorder with associated behavior that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others.

* * * * *

PURPOSE(S):

To comply with the requirements of section 212(g) of the Immigration and Nationality Act, the Centers for Disease Control (CDC) must receive and maintain medical records on aliens who apply for waivers of excludability due to a physical or mental disorder with associated harmful behavior. CDC is furnished with a copy of the alien's medical examination report and psychiatric/psychological evaluation and uses the information to process the initial applications for such waivers and for periodic medical surveillance and evaluation of individual cases.

* * * * *

Dated: October 24, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91–26231 Filed 12–23–91; 8:45 am]

BILLING CODE 4160–18–M

Agency for Toxic Substances and Disease Registry

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Agency for Toxic Substances and Disease Registry, HHS.

ACTION: Publication of minor changes to notice of system of records.

SUMMARY: In accordance with the Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," the Agency for Toxic Substances and Disease Registry (ATSDR) is publishing the table of contents and minor changes to its notice of system of records.

SUPPLEMENTARY INFORMATION: ATSDR has completed the annual review of its system of records and is publishing below the table of contents and those minor changes which affect the public's right or need to know, such as changes in the system location of records, or the designation and address of system managers.

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Agency for Toxic Substances and Disease Registry

1. Table of contents

The following system notice currently maintained by ATSDR was published in the Federal Register, 53 FR 30720, August 15, 1988:

09–19–0001 Records of Persons Exposed or Potentially Exposed to Toxic or Hazardous Substances, HHS/ATSDR/DHS.

2. System 09–19–0001 is amended to reflect changes in the system location of records and the designation and address of the system managers:

09–19–0001

SYSTEM NAME:

Records of Persons Exposed or Potentially Exposed to Toxic or Hazardous Substances, HHS/ATSDR/DHS.

Minor alterations have been made to this system notice. The following categories are revised in their entirety:

* * * * *

SYSTEM LOCATION:

Division of Health Studies, Agency for Toxic Substances and Disease Registry, Executive Park, Bldg. 35, 1600 Clifton Road, Atlanta, GA 30333.

Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Executive Park, Bldg. 31, 1600 Clifton Road, Atlanta, GA 30333.

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

Data are also located at contractor sites. A list of contractor sites where individually identified data are currently located is available upon request to the system manager.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Health Studies, Agency for Toxic Substances and Disease Registry, Executive Park, Bldg. 35, 1600 Clifton Road, Atlanta, GA 30333.

Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Executive Park, Bldg. 31, 1600 Clifton Road, Atlanta, GA 30333.

Policy coordination is provided by: Deputy Assistant Administrator, Agency for Toxic Substances and Disease Registry, Chamblee Bldg. 5, 1600 Clifton Road, Atlanta, GA 30333.

* * * * *

Dated: October 24, 1991.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 91–28230 Filed 12–23–91; 8:45 am]

BILLING CODE 4160–75–M

Indian Health Service

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Indian Health Service, PHS, HHS.

ACTION: Publication of minor changes to system of records notices.

SUMMARY: In accordance with Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," the Indian Health Service (IHS), an agency of the Public Health Service (PHS), is publishing minor changes to the existing list of addresses of system of records 09–17–0001, "Health and Medical Records System, HHS/IHS/OHP."

SUPPLEMENTARY INFORMATION: IHS has completed the annual review of its systems of records. Since the publication of January 11, 1991, the only changes IHS has made that affect the Public's right or need to know are the address changes to Systems of Records 09–17–0001, "Health and Medical Records System, HHS/IHS/OHP."

Listed below are:

1. The Table of Contents of active IHS Systems of Records. The complete text of the Systems Notice was last published in the Office of the Federal Register's 1989 Biennial Compilation of Privacy Act Issuances:

Table of Contents:

09–17–0001 Health and Medical Records Systems, HHS/IHS/OHP.
09–17–0002 Indian Health Service Scholarship Programs, HHS/IHS/OHP.
09–17–0003 Indian Health Service Staff Credentials and Privileges Records, HHS/IHS/OHP.

2. The minor changes that have been made to the following IHS System of Records: 09–17–0001 Health and Medical Records Systems, HHS/IHS/OHP. Substitute Appendix 1 in its entirety as listed below:

* * * * *

Appendix 1—System Managers and IHS Locations Under Their Jurisdiction Where Records are Maintained:

Director, Aberdeen Area Indian Health Service, Federal Building, 115 Fourth Avenue, SE, Aberdeen, South Dakota 57401.
Director, Rapid City Service Unit, Rapid City Indian Hospital, Rapid City, South Dakota 57702.
Director, Cheyenne River Service Unit, Eagle Butte Indian Hospital, Eagle Butte, South Dakota 57625.
Director, Fort Berthold Service Unit, Minni-Tohe Indian Health Center, New Town, North Dakota 58763.
Director, Fort Totten Service Unit, Fort Totten Indian Health Center, Fort Totten, North Dakota 58335.
Director, Pine Ridge Service Unit, Pine Ridge Indian Hospital, Pine Ridge, South Dakota 57770.
Director, Kyle Indian Health Center, P.O. Box 540, Kyle, South Dakota 57752.
Director, Wanblee Indian Health Center, Wanblee, South Dakota 57577.
Director, Rosebud Service Unit, Rosebud Indian Hospital, Rosebud, South Dakota 57570.
Director, Sisseton-Wahpeton Service Unit, Sisseton Indian Hospital, Sisseton, South Dakota 57262.
Director, Wahpeton Indian School Health Center, Wahpeton, North Dakota 58075.
Director, Standing Rock Service Unit, Fort Yates Indian Hospital, Fort Yates, North Dakota 58538.
Director, McLaughlin Indian Health Center, McLaughlin, South Dakota 57642.
Director, Turtle Mountain Service Unit, Belcourt Indian Hospital, Belcourt, North Dakota 58316.
Director, Omaha-Winnebago Service Unit, Winnebago Indian Hospital, Winnebago, Nebraska 68071.
Director, Yankton-Wagner Service Unit, Wagner Indian Hospital, Wagner, South Dakota 57380.
Director, Crow Creek Service Unit, Ft. Thompson Indian Health Center, Ft. Thompson, South Dakota 57339.
Director, Pierre Indian School Health Center, c/o Ft. Thompson Indian Health Station, Ft. Thompson, South Dakota 57339.
Director, Lower Brule Indian Health Center, Lower Brule, South Dakota 57548.
Director, Bemidji Area Office, Indian Health Service, 203 Federal Building, Bemidji, Minnesota 56601.
Director, Eastern Michigan Service Unit, Kincheloe Indian Health Center, Kincheloe, Minnesota 49788.
Director, Leach Lake Service Unit, Cass Lake Indian Hospital, Cass Lake, Minnesota 56633.
Director, Inger Indian Health Station, Inger Route, Deer River, Minnesota 56636.
Director, Squaw Lake Indian Health Station, Squaw Lake, Minnesota 56681.
Director, Ball Club Indian Health Station, Ball Club, Minnesota 56622.
Director, Onigum Indian Health Station, Star Route, Walker, Minnesota 56484.
Director, Red Lake Service Unit, Red Lake Indian Hospital, Red Lake, Minnesota 56671.
Director, Ponemah Indian Health Station, Ponemah, Minnesota 56666.
Director, White Earth Service Unit, White Earth Indian Health Center, White Earth, Minnesota 56591.

Director, Naytahwaush Indian Health Station, Naytahwaush, Minnesota 56566.
Director, Pine Point Indian Health Station, White Earth, Minnesota 56591.
Director, Alaska Native Health Service, 250 Gambell Street, Anchorage, Alaska 99501.
Director, Anchorage Service Unit, PHS, Alaska Native Medical Center, 255 Gambell St., Anchorage, Alaska 99501.
Director, Alaska Native Health Center, St. George Island, Alaska 99660.
Director, Alaska Native Health Center, St. Paul Island, Alaska 99660.
Director, Barrow Service Unit, Barrow Alaska Native Hospital, Barrow, Alaska 99723.
Director, Southeast Area Regional Health Center, 3272 Hospital Drive, Juneau, Alaska 99801.
Director, Kotzebue Service Unit, Kotzebue Alaska Native Hospital, Kotzebue, Alaska 99752.
Director, Ketchikan Alaska Native Health Center, 3289 Tongass Avenue, Ketchikan, Alaska 99901.
Director, Annette Islands Service Unit, Metlakatla Alaska Native Health Center, Box 428, Metlakatla, Alaska 99926.
Director, Yukon-Kuskokwim-Delta Service Unit, Yukon-Kuskokwim-Delta Regional Hospital, Indian Health Service, Bethel, Alaska 99559.
Director, Albuquerque Area Indian Health Service, 505 Marquette, NW., Suite 1502, Albuquerque, New Mexico 87102–2163.
Director, Albuquerque Service Unit, Albuquerque Indian Hospital, 801 Vassar Drive, NE., Albuquerque, New Mexico 87106.
Director, Isleta Indian Health Center, PO. Box 429, Isleta, New Mexico 87022.
Director, Jemez Indian Health Center, PO Box 256, Jemez Pueblo, New Mexico 87024.
Chief Dental Program, IHS Dental Training Center, Southwestern Indian Polytechnical Inst., 9168 Coors Road, NW, PO Box 25927, Albuquerque, New Mexico 87125.
Director, Indian School Health Center, Southwestern Indian Polytechnical Inst., 9168 Coors Road, NW, PO Box 25927, Albuquerque, New Mexico 87125.
Director, Sandia Indian Health Station, Sandia, New Mexico 87047.
Director, Santa Ana Indian Health Station, P.O. Box 580, Bernalillo, New Mexico 87004.
Director, Zia Indian Health Station, General Delivery, San Ysidro, New Mexico 87053.
Director, Mescalero Service Unit, Mescalero Indian Hospital, PO Box 210, Mescalero, New Mexico 88340.
Director, Santa Fe Service Unit, Santa Fe Indian Hospital, 1700 Cerrillos Road, Santa Fe, New Mexico 87501.
Director, Dulce Indian Health Center, Dulce, New Mexico 87528.
Director, Taos Indian Health Center, Taos, New Mexico 87571.
Director, Santa Clara Indian Health Center, P.O. Box 1322, Espanola, New Mexico 87532.
Director, Santo Domingo Indian Health Station, Santo Domingo, New Mexico 87052.
Director, San Juan Indian Health Station, San Juan, New Mexico 87566.
Director, Cochiti Indian Health Station, Cochiti, New Mexico 87041.
Director, San Felipe Indian Health Station, General Delivery, San Felipe Pueblo, New Mexico 87001.
Director, Southern Colorado-Ute Service Unit, PO Box 778, Ignacio, Colorado 81137.
Director, Southern Ute Health Center, Ignacio, Colorado 81137.
Director, Ute Mountain Ute Health Center, Towaoc, Colorado 81334.
Director, White Mesa Indian Health Station, General Delivery, Towaoc, Colorado 81334.
Director, Zuni-Ramah Service Unit, Zuni Indian Hospital, Zuni, New Mexico 87327.
Director, Acoma-Canoncito-Laguna Service Unit, Acoma-Canoncito-Laguna Indian Hospital, PO Box 130, San Fidel, New Mexico 87049.
Director, Laguna Indian Health Center, PO Box 199, New Laguna, New Mexico 87038.
Director, Canoncito Indian Health Station, c/o Acoma-Canoncito-Laguna Indian Hospital, PO Box 130, San Fidel, New Mexico 87049.
Director, Billings Area Indian Health Service, P.O. Box 2143, 711 Central Avenue, Billings, Montana 59103.
Director, Blackfeet Service Unit, Browning Indian Hospital, Browning, Montana 59417.
Director, Heart Butte Indian Health Station, Heart Butte, Montana 59448.
Director, Crow Service Unit, Crow Indian Hospital, Crow Agency, Montana 59022.
Director, Lodge Grass Indian Health Center, Lodge Grass, Montana 59050.
Director, Pryor Indian Health Station, Pryor, Montana 59066.
Director, Flathead Service Unit, St. Ignatius Indian Health Center, St. Ignatius, Montana 59865.
Director, Polson Indian Health Center, 320–B 4th Avenue East, Polson, Montana 59860.
Director, Fort Belknap Service Unit, Harlem Indian Hospital, Harlem, Montana 59526.
Director, Hays Indian Health Station, Hays, Montana 59527.
Director, Fort Peck Service Unit, Poplar Indian Health Center, Poplar, Montana 59255.
Director, Wolf Point Indian Health Center, Wolf Point, Montana 59201.
Director, Wind River Service Unit, Fort Washakie Indian Health Center, Fort Washakie, Wyoming 82514.
Director, Arapahoe Indian Health Center, Arapahoe, Wyoming 82510.
Director, Northern Cheyenne Service Unit, Lame Deer Indian Health Center, Lame Deer, Montana 59043.
Director, Rocky Boy's Service Unit, Box Elder Indian Health Center, Box Elder, Montana 59521.
Director, Navajo Area Indian Health Service, P.O. Box G, Window Rock, Arizona 86515.
Director, Chinle Service Unit, P.O. Drawer P.H., Chinle, Arizona 86503.
Director, Tsaile Indian Health Center, P.O. Box 467, Tsaile, Arizona 86556.
Director, Pinon Indian Health Station, c/o Chinle Indian Hospital, P.O. Box P.H., Chinle, Arizona 86503.
Director, Rock Point Indian Health Station, c/o Chinle Indian Hospital, P.O. Box P.H., Chinle, Arizona 86503.
Director, Crownpoint Service Unit, Crownpoint Indian Hospital, P.O. Box 358, Crownpoint, New Mexico 87313.
Director, Pueblo Pintado Indian Health Station, c/o Crownpoint Indian Hospital, P.O. Box 358, Crownpoint, New Mexico 87313.
Director, Fort Defiance Service Unit, Fort Defiance Indian Hospital, P.O. Box 649, Fort Defiance, Arizona 86504.
Director, Gallup Service Unit, Gallup Indian Medical Center, P.O. Box 1337, Gallup, New Mexico 87301.
Director, Tohatchi Indian Health Center, P.O. Box 142, Tohatchi, New Mexico 87325.
Director, Fort Wingate Indian School Health Center, c/o Gallup Indian Medical Center, P.O. Box 1337, Gallup, New Mexico, 87301.
Director, Kayenta Service Unit, Kayenta Indian Health Center, P.O. Box 366, Kayenta, Arizona 86033.
Director, Inscription House Indian Health Center, P.O. Box 7397, Shonto, Arizona 86044.
Director, Dennehotso Indian Health Center, c/o Kayenta Indian Health Center, P.O. Box 368, Kayenta, Arizona 86033.
Director, Chilchinbeto Indian Health Station, c/o Kayenta Indian Health Center, P.O. Box 366, Kayenta, Arizona 86033.
Director, Shiprock Service Unit, Shiprock Indian Hospital, P.O. Box 160, Shiprock, New Mexico 87420.
Director, Teec Nos Pos Indian Health Center, P.O. Drawer D, Teec Nos Pos, Arizona 86514.
Director, Dzilth-Na-O-Dith-Le Indian Health Center, Star Route 4, Box 5400, Bloomfield, New Mexico 87413.
Director, Sanostee Indian Health Station, Shiprock Indian Hospital, P.O. Box 160, Shiprock, New Mexico 87420.
Director, Toadlena Indian Health Station, c/o Shiprock Indian Hospital, P.O. Box 160, Shiprock, New Mexico 87420.
Director, Tuba City Service Unit, Tuba City Indian Hospital, Tuba City, Arizona 86045.
Director, Dennebito Indian Health Station, c/o Tuba City Indian Hospital, Tuba City, Arizona 86045.
Director, Winslow Service Unit, Winslow Indian Health Center, P.O. Drawer 40, Winslow, Arizona 86047.
Director, Dilkon Indian Health Station, c/o Winslow Indian Health Center, P.O. Drawer 40, Winslow, Arizona 86047.
Director, Leupp Indian Health Station, c/o Winslow Indian Health Center, P.O. Drawer 40, Winslow, Arizona 86047.
Director, Oklahoma City Area Indian Health Service, 215 Dean A. McGee Street, NW., Oklahoma City, Oklahoma 73102–3477.
Director, Ada Service Unit, Carl Albert Indian Hospital, 1001 North Country Club Drive, Ada, Oklahoma 74820.
Director, Wewoka Indian Health Center, P.O. Box 1475, Wewoka, Oklahoma 74884.
Director, Claremore Service Unit, Claremore Comprehensive Indian Health Facility, West Will Rogers Boulevard & Moore, Claremore, Oklahoma 74017.
Director, Miami Indian Health Center, P.O. Box 1498, Miami, Oklahoma 74855.
Director, Clinton Service Unit, Clinton Indian Hospital, Route 4, Box 213, Clinton, Oklahoma 73601.
Director, Watonga Indian Health Center, P.O. Box 878, Watonga, Oklahoma 73772.

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Director, Concho Indian Health Clinic, P.O. Box 150, Concho, Oklahoma 73022.
Director, Kansas Service Unit, Holton Indian Health Center, 100 West 16th Street, Holton, Kansas 66436.
Facility Director, Lawrence (Haskell) Indian Health Center, 2415 Massachusetts Avenue, Lawrence, Kansas 66044.
Director, Lawton Service Unit, Lawton Indian Hospital, Lawton, Oklahoma 73501.
Director, Anadarko Indian Health Center, P.O. Box 828, Anadarko, Oklahoma 73005.
Director, Carnegie Indian Health Center, P.O. Box 1120, Carnegie, Oklahoma 73105.
Director, Pawnee Service Unit, Pawnee Indian Health Center, Rural Route 2, Box 1, Pawnee, Oklahoma 74058.
Director, Pawhuska Indian Health Center, 715 Grandview, Pawhuska, Oklahoma 74056.
Director, White Eagle Indian Health Center, P.O. Box 2071, Ponca City, Oklahoma 74601.
Director, Shawnee Service Unit, Shawnee Indian Health Center, 2001 South Gordon Cooper Drive, Shawnee, Oklahoma 74801.
Director, Tahlequah Service Unit, W.W. Hastings Indian Hospital, 100 S. Bliss, Tahlequah, Oklahoma 74464.
Director, Phoenix Area Indian Health Service, 3738 N. 16th Street, Suite A, Phoenix, Arizona 85016–5981.
Director, Colorado River Service Unit, Parker Indian Hospital, Route 1, P.O. Box 12, Parker, Arizona 85344.
Director, Peach Springs Indian Health Center, Peach Springs, Arizona 86434.
Director, Chemehuevi Indian Health Clinic, Chemehuevi Valley, California 92363.
Director, Havasupai Indian Health Station, Supai, Arizona 86435.
Director, Fort Yuma Service Unit, Fort Yuma Indian Hospital, P.O. Box 1368, Fort Yuma, Arizona 85364.
Director, Sherman Indian School Health Center, 9034 Magnolia, Riverside, California 92503.
Director, Keams Canyon Service Unit, Keams Canyon Indian Hospital, P.O. Box 98, Keams Canyon, Arizona 86034.
Director, Second Mesa Indian Health Center, P.O. Box General Delivery, Second Mesa, Arizona 86043.
Director, Owyhee Service Unit, Owyhee Indian Hospital, P.O. Box 212, Owyhee, Nevada 89832.
Director, Southern Bank Indian Health Clinic, 1545 Silver Eagle Road, Elko, Nevada 89801.
Director, Phoenix Service Unit, Phoenix Indian Medical Center, 4212 North 16th St., Phoenix, Arizona 85016.
Director, Fort McDowell Indian Health Station, c/o Phoenix Indian Medical Center, 4212 North 16th Street, Phoenix, Arizona 86016.
Director, Salt River Indian Health Center, Route 1, Box 215, Scottsdale, Arizona 85256.
Director, Gila Crossing Indian Health Clinic, Route 1, Box 770, Laveen, Arizona 85339.
Director, San Lucy Indian Health Station, c/o Phoenix Indian Medical Center, 4212 North 16th Street, Phoenix, Arizona 85016.
Director, Phoenix Indian School Health Center, c/o Phoenix Indian Medical Center, 4212 North 16th St., Phoenix, Arizona 85016.
Director, Sacaton Service Unit, Sacaton Indian Hospital, Sacaton, Arizona 85247.
Director, San Carlos Service Unit, San Carlos Indian Hospital, San Carlos Arizona 85550.
Director, Bylass Indian Health Center, P.O. Box 208, San Carlos, Arizona 85550.
Director, Schurz Service Unit, Schurz Indian Hospital, Schurz, Nevada 89427.
Director, Stewart Indian Health Station, Stewart, Nevada 89437.
Director, Fort McDermitt Indian Health Station, P.O. Box 475, McDermitt, Nevada 89421.
Director, Pyramid Lake Indian Health Clinic, Nixon, Nevada 89424.
Director, Unitah and Ouray Service Unit, Fort Duchesne Indian Health Center, P.O. Box 160, Roosevelt, Utah 84066.
Director, Whiteriver Service Unit, Whiteriver Indian Hospital, Whiteriver, Arizona 85941.
Director, Cibicue Indian Health Center, Cibicue, Arizona 85941.
Director, Portland Area Indian Health Service, Room 476, Federal Building, 1220 Southwest Third Avenue, Portland, Oregon 97204–2892.
Director, Chimawa Indian Health Center, 3750 Hazelgreen Road, NE., Salem, Oregon 97303.
Director, Colville Service Unit, Colville Indian Health Center, Nespelem, Washington 99155.
Director, Inchelium Indian Health Center, Inchelium, Washington 99136.
Director, Fort Hall Service Unit, Fort Hall Indian Health Center, P.O. Box 317, Fort Hall, Idaho 83203.
Director, Northern Idaho Service Unit, Northern Idaho Indian Health Center, P.O. Drawer 367, Lapwai, Idaho 83540.
Director, Kamiah Indian Health Station, Kamiah, Idaho 83536.
Director, Coeur d'Alene Indian Health Station, Coeur d'Alene, Idaho 83814.
Director, Warm Springs Service Unit, Wellpinit Indian Health Center, P.O. Box 357, Wellpinit, Oregon 99040.
Director, Puget Sound Service Unit, Puget Sound Indian Health Station, 1212 South Judkins, Seattle, Washington 98144.
Director, Yakima Service Unit, Yakima Indian Health Center, Route 1, Box 1104, Toppenish, Washington, 98948.
Director, Yellowhawk Service Unit, Yellowhawk Indian Health Center, P.O. Box 160, Pendleton, Oregon 97801.
Director, Taholah Service Unit, Taholah Indian Health Center, P.O. Box 219, Taholah, Washington 98567.
Director, Queets Indian Health Station, c/o Service Unit Director, Taholah Indian Health Center, P.O. Box 219, Taholah, Washington 98587.
Director, Neah Bay Service Unit, Neah Bay Indian Health Center, P.O. Box 418, Neah Bay, Washington 98357.
Director, Northwest Washington Service Unit, Lummi Indian Health Center, 2592 Kwina Road, Bellingham, Washington 98225.
Director, Office of Health Program Research & Development, Indian Health Service, 7900 S.J. Stock Road, Tucson, Arizona 85746–9352.
Director, Sells Service Unit, Sells Indian Hospital, P.O. Box 548, Sells, Arizona 85634.
Director, Santa Rosa Indian Health Center, HCR Box 700, Sells, Arizona 85634.
Director, San Xavier Indian Health Center, 7900 S. J. Stock Road, Tucson, Arizona 85746–9352.
Director, Nashville Area Office, Indian Health Service, Oak Towers Building, 1101 Kermit Drive, Suite 810, Nashville, Tennessee 37217–2191.
Director, Cherokee Service Unit, Cherokee Indian Hospital, Cherokee, North Carolina 28719.
Director, California Area Office, Indian Health Service, 2999 Fulton Avenue, Sacramento, California 95821.

Dated: December 5, 1991.

Everett R. Rhoades,

Assistant Surgeon General Director.

[FR Doc. 91 30045 Filed 12–23–91; 8:45 am]

BILLING CODE 4160–16–M

Health Resources and Services Administration

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Department of Health and Human Services; Public Health Service (PHS); Health Resources and Services Administration (HRSA).

ACTION: Publication of minor changes to systems of records notices.

SUMMARY: In accordance with the Office of Management and Budget Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," HRSA is publishing minor changes to its notices of systems of records.

SUPPLEMENTARY INFORMATION: HRSA has completed the annual review of its systems of records and is publishing below those minor changes which affect the public's right or need to know, such as system deletions, title changes, and changes in the system location of records, or the address of systems managers.

Dated: October 22, 1991.

James A. Walsh,

Associate Administrator for Operations and Management.

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The following table of contents lists all currently active Privacy Act systems of records maintained by the Health Resources and Services Administration:

09–15–0001 Division of Federal Occupational and Beneficiary Health Services, Health and Counseling Records, HHS/HRSA/BHCDA.
09–15–0002 Record of Patients' Personal Valuables and Monies, HHS/HRSA/BHCDA.
09–15–0003 Contract Physicians and Consultants, HHS/HRSA/BHCDA.
09–15–0004 Federal Employee Occupational Health Data System, HHS/HRSA/BHCDA.
09–15–0007 Patients Medical Records System PHS Hospitals/Clinics, HHS/HRSA/BHCDA.
09–15–0008 Emergency Non-PHS Treatment Authorization File, HHS/HRSA/BHCDA.
09–15–0022 Accounts Receivable, HHS/HRSA/OA.
09–15–0026 Medical Fellowships and Educational Loans, HHS/HRSA/OA.
09–15–0028 PHS Clinical Affiliation Trainee Records, HHS/HRSA/BHCDA.
09–15–0029 PHS Beneficiary-Contract Medical/Health Care Records, HHS/HRSA/BHCDA.
09–15–0037 Public Health Service (PHS) and National Health Service Corps (NHSC) Health Care Provider Records System, HHS/HRSA/BHCDA.
09–15–0038 Disability Claims of the Nursing Student Loan Program, HHS/HRSA/BHPr.
09–15–0039 Disability Claims in the Health Professions Student Loan Program, HHS/HRSA/BHPr.
09–15–0040 Health Professions Student Loan Repayment Program, HHS/HRSA/BHPr.
09–15–0041 Health Professions Student Loan Cancellation, HHS/HRSA/BHPr.
09–15–0042 Physician Shortage Area Scholarship Program, HHS/HRSA/BHCDA.
09–15–0043 Cuban Loan Program, HHS/HRSA/OA.
09–15–0044 Health Educational Assistance Loan Program (HEAL) Loan Control Master File, HHS/HRSA/BHPr.
09–15–0045 Health Resources and Services Administration Loan Repayment/Debt Management Records Systems, HHS/HRSA/OA.
09–15–0046 Health Professions Planning and Evaluation, HHS/HRSA/OA.
09–15–0052 Nurse Practitioner and Midwifery Traineeship Program, HHS/HRSA/BHPr.
09–15–0054 National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners, HHS/HRSA/BHPr.
09–15–0055 Organ Procurement and Transplantation Network (OPTN) Data System, HHS/HRSA/BHRD.
09–15–0056 National Vaccine Injury Compensation Program, HHS/HRSA/BHPr.
09–15–0057 Scholarships for the Undergraduate Education of Professional Nurses Grant Programs, HHS/HRSA/BHPr.

Changes

09–15–0022

System name:

Accounts Receivable, HHS/HRSA/OA.

Minor changes have been made to this system notice. The following category should be revised:

* * * * *

System manager(s) and address:

Policy Coordination Official: Director, Division of Fiscal Services, Office of the Administrator (OA), Health Resources and Services Administration (HRSA), Room 16–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Chief, Debt Management Branch, Division of Fiscal Services, HRSA/OA, Room 16A–09, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Director, Gillis W. Long Hansen's Disease Center, Carville, LA 70721.

* * * * *

09–15–0026

System name:

Medical Fellowships and Educational Loans, HHS/HRSA/OA.

Minor changes have been made to this system notice. The following category should be revised:

* * * * *

System manager(s) and addresses:

Chief, General Accounting Branch, Division of Fiscal Services, Office of the Administrator, Health Resources and Services Administration, Room 16–16, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

09–15–0043

System name:

Cuban Loan Program, HHS/HRSA/OA. Minor changes have been made to this system notice. The following category should be revised:

* * * * *

System location:

Debt Management Branch, Division of Fiscal Services, Office of the Administrator, Health Resources and Services Administration, Room 16A–09, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

System manager(s) and address:

Chief, Debt Management Branch, Division of Fiscal Services, Office of the Administrator, Health Resources and Services Administration, Room 16A–09, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

* * * * *

09–15–0045

System name:

Health Resources and Services Administration Loan Repayment/Debt Management Records Systems, HHS/HRSA/OA.

Minor changes have been made to this system notice. The following categories should be revised:

* * * * *

System location:

Division of Fiscal Services, Office of the Administrator, Health Resources and Services Administration (HRSA), Room 16–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Bureau of Health Professions, HRSA, Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Bureau of Health Care Delivery and Assistance, HRSA, Room 7–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Indian Health Service, Room 6–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Grants Management Branch, National Institute on Drug Abuse, Room 10–25, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Grants Management Branch, National Institute on Alcohol Abuse and Alcoholism, Room 16–86, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Grants Management Branch, OPS, National Institute of Mental Health, Room 7C–23, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Federal Assistance Accounting Branch, Division of Financial Management, National Institutes of Health, Room B1B04, Building 31, 9000 Rockville Pike, Bethesda, MD 20892.

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

* * * * *

System manager(s) and address:

Policy Coordination Official: Associate Administrator for Operations and Management, Health Resources and Services Administration (HRSA) Room 14A–03, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Chief, Debt Management Branch, Division of Fiscal Services, Office of the Administrator, HRSA, Room 16–09, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Director, Office of Debt Management, Bureau of Health Professions, (HRSA), Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Director, Division of Resource Management, Indian Health Service, Room 5A–38, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

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09-15-0046

System name:

Health Professions Planning and Evaluation, HHS/HRSA/OA. Minor changes have been made to this system. The following categories should be revised:

* * * * *

System location:

This system of records is an umbrella system comprising separate sets of records located either in the organizations responsible for conducting evaluations or at the sites of programs or activities under evaluation. Locations include the Health Resources and Services Administration (HRSA) facilities in Rockville, Maryland, or facilities of contractors of HRSA. Write to the System Manager for a list of current locations.

Authority for maintenance of the system:

Authority is found in the following sections of the Public Health Service Act: Title III, Part D, "Primary Health Care" (42 U.S.C. 254b); Title VII, "Health Research and Training Facilities and Training of Professional Health Personnel" (42 U.S.C. 292a); Title VIII, "Nurse Education" (42 U.S.C. 296K); and Title XXVI, Section 2611, "Evaluation of Programs" (42 U.S.C. 300aaa–10). Authority is also found in Section 401 of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11101 note).

* * * * *

System manager(s) and address:

Deputy Director, Division of Information and Analysis, Office of Planning, Evaluation and Legislation, Health Resources and Services Administration, Room 14-33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

* * * * *

Record access procedures:

To obtain access to your record, contact the System Manager and provide suitable identification, a reasonable description of the record and, if possible, information about the specific project. You may also request a list of accountable disclosures that have been made of your record.

Contesting record procedures:

To correct your record, contact the System Manager and provide (a) suitable identification, (b) reasonable description of the record, (c) the specific information you want corrected, and (d) a precise description of the correction with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, or untimely (obsolete).

[FR Doc. 91-25842 Filed 12-23-91; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Food and Drug Administration

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Publication of minor changes to systems of records notices.

SUMMARY: FDA is publishing this document in accordance with Office of Management and Budget Circular No. A-130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals."

SUPPLEMENTARY INFORMATION: FDA has completed the annual review of its systems of records and has made no changes which affect the public's right or need to know. Therefore, FDA is publishing below a table of contents only of all active systems of records in FDA. The last complete text of FDA's System Notices was published in the Office of the Federal Register's 1989 Annual Compilation of Privacy Act Issuances.

Dated: October 28, 1991.

Donald C. McLearn,

Acting Associate Commissioner for Public Affairs.

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09-10-0005 State Food and Drug Official File HHS/FDA/ORA
09-10-0007 Science Advisor Research Associate Program (SARAP), HHS/FDA/ORA
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[FR Doc. 91-26269 Filed 12-23-91; 8:45 am]

BILLING CODE 4160-01-M

federal register

Tuesday
December 24, 1991

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 357

Orally Administered Drug Products for Relief of Symptoms Associated With Overindulgence in Food and Drink for Over-The-Counter Human Use; Tentative Final Monograph; Notice of Proposed Rulemaking

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 357

[Docket No. 82N-0166]

RIN 0905-AA06

Orally Administered Drug Products for Relief of Symptoms Associated With Overindulgence in Food and Drink for Over-the-Counter Human Use; Tentative Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking in the form of a tentative final monograph that would establish conditions under which over-the-counter (OTC) orally administered drug products for relief of symptoms associated with overindulgence in food and drink (drug products for the relief of symptoms of upset stomach due to overindulgence resulting from food and drink, and drug products to minimize or relieve hangover symptoms) are generally recognized as safe and effective and not misbranded. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products and public comments on an advance notice of proposed rulemaking that was based on those recommendations. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by April 22, 1992. New data by December 24, 1992. Comments on the new data by February 24, 1993. Written comments on the agency's economic impact determination by April 22, 1992.

ADDRESSES: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 1, 1982 (47 FR 43540), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC orally administered drug products for relief of symptoms associated with overindulgence in alcohol and food, together with the recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in these drug products. Interested persons were invited to submit comments by December 30, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by January 31, 1983.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were placed on public display in the Dockets Management Branch (address above), after deletion of a small amount of trade secret information.

In response to the advance notice of proposed rulemaking, two manufacturers, one consumer group, and one individual submitted comments. Copies of the comments received are on public display in the Dockets Management Branch.

In this tentative final monograph (proposed rule) to establish subpart J of part 357 (21 CFR part 357—subpart J), FDA states for the first time its position on the establishment of a monograph for OTC orally administered drug products for relief of symptoms associated with overindulgence in food and drink. The agency has changed the title of this monograph from drug products for * * * overindulgence in "alcohol and food" to * * * "food and drink." The agency considers the terms "food and drink" to be more inclusive of the use of these drug products. Final agency action on this matter will occur with the publication at a future date if a final monography, which will be a final rule establishing a monograph for these drug products.

This proposal constitutes FDA's tentative conclusions on OTC orally administered drug products for relief of symptoms associated with overindulgence in food and drink based on the agency's independent evaluation of the Panel's report and the comments received. Modifications have been made for clarity and regulatory accuracy and to reflect new information. Such new information has been placed on file in the Dockets Management Branch (address above). These modifications are reflected in the following summary of the comments and FDA's responses to them.

In the advance notice of proposed rulemaking for these products (47 FR 43540), the Panel's discussion and the recommended monograph were organized into four categories of active ingredients: (1) To minimize inebriation, (2) to minimize hangover symptoms, (3) for relief of hangover symptoms, and (4) for relief of symptoms of upset stomach due to overindulgence in the combination of alcohol and food. In the **Federal Register** of July 19, 1983 (48 FR 32872), the agency published a notice announcing that fructose or any other ingredient intended to minimize or prevent inebriation is a new drug and is required to be the subject of an approved new drug application (NDA) before marketing.

Activated charcoal, the only ingredient reviewed to reduce or minimize hangover, was placed in Category III in the advance notice of proposed rulemaking (47 FR 43540 at 43555). No additional data have been submitted to the agency to prove the effectiveness of activated charcoal in reducing or minimizing hangover. Therefore, activated charcoal remains in Category III for this use and is not further discussed in this document. However, the agency is proposing Category I labeling in this document in the event that data are submitted which result in the upgrading of activated charcoal to monograph status in the final rule.

In reviewing the Panel's recommendations on OTC drug products for relief of hangover symptoms and OTC drug products for relief of symptoms of upset stomach due to overindulgence in the combination of alcohol and food, the agency recognizes that this rulemaking significantly overlaps other rulemakings in the OTC drug review. For example, the Panel's recommendation on OTC drug products for relief of hangover symptoms consists of a combination of ingredients involving ingredients already classified as Category I in other OTC drug monographs: Antacid (21 CFR part 331), stimulant (21 CFR part 340), and internal analgesic (proposed 21 CFR part 343) (see the **Federal Register** of November 16, 1988, 53 FR 46204). To avoid unnecessary monograph duplication, the agency will not propose to establish a separate monograph for products for relief of hangover symptoms that contain these classes of ingredients. Instead, the agency is proposing to amend the final monographs for OTC antacid (21 CFR part 331) and stimulant (21 CFR part 340) drug products, and is amending the tentative final monograph for OTC internal analgesic drug products to include appropriate conditions for relief of hangover symptoms. These proposals are published elsewhere in this issue of the **Federal Register**.

Similarly, the claim for relief of symptoms of upset stomach due to overindulgence in the combination of food and drink overlaps claims contained in the antacid rulemaking. Therefore, the agency is proposing to amend the final monograph for OTC antacid drug products to include appropriate conditions for relief of the symptoms of upset stomach due to overindulgence in food and drink.

Therefore, this tentative final monograph will include only ingredients, such as bismuth subsalicylate, that are not included in other OTC drug final monographs or ongoing rulemakings and only for claims related to relief of upset stomach associated with overindulgence in food and drink. For further discussion, see comment 1 below.

For the sake of clarity and comprehensiveness, all issues raised in comments to the advance notice of proposed rulemaking for OTC orally administered drug products for relief of symptoms associated with overindulgence in alcohol and food (47 FR 43540) are being addressed in this tentative final monograph. However, any comments received in response to the proposed amendments to the monographs for OTC antacid, internal analgesic, or stimulant drug products, published elsewhere in this issue of the **Federal Register**, will be addressed in the respective rulemaking, as appropriate.

The OTC drug procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA will no longer use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but will use instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II, and III at the tentative final monograph stage.

The agency advises that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication of the final monograph in the **Federal Register**. On or after that date, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

If the agency determines that any labeling for a condition included in the final monograph should be implemented sooner than the 12-month effective date, a shorter deadline may be established. Similarly, if a safety problem is identified for a particular nonmonograph condition, a shorter deadline may be set for removal of that condition from OTC drug products.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notices published in the **Federal Register** of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179) or to additional information that has come to the agency's attention since publication of the advance notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch (address above).

I. The Agency's Tentative Conclusions on the Comments

1. Two comments questioned the appropriateness of the term "food and drink overindulgence reliever" as a statement of identity. The comments noted that OTC drug monographs normally use a term such as "antacid" or "analgesic" that describes the pharmacological category or principal intended action of the active ingredient(s) as a statement of identity. One comment requested that terms such as "antacid" or "analgesic" be permitted as alternatives to the Panel's recommended statement of identity. The comment added that consumers are familiar with current statements of identity and proposing new ones may confuse consumers or mislead them into thinking that a product has been changed. The other comment requested that the statement of identity be changed from "food and drink overindulgence reliever" to "upset stomach remedy," stating that this phrase is concise, accurate, and provides the consumer with a better understanding of the product's intended use. The comment added that the Panel's proposed statement of identity is very lengthy and could create labeling space problems, particularly for a product with multiple indications.

The agency acknowledges that statements of identity are normally expressed in terms of the general pharmacological category(ies) or principal intended action(s) of the active ingredients in the products, in accord with 21 CFR 201.61. As pointed out by the comments, the statement of identity "food and drink overindulgence reliever," which was recommended by the Panel, does not conform to the usual practice set forth in § 201.61 and is potentially confusing to consumers. The agency believes that a shorter, more concise statement of identity can be used, and the agency is proposing to revise the statement of identity. The agency believes that the statement of identity "upset stomach remedy" suggested by one of the comments is preferable. However, the agency believes this phrase would be more appropriate if the term "remedy" was replaced with the term "reliever" because the term "reliever" more accurately describes the intended effect of such products than the term "remedy." Therefore, the agency is proposing the term "upset stomach reliever" as the statement of identity for the products covered by this tentative final monograph.

The suggestion by one comment that widely recognized statements of identity such as "antacid" or "analgesic" be allowed as alternatives to the proposed statement of identity is not being included in this document. As discussed in the preamble to this document, if the action of an ingredient or combination of ingredients in relieving "upset stomach" or "overindulgence in food and drink" is that of an antacid, then those ingredients are more appropriately covered under the monograph for OTC antacid drug products and would bear the statement of identity appropriate to that monograph, i.e., "antacid", as the comment requested. (See notice of proposed rulemaking for Antacid Drug

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Products for Over-the-Counter Human Use published elsewhere in this issue of the **Federal Register**.)

As discussed above, the agency is limiting this rulemaking to those ingredients, such as bismuth subsalicylate, that are not covered by the rulemaking for OTC antacid drug products. (See section II. paragraph A. 1.)

2. One comment urged that combination drug products containing sodium citrate and sodium acetylsalicylate in solution be exempted from the Panel's recommended analgesic overdose warning regarding ringing in the ears in § 357.952(c)(4)(ii) (47 FR 43540 at 43559). The comment argued that this combination is incapable of producing potentially toxic blood levels of salicylate. The comment stated that, in comparison with aspirin administered in other dosage forms, this combination product produces more rapid, high salicylate blood levels, an increased salicylate excretion rate with increasing dosages due to alkalinization of the urine by the sodium citrate, and a leveling off of plasma salicylate concentration. In support of this argument, the comment referred to a study of Leonards (Ref. 1) in which large repeated doses of the combination drug product or aspirin were administered to human subjects and plasma salicylate levels were determined. Four 325-milligram (mg) tablets of aspirin were given every 2 hours up to a maximum of 20 tablets in 8 hours. Four tablets of the combination drug product, containing an amount of salicylate equivalent to the aspirin, were also given every 2 hours, up to a maximum of 28 tablets in 12 hours. The plasma salicylate levels reached 2 hours after the last dose were 188 milligrams per liter (mg/L) for the combination product and 300 mg/L for aspirin. Plasma salicylate reached approximately 200 mg/L for the combination product at 10 hours, but had dropped to 180 mg/L at 14 hours. Therefore, the comment contended that this combination drug product will not reach toxic plasma salicylate levels, regardless of the dose taken, and the proposed warning should not be applicable to this particular combination drug product.

The agency has reviewed the cited study (Ref. 1) and concludes that the data are inadequate to establish that toxic blood levels of salicylate cannot be achieved by a combination product containing sodium citrate and sodium acetylsalicylate. The study includes two separate dosage tests conducted on two groups of subjects. In the first test, 12 normal adult subjects were given 1,300 mg (4 tablets of 325 mg each) of aspirin followed by 6 ounces (oz) of water every 2 hours until 6.5 grams (g) (20 tablets) were taken. One week later, an equivalent dose of the combination product dissolved in 6 oz of water was administered to the same 12 subjects. Blood samples were taken at 0, 2, 4, 6, 8, and 10 hours after the first dose and total salicylate in plasma was determined. Plasma salicylate levels of approximately 300 mg/L for the aspirin and 188 mg/L for the combination product were reported 2 hours after the last dose. The test indicated that plasma salicylate levels after repeated administration of large amounts of aspirin continued to rise to approach toxic levels, while the plasma salicylate levels after repeated administration of large amounts of the combination drug product appeared to level off at the still safe concentration of 188 mg/L. The second dose test assessed the peak plasma salicylate levels of six subjects given the same amount of combination drug product as used in the first test; the subjects were given the drug every 2 hours until seven doses had been taken. Peak plasma salicylate levels of approximately 200 mg/L were reached 10 hours after the first dose, with the level dropping to approximately 180 mg/L at 14 hours.

The agency acknowledges that the Leonards study shows that subjects who received the combination drug product had lower plasma salicylate levels after 10 hours than those who received aspirin. However, as the Advisory Review Panel on OTC Internal Analgesic and Antirheumatic Drug Products (Internal Analgesic Panel) discussed in its report (42 FR 35346 at 35379), there is great variability of salicylate metabolism and elimination in normal individuals. Thus, the plasma salicylate levels observed in the small sample of subjects used in the Leonards study (Ref. 1) could not be considered to be representative of the population on a whole. Further, the Internal Analgesic Panel pointed out that no correlation between response and plasma levels has been established (42 FR 35346 at 35373). The Internal Analgesic Panel further noted that correlation between product formulation, drug blood levels achieved, and the onset of pharmacological effect is not understood (42 FR 35346 at 35374). Thus, even if a correlation between dose and plasma salicylate levels can be established, a correlation between plasma salicylate levels and salicylate effect (i.e., ringing in the ears) must still be established. The agency concurs with the Panel's findings. (See also comment 39 of the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products published in the **Federal Register** of November 16, 1988, 53 FR 46204 at 46222.)

Therefore, based on the above discussion, the agency is not exempting combination drug products containing sodium citrate and sodium acetylsalicylate from the warning regarding ringing in the ears. Combinations of antacids and internal analgesics, including combinations of sodium citrate and sodium acetylsalicylate in solution, are primarily being handled in the rulemaking for OTC internal analgesic drug products and not in this rulemaking. (See also comment 1.) Such a combination drug product would, therefore, be required to bear the warning proposed in the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products in § 343.50(c)(1)(v)(A), published in the **Federal Register** of November 16, 1988 (53 FR 46204 at 46256), which states "If ringing in the ears or a loss of hearing occurs, consult a doctor before taking any more of this product." Such products would not be permitted to bear the warning recommended by the Miscellaneous Internal Panel in § 357.952(c)(4)(ii) of the advance notice of proposed rulemaking for OTC orally administered drug products for the relief of symptoms associated with overindulgence in alcohol and food.

Reference

(1) Leonards, J. R., "Safety of Alka-Seltzer in Very Large Doses as Evidenced by Plasma Salicylate Levels," draft of unpublished study, OTC Volume 170198, Docket No. 82N–0166, Dockets Management Branch.

3. One comment urged that the claims "fast relief" and "speedy relief" be permitted in the labeling of a drug product containing a combination of sodium citrate and sodium acetylsalicylate in solution. The comment claimed that substantial scientific data submitted to the Panel on this product clearly demonstrate that the product provides faster symptomatic relief than other dosage forms. The comment pointed out that, because this product is already in solution when ingested, the dissolution step that is necessary for other dosage forms before absorption occurs is eliminated. Thus, the acetylsalicylate and total salicylate quickly become available. The comment added that the rapid gastric emptying (to the duodenum) that occurs produces both early and high peak plasma levels of acetylsalicylate (Ref. 1). The comment also contended that the drug product provides instant acid neutralization, thereby instantly relieving the symptoms that are acid related or mediated (Ref. 2). The comment argued that the statements "speedy relief" and "fast relief" simply convey, in layman's language, truthful and informative information that the product acts relatively promptly. The comment concluded that there is no basis for prohibiting use of these claims.

In comment 42 of the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products (53 FR 46204 at 46223), the agency addressed the claim of quicker analgesic benefits for antacid and analgesic combination drug products in a solution dosage form. In that document, the agency concurred with the Internal Analgesic Panel that no well-controlled studies exist to prove that absorption rates will produce therapeutically different results with regard to onset, intensity, or incidence of relief of symptoms. Thus, in the absence of supporting data, such claims were placed in Category III. Further, while the data submitted by the comment (Ref. 1) do indicate that the product provides rapid neutralization of stomach acid, the data do not prove or disprove that rapid acid neutralization will result in clinically significant differences in the onset, intensity, or incidence of relief of symptoms associated with overindulgence of food and/or drink. Therefore, the agency is placing the label claims "fast relief" and "speedy relief" in Category III until further data supporting such claims are provided.

References

(1) OTC Volume 170189, pp. 18–21.
(2) OTC Volume 170189, pp. 17–18.

4. One comment agreed with the Panel's recommendation at 47 FR 43547 that combination products containing antacids and aspirin labeled "for the relief of upset stomach due to overindulgence in the combination of food and drink, when accompanied by a headache or other minor aches and pains" be appropriately buffered so that the final dosage form at least meets the buffering capacity of an antacid final dosage form. The comment also supported the Panel's recommended deletion of the proposed caution against the use of aspirin-containing products in the presence of "gastric distress" for products containing an adequate amount of antacids, and urged the agency to adopt the Panel's recommendation. The comment summarized the Panel's discussion and other data on this subject in support of its contention that highly buffered analgesic-antacid combinations, such as sodium acetylsalicylate and sodium citrate in solution, do not damage the stomach or gastric mucosa, or cause gastrointestinal bleeding (Ref. 1).

In comment 47 of the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products (53 FR 46204 at 46226), the agency discussed analgesic-antacid labeling claims for aspirin-antacid drug products and stated that such combination drug products for ingestion as a solution should provide at least 5 milliequivalents (mEq) of acid neutralizing capacity as specified in § 331.10(a) of the OTC antacid final monograph (21 CFR part 331). In this document, the agency continues to support that position.

The safety of highly buffered aspirin solutions and aspirin-antacid combinations and the effects of such products on the gastrointestinal tract was also discussed in comment 47 of the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products (53 FR 46226). The agency concluded in that document that such combination products should bear warnings against their use by persons who have persistent or recurring stomach problems, such as acid indigestion, or who have ulcers or bleeding problems as stated in the following proposed warning in the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products (§ 343.50(c)(1)(v)(B)): "Do not take this product if you have stomach problems (such as heartburn, upset stomach, or stomach pain) that persist or recur, or if you have ulcers or bleeding problems, unless directed by a doctor." Because the combination products mentioned by the comment are primarily being handled in the rulemaking for OTC internal analgesic drug products, they would be required to bear this proposed warning.

Reference

(1) Comment No. C0005, Appendix A, Docket No. 82N–0166, Dockets Management Branch.

5. One comment criticized the Panel's reasoning for allowing use for relief of alcoholic hangover symptoms of a combination product that contains active ingredients from at least two of the following three drug categories: Analgesic, antacid, and stimulant. The comment disagreed with the Panel's conclusion that because these ingredients have been reviewed extensively by other Panels and found effective for treating the various symptoms that comprise a hangover, it is unnecessary to require clinical studies to prove the effectiveness of the combination products used to treat hangover (47 FR 43540 at 43551). The comment expressed the belief that, in lieu of clinical studies, and Panel based its recommendation on the fact that over the years people have found it convenient to treat hangover with these combination products.

The comment questioned whether it is correct to classify a product as generally recognized as safe and effective based primarily on the fact that similar products have been used for this purpose for many years. The comment argued that unsafe products such as analgesics containing phenacetin and ineffective products such as hair growing agents were marketed for years and later found to be either unsafe or ineffective. The comment expressed the opinion that the Panel's action with respect to hangover remedies provides evidence that the agency is willing to abandon its legal responsibilities under the OTC drug review because these recommendations are irrational, lack proof of sound scientific evidence, set a precedent for the issuance of further unsound monographs, and allow the marketing of unnecessary and irrational products. The comment concluded that until substantial evidence exists for a given product or ingredient, the agency should not add new products to the OTC market or add new indications on old products.

A second comment recommended that the agency adopt the Panel's determination that the combination of the internal analgesic sodium acetylsalicylate and the antacid sodium citrate in solution is safe and effective in relieving the symptoms of a hangover. The comment expressed the opinion that this determination is fully supported by the scientific literature and years of experience with the product.

The agency believes that the first comment overlooks a number of important considerations in the Panel's evaluation of combination products containing antacids, analgesics, and stimulants to treat hangover symptoms. It was not the Panel's intention to permit random combinations of ingredients in a simple product for a simple indication, but rather to recognize that the term "hangover" referred to a commonly recognized symptom complex that is composed of symptoms for which Category I ingredients that exist in the antacid, internal analgesic, and stimulant monographs can be used. Although acknowledging that no study had been done to determine the relative frequency of hangover symptoms in a

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large population, the Panel compiled a list of symptoms that included nausea, heartburn, thirst, tremor, disturbance of equilibrium, fatigue, general aches and pain, headache, dullness and/or depression, and irritability (47 FR 43540 at 43551). The Panel then proposed to allow combination products containing an internal analgesic(s) to treat the headache and general aches, an antacid(s) to treat the gastric distress, and a stimulant (caffeine) to treat the dullness or fatigue. The Panel proposed that any combination of ingredients from two or more of these categories of drugs, was a Category I hangover reliever.

The Panel believed it would be justifiable to combine active ingredients to treat these separate symptoms if the combination met the agency's requirements (47 FR 43540 at 43551). In its "General Guidelines for OTC Drug Combination Products" (Ref. 1), the agency has provided that Category I active ingredients from different therapeutic categories may be combined to treat different symptoms concurrently only if each ingredient is present within its established safe and effective dosage range and the combination meets the OTC drug combination policy in all other respects. In this case, the different symptoms treated concurrently are part of the symptom complex. The OTC drug combination policy, as stated in 21 CFR 330.10(a)(4)(iv) of the OTC drug regulations, includes the provisions that combining of the active ingredients does not decrease the safety or effectiveness of any of the individual active ingredients, and the combination provides rational concurrent therapy for a significant proportion of the target population.

The agency agrees that a symptom complex known as "hangover" does exist and that its symptoms vary widely from individual to individual. In reviewing the data on hangover symptoms cited by the Panel (Refs. 2 through 6), the agency agrees that many of the symptoms that form the complex are treatable with combination products containing internal analgesic, antacid, or stimulant ingredients. The agency further agrees that certain symptoms of a hangover are relieved by the combination of the internal analgesic sodium acetylsalicylate and the antacid sodium citrate in solution.

The agency notes, however, that in recommending combination products to treat hangover symptoms, the Panel failed to adequately consider that caffeine stimulates gastric secretion of hydrochloric acid (Refs. 7 through 13). The ability of caffeine to significantly increase hydrochloric acid secretion is mentioned in standard medical reference textbooks (Refs. 7 and 8) and was reported by Roth and Ivy (Ref. 13) as early as 1944. McArthur, Hogan, and Isenberg (Ref. 9) undertook a study to determine the effect of nine commonly ingested beverages on gastric acid secretion in humans. Six healthy subjects were each studied on 11 separate days and in random order. Test substances were 3 types of soda water, 3 different brands of instant coffee, tea, milk, and beer. The control was water. The results were considered significantly different for each beverage versus the control ($p<0.05$). The authors stated that this study indicates that each of the beverages tested is a potent stimulus of gastric acid secretion regardless of its caffeine content. Studies by Cohen and Booth (Ref. 10) likewise demonstrated that caffeine stimulates gastric acid secretion and reduces the competence of the lower esophageal sphincter in healthy subjects. Noting that caffeine is a potent stimulant of gastric secretion in man, Roth and Ivy (Ref. 13) conducted experiments to determine the synergistic effect of caffeine upon alcohol. They observed that the gastric secretory response to the combined action of alcohol plus caffeine was an average of 65.9 percent greater than the response produced when alcohol and caffeine were given separately. Further, the response to the combination of alcohol and caffeine was prolonged, lasting approximately 70 minutes longer than that of the individual ingredients.

The Advisory Review Panel on OTC Sedative, Tranquilizer, and Sleep-aid Drug Products (Sleep-aid Panel) noted in its advance notice of proposed rulemaking for OTC nighttime sleep-aid, daytime sedative, and stimulant drug products (December 8, 1975, 40 FR 57292 at 57324 to 57325) that caffeine stimulates gastric secretion in man. While that Panel stated that normal doses of caffeine (i.e., 100 mg) did not seem to cause irritation of the gastrointestinal tract, the agency notes that the target population considered by that Panel in its assessment of the safety and effectiveness of caffeine as an OTC stimulant did not specifically include individuals that already had some degree of stomach or gastrointestinal irritation or upset due to overindulgence in alcohol and/or food. Further, the Sleep-aid Panel did not give any consideration to the safety of caffeine in patients with already high levels of stomach acid.

In view of caffeine's documented effect in stimulating gastric secretions, the agency does not believe that combination products containing both caffeine, which stimulates hydrochloric acid secretion, and an antacid, which reduces the concentration of hydrochloric acid and treats the symptoms associated with high levels of hydrochloric acid, are rational. Therefore, the agency is reversing the Panel's Category I recommendation and is placing in Category II all combination products for the treatment of hangover that contain both an antacid ingredient and caffeine, a stimulant ingredient. The agency is not aware of any marketed OTC drug combination products, other than hangover remedies, that contain both stimulant and antacid ingredients.

Analgesic-antacid combinations are currently included in the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products, published in the **Federal Register** of November 16, 1988 (53 FR 46204). The agency does not see a need to establish a separate monograph for drug products for the relief of hangover symptoms when this indication can readily be incorporated into the rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products.

Accordingly, the agency is proposing to eliminate further consideration of drug products for the relief of hangover in this document and is instead proposing elsewhere in this issue of the **Federal Register** to amend the internal analgesic tentative final monograph in § 343.20 by adding new paragraph (b)(5), to read as follows:

(b) * * *

(5) *Internal analgesic and stimulant combinations.* Any internal analgesic ingredient identified in § 343.10(a) or (b)(1) of this chapter may be combined with any stimulant ingredient identified in § 340.10 of this chapter provided the product bears labeling indications in accordance with § 343.60(b)(6).

The agency is also proposing to amend the labeling for products containing a combination of an internal analgesic and an antacid to include claims for the relief of symptoms of hangover and/or overindulgence in food and drink and to include a warning for products for relief of hangover symptoms in § 343.60 by revising paragraphs (b)(2) and (b)(4) and (c) and by adding new paragraphs (b)(6) and (c)(1), to read as follows:

(b) * * *

(2) *For permitted combinations identified in § 343.20(b)(1).* The indications are the following: "For the temporary relief of minor aches and pains with" (select one or more of the following: "heartburn," "sour stomach," or "acid indigestion") (which may be followed by: "and upset stomach associated with" (select one or more of the following, as appropriate: "this symptom," "these symptoms," "hangover," or "overindulgence in food and drink."))

* * * * *

(4) *For permitted combinations identified in § 343.20(b)(3).* The indications are the following: "For the temporary relief of minor aches and pains with" (select one or more of the following: "heartburn," "sour stomach," or "acid indigestion") (which may be followed by: "and upset stomach associated with" (select one or more of the following, as appropriate: "this symptom," "these symptoms," "hangover," or "overindulgence in food and drink")) and "Also may be used for the temporary relief of minor aches and pains alone" (which may be followed by one or more of the following: ("such as associated with" (select one or more of the following: "a cold," "the common cold," "sore throat," "headache," "toothache," "muscular aches," "backache," "the premenstrual and menstrual periods" (which may be followed by "dysmenorrhea")", or "premenstrual and menstrual cramps" (which may be followed by: "(dysmenorrhea)")), ("and for the minor pain from arthritis"), and ("and to reduce fever.")))

* * * * *

(6) *For permitted combinations identified in § 343.20(b)(5).* The indications are the following: "For the temporary relief of minor aches and pain associated with a hangover. Helps restore mental alertness or wakefulness when experiencing fatigue or drowsiness associated with a hangover."

* * * * *

(c) *Warnings.* The labeling of the product states, under the heading "Warnings," the warnings(s) for each ingredient in the combination, as established in the warnings sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph.

(1) *For permitted combinations identified in § 343.20(b)(1) and (b)(3) when labeled for the relief of the symptoms of hangover.* "Do not use for more than 2 days for a hangover unless directed by a doctor."

(2) [Reserved]

The agency is further proposing elsewhere in this issue of the **Federal Register** to amend the OTC stimulant final monograph by adding a new section § 340.20 to subpart B to include combinations of stimulant and nonstimulant active ingredients, to read as follows:

Section 340.20 *Permitted combinations of active ingredients.*

The following combinations are permitted provided each active ingredient is present within the established dosage limits and the product is labeled in accordance with § 340.60.

(a) *Combinations containing a stimulant active ingredient and an internal analgesic active ingredient(s).* (See § 343.20(b)(5) of this chapter.)

(b) [Reserved]

The agency is also proposing to add new § 340.60 to subpart C, to read as follows:

Section 340.60 *Labeling of permitted combinations of active ingredients.*

Statements of identity, indications, warnings, and directions for use, respectively, applicable to each ingredient in the product may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable.

(a) *Statement of identity.* For a combination drug product that has an established name, the labeling of the product states the established name of the combination drug product, followed by the statement of identity for each ingredient in the combination, as established in the statement of identity sections of the applicable OTC drug monographs. For a combination drug product that does not have an established name, the labeling of the product states the statement of identity for each ingredient in the combination, as established in the statement of identity sections of the applicable OTC drug monographs.

(b) *Indications.* The labeling of the product states, under the heading "Indications," the indication(s) for each ingredient in the combination, as established in the indications sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph. Other truthful and nonmisleading statements describing only the indications for use that have been established and listed in this paragraph may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) *For permitted combinations containing a stimulant and an internal analgesic active ingredient identified in § 340.20(a).* The indications in § 343.60(b)(6) of this chapter should be used.

(2) [Reserved]

(c) *Warnings.* The labeling of the product states, under the heading "Warnings," the warning(s) for each ingredient in the combination, as established in the warnings sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph.

For permitted combinations containing any stimulant ingredient identified in § 340.20. The following warning should be used instead of the warnings in §§ 340.50(c)(2) and 343.50(c)(1) of this chapter: "For occasional use only. Do not use for more than 2 days for a hangover unless directed by a doctor. Not intended for use as a substitute for sleep. If fatigue or drowsiness persists or continues to recur, consult a" (select one of the following: "physician" or "doctor").

(d) *Directions.* The labeling of the product states, under the heading "Directions," directions that conform to the directions established for each ingredient in the directions sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph. When the time intervals or age limitations for administration of the individual ingredients differ, the directions for the combination product:

(1) May not contain any dosage that exceeds those established for any individual ingredient in the applicable OTC drug monograph(s), and

(2) May not provide for use by any age group lower than the highest minimum age limit established for any individual ingredient.

The agency is further proposing elsewhere in this issue of the **Federal Register** to amend § 331.30 of the OTC antacid monograph by revising paragraph (b), to read as follows:

(b) *Indications.* The labeling of the product states, under the heading "Indications," the following: "For the relief of" (select any or all of the following: "heartburn," "sour stomach," and/or "acid indigestion") (which may be followed by the statement: "and upset stomach associated with" (select one or more of the following, as appropriate "this symptom," "these symptoms," or "overindulgence in food and drink.") Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in this paragraph, may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

In proposing the above labeling the agency hopes to eliminate consideration of overlapping claims for the same ingredients subject to different OTC drug monographs and, at the same time, limit combinations to those which have been proven scientifically sound and justified.

References

(1) Food and Drug Administration "General Guidelines for OTC Drug Combination Products, September 1978, "Docket No. 78D–0322, Dockets Management Branch.

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(10) Cohen, S., and G. H. Booth, Jr., "Gastric Acid Secretion and Lower-Esophageal-Sphincter Pressure in Response to Coffee and Caffeine," The New England Journal of Medicine, 293:897–899, 1975.

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(12) Debas, H. T., et al., "Caffeine-Stimulated Acid and Pepsin Secretion: Dose-Response Studies," Scandinavian Journal of Gastroenterology, 6:453–457, 1971.

(13) Roth, J.A., and A.C. Ivy, "The Synergistic Effect of Caffeine Upon Histamine in Relation to Gastric Secretion," American Journal of Physiology, 142:107–113, 1944.

6. One comment supported the Panel's recommendation for modified warnings for hangover relief drug products containing internal analgesic ingredients. Specifically, the comment agreed with the Panel that the 10-day limitation on use of the drug (see recommended warning for OTC internal analgesic drug products in § 343.50(c)(1)(i) at 42 FR 35493) and that the caution regarding use of an internal analgesic with prescription drugs taken for diabetes, gout, and arthritis (see recommended warning for OTC internal analgesic drug products in § 343.50(c)(3)(v) at 42 FR 35493) should be deleted. The comment supported the Panel's reasoning that such modifications of the warnings recommended for OTC internal analgesic drug products were appropriate because hangover is considered an acute, self-limiting condition that does not require warnings applicable to products subject to more prolonged use. The comment also supported the Panel's recommendation to delete, as too vague, the words "or other symptoms" from the warning for OTC internal analgesic drug products (proposed in § 343.50(c)(3)(ii) at 42 FR 35493), that states "Stop taking this product if ringing in the ears or other symptoms occur."

The agency disagrees with the Panel's recommendations for deleting or modifying the warnings applicable to internal analgesic ingredients contained in products for the treatment of hangover. While hangover is generally an acute self-limiting condition, the symptom complex can be experienced for periods of several days, either as a result of excessive and physically harmful consumption of alcoholic beverages or as a result of the consumption of alcohol aggravating some other disease or condition. If the condition persists for more than 2 days, the individual should seek medical guidance and not continue to rely on a hangover remedy for symptomatic relief.

As discussed in comment 5, the agency is not including combinations of products for the relief of hangover in this rulemaking, but elsewhere in this issue of the **Federal Register** the agency is amending the tentative final monograph for OTC internal analgesic drug products to include internal analgesic/antacid and internal analgesic/stimulant combinations for the relief of hangover symptoms. Accordingly, the agency concludes that combination products for relief of hangover symptoms that contain an internal analgesic ingredient should bear the applicable warnings required under § 343.50 of the internal analgesic tentative final monograph, and the interaction warning concerning use with prescription drugs used to treat gout, diabetes, and arthritis.

With regard to the 10-day limitation on use of internal analgesics, the agency notes that when the limitation for the use of the individual ingredients in a combination drug product differ, the labeling for the combination product may not exceed any maximum limit established for the individual ingredients in the applicable OTC drug monographs. Antacids have a 2-week limitation of use (21 CFR 331.30(c)(1)), internal analgesics have a 10-day limitation of use (proposed 21 CFR 343.50(c)(1); 53 FR 46204 at 46256), and stimulants, although recommended only for occasional use, have no established limitation of use (21 CFR Part 340). Therefore, any combination product for relief of hangover symptoms containing an internal analgesic would be limited to use for no more than 10 days. However, as discussed above, the agency believes that individuals who require the use of a hangover relief product for more than 2 days should seek medical guidance. Therefore, the agency proposes to limit the use of any OTC hangover relief drug product to 2 days unless directed by a doctor. The agency is proposing to amend § 343.80 of the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products by adding new paragraph (c)(1), to read as follows:

(1) *For permitted combinations identified in § 343.20(b)(1) and (3) when labeled for the relief of the symptoms of hangover.* "Do not use for more than 2 days for a hangover unless directed by a doctor."

The agency is also proposing to amend § 340.60 of the final monograph for OTC stimulant drug products by adding new paragraph (c), to read as follows:

(c) *Warnings.* The labeling of the product states, under the heading "Warnings," the warning(s) for each ingredient in the combination, as established in the warnings sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph. The following warning should be used for permitted combinations containing any stimulant ingredient identified in § 340.20 instead of the warnings in §§ 340.50(c)(2) and 343.50(c)(1) of this chapter: "For occasional use only. Do not use for more than 2 days for a hangover unless directed by a doctor. Not intended for use as a substitute for sleep. If fatigue or drowsiness persists or continues to recur, consult a" (select one of the following: "physician" or "doctor").

The agency points out that the term "other symptoms," was deleted, as requested by the comment, from the warning in § 343.50(c)(3)(ii) in the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products which was published in the **Federal Register** of November 16, 1988 (53 FR 46204 at 46257).

7. One comment concurred with the Panel that no ingredient has been demonstrated to be both safe and effective to prevent or reduce inebriation. However, the comment expressed concern that since the advance notice of proposed rulemaking was published, numerous sobering agents have been advertised and readied for marketing. According to the comment, many of these products have sought to avoid FDA's OTC drug approval procedures by claiming that they are food supplements. The comment was also greatly concerned that these products would be misused to "make drinking safer" or "to control drunken driving." The comment added that, before such products are allowed to be marketed, evidence must be presented that demonstrates benefits for all potential users of the product, e.g., men and women, all ages (over 16), light to heavy drinkers (including alcoholics), and that includes test-simulating real-life activities such as driving. The comment stated that unless a product is shown to eliminate all sensory and cognitive impairment resulting from alcohol ingestion, FDA should reject any use of the term "sober" to describe or name such a product. The comment stated that, if such products were approved, their labeling should warn against reliance on the product (1) to improve driving capabilities after drinking or (2) to increase one's alcohol consumption. The comment concluded that any approved labeling should not mislead drinking consumers into believing that drinking and driving are somehow compatible or that sustained, excessive drinking does not pose substantial health, social, and safety risks.

The agency shares the comment's concerns. In the **Federal Register** of July 19, 1983 (48 FR 32872), FDA declared any such product to be a new drug and, as such, it must be the subject of an approved NDA before marketing occurs. This notice stated that products intended to minimize or prevent inebriation may present a health hazard, particularly when motorists rely on unsubstantiated claims that a product will prevent or minimize an inebriated state, and such products could give persons who consume alcoholic beverages and then drive a motor vehicle a false sense of security. Therefore, all testing and labeling for any such product will have to be approved by the agency before such a product may be legally marketed. No such drug products are currently marketed, and the agency is not aware of any product intended to prevent or reduce inebriation being marketed as a food supplement.

II. The Agency's Tentative Conclusions on the Panel's Report

A. Summary of Ingredient Categories and Testing of Category II and Category III Conditions

1. Summary of Ingredient Categories

The agency has reviewed all claimed active ingredients submitted to the Panel, as well as other data and information available at this time, and has made some changes in the categorization of active ingredients recommended by the Panel for drug products for relief of symptoms associated with overindulgence in food and drink. In addition, as discussed in the comments above, the agency is limiting the rulemaking for OTC overindulgence drug products to only those ingredients that have not been adequately covered by other OTC drug rulemakings for similar claims related to relief of symptoms of upset stomach associated with overindulgence in food and drink or hangover. As a convenience to the reader, the following list is included as a summary of the categorization of overindulgence active ingredients recommended by the Panel and the proposed categorization by the agency. Where the ingredient has been classified in another rulemaking, that rulemaking and the classification therein is stated.

CATEGORIZATION OF INGREDIENTS

Active ingredients	Panel				Agency
	Overindulgence	[1] Hangover reliever	Hangover minimizer	Inebriation minimizer	
Acetaminophen		I			Internal analgesic (I).
Aluminum hydroxide		I			Antacid (I).
Aluminum hydroxide gel		I			Antacid (I).
Aspirin		I			Internal analgesic (I).
Bismuth subsalicylate	I				I.
Caffeine		I			Stimulant (I).
Charcoal, activated			III		III.
Fructose				III	[2] II (New Drug).
Magnesium carbonate		I			Antacid (I).
Magnesium trisilicate		I			Antacid (I).
Sodium acetylsalicylate in solution		I			Internal analgesic (I)
Sodium citrate in solution	I	I			Antacid (I).

[1] The Panel classified these ingredients in Category I for hangover relief only when used in combination as provided in parts 331, 340, and 343.
[2] All products intended to prevent or minimize inebriation were classified as new drugs in the Federal Register of July 19, 1983 (48 FR 32872).

2. Testing of Category II and Category III Conditions

Interested persons may communicate with the agency about the submission of data and information to demonstrate the safety or effectiveness of any overindulgence ingredient or condition included in this review by following the procedures outlined in the agency's policy statement published in the **Federal Register** of September 29, 1981 (46 FR 47740) and clarified April 1, 1983 (48 FR 14050). That policy statement includes procedures for the submission and review of proposed protocols, agency meetings with industry or other interested persons, and agency communications on submitted test data and other information.

B. Summary of the Agency's Changes in the Panel's Recommendations

FDA has considered the comments and other relevant information and concludes that it will tentatively adopt the Panel's report and recommended monograph with the changes described in FDA's responses to the comments above and with other changes described in the summary below. A summary of the changes made by the agency follows:

(1) The agency is limiting the rulemaking for OTC overindulgence drug products to include only those ingredients that have not been adequately covered by other OTC drug rulemakings that address similar claims related to relief of symptoms of hangover or overindulgence in food and drink. (See comments 1 and 5, above, and section II. A. 1.)

(2) The agency has revised the phrase "due to overindulgence in the combination of alcohol and food" recommended by the Panel in the proposed headings for § 357.910 and § 357.950 to read "due to overindulgence in food and drink." The use of the word "combination" is redundant and unnecessary.

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(3) The agency is proposing a new statement of identity "upset stomach reliever," for products labeled for the relief of overindulgence in food and drink. (See comment 1.)

(4) The agency is not including combinations containing bismuth subsalicylate and nonsalicylate analgesic active ingredients labeled for the relief of symptoms of upset stomach due to overindulgence in food and drink in this tentative final monograph. While such combinations were recommended as Category I in the advance notice of proposed rulemaking (47 FR 43540 at 43558), the agency is unaware of any data supporting the safety and effectiveness of such combinations. Further, the agency is unaware that such combinations have ever been marketed. Because no combinations of active ingredients for relief of symptoms of upset stomach due to overindulgence in food and drink are currently included in this rulemaking, the agency is not including the Panel's recommended § 357.920 *Permitted combinations of active ingredients* in the tentative final monograph.

(5) The agency is adding, as § 357.950(c)(2), the warning proposed in § 343.50(c)(1)(vi) of the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products (53 FR 46204 at 46256) "Do not take this product if you are allergic to salicylates (including aspirin) unless directed by a doctor."

(6) The agency is adding a warning appearing as § 357.950(c)(3) "Do not use for more than 2 days unless directed by a doctor" to reflect safety considerations and the dose limitation for bismuth subsalicylate-containing products addressed in the tentative final monograph for OTC antidiarrheal drug products (51 FR 16138 at 16143 and 16149).

The agency is also modifying the Panel's warning recommended in § 357.950(c)(1)(ii) for products containing bismuth subsalicylate labeled for the relief of symptoms of upset stomach due to overindulgence in food and drink to conform to a similar warning the agency proposed for other salicylates in the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products in § 343.50(c)(1)(v)(C) (53 FR 46204 at 46256). The warning, appearing as § 357.950(c)(4) in this tentative final monograph, reads as follows: "*Drug Interaction Precaution:* Do not take this product if you are taking a prescription drug for anti coagulation (thinning the blood), diabetes, gout, or arthritis unless directed by a doctor."

(7) The agency is combining several indications statements recommended by the Panel in § 357.956(b) for drug products to minimize hangover symptoms and is slightly revising the directions paragraph for bismuth subsalicylate labeled for relief of symptoms of upset stomach due to overindulgence in food and drink in § 357.950(d) to conform with the format of other recently published tentative final monographs.

(8) In an effort to simplify OTC drug labeling, the agency proposed in a number of tentative final monographs to substitute the word "doctor" for physician in OTC drug monographs on the basis that the word "doctor" is more commonly used and better understood by consumers. Based on comments received to these proposals, the agency has determined that final monographs and any applicable OTC drug regulation will give manufacturers the option of using either the word "physician" or the word "doctor." This tentative final monograph proposes that option.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC overindulgence drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC overindulgence drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invited public comment in the advance notice of proposed rulemaking regarding any impact that this rulemaking would have on OTC overindulgence drug products. No comments on economic impacts were received. Any comments on the agency's initial determination of the economic consequences of this proposed rulemaking should be submitted by April 22, 1992. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before April 22, 1992, submit to the Dockets Management Branch (address above) written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before April 22, 1992. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register**.

Interested persons, on or before December 24, 1992, may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before February 24, 1993. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on February 24, 1993. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the **Federal Register**, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects in 21 CFR Part 357

Labeling, Over-the-counter drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 357 be amended as follows:

PART 357—MISCELLANEOUS INTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 357 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. A new Subpart J is added to Part 357 to read as follows:

Subpart J—Orally Administered Drug Products for Relief of Symptoms Associated with Overindulgence in Food and Drink

Sec.
357.901 Scope.
357.903 Definitions.
357.910 Active ingredients for the relief of symptoms of upset stomach due to overindulgence in food and drink.
357.916 Active ingredients to minimize hangover symptoms. [Reserved]
357.950 Labeling of drug products for the relief of symptoms of upset stomach due to overindulgence in food and drink.
357.956 Labeling of drug products to minimize hangover symptoms.

Subpart J—Orally Administered Drug Products for Relief of Symptoms Associated with Overindulgence in Food and Drink

§ 357.901 Scope.

(a) An over-the-counter drug product for the relief of symptoms of upset stomach due to overindulgence in food and drink or to minimize hangover symptoms, in a form suitable for oral administration is generally recognized as safe and effective and is not misbranded if it meets each condition in this subpart and each general condition established in § 330.1 of this chapter.

(b) References in this subpart to regulatory sections of the Code of Federal Regulations are to chapter I of title 21, unless otherwise noted.

§ 357.903 Definitions.

As used in this subpart:

(a) *Upset stomach due to overindulgence in food and drink.* A condition which occurs as a result of overindulgence in food and drink and consists of a group of symptoms which includes heartburn, fullness, and nausea.

(b) *Hangover.* A condition consisting of a complex of symptoms involving the gastrointestinal, neurologic, and metabolic system that follows recent acute excessive alcohol ingestion. The symptoms may include nausea, heartburn, thirst, tremor, disturbances of equilibrium, fatigue, generalized aches and pains, headache, dullness, and/or depression or irritability.

§ 357.910 Active ingredients for the relief of symptoms of upset stomach due to overindulgence in food and drink.

The active ingredient of the product is bismuth subsalicylate when used within the dosage limits established in § 357.950(d).

§ 357.916 Active ingredients to minimize hangover symptoms. [Reserved]

§ 357.950 Labeling of drug products for the relief of symptoms of upset stomach due to overindulgence in food and drink.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "upset stomach reliever."

(b) *Indications.* The labeling of the product states, under the heading "Indications," any of the phrases listed in paragraph (b) of this section, as appropriate. Other truthful and nonmisleading statements, describing only the indications for use that have been established in this paragraph, may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act:

(1) "For the relief of upset stomach due to overindulgence in food and drink."

(2) "For the relief of upset stomach associated with" (select one or more of the following: "nausea," "heartburn," and "fullness") "due to overindulgence in food and drink."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) "This product contains salicylate. If taken with other salicylate-containing preparations (such as aspirin) and ringing in the ears occurs, discontinue use."

(2) "Do not take this product if you are allergic to salicylates (including aspirin) unless directed by a doctor."

(3) "Do not use for more than 2 days unless directed by a doctor."

(4) "*Drug Interaction Precaution.* Do not take this product if you are taking a prescription drug for anticoagulation (thinning the blood), diabetes, gout, or arthritis unless directed by a doctor."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions" for products containing bismuth subsalicylate identified in § 357.910. Adults and children 12 years of age and over: oral dosage is 0.525 gram every ½ to 1 hour, as required, not to exceed 4.2 grams or 8 doses in 24 hours. Children under 12: consult a doctor.

(e) The word "physician" may be substituted for the word "doctor" in any of the labeling statements in this section.

§ 357.956 Labeling of drug products to minimize hangover symptoms.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as a "hangover minimizer."

(b) *Indications.* The labeling of the product states, under the heading "Indications," the following: (Select one of the following: "To minimize," "For minimizing," or "Helps to minimize") "the symptoms of a hangover caused by alcoholic beverages." Other truthful and nonmisleading statements, describing only the indications for use that have been established in this paragraph, may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or deliver for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(c) *Warnings.* [Reserved]

(d) *Directions.* [Reserved]

Dated: November 1, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy

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Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 331

Antacid Drug Products for Over-the-Counter Use; Proposed Amendment to the Monograph; Notice of Proposed Rulemaking

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

21 CFR Part 331

[Docket No. 88N-003U]

RIN 0905-AA06

Antacid Drug Products for Over-the-Counter Human Use; Proposed Amendment to the Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking that would amend the final monograph for over-the-counter (OTC) antacid drug products to include conditions for the relief of upset stomach associated with overindulgence in food and drink. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products and public comments on the advance notice of proposed rulemaking for orally administered drug products for relief of symptoms associated with overindulgence in alcohol and food for OTC human use that was based on those recommendations. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by April 22, 1992. New data by December 24, 1992. Comments on the new data by February 24, 1993. Written comments on the agency's economic impact determination by April 22, 1992.

ADDRESSES: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 1-23, 12420 Parklawn Dr., Rockville, MD 30857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 4, 1974 (39 FR 19862), FDA issued a final monograph for OTC antacid drug products (21 CFR part 331). Section 331.15(b) (21 CFR 331.15(b)) of the monograph provides for the combination of antacid and analgesic ingredients. In the **Federal Register** of August 31, 1982 (47 FR 38481), the agency concluded that antacid drug products may be labeled for relief of upset stomach associated with heartburn, sour stomach, and acid indigestion, and amended the monograph to include this claim in § 331.30(b). The agency recognized that "upset stomach" is a general term used by consumers to describe clusters of symptoms (47 FR 38481 at 38482). The agency also noted that terms such as "heartburn" may be used by consumers to describe gastrointestinal distress resulting from other causes such as overindulgence in food and drink. However, the agency stated that as of August 31, 1982, antacids have not been shown to relieve components of the upset stomach syndrome other than those for which labeling has been specified in the antacid monograph (47 FR 38481 at 38483).

Subsequent to the publication of the final rule for OTC antacid drug products and the amendment of the antacid monograph described above, the agency published the advanced notice of proposed rulemaking for orally administered drug products for relief of symptoms associated with overindulgence in alcohol and food for OTC human use (October 1, 1982, 47 FR 43540). In that notice, the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (the Panel) reviewed data on drug products containing antacid, analgesic, and stimulant ingredients in various combinations and recommended conditions for their safe and effective OTC use. The Panel concluded that the following combinations of Category I ingredients were safe and effective for use in relief of the symptoms of hangover: (1) Antacids and analgesics, (2) antacids and stimulants, (3) analgesics and stimulants and (4) antacids, analgesics, and stimulants. The Panel also recommended that the antacid ingredient sodium citrate in solution was safe and effective for use in the relief of upset stomach associated with overindulgence in the combination of alcohol and food. In addition, the Panel recommended that sodium citrate in solution for this use could be combined with any Category I internal analgesic ingredient in 21 CFR Part 343 (proposed in the **Federal Register** of November 16, 1988 53 FR 46204). The Panel added that if the product contains aspirin (as identified in Part 343), the finished product must meet the acid neutralizing requirements of § 331.10 of the antacid monograph (21 CFR 331.10).

The agency notes, however, that in recommending combination products to treat hangover symptoms, the Panel failed to adequately consider that caffeine stimulates gastric secretion of hydrochloric acid (Refs. 1 through 7). The ability of caffeine to significantly increase hydrochloric acid secretion is mentioned in standard medical reference textbooks (Refs. 1 and 2) and was reported by Roth and Ivy (Ref. 7) as early as 1944. McArthur, Hogan, and Isenberg (Ref. 3) undertook a study to determine the effect of nine commonly ingested beverages on gastric acid secretion in humans. Six healthy subjects were each studied on 11 separate days and in random order. Test substances were 3 types of soda water, 3 different brands of instant coffee, tea, milk, and beer. The control was water. The results were considered significantly different for each beverage versus the control ($p<0.05$). The authors stated that this study indicates that each of the beverages tested is a potent stimulus of gastric acid secretion regardless of its caffeine content. Studies by Cohen and Booth (Ref. 4) likewise demonstrated that Caffeine stimulates gastric acid secretion and reduces the competence of the lower esophageal sphincter in healthy subjects. Noting that caffeine is a potent stimulant of gastric secretion in man, Roth and Ivy (Ref. 7) conducted experiments to determine the synergistic effect of caffeine upon alcohol. They observed that the gastric secretory response to the combined action of alcohol plus caffeine was an average of 65.9 percent greater than the response produced when alcohol and caffeine were given separately. Further, the response to the combination of alcohol and caffeine was prolonged, lasting approximately 70 minutes longer than that of the individual ingredients.

The Advisory Review panel on OTC Sedative, Tranquilizer, and Sleep-aid Drug Products (Sleep-aid Panel) noted in its advance notice of proposed rulemaking for OTC nighttime sleep-aid, daytime sedative, and stimulant drug products (December 8, 1975, 40 FR 57292 at 57324 to 57325) that caffeine stimulates gastric secretion in man. While that Panel stated that normal doses of caffeine (i.e., 100 milligrams) did not seem to cause irritation of the gastrointestinal tract, the agency notes that the target population considered by that Panel in its assessment of the safety and effectiveness of caffeine as an OTC stimulant did not specifically include individuals that already had some degree of stomach or gastrointestinal irritation or upset due to overindulgence in alcohol and/or food. Further, the Sleep-aid Panel did not give any consideration to the safety of caffeine in patients with already high levels of stomach acid.

In view of caffeine's documented effect in stimulating gastric secretions, the agency does not believe that combination products containing both caffeine, which stimulates hydrochloric acid secretion, and an antacid, which reduces the concentration of hydrochloric acid and treats the symptoms associated with high levels of hydrochloric acid, are rational. Therefore, the agency is reversing the Panel's Category I recommendation and is placing in Category II all combination products for the treatment of hangover that contain both an antacid ingredient and caffeine, a stimulant ingredient. The agency is not aware of any marketed OTC drug combination products, other than hangover remedies, that contain both stimulant and antacid ingredients.

In the tentative final monograph for OTC orally administered drug products for relief of symptoms associated with overindulgence in food and drink, published elsewhere in this issue of the **Federal Register**, FDA states its position on the establishment of a monograph for these drug products. Recognizing that there was considerable overlap in claims included in certain other rulemakings and the rulemaking for drug products for relief of symptoms associated with overindulgence in food and drink and with hangover, the agency determined that those claims should be included in the appropriate monographs for antacid, internal analgesic, and stimulant drug products. The agency recognizes that combination products may be intended for use by a specific target population, such as consumers who are suffering from a hangover or overindulgence in food and drink. The agency believes that the labeling for such combination products should reflect the principal intended use(s) of the product (e.g., pain reliever, antacid, stimulant). Such labeling should be consistent with the approved indications for the active ingredients, but would not be required to contain all of the indications.

The agency believes that labeling specific to internal analgesic/antacid or internal analgesic/stimulant combinations need only appear in one monograph, with an appropriate cross-reference in the other monograph. The agency previously proposed a number of internal analgesic/antacid combinations in the internal analgesic tentative final monograph. (See § 343.20 (b)(1) and (b)(3) (November 16, 1988, 53 FR 46204 at 46255)). Concurrently, in the same issue of the **Federal Register** (53 FR 46190), the agency proposed to amend the final monograph for OTC antacid drug products to revise § 331.15(b) to include the combinations that were proposed in § 343.20 (b)(1) and (b)(3) of the internal analgesic tentative final monograph. Likewise, the agency proposed to add a new § 331.60 (entitled "*Labeling of permitted combinations of active ingredients*") to reflect that the new combinations included in § 331.15 (b)(1) and (b)(2) should use the indications proposed in § 343.60 (b)(2) and (b)(4), respectively, of the internal analgesic tentative final monograph.

In this current notice, the agency is proposing to amend the final monograph for OTC antacid drug products to add a claim for relief of upset stomach due to overindulgence in food and drink. The agency does not need to propose any amendment to the final monograph to address the Panel's recommendation concerning sodium citrate in solution for use in the relief of upset stomach associated with overindulgence in the combination of alcohol and food because citrate-containing active ingredients are already included in § 331.11(e) of the antacid monograph.

FDA has previously amended the final monograph for OTC antacid drug products to permit the labeling for these products to include a claim for the relief of upset stomach associated with heartburn, sour stomach, and/or acid indigestion (47 FR 38481). This amendment was based on data (that were discussed in the September 21, 1979, proposal to amend the antacid monograph (44 FR 54731 at 54732)) which demonstrated that the term "upset stomach" is often used by consumers to describe the symptoms "acid indigestion," "sour stomach," and "heartburn." The agency also recognized that a cluster of symptoms referred to as "upset stomach" may be caused by overindulgence in food and drink, but this use was not considered in the August 31, 1982, amendment to the antacid final monograph. At that time, the agency concluded that a symptom described simply as "upset stomach" would not be used as an indication for OTC antacid drug products because it had not been specifically demonstrated to be associated with gastric hyperacidity (47 FR 38481 at 38482). In reaching that conclusion, the agency failed to note that the Advisory Review Panel on OTC Antacid Drug Products (Antacid Panel) had pointed out that evidence of the association between hyperacidity and the Category I antacid indications "heartburn," "sour stomach," and "acid indigestion," is "far from conclusive" (April 5, 1973, 38 FR 8714 at 8720).

Because of a recognized association between upset stomach and overindulgence in food and drink, the agency stated that it had referred further consideration of this issue to the Miscellaneous Internal panel for review (47 FR 38481 at 38483). That Panel reviewed data on only one antacid ingredient (sodium citrate in solution) for overindulgence claims and concluded that the ingredient was effective in relieving "upset stomach" due to overindulgence in the combination of food and drink (47 FR 43540 at 43549 and 43550).

Based on the Miscellaneous Internal Panel's review, the data discussed in the September 21, 1979, proposal to amend the antacid monograph (47 FR 38481), and the Antacid Panel's conclusion regarding hyperacidity (38 FR 8714 at 8722), the agency believes that consumers perceive the term "upset stomach" to refer to a variety of symptoms properly-treated with antacids, including symptoms of heartburn, sour stomach, and "upset stomach" symptoms which may be due to overindulgence in food and drink.

Based on the above findings, the agency is proposing to amend the indications in § 331.30(b) of the final monograph for OTC antacid drug products to provide that the phrase "and upset stomach associated with" may be followed by the phrase "overindulgence in food and drink." Because the Miscellaneous Internal Panel also recommended an antacid/analgesic combination for the relief of symptoms of overindulgence in food and drink, the agency is proposing to include this same option in the OTC internal analgesic tentative final monograph, published elsewhere in this issue of the **Federal Register**. Because of the interrelationship of this amendment to the antacid final monograph and to other proposals published elsewhere in this issue of the **Federal Register** to amend the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products and the final monograph for OTC stimulant drug products, the agency does not intend to finalize this amendment until the comments to all of the proposals have been fully evaluated.

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(5) Friedman, G. D., A. B. Siegelaub, and C. C. Seltzer, "Cigarettes, Alcohol, Coffee and Peptic Ulcer," The New England Journal of Medicine, 290:469–473, 1974.
(6) Debas, H. T., et al. "Caffeine-Stimulated Acid and Pepsin Secretion: Dose-Response Studies," Scandinavian Journal of Gastroenterology, 6:453–457, 1971.
(7) Roth, J. A., and A. C. Ivy, "The Synergistic Effect of Caffeine Upon Histamine in Relation to Gastric Secretion," American Journal of Physiology, 142:107–133, 1944.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5906), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC antacid drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC antacid drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC antacid drug products. Comments regarding the impact of this rulemaking on OTC antacid drug products should be accompanied by appropriate documentation.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before April 22, 1992, submit to the Docket Management Branch (address above), written comments or objections. Three copies of all comments or objections are to be submitted, except that individuals may submit one copy. Comments and objections are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments and objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 331

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 331 be amended to read as follows:

PART 331—ANTACID PRODUCTS FOR OVER-THE-COUNTER (OTC) HUMAN USE

1. The authority citation for 21 CFR part 331 continues to read as follows;

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371)

2. Section 331.30 is amended by revising paragraph (b) to read as follows:

§ 331.30 Labeling of antacid products.

* * * * *

(b) *Indications.* The labeling of the product states, under the heading "Indications," the following: "For the relief of" (select any or all of the following: "heartburn," "sour stomach," and/or "acid indigestion") (which may be followed by the statement: "and upset stomach associated with" (select one or more of the following, as appropriate "this symptom," "these symptoms," or "overindulgence in food and drink.")) Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in this paragraph, may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

* * * * *

Dated: November 1, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 91–30425 Filed 12–23–91; 8:45 am]
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federal register

Tuesday
December 24, 1991

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 340

Stimulant Drug Products for Over-the-Counter Human Use; Proposed Amendment to the Monograph; Notice of Proposed Rulemaking

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

FOOD AND DRUG ADMINISTRATION

21 CFR Part 340

[Docket No. 75N-244U]

RIN 0905-AA06

Stimulant Drug Products for Over-the-Counter Human Use; Proposed Amendment to the Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking to amend the final monograph for over-the-counter (OTC) stimulant drug products to include conditions for the relief of symptoms associated with hangover. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products and public comments on the advance notice of proposed rulemaking for orally administered drug products for relief of symptoms associated with overindulgence in alcohol and food for OTC human use that was based on those recommendations. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by April 22, 1992. New data by December 24, 1992. Comments on the new data by February 24, 1992. Written comments on the agency's economic impact determination by April 22, 1992.

ADDRESSES: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 29, 1988 (53 FR 6100), FDA issued a final monograph for OTC stimulant drug products (21 CFR part 340). This monograph did not contain any provision for combination drug products containing stimulant and nonstimulant active ingredients.

In the **Federal Register** of October 1, 1982 (47 FR 43540), the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (the Panel) reviewed data on drug products containing antacid, analgesic, and stimulant active ingredients in various combinations and recommended conditions for their safe and effective use in its report on orally administered drug products for the relief of symptoms associated with overindulgence in alcohol and food. That Panel concluded that combinations of Category I ingredients from the following pharmacologic groups were safe and effective for use in the relief of the symptoms of hangover: (1) Antacid and analgesic, (2) antacid and stimulant, (3) analgesic and stimulant, and (4) antacid, analgesic, and stimulant.

In the tentative final monograph for OTC drug products for the relief of symptoms associated with overindulgence in food and drink, published elsewhere in this issue of the **Federal Register**, FDA states for the first time its position on the establishment of a monograph for these drug products. In formulating its proposals on conditions for marketing combination products containing antacid, analgesic, and stimulant ingredients for the relief of symptoms associated with hangover and/or overindulgence in food and drink, the agency recognized that rulemaking significantly overlaps other rulemakings in the OTC drug review. For example, the Panel's recommendations on OTC drug products for the relief of hangover symptoms include a combination of ingredients already classified as Category I in the OTC antacid rulemaking (21 CFR part 331), the OTC stimulant rulemaking (21 CFR part 340), and the pending OTC internal analgesic, antipyretic, and antirheumatic rulemaking (21 CFR part 343), proposed in the **Federal Register** of November 16, 1988 (53 FR 46204). Therefore, the agency decided not to further consider ingredients for the relief of hangover symptoms in the overindulgence tentative final monograph and decided instead to amend the internal analgesic, antipyretic, and antirheumatic tentative final monograph, the antacid final monograph, and the stimulant final monograph to include a claim for the relief of symptoms of hangover for combinations of ingredients from these drug categories.

The agency notes, however, that in recommending combination products to treat hangover symptoms, the Panel failed to adequately consider that caffeine stimulates gastric secretion of hydrochloric acid (Refs. 1 through 7). The ability of caffeine to significantly increase hydrochloric acid secretion is mentioned in standard medical reference textbooks (Refs. 1 and 2) and was reported by Roth and Ivy (Ref. 7) as early as 1944. McArthur, Hogan, and Isenberg (Ref. 3) undertook a study to determine the effect of nine commonly ingested beverages on gastric acid secretion in humans. Six healthy subjects were each studied on 11 separate days and in random order. Test substances were 3 types of soda water, 3 different brands of instant coffee, tea, milk, and beer. The control was water. The results were considered significantly different for each beverage versus the control ($p<0.05$). The authors stated that this study indicates that each of the beverages tested is a potent stimulus of gastric acid secretion regardless of its caffeine content. Studies by Cohen and Booth (Ref. 4) likewise demonstrated that caffeine stimulates gastric acid secretion and reduces the competence of the lower esophageal sphincter in healthy subjects. Noting that caffeine is a potent stimulant of gastric secretion in man, Roth and Ivy (Ref. 7) conducted experiments to determine the synergistic effect of caffeine upon alcohol. They observed that the gastric secretory response to the combined action of alcohol plus caffeine was an average of 65.9 percent greater than the response produced when alcohol and caffeine were given separately. Further, the response to the combination of alcohol and caffeine was prolonged, lasting approximately 70 minutes longer than that of the individual ingredients.

The Advisory Review Panel on OTC Sedative, Tranquilizer, and Sleep-aid Drug Products (Sleep-aid Panel) noted in its advance notice of proposed rulemaking for OTC nighttime sleep-aid, daytime sedative, and stimulant drug products (December 6, 1975, 40 FR 57292 at 57324 to 57325) that caffeine stimulates gastric secretion in man. While that Panel stated that normal doses of caffeine (i.e., 100 milligrams) did not seem to cause irritation of the gastrointestinal tract, the agency notes that the target population considered by that Panel in its assessment of the safety and effectiveness of caffeine as an OTC stimulant did not specifically include individuals that already had some degree of stomach or gastrointestinal irritation or upset due to overindulgence in alcohol and/or food. Further, the Sleep-aid Panel did not give any consideration to the safety of caffeine in patients with already high levels of stomach acid.

In view of caffeine's documented effect in stimulating gastric secretions,

the agency does not believe that combination products containing both caffeine, which stimulates hydrochloric acid secretion, and an antacid, which reduces the concentration of hydrochloric acid and treats the symptoms associated with high levels of hydrochloric acid, are rational. Therefore, the agency is reversing the Panel's Category I recommendation and is placing in Category II all combination products for the treatment of hangover that contain both an antacid ingredient and caffeine, a stimulant ingredient. The agency is not aware of any marketed OTC drug combination products, other than hangover remedies, that contain both stimulant and antacid ingredients.

The agency believes that labeling specific to stimulant/internal analgesic combinations need only appear in one monograph, with an appropriate cross-reference in the other monograph. In this notice, the agency is proposing to add § 340.20 to the stimulant monograph to allow for the combination of caffeine, the stimulant active ingredient, with an internal analgesic ingredient. Such combinations are also being proposed in § 343.20(b)(5) of the internal analgesic monograph (21 CFR 343.20(b)(5)).

While the Miscellaneous Internal Panel recommended that any Category I stimulant ingredient could be combined with any Category I internal analgesic ingredient, the agency is not aware of a marketing history for combination products other than those containing a stimulant with acetaminophen or aspirin. Internal analgesic/stimulant combinations for the treatment of hangover are therefore being limited to the internal analgesic ingredients listed in § 343.10 (a) and (b)(1) only, i.e., acetaminophen and aspirin.

The agency is further proposing to add § 340.60 to provide for the labeling of combination drug products. For combinations containing a stimulant ingredient with an internal analgesic ingredient as provided for in § 340.20, the following indication should be used in addition to the appropriate indication related to the internal analgesic component "Helps restore mental alertness or wakefulness when experiencing fatigue or drowsiness associated with a hangover." Indications for such combinations are proposed in § 343.60(b)(6). In addition, § 340.60(c), the agency is proposing that the following warning be used for combination products containing a stimulant ingredient combined with any internal analgesic ingredient "For occasional use only. Do not use for more than 2 days for a hangover unless directed by a doctor. Not intended for use as a substitute for sleep. If fatigue or drowsiness persists or continues to recur, consult a doctor." This warning should be used instead of the warnings in §§ 340.50(c)(2) and 343.50(c)(1).

Because of the interrelationship of this amendment to the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products, the agency does not intend to finalize this amendment until the comments to the internal analgesic, antipyretic, and antirheumatic tentative final monograph have been fully evaluated.

References

(1) Rall, T. W., "Drugs Used in the Treatment of Asthma," *in* "The Pharmacological Basis of Therapeutics," 6th ed., edited by A. G. Gilman, et al., Pergamon Press, New York, p. 623, 1900.

(2) Ivey, K. J., and J. L. A. Roth, "Drug and Chemical-Induced Injuries of the Stomach," Chapter 64 *in* "Bockus Gastroenterology," 4th ed., Edited by J. E. Berk, W. B. Saunders Co., Philadelphia, pp. 975 and 995, 1985.

(3) McArthur, K., D. Hogan, and J. L. Isenberg, "Relative Stimulatory Effects of Commonly Ingested Beverages on Gastric Acid Secretion in Humans," Gastroenterology, 83:199-203, 1982.

(4) Cohen, S., and G. H. Booth, Jr., "Gastric Acid Secretion and Lower-Esophageal-Sphincter Pressure in Response to Coffee and Caffeine," The New England Journal of Medicine, 293:897-899, 1975.

(5) Friedman, G. D., A. B. Siegelaub, and C. C. Seltzer, "Cigarettes, Alcohol, Coffee and Peptic Ulcer," The New England Journal of Medicine, 290:469-473, 1974.

(6) Debas, H. T., et al., "Caffeine-Stimulated Acid and Pepsin Secretion: Dose-Response Studies," Scandinavian Journal of Gastroenterology, 6:453-457, 1971.

(7) Roth, J. A., and A. C. Ivy, "The Synergistic Effect of Caffeine Upon Histamine in Relation to Gastric Secretion," American Journal of Physiology, 142:107-113, 1944.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that not one of these rules, including this proposed rule for OTC stimulant drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96-354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC stimulant drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC stimulant drug products. Comments regarding the impact of this rulemaking on OTC stimulant drug products should be accompanied by appropriate documentation.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before April 22, 1992, submit to the Dockets Management Branch (address above), written comments or objections. Three copies of all comments or objections are to be submitted, except that individuals may submit one copy. Comments and objections are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments and objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 340

Labeling, over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 340 be amended as follows:

PART 340—STIMULANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 340 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. New § 340.20 is added to subpart B to read as follows:

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§ 340.20 Permitted combinations of active ingredients.

The following combinations are permitted provided each active ingredient is present within the established dosage limits and the products is labeled in accordance with § 340.60.

(a) *Combinations containing a stimulant active ingredient and an internal analgesic active ingredient.* (See § 343.20(b)(5) of this chapter.)

(b) [Reserved]

3. New § 340.60 is added to Subpart C to read as follows:

§ 340.60 Labeling of permitted combinations of active ingredients.

Statements of identity, indications, warnings, and directions for use, respectively, applicable to each ingredient in the product may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable.

(a) *Statement of identity.* For a combination drug product that has an established name, the labeling of the product states the established name of the combination drug product, followed by the statement of identity for each ingredient in the combination, as established in the statement of identity sections of the applicable over-the-counter (OTC) drug monographs. For a combination drug product that does not have an established name, the labeling of the product states the statement of identity for each ingredient in the combination, as established in the statement of identity sections of the applicable OTC drug monographs.

(b) *Indications.* The labeling of the product states, under the heading "Indications," the indication(s) for each ingredient in the combination, as established in the indications sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph. Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in this paragraph may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the act Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) *For permitted combinations containing a stimulant and an internal analgesic active ingredient identified in § 340.20(a).* The indications in § 343.60(b)(6) of this chapter should be used.

(2) [Reserved]

(c) *Warnings.* The labeling of the product states, under the heading "Warnings," the warning(s) for each ingredient in the combination, as established in the warnings sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph.

For permitted combinations containing any stimulant ingredient identified in § 340.20. The following warning should be used instead of the warnings in § § 340.50(c)(2) and 343.50(c)(1) of this chapter: "For occasional use only. Do not use for more than 2 days for a hangover unless directed by a doctor. Not intended for use as a substitute for sleep. If fatigue or drowsiness persists or continues to recur, consult a" (select one of the following: "physician" or "doctor").

(2) [Reserved]

(d) *Directions.* The labeling of the product states, under the heading "Directions," directions that conform to the directions established for each ingredient in the directions sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph. When the time intervals or age limitations for administration of the individual ingredients differ, the directions for the combination product:

(1) May not contain any dosage that exceeds those established for any individual ingredient in the applicable OTC drug monograph(s), and

(2) May not provide for use by any age group lower than the highest minimum age limit establish for any individual ingredient.

Dated: November 1, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 91-30426 Filed 12-23-91; 8:45 am]

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federal register

Tuesday
December 24, 1991

Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 343

Internal Analgesic, Antipyretic, and Antirheumatic Drug Products For Over-The-Counter Human Use; Proposed Amendment to the Tentative Final Monograph; Notice of Proposed Rulemaking

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 343

[Docket No. 77N-094U]

RIN 0905-AA06

Internal Analgesic, Antipyretic, and Antirheumatic Drug Products for Over-the-Counter Human Use; Proposed Amendment to the Tentative Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking to amend the tentative final monograph for over-the-counter (OTC) internal analgesic, antipyretic, and antirheumatic drug products to include conditions for the relief of upset stomach associated with overindulgence in food and drink and the relief of symptoms associated with hangover. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products and public comments on the advance notice of proposed rulemaking for orally administered drug products for relief of symptoms associated with overindulgence in alcohol and food for OTC human use that was based on those recommendations. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearings on the proposed regulation before the Commissioner of Food and Drugs by April 22, 1992. New data by December 24, 1992. Comments on the new data by February 24, 1993. Written comments on the agency's economic impact determination by April 22, 1992.

ADDRESSES: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 16, 1988 (53 FR 46204), FDA issued a tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products (21 CFR Part 343). That proposal included conditions for marketing combination drug products containing internal analgesic and antacid ingredients. The agency proposed that (1) acetaminophen may be combined with any antacid ingredient(s) and may be labeled only for concurrent symptoms, and (2) aspirin may be combined with any antacid ingredient(s) when marketed in a form intended for ingestion as a solution and may be labeled for concurrent symptoms as well as analgesic indications alone. (See proposed § 343.20(b) (1) and (3) at 53 FR 46204 at 46255.)

As part of the rulemaking for orally administered drug products for relief of symptoms associated with overindulgence in alcohol and food for OTC human use, published in the **Federal Register** of October 1, 1982 (47 FR 43540), the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (the Panel) reviewed data on drug products containing antacid, analgesic, and stimulant ingredients in various combinations and recommended conditions for their safe and effective OTC use. The Panel concluded that the following combinations of Category I ingredients were safe and effective for use in relief of the symptoms of hangover: (1) Antacids and analgesics, (2) antacids and stimulants, (3) analgesics and stimulants, and (4) antacids, analgesics, and stimulants. The Panel also recommended that the antacid ingredient sodium citrate in solution could be combined with any Category I internal analgesic ingredient and be labeled for the relief of symptoms of upset stomach associated with overindulgence in the combination of alcohol and food. The Panel added that if the product contains aspirin (as identified in Part 343), the finished product must meet the acid neutralizing requirements of § 331.10 of the antacid monograph (21 CFR 331.10).

In the tentative final monograph for OTC orally administered drug products for relief of symptoms associated with overindulgence in food and drink, published elsewhere in this issue of the **Federal Register**, FDA states its position on the establishment of a monograph for these drug products. Recognizing that there was considerable overlap in claims included in certain other rulemakings and the rulemaking for drug products for relief of symptoms associated with overindulgence in food and drink and with hangover, the agency determined that those claims should be included in the appropriate monographs for OTC antacid, internal analgesic, and stimulant drug products. The agency recognizes that combination products may be intended for use by a specific target population, such as consumers who are suffering from a hangover or from overindulgence in food and drink. The agency believes that the labeling for such combination products should reflect the principal intended use(s) of the product (e.g., pain reliever, antacid, stimulant). Such labeling should be consistent with the approved indications for the active ingredients, but would not be required to contain all of the indications.

The agency notes, however, that in recommending combination products to treat hangover symptoms, the Panel failed to adequately consider that caffeine stimulates gastric secretion of hydrochloric acid (Refs. 1 through 7). The ability of caffeine to significantly increase hydrochloric acid secretion is mentioned in standard medical reference textbooks (Refs. 1 and 2) and was reported by Roth and Ivy (Ref. 7) as early as 1944. McArthur, Hogan, and Isenberg (Ref. 3) undertook a study to determine the effect of nine commonly ingested beverages on gastric acid secretion in humans. Six healthy subjects were each studied on 11 separate days and in random order. Test substances were 3 types of soda water, 3 different brands of instant coffee, tea, milk, and beer. The control was water. The results were considered significantly different for each beverage versus the control ($p<0.05$). The authors stated that this study indicates that each of the beverages tested is a potent stimulus of gastric acid secretion regardless of its caffeine content. Studies by Cohen and Booth (Ref. 4) likewise demonstrated that caffeine stimulates gastric acid secretion and reduces the competence of the lower esophageal sphincter in healthy subjects. Noting that caffeine is a potent stimulant of gastric secretion in man, Roth and Ivy, (Ref. 7) conducted experiments to determine the synergistic effect of caffeine upon alcohol. They observed that the gastric secretory response to the combined action of alcohol plus caffeine was an average of 85.9 percent greater than the response produced when alcohol and caffeine were given separately. Further, the response to the combination of alcohol and caffeine was prolonged, lasting approximately 70 minutes longer than that of the individual ingredients.

The Advisory Review Panel on OTC Sedative, Tranquilizer, and Sleep-aid Drug Products (Sleep-aid Panel) noted in its advance notice of proposed rulemaking for OTC nighttime sleep-aid, daytime sedative, and stimulant drug products (December 8, 1975, 40 FR 57292 at 57324 to 57325) that caffeine stimulates gastric secretion in man. While that Panel stated that normal doses of caffeine (i.e., 100 milligrams) did not seem to cause irritation of the gastrointestinal tract, the agency notes that the target population considered by that Panel in its assessment of the safety and effectiveness of caffeine as an OTC stimulant did not specifically include individuals that already has some degree of stomach or gastrointestinal irritation or upset due to overindulgence in alcohol and/or food. Further, the Sleep-aid Panel did not give any consideration to the safety of caffeine in patients with already high levels of stomach acid.

In view of caffeine's documented effect in stimulating gastric secretions, the agency does not believe that combination products containing both caffeine, which stimulates hydrochloric acid secretion, and an antacid, which reduces the concentration of hydrochloric acid and treats the symptoms associated with high levels of hydrochloric acid, are rational. Similarly, combination drug products containing internal analgesic, antacid, and stimulant ingredients are also irrational. Therefore, the agency is reversing the Panel's Category I recommendation and is placing in Category II all combination products for the treatment of hangover that contain both an antacid ingredient and caffeine, a stimulant ingredient. The agency is not aware of any marketed OTC drug combination products, other than hangover remedies, that contain both stimulant and antacid ingredients, plus an internal analgesic.

The agency believes that labeling specific to internal analgesic/antacid or internal analgesic/stimulant combinations need only appear in one monograph, with an appropriate cross-reference in the other monograph. A number of internal analgesic/antacid combinations were proposed in the internal analgesic tentative final monograph. (See § 343.20(b) (1) and (3) (53 FR 46204 at 46255).) Concurrently, in the same issue of the **Federal Register** (November 16, 1988, 53 FR 46190), the agency proposed to amend the final monograph for OTC antacid drug products to revise § 331.15(b) to include the combinations that were proposed in § 343.20(b) (1) and (3) of the internal analgesic tentative final monograph. Likewise, the agency proposed to add a new § 331.60 (entitled "*Labeling of permitted combinations of active ingredients*") to reflect that the new combinations included in § 331.15 (b)(1) and (b)(2) should use the indications proposed in § 343.60 (b)(2) and (b)(4), respectively, of the internal analgesic tentative final monograph.

In this current notice, the agency is proposing to add new § 343.20(b)(5) to allow for internal analgesic and stimulant combination drug products. While the Miscellaneous Internal Panel recommended that any Category I stimulant ingredient could be combined with any Category I internal analgesic ingredient, the agency is not aware of a marketing history for combination products other than those containing a stimulant with aspirin or acetaminophen. Internal analgesic/stimulant combinations for the treatment of hangover are, therefore, being limited to the internal analgesic ingredients listed in § 343.10 (a) and (b)(1) only, i.e., acetaminophen and aspirin.

This notice also amends the labeling for internal analgesic/antacid combinations proposed in § 343.60 (b)(2) and (b)(4) of the OTC internal analgesic, antipyretic, and antirheumatic tentative final monograph to include a claim for relief or symptoms of hangover and a claim for relief of symptoms of overindulgence in food and drink. Because of the interrelationship of this amendment to the internal analgesic, antipyretic, and antirheumatic tentative final monograph and to other proposals included elsewhere in this issue of the **Federal Register** to amended the final monograph for OTC antacid drug products and the final monograph for OTC stimulant drug products, the agency does not intend to finalize this amendment until the comments to all of these proposals have been fully evaluated.

In this notice, the agency is also proposing to add new § 343.60(c)(1) containing the following warning for internal analgesic/antacid combination products labeled for the relief of symptoms of hangover, "Do not use for more than 2 days for a hangover unless directed by a doctor." This warning is being added because, although hangover is generally an acute self-limiting condition, the symptom complex can be experienced for periods of several days, either as a result of excessive and physically harmful consumption of alcoholic beverages or as a result of the consumption of alcohol aggravating some other disease or condition. If symptoms persist for more than 2 days, the individual should seek medical guidance and not continue to rely on a hangover remedy for symptomatic relief.

The agency is further proposing to revise the labeling directions for combination drug products in § 343.60(d), by modifying the last sentence as follows:

* * * the directions for the combination product:

(1) May not contain any dosage that exceeds those established for any individual ingredient in the applicable OTC drug monograph(s), and

(2) May not provide for use by any age group lower than the highest minimum age limit established for any individual ingredient.

This change is being made to make these labeling directions for combination drug products consistent with other recently proposed OTC drug monographs.

References

(1) Rall, T.W., "Drugs Used in the Treatment of Asthma," in "The Pharmacological Basis of Therapeutics," 8th ed., edited by A.G. Gilman, et al., Pergamon Press, New York, p. 623, 1990.

(2) Ivey, K.J., and J.L.A. Roth, "Drug and Chemical-Induced Injuries of the Stomach," Chapter 64 in "Bockus Gastroenterology," 4th ed., Edited by J.E. Berk, W.B. Saunders Co., Philadelphia, pp. 975 and 995, 1985.

(3) McArthur, K., D. Hogan, and J.I. Isenberg, "Relative Stimulatory Effects of Commonly Ingested Beverages on Gastric Acid Secretion in Humans," Gastroenterology, 83:199-203, 1982.

(4) Cohen, S., and G.H. Booth, Jr., "Gastric Acid Secretion and Lower-Esophageal-Sphincter Pressure in Response to Coffee and Caffeine," The New England Journal of Medicine, 293:897-899, 1975.

(5) Friedman, G.D., A.B. Siegelaub, and C.C. Seltzer, "Cigarettes, Alcohol, Coffee and Peptic Ulcer," The New England Journal of Medicine, 290:469-473, 1974.

(6) Debas, H.T., et al., "Caffeine-Stimulated Acid and Pepsin Secretion: Dose-Response Studies," Scandinavian Journal of Gastroenterology, 6:453-457, 1971.

(7) Roth, J.A., and A.C. Ivy, "The Synergistic Effect of Caffeine Upon Histamine in Relation to Gastric Secretion," American Journal of Physiology, 142:107-113, 1944.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC internal analgesic, antipyretic, and

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antirheumatic drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC internal analgesic, antipyretic, and antirheumatic drug products. Comments regarding the impact of this rulemaking on OTC internal analgesic, antipyretic, and antirheumatic drug products should be accompanied by appropriate documentation.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before April 22, 1992, submit to the Dockets Management Branch (address above), written comments or objections. Three copies of all comments or objections are to be submitted, except that individuals may submit one copy. Comments and objections are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments and objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 343

Internal analgesic drug products, Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 343, as proposed in the Federal Register of November 16, 1988 (53 FR 46204), be amended as follows:

PART 343—INTERNAL ANALGESIC, ANTIPYRETIC, AND ANTIRHEUMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation in 21 CFR part 343 is revised to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 343.20 is amended by adding new paragraph (b)(5) to read as follows:

§ 343.20 Permitted combinations of active ingredients.

* * * * *

(b) * * *

(5) *Internal analgesic and stimulant combinations.* Any internal analgesic ingredient identified in § 343.10 (a) or (b)(1) of this chapter may be combined with any stimulant ingredient identified in § 340.10 of this chapter provided the product bears labeling indications in accordance with § 343.60(b)(6).

3. Section 343.60 is amended by revising paragraphs (b)(2), (b)(4), (c), and (d), and by adding new paragraph (b)(6) to read as follows:

§ 343.60 Labeling of permitted combinations of active ingredients.

* * * * *

(b) * * *

(2) *For permitted combinations identified in § 343.20(b)(1).* The indications are the following: "For the temporary relief of minor aches and pains with" (select one or more of the following: "heartburn," "sour stomach," or "acid indigestion") (which may be followed by: "and upset stomach associated with" (select one or more of the following, as appropriate: "this symptom," "these symptoms," "hangover," or "overindulgence in food and drink."))

* * * * *

(4) *For permitted combinations identified in § 343.20(b)(3).* The indications are the following: "For the temporary relief of minor aches and pains with" (select one or more of the following: "heartburn," "sour stomach," or "acid indigestion") [which may be followed by "and upset stomach associated with" (select one or more of the following, as appropriate: "this symptom," "these symptoms," "hangover," or "overindulgence in food and drink")] and "Also may be used for the temporary relief of minor aches and pains alone" [which may be followed by one or more of the following: ("such as associated with" (select one or more of the following: "a cold," "the common cold," "sore throat," "headache," "toothache," "muscular aches," "backache," "the premenstrual and menstrual periods" (which may be followed by "(dysmenorrhea)"), or "premenstrual and menstrual cramps" (which may be followed by: "(dysmenorrhea)")), ("and for the minor pain from arthritis"), and ("and to reduce fever.")]

* * * * *

(6) *For permitted combinations identified in § 343.20(b)(5).* The indications are the following: "For the temporary relief of minor aches and pain associated with a hangover. Helps restore mental alertness or wakefulness when experiencing fatigue or drowsiness associated with a hangover."

* * * * *

(c) *Warnings.* The labeling of the product states, under the heading "Warnings," the warning(s) for each ingredient in the combination, as established in the warnings sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph.

(1) *For permitted combinations identified in § 343.20 (b)(1) and (b)(3) when labeled for the relief of the symptoms of hangover.* "Do not use for more than 2 days for a hangover unless directed by a doctor."

(2) [Reserved]

(d) *Directions.* The labeling of the product states, under the heading "Directions," directions that conform to the directions established for each ingredient in the directions sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph. When the time intervals or age limitations for administration of the individual ingredients differ, the directions for the combination product:

(1) May not contain any dosage that exceeds those established for any individual ingredient in the applicable OTC drug monograph(s), and

(2) May not provide for use by any age group lower than the highest minimum age limit established for any individual ingredient.

Dated: November 1, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 91–30424 Filed 12–23–91; 8:45 am]

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federal register

Tuesday
December 24, 1991

Part VII

Department of Transportation

Coast Guard

33 CFR Part 143

46 CFR Part 2

Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels; Proposed Rule; Correction

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 143

46 CFR Part 2

[CGD 91-030]

RIN 2115-AD79

Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: On December 18, 1991, the Coast Guard published a notice of proposed rulemaking (56 FR 65786). Appendix A to that rulemaking was omitted from publication. This correction document publishes appendix A to the notice of proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: Commander Bruce A. Russell, Plans and Analysis Branch (G-MP-1), Office of Marine Safety, Security and Environmental Protection (202) 267-6923.

SUPPLEMENTARY INFORMATION: To assist the reader in understanding the basis for the user fees proposed in this rulemaking the Coast Guard has attached a summary of the preliminary regulatory evaluation, including the regulatory flexibility analysis, prepared for this rulemaking project. The summary is published as an appendix to the preamble to this notice of proposed rulemaking and will not be republished in the final rule. The complete preliminary regulatory evaluation is available in the rulemaking docket for inspection or copying.

This document adds Appendix A that was inadvertently omitted from the notice of proposed rulemaking. All other provisions of the notice of proposed rulemaking remain unchanged.

Corrections: On page 65796, add appendix A to read as follows:

Dated: December 19, 1991.

A.F. Bridgman, Jr.,

U.S. Coast Guard, Chief, Regulations and Administrative Law Division.

APPENDIX

Summary of Preliminary Regulatory Evaluation and Regulatory Flexibility Analysis of the Regulations to Implement Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels

I. Introduction

A cost-benefit analysis was not prepared for this evaluation. Since the regulatory proposal is a deficit-reduction measure of the Budget Reconciliation Act of 1990 (the Act), there will be no benefits to the segment of the public affected by this proposal. However, the regulatory proposal will have an impact on many companies. Vessel inspections and examinations have previously been provided free of charge by the Coast Guard, so any fee for such services will have an impact, no matter how small. This analysis will describe the methodology used by the Coast Guard to develop a fee structure for vessel inspections and examinations and the impact of this fee structure on vessel owners.

II. Derivation of Vessel Inspection User Fees

These fees were derived based on the proposition that U.S. and foreign commercial vessel inspections and examinations should generate revenues approximating the total costs of the commercial vessel inspection program *less* costs for: Activities which will be the subject of separate rulemakings (i.e., new construction inspections, plan review, construction oversight, equipment approval and factory inspections); activities for which the program director has determined that the imposition of user fees would be administratively burdensome to both the Coast Guard and the marine industry; and, inspection activity costs in excess of the statutory annual user fee cap of $500 for the inspection of tank barges. The section of this paper titled Program Costs for Vessel Inspection User Fees details the program costs and reductions.

Program costs were derived using inspection activity data from the Coast Guard's Marine Safety Information System (MSIS), a 1989 "M" (Office of Marine Safety, Security and Environmental Protection) workload survey, data on MSIS costs, and field travel costs (automobile mileage).

The MSIS data used covered one-year periods during 1987, 1988, and 1989-90. Workloads vary from year to year as a function of regional, national and international industry trends. However, workload per unit of inspection activity (mean inspector hours per inspection), as a function of inspection activity and vessel type or service were found to be consistent over time.

The cost of the vessel inspection program subject to this rulemaking was computed in accordance with the Coast Guard Staffing Standards Manual (COMDTINST 5312.11) and the Standard Rate Instruction (COMDTINST 7310.1). The total was determined to be approximately $25.4-$27.0M, excluding collection costs. The accounting is detailed in the section titled Program Cost for Vessel Inspection User Fees. Enforcement boardings of uninspected vessels, U.S. commercial vessels, and foreign vessels have been excluded from the program cost model, and will not be the subject of a user fee rulemaking. New construction activities, factory inspections, equipment approvals, and plan review have also been excluded from the program cost model, but will be covered by separate user fee rulemakings.

Following the determination of program costs and available inspection hours, the Coast Guard derived the basic hourly rate. This rate distributes the program cost among identifiable inspection activities. The calculation of the basis hourly rate is detailed in the section titled Billable Hourly Rate Calculation. Each annual user fee is computed as a function of the time the Coast Guard would reasonably expect to spend inspecting or examining a specific category of vessel during an average year. All other fees for examination or inspection of vessels were based on the mean inspection or examination time for the specific type of inspection.

This project proposes to assess approximately $21-22 million in annual user fees, out of the $25.4-$27.0M program cost. A limitation in the Act, which set a maximum allowable annual user fee for inspection of tank barges ($500), reduces estimated receipts by approximately $2.1 million annually. This amount was eliminated from the cost model to ensure that the costs would not be included in the overhead and charged to the remaining industry. To simplify the fee structure and minimize the impact of the fee assessment and collection system on both the marine industry and the Coast Guard, several adjustments were introduced which reduce annual collections estimates by approximately $3.2 million. In each instance where decisions were made to not assess a user fee, to assess less than the full cost of performing the inspections, or where the fee will be collected under a separate rule, the Coast Guard was careful to exclude overhead costs as well as the cost of the activity. These costs, therefore, were not inadvertently distributed to activities subject to user fees.

Program Cost for Vessel Inspection User Fees

The Coast Guard attributes approximately 416 inspector full time equivalents (FTE) at field units to that

portion of the vessel inspection program subject to this rulemaking. Field personnel program cost was determined using the Standard Rate Instruction COMDTINST 7310.1, which establishes a base hourly rate (salary cost) of $30/hour (unspecified average officer):

416 × 1738 hrs. × $30 × 1.29 = $28,050,000

In addition to personnel costs, two other extraordinary costs accrue to the vessel inspection program: Marine Safety Information Systems (MSIS) costs and automobile mileage costs.

(1) MSIS Costs: $3,100,000 annual contract.

Inspection program prorated share: 12.5% or $389,000.

(2) Automobile mileage: 1,598,795 miles/year (1988 summary).

Cost/mile: $.24.

Inspection program prorated share: 89.5% or $343,000.

Therefore the total cost of the vessel inspection program is estimated to be:

Personnel	$28,050,000
MSIS	389,000
Auto mileage	343,000
	$28,782,000

Billable Hourly Rate Calculation

Total annual vessel inspection hours, (not including training hours, uninspected vessels or factory inspections but including new construction and plan review), for the most recently available 12 month period June 1989-June 1990, was 330,891 hours.

Therefore, the billable hourly rate was determined to be: $28,782,000/330,891 hours = $87/hour.

Cost Deferred to Other Rulemakings

The Coast Guard has determined that plan review and new construction inspections will not be the subject of this rulemaking. These costs are included in the gross vessel inspection program cost. The Coast Guard had not yet developed a satisfactory scheme to assess user fees for these activities in an equitable and administratively simple manner. Fees for these activities will be the subject of separate rulemakings. Because of the annual variability in new construction activities, the Coast Guard can only estimate that these activities could generate $1.8-3.3 million in annual user fee receipts (20,000-38,000 inspection hours at $87/hour).

Fee Reductions

Follow-on Inspections. For administrative simplicity and because of the wide range of variability within each type of follow-on inspection, only 50% of the expected value of most follow on inspections were included in the annual fee. While some vessel owners will receive more services than they pay for under this reduction, it minimizes the probability that those owners requiring the minimum of inspection services will have to pay a share of the cost of the high-end users.

Annual Reduction: $1,930,000.

Inspection intervals for hull examinations change as the vessel's service or route changes (e.g., salt water/fresh water). We have elected to avoid the potential for additional administrative and political disputes by charging only for the longest inspection interval (and lowest cost) for each type of vessel.

Annual Reduction: $948,000.

Tank Barges. Inspection User fees for all tank barges (U.S. and foreign) are limited to a maximum of $500 per year by the Budget Reconciliation Act of 1990. Annual user fees for tank barges would exceed $500 ($778-$1015 not including collection costs). Savings to the tank barge industry because of this statutorily-mandated provision are estimated at $2.1 million annually.

Annual Reduction: $2,087,000.

Foreign Passenger Vessels. Inspection times for approximately 5% of foreign passenger vessels exceed the normal range significantly, some as much as 40 times the mean inspection time. This disparity, which may result from unusual design, age, or poor maintenance, is expected to become more common as more vessels enter the U.S. cruise market. Until the causes for this disparity can be better defined and categorized, the excess inspection hours will be provided with no charge above the standard fee.

Annual Reduction: $109,000.

Miscellaneous: Passenger Freight Permit, Personnel in Addition to Crew Permit, and noncredit drydock inspection fees are not proposed since these services are usually provided only to the 20 Nautical School ships. The fees would be administratively burdensome and would not generate sufficient revenue to justify the burden.

Annual Reduction: $46,000.

Recapitulation

The following is a recapitulation of vessel inspection program costs, fee reductions, and estimated user fee receipts:

[In dollars]

Gross Vessel Inspections Cost	28,782,000
Less New Construction/Plan Review.	(1.8M-3.3M)
Net Vessel Inspections Cost	25.5-27.0
Less Fee reductions	5,120,000
Theoretical Receipts	20.4-21.9M
Estimated user fee receipts based on calculated fees, fleet and other activities.	21.0M

Fee Development

Initially the Coast Guard expected to charge a user fee for each inspection conducted. Fifteen types of inspection and 28 vessel categories were defined. Using these, the Coast Guard could establish 420 different user fees for the over 38,000 annual inspections.

The Coast Guard proceeded from this point to reduce the number of fee categories by looking for patterns in the amount of time it takes to conduct an inspection by inspection type, vessel type, and other factors. Because of the wide variation in the time to inspect each vessel it was suggested that the Coast Guard charge an hourly user fee after the exam was completed. This was rejected as unworkable. The cost of billing, timekeeping and administration would be enormous.

The Coast Guard is proposing one annual fee for each type of vessel. The fee would include follow-on inspections via an annual accrual accounting system based on the annual expected value of inspection services provided. Each user fee was annualized, and computed as a function of the time the Coast Guard would reasonably expect to spend on average examining a specific category of vessel during the course of an average year. This was done to minimize administrative burden, reduce collection costs, and provide a predictable cost to vessel owners. Table 2.10-3 in the proposed rule shows the annual fees for each type of inspected vessel.

Opportunity for Prepaying Fee

Vessel owners are being given the opportunity to prepay their annual user fee up to the remaining life of the vessel. The prepayment fee will be calculated as the net present value of the expected series of annual payments to the Treasury, adjusted for inflation and discounted at a rate equal to the interest rate for ten-year Treasury notes. This fee, once paid, will be transferable to the next owner. This is an optional procedure. The advantage of this is that the vessel owner is able to predict the costs of this item for 10-20 years. This can be important when developing budget estimates for capital

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improvements. The prepayment formula is published in § 2.10–4 of the proposed rule.

Fees That Differ From the Standard Formula Tank Barge User Fee Limit

The Act capped user fees for inspection of non-self-propelled tank vessels (tank barges) at $500 for both foreign and domestic vessels. The Coast Guard determined the annual expected cost of inspecting tank barges, excluding collection costs, to be $778–$1,015. The Coast Guard therefore established the fee for tank barges at $500. The savings to the tank barge industry is estimated to be $2.1 million annually or approximately $500 per vessel each year (see Table I).

Excursion Permit Inspection Fee

An "excursion vessel" referred to in 46 CFR 2.01–45, 72.40–5(c), and 177.35–1(c), is a passenger vessel that engages in short cruises for special events or recreational purposes. Operation under an excursion permit is chiefly seasonal and normally involves the carriage of deck passengers. The excursion permit allows carrying excursion passengers in excess of the number permitted under a normal certificate of inspection, operation on an extended route, or permits another type of vessel to carry passengers. This is a temporary permit only, and the fee is to be paid upon application for the inspection. The excursion permit user fee is $424. Only 35 excursion permits were issued in 1989. The institution of this fee may eliminate requests for some excursion permits. Excursion permits are issued so infrequently it should have little or no impact on industry or the general public.

Overseas Inspection User Fee

An estimated 40,000 hours in overseas travel time are expended annually in connection with inspection of U.S. commercial vessels. These inspections are conducted at the request of the vessel owner. Owners now reimburse the Coast Guard (under 46 U.S.C. 3317) for actual travel expenses and per-diem, but not for additional operating costs associated with overseas inspections. Personnel hours expended during travel and costs for the operation of overseas offices are included among the costs which require a differential fee for these inspections. This fee would be an additional $4,586 per overseas inspection.

Foreign Tank Ship User Fee

Foreign chemical tank ships operating in U.S. waters must be examined and issued a Certificate of Compliance (COC). The COC is valid for two years, but the vessel must be reexamined annually by a marine inspector. Foreign tank ships carrying petroleum products are issued an annual Tank Vessel Examination (TVE) letter. As the time involved to conduct these exams is essentially the same, the Coast Guard proposes to charge the same fee for these examinations and reexaminations, $1,102.

Foreign Mobile Offshore Drilling Unit (MODU) User Fee

Foreign MODU's operating in U.S. waters are required to be inspected and obtain a Certificate of Compliance valid for one year or until the MODU departs the Outer Continental Shelf (OCS) whichever comes first. The fee for these inspections is $1,831.

Foreign Passenger Vessel Control Verification User Fee

Over 95% of foreign passenger vessel control verification examinations are straightforward, conducted on a regular basis, and are predictable in terms of inspection time spent per examination. A fixed fee which would be applicable to the initial, annual and reinspection examination is being proposed. For the remaining 5%, inspection times are as much as 40 times the mean. The Coast Guard proposes to charge these vessels the same fee as the 95% which require no significant extra effort. This fee is $1,047 and is paid on application for the inspection. Since these examinations are conducted quarterly when the vessels are operating from U.S. ports, the cost to the owner could be as much as $4,188 annually.

III. Impact

The annual cost of the proposed vessel inspection user fees is estimated to be $21–22 million. The hourly cost of a Coast Guard inspection is $87. This compares favorably with the inspection fee charged by American Bureau of Shipping (ABS) which is estimated at $95–$100 per hour plus expenses. Table 2.10–3 describes the fees per vessel type on an annual basis. For many of the vessel types, the annual user fee will represent a very small additional cost of doing business. For some categories of vessels, the fee may have a major impact. What follows is a discussion of the fee by type of vessel or examination. Where profit data was available it was used. In the absence of profit information for some vessel types, this analysis uses revenue per vessel per day. This allows comparisons in order to make some judgments about potential impacts on vessel owners and operators. It is assumed that if the cost of a user fee is less than one revenue day, the impact to that vessel is not significant.

This method of analysis is a "worst case" estimate. In economic terms demand would be described as perfectly elastic. That means that the market is perfectly competitive so that no vessel owner can raise the rental price, freight rate, or passenger fare on the vessel because the consumer could find a satisfactory substitute at the original price. If vessel owners are able to absorb the full cost of the user fee (from profits) then the fee will not have a significant impact.

The presence of perfect competition is rare. More common is the case where the vessel owner could pass along some of the cost of the fee. If the market for vessel services is less than perfectly competitive and the demand for vessel services is relatively inelastic, or is increasing, as in a booming market, the vessel owner could pass along a portion of the fee. If vessel owners are able to pass forward some or all the costs of the proposed user fees the impacts would be likewise reduced.

The market for vessels varies by type of vessel as well as external economic conditions. For example with the downturn experienced in the market price for oil in the 1980's the demand for offshore supply vessels and MODU's decreased. This decline forced these vessel owners to lower prices. In a down market or recession, the ability of vessel owner to absorb costs is considerably less than in a booming economy. With falling prices, the ability of the owner to pass cost increases to the consumer is also limited or eliminated. The impact of imposing fees, therefore, will vary with the industry in which the vessel operates as well as the state of the economy.

The first type of vessel to be discussed, Freight Barges, would have an annual user fee of $955 per year. The cost of this to industry would be $649,515 annually. These vessels are generally oceangoing deck barges that carry containers. According to an industry source, oceangoing freight barges range in size from 250–450 feet. With a tug, they rent for approximately $11,000–$15,000 a day. Without a tug they would rent for $1,000 a day. This $1,000 represents a figure that is higher than the annual user fee. The Coast Guard is convinced that the user fee for this industry will not represent an undue burden.

U.S. Flag Freight Ship. The cost of the user fee for freight ships would be $5,411 per year. The cost to the freight ship industry would be $2,261,879 annually. According to data provided by the U.S. Maritime Administration for 1989, the total operating revenue of a U.S. flag breakbulk, LASH, or roll-on-roll-off vessel is $62,415 per day with a gross operating profit of $14,164. A U.S. flag container ship has revenue of $121,885 per day and a gross profit of $20,113 per day. The user fee represents significantly less than one day's profits of either of these two U.S. flag freight ships. It appears that even if U.S. flag freight ships must absorb this whole user fee it should cause them little problem.

Public freight ships would pay $4,245 per year. For purposes of this analysis the user fees for all public vessels should be considered a transfer payment from one government agency or department, e.g., the Maritime Administration, the Department of Defense, etc., to the U.S. Treasury and therefore does not have an impact on the general public or industry and will not be discussed in this analysis.

Industrial vessels would have a user fee of $2,751 per year. The cost to the entire industry would be $286,098 annually. A significant number of industrial vessels are dredging vessels. According to Michael Sickles of the National Association of Dredging Contractors the dredging industry is in the worst condition it has been in many years because the supply of dredging capacity is 100 million cubic yards while the demand is for only 30 million cubic yards. The price charged for a dredging vessel per day is $20,000 to $35,000. Although the industry is suffering, the cost of this user fee to this hard pressed industry should not have a significant impact on the industry as it represents only a small cost of doing business.

Liquefied Gas Tank Ships would have a user fee of $14,142 annually. The cost of this to the industry would be $169,705 annually. According to Lloyd's Shipping Economist March 1991 issue, a LPG tank ship of 24,000 cubic meters on a one month charter was $865,000–$895,000, a 52,000 cubic meter vessel $1,000,000 to $1,200,000 and a 75,000 cubic meter vessel $1,300,000–$1,395,000 respectively. For the smallest of these vessels that represents a day rate of over $28,800. The user fee represents just under ½ of the day rate for this type of vessel. It would appear that the proposed user fee does not represent an undue burden on these specialized ships.

Mobile offshore drilling units (MODUs) would face differential user fees depending on the type of unit. The Submersible and Self-elevating units will be assessed a fee of $4,698 a year, a Self Propelled Drillship $6,712 while a Semi-submersible Unit will be charged $8,054. The cost to the industry is $1,315,517. According to industry sources, the day rate of MODU's vary widely based on their size and complexity. The day rate for a U.S. flag MODU ranges from $12,000–$65,000 per day. The differential rates being charged by the Coast Guard reflect the differences in size and complexity of these vessels. This industry has in the last few years suffered from some over capacity which has depressed rates. Nevertheless, the Coast Guard's opinion is that these fees represent only a small amount compared to the cost of doing business in this industry.

Offshore Supply Vessels would face a user fee of $1,470 per year. The cost of this to industry would be $1,052,841 annually. According to a source in the offshore marine supply industry, the benchmark supply vessel of 180 feet costs approximately $2,500 a day to contract. The utilization rate in the industry in the Gulf of Mexico is relatively high at approximately 70–80%. There are approximately 360 domestic supply vessels. There are also 240 utility vessels and 170 crew boats which rent for $800–$1,200 a day. The 200 domestic lift boats have higher rates that are not as easily quoted as they are often rented for specific jobs. According to an offshore industry analyst, the return on revenues after taxes for supply vessels and crew and utility vessels were 15–20% last year and are around 10% for 1991. Although impact on the crew boats and utility boats will be more than on the 180 foot supply vessels, this industry is in relatively healthy condition and should be able to absorb these fees. The industry has shrunk over the last five years leaving those survivors in better economic shape.

Oceanographic Research vessels would have an annual fee of $4,199. The cost to this industry would be $71,389 annually.

More than half of these vessels are owned by the U.S. Government particularly the Navy. User fees on these vessels will therefore represent a transfer payment. Two of these vessels are owned by major oil companies with the rest owned by nonprofit foundations of other specialty companies. The Coast Guard does not consider that this user fee represents a significant burden to these highly specialized type of craft.

Nautical School Vessels would have a user fee of $7207 per year. The cost to the industry is $161,632 annually. Five of these vessels are owned by the U.S. Maritime Administration and one by the U.S. Navy and therefore involve a transfer payment from one U.S. agency to another. The rest are owned by colleges and foundations. These institutions may have to raise fees a modest amount to cover the cost of this user fee. The Coast Guard expects that these institutions will be able to pay these fees.

Passenger Ships (Subchapter H) and Small Passenger Vessels (Subchapter T) and Passenger Barges

This industry is a very difficult industry to characterize. The industry is made up of many small firms which own only one vessel. They could be described as small entities. Many of these vessels may sail only seasonally reflecting regional weather conditions. Other companies are large and have vessels that sail year around. The Coast Guard has tried to account for the differences in the industry by charging varying rates depending on the size of the vessel. The smallest vessel category, of less than 54 feet, would be faced with a fee of $820 a year, while a passenger ship of more than 450 feet has a fee of $14,650. (There are only four of these very large vessels, two of which are owned by the U.S. Navy). The cost to this entire industry would be $5,964,058 annually. The variance in the fees reflects the greater inspection requirements for the larger vessels. Because the vast majority of these companies are private sole proprietorships or closely held family businesses, financial data is not readily available. The National Association of Passenger Vessel Operators has been cooperative and has helped put the Coast Guard in touch with several passenger vessel operators. These operators describe an industry with net income of under 10% of revenue. In the case of some vessels, particularly seasonal ones, profits were close to zero.

The Coast Guard expects that the proposed user fees will not have a significant impact on this industry. Nevertheless, the Coast Guard requests information from passenger vessel owners and operators who believe they will be significantly impacted by this rulemaking. Information requested by the Coast Guard includes size and type of vessel, region of the country, and length of season. Economic theory would suggest that the most marginal firms in this industry which were making little to no net income (profits) might be forced to exist the industry.

U.S. Flag Tank Ships would face a user fee of $5,805. The cost of this rule to the tankship industry would be $1,602,226 annually. According to an industry source, the day rates of U.S. flag tankers range from $18,000 to $80,000 a day. Profit figures in the

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industry were described as so volatile that it is very difficult to categorize them. The user fee should have little impact on this industry as they represent less than ⅛ of one day's revenue for even the lowest priced ships.

Public Tank Ships user fees are a transfer payment from one government agency to another.

Tank Barge inspection user fees are capped at $500 per year by statute. The cost of this to industry would be $2,044,000 annually. According to industry sources the present day rates for river tank barges are $400 per day for a 10,000 barrel barge, $800 a day for a 20,000 barrel barge and $1,000 for a 30,000 barrel vessel. For the smallest of these barges the user fee represents slightly more than one day's revenue. The Coast Guard's opinion is that the user fee will not have a significant impact on this industry, and will affect only marginal firms. The Coast Guard asks barge owners who believe they may be unduly impacted by the proposed fees to comment on the proposed fees.

Unclassified or other inspected vessels would be subject to a user fee of $1,032. The cost of this to the industry would be $76,225 annually. Many of these inspections were one of a kind inspections related to the Exxon Valdez oil spill. Several of these vessels were deck barges which carried dredging equipment. The Coast Guard's opinion is that this fee will not cause any undue burden for these vessels. However, because of the diversity of this group of vessels it is impossible to categorically state that no owner will be impacted by the imposition of user fees.

Foreign Passenger Vessels would be subject to control verification user fee of $1047. This fee is a pay as you go fee. Since many of these vessels are inspected quarterly, the cost per vessel may be $4188 annually. The cruise industry has experienced tremendous growth during the 1980's of around 10% annually. Growth during the nineties is expected to be more modest. The industry is dominated by four carriers which control 61% of the business according to a member of the cruise industry press. The industry has been consolidating recently with mergers and exists from the industry. This trend should continue in the 1990's. There are two distinct sectors in the cruise industry, the upscale smaller ships of 100–200 passengers and the large cruise ships of 1,000–2,000+ passengers. Net revenue per passenger is $300 per passenger day for the luxury small ships and $100 per passenger day for the large ships. The user fee would be a small cost of doing business for this industry. The total cost to the industry is expected to be $464,921.

Tank Vessel Examination (TVE) and Certificate of Compliance (COC) for foreign flag tank ships would be $1102 per year. Tank ship trip day charter rates according to Lloyd's Shipping Economist March 1991 issue were from $13,000 to $28,000. The user fee represents a minimal cost of these ships. The total cost to the industry is expected to be $1,343,306.

Overseas Inspection Fees for inspections on U.S. vessels in foreign countries in an additional $4586. For the oceangoing U.S. vessels discussed earlier, this represents substantially below one revenue day for these vessels. The total cost to the industry could be as much as $3.5 million.

Foreign MODU's should have no problem in paying the same user fee as U.S. vessels, for those complying with U.S. design and equipment standards, or the user fee of $1831 annually for those complying with the requirements of the International Maritime Organization or of the documenting nation. The revenues of these vessels should be in the same general amount as those of U.S. flag MODUs, and the impact will be approximately the same. The overall cost to the foreign segment of the industry is estimated to be $35,000.

Conclusion

In conclusion the Coast Guard does not expect the proposed user fees to have an undue impact on industry, the general public, productivity, innovation, international trade, inflation, employment or any regions or on state and local governments. It is the Coast Guard's opinion that this fee will not have a significant impact on a substantial number of small entities. However, the Coast Guard awaits further information from the domestic small passenger vessel and tank barge industries on possible impacts.

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federal register

Tuesday
December 24, 1991

Part VIII

The President

Proclamation 6396—National Law Enforcement Training Week, 1992

Proclamation 6397—National Sanctity of Human Life Day, 1992

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Presidential Documents

Title 3—

The President

Proclamation 6396 of December 20, 1991

National Law Enforcement Training Week, 1992

By the President of the United States of America

A Proclamation

High-quality training is an essential component of effective law enforcement. The dedicated men and women who serve in this field have sworn to uphold the constitutional rights of individuals while promoting and defending the public safety. Meeting that challenge requires that every officer—from the rookie on the street to the most experienced chief or investigator—be equipped with certain knowledge and skills.

Today law enforcement training is as rigorous and as wide-ranging in scope as the day-to-day demands of an officer's job. First, every man and woman behind the badge must have knowledge of the law itself, including the rules of proper conduct and procedure. Because their work places them on the front lines in the war against drugs and crime, law enforcement officers also devote many hours of study and practice to self-defense techniques and to the safe use of firearms. Basic law enforcement training also includes physical conditioning, as well as lessons and exercises in the administration of first aid. Whether they are called to the scene of an accident or to the site of a violent domestic dispute, law enforcement officers know that lives depend on their preparedness and skill.

While the fundamentals have remained the same, recent advances in science and technology have changed many aspects of law enforcement and law enforcement training. To fight back against increasingly sophisticated crimes, police officers and other law enforcement agents are employing increasingly sophisticated tools and methods, from computers and toxicology to genetic "fingerprinting" and psychological profiling. Thus, those individuals who provide law enforcement training—including continuing education for veteran personnel—are part of a large, multidisciplinary team of professionals.

This week, as we gratefully salute all those who conduct and participate in law enforcement training, we also acknowledge the many rewarding career opportunities that it offers through its related disciplines. Young Americans who aspire to serve in our Nation's law enforcement and criminal justice system are encouraged to learn more about them.

To heighten public awareness of the importance of law enforcement training and its related fields, the Congress, by Public Law 102–206, has designated the week of January 5 through January 11, 1992, as "National Law Enforcement Training Week" and has authorized and requested the President to issue a proclamation in observance of this week.

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NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning January 5, 1992, as National Law Enforcement Training Week. I invite all Americans to observe this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of December, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.

George Bush

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Presidential Documents

Proclamation 6397 of December 20, 1991

National Sanctity of Human Life Day, 1992

By the President of the United States of America

A Proclamation

Throughout our Nation's history, Americans have treasured these timeless words from our Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." These stirring words summarize the fundamental moral vision of the United States, a vision that affirms the inestimable dignity and worth of every human being, each of whom is made in the image of God. They were not words uttered lightly. Signers of the Declaration pledged to uphold them with their lives, their fortunes, and their sacred honor. On this occasion, we reflect on the first and most fundamental right enumerated by our Nation's founders: the right to life.

Thomas Jefferson noted that "the God who gave us life gave us liberty at the same time," and much of his writing reflects his belief that "the care of human life and happiness, and not their destruction, is the first and only legitimate object of good government." Thus, respect for the sanctity of human life is deeply rooted in the American tradition. Today we Americans are rightfully proud of our physicians and scientists, who have helped lead the way in the fight against disability and disease; proud of the thousands of American service members and volunteers who have responded to calls for help around the world; and grateful to the many fire fighters and law enforcement officers who work to protect the public safety. These are just a few of the millions of Americans who demonstrate, through their daily labors, our Nation's traditional reverence for human life.

While the United States boasts a long and honorable tradition of respect for human life and the rights of individuals, one key issue related to the sanctity of life is a divisive one in America today: the issue of abortion.

Fewer than 20 years after the 1973 Supreme Court ruling in *Roe* v. *Wade*, the prevalence of abortion on demand in the United States stands in stark contrast to our Nation's most deeply held values and beliefs. While sincere persons may disagree, my position is that the lives of both mother and child must be cherished and protected.

Advances in science and technology continue to provide evidence that the child developing in the mother's womb is a distinct, living individual who bears all the basic attributes of human personality. How terribly ironic that an unborn child in one medical facility may be carefully treated as a patient while at another facility—perhaps just a few blocks away—another unborn child will bcome the innocent victim of abortion.

Women and men who operate crisis pregnancy centers across the country recognize the fear and desperation that compel some women to consider abortion. Yet they also know that, in a Nation as prosperous as ours, where people are known for their open hearts and their unfailing generosity, this tragic choice is unnecessary.

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On this occasion, we acknowledge the selflessness and compassion of all those volunteers who offer emotional, physical, and financial support to women facing crisis pregnancies. We also salute those courageous women who choose life for their unborn children and thank the dedicated counselors, social workers, and other professionals who, where needed, offer assistance in adoption. As a Nation, we must continue to dismantle legal, financial, and attitudinal barriers to adoption, to make adopting easier for families who want children and who will give them loving homes—particularly children with special needs.

On this ninth National Sanctity of Human Life Day, let us renew our determination to ensure that all, born and unborn, receive the protection and care they deserve. Together, let us choose life, so that America might always be known as a good and giving Nation, a nation where the stranger is welcomed and the needy are served with dignity and kindness. That is the sure and noble path chosen at our Nation's founding and the path to which we must always return.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Sunday, January 19, 1992, as National Sanctity of Human Life Day. I call on all Americans to reflect on the sanctity of human life in all its stages and to gather in homes and places of worship to give thanks for the gift of life and to reaffirm our commitment to respect the life and dignity of every human being.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of December, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.

George Bush

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 911

[Docket No. FV-91-299FR]

Limes Grown in Florida; Container Requirements for Seedless Limes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes container, container marking, and pack requirements for fresh seedless limes shipped within the production area. This action was unanimously recommended by the Florida Lime Administrative Committee (committee) at its meeting of June 12, 1991. This action is designed to ensure that fresh seedless limes are shipped in such a manner that they arrive in the marketplace in good condition, and to improve compliance with marketing order handling requirements by making it easier for the committee to determine whether the limes have been inspected and certified as required. This rule also amends § 911.311 to make necessary conforming paragraph redesignations and other miscellaneous changes to update that section.

EFFECTIVE DATE: December 26, 1991.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone (202) 720–9918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 911, both as amended (7 CFR part 911), regulating the handling of limes grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 18 lime handlers subject to regulation under the marketing order. In addition, there are about 260 lime growers in Florida. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $3,500,000, and small agricultural growers are defined as those whose annual receipts are less than $500,000. The majority of the handlers and growers may be classified as small entities.

A proposed rule concerning this action was issued October 25, 1991, and published in the **Federal Register** (56 FR 56029, October 31, 1991), with a 15-day comment period ending November 15, 1991. No comments were received.

Currently, Florida seedless limes shipped to destinations within and outside the production area in containers prescribed by the regulations must be inspected and certified as meeting the minimum grade, size, juice, pack, and lot marking requirements specified in §§ 911.311, 911.329, and 911.344. Seedless limes shipped in containers other than those prescribed by the regulations must only be inspected and certified as meeting those same minimum size and juice requirements, and may be shipped only to markets within the production area.

This final rule revises § 911.344 (7 CFR 911.344) to require that such limes, shipped within the production area in containers other than those currently authorized under § 911.329, be packed in new or used, rigid closed cardboard containers or wirebound containers. Such containers must be fairly well filled with the fruit to a level not more than ½ inch below the top edge of the container, and must contain not more than 60 pounds of fruit.

In addition, this final rule requires the containers of such limes to be marked with a Federal-State Inspection Service (FSIS) lot stamp number applied to an adhesive tape seal affixed to the container in a manner to prevent the container from being opened and/or the fruit being removed without breaking the seal. The stamp and tape must be affixed to the container by the FSIS or by the handler under the supervision of the FSIS. Only stamps and tape approved by the Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, are to be used for purposes of stamping and sealing containers.

The committee reports that these requirements are needed to improve the quality of seedless limes delivered to markets in the production area in other than authorized containers. The use of unsuitable containers has reportedly resulted in the arrival of bruised and otherwise damaged seedless limes in the production area markets. The container requirements are designed to maintain the arrival condition of seedless limes delivered to such markets, and, thus, improve returns to growers. Poor quality, bruised, and otherwise damaged fruit in the markets depresses prices for better quality fruit and results in lower overall returns to growers.

The committee also reports that, on a number of occasions, substandard, undersized, uninspected limes have been discovered in production area markets. The container marking and sealing requirements are designed to improve compliance with the order because, they make it easier to determine the identity of handlers who ship in violation of order requirements. The requirements also help determine whether containers were inspected and

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certified as meeting marketing order requirements.

These requirements should help improve the demand for fresh seedless limes sold within the production area in Florida, and thus are in the interest of growers and handlers.

The final rule also amends § 911.311 to make necessary conforming paragraph redesignations and other miscellaneous changes to update the language of the section. Paragraph (a)(1) is deleted because it is no longer needed. Furthermore, the language in current paragraph (a)(2) pertaining to standard pack for fresh seedless limes is revised to specify that such requirements apply only to seedless limes shipped in containers authorized in § 911.329. This change is made because this action establishes packing requirements in § 911.344 for seedless limes shipped in containers other than those authorized in § 911.329, thus making the "standard pack" requirement for such limes in § 911.311 unnecessary.

The committee works with the Department in administering the marketing agreement and order. The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida limes. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Some Florida lime shipments are exempt from container requirements effective under the order. Exempt are shipments up to 55 pounds during any one day by a handler and gift shipments in individually addressed containers of up to 20 pounds of limes each. Also, limes utilized in commercial processing are not covered by the container requirements.

This action reflects the committee's and the Department's appraisal of the need to improve requirements applicable to shipments of fresh Florida seedless limes within the production area. The Department's view is that this action will benefit lime handlers. The requirements over the past several years have not been sufficient in keeping limes in good condition during shipment to market. Although compliance with these requirements affects costs to handlers, these costs will be significantly offset when compared to the benefits resulting to growers, handlers, and consumers from the fruit being in good condition upon arrival in the marketplace.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 533, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Florida limes are shipped to market on a year-round basis, and these container requirements should be made effective as soon as possible to be of maximum benefit to the industry; (2) Florida lime handlers are aware of these requirements which were recommended by the committee at a public meeting; (3) handlers will need no additional time to comply with the requirements; and (4) the proposed rule provided a 15-day comment period, and no comments were received.

List of Subjects in 7 CFR Part 911

Florida, Limes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 911 is amended as follows:

PART 911—LIMES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 911 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 911.311 is amended by revising the section heading; by removing current paragraph (a)(1); by redesignating paragraph (b) as paragraph (e); by redesignating paragraphs (a)(2) through (a)(5) as paragraphs (a) through (d); by redesignating paragraphs (a)(2)(i) through (a)(2)(v) as paragraphs (a)(1) through (a)(5); and by revising redesignated paragraphs (a) introductory text, (b), and (c) to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 911.311 Florida lime pack and container marking regulation.

(a) No handler shall handle any limes grown in the production area, of the group known as seedless, large fruited, or Persian limes (including Tahiti, Bearss and similar varieties), in any container specified in § 911.329, unless such limes meet the requirements of standard pack and each container in each lot is marked or stamped on one outside end in letters at least ¼ inch in height to show the United States grade applicable to such lot and either the average juice content of the limes in such lot or the phrase "average juice content forty-two percent (42%) or more": *Provided,* That, in lieu of such marking requirement, any handler may affix to the container a label, brand, or trademark, registered with the Florida Lime Administrative Committee in accordance with the following, which appropriately identifies the grade:

* * * * *

(b) No handler shall handle any limes grown in the production area in any container specified in § 911.329 unless such container is marked with a Federal or Federal-State Inspection Service lot stamp number showing that the limes have been inspected in accordance with regulations issued under § 911.48 of the marketing order.

(c) The provisions of paragraphs (a) and (b) of this section shall not apply to individual packages of limes not exceeding four pounds, net weight, that are within master containers, except that if such packages are individual bags, either such bags or the master containers thereof shall be marked or labeled in accordance with the requirements of paragraph (a) of this section, and master containers shall be marked or labeled in accordance with the requirements of paragraph (b) and the requirements of § 911.329(a)(2)(v).

* * * * *

3. Section 911.344 is amended by revising the section heading and paragraph (a)(2) to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 911.344 Florida lime grade, size, and container regulation.

(a) * * *

(2) Such limes of the group known as seedless, large-fruited, or Persian limes (including Tahiti, Bearss, and similar varieties) meet the requirements of §§ 911.311 and 911.329 and grade at least U.S. Combination, Mixed Color: *Provided,* That at least 75 percent, by count, of the limes in the lot meet the requirements of the U.S. No. 1 grade, and the remainder meet the requirements of the U.S. No. 2 grade: *Provided further,* That stem length shall not be considered a factor of grade: *Provided further,* That such limes not meeting these requirements may be handled within the production area if:

(i) They meet the size requirements in paragraph (a)(3) of this section;

(ii) They contain not less than 42 percent juice content by volume;

(iii) They are packed in containers other than those authorized under § 911.329: *Provided,* That they are packed in closed new or used rigid cardboard or wire-bound containers which are fairly well filled with the fruit not more than ½ inch below the top edge of the container, containing not more than 60 pounds, net weight, of limes; and

(iv) They are in containers marked with a Federal-State Inspection Service (FSIS) lot stamp number applied to an adhesive tape seal affixed to the container in a manner to prevent the container from being opened and/or the fruit being removed without breaking the seal. The stamp and tape shall be affixed to the container by the FSIS or by the handler under the supervision of the FSIS. Only stamps and tape which have been approved by the Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, may be used for purposes of stamping and sealing containers to meet these requirements.

* * * * *

Dated: December 19, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–30733 Filed 12–24–91, 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1139

[Docket No. AO–309–A31, DA–91–018]

Milk in the Great Basin Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends for the period of December 1991 through August 1992 provisions of the Great Basin order limiting the amount of milk that a producer-handler may purchase from pool plants or other order plants without losing its unregulated status. The same provisions were previously suspended for the period of December 1990 through August 1991 based on a public hearing held at Salt Lake City, Utah, on August 27–28, 1990. The suspension is needed to facilitate the orderly marketing of milk.

EFFECTIVE DATE: December 1, 1991.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of hearing: Issued August 14, 1990; published August 20, 1990 (55 FR 33915).

Order suspending rule: Issued December 17, 1990; published December 26, 1990 (55 FR 52981).

Notice of Proposed Suspension: Issued November 18, 1991; published November 25, 1991 (56 FR 59223).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain producer-handlers and tends to encourage more orderly marketing of milk in the Great Basin marketing area.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Great Basin marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on November 25, 1991 (56 FR 59223) concerning a proposed suspension of certain provisions of the order. Interested persons were offered the opportunity to file written data, views, and arguments thereon. One comment in support of the suspension and one comment in opposition to the suspension were received.

After consideration of all relevant material, including the record of the hearing, the proposal in the notice, comments received, and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act for the months of December 1991 through August 1992:

In § 1139.10(b)(i)(ii), the words, "in an amount that is not in excess of the larger of 5,000 pounds or 5 percent of such person's Class I disposition during the month."

Statement of Consideration

This action makes inoperative for the months of December 1991 through August 1992 or until the amendatory formal rulemaking proceeding is concluded, whichever is earlier, the provisions of the Great Basin milk order that limit the amount of milk that a producer-handler may purchase from pool plants and other order plants. Under the current provisions, the amount of milk that a producer-handler may buy monthly from pool plants or from other order plants to supplement its own production is limited to 5,000 pounds or 5 percent of its Class I sales, whichever is greater.

This provision was previously suspended for the months of December 1990 through August 1991. The suspension was requested by Brown Dairy, Inc., a producer-handler located in Coalville, Utah, pending completion of action on several proposed amendments to the Great Basin order that were considered at the hearing held August 27–28, 1990 at Salt Lake City, Utah.

At the hearing Brown Dairy, Inc., supported its proposed amendment to relax the limits on producer-handler purchases from pool plants which is now under consideration. Proponent contends that the order's limit on purchases from regulated sources does not provide producer-handlers with sufficient flexibility in making seasonal sales to nearby winter ski resorts and summer camps. Brown Dairy also contends that a suspension of the limit on supplemental purchases during the higher production months of the year would not provide producer-handlers any competitive advantage because they would be required to pay the order's Class I price for such milk. Furthermore, producers under the Great Basin order would continue to receive the benefits of such Class I sales since such supplemental purchases would be from pool plants.

At the hearing and in comments filed after the hearing, Western Dairymen Cooperative, Inc. (WDCI) stated that the cooperative association was opposed to the suspension. WDCI stated that the current provision adequately allows a producer-handler to compensate for the seasonal nature of milk production by purchasing limited quantities of supplemental milk from pool plants or other order plants and still maintain its exemption from pooling.

WDCI indicated the producer-handlers can market their own milk without sharing their Class I utilization with other producers. WDCI contended the producer-handlers have a competitive advantage over fully regulated distributing plants because they are not required to account to the producer-settlement fund at the Class I price for all their milk disposed in fluid form. WDCI stated that if a producer-

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handler, as in Brown's case, desires to expand its business beyond the capacity of its own production by bidding on contracts such as summer camps, that they should come under the same regulations as any other handler.

WDCI also filed comments in opposition to the notice of proposed suspension issued November 18, 1991. WDCI stated that the present provisions allow a producer-handler to acquire adequate supplies of fluid milk products from pool plants or other order plants to compensate for the seasonal nature of milk production. Also, WDCI believes the suspension of this provision allows a producer-handler to shift the burden of carrying his reserve supply to the producers and gives the producer-handler a competitive advantage in competing with fully regulated handlers. Their arguments in opposition can be characterized as speculative in nature and, therefore, should be disregarded.

Ideal Dairy, another producer-handler located in Richfield, Utah, testified briefly in support of Brown Dairy's proposal that would permit producer-handlers to purchase larger quantities of fluid milk than under the present regulations during nine months of the year.

The basis for producer-handler exemption from full regulation is that producer-handlers are usually small-volume operations that tend to be self-sufficient in maintaining the burden of their own reserve milk supplies. The order's limit on supplemental purchases is intended to prevent producer-handlers from shifting the burden of maintaining a reserve milk supply to pool producers, particularly the seasonal reserves that result from the seasonal variation in milk production. Otherwise, a producer-handler could shift this burden to pool producers by maintaining sales accounts equal to its production in peak-production months and then buying supplemental milk from pool sources during the low-production months (September through November).

By keeping the supplemental purchase limit in effect for the seasonally low-production months of September through November, the pool producers would tend to be protected from carrying the seasonal reserve supply burden of producer-handlers. In addition, if the limit were applied only during such months, it would provide an incentive for producer-handlers to change their breeding program to effect peak production during the market's low-production months and obtain supplemental supplies during the period of higher production in the market. This would tend to lessen the burden of wide seasonal swing in the volume of total reserve supplies in the market and thereby contribute to marketing efficiencies. In addition, it would tend to discourage excess surplus production by producer-handlers. Also, it would facilitate potential marketing efficiency that may be gained by enabling producer-handlers to service nearby ski resort and summer camp accounts.

It therefore is concluded that the limit should be suspended for the months of December 1991 through August 1992, or until such time as the amendatory rulemaking noticed at 55 FR 33915–33918 (August 20, 1990) is completed if that date is earlier.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that unnecessary production of surplus milk by producer-handlers is being encouraged by the limit on purchases of pool milk by producer-handlers and the limit is unduly disrupting the marketing of milk to seasonal recreational sales accounts in the marketing area;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) The marketing problems that provide the basis for the suspension were fully reviewed at a public hearing and all interested parties had the opportunity of being heard on this matter.

Therefore, good cause exists for making this order effective December 1, 1991.

List of Subjects in 7 CFR Part 1139

Milk.

It is therefore ordered, That the following provisions in § 1139.10 of the Great Basin order are hereby suspended for the months of December 1991 through August 1992 or until such time as the amendatory rulemaking noticed at 55 33915–33918 (August 20, 1990) is completed, if that date is earlier.

PART 1139—MILK IN THE GREAT BASIN MARKETING AREA

1. The authority citation for 7 CFR part 1139 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1139.10 [Temporarily suspended in part]

2. In § 1139.10(b)(1)(ii), the words "in an amount that is not in excess of the larger of 5,000 pounds or 5 percent of such person's Class I disposition during the month" are suspended for the months of December 1991 through August 1992.

Signed at Washington, DC, on: December 18, 1991.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 91–30744 Filed 12–24–91; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 91–157]

Contagious Equine Metritis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations regarding horses from countries affected with contagious equine metritis (CEM), so that all paragraph references in the regulations will refer to current paragraph designations. These changes are necessary to clarify the regulations.

EFFECTIVE DATE: December 26, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Karen James, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 765, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8590.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 92, referred to below as the regulations, govern the importation into the United States of specified animals and animal products, to prevent the introduction into the United States of various diseases, including contagious equine metritis (CEM). CEM is a venereal disease of horses that affects fertility and breeding. Section 92.301 of the regulations authorizes the importation of certain horses into the United States from countries affected with CEM, when specific requirements to prevent the horses from introducing CEM into the United States are met. Section 92.304 of the regulations, among other things, sets forth requirements for import permits for horses from countries affected with CEM.

On April 17, 1991, we published in the **Federal Register** a final rule (56 FR 15486–15493, Docket No. 90–160), in which we made a number of amendments to the regulations regarding horses from countries affected with CEM. In that final rule, we added and amended a number of paragraphs, and redesignated other paragraphs as necessary. In certain cases, however, we did not make corresponding changes to paragraph references in the existing regulations. Therefore, following publication of our April 17, 1991, final rule, certain provisions in the regulations referred to outdated paragraph designations. To clarify the regulations, we are amending references to paragraph designations in §§ 92.301 and 92.304 to reflect current paragraph designations. We are also making certain nonsubstantive changes to the regulations to amend paragraph references that appeared incorrectly due to previous typographical errors.

This rule corrects references to paragraph designations in the regulations. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register.** Further, because this rule makes nonsubstantive corrections to the regulations, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Public Law 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

These programs/activities under 9 CFR part 92 are listed in the Catalog of Federal Domestic Assistance under No. 10.025 and are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock and livestock products, Quarantine, Transportation.

Accordingly, we are amending 9 CFR part 92 as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.301 [Amended]

2. In § 92.301, paragraph (c)(2)(vi)(A)(*1*) is amended by removing the reference to "§ 92.4" and adding in its place a reference to "§ 92.304 of this part".

3. In § 92.301, paragraph (c)(2)(vi)(A)(*2*) is amended by removing the reference to "§ 92.17" and adding in its place a reference to "§ 92.314 of this part".

4. In § 92.301, paragraph (c)(2)(vii)(B)(*5*) is amended by removing the reference to "paragraph (c)(2)(vi)(D)" and adding in its place a reference to "paragraph (c)(2)(vii)(D)".

5. In § 92.301, paragraph (c)(2)(vii)(B)(*6*) is amended by removing the reference to "paragraph (c)(2)(vi)" and adding in its place a reference to "paragraph (c)(2)(vii)".

6. In § 92.301, the reference to "paragraph (c)(2)(iv)(B)" is removed and a reference to "paragraph (c)(2)(vii)(B)" is added in its place in the following places:

a. Paragraph (c)(2)(vii)(D), both sentences; and

b. Paragraph (c)(2)(vii)(E).

7. In § 92.301, paragraph (c)(2)(viii)(B)(*2*) is amended by removing the reference to "paragraphs (c)(2)(vii)(B)(*1*)" and adding in its place a reference to "paragraphs (c)(2)(viii)(B)(*1*)".

8. In § 92.301, paragraph (c)(2)(viii)(B)(*7*) is amended by removing the reference to "paragraph (c)(2)(vii)(B)(*6*)" and adding in its place a reference to "paragraph (c)(2)(viii)(B)(*6*)".

9. In § 92.301, paragraph (c)(2)(viii)(C)" is amended by removing the reference to "paragraph (c)(2)(vii)(G)" and adding in its place a reference to "paragraph (c)(2)(viii)(G)".

10. In § 92.301, paragraph (c)(2)(viii)(E)" is amended by removing the reference to "paragraph (c)(2)(vii)(A)" and adding in its place a reference to "paragraph (c)(2)(viii)(A)".

11. In § 92.301, paragraph (c)(2)(viii)(G), the first sentence is amended by removing the reference to "paragraph (c)(2)(vii)" and adding in its place a reference to "paragraph (c)(2)(viii)".

12. In § 92.301, paragraph (c)(2)(viii)(G)" the second sentence is amended by removing the reference to "paragraph (i)(2)(vii)" and adding in its place a reference to "paragraph (c)(2)(viii)".

13. In § 92.301, paragraph (c)(2)(viii)(G)" the second sentence is amended by revising the words "paragraph (c)(2)(vii)(B)(*2*)" of this section; and (*3*) to supervise the cleaning and disinfection required by paragraph (c)(2)(viii)(B)(*6*) of this section." to read "paragraph (c)(2)(viii)(B)(*2*) of this section; and (*3*) to supervise the cleaning and disinfection required by paragraph (c)(2)(viii)(B)(*6*) of this section.".

14. In § 92.301, paragraph (c)(2)(viii)(G), the third sentence is amended by removing the reference to "(c)(2)(viii)(H)" and adding in its place a reference to "(c)(2)(viii)(H)".

15. In § 92.301, the reference to "paragraph (c)(2)(viii)(B)" is removed and a reference to "paragraph (c)(2)(vii)(B)" is added in its place in the following places:

a. Paragraph (c)(2)(viii)(G), sixth sentence; and

b. Paragraph (c)(2)(viii)(H).

§ 92.304 [Amended]

16. In § 92.304, paragraph (a)(1)(i) is amended by removing the reference to "§ 92.2(c)(1)" and adding in its place a reference to "§ 92.301(c)(1)".

17. In § 92.304, the reference to "§ 92.301(c)(2)(vii)" is removed and a reference to "§ 92.301(c)(2)(viii)" is added in its place in the following places:

a. Paragraph (a)(1)(ii), both times it appears; and

b. Paragraph (a)(1)(iii).

18. In § 92.304, the paragraph designation for paragraph (a)(4)(ii) that reads "(4)(ii)" is revised to read "(ii)".

19. In § 92.304, the paragraph designation for paragraph (a)(8)(iii)(A), which appears incorrectly as (a)(8)(iii)(A)(1), is revised by removing the "(1)".

20. Section 92.304 is amended by removing the reference to "§ 92.301(c)(2)(vi)" and adding in its place a reference to "§ 92.301(c)(2)(vii)" in the following places:

a. Paragraph (a)(8)(iii)(B); and

b. Paragraph (a)(8)(iii)(E), the first sentence.

21. In § 92.304, paragraph (a)(8)(iii)(C) is amended by removing the reference to "§ 92.304(a)(8)(iii)(A)" and adding in its place a reference to "§ 92.304(a)(8)(iii)(B)".

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22. In § 92.304, paragraph (a)(8)(iii)(D) is amended by revising the words "§ 92.2(c)(2)(vii)" if any specimen required by this section or by "§ 92.2(c)(2)(v)(G)" § 92.2(c)(2)(vi)(F)" or § 92.2(c)(2)(vi)(G)" to read "§ 92.301(c)(2)(vii), if any specimen required by this section or by § 92.301(c)(2)(v)(G), § 92.301(c)(2)(vi)(F), or § 92.301(c)(2)(vi)(G) of this part.

Done in Washington, DC, this 13th day of December 1991.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-30342 Filed 12-24-91; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Parts 101-108, 109, and 112-118

[Docket No. 90-170]

Viruses, Serums, Toxins, and Analogous Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the veterinary biologics regulations by removing all references to "Deputy Administrator" and replacing them with references to "Administrator." We are also removing all references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service" (APHIS). These changes are warranted so that regulations will accurately reflect that the Administrator of the Agency holds the primary authority and responsibilities for various decisions under the regulations.

EFFECTIVE DATE: December 26, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Frank Y. Tang, Biotechnologist, BCTA, BBEP, APHIS, USDA, room 851, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-4833.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR parts 101-118 concern veterinary biologics. Prior to the effective date of this document, these regulations indicated that the Deputy Administrator of the Animal and Plant Health Inspection Service (APHIS) for Veterinary Services (VS) was the official responsible for various decisions under these regulations. We are revising 9 CFR parts 101-118 to indicate that the primary authority and responsibility for various decisions under these regulations belong to the Administrator of the Agency. We are making similar revisions in all other APHIS regulations. These revisions will be published in separate Federal Register documents.

With these changes the term "Deputy Administrator" no longer appears in the text of the regulations. Therefore, we are deleting the definition of "Deputy Administrator." We are also adding a definition of "Animal and Plant Health Inspection Service". In addition, we are making non-substantive wording changes for clarity.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Public Law 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects

9 CFR Part 101

Animal biologics.

9 CFR Part 102

Animal biologics, Reporting and recordkeeping requirements.

9 CFR Part 103

Animal biologics, Reporting and recordkeeping requirements.

9 CFR Part 104

Animal biologics, Imports, Reporting and recordkeeping requirements, Transportation.

9 CFR Parts 105-109

Animal biologics.

9 CFR Part 112

Animal biologics, Exports, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

9 CFR Part 114

Animal biologics, Reporting and recordkeeping requirements.

9 CFR Part 115

Animal biologics.

9 CFR Part 116

Animal biologics, Reporting and recordkeeping requirements.

9 CFR Part 117

Animal biologics, and Animals.

9 CFR Part 118

Animal biologics.

Accordingly, we are amending 9 CFR parts 101 through 109 and 112 through 118 as follows:

Part 101—DEFINITIONS

1. The authority citation for part 101 continues to read as follows:

Authority: 21 U.S.C. 151-159; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 101.2, the terms are rearranged alphabetically without paragraph designations; the definition of "Deputy Administrator" is removed and the definitions of "Administrator" and "Animal and Plant Health Inspection Service" are added in alphabetical order to read as follows:

§ 101.2 Administrative terminology.

* * * * *

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The agency in the Department of Agriculture responsible for administering the Virus-Serum-Toxin Act.

§§ 101.2, 101.3, 101.4, 101.5 [Amended]

* * * * *

3. In the following places, the words "Veterinary Services" are removed and the term "Animal and Plant Health Inspection Service" added in their place:

(a) Section 101.2, in the definition of "Inspector";

(b) Section 101.3(k);

(c) Section 101.4(g);

(d) Section 101.5(a); (c); (f).

§§ 101.2, 101.5 [Amended]

4. In the following places, the word "Deputy" is removed:

(a) Section 101.2, in the definition of "Inspector";

(b) Section 101.5(c).

PART 102—LICENSES FOR BIOLOGICAL PRODUCTS

5. The authority citation for part 102 continues to read as follows:

Authority: 21 U.S.C. 151-159; 7 CFR 2.17, 2.51, and 371.2(d).

§§ 102.4, 102.5 [Amended]

6. In the following places, the words "Deputy Administrator, Veterinary Services" are removed and the word "Administrator" is added in their place:

(a) Section 102.4(c);

(b) Section 102.5(c).

7. In the following places, the words "Veterinary Services" are removed and the term "Animal and Plant Health Inspection Service" is added in their place:

(a) Section 102.3(a)(1); (a)(4).

§§ 102.2, 102.3, 102.4, 102.5 [Amended]

8. In the following places, the word "Deputy" is removed:

(a) Section 102.1 heading; introductory text;

(b) Section 102.2;

(c) Section 102.3(a); (b);

(d) Section 102.4(a); (b)(1); (b)(2); (b)(2)(ii); (f); (g); (h); (h)(1);

(e) Section 102.5(a); (b)(5); (d)(1); (d)(3); (e).

PART 103—EXPERIMENTAL PRODUCTION, DISTRIBUTION, AND EVALUATION OF BIOLOGICAL PRODUCTS PRIOR TO LICENSING

9. The authority citation for part 103 continues to read as follows:

Authority: 21 U.S.C. 151-159; 7 CFR 2.17, 2.51, and 371.2(d).

§§ 103.1, 103.2, 103.3 [Amended]

10. In the following places, the word "Deputy" is removed:

(a) Section 103.1 [second and fourth sentences];

(b) Section 103.2(a); (c);

(c) Section 103.3 introductory text [second sentence—twice], [third sentence]; (f); (g); and (h).

§ 103.3 [Amended]

11. In § 103.3(e), the words "the Veterinary Services" are removed and the term "Animal and Plant Health Inspection Service" is added in their place.

PART 104—PERMITS FOR BIOLOGICAL PRODUCTS

12. The authority citation for part 104 continues to read as follows:

Authority: 21 U.S.C. 151-159, 7 CFR 2.17, 2.51, and 371.2(d).

§§ 104.1, 104.2, 104.3, 104.5, 104.6 [Amended]

13. In the following places, the words "Veterinary Services" are removed and the term "Animal and Plant Health Inspection Service" is added in their place:

(a) Section 104.1(b);

(b) Section 104.2(a), introductory text;

(c) Section 104.3(a);

(d) Section 104.5(a)(1); (a)(4); (a)(5); (b)(4);

(e) Section 104.6(a); (b).

§§ 104.1, 104.2, 104.4, 104.5 [Amended]

14. In the following places, the word "Deputy" is removed:

(a) Section 104.1 introductory text;

(b) Section 104.2(b); (c);

(c) Section 104.4(b);

(d) Section 104.5(a)(3); (b)(1); (b)(4).

§ 104.7 [Amended]

15. In § 104.7(a), the words "Veterinary Services" are removed and the word "Administrator" is added in their place.

PART 105—SUSPENSION OF BIOLOGICS LICENSES OR PERMITS

16. The authority citation for part 105 is revised to read as follows:

Authority: 21 U.S.C. 151-159; 7 CFR 2.17, 2.15, and 371.2(d).

§ 105.2 [Amended]

17. In § 105.2, the words "Veterinary Services" are removed and the term "Animal and Plant Health Inspection Service" is added in their place.

§§ 105.3, 105.4 [Amended]

18. In the following places, the word "Deputy" is removed:

(a) Section 105.3(b);

(b) Section 105.4.

PART 106—EXEMPTION FOR BIOLOGICAL PRODUCTS USED IN DEPARTMENT PROGRAMS OR UNDER DEPARTMENT CONTROL OR SUPERVISION

19. The authority citation for part 106 is revised to read as follows:

Authority: 21 U.S.C. 151-159; 7 CFR 2.17, 2.51, and 371.2(d).

§ 106.1 [Amended]

20. In § 106.1, the word "Deputy" is removed.

PART 107—EXEMPTIONS FROM PREPARATION PURSUANT TO AN UNSUSPENDED AND UNREVOKED LICENSE

21. The authority citation for part 107 continues to read as follows:

Authority: 21 U.S.C. 151-159; 7 CFR 2.17, 2.51, and 371.2(d).

§§ 107.1 and 107.2 [Amended]

22. In the following places, the word "Deputy" is removed.

(a) Section 107.1 introductory text;

(b) Section 107.2, paragraphs (a) twice; (c) twice; and (d) once.

§ 107.1 [Amended]

23. In § 107.1(a)(2), the words "Veterinary Services" are removed and the term "Animal and Plant Health Inspection Service" is added in its place.

PART 108—FACILITY REQUIREMENTS FOR LICENSED ESTABLISHMENTS

24. The authority citation in part 108 is revised to read as follows:

Authority: 21 U.S.C. 151-159; 7 CFR 2.17, 2.51, and 371.2(d).

§ 108.1 [Amended]

25. In § 108.1, the word "Deputy" is removed.

§§ 108.6, 108.7, 108.11 [Amended]

26. In the following places, the words "Veterinary Services" are removed and the term "Animal and Plant Health Inspection Service" is added in their place:

(a) Section 108.6 introductory text; (a);

(b) section 108.7 [first and last sentences];

(c) Section 108.11.

PART 109—STERILIZATION AND PASTEURIZATION AT LICENSED ESTABLISHMENTS

27. The authority citation for part 109 is revised to read as follows:

Authority: 21 U.S.C. 151-159; 7 CFR 2.17, 2.51, and 371.2(d).

§§ 109.1, 109.2 [Amended]

28. In the following places, the word "Deputy" is removed:

(a) Section 109.1(a);

(b) Section 109.2.

§ 109.3 [Amended]

29. In § 109.3, introductory text, the words "Veterinary Services" are removed and the term "Animal and Plant Health Inspection Service" is added in their place.

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PART 112—PACKAGING AND LABELING

30. The authority citation for part 112 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

§§ 112.2, 112.5, 112.7 [Amended]

31. In the following places, the words "Veterinary Services" are removed and the term "Animal and Plant Health Inspection Service" is added in their places:

(a) Section 112.2(e);
(b) Section 112.5 introductory text; (a); (b); (c); (d)(1)(i); (d)(1)(ii); (d)(4); (f);
(c) Section 112.7(i).

§§ 112.1, 112.2, 112.7, 112.8, 112.9) [Amended]

32. In the following places, the word "Deputy" is removed:

(a) Section 112.1 introductory text;
(b) Section 112.2(a)(8);
(c) Section 112.7(e);
(d) Section 112.8(a)(2);
(e) Section 112.9(c).

PART 113—STANDARD REQUIREMENTS

33. The authority citation for part 113 is revised to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

§§ 113.2, 113.3, 113.5, 113.6, 113.8, 113.9, 113.21, 113.30, 113.53, 113.54, 113.64, 113.65, 113.67, 113.106, 113.107, 113.108, 113.109, 113.111, 113.112, 113.119, 113.120, 113.121, 113.208, 113.210, 113.211, 113.212, 113.213, 113.214, 113.302, 113.303, 113.304, 113.305, 113.306, 113.307, 113.308, 113.310, 113.311, 113.312, 113.313, 113.314, 113.315, 113.316, 113.317, 113.318, 113.325, 113.326, 113.327, 113.328, 113.239, 113.330, 113.331, 113.332, 113.406, 113.408, 113.409, 113.453, 113.454, 113.455 [Amended]

34. In the following places, the words "Veterinary Services" are removed and the term "Animal and Plant Health Inspection Service" is added in their place:

(a) Section 113.2(e);
(b) Section 113.3 introductory text; (a)(2); (b)(8); (b)(9); (c)(4);
(c) Section 113.5(c) [twice]; (e);
(d) Section 113.6 heading; (b);
(e) Section 113.8(a)(2); (b); (c) introductory text; (c)(4)(i);
(f) Section 113.9 introductory text;
(g) Section 113.31 introductory text; (a)(1); (b)(2);
(h) Section 113.39(a)(1)(iii);
(i) Section 113.53(e);
(j) Section 113.54(a);
(k) Section 113.64(c);
(l) Section 113.66(b)(3); (b)(7);
(m) Section 113.67(b)(3); (b)(8);
(n) Section 113.106(c)(2);
(o) Section 113.107(c)(2);
(p) Section 113.108(c)(2);
(q) Section 113.109(c)(2);
(r) Section 113.111(c)(1)(iv); (c)(1)(v);
(s) Section 113.112(c)(1)(iv); (c)(1)(v);
(t) Section 113.119(c)(1);
(u) Section 113.120(c)(1);
(v) Section 113.121(c)(1);
(w) Section 113.209(b) [second sentence]; (b)(3)(iv) [twice]; (b)(5);
(x) Section 113.210(c); (d)(2)(iii); (d)(2)(v);
(y) Section 113.211(c); (d)(2)(iii); (d)(2)(v);
(z) Section 113.212(c); (d)(2)(iii);
(aa) Section 113.213(b); (c)(2)(ii); (c)(2)(vi);
(ab) Section 113.214(b)(1) [last sentence]; (b)(2); (b)(3); (b)(5);
(ac) Section 113.302(c)(1); (c)(5);
(ad) Section 113.303(b); (c)(1); (c)(5);
(ae) Section 113.304(c)(3); (c)(5);
(af) Section 113.305(c)(5);
(ag) Section 113.306(c)(3); (c)(5);
(ah) Section 113.307(c)(3); (c)(5);
(ai) Section 113.308(b)(6);
(aj) Section 113.309(c)(10);
(ak) Section 113.310(c)(9);
(al) Section 113.311(c)(8);
(am) Section 113.312(b); (b)(3)(iv) [first and third sentences]; (b)(7);
(an) Section 113.313(c)(5); (c)(7);
(ao) Section 113.314(c)(3) introductory text; (c)(3)(ii); (c)(5);
(ap) Section 113.315(c)(3); (c)(5);
(aq) Section 113.316(b)(3); (b)(6);
(ar) Section 113.317(b); (c)(3); (c)(5);
(as) Section 113.318(b)(3); (b)(5);
(at) Section 113.325(c)(6);
(au) Section 113.326(c)(3); (c)(6);
(av) Section 113.327(c)(3); (c)(5);
(aw) Section 113.328(c)(3); (c)(4); (c)(7);
(ax) Section 113.329(c)(3); (c)(6); (c)(7);
(ay) Section 113.330(d)(3);
(az) Section 113.331(c)(2); (c)(3); (c)(5);
(ba) Section 113.332(c)(2); (c)(3); (c)(5);
(bb) Section 113.406 introductory text; (c);
(bc) Section 113.408 introductory text;
(bc) Section 113.409 introductory text; (c); (c)(2)(i); (c)(2)(ii);
(bd) Section 113.453(c) introductory text;
(be) Section 113.454(c)(1)(iv); (c)(1)(v);
(bf) Section 113.455(c)(1)(iv); (c)(1)(v);

§§ 113.52, 113.53, 113.55, and 113.408 [Amended]

35. In the following places, the term "VS" is removed and the term "APHIS" is added in its place:

(a) Section 113.52(b)(5); (h);
(b) Section 113.53(b); (c); (c)(2);
(c) Section 113.55(a)(3);
(d) Section 113.408(b); (f).

§§ 113.3, 113.4, 113.6, 113.8, 113.25, 113.26, 113.27, 113.35, 113.47, 113.113, 113.450 [Amended]

36. In the following places, the word "Deputy" is removed:

(a) Section 113.3(a) [twice]; (a)(1)(ii); (b); (c);
(b) Section 113.4(a);
(c) Section 113.6(a);
(d) Section 113.8(a); (c)(4)(i);
(e) Section 113.25(d);
(f) Section 113.26 introductory text;
(g) Section 113.27 introductory text;
(e) Section 113.35(b);
(f) Section 113.47(b) [second and third sentences];
(g) Section 113.113(a)(2) [second and third sentences]; (b);
(h) Section 113.450(b)(2);

§§ 113.52, 113.53, 113.55, 113.408 [Amended]

37. In § 113.52 paragraph (a)(3), § 113.53, introductory text; § 113.55, paragraph (a)(3); and § 113.408, introductory text; the term "Veterinary Services (VS)" is removed and replaced with "Animal and Plant Health Inspection Service (APHIS)".

PART 114—PRODUCTION REQUIREMENTS FOR BIOLOGICAL PRODUCTS

38. The authority citation for part 114 continues to read as follows:

Authority: 21 U.S.C. 151–159, 7 CFR 2.17, 2.51, and 371.2(d).

§§ 114.2, 114.3, 114.5, 114.7, 114.8, 114.9, 114.13, 114.14, 114.17, 114.18 [Amended]

39. In the following places, the words "Veterinary Services" are removed and the term "Animal and Plant Health Inspection Service" is added in their place:

(a) Section 114.2(b)(4);
(b) Section 114.3(d);
(c) Section 114.5;
(d) Section 114.7(a) [first and second sentences];
(e) Section 114.8 introductory text [first and second sentences]; paragraph (a) [first and second sentences]; paragraphs (b); (c); (d); (e)(1);
(f) Section 114.9(a)(3); (a)(7); (b);
(g) Section 114.13 introductory text;
(h) Section 114.14(b); (b)(1);
(i) Section 114.17(d); (e);
(j) Section 114.18(d) [first and second sentences].

§§ 114.1, 114.2, 114.3, 114.5, 114.8, 114.10, 114.15, 114.17, 114.18 [Amended]

40. In the following places, the word "Deputy" is removed:

(a) Section 114.1 [first and second sentences];
(b) Section 114.2 (b); (c); (d)(3);
(c) Section 114.3(c);
(d) Section 114.5;
(e) Section 114.8 (e); (f) [first and second sentences];
(f) Section 114.10(a);
(g) Section 114.15;
(h) Section 114.17 introductory text;
(i) Section 114.18 introductory text.

41. In § 114.2(d)(2), "VS Form14–3" is removed [2 places) and "APHIS Form 2003" is added in its place. In the address in the last sentence the term "VS" is removed.

PART 116—RECORDS

42. The authority citation for part 116 is revised to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

43. In the following places, the words "Veterinary Services" are removed and the term "Animal and Plant Health Inspection Service" is added in their place:

(a) Section 116.5;
(b) Section 116.7 [second and third sentences].

§§ 116.2, 116.5, 116.8 [Amended]

44. In the following places, the word "Deputy" is removed:

(a) Section 116.2(b);
(b) Section 116.5;
(c) Section 116.8.

PART 117—ANIMALS AT LICENSED ESTABLISHMENTS

45. The authority citation for part 117 is revised to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

§§ 117.1, 117.3, 117.6 [Amended]

46. In the following places, the word "Deputy" is removed:

(a) Section 117.1 (a); (b);
(b) Section 117.3 (c); (e).
(c) Section 117.6(e).

PART 118—DETENTION; SEIZURE, AND CONDEMNATION

47. The authority citation for part 118 is revised to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

§§ 118.1, 118.2, 118.3, 118.4 [Amended]

48. In the following places, the word "Deputy" is removed:

(a) Section 118.1;
(b) Section 118.2 introductory text; (b); (c) [first sentence—twice];
(c) Section 118.3(a)—twice; (b);
(d) Section 118.4, [second sentence].

Done in Washington, DC, this 13th day of December 1991.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–30343 Filed 12–24–91; 8:45 am]

BILLING CODE 3410–34–M

9 CFR Part 113

[Docket No. 91–166]

Viruses, Serums, Toxins, and Analogous Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the veterinary biologics regulations under part 113 to update cross references to section numbers which inadvertently were not updated when part 113 sections were redesignated. These changes are necessary so that the regulations will accurately reflect the section numbers in part 113.

EFFECTIVE DATE: December 26, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 838, 6505 Belcrest Road, Hyattsville, MD 20782, telephone 301–436–8245.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 113 concern Standard Requirements for the preparation of veterinary biologics. The section numbers in part 113 were redesignated in a final rule published on August 31, 1990. (55 FR 35556–35563, Docket No. 89–151) and effective October 1, 1990. However, cross references in part 113 were not updated to reflect the new section numbers. Updating these cross reference section numbers is necessary in order to accurately reflect the redesignation of these section numbers.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the Federal Register. Further, since this action is not a rule as defined by Public Law 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 113 to read as follows:

PART 113—STANDARD REQUIREMENTS

1. The authority citation for part 113 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

§§ 113.7, 113.101, 113.103, 113.104, 113.105, 113.106, 113.107, 113.108, 113.109, 113.110, 113.111, 113.112, 113.114, 113.115, 113.116, 113.117, 113.118, 113.119, 113.120, 113.121, 113.122, 113.123 [Amended]

2. In the following places, the reference "§ 113.85" is removed and "§ 113.100" is added in its place as follows:

(a) Section 113.7(d);
(b) Section 113.101, introductory paragraph;
(c) Section 113.102, introductory paragraph;
(d) Section 113.103, introductory paragraph;
(e) Section 113.104, introductory paragraph;
(f) Section 113.105, introductory paragraph;
(g) Section 113.106, introductory paragraph;
(h) Section 113.107, introductory paragraph;
(i) Section 113.108, introductory paragraph;
(j) Section 113.109, introductory paragraph;
(k) Section 113.110, introductory paragraph;
(l) Section 113.111, introductory paragraph;
(m) Section 113.112, introductory paragraph;
(n) Section 113.114, introductory paragraph;

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(o) Section 113.115, introductory paragraph;
(p) Section 113.116, introductory paragraph;
(q) Section 113.117, introductory paragraph;
(r) Section 113.118, introductory paragraph;
(s) Section 113.119, introductory paragraph;
(t) Section 113.120, introductory paragraph;
(u) Section 113.121, introductory paragraph;
(v) Section 113.122, introductory paragraph; and
(w) Section 113.123, introductory paragraph.

§§ 113.201, 113.202, 113.203, 113.204, 113.205, 113.206, 113.207, 113.208, 113.209, 113.210, 113.211, 113.212, 113.213, 113.214, 113.216 [Amended]

3. In the following places, the reference "§ 113.120" is removed and "§ 113.200" is added in its place as follows:
(a) Section 113.201, introductory paragraph;
(b) Section 113.202, introductory paragraph;
(c) Section 113.203, introductory paragraph, both places it appears;
(d) Section 113.204, introductory paragraph;
(e) Section 113.205, introductory paragraph, both places it appears;
(f) Section 113.206 (a) and (c), both places it appears;
(g) Section 113.207, introductory paragraph, both places it appears;
(h) Section 113.208, introductory paragraph;
(i) Section 113.209 (a) and (d);
(j) Section 113.210 (a) and (d);
(k) Section 113.211 (a) and (d);
(l) Section 113.212 (a) and (d);
(m) Section 113.213 (a) and (c);
(n) Section 113.214 (a) and (c); and
(o) Section 113.216(c).

§§ 113.8, 113.71, 113.301, 113.302, 113.303, 113.304, 113.305, 113.306, 113.307, 113.308, 113.309, 113.310, 113.311, 113.312, 113.313, 113.314, 113.315, 113.316, 113.317, 113.318, 113.325, 113.326, 113.327, 113.328, 113.329, 113.330, 113.331, 113.332 [Amended]

4. In the following places, the reference "§ 113.135" is removed and "§ 113.300" is added in its place as follows:
(a) Section 113.8(a)(1);
(b) Section 113.71(c);
(c) Section 113.301, introductory paragraph, both places it appears;
(d) Section 113.302 (a) and (d);
(e) Section 113.303 (a) and (d);
(f) Section 113.304 (a) and (d);
(g) Section 113.305 (a) and (d);
(h) Section 113.306 (a) and (d);
(i) Section 113.307 (a), both places it appears, and (d), both places it appears;
(j) Section 113.308 (a) and (c);
(k) Section 113.309 (a) and (d);
(l) Section 113.310 (a) and (d);
(m) Section 113.311 (a) and (d);
(n) Section 113.312 (a) and (d);
(o) Section 113.313 (a) and (d);
(p) Section 113.314 (a) and (d);
(q) Section 113.315 (a) and (d);
(r) Section 113.316 (a) and (c);
(s) Section 113.317 (a) and (d);
(t) Section 113.318 (a) and (c);
(u) Section 113.325 (a) and (d);
(v) Section 113.326 (a) and (d);
(w) Section 113.327 (a) and (d);
(x) Section 113.328 (a) and (d);
(y) Section 113.329 (a) and (d);
(z) Section 113.330(a);
(aa) Section 113.330(d), both places it appears;
(ab) Section 113.331 (a) and (d); and
(ac) Section 113.332 (a) and (d).

Done in Washington, DC, this 13th day of December 1991.

Robert Melland,

Administrator, Animal and Plan Health Inspection Service.

[FR Doc. 91-30344 Filed 12-24-91, 8:45 am]
BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 29

[Docket No. 91-ASW-2; Special Condition 29-ASW-2]

Special Conditions: McDonnell Douglas Model MD-900 Helicopter, Critical Functioning Electrical/ Electronic Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special condition.

SUMMARY: This special condition is issued for the McDonnell Douglas Model MD-900 helicopter. This helicopter will have a novel or unusual design feature associated with certain engine installations identified as utilizing a Full Authority Digital Engine Control (FADEC). This special condition contains additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

EFFECTIVE DATE: January 27, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Carroll Wright, FAA, Rotorcraft Standards Staff, Regulations Group, Fort Worth, Texas 76193-0111, telephone 817-624-5121.

SUPPLEMENTARY INFORMATION:

Background

On April 25, 1989, McDonnell Douglas Helicopter Company (MDHC), 5000 East McDowell Road, Mesa, Arizona, submitted an application for a new Type Certificate to include the Model MD-900 Helicopter. This aircraft is an eight-passenger, two-engine, 5,400-pound normal category helicopter. This helicopter will possess several advanced features including a hingeless, bearingless composite rotor system; a composite primary airframe structure; an integrated crew station; a centerline instrument display; the NOTAR antitorque system; and one or possibly more electrical/electronic systems performing functions critical to the continued safe flight and landing of the helicopter.

Type Certification Basis

The certification basis for the Model MD-900 includes: FAR part 27, through Amendment 27-23, effective September 2, 1988; Amendment 27-25, effective December 13, 1989; portions of Amendments 27-26, specifically 27.501; and FAR part 36, appendix H, effective on the date of certification.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of an aircraft or installation.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become a part of the type certification basis, as provided by § 21.101(b)(2).

Discussion

Notice of Proposed Special Condition No. SC-91-2-SW was published in the **Federal Register** on January 31, 1991 (56 FR 3804). No comments were received. Therefore, the special condition is adopted as proposed. The MDHC Model MD-900 helicopter will incorporate one and possibly more electrical/electronic systems and equipment that will be performing functions critical to the continued safe flight and landing of the helicopter. A FADEC is an electronic device which performs the critical function of engine control. The control of the engines is critical to the continued safe flight and landing of the helicopter during all operating flight regimes (both Visual Flight rules (VFR) and Instrument Flight Rules (IFR)). When the design is finalized, MDHC will provide the FAA with a preliminary hazard analysis that will identify any other critical functions performed by electrical/electronic systems and equipment.

If it is determined that this helicopter incorporates other electrical/electronic systems performing critical functions, it will be necessary to show that those systems meet the requirements of this special condition.

Conclusion

This action would affect only certain unusual or novel design features on one series of rotorcraft. This rule is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the rotorcraft identified in this special condition.

List of Subjects in 14 CFR Parts 21 and 27

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The Authority Citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11541, 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983).

The Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator of the Federal Aviation Administration, the following special condition is issued as part of the type certification basis for the MDHC Model MD-900 helicopter.

Protection for Electrical/Electronic Systems From High Intensity Radiated Fields

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high intensity radiated fields external to the helicopter.

Issued in Fort Worth, Texas, on December 13, 1991.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 91-30762 Filed 12-24-91, 8:45 am]
BILLING CODE 4901-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1213

Release of Information to News and Information Media

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR part 1213, "Release of Information to News and Information Media," to update the officials authorized to release and approve release of information. This rule establishes NASA policy, responsibilities, and procedures for the release of information concerning NASA programs and activities to news and information media. The intended effect of this action is to respond to the mandate in NASA's authorizing legislation in which the Congress has instructed the Agency to provide for the widest practicable and appropriate dissemination of information concerning its activities and the results.

EFFECTIVE DATE: December 26, 1991.

FOR FURTHER INFORMATION CONTACT: James W. McCulla, (202) 453-8398.

SUPPLEMENTARY INFORMATION: This revision updates the officials authorized to release and approve release of information. Since this involves administrative and editorial management decisions and procedures, no public comment period is required.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1213

New media, Administration practice and procedure.

For reasons set out in the Preamble, 14 CFR part 1213 is amended as follows:

PART 1213—RELEASE OF INFORMATION TO NEWS AND INFORMATION MEDIA

1. The authority citation for 14 CFR part 1213 continues to read as follows:

Authority: 42 U.S.C. 2473(a)(3) and NSDD-84, "Safeguarding National Security Information."

2. Section 1213.102 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 1213.102 Responsibility.

(a) The Associate Administrator for Public Affairs is responsible for the development and overall administration of an integrated Agencywide communications program and determines whether the specific information is to be released. The Associate Administrator for Public Affairs will:

* * * * *

3. Section 1213.103 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1213.103 Procedures for issuance of news releases.

(a) All Headquarters news releases will be issued by the Office of Public Affairs, Media Services Division.

(b) Directors of Field Installations, through their Public Affairs Officer, may release information for which that Field Installation is the primary or sole source, i.e., launch, mission, and planetary encounter commentary; telephone recorded messages; status reports; and releases of local or regional interest. Release of information that has national significance will be coordinated with the Associate Administrator for Public Affairs. Material received from contractors prior to its public release may be reviewed for technical accuracy at the contracting installation.

* * * * *

4. Section 1213.104 is amended by revising paragraphs (a), (b)(1), (2), and (3) to read as follows:

§ 1213.104 Procedures for news release coordination and concurrence.

(a) General. All organizational elements of NASA involved in preparing and issuing NASA news releases are responsible for proper coordination and obtaining concurrences and clearances prior to issuance of the news release. Such coordination will be accomplished through the Associate Administrator for Public Affairs, NASA Headquarters.

(b) * * * (1) The Headquarters Office of Public Affairs will release information after obtaining all necessary concurrences and clearances from the appropriate Program or other Headquarters Office. Field Installations will obtain clearances from the appropriate Institutional Program or other Headquarters Office.

(2) Headquarters issuance of a news release bearing on a Field Installation will be coordinated with the installation through the appropriate Institutional Program Office/Public Affairs Office, Associate Administrator for Public Affairs, or Director, Media Services Division. If Headquarters is the issuing

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Agency for a release for which the primary source is an Installation, the Office of Public Affairs will keep the Installation fully informed.

(3) If the Office of Public Affairs changes, delays, or cancels a release proposed for issuance by a Field installation, the Installation and the appropriate Institutional Program Office affected will be notified of the reasons for the action.

* * * * *

5. Section 1213.105 is amended by revising paragraphs (d) to read as follows:

§ 1213.105 Interviews.

* * * * *

(d) Any attempt by news media representatives to obtain classified information will be reported through the Headquarters Office of Public Affairs or Installation Public Affairs Office to the Installation Security Office. The knowing disclosure of classified information to unauthorized individuals will be cause for disciplinary actions against the NASA employee involved.

* * * * *

Dated: December 12, 1991.

Richard H. Truly,

Administrator

[FR Doc. 91-30594 Filed 12-24-91, 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-91-51]

Special Local Regulations for Marine Events; New Year's Eve Celebration Fireworks; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of Implementation of 33 CFR 100.501.

SUMMARY: This notice implements 33 CFR 100.501 for the New Year's Eve Celebration Fireworks Display. The fireworks display will be launched from the Town Point Park Fireworks Mast Area, Town Point Park, Norfolk, Virginia, on the Elizabeth River, adjacent to "Waterside", between the Norfolk and Portsmouth downtown areas from 10 p.m., December 31, 1991 to 1 a.m., January 1, 1992. The regulations in 33 CFR 100.501 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATE: The regulations in 33 CFR 100.501 are effective from 10 p.m., December 31, 1991 to 1 a.m., January 1, 1992. If inclement weather causes the postponement of the event, the regulations are effective from 6 p.m. to 8 p.m., January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204, or Commander, Coast Guard Group Hampton Roads (804) 483-8559.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

Norfolk Festevents, Ltd. submitted an application to hold a fireworks display on December 31, 1991 from 10 p.m. to 1 a.m., on January 1, 1992. The fireworks display will be launched from the Town Point Park Fireworks-Mast Area, Town Point Park, Norfolk, Virginia, and will burst over the Elizabeth River. Since many spectator vessels are expected to be in the area to watch the fireworks display, the regulations in 33 CFR 100.501 are being implemented for these events. The fireworks will be launched from within the regulated area. The waterway will be closed during the fireworks display. Since the waterway will not be closed for an extended period, commercial traffic should not be severely disrupted. In addition to regulating the area for the safety of life and property, this notice of implementation also authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa. The implementation of 33 CFR 100.501 also implements regulations in 33 CFR 110.72aa and 117.1007. 33 CFR 110.72aa establishes the spectator anchorages in 33 CFR 100.501 as special anchorage areas under Inland Navigation Rule 30, 33 U.S.C. 2030(g). 33 CFR 117.1007 closes the draw of the Berkley Bridge to vessels during and for one hour before and after the effective period under 33 CFR 100.501, except that the Coast Guard Patrol Commander may order that the draw be opened for commercial vessels.

Dated: December 16, 1991.

W.T. Leland,

Rear Admiral U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 91-30842 Filed 12-24-91; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-629; RM-7031]

Radio Broadcasting Services; LaFayette, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 298A to LaFayette, Georgia, as that community's first local FM service, at the request of Radix Broadcasting, Inc. See 55 FR 03752, February 5, 1990. Channel 298A can be allotted to LaFayette in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.3 kilometers (3.3 miles) east of the community, in order to avoid a short-spacing to Station WENN(FM), Channel 299C, Birmingham, Alabama, and to Station WJRX(FM), Channel 300A, East Ridge, Tennessee. The coordinates for this allotment are North Latitude 34-42-31 and West Longitude 85-13-33. With this section, this proceeding is terminated.

DATES: Effective February 3, 1992. The window period for filing applications will open on February 4, 1992, and close on March 5, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-629, adopted December 9, 1991, and released December 19, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete test of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Channel 298A, LaFayette.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-30724 Filed 12-24-91, 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-284; RM-7224, RM-7301, RM-7487]

Radio Broadcasting Services; New Sharon and Albia, Iowa, and Memphis, Missouri

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of First Christian Reformed Church, allots Channel 260C3 at New Sharon, Iowa, as its first local FM transmission service (RM-7224). We also allot, as requested by H&H Broadcasting Corporation, Channel 244C3 at Albia, Iowa, as its first local FM transmission service. In order to allot Channel 144C3 at Albia, we will also change Station KMEM(FM), Memphis, Missouri, from Channel 244A to Channel 263A (RM-7487). *See* 55 FR 23953, June 13, 1990. *See* Supplementary Information, *infra*.

DATES: Effective February 3, 1992. The window period for filing applications for Channel 260C3 at New Sharon, Iowa, and Channel 244C3 at Albia, Iowa, will open on February 4, 1992, and close on March 5, 1992.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-284, adopted December 10, 1991, and released December 19, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Channel 260C3 can be allotted to New Sharon in compliance with the Commission's minimum distance separation requirements with a site restriction of 17.4 kilometers (10.8 miles) south to avoid short-spacings to the construction permit for Station KFMH, Channel 259C1, Muscatine, Iowa, and Station KLYF, Channel 262C, Des Moines, Iowa. The coordinates for Channel 260C3 at New Sharon are North Latitude 41-18-49 and West Longitude 92-40-20. Channel 244C3 can be allotted to Albia without the imposition of a site restriction. The coordinates for Channel 244C3 at Albia are North Latitude 41-01-42 and West Longitude 92-48-12. Channel 263A can be allotted to Memphis at Station KMEM(FM)'s licensed site. The coordinates for Channel 263A at Memphis are North Latitude 40-29-59 and West Longitude 92-09-58. With this action, this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio broadcasting

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Channel 244C3, Albia and Channel 260C3, New Sharon.

3. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 244A and adding Channel 263A at Memphis.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-30725-Filed 12-24-91, 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-279; RM-7808]

Radio Broadcasting Services; Belle Plaine, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 224C3 to Belle Plaine, Kansas, in response to a petition filed by Belle Plaine Broadcasters, Inc. See 56 FR 50547, October 7, 1991. The coordinates for Channel 224C3 are 37-20-15 and 97-27-56. There is a site restriction 17.5 kilometers (10.9 miles) southwest of the community. With this action, this proceeding is terminated.

DATES: Effective February 3, 1992. The window period for filing applications will open on February 4, 1992, and close on March 5, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91-279, adopted December 11, 1991, and released December 19, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting

PART 73—[Amended]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by adding Channel 224C3, Belle Plaine.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-30726 Filed 12-24-91, 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-278; RM-7809]

Radio Broadcasting Services; Minneapolis, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 224C2 for Channel 224A at Minneapolis, Kansas, and modifies the construction permit for Station WILS to specify operation on the higher class channel, in response to a petition filed by Belinda S. Ohlemeier. See 56 FR

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50548, October 7, 1991. The coordinates for Channel 224C2 at Minneapolis are 39–00–52 and 97–37–42. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91–278, adopted December 11, 1991, and released December 19, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 224A and adding Channel 224C2 at Minneapolis.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–30727 Filed 12–24–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–508; RM–6975; RM–7258]

Radio Broadcasting Services; Gilchrist and Crystal Beach, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document dismisses a petition for rule making (RM–6975) filed by James Owens, d/b/a Gilchrist Community Broadcasting ("GCB"), to allot Channel 268C3 to Gilchrist, Texas, because neither GCB nor any other party filed a continuing expression of interest as required by the Notice of Proposed Rule Making. See 46 FR 46852, November 24, 1989. This document also grants a counterproposal filed by Harbor Broadcasting to allot Channel 268C3 to Crystal Beach, Texas, as its first local service. The coordinates for the Crystal Beach allotment are 29–30–25 and 94–30–17. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 3, 1992. The window period for filing applications for Channel 268C3 at Crystal Beach will open on February 4, 1992, and close on March 5, 1992.

FOR FURTHER INFORMATION, CONTACT: Belford V. Lawson, III, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–508, adopted December 11, 1991, and released December 19, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 268C3, Crystal Beach.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–30728 Filed 12–24–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 209

[FRA Docket No. RSEP–6, Notice No. 3]

RIN 2130–AA49

Amendment to Railroad Safety Enforcement Procedures; Approval of Information Collection Requirements

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: FRA is amending its railroad safety enforcement regulations (49 CFR part 209) to reflect the Office of Management and Budget's approval of information collection requirements.

EFFECTIVE DATE: This final rule will be effective December 26, 1991.

FOR FURTHER INFORMATION CONTACT: Gloria Swanson, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4345.

SUPPLEMENTARY INFORMATION: On October 18, 1989, FRA issued a final rule notice amending 49 CFR part 209, entitled "Railroad Safety Enforcement Procedures," by revising "Subpart A—General" and adding a new "Subpart D—Disqualification Procedures" prescribing procedures for disqualifying railroad employees, including managers, supervisors, and other agents from performing safety-sensitive functions in the rail industry (54 FR 42894, 1989). Since publication of the rule in the **Federal Register**, the Office of Management and Budget (OMB) has approved the information collection requirements of the rule (49 CFR 209.331) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This document provides notice of OMB approval of the information collection requirements and amends 49 CFR part 209 to reflect the approval of information gathering requirements contained in that part.

Regulatory Impact

E.O. 12291 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures, and is considered to be non-major under Executive Order 12291 and not significant under DOT policies and procedures (44 FR 11034, February 26, 1979).

Regulatory Flexibility Act

FRA certifies that this rule will not have a significant economic impact on a substantial number of small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations.

Paperwork Reduction Act

The rule does not contain information collection requirements.

Environmental Impact

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related directives. This notice meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 209

Railroad safety, Railroad safety enforcement procedures.

The Final Rule

In consideration of the foregoing, part 209, title 49, Code of Federal Regulations is amended as follows:

PART 209—[AMENDED]

1. The authority citation for part 209 continues to read as follows:

Authority: 45 U.S.C. 6, 10 and 13, as amended; 45 U.S.C. 34, as amended; 45 U.S.C. 43, as amended; 45 U.S.C. 64a, as amended; 45 U.S.C. 431, 437, 438, and 439, as amended; 49 U.S.C. 103(c); 49 app. U.S.C. 26(h), as amended; 49 app. U.S.C. 1655(e), as amended; Pub. L. 100–342; and 49 CFR 1.49 (c), (d), (f), (g), and (m).

Subparts B and C also issued under 49 app. U.S.C. 1802, 1804, 1808, 1809, and 1810; and 49 CFR 1.49(s).

Subpart D—Disqualification Procedures

2. Subpart D is amended by adding a new § 209.337 to read as follows:

§ 209.337 Information collection.

The information collection requirements in § 209.331 of this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2130–0529.

Issued in Washington, DC on December 19, 1991.

Gilbert E. Carmichael,

Federal Railroad Administrator.

[FR Doc. 91–30750 Filed 12–24–91; 8:45 am]

BILLING CODE 4910–06–M

49 CFR Parts 229, 230, 231, and 232

[FRA Docket No. RSEP–6, Notice No. 4]

RIN 2130–AA67

Amendment to Railroad Safety Regulations

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: FRA is amending its railroad safety regulations to ensure that the full range of its enforcement authority is available to address violations of all of the regulations it enforces under the Federal Railroad Safety Act of 1970 or the older safety statutes. This final rule clarifies FRA's authority to bring a non-emergency disqualification action under section 209(f) of the Safety Act for violations of the locomotive, safety appliance, and/or power brake regulations.

DATES: The final rule will become effective January 27, 1992.

FOR FURTHER INFORMATION CONTACT: Daniel C. Smith, Deputy Assistant Chief Counsel for Safety, FRA, Washington, DC 20590 (Telephone 202–366–0628).

SUPPLEMENTARY INFORMATION: Section 3 of the Rail Safety Improvement Act of 1988 ("RSIA") (Pub. L. No. 100–342) added a new section 209(f) to the Federal Railroad Safety Act of 1970 ("Safety Act") (45 U.S.C. 438(f)), which authorizes the Secretary of Transportation, after notice and an opportunity for a hearing, to disqualify an individual from safety-sensitive service in the railroad industry where that individual's violation of any rule or order prescribed "under this title" is shown to make that individual unfit for such service. When FRA issued its procedures for disqualification proceedings, it construed "this title" to mean title 45 of the United States Code. See 54 FR 42894–95 (October 18, 1989). However, it is also possible to read "this title" as referring only to the Safety Act, not all of title 45. Under that reading, the disqualification authority under section 209(f) of the Safety Act would be available only in connection with violations of a rule or order issued under the Safety Act.

Section 202(a) of the Safety Act, 45 U.S.C. 431(a), provides the Secretary with the authority to issue rules or orders covering all areas of railroad safety "supplementing provisions of law and regulations in effect on the date of enactment of this title." The laws in effect when the Safety Act was enacted in 1970, referred to here collectively as the "older safety laws," included the Safety Appliance Acts, 45 U.S.C. 1–14, 16; the Locomotive Inspection Act, 45 U.S.C. 22–34; the Accident Reports Act, 45 U.S.C. 38–43; the Hours of Service Act, 45 U.S.C. 61–64b; and the Signal Inspection Act, 49 app. U.S.C. 26.

FRA has issued the great majority of its safety regulations under the authority of the Safety Act (*e.g.*, the Track Safety Standards, 49 CFR part 213) or the joint authority of the Safety Act and one of the older laws (*e.g.*, the accident reporting regulations at 49 CFR part 225). However, there are four bodies of regulation that have thus far been issued only under the authority of one of the older safety laws: The Locomotive Safety Standards, 49 CFR part 229; the standards for inspection of steam locomotives, 49 CFR part 230; the Safety Appliance Standards, 49 CFR part 231; and the regulations on power brakes, 49 CFR part 232.

Therefore, in order to ensure that the disqualification authority under section 209(f) of the Safety Act is available for violations of those four regulatory parts, it is necessary to reissue them under the joint authority of the Safety Act and the older safety law under which they were previously issued. This is accomplished by a simple technical amendment to the authority sections of the four parts. In this way, FRA uses its Safety Act regulatory authority to supplement the older safety laws by making sure that the full range of Safety Act enforcement authority is available for violations of those older laws and regulations previously issued under them.

This final rule will eliminate the potential for the anomalous situation in which violations of the freight car safety standards (issued under the Safety Act) could provide the basis for disqualification, while violations of the locomotive, safety appliance, or power brake regulations—even if present on the same cars or trains as the freight car safety standards violations—would (assuming "this title" means the Safety Act) not provide the basis for disqualification under section 209(f) of the Safety Act. Of course, even if "this title" does limit section 209(f) disqualification actions to violations of regulations or orders issued under the Safety Act, section 209(f) specifically preserves FRA's authority to disqualify an individual on an emergency basis under section 203 of the Safety Act, which is in no way limited to violations of Safety Act regulations or orders. Therefore, this final rule merely clarifies FRA's authority to bring a non-

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emergency disqualification action under section 209(f) of the Safety Act for violations of the locomotive, safety appliance, and/or power brake regulations. The rule makes one other minor change: It deletes from part 231 an appendix that was inadvertently not deleted when a substitute appendix was issued in 1988.

Congress envisioned in 1970 that such exercises of joint authority under the Safety Act and the older laws would be necessary. H.R. Rep. No. 91-1194, 91st Cong., 2d Sess. at 16 (1970). Moreover, it is clear that Congress, in providing FRA with disqualification authority under section 209(f) in 1988, intended that authority be available to address violations of all of the federal railroad safety regulations. See, *e.g.*, 134 Cong. Rec. H3468 (daily ed. May 23, 1988) (remarks of Cong. Luken).

Public Participation

In taking this action, FRA is not exercising its regulatory authority in a manner that could be informed by public comment. There are no substantive choices to be made. Instead, this is a technical amendment that is being accomplished merely by adding a citation to the Safety Act to the authority citations of four parts of the CFR. Accordingly, notice and comment procedures are "impracticable, unnecessary, or contrary to the public interest" within the meaning of section 4(a)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B).

Regulatory Impact

E.O. 12291 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures. It is considered to be non-major under Executive Order 12291 and non-significant under the DOT policies and procedures. (44 FR 11034; February 26, 1979.)

This rule will not have any direct or indirect economic impact because it does not alter any existing substantive or procedural regulation in such a way as to impose additional burdens. The cost of complying with existing substantive regulations is not being increased. The rule merely clarifies the applicability of FRA's disqualification authority to certain types of regulatory violations. Accordingly, preparation of a regulatory evaluation is not warranted.

Regulatory Flexibility Act

FRA certifies that this rule will not have a significant economic impact on a substantial number of small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations. State rail agencies remain free to participate in the enforcement of FRA's rules but are not required to do so.

Paperwork Reduction Act

There are no information collection requirements contained in this rule.

Environmental Impact

FRA has evaluated this rule in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related directives. This notice meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

This rule will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Parts 229, 230, 231 and 232

Railroad safety.

Therefore, in consideration of the foregoing, parts 229, 231, and 232, title 49 Code of Federal Regulations are amended as follows:

PART 229—[AMENDED]

1. Part 229 is amended as follows:

A. The authority citation for part 229 is revised to read as follows:

Authority: 45 U.S.C. 22–34, as amended; 45 U.S.C. 431, 438, as amended; 49 app. U.S.C. 1655(e), as amended; Pub. L. 100–342; and 49 CFR 1.49(c), (g), and (m).

PART 230—[AMENDED]

2. Part 230 is amended as follows:

A. The authority citation for part 230 is revised to read as follows:

Authority: 45 U.S.C. 22–34, as amended; 45 U.S.C. 431, 438, as amended; 49 app. U.S.C. 1655(e), as amended; Pub. L. 100–342; and 49 CFR 1.49(c), (g), and (m).

PART 231—[AMENDED]

3. Part 231 is amended as follows:

A. The authority citation for part 231 is revised to read as follows:

Authority: 45 U.S.C. 2, 4, 6, 8, 10, and 11–14, 16, as amended; 45 U.S.C. 431, 438, as amended; 49 app. U.S.C. 1655(e), as amended; Pub. L. 100–342; and 49 CFR 1.49(c), (g), and (m).

B. The first appendix A, which is identified by the citation to its source (53 FR 28602, July 28, 1988) that appears just below it, is removed.

PART 232—[AMENDED]

4. Part 232 is amended as follows:

A. The authority citation for part 232 is revised to read as follows:

Authority: 45 U.S.C. 1, 3, 5, 6, 8–12, and 16, as amended; 45 U.S.C. 431, 438, as amended; 49 app. U.S.C. 1655(e), as amended; Pub. L. 100–342; and 49 CFR 1.49(c), (g), and (m).

Issued in Washington, DC, on December 19, 1991.

Gilbert E. Carmichael,

Federal Railroad Administrator.

[FR Doc. 91-30751 Filed 12-24-91; 8:45 am]

BILLING CODE 4910-06-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Ex Parte No. 334 (Sub-No. 8)]

Joint Petition for Rulemaking on Railroad Car Hire Compensation

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a final rule allowing railroads to enter into bilateral agreements concerning car hire terms. This will help to encourage efficient use of freight cars and alleviate problems with the existing car hire system. The text of the final rule is set forth below.

EFFECTIVE DATE: This rule is effective January 25, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202–927–5660) [TDD for hearing impaired: 202–927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

List of Subjects in 49 CFR Part 1033

Railroads.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Our action will not have a significant impact on a substantial number of small entities. The change will merely permit rail carriers and car leasing companies to reach car hire agreements among themselves.

Decided: December 18, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1033 of the Code of Federal Regulations is revised to read as follows:

PART 1033—CAR SERVICE

Sec.

1033.1 Car hire rates.

Authority: 49 U.S.C. 10321, 10326, 11121, and 11122; 5 U.S.C. 553.

§ 1033.1 Car hire rates.

Car hire agreements. Rail carriers are authorized to negotiate and enter bilateral agreements concerning car hire. Cars subject to such agreements are relieved from adhering to the Commission's car hire prescription.

[FR Doc. 91-30802 Filed 12-24-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 25, 32 and 33

RIN 1018-AA71

Refuge-Specific Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) amends certain regulations in 50 CFR parts 32 and 33 that pertain to migratory game bird, upland game, and big game hunting on individual national wildlife refuges. In addition, the Service makes an administrative change only in moving all information collection references to part 25. Refuge hunting programs are reviewed annually to determine whether the regulations governing individual refuge hunts should be modified, deleted or added to. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitats may warrant modifications to ensure the continued compatibility of hunting with the purposes for which the individual refuges involved were established and, to the extent practical, make refuge hunting programs consistent with State regulations.

EFFECTIVE DATE: December 26, 1991.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, U.S. Fish and Wildlife Service, Division of Refuges, 1849 C Street, NW., MS 670–ARLSQ, Washington, DC 20240; Telephone (703) 358–2043.

SUPPLEMENTARY INFORMATION: 50 CFR parts 32 and 33 contain provisions governing hunting on national wildlife refuges. Hunting is regulated on refuges to (1) ensure compatibility with refuge purposes, (2) properly manage the wildlife resource, (3) protect other refuge values, and (4) ensure refuge user safety. On many refuges, it is necessary to supplement State regulations with more restrictive Federal regulations to ensure that the Service meets its management responsibilities, as outlined under the section entitled "Conformance with Statutory and Regulatory Authorities." Refuge-specific hunting regulations may be issued only after a wildlife refuge is opened to migratory game bird, upland game, or big game hunting through publication in the **Federal Register**. These regulations may list the wildlife species that may be hunted, seasons, bag limits, methods of hunting, descriptions of open areas, and other provisions. Previously issued refuge-specific regulations for migratory game bird, upland game, and big game hunting are contained in 50 CFR 32.12, 32.22, and 32.32 respectively. Many of the proposed amendments to these sections are being promulgated to standardize and clarify the existing language of these regulations.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process.

In the August 28, 1991, issue of the **Federal Register** 56 FR 42018 the Service published a proposed rulemaking to amend certain regulations in 50 CFR parts 32 and 33 and invited public comment. The Service's responses to those comments are contained in the following section.

Responses to Comments Received

Written comments on the proposed rule were received from one party, the Humane Society of the United States.

Issue 1: Hunting is a violation of refuge purposes.

Response: The Refuge Recreation Act of 1962, 16 U.S.C. 460K, as amended, allows for recreational uses (e.g., hunting) when such uses do not interfere with the areas' primary purposes. As regulated in 50 CFR parts 32 and 33, hunting does not interfere with the areas' primary purposes.

Issue 2: There is a lack of data supporting the propriety of changes in hunting programs from the standpoints of compatibility, environmental impact under the National Environmental Policy Act (NEPA), endangered species protection, and determinations of surplus wildlife populations.

Response: The specific refuges proposing any changes in their hunting programs are doing so pursuant to a change in their hunting management plans. Such plans must comply with NEPA protections, be compatible with the purposes for which the refuge was established, and allow for any impact on endangered species as mandated by the Endangered Species Act of 1963, 61 U.S.C. 1531–1543, as amended. Determinations of surplus wildlife populations are routinely done through the respective Regional offices and under the direction of the central office in Washington, DC. There have been no reports of a threatened or endangered species or otherwise compromised species being hunted in the refuges proposing changes in their hunting programs.

Issue 3: The proposed regulations illegally transfer administrative authority to the States.

Response: The proposed regulations govern, along with already promulgated hunting regulations (e.g., migratory bird hunting regulations), the administration of hunting programs on specific refuges. Any area not covered by such regulations will follow State hunting regulations which, by law, are not to circumvent or otherwise usurp Federal protections.

Issue 4: The comment period is inadequate to properly analyze changes in hunting programs.

Response: A thirty-day comment period is Departmental policy, although the Service does take comments at any time concerning its rulemakings. While these comments may not receive responses in the Final Rule, they are accepted and filed for further review when appropriate.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, section 49(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior to permit the use of any area within the Refuge System for any purposes, including but not limited to, hunting, fishing and public recreation.

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accommodations, and access, when he determines that such uses are compatible with the major purpose(s) for which the area was established.

The Refuge Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established. The Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act. Hunting plans are developed for each refuge prior to opening it to hunting. In many cases, refuge-specific hunting regulations are included in the hunting plan to ensure the compatibility of the hunting programs with the purposes for which the refuge was established. Initial compliance with the NWRSAA and the Refuge Recreation Act is ensured when hunting plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists or areas open to hunting in 50 CFR. Continued compliance is ensured by annual review of hunting programs and regulations.

Economic Effect

Executive Order 12291 requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; or a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

These amendments to the codified refuge-specific hunting regulations make relatively minor adjustments to existing hunting programs. The regulations are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographic regions. The benefits accruing to the public are expected to exceed by a large margin the costs of administering this rule. Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of E.O. 12291 and would not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements contained in parts 25, 32 and 33 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0014), Washington, DC 20503.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) is ensured when hunting plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting in 50 CFR. Refuge-specific hunting regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular national wildlife refuge. The changes proposed in this rulemaking would not substantially alter the existing uses of the refuges involved. Information regarding hunting permits and the conditions that apply to individual refuge hunts and maps of the hunt areas are available at refuge headquarters or can be obtained from the regional offices of the U.S. Fish and Wildlife Service at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Assistant Regional Director, Refuges and Wildlife, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 NE 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas. Assistant Regional Director, Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. Assistant Regional Director, Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725–3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico and the Virgin Islands. Assistant Regional Director, Refuges and Wildlife, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303; Telephone (404) 331–0833.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia. Assistant Regional Director, Refuges and Wildlife, U.S. Fish and Wildlife Service, One Gateway Center, suite 700, Newton Corner, Massachusetts 02158; Telephone: (617) 965–9222.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming. Assistant Regional Director, Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone: (303) 236–8145.

Region 7—Alaska (Hunting on Alaska refuges is in accordance with State regulations. There are no refuge-specific hunting regulations for these refuges). Assistant Regional Director, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone: (907) 786–3538.

List of Subjects

50 CFR Part 25

Administrative practice and procedure, Concessions, Safety, Wildlife refuges.

50 CFR Part 32

Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

50 CFR Part 33

Fishing, Reporting and recordkeeping requirements, Wildlife refuges.

Accordingly, parts 25, 32, and 33 of chapter I of title 50 of the Code of Federal Regulations are amended as set forth below:

PARTS 25, 32 AND 33—[AMENDED]

1. The authority citation for parts 25, 32 and 33 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460K, 664, 668dd, and 715i.

PART 25—[AMENDED]

2. Part 25 is amended by adding § 25.23 to read as follows:

§ 25.23 General regulations and information collection requirements.

The information collection requirements contained in subchapter C, parts 25, 32 and 33 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit. The public reporting burden for the application form is estimated to average six minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0014), Washington, DC 20530.

PART 32—[AMENDED]

3. Section 32.2 is amended by adding paragraph (j) to read as follows:

§ 32.2 General provisions.

* * * * *

(j) The use or possession of alcoholic beverages while hunting is prohibited.

4. Section 32.12 is amended by revising paragraphs (f)(3), (i)(4), (p)(2), (p)(4)(iii), (p)(5), (s)(2), (u)(1), (y)(2) heading, (i) and (ii), (hh)(4)(i), (hh)(10)(ii), (hh)(11)(ii), (jj)(2), (qq)(4)(ii) and (v), and (qq)(7)(i) and (iii); and by adding paragraphs (hh)(10)(v), (hh)(11)(viii) and (qq)(4)(viii) to read as follows:

§ 32.12 Refuge-specific regulations; migratory game birds.

* * * * *

(f) *California*—* * *

* * * * *

(3) *Delevan National Wildlife Refuge.* Hunting of geese, ducks, coots, moorhens and snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Firearms must be unloaded while being transported between parking areas and blind sites.

(ii) Snipe hunting is only permitted in the free roam unit.

(iii) Hunters assigned to the spaced blind unit are restricted to their original blind except for retrieving downed birds, placing decoys, or traveling to and from the parking area.

(iv) Hunters must hunt from assigned blinds except when shooting to retrieve crippled birds.

* * * * *

(i) *Florida*—* * *

* * * * *

(4) *Merritt Island National Wildlife Refuge.* Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(p) *Louisiana*—* * *

* * * * *

(2) *Boque Chitto National Wildlife Refuge.* Hunting of ducks, geese, coots, and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(4) *Delta National Wildlife Refuge.*

* * *

* * * * *

(iii) Camping is permitted in designated areas only.

* * * * *

(5) *Lacassine National Wildlife Refuge.* Hunting of geese, ducks, and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(s) *Michigan*—* * *

(2) *Shiawassee National Wildlife Refuge.* Hunting of geese, ducks, and coots is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Duck and coot hunting is permitted only in Pool 4 and associated marshes.

(iii) Goose hunting in designated cropland fields and areas of the Shiawassee River is permitted until 12 noon with a required check out time of 1 p.m.

* * * * *

(u) *Mississippi*—(1) *Boque Chitto National Wildlife Refuge.* Hunting of ducks, geese, coots, and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(y) *Nevada*—* * *

(2) *Pahranagat National Wildlife Refuge.* * * *

(i) Only nonmotorized boats or other motorless flotation devices are permitted on the refuge hunting area during the migratory waterfowl hunting season.

(ii) Hunting of waterfowl, coots, moorhens, and snipe is permitted only on the opening day of the season and alternate days throughout the remainder of the season.

* * * * *

(hh) *Oregon*— * * *

* * * * *

(4) *Cold Springs National Wildlife Refuge.* * * *

(i) Hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Years Day.

* * * * *

(10) *Mckay Creek National Wildlife Refuge.* * * *

* * * * *

(ii) Hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Years Day.

* * * * *

(v) The refuge may not be entered before 5 a.m.

(11) *Umatilla National Wildlife Refuge.* * * *

* * * * *

(ii) In the McCormack Unit, hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, and New Years Day.

* * * * *

(viii) Decoys, boats, and other personal property may not be left on the refuge overnight.

* * * * *

(jj) *South Carolina*— * * *

(2) *Carolina Sandhills National Wildlife Refuge.* Hunting of mourning doves and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(qq) *Washington*— * * *

* * * * *

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(4) *McNary National Wildlife Refuge.* * * *

* * * * *

(ii) In the McNary Division, hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Years Day.

* * * * *

(v) Hunters may not enter or be on the refuge between one hour after sunset and 5 a.m. or leave decoys, boats, and other personal property on the refuge overnight.

* * * * *

(viii) On Youth Hunt Day only youth aged 10 through 17 accompanied by an adult 18 or older may hunt.

* * * * *

(7) *Umatilla National Wildlife Refuge.* * *

(i) In the Paterson Slough Unit, hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Years Day.

* * * * *

(ii) The refuge, including parking sites, is closed from 10 p.m. to 5 a.m. Decoys, boats, and other personal property may not be left on the refuge overnight.

* * * * *

5. Section 32.22 is amended by revising paragraphs (e)(2), (e)(4)(i), (e)(10)(i), (p), (q)(2), (v)(1), (dd)(1), (ff)(1)(i) and (iii); (ff)(6) (ii) and (iv), (ff)(8)(ii), (hh)(2), (jj)(4), (nn)(3) and (nn)(5)(ii); and adding paragraph (q)(5)(iv) to read as follows:

§ 32.22 Refuge-specific regulations; upland game.

* * * * *

(e) *California*— * * *

(2) *Develan National Wildlife Refuge.* Hunting of pheasant is permitted only in the free room areas of the refuge subject to the following condition: A special one-day pheasant hunt is permitted in the spaced blind unit on the first Monday after the opening of the State pheasant hunting season.

* * * * *

(4) *Lower Klamath National Wildlife Refuge.* * * *

(i) In the controlled pheasant hunting area, entry permits are required for all hunters 16 years of age or older for the first 3 days of hunting. Hunters under the age of 16 hunting the controlled area must be accompanied by an adult with a permit.

* * * * *

(10) *Tule Lake National Wildlife Refuge.* * * *

(i) In the controlled pheasant hunting area, entry permits are required for all hunters 16 years of age or older for the first 3 days of hunting. Hunters under the age of 16 hunting the controlled area must be accompanied by an adult with a permit.

* * * * *

(p) *Kentucky and Tennessee—Reelfoot National Wildlife Refuge.* Hunting of squirrels and raccoons is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(q) *Louisiana*— * * *

* * * * *

(2) *Bogue Chitto National Wildlife Refuge.* Hunting of squirrel, rabbit, raccoon, and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(5) *Delta National Wildlife Refuge.* * * *

* * * * *

(iv) Camping is permitted in designated area only.

* * * * *

(v) *Mississippi*—(1) *Bogue Chitto National Wildlife Refuge.* Hunting of squirrel, rabbit, and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(dd) *North Dakota*—(1) *Arrowwood National Wildlife Refuge.* Hunting of pheasant, sharp-tailed grouse, partridge, rabbit, and fox is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted from December first through the end of the regular seasons.

* * * * *

(ff) *Oregon*—(1) *Cold Springs National Wildlife Refuge.* * * *

(i) Hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Years Day.

* * * * *

(iii) Hunting is permitted only by shotgun and bow and flu-flu arrow beginning at noon each day.

* * * * *

(6) *McKay Creek National Wildlife Refuge.* * * *

* * * * *

(ii) Hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Years Day.

* * * * *

(iv) Hunting is permitted by shotgun and bow and flu-flu arrow beginning at noon each day.

* * * * *

(8) *Umatilla National Wildlife Refuge.* * * *

* * * * *

(ii) In the McCormack Unit, hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Years Day.

* * * * *

(hh) *South Carolina*— * * *

* * * * *

(2) *Carolina Sandhills National Wildlife Refuge.* Hunting of quail, rabbit, raccoon, and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(jj) *Tennessee*— * * *

* * * * *

(4) *Lake Isom National Wildlife Refuge.* Hunting of squirrels and raccoons is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(nn) *Washington*— * * *

* * * * *

(3) *McNary National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted by shotgun and bow and flu-flu arrow beginning at noon each day.

(ii) In the McNary Division, hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Years Day.

* * * * *

(5) *Umatilla National Wildlife Refuge.* * * *

* * * * *

(ii) In the Paterson Slough Unit, hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Years Day.

* * * * *

6. Section 32.32 is amended by revising paragraphs (s)(2), (s)(6), (t), (z)(1), (ii)(1), (mm)(2), (pp)(1)(iii) through (ix), (ss)(4)(iv) and (tt)(3)(ii); and by adding paragraphs (s)(5)(iii) and (iv) to read as follows:

§ 32.32 Refuge-specific regulations; big game.

* * * * *

(s) *Louisiana*— * * *

(2) *Bogue Chitto National Wildlife Refuge.* Hunting of white-tailed deer, turkey, and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(5) *Delta National Wildlife Refuge.* * * *

* * * * *

(iii) Archery hunting is permitted beginning October 1 through October 31.

(iv) Camping is permitted in designated area only.

(6) *Lacassine National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(t) *Kentucky and Tennessee—Reelfoot National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(z) *Mississippi*—(1) *Bogue Chitto National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(ii) *North Dakota*—(1) *Arrowwood National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(mm) *South Carolina*— * * *

* * * * *

(2) *Carolina Sandhills National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(pp) *Texas*—(1) *Arkansas National Wildlife Refuge.* * * *

* * * * *

(iii) Hunters shall be at least 12 years of age. Hunters between the ages of 12 and 17 (inclusive) must hunt under the supervision of an adult 18 years of age or older.

(iv) Archery hunting is permitted for nine consecutive days beginning the first Saturday after the Monday holiday for Columbus Day in October.

(v) Archery hunt bag limits are three deer, no more than two bucks per hunter. There is no limit on feral hogs.

(vi) Permits are required for the firearms hunt.

(vii) Firearms hunting is permitted for five consecutive one day hunts beginning the first Wednesday after the Veterans Day holiday in November.

(viii) Firearms hunters must wear safety orange cap and vest while in hunt units.

(ix) Firearms hunt bag limit is two deer of either sex per hunter. There is no limit on feral hogs.

* * * * *

(ss) *Virginia*— * * *

* * * * *

(4) *Mason Neck National Wildlife Refuge.* * * *

* * * * *

(iv) Only shotguns 20 guage or larger loaded with buckshot are permitted.

* * * * *

(tt) *Washington*— * * *

* * * * *

(3) *Umatilla National Wildlife Refuge.* * * *

* * * * *

(ii) In the Paterson Slough Unit, hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Years Day.

* * * * *

§ 32.41 [Removed]

7. Part 32 is amended by removing subpart D consisting of § 32.41.

§ 33.2 [Amended]

8. Section 33.2 is amended by removing paragraph (f).

Dated: November 7, 1991.

Bruce Blanchard,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 91-30737 Filed 12-24-91; 8:45 am]

BILLING CODE 4310-55-M

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Proposed Rules

Federal Register
Vol. 56, No. 248
Thursday, December 26, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1032

[DA-91-022]

Milk in the Southern Illinois—Eastern Missouri Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This action invites written comments on a proposal to suspend certain provisions of the Southern Illinois—Eastern Missouri Federal milk marketing order for the months of December 1991 and January 1992. The proposed suspension would reduce the shipping standard for pool supply plants operated by cooperative associations. The action was requested by Prairie Farms Dairy, Inc. (Prairie Farms), a cooperative association that operates supply plants and represents producers who supply the market. Prairie Farms contends that the action is necessary to reflect a reduced need for shipments of milk from supply plants to distributing plants.

DATES: Comments are due no later than January 2, 1992.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 6456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 690–1366.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Southern Illinois—Eastern Missouri marketing area is being considered for the months of December 1991 and January 1992:

In § 1032.7(b), the words "and at least 75 percent of the total producer milk marketed in that 12-month period by such cooperative association was delivered", and the words "and physically received at".

All persons who want to submit written data, views or arguments about the proposed suspension should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures and include December in the suspension period.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would suspend certain provisions of the order for the months of December 1991 and January 1992. The action would reduce the shipping standard for pool supply plants operated by cooperative associations.

Currently the order provides that a supply plant must ship at least 40 percent of its receipts of milk to distributing plants during December, and 50 percent in other months, to be a pool plant under the order. A supply plant that meets the pooling standard during each of the months of September through January is a pool plant during each of the months of February through August. Also, the order provides a monthly shipping standard of 25 percent for a supply plant operated by a cooperative association if at least 75 percent of the cooperatives total milk supply during the preceding months of September through August is received at distributing plants. The proposed suspension would result in reducing the shipping standard for a cooperative association supply plant to 25 percent of receipts during December 1991 and January 1992.

This action was requested by Prairie Farms Dairy, Inc. (Prairie Farms), a cooperative association that operates supply plants under the order and represents producers who supply the market. Prairie Farms contends that the action is necessary because of a reduced need for shipments of milk from supply plants to furnish the fluid milk requirements of distributing plants.

Prairie Farms indicates that the reduction of the fluid milk requirements for the market is a result of the recent loss of two customers to competitors regulated under other Federal orders and the sluggish sales in the area due to layoffs in major defense, tire, and heavy equipment manufacturing firms. Consequently, Prairie Farms contends that the suspension is necessary to reduce the shipping standard to 25 percent of receipts for cooperative associations during December 1991 and January 1992. Absent a suspension, Prairie Farms contends that costly and inefficient movements of milk would have to be made to pool its supply plants and the milk of its producers who have historically supplied the market.

List of Subjects in 7 CFR Part 1032

Milk marketing orders.

PART 1032—[AMENDED]

The authority citation for 7 CFR part 1032 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

Signed at Washington, DC, on December 19, 1991.

Kenneth C. Clayton,
Acting Administrator.

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7 CFR Part 1211

[FV–91–277]

RIN 0581–AA50

Pecan Promotion and Research Plan

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department proposes to issue a plan establishing a national industry-funded pecan promotion, research, and industry and consumer information program. A national pecan industry organization requested the issuance of such a plan and submitted a proposed plan in response to an invitation to submit proposals. The proposed plan would require pecan growers and importers to pay an assessment which would be used in a national program of pecan promotion, research, and industry and consumer information. No interest was expressed in holding a public meeting to discuss the proposal, so none will be held.

DATES: Comments must be received by January 27, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, P.O. Box 96456, room 2533–S, Washington, DC 20090–6456. Three copies of all written material should be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments concerning the information collection requirements contained in this action should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for the Agricultural Marketing Service, USDA .

FOR FURTHER INFORMATION CONTACT: Jim Wendland, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2533–S, Washington, DC 20090–6456, telephone (202) 720–9916.

SUPPLEMENTARY INFORMATION: This proposed plan is authorized under the Pecan Promotion and Research Act of 1990 (Subtitle A of title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990; Pub. L. 101–624) approved November 28, 1990, hereinafter referred to as the Act.

This proposal has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed action on small entities.

The most recent available census of agricultural producers indicates that over 21,000 farms in the United States reported having pecan trees. The majority of these producers would be subject to the proposed plan and be classified as small businesses. Producers or growers engaged in the production and sale of pecans would be subject to being assessed under this proposal. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms, which include pecan handlers and importers, have been defined as those having annual receipts of less than $3,500,000. Also, there are approximately 2,000 pecan handlers, 115 shellers and 10 importers of pecans who would be subject to the provisions of this proposed plan, the majority of whom would also be classified as small entities.

The proposed plan would require each pecan grower and importer to pay an assessment not to exceed $0.02 per pound of inshell pecans. First handlers of pecans, virtually all of whom would be classified as small firms, would be required to collect and remit the assessments. Although the maximum assessment collection is expected to total about $6 million annually, the economic impact of a two cent or less assessment per pound on each grower or importer would not be significant

While the proposed plan imposes certain recordkeeping requirements on first handlers, importers, grower-shellers, and growers, information required under the proposed plan could be compiled from records currently maintained. Thus, any added burden resulting from increased recordkeeping would not be significant when compared to the benefits that should accrue to such businesses. The plan's provisions were carefully reviewed and effort was made to minimize any unnecessary costs or requirements.

Although the plan could impose some additional costs and requirements on first handlers, importers, and some growers who are their own first handlers, it is anticipated that the program under the proposed plan would help to increase the demand for pecans. Therefore, any additional costs should be offset by the benefits derived from expanded markets and sales benefiting growers, importers, and first handlers alike. Accordingly, the Administrator of the AMS has determined that the proposed provisions of the plan would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) the forms, reporting, and recordkeeping requirements included in this action have been approved by the Office of Management and Budget (OMB) and were assigned OMB No. 0581–0093, except for Board member nominee information sheets that were previously assigned OMB No. 0505–0001. This action sets forth the provisions of a proposed plan to establish a nation-wide program for pecan promotion, research, and information to be funded by pecan growers and importers. Information collection requirements that are included in this proposal include:

(1) A periodic report by each first handler and importer who handles or imports pecans. The estimated maximum number of respondents is 2,010, each submitting an average of 5 responses per year, with an estimated average reporting burden of one-half hour per response. However, these persons may alternatively prepay assessments annually, requiring only an initial report of anticipated assessments and a final annual report of actual handling;

(2) A refund application form for persons who desire a refund of their assessments. The estimated maximum number of respondents is 1,000 each submitting 2 responses per year, with an estimated average reporting burden of .10 an hour per response;

(3) An exemption application for growers, handlers and importers of pecans for non-food uses to be exempt from assessments and recordkeeping requirements. The estimated number of respondents for this form is 5, each

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submitting one response per year, with an estimated average burden of .083 hour per response;

(4) A referendum ballot to be used in 1994 and periodically thereafter to indicate whether growers and importers favor continuance of the plan. The estimated maximum number of respondents for this form is an annual average of 4,400, with an estimated average reporting burden of .10 an hour per response;

(5) A nominee background statement form for Board member and alternate member nominees. The estimated number of respondents for this form is 60 during the first year of plan operations and approximately 20 annually thereafter. Each respondent would submit one response per year, with an estimated average reporting burden of .10 an hour per response; and

(6) A requirement to maintain records sufficient to verify reports submitted under the plan. The estimated maximum number of recordkeepers necessary to comply with the requirement is 2,010, each of whom would have an estimated annual burden of .12 hour.

Comments concerning the information collection requirements contained in this action should also be sent to the Office of Information and Regulatory Affairs; Office of Management and Budget; Washington, DC 20503. Attention: Desk Officer for Agricultural Marketing Service, USDA.

Background

The Act authorizes the Secretary of Agriculture (Secretary) to establish a national pecan promotion, research, and information program. The program would be funded by an assessment on growers and importers not to exceed two cents per pound of inshell pecans.

The Act provides for the submission of proposals for a pecan promotion, research, and information plan by industry organizations or any other interested person. The Act requires that such plan provide for the establishment of a Pecan Marketing Board. The Board would be composed of 15 voting members, including 8 growers, 4 shellers, 1 first handler, 1 importer and 1 public member, with an alternate for each member.

The Department published an invitation in the January 30, 1991, issue of the Federal Register (56 FR 3425) to submit proposals for an initial plan and in the July 3, 1991, issue (56 FR 30517) extended the submission period for proposals to July 10, 1991.

In response to the invitation to submit proposed plans, one letter supporting such a program was received from Oakhurst Ranch, Lindale, Texas; a proposal requesting $600,000 to establish a Pecan Center was received from Mr. James Crump with the Seguin, Texas, Chamber of Commerce; and one proposed plan was received from the Federated Pecan Growers' Associations of the United States (Federated), with unanimous support by all of its State and regional pecan grower associations and the National Pecan Shellers and Processors Association for the proposed plan.

The Department is publishing Federated's proposed plan, with some modification of proposed provisions, including changes to make it consistent with the Act and other similar national research and promotion programs administered by the Department. These modifications include a revision of Federated's proposal that § 1211.30 specify that grower and sheller Board members nominate the first handler member and alternate. This is contrary to section 1910(b)(8)(B) of the Act which requires the "Growers shall be eligible to vote for the nomination of the first handler members of the Board." Also, Federated's proposal specifies that half or less of the total amount of domestic assessments could be spent on the development and expansion of pecan sales in foreign markets. However, section 1911(g) of the Act does not specify any limit. Therefore, the amount of money expended for the development of foreign markets would be determined through the budget process in the same manner as other expenditures. Further, Federated's proposal sets the initial assessment rate as one-half cent per pound for in-shell pecans. However, section 1912(d) of the Act specifies that the assessment rate shall be recommended by the Board and approved by the Secretary, except that the maximum rate shall not exceed one-half cent per pound for in-shell pecans until the date the initial referendum is conducted under section 1916(a).

The Department will consider all written comments received by the deadline, before issuing a final plan.

The proposed plan is summarized as follows:

Sections 1211.1–1211.29 of the proposed plan define certain terms which are used in the plan. Sections 1211.30–1211.39 include provisions relating to the establishment, membership, nomination, appointment, term of office, procedure, reimbursement, powers and duties of the Pecan Marketing Board, which would be the body organized to administer the plan subject to the oversight of the Secretary of Agriculture. Sections 1211.40–1211.42 concern promotion, research and contracts. Section 1211.50 would authorize the Board to incur expenses necessary for the performance of its duties and to recommend an annual budget. Sections 1211.51–1211.56 would authorize the collection of assessments, specify who pays them and how, set forth procedures for the handling of a one-time refund, and for establishing an operating monetary reserve. The initial maximum assessment rate would be one-half cent per pound of in-shell pecans produced domestically or imported into the United States. After the initial continuance referendum, the rate would be a maximum of two cents per pound for in-shell pecans. The assessment sections also outline the procedures to be followed by first handlers and importers for remitting assessments; establish a 10 percent late payment charge and also a one and one-half percent per month interest change for unpaid or late assessments; and provide for refunds of assessments paid if the initial continuance referendum fails.

Sections 1211.60–1211.62 concern reporting and recordkeeping requirements for persons subject to the plan.

Sections 1211.70–1211.78 are miscellaneous provisions including the right of the Secretary; personal liability of Board members and employees; influencing governmental actions; termination of the plan; separability of plan provisions; handling of intellectual property, such as patents, arising from funds collected by the Board; amendments to the plan; and OMB control numbers.

List of Subjects in 7 CFR Part 1211

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreements, Pecans, Promotion, Reporting and recordkeeping requirements.

The proposal, set forth below, has not received the approval of the Secretary of Agriculture.

It is hereby proposed that title 7 of the Code of Federal Regulations be amended by adding part 1211 to read as follows:

PART 1211–PECAN PROMOTION AND RESEARCH

Subpart A—Pecan Promotion and Research Plan

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1211.4 Pecan.

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1211.29 District.

Pecan Marketing Board

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1211.31 Districts.
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1211.73 Suspension or termination.
1211.74 Proceedings after termination.
1211.75 Effect of termination or amendment.
1211.76 Separability.
1211.77 Patents, copyrights, inventions, product formulations and publications.
1211.78 OMB control numbers.

Authority: The Pecan Promotion and Research Act of 1990; 7 U.S.C. 6001 *et seq.*

Definitions

§ 1211.1 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1211.2 Act.

Act means the Pecan Promotion and Research Act of 1990. (title XIX, subtitle A of Public Law 101–624, 7 U.S.C. 6001, *et seq.*, 104 Stat. 3838–3854), and any amendments thereto.

§ 1211.3 Board.

Board means the administrative body referred to as the Pecan Marketing Board, established pursuant to § 1211.30.

§ 1211.4 Pecan.

Pecan means the nut of the pecan tree *Carya illinoensis*.

§ 1211.5 Shell.

Shell means to remove the shell from an in-shell pecan.

§ 1211.6 Shelled pecan.

Shelled pecan means a pecan kernel, or portion of a kernel, after the pecan shall has been removed.

§ 1211.7 In-shell pecan.

In-shell pecan means a pecan that has a shell that has not been removed.

§ 1211.8 Person.

Person means any individual, group of individuals, partnership, association, corporation, cooperative, or any other entity.

§ 1211.9 Grower.

Grower means any person engaged in the production and sale of pecans in the United States who owns, or who shares in the ownership and risk of loss of, such pecans.

§ 1211.10 Importer.

Importer means any person who imports pecans from outside of the United States for sale in the United States.

§ 1211.11 First handler.

First handler means the first person who buys or takes possession of pecans from a grower for marketing. If a grower markets pecans directly to consumers, such grower shall be considered the first handler with respect to such pecans.

§ 1211.12 Grower-sheller.

Grower-sheller means a person who:

(a) Shells pecans, or has pecans shelled for such person, in the United States; and

(b) During the immediately preceding year, grew 50 percent or more of the pecans such person shelled or had shelled for such person.

§ 1211.13 Sheller.

Sheller means any person who:

(a) Shells pecans or has pecans shelled for the account of such person; and

(b) During the immediately preceding year, purchased more than 50 percent of the pecans such person shelled or had shelled for such account.

§ 1211.14 Handle.

Handle means receipt of in-shell pecans by a sheller or first handler, including pecans produced by such sheller or first handler.

§ 1211.15 Commerce.

Commerce means interstate, foreign, or intrastate commerce.

§ 1211.16 Conflict of interest.

Conflict of interest means a situation in which a Board member has direct or indirect financial interest in a corporation, partnership, sole proprietorship, joint venture or other business entity dealing directly or indirectly with the Board.

§ 1211.17 Consumer and industry information.

(A) *Consumer information* means information and programs that will assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, and use of pecans.

(b) *Industry information* means information and programs that will lead to the development of new markets and marketing strategies, increased efficiency, and activities to enhance the image of the pecan industry.

§ 1211.18 Customs Service.

Customs Service means the U.S. Customs Service of the United States Department of Treasury.

§ 1211.19. Department.

Department means the United States Department of Agriculture.

§ 1211.20 To market.

To market means to sell or offer to dispose of pecans in any channel of commerce.

§ 1211.21 Marketing year of fiscal period.

Marketing year or *fiscal period* mean the twelve-month period from October 1 through September 30 each year, or such

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other period as recommended by the Board and approved by the Secretary.

§ 1211.22 Programs and projects.

Programs and *projects* mean those research, development, advertising, or promotion projects developed by the Board pursuant to § 1211.41 of this part.

§ 1211.23 Promotion.

Promotion means any action taken by the Board, pursuant to this part, to present a favorable image of pecans to the public with the express intent of improving the competitive position of pecans in the marketplace and stimulating sales of pecans, including paid advertising.

§ 1211.24 Referendum.

Referendum means the referendum to be conducted by the Secretary pursuant to § 1916 of the Act whereby growers, grower-shellers, and importers shall be given the opportunity to vote to determine whether a majority of the growers, grower-shellers, and importers voting in the referendum, favor continuation, termination, or suspension of this plan.

§ 1211.25 Research.

Research means any type of test, study, or analysis designed to advance the image, desirability, usage, marketability, production, product development, or quality of pecans.

§ 1211.26 State and United States.

(a) *State* means any of the several States, the District of Columbia and the Commonwealth of Puerto Rico.

(b) *United States* means collectively the several States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 1211.27 District.

District means a geographical area of the United States, as recommended by the Board and approved by the Secretary, in which there is produced approximately one-fourth of the volume of pecans produced in the United States.

§ 1211.28 Plan.

Plan means this Pecan Promotion and Research Plan issued by the Secretary pursuant to section 1908 of the Act.

§ 1211.29 Processor.

Processor means an individual, corporation or entity which starts a series of progressive and independent steps using pecans by which an end product is obtained for final consumer consumption or sale, such as a bakery, ice cream manufacturer or cookie maker.

Pecan Marketing Board

§ 1211.30 Establishment and membership.

(a) There is hereby established a Pecan Marketing Board, hereinafter called the Board. The Board shall consist of fifteen (15) members to administer the terms and provisions of this part. Eight members shall be pecan growers, not exempt from paying assessments under the Act; four members shall be pecan shellers; one member shall be a first handler; one member shall be a pecan importer, not exempt from paying assessments under the Act; and one member shall be a public member. Each member shall have an alternate who shall have the same qualifications as the member for whom such person is an alternate. At the option of the Board, one consultant or advisor representing the views of pecan growers in a country other than the United States may be chosen to attend Board functions as a nonvoting member.

(b) Membership on the Board shall be determined as follows: Two grower members shall represent each of the four districts; two sheller members shall represent shellers whose place of residence is east of the Mississippi River and two sheller members shall represent shellers whose place of residence is west of the Mississippi River; the first handler member shall be selected from among eligible first handlers whose place of residence is in any one of the four districts and derives over 50 percent of such handlers' gross pecan income from buying and selling pecans; one importer member shall be an individual who import pecans into the United States; and the public member shall have no direct financial interest in the commercial production or marketing of pecans except as a consumer and shall not be a director, stockholder, officer or employee of any firm so engaged.

§ 1211.31 Districts.

(a) Districts shall have approximately equal production volume according to the most recent three years' U.S. Department of Agriculture production reports. For the purpose of facilitating initial nominations to the Board, the following districts shall be the initial districts:

District 1—The States of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, West Texas (West of Highway 277 from Del Rio to Stamford and Highway 6 from Stamford to Quanah and the Oklahoma line), Utah, Washington, and Wyoming.

District 2—The States of Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, East Texas (East of Highway 277 from Del Rio to Stamford and Highway 6 from Stamford to Quanah and the Oklahoma line) and Wisconsin.

District 3—The States of Alabama, Arkansas, Connecticut, Illinois, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, and West Virginia.

District 4—The States of Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) At least once every three years and not more than once each two years, the Board shall review the geographic distribution of pecan production throughout the United States to determine whether realignment of the districts is necessary. In making such review, it shall give consideration to:

(1) The most recent four years of U.S. Department of Agriculture production reports or Board assessment reports if USDA production reports are unavailable, and such other acceptable sources as determined by the Board;

(2) Shifts and trends in quantities of pecans produced; and

(3) Other relevant factors.

As a result of this review, the Board may recommend realigning the districts subject to the approval of the Secretary. Any such realignment shall be recommended by the Board to the Secretary at least six months prior to the date of the call for nominations and shall become effective at least 30 days prior to such date.

§ 1211.32 Nominations and selection.

The Secretary shall appoint the grower and sheller members and their alternates from nominations to be made in the following manner:

(a) Except for initial Board members whose nomination process shall be conducted by the Secretary, the Board shall issue a call for nominations by January 10th of each year in which an election is to be held, or such other date as approved by the Secretary. The call shall include at a minimum the following information:

(1) A list of the vacancies for which nominations may be submitted and the qualifications for each position;

(2) The date by which the nominees shall be submitted to the Secretary for consideration to be in compliance with paragraph (f) of this section;

(3) A list of those States, by district, or organizations entitled to participate in the nomination process; and,

(4) The date, time, and location of any next scheduled meeting of the Board, national and State grower or sheller associations, and district conventions if any.

(b) Nominations for grower and alternate grower member positions that will become vacant shall be made by district convention in the district entitled to nominate. The following requirements shall apply:

(1) Notice of such convention shall be publicized by the Board to all growers within such district, and to the Secretary, at least ten days prior to said event. The notice shall have attached to it the call for nominations from the Board. Current Board grower members, supported by the Board and its staff, shall be responsible for convening and publicizing district conventions in their respective districts, except for the initial convention, which shall be called and conducted by a representative of the Secretary.

(2) All growers within the district may participate in the convention: *Provided*, That if a grower is engaged in the production of pecans in more than one State or district, the grower shall participate within the State or district in which the grower so elects in writing to the Board and such election shall remain controlling until revoked in writing to the Board.

(3) The district convention shall conduct the nomination process for the nominees in accordance with procedures prescribed by the Department.

(4) There shall be no more than one member from any State in a district, except that the State of Georgia may have two growers from such State representing District 4.

(5) Each grower present shall have one vote for each grower position to be filled in that District.

(c) Nominations for sheller and sheller alternate positions that will become vacant shall be made by any sheller organization(s) recommended by the Board and approved by the Secretary. The following requirements shall apply:

(1) Notice of any such organization's nomination meeting shall be publicized to all shellers within the area (east or west of the Mississippi River), where one or more vacancies exist, and the Secretary, at least ten days prior to said event. The notice shall have attached to it the call for nominations from the Board. Current sheller members on the Board, supported by the Board and its staff, shall be responsible for arranging for and publicizing the meeting.

(2) All shellers within the area may participate in the nominations meeting: *Provided*, That if a sheller has shelling operations on both sides of the Mississippi River, the sheller shall participate within the area in which the sheller so elects in writing to the Board and such election shall remain controlling until revoked in writing to the Board.

(3) The sheller organization(s) shall conduct the nomination process for the nominees in accordance with procedures prescribed by the Department.

(4) Each sheller present shall have one vote for each sheller position to be filled in the applicable area (east or west of the Mississippi River).

(d) The Board shall nominate the importer member and the public member and their respective alternates. Growers shall nominate the first handler member and alternate. All shall be nominated in such manner as may be prescribed by the Secretary.

(e) There shall be two individuals nominated for each vacant position. Each nominee shall meet the qualifications set forth in the call.

(f) Except for the establishment of the initial Board, the nominations shall be certified by the Board and submitted to the Secretary no later than May 1 preceding the commencement of the term of office for Board membership, or such other date as approved by the Secretary.

(g) The Secretary may reject any nominee submitted. If there are insufficient nominees from which to appoint members to the Board as a result of the Secretary's rejecting such nominees, additional nominees shall be submitted to the Secretary in the same manner.

§ 1211.33 Term of office.

(a) The term of office of Board members and their alternates shall be three years, except that the members and alternates of the initial Board shall serve terms as follows: The two growers and their alternates from each of Districts 1 and 4, and the public member and alternate shall serve one-year initial terms; two growers and their alternates from District 3, two shellers and their alternates from east of the Mississippi River and the importer member and alternate shall serve two-year initial terms; and the two growers and their alternates from District 2, two shellers and their alternates from west of the Mississippi River, and the first handler member and alternate shall serve three-year initial terms.

(b) The term of office for the initial Board shall begin immediately following appointment by the Secretary. Time in the interim period, from appointment until the term begins pursuant to this section, shall not count towards the initial term of office. In subsequent years, the term of office shall begin on October 1 or such other period which may be approved by the Secretary.

(c) Board members and alternates shall serve during the term of office for which they are selected and have qualified, and until their successors are selected and have qualified.

(d) No member or alternate shall serve more than two successive terms: except that those members and alternates serving initial terms of one year may serve two full succeeding three-year terms following the one-year initial term.

§ 1211.34 Acceptance.

Each person nominated for membership on the Board shall qualify by filing a written acceptance with the Secretary. Such written acceptance shall accompany the nominations list required by § 1211.32 of this part.

§ 1211.35 Vacancies.

(a) In the event any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Board shows adequate cause, the Secretary shall remove such member from office. Further, without recommendation of the Board, a member may be removed by the Secretary upon showing of adequate cause, if the Secretary determines that the person's continuing services would be detrimental to the purposes of the Act.

(c) To fill any vacancy caused by the failure of any person selected as a member of the Board to qualify, or in the event of the death, removal, resignation, or disqualification of any member, the alternate of that member shall automatically assume the position of said member. A replacement for said alternate shall be nominated and selected in the manner specified in § 1211.32 of this part. Should the positions of both a member and such member's alternate become vacant, successors for the unexpired terms of such member and alternate shall be nominated and selected in the manner qualified in § 1211.32 of this part.

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Nomination and replacement shall not be required for any vacancy where the unexpired term of office is less than six months. In the event of failure to provide nominees for such vacancies the Secretary may appoint other eligible persons.

§ 1211.38 Procedure.

(a) Eight Board members, including alternates acting in place of members of the Board, shall constitute a quorum: *Provided*, That such alternates shall serve only when the member is absent from a meeting or is disqualified. Any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

(b) In lieu of voting at a properly convened meeting, and when in the opinion of the chairperson of the Board such action is considered necessary, and for matters of an emergency nature when there is not enough time to call an assembled meeting, the Board may act upon a majority of concurring votes of its members cast by mail, telegraph, telephone, facsimile, or by other means of communication: *Provided*, That each member or alternate acting for a member receives an accurate, full, and substantially identical explanation of each proposition. Telephone votes shall be promptly confirmed in writing. All votes shall be recorded in the Board minutes.

§ 1211.37 Compensation and reimbursement.

Board members shall serve without compensation but shall be reimbursed for reasonable and necessary expenses incurred by them only in the performance of their Board duties under this subpart.

§ 1211.36 Powers.

The Board shall have the following powers:

(a) To administer the provisions of this Plan in accordance with its terms and conditions;

(b) To recommend to the Secretary rules and regulations to effectuate the terms and conditions of this Plan;

(c) To receive, investigate, and report to the Secretary complaints of violations of this Plan;

(d) To recommend to the Secretary amendments to this Plan; and

(e) With the approval of the Secretary, to invest in risk-free, short term, interest-bearing accounts, pending disbursement pursuant to a program or project, funds collected through assessments authorized under § 1211.51 of this part. The investment can only be in obligations of the United States or any agency thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States. Income from any such invested funds may be used for any purpose for which the invested funds may be used.

§ 1211.39 Duties.

The Board shall, among other things, have the following duties:

(a) To meet not less than annually, organize, and select from among its members, a chairperson and such other officers as may be necessary; to select committees and subcommittees of Board members; to recommend for Department approval such rules and bylaws for the conduct of Board business as it may deem advisable; and it may establish special working committees that may include persons other than Board members, and reimburse the necessary and reasonable expenses and fees of such persons serving on such committees;

(b) To employ such individuals as it may deem necessary and to determine the compensation and define the duties of each; and to protect the handling of Board funds through fidelity bonds or any other form of bonding permitted by statute and/or approved by the Secretary;

(c) To prepare and submit for the Secretary's approval, at least 60 days prior to the beginning of each fiscal period, a recommended rate of assessment and a fiscal period budget of the anticipated income and expenses for the administration of this Plan, including the projected costs of all programs and projects;

(d) To develop programs and projects, which must be approved by the Secretary before becoming effective, and enter into contracts or agreements, with the approval of the Secretary, for the development and carrying out of programs or projects of research, promotion or information. The cost of such programs and projects will be paid with funds collected pursuant to this Plan;

(e) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the Board. Minutes of all meetings shall be promptly provided to the Secretary;

(f) To appoint and convene, from time to time, working committees drawn from growers, grower-shellers, first handlers, shellers, importers, and the public to assist in the development of research, promotion, industry information, and consumer information programs for pecans;

(g) To establish an interest bearing escrow account with a bank which is a member of the Federal Reserve System and to deposit into such account an amount equal to the product obtained by multiplying the total amount of assessments collected by the Board during the period prior to the initial referendum by 10 percent. If continuance of the Plan is favored by a majority voting in the initial referendum conducted under the Act, all funds in the escrow account shall be returned to the Board for use by the Board;

(h) To prepare and submit to the Secretary such reports as may be prescribed for appropriate accounting with respect to the receipt and disbursement of funds entrusted to the Board monthly, or at such times as prescribed by the Secretary. Monthly financial statements shall be submitted to the Department and shall include at least:

(1) A balance sheet, and

(2) An expense budget comparison showing expenditures during the month, year-to-date expenditures, and an unexpended budget. Upon request, a summary of checks issued by the Board is to be made available. Reports shall be submitted within 30 days after the end of each month.

(i) To cause the books of the Board to be audited by an independent certified public accountant at the end of each fiscal period, and at such other times as the Board or the Secretary may deem necessary. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part.

(j) To investigate violations of the Plan and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of this Plan;

(k) To periodically prepare, make public, and make available to growers, grower-shellers, shellers, first handlers, importers, and the Secretary, reports of its activities, including an annual report which should be submitted to the Secretary within 90 days after the end of the fiscal period.

(l) To give the Secretary the same notification, written or oral, as provided to Board members concerning all conference calls and meetings, including executive, advisory, subcommittee, and other meetings related to Board matters, and to grant the Secretary access to all such calls and meetings;

(m) To act as intermediary between the Secretary and any grower, grower-sheller, sheller, first handler, or importer;

(n) To furnish the Secretary such information as the Secretary may request;

(o) To notify pecan growers, grower-shellers, shellers, first handlers, and importers of all Board meetings through press releases or other means;

(p) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of programs or projects to effectuate the declared purpose of the Act; and

(q) To follow the Department's equal opportunity/civil rights policies.

Research and Promotion

§ 1211.40 Policy and objective.

It shall be the policy of the Board to carry out an effective, continuous, and coordinated program of pecan promotion, research, and industry and consumer information in order to:

(a) Strengthen pecans' competitive position in the marketplace;

(b) Maintain and expand existing domestic and foreign markets and uses for pecans; and

(c) Develop new or improved markets and uses for pecans.

It shall be the objective of the Board to carry out programs and projects which will provide maximum benefit to the pecan industry.

§ 1211.41 Programs and projects.

The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any programs or projects authorized in this section. Such programs or projects shall provide for:

(a) The establishment, issuance, effectuation and administration of appropriate programs or projects for industry and consumer information, advertising, and promotion of pecans designed to strengthen the position of the pecan industry in the marketplace and to maintain, develop, and expand markets for pecans and pecan products;

(b) The establishment and implementation of research and development projects and studies to the end that the acquisition of knowledge pertaining to pecans or their consumption and use may be encouraged or expanded, or to the end that the marketing and use of pecans may be encouraged, expanded, improved, or made more efficient: *Provided*, That quality control, grade standards, supply management programs or other programs that would otherwise limit the right of the individual pecan grower to produce pecans shall not be conducted under, or as a part of, this Plan;

(c) The development and expansion of pecan sales in foreign markets;

(d) A prohibition on advertising or on any program or project that makes any reference to a variety, brand, trade name, state or regional identification of pecans or uses false or unwarranted claims on behalf of pecans or false or unwarranted statements with respect to the attributes or use of another product; but this does not preclude tie-ins with other non-pecan branded or non-branded products; and

(e) Periodic evaluation by the Board of each program or project authorized under this Plan to insure that each program or project contributes to an effective and coordinated program of research, education, and promotion and at least an annual submission of such evaluation to the Secretary. If the Board or the Secretary finds that a program or project does not further the purpose of the Act, then the Board shall terminate such program or project.

§ 1211.42 Contracts.

To ensure efficient use of funds, the Board, with the approval of the Secretary, may enter into contracts or make agreements for the development and submission of programs or projects authorized by the Plan and for carrying out such programs or projects and pay for the costs of such contracts or agreements with funds collected pursuant to §§ 1211.51 or 1211.50(g). Requirements include the following:

(a) Contractors shall develop and submit to the Board a plan or project together with a budget or budgets that shall show estimated costs to be incurred for such plan or project;

(b) Plans and projects shall only become effective upon approval of the Secretary;

(c) Contractors shall keep accurate records of all transactions, account for funds received and expended, make periodic reports to the Board of activities conducted, and make such other reports as the Board or the Secretary may require;

(d) Subcontractors who enter into contracts or agreements with Board contractors and who receive or otherwise utilize funds allocated by the Board shall be subject to the same provisions as the contractors;

(e) The records of contractors and subcontractors shall be subject to audit by the Secretary.

Expenses and Assessments

§ 1211.50 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend a budget on a fiscal period basis of its anticipated income and expenses in the administration of this Plan, including probable costs of research, promotion, and industry and consumer information. The Board shall also recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in § 1211.56 of this part.

(b) Each budget shall include:

(1) A statement of objectives and strategy for each program or project, including reasons for significant changes from the preceding budget period,

(2) A summary of anticipated revenue, with comparative data for at least the preceding year,

(3) A summary of proposed expenditures by each program or project, with comparative data for at least the preceding year, and

(4) Staff and administrative expense breakdown with comparative data for at least the preceding year. Comparative data reporting will not apply to the initial budget.

(c) The Board is authorized to incur such expenses for research, promotion, and industry and consumer information concerning pecans, such other reasonable expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary and those costs incurred by the Department specified in paragraph (d) of this section. The funds to cover such expenses shall be paid from assessments collected pursuant to § 1211.51 of this part. Expenses for programs and projects may also be paid with funds received pursuant to paragraph (g) of this section.

(d) The Board shall reimburse the Department for all expenses incurred in implementing and administering the Plan, except for salaries of Federal Government employees incurred in conducting any referendum. The Board shall pay those costs incurred by the Department for the conduct of Department duties under the plan as determined periodically by the Secretary. The Department will bill the Board monthly and payment shall be due promptly after the billing of such costs.

(e) The Board may accept voluntary contributions but these shall only be used to pay expenses incurred in the conduct of programs and projects. However, such contributions shall only be accepted from persons not subject to assessments under this Plan: *Provided*, That such contributions shall be free from any encumbrances by the donor

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and the Board shall retain complete control of their use.

(f) Any amendment(s) or addition(s) to an approved budget shall be approved by the Secretary, including shifting of funds from one program or project to another, except such shifts that are consistent with governing bylaws need not have prior approval by the Secretary.

(g) Effective 3 years after the date of the establishment of the Board, the Board shall not spend in excess of 20 percent of the assessments collected under section 1912 of the Act for administration of the Board.

§ 1211.51 Assessments.

(a) *General.* During the effective period of this Plan, assessments shall be levied on all pecans produced in, and all pecans imported into, the United States and marketed, except as otherwise provided in this part pursuant to § 1911(h) of the Act. No more than one assessment on a first handler, grower-sheller or importer shall be made on any lot of pecans.

(b) *Rates.* Assessment rates shall not exceed a maximum of one-half cent per pound for in-shell pecans during the period prior to the initial referendum required by § 1916(a) for the Act and may be up to a maximum of two cents per pound thereafter, as recommended by the Board and approved by the Secretary. The rate of assessment of shelled pecans shall be twice the rate established for in-shell pecans.

(c) *Time of payment.* The assessment shall become due at the time the pecans are first handled, or entered, or withdrawn, for consumption, into the United States.

(d) *Responsibility for payment and due dates.* (1) Except as provided in subparagraphs (2) and (3) of this paragraph, the first handler and grower-sheller shall be responsible for payment of assessments to the Board on all pecans handled.

(i) Such assessments shall be deducted from the payment made to a grower for all pecans sold to the first handler.

(ii) All such assessments shall be remitted to the Board no later than the last day of the month following the month that the pecans being assessed were purchased by or marketed by the handler. To avoid late payment charges, the assessments must be mailed to the Board and postmarked by such last day.

(2) Grower-shellers shall pay to the Board the assessment on the pecans for which they act as first handler.

(i) Each first handler who is a grower-sheller shall remit such assessments to the Board, to the extent practicable, in payments of one-third of the total annual amount of such assessment due to the Board on January 31, March 31, and May 10, or such dates as may be recommended by the Board and approved by the Secretary, during the fiscal year that the pecans being assessed were harvested. To avoid late payment charges, the assessments must be mailed to the Board and postmarked by the required due dates.

(3) Importers of pecans shall pay the assessment to the Board through the Customs Service. The Customs Service will collect assessments on all pecans imported at the time of entry, or withdrawal for consumption, and forward such assessments as per agreement between the customs Service and the Department.

(e) *Remittance.* First handler and grower-sheller remittance shall be by check, draft, or money order payable to the Pecan Marketing Board and shall be accompanied by a report specified in § 1211.60.

(f) *First handler prepayment of assessments.* (1) In lieu of the assessment payment and reporting requirements of this section and § 1211.60, the Board may permit first handlers to make advance payment of their total estimated assessments for the crop year to the Board prior to their actual determination of assessable pecans. If any such estimate appears unreasonably low, the Board may request additional evidence from that first handler to justify such estimate. If, after reviewing any additional evidence, the Board concludes that such estimate is not reasonable, it shall notify that handler that it is withdrawing that individual's privilege of prepaying such assessment, unless a reasonable estimate is submitted. Any handler whose prepayment is consistently and significantly under the final assessment due shall be subject to provisions of paragraph (g) of this section on the deficient amounts. The Board shall not be obligated to pay interest on any advance payment.

(2) First handlers prepaying assessments shall provide a final annual report of actual handling. First handlers shall remit any unpaid assessments not later than the last day of the month following the last month the first handler purchased or marketed pecans or at the end of each fiscal period if such first handler purchases or markets assessable pecans on a year-round basis.

(3) First handlers prepaying assessments shall, after filing a final annual report, receive a reimbursement of any overpayment of assessments.

(4) First handlers prepaying assessments shall, at the request of the Board, provide the Board with a handling report on any and all growers for whom the first handler has provided handling services but has not yet filed a handing report with the Board.

(5) Specific requirements, instructions, and forms for making such advance payments shall be provided by the Board on request.

(g) *Late payment charges and interest.* (1) A late payment charge shall be imposed on any first handler or grower-sheller who fails to make timely remittance to the Board of the total assessments. Such late payment shall be imposed on any assessments not received before the tenth day after the assessment is due. This one-time late payment charge shall be ten (10) percent of the assessments due before interest charges have accrued.

(2) In addition to the late payment charge, one and one-half percent per month interest on the outstanding balance, including the late payment charge and any accrued interest, will be added to:

(i) Any first handler accounts delinquent beyond 30 days after the last day of the month following the month that the assessments became due; and

(ii) Any grower-sheller accounts delinquent beyond 30 days after the assessments became due.

Such interest will continue monthly until the outstanding balance is paid to the Board.

(h) *Special state assessment.* (1) The Board shall, subject to approval of the Secretary and if authorized by State law and requested by such State's pecan marketing board or commission, collect a one-quarter cent special assessment for in-shell pecans, and a one-half cent special assessment for shelled pecans to be remitted by the Board to such State pecan marketing board for use by the State board in funding research projects to promote pecans pursuant to State law.

(2) The Board shall, upon receipt of such assessments, remit such assessments to the State, within a time period mutually agreed upon between the State and the Board and approved by the Secretary.

(3) In the collection of such State assessments, neither the Board nor the Secretary shall in any manner enforce the collection or remittance of any such payment of such State assessments or investigate nonpayment of such State assessments, except to provide the State board with the names of growers from whom such assessments were and were not collected and the respective amounts of assessments that were and were not collected.

(4) The Secretary may make such procedures or regulations as may be necessary to carry out the provisions of this subsection.

(i) *Payment through cooperating agency.* The Board may enter into agreements, subject to approval of the Secretary, authorizing other organizations, such as a State pecan board, to collect assessments in its behalf. In any State or area in which the Board has entered into such an agreement, the first handler and grower-sheller shall pay the assessment to such agency in the time and manner, and with such identifying information as specified in such agreement. Such an agreement shall not provide any cooperating agency with authority to collect confidential information from growers. To qualify, the cooperating agency must on its own accord have access to all information required by the Board for collection purposes. If the Board requires further evidence of payment than provided by the cooperating agency, it may acquire such evidence from individual first handlers and grower-shellers. All such agreements are subject to the requirements of the Act, Plan, and all applicable rules and regulations under the Act and the Plan.

§ 1211.52 Failure to remit and report.

Any first handler, grower-sheller, or importer who failes to submit remittances and reports as required by this part shall be subject to appropriate action by the Board which may include one or more of the following actions:

(a) Audit of the first handler's, grower-shellers, or importer's or books and records to determine the amount owed the Board.

(a) Establishment of an escrow account for the deposit of assessments collected. Frequency and schedule of deposits and withdrawals from the escrow account shall be determined by the Board with the approval of the Secretary.

(c) Referral to the Secretary for appropriate enforcement action.

§ 1211.53 Determination of first handler.

The following examples are provided to aid in the identification of first handlers:

(a) Grower sells pecans of own production to a handler. The handler is the first handler and is responsible for payment of the assessments.

(b) Grower sells pecans of that grower's own production from the orchard, roadside stand, or storage to a consumer or other buyer who is not a handler of pecans. The grower is the first handler and is responsible for payment of the assessments.

(c) Grower sells pecans to a sheller. The sheller is the first handler and is responsible for payment of the assessment.

(d) Grower delivers in-shell pecans to a sheller for shelling and the sheller returns the shelled pecans to the grower who sells the pecans to a consumer or other buyer who is not a handler of pecans. The grower is the first handler and is responsible for payment of the assessments.

(e) Grower delivers in-shell pecans to a sheller for shelling and the sheller returns the shelled pecans to the grower who sells the pecans to a handler. The handler is the first handler and is responsible for payment of the assessments.

(f) Handler buys pecans from a grower and sells the pecans to another handler. The handler who buys the pecans from the grower is the first handler and is responsible for payment of the assessments.

(g) Grower supplies pecans to a cooperative marketing association which sells the pecans and makes an accounting to the grower, or pays the proceeds of the sale to the grower. The cooperative marketing association becomes the first handler and is responsible for payments of the assessments.

(h) Grower sells pecans to a processor. The processor is the first handler and is responsible for payment of the assessments.

(i) Broker receives pecans from a grower and sells such pecans in the broker's company name. The broker is the first handler, regardless of whether the broker took title to such pecans, and is responsible for payment of the assessments.

§ 1211.54 Authority to borrow.

The Board is authorized to borrow funds, as approved by the Secretary, for capital outlays and start-up costs including the payment of administrative expenses subject to the same fiscal, budget, and audit controls as other funds of the Board.

§ 1211.55 Refunds.

(a) Subject to the provisions of this section, any grower, grower-sheller, or importer shall have the right to personally demand and receive from the Board a one-time refund of assessments paid by or on behalf of such grower, grower-sheller, or importer during the period beginning on the effective date of this Plan and ending on the date the initial referendum specified in the Act is conducted: *Provided,* That:

(1) Such grower, grower-sheller, or importer makes application and provides proof of payment as required in paragraphs (b), (c), and (d) of this section;

(2) Such grower, grower-sheller, or importer does not support the program established under this Plan; and

(3) This Plan is not approved pursuant to the initial referendum conducted under § 1916(a) of the Act.

(b) Application form. A grower, grower-sheller, or importer shall obtain a refund application form from the Board by written request which shall bear the grower's grower-sheller's, or importer's signature. For partnerships, corporations, associations, or other business entities, a partner or an officer of the entity must sign the request and indicate his or her title.

(c) Submission of refund application to the Board. Any grower, grower-sheller, or importer requesting a refund shall mail the refund application on the prescribed form to the Board. Such application shall be considered if received prior to the conduct of the initial referendum. The refund application shall show the following:

(1) Grower's, grower-sheller's, or importer's name and address;

(2) First handler's or handlers' name(s) and address(es);

(3) Number of pounds of pecans on which refund is requested;

(4) Total amount to be refunded;

(5) Proof of payment as described below; and

(6) Grower's, grower-sheller's, or importer's signature.

Where more than one grower, grower-sheller, or importer shared in the assessment payment, the refund application shall show, in addition to other required information, the names, addresses and proportionate shares of such growers, grower-shellers, or importers and the signature of each. Any request for refund of assessments paid may be in part or total.

(d) Proof of payment of assessment. Evidence of payment of assessments satisfactory to the Board, such as the receipt or accounting given to the grower or importer by the collecting person or a copy thereof, or in the case of a grower-sheller the handling report or a copy therof, shall accompany the grower's, grower-sheller's or importer's refund application. Evidence submitted with refund applications shall not be returned to the applicant.

(e) Payment of refund. (1) If the initial referendum required by § 1916(a) of the Act shows that a majority of those

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voting do not favor continuation of this Plan, the Board shall pay refund requests within 90 days of the date the results of the referendum are released by the Secretary. Should the amount of funds in the account required by § 1912(f) of the Act not be sufficient to refund the total amount of assessments demanded by eligible growers, grower-shellers, or importers, the Board shall prorate the amount of such refunds among all eligible growers, grower-shellers, and importers who demand such refund. Names of individuals obtaining refunds shall be kept confidential and made available only to the Secretary and the Board employees essential to refund processing.

(2) No refunds shall be paid to any grower, grower-sheller, or importer making demand for such refund if this Plan is approved by a majority of those voting in the initial referendum required by § 1916(a) of the Act, and all funds in the escrow account established pursuant to § 1912(f) of the Act shall be returned to the Board for use by the Board in funding approved programs and projects.

§ 1211.58 Operating reserve.

The Board may establish an operating monetary reserve and carry over to subsequent fiscal periods excess funds in a reserve so established: *Provided*, That funds in the reserve shall not exceed approximately two fiscal periods' expenses. Such reserve funds may be used to defray any expenses authorized under this subpart.

Reports, Books, and Records

§ 1211.60 Reports.

(a) Each first handler, grower-sheller, and importer who is subject to this Plan shall be required to report to the Board, at such times and in such manner as is prescribed by the regulations, such information as may be considered necessary by the Secretary for the Board to perform its duties and to ensure compliance with the Act and with this part.

(b) Each first handler and grower-sheller shall maintain a separate record with respect to each grower for whom 5,000 pounds or more pecans were handled in a single lot.

(c) First handlers shall file with the Board a report for each month that pecans were handled, along with any assessment payments due under § 1211.51(d)(1) of this part, and grower-shellers shall file with the Board a report, along with the assessment payment, by the payment due dates provided in paragraph (d)(2)(ii) of § 1211.51 of this part. All such reports shall contain at lest the following information:

(1) The first handler's or grower-sheller's name, address, and telephone number;

(2) Date of report (which is also the date of any payment to the Board);

(3) Period covered by the report;

(4) Total quantity of pecans handled during the reporting period;

(5) Total quantity of pecans from the reporting period for which assessments are remitted;

(6) For first handlers only, the total quantity of pecans from previous reporting periods for which assessments are remitted;

(7) Date of last report remitting assessments to the Board;

(8) Listing of all periods for whom the first handler or grower-sheller handled pecans, their addresses, pounds handled, and total assessments remitted for each grower. In lieu of such a list, the first handler or grower-sheller may substitute copies of settlement sheets given to each person or computer generated reports, provided such settlement sheets or computer reports contain all the information listed above; and

(9) For first handlers only, a listing of all persons, including the reporting date, for whom the first handler previously reported by for whom assessments are remitted with the current report. In lieu of such a list, the first handler may substitute a copy of the applicable handler's report appropriately marked to identify those persons for whom assessments are currently being remitted.

(d) The words "final report" shall be shown on the last report at the close of the first handler's and grower-sheller's marketing season or at the end of each fiscal period if such first handler or grower-sheller markets pecans on a year-round basis.

(e) Each importer shall file with the Board, no later than the last day of the month following the month that the assessments because due, a monthly report containing at least the following information:

(1) Importer's name, address, and telephone number;

(2) Quantity of pecans entered, or withdrawn, for consumption into the United States;

(3) Amount of assessments paid on pecans entered, or withdrawn, for consumption into the United States to the Customs Service at the time of entry, or withdrawal, for consumption and the port of ports of entry; and

(4) Amount of any pecans on which the assessment was not paid to the Customs Service at the time of entry, or withdrawal, for consumption into the United States and the port or ports of entry.

(f) In the event of a first handler's grower-sheller's, or importer's death, bankruptcy, receivership, or incapacity to act, the representative of the first handler, grower-sheller, or importer of such individual's estate, shall be considered the first handler, grower-sheller, or importer for the purposes of this part.

§ 1211.61 Books and records.

Each first handler, grower-sheller, and importer subject to this Plan shall maintain, and during normal business hours make available for inspection and copying by authorized employees of the Board or Secretary, such books and records as are necessary to carry out the provisions of this Plan and the regulations issued thereunder, including such records as are appropriate and necessary to verify all reports required under this subpart. All such books and records and reports required by this subpart shall be maintained and retained for at least two years beyond the fiscal period of their applicability.

§ 1211.62 Confidential treatment of books, records, and reports.

(a) Except as otherwise provided in the Act and this subpart, all information obtained from the books, records, or reports required to be maintained shall be kept confidential and shall not be disclosed to the public or Board members by any person. Only such information as the Secretary deems relevant shall be disclosed to the public and then only in a suit or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any other officer of the United States is a party, and involving this Plan: Except that nothing in this subpart shall be deemed to prohibit:

(1) Issuance of general statements based on the reports of a number of first handlers, grower-shellers, or importers subject to this Plan if such statements do not identify the information furnished by any person; or

(2) Publication by direction of the Secretary of the name of any person violating this Plan together with a statement of the particular provisions of this Plan violated by such person; or

(3) Release of information obtained under this subpart to another agency of the Federal Government for a civil or criminal law enforcement activity if the activity is authorized by law and if the head of the agency has made a written request to the Secretary specifying the particular activity for which the information is sought.

(b) Any disclosure of confidential information by any Board member or employee of the Board, except as required by law or allowed by the Act, shall be considered willful misconduct and a violation of the Act.

Miscellaneous

§ 1211.70 Right of the Secretary.

All fiscal matters, programs or projects, by-laws, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1211.71 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for efforts in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1211.72 Influencing government action.

(a) The Board shall not engage in any action to, nor shall any funds received by the Board under this Plan be used to influence legislation or governmental action, other than recommending to the Secretary amendments to this Plan.

(b) The Board is not precluded from providing factual information to Government officials, if the information is presented in an unbiased manner and does not state a specific course of action. Persons in their official capacity representing the Board may not appear before Congress, unless authorized by the Secretary.

§ 1211.73 Suspension or termination.

(a) Whenever the Secretary finds that this Plan or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall terminate or suspend the operation of this Plan or such provision thereof.

(b) After the initial referendum, the Secretary may conduct a referendum at any time, and shall hold a referendum on request of the Board or of 10 percent or more of the total number of pecan growers, grower-shellers, and importers, to determine if pecan growers, grower-shellers, and importers favor termination or suspension of this Plan. The Secretary shall terminate or suspend this Plan whenever the Secretary determines that its termination or suspension is favored by a majority of the pecan growers, grower-shellers, and importers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of pecans. Any such referendum shall be conducted at county Agricultural Stabilization and Conservation Service offices.

(c) If, as a result of any referendum conducted under the Act, the Secretary determines that suspension or termination of this Plan is favored by a majority of the growers, grower-shellers, and importers voting in the referendum, the Secretary shall:

(1) Within six months after making such determination, suspend or terminate, as the case may be, collection of assessments under this Plan; and

(2) As soon as practicable, suspend or terminate, as the case may be, activities under this Plan in an orderly manner.

§ 1211.74 Proceedings after termination.

(a) Upon the termination of this Plan, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the board. Such persons, upon designation by the Secretary, shall become trustees of all funds and property then in possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to § 1211.42 of this part;

(3) From time-to-time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to person or persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person or persons full title and right to all the funds, property, and claims vested in the Board or the trustees pursuant to this section.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this section shall be subject to the same obligations imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Department to be used, to the extent practicable in the interest of continuing one or more of the pecan promotion, research, consumer or industry information programs authorized under the Plan or be disposed of in such manner as the Secretary may determine to be appropriate.

§ 1211.75 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this Plan or any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this Plan or any regulation issued thereunder; or

(b) Release or extinguish any violation of this Plan or any regulation issued thereunder; or

(c) Affect or impair rights or remedies of the United States, or of the Secretary, or of any other person with respect to any such violation.

§ 1211.76 Separability.

If any provision of this Plan is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this Plan or applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1211.77 Patents, copyrights, inventions, product formulations and publications.

Any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this Plan shall be the property of the United States Government as represented by the Board. Funds generated by such patents, copyrights, inventions, product formulations, or publications shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board. Upon termination of this part, § 1211.74 of this part shall apply to determine the disposition of all such property.

§ 1211.78 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Public law 96–511, is OMB number 0581–0093, except Board member nominee information sheets are assigned OMB number 0505–0001.

Dated: December 19, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91–30732 Filed 12–24–91; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 29

[Docket No. 91-ASW-4; Notice No. SC-91-4-SW]

Special Conditions: Aerospatiale Model AS-365N2 "Dauphin" Helicopter, Electronic Flight Instrument System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Aerospatiale Model AS-365N2 "Dauphin" helicopter. This helicopter will have a novel or unusual design feature associated with the Electronic Flight Instrument System. The applicable airworthiness regulations do not contain appropriate safety standards for the requirements to protect critical function systems from the effects of external radio frequency energy sources. This notice contains proposed additional safety standards that the Administrator considers necessary to ensure that critical functions of systems in the Aerospatiale Model S-365N2 "Dauphin" helicopter would be maintained.

DATES: Comments must be received on or before January 15, 1992.

ADDRESSES: Comments on this proposed special condition may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attention: Docket No. 91-ASW-4, Fort Worth, Texas 76193-0007, or delivered in duplicate to the Office of the Assistant Chief Counsel, Building 3B, room 158, 4400 Blue Mound Road, Fort Worth, Texas.

All comments must be marked Docket No. 91-ASW-4. Comments may be inspected in the Office of the Assistant Chief Counsel, at the address specified above, between 8 a.m. and 4 p.m., weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Carroll Wright, FAA, Rotorcraft Standards Staff, Regulations Group, Fort Worth, Texas 76193-0111; telephone (817) 624-5121.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The special conditions proposed in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Regional Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91-ASW-4." The postcard will be date/time stamped and returned to the commenter.

Background

On September 27, 1991, Keystone Helicopter Corporation, West Chester, Pennsylvania, applied for a Supplemental Type Certificate for installation of an Electronic Flight Instrument System and Flight Management System in an Aerospatiale AS-365N2 "Dauphin" helicopter. The Model AS-365N2 "Dauphin" is a 13 passenger, two engine, 9,370 pound transport category helicopter.

Type Certificate Basis

The certification basis established for the Model AS-365N2 includes: FAR 21.29 and FAR 29 effective February 1, 1965, Amendments 29-1 through 29-11; Airworthiness Criteria for Helicopter Instrument Flight, dated December 15, 1978 for IFR certification; and Longitudinal Static Stability FAR 29.173. Aerospatiale has elected to comply with FAR 29 Amendments 29-12 through 29-16 except for FAR 29.397 as concerns rotorbrake.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of an aircraft or installation. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become a part of the type certification basis, as provided by § 21.101(b)(2).

Discussion

The Aerospatiale Model AS-365N2 helicopter, at the time of application, was identified as incorporating one and possibly more electrical/electronic systems that will be performing functions critical to the continued safe flight and landing of the helicopter. The Electronic Flight Instrument System performs the function of display of attitude. The display of attitude, altitude, and airspeed to the pilot is critical to the continued safe flight and landing of the helicopter for instrument flight rules (IFR) operations in Instrument Meteorological Conditions. When the design is finalized, Keystone Helicopter Corporation will provide the FAA with a preliminary hazard analysis that will identify any other critical functions performed by electrical/electronic systems.

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. These advanced systems are responsive to the transient effects of induced electrical current and voltage caused by the high intensity radiated fields (HIRF) incident on the external surface of the helicopter. These induced transient currents and voltages can degrade the performance of electronic systems by damaging the components or by upsetting the system's functions.

Furthermore, the electromagnetic environment has undergone a transformation not envisioned by the current application of the § 29.1309(a) requirement. Higher energy levels radiate from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly.

Existing aircraft certification requirements are inappropriate in view of the aforementioned technological advances. In addition, the FAA has received reports of some significant safety incidents and accidents involving military aircraft equipped with advanced electronic systems when they were exposed to electromagnetic radiation.

The combined effects of the technological advances in helicopter design and the changing environment have resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the helicopter. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The primary factors that have contributed to this increased concern are: (1) The increasing use of sensitive electronics that perform critical functions; (2) the reduced electromagnetic shielding afforded helicopter systems by advanced technology airframe materials; (3) the adverse service experience of military aircraft using these technologies; and (4) the increase in the number and power of radio frequency emitters and the expected increase in the future.

The FAA recognized the need for aircraft certification standards to keep pace with the developments in technology and environment and, in 1986, initiated a high priority program to: (1) Determine and define the electromagnetic energy levels; (2) develop and describe guidance material for design, test, and analysis; and (3) prescribe and promulgate regulatory standards. The FAA participated with industry and airworthiness authorities of other countries to develop internationally recognized standards for certification.

At this time, the FAA and airworthiness authorities of other countries have established a level of HIRF environment that a helicopter could be exposed to during IFR operations.

While the HIRF requirements are being finalized, the FAA is adopting special conditions for the certification of aircraft that employ electrical/electronic systems performing critical functions. The accepted maximum energy levels in which civilian helicopter system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. This special condition would require that the helicopter be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels are believed to represent the worst-case exposure for a helicopter operating IFR.

The defined HIRF environment specified in this proposed special condition is based on many critical assumptions; among these is that with the exception of takeoff and landing at an airport, the aircraft would be not less than 500 feet above ground level (AGL). Helicopters operating under visual flight rules (VFR) routinely operate at less than 500 feet AGL and perform takeoffs and landings at locations other than controlled airports. Therefore, it would be expected that the HIRF environment experienced by a helicopter operating VFR may exceed the given environment by twice or more.

This special condition would require qualification of systems that perform critical functions, as installed in aircraft, to either a defined HIRF environment or to a fixed value using laboratory tests.

The applicant may demonstrate that the operation and the operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment. The FAA has determined that the environment defined in table I is acceptable for critical functions in helicopters operating not less than 500 feet above ground level (AGL). For critical functions in helicopters operating at altitudes less than 500 feet (AGL), additional considerations must be given.

The applicant may demonstrate by a laboratory test that the electrical and electronic systems that perform critical functions withstand a peak electromagnetic field strength in a frequency range of 10 KH_z to 18 GH_z. If a laboratory test is used to show compliance with the HIRF requirements, no credit would be given for signal attenuation due to installation. A level of 100 v/m and further considerations such as an alternate technology backup that is immune to HIRF are appropriate at this time for critical functions during IFR operations. A level of 200 v/m and further considerations such as an alternate technology backup that is immune to HIRF are more appropriate for critical functions during VFR operations.

For helicopters, the primary electronic flight displays are critical for IFR operations and a full authority digital engine control (FADEC) is an example of a critical functioning system for all operations (both IFR and VFR).

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify electrical and/or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the helicopter. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements.

A system may perform both critical and noncritical functions. Primary electronic flight display systems and their associated components perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements would only apply to critical functions.

Compliance with HIRF requirements would be demonstrated by tests, analysis, models, similarity with existing systems, or a combination thereof. Service experience alone would not be acceptable since such experience in normal flight operations may not include an exposure to the HIRF environmental condition. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

The modulation should be selected as the signal most likely to disrupt the operation of the system under test, based on its design characteristics. For example, flight control systems may be susceptible to 3 H_z square wave modulation while the video signals for electronic display systems may be susceptible to 400 H_z sinusoidal modulation. If the worst-case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1 KH_z sine wave with 80 percent depth of modulation in the frequency range from 10 KH_z to 400 MH_z and 1 KH_z square wave with greater than 90 percent depth of modulation from 400 MH_z to 18 GH_z. For frequencies where the unmodulated signal would cause deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Acceptable system performance would be attained by demonstrating that the system under consideration continues to perform its intended function during and after exposure to required electromagnetic fields. Deviations from system specification may be acceptable and would need to be independently assessed by the FAA for each application.

TABLE 1.—FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–500 KH_z	80	80
500–2000	80	80
2–30 MH_z	200	200
30–100	33	33
100–200	33	33
200–400	150	33
400–1000	8.3K	2K
1–2GH_z	9K	1.5K
2–4	17K	1.2K
4–6	14.5K	800
6–8	4K	666
8–12	9K	2K
12–20	4K	509
20–40	4K	1K

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Conclusion

This action would affect only certain unusual or novel design features on one series of rotorcraft. It would not be a rule of general applicability and would affect only the applicant who applied to the FAA for approval of these features on the rotorcraft.

List of Subjects in 14 CFR Parts 21 and 29

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f-10, 4321 et seq., E.O. 11541, 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as a part of the type certification basis for the Aerospatiale Model AS-365N2 "Dauphin" helicopter.

Protection for Electrical/Electronic Systems From High Intensity Radiated Fields

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high intensity radiated fields external to the helicopter.

Issued in Fort Worth, Texas, on December 13, 1991.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 91-30783 Filed 12-24-91, 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-232-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9-20, -30, -40, -50, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9 series airplanes, which currently requires repetitive inspections to detect cracks of the forward slat drive drums' bellcrank shafts, and replacement, if necessary. This action would require replacement of the slat drive drums' bellcrank shafts with an improved part, thus terminating the need for repetitive inspections. This proposal is prompted by a number of reports of slat drive bellcrank failures resulting in slat malfunction. This condition, if not corrected, could result in slat asymmetry and potential reduction of lift and lateral control of the airplane at takeoff rotation, as well as the potential for rejected takeoffs from speeds beyond V_1 (the critical engine failure speed).

DATES: Comments must be received no later than February 18, 1992.

ADDRESSES: Submit comments on the proposal in triplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-232-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager of Technical Publications—Technical Administrative Support, C1-L5B (54-60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David Hempe, Aerospace Engineer, Los Angeles Aircraft Certification Office, Airframe Branch ANM-120L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5224.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-232-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-232-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion: On June 5, 1991, the FAA issued AD 91-13-09, Amendment 39-7040 (56 FR 28479, June 21, 1991), to require more stringent repetitive inspection intervals to detect cracks of the forward slat drive drums' bellcrank shafts on McDonnell Douglas Model DC-9 series airplanes, and to require the use of an improved visual inspection procedure. That action was prompted by reports of 22 instances of slat drive drum bellcrank failures and the results of the investigation of those failures, which demonstrated the need for a reduction of previously mandated inspection intervals (reference AD 84-24-03, Amendment 39-4956, (49 FR 48057, December 10, 1984)) in order to detect the cracks in a timely manner. Failure of the slat drive drum bellcrank could result in slat asymmetry and potential reduction of lift and lateral control of the airplane at takeoff rotation, as well as the potential for rejected takeoffs from speeds beyond V_1 (the critical engine failure speed).

Additionally, the FAA issued AD 90-18-03, Amendment 39-6701 (55 FR 34704, August 24, 1990), as part of the "Aging Aircraft Program." That AD requires the removal and replacement of the slat drive drums bellcrank shafts on Model DC-9 series airplanes prior to the accumulation of 100,000 landings or within four years after September 24, 1990, whichever occurs later.

The FAA has recently reassessed the possible consequences of failure of the slat drive drums bellcrank shafts. Based on this reassessment and the numerous reports of findings of cracked slat drive drums bellcrank shafts, the FAA has determined that removal and replacement of the slat drive drums bellcrank shaft must be accomplished within a shorter time period than is currently required by AD 90-18-03, in order to assure the continued airworthiness of these airplanes.

The FAA also considers that long term continued operational safety will be better assured by actual modification of the airframe to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The FAA's determination that replacement of the slat drive drum bellcrank shaft must be accomplished in order to terminate the need for the currently required repetitive inspections is in consonance with that policy decision.

The FAA has reviewed and approved McDonnel Douglas Alert Service Bulletin A27-250, Revision 3, dated May 15, 1991, which describes procedures for the visual inspection of the slat drive drum bellcrank shafts to detect cracks, and necessary repair. This service bulletin also describes procedures for replacement of the slat drive drum bellcrank shaft with a new improved part; once this new part is installed, the need for repetitive inspections is eliminated.

Since this condition is likely to exist or develop on other airplanes of this same type design, and AD is proposed which would supersede AD 91-13-09 with a new airworthiness directive that would add a requirement to replace the slat drive drums' bellcrank shafts with new improved parts (P/N 5920212-505) within 18 months. This action would be required to be accomplished in accordance with the service bulletin previously described. Replacement of the subject part would constitute terminating action for the repetitive inspections.

The FAA is aware of the inconsistency regarding compliance times for replacement of the bellcrank shafts as set forth in this proposed rule and as currently required by AD 90-18-03. However, McDonnell Douglas Report Number MDC-K1572, "DC-9/MD-80 Aging Aircraft Service Action Requirements Document," which is the subject of AD 90-18-03, will be revised to reflect a compliance time for removal and replacement of the slat drive drums bellcrank shafts consistent with the compliance time of this proposed AD action.

There are approximately 685 Model DC-9-20, -30, -40, -50, and C-9 series airplanes of the affected design in the worldwide fleet. It is estimated that 422 airplanes of U.S. registry would be affected by this AD, that it would take approximately 124 work hours per airplane (62 work hours per slat drive unit) to accomplish the required actions, and that the average labor cost would be $55 per work hour. Required parts would cost approximately $7,658 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,109,716.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-7040 and by adding the following new airworthiness directive:

McDonnell Douglas: Docket No. 91-NM-232-AD. Supersedes AD 91-13-09, Amendment 39-7040.

Applicability: Model DC-9-20, -30, -40, -50, and C-9 (Military) series airplanes, which correspond to factory serial numbers listed in McDonnell Douglas Service Bulletin 27-196, Revision 1, dated September 28, 1984, or Revision 2, dated December 17, 1990; Service Bulletin 27-250, dated August 29, 1984, or Revision 1, dated October 18, 1984, or Revision 2, dated January 3, 1990; and Alert Service Bulletin A27-250, Revision 3, dated May 15, 1991, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To detect cracks and prevent failure of the slat drive mechanism and its interrelated structure, accomplish the following:

(a) Within 20 days or 135 landings, whichever occurs first after January 10, 1985 (the effective date of AD 84-24-03, Amendment 39-4956), inspect the left and right actuator slat drive mechanism in accordance with McDonnell Douglas Service Bulletin 27-196, Revision 1, dated September 28, 1984, or Revision 2, dated December 17, 1990.

(1) If no cracks are found, no further inspection is required.

(2) If a crack is found, and the crack is less than one inch in length, continue to inspect the actuator slat drive shaft at intervals not to exceed 1,600 landings in accordance with the service bulletin.

(3) If a crack is found, and the crack is one inch or greater in length, prior to further flight, replace the actuator slat drive shaft in accordance with Condition II specified in the service bulletin. Such replacement constitutes terminating action for the inspections required by paragraph (a)(2) of this AD.

(b) Within 20 days or 135 landings, whichever occurs first after January 10, 1985, inspect the forward slat drive drums' bellcrank shafts that have accumulated 4,000 or more landings since new or last overhaul.

(1) If no cracks are detected, continue to inspect the slat drive drum bellcrank shaft for cracks at intervals not to exceed 1,500 landings as shown in Figure 1 of McDonnell Douglas Service Bulletin 27-250, dated August 29, 1984; Revision 1, dated October 18, 1984; or Revision 2, dated January 3, 1990.

(2) If cracks are found, prior to further flight, replace the slat drive drum bellcrank shaft in accordance with Condition II of the service bulletin. Such replacement constitutes terminating action for the repetitive inspection requirements of paragraph (b)(1) of this AD.

(c) Within 500 landings after July 8, 1991 (the effective date of AD 91-13-09, Amendment 39-7040), or at the next scheduled inspection in accordance with paragraph (b) of this AD, whichever occurs earlier, inspect the slat drive drums' bellcrank shafts for cracks, in accordance with McDonnell Douglas Alert Service Bulletin A27-250, Revision 3, dated May 15, 1991. This inspection constitutes terminating action for the repetitive inspection requirements of paragraph (b)(1) of this AD.

(1) If no cracks are found, repeat the inspection of the slat drive drum bellcrank

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shaft for cracks at intervals not to exceed 750 landings, in accordance with the alert service bulletin.

(2) If cracks are found, prior to further flight, replace the slat drive drum bellcrank shaft with a new drum shaft, P/N 5020213–505, in accordance with Condition II specified in the alert service bulletin. Such replacement constitutes terminating action for the repetitive inspection requirements of paragraph (c)(1) of this AD.

(d) If cracks are found in locations in the slat drive shaft(s) other than those specified in McDonnell Douglas Service Bulletin 27–198, Revision 1 or 2; and Alert Service Bulletin A27–250, Revision 3; prior to further flight, replace or rework the cracked component(s) in a manner approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate.

(e) Replacement of both the actuator slat drive mechanism and the slat drive drum bellcrank shaft in accordance with Condition II of the following service bulletins, as applicable, constitutes terminating action for the requirements of this AD:

McDonnell Douglas service bulletin number	Revision level	Dated
27–198	Revision 1	September 28, 1984
	Revision 2	December 17, 1990
27–250	Original	August 29, 1984
	Revision 1	October 18, 1984
	Revision 2	January 3, 1990
A27–250	Revision 3	May 15, 1991

(f) Within 18 months after the effective date of this AD, replace the slat drive drum bellcrank shaft with a new drum shaft, P/N 5020212–505, in accordance with Condition II specified in McDonnell Douglas Alert Service Bulletin 27–250, Revision 3, dated May 15, 1991. Such replacement constitutes terminating action for the repetitive inspection requirements of paragraphs (b)(1) and (c)(1) of this AD.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(h) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(i) Upon the request of an operator, an FAA Maintenance Inspector, subject to prior approval by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection times specified in this AD to permit compliance at an established inspection period of that operator if the request contains substantiating data to justify the change for that operator.

Issued in Renton, Washington, on December 16, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–30784 Filed 12–24–91, 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 122

RIN 1515–AA95

Proposed Amendments to the Customs Regulations Regarding International, Landing Rights and User Fee Airports

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to set forth the circumstances in which permission to land at a landing rights airport may be denied or withdrawn and to set forth the circumstances in which status as a user fee airport may be terminated. The document also updates the list of designated user fee airports and proposes certain organizational or editorial changes to improve the layout of the present regulations insofar as they deal specifically with international airports, landing rights airports and user fee airports.

DATES: Comments must be received on or before February 24, 1992.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Mike Lovejoy, Office of Inspection and Control (202–566–5807).

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1988, Customs at 53 FR 9285 published a final rule revising the air commerce regulations previously set forth as part 6 of the Customs Regulations (19 CFR part 6). The revised regulations, set forth as part 122 of the Customs Regulations (19 CFR part 122), among other things restructured the regulatory provisions concerning specific types or classes of airports at which aircraft could land when arriving from points outside the United States.

Subpart B of those regulations concerns international airports which are designated jointly by the Secretary of the Treasury or Commissioner of Customs (as a port of entry for aircraft and for merchandise carried thereon), by the Attorney General (as a port of entry for aliens), and by the Secretary of Health and Human Services (as a place for quarantine inspection). Section 122.34 of those regulations (set forth in subpart D, which is entitled "Landing Requirements") concerns landing rights airports which are currently defined in § 122.1(f) as airports, other than international airports, at which flights from a foreign area may be allowed to land. In addition, in order to implement section 236 of the Trade and Tariff Act of 1984 (Pub. L. 98–573), as amended (codified at 19 U.S.C. 58b), on March 31, 1988, Customs published at 53 FR 10370 a final rule amending part 122 by inserting in subpart D a new § 122.39 entitled "User fee airports." A user fee airport is specifically designated as such by the Commissioner of Customs based on a Memorandum of Agreement between the concerned airport authority and Customs and with the approval of the governor of the State in which the airport is located. Following such designation, flights from a foreign area may be granted permission to land there in lieu of landing at an international airport or at a landing rights airport. Thus, there are three types or classes of airports which serve as entry points for international air commerce under the Customs laws and regulations.

Section 122.12(a) provides that international airports are open to all aircraft for entry and clearance at no charge by Customs (however, certain arrival and related user fees must be paid to Customs under part 24 of the Customs Regulations). Thus, Customs is required to supply Customs personnel at an international airport, and all aircraft arriving from foreign points have a right to land there without first obtaining permission to land from Customs. Section 122.11(c) requires that each international airport provide, without cost to the Federal Government, proper office and other space for the sole use of Federal officials working at the airport as well as a suitable paved aircraft loading area convenient to that office space. Section 122.11(b) sets forth four reasons for which the designation as an international airport may be withdrawn, i.e., insufficient business to justify maintenance of inspection equipment and personnel, failure to provide or maintain proper facilities, failure to follow the rules and regulations of the Federal Government, or if another location would be more useful. The majority of designated international airports are smaller municipal or regional airports. The use of the word "international" in the name of a large airport in the U.S. does not necessarily signify that the airport is an international airport within the meaning of the Customs Regulations.

Landing rights airports are not designated as such on an across-the-board basis for all aircraft arriving from foreign points. Rather, a landing rights airport becomes such by usage, *i.e.*, when Customs under § 122.34(a) specifically gives a party permission to land at an airport which has not been designated as an international airport or user fee airport. Such permission to land may be given on a one-time basis (*e.g.*, for a private aircraft or for a charter or other unscheduled flight) or on a recurring basis according to a fixed schedule submitted to and approved by Customs (e.g., in the case of a scheduled airline or charter operator). Under § 122.34(b), Customs is required to notify other interested Federal agencies when permission to land is given at a landing rights airport so that they may also perform their clearance or inspection duties, although in some cases those duties are performed by Customs officers cross-designated for that purpose. Unlike international airports, there is no provision in § 122.34 or elsewhere in the Customs Regulations which requires that landing rights airports provide office and other space to Customs and other Federal agencies. Such space has traditionally been provided to Customs and other Federal agencies by the airport authorities on a voluntary basis on the understanding that (1) the presence of Customs and other Federal officers at the airports operates essentially as a convenience to the aircraft, airport and surrounding community and (2) Customs could deny or revoke landing rights if the facilities for clearance and inspection were inadequate to ensure compliance with Federal law. Thus, a landing rights airport exists for the purpose of handling international traffic only to the extent that Customs and other interested agencies specifically determine that one or more international flights may land there. This determination is based in significant part on the willingness and ability of Customs and other Federal officers to staff the airport, on the availability of adequate facilities to enable those Federal officers to carry out their functions, and on the willingness of the airport users to defray part of the cost of the Customs presence there. Most of the major U.S. airports handling international traffic are, in fact, landing rights airports.

Section 122.34(c) states that the owner, operator or person in charge of the aircraft shall pay any added charges for inspecting the aircraft, passengers, employees and merchandise when landing rights are given, except in the case of scheduled aircraft of a scheduled airline where a charge may be made only for the overtime expenses of Customs officers. However, as a consequences of the imposition of user fees covered by part 24 of the Customs Regulations, these charges now must be paid only in the case of arrivals at locations outside the limits of a port of entry.

Section 122.39(a) states that the procedures for landing at a user fee airport are the same as those set forth in § 122.34 for landing rights airports. Section 122.39(b) sets forth a list of designated user fee airports. Although there are no other regulatory provisions which deal specifically with user fee airports, each memorandum of Agreement, under which each user fee airport is established, sets forth certain responsibilities of both Customs and the airport. For a flat fee paid by the airport (currently estimated at $73,350 for the first year of operation and $50,112 for the second year) to cover the salary and benefits costs of one full-time inspector, plus any related costs for travel, transportation, per diem and cost-of-living allowances, Customs agrees to provide 8 hours of service per day, Monday through Friday, for a total of 40 hours; however, the party requesting the Customs services is responsible for paying the full costs of any overtime services of Customs officers as determined under 19 U.S.C. 267. In addition to the payment of the above inspectional costs, each user fee airport agrees to provide, at no cost to Customs, sufficient office space, utilities, office furniture and equipment, including costs for installation and maintenance thereof. Each Memorandum of Agreement further provides that the agreement will continue in effect until terminated by either party, that either party may terminate the agreement upon 120 days written notice to the other party, and that the agreement will be automatically terminated if any amounts due under the agreement are not paid to Customs on a timely basis.

Customs believes that the current regulations regarding international, landing rights and user fee airports, as discussed above, could be significantly improved.

With regard to landing rights airports, Customs believes that the regulations should spell out the circumstances in which landing rights may be denied or withdrawn, both to protect the rights of the public against an arbitrary use of such action and to clarify that the existence of landing rights of an airport is always contingent upon both commercial need and the ability of Customs and other Federal agencies to ensure proper enforcement of the law. This regulatory change would not amount to a substantive change in present practice but would simply put landing rights airports on a regulatory footing more parallel to that of international airports for which the same general considerations, as reflected in the present regulations, apply.

As regards user fee airports, Customs believes that the regulations should set forth the circumstances in which a user fee airport designation may be withdrawn, as specified in the Memorandum of Agreement under which each user fee airport is established. Moreover, the regulations should be amended to reflect the fact that eleven additional user fee airports have been designated since the user fee airport provision was originally promulgated. The currently designated user fee airports, and the telephonic contacts for each for obtaining information regarding service, are as follows:

Airport	Contact
Natrona County International Airport, Casper, Wyoming.	Airport Authority, (307) 472–6688.
Rickenbacker Airport, Columbus, Ohio.	Chairman, Rickenbacker Airport, (614) 491–1401.
Santa Teresa Airport, Santa Teresa, New Mexico.	Airport Manager, (505) 589–1200.
Hector International Airport, Fargo, North Dakota.	Airport Authority, (701) 241–1501.
Southwest Florida Regional Airport, Fort Myers, Florida.	Chairman, Board of Lee County, (813) 768–1000.
Lebanon Municipal Airport, Lebanon, New Hampshire.	Director of Corporate Service, (603) 298–5571.
Allentown-Bethlehem-Easton Airport, Lehigh Valley, Pennsylvania.	Airport Director, (215) 264–2831
Midland International Airport, Midland, Texas.	Airport Authority, (915) 563–1460.
Airborne Air Park, Wilmington, Ohio.	Chairman, Airborne Express, (513) 382–5591
Fort Wayne-Allen County Airport, Fort Wayne, Indiana.	Airport Authority, (219) 747–4146.
Morristown Municipal Airport, Morristown, New Jersey.	Airport Authority, (201) 538–6400.
Jackson Municipal Airport, Jackson, Mississippi.	Airport Authority, (601) 939–5631

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Airport	Contact
Greater Rockford Airport, Rockford, Illinois.	Airport Authority, (815) 965-8639.
Waukegan Regional Airport, Waukegan, Illinois.	Airport Authority, (708) 244-0055.
Kingsley Field, Klamath Falls, Oregon.	Board of County Commissioners, (503) 885-6350.
St. Paul Airport, St. Paul, Alaska.	Airport Authority, (907) 546-2331.
Bluegrass Airport, Lexington, Kentucky.	Airport Authority, (606) 254-9336.
Oakland-Pontiac Airport, Oakland, Michigan.	Airport Manager, (313) 858-3900.
Yakima Air Terminal, Yakima, Washington.	Airport Authority, (509) 575-6150.
Sanford Regional Airport, Sanford, Florida.	Airport Authority, (407) 322-7771.

Customs also believes that some organizational and editorial amendments should be made in part 122. It is noted in this regard that present §§ 122.34 and 122.39 concern principally the legal status or establishment of landing rights and user fee airports rather than "landing requirements" which is the title of subpart D; the remainder of the provisions in subpart D, on the other hand, are general provisions which apply equally to international landing rights and user fee airports. Accordingly, it would appear appropriate to transfer §§ 122.34 and 122.39 to subpart B which would be retitled to reflect its broader scope. Moreover, certain consequential and other editorial changes should be made to the existing texts within part 122. The proposed amendments are discussed in detail below.

Discussion of Proposed Amendments

Section 122.1 General Definitions

It is proposed to amend paragraph (f), which defines "landing rights airport", by inserting after "international airport" the words "or user fee airport". This change is necessary to clarify that landing rights airports do not include user fee airports which are established under totally separate statutory authority. It is noted in this regard that "user fee airport" is already separately defined in paragraph (m) of this section, which would also be amended by changing the reference to "§ 122.39" to reflect the proposed transfer of that section to subpart B.

Subpart B Classes of Airports

It is proposed to retitle subpart B (presently "International Airports") as "Classes of Airports" to reflect the broader scope resulting from the proposed transfer of present §§ 122.34 and 122.39 to this subpart.

Section 122.14 Landing Rights Airports

This proposed new section would be identical to present § 122.34 except that present paragraph (c) has been revised (simply to clarify that inspection charges are payable only when the arrival takes place outside a port of entry) and a new paragraph (d) has been added to set forth the circumstances in which landing rights may be denied or withdrawn. Proposed new paragraph (d) is primarily based on present § 122.11(b), which sets forth the four circumstances in which designation as an international airport may be withdrawn; new paragraphs (d)(2)–(5) are identical to §§ 122.11(b)(1)–(4). In addition, new paragraph (d)(1) has been included to refer to the unavailability of Federal Government personnel in sufficient numbers to perform clearance and inspection duties, in consideration of the fact that an adequate Federal presence is a prerequisite to both the initial and the continued granting of permission to land at a landing rights airport.

Section 122.15 User Fee Airports

This proposed new section replaces present § 122.39 but with amendments to present paragraphs (a) and (b) and with the addition of a new paragraph (c). The proposed amendment to paragraph (a) involves (1) replacing the word "landing" with the words "obtaining permission to land" to reflect the true content of present § 122.34(a) and (2) replacing the reference to "§ 122.34" to reflect the transfer of that section to subpart B. The proposed amendment to paragraph (b) involves updating the list of designated user fee airports. New paragraph (c), which has been added to set forth the circumstances in which designation as a user fee airport will be terminated, is based on the standard terms of the Memorandum of Agreement under which each user fee airport is designated and thus sets forth only two conditions: (1) If either Customs or the airport authority gives 120 days written notice of termination to the other party, and (2) if any amounts due to be paid to Customs are not paid on a timely basis. It should be noted that paragraph (c) states that the designation "shall" be terminated because each Memorandum of Agreement mandates termination of the agreement (and thus termination of user fee airport status) if either of these conditions arises.

Section 122.33 Place of First Landing

It is proposed to amend this section (1) to change the cross-reference to reflect the proposed renumbering of present §§ 122.34 and 122.39 and (2) to set forth the regulatory requirements in a clearer and more logical order. These changes do not affect the substance of the regulation.

Comments

Before adopting the proposed amendments, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Francis W. Foote, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 122

Customs duties and inspections, Imports, Air carriers, Air transportation, Aircraft, Airports.

Proposed Amendments to the Regulations

Accordingly, it is proposed to amend part 122, Customs Regulations (19 CFR part 122), as set forth below:

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1590, 1594, 1624, 1644, 49 U.S.C. App. 1509.

2. Section 122.1, paragraphs (f) and (m), are revised to read as follows:

§ 122.1 General definitions.

* * * * *

(f) *Landing rights airport.* A *landing rights airport* is any airport, other than an international airport or user fee airport, at which flights from a foreign area may be allowed to land.

* * * * *

(m) *User fee airport.* A *user fee airport* is an airport so designated by Customs and listed in § 122.15. Flights from a foreign area may be granted permission to land at a user fee airport rather than at an international airport or a landing rights airport.

3. The heading of Subpart B is revised to read as follows:

Subpart B—Classes of Airports

§§ 122.34 and 122.39 [Redesignated as §§ 122.14 and 122.15]

4. Sections 122.34 and 122.39 are redesignated as §§ 122.14 and 122.15 respectively in subpart B.

5. In newly redesignated § 122.14, paragraph (c) is revised and paragraph (d) is added to read as follows:

§ 122.14 Landing rights airports.

* * * * *

(c) *Payment of expenses.* In the case of an arrival at a location outside the limits of a port of entry, the owner, operator or person in charge of the aircraft shall pay any added charges for inspecting the aircraft, passengers, employees and merchandise when landing rights are given.

(d) *Denial or withdrawal of landing rights.* Permission to land at a landing rights airport may be denied or withdrawn for any of the following reasons:

(1) Federal Government personnel are no available in sufficient numbers to perform clearance and inspection duties;

(2) The amount of business clearing through the airport does not justify maintenance of inspection equipment and personnel;

(3) Proper facilities are not available at, or maintained by, the airport;

(4) The rules and regulations of the Federal Government are not followed; or

(5) Some other location would be more useful.

6. Newly redesignated § 122.15 is revised to read as follows:

§ 122.15 User fee airports.

(a) *Permission to land.* The procedures for obtaining permission to land at a user fee airport are the same procedures as those set forth in § 122.14 for landing rights airports.

(b) *List of user fee airports.* The following is a list of user fee airports designated by the Commissioner of Customs in accordance with 19 U.S.C. 58b. Information concerning service at any of these airports can be obtained by calling the airport or its authority directly.

Location	Name
Casper, Wyoming	Natrona County International Airport.
Columbus, Ohio	Rickenbacker Airport.
Santa Teresa, New Mexico.	Santa Teresa Airport.
Fargo, North Dakota	Hector International Airport.
Fort Myers, Florida	Southwest Florida Regional Airport.
Lebanon, New Hampshire.	Lebanon Municipal Airport.
Lehigh Valley, Pennsylvania.	Allentown-Bethlehem-Easton Airport.
Midland, Texas	Midland International Airport.
Wilmington, Ohio	Airborne Air Park.
Fort Wayne, Indiana	Fort Wayne-Allen County Airport.
Morristown, New Jersey	Morristown Municipal Airport.
Jackson, Mississippi	Jackson Municipal Airport.
Rockford, Illinois	Greater Rockford Airport.
Waukegan, Illinois	Waukegan Regional Airport.
Klamath Falls, Oregon	Kingsley Field.
St. Paul, Alaska	St. Paul Airport.
Lexington, Kentucky	Bluegrass Airport.
Oakland, Michigan	Oakland-Pontiac Airport.
Yakima, Washington	Yakima Air Terminal.
Sanford, Florida	Sanford Regional Airport.

(c) *Withdrawal of designation.* The designation as a user fee airport shall be withdrawn under either of the following circumstances:

(1) If either Customs or the airport authority gives 120 days written notice of termination to the other party; or

(2) If any amounts due to be paid to Customs are not paid on a timely basis.

7. Section 122.33 is revised to read as follows:

§ 122.33 Place of first landing.

The first landing of an aircraft entering the U.S. from a foreign area shall be:

(a) At a designated international airport (see § 122.13);

(b) At a landing rights airport if permission to land has been granted (see § 122.14); or

(c) At a designated user fee airport if permission to land has been granted (see § 122.15).

Permission to land at a landing rights airport or user fee airport is not required for an emergency or forced landing (see § 122.35).

Approved: November 22, 1991.

Carol Hallett,

Commissioner of Customs.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 91-30770 Filed 12-24-91; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Part 10

RIN 1215-AA 67

Claims for Compensation Under the Federal Employees' Compensation Act, as Amended

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: The Secretary of Labor proposes to revise the regulations regarding the availability of lump-sum payments of compensation benefits under the Federal Employees' Compensation Act (FECA). The proposed rule sets forth the Secretary's determination that, in the exercise of discretion afforded the Secretary in section 8135(a), lump sum payments of compensation benefits will no longer be made except for payments of schedule awards. In making this determination, the Secretary has taken into consideration a number of factors, including: the fact that FECA is intended as income replacement, large lump sum payments of benefits are often detrimental to claimants and lump sum payments are not a fiscally responsible method of fulfilling the government's obligations under the FECA for wage-loss compensation. This rule also indicates that it will generally not be in the best interest of the claimant to make lump-sum payment of schedule award benefits where the schedule award is a substitute for lost wages.

DATES: Written comments must be submitted on or before February 10, 1992.

ADDRESSES: Send written comments to Thomas M. Markey, Director for Federal Employees' Compensation, Employment Standards Administration, U.S. Department of Labor, room S-3229, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210; Telephone (202) 523-7552.

FOR FURTHER INFORMATION CONTACT: Thomas M. Markey, Director for Federal

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Employees' Compensation, Telephone (202) 523–7552.

SUPPLEMENTARY INFORMATION:

Introduction

The Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.*, is the workers' compensation law for Federal employees. The FECA provides a range of benefits for covered work-related injuries, including payment of wage loss compensation, schedule awards for permanent loss or loss of use of specified members of the body, and related medical costs.

FECA wage-loss benefits are paid where the injured employee is disabled. Benefits for temporary total disability are payable when a claimant is unable to work at all and partial benefits are payable if the claimant is able to perform some work but unable to earn the wages earned at the time of injury. A totally disabled employee receives 66⅔% or 75% (if there are dependents) of the salary earned as of the date of injury, with a partially disabled employee receiving an appropriate proportion of such benefits.

Schedule awards are available for a permanent loss or loss of use of a specified organ or member of the body, such as an arm, leg, eye or kidney. These benefits are paid in addition to (but not concurrently with) wage-loss benefits and are paid upon a medical determination that the condition is permanent and will not improve.

The Secretary of Labor is charged with adjudicating claims, administering the payment of benefits and deciding all questions arising under the FECA (see section 8145). Pursuant to statutory authority, the Secretary has delegated the adjudication and administrative responsibility to the Director of the Office of Workers' Compensation Programs (OWCP), which is part of the Department of Labor's Employment Standards Administration.

Compensation benefits are generally made through regular, periodic payments for as long as the disability remains. The statute also authorizes the Secretary to grant lump-sum payment of compensation benefits, but only where one of three statutory criteria have been met. Except in cases where the monthly payment is less than $50 or the individual is about to become a nonresident of the United States, a lump sum payment may not be made unless the Secretary determines that it is in the individual's best interest.

The discretionary authority regarding lump-sum payments which the statute gives the Secretary is very broad. It includes the discretion to determine, in the first instance, whether or not to fulfill the government's monetary obligations under the FECA through a lump-sum payment, since the statute authorizes but does not require such a form of payment. Of course, if the Secretary determines that a lump sum payment is otherwise appropriate, a determination must also be made whether one of the three statutory criteria have been met, since a lump-sum payment is prohibited where they have not been met.

In the past, the Secretary has, in exercising the discretion afforded by the statute, determined that every lump-sum request will be evaluated on a case-by-case basis and a determination made on the basis of whether a lump-sum payment would be in the beneficiary's best interest. Although all applications have in the past been considered, lump-sum payments have been granted only rarely over most of the life of the program. Nevertheless, neither the existing rule nor (until recently) the procedures reflected the limited extent to which lump-sum payments have been made. Moreover, the practice of considering every lump-sum request and deciding each on its own merits has required extensive (and sometimes expensive) preparation by a claimant.

Accordingly, the Secretary, in the exercise of the discretion granted by statute, has now determined that lump-sum payments of wage-loss benefits are not advantageous for the government, nor are they consistent with the primary purpose of workers' compensation and therefore will not be substituted for wage-loss benefits under any circumstances, except where such payments are required by statute (that is, where a surviving spouse entitled to compensation remarries before age 55). Since the Secretary has determined that the government will fulfill its obligation for wage-loss benefits by means of periodic rather than lump-sum payments, there is no need to exercise further discretion in an individual case.

The proposed rule thus establishes a simpler and more direct process which is consistent with the discretionary authority granted to the Secretary by the statute, and lessens the administrative burden on both claimants and the Department. By making it clear that lump-sum payments will not be made for wage-loss benefits, the proposed rule eliminates needless substantive development of a lump-sum application.

Where a claimant is entitled to a schedule award, however, the Secretary has determined that a request for a lump-sum payment will still be considered. The determination will be made on a case-by-case basis, using the statutory criterion of whether the payment would be in the best interest of the claimant. It will generally not be considered in the claimant's best interest to grant a lump sum where the individual depends on the schedule award as a substitute for wage-loss.

Background

The FECA's lump-sum provision, found at section 8135 (5 U.S.C. 8135) is consistent with most workers' compensation statutes. The lump-sum provision reads as follows:

(a) The liability of the United States for compensation to a beneficiary in the case of death or of permanent total or permanent partial disability may be discharged by a lump-sum payment equal to the present value of all future payments of compensation commuted at 4 percent true discount compounded annually if—

(1) The monthly payment to the beneficiary is less than $50 a month;

(2) The beneficiary is or is about to become a nonresident of the United States; or

(3) The Secretary of Labor determines that it is for the best interest of the beneficiary.

The probability of the death of the beneficiary before the expiration of the period during which he is entitled to compensation shall be determined according to the most current United States Life Tables, as developed by the United States Department of Health, Education and Welfare, which shall be updated from time to time, but the lump-sum payment to a widow or widower of the deceased employee may not exceed 60 months' compensation. The probability of the happening of any other contingency affecting the amount or duration of compensation shall be disregarded.

(b) On remarriage before reaching age 55 a widow or widower entitled to compensation under section 8133 of this title, shall be paid a lump sum equal to twenty-four times the monthly compensation payment (excluding compensation on account of another individual) to which he was entitled immediately before the marriage.

5 U.S.C. 8135

Legislative History

This first part of the lump sum section has remained essentially unchanged since the Federal Employees' Compensation Act (originally titled the Employees' Compensation Act) was first enacted in 1916. The FECA was the second workers' compensation law covering Federal employees. The first such law, passed in 1908, quickly proved unsatisfactory. Several proposals for revamping the law were introduced in Congress in the years preceding passage of the FECA.

An early version of what was eventually to became the Federal Employees' Compensation Act was introduced in 1916 by Congressman Daniel McGillicuddy of Maine (H.R. 15316). The lump sum provision found at section 14, has remained essentially unchanged.[1] Although the legislative history of the FECA is extensive, very little mention is made of the lump-sum provision. Most of the discussion in testimony and in committee reports highlights the other changes contained in the bill, the most significant of which were the expansion of coverage, the increased benefits provided by the bill, and the creation of an independent Employees' Compensation Commission to administer the program and adjudicate claims.[2] The Employees' Compensation Act passed both houses of Congress and was signed into law on September 7, 1916.

The lump sum provision, although amended a few times, remains essentially the same. The most significant changes were made in 1966, when the existing language in this provision was redesignated as paragraph (a) and a new paragraph (b) was added, providing for a mandatory lump-sum payment of benefits equal to 24 months of compensation payment to widows or widowers who remarry before the age of 60 (this age was recently lowered to age 55 (see Pub. L. 101–303)). Title 5, United States code was also revised and recodified (Pub. L. 89–554; 80 stat. 378) in 1966; the lump sum provisions at section 14 became new section 8135 and the order of paragraph (a) was modified so that the last sentence was moved to the opening of the paragraph. The history of this recodification indicates that no substantive changes were intended by the rewriting. Like the history of the original lump sum provision, the respective legislative histories of these changes are very thin.

Agency Practice

As noted earlier, the longstanding administrative practice has been to make lump-sum payments only rarely. The Employees' Compensation Commission, which was the first agency charged with administering the 1916 Act, was reticent to make lump-sum payments from the beginning, as shown in its annual reports. The Commission reported in its First Annual Report that it was "* * * opposed to lump-sum settlement on principle, as likely to defeat the very purpose of the compensation act as against the best interests of the beneficiary in nearly all cases." (Report at p. 19). The Commission began to make lump-sum payments more frequently during the 1920's, although there is no discussion in the reports of how the decisions were made.[3] By 1929, however, the position again changed and payment of lump-sum benefits had virtually ceased. The Commission explained in its Fourteenth Annual Report that it had:

> * * *learned from experience that in the great majority of cases injured workmen have not sufficient experience to wisely use large sums of money. There is great danger that if such sums are granted they may be lost. It is considered that the safest and most effective means of affording relief to disabled employees is the payment of compensation in periodic installments. Accordingly, the commission's practice is to make lump-sum settlements only in very exceptional cases, where it is clearly demonstrated that such settlement will be for the best interest of the claimant.

Fourteenth Annual Report of the Employees' Compensation Commission, p. 51. (1930).

Succeeding administrators have consistently applied this principle, recognizing that the FECA is a wage-loss replacement system and a periodic payment is the most reliable method of wage replacement.

The Employees' Compensation Appeals Board (ECAB) was created in 1946, to review the decisions of the administrative body, called the Bureau of Employees Compensation.[4] ECAB decisions further illustrate how the lump-sum provisions have been interpreted. In *Manny Korn* (1 ECAB 78), the Board first addressed the lump sum issue, noting that section 14 of the FECA "*authorizes* payment in a lump sum of compensation for permanent disability if it should be determined that such a manner of payment is 'for the best interest of the beneficiary.'" (Emphasis added). That decision also concurred with the principle that the matter was an exercise of discretion, and its review of such determinations was limited to whether or not the decision constituted an abuse of discretion.

In a much later case (*Bruce Hickey*, 20 ECAB 253 (1969)), the Board emphasized that the Secretary's discretion extends beyond a determination of what is in the claimant's best interest. The case involved a denial of a request for a lump-sum payment from an individual who was moving out of the country, one of the three alternative reasons for which lump-sum payments are authorized. There is no requirement, however, for considering the claimant's best interest; the statute says merely that such a payment may be made when an individual is about to become a nonresident. The Bureau of Employees' Compensation denied the request and the claimant appealed to the Board, arguing that the statute mandated that lump sums be made when this event were about to occur. After noting that the legislative history is silent as to the intent of the non-resident provision on lump sums, the board stated:

> * * * giving ordinary words their ordinary meaning, the Board construes 5 U.S.C. 8135 (a)(2) as giving the Bureau discretion to grant or reject applications of claimants who are about to become nonresidents of the United States. The section specifically provides that a lump sum settlement "may" be paid under any of the 3 alternatives described there. The word "may" clearly implies discretion. * * * "

The Board accurately pointed out that the Department has complete discretion in determining whether or not to fulfill the government's obligations under the FECA through a lump-sum payment.

Statutory Discretion

While section 8135(a) merely authorizes lump-sum payments, while giving the Secretary broad discretion to

[1] The language is almost identical to that which appears in many state workers' compensation laws, and apparently was based on prototypical language suggested by the American Association for Labor Legislation (AALL), a labor law reform group. Indeed, the legislative history indicates that the AALL actually drafted the McGillicuddy bill. See Federal Employees' Compensation Hearings before the Committee on the Judiciary, H.R., 63rd Cong., 2nd Sess., Serial 16—part 1, March 31, 1914; Cong. Rec.—House, 63rd Cong., 2nd Sess., 10485 (June 15, 1914); H.R. Rept No 476, 64th Cong., 2nd Sess. (January 28, 1916); Cong. Rec.—Senate, 64th Cong., 1st Sess., 12887–12888 (August 19, 1916).

[2] At the time the FECA was being considered, the 1908 workers' compensation law as administered by the Department of Labor. In 1946, pursuant to the Reorganization Act of 1945 (59 Stat. 613), the President proposed and the Congress approved Reorganization Plan No. 2 of 1946, which abolished the Employees' Compensation Commission and transferred its functions to the Federal Security Agency. By Reorganization Plan No. 19 of 1950, these functions were transferred to the Secretary of Labor. The reorganization plans were not intended to change the scope of authority transferred from one agency to a new one.

[3] The Sixth Annual Report of the Commission notes that lump sum payments were not broken out of the total benefits paid until 1930. In 1922, $415,000 in injury compensation benefits were paid in lump sums, out of a total of $1,585,340.

[4] Reorganization Plan No. 2 of 1946 abolished the United States Employees' Compensation Commission and transferred the functions to the Federal Security Agency. Reorganization Plan No. 19 of 1950 transferred the Bureau of Federal Employees' Compensation (now OWCP) and the ECAB to the Department of Labor.

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determine whether to grant a request for lump-sum payments, the Secretary has until now chosen to exercise that discretion by deciding that each individual request should be reviewed. The Secretary, however, can exercise her very broad discretionary authority and decide not only whether a lump-sum payment is appropriate in a particular case, but also that no lump-sum payments will be made.

The United States Court of Appeals for the District of Columbia Circuit has held that similar language in the Trade Adjustment Assistance (TAA) provision of the Trade Act of 1974, should be read to authorize rather than require discretionary action. *International Union, UAW* v. *Dole*, 919F.2d 753 (DC Cir. 1990). The TAA authorizes states to pay benefits and recoup overpayments of benefits pursuant to regulations prescribed by the Secretary of Labor. Similar to the discretion granted under section 8135 of the FECA, the TAA provides that a state "may waive" an overpayment, and like the FECA, then goes on to specify the circumstances in which the states could exercise the discretionary authority to grant a waiver. 19 U.S.C. 2315(a)(1).

The Secretary of Labor interpreted the "may waive" provision as meaning waiver was a purely discretionary action which was available to the states, but that its use was not mandatory. Regulations were issued which provided, *inter alia*, that the states could refuse to entertain waiver applications at all. The rules were challenged by appellant UAW, which argued that the Secretary's interpretation of the "may waive" provision was contrary to the intent of Congress, and that the statutory language required states to at least consider waiver of an overpayment.

The court decided the question under the standard for review applicable to an administrative body's interpretation of a statute set out in the Supreme Court's decision in *Chevron USA, Inc.*, v. *Natural Resources Defense Council, Inc.*, 467 U.D. 837 (1984). Under this two-part test, a court first looks to see whether Congress had a clearly discernible intent on the precise question at issue; if so, the agency's interpretation must be consistent with that intent. Where Congress does not make its intention clear, however, then the court looks to see whether the agency's interpretation is "a permissible construction of the statute." *Chevron*, 467 U.S. at 842–43.

The court in *International Union* found the "may waiver" requirement was purely discretionary and that the Secretary's interpretation—that the states could simply choose not to waive such overpayments under any circumstances—was a permissible construction of the statute. In reaching this conclusion, the court found that the discretion granted under the statute included the authority not to perform the function at all.

Appellant argued that the states must consider waiver, and that where the criteria set forth were met, then the waiver must be granted. The court rejected that interpretation, noting that "merely listing waiver as one eventuality that would ward off a deduction does not come even close to suggesting that states are obliged to consider waiver requests." 919 F2d at 755. The court further stated that:

> Appellant's interpretation * * * puts an intolerable strain on the ordinary meaning of the text. Effectively, appellants read the word "may" as if it were "shall", despite the usual presumption that "may" confers discretion while "shall" imposes an obligation to act. 919 F.2d at 756.

In determining that section 8135(a) of the FECA merely authorizes but does not require granting lump-sum payments, the Department closely examined the legislative history to discern Congressional intent. As noted earlier, the history is largely silent on the lump-sum provision, and there is no clearly discernible Congressional intent indicating that the statutory language should not be read consistently with the "usual presumption." Is this then "a permissible construction of the statute?" *Chevron*, 467 U.S. at 842–43. The Secretary believes it is, given the wording of the statute, the general purpose of the FECA and the largely silent legislative history.

The purpose of workers' compensation is to provide a substitute for the wages lost because of an on-the-job injury. Regular, periodic payments, providing for cost-of-living increases safe from speculation or economic fluctuations and free from creditors, generally more nearly provide the measure of security that the Act was designed to afford. See *Garth M. Crosby*, 37 ECAB 228 (1985). The determination to end lump-sum payments for wage-loss compensation is thus consistent with the overall purpose of the statute.

The legislative history of the 1916 Act reveals that Congress was concerned with providing fair and equitable benefits to injured Federal employees. The history also shows that Congress charged the administrator with the responsibility to look out for the interest of the government, and also that Congress was concerned with the cost of the program. This proposed rule is consistent with all of these purposes.

Congress charged the new Commission to look out for the interests of the government. Under the FECA the administrator (now the Secretary) both adjudicates claims and administers the program. While an impartial adjudicator, the Department is not simply a neutral administrator in the same sense as in many states, where the benefit costs are met by insurance policies. The legislative history shows that the administrator is specifically charged with protecting the government's interest, including the government's financial interest. Commenting on the creation of the Employees' Compensation Commission, the House Report noted:

> It seemed (to the Committee) especially unwise to place the administration in the hands of the Department of Labor because that department in large measure represents * * * the side of labor, whereas the administrative body having charge of the proposed Act should represent, and should constantly be alert to safeguard, the interests of the Government. * * *
>
> * * * * *
>
> The Commission each year, therefore, will have not only to pass upon the claims received during the year but will be under the necessity of vigilantly watching the payment of compensation for injuries occurring in past years in order to protect the interests of the Government. * * *

H.R. Rept. No. 678, 64th Cong., 1st Sess. (May 11, 1916), p. 12. [5]

Although the history on the lump-sum provision itself is thin, the proposed rule is consistent with this clearly enunciated responsibility of the administrator to look out for the government's interest and with the expression of concern about cost.

Any interpretation of section 8135(a) which disregards the discretionary nature of lump sum awards would "put an intolerable strain on" the meaning of section 8135(a) by effectively defining "may" as "shall." Such an interpretation would be directly contrary to Congressional intent so clearly expressed.

Congress clearly knows the difference between the two words and how to direct an action where it wants to. This is amply illustrated within section 8135 itself, for when Congress amended this section in 1966 and added the new paragraph (b), it ensured that lump-sum payments would be made to widows or

[5] As for concern with costs, see for example, Federal Employees' Compensation Hearings before the Committee on the Judiciary, H.R., 63rd Cong., 2nd Sess., Serial 16—part 1, March 31, 1914, 13, 24–28; House Report No. 678 (May 11, 1916) at page 11.

widowers who remarried before a certain age (now 55) by directing that such lump-sums "shall be paid." Even when it so directed an action in section (b), it left alone the discretionary wording in paragraph (a). The reports of the Commission and the ECAB decisions made clear to Congress that lump-sum payments have been made only under exceptional circumstances; Congress chose not to change the discretionary authority of the Secretary. Nor did Congress make, or even consider, such a change when extensively amending the FECA in 1974.

Basis of the Determination

The Secretary has, based on the experience over the life of the program and the history related above, determined that benefits for wage loss will be made only in the form of periodic payments. Lump-sum payments will neither be made nor considered, and it will, thus, be unnecessary to exercise any further discretion beyond what is reflected in this rule.

As described earlier, in the past OWCP has considered every lump-sum application, examined each on its merits and made a determination strictly on the basis of whether such a payment would be in the "best interest of the beneficiary." Since this proposal to end consideration of lump-sum payments for wage-loss benefits represents a change in this practice, it is important that the principal reasons for this change be set forth.

Foremost among the reasons for the change is the reason expressed in the early Commission Reports quoted above: Regular, periodic payments most closely approximate the wages the benefits are designed to replace. This method most resembles the wages that an injured worker must forgo during the period of disability, even if that disability lasts a lifetime. The periodic payments are adjusted once a year to keep pace with cost-of-living and thus remain a viable, accurate approximation of the lost wages. This form of payment reasonably places the injured individual in the position he or she would be in but for the injury.

In addition to the equitable nature of regular payments, periodic payments made by the United States Treasury are secure. They are not subject to economic downtown, the uncertainties of investments or the abuses of fraud such as would be a lump-sum payments, no matter how generous. The early commission reports expressed deep concern with the danger presented by lump sums where individuals are disabled and thus not readily able to provide for their livelihood. Through error, waste or fraud a lump-sum payment might be lost and the disabled claimant would then have no recourse. The same concerns which motivated the commission to effectively end lump sum payments in the 1920's are valid today, for no source is as secure as the United States Treasury.

Such periodic payments are also consistent with government accounting and budgeting practices, while lump sum payments are directly counter to those practices. In addition, this proposed rule represents sound fiscal policy, since the cost of lump-sum payments is generally greater than periodic payments where interest rates are above four percent and the claimant does not live longer than the life tables project.

The Federal government budget process is based on a fiscal year. Obligations incurred in each year are generally met out of the Congressional appropriation to an agency for that year. Under the chargeback system, OWCP pays out of the Employees' Compensation Fund the costs of benefits paid under the FECA for each injured employee. With limited exceptions, the agencies pay that chargeback bill once a year out of the funds appropriated by Congress for that year, based on the bills previously charged by DOL. Each agency is appropriated a set amount of money to be used for specified purposes, including salaries and expenses. In practical terms, the dollars to pay the agency's workers' compensation costs through charges paid in their behalf by the Department of Labor (chargeback) come out of this account first. What is left over goes to pay the salaries and benefits to the other employees.

Compensation liability can vary. Chargeback bills, nevertheless, can generally be anticipated and normally provided for out of the appropriation since regular compensation benefits about equal the salary which would be paid if the employee had not been injured. Lump-sum payments, on the other hand, cannot be accounted for in the appropriation process with similar ease. If an agency receives a chargeback bill which reflects a lump sum payment, that agency's budget could be stretched beyond expected limits. Instead of the 20 to 30 thousand dollars which is the usual charge for each injury, the agency might have to absorb a lump-sum payment of several hundred thousand dollars in one year. Since many agencies now charge down to the lowest budgetary level the costs associated with the chargeback bill, a small office within an agency could see most of its entire salary and expense budget wiped out through one lump sum compensation payment which could not be readily absorbed. The result would be that another part of the budget for that agency would have to absorb the charge.

Another reason for ending the use of lump-sum payments, touched on earlier, is the added cost to the government which lump-sum payment represent. The statute provides that benefits paid in a lump sum may be discounted at a rate of four percent, while the cost to the government of borrowing the funds to make these payments has historically been much greater than this discount. While currently, the rates at which the government has had to borrow money has averaged around six percent for short term and eight percent for 30-year notes, over the past ten years, the average rate for 30-year Treasury bonds has been around 10 percent. By contrast, the yearly increase in benefit payments due to the cost-of-living adjustment has averaged around four percent since 1981. Simple math illustrates that borrowing money at a higher rate than the discount rate provided in the statute in order to make lump-sum payments is not a prudent method by which to fulfill the government's obligations under the Act.

This point is readily illustrated. An employee who is 57 years old (the average age of a FECA long-term roll recipient) and whose compensation benefits are $18,000, has an average life expectancy of 23 years (the average for both males and females). The lump-sum payment for that individual, calculated according to the formula established by law (23 x $18,000 discounted at four percent) would be $278,120. The cost to the government of borrowing that amount would be $789,861 at eight percent interest. By contrast, over life the claimant would receive a total of $659,121 in periodic payments (23 x $18,000, using a four percent cost-of-living rate). The difference between the amount which have to paid out over 23 years in periodic payments and the amount which would have to be paid in interest to borrow a lump-sum payment is $130,740, which represents the additional cost to the government of using a lump-sum payment to fulfill its obligations under the FECA. As this example illustrates, it would cost more for the government to make the lump-sum payment, unless the claimant exceeded his/her life expectancy. See the Appendix to this document which will not be codified in the Code of Federal Regulations (CFR).

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Lump-Sum Payments of Schedule Awards Distinguished

Although the Secretary has determined that wage-loss benefit payments will not paid in a lump sum, payments of schedule awards may be made in this form where the schedule award is not a substitute for wage-loss. Section 8107 of the FECA provides compensation for permanent loss or loss of use of specified members and organs. The Act specifies the maximum awards for these benefits, expressed in numbers of weeks of benefits. The amount of an award where there is less than 100 percent loss is prorated, so that the award for 50 percent loss of use of the leg would be one-half the specified amount, or 144 weeks.

Schedule awards are paid for permanent loss or loss of use of a organ or body member. They are paid whether or not an individual becomes disabled—that is unable to earn the wages earned at the time of injury. An award is paid in addition to wage-loss benefits (but cannot be paid concurrently with such benefits) and is not therefore a wage substitute. A schedule award can be paid to individuals who have returned to work, or have retired and are receiving an Office of Personnel Management (OPM) annunity, and therefore have not wage loss. In such instances, the individual might not be dependent upon the schedule award for basic living expenses and so there might not be a need for periodic payments.

The consideration underlying the Secretary's determination not to grant lump-sum awards generally simply does not apply to schedule awards. Schedule awards are in part distinguishable from wage-loss benefits because they most often cover a short period of time. The average period of an award is 20.54 months, much less than the 20 or 30 years often involved in a lump sum in wage-loss claims. Given this shorter period, the amount of the award is much smaller. Keeping in mind that periodic payments of schedule awards are eligible for cost-of-living increases, and that the cost of short-term borrowing is lower, the difference in cost to the government between lump sums and periodic payments is minimized. When the administrative costs saved by not processing checks on a monthly basis are included, the difference in cost to the government is in most cases negligible.

In addition, the budget impact on individual agencies is not as severe as with the large lump-sum payments associated with wage-loss benefits. The cost of benefits paid by OWCP is charged back to agencies at the end of the year. Since many of the awards are for periods of a year or less, the amount each agency would have to absorb during that year would be the same. Even for the average 20 month schedule award, the amount the agency would have to absorb for a lump sum would not be so significantly different as would the hundreds of thousands of dollars which have to be absorbed for wage-loss lump sums.

Lump-sum payments will not be automatic, however, and no claimant has an absolute right to such a payment. While schedule awards may still be paid in a lump sum, the Secretary must still determine in every case whether such a payment would be in the beneficiary's best interest. OWCP practice and ECAB decisions over the years provide insight into what criteria are to used be in making this determination. In general, as provided in the proposed rules, it is not in the claimant's best interest to receive a lump sum where the schedule award payments are relied upon by the claimant as a substitute for lost wages. Thus, lump sums may be considered where, for example, an individual has returned to work (and there does not appear a likelihood that a disability will recur), or where the individual is eligible for OPM benefits which would be at a level which could provide for the basic living expenses. The lump sum would not then be relied on as a substitute for the wages lost because of the injury and the regular, periodic payment would not be necessary. As noted above, periodic payments, providing for cost-of-living increases safe from speculation or economic fluctuations and free from creditors, generally more nearly provide the measure of security which the Act was designed to afford. See *Garth M. Crosby*, 37 ECAB 228 (1985).

Cost Benefit Analysis

The rule should bring no additional costs to the government. The benefits prescribed by the FECA must be paid where appropriate. By making clear that lump-sum payment of wage loss benefits will not be considered, considerable administrative savings may be expected.

Classification—Executive Order 12291

The Department of Labor has concluded that the regulatory proposal does not constitute a "major rule" under Executive Order 12291, because it is unlikely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The rule applies only to Federal employees, their families and the Federal agencies which employ them. Accordingly, no regulatory analysis is required.

Paperwork Reduction Act

None.

Regulatory Flexibility Act

The Department believes that the rule will have "no significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Public Law 96–354, 91 stat. 1164 (5 U.S.C. 605(b)). The proposed regulations apply primarily to Federal agencies and their employees. No additional burdens are being imposed on small entities. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory impact analysis is required.

List of Subjects in 20 CFR Part 10

Claims, Government employees, Archives and records, Health records, Freedom of Information, Privacy, Penalties, Health profession, Workers' compensation, Employment, Administrative practices and procedures, Wages, Health facilities, Dental health, Medical devices, Health care, Lawyers, Legal services, Student, X-rays, Labor, Insurance, Kidney disease, Lung diseases, and Tort claims.

For the reasons set out in the preamble, it is proposed that part 10 of chapter I of title 20 of the Code of Federal Regulations be amended as follows:

PART 10—CLAIMS FOR COMPENSATION UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT, AS AMENDED

1. The authority citation for 20 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 301; Reorg. Plan No. 6 of 1950, 15 FR 3174, 64 stat. 1263; 5 U.S.C. 8145, 8149; Secretary's Order 1–89; Employment Standards Order 90–02.

2. Section 10.311 is revised to read as follows:

§ 10.311 Lump sum awards.

(a) In exercise of the discretion afforded by section 8135(a), and taking into consideration among other factors:

(1) The fact that FECA is intended as a wage-loss replacement program;

(2) The general advisability that such benefits be provided on a periodic basis; and

(3) The high cost associated with the long-term borrowing that is necessary to pay out large lump sums, the Director has determined that lump-sum payments will no longer be made to individuals whose injury in the performance of duty as a federal employee has resulted in a loss of wage-earning capacity.

Accordingly, where applications for lump-sum payments for wage-loss benefits under section 8105 and 8106 are received, the Director will not exercise further discretion in the matter.

(b) Notwithstanding the determination set forth in paragraph (a) of this section, a lump sum payment may be made to a claimant whose injury entitles him or her to a schedule award under section 8107. Even under these circumstances, a claimant possesses no absolute right to a lump-sum payment of benefits payable under section 8107, and such a payment may be granted only where the Director determines, acting within his or her discretion, that such a payment is in the claimant's best interest. Lump-sum payments of schedule awards generally will not be considered in the claimant's best interest where the compensation payments are relied upon by the claimant as a substitute for lost wages.

(c) On remarriage before age 55, a surviving spouse entitled to compensation under 5 U.S.C. 8133, shall be paid a lump sum equal to 24 times the monthly compensation payment (excluding compensation payable on account of another individual) to which the surviving spouse was entitled immediately before the remarriage.

Signed at Washington, DC, this 19th day of December 1991.

Lynn Martin

Secretary of Labor.

APPENDIX

[Not to be codified in the CFR]

Number	Lump sum value for $24,000 salary at ¾ rate	Cost of borrowing funds at 6% interest	Cumulative compensation	Annual comp w/4% CPIs
1	$18,000.00	$19,440.00	$18,000.00	$18,000.00
2	35,307.69	40,956.92	36,720.00	18,720.00
3	51,949.70	64,417.63	56,188.80	19,468.80
4	67,951.64	88,696.15	76,436.35	20,247.55
5	83,338.11	116,673.36	97,493.81	21,057.45
6	96,132.80	145,236.55	119,393.56	21,899.75
7	112,358.46	175,279.20	142,169.30	22,775.74
8	126,036.95	206,700.65	165,856.07	23,686.77
9	139,189.41	239,405.78	190,490.32	24,634.24
10	151,835.97	273,304.74	216,109.93	25,619.61
11	163,996.12	308,312.71	242,754.33	26,644.40
12	175,688.58	344,349.62	270,464.50	27,710.17
13	186,931.33	381,339.91	299,283.08	28,818.58
14	197,741.66	419,212.32	329,254.40	29,971.32
15	208,136.21	457,899.67	360,424.58	31,170.18
16	218,130.97	497,338.62	-392,841.56	32,416.98
17	227,741.32	537,469.52	426,555.22	33,713.66
18	236,982.04	578,236.18	461,617.43	35,062.21
19	245,867.35	619,585.71	498,082.13	36,464.70
20	254,410.91	661,468.26	536,005.41	37,923.29
21	262,625.87	703,837.34	575,445.63	39,440.22
22	270,524.88	746,648.67	616,463.46	41,017.83
23	278,120.06	789,861.02	659,121.99	42,658.54
24	285,423.15	833,435.60	703,486.87	44,364.86
25	292,445.34	877,336.01	749,626.35	46,139.47
26	299,197.44	921,528.11	797,611.40	47,985.05
27	305,689.85	965,979.91	847,515.86	49,904.46
28	311,932.54	1,010,661.44	899,416.49	51,900.63
29	317,935.14	1,055,544.66	953,393.15	53,976.66
30	323,706.86	1,100,603.34	1,009,528.88	56,135.73
31	329,256.60	1,145,812.97	1,067,910.03	58,381.16
32	334,592.88	1,191,150.67	1,128,626.44	60,716.40
33	339,723.93	1,236,595.09	1,191,771.49	63,145.06
34	344,657.62	1,282,126.35	1,257,442.35	65,670.86
35	349,401.56	1,327,725.93	1,325,740.05	68,297.69
36	353,963.04	1,373,376.59	1,396,769.65	71,029.60
37	358,349.06	1,419,062.34	1,470,840.44	73,870.79
38	362,566.42	1,464,768.33	1,547,466.05	76,825.62
39	366,621.56	1,510,480.81	1,627,364.69	79,898.64
40	370,520.73	1,556,187.05	1,710,459.28	83,094.59
41	374,269.93	1,601,875.30	1,796,877.65	86,418.37
42	377,874.93	1,647,534.71	1,886,752.76	89,875.11
43	381,341.28	1,693,155.29	1,980,222.87	93,470.11
44	384,674.31	1,738,727.88	2,077,431.79	97,208.91
45	387,879.14	1,784,244.06	2,178,529.06	101,097.27
46	390,960.71	1,829,696.14	2,283,670.22	105,141.16
47	393,923.76	1,875,077.12	2,393,017.03	109,346.81
48	396,772.85	1,920,380.59	2,506,737.71	113,720.68
49	399,512.36	1,965,600.79	2,625,007.22	118,269.51
50	402,148.50	2,010,732.48	2,748,007.51	123,000.29

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 83

RIN 3067-AB67

Federal Crime Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: proposed rule; correction and extension of comment period.

SUMMARY: This correction to a proposed rule published on November 15, 1991, relates to the Federal Crime Insurance Program (FCIP) rate tables which apply to commercial properties located in eligible states that are set forth in § 83.25(e).

DATES: The comment period for the proposed rule is extended. Comments must be received on or before February 24, 1992.

ADDRESSES: Persons wishing to comment should submit comments in duplicate to the Rule Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Washington, DC 20472. Telephone Number: (202) 646-4107.

FOR FURTHER INFORMATION CONTACT: Kimber A. Wald, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472. Telephone Number (202) 646-3440.

SUPPLEMEMENTARY INFORMATION: On November 15, 1991, the Federal Emergency Management Agency (FEMA) published a proposed rule (56 FR 58019-58020) with the intent of revising the Federal Crime Insurance Program (FCIP) rate tables which apply to commercial properties located in eligible states. However, the amendatory language was incorrect and the revised tables were not shown. Accordingly, in FR Doc. 91-28128, appearing on pages 58019-58020 in the issue of November 15, 1991, the following corrections are made:

1. On page 58019 in the third column, the SUMMARY: section should read "This proposed rule revises the Federal Crime Insurance Program (FCIP) rates which apply to commercial properties located in eligible states. This proposed rule is necessary to offset heavy losses under commercial coverage and the higher-than-average administrative expenses associated with operating a single-line residual market program.",

2. On page 58020 in the first column, in the first paragraph the word "proposed" should appear after the word "These" and before the word "amendments".

3. On page 58020 in the last paragraph of the first column, the word "final" should be changed to the word "proposed".

4. On page 58020 in the second column, amendatory instructions no. 2 and the regulatory text following it should be corrected to read as follows:

2. Section 83.25 is proposed to be amended by revising paragraph (e) to read as follows:

§ 83.25 Commercial crime insurance rates.

* * * * *

(e) The following tables shall be used to determine rates for commercial risks:

Federal Crime Insurance Program, Commercial Crime Insurance Rates—1991

[Annual Premiums—Class 1]

Amount of insurance	Gross receipts: Less than $100,000, option 1	Less than $100,000, option 2	$100,000 to $199,999, option 1	$100,000 to $199,999, option 2	$200,000 to $299,999, option 1	$200,000 to $299,999, option 2	$300,000 to $499,999, option 1	$300,000 to $499,999, option 2	$500,000 to $999,999, option 1	$500,000 to $999,999, option 2	$1,000,000 or greater, option 1	$1,000,000 or greater, option 2
1,000	90	137	135	206	135	206	180	274	225	343	360	548
2,000	165	245	247	368	247	368	329	490	412	613	659	981
3,000	239	353	359	530	359	530	479	707	599	884	958	1414
4,000	309	452	463	678	463	678	617	904	772	1130	1235	1808
5,000	351	511	527	767	527	767	702	1022	878	1278	1404	2044
6,000	383	562	575	843	575	843	767	1123	959	1404	1534	2247
7,000	403	596	605	894	605	894	806	1192	1008	1490	1613	2384
8,000	421	633	632	949	632	949	842	1266	1053	1582	1685	2532
9,000	428	644	643	966	643	966	857	1288	1071	1610	1714	2576
10,000	441	669	661	1003	661	1003	882	1337	1102	1671	1764	2674
11,000	474	729	711	1093	711	1093	949	1458	1186	1822	1897	2915
12,000	500	778	749	1167	747	1167	999	1556	1249	1945	1998	3113
13,000	511	801	767	1202	767	1202	1022	1603	1278	2004	2045	3206
14,000	518	814	775	1221	776	1221	1035	1628	1294	2034	2070	3255
15,000	525	826	787	1239	787	1239	1049	1652	1312	2065	2099	3304

Option 1: Burglary only.
Option 2: Roobery only.
Option 3: A combination of coverages under options 1 and 2 in uniform or varying amounts. The premium for option 3 is the sum of the rates for amounts of coverage selected under options 1 and 2.
Discounts on these rates are afforded for businesses with alarm systems/safes. A discount of 10% is given for policies with option 3.

Federal Crime Insurance Program, Commercial Crime Insurance Rates—1991

[Annual Premiums—Class 2]

Amount of insurance	Gross receipts: Less than $100,000, option 1	Less than $100,000, option 2	$100,000 to $199,999, option 1	$100,000 to $199,999, option 2	$200,000 to $299,999, option 1	$200,000 to $299,999, option 2	$300,000 to $499,999, option 1	$300,000 to $499,999, option 2	$500,000 to $999,999, option 1	$500,000 to $999,999, option 2	$1,000,000 or greater, option 1	$1,000,000 or greater, option 2
1,000	108	164	162	246	152	247	216	329	270	411	432	658
2,000	198	294	296	441	296	441	395	589	494	736	791	1177
3,000	287	424	431	636	431	636	575	848	718	1060	1149	1697

Federal Crime Insurance Program, Commercial Crime Insurance Rates—1991—Continued

[Annual Premiums—Class 2]

Amount of insurance	Gross receipts: Less than $100,000, option 1	Less than $100,000, option 2	$100,000 to $199,999, option 1	$100,000 to $199,999, option 2	$200,000 to $299,999, option 1	$200,000 to $299,999, option 2	$300,000 to $499,999, option 1	$300,000 to $499,999, option 2	$500,000 to $999,999, option 1	$500,000 to $999,999, option 2	$1,000,000 or greater, option 1	$1,000,000 or greater, option 2
4,000	370	543	556	814	556	814	741	1085	926	1356	1482	2170
5,000	421	613	632	920	632	920	842	1226	1053	1533	1685	2453
6,000	460	674	690	1011	690	1011	920	1348	1150	1685	1840	2696
7,000	484	715	726	1073	726	1073	968	1430	1210	1788	1935	2861
8,000	505	760	758	1139	758	1139	1011	1519	1264	1899	2022	3038
9,000	514	773	771	1159	771	1159	1026	1545	1285	1932	2056	3091
10,000	529	802	794	1203	794	1203	1058	1605	1323	2006	2117	3209
11,000	569	875	854	1312	854	1312	1138	1749	1423	2187	2277	3498
12,000	599	934	899	1401	899	1401	1199	1868	1499	2334	2398	3735
13,000	613	962	920	1443	920	1443	1227	1923	1534	2404	2454	3847
14,000	612	977	932	1465	932	1465	1242	1953	1553	2441	2464	3906
15,000	630	991	944	1487	944	1487	1258	1983	1574	2478	2519	3965

Option 1: Burglary only.
Option 2: Robbery only.
Option 3: A combination of coverages under options 1 and 2 in uniform or vrying amounts. The premium for option 3 is the sum of the rates for amounts of coverage selected under options 1 and 2.
Discounts on these rates are afforded for businesses with alarm systems/safes. A discount of 10% is given for policies with option 3.

Federal Crime Insurance Program, Commercial Crime Insurance Rates—1991

[Annual Premiums—Class 3]

Amount of insurance	Gross receipts: Less than $100,000, option 1	Less than $100,000, option 2	$100,000 to $199,999, option 1	$100,000 to $199,999, option 2	$200,000 to $299,999, option 1	$200,000 to $299,999, option 2	$300,000 to $499,999, option 1	$300,000 to $499,999, option 2	$500,000 to $999,999, option 1	$500,000 to $999,999, option 2	$1,000,000 or greater, option 1	$1,000,000 or greater, option 2
1,000	121	171	182	257	182	257	243	343	304	428	486	685
2,000	222	307	334	460	334	460	445	613	556	766	889	1226
3,000	323	442	485	663	485	663	646	884	808	1105	1293	1767
4,000	417	565	625	848	625	848	833	1130	1042	1413	1667	2261
5,000	474	639	711	956	711	958	948	1276	1185	1597	1895	2555
6,000	518	702	776	1053	776	1053	1035	1404	1294	1755	2070	2809
7,000	544	745	816	1117	816	1117	1089	1490	1361	1862	2177	2980
8,000	569	791	853	1187	853	1187	1137	1582	1422	1978	2274	3165
9,000	578	805	868	1207	866	1207	1157	1620	1446	2012	2313	3220
10,000	595	838	893	1254	893	1254	1191	1671	1488	2089	2381	3343
11,000	640	911	960	1367	960	1367	1281	1822	1601	2278	2561	3644
12,000	674	973	1011	1459	1011	1459	1349	1945	1686	2432	2697	3891
13,000	690	1002	1035	1503	1035	1503	1380	2004	1725	2505	2760	4007
14,000	699	1017	1048	1526	1048	1526	1397	2034	1747	2543	2794	4059
15,000	708	1033	1063	1549	1063	1549	1417	2066	1771	2582	2833	4131

Option 1: Burglary only.
Option 2:Robbery only.
Option 3: A combination of coverages under options 1 and 2 in uniform or varying amounts. The premium for option 3 is the sum of the rates for amounts of coverage selected under options 1 and 2.
Discounts on these rates are afforded for businesses wih alarm systems/safes. A discount of 10% is given for policies with option 3.

Federal Crime Insurance Program, Commercial Crime Insurance Rates—1991

[Annual Premiums—Class 4]

Amount of insurance	Gross receipts: Less than $100,000, option 1	Less than $100,000, option 2	$100,000 to $199,999, option 1	$100,000 to $199,999, option 2	$200,000 to $299,999, option 1	$200,000 to $299,999, option 2	$300,000 to $499,999, option 1	$300,000 to $499,999, option 2	$500,000 to $999,999, option 1	$500,000 to $999,999, option 2	$1,000,000 or greater, option 1	$1,000,000 or greater, option 2
1,000	131	178	196	267	196	267	261	356	326	445	522	712
2,000	239	319	358	478	358	478	478	638	597	797	955	1275
3,000	347	459	521	689	521	689	694	918	868	1149	1389	1838
4,000	448	588	671	882	671	882	895	1175	1119	1469	1790	2351
5,000	509	664	763	996	763	996	1018	1329	1272	1661	2036	2657
6,000	558	730	834	1095	834	1095	1112	1460	1390	1826	2224	2921
7,000	585	775	877	1162	877	1162	1169	1549	1462	1937	2339	3099
8,000	611	823	916	1234	916	1234	1221	1646	1527	2057	2443	3291
9,000	621	837	932	1256	932	1256	1242	1674	1553	2093	2485	3348

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Federal Crime Insurance Program, Commercial Crime Insurance Rates—1991—Continued

[Annual Premiums—Class 4]

Amount of insurance	Gross receipts: Less than $100,000, option		$100,000 to $199,999, option		$200,000 to $299,999, option		$300,000 to $499,999, option		$500,000 to $999,999, option		$1,000,000 or greater, option	
	1	2	1	2	1	2	1	2	1	2	1	2
10,000	639	869	959	1304	959	1304	1279	1738	1599	2173	2558	3477
11,000	688	947	1032	1421	1032	1421	1375	1895	1719	2369	2751	3790
12,000	724	1012	1086	1517	1086	1517	1449	2023	1811	2529	2897	4046
13,000	741	1042	1112	1563	1112	1563	1482	2084	1853	2605	2965	4168
14,000	750	1056	1126	1587	1126	1587	1501	2116	1876	2645	3002	4232
15,000	761	1074	1141	1611	1141	1611	1522	2148	1902	2685	3043	4296

Option 1: Burglary only.
Option 2: Robbery only.
Option 3: A combination of coverages under options 1 and 2 in uniform or varying amounts. The premium for option 3 is the sum of the rates for amounts of coverage selected under options 1 and 2.
Discounts on these rates are afforded for businesses with alarm systems/safes. A discount of 10% is given for policies with option 3.

Federal Crime Insurance Program, Commercial Crime Insurance Rates—1991

[Annual Premiums—Class 5]

Amount of insurance	Gross receipts: Less than $100,000, option		$100,000 to $199,999, option		$200,000 to $299,999, option		$300,000 to $499,999, option		$500,000 to $999,999, option		$1,000,000 or greater, option	
	1	2	1	2	1	2	1	2	1	2	1	2
1,000	135	185	203	277	203	277	270	370	338	462	540	740
2,000	247	331	371	497	371	497	494	662	618	828	988	1324
3,000	359	477	539	716	539	716	718	954	898	1193	1436	1909
4,000	463	610	695	916	695	916	926	1221	1158	1526	1852	2441
5,000	527	690	790	1035	790	1035	1053	1380	1316	1725	2106	2759
6,000	575	758	863	1137	863	1137	1150	1517	1438	1896	2300	3033
7,000	605	805	907	1207	907	1207	1210	1609	1512	2011	2419	3218
8,000	632	854	948	1282	948	1282	1264	1709	1580	2136	2527	3418
9,000	643	969	964	1304	964	1304	1285	1739	1607	2173	2570	3477
0,000	662	903	992	1354	992	1354	1323	1805	1654	2256	2646	3610
11,000	711	984	1067	1476	1067	1476	1423	1968	1779	2460	2848	3936
12,000	749	1051	1124	1576	1124	1576	1499	2101	1873	2626	2997	4202
13,000	767	1082	1150	1623	1150	1623	1534	2164	1917	2705	3067	4328
14,000	776	1099	1164	1648	1164	1648	1553	2197	1941	2747	3105	4394
15,000	787	1115	1181	1673	1181	1673	1574	2230	1968	2788	3148	4461

Option 1: Burglary only.
Option 2: Robbery only.
Option 3: A combination of coverages under options 1 and 2 in uniform or varying amounts. The premium for option 3 is the sum of the rates for amounts of coverage selected under options 1 and 2.
Discounts on these rates are afforded for businesses with alarm systems/safes. A discount of 10% is given for policies with option 3.

Federal Crime Insurance Program, Commercial Crime Insurance Rates—1991

[Annual Premiums—Class 6]

Amount of insurance	Gross receipts: Less than $100,000, option		$100,000 to $199,999, option		$200,000 to $299,999, option		$300,000 to $499,999, option		$500,000 to $999,999, option		$1,000,000 or greater, option	
	1	2	1	2	1	2	1	2	1	2	1	2
1,000	177	190	266	285	266	285	354	379	443	474	709	759
2,000	324	340	486	509	486	509	649	679	811	849	1297	1359
3,000	471	490	707	734	707	734	943	979	1178	1224	1886	1958
4,000	608	626	912	939	912	939	1216	1252	1520	1565	2431	2505
5,000	691	708	1037	1062	1037	1062	1382	1415	1728	1769	2764	2831
6,000	755	778	1132	1167	1132	1167	1510	1556	1887	1945	3020	3112
7,000	794	825	1191	1238	1191	1238	1588	1651	1985	2063	3176	3302
8,000	829	877	1244	1315	1244	1315	1659	1753	2073	2192	3317	3506
9,000	844	892	1265	1338	1265	1338	1687	1784	2109	2230	3374	3567
10,000	868	826	1302	1389	1302	1389	1737	1852	2171	2315	3473	3704
11,000	934	1009	1401	1514	1401	1514	1868	2019	2335	2524	3736	4038
12,000	984	1078	1475	1617	1475	1617	1967	2156	2459	2694	3934	4311
13,000	1007	1110	1510	1665	1510	1665	2013	2220	2516	2775	4026	4440
14,000	1019	1127	1528	1691	1528	1691	2038	2254	2547	2818	4076	4508

Federal Crime Insurance Program, Commercial Crime Insurance Rates—1991—Continued

[Annual Premiums—Class 6]

Amount of insurance	Gross receipts: Less than $100,000, option		$100,000 to $199,999, option		$200,000 to $299,999, option		$300,000 to $499,999, option		$500,000 to $999,999, option		$1,000,000 or greater, option	
	1	2	1	2	1	2	1	2	1	2	1	2
15,000	1033	1144	1550	1716	1550	1716	2066	2288	2583	2860	4133	4577

Option 1: Burglary only.
Option 2: Robbery only.
Option 3: A combination of coverages under options 1 and 2 in uniform or varying amounts. The premium for option 3 is the sum of the rates for amounts of coverage selected under options 1 and 2.
Discounts on these rates are afforded for businesses with alarm systems/safes. A discount of 10% is given for policies with option 3.

* * * * *

Dated: December 12, 1991.

C. M. "Bud" Schauerte,

Federal Insurance Administrator.

[FR Doc. 91-30678 Filed 12-24-91; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL MARITIME COMMISSION

46 CFR Part 552

[Docket No. 91-51]

Financial Reports of Common Carriers by Water in the Domestic Offshore Trades

AGENCY: Federal Maritime Commission.

ACTION: Advance Notice of Proposed Rulemaking; extension of time for comments.

SUMMARY: On November 8, 1991, the Federal Maritime Commission published (56 FR 57298) an Advance Notice of Proposed Rulemaking soliciting comments and information from the public on the issues which should be addressed in a proposed rule concerning substantive guidelines for determining what constitutes a just and reasonable rate of return or profit for common carriers by water in the FMC-regulated portion of the domestic offshore trades. Time for filing comments was set at January 7, 1992. The Puerto Rico Maritime Shipping Authority has requested an extension of time for filing comments to February 21, 1992. The Commission determined to grant the request.

DATE: Comments (original and 15 copies) due on or before February 21, 1992.

ADDRESSES: Comments are to be submitted to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Austin L. Schmitt, Director, Bureau of Trade Monitoring and Analysis, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001, (202) 523-5787.

By the Commission.[1]

Joseph C. Polking,

Secretary.

[FR Doc. 91-30803 Filed 12-24-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-651; RM-7544]

Radio Broadcasting Services; Bald Knob and Clarendon, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of.

SUMMARY: This document denies a petition filed by Capps Rado Company, licensee of Station KKSY(FM), Channel 296A, Bald Knob, Arkansas, seeking the substitution of Channel 296C3 for Channel 296A and modification of its license accordingly, for failure to demonstrate that its proposal would provide an unobstructed 70 dBu signal from its specified transmitter location over the entire principal community of license, as required by § 73.315 of the Commission's Rules. Petitioner also requested the substitution of Channel 281A for Channel 296A at Clarendon, Arkansas, for which a permit has been issued to B and H Broadcasting Company for Station KXRC(FM), to accommodate the Bald Knob proposal. See 56 FR 2486, January 23, 1991. With this action, this proceeding is terminated.

DATES: This proceeding is terminated February 3, 1992.

[1] Chairman Koch and Commissioner Heu would deny the request.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-651, adopted December 11, 1991, and released December 19, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-30729 Filed 12-24-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-373; RM-7287]

Radio Broadcasting Services; Cusseta, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of.

SUMMARY: This document denies the request of Gary P. Albarez proposing the allotment of Channel 267A to Cusseta, Georgia, as the community's first local FM service. Albarez's petition is denied because there is no transmitter site available for Channel 267A at Cusseta. With this action, this proceeding is terminated.

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DATES: This proceeding is terminated February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–373, adopted December 11, 1991, and released December 19, 1991. The full text of this Commission decision is available for inspection and copying during normal businss hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–30730 Filed 12–24–91; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 56, No. 248
Thursday, December 26, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Big Valley Federal Sustained Yield Unit; Public Advisory Hearing

The Modoc National Forest will sponsor two public advisory hearings at 2 PM and again at 7 PM on Tuesday, January 21, 1992 at the Adin Community Hall in Adin, California. The purpose of the public advisory hearings are to consider the advantages and/or disadvantages of the Big Valley Federal Sustained Yield Unit in the light of a reduction of more than 20 percent in the potential yield (Allowable Sale Quantity).

The public is invited to attend the hearing to obtain further information and/or to participate by giving advisory testimony. Written comments will be accepted from the date of hearing through March 6, 1992.

Dated: December 17, 1991.

Douglas G. Smith,

Forest Supervisor.

[FR Doc. 91–30738 Filed 12–24–91, 8:45 am]

BILLING CODE 3410–11–M

APPALACHIAN REGIONAL COMMISSION

Agency Form Under Review by the Office of Management and Budget

The Appalachian Regional Commission (ARC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act, section 3504(h) (44 U.S.C. chapter 35).

Agency: Office of Inspector General, Appalachian Regional Commission.

Title: President's Council on Integrity and Efficiency (PCIE) Survey on How to Improve the Single Audit Process.

Form Number: ARC–OIG–1.

Type of Request: Initial collection of information.

Burden: 425 respondents; 850 reporting hours.

Average Time Per Response: 2 hours.

Needs and Uses: The survey collects information on the Single Audit process and potential areas for improving the efficiency and effectiveness of audits of Federal financial assistance provided to State and local governments.

Affected Public: State and local governmental units, State auditors, and independent public accountants.

Frequency: One time.

Respondents Obligation: Voluntary.

Copies of the above information collection proposal can be obtained by calling or writing Terry Livingston, (816) 891–7981, Office of Inspector General, Department of Education, 10220 N. Executive Hills Boulevard, 2nd floor, Kansas City, MO 64153.

Written comments and recommendations for the proposed information collection should be sent to Office of Information and Regulatory Affairs of OMB, attention: Desk Officer for Appalachian Regional Commission, Office of Management and Budget, Washington, DC 20503.

Dated: December 17, 1991.

Hubert N. Sparks,

Certifying Officer, Office of Inspector General.

[FR Doc. 91–30741 Filed 12–24–91; 8:45 am]

BILLING CODE 6130–01–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: South Pacific Tuna Act of 1988.

Form Number: No form numbers; OMB–0648–0218.

Type of Request: Request for extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

Burden: 40 respondents; 290 reporting hours; average hours per response—.73 hours.

Needs and Uses: The U.S. government, in order to meet its obligations under a Treaty on Fisheries Between the Governments of Certain Pacific Island States and the United States of America, is required to collect fish catch and vessel logbook information from masters of participating U.S. tuna purse seine vessels.

Affected Public: Businesses or other for-profit, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ronald Minsk, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 19, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–30848 Filed 12–24–91; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Licensing of Private Remote Sensing Space Systems.

Form Number: No form; OMB 0648–0174.

Type of Request: Request for extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

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Burden: 1 respondents; 16 reporting. hours; average hours per response—16 hours.

Needs and Uses: Persons under U.S. jurisdiction who wish to operate a private remote-sensing space systems must obtain a license. The information provided in the application is used to determine if U.S. security and international obligations are protected, and that the applicant will provide access to unenhanced data on a nondiscriminatory basis.

Affected Public: Businesses or other for-profit, Federal agencies,or employees.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ronald Minsk, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 19, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–30847 Filed 12–24–91; 8:45 am]

BILLING CODE 3510–CW–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Administrative Record Information System (ARIS)—State and Selected Local Data.

Form Number(s): ARIS–1.

Agency Approval Number: None.

Type of Request: New Collection.

Burden: 443.

Number of Respondents: 443.

Avg Hours Per Response: 1 hour.

Needs and Uses: The Program and Policy Development Office maintains an Administrative Records Information System (ARIS) database which contains information on Federal administrative records systems. This data collection will expand the ARIS database to include the following state and local administrative records systems: drivers licenses, food stamps, automobile registration, birth records, death records, state tax records, unemployment insurance records, workers compensation records, medical assistance records, energy and other supplemental welfare programs, school enrollment records, property tax records, and property assessment records. The ARIS database will be used by Census Bureau personnel to research activities related to the Year 2000 census and other Census programs.

Affected Public: State or local governments.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 20, 1991.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 91–30856 Filed 12–24–91; 8:45 am]

BILLING CODE 3510–07–F

Bureau of the Census

[Docket No. 911209–1309]

Motor Freight Transportation and Warehousing Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In accordance with title 13, United States Code, sections 131, 182, 244, and 225, I have determined that 1991 operating revenue and expenses are needed for the for-hire trucking and public warehousing industries to provide a sound statistical basis for the formation of policy by various governmental agencies and that these data also apply to a variety of public and business needs. Effective with the 1991 survey, this program will provide data for additional categories of operating expenses. These include, for all firms, a breakout of employer contributions to legally required and other employee benefit plans; for trucking firms, data on the cost of drug and alcohol testing and rehabilitation programs; and for warehousing firms, data on taxes and licenses, and the cost of insurance. The data are not publicly available from nongovernment or other governmental sources.

ADDRESSES: Director, Bureau of the Census, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: Thomas E. Zabelsky on (301) 763–5528.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on subjects covered by the major censuses authorized by title 13, United States Code. This survey will provide continuing and timely national statistical data on motor freight transportation and warehousing services for the period between economic censuses. The next economic census will be conducted for 1992. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic censuses. The Census Bureau will select a probability sample of trucking and warehousing firms in the United States (with revenue size determining the probability of selection) to report in the 1991 Motor Freight Transportation and Warehousing Survey. The sample will provide, with measurable reliability, national level statistics on operating revenue and expenses for these industries. We will mail report forms to the firms covered by this survey and require their submission within 30 days after receipt.

This survey has been submitted to the Office of Management and Budget, in accordance with the Paperwork Reduction Act, Public law 96–511, as amended. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, DC 20233. Based upon the foregoing determination, I have directed that an annual survey be conducted for the purpose of collecting these date.

Dated: December 18, 1991.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 91–30839 Filed 12–24–91; 8:45 am]

BILLING CODE 3510–07–M

[Docket No. 911208–1308]

Service Annual Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In accordance with title 13, United States Code, sections 131, 182, 224, and 225, I have determined that 1991 service sector data on receipts and revenue are needed to provide a sound statistical basis for the formation of policy by various governmental agencies and that these data also apply to a variety of public and business needs. Selected services include personal, business, automotive, repair, amusement, health, and other professional and social service industries. This survey will yield 1991 and 1990 estimates of the dollar volume of receipts for taxable firms and revenue of firms and organizations exempt from Federal income taxes. Effective with the 1991 survey, this program also will provide data on major sources of receipts for computer and data processing services, management and consulting services, equipment rental and leasing, automotive rental and leasing, amusement parks, and offices and clinics of health practitioners. In addition, this survey will provide estimates of total expenses for tax exempt organizations in selected kinds of businesses. These data are not publicly available from nongovernment or other governmental sources.

ADDRESSES: Director, Bureau of the Census, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: Thomas E. Zabelsky on (301) 763–5528.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on subjects covered by the major censuses authorized by title 13, United States Code. This survey will provide continuing and timely national statistical data on selected service industries for the period between economic censuses. The next economic census will be conducted for 1992. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic censuses. The Census Bureau will select a probability sample of service firms and organizations in the United States (with receipts or revenue size determining the probability of selection) to report in the 1991 Service Annual Survey. The sample will provide, with measurable reliability, national level statistics on receipts and revenue for these industries. We will mail report forms to the firms covered by this survey and require their submission within 30 days after receipt.

This survey has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, DC 20233. Based on the foregoing determination, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: December 18, 1991.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 91–30838 Filed 12–24–91; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

[A–570–814]

Preliminary Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 26, 1991.

FOR FURTHER INFORMATION CONTACT: Steve Alley or Lori Way, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–0656, respectively.

PRELIMINARY DETERMINATION: We preliminarily determine that imports of certain carbon steel butt-weld pipe fittings ("pipe fittings") from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make our final determination no later than March 2, 1992.

Case History

Since the publication of the notice of initiation on June 17, 1991 (56 FR 27730), the following events have occurred. On July 8, 1991, the International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports of pipe fittings from the PRC.

On July 26, 1991, we sent a letter to the Embassy of the PRC, requesting that it address the question of whether the PRC is a nonmarket economy country (NME) relative to the industry under investigation. No response to this letter has been received as of this date. As discussed below under "Foreign Market Value," we are continuing the treatment of the PRC as an NME within the meaning of section 771(18) of the Act, as we have done in all past cases involving the PRC.

On July 12, 1991, the Department issued a survey to interested parties requesting information on procedures and exporters of pipe fittings in the PRC, for purposes of identifying potential respondents to our antidumping duty questionnaire. We received responses to this survey on July 24 and August 7, 1991. Based on this information, we issued our antidumping questionnaire to the following exporters, which account for more than 60 percent of exports of the pipe fittings from the PRC to the United States during the period of investigation (POI):

(1) China North Industries Corporation (China North);

(2) Jilin Provincial Machinery & Equipment Import & Export Corporation (Jilin Michinery);

(3) Liaoning Machinery & Equipment Import & Export Corporation (Liaoning Machinery);

(4) Liaoning Metals (Liaoning);

(5) Liaoning Metals & Minerals Import & Export Corporation (Liaoning Metals) (based on information available at this time, we understand this entity to be distinct from the previously named entity known as "Liaoning Metals");

(6) Shandong Metals & Minerals Import & Export Corporation (Shandong);

(7) Shenyang Billiongold Pipe Fittings Co., Ltd. (Billiongold);

(8) Shenyang Machinery & Equipment Import & Export Corporation (Shenyang Machinery); and

(9) Shenzhen Machine and Industrial Co. (Shenzhen Machine).

We received questionnaire responses and supplemental information from seven of the respondents in September, October, and November 1991. Two respondents, Liaoning and Shenzhen Machine, did not respond to our antidumping questionnaire or any other request for information.

On September 13, 1991, the petitioner, the U.S. Fittings Group, requested that the preliminary determination be postponed until no later than December 18, 1991, pursuant to section 733(c)(1) of the Act. We granted this request on September 24, 1991 (56 FR 48517, September 25, 1991).

On November 1, 1991, petitioner alleged that critical circumstances exist with regard to imports of pipe fittings from the PRC. We requested information from respondents regarding petitioner's allegation of critical circumstances on November 8, 1991.

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On December 6, 1991, Weldbend Corporation, a domestic producer of the subject merchandise, indicated its opposition to this proceeding and challenged the standing of the petitioner in this investigation. Petitioner submitted its rebuttal to the standing challenge on December 13, 1991. Since this issue was raised for the first time less than two weeks before the due date of the preliminary determination, we were unable to consider the standing issue for this determination, but will address it in the final determination.

Separate Rates

Each party which has responded to the antidumping questionnaire has argued that it is entitled to a separate dumping margin. In order to determine whether company-specific dumping margins should be calculated in these investigations, we asked respondents to provide information on company ownership and relationships, sources of inputs, manufacturing processes, distribution channels, involvement of trading companies, controls on external trade, profit retention, and other facets of their production and sale of pipe fittings. As stated in the Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China ("Sparklers") (56 FR 20588, May 6, 1991), we will issue separate rates if respondents can demonstrate both a *de jure* and *de facto* absence of central control. Evidence supporting, though not requiring, a finding of *de jure* absence of central control would include: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments devolving central control of export trading companies. Evidence supporting a finding of *de facto* absence of central control with respect to exports would include: (1) A finding that each exporter sets its own export prices independently of the government and other exporters; and (2) a finding that each exporter can keep the proceeds from its sales.

The seven participating respondents have submitted information for the record in this investigation attempting to show that they meet the Sparklers criteria described above. Based on our analysis of this information, each of these seven respondents meets the Sparklers criteria. Although the respondents appear to be wholly or partly owned by local or state authorities, or by collectives, all seven of these respondents state that their businesses operate independently of the central government and other trading companies. Consequently, we are issuing company-specific dumping margins for these seven participating respondents for purposes of the preliminary determination.

Since no response to our questionnaire was received from Liaoning or Shenzhen Machine, and since we have no evidence of their independence from one another or the government, we presume that they are related and subject to a single rate. This issue will be re-examined in the final determination and in any future administrative reviews if an antidumping duty order is issued. Furthermore, because Liaoning and Shenzhen Machine have not demonstrated their independence, the dumping margin assigned to them will also serve as the PRC-wide rate for all companies not receiving a separate rate in this determination.

Scope of Investigation

The products covered by this investigation are carbon steel butt-weld pipe fittings, having an inside diameter of less than 360 millimeters (14 inches), imported in either finished or unfinished form. these formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (*e.g.*, threaded, grooved, or bolted fittings). Carbon steel butt-weld pipe fittings are currently classified under subheading 7307.93.30 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, or written description of the scope of this proceeding is dispositive.

We received from the petitioner (letter dated June 18, 1991) and Silbo Industries, Inc., an interested party, (letter dated June 20, 1991) comments regarding the scope of the investigation as defined in the Department's notice of initiation. We contacted the ITC and the Customs Service National Import Specialist responsible for the subject merchandise. Based on these communications, we have deleted the following sentence from the scope as published in the notice of initiation: "Unfinished butt-weld pipe fittings that are not machined, not tooled, and not otherwise processed after forging are not included in the scope of this investigation." For a detailed discussion of this issue, see the Department's memorandum of June 27, 1991 (Memorandum from Richard W. Moreland to Francis J. Sailer).

Period of Investigation

The POI is December 1, 1990 through May 31, 1991.

Fair Value Comparisons

To determine whether sales of pipe fittings from the PRC to the United States were made at less than fair value, we compared the United States price to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice, except for Liaoning, Shenzhen Machine, and Shenyang Machinery.

Liaoning and Shenzhan Machine did not respond to our antidumping questionnaire, and Shenyan Machinery did not report a significant percentage of its U.S. sales during the POI. Therefore, we have based the margins for these companies on the best information available (BIA) in accordance with section 776(c) of the Act. In deciding what to use as BIA, both the statute and the regulation, 19 CFR 353.37(b), provide that the Department may take into account whether a party refused to provide requested information. When a company refuses to provide the information in a timely manner, or otherwise significantly impedes the Department's investigation, the Department normally assigns to that company the higher of either: (1) The highest margin alleged in the petition; or (2) the highest calculated margin for any respondent that supplied an adequate response. See, e.g., Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany (54 FR 18992 19033, May 3, 1989).

By not responding to our questionnaire, Liaoning and Shenzhen Machine have significantly impeded this investigation. We have assigned to Liaoning and Shenzhen Machinery a margin of 182.90 percent, which is the highest margin alleged in the petition. Although Shenyang Machinery attempted to comply with all our requests for information, it failed to report a significant percentage of its U.S. sales. Shenyang Machinery brought this omission to the Department's attention and is attempting to correct its data. We have provided Shenyang Machinery until the date of this preliminary determination to correct its deficiency, but we may still have to resort to BIA in our final determination. Consequently, we have assigned Shenyang Machinery a margin of 149.65 percent, which is the highest margin calculated for a respondent in this determination. The selection of the most adverse BIA rate (*i.e.*, the highest petition rate) was not warranted under these circumstances.

Several respondents did not report factors of production data for some models sold to the United States during the POI. As BIA, we assigned to those sales the highest non-aberrational margin calculated for the company in question.

Billiongold provided estimated factor of production information for some U.S. sales when it purchased finished pipe fittings from another PRC manufacturer, and for merchandise sold but not yet produced and shipped. Rather than rely on estimates, we based the margin for Billiongold on Billiongold's U.S. sales for which we had actual, as opposed to estimated, factors of production.

United States Price

For all respondents except Liaoning, Shenzhen Machine, and Shenyang Machinery, we based United States price on purchase price where sales were made directly to unrelated parties prior to importation into the United States, in accordance with section 772(b) of the Act. We used purchase price as defined in section 772(b) of the Act, both because the pipe fittings were sold to unrelated purchasers in the United States prior to importation into the United States, and because exporter's sales price (ESP) methodology was not indicated by other circumstances.

For the six companies which responded substantially to our questionnaire, we calculated purchase price based on packed, CIF prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, ocean freight, and marine insurance.

We based the deduction for foreign inland freight on freight rates in Pakistan, as the respondents reported the use of PRC transportation services in incurring this charge. Respondents were unable to report the actual packed weight for individual pipe fitting models. Therefore, as the best available information, we used the gross weight of the steel inputs as an estimate of the packed weight of the pipe fittings.

The respondents reported the use of PRC-based providers for ocean freight and marine insurance. Since no surrogate country information was available for these expenses, we used the reported U.S. dollar charges for those expenses as the best available information, pursuant to section 773(c)(1) of the Act, for this preliminary determination.

For Billiongold, in addition to the deductions noted above, we made deductions, where appropriate, for discounts, containerization expenses, U.S. brokerage and handling, U.S. customs duties, U.S. unloading costs, and U.S. demurrage charges.

Shandong reported a commission paid to its unrelated U.S. customer. Our analysis of this adjustment, however, indicates that the "commission" appears instead to be a discount from the gross unit selling price to the U.S. customer. Therefore, in addition to the deductions noted above, for Shandong, we deducted the reported commission amount as a discount from U.S. price.

Foreign Market Value

Section 773(c)(1) of the Act provides that the Department shall determine FMV using a factors of production methodology if (1) the merchandise is exported from an NME country, and (2) the information does not permit the calculation of FMV using home market prices, third country prices, or constructed value under section 773(a).

Pursuant to section 771(18) of the Act and based on determinations in prior proceedings, the PRC is an NME. See e.g., Final Determination of Sales at Less than Fair Value: Natural Menthol From the PRC (46 FR 24614, May 1, 1981); Final Determination of Sales at Less than Fair Value: Chrome Plated Lug Nuts from the PRC (56 FR 46153, September 10, 1991) (Lug Nuts); and Final Determinations of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the PRC (56 FR 55271, October 25, 1991) (Fans).

In Lug Nuts, we stated that we will value FMV based entirely on NME data only if we find that all costs incurred by a producer of the subject merchandise are market-determined. We stated further that where some costs are market-driven, we will value those inputs based on the cost incurred by the NME producer. For inputs whose costs are not shown to be market-driven, we will rely on surrogate values.

As noted above, we continue to find that the PRC is an NME. No party has suggested that the PRC is no longer an NME. Therefore, the presumption remains that the inputs used by the pipe fittings producers which are sourced in the PRC are not purchased at market prices. A respondent asserting that it purchases inputs at market-oriented prices must provide significant documentary evidence to overcome this presumption.

The seven participating respondents have claimed that many of the inputs were purchased at market-driven prices and that, accordingly, we should use the actual PRC prices for valuing these inputs. Of these respondents, only Billiongold has submitted PRC price data which would permit such a valuation. However, Billiongold has not provided sufficient documentation to show that market forces were operating in its input purchases. Billiongold has merely asserted that its inputs are purchased at market-oriented prices. Such an assertion, without sufficient documentary support, is not enough to establish market behavior.

Therefore, for this preliminary determination, we have not accepted the respondents' assertions and we have used surrogate values in calculating FMV, as discussed below. At verification, we will examine further whether the evidence submitted supports Billiongold's assertion regarding the market orientation of its input prices.

In accordance with section 773(c)(4) of the Act, as amended by the Omnibus Trade and Competitiveness Act of 1988, we have calculated FMV based on the market valuation of the factors of production used in producing the subject merchandise, as reported by each respondent. These factors are valued in market economy countries that are at a level of economic development comparable to that of the PRC and that are significant producers of the subject merchandise.

Of the countries that are known producers of pipe fittings, we determined that Pakistan, Indonesia and India, are the most comparable to the PRC in terms of overall economic development, based on per capita gross national product (GNP), the national distribution of labor, and growth rate in per capita GNP. We attempted to obtain information for valuing factors of production from these three countries either as supplied by U.S. diplomatic posts in response to information requests for this investigation and other recent Department proceedings, or from publicly available statistical references at the Department. With respect to the latter sources, we adjusted the factor values to the POI using wholesale price indices published by the International Monetary Fund.

Since the most useable surrogate value data for this case came from Pakistan, we used Pakistani values where available. The next most useable data came from Indonesian sources and we used those surrogate values for inputs where no Pakistani value was available.

For those companies that reported the distance between steel suppliers and the pipe fittings factory, we calculated the

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cost of raw material input freight based on the weight of the steel pipe input and freight rates as valued in Pakistan. For companies that did not report the distance between suppliers and factories, as BIA, we used the highest average distance derived from the public versions of questionnaire responses submitted by respondents who provided the information.

For the six companies which substantially responded to our questionnaire, we calculated an FMV for each model of pipe fitting sold to the United States during the POI using the material factors reported. We added an amount for the material factors reported which we valued in Indonesia and Pakistan. We added an amount for labor and for variable electricity consumption, both of which we valued in Pakistan. To the resulting sum, we added an amount for factory overhead based on Indonesian experience.

For selling, general, and administrative expenses (SG&A), we added an amount based on the information received from Indonesian pipe fittings producers because this amount was greater than the statutory minimum of ten percent. Finally, we added an amount for profit based on the experience of Indonesian pipe fittings producers because the profit percentage was higher than the statutory eight percent minimum.

In Lug Nuts and Fans, no circumstance of sale adjustments were made because the only data available to calculate corresponding FMV adjustments was based, in whole or part, on PRC nonmarket economy expenses. No surrogate country data was available for these expenses, and we did not believe it was fair or that the statute directed us to make these deductions on one side of the margin calculation and not the other. We did not make circumstance of sale adjustments in this investigation for the reasons cited above.

To this constructed FMV, we added an amount for packing. We were unable to find sufficient useable surrogate value data for all of the packing material inputs reported. For purposes of the preliminary determination, we assigned a value to the reported packing materials based on public information submitted in the concurrent investigation of certain Carbon Steel Butt-Weld Pipe Fittings from Thailand.

As in past cases involving NMEs (*e.g.*, Fans), we have made no adjustment to FMV for U.S. selling expenses since we had no information on the specific amount of direct selling expenses included in the surrogate countries used as the basis for determining FMV.

We made currency conversions in accordance with 19 CFR 353.60(a).

Critical Circumstances

On November 1, 1991, petitioner alleged that "critical circumstances" exist with respect to imports of pipe fittings from the PRC. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(b) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

On November 8, 1991, we asked the respondents to supply monthly shipment volume data from January 1990 through October 1991. We received the information from Billiongold and Jilin Machinery on November 21, 1991. No data was received from the other respondents.

Pursuant to section 733(e)(1)(B) of the Act, we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends if applicable); and (3) the share of domestic consumption accounted for by imports. See, *e.g.*, Final Determination of Sales at Less Than Fair Value: Certain Internal-Combustion Industrial Forklift Trucks from Japan (53 FR 12552, April 15, 1988).

Normally, we compare the export volume for a period of not less than three months beginning with the month the petition was filed, with a previous period of the same length, in accordance with 19 CFR 353.16(g). Since the petition was filed on May 22, 1991, (*i.e.*, toward the end of the month), we compared shipments, for Jilin, during the three-month period following the filing of the petition, June through August 1991, to shipments during the three-month period prior to and including the month in which the petition was filed, March through May 1991. Since Billiongold provided shipment data through October 1991, we compared Billiongold's shipments from June through October 1991 to its shipments from January through May 1991.

Under 19 CFR 353.16(f)(2), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we will not consider the imports "massive". Our analysis indicates that shipments from Billiongold and Jilin Machinery have increased by considerably more than 15 percent.

Since these companies show evidence of massive imports over a relatively short period of time, we need to consider whether there is a history of dumping or whether there is reason to believe or suspect that importers of this product knew or should have known that it was being sold at less than fair value. We examined recent antidumping cases and found that there are currently no findings of dumping in the United States or elsewhere of the subject merchandise by PRC manufacturers. However, it is our standard practice to impute knowledge of dumping under section 733(e)(1)(A)(ii) of the Act when the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally, in purchase price sales we consider estimated margins of 25 percent or greater to be sufficient. See, *e.g.*, Fans. In this investigation, because all companies sell only on a purchase price basis, the 25 percent threshold applies.

We have found the preliminary margins for Billiongold and Jilin Machinery to be sufficiently high for the purposes of a critical circumstances determination under the criteria described above. Therefore, we find that the requirements of section 733(e)(1) are met for these companies and we preliminarily determine that critical circumstances exist with respect to imports of pipe fittings from the PRC that are exported by Billiongold and Jilin Machinery.

Of the remaining seven respondents in this investigation, five responded to our antidumping questionnaire, but did not submit shipment data as requested. The remaining two, Liaoning and Shenzhen Machinery, did not respond to the questionnaire. Thus, we must rely on BIA in making our critical circumstances determination for all of these respondents.

In accordance with section 776(c) of the Act, as BIA, we assume that the increase in imports has been "massive" since the filing of the petition. We impute knowledge of dumping because, for all of these companies, the preliminary determination margin is greater than 25 percent. Therefore, we find that critical circumstances also exist with respect to imports from these companies.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of pipe fittings from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 calendar days prior to the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted average margin percentage
China North Industries Corporation (China North)	149.65
Jilin Provincial Machinery & Equipment Import & Export Corp. (Jilin Machinery)	112.47
Liaoning Machinery & Equipment Import & Export Corporation (Liaoning Machinery)	115.16
Liaoning Metals & Minerals Import & Export Corporation (Liaoning Metals)	99.02
Shenyang Billiongold Pipe Fitting Co. Ltd. (Billiongold)	115.65
Shandong Metals & Minerals Import & Export Corporation (Shandong)	99.76
Shenyang Machinery & Equipment Import & Export Corporation (Shenyang Machinery)	149.65
Liaoning Metals (Liaoning), Shenzhen Machine and Industrial Co. (Shenzhen Machine), and All Others	132.90

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than February 3, 1992, and rebuttal briefs no later than February 10, 1992. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on February 12, 1992, at 9:30 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearings 48 hours before the scheduled time.

Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15.

Dated: December 18, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-30855 Filed 12-24-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-549-807]

Preliminary Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 26, 1991.

FOR FURTHER INFORMATION CONTACT: Michelle A. Frederick or Steve Alley, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0186 and 377-3773, respectively.

PRELIMINARY DETERMINATION: We preliminarily determine that certain carbon steel butt-weld pipe fittings from Thailand are being, or are likely to be, sold in the United States at less than fair value, as provided in section 773 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make our final determination no later than March 2, 1991.

Case History

Since the publication of our notice of initiation on June 17, 1991 (56 FR 27730), the following events have occurred.

On July 8, 1991, the International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, by reason of imports of certain carbon steel butt-weld pipe fittings from Thailand.

On July 31, 1991, the Department presented questionnaires to three Thai producers of the subject merchandise: TTU Industrial Corp., Ltd.; Awaji Sangyo (Thailand) Co., Ltd. (AST); and Thai Benkan Co. These three manufacturers account for all sales of carbon steel butt-weld pipe fittings from Thailand during the period of investigation (POI). TTU and AST have responded to the Department's requests for information; Thai Benkan has not.

On September 9, 1991, having already determined that TTU's home market was not viable, the Department determined that sales made by TTU to Australia during the POI provided the most appropriate basis for the calculation of TTU's foreign market value (FMV). Based on an allegation make by petitioner, on October 4, 1991, the Department initiated an investigation into whether TTU sold carbon steel butt-weld pipe fittings to Australia at less than the cost of production (COP). Accordingly, on October 7, 1991, the Department issued a cost questionnaire to TTU pursuant to section 773(b) of the Act. On November 25, 1991, TTU responded to the Department's requests for information regarding its production costs.

Upon review of the revised computer data output submitted by TTU on November 25, 1991, we found that the data was not in a form usable by the Department for the preliminary determination. Based on the lack of usable data, we were precluded from performing the COP test for TTU and making U.S. comparisons to third country sales. On December 17, 1991, we

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requested that TTU resubmit its November 25, 1991, computer submission of U.S. sales in a form usable to the Department. Upon receipt of TTU's revised sales data, we will analyze and verify TTU's response for use in the final determination. In addition, on December 10, 1991, TTU requested that the Department examine all third country sales when performing the cost test. We are currently reviewing TTU's request. In the meantime, we are using the September 13, 1991, U.S. and third country sales data for purposes of the preliminary determination.

On September 13, 1991, the petitioner, the U.S. Fittings Group, an *ad hoc* trade association, requested that the preliminary determination be postponed until not later than December 16, 1991, pursuant to section 733(c)(1) of the Act. We granted this request on September 18, 1991 (56 FR 48517, September 25, 1991).

Based on a separate allegation made by petitioner, on October 31, 1991, the Department initiated an investigation into whether AST sold the Subject merchandise in the home market at less than the COP. Accordingly, on November 18, 1991, the Department issued a cost questionnaire to AST pursuant to section 773(b) of the Act. AST submitted its response to the cost questionnaire on December 16, 1991, too late to be considered for purposes of the preliminary determination. We will analyze and verify AST's cost response for use in the Department's final determination.

On November 19, 1991, petitioner alleged that AST did not fully or accurately report its sales in the United States during the POI and argued that the inaccuracies require the use of best information available (BIA). Specifically, petitioner alleged that (1) AST's reported prices to a U.S. importer are inaccurate since they are higher than the prices charged by this U.S. importer to its customer, and (2) AST did not report all U.S. sales for the POI. Petitioner provided purchase orders of a U.S. importer and the importer's customer, and AST's packing lists for the shipments of the merchandise to support its claim.

AST argues that it has accurately reported its sales to the United States. It does not have knowledge of the resale price the U.S. importer charges its customer. AST also contends that it reported all sales to the United States. AST explains that it did not report the sales petitioner alleged were made during the POI since price and quantity were fixed prior to the POI by a "pilot order," which is a type of purchase order.

The Department has accepted AST's information for purposes of the preliminary determination and will examine these issues at verification.

On December 6, 1991, Weldbend Corporation, a domestic producer of the subject merchandise, indicated its opposition to this proceeding and challenged the standing of the petitioner in this investigation. Petitioner submitted its rebuttal to the standing challenge on December 13, 1991. Since this issue was raised for the first time less than two weeks before the due date of our preliminary determination, we were unable to consider the standing issue for this determination, but will address it in the final determination.

Scope of the Investigation

The products covered by this investigation are carbon steel butt-weld pipe fittings, having an inside diameter of less than 360 millimeters (14 inches), imported in either finished or unfinished form. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (*e.g.*, threaded, grooved, or bolted fittings). Carbon steel butt-weld pipe fittings are currently classified under subheading 7307.93.30 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

We received from the petitioner (letter dated June 18, 1991) and Silbo Industries, Inc., an interested party, (letter dated June 20, 1991) comments regarding the scope of the investigation as defined in the Department's notice of initiation. We contacted the ITC and the Customs Service National Import Specialist responsible for the subject merchandise. Based on these communications, we have deleted the following sentence from the scope as published in the notice of initiation: "Unfinished butt-weld pipe fittings that are not machined, not tooled, and not otherwise processed after forging are not included in the scope of this investigation." For a detailed discussion of this issue, see the Department's memorandum of June 27, 1991 (Memorandum from Richard W. Moreland to Francis J. Sailer).

Period of Investigation

The POI is December 1, 1990 through May 31, 1991.

Such or Similar Comparisons

We have determined that certain carbon steel butt-weld pipe fittings constitute one such or similar category of merchandise.

Fair Value Comparisons

For AST and TTU, to determine whether sales of certain carbon steel butt-weld pipe fittings from Thailand to the United States were made at less than fair value, we compared the United States price to the FMV, as specified in the United States Price" and "Foreign Market Value" sections of this notice.

For AST we compared merchandise sold in the United States to identical and non-identical merchandise sold in the home market. For TTU, we compared merchandise sold in the United States to identical merchandise sold in a third country (Australia). For a detailed discussion of this issue, see the Department's memorandum of September 9, 1991 (Memorandum from Richard W. Moreland to Francis J. Sailer).

Best Information Available

The Department issued a questionnaire to Thai Benkan, however, it did not respond to the Department's requests for information. Accordingly, we used BIA to assign a margin to that company, pursuant to 19 CFR 353.37(b). The Department's normal practice for a non-cooperative respondent is to assign the higher of either the margin alleged in the petition or the highest margin calculated for another responding company. See, e.g., Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Republic of Germany, 54 FR 18992 (May 3, 1989). We have assigned Thai Benkan the petition margin of 52.60 since it is higher than the calculated margins.

United States Price

A. TTU

For TTU, we based U.S. price on purchase price, in accordance with section 772(b) of the Act, because all sales were made directly to unrelated parties prior to importation into the United States and because exporter's sales price methodology was not indicated by other circumstances. We calculated purchase price based on CIF or C&F prices, duty unpaid. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, ocean freight, and marine insurance. In accordance with section 772(d)(1)(B) of the Act, we increased U.S. price by the amount of import duties imposed by Thailand on inputs for the subject merchandise which have not been collected by reasons of the exportation of the subject merchandise to the United States.

TTU reported amounts for rebated taxes. We did not increase U.S. price by the amount of any taxes imposed in Thailand which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States because we are calculating FMV based on third country prices. In this circumstance, where the sales used to calculate FMV are tax free (since any taxes imposed in Thailand on merchandise that is shipped to third countries are rebated or uncollected by reason of the exportation of the merchandise), there is no basis for any tax adjustment to U.S. price.

B. AST

For AST, we based U.S. price on purchase price, in accordance with section 772(b) of the Act, because all sales were made directly to unrelated parties prior to importation into the United States and because exporter's sales price methodology was not indicated by other circumstances. AST submitted revised shipment and payment dates, and movement charges for U.S. sales on December 11, 1991, too late to be considered for purposes of this preliminary determination. We calculated purchase price based on CIF, duty unpaid, prices. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, ocean freight, and marine insurance. In accordance with section 772(d)(1)(B) of the Act, we increased U.S. price by the amount of import duties imposed by Thailand on inputs for the subject merchandise which have been rebated by reason of the exportation of the subject merchandise to the United States. In accordance with section 772(d)(1)(C) of the Act, we increased U.S. price by the amount of taxes imposed in Thailand directly upon the exported merchandise and components thereof, which had been rebated, or which had not been collected, by reason of the exportation of the merchandise to the United States. Since there is a companion countervailing duty administrative proceeding on the subject merchandise, the rebate of indirect taxes is limited to the amount of the rebate of indirect taxes on inputs that are physically incorporated into the exported merchandise. See, Final Determination of Sales at Less Than Fair Value: Silicon Metal From Argentina, 56 FR 37691 (August 9, 1991). For those U.S. sales with unreported payments dates and shipment dates, we recalculated credit based on the average credit days incurred for other U.S. sales and AST's short-term interest rate for the POI.

Foreign Market Value

In order to determine whether there were sufficient sales of certain carbon steel butt-weld pipe fittings in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales in the such or similar category to the volume of third country sales in the such or similar category in accordance with section 773(a)(1) of the Act.

A. TTU

For TTU, we determined that the home market was not viable. In selecting which third country market to use for comparison purposes, we first determined which third country markets had "adequate" sales volumes within the meaning of 19 CFR 353.49(b) (1) and (2). We determined that the volume of sales to a third country market was adequate if the sales of such or similar merchandise exceeded, or was equal to, five percent of the volume sold to the United States. Of the third country markets having an adequate sales volume of such or similar sales, we selected Australia as the most appropriate market for comparison purposes in accordance with 19 CFR 353.49(b).

We calculated FMV based on CIF and C&F duty unpaid prices to unrelated customers in Australia. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, ocean freight, and marine insurance. In accordance with 19 CFR 353.56(a)(2), we made circumstance of sale adjustments, where appropriate, for differences in credit, bank charges, and fumigation costs. We deducted third country packing costs and added U.S. packing costs. In accordance with 19 CFR 353.56(b)(1), we deducted third country commissions and added indirect selling expenses incurred in the U.S. market up to the amount of the third country commission. In order to make a fair comparison with U.S. sales, we added the amount of import duties imposed by Thailand on inputs for the subject merchandise which have not been collected by reason of the exportation of the subject merchandise to Australia.

B. AST

For AST, we determined that the home market was viable. We calculated FMV based on delivered prices to unrelated customers in the home market. We disregarded sales to a related party because those sales did not appear to be at arm's length. We made deductions, where appropriate, for foreign inland freight. In accordance with 19 CFR 353.56(a)(2), we made circumstance of sale adjustments, where appropriate, for differences in credit.

For sales with unreported payment dates and shipment dates in the home market, we calculated a weighted-average credit expense based on the expense reported for AST's home market transactions. We deducted home market packing costs and added U.S. packing costs. In accordance with 19 CFR 353.56(b)(1), we deducted home market commissions. Because AST did not report U.S. indirect selling expenses, we made an upward adjustment to FMV for the amount reported for home market commissions. We also made circumstance-of-sale adjustments for the differences between taxes incurred on home market sales and imputed to export sales.

Currency Conversion

In accordance with 19 CFR 353.60, we converted foreign currency into the equivalent amount of United States currency using the official exchange rates in effect on the appropriate dates. All currency conversions were made at rates certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of certain carbon steel butt-weld pipe fittings from Thailand (except for those of AST) that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Normally, we would instruct the U.S. Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the foreign market value of pipe fittings from Thailand exceeds the U.S. price, which in this investigation is 7.95 percent for TTU, 0.00 percent for AST, 52.60 percent for Thai Benkan, and 40.90 percent for all other manufacturers, producers, and exporters of pipe fittings from Thailand. However, Article VI.5 of the General Agreement on Tariffs and Trade (GATT) provides that "[n]o * * * product shall be subject

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to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act which prohibits assessing dumping duties on the portion of the margin attributable to an export subsidy.

In this case, the product under investigation is subject to a concurrent countervailing duty administrative review. The Department has yet to assess countervailing duties, however. To fulfill our international obligations arising under the GATT, under these circumstances, we are subtracting the bonding rate attributable to the export subsidies found in the initial countervailing duty investigation from the antidumping bonding rate. See, Final Determination of Sales at Less Than Fair Value: Ball Bearings and Parts thereof From Thailand, 54 FR 19117 (May 3, 1989). Accordingly, for duty deposit purposes, the net antidumping bonding rates are shown below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Weighted-average margin percentage
TTU	5.42
AST	0.00
Thai Benkan [1]	52.60
All Other	40.90

[1] Since Thai Benkan's margin is based on BIA, no offset for export subsidies was made.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than February 3, 1992 and rebuttal briefs no later than February 10, 1992. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on February 12, 1991, at 3 p.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673(f)) and 19 CFR 353.15.

Dated: December 16, 1991.

Francis J. Sailor,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-30854 Filed 12-24-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-037]

Drycleaning Machinery From Germany; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 12, 1991, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on drycleaning machinery from Germany. The review covers two manufacturers/exporters of this merchandise and the period November 1, 1989 through October 31, 1990.

We gave interested parties an opportunity to comment on the preliminary results. At the request of Boewe Reinigungs und Waschereitechnik GmbH (Boewe) we held a public hearing. Based on our analysis of the comments received and the correction of certain clerical errors, we have changed the margin for Boewe and Seco Maschinenbau & Co. GmbH (Seco) to 0.64 and 4.44 percent, respectively.

EFFECTIVE DATE: December 26, 1991.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Thomas F. Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-8312/3814.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 38112) the preliminary results of its administrative review of the antidumping finding on drycleaning machinery from Germany (37 FR 23715, November 2, 1972). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of German drycleaning machinery currently classifiable under item number 8451.10.10 of the Harmonized Tariff Schedules (HTS). The HTS item number is provided for convenience and Customs purposes. The written description of the scope of the finding remains dispositive.

The review covers two manufacturers/exporters of this merchandise to the United States, Boewe and Seco, and the period November 1, 1989 through October 31, 1990. Since Seco did not respond to our questionnaire, we have used best information available in determining Seco's rate in these final results of review.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from Boewe and, at the request of Boewe, held a public hearing on October 23, 1991.

Comment 1

Boewe contends that for Model P200 we should base foreign market value (FMV) on third-country sales rather than on constructed value (CV). Boewe says that it originally reported third-country sales to Italy because Italy was the largest market for the P200, even though the sales were to a related firm. Boewe asserts that 19 CFR 353.45, regarding sales to related parties, permits the use of sales to related parties in third countries as long as there is no reason to conclude that the price is not comparable to prices to an unrelated party.

In its supplemental response, Boewe reported third-country sales to Spain in addition to reporting the CV information requested by the Department, and claimed that the Department's regulations, specifically 19 CFR 353.48(b), express a preference for the use of third-country sales over CV. In the hearing, Boewe also argued that the sales to Spain would be preferable for determining FMV over the sales to Italy for two reasons: (1) The sales to Spain were made to unrelated parties, and (2) the majority of the U.S. sales were made at the same level of trade (LOT), *i.e.*, to distributors.

Department's Position

We disagree with the respondent. In cases such as this where the home market is determined to be viable and there are no home market sales of a particular model, our practice is to use CV rather than third-country sales to determine FMV for that model. See High Information Flat Panel Displays and Display Glass Therefor from Japan, Final Determination; Recision of Investigation and Partial Dismissal of Petition (56 FR 32376, July 16, 1991). In this review, Boewe's home market was viable, but there were no home market sales of the P200 model. Therefore, we correctly used CV to determine FMV for the P200.

Comment 2

Boewe claims that the Department should reduce FM by the full value of the Consorba anti-emission machines that are required for all drycleaning machines sold in the home market, rather than limiting the adjustment to only the cost differences. Boewe asserts that Consorba machines are not drycleaning machines or drycleaning options, but are separate machines. Boewe contends that if the invoice had shown separate prices for the drycleaning machine and for the Consorba, instead of a combined price, the Department would have used only the price of the drycleaning machine and ignored the price of the Consorba.

Department's Position

We agree. Since the Consorba is clearly not a drycleaning machine, an attachment, or an option for a drycleaning machine, we have recalculated the FMV of the drycleaning machines by using the selling price of the drycleaning machines only. See Certain Electric Motors from Japan, Final Results of Administrative Review of Antidumping Duty Order (49 FR 32627, August 15, 1984). To do this, we allocated the discounted unit price of the combined drycleaning machine/Consorba based upon the ratio of the unit prices of the drycleaning machines and Consorba sold separately. We then used for FMV the portion of the discounted drycleaning machine/Consorba unit price represented by the drycleaning machine alone.

Comment 3

Boewe claims that advertising in the home market should be allowed in full as a direct expense, or, alternatively, two-thirds should be allowed as direct selling expenses and one-third should be allowed as an LOT adjustment.

Department's Position

We disagree. In its original response, Boewe said that all or substantially all of its home market advertising was on a product-line basis but it was not able to demonstrate that this was the case. Therefore, we do not consider this as a direct selling expense. Further, Boewe's estimate that one-third of this expense would be assumed by home market distributors if there were such distributors is mere conjecture and unsupported by any evidence on the record, and is thus not allowable as an LOT adjustment. However, we note that we have allowed the full amount of the home market advertising expense as an indirect selling expense in ESP comparisons.

Boewe submitted unsolicited factual information in its pre-hearing brief dated October 9, 1991, supporting its claim for advertising as a direct expense and several other claims. At the hearing Boewe proffered a document, which it termed backup material, to support claims previously made. The Department did not accept this information from Boewe.

At the hearing, the hearing examiner explained that the Department does not accept such information after the time limits specified in our regulations (19 CFR 353.31). To the extent that we deem unsolicited data or information submitted after these dates to be new factual information, whether characterized as supplementing, explaining, or supporting previously submitted data or information, and whether submitted in case briefs, at a hearing, or otherwise, it is untimely and may not be considered in this review.

Comment 4

Boewe claims the Department should have allowed trade-in allowances as a circumstance-of-sale adjustment, as an indirect selling expense, or as a LOT adjustment.

Department's Position

We disagree. We consider the trade-in allowance to be equal to the value of a traded-in machine and, therefore, permitting a COS adjustment, or treating the trade-in allowance as an indirect selling expense, or as an addition to the LOT adjustment, would be inappropriate.

Comment 5

Boewe says that home market headquarters sales department and order entry and control expenses should be treated as a COS adjustment, or, alternatively, as a LOT adjustment.

Department's Position

We disagree. Because these expenses are overhead expenses, we are continuing to treat them as indirect. We are also unconvinced that these expenses should be added to the LOT adjustment because it is unclear whether Boewe would have incurred most or all of these expenses if it had sold through distributors instead of directly to end-users in the home market.

Comment 6

Boewe claims that expenses for technical publications should be treated as direct expenses. It argues that it is difficult to imagine any expense category which relates more directly to the machines under consideration than expenses for preparing technical publications for these machines.

Department's Position

We disagree. Boewe failed to provide sufficient timely evidence that the expenses claimed were directly related to the sales under consideration. Certain information respondent sought to use that purportedly supported this argument was untimely submitted. (See Department's Position on Comment 3.) We cannot discern from the record that these expenses are anything other than general technical services expenses, and that they would have been incurred regardless of whether any particular sale had been made.

Comment 7

Boewe claims that the Department should have allowed certain general and administrative (G&A), management, and traffic/shipment department expenses as direct or as indirect selling expenses.

Department's Position

We disagree. Boewe has failed to demonstrate that these expenses are sales expenses and, therefore, we continued to treat G&A, management, and traffic/shipment department expenses as overhead.

Comment 8

Boewe contends that one U.S. "exhibit sale" should be excluded from our margin calculations. Boewe claims it is common in the industry for exhibit machines to be marked down when sold as "floor samples." It, therefore,

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requests that the Department not include this machine in its dumping calculations.

Department's Position

We disagree. There is no basis in the statute or in the regulations for excluding such sales.

Comment 9

Boewe requests that negative margins be used to offset any positive dumping margins calculated.

Department's Position

We disagree. Under section 731 of the Tariff Act, dumping duties are imposed in an amount equal to the amount by which the FMV exceeds the U.S. price. The Tariff Act does not provide for offsets for negative margins. To provide for offsets would permit a foreign producer to mask dumped prices with prices above FMV and to engage in selective dumping. Thus, except in instances where the Department has conducted reviews of seasonal merchandise which has very significant price fluctuations due to perishability (see Final Results of Antidumping Administrative Review, Certain Fresh Cut Flowers from Colombia (55 FR 20495, May 17, 1990)), the idea of averaging U.S. prices has been rejected. See Final Results of Antidumping Administrative Review, Pressure Sensitive Plastic Tape from Italy (54 FR 13091, March 30, 1989).

Comment 10

Boewe claims that the Department made certain clerical errors that should be corrected, including omissions or errors involving options, miscellaneous expense deductions, sale dates, exchange rates, physical differences, and inventory carrying charges for ESP sales.

Department's Position

We agree and have recalculated our results accordingly.

Final Results of the Review

We preliminarily found margins of 6.00 percent for Boewe and for Seco. Seco's best information available (BIA) rate, based on its own highest previous rate, is 4.44 percent. Because Boewe's non-BIA rate was greater than 4.44 percent in the preliminary results of review, we assigned Boewe's rate to Seco. However, since Boewe's margin fell below 4.44 percent in these final results, we have assigned Seco its own BIA rate of 4.44 percent.

As a result of the comments received and the correction of certain clerical errors, we have revised our preliminary results, and we determine that the following weighted-average margins exist:

Manufacturer/ exporter	Time period	Margin (percent)
Boewe	11/1/89–10/31/90	0.64
Seco	11/1/89–10/31/90	4.44

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results for all shipments of drycleaning machinery from Germany entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate will be 0.64 percent for Boewe, and 4.44 percent for Seco; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the final determination in the original less-than-fair-value investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; and (3) the cash deposit rate for any future entries from all manufacturers or exporters who are not covered in this or prior administrative reviews and who are unrelated to the reviewed firms or any previously reviewed firm, will be 0.64 percent. This is the most current non-BIA rate for any firm in this proceeding.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 12, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 91-30849 Filed 12-24-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-068]

Steel Wire Strand for Prestressed Concrete From Japan; Final Results of Antidumping Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On October 1, 1991, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on steel wire strand for prestressed concrete from Japan. These final results of review cover one explorer of this merchandise, Mitsui & Co., Ltd., and the periods from December 1, 1985 through November 30, 1987, and December 1, 1987 through November 30, 1988. The review indicates no shipments of the subject merchandise during the review periods. We gave interested parties an opportunity to comment on the preliminary results and we received timely comments from the petitioners. Based on our analysis of comments received, the final results remain unchanged from the preliminary results.

EFFECTIVE DATE: December 26, 1991.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 49745) the preliminary results of its administrative review of the antidumping finding on steel wire strand for prestressed concrete from Japan (43 FR 57599, December 8, 1978). The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of steel wire strand, (strand) other than alloy steel, not galvanized, which are stress-relieved and suitable for use in prestressed concrete. During the review periods such merchandise was classifiable under Tariff Schedules of the United States Annotated (TSUSA) item number 642.1120. Such merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item number 7312.10.30.15. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one exporter of Japanese steel wire strand to the United States, Mitsui & Co., Ltd. (Mitsui), and the periods December 1, 1985 through November 30, 1987, and December 1, 1987 through November 30, 1988.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received a comment from the petitioners.

Comment: The petitioners question the Department's decision to apply a zero percent estimated cash deposit rate to future entries of steel wire strand for any new exporters or manufacturers. Rather, they argue, we should apply the 15.8 percent rate found for Mitsui in this review. The zero rate is derived from an administrative review of the period December 1, 1980 through November 30, 1982, a period five years prior to the current review. That zero rate was subsequently applied in two administrative reviews covering the periods December 1, 1982 through November 30, 1985 (51 FR 30894 (1986); 54 FR 4373 (1987)).

This review of Mitsui covers the period ending November 1988 and, as such, 15.8 percent is the most recent rate for exports of Japanese strand. That Mitsui's last rate was a best information available (BIA) rate (due to deficiencies and delays in Mitsui's submission of data in the prior review) should not affect the Department's decision about the most appropriate rate to apply to future entries from other producers or exporters. In such circumstances, it unfairly penalizes petitioners to assume that a BIA rate applied to a respondent in the most recent review is somehow different from a rate calculated based on pricing data submitted by the respondent in the most recent review. As a matter of policy, it is reasonable to apply the most current rate to future entries from any company not previously reviewed. Whether that rate was determined based on pricing data submitted by the respondent in the most recent review, or was a BIA rate based on the best information the Department had, should be legally irrelevant in determining the future cash deposit rate for new exporters.

Department's Position: We disagree. It is inappropriate to base future deposit rates for companies not previously reviewed on a BIA rate. (See, e.g., Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review (55 FR 31414, August 2, 1990)). It is our standard practice to use the highest rate for a responding firm with shipments in the current or most recent period reviewed as the all-other rate. For this review, in accordance with our general practice, we determined future estimated cash deposits based upon the highest non-BIA rate for a firm with shipments in the most recent review period. The most recent review for a firm with shipments was the period December 1, 1980 through November 30, 1982. (See Steel Wire Strand for Prestressed Concrete from Japan; Final Results of Antidumping Duty Administrative Review and Revocation in Part (51 FR 30894, August 29, 1986)). Thus, as the petitioners stated, the zero deposit rate used in this review for all others is taken from a review five years prior to the present review. However, the source of the BIA rate of 15.8 percent for Mitsui is the less-than-fair-value investigation, a period 10 years prior to this present review.

Final Results of Review

Based on our analysis of the comment received and as a result of our review, we determine that for the consecutive periods between December 1, 1985 and November 30, 1988, the final results of review are unchanged from the preliminary results. Since Mitsui had no shipments of merchandise subject to the finding, we determine a dumping margin of 15.80 percent based on the final results of the last adminstrative review with shipments.

Furthermore, the following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of steel wire strand for prestressed concrete from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for Mitsui will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or in the original less-than-fair-value investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; and (3) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews and who are unrelated to the reviewed firm or any previously reviewed firm will be zero percent. This is the most current non-BIA rate for any firm in this proceeding.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 17, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-30851 Filed 12-24-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-015]

Television Receiving Sets, Monochrome and Color, From Japan; Final Scope Ruling

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Final scope ruling.

SUMMARY: On March 9, 1989, the Department of Commerce Received a request to exclude hand-held, portable televisions with liquid crystal display screens under six inches in size from the antidumping duty order on television receiving sets, monochrome and color, from Japan.

On January 30, 1990, we published a preliminary scope ruling that found such merchandise to be within the scope of the subject antidumping order, and invited comments from the public.

After reviewing the comments received, we reaffirm our preliminary determination that hand-held, portable televisions with liquid crystal display screens under six inches in size are within the scope of the antidumping order on television receiving sets, monochrome and color, from Japan.

EFFECTIVE DATE: December 26, 1991.

FOR FURTHER INFORMATION CONTACT: Melissa Skinner or Amy Beargie, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4851.

SUPPLEMENTARY INFORMATION:

Background

In 1971, the U.S. Tariff Commission (predecessor of the International Trade Commission (ITC)) conducted an injury investigation with regard to Japanese television imports into the United States. As part of the investigation, the Commission defined the imported product as:

> television sets from Japan [that] cover the broad range of types and sizes sold in the U.S. market. Both monochrome and color receivers in nearly all screen sizes are imported into the United States from Japan in large volumes.

36 FR 4576 (March 9, 1971). The final injury determination encompassed virtually all TVs without mentioning any specific characteristics.

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The Treasury Department (the pre-1980 administering authority) published a corresponding antidumping determination which contained a similarly broad product description, "television receiving sets, monochrome and color, from Japan." 34 FR 4597 (March 10, 1971). That finding served as both the final notice in the sales at less than fair value investigation and the antidumping duty order.

In June 1979, the Treasury Department ruled that the subject antidumping order applies to any unit which is generally capable of receiving a broadcast television signal and producing a video image. In all succeeding reviews of this finding conducted by the Department of Commerce (the Department), the following definition of the scope has been consistently applied:

> Television sets include, but are not limited to, units known as projection television, receiver monitors, kits (containing all parts necessary to assemble a complete television receiver) and subassemblies containing the components necessary to receive a broadcast television signal and produce a video image. Not included are monitors not capable of receiving a broadcast television signal . . . and subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image.

Final Results of Administration Review: Television Receiving Sets, Monochrome and Color, from Japan, 46 FR 30163 (February 13, 1981).

Three prior determinations are relevant to the instant scope review. On July 10, 1984, Casio Computer Co., Ltd. (Casio) filed a request with the Department to exclude the Casio TV–10, a small-screen liquid crystal display television (LCD TV), from the scope of the subject order. In response to Casio's request, the Department defined that "(t)he Casio TV–10 is capable of receiving a broadcast television signal and producing a video image, and is thus within the scope of the finding on television receiving sets from Japan." Letter to Harold Evans from Leonard M. Shambon, Director, Office of Compliance (June 24, 1985).

On December 5, 1986, Matsushita Electric Industrial Co., Ltd. (Matsushita) filed a request with the Department to exclude model CT–333S—a portable combination unit consisting of an LCD TV receiver and an AM/FM stereo radio—from the scope of the subject order.

On June 18, 1987, the Department notified Matsushita of its determination that model CT–333S is within the scope of the subject antidumping order. The Department based its determination on the four criteria set forth in *Diversified Products Corp.* v. *United States*, 6 CIT 155, 572 F. Supp. 883 (1983). Letter to Charles H. Bayar from Timothy N. Bergan, Director, Office of Compliance (June 18, 1987).

On May 11, 1987, various parties (the Casio Group) filed a request with the ITC to modify the antidumping order on Japanese television receivers to exclude LCD TVs from the scope thereof. After conducting an investigation, the ITC ruled that LCD TVs are the same like product as other television receivers. Liquid Crystal Display Television Receivers from Japan, USITC Pub. No. 2042 (December 1987) at 1.

On March 9, 1989, the Department received a request to exclude hand-held, portable televisions with LCD screens under six inches in size, from the antidumping order on television receiving sets, monochrome and color, from Japan. The request was filed on behalf of Casio Computer Co., Ltd., Casio, Inc., Citizen Watch Co., Ltd., Hitachi, Ltd., Hitachi Sales Corporation of America, Hitachi Sales Corporation of Hawaii, Inc., Matsushita Electrical Industrial Co., Ltd., Matsushita Electric Corporation of America, NEC Corporation, NEC Home Electronics (USA), Inc., Seiko Epson Corporation, Toshiba Corporation, and Toshiba America, Inc. (the Requesting Parties).

Although we received various comments on the request, we were unable to consider those submitted by U.S. firms that were not interested parties within the meaning of section 771(9) of the Tariff Act of 1930, as amended (the Tariff Act). As a result of the significant interest in the request, we found it appropriate to provide an opportunity for wider participation in this proceeding. Therefore, we published a preliminary ruling that the subject merchandise was within the scope of the order and invited comments from the public. 55 FR 3075 (January 30, 1990).

We received comments opposing exclusion from Zenith Electronics Corporation (Zenith comments of March 1, 1990) and Thomson Consumer Electronics, Inc. (Thomson comments of February 26, 1990), both domestic manufacturers of television receivers. The Requesting Parties and Sharp Electronics Corporation, a U.S. subsidiary of a Japanese manufacturer of televisions, submitted comments supporting exclusion. (Requesting Parties' comments of February 28, 1990 and Sharp comments of March 1, 1990). We also received comments supporting exclusion from Corning Incorporated (Corning comments of March 1, 1990), a domestic manufacturer of specialty glass used in the manufacture of LCDs.

Criteria

For purposes of determining whether the merchandise in question is within the scope of the antidumping duty order on television receiving sets, monochrome and color, from Japan, we referred to § 353.29 of the Department's regulations on antidumping scope determinations. 19 CFR 353.29 (1990).

On matters concerning the scope of an antidumping duty order, our primary bases on determining whether a product is covered by such an order are the descriptions of the product contained in the petition, the initial investigation, and the prior determinations of the Department and the International Trade Commission. If these descriptions are not dispositive, the Department refers to the remaining provisions of § 353.29, as appropriate. In this case, the parties requesting exclusion contend that LCD TVs are later-developed products and therefore a scope ruling should be based on the criteria contained in § 353.29(h), which provides:

> (h) Later-developed products—(1) In general. For purposes of determining whether a product developed after an antidumping investigation is initiated (hereafter in this paragraph referred to as the "later-developed merchandise") is within the scope of an order, the Secretary will consider whether:
>
> (i) The later-developed product has the same general physical characteristics as the merchandise with respect to which the order was originally issued (hereafter in this paragraph referred to as the "earlier merchandise");
>
> (ii) The expectations of the ultimate purchasers of the later-developed product are the same as of the earlier merchandise;
>
> (iii) The ultimate use of the earlier merchandise and the later-developed product are the same;
>
> (iv) The later-developed product is sold through the same channels of trade as the earlier merchandise; and
>
> (v) The later-developed product is advertised and displayed in a manner similar to the earlier merchandise.

19 CFR 353.29(h)(1). With respect to later-developed products which incorporate a significant technological advance or significant alteration of an earlier product, prior to issuing a ruling to include products within the scope of an order pursuant to § 353.29(h), the Secretary will notify the Commission in writing of the proposing inclusion in accordance with section 781(e) of the Tariff Act of 1930, as amended, 19 U.S.C. 1677j(e). See also 19 CFR 353.29(d)(7)(iii).

Further, the statute provides that the Department may not exclude later-developed products from an order merely because the products:

> (i) Are classified under a tariff classification other than that identified in the petition or the Secretary's prior notices during the proceeding; or
>
> (ii) Permit the purchaser to perform additional functions, unless such additional functions constitute the primary use of the products and the cost of the additional functions constitute more than a significant portion of the total cost of production of the products.

19 U.S.C. 1677j(d)(2) and 19 CFR 353.29(h)(2).

Documents from the underlying proceeding deemed relevant by the Department to the scope of the outstanding order were made a part of the record in the instant scope review. In completing its analysis, the Department considered any written arguments that interested parties submitted within the specified time limits. Documents that were not presented to the Department or placed by it on the record do not constitute part of the administrative record attendant to this scope proceeding.

Arguments

The Requesting Parties base their arguments for exclusion of small-screen LCD TVs on the criteria set forth in the later-developed merchandise provision of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act), and claim that the Department is not free to ignore this legal standard, as it did in the preliminary scope ruling. (Requesting Parties at 2.) The Requesting Parties state that there is no question that small-screen LCD TVs were developed after the issuance of the subject antidumping order. (Requesting Parties at 3.) As a result, the Department committed a legal error by basing its preliminary scope ruling on an obsolete definition of a television and ignoring the criteria set forth in the 1988 Act. (Requesting Parties at 3.) According to the Requesting Parties, small-screen LCD TVs have different physical characteristics and end uses, move through different channels of trade, give rise to different consumer expectations, and are displayed and advertised in a manner different than conventional televisions with cathode ray tubes (CRTs). (Requesting Parties at 4–5.) As a result, the Requesting Parties claim that hand-held, portable LCD TVs must be excluded from the scope of the subject order pursuant to the criteria set forth in the 1988 Act.

Sharp and Corning claim that Corning, a U.S. manufacturer of the fusion-formed flat glass currently used in the production of LCD televisions, is being injured by the application of the antidumping order to small-screen LCD TVs. Sharp states that it has decided not to import small-screen LCD televisions from Japan because of the adverse economic effects of antidumping duties, and contends that other companies have been similarly affected. (Sharp at 1.) Since LCD TVs are not currently produced in the United States, Sharp supports Corning's contention that demand for Corning's fusion-formed flat glass has fallen as a result of the application of the antidumping order to small-screen LCD TVs from Japan, and argues that demand in Japan for Corning's glass would increase if small-screen LCD televisions were excluded from the scope of the order. (Sharp at 2.)

Corning renews its October 10, 1989 request for a review under section 751(b) of the Tariff Act. Corning cites five changed circumstances: the development of fusion-formed flat glass; the invention of small-screen LCD TVs; the emergence of Corning as the supplier of choice for Japanese manufacturers of small-screen LCD TVs; the failure of U.S. television manufacturers to develop LCD technology; and the restrictive effects of the antidumping order on imports of small-screen LCD TVs containing glass manufactured by Corning. (Corning at 2.) Corning contends that, as a result of these circumstances, the application of the antidumping order to small-screen LCD TVs causes it considerable harm, and fails to benefit the domestic industry which does not produce such merchandise. (Corning comments of October 10, 1989 at 2.)

Corning offers to modify the request to exclude only LCD TVs with the following characteristics: A screen size of four inches or less, color picture, portable, self-powered, and containing fusion-formed flat glass manufactured by Corning. (Corning at 3.) Corning states that it has offered to narrow the scope of its request for a changed-circumstances review in an attempt to address concerns that it claims were expressed informally by the domestic industry. (Corning at 3.) Corning believes that modification of its request for a changed-circumstances review will allow the Department to act affirmatively on its request as a result of no interest by the domestic industry. (Corning at 3.)

The Requesting Parties support Corning's request for a changed-circumstances review. According to the Requesting Parties, Corning fully supports the exclusion of small-screen LCD TVs from the scope of the order, despite the fact that it has been a longstanding supporter of the domestic television industry. (Corning at 5.) Requesting Parties argue that the statute does not specify that requests for review under section 751(b) of the Tariff Act must be made by an interested party. (Requesting Parties at 6.) However, if the Department reaffirms that Corning lacks standing to request such a review, the Requesting Parties adopt Corning's request for a changed-circumstances review as their own. (Requesting Parties at 6.)

Zenith and Thomson support the Department's preliminary determination not to exclude small-screen LCD televisions from the scope of the finding.

Zenith states that the Department has determined that LCD TVs are within the scope of the finding of three separate occasions, and that the ITC has also ruled that there is no justification for removing LCD TVs from the scope of the order. (Zenith at 2–3) Thomson supports the determinations by the Department, the ITC, and the Treasury Department that any unit generally capable of receiving a broadcast signal and producing a video image is a television covered by the antidumping order. Thomson states that consistent application of this standard has served both the domestic industry and the U.S. government well, and that the scope of the subject order should not be narrowed by a decision to exclude small-screen LCD TVs. (Thomson at 1.)

Zenith argues further that the Requesting Parties have improperly used the "later-developed products" provision of the 1988 Act as the basis for their request. According to Zenith, both the legislative history and the title of the section of the legislation containing this provision clearly demonstrate that it was not intended to provide respondents with an alternative means of requesting that a product be excluded from the scope of an order, but rather was intended to be a means of clarifying and codifying the Department's authority to take action against the circumvention of orders. (Zenith at 17–18.)

Zenith also notes that the criteria specified in this provision parallel those set forth in *Diversified Products Corp.* v. *United States*, 6 CIT 155, 572 F. Supp. 883 (1983). According to Zenith, the Department denied one previous request for exclusion of small-screen LCD TVs from the scope of the subject order using these criteria, and refused to even consider these criteria in denying another exclusion request because the existing scope descriptions were sufficient to make a ruling. (Zenith at 20.) Zenith states that the ITC also relied on similar criteria in determining that the scope should not be modified to exclude small-screen LCD televisions. (Zenith at 20.) Zenith argues that, as a result of these determinations, small-

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screen LCD TVs are not later-developed products within the meaning of the statute. (Zenith at 19–20.)

Zenith claims that the only motive behind the instant request is the Japanese manufacturers' desire to dominate the U.S. television market. (Zenith at 22.) Zenith contends that, despite their assertions to the contrary, Japanese manufacturers are developing televisions with larger LCD screens that will compete directly with conventional televisions (Zenith at 22.) However, the development of television incorporating larger LCDs is dependent on the successful application of LCD technology to small-screen televisions, which is currently hindered by the high cost of manufacturing LCDs. (Zenith at 23.) According to Zenith, Japanese manufacturers must increase production of small-screen LCDs to reduce costs to a profitable level. (Zenith at 24.) If small-screen LCD TVs were to be excluded from the scope of the subject order, Zenith fears that Japanese manufacturers would be able to reduce costs by increasing production of small-screen LCD TVs, thereby generating the revenue and gaining the manufacturing knowledge required to pursue the development of larger LCD TVs. (Zenith at 22–24.)

Finally, Zenith states that Corning lacks standing to request a changed-circumstances review because it is not a manufacturer of televisions and, therefore, is not an interested party in this proceeding, as defined in the statute. (Zenith at 21.) Zenith argues, therefore, that the Department should reject Corning's request for a changed-circumstances review, as it did in the preliminary scope ruling.

Analysis

The purpose of a scope ruling is to determine whether the product in question is of the same class or kind of merchandise as other products known to be within the scope of an antidumping order. The motives of the parties requesting a scope ruling and the economic effects of an order on a particular domestic industry or firm are irrelevant to a scope proceeding. As a result, we have not considered those factors in making this final scope ruling.

In the Department's preliminary scope ruling we found it unnecessary to examine LCD TVs in light of the later-developed products provision, finding instead that the product descriptions are dispositive. In doing so, we relied exclusively on the first prong of the Department's two-prong scope test; i.e., the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Department and the ITC. 19 CFR 353.29(i)(1). An examination of LCD TVs indicates that this technology did not exist at the time the original product descriptions were developed in 1971. As such, the Department has concluded that it would be inappropriate to rely solely on the first prong of its scope test, and that application of the second prong, the later-developed products provision, is appropriate in this case. Accordingly, we have analyzed the subject merchandise pursuant to the later-developed guidelines set forth in 19 U.S.C. 1677j(d)(1) and 19 CFR 353.29(h).

Pursuant to § 353.29(h)(1), the Department must consider the physical characteristics, expectations of the ultimate purchaser, ultimate use, channels of trade, and manner of advertising and display when making a scope determination involving a later-developed product. (See Criteria section, *supra* for text of 19 CFR 353.29(h)(1).)

Physical Characteristics

The Requesting Parties argue that the inherent features of LCD technology lead to differences in physical characteristics between TVs incorporating small-screen LCDs and those incorporating CRTs.

According to the Requesting Parties, the subject LCD TVs are much thinner and more compact than conventional and small-screen CRT TVs due to the additional depth required to accommodate the shape of the CRT. (Requesting Parties at 11–12). Furthermore, the Requesting Parties state that most currently available hand-held LCD TVs weigh less than one pound, which contrasts sharply with the substantially heavier CRT TVs. (Requesting Parties at 12.) Finally, the Requesting Parties note that the subject LCD TVs require relatively little power, thereby allowing for the incorporation of an internal power source or the use of a portable power supply. (Requesting Parties at 13.) In contrast, CRT TVs require 110 volts and an AC electrical wall outlet in order to function. (Requesting Parties at 13.)

Although the Department acknowledges that LCD and CRT TVs differ in terms of size, weight, and power requirements, the two product types share several significant physical characteristics. Specifically, as noted in the language contained in the ITC report on the investigation of LCD TVs:

> [D]ifferent types of televisions require different types of parts and components, but, in general, all must have a tuner, intermediate frequency amplifier, audio processing circuitry, color separation circuitry, speaker(s), and a display device, as well as a housing, user controls, power source, and an antenna.

Liquid Crystal Display Television Receivers from Japan, USITC Pub. No. 2042 (December 1987) at A–8. These components are essential to the fundamental use and purpose of a TV—receiving a broadcast signal and producing a video image. Because LCD TVs feature the components enumerated above, the Department concludes that such similarity in physical characteristics significantly outweighs the aforementioned differences raised by the Requesting Parties.

Expectations of Ultimate Purchasers

The Requesting Parties argue that the ultimate purchasers of a hand-held LCD TVs expect to be able to carry the unit on their person in order to view it anywhere and anytime. (Requesting Parties at 13.) Such expectations of portability are discernible from the miniature size and light weight of the unit, the product's ability to function on an internal or mobile power source, and the fact that the LCD TV produces a brighter picture in an outdoor setting. (Requesting Parties at 14.) Despite these advantages, the Requesting Parties note that hand-held LCD TVs have limited broadcast reception, and that, given the small screen size, they can only be viewed by one person at close range for limited periods of time. (Requesting Parties at 14–15.) Conversely, CRT TVs function better indoors and can be viewed for extended periods of time by several people at once. (Requesting Parties at 14–15.) Accordingly, the Requesting Parties assert that purchaser expectations conform to the inherent limitations of hand-held LCD TVs.

We acknowledge that purchasers of small-screen LCD TVs may expect to use the product outdoors or in other locations in which use of a larger CRT TV is impractical. However, the setting in which the subject LCD TV is viewed does not lead to significantly different expectations among the ultimate purchasers of the two product types. Rather, as discussed below, the ultimate purchaser of a small-screen LCD TV expects to use it for the same purpose as the purchaser of a CRT TV.

Ultimate Use

The Requesting Parties state that the unique characteristics of small-screen LCD TVs result in ultimate uses different from those associated with conventional TVs. Because the subject LCDs are compact, lightweight, and can function from an internal or mobile power source, the Requesting Parties claim that the subject product is truly portable. (Requesting Parties at 13–14.) Conversely, CRT TVs function better indoors and are mostly used for stationary, in-home viewing due to their comparatively heavier frame and standard power requirements. (Requesting Parties at 13–14.) Therefore, in terms of ultimate use, it is the feature of portability which, in the opinion of the Requesting Parties, distinguishes hand-held LCD TVs from CRT TVs.

We recognize that LCD technology allows for a lighter and more compact product than those TVs which incorporate CRTs. However, certain CRT TVs are also portable and operate from a self-contained power source. Therefore, a difference in degree of portability does not significantly distinguish LCD TVs from CRT TVs. Moreover, even assuming portability did constitute a distinction, such portability would not distinguish the product in terms of ultimate use. Both product types are ultimately used to view programming received from a broadcast signal. The feature of portability is rendered meaningless without the capability of broadcast reception and, therefore, the fact that a viewer might be outdoors does not alter the fundamental use of the product. Accordingly, we determine that hand-held LCD TVs and CRT TVs have the same ultimate use. The similarity in ultimate use also generates similarity in the purchaser expectations discussed *supra*.

Channels of Trade

According to the Requesting Parties, small-screen LCD TVs can be sold through such diverse retail outlets as drugstores, jewelry stores, and specialty gift shops, which do not sell CRT TVs. (Requesting Parties at 16.)

Although we acknowledge that the distribution channels for LCD TVs may be broader than those for CRT TVs, we also recognize that the two product types share similar channels of trade. First, notwithstanding the fact that LCD TVs may be sold at various outlets, both products are principally distributed through retail channels to consumers. Second, in its investigation of LCD TVs, the ITC found that "some retailers advertise both CRT TVs (of many sizes) and LCD TVs together." Liquid Crystal Display Television Receivers from Japan, USITC Pub. No. 2042 (December 1987) at A–17. In light of these similarities, the Requesting Parties have not furnished sufficient evidence that LCD TVs have significantly different channels of trade then CRT TVs.

Advertising and Display

The Requesting Parties claim that small-screen LCD TVs are exhibited in counter display cases along with watches and small appliances, and are advertised with specialty gifts items, thereby differentiating them from CRT TVs, which are normally advertised and displayed with major consumer electronics products. (Requesting Parties at 16–17.)

Once again, we acknowledge that the size and relative novelty of small-screen LCD TVs may, in certain circumstances, allow them to be advertised and displayed in a different manner than CRT TVs. However, as with the channels of trade, the Requesting Parties have offered no evidence that the manner in which small-screen LCD TVs are advertised and displayed differs significantly from that of CRT TVs. Moreover, the evidence cited above in reference to channels of trade also shows that small-screen LCD TVs can be advertised and displayed along with CRT TVs.

Summary

In the foregoing analysis, we applied the five criteria set forth in section 781(d) of the Tariff Act to determine whether small-screen LCD TVs are within the scope of the antidumping order on television receivers, monochrome and color, from Japan. Based on this analysis, we determine that such LCD TVs are similar to conventional television receivers in terms of physical characteristics, purchaser expectations, ultimate use, channels of trade, and manner of advertisement and display. Accordingly, we reaffirm our preliminary ruling that hand-held, portable televisions with LCD screens under six inches in size are within the scope of the antidumping duty order on televisions, monochrome and color, from Japan.

ITC Consultation

Pursuant to § 353.29(d)(7)(iii), the Department must notify the ITC of the proposed inclusion of a later-developed product which incorporates a significant technological advance or significant alteration of an earlier product. Because the subject LCD TVs is a later-developed product which incorporates a significant technological advance or significant alternation of an earlier product, we contacted the ITC and informed the Commission of the proposed inclusion of the subject merchandise. By letter of December 11, 1991, the ITC advised the Department that it "does not believe that consultation between Commerce and the Commission are necessary."

Changed Circumstances Determination

We reaffirm our preliminary determination that Corning is not an interested party within the meaning of the statute and, therefore, lacks standing to request a changed circumstances review. However, since the Requesting Parties have adopted Corning's request as their own, and since they are interested parties within the meaning of the statute, we have examined the alleged changed circumstances.

The alleged changed circumstances that involve the development and production of LCD televisions have been the subject of previous rulings by both the Department and the ITC. We determined on June 24, 1985, that small-screen LCD televisions are within the scope of the antidumping finding on Japanese televisions, and the ITC, in Investigation 751–TA–14, determined that small-screen LCD TVs are the same like product as other televisions, despite the fact that the domestic industry does not produce LCD TVs. (USITC Pub. 2042, December 1987.) The argument concerning the alleged failure of the domestic industry to develop LCD technology for use in television receivers has already been addressed by the ITC. As a result of the determination by the ITC, as well as the Department's previous rulings, we find that the development of small-screen LCD TVs does not constitute a changed circumstance within the meaning of the statute.

The other alleged changed circumstances include the development of fusion-formed flat glass, the emergence of Corning as the supplier of choice of this type of glass for Japanese manufacturers of small-screen LCD televisions, and the restriction on imports of small-screen LCD televisions made in Japan caused by the antidumping finding. Although we acknowledge that these conditions could have potentially adverse effects on Corning, we find that they are not changed circumstances within the meaning of the statute with respect to the order on Japanese television receivers.

Corning narrowed the scope of its original request in the hope that the domestic industry would express no interest in the continued application of the subject order to small-screen LCD TVs. However, members of the domestic industry opposed modification of the finding to exclude televisions with LCD screens under four inches in size during the ITC's 1987 investigation of LCD TVs, and have not made an affirmative statement of no interest since them.

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Therefore, we determine that changed circumstances sufficient to warrant a review do not exist, and we deny the request for review under section 751(b) of the Tariff Act.

Dated: December 16, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-30850 Filed 12-24-91; 8:45 am]

BILLING CODE 3510-DS-M

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than January 31, 1992, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in December for the following periods:

	Period
Antidumping Duty Proceedings:	
Brazil: Brass Sheet & Strip, (A-351-603)	01/01/91-12/31/91
Canada: Brass Sheet & Strip, (A-122-601)	01/01/91-12/31/91
Canada: Color Picture Tubes, (A-122-605)	01/01/91-12/31/91
France: Anhydrous Sodium Metasilicate, (A-427-098)	01/01/91-12/31/91
Japan: Color Picture Tubes, (A-588-609)	01/01/91-12/31/91
Singapore: Color Picture Tubes, (A-559-601)	01/01/91-12/31/91
Spain: Potassium Permanganate, (A-469-007)	01/01/91-12/31/91
South Africa: Low-Fuming Brazing Copper Wire and Rod, (A-791-502)	01/01/91-12/31/91
Taiwan: Certain Stainless Steel Cooking Ware (A-583-603)	01/01/91-12/31/91
The Peoples Republic of China: Potassium Permanganate, (A-570-001)	01/01/91-12/31/91
The Republic of Korea: Brass Sheet & Strip, (A-580-603)	01/01/91-12/31/91
The Republic of Korea: Color Picture Tubes, (A-580-605)	01/01/91-12/31/91
The Republic of Korea: Stainless Steel Cooking Ware, (A-580-601)	01/01/91-12/31/91
Suspension Agreements:	
Canada: Potassium Chloride, (A-122-701)	01/01/91-12/31/91
Canada: Certain Red Raspberries, (A-122-504)	01/01/91-12/31/91
Colombia: Miniature Carnations, (A-301-601)	01/01/91-12/31/91
Colombia: Roses and Other Cut Flowers, (A-301-003)	01/01/91-12/31/91
Costa Rica: Certain Fresh Cut Flowers, (A-223-601)	01/01/91-12/31/91
Hungary: Truck Trailer Axle and Brake Assemblies, (A-437-001)	01/01/91-12/31/91
Countervailing Duty Proceedings:	
Argentina: Non-Rubber Footwear, (A-357-0052)	01/01/91-12/31/91
Brazil: Brass Sheet & Strip, (A-351-604)	01/01/91-12/31/91
Ecuador: Fresh Cut Flowers, (A-331-601)	01/01/91-12/31/91
The Republic of Korea: Stainless Steel Cookware, (A-580-602)	01/01/91-12/31/91
Spain: Stainless Steel Wire Rod, (A-469-004)	01/01/91-12/31/91
Taiwan: Stainless Steel Cookware, (A-583-604)	01/01/91-12/31/91
Thailand: Butt-weld Pipe Fittings, (A-549-804)	01/01/91-12/31/91

In accordance with § 353.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review of specified individual producers or resellers covered by an order, if the requesting person states why the person desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230. Further, in accordance with § 353.31 of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by January 31, 1992.

If the Department does not receive by January 31, 1992 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: December 18, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-30848 Filed 12-24-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-517-501]

Carbon Steel Wire Rod From Saudi Arabia; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce had conducted an administrative review of the countervailing duty order on carbon steel wire rod from Saudi Arabia. We preliminarily determine that total bounty or grant to be 0.01 percent *ad valorem* for the period January 1, 1990 through December 31, 1990. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: December 26, 1991.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1991, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (54 FR 5102) of the countervailing duty order on carbon steel wire rod from Saudi Arabia. During February 1991, Georgetown Steel Corporation, Northstar Steel Texas, Inc., Raritan River Steel Company and Atlantic Steel Company, petitioners in this proceeding, and the Saudi Iron Steel Company (HADEED), the respondent, requested an administrative review covering the period January 1, 1990 through December 31, 1990. We initiated the review on March 22, 1990 (55 FR 10842). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by the review are shipments of Saudi carbon steel wire rod. Carbon steel wire rod is a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, tempered or not tempered, treated or not treated, not manufactured or partly manufactured, and valued over or under 4 cents per pound. Such merchandise is classifiable under item numbers 7213.20.00, 7213.31.30, 7213.31.60, 7213.39.00, 7213.41.30, 7213.41.60, 7213.49.00 and 7213.50.00 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1990 through December 31, 1990, and four programs. During the review period, there was only one Saudi producer and/or exporter of the subject merchandise, the Saudi Iron and Steel Company (HADEED).

Analysis of Programs

(1) Public Investment Fund Loan to HADEED

The Public Investment Fund (PIF) was established in 1971 as one of five specialized credit institutions set up by the Government of Saudi Arabia. The other specialized credit institutions are the Saudi Industrial Development Fund (SIDF), the Saudi Agricultural Bank the Saudi Credit Bank and the Real Estate Development Fund. These specialized credit institutions are funded completely by the Saudi government and were the only sources of long-term financing in Saudi Arabia during the review period.

The respondent has contended that PIF and SIDF are "integrally linked" as defined in § 355.43(b)(6) of the Department's proposed regulations. Should the Department determine that PIF and SIDF are integrally linked, they would be considered together in determining whether loans provided by these two entities are limited to a specific enterprise or industry, or group of enterprises or industries. We stated in the final results of the previous review that documented information on the inception of the two funds that explicitly ties PIF and SIDF as complementary parts of an overarching governmental policy directive had not been presented. In this review, we conducted a verification of the factual information presented in the respondent's questionnaire responses regarding the issue of integral linkage. We examined all of the documentation presented by respondents at verification which included various annual reports of the administering agencies of both funds, Saudi Five-Year Development Plans, as well as verbal and written statements of Saudi government officials. Nothing we examined contained specific references indicating that PIF and SIDF had been conceived as complementary programs or that any direct connection existed between the two funds at either the operational or administrative levels. Therefore, we preliminarily determine that PIF and SIDF are not integrally linked as defined by the Department's regulations. We will continue to consider PIF as a single and separate program.

The PIF was established in 1971 to provide financing to large-scale, commercially productive projects that have some equity participation of the Saudi government. PIF by-laws exclude firms or projects without Saudi government equity from applying to the PIF for financing. Because the application of the government equity participation requirement has limited benefits under this program to a small number of enterprises, we have previously determined that PIF loans are provided to a specific group of enterprises in Saudi Arabia, and that the PIF loan to HADEED is counteravailable to the extent that it is given on terms inconsistent with commercial considerations (see, Carbon Steel Wire Rod from Saudi Arabia; Final Results of Countervailing Duty Administrative Reviews, 56 FR 46158 (September 24, 1991)). The evidence reviewed by the Department does not indicate a need to revise this conclusion.

The loan contract between the PIF and HADEED requires that HADEED pay a variable commission, or interest, on the outstanding balance based on its profitability in the preceding semester. During 1990, HADEED made repayments of loan principal and commission on its PIF loan.

Using the two sources for medium- to long-term industrial financing available in Saudi Arabia, private commercial banks and the SIDF, we have constructed a composite interest rate benchmark for 1990 to determine whether the PIF loan to HADEED was on terms inconsistent with commercial considerations. Since the PIF loan covered 60 percent of HADEED's total project costs, for our benchmark we assumed that HADEED could have financed 50 percent of its total project costs with a SIDF loan (the maximum eligibility for a company with at least 50 percent Saudi ownership) and the remaining 10 percent of project costs with a Saudi commercial bank loan. The SIDF loan portion of the benchmark was used because, of all the specialized credit institutions, it is the only fund besides the PIF which lends to industrial or manufacturing projects and, thus, is most representative of what HADEED would otherwise have to pay for long-term loans in Saudi Arabia. We used the 2 percent flat rate of interest applied to SIDF loans in 1990. The commercial

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bank portion of the benchmark was based on the average Saudi Interbank Offering Rate (SIBOR) for 1990, plus a one-quarter of one percent spread. Because the composite benchmark for 1990 is less than the actual commission, or interest rate, that HADEED paid on its PIF loan in 1990, we preliminary determine that the PIF loan was not inconsistent with commercial considerations for the period January 1, 1990 through December 31, 1990.

(2) SABIC's Transfer of SULB Shares to HADEED

The Saudi Arabian Basic Industries Corp. (SABIC) was established in 1976 by the Government of Saudi Arabia as an industrial development corporation. SABIC has been the majority shareholder in HADEED since the steel company's inception in 1979. In 1982, SABIC acquired all of the remaining shares in the Steel Rolling Company (SULB), a Saudi producer of steel reinforcing bars of which SABIC had been the majority shareholder since 1979. In December 1982, SABIC decided to transfer its shares in SULB to HADEED in return for new HADEED stock. Through the stock transfer, SULB became a wholly-owned subsidiary of HADEED.

In Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Wire Rod From Saudi Arabia, (51 FR 4206; February 3, 1986), we determined that HADEED was unequityworthy in December 1982 and that the transfer of SABIC's shares in SULB to HADEED in exchange for additional shares in HADEED was inconsistent with commercial considerations.

To determine the benefit to HADEED from the acquisition of SULB, we used our rate of return shortfall methodology. Because no information was available on the 1990 national average rate of return on equity in Saudi Arabia, we used the 1990 annual average rates of return on U.S. direct investment in Saudi Arabia. Based on the most recent data available from the U.S. Commerce Department's Bureau of Economic Analysis, the 1990 average rate of return on investment was 21.61 percent. We computed the rate of return shortfall by taking the difference between this figure and the 1990 rate of return on equity in HADEED. Because HADEED's rate of return on equity in 1990 was greater than average rate of return on U.S. direct investment in Saudi Arabia in 1990, the rate of return shortfall for the review period is zero. On this basis, we preliminary determine the benefit from this equity infusion to be zero for the period January 1, 1990 through December 31, 1990.

(3) Preferential Provision of Equipment to HADEED

Under a lease/purchase arrangement, the Royal Commission for Jubail and Yanbu built for HADEED two bulk ship unloaders at the Jubail industrial port for unloading iron ore, and constructed a conveyor belt system for transporting iron ore from the pier to HADEED's plant in the Jubail Industrial Estate. When construction of these facilities was completed in 1982, the Commission transferred custody to HADEED under a lease/purchase agreement.

As originally planned, the bulk ship unloader and conveyor system was built to serve both HADEED and an adjacent plant in the Jubail Industrial Estate. The second plant was not built, however, leaving HADEED as the sole user of this equipment. The terms of the lease/purchase agreement require that HADEED must repay the equipment and construction costs plus a two-percent fee for the cost of money in 20 annual installments. The annual payments are stepped, with the lowest payment levels occurring at the beginning and the highest payment levels occurring at the end of the 20-year period.

In the Saudi Wire Rod (op. cit.), we found that the two-percent cost-of-money fee is the Commission's standard charge for recovery of costs on other facilities in the Jubail Industrial Estate. Of the projects examined, a urea berthside handling system built for the exclusive use of another company located in the Estate was the most comparable to HADEED's ship unloader and conveyor system. Therefore, we compared the repayment schedule for HADEED's ship unloader and conveyor system to the repayment schedule for a berthside handling system. Although both agreements carried the standard cost-of-money fee, we found that HADEED's end-loaded, stepped repayment schedule was more advantageous than the annuity-style repayment schedule on the berthside handling system. Therefore, we determine that HADEED's ship unloader and conveyor system was provided on preferential terms. Moreover, because the equipment is used exclusively by HADEED, we find that it is provided to a specific enterprise and, thus, confers a bounty or grant.

To calculate the benefit, we compare the principal and fees being paid in each year by HADEED to the principal and fees that would be paid under the repayment schedule used for the berthside handling system. We allocated the sum of the present values of the differences in the two repayment schedules over 20 years, using a two-percent discount rate. The resulting benefit for 1990 was divided by HADEED's total sales in 1990. On this basis, we preliminarily determine the benefit from the preferential provision of the unloader and conveyor system to be 0.01 percent ad valorem for the period January 1, 1990 through December 31, 1990.

(4) Income Tax Holiday for Saudi Joint Venture Projects

Duly licensed foreign partners of joint-venture companies in Saudi Arabia are granted a 10-year income tax holiday under article 7 of the Foreign Capital Investment Law of January 1, 1979. The exemption is granted automatically to any licensed industrial or agricultural project provided that Saudi capital shall not be less than twenty-five percent of the total capital of the project and that such percentage shall be maintained throughout the period of exemption. This tax holiday applies only to income taxes that are owed by the foreign share of the enterprise. The Saudi partners of both foreign joint-ventures or wholly national firms are liable for zakat, an Islamic alms tax, for which there are no exemptions.

In this review, information on the universe of firms eligible for the exemption, never before presented in any foreign reviews, was provided in the questionnaire responses on a timely basis. During verification, we reviewed the information provided in the responses. This information shows that of 369 foreign joint-ventures licensed and operating in the Kingdom during 1990, a large number of them, 322 or 87 percent, were eligible for the income tax holiday. The actual percentage of firms which made use of the automatic exemption in 1990 may differ from this, depending on the profit (loss) experience of each firm. Those firms comprising the 87 percent represent virtually all sectors of Saudi industry including food and beverage, textiles, apparel, wood products, paper products, printing and publishing, chemicals, petroleum products, plastics, rubber products, nonmettalic mineral products, metal industries, and other manufacturing. Based on these facts, we preliminarily determine that the income tax holiday is not limited to a specific enterprise or industry, or group of enterprises or industries, and therefore, is not countervailable.

Preliminary Results of Review

As a result of the review, we preliminarily determine the total bounty or grant to be 0.01 percent *ad valorem* for the period January 1, 1990 through December 31, 1990. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

Therefore, the Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1990 and exported on or before December 31, 1990.

The Department also intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the final results of this review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: December 17, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-30652 Filed 12-24-91, 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications: Tucson, AZ

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance, and the availability of funds. The cost of performance for the first budget period (12 months) is estimated at $165,000 in Federal funds and a minimum of $29,118 in non-Federal (cost sharing) contributions. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The period of performance will be from May 1, 1992 to April 30, 1993. The MBDC will operate in the Tucson, Arizona Geographic Service Area.

The award number for this MBDC will be 09-10-92006-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, State and local governments, American Indian Tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50.00 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with OMB Circular A-129, "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any

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time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 16, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreements" and SF–LLL, the "Disclosure of Lobbying Activities" (if applicable) is required in accordance with section 319 of Public Law 101–121, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

CLOSING DATE: The closing date for submitting an application is February 3, 1992. Applications must be postmarked on or before February 3, 1992.

Proposals will be reviewed by the Atlanta Regional Office. The mailing address for submission is: Atlanta Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 401 West Peachtree Street NW., suite 1930; Atlanta, Georgia 30308–3516, 404/703–3300.

A pre-application conference to assist all interested applicants will be held at the following address and time: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, January 15, 1992 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Xavier Mena, Regional Director, San Francisco Regional Office at 415/744–3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained from the San Francisco Regional Office.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance).

Dated: December 19, 1991.

Maggie L. Faulkner,

Chief, Business Development Specialist.

[FR Doc. 91–30868 Filed 12–24–91; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

International Whaling Commission; Meetings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of meetings.

SUMMARY: NOAA makes use of an Interagency Committee to assist in preparing for meetings of the International Whaling Commission (IWC). This notice sets forth guidelines for participating on the Committee and a tentative schedule of meetings and other important dates.

DATES: See **SUPPLEMENTARY INFORMATION** for dates of scheduled meetings.

ADDRESSES: Recommendations to the U.S. Commissioner to the IWC and nominations to the U.S. delegation to the IWC should be sent to: Dr. John A. Knauss, United States Commissioner to the International Whaling Commission, Department of Commerce, Herbert C. Hoover Building, 14th and Constitution Avenue, NW., Washington, DC 20230, with a copy sent to Becky Rootes, Office of International Affairs, rm. 7276, NMFS, 1335 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Becky Rootes, Office of International Affairs, National Marine Fisheries Service, Department of Commerce, Washington, DC 20910. Phone: (301) 713–2276.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce is charged with the responsibility of discharging the obligations of the United States under the International Convention for the Regulation of Whaling, 1946. This authority has been delegated to the Under Secretary of NOAA. The U.S. Commissioner to the IWC has primary responsibility with the Secretary for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce, and assisted by the Department of the Interior, the Marine Mammal Commission, and other interested agencies.

Each year NOAA conducts a series of meetings and other actions to prepare for the annual meeting of the IWC which is held in the summer. The major purpose of the preparatory meetings is to provide for participation in the development of policy by members of the public and non-governmental organizations interested in whale conservation. NOAA believes that this participation is important for the effective development and implementation of U.S. policy concerning whaling, and such participation is and shall continue to be, a prerequisite to the establishment of U.S. negotiating positions for IWC meetings.

Because the meetings discuss U.S. negotiating positions, the substance of the meetings must be kept confidential. For example, proposed position papers that may be circulated at a meeting for discussion cannot be removed from the meeting site and must be collected at the close of each meeting.

Any person with an identifiable interest in United States whale conservation policy may participate, but NOAA reserves the authority to inquire about the interest of any person who appears at a meeting and to determine the appropriateness of that person's participation. Persons who represent foreign governments may not attend. These stringent measures are necessary to promote the candid exchange of information and protect the confidentiality of U.S. negotiating positions. Such measures are a necessary basis for the relatively open process of preparing for IWC meetings that characterizes current practice.

The tentative schedule of meetings and deadlines, including those of the IWC and deadlines for the preparation of position papers during 1992 is as follows:

January 21, 1992—Interagency Committee Meeting to continue preparations for the 1991 IWC meetings. Interested persons who are unable to attend are welcome to submit comments. Recommendations to the U.S. Commissioner should be sent to: The United States Commissioner to the International Whaling Commission, at the above address.

February 28, 1992—Nominations for the U.S. Delegation to the May IWC meetings are due to the U.S. Commissioner, with a copy to Becky Rootes at the address above. All persons wishing to be considered pursuant to the U.S. Commissioner's recommendation to the Department of State concerning the composition of the Delegation should ensure that nominations are received by this date. Prospective Congressional advisors to the Delegation should contact the Department of State directly.

March 30, 1992—Tentative Interagency Committee meeting to review United States agenda changes for forwarding to the IWC Secretariat.

May 1, 1991—Publish in the Federal Register the Agency views on (1) the current population levels and annual net recruitment rate of bowhead whales, (2) the nature and extent of the aboriginal/subsistence need for bowhead whales, (3) the level of take of bowhead whales that is consistent with provisions of the IWC aboriginal/subsistence whaling management scheme and (4) a list of documents reviewed by NOAA and used by the Administrator in formulating these views.

May 21, 1992—Tentative Interagency Committee Meeting date for finalizing preparations for 1991 IWC meetings.

Persons who would like to be included in IWC Interagency Committee meeting may contact Becky Rootes at the address or telephone number provided above to obtain meeting times and location.

(16 U.S.C. 1801 *et seq.*)

Henry R. Beasley,

Director, Officer of International Affairs.

[FR Doc. 91–30806 Filed 12–24–91; 8:45 am]

BILLING CODE 3510–22–M

Patent and Trademark Office

Advisory Commission on Patent Law Reform; Open Meeting

AGENCY: Patent and Trademark Office, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Commission was chartered on August 15, 1990, to advise the Secretary of Commerce on the state of and need for any reform in the United States patent system, as well as the need for any changes in the U.S. laws relating to the enforcement and the licensing of U.S. patents. This meeting will provide an opportunity for discussion of the findings and draft recommendations of the Advisory Commission.

DATES: The Advisory Commission on Patent Law Reform will meet on January 16 and 17, 1992, from 9:30 a.m. to 5 p.m.

PLACE: Crystal Park Two, suite 912, 2121 Crystal Drive, Arlington, Virginia 22202.

MATTERS TO BE CONSIDERED:

1. Presentations on draft recommendations from the four Working Groups of the Advisory Commission, followed by discussion.

2. Set administrative agenda for further Advisory Commission proceedings and report preparation.

BACKGROUND: On March 28, 1991, the Advisory Commission held its first meeting and created four working groups to address an agenda of thirteen issues. Public input was solicited on each issue through an invitation for public comment published on May 16, 1991 (56 FR 22702) and comments were received through September 3, 1991. During the last meeting of the Advisory Commission, the public input discussed, and a fourteenth issue, the Secrecy Order Program, was taken up and assigned to Working Group II. the current meeting will provide an opportunity for the four Working Groups of the Advisory Commission to present draft recommendations and findings on the fourteen issues, and to permit discussion of those findings and draft recommendations.

STATUS: The meeting will be open to public observation. Approximately 30 seats have been reserved for the public on a first-come, first-served basis. Efforts will be made to accommodate all requests for attendance; however, to ensure that adequate seating will be available, parties wishing to attend should request a reservation by Janaury 14, 1992. Reservations for attendance should be made through the contact person indicated below. If time permits, the Chairperson may allow oral comments or questions. Written comments and suggestions will be accepted before or after the meeting on any of the agenda matters.

CONTACT PERSON FOR FURTHER INFORMATION: E. R. Kazenske, Executive Assistant to the Commissioner, Box 15, Patent and Trademark Office, Washington, DC 20231. Telephone: (703) 305–8600.

Dated: December 19, 1991.

Harry F. Manbeck, Jr.,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 91–30798 Filed 12–24–91; 8:45 am]

BILLING CODE 3510–16–M

COMMISSION ON INTERSTATE CHILD SUPPORT

Commission Meeting

The U.S. Commission on Interstate Child Support will meet January 17, 18, and 19, 1992 in Portland, Oregon. Meetings will be held from 8 a.m.–6 p.m. on the 17th and 18th and from 8 a.m. to 4 p.m. on the 19th. All meetings will take place at the hotel Vintage Plaza, 422 SW Broadway in Downtown Portland.

The Commission will review tentative recommendations to be submitted in its final report to Congress.

For more information contact Joyce Moore at 202/254–8093.

Margaret Campbell Haynes,

Chair.

[FR Doc. 91–30799 Filed 12–24–91; 8:45 am]

BILLING CODE 6820–44–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

December 19, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 23, 1991.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, carryover and recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990; and 56 FR 60101, published on November 27, 1991). Also see 56 FR 22402, published on May 15, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant

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to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 19, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 9, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on June 1, 1991 and extends through May 31, 1992.

Effective on December 23, 1991, you are directed to amend further the directive dated May 9, 1991 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Dominican Republic:

Category	Adjusted twelve-month limit [1]
338/638	575,469 dozen.
339/639	573,474 dozen.
340/640	551,382 dozen.
342/642	375,857 dozen.
347/348/647/648	1,133,972 dozen of which not more than 778,655 dozen shall be in Categories 347/348 and not more than 714,610 dozen shall be in Categories 647/648.
633	78,748 dozen.
644	405,327 numbers.

[1] The limits have not been adjusted to account for any imports exported after May 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-30775 Filed 12-24-91, 8:45 am]
BILLING CODE 3510-DR-F

Amendment to the Export Licensing System for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

December 20, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs providing for the use of export licenses/commercial invoices printed on red paper.

EFFECTIVE DATE: January 1, 1992 and April 1, 1992.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the People's Republic of China have agreed to further amend the existing export licensing system to provide for the use of export licenses/commercial invoices, issued by the Government of the People's Republic of China, for shipments of goods produced or manufactured in China and exported from China on or after April 1, 1992, which are printed on a red guilloche patterned background paper. The red form replaces the blue licenses/invoices currently in use. The visa stamp is not being changed at this time. The Chinese Embassy in Washington will continue to issue the white pre-printed replacement visa now in use.

Textile products which are produced or manufactured in China and exported from China during the period January 1, 1992 through March 31, 1992 may be accompanied by visas printed on either blue or red background paper.

See 49 FR 7269, published on February 28, 1984; and 52 FR 28741, published on August 3, 1987.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 20, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 23, 1984, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes an export licensing system for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China.

Effective on April 1, 1992, you are directed to amend further the directive dated February 23, 1984 to provide for the use of export licenses/commercial invoices issued by the Government of the People's Republic of China which are printed on red guilloche patterned background paper. The red form will replace the blue form currently being used. The Chinese Embassy in Washington will continue to issue the white pre-printed replacement visa now in use.

To facilitate implementation of this amendment to the export licensing system, I request that, effective on January 1, 1992, you permit entry of textile products, produced or manufactured in China and exported from China during the period January 1, 1992 through March 31, 1992, for which the Government of the People's Republic of China has issued either a blue or red export license/commercial invoice.

Goods exported on and after April 1, 1992 must be accompanied by an export visa issued by the Government of the People's Republic of China on the red invoice form only.

Shipments entered according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-30858 Filed 12-24-91; 8:45 am]
BILLING CODE 3510-DR-F

Denial of Participation in the Special Access and Special Regime Programs

December 20, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs denying the right to participate in the Special Access and Special Regime Programs.

EFFECTIVE DATE: April 1, 1992.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Committee for the Implementation of Textile Agreements (CITA) has determined that Encro Macclenny Products is in violation of the requirements set forth for participation in the Special Access and Special Regime Programs.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs, effective on April 1, 1992, to deny Encro Macclenny Products the right to participate in the Special Access and Special Regime Programs, for a period of one year, beginning April 1, 1992 and ending March 31, 1993. In addition, for the period April 1, 1992 through March 31, 1993, U.S. Customs will not sign ITA-370P forms for export of U.S.-formed and cut fabric for Encro Macclenny Products.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

Requirements for participation in the Special Regime Program are available in **Federal Register** notices 53 FR 15724, published on May 3, 1988; 53 FR 32421, published on August 25, 1988; 53 FR 49346, published on December 7, 1988; and FR 50425, published on December 6, 1989.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 20, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has determined that Encro Macclenny Products is in violation of the requirements for participation in the Special Access and Special Regime Programs.

Effective for entry on or after April 1, 1992, you are directed to prohibit Encro Macclenny Products from further participation in the Special Access and Special Regime Programs for a period of one year, beginning April 1, 1992 and ending March 31, 1993. Goods accompanied by Form ITA-370P which are presented to U.S. Customs for entry under the Special Access and Special Regime Programs will no longer be accepted. In addition, for the period April 1, 1992 through March 31, 1993, you are directed not to sign ITA-370P forms for export of U.S.-formed and cut fabric for Encro Macclenny Products.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-30857 Filed 12-24-91; 8:45 am]
BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Report of Medical History, SF 93 (with overprint).

Type of Request: New Collection.

Average Burden Hours/Minutes Per Response: 20 minutes.

Responses Per Respondent: One.

Number of Respondents: 500,000.

Annual Burden Hours: 166,667.

Annual Responses: 500,000.

Needs and Uses: Title 10 U.S.C. 505 and 510 established minimum standards for enlistment, appointment, and induction into the Armed Forces. Medical standards were developed which address the acceptability of persons and define deviations from these standards. Those medical fitness standards provide sufficient detail to insure uniformity in the physical qualifications of candidates for enlistment, appointment, and induction into the military service.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Office: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at Office of Management and Budget, Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written request for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: December 20, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-30825 Filed 12-24-91; 8:45 am]
BILLING CODE 3810-01-M

Office of the Secretary

Defense Science Board Task Force on Feasibility of Employing Pit Reuse in the Production of W88 Warheads for Trident II

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Feasibility of Employing Pit Reuse in the Production of W88 Warheads for Trident II will meet in closed session on January 7-8, 1992 at Science Applications International Corporation, McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will investigate the feasibility of reusing existing plutonium pits in the production of Mark 5 Reentry Body/W88 warheads for deployment in Trident II SLBMs.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. app. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: December 20, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-30826 Filed 12-24-91; 8:45 am]
BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Committee on Technology Options for Global Reach—Global Power: 1995-2020 (Support Panel) will meet on 15-17 January 1992, at HQ TAC, Langley AFB, VA, HSD, Brooks AFB, TX HQ AFLC, Wright Patterson AFB, OH, 8 a.m. to 5 p.m.

The purpose of this meeting is to receive briefings and gather information for the study.

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The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91–30612 Filed 12–24–91; 8:45 am]

BILLING CODE 3910–01–M

Defense Logistics Agency

Cooperative Agreements Revised Procedures

AGENCY: Defense Logistics Agency, DoD.

ACTION: Cooperative agreements; proposed revised procedures.

SUMMARY: This proposed revised procedure implements chapter 142, title 10, United States Code, as amended, which authorizes the Secretary of Defense, acting through the Director, Defense Logistics Agency (DLA), to enter into cost sharing cooperative agreements to support procurement technical assistance programs established by state and local governments, private nonprofit organizations, Tribal organizations, and Indian-owned economic enterprises. Subpart III of this issuance establishes the administrative procedures proposed to be implemented by DLA to enter into such agreements for this purpose.

DATES: Comments will be accepted until January 13, 1992. Proposed effective date: January 20, 1992.

FOR FURTHER INFORMATION CONTACT: Sim Mitchell, Program Manager, Office of Small and Disadvantaged Business Utilization (DLA–UM), Defense Logistics Agency, Alexandria, VA 22304–6100, Telephone (703) 274–6471.

I. Background Information

The Department of Defense (DoD) has developed programs designed to expand its industrial base and increase competition for its requirements for goods and services, thereby reducing the cost of maintaining a strong national security. Its efforts to increase competition in the private sector have been supplemented by many state and local governments and other entities where the interest in improving the business climate and economic development in their communities is compatible with these DoD objectives. To assist in furthering this mutual interest, a Cooperative Agreement Program was established in which DoD shares the cost of establishing new and/or maintaining procurement technical assistance (PTA) programs being conducted by state and local governments, private nonprofit entities, Tribal organizations, and Indian-owned economic enterprises.

The Cooperative Agreement Program was established by the Fiscal Year (FY) 1985 DoD Authorization Act, Public Law 98–525. It amended title 10, United States Code, by adding chapter 142 and authorizing the Secretary of Defense, acting through the Director, Defense Logistics Agency (DLA), to enter into cost sharing cooperative agreements with state and local governments, other nonprofit entities, Tribal organizations and Indian economic enterprises (hereafter referred to as eligible entities as defined in section 3 of this procedure) to establish and conduct PTA programs during FY 85. The Cooperative Agreement Program continues under title 10, United States Code, as amended.

The U.S. Congress authorized a total of $9,000,000 to support the program during FY 92. Of this total, $600,000 is available for Indian programs only.

In cases where the area being or to be serviced by the eligible entity encompasses more than one Defense Contract Management District's (DCMD) area of geographic cognizance, eligible entities will submit their proposals to the DCMD having cognizance over the preponderant part of the area being or to be serviced. Only one proposal will be accepted from a single eligible entity. The names, addresses and state or geographic areas under the cognizance of the DCMD Associate Directors of Small Business are at Encl 1.

Additional limitations placed on these funds are:

(a) DoD cost sharing shall not exceed 50% of the net cost of a single program. In no event shall the DoD share of the net program cost (NPC) exceed $150,000 for programs providing less than statewide coverage and $300,000 for programs providing statewide coverage.

(b) For the Indian Program, DoD share of NPC shall not exceed 75% or $150,000, whichever is less, for programs providing services on reservation(s) within one BIA service area. For programs providing services to 100% of the reservations within one BIA service area and at least 50% of the reservations of at least one additional BIA service area, DoD share of NPC shall not exceed 75% or $300,000, whichever is less.

(c) Eligible entities cannot subcontract more than 10% of their total program costs for private profit and/or nonprofit consulting services to support the program.

(d) These limitations may be modified by the Headquarters (HQ) DLA Cooperative Agreement Policy Committee (hereafter referred to as Policy Committee) as necessary to comply with legislative or other requirements.

DoD presently provides PTA to business firms through its network of Small Business Specialists located in industrial centers around the country. To the extent resources are available, the DCMD Associate Directors of Small Business (hereafter referred to as Associate Director) located in these industrial centers, will be available to provide: (1) Eligible entities such assistance as necessary to facilitate full understanding of the solicitation requirements; (2) general guidance in preparing proposals; and (3) orientation and training assistance to PTA cooperative agreement recipients' staff during program implementation.

PTA given to clients for marketing their goods and services to Federal agencies other than DoD will not be considered when evaluating proposals. However, eligible entities are encouraged to consider supplementing their DoD program to include these Federal marketing opportunities for business firms located in the area being or to be serviced.

The purpose of the proposed revised procedure is to make available to all eligible entities the prerequisites, policies and procedures which will govern the award of cooperative agreements by DLA. Also, this procedure establishes the guidelines which will govern the administration of cooperative agreements.

Although this procedure will affect all eligible entities desiring to enter into a DLA awarded cooperative agreement, DLA has determined that this procedure does not involve a substantial issue of fact or law, and that it is unlikely to have a substantial or major impact on the Nation's economy or large numbers of individuals or businesses. This determination is based on the fact that the proposed cooperative agreement procedure implements policies already published by the Office of Management and Budget pursuant to chapter 63, title 31, United States Code, Using Procurement Contracts and Grant and Cooperative Agreements. In addition DLA cooperative agreements will be entered into pursuant to the authorities and restrictions contained in the annual DoD Authorization and Appropriation Acts. Therefore, public hearings were not conducted.

II. Other Information

The language contained in the current cooperative agreement procedure limited the period of coverage to the FY 91 Program in that it addressed the FY 91 Authorization Act requirements in specific terms, including the exact dollar amounts of funding applicable to the Program. The proposed revision to the procedure will provide general guidance for cooperative agreements entered into by the DLA and will become a permanent document for the duration of the FY 92 program.

Comments are invited on the procedure. Comments should be submitted to the Defense Logistics Agency, ATTN: DLA–UM, Cameron Station, Alexandria, VA 22304–6100. Comments received after 13 January 1992 may not be considered in formulating revisions to the Procedure.

Cooperative Agreement Procedure

III. Proposed Revision to DLA Procedure—Cooperative Agreements

3–1 Policy

A. Proposals for cooperative agreements are obtained through the issuance of a DLA Solicitation for Cooperative Agreement Proposals, hereafter referred to as a SCAP. The contents of this procedure shall be incorporated, in whole or in part, into the solicitation to establish administrative requirements to execute and administer DLA awarded cooperative agreements. The SCAP may include additional administrative requirements that are not included in this procedure.

B. Cooperative agreements will be awarded on a competitive basis as a result of the SCAP. It is DLA's policy to encourage fair and open competition when awarding cooperative agreements. However, DoD through DLA, reserves the right to make or deny an award to an applicant if competition for DoD goods and services would be enhanced.

C. Letters of support and recommendation from Members of Congress are not necessary and will not be considered in the evaluation and selection of proposals to receive cooperative agreement awards.

D. The solicitation inviting the submission of proposals shall be given the widest practical dissemination. A copy of the SCAP will be provided to all known eligible entities and those that request copies after the solicitation is issued. All eligible entities that have advised DCMD of their interest in submitting a proposal under the SCAP will be invited to participate in preproposal conferences. The preproposal conferences will be held at the locations designated in the solicitation approximately 30 calendar days prior to the SCAP's closing date.

E. Proposals will not be accepted from applicants who apply as co-equal partners or co-equal joint ventures. Only one organization can take the lead and primary responsibility for the program.

F. Proposals will not be accepted from applicants who propose to provide less than county or equivalent coverage (i.e. parish, borough). For example, if an applicant proposes to service any part of a county, the applicant must service the entire county.

G. The SCAP shall not be considered to be an offer made by DoD. It will not obligate DoD to make any awards under this Program.

H. DoD is not responsible for any monies expended or expenses incurred by applicants prior to the award of a cost sharing cooperative agreement However, actual expenses incurred by FY 92 award recipients to participate in a preproposal conference may be reimbursed under the FY 92 cooperative agreement award subject to the provisions of the applicable cost principles.

I. DoD's share of an eligible entity's proposal and award recipient's net program cost (NPC) shall not exceed 50%, unless the eligible entity/recipient proposes to cover a distressed area. If the eligible entity/recipient proposes to cover a distressed area (as defined in paragraph 3–3, subparagraph K below), the DoD share may be increased to an amount not to exceed 75%. In no event shall DoD's share of NPC exceed $150,000 for programs providing less than statewide coverage or servicing reservation(s) within one BIA service area, and $300,000 for programs providing statewide coverage (defined in paragraph 3–3, subparagraph AG below) or servicing 100% of the reservations within one BIA service area and at least 50% of the reservations within one other BIA service area (defined in paragraph 3–3, subparagraph AE below).

J. During each FY for which funding is authorized for the PTA program, at least one cooperative agreement for either an existing program or a new start shall be awarded within the geographical cognizance of each DCMD. If the area being or to be serviced by an eligible entity encompasses more than one DCMD's area of geographical cognizance, the eligible entity should submit its application to the DCMD having cognizance over the majority of the counties or equivalent coverage (i.e. parishes, boroughs) it is servicing or proposes to service. Only one application will be accepted from a single eligible entity.

K. The award of a cooperative agreement shall not in any way obligate DoD to enter into a contract or give preference for the award of a contract to a concern or firm which becomes a client of a DLA cooperative agreement recipient.

L. The period of performance for a cooperative agreement shall cover a twelve month period.

M. To assist DoD in achieving its socioeconomic goals, applicants and cooperative agreement recipients must give special emphasis to assisting small disadvantaged business (SDB) firms which are participating or will be participating in DoD contracting opportunities. A concerted effort must be made by recipients to identify SDB firms and provide them with marketing and technical assistance, particularly where such firms are referred for assistance by a DoD component.

N. Award recipients are not required to obtain or retain private profit and/or nonprofit consulting services. Any subcontract costs being proposed for such services shall not exceed 10% of the total program cost (TPC). Subcontract costs in excess of 10% included in the eligible entity's proposal will cause the proposal to be rejected.

O. Reasonable quantities of government publications, such as "Selling to the Military," may be furnished to award recipients at no cost, subject to availability. All requests for such publications must be submitted to the cognizant Associate Director.

P. For the purpose of executing cooperative agreements, the HQ DLA Cooperative Agreement Program Manager (hereafter referred to as Program Manager) and the Associate Director are delegated the authority to execute cooperative agreements.

Q. Each cooperative agreement recipient's area of performance will be limited to the county(ies) or equivalent coverage (i.e., parish(es), borough(s)) specified in its cooperative agreement award, including modifications thereto.

R. To the extent that the annual DoD Authorization and Appropriation Acts provide for restricting some part of the total funds authorized to accommodate special socioeconomic requirements, any specific requirements related to the restricted funds which differ from this procedure will be identified in the SCAP.

S. The applicant/recipient will support the Mentor-Protege Pilot Program as required by section 831 of Public Law 101–510, "The Defense Authorization Act."

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3–2 Scope.

This procedure implements chapter 142 of title 10, United States Code, as amended, and establishes procedure and guidelines for the award and administration of Cost Sharing Cooperative Agreements entered into between DLA and eligible entities. Under these agreements, financial assistance provided by DoD to recipients will cover the DoD share of the cost of establishing new and/or maintaining existing PTA programs for furnishing PTA to business entities.

3–3 Definitions.

The following definitions apply for the purpose of this procedure.

A. *Act.* The enabling legislation that authorizes the establishment and continuation of the PTA Cooperative Agreement Program each FY.

B. *Agency.* A field office of one of the twelve service area offices, as published by the Bureau of Indian Affairs (BIA), US Department of the Interior.

C. *Civil jurisdiction.* All cities with a population of at least 25,000 and all counties. Townships of 25,000 or more population are also considered as civil jurisdictions in 4 States (Michigan, New Jersey, New York, and Pennsylvania). In Connecticut, Massachusetts, Puerto Rico and Rhode Island where counties have very limited or no government functions, the classifications are done for individual towns.

D. *Client.* A recognized business entity, including a corporation, partnership, or sole proprietorship, organized for profit or nonprofit, which is small or other than small, that has the potential or is seeking to market its goods and/or services to DoD and other Federal agencies.

E. *Consultant services.* Marketing and technical assistance offered directly to cooperative agreement recipients by private nonprofit and/or profit seeking individuals, organizations or otherwise qualified business entities.

F. *Cooperative agreement.* A binding legal instrument reflecting a relationship between DLA and a cooperative agreement recipient for the purpose of transferring money, property, services or anything of value to the recipient to accomplish the requirements described in the agreement. The requirement shall be authorized by Federal statute and substantial involvement is expected between DLA and the recipient during performance of the agreement.

G. *Cooperative agreement offer/application/proposal.* An eligible entity's response to the SCAP describing its existing or planned PTA program. The offer binds the eligible entity to perform the services described in its offer if selected for an award, and upon the proposal being incorporated into the cooperative agreement award document.

H. *Cooperative agreement award recipient.* An organization receiving financial assistance directly from DLA to carry out the PTA program. The organization is the entire legal entity even if only a particular component of the entity is designated in the cooperative agreement award document.

I. *Cost matching or sharing.* The value of third party in-kind contributions and the portion of costs of a federally assisted project or program not borne by the Federal government.

J. *Direct cost.* Any cost that can be identified specifically with a particular final cost objective. No final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any indirect cost pool to be allocated to that or any other final cost objective.

K. *Distressed area.* The geographical area being or to be serviced by an eligible entity in providing PTA to business firms physically located within an area that:

(1) Has a per capita income of 80% or less of the State average; or

(2) Has an unemployment rate that is one percent greater than the national average for the most recent 24-month period in which statistics are available.

(3) Is a "Reservation" which includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act.

DoD Cooperative Agreement Program. Provides assistance to eligible entities (defined by subparagraph N below) in establishing or maintaining PTA activities to help business firms market their goods and services to the DoD and other Federal government activities.

M. *Duplicate coverage.* A situation caused by two or more applicants offering to provide marketing and technical assistance to clients located within the same county(ies) or equivalent coverage (i.e., parish(es), borough(s)).

N. *Eligible entities.* Are organizations qualifying to submit a proposal under the PTA program, including:

(1) *State government.* A State of the United States, the District of Columbia, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-state, regional, or interstate entity having governmental duties and powers.

(2) *Local government.* A county, municipality, city, town, township, local public authority (including any public Indian Housing agency under the United States Housing Act of 1937), school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), any other regional or interstate government entity (such as regional planning agencies), or any agency or instrumentality of a local government. The term does not include institutions of higher education and hospitals.

(3) *Private, nonprofit organizations.* Any corporation, trust, foundation, or institution which is exempt or entitled to exemption under section 501(c)(3)–(6) of the Internal Revenue Code, or which is not organized for profit and no part of the net earnings of which inure to the benefit of any private shareholder or individual.

(4) *Indian Economic enterprise.* Any Indian-owned (as defined by the Secretary of the Interior) commercial, industrial or business activity established or organized, whether or not such economic enterprise is organized for profit or nonprofit purposes: *Provided,* that such Indian ownership shall constitute not less than 51 per centum of the enterprise.

(5) *Tribal organization.* The recognized governing body of any Indian tribe; and legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body, or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: *Provided,* that in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant.

O. *Existing program.* Any PTA program that was the recipient of a cooperative agreement with DLA for any two years subsequent to FY 88.

P. *Federal funds authorized.* The total amount of Federal funds obligated by the Federal government for use by the recipient.

Q. *Indian.* A person who is a member of any Indian tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the BIA and any "Native" as defined in the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.].

R. *Indian organization.* The governing body of any Indian tribe (as defined in subparagraph S below) or entity established or recognized by such governing body.

S. *Indian tribe.* Any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.] which is recognized by the Federal Government as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

T. *Indirect cost.* Any cost not directly identified with a single, final cost objective, but identified with two or more final cost objectives or an intermediate cost objective. An indirect cost is not subject to treatment as a direct cost.

U *In-kind contributions/donations.* The value of noncash contributions provided by the eligible entity and non-Federal parties. Only when authorized by Federal legislation may property or services purchased with Federal funds be considered as in-kind contributions/donations. In-kind contributions/donations may be in the form of charges for real property and nonexpendable personal property and the value of goods and services directly benefiting and specifically identifiable to the project or program.

V. *Modified total cost.* Costs consisting of salaries and wages, fringe benefits, materials and supplies, services, travel, and subagreements and subcontracts up to $25,000 each.

W. *Net program cost.* The total program cost (TPC) (including all authorized sources) less any program income and/or other federal funds not authorized to be shared.

X. *New start.* An eligible entity that is not an existing program (see subparagraph O above for definition of an existing program).

Y. *Other Federal funds.* Include Federal funds such as that provided by the Job Training Partnership Act, and Federal agencies other than DoD. When authorized by statute, Federal funds received from other sources, including grants, may be used as cost sharing and/or cost matching contributions.

Z. *Per capita income.* The estimated average amount per person of total money income received during a calendar year for all persons residing in a given political jurisdiction as published by the U.S. Department of Commerce, Bureau of the Census.

AA. *Prior approval.* Written approval by the authorized official evidencing consent, as required by the cooperative agreement award document.

AB. *Procurement technical assistance (PTA).* A program organized to generate employment and improve the general economy of a locality by assisting business firms in obtaining and performing under Federal contracts.

AC. *Program income.* The gross income received by the recipient or subrecipient from cooperative agreement supported activities. It includes training fees received from other PTA centers and organizations. Such earnings exclude interest earned on advances. It may also include, but is not limited to, income from service fees, reimbursement for expenses incurred in conducting the program, sale of commodities, usage or initial fees, and royalties on patents and copyrights. It may be reported by the recipient on a cash or accrual basis, whichever is used for reporting outlays.

AD. *Reservation.* Includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.].

AE. *Service area.* Any of the twelve geographical regions, as published by the U.S. Department of the Interior, BIA to include: Aberdeen, Albuquerque, Anardako, Billings, Eastern, Juneau, Minneapolis, Muskogee, Navajo, Phoenix, Portland and Sacramento.

AF. *Solicitation for cooperative agreement proposals (SCAP).* A document issued by DLA/DCMDs containing provisions and evaluation factors applicable to all applicants which apply for a PTA cooperative agreement.

AG. *Statewide coverage.* A PTA program which proposes to service at least 50% of a State's counties or equivalent coverage (i.e., parishes, boroughs) and 75% of a State's labor force.

AH. *Subrecipient.* The legal entity to which a subagreement is awarded and which is accountable to the recipient of the cooperative agreement for the use of the PTA program funds for providing procurement technical assistance to business firms/clients.

AI. *Third party in-kind contributions.* Property or services which benefit the PTA cooperative agreement program and which are contributed by non-Federal third parties without charge to the recipient.

AJ. *Total program cost (TPC).* All allowable costs set forth in applicable OMB Circulars from all sources, to include in-kind contributions/donations and all income received from all sources, as a result of operating the program. Any Federal funds proposed for use in establishing or conducting the program must have prior approval for such use.

AK. Total quality management (TQM). Is both a philosophy and a set of guiding principles and practices that represent the foundation for continuously improving an organization. It applies human resources and quantitative methods to improve the material and services supplied to an organization, all the processes within an organization, and the degree to which the needs of the customer are met now and in the future. It integrates fundamental management techniques, existing improvement efforts, and technical tools in a disciplined and focused continuous improvement process. While operating under the principles of TQM, business firms/clients of the Government would tender goods and services whose quality not only meets but may exceed the requirements of the Government. Additionally, the quality of those goods and services would be continually improved by the producer to meet the future expectations of the Government.

3–4 Program Description

A. The objective of the PTA Program is to assist eligible entities in providing marketing and technical assistance to business firms/clients in selling their goods and services to DoD. Thus, the PTA program assists DoD in its acquisition goals. At the same time, it enhances the business climate and economies of the communities being served.

B. Program requirements to accomplish this objective will vary depending on location, the types of industries and business firms within the community, the level of economic activity in the community, and other factors.

C. A comprehensive PTA program should include, but not be limited to, the following:

(1) *Personnel.* Personnel qualified to counsel and advise business firms/clients regarding Federal procurement policies and procedures as they apply to both prime and subcontract opportunities. The areas of consideration should relate to:

(a) Marketing techniques and strategies;

(b) Pricing policies and procedures;

(c) Preaward procedures;

(d) Postaward contract administration;

(e) Quality assurance;

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(f) Production and manufacturing;
(g) Financing;
(h) Subcontracting;
(i) Bid and proposal preparation; and
(j) Specialized acquisition requirements for such areas as construction, research and development, and data processing.

(2) *Counseling tools* The sources used or will be used by the eligible entity for implementing its PTA program. The following publications should be included:
(a) Commerce Business Daily;
(b) Federal Acquisition Regulations (FAR);
(c) DoD FAR Supplement;
(d) Commodity listings from Federal contracting activities;
(e) Federal and military specifications and standards; and
(f) Other Federal government publications.

(3) *Methods for providing PTA.* The eligible entity's procedures and plans for activating and developing the outreach program, including networking throughout the area being serviced or which the applicant plants to service. Examples of networking include:
(a) Locating assistance offices in areas of industrial concentration;
(b) Establishing data links with other organizations; and
(c) Crating data exchanges.

(4) *Performance measurement.* The program shall include a description of the method being used or to be used to periodically measure and verify the program's effectiveness. Factors to consider in establishing time phased goals and techniques for measuring performance against proposed goals shall consist of:
(a) The total number of procurement outreach conferences sponsored/participated;
(b) The total number of initial and follow-up counseling sessions and types of clients to be assisted, including size (small businesses and other than small businesses) and socioeconomic status (small disadvantaged and women-owned businesses);
(c) The total number of client applications submitted by business firms/clients for addition to Federal agency(ies) bidders mailing list(s); and
(d) The total number and value of DoD prime contract and subcontract awards received by business firms/clients, including the business firms/client's size (small businesses and other than small businesses) and socioeconomic status (small disadvantaged and women-owned businesses) resulting from assistance received through the recipient's program.
(e) The total number and value of other Federal agencies' prime contract and subcontract awards received by business firms/clients, including the business firms/client's size (small businesses and other than small businesses) and socioeconomic status (small disadvantaged and women-owned businesses) resulting from assistance received through the recipient's program.
(f) Award recipients are required to obtain appropriate data from their clients on the assistance provided to substantiate the effectiveness of the recipient's program.

D. *Fees and service charges.* In the event the applicant charges or plans to charge clients a fee or service charge, details as to the amount and basis for the fee or service charge must be described. Also, recipients shall not charge a commission, percentage, brokerage or other fee that is contingent upon the success of the client securing a Government contract. Any fees earned under the program are to be included as part of TPC.

3–5 Procedures.

A. The Program Manager will develop and prepare the SCAP. He/she will be responsible for assuring that adequate funds are made available to the DCMDs.

B. The SCAP will be approved by the Policy Committee and will be issued by DLA through each DCMD. The Policy Committee will be comprised of representatives from the HQ DLA Offices of General Counsel, Contracting, Comptroller, Congressional Affairs and Small Business. The Policy Committee will be responsible for reviewing the evaluations and recommendations of the Program Manager and the Evaluation Panel.

C. The Staff Director, Small and Disadvantaged Business Utilization will serve as the Policy Committee's Chairman. The Policy Committee is the final administrative appeal authority for disagreements between the Program Manager, Associate Director and the eligible entity and/or cooperative agreement recipient.

D. The evaluation of proposals submitted in response to the SCAP and the selection of award recipients will be conducted as detailed below:

(1). The Associate Director will perform an initial evaluation of each proposal received to determine if the proposal:
(a) Contains sufficient technical, cost and other information;
(b) Has been signed by a responsible official authorized to bind the eligible entity; and
(c) Generally meets all requirements of the SCAP. If the proposal does not meet all of the above requirements, the Associate Director will remove the applicant's proposal from further consideration for an award and promptly notify the applicant of the reason(s) for removal. The applicant's proposal will be retained with other unsuccessful proposals by the Associate Director. The Associate Director will forward all accepted proposals, along with his/her recommendations, to the Program Manager at HQ DLA.

(2) Under existing programs only, the applicant's PTA Performance Report, DLA Form 1806, will be attached to the proposal by the cognizant Associate Director if it is not included in the application by the eligible entity.

(3) Revised proposals will not be accepted from applicants unless the revised proposal is postmarked two working days prior to the date specified for receipt of proposals or is hand delivered prior to the time and closing date of the SCAP. Any proposal which is unsigned or otherwise rejected will not be given additional evaluation consideration and will be retained with other unsuccessful applications by the Associate Director.

(4) As part of the initial evaluation of an otherwise acceptable proposal, the Associate Director will review and verify the accuracy of the applicant's program status stated on block 8, "Type of Application" of the SF 424. If the Associate Director considers the program status misclassified, the matter will be reviewed with the applicant. If there is disagreement, the Associate Director's decision regarding the program classification is final and is not subject to further review.

(5) If the Associate Director determines that supporting documentation does not substantiate the applicant's proposed distressed area or per capita income status in part or in whole (where greater than 50% funding as the Government share is requested), the application will be disqualified and not be given further review or consideration for an award. The proposal will be retained with other unsuccessful applicants by the Associate Director.

(6) Proposals which pass the initial evaluation phase will be subjected to a comprehensive evaluation. The comprehensive evaluation is performed by a specially constituted HQ DLA Evaluation Panel comprised of small business specialists, contract management specialists, and other personnel deemed appropriate by the Policy Committee. The purpose of the comprehensive evaluation is to assess the merits of the proposals to determine which offer the greatest likelihood of achieving the stated program objectives considering technical, quality, personnel qualifications, estimated cost, and other relevant factors. The Evaluation Panel will conduct its evaluations in accordance with stated criteria and rank proposals in order of excellence to determine which will best further DoD's program objectives. A member of the Office of General Counsel, HQ DLA, will provide legal assistance to the Evaluation Panel, as needed.

(7) Upon completion of its review, the Evaluation Panel will submit its results and it recommendations to the Program Manager.

(8) The Program Manager will determine whether sufficient funds have been allocated to the DCMD to cover DoD's share of NPC and whether any of the dollar limitations have been exceeded. The Program Manager will submit its comments and the Evaluation Panel's recommendations to the Policy Committee for review.

(9) Proposals that include duplicate coverage will be processed by the Program Manager or designated representative(s) as follows:
(a) When two or more applicants submit proposals that provide duplicate coverage of the county(ies) or equivalent coverage (i.e., parish(es), borough(s)), which the applicant plans to service, selection priority will be given to the proposal that is assigned the highest total points by the Evaluation Panel.
(b) To be considered for an award, an applicant's proposal shall not duplicate more than 25% on an individual or cumulative basis any of the county(ies) or equivalent coverage (i.e., parish(es), borough(s)) proposed by higher ranked applicant(s) as established by the Evaluation Panel.
(c) Proposals will not be accepted from applicants who propose to provide less than county or equivalent coverage (i.e., parish, borough). For example, if an applicant proposes to service any part of a county, the applicant must service the entire county.
(d) Only one statewide program will be awarded in a state.

(10) The Policy Committee will review the Evaluation Panel's award recommendations along with the Program Manager's comments. The results of the Policy Committee's review and its recommendations will be forwarded to the appropriate DCMD Commander for approval.

E. After approval of the award selections by the DCMD Commander, the cooperative agreements will be executed by the Associate Director.

3–6 Evaluation Factors.

A. The evaluation factors for new starts and existing programs, with their relative importance, will be specified in the SCAP.

B. The following evaluation factors (which may be subject to change) will be considered:
(1) Program development, performance and effectiveness. (Existing Programs only.)
(2) Types and qualifications of personnel. (Existing Programs and New Starts.)
(3) Quality of the PTA Program. (New Starts only.)
(4) Potential number of business firms/clients in the county(ies) or equivalent coverage (i.e. parish(es), borough(s)) being serviced and/or which the applicant plans to service. (Existing Program and New Starts.)
(5) The amount and percentage of net program costs to be shared by DoD. (Existing Programs and New Starts.)
(6) The level of unemployment in the area being serviced and/or which the applicant plans to service. (Existing Programs and New Starts.)
(7) The amount of subcontracting. (Existing Programs only.)

C. As this program applies both to existing PTA programs and new start programs, certain of these evaluation factors will be evaluated based upon stated implementing policy for programs being planned. For example, the types and qualifications of personnel assigned will require applicants to provide a list of personnel by name, including each of their salaries, education, previous experience (listed by technical discipline(s)), and Federal government courses which were successfully completed (including the number of hours for each course), and the percentage of time assigned or to be assigned to directly performing the program. If personnel have not been selected, the qualification standard to be used in making the selection, anticipated salary range, education, previous experience by technical discipline required by the qualification standard, and the percentage of time the individual is to be assigned to directly performing the program must be provided.

D. The amount of subcontracting to private consultants for consultant services is limited to no more than 10% of total program costs for both existing programs and new starts. However, in evaluating this factor for existing programs, the smaller the amount of subcontracting for consultant services the greater the weight that will be given. In the case of new starts, this is not an evaluation factor. New starts are subject only to the 10% limitation.

3–7 DoD Funding.

A. Any funds available for the PTA program will be allocated equitably among the DCMDs to cover the DoD share of the PTA's program costs for existing programs and for new starts.

B. If there is an insufficient number of satisfactory proposals in a DCMD to allow effective use of the funds allocated, the Program Manager will reallocate the funds among the DCMDs based upon the award recommendations made by the Evaluation Panel and Policy Committee.

C. The award recommendations must be approved by the DCMD Commander.

3–8 Cost Sharing Criteria and Limitations.

A. The DoD share of NPC shall not exceed 50%, except in a case where an eligible entity meets the criteria of a distressed area. When the prerequisite conditions to qualify as a distressed area are met, the DoD share may be increased to an amount not to exceed 75%.

B. In no event shall the DoD share of NPC exceed $150,000 for programs providing less than statewide coverage and $300,000 for programs providing statewide coverage. For the Indian Program, a request for DoD share shall not exceed 75% of NPC or $150,000 for a program providing services on reservations within one BIA service area, or $300,000 for a program providing multi-area coverage.

C. Cost contributions may be either direct or indirect costs, provided such costs are otherwise allowable in accordance with the cost principles applicable to the award. Allowable costs which are absorbed by the eligible entity as its share of costs may not be charged directly or indirectly or may not have been charged in the past to the Federal Government under other contracts, agreements, or grants.

D. The SCAP will require applicants to submit an annualized estimated budget, which may include cash contributions, third party in-kind contributions/donations, any fees and service charges to be earned under the program, and any other Federal Agency funding (including grants, loans, and cooperative agreements) authorized to be used for this program.

E. The type of value of third party in-kind contributions/donations will be limited to no more than 25% of TPC.

F. Any fees, service charges or Federal funds provided under another Federal financial assistance award,

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including loans (but not including loan guarantee agreements since these do not provide for disbursement of Federal funds) are not acceptable for calculating cost contributions of the eligible entity. Although the fees, service charges and other authorized Federal funds must be included in the annualized estimated budget, they cannot be included for cost sharing purposes. Inclusion of other Federal funds in the program is subject to the terms of the award instrument containing such funds or written advice being obtained from the awarding Agency(ies) authorizing such use. Any method used by the eligible entity in providing the required funds which relies upon Federal funds must be disclosed and identified in the eligible entity's proposal.

G. Where distressed area funding (greater than 50%) is requested and the civil jurisdiction(s) which the applicant services or plans to service includes both distressed areas and non-distressed areas, the budget must: (1) Be divided based on a reasonable and logical distribution of TPC between these two distinct areas; and (b) submitted as a single proposal. In addition, the recipient's accounting system must be capable of segregating and accumulating costs in each of the two budget areas.

H. Recipients of PTA cooperative agreements are required to maintain records adequate to reflect the nature and extent of their costs and expenditures, and ensure that the required cost participation is achieved. In addition, each state and local entity that receives Federal funding is required to have audits performed in accordance with the requirements of OMB Circular A-128. Nonprofit organizations and institutions of higher education are required to have audits performed in accordance with the the requirements of OMB Circular A-133. Indian economic enterprises (for profit only) will also have an audit performed in accordance with the requirements of OMB Circular A-133. Recipients shall have the audit organization send a copy of all audit reports which pertain to the PTA cooperative agreement directly to the cognizant Associate Director.

I. The SCAP will also provide that indirect costs are not to exceed 100% of direct costs. OMB Circular A-21, limits reimbursement of administrative costs to 26% of modified total direct costs for educational institutions.

J. In the event the applicant charges or plans to charge a fee or service charge for PTA given to clients, or to receive any other income as a result of operating the PTA Program, the estimated amount of such reimbursement is to be clearly identified in the proposed budget and shall be included as part of TPC.

K. The following OMB Circulars will be used to determine allowable costs in performance of the program:

(1) OMB Circular No. A-21, Cost Principles for Educational Institutions;

(2) OMB Circular No. A-87, Cost Principles for State and Local Governments; and

(3) OMB Circular No. A-122, Cost Principles for Nonprofit Organizations. This circular will also be used by for profit organizations.

3-9 Administration.

A. Cooperative Agreements will be assigned to the cognizant DCMD for postaward administration.

B. The Associate Director or designee at the cognizant DCMD will be responsible for performing in-depth reviews. These in-depth reviews will be performed annually for existing programs and semiannually for new starts during the effective period of each cooperative agreement. The review will include management control system, budgeted versus actual expenditures, performance factors, and quarterly performance report data. The result of the review will be furnished to the recipient and a copy will be provided to the Program Manager.

C. For eligible entities covered by OMB Circular No. A-102, Grants and Cooperative Agreements with State and Local Governments, Common Rule, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; or OMB Circular No. A-110, Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-profit Organizations, the administrative requirements specified in those circulars will apply.

DCMD PROCUREMENT TECHNICAL ASSISTANCE COOPERATIVE AGREEMENT PROGRAM MANAGERS

State or area	DCMD	Associate director for small business
Delaware, District of Columbia, Kentucky, Maryland, Michigan (inclusive of Alcona, Arenac, Bay, Genesee, Hillsdale, Huron, Iosco, Jackson, Lapeer Lenawee, Macomb, Midland, Monroe, Oakland, Ogemaw, Oscoda, Saginaw, St. Clair Sanilac, Tuscola, Washtenaw, Gladwin and Wayne counties), New Jersey, Ohio, Pennsylvania, Virginia and West Virginia.	DCMD Mid-Atlantic, 2800 South 20th St., P.O. Box 7478, Philadelphia, PA 19101-7478. For courier service delivery DCMD Mid-Atlantic (DCMDM-DU), Bldg. 6-2, Pole 47B, 2800 S. 20th St., Philadelphia, PA 19145.	Mr Thomas B. Corey, Telephone (215) 737-4006, Toll Free (PA only) 1-800-843-7694, Toll Free (Others) 1-800-258-9503.
Colorado, Illinois, Indiana, Iowa, Kansas, Michigan (except Alcona, Arenac, Bay, Genesee, Hillsdale, Huron, Iosco, Jackson, Lapeer Lenawee, Macomb, Midland, Monroe, Oakland, Ogemaw Oscoda, Saginaw, St. Clair Sanilac, Tuscola, Washtenaw, Gladwin and Wayne counties), Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Utah, Wisconsin and Wyoming.	DCMD North Central, O'Hare Int'l Airport, 10601 West Higgins Rd., P.O. Box 66926, Chicago, IL 60666-0926.	Mr James L. Kleckner Telephone (312) 825-6020, Toll Free 1-800-637-3848.
Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont.	DCMD Northeast, 495 Summer Street, 8th Floor Boston, MA 02210-2184.	Mr John T McDonough, Telephone (617) 451 4317/8, Toll Free (MA) 1-800-348-1011 (Outside MA) 1-800-321-1861.
Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas (except El Paso, Hudspeth, and Presidio counties and portions of Culberson, Jeff Davis, Brewster and Terrell counties or Zip Codes 789xx and 799xx), and Puerto Rico.	DCMD South, 805 Walker Street, Marietta, GA 30060-2789.	Mr Howard Head, Jr, Telephone (404) 590-6196, Toll Free 1-800-331-6415, (GA Only) 1-800-551-7801
Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Texas (inclusive of El Paso, Hudspeth and Presidio counties and portions of Culberson, Jeff Davis, Brewster and Terrell counties, or counties in the 789xx or 799xx Zip Codes), and Washington.	DCMD West, 222 N. Sepulveda Blvd., El Segundo, CA 90245-4394.	Ms. E. Renee Deavens, Telephone (213) 335-3260 Toll Free (CA only) 1-800-233-6521 Toll Free (Others) 1-800-624-7373.

Sim C. Mitchell,
Cooperative Agreement Program Manager, Small and Disadvantaged Business Utilization.
[FR Doc. 91-30742 Filed 12-24-91, 8:45 am]
BILLING CODE 3620-01-M

DEPARTMENT OF EDUCATION

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: Tuesday, January 21, 1992, 9 a.m. to approximately 5 p.m.

ADDRESSES: Ramada Renaissance at Techworld, 999 Ninth Street NW., Washington, DC 20001-9000. Telephone: 202/898-9000.

FOR FURTHER INFORMATION CONTACT: Robert K. Chiago, Executive Director, National Advisory Council on Indian Education, 330 C Street SW., room 4072, Switzer Building, Washington, DC 20202-7556. Telephone: 202/732-1353.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (part C, title V, Pub. L. 100-297) and to advise Congress and the Secretary of Education with regard to Federal education programs in which Indian children or adults participate or from which they can benefit.

The meeting is open to the public. The agenda includes reports by the Chairman and the Executive Director; a review of items to be included in the Fiscal Year 1991 Annual Report to Congress; the development of Council initiatives and workplan for the remainder of the 1992 fiscal year; and finalizing a work agenda for the White House Conference on Indian Education, January 22-24, 1992. Guest presenters will include Mr. Buck Martin, Director, White House Conference on Indian Education, Dr. John Tippeconnic, Director, Office of Indian Education and a representative from the Department of the Interior.

Records shall be kept of all Council proceedings open to the public and shall be available for public inspection at the office of the National Advisory Council on Indian Education located at 330 C Street SW., room 4072, Washington, DC 20202-7556.

Dated: December 19, 1991.

Robert K. Chiago,
Executive Director National Advisory Council on Indian Education.
[FR Doc. 91-30743 Filed 12-24-91, 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 91-61-NG]

Northridge Petroleum Marketing U.S., Inc.; Order Granting Blanket Authorization to Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order authorizing Northridge Petroleum Marketing U.S., Inc., to import up to 200 Bcf of natural gas from Canada and to export up to 300 Bcf of natural gas to Canada over a two-year period beginning on the date of first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 11, 1991.

Anthony J. Como,
Director, Office of Coal and Electricity Office of Fuels Programs Fossil Energy
[FR Doc. 91-30866 Filed 12-24-91, 8:45 am]
BILLING CODE 6450-01-M

[FE Docket No. 91-69-NG]

Northern States Power Co.; Application for Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for long-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed on September 5, 1991, and amended on October 21, 1991, by Northern States Power Company (Wisconsin) (NSPW), for authorization to import up to 7,500 Mcf per day of natural gas from Canada over a 10-year term commencing on the later of November 1, 1992, or the date of first delivery. NSPW would import the gas from Canadian Occidental Petroleum Company Ltd. (Canadian Occidental) under a gas purchase agreement dated November 1, 1990. The gas would be imported at the international border near Emerson, Manitoba, where Great Lakes Gas Transmission's (Great Lakes) pipeline system interconnects with TransCanada PipeLines Limited (TransCanada). Great Lakes would deliver the import volumes to Viking Gas Transmission (Viking) which in turn would transport the gas to NSPW's distribution facilities at Eau Claire, Wisconsin. NSPW states that no new pipeline construction is required for the proposed import.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed in Washington, DC, at the address listed below no later than 4:30 p.m., Eastern time, January 27, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478.

FOR FURTHER INFORMATION CONTACT:

Thomas Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-070, FE-53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9590.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: NSPW is a public utility incorporated in the State of Wisconsin and a wholly-owned subsidiary of Northern States Power

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Company (Minnesota) (NSPM). According to its application, NSPW provides electricity and natural gas service to customers in upper and central Wisconsin as well as Michigan's Upper Peninsula.

Under its gas sales contract with Canadian Occidental, NSPW has agreed to purchase a minimum annual quantity. Minimum purchases for the peak period months of December through February would be 75 percent of the sum of the daily contract quantities (DCQ) for those months, and 40 percent for the remainder of the year. If NSPW does not meet minimum annual purchase requirements of 65 percent, the contract requires it to pay a gas inventory charge of $.25 per MMBtu times the shortfall. The contract DCQ (7,500 Mcf) is also subject to adjustment if NSPW does not make minimum purchases that average at least 65 percent of DCQ in any contract year.

The contract price for the DCQ service consists of a two-part demand/commodity price. The monthly demand rate would equal the product of the DCQ average for the month times the sum of the monthly demand tolls for transportation service on the TransCanada and Nova pipeline systems. The commodity price to be paid in any month would equal the product of the base commodity price of $1.70 (U.S.) per MMBtu, as adjusted annually to reflect changes in the weighted average cost of gas (WACOG) for spot purchases at Kansas, Texas and Oklahoma, and by changes in prices for eight mid-western gas utilities under long-term import contracts, times a predetermined monthly adjustment factor. The contract provides for renegotiation and, absent agreement, arbitration of the commodity price and the commodity price adjustment mechanism if it fails to track changes in the WACOG of NSPW's gas purchases or the weighted average price of long-term Canadian gas exported to the U.S. midwestern market.

In support of its application, NSPW asserts the pricing, renegotiation, and arbitration provisions in its gas sales contract provide sufficient flexibility to assure a competitive price that will reflect market conditions throughout the term of the contract. NSPW also submits that the long-term imports are needed and secure. According to its application, NSPW's natural gas demand between 1987 and 1990 increased from 11.4 to 14.1 Bcf, and NSPW anticipates at least a 5 percent annual growth rate for near-term deliveries. Finally, NSPW states that Canadian Occidental estimates it has over 35 Bcf of available reserves to supply its needs over the ten-year contract. According to NSPW, security of supply is further ensured by contract provisions that permit Canadian Occidental to substitute alternate gas supplies from other producers as long as there is no interruption in supply. In the event non-delivery of gas volumes exceeds ninety days, NSPW is entitled to terminate the contract by providing 30-days notice.

The decision on NSPW's application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In the case of a long-term arrangement such as this, other matters that will be considered in making a public interest determination include need for the natural gas and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. NSPW asserts that this import arrangement is in the public interest because it is needed, competitive, and its natural gas source will be secure. Parties opposing the import arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of NSPW's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 19, 1991.

Clifford P. Tomaszewski,

Acting Assistant Deputy Secretary for Fuels Programs, Office of Fossil Energy

[FR Doc. 91-30965 Filed 12-24-91, 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-59-NG]

Tenaska Gas Co.; Application for Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Department of Energy; Office of Fossil Energy.

ACTION: Notice of application for long-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed on August 6, 1991, by Tenaska Gas Co. (Tenaska), for authorization to import up to 15,000 MMBtu (approximately 15,000 Mcf) per day of natural gas form Pertro-Canada beginning on the effective date of the requested authorization through December 31, 2011. The imported gas would enter the U.S. at the international border near Sumas, Washington, and be transported through the pipeline facilities of Cascade Natural Gas Corporation (Cascade) to a combined cycle, gasfired cogeneration facility being developed by Tenaska Washington, Inc. (TWI). The TWI facility would use the imported gas as part of its system supply to produce electricity for sale to the Puget Sound Power and Light Company and steam for sale to an as yet unidentified company. Cascade would construct and operate facilities on the international border to implement transportation of the gas.

The application is filed under section 3 of the Natural gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., Eastern time January 27, 1992.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy; Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-9478.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, FE-53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9482.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Tenaska is a Nebraska Corporation with offices in Omaha, Nebraska. Tenaska has entered into a gas purchase agreement with Petro-Canada, a Canadian corporation, dated July 29, 1991, under which Petro-Canada would supply up to 15,000 MMBtu per day of natural gas to Tenaska for resale to TWI's proposed cogeneration facility. The term of the contract continues for seventeen years following commencement of commercial operation of TWI's cogeneration facility, or December 31, 2011, whichever occurs earlier. Commercial operation of the cogeneration facility is expected to begin by October 1, 1993. The TWI cogeneration facility would be a "qualifying facility" under section 201 of the Public Utility Regulatory Policies Act and would be located in Whatcon County, Washington.

Under the terms of the Tenaska/Petro-Canada gas purchase agreement, Tenaska must take or pay for eighty percent of the daily contract quantity of 15,000 MMBtu of natural gas. If Tenaska fails to take the prescribed minimum volume, then Tenaska must pay Petro-Canada a deficiency payment equal to the difference between the commodity price under the terms of the Tenaska/Petro-Canada contract and Canadian spot market prices for the volumes not taken as required by the contract.

The price of the imported gas would be computed under a pricing formula which, according to the applicant, would take into account market indexes for both domestic and Canadian natural gas prices. The formula does this by tying the price of the imported gas to the actual annual average market index price published in the Natural Gas Week and inside F.E.R.C.'s Gas Market Report. This index price represents the price for one month's gas sales transactions at the interconnection of the gas transmission system of Westcoast Energy, Inc. and Northwest Pipeline corporation near Sumas, Washington, and at the mainline gas receipt points of Northwest Pipeline Corporation located in the Rocky Mountains times a fraction the numerator of which is $1.70 (U.S.) per MMBtu of natural gas and the denominator of which $1.25 (U.S.) per MMBtu. The contract price is computed by averaging a monthly escalation price and the actual annual average market index price subject to a ceiling and a floor price. The contract provides that the monthly escalation price for the period January 1, 1993, through October 31, 1993, shall be $2.00 (U.S.) per MMBtu of natural gas, and shall be escalated monthly at the rate of one-half of one percent beginning on November 1, 1993. The contract also provides that the ceiling price for calendar year 1993 shall be $2.05 (U.S.) per MMBtu of natural gas and shall be escalated at the rate of eight and one-fourth percent each year thereafter. The floor price for the calendar year 1993 is also set at $2.05 (U.S.) per MMBtu and shall be escalated at the rate of four percent each year thereafter.

The Tenaska/Petro-Canada contract further provides that Tenaska is not responsible for any specific Canadian transportation costs for the gas but rather is obligated to pay a demand charge equal to thirty-five percent of what the cost of the Canadian gas would be if the daily contract quantity were delivered each day of the month and a commodity charge equal to sixty-five percent to the cost of the gas actually delivered each month.

In support of its application, Tenaska asserts that the price of the imported gas would be competitive because the pricing formula requires that the price of the gas track the marketplace price of gas and has escalator provisions that restrict wide swings in the price of the gas. Security of supply is assured, according to the applicant, by Petro-Canada's three trillion feet of proven reserves of natural gas and by a contract warranty provision under which Petro-Canada must deliver the daily contract quantity or reimburse Tenaska for the cost of obtaining alternate supplies of fuel to replace the delivery shortfall. Further, Tenaska states that the gas is needed to provide part of the gas requirements for TWI's proposed cogeneration facility.

The decision on Tenaska's application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In the case of a long-term arrangement such as this, other matters that will be considered in making a public interest determination include need for the natural gas and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. Tenaska asserts that this import arrangement is in the public interest because it is needed, competitive, and its natural gas source will be secure. Parties opposing the

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proposed import arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C., 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR ¶590.316.

A copy of Tenaska's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 19, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–30864 Filed 12–24–91; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4087–3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before January 27, 1992.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards (NSPS) (subpart E) for Municipal Incinerators—Reporting and Recordkeeping Requirements (EPA No. 1058.04, OMB No. 2060–0040).

Abstract: This ICR is for an extension of an existing information collection in support of the NSPS for Particulate Matter (PM) as established by the Clean Air Act. In accordance with the general requirements under 40 CFR part 60.7–60.8, and the specific requirements for PM emissions by municipal incinerators under 40 CFR part 60.50–60.54, subject facilities must comply with certain monitoring, recordkeeping, and reporting requirements. The information collected will be used by the EPA for monitoring, inspection, and enforcement efforts directed at ensuring facility compliance with this NSPS.

Owners or operators of new sources subject to this NSPS must submit to EPA: (1) Notification of the date of construction or reconstruction, (2) notification of the anticipated and actual dates of the start-up, and (3) initial performance tests results. Owners and operators of existing facilities must notify EPA of any physical or operational change to their facility which may result in an increase in the regulated pollutant emission rate. Existing facilities must also maintain records on the incinerator operation that include: (1) The occurrence and duration of any start-up, shutdowns, and malfunctions, (2) initial performance test results, and (3) daily charging rates and operating hours.

Presently, there are an estimated 79 facilities subject to the regulation, with the regulated universe expanding at an annual rate of 7 new facilities. All subject facilities must maintain records related to compliance for two years.

Burden Statement: Public reporting burden for this collection of information is estimated to average 81 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the collection of information. Public recordkeeping burden is estimated to average 87.5 hours, annually.

Respondents: State or local governments, Businesses or other for-profit organizations.

Estimated Number of Respondents: 7 reporters, 86 recordkeepers.

Estimated Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents: 8,092 hours.

Frequency of Collection: On occasion for reporting, daily for recordkeeping.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460,

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: December 18, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91–30836 Filed 12–24–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4087–1]

Class II Underground Injection Control Program Advisory Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advisory Committee Meetings.

SUMMARY: The Class II Underground Injection Advisory Committee will meet on Tuesday and Wednesday, January 21 and 22, in Alexandria, Va. to continue work on construction and areas of review for Class II Injection Wells.

DATES: On January 21, the meeting will begin at 9 a.m. and end at 5 p.m. On January 22, the meeting will begin at 8:30 a.m. and end at 3:30 p.m.

ADDRESSES: The meetings will take place at the Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, Va. 22314, 703–684–5900, 1–800–362–2779.

FOR FURTHER INFORMATION CONTACT: For information on substantive issues, contact Jeffrey Smith, EPA, Water Office, (202) 260–5586. On administrative matters, contact Angela Suber, EPA, Regulatory Development Branch, at (202 260–7205, or John Lingelbach, Committee Co-Chair, at (202) 887–1037.

Dated: December 19, 1991.

Charles Kirtz,

UIC Advisory Committee Designated Federal Official.

[FR Doc. 91–30837 Filed 12–24–91, 8:45 am]

BILLING CODE 6560–50–M

[OPPT–59927; FRL 4010–6]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984 (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 4 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 92–70, 92–71, 92–72, December 29, 1991.

Y 92–73, December 15, 1991.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 92–70

Manufacturer. Confidential.

Chemical. (G) Polyester urethane.

Use/Production. (C) Coatings for textiles. Prod. range: Confidential.

Y 92–71

Manufacturer. Confidential.

Chemical. (G) Polyester urethane.

Use/Production. (G) Coatings for textiles. Prod. range: Confidential.

Y 92–72

Importer Unichema North America.

Chemical. (G) Alkanedibasic acids, propanediol, N-alkanol polyester.

Use/Import. (S) Plastizer. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat).

Y 92–73

Importer. Confidential.

Chemical. (G) Polyester resin.

Use/Import. (G) Electrostatic powder coatings. Import range: Confidential.

Dated: December 19, 1991.

Douglas W. Sellers,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 91–30772 Filed 12–24–91, 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

December 18, 1991.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0034.

Title: Application for Construction Permit for Noncommercial Educational Broadcast Station.

Form Number: FCC Form 340.

Action. Revision.

Respondents: Non-profit institutions.

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 48 responses; 171.56 hours average burden per response; 8,235 hours total annual burden.

Needs and Uses: FCC Form 340 is used to apply for authority to construct a new noncommercial educational AM, FM and TV broadcast station, or to make changes in the existing facilities of such a station. On 9/26/91, the FCC adopted a Report and Order, MM Docket No. 87–267, Review of the Technical Criteria for the AM Broadcast Service. In this R&O a number of major steps have been taken to improve technical standards and thus to reduce the level interference in the existing band, to encourage certain existing licensees to move into the expanded portion of the AM band, and to consolidate existing broadcasting facilities in order to further reduce congestion and interference in the existing band. The form has been revised to include this service. The form has also been changed to include modified policies concerning adjudicated actions or pending adjudications of relevant misconduct by broadcast applicants. The data is used by FCC staff to determine whether the

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applicant meets basic statutory requirements to become a Commission licensee.

OMB Number: 3060–0027.

Title: Application for Construction Permit for Commercial Broadcast Station.

Form Number: FCC Form 301.

Action: Revision.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 916 responses; 193.59 hours average burden per response; 177,328 hours total annual burden.

Needs and Uses: FCC Form 301 is used to apply for authority to construct a new commercial AM, FM, or TV broadcast station, or to make changes in the existing facilities of such a station. On 9/26/91, the Commission adopted a Report and Order, MM Docket No. 87–267, Review of the Technical Assignment Criteria for the AM Broadcast Service. In this R&O a number of major steps have been taken to improve technical standards and thus to reduce the level of interference in the existing band, to encourage certain existing licensees to move into the expanded portion of the AM band, and to consolidate existing broadcasting facilities in order to further reduce congestion and interference in the existing band. There will be a 30 minute increase in burden for applicants for AM facilities filing in compliance with an Allotment Plan to Migrate to the expanded band. The form has been changed to include this service. The form has also been revised to include character qualification questions and to incorporate fee processing data. The data is used by FCC staff to determine whether applicant meets basic statutory requirements to become a Commission licensee.

OMB Number 3060–0029.

Title: Application for New Broadcast Station License.

Form Number FCC Form 302.

Respondents: Non-profit institutions, businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden. 1,080 responses; 136.49 hours average burden per response; 147,409 hours total annual burden.

Needs and Uses: Licensees and permittees of AM, FM and TV broadcast stations are required to file FCC Form 302 to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities of these stations. On 9/26/91, the Commission adopted a Report and Order, MM Docket No. 87–267, Review of the Technical Assignment Criteria for the AM Broadcast Service. In this R&O a number of major steps have been taken to improve technical standards and thus to reduce the level of interference in the existing band, to encourage certain existing licensees to move into the expanded portion of the AM band, and to consolidate existing broadcasting facilities in order to further reduce congestion and interference in the existing band. There will be a 30 minute increase in burden for applicants for AM facilities filing in compliance with an Allotment Plan to Migrate to the expanded band. The form has been changed to include this service. The form has also been revised to include character qualification questions and to incorporate fee processing data. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit, and to update FCC station files. Data is then extracted from FCC Form 302 for inclusion in the subsequent license to operate the station.

Federal Communications Commission.

Donna R. Searcy,

Secretary

[FR Doc. 91–30804 Filed 12–24–91, 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

[Notice 1991–23]

Rulemaking Petition: Congressman William Thomas; Availability

AGENCY: Federal Election Commission.

ACTION: Rulemaking Petition: Notice of availability.

SUMMARY: On December 5, 1991, the Commission received a Petition for Rulemaking from Congressman William Thomas. The petition requests the Commission to consider amending its regulations governing the transfer of funds from nonfederal committees to federal political committees. The petition is available for public inspection in the Commission's Public Records office. Further information is provided in the supplementary information which follows.

DATES: Statements in support of or in opposition to the petition must be filed on or before February 10, 1992.

ADDRESSES: Comments must be made in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

Rulemaking Petition: Notice of Availability

Petitioner has requested that the Commission reconsider its regulations governing the transfer of funds from nonfederal committees to federal political committees. Current regulations allow nonfederal committees to transfer funds to federal committees so long as the funds are not composed of any contributions that would violate the Act, so-called "soft money." 11 CFR 110.3(c)(6). The petitioner alleges that the regulations are ineffective, because they "do not address the loophole through which this 'soft money' is often spent by nonfederal committees to raise 'hard' dollars that are then transferred to federal committees." The petitioner urges the Commission to "conduct a rule-making procedure to ensure that Federal Election law is fully enforced to the extent that 'soft money' is not indirectly used by nonfederal committees to raise funds that will be used in Federal races."

Copies of the Petition for Rulemaking are available for public inspection at the Commission's Public Records Office, 999 E Street, NW., Washington, DC 20463, Monday through Friday between the hours of 9 a.m. and 5 p.m. Statements in support of or in opposition to the Petition for Rulemaking must be submitted in writing by February 10, 1992.

Dated: December 20, 1991.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 91–30777 Filed 12–24–91, 8:45 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Los Angeles, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200441–001

Title: Los Angeles/Containerfreight Transportation Co. Lease Agreement.

Parties: City of Los Angeles, Containerfreight Transportation Company.

Synopsis. The Agreement, filed December 17, 1991, revises the lease description of the premises to be used by the tenant, Containerfreight Transportation Company. The premises is defined as Bay No. 1 of Municipal Warehouse No. 16 and not the entire Warehouse.

Agreement No.: 224–200600.

Title: Los Angeles/Stevedoring Services of America Crane Assignment Agreement.

Parties: City of Los Angeles, Stevedoring Services of America.

Synopsis: This Agreement, filed December 12, 1991, provides for the assignment of two cranes owned by the Los Angeles Harbor Commission to Stevedoring Services of America on a nonexclusive preferential basis. The assignment term for the two cranes, Container Cranes Number 209–18 and 209–19, shall be on a month-to-month basis.

Dated: December 19, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary

[FR Doc. 91–30731 Filed 12–24–91, 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Program Announcement 913]

Grants for Injury Control Research Centers and Injury Control Research Program Project Grants; Amendment

A notice announcing the availability of Fiscal Year 1992 funds for grants to support Injury Control Research Centers (IRGRCs) and Injury Control Research Program Projects (RPPGs) was published in the **Federal Register** on June 17, 1991, (56 FR 22762). The notice is amended as follows:

1. On page 27762, third column, under the heading "Availability of Funds," following the first sentence insert the following: "An additional $900,000 is available for evaluation research in the area of youth violence in high risk communities."

2. On page 27762, third column, under the heading "Purpose," in the first paragraph, insert the following publication within the references already listed: "Forum on Youth Violence in Minority Communities: Setting the Agenda for Prevention."

3. On page 27763, third column, under the heading "Evaluation Criteria," insert the following before the first paragraph: "Applications may be subjected to a preliminary evaluation by a peer review group to determine if the application is of sufficient technical and scientific merit to warrant further review. CDC will withdraw from further consideration those applications judged to be nonresponsive and will so notify in writing the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be responsive will be further evaluated as described below."

All other information and requirements of the June 17, 1991, **Federal Register** notice remain the same.

Dated: December 18, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91–30776 Filed 12–24–91, 8:45 am]

BILLING CODE 4160–18–M

Administration for Children and Families

Meeting of the U.S. Advisory Board on Child Abuse and Neglect

AGENCY HOLDING THE MEETING: Administration for Children and Families.

TIMES AND DATES: 9 a.m., January 7, 1992; 2:45 p.m., January 10, 1992.

PLACE: Aerospace Building, Auditorium—Sixth Floor, 370 L'Enfant Promenade, SW., Washington, DC.

STATUS: The meeting is open to public observation at all times.

MATTERS TO BE CONSIDERED: During portions of this meeting the Executive Committee of the Advisory Board will hold preliminary discussions on the form, content, nature and scope of the 1992 and 1993 annual reports of the Board. During other portions of this meeting, the full Board will: Meet with the National Research Council Panel on Research on Child Abuse and Neglect; hold a symposium on the relationship of child maltreatment to foster care; discuss a proposed plan of Board activities for FY 1992–FY 1993; discuss the form, content, nature, and scope of the 1992 and 1993 reports; interact with the Federal Task Force on child Abuse and Neglect; hear from a British social services manager on the British approach to child protection; discuss new rules governing the compensation of Board members; receive a briefing on important programs of the National Center on Child Abuse and Neglect as well as the Children's Bureau; receive an updating on the reorganization of the Administration for Children and Families, the Secretary's initiative on child abuse and neglect, and National Center and Children's Bureau developments since the September, 1991 meeting; hear presentations on neonatal home visiting; and discuss Board papers on research, child fatalities, and child protective services reform.

CONTACT PERSON FOR MORE INFORMATION: Eileen H. Lohr, Program Assistant, U.S. Advisory Board on Child Abuse and Neglect, room 2433, Switzer Building, Washington, DC. 20201, (202) 245–6670.

Dated: December 17, 1991.

Byron D. Metrikin-Gold,

Executive Director, U.S. Advisory Board on Child Abuse and Neglect.

[FR Doc. 91–30883 Filed 12–24–91; 8:45 am]

BILLING CODE 4130–01–M

Health Care Financing Administration

Reconsideration of Disapproval of Illinois State Plan Amendment (SPA); Hearing

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on February 6, 1992, at 10 a.m.; the 15th Floor, Conference Room; 105 W. Adams Street, Chicago, Illinois to reconsider our decision to disapprove Illinois SPA 91–07.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by January 10, 1992.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, suite 110, Security Office Park, 7000 Security Blvd., Baltimore, Maryland 21207, Telephone: (410) 597–3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Illinois State plan amendment (SPA) number 91–07.

Section 1116 of the Social Security Act (the Act) and 42 CFR, part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a

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State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and space of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Illinois SPA 91–07 contains the State's Medicaid fee schedule for obstetrical and pediatric services and data alleging at least 50 percent of obstetrical and pediatric practitioners are full Medicaid participants.

The issue here is whether the plan amendment meets the statutory provisions of section 1926(a) of the Act and thus, also complies with section 1902(a)(30)(A) of the Act.

Section 1926 of the Act, as added by section 6402 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, requires that no later than April 1 of each year (beginning in 1990) States are to submit plan amendments specifying their payment rates for obstetrical practitioner services and pediatric practitioner services. States must provide specific information to document that those payment rates are sufficient to enlist enough providers such that obstetrical and pediatric services are available to Medicaid recipients at least to the extent that such services are available to the general population in the geographic area (section 1902(a)(30(A) of the Act).

HCFA has determined that for obstetrical and pediatric rate SPAs to be approvable, they must include the following:

1. Payment rates for this year and next year (i.e. 1991 and 1992) for those obstetrical and pediatric services covered under the State s plan. Pediatric rates must be specified by procedure; we recommend the same format be followed for obstetrical services;

2. Data that document that payment rates for obstetrical and pediatric services are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographical area, and,

3. Data that document that payment rates to health maintenance organizations (HMOs) under section 1903(m) of the Act take into account the payment rates specified in number 1 above.

HCFA has also developed several guidances, that if met by the State, would evidence that the State meets the statutory requirements of section 1926 of the Act. These guidelines are set forth in a draft State Medicaid manual (SMM) revision dated March 26, 1990. In accordance with these guidelines, a State is instructed to provide data, on a county-by-county or other appropriate substate geographic basis, documenting its compliance with at least one of the three guidelines.

Based upon the data submitted, HCFA determined that Illinois' amendment did not comply with the statutory requirements of section 1926, and thus, also did not comply with section 1902(a)(30)(A) of the Act. The State intended to demonstrate adequacy of access utilizing guideline number 1 (Practitioner Participation) from the March 26 draft SMM revision. The State had argued that it met the statutory requirements under guideline 1 of the draft SMM revision, which instructs the State to document its compliance with the statute by submitting data showing that at least 50 percent of obstetrical and pediatric practitioners are full Medicaid participants or that Medicaid participation is at the same rate as Blue Shield participation. The State claimed that they exceed the 50 percent criteria. However, the State had not defined a "participating practitioner". In addition, HCFA has a number of concerns about the data itself.

First, the State provided data on total obstetrical providers, total pediatric providers, total Medicaid obstetrical providers and total Medicaid pediatric providers.

In SPA 90–21, Illinois stated that because their Medicaid claims processing system does not separate family practitioners from other physicians, they have only incorporated family practitioners into the group of practicing pediatricians. In order to accurately determine the rate of obstetrical and pediatric practitioners in Medicaid, the State was asked to break-out the data for family practitioners by those who provide obstetrical care, pediatric care or both obstetrical and pediatric care. In this SPA, the State did not address the family practitioner data issue, and HCFA is unable to determine whether the State has broken-out the data by those who provide obstetrical care, pediatric care or both obstetrical and pediatric care.

Second, in 6 of 16 regions, the percentage of Medicaid obstetrical providers exceeds 100 percent. For example, Illinois states that, in region thirteen, 136.36 percent of all obstetrical providers participate in the Medicaid program. HCFA believes the data are flawed because Medicaid participating practitioners exceed total practitioners. If a practitioner is providing services in more than one country, he/she must be included in the total universe and not just the Medicaid participating total. The total universe must include *all* practitioners providing obstetrical services in the region. Therefore, percentages should not exceed 100 percent. Thus, HCFA is unable to accurately determine the rate of obstetrical and pediatric practitioners in Medicaid.

Third, there are three regions that do not meet the 50 percent criteria for obstetrical services. The State has attempted to prove equal access for Medicaid individuals in DuPage and Lake Counties by showing that the ratio of Medicaid participating practitioners to the Medicaid population is no less than that of non-participating practitioners to the general population. However, the State's ratio has not shown that access by Medicaid participating practitioners to Medicaid recipients is equal to or greater than access by non-participating practitioners to the non-Medicaid population. The State's documentation would be acceptable if the State's data showed at least 50 percent of the obstetrical/pediatrician practitioners in the State provided services to Medicaid recipients (and no ratio would be needed). Absent this, the State's ratio attempts to show that access to a practitioner is equivalent for Medicaid and non-Medicaid individuals.

However, this ratio essentially is showing access to a practitioner's time. It assumes that participating practitioners only treat Medicaid patients and nonparticipating practitioners only treat non-Medicaid patients. While this assumption is valid for non-participating practitioners (as that is how they are defined), it is not necessarily true for participating providers. The ratio is only valid if the State specifies the percentage of time that the participating practitioner provided services to Medicaid and non-Medicaid recipients.

The State has not included data or accounted for those obstetrical and pediatric nonphysician practitioners cited in the statutory definition of obstetrical and pediatric services. If nonphysician practitioners, such as certified nurse practitioners or nurse midwives, render obstetrical or pediatric services in Illinois, they should be included in the State's data.

The notice to Illinois announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr Phil Bradley,
Director, Division of Medical Programs, Illinois Department of Public Aid, 201 South Grand Avenue, East Springfield, Illinois 62762–0001

Dear Mr Bradley: I am responding to your request for reconsideration of the decision to disapprove Illinois State Plan Amendment (SPA) 91–07. The amendment contains the State's Medicaid fee schedule for obstetrical and pediatric services and data alleging at least 50 percent of obstetrical and pediatric practitioners are full Medicaid participants.

Section 1926 of the Act, as added by section 6402 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, requires that by no later than April 1 of each year (beginning in 1990) States are to submit plan amendments specifying their payment rates for obstetrical practitioner services and pediatric practitioner services. States must provide specific information to document that those payment rates are sufficient to enlist enough providers such that obstetrical and pediatric services are available to Medicaid recipients at least to the extent that such services are available to the general population in the geographic area (section 1902(a)(30)(A) of the Act).

The issue in this matter is whether the plan amendment meets the statutory provisions of section 1926(a) of the Act and thus, also complies with section 1902(a)(30)(A) of the Act.

I am scheduling a hearing on your request for reconsideration to be held on February 6, 1992, at 10 a.m., the 15th Floor, Conference Room; 105 W. Adams Street, Chicago, Illinois. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, Part 430.

I am designating Mr Stanley Katz as the presiding officer If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (410) 597–3013.

Sincerely,

Gail R. Wilensky,
Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR section 430.18).

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program).

Dated: December 18, 1991.

Gail R. Wilensky,
Administrator, Health Care Financing Administration.

[FR Doc. 91–30818 Filed 12–24–91, 8:45 am]
BILLING CODE 4120–03–M

National Institutes of Health

National Institutes of Allergy and Infectious Diseases; Meeting of AIDS Liaison Subcommittee of the AIDS Research Advisory Committee, NIAID

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the AIDS Liaison Subcommittee of the AIDS Research Advisory Committee, National Institute of Allergy and Infectious Disease, on January 24, 1992, in Building 31C, Conference Room 6, at the National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8 a.m. until adjournment on January 24. The subcommittee will discuss the mission and directions of the Division of AIDS (DAIDS) providing input and broad programmatic advice on the DAIDS extramural program with respect to basic and clinical research. Attendance by the public will be limited to space available.

Ms. Patricia Randall, Office of Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717) will provide a summary of the meeting and a roster of the committee members upon request.

Ms. Jean Noe, Executive Secretary, AIDS Research Advisory Committee, DAIDS, NIAID, NIH, Solar Building, room 2A22, 6003 Executive Boulevard, Rockville, Maryland 20892, telephone (301–496–0545) will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunologic, Allergic and Immunologic Disease Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health).

Dated: December 18, 1991.

Susan K. Feldman,
Committee Management Officer, NIH.

[FR Doc. 91–30821 Filed 12–24–91, 8:45 am]
BILLING CODE 4140–01–M

Meeting of the Planning Subcommittee of the Board of Regents of the National Library of Medicine

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Planning Subcommittee of the Board of Regents of the National Library of Medicine on January 9–10, 1992, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland.

The entire meeting will be open to the public from 9 a.m. to approximately 5 p.m. on January 9, and from 9 a.m. to adjournment on January 10. This is the second meeting in a series of three to discuss and determine the role of the National Library of Medicine in serving the information needs of those concerned with toxicology and the environment. Attendance by the public will be limited to space available.

Ms. Susan P. Buyer, Deputy Assistant Director for Planning and Evaluation of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, telephone 301–496–8834, will provide a summary of the meeting, a roster of subcommittee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance program No. 93.879—Medical Library Assistance, National Institute of Health.)

Dated: December 18, 1991.

Susan K. Feldman,
Committee Management Officer, NIH.

[FR Doc. 91–30817 Filed 12–24–91, 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–250–4370–02]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice is hereby given, under authority of 43 CFR part 1784, that the Wild Horse and Burro Advisory Board.

SUMMARY: Notice is hereby given, under authority of 43 CFR part 1784, that the Wild Horse and Burro Advisory Board will meet in the Washington, DC, area on January 28–30, 1992, at the Rosslyn Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia 22209, from 9 a.m. to 4:30 p.m. on January 28 and 29 and from 9 a.m. to 12 noon on January 30.

DATES: January 28–30, 1992.

ADDRESSES: Director (250), Bureau of Land Management, LS—room 206, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION OR TO SCHEDULE OR SUBMIT TESTIMONY, CONTACT: John S. Boyles, Chief, Division of Wild Horses and Burros, at the above address; telephone (202) 653–9215.

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SUPPLEMENTARY INFORMATION: The purpose of the Board is to advise the Secretary of the Interior, the Director, Bureau of Land Management (BLM), the Secretary of Agriculture, and the Chief, Forest Service, on matters pertaining to management and protection of wild free-roaming horses and burros on the Nation's public lands. At this meeting, the Board will discuss topics shown in the agenda below.

The meeting will be open to the public. Members of the public may make oral statements to the Board on January 29, 1992, starting at 3:15 p.m. Persons wishing to make statements should notify the BLM at the address or telephone number given above by January 17, so that time can be scheduled for their presentations. Depending on the number of speakers, it may be necessary to limit the length of each presentation. Speakers should address specific wild horse and burro issues related to the topics on the agenda. Speakers must submit a written copy of their testimony to the address given above or bring a written copy to the meeting. Persons who wish to provide testimony but who are unable to attend the meeting may submit a written statement to the address above.

The proposed agenda for the meeting is:

Tuesday, January 28: Morning: Review of draft report to the Secretaries of the Interior and Agriculture; discussion of wild horse and burro research needs.

Afternoon: Discussion of options and innovations for management and control and ways to develop leadership in the wild horse and burro program.

Wednesday, January 29: Morning: Review of second draft of report; briefing on Fiscal Year (FY) 1992 budget and review of FY 1990 expenditures.

Afternoon: Outreach briefing by the BLM Washington Office Public Affairs Staff; public comment period.

Thursday, January 30: Morning: Briefing on wild horse and burro strategic plan by BLM Nevada State Director; Advisory Board report presented to the Secretaries of the Interior and Agriculture, or their representatives.

Dated: December 20, 1991.

Cy Jamison,

Director, Bureau of Land Management.

[FR Doc. 91-30844 Filed 12-24-91; 8:45 am]

BILLING CODE 4310-84-M

[G-010-4352-12/GS-0102]

Seasonal Closures in Bisti Wilderness and De-na-zin Wilderness; Off-Road Vehicle Restrictions in Aztec Gilia Area of Critical Environmental Concern

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Use Restrictions.

SUMMARY: To protect candidate or listed species under the Endangered Species Act, use restrictions are announced by the Farmington Resource Area, Albuquerque District.

Areas within ¼ mile of any active raptor nest will be posted and closed during the nesting season in the Bisti Wilderness.

Areas within ¼ mile of any active raptor nest will be posted and closed during the nesting season in the De-na-zin Wilderness.

Off-Road Vehicle use in the Aztec Gilia Area of Critical Environmental Concern will be limited to designated roads and trails.

SUPPLEMENTARY INFORMATION: Seasonal closures in the Bisti Wilderness and De-na-zin Wilderness are affected to protect the Ferruginous Hawk, a Category 2 species under the Endangered Species Act, and the Golden Eagle and Prairie Falcon, two species of special concern. These species are particularly susceptible to disturbance by human approaches. Affected area is approximately 125 acres per nest. Season of closure will be generally from March 15 to July 15. Authority for these closures is found in 43 CFR part 8364 and 43 CFR 8560.1-1, and is in keeping with management prescriptions as detailed in the Bisti Wilderness Management Plan of 1986 and the De-na-zin Wilderness Management Plan of 1989. Any person who fails to comply with a closure issued under 43 CFR part 8364 may be subject to the penalties provided in 43 CFR 8360.0-7: violations are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Off-Road Vehicle restrictions in the Aztec Gilia Area of Critical Environmental Concern (ACEC) are affected to protect Gilia formosa, a Category 2 species under the Endangered Species Act. Affected area is approximately 6,400 acres. Authority for this restriction is found in 43 CFR 8340, and violations are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. These restrictions are in keeping with the designation for this area as described in the Farmington Resource Management Plan of 1988; Aztec Gilia ACEC was inadvertently omitted from the notice of Off-Road Vehicle designation published in the **Federal Register** on September 1, 1988 (53 FR 33881).

FOR MORE INFORMATION CONTACT: Christopher Barns or Bill Falvey, BLM Farmington Resource Area, 1235 La Plata Highway, Farmington, New Mexico 87401; phone number (505) 327-5344.

Dated: December 16, 1991.

Robert T. Dale,

District Manager.

[FR Doc. 91-30815 Filed 12-24-91; 8:45 am]

BILLING CODE 4310-FB-M

[NV-943-02-4214-10; N-52289]

Termination of Segregative Effect of Withdrawal Application; Nevada

December 13, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action notifies the public that the segregative effect on the Department of Energy's withdrawal application N-52289 terminated on December 8, 1991.

EFFECTIVE DATE: December 8, 1991.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, (702) 785-6526.

SUPPLEMENTARY INFORMATION: Pursuant to the regulation 43 CFR 2310.2-1(e), at 9 a.m. on December 8, 1991, the following described lands were relieved of the segregative effect of withdrawal application N-52289.

Mount Diablo Meridian

T. 23 N., R. 20 E.,
- Sec. 2, Lots 3 and 4, S½NW¼, NW¼SW¼, S½SW¼;
- Sec. 3, Lots 1-4, S½N½, S½;
- Sec. 4, Lot 1, S½NE¼, SE¼;
- Sec. 9, E½;
- Sec. 10, All;
- Sec. 11, E½E½, NW¼NE¼, NW¼, N½SW¼, SW¼SW¼;
- Sec. 12, NW¼NE¼, S½NE¼, NW¼, S½;
- Sec. 14, S½NW¼;
- Sec. 15, S½NE¼, NW¼NW¼, S½NW¼, SW¼, SW¼SE¼;
- Sec. 16, NE¼.

The area contains 3,892.02 acres in Washoe County.

Marla B. Bohl,

Acting Deputy State Director, Operations.

[FR Doc. 91-30739 Filed 12-24-91; 8:45 am]

BILLING CODE 4310-HC-M

Bureau of Indian Affairs

Crow Irrigation Project Operation; Maintenance Rates

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Public notice.

PURPOSE: Proposed increase to the Crow Irrigation Project Operation and maintenance rates.

SUMMARY: The Bureau of Indian Affairs is proposing to increase the operation and maintenance rate of the Crow Irrigation Project from $10.60 to $11.60 per assessable acre. The cost to operate and maintain the irrigation project have increased since the last operation and maintenance rate increase and these cost are anticipated to increase in Fiscal Year 1992.

The projects annual operation and maintenance charges are based on the estimated normal operating cost of the project for one Fiscal Year. Copies of the proposed 1992 budget may be acquired from the Superintendent of the Crow Agency, Bureau of Indian Affairs, Crow Agency, Montana 59022. A self addressed manila envelope with postage must be included when making your request.

The due date for all operation and maintenance charges will be May 1 of each calendar year.

Interest and/or penalty fees will be assessed on all (Trust, and Fee assessed lands) delinquent operation and maintenance charges as prescribed in the 42 Bureau of Indian Affairs Manual and the Code of Federal Regulations, chapter 4, part 102. Government agencies, such as Federal, State and Tribal Governments are exempted from interest and/or penalty fees.

This notice will be published and posted at the following locations:

U.S. Post Offices

Crow Agency, Mt. 59022
Hardin, Mt. 59034

Newspaper

Big Horn County News
Hardin, Mt. 59034

Bureau of Indian Affairs

Crow Agency
Crow Agency, Mt. 59022.

COMMENT PERIOD: All comments concerning the proposed 1992 operating and maintenance charges for the Crow irrigation project must be in writing and addressed to the Superintendent of the Crow Agency, Crow Agency, Montana 59022. All written comments will be accepted on or after December 23, 1991, but no later than the close of business of January 24, 1992.

SUPPLEMENTARY INFORMATION: This notice is issued pursuant to the Code of Federal Regulations, chapter 25, part 171 under the authority delegated to the Area Director, by the Assistant Secretary of Indian Affairs and the Deputy Assistant Secretary of the Interior (Departmental Manual, chapter 3, part 230, (3.1 & 3.2)).

Richard Whitesell,

Billings Area Director.

[FR Doc. 91-30740 Filed 12-24-91; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Reclamation

San Luis Unit Drainage Program, Central Valley Project, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability and notice of public hearings, INT DES 92-36.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, the Department of the Interior, Bureau of Reclamation (Reclamation), has prepared a draft environmental impact statement (DEIS) on the San Luis Unit Drainage Program investigation. The DEIS describes and presents the environmental effects of no action plus four alternatives that will address agricultural drainage needs of the San Luis Unit through at least the year 2007 and be compatible with potential long-term solutions.

DATES: A 90-day public review period commences with the publication of this notice. Within the review period, written comments on the DEIS may be submitted to the Regional Director, Mid-Pacific Region, Bureau of Reclamation at the address provided below.

Public hearings on the DEIS will be held on the following dates at the locations indicated:

Tuesday, February 4, 1992, 1 p.m. to 4 p.m., the Sacramento Hilton, 2200 Harvard Street, Sacramento, California

Wednesday, February 5, 1992, 7 p.m. to 10 p.m., the Mendota Community Center, Mendota, California

Thursday, February 6, 1992, 7 p.m. to 10 p.m., Sheraton Smugglers Inn, Fresno, California

Tuesday, February 11, 1992, 7 p.m. to 10 p.m., Concord Hilton, Concord, California

ADDRESSES: Copies of the DEIS may be requested from: Regional Director, Bureau of Reclamation, Mid-Pacific Regional Office, 2800 Cottage Way, Attention: MP-405, Sacramento CA 95825-1898; telephone: (916) 978-5039.

Copies of the DEIS are available for inspection at the address above and at the following locations:

Office of the Commissioner, Bureau of Reclamation, Technical Liaison Division, 18th and C Streets, NW., room 7456, Washington, DC 20240; telephone: (202) 208-4662.

Denver Office, Bureau of Reclamation, Library, room 167, Building 67, Denver Federal Center, Denver, CO 80225; telephone: (303) 236-6963.

Libraries:

California State University, 2000 Jed Smith Dr., Sacramento, California

Sacramento County Library, 536 Downtown Plaza, Sacramento, California

Fresno County Free Library, 667 Quince Street, Mendota, California

Merced County Public Library, 2100 O Street, Merced, California

Kings County Public Library, 401 North Douty, Hanford, California

University of California, Water Resources Center, Berkeley Archives, Collection, 410 O'Brien Hall, Berkeley, California

University of California, Shields Library, Davis, California

FOR FURTHER INFORMATION CONTACT: Michael Delamore (Chief, Drainage, Water Quality and Environment Branch, MP-405), Bureau of Reclamation, Mid-Pacific Region, (916) 978-5039; or Dr. Wayne Deason (Manager, Environmental Services Staff, Bureau of Reclamation, Denver Federal Center), (303) 236-9336.

SUPPLEMENTARY INFORMATION: The proposed action concentrates on source control, monitoring, and pilot scale-demonstration programs of new technologies to collect, treat, and ultimately dispose of concentrated brines and salts (alternative 4). Source control activities include improving irrigation efficiency, setting lands aside for alternative uses, and other onfarm activities. This alternative proposes site-specific actions to implement recommendations in the final report of the San Joaquin Valley Drainage Program as they apply to the Federal San Luis Unit.

The proposed plan addressed in this DEIS fulfills the requirement of a court settlement (Barcellos Judgment) by presenting an implementable drainage plan by December 31, 1991, for drainage service for the Westlands Water District to the year 2007, while considering the

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need for consistency with long-term needs and opportunities.

The agricultural drainage problem affects the agricultural economy, fish and wildlife resources, and water quality and has the potential to affect public health. Any viable plan for agricultural drainage in the San Luis Unit must also consider and be protective of fish and wildlife, water quality, and public health.

The no action alternative identifies the impacts of future agricultural operations without implementing any of the other alternatives.

Hearing Process Information: Organizations and individuals wishing to present statements at the hearings should contact Reclamation's Mid-Pacific Regional Office at the above address to announce their intention to participate.

Requests for scheduled presentations will be accepted through 4 p.m. on February 3, 1992, and may also be made at each hearing. Requests should indicate at which hearing the speaker wishes to appear. Speakers will be called upon to present their comments in the order in which requests were received. Advance requests will be called before requests made at the hearings. Oral comments will be limited to 10 minutes per individual. Speakers not present when called will lose their position in the scheduled order and will be recalled at the end of the schedule. Written comments from those unable to attend or those wishing to supplement their oral presentations at the hearings will be accepted through March 15, 1992, by Reclamation's Mid-Pacific Regional Office at the above address. All comments received during the 90-day public comment period will be addressed in the final environmental impact statement.

Dated: December 20, 1991.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 91-30671 Filed 12-24-91; 8:45 am]

BILLING CODE 4310-09-M

Tucson Aqueduct Reliability Investigation Project, Pima Co., AZ

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a draft environmental impact statement and notice of public scoping meetings.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior proposes to prepare a draft environmental impact statement (DEIS) for the Tucson Aqueduct System Reliability Investigation (TASRI) Project.

DATES AND LOCATIONS: There will be two public scoping meetings:

March 9, 1992, 6 p.m., Tucson Convention Center, 260 South Church Street, Tucson, Arizona

March 10, 1992, 6 p.m., Vesey School, 5005 South Butts, Tucson, Arizona

FOR FURTHER INFORMATION CONTACT: Mr. Kurt W. Flynn, Environmental Division, Arizona Projects Office, Bureau of Reclamation, P.O. box 9980, Phoenix, Arizona 85068, telephone: (602) 870-6768.

SUPPLEMENTARY INFORMATION: The United States agreed, in the April 1986 Plan 6 Funding Agreement, to evaluate alternatives that "if approved by the Secretary [of the Interior] will provide as reasonably reliable a supply of municipal and industrial (M&I) water for the water users in the Tucson area as is provided for other major Central Arizona Project M&I water subcontractors * * *."

Tucson's location at the end of the aqueduct system and the existence of nine pumping plants between Phoenix and Tucson, Arizona, increases Tucson's vulnerability to routine maintenance outages. This difference in reliability between Phoenix and Tucson is the motive for the TASRI project.

The DEIS will analyze the environmental issues involved with alternatives that provide the municipal and industrial water users of the Tucson, Arizona, area with a supply of water that is as reasonably reliable as that provided other major central Arizona municipal and industrial water subcontractos.

Analysis will include, but not be limited to, the no action alternative, above-ground storage, ground-water storage/retrieval, and physical modifications to the aqueduct system. Combinations of one or more of the above alternatives, as well as any other alternatives identified during the public scoping process, may be included in the analysis. The DEIS is expected to be completed and available for review and comment by early 1993.

Based on public comment to date, Reclamation has developed the following list of significant environmental issues:

- Loss of desert habitat.
- Esthetic impacts to parks and surrounding areas.
- Impacts on plants and wildlife including threatened or endangered species.
- Impacts on properties listed or eligible for listing on the National Register of Historic Places.
- Use of Tucson Water's existing well system rather than building new facilities.
- Aquifer contamination and depletion.
- Creation of wetland and riparian habitat.
- Quality of drinking water.
- Impacts to landowners and residences.
- Impacts to Indian reservation land.
- Assistance in flood control.
- Impacts to air quality during construction.
- Creation of recreational benefits.

Reclamation will consult with other Federal, State, and local agencies with specific expertise regarding environmental impacts resulting from the TASRI Project.

Written comments may be sent to Mr. Kurt W. Flynn at the Arizona Projects Office, address above. To ensure inclusion in the environmental analysis, the comments should be received by this office no later than April 10, 1992. Comments submitted to Reclamation as a result of previous TASRI public involvement will automatically be considered in the preparation of the DEIS.

Dated: December 19, 1991.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 91-30781 Filed 12-24-91; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 764286

Applicant: San Diego Zoological Society, San Diego, CA.

The applicant requests a permit to import one male and one female captive born Anoa (*Bubalus depressicornis*) from Diergaarde Blijdorp, Rotterdam, Netherlands, for captive breeding.

PRT 744878

Applicant: Institute for Wildlife Studies, Arcata, CA.

The applicant requests the following amendments to their current permit which allows live-trapping, bleeding, and placement of telemetry transmitters on bald eagles (*Haliaeetus leucocephalus*): 1. Request authorization to remove up to two bald eagle nestlings per year for purposes of fostering failing nest sites on Santa Catalina Island; 2. authorization to harass bald eagles to obtain prey samples for contaminant studies on prey species. No more than one prey item per individual eagle will be sampled per month; 3. transfer eggs from wild nests on Catalina Island to the San Fransisco Zoo for artificial rearing and transfer of nestlings from the zoo to Santa Catalina Island for fostering to wild nests.

PRT 764416

Applicant: San Diego Zoological Society, San Diego, CA.

The applicant requests a permit to import two male and two female captive born Gabot's tragopans (*Tragopan caboti*) from the Guangxi Normal University, People's Republic of China, for captive breeding purposes.

PRT 763825

Applicant: A.L. Cuming, Watkinsville, GA.

The applicant requests a permit to import eight male and four female captive-bred, white-eared pheasants (*Crossoptilon crossoptilon*) and eight male and four female captive-bred, brown-eared pheasants (*Crossoptilon mantchuricum*) for breeding purposes.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45-4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281).

Dated: December 20, 1991.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91-30807 Filed 12-24-91; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18).

File no. PRT 762093.

Applicant: Oregon Coast Aquarium, 2820 SE Ferry Slip Road, Newport, OR 97365.

Type of Permit: Public display.

Name and Number of Animals: Alaskan sea otter (*Enhydra lutris*); one male and two females.

Summary of Activity to be Authorized: The applicant proposes to import these animals for public display. The otters were obtained as beached and stranded animals due to the 1989 Exxon Valdez oil spill, Anchorage, Alaska, and are currently being held at the Vancouver Public Aquarium, Vancouver, B.C., Canada.

Source of Marine Mammals for Public Display: 1989 Exxon Valdez oil spill, Anchorage, Alaska.

Period of Activity: Duration for life of the animals.

Concurrent with the publication of this notice, the Office of Management Authority is forwarding copies of the application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments and/or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45-4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281).

Dated: December 20, 1991.

Maggie Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91-30808 Filed 12-24-91; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission will be held at 10 a.m. (PST) on Saturday, January 11, 1992 at the Presidio Golden Gate NCO Enlisted Club, Lincoln Boulevard and Sheridan Avenue, Presidio of San Francisco, California.

The Advisory Commission was established by Public Law 92-589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Amy Meyer, Vice Chair
Mr. Ernest Ayala
Dr. Howard Cogswell
Brig. Gen. John Crowley, USA (ret)
Mr. Margot Patterson Doss
Mr. Neil D. Eisenberg
Mr. Jerry Friedman
Mr. Steve Jeong
Ms. Daphne Greene
Ms. Gimmy Park Li
Mr. Gary Pinkston
Mr. Merritt Robinson
Mr. R.H. Sciaroni
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams

The main agenda item at this public meeting will be receiving public comment on the Presidio Concepts Workbook, a work-in-progress report on planning for uses of the Presidio of San Francisco, issued by the National Park Service in November 1991. The Presidio will be transferred to the National Park Service when the U.S. Army vacates the post, expected in late 1994.

The National Park Service is interested in learning which items identified in the Presidio Concepts Workbook the public feels have merit for further evaluation as alternatives for the future of the Presidio as part of the Golden Gate National Recreation Area. The public's comments on the concepts will be considered along with technical and feasibility analyses as the Presidio Planning Team develops more detailed alternatives.

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A Draft Plan Amendment (which includes a proposed plan and several alternatives) and an accompanying Environmental Impact Statement (EIS) are scheduled to be released by the National Park Service for public comment in the fall of 1992. The Final Plan Amendment and Final Environmental Impact Statement are expected in the summer of 1993.

Copies of the Presidio Concepts Workbook can be obtained by calling (415) 556–7385.

The meeting will also contain a Superintendent's Report.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript will be available after January 31, 1992. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: December 18, 1991.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 91–30853 Filed 12–24–91; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation 337-TA-328]

Certain Bathtubs and Other Bathing Vessels and Materials Used Therein; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondent on the basis of a consent order agreement: SWC Industries, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on December 20, 1991.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Streets, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: December 20, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–30861 Filed 12–24–91; 8:45 am]

BILLING CODE 7020-02-M

[332-288]

Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports

AGENCY: International Trade Commission.

ACTION: Notice of determination.

SUMMARY: Section 7 of the Steel Trade Liberalization Program Implementation Act (19 U.S.C. 2253 note), enacted in December 1989, concerns local feedstock requirements for fuel ethyl alcohol imported by the United States from CBI-beneficiary countries. The U.S. International Trade Commission's role as outlined in this Act was to determine annually for 2 years the U.S. domestic market for ethyl alcohol during the 12-month period ending on the preceding September 30. The domestic market estimate made by the Commission is to be used to establish the "base quantity" of imports that can be imported with a zero percent local feedstock requirement. Beyond the base quantity of imports, progressively higher local feedstock requirements are placed on imports of fuel ethyl alcohol and mixtures from the CBI-beneficiary countries.

For purposes of making determinations of the U.S. market for ethyl alcohol as required by section 7 of the Act, the Commission instituted Investigation No. 332–288, Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports, in March 1990. The Commission uses official statistics of the U.S. Departments of Commerce and Treasury to make these determinations.

Section 225 of the Customs and Trade Act of 1990 (Pub. L. 101–382, August 20, 1990) amended the original language set forth in the Steel Trade Liberalization Program Implementation Act of 1989. In the amendment, a determination of the U.S. domestic market for ethanol will be made for each year after 1989.

For the 12-month period ending September 30, 1991, the Commission has preliminarily determined the level of U.S. consumption of ethyl alcohol to be 840 million gallons. Seven percent of this amount is 58.8 million gallons. Because the law specifies that the base quantity to be used by Customs in the administration of the law is the greater of 60 million gallons or 7 percent of U.S. consumption as determined by the Commission, the base quantity for 1992 should be 60 million gallons. It should be noted that certain of the data required to make the determination is being estimated by the Commission pending finalization of Treasury and Commerce statistics through September 1991 for alcohol fuel producers. In the event that the finalized data materially change the base quantity estimate to be used in 1992, the Commission will notify the Customs Service and issue an amended **Federal Register** notice.

EFFECTIVE DATE: December 16, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. David G. Michels (202–205–3352) or Mr. James A. Emanuel (202–205–3367) in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at 202–205–3091. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

Issued: December 17, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–30862 Filed 12–24–91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701–TA–309 (Final)]

Magnesium From Canada; Notice of Institution

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701–TA–309 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of primary magnesium,[1] that all alleged to be subsidized by the Government of Canada.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: December 4, 1991.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202–205–3179), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

[1] The product covered by this investigation is primary magnesium, which consists of unwrought pure magnesium and magnesium alloys. Pure unwrought magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight, with magnesium being the largest metallic element in the alloy by weight. Pure and alloy magnesium are provided for in subheadings 8104.1100.00 and 8104.1900.00, respectively, of the Harmonized Tariff Schedule of the United States (HTS). Excluded from the scope of investigation are secondary magnesium and magnesium alloys which contain 70 percent or less of magnesium by weight.

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Canada of pure and alloy magnesium. The investigation was requested in a petition filed on September 5, 1991, by Magnesium Corp. of America (MagCorp), Salt Lake City, UT.

Participation in the Investigations and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on Friday, February 21, 1992, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on Thursday, March 5, 1992, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before Friday, February 28, 1992. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on Monday, March 2, 1992, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is Friday, February 28, 1992. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is Wednesday, March 11, 1992; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before Wednesday, March 11, 1992. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: December 18, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–30860 Filed 12–24–91; 8:45 am]

BILLING CODE 7020-02-M

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[Investigation No. 337-TA-332]

Certain Translucent Ceramic Orthodontic Brackets; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 21, 1991, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Minnesota Mining and Manufacturing Corporation, 3M Center, St. Paul, Minnesota 55133; 3M Unitek Corporation, 2724 South Peck Road, Monrovia, California 92626; and Ceradyne Corporation, 3169–A South Redhill Avenue, Costa Mesa, California 92626. A supplement was filed on December 5, 1991. The complaint, as supplemented, alleges violations of section 337 by reason of unfair methods of competition and unfair acts in the unauthorized importation and sale of certain translucent ceramic orthodontic brackets, which allegedly infringe claims 1–2, 4, 6–8, 19, 22–23, 25–26, 28–31, 35–36, 39–40, and 42–43 of U.S. Letters Patent 4,954,080, and the claim of U.S. Letters Patent Des. 304,077; and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E. Street, SW., room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2572.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on December 18, 1991, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain translucent ceramic orthodontic brackets by reason of alleged infringement of claims 1–2, 4, 6–8, 19, 22–23, 25–26, 28–31, 35–36, 39–40, or 42–43 of U.S. Letters Patent 4,954,080, or the claim of U.S. Letters Patents Des. 304,077; and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Minnesota Mining and Manufacturing Corporation, 3M Center, St. Paul, Minnesota 55133
3M Unitek Corporation, 2724 South Peck Road, Monrovia, California 92626
Ceradyne Corporation, 3169–A South Redhill Avenue, Costa Mesa, California 92626

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Tomy Incorporated, 4–11–2 Tamagawa, Chofu-Shi, Tokyo, Japan
Dentaurum J.P. Winklestroeter, KG., Turnstr. 31, D–7536 Ispringen, Germany
GAC International, Inc., 185 Oval Drive, Central Islip, New York 11722
Dentaurum, Inc., 2 Pleasant Run, Newtown, Pennsylvania 91840

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401Q, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administration Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules (19 CFR §§ 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to such respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: December 18, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–30859 Filed 12–24–91; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290 (Sub No. 5) (92–1)]

Quarterly Rail Cost Adjustment Factor; Notice

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has approved the first quarter 1992 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The first quarter RCAF (Unadjusted) is 1.168. The fourth quarter RCAF (Adjusted) is 1.040, a decrease of 1.6 percent from the fourth quarter 1991 RCAF (Adjusted) of 1.057. Maximum first quarter 1992 RCAF rate levels may not exceed 98.4 percent of maximum fourth quarter 1992 RCAF rate levels.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: William T. Bono (202) 927–5720, Robert C. Hasek (202) 927–6289. (TDD for hearing impaired (202) 927–5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: December 16, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–30801 Filed 12–24–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Discretionary Programs for Fiscal Year 1992

AGENCY: Office of Justice Programs and its components: Bureau of Justice Assistance, Bureau of Justice Statistics, National Institute of Justice, Office of Juvenile Justice and Delinquency Prevention, and Office for Victims of Crime.

ACTION: Public announcement of the discretionary program plan for the component offices and bureaus of the Office of Justice Programs for Fiscal Year 1992.

SUMMARY: The Office of Justice Programs (OJP) publishes this announcement of the discretionary programs of the Bureau of Justice Assistance, Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime.

ADDRESSES: Office of Justice Programs, 633 Indiana Avenue, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Gerald (Jerry) Regier, Acting Director, Bureau of Justice Assistance, room 1042, 633 Indiana Avenue, NW., Washington, DC 20531. (202) 514–6278.

Steven D. Dillingham, Ph.D., Director, Bureau of Justice Statistics, room 1142, 633 Indiana Avenue NW., Washington, DC 20531. (202) 307–0765.

Charles B. DeWitt, Director, National Institute of Justice, room 846, 633 Indiana Avenue, NW., Washington, DC 20531. (202) 307–2942.

Robert W. Sweet, Jr., Administrator, Office of Juvenile Justice and Delinquency Prevention, room 744, 633 Indiana Avenue, NW., Washington, DC 20531. (202) 307–5911.

Brenda G. Meister, Acting Director, Office for Victims of Crime, room 1386, 633 Indiana Avenue, NW., Washington, DC 20531. (202) 307–5984.

SUPPLEMENTARY INFORMATION:

Message from the Attorney General

I am pleased to announce the publication of the Office of Justice Programs' (OJP) Fiscal Year 1992 Program Plan. It represents a landmark effort on the part of OJP to target the resources of its five agencies on the highest priorities of law enforcement in the fight against drug and violent crime. OJP comprises the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime. In this Program Plan, these five agencies have unified their programs in accordance with Department of Justice priorities such as Gangs and Violent Offenders, Intermediate Sanctions and Community Policing, among others.

OJP is the primary component of the Department's effort to form partnerships with and provide assistance to State and local governments. The Justice Assistance Act of 1984 established OJP in order to foster the cooperation and coordination required to assist the criminal justice system to function effectively at the State and local level. OJP has done an outstanding job of enhancing State and local criminal justice efforts; upgrading the quality of criminal history records and statistics; conducting vital research and development; promoting programs to safeguard juveniles; and advancing the rights of victims of crime.

Violent crime and drug use have cut across all segments of our society and represent a major threat to the well-being of our Nation. The innovative programs contained herein will place Federal resources where they can truly be effective on the front lines of our cities, towns, streets and communities and in the hands of those who wage, first-hand, the daily battle to keep our neighborhoods safe and drug-free.

I strongly endorse this Fiscal Year 1992 Program Plan and commend OJP for its strong leadership and commitment to assisting law enforcement in its ongoing battle against crime and drugs.

William P. Barr,

Attorney General.

Foreword

The Office of Justice Programs (OJP) is taking a leadership role in the Department of Justice in forging Federal, State, and local partnerships that will have maximum impact on the problems of violent crime and drug-related crime. OJP's Fiscal Year 1992 Program Plan is designed to foster these cooperative efforts and, at the same time, combine the resources and expertise of each of OJP's five bureaus: The Bureau of Justice Assistance (BJA); the Bureau of Justice Statistics (BJS); the National Institute of Justice (NIJ); the Office of Juvenile Justice and Delinquency Prevention (OJJDP); and the Office for Victims of Crime (OVC).

The Office of Justice Programs has established ten priority areas for discretionary grant funding and program development in Fiscal Year 1992. These ten priority areas are designed to attack violent crime and drug-related crime on all fronts—from law enforcement to the judiciary to the community, to assure accountability for law-breakers and drug users, to assist crime victims, and to determine "what works" in the fight against drug-related crime and violence The Fiscal Year 1992 priorities are:

- Gangs and Violent Offenders
- Victims
- Community Policing and Police Effectiveness
- Intermediate Sanctions and User Accountability
- Drug Prevention
- Drug Testing
- Intensive Prosecution and Adjudication
- Evaluation
- Money Laundering and Financial Investigations
- Information Systems, Statistics and Technology

Most programs and activities in Fiscal Year 1992 will be funded under the priorities listed above. However, there are other programs—not included in this document—which respond to specific Congressional mandates. These programs will be continued in Fiscal Year 1992 in conformance with the intent of Congress. For example, the Public Safety Officers' Benefits Program and the Regional Information Sharing System are not listed, although these programs will be fully operational in Fiscal Year 1992.

During 1991, I traveled to more than 20 cities across the United States to talk with community leaders about their experiences with drug-related crime and gang violence and what they had found to be effective in combatting these problems. It is important that OJP planning decisions, the identification of program priorities, the allocation of resources, and the development of anti-drug abuse strategies not be made in isolation. Toward that end, OJP conducted a series of National Field Studies on Gangs and Gang Violence

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this year in Los Angeles, Dallas and Chicago, with a fourth session planned for early in 1992 in an East Coast city. OJP Bureau Directors also participated in the Field Studies.

The purpose of the Gang Field Studies is to learn first-hand from the people facing the terror of gang violence on a daily basis what works and what does not in combatting the problem of gang-related violent crime. The information gained from the Field Study has been invaluable in developing the Fiscal Year 1992 OJP Program Plan. Moreover, we will take what we have learned from the Gang Field Studies and develop a national strategy—a plan of action—to prevent and suppress gang activity, prosecute hard-core gang members, assist the victims of gang violence, and return gang-infested neighborhoods to their law-abiding residents.

Although OJP Bureau Directors and I learned about many promising programs through the Field Studies, all too often there was not the kind of comprehensive, coordinated effort that is important in implementing an effective drug control strategy. President Bush in his National Drug Control Strategy stated, "America's fight against epidemic illegal drug use cannot be won on any single front alone; it must be waged everywhere—at every level of Federal, State, and local government and by every citizen in every community across the country."

This comprehensive approach is the principal focus of a major Department-wide initiative called "Operation Weed and Seed," which is described in more detail in this Program Plan. It is designed to target crime in areas where it is the most severe, usually in inner-city minority communities. I am proud of the work the Office of Justice Programs is doing to implement this comprehensive strategy in communities throughout the country. I am further excited about the potential that "Operation Weed and Seed" has for revitalizing crime-infested neighborhoods and restoring hope among families who must live and work in areas where crime and related violence are rampant. You will be learning more about "Operation Weed and Seed" as the number of pilot demonstration sites is expanded in Fiscal Year 1992 across the country. I believe that "Operation Weed and Seed" is the wave of the future for combatting and preventing drug and gang-related violent crime.

I would like to thank the OJP Bureau Directors and their staffs, as well as other Federal and State officials, and representatives of national criminal justice organizations, who contributed valuable suggestions for the Fiscal Year 1992 Program Plan. Working together, through comprehensive and coordinated efforts reflected in this document, we can drive criminals and drug traffickers out of our communities and make our neighborhoods safe places in which to live, work and raise a family. The law-abiding citizens of this Nation deserve no less and we are committed to achieving that goal for this and future generations.

Jimmy Gurulé,

Assistant Attorney General.

Office of Justice Programs Weed and Seed Strategy

The Office of Justice Programs, through its discretionary grant program resources, will initiate in Fiscal Year 1992 a comprehensive strategy entitled "Operation Weed and Seed." Operation Weed and Seed is an innovative, comprehensive and integrated multi-agency approach to law enforcement and community revitalization for controlling and preventing violent crime, drug abuse and gang activity in the United States.

Operation Weed and Seed has two distinct components. The first is to utilize existing and new Federal resources to "weed out" violent criminals, illegal gang activity, drug trafficking and related violence from selected high-crime neighborhoods. Under the second component, neighborhoods will be "seeded" with social, economic and community revitalization programs. This overall strategy is based on coordination and concentration of Federal, State and local resources, both public and private.

"Weeding" (or enforcement) is accomplished by coordinating Federal, State and local criminal justice systems (law enforcement, prosecution, adjudication and correctional supervision activities). The most violent repeat offenders, drug traffickers and members of street gangs will be targeted, apprehended and incapacitated. This enforcement strategy will keep these offenders off the streets through such programs as Operation Triggerlock, a nationwide, coordinated effort to prosecute violent criminals and drug kingpins for firearms-related violations under Federal laws. This approach has a positive effect by demonstrating to community residents that criminal violators will not be released back into the community shortly after arrest. The offender is immediately removed from the streets, receives swift justice, serves a mandatory prison term and is thereby prevented from returning to terrorize the community.

An essential element of the Weed and Seed strategy is community policing. Community policing involves law enforcement working in partnership with neighborhood residents to develop solutions to the problems of violent crime and drug abuse. Through community policing, the groundwork is laid for the next phase of the Weed and Seed program.

"Seeding" (community revitalization) is accomplished by implementing and focusing a broad array of existing and new social, economic, and recreational programs in these targeted neighborhoods, once violent felons and drug traffickers have been weeded out. Historically, social programs have a better chance of succeeding if they are placed within a crime-free and drug-free environment. Seeding should involve substantial cooperation between Federal, State and local agencies, along with local business and community organizations. Examples of programs included in the seeding component are health, education, labor, housing, small business development and recreational activities. Private sector resources and community participation are essential to the success of the Weed and Seed program. All of these entities must work together in partnership with the residents of the community.

To demonstrate the Weed and Seed strategy, in Fiscal Year 1991 the Office of Justice Programs, through the Bureau of Justice Assistance (BJA), provided funding to establish the first three Weed and Seed pilot sites at Trenton, New Jersey; Kansas City, Missouri; and Omaha, Nebraska. In addition, as part of the Department's broader Weed and Seed initiative in Fiscal Year 1991, OJP through BJA entered into a public-private partnership with New York University and two private foundations to fund a 3-year, $8 million anti-drug program. The Ford Foundation is contributing $3 million and the Pew Charitable Trusts is contributing $1 million toward the program. BJA is contributing $4 million. The purpose of the program is to develop and test a comprehensive intervention strategy for controlling and preventing illegal drug use and other criminal activity among high-risk youth in drug- and crime-infested neighborhoods. The program includes recreational alternatives and tutoring for idle youth to help keep them in school, out of trouble, and out of gangs. The NYU program will be implemented in five cities across the country.

In Fiscal Year 1992, Operation Weed and Seed will be continued in order to expand the initial, or "pilot," phase of the program. Although the strategy holds great promise, much work remains to be done in developing and refining the design of the program. While resources are limited in Fiscal Year 1992, Operation Weed and Seed will be expanded to approximately eight additional sites. In Fiscal Year 1993, it is anticipated that this experimental program will be expanded further to be national in scope. The number of sites funded in Fiscal Year 1993 will be based on the level of appropriations and the availability of funds.

Additionally, OJP agencies (BJA; the Office for Victims of Crime; and the Office of Juvenile Justice and Delinquency Prevention) provide formula grant funds to the States and territories. Those funds are administered by the State criminal justice planning agencies. The OJP formula grant funds, consistent with the statutory purposes, may be used to supplement the OJP discretionary activities described above or initiate similar programs at the State and local level.

Office of Justice Programs' Components

OJP components operate together as a coordinated unit, supporting the mission of the agency in providing leadership through innovation in the administration of justice, in keeping with the direction of the Administration and the Attorney General and the priorities set forth in the National Drug Control Strategy. The following information provides a brief description of each Bureau's programs and its total Fiscal Year 1992 discretionary grant dollars. These funds may be used to implement collaborative efforts between the Bureaus in selected programs. In addition, where agreements exist between OJP Bureaus and other agencies, the known external funding has been factored into the program totals. When this occurs, it is noted in the program summary.

The Bureau of Justice Assistance (BJA) administers the Edward Byrne Memorial State and Local Law Enforcement Assistance Program to support national drug control efforts and to improve State and local criminal justice systems. BJA's Discretionary Grant Program complements the Formula Grant Program through which funds are provided directly to the States to carry out their statewide drug control strategies. BJA funds innovative demonstration programs, some of which are national or multijurisdictional in scope; evaluates them to determine "what works" in drug and crime control; and encourages the replication of successful models through linkages with Formula Grant Funds and other resources. Discretionary Grant Funds are also used to provide enhanced training and technical assistance to State and local criminal justice personnel. The total Fiscal Year 1992 funds available for these activities are $54,050,000.

The Bureau of Justice Statistics (BJS) collects, analyzes, publishes and disseminates statistical information on crime, criminal offenders, victims of crime and the operations of justice systems at all levels of government and internationally. These objectives, critical data and analyses are used by key policymakers at the Federal, State and local levels in their efforts toward combatting drugs and crime. Generally, more than 90 percent of BJS' funds are allocated each year to ongoing statistical surveys and support entities. BJS also provides technical and financial support to State statistical and operating agencies responsible for the collection and analysis of State criminal justice data and statistics. The total Fiscal Year 1992 funds available for these activities excluding the BJA funds are $22,095,000.

The National Institute of Justice (NIJ) develops knowledge, conducts research and operates programs that support State and local efforts to combat crime and drug abuse. NIJ conducts evaluations of drug control programs and projects throughout the country. In addition, NIJ funds research and analyzes criminal justice policies and practices. NIJ tests new law enforcement and criminal justice programs and conducts demonstration projects. It operates a national and international clearinghouse for justice-related information, conducts national and regional conferences and produces publications detailing new policy options and successful programs. NIJ also provides technical assistance in the construction of correctional facilities and operates a technology and equipment program for law enforcement and corrections agencies. NIJ's unique mandate as a research and development agency requires flexibility to respond to varied needs and emerging national issues. The total Fiscal Year 1992 funds available for these activities are $23,739,000. (This does not include Fiscal Year 1991 carryover funds).

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) provides assistance to State and local governments to improve their juvenile justice systems and to reduce delinquency. It also coordinates activities and policy for all Federal juvenile delinquency prevention efforts and provides leadership for the Coordinating Council on Juvenile Justice and Delinquency Prevention. It awards discretionary and formula grants that address a broad array of juvenile justice and delinquency prevention issues both nationally and through State and local subgrant assistance awards. The Juvenile Justice and Delinquency Prevention Act and the Missing Children's Assistance Act authorize the Office to fund research, development, demonstration and dissemination activities that develop and communicate information about what works in all aspects of the juvenile justice system: prevention, intervention, adjudication and supervision. OJJDP provides information through training and technical assistance to policymakers, practitioners and researchers throughout the Nation. The total Fiscal Year 1992 funds available for these activities are $22,439,698.

The Office for Victims of Crime (OVC) serves as the Federal focal point for improving the treatment of crime victims and ensuring that the criminal justice system recognizes the legitimate rights and interests of innocent victims. In addition to its role as a national victims advocate, OVC's program activities include victims' assistance and compensation grants to States, training and technical assistance and the provision of emergency services to victims of Federal crimes, particularly on Indian reservations. Given the demonstrable link between drug abuse and crime, the activities of OVC are an increasingly vital component in the Nation's war against illegal substance abuse. The total funding available from the Fiscal Year 1991 Crime Victims Fund is $3,873,000.

Gangs and Violent Offenders

$6,697,139

"We will not allow our communities to be held hostage to gangs and drug dealers." President Bush, November 2, 1990 (Remarks in Cincinnati, Ohio.)

"The first duty of any civil government is to protect its citizens. Through increased Federal, State and local cooperation we must rid our Nation's communities of the violent predators who are attempting to destroy the fabric of our society." Attorney General William P. Barr.

OJP Policy Statement

Federal, State and local law enforcement must work together in partnership with the community to combat adult and juvenile gang violence

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and drug trafficking. Gang-related homicides and violent crime are tragically high and gang members armed with fully-automatic weapons pose a problem of national concern. The Office of Justice Programs will initiate a comprehensive agency-wide program which will emphasize prevention, intervention and suppression of illegal gang activity. A broad range of resources will be dedicated across the full spectrum of OJP agency functions, including policy research, evaluation, program development, demonstration, training and technical assistance, and information dissemination.

OJP Program Response

Bureau of Justice Assistance (BJA)

$775,000

New Programs

Summit on Violent Crime—Southeastern Region

$125,000 [1]

One-time funding support is being provided for the Southeastern States Violent Crime Summit. These States have established a regional planning and analysis process coordinated by the State of North Carolina to address the issue of increasing rates of violent crime. The following products are anticipated: (1) The identification of the most salient indicators to predict increases in violent crime; (2) innovative, regional planning approaches to address the growing instances of violent crime; (3) Federal, State and local agreements on program approaches to be adopted and funded through the Formula Grant Program; and (4) a regional, comprehensive strategy for addressing violent crime, incorporating the elements outlined above. This joint program implementation plan for the Southern States will include specific program elements and performance indicators. The program will be implemented by an existing grantee currently providing technical assistance, including conference support services, to formula grant program participants. No additional applications will be solicited in Fiscal Year 1992.

[1] This program and the corresponding budget amount represent a Congressional "earmark" or directive as contained in the Fiscal Year 1992 Appropriations report language pertaining to the Office of Justice Programs.

Continuation Programs

Urban Street Gang Drug Trafficking Suppression

$650,000

This is a demonstration program to develop model city-wide or multijurisdictional enforcement projects to investigate and prosecute drug distribution and drug-related violent crimes by organized urban street gang networks. Up to two new sites will be competitively selected during Fiscal Year 1992. Documentation of site implementation activities and model development will be undertaken by a separately-funded technical assistance and training effort which will operate concurrently with the implementation activities. This program will be implemented by the current grantee.

National Institute of Justice (NIJ)

$2,680,000

New Program

Research and Development on Gangs and Crime

$500,000

NIJ will support new gang research projects in Fiscal Year 1992 which will emphasize prevention, intervention and suppression of illegal gang activity. Building on efforts initiated in Fiscal Year 1991, issues of interest for Fiscal Year 1992 may include factors that influence gang involvement. Also, NIJ's Fiscal Year 1992 gang programs will reflect issues identified by the OJP National Field Study on Gangs and Gang Violence and by the National Academy of Sciences. Projects will be coordinated with BJA and OJJDP. Multiple awards are anticipated. Applications will be solicited in Fiscal Year 1992.

Research on Violence

$500,000

NIJ will expand its research program to study new aspects of violent crime. Research topics of particular interest in Fiscal Year 1992 may include characteristics of offenders and victims as well as risk and protective factors; violence-prone situations; alcohol and illegal drug use in criminal violence; correctional programs for serious, violent juvenile offenders; and improvements in the identification of suspected offenders through risk assessment profiling. Multiple awards are anticipated. Applications will be solicited in Fiscal Year 1992.

Research and Development on Gangs in Public Housing

$500,000

In coordination with the OJP Task Force on Gangs in Public Housing, NIJ will support a new research program on gangs and crime in public housing developments. This program will emphasize the prevention, intervention and suppression of illegal gang activity in public housing. In Fiscal Year 1992, NIJ will assess anti-gang law enforcement activities in public housing and examine the prevalence of gang-related crime in public housing. Multiple awards may be made in Fiscal Year 1992. Methods of procurement will be determined and solicitations issued, as appropriate.

Continuation Programs

Applied Research on Gangs

$100,000

NIJ, under its Research Applications Program, will continue to support applied research on gangs and crime. Activities in Fiscal Year 1992 may include site-specific case studies on gang prevention and intervention and control programs in State and local jurisdictions. These case studies may be published as part of NIJ's Focus on Programs and Issues and Practices series. Research is being conducted under an existing contract; no additional applications will be solicited in Fiscal Year 1992.

Longitudinal Study of Criminal Behavior

$1,000,000

This is a program between NIJ and the MacArthur Foundation studies the development of delinquent and criminal behavior patterns from birth to age 30 in multiple cities, gathering data over a 7-year period. The study will employ research approaches from a variety of disciplines and theoretical perspectives in order to understand better the individual and community circumstances under which criminal careers do and do not develop. During the course of the study, experimental projects may be implemented suggesting intervention strategies to prevent or control emerging patterns of delinquency and crime. Research is being conducted by a current grantee. No additional applications will be solicited in Fiscal Year 1992.

SMART Program

$80,000

The SMART Program, an interagency collaborative effort between NIJ and the Department of Education, is a demonstration program which provides assistance to local school districts in establishing safe, disciplined and drug-free schools. The program has been field-tested in more than 100 schools in seven districts. The program provides training, technical assistance and support in data collection and analysis, school-based team building and anti-drug strategy development. SMART Resource Centers have been established in the Anaheim, California, Union High School District and the Norfolk, Virginia, Public Schools. The Fiscal Year 1992 SMART program will expand to as many as 20 new pilot school districts. Services are being provided by a current grantee. No additional applications will be solicited in Fiscal Year 1992.

Office of Juvenile Justice and Delinquency Prevention (OJJDP)

$3,242,139

New Programs

Juvenile Justice System Handling of Sex Offenses and Offenders

$200,000

Research with adult sex offenders has shown that many began their offending behavior as juveniles. Within the past decade, the juvenile justice system has begun to address the problem of juvenile sex offenders. To understand and improve the system's ability to address effectively such offenses, OJJDP will begin a study of the juvenile justice system's response to juvenile sex offenders. This grant will assess the type and nature of these responses. This assessment will examine the flow of sex offenders through the system from initial contact to adjudication and disposition. Little is known about the relationship between various types of sex offenses and the sanctions or treatment approaches employed by the justice system. The project will also assess the justice system's response to different types of offenses from voyeurism and exhibitionism to violent assault and rape. The results from this study will indicate the direction of future efforts to improve the juvenile justice system's response to the problem. Applications will be solicited competitively.

Gang Prevention and Intervention

$800,000

The objective of this program is to reduce gang violence in a selected number of cities through legal suppression, community mobilization, and early intervention with gangs. OJJDP anticipates that awards will be made for programs in selected cities. Each city would choose the particular model that best fits its needs from among the promising program models which OJJDP identifies. The specific models will represent an integration of the best approaches identified in the OJJDP sponsored programs: The Gang Suppression and Intervention Program; Boys and Girls Clubs of America's Targeted Outreach with a Gang Component and the Serious Habitual Offender Comprehensive Action Program. Applications will be solicited competitively.

Continuation Programs

Youth Gang Intervention Training

$400,000

This is a collaborative interagency program between OJJDP and the Federal Law Enforcement Training Center. The objectives of this training program are: (1) To provide a process for community leaders to recognize the benefits of cooperatively developing strategies to address the problems resulting from gang and drug activities; (2) to promote an awareness and recognition of (a) the problems of gangs and drugs, (b) justice system practices, (c) behavior patterns of gangs and gang members, and (d) current system practices and demonstration projects; (3) to provide strategies and techniques for public and private interagency partnerships dealing dynamically with community gang and drug-related problems; (4) to clarify and document the legal roles, responsibilities and issues relating to an interagency approach to the prevention, intervention and suppression of these illegal activities of youth gangs; (5) to encourage leadership and innovation in the management and resolution of gang and drug problems; and (6) to develop or improve the response capacity to issues involving gangs and drugs through an effective interagency model which matches resources to demands.

National Youth Gang Clearinghouse

$225,139

The contract to Digital Systems Research, Inc., provides funding for OJJDP's National Youth Gang Clearinghouse. The Gang Clearinghouse will: (1) Gather and disseminate current information on model programs for combating violent juvenile gangs; (2) gather and disseminate current statistical and descriptive information on violent juvenile gangs; and (3) assist in the coordination of Federal, State and local gang program development and training and technical assistance efforts by providing information to the field on relevant programs and activities. This program will be administered by the current contractor. No additional applications will be solicited in Fiscal Year 1992.

Private Sector Options for Juvenile Corrections

$300,000

The American Correctional Association is currently implementing this private sector options program which is designed to help improve the quality of juvenile correctional services by providing technical assistance to corrections administrators in analyzing existing services, redesigning service delivery and developing a competitive process for delivering services to private providers. Supplemental funds will be used to expand the number of sites receiving technical assistance from six to ten. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

School Safety

$250,000

This is a collaborative interagency program between OJJDP and the Department of Education. The purpose of this program is to provide training and technical assistance on school safety to elementary and secondary schools, as well as to identify methods to diminish crime, violence, and illegal drug use in schools and on school campuses, with special emphasis on outreach to ethnic minorities and gang-related crime. The National School Safety Center (NSSC) maintains a library and clearinghouse with specialized information, provides research on school safety issues, and develops publications and training programs. OJJDP will work with NSSC over the next year to facilitate transition of the Center toward self-sufficiency. The Department of Education is supporting this transition with a transfer of $400,000 of Fiscal Year 1991 funds for expenditure in Fiscal Year 1992. These funds will strengthen the focus on prevention of drug abuse and violence in schools. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Targeted Outreach with a Gang Prevention and Intervention Component

$400,000

This program is designed to enable local Boys and Girls Clubs to prevent youth from entering gangs and to intervene with gang members who are very early in their careers in an effort to divert them away from gangs toward

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more constructive programs. The National Office of Boys and Girls Clubs will provide training and technical assistance to the 33 existing sites and will add six to eight new gang prevention and intervention sites throughout the country. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Schools and Jobs are Winners

$150,000

This gang prevention program in Philadelphia focuses on high school students in grades 10 and 11 who are in gangs; have family members who belong to gangs; are involved with drugs or alcohol use; were abused or neglected; or were arrested by police. The project will also include funding by the Private Industry Council of Philadelphia. The goals of the project are to prevent high school students from dropping out of school and joining gangs by providing educational, recreational and social services, and to provide supportive services to families of at-risk youth and extremely disadvantaged youth. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Serious Habitual Offender Comprehensive Action Program (SHOCAP)

$517,000

SHOCAP is an information and case management program on the part of police, probation, prosecution, social service, school, and corrections authorities that enables the juvenile justice system to focus additional attention on juveniles who repeatedly commit serious crimes, with particular attention given to providing relevant case information for more informed sentencing dispositions. The training and technical assistance provider is assisting 20 jurisdictions with the implementation of this model by providing intensive training and follow-up technical assistance. In addition four new sites will be developed.

The provider also serves as a clearinghouse for information on the model, which non-participating jurisdictions can access. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Victims

$17,860,000

"None of us should rest however, until all of our laws practices fully reflect the sympathy we should have for the victims of crime—and the intolerance we should have for hardened criminals." President Bush, (Proclamation 5953—Crime Victims Week, 1990).

OJP Policy Statement

The criminal justice and juvenile justice systems must strive to implement policies and programs to improve services to crime victims. OJP is committed to helping crime victims and improving the responsiveness of juvenile justice, criminal justice and victim service systems. This year's Program Plan focuses on minority victims of crime to assure that services are made accessible to them at the Federal, State and local levels. In addition, it focuses on ensuring that innocent crime victims are not revictimized by the criminal justice system.

Resources will be committed to training law enforcement officers, prosecutors and other criminal justice personnel who work with innocent victims of crime.

OJP Program Response

Bureau of Justice Statistics (BJS)

$10,495,000

Continuation Programs

The National Crime Victimization Survey (NCVS)

$10,495,000

This program is under a reimbursable agreement between BJS and the Bureau of the Census governing the work to be undertaken by Census for BJS. The National Crime Victimization Survey (NCVS) is the second largest ongoing household survey undertaken by the Federal Government and is the major national indicator of criminal victimization in American society. BJS supports the Computer-Assisted Telephone Interviewing Center (CATI) which is currently utilized in a portion of the NCVS sample. Publications expected to be released in Fiscal Year 1992 using data from a variety of sources including *Criminal Victimization, 1991, Crime and the Nation's Households, 1991; Criminal Victimization in the U.S. 1990; and Criminal Victimization in the U.S., 1973–1989 Trends.* NCVS publications on the following topics will also be released in Fiscal Year 1992: school crime, self-protective measures, rural crime, elderly victims and police response time. This program will be implemented by the current grantee, the U.S. Census Bureau. No additional applications will be solicited in Fiscal Year 1992.

National Institute of Justice (NIJ)

$1,117,000

New Programs

Research and Development on Victims

$250,000

In Fiscal Year 1992, NIJ research will focus on the reduction of criminal victimization by assessing the crime prevention education efforts that are offered by some victim service agencies and police departments. Projects also may examine how well the criminal justice system is responding to the needs of victims and witnesses and how this is affecting the willingness of citizens to get involved and cooperate with the criminal justice system. Also, studies will explore the causes and prevention of victimization and the responses to the needs of crime victims by victim service providers and others. Methods of procurement will be determined and solicitations issued, as appropriate.

NIJ Program on the Elderly Against Crime

$317,000

The purpose of this program is to support local teams of law enforcement personnel, elderly volunteers and victim service providers in coordinating their efforts to prevent crimes against the elderly and to provide assistance to those victimized. This program may provide funding that results in a training and implementation manual, a source-book of crime prevention and victim assistance resources for use by the elderly and a script for a video to promote the program. Methods of procurement will be determined, and solicitations issued, as appropriate.

Initiative on Child Abuse and Neglect

$250,000

This program may focus on one or all of the following three areas: (1) Increasing our understanding of the influence of child abuse and neglect on criminal behavior; (2) identifying and promoting various improvements in the justice system response to child abuse and neglect; and (3) contributing to improvements in justice-related data on child abuse and neglect. One specific area of focus within this program will be the relationship between parental drug abuse and family violence. The program is coordinated with the Office of Justice Programs' (OJP) Task Force on Child Abuse and Neglect and some projects may be supported by more than one agency within OJP. The program includes a mix of both basic and applied research. Multiple grant awards are anticipated and solicitations will be issued, as appropriate.

Research on Underutilization of Victim Services in Minority Communities

$250,000

The purpose of this research is to determine the utilization of victim services by minority and low-income crime victims, to investigate reasons for any underutilization which may be found, to identify the special needs of these victims and to find methods to better meet these needs. This research is based on collaboration with the Office for Victims of Crime (OVC) and an examination by OVC of reporting data under the Victims of Crime Act in Fiscal Year 1991. NIJ will support a project in Fiscal Year 1992 to conduct focus groups, to develop a research instrument, to survey victim service utilization and special needs of minority and low-income victims and to analyze the survey data. The information may be used to make recommendations on what changes, if any, could be implemented in victim service program design and delivery that would increase utilization of victim services by minority and low-income crime victims. Methods of procurement will be determined and solicitations issued, as appropriate.

Continuation Programs

Project on Victims of Criminal Fraud

$50,000

This project supports a national survey which is expected to provide the first valid national estimates on the extent of victimization by criminal fraud. The research will provide information on the magnitude of financial losses and the severity of other forms of victimization. Crimes perpetrated against the elderly are of particular importance. Deficiencies in current prevention and victim assistance programs will be described and opportunities for improvements in these areas will be identified. Continued research in Fiscal Year 1992 will focus on the design of programs and strategies to reduce the incidence of criminal fraud and to deal more effectively with the perpetrators of this type of crime. This is an intramural research effort; no applications will be solicited.

Office of Juvenile Justice and Delinquency Prevention (OJJDP)

$1,525,000

Continuation Programs

Permanent Families for Abused and Neglected Children

$225,000 [1]

This is a national project to prevent unnecessary foster care placement of abused and neglected children, to reunify the families of children already in care, and to ensure permanent adoptive homes when reunification is impossible. The purpose of this project is to ensure that foster care is utilized only as a last resort and temporary solution for children. Accordingly, the project is designed to ensure that the government's responsibility to children in foster care is duly acknowledged by all appropriate disciplines. The project will continue to call upon judges, social service personnel, citizen volunteers, attorneys, and others to recognize and resolve the problems of children in foster care. Project activities include national training programs for judges, social service personnel, citizen volunteers and others in the Reasonable Efforts Provision of 42 U.S.C. 671(a)(15); training in selected lead States; and development of model questions to guide risk assessment. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Advocacy for Abused and Neglected Children

$1,000,000 [1]

The National Court Appointed Special Advocates Association (NCASAA) provides training and technical assistance to local and statewide programs. It assists in program development; advocates for the best interest of abused and neglected children; publicizes the Court Appointed Special Advocate (CASA) concept which helps recruit volunteers; develops management systems and standards to improve local CASA operations; provides a resource library and resource services; gathers and publishes information about the needs of the CASA network and operation; develops cooperative relationships with other national and regional organizations; and performs a variety of related services in furtherance of its goal of assuring that every child who needs one has a CASA. There are now 412 CASA programs in 47 States, with 15,000 volunteers. There are 12 statewide programs mandated and State-funded, and 23 State associations and networks offering support services to their State's program. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

The Investigation and Prosecution of Child Abuse

$300,000

This is a collaborative intra-agency program between OJJDP and OVC in which OVC is providing all of the funding. This program is designed to provide training and technical assistance to prosecutors and related professionals on the issue of child abuse prosecution. The project also serves as a clearinghouse for child abuse prosecution information. The trial manual entitled "The Investigation and Prosecution of Child Abuse" will be updated and published. Case law on issues of child abuse prosecution will also be updated and made available through the clearinghouse. At least one national training event will be held, and the recipient will also participate in several State-level training sessions during the supplemental grant period. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Office for Victims of Crime (OVC)

$4,723,000

New Programs

Law Enforcement Curricula—Victims of Hate Crimes

$150,000 [1]

This is a collaborative intra-agency program between OVC and BJA with BJA providing all of the funds. The purpose of this program is to develop a training curriculum for criminal justice and victim assistance professionals for dealing with victims of hate crime. The first stage will consist of an assessment of existing policies, procedures and practices for responding to hate crimes. A prototype for responding to hate crimes will be developed based on the assessment, and a training curriculum will be developed to transfer the prototype to the field. Applications will be solicited competitively.

Family Violence Information Dissemination

$50,000 (HHS)

This is a collaborative interagency program between OVC and the Department of Health and Human Services (HHS) in which HHS is providing all of the funds. The information and documentation

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provisions of the Family Violence Prevention and Services Act are intended to encourage the official reporting of incidents of family violence. This award will fund five projects of up to $10,000 each through an interagency transfer from HHS to OVC. Grantees will develop and implement a training program for law enforcement policymakers and officers on the most effective procedures and policies for responding to incidents of family violence. Additional applications will be solicited to implement new activities in this continuation program in Fiscal Year 1992. Applications will be solicited competitively.

Prosecutor-Based Training and Technical Assistance

$210,000

This is a collaborative intra-agency program between OVC and BJA in which BJA is providing a portion of the funds. Prosecutors play a key role in responding to victims, and the training and technical assistance to help them fulfill that role is an ongoing need. This program funds the development and implementation of a model training and technical assistance program to improve the response of prosecutors' offices to the rights and needs of crime victims. The project has two phases. The first phase will focus on developing training and training materials for Federal Victim-Witness Coordinators to implement new Federal legislation concerning assistance services for crime victims and child victim-witnesses. The second phase will expand training for prosecutors to improve victim-witness assistance on the State and local level. This training will focus on measures prosecutors may take to ensure that victims are protected from harassment, intimidation and future harm; to inform them of key proceedings, such as bail hearings and plea bargains; and to help them feel safe as witnesses in court. Applications will be solicited competitively.

The Spiritual Dimension in Victim Services

$60,000

A high percentage of traumatized victims seek assistance from clergy rather than from other service or law enforcement professionals, and it is acknowledged by most clergy that generally they are untrained in the proper response to victimization. This program will provide multiple training events for clergy of all denominations about the indicators of child abuse and neglect, the operation of the child protection system, domestic violence and the issues surrounding the trauma of rape and other forms of assault. This program was selected competitively in Fiscal Year 1991 for funding in Fiscal Year 1992.

Elder Domestic Violence Law Enforcement Curriculum Development

$75,000 (HHS)

This is a collaborative interagency program between OVC and HHS in which HHS is providing all or a major portion of the funds. The problem of elder abuse is likely to grow more acute in the future as the number of older Americans who are dependent upon family members and others for long-term care increases. This award will fund the development of a training curriculum for law enforcement policymakers and officers on the most effective procedures and policies for responding to incidents of family violence involving elderly people. The curriculum developed under this grant will be designed for easy integration with other curricular materials used by police academies. Additional applications will be solicited to implement new activities in this continuation program in Fiscal Year 1992. Applications will be solicited competitively.

Family Violence Law Enforcement Training and Technical Assistance

$375,000 (HHS)

This is a collaborative interagency program between OVC and HHS in which HHS is providing all of the funds. Law enforcement training provided under the auspices of the Family Violence Prevention and Services Act has, to date, reached approximately 50,000 law enforcement officers enrolled in State training programs. This award will build on those training activities by funding up to seven new training projects. Grant recipients will develop and implement training for law enforcement policymakers and officers on the most effective procedures and policies for responding to incidents of family violence. Additional applications will be solicited to implement new activities in this continuation program in Fiscal Year 1992. Applications will be solicited competitively.

Training and Technical Assistance for Victims of Federal Crime in Indian Country Discretionary Grant Subgrantees

$120,000

The purpose of this program is to provide focused, short-term, on-site training and technical assistance or peer consultation to Native American Indian Tribes or Native American organizations that have received funds under the Assistance to Victims of Federal Crime in Indian Country Discretionary Grant Program. Applications will be solicited competitively.

Children's Justice Act Discretionary Grant Program for Native Americans

$302,000

The goal of this program is to bring about systemic improvement in the response to child sexual abuse on Indian reservations and other locations where Federally-recognized Indian tribes exist. Grants will be made directly to Indian tribes to improve the reporting, referral, investigation, prosecution and overall handling of child abuse cases, particularly child sexual abuse cases, in a manner that limits additional trauma to child victims. Additional applications will be solicited to implement new activities in this continuation program in Fiscal Year 1992. Applications will be solicited competitively.

The Investigation and Prosecution of Child Abuse Through the Federal Criminal Justice System

$1,200,000 [1]

This is a collaborative intra-agency program between OVC and OJJDP in which OVC is providing all or a major portion of the funds. Technical assistance will be provided nationwide to prosecutors and other professionals involved in the prosecution of child abuse cases. This program will provide several in-depth training conferences for child abuse prosecutors and will provide training workshops in conjunction with multidisciplinary national child abuse conferences. The program will revise and update a current training manual, *Investigation and Prosecution of Child Abuse*, and add a section on prosecuting child abuse cases in Federal court. The program will serve as an information clearinghouse for prosecutors, social workers, therapists, law enforcement officers and clinicians involved with the prosecution of child abuse cases. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992. This award will be in addition to a $300,000 award listed under OJJDP's program plan as "The Investigation and Prosecution of Child Abuse." A total sum of $1,500,000 will be awarded under this project in 1992.

Continuation Programs

Emergency Assistance for Victims of Federal Crime

$100,000

Emergency Assistance for Victims of Federal Crime supports emergency needs of victims of Federal crime when services that are essential to a victim's recovery cannot be provided by any other source. Requests are made from Federal Victim-Witness Coordinators to OVC for such purposes. Direct services such as emergency shelter, crisis intervention and counseling are supported by this program.

Federal Training and Technical Assistance

$526,000

OVC will continue to improve the response of Federal law enforcement officials to the needs of Federal victims through training programs for Federal prosecutors, investigators and Victim-Witness Coordinators. Efforts will include specialized training on handling cases of child abuse in the Federal criminal justice system; an interagency agreement with the Federal Law Enforcement Training Center to train Federal law enforcement officers to respond effectively to crime victims; an interagency agreement with the FBI to enhance victim witness assistance services; joint DOD/DOJ training on victim witness assistance; and assistance for grantees in Indian country to initiate and expand victim assistance services.

Children's Justice Act Discretionary Grant Program for Native Americans

$486,000

The goal of this program is to bring about systemic improvement in the overall response to child sexual abuse on Indian reservations and other locations where Federally-recognized Indian tribes exist. Grants are made directly to Indian tribes to improve the investigation, prosecution and handling of child abuse cases, particularly those involving child sexual abuse and to limit the trauma to child victims. Ten programs funded in November 1990 are eligible to submit an application for continuation funding. These grants were awarded in November 1991. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Outreach to Victims of Federal Crime

$45,000

Native Americans have not been made aware of crime victim compensation benefits and application procedures. Service providers and crime victims in the military also have been uninformed about benefits. This program will devise strategies to make both populations aware of procedures and benefits. A video tape will be produced that describes various options and sources of help for victims of crime in Indian country. The major focus will be the availability of crime victim compensation. It will also provide information to military service providers that describes available benefits. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Assistance to Victims of Federal Crime in Indian Country

$583,000

OVC will continue to improve direct services to victims of Federal crime by making grants to States to expand victim assistance services on Indian reservations. State grantees will subgrant these funds to Indian tribes to provide services in remote areas of Indian country where U.S. Attorneys have the jurisdiction to prosecute crimes. This program will provide funds for continuation grants to 15 States and approximately 50 tribal subgrantee victim assistance programs. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Specialized Training for Federal Criminal Justice Personnel Responding to Child Sexual Abuse Cases

$40,000

This cooperative agreement supports a Federal Training Day for Federal criminal justice personnel at the National Symposium on Child Sexual Abuse. The Federal Training Day addresses issues of special concern to those handling child sexual abuse cases at the Federal level. This year a concentrated 3-day training track will be developed for teams of Federal prosecutors, law enforcement officers and victim-witness coordinators on handling child victim-witnesses in the Federal judicial system. Federal criminal justice officials attend in teams consisting of Assistant U.S. Attorneys, LECC Victim-Witness Coordinators and Federal investigators; the training will promote coordination among these professionals. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

National Victims Resource Center

$300,000

This is a collaborative intra-agency program between OVC and BJA, in which BJA is providing a portion of the funds. The National Victims Resource Center collects, maintains and disseminates information about national, State and local victims-related organizations, criminal justice officials and also State programs that receive funds authorized by the Victims of Crime Act. The National Victims Resource Center is a component of the National Criminal Justice Reference Service. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Training and Technical Assistance to Help Children Grieving Violent Death

$34,000

In the wake of rising rates of violent crimes, there is evidence that numerous children across the Nation are suffering in the aftermath of the violent deaths of loved ones. The provision of a training and technical assistance package and training events will enable victim service providers, school staff and other human service professionals to address the often overlooked needs of children who are in the process of grieving the violent deaths of family members and close friends. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Technical Assistance and Training: Empowering Survivors of Homicide

$17,000

Parents of Murdered Children (POMC) is a national self-help organization for parents and their children who experience a violent homicide in their family. Services they provide include self-help groups that meet regularly; information about the grieving process and the criminal justice system; and communication with professionals in related fields about the problems faced by those surviving a homicide victim. The present funding will support dissemination of efforts. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

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National Judicial College

$50,000

The National Judicial College is the Nation's leading continuing education center for State trial judges. In order to improve the treatment of victims and witnesses in the courts, it is essential that a more aware and knowledgeable group of judges be trained who will promote actively the rights of victims. Victims issues will be incorporated into the existing curriculum as well as a new curriculum developed to train judges regarding victims legislation, rules and procedures. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Community Policing and Police Effectiveness

$14,205,000

"While we can place great confidence in the courage, professionalism, and skill of our law enforcement officials, we also know that government cannot do the job alone—law enforcement officers must have the respect and the support of the people they serve. Fortunately, many concerned Americans have already taken a stand to help prevent crime and to apprehend its perpetrators." President Bush (Proclamation 6359—Crime Prevention Month, October 17, 1991)

OJP Policy Statement

The criminal justice system should assume a primary role in mobilizing communities to develop comprehensive strategies for combating gang violence and preventing illegal drug trafficking. Alliances between community residents and the police are essential for making neighborhoods safe and drug-free. Through comprehensive and coordinated activities, including the police and community leaders, school officials, youth service providers, church, business, and civic leaders can work together in partnership to "take back the streets." OJP's Community Policing and Police Effectiveness activities emphasize the importance of the police and the communities working together in a relationship of trust, cooperation and partnership to promote safety and security and to rid neighborhoods of thugs and drug pushers.

OJP will focus on demonstration projects which involve promising innovations, such as mini-police stations, directed patrols and police-neighborhood ombudsmen. Community prevention and intervention efforts will be concentrated in public housing complexes, drug-free school zones, recreational parks, alternative education programs and community centers threatened by drug-related crime and illegal gang activity. This rapidly developing approach to better control crime addresses the need to prevent crime and to respond effectively to crime when it occurs.

OJP Program Response

Bureau of Justice Assistance (BJA)

$9,300,000

New Programs

Community Policing Model Development, Training and Technical Assistance

$600,000 [1]

The purpose of this program is to develop a comprehensive program model (key components, processes and activities) of Community Oriented Policing and to provide training and technical assistance to local demonstration sites participating in OJP's Community Policing Program Initiatives. The development of the model will take place through a consortium of law enforcement organizations which will identify key components, processes and activities associated with community oriented policing. The model will be demonstrated by local law enforcement agencies selected through a separate solicitation.

Community Policing Model Demonstration

$1,500,000 [1]

This is a new program which is designed for law enforcement agencies to demonstrate prototype processes and strategies for making complete organizational transitions to community policing. The first phase of this program includes the development of a plan for the full implementation of community policing throughout a local jurisdiction and the implementation of internal organizational changes.

Weed and Seed—Demonstration

$2,000,000

This program will be designed to demonstrate the Weed & Seed Program in selected jurisdictions. Weed & Seed is a comprehensive and coordinated multiagency approach to law enforcement and community revitalization. The first task, "weeding," is accomplished by utilizing the resources of the criminal justice system, including intensive law enforcement efforts to remove and incapacitate violent criminals and drug traffickers from targeted neighborhoods and housing developments. The second task, "seeding," restores the community by providing broad economic and social opportunities developed in cooperation with other Federal, State and local agencies along with public and private organizations and community groups. Up to 8 sites will be funded under the demonstration phase of this program through a limited competition.

Weed and Seed—Technical Assistance

$350,000

This program is designed to develop an Implementation Guidance Manual for the Weed and Seed Program. Technical assistance and training will be provided to facilitate the demonstration of a comprehensive and coordinated multiagency approach to law enforcement and community revitalization. The first task, "Weeding," focuses on utilizing the resources of the criminal justice system, including intensive law enforcement efforts, to remove and incapacitate violent criminals and drug traffickers from targeted neighborhoods. The second task, "Seeding," is designed to restore the community by providing broad economic and social opportunities developed in cooperation with other Federal, State and local agencies along with public and private organizations and community groups.

Continuation Programs

Organized Crime Narcotics Trafficking (OCN) Enforcement

$2,500,000 [1]

This program demonstrates a unique approach to the development and implementation of coordinated investigations and prosecutions of upper level conspiratorial narcotics trafficking. It demonstrates that shared management, using a group composed of all participating agencies, of multi-jurisdictional investigations and prosecutions can avoid the usual pitfalls of single lead agency task forces. Fiscal Year 1992 funds will continue the existing projects, continue and expand a national training program as well as continue technical assistance to project sites. Additional variations in existing sites may be implemented. This program will be implemented by the current grantees. No additional applications will be solicited in Fiscal Year 1992.

Drug Impacted Small Jurisdictions

$200,000 [1]

The purpose of this program is to demonstrate effective drug prevention and control strategies which address drug trafficking and drug-related crime problems in jurisdictions or combinations of jurisdictions with populations of 50,000 or less. A comprehensive drug control program will be designed and implemented which features a centrally coordinated, cooperative effort with law enforcement, prosecutors, the courts, corrections, drug treatment services and the community. Additional applications will be solicited to implement activities in up to two new sites in this continuation program in Fiscal Year 1992.

Metropolitan Area Drug Enforcement Task Force

$500,000

This is a collaborative interagency program between BJA and the Drug Enforcement Administration (DEA) in which BJA is providing a portion of the funds. With the cooperation of DEA, this project targets street level and mid-level drug traffickers in the Washington, DC, Metropolitan Area. Its purpose is to establish a visible law enforcement presence in local neighborhoods; to disrupt major links between the suppliers, distributors, and users; to seize and initiate forfeitures against properties used to facilitate the sale and/or consumption of drugs; to initiate enforcement action against property owners who knowingly allow their property to be used in the distribution of illicit drugs and who fail to take action against their tenants who do so; and to develop comprehensive intelligence systems to identify the illicit drug supply source and the distribution network that is responsible for illicit drug trafficking and its associated violence. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

State and Local Training and Technical Assistance

$1,000,000

This program is designed to assist States and local jurisdictions in developing and implementing comprehensive strategies to prevent and control illegal drug trafficking and to improve their criminal justice systems. The major purposes of the program are to: (1) Support the development and enhancement of comprehensive State strategies; (2) promote and facilitate the implementation of programs developed under BJA discretionary initiatives; and (3) provide technical assistance to States and local jurisdictions. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Training Local Law Enforcement Officers in Anti-Drug Activities Involving Illegal Aliens

$150,000

This is a collaborative interagency program between BJA and the Immigration and Naturalization Service (INS). This program recognizes the unique problems faced by State and local law enforcement officers involved in narcotics investigations or other activities dealing with legal and illegal aliens. Regional training workshops are presented to provide information on criminal alien groups from a regional as well as national perspective. This program provides training on fraudulent document recognition as well as relevant training regarding U.S. Immigration and Naturalization Service procedures. The training provides an understanding of new and additional investigative possibilities in cases as well as an understanding of possible noncriminal sanctions. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Executive Working Group of State Drug Policy Officials

$300,000

This project will support the first year of Phase II of the Executive Working Group of State Drug Policy Officials, consisting of 15 senior State officials designated by their governors as the lead officials in the development of statewide drug strategies. The Working Group is designed to assist the governors' offices and inform the governors' designated representatives in the development and implementation of integrated, effective State drug control strategies. Phase I provided for an analysis of existing organizational structures in the represented States, a meeting of the Working Group and the development of a publication targeting governors and their senior staff members relative to practical, contemporary approaches to developing a statewide drug control strategy, with particular emphasis on effective integration of BJA formula grant planning in the broader State planning process. Phase II activities will involve conducting two meetings of the Working Group to address key issues identified earlier, building on the insights gained from the Phase I meeting. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Weed and Seed—Omaha

$200,000

The central focus of this program is the Omaha Community Partnership, a 23 member Steering Committee (comprised of leaders from law enforcement, corporate, political, civic, religious and community groups) who meet regularly to coordinate, support and execute neighborhood and citywide anti-crime and drug initiatives. This program was initiated in 1991 as part of the Weed & Seed Demonstration Sites. A full Weed & Seed Demonstration will be developed including a strong "Weeding" component, Community Policing, and "Seeding" activities focused on a selected neighborhood. No additional applications will be solicited in Fiscal Year 1992.

Bureau of Justice Statistics (BJS)

$1,145,000

Continuation Programs

National Incident-Based Reporting Program

$945,000

Having funded the redesign of the Uniform Crime Reporting (UCR) program of the Federal Bureau of Investigation, BJS provides support to State UCR programs in their implementation of recent changes under the National Incident-Based Reporting System. In Fiscal Year 1992, BJS intends to fund several local law enforcement agencies to demonstrate and document the utility of incident-based reporting to the law enforcement and criminal justice community. Applications will be solicited from cities following BJS site visits to implement new activities in this continuation program in Fiscal Year 1992.

Law Enforcement Management and Administrative Statistics

$200,000

This program is under a reimbursable agreement between BJS and the Bureau of the Census. The Law Enforcement Management and Administrative Statistics (LEMAS) Program provides nationally representative data on law enforcement agencies in the United States. Information gathered includes the number and characteristics of personnel, salary levels, education and training requirements, expenditures, number and types of vehicles, types of special units and agency policies. In Fiscal Year 1992, BJS will continue analysis of the 1990 data and will publish several reports, including: *Profile of State and Local Law*

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Enforcement Agencies, 1990 and Profile of Sheriffs' Agencies, 1990. Additionally, the 1993 LEMAS questionnaire will be designed and new questions will be tested, as appropriate. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

National Institute of Justice (NIJ)

$3,313,000

New Programs

Research and Development on Community Policing and Police Effectiveness

$750,000

This NIJ program will continue to identify and develop innovative methods of community policing and crime analysis. Possible projects for Fiscal Year 1992 may include measuring the performance of community police officer activity and issues related to the accountability of community police officers, particularly the roles of supervisors, managers, and the community itself. Multiple awards are anticipated. Applications will be solicited in Fiscal Year 1992.

Rural Law Enforcement Initiative

$250,000

NIJ will begin to assess the efforts of law enforcement in rural environments. Knowledge about crime, disorder and law enforcement in rural America is limited to impressions from the media and anecdotal accounts from the field. Systematic assessment about the extent, nature and characteristics of crime and disorder and the response of the criminal justice system has not been undertaken. Based on this assessment, NIJ may develop pilot programs and conduct field tests of particularly promising strategies and models. Information provided by these studies could serve as the basis for demonstration and education programs. Methods of procurement will be determined and solicitations issued, as appropriate.

Drug Market Analysis: Enforcement Model

$200,000

This is a collaborative intra-agency program between NIJ and BJA, in which BJA is providing all of the funds. This program will examine and document drug enforcement activities of current projects funded under the Drug Market Analysis Program. Researchers will provide information about computer hardware and software necessary for the development of Drug Market Analysis and will describe how computer technology is useful for drug enforcement. To assist law enforcement in "weeding" out drug traffickers, implementation guidelines and a full description of drug enforcement strategies will be products of this research effort. A cross-site analysis will be conducted to identify the most effective approaches to developing and utilizing DMA techniques. This information will be disseminated to State and local officials. Methods of procurement will be determined and a solicitation issued, as appropriate.

Research & Demonstration Projects on the Weed and Seed Initiative

$750,000

NIJ will continue to support research projects that can provide model programs and strategies for the Weed and Seed comprehensive approach to neighborhood security. Special attention will be given to research projects that support each of the major components of Weed and Seed dealing with the suppression of neighborhood drugs and crime, police/community partnerships and neighborhood reclamation. The focus will be on the development of a coordinated approach to community security through the integrated efforts of the police, citizen groups and other public and private agencies. Multiple awards may be made in Fiscal Year 1992. Methods of procurement will be determined and solicitations issued, as appropriate.

Continuation Programs

Implementation of Community Policing

$100,000

This program is developing information to support the implementation of community policing across the Nation. NIJ efforts may include technical assistance, training, clearinghouse functions and demonstrations. Studies currently underway will assess the current State of community policing in the country. NIJ grantees are identifying community-based programs and strategies throughout the country, documenting the components of these programs and developing case studies to provide detailed accounts of program strengths and weaknesses. The information will be used to provide program guidance to selected communities and police agencies. These are continuing projects; no additional applications will be accepted in Fiscal Year 1992.

Performance Measures for Community Policing

$200,000

In Fiscal Year 1992, continuing research will identify performance measures, define elements of both administrative and operational supervision critical to successful community policing, and examine the role of community involvement in the development and success of community policing strategies. This is a continuation of a current project; additional applications may be solicited in Fiscal Year 1992.

Training and Technical Assistance for Community Policing

$138,000

NIJ will support training seminars on community-oriented policing for city managers, police executives and community leaders. This is a continuation of a current project; additional applications may be solicited in Fiscal Year 1992.

Drug Market Analysis (DMA)

$500,000

The program uses location based computer mapping technology to identify drug market "hot spots." Maps are computer generated by programming all city addresses into the system and integrating them with calls for service data, drug arrests and observational information collected by narcotics and patrol officers. The information produced assists police in developing and evaluating the effectiveness of a variety of drug enforcement strategies. In Fiscal Year 1992, the final year of funding for DMA, the program will reach its final stage at existing sites. Thus, applications will not be solicited in Fiscal Year 1992.

Study of Excessive Force by Police

$100,000

This research program is examining the relationship between the incidence of the use of excessive force by police and the presence or absence of training programs and internal procedures to guide police behavior in police-citizen encounters. Currently, a national survey is underway to collect information on incidents, law enforcement agency policies and procedures and law enforcement training information. A series of case studies on police experience with this issue was also funded in 1991. This program will be continued in Fiscal Year 1992 and will include applied research in individual police agencies and the communities they serve. Services are being provided by current grantees. No additional applications will be solicited in Fiscal Year 1992.

Analysis of Police Killings

$125,000

NIJ is examining violence against police officers, especially police killings and assaults. Information about the characteristics of incidents, motivations of assailants and the implications for additional police training are part of this continuation program. Services are being provided by current grantees; no additional applications will be solicited in Fiscal Year 1992.

Crime Prevention Through Environmental Design (CPTED)

$200,000

In Fiscal Year 1992, NIJ will conduct a review and synthesis of the CPTED research literature. NIJ may also support research that will incorporate studies of how the geographic distribution of different types of crime is associated with the environmental characteristics of locations where those crimes occur often or seldom, with a focus on the policy implications of the findings. Other issues to be addressed may include modification of the physical characteristics of locations to reduce risk in the urban environment, the association of public disorder with crime and fear, and the effect of disorder on urban decay and investment by businesses in the community. Methods of procurement will be determined and a solicitation issued in Fiscal Year 1992.

Office of Juvenile Justice and Delinquency Prevention (OJJDP)

$447,000

Continuation Programs

Juvenile Justice Training for Law Enforcement Personnel (Glynco)

$447,000

This project provides technical assistance and training to promote a better understanding of the juvenile justice system by Federal, State and local law enforcement agencies. Five training programs are offered through this project, namely: Police Operations Leading to Improved Children and Youth Services (POLICY) which has two components: POLICY I introduces law enforcement executives to management strategies in order to integrate juvenile services into the mainstream of their operations, while POLICY II helps mid-level managers build on these strategies and demonstrates step-by-step methods to improve police productivity in the juvenile justice area. The Child Abuse and Exploitation Investigative Techniques Program provides law enforcement officers with state-of-the-art approaches for building a case against those individuals charged with child abuse, sexual exploitation, or the abduction of children. Managing Juvenile Operations is a curriculum which provides a series of training programs for police executives. It demonstrates simple, yet effective methods to increase departmental efficiency and effectiveness by integrating juvenile services into the mainstream of police activity. School Administrators for Effective Police, Probation, and Prosecutors Operations Leading to Improved Children and Youth Services (SAFE POLICY) brings together the chief executives of schools, law enforcement, prosecution, and probation to promote interagency cooperation and coordination in dealing with youth-related problems. This program will be implemented under the current interagency agreement.

Intermediate Sanctions and User Accountability

$13,825,000

"All those engaged in illegal drug use must be held accountable for their behavior, yet not all convicted drug offenders need to be incarcerated * * *. However, intermediate punishments—which expand the range of options between incarceration and unsupervised release—can provide innovative ways to assure swift and certain punishment, which in many cases will deter further criminal acts * * *. Such punishments are not a safety valve to relieve prison crowding, and cannot serve as a substitute for needed prison construction. Public safety demands that serious offenders be incarcerated." (National Drug Control Strategy, February 1991).

OJP Policy Statement

Intermediate Sanctions fall between traditional probation and incarceration and are usually less severe than jail or prison. However, they are more restrictive than probation, for nondangerous offenders. Intermediate sanctions are designed to hold the drug user accountable and focus on the range of post-adjudication sanctions that fill the gap between traditional probation and jail or prison sentences. These sanctions can be used to address the problems of both juvenile and adult crime. Demonstration programs, as well as evaluation efforts, are being initiated to promote and test a continuum of sanctions such as the expanded use of fines, restitution, community service, home detention, intensive supervision, electronic monitoring and boot camps. Intermediate sanctions recognize gradations in the seriousness of criminal behavior and are designed to respond accordingly with graduated levels of criminal punishment.

OJP Program Response

Bureau of Justice Assistance (BJA)

$12,150,000

New Programs

Corrections Options Grants

$11,700,000 [1]

The purpose of this program is to provide assistance to public and private nonprofit agencies in designing, developing and implementing innovative alternatives to traditional incarceration and offender release programs. In addition, financial support will be provided to public agencies to demonstrate boot camp prisons. Training and technical assistance will be provided to public and private agencies in the development of innovative alternative programs. Also, this project will provide support for the Private Sector and Prison Industry Enhancement Certification program. An additional $1.3 million will be available to NIJ for the evaluation of this program, bringing the total for this program to $13 million.

Continuation Programs

Fines Demonstration Program

$200,000

This program benefits all jurisdictions in which criminal fines are used as sanctions in the punishment of drug offenders. The program will enhance alternative sanctioning options by demonstrating the application and enforcement of fines as realistic and credible monetary penalties. Currently, three demonstration sites are implementing the Structured Fine Program. This program will provide training and technical assistance to the demonstration sites.

Denial of Federal Benefits

$250,000

This program established a clearinghouse of automated systems to receive and transmit to the General Services Administration, as well as other interested Federal agencies, information on persons convicted of drug trafficking or possession offenses who have been sentenced to a denial of

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Federal benefits. Fiscal Year 1992 funds will support continued technical assistance and an evaluation component.

National Institute of Justice (NIJ)

$1,325,000

New Programs

Research and Development on Corrections

$500,000

NIJ research in Corrections in Fiscal Year 1992 will address the critical issues of prison crowding, improving community supervision through development of more effective offender classification practices, preliminary planning and data collection for future assessment of the risks to the public and cost effectiveness of incarceration compared to community supervision of offenders. Research into the effectiveness of prison- and jail-based inmate education and work programs in deterring recidivism may also be initiated. In addition, the effectiveness of differing sentence lengths in deterring recidivism; a synthesis of what is known about current prison classification practices; and an assessment of current information on the frequency of offending are among the topics that may be examined. Methods of procurement will be determined and solicitations issued, as appropriate.

Research and Development on Intermediate Sanctions

$500,000

Building on its Fiscal Year 1990 and 1991 efforts, NIJ will support a new initiative in the development of standards and guidelines for boot camps. In addition, NIJ will examine a variety of intermediate sanctions, including boot camps and their impact in controlling criminal behavior. Issues to be addressed may include intensive supervision probation, operational impact of intermediate sanctions including day reporting centers, intermediate sanctions for special offender populations and the use of intermediate sanctions in the charging and sentencing process. Methods of procurement will be determined and solicitations issued, as appropriate.

Continuation Programs

Inmate Work Initiative

$325,000

This is a collaborative interagency program between NIJ, BJA and National Institute of Corrections (NIC) for which NIJ is providing all of the funds. This program provides developmental assistance to jurisdictions seeking to reduce inmate idleness and lower the costs of incarceration, through inmate work programs. The program demonstrates how private businesses operate inside correctional facilities by employing inmates for the production and open market sale of goods and services. The program serves to strengthen and expand prison and jail industry programs certified by BJA through its Prison Industry Enhancement Certification Program. The program also provides training and technical assistance. This program is being conducted by current grantees. It is not anticipated that applications will be solicited in Fiscal Year 1992.

Office of Juvenile Justice and Delinquency Prevention (OJJDP)

$350,000

New Programs

Juvenile Restitution

$200,000

OJJDP plans to support a juvenile restitution training and technical assistance program. The project design will be based on practitioner recommendations regarding the current needs in the field. A survey is being initiated by the Office to determine how best to expand and institutionalize restitution as a viable juvenile justice disposition. In addition to the survey, it is anticipated that a "working group" will be convened to map out the future course of OJJDP's support for optimum development of the various components of restitution. These components will include community service, victim reparation (also victim-offender mediation), offender employment and supervision, employment development, and possible new program elements designed to establish restitution as a major aspect in our efforts to improve the juvenile justice system. Applications will be solicited competitively.

Continuation Programs

Demonstration of Post Adjudication: Non-Residential Intensive Supervision Program

$150,000

The National Council on Crime and Delinquency (NCCD) was funded to implement the Intensive Supervision Program which was designed to identify and assess effective intensive supervision programs, to provide the capability of select jurisdictions to implement an effective program model and to disseminate information about the initiative. The assessment report has been completed and the training and technical assistance materials have been completed in draft. Support for this program will supplement NCCD's current award and provide funds for technical assistance and training for six to eight jurisdictions that are interested in implementing the intensive supervision programs model developed by NCCD. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Drug Prevention

$20,035,000

"Prevention remains one of our most important weapons in the Nation's war on illicit drugs." President Bush, September 4, 1990. (Proclamation 6174–National DARE Day.)

"Law Enforcement alone cannot solve the problem of violent crime * * * community action is essential. We need to transform our attitudes as a society. We need to mobilize the community at all levels." Acting Attorney General William P. Barr, October 1, 1991, (Annual Conference of Crime Stoppers International)

"When communities implement a coordinated plan of attack against drugs, one which includes meaningful sanctions for any drug use, and involves schools, parents, religious organizations, law enforcement agencies and businesses, we can make progress in keeping drugs out of schools, neighborhoods and the workplace. Strengthening the ability of communities to mobilize against drugs and holding the occasional user accountable are among the cornerstones of the Administration's drug prevention Strategy. (National Drug Control Strategy, February 1991).

OJP Policy Statement:

The criminal justice system should assume a primary role in developing community-wide efforts to prevent the use and trafficking of illegal drugs. OJP's drug prevention activities focus on community-based efforts to reduce the problems of drug abuse, gang activities, illiteracy, juvenile delinquency and school dropouts, especially in our minority communities. This priority area will emphasize programs at the grass roots level which focus on mobilizing law abiding citizens to get involved with prevention in high crime neighborhoods where there is a prevalence of drug trafficking, serious crime, gang violence and child sexual exploitation.

Through comprehensive and coordinated activities law enforcement officials, community leaders, including

school administrators, church, business and civic leaders can work together in partnership to both take back the streets and keep those most at risk, safe from criminals. It will also focus on offenders who have had previous drug involvement and are returning from correctional programs. These program activities will be implemented through demonstration programs, training and technical assistance and evaluations.

OJP Program Response

Bureau of Justice Assistance (BJA)

$10,200,000

New Programs

Boys and Girls Clubs Demonstration

$2,300,000 [1]

The purpose of this program, is to promote the establishment of Boys and Girls Clubs in public housing projects, which will be closely coordinated with the BJA Weed and Seed initiative. This will include training and technical assistance for Boys and Girls Clubs as well as support for demonstration activities in selected sites.

IMPACT

$200,000 [1]

The IMPACT Program provides training and consultation to teachers, school counselors, administrators and community groups in substance abuse awareness and prevention. This program for elementary and secondary school students, will expand the IMPACT Program in Washington State and document the program model.

Continuation Programs

Drug Abuse Resistance Education (DARE)—Training Centers

$1,700,000 [1]

The purpose of this program is: (1) To train police officers to teach skills to children that help them resist pressure to use drugs; (2) to reduce the demand for drugs and eliminate drug-related crime; and (3) to provide technical assistance to State training centers and to accredit those centers that are qualified as DARE Training Centers. DARE officer candidates will receive 80 hours of initial training, to be followed by 40 hours of in-service training classes. This program will be implemented by the current grantees. No additional applications will be solicited in Fiscal Year 1992.

National Citizens' Crime Prevention Campaign

$3,000,000 [1]

The purpose of this program is to educate children and adults about crime, violence and drug abuse prevention; to mobilize existing resources for crime and drug abuse prevention; to generate an individual and community sense of responsibility for crime and drug abuse prevention; and to provide program and policy direction to citizens, community organizations, law enforcement, other public and private service providers as well as State and Federal agencies. An evaluation of the public service advertising campaign will be included in this effort. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

The National Town Watch Crime and Drug Prevention Campaign

$100,000 [1]

Sponsored by the National Association of Town Watch, National Night Out, as the campaign is commonly referred to, is a nationwide crime and drug prevention initiative that involves thousands of communities in a year-long effort of partnership building among public and private agencies, businesses, community organizations and citizens. Program activities for the year culminate in an August event in which citizens are asked to turn on their porch lights between the hours of 8 and 10 p.m., go outside and meet neighbors and participate in events such as block parties and candlelight vigils to demonstrate support for community crime and drug abuse prevention efforts. This program will be implemented by the current grantee.

Community Drug Abuse Prevention Initiatives

$1,000,000 [1]

The purpose of this program is to continue to provide cost-effective technical assistance and training in crime, violence and drug demand reduction as well as to support the assessment and implementation of efficient multifaceted community-based strategies. The program will continue to promote holistic, cost-effective strategies to reduce crime, violence and illicit drug use; provide information on effective methods of reducing crime, violence, gang activity and illicit drug use by strengthening relationships among ethnically diverse populations, law enforcement and other public and private service providers. The program will promote the adoption and implementation of comprehensive community-based crime and drug demand reduction efforts which involve youth, citizens, schools, civic and community organizations, churches, businesses, law enforcement and other public and private service providers. This program will be implemented by the current grantee. Applications will not be solicited competitively.

Communities in Action to Prevent Drug Abuse

$400,000 [1]

The purpose of this program is to provide technical assistance and training to selected communities for the development of cost-effective community based anti-crime and drug control strategies which are comprehensive in nature. Projects will involve the building of partnerships between law enforcement and other public and private service providers, businesses, churches, schools, community organizations, citizens and youth. This program will be administered by the National Training and Information Center. Up to ten demonstration sites will be selected with close attention to coordination with operation Weed & Seed. Applications will not be solicited competitively.

Strategic Intervention for High Risk Youth

$1,275,000

This is a joint venture with New York University, the Ford Foundation and the Pew Charitable Trusts. The program consists of a test of a specific intervention strategy for preventing and controlling illegal drugs and related crime and fostering healthy development among youth from drug and crime-ridden neighborhoods. Multiservice, multidisciplinary neighborhood-based programs will be established to provide a range of opportunities and diverse services for pre-adolescents and their families who are at high risk for involvement in illegal drugs and crime. Simultaneously, the criminal and juvenile justice systems will target resources to reduce illegal drug use and crime in the neighborhoods where these young people reside. This year's funds will support the continuation of the demonstration sites, training and technical assistance and evaluation of the demonstration sites. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

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Wings of Hope Anti-Drug Program

$225,000

This program is an excellent example of coalition building and community partnership, involving law enforcement agencies, churches, businesses, schools, residents and other public and private agencies in a multifaceted effort to combat crime and illicit drugs. With primary focus on minority populations, its goals are to: develop comprehensive community-based strategies to combat crime and drug abuse in public housing and drug infested neighborhoods; educate and train minority church groups, community groups and youth in crime and drug prevention, mentoring, coalition building and strategy development; develop proactive neighborhood prevention teams comprised of residents, church officials, the business community, law enforcement and other public and private service providers; develop an adoption program to assist "at risk" families in high risk communities; and develop and implement innovative law enforcement approaches that will better facilitate cooperation and coordination. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Bureau of Justice Statistics (BJS)

$450,000

Continuation Programs

Drugs and Crime Data Center and Clearinghouse

$450,000

This is a collaborative intra-agency agreement program between BJS and BJA. Entering its fourth year of operation, the Drugs and Crime Data Center and Clearinghouse is highlighted in the President's National Drug Control Strategy, 1991, and continues to provide a centralized source of information on drugs and crime for Federal, State and local officials, Congressional staff, academic researchers, private sector inquirers, the media and the general public. The Data Center and Clearinghouse has two components: (1) Data analyses and evaluation activities; and (2) data user services. BJS is developing a comprehensive national report, Drugs, Crime and the Justice System: A National Report, in conjunction with the Data Center. This report combines many sources of drug data and covers topics including illegal drug production and trafficking, extent of drug use, costs associated with drug abuse, drug control policies, drug testing and history of drug abuse and control. The anticipated publication date for the report is 1992. In addition, the Data Center and Clearinghouse is planning to release Drugs and Crime Facts, 1991, during the fiscal year. This annual report will present the most current information available relating to drugs and crime published by BJS in 1991. Other special reports, analytic studies and drug data services are planned. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

National Institute of Justice (NIJ)

$1,500,000

New Programs

Research and Development on Prevention of Drug Abuse and Related Crime

$500,000

This program will support new research on prevention and control of illegal drug supply and deterrence of illegal drug demand. In 1991, NIJ initiated a comprehensive analysis of criminal justice system drug treatment and analytic models of the relationship of drugs and crime to criminal sanctions. Building on these efforts, NIJ's Fiscal Year 1992 projects will emphasize assessments of drug use and related crime, identification and treatment of drug offenders and new strategies for prevention and control of drug-related crime. Initiatives may examine female and juvenile offenders, alcohol abuse and related violence, State and local drug laws, tracing drug money, drug detection devices and control of precursor chemicals. Multiple awards will be made. Methods of procurement will be determined and solicitations issued, as appropriate.

Continuation Programs

AIDS–HIV Education in Lockups and Booking Facilities

$1,000,000 (NIDA)

The purpose of this program is to design, test and evaluate the effectiveness of AIDS–HIV prevention approaches for arrestees held 48 hours or less in jail booking facilities and lockups. The program which is jointly administered by NIJ and NIDA involves a combination of various education and drug treatment referral strategies to prevent or intervene in high risk behavior among this population. Fiscal Year 1992 is the final year of the 3-year cooperative project operated under an interagency agreement. No additional applications will be solicited in Fiscal Year 1992.

Office of Juvenile Justice and Delinquency Prevention (OJJDP)

$7,885,000

New Programs

Professional Development for Youth Workers

$200,000

The primary purpose of this initiative is to establish and promote professional development of youth and juvenile justice system providers through a formal and continued training program. The program will be designed to include an inventory of existing training programs and their effectiveness, a needs assessment survey of training, the development of several curricula areas, the design of a dissemination strategy, and finally, an implementation plan for the second year of a two-year program. The end product is an expertly designed set of curricula which can be adapted for use in a broad range of juvenile justice and youth care training programs. The overall goal of the program will be to enhance professionalism for those persons to whom society has delegated responsibility in treating and caring for our Nation's troubled youth. Such individuals include foster parents for "acting-out" adolescents, staff in a range of community-based residential care facilities, juvenile correctional officers, probation officers, truant officers, and security personnel in youth facilities. Applications will be solicited competitively.

Native American Alternative Community-Based Program

$300,000

This is a collaborative interagency program between OJJDP and the Administration on Native Americans in the Department of Health and Human Services. The purpose of this program is to develop community-based alternative programs for Native American youth who have been adjudicated delinquent, and to develop a reentry program for Native American delinquents returning from institutional placement. The program will use the information being gathered by the American Indian Law Center in its study of the Native American juvenile justice system to develop this initiative. A multi-component design will be developed which will integrate the critical elements of the OJJDP Intensive Supervision and Aftercare programs with cultural elements that have traditionally been utilized by the Native Americans to control and rehabilitate offending youth.

As planned, the program would be tested in up to two sites. Applications will be solicited competitively.

Program for Chronic Status Offenders

$140,000

The grant will underwrite the replication in Philadelphia of the program for chronic status offenders conducted in West Milton, Pennsylvania. That program seeks to effect change in juvenile delinquent behavior (including addressing possible family dysfunction), stabilizing the offender's behavior at home and in the community, promoting positive substitutes for antisocial acts, and implementing individualized educational plans for those needing more than mainstream education can afford.

This program offers an efficient and effective alternative to the "too-little"/"too-much" syndrome as it applies to chronic status offenders and emergent delinquents. In lieu of probation alone or residential treatment, the day care program employs a broad spectrum of counseling techniques to enhance life skills and employment opportunities, while providing intensive treatment for pre-and post-adjudicatory delinquents and status offenders. Applications will not be solicited competitively.

Continuation Programs

Drug Abuse Prevention—Technical Assistance Voucher Project

$200,000

This project will provide technical assistance to 15–25 neighborhood-based organizations which have established anti-drug abuse projects, and will enhance their capacity to serve high-risk youth and serious juvenile offenders. Neighborhood groups will apply to the grantee for vouchers ranging from $1,000 to $10,000, depending on their needs. They will present their own plans and designs for the requested technical assistance, which will be evaluated and refined by the grantee. This method of delivery will allow these neighborhood groups to secure technical assistance inexpensively from sources that are compatible with both their programs and their specific community characteristics. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Intensive Community-Based Aftercare Program

$200,000

This program is designed to develop a juvenile aftercare model which can be tested in the juvenile justice system. Under this program, an assessment has been completed and a final draft assessment report has been submitted to OJJDP. A model juvenile aftercare program, which builds on the assessment material, has been developed and related policies and procedures have been completed in draft. This next stage of funding will provide training and technical assistance for up to four sites in the aftercare model. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Research on the Causes and Correlates of Delinquency and Non-Delinquency

$1,680,000

This longitudinal cohort study by three coordinated projects has been directed to improving the knowledge base regarding positive, delinquent, or drug using behaviors of juveniles in the context of the family, school and the individual. Factors are being identified that promote, as well as inhibit, involvement in delinquency, leading to effective design of intervention activities. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Reaching At-Risk Youth in Public Housing

$300,000

This is a collaborative interagency program between OJJDP and the Department of Housing and Urban Development (HUD). Boys and Girls Clubs of America have established seven Boys and Girls Clubs in public housing developments across the Nation under the existing cooperative agreement with OJJDP. HUD's funding level commitment for this program is not yet final. The dollar amount of this program represents only OJJDP's portion. These programs are designed to provide needed services to the high-risk youth who live in public housing, thereby preventing their involvement in delinquency, drug and alcohol abuse and gang involvement. During Fiscal Year 1992 additional sites will be established and training and technical assistance will be made available to other Boys and Girls Clubs and public housing authorities who wish to establish Clubs. Also, as part of this program, the Boys and Girls Clubs developed a curriculum on their targeted public housing outreach program for the Federal Bureau of Investigation's Drug Reduction Coordinators. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

The Congress of National Black Churches: National Anti-Drug Abuse Program

$150,000

The overall plan for this program calls for the development and implementation of a national public awareness and mobilization strategy to address the problem of drug abuse and drug abuse prevention in targeted communities across the United States. The goals of the national mobilization strategy are to summon, focus and coordinate the leadership of the Black religious community in cooperation with the Department of Justice, other Federal agencies and organizations to help mobilize groups of community residents to combat effectively drug abuse and drug-related criminal and antisocial activities. The program is currently operating in 10 cities. This award will provide funding to extend the program from 10 to 15 additional cities. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Effective Strategies in the Extension Service Network, Phase II

$75,000

This is a collaborative interagency program between the Office of Juvenile Justice and Delinquency Prevention (OJJDP), Department of Justice; the National Highway Traffic Safety Administration (NHTSA), Department of Transportation; and the Extension Service, Department of Agriculture, in which OJJDP and NHTSA provide the funding. NHTSA's funding level commitment for this program is not yet final. The dollar amount of this program represents only OJJDP's portion. The purpose of this program is to establish worthwhile community collaborations through a defined, established training program and technical assistance provided by the U.S. Department of Agriculture's Extension Service Network. These collaborations will focus on youth substance abuse, impaired driving and other delinquent behavior. Training and technical assistance will be based on the Community Systemwide Response (CSR) planning process, a training curriculum that presents a planning and organization strategy communities can use to assess and respond to their current juvenile drug and alcohol abuse and impaired driving problems. The CSR also provides information about the

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most promising systemwide technologies in drug abuse prevention and treatment. Applications will not be solicited competitively.

Field-Initiated Programs

$550,000

OJJDP is proposing continuation of its program designed to increase the capacity of State and local governments, public and private youth-serving agencies, and neighborhood organizations or community groups to prevent delinquency, develop and use alternatives to the juvenile justice system, and improve the administration of juvenile justice. This program will provide competitive awards to practitioners, policymakers and researchers who have innovative ideas which address areas that do not fall within the scope of other proposed programs. The award of these grants will be closely coordinated with the priorities of the Office of Justice Programs. Any grant funded under this program will follow a regular cycle of application, peer review and competitive selection. Additional applications will be solicited to implement new activities in this continuation program in Fiscal Year 1992.

Law-Related Education (LRE)

$3,200,000 [1]

Since 1979, OJJDP has funded a national law-related education (LRE) effort. The Law-Related Education National Training and Dissemination Program involves five national LRE projects and programs which operate in 47 States. The purpose of this program is to provide training and materials to State and local school jurisdictions to encourage and guide them in establishing LRE delinquency prevention programs in the curricula of grades kindergarten through 12 and in juvenile justice settings. Grantees will be encouraged to place emphasis on drug abuse prevention programs in primary, middle and secondary schools in minority communities. The major components of the program are: Coordination and management, training and technical assistance, preliminary assistance to future sites, public information, program development, and assessment. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Satellite Prep School Program and Early Elementary Schools for Privatized Public Housing

$400,000

This is a collaborative interagency program between OJJDP and the Department of Housing and Urban Development, and is being coordinated with the Department of Education. The purpose of this program is to establish an early elementary school program to help prevent and deter children who reside in public housing developments from participation in delinquent acts and to reduce the potential for their involvement in lives of crime, especially drug-related crime, gang activities, alcohol and/or drug abuse. The Prep-School Program has as its mission the establishment of preparatory elementary schools for kindergarten to fourth grade children living in public housing developments. The Prep-School Program will begin with one demonstration site in the Ida B. Wells Housing Development, Chicago, Illinois. The Prep-School will be established and operated as an early intervention educational model based upon the Marva Collins Westside Preparatory School educational philosophy, curriculum and teaching techniques. The other partner in this effort is the Chicago Housing Authority. The Fiscal Year 1992 funds awarded to the Chicago Housing Authority will be used for the Prep-School operational expenses and continued training and technical assistance. The U.S. Department of Housing and Urban Development funds will be used for renovations to create the space for school. This program addresses Goal 6 of "Goals for America 2000: The President's Education Strategy." This program will be implemented by the current grantees. No additional applications will be solicited in Fiscal Year 1992.

Career Development

$90,000

This is a collaborative interagency program between OJJDP and the U.S. Department of the Interior. This program gives high-risk youths an opportunity to assess their interest in and potential for careers in the Criminal Justice System or the National Park Service. The purpose of Law Enforcement Exploring is to educate and involve youth in police or other justice system operations, to interest them in possible law enforcement careers, and to build understanding between youth and law enforcement personnel. An added program component in Fiscal Year 1990 was the introduction of youths to career opportunities in the National Park Service. The youths participating in the Exploring Program render hands-on assistance to their host agencies or organizations (State and local police departments, U.S. Park Service, U.S. Customs, etc.). The youths also receive hands-on training from their host agencies. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Partnership Plan, Phase V (Cities in Schools)

$400,000

This is a collaborative interagency program between OJJDP, the U.S. Department of Labor, and the U.S. Departments of Health and Human Services and Commerce. The dollar amount of this program represents only OJJDP's portion. The funding level commitment for the other agencies are not yet final. This program is a continuation of a national school dropout prevention model that is being implemented by Cities In Schools, Inc. (CIS). CIS provides training and technical assistance to States and local communities to enable them to adapt and implement the CIS dropout prevention model. The model focuses social, employment, mental health and other resources on high-risk youths and their families at the school level. Individualized plans are developed for each youth, and needed remedial education, social and other services are provided to the youths and their families. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Drug Testing

$3,350,000

"Testing within the criminal justice system can serve as an 'early warning system' that provides another method of keeping offenders in check while they are on pretrial or post-conviction release. Moreover, random, mandatory drug tests, coupled with certain penalties, create a powerful incentive for those under correctional supervision—a high risk group—to get off and stay off drugs." (National Drug Control Strategy, January 1990).

OJP Policy Statement:

Drug testing should be considered an essential component of intermediate sanctions as well as all other pre- and post-adjuditory sanctions of criminal justice and juvenile justice systems. It should be available at intake and throughout the system for initial and periodic screening and diagnostic assessment purposes. In addition, it should be used to guide decisions pertaining to immediate and longer term control and treatment needs, levels of security and types of confinement as well as the development of appropriate dispositions, treatment plans and referrals for services. Through research, demonstration, technical assistance, training and information dissemination program, OJP will provide policymakers at the State and local levels with information to enable and encourage them to incorporate drug testing in all aspects of the criminal and juvenile justice systems.

OJP Program Response

Bureau of Justice Assistance (BJA)

$500,000

Continuation Programs

Drug Testing Throughout the Criminal Justice System

$500,000

The purpose of this program is to demonstrate the use of drug testing throughout the criminal justice system from pretrial through parole. Training and technical assistance is being provided during the planning and operational phases of the demonstration site. Fiscal Year 1992 funds will support continuation of the Portland, Oregon, site. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

National Institute of Justice (NIJ)

$2,450,000

New Programs

Research and Development on Drug Testing/Drug Use Forecasting

$250,000

This program includes research on drug testing and its benefits for the criminal justice system, studies of NIJ's Drug Use Forecasting Program, and demonstrations and applications using DUF data. Issues to be addressed may include the predictive value of pretrial drug testing, the use of portable drug testing technology, models for efficient system-wide testing, the management and use of drug test results and programs for criminally-involved pregnant addicts or those with young children. NIJ will make the DUF juvenile data sets as well as those for male and female adult arrestees available. Responses to the open-ended interview questions may also be publicly available. This will permit broader lines of inquiry, ranging from progression of drug use from mid-teens to mid-twenties to analysis of the geographic movement over time of self-reported "new drugs on the street." Methods of procurement will be determined and solicitations issued, as appropriate.

Continuation Programs

Drug Use Forecasting (DUF) Program

$1,400,000

This is a collaborative intra-agency program between NIJ and BJA, in which BJA is providing matching funding. DUF has been identified by the Office of National Drug Control Policy (ONDCP) as one of eight leading drug indicator systems in the Nation. Using drug testing and interview data, the DUF system collects information on drug use by arrestees brought to booking facilities in 24 jurisdictions. Results are analyzed and published by NIJ in quarterly and annual reports. Studies are underway to expand the utility of DUF data in the sites, to examine and refine the DUF sampling plan and to pilot test a computerized interview which may improve the timeliness and accuracy of the data as well as the cost efficiency of the program. Fiscal Year 1992 activities will maintain the data collection and research program in the sites and support extended ongoing coordination with other Federal agencies including the National Institute of Drug Abuse (NIDA), Drug Enforcement Administration (DEA), ONDCP and the Office of Treatment Improvement (OTI). Methods of procurement will be determined and solicitations issued, as appropriate.

Hair Analysis Research and Standards

$800,000

This is a collaborative interagency program between NIJ and NIDA designed to expand the drug testing capability of the criminal justice system through the development of hair-based tests. Hair testing permits the detection of drug use patterns over longer periods of time than can be detected through urine-based testing. In Fiscal Year 1991, research focused on cocaine and heroin evidence in hair and the development of criminal justice system standards for hair analysis techniques. Building on these efforts, Fiscal Year 1992 initiatives may address variations in hair drug evidence by offender group characteristics, standardization of field testing and analysis procedures and cost-benefit comparisons of hair and other testing methods in criminal justice program settings. Multiple awards will be made. Methods of procurement will be determined and solicitations issued, as appropriate.

Office of Juvenile Justice and Delinquency Prevention (OJJDP)

$400,000

New Programs

Enhancing Enforcement Strategies for Juvenile Impaired Driving Due to Drug and Alcohol Abuse

$100,000

This is a collaborative interagency program between OJJDP and the National Highway Traffic Safety Administration. NHTSA's funding level commitment for this program is not yet final. The dollar amount of this program represents only OJJDP's portion. The purpose of this program is to enhance the juvenile justice system's coordination and responsiveness to delinquent youth involved in drinking and driving. Based on documentation of low arrest and citation problems as they pertain to youth impaired driving, as well as information about enforcement obstacles and effective enforcement strategies, an award is being made to develop training and technical assistance materials for the various juvenile justice system components (i.e., police officers, judges, prosecutors, probation officers, etc.). The materials will address the issues related to effective enforcement of impaired driving laws as they pertain to juveniles and the juvenile justice system. The materials will be tested in five jurisdictions across the country. Based on practical use, they will then be edited and prepared for replication and dissemination. Applications will not be solicited competitively.

Continuation Programs

Drug Testing Guidelines

$125,000

The primary purpose of this project is to develop a comprehensive curriculum in close coordination with the National Institute of Justice, consisting of drug identification, screening and testing which will assist juvenile justice systems in educating policymakers and training managers through training and technical assistance. This program, "Training and Technical Assistance Curriculum for Drug Identification, Screening and Testing in the Juvenile Justice System," offers a plan for providing training and technical assistance to selected juvenile justice systems throughout the country. This program will be implemented by the

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current grantee. No additional applications will be solicited in Fiscal Year 1992.

Testing Juvenile Detainees for Illegal Drug Use

$175,000

The intent of this program is to assess, develop, test, and disseminate information on new and innovative approaches to test for illegal drug use among juvenile detainees. The purpose of the program is to improve resource allocation and treatment services for youth in detention by developing more accurate and complete information on the use of illegal drugs. The world of drug testing is technical and complex, as are the issues revolving around the decision to test juveniles for illegal drug use. OJJDP has recognized the complexity of the situation and embarked on this initiative, among others, to provide guidance and leadership to the field in this area. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Intensive Prosecution and Adjudication

$6,728,263

"Through the criminal justice system we identify, arrest, and prosecute those who break our laws; incarcerate the most serious offenders so they cannot further threaten the welfare of society; deter others from involvement in the drug trade; and, by making clear the costs of drug use, cause many more to enter treatment and rehabilitation." (National Drug Control Strategy, February 1991.)

OJP Policy Statement

Prosecution and adjudication should be a primary focus of criminal and juvenile justice system activity in order to attack aggressively the problems of illegal drug trafficking, gang violence and community exploitation. OJP's activities will focus on promoting legislation as well as policies, procedures and practices that expedite the identification, processing, adjudication and case disposition of adult and juvenile serious, violent offenders. The activities will emphasize tactics, technologies and strategies that include system-wide coordinated responses, vertical prosecution, offender specialization, case management, expeditious court decisionmaking and appropriate dispositional alternatives. Demonstration, training, technical assistance and information dissemination are the primary program mechanisms that will be used in preparing more effective prosecutorial and judicial responses to serious and violent crime.

OJP Program Response

Bureau of Justice Assistance (BJA)

$2,700,000

Continuation Programs

Model State Drug Control Statutes

$350,000

This program will facilitate the adoption and implementation of model comprehensive drug control statutes which strengthen States' investigation, apprehension, prosecution and punishment capabilities in dealing with drug offenders and organizations trafficking in illegal drugs and narcotics. In addition, this program provides State and local policymakers model statutes with supporting commentary which effectively address both drug supply and demand problems. This program will promote and assist the implementation of the updated model State statutes across the Nation through key State and local policymakers and providing comprehensive technical assistance for their implementation of the model statutes. This funding will provide intensive technical assistance to between six to eight States. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Night Drug Courts

$500,000

This program benefits medium and large jurisdictions which experience backlogs and/or increased filings of drug cases. Purposes of this program are to refine program models, demonstrate those models and provide technical assistance and training to the demonstration sites. Additional applications will be solicited to implement new activities in this continuation program in Fiscal Year 1992.

National Drug Conference

$100,000

BJA and the State Justice Institute (SJI) sponsored a conference in November 1991 to assist State Judiciaries in developing responsive drug control strategies and in implementing corresponding programs. To support the needs of the judiciary in future program development, BJA and SJI have agreed to set aside funds to implement selected recommendations from the conference attendees. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Court Case Management Training and Technical Assistance

$150,000

The purpose of this program is to collect and assess the information generated by the programs of BJA and SJI focused on assisting courts to respond more effectively and efficiently to drug cases. This information will be used to develop a training and technical assistance curriculum for providing guidance to courts in implementing one or more model approaches to drug case management. The program will include a conference on alternative models of case management. It is anticipated that this will be a joint program with the SJI. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Interjurisdictional Prosecution Program—Demonstration

$500,000 [1]

The purpose of this program is to enable prosecutors from two to six adjoining jurisdictions to establish a formal interjurisdictional prosecutor-led task force focused on the investigation and prosecution of illegal drug manufacturing and distribution organizations operating within their contiguous jurisdictional boundaries. This program will support up to three new demonstration sites selected to replicate the prototype model. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

South Carolina Grand Jury—Criminal Drug Project

$500,000*

The purpose of this demonstration is to continue the ongoing South Carolina Grand Jury Project's operation and to assess and document the State Project to enable its possible replication by other States. The South Carolina Attorney General's Office was recognized during hearings held by Senators Hollings and Rudman in February 1990 as having a highly successful Statewide Grand Jury—Criminal Drug Organization Project which is a special prosecution unit in the State Attorney General's Office dedicated to intensive investigation and prosecution of multijurisdictional drug trafficking networks throughout the State. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Local Drug Prosecution—Innovative Projects and Assessments

$250,000

This program is designed to provide State and local prosecutors with new and innovative approaches to improve local investigation and prosecution of drug offenses as well as to organize community resources into a comprehensive strategy to eliminate illegal drugs. The program targets district attorneys who establish and implement drug control policies and front line prosecutors who try drug-related cases. Drawing upon the expertise of an established national network of narcotics prosecutors, the project will develop, document and disseminate information on innovative programs and policies related to effective investigation and prosecution of drug offenses and the development of comprehensive community-based drug control strategies. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Statewide Training for Local Prosecutors

$150,000

The purpose of this dissemination program is to provide training and technical assistance to local prosecutors assigned full-time to drug units and task forces. It is based on a sophisticated case study and trial advocacy training program for drug prosecutors that was tested statewide in two jurisdictions and is to be made available to all States. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Federal Alternatives to State Trial (FAST)

$200,000

The purpose of this program is to demonstrate the potential benefits of moving selected State drug trafficking cases to the Federal system utilizing City and County of Philadelphia Assistant District Attorneys to develop and prosecute these cases in Federal Court. This transfer from State to Federal jurisdiction will substantially increase the likelihood of pretrial detention for local drug dealers, expedite the prosecution of these cases before the Federal District Court and obtain a significant mandatory sentence, for the guilty defendants, in a Federal prison facility. Special emphasis will be given to the project's documentation and assessment-evaluation activities. This information will provide the first substantive review of a systematic removal of a relatively large number of State cases (200–400 annually) to Federal jurisdiction. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

National Institute of Justice (NIJ)

$500,000

New Programs

Research and Development on Prosecution and Adjudication

$500,000

This program addresses issues and problems concerning the prosecution and adjudication of criminal cases and related civil matters. The program builds on past research and upon recently identified problems and issues of concern to prosecution and the judicial process. Some of the areas of particular interest that may be pursued concern effective handling of drug cases, innovation in the pretrial process, evidentiary issues such as eyewitness testimony, jury decisionmaking, assessing juror representation and environmental crime. Methods of procurement will be determined and solicitations issued, as appropriate.

Office of Juvenile Justice and Delinquency Prevention (OJJDP)

$3,528,263

New Programs

Improvement in Correctional Education for Juvenile Offenders

$100,000

This is a collaborative interagency program between OJJDP and the U.S. Department of Education. The primary purpose of this program is to assist juvenile corrections administrators in planning and implementing educational services for detained and incarcerated juvenile offenders. This will be accomplished by the development of minimum educational standards and specific approaches to improving correctional education. OJJDP will seek joint funding for the program from the Department of Education. Applications will be solicited competitively.

A Study To Examine The Delay In Juvenile Sanctions

$75,000

The problems created by delays in juvenile treatment and sanctions are not well documented because of the lack of research. Since the Supreme Court decision in In Re Gault, 387 U.S. 1 (1969), procedural requirements in juvenile hearings have become more formal. Crowded civil and criminal calendars often delay juvenile hearings. The decision in *United States* v. *Furey*, 500 F.2d 338 (2d Cir. 1974), and a number of State cases have held that juveniles have a constitutional right to a speedy trial. In line with this right, the Institute of Judicial Administration and the American Bar Association published Standards for Juvenile Justice in 1977 that recommended ideal time limits for juvenile systems to function appropriately and effectively. Delays, directly and many times adversely, affect juveniles and are also wasteful of judicial resources. OJJDP will fund a study to determine the extent of unnecessary delays and whether they are excessive; the cause of the delays; and their effect on the juveniles and system administration. As a result, recommendations will be offered for improvement. Applications will be solicited competitively.

Juvenile Justice Personnel Improvement

$100,000

The purpose of this applied research program is to raise the quality of the key personnel in the juvenile justice system, such as probation officers and detention and corrections counselors, who have direct one-on-one contact with juveniles on an on-going basis. Juvenile justice succeeds or fails as a result of the highly interpersonal relations that are established by these professionals. Unfortunately, turnover rates among these professionals are excessively high. The obvious effects of such turnover are disruption on administration and increasing costs of recruitment and training. However, of possibly greater seriousness are the effects on the juveniles who are confused by a succession of youth workers. Many of these youth have begun to form meaningful relationships with a juvenile justice professional only to be abruptly placed with a different person. Despite the high turnover rates, there are capable and experienced staff professionals who stay, are satisfied, and do excellent work. The object of this program is to learn how to increase the number of professionals who achieve such stability and longevity in their careers.

The initial project will include an assessment of the descriptions of the functions, knowledge, and skill requirements of these personnel. A study of turnover rates in a representative sample of jurisdictions

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and agencies will be initiated. The goal of the overall program, which will be completed in a continuation, will be the development of guides for the implementation of personnel programs that will result in the recruitment and retention of competent and satisfied personnel. Applications will be solicited competitively.

Juvenile Court Technical Assistance and Training on Child Abuse and Neglect Cases

$500,000

The purpose of this program is to design and implement model national standards and to develop a national training curriculum to improve the handling of child abuse and neglect cases in juvenile court. Training and Technical Assistance will be the primary method of transferring the model material to State and local court systems. Section 223(a) of the Crime Control Act of 1990 (Public Law 101–647, 104 Stat 4797) provides $500,000 for a grant to the National Council of Juvenile and Family Court Judges for this purpose. Therefore, no additional applications will be solicited in Fiscal Year 1992.

Continuation Programs

Juvenile Court Training

$1,100,270 [1]

The primary purpose of this project is to allow the National Council of Juvenile and Family Court Judges to continue to refine the training presently offered and to provide technical assistance. The training objectives are to supplement law school curricula, provide judges with current information on developments in juvenile and family case law and make available options for sentencing and treatment. Specifically, emphasis will be placed on the areas of drug testing, gangs and violence, intermediate sanctions, as well as responding to the problems of unemployability, illiteracy and family dysfunction. This project will provide foundation training both to newly elected or appointed judges and to experienced judges who have been recently assigned to the juvenile or family court bench. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Court Management Training

$35,000

The purpose of this training is to develop and enhance skills of juvenile court personnel who manage the day-to-day operations of juvenile court intake, detention facilities, juvenile court processing, and juvenile court data systems. The focus will be upon improved development and functioning of these systems within the juvenile court through upgrading skills of management staff. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Technical Assistance to the Juvenile Courts

$392,993 [1]

The National Center for Juvenile Justice (NCJJ) is the research division of the National Council of Juvenile and Family Court Judges. The general areas in which assistance will be provided include: Court administration and management, program development, court decision-making, legal opinions, due process, and case law. Emphasis will be placed on intermediate sanctions such as boot camps, and on appropriate dispositional alternatives for handling juveniles involved in gang activity. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Improving Literacy Skills of Institutionalized Juvenile Delinquents

$100,000

This is a collaborative interagency program between OJJDP and the Department of Education. Many juvenile delinquents in correctional institutions have a serious need to develop basic reading and writing skills. This program will improve the literacy levels of juvenile residents in these facilities while creating a national network of trained reading teachers and volunteers available to juvenile correctional facilities. The program will include training, technical assistance, and development of curricula for use by staff of detention and corrections facilities. The program should improve correctional education and the delivery of appropriate services to incarcerated juveniles. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Improving Conditions of Confinement: Training for Juvenile Corrections Staff

$600,000

This is a collaborative interagency program between OJJDP and the National Institute of Corrections (NIC) to continue the development of a comprehensive training program for juvenile corrections and detention staff personnel. The program is being designed to develop a core curriculum to provide training for juvenile corrections and detention administrators and mid-level management personnel in such areas as drug testing, gang activity and overcrowding. It is anticipated that the juvenile corrections core training will be conducted at the NIC Academy and that the more issue-oriented training will be done regionally. This program will be implemented under the existing interagency agreement.

Juvenile Justice Training for Prosecutors

$125,000

This project's activities include designing and implementing policy development workshops for chief prosecutors, and for juvenile unit chiefs in prosecutors' offices, to support their roles in the juvenile court processing of delinquents. Materials will be collected for the preparation of a training manual on policy issues pertaining to the prosecution of juvenile offenders. The project will also continue to issue a newsletter. To date, the National District Attorneys Association has presented five highly rated workshops designed to expand prosecutor involvement in juvenile justice. The training provided by the project addresses organizational leadership, management, and change. A major goal of the project is to make juvenile matters a priority concern in prosecutors' offices. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Training and Technical Assistance for Juvenile Detention and Corrections Agencies

$250,000

This project will continue to provide technical assistance and training to juvenile correctional and detention agencies. It will also provide a national forum on juvenile corrections to include representatives from the juvenile court judges and juvenile probation offices; develop a juvenile facility construction handbook; develop a behavior management training package; and complete the development of standards for all juvenile justice facilities. Emphasis will be placed on intermediate sanctions for handling juveniles involved in drug-related offenses and gang activities. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Juvenile Corrections Industries Venture Program

$150,000

The purpose of this program is to assist juvenile corrections agencies in establishing joint ventures with private businesses and industries in order to provide new opportunities for the vocational training of juvenile offenders. The grantee has performed an assessment of corrections industries ventures programs, developed a policies procedures manual, and produced training and technical assistance materials and is now in the process of selecting four to eight juvenile corrections agencies to participate in the training and technical assistance on the corrections venture models. The Fiscal Year 1992 funding will increase the number of sites receiving training and technical assistance. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Evaluation

$5,790,000

"The detailed picture of drug use and trafficking patterns necessary to formulate intelligent national policy can be developed only by means of wide-ranging, interdisciplinary data collection and evaluation." (National Drug Control Strategy, February 1991).

OJP Policy Statement

Evaluations are a primary component of OJP discretionary grant programs. OJP promotes program evaluation so that programs that are effective can be identified, publicized and replicated in other jurisdictions, while programs that have not proven effective can be discontinued. OJP will dedicate significant financial resources to encourage, enhance and enforce quality design and program development and will disseminate the results to communicate what works and what does not. These evaluation activities consist of formal assessments of OJP programs through objective measurement and systematic analysis of the manner and extent to which the programs achieve their objectives and produce significant results. The results are used to assist in the formulation of relevant criminal justice and juvenile justice policies. Related program design and the subsequent development and dissemination of program policies, procedures and practices provide information and guidance at the Federal, State and local levels.

OJP Program Response

Bureau of Justice Assistance (BJA)

$750,000

Continuation Programs

BJA-State Reporting and Evaluation Program

$750,000

This project is designed to develop and implement standardized assessments of subgrant performance data to allow the assessment and evaluation of formula grant drug control efforts at the State and local levels. The project will provide technical assistance to the 56 States and Territories directly and through a series of reports and technical assistance documents. This technical assistance will enhance the data collection, analysis and reporting capabilities of the State agencies designated to administer the formula grant program. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

National Institute of Justice (NIJ)

$4,250,000

New Programs

Evaluation Projects

$4,000,000

This is a collaborative intra-agency agreement between NIJ and BJA to evaluate a range of new programs funded under the Anti-Drug Abuse Act of 1988. Evaluation areas may include Corrections Options, Inmate Work and Education, Weed and Seed, Boys and Girls Clubs, Community Policing and Disruption of Drug Markets. NIJ will continue to evaluate innovative State and local anti-drug programs supported by BJA funds. In 1992, NIJ will co-sponsor with BJA the Third Annual Evaluation Conference to provide a forum for State and local officials to exchange information, provide technical assistance and training and disseminate the findings from completed evaluation studies. NIJ will also continue to build its evaluation capacity and consider possible supplements to ongoing projects. Multiple awards may be made in Fiscal Year 1992. Methods of procurement will be determined and solicitations issued, as appropriate.

Evaluation of Weed and Seed Projects

$250,000

The National Institute of Justice will continue to support evaluation projects that can provide model programs and strategies for the Weed and Seed comprehensive approach to neighborhood security. The focus will be on the development of a coordinated approach to community security through the integrated efforts of the police, citizen groups and other public and private agencies. Special attention will be given to evaluation projects that support each of the major components of Weed and Seed dealing with the suppression of neighborhood drugs and crime, police-community partnerships and neighborhood reclamation. Multiple awards may be made in Fiscal Year 1992. Methods of procurement will be determined and solicitations issued, as appropriate.

Office of Juvenile Justice and Delinquency Prevention (OJJDP)

$790,000

New Programs

Effectiveness of Juvenile Offender Treatment: What Works Best and for Whom?

$50,000

OJJDP seeks to determine what forms of treatment are most effective for individual juvenile offenders. The initial project will determine the feasibility of a program of collection and review of data, previous studies, and current literature. Treatment, in this context, could range from release, restitution, community service, and probation to incarceration. The aim is to determine, insofar as possible, what forms of treatment and sanctions are most effective, and for which types of juvenile offenders. Subsequent findings would be made available to the juvenile courts in order to provide officials with the necessary data to assist them in selecting treatment options for juvenile offenders. Applications will be solicited competitively.

Continuation Programs

Independent Evaluations

$640,000

OJJDP awarded a contract to conduct independent evaluations of selected funded programs. This will establish a concerted, continuous effort to learn, in the following order of priority: Efficacy, cost-effectiveness, and impact of the discretionary programs. Reported findings, including strengths, weaknesses and other assessment data, will be made available to all concerned. The following criteria will determine the priority of programs selected for evaluation: (1) Continuations in order of number of years of funding and total expenditures; (2) new action programs being tested to serve as possible models;

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and (3) new and continuing programs requiring decisions regarding continuation. This program will be implemented by the current contractor. No additional applications will be solicited in Fiscal Year 1992.

Fellowship Program

$100,000

Acting through the National Institute for Juvenile Justice and Delinquency Prevention, OJJDP will continue a Fellowship Program which will provide grants of varying amounts to individuals for independent scholarly study in the field of juvenile delinquency. The Fellowship Program includes the Graduate Research Fellowship and the Summer (short-term) Research Fellowship. Each fellowship program selection will be based on a competitive review and evaluation of proposals for independent study on policy-relevant issues in the juvenile justice field that are closely coordinated with the Office of Justice Programs priority areas. (See OJP priorities under Proposed Programs in earlier sections of this notice.) The OJJDP fellowships are open to juvenile justice practitioners, new Ph.D.s, graduate students, and senior researchers. Each fellowship application will be expected to meet the criteria specified in the procedures and requirements of the OJJDP Fellowship Program. Fellowships will vary in length and amount. Additional applications will be solicited competitively to implement new activities in this continuation program in Fiscal Year 1992.

Money Laundering and Financial Investigation

$3,850,000

"A top priority of the National Drug Control Strategy is to bar the doors of the world's financial institutions to drug money launderers. Our comprehensive money laundering strategy focuses on four aspects of the problem: Improving our intelligence and data analysis capabilities to understand the financial activities of the drug traffickers better; conducting criminal investigations of suspected money laundering activities, to arrest and prosecute those engaging in same, and to seize and forfeit laundered drug proceeds and accumulated wealth * * * and finally * * * promoting international cooperation in stopping money laundering." (National Drug Control Strategy, February 1991.)

OJP Policy Statement

The criminal justice system must disrupt and destroy the production and distribution of illegal drugs and as a result remove the principal income generating activity for organized crime in the Nation. This requires appropriate statutory authorizations, specialized financial investigative techniques and expertise. Prosecutors and other law enforcement officials have to be knowledgeable in financial crimes and the movement of adult and juvenile illegal drug trafficking revenues. Countering major interstate drug enterprises requires techniques that involve identifying the hidden assets and proceeds of drug crime, tracing narcotics-related financial structures and money laundering schemes and asset administration. Demonstration, development, training and technical assistance programs as well as evaluation efforts are being implemented to promote and test a complete range of skills, techniques and approaches to effect the necessary legislation, policy and practices to conduct successful financial investigations.

OJP Program Response

Bureau of Justice Assistance (BJA)

$3,250,000

New Programs

COMMAND

$200,000 [1]

This will be a pilot program involving the cities of Buena Park and Fontana, California. COMMAND Asset Seizure and Forfeiture Administration Service, and the University of Nevada, Reno. It is designed to determine the feasibility of using private sector financial investigators to assist in the detection and seizure of hidden assets of drug traffickers.

Continuation Programs

Financial Investigation Demonstration (FINVEST)

$2,200,000 [1]

This program is designed to develop and implement centrally coordinated multijurisdictional financial investigation activities involving tracing narcotics-related financial transactions, analyzing movement of currency and identifying criminal financial structures and forfeitures. Fiscal Year 1992 funds will provide continuation funding for 12 existing sites and provide for continuation and expansion of the training and technical assistance component. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Civil RICO—Training and Technical Assistance

$250,000

This project will continue to provide sophisticated technical assistance, training and information exchange capabilities to State Attorneys General Offices. It will increase the use of State civil RICO and other civil remedy statutes as drug enforcement tools by providing technical assistance and training to all interested State Attorneys General Offices. Available statistical information will be shared with BJS. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Asset Seizure and Forfeiture Enforcement Training

$300,000 [1]

This is a collaborative interagency program between BJA and the Executive Office of Asset Forfeiture (EOAF). The purpose of this program is to provide training and technical assistance to State and local law enforcement investigators and selected prosecution personnel in State and local asset seizure and forfeiture statutes and appropriate Federal laws and protocols.

BJA has an existing grant with the Police Executive Research Forum (PERF) to provide training to State and local agencies to develop and implement asset seizure and forfeiture units within their respective departments. The training delivered under this program is directed specifically toward State asset seizure and forfeiture statutes and coordinated with the EOAF, cognizant U.S. Attorneys and with related BJA efforts in prosecution training in this area. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Asset Forfeiture Training for Prosecutors—Training Financial Investigations

$300,000 [1]

This program is designed to train State and local prosecutors and selected local law enforcement officers in implementing effective State forfeiture statutes. The training will address the key provisions of these statutes: civil (*in rem*) and criminal forfeiture procedures, substitute asset provisions, money laundering provisions and property management procedures. It will focus on how to develop the prosecution capacity, as well as policies and management to ensure just, ethical and effective prosecution of the model State asset forfeiture provisions. Training will be provided to States that now have or are actively pursuing the adoption of the model asset forfeiture statute or an enhanced State asset forfeiture statute. Training will be increased for eight to ten more States. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

National Institute of Justice (NIJ)

$605,000

New Programs

Research and Development on White Collar and Organized Crime

$500,000

In Fiscal Year 1991, NIJ funded research aimed at increased understanding, prevention and control of money laundering, securities fraud and organized crime corruption of legitimate industries (construction). In addition, joint conferences were held with the FBI on money laundering and emerging economic crimes and with the DOJ Criminal Division on Asian organized crime. In Fiscal Year 1992, studies will target offenses that threaten to cause major physical, social and economic harm, such as insurance fraud and health care fraud as well as the drug trafficking and multiple illegal enterprises of violent organized criminal groups. These studies will seek to describe clearly the characteristics of these crimes and to identify effective strategies of prevention and control. Multiple awards may be made and solicitations will be issued, as appropriate.

Continuation Programs

Study of the Changing Structure of Organized Crime

$100,000

This project will examine international money laundering issues, including existing modes of money laundering by drug traffickers, organized crime and other criminals, current law enforcement strategies, cooperative efforts among nations and special problems faced by investigators and prosecutors in detecting and responding to these offenses. Recommendations will then be made for improved legislative and law enforcement strategies, highlighting multinational coordination. The study will be closely coordinated with NIJ's ongoing national assessment of money laundering. Applications will not be solicited in Fiscal Year 1992.

Information Systems, Statistics and Technology

$37,258,991

"Success on the interdiction, criminal justice, and other fronts will depend on acquiring, integrating, and disseminating information for planning, decision-making, and management of drug control resources." (National Drug Control Strategy, 1990.)

OJP Policy Statement

Criminal justice agencies need accurate, comprehensive and timely information in developing policies and allocating resources to prevent and control illegal drugs. OJP's Information Systems, Statistics and Technology activities focus on the collection and analysis of criminal and juvenile justice information related to serious crime, gang activity, illegal drug use, pre- and post- adjudicatory incarceration, criminal history and system-wide service response effectiveness. To enhance reporting and access to accurate and complete criminal history data, the improvement of criminal history information systems within the States is also a major focus of this activity. Statistical research, analysis, development and dissemination activities are used to implement this priority. Particular emphasis will be placed on technological programs that focus on less than lethal weapons and protective clothing.

OJP Program Response

Bureau of Justice Assistance (BJA)

$1,375,000

Continuation Programs

BJA Clearinghouse

$550,000

The BJA Clearinghouse maintains a criminal justice library of over 100,000 documents and an electronic data base of document surrogates which serve reference specialists in locating information quickly for the use of the criminal justice practitioners and research community. During Fiscal Year 1992, particular emphasis will be placed on OJP priorities; for example, publications regarding gangs and violence will be disseminated throughout the criminal justice community via reports, the NCJRS Electronic Bulletin Board and conference support system which ensures dissemination to all major criminal justice agencies and organizations in the Nation and worldwide. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Operational Systems Support Training and Technical Assistance (SEARCH)

$700,000 [1]

The purpose of this continuation program is to conduct outreach training to improve the general understanding of micro-computer automation and to provide criminal justice practitioners with information and demonstrations of specific criminal justice applications. It is designed to provide short-term technical assistance in order to address the specific needs of criminal justice agencies and long-term technical assistance to individual States or agencies within States which are not automated predominantly or seriously lag in their adoption of criminal justice automation. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Peer Review Services

$125,000

In approving programs for Federal funding, the process for reviewing competitive applications by independent experts in the field has been institutionalized in such a way as to avoid bias or the appearance of bias. Typically, there is a clearly delineated period of time in which to select a panel and complete the review. This contractor identifies potential panel reviewers, provides résumés of candidates and submits these to the program manager, who, in turn, presents them to the Director for final selection of the review panel participants. The contractor then collates a package of materials relevant to each program being reviewed, coordinates the review and prepares a synopsis of reviewers' comments on each of the applications. This project permits BJA to complete the application review and award process quickly and fairly. Additional applications will be solicited to implement new activities in this continuation program in Fiscal Year 1992. Applications will be solicited competitively.

Bureau of Justice Statistics (BJS)

$19,205,000

New Programs

Visiting Research Fellowship Program

$100,000

The Visiting Research Fellowship Program promotes criminal justice statistical research among the academic

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and professional criminal justice community to meet the specific needs of the Department of Justice and BJS. Visiting Fellows participate in a specifically designed research project of particular operational relevance to the national justice system or the international justice system. The Fellowship Program offers criminal justice researchers an opportunity to have a significant impact on specific BJS projects as well as a chance to investigate innovative approaches to the analysis and dissemination of BJS data. Fellows learn from and work with BJS statisticians and present seminars on the work they conduct. Applications will be solicited competitively.

Continuation Programs

Criminal History Record Improvements (CHRI) Program

$9,000,000

This is a collaborative intra-agency program between BJS and BJA with BJA providing all of the funds. The Attorney General's 3-year $27 million Criminal History Record Improvement (CHRI) program, funded by BJA and administered by BJS, will continue in Fiscal Year 1992. The major purposes of the program remain the same for the third year: (1) To make systematic improvements in the quality and timeliness of State criminal history records; (2) to identify convicted felons accurately; and (3) to meet new BJS/FBI voluntary reporting standards. Future changes may be made to this program to ensure consistency with related legislation now pending before the Congress. Under the BJS Information Policy Program, BJS will provide funding for the development of a national training curriculum and training for auditing State record improvements. Under a separate program, BJA is funding an evaluation of the CHRI program. Additional applications will be solicited to implement new activities in this continuation program in Fiscal Year 1992.

National Judicial Reporting Program

$450,000

This program is governed by a reimbursable agreement between BJS and the Bureau of the Census. The National Judicial Reporting Program is the Nation's sole source of data on characteristics of persons convicted of felonies in State courts nationwide. Data are obtained from a nationally representative sample of 300 counties. Characteristics of these data include age, race, sex, conviction offense, type and length of sentence received, type of conviction and judicial processing time. In Fiscal Year 1992, the 1990 data collection process will be completed and BJS will conduct data analysis and prepare the report, Felony Cases in State Courts, 1990. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

National Prosecutor Survey Program

$120,000

This program is governed by a reimbursable agreement between BJS and the Bureau of the Census. The National Prosecutor Survey Program recently collected data on prosecutorial policies and practices from a nationally-representative sample of 290 chief prosecutors in State court systems. Data was collected and analyzed on such factors as staff size, use of plea bargaining, sentencing guidelines, court organization, capacity and workload. In Fiscal Year 1992, BJS will report the findings of the survey in the Special Report, National Prosecutor Survey, 1990. Additionally, BJS will initiate a 1992 survey of the same panel of 290 State court prosecutors, adding questions covering topics of special interest to the Department and the prosecutor community. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

National Pretrial Reporting Program (NPRP)

$450,000

NPRP collects data relating to the pretrial status of persons charged with felonies. Information gathered includes arrest offense, prior criminal record, type of pretrial release, failure to appear in court, rearrests while on pretrial release, disposition and sentencing. Data is being collected currently from 40 jurisdictions representing the 75 largest counties in the United States. These 75 counties account for about half the Nation's crime. The sample of defendants was tracked for 12 months beginning in May 1990 or until case disposition. Consideration will be given to expanding the sample and preparing for future data collection. The NPRP plans to release Pretrial Release of Felony Defendants, 1990 during Fiscal Year 1992. No additional applications will be solicited in Fiscal Year 1992.

Civil Justice Statistics

$175,000

BJS will initiate efforts in the collection and analysis of data related to selected civil justice topics, including the National Survey of State Court Organization. A 1992 national survey of State court organizations will be conducted to collect current information on the organizational, financial and personnel statistics relating to State and Federal judicial systems. A detailed report presenting the findings of the survey will be released in Fiscal Year 1992. Additional applications will be solicited to implement new activities in this continuation program in Fiscal Year 1992.

National Corrections Statistics

$1,565,000

This program is governed by a reimbursable agreement between BJS and the Bureau of the Census. The corrections statistics program consists of a number of separate data collection and analysis efforts designed to obtain detailed information on offenders under correctional care, custody or control and the agencies and facilities responsible for administering the supervision of offenders. Statistical series obtain information on Federal, State and local correctional populations including those in confinement, as well as those subject to intermediate sanctions or conditional supervision in the community. The data collected and analyzed under the corrections statistics program will result in several publications and press releases during the Fiscal Year. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

State Statistical Analysis Network

$2,500,000

BJS provides financial and technical assistance to support a national network of State Statistical Analysis Centers (SACs) which are State-level organizations devoted to the collection, analysis and dissemination of criminal justice statistical information. Through the SAC programs, a new effort will be initiated which will assist States in: (a) Establishing an infrastructure which promotes the collection of common criminal justice statistical data among the States which emphasizes selected topics such as the control of gang activity and (b) developing a mechanism to share data and information among the States and to access Federal and State data and information electronically. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Statistical Initiatives for Improved Analysis

$550,000

BJS provides support to national organizations for special activities of national significance (for example, the Justice Research and Statistics Association, comprised of State Statistical Analysis Centers and their directors.) Activities anticipated this year include the development of: new research and evaluation measures, operationally relevant trend measures of special topics (e.g., State habeas corpus practices) and standards for justice statistics. Additional applications will be solicited to implement new activities in this continuation program in Fiscal Year 1992.

Offender-Based Transaction Statistics (OBTS) Program

$150,000

The OBTS Program collects and analyzes data tracing the key decisions during the arrest, prosecution, judicial decision and incarceration of the felony offender within the State's criminal justice system. The Statistical Analysis Centers play a key role in the collection of these data. This is an expanding program with additional States participating in the data collection process as the quality and completeness of their criminal history records permit. BJS is currently receiving data on dispositions occurring in 1989. In Fiscal Year 1992, the 1989 data will be processed, analyzed and published in the report, Tracking Offenders, 1989. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Criminal Justice Expenditure and Employment Extracts

$145,000

This program is under a reimbursable agreement between BJS and the Bureau of the Census governing the work to be undertaken by Census for BJS. BJS will collect, analyze and publish extract data for the Criminal Justice Expenditure and Employment program which includes statistical data on the cost of operating the Nation's criminal justice systems. The last year for which complete and more detailed expenditure and employment data was collected and analyzed was 1990. This served as the basis for calculating variable pass-through data in distributing the formula funds of the Edward Byrne Memorial State and Local Law Enforcement Assistance Program administered by BJA. Using extract data from the Census Bureau's ongoing finance and employment survey series, BJS will produce less detailed national estimates of expenditures and employment relating to major criminal justice activities, including police protection, prosecution, legal services, public defense and corrections. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

National Criminal Justice Statistical Compilations

$355,000

The Sourcebook of Criminal Justice Statistics, a BJS annual publication, provides in a single volume statistical data on a full range of criminal justice topics, from victimization to corrections. Data is compiled from over 100 different sources from various Federal agencies and private organizations. The Sourcebook is designed to make existing data more readily available to criminal justice practitioners, policymakers, researchers, the media and others in need of criminal justice statistics. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Technical Assistance in Law and Justice Statistics

$175,000

The purpose of this program is to ensure that all BJS programs benefit from a wide range of technical statistical expertise residing in other government agencies, the academic world, the research community and private industry. The Law and Justice Statistics Committee of the American Statistical Association provides technical advice to BJS, upon request, for the overall improvement of statistical methodology and data analysis and presentation. It also assists BJS personnel in a variety of ways including the review of written reports and documents, technical consultations with BJS personnel and in-depth studies of issues by the committee. Technical advice is given relating to the following matters: sample design, survey design, estimation techniques, data analysis and interpretation, and statistical and economic model design. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Federal Justice Statistics and Information Policy

$1,475,000

BJS has developed and maintained a Federal integrated data base which links information from investigative agencies, the Executive Office for U.S. Attorneys, the Administrative Office of the Courts and the Bureau of Prisons to understand the movement of cases and accused persons or offenders through the Federal criminal process. The Federal Justice Statistics program is currently developing, in conjunction with other Federal research and statistical agencies, a state-of-the-art automated model to simulate functioning of the Federal criminal justice system. The program produces annual compendiums, special reports and trend data relating to Federal justice statistics, sentencing and criminal case processing and Federal offenses and offenders. In Fiscal Year 1992, several efforts will be undertaken under the Information Policy Program, giving attention to privacy and security issues in data series, particularly criminal histories and other data bases where access is a critical issue. A curriculum will be developed and training provided in Criminal History Record Improvement (CHRI) auditing and a second comprehensive survey of the CHRI systems will be undertaken. A study will be conducted on issues associated with the merging of juvenile and adult criminal history records. Additional applications will be solicited to implement new activities in this continuation program in Fiscal Year 1992.

International Statistics

$100,000

In its effort to make international criminal justice statistics more accessible within the United States, the International Statistics Program will continue to support a number of activities in Fiscal Year 1992. Foreign universities and research centers are encouraged to supply data tapes of crime statistics and criminal justice studies that have been conducted in other countries to the Criminal Justice Archive at the University of Michigan. A program which collects annual statistical reports on crime and justice from statistical agencies in other countries will be maintained through the National Criminal Justice Reference Service. Translation of selected reports from nonEnglish-speaking countries and dissemination of these data to American scholars and researchers is also accomplished through the National Criminal Justice Reference Service. BJS also provides financial assistance to the United Nations Criminal Justice Information Network which fosters easy communication among criminal justice professionals and dissemination of

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criminal justice information and research findings around the world. BJS will assist the Department in providing relevant international statistics associated with topics of priority to the Department. Additional applications will be solicited to implement new activities in this continuation program in Fiscal Year 1992.

Publication and Dissemination

$1,895,000

BJS reports its statistical findings in a variety of publications, including bulletins, special reports, national updates, tomes, user guides and press releases. BJS sends reports to persons on one of 11 subject-oriented mailing lists to get new reports on specific data series. A variety of mechanisms and institutions are used by BJS to disseminate and promote utilization of data. Reports are distributed by two clearinghouses: the Justice Statistics Clearinghouse and the Drugs and Crime Data Center and Clearinghouse, through the National Criminal Justice Reference Service (NCJRS). In addition, the University of Michigan's Inter-University Consortium for Political and Social Research is the repository for and provides access to the public-use data tapes created as a result of all of the BJS data collection activities, including those of the Bureau of the Census, the Federal Bureau of Investigation and all BJS and NIJ grantees. Finally, BJS also supports the National Clearinghouse for Criminal Justice Information Systems (CJIS) which operates an automated index of more than 1,000 criminal justice information systems maintained by State and local governments throughout the Nation. As part of this program, the CJIS Clearinghouse operates an electronic bulletin board which promotes and facilitates the exchange of information among justice agencies and practitioners. The bulletin board features an electronic mail system, a variety of publications to read on-line or by downloading and the ability to exchange software between users. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

National Institute of Justice (NIJ)

$12,303,092

New Programs

Research and Development in Forensic Sciences and Criminal Justice Technology

$200,000

This science and technology program supports development of new methods, techniques and systems for improving criminal investigation. NIJ is considering a consolidation of the various DNA testing efforts underway nationally to produce reliable statistical and effective laboratory procedures as well as a national assessment of fingerprint technologies. Multiple awards may be made and solicitations will be issued, as appropriate.

State and Local Technical Assistance

$500,000

This program will provide assistance to State and local governments for implementing new and innovative approaches to crime control and criminal justice. The technical support will transfer and apply NIJ research findings and programs to the field. The methods of procurement in Fiscal Year 1992 will be determined.

"Research Focus" Series

$150,000

NIJ is developing a new research publication series which is designed to place current NIJ-sponsored research on critical policy issues in the hands of criminal justice officials. This national publication will highlight current and prior NIJ research on issues of importance to State and local governments. The primary audience for this series is criminal justice officials, agency administrators and policymakers at the State and local level. Each issue will be devoted to a single substantive topic, such as boot camps, intermediate sanctions, child abuse or gang violence and will be composed of six to eight individual articles describing NIJ research, relevant policy issues and current practice. Issues may be structured differently depending on the topic. The product will be highly readable with a focus on the substantive topic as it relates to criminal justice decisionmaking and current policy issues. Services are provided by a current contractor; no applications will be solicited in Fiscal Year 1992.

Continuation Programs

Research and Development in Forensic Sciences and Criminal Justice Technology

$350,000

NIJ plans to support continuation studies in Forensic Science. In Fiscal Year 1991, NIJ funded projects related to DNA profiling, fingerprints and other forensic science technology research. In Fiscal Year 1992, NIJ will continue its efforts to provide the criminal justice field with the latest forensic science and technological information and products. This includes projects that result in a sourcebook for serology (including DNA), fingerprinting and trace evidence and DNA testing. Methods of procurement will be determined and solicitations issued, as appropriate.

NIJ Technology Assessment Program

$938,000

The Technology Assessment Program Information Center operated by NIJ disseminates information to Federal, State and local law enforcement officials on the reliability and effectiveness of criminal justice equipment and products. Services are being provided by a current grantee; no new applications will be solicited in Fiscal Year 1992.

National Criminal Justice Reference Service (NCJRS)

$3,600,000

NCJRS serves as a clearinghouse by maintaining a criminal justice library of over 100,000 documents and an electronic data base which allows reference specialists to locate information quickly for use by law enforcement agencies, policymakers, criminal justice professionals and the research community. During Fiscal Year 1992, particular emphasis will be placed on OJP priorities. For example, publications regarding gangs and violence will be disseminated throughout the criminal justice community via announcements in NIJ Reports, through the NCJRS Electronic Bulletin Board and through conference support activities. This strategy ensures dissemination to all major criminal justice agencies and organizations. Fiscal Year 1992 is the second year of a 4-year contract period. No applications will be solicited in Fiscal Year 1992.

NIJ Research Support Services

$1,000,000

The services provided under this contract fall into three areas: peer review, logistical and technical support, and consultant support. This contract provides for many of the essential research support and administration functions that are integral to NIJ's programs. This contract also may support a possible follow-up meeting of the Chemical Action Task Force in Fiscal Year 1992 which NIJ would coordinate with the Criminal Division of the Department of Justice. Methods of procurement will be determined, as appropriate.

NIJ Data Resources Program

$300,000

The purpose of the Data Resources Program is to facilitate production of fully documented, machine-readable criminal justice research data sets produced under NIJ grant awards. These data sets are made available for subsequent analysis through a public data archive. This program obtains machine-readable data, code-books, and other documentation as they are delivered to NIJ. These items are reviewed for accuracy, completeness and clarity. Of particular interest are those data related to NIJ's evaluation efforts. In addition, the Data Resources Program promotes access to and use of these data. Fiscal Year 1992 is the third year of a 3-year contract. A new contract may be competed in Fiscal Year 1992.

National Assessment Program

$170,000

The National Assessment Program (NAP) supports a triennial national survey of criminal justice policymakers and practitioners to ensure that their needs and priorities are included in the NIJ's research and development agenda. The NAP survey also serves as a means to identify emerging areas of concern in the field and helps inform those in criminal justice about issues of concern to their colleagues nationwide. A new contract may be offered for competition in Fiscal Year 1992.

Less-than-Lethal Weapons Program

$3,585,692

A major research priority will be to continue the development and testing of less-than-lethal weaponry for use in the criminal justice system. NIJ is developing and evaluating less-than-lethal weaponry systems for use by patrol officers. Continued evolution of this research program will be based on an ongoing assessment of the needs of law enforcement in light of emerging technological advances. Multiple awards may be made in Fiscal Year 1992.

Administration of Justice Seminars

$10,000

NIJ will continue to sponsor seminars on the Administration of Justice in Fiscal Year 1992. Seminars provide for the exchange of information, ideas and differing perspectives among the three branches of government on key issues and concerns in the effective operation of the judicial system. In addition, they provide a vehicle for the dissemination of research results to key policymakers and identify critical areas for further research. Services are provided by a current grantee; no applications will be solicited in Fiscal Year 1992.

NIJ Research Applications Program

$600,000

The Research Applications Contract supports applied research projects, summaries of major studies, and syntheses of studies in identified topic areas. The program also develops reports, publications and program development products to convey useful research-based information to criminal justice policymakers and professional audiences. A number of projects underway and proposed for Fiscal Year 1992 specifically address the Office of Justice Programs' initiatives on Gangs and Violence, Prosecution, Drug Prevention and Victims. Services are provided by a current contractor. However, applications for the Fiscal Year 1993 procurement may be accepted in Fiscal Year 1992.

NIJ Professional Conference Series

$500,000

The Professional Conference Series sponsors meetings, workshops and national conferences to provide information and research findings on criminal justice issues to State and local officials, to serve as a forum for discussions with criminal justice professionals on their needs and priorities and to develop and refine research agendas. Plans for Fiscal Year 1992 include the delivery of regional training workshops on evaluating criminal justice programs. Focus groups will be convened to identify the concerns of law enforcement and corrections professionals and to provide feedback on and support for programs in community policing, law enforcement technology and drug testing. As proposed in Fiscal Year 1991, NIJ will continue to sponsor regional conferences on intermediate sanctions. Fiscal Year 1992 is the second year of a 3-year contract period. Applications will not be solicited in Fiscal Year 1992.

Fellowship Programs

$400,000

NIJ's Fellowship Program will support work on topics of high priority to the Attorney General, OJP and NIJ. The program includes graduate fellowships and grants to researchers and practitioners for research in criminal justice. This program also includes grants to Historically Black Colleges and Universities. Multiple awards will be made under this program. Methods of application will be determined and solicitations issued, as appropriate.

Office of Juvenile Justice and Delinquency Prevention (OJJDP)

$4,375,298

New Programs

Telecommunications Technology for Training and Information Dissemination

$100,000

The purpose of this program is to take advantage of the newly developed technology of satellite communications by examining the feasibility of using this medium for the training and dissemination activities of OJJDP. Funds under this program would support a feasibility study to determine (1) what programs currently being implemented by OJJDP would best lend themselves to satellite technology, (2) what modes of the technology (i.e., teleconferencing, closed circuit satellite television, etc.) would best suit the needs of our target audiences and the Federal, State and local governments, and (3) what cost benefits the agency could realize through application of satellite communications. Additionally, the program would fund one pilot project as a demonstration effort to gather additional information on implementation issues, reaction of the field, and assessment of the medium for training and dissemination activities of OJJDP. Application will be solicited competitively.

Continuation Programs

National Juvenile Court Data Archive

$611,998

This program collects, processes, analyzes, and disseminates available data concerning the Nation's juvenile courts. The Archive collects automated data and published reports from juvenile courts throughout the Nation. Using the automated data, the Archive produces comprehensive reports on the activities of the juvenile courts. These reports examine resources expended, referral, offenses, intake, and disposition. These

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reports also examine specialized topics such as minorities in juvenile courts, gang-related offenses, or specific offense categories. The Archive also provides direct assistance to jurisdictions in analyzing their juvenile court data, yielding better case flow management and more effective allocation of resources. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Juvenile Justice Data Resources

$55,000

This is an interagency agreement between OJJDP and the University of Michigan. This program addresses the need to enhance the availability of juvenile justice data sets and to improve OJJDP's analytic capability. In order to make the data more widely available, this project assures that data are understandable and accurate, or "clean." This project also ensures that the data are fully documented to be of use to researchers and others. OJJDP will conduct cross analyses of data sets to add to the knowledge and understanding necessary for improved policy decisions. Improved computer capabilities will give OJJDP access to past data sets thus permitting the study of trends.

Research Program on Juveniles Taken Into Custody

$450,000

This continuing statistical program produces an annual report to OJJDP and the Congress containing a detailed summary and analysis of the most recent data available regarding the numbers and characteristics of juveniles taken into custody. A major objective of this program is to develop individual-based data collection systems that are more responsive to the statutory requirements and the needs of the field. There are two projects under this program: one with the U.S. Census Bureau and the other with the National Council on Crime and Delinquency (NCCD). NCCD's role in this program is to refine the data collection design and procedures; develop, in concert with the Census Bureau, technical assistance and training materials; continue the feasibility testing; and analyze juvenile corrections data and prepare reports. No additional application will be solicited in Fiscal Year 1992.

Juveniles Taken Into Custody

$150,000

This is an interagency agreement with the U.S. Bureau of the Census in which OJJDP is providing all of the funds. The Juveniles Taken into Custody (JTIC) program is conducted in collaboration with the National Council on Crime and Delinquency (NCCD). The Census Bureau contributes to the refinement of the program design, provides training and technical assistance and is responsible for all aspects of data collection and processing. Automated data tapes containing detailed, case-level data on juveniles admitted to and released from State juvenile correctional custody during a given year are submitted to the Census Bureau for processing. The data are analyzed by NCCD.

Children in Custody Census

$300,000

This is a collaborative interagency program between the Bureau of the Census and OJJDP in which OJJDP is providing all or a major portion of the funds. This biennial census of public and private juvenile detention and correctional facilities is conducted by the Census Bureau to describe the subject facilities in terms of their resident populations as well as their programs and physical characteristics. This program will be implemented under the existing interagency agreement. No additional applications will be solicited in Fiscal Year 1992.

Juvenile Justice Statistics and Systems Development

$550,000

The purpose of this program is to improve national and sub-national (State and local) statistics on juvenile justice as well as decision-making and management information systems (MIS) within the juvenile justice system. The project is divided into two tracks, the National Statistics Track (NST) and Systems Development Track (SDT). The NST is helping to formulate a comprehensive National Juvenile Justice Statistics program which will include a series of regular reports on the extent and nature of juvenile offenses and victimization and the justice system's response. A major product will be a Report to the Nation on Juvenile Crime and Victimization. The SDT will assess juvenile justice agencies' decision-making, needs and capabilities to generate and use information; develop models for decision-making and related MIS; and develop and provide training and technical assistance to promote the adoption of model systems in test sites. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Study to Evaluate Conditions in Juvenile Detention and Correctional Facilities

$250,000

This national study of conditions of confinement in juvenile facilities will give facility administrators, agency directors, state policymakers and the Congress a systematic overview of the field. The study has involved a review and assessment of secure juvenile detention centers, reception and diagnostic centers, training schools, farms, ranches, and camps operated by public and private agencies in all 50 states. State and local officials will be able to use the information from the study to refine their programs, services, facilities and policies and to provide better information on conditions of confinement and quality of life linked to overcrowding. A major product of this study will be a summary of the results and a report to the Congress on the conditions existing within juvenile detention and correctional facilities, including recommendations for the improvement of those conditions as needed. This program will be implemented by the current grantee. No additional applications will be solicited in Fiscal Year 1992.

Juvenile Justice Clearinghouse

$780,301

The Clearinghouse provides support services to OJJDP in preparing the Office's publications; collecting, synthesizing, and disseminating information on all aspects of juvenile delinquency; and preparing specialized responses to information requests from the juvenile justice field. A toll-free number is maintained for information requests. This program will be implemented by the current contractor. No additional applications will be solicited in Fiscal Year 1992.

National Coalition of State Juvenile Justice Advisory Groups

$500,000 [1]

The National Coalition of State Juvenile Justice Advisory Groups was established in 1983 as an organization that would support and facilitate the purposes and functions of state juvenile justice and delinquency prevention groups. In 1984 Congress also required the National Coalition to prepare and submit an Annual Report to the President, the Congress, and the OJJDP Administrator which reviews Federal policies regarding juvenile justice and delinquency prevention. The Coalition is also authorized to disseminate information, data, standards, and advanced techniques. Applications will not be solicited competitively.

OJJDP Technical Assistance Support Contract

$628,000

The purpose of this project is to provide technical assistance and support to OJJDP, the National Institute for Juvenile Justice and Delinquency Prevention, OJJDP grantees, and the Coordinating Council on Juvenile Justice and Delinquency Prevention on all research, program development, evaluation, training, and research activities. This program will be implemented by the current contractor. No additional applications will be solicited in Fiscal Year 1992.

Walter W. Barbee,

Acting General Counsel, Office of Justice Programs.

[FR Doc. 91-30580 Filed 12-24-91; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: Office of Records Administration National Archives and Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before February 10, 1992. Once the appraisal of the records is completed , NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates or previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the record and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Health and Human Services, Centers for Disease Control (N1-442-90-5). Records relating to the Agent Orange Project.

2. Department of Health and Human Services, Centers for Disease Control (N1-442-91-6). Records relating to the distribution of swine flu vaccine and compensation for side-effects.

3. Department of Health and Human Services, Public Health Service (N1-90-91-2). Audiovisual records of the Office of Assistant Secretary for Health.

4. Department of State, Bureau of Intelligence and Research (N1-59-91-34). Routine and facilitative records.

5. Department of the Treasury, United States Secret Service (N1-87-89-2). Revisions to comprehensive schedule for field office investigative records.

6. Department of the Treasury, United States Secret Service (N1-87-91-2). Litigation case files.

7. Federal Emergency Management Agency (N1-311-92-2). Records relating to the proposed National Emergency Training Center in Carson City, NV.

8. General Accounting Office (N1-411-92-1). Financial disclosure statements.

9. General Services Administration (N1-234-92-1). Administrative records of the Price Adjustment Board, Reconstruction Finance Corporation.

10. National Archives and Records Administration (N1-GRS-92-3). Records relating to Equal Employment Opportunity complaints that do not develop into official cases.

11. National Archives and Records Administration (N2-34-91-1). Administrative and fiscal records, 1933-75, accessioned from the Federal Deposit Insurance Corporation.

12. National Endowment for the Arts (N1-288-92-1). Grant case files.

Dated: December 19, 1991.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 91-30785 Filed 12-24-91; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Meeting

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting of the Commission.

DATE AND TIME: Tuesday, January 14, 1992; 8:30 a.m. to 5:30 p.m.

PLACE: Pan American Health Organization, 525 23rd Street, NW., Washington, DC 20037.

TYPE OF MEETING: Open.

FOR FURTHER INFORMATION CONTACT: Roy Widdus, Ph.D., Executive Director, The National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street NW., suite 815, Washington, DC 20006, (202) 254-5125. Records shall be

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kept of all Commission proceedings and shall be available for public inspection at this address.

AGENDA: The agenda for the Commission meeting includes a discussion of the future of the Human Immunodeficiency Virus (HIV) epidemic as well as Commission business. Inquiries regarding the agenda should be addressed to the Commission. Written comments on this issue are welcome from interested individuals or organizations.

Interpreting services are available for deaf people. Please call our TDD number (202) 254–3816 to request services no later than January 8, 1992.

Dated: December 19, 1991.

Roy Widdus,

Executive Director.

[FR Doc. 91–30799 Filed 12–24–91; 8:45 am]

BILLING CODE 6820–CN–M

NATIONAL COMMISSION ON AMERICAN INDIAN, ALASKA NATIVE, AND NATIVE HAWAIIAN HOUSING

Meeting

AGENCY: The National Commission on American Indian, Alaska Native, and Native Hawaiian Housing.

ACTION: Notice of public hearings and meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing announces the forthcoming public hearings and meeting of the Commission.

DATES: January 7 & 8, 1992, 9 a.m. to 5 p.m.

ADDRESSES: Hotel Denver Downtown, 1450 Glenarm Place, Denver, Colorado 80202, (303) 573–1450.

FOR FURTHER INFORMATION CONTACT: Lois V. Toliver, Administrative Officer, (202) 275–0045.

Type of Meeting: Open.

Agenda: Call to Order, Roll Call, Chairman's Message, Introduction of Commissioners and Guests, Presentations from Invited Guests.

Lois V. Toliver,

Administrative Officer.

[FR Doc. 91–30774 Filed 12–24–91; 8:45 am]

BILLING CODE 6820–97–M

NATIONAL COMMUNICATIONS SYSTEM

Federal Telecommunication Standards

AGENCY: Office of Technology and Standards, National Communications System.

ACTION: Notice for comment on proposed standard.

SUMMARY: The purpose of this notice is to solicit the views of Federal agencies, industry, the public, and State and local governments on proposed Federal Telecommunications Standard 1046; "Telecommunications: High Frequency Radio Automatic Networking."

DATES: Comments are due on or before March 26, 1992.

ADDRESSES: Send comments to the National Communications System, Office of Technology and Standards, Attn: NT, 701 South Court House Road, Arlington, VA 22204–2199.

FOR FURTHER INFORMATION CONTACT: Institute for Telecommunications Sciences, National Telecommunications and Information Administration, Mr. Robert T. Adair, telephone (303) 497–3723, or Mr. David F. Peach, telephone (303) 497–5309.

SUPPLEMENTARY INFORMATION:

1. The General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications System (NCS) as the responsible agent for the development of Federal telecommunication standards for NCS interoperability and the computer communication interface.

2. Prior to the adoption of proposed Federal standards, it is important that proper consideration be given to the needs and views of Federal agencies, industry, the public, and State and local governments.

3. Requests for copies of the November 14, 1991 draft proposed FED–STD–1046, should be directed to the National Communications System, Office of Technology and Standards, Attn: NT, 701 South Court House Road, Arlington, VA 22204–2199.

Dennis Bodson,

Assistant Manager, NCS Office of Technology and Standards.

Beverly Sampson,

Federal Register Liaison Officer.

[FR Doc. 91–30809 Filed 12–24–91; 8:45 am]

BILLING CODE 3610–05–M

Federal Telecommunication Standards

AGENCY: National Communications System, Office of Technology and Standards.

ACTION: Notice for comment on proposed standard.

SUMMARY: The purpose of this notice is to solicit the views of Federal agencies, industry, the public, and State and local governments on proposed Federal Telecommunications Standard 1045A; "Telecommunications: High Frequency Radio Automatic Link Establishment."

DATES: Comments are due on or before March 26, 1992.

ADDRESSES: Send comments to the National Communications System, Office of Technology and Standards, Attn: NT, 701 South Court House Road, Arlington, VA 22204–2199.

FOR FURTHER INFORMATION CONTACT: Institute for Telecommunication Sciences, National Telecommunications and Information Administration, Mr. Robert T. Adair, telephone (303) 497–3723, or Mr. David F. Peach, telephone (303) 497–5309.

SUPPLEMENTARY INFORMATION:

1. The General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications System (NCS) as the responsible agent for the development of Federal telecommunication standards for NCS interoperability and the computer communication interface.

2. Prior to the adoption of proposed Federal standards, it is important that proper consideration be given to the needs and views of Federal agencies, industry, the public, and State and local governments.

3. Requests for copies of the November 14, 1991 draft proposed FED–STD–1045A, should be directed to the National Communications System, Office of Technology and Standards, Attn: NT, 701 South Court House Road, Arlington, VA 22204–2199.

Dennis Bodson,

Assistant Manager, NCS Office of Technology and Standards.

Beverly Sampson,

Federal Register Liaison Officer.

[FR Doc. 91–30810 Filed 12–24–91; 8:45 am]

BILLING CODE 3610–05–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Challenge/Advancement Advisory Panel (Advancement Literature Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Advancement Literature Section) to the National Council on the Arts will be held on January 16, 1992 from 9 a.m.–5 p.m. in room M–07 at the Nancy Hanks Center, 110 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9 a.m.–9:30 a.m. The topic will be introductory remarks.

The remaining portion of this meeting from 9:30 a.m.–5 p.m. is for the purpose of application review on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: December 19, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–30788 Filed 12–24–91; 8:45 am]

BILLING CODE 7537–01–M

Challenge/Advancement Advisory Panel (Advancement Opera-Musical Theater Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Advancement Opera-Musical Theater Section) to the National Council on the Arts will be held on January 24, 1992 from 9 a.m.–5 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9 a.m.–9:30 a.m. The topic will be introductory remarks.

The remaining portion of this meeting from 9:30 a.m.–5p.m. is for the purpose of application review on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Savine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: December 19, 1991.

Yvonne M. Savine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–30789 Filed 12–24–91; 8:45 am]

BILLING CODE 7537–01–M

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Visual/Media/Design/Literary Section) to the National Council on the Arts will be held on January 14, 1992 from 9:15 a.m.–6 p.m., January 15 from 9 a.m.–6 p.m., and January 16 from 9 a.m.–5:30 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on January 14 from 9:15 a.m.–10:30 a.m. and January 16 from 3 p.m.–5:30 p.m. The topics will be opening remarks, general program overview, and policy discussion.

The remaining portions of this meeting on January 14 from 10:30 a.m.–6 p.m., January 15 from 9 a.m.–6 p.m., and January 16 from 9 a.m. to 3 p.m. are for the purpose of Panel instructions, application review, and procedures on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applications. In accordance with the determination of the Chairman of November 21, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: December 18, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–30786 Filed 12–24–91; 8:45 am]

BILLING CODE 7537–01–M

Media Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.

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L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (American Film Institute Section) to the National Council on the Arts will be held on January 14, 1992 from 10 a.m.–5 p.m. in room M-09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 10 a.m.–10:30 a.m. The topic will be introductory remarks.

The remaining portion of this meeting from 10:30 a.m.–5 p.m. is for the purpose of application review on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: December 19, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-30787 Filed 12-24-91; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Chamber/Jazz Ensembles and Composer in Residence Section) to the National Council on the Arts will be held on January 13-16, 1992 from 9 a.m.–5:30 p.m., and January 17 from 9 a.m.–4 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on January 17 from 3 p.m.–4 p.m. The topics will be policy discussion and guidelines review.

The remaining portions of this meeting on January 13-16 from 9 a.m.–5:30 p.m. and January 17 from 9 a.m.–3 p.m. are for the purpose of application review on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: December 19, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-30791 Filed 12-24-91; 8:45 am]

BILLING CODE 7537-01-M

Presenting and Commissioning Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning (formerly Inter-Arts) Advisory Panel (Interdisciplinary Projects Section) to the National Council on the Arts will be held on January 13-16, 1992 from 9 a.m.–7 p.m., and January 17 from 9 a.m.–5 p.m., in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on January 17 from 2 p.m.–5 p.m. The topics will be guidelines review and policy discussion.

The remaining portions of this meeting on January 13-16 from 9 a.m.–7 p.m. and January 17 from 9 a.m.–2 p.m. are for the purpose of application review on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 21, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: December 19, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-30790 Filed 12-24-91; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting two notices of information collections that will affect the public. Interested persons are invited to submit comments by January 17, 1991. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357-7335, and to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: Visiting Professorships for Women Program Evaluation.

Affected Public: Individuals.

Respondents/Burden Hours: 600 respondents/40 minutes each response.

Abstract: The survey is needed to assess the impact of the Visiting Professorships for Women program, a program that provides funding on a competitive basis for women scientists and engineers to undertake advanced research at host institutions. Information obtained from this study will be used for program planning within the Directorate for Education and Human Resources.

Dated: December 19, 1991.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 91-30792 Filed 12-24-91; 8:45 am]

BILLING CODE 7555-01-M

Continental Dynamics Proposal Review Panel; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Continental Dynamics Proposal Review Panel.

Date and Time: January 30-31, 1992; 9 a.m.–5 p.m.

Place: National Science Foundation, 1800 G Street, NW., room 1243, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Leonard E. Johnson, Program Director, Continental Dynamics Program, National Science Foundation, room 602, Washington, DC 20550. Telephone: (202) 357-7721.

Purpose of Meeting: To provide advice and recommendations concerning applications submitted to NSF for financial support.

Agenda: Review and evaluate proposals for the Continental Dynamics Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b. (c) (4) and (6) the Government in the Sunshine Act.

Dated: December 17, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-30794 Filed 12-24-91; 8:45 am]

BILLING CODE 7555-01-M

Collection of Information Submitted For OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science foundation is posting two notices of information collections that will effect the public. Interested persons are invited to submit comments by January 17, 1992. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357-7335, and to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: Baseline Data for the Young Scholars Program.

Affected Public: Individuals.

Respondents/Reporting Burden: 48,150 responses/16 minutes each response.

Abstract: NSF needs this information to establish baseline data on its Young Scholars Program. This will allow for the assessment of program impact after enough time has elapsed to allow for observable results, including the influence of participation on career selection. The affected individuals are students in the projects.

Dated: December 19, 1991.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 91-30793 Filed 12-24-91; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Education and Human Resources; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Education and Human Resources

Dates and Time: February 6, 1992, 12:30 p.m.–5 p.m.; February 7, 1992, 8:30 a.m.–5 p.m.

Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Peter E. Yankwich, Executive Secretary, Directorate for Education and Human Resources, National Science Foundation, room 516, Washington, DC. 20550, Telephone: (202) 357-9522.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning NSF support for Education and Human Resources.

Agenda: Review of FY 1992 Programs and Initiatives, Review of FY 1993 Programs and Initiatives, Strategic Planning for FY 1994 and Beyond.

Dated: December 18, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-30795 Filed 12-24-91; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Mechanical and Structural Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Mechanical and Structural System.

Date and Time: January 28, 1992; 8:30 a.m. to 5 p.m.; January 29, 1992; 8:30 a.m. to 12 p.m.

Place: National Science Foundation, 1800 G Street, NW., room 543, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Drs. Jerome L. Sackman & Huseyin Sehitoglu, Program Directors, 1800 G Street, NW., room 1108, Washington, DC 20550 Telephone: (202) 357-9542.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Review and evaluate unsolicited proposals submitted to the Mechanics and Materials Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 522b (c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 17, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-30796 Filed 12-24-91; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Studies, Evaluation, and Dissemination; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Studies, Evaluation, and Dissemination.

Date and Time: January 22-23, 1992; 9 a.m.–5 p.m.

Place: Hotel Washington, 15th & Pennsylvania Avenue NW., Washington, DC 20004.

Type of Meeting: Open.

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Contact Person: Dr. Kenneth J. Travers, Office Head, Office of Studies, Evaluation, and Dissemination, Directorate for Education and Human Resources, National Science Foundation, rm. 516, Washington, DC 20550, Telephone: (202) 357–7425.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice concerning evaluations of programs in the Division of Human Resource Development (HRD).

Agenda: Familiarization of panel with EHR/Human Resource Development programs, especially Research Careers for Minority Scholars; overview of existing HRD evaluations; report on evaluation activities and data base committees; and discussion of future evaluation work.

Dated: December 19, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–30797 Filed 12–24–91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

GPU Nuclear Corp.; and Jersey Central Power & Light Co., Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–16 issued to GPU Nuclear Corporation, et al. (the licensee), for operation of the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment would revise Technical Specification Sections 4.2.A and 4.2.C.1 to delete restriction that the refueling outage interval is not to exceed 20 months. This revision accommodates implementation of a 21-month operating cycle with a 3-month refueling outage. Specifically, it relates to the surveillance requirements for shutdown margin and measured scram time for the control rods.

The proposed amendment is in accordance with GPU Nuclear Corporation's application dated August 19, 1991 as revised August 29, 1991.

Need for the Proposed Action

The proposed change to the Facility Operating License is needed so that surveillance requirements for shutdown margin and measured scram time of control rods is extended to accommodate a 21-month operating cycle with a 3-month outage or a 24-month plant refueling cycle.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to Technical Specification Section 4-2 "Reactivity Control." The proposed revision would accommodate implementation of a 21-month operating cycle with a 3-month outage or a 24-month plant refueling cycle for the Oyster Creek surveillance requirements for shutdown margin and measured scram time of control rods. The surveillance interval is presently 20 months.

Based on its review, the Commission concludes that the proposed change is acceptable. The staff has determined that the proposed change does not alter any initial conditions assumed for the design basis accidents previously evaluated nor change operation of safety systems utilized to mitigate the design basis accidents.

The proposed change does not increase the probability or consequences of accidents. No changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed change to the License involves one component in the plant which is located within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impacts. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed actions, any alternatives with equal or greater environmental impacts need not be evaluated.

Alternative Use of Resources

The action would involve no use of resources not previously considered in the Final Environmental Statement (FES) for the Oyster Creek Nuclear Generating Station dated December 1974.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the staff has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see the application for amendment dated August 19, 1991, as revised August 29, 1991, which is available for public inspection in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, 20555 and the local public document room located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland this 17th day of December 1991.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Project—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–30830 Filed 12–24–91; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 2, 1991 through December 13, 1991. The last biweekly notice was published on December 11, 1991 (56 FR 64649).

Notice of Consideration of Issuance of Amendment To Facility Operating License And Proposed No Significant Hazards Consideration Determination And Opportunity For Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 27, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission,

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Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: July 15, 1991, as supplemented September 10, 1991

Description of amendments request: The proposed amendments would revise numerous sections of the Technical Specifications (TS) to provide for (1) the planned changeover of fuel type from the current Westinghouse 17x17 low-parasitic (LOPAR) fuel assemblies to Westinghouse 17x17 VANTAGE-5 fuel assemblies, and (2) the removal and replacement of the existing Unit 2 resistance temperature detector (RTD) bypass manifold system with fast response RTDs located in the reactor coolant hot and cold leg piping. The proposed TS changes were justified on the basis of the specific design features of VANTAGE-5 fuel and RTD replacement, making use of improved computer code methodologies in the determination of gain in departure from nucleate boiling (DNB) margin and in safety and accident analyses. The RTD replacement for Unit 1 was previously approved on March 8, 1991 (56 FR 11788).

The proposed TS changes related to core safety limits, reactor trip system instrumentation setpoints and DNB parameters are contained in TS Section 2.1 (Safety Limits), TS Section 2.2 (Limiting Safety System Settings), TS 3/4.2 (Power Distribution Limits), TS 3/4.2.2 (Heat Flux Hot Channel Factor, F (sub script Q)(Z)), TS 3/4.2.3 (Nuclear Enthalpy Hot Channel Factor - F (super script N sub script delta H), TS 3/4.2.5 (DNB Parameters) and their associated Bases.

The changes to TS Bases 2.1.1 (Reactor Core, Safety Limits), 2.2.1 (Reactor Trip System Instrumentation Setpoints), 3/4.2 (Power Distribution Limits) and 3/4.4.1 (Reactor Coolant Loops and Coolant Circulation) pertain to the determination of DNB parameters, F (sub script Q)(Z) and F (super script N sub delta H), using the Westinghouse DNB correlations WRB-1 and WRB-2 (Westinghouse proprietary correlations).

The moderator temperature coefficient is increased by the revision to TS 3.1.1.3 (Moderator Temperature Coefficient). The allowable rod drop time is increased in the revised TS 3.1.3.4 (Rod Drop Time). The response time for Power Range, Neutron Flux, High Negative Rate in Table 3.3-2 (Reactor Trip System Instrumentation Response Times) is changed to "Not Applicable", since this function is not used as a primary protection function and is not taken credit for in any accident analysis. In the same Table 3.3-2, the allowable response time for overtemperature delta temperature (OT delta T) is increased to allow for the thermal resistance of the thermowells after the RTD replacement.

The allowable containment pressure high-high-high and high-high limits are decreased in Table 3.3-4 (Engineered Safety Factor (ESF) Actuation System Instrumentation Trip Setpoints) to account for the effects of uncertainties associated with plant instrumentation, procedures and measurement techniques. Also because of these uncertainties, the allowable limits for steam line isolation on high steam flow coincident with T (sub script avg) low-low were increased. The response time for the steam line isolation is changed to "Not Applicable" in Table 3.3-5 (ESF Response Times) because it is not used as a primary protection function and is not taken credit for in any accident analysis.

The revisions to TS 3.4.1.2 (Reactor Coolant System, Hot Standby) and Bases 3/4.4.1 (Reactor Coolant Lopps and Coolant Circulations) permit Mode 3 operation with two reactor coolant pumps running and their associated loops operable.

The proposed change to TS 6.9.1.11 (Administrative Controls, Radial Peaking Factor Limit Report) revises the reporting requirement to 30 days after cycle initial criticality.

For all of the proposed TS changes listed above, the licensee has considered the effects of the changes on the safety analyses.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration for each aspect of the changes associated with the use of VANTAGE-5 fuel and replacement of the RTD bypass manifold. The licensee's analysis is presented below:

A. Reactor Core Safety Limits, Reactor Trip System Instrumentation Setpoints, and DNB Parameters

1. The proposed safety limits, reactor trip setpoints, and DNB related parameters Technical Specifications changes do not increase the probability or consequences of an accident previously evaluated in the FSAR [Final Safety Analysis Report]. The core safety limits, trip setpoints, and DNB parameters were determined using [Nuclear Regulatory Commission] NRC-reviewed and approved DNB methodologies, namely RTDP [revised thermal design procedure] improved THINC-IV model [thermal-hydraulics computer code], and the WRB-1 and WRB-2 DNB correlations. No new performance requirements are being imposed on any system or component in order to support the revised DNBR [departure from nucleate boiling ratio] analysis assumptions. Overall plant integrity is not reduced. The DNB sensitive transients were reanalyzed. The DNB design criterion continues to be met. None of these changes directly initiate an accident; therefore, the probability of an accident has not increased. The acceptance criteria for the reanalyzed analyses with these revised DNB parameters continue to be met; therefore, the consequences of accidents previously evaluated in the FSAR are not significantly changed. All dose consequences have been evaluated for these changes and all acceptance limits continue to be met.

2. The proposed safety limits, reactor trip setpoints, and DNB-related parameters Technical Specifications changes do not create the possibility of a new or different kind of accident than any accident already evaluated in the FSAR. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. The proposed Technical Specifications changes have no adverse effects on any safety-related system and do not challenge the performance or integrity of any safety-related system. The DNB design criterion continues to be met. Therefore, the possibility of a new or different kind of accident is not created.

3. The proposed Technical Specifications changes do not involve a significant reduction in a margin of safety. The change in the DNBR design limits are [sic] associated with the use of NRC-approved methodologies (RTDP and WRB-1 and WRB-2 DNB correlations) and the improved THINC-IV model. In addition, the VANTAGE-5 fuel design, including IFM (intermediate flow mixer) grids, uses the WRB-2 correlation and has been generically approved by the NRC. The DNB design criterion remains unchanged, even with the changes in DNBR design limit values. Therefore, the new DNBR design limit values associated with the DNB methodology and correlation changes, upon which the Technical Specifications changes are based, do not result in a significant reduction in the margin of safety because the DNB design criterion continues to be met.

B. Reactor Trip System Instrumentation Response Times

1. The deletion of response time for reactor trip on high negative flux rate does not significantly increase the probability or consequences of an accident previously evaluated in the FSAR. This function provides no primary protection for any transient in the FSAR. The power range high negative flux rate reactor trip is considered to be a diverse RPS [reactor protection system] feature. No new performance requirements are being imposed on any system or component. Consequently, overall plant integrity is not reduced. This change has no effect on any dose calculations. Therefore, the probability or consequences of an accident will not increase.

2. The reactor trip response time change to "Not Applicable" for high negative flux rate does not create the possibility of a new or different kind of accident from any previously evaluated in the FSAR. This response time is not an initiator for any transient. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this modification. The response time change does not challenge or prevent the performance of any safety-related system during plant transients. Therefore, the possibility of a new or different kind of accident is not created.

3. This change does not involve a significant reduction in the margin of safety. All primary trip functions and ESF actuations are unaffected by the change in this response time. In addition, the other Technical Specification surveillance testing requirements (e.g., channel calibration) associated with the power range high negative flux rate reactor trip are not affected by this change. Therefore, the deletion of the response time does not affect the results of any accident analysis, and the margin of safety is maintained and not significantly reduced.

C. Increase in Shutdown and Control Rod Drop Time

1. The increase in rod drop time will not result in a significant increase in the probability or consequences of any accident previously evaluated in the FSAR, since the increased rod drop time has been accounted for in all accident analyses and the same surveillance requirements will be used to detect inoperable rods and increased rod drop times. The effects of increased rod drop time on all applicable analyses and dose calculations have been evaluated or analyzed, and all the acceptance limits continue to be met.

2. The possibility of a new or different type of accident is not involved because the increase in rod drop time used in the analyses and in the proposed Technical Specifications is consistent with the design of the VANTAGE-5 fuel and does not indicate any new or different failure mechanism.

3. The effects of the increased rod drop time have been included in all applicable analyses and evaluations of accidents and transients. These analyses demonstrated that the plant will remain within previously accepted limits; therefore, the increase in the allowable rod drop time does not result in a significant reduction in a margin of safety.

D. Increased Positive Moderator Temperature Coefficient (PMTC)

1. The proposed Technical Specifications changes with respect to increased moderator temperature coefficient do not involve a significant increase in the probability or consequences of an accident previously evaluated in the Farley FSAR. The mechanical design changes associated with VANTAGE-5 fuel result in the capability for relaxation of analytical input parameters, such that increased margin can be generated without violation of any acceptance criteria. This margin can then be applied towards relaxation of operational limits such as moderator temperature coefficient. In all cases, the appropriate design and acceptance criteria are met. No new performance requirements are being imposed on any system or component in order to support the revised analysis assumptions. Subsequently, overall plant integrity is not reduced. Therefore, the probability of an accident has not significantly increased.

The radiological consequences of an accident previously evaluated in the FSAR are not increased due to the proposed increase in PMTC. Evaluations have confirmed that the doses remain within previously approved acceptable limits, as well as those defined by 10 CFR [Part] 100. Therefore, the radiological consequences to the public resulting from any accident previously evaluated in the FSAR has not significantly increased.

2. The Technical Specifications changes with respect to increased moderator temperature coefficient do not create the possibility of a new or different kind of accident from any previously evaluated in the FSAR. No new accident scenarios, failure mechanism, or limiting single failures are introduced as a result of the fuel transition. Neither the presence of VANTAGE-5 fuel assemblies in the core nor the revised analytical assumptions, including increased PMTC, create new challenges to the performance of any safety-related system. Therefore, the possibility of a new or different kind of accident is not created.

3. The Technical Specifications related to PMTC changes do not involve a significant reduction in the margin of safety. The margin of safety for fuel-related parameters, including increased PMTC, associated with the VANTAGE-5 transition are defined in the Bases of the Technical Specifications. These Bases and the supporting Technical Specifications values are defined by the accident analyses which are performed to conservatively bound the operating conditions defined by the Technical Specifications and to demonstrate meeting the regulatory acceptance limits. Performance of analyses and evaluations for the VANTAGE-5 fuel transition with increased PMTC has confirmed that the operating envelope defined by the Technical Specifications will be bounded by the revised analytical basis, which in no case exceeds the acceptance limits. Therefore, the margin of safety provided by the analyses in accordance with these acceptance limits is maintained and is not significantly reduced.

E. Increased F (subscript Q), F (subscript delta H), and Modification of K(Z) Curve

1. The F (subscript delta H) and K(Z) (axially dependent multiplier) curve Technical Specifications changes do not involve a significant increase in the probability or consequences of an accident previously evaluated in the Farley FSAR. The mechanical design changes associated with VANTAGE-5 fuel and the improved methodologies result in the capability for relaxation of analytical input parameters, such that increased margin can be generated without violation of any acceptance criteria. This margin can then be applied towards relaxation of operational limits such as higher F (subscript Q) (Z) and F (subscript delta H) for the VANTAGE-5 assemblies. In each case, however, the appropriate design and acceptance criteria are met. No new performance requirements are being imposed on any system or component in order to support the revised analysis assumptions. Subsequently, overall plant integrity is not reduced. Furthermore, the parameter changes are associated with features used as limits or mitigators to assumed accident scenarios and are not accident initiators. Therefore, the probability of an accident has not significantly increased.

The radiological consequences of an accident previously evaluated in the FSAR are not increased due to these Technical Specifications changes. Evaluations have confirmed that the doses remain within previously approved acceptable limits as well as those defined by 10 CFR [Part] 100. Therefore, the radiological consequences to the public resulting from any accident previously evaluated in the FSAR have not significantly increased.

2. The F [subscript Q], F [subscript delta H], and K(Z) curve Technical Specifications changes do not create the possibility of a new or different kind of accident from any previously evaluated in the FSAR. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the fuel transition. The presence of VANTAGE-5 fuel assemblies in the core or the revised analytical assumptions have no

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adverse effect and do not challenge the performance of any other safety-related system. Therefore, the possibility of a new or different kind of accident is not created.

3. The F [subscript Q], F [subscript delta H], and K(Z) curve Technical Specifications changes do not involve a significant reduction in the margin of safety. The margin of safety for fuel-related parameters associated with the VANTAGE-5 transition are defined in the bases to the Technical Specifications. These bases and the supporting Technical Specifications values are defined by the accident analyses which are performed to conservatively bound the operating conditions defined by the Technical Specifications and to demonstrate that the regulatory acceptance limits are met. Performance of analyses and evaluations for the proposed inclusion of separate F [subscript Q's] and F [subscript delta H's] for VANTAGE-5 and LOPAR [low parasitic] fuel types and modification of the K(Z) curve have confirmed that the operating envelope defined by the Technical Specifications continues to be bounded by the revised analytical basis, which in no case exceeds the acceptance limits. Therefore, the margin of safety provided by the analyses in accordance with these acceptance limits is maintained and is not significantly reduced.

F. Engineered Safety Features (ESF) Allowable Values

1. The ESF allowable value changes do not significantly increase the probability or consequences of an accident previously evaluated in the FSAR. These allowable values are not input parameters to any transient in the FSAR. No new performance requirements are being imposed on any system or component. Consequently, overall plant integrity is not reduced. These changes have no effect on any dose calculations. Therefore, the probability or consequences of an accident will not increase.

2. The ESF allowable value changes do not create the possibility of a new or different kind of accident from any previously evaluated in the FSAR. These values are not an initiator for any transient. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of these changes. The allowable value changes do not challenge or prevent the performance of any safety-related system during plant transients. Therefore, the possibility of a new or different kind of accident is not created.

3. These changes do not involve a significant reduction in the margin of safety. All trip setpoints associated with these changes have been preserved. Therefore, the small changes to the allowable values do not effect the results of any accident analysis. Therefore, the margin of safety is maintained and not significantly reduced.

G. Engineered Safety Features (ESF) Response Times

1. The ESF response time change for this steam line isolation function does not significantly increase the probability or consequences of an accident previously evaluated in the FSAR.

This function provides no primary protection for any transient in the FSAR. No new performance requirements are being imposed on any system or component. Consequently, overall plant integrity is not reduced and dose calculations are not affected. Therefore, the probability or consequences of an accident will not increase.

2. The ESF response time change to "Not Applicable" for the high steam flow in coincidence with low-low Tavg [average reactor coolant temperature] function does not create the possibility of a new or different kind of accident from any previously evaluated in the FSAR. This response time is not an initiator for any transient. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this modification. The response time change does not challenge or prevent the performance of any safety-related system during plant transients. Therefore, the possibility of a new or different kind of accident is not created.

3. This change does not involve a significant reduction in the margin of safety. All primary reactor trip functions and ESF actuations are unaffected by the change in this ESF response time. In addition, the other Technical Specification surveillance testing requirements (e.g., periodic channel checks and calibrations) associated with high steam flow coincident with low-low Tavg are not affected by this change; therefore, performance of these surveillance tests will continue to demonstrate operability. Therefore, the change to the response time does not affect the results of any accident analysis, and the margin of safety is maintained and not significantly reduced.

H. Reactor Coolant Loops and Coolant Circulation (Mode 3)

1. The Technical Specifications change with respect to Mode 3 operation requiring only two RCPs [reactor coolant pumps] operable does not involve a significant increase in the probability or consequences of an accident previously evaluated in the Farley FSAR. Capability for relaxation of analytical input parameters has been demonstrated by acceptable analytical results without violation of any acceptance criteria. This can allow a reduction in the number of RCPs required for Mode 3. In all cases, the appropriate design and acceptance criteria are met. No new performance requirements are being imposed on any system or component in order to support the revised analysis assumptions. Subsequently, overall plant integrity is not reduced. Therefore, the probability of an accident has not significantly increased.

The radiological consequences of an accident previously evaluated in the FSAR are not increased due to this proposed Technical Specifications change. Evaluations have confirmed that the doses remain within previously approved, acceptable limits as well as those defined by 10 CFR [Part] 100. Therefore, the radiological consequences to the public resulting from any accident previously evaluated in the FSAR has not significantly increased.

2. The Technical Specifications changes [sic] with respect to requiring only two RCPs in Mode 3 does not create the possibility of a new or different kind of accident from any previously evaluated in the FSAR. No new accident scenarios, failure mechanism, or limiting single failures are introduced as a result of this change. No new challenges to safety systems have been identified because of this proposed change. Therefore, the possibility of a new or different kind of accident is not created.

3. The proposed Technical Specifications change related to requiring only two RCPs in Mode 3 does not involve a significant reduction in the margin of safety. The margin of safety associated with this change is defined in the bases to the Technical Specifications. These bases and the supporting Technical Specifications are defined by the accident analyses which are performed to conservatively bound the operating conditions defined by the Technical Specifications and to demonstrate meeting the regulatory acceptance limits. Performance of analyses and evaluations have confirmed that the operating envelope defined by the Technical Specifications continues to be bounded by the revised analytical basis, which in no case exceeds the acceptance limits. Therefore, the margin of safety provided by the analyses in accordance with these acceptance limits is maintained and is not significantly reduced.

I. Administrative Change for Radial Peaking Factor Limit Reporting

1. Since the reporting requirements are an administrative change, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated in the Farley FSAR. With the exception of the reporting schedule, no other changes to the reporting requirements are made.

2. This administrative change in reporting requirements does not create the possibility of a new or different kind of accident from any previously evaluated in the Farley FSAR, since only the time for reporting requirements has changed. Therefore, the possibility of a new or different kind of accident is not created.

3. This administrative change is not safety-related and, therefore, does not involve any reduction in the margin of safety.

J. Farley, Unit 2, Resistance Temperature Detector (RTD) Bypass Removal

1. The use of fast response RTDs does not involve a significant increase in the probability or consequences of any accident previously evaluated. The non-LOCA and LOCA accidents were reviewed in WCAP-12814, Rev. 2, verifying that the variations in uncertainty associated with certain reactor trip functions were unacceptable. It is concluded that an increase in RCS [reactor coolant system] temperature uncertainty can be accommodated by margins in the safety analyses to acceptance criteria limits and allocation of generic DNB margin. Evaluation of the modification to the Reactor Coolant System boundary has also been performed, and no degradation in integrity is involved. In addition, the recent analyses and evaluations conducted to support the transition to VANTAGE-5 fuel at Farley were performed with a bounding set of plant operating parameter uncertainties that bound plant operation with or without the RTD bypass manifold temperature system. Therefore, the potential effects of RTD Bypass Elimination (RTDBE) on plant operation with VANTAGE-5 fuel have been considered and found not to involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The use of fast response RTDs does not create the possibility of a new or different kind of accident from any accident previously evaluated. The three dual-element hot leg RTDs and one dual-element cold leg RTD will utilize the existing penetrations, whenever possible, into the RCS piping from the bypass system with only slight modifications. Caps and welds sealing the crossover leg bypass return nozzle and piping, as well as the modification and welding for the existing penetrations, will be qualified in accordance with the ASME code, thus precluding the possibility for a new or different kind of accident.

The function of the [delta] T/T [subscript avg] protection channels is not changed because of the bypass elimination. The newly installed fast response RTDs perform the same function in both T[subscript hot] [RCS hot leg temperature] and T [subscript cold] [RCS cold leg temperature] applications. The three T [subscript hot] signals are electronically averaged. Dual-element RTDs are installed in the hot and cold legs. Should one RTD element fail, the spare element can be connected. In addition, the average T [subscript hot] signal can be electronically biased to a two RTD average should one dual RTD fail. The measured temperature values will still serve as input to two-out-of-three voting logic for protection functions. The Median Signal Selector (MSS) will eliminate the potential for control and protection interactions with all [delta] T/T [subscript avg] applications. The basis for the instrumentation and control design meets the criteria of applicable IEEE [Institute of Electrical and Electronic Engineers] standards, regulatory guides, and general design criteria, in that such principals [sic] as electrical separation, seismic and environmental qualification, and single failure criteria are satisfied. Therefore, there is no possibility of a new or different kind of accident as a result of the instrumentation aspects of RTD Bypass Elimination.

3. The effect of RTD Bypass Elimination, response time, setpoint uncertainty, temperature, and flow measurement uncertainty does not involve a significant reduction in a margin of safety. These changes have been evaluated and compared to the acceptance limits with respect to the fuel, RCS pressure boundary, and containment. All acceptance limits continue to be met. The evaluation of the effect of these variables on non-LOCA and LOCA transients has verified that plant operation will be maintained within the bounds of safe, analyzed conditions as defined in the FSAR with the revised Technical Specifications, and the conclusions presented in the FSAR remain valid. As such, there is no significant reduction in the margin of safety for operation of J. M. Farley Nuclear Plant Unit 2 with RTD Bypass Elimination.

The NRC staff has reviewed the licensee's analysis; and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, P. O. Box 1369, Dothan, Alabama 36302

Attorney for licensee: James H. Miller, III, Esq., Balch and Bingham, P. O. Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: Elinor G. Adensam

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Units Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: November 27, 1991

Description of amendments request: The proposed amendments would revise Calvert Cliffs Units 1 and 2 Technical Specifications (TS) Section 3/4.6.1.2 and associated Bases to increase the surveillance intervals for Type B and C leak tests to up to 30 months to accommodate the 24-month fuel cycle currently in use. The proposed amendment would also reduce the maximum allowable combined leakage rate of Type B and C leak tests. In accordance with the guidance provided in Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to accommodate a 24-month fuel cycle," the licensee has provided an analysis in support of the proposed changes. In addition, the proposed amendments would make an administrative revision to Section 3/4.6.1.2 and remove a note regarding a one-time extension which no longer applies.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Neither containment penetrations, nor their leak rate testing processes, are considered as initiators for any accidents previously evaluated. Therefore, the probability of previously evaluated accidents would not be increased by this change to the operating license.

Since the containment leakage rate is a direct assumption of dose calculations for all design basis accidents, the requested change could potentially affect the consequences of previously evaluated accidents. However, the assumed maximum allowable leakage rate is not changed and must continue to be met. While the surveillance interval between leak rate testing of containment penetrations is increased, the margin between the specified allowable leakage and maximum allowable leakage is proportionately increased to provide an equivalent margin for increase of leakage during the surveillance interval Therefore, the consequences of previously evaluated accidents are not significantly affected by this change.

(2) Would not create the possibility of a new or different type of accident from any accident previously evaluated.

This change in surveillance intervals does not affect the design or function of any equipment, nor the operation of such equipment. Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

(3) Would not involve a significant reduction in a margin of safety.

A significant margin, 0.40 L_a, is provided between the specified allowable containment penetration leakage rate limits and the maximum allowable leakage rate limit which is used as the assumed containment leakage rate in accident dose calculations. This change would increase this margin by 25 percent to match the 25 percent increase in the surveillance interval. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: October 31, 1991

Description of amendment request: The proposed amendment request changes the required refueling shutdown margin accomplished with a required minimum boron concentration of 1950 ppm from 10 percent delta K/K to 8 percent delta K/K.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

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1. Operation of the facility, in accordance with the proposed amendment, would not involve a significant increase in the probability or consequences of an accident previously analyzed.

Since the purpose for Shutdown Margin (SDM) during refueling is protection against accidental criticality, Inadvertent Boron Dilution during Refueling is the only Updated FSAR Chapter 15 event pertinent to the parameter being changed. Because changing the shutdown reactivity associated with the same boron concentration of 1950 ppm does not affect the boration/dilution equipment or procedures, the probability that an accidental dilution will occur cannot be affected.

The purpose of analysis of Inadvertent Boron Dilution in UFSAR Section 15.4.6 is to show that there is sufficient operator response time to avoid accidental criticality. In other words, the calculation is focused on preventing instead of withstanding an accidental criticality. The consequences of this event are not increasing because the accident analysis will continue to make an off-site dose calculation unnecessary.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated because inadvertent criticality is the only relevant concern and:

- Changing the shutdown reactivity requirement associated with the boron concentration of 1950 ppm does not affect the boration/dilution equipment or procedures.
- Control rods are intentionally withdrawn from fuel assemblies during refueling only one at a time, and the reactivity "worth" of an individual RCCA will always be much less than 6 percent delta K/K.
- The requirement that the 1950 ppm be enough to keep the core subcritical with no control rods present is being retained.
- Six percent SDM is more than enough to cover any uncertainty in fuel assembly placement allowed by fuel shuffle procedures.

3. Operation of the facility, in accordance with the proposed amendment, would not involve a significant reduction in a margin of safety.

Since the only purpose for Shutdown Margin during refueling is protection against accidental criticality, Inadvertent Boron Dilution during refueling is the only pertinent FSAR Chapter 15 event. Although analysis in UFSAR does not explicitly mention initial refueling shutdown margin in terms of reactivity, this change can indirectly affect the analysis by allowing a higher refueling critical boron concentration. Since this represents a less restrictive constraint for the analysis at this mode, the estimated time to complete loss of all available shutdown margin (which in this case corresponds to criticality) for Refueling for future core loadings may be less, more closely approaching those of other modes (e.g., Cold Shutdown). In other words, because the acceptance criteria for Inadvertent Boron Dilution is defined in terms of the time available for the operator to terminate the dilution flow before the core goes critical, and because this change will allow the calculation of a shorter "time" for Refueling, the calculated margin to the NRC acceptance limit for this accident may be considered to decrease.

In considering "Time to Loss of Shutdown Margin" as a measure of the "margin of safety," the impact of reducing the required shutdown margin from 10 percent to 6 percent is not significant for several reasons:

(1) As noted, the minimum refueling boron concentration of 1950 ppm is not changing.

(2) Even in the unlikely case that the critical boron concentration increases to the new limit (i.e., 1950 ppm comes to correspond to 6 percent delta K/K), more than half of the original shutdown margin is retained. In rough terms, reducing the shutdown margin by 40 percent can be expected to result in a similar reduction in the calculated "Time to Loss of Shutdown Margin." The 68.4 minutes previously calculated for Cycle 14 for the refueling condition can be reduced considerably and still meet the 30-minute minimum allowable operator response time presented in our Cycle 10 SER as an acceptance criterion. Therefore, a 6 percent delta K/K is consistent with the acceptance limit for our present analysis of Inadvertent Boron Dilution for the refueling condition.

(3) In a practical sense, it is the "Time" estimation in UFSAR (rather than the extent of initial negative reactivity) that provides the assurance that the core will not achieve criticality in the unlikely event of accidental dilution. This more meaningful commitment in UFSAR Section 15.4.6 to maintain adequate operator response time is unchanged.

In summary, since this change will slightly reduce the extent to which the core is required to be subcritical during refueling, it does result in a small increase in the susceptibility to inadvertent criticality. However, maintaining the same acceptance criteria for analysis of Inadvertent Boron Dilution ensures that there is no significant reduction in the margin of safety with respect to this accident. Likewise, the proposed Refueling Shutdown Margin of 6 percent is more than adequate to accommodate the other credible reactivity challenges represented by movement of core components.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: November 26, 1991

Description of amendment request: The proposed amendment relocates the existing procedural details of the current Radiological Effluent Technical Specifications (RETS) to the Offsite Dose Calculation Manual (ODCM), and procedural details for the solid radioactive wastes to the Process Control Program (PCP). The amendment also incorporates the respective programmatic controls in the Administrative Controls section of the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because relocating the Radiological Effluent Technical Specifications (RETS) to the Offsite Dose Calculation Manual (ODCM) or the Process Control Program (PCP) is strictly an administrative change that does not reduce or modify any existing safety requirement or procedures;

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident scenario is created and no previously evaluated accident scenario is changed by re- locating procedural requirements from one controlled document to another; or

(3) Involve a significant reduction in a margin of safety because no modification of any plant structure, system, component or operating procedure is associated with this administrative change so all safety margins remain unchanged.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: L. B. Marsh

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: August 6, 1991

Description of amendment request: The proposed revisions would change the maximum allowable combined flowrates from both reactor makeup water pumps for Modes 3-5 with one or both trains of the Boron Dilution Mitigation System (BDMS) inoperable. The restriction to either isolate or limit the flowrate from both reactor makeup water pumps with one or both trains of the BDMS inoperable is being added to the Mode 6 BDMS Technical Specification. This request also includes administrative changes to the BDMS Technical Specifications (TS) for Modes 3-5 and Mode 6.

Catawba Units 1 and 2 are equipped with a BDMS which serves to detect uncontrolled dilution events in Modes 3-6 of plant operation. The BDMS uses two source range detectors to monitor the subcritical multiplication of the reactor core. An alarm setpoint is continually calculated. Once the alarm setpoint is exceeded, each train of the BDMS will automatically shut off both reactor makeup water pumps, align the suction of the charging pumps to highly borated water from the Refueling Water Storage Tank, and isolate flow to the charging pumps from the Volume Control Tank. Since these functions are automatically actuated by the BDMS, no operator action is necessary to terminate the dilution event and recover the shutdown margin.

The evaluation of dilution events in Modes 3-6 must demonstrate that the dilution will be terminated, either by the BDMS or by the operator, before criticality occurs. In the event that one or both trains of the BDMS is inoperable in these modes, the flowrate of the Reactor Makeup Water System is limited to values which have been shown to allow adequate operator action time to terminate the dilution before criticality occurs. This accident was reanalyzed based on a Westinghouse bulletin concerning potential nonconservatism in the existing boron dilution analysis. Reanalysis of the boron dilution event in Modes 3-6 shows a need to change the TS flowrates. The new flowrates result from changes in two of the flowrate calculation parameters. For all modes, the increase in temperature of the diluting water as it reaches the Reactor Coolant System (RCS) was factored into the calculation of the dilution rate. Since the diluting water is typically colder than the RCS inventory, the diluting water expands within the RCS. This expansion causes a given volumetric flowrate measured at the colder temperature to correspond to a larger volumetric flowrate dilution flowrate within the RCS. This temperature increase was not accounted for in the original analysis. The diluting water source is conservatively assumed to be 30° F and 0 ppm boron. This reduced the maximum allowable combined reactor makeup water pump output from 200 gpm to 150 gpm for Mode 3 and from 80 gpm to 75 gpm for Mode 5.

The second flowrate calculation parameter change increased the minimum water volume in the RCS for Mode 4 from 3588 ft ^{3} to 9029 ft ^{3}. The original Mode 4 analysis had incorrectly used the Modes 5 and 6 minimum RCS water volume of 3588 ft ^{3} instead of the correct Mode 4 value of 9029 ft ^{3}. This change over-shadowed the temperature difference correction and resulted in an increase in the maximum allowable combined reactor makeup water pump output from 80 gpm to 150 gpm. The additional formalized requirement for Mode 6 is considered appropriate to ensure that the 30 minute operator action time for mitigation of a dilution event is available.

The following changes to the TS are proposed: (1) TS 3.3.3.12 (a)(2) and (b)(2), and TS 4.3.3.12.2 (b) would be changed to reflect the new required flowrates; (2) TS 3.9.2.1 (a)(1) and (a)(2) would be modified and TS 4.9.2.1.2 (d) would be added to include isolating or limiting the flowrate from the Reactor Makeup Water Pumps; (3) ACTION (d) is being removed from TS 3.9.2.1 because it is no longer required based on the issuance of Amendment 48/41 which was made using the guidance of Generic Letter 87-09; (4) The footnote in TS 3.3.3.12 and 3.9.1.2 that refers to applicability for Unit 2 has been removed since this time has passed; (5) The addition of "(square root of 10)" to TS 3.3.3.12 (a)(2) and (b)(2) is to provide additional clarity and consistency with TSs 4.3.3.12.2 (a), 3.9.2.1, (2) and 4.9.2.1.2 (c); (6) The removal of "3/4.3.3.12" from the title of the TS provides consistency with other TS in this section; and (7) The spelling of the word "least" has been corrected in TS 4.9.2.1.2 (c).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Changes 1 and 2

The proposed amendment does not involve an increase in the probability or consequences of any previously evaluated accident. No accident initiators are affected by this change so the probability of a previously evaluated accident is not increased. The consequence of a boron dilution accident is recriticality of the reactor core. The flowrate reduction in

Modes 3 and 5 due to temperature differences between the diluting water source and the RCS adds more conservatism to the analysis which decreases the chance that the reactor core will become critical due to a boron dilution accident. The overall increase in the Mode 4 flowrate results from using the correct minimum RCS water volume, thus removing unnecessary conservatism. The added restriction that requires either isolating or limiting the combined flowrate from both reactor makeup water pumps for Mode 6 ensures that the 30 minute operator action time is available for mitigation of a dilution event. The calculated consequences of the boron dilution accident are unchanged.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. This proposed Technical Specification change will not cause any physical changes to the plant. The plant will continue to operate the same way it does now with the exception of the new reactor makeup water flowrates. These new flowrates are necessary to ensure that the Standard Review Plan operator action times are available for the mitigation of a dilution event.

The proposed amendment does not involve a significant reduction in a margin of safety. The flowrate reduction in Modes 3 and 5 due to temperature differences between the diluting water source and the RCS adds more conservatism to the analysis which increases the margin of safety. The overall increase in the Mode 4 flowrate results from using the correct Mode 4 minimum RCS water volume, thus removing unnecessary conservatism. The added restriction that requires either isolating or limiting the combined flowrate from both reactor makeup water pumps for Mode 6 ensures that the 30 minute operator action time is available for mitigation of a dilution event. The calculated margin of safety remains unchanged.

Change 3

The exemption from the requirements of TS 3.0.4 are no longer necessary because of the issuance of Amendment 48/41 to the Catawba Technical Specifications. This amendment was made using the guidance contained in NRC Generic Letter 87-09. The NRC has already concluded that the changes made using the guidance of Generic Letter 87-09 contain no significant hazards.

Change 4

The footnote regarding applicability for Unit 2 after entering Mode 2 following the first refueling outage has been removed since this time has passed. This change is administrative in nature and does not involve significant hazards consideration.

Change 5

The addition of the phrase "square root of 10" clarifies the meaning of "one-half

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decade." This was inadvertently left out in some of the actions that require verifying the Alarm Setpoints on the Source Range Neutron Flux Monitors. The addition of the phrase "square root of 10" is administrative in nature and does not involve significant hazards consideration.

Change 6

The removal of the number 3/4.3.3.12 from the title of the Technical Specification provides formatting consistency with other titles in this section. This change is administrative in nature and does not involve significant hazards consideration.

Change 7

The word "least" had been misspelled "lest." This spelling correction is administrative in nature and does not involve significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: April 15, 1991

Description of amendment request: The proposed amendment would change Technical Specifications 3.3.1 and 3.3.2 for South Texas Project, Units 1 and 2 (STP). Specifically, the licensee is requesting to remove two tables regarding response times of reactor trip system instrumentation and engineered safety features from the STP Technical Specifications. These tables would be placed in Chapter 16 of the STP Updated Final Safety Analysis Report (USFAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

No change is being proposed to physical systems in the plant; information on response times for reactor trip system instrumentation and engineered safety features would be relocated to the UFSAR. Changes to UFSAR tables regarding response times would be made pursuant to 10 CFR 50.59, thereby ensuring proper safety considerations. Therefore, the proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change would not affect the design, configuration, or method of operation of the plant. Transferring tables from the Technical Specifications to the UFSAR is an administrative change with no effect on plant operations. Any changes to response times would be evaluated pursuant to 10 CFR 50.59 and safety questions, if any, would be adequately handled through that process. Therefore, since no actual changes to safety systems would be made, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

Existing Technical Specification operability and surveillance requirements would not be reduced by the proposed change, and the change would not affect a safety limit or a Limiting Condition for Operation. Changes to tables regarding response times would be handled pursuant to 10 CFR 50.59, reviewed by PORC [Plant Operations Review Committee], and then approved by the Plant Manager. Changes which involve an unreviewed safety question will be reviewed and approved by the NRC prior to implementation. Therefore, no margins of safety are significantly reduced by the proposed change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW, Washington, DC 20036

NRC Project Director: Suzanne C. Black

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: October 12, 1990, as superseded by letter dated October 25, 1991.

Description of amendment request: This was previously published in the **Federal Register** on December 26, 1990 (55 FR 53072). The proposed amendment would delete Table 5.7-1 (Component Cycle or Transient Limits) from the Technical Specifications. Cyclic/transient occurrences identified in the Updated Final Safety Analysis Report, Table 3.9-8, would be tracked through administrative procedures. Houston Lighting & Power Company (licensee) had previously submitted an amendment request by letter dated October 12, 1990, to delete Table 5.7-1. The October 25, 1991 submittal supersedes the October 12, 1990 letter, which includes and incorporates the NRC staff comments. The licensee's analysis of no significant hazards consideration has not changed, however, it will be repeated for completeness.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of accidents previously evaluated.

The removal of cyclic or transient limits from the STPEGS [South Texas Project or STP] Technical Specifications has no influence or impact on the probability or consequences of any accident previously evaluated. The change is administrative in nature. The cyclic or transient limits will still be monitored in the operation of the STP plants.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change is administrative in nature and involves no change to the design bases or operating procedures. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not result in a significant reduction in the margin of safety.

The margin of safety is not affected by the removal of cyclic or transient limits from the Technical Specifications. The margin of safety presently provided by current Technical Specifications remains unchanged.

The appropriate measures exist to control the values of these cyclic or transient limits. Therefore, the proposed changes are administrative in nature and do not impact the operation of STP in a manner that involves a reduction in the margin of safety. The proposed amendment continues to require operation within the cyclic or transient limits and appropriate actions to be taken when or if limits are violated remain unchanged.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW, Washington, DC 20036

NRC Project Director: Suzanne C. Black

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: September 20, 1991

Description of amendment request: In accordance with 10 CFR 50.90, Illinois Power Company (IP) proposed changes to the following Clinton Power Station (CPS) technical specification (TS) sections: (1) 3/4.3.1, "Reactor Protection System Instrumentation"; (2) 3/4.3.3, "Emergency Core Cooling System Actuation Instrumentation"; (3) 3/4.3.6, "Control Rod Block Instrumentation"; (4) 3/4.3.2, "Containment and Reactor Vessel Isolation Control System"; (5) 3/4.3.4.1, "ATWS Recirculation Pump Trip System Instrumentation"; (6) 3/4.3.4.2, "End-of-Cycle Recirculation Pump Trip System Instrumentation"; (7) 3/4.3.5, "Reactor Core Isolation System Actuation System Instrumentation"; (8) 3/4.3.6, "Control Rod Block Instrumentation"; (9) 3/4.3.7.1, "Radiation Monitoring Instrumentation"; (10) 3/4.3.9, " Plant Systems Actuation Instrumentation"; (11) 3/4.4.2.1, "Safety/Relief Valves"; (12) 3/4.4.2.2, "Safety/relief Valves Low-Low Set Function". The proposed TS changes involve revisions to the instrumentation repair allowable out-of-service time (AOT), surveillance AOT, channel functional test intervals, staggered test intervals, and editorial corrections.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

(1) These proposed changes do not involve a change to the plant design or operation, only to the allowable out-of-service time (AOT) and frequency at which testing of instrumentation is performed. Failure of instrumentation itself cannot create an accident. As a result, these proposed changes cannot increase the probability or significantly increase the consequences of any accident previously evaluated.

(2) These proposed changes do not result in any changes to the plant design or operation, only to the AOT and frequency at which testing of instrumentation is performed. Since failure of this instrumentation itself cannot create an accident, these proposed changes can at most affect only accidents which have been previously evaluated. Therefore, these proposed changes cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The combined effect of the changes proposed for the instrumentation should result in an overall improvement in plant safety. In addition, IP has confirmed that the proposed changes to the functional test intervals will not result in excessive instrument drift relative to current, established setpoints. Therefore, these proposed changes, taken as a whole, do not result in a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: John N. Hannon

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: October 22, 1991

Description of amendment request: In accordance with 10 CFR 50.90, Illinois Power Company (IP) proposes to change Clinton Power Station (CPS) Technical Specification (TS) 6.2.3.2, which describes the composition of the Independent Safety Evaluation Group (ISEG) to provide a second set of acceptable qualifications for ISEG members. The proposed change would allow a person who holds or has held a CPS Senior Reactor Operator (SRO) license and has at least five years of nuclear power experience to be a member of the ISEG. IP also proposes to include a restriction which would require at least four of the ISEG members to hold a bachelor's degree in engineering or related science. This restriction would limit the number of non-degreed SROs to no more than one of the five required ISEG members.

Basis for proposed no significant hazards consideration determination. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change is administrative in nature as it only addresses the qualification requirements of ISEG members and does not alter any plant equipment, system configurations, or operation. As a result, the proposed change cannot increase the probability or the consequences of any accident previously evaluated.

2. The proposed change only addresses the qualification requirements of ISEG members. The proposed change does not alter any plant equipment, system configurations or analyses. As a result, this proposed change does not introduce any new failure modes. Therefore, the proposed change cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change only addresses the qualification requirements of ISEG members. The proposed alternate qualification requirement of currently or previously holding an SRO license for CPS and having at least five years experience in the nuclear field is consistent with the qualification requirements recommended in Section 4.7.2 of ANS 3.1-1981. Additionally, the proposed change will continue to require that at least four of the ISEG members hold a bachelor's degree in engineering or related science. As a result, the proposed change will enhance the quality, knowledge level, and insight of the CPS ISEG in the areas of plant operations without any discernible reduction in technical knowledge or skills. Therefore, the proposed change will not result in a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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NRC Project Director: John N. Hannon

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: October 22, 1991

Description of amendment request: In accordance with 10 CFR 50.90, Illinois Power Company (IP) proposes the following changes to the Clinton Power Station Specifications (TSs):

1. Technical Specification 3/4.8.3.1, 'Onsite Power Distribution Systems, Distribution-Operating'

a. Action Statement a.4 would be revised to address inoperability of the Reactor Protection System (RPS) solenoid buses (rather than only the inverters). A new Action a.4.a would be added to address continued operation with one RPS solenoid bus de-energized. The remaining subparts would be relettered to reflect the addition of the new Action a.4.a. Additionally, an option would be added to the current Action a.4.a (relettered Action a.4.b) to allow the solenoid bus to be de-energized when the associated inverter is inoperable, and commas and wording changes would be made to current Actions a.4.a and a.4.b (relettered as Actions a.4.b and a.4.c, respectively) to provide clarification.

b. Surveillance Requirement 4.8.3.1.2 would be modified to delete inoperability of an RPS bus power monitor as a condition which requires monitoring of the supply frequency.

c. Surveillance Requirement 4.8.3.1.3 would be deleted to remove a redundant TS.

d. Surveillance Requirement 4.8.3.1.4 would be modified to delete a redundant requirement to perform a CHANNEL CALIBRATION of the RPS bus power monitor.

2. Technical Specification 3/4.8.4.3, 'Reactor Protection System Electric Power Monitoring'

a. Surveillance Requirement 4.8.4.3.a would be revised to require the performance of a CHANNEL FUNCTIONAL TEST of the RPS bus power monitor each time the plant is in COLD SHUTDOWN for a period of more than 24 hours, unless performed in the previous 6 months, rather than at least once per 6 months as currently required.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed changes to the Action Statements of TS 3.8.3.1 address continued operation with one of the RPS solenoid buses de-energized. These proposed changes do not alter the limitations on continued operation with power being supplied by the alternate source. Since the associated RPS scram solenoids and MSIV [Main Steam Isolation Valve] solenoids are de-energized when the RPS solenoid bus is de-energized, operation with one RPS solenoid bus de-energized will not prevent a reactor scram or MSIV isolation when required. Additionally, continued operation with one RPS solenoid bus de-energized is currently allowed per Action a.4.b when both inverters are inoperable. The remaining changes to these Action Statements are editorial in nature and provide clarification without changing the technical requirements.

The proposed changes to the Surveillance Requirements of TS 3/4.8.3.1 address removal of unnecessary cross-references to TS 3/4.8.4.3 and removal of the requirement to verify the RPS solenoid bus supply frequency when the RPS power monitor is inoperable. Since TS 3/4.8.4.3 addresses the requirements for testing of the RPS power monitor, these proposed changes do not result in any change to the requirement to perform these tests. The requirement to verify RPS solenoid bus supply frequency every eight hours when the RPS power monitor is inoperable is unnecessary since TS 3.8.4.3 would require the RPS solenoid bus to be de-energized within 30 minutes.

The proposed change to Surveillance Requirement 4.8.4.3 is in conformance with GL 91-09 and reduces the possibility for inadvertent reactor scrams and challenges to safety systems during power operation by eliminating the requirement to perform functional testing of the EPAs during power operation. As provided in GL 91-09, the benefit to safety by reducing the potential for challenges to safety systems during power operation more than offsets the risk to safety from relaxing this surveillance requirement.

Based on the above, it is concluded that these proposed changes do not result in a significant increase in the probability or the consequences of any accident previously evaluated.

(2) The proposed changes do not involve any change to the plant design or operation from that currently allowed by the CPS TS. As a result, no new failure modes are introduced and plant operation continues to be limited to those conditions assumed in the safety analyses. Therefore, these proposed changes cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed changes to TS 3/4.8.3.1 do not alter the limitations on plant operation with an RPS solenoid bus powered by its alternate source. The proposed changes merely provide an allowance to de-energize the bus. Continued operation with one RPS solenoid bus de-energized is currently allowed when both inverters are inoperable and is acceptable because the associated RPS scram solenoids and MSIV solenoids would be de-energized and would allow actuation upon de-energization of the remaining solenoids. These proposed changes will continue to provide adequate assurance that the solenoids which receive power from the RPS solenoid buses will not be damaged by abnormal voltage or frequency conditions. The proposed changes to TS 3/4.8.4.3 reduce the possibility for inadvertent reactor scrams or challenges to safety systems caused by testing of EPAs during power operation. GL 91-09 concluded that the benefit to safety by reducing the potential for challenges to safety systems during power operation more than offsets the risk to safety from relaxing this requirement. Therefore, these proposed changes do not result in a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: John N. Hannon

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: March 21, 1990

Description of amendment request: The licensee proposes to revise Definition 1.25 "PHYSICS TEST", and Section 5.0 of the Trojan Technical Specification (TTS) to clarify references to the Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license change involve a significant increase in the probability or consequences of an accident?

The FSAR is updated using the provision of 10 CFR 50.59. Clarifying the TTS to reflect the amended versus original FSAR is an administrative action that does not affect any current accident analysis and therefore has no effect on the probability or consequences of an accident.

2. Does the proposed license change create the possibility of a new or different kind of accident from any accident previously analyzed?

The proposed change merely clarifies that the TTS reference the amended FSAR and not the original FSAR. This is an administrative action that does not create any new accident scenarios and therefore does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Does the license change involve a significant reduction in a margin of safety?

This is an administrative action that clarifies the TTS and as such does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Attorney for licensees: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204

NRR Project Director: Theodore R. Quay

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: May 7, 1990

Description of amendment request: The licensee proposed to revise Trojan Technical Specification (TTS) 3.5.1 "Emergency Core Cooling System - Accumulators" to delete Surveillance Requirement 4.5.1.d. The added requirement contained within this specification to verify that the valves open when reactor coolant system pressure reaches 1925 psig, or upon receipt of a safety injection test signal is unnecessary. These valves are normally open with the power supply disconnected during power operation, and therefore, can not respond to such signals. This proposed amendment request is designated by the licensee as LCA 199.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license change involve a significant increase in the probability or consequences of an accident?

During a Loss-of-Coolant Accident (LOCA), the accumulators will force borated water into the reactor core should the RCS depressurize to approximately 600 psia. The proposed TTS change does not inhibit this accident mitigation function since these isolation valves are required to be open with power removed to prevent inadvertent closure. Therefore, there will be no increase in the probability or consequences on an accident due to the proposed change.

2. Does the proposed license change create the possibility of a new or different kind of accident from any accident previously analyzed?

Power is removed from the accumulator isolation valves during all modes of operation, except during the brief intervals when the valves must be repositioned during shutdown or startup (i.e., the valves are required to be closed when depressurizing below 1000 psig and opened when pressurized above 1000 psig). Immediately following both of these operations, the breakers are reopened. Thus, the valves do not function automatically regardless of their position. Because the automatic function is not relied upon, deletion of this surveillance requirement can not introduce a new or different kind of accident.

3. Does the proposed license change involve a significant reduction in a margin of safety?

The proposed TTS change does not affect the accumulator volume, boron concentration or pressure and maintains the accumulator isolation valves open when the accumulators are needed for possible accident mitigation. Therefore, the accumulators will still perform their design function of injecting borated water into the core, if required, and the margin of safety has not been reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Attorney for licensees: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204

NRR Project Director: Theodore R. Quay

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: May 7, 1990

Description of amendment request: The licensee proposes to revise the Trojan Technical Specification (TTS) 3.1.3.4, "Shutdown Rod Insertion Limit", Figure 3.1-1, "Rod Bank Insertion Limits Versus Thermal Power - Four Loop Operation" and Figure 3.1-2, "Rod Bank Insertion Limits Versus Thermal Power Three Loop Operation" to define fully withdrawn rods as greater than 223 steps.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license change involve a significant increase in the probability or consequences of an accident?

Rod insertion limits are established to ensure that power distribution limits are met and the minimum shutdown margin is maintained. Since the proposed change does not change the insertion limit, it does not effect TTS 3/4.2, "Power Distribution Limits" or TTS 3.1.1.1, "Shutdown Margin". For the Cycle 12 Reload Report . . . the fully withdrawn position was calculated using the 224 steps position and shown to have a shutdown margin in excess of the required margin used in the accident analysis. [The Cycle 12 Reload Report] further concluded that using the 224 steps position or higher does not impact the accident analysis and as such the probability or consequences of an accident is not increased.

2. Does the proposed license change create the possibility of a new or different kind of accident from any accident previously analyzed?

A new or different kind of accident is not created since as discussed above, the power distribution limits and shutdown margins continue to be maintained.

3. Does the proposed license change involve a significant reduction in a margin of safety?

There is negligible impact upon the power distribution and shutdown margin because of the low rod worth in the top region of the core. There is sufficient shutdown margin to accommodate the all rod out position (ARO) to 224 steps for Cycle 12. [The Cycle 12 Reload Report] calculates a reactivity penalty of .07 percent [delta rho] for the proposed change. Since the available shutdown margin was 2.06 and 1.99 for Cycles 11 and 12 respectively versus the required margin of 1.60, the .07 penalty can be easily accommodated. Likewise sufficient peaking factors and Departure from Nucleate Boiling Ratio (DNBR) margins are available to accommodate the negligible effect on power distribution. Therefore, the proposed change does not significantly reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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NRR Project Director: Theodore R. Quay

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: June 28, 1991

Description of amendment request: The licensee proposes to revise the Trojan Technical Specifications (TTS) for the Reactor Coolant System (RCS) safety and relief valves, Overpressure Protection System, Emergency Core Cooling Subsystems (T_{avg} less than 350° F) and other associated Technical Specifications and Bases to incorporate the changes committed to in Portland General Electric Company's response to Generic Letter 90-06, "Resolution of Generic Issue 70, 'Power-Operated Relief Valve and Block Valve Reliability', and Generic Issue 94, 'Additional Low-Temperature Overpressure Protection for Light-Water Reactors', pursuant to 10 CFR 50.54(f)". This amendment request was designated by the licensee as LCA 211. Specifically, the licensee proposes to modify TS 3/4.4.3.2, "Safety and Relief Valves - Operating;" TS 3/4.4.9.3, "Overpressure Protection Systems;" TS 3/4.5.3.2 "ECCS Subsystems - T_{avg} less than 350° F;" TS 3/4.1.2.1, "Boration System Flow Path - Shutdown;" TS 3/4.1.2.3; "Charging Pump - Shutdown;" TS 6.9.2, "Special Reports;" and associated Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

a. Does the proposed license change involve a significant increase in the probability or consequence of an accident previously evaluated?

The PORVs [Power Operated Relief Valves] are provided to prevent or mitigate overpressure transients in the RCS [Reactor Coolant System]. During operation, the PORVs prevent actuating the high pressure reactor trip for design transients and prevent undesirable opening of the safety valves. In addition, the PORVs are used during low temperature solid water conditions to prevent possible violations of 10 CFR [Code of Federal Regulations] 50, Appendix G reactor vessel temperature/pressure limits. The changes made in the PORV Technical Specifications serve to increase the availability of the PORVs and block valves by shortening the allowed outage time when the valves become inoperable. Also, in the case where the PORV is inoperable due to seat leakage, the block valves are closed but power is maintained to the valves so they can be manually opened to provide pressure relief capability. This change also improves the availability of the PORVs. The new requirement to test the PORVs in Modes 3 or 4 ensures the PORVs are operable prior to establishing conditions where the PORVs are required for low-temperature overpressure protection as well as to simulate temperature environmental effects on the valves.

In several instances, the action requirements for inoperable PORVs or block valves were changed to require the Plant to be placed in HOT SHUTDOWN rather than COLD SHUTDOWN as previously required. This change was made because the APPLICABILITY requirements of the specification do not extend past the HOT STANDBY mode.

Since these changes serve to increase the availability of overpressure protection equipment, they do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change to allow greater flexibility as to which pumps can remain OPERABLE during low temperature conditions has been analyzed to show that overpressure conditions will not occur with those pump conditions; therefore, the probability or consequences of an overpressure accident will not be increased.

b. Do the proposed license changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Since the proposed changes serve to increase the availability of accident mitigation/prevention equipment, there is no possibility of a new or different kind of accident occurring. No physical changes are being made to the Plant that would create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Do the proposed license changes involve a significant reduction in a margin of safety?

Since the proposed changes serve to increase the availability of accident mitigation/prevention equipment, the margin of safety for an overpressure accident is not reduced. The change to allow greater flexibility as to which pumps can remain OPERABLE during low temperature conditions has been analyzed to show that overpressure conditions will not occur with the given pump configurations; therefore, the margin of safety will not be reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Attorney for licensees: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204

NRR Project Director: Theodore R. Quay

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: November 30, 1989, superseded by June 28, 1991 submittal.

Description of amendment request: The licensee proposes to modify the Trojan Technical Specification (TTS) by changing TTS Section 3.0 and 4.0 and associated Bases to reflect the general guidance provided in Generic Letter 87-09, "Section 3.0 and 4.0 of the Standard Technical Specification (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements," dated June 4, 1987. This is a Technical Specification line item improvement.

Additionally, the licensee requests modification of TTS 3.1.3.1, "Moveable Control Assemblies - Group Height" to lower the zero power ejected rod worth from less than or equal to .98 percent delta K to less than or equal to .90 percent delta K to match the value in the Updated Final Safety Analysis Report. Finally, the licensee requests that TTS 3.1.3.3 "Rod Drop Time" be modified to reflect current operating practice. These changes are administrative in nature. These requests for amendments were designated by the licensee as LCA 186, revision 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. The change to replace TTS 4.0.3 with the 4.0.3 specification provided in GL 87-09:

a. Does the proposed license change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change to TTS 4.0.3 does not change any surveillance requirements or the frequency in which they are performed. The change is administrative in that upon discovery of a missed surveillance, up to 24 hours will be allowed to perform the surveillance. The 24 hours is based on an NRC determination in GL 87-09 that this is an acceptable time limit for completing a missed surveillance when the allowable outage times of the ACTION are less than 24 hours.

If a Plant shutdown is required before a missed surveillance is completed, it is likely that the surveillance would be conducted while the Plant was being shut down because completion of the missed surveillance would terminate the shutdown requirement. This is undesirable since it increases the risk to Plant and public safety for two reasons. First, the Plant would be in a transient state involving changing Plant conditions that offer the potential for an upset that could lead to a demand for the system or component being tested. This would occur when the system or component is either out-of-service to allow performance of the surveillance test or there is a lower level of confidence in its operability because the normal surveillance interval was exceeded. If the surveillance did demonstrate that the system or component was inoperable, it usually would be preferable to restore it to operable status before making a major change in Plant operating conditions. Second, a shutdown would increase the pressure on the Plant staff to expeditiously complete the required surveillance so that the Plant could be returned to power operation. This would further increase the potential for a plant upset when both the shutdown and surveillance activities place a demand on the Plant operators.

In summary, accident probabilities or consequences will not be increased by this proposed license change.

b. Does the proposed license change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change is not related to accident creation because the TTS surveillance requirements remain unchanged in that neither what is to be performed, nor the frequency at which it is performed, is modified.

c. Does the proposed license change involve a significant reduction in a margin of safety?

The proposed change to TTS 4.0.3 conforms with the change recommended in GL 87-09 except for the revision to the Bases for Specification 4.0.3 as described above. This change does not relax any surveillance requirement or change the frequency at which surveillances are performed. The change merely allows for missed surveillances to be performed without resulting in a Plant shutdown. It is overly conservative to assume that systems or components are inoperable when a surveillance requirement has not been performed. The opposite is in fact the case. The vast majority of surveillances demonstrate that systems or components in fact are operable. When a surveillance is missed, it is primarily a question of operability that has not been verified by the performance of the required surveillance.

Because the allowable outage time limits of some ACTIONS do not provide an appropriate time limit for performing a missed surveillance before shutdown requirements may apply, the TTS should include a time limit that would allow a delay of the required actions to permit the performance of the missed surveillance. The 24-hour time limit balances the risks associated with an allowance for completing the surveillance within this period against the risks associated with the potential for a Plant upset and challenge to safety systems when the alternative is a shutdown to comply with ACTIONS before the surveillance can be completed. Consequently, margins of safety are not reduced.

2. The change to revise TTS 4.0.4 to include the provisions of GL 87-09:

a. Does the proposed license change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change to TTS 4.0.4 does not change any surveillance requirements or the frequency in which they are performed. This change is administrative in that it merely clarifies that passage through or to an operational mode is allowed to comply with the ACTION of an LCO. Accident probabilities or consequences are not increased.

b. Does the proposed license change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change is not related to accident creation because the TTS surveillance requirements remain unchanged in that neither what is to be performed, nor the frequency at which it is performed, is modified.

c. Does the proposed license change involve a significant reduction in a margin of safety?

As previously stated, the proposed change to TTS 4.0.4 conforms with the change recommended in GL 87-09. This change does not relax any surveillance requirement or change the frequency at which surveillances are performed. This change merely clarifies that passage through or to an operational mode is allowed to comply with the ACTION of an LCO.

3. The proposed changes to modify individual TTSs to include references to TTS 3.0.4 as not being applicable:

a. Does the proposed license change involve a significant increase in the probability or consequences of an accident previously evaluated?

GL 87-09, in the proposed bases for TTS 3.0.4, states "Compliance with ACTION requirements that permit continued operation of the facility for an unlimited period of time provides an acceptable level of safety for continued operation without regard to the status of the Plant before or after a mode change. Therefore, in this case, entry into an OPERATIONAL MODE or other specified condition may be made in accordance with the provisions of the ACTION requirements."

The individual TTSs for which revisions are proposed to add references to TTS 3.0.4 as being not applicable meet the above criteria, i.e., they contain actions that allow continued operation for an unlimited period of time. Consequently, entry into these ACTIONS provides an acceptable level of safety for continued operation, and do not result in a significant increase in the probability or consequences of an accident.

[The submittal] contains summary discussions of the proposed individual TTS revisions, affirming that the remedial measures prescribed for the affected ACTION statements are consistent with the updated Safety Analysis Report and its supporting safety analysis.

b. Does the proposed license change create the possibility of a new or different kind of accident from any accident previously evaluated?

These changes result in the ability to change modes while in an ACTION that allows continued, indefinite operation. Consequently, no new equipment configurations or accident scenarios are introduced.

c. Does the proposed license change involve a significant reduction in a margin of safety?

Since the ACTIONS themselves associated with this set of specific TTSs already exist and are considered to provide adequate levels of safety, entry into these actions should not cause a reduction in a margin of safety.

4. The proposed change to TTS 3.1.3.1, Group Height, to reflect the zero power ejected rod worth value of [less than or equal to] 0.90 percent rather than [less than or equal to] 0.98 percent:

a. Does the proposed license change involve a significant increase in the probability or consequences of an accident previously evaluated?

This change will achieve consistency between the TTS and the FSAR Accident Analyses. FSAR Table 15.4-3 lists the parameters used in the analysis of the RCCA [Rod Control Cluster Assemblies] ejection accident. Included is a value of 0.90 percent [delta] K for the zero power, end of cycle, ejected rod worth. This ejected rod worth value resulted from FSAR Amendment 11, which was generated to update the FSAR to reflect the Trojan Nuclear Plant fuel upgrade. The resultant change in reactor characteristics represented by a calculated maximum ejected rod worth of 0.90 percent rather than the previous value of 0.98 percent is a change in the positive safety direction. Consequently, this change will not increase the probability or consequences of an accident.

b. Does the proposed license change create the possibility of a new or different kind of accident from any accident previously evaluated?

The value of the ejected rod worth of 0.90 percent is the value used in the Accident Analyses represented in the FSAR. Consequently, no new different accident scenarios are introduced.

c. Does the proposed license change involve a significant reduction in a margin of safety?

No. The margin of safety involved in a rod ejection accident is enhanced by the lowering of the ejected rod worth.

5. The proposed change to TTS 3.1.3.3, Rod Drop Time, to delete the footnote and Action b.:

a. Does the proposed license change involve a significant increase in the probability or consequences of an accident previously evaluated?

The deletion of the footnote is an administrative change only. This footnote only had applicability until April 11, 1980.

The deletion of Action b. does not adversely affect the probability or consequences of an accident. Given other TTS restraints, rod drop times are not

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determined with three coolant pumps operating.

b. Does the proposed license change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. Deletion of the footnote is administrative. Deletion of the Action b. assures that rod drop time will be determined with four reactor coolant pumps operating, which is the preferred and safer situation.

c. Does the proposed license change involve significant reduction in a margin of safety?

No. Deletion of the footnote is administrative. Deletion of Action b. assures that rod drop times will be determined with four reactor coolant pumps operating. This is more accurate and results in better defined safety margins.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Attorney for licensees: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204

NRR Project Director: Theodore R. Quay

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: January 25, 1990, superseded by July 15, 1991

Description of amendment request: The licensee requests to revise the Trojan Technical Specifications (TTS) to reflect the guidance promulgated in Generic Letter 91-08, "Removal of Component Lists from Technical Specifications," dated May 6, 1991. Specifically, the licensee requests to delete TTS Table 3.6-1, "Containment Isolation Valves," in accordance with the generic letter. Other associated specifications and associated Bases will be modified to reflect the changes. This is a technical specification line item improvement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license change involve a significant increase in the probability or consequences of an accident previously evaluated?

The removal of Table 3.6-1 from TTS [Trojan Technical Specifications] and replacing it with a reference to Plant procedures and FSAR [Final Safety Analysis Report] Table 6.2-1 in the Bases section does not reduce the effectiveness of the TTS. In addition, there are no proposed changes to the LCOs [Limiting Conditions for Operations] and Surveillance Requirements other than discussed below; consequently, no changes in operability of the isolation valves will occur. Accordingly, there will be no effect on previously analyzed accidents. Making Specification 3.0.4 not applicable to TTS 3.6.3.1 allows Plant start-up with isolation valves closed and de-energized or the penetration isolated with a closed manual valve or a blind flange. This provides at least the same level of assurance (as that provided during operation) that the affected penetrations will be isolated when required. Since the ability to isolate the Containment is not adversely affected, there can be no adverse impact on the consequences or probability of any accident.

The clarification that TTS 3.6.3.1 Actions b. and c. will not apply to those isolation valves required for post-accident operation is more restrictive than the present TTS and will thus enhance safety. Again, there will be no adverse impact on the consequences or probability of any accident.

We have retained in the TTS the requirements for keeping the opening of certain valves under administrative control and for making others inoperable. These valves and their requirements remain the same as the current TTS. Thus, as the location of the requirement within the TTS has changed, the requirement itself has not; therefore, there is no impact upon any accident analysis.

Modification of TTS 4.6.3.1.1 was done for clarification in recognition that some Containment isolation valves require isolation times, but others do not. Thus, there will be no effect on previously analyzed accidents.

2. Does the proposed license change create the possibility of a new or different kind of accident from any accident previously evaluated?

Because deletion of Table 3.6-1 does not change the way the Plant is operated, the potential for an unanalyzed accident is not created.

The exemption added to TTS 3.6.3.1 will not affect the Plant response in any way, and no new failure modes are introduced which could create a new accident. The exemption applies to valves which have no safety function other than Containment isolation and that safety function can be met by meeting the conditions of TTS 3.6.3.1 Actions b. or c.

The retention of administrative control over specific valves cannot create a new accident since the requirements remain the same.

Clarification of TTS 4.6.3.1.1 and 3.6.3.1 does not create a new accident since the change will enhance interpretations of the TTS.

3. Does the proposed license change involve a significant reduction in a margin of safety?

Since the deletion of Table 3.6-1 does not affect the consequences of any accident previously analyzed, there is not a reduction in the margin of safety.

The proposed change to TTS 3.6.3.1 will apply when the inoperable Containment isolation valve(s) are isolated by use of at least one deactivated automatic valve secured in the closed position or by use of a closed manual valve or blind flange. Because the penetration is isolated, the proposed change does not have any adverse impact on the Containment boundary. The proposed change to TTS 3.6.3.1 Actions b. and c. applies to valves which are required to be open for post-accident operation. Accordingly, there will be no impact on safety margin.

Keeping the same administrative controls over specific valves does not affect the safety margins since the requirements remain the same.

The enhancement of TTS 4.6.3.1.1 and 3.6.3.1 provides needed clarification and thus, cannot reduce the safety margin.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Attorney for licensees: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204

NRR Project Director: Theodore R. Quay

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: October 17, 1991

Description of amendment request: The licensee requests to revise Trojan Technical Specification (TTS) 3/4.7.1 "Turbine Cycle - Safety Valves" and associated Bases. This revision would clarify the actions required with inoperable safety valves and the surveillance testing requirements. Additionally, it would remove the provision for three loop operation. This amendment request was designated by the licensee as LCA 214.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

a. Revision of the LCO to include reference to Table 4.7-1 for safety valve required lift settings.

(1) Do the proposed license changes involve a significant increase in the probability or consequences of an accident previously evaluated?

This change is for clarification and is administrative. It does not modify the actual safety valve required lift settings. Consequently, no accident probabilities or consequences are affected.

(2) Do the proposed license changes create the possibility of a new or different kind of accident from any accident previously evaluated?

This change is for clarification and is administrative. It does not modify the actual safety valve required lift settings. Consequently, no new or different kinds of accidents from any accident previously evaluated are created.

(3) Do the proposed license changes involve a significant reduction in a margin of safety?

This change is administrative and does not involve a significant reduction in a margin of safety.

b. Revision of ACTION a to clarify ACTION requirements: (1) Do the proposed license changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed revision removes an anomaly from the ACTION statement. The existing statement has the result that continued operation in Mode 3 with inoperable safety valves is allowed if the Power Range Neutron Flux High Setpoint is reduced per Table 3.7-1. The Reactor Protection System (RPS) Specification 3.3.1 (Table 3.3-1) does not require the Power Range Neutron Flux System to be OPERABLE in MODE 3. The Source Range Neutron Flux System is required to be OPERABLE when the reactor trip system breakers are in the closed position and the control rod drive system is capable of rod withdrawal. The Source Range Neutron Flux Trip function provides protection against positive reactivity insertion transients originating in MODE 3, 4, and 5. Reduction of the Power Range Neutron Flux High Setpoint is logical when at power to assure that power remains reduced proportionately to the loss of relieving capacity due to inoperable main steam line code safety valves. The revised ACTION a clarifies that the Power Range Neutron Flux High Setpoint reduction is not applicable when in MODE 3. Based on the above, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revision also changes the required MODE when more than 3 main steam line code safety valves are inoperable on any steam generator. The existing ACTION requires going to MODE 5, COLD SHUTDOWN, whereas the revised ACTION would require going to MODE 4, HOT SHUTDOWN. Since the Limiting Condition for Operation (LCO) of this Specification is applicable to MODES 1, 2, and 3, MODE 4 is sufficient to place the plant in a mode where the specification is no longer applicable.

Additionally, main steam line code safety valve operability is not required in MODES 4 and 5 since it is improbable that an overpressure condition could be achieved due to the reduced nominal operating pressure and temperature and the lack of significant thermal power. Consequently, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Do the proposed license changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The changes do not introduce any new configurations or conditions other than allowing indefinite operation in MODE 3 without the Power Range Neutron Flux High Setpoint being OPERABLE and reduced, and allowing MODE 4 rather than MODE 5 as the MODE of residence with more than 3 main steam line code safety valves inoperable on any steam generator. The Power Range Neutron Flux trip functions are not required by TTS 3.3.1. The Source Range Neutron Flux trip function provides protection against positive reactivity insertion transients originating from MODES 3, 4, or 5. In addition to providing protection from positive reactivity insertion transients originating from power conditions, the Power Range Neutron Flux High Setpoint, when adjusted per Table 3.7-1, provides assurance that reduced thermal power will be maintained proportionately to the reduced relieving capacity due to one or more inoperable main steam line code safety valves. However, this function is not needed in MODE 3, which is a zero power MODE.

Allowing continued operation in MODE 4 rather than MODE 5 without operability of main steam line code safety valves is proposed since operability is not required in MODE 4. Power transients from this shutdown MODE are non-consequential, and the low temperature/pressure nominal values in this MODE are not sufficient to achieve overpressure conditions.

Based on the above, no new or different kinds of accidents from any accident previously evaluated are created.

(3) Do the proposed license changes involve a significant reduction in a margin of safety?

The changes do not involve creating new or non-conservative initial conditions contributing to accident severity or consequences, consequently there are no significant reductions in a margin of safety.

c. Deletion of ACTION b; f. Deletion of Table 3.7-2; and g. BASES revision:

(1) Do the proposed license changes involve a significant increase in the probability or consequences of an accident previously evaluated?

AND

(2) Do the proposed license changes create the possibility of a new or different kind of accident from any accident previously evaluated?

AND

(3) Do the proposed license changes involve a significant reduction in a margin of safety?

The deletion of ACTION b, the deletion of Table 3.7-2, and the BASES revision apply to 3-loop operation, and are administrative changes in that Trojan is effectively not licensed for 3-loop operation, consequently the 3-loop applicable TTSs are not needed. TTS 3.4.1.2 requires that all four reactor coolant loops be in operation in MODE 3 with any Control Rod Drive Mechanism (CRDM) energized. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident from any accident previously evaluated and does not involve a significant reduction in a margin of safety.

d. Renumbering of old ACTION c to become ACTION b:

This is purely an editorial change involving no significant hazards.

e. Revised wording for Surveillance Requirements 4.7.1.1:

(1) Do the proposed license changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not result in a change to the actual surveillance testing of the main steam line code safety valves. The change will make the wording consistent with the standard Technical Specification for Westinghouse Pressurized Water Reactors (NUREG-0452, Rev. 4). The changes will also clarify that surveillance testing for OPERABILITY verification need not include orifice size determinations each time. Consequently, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Do the proposed license changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not modify components, configuration, nor operating procedures of the Plant. Consequently, no new or different kinds of accidents from any accident previously evaluated are created.

(3) Do the proposed license changes involve a significant reduction in a margin of safety?

The proposed change does not modify component, configuration, nor operation of the Plant. No accident initial conditions nor evolutions are affected. The actual surveillance testing of the main steam line code safety valves will remain in compliance with TTS 4.0.5 requirements. Consequently, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Attorney for licensees: Leonard A. Girard, Esq., Portland General Electric

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Company, 121 S.W. Salmon Street, Portland, Oregon 97204

NRC Project Director: Theodore R. Quay

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: November 15, 1991

Description of amendment request: This proposed amendment to the James A. FitzPatrick Technical Specifications revises the schedule for visual inspection of snubbers. Specifically, the proposed schedule is based on the number of unacceptable snubbers found during the previous inspection in proportion to the size of the various snubber categories and increases the maximum inspection interval to forty-eight months. This proposed inspection schedule is consistent with the guidance provided in NRC Generic Letter 90-09.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes involve no hardware changes, no changes to the operation of the snubbers, and do not change the ability of the snubbers to perform their intended functions. An increase in visual inspection frequency will not affect the confidence level in operability developed from functional testing.

2. create the possibility of a new or different kind of accident from those previously evaluated.

The proposed changes involve no hardware changes, no changes to the operation of the snubbers, and do not change the ability of the snubbers to perform their intended functions. The new visual inspection interval does not change the level of confidence in snubber operability developed from functional testing and therefore no unreviewed failure mechanism can result.

3. involve a significant reduction in the margin of safety.

The proposed changes involve no hardware changes, no changes to the operation of the snubbers, and do not change the ability of the snubbers to perform their intended functions. The proposed amendment incorporates the alternate Technical Specification requirements for visual inspection of snubbers identified in Generic Letter 90-09. The alternate visual inspection criteria consider the size of the category of snubbers when evaluating inspection intervals due to failure rates. They do not reduce the confidence level in snubber operability. The functional testing requirements remain unchanged and do not reduce operability confidence levels.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: November 15, 1991

Description of amendment request: The licensee requests an amendment to the Technical Specifications to revise Section 4.11 (Shock Suppressors (Snubbers)). This section would be revised to provide a schedule for visual inspection of snubbers that reflects the guidance provided in Generic Letter 90-09, "Alternate Requirements for Snubber Visual Inspection Intervals and Corrective Actions." The proposed amendment also corrects typographical errors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the requirements of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based on the following information:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:

Operation of Indian Point 3 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change does not result in any physical change to the plant which could cause an increase in the probability or consequences of any previously evaluated accident.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

Operation of Indian Point 3 in accordance with the proposed license amendment does not create the probability of a new or different kind of accident from any accident previously evaluated. The proposed amendment does not alter any plant operations, maintenance requirements, system design or functions other than the snubber visual inspection interval. The NRC staff has determined that the alternate visual inspection interval maintains the same confidence level in snubber operability. The Authority agrees with this determination. Therefore, no possibility of creating a new or different type of accident would result from the proposed amendment.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

Operation of Indian Point 3 in accordance with the proposed license amendment does not involve a significant reduction in a margin of safety. As stated above, the proposed amendment incorporates the alternate Technical Specification requirements for visual inspection of snubbers. These requirements were evaluated by the NRC staff in Generic Letter 90-09. The NRC staff has determined that the alternate visual inspection interval maintains the same confidence level in snubber operability as the current requirements. The Authority agrees with this determination. Therefore, the proposed license amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: November 29, 1991

Description of amendment request: The licensee proposes to revise Technical Specification (TS) 4.6.1.2.a to allow a one-time interval of 53 months for the Type A Containment Integrated Leak Rate Test (ILRT). The present TS require a 40 ±10 month interval. Additionally, the licensee is requesting

to delete the note pertaining to TS 4.6.1.2.d. This note allowed a one-time extension of the Type C test interval, for specific valves, to the first refueling outage. This note is no longer applicable and will not be applicable in the future.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

PSE&G has, pursuant to 10 CFR 50.92, reviewed the proposed amendment to determine whether our request involves a significant hazards consideration. We have determined that operation of the Hope Creek Generating Station in accordance with the proposed changes:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated. Although the proposed change extends the 40 ± 10 month test interval by 3 months, [the] first Type A test was completed successfully. Since then, there has not been any modifications made to the plant which could adversely effect the test results.

Type B and C tests have been completed satisfactorily during each of the three previous Hope Creek outages and is scheduled to be performed during the upcoming fourth refuel[ing] outage. Demonstrated operability of the associated components and penetrations provides additional assurance that the integrated containment leak rate remains satisfactory.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not adversely effect the design or operation of any system or component important to safety. No physical plant modifications or new operational configurations will result from this change.

3. Will not involve a significant reduction in a margin of safety. The first Type A test was completed satisfactorily. Type B and C tests have been completed satisfactorily and will be performed during the fourth refuel outage. No plant modifications have been made which could adversely effect Type A test results.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: August 10, 1988 as supplemented May 18, 1989, March 22, September 18, and November 21, 1991 (TS 88-03 and 91-13). The staff's proposed no significant hazards consideration determination for the requested changes was previously published on September 7, 1988 (53 FR 34612).

Description of amendment request: The proposed amendment would revise various Technical Specifications (TS) related to the reactor coolant system power operated relief valves (PORVs) and their associated block valves. Also, the proposed amendment would add new requirements to address the low temperature overpressure protection (LTOP) requirements related to the PORVs, operability of the centrifugal charging pumps, reactor coolant pump startup, updating of LTOP setpoints, and cyclic limits to prevent excessive overpressure affects while the plant is in the low-temperature, water-solid condition. The proposed changes are designed to incorporate the guidance given in Generic Letter (GL) 90-06, "Resolution of Generic Issue 70, 'Power-Operated Relief Valves and Block Valve Reliability,' and Generic Issue 94, 'Additional Low-Temperature Overpressure Protection for Light-Water Reactors,' Pursuant to 10 CFR 50.54f." The proposed TS changes would result in the following: (1) addition of specific operability and surveillance requirements to provide low temperature overpressure protection (LTOP); (2) clarification of the operability requirements for the charging pumps when the plant is shut down; (3) changing the boration system requirements to conform with the administrative controls that support the LTOP requirements; (4) addition of new requirements to minimize the potential for heat input overpressure transients caused by the restart of a reactor coolant pump in Mode 4; (5) addition of LTOP considerations to the reactor vessel specimen surveillance program; (6) addition of cyclic limits for low-temperature, water-solid overpressure events; (7) deletion of an outdated footnote on page 3/4 1-10 of Unit 2 TS that expired in 1984; (8) replacing Figure 3.4-4 with an updated figure that is applicable to 16 Effective Full Power Years (EFPYs); (9) changes to the Power Operated Relief Valve (PORV) Specification 3.4.3.2 that would allow termination of a forced shutdown when the plant is in the hot shutdown condition rather than the cold shutdown condition; (10) changes to the shutdown time requirements for placing the plant into the hot shutdown condition for various PORV inoperable conditions from 30 hours to 6 hours; (11) specifying that PORV testing be performed while in Mode 4; and (12) modifications to the respective Bases sections and certain administrative-in-nature changes to reflect these proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated

The low-temperature overpressure events had been previously evaluated in the Final Safety Analysis Report (FSAR). The addition of operability and surveillance requirements for the LTOP system is administrative in nature because it incorporates existing requirements into the technical specifications. Conforming changes to Technical Specifications 3.1.2.1, 3.1.2.2, 3.1.2.3, 3.1.2.4, 3.4.1.3, 3.4.9.1, and 5.7 are necessary to fully integrate the LTOP system requirements. The addition of a special test condition for surveillance requirement 4.4.11.1(a) ensures that instrumentation common to both the Reactor Vessel Level Indication System (RVLIS) and LTOP system remains in service as required. The deletion of an outdated footnote to unit 2 Specification 3.5.2 is purely editorial in nature.

Following the replacement of SQN's Foxboro Company protection system with the Westinghouse Electric Corporation Eagle 21 system, SQN's LTOP setpoint analyses were revised to include the added process instrument delay time (i.e., 250 milliseconds). SQN's revised LTOP setpoint analyses also now include the effect of SQN's new reactor pressure-temperature (P-T) limits that were based on Revision 2 of NRC Regulatory Guide (RG) 1.99, "Radiation Embrittlement of Reactor Vessel Materials." As a result of these changes to SQN's LTOP setpoint analyses, TVA is submitting revised LTOP setpoints that will supersede the setpoints previously provided in TVA's August 10, 1988 letter.

The proposed change does not introduce new operating practices or

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require further plant hardware modifications. SQN's LTOP setpoints will continue to provide protection against LTOP events previously evaluated in SQN's Final Safety Analysis Report (FSAR).

From an accident and transient mitigation standpoint, SQN's power-operated relief valves (PORVs) can be utilized to perform several safety-related functions. These include mitigation of a steam generator (SG) tube rupture accident and low-temperature overpressure protection of the reactor vessel. In addition, the PORVs can be an accident initiator in the case where a failed-open PORV results in a small break loss of coolant accident.

Under normal operating conditions, SQN's PORVS are designed to limit pressurizer pressure and prevent the undesirable opening of the pressurizer safety valves. The PORVs are also used for automatic and manual pressure control. The Final Safety Analysis Report analysis for overpressure protection in Modes 1, 2, and 3 assumes that the PORVs do not actuate. The pressurizer safety valves provide the required pressure relief.

TVA's proposed change adds surveillance testing of the PORVs in Mode 4. The intent of requiring PORVS to be tested during Mode 4 is to demonstrate operability of the PORVs between power operational modes (Modes 1 and 2) and Mode 5, when the plant is most vulnerable to a low-temperature overpressure transient. The proposed change remains consistent with the guidance provided in GL 90-06 and continues to provide operability assurance that SQN's PORVs will perform their safety-related functions.

TVA's proposed change to the ACTION statements for terminating a forced-shutdown at HOT SHUTDOWN rather than COLD SHUTDOWN provides consistency between the applicability requirements of the limiting condition of operation (LCO) and the forced-shutdown requirements. This change is considered to be an improvement for maintaining consistent LCO applicability and shutdown requirements within TSs. Accordingly, the proposed changes do not significantly increase the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously analyzed

The low-temperature overpressure events had been previously evaluated in the FSAR. The addition of operability and surveillance requirements for the LTOP system and conforming changes to other technical specifications is administrative in nature. The deletion of an outdated footnote to Unit 2 Specification 3.5.2 is purely editorial in nature. The addition of a special test condition for Surveillance Requirement 4.4.11.1.(a) ensures that instrumentation common to both the RVLIS and LTOP systems remains in service as required.

TVA is submitting new LTOP setpoints that reflect SQN's current LTOP setpoint analyses. The new LTOP setpoints resulted from SQN's new reactor P-T limits and SQN's Eagle 21 upgrade. The new LTOP setpoints supersede SQN's setpoints that were previously provided in TVA's August 10, 1988 letter. The new LTOP setpoints have been determined for SQN and remain bounding for SQN's new P-T limit.

The proposed change does not introduce new operating practices or require further plant hardware modifications. SQN's LTOP setpoints continue to provide protection against LTOP events previously evaluated in SQN's FSAR.

The change to the surveillance requirement for testing PORVs in Mode 4 does not require any hardware changes. Existing surveillance instructions at SQN allow for testing PORVs while in Mode 4. The changes associated with the ACTION statements follow the guidance of GL 90-06 for providing consistency between forced-shutdown requirements and LCO applicability requirements. Thus, the possibility of a new or different kind of accident is not created.

(3) Involve a significant reduction in a margin of safety

The addition of operability and surveillance requirements for the LTOP system will increase the margin of safety by affording a higher level of administrative controls over LTOP system operability. The conforming changes to Technical Specifications 3.4.1.3, 3.4.9.1, and 5.7 will increase the margin of safety by also affording a higher level of administrative controls over related LTOP requirements. The changes to Technical Specifications 3.1.2.1, 3.1.2.2, 3.1.2.3, and 3.1.2.4 involve a reduction in the redundancy requirements for boration capability in Mode 4. However, this reduction is necessary to incorporate requirements that minimize the potential for and severity of mass input, low-temperature overpressure events by limiting the number of centrifugal charging pumps that can automatically inject into the RCS. The addition of a special test condition for Surveillance Requirement 4.4.11.1(a) ensures that instrumentation common to both the RVLIS and LTOP systems remains in service as required. NRC has acknowledged the greater importance of LTOP system requirements which resulted in generation of Generic Letter 90-06. TVA is adopting the Generic Letter and related requirements in the proposed amendment. The deletion of an outdated footnote is administrative in nature.

The proposed change does not introduce new operating practices or require further plant hardware modifications. SQN's LTOP setpoints continue to provide protection against LTOP events previously evaluated in SQN's FSAR. Consequently, the LTOP setpoint change would not involve a reduction in the margin of safety.

The intended design and operation of SQN's PORVs have not been changed. The safety-related functions of the PORVS (i.e., mitigation of a SG tube rupture and low-temperature overpressure protection) remain unchanged. Testing the PORVs in Mode 4 provides additional assurance of valve operability for performing safety-related functions. The additional changes associated with Specification 3.4.3.2 ACTION statements a, b, and c, provide a TS improvement by establishing consistency between the LCO applicability requirements and the forced-shutdown requirements. Accordingly, the margin of safety has not been changed.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon

TU Electric Company, Docket No. 50-445, Comanche Peak Steam Electric Station, Unit 1, Somervell County, Texas

Date of amendment request: April 22, 1991, as supplemented by letter dated November 4, 1991.

Description of amendment request: This was previously published in the **Federal Register** on July 10, 1991 (56 FR 31444). The April 22, 1991, amendment request proposed to change Comanche Peak Steam Electric Station (CPSES) Unit 1 Technical Specifications Paragraphs 6.2.3.1 and 6.2.3.4 concerning the reporting responsibilities for the CPSES Independent Safety Engineering Group (ISEG). Specifically, this change would replace the organizational position and function of the Vice President, Nuclear Engineering with the organizational position and function of the Executive Vice President, Nuclear Engineering and Operations. By letter dated November 4, 1991, TU Electric submitted a supplement to the April 22, 1991, amendment request. The supplement proposed to change the title of the Executive Vice President, Nuclear Engineering and Operations to Group Vice President, Nuclear Engineering and Operations. This requires that Technical Specification Sections 6.2 and 6.5 be changed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated?

The proposed change involves administrative changes at the executive level and does not impact nor affect accident analysis assumptions. Therefore, these assumptions are preserved and there is no change in the probability or consequences of any previously evaluated accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated?

This change is administrative only. No change is made to the plant or plant operating procedures that would create a new or different kind of accident.

3. Involve a significant reduction in the margin of safety?

As an administrative change, the proposed change does not impact nor affect any accidents or failure points and, therefore, does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P. O. Box 19497, Arlington, Texas 76019

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Suite 1000, Washington, D.C. 20036

NRC Project Director: Suzanne C. Black

Virginia Electric and Power Company, Docket No. 50-338, North Anna Power Station, Unit No. 1, Louisa County, Virginia

Date of amendment request: November 7, 1991

Description of amendment request: The proposed changes would revise the Technical Specifications for the North Anna Power Station, Unit No. 1 (NA-1). Specifically, the proposed changes would revise the current NA-1 TS to ensure that the correct measurement range of the triaxial response spectrum recorders is reflected in the appropriate NA-1 TS table. The changes are being made to reflect the range of the instrumentation originally installed in the plant and excepted from Regulatory Guide 1.12, Revision 1, dated April 1974, as noted in Section 3A.12 of the Updated Final Safety Analysis Report (UFSAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. There is not a significant increase in the probability of occurrence or consequences of any accident or malfunction of equipment which is important to safety and which has been evaluated in the UFSAR. No modifications have been made to the installed instrumentation. The proposed amendment is submitted to reflect the range of the installed equipment as noted in Section 3A.12 of the UFSAR. The availability and reliability of the four triaxial response spectrum recorders will remain the same. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated. Likewise, the consequences of the accidents will not increase as a result of the proposed Technical Specification changes.

2. The changes do not create the possibility of a new or different kind of accident from those previously evaluated in the safety analysis report. No modifications have been made to the installed instrumentation or accident analysis as a result of this proposed amendment. The proposed amendment is submitted to reflect the range of the installed equipment as noted in Section 3A.12 of the UFSAR. Therefore, the proposed changes will not create the possibility of a new or different kind of accident than any previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety. No physical plant modifications, changes in plant operations, or changes in accident analysis assumptions are being made. The proposed amendment is submitted to reflect the range of the installed equipment as noted in Section 3A.12 of the UFSAR. Therefore, the accident analysis assumptions remain bounding and safety margins remain unchanged.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: October 8, 1991

Description of amendment request: The proposed changes will upgrade portions of Sections 3.0 and 4.0 of the Surry Power Station Technical Specifications by incorporating conclusions reached in Generic Letter 87-09. The proposed changes restrict the changing of operational conditions while in Limiting Conditions for Operation (LCO), allow entry into an action statement due to a missed surveillance to be delayed for 24 hours, and require the completion of the surveillance requirements of an LCO prior to changing operational conditions. Exceptions to certain requirements of Sections 3.0 and 4.0 are also proposed. Paragraphs unaffected by this change would be relocated in some cases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment[s] would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Specification 3.0.3 has been added as a clarification to specifically limit entry into an operational condition when the conditions for the LCO are not met and the associated action statement requires a shutdown if they are not completed within a specified time interval. For [an] LCO that has action statement requirements permitting continued operation for an unlimited period of time or an exception to Specification 3.0.3, entry into an operational mode or other specified condition of operation should be permitted in accordance with those action statement

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requirements. This clarification is consistent with existing NRC regulatory requirements for [an] LCO.

Surveillances provide positive verification of operability. A 24-hour time limit has been included in Specification 4.0.3 allowing a delay of the required actions to permit the performances of the missed surveillance. This change is justified in that it is overly conservative to assume that systems or components are immediately inoperable when a surveillance requirement has not been performed. The NRC concluded in Generic Letter 87-09 that a 24-hour time limit balances the risks associated with an allowance for completing the surveillance within this period against the risks associated with the potential for a plant upset and challenge to safety systems when the alternative is a shutdown to comply with action statement requirements before the surveillance can be completed. The NRC concluded that the potential for a plant upset and challenge to safety systems is increased if surveillances are performed during actions to initiate a shutdown to comply with action statement requirements. We concur with this assessment and conclude that this change does not increase the probabilities or consequences of an accident.

Specification 4.0.4 has been modified to note that its provisions shall not prevent passage through or to operational conditions as required to comply with action statement requirements. This is consistent with the intent of the existing Technical Specifications and only represents a clarification.

No previously analyzed accident scenario is changed by [these amendments]. Initiating conditions and assumptions remain as previously analyzed.

(2) Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated above, the proposed changes do not involve changes to the physical plant or operations.

The changes being proposed to achieve consistency with Generic Letter 87-09 are clarifications of existing specifications with the exception of the 24-hour time limit to perform a missed surveillance. As noted in the generic letter, that change addresses a balance between positive verification of operability and the potential risk of known transients or plant upsets which may occur during activities to initiate a shutdown. This change does not alter any accident scenarios. Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

(3) Use of the modified specification would not involve a significant reduction in a margin of safety.

For the changes intended to achieve consistency with the recommendation of Generic Letter 87-09 "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions [for] Operation and Surveillance Requirements," the NRC [s]taff has previously evaluated these changes in the generic letter and determined that the modifications will result in improved [T]echnical [S]pecifications. No other changes are proposed.

Therefore, use of the proposed specification would not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Previously Published Notices Of Consideratioin Of Issuance of Amendments To Operating LIcenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: November 20, 1991 as supplemented December 5, 1991

Brief Description of amendments request: The proposed amendments would change the parameters in Technical Specification Table 2.2-1 to compensate for potential nonconservatisms in the F-Delta I (axial flux differences) portion to the Overtemperature-Delta T reactor trip function. Date of publication of individual notice in **Federal Register:** November 29, 1991 (56 FR 61062)

Expiration date of individual notice: Comment period expires December 14, 1991; Notice period expires December 30, 1991.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Notice Of Issuance Of Amendment To Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: August 23, 1991

Brief description of amendment: The amendment removes Technical Specification 4.0.1c which limits the combined time interval for any three consecutive surveillance intervals to less than 3.25 times the specified surveillance interval.

Date of issuance: December 10, 1991

Effective date: December 10, 1991

Amendment No. 137

Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** October 30, 1991 (56 FR 55943) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 10, 1991

No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: October 10, 1990, as amended by letter dated October 16, 1991.

Brief description of amendments: This amendment modifies the Technical Specification (TS) requirements for the High Pressure Core Spray (HPCS) system by permanently aligning the HPCS suction to the suppression pool and removing all TS requirements for aligning the HPCS suction to the condensate storage tank. In addition, containment isolation requirements are added for the new Reactor Core Isolation Cooling (RCIC) full flow test line to the suppression pool.

Date of issuance: November 27, 1991

Effective date: November 27, 1991

Amendment Nos.: 81 and 65

Facility Operating License Nos. NPF-11 and NPF-18. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 14, 1990 (55 FR 47569) The October 16, 1991, letter provided additional clarifying information that did not change the initial proposed no significant hazards consideration. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 27, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of application for amendment: September 26, 1991

Brief description of amendment: The proposed amendment would revise TS Sections 6.1.5(h), 6.2.2, 6.3.2, 7.3.5(e), and 7.5.7 to clarify equipment operability requirements during periods when all fuel is removed from the reactor vessel. This amendment request was submitted in response to a NRC Temporary Waiver of Compliance (TWC) granted to the Big Rock Point Plant on November 5, 1990.

Date of issuance: December 13, 1991

Effective date: December 13, 1991

Amendment No.: 106

Facility Operating License No. DPR-6. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 8, 1991 (56 FR 57360) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 13, 1991. No significant hazards consideration comments received: No.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: March 8, 1991

Brief description of amendments: The amendments revise Technical Specification 3.8.1.1 to increase the minimum volume of fuel oil for the emergency diesel generators from 28,000 gallons to 39,500 gallons for Modes 1 through 4.

Date of issuance: December 9, 1991

Effective date: December 9, 1991

Amendment Nos.: 129, 111

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 15, 1991 (56 FR 22463) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 9, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: July 26, 1989

Brief description of amendments: These amendments revise Technical Specifications Section 3.7 for both units to clarify testing requirements for the main steam line isolation valves and for the main feedwater line isolation valves.

Date of Issuance: December 5, 1991

Effective Date: December 5, 1991

Amendment Nos.: 111 & 52

Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 23, 1989 (54 FR 35102) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 5, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: February 26, 1991

Brief description of amendments: These amendments make administrative changes to achieve consistency throughout the Technical Specifications by removing outdated material, making minor text changes, and correcting errors.

Date of Issuance: December 5, 1991

Effective Date: December 5, 1991

Amendment Nos.: 112 & 53

Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 17, 1991 (56 FR 15641) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 5, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

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Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: October 31, 1991

Brief description of amendments: These amendments allow operation with the AFD outside the ±5% target band, without accruing penalty deviation time, solely for the calibration of excore detectors, provided the AFD is within the acceptable operation limits of TS Figure 3.2-1. In addition, a footnote is modified to include that such surveillance testing will be performed below 90% of rated thermal power. A Temporary Waiver of Compliance concerning this change was verbally granted by the NRC on October 30, 1991, followed by an NRC letter dated October 31, 1991.

Date of issuance: December 6, 1991

Effective date: December 6, 1991

Amendment Nos. 150 & 145

Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (56 FR 57537). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by December 12, 1991, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendments. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated December 6, 1991.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: June 26, 1991

Brief description of amendment: The amendment modifies Table 4.8.1.1.2-1 of the Technical Specifications (TS) related to the testing frequency of the Emergency Diesel Generators to permit returning to a regular monthly testing schedule from an increased test frequency when seven consecutive failure-free demands have been performed and the number of failures in the last 20 valid demands has been reduced to less than or equal to one regardless of which failure criteria in Table 4.8.1.1.2-1 had resulted in the increased testing frequency. This amendment also revises T.S. 4.8.1.1.3 "Reports" to allow failure statistics to be kept on a per-diesel-generator basis rather than on a per-nuclear-unit basis for the purpose of reporting failures.

Date of issuance: December 3, 1991

Effective date: December 3, 1991, to be implemented within 60 days

Amendment No.:

Amendment No. 62

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 2, 1991 (56 FR 49918) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 3, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: April 16, 1991

Brief description of amendments: The Technical Specifications (TS) definitions and requirements relating to Units 1 and 2 containment integrity and containment air lock operability and surveillance were revised. The definition of CONTAINMENT INTEGRITY (TS 1.8) along with its the related surveillance requirement (TS 4.6.1.1.b), and containment leakage limitations (TS 4.6.1.2.e) was revised to indicate that for containment integrity to exist, air locks must be in compliance with the applicable operability requirements. Also, the amendment deleted a Unit 1 surveillance requirement (TS 4.6.1.3.a) that air locks be visually inspected after each opening to verify that the seal has not been damaged.

Date of issuance: December 5, 1991

Effective date: December 5, 1991

Amendments Nos.: 160 & 144 Facility Operating Licenses Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 2, 1991 (56 FR 49919). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 5, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: May 13, 1991

Brief description of amendment: This amendment would modify the Maine Yankee Radiological Effluent Technical Specifications (RETS) in response to NRC guidance provided in Generic Letter 89-01. As recommended in the NRC guidance, procedural details currently found in the RETS are to be moved to the Offsite Dose Calculation Manual (ODCM), with programmatic controls incorporated into the Administrative Controls section of the Technical Specifications.

Date of issuance: December 4, 1991

Effective date: December 4, 1991

Amendment No.: 125

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 30, 1991 (56 FR 55948) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 4, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: September 4, 1991

Brief description of amendments: These amendments change Technical Specification 4.5.1.c.2 such that the HPCI system is verified to develop a flow of at least 5000 gpm against a test line pressure of greater than or equal to 245 psig when measured at the pump discharge centerline when steam is being supplied to the HPCI turbine at 150 ± 15 psig.

Date of issuance: December 2, 1991

Effective date: December 2, 1991

Amendment Nos.: 114 and 83

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 16, 1991 (56 FR 51927) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 2, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendment: April 26, 1990

Brief description of amendment: The amendments revised the Technical Specifications to extend the surveillance test intervals and allowable out-of-service times for instrumentation supporting the Reactor Protection System (RPS) and Emergency Core Cooling System (ECCS), including instrumentation common to the Control Rod Block Function, the Reactor Core Isolation Cooling system (RCIC), and the isolation instrumentation common to RPS and/or ECCS.

Date of issuance: December 2, 1991

Effective date: Units 1 and 2, Fifteen (15) days after date of issuance

Amendment No. 53 and 17

Facility Operating License Nos. NPF-39 and NPF-85. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 30, 1990 (55 FR 21975) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 2, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: January 16, 1991, supplemented October 10, 1991.

Brief description of amendment: The amendment deletes Table 3.7-1, "Primary Containment Isolation Valves," along with any associated notes and any references to this table from the Technical Specifications. These changes were made in accordance with the guidance given in NRC Generic Letter 91-08, "Removal of Component Lists from Technical Specifications," dated May 6, 1991. Several administrative changes have also been incorporated in this amendment.

Date of issuance: December 2, 1991

Effective date: December 2, 1991

Amendment No.: 173

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** February 20, 1991 (56 FR 60880) and renoticed October 30, 1991 (56 FR 55949). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 2, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of Oswego, Oswego, New York 13126.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: October 3, 1991

Brief description of amendments: The amendments revise the NA-1&2 TS 4.4.5.4.a.9 which provides preservice inspection (baseline eddy current examination) requirements for steam generator tubing.

Date of issuance: December 4, 1991

Effective date: December 4, 1991

Amendment Nos.: 151 and 135

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 30, 1991 (56 FR 55950) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 4, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: October 3, 1991

Brief description of amendments: The amendments revise the current NA-1&2 TS to ensure the design basis is met for the NA-1&2 Service Water System.

Date of issuance: December 13, 1991

Effective date: December 13, 1991

Amendment Nos.: 152 & 136

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 30, 1991 (56 FR 55950) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 13, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2405.

Notice of Issuance Of Amendment To Facility Operating License and Final Determination Of No Significant Hazards Consideration and Opportunity for Hearing (Exigent or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public

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comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By January 27, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington.

DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d). **Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington**

Date of application for amendment: November 25, 1991

Brief description of amendment: The amendment revised Technical Specifications 3.3.7.5 and 3.4.2 to allow continued plant operation with one safety relief valve acoustic monitor inoperable until the next refueling outage or until the first forced outage of sufficient duration to effect repair/replacement of the acoustic monitor.

Date of issuance: November 29, 1991

Effective date: November 29, 1991

Amendment No.: 96

Facility Operating License No. NPF-21: Amendment revised the Technical Specifications. Public comments requested as to no significant hazards consideration: No The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration determination are contained in a Safety Evaluated dated November 29, 1991.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Attorney for licensee: Nicholas S. Reynolds, Esq., Winston & Strawn, 1440 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theodore R. Quay

Dated at Rockville, Maryland, this 18th day of December 1991.

For the Nuclear Regulatory Commission

Bruce A. Boger,

Director, Division of Reactor Projects - III/IV/V Office of Nuclear Reactor Regulation

[Doc. 91-30697 Filed 12-24-91; 8:45 am]

BILLING CODE 7590-01-D

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-61, issued to Connecticut Yankee Atomic Power Company (the licensee), for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

The proposed amendment would modify Technical Specification (TS) 6.9.1.9, "Technical Report Supporting Cycle Operation," to add a reference that includes the analytical methods used to determine the core operating limits relative to Zircaloy fuel. In addition the licensee proposed to upgrade parts of their amendment request of June 27, 1991 to exigent circumstances. This action is not necessary as the proposed amendment has been previously noticed in the **Federal Register** on July 31, 1991 (56 FR 36175) and no comments or requests for hearing have been received. The proposed amendment is necessary to load the new Zircaloy fuel and operate the plant. Therefore, the exigent circumstances exist, as the current TS does not allow the fuel to be loaded and will delay the resumption of operation of the plant.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

All Chapter 15 accidents were reviewed to determine if they were impacted by the proposed change to Technical Specification 6.9.1.9. This proposed change is to the Technical Specifications only. There are no hardware changes associated with it and no equipment that is important to safety is affected by the proposed change. Adding the reference of the NRC SER for the LBLOCA analysis in no way will affect the plant response to design basis accidents.

The proposed change is to the Technical Specifications only and cannot be an initiating event for any previously analyzed accidents and as such does not affect the probability of occurrence of the previously evaluated accidents. Since plant operation and plant equipment important to safety are not affected by this proposed change, the offsite radiological releases from design basis accidents will not be increased and there will be no effect on the consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

As stated above, the proposed change is to the Technical Specifications only. The proposed change will not change plant conditions or plant response sufficiently to create an accident of a different type than previously evaluated. Adding a reference to the Technical Specifications will not affect plant conditions and thus, there is no possibility of a malfunction of a different type than previously analyzed.

3. Involve a Significant Reduction in a Margin of Safety.

Since there is no impact on the consequences of any accident, there can be no impact on any of the protective boundaries.

Adding the reference to Section 6.9.1.9 better defines the approved analytical methods used to determine the core operating limits. Therefore, the proposed change meets the intent of the technical specifications and does not impact the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within fifteen (15) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications

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Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 27, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2 the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram identification Number 3737 and the following message addressed to John F. Stolz: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearings will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amended dated December 16, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 19th day of December 1991.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–30632 Filed 12–24–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–412]

Dequesne Light Co., Ohio Edison Co., the Cleveland Electric Illuminating Co., the Toledo Edison Co., Beaver Valley Power Station, Unit 2; Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied, in part, a request by Duquesne Light Company (DLC) for an amendment to Facility Operating License No. NPF–73, issued to DLC for operation of the Beaver Valley Power Station, Unit 2, located in Beaver County, Pennsylvania. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on August 20, 1991 (56 FR 41580).

The purpose of the DLC's amendment request was to revise the Technical Specifications (TS) by deleting a nonapplicable (first fuel cycle only) Action statement and reannotating the last two Action statements. It will also modify Table 3.3–11 by deleting a nonapplicable (first fuel cycle only) note.

Included in this proposal was a request to reduce the total number of channels specified in table 3.3–11 for the Reactor Vessel Level Indication System (RVLIS) from 2 to 1. The proposed reduction in RVLIS channels is not consistent with Generic Letter 83–37 which specifies 2 channels, nor is it consistent with the Westinghouse Standard Technical Specifications. Furthermore, the current requirements for RVLIS are not unique to Beaver Valley Unit 2. Therefore, the NRC staff has concluded that your request to reduce the total number of RVLIS channels from 2 to 1 is not acceptable.

All other provisions of the amendment request have been approved by amendment No. 41 dated December 13, 1991. Notice of Issuance of Amendment No. 41 will be published in the Commission's biweekly **Federal Register** notice.

The DLC was notified of the Commission's partial denial of the proposed change by letter dated December 13, 1991.

By January 27, 1992, the DLC may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esquire and Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the DLC.

For further details with respect to this action, see (1) the application for amendment dated April 12, 1991, and (2) the Commission's letter to the DLC dated December 13, 1991.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 13th day of December 1991.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–30628 Filed 12–24–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–289]

GPU Nuclear Corp.; Notice of Consideration of Issuance of Amendment To Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–50, issued to GPU Nuclear Corporation, (the licensee), for operation of the Three Mile Island Nuclear Station, Unit 1 located in Dauphin County, Pennsylvania.

The proposed amendment would increase the number of spent fuel assemblies which may be stored in the spent fuel pool (SFP) from 749 assemblies to 1494 assemblies through use of high density spent fuel storage racks whose design incorporates Boral as a neutron absorber. The changes would affect Technical Specification Sections 5.4.1.a and 5.4.2. and adds a Figure 5–4.

Projections now indicate that full core discharge capability will be lost following the scheduled 1993 refueling outage. The increased storage capacity will extend his capability to the year 2023, well beyond the present license expiration date of 2014.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The following previously analyzed accident scenarios have been considered as part of the analyses required to support the

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installation of high density spent fuel storage racks:

a. Spent Fuel Assembly Drop—The criticality acceptance criterion, K_{eff} [less than or equal to] 0.95, is maintained and the radiological consequences remain bounded by previous analysis. Therefore, the proposed change has no effect on this accident scenario.

b. Spent Fuel Cask Drop—TMI–1 Technical Specifications preclude movement of spent fuel cask when fuel is stored in the spent fuel storage pools. Therefore, the proposed change has no effect on this accident scenario.

c. Seismic Event—The new racks are designed and fabricated to remain functional during and after a Safe Shutdown Earthquake under all loading conditions. Analysis has demonstrated that no rack-to-rack or rack-to-wall impacts occur. The potential for overturning has been analyzed and shown to be not possible. Pool slab analysis has demonstrated adequate structural integrity for all postulated loading conditions. Therefore, the proposed change has no effect on this accident scenario.

d. Loss of Spent Fuel Pool Cooling—Sufficient time is available to provide an alternate means of cooling in the event of a failure in the cooling system. Therefore, the proposed change has no effect on this accident scenario.

Accordingly, the proposed modification does not increase the probability of occurrence or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. Administrative controls during rack installation will preclude the movement of a new or existing rack[s] directly over any fuel. The new fuel storage vault and the decontamination pit will be equipped with structural impact shields adequate to sustain a potential rack drop. The Fuel Storage Building crane has sufficient safety factor to preclude potential single-failure mechanisms. Therefore, this change has no effect on the possibility of creating a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. Analysis has demonstrated that the established critically acceptance criterion, K_{eff} [less than or equal to] 0.95 including uncertainties, is maintained with the racks fully loaded with fuel of the highest anticipated reactivity. Thermal-hydraulic analyses is not exceeded for the increase in pool heat load, and that the maximum local water temperature along with the hottest fuel assembly is below the nuclear boiling condition value. The maximum calculated bulk pool water temperature of 160°F results in a negligible decrease in the time-to-boil margin of safety. The rack materials used are compatible with the spent fuel pool and the spent fuel assemblies. The structural considerations have maintained margins of safety against tilting and deflection or movement. Therefore, this change has no effect on the margins of safety related to nuclear criticality, thermal and structural integrity, and material compatibility.

The proposed amendment is considered to be in the same category as example (x) of amendments that are considered not likely to involve significant hazards consideration as provided in the final NRC adoption of 10 CFR 50.92 published on page 7751 of the **Federal Register** Volume 51, No. 44, March 6, 1986. This example indicates that an amendment is not likely to involve a significant hazards condition as follows:

Criterion (1)

The storage expansion method consists of either replacing existing racks with a design which allows closer spacing between stored spent fuel assemblies or placing additional racks of the original design on the pool floor if space permits.

Proposed Amendment

The TMI–1 spent fuel pool rerack involves both replacing existing and adding new racks where space permits. The new racks allow closer spacing of the stored spent fuel by incorporating a neutron absorber and requiring that only burned fuel be stored in Region II. Region I is designed for allowing safe storage of fresh or irradiated fuel.

Criterion (2)

The storage expansion method does not involve rod consolidation or double tiering.

Proposed Amendment

The TMI–1 racks are not double tiered and all racks will sit on the spent fuel pool floor. Additionally, the amendment application does not involve consolidation of spent fuel.

Criterion (3)

The K_{eff} of the pool is maintained less than or equal to 0.95.

Proposed Amendment

The design of the new spent fuel racks contains a neutron absorber, Boral, to allow close storage of spent fuel assemblies while ensuring that the K_{eff} remains less than 0.95 under all operating conditions with pure water in the pool.

Criterion (4)

No new technology or unproven technology is utilized in either the construction process or the analytical techniques necessary to justify the expansion.

Proposed Amendment

The rack designer, Holtec International, has licensed at least ten (10) other racks of the same design. The construction processes and analytical techniques remain substantially the same as these other ten (10) rack installations. Thus, no new or unproven technology is utilized in the construction or analysis of the high density TMI–1 spent fuel racks.

Thus, the submittal meets example (x) presented in the supplementary information accompanying publication of the Final Rule and is considered as not involving significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:14 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 27, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41670, October 15, 1985) to 10 CFR 2.1101 *et seq.* Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within 10 days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules

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in 10 CFR part 2, subpart G, and 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in adjudicatory hearing. If no party to the proceedings requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G, apply.

For further details with respect to this action, see the application for amendment dated November 14, 1990, as supplemented June 6, June 14, and September 18, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 18th day of December 1991.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–30831 Filed 12–24–91; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Extension of OPM Form 1530

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S.C., chapter 35), this notice announces a request to extend an information collection from the public. OPM Form 1530, Report of Medical Examination of Person Electing Survivor Benefit Under the Civil Service Retirement System, is completed by employees who wish to provide a survivor benefit for a person who has an insurable interest in the applicant. This form is designed to collect information from both the applicant and the applicant's physician regarding the applicant's health.

Approximately 1,000 insurable interest survivor annuities are elected annually. It requires one hour and 30 minutes to assemble the needed information. The annual burden is 1500 hours.

For copies of this proposal, contact C. Ronald Trueworthy, on (703) 908–8550.

ADDRESSES: Send or deliver comments to:

Mary Beth Smith-Toomey, Program Clearance Officer, U.S. Office of Personnel Management, 1900 E. Street, NW., SBH22, Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey (202) 606–0623.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91–30722 Filed 12–24–91; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–30086; File No. SR–CBOE–91–46]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Telecommunication Charges

December 17, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 22, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposed a new $10 per month fee to be charged to active clearing firms (those actually executing trades)[1] to recover the cost of an enhancement to the CBOE's trading floor telephone system. The enhancement will provide clearing firms with telephone access from the trading floor to the back offices of clearing firms. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis, for, the Proposed Rule Change

(1) Purpose

As an enhancement to intraday trade checking, the Exchange is providing telephone access from the trading floor to clearing firm back offices. Members will have direct access from each trading post and station to clearing firm back offices for the review of trade tickets and out-trade reports. In order to cover the cost of this service, the Exchange has determined to charge each active clearing firm ten dollars per months.

(2) Basis

The Exchange believes that the proposed rule change is consistent with

[1] The fee is only applicable to active clearing firms. Firms that are members of both the CBOE and the Options Clearing Corporation are eligible to self-clear. Not all such firms, however, are actively self-clearing. Some of such firms are executing through other clearing members, and others are inactive for various reasons. Only those firms that are actually executing trades on a daily basis will be deemed "active firms" and assessed the fee. See letter from Nancy L. Nielsen, Assistant Corporate Secretary, CBOE, to Mark McNair, Staff Attorney, Division of Market Regulation, dated December 9, 1991.

section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(4), in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by January 16, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–30823 Filed 12–24–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30101; File No. SR–OCC–91–20]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Rescission of Amendment No. 5 to Stockholders Agreement

December 18, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 18, 1991, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to rescind Amendment No. 5 to the OCC Stockholders Agreement ("Amendment No. 5") and to repeal Article III, section 9(b) of the By-laws. Amendment No. 5 provided in substance that in the event of a sale or liquidation of OCC, OCC's stockholder would pay over a portion of the after-tax proceeds to Clearing Members. Article III, section 9(b) of the By-laws provided for the establishment of a Transaction Committee to represent the interests of Clearing Members in transactions covered by Amendment No. 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to rescind Amendment No. 5 and to repeal Article III, section 9(b) of OCC's By-laws. In a pending audit of OCC's income tax returns for the years 1987 through 1990, an Internal Revenue Service ("IRS") auditor preliminarily has asserted that OCC's Clearing Members should be treated as stockholders for federal income tax purposes. If this contention were to be sustained, OCC might be required to treat clearing fee refunds as non-deductible dividends rather than as deductible business expenses.

The IRS auditor has cited Amendment No. 5, which became effective in October 1990,[1] as support for his position. Amendment No. 5 provided in substance that in the event of a sale or liquidation of OCC, OCC's stockholders would pay over a portion of the after-tax proceeds to those entities that were then Clearing Members. The IRS auditor contends that Amendment No. 5 gives Clearing Members an economic interest in OCC's assets similar to that of a stockholder.

OCC considers the auditor's position to be without merit. Nevertheless, since the events that would trigger Amendment No. 5 are sufficiently remote, OCC does not believe that providing for them is important enough to warrant giving the IRS an additional argument, however weak, in support of its audit position.

The proposed rule change will approve a New Amendment No. 6 to the Stockholders Agreement that will rescind Amendment No. 5 retroactively to its effective date. The proposed rule change will also repeal article III, section 9(b) of OCC's By-laws, which provides for the establishment of a Transaction Committee to represent the interests of Clearing Members in transactions covered by Amendment No. 5. Lastly, the proposal will delete from article III, section 9 certain language that was replaced in a previous rule filing but inadvertently was not deleted.[2]

[1] Securities Exchange Act Release No. 28500 (October 1, 1990), 55 FR 41407 (File No. SR–OCC–90–07).

[2] Securities Exchange Act Release No. 27211 (September 1, 1989), 54 FR 37855.

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B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change were not and are not intended to be solicited by OCC, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission believes the proposed rule change is consistent with the Act and in particular with sections 17A(b)(3) (A) and (F) of the Act.[3] Those Sections require that a clearing agency, such as OCC, be organized and that its rules be designed to assure the safeguarding of securities and funds which are in its custody and control or for which it is responsible. Clearing fees, a portion of which are returned periodically to Clearing Members, represent funds that are within the custody and control of OCC. The purpose of this proposed rule change is to modify the process by which the after-tax proceeds of a sale or liquidation of OCC are to be distributed to Clearing Members. By rescinding Amendment No. 5, OCC will help clarify the tax treatment of annual clearing fee refunds.

OCC has requested that the Commission find good cause for approving the proposed rule change prior to thirty days after the date of publication of this notice in the **Federal Register**. The Commission finds good cause for so approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because of the Commission's belief that it is desirable that the proposed rule change be approved before OCC authorizes at its December 19, 1991, Board of Directors meeting any refund of clearing fees to be paid in 1991.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principle office of OCC. All submissions should refer to File No. SR-OCC-91-20 and should be submitted by January 16, 1992.

V. Conclusion

On the basis of the foregoing, the Commission finds the proposed rule change to be consistent with the Act and in particular with section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [4] that the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [5]

Jonathan G. Katz,

Secretary.

[FR Doc. 91-30824 Filed 12-24-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

December 19, 1991.

The above named national securities exchange as filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Attwoods, Plc
American Depositary Shares (File No. 7-7695)
Argentina Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-7696)
Agricultural Minerals Co.
Limited Partners, Senior Preferred Units, No Par Value (File No. 7-7697)
Bangor Hydro
Common Stock, $5.00 Par Value (File No. 7-7698)
Blackstone Municipal Target Term Trust, Inc.
Common Stock, $.01 Par Value (File No. 7-7699)
Damon Corp.
Common Stock, $.01 Par Value (File No. 7-7700)
Foxmeyer Corp.
Common Stock, $.01 Par Value (File No. 7-7701)
General Physics Corp.
Common Stock, $.025 Par Value (File No. 7-7702)
Health Care & Retirement Corp.
Common Stock, $.01 Par Value (File No. 7-7703)
Horace Mann Educator Corp.
Common Stock, $.01 Par Value (File No. 7-7704)
Morgan Stanley Emerging Markets Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-7705)
Owens-Illinois, Inc.
Common Stock, $.01 Par Value (File No. 7-7706)
Presley Companies
Common Stock, $.01 Par Value (File No. 7-7707)
Sunbelt Nursery Group, Inc.
Common Stock, $.01 Par Value (File No. 7-7708)
Shopko Stores, Inc.
Common Stock, $.01 Par Value (File No. 7-7709)
Warnaco Group, Inc.
Common Stock, $.01 Par Value (File No. 7-7710)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 13, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-30746 Filed 12-24-91; 8:45 am]

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[3] 15 U.S.C. 78q-1(b)(3) (A) and (F).

[4] 15 U.S.C. 78s(b)(2).

[5] 17 CFR 200.30-3(a)(12).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

December 19, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Guaranty National Corporation
Common Stock, $1.00 Par Value (File No. 7-7711)
Heist (C.H.) Corporation
Common Stock, $.05 Par Value (File No. 7-7712)
K-V Pharmaceuticals Company
Class B Common Stock, $.01 Par Value (File No. 7-7713)
Employee Benefit Plans, Inc.
Common Stock, $.01 Par Value (File No. 7-7714)
Healthtrust, Inc. The Hospital Company
Common Stock, $.001 Par Value (File No. 7-7715)
Muniyield Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-7716)
Oceaneering International, Inc.
Common Stock, $.25 Par Value (File No. 7-7717)
Tenneco, Inc.
Depository Shares (representing ⅛ share Series A Cumulative Preferred Stock, Without Par Value) (File No. 7-7718)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 13, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-30747 Filed 12-24-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1540]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Study Group A Meeting; Meeting

The Department of State announces that CCITT Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on Thursday, January 16, 1992 in Conference Room 1107, commencing at 9:30 a.m. at the Department of State, 2201 C Street, NW, Washington, DC 20520.

The Agenda for this meeting will include a review of the results of the Baltimore Rapporteurs meeting of Study Group III, several SG-A ad hoc meetings to prepare for Study Groups II and III activities upcoming in January and February, 1992, and upcoming meetings of Study Group I. A more detailed draft agenda for the Study Group A meeting will be introduced at this meeting.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair.

Please Note: Persons planning to attend the above meeting must announce this no later than five days before the meeting to the Department of State, Earl S. Barbely (202) 647-0201 (fax 202-647-7407). The announcement must include name, social security number, and date of birth, if you have not already provided this personal data to this office. The above includes government and non-government attendees. All attendees must use the C Street entrance.

Please bring 60 copies of documents to be considered at this meeting. If the document has been mailed, bring only 10 copies.

Dated: December 17, 1991.

Earl S. Barbely,

Director Telecommunications and Information Standards, Chairman, U.S. CCITT National Committee.

[FR Doc. 91-30816 Filed 12-24-91; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 1536]

Overseas Schools Advisory Council; Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Executive Committee meeting on Wednesday, January 22, 1992, at 9:30 a.m. in Conference Room 1105, Department of State Building, 2201 C Street, NW., Washington, DC. The meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas which are assisted by the Department of State and which are attended by dependents of U.S. government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Access to the State Department is controlled and individual building passes are required for each attendee. Entry will be facilitated if arrangements are made in advance of the meeting. Persons who plan to attend should so advise the office of Dr. Ernest N. Mannino, Department of State, telephone 703-875-7800, prior to January 20. All attendees must use the C Street entrance to the building.

Dated: December 11, 1991.

Ernest N. Mannino,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 91-30813 Filed 12-24-91; 8:45 am]

BILLING CODE 4710-24-M

[Public Notice 1539]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Working Group on Carriage of Dangerous Goods; Meeting

The Working Group on Carriage of Dangerous Goods of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 a.m. on January 15, 1992, in room 2415, at U.S. Coast Guard Headquarters, 2100 2d Street, SW., Washington, DC 20593-0001. The purpose of the meeting is to finalize preparations for the 43rd Session of the Subcommittee on the Carriage of Dangerous Goods of the International Maritime Organization (IMO) which is scheduled for January 27-31, 1992, at the IMO Headquarters in London. The agenda items include:

a. Amendments to the International Maritime Dangerous Goods (IMDG) Code.

b. Implementation of the IMDG Code.

c. Amendments to section 13 of the General Introduction to the IMDG Code

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to cover transport in tanks of solid dangerous substances including molten substances in solidified form, and the transport of dangerous substances under heated conditions.

d. Revision of section 21 of the General Introduction—Controlled temperature requirements.

e. Development of criteria for stowage and segregation requirements.

f. Development of criteria for the hermetic sealing of receptacles, packages and Intermediate Bulk Containers.

g. Amendments to the Emergency Procedures for Ships Carrying Dangerous Goods and the Medical First Aid Guide for Use in Accidents involving Dangerous Goods.

h. Implementation of Annex III of the Marine Pollution Convention (MARPOL 73/78), as amended, and amendments to the IMDG Code to cover pollution aspects (including immersion testing of packages for marine pollutants).

i. Carriage of dangerous goods on vehicle decks of passenger ships.

j. Requirements for hazardous ships' stores.

k. Transboundary movement of wastes by sea.

l. Stowage and segregation in open-top container ships.

m. Relations with other organizations.

n. Requirements for carriage of irradiated nuclear fuel.

o. Marking of explosives for detectability.

p. Reports on incidents involving packaged dangerous goods or marine pollutants on board ships or in port areas.

q. Dangerous goods in passengers' baggage and cars.

r. Carriage of dangerous goods documentation.

s. Updating of the Recommendations on the Safe Transport, Handling and Storage of Dangerous Goods in Port Areas.

t. Review of existing ships' safety standards.

u. Review of the Hazardous and Noxious Substances (HNS) Working Group Reports—Draft HNS Convention.

v. Night signals on ships carrying dangerous goods.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: CDR K. J. Eldridge, U.S. Coast Guard (G–MTH–1), 2100 Second Street, SW., Washington, DC 20593–0001 or by calling (202) 267–1577.

Dated: December 17, 1991.

Bruce Carter,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 91–30814 Filed 12–24–91; 8:45 am]

BILLING CODE 4710–04–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended December 13, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47904.
Date filed: December 9, 1991.
Parties: Members of the International Air Transportation Association
Subject: PAC/Reso/371 dated December 2, 1991. Finally Adopted Resolutions, R–1 to R–21. PAC/Meet/115 dated December 2, 1991–Minutes.
Proposed Effective Date: April 1, 1992.

Docket Number: 47905.
Dated Filed: December 9, 1991.
Parties: Members of the International Air Transport Association.
Subject: Telex dated December 5, 1991. Reso 024f—Fare Changes From Sri Lanka.
Proposed Effective Date: Upon Necessary Government Approvals.

Docket Number: 47906.
Date filed: December 9, 1991.
Parties: Members of the International Air Transport Association.
Subject: Telex dated December 2, 1991. Mail Vote 525–Belgium to Libya GIT fares (Reso 084gg).
Proposed Effective Date: January 1, 1992.

Docket Number: 47907.
Date filed: December 9, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC23 Reso/P0476 dated November 20, 1991. Middle East–TC3 Expedited Resos R–1 to R–4.
Proposed Effective Date: March 1, 1992.

Docket Number: 47914.
Dated filed: December 13, 1991.
Parties: Members of the International Air Transport Association.
Subject: Telex dated December 5, 1991. Mail Vote 526 (China-Japan fares) R–1 to R–4.
Proposed Effective Date: January 4, 1992.

Docket Number: 47915.
Date filed: December 13, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC2 Reso/P 1172 dated December 5, 1991. Europe-Middle East Expedited Resos R–1 to R–5.
Proposed Effective Date: February 1, 1992.

Docket Number: 47916.
Date filed: December 13, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC12 Reso/P 1357 dated September 19, 1991. South Atlantic Resos R–1 to R–13.
Proposed Effective Date: April 1, 1992.

Docket Number: 47919.
Date filed: December 13, 1991.
Parties: Members of the International Air Transport Association.
Subject: SNATC2061 dated October 24, 1991. U.S.-Europe Agreement R–1 to R–3.
Proposed Effective Date: April 1, 1992.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91–30820 Filed 12–24–91; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 13, 1991

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47911.
Date filed: December 11, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 8, 1992.
Description: Application of Delta Air Lines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations applies for a new or amended certificate of public convenience and necessity to permit Delta to provide foreign air transportation between Honolulu, Hawaii and Nagoya, Japan.

Docket Number: 47912.
Date filed: December 12, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 9, 1992.

Description: Application of Patriot Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, for issuance of a certificate of public convenience and necessity so as to authorize Patriot to provide interstate and overseas air transportation of persons, property and mail between various points in the United States.

Docket Number: 47917.
Date filed: December 13, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 10, 1992.
Description: Application of USAir, Inc., pursuant to section 401 of the Act and subpart Q of the Act applies for a new or amended certificate of public convenience and necessity so as to authorize USAir to provide scheduled foreign air transportation on a nonstop basis between Baltimore/Washington and Tampa, on the one hand, and Grand Cayman, Cayman Islands, on the other hand.

Docket Number: 44992.
Date filed: December 10, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 7, 1992.
Description: Application of Compania de Aviacion "Faucet," S.A., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for renewal of its foreign air carrier permit to engage in scheduled foreign air combination passenger, property and mail service between the United States and Peru.

Docket Number: 44944.
Date filed: December 11, 1991.
Due Date for Answers, Conforming Application, or Motion to Modify Scope: January 8, 1992.
Description: Application of Aeronaves Del Peru, pursuant to section 402 of the Act, requests renewal of its foreign air carrier permit for an additional indefinite period authorizing it to engage in scheduled foreign air transportation of property and mail twice weekly between Lima, Peru; via the intermediate points Panama City, Panama; Guayaquil, Ecuador (blind sector); Bogata and Cali, Columbia (blind sectors); and the terminal point Miami, Florida.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91–30819 Filed 12–24–91; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF THE TREASURY

Customs Service

Current IRS Interest Rate Used In Calculating Interest on Overdue Accounts and Refunds

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of calculation and interest.

SUMMARY: This notice advises the public of the interest rates for overpayments and underpayments of Customs duties. The rates are 8 percent for overpayments and 9 percent for underpayments for the quarter beginning January 1, 1992. This notice is being published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Robert B. Hamilton, Jr., Revenue Branch, National Finance Center, (317) 298–1245.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 20 U.S.C. 6621. Interest rates are determined based on the short-term Federal rate. The interest rate that Treasury pays on overpayments will be the short-term Federal rate plus two percentage points. The interest rate paid to the Treasury for underpayments will be the short-term Federal rate plus three percentage points. The rates will be rounded to the nearest full percentage.

The interest rates are determined by the Internal Revenue Service on behalf of the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the U.S. with remaining periods to maturity of 3 years or less and are to fluctuate quarterly. The rates are determined during the first month of a calendar quarter and become effective for the following quarter.

The rates of interest for the period of January 1, 1992—March 31, 1992, are 8 percent for overpayments and 9 percent for underpayments. These rates will remain in effect through March 31, 1992, and are subject to change on April 1, 1992.

Dated: December 20, 1991.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 91–30827 Filed 12–24–91; 8:45 am]

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Sunshine Act Meetings

Federal Register
Vol. 56, No. 248
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This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, January 7, 1992.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza SW., Washington, DC 20024.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5428A Marine Accident Report: Grounding of the U.S. Tankship STAR CONNECTICUT, Barbers Point, Hawaii, November 6, 1990.

NEWS MEDIA CONTACT: Telephone (202) 382-0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

December 20, 1991.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 91-30910 Filed 12-23-91; 10:27 am]

BILLING CODE 7533-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, January 6, 1992, and at 8:30 a.m. on Tuesday, January 7, 1992, in Washington, D.C. The January 6 meeting, at which the Board will consider the Postal Rate Commission's November 22, 1991, Opinion and Recommended Decision Approving Stipulation and Agreement in Docket No. MC91-2, is closed to the public. (See 56 FR 64543, December 10, 1991)

The January 7 meeting is open to the public and will be held in the Benjamin Franklin Room on the 11th floor of U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

AGENDA

Monday Session

January 6-1:00 p.m. (Closed)

1. Conservation of the Postal Rate Commission's November 22, 1991, Opinion and Recommended Decision Approving Stipulation and Agreement in Docket No. MC91-2.

Tuesday Session

January 7-8:30 a.m. (Open)

1. Minutes of the Previous Meeting, December 2-3, 1991.
2. Remarks of the Postmaster General. (Anthony M. Frank)
3. Annual Report on Open Meeting Compliance. (David F. Harris, Secretary of the Board)
4. Report on Quality Program. (David H. Charters, Senior Assistant Postmaster General, Quality)
5. Status Report on Strategic Plan. (Frank R. Power, Assistant Postmaster General, Planning Department)
6. Annual Report of the Postmaster General. (Edward E. Horgan, Jr., Associate Postmaster General)
7. Report on Human Resources Group. (Joseph J. Mahon, Jr., Senior Assistant Postmaster General, Human Resources Group)
8. Annual Report on EEO/Affirmative Action. (Donna A. Galloway, Executive Director, Office of Equal Employment Opportunity)
9. Report on Technology Resource Department. (Karen T. Uemoto, Assistant Postmaster General, Technology Resource Department)
10. Capital Investments.
   a. Small Parcel and Bundle Sorter. (William J. Dowling, Assistant Postmaster General, Engineering and Technical Support Department)
   b. Raleigh, North Carolina, GMF and VMF. (Stanley W. Smith, Assistant Postmaster General, Facilities Department, and William J. Henderson, Greensboro Field Division General Manager/Postmaster)
   c. Columbia, South Carolina, GMF and VMF. (Mr. Smith and Bill R. Austin, Columbia Field Division General Manager/Postmaster)
   d. Bangor, Maine, Mail Processing Facility. (Mr. Smith and Ray D. Stewart, Manchester, New Hampshire, Field Division General Manager/Postmaster)
   e. Norman, Oklahoma, Technical Training Center Facility Deviation Request. (Mr. Smith and Elwood A. Mosley, Assistant Postmaster General, Training and Development Department)
11. Election of Chairman and Vice Chairman.
12. Tentative Agenda for February 3-4, 1992, meeting in Miami, Florida.

David F. Harris,

Secretary.

[FR Doc. 91-30911 Filed 12-23-91; 10:28 am]

BILLING CODE 7710-12-M

federal register

Thursday
December 26, 1991

Part II

The President

Proclamation 6398—National Ellis Island Day, 1992

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Federal Register
Vol. 56, No. 248
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Presidential Documents

Title 3—

The President

Proclamation 6398 of December 23, 1991

National Ellis Island Day, 1992

By the President of the United States of America

A Proclamation

The ethnic diversity that we so proudly celebrate in the United States mirrors our rich heritage as a Nation of immigrants. "Here is not merely a Nation," wrote Walt Whitman, "but a teeming nation of nations . . . . Here is the hospitality which forever indicates heroes." One of the greatest symbols of American hospitality stands at Ellis Island in Upper New York Bay.

A century ago, on January 1, 1892, the immigrant station on Ellis Island was opened as a gateway to America. Between 1892 and 1954, nearly 17 million immigrants entered the United States through this portal. Many sought refuge from tyranny and persecution. All sought new lives in this great land of freedom and opportunity.

At Ellis Island, millions of immigrants from around the world were able to look across the Bay toward our magnificent Statue of Liberty, the famed "Mother of Exiles" who lifts her lamp "beside the golden door." During the mass wave of immigration that spanned from 1900 to 1914, they came, especially immigrants from throughout Southern and Eastern Europe. Indeed, 100 million Americans, some 40 percent of our population, can trace their ancestry through Ellis Island.

The course of immigration to this country has fluctuated throughout the history of the United States. Recent years, for example, have seen increased numbers of immigrants of Hispanic and Asian origin. But whatever their place of origin or point of entry, each generation of immigrants has bettered America.

Indeed, it is fitting that the restoration of Ellis Island has constituted the largest historic renovation project in the history of the United States. After all, immigration has been one of the largest single factors in our Nation's social, cultural, and economic development. Walt Whitman aptly noted that, in the eyes of the poet, "the other continents arrive as contributions . . . he gives them reception for their sake and for his own sake." That has always been true, for immigrants have enriched the United States beyond measure, bringing many contributions to our society along with the unique customs and traditions of their ancestral homeland. Most important, they have shared eagerly in the hard work of freedom, helping to defend the ideals of liberty and self-government and helping to build our churches, schools, factories, farms, and railroads.

Visiting Ellis Island today or seeing pictures of this place evokes strong chords in our national memory—the relief immigrants felt upon landing, the strangeness of new surroundings, the babble of languages, the pain of separation from family and friends remaining in the Old World, the despair felt by those few who were not admitted and forced to return to their countries. Whatever our personal histories, who does not recall the pictures—a woman in a head scarf holding a wide-eyed child, a man burdened with his belongings and tools of his trade, a 45-star flag perched above a full waiting room of anxious people—and not felt a breath of recognition; a twinge of silent pain; or, most of all, a feeling of gratitude that our ancestors chose to live or remain in this, the freest, greatest country on Earth?

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America's history has long been a story of immigrants, and today Ellis Island stands as a glorious reminder that new chapters are being added to that narrative each day. Thus, as we celebrate the 100th anniversary of this historic place, evocative symbol of so much of our Nation's heritage, let us not only salute the many generous contributors who made its renovation possible but also offer a warm welcome to the immigrants of today—our fellow Americans of tomorrow.

The Congress, by Public Law 102–177, has designated January 1, 1992, as "National Ellis Island Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim January 1, 1992, as National Ellis Island Day. I invite all Americans to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of December, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.

George Bush

[FR Doc. 91–31003
Filed 12–23–91; 2:16 pm]
Billing code 3195–01–M

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Note: This completes the listing of public laws enacted during the first session of the 102d Congress.

The list will be resumed when bills are enacted into public law during the second session of the 102d Congress, which convenes on January 3, 1992. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470).

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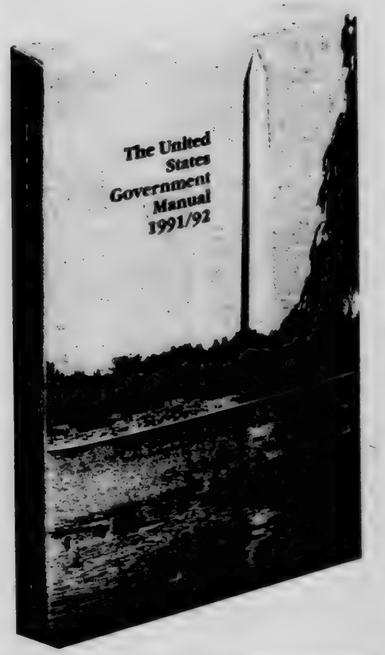
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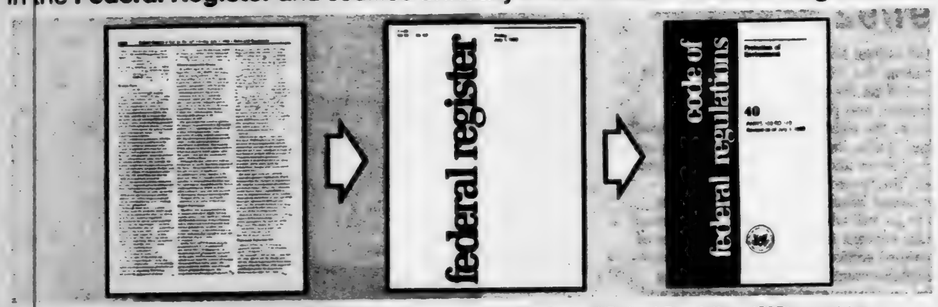
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1030

[DA-91-020]

Milk in the Chicago Regional Marketing Area; Revision of Supply Plant Shipping Percentages

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Revision of rules.

SUMMARY: This action revises certain provisions of the Chicago Regional milk order for the month of December 1991. The action reduces the shipping percentages for pooling individual supply plants by 4 percentage points (from 5 to 1 percent of receipts) and units of supply plants by 6 percentage points (from 10 to 4 percent of receipts). The revision is made in response to a request by Central Milk Producers Cooperative, a federation of cooperatives that represents producers who supply the market. The action is necessary to prevent uneconomic shipments of milk from supply plants to distributing plants.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, 202-720-6274.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Revision of Supply Plant Shipping Percentages: Issued November 27, 1991; published December 4, 1991 (56 FR 63470).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The action reduces the regulatory impact of the order on certain milk handlers and tends to ensure that the market will be adequately supplied with milk for fluid use with a smaller proportion of milk shipments from pool supply plants.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the provisions of § 1030.7(b)(5) of the Chicago Regional order.

Statement of Consideration

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, and other available information, it is hereby found and determined that the supply plant shipping percentages should be lowered by 4 percentage points (from 5 to 1 percent of receipts) for individual supply plants and by 6 percentage points (from 10 to 4 percent of receipts) for supply plant units during December 1991.

Currently, the order provides that individual supply plants must ship at least 5 percent of milk receipts to other plants to qualify as pool plants while a unit of supply plants must ship at least 10 percent of total receipts for pooling purposes during the months of September through December. During other months the shipping standards are 3 percent for individual plants and 6 percent for a unit of plants.

The Chicago order provides that the market administrator may adjust the shipping standards for individual plants and units of plants by up to 2 percentage points. The order also provides that the Director of the Dairy Division may increase the shipping standards by up to 5 percentage points or decrease the shipping standards up to 10 percentage points. The adjustments can be made to encourage additional milk shipments or to prevent uneconomic shipments.

The revision was requested by Central Milk Producers Cooperative (CMPC), a federation of cooperative associations that represent a substantial number of the producers who supply the market. CMPC contends that a reduction of the shipping percentages is necessary to prevent uneconomic shipments of milk from distant supply plants solely for pooling purposes.

Based on supply and sales estimates, CMPC requested that the market administrator reduce the shipping percentages by 2 percentage points during December. A reduction of shipping percentages by the market administrator has been issued for December.

Based on the most recent supply and demand estimates, CMPC indicated that a further reduction of the shipping percentages for December was necessary. CMPC contends that in order to make the most efficient use of available milk supplies as much as possible of nearby milk supplies will have to be utilized with reliance on distant supplies only on days when nearer milk supplies have been exhausted. For the month of December, CMPC indicates that such efficiencies can only be realized if the shipping standards for individual plants and units of supply plants are reduced to 1 and 4 percent of receipts, respectively.

In view of the supply/demand relationship for the market, the supply plant shipping percentages should be reduced for December 1991. A reduction of the shipping percentages will contribute to orderly marketing in that costly and inefficient shipments of milk from distant supply plants will not be necessary. Thus, dairy farmers who have supplied the market will continue to have their milk pooled under the order.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to public interest in that:

(a) This revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the month of December;

(b) This revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this issue. No opposing views were received.

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Therefore, good cause exists for making this revision effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1030

Milk marketing orders.

It is therefore ordered, that the following provisions of § 1030.7(b) of the Chicago Regional milk order are hereby revised for the month December 1991.

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. The authority for 7 CFR part 1030 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

§ 1030.7 [Amended]

2. In the introductory text of § 1030.7(b), the provision "5 percent" is revised to "1 percent" and the provision "10 percent" is revised to "4 percent" for the month of December 1991.

Signed at Washington, DC, on December 19, 1991.

W.H. Blanchard,

Director, Dairy Division.

[FR Doc. 91–30959 Filed 12–26–91; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1403

Debt Settlement Policies and Procedures

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Final rule.

SUMMARY: A proposed rule was published in the **Federal Register** on May 21, 1991, at 56 FR 23250, amending 7 CFR part 1403, which sets forth the debt settlement policies and procedures of CCC. This final rule adopts the provisions of the proposed rule. The regulations at 7 CFR part 1403 are currently applicable to debts by and against CCC arising out of domestic transactions. This final rule amends the regulations to provide that they will be applicable to all debts by and against CCC, whether or not they arise from domestic transactions. This final rule also makes special provisions for collection of price support loans, amends other existing provisions for clarity and makes technical changes.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: Carol Spencer, Debt Management and Contract Procedures Branch, Financial Management Division, ASCS, (202) 720–8975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in conformance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs and prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action does not constitute a review as to need, currency, clarity, and effectiveness of these regulations under Departmental Regulation 1512–1. No sunset review date has been set for this regulation because review is ongoing.

This action will not increase the Federal paperwork burden for individuals, small businesses, and others and will not have a significant impact on a substantial number of small entities. Therefore, this action is exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This action will not have a significant impact specifically upon area and community development; therefore, review as established by Executive Order 12372 (July 14, 1982) was not used to assure that units of local government are informed of this action.

Background

The Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (the Act), (31 U.S.C. 3711 *et seq.*), and the joint regulations promulgated thereunder by the Comptroller General and the Attorney General (4 CFR parts 101–105) provide minimum standards for the administrative collection of claims by the United States. The Act also provides that nothing therein shall diminish the existing authority of the head of an agency to settle, compromise, or close claims. The CCC Charter Act, as amended (15 U.S.C. 714 *et seq.*), provides that CCC shall have authority to make final and conclusive settlement and adjustment of any claims by or against it, irrespective of the amount at issue. CCC is, therefore, not subject to the provisions of the Federal Claims Collection Act or its implementing regulations. However, it has been CCC policy to follow the Federal Claims Collection Standards (FCCS) to the maximum practicable extent. The FCCS require each federal agency to take aggressive action to collect debts owed it, and to cooperate with other federal agencies in their debt collection activities. Federal agencies are required to promulgate regulations consistent with the standards.

The regulations applicable to debts by and against CCC arising out of domestic transactions are currently set forth at 7 CFR part 1403. These transactions give rise to, among other types of claims, cargo losses and damage claims arising under title II of the Agricultural Trade Development and Assistance Act of 1954 ("Pub. L. 480"), as amended, or other export relief programs and section 416 of the Agricultural Act of 1949, as amended. Since CCC may, on occasion, enter into transactions outside of the United States, CCC has amended these regulations to provide that they will be applicable to all CCC transactions. This action ensures a uniform debt settlement policy for all CCC debts. This rule applies only to private debt. "Government-to-Government" debt settlement procedures are not affected.

This final rule also amends 7 CFR part 1403 to revise the definitions of "carrier" and "shipment" in order to include all CCC related transactions by all carriers, whether or not CCC actually owns the commodity being transported since, in many foreign transactions, CCC does not own the commodity but has provided significant financial assistance concerning the sale or shipment of the commodity.

In addition, this final rule amends 7 CFR part 1403 to clarify the manner in which administrative offset will be taken with respect to unsettled loans. Generally, the final rule provides that in order to adequately protect the rights of CCC debtors, similar to the procedure for other delinquent debts, administrative offset would not be taken until after a CCC loan has been delinquent for at least 30 days and the borrower has been timely notified that offset may be taken.

This final rule also amends 7 CFR part 1403 to provide that, with respect to debts resulting from price support loans, later payment interest shall begin to accrue from the date on which a claim is established, rather than from the date on which notice of the debt is first mailed or hand-delivered to the debtor. This change was necessary to prevent the charging of both loan interest and late payment interest during the period between the date of the demand letter and the date of claim establishment. As a result of this amendment, in order to maintain conformity, it was also necessary to change the date on which additional interest will be assessed on

debts arising from price support loans to sixty days after the late payment interest start date rather than ninety days after the late payment interest start date. Furthermore, since no late payment interest is being charged on debts arising from price support loans during the period between the date of the demand letter and the date of claim establishment, there is no need for late payment interest to be waived during that period. Therefore, the section providing for the waiver of late payment interest on a debt which is paid within 30 days after the date on which late payment interest began to accrue has been amended to exclude debts arising from price support loans.

Finally, this final rule makes minor technical changes to conform more closely with current procedures.

No comments were received on the proposed rule published in the **Federal Register** on May 21, 1991 (56 FR 23250).

List of Subjects in 7 CFR Part 1403

Claims, Income taxes, Loan programs—Agriculture.

Accordingly, 7 CFR part 1403 is amended as follows:

PART 1403—DEBT SETTLEMENT POLICIES AND PROCEDURES

1. The authority citation for 7 CFR part 1403 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c.

§ 1403.1 [Amended]

2. Section 1403.1 is amended by removing the phrase "arising out of domestic transactions".

3. Section 1403.3 is amended by revising the definitions of "Carrier," "Delinquent debt" and "Shipment" to read as follows:

§ 1403.3 Definitions.

* * * * *

Carrier means a person or other entity, including but not limited to railroads, motor carriers, ocean carriers or piggyback enterprises, which provide transportation or other transportation-related services for compensation.

* * * * *

Delinquent debt means: (1) Any debt owed to CCC that has not been paid by the date specified in the applicable statute, regulation, contract, or agreement; or

(2) any debt that has not been paid by the date of an initial notification of indebtedness mailed or hand-delivered pursuant to § 1403.4.

* * * * *

Shipment means a carload, truckload, containerload, or other conveyance load of freight shipped from one location by one shipper for delivery. Such shipment must move in accordance with the terms of a commercial or ocean bill or lading, or other similar agreement between the carrier and CCC. In the case of export shipments, the agreement may also be between the carrier and a private voluntary organization, foreign government, or the Agency for International Development.

* * * * *

4. Section 1403.4 is amended by revising paragraphs (a) introductory text, (a)(4) and (a)(5)(i) to read as follows:

§ 1403.4 Demand for payment of debts.

(a) When a debt is due CCC, an initial written demand for payment of such amount shall be mailed or hand-delivered to the debtor. If the debt is not paid in full by the date specified in the initial demand letter, or if a repayment schedule acceptable to CCC has not been arranged with the debtor, the initial demand may be followed by two subsequent written demands at approximately 30-day intervals. The initial or subsequent demand letters shall specify the following:

* * * * *

(4) CCC's intent, if applicable, to collect the debt 30 days from the date of the initial demand letter, or other applicable period of time, by administrative offset from any CCC or ASCS payments due or to become due to the debtor, and that the claim may be reported to other agencies of the Federal government for offset from any amounts due or to become due to the debtor;

(5) * * *

(i) Existence or amount of the debt, it must be made within 15 days from the date of the letter, unless a different time period is specified in the contract, agreement or program regulation;

* * * * *

5. Section 1403.7 is amended by revising paragraph (b)(3) and adding paragraph (t) to read as follows:

§ 1403.7 Collection by administrative offset.

* * * * *

(b) * * *

(3) The debtor has been notified in writing that the debt may be collected by administrative offset if not paid; and

* * * * *

(t)(1) Notwithstanding the provisions of paragraph (b) of this section and § 1403.4, with respect to debts which are based upon an unsettled CCC loan, offset action may be taken when the debtor has been:

(i) Provided written notification of the maturity date of the loan and the debtor has not repaid the loan by the maturity date or, in the case of a nonrecourse price support loan, has not repaid the loan or forfeited the loan collateral to CCC by the date specified by CCC;

(ii) Notified of CCC's intent to establish an account on a debt record 30 days after the maturity date, or other applicable period of time, if the loan is not settled in accordance with the loan agreement;

(iii) Notified of the right to pursue an administrative appeal in accordance with Part 780 of this title if such an opportunity has not been previously provided;

(iv) Provided an opportunity to inspect and copy CCC records related to the debt; and

(v) Notified in writing that the debt may be collected by administrative offset if the loan is not repaid or, with respect to nonrecourse loans only, settled through forfeiture of the loan collateral.

(2) After a claim has been established by CCC with respect to a loan which has not been settled by the date specified in the loan agreement:

(i) In the event CCC takes possession of the collateral which is security for a nonrecourse of recourse loan made in accordance with parts 1421, 1427, 1434, or 1435 of this chapter, the value of such loan collateral shall be determined by CCC in accordance with the provisions of such parts which are used to determine the settlement value of the collateral. The value of such collateral shall be applied to the claim. Any amount remaining due on the claim must be paid by the debtor.

(ii) In the event CCC takes possession of the collateral which is the security for any other loan, the value of such collateral, as determined by CCC, less any costs incurred by CCC in taking possession and disposing of the collateral, shall be applied to the claim. Any amount remaining due on the claim must be paid by the debtor.

6. Section 1403.9 is amended by revising paragraphs (d)(2), (e), and (g) to read as follows:

§ 1403.9 Late payment interest and administrative charges.

* * * * *

(d) * * *

(2) With respect to debts not resulting from a statute, regulation, contract or agreement containing specific provisions for late payment interest and payment

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due date, late payment interest shall begin to accrue from the date on which notice of the debt is first mailed or hand-delivered to the debtor, except that, with respect to debts resulting from price support loans, late payment interest shall begin to accrue from the date on which a claim is established.

* * * * *

(e)(1) Except as specified in paragraphs (a)(2) and (e)(2) of this section, an additional interest rate of three (3) percent per annum will be assessed on any portion of a debt which remains unpaid 90 days after the date described in paragraph (d)(1) or (d)(2) of this section, if no repayment schedule satisfactory to CCC has been agreed upon. Such rate will be assessed retroactively from the date late payment interest began to accrue and apply on a daily basis. Such rate shall continue to accrue until the delinquent debt has been paid.

(2) With respect to debts resulting from price support loans, an additional interest rate of three (3) percent per annum will be assessed on an portion of a debt which remains unpaid 60 days after the date on which a claim was established. Such rate will be assessed retroactively from the date of claim establishment and apply on a daily basis. Such rate shall continue to accrue until the delinquent debt has been paid.

* * * * *

(g) When a debt is paid in partial or installment payments, payments will be applied first to administrative charges, second to additional interest assessed in accordance with paragraph (e) of this section and late payment interest, and third to outstanding principal.

7. Section 1403.10 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1403.10 Waiver of late payment interest, additional interest and administrative charges.

(a) Except for debts resulting from price support loans, CCC shall waive the collection of late payment interest and administrative charges on a debt or any portion of a debt which is paid within 30 days after the date on which late payment interest began to accrue.

(b) CCC may waive the assessment and collection of all or a portion of the additional interest on debts which are appealed in accordance with 7 CFR part 780, or other applicable appeal procedures, from either the date of the appeal or the date of delinquency, as determined by CCC, until the date a final administrative determination is issued. However, with respect to CCC programs administered by the Foreign Agricultural Service, CCC shall waive the assessment and collection of additional interest on debts which are appealed in accordance with 7 CFR part 780, or other applicable appeal procedures, from the date of delinquency until 30 days after the date of the letter informing the appellant of the final administrative determination. The waiver provisions of the paragraph shall not apply during any period of delay due to:

* * * * *

8. Section 1403.11 is revised to read as follows:

§ 1403.11 Administrative appeal.

If the opportunity to appeal the determination has not previously been provided under part 24 or 780 of this title or any other appeal procedure, a debtor may obtain an administrative review under part 780 of this title, or other applicable appeal procedures, of CCC's determination concerning the existence or amount of a debt, if a request is filed with the authority who made the determination within 15 days of the date of CCC's initial demand letter, unless a longer period is specified in the initial demand letter.

9. Section 1403.12 is revised to read as follows:

§ 1403.12 Additional administrative collection action.

Nothing contained in this part shall preclude the use of any other administrative or contractual remedy which may be available to CCC to collect debts owed to the Government.

10. Section 1403.16 is amended by revising paragraph (a) and adding paragraph (l) to read as follows:

§ 1403.16 Referral of delinquent debts to credit reporting agencies.

(a) This section specifies the procedures that will be followed by CCC and the rights that will be afforded to farm producers when CCC reports delinquent debts to credit reporting agencies.

* * * * *

(l) Notwithstanding the provisions of paragraphs (a) through (k) of this section, all commercial debts owed by debtors other than farm producers may be reported to credit reporting agencies.

Signed at Washington, DC, on December 19, 1991.

John A. Stevenson,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-30869 Filed 12-26-91; 8:45 am]

BILLING CODE 3410-05-M

Farmers Home Administration

7 CFR Parts 1910, 1930, 1940, 1944, 1951 and 1965

Implementation of Sections 206, 207 and 401 of the Housing and Urban Development Reform Act of 1989 as Amended by the Cranston-Gonzalez National Affordable Housing Act of 1990

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to implement recently enacted legislation and to incorporate comments from the public which were solicited during the interim rule stage published in the **Federal Register** 55 FR 29558 and 55 FR 25072. The intended outcome is to provide guidance on: charging a surcharge on occupied units in projects with initial loans made or insured pursuant to a contract entered into on or after December 15, 1989; registration and reporting requirements of persons paid to influence the making of an FmHA housing loan and or grant; and equity takeout incentives for new rural rental housing loans. There are portions of the aforementioned Interim Rule (55 FR 29558) which will be more appropriately addressed in a Final Rule dealing with prepayment and tenant displacement issues.

EFFECTIVE DATE: January 27, 1992.

FOR FURTHER INFORMATION CONTACT: Regarding section 207, contact Carolyn B. Cooksie, Senior Loan Specialist, Multiple Housing Servicing and Property Management Division, room 5328-S, telephone (202) 382-9728. Regarding section 401 and section 206, contact Joyce H. Akers, Senior Loan Specialist, Multiple Family Housing Processing Division, room 5347-S, telephone (202) 382-1622. The address is: USDA-FmHA, South Agriculture Building, 14th and Independence Ave., SW., Washington, DC 20250.

SUPPLEMENTARY INFORMATION:

Classification

This rulemaking action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291 and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, Federal, State or local Government agencies, or

geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91-90, an Environmental Impact Statement is not required.

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Nos:

10.405 Farm Labor Housing Loans and Grants
10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.415 Rural Rental Housing Loans
10.417 Very Low Income Housing Repair Loans and Grants
10.420 Rural Self-Help Housing Technical Assistance Grants
10.427 Rural Rental Assistance Payments
10.433 Housing Preservation Grants

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice(s) to 7 CFR part 3015, subpart V, Nos. 10.410 and 10.417 are excluded from the scope of Executive Order 12372 which requires Intergovernmental consultation with State and local officials. The remaining programs are subject to intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program, and the reporting/registration requirements are imposed by statute.

Background and Addressing Comments (55 FR 29558)

An interim rule was published in the **Federal Register** (55 FR 29558) on July 20, 1990. It amended several regulations to facilitate the implementation and intent of the HUD Reform Act of 1989. Comments on the interim rule were invited from the public until September 18, 1990. Seven comments were received from the public and were carefully considered.

One commenter stated § 1910.4 should be enlarged to cover the situation where an applicant is determined eligible but notified by the AD-622 that funds are not available at that time and questioned whether this is an adverse decision. Determining eligibility, issuance of AD-622s and adverse decisions were not part of the HUD Reform Act and will not be addressed at this time. This issue will be addressed in a proposed rule to be published in the **Federal Register**.

One commenter stated the definition of other government assistance included tax benefits under related assistance and questioned whether this assistance should be identified on SF 424.2 as an annual amount of low income housing tax credit, a total 10 year amount or developer's fee. The SF 424.2 should indicate that tax credits will be sought; however, an arbitrary amount would not be appropriate. On Form FmHA 1924-13, if a tax credit fee is indicated, such fee should be identified and the basis for calculating the fee should be defined.

One commenter recommended all complete preapplications on hand be ranked and included in the weighted-decision process to ensure those preapplications on hand less than 45 days would not be excluded from funding consideration. Timeframes were not part of the HUD Reform Act and will not be addressed at this time. However, this issue is addressed in the "Processing Preapplications for Rural Rental Housing (RRH) Assistance" changes which were published in the **Federal Register** as a proposed rule on October 31, 1991.

One commenter recommended processing timeframes and standards for preapplications should apply to applications as well, and, these standards and timeframes should be enlarged to include State Office housing staffs. Again, this issue will be addressed in a proposed rule to be published in the **Federal Register**.

One commenter stated the 45 day review period for District Directors to determine eligibility, feasibility and ranking must be met. Again, the processing timeframe was not a part of the HUD Reform Act and this issue will not be addressed at this time. This issue will be addressed in a proposed rule to be published in the **Federal Register**.

Five (5) commenters addressed the requirements or recommended changes to Exhibit A-9 of subpart E of part 1944 which was developed as a guide for administrative processing when FmHA applicants are applying for low-income housing tax credits. In most cases, changes were suggested based on the administrative process utilized by the commenter's state low-income housing tax credit agency. The Agency has reviewed all of the comments related to the processing relationships between FmHA and the State Agency. Exhibit A-9, now renumbered as Exhibit A-10, was developed in concert with the FmHA and the National Council of State Housing Finance Agencies. We have made minor editorial changes to the exhibit, added a paragraph providing FmHA State Offices the option of using the guide as written or developing their own State supplement complementing the local State Agency's administrative process for processing tax credits, and removed the processing timeframes at various milestones.

A tenant advocate commented that the interim rule covering § 1965.89 states that guaranteed equity loans twenty years after post December 15, 1989, loans are made are provided to ensure that projects remain in the program for the remainder of the loan period while in reality these loans will be available as an inducement to borrowers to take the initial loan. All references to the reason for the provision have been removed from the regulation.

A tenant advocate stated that § 1965.89 should be amended to require evidence that the equity loan will not impose an undue hardship on tenants. This has been added although the reference to the procedure for equity loans would have assured this condition.

One commenter stated there is a basic conflict between two rules published by FmHA on July 20, 1990. FmHA recognizes these conflicts. All comments received on §§ 1944.215, 1944.236, 1944.237, 1944.238, 1951.251, and 1965.90 will be consolidated with comments received pursuant to the proposed rule published on July 20, 1990 (55 FR 29601), and will be addressed in a forthcoming Final Rule on prepayment and tenant displacement issues.

Background and Discussion of Comments (55 FR 25072)

An interim rule was published in the **Federal Register** (55 FR 25072) on June 20, 1990. It amended several regulations to facilitate the implementation and intent of the HUD Reform Act of 1989. The changes in this final rule are based upon the comments, as discussed below, and the Cranston-Gonzalez National Affordable Housing Act of 1990, which changed much of the law to allow

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FmHA to be much more responsive to the comments.

Comments on this interim rule were invited from the public until August 20, 1990. Comments were received from eleven sources (of the public) and were all carefully considered.

Nine comments were received concerning various issues related to exhibit B of subpart K of part 1951, "Occupancy Surcharge Payments."

Five of the comments were concerned with whether collecting additional monies from tenants is the appropriate method to fund the equity takeout, and two of these comments gave alternative routes for funding the equity takeout. The equity takeout provisions were authorized in a mandate allowing each unit in the project to be at the same surcharge rate and the tenant only paying the affordable part of the rate. That deletes much of the bulky recording requirements and makes the surcharge assessment easy to keep up with since the bottom line of whether a tenant pays the surcharge, and in what amount, will now be based strictly on income level as reported on the present tenant certification.

Three commenters were concerned over the impact of surcharge on tax credits. The new law which requires that no tenant pay more than 30 percent of their income for rent, utilities and occupancy surcharge will alleviate most of the tax credit issue.

Three commenters were concerned with the provision that "replacement tenants" pay the same surcharge level as the previous tenant would cause undue hardship on some tenants. This is no longer a problem since the "replacement tenant" has been deleted from the regulation and each tenant will now pay surcharge at the rate they can afford up to 30 percent. The rate any tenant pays is no longer dependent upon the rate the previous tenant paid.

One commenter asked for a clarification of the definition of "initial tenant." The term "initial tenant" has been deleted from the regulation and is no longer applicable.

Three commenters said that FmHA's interpretation of the law was wrong when we said that in year 20 of the loan the annual surcharge increase period stops, but the surcharge will continue at that rate for the remaining life of the loan. We believe that that is indeed what is written into the law so this will remain the same in the final regulation.

Three commenters said that they did not believe the law was interpreted by FmHA correctly when we said that if a subsequent loan was made that the surcharge annual increase period extends for an additional 20 year period. Since the Cranston-Gonzalez Act mandated that subsequent loans will not make projects subject to the surcharge, this is no longer applicable and has been deleted from the regulation.

One commenter was concerned that prospective tenants, when filing an application, could not be advised in advance of the specific amount of rent they are required to pay since the surcharge is based upon income levels. Presently, when an application is filed and income verified, the determination could be made at that time of how much rent that applicant is eligible to pay. The surcharge rate, though an additional charge, could also be arrived at since it is also based on the applicant's present income level.

Two commenters questioned whether Congress had really looked at the continued affordability of surcharge to the rental assistance account since rental assistance will now be depleted much quicker. FmHA cannot answer that question.

One commenter suggested that FmHA create different Tenant Certifications and Project Worksheets to use in projects subject to the surcharge and continue to use the present forms for projects not subject to surcharge. Two commenters reminded FmHA that those two forms need to be revised to incorporate the surcharge requirements. The Tenant Certification and Project Worksheet forms will be revised to include the surcharge requirements. It is our opinion that to have two versions of the same form would be costly and confusing. The forms will be revised for where only the applicable entries to that tenant will need to be made.

One commenter suggested that FmHA incorporate exact language in the regulation for the lease clause. We have not incorporated the exact lease language but FmHA has expanded on the requirements of what is expected to be incorporated into that lease clause.

Three commenters wanted FmHA to allow the annual surcharge increase to become effective on the same date as the annual tenant recertification. We reviewed this matter closely and are still of the opinion that the surcharge anniversary date must be a date separate and apart from the recertification date in order to keep the automated system up with the annual increases and keep each unit at the same surcharge rate.

Three comments were received regarding subpart S of part 1940, "Accountability Requirements of Persons Paid to Influence the Making of an FmHA Housing Loan and/or Grant." Two commenters opposed the regulation in its entirety commenting that compliance with same was too burdensome. The subject regulation was developed to implement a mandatory provision of the HUD Reform Act and FmHA believes it implemented same with the minimum amount of burden to the public.

One commenter urged FmHA to adopt the prelitigation exception proposed by HUD and mentioned in FmHA's rulemaking document. HUD requested comments in this area especially on how to minimize the potential for abuse with a prelitigation exception. Public comment did not provide enough support or guidance in this area. Therefore HUD and FmHA have decided not to adopt this provision.

One commenter felt the regulation was unfair to applicants in our Multi-Family Housing (MFH) Program as opposed to our Single Family Housing (SFH) Program. FmHA recognizes that the majority of burden to comply with this regulation is on applicants for our MFH program. This is because the regulation deals with persons paid to influence the making of an FmHA housing loan and/or grant. Applicants in our SFH program are very-low and low-income families who are unable to obtain credit elsewhere. They generally do not have the resources to "pay" someone to influence the making of the FmHA loan. On the other hand, applicants in our MFH program generally have more resources and often pay outside parties to assist them in completing a loan proposal.

Comments were also received requesting FmHA to provide categorical exclusions from registration and reporting requirements for certain professions. FmHA considered these comments, and does not believe categorical exclusions can meet the intent of the HUD Reform Act. The most common comment was for a categorical exclusion for packagers. Generally, a packager assembles the documents necessary to submit a complete proposal to FmHA for consideration. Such activities are exempted under the current regulations. However, not all packagers provide the same services. Some may be paid to influence the making of the FmHA loan. Since there is no practical way for FmHA to know what services are being paid for by an applicant, a categorical exclusion would not meet the registration and reporting requirements of the HUD Reform Act.

Subpart S of part 1940, subparts A and D of part 1944, and subpart F of part 1951 as published in the interim rule, are adopted as final. FmHA is adding references to subpart S of part 1940 in subparts I, J and N of part 1944.

List of Subjects

7 CFR Part 1910

Applicants, Credit, Marital status, Discrimination, Sex discrimination.

7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income Housing—Rental, Reporting requirements.

7 CFR Part 1940

Accountability, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income Housing—Rental, Reporting requirements.

7 CFR Part 1944

Administrative practice and procedure, Aged, Farm labor Housing, Grant programs—Housing and community development, Handicapped, Home improvement, Loan programs—Housing and community development, Low and moderate income Housing—Rental, Migrant labor, Mobile homes, Mortgages, Nonprofit organizations, Public Housing, Rent subsidies, Rural Housing, Subsidies.

7 CFR Part 1951

Account Servicing, Grant programs—Housing and community development, Loan programs—Housing and community development, Reporting requirements, Rural areas.

7 CFR Part 1965

Administrative practice and procedure, Low and moderate income Housing—Rental, Mortgages.

Accordingly, the interim rules published on June 20, 1990 (55 FR 25072), and July 20, 1990 (55 FR 29558) of chapter XVIII, title 7, Code of Federal Regulations are adopted as a final rule with the following amendments:

PART 1910—GENERAL

1. The authority citation for part 1910 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Receiving and Processing Applications

§ 1910.1 [Amended]

2. Section 1910.1 is amended by removing paragraph (d).

3. Section 1910.3 is amended by redesignating current paragraphs (a) (3), (4) and (5) as paragraphs (a) (4), (5) and (6), respectively, and adding a new paragraph (a) (3) to read as follows:

§ 1910.3 Receiving applications.

* * * * *

(a) * * *

(3) SF 424.2, "Application for Federal Assistance (For Construction)," with the requirements outlined in the applicable program exhibits will be used by all applicants applying for RRH and LH loans.

* * * * *

§ 1910.3 [Amended]

4. Section 1910.3 is amended in newly redesignated paragraph (a)(4)(i) by changing the reference from "paragraph (a)(3)(ii)" to "paragraph (a)(4)(ii)", and in newly redesignated paragraph (a)(4)(ii), by changing the reference from "paragraph (a)(3)(i)" to "paragraph (a)(4)(i)."

§ 1910.4 [Amended]

5. Section 1910.4 (a)(9) is amended by changing the reference from "§ 1910.3 (a)(3) and (4)" to "§ 1910.3 (a)(4) and (5)."

§ 1910.4 [Amended]

6. Section 1910.4 (b)(14) is amended by changing the reference from "§ 1910.3 (a)(3)(i)" to "§ 1910.3 (a)(4)(i)."

7. Section 1910.4 (i) is amended by italicizing "Except for RRH and LH loans" in the first sentence, italicizing "For RH loans" in the third sentence, revising the fourth sentence and adding a new sentence after the fourth sentence to read as follows:

§ 1910.4 Processing applications.

* * * * *

(i) * * * RRH and LH preapplications must be determined eligible and feasible (RRH preapplications must also be ranked) and the applicant notified in writing in accordance with applicable program regulations not later than 45 days after receipt of a complete application. This eligibility determination will be made regardless of ranking or funding levels * * *

* * * * *

PART 1930—GENERAL

8. The authority citation for part 1930 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

9. Exhibit B to subpart C is amended by revising paragraphs II EE and VIII A-3 to read as follows:

Exhibit B—Multiple Family Housing Management Handbook

* * * * *

II. Definitions

* * * * *

EE. Occupancy Surcharge. A monthly surcharge on units in projects where the initial loan was made or insured pursuant to a contract entered into on or after December 15, 1989. This surcharge will be collected from tenants by borrowers and transmitted to FmHA and set aside to offset any rent increases which may result when the project becomes eligible for a guaranteed equity loan, 20 years from the date of the loan in the project which made the project subject to surcharge.

* * * * *

VIII. Lease Agreements

* * * * *

A. * * *

3. Projects in which occupancy surcharge collection is required should contain an appropriate lease clause permitting possible increases in the surcharge assessed. This clause should contain at least the following:

a. That occupancy surcharges are mandated by law, therefore, they must be paid by the tenant in addition to regular rent. If they are not paid, these unpaid surcharges constitute good cause for possible eviction.

b. That the occupancy surcharge unit rate will began at $2 per unit in the first year and will increase annually on the surcharge anniversary date by $2 per unit for a 19 year period.

c. That the portion of the unit surcharge assessment which the tenant pays will be based upon the tenant household income, and will not cause the tenant's contribution for rent and occupancy charge, plus utility allowance to exceed 30 percent of adjusted income.

d. That tenant households may experience increases or decreases in the amount of occupancy surcharge they pay prior to the expiration of the lease.

* * * * *

Exhibit B to Subpart C [Amended]

10. Exhibit B to subpart C is amended in paragraph II. RR. in the first sentence by removing the comma after the word "allowance" and inserting the words "and occupancy surcharge."

Exhibit B to Subpart C [Amended]

11. Exhibit B to subpart C is amended in paragraph VII. F. 5. b. by inserting a comma and the words "or maximum occupancy surcharge," in the second sentence after the words "market rent."

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Exhibit B to Subpart C [Amended]

12. Exhibit B to subpart C is amended in paragraph VII. F. 5. c. in the third sentence by inserting a comma and removing the word "and" after the word "credit" and inserting the words "and occupancy surcharges" between the words "overages" and "while."

Exhibit E of Subpart C [Amended]

13. Exhibit E of subpart C is amended in paragraph II. F. in the first sentence by adding the words "and occupancy surcharge" between the words "allowance" and "when."

PART 1940—GENERAL

14. The authority citation for part 1940 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

15. Section 1940.551 (c) is amended by revising the last sentence to read as follows:

§ 1940.551 Purpose and general policy.

* * * * *

(c) * * * FmHA will publish a Notice of Availability of Rural Housing funds in the **Federal Register** each year.

PART 1944—HOUSING

16. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Section 515 Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations

17. Section 1944.205 is amended by revising the definition of "State Agency" to read as follows:

§ 1944.205 Definitions.

* * * * *

State Agency. The Agency within a State that has been given the responsibility to allocate low-income tax credits.

* * * * *

§ 1944.212 [Amended]

17a. Section 1944.212(n) is amended by changing the reference "§ 1944.215(t)" to read "§ 1944.215(v)."

18. Section 1944.213 is amended by revising paragraph (a) to read as follows:

§ 1944.213 Limitations.

(a) *Loan Limits.* The State Director must certify that assistance provided any housing project is not more than is necessary to make the project affordable. The applicant must disclose, at all times, beginning with the preapplication package, other Government assistance, as defined in § 1944.205 of this subpart, proposed for the project. At the time of loan approval, the State Director will take into account any other such assistance when determining the FmHA loan amount to be granted. SF 424.2, "Application for Federal Assistance (For Construction)" will be used by an applicant to disclose all assistance being sought.

* * * * *

§ 1944.213 [Amended]

19. Section 1944.213(b)(1) is amended by changing the reference "1944.215(w)" to read "1944.215(v)."

20. Section 1944.231 is amended by redesignating current paragraph (a)(9)(iii) as paragraph (a)(9)(ii)(C), and by revising paragraph (a)(9)(i)(D) and newly designated paragraph (a)(9)(ii)(C) to read as follows:

§ 1944.231 Processing preapplications.

* * * * *

(a) * * *

(9) * * *

(i) * * *

(D) After a preapplication is determined eligible, feasible and ranks high enough for funding in the current fiscal year, if applicable, a copy of the AD–622 and related documentation will be forwarded to the State Agency in accordance with exhibit A–10 of this subpart or any State supplement.

* * * * *

(ii) * * *

(C) After a preapplication is determined eligible, feasible and ranks high enough for funding in the current fiscal year, if applicable, a copy of the AD–622 and related documentation will be forwarded to the State Agency in accordance with Exhibit A–10 of this subpart or any State supplement.

* * * * *

§ 1944.231 [Amended]

21. Section 1944.231 (a)(9)(ii)(A)(*5*) is amended by changing the reference "§ 1944.215(p)" to read "§ 1944.215(r)."

22. and 23. Exhibit A–10 of subpart E of part 1944 is revised to read as follows:

Exhibit A–10—Administrative Process for Combining Farmers Home Administration (FmHA) Assistance with Low-Income Housing Tax Credits

I. Purpose

A. This exhibit will be used by States to coordinate efforts with State Agencies administering tax credits. This exhibit will be utilized unless a State develops its own State supplement in which case the State supplement will supersede this exhibit.

B. The State Agency administering tax credits is required under section 42 of the U.S. Internal Revenue Code to select projects to receive the tax credits from applications according to tax credit allocation plans developed by the State Agency. Each application submitted to the State Agency is to be evaluated to determine the amount of credit necessary to make the proposal financially feasible and viable. When making this evaluation, the State Agency is required to consider the "sources and uses" of funds and the total financing planned for the project, as well as the proceeds expected to be generated by reason of tax benefits.

II. Administrative Process

A. FmHA will review preapplications from applicants seeking FmHA assistance when those applicants submit SF 424.2, "Application for Federal Assistance (For Construction)," and the requirements of Exhibit A–6 of this subpart. When a preapplication is determined by FmHA to be eligible, feasible and has sufficient points to be funded, the applicant will be notified by issuance of an AD–622, "Notification of Preapplication Review," to develop a complete loan application. The State Agency will also be sent a copy of Form AD–622 with a copy of SF 424.2 on which FmHA based its preliminary determination regarding funding. When a preapplication is determined by FmHA to be eligible and feasible but lacks sufficient priority points for funding consideration, or, if a preapplication is rejected by FmHA, the applicant(s) and the State Agency will only receive a copy of the AD–622 in accordance with § 1944.231(a)(9)(i) of this subpart.

1. Under the State allocation plan criteria, only projects receiving a favorable review, which reflect they are likely to be funded in the current fiscal year, will be eligible to apply to the State Agency for low income tax credit allocations. It is the responsibility of the applicant to provide the State Agency with any additional information or clarification of funding sources as may be necessary. The State Agency will evaluate the applicant's request for a tax credit allocation in accordance with its application processing criteria, using the AD–622 and any attachments. When the evaluation is completed, a copy of the tax credit reservation will be transmitted to FmHA by the State Agency.

2. After FmHA finalizes its processing of SF 424.2 and related materials constituting a full loan application, FmHA will submit to the State Agency a copy of Form FmHA 1944–51, "Multiple Family Housing Obligation—Fund Analysis," as well as a copy of the updated financial assistance analysis.

3. The State Agency will then evaluate the project based on any changes in funding sources and amounts resulting from the FmHA loan obligation. A formal tax credit commitment is made by the State Agency at this time and a copy of the tax credit commitment notice will be sent to FmHA by the State Agency. Since the loan obligation and the tax credit commitment are likely to occur in one calendar year and the final loan closing and the tax credit allocation in a later calendar year, the State Agency may award a carryover commitment to the project. A carryover commitment provides that the project must be placed in service by the end of the second calendar year following the year in which the carryover is awarded.

B. At loan closing, FmHA will send the final terms of the FmHA loan to the State Agency. The State Agency will make a final tax credit award calculation based upon any changes in the FmHA loan which may have taken place between obligation and closing. The State Agency will allocate the tax credits based on documentation received either at loan closing or immediately after loan closing. An executed Form 8609, "Low-Income Housing Credit Allocation Certification," will be transmitted to FmHA by the State Agency. Form 8609 will be retained in the project file for the life of the loan, along with supporting final documentation on the sources and uses of funds upon which the low-income housing tax credit allocation was made.

III. In evaluating projects to determine tax credit awards, the State Agency may rely upon the loan amount and terms determined by FmHA. If FmHA also provides rental assistance to units in the project, the State Agency may rely on FmHA's judgment and determination that such assistance is necessary.

IV. The State Agency and FmHA will transmit to each other, as soon as possible, the appropriate documentation at each milestone in the loan processing/tax credit allocation process. Materials transmitted and correspondence received will be retained by FmHA as part of the permanent project file.

V. Form 8609 will be issued by the State Agency in accordance with authorizing statutes to ensure that financial assistance provided on behalf of the project is not more than is necessary to provide affordable housing.

VI. The FmHA State Director will make a certification by Memorandum to the FmHA Administrator that the assistance provided to the project is not more than is necessary to make the project affordable. This certification will be based on FmHA processing and the State Agency's certification (Form 8609). The State Director's certification memorandum and State Agency certification will be filed in the FmHA loan docket with other loan security instruments and kept as a permanent part of the loan file for the life of the loan.

VII. A diagram of the administrative process between FmHA and the State Agency is provided as part of this exhibit.

Subpart I—Self-Help Technical Assistance Grants

24. Section 1944.408 is added to read as follows:

§ 1944.408 Accountability.

Applicants should be made aware of the accountability requirements of persons paid to influence the making of an FmHA housing loan and/or grant as described in subpart S of part 1940 of this chapter.

Subpart J—Section 504 Rural Housing Loans and Grants

25. Section 1944.466 is added to read as follows:

§ 1944.466 Accountability.

Applicants should be made aware of the accountability requirements of persons paid to influence the making of an FmHA housing loan and/or grant as described in subpart S of part 1940 of this chapter.

Subpart N—Housing Preservation Grants

26. Section 1944.662 is added to read as follows:

§ 1944.662 Accountability.

Applicants should be made aware of the accountability requirements of persons paid to influence the making of an FmHA housing loan and/or grant as described in subpart S of part 1940 of this chapter.

PART 1951—SERVICING AND COLLECTIONS

27. The authority citation for part 1951 continues to read as follows:

Authority: U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.70.

Subpart K—Predetermined Amortization Schedule System (PASS) Account Servicing

28. Section 1951.504 is amended by revising paragraph (k) and (l) to read as follows:

§ 1951.504 Definitions and statements of policy.

* * * * *

(k) *Occupancy surcharges.* A monthly surcharge on units in projects where the initial loan was made or insured pursuant to a contract entered into on or after December 15, 1989. These surcharges will be collected from the tenant by the borrower on the same day and in addition to regular rents. The amounts to be collected will be in accordance with exhibit B of this subpart.

(l) *Overage.* This term refers to both "overage" and "surcharge" described in exhibit H to subpart C of part 1930 of this chapter.

* * * * *

29. Section 1951.509 is revised to read as follows:

§ 1951.509 Occupancy surcharges.

(a) *Authorization to Collect Occupancy Surcharge.* Public Law 101–235 enacted December 15, 1989, and amended by Public Law 101–625, prescribes provisions for FmHA to collect an additional monthly amount from borrowers on all initial section 515 loans made or insured pursuant to a contract entered into on or after December 15, 1989.

(1) A contract entered into for this purpose is when a completed Form FmHA 1944–51, "Multiple Family Housing Obligation—Fund Analysis," is properly delivered to the borrower on or after December 15, 1989. (That delivery date is the date entered in Item 51 on Form FmHA 1944–51).

(2) The term *occupancy surcharge* shall be used hereafter to describe this additional monthly charge.

(b) *Occupancy Surcharge Payments.* These monthly payments shall be made from project income which will be collected from tenants or from subsidy which the tenant will be entitled to. The amount of surcharge assessed per unit, in the initial year of operation will be $2 per unit. This surcharge assessment will increase by $2 per unit each year thereafter for 19 years. The amount of the surcharge assessment which the tenant pays will be based on the income level of each tenant household. Tenant households who pay more than 30 percent of their annual adjusted income in rent and utilities will not be required to pay occupancy surcharge.

(1) Annual increases will cease 20 years from the date of the first surcharge payment due on the initial or oldest loan in the project.

(2) Surcharge payments will continue after the annual increase period has expired, but surcharge unit assessments will remain at the levels established at year 20 of the initial loan for the remaining life of the loan.

(3) If a subsequent loan is made and the initial loan in the project is subject to occupancy surcharge, the annual increase period will still expire 20 years from the first surcharge payment due on the initial loan.

(c) *Increases in Tenant Contribution Due to Occupancy Surcharges.* Borrowers/Managers are responsible for initiating and monitoring surcharge annual increases and all surcharge

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increases and decreases due to change in tenant contributions. These changes require no prior review by FmHA. All tenants must be notified of any changes in their surcharge contribution in the following manner:

(1) Tenants moving into newly constructed projects in their first year of operation should be informed of the occupancy surcharge requirements when their lease and initial tenant certification is signed. They should also be apprised at that time of possible surcharge changes based on their income levels.

(2) When there are surcharge changes due to income changes and regular recertifications, the current signed tenant certification showing the level of surcharge due will serve as notification of the change.

(3) Tenants who experience surcharge changes due to the annual $2 per unit increase on the surcharge anniversary date must be sent a notification of the change in accordance with exhibit B of this subpart.

(d) *Occupancy Surcharge Account.* Occupancy surcharge monies collected by FmHA will be deposited in the Rural Housing Insurance Fund (RHIF) in such a manner as to accrue interest on the total amount of funds collected. These monies will be made available only for payments of principal and interest on guaranteed equity loans made under the authorization of section 515 of the HUD Act of 1989. Payments from the occupancy surcharge account will only be in amounts necessary to ensure that additional project expense from the incurred guaranteed equity loan does not raise rent payments above prescribed maximum rent levels necessary to operate the project. Any monies not expended in the project from which the payments were made will be used in other projects to make payments of principal and interest on a guaranteed equity loan.

(e) *Occupancy Surcharge Takeout.* The method for allowing payments on these guaranteed equity loans out of the occupancy surcharge account will be forthcoming a such time as needed and will conform with appropriate legislative requirements in effect at that time.

(f) *Collection of Occupancy Surcharge by FmHA.* The policies and methods for collecting surcharge are set forth in exhibit B of this subpart.

30. Exhibit B of subpart K is revised to read as follows:

Exhibit B of Subpart K—Occupancy Surcharge Payments

I. Objectives

This exhibit prescribes the methods for arriving at monthly occupancy surcharge rates for tenants in Farmers Home Administration (FmHA) Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) section 515 projects. This exhibit affects all initial loans made or insured pursuant to a contract entered into (when a properly completed Form FmHA 1944–51, "Multiple Family Housing Obligation—Fund Analysis," is delivered to the borrower. This delivery date is the date entered in item 51 on the 1944–51) on or after December 15, 1989.

II. Eligible Projects

A. Initial loans made pursuant to contracts entered into on or after December 15, 1989, will be subject to all occupancy surcharge requirements contained within this exhibit.

B. Subsequent loans will be subject to occupancy surcharge unless the initial loan in the project is subject to occupancy surcharge.

C. Project consolidations will make the new consolidated project subject to occupancy surcharge when one or more of the loans are subject to occupancy surcharge and will be handled in accordance with subpart B of part 1965 of this chapter.

III. Initial Understanding With Borrower

All RRH and RCH applicants will be informed at the application stage of the Agency's occupancy surcharge requirements and procedures. All borrowers will be advised that all occupancy surcharge charges must comply with this Exhibit.

IV. Initial Understanding With Tenant

Tenants moving into projects that are subject to occupancy surcharge requirements should be informed by the borrower/manager of those requirements when the lease and initial tenant certification are signed by the tenant. They should also be apprised at that time of possible surcharge changes based on tenant household income levels.

V. Surcharge Payment Due Dates

The first monthly occupancy surcharge payment and all payments thereafter will have the same due dates as amortized loan installment due dates. Surcharges will be based on tenants in residence on the first of the month prior to the payment due date.

VI. Defining Occupancy Surcharge

Occupancy surcharge is a monthly charge on units in projects where the initial loan was made or insured pursuant to a contract entered into on or after December 15, 1989. The surcharge assessment due will be collected from borrowers by FmHA and set aside to offset any rent increases which may result when the project becomes eligible for a guaranteed equity loan, 20 years from the date the initial loan was made or insured.

The amount of surcharge assessed in the initial year will be $2 per unit, per month, with annual increases of $2 per unit for a 19 year period. At the expiration of the 20 year period, annual increases will stop but the surcharge payment will continue at that established rate for the remaining life of the loan.

The residing tenant will only be required to pay the portion of the surcharge assessment that would be included within 30 percent of their annual adjusted gross income.

Example: (No RA Available for Unit)

Basic Rent for Project—$200 per month
Occupancy Surcharge Assessment for Year One is $2
Net Tenant Contribution (NTC)—$195
Tenant Pays—$200—No Occupancy Surcharge (To pay any portion of the $2 would have put the tenant over 30 percent of their annual adjusted income).

Borrowers will not be required to pay the unpaid portion of the surcharge assessment that exceeds the tenant contribution.

Vacant units will not be subject to surcharge payments but will be subject to annual increases in unit surcharge rates on surcharge anniversary dates.

VII. Adjustments to Occupancy Surcharge Due to Changes In Tenant's Income

A. If a tenant's income increases, and that tenant was not previously paying surcharge at the maximum level assessed to the unit, they may become subject to paying a higher level of surcharge. This amount of surcharge increase is not to exceed the maximum surcharge assessed to the unit by annual increases.

B. If a tenant's income decreases and that decrease will cause the level of surcharge previously paid to exceed 30 percent of their annual adjusted income, the surcharge payments will be decreased accordingly.

C. Annual increases in occupancy surcharges will always be in $2 increments but tenants may qualify to pay any portion of the surcharge unit assessment, rounded up to the nearest $1.

Example: Basic Rent for Project—$200 per month
Occupancy Surcharge Assessment for Year 2 is $4
Tenant NTC—$203
Tenant Pays $200 + $3 Occupancy Surcharge

VIII. Tenants Receiving Rental Assistance (RA)

Tenants receiving RA will always be subject to the maximum occupancy surcharge assessments because their rent contributions will never exceed 30 percent of their annual adjusted gross income.

Example: Basic Rent in Project—$200 per month
Tenant NTC = $150
Year One—Tenant Pays $150 and RA Pays $52 = $202 ($50 Basic Rent + $2 Surcharge)
Year Two—Tenant Pays $150 and RA Pays $54 = $204 ($50 Basic Rent + $4 Surcharge)
If the tenant continues to receive RA, annual increase surcharge assessments will continue to be paid from RA.

IX. Tenants Paying Overage

Tenants paying overage will be subject to maximum surcharge assessments until their rent, utilities and surcharge equals 30 percent of their annual adjusted gross income. The amount of overage tenants pay will reduce by the amount of surcharge assessed to the unit.

Example: Basic Rent for Project is $200 per month
Tenants NTC—$210 (No change in income throughout example)

Year One—Tenant Pays $210 ($200 basic + $2 Surcharge + $8 overage)
Year Two—Tenant Pays $210 ($200 basic + $4 Surcharge + $6 overage)
Year Five—Tenant pays $210 ($200 basic + $10 Surcharge + $0 overage)
Year Six—Tenant Pays $210 ($200 + $10 Surcharge) While the unit surcharge increases to $12, the tenant experienced no surcharge annual increase because, at this point, 30 percent of their annual adjusted gross income will only cover rent, utilities and a $10 occupancy surcharge.

X. Tenants Paying Market Rent

Tenants paying market rent will pay up to the maximum surcharge assessments plus any annual increases until rent, utilities and the surcharge level equals 30 percent of their annual adjusted gross income.

Note: An easy formula to use for market tenants is:
Take the lesser figure of Tenant's 30 Percent or Maximum Contribution (Market plus Surcharge).
Minus Basic Rent.
Minus Occupancy Surcharge unit assessment.
Balance is Overage.

Example: Basic Rent is $200 per month.
Market Rent is $425 per month
Tenant NTC—$430 (no change in income throughout example)
Tenant's maximum contribution is $425 plus surcharge rate
Year One—Tenant Pays $427 ($425 Market Rent + $2 Surcharge) minus basic Rent minus Surcharge = $225 Overage
Year Two—Tenant Pays $429 ($425 Market Rent + $4 Surcharge) minus Basic Rent minus Surcharge = $225 Overage
Year Three—Tenant Pays $430 ($425 Market Rent + $5 Surcharge) minus Basic Rent minus Surcharge = $224 overage
Year Four—Tenant Still Pays $430. Tenant did not pay surcharge annual increase for this year because they are now paying 30 percent of their annual adjusted gross income for rent, utilities and surcharge.

XI. Projects Receiving Rental Assistance From Sources Other Than FmHA

A. Projects subject to occupancy surcharge provisions where tenants are receiving sources of rental assistance other than from FmHA (private project RA, HUD Section 8, State Funded RA, etc.) should be handled on a case-by-case basis and in consultation with the National Office.

B. Whether occupancy surcharge will be paid by rental assistance coming from sources other than FmHA is dependent upon the terms of the contracts from which the funds are expended.

XII. Annual Increases of Occupancy Surcharges

A. The annual surcharge increases will continue for a period of 19 years from the first surcharge anniversary date of the loan in the project that established the surcharge.

B. After the 19 year annual increase period expires, tenants will continue surcharge payments for the remaining life of the loan at the unit rate established on the anniversary date of year 19. The tenant will continue to pay the portion of that unit rate that is within 30 percent of their annual adjusted gross income.

XIII. Surcharge Anniversary Date

The surcharge anniversary date is the effective date for the $2 per unit annual increase assessment. This date will always be established one year from the first surcharge payment due. The first surcharge payment is due at the same time the first amortized loan installment is due which is one month from the Amortized Effective Date (AED).

Example:
Loan Closed—10/12/91
AED Date—11/01/91
1st Amortized Payment Due—12/01/91
1st Surcharge Payment Due—12/01/91
Surcharge Anniversary Date—12/01 for all Subsequent Years
No Further Annual Increases after Year 2011

XIV. Occupancy Surcharge Changes

A. Changes in the amount of surcharge tenants pay due to income changes, the regular tenant recertification process and surcharge anniversary increases will always be handled as separate actions, even though they could be effective on the same date. Examples of change in tenant surcharge payments are:

1. Changes in tenant income during the year can increase or decrease the portion of the assessed surcharge per unit which the tenant must pay.

2. The amount of surcharge paid by the tenant can increase or decrease on the yearly recertification date of Form FmHA "Tenant Certification" if the tenants income has changed.

3. The amount of surcharge paid by the tenant can increase on the surcharge anniversary date.

4. Tenants paying market rent may experience a increase/decrease in the amount of cash they pay for surcharge as a result of the anniversary increase and any income changes.

B. When there are surcharge changes due to income changes and regular recertifications, the current signed tenant certification showing the level of surcharge due will serve as notification of the change.

C. Prior to the project anniversary date, all current Forms FmHA 1944–8, "Tenant Certification" must be reviewed for any changes occurring during the year that would change the status of the tenant related to a surcharge annual increase. Surcharge anniversary reviews must be accomplished by the borrower/manager in a timely manner. The process requires no prior review by FmHA and should be handled in accordance with the following:

1. Prior to the surcharge anniversary date established for the project, all current tenant certifications on file must be reviewed.

2. All tenants in the project will be sent a notification that the surcharge unit assessment has increased by $2, that a review of their income has occurred and notice of any change in their contribution brought about by the surcharge annual increase. Tenants who will actually experience an increase in their Net Tenant Contribution (tenants paying market rent) should be notified at least 30 to 60 days (or in accordance with State or local statutes) prior to the effective date of the increase. These notifications should do the following:

a. Make all tenants aware of the review of their tenant certification and of any changes in the amount of RA they receive, overage they pay or any changes in cash they pay as a result of the review.

b. Offer the tenants an opportunity to meet with management to discuss the changes brought about by the review. (The point of discussion should be based solely on information contained on the tenant certification since the occupancy surcharge requirement is mandated by law).

D. If there are surcharge changes due the tenant as a result of the surcharge anniversary date, it should be manually recorded on the current tenant certification by marking through the old recorded surcharge rate and inserting the new rate.

XV. Responsibility To Pay Occupancy Surcharge

A. Payment of occupancy surcharge must be a viable part of the lease agreement between the tenant and the borrower/manger in accordance with paragraph VIII A 3 of exhibit B of subpart C of part 1930 of this chapter.

B. Nonpayment of occupancy surcharge by the tenant is a violation of that lease and can be used as grounds for eviction.

C. If the borrower/manager has correctly followed the certification procedure as outlined in paragraph VII F of exhibit B of subpart C of part 1930 of this chapter, and there is still no current valid Tenant Certification on file for the tenant at the time of the surcharge anniversary review, and it is determined the fault of the tenant, the tenant will automatically be subject to paying market rent plus the maximum surcharge assessed to the unit. The tenant should be notified of this action in accordance with paragraph VII F 5 b of exhibit B of subpart C of part 1930 of this chapter.

D. The District Director can authorize a waiver of occupancy surcharge while eviction is being actively pursued up to resolution of the eviction action in two instances.

1. When there is not a valid tenant certification on file and it is the fault of the tenant.

2. When the tenant refuses to pay occupancy surcharge.

E. If it is concluded that the lack of current tenant certification is the fault of the borrower/manager, then the borrower/manager (project) must pay market rent plus the maximum occupancy surcharge due for that unit until there is a current certification.

XVI. Subsequent Loans

A. If the initial loan in the project is subject to occupancy surcharge, all other loans in the project will be subject to occupancy surcharge.

B. Subsequent loans, made for any purpose, will not subject a project to paying occupancy surcharge if the initial loan in the project is not subject to occupancy surcharge.

C. If units are added with a subsequent loan and the project is subject to surcharge because of the initial loan, the anniversary

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date for the project will remain the same as the one already established by the initial loan. See paragraph XII A for how occupancy surcharge increases apply, and paragraph XII B for period of duration of collection.

1. Tenants moving into the new units will be subject to the level of surcharge assessment already reached for the project by annual increases.

2. The first surcharge payment for the new tenants will begin when their first rent payment for the project is due.

3. On the project anniversary date, all Tenant Certifications for the project will be checked for tenant eligibility for any occupancy surcharge changes.

XVII. Consolidations of Projects Subject to Occupancy Surcharge

A. If none of the loans in any of the projects to be consolidated are subject to the occupancy surcharge provisions, the new consolidated project will not be subject to occupancy surcharge.

B. If one of the projects being consolidated is subject to the occupancy surcharge provisions and one project is not, the following conditions apply:

1. The total units in the project after consolidation will be subject to the occupancy surcharge.

2. The level of the surcharge assessment for the consolidated project will be the same as the assessment for the oldest project already subject to the surcharge. (EXAMPLE: If the project with the oldest surcharge is in its fourth year, the assessment for all units in the new consolidated project will begin at $8 per unit).

3. All tenants in the project, who were not previously subject to surcharge but will now be subject to surcharge because of the consolidation, must be notified 30 to 60 days prior to the first surcharge payment due date.

4. All leases not previously modified to include occupancy surcharge must be modified.

5. The first occupancy surcharge payment for the new consolidated project is due when the first new amortized loan installment is due for the project.

6. The anniversary date established for the project already subject to the occupancy surcharge will be the anniversary date for the new consolidated project.

7. The annual surcharge increase period will expire twenty (20) years from the due date of the first occupancy surcharge payment for the first project that was subject to the assessment prior to consolidation.

C. If all projects being consolidated are subject to the occupancy surcharge provisions, but have different anniversary dates and different twenty (20) year expiration dates, the following conditions apply:

1. The earliest anniversary date of the projects being consolidated will be the anniversary date for the newly consolidated project.

Example:
Project 01–1: Anniversary Date on 10/1/90
Project 02–2: Anniversary Date on 5/1/91
Consolidated Project Anniversary Date is 10/1

2. The beginning level of the surcharge assessment for the consolidated project will be the same as the project with the earliest surcharge payment due date.

Example:
Project 01–1 First Surcharge Payment 10/1/90
Project 02–2 First Surcharge Payment 5/1/91
Date of Consolidation 12/1/91
Project 01–1 is in the 2nd Year of Surcharge
Tenants in project 02–2 will be assessed $4 per unit, effective 1/1/92
All tenants in the consolidated project will be reviewed for the surcharge anniversary increase on 10/1/92

3. The annual surcharge increase period will expire twenty (20) years from the due date of the first occupancy surcharge payment for the newest loan of the projects being consolidated.

XVIII. Surcharge Collection Process

A. Project owners/managers will collect the occupancy surcharge amount from tenants at the same time they collect monthly rents.

B. Project owners/managers will collect information from Forms FmHA 1944–8 and report the amount of surcharge due FmHA on Form FmHA 1944–29, "Project Worksheet for Interest Credit and Rental Assistance," both as a project total and per unit amounts.

C. Project owners will remit the collected amount to FmHA when they remit their monthly loan payments as a part of that payment. The method of RA "netting" will also apply to occupancy surcharges.

D. If occupancy surcharges are not remitted to FmHA in correct amounts and in the specified timely manner, and the project account becomes delinquent as a result, late fees, if applicable, will be assessed to the account.

E. FmHA will remit the collected amount to the Finance Office in accordance with the prescribed collection process in FmHA Instruction 1951–B and of 1951–K of this subpart.

XIX. Tracking Responsibilities

A. The occupancy surcharge monies collected nationwide by FmHA will be deposited in the Rural Housing Insurance Fund (RHIF) and will accrue interest to the account on the total amount of funds collected.

B. FmHA will track occupancy surcharge balances by project through the use of the Automated Multi-Housing Accounting System (AMAS).

C. FmHA will report to borrowers the amount of surcharge collected per project once a year on Form FmHA 1951–54, "Annual Statement of Account."

PART 1965—REAL PROPERTY

31. The authority citation for part 1965 continues to read as follows:

Authority: 7 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Security Servicing for Multiple Housing Loans

§ 1965.65 [Amended]

32. Section 1965.65 is amended by removing paragraph (b)(13).

33. Section 1965.68 is amended by adding a new paragraph (c)(8) to read as follows:

§ 1965.68 Consolidation.

* * * * *

(c) * * *

(8) If any of the loans being consolidated are subject to the occupancy surcharge provisions, they will be handled in accordance with subpart 1951–K, exhibit B.

§ 1965.70 [Amended]

34. Section 1965.70 is amended by removing paragraph (b)(3)(viii) and redesignating paragraphs (b)(3)(ix), (x) and (xi) as paragraphs (b)(3)(viii), (ix) and (x), respectively.

35. Section 1965.89 is amended by revising the introductory text and paragraphs (c) and (d) to read as follows:

§ 1965.89 Equity take-out for loans made after December 15, 1989.

For initial loans made or insured pursuant to contracts entered into on or after December 15, 1989, equity loans may be guaranteed by FmHA after a 20-year period, from the date of the loan, has elapsed. The following steps will be followed when a borrower wishes to receive this equity:

* * * * *

(c) In accordance with the conditions outlined in Exhibit E of this subpart, FmHA will offer to guarantee an equity loan to the borrower which may be repaid from an occupancy surcharge account in accordance with subpart K of part 1951 of this chapter. In addition it must be determined that such an equity loan would not impose undue hardship on tenants or unreasonable cost to the Federal Government. The guaranteed loan will not exceed the lesser of:

(1) The amount determined and calculated in accordance with the equity loan instructions contained in exhibit E of this subpart or (2) 30 percent of the appraised value of the project at the time of the initial loan as shown on the appraisal for that loan.

(d) If the borrower indicates preliminary acceptance of the equity loan, an application will be completed in accordance with subpart E of part 1944 of this chapter and two appraisals will be conducted in the manner outlined in paragraph VI A of exhibit E of this subpart for loans to nonprofit organizations.

* * * * *

Dated: September 19, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91–30588 Filed 12–26–91; 8:45 am]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1436–91]

RIN 1115–AC71

Aliens in Religious Occupations (R Nonimmigrants)

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule promulgates final regulations for implementation of section 209 of the Immigration Act of 1990, Public Law 101–649, November 29, 1990, by providing procedures for admission to the United States of nonimmigrant religious workers under section 101(a)(15)(R) of the Immigration and Nationality Act (Act). This rule will conform Immigration and Naturalization Service (Service) policy on this classification, and clarify for the general public and religious organizations the requirements for classification, admission, and maintenance of status.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: Edward H. Skerrett, Senior Immigration Examiner, or Carla J. Hengerer, Immigration Examiner, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., room 7122, Washington, DC 20536, telephone (202) 514–3946.

SUPPLEMENTARY INFORMATION: On July 24, 1991, at 56 FR 33886, the Immigration and Naturalization Service published a proposed rule in the **Federal Register** and requested comments from interested parties by August 23, 1991. The Service received 27 comments on the proposed rule and considered each of the comments in writing the final rule. The following discussion summarizes the comments, describes how the proposed rule has been altered, and explains the Service's reasons for either making or declining to make changes suggested in the comments.

General Issues

Ten commenters noted that the proposed rule did not specifically allow aliens already lawfully in the United States under other nonimmigrant classifications to change their status to that of nonimmigrant religious worker. The Service initially saw no need to describe this procedure specifically, since section 248 of the Act and 8 CFR part 248 permit such changes of classification generally, with certain exceptions.

To be clear, however, the final rule states that eligible nonimmigrants may change to R–1 classification by filing Form I–129, Petition for Nonimmigrant Worker. Although no petition is required for initial visa issuance, or for initial admission if the alien is visa-exempt, Form I–129 will be used for changes of status, extensions of stay, and changes of employers. A draft of Form I–129 was published at 56 FR 50365 on October 4, 1991. Until this form is available, an alien wishing to change from another nonimmigrant classification to R classification will use Form I–506, Application for Change of Nonimmigrant Status. An alien wishing to extend a stay or change employers will use Form I–539, Application to Extend Time of Temporary Stay.

Two commenters felt that a petition should be required for the initial visa issuance, or for the initial admission of those who are visa-exempt. This would mean that only immigration examiners at Service Centers would make individual R classification decisions. If instead petitions are not required, then applications for R classification can also be decided by immigration inspectors at ports of entry for those who are visa exempt, and by Department of State consular officers for others. Section 214(c)(1) of the Act requires that petitions be filed for aliens seeking H, L, O, or P classification. The Act imposes no such requirement, however, for the R classification. Although the Service could impose such a requirement by regulation, it has consulted with the Department of State and has chosen not to do so. Both Department of State and Service personnel have had long experience issuing visas to and admitting religious workers under B–1 nonimmigrant classification, and thus are well-equipped to administer the new R classification.

Definitions

Three commenters felt that the definition of *bona fide nonprofit religious organization in the United States* was overly restrictive. These commenters maintained that, although the statute requires that the organization be nonprofit, there is no requirement that it be tax-exempt. The Service regards this requirement as a fair one, however, and will retain it in the final rule. Whether an organization qualifies for exemption from federal income taxation provides a ready test of that organization's nonprofit status. The Internal Revenue Service (IRS) routinely makes decisions concerning the non-profit nature of any organization seeking tax-exempt status. Whenever the IRS has already made a determination in this regard, the Service will defer to that deicision. However, the final rule has been amended to provide that, if for any reason an organization has never sought such tax-exempt status from the IRS, the Service will allow the organization to submit to the Service the same documentation as would be required by the IRS.

Seven commenters felt that requiring affiliated organizations to be tax-exempt as religious organizations was too restrictive. These commenters noted that religious organizations are often affiliated with other entities which are tax-exempt for other than religious reasons. The Act does not specifically answer this question. Since this section of the Act pertains to religious workers, however, it is the Service's view that the benefits of this section should be restricted to those in the religious sphere. Therefore, the Service has not changed the final rule in this regard.

Three commenters objected to the proposed requirement that, to be considered affiliated, an organization must be closely related to the religious denomination "in the subordinate or dependent position." These commenters worried that the proposed definition might exclude those faiths not organized as formal hierarchies. Organizations may be closely related to such faiths yet not dependent upon them. The proposed definition might likewise exclude inter-denominational organizations, which may not be subordinate to any denomination. The Service wishes to avoid this result. Accordingly, it has revised the definition of *bona fide organization which is affiliated with the religious denomination* by eliminating the phrase "in a subordinate or dependent position."

Two commenters read the proposed rule to mean that aliens who wish to qualify as ministers must have a baccalaureate degree. The proposed rule imposed no such requirement, however; nor does the final rule. Instead, it must be demonstrated that a recognized religious denomination has authorized the alien to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion.

Six commenters objected to the requirement that, to be considered a

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professional religious worker, an alien must have at least a United States baccalaureate degree or its foreign equivalent. These commenters argued first that, because the Act does not specifically require a degree, neither should the regulations. Second, if a degree is required, the regulations should permit an alien religious worker to meet the requirement through some level of experience alone. In contrast, two commenters felt that the proposed definition of *professional capacity* was not restrictive enough and suggested that more than a baccalaureate degree should be required.

The degree requirement is consistent with the rule governing immigrant religious workers, and the Service will retain it in the nonimmigrant rule. This requirement follows from both the Act and its legislative history. The Act itself creates distinct categories: one for those working in a religious vocation or occupation, and another for those working in a religious vocation or occupation in a professional capacity. While the Act does not define the term *professional* in the context of religious workers, it does so at section 203(b)(3)(A) in the context of "skilled workers, professionals, and other workers" who seek immigrant visas. There the Act specifies that a "professional" must have a baccalaureate degree. This strongly suggests that Congress regards a baccalaureate degree as a critical feature distinguishing professionals from nonprofessionals. Therefore, the Service will require an alien seeking nonimmigrant entry as a professional religious worker to have such a degree.

The Act does not require the degree to come from a United States institution, and the Service will recognize an equivalent foreign degree. Nor, however, does the Act refer to gaining baccalaureate degree equivalency through experience, as the legislative history of section 203(b)(2) does with respect to an advanced degree and the Act itself does at section 214(i)(2)(C) with respect to specialty occupations. Therefore, the final rule does not permit baccalaureate degree equivalency through experience.

In any event, the distinction between professional religious workers and other workers in a religious vocation or occupation will have little practical effect. An alien in a religious professional position whose claim to professional status is not based on a degree, but on experience alone or a combination of education and experience, would fall into the category of an alien in a religious vocation or occupation.

One commenter felt that, to qualify as a professional religious worker, an alien should not be required to engage in a traditionally religious profession. The Act itself, however, requires the professional worker to be working "in a professional capacity in a religious vocation or occupation." The final rule reflects this requirement.

The Service also received several comments and questions on the proposed definitions of *religious occupation* and *religious vocation*. These comments ranged from objections that the definitions were overrestrictive to objections that they were overpermissive. While the Act itself does not hint at the definitions of these terms, the legislative history does. The Service based these definitions on H.R. Rep. 101-723, p. 75. The definition of *religious vocation* includes examples taken from the legislative history. Likewise, the definition of *religious occupation* is based on the key admonition in the legislative history that the religious worker provisions "relate to traditional religious functions." As one commenter noted, the exclusion of janitors, maintenance workers, and clerks demonstrates that the occupation must have religious significance. If the job has no religious significance, then the fact that a person is a member of a religious denomination working in a facility run by the denomination would not by itself make that person a religious worker. For example, Catholic nurses do not qualify as religious workers simply by working in a Catholic hospital. Rather, it must be shown that the work relates to a traditional religious function.

Five commenters objected that the proposed definition of *religious vocation*—a calling to religious life "as evidenced by the taking of vows"—was overly restrictive. The Service agrees that the definition should not exclude those in faiths in which "a calling to religious life" may be demonstrated by comparable means other than taking vows. The definition has been revised accordingly.

Two commenters asked that the regulation specifically indicate that religious volunteers need not be compensated. The final rule has been revised to account more clearly for uncompensated volunteers, whose services are engaged but who are not technically employees. Any alien who receives wages or other remuneration for services is an employee. In such a case, the specific organizational unit of the religious organization employing the alien should maintain Form I-9, Employment Eligibility Verification.

Miscellaneous Comments

One commenter asked whether study is permissible for R-2 dependents. The rule only forbids the R-1 alien's dependents to accept employment while in the United States. As with those in other nonimmigrant dependent classifications, such as H-4 and L-2, study is permissible.

Two commenters asked that the B-1 classification continue to be available for short-term religious workers. In the legislative history of this provision at H.R. 101-723, p. 75, the House Committee on the Judiciary noted that "currently, nonimmigrant religious workers are required to pursue business-related visas, such as B, H and L, for admission to the United States." The Committee further noted that "the bill establishes three categories of religious workers" and that "these three categories apply to both immigrants and nonimmigrants alike." This indicates that Congress's purpose in creating the R classification was to incorporate into one classification the various prior means of admitting nonimmigrant religious workers. The B-1 classification should therefore become unnecessary. Both the Service and the Department of State plan regulatory action that will affect the B-1 classification. Until such action is taken, however, the B-1 provisions for religious workers remain in effect.

One commenter expressed concern that ministers might subvert the purpose of the Act after entering the United States by accepting other, non-religious employment. The final rule need not change in this regard, however, since both it and the Act would clearly forbid such employment. The minister of religion must be coming to the United States solely to pursue the vocation of minister. This requirement must be met at the time of the visa application, the application for admission, or the change of nonimmigrant status.

One commenter felt that the rule should be toughened in several ways. This commenter believed that the rule should require bonds, forbid religious workers to change employers, require employers to notify the Service of any change in the religious worker's employment status, and require a longer period between nonimmigrant stays as a religious worker.

The Service does not believe that such measures are necessary. The Act does not require bonds for nonimmigrant religious workers, and to impose such a requirement by regulation would be unnecessarily cumbersome and severe. The rule permits changes of employers but creates specific requirements that the Service believes are sufficient to prevent abuse. In addition, section 274A of the Act imposes strong employment controls. Finally, although the Service must require an alien to leave the United States between stays as a religious worker, since the Act mandates that such stays shall not exceed five years, one year outside the United States is a sufficient minimum period. That period has previously been used satisfactorily for H-1 and L-1 nonimmigrants, and the Service will also use it for R nonimmigrants.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Authority delegation (Government agencies), Employment, Organization and functions (Government agencies), Passports and visas.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a, 8 CFR part 2.

2. Section 214.2 is amended by adding a new paragraph (r) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(r) *Religious workers*—(1) *General.* Under section 101(a)(15)(R) of the Act, an alien who, for at least the two (2) years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit religious organization in the United States, may be admitted temporarily to the United States to carry on the activities of a religious worker for a period not to exceed five (5) years. The alien must be coming to the United States for one of the following purposes: solely to carry on the vocation of a minister of the religious denomination; to work for the religious organization at the request of the organization in a professional capacity; or to work for the organization, or a bona fide organization which is affiliated with the religious denomination, at the request of the organization in a religious vocation or occupation.

(2) *Definitions.* As used in this section:

Bona fide nonprofit religious organization in the United States means an organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations, or one that has never sought such exemption but establishes to the satisfaction of the Service that it would be eligible therefor if it had applied for tax exempt status.

Bona fide organization which is affiliated with the religious denomination means an organization which is both closely associated with the religious denomination and exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

Professional capacity means an activity in a religious vocation or occupation for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required.

Religious denomination means a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, and religious congregations, or comparable indicia of a bona fide religious denomination. For the purposes of this definition, an interdenominational religious organization which is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 will be treated as a religious denomination.

Religious occupation means an activity which relates to a traditional religious function. Examples of persons in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious conselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons involved solely in the solicitation of donations.

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of persons with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

(3) *Initial evidence.* An alien seeking classification as a nonimmigrant religious worker shall present to a United States consular officer, or, if visa exempt, to an immigration officer at a United States port of entry, documentation which establishes to the satisfaction of the consular or immigration officer that the alien will be providing services to a bona fide nonprofit religious organization in the United States or to an affiliated religious organization as defined in paragraph (r)(2) of this section, and that the alien meets the criteria to perform such services. If the alien is in the United States in another valid nonimmigrant classification and desires to change nonimmigrant status to classification as a nonimmigrant religious worker, this documentation should be presented with an application for change of status (Form I-129, Petition for a Nonimmigrant Worker). The documentation shall consist of:

(i) Evidence that the organization qualifies as a non-profit organization, in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; and

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(ii) A letter from an authorized official of the specific organizational unit of the religious organization which will be employing the alien or engaging the alien's services in the United States. If the alien is to be employed, this letter should come from the organizational unit that will maintain the alien's Form I–9, Employment Eligibility Verification, that is, the organizational unit that is either paying the alien a salary or otherwise remunerating the alien in exchange for services rendered. This letter must establish:

(A) That, if the alien's religious membership was maintained, in whole or in part, outside the United States, the foreign and United States religious organizations belong to the same religious denomination;

(B) That, immediately prior to the application for the nonimmigrant visa or application for admission to the United States, the alien has the required two (2) years of membership in the religious denomination;

(C) As appropriate:

(*1*) That, if the alien is a minister, he or she is authorized to conduct religious worship for that denomination and to perform other duties usually performed by authorized members of the clergy of that denomination, including a detailed description of those duties;

(*2*) That, if the alien is a religious professional, he or she has at least a United States baccalaureate degree or its foreign equivalent and that at least such a degree is required for entry into the religious profession; or

(*3*) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a monk, nun, or religious brother or that the type of work to be done relates to a traditional religious function;

(D) The arrangements made, if any, for remuneration for services to be rendered by the alien, including the amount and source of any salary, a description of any other types of remuneration to be received (including housing, food, clothing, and any other benefits to which a monetary value may be affixed), and a statement whether such remuneration shall be in exchange for services rendered;

(E) The name and location of the specific organizational unit of the religious organization for which the alien will be providing services within the United States; and

(F) If the alien is to work in a non-ministerial and nonprofessional capacity for a bona fide organization which is affiliated with a religious denomination, the existence of the affiliation; and

(iii) Any appropriate additional evidence which the examining officer may request relating to the religious organization, the alien, or the affiliated organization. Such additional documentation may include, but need not be limited to, diplomas, degrees, financial statements, or certificates of ordination. No prior petition, labor certification, or prior approval shall be required.

(4) *Initial admission.* The initial admission of a religious worker, spouse, and unmarried children under twenty-one years of age shall not exceed three (3) years. A Form I–94, Arrival-Departure Record, shall be provided to every alien who qualifies for admission as an R nonimmigrant. The Form I–94 for the religious worker shall be endorsed with the name and location of the specific organizational unit of the religious organization for which the alien will be providing services within the United States. The admission symbol for the religious worker shall be R–1; the admission symbol for the worker's spouse and childen shall be R–2.

(5) *Extension of stay.* The organizational unit of the religious organization employing the nonimmigrant religious worker admitted under this section shall use Form I–129, Petition for a Nonimmigrant Worker, along with the appropriate fee, to extend the stay of the worker. The petition shall be filed at the Service Center having jurisdiction over the place of employment. An extension may be authorized for a period of up to two (2) years. The worker's total period of stay may not exceed five (5) years. The petition must be accompanied by a letter from an authorized official of the organizational unit confirming the worker's continuing eligibility for classification as an R–1 nonimmigrant.

(6) *Change of employers.* A different or additional organizational unit of the religious denomination seeking to employ or engage the services of a religious worker admitted under this section shall file Form I–129 with the appropriate fee. The petition shall be filed with the Service Center having jurisdiction over the place of employment. The petition must be accompanied by evidence establishing that the alien will continue to qualify as a religious worker under this section. Any unauthorized change to a new religious organizational unit will constitute a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act.

(7) *Limitation on stay.* An alien who has spent five (5) years in the United States under section 101(a)(15)(R) of the Act may not be readmitted to the United States under the R visa classification unless the alien has resided and been physically present outside the United States for the immediate prior year, except for brief visits for business or pleasure. Such visits do not end the period during which an alien is considered to have resided and been physically present outside the United States, but time spent during such visits does not count toward the requirement of this paragraph.

(8) *Spouse and children.* The religious worker's spouse and unmarried children under twenty-one years of age are entitled to the same nonimmigrant classification and length of stay as the religious worker, if the religious worker will be employed and residing primarily in the United States, and if the spouse and unmarried minor children are accompanying or following to join the religious worker in the United States. Neither the spouse nor any child may accept employment while in the United States in R–2 nonimmigrant status.

Dated: December 18, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91–31000 Filed 12–26–91; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 139

Development of an Airport Signage Plan; Certification and Operations: Land Airports Serving Certain Air Carriers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of requirement for airport signage plan.

SUMMARY: This notice informs all certificated airport owners and operators subject to FAR part 139 that they must have an approved airport signage plan by November 1, 1992.

FOR FURTHER INFORMATION CONTACT: William DeLoach, Office of Airport Safety and Standards, Airport Safety and Operations Division, AAS–300, Federal Aviation Administration, 800 Independence Ave. SW, Washington, DC 20591. Telephone (202)–267–3085.

SUPPLEMENTARY INFORMATION: Federal Aviation Regulations, 14 CFR part 139, § 139.205(b)(12) and § 139.213(b)(10) contain the requirement to include in the Airport Certification Manual or the Airport Certification Specifications, as applicable, the following: "A description of, and procedures for maintaining, the marking and lighting systems as required by § 139.311." Additionally, §§ 139.205(b)(28) and § 139.213(b)(16) state that the airport certification manual and airport certification specifications must contain any other item which the Administrator of the Federal Aviation Administration (FAA) finds is necessary in the public interest.

The purpose of this notice is to inform all certificated airport owners and operators that the FAA finds that the inclusion of the airport signage plan in the airport certification manual or the airport certification specifications is in the public interest and requires that airports subject to Federal Aviation Regulation part 139 prepare a signage plan for FAA approval. This plan will detail the type and the location of each sign required by § 139.311.(a) (3), (4), and (5). Any airport subject to FAR part 139 must have an approved airport signage plan no later than November 1, 1992. Additionally, any airport subject to FAR part 139 must have an approved sign plan in order to be eligible for Airport Improvement Program funds for such signing.

Advisory Circular No. 150/5340–18C was adopted July 31, 1991 and contains acceptable standards to satisfy these signage plan requirements.

Authority: 49 U.S.C. App. 1354(a) and 1432; 49 U.S.C. section 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

Issued in Washington, DC, on December 16, 1991.

Raymond T. Uhl,

Deputy Director, Office of Airport Safety and Standards.

[FR Doc. 91–30642 Filed 12–26–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Technology Administration

15 CFR Part 265

Regulations Governing Traffic and Conduct on the Grounds of the National Institute of Standards and Technology, Gaithersburg, MD, and Boulder and Fort Collins, CO

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Final Rule; nomenclature change.

SUMMARY: Pursuant to a reorganization of certain offices within the National Institute of Standards and Technology (hereinafter "NIST"), during which many of NIST's functions and activities have been renamed and reassigned, it became necessary to revise and update NIST's administrative structure. Accordingly, relevant sections of the Code of Federal Regulations must be amended to reflect these changes.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: Philip J. Greene (202) 377–5394.

SUPPLEMENTARY INFORMATION: Because this rulemaking document concerns agency organization and management, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and is not subject to the requirements of that order.

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedures Act (5 U.S.C. 553), or by any other law, no regulatory flexibility analysis has to be or will be prepared for purposes of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)).

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612. This rule does not contain collections of information for purposes of the Paperwork Reduction Act.

List of Subjects in 15 CFR Part 265

Federal buildings and facilities; Traffic regulations.

For the reasons set forth in the Preamble, 15 CFR part 265 is amended as follows:

PART 265 [AMENDED]

1. The authority citation for 15 CFR part 265 continues to read as follows:

Authority: Sec. 9, 31 Stat. 1450, as amended (15 U.S.C. 277). Applies sec. 1, 72 Stat 1711, as amended, (15 U.S.C. 278e(b)).

§ 265.31 [Amended]

2. In 15 CFR 265.31, remove the words "Deputy Director, IBS/Boulder" and add, in their place, the words "Director, NIST Boulder Laboratories."

§ 265.42 [Amended]

3. In 15 CFR 265.42(a), remove the words "Office of Information Activities of the National Institute of Standards and Technology (Chief, Program Information Office, IBS/Boulder for sites in Colorado)" and add, in their place, the words "Public Affairs Division of the National Institute of Standards and Technology (Public Affairs Officer for Boulder for sites in Colorado.)"

§ 265.42 [Amended]

4. In 15 CFR 265.42(b), remove the words "Associate Director for Administration (Executive Officer, IBS/Boulder, for sites in Colorado," and add, in their place, the words "Director of Administration (Executive Office, Boulder, for sites in Colorado)."

Dated: December 19, 1991.

John W. Lyons,

Director, National Institute of Standards and Technology.

[FR Doc. 91–30721 Filed 12–26–91; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 91F–0059]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Cocoa Butter Substitute

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a synthetic triglyceride mixture as a cocoa butter substitute. This action is in response to a petition filed by Huls America, Inc.

DATES: Effective December 27, 1991; written objections and requests for a hearing by January 27, 1992.

ADDRESSES: Written objections to the Docket Management Branch (HFA–305), Food and Drug Administration, room 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of March 14, 1991 (56 FR 10903), FDA announced that a food additive petition (FAP 7A4025) had been filed by Huls America, Inc., 80 Centennial Ave., P.O. Box 456, Piscataway, NJ 08855–0456, proposing that the food additive regulations be amended to provide for the safe use of synthetic triglyceride

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mixture (CAS Reg. No. 85665–33–4), obtained by reacting fatty acids derived from coconut or palm kernel oil with glycerol, as a cocoa butter substitute.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations in 21 CFR part 172 should be amended as set forth below. Because the notice of filing of March 14, 1991, may have been ambiguous, in the amendment set forth below, FDA is clarifying that the food additive may be composed of fatty acids derived solely from coconut oil, fatty acids derived solely from palm kernel oil, or a combination of fatty acids derived from both oils.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before January 27, 1992 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on the objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 376).

2. New § 172.861 is added to subpart I to read as follows:

§ 172.861 Cocoa butter substitute from coconut oil, palm kernel oil, or bath oils.

The food additive, cocoa butter substitute from coconut oil, palm kernel oil, or both oils, may be safely used in food in accordance with the following conditions:

(a) Cocoa butter substitute from coconut oil, palm kernel oil (CAS Reg. No. 85665–33–4), or both oils is a mixture of triglycerides. It is manufactured by esterification of glycerol with food-grade fatty acids (complying with § 172.860) derived from edible coconut oil, edible palm kernel oil, or both oils.

(b) The ingredient meets the following specifications:

Acid number	Not to exceed 0.5.
Saponification number.	220 to 260.
Iodine number	Not to exceed 3.
Melting range	30 to 44 °C.

(c) The ingredient is used or intended for use as follows:

(1) As coating material for sugar, table salt, vitamins, citric acid, succinic acid, and spices; and

(2) In compound coatings, cocoa creams, cocoa-based sweets, toffees, caramel masses, and chewing sweets as defined in § 170.3 (n)(9) and (n)(38) of this chapter, except that the ingredient may not be used in a standardized food unless permitted by the standard of identity.

(d) The ingredient is used in accordance with current good manufacturing practice and in an amount not to exceed that reasonably required to accomplish the intended effect.

Dated: December 17, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91–30923 Filed 12–26–91; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF STATE

Bureau of Economic and Business Affairs

[Public Notice 1542]

22 CFR Part 89

Foreign Prohibitions on Longshore Work by U.S. Nationals

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The final rule contains a revised list, of longshore work by particular activity, of countries where performance of such a particular activity is prohibited by law, regulation or in practice in the country concerned. This list is being issued pursuant to section 258(d) of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1288, as added by the Immigration Act of 1990, Pub. L. 101–649 of November 29, 1990.

DATES: Effective Date: January 1, 1992.

ADDRESSES: For mailing public comments: Office of Maritime and Land Transport (EB/TRA/MA), room 5828, Department of State, Washington, DC 20520–5816.

FOR FURTHER INFORMATION CONTACT: Stephen Miller, Office of Maritime and Land Transport, Department of State, Washington, DC 20520–5816. (202) 647–6961.

SUPPLEMENTARY INFORMATION: Section 258(d)(2) of the Immigration and Nationality Act of 1952, as amended, (hereinafter: the Act) directs the Secretary of State (hereinafter: the Secretary) to "compile and annually maintain a list, of longshore work by particular activity, of countries where performance of such work by crewmembers aboard United States vessels is prohibited by law, regulation or in practice in the country." As announced in the Notice of Proposed Rulemaking dated February 27, 1991, the Department of State (hereinafter: the Department) is establishing such a list from reports received from United States diplomatic posts abroad concerning relevant laws, regulations and practices of their host countries and from comments received from interested parties. On May 30, 1991, the Department issued a list in the form of an interim final rule with a request for comments (56 FR 24338). Upon publication of the interim final rule, the Department asked the U.S. Embassies in the countries cited to inform their host governments of the rulemaking and its effects and to investigate reports of restrictive practices received in comments to the interim final rule.

Comments From Interested Parties

The Department has received the following comments in response to the interim final rule.

The American Great Lakes Ports (the Ports), which make up the U.S. members of the International Association of Great Lakes Ports, commends the Department for its effort to carry out the letter and intent of section 258 of the Act in a practical manner that takes account of the complexities of the shipping industry. In particular, the Ports agree with the Department's interpretation of geographic scope. The Ports also support listing particular activities in order to apply reciprocity to activities prohibited by other countries, as specified by the Act. In cases where governments are involved in local prohibitions, the Ports believe that the Department should consider whether the government role is similar to that of a commercial entity. Finally, the Ports take the position that the Department's list should govern application of the reciprocity exemption by other agencies.

On behalf of its domestic member companies, the American Iron and Steel Institute expressed strong support for the interim final rule, in particular for the interpretation of the term "in practice", which the Institute believes is fully consistent with section 258 of the Act.

Writing on behalf of the Canadian Shipowners Association, the Canadian-American Company (CANAMCO), fully concurs with the Department's interim final rule. In particular, CANAMCO agrees with the interpretation regarding collective bargaining agreements and general practice.

The Federation of American Controlled Shipping (FACS), whose membership consists of U.S. companies with interests in open registry shipping, believes that the interim final rule has properly construed the longshore provisions of the Act. In particular, FACS concurs with the Department's interpretation of the term "in practice". FACS takes the view that to deny reciprocity to friendly foreign countries whose governments had no role in restrictions in private agreements would be akin to holding the U.S. Government responsible for practices privately negotiated by longshore unions and stevedoring firms in this country. FACS observes that the Act defers to collective bargaining arrangements in U.S. ports which may have the effect of reserving certain activities to longshoremen. From this, FACS concludes that Congress views such private arrangements as both permissible and controlling in the U.S. and that in the same law, Congress would not treat similar arrangements in other countries as improper in the sense that these restrictions would create grounds for denial of a reciprocal exemption. FACS also points to the practical difficulties of monitoring private sector practices throughout the world. Finally, FACS believes that the decision to list only countries that actually have had operative restrictions against U.S. mariners in the past year is reasonable, justifiable and consistent with the spirit and purpose of the reciprocity exemption.

Georgia-Pacific Corporation (G–P) supports the interim final rule as fairly and effectively implementing the spirit and intent of Congress in the Act. G–P agrees with the Department's interpretation regarding collective bargaining agreements and general practice. G–P reports that it owns three foreign-flag ships and depends on other U.S. and foreign-flag carriers for the import and export of raw materials and finished goods. G–P underscores the importance of free and fair international trade to U.S. interests and takes the position that U.S. regulations must not impose unnecessary restrictions or barriers in ocean transportation.

The International Council of Cruise Lines (ICCL) requests an exemption for passenger ships registered in Italy. The ICCL identifies itself as the representative of thirteen foreign-flag passenger cruise lines that carry more than ninety percent of the overnight, deep-water passenger cruise capacity in the North American market. The ICCL recalls that it submitted an earlier statement that the Act does not apply to passenger vessels. Since several ICCL vessels are registered in Italy, which appears on the list published in the interim final rule, ICCL wanted to submit further comments on this particular point. The ICCL submits that the Department should make a finding that Italian law, regulation or practice has not restricted the crews of U.S. passenger vessels from performing longshore work because no U.S.-flag passenger vessel has called on any Italian port in the past year. The ICCL points out that the Department, in its cable to U.S. diplomatic posts, did not make any reference to non-cargo related loading activities of U.S. passenger vessels. The ICCL understands that there is no national policy in Italy regarding longshore work and that each port sets its own policy.

The Lake Carrier's Association supports the Department's finding that Canada does not prohibit longshore work to the crews of U.S.-flag bulk vessels.

The Shippers for Competitive Ocean Transportation (SCOT) has submitted comments as the representative of major companies and associations accounting for more than 60 percent of all U.S. liner exports and for substantial exports by bulk shipping. SCOT supports the Department's interim final rule. In particular, SCOT applauds the effort to determine precise restrictions of each country and to apply reciprocal restrictions only to the degree foreign countries restrict U.S. mariners. SCOT strongly concurs with the Department's interpretation of the geographic scope of foreign restrictions and with the decision not to include countries where no U.S. ship has called in the past year. SCOT urges the Department to clarify whether the restrictions listed apply to different kinds of shipping services. As an example, SCOT notes that in its experience, the restrictions listed for Belgium have not applied to liquid bulk terminals in that country. SCOT observes that the law excludes tankers under the provisions dealing with hazardous materials and environmental protection.

In contrast to industry comments, labor union representatives oppose the Department's interpretation of the Act.

In the view of the International Longshoremen's Association, AFL–CIO and the International Longshoremen and Warehousemen's Union, AFL–CIO (the longshoremen's unions), the Department's standards for reciprocity exception articulated in the interim final rule are not consistent with the guidelines set by Congress in the Act. The longshoremen's unions hold that the Act has the objective of preserving longshore work in the U.S. for U.S. longshoremen. The longshoremen's unions believe that alien longshoremen are doing such work in U.S. ports while U.S. nationals are not able to perform the same activities in foreign countries. The longshoremen's unions express the

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concern that the Department's list will enable countries to avail themselves of a reciprocity exemption to which they are not entitled.

Specifically, the longshoremen's unions observe that the statute refers to activities "prohibited by law, regulation or in practice *in* the country. (Emphasis added by the longshoremen's unions.) The longshoremen's unions believe that this construction applies to any private agreement that prohibits U.S. mariners from carrying out longshore work in a foreign country. The longshoremen's unions do not believe that Congress would allow reciprocal exemptions for beneficiaries whose countries did not extend the same privileges to U.S. vessels and mariners.

The longshoremen's unions also take exception to the Department's interpretation of the effect of compensation of local port workers and geographic scope. The longshoremen's unions refer to reports from the International Transport Workers Federation attached to their comments to demonstrate that practices can vary among the ports of a single country. The longshoremen's unions do not believe that the omission of Liberia from the list is warranted because the Department has not made a finding that any longshore activities have been normally performed in Liberia during the past year or during the year preceeding the arrival of a Liberian ship in U.S. coastal waters. The longshoremen's unions further question the terms for the reciprocal treatment of U.S. mariners in Panama. The longshoremen's unions do not believe that Peru should be granted a reciprocal exception because regulations prohibit longshore work by U.S. mariners. Finally, the longshoremen's unions ask about the reasons for the exemptions of Canada, China, Denmark, Germany, Japan, Korea, Portugal and other unspecified countries.

The North American Caucus of the International Transport Workers' Federation (ITF) believes that the Department has misinterpreted the intent of the Act, in particular the term "in practice" as it relates to union contracts, industry agreements, or traditional practices. The ITF takes the position that this section of the Act has the objective of protecting the long-term security of jobs traditionally performed by U.S. longshoremen.

The Transportation Trades Department of the AFL–CIO believes that the Department has misinterpreted the intent of the Act, in particular the term "in practice" as it relates to union contracts, industry agreements, or traditional practices. The AFL–CIO takes the position that this section of the Act has the objective of protecting the long-term security of jobs traditionally performed by U.S. longshoremen.

Representatives Jack Brooks, Howard Berman, William Ford and George Miller submitted a joint statement expressing concerns about the Department's interim final rule and calling upon the Department to modify the final rule. The Congressmen advise that section 258(d) of the Act only provides for a narrow exception from an otherwise broad and deliberate effort to stop foreign mariners from doing longshore work. The Congressmen do not accept the Department's interpretation of the term "in practice" as it relates to private collective bargaining agreements. They note that Congress neither explicitly stated nor implicitly inferred that a private agreement would have to be imposed or approved by the government in order to disqualify a country from receiving a reciprocal exemption. They refer to a colloquy in the October 26, 1990 edition of the Congressional Record between Senators Brock Adams and Edward Kennedy about practices that could constitute a prohibition "in practice."

Definition of Longshore Work

Section 258(b) defines the term "longshore work" as "any activity relating to the loading or unloading of cargo, the operation of cargo-related equipment (whether or not integral to the vessel), and the handling of mooring lines on the dock when the vessel is made fast or let go, in the United States or the coastal waters thereof."

Information developed by the Department indicates that there is no international consensus on what constitutes "longshore work". The laws and regulations of many countries which prohibit crews of U.S. ships from performing longshore work do not provide a definition of the term and do not enumerate particular activities which are covered. Other countries specify particular activities exempt from their restrictions on longshore work. It is possible that activities covered by the Act's definition of "longshore work" may not be viewed in other countries as "longshore work" for the purposes of their laws and regulations. In order to compile as detailed a list as possible, the Department sought information regarding restrictions on particular shipboard activities, e.g. opening of hatches, rigging of ship's gear and handling of lines.

Several comments asked the Department to list practices that apply to different types of shipping services, such as bulk and passenger shipping. The regulations of many countries are not sufficiently detailed to differentiate between practices applying to dry bulk, tanker and liner shipping. Where identified, exceptions from restrictions on longshore work are noted in the list of countries established in accord with section 258(d)(2) of the Act.

Standards for Reciprocity Exception

The Department is listing those countries where restrictions on longshore activities by crewmembers of U.S. ships are imposed or approved by the foreign government on a national basis.

—By law or regulation,
—Through a collective bargaining agreement directly negotiated by the foreign government with other parties, or
—Through restrictions in private collective bargaining agreements imposed or approved by the foreign government.

In view of the sharp differences in opinion prompted by the interim final rule, the Department wishes to review in detail the Act and its legislative history.

Role of Government in Restrictions in Practice

Section 258(d)(1) of the Act sets the general conditions for the reciprocity exemption:

* * * the Attorney General shall permit an alien crewman to perform an activity constituting longshore work if—

(A) The vessel is registered in a *country that by law, regulation, or in practice does not prohibit such activity* by crewmembers aboard United States vessels; and (emphasis added by the Department.)

(B) nationals of *a country (or countries) which by law, regulation, or in practice does not prohibit such activity* by crewmembers aboard United States vessels hold a majority of the ownership interest in the vessel. (Emphasis added by the Department.)

Section 258(d)(3) defines "in practice" as

"an activity normally performed in such country during the one-year period preceding the arrival of such vessel into the United States or coastal waters thereof."

In interpreting the legislation, the Department consulted the conference report, which contains brief references to the exemptions from the general prohibition in section 258 against longshore work by the crews of foreign vessels:

The section provides * * * exemptions * * * for international reciprocity between the United States and *countries that do not prohibit crewmen from performing particular longshore activities* aboard U.S. vessels in their respective ports. (Emphasis added by the Department.)

The conference report further specifies that

"(t)he exception for reciprocity requires a foreign vessel to be registered in a country, and owned by nationals of a country, *each of which does not prohibit by law, regulation or general practice crewmen from performing longshore activities* aboard U.S. vessels in its ports. (Emphasis added by the Department.)

In addition, the colloquy between Senators Kennedy and Adams offers an insight into the intent of Congress:

Mr. ADAMS. Mr. President, concerning the international reciprocity provision in section 203, the bill's section on longshore work, I want to confirm the conference committee's agreement on the degree of protection this provision provides for U.S. longshoremen. It is my understanding that another country's "prohibition in practice" of U.S. or other foreign crewmen performing longshore work is to consist of any effective restriction *imposed or sanctioned by the other country's government.* * * * (emphasis added by the Department.)

Mr. KENNEDY. The Senator is correct.

The Department takes the view that the general conditions set in section 258(d)(1) govern the implementation of the reciprocity exception. The Department agrees with the comment that Congress does not want to grant an exception to crews of countries that do not accord U.S. crews the same treatment. Section 258(d)(1), however, only refers to restrictions in which the government has an active role. The conference report uses the same construction. Moreover, the colloquy explicitly refers to restrictions sanctioned or imposed by a country's government. The Department has therefore concluded that a reasonable interpretation of the Act would only apply to restrictions actively imposed or sanctioned by a foreign government.

Collective Bargaining Agreements

Under the policy of reciprocal treatment established by the Act, collection bargaining agreements duly negotiated under a foreign country's labor law should not affect that country's eligibility for reciprocal exemption unless the country's government imposes or sanctions the agreements. The mere existence of agreements restricting longshore activities by crewmen does not mean that the government supports or requires such restrictions. As in the U.S., the labor laws of many other countries guarantee the right of collective bargaining but do not dictate the terms of collective bargaining agreements. In each case, the Department examined the extent of government intervention in the collective bargaining process.

The Department agrees with the comment that section 258(d)(3) recognizes collective bargaining activities as a distinct sphere of activity not subject to provisions of the Act. In this connection, the Department makes note of a statement by Senator Kennedy on this matter in the colloquy cited earlier:

[This section] does not extent (sic) into the area of labor law and would not disturb any U.S. longshore collective bargaining agreements that reserve work for U.S. workers.

Geographic Scope

The Department is only listing countries where restrictions generally prevail throughout the country. The conference report establishes "general practice" as a test for reciprocity exemption. Some parties submitting comments claim no knowledge of discussions in Congress to examine each region of countries contiguous to the United States rather than considering activities on a nationwide basis. Even if Congress rejected such a proposal, these parties believe that the legislation requires a separate examination of the practices in each region of a foreign country. The Department notes that Administration representatives from the Departments of State and Transportation took an active part in discussions with the conferees about this proposal and made clear that the Administration firmly rejected such an approach. Comments to the interim final rule have not changed the Department's views.

Commercial Practice

Several comments submitted in response to the notice of proposed rulemaking observed that carriers may use local longshore workers as a matter of established commercial practice. The Department agrees that carriers may voluntarily employ local workers for reasons other than governmentally imposed or approved constraints. In the absence of evidence of restrictive laws, regulations or practices, the Department presumes that the choice to use local longshoremen results from purely voluntary commercial decisions.

Compensation of Port Workers

The Department is not including as restrictions requirements to compensate local workers for wages foregone if crewmembers perform longshore work unless the compensation does not reflect the ordinary market wages for such work.

Status of Individual Countries

Some parties raised questions about the status of individual countries. The Department made its finding on Liberia after determining that no U.S. ships have called in Liberian ports during the past year and consequently have not been subject to any restrictions on longshore work. After further consultations with the Panamanian Government, the Department has not found any prohibition against longshore work by U.S. crewmembers in law, regulation or in practice. Therefore, the Department is not placing Panama on the list. The finding on Peru is based on reports from the U.S. Embassy in Lima on discussions with U.S. carriers as well as Peruvian government officials. These sources confirm that Peru no longer prevents U.S. mariners from doing longshore work.

Some comments contained allegations about restrictions in several other countries. Some of the countries (Belgium, Brazil, Italy and Turkey) are already included on the list. Further investigation into the allegations about Japan uncovered regulations that prohibit the crews of U.S. ships from doing longshore work. The Department also determined that Germany requires U.S. mariners to have a work permit in order to perform certain on-shore longshore activities. Germany and Japan have consequently been added to the list. The Department also investigated reports of restrictive collective bargaining agreements in Denmark and has reconfirmed that the Danish Government has not approved or imposed these restrictions. Therefore, Denmark is not included in the list.

Information collected after publication of the interim final rule indicates that Algeria prohibits U.S. mariners from performing longshore work. That country has been added to the list. The Department has incorporated changes into the final rule concerning prohibitions in Italy, Spain, Taiwan and Trinidad and Tobago to reflect more precisely the laws, regulations, and practices of these countries and regions.

In its comments, one party questioned whether Italy has a national policy on longshore work. The U.S. Embassy in Rome reports that Article 110 of the Navigation Code governs longshore work by foreign mariners. The law makes no distinction between types of ships.

List of Subjects in 22 CFR Part 89

Aliens, Crewmembers, Immigration, Labor, Longshore Work.

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For the reasons set out in the preamble, 22 CFR chapter I is amended as follows.

PART 89—PROHIBITIONS ON LONGSHORE WORK BY U.S. NATIONALS

Part 89 is amended by revising § 89.1 to read as follows:

§ 89.1 Prohibitions on Longshore work by U.S. nationals; listing by country.

The Secretary of State has determined that, in the following countries, longshore work by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice, with respect to the particular activities noted:

Algeria

(a) All longshore activities.

Argentina

(a) Loading and discharge of cargo.

Australia

(a) Handling of cargo or ballast in connection with the loading or discharge of a ship, including rigging of ship's gear, unless there is insufficient shore labor.

(b) Exceptions: Operation of self discharging equipment and other automatic loading/unloading mechanisms.

Belgium

(a) Cargo loading and discharge.

(b) Exception: Operation of cargo-related machinery on board the ship.

Belize

(a) Loading and unloading cargo vessels and handling of containers.

(b) Exception: Operation of shipboard cranes to load and offload containers.

Brazil

(a) Movement of cargo.

(b) Lashing or unlashing of containers.

(c) Operation of cargo related equipment, whether or not on board the ship.

(d) Activities performed by cargo checkers, tally clerks, watchmen, and coopers.

Burma

(a) Loading and discharge of cargo from and in any sea-going vessels coming to any dock, wharf, quay, stage, jetty or pier.

(b) Handling of mooring lines.

(c) Exceptions: Shipboard activities including opening hatches and rigging ship's gear; loading or discharge of cargo when the equipment or cargoes require special handling; and loading or discharge of other cargoes, by special agreement with port authorities.

Chile

(a) Any and all functions relating to the loading and unloading of cargo and other tasks appropriate to a port, whether on board boats and ships in the port or in the dock area, including the operation of cargo-related equipment, whether or not integral to the vessel, including hatches and rigging of ship's gear.

(b) Exceptions:

(1) Placement and removal of mooring ropes from dock bitts and operation of the capstans aboard the vessel, when under the control of the harbor pilot; and

(2) Doing a vessel's mess and purveying alongside the ship with the provisions, loading and placement of the provisions in the ship's larder or stores.

China, Peoples Republic of

(a) All longshore activities.

Columbia

(a) All activities related to the loading and discharge of cargo, including operation of cargo-related equipment integral to the vessel.

Congo

(a) All longshore activities.

Costa Rica

(a) Operation of loading and unloading equipment affixed to the pier.

Cote d'Ivoire

(a) All longshore activities.

Egypt

(a) Cargo loading and unloading activities not on board the ship.

El Salvador

(a) Port operations, including the loading and discharge of cargo, the operation of equipment, whether on the ship or not, and the handling of lines.

France

(a) All loading and unloading of ocean-going ships.

(b) Exception: Movement of personal belongings and machinery belonging to the ship.

Germany

(a) All longshore activities on shore without a labor permit.

Guatemala

(a) All port operations except for the opening of hatches and entrances to ship storage areas.

Guinea

(a) All longshore activities.

Honduras

(a) All longshore activities, including loading and discharge of cargo, handling of containers, operation of cranes, hoisting machinery and roll-on/roll-off equipment.

(b) Exception: Handling of toxic or hazardous materials, with clearances obtained through the national port authority prior to entry into port.

India

(a) All on-board activities relating to loading and discharge of cargo and operation of cargo-related equipment, including rigging of derricks, and opening and closing of hatches.

(b) All movement of cargo on shore.

(c) Berthing vessels and handling of mooring lines on dock when the vessel is made fast or let go.

Indonesia

(a) All longshore activities, including opening of hatches, rigging of ship's gear and line handling, as long as there are Indonesian longshoremen available.

(b) Exceptions: Activities for which local workers lack the requisite skills; in an emergency situation, duties ordinarily performed by longshoremen; and loading and discharge of hazardous chemicals at industrial ports if no Indonesian workers are available for the job.

Israel

(a) All longshore activities, including loading and unloading of cargo, operation of cargo-related equipment, and handling of mooring lines.

(b) Exception: Jobs related to the maintenance of the ship itself.

Italy

(a) All longshore activities, including operation of on board equipment and the loading and discharge of new automobiles.

(d) Exceptions:

(1) Operation of automated loading and discharge equipment on board the vessel and associated manual activities, including loading and discharging containers from container vessels manually or with automatic or semi-automatic spreaders,

(2) Operation and movement of fixed or mobile mechanical equipment owned or leased by port companies and used for operations.

(3) Ancillary activities connected with documenting goods,

(4) Restoration of packaging,

(5) All activities, including moving goods, carried out within areas operated under a concession granted by the port authority,

(6) Activities strictly connected with the operation and security of navigation, or otherwise within the competence of the crew,

(7) Handling of the lifts on ferries,

(8) Preparation of on board derricks, winches and cranes,

(9) Opening and closing of hatches,

(10) Loading and discharge operations related to barges from LASH vessels,

(11) Installation of bulkheads to secure cargo,

(12) Lashing and unlashing operations, and

(13) Securing of cargo.

Jamaica

(a) Activities normally carried out by stevedores, lineamen, gangmen or longshoremen, including:

(1) All on-shore activities dealing with the handling and placement of cargo;

(2) All movement of cargo from or onto ships whether by gangplank or crane;

(3) All stacking and slinging of pallets within the ship's cargo holds;

(4) Mooring and unmooring of ships, including handling of mooring lines aboard ships; and

(5) Any other activity involving the discharge of cargo into Jamaica.

(b) All activities associated with the discharge of grain and loading of grain products, with the exception of handling of on-board machinery to keep the ship righted:

(c) Exception: Direction of supervisors by the ship's officers only insofar as necessary to identify which cargo is to be palletized, shifted, or off-loaded.

Kenya

(a) All longshore activities.

Madagascar

(a) All longshore activities.

Mauritania

(a) All longshore activities.

(b) Exception: Supervision by the vessel's master or loadmaster.

Morocco

(a) Handling of any product, crates, boxes, bales or containers destined for unloading.

(b) Exception: Any shipboard activities not relating to loading or discharge operations and not having any commercial character, including opening hatches, rigging of ship's gear and line handling.

Mozambique

(a) All longshore activities.

Namibia

(a) Port services and cargo loading and discharge.

(b) Exception: Handling of cargo only while it remains on the vessel.

Oman

(a) Longshore work without a labor permit, including loading or discharge of cargo, handling of containers or any other activity not related to a crewman's job on the ship or to basic ship repair.

(b) Exceptions: Opening of hatches, rigging of the ship's gear and handling of lines aboard ship.

Pakistan

(a) All longshore activities.

(b) Exceptions: Shipboard activities other than opening of hatches; with prior approval from Ministry of Communications officials, loading or discharge of special cargoes with on-board equipment in cases where dockside equipment operated by longshoremen cannot safely moved the cargoes.

Philippines

(a) All longshore activities.

Portugal

(a) All operations associated with loading or unloading cargo and complementary operations within the port area, including lashing.

(b) Expections:

(1) Opening and closing of hatches;

(2) Rigging of ship's gear;

(3) Handling of lines;

(4) Military vessels or the operation of military material in areas under military jurisdiction;

(5) The supply of bulk operating fuels and lubricating oils to a ship;

(6) The movement of spare parts, supplies, ship's stores, fuels and lubricants when the quantities to be moved are less than three tons per vessels;

(7) The loading, unloading and transfer of fuels and bulk liquid petroleum products;

(8) The loading, unloading and transfer of chemical products whose characteristics require special handling;

(9) The loading, unloading and packing of fresh, refrigerated or frozen fish from a fishing vessel, except when such cargo is listed on the manifest; and

(10) The movement of goods and materials within naval construction and repair yards or petroleum terminals.

Romania

(a) All longshore activities not on board the ship.

St Lucia

(a) All longshore activities.

Sierra Leone

(a) All longshore activities on shore.

South Africa

(a) Cargo handling without a license issued by the port authority.

Spain

(a) Longshore operations, including any loading, offloading, stowage and transfer of goods within port intended for maritime transport by ship.

(b) Exceptions include:

(1) Handling of goods, material, and machinery belonging to the port authorities;

(2) Material of the Ministry of Defense unless operations are carried out by a stowage company;

(3) Mail loading and offloading;

(4) Private vehicles offloaded by owners or drivers and complementary grip tasks carried out by ship's crew;

(5) Offloading, transport to storage and complementary work of fresh fish from ships of less than 100 gross tons capacity or those above this size under special contract when carried out by the crew;

(6) Operations carried out within the port directly related to processing plants, industrial zones or canning factories, as long as they are not carried out by a stowage company;

(7) Handling of personal belongings of passengers and crewmembers;

(8) Loading and offloading of maintenance goods as long as it does not require hiring additional personnel or operations carried out by pipelines;

(9) The use of cranes and tractor devices not assigned to port operations as long as they are used by their regular personnel; and

(10) Driving, coupling and coupling tractor devices to load and unload trailers as long as transport is carried out without interruption from outside of the port area until their loading, or from the ship to the outside of the port area.

Sri Lanka

(a) All longshore activities.

(b) Exceptions: With a waiver granted by the Minister of Ports and Shipping upon application through the ports authority, handling of long lines of ships awaiting unloading and other activities under exceptional circumstances.

Taiwan

(a) Loading and discharge activities, including opening of hatches and rigging of ship's gear.

(b) Handling of mooring lines on the dock for all vessels.

(c) Exceptions: Loading and discharge of cargo if the longshoremen cannot handle the cranes of a particular ship; and operation of automatic hatch opening equipment that longshoremen are unable to operate.

Thailand

(a) All longshore activities, including opening of hatches, riggings ship's gear and line handling once the ship has berthed.

(b) Exception: Operation of onboard cargo machinery integral to the ship.

Togo

(a) Handling of mooring lines on the dock.

Trinidad and Tobago

(a) All longshore activities, including loading and discharge of cargo; lashing and unlashing of containers; operation of cargo-related equipment, unless the required skill is unavailable at port; and activities normally performed by cargo checkers, tally clerks and watchmen.

Tunisia

(a) All longshore or dock activities, including the operation of on-board hoists.

Turkey

(a) Work done on the pier, including mooring, cargo handling, crane operations and ground vehicle transportation.

(b) Exceptions: activities on board vessels to assist in loading and discharge of cargo.

Uruguay

(a) All longshore activities, including the opening of hatches, rigging of ship's gear and line handling.

(b) Exception: loading and discharge of cargo where Uruguayan workers cannot operate on board loading cranes.

Yemen

(a) All longshore activities.

(8 U.S.C. 1288, Pub. L. 010–649, 104 Stat. 4878)

Eugene J. McAllister,

Assistant Secretary, Economic and Business Affairs, Department of State.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 201, 203, and 234

[Docket No. N–91–3348; FR–3188–N–01]

Loan and Mortgage Insurance; Changes to the Maximum Loan and Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of revisions to FHA maximum loan and mortgage limits for high-cost areas.

SUMMARY: This Notice amends the list of areas eligible for "high-cost" loan and

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mortgage limits under certain of HUD's insuring authorities under the National Housing Act (NHA) by increasing the mortgage limits for Caroline County, Virginia; Kent County, Maryland; Pinellas County, Florida; Hamilton County, Tennessee; Livingston County, Michigan; Jefferson County, Colorado; Douglas County, Nevada; the Bremerton, Takoma, Spokane and Olympia, Washington MSAs; and Mason and Skagit Counties, Washington; and by adding to the list of high cost areas: Penobscot County, Maine; Carroll County, New Hampshire; Pike County, Pennsylvania; Lake, Charlotte and Flagler Counties, Florida; Whitfield County, Georgia; Cowlitz, Chelan and Douglas Counties, Washington.

This Notice also corrects several errors and omissions that appeared in the notice of revisions published in the **Federal Register** on August 1, 1991 (56 FR 36980). The corrections include reflecting that Salem County, New Jersey and Cecil County, Maryland have the same limits as the rest of the Wilmington, DE–NJ–MD PMSA; reflecting that York County, South Carolina has the same limits as the rest of the Charlotte-Gastonia-Rock Hill, NC–SC MSA, and that Lapeer County, Michigan has the same limits as the rest of the Detroit, MI PMSA. This notice also reflects correct limits for Manatee County, Florida; Santa Cruz County, Arizona; and Clackamas and Washington Counties, Oregon.

Loan and mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: For single family: Morris Carter, Director, Single Family Development Division, room 9272; telephone (202) 708–2700. For manufactured homes: Robert J. Coyle, Director, title I Insurance Division, room 9158; telephone (202) 708–2880; 451 Seventh Street, SW., Washington, DC 20410. (These are not toll-free numbers.).

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act, 12 U.S.C. 1703 and 1709 *et. seq.*, authorizes HUD to insure loans and mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and manufactured homes and lots in combination. The NHA, as amended by the Housing and Community Development Amendments of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum loan and mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, section 214 of the NHA provides for special high-cost limits for insured mortgages in Alaska, Guam, Hawaii, and the Virgin Islands.

The last comprehensive list of high-cost areas was published on August 1, 1991 (56 FR 36980) listing all areas eligible for "high-cost" loan and mortgage limits under certain of HUD's insuring authorities under the National Housing Act, and the applicable limits for each area.

This Document

Today's document increases high-cost loan and mortgage limits for Caroline County, Virginia; Kent County, Maryland; Pinellas County, Florida; Hamilton County, Tennessee; Livingston County, Michigan; Jefferson County, Colorado; Douglas County, Nevada; the Bremerton, Takoma, Spokane and Olympia, Washington MSAs; and Mason and Skagit Counties, Washington; and adds high-cost loan and mortgage limits for Penobscot County, Maine; Carroll County, New Hampshire; Pike County, Pennsylvania; Lake, Charlotte and Flagler Counties, Florida; Whitfield County, Georgia; Cowlitz, Chelan and Douglas Counties, Washington.

This document also corrects several errors and omissions appearing in the notice of revisions published in the **Federal Register** on August 1, 1991 (56 FR 36980). The corrections include reflecting that Salem County, New Jersey and Cecil County, Maryland have the same limits as the rest of the Wilmington, DE-NJ-MD PMSA; reflecting that York County, South Carolina has the same limits as the rest of the Charlotte-Gastonia-Rock Hill, NC-SC MSA, and that Lapeer County, Michigan has the same limits as the rest of the Detroit, MI PMSA. This notice also reflects the correct limits for Manatee County, Florida; Santa Cruz County, Arizona; and Clackamas and Washington Counties, Oregon.

These amendments appear in two parts. Part I explains how the high-cost limits are calculated for manufactured home and lot loans insured under title I of the National Housing Act. Part II lists each high-cost area, with applicable limits for single family residences (including condominiums) insured under sections 203(b), 234(c) and 214 of the National Housing Act.

List of Subjects

24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Loan programs—housing and community development, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 203

Hawaiian Natives, Home Improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the Department publishes the revised dollar limitations as follows:

National Housing Act High Cost Loan and Mortgage Limits

Part I: Method of Computing Limits Under Title I, National Housing Act

A. *Section 2(b)(1)(D). Combination manufactured home and lot (excluding Alaska, Guam, Hawaii, and the Virgin Islands):* To determine the high-cost limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one family" column of Part II of this list by .80. For example, Penobscot County, ME has a one-family limit of $77,900. The combination home and lot loan limit is $77,900 x .80, or $62,320.

B. *Section 2 (b)(1)(E): Lot only (excluding Alaska, Guam, Hawaii and the Virgin Islands):* To determine the high-cost limit for a lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .20. For example, Penobscot County, ME has a one-family limit of $77,900. The lot-only loan limit is $77,900 x .20, or $15,580.

C. *Section 2(b)(2). Alaska, Guam, and Hawaii limits:* The maximum dollar limits for Alaska, Guam and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1).

Accordingly, the dollar limits for Alaska, Guam, and Hawaii are as follows:

1. For manufactured homes: $56,700. ($40,500 X 140%).

2. For combination manufactured homes and lots: $75,600. ($54,000 X 140%).

3. For lots only: $18,900. ($13,500 X 140%).

D. *Limits in the Virgin Islands:* For the Virgin Islands, the maximum mortgage amount for a one-family residence has been increased under section 203(b) to 185% of the basic mortgage limit. Accordingly, the combination home and lot limit is $99,900 ($54,000 x 185%). The lot limit is $24,975 ($13,500 x 185%).

Part II. Updating of FHA Sections 203(b), 234(c) and 214 Area-Wide Mortgage Limits

REGION I

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
HUD Field Office—Bangor:				
Penobscot County, ME	$77,900	$87,700	$106,600	$123,000
HUD Field Office—Manchester:				
Carroll County, NH	123,000	138,550	168,350	194,250

REGION II

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
HUD Field Office—Camden:				
Wilmington, DE–NJ–MD PMSA (Part) Salem County, NJ	$100,600	$113,300	$137,650	$158,800

REGION III

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
HUD Field Office—Philadelphia:				
Pike County, PA	$97,850	$110,200	$133,900	$154,500
HUD Field Office—Baltimore:				
Wilmington, DE–NJ–MD PMSA (Part) Cecil County, MD	100,600	113,300	137,650	158,800
Kent County, MD	104,500	117,700	143,000	165,000
HUD Field Office—Richmond:				
Caroline County, VA	71,250	80,250	97,500	112,500

REGION IV

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
HUD Field Office—Atlanta:				
Whitfield County, GA	$70,850	$79,800	$96,950	$111,900
HUD Field Office—Columbia:				
Charlotte-Gastonia-Rock Hill, NC–SC MSA (Part)				
York County, SC	97,950	110,300	134,000	154,650
HUD Field Office—Orlando:				
Lake County, FL	71,500	80,550	97,850	112,950
HUD Field Office—Jacksonville:				
Flagler County, FL	83,600	94,150	114,400	132,000
HUD Field Office—Coral Gables:				
Charlotte County, FL	73,050	82,250	99,900	115,350
HUD Field Office—Tampa:				
Pinellas County, FL	91,850	103,450	125,700	145,050
Bradenton, FL MSA				
Manatee County	93,950	105,850	128,600	148,400
HUD Field Office—Knoxville:				
Hamilton County, TN	82,650	93,050	113,100	130,500

REGION V

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
HUD Field Office—Detroit:				
Livingston County, MI	$96,400	$110,850	$134,650	$155,400
HUD Field Office—Flint:				
Detroit, MI PMSA				
Lapeer County	85,150	95,900	116,500	134,400

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REGION VIII

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
HUD Field Office—Denver				
Jefferson County, CO	$109,050	$122,800	$149,200	$172,000

REGION IX

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
HUD Field Office—Tucson:				
Santa Cruz County, AZ	$69,350	$78,100	$94,900	$109,500
HUD Field Office—Reno:				
Douglas County, NV	101,300	114,100	138,600	159,950

REGION X

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
HUD Field Office—Seattle:				
Chelan County, WA	$77,900	$87,700	$106,800	$123,000
Douglas County, WA	83,600	94,150	114,400	132,000
Bremerton, WA MSA				
Kitsap County	106,400	119,800	145,600	168,000
Mason County, WA	79,100	89,100	108,250	124,950
Olympia, WA MSA				
Thurston County	85,450	96,200	116,900	134,900
Skagit County, WA	97,100	109,400	132,900	153,350
Takoma, WA PMSA				
Pierce County	102,850	115,850	140,750	162,450
Other Areas:				
Cowlitz County	69,350	78,100	94,900	109,500
HUD Field Office—Spokane:				
Spokane, WA MSA				
Spokane County	79,750	89,850	109,150	125,950
HUD Field Office—Portland:				
Clackamas County, OR	113,050	127,300	154,700	178,500
Washington County, OR	106,800	120,050	145,850	168,300

Dated: December 19, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91–30963 Filed 12–26–91; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8365]

RIN 1545–AP75

Allocations Attributable to Partnership Nonrecourse Liabilities

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the allocation among partners of certain losses or deductions and certain income or gain attributable to partnership nonrecourse liabilities. The final regulations affect partnerships and their partners, and are necessary to provide them with guidance needed to comply with the applicable tax law.

EFFECTIVE DATE: These regulations are effective December 28, 1991, and generally apply to partnership taxable years beginning on or after December 28, 1991.

FOR FURTHER INFORMATION CONTACT: Susan Pace Hamill, 202–377–9470 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1990 (44 U.S.C. 3504(h)) under control number 1545–1090. The estimated annual burden per respondent varies from 3 minutes to 8 minutes, depending on individual circumstances, with an estimated average of 5 minutes.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224 and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Introduction

This document adds new regulation § 1.704–2 to the Income Tax Regulations (26 CFR part 1) under section 704(b) of the Internal Revenue Code of 1986 and removes existing § 1.704–1(b)(4)(iv) and § 1.704–1T(b)(4)(iv).

Background

On December 30, 1988, temporary regulations (TD 8237) relating to allocations attributable to nonrecourse liabilities were published in the **Federal Register**. A notice of proposed rulemaking (PS–229–84) cross referencing the temporary regulations was published in the **Federal Register** the same day. On November 21, 1989, amendments to the temporary regulations (TD 8274) were published. Written comments were received and a public hearing was held on October 30, 1991. After consideration of the comments, the proposed regulations are adopted as simplified and revised by this Treasury decision, and the corresponding temporary regulations are removed.

Explanation of Provisions

I. Introduction

Under section 704(b) of the Internal Revenue Code and the regulations thereunder, allocations of a partnership's income and deductions must have substantial economic effect to be valid for federal income tax purposes—that is, they must affect, in a substantial way, the economic stakes of the partners in the partnership apart from the tax consequences. The substantial economic effect portion of the section 704(b) regulation (§ 1.704–1(b)(1) and (b)(2)) contains a number of requirements designed to ensure that partners who are allocated losses bear the economic burden associated with those losses, and partners who are allocated income receive the economic benefit associated with that income. Allocations that do not have substantial economic effect under the tests in the section 704(b) regulations are reallocated according to the partners' interests in the partnership.

Nonrecourse liabilities are liabilities for which no partner is personally liable. Accordingly, allocations of deductions attributable to partnership nonrecourse liabilities (nonrecourse deductions) cannot have substantial economic effect because the nonrecourse lender, rather than the partners, ultimately bears any economic loss attributable to those deductions. Similarly, allocations of the gain that would be realized if the property securing the debt were surrendered for no consideration other than full satisfaction of the liability cannot have substantial economic effect because these allocations merely offset the nonrecourse deductions.

The final regulations provide rules that: (1) Determine when a partnership has nonrecourse deductions; (2) provide a safe harbor, including a minimum gain chargeback requirement, under which allocations of nonrecourse deductions are deemed to be in accordance with the partners' interests in the partnership; and (3) determine when a partnership must allocate income to the partners who were previously allocated nonrecourse deductions, pursuant to the minimum gain chargeback requirement.

II. Explanation of the Rules Common to the Temporary and Final Regulations

A. Minimum Gain

Allocations attributable to partnership nonrecourse liabilities are based on the concept of minimum gain. The amount of minimum gain with respect to a nonrecourse liability is the gain the partnership would realize if the property securing the liability were disposed of for no consideration other than relief from the liability. Consequently, minimum gain exists to the extent the amount of the liability exceeds the property's adjusted tax basis. The amount of minimum gain increases as the difference between the property's adjusted tax basis and the amount of the liability gets larger (for example as depreciation deductions are taken); minimum gain decreases as the difference between the property's adjusted tax basis and the amount of the liability gets smaller (for example if the property subject to the debt is disposed of or if the liability is paid).

B. Nonrecourse Deductions

In any taxable year, the amount of a partnership's nonrecourse deductions equals the net increase in the partnership's minimum gain reduced by any distributions of nonrecourse debt proceeds that are allocable to an increase in partnership minimum gain. A net increase or decrease in the partnership's minimum gain is an aggregate figure that is determined by comparing the current year's minimum gain with the prior year's minimum gain. If the partnership has a net increase in minimum gain, partnership deductions are generally treated as nonrecourse deductions to the extent of the net increase. Nonrecourse deductions must be allocated in accordance with the partners' interests in the partnership. The regulations provide a safe harbor under which an allocation of nonrecourse deductions is deemed to be in accordance with the partners' interests in the partnership. If the partnership has a net decrease in minimum gain, generally the minimum gain chargeback rules require income to be allocated to the partners who were previously allocated nonrecourse deductions or received distributions attributable to nonrecourse debt proceeds.

The partnership's nonrecourse deductions consist first of depreciation or cost recovery deductions from property subject to nonrecourse debt. If there are not enough depreciation or cost recovery deductions to cover the partnership's nonrecourse deductions, a pro rata portion of the partnership's other deductions are treated as nonrecourse deductions. If the amount of nonrecourse deductions exceeds these other items, then the excess is treated as an increase in partnership minimum gain (to be aggregated with any other minimum gain increases and decreases) for the next taxable year.

C. Allocations of Nonrecourse Deductions and Minimum Gain Chargebacks

Allocations of nonrecourse deductions are deemed to be in accordance with the partners' interests in the partnership if certain requirements are met. First, the partnership must meet all of the requirements of the economic effect rules under § 1.704–1(b) of the regulations. (The final regulations clarify the temporary regulations by explicitly listing the requirement that partners agree to a qualified income offset or an unconditional deficit restoration obligation with the other economic effect requirements that must be satisfied.) Second, the partnership must allocate the nonrecourse deductions in a manner that is reasonably consistent with the allocation that has substantial economic effect of another significant item attributable to property secured by nonrecourse debt (the reasonable consistency requirement). Finally, the partnership agreement must also contain a minimum gain chargeback provision that complies with the regulations. Part III below describes the minimum gain chargeback requirement in the temporary regulations, and Part IV describes the minimum gain chargeback requirement in the final regulations.

The reasonable consistency requirement governs the ratio in which the partners are permitted to share the nonrecourse deductions. The ratio for sharing nonrecourse deductions must correspond to other allocations that are related to the nonrecourse deductions and that have substantial economic

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effect. The examples illustrate situations that meet the reasonable consistency requirement where the nonrecourse deductions are allocated according to how the partners share losses or profits, or any ratio between those two figures.

Generally, when a partnership has a net decrease in minimum gain, there is a requirement to charge back minimum gain (the minimum gain chargeback requirement) (see parts III and IV below). The minimum gain chargeback requirement ensures that the nonrecourse deductions are replaced with income allocations at the appropriate time. The partnership's income used to satisfy the minimum gain chargeback requirement first consists of gains from the sale of property subject to nonrecourse debt. Any remaining minimum gain chargeback requirement is satisfied with a pro rata portion of the partnership's other items of income and gain (except gain from the sale of property subject to partner nonrecourse debt, which is treated separately). If there are not enough income items to satisfy the minimum gain chargeback requirement, the excess is carried over as a minimum gain chargeback requirement to succeeding taxable years until there is enough income to satisfy the minimum gain chargeback requirement. In certain circumstances, the temporary and the final regulations permit deferral of the minimum gain chargeback requirement until the occurrence of a subsequent event that triggers the chargeback. The temporary and final regulations also do not require the chargeback of minimum gain to a partner if the partner's share of minimum gain is or will be replaced with capital contributions.

D. Nonrecourse Deductions and Minimum Gain Chargebacks if There is a Book/Tax Disparity

Book/tax disparities may exist if contributed property is subject to section 704(c) or if the partnership's property is revalued pursuant to § 1.704–1(b)(2)(iv)(*f*). If partnership property is reflected on the partnership's books at a value that is different from the adjusted tax basis, the minimum gain increases and decreases are determined with reference to the book value. The regulations contain examples illustrating this determination.

If a revaluation of partnership property subject to nonrecourse liabilities causes an increase to the partners' capital accounts (a book-up), the regulations contain a special rule designed to prevent an inappropriate net decrease in minimum gain in the year the revaluation occurs. The partnership first calculates the net increase or decrease in minimum gain using the new book values and the prior year's minimum gain amount. Then, any decrease in minimum gain arising solely from the revaluation is added back (treated as an increase in minimum gain) to the net increase or decrease determined in the first step. In subsequent partnership taxable years, net increases or decreases in partnership minimum gain are determined using book values instead of adjusted tax basis. A special rule to compute minimum gain in the year of revaluation is not needed if the partners' capital accounts are decreased (a book-down). An artificial increase in minimum gain cannot occur if capital accounts are booked down because property cannot be revalued below the amount of any nonrecourse indebtedness to which it is subject. See section 7701(g) and § 1.704–1(b)(2)(iv)(*f*)(*1*).

E. Distributions of Nonrecourse Liability Proceeds

Encumbering property with additional nonrecourse debt that is not used to improve the property often causes an increase in minimum gain because the difference between the basis of the property and the total amount of the debt immediately increases. If the partnership distributes the proceeds of a nonrecourse liability, the distributee partner enjoys the economic benefit of the immediate use of the proceeds but does not bear the economic risk of loss if the partnership cannot pay the debt. If a nonrecourse liability encumbering the property causes minimum gain to increase and a distribution is allocable to the proceeds of this nonrecourse liability, the partner receiving this distribution also receives an additional share of minimum gain, which will be subject to the minimum gain chargeback requirement when the partnership's minimum gain decreases. Any reasonable method (including the rules under § 1.163–8T for allocating debt proceeds among expenditures) may be used to determine if a distribution is allocable to nonrecourse debt proceeds. If a net increase in minimum gain arising from nonrecourse borrowing is carried over to a later taxable year (usually because the proceeds are not distributed in the year of the encumbrance and the partnership does not otherwise have enough deductions to cover the increase in minimum gain), the carried-over portion of the net increase is allocable to any distribution of nonrecourse debt proceeds in the succeeding taxable year.

F. Tiered Partnerships

The regulations contain general rules that determine what effect a lower-tier partnership's items have on the upper-tier partnership's minimum gain. The rules are designed to allow the partners of the upper-tier partnership to look through and account for the lower-tier partnership's items as directly as possible. All nonrecourse deductions and distributions of nonrecourse debt proceeds from the lower-tier partnership increase the upper-tier partnership's minimum gain proportionately. The upper-tier partnership's share of the lower-tier partnership's net decrease in minimum gain is treated as a decrease in the upper-tier partnership's minimum gain (to be aggregated with the upper-tier partnership's other minimum gain increases or decreases). Distributions of nonrecourse debt proceeds from the lower-tier partnership generally retain their status (as nonrecourse debt proceeds) when received by the upper-tier partnership. Nonrecourse deductions allocated by the lower-tier partnership to the upper-tier partnership are treated as depreciation or cost recovery deductions arising from property owned by the upper-tier partnership.

G. Rules For Partner Nonrecourse Debt

The regulations contain rules, which generally parallel the rules applicable to nonrecourse debt, covering nonrecourse debt for which a partner bears the economic risk of loss ("partner nonrecourse debt"). A liability is treated as partner nonrecourse debt to the extent a partner bears the economic risk of loss solely because the partner or a related person (within the meaning of the section 752 regulations) is the creditor or the guarantor and the debt is considered nonrecourse for purposes of § 1.1001–2.

The regulations require the deductions attributable to partner nonrecourse debt to be allocated to the lending or guaranteeing partner. This is accomplished by requiring minimum gain calculations for each separate partner nonrecourse debt. If there is a net increase in the minimum gain attributable to a specific partner nonrecourse debt, the depreciation or cost recovery deductions generated by the property subject to the debt must be allocated to the lending or guaranteeing partner. If there are still not enough depreciation or cost recovery deductions to cover the entire net increase in minimum gain, a pro rata portion of the partnership's other loss items (except for depreciation or cost recovery deductions

on property subject to a partnership nonrecourse liability) is used. A carryover rule applies if there are not enough losses to cover the minimum gain increase.

If there is a net decrease in the minimum gain attributable to a particular partner nonrecourse debt, a minimum gain chargeback requirement generally applies to the partner who was previously allocated the losses (or who received distributions) attributable to the debt. (See parts III and IV below). The minimum gain chargeback requirement is satisfied first with gain from the sale of the property subject to the partner nonrecourse debt and then by a pro rata portion of the partnership's other income and gain items (except to the extent these items have been allocated to satisfy a partnership minimum gain chargeback requirement). Unsatisfied minimum gain chargeback requirements carry over to succeeding taxable years.

III. Description of Minimum Gain Chargeback Approach in the Temporary Regulations

The temporary regulations based a partner's minimum gain chargeback requirement (with respect to both nonrecourse and partner nonrecourse debt) on a "two-prong" calculation. A partner's minimum gain chargeback equaled the greater of (1) the partner's share of the net decrease in minimum gain attributable to a disposition of property securing nonrecourse liabilities, or (2) the partner's deficit capital account, as specially defined. The computation of the partner's deficit capital accounts required a number of deemed increases and decreases that generally—but not precisely—paralleled the alternate test for economic effect under the section 704(b) regulations.

The two-prong approach contained no explicit exceptions. If prong one applied to the net decrease in minimum gain, a chargeback was always imposed. Prong two, however, effectively provided partial relief from the minimum gain chargeback requirement in certain situations. When nonrecourse debt converted to recourse debt or to partner nonrecourse debt (by, for example, the creation of a guarantee) prong two precluded the chargeback to the extent the partner bore the risk of loss, so long as no part of the net decrease in minimum gain was attributable to a disposition of property. When calculating the minimum gain chargeback requirement, prong two increased the partner's deficit capital account to the extent the partner bore the risk of loss for partnership liabilities. Moreover, if the partners had previously restored the nonrecourse deductions and distributions attributable to nonrecourse debt proceeds with income allocations or capital contributions, prong two (but not prong one) did not impose a minimum gain chargeback to the extent the deficits in the partners' capital accounts had been eliminated by these income allocations and capital contributions.

IV. Modifications to the Minimum Gain Chargeback Requirement Made by the Final Regulations

A. Reasons For the Modifications

The complexity of the two-prong calculation was heavily criticized in the comments. The comments stated that the second prong did not always preclude inappropriate chargebacks when debt was converted, refinanced, or otherwise changed. Moreover, the comments stated that, depending on whether the property was sold at the time of the decrease in minimum gain, the two-prong approach treated similar situations inconsistently if the partners restored their nonrecourse deductions with other income allocations (or capital contributions) before the partnership had a net decrease in minimum gain. Under the temporary regulations, if the partners restored their nonrecourse deductions with income allocations or capital contributions and prong one later applied to the net decrease in minimum gain, the minimum gain chargeback always applied and often created economic distortions. However, if prong two applied and if the income allocations and capital contributions fully restored the deficits in the partners' capital accounts, the minimum gain chargeback was not required. The final regulations address these concerns by basing the minimum gain chargeback solely on the partners' shares of minimum gain and providing exceptions where a chargeback is inappropriate.

B. Minimum Gain Chargeback Requirement in the Final Regulations

The final regulations contain a minimum gain chargeback requirement (for both nonrecourse and partner nonrecourse debt), with appropriate exceptions, based exclusively on the partners' shares of minimum gain. Specifically, a partner's minimum gain chargeback equals the partner's share of the partnership's net decrease in minimum gain. A partner's share of the net decrease is measured by that partner's percentage share of the partnership's total minimum gain. For example, if a partner had a 20 percent share of the partnership's total minimum gain and the partnership had a net decrease in minimum gain of $500, the partner's share of the net decrease (and minimum gain chargeback) is $100 (20 percent of $500). A partner's share of minimum gain equals the sum of all past nonrecourse deductions allocated to the partner and distributions attributable to nonrecourse debt proceeds received by the partner; those are the items that need to be restored by the minimum gain chargeback requirement.

A number of exceptions to the mandatory minimum gain chargeback are included to address inappropriate chargebacks. A partner is not subject to a minimum gain chargeback to the extent (1) the partner's share of the net decrease in minimum gain is caused by a guarantee, refinancing, or other change in the debt instrument causing it no longer to be partially or wholly nonrecourse, and (2) the partner bears the economic risk of loss (under the section 752 regulations) for the new liability. A chargeback is inappropriate in this circumstance because partners who bear the risk of loss for the former nonrecourse debt have replaced their nonrecourse deductions with obligations either to contribute money to the partnership or to pay the creditor if the partnership cannot pay the liability. The minimum gain chargeback also does not apply to a partner to the extent the partner contributes capital to the partnership and that capital is used to repay the nonrecourse liability.

The final regulations also contain exceptions to the minimum gain chargeback requirement for partner nonrecourse debt. If partner nonrecourse debt converts to partnership nonrecourse debt, the minimum gain chargeback is deferred. The partner is allocated a share of partnership minimum gain to the extent the chargeback is deferred and thus is subject to the deferred minimum gain chargeback when that debt is paid off or the encumbered property is sold. Other exceptions parallel the exceptions for partnership nonrecourse liabilities.

The final regulations do not allow partners to reduce their shares of minimum gain if the nonrecourse deductions (or distributions of nonrecourse debt proceeds) are restored before there is a net decrease in minimum gain. However, the Commissioner has the discretion to waive the minimum gain chargeback requirement at the partnership's request if the partnership has a net decrease in minimum gain, the minimum gain chargeback would cause economic distortions, and it is not expected that the partnership will have sufficient other income to correct these distortions. In

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order for a waiver to be considered, the partnership must demonstrate that: (1) The partners have restored the previous nonrecourse deductions (and distributions of nonrecourse debt proceeds) with net income allocations or capital contributions; and (2) the income allocations that do not meet the minimum gain chargeback requirement more accurately reflect the partners' economic arrangement, as evidenced by the partnership's allocations and distributions and the partners' contributions.

V. Other Comments on the Temporary Regulations

A. Guarantees of Partnership Nonrecourse Debt

Commentators have suggested that allocations attributable to partnership nonrecourse liabilities that have been guaranteed by a partner (or a related party) can be more appropriately treated under the substantial economic effect rules of § 1.704–1(b)(2) than under the partner nonrecourse debt rules. These commentators have argued that guaranteed nonrecourse debt should be distinguished from direct nonrecourse loans made by partners (or related parties) because, to the extent the debt can be satisfied by the guarantee, the partnership will not recognize gain if the lender forecloses on the property. Commentators advocate the distinction on the premise that, in the case of guaranteed debt, partners other than the guarantor may bear the economic burden under the substantial economic effect rules. The rights and obligations of partners and lenders under guarantee arrangements, however, may vary greatly from case to case. As a result, the distinction sought by the commentators may not always be appropriate; in many instances, guaranteed nonrecourse debt is more appropriately treated under the partner nonrecourse debt rules. In addition, the Service and the Treasury believe that, in the case of guaranteed nonrecourse debt and partner nonrecourse loans, transactions may be structured to ensure that partner nonrecourse deductions are allocated properly to the partners that economically bear the risk of loss attributable to those loans. Moreover, some of the commentators' concerns regarding the complexity of the partner nonrecourse debt rules may have been alleviated by the modifications made to the nonrecourse debt rules that are described in part IV above. Therefore, the final regulations continue to treat guaranteed nonrecourse debt under the partner nonrecourse debt rules. Nonetheless, the Service and the Treasury request comments on whether further simplification of the partner nonrecourse debt rules is needed and welcome suggestions for alternative approaches to accounting for allocations attributable to partner nonrecourse debt.

B. Minimum Gain Calculations for Exculpatory Liabilities

A partnership may have a liability that is not secured by any specific property and that is recourse to the partnership as an entity, but explicitly not recourse to any partner (exculpatory liability). Section 1.704–2(b)(3) of the final regulations defines nonrecourse liability by referring to the definition of nonrecourse liability in the regulations under section 752. Under that definition, an exculpatory liability is a nonrecourse liability. The application of the nonrecourse debt rules of § 1.704–2—more specifically, the calculation of minimum gain—may be difficult in the case of an exculpatory liability, however, because the liability is not secured by specific property and the bases of partnership properties that can be reached by the lender in the case of an exculpatory liability may fluctuate greatly. Section 1.704–2 does not prescribe precise rules addressing the allocation of income and loss attributable to exculpatory liabilities. Taxpayers, therefore, are left to treat allocations attributable to these liabilities in a manner that reasonably reflects the principles of section 704(b). Commentators have requested that the treatment of allocations attributable to exculpatory liabilities under the nonrecourse debt rules be clarified. The Service and the Treasury solicit further suggestions on the appropriate treatment of allocations attributable to these liabilities. Suggestions should take into account the practical concerns of partnerships as well as the Service's concerns about the proper allocation of loss and gain items attributable to these liabilities.

VI. Effective Dates and Transition Rules

Comments stated that the transition rules do not correspond exactly with the grandfather provisions of section 752 and are complex. However, a major change to the transition rules could adversely affect some partnerships retroactively. Therefore, the final regulations contain the transition rules as they appear in the temporary regulations with one modification.

The modification expands the grandfather rule for related-party partner nonrecourse debt. But section 752 and the temporary regulations grant permanent grandfather status to nonrecourse loans or guarantees of nonrecourse debt made before January 30, 1989, by persons related to partners as long as there are no material modifications to the debt. The grandfather rule in the temporary regulations for related-party partner nonrecourse debt fails to grandfather certain situations, such as guarantees of interest and certain guarantees of a lower-tier partnership's debt by upper-tier partners. The final regulations amend the related-party grandfather provision to include all pre-January 30, 1989, debt, other than direct partner nonrecourse loans or guarantees of partnership nonrecourse debt, that is grandfathered under the section 752 regulations so long as all the partners in the partnership consistently treat the liability as nonrecourse.

Special Analyses

These final regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It is hereby certified that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that these rules do not have a significant impact on a substantial number of small entities. Therefore, a final Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comments on their impact on small businesses.

Drafting Information

The principal author of these regulations is Susan Pace Hamill, Office of the Assistant Chief Counsel (Passthroughs and Special Industries). However personnel from other offices in the Internal Revenue Service and the Treasury Department participated in their development.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805 * * *

§ 1.704–1 [Amended]

Par. 2. In § 1.704–1(b)(0), the entry for § 1.704–1(b)(4)(iv) is amended by revising the heading to read "Allocations Attributable to Nonrecourse Liabilities."

Par. 3. Section 1.704–1(b)(0) is further amended by removing from the table all headings and section numbers for § 1.704–1(b)(4)(iv) (*a*) through (*h*).

Par. 4. Section 1.704–1(b)(1)(i) is amended by adding the language "and § 1.704–2" at the end of the sixth sentence.

Par. 5–6. Section 1.704–1(b)(2)(ii)(*d*)(*6*) is amended by adding "under § 1.704–2(f)" at the end of the paragraph.

Par. 7. Section 1.704–1(b)(4)(iv) is revised to read as follows:

§ 1.704–1 Partner's distributive share.

* * * * *

(b) * * *

(4) * * *

(iv) *Allocations attributable to nonrecourse liabilities.* The rules for allocations attributable to nonrecourse liabilities are contained in § 1.704–2.

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Par. 8. Section 1.704(b)(5) is amended by removing *Examples* (*20*) through (*23*).

Par. 9. Section 1.704–1T(b)(4)(iv) is removed.

Part. 10. New § 1.704–2 is added to read as follows:

§ 1.704–2. Allocations attributable to nonrecourse liabilities.

(a) *Table of contents.* This paragraph contains a listing of the major headings of this § 1.704–2.

§ 1.704–2 Allocations attributable to nonrecourse liabilities.

(a) Table of contents.
(b) General principles and definitions.
(1) Definition of and allocations of nonrecourse deductions.
(2) Definition of and allocations pursuant to a minimum gain chargeback.
(3) Definition of nonrecourse liability.
(4) Definition of partner nonrecourse debt.
(c) Amount of nonrecourse deductions.
(d) Partnership minimum gain.
(1) Amount of partnership minimum gain.
(2) Property subject to more than one liability.
(i) In general.
(ii) Allocating liabilities.
(3) Partnership minimum gain if there is a book/tax disparity.
(4) Special rule for year of revaluation.
(e) Requirements to be satisfied.
(f) Minimum gain chargeback requirement.
(1) In general.
(2) Exception for certain capital conversions and refinancings.
(3) Exception for certain contributions.
(4) Waiver for certain income allocations that fail to meet minimum gain chargeback requirement if minimum gain chargeback distorts economic arrangement.
(5) Additional exceptions.
(6) Partnership items subject to the minimum gain chargeback requirement.
(7) Examples.
(g) Shares of partnership minimum gain.
(1) Partner's share of partnership minimum gain.
(2) Partner's share of the net decrease in partnership minimum gain.
(3) Conversions of recourse or partner nonrecourse debt into nonrecourse debt.
(h) Distribution of nonrecourse liability proceeds allocable to an increase in partnership minimum gain.
(1) In general.
(2) Distribution allocable to nonrecourse liability proceeds.
(3) Option when there is an obligation to restore.
(4) Carryover to immediately succeeding taxable year.
(i) Partnership nonrecourse liabilities where a partner bears the economic risk of loss.
(1) In general.
(2) Definition of and determination of partner nonrecourse deductions.
(3) Determination of partner nonrecourse debt minimum gain.
(4) Chargeback of partner nonrecourse debt minimum gain.
(5) Partner's share of partner nonrecourse debt minimum gain.
(6) Distribution of partner nonrecourse debt proceeds allocable to an increase in partner nonrecourse debt minimum gain.
(j) Ordering rules.
(1) Treatment of partnership losses and deductions.
(i) Partner nonrecourse deductions.
(ii) Partnership nonrecourse deductions.
(iii) Carryover to succeeding taxable year.
(2) Treatment of partnership income and gains.
(i) Minimum gain chargeback.
(ii) Chargeback attributable to decrease in partner nonrecourse debt minimum gain.
(iii) Carryover to succeeding taxable year.
(k) Tiered partnerships.
(1) Increase in upper-tier partnership's minimum gain.
(2) Decrease in upper-tier partnership's minimum gain.
(3) Nonrecourse debt proceeds distributed from the lower-tier partnership to the upper-tier partnership.
(4) Nonrecourse deductions of lower-tier partnership treated as depreciation by upper-tier partnership.
(5) Coordination with partner nonrecourse debt rules.
(l) Effective dates.
(1) In general.
(i) Prospective application.
(ii) Partnerships subject to temporary regulations.
(iii) Partnerships subject to former regulations.
(2) Special rule applicable to pre-January 30, 1989, related party nonrecourse debt.
(3) Transition rule for pre-March 1, 1984, partner nonrecourse debt.
(4) Election.
(m) Examples.

(b) *General principles and definitions*—(1) *Definition of and allocations of nonrecourse deductions.* Allocations of losses, deductions, or section 705(a)(2)(B) expenditures attributable to partnership nonrecourse liabilities ("nonrecourse deductions") cannot have economic effect because the creditor alone bears any economic burden that corresponds to those allocations. Thus, nonrecourse deductions must be allocated in accordance with the partners' interests in the partnership. Paragraph (e) of this section provides a test that deems allocations of nonrecourse deductions to be in accordance with the partners' interests in the partnership. If that test is not satisfied, the partners' distributive shares of nonrecourse deductions are determined under § 1.704–1(b)(3), according to the partners' overall economic interests in the partnership. See also paragraph (i) of this section for special rules regarding the allocation of deductions attributable to nonrecourse liabilities for which a partner bears the economic risk of loss (as described in paragraph (b)(4) of this section).

(2) *Definition of and allocations pursuant to a minimum gain chargeback.* To the extent a nonrecourse liability exceeds the adjusted tax basis of the partnership property it encumbers, a disposition of that property will generate gain that at least equals that excess ("partnership minimum gain"). An increase in partnership minimum gain is created by a decrease in the adjusted tax basis of property encumbered by a nonrecourse liability below the amount of that liability and by a partnership nonrecourse borrowing that exceeds the adjusted tax basis of the property encumbered by the borrowing. Partnership minimum gain decreases as reductions occur in the amount by which the nonrecourse liability exceeds the adjusted tax basis of the property encumbered by the liability. Allocations of gain attributable to a decrease in partnership minimum gain (a "minimum gain chargeback," as required under paragraph (f) of this section) cannot have economic effect because the gain merely offsets nonrecourse deductions previously claimed by the partnership. Thus, to avoid impairing the economic effect of other allocations, allocations pursuant to a minimum gain chargeback must be made to the partners that either were allocated nonrecourse deductions or received distributions of proceeds attributable to a nonrecourse borrowing. Paragraph (e) of this section provides a test that, if met, deems allocations of partnership income pursuant to a minimum gain chargeback to be in accordance with the partners' interests

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in the partnership. If property encumbered by a nonrecourse liability is reflected on the partnership's books at a value that differs from its adjusted tax basis, paragraph (d)(3) of this section provides that minimum gain is determined with reference to the property's book basis. See also paragraph (i)(4) of this section for special rules regarding the minimum gain chargeback requirement for partner nonrecourse debt.

(3) *Definition of nonrecourse liability.* "Nonrecourse liability" means a nonrecourse liability as defined in § 1.752–1(a)(2).

(4) *Definition of partner nonrecourse debt.* "Partner nonrecourse debt" or "partner nonrecourse liability" means any partnership liability to the extent the liability is nonrecourse for purposes of § 1.1001–2, and a partner (or related person (within the meaning of § 1.752–4(b)) bears the economic risk of loss under § 1.752–2 because, for example, the partner or related person is the creditor or a guarantor.

(c) *Amount of nonrecourse deductions.* The amount of nonrecourse deductions for a partnership taxable year equals the net increase in partnership minimum gain during the year (determined under paragraph (d) of this section), reduced (but not below zero) by the aggregate distributions made during the year of proceeds of a nonrecourse liability that are allocable to an increase in partnership minimum gain (determined under paragraph (h) of this section). See paragraph (m), *Examples* (1)(i) and (vi), (2), and (3) of this section. However, increases in partnership minimum gain resulting from conversions, refinancings, or other changes to a debt instrument (as described in paragraph (g)(3)) do not generate nonrecourse deductions. Generally, nonrecourse deductions consist first of certain depreciation or cost recovery deductions and then, if necessary, by a pro rata portion of other partnership losses, deductions, and section 705(a)(2)(B) expenditures for that year; excess nonrecourse deductions are carried over. See paragraphs (j)(1) (ii) and (iii) of this section for more specific ordering rules. See also paragraph (m), *Example* (1)(iv) of this section.

(d) *Partnership minimum gain*—(1) *Amount of partnership minimum gain.* The amount of partnership minimum gain is determined by first computing for each partnership nonrecourse liability any gain the partnership would realize if it disposed of the property subject to that liability for no consideration other than full satisfaction of the liability, and then aggregating the separately computed gains. The amount of partnership minimum gain includes minimum gain arising from a conversion, refinancing, or other change to a debt instrument, as described in paragraph (g)(3) of this section, only to the extent a partner is allocated a share of that minimum gain. For any partnership taxable year, the net increase or decrease in partnership minimum gain is determined by comparing the partnership minimum gain on the last day of the immediately preceding taxable year with the partnership minimum gain on the last day of the current taxable year. See paragraph (m), *Examples* (1) (i) and (iv), (2), and (3) of this section.

(2) *Property subject to more than one liability.* (i) *In general.* If property is subject to more than one liability, only the portion of the property's adjusted tax basis that is allocated to a nonrecourse liability under paragraph (d)(2)(ii) of this section is used to compute minimum gain with respect to that liability.

(ii) *Allocating liabilities.* If property is subject to two or more liabilities of equal priority, the property's adjusted tax basis is allocated among the liabilities in proportion to their outstanding balances. If property is subject to two or more liabilities of unequal priority, the adjusted tax basis is allocated first to the liability of the highest priority to the extent of its outstanding balance and then to each liability in descending order of priority to the extent of its outstanding balance, until fully allocated. See paragraph (m), *Example* (1) (v) and (vii) of this section.

(3) *Partnership minimum gain if there is a book/tax disparity.* If partnership property subject to one or more nonrecourse liabilities is, under § 1.704–1(b)(2)(iv) (*d*), (*f*), or (*r*), reflected on the partnership's books at a value that differs from its adjusted tax basis, the determinations under this section are made with reference to the property's book value. See section 704(c) and § 1.704–1(b)(4)(i) for principles that govern the treatment of a partner's share of minimum gain that is eliminated by the revaluation. See also paragraph (m), *Example* (3) of this section.

(4) *Special rule for year of revaluation.* If the partners' capital accounts are increased pursuant to § 1.704–1(b)(2)(iv) (*d*), (*f*), or (*r*) to reflect a revaluation of partnership property subject to a nonrecourse liability, the net increase or decrease in partnership minimum gain for the partnership taxable year of the revaluation is determined by:

(i) First calculating the net decrease or increase in partnership minimum gain using the current year's book values and the prior year's partnership minimum gain amount; and

(ii) Then adding back any decrease in minimum gain arising solely from the revaluation. See paragraph (m), *Example* (3)(iii) of this section. If the partners' capital accounts are decreased to reflect a revaluation, the net increases in partnership minimum gain are determined in the same manner as in the year before the revaluation, but by using book values rather than adjusted tax bases. See section 7701(g) and § 1.704–1(b)(2)(iv)(*f*)(*1*) (property being revalued cannot be booked down below the amount of any nonrecourse liability to which the property is subject).

(e) *Requirements to be satisfied.* Allocations of nonrecourse deductions are deemed to be in accordance with the partners' interests in the partnership only if—

(1) Throughout the full term of the partnership requirements (*1*) and (*2*) of § 1.704–1(b)(2)(ii)(*b*) are satisfied (*i.e.*, capital accounts are maintained in accordance with § 1.704–1(b)(2)(iv) and liquidating distributions are required to be made in accordance with positive capital account balances), and requirement (*3*) of either § 1.704–1(b)(2)(ii)(*b*) or § 1.704–1(b)(2)(ii)(*d*) is satisfied (*i.e.*, partners with deficit capital accounts have an unconditional deficit restoration obligation or agree to a qualified income offset);

(2) Beginning in the first taxable year of the partnership in which there are nonrecourse deductions and thereafter throughout the full term of the partnership, the partnership agreement provides for allocations of nonrecourse deductions in a manner that is reasonably consistent with allocations that have substantial economic effect of some other significant partnership item attributable to the property securing the nonrecourse liabilities;

(3) Beginning in the first taxable year of the partnership that it has nonrecourse deductions or makes a distribution of proceeds of a nonrecourse liability that are allocable to an increase in partnership minimum gain, and thereafter throughout the full term of the partnership, the partnership agreement contains a provision that complies with the minimum gain chargeback requirements of paragraph (f) of this section; and

(4) All other material allocations and capital account adjustments under the partnership agreement are recognized under § 1.704–1(b) (without regard to whether allocations of adjusted tax basis and amount realized under section 613A(c)(7)(D) are recognized under § 1.704–1(b)(4)(v)).

(f) *Minimum gain chargeback requirement*—(1) *In general.* If there is a net decrease in partnership minimum gain for a partnership taxable year, the minimum gain chargeback requirement applies and each partner must be allocated items of partnership income and gain for that year equal to that partner's share of the net decrease in partnership minimum gain (within the meaning of paragraph (g)(2)).

(2) *Exception for certain conversions and refinancings.* A partner is not subject to the minimum gain chargeback requirement to the extent the partner's share of the net decrease in partnership minimum gain is caused by a guarantee, refinancing, or other change in the debt instrument causing it to become partially or wholly recourse debt or partner nonrecourse debt, and the partner bears the economic risk of loss (within the meaning of § 1.752–2) for the newly guaranteed, refinanced, or otherwise changed liability.

(3) *Exception for certain capital contributions.* A partner is not subject to the minimum gain chargeback requirement to the extent the partner contributes capital to the partnership that is used to repay the nonrecourse liability, and the partner's share of the net decrease in partnership minimum gain results from the repayment. See paragraph (m), *Example* (1)(iv) of this section.

(4) *Waiver for certain income allocations that fail to meet minimum gain chargeback requirement if minimum gain chargeback distorts economic arrangement.* In any taxable year that a partnership has a net decrease in partnership minimum gain, if the minimum gain chargeback requirement would cause a distortion in the economic arrangement among the partners and it is not expected that the partnership will have sufficient other income to correct that distortion, the Commissioner has the discretion, if requested by the partnership, to waive the minimum gain chargeback requirement. The following facts must be demonstrated in order for a request for a waiver to be considered:

(i) The partners have made capital contributions or received net income allocations that have restored the previous nonrecourse deductions and the distributions attributable to proceeds of a nonrecourse liability; and

(ii) The minimum gain chargeback requirement would distort the partners' economic arrangement as reflected in the partnership agreement and as evidenced over the term of the partnership by the partnership's allocations and distributions and the partners' contributions.

(5) *Additional Exceptions.* The Commissioner may, by revenue ruling, provide additional exceptions to the minimum gain chargeback requirement.

(6) *Partnership items subject to the minimum gain chargeback requirement.* Any minimum gain chargeback required for a partnership taxable year consists first of certain gains recognized from the disposition of partnership property subject to one or more partnership nonrecourse liabilities and then if necessary consists of a pro rata portion of the partnership's other items of income and gain for that year. If the amount of the minimum gain chargeback requirement exceeds the partnership's income and gains for the taxable year, the excess carries over. See paragraphs (j)(2) (i) and (iii) of this section for more specific ordering rules.

(7) *Examples.* The following examples illustrate the provisions in § 1.704–2(f).

Example 1. Partnership AB consists of two partners, limited partner A and general partner B. Partner A contributes $90 and Partner B contributes $10 to the partnership. The partnership agreement has a minimum gain chargeback provision and provides that, except as otherwise required by section 704(c), all losses will be allocated 90 percent to A and 10 percent to B; and that all income will be allocated first to restore previous losses and thereafter 50 percent to A and 50 percent to B. Distributions are made first to return initial capital to the partners and then 50 percent to A and 50 percent to B. Final distributions are made in accordance with capital account balances. The partnership borrows $200 on a nonrecourse basis from an unrelated third party and purchases an asset for $300. The partnership's only tax item for each of the first three years is $100 of depreciation on the asset. A's and B's shares of minimum gain (under paragraph (g) of this section) and deficit capital account balances are $180 and $20 respectively at the end of the third year. In the fourth year, the partnership earns $400 of net operating income and allocates the first $300 to restore the previous losses (*i.e.*, $270 to A and $30 to B); the last $100 is allocated $50 each. The partnership distributes $200 of the available cash that same year; the first $100 is distributed $90 to A and $10 to B to return their capital contributions; the last $100 is distributed $50 each to reflect their ratio for sharing profits.

	A	B
Capital account on formation	$90	$10
Less: net loss in years 1–3	($270)	($30)
Capital account at end of year 3	($180)	($20)
Allocation of operating income to restore nonrecourse deductions	$180	$20
Allocation of operating income to restore capital contributions	$90	$10
Allocation of operating income to reflect profits	$50	$50
Capital accounts after allocation of operating income	$140	$60
Distribution reflecting capital contribution	($90)	($10)
Distribution in profit-sharing ratio	($50)	($50)
Capital accounts following distribution	($0)	($0)

In the fifth year, the partnership sells the property for $300 and realizes $300 of gain. $200 of the proceeds are used to pay the nonrecourse lender. The partnership has $300 to distribute, and the partners expect to share that equally. Absent a waiver under paragraph (f)(4) of this section, the minimum gain chargeback would require the partnership to allocate the first $200 of the gain $180 to A and $20 to B, which would distort their economic arrangement. This allocation, together with the allocation of the $100 profit $50 to each partner, would result in A having a positive capital account balance of $230 and B having a positive capital account balance of $70. The allocation of income in year 4 in effect anticipated the minimum gain chargeback that did not occur until year 5. Assuming the partnership would not have sufficient other income to correct the distortion that would otherwise result, the partnership may request that the Commissioner exercise his or her discretion to waive the minimum gain chargeback requirement and recognize allocations that would allow A and B to share equally the gain on the sale of the property. These allocations would bring the partners' capital accounts to $150 each, allowing them to share the last $300 equally. The Commissioner may, in his or her discretion, permit this allocation pursuant to paragraph (f)(4) of this section because the minimum gain chargeback would distort the partners' economic arrangement over the term of the partnership as reflected in the partnership agreement and as evidenced by the partner's contributions and the partnerships allocations and distributions.

Example 2. A and B form a partnership, contribute $25 each to the partnership's capital, and agree to share all losses and profits 50 percent each. Neither partner has an unconditional deficit restoration obligation and all the requirements in paragraph (e) of this section are met. The partnership obtains a nonrecourse loan from an unrelated third party of $100 and purchases two assets, stock for $50 and depreciable property for $100. The nonrecourse loan is secured by the partnership's depreciable property. The partnership generates $20 of depreciation in each of the first five years as its only tax item. These deductions are properly treated as nonrecourse deductions and the allocation of these deductions 50 percent to A and 50 percent to B is deemed to be in accordance with the partners' interests in the partnership. At the end of year five, A and B each have a $25 deficit capital account and a $50 share of partnership minimum gain. In the beginning of year six, (at the lender's request), A guarantees the entire nonrecourse liability.

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Pursuant to paragraph (d)(1) of this section, the partnership has a net decrease in minimum gain of $100 and under paragraph (g)(2) of this section, A's and B's shares of that net decrease are $50 each. Under paragraph (f)(1) of this section (the minimum gain chargeback requirement), B is subject to a $50 minimum gain chargeback. Because the partnership has no income in year six, the entire $50 carries over as a minimum gain chargeback requirement to succeeding taxable years until their is enough income to cover the minimum gain chargeback requirement. Under the exception to the minimum gain chargeback in paragraph (f)(2) of this section, A is not subject to a minimum gain chargeback for A's $50 share of the net decrease because A bears the economic risk of loss for the liability. Instead, A's share of partner nonrecourse debt minimum gain is $50 pursuant to paragraph (i)(3) of this section. In year seven, the partnership earns $100 of net operating income and uses the money to repay the entire $100 nonrecourse debt (that A has guaranteed). Under paragraph (i)(3) of this section, the partnership has a net decrease in partner nonrecourse debt minimum gain of $50. B must be allocated $50 of the operating income pursuant to the carried over minimum gain chargeback requirement; pursuant to paragraph (i)(4) of this section, the other $50 of operating income must be allocated to A as a partner nonrecourse debt minimum gain chargeback.

(g) *Shares of partnership minimum gain—(1) Partner's share of partnership minimum gain.* Except as increased in paragraph (g) (3) of this section, a partner's share of partnership minimum gain at the end of any partnership taxable year equals:

(i) The sum of nonrecourse deductions allocated to that partner (and to that partner's predecessors in interest) up to that time and the distributions made to that partner (and to that partner's predecessors in interest) up to that time of proceeds of a nonrecourse liability allocable to an increase in partnership minimum gain (see paragraph (h)(1) of this section); minus

(ii) The sum of that partner's (and that partner's predecessors' in interest) aggregate share of the net decreases in partnership minimum gain plus their aggregate share of decreases resulting from revaluations of partnership property subject to one or more partnership nonrecourse liabilities.

For purposes of § 1.704(b)(2)(ii)(*d*), a partner's share of partnership minimum gain is added to the limited dollar amount, if any, of the deficit balance in the partner's capital account that the partner is obligated to restore. See paragraph (m), *Examples* (1)(i) and (3)(i) of this section.

(2) *Partner's share of the net decrease in partnership minimum gain.* A partner's share of the net decrease in partnership minimum gain is the amount of the total net decrease multiplied by the partner's percentage share of the partnership's minimum gain at the end of the immediately preceding taxable year. A partner's share of any decrease in partnership minimum gain resulting from a revaluation of partnership property equals the increase in the partner's capital account attributable to the revaluation to the extent the reduction in minimum gain is caused by the revaluation. See paragraph (m), *Example* (3)(ii) of this section.

(3) *Conversions of recourse or partner nonrecourse debt into nonrecourse debt.* A partner's share of partnership minimum gain is increased to the extent provided in this paragraph (g)(3) if a refinancing, the lapse of a guarantee, or other change to a debt instrument causes a recourse or partner nonrecourse liability to become partially or wholly nonrecourse. If a recourse liability becomes a nonrecourse liability, a partner has a share of the partnership's minimum gain that results from the conversion equal to the partner's deficit capital account (determined under § 1.704–1(b)(2)(iv)) to the extent the partner no longer bears the economic burden for the entire deficit capital account as a result of the conversion. For purposes of the preceding sentence, the determination of the extent to which a partner bears the economic burden for a deficit capital account is made by determining the consequences to the partner in the case of a complete liquidation of the partnership immediately after the conversion applying the rules described in § 1.704–1(b)(2)(iii)(*c*) that deem the value of partnership property to equal its basis, taking into account section 7701(g) in the case of property that secures nonrecourse indebtedness. If a partner nonrecourse debt becomes a nonrecourse liability, the partner's share of partnership minimum gain is increased to the extent the partner is not subject to the minimum gain chargeback requirement under paragraph (i)(4) of this section.

(h) *Distribution of nonrecourse liability proceeds allocable to an increase in partnership minimum gain—*(1) *In general.* If during its taxable year a partnership makes a distribution to the partners allocable to the proceeds of a nonrecourse liability, the distribution is allocable to an increase in partnership minimum gain to the extent the increase results from encumbering partnership property with aggregate nonrecourse liabilities that exceed the property's adjusted tax basis. See paragraph (m), *Example* (1)(vi) of this section. If the net increase in partnership minimum gain for a partnership taxable year is allocable to more than one nonrecourse liability, the net increase is allocated among the liabilities on a pro rata basis based on the outstanding balance of each liability.

(2) *Distribution allocable to nonrecourse liability proceeds.* A partnership may use any reasonable method to determine whether a distribution by the partnership to one or more partners is allocable to proceeds of a nonrecourse liability. The rules prescribed under § 1.163–8T for allocating debt proceeds among expenditures (applying those rules to the partnership as if it were an individual) constitute a reasonable method for determining whether the nonrecourse liability proceeds are distributed to the partners and the partners to whom the proceeds are distributed.

(3) *Option when there is an obligation to restore.* A partnership may treat any distribution to a partner of the proceeds of a nonrecourse liability (that would otherwise be allocable to an increase in partnership minimum gain) as a distribution that is not allocable to an increase in partnership minimum gain to the extent the distribution does not cause or increase a deficit balance in the partner's capital account that exceeds the amount the partner is otherwise obligated to restore (within the meaning of § 1.704–1(b)(2)(ii)(*c*)) as of the end of the partnership taxable year in which the distribution occurs.

(4) *Carryover to immediately succeeding taxable year.* The carryover rule of this paragraph applies if the net increase in partnership minimum gain for a partnership taxable year that is allocable to a nonrecourse liability under paragraph (h)(2) of this section exceeds the distributions allocable to the proceeds of the liability ("excess allocable amount"), and all or part of the net increase in partnership minimum gain for the year is carried over as an increase in partnership minimum gain for the immediately succeeding taxable year (pursuant to paragraph (j)(1)(iii) of this section). If the carryover rule of this paragraph applies, the excess allocable amount (or the amount carried over under paragraph (j)(1)(iii) of this section, if less) is treated in the succeeding taxable year as an increase in partnership minimum gain that arose in that year as a result of incurring the nonrecourse liability to which the excess allocable amount is attributable. See paragraph (m), *Example* (1)(vi) of this section. If for a partnership taxable year there is an excess allocable amount with respect to more than one partnership nonrecourse liability, the excess allocable amount is allocated to each liability on a pro rata basis based on the outstanding balance of each liability.

(i) *Partnership nonrecourse liabilities where a partner bears the economic risk of loss—*(1) *In general.* Partnership losses, deductions, or section 705(a)(2)(B) expenditures that are attributable to a particular partner nonrecourse liability ("partner nonrecourse deductions," as defined in paragraph (i)(2) of this section) must be allocated to the partner that bears the economic risk of loss for the liability. If more than one partner bears the economic risk of loss for a partner nonrecourse liability, any partner nonrecourse deductions attributable to that liability must be allocated among the partners according to the ratio in which they bear the economic risk of loss. If partners bear the economic risk of loss for different portions of a liability, each portion is treated as a separate partner nonrecourse liability.

(2) *Definition of and determination of partner nonrecourse deductions.* For any partnership taxable year, the amount of partner nonrecourse deductions with respect to a partner nonrecourse debt equals the net increase during the year in minimum gain attributable to the partner nonrecourse debt ("partner nonrecourse debt minimum gain"), reduced (but not below zero) by proceeds of the liability distributed during the year to the partner bearing the economic risk of loss for the liability that are both attributable to the liability and allocable to an increase in the partner nonrecourse debt minimum gain. See paragraph (m), *Example* (1) (viii) and (ix) of this section. The determination of which partnership items constitute the partner nonrecourse deductions with respect to a partner nonrecourse debt must be made in a manner consistent with the provisions of paragraphs (c) and (j)(1) (i) and (iii) of this section.

(3) *Determination of partner nonrecourse debt minimum gain.* For any partnership taxable year, the determination of partner nonrecourse debt minimum gain and the net increase or decrease in partner nonrecourse debt minimum gain must be made in a manner consistent with the provisions of paragraphs (d) and (g)(3) of this section.

(4) *Chargeback of partner nonrecourse debt minimum gain.* If during a partnership taxable year there is a net decrease in partner nonrecourse debt minimum gain, any partner with a share of that partner nonrecourse debt minimum gain (determined under paragraph (i)(5) of this section) as of the beginning of the year must be allocated items of income and gain for the year (and, if necessary, for succeeding years) equal to that partner's share of the net decrease in the partner nonrecourse debt minimum gain. A partner's share of the net decrease in partner nonrecourse debt minimum gain is determined in a manner consistent with the provisions of paragraph (g)(2) of this section. A partner is not subject to this minimum gain chargeback, however, to the extent the net decrease in partner nonrecourse debt minimum gain arises because the liability ceases to be partner nonrecourse debt due to a conversion, refinancing, or other change in the debt instrument that causes it to become partially or wholly a nonrecourse liability. The amount that would otherwise be subject to the partner nonrecourse debt minimum gain chargeback is added to the partner's share of partnership minimum gain under paragraph (g)(3) of this section. In addition, rules consistent with the provisions of paragraphs (f) (2), (3), (4), and (5) of this section apply with respect to partner nonrecourse debt in appropriate circumstances. The determination of which items of partnership income and gain must be allocated pursuant to this paragraph (i)(4) is made in a manner that is consistent with the provisions of paragraph (f)(5) of this section. See paragraph (j)(2) (ii) and (iii) of this section for more specific rules.

(5) *Partner's share of partner nonrecourse debt minimum gain.* A partner's share of partner nonrecourse debt minimum gain at the end of any partnership taxable year is determined in a manner consistent with the provisions of paragraphs (g)(1) and (g)(3) of this section with respect to each particular partner nonrecourse debt for which the partner bears the economic risk of loss. For purposes of § 1.704–1(b)(2)(ii)(*d*), a partner's share of partner nonrecourse debt minimum gain is added to the limited dollar amount, if any, of the deficit balance in the partner's capital account that the partner is obligated to restore, and the partner is not otherwise considered to have a deficit restoration obligation as a result of bearing the economic risk of loss for any partner nonrecourse debt. See paragraph (m), *Example* (1)(viii) of this section.

(6) *Distribution of partner nonrecourse debt proceeds allocable to an increase in partner nonrecourse debt minimum gain.* Rules consistent with the provisions of paragraph (h) of this section apply to distributions of the proceeds of partner nonrecourse debt.

(j) *Ordering Rules.* For purposes of this section, the following ordering rules apply to partnership items.

Notwithstanding any other provision in this section and § 1.704–1, allocations of partner nonrecourse deductions, nonrecourse deductions, and minimum gain chargebacks are made before any other allocations.

(1) *Treatment of partnership losses and deductions.* (i) *Partner nonrecourse deductions.* Partnership losses, deductions, and section 705(a)(2)(B) expenditures are treated as partner nonrecourse deductions in the amount determined under paragraph (i)(2) of this section (determining partner nonrecourse deductions) in the following order:

(A) First, depreciation or cost recovery deductions with respect to property that is subject to partner nonrecourse debt;

(B) Then, if necessary, a pro rata portion of the partnership's other deductions, losses, and section 705(a)(2)(B) items.

Depreciation or cost recovery deductions with respect to property that is subject to a partnership nonrecourse liability is first treated as a partnership nonrecourse deduction and any excess is treated as a partner nonrecourse deduction under this paragraph (j)(1)(i).

(ii) *Partnership nonrecourse deductions.* Partnership losses, deductions, and section 705(a)(2)(B) expenditures are treated as partnership nonrecourse deductions in the amount determined under paragraph (c) of this section (determining nonrecourse deductions) in the following order:

(A) First, depreciation or cost recovery deductions with respect to property that is subject to partnership nonrecourse liabilities;

(B) Then, if necessary, a pro rata portion of the partnership's other deductions, losses, and section 705(a)(2)(B) items.

Depreciation or cost recovery deductions with respect to property that is subject to partner nonrecourse debt is first treated as a partner nonrecourse deduction and any excess is treated as a partnership nonrecourse deduction under this paragraph (j)(1)(ii). Any other item that is treated as a partner nonrecourse deduction will in no event be treated as a partnership nonrecourse deduction.

(iii) *Carryover to succeeding taxable year.* If the amount of partner nonrecourse deductions or nonrecourse deductions exceed the partnership's losses, deductions, and section 705(a)(2)(B) expenditures for the taxable year (determined under paragraphs (j)(1)(i) and (ii) of this section), the excess is treated as an increase in partner nonrecourse debt minimum gain or

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partnership minimum gain in the immediately succeeding partnership taxable year. See paragraph (m), *Example* (1)(vi) of this section.

(2) *Treatment of partnership income and gains.* (i) *Minimum gain chargeback.* Items of partnership income and gain equal to the minimum gain chargeback requirement (determined under paragraph (f) of this section) are allocated as a minimum gain chargeback in the following order:

(A) First, gain from the disposition of property subject to partnership nonrecourse liabilities;

(B) Then, if necessary, a pro rata portion of the partnership's other items of income and gain for that year. Gain from the disposition of property subject to partner nonrecourse debt is allocated to satisfy a minimum gain chargeback requirement for partnership nonrecourse debt only to the extent not allocated under paragraph (j)(2)(ii) of this section.

(ii) *Chargeback attributable to decrease in partner nonrecourse debt minimum gain.* Items of partnership income and gain equal to the partner nonrecourse debt minimum gain chargeback (determined under paragraph (i)(4) of this section) are allocated to satisfy a partner nonrecourse debt minimum gain chargeback in the following order:

(A) First, gain from the disposition of property subject to partner nonrecourse debt;

(B) Then, if necessary, a pro rata portion of the partnership's other items of income and gain for that year. Gain from the disposition of property subject to a partnership nonrecourse liability is allocated to satisfy a partner nonrecourse debt minimum gain chargeback only to the extent not allocated under paragraph (j)(2)(i) of this section. An item of partnership income and gain that is allocated to satisfy a minimum gain chargeback under paragraph (f) of this section is not allocated to satisfy a minimum gain chargeback under paragraph (i)(4).

(iii) *Carryover to succeeding taxable year.* If a minimum gain chargeback requirement (determined under paragraphs (f) and (i)(4) of this section) exceeds the partnership's income and gains for the taxable year, the excess is treated as a minimum gain chargeback requirement in the immediately succeeding partnership taxable years until fully charged back.

(k) *Tiered partnerships.* For purposes of this section, the following rules determine the effect on partnership minimum gain when a partnership ("upper-tier partnership") is a partner in another partnership ("lower-tier partnership").

(1) *Increase in upper-tier partnership's minimum gain.* The sum of the nonrecourse deductions that the lower-tier partnership allocates to the upper-tier partnership for any taxable year of the upper-tier partnership, and the distributions made during that taxable year from the lower-tier partnership to the upper-tier partnership of proceeds of nonrecourse debt that are allocable to an increase in the lower-tier partnership's minimum gain, is treated as an increase in the upper-tier partnership's minimum gain.

(2) *Decrease in upper-tier partnership's minimum gain.* The upper-tier partnership's share for its taxable year of the lower-tier partnership's net decrease in its minimum gain is treated as a decrease in the upper-tier partnership's minimum gain for that taxable year.

(3) *Nonrecourse debt proceeds distributed from the lower-tier partnership to the upper-tier partnership.* All distributions from the lower-tier partnership to the upper-tier partnership during the upper-tier partnership's taxable year of proceeds of a nonrecourse liability allocable to an increase in the lower-tier partnership's minimum gain are treated as proceeds of a nonrecourse liability of the upper-tier partnership. The increase in the upper-tier partnership's minimum gain (under paragraph (k)(1) of this section) attributable to the receipt of those distributions is, for purposes of paragraph (h) of this section, treated as an increase in the upper-tier partnership's minimum gain arising from encumbering property of the upper-tier partnership with a nonrecourse liability of the upper-tier partnership.

(4) *Nonrecourse deductions of lower-tier partnership treated as depreciation by upper-tier partnership.* For purposes of paragraph (c) of this section, all nonrecourse deductions allocated by the lower-tier partnership to the upper-tier partnership for the upper-tier partnership's taxable year are treated as depreciation or cost recovery deductions with respect to property owned by the upper-tier partnership and subject to a nonrecourse liability of the upper-tier partnership with respect to which minimum gain increased during the year by the amount of the nonrecourse deductions.

(5) *Coordination with partner nonrecourse debt rules.* The lower-tier partnership's liabilities that are treated as the upper-tier partnership's liabilities under § 1.752–4(a) are treated as the upper-tier partnership's liabilities for purposes of applying paragraph (i) of this section. Rules consistent with the provisions of paragraphs (k)(1) through (k)(5) of this section apply to determine the allocations that the upper-tier partnership must make with respect to any liability that constitutes a nonrecourse debt for which one or more partners of the upper-tier partnership bear the economic risk of loss.

(l) *Effective dates*—(1) *In general*—(i) *Prospective application.* Except as otherwise provided in this paragraph (l), this section applies for partnership taxable years beginning on or after December 28, 1991. For the rules applicable to taxable years beginning after December 29, 1988, and before December 28, 1991, see former § 1.704–1T(b)(4)(iv). For the rules applicable to taxable years beginning on or before December 29, 1988, see former § 1.704–1(b)(4)(iv).

(ii) *Partnerships subject to temporary regulations.* If a partnership agreement entered into after December 29, 1988, and before December 28, 1991, complied with the provisions of former § 1.704–1T(b)(4)(iv) before December 28, 1991—

(A) The provisions of former § 1.704–1T(b)(4)(iv) continue to apply to the partnership for any taxable year beginning on or after December 28, 1991, (unless the partnership makes an election under paragraph (l)(4) of this section) and ending before any subsequent material modification to the partnership agreement; and

(B) The provisions of this section do not apply to the partnership for any of those taxable years.

(iii) *Partnerships subject to former regulations.* If a partnership agreement entered into on or before December 29, 1988, complied with the provisions of former § 1.704–1(b)(4)(iv)(*d*) on or before that date—

(A) The provisions of former § 1.704–1(b)(4)(iv) (*a*) through (*f*) continue to apply to the partnership for any taxable year beginning after that date (unless the partnership made an election under § 1.704–1T(b)(4)(iv)(*m*)(*4*) in a partnership taxable year ending before December 28, 1991, or makes an election under paragraph (l)(4) of this section and ending before any subsequent material modification to the partnership agreement; and

(B) The provisions of this section do not apply to the partnership for any of those taxable years.

(2) *Special rule applicable to pre-January 30, 1989, related party nonrecourse debt.* For purposes of this section and former § 1.704–1T(b)(4)(iv), if—

(i) A partnership liability would, but for this paragraph (l)(2) of this section, constitute a partner nonrecourse debt; and

(ii) Sections 1.752–1 through –3 or former §§ 1.752–1T through –3T (whichever is applicable) do not apply to the liability;

the liability is, notwithstanding paragraphs (i) and (b)(4) of this section, treated as a nonrecourse liability of the partnership, and not as a partner nonrecourse debt, to the extent the liability would be so treated under this section (or § 1.704–1T(b)(4)(iv)) if the determination of the extent to which one or more partners bears the economic risk of loss for the liability under § 1.752–1 or former § 1.752–1T were made without regard to the economic risk of loss that any partner would otherwise be considered to bear for the liability by reason of any obligation undertaken or interest as a creditor acquired prior to January 30, 1989, by a person related to the partner (within the meaning of § 1.752–4(b) or former § 1.752–1T(h)). For purposes of the preceding sentence, if a related person undertakes an obligation or acquires an interest as a creditor on or after January 30, 1989, pursuant to a written binding contract in effect prior to January 30, 1989, and at all times thereafter, the obligation or interest as a creditor is treated as if it were undertaken or acquired prior to January 30, 1989. However, for partnership taxable years beginning on or after December 28, 1991, a pre-January 30, 1989, liability, other than a liability subject to paragraph (i)(3) of this section or former § 1.704–1T(b)(4)(iv)(*m*)(*3*) (whichever is applicable), that is treated as grandfathered under former §§ 1.752–1T through –3T (whichever is applicable) will be treated as a nonrecourse liability for purposes of this section provided that all partners in the partnership consistently treat the liability as nonrecourse for partnership taxable years beginning on or after December 28, 1988.

(3) *Transition rule for pre-March 1, 1984, partner nonrecourse debt.* If a partnership liability would, but for this paragraph (l)(3) or former § 1.704–1T(b)(4)(iv), constitute a partner nonrecourse debt and the liability constitutes grandfathered partner nonrecourse debt that is appropriately treated as a nonrecourse liability of the partnership under § 1.752–1 (as in effect prior to December 29, 1988)—

(i) The liability is, notwithstanding paragraphs (i) and (b)(4) of this section, former § 1.704–1T(b)(4)(iv), and former § 1.704–1(b)(4)(iv), treated as a nonrecourse liability of the partnership for purposes of former § 1.704–1T(b)(4)(iv) and former § 1.704–1(b)(4)(iv) to the extent of the amount, if any, by which the smallest outstanding balance of the liability during the period beginning at the end of the first partnership taxable year ending on or after December 31, 1986, and ending at the time of any determination under this paragraph (l)(3)(i) or former § 1.704–1T(b)(4)(iv)(*m*)(*3*)(*i*) exceeds the aggregate amount of the adjusted basis (or book value) of partnership property allocable to the liability (determined in accordance with former § 1.704–1(b)(4)(iv)(*c*) (*1*) and (*2*) at the end of the first partnership taxable year ending on or after December 31, 1986); and

(ii) In applying this section to the liability, former § 1.704–1(b)(4)(iv)(*c*) (*1*) and (*2*) is applied as if all of the adjusted basis of partnership property allocable to the liability is allocable to the portion of the liability that is treated as a partner nonrecourse debt and as if none of the adjusted basis of partnership property that is allocable to the liability is allocable to the portion of the liability that is treated as a nonrecourse liability under this paragraph (l)(3) and former § 1.704–1T (b)(4)(iv)(*m*)(*3*)(*i*).

For purposes of the preceding sentence, a grandfathered partner debt is any partnership liability that was not subject to former § § 1.752–1T and –3T but that would have been subject to those sections under § 1.752–4T(b) if the liability had arisen (other than pursuant to a written binding contract) on or after March 1, 1984. A partnership liability is not considered to have been subject to § § 1.752–2T and –3T solely because a portion of the liability was treated as a liability to which those sections apply under § 1.752–4(e).

(4) *Election.* A partnership may elect to apply the provisions of this section to the first taxable year of the partnership ending on or after December 28, 1991. An election under this paragraph (l)(4) is made by attaching a written statement to the partnership return for the first taxable year of the partnership ending on or after December 28, 1991. The written statement must include the name, address, and taxpayer identification number of the partnership making the statement and must declare that an election is made under this paragraph (l)(4).

(m) *Examples.* The principles of this section are illustrated by the following examples:

Example 1. Nonrecourse deductions and partnership minimum gain. For *Example 1*, unless otherwise provided, the following facts are assumed. LP, the limited partner, and GP, the general partner, form a limited partnership to acquire and operate a commercial office building. LP contributes $180,000, and GP contributes $20,000. The partnership obtains an $800,000 nonrecourse loan and purchases the building (on leased land) for $1,000,000. The nonrecourse loan is secured only by the building, and no principal payments are due for 5 years. The partnership agreement provides that GP will be required to restore any deficit balance in GP's capital account following the liquidation of GP's interest (as set forth in § 1.704–1 (b)(2)(ii)(*b*)(T33)), and LP will not be required to restore any deficit balance in LP's capital account following the liquidation of LP's interest. The partnership agreement contains the following provisions required by paragraph (e) of this section: a qualified income offset (as defined in § 1.704–1(b)(2)(ii)(*d*)); a minimum gain chargeback (in accordance with paragraph (f) of this section); a provision that the partners' capital accounts will be determined and maintained in accordance with § 1.704–1(b)(2)(ii)(*b*)(*1*); and a provision that distributions will be made in accordance with partners' positive capital account balances (as set forth in § 1.704–1(b)(2)(ii)(*b*)(*2*)). In addition, as of the end of each partnership taxable year discussed herein, the items described in § 1.704–1(b)(2)(ii)(*d*) (*4*), (*5*), and (*6*) are not reasonably expected to cause or increase a deficit balance in LP's capital account. The partnership agreement provides that, except as otherwise required by its qualified income offset and minimum gain chargeback provisions, all partnership items will be allocated 90 percent to LP and 10 percent to GP until the first time when the partnership has recognized items of income and gain that exceed the items of loss and deduction it has recognized over its life, and all further partnership items will be allocated equally between LP and GP. Finally, the partnership agreement provides that all distributions, other than distributions in liquidation of the partnership or of a partner's interest in the partnership, will be made 90 percent to LP and 10 percent to GP until a total of $200,000 has been distributed, and thereafter all the distributions will be made equally to LP and GP. In each of the partnership's first 2 taxable years, it generates rental income of $95,000, operating expenses (including land lease payments) of $10,000, interest expense of $80,000, and a depreciation deduction of $90,000, resulting in a net taxable loss of $85,000 in each of those years. The allocations of these losses 90 per percent of LP and 10 percent to GP have substantial economic effect.

	LP	GP
Capital account on formation	$180,000	$20,000
Less: net loss in years 1 and 2	(153,000)	(17,000)
Capital account at end of year 2	27,000	3,000

In the partnership's third taxable year, it again generates rental income of $95,000, operating expenses of $10,000, interest expense of $80,000, and a depreciation deduction of $90,000, resulting in net taxable

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loss of $65,000. The partnership makes no distributions.

(i) *Calculation of nonrecourse deductions and partnership minimum gain.* If the partnership were to dispose of the building in full satisfaction of the nonrecourse liability at the end of the third year, it would realize $70,000 of gain ($800,000 amount realized less $730,000 adjusted tax basis). Because the amount of partnership minimum gain at the end of the third year (and the net increase in partnership minimum gain during the year) is $70,000, there are partnership nonrecourse deductions for that year of $70,000, consisting of depreciation deductions allowable with respect to the building of $70,000. Pursuant to the partnership agreement, all partnership items comprising the net taxable loss of $85,000, including the $70,000 nonrecourse deduction, are allocated 90 percent to LP and 10 percent to GP. The allocation of these items, other than the nonrecourse deductions, has substantial economic effect.

	LP	GP
Capital account at end of year 2	$27,000	$3,000
Less: net loss in year 3 (without nonrecourse deductions)	(13,500)	(1,500)
Less: nonrecourse deductions in year 3	(63,000)	(7,000)
Capital account at end of year 3	(49,500)	(5,500)

The allocation of the $70,000 nonrecourse deduction satisfies requirement (2) of paragraph (e) of this section because it is consistent with allocations having substantial economic effect of other significant partnership items attributable to the building. Because the remaining requirements of paragraph (e) of this section are satisfied, thee allocation of nonrecourse deductions is deemed to be in accordance with the partners' interests in the partnership. At the end of the partnership's third taxable year, LP's and GP's shares of partnership minimum gain are $63,000 and $7,000, respectively. Therefore, pursuant to paragraph (g)(1) of this section, LP is treated as obligated to restore a deficit capital account balance of $63,000, so that in the succeeding year LP could be allocated up to an additional $13,500 of partnership deductions, losses, and section 705(a)(2)(B) items that are not nonrecourse deductions. Even though this allocation would increase a deficit capital account balance, it would be considered to have economic effect under the alternate economic effect test contained in § 1.704–1(b)(2)(ii)(*d*). If the partnership were to dispose of the building in full satisfaction of the nonrecourse liability at the beginning of the partnership's fourth taxable year (and had no other economic activity in that year), the partnership minimum gain would be decreased from $70,000 to zero, and the minimum gain chargeback would require that LP and GP be allocated $63,000 and $7,000, respectively, of the gain from that disposition.

(ii) *Illustration of reasonable consistency requirement.* Assume instead that the partnership agreement provides that all nonrecourse deductions of the partnership will be allocated equally between LP and GP. Furthermore, at the time the partnership agreement is entered into, there is a reasonable likelihood that over the partnership's life it will realize amounts of income and gain significantly in excess of amounts of loss and deduction (other than nonrecourse deductions). The equal allocation of excess income and gain has substantial economic effect.

	LP	GP
Capital account on formation	$180,000	$20,000
Less: net loss in years 1 and 2	(153,000)	(17,000)
Less: net loss in year (without nonrecourse deductions)	(13,500)	(1,500)
Less: nonrecourse deductions in year 3	(35,000)	(35,000)
Capital account at end of year 3	(21,500)	(33,500)

The allocation of the $70,000 nonrecourse deduction equally between LP and GP satisfies requirement (2) of paragraph (e) of this section because the allocation is consistent with allocations, which will have substantial economic effect, of other significant partnership items attributable to the building. Because the remaining requirements of paragraph (e) of this section are satisfied, the allocation of nonrecourse deductions is deemed to be in accordance with the partners' interests in the partnership. The allocation of the nonrecourse deductions 75 percent to LP and 25 percent to GP (or in any other ratio between 90 percent to LP/10 percent to GP and 50 percent of LP/50 percent to GP) also would satisfy requirement (2) of paragraph (e) of this section.

(iii) *Allocation of nonrecourse deductions that fails reasonable consistency requirement.* Assume instead that the partnership agreement provides that LP will be allocated 99 percent, and GP 1 percent, of all nonrecourse deductions of the partnership. Allocating nonrecourse deductions this way does not satisfy requirement (2) of paragraph (e) of this section because the allocations are not reasonably consistent with allocations, having substantial economic effect, of any other significant partnership item attributable to the building. Therefore, the allocation of nonrecourse deductions will be disregarded, and the nonrecourse deductions of the partnership will be reallocated according to the partners' overall economic interests in the partnership, determined under § 1.704–1(b)(3)(ii).

(iv) *Capital contribution to pay down nonrecourse debt.* At the beginning of the partnership's fourth taxable year, LP contributes $144,000 and GP contributes $16,000 of addition capital to the partnership, which the partnership immediately uses to reduce the amount of its nonrecourse liability from $800,000 to $640,000. In addition, in the partnership's fourth taxable year, it generates rental income of $95,000, operating expenses of $10,000, interest expense of $64,000 (consistent with the debt reduction), and a depreciation deduction of $90,000, resulting in a net taxable loss of $69,000. If the partnership were to dispose of the building in full satisfaction of the nonrecourse liability at the end of that year, it would realize no gain ($640,000 amount realized less $640,000 adjusted tax basis). Therefore, the amount of partnership minimum gain at the end of the year is zero, which represents a net decrease in partnership minimum gain of $70,000 during the year. LP's and GP's shares of this net decrease are $63,000 and $7,000 respectively, so that at the end of the partnership's fourth taxable year, LP's and GP's shares of partnership minimum gain are zero. Although there has been a net decrease in partnership minimum gain, pursuant to paragraph (f)(3) of this section LP and GP are not subject to a minimum gain chargeback.

	LP	GP
Capital account at end of year 3	($49,500)	($5,500)
Plus: contribution	144,000	16,000
Less: net loss in year 4	(62,100)	(6,900)
Capital account at end of year 4	32,400	3,600
Minimum gain chargeback carryforward	0	0

(v) *Loans of unequal priority* Assume instead that the building acquired by the partnership is secured by a $700,000 nonrecourse loan and a $100,000 recourse loan, subordinate in priority to the nonrecourse loan. Under paragraph (d)(2) of this section, $700,000 of the adjusted basis of the partnership's third taxable year is allocated to the nonrecourse liability (with the remaining $30,000 allocated to the recourse liability) so that if the partnership disposed of the building in full satisfaction of the nonrecourse liability at the end of the year, it would realize no gain (700,000 amount realized less $700,000 adjusted tax basis). Therefore, there is no minimum gain (or increase in minimum gain) at the end of the partnership's third taxable year. If, however, the $700,000 nonrecourse loan were subordinate in priority to the $100,000 recourse loan, under paragraph (d)(2) of this section, the first $100,000 of adjusted tax basis in the building would be allocated to the recourse liability, leaving only $630,000 of the adjusted basis of the building to be allocated to the $700,000 nonrecourse loan. In that case, the balance of the $700,000 nonrecourse liability would exceed the adjusted tax basis of the building by $70,000, so that there would be $70,000 of minimum gain (and a $70,000 increase in partnership minimum gain) in the partnership's third taxable year.

(vi) *Nonrecourse borrowing; distribution of proceeds in subsequent year.* The partnership obtains an additional nonrecourse loan of $200,000 at the end of its fourth taxable year, secured by a second mortgage on the building, and distributes $180,000 of this cash to its partners at the beginning of its fifth taxable year. In addition, in its fourth and fifth taxable years, the partnership again

generates rental income of $95,000, operating expenses of $10,000, interest expense of $80,000 ($100,000 in the fifth taxable year reflecting the interest paid on both liabilities), and a depreciation deduction of $90,000, resulting in a net taxable loss of $85,000 ($105,000 in the fifth taxable year reflecting the interest paid on both liabilities). The partnership has distributed its $5,000 of operating cash flow in each year ($5,000 of rental income less $10,000 of operating expense and $80,000 of interest expenses) to LP and GP at the end of each year. If the partnership were to dispose of the building in full satisfaction of both nonrecourse liabilities at the end of its fourth taxable year, the partnership would realize $360,000 of gain ($1,000,000 amount realized less $640,000 adjusted tax basis). Thus, the net increase in partnership minimum gain during the partnership's fourth taxable year is $290,000 ($360,000 of minimum gain at the end of the fourth year less $70,000 of minimum gain at the end of the third year). Because the partnership did not distribute any of the proceeds of the loan it obtained in its fourth year during that year, the potential amount of partnership nonrecourse deductions for that year is $290,000. Under paragraph (c) of this section, if the partnership had distributed the proceeds of that loan to its partners at the end of its fourth year, the partnership's nonrecourse deductions for that year would have been reduced by the amount of that distribution because of the proceeds of that loan are allocable to an increase in partnership minimum gain under paragraph (h)(1) of this section. Because the nonrecourse deductions of $290,000 for the partnership's fourth taxable year exceed its total deductions for that year, all $160,000 of the partnership's deductions for that year are treated as nonrecourse deductions, and the $110,000 excess nonrecourse deductions are treated as an increase in partnership minimum gain in the partnership's fifth taxable year under paragraph (c) of this section.

	LP	GP
Capital account at end of year 3 (including cash flow distributions)	($63,000)	($7,000)
Plus: rental income in year 4	85,500	9,500
Less: nonrecourse deductions in year 4	(162,000)	(18,000
Less: cash flow distributions in year 4	(4,500)	(500)
Capital account at end of year 4	(144,000)	(16,000)

At the end of the partnership's fourth taxable year, LP's and GP's shares of partnership minimum gain are $225,000 and $25,000, respectively (because the $110,000 excess of nonrecourse deductions is carried forward to the next year). If the partnership were to dispose of the building in full satisfaction of the nonrecourse liabilities at the end of its fifth taxable year, the partnership would realize $450,000 of gain (1,000,000 amount realized less 550,000 adjusted tax basis). Therefore, the net increase in partnership minimum gain during the partnership's fifth taxable year is $200,000 ($110,000 deemed increase plus the $90,000 by which minimum gain at the end of the fifth year exceeds minimum gain at the end of the fourth year ($450,000 less $360,000)). At the beginning of its fifth year, the partnership distributes $180,000 of the loan proceeds (retaining $20,000 to pay the additional interest expense). Under paragraph (h) of this section, the first $110,000 of this distribution (an amount equal to the deemed increase in partnership minimum gain for the year) is considered allocable to an increase in partnership minimum gain for the year. As a result, the amount of nonrecourse deductions for the partnership's fifth taxable year is $90,000 (200,000 net increase in minimum gain less $110,000 distribution of nonrecourse liability proceeds allocable to an increase in partnership minimum gain), and the nonrecourse deductions consist solely of the $90,000 depreciation deduction allowable with respect to the building. As a result of the distributions during the partnership's fifth taxable year, the total distributions to the partners over the partnership's life equal $205,000. Therefore, the last $5,000 distributed to the partners during the fifth year will be divided equally between them under the partnership agreement. Thus, out of the $185,000 total distribution during the partnership's fifth taxable year, the first 180,000 is distributed 90 percent to LP and 10 percent to GP, and the last $5,000 is divided equally between them.

	LP	GP
Capital account at end of year 4	($144,000)	($16,000)
Less: net loss in year 5 (without nonrecourse deductions)	(13,500)	(1,500)
Less: nonrecourse deductions in year 5	(81,000)	(9,000)
Less: distribution of loan proceeds	(162,000)	(18,000)
Less: cash flow distribution in year 5	(2,500)	(2,500)
Capital account at end of year 5	(403,000)	(47,000)

At the end of the partnership's fifth taxable year, LP's share of partnership minimum gain is $405,000 ($225,000 share of minimum gain at the end of the fourth year plus $81,000 of nonrecourse deductions for the fifth year and a $99,000 distribution of nonrecourse liability proceeds that are allocable to an increase in minimum gain) and GP's share of partnership minimum gain is $45,000 ($25,000 share of minimum gain at the end of the fourth year plus $9,000 of nonrecourse deductions for the fifth year and an $11,000 distribution of nonrecourse liability proceeds that are allocable to an increase in minimum gain).

(vii) *Partner guarantee of nonrecourse debt.* LP and GP personally guarantee the "first" $100,000 of the $800,000 nonrecourse loan (*i.e.*, only if the building is worth less than $100,000 will they be called upon to make up any deficiency). Under paragraph (d)(2) of this section, only $630,000 of the adjusted tax basis of the building is allocated to the $700,000 nonrecourse portion of the loan because the collateral will be applied first to satisfy the $100,000 guaranteed portion, making it superior in priority to the remainder of the loan. On the other hand, if LP and GP were to guarantee the "last" $100,000 (*i.e.*, if the building is worth less than $800,000, they will be called upon to make up the deficiency up to $100,000), $700,000 of the adjusted tax basis of the building would be allocated to the $700,000 nonrecourse portion of the loan because the guaranteed portion would be inferior in priority to it.

(viii) *Partner nonrecourse debt.* Assume instead that the $800,000 loan is made by LP, the limited partner. Under paragraph (b)(4) of this section, the $800,000 obligation does not constitute a nonrecourse liability of the partnership for purposes of this section because LP, a partner, bears the economic risk of loss for that loan within the meaning of § 1.752–2. Instead, the $800,000 loan constitutes a partner nonrecourse debt under paragraph (b)(4) of this section. In the partnership's third taxable year, partnership minimum gain would have increased by $70,000 if the debt were a nonrecourse liability of the partnership. Thus, under paragraph (i)(3) of this section, there is a net increase of $70,000 in the minimum gain attributable to the $800,000 partner nonrecourse debt for the partnership's third taxable year, and $70,000 of the $90,000 depreciation deduction from the building for the partnership's third taxable year constitutes a partner nonrecourse deduction with respect to the debt. See paragraph (i)(4) of this section. Under paragraph (i)(2) of this section, this partner nonrecourse deduction must be allocated to LP, the partner that bears the economic risk of loss for that liability.

(ix) *Nonrecourse debt and partner nonrecourse debt of differing priorities.* As in *Example* 1 (viii) of this paragraph (m), the $800,000 loan is made to the partnership by LP, the limited partner, but the loan is a purchase money loan that "wraps around" a $700,000 underlying nonrecourse note (also secured by the building) issued by LP to an unrelated person in connection with LP's acquisition of the building. Under these circumstances, LP bears the economic risk of loss with respect to only $100,000 of the liability within the meaning of § 1.752–2. See § 1.752–2(f) (*Example* 8). Therefore, for purposes of paragraph (d) of this section, the $800,000 liability is treated as a $700,000 nonrecourse liability of the partnership and a $100,000 partner nonrecourse debt (inferior in priority to the $700,000 liability) of the partnership for which LP bears the economic risk of loss. Under paragraph (i)(2) of this section, $70,000 of the $90,000 depreciation deduction realized in the partnership's third taxable year constitutes a partner nonrecourse deduction that must be allocated to LP.

Example 2. *Netting of increases and decreases in partnership minimum gain.* For *Example* 2 unless otherwise provided, the

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following facts are assumed. X and Y form a general partnership to acquire and operate residential real properties. Each partner contributes $150,000 to the partnership. The partnership obtains a $1,500,000 nonrecourse loan and purchases 3 apartment buildings (on leased land) for $720,000 ("Property A"), $540,000 ("Property B"), and $540,000 ("Property C"). The nonrecourse loan is secured only by the 3 buildings, and no principal payments are due for 5 years. In each of the partnership's first 3 taxable years, it generates rental income of $225,000, operating expenses (including land lease payments) of $60,000, interest expense of $175,000, and depreciation deductions on the 3 properties of $150,000 ($60,000 on Property A and $45,000 on each of Property B and Property C), resulting in a net taxable loss of $150,000 in each of those years. The partnership makes no distributions to X or Y.

(i) *Calculation of net increases and decreases in partnership minimum gain.* If the partnership were to dispose of the 3 apartment buildings in full satisfaction of its nonrecourse liability at the end of its third taxable year, it would realize $150,000 of gain ($1,500,000 amount realized less $1,350,000 adjusted tax basis). Because the amount of partnership minimum gain at the end of that year (and the net increase in partnership minimum gain during that year) is $150,000, the amount of partnership nonrecourse deductions for that year is $150,000, consisting of depreciation deductions allowable with respect to the 3 apartment buildings of $150,000. The result would be the same if the partnership obtained 3 separate nonrecourse loans that were "cross-collateralized" (*i.e.*, if each separate loan were secured by all 3 of the apartment buildings).

(ii) *Netting of increases and decreases in partnership minimum gain when there is a disposition.* At the beginning of the partnership's fourth taxable year, the partnership (with the permission of the nonrecourse lender) disposes of Property A for $835,000 and uses a portion of the proceeds to repay $600,000 of the nonrecourse liability (the principal amount attributable to Property A), reducing the balance to $900,000. As a result of the disposition, the partnership realizes gain of $295,000 ($835,000 amount realized less $540,000 adjusted tax basis). If the disposition is viewed in isolation, the partnership has generated minimum gain of $60,000 on the sale of Property A ($600,000 of debt reduction less $540,000 adjusted tax basis). However, during the partnership's fourth taxable year it also generates rental income of $135,000, operating expenses of $30,000, interest expense of $105,000, and depreciation deductions of $90,000 ($45,000 on each remaining building). If the partnership were to dispose of the remaining two buildings in full satisfaction of its nonrecourse liability at the end of the partnership's fourth taxable year, it would realize gain of $180,000 ($900,000 amount realized less $720,000 aggregate adjusted tax basis), which is the amount of partnership minimum gain at the end of the year. Because the partnership minimum gain increased from $150,000 to $180,000 during the partnership's fourth taxable year, the amount of partnership nonrecourse deductions for that year is $30,000, consisting of a ratable portion of depreciation deductions allowable with respect to the two remaining apartment buildings. No minimum gain chargeback is required for the taxable year, even though the partnership disposed of one of the properties subject to the nonrecourse liability during the year, because there is no net decrease in partnership minimum gain for the year. See paragraph (f)(1) of this section.

Example 3. Nonrecourse deductions and partnership minimum gain before third partner is admitted. For purposes of Example 3, unless otherwise provided, the following facts are assumed. Additional facts are given in each of Examples 3 (ii), (iii), and (iv). A and B form a limited partnership to acquire and lease machinery that is 5-year recovery property. A, the limited partner, and B, the general partner, contribute $100,000 each to the partnership, which obtains an $800,000 nonrecourse loan and purchases the machinery for $1,000,000. The nonrecourse loan is secured only by the machinery. The principal amount of the loan is to be repaid $50,000 per year during each of the partnership's first 5 taxable years, with the remaining $550,000 of unpaid principal due on the first day of the partnership's sixth taxable year. The partnership agreement contains all of the provisions required by paragraph (e) of this section, and, as of the end of each partnership taxable year discussed herein, the items described in § 1.704–1(b)(2)(ii)—(*d*)(*4*), (*5*), and (*6*) are not reasonably expected to cause or increase a deficit balance in A's or B's capital account. The partnership agreement provides that, except as otherwise required by its qualified income offset and minimum gain chargeback provisions, all partnership items will be allocated equally between A and B. Finally, the partnership agreement provides that all distributions, other than distributions in liquidation of the partnership or of a partner's interest in the partnership, will be made equally between A and B. In the partnership's first taxable year it generates rental income of $130,000, interest expense of $80,000, and a depreciation deduction of $150,000, resulting in a net taxable loss of $100,000. In addition, the partnership repays $50,000 of the nonrecourse liability, reducing that liability to $750,000. Allocations of these losses equally between A and B have substantial economic effect.

	A	B
Capital account on formation	$100,000	$100,000
Less: net loss in year 1	(50,000)	(50,000)
Capital account at end of year 1	50,000	50,000

In the partnership's second taxable year, it generates rental income of $130,000, interest expense of $75,000, and a depreciation deduction of $220,000, resulting in a net taxable loss of $165,000. In addition, the partnership repays $50,000 of the nonrecourse liability, reducing that liability to $700,000, and distributes $2,500 of cash to each partner. If the partnership were to dispose of the machinery in full satisfaction of the nonrecourse liability at the end of that year, it would realize $70,000 of gain ($700,000 amount realized less $630,000 adjusted tax basis). Therefore, the amount of partnership minimum gain at the end of that year (and the net increase in partnership minimum gain during the year) is $70,000, and the amount of partnership nonrecourse deductions for the year is $70,000. The partnership nonrecourse deductions for its second taxable year consist of $70,000 of the depreciation deductions allowable with respect to the machinery. Pursuant to the partnership agreement, all partnership items comprising the net taxable loss of $165,000, including the $70,000 nonrecourse deduction, are allocated equally between A and B. The allocation of these items, other than the nonrecourse deductions, has substantial economic effect.

	A	B
Capital account at end of year 1	$50,000	$50,000
Less: net loss in year 2 (without nonrecourse deductions)	(47,500)	(47,500)
Less: nonrecourse deductions in year 2	(35,000)	(35,000)
Less: distribution	(2,500)	(2,500)
Capital account at end of year 2	(35,000)	(35,000)

(i) *Calculation of nonrecourse deductions and partnership minimum gain.* Because all of the requirements of paragraph (e) of this section are satisfied, the allocation of nonrecourse deductions is deemed to be made in accordance with the partners' interests in the partnership. At the end of the partnership's second taxable year, A's and B's shares of partnership minimum gain are $35,000 each. Therefore, pursuant to paragraph (g)(1) of this section, A and B are treated as obligated to restore deficit balances in their capital accounts of $35,000 each. If the partnership were to dispose of the machinery in full satisfaction of the nonrecourse liability at the beginning of the partnership's third taxable year (and had no other economic activity in that year), the partnership minimum gain would be decreased from $70,000 to zero. A's and B's shares of that net decrease would be $35,000 each. Upon that disposition, the minimum gain chargeback would require that A and B each be allocated $35,000 of that gain before any other allocation is made under section 704 (b) with respect to partnership items for the partnership's third taxable year.

(ii) *Nonrecourse deductions and restatement of capital accounts.* (a) *Additional facts.* C is admitted to the partnership at the beginning of the partnership's third taxable year. At the time of C's admission, the fair market value of the machinery is $900,000. C contributes $100,000 to the partnership (the partnership invests $95,000 of this in undeveloped land and holds the other $5,000 in cash) in exchange for an interest in the partnership. In connection with C's admission to the partnership, the partnership's machinery is revalued on the partnership's books to reflect its fair market value of $900,000. Pursuant to § 1.704–1(b)(2)(iv)(*f*), the capital accounts of A and B are adjusted upwards to $100,000 each to reflect the revaluation of the partnership's machinery. This adjustment reflects the manner in which the partnership gain of $270,000 ($900,000 fair market value minus $630,000 adjusted tax basis) would be shared if the machinery were sold for its fair market value immediately prior to C's admission to the partnership.

	A	B
Capital account before C's admission	($35,000)	($35,000)
Deemed sale adjustment	135,000	135,000
Capital account adjusted for C's admission	100,000	100,000

The partnership agreement is modified to provide that, except as otherwise required by its qualified income offset and minimum gain chargeback provisions, partnership income, gain, loss, and deduction, as computed for book purposes, are allocated equally among the partners, and those allocations are reflected in the partners' capital accounts. The partnership agreement also is modified to provide that depreciation and gain or loss, as computed for tax purposes, with respect to the machinery will be shared among the partners in a manner that takes account of the variation between the property's $630,000 adjusted tax basis and its $900,000 book value, in accordance with § 1.704–1(b)(2)(iv)(*f*) and the special rule contained in § 1.704–1(b)(4)(i).

(b) *Effect of revaluation.* Because the requirements of § 1.704–1(b)(2)(iv)(*g*) are satisfied, the capital accounts of the partners (as adjusted) continue to be maintained in accordance with § 1.704–1(b)(2)(iv). If the partnership were to dispose of the machinery in full satisfaction of the nonrecourse liability immediately following the revaluation of the machinery, it would realize no book gain ($700,000 amount realized less $900,000 book value). As a result of the revaluation of the machinery upward by $270,000, under part (i) of paragraph (d)(4) of this section, the partnership minimum gain is reduced from $70,000 immediately prior to the revaluation to zero; but under part (ii) of paragraph (d)(4) of this section, the partnership minimum gain is increased by the $70,000 decrease arising solely from the revaluation. Accordingly, there is no net increase or decrease solely on account of the revaluation, and so no minimum gain chargeback is triggered. All future nonrecourse deductions that occur will be the nonrecourse deductions as calculated for book purposes, and will be charged to all 3 partners in accordance with the partnership agreement. For purposes of determining the partners' shares of minimum gain under paragraph (g) of this section, A and B's shares of the decrease resulting from the revaluation are $35,000 each. However, as illustrated below, under section 704(c) principles, the tax capital accounts of A and B will eventually be charged $35,000 each, reflecting their 50 percent shares of the decrease in partnership minimum gain that resulted from the revaluation.

(iii) *Allocation of nonrecourse deductions following restatement of capital accounts.* (a) *Additional facts.* During the partnership's third taxable year, the partnership generates rental income of $130,000, interest expense of $70,000, a depreciation deduction of $210,000, and a book depreciation deduction (attributable to the machinery) of $300,000. As a result, the partnership has a net taxable loss of $150,000 and a net book loss of $240,000. In addition, the partnership repays $50,000 of the nonrecourse liability (after the data of C's admission), reducing the liability to $850,000 and distributes $5,000 of cash to each partner.

(b) *Allocations.* If the partnership were to dispose of the machinery in full satisfaction of the nonrecourse liability at the end of the year, $50,000 of book gain would result ($650,000 amount realized less $600,000 book basis). Therefore, the amount of partnership minimum gain at the end of the year is $50,000, which represents a net decrease in partnership minimum gain of $20,000 during the year (This is so even though there would be an increase in partnership minimum gain in the partnership's third taxable year if minimum gain were computed with reference to the adjusted tax basis of the machinery.) Nevertheless, pursuant to paragraph (d)(4) of this section, the amount of nonrecourse deductions of the partnership for its third taxable year is $50,000 (the net increase in partnership minimum gain during the year determined by adding back the $70,000 decrease in partnership minimum gain attributable to the revaluation of the machinery to the $20,000 net decrease in partnership minimum gain during the year). The $50,000 of partnership nonrecourse deductions for the year consist of book depreciation deductions allowable with respect to the machinery of $50,000. Pursuant to the partnership agreement all partnership items comprising the net book loss of $240,000, including the $50,000 nonrecourse deduction, are allocated equally among the partners. The allocation of these items, other than the nonrecourse deductions, has substantial economic effect. Consistent with the special partners' interests in the partnership rule contained in § 1.704–1(b)(4)(i), the partnership agreement provides that the depreciation deduction for tax purposes of $210,000 for the partnership's third taxable year is, in accordance with section 704(c) principles, shared $55,000 to A, $55,000 to B, and $100,000 to C.

	A		B		C	
	Tax	Book	Tax	Book	Tax	Book
Capital account at beginning of year 3	(35,000)	$100,000	(35,000)	$100,000	$100,000	$100,000
Less: nonrecourse deductions	(9,166)	(16,666)	(9,166)	(16,666)	(16,666)	(16,666)
Less: items other than nonrecourse deductions in year 3	(25,834)	(63,334)	(25,834)	(63,334)	(63,334)	(63,334)
Less: distribution	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)
Capital account at end of year 3	($75,000)	$15,000	($75,000)	$15,000	$15,000	$15,000

Because the requirements of paragraph (e) of this section are satisfied, the allocation of the nonrecourse deduction is deemed to be made in accordance with the partners' interests in the partnership. At the end of the partnership's third taxable year, A's, B's, and C's shares of partnership minimum gain are $16,666 each.

(iv) *Subsequent allocation of nonrecourse deductions following restatement of capital accounts.* (a) *Additional facts.* The partners' capital accounts at the end of the second and third taxable years of the partnership are as stated in *Example* 3(iii) of this paragraph (m). In addition, during the partnership's fourth taxable year the partnership generates rental income of $130,000, interest expense of $65,000, a tax depreciation deduction of $210,000, and a book depreciation deduction (attributable to the machinery) of $300,000. As a result, the partnership has a net taxable loss of $145,000 and a net book loss of $235,000. In addition, the partnership repays $50,000 of the nonrecourse liability, reducing that liability to $600,000, and distributes $5,000 of cash to each partner.

(b) *Allocations.* If the partnership were to dispose of the machinery in full satisfaction of the nonrecourse liability at the end of the fourth year, $300,000 of book gain would result ($600,000 amount realized less $300,000 book value). Therefore, the amount of partnership minimum gain as of the end of the year is $300,000, which represents a net increase in partnership minimum gain during the year of $250,000. Thus, the amount of partnership nonrecourse deductions for that year equals $250,000, consisting of book depreciation deductions of $250,000. Pursuant to the partnership agreement, all partnership items comprising the net book loss of $235,000, including the $250,000 nonrecourse deduction, are allocated equally among the partners. That allocation of all items, other than the nonrecourse deductions, has substantial economic effect. Consistent with the special partners' interests in the partnership rule contained in § 1.704–1(b)(4)(i), the partnership agreement provides that the depreciation deduction for tax purposes of $210,000 in the partnership's fourth taxable year is, in accordance with

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section 704(c) principles, allocated $55,000 to A, $55,000 to B, and $100,000 to C.

	A		B		C	
	Tax	Book	Tax	Book	Tax	Book
Capital account at end year 3	(75,000)	$15,000	(75,000)	$15,000	$15,000	$15,000
Less: nonrecourse deductions	(45,833)	(83,333)	(45,833)	(83,333)	(83,333)	(83,333)
Plus: items other than nonrecourse deduction in year 4	12,499	5,000	12,499	5,000	5,000	5,000
Less: distribution	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)
Capital account at end of year 4	($113,334)	($68,333)	($113,333)	($68,333)	($68,333)	($68,333)

The allocation of the $250,000 nonrecourse deduction equally among A, B, and C satisfies requirement (2) of paragraph (e) of this section. Because all of the requirements of paragraph (e) of this section are satisfied, the allocation is deemed to be in accordance with the partners' interests in the partnership. At the end of the partnership's fourth taxable year A's, B's, and C's shares of partnership minimum gain are $100,000 each.

(v) *Disposition of partnership property following restatement of capital accounts.* (a) *Additional facts.* The partners' capital accounts at the end of the fourth taxable year of the partnership are as stated above in (iv). In addition, at the beginning of the partnership's fifth taxable year it sells the machinery for $650,000 (using $600,000 of the proceeds to repay the nonrecourse liability), resulting in a taxable gain of $440,000 ($650,000 amount realized less $210,000 adjusted tax basis) and a book gain of $350,000 ($650,000 amount realized less $300,000 book basis). The partnership has no other items of income, gain, loss, or deduction for the year.

(b) *Effect of disposition.* As a result of the sale, partnership minimum gain is reduced from $300,000 to zero, reducing A's, B's, and C's shares of partnership minimum gain to zero from $100,000 each. The minimum gain chargeback requires that A, B, and C each be allocated $100,000 of that gain (an amount equal to each partner's share of the net decrease in partnership minimum gain resulting from the sale) before any allocation is made to them under section 704(b) with respect to partnership items for the partnership's fifth taxable year. Thus, the allocation of the first $300,000 of book gain $100,000 to each of the partners is deemed to be in accordance with the partners' interests in the partnership under paragraph (e) of this section. The allocation of the remaining $50,000 of book gain equally among the partners has substantial economic effect. Consistent with the special partners' interests in the partnership rule contained in § 1.704–1(b)(4)(i), the partnership agreement provides that the $440,000 taxable gain is, in accordance with section 704(c) principles, allocated $161,667 to A, $161,667 to B, and $116,666 to C.

	A		B		C	
	Tax	Book	Tax	Book	Tax	Book
Capital account at end of year 4	($113,334)	($68,333)	($113,334)	($68,333)	($68,333)	($68,333)
Plus: minimum gain chargeback	138,573	100,000	138,573	100,000	100,000	100,000
Plus: additional gain	23,094	16,666	23,094	16,666	16,666	16,666
Capital account before liquidation	$48,333	$48,333	$48,333	$48,333	$48,333	$48,333

Example (4). *Allocations of increase in partnership minimum gain among partnership properties.* For *Example* 4, unless otherwise provided, the following facts are assumed. A partnership owns 4 properties, each of which is subject to a nonrecourse liability of the partnership. During a taxable year of the partnership, the following events take place. First, the partnership generates a depreciation deduction (for both book and tax purposes) with respect to Property W of $10,000 and repays $5,000 of the nonrecourse liability secured only by that property, resulting in an increase in minimum gain with respect to that liability of $5,000. Second, the partnership generates a depreciation deduction (for both book and tax purposes) with respect to Property X of $10,000 and repays none of the nonrecourse liability secured by that property, resulting in an increase in minimum gain with respect to that liability of $10,000. Third, the partnership generates a depreciation deduction (for both book and tax purposes) of $2,000 with respect to Property Y and repays $11,000 of the nonrecourse liability secured only by that property, resulting in a decrease in minimum gain with respect to that liability of $9,000 (although at the end of that year, there remains minimum gain with respect to that liability). Finally, the partnership borrows $5,000 on a nonrecourse basis, giving as the only security for that liability Property Z, a parcel of undeveloped land with an adjusted tax basis (and book value) of $2,000, resulting in a net increase in minimum gain with respect to that liability of $3,000.

(i) *Allocation of increase in partnership minimum gain.* The net increase in partnership minimum gain during that partnership taxable year is $9,000, so that the amount of nonrecourse deductions of the partnership for that taxable year is $9,000. Those nonrecourse deductions consist of $3,000 of depreciation deductions with respect to Property W and $6,000 of depreciation deductions with respect to Property X. See paragraph (c) of this section. The amount of nonrecourse deductions consisting of depreciation deductions is determined as follows. With respect to the nonrecourse liability secured by Property Z, for which there is no depreciation deduction, the amount of depreciation deductions that constitutes nonrecourse deductions is zero. Similarly, with respect to the nonrecourse liability secured by Property Y, for which there is no increase in minimum gain, the amount of depreciation deductions that constitutes nonrecourse deductions is zero. With respect to each of the nonrecourse liabilities secured by Properties W and X, which are secured by property for which there are depreciation deductions and for which there is an increase in minimum gain, the amount of depreciation deductions that constitutes nonrecourse deductions is determined by the following formula:

net increase in partnership minimum gain × total depreciation deductions on the specific property securing the nonrecoure liability, to the extent of the minimum gain on that liability ÷ total depreciation deductions on all properties securing nonrecourse liabilities with minimum gain, to the extent of the aggregate increase in minimum gain on all those liabilities

Thus, for the liability secured by Property W, the amount is $9,000 times $5,000/$15,000, or $3,000. For the liability secured by Property X, the amount is $9,000 times $10,000/$15,000, or $6,000. (If one depreciable property secured two partnership nonrecourse liabilities, the amount of depreciation or book depreciation with respect to that property would be allocated among those liabilities in accordance with the method by which adjusted basis is allocated under paragraph (d)(2) of this section).

(ii) *Alternative allocation of increase in partnership minimum gain among partnership properties.* Assume instead that the loan secured by Property Z is $15,000 (rather than $5,000), resulting in a net increase in minimum gain with respect to that liability of $13,000. Thus, the net increase in partnership minimum gain is $19,000, and the amount of nonrecourse deductions of the partnership for that taxable year is $19,000. Those nonrecourse deductions consist of $5,000 of depreciation deductions with respect to Property W, $10,000 of depreciation deductions with respect to Property X, and a pro rata portion of the partnership's other items of deduction, loss, and section 705(a)(2)(B) expenditure for that year. The method for computing the amounts of depreciation deductions that constitute nonrecourse deductions is the same as in (i) of this *Example* 4 for the liabilities secured by Properties Y and Z. With respect to each of the nonrecourse liabilities secured by Properties W and X, the amount of depreciation deductions that constitutes nonrecourse deductions equals the total depreciation deductions with respect to the partnership property securing that particular liability to the extent of the increase in minimum gain with respect to that liability.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 11. The authority for part 602 continues to read as follows:

Authority: [28 U.S.C. 7805].

§ 602.101 [Amended]

Par. 12. Section 602.101(c) is amended by removing the citation "1.704–1T * * * 1545–1090" and adding the following citation to read as follows:

"1.704–2 * * * 1545–1090.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved: December 12, 1991.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91–30643 Filed 12–26–91; 8:45 am]

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26 CFR Parts 301 and 602

[T.D. 8363]

RIN 1545–AP34

Disclosure of Tax Return Information for Purposes of Quality or Peer Reviews; Due to Incapacity or Death of Tax Return Preparer

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations § 301.7216–2(o) prescribing the circumstances under which tax return information may be disclosed for purposes of conducting quality or peer reviews. These regulations are necessary to provide tax return preparers with the guidance needed to comply with changes to the applicable law made by the Omnibus Budget Reconciliation Act of 1989. This document also contains final regulations § 301.7216–2(p) regarding disclosures necessitated by a tax return preparer's incapacity or death.

EFFECTIVE DATE: These regulations are effective on December 28, 1990.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:CORP:T:R), or by telephone at 202–566–5985 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980, (44 U.S.C. 3504(h)), under control number 1545–1209. The estimated annual burden per recordkeeper varies from 15 minutes to 2 hours, depending on individual circumstances, with an estimated average of 1 hour.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual recordkeepers may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224, with copies to the Office of Management and Budget, Attention: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

These regulations were published in temporary and proposed form in the **Federal Register** on December 28, 1990 (55 FR 53295, 55 FR 53313). This document adds rules under section 7216(b)(3) of the Internal Revenue Code of 1986 to the Regulations on Procedure and Administration (26 CFR part 301). A number of comments were received in response to the notice of proposed rulemaking. A public hearing was held on June 3, 1991. After consideration of the public comments received, the regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

The explanation contained in the preamble to the temporary regulations applies equally to the final regulations except as described below.

The temporary regulations define a quality or peer review as a review that is undertaken to evaluate, monitor, and improve the quality and accuracy of a tax return preparer's tax preparation services. Some commentators suggested that the definition is too broad and might defeat the statutory purpose of maintaining the confidentiality of tax return information. Other commentators suggested that this definition is too restrictive. They noted that some preparers must undergo a review of their auditing and accounting services to satisfy government concerns. While these reviews are only incidentally related to tax return preparation, tax return information sometimes must be disclosed to properly complete the review. The commentators are concerned that the definition in the temporary regulations will not allow these reviews to be accomplished.

The final regulations slightly expand the definition of a quality or peer review to include accounting and auditing services. It is believed that concerns about unauthorized disclosures or uses of tax return information are adequately addressed by the safeguards contained in the regulations together with the criminal and civil penalties of sections 7216(a) and 6713 of the Code. The safeguards contained in the regulations include: (a) Limiting the scope of reviews to address only tax return preparation, accounting, and auditing services; (b) requiring that any taxpayer identifying information be excised from any final evaluative reports that may be accessible to anyone other than the reviewer or the preparer being reviewed; (c) treating any person who obtains tax return information in the course of a review as a tax return preparer for purposes of sections 7216(a) and 6713(a) of the Code; and (d) limiting those who may conduct reviews to persons who are subject to the provisions of Treasury Department Circular 230 ("Circular 230").

Persons permitted to conduct quality or peer reviews under the tamporary regulations (i.e. persons subject to Circular 230) are attorneys, certified public accountants, enrolled agents, and enrolled actuaries who are not under suspension or disbarment from practice before the Service. Some commentators suggested that the classes of persons permitted to conduct a quality or peer review be expanded to include non-

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certified, licensed public accountants ("LPAs") who are neither enrolled agents, nor otherwise eligible to practice before the Service. Unenrolled LPAs are not subject to the provisions of Circular 230. The Service believes that permitting only persons subject to Circular 230 to conduct a quality or peer review helps to prevent unauthorized disclosures of tax return information. Accordingly, the final regulations do not adopt this suggestion.

Finally, some commentators suggested that the temporary regulations should be revised to permit franchisees to disclose tax return information to their franchisor for purposes that are unrelated to a quality or peer review. Along similar lines, one commentator suggested that a franchisor's employees who are not eligible to practice before the Service should nonetheless be permitted to conduct quality or peer reviews. Neither suggestion was adopted. The first suggestion raised concerns that were not within the scope of these regulations. The second suggestion would not further the statutory purpose of maintaining the confidentiality of tax return information.

Special Analyses

These rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this Treasury decision was preceded by a notice of proposed rulemaking that solicited public comments, the notice was not required by 5 U.S.C. 553 since the regulations proposed in that notice and adopted by this Treasury decision are interpretive. Therefore, a final Regulatory Impact Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Internal Revenue Code, a copy of the temporary and proposed regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is David L. Meyer, Office of Assistant Chief Counsel, Income Tax and Accounting, Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Disclosure of information, Employment taxes, Estate taxes, Excise taxes, Filing requirements, Gift tax, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set forth in the preamble, 26 CFR parts 301 and 602 are amended as follows.

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority for part 301 is amended by adding the following citation to read:

Authority: Sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805 * * * Section 301.7216–2, paragraphs (o) and (p) also issued under 26 U.S.C. 7216(b)(3).

Par. 2. The authority citation located at the end of § 301.7216–2 is removed and § 301.7216–2 is amended by adding paragraphs (o) and (p) to read as follows:

§ 301.7216–2 Disclosure or use without formal consent of taxpayer.

* * * * *

(o) *Disclosure or use of information for quality or peer reviews.* The provisions of section 7216(a) and § 301.7216–1 do not apply to any disclosure of tax return information permitted by this paragraph (o) made after December 28, 1990. Tax return information may be disclosed for the purpose of a quality or peer review to the extent necessary to accomplish the review. A quality or peer review is a review that is undertaken to evaluate, monitor, and improve the quality and accuracy of a tax return preparer's tax preparation, accounting, or auditing services. A quality or peer review may be conducted only by attorneys, certified public accountants, enrolled agents, and enrolled actuaries who are eligible to practice before the Internal Review Service. See Department of the Treasury Circular 230, 31 CFR part 10. Disclosure of tax return information is also authorized to persons who provide administrative or support services to an individual who is conducting a quality or peer review under this paragraph (o), but only to the extent necessary for the reviewer to conduct the review. Tax return information gathered in conducting a review may be used only for purposes of a review. No tax return information identifying a taxpayer may be disclosed in any evaluative reports or recommendations that may be accessible to any person other than the reviewer or the preparer being reviewed. The preparer being reviewed shall maintain a record of the review including the information reviewed and the identity of the persons conducting the review. After completion of the review, no documents containing information that may identify any taxpayer by name or identification number may be retained by a reviewer or by the reviewer's administrative or support personnel. Any person (including administrative and support personnel) receiving tax return information in connection with a quality or peer review is a tax return preparer for purposes of sections 7216(a) and 6713(a).

(p) *Disclosure of tax return information due to a tax return preparer's incapacity or death.* The provisions of section 7216(a) and § 301.7216–1 do not apply to any disclosure of tax return information permitted by this paragraph (p) made after December 28, 1990. In the event of incapacity or death of a tax return preparer, disclosure of tax return information may be made for the purpose of assisting the tax return preparer or his legal representative (or the representative of a deceased preparer's estate) in operating the business. Any person receiving tax return information under the provisions of this paragraph (p) is a tax return preparer for purposes of sections 7216(a) and 6713(a).

Par. 3. Section 301.7216–2T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority for part 602 continues to read as follows:

Authority: (26 U.S.C. 7805).

Par. 5. The table of OMB Control Numbers in § 602.101 is amended by revising the entry in the table for "§ 301.7216–2T" to read as follows:

"§ 301.7216–2(o) * * * 1545–1209".

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved: December 5, 1991.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91–30712 Filed 12–26–91; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–4088–1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Amendment to an Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is finalizing a proposed amendment to an exclusion previously granted, in March 11, 1988, in response to a petition submitted for the EPA Mobile Incineration System (MIS) in McDowell, Missouri. This exclusion applied to certain wastes that were to be generated by the MIS during the incineration of cancelled 2,4,5-T and Silvex pesticide products. In amending the March 1988 exclusion, the Agency is transferring the exclusion to wastes to be generated by a different incinerator that is owned and operated by Aptus, Incorporated, located in Coffeyville, Kansas. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: December 27, 1991.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW. (room M2427), Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260–9327 for appointments. The reference number for this docket is "F–91–CPAF–FFFFF". The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 920–9810. For technical information concerning this rule, contact Robert Kayser, Office of Solid Waste (OS–333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–2224.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that: (1) The waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) no other hazardous constituents or factors that could cause the waste to be hazardous are present in the waste at levels of regulatory concern.

B. History of this Rulemaking

In February 1979, the Administrator issued emergency suspension orders and notices of intent to cancel the registration for a number of uses of the pesticides 2,4,5-T and Silvex. Among the products affected by the Administrator's actions were certain 2,4,5-T and Silvex products registered by Union Carbide Corporation. Union Carbide's 2,4,5-T and Silvex registrations were finally cancelled in November 1984. Pursuant to section 19 of FIFRA (prior to its amendment in 1988), upon request, EPA was required to accept for safe disposal Union Carbide's existing stocks of suspended and cancelled 2,4,5-T and Silvex. EPA later accepted title to the cancelled 2,4,5-T and Silvex pesticides stored at the Byers Warehouse in St. Joseph, Missouri.

The Agency originally planned to incinerate these wastes in the EPA Mobile Incineration System (MIS) and, as such, the EPA Releases Control Branch (RCB), Office of Research and Development, submitted a petition and received an exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 for the wastes that would have been generated by the MIS (see 53 FR 31, January 4, 1988, and 53 FR 7903, March 11, 1988). RCB's petition was for an "upfront" exclusion, an exclusion conditioned upon testing the MIS residues, once generated, to ensure that levels of hazardous constituents would not present a threat to human health and the environment.

EPA applied to the state of Missouri for a permit modification to allow the incineration of the cancelled pesticides to proceed. However, the modification was not obtained and the Agency has since dismantled the MIS. The Agency's Superfund contractor entered into a contract with Aptus, Incorporated, to incinerate the same stockpiles of wastes identified in the MIS exclusion.

Aptus petitioned the Agency to amend the MIS exclusion so that the incineration of the cancelled pesticide materials can occur in its own state-of-the-art incinerator located in Coffeyville, Kansas. After evaluating the petition, EPA proposed, on October 25, 1991, to transfer the March 1988 MIS exclusion to wastes that will be generated from Aptus' state-of-the-art incinerator (see 56 FR 55257, October 25, 1991).

This rulemaking addresses public comments received on the proposal and finalizes the proposed decision to amend the March 1988 MIS exclusion and to transfer the exclusion to Aptus, Incorporated.

II. Disposition of Delisting Petition

A. Aptus, Incorporated, Coffeyville, Kansas

1. Petition to Amend 40 CFR Part 261, Appendix IX

Aptus, Incorporated (Aptus), located in Coffeyville, Kansas, is a hazardous waste treatment facility, with a permit under RCRA to store hazardous waste materials. Upon successful completion of a trial burn, Aptus will also have a fully effective permit to incinerate hazardous waste. Aptus petitioned the Agency to amend the March 11, 1988, exclusion previously granted in response to a petition submitted for the EPA MIS in McDowell, Missouri. The MIS exclusion applied to wastes that were to be generated during the incineration of dioxin-contaminated pesticides, listed as hazardous pursuant to 40 CFR 261.3(c)(2)(i). The pesticides, which include 2,4,5-T and Silvex, are presently listed as EPA Hazardous Waste No. F027—Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. The listed constituents of concern for EPA Hazardous Waste No. F027 are tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlordibenzofurans; and tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amines, and other salts (see 40 CFR part 261, appendix VII).

In its petition, Aptus requested that the Agency amend the MIS exclusion so that the incineration of the cancelled pesticide materials can occur in its own, state-of-the-art incinerator located in Coffeyville, Kansas. Aptus also requested that the applicable verification testing requirements, which would have allowed for delisting of incineration residues from the MIS,

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continue to apply to the incineration residues generated from its facility. Aptus intends to incinerate the same materials that were covered by the original 1988 exclusion.

In support of its petition, Aptus provided detailed descriptions of its incinerator. Aptus also requested that the Agency rely on petition information submitted for the MIS, in particular, descriptions of the pesticide materials to be incinerated, product specification and material safety data sheets of the pesticides, and the analyses for hazardous constituents completed for the major liquid and solid products.

The Agency reviewed the information submitted by Aptus and based on an assessment of the information provided regarding design and performance capabilities of the incineration system, the Agency believes that the Aptus incinerator is at least as capable as the MIS of generating non-hazardous waste residues from incineration of the pesticide materials. See the RCRA public docket for the proposed amendment for a complete description of each incineration system. EPA proposed to transfer the delisting levels and verification testing requirements developed in 1988 for these wastes with only a few modifications. EPA proposed to lower the delisting level for nickel based on the use of a newer model and health-based level. EPA also proposed to modify several details in the monitoring and testing requirements so that it can continue to verify whether or not the residues from the incinerator meet the delisting levels. EPA is retaining these modifications in today's final rule. For further information on the proposal, see the October 25, 1991 notice.

2. Agency Response to Public Comments

The Agency received comments on the proposed amendment from two interested parties. One commenter supported the Agency's proposed amendment, but felt that the exclusion should not be limited to those materials stored in Byers Warehouse in St. Joseph, Missouri. The commenter believed that the proposed amendment should be applicable to all materials of this type currently held by individuals, private business or governmental bodies.

In response, the Agency notes that the proposed amendment resulted from a delisting petition submitted by Aptus. In its petition, Aptus requested that the Agency amend a previously granted (March 11, 1988) exclusion for wastes that were to be generated by incineration of cancelled pesticide materials stored in Byers Warehouse, using the EPA MIS, so that this exclusion would apply to wastes to be generated from the same materials in its own state-of-the-art incinerator located in Coffeyville, Kansas. Therefore, since the MIS exclusion was limited to only wastes that were to be generated during the incineration of cancelled pesticide materials stored in Byers Warehouse, the proposed amendment also only covered the wastes to be generated from these same materials.

Additionally, before the Agency could consider excluding other similar waste materials, the Agency would require submission of a separate petition which includes waste characterization data (e.g., constituents of concern and their levels in the waste) and waste volume information. Without this information, the Agency cannot determine whether incineration can effectively treat the waste materials and, if treatment is possible, what testing requirements and delisting levels would be appropriate. For example, a waste with higher levels of metals may not be effectively treated by incineration.

The other commenter raised a number of issues concerning the permitting of the incinerator, as well as several concerning the delisting, and requested a public hearing on the proposed amendment. The Agency decided that the issues raised by this commenter did not warrant a public hearing for two reasons. First, many of the issues raised concerned the entirely separate proceedings that led to the decision made by EPA and the State of Kansas to issue the incineration permit to the Aptus facility. Second, the Agency did not require oral presentations in a hearing to respond to the issues that did relate to the proposed delisting. While the Agency provided a written response to the commenter, the specific issues of concern to the commenter and the Agency's responses are also provided below.

The commenter expressed concern that "EPA is proposing to transfer a permit to incinerate hazardous waste and the related delisting without a public hearing." The commenter suggested that EPA was somehow taking a "shortcut" in the proper procedures, and argued that EPA should not "transfer" the permit and delisting to an incinerator at a different location without a hearing for the residents of Kansas.

In response to the above concern over the "transfer" of a permit without a hearing, the Agency would like to point out that permits and delistings address separate issues and are subject to separate procedural requirements. The permit will authorize Aptus to incinerate hazardous wastes under RCRA once the facility completes a successful trial burn. EPA and the State of Kansas issued a permit to Aptus in June of this year only after two public hearings; one prior to the first trial burn in 1989, and a more recent one in June of this year. These hearings were the proper forum for public comments on the decision to allow Aptus to incinerate hazardous wastes, including dioxin wastes, and EPA Region VII and the State of Kansas considered all comments received before issuing the permit.

In a delisting determination, EPA decides whether a particular hazardous waste presents so little risk to human health and the environment that it can be "reclassified" as a nonhazardous waste. Delistings are accomplished through a petition process that requires publication of proposed decisions in the Federal Register. While public hearings are an option, delistings rarely present issues that cannot be addressed adequately through written comments and responses. In fact, although EPA has taken final action on over 200 delisting petitions, it has not found it necessary to hold a hearing for any of them. As noted in the proposed rule, EPA believes that the Aptus incinerator will be at least as effective as the MIS in rendering the waste nonhazardous. Therefore, the proposal to transfer the delisting was justified and was consistent with the facility-specific nature of delisting.

The commenter also stated that the Aptus incinerator had failed its first trial burn, and noted that Missouri did not allow the incineration of the pesticide materials to proceed in the MIS. While these issues are outside the scope of the delisting decision, the Agency provides the following responses.

First, Aptus must complete a trial burn and meet the special standards for dioxin waste before it can incinerate the cancelled pesticide materials. The performance standards that an incinerator must meet in order to treat dioxin wastes are very stringent. Specifically, Aptus must demonstrate 99.9999% destruction and removal efficiency for hazardous constituents that are more difficult to incinerate than the key dioxin compound (TCDD). Second, Missouri did not extend the permit for the MIS in 1988, which would have allowed the cancelled pesticides to be incinerated, due to a prior understanding between Missouri and EPA concerning the limitations placed on the time period the MIS could operate, and the wastes it could treat (see letter from Ron Kucera to John Farlow, January 3, 1990, in the public docket for this notice). The MIS had successfully treated a fairly large volume of dioxin-contaminated materials, and Missouri did not raise any technical reason in denying the permit modification. In any case, Kansas and EPA have fully evaluated the Aptus incinerator and approved the permit for the incineration of dioxin wastes (upon completion of a fully successful trial burn).

In comments related to delisting, the commenter suggested that the ultimate disposal site for the delisted residues should be specified, and indicated that Missouri would not allow disposal of the delisted materials at any of its permitted facilities.

EPA has never specifically designated a disposal site for a delisted waste. In evaluating the ultimate disposal of the delisted waste, EPA assumed a reasonable worst-case disposal in a Subtitle D landfill without any modern engineering barriers. Therefore, EPA believes that the waste, if delisted, may be safely disposed at any typical solid waste landfill. It should also be noted that the delisting is conditional, and would require Aptus to test the residues to ensure that the delisting levels are achieved. EPA has no knowledge that Missouri has refused to allow disposal of delisted residues; however, landfills typically have the option to restrict the wastes they choose to accept. If the residues are delisted, Aptus still must dispose of the residues according to the state regulations for nonhazardous solid waste. In the past, Aptus has chosen to dispose of nonhazardous waste from the incineration of polychlorinated biphenyls (PCBs) in a commercial hazardous waste landfill, and Aptus may decide to dispose of the delisted residues in a similar fashion.

Finally, the commenter stated that a hearing should also be held to determine the justification for allowing the delisting amendment to become effective immediately, rather than after the six month delay typical for RCRA regulations.

EPA proposed to make the delisting effective immediately upon final promulgation under section 3010(b)(1) of RCRA, because the regulated community (*i.e.*, Aptus) does not need the usual six months to come into compliance. Delaying the effective date of a decision to delist these wastes would continue to impose hazardous waste management requirements on residues that EPA has determined were not hazardous. Setting the effective date on the date of publication is standard practice for delistings granted in the past, and does not represent any special exception for the Aptus delisting.

3. Final Agency Decision

For the reasons stated in the proposal and described above, the Agency believes that the wastes to be generated by the incineration of the Byers Warehouse materials in Aptus' incinerator should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Aptus, Incorporated, located in Coffeyville, Kansas, for its incineration residues described in its petition as EPA Hazardous Waste No. F027.

The exclusion only applies to the kiln residue and spray dryer/baghouse residue generated during the treatment of the cancelled pesticide materials stored in Byers Warehouse. The facility would require a new exclusion if the treatment process is significantly altered, or if other materials are incinerated with the cancelled pesticides, and accordingly, would need to file a new petition. The facility must treat such wastes generated from significantly altered processes (or from co-incineration of other materials) as hazardous until a new exclusion is granted. The separate incineration of any other hazardous waste would also require a new petition for the residues to be nonhazardous.

Although the management of the wastes covered by this petition is relieved from RCRA subtitle C jurisdiction, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, a delisted waste may be delivered to a facility which beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under the State law.

IV. Effective Date

This rule is effective December 27, 1991. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This amendment to a previously granted exclusion is not major since its effect reduces the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its wastes as non-hazardous. There is no additional economic impact, therefore, due to today's rule. This rule is not a major regulation, therefore, no Regulatory Impact Analysis is required.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis, which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small

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entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050-0053.

VIII. List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Dated: December 20, 1991.

Jeffrey D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In table 1 of appendix IX to part 261 the entry "EPA's Mobile Incineration System (MIS), McDowell, MO," is revised to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NONSPECIFIC SOURCES

Facility and address	Waste description
Aptus, Inc., Coffeyville, Kansas.	Kiln residue and spray dryer/baghouse residue (EPA Hazardous Waste No. F027) generated during the treatment of cancelled pesticides containing 2,4,5-T and Silvex and related materials by Aptus' incinerator at Coffeyville, Kansas after December 27, 1991, so long as: (1) The incinerator is monitored continuously and is in compliance with operating permit conditions. Should the incinerator fail to comply with the permit conditions relevant to the mechanical operation of the incinerator, Aptus must test the residues generated during the run when the failure occurred according to the requirements of Conditions (2) through (4), regardless of whether or not the demonstration in Condition (5) has been made. (2) A minimum of four grab samples must be taken from each hopper (or other container) of kiln residue generated during each 24 hour run; all grabs collected during a given 24 hour run must then be composited to form one composite sample. A minimum of four grab samples must also be taken from each hopper (or other container) of spray dryer/baghouse residue generated during each 24 hour run; all grabs collected during a given 24 hour run must then be composited to form one composite sample. Prior to the disposal of the residues from each 24 hour run, a TCLP leachate test must be performed on these composite samples and the leachate analyzed for the TC toxic metals, nickel, and cyanide. If arsenic, chromium, lead or silver TC leachate test results exceed 1.6 ppm, barium levels exceed 32 ppm, cadmium or selenium levels exceed 0.3 ppm, mercury levels exceed 0.07 ppm, nickel levels exceed 10 ppm, or cyanide levels exceed 6.5 ppm, the wastes must be retreated to achieve these levels or must be disposed in accordance with Subtitle C of RCRA. Analyses must be performed according to SW-846 methodologies. (3) Aptus must generate, prior to the disposal of the residues, verification data from each 24 hour run for each treatment residue (i.e., kiln residue, spray dryer/baghouse residue) to demonstrate that the maximum allowable treatment residue concentrations listed below are not exceeded. Samples must be collected as specified in Condition (2). Analyses must be performed according to SW-846 methodologies. Any residues which exceed any of the levels listed below must be retreated or must be disposed of as hazardous. Kiln residue and spray dryer/baghouse residue must not exceed the following levels: Aldrin ..... 0.015 ppm Benzene ..... 9.7 ppm Benzo(a)pyrene ..... 0.43 ppm Benzo(b)fluoranthene ..... 1.8 ppm Chlordane ..... 0.37 ppm Chloroform ..... 5.4 ppm Chrysene ..... 170 ppm Dibenz(a,h)anthracene ..... 0.083 ppm 1,2-Dichloroethane ..... 4.1 ppm Dichloromethane ..... 2.4 ppm 2,4-Dichlorophenol ..... 480 ppm Dichlorvos ..... 260 ppm Disulfaton ..... 23 ppm Endosulfan I ..... 310 ppm Fluorene ..... 120 ppm Indeno(1,2,3,cd)-pyrene ..... 330 ppm Methyl parathion ..... 210 ppm Nitrosodiphenylamine ..... 130 ppm Phenanthrene ..... 150 ppm Polychlorinated biphenyls ..... 0.31 ppm Tetrachloroethylene ..... 59 ppm 2,4,5-TP (silvex) ..... 110 ppm 2,4,6-Trichlorophenol ..... 3.9 ppm

(4) Aptus must generate, prior to disposal of residues, verification data from each 24 hour run for each treatment residue (*i.e.*, kiln residue, spray dryer/baghouse residue) to demonstrate that the residues do not contain tetra-, penta-, or hexachlorodibenzo-p-dioxins or furans at levels of regulatory concern. Samples must be collected as specified in Condition (2). The TCDD equivalent levels for the solid residues must be less than 5 ppt. Any residues with detected dioxins or furans in excess of this level must be retreated or must be disposed of as acutely hazardous. SW-846 Method 8290, a high resolution gas chromatography and high resolution mass spectroscopy (HRGC/HRMS) analytical method must be used. For tetra- and penta-chlorinated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 15 ppt for the solid residues. For hexachlorinated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 37 ppt for the solid residues.
(5) The test data from Conditions (1), (2), (3), and (4) must be kept on file by Aptus for inspection purposes and must be compiled, summarized, and submitted to the Director for the Characterization and Assessment Division, Office of Solid Waste, by certified mail on a monthly basis and when the treatment of the cancelled pesticides and related materials is concluded. The testing requirements for Conditions (2), (3), and (4) will continue until Aptus provides the Director with the results of four consecutive batch analyses for the petitioned wastes, none of which exceed the maximum allowable levels listed in these conditions and the director notifies Aptus that the conditions have been lifted. All data submitted will be placed in the RCRA public docket.
(6) Aptus must provide a signed copy of the following certification statement when submitting data in response to the conditions listed above: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate, and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy,I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete."

[FR Doc. 91-30967 Filed 12-26-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Federal Insurance Administration; Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Source of flooding and location	Depth in feet above ground. Elevation in feet (NGVD)
LOUISIANA	
St. Charles Parish (Unincorporated Areas) (FEMA Docket No. 7034) Gulf of Mexico affecting:	
Lake Calcasieu:	
At confluence with Bayou des Saules	*9
At confluence with Bayou Couba	*8
Lake Salvador:	
At confluence with Bayou Couba	*10
At confluence with Base du Cabanage	*10
Lake Pontchartrain:	
At intersection of Apple Street and Kansas City Southern Railway in Norco	*10
At confluence with Bayou La Branche	*16
Maps available for review at the St. Charles Parish Courthouse, Planning & Zoning Department, Hahnville, Louisiana.	

Dated: December 17, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-30679 Filed 12-26-91; 8:45 am]

BILLING CODE 6718-03-M

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INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1011, 1160, 1181, and 1186

[Ex Parte No. 55 (Sub-No. 84)]

RIN 3120-AB68

Safety Fitness Policy

AGENCY: Interstate Commerce Commission.

ACTION: Denial of petition to reopen; discontinuance of proceeding.

SUMMARY: The Commission denies a petition to reopen this proceeding filed by the Transportation Lawyers Association (TLA). Petitioner's challenge to the Commission's decision not to adopt independent safety fitness standards for certain licensing applicants otherwise exempt from the U.S. Department of Transportation's safety fitness regulations fails to establish material error, to introduce new evidence, or to demonstrate changed circumstances such as would warrant reopening this proceeding under 49 CFR 1115.3(b). To ensure that small vehicle operators have in place meaningful safety programs, however, the decision reiterates and clarifies the Commission's commitment to modify the standard licensing application form (Form OP-1) in a manner that will address with greater precision the safety fitness profiles of such applicants. The Commission's final rules implementing significant revisions to its safety fitness policy in the licensing and finance dockets, were published at 56 FR 46733 (1991).

EFFECTIVE DATE: This decision is effective on December 27, 1991.

FOR FURTHER INFORMATION CONTACT: Suzanne Higgins O'Malley (202) 927-5610 and Richard B. Felder (202) 927-5610 [TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: We disagree with TLA's suggestion that the Commission has in any way abrogated its safety fitness oversight responsibility and impermissibly deferred to DOT's safety oversight jurisdiction. Rather, we affirm our prior conclusion, as announced in earlier stages of this proceeding, that it is neither necessary nor appropriate for the Commission to assume a formal safety review and evaluation role for those carriers that are exempt by DOT regulation from the Federal safety fitness standards—*i.e.*, those referenced by petitioner that operate vehicles transporting 15 or fewer passengers and property carriers operating vehicles having a gross vehicle weight rating of 10,000 pounds or less.

In denying the petition to reopen, we advise TLA that the Commission is not the appropriate forum for consideration of the operational safety profiles of carriers exempt from Federal safety fitness regulations and that this proceeding is not the appropriate vehicle for a collateral attack on the sufficiency of Federal safety compliance requirements. The decision denying the petition also directed TLA, should it seek further assurance concerning the safety oversight of otherwise exempt carriers, to raise its concerns before DOT, the agency with primary safety oversight jurisdiction.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

Additional information is contained in the Commission's decision denying TLA's petition to reopen Ex Parte No. 55 (Sub-No. 84). To obtain a copy of the full decision, write to, call, or pick up in person from Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927-5721.]

Decided: December 12, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald. Commissioner Phillips commented with a separate expression. Commissioner McDonald dissented with a separate expression. Commissioner Simmons dissented in part with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-30925 Filed 12-26-91; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register

Vol. 56, No. 249

Friday, December 27, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket No. AO-341-45; FV-89-109]

Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Secretary's Decision and Referendum Order on Proposed Further Amendment of Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes amendments to the marketing agreement and order for cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York and provides cranberry producers and processors with the opportunity to vote in a referendum to determine if they favor the proposed amendments. The proposed amendments were submitted by the Cranberry Marketing Committee (Committee), the agency responsible for local administration of the marketing order program. The proposed changes would: (1) Authorize the Committee to conduct research and development projects; (2) provide a method whereby annual allotments are calculated on the basis of sales histories and add provisions regarding excess cranberries; (3) limit tenure for Committee members; (4) require handlers to pay assessments on the weight of acquired cranberries; (5) add a definition of barrel; and (6) make other miscellaneous changes that would be consistent with the proposed amendments. These changes are being proposed to improve the administration, operation and functioning of the marketing agreement and order program.

DATES: The referendum shall be conducted from January 13-31, 1992. The representative period for the purpose of the referendum herein ordered is September 1, 1990, to August 31, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 720-9920.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on January 2, 1990, and published in the **Federal Register** on January 4, 1990 (55 FR 295). Recommended Decision and Opportunity to File Written Exceptions issued on January 15, 1991, and published in the **Federal Register** on January 18, 1991 (56 FR 1938). Reopening of the period for filing written exceptions issued on March 5, 1991, and published in the **Federal Register** on March 11, 1991 (56 FR 10189). The exception period was reopened until March 15, 1991.

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291 and Departmental Regulation 1512-1.

Preliminary Statement

These proposed amendments were formulated on the record of a public hearing held in Plymouth, Massachusetts, on January 17, 1990; Cherry Hill, New Jersey, on February 6, 1990; Wisconsin Rapids, Wisconsin, on February 13, 1990; and Portland, Oregon, on February 15, 1990, to consider the proposed amendment of the Marketing Agreement and Order No. 929, regulating the handling of cranberries grown in 10 States, hereinafter referred to collectively as the "order." The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as to the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained several amendment proposals submitted by the Cranberry Marketing Committee (Committee) established under the order to assist in local administration of the marketing order.

The proposals would: (1) Authorize the Committee to conduct research and development projects; (2) provide a method whereby annual allotments are calculated on the basis of sales histories and add provisions regarding excess cranberries; (3) limit tenure provisions for Committee members; (4) require handlers to pay assessments on the weight of acquired cranberries; and (5) add a definition of barrel. The Department of Agriculture proposed that it be authorized to make any necessary conforming changes.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on January 15, 1991, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by February 19, 1991. The Department received a request that the USDA provide more time for interested persons to analyze the recommended decision and file exceptions. Therefore, the Department reopened the period for filing written exceptions until March 15, 1991 (56 FR 10189). One exception was received from Mr. David M. Farrimond, Manager of the Committee, who raised the following concerns regarding: (1) The inclusion of reporting and accounting requirements under the authority for production research and development; (2) the submission of a grower report by January 15; (3) an agreement between growers and handlers on the disposition of unused annual allotment; (4) the calculation of sales histories on leased or transferred acreage; (5) established cranberry acreage; and (6) staggered terms of office for Committee members.

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $500,000. Small agricultural service firms which include handlers

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under this order, are defined as those with annual receipts of less than $3.5 million.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act have small entity orientation and compatibility. Interested persons were invited to present evidence at the hearing on the probable impact that the proposed amendments to the order would have on small businesses.

During the 1988–89 crop year, approximately 30 handlers were regulated under Marketing Order No. 929. In addition, there are about 950 growers of cranberries in the regulated area. The Act requires the application of uniform rules on regulated handlers. Since handlers covered under the cranberry marketing order are predominantly small businesses, the order itself is tailored to the size and nature of these small businesses. Marketing orders, and amendments thereto, are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

The proposed amendments to the marketing agreement and order include a provision authorizing the Committee to conduct production research and development projects. Presently, the cranberry marketing order authorizes only marketing research and development projects which are designed to assist, improve or promote the distribution and consumption of cranberries. Production-related research conducted on cranberries is usually performed through agricultural extension stations of state universities and colleges. Recent cutbacks in state funding to universities have caused concern with the cranberry industry that production research could be jeopardized, severely restricted or delegated to a lower priority in the future.

Cranberry growers today are encountering increased problems related to production yields. These include not only weather-related problems and diseases caused by fungi and insects but also increasing environmental concerns, e.g., water and chemical usage and expansion into wetlands. More and more, Federal and state laws have been implemented which restrict the use of chemicals and oversee water use. In addition, it is becoming more difficult to expand production in wetlands which are protected by federal and state laws. Research projects which address these concerns would benefit all cranberry growers and could help ensure adequate supplies and increased quality of cranberries to consumers.

The proposed changes to replace the current allotment base program with a sales history program are intended to reduce values currently associated with allotment base and reduce barriers to entry to cranberry production and sales. The changes which are intended to reduce barriers to entry are consistent with the Department's 1982 Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders (Guidelines). Also included under this issue are definitions of sales history, established cranberry acreage and the term handle; modification of the sections of the marketing order regarding transfers, interhandler transfers, and annual allotment; and the addition of new order sections concerning excess cranberries.

Under this proposal, a grower's sales history would be calculated based on such grower's sales, expressed as an average of the best four of the previous six years. Each year, a grower's sales history would be automatically recalculated by the Committee with the newest crop year's sales being added and the oldest crop year's sales being dropped from the six-year period. Sales history would be transferred with the acreage on which it was earned, thus ensuring that a buyer or lessee receives sales history on acreage which is bought or leased. If there is no sales history or less than four years of sales history, sales history would be computed based on the number of years of actual sales until four years of sales is reached or the Committee would use the state average yield multiplied by the grower's cranberry acreage to calculate the grower's allotment. There are also provisions to not penalize a grower who loses a crop for three consecutive years because of natural disasters.

Under the proposed allotment program, when a marketable quantity and an allotment percentage have been established, growers would deliver all of their cranberries to handlers. Handlers could handle only the total of the annual allotments of all growers delivering cranberries to them. Cranberries in excess of those received under allotment would be called excess cranberries and would be able to be used only in noncommercial and/or noncompetitive markets.

The proposal to limit tenure for Committee members would allow for different and more contemporary ideas to be represented on the Committee and would be consistent with the Department's Guidelines. Currently, Committee members may serve for unlimited terms of office. This proposal would limit the terms of office. This proposal would limit the terms of office that Committee members may serve to three consecutive two-year terms of office. The terms of alternate members would not be limited Members serving three consecutive terms would again become eligible to serve on the Committee by not serving for one full term as either a member or an alternate member. This proposal could encourage and foster, to the maximum extent possible, broad-based participation by all industry members of the regulated community in the administration of the marketing order.

The proposal to add a requirement for handlers to pay assessments on the weight of acquired cranberries would require that all cranberries delivered to a handler, with the exception of excess cranberries, be assessed. Currently an assessment rate per 100-pound barrel is applied to the total barrels of cranberries a handler handled, i.e., canned, frozen, or dehydrated. However, fresh cranberries usually experience a loss in weight, called shrinkage, between the time they are received by the handler and the time they are actually handled. Therefore, the weight lost to shrinkage is not assessed. The Committee recommended that cranberries be assessed based on their weight when acquired by the handler prior to shrinkage. Thus, handlers would be assessed on all cranberries received, with the exception of excess cranberries, and assessments due to shrinkage would not be lost.

The proposal to add a definition of barrel would reflect current usage of this term in the industry. The marketing order does not include a definition of the term barrel. The term "barrel," which is equal to 100 pounds of cranberries, is used and understood by growers, processors, and handlers. Growers report their sales on a yearly basis in barrels and handlers report the number of cranberries acquired from growers and the disposition of such cranberries during the crop year in barrels.

The proposal to make other miscellaneous changes that would be consistent with the proposed amendments is necessary so that all sections of the order would be consistent if any or all of the amendments are adopted. These changes include deleting and redesignating certain sections of the order.

All of these changes are designed to enhance the administration and functioning of the marketing agreement and order to the benefit of the industry. Accordingly, it is determined that the proposed revisions of the order would not have a significant economic impact on handlers or growers.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the reporting and recordkeeping provisions that are included in the proposed amendments have been submitted to the Office of Management and Budget (OMB). Any forms associated with these provisions could not be used prior to OMB approval.

Findings and Conclusions

The material issues, findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the January 16, 1991, issue of the Federal Register (56 FR 1938) are hereby approved and adopted subject to the following additions and modifications:

Based upon the exception filed by Mr. Farrimond, the findings and conclusions in material issue number 1 of the Recommended Decision, concerning the authority for production research and development, are amended by adding the following paragraph after the thirteenth paragraph of material issue number 1 to read as follows:

The exception received from Mr. Farrimond indicated that the record evidence did not oppose the Committee's modification to include reporting and accounting requirements for researchers conducting research projects on behalf of the Committee. Rather, the record showed that the reporting and accounting requirements should be flexible. The Committee agrees with the researchers regarding flexibility of these provisions. Mr. Farrimond's exception raised no further information to reverse the Department's position on this issue. The amendatory language in the Recommended Decision authorized the Committee to establish rules and regulations, as necessary, for the implementation and operation of the proposed amendment. Rules and regulations, which are established through informal rulemaking, can be accomplished through a notice and comment period which is a much shorter and less expensive process than the formal rulemaking procedure which is required to amend an order provision. The establishment of rules and regulations should provide adequate flexibility as supported by the testimony. Therefore, Mr. Farrimond's exception is denied.

Based upon the exception filed by Mr. Farrimond, the findings and conclusions in material issue number 2 of the Recommended Decision, concerning the calculation of annual allotments on the basis of sales histories, are amended by adding the following two paragraphs after the 16th paragraph of material issue number 2 to read as follows:

The exception received by Mr. Farrimond objected to the Department's modification to the amendatory language in the Recommended Decision regarding the submission of the production and eligibility report by producers to the Committee for the purpose of calculating sales histories. The Department proposed the following language in § 929.48(b) of the Recommended Decision to provide "for each grower who wishes to market cranberries under the marketing order shall file a report with the Committee by January 15 of each crop year * * *" Mr. Farrimond pointed out that the marketing order does not preclude growers from marketing their crop. Mr. Farrimond also asserted that the language implies that growers are prohibited from marketing their crop without filing a report with the Committee. The Department has revised the amendatory language in § 929.48(b) as appropriate. The language "to allow the committee to complete a sales history for each grower" is also added to the section for clarity.

However, that portion of the exception that recommended an amendment to the end of § 929.48(b) to provide, "failure to provide the committee with such report may result in the grower not receiving credit for the barrels sold during that crop year," is not adopted. The Recommended Decision has already indicated that such failure to submit a report by January 15 could result in a grower not receiving credit for barrels sold during the crop year. Including this language in the order provision itself is not necessary.

In addition, § 929.48(a)(5) is revised for the purposes of clarifying the amendatory language. That section will now provide for growers who have unused allotment and received a sales history calculated pursuant to § 929.48(a)(5) shall forfeit such unused allotment. The record indicates that growers or handlers should not be able to utilize the unused allotment since it was not actually earned by such grower.

Further, the following revisions to the findings and conclusions in the Recommended Decision are also made based upon the above referenced exception filed by Mr. Farrimond. The phrase "but would not be able to market the cranberries" is deleted from material issue number 2, 9th paragraph, 2nd sentence, of the Recommended Decision. Also, the 22nd paragraph, 2nd sentence under material issue number 2 is revised by deleting the phrase "and they would be eligible for an annual allotment immediately which enables them to sell their cranberries during a year when a marketable quantity has been established."

Based upon the exception filed by Mr. Farrimond, the findings and conclusions in material issue number 2 of the Recommended Decision, concerning the calculation of annual allotments on the basis of sales histories, are further amended by adding the following two paragraphs after the 49th paragraph of material issue number 2 to read as follows:

Mr. Farrimond stated in his exception that the words "equal to their" in § 929.49(f) had been deleted from the amendatory language. These words were included in the Notice of Hearing and were erroneously deleted from the Recommended Decision.

Mr. Farrimond also objected to the sentence in § 929.49(f) which would authorize growers to enter into an agreement with handlers as to the disposition of their unused annual allotment. The record evidence indicated that growers shall transfer all unused annual allotment to their handler or handlers. Handlers would then equitably apportion such unused allotment among those growers having excess cranberries. Mr. Farrimond stated that the two criteria are conflicting and allowing growers to enter into an agreement on the disposition of their unused allotment could cause a monetary value to be assigned to such unused allotment. The evidence supports Mr. Farrimond's exception; therefore, the sentence regarding the agreement between the grower and handler on the disposition of unused allotment is deleted from the Recommended Decision. Therefore, in accordance with Mr. Farrimond's exception, the amendatory language in § 929.49(f) is so modified.

Based upon the exception filed by Mr. Farrimond, the findings and conclusions in material issue number 2 of the Recommended Decision, concerning the calculation of annual allotments on acreage that is leased or transferred are further amended by adding the following two paragraphs after the 24th paragraph of material issue number 2 to read as follows:

Mr. Farrimond also objected to the provision in § 929.50(a)(5) which

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concerns the determination of sales history associated with cranberry acreage being leased or transferred during a year of nonregulation. The method for determining sales history proposed in § 929.50(a)(5) is inconsistent with the proposed formula in § 929.48 and the record evidence. Mr. Farrimond correctly points out that the evidence supports the determination of sales history on the basis of the formula in § 929.48 because that formula would also be used to calculate the sales history on leased or transferred cranberry acreage. Therefore, in accordance with Mr. Farrimond's exception, the amendatory language in § 929.50(a)(5) is revised.

Mr. Farrimond's exception stated that there appear to be inconsistencies in filing requirements between paragraphs (a) (2), (3), and (4) of § 929.50. This section provides for the transfer of sales history when leasing or purchasing cranberry acreage. The evidence supports that no transfer of sales history will be recognized unless both the transferee and transferor notify the Committee in writing. While the evidence supports this requirement, the amendatory language in § 929.50(a)(3) of the Recommended Decision specifies that either the seller or lessor of cranberry acreage shall provide the Committee with the completed transfer forms. The record evidence further indicated that it is not always possible to obtain a completed tranfer form from both parties involved in the transfer. This could cause delays and impede the committee's ability to calculate a sales history for the buyer. Therefore, § 929.50(a)(3) should be revised by replacing the word "and" with "or", and adding a proviso to §929.50(a)(4) to allow the Committee to recognize the filing of only one form from one of the parties if unusual circumstances exist. Therefore, in accordance with Mr. Farrimond's exception, the amendatory language is revised accordingly.

Based upon the exception filed by Mr. Farrimond, the findings and conclusions in material issue number 2 of the Recommended Decision, concerning the calculation of annual allotments on the basis of sales histories, are further amended by adding the following paragraph after the 40th paragraph of material issue number 2 to read as follows:

Mr. Farrimond's exception also favored the deletion of the term "established cranberry acreage;" however, he noted an inconsistency in § 929.48(a)(4) where the term is used. Therefore, in accordance with Mr. Farrimond's exception, the term "established cranberry acreage" is therefore deleted in the amendatory language under § 929.48(a)(4).

Based upon the exception filed by Mr. Farrimond, the findings and conclusions in material issue number 3 of the Recommended Decision, concerning tenure requirements for Committee members, are amended by adding the following paragraph after the fourth paragraph of material issue number 3 to read as follows:

Mr. Farrimond's exception favored tenure requirements of three consecutive two-year terms of office for Committee members. However, he objected to staggering the terms of office for Committee members. The record evidence, however, supported staggering the terms of office. As stated above, staggering the terms of office would preclude the loss of all or most of the Committee members at one time due to tenure limitations. Mr. Farrimond stated in his exception that staggering the terms of office for District 1 and District 2 could have an adverse impact on the Committee's independent member representation, since there are only a small number of independent growers in District 2. However, if no other qualified candidate can be found to serve on the Committee from that district, the Secretary has the authority to exempt the Committee member whose tenure has expired from the tenure requirements. Thus, Mr. Farrimond's exception is denied.

Rulings on Exceptions

In arriving at the findings and conclusions and the regulatory provisions of this decision, the exceptions to the Recommended Decision were carefully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exceptions, such exceptions are denied.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents entitled, respectively, "Order Amending the Order Regulating the Handling of Cranberries Grown in 10 States" and "Marketing Agreement as Amended, Regulating the Handling of Cranberries Grown in 10 States." These documents have been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision be published in the **Federal Register**. The regulatory provisions of the marketing agreement are identical to those contained in the order as hereby proposed to be amended by the annexed order which is published with this decision.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et seq.*) to determine whether the issuance of the annexed order amending the order regulating the handling of cranberries grown in 10 States is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production of cranberries grown in 10 States.

The representative period for the conduct of such referendum is hereby determined to be September 1, 1990, through August 31, 1991.

The agents of the Secretary to conduct such referendum are hereby designated to be Anne M. Dec, Patricia A. Petrella and Maureen T. Pello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Washington, DC 20250-6456, telephone (202) 720-9920.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

Signed at Washington, DC, on December 18, 1991.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

Order Amending the Order Regulating the Handling of Cranberries Grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York [1]

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 929 (7 CFR part 929), regulating the handling of cranberries grown in 10 States.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The order, as amended, as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as amended, as hereby proposed to be further amended, regulates the handling of cranberries grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The order, as amended, as hereby proposed to be further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The order, as amended, as hereby proposed to be further amended, prescribes, in so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of cranberries grown in the production area; and

(5) All handling of cranberries grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of cranberries grown in 10 States shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

Except for the previously noted changes, the provisions of the proposed marketing agreement and the order amending the order contained in the Recommended Decision issued by the Administrator on January 15, 1991, and published in the **Federal Register** on January 18, 1991, shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

2. Section 929.10 is revised as follows:

§ 929.10 Handle.

(a) *"Handle"* means (1) to can, freeze, or dehydrate cranberries within the production area or (2) to sell, consign, deliver, or transport (except as a common or contract carrier of cranberries owned by another person) fresh cranberries or in any other way to place fresh cranberries in the current of commerce within the production area or between the production area and any point outside thereof in the United States or Canada.

(b) The term *"handle"* shall not include: (1) The sale of nonharvested cranberries; (2) the delivery of cranberries by the grower thereof to a handler having packing or processing facilities located within the production area; (3) the transportation of cranberries from the bog where grown to a packing or processing facility located within the production area; or (4) the cold storage or freezing of excess cranberries for the purpose of temporary storage during periods when an annual allotment percentage is in effect prior to their disposal, pursuant to 929.59.

§ 929.13 [Removed]

3. Section 929.13 is removed.

4. A new § 929.13 is added to read as follows:

§ 929.13 Sales history.

Sales history means the number of barrels of cranberries established for a grower by the committee pursuant to section 929.48.

5. Section 929.15 is revised to read as follows:

§ 929.15 Annual allotment.

A grower's annual allotment for a particular crop year is the number of barrels of cranberries determined by multiplying such grower's sales history by the allotment percentage established pursuant to § 929.49 for such crop year.

§ 929.16 [Removed]

6. Section 929.16 is removed and reserved.

7. A new § 929.17 is added to read as follows:

§ 929.17 Barrel.

"Barrel" means a quantity of cranberries equivalent to 100 pounds of cranberries.

8. Section 929.21 is revised to read as follows:

§ 929.21 Term of office.

The term of office for each member and alternate member of the committee shall be for two years, beginning on August 1 of each even-numbered year and ending on the second succeeding July 31. Members and alternate members shall serve the term of office for which they are selected and have been qualified or until their respective successors are selected and have been qualified. Beginning on August 1 of the even-numbered year following the adoption of this amendment, committee members shall be limited to three consecutive terms: *Provided*, That committee members representing Districts 1 and 2 shall be limited to two consecutive terms of office for the initial period following adoption of this amendent. The consecutive terms of office for alternate members shall not be limited. Members serving three consecutive terms may become eligible to serve on the committee by not serving for one full term as either a member or an alternate member, unless specifically exempted by the Secretary.

9. Section 929.41 is revised to read as follows:

§ 929.41 Assessments.

(a) As a handler's pro rate share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during a fiscal period, a handler shall pay to the committee assessments on all cranberries acquired as the first handler thereof during such period, except as provided in § 929.55: *Provided*, That no handler shall pay assessments on excess cranberries as provided in § 929.57. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each handler during a fiscal period in an amount designated to secure funds sufficient to cover the expenses which may be incurred during such period and to accumulate and maintain a reserve fund equal to approximately one fiscal period's expenses. At any time during or

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

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after the fiscal period, the Secretary may increase the assessment rate in order to secure funds sufficient to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all cranberries acquired during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal year, before sufficient operating income is available from assessments, the committee may accept the payment of assessments in advance and may also borrow money for such purposes.

(c) If a handler does not pay such assessment within the period of time prescribed by the committee, the assessment may be increased by either a late payment charge, or an interest charge, or both, at rates prescribed by the committee, with the approval of the Secretary.

10. Section 929.45 is revised to read as follows:

§ 929.45 Research and development.

(a) The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research, and market development projects designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of cranberries. The expense of such projects shall be paid from funds collected pursuant to § 929.41, or from such other funds as approved by the Secretary.

(b) The committee may, with the approval of the Secretary, establish rules and regulations as necessary for the implementation and operation of this section.

§ 929.48 [Removed]

11. Section 929.48 is removed.

12. A new § 929.48 is added to read as follows:

§ 929.48 Sales history.

(a) Determination of sales history. (1) The initial sales history shall be computed by the committee for each grower using the best four out of six years of such grower's sales history, which shall include all commercial sales from the first complete crop year following adoption of this amendment, plus the prior five years' history of commercial sales, except as otherwise provided in paragraph (a)(5) of this section. For a grower with four years or less of commercial sales history, the initial sales history shall be computed by the committee using all available years of such grower's commercial sales history.

(2) A new sales history shall be computed for each grower after each crop year during which no volume regulation was established, in the same manner as for the initial sales history, except that the most recent crop year shall be used instead of the earliest crop year, and except as otherwise provided in paragraph (a)(4) of this section. The committee, with the approval of the Secretary, may, by regulation, alter the number and identity of years to be used in computing these subsequent sales histories.

(3) A new sales history shall be calculated for each grower after each crop year, during which a volume regulation has been established, using a formula determined by the committee, with the approval of the Secretary.

(4) Beginning with the first complete crop year following the adoption of this section, if a grower has no commercial sales from such grower's cranberry acreage for three consecutive crop years due to forces beyond the grower's control, the committee shall compute a level of commercial sales for the fourth year for that acreage using an estimated production, obtained by crediting the grower with the average sales from the preceding three years during which sales occurred. Any and all relevant factors regarding the grower's lost production may be considered by the committee prior to establishing a sales history for such acreage.

(5) The committee shall compute a sales history for a grower who has no history of sales associated with such grower's cranberry acreage during a crop year when a volume regulation has been established, using the greater of the following: (i) The total estimated commercial sales from a grower's cranberry acreage, or (ii) The state acreage yield per acre multiplied by the grower's cranberry producing acreage. *Provided,* That a grower having unused allotment and received a sales history computed under either of these methods shall forfeit such unused allotment.

(b) Grower report. Each grower shall file a report with the committee by January 15 of each crop year, indicating the total acreage harvested, the total commercial cranberry sales in barrels from such acreage, and the amount of any new or renovated acreage planted, to allow the committee to compute a sales history for each grower.

(c) The committee may establish, with the approval of the Secretary, rules and regulations necessary for the implementation and operation of this section.

13. Section 929.49 is revised to read as follows:

§ 929.49 Marketable quantity, allotment percentage and annual allotment.

(a) Marketable quantity and allotment percentage. If the Secretary finds, from the recommendation of the committee or from other available information, that limiting the quantity of cranberries purchased from or handled on behalf of growers during a crop year would tend to effectuate the declared policy of the Act, the Secretary shall determine and establish a marketable quantity for the crop year.

(b) The marketable quantity shall be apportioned among growers by applying the allotment percentage to each grower's sales history, established pursuant to section 929.48. Such allotment percentage shall be established by the Secretary and shall equal the marketable quantity divided by the total of all growers' sales histories. Except as provided in paragraph (f) of this section, no handler shall purchase or handle on behalf of any grower cranberries not within such grower's annual allotment.

(c) In any crop year in which the production of cranberries is estimated by the committee to be equal to or less than its recommended marketable quantity, the committee may recommend and the Secretary may increase or suspend the allotment percentage applicable to that year. In the event it is found that market demand is greater than the marketable quantity previously set, the committee may recommend and the Secretary may increase such quantity.

(d) Issuance of annual allotments. The committee shall require all growers to qualify for their allotment by filing with the committee, on or before April 15 of each year, a form wherein growers include the following information: The location of their cranberry producing acreage from which their annual allotment will be produced; the amount of acreage which will be harvested; changes in location, if any, of annual allotment; and such other information, including a copy of any lease agreement, as is necessary for the committee to administer this part. On or before June 1, the committee shall issue to each grower an annual allotment determined by applying the allotment percentage established pursuant to paragraph (b) of this section to the grower's sales history.

(e) On or before June 1 of any year in which an allotment percentage is established by the Secretary, the committee shall notify each handler of the annual allotment that can be handled for each grower whose total crop will be delivered to that handler. In cases where a grower delivers a crop to more than one handler, such grower's annual allotment will be apportioned equitably among the handlers.

(f) Growers who do not produce cranberries equal to their computed annual allotment shall transfer their unused allotment to such growers' handlers. The handler shall equitably allocate the unused annual allotment to growers with excess cranberries who deliver to such handler. Unused annual allotment remaining after all such transfers have occurred shall be transferred to the committee pursuant to paragraph (g) of this section.

(g) Handlers who receive cranberries more than the sum of their growers' annual allotments have "excess cranberries," pursuant to § 929.59, and shall so notify the committee. Handlers who have remaining unused allotment pursuant to paragraph (f) of this section are "deficient" and shall so notify the committee. The committee shall equitably distribute unused allotment to all handlers having excess cranberries.

(h) The committee may establish, with the approval of the Secretary, rules and regulations necessary for the implementation and operation of this section.

14. Section 929.50 is revised to read as follows:

§ 929.50 Transfers.

(a) Transfers to another grower. A grower who owns cranberry acreage on which a sales history has been established may transfer the acreage and sales history to another grower. When transfers of acreage occur, transfers of sales history will be made under the following conditions:

(1) A lease agreement between the owner of the cranberry producing acreage and a lessee: Terms of such lease agreement shall be filed with the committee prior to the committee recognizing such transfer. The lease agreement filed with the committee shall include the following information: (i) Name of owner and lessee; (ii) Starting and ending dates of the lease; (iii) Amount of acreage transferred; and (iv) The amount of sales history transferred.

(2) Total sale of cranberry acreage. When there is a sale of a grower's total cranberry producing acreage, the seller and buyer shall file a completed transfer form with the committee and the buyer will have immediate access to the sales history computation process.

(3) Partial sale or lease of cranberry acreage. When less than the total cranberry producing acreage is sold or leased, sales history associated with the portion of the acreage being sold or leased shall be transferred with the acreage. The seller and lessor shall provide the committee with a completed transfer or lease form outlining such distribution of acreage and sales history between the parties. Such transfer or lease form shall include that percentage of the sales history, as defined in § 929.48(a)(1), attributable to the acreage being transferred or leased.

(4) No transfer shall be recognized by the committee unless the tranferee and transferor notify the committee in writing: *Provided That,* if unusual circumstances exist, the Committee may recognize a transfer when only one form from the transferee or transferor is filed with the committee.

(5) In a year of nonregulation, in the absence of any sales history associated with the cranberry acreage being transferred or leased, the committee shall determine the buyer's or lessee's sales history pursuant to § 929.48 of the order.

(6) During a year when a volume regulation has been established, no transfer or lease of cranberry producing acreage, without accompanying sales history, shall be recognized until the committee is in receipt of a completed transfer or lease form.

(b) The committee may establish, with the approval of the Secretary, rules and regulations, as needed, for the implementation and operation of this section.

15. Amend § 929.52 by revising paragraph (a) to read as follows:

§ 929.52 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of cranberries whenever the Secretary finds, from the recommendations and information submitted by the committee, or from other available information, that such regulation will tend to effectuate the declared policy of the Act. Such regualation shall limit the total quantity of cranberries which may be handled during any fiscal period either by fixing the free and restricted percentages, which percentages shall be applied to cranberries acquired by handlers during such fiscal period in accordance with § 929.54, or by establishing an allotment percentage in accordance with § 929.49.

* * * * *

16. Section 929.55 is revised to read as follows:

§ 929.55 Interhandler transfer.

(a) Transfer or cranberries from one handler to another may be made without prior notice to the committee, except during a period when a volume regulation has been established. If such transfer is made between handlers who have packing or processing facilities located within the production area, the assessment and withholding obligations provided under this part shall be assumed by the handler who agrees to meet such obligation. If such transfer is to a handler whose packing or processing facilities are outside of the production area, such assessment and withholding obligation shall be met by the handler residing within the production area.

(b) All handlers shall report all such transfers to the committee on a form provided by the committee four times a year or at other such times as may be recommended by the committee and approved by the Secretary.

(c) The committee may establish, with the approval of the Secretary, rules and regulations necessary for the implementation and operation of this section.

17. A new § 929.59 is added to read as follows:

§ 929.59 Excess cranberries.

(a) Whenever the Secretary establishes an allotment percentage pursuant to § 929.52, handlers shall be notified by the committee of such allotment percentage and shall withhold from handling such cranberries in excess of the total of their growers' annual allotments obtainted during such period. Such withheld cranberries shall be defined as "excess cranberries" after all unused allotment has been allocated.

(1) Excess cranberries received by a handler shall be made available for inspection by the committee or its representatives from the time they are received until final disposition is completed. Such excess cranberries shall be identified in such manner as the committee may specify in its rules and regulations with the approval of the Secretary.

(2) All matters dealing with handler-held excess cranberries shall be in accordance with such rules and regulations established by the committee, with the approval of the Secretary.

(b) Prior to January 1, or such other date as recommended by the committee and approved by the Secretary, handlers holding excess cranberries shall submit to the committee a written plan outlining procedures for the systematic disposal of such cranberries in the outlets prescribed in § 929.61.

(c) Prior to March 1, or such other date as recommended by the committee and approved by the Secretary, all excess

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cranberries shall be disposed of pursuant to 929.61.

~~§§ 929.60–929.63 [Redesignated as §§ 929.62–929.65]~~

~~§§ 929.65–929.75 [Redesignated as §§ 929.67–929.77]~~

18. Redesignate §§ 929.60, 929.61, 929.62, and 929.63 of *Reports and Records* as §§ 929.62, 929.63, 929.64, and 929.65, respectively. In addition, redesignate §§ 929.65, 929.66, 929.67, 929.68, 929.69, 929.70, 929.71, 929.72, 929.73, 929.74, and 929.75 of *Miscellaneous Provisions* as §§ 929.67, 929.68, 929.69, 929.70, 929.71, 929.72, 929.73, 929.74, 929.75, 929.76, and 929.77, respectively.

19. A new § 929.60 is added to read as follows:

§ 929.60 Handling for special purposes.

Regulations in effect pursuant to §§ 929.10, 929.41, 929.47, 929.48, 929.49, 929.51, 929.52, or 929.53 or any combination thereof, may be modified, suspended, or terminated to facilitate handling of excess cranberries for the following purposes.

(a) Charitable institutions;

(b) Research and development projects described pursuant to section 929.61;

(c) Any nonhuman food use;

(d) Foreign markets, except Canada; and

(e) Other purposes which may be recommended by the committee and approved by the Secretary.

20. A new § 929.61 is added to read as follows:

§ 929.61 Outlets for excess cranberries.

(a) Noncommercial outlets. Excess cranberries may be disposed of only in the following noncommercial outlets that the committee finds, with approval of the Secretary, meet the requirements outlined in paragrpah (c) of this section:

(1) Charitable institutions; and

(2) Research and dedvelopment projects approved by the U.S. Department of Agriculture for the development of foreign and domestic markets, including, but not limited to, dehydration, radiation, freeze drying, or freezing of cranberries.

(b) Noncompetitive outlets. Excess cranberries may be sold to outlets that the committee finds, with the approval of the Secretary, are noncompetitive with established markets for regulated cranberries and meet the requirements outlined in paragraph (c) of this section. These outlets include: (1) Any nonhuman food use; and (2) Foreign markets, except Canada.

(c) Requirements for diversion. The following requirements, as applicable, shall be met by the handler diverting excess cranberries into noncompetitive or noncommercial outlets:

(1) Diversion to charitable institutions. A statement from the charitable institution shall be submitted to the commitee showing the quantity of cranberries received and certifying that the cranberries will be utilized by the institution;

(2) Diversion to research and development projects. A report shall be given to the committee describing the project, quantity of cranberries diverted, and date of disposition;

(3) Division to a nonhuman food use. Notification shall be given to the committee at least 48 hours prior to such disposition; and

(4) Diversion to foreign markets, except Canada. A copy of the on-board bill of lading shall be submitted to the committee showing the amount of cranberries loaded for export.

(d) The storage and disposition of all excess cranberries withheld from handling shall be subject to the supervision and accounting control of the commitee.

(e) The committee, with approval of the Secretary, may establish as needed rules and regulations for the implementation and operation of this section.

Dated: December 18, 1991.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

UNITED STATES DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Marketing Agreement, As Amended, Regulating the Handling of Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York

The parties hereto, in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the "Act" (7 U.S.C. 601–674), and in accordance with the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and orders (7 CFR part 900), desire to enter into this agreement amending the amended marketing agreement regulating the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; and each party hereto agrees that the handling of cranberries shall be in conformity to, and in compliance with, the provisions of the said marketing agreement, as amended, and as hereby further amended in the following respects:

The provisions of §§ 929.1 to 929.75, inclusive, of Order No. 929, as amended (7 CFR part 929), regulating the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, and as further amended by the order annexed to and made a part of the decision of the Secretary of Agriculture with respect to proposed further amendment of the aforesaid marketing agreement and order, are hereby incorporated into this agreement as if set forth in full herein; and the specified provisions as further amended by said annexed order, plus the following additional provisions, shall be, and the same hereby are, the terms and conditions hereof:

Section 929.76 *Counterparts.* This agreement may be executed in multiple counterparts, and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

Section 929.77 *Additional parties.* After the effective date hereof, any handler may become a party to this agreement if a counterpart thereof is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

Section 929.78 *Order with marketing agreement.* Each contracting handler hereby requests the Secretary to issue, pursuant to the Act, an order regulating the handling of cranberries in the same manner as is provided for this agreement.

The undersigned hereby authorizes the Director or Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, to correct any typographical errors which may have made in this agreement amending the marketing agreement.

IN WITNESS WHEREOF, the contracting parties, acting under the provisions of the Act, for the purpose and subject to the limitations therein contained, and not otherwise, have hereto set their respective signatures and seals.

(Firm name) _____

_____

(Address) _____

_____

By (Name) _____

_____

(Title) _____

_____

(Date of Execution) _____

_____

(Corporate seal; if none, so state)

[Doc. 91–30958 Filed 12–26–91; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 318 and 381

[Docket No. 88–033E]

RIN 0583–AA95

Finished Products Inspection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On September 24, 1991, the Food Safety and Inspection Service (FSIS) published a proposed rule to amend the Federal meat and poultry products inspection regulations to allow canning establishments more flexibility in complying with the regulatory requirements concerning finished product inspection of thermally-processed shelf stable canned product. FSIS has received a request to extend the comment period for an additional 30 days. FSIS has determined that the request should be granted. Therefore, FSIS is reopening the comment period for an additional 30 days.

DATE: Comments must be received on or before: January 27, 1992.

ADDRESSES: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided by the Poultry Products Inspection Act should be directed to Mr. William C. Smith, at (202) 720–3840.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Smith, Director, Processed Products Inspection Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Area Code (202) 720–3840.

SUPPLEMENTARY INFORMATION: Currently, quality control programs regarding finished product inspection of thermally-processed shelf stable canned products must comply with specific requirements of sections 318.309 and 381.309 of the Federal meat and poultry products inspection regulations. The Agency received two petitions from the National Food Processors Association (NFPA) to amend the Federal meat and poultry products inspection regulations to allow canning establishments more latitude in complying with the requirements contained in sections 318.309 and 381.309 of the Federal meat and poultry products inspection regulations.

On September 24, 1991, FSIS published a proposed rule (56 FR 48131) to amend the Federal meat and poultry products inspection regulations to allow quality control programs to differ from current regulatory requirements. Such programs must be determined to be equivalent to the current regulatory requirements or meet the intent of such requirements which is to provide assurance of the safety and stability of canned products.

Interested persons were given until November 25, 1991, to comment on this proposed rule. FSIS has received a request to extend the comment period to allow more time to review the proposal and submit comments. The Agency is interested in receiving such information pertaining to this proposed rule and is, therefore, reopening the comment period for an additional 30 days.

Done at Washington, DC, on: December 23, 1991.

Ronald J. Prucha,

Acting Administrator.

[FR Doc. 91–30961 Filed 12–26–91; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 31 and 32

RIN 3150—AD34

Requirements for the Possession of Industrial Devices Containing Byproduct Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations governing the safe use of byproduct material in certain measuring, gauging, or controlling devices. The proposed changes, among other things, would require general licensees who posses these devices to provide the NRC information about the identification of devices and the people responsible for the devices. Further, specific licensees who are distributors of generally licensed devices under 10 CFR 31.5 would be required to use a uniform format when submitting the quarterly transfer reports to NRC. The proposed rule is intended to ensure that general licensees are aware of and understand the requirements for the possession of devices containing byproduct material. This awareness will better assure that general licensees will comply with the requirements for proper handling and disposal of generally licensed devices and presumably reduce the potential for incidents that could result in unnecessary radiation exposure to the public.

DATES: The comment period expires March 12, 1992. Comments received after this date will be considered if it is practicable to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to One White Flint North, 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 pm on weekdays. Copies of the draft regulatory analysis, as well as copies of the comments received on the proposed rule, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph J. Mate, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3795.

SUPPLEMENTARY INFORMATION:

Background

On February 12, 1959 (24 FR 1089), the Atomic Energy Commission amended its regulations to provide a general license for the use of byproduct material contained in certain lumious, measuring, gauging, and controlling devices. Under the current requirements for possession of a general license, certain persons may receive and use a device containing byproduct material if the device has been manufactured and distributed in accordance with the specifications contained in a specific license issued by the NRC or by an Agreement State. A specific license is issued based upon a determination by a regulatory authority that the safety features of the device and the instructions for safe operation are adequate and meet regulatory requirements. The general licensee is required to comply with the safety instructions contained in or referenced on the label of the device and to have the testing or servicing of the device performed by an individual authorized to manufacture, install, or service these devices. A generally licensed device is a "black box," that is, the radioactive material is contained in a sealed source usually within a shielded device. The device is designed with inherent radiation safety features so that it can be used by persons with no radiation training or experience. Thus, the general license policy is a mechanism to

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simplify the license process so that a case-by-case determination of the adequacy of the radiation training or experience of each user is not necessary.

Discussion

There are about 600,000 devices that contain byproduct material is use by about 35,000 licensees under the Commission's general license regulatory program. General licensees have not been contacted by NRC on a regular basis because of the relatively small radiation risk posed by generally licensed devices. These devices have survived fires and explosions on many occasions without a total loss of shielding. They have been damaged by molten steel, and hit by construction vehicles with only minor losses in radiation shielding while maintaining the integrity of the source capsule.

Nonetheless, there have been a number of occurrences where devices containing radioactive material have not been properly handled or disposed of and resulted in radiation exposure of the public. Although no significant public health and safety hazards resulted from these incidents, if proper handling and disposal procedures had been followed, these avoidable exposures would not have occurred. For example, one or more cesium-type gauges were mixed in with some scrap metal that was melted down to form steel and the entire batch of steel was contaminated. In another instance, a static eliminator bar with 22.5 millicuries of americium-241 was sent to a sanitary landfill over which the NRC has no jurisdiction. There have been other types of incidents involving NRC generally licensed devices including damaged devices, leaking or contaminated sources, and equipment malfunctions. However, lose of accountability, as occurred above, remains the most frequent incident and the predominant concern.

Because of these occurrences, the NRC's Office of Nuclear Material Safety and Safeguards (NMSS) conducted a radiological risk assessment addressing storage of devices in warehouses, disposal in scrap yards, incineration of waste, melting in a smelter, and disposal in a landfill. NMSS included in the risk assessment an incident at a steel company in 1983 (discussed in NUREG–1188, "The Auburn Steel Company Radioactive Contamination Incident") that probably represents a worst-case scenario for generally licensed gauging devices. Although individual doses were low and within prescribed limits for exposure of members of the public, they nevertheless represent unnecessary additional public exposure that could have been avoided. In addition, the cleanup costs were in excess of four million dollars with additional costs incurred for the staff efforts of regulatory agencies.

In consideration of both the risk assessment and incidents like those noted above, the NRC conducted a three-year sampling (1984 thru 1986) of general licensees (taken from the vendor's quarterly reports) to determine whether there was an accounting problem with gauge users under general licenses, and if so, what remedial action might be necessary. The sampling was conducted both by telephone calls and site visits. The sampling revealed several areas of concern regarding the use of radioactive material under the general license provisions. On the basis of the sampling, the NRC concluded that is: (1) A lack of awareness of appropriate regulations on the part of the user (general licensee) and (2) inadequate handling and accounting for these generally licensed devices. The NRC further concluded that these two problems could be remedied by more frequent and timely contact between the general licensee and the NRC. This conclusion by the NRC provides the basis for the regulatory changes proposed in this action.

An estimated 70,000 Agreement State licensees use the types of sources and devices covered by the amendments being proposed today for the NRC's general licensees. Consequently, the States will play an important role in achieving improved regulatory oversight on a national basis. Many of the States already have accountability programs in place. The Agreement States participated in the development of this rule and indicated agreement with the concept of the proposed rule. Specific comments from the Agreement States were adopted except for suggestions that the NRC charge general licensees fees and that there is no need for a standard format for submitting information. The fee issue will be addressed separately. The proposed rule provides flexibility in the use of the standard format.

The Commission is considering making the amendments a matter of compatibility for the States. The NRC staff has suggested that the amendments be categorized as Division 2 level of compatibility. This level of compatibility requires that States address provisions in NRC regulations relating to basic principles of radiation safety and regulatory functions without necessarily using identical language. States may also adopt requirements more restrictive than NRC rules under this level of compatibility. The Commission would appreciate comments on this suggestion.

An estimated 35,000 persons use certain measuring, gauging, or controlling devices under the NRC's general license. NRC regulations that affect these general licensees' responsibilities and that are presently being amended are 10 CFR 31.2, 31.4, 31.5, and 31.6. Under 10 CFR 31.2, "Terms and Conditions," all general licensees are subject to certain provisions of part 30 and also parts 19, 20, and 21. The proposed revision to § 31.2 would also subject all general licensees to the requirements of 10 CFR 30.9, "Completeness and Accuracy of Information," which imposes certain requirements regarding the completeness and accuracy of the information submitted to the NRC by licensees not now imposed upon general licensees.

Section 31.4 of 10 CFR part 31, "Information Collection Requirements: OMB approval," lists the various sections of part 31 that contain approved information collection requirements. Paragraph (b) of § 31.4 is being amended to add § 31.6 to the approved listing.

Section 31.5, "Certain measuring, gauging or controlling devices," provides for a general licensee to acquire, receive, possess, use, or transfer byproduct materials. It also specifies the responsibilities of general licensees regarding the use of byproduct materials. Under the proposed revisions a new paragraph (c)(11) would be added to require the general licensee to provide specific information to the NRC upon request. This information would include the complete name and address; specific information about the device, such as manufacturer, model number, and number of devices; name, title, and telephone number of the person responsible for controlling the use of the device; the address where the device is located or used; and whether the specific requirements of paragraph (c) of § 31.5 have been met. In addition, a proposed revision to paragraph (b) of § 31.5 would delete all references to specific licenses issued by Agreement States that authorize distribution of devices to persons generally licensed by Agreement States.

The registration and verification system contained in the proposed amendments to 10 CFR parts 31 and 32 will include all general licensees, including those who previously acquired radioactive sources. If older sources are transferred, they would be subject to the same requirements as newer sources and the registration system is intended

to capture them. General licensee transfers of sources are limited to either transfer to specific licensees or other general licensees by the existing provisions of 10 CFR 31.5(c) (8) and (9). In both cases, licensees must notify the NRC of the transfers. If the specific licensee is a 10 CFR part 32 or Agreement State equivalent distributor, the reporting requirements of the proposed rule would apply to any subsequent transfers. The current NRC data base, although limited, includes identification of general licensees who acquired gauges as early as 1959. The NRC staff plans to contact these licensees and any new general licensee as part of the enhanced oversight effort.

At present, 10 CFR 31.6, "General license to install devices generally licensed in § 31.5," provides a general license to certain specific licensees from Agreement States to install or service devices used under § 31.5. The current regulation, 10 CFR 31.6, is not clear with respect to time restrictions. 10 CFR 150.20(b)(3), imposes a 180-day-per-calendar-year limitation on the activities of Agreement State Licensees in non-Agreement States. The proposed amendments to § 31.6 would remove this restriction for § 31.5 licensees. This change will be convenient to the NRC, Agreement States, and manufacturers because it will reduce and simplify paper work without increasing the risk to public health and safety. The proposed § 31.6(a) would require the general licensee holding a specific license from an Agreement State to report to the NRC all persons receiving a device from the licensee, as specified in the accompanying proposed revision to § 32.52. Proposed § 31.6(d) would require the licensee to supply each of the recipients of a generally licensed device a copy of the general license contained in § 31.5. Proposed § 31.6(e) would require that written instructions and precautions be provided to persons servicing a generally licensed device. Proposed § 31.6(f) would also require a person performing routine installation/servicing/relocation of these devices to notify the appropriate NRC regional office at least 3 working days prior to the start of the activities. This notification would allow for a level of periodic inspection of those activities that intentionally place a worker in direct contact with the device or an unshielded radiation source. It is not intended that the prior notification requirement apply in cases where a radiological hazard due to an accident or a malfunction of the device exists. To be consistent with the proposed modifications, the section heading would be amended to read "General license to distribute, install, and service devices generally licensed in § 31.5."

10 CFR 32.51a, "Same: Conditions of licenses," presently imposes conditions on applicants for a specific license to manufacture or initially transfer generally licensed devices to general licensees. The addition of proposed paragraph (c) to § 32.51a would require such specific licensees to provide recipient users of generally licensed devices with written instructions and precautions to ensure that the devices are used safely. In addition, these specific licensees would be required to provide those users with information regarding testing requirements, transfer and reporting requirements, and disposal options for the devices being transferred.

10 CFR 32.52, "Material transfer reports and records," currently requires specific licensees authorized to distribute devices to general licensees to file transfer reports with the NRC on a quarterly basis. The revised regulation would prescribe the format to be used when submitting transfer reports to the NRC. The proposed format would provide more detailed and complete information about the general licensee to whom the device is transferred. The format is presented in proposed subpart E, § 32.310. Licensees who do not use the prescribed format would be permitted to provide all of the information required by the format on a clear and legible record. In addition, specific licensees would be required to identify a person responsible for meeting the requirements associated with the possession of the generally licensed device rather than simply identifying a point of contact at the general licensee's location.

After receipt of the quarterly transfer reports from the specific licensee under § 32.52, the NRC would send letters to the general licensees who received the devices during the preceding reporting period requesting them to verify in writing that they had purchased the devices containing byproduct material and that they understand the requirements of the general license. The general licensee under proposed § 31.5(c)(11)(ii) would be required to respond to the NRC by letter and to verify safety-related information about the device and its location. Thereafter, notices would be sent periodically to the general licensees requesting that they verify that they still have the device, verify the safety-related information, and remind them of their regulatory responsibilities in using the device. The frequency of these letters may range from 1 to 3 years. Any failure to respond or any reports of lost devices would initiate NRC follow-up action. This contact between the NRC and the general licensee would allow the NRC to validate and update the information currently contained in the data base that the NRC maintains for its general licensees.

Although these proposed requirements would impose additional costs on licensees, the Commission has estimated these to be nominal (on the order of $10 per device). Accordingly, the Commission believes that the increased compliance by general licensees and confidence in the appropriateness of the general license program potentially afforded by these new requirements outweigh this cost. Nonetheless, the Commission particularly requests comments on this matter.

At the time of the final rulemaking on this matter, the Commission intends to provide for an interim enforcement policy to supplement the current Enforcement Policy in 10 CFR part 2, appendix C, to address violations arising from the proposed regulations. The interim policy would remain in effect for one cycle of the notice and response program, approximately three years. Under the existing NRC Enforcement Policy, significant violations such as those involving lost sources may result in escalated action including civil penalties. The interim policy would provide that in the initial phase of the implementation of a notice and response program, enforcement action would not normally be taken for violations identified by a licensee in submitting information pursuant to the proposed regulation provided appropriate corrective action is initiated. This change from the Commission's normal enforcement policy in 10 CFR part 2, appendix C, is to remove any disincentive to identify deficiencies caused by a concern of potential enforcement action. This action would be taken to encourage general licensees to search their facilities to assure sources are located, to determine if applicable requirements have been met, and to develop appropriate corrective action when deficiencies are found. However, enforcement action will be considered for violations involving the failure to provide the information requested or take appropriate corrective actions or willful violations including the submittal of false information. Sanctions in those situations may include civil penalties as well as orders to limit or revoke the

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authority to possess radioactive sources under a general license.

Environmental Impact: Categorical Exclusion

The NRC has determined that the proposed regulations are the type of action described in the categorical exclusion 10 CFR 51.22(c)(3)(iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

The proposed rule amends the information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This proposed rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

The public reporting burden for this collection of information is estimated to average about 20 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB-7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-3019, (3150-0016 and 3150-0001), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The NRC has prepared a draft regulatory analysis of this proposed regulation. The analysis examines the cost and benefits of the alternatives considered by the NRC. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the draft analysis may be obtained from Joseph J. Mate, Officer of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301-492-3795.

Regulatory Flexibility Certification

Based on information available at this stage of the rulemaking proceeding and in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the NRC certifies that, if promulgated, this rule will not have a significant economic impact on a substantial number of small entities. The NRC has adopted size standards that classify a small entity as one whose gross annual receipts do not exceed $3.5 million over a 3-year period. The proposed rule affects about 35,000 persons using products under this general license, many of whom would be classified as a small entity. However, the NRC believes that the economic impact of the proposed requirements on any general licensee would be negligible. The proposed rule is being issued to better ensure that the general licensees understand and comply with regulatory responsibilities regarding the generally licensed radioactive devices in their possession.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to these proposed rules and therefore a backfit analysis is not required because these proposed amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in:

10 CFR Part 31

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, and Scientific equipment.

10 CFR Part 32

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements, and Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 31 and 32.

PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

1. The authority citation for part 31 is revised to read as follows:

Authority: Secs. 81, 161, 183, 68 Stat. 935, 948, 954, as amended (42 U.S.C. 2111, 2201, 2233); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Section 31.6 also issued under sec. 274, 73 Stat. 688 (42 U.S.C. 2021).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 31.5 (c)(1)-(3) and (5)-(9), 31.6, 31.8(c), 31.10(b), and 31.11(b), (c), and (d) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b); and §§ 31.5 (c)(4), (5), (8), and (11), 31.6 (d)-(f), and 31.11(b) and (e) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 31.2 is revised to read as follows:

§ 31.2 Terms and Conditions.

The general licenses provided in this part are subject to the provision of §§ 30.9, 30.14(d), 30.34(a) to (e), 30.41, 30.51 to 30.63, and parts 19, 20, and 21 of this chapter [1] unless indicated otherwise in the language of the general license.

3. In § 31.4 paragraph (b) is revised to read as follows:

§ 31.4 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 31.5, 31.6, 31.8, and 31.11.

* * * * *

4. In § 31.5, paragraph (b) is revised and paragraph (c)(11) is added to read as follows:

§ 31.5 Certain measuring, gauging, or controlling devices.[2]

* * * * *

(b) The general license in paragraph (a) of this section applies only to byproduct material contained in devices that have been manufactured or initially transferred and labeled in accordance with the specifications contained in a specific license issued pursuant to § 32.51 of this chapter or in accordance with the specifications contained in the general license of § 31.6.

(c) * * *

(11) Shall respond within 30 calendar days of receipt of a request from the Nuclear Regulatory Commission to verify the following information and any other such information as may be requested by the Commission as it relates to the general license. Further, the general licensee shall notify the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555 within 30 calendar days if any of the requested information should change.

(i) Name and complete address of the general licensee.

(ii) Identification of specific information about the device, such as: the manufacturer, model number, the number of devices, type of isotope, and who has performed what service on the device since the last report concerning the device was submitted to the NRC.

(iii) Name, title, and telephone number of the person who is responsible for the device and for ensuring compliance with the appropriate regulations and requirements.

(iv) Address at which the device is located or used.

(v) Whether the requirements of § 31.5(c)(1) through (c)(10) have been met.

* * * * *

5. Section 31.6 is amended by revising the section heading and the introductory paragraph and by adding paragraphs (a), (d), (e), and (f) to read as follows:

§ 31.6 General license to distribute, install, and service devices generally licensed in § 31.5.

Any person who holds a specific license by an Agreement State authorizing the holder to manufacture, distribute, install, or service devices described in § 31.5 within the Agreement State is hereby granted a general license to distribute, install, or service the devices in any non-Agreement State for an unlimited period of time and a general license to distribute, install, or service the devices in offshore waters, as defined in § 150.3(f), provided that:

(a) The Agreement State licensee files the appropriate transfer reports as required by paragraphs (a) and (b) of § 32.52.

* * * * *

(d) The person shall furnish a copy of the general license contained in § 31.5 of this chapter to each person who is responsible for the byproduct material and for ensuring compliance with the appropriate regulations and requirements.

(e) The person shall provide the individual responsible for service of the device with written instructions and precautions necessary to ensure its safe installation, operation, and service. These instructions shall include leak-testing requirements, transfer and reporting requirements, disposal options, including possible costs and reporting requirements for lost or damaged devices.

(f) The person performing routine service/installation or relocation of devices shall notify the appropriate NRC Regional Office listed in Appendix D of part 20 of this chapter at least 3 working days prior to engaging in such activities in Non-Agreement States. The notification shall include the date and location of the activity that will be performed. Prior notification does not apply in cases where a radiological hazard due to an accident or malfunction of the device exists.

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

6. The authority citation for part 32 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 32.13, 32.15 (a), (c), and (d), 32.19, 32.25 (a) and (b), 32.29 (a) and (b), 32.54, 32.55 (a), (b), and (d), 32.58, 32.59, 32.62, and 32.210 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201 (b)); and §§ 32.12, 32.16, 32.20, 32.25(c), 32.29(c), 32.51a, 32.52, 32.56, and 32.210 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

7. Section 32.51a is amended by adding paragraph (c) to read as follows:

§ 32.51a Same: Conditions of licenses.

* * * * *

(c) Furnish the individuals identified under § 31.5(c)(11) or § 31.6(d) with written instructions and precautions necessary to ensure safe installation, operation, and service of the device. These instructions must include the leak-testing requirements, transfer and reporting requirements, disposal options including possible costs, and reporting requirements for lost or damaged devices.

8. Section 32.52 is revised to read as follows:

§ 32.52 Same: Material transfer reports and records.

Each person licensed under § 32.51 or § 31.6 to initially transfer devices to generally licensed persons shall:

(a) Report quarterly to the Director of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and send a copy of the report to the appropriate NRC regional office listed in appendix D of part 20 of this chapter all transfers of such devices to persons for use under the general license in § 31.5 of this chapter. The report must be provided either in the format presented in subpart E, § 32.310, "Transfer Report Format," or on a clear and legible record as long as all of the data required by the format is included. If one or more intermediate persons temporarily possesses the device at the intended place of use prior to its possession by the user, the report must include the same information for each intermediary as in subpart E, § 32.310, and clearly designate that person as an intermediary. If no transfers have been made to persons generally licensed under § 31.5 during the reporting period, the report must so indicate. The report must cover each calendar quarter and must be filed within 30 days of the end of the calendar quarter.

(b) Report quarterly to the responsible Agreement State agency all transfers of such devices to persons for use under a general license in an Agreement State's regulations that are equivalent to § 31.5. The report must be provided either in the format in subpart E, § 32.310, "Transfer Report Format," or on a clear and legible record as long as all of the data required by the format is included. If one or more intermediate persons temporarily possesses the device at the intended place of use prior to its possession by the user, the report must include the same information for each intermediary as in subpart E, § 32.310, and clearly designate that person as an intermediary. If no transfers have been made to persons generally licensed under § 31.5 during the reporting period, the report must so indicate. The report must cover each calendar quarter and must be filed within 30 days of the end of the calendar quarter.

(c) Keep records of all transfers of such devices for each general licensee and in compliance with the above reporting requirements of § 32.52. Records required by this section must be maintained for a period of 5 years from the date of the recorded event.

9. Subpart E, § 32.310 is added to 10 CFR part 32 to read as follows:

Subpart E—Report of Transfer of Byproduct Materials

§ 32.310 Transfer Report Format.

This section contains the format required by § 32.52.

BILLING CODE 7590-01-M

[1] Attention is directed particularly to the provisions of the regulations in part 20 of this chapter that relate to the labeling of containers.

[2] Persons possessing byproduct material in devices under a general license in § 31.5 before January 15, 1975, may continue to possess, use, or transfer that material in accordance with the labeling requirements of § 31.5 in effect on January 14, 1975.

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Subpart E-Report of Transfer of Byproduct Materials

Section 32.310 - Transfer Report Format

NAME OF VENDOR AND LICENSE NUMBER	REPORTING PERIOD	
	FROM	TO

GENERAL LICENSEE INFORMATION	
COMPANY NAME, STREET, CITY, STATE, ZIP CODE	DEPARTMENT
PERSON RESPONSIBLE FOR CONTROL OF THE DEVICE	
NAME AND TITLE	TELEPHONE NUMBER

FOR EACH DEVICE PROVIDE THE FOLLOWING

MODEL NUMBER	SERIAL NUMBER	ISOTOPE	ACTIVITY AND UNITS

BILLING CODE 7590-01-C

Subject: Requirements for the Possession of Industrial Devices Containing Byproduct Material (RIN 3150-AD34).

Dated at Rockville, Maryland this 12th day of December 1991.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 91-30829 Filed 12-26-91; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-73-AD]

Airworthiness Directives; deHavilland Model DHC-3 Otter Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to deHavilland Model DHC-3 Otter airplanes that have a Servo-Aero Engineering 20000 Series Kit installed on a Pratt & Whitney PT6A-135/135A engine. This proposed action would require a one-time inspection to ensure existence and correct assembly of the fuel condition lever lock, and, if not existent or incorrectly assembled, installation in accordance with the applicable service information. If the fuel condition lever lock is not existent or incorrectly assembled, inadvertent engine shutdown could occur. The actions specified in this proposed AD are intended to prevent loss of control of the airplane caused by inadvertent engine shutdown.

DATES: Comments must be received on or before February 3, 1992.

ADDRESSES: Servo-Aero Engineering Service Bulletin SB001, dated July 24, 1990, may be obtained form Servo-Aero Engineering Inc., 37 Mortensen Avenue, Salinas, California 93905; Telephone (408 422-7866). This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-73-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Chinh Vuong, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3329 E. Spring Street, Long Beach, California 90808-2425; Telephone (213) 988-5264; Facsimile (213) 988-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-73-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Transport Canada, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain deHavilland Model DHC-3 Otter airplanes that have a Servo-Aero Engineering 20000 Series Kit installed on a Pratt & Whitney PT6A-135/135A engine. Transport Canada advises that some of the Pratt & Whitney Canada PT6A-135/135A engines that have been modified in accordance with either Supplemental Type Approval (STA) SA 89-32 or Supplemental Type Certificate (STC) SA 3777NM do not have a fuel condition lever lock installed. If the fuel condition lever lock is not installed or is incorrectly assembled, then the engine can inadvertently shutdown and result in loss of control of the airplane.

Servo-Aero Engineering Inc. has issued Service Bulletin SB001, dated July 24, 1991, which specifies instructions for installing the fuel condition level lock, part number (P/N) 20037-16. Transport Canada classified this service bulletin as mandatory and issued Transport Canada AD DV-912-16, dated June 11, 1991, in order to assure the airworthiness of these airplanes in Canada. The airplanes are manufactured in Canada and are type certificated for operation in the United States. Pursuant to a bilateral airworthiness agreement, Transport Canada has kept the FAA totally informed of the above situation.

The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Since this condition could exist or develop in other deHavilland Model DHC-3 Otter airplanes that have a Servo-Aero Engineering 20000 Series Kit installed on a Pratt & Whitney PT6A-135/135A engine of the same type design, the proposed AD would require a one-time inspection to ensure existence and correct assembly of the fuel condition lever lock, and, if not existent or incorrectly assembled, installation in accordance with the instructions in Servo-Aero Service Bulletin SB001, dated July 24, 1991.

It is estimated that 2 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 hours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts are provided by the manufacturer at no cost. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $440.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034), February 26, 1979); and (3) if

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promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of its may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new AD:

deHavilland: Docket No. 91–CE–73–AD.

Applicability: Model DHC–3 Otter airplanes (all serial numbers) that have a Servo-Aero Engineering 20000 Series Kit installed on a Pratt & Whitney PT6A–135/135A engine, certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent loss of control of the airplane caused by inadvertent engine shutoff, accomplish the following:

(a) Visually inspect the Pratt & Whitney PT6A–135/135A engine to ensure that a fuel condition lever lock, part number (P/N) 20037–18, is installed and ensure that it is correctly assembled in accordance with the instructions in Servo-Aero Service Bulletin SB001, dated July 24, 1990.

(1) If a fuel condition lever lock is installed and is correctly assembled in accordance with the instructions in Servo-Aero Service Bulletin SB001, dated July 24, 1990, return the airplane to service.

(2) If a fuel condition lever lock is not installed or is not assembled in accordance with the instructions in Servo-Aero Service Bulletin SB001, dated July 24, 1990, prior to further flight, install a fuel condition lever position lock, (P/N) 20037–18, in accordance with the instructions in Servo-Aero Service Bulletin SB001, dated July 24, 1990.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Los Angeles Aircraft Certification Office, 3329 E. Spring Street, Long Beach, California 90806–2425. The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to Servo-Aero Engineering Inc., 37 Mortensen Avenue, Salinas, California 93905; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on December 19, 1991.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–30921 Filed 12–26–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–78–91]

RIN 1545–AQ07

Procedure for Monitoring Compliance with Low-Income Housing Credit Requirements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the requirement that State allocation plans provide a procedure for State and local housing credit agencies to monitor for compliance with the requirements of section 42 of the Internal Revenue code and report any noncompliance to the Internal Revenue Service. These regulations affect State and local housing credit agencies, owners of buildings or projects for which the low-income housing credit is claimed, and taxpayers claiming the low-income housing credit.

DATES: Written comments must be received by February 25, 1992. Requests to appear at a public hearing scheduled for March 4, 1992, and outlines of oral comments must be received by February 19, 1992. See notice of hearing published elsewhere in this issue of the **Federal Register**

ADDRESSES: Send comments, requests to appear at the public hearing, and outlines to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, (Attn: CC:CORP:T:R (PS–78–91), room 5228), Washington, DC 20044. In the alternative, comments, requests to appear at the public hearing, and outlines may be hand delivered to: CC:CORP:T:R (PS–78–91), Internal Revenue Service, room 5228, 1111 Constitution Ave., NW., Washington, DC 20224. The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Paul F. Handleman, (202) 377–6349 (not a toll-free call). Concerning the hearing, Bob Boyer, Regulations Unit, (202) 566–3935 (not a toll–free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224.

The collection of information in this proposed regulation is contained in § 1.42–5. This information is required by the Internal Revenue Service because State and local housing credit agencies are required under section 42 (m)(1)(B)(iii) to monitor for compliance with the requirements of section 42 and report any noncompliance to the Internal Revenue Service. Noncompliance is reported by the agencies on form 8823, Low-Income Housing Credit Agencies Report of Noncompliance. Form 8823 was submitted to the Office of Management and Budget under control number 1545–1204. The likely respondents/recordkeepers are individuals, State and local governments, business or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

These estimates are an approximation of the average time expected to be necessary for the collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances. Estimated total reporting and/or recordkeeping burden: 18,750 hours. The estimated annual burden per State or local government respondent/recordkeeper varies from 10 hours to 1,500 hours, with an estimated average of 250 hours. The estimated annual burden for all other respondent/recordkeepers varies from .5 hours to 3 hours, with an estimated average of 1 hour. Estimated number of State or local government respondents/recordkeepers: 55. Estimated number of all other respondents/recordkeepers: 5,000. Estimated annual frequency of State or local government responses (for reporting requirement only): As necessary. Estimated annual frequency of all other responses (for reporting to State or local government requirement only): 1.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 42 of the Internal Revenue Code of 1986. These amendments are proposed to provide guidance on section 42 (m)(1)(B)(iii). Section 42 (m)(1)(B)(iii), which was amended and renumbered by the Revenue Reconciliation Act of 1990, is effective on January 1, 1992, and applies to all buildings placed in service for which the low-income housing credit determined under section 42 is, or has been, allowable at any time.

Section 42 provides for a low-income housing credit that may be claimed as part of the general business credit under section 28. The credit determined under section 42 is allowable only to the extent the owner of a qualified low-income building receives a housing credit allocation from a State or local housing credit agency ("Agency"), unless the building is exempt from the allocation requirement by reason of section 42 (h)(4)(B). Under section 42 (m)(1)(A), the housing credit dollar amount for any building is zero unless the amount was allocated pursuant to a qualified allocation plan of the Agency. Similarly, under section 42 (m)(1)(D), the housing credit dollar amount for any project qualifying under section 42 (h)(4) is zero unless the project satisfies the requirements for allocation of a housing credit dollar amount under the qualified allocation plan of the Agency. Under section 42 (m)(1)(B)(iii), an allocation plan is not qualified unless it contains a procedure that the Agency (or an agent of, or private contractor hired by, the Agency) will follow in monitoring compliance with the provisions of section 42 and notifying the Internal Revenue Service of any noncompliance of which the Agency becomes aware.

Explanation of Provisions

A. In General

The proposed regulations provide guidance on section 42(m)(1)B)(iii). Under the proposed regulations, an allocation plan meets the requirement of section 42(m)(1)(B)(iii) if it includes a monitoring procedure that contains, in substance, all of the provisions specified in the regulations.

The specified provisions are minimum requirements; a monitoring procedure may contain additional provisions or requirements. Moreover, the language, form, and order of the specified provisions as set forth in the regulations need not be exactly duplicated in an allocation plan in order for the plan to include a monitoring procedure as required by the regulations. As long as the substance of the provisions specified in the regulations is contained in the allocation plan as a whole, the allocation plan includes the monitoring procedure required by the regulations.

B. Provisions of Monitoring Procedure

1. In General

Under the regulations, a monitoring procedure must contain recordkeeping and record retention provisions, certification and review provisions, an auditing provision, and provisions for notifying owners and the Internal Revenue Service of noncompliance or lack of certification.

2. Recordkeeping and Record Retention

A monitoring procedure must require the owner of a low-income housing project to keep records for each building in the project showing the total number of residential rental units in the building, the percentage of low-income units in the building, the rent charged on each residential rental unit in the building, the low-income unit vacancies in the building and the rentals of the next available units, the low-income certification of each low-income tenant and documentation to support that certification, and the character and use of the nonresidential portion of the building included in the building's eligible basis under section 42(d) (*e.g.*, tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project). These records should already be kept by all owners, since they are necessary to calculate how much credit, if any, can be claimed.

A monitoring procedure must require the records for a building to be kept a minimum of 6 years beyond the end of the compliance period of the building. The records should be kept until this date in any event, because a portion of the credit claimed for a building may be recaptured during the compliance period under certain circumstances.

3. Certification and Review

A monitoring procedure must require the owner of a low-income housing project to certify at least annually to the Agency under penalty of perjury that the project meets the requirements of the 20–50 test under section 42(g)(1)(A), the 40–60 test under section 42(g)(1)(B), or the 25–60 test under sections 42(g)(4) and 142(d)(6) for New York City, whichever minimum set-aside test is applicable to the project, and the 15–40 test under sections 42(g)(4) and 142(d)(4)(B) for "deep rent skewed" projects, if applicable to the project. In addition, the monitoring procedure must require the owner to certify to the Agency under penalty of perjury that the owner has received an annual low-income certification from each low-income tenant and documentation to support that certification, that each low-income unit is rent-restricted under section 42(g)(2), that all units in the project are for use by the general public and are used on a nontransient basis, that each building in the project is suitable for occupancy taking into account local health, safety, and building codes, that there has been no change in any building's eligible basis under section 42(d) (or that there has been a change, with an explanation of the nature of the change), that all tenant facilities included in the eligible basis of any building in the project are provided on a comparable basis without a separate fee to all tenants in the building, that if a low-income unit in the project becomes vacant during the year reasonable attempts are made to rent that unit to tenants having a qualifying income and while the unit is vacant no units of comparable or smaller size are rented to tenants not having a qualifying income, and that if the income of tenants of low-income units increases above the limit allowed in section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size will be rented to tenants having a qualifying income. Periodic certifications for a building must be required at least through the end of the building's 15-year compliance period.

In addition to requiring periodic certifications, a monitoring procedure must provide that the Agency will review, in at least one of two ways, certain records kept by low-income housing project owners. The monitoring procedure must require (1) that the owner of a low-income housing project

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send to the Agency each year a copy of the annual low-income certification from each low-income tenant and a copy of the documentation the owner has received to support that certification, or (2) that the Agency inspect a reasonable number of low-income housing projects each year, and that the inspection include at a minimum a review on-site of the tenant low-income certifications for that year and the documentation the owner has received to support those certifications. If an Agency chooses to include the second of these review provisions in its monitoring procedure, the low-income housing projects to be inspected must be chosen in a manner that will not give owners advance notice that their records for a particular year will or will not be inspected. However, an Agency may give an owner reasonable notice that an inspection will occur so that the owner may assemble records.

A monitoring procedure may, however, exempt from the certification and review provisions certain buildings that are subject to other monitoring programs than that required under section 42(m)(1)(B)(iii). Buildings that may be exempted are buildings financed the Farmers Home Administration (FmHA) under its section 515 program and buildings of which 50 percent or more of the aggregate basis (taking into account the building and the land) is financed with the proceeds of tax-exempt bonds. However, the monitoring procedure must require the owner of any exempted building to certify to the Agency on at least an annual basis under penalty of perjury that the building complies with the requirements for FmHA assistance or tax-exempt bond financing, as applicable, and that the minimum set-aside, income, rent and suitability-for-occupancy requirements of section 42 are also met. Additionally, the monitoring procedure must require the owner of an exempted building to inform the Agency if the owner would be unable to make one or more of the required certifications.

4. Auditing

A monitoring procedure must provide that the Agency has the right to perform an audit of any low-income building at least during the 15-year compliance period of the building. An audit includes an inspection of the building as well as a review of the records described in the recordkeeping portion of the regulations. The auditing provision is required in addition to the review of low-income certifications and documentation described above.

5. Notification

A monitoring procedure must provide that the Agency is to notify the owner of a low-income housing project in writing as soon as possible if the Agency does not receive the required certification, or if the Agency discovers on audit, inspection or review, or in some other manner, that the project is not in compliance with the provisions of section 42.

A monitoring procedure must provide that the owner has an opportunity to supply missing certification or to correct noncompliance within a correction period. The correction period must be specified in the monitoring procedure and cannot exceed 90 days from the date of the notice to the owner. However, a monitoring procedure may provide for extensions of up to six months, but only if the extension is based on a determination by the Agency that there is good cause for granting the extension.

A monitoring procedure must provide that the Agency is to notify the Internal Revenue Service of an owner's noncompliance or failure to certify no later than 45 days after the end of the allowed time for correction, whether or not the noncompliance or failure to certify is corrected. The Agency is to notify the Internal Revenue Service by filing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance. The Agency must explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify.

If a building goes entirely out of compliance with section 42, so that no credit is allowable for the building for the taxable year or in any future taxable year during the compliance period, the Agency need not file Form 8823 in every subsequent year to report the noncompliance. Instead, the Agency may file a single Form 8823 for the building when the Agency becomes aware that the building has gone entirely out of compliance, provided that the Agency reports on the form that the building is entirely out of compliance and will not be in compliance in the future.

C. Agency Delegation of Monitoring Function

Section 42(m)(1)(B) and § 1.42–5(f) allow an Agency to retain an agent or other private contractor to perform compliance monitoring. In this event, the agent or other private contractor may be delegated the functions of the Agency to monitor compliance, except for the responsibility of filing Form 8823. For example, the agent or other private contractor may be delegated the responsibility of inspecting low-income housing projects each year, the right to inspect buildings and audit records, and the responsibility of notifying building owners of noncompliance. The agent or other private contractor must notify the Agency of any noncompliance or failure to certify and the Agency must, in turn, notify the Internal Revenue Service no later than 45 days after the end of the allowed time for correction.

An Agency that delegates compliance monitoring to an agent or other private contractor must use reasonable diligence to ensure that the agent or other private contractor properly performs the delegated monitoring functions. In addition, delegation by an Agency of compliance monitoring functions to an agent or other private contractor does not relieve the Agency of its obligation to notify the Internal Revenue Service of any noncompliance of which the Agency becomes aware.

D. Fees

The proposed regulations do not address any issues relating to Agency fees. However, nothing in section 42 prohibits an Agency from charging a fee for covering the Agency's administrative expenses in monitoring for compliance.

E. Effective Date

These proposed regulations are proposed to be effective on the later of June 30, 1992 or 90 days after these regulations are published in final form. However, the requirement of section 42(m)(1)(B)(iii) that allocation plans provide a monitoring procedure is effective January 1, 1992. Thus, allocation plans must comply with the statutory monitoring requirement as of that date.

Both section 42(m)(1)(B)(iii) and these regulations apply to all buildings placed in service for which the low-income housing credit is, or has been, allowable at any time. Neither section 42(m)(1)(B)(iii) or these regulations, however, require monitoring for whether a building or project is in compliance with the requirements of section 42 prior to January 1, 1992.

These proposed regulations contain minimum compliance monitoring requirements and in no way preclude an Agency from formulating and applying monitoring procedures that are stricter than those set forth in these regulations. For example, an Agency may wish to require that other types of records be kept by owners of low-income housing projects, or other certifications be made, in addition to those described in the regulations, or an Agency may wish to do regular on-site inspections of projects and audits of any records required to be kept.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests to Appear at Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held on March 4, 1992. See notice of hearing published elsewhere in this issue of the Federal Register.

Drafting Information

The principal author of these regulations is Paul F. Handleman, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, other personnel from the Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR 1.37–1 through 1.44A–1

Credits, Income taxes, Reporting and Recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended by adding the following citation:

Authority: Sec. 7805, 68A Stat. 917 (26 U.S.C. 7805) * * * Section 1.42–5 is also issued under 26 U.S.C. 42(n) * * *

Par. 2. New § 1.42–5 is added to read as follows:

§ 1.42–5 Monitoring compliance with low-income housing credit requirements.

(a) *Compliance monitoring requirement*—(1) *In general.* Under section 42(m)(1)(B)(iii), an allocation plan is not qualified unless it contains a procedure that the State or local housing credit agency ("Agency") (or an agent of, or other private contractor hired by, the Agency) will follow in monitoring for noncompliance with the provisions of section 42 and in notifying the Internal Revenue Service of any noncompliance of which the Agency becomes aware.

(2) *Requirements for a monitoring procedure.* A procedure for monitoring for noncompliance under section 42(m)(1)(B)(iii) must contain—

(i) The recordkeeping and record retention provisions of paragraph (b) of this section;

(ii) The certification and review provisions of paragraph (c) of this section;

(iii) The auditing provision of paragraph (d) of this section; and

(iv) The notification-of-noncompliance provisions of paragraph (e) of this section.

A monitoring procedure will meet the requirements of section 42(m)(1)(B)(iii) if it contains the substance of these provisions. The particular order and form of the provisions in the allocation plan is not material. A monitoring procedure may contain additional provisions or requirements.

(b) *Recordkeeping and record retention provisions*—(1) *Recordkeeping provision.* Under the recordkeeping provision, the owner of a low-income housing project must be required to keep records for each qualified low-income building in the project showing—

(i) The total number of residential rental units in the building;

(ii) The percentage of residential rental units in the building that are low-income units;

(iii) The rent charged on each residential rental unit in the building;

(iv) The low-income unit vacancies in the building and the rentals of the next available units;

(v) The income certification of each low-income tenant;

(vi) Documentation to support each low-income tenant's income certification (for example, a copy of the tenant's federal income tax return, Forms W–2, or verifications of income from third parties such as employees or state agencies paying unemployment compensation); and

(vii) The character and use of the nonresidential portion of the building included in the building's eligible basis under section 42(d) (*e.g.*, tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project).

(2) *Record retention provision.* Under the record retention provision, the owner of a low-income housing project must be required to retain the records described in paragraph (b)(1) of this section for each building in the project for at least 6 years beyond the end of the compliance period of the building.

(c) *Certification and review provisions*—(1) *Certification.* Under the certification provision, the owner of a low-income housing project must be required to certify to the Agency that—

(i) The project meets the requirements of the 20–50 test under section 42(g)(1)(A), the 40–60 test under section 42(g)(1)(B), or the 25–60 test under sections 42(g)(4) and 142(d)(6) for New York City, whichever minimum set-aside test is applicable to the project, and the 15–40 test under sections 42(g)(4) and 142(d)(4)(B) for "deep rent skewed" projects, if applicable to the project;

(ii) The owner has received an annual income certification from each low-income tenant and documentation to support that certification;

(iii) Each low-income unit in the project is rent-restricted under section 42(g)(2);

(iv) All units in the project are for use by the general public and are used on a nontransient basis;

(v) Each building in the project is suitable for occupancy, taking into account local health, safety, and building codes;

(vi) There has been no change in the eligible basis (as defined in section 42(d)) of any building in the project, or that there has been a change, and the nature of the change;

(vii) All tenant facilities included in the eligible basis under section 42(d) of any building in the project, such as swimming pools, other recreational facilities, and parking areas, are provided on a comparable basis without charge to all tenants in the building;

(viii) If a low-income unit in the project becomes vacant during the year, reasonable attempts are made to rent that unit to tenants having a qualifying income and while the unit is vacant no units of comparable or smaller size are rented to tenants not having a qualifying income; and

(ix) If the income of tenants of a low-income unit in the project increases above the limit allowed in section 42(g)(2)(D)(ii), the next available unit of

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comparable or smaller size in the project will be rented to tenants having a qualifying income.

(2) *Review.* Under the review provision, a monitoring procedure must require—

(i) An owner of a low-income housing project to submit to the Agency each year a copy of the annual income certification from each low-income tenant and a copy of the documentation the owner has received to support that certification, or

(ii) The Agency to inspect a reasonable number of low-income housing projects each year, and review on-site the low-income tenant income certifications for that year and the documentation the owner has received to support those certifications.

If a monitoring procedure includes the review provision described in paragraph (c)(2)(ii) of this section, the low-income housing projects to be inspected must be chosen in a manner that will not give owners of low-income housing projects advance notice that their records for a particular year or will not be inspected. However, an Agency may give an owner reasonable notice that an inspection will occur so that the owner may assemble records, for example, 30 days advance notice of inspection. See paragraph (d) of this section for the auditing provision that is required to be included in all monitoring procedures.

(3) *Exceptions for certain buildings.* A monitoring procedure may provide that the certification and review provisions required under paragraphs (c) (1) and (2) of this section do not apply to certain low-income buildings subject to other monitoring programs. The following buildings may be exempted from paragraphs (c) (1) and (2) of this section:

(i) Buildings financed by the Farmers Home Administration (FmHA) under its section 515 program; and

(ii) Buildings of which 50 percent or more of the aggregate basis (taking into account the building and the land) is financed with the proceeds of obligations the interest on which is exempt from tax under section 103.

If a monitoring procedure exempts a building from paragraphs (c) (1) and (2) of this section, the procedure must require the owner of the building to certify to the Agency that the building complies with the requirements for FmHA assistance or tax-exempt bond financing, as applicable, and that the building also meets the minimum set-aside, income, rent, and suitability-for-occupancy requirements of section 42. Additionally, the monitoring procedure must require the owner of an exempted building to inform the Agency if the owner would be unable to make one or more of the certifications otherwise required under paragraph (c)(1) of this section.

(4) *Frequency and form of certification.* A monitoring procedure must require the certifications of paragraphs (c) (1) and (3) of this section to be made at least annually through the end of the 15-year compliance period under section 42(i)(1) and to be made underpenalty of perjury.

(d) *Auditing provision.* Under the auditing provision, the Agency must have the right to perform an audit of any low-income housing project at least through the end of the compliance period of the buildings in the project. An audit includes an inspection of nay building in the project, as well as a review of the records described in paragraph (b)(1) of this section. The auditing provision of this paragraph (d) is required in addition to any inspection of low-income certifications and documentation under paragraph (c)(2) of this section.

(e) *Notification-of-noncompliance provisions*—(1) *In general.* Under the notification-of-noncompliance provisions, the Agency must be required to give the notice described in paragraph (e)(2) of this section to the owner of a low-come housing project and the notice described in paragraph (e)(3) of this section to the Internal Revenue Service.

(2) *Notice to owner.* The Agency must be required to provide prompt written notice to the owner of a low-income housing project if the Agency does not receive the certification described in paragraph (c)(1) or (3) of this section or discovers on audit, inspection, or review, or in some other manner, that the project is not in compliance with the provisions of section 42.

(3) *Notice to Internal Revenue Service.* The Agency must be required to file Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance, with the Internal Revenue Service no later than 45 days after the end of the correction period (as described in paragraph (e)(4) of this section, including extensions permitted under that paragraph), whether or not the noncompliance or failure to certify is corrected. The Agency must explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. If an Agency reports on Form 8823 that a building has gone entirely out of compliance and will not be in compliance at any time in the future, the Agency need not file Form 8823 in subsequent years to report that building's noncompliance.

(4) *Correction period.* The correction period shall be that period specified in the monitoring procedure during which an owner must supply any missing certifications and bring the project into compliance with the provisions of section 42. The correction period is not to exceed 90 days from the date of the notice to the owner described in paragraph (e)(2) of this section. An Agency may extend the correction period for up to six months, but only if the Agency determines there is good cause for granting the extension.

(f) *Delegation of authority*—(1) *Agencies permitted to delegate compliance monitoring functions.* An Agency may retain an agent or other private contractor to perform compliance monitoring. In this case, the agent or other private contractor may be delegated the functions of the Agency to monitor compliance, except for the responsibility of notifying the Internal Revenue Service under paragraph (e)(3) of this section. For example, the agent or other private contractor may be delegated the responsibility of reviewing tenant certifications and documentation under paragraph (c)(2) of this section, the right to inspect buildings and audit records as described in paragraph (d) of this section, and the responsibility of notifying building owners of lack of certification or noncompliance under paragraph (e)(2) of this section. However, the agent or other private contractor must notify the Agency of any noncompliance or failure to certify.

(2) *Limitations.* An Agency that delegates compliance monitoring to an agent or other private contractor must use reasonable diligence to ensure that the agent or other private contractor properly performs the delegated monitoring functions. Delegation by an Agency of compliance monitoring functions to an agent or other private contractor does not relieve the Agency of its obligation to notify the Internal Revenue Service of any noncompliance of which the Agency becomes aware.

(g) *Liability.* Compliance with the requirements of section 42 is the responsibility of the owner of the building for which the credit is allowable. The Agency's obligation to monitor for compliance with the requirements of section 42 does not make the Agency liable for an owner's noncompliance.

(h) *Effective date.* Allocation plans must comply with these regulations as of the later of June 30, 1992, or 90 days after these regulations are published as final regulations. The requirement of section 42 (m)(1)(B)(iii) that allocation plans contain a procedure for monitoring for noncompliance becomes effective on January 1, 1992, and applies to buildings placed in service for which a low-income housing credit is, or has been, allowable at any time. Thus, allocation plans must comply with section 42 (m)(1)(B)(iii) prior to the effective date of these regulations. Section 42 (m)(1)(B) and these regulations do not require monitoring for whether a building or project is in compliance with the requirements of section 42 prior to January 1, 1992.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91-30710 Filed 12-26-91; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[PS-78-91]

RIN 1545-AQ07

Procedure for Monitoring Compliance With Low-Income Housing Credit Requirements; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed Income Tax Regulations relating to the requirement that State allocation plans provide a procedure for State and local housing credit agencies to monitor for compliance with the requirements of section 42 of the Internal Revenue Code and report any noncompliance to the Internal Revenue Service.

DATES: The public hearing will be held on Wednesday, March 4, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Wednesday, February 19, 1992.

ADDRESSES: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC: CORP:T:R (PS-78-91), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9231, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is regulations that contain amendments to the Income Tax Regulations (26 CFR part 1), under section 42 of the Internal Revenue Code. These amendments are proposed to provide guidance on section 42(m)(1)(B)(iii). These regulations appear in this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Wednesday, February 19, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-30711 Filed 12-26-91; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 301

[IA-98-91]

RIN 1545-AQ21

Disclosure of Tax Return Information for Purposes of Quality or Peer Review; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of public hearing on proposed regulations under section 7216(b)(3) relating to disclosures of tax return information for purposes of conducting quality of peer review.

DATES: The public hearing will be held on Wednesday, June 3, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Wednesday, May 20, 1992.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (IA-98-91), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9236 or (202) 566-3935 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 7216(b)(3) of the Internal Revenue Code. The proposed regulations appear elsewhere in this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Wednesday, May 20, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-30714 Filed 12-26-91; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 301

[IA-98-91]

RIN 1545-AQ21

Disclosure of Tax Return Information for Purposes of Quality or Peer Reviews

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 7216(b)(3) relating to disclosures of tax return information for purposes of conducting quality or peer reviews. The proposed regulations would expand the purposes for which a quality or peer review may be conducted to include evaluating, monitoring and improving the quality of a tax return preparer's accounting and auditing services. These regulations are proposed under changes to the applicable law made by the Omnibus Budget Reconciliation Act of 1989.

DATES: Written comments must be received by May 1, 1992. A public hearing has been scheduled for June 3, 1992. Requests to speak at the hearing, along with outlines of oral comments must be received by May 20, 1992. See the notice of hearing published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send comments and requests for a public hearing to the Internal Revenue Service, Attn: CC: CORP:T:R: [IA-98-91] P.O. Box 7604, Ben Franklin Station NW., Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Attorney-Advisor, Office of the Assistant Chief Counsel (Income Tax and Accounting) at 202-566-5985 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR part 301) under section 7216(b)(3) of the Internal Revenue Code. Section 7216(b)(3) was amended by section 7739(a) of the Omnibus Budget Reconciliation Act of 1989 ("OBRA 1989") (Pub. L. No. 101-239, 103 Stat. 2106, 2404) to require the issuance of regulations addressing the disclosure of tax return information for the purposes of quality or peer reviews.

On December 28, 1990, the Service issued regulations under section 7216(b)(3) in proposed and temporary form. (55 FR 53313, 55 FR 53295). Comments were received from the public and a public hearing was held on those regulations on June 3, 1991. The final regulations are published elsewhere in this issue of the **Federal Register** without any substantive change.

Explanation of Provision

The proposed regulations issued under section 7216(b)(3) on December 28, 1990, defined a quality or peer review as a review that is undertaken to evaluate, monitor, and improve the quality and accuracy of a tax return preparer's tax preparation services. Some commentators suggested that this definition is too restrictive. They noted that some preparers must undergo a review of their auditing and accounting services to satisfy government concerns. While these reviews are only incidentally related to tax return preparation, tax return information sometimes must be disclosed to properly complete the review. These commentators are concerned that this definition will not allow these reviews to be accomplished. In response to these comments, the proposed regulations issued today would expand the definition of a quality or peer review to include accounting and auditing services. These amendments are proposed to be effective on December 28, 1990.

Special analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of these regulations will be submitted to the Chief Counsel on Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

The Service intends to hold the public hearing on these regulations on June 3, 1992. Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. See notice of public hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is David L. Meyer, Office of Assistant Chief Counsel, Income Tax and Accounting, Internal Revenue Service. However personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child Support, Continental shelf, Courts, Crime, Disclosure of information, Employment taxes, Estate taxes, Excise taxes, Filing requirements, Gift tax, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Proposed Amendments to the Regulations

For the reasons set forth in the preamble, 26 CFR part 301 is proposed to be amended as follows:

PART 301—[AMENDED]

Paragraph 1. The authority for part 301 continues to read in part:

Authority: Sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805 * * *.

Par. 2. Section 301.7216-2, paragraph (o), is amended by revising the third sentence to read as follows:

§ 301.7216-2 Disclosure or use without formal consent of taxpayer.

* * * * * * *

(o) * * * A quality or peer review is a review that is undertaken to evaluate, monitor, and improve the quality and accuracy of a tax return preparer's tax preparation, accounting and auditing services. * * *

* * * * * * *

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91-30713 Filed 12-26-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 169a

[DoD Instruction 4100.33]

Commercial Activities Program Procedures

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of Defense is proposing to revise this part to incorporate substantive changes to part 169a required by OMB revisions and DoD guidance. This part establishes procedures and criteria for use by the Department of Defense to determine whether DoD commercial activities should be performed by DoD personnel in-house or by contract with commercial sources.

DATES: Written comments on this proposed rule must be received on or before February 24, 1992.

ADDRESSES: Forward comments to the Office of the Assistant Secretary of Defense (Production and Logistics), Installations, Housing and Services, The Pentagon, room 3E787, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Mr. Earl DeHart, telephone 703-756-5641.

SUPPLEMENTARY INFORMATION: Part 169a was published in the Federal Register on October 7, 1985 (50 FR 40804) establishing the procedures for DoD commercial activities. Comments will be available for public inspection by request. Because of the anticipated number of comments, the Department of Defense does not plan to acknowledge or respond to individual comments. However, the Department of Defense will respond to comments in the preamble of the final rule.

List of Subjects in 32 CFR Part 169a

Armed forces; Government procurement.

Accordingly, it is proposed that 32 CFR part 169a be amended as follows:

PART 169a [AMENDED]

1. The authority citation for part 169a is proposed to be revised to read as follows:

Authority: 5 U.S.C. 301 and 552.

2. Footnote 1 is proposed to be revised to read as follows: "Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161."

3. Section 169a.2 is proposed to be amended by revising paragraphs (d)(5) through (7) and adding new paragraphs (d)(8) through (11) to read as follows:

§ 169a.2 Applicability and scope.

* * * * * * *

(d) * * *

(5) Does not apply when contrary to law, executive orders, or any treaty or international agreement.

(6) Does not apply in times of a declared war or military mobilization.

(7) Does not provide authority to enter into contracts.

(8) Does not apply to conduct of research and development, except for severable in-house CAs that support research and development, such as those listed in appendix A to this part.

(9) Does not justify conversion to contract solely to avoid personnel ceilings or salary limitations.

(10) Does not authorize contracts that establish an employer-employee relationship between the Department of Defense and contractor employees as described in FAR 37.104.

(11) Does not establish and shall not construed to create any substantive or procedural basis for anyone to challenge any DoD action or inaction on the basis that such action or inaction was not in accordance with this part, except as specifically set forth in § 169a.6(c)(7).

3a. In Appendix A, footnotes 13 and 14 are redesignated as footnotes 1 and 2.

3b. Footnotes 5-12 are proposed to be redesignated as footnotes 6-13.

4. Section 169.4 is proposed to be revised to read as follows:

§ 169a.4 Policy.

(a) *Ensure DoD Mission Accomplishment.* The implementation of this part shall consider the overall DoD mission and the defense objective of maintaining readiness and sustainability to ensure a capability for mobilizing the defense and support structure.

(b) *Retain Governmental functions In-House.* Certain functions that are inherently governmental in nature, and intimately related to the public interest, mandate performance by DoD personnel only. These functions are not in competition with commercial sources; therefore, these functions shall be performed by DoD personnel.

(c) *Rely on the Commercial Sector.* DoD Components shall rely on commercially available sources to provide commercial products and services, except when required for national defense, when no satisfactory commercial source is available, or when in the best interest of direct patient care. DoD Components shall not consider an in-house new requirement, an expansion of an in-house requirement, conversion to in-house, or otherwise carry on any CAs to provide commercial products or services if the products or services can be procured more economically from commercial sources.

(d) *Achieve Economy and Enhance Productivity.* Encourage competition with the objective of enhancing quality, economy, and performance. When performance by a commercial source is permissible, a comparison of the cost of contracting and the cost of in-house performance shall be performed to determine who shall provide the best value for the Government, considering price and other factors included in the solicitation. If the installation commander has reason to believe that it may not be cost effective to make an award under mandatory source programs, section 8(a) of the Small Business Act or any other noncompetitive preferential procurement program, a cost comparison, or any other cost analysis, although not required by OMB Circular A-76, may be performed. Performance history will be considered in the source selection process, and high quality performance should be rewarded.

(e) *Delegate Decision Authority and Responsibility.* DoD Components shall delegate decision authority and responsibility to lower organization levels, giving more authority to the doers, and linking responsibility with that authority. This shall facilitate the work that installation commanders must perform without limiting their freedom to do their jobs. When possible, the installation commanders should have the freedom to make intelligent use of their resources, while preserving the essential wartime capabilities of U.S. support organizations in accordance with DoD Directive 4001.1 [5].

(f) *Share Resources Saved.* When possible, make available to the installation commander a share of any resources saved or earned so that the commander can improve operations or working and living conditions on the installation.

(g) *Provide Placement Assistance.* Provide a variety of placement assistance to employees whose Federal jobs are eliminated through CA competitions.

§ 169a.8 [AMENDED]

4. Section 169a.8 is proposed to be amended by revising "ASD(A&L)" to read "ASD(P&L)".

§ 169a.9 [Amended]

5. Section 169a.9 is proposed to be amended in paragraph (a) introductory text by removing the sentence: "ASD(A&L) shall be notified within 30 days of any such decision."; paragraph (a)(1)(ii) and (iv) by changing "ASD(A&L)" to "ASD(P&L)" each time it appears; and paragraph (a)(2)(i)(A) by changing "DoD FAR Supplement (DFAR)" to Defense FAR Supplement (DFARS)".

6. Section 169a.13 is proposed to be amended by revising the heading and

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paragraphs (a) and (b) to read as follows:

§ 169a.13 CAs involving forty-five or fewer DoD civilian employees.

(a) When adequately justified under the criteria required in Appendix C to this part, CAs involving forty-five or fewer DoD civilian employees may be converted to contract based on simplified cost comparison procedures. Such conversions shall be approved by the DoD Component's central point of contact office having the responsibility for implementation of this part. Part IV of the supplement to OMB Circular A–76 shall be utilized to define the specific elements of cost to be estimated in the simplified cost comparison.

(b) In no case shall any CA involving more than forty-five employees be modified, reorganized, divided, or in any way changed for the purpose of circumventing the requirement to perform a full cost comparison.

* * * * *

§ 169a.15 [Amended]

7. Section 169a.15 is proposed to be amended as follows:

a. Paragraphs (a) and (b) are proposed to be amended by revising "ASD(A&L)" to read "ASD(P&L)".

b. Paragraph (d)(1)(i) is proposed to be amended by revising the first sentence and changing "ASD(A&L)" to "ASD(P&L)".

c. Paragraph (d)(1)(ii) is proposed to be revised.

d. A new paragraph (d)(1)(iii) is proposed to be revised.

e. Paragraphs (d)(2)(ii)(A) and (iii) are proposed to be revised.

f. Paragraph (d)(2)(v) is proposed to be amended by revising "components" to read "DoD components" and "agencies" to "Federal agencies.".

g. Paragraphs (d)(2)(vi) and (vii) are proposed to be amended by removing the word "Regulation" from "DoD Regulation 5220.22–R".

h. Paragraph (d)(4)(i)(C) is proposed to be amended by revising "ASD(A&L)" to read "ASD(P&L)".

i. Paragraph (d)(4)(i)(E) is proposed to be amended by revising "24.5" to read "19.1" and "13.4" to "13.6".

j. Paragraph (d)(4)(i)(H) is proposed to be amended, third sentence, after the word "rates" add "that include PCS costs multiplied by the appropriate support factor."

k. Paragraph (d)(4)(i)(I) is proposed to be added.

l. Paragraphs (d)(4)(ii)(D)(*2*) and (*3*) are proposed to be amended by removing the last sentence; and introductory text of paragraph (d)(4)(ii)(E) is proposed to be amended by revising "Property Disposal Office" to read "Defense Reutilization and Marketing Office".

§ 169a.15 Special considerations.

* * * * *

(d) * * *

(1) * * *

(i) *Congressional Notification.* DoD components shall notify Congress of the intention to do a full cost comparison.

* * *

(ii) DoD components shall, in accordance with Public Law 100–456, at least monthly during the development and preparation of the performance work statement (PWS) and management study, consult with DoD civilian employees who will be affected by the cost comparison and consider the views of such employees on the development and preparation of the PWS and management study. DoD components may consult with such employees more frequently and on other matters relating to the cost comparison. In the case of DoD employees represented by a labor organization accorded exclusive recognition under 5 U.S.C. 7111, consultation with representatives of labor organization satisfies the consultation requirement. Consultation with nonunion DoD civilian employees may be through such means as group meetings. Alternatively, DoD civilian employees may be invited to designate one or more representatives to speak for them. Other methods may be implemented if adequate notice is provided to the nonunion DoD civilian employees and the right to be represented during the consultations is ensured.

(iii) *Local Notification.* It is suggested that upon starting the cost comparison process, the installation make an announcement of the cost comparison, including a brief explanation of the cost-comparison process to the employees of the activity and the community. The installations' labor relations specialist also should be apprised to ensure appropriate notification to employees and their representatives in accordance with applicable collective bargaining agreements. Local Inter-Service Support Coordinators (ISCs) and the Chair of the appropriate Joint Inter-Service Resources Study Group (JIRSG) also should be notified of a pending cost comparison.

(2) * * *

(ii) * * *

(A) Prepare PWS that are based on accurate and timely historical or projected work land data and that provide measurable and verifiable performance standards.

* * * * *

(iii) Guidance on Government property:

(A) For the purposes of this part, Government property is defined in accordance with the FAR, 48 CFR part 45.

(B) The decision to offer or not to offer Government property to a contractor shall be determined by a cost-benefit analysis justifying that the decision is in the best interest of the Government. The determination on Government property must be supported by current, accurate, complete information and be readily available for the independent reviewing activity. The design of this analysis shall not give a decided advantage/disadvantage to either in-house or contract competitors. The management of Government property offered to the contractor shall also be in compliance with FAR, 48 CFR chapter 1.

(4) * * *

(i) * * *

(I) In order to more accurately estimate personnel costs, line 1 (Personnel Costs) shall be completed as follows:

[(Basic Pay × fringe benefit factor**) + (other Pay × Medicare factor)]

** The fringe benefit factor includes cost factors for standard retirement, employee insurance benefits (life and health), Medicare, and miscellaneous fringe benefits.

* * * * *

8. Section 169a.17 is proposed to be amended by revising paragraph (a); paragraph (d)(1) changing "DFAR" to "DFARS"; by revising paragraph (f); paragraph (g)(1) by removing the last sentence; and by adding new paragraph (1) to read as follows:

§ 169a.17 Solicitation considerations.

(a) Every effort must be made to avoid postponement or cancellation of OMB circular A–76 solicitations and when there is no alternative, contracting officers must clearly document the reason(s).

* * * * *

(f) OMB circular A–76 contract, should be terminated at the appropriate time when the Department of Defense has the authority to close or realign installations.

* * * * *

(1) In order to ensure that bonds and/or insurance requirements are being used in the best interest of the Government, as a general rule, requirements (for other than construction related services) above the levels established in the FAR and DFARS should not be included in acquisitions.

9. Section 169a.18 is proposed to be amended by revising (b)(3) to read as follows:

§ 169a.18 Administrative appeal procedures.

* * * * *

(b) * * *

(3) Each DoD Component shall establish an administrative appeal procedure that is independent and objective; Installation Commanders must make available, upon request, the documentation supporting the decision to directly convert activities; appeals to direct conversions must be filed within 30 calendar days after the decision is announced in the Commerce Business Daily and/or Federal Register, and the supporting documentation is made available; an impartial official one level organizationally higher than the official who approved the direct conversion decision will hear the appeal; officials will provide an appeal decision within 30 calendar days of receipt of the appeal.

* * * * *

§ 169a.21 [Amended]

10. Section 169a.21 is proposed to be amended in paragraph (c)(2) by changing "ten" to "forty-five"; paragraph (c)(3), first sentence, add "(while in session)" after the word "Components" and in the second sentence by revising "ASD(A&L)" to read "ASD(P&L)"; paragraph (c)(5) changing "ASD(A&L)" to "Congress (while in session)"; paragraph (c)(6) by changing "50" to "75"; and paragraph (c)(7) changing "ASD(A&L)" to "ASD(P&L)" and by adding the sentence "Also, include the number of studies you expect to complete in the next fiscal year showing total civilian and military FTEs." at the end of the paragraph.

§ 169a.22 [Amended]

11. Section 169a.22 is proposed to be amended in paragraph (b)(1) by changing "OASD(A&L)IA" to "OASD(P&L)" and changing "OASD(A&L)" to "OASD(P&L"; paragraph (b)(2) changing "OASD(A&L)" to "OASD(P&L)".

Appendix A [Amended]

11a. Appendix A is proposed to be amended by redesignating "footnotes 13–14" as "1–2."

12. Appendix B. is proposed to be revised to read as follows:

Appendix B to part 169a—Commercial Activities Inventory Report and Five-Year Review Schedule

A. *General Instructions*

1. Send your inventory reports before 1 January to the Defense Manpower Data Center (DMDC). Use Report Control Symbol "DD–P&L(A) 1540" and send by microcomputer diskette, magnetic tape, or use terminals as a medium.

2. You can use nine-track extended binary coded decimal interchange code (EBCDIC), 1600 or 6250 density, even parity for tape medium. Data records must have 132 characters and block ten logical records to a block. Do not use headers and trailers. Use a tape mark (end of file) to follow the data. Use an external label, on the reel, showing your organization for return. Also, do this for the title of the report, the fiscal year (FY) covered, and the tape attributes.

3. Prior permission for interface requirements must be established between DMDC and the sender when sending by a remote work station terminal.

4. DATA FORMAT:

(In-house DoD commercial activities)

Data element	Tape positions	Field	Data[1]
Designator	1	A	A
Installation		A1	
State, Territory, or Possession	2–3	A1a	N
Place	4–9	A1b	A/N
*Function	10–14	A2	A/N
In-house civilian workload	15–20	A3	N
Military workload	21–26	A4	N
*Reason for in-house operation	49	A8	A
*Most recent year in-house operation approved	50–51	A9	N
*Year DoD CA scheduled for next review	52–53	A10	N
Installation name	76–132	A11	A

[1] A = Alpha; N = Numeric. And A/N data shall be left justified and space filled. N data shall be right justified and zero filled.

* Items marked with an asterisk (*) have been registered in the DoD Data Element Dictionary.

5. When definite coding instructions are not provided, reference must be made to DoD 5000.12–M[2]. Failure to follow the coding instructions contained in this document, or those published in Pub. L. 89–306 makes the DoD component responsible for noncompliance of required consessions in data base communication.

B. ENTRY INSTRUCTIONS

Field	Instruction
A	Enter an A to designate that the data to follow on this record pertains to a particular DoD CA.
A1a	Enter the two-position numeric code for State (Data element reference ST–GA) or State equivalent (federal Information Processing Standards Publication 55–2, as shown in attachment 1 to this appendix.

[2] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

B. ENTRY INSTRUCTIONS—Continued

Field	Instruction
A1b	Enter the unique alpha-numeric code established by the DoD Component for military installation, named populated place, or related entity where the CA workload was performed during the FY covered by the report. A separate look-up listing or file should be provide showing each unique place code and its corresponding place name or enter the name in field "A11".
A2	Enter the function code from appendix A to this part that best describes that type of CA workload basically performed by the CA covered by this report. Left justify.
A3	Enter total (full- and part-time) in-house civilian workyear equivalents applied to the performance of the function during the FY. Round off to the nearest whole workyear equivalent. (If amount is equal to or greater than .5, round up. If amount is less than .5, round down. Amounts between zero and one should be entered as one). Right justify. Zero fill.
A4	Enter total military workyear equivalents applied to the performance of the function in the FY. Round off to the nearest whole workyear equivalent. (Amounts between zero and one should be entered as one). Right justify. Zero fill.
A8	Enter the reason for in-house operation of the CA, as shown in attachments 1 and 2 of this Appendix.
A9	Enter the last two digits of the most recent FY corresponding to the reason for in-house operation of the CA, as stated in field A8.
A10	Enter the last two digits of the FY the function is scheduled for study or next review. (Data element reference YE–NA.)
A11	Enter the named populated place, or related entity, where the CA workload was performed.

Attachment 1 to Appendix B to Part 169a—Codes for Denoting States, Territories, and Possessions of the United States

a. *Numeric States Codes* (Data element reference ST–GA)

Code	
01	Alabama
02	Alaska
04	Arizona
05	Arkansas
06	California
08	Colorado
09	Connecticut
10	Delaware
11	District of Columbia
12	Florida
13	Georgia
15	Hawaii
16	Idaho
17	Illinois
18	Indiana
19	Iowa
20	Kansas
21	Kentucky
22	Louisiana
23	Maine
24	Maryland
25	Massachuesetts
26	Michigan

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27	Minnesota
28	Mississippi
29	Missouri
30	Montana
31	Nebraska
32	Nevada
33	New Hampshire
34	New Jersey
35	New Mexico
36	New York
37	North Carolina
38	North Dakota
39	Ohio
40	Oklahoma
41	Oregon
42	Pennsylvania
44	Rhode Island
45	South Carolina
46	South Dakota
47	Tennessee
48	Texas
49	Utah
50	Vermont
51	Virginia
53	Washington
54	West Virginia
55	Wisconsin
56	Wyoming

b. *State Equivalent Codes* (FIPS 55–2)

Code	
60	American Samoa
66	Guam
69	Northern Marianna Islands
71	Midway Islands
72	Puerto Rico
75	Trust Territory of the Pacific Islands
76	Navassa Island
78	Virgin Islands
79	Wake Island
81	Baker Island
84	Howland Island
86	Jarvis Island
89	Kingsman Reff
95	Palmyra Atoll

Attachment 2 to Appendix B to Part 169a—Reasons for In-House Operations

1. *In-House Authorized Reason Codes* (for entry in field A8)

Code	Explanation
A	Indicates that the DOD CA has been retained in-house for national defense reasons in accordance with section 169a.5(b)(1)(i) of this part, other than CAs reported under code "C", below.
C	Indicates that the DoD CA is retained in-house because the CA is essential for training or experience in required military skills, or the CA is needed to provide appropriate work assignments for a rotation base for overseas or sea-to-shore assignments, or the CA is necessary to provide career progression to a needed military skill level in accordance with section 169a.5(b)(1)(i) of this part.
D	Indicates procurement of a product or service from a commercial source would cause an unacceptable delay or disruption of an essential DoD program.
E	Indicates that there is no satisfactory commercial source capable of providing the product or service needed.
F	Indicates that a cost comparison has been conducted and that the Government is providing the product or service at a lower total cost as a result of cost comparison.
G	Indicates that the CA is being performed by DoD personnel now, but decision to continue in-house or convert to contract is pending results of a scheduled cost comparison.
H	Indicates that the CA is being performed by DoD employees now but will be converted to contract because of cost comparison results.
J	Indicates that the CA is performed at a DoD hospital and, in the best interest of direct patient care, is being retained in-house.
N	Indicates that the CA is performed by DoD employees now, but a review is in progress pending a decision. (i.e., base closure, realignment or consolidation).
X	Indicates that the installation Commander is not scheduling this CA for cost study under the provisions of Congressional authority.
Y	Indicates the CA is retained in-house because the cost study exceeded the time limit prescribed by law.
Z	Indicates that a CA is retained in-house for reasons not included above. (i.e., a law, Executive Order, treaty, or international agreement).

2. *Use of Other Codes:* Other codes may be assigned as designated by the ODASD(I).

13. Appendix C is proposed to be revised to read as follows:

Appendix C to Part 169a—Simplified Cost Comparison and Direct Conversion of CAs

A. This appendix provides guidance on procedures to be followed in order to convert a commercial activity employing 45 or fewer DoD civilian employees to contract performance without a full cost comparision. DoD Components may directly convert functions with 10 or fewer civilian employees without conducting a simplified cost comparison. Simplified cost comparisons are to be conducted on activities with 11–45 civilian employees to ensure that cost data are fully considered in decisions on CAs.

B. The proposed direct conversions must meet the following criteria:

1. The activity is currently performed by 10 or fewer civilian employees.

2. The conversion makes sense from a management or performance standpoint.

3. The conversion is cost effective.

4. The installation commander must certify that all affected civilian employees will be offered jobs at that installation, or within the local area, commensurate with their current skills and pay grades. If no such vacancies exist the employees will be offered retraining opportunities for existing or projected vacancies at that installation or within the local area. The employees potential right-of-first-refusal with civilian contractors does not satisfy this requirement.

Attachment 1 of this Appendix is a format for preparing direct conversion requests. Each potential candidate for direct conversion should be reviewed on a case-by-case basis to ensure that both the in-house and contractor cost estimates are as accurate as possible.

C. The following provides general guidance for completion of a simplified cost comparison:

1. Estimated contractor costs should be based on either the past history of similar contracts at other installations or on the contracting officer's best estimate of what would constitute a fair and reasonable price.

2. For activities small in total size (45 or fewer civilian and military personnel):

a. Estimated in-house cost generally should not include overhead costs, as it is unlikely that they would be a factor for a small activity.

b. Similarly, estimated contractor costs generally should not include contract administration, one-time conversion costs, or other contract price add-ons associated with full cost comparisons.

3. For activities large in total size (45 or fewer civilian employees but a significant number of military personnel) all cost elements should be considered for both in-house and contractor estimated costs.

4. In either case, large or small, the 10 percent conversion differential contained in part IV of the supplement to OMB Circular A–76 should be applied.

5. Part IV of the supplement to OMB Circular A–76 shall be utilized to define the specific elements of cost to be estimated and for developing the MEO in the simplified cost comparison.

6. Clearance for CA simplified cost comparison decisions are required for Agencies without their own LA and PA offices. Those Agencies shall submit their draft decision brief to the Deputy Assistant Secretary of Defense, (Installations) room 3E787, the Pentagon, DC 20301 for release to Congress.

7. Provide CA simplified cost comparison approvals containing a certification of the MEO analysis, a copy of the approval to convert, a copy of the cost comparison fact sheet (attachment 1 to this appendix), with back-up data, before conversion to the following:

a. Committee on Appropriations of the House of Representatives and the Senate (11–45 civilian employees only)

b. Copies to the following:

(1) Assistant Secretary of Defense (Legislative Affairs), room 3D918, the Pentagon, Washington, DC 20301.

(2) Assistant Secretary of Defense (Public Affairs), room 2E757, the Pentagon, Washington, DC 20301.

(3) Office of Economic Adjustment, room 4C767, the Pentagon, Washington, DC 20301.

(4) Deputy Assistant Secretary of Defense, (Installations), room 3E787, the Pentagon, Washington, DC 20301. (exception—no copies required from Agencies that do not have legislative and public affairs offices)

8. Certification for all activities involving 11 to 45 DoD civilian employees. The installation commander must certify that the estimated in-house cost for each simplified cost comparison is based on a completed most efficient and cost effective organization analysis. Certification of this MEO analysis, as required by Public Law 101–165 shall be provided to the Committee on Appropriations of the House of Representatives and the Senate before conversion to contract performance.

Attachment 1 to Appendix C to Part 169a–Fact Sheet for Direct Conversions

Title: Direct Conversion for

(Activity/Function)
at

(Installation)
Description of activity:

Number of affected personnel:
CIV
(Authorizations)
MIL
(Authorizations)
Status of affected civilian employees:

(Special considerations such as a number of employees classified as "Section 3310," preference eligible veterans, minorities, handicapped. Also, include number of civilian authorizations currently vacant or filled by temporaries.)
Placement plans for affected civilian employees:

Justification for direct conversion:

(Narrative justification other than cost.)

Direct Conversion (details attached):
Estimated In-House Cost:
—Personnel Cost (including fringe benefits). ____
—Material and Supply Cost ____
—Other In-House Cost (if appropriate). ____
—Total Estimated in-House Cost. ____
Estimated Contractor Cost:
—Estimated Contract Price ____
—Contract Administration (if appropriate). ____
—Other Estimated Contractor Cost (if appropriate). ____
—Total Estimated Contractor Cost. ____
—Conversion Differential (10% of In-House Personnel Cost). ____
Adjusted Contractor Cost ____

Point of Contract:

14. Appendix D is proposed to be revised to read as follows:

Appendix D to Part 169a—Commercial Activities Management Information System (CAMIS)

A. Each DoD Component shall create and manage their A–76 data base. The A–76 data base shall have a comprehensive edit check on all input data in the computerized system. All data errors in the A–76 data base shall be corrected as they are found by the established edit check program. The data elements described in this Appendix represents the DoD minimum requirements.

B. On approval of a full cost comparison, a simplified cost comparison, or a direct conversion CA, the DoD Component shall create the initial entry using the format at attachment 1 of this Appendix for full cost comparisons or attachment 2 of this Appendix for all other conversions. Within 30 days of the end of each quarter the DoD Component shall submit automated tape or diskette, annotated with the number of records submitted and the record length. The data shall be in the format that has been agreed to by the DMDC at least 60 days prior to the end of the quarter. All data shall be in upper case. (TAPE MEDIUM—Use 9 track tape Extended Binary Coded Decimal Interchange Code (EBCDIC) 1600 or 6250 density, even parity). The DMDC shall use the automated data to update the CAMIS. If the DoD Component is unable to provide data in an automated format, the DMDC shall provide quarterly printouts of cost comparison records (CCR) and conversion/comparison records (DCSCCR) that may be annotated and returned within 30 days of the end of each quarter to the DMDC. The DMDC then shall use the annotated printouts to update the CAMIS.

Part I—Cost Comparison

The record for each full cost comparison is divided into six sections. Each of those sections contains information provided by the DoD Components. The first five sections are arranged in a sequence of milestone events occurring during a cost comparison. Each section is completed immediately following the completion of the milestone event. These are as follows:

1. Cost comparison is approved by DoD Component.
2. Solicitation is issued.
3. In-house and contractor costs are compared.
4. Contract is awarded or solicitation is canceled.
5. Contract starts.

The events in paragraphs B.1. through 5 of part I of this appendix are used as milestones because on their completion some elements of significant information on the cost comparison become known.

A sixth section is utilized for tracking historical data after the cost comparison is completed. This section contains data elements on contracts and cost information during the second and third performance period.

The data elements that comprise the six sections in part I, of this appendix, are defined in the CAMIS Entry and Update Instructions, part I of part II of this appendix.

Part II—Direct Conversions and Simplified Cost Comparisons

The record for each direct conversion and simplified cost comparison is divided into six sections. Each of the first five sections is completed immediately following the completion of the following events:

1. DoD component approves CA action.
2. The solicitation is issued.
3. In-house and contractor costs are compared.
4. Contract is awarded or solicitation is canceled.
5. Contract starts.

A sixth section is utilized for tracking historical data after the direct conversion or simplified cost comparison is completed. This section contains data elements on contracts and cost information during the second and third performance period.

The data elements that comprise the six sections in part II, of this appendix, are defined in the CAMIS Entry and Update Instruction, Part II—Direct Conversions and Simplified Cost Comparisons.

Camis Entry and Update Instructions

Part I—Cost Comparisons

The bracketed number preceding each definition in Section One through Six, below, is the DoD data element number. All date fields should be in the format YYMMDD (Data element reference DA–FA).

Section One

Event: DoD Component Approves Conducting a Cost Comparison

All entries in this section of the CCR shall be submitted by DoD Components on approving the start of a cost comparison. These entries shall be used to establish the CCR and to identify the geographical, organizational, political, and functional attributes of the activity (or activities) undergoing cost comparison as well as to provide an initial estimate of the manpower associated with the activity (or activities). The initial estimate of the manpower in this section of the CCR will be, in all cases, those manpower figures identified in the correspondence approving the start of the cost comparison. DoD Components shall enter the following data elements to establish a CCR:

(1) Cost Comparison Number. The number assigned by the DoD Component to uniquely identify a specific cost comparison. The first character of the cost comparison number must be a letter designating the DoD Component as noted in data element (3) of this appendix. The cost comparison number may vary in length from 5 to 10 characters, of which the second and subsequent may be alpha or numeric and assigned under any system desired by the DoD Component.

(2) Announcement and/or Approval Date. Date Congress is notified when required by section 502(a)(2)(A), appendix E, of this part or date DoD Component approves studies with less than 46 FTEs.

(3) DoD component code. Use the following codes to identify the Military Service or

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Defense Agency/Field Activity conducting the cost comparison:

A—Department of the Army
B—Defense Mapping Agency (DMA)
D—Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) (3D1)
D—Washington Headquarters Service (WHS)(3D2)
F—Department of the Air Force
G—National Security Agency/Central Security Service (NSA/CSS)
H—Defense Nuclear Agency (DNA)
J—Joint Chiefs of Staff (including the Joint Staff, Unified and Specified Commands, and Joint Service Schools)
K—Defense Information Systems Agency (DISA)
L—Defense Intelligence Agency (DIA)
M—United States Marine Corps (USMC)
N—United States Navy (USN)
R—Defense Contract Audit Agency (DCAA)
S—Defense Logistics Agency (DLA)
T—Defense Security Assistance Agency (DSAA)
V—Defense Investigative Service (DIS)
W—Uniformed Services University of the Health Sciences (USUHS)
Y—U.S. Army Corps of Engineers (USACE) Civil Works
2—Defense Finance & Accounting Service (DFAS)
3—Defense Commissary Agency (DeCA)

(4) Command Code. The code established by the DoD Component Headquarters to identify the command responsible for operating the CA undergoing cost comparison. A separate look-up listing or file shall be provided to the DMDC showing each unique command code and its corresponding command name. If the DoD Component chooses to submit the look-up table on diskette or tape, the format should be as follows:

Column	Entry
1 through 6 (left justify)	command code.
7	blank.
8 through 10 (left justify)	command code.

(5) Installation Code. The alpha and/or numeric designation established by the DoD Component Headquarters to identify the installation where the CA(s) under cost comparison is and/or are located physically. Two or more codes (for cost comparison packages encompassing more than one installation) should be separated by commas. A separate look-up listing or file shall be provided to the DMDC showing each unique installation code and its corresponding installation name. Also submission of the installation name in each record is allowed. If the DoD Component chooses to submit the look-up listing on diskette or tape, the format shall be as follows:

Column	Entry
1 through 10 (left justify)	installation code.
11	blank.
12 through 80 (left justify)	installation code.

The DMDC shall generate the installation name corresponding to the installation code submitted by the DoD Component, and display it with the code on the CAMIS.

(6) State Code. A two-position numeric code for the State (Data element reference ST–GA.) or State Equivalent (FIPS 55–2), as shown in attachment 1 of appendix B of this part, where element (5) is located. Two or more codes shall be separated by commas.

(7) Congressional District (CD) Code. Number of the CDs where element (5) of this section, is located. If representatives are elected "at large," enter "01" in this data element; for a delegate or resident commissioner (i.e., District of Columbia or Puerto Rico) enter "9." If the installation is located in two or more CDs, all CDs should be entered and separated by commas.

(8) JIRSG Area Code. The JIRSG Area that element (5) of this section, is assigned to for coordination of the DRIS Program, DoD 4000.19–R. This is a four-character alpha and/or numeric data element. For instance, "NO15" is the National Capital Region (NCR) (as published in the "DRIS Point of Contact Directory").

Note: A DoD Component may, at its option, report corresponding multiple values for the following geographical data elements: State code, CD, and JIRSG area code. These values shall be grouped and punctuated, as shown in the example, below, so that the proper relationship can be established between each installation code value and its corresponding set of geographical attribute values.

(5) Installation code	(6) State code	(7) CD code	(8) JIRSG area code
AAAAA,BBBBB,CCCCC	13,06,34	05,06;42,15	S003,WE10,*

When multiple values within a data element are reported for a single installation code, semicolons shall be used to separate each series of values and to indicate correspondence of each series to its respective installation value; commas shall be used to separate the values within a series. When only a single value (within a data element) is reported for each installation, the values shall be separated by commas. To denote an unknown or missing number of a series of values, the asterisk (*) symbol should be used.

The cost comparison package, above, involves three installations: AAAAA, BBBBB, and CCCCC. The first is located in Georgia, the second in California, and the third in New Jersey. AAAAA is in Georgia's 5th and 6th CDs, BBBBB is in California's 42nd CD, and CCCCC is in New Jersey's 15th CD. The first two installations are in JIRSG areas S003, and WE10, respectively. CCCCC is not within a JIRSG area.

(9) Title of Cost Comparison. The title that describes the CA(s) under cost comparison (for instance, "Facilities Engineering Package," "Installation Bus Service," or "Motor Pool"). Use a clear title, not acronyms or function codes in this data element.

(10) DoD Functional Area Code(s). The four- or five- alpha and/or numeric character designators listed in appendix A of this part, that describes the type of CA undergoing cost comparison. There would be one code for a single CA or possibly several codes for a large cost comparison package. A series of codes shall be separated by commas.

(11) Prior Operation Code. A single alpha character that identifies the mode of operation for the activity at the time the cost comparison is started. Despite the outcome of the cost comparison, this code does not change. The coding is as follows:

C—Contract
E—Expansion
I—In-house
N—New requirement

(12) Cost Comparison Status Code. A single alpha character that identifies the current status of the cost comparison. Enter one of the following codes:

B—Broken out. The cost comparison package has been broken into two or more separate cost comparisons. The previous CCR shall be excluded from future updates. (See data element (15) of this section).
C—Complete
P—In progress
X—Canceled. The CCR shall be excluded from future updates.
Z—Consolidated. The cost comparison has been consolidated with one or more other cost comparisons into a single cost comparison package. The CCR for the cost comparison that has been consolidated shall be excluded from future updates. (See data element (15) of this section).

13—Announcement—Personnel Estimate Civilian, and (14) Announcement—Personnel Estimate Military. The number of civilian and military personnel allocated to the CAs undergoing cost comparison when the cost comparison is approved by the DoD Component or announced the Congress. This number in all cases shall be those personnel figures identified in the correspondence announcing the start of a cost comparison and will include authorized positions, temporaries, and borrowed labor. The number is used to give a preliminary estimate of the size of the activity.

15—Revised and/or Original Cost Comparison Number. When a consolidation occurs, create a new CCR containing the attributes of the consolidated cost comparison. In the CCR of each cost comparison being consolidated, enter the cost

comparison number of the new CCR in this data element and code "Z" in data element (12) of this section. In the new CCR, this data element should be blank and data element (12) of this section, should denote the current status of the cost comparison. Once the consolidation has occurred, only the new CCR requires future updates.

When a single cost comparison is being broken into multiple cost comparison, create a new CCR for each cost comparison broken out from the original cost comparison. Each new CCR shall contain its own unique set of attributes; in data element (15) of this section, enter the cost comparison number of the original cost comparison from which each was derived, and in data element (12) of this section, enter the current status of each cost comparison. For the original cost comparison, data element (15) of this section, should be blank and data element (12) of this section, should have a code "B" entry. Only the derivative record entries require future updates.

When a consolidation or a breakout occurs, an explanatory remark shall be entered in data element (57) of this section (such as, "part of SW region cost comparison," or, "separated into three cost comparisons").

(16) PWS Scheduled Completion Date. The date the approved PWS is anticipated to be provided to the contracting officer for solicitation preparation at the start of a cost comparison.

(16A) PWS Actual Completion Date. The date the approved PWS is provided to the contracting officer for solicitation preparation.

Section Two

Event: The Solicitation is Issued

The entries in this section of the CCR provide information on the personnel authorized to perform the workload in the PWS, the number of workyears used to accomplish the workload in the PWS, and the type and kind of solicitation.

The DoD Component shall enter the following data elements at the first quarterly update subsequent to the issuance of the solicitation:

(17) Scheduled Solicitation Issuance Date. The date of solicitation as anticipated at the start of a cost comparison.

(17A) Date Solicitation Issued. The date the solicitation is issued by the contracting officer.

(18) Solicitation-Type Code. A one-character alpha designator that identifies the type of solicitation to obtain contract bids or offers. Use either the CBD as the source document or information received from the contracting officer for this entry. Solicitations under section 8(a) of "The Small Business Act" are negotiated. Enter one of the following codes:

N—Negotiated
S—Sealed Bid

(19) Solicitation-Kind Code. A one-character (or two-character, if "W" suffix is used) alpha designator indicating whether the competition for the contract has been limited to a specific class of bidders or offerors. Use either the CBD as the source document or information received from the contracting officer to enter one of the following codes:

A—Restrict to small business
B—Small Business Administration 8(a) Set Aside
C—"Javits-Wagner-O'Day Act" (JWOD)
D—Other mandatory sources
U—Unrestricted
W—(Optional suffix) Unrestricted after initial restriction

(20) Current Authorized Civilians, and (21) Current Authorized Military. The number of civilian and military authorizations allocated on the DoD Component's manpower documents to perform the work described in the PWS. This number refines the initial authorization estimate (*Section One*, data elements (13) and (14), of this section).

(22) Baseline Annual Workyears Civilian, and (23) Baseline Annual Workyears Military. The number of annual workyears it has taken to perform the work described by the PWS before the DoD Component conducts the MEO study of the in-house organization. Do not include contract monitor requirements. Military workyears include assigned, borrowed, diverted, and detailed personnel.

An annual workyear is the use of 2,087 hours (including authorized leave and paid time off for training). For example, when full-time employees, whose work is completely within the PWS are concerned, "one workyear" normally is comparable to "one employee" or two part-time employees, each working 1,043 hours in a FY. Also include in this total, the workyears for employees who do not work full-time on the work described by the PWS. For example, some portion of the workload is performed by persons from another work center who are used on an as needed basis. Their total hours performing that workload is 4,172 hours. This would be reflected as 2 workyears. Less than one-half a year of effort should be rounded down, and one-half a year or more should be rounded up.

Those workyear figures shall be the baseline for determining the personnel savings identified by the management study.

Section Three

Event: The In-House and the Contractor Costs of Operation are Compared

The entries in this section provide information on the date of the cost comparison (initial decision), the preliminary results, the number of bids or offers received, and the costing method used in the cost comparison.

The DoD Component shall enter the following data elements in the first quarterly update subsequent to the date of the comparison of in-house and contractor costs (date of initial decision):

(24) Scheduled Initial Decision Date. Date the initial decision is scheduled at the start of a cost comparison.

(24A) Actual Initial Decision Date. Date the initial decision is announced. The initial decision is based on the apparent low bid or offer and is subject to preaward surveys and resolution of all appeals and protests. In a sealed bid procurement, the initial decision is announced at bid opening. In a negotiated procurement, the initial decision is announced when the cost comparison is made between the in-house estimate and the proposal of the selected offeror.

(25) Cost Comparison Preliminary Results Code. A one-character alpha designator indicating the results of the cost comparison as announced by the contracting officer at the time the bids or offers are compared. The entities are limited to two possibilities:

C—Contract
I—In-house

(26) Cost Method Code. A one-character numeric designator indicating the procedures under which the cost comparison was and/or is being conducted. Enter one of the following codes:

1—Cost comparison conducted under the incremental costing procedures in effect before 1980.
2—Cost comparison conducted using the full costing procedures in DoD 4100.33–H, April 1980. (superseded September 9, 1985 by DoD Instruction 4100.33).
3—Cost comparison conducted under the alternative costing procedures implemented in the Department of Defense in March 1982.
4—Cost comparison conducted under the new costing procedures in the OMB Circular A–76 published August 4, 1983, and implemented by the Department of Defense in March 1984.

(27) Number of Bids or offers Received. The number of commercial bids or offers received by the contracting officer in response to the solicitation.

Section Four

Event: The Contracting Officer Either Awards the Contract or Cancels the Solicitation

The entries in this section identify the final result, information on the contract, the in-house bid, and costing information from the cost comparison record. The DoD Component shall enter the following data elements in the quarterly update subsequent to the date the contacting officer either awards a contract or cancels the solicitation:

(28) Contract Award or Solicitation Cancellation Date. For conversions to contract, this is the date a contract was awarded in a sealed bid solicitation or the date the contractor was authorized to proceed on a conditional award contract in a negotiated solicitation. For retentions in-house, this is the date the solicitation was canceled (when the contracting officer publishes an amendment to cancel the solicitation).

(29) Cost Comparison Final Result Code. A one-character alpha designator identifying the final result of the comparison between in-house and contractor costs; the contracting officer either awards the contract or cancels the solicitation. Enter one of the following codes:

C—Contact
I—In-house

(30) Decision Rationale Code. A one-character alpha designator that identifies the rationale for awarding a contract or canceling the solicitation. The work shall be performed in-house or by contractor based on cost, for other than cost, or the work shall be performed in-house because no satisfactory commercial source was available (no bids or offers were received or the pre-award survey

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resulted in the determination that no commercial sources were responsive or responsible. Enter one of the following codes:

C—Cost
N—No satisfactory commercial source
O—Other

(31) Contract-Type Code. Enter one of the following alpha designators for the type of contract used in the cost comparison. This entry is required for all completed studies regardless of their outcome.

CPAF—Cost Plus Award Fee
CPFF—Cost Plus Fixed Fee
CPIF—Cost Plus Incentive Fee
FFP—Firm Fixed Price
FP–EPA—Fixed Price with Economic Price Adjustment
FPI—Fixed Price Incentive
TM–LH—Time and Material or Labor Hour

(31A) Prime Contractor Size. Enter one of the following:

L—Large business
S—small or small and/or disadvantaged business

(32) MEO Workyears. The number of annual workyears it takes to perform the work described in the PWS after the MEO study has been conducted. This entry will be equal to the number of annual workyears in the in-house bid. For data elements (33) through (36) of this section, enter all data after all adjustments required by appeal board decisions. Do not include the minimum cost differential (line 14 in the CCF or line 16 in the ENRC CCF) in the computation of any of these data elements. If a valid cost comparison was not conducted (i.e., all bidders or offerors disqualified, no bids or offers received, etc.) do not complete data elements (33), (34), and (36) of this section. Explain lack of valid cost data in data element (57) of this section, "DoD Component Comments"

(33) First Performance Period. Expressed in months, the length of time covered by the contract. Do not include any option periods.

(34) Cost Comparison Period. Expressed in months, the total period of operation covered by the cost comparison; this is the period used as the basis for data elements (35) and (36) of this section.

(35) Total In-House Cost ($000). Enter the total cost of in-house performance in thousands of dollars, rounded to the nearest thousand. This is the total of line 9 plus line 22 of the old CCF (line 6 of the new CCF or line 8 of the new ENRC CCF). An entry is required although the activity remains in-house due to absence of a satisfactory commercial source.

(36) Total Contract Cost ($000). Enter the total cost of contract performance in thousands of dollars, rounded to the nearest thousand. This is the total of line 13 of the CCF or line 15 of the ENRC CCF).

(37) Notification Date. The date Congress was notified that the DoD Component intends to convert a CA with 46 or more FTEs to contract performance or the MEO certification date for CAs with 11 to 45 FTEs.

(37A) Scheduled Contract or MEO Start Date. Date of the contract and/or MEO was scheduled to start at the beginning of a cost comparison.

Section Five

Event: The Contract Starts

The entries in this section identify the contract start date and the personnel actions taken as a result of the cost comparison.

The DoD Component shall enter the following date elements in the first quarterly update subsequent to the start of the contract:

(38) Contract/MEO Start Date. The actual date the contractor began operation of the contract or the Government implements the MEO.

(39) Permanent Employees Reassigned to Equivalent Positions. The number of permanent employees who were reassigned to positions of equivalent grade as of the contract start date.

(40) Permanent Employees Changed to Lower Positions. The number of permanent employees who were reassigned to lower grade positions as of the contract start date.

(41) Employees Taking Early Retirement. The number of employees who took early retirement as of the contract start date.

(42) Employees Taking Normal Retirement. The number of employees who took normal retirement as of the contract start date.

(43) Permanent Employees Separated. The number of permanent employees who were separated from Federal employment as of the contract start date.

(44) Temporary Employees Separated. The number of temporary employees who were separated from Federal employment as of the contract start date.

(45) Employees Entitled to Severance Pay. The estimated number of employees entitled to severance pay on their separation from Federal employment as of the contract start date.

(46) Total Amount of Severance Entitlements ($000). The total estimated amount of severance to be paid to all employees, in thousands of dollars, rounded to the nearest thousand, as of the contract start date.

(47) Number of Employees Hired by the Contractor. The number of estimated DoD civilian employees (full-time or otherwise) that will be hired by the contractors, or their subcontractors, at the contract start date.

Administrative Appeal

(48) Filed. Were administrative appeals filed?

N—No
Y—Yes

(49) Source. Who filed the appeal?

B—Both
C—Contractor
I—In-house

(50) Result. Were the appeals finally upheld? (if both appealed, explain result in data element (57) of this section).

N—No
P—Still in progress
Y—Yes

GAO Protest

(51) Filed. Was a protest filed with GAO?

N—No
Y—Yes

(52) Source. Who filed the protest?

B—Both
C—Contractor
I—In-house

(53) Result. Was the protest finally upheld? (explain result in data element (57) of this section).

N—No
P—Still in progress
Y—Yes

Arbitration

(54) Requested. Was there a request for arbitration?

N—No
Y—Yes

(55) Result. Was the case found arbitratible? (explain result in data element (57) of this section).

N—No
P—Still in progress
Y—Yes

General Information

* (56) Total Staff-Hours Expended. Enter the estimated number of staff-hours expended by the installation for the cost comparison. Include direct and indirect hours expended from the time of PWS until a final decision is made.

* (56A) Estimated Cost of Conducting the Cost Comparison. Enter the estimated cost of the total staff-hours identified in data element (56) of this section and non-labor (travel, reproduction costs, etc.) associated with the cost comparison.

(57) DoD Component Comments. Enter comments, as required, to explain situations that affect the conduct of the cost comparison. Where appropriate, precede each comment with the CAMIS data element being referenced.

(58) Effective Date. "As of" date of the most current update for the cost comparison. This data element will be completed by the DMDC.

(59) (Leave blank, for DoD computer program use).

Section Six

Event: Quarter Following Contract and/or Option Renewal

The entries in this section identify original costs, savings, information on subsequent performance periods and miscellaneous contract data. The DoD Component shall enter the following data elements in the first quarterly update annually.

(60) Original Cost of Function(s) ($000). The estimated total cost of functions prior to development of an MEO in thousands of dollars, rounded to the nearest thousand for the base year and option years (Begin entry after 1 October 1989).

(60A) Estimated Dollar Savings ($000). The DoD Component's estimated savings from the cost comparison for the base year plus option

* Data elements (56) and (56A) will only be completed by DoD Components that are participating in the pilot test of these data elements. Staff-hours expended will not include waiting time. The staff-hours expended for the management study phase will not be included or costed, since this is a practice used throughout the organization, irrespective of the A–76 program.

years, in thousands of dollars, rounded to the nearest thousand, for either in-house or contract performance. Documentation will be available at the DoD Component level (Begin entry after 1 October 1989).

(61) Contract or In-House Bid First Performance Period ($000). For studies resulting in continued in-house performance, enter the total in-house cost (Line 6 from the CCF) for the first performance period. For studies resulting in conversion to contract performance, enter the contract price (Line 7 from the CCF) for the first performance period. Figures shall be shown in thousands of dollars, rounded to the nearest thousand.

(61A) Actual Contract Costs First Performance Period ($000). Enter the actual first performance period contract cost including all change orders (Plus changes in the scope of work), in thousands of dollars, rounded to the nearest thousand. No entry is required when the function remained in-house.

(61B) Adjusted Contract Costs First Performance Period ($000). Enter an adjusted first performance period contract cost that includes actual DoL wage increases and costs for omissions and/or errors in the original PWS, but exclude new requirement costs and their associated wage increases, in thousands of dollars, rounded to the nearest thousand (Begin entry after 1 October 1989).

(61C) Adjusted In-House Costs First Performance Period ($000). Enter the total first performance period in-house cost of the MEO, including civil service pay increases, but excluding increases associated with new mission requirements not included in the original scope of work of the function. Show costs in thousands of dollars, rounded to the nearest thousand. Entry is required even if the function went to contract. (Begin entry after 1 October 1989).

(61D) Actual In-House Costs First Performance Period Only ($000). Enter the actual first performance period in-house cost including changes in the scope of work, in thousands of dollars, rounded to the nearest thousand. No entry is required when the function is contracted and is not required for the CAMIS data base for the second and third performance periods (Begin entry after 1 October 1989).

(61E) (Leave blank).

(62) Contract or In-House Bid Second Performance Period ($000). For studies resulting in continued in-house performance, enter the total in-house cost (Line 6 from the CCF) for the second performance period. For studies resulting in conversion to contract performance, enter the contract price (Line 7 from the CCF) for the second performance period. Figures shall be shown in thousands of dollars, rounded to the nearest thousand.

(62A) Actual Contract Costs Second Performance Period ($000). Enter the actual second performance period contract cost including all change orders (Plus changes in the scope of work), in thousands of dollars, rounded to the neatest thousand. No entry is required when the function remained in-house.

(62B) Adjusted Contract Costs Second Performance Period ($000). Enter an adjusted second performance period contract cost that includes actual DoL wage increases and costs for omissions and/or errors in the original PWS, but exclude new requirement costs and their associated wage increases, in thousands of dollars, rounded to the nearest thousand (Begin entry after 1 October 1989).

(62C) Adjusted In-House Costs Second Performance Period ($000). Enter the total second performance period in-house cost of the MEO, including civil service pay increases, but excluding increases associated with new mission requirements not included in the original scope of work of the function. Show costs in thousands of dollars, rounded to the nearest thousand. Entry is required even if the function went to contract (Begin entry after 1 October 1989).

(62D) (Leave blank).

(63) Contract or In-House Bid Third Performance Period ($000). For studies resulting in continued in-house performance, enter the total in-house cost (Line 6 from the CCF) for the third performance period. For studies resulting in conversion to contract performance, enter the contract price (Line 7 from the CCF) for the third performance period. Figures shall be shown in thousands of dollars, rounded to the nearest thousand.

(63A) Actual Contract Costs Third Performance Period ($000). Enter the actual third performance period contract cost including all change orders (Plus changes in the scope of work), in thousands of dollars, rounded to the neareat thousand. No entry is required when the function remained in-house.

(63B) Adjusted Contract Costs Third Performance Period ($000). Enter an adjusted third performance period contract cost that includes actual DoL wage increases and costs for omissions and/or errors in the original PWS, but exclude new requirement costs and their associated wage increases, in thousands of dollars, rounded to the nearest thousand (Begin entry after 1 October 1989).

(63C) Adjusted In-House Costs Third Performance Period ($000). Enter the total third performance period in-house cost of the MEO, including civil service pay increases, but excluding increases associated with new mission requirements not included in the original scope of work of the function. Show costs in thousands of dollars, rounded to the nearest thousand. Entry is required even if the function went to contract (Begin entry after 1 October 1989).

(63D) (Leave blank).

(64) Contractor Change. Enter one of the following alpha designators to indicate whether the contract for the second or third performance period has changed from the original contractor.

N—No, the contractor has not changed.
Y—Yes, the contractor has changed.

Data elements (65) through (66) of this section, are not required if the answer to data element (64), of this section, is no (N).

(65) New Contractor Size (If data element (66), below, contains the alpha designator "T" or "R," no entry is required).

L—New contractor is large business
S—New contractor is small and/or small disadvantaged business.

(66) Reason for Change. DoD Components shall enter one of the following designators listed below, followed by the last two digits of the FY in which the change occurred.

C—Contract workload consolidated with other existing contract workload.
D—New contractor takes over because original contractor defaults.
I—Returned in-house because original contractor defaults within 12 months of start date and in-house bid is the next lowest.
N—New contractor replaced original contractor because Government opted not to renew contract in option years.
R—Returned in-house temporarily pending resolicitation due to contract default, etc.
U—Contract workload consolidated into a larger (umbrella) cost comparison.

(67) Contract Administration Staffing. The actual number of contract administration personnel hired to administer the contract.

Comis Entry and Update Instruction

Part II—Direct Conversions and Simplified Cost Comparisons

The bracketed number preceding each definition in Sections One through Six, of this section is the DoD data element number. All date fields should be in the format YYMMDD (Data element reference DA–FA).

Section One

EVENT: DoD Component Approves the CA Action

All entries in this section of the DCSCC record shall be submitted by DoD Components on approving the start of a cost comparison. These entries shall be used to establish the DCSCC and to identify the geographical, organizational, political, and functional attributes of the activity (or activities) undergoing conversion/comparison as well as to provide an initial estimate of the manpower associated with the activity (or activities). The initial estimate of the personnel in this section of the DCSCC will be, in all cases, those personnel figures identified in the correspondence approving the start of the conversion/comparison. DoD Components shall enter the following data elements to establish a DCSCC:

(1) Direct Conversion/Simplified Cost Comparison Number. The number assigned by the DoD Component to uniquely identify a specific conversion/comparison. The first character of the conversion/comparison number must be a letter designating the DoD Component as noted in data element (3) of this section. The conversion/comparison number may vary in length from 5 to 10 characters, of which the second and subsequent may be alpha or numeric and assigned under any system desired by the DoD Component.

(2) Approval Date. The date the simplified cost comparison or direct conversion was approved.

(3) DoD Component Code. Use the following codes to identify the Military Service or Defense Agency/Field Activity conducting the cost comparison:

A—Department of the Army
B—Defense Mapping Agency (DMA)
C—Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) (3D7)
D—Washington Headquarters Service (WHS) (3D2)

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F—Department of the Air Force
G—National Security Agency/Central Security Service (NSA/CSS)
H—Defense Nuclear Agency (DNA)
J—Joint Chiefs of Staff (including the Joint Staff, Unified and Specified Commands, and Joint Service Schools)
K—Defense Information Systems Agency (DISA)
L—Defense Intelligence Agency (DIA)
M—United States Marine Corps (USMC)
N—United States Navy (USN)
R—Defense Contract Audit Agency (DCAA)
S—Defense Logistics Agency (DLA)
T—Defense Security Assistance Agency (DSAA)
V—Defense Investigative Service (DIS)
W—Uniformed Services University of the Health Sciences (USUHS)
Y—U.S. Army Corps of Engineers (USACE) Civil Works
2—Defense Finance & Accounting Service (DFAS)
3—Defense Commissary Agency (DeCA)

(4) Command Code. The code established by the DoD Component Headquarters to identify the command responsible for operating the CA undergoing conversion/comparison. A separate look-up listing or file shall be provided to the DMDC showing each unique command code and its corresponding command name. If the DoD Component chooses to submit the look-up table on diskette or tape, the format should be as follows:

Column	Entry
1 through 6 (left justify)	command code.
7	blank.
8 through 80 (left justify)	command code.

(5) Installation Code. The alpha and/or numeric designation established by the DoD Component Headquarters to identify the installation where the CA(s) under conversion/comparison is and/or are located physically. Two or more codes (for conversion/comparison packages encompassing more than one installation) should be separated by commas. A separate look-up listing or file shall be provided to the DMDC showing each unique installation code and its corresponding installation name. Also submission of the installation name in each record is allowed. If the DoD Component chooses to submit the look-up listing on diskette or tape, the format shall be as follows:

Column	Entry
1 through 10 (left justify)	installation code.
11	blank.
12 through 80 (left justify)	installation name.

The DMDC shall generate the installation name corresponding to the installation code submitted by the DoD Component, and display it with the code on the CAMIS.

(6) State Code. A two-position numeric code for the State (Data element reference ST–GA.) or State Equivalent (FIPS 55–2), as shown in attachment 1 to Appendix B of this part, where data element (5) of this section is located. Two or more codes shall be separated by commas.

(7) Congressional District (CD) Code. Number of the CDs where date element [5] of this section, is located. If representatives are elected "at large," enter "01" in this data element; for a delegate or resident commissioner (i.e., District of Columbia or Puerto Rico) enter "98." If the installation is located in two or more CDs, all CDs should be entered and separated by commas.

(8) JIRSG Area Code. The JIRSG Area that data element [5] of this section is assigned to for coordination of the DRIS Program, DoD 4000.19–R. This is a four-character alpha and/or numeric date element. For instance, "NO15" is the National Capitol Region (NCR) (as published in the "DRIS Point of Contact Directory").

NOTE: A DoD Component may report corresponding multiple values for the following geographical data elements: State, CD, and JIRSG area code. These values shall be grouped and punctuated, as shown in the example, below, so that the proper relationship can be established between each installation code value and its corresponding set of geographical attribute values.

(5) Installation code:
AAAAA,BBBBB,CCCCC.
(6) State code: 13,06,34.
(7) CD code: 05,06;42,15.
(8) JIRSG area code: S003,WE10,*.

When multiple values within a data element are reported for a single installation code, semicolons shall be used to separate each series of values and to indicate correspondence of each series to its respective installation value; commas shall be used to separate the values within a series. When only a single value (within a data element) is reported for each installation, the values shall be separated by commas. To denote an unknown or missing number of a series of values, the asterisk (*) symbol should be used.

The conversion/comparison package, above, involves three installations: AAAAA, BBBBB, and CCCCC. The first is located in Georgia, the second in California, and the third in New Jersey. AAAAA is in Georgia's 5th and 6th CDs, BBBBB is in California's 42nd CD, and CCCCC is in New Jersey's 15th CD. The first two installations are in JIRSG areas S003, and WE10, respectively, CCCCC is not within a JIRSG area.

(9) Title of Conversion/Comparison. The title that describes the CA(s) under conversion/comparison (for instance, "Facilities Engineering Package," "Installation Bus Service," or "Motor Pool"). Use a clear title, not acronyms or function codes in this data element.

(10) DoD Functional Area Code(s). The four- or five- alpha and/or numeric character designators listed in Appendix A of this part, that describes the type of CA undergoing conversion/comparison. This would be one code for a single CA or possibly several codes for a large cost comparison package. A series of codes shall be separated by commas.

(11) Prior Operation Code. A single alpha character that identifies the mode of operation for the activity at the time the conversion/comparison is started. Despite the outcome of the conversion/comparison, this code does not change. The coding is as follows:

C—Contract.
E—Expansion.
I—In-house.
N—New requirement.

(12) Conversion/Comparison Status Code. A single alpha character that identifies the current status of the conversion/comparison. Enter one of the following codes:

B—Broken out. The cost comparison package has been broken into two or more separate cost comparisons. The previous DCSCCR shall be excluded from future updates. (See data element (15) of this section).
C—Complete.
P—In progress.
X—Canceled. The DCSCCR shall be excluded from future updates.
Z—Consolidated. The cost comparison has been consolidated with one or more other cost comparisons into a single cost comparison package. The DCSCCR for the cost comparison that has been consolidated shall be excluded from future updates. (See data element (15) of this section).

(13) Announcement—Personnel Estimate Civilian, and (14) Announcement—Personnel Estimate Military. The number of civilian and military personnel allocated to the CAs undergoing conversion/comparison at the time the start of the conversion/comparison is approved. This number in all cases shall be those personnel figures identified when the conversion/comparison was approved and will include authorized positions, temporaries, and borrowed labor. The number is used to give a preliminary estimate of the size of the activity.

(15) Revised and/or Original Cost Comparison Number. When a consolidation occurs, create a new DCSCC containing the attributes of the consolidated conversion/comparison. In the DCSCC of each conversion/comparison being consolidated, enter the conversion/comparison number of the new DCSCC in this data element and code "Z" in data element (12) of this section. In the new DCSCC, this data element should be blank and data element (12) of this section, should denote the current status of the conversion/comparison. Once the consolidation has occurred, only the new DCSCC requires future updates.

When a single conversion/comparison is being broken into multiple conversion/comparisons, create a new DCSCC for each conversion/comparison broken out from the original conversion/comparison. Each new DCSCC shall contain its own unique set of attributes; in date element (15) of this section, enter the conversion/comparison number of the original conversion/comparison from which each was derived, and in data element (12) of this section, enter the current status of each conversion/comparison. For the original conversion/comparison, data element (15) of this section, should be blank and data element (12) of this section, should have a

code "B" entry. Only the derivative record entries require future updates.

When a consolidation or a breakout occurs, an explanatory remark shall be entered in data element (56) of this section (such as, "part of SW region cost comparison," or, "separated into three cost comparisons").

(16) PWS Scheduled Completion Date. The date the approved PWS is anticipated to be provided to the contracting officer for solicitation preparation at the start of a cost comparison.

(16A) PWS Actual Completion Date. The date the approved PWS is provided to the contracting officer for solicitation preparation.

Section Two

Event: The Solicitation is Issued

The entries in this section of the DCSCC provide information on the personnel authorized to perform the workload in the PWS, the number of workyears used to accomplish the workload in the PWS, and the type and kind of solicitation.

The DoD Component shall enter the following data elements at the first quarterly update subsequent to the issuance of the solicitation:

(17) Scheduled Solicitation Issuance Date. The date of solicitation as anticipated at the start of a cost comparison.

(17A) Date Solicitation Issued. The date the solicitation is issued by the contracting officer.

(18) Solicitation-Type Code. A one-character alpha designator that identifies the type of solicitation used to obtain contract bids or offers. Use either the CBD as the source document or information received from the contracting officer for this entry. Solicitations under section 8(a) of "The Small Business Act" are negotiated. Enter one of the following codes:

N—Negotiated.
S—Sealed Bid.

(19) Solicitation-Kind Code. A one-character (or two-character, if "W" suffix is used) alpha designator indicating whether the competition for the contract has been limited to a specific class of bidders or offerors. Use either the CBD as the source document or information received from the contracting officer to enter one of the following codes:

A—Restrict to small business.
B—Small Business Administration 8(a) Set Aside.
C—"Javits-Wagner-O'Day Act" (JWOD).
D—Other mandatory sources.
U—Unrestricted.
W—(Optional suffix) Unrestricted after initial restriction.

(20) Current Authorized Civilians, and (21) Current Authorized Military. The number of civilian and military authorizations allocated on the DoD Component's manpower documents to perform the work described in the PWS. This number refines the initial authorization estimate (Section One, date elements (13) and (14) of this section).

(22) Baseline Annual Workyears Civilian, and (23) Baseline Annual Workyears Military. The number of annual workyears it has taken to perform the work described by the PWS before the DoD Component conducts the MEO study of the in-house organization. Do not include contract monitor requirements. Military workyears include assigned, borrowed, diverted, and detailed personnel.

An annual workyear is the use of 2,087 hours (including authorized leave and paid time off for training). For example, when full-time employees, whose work is completely within the PWS are concerned, "one workyear" normally is comparable to "one employee" or two part-time employees, each working 1,043 hours in a FY. Also include in this total, the workyears for employees who do not work full-time on the work described by the PWS. For example, some portion of the workload is performed by persons from another work center who are used on an as needed basis. Their total hours performing that workload is 4,172 hours. This would be reflected as 2 workyears. Less than one-half a year of effort should be rounded down, and one-half a year or more should be rounded up.

Those workyear figures shall be the baseline for determining the personnel savings identified by the management study.

Section Three

Event: The In-House and the Contractor Costs of Operation are Compared

The entries in this section provide information on the date of the conversion/comparison (initial decision), the preliminary results, the number of bids or offers received, and the costing method used in the conversion/comparison.

The DoD Component shall enter the following data elements in the first quarterly update subsequent to the date of the comparison of in-house and contractor costs (date of initial decision):

(24) Scheduled Initial Decision Date. Date the initial decision is scheduled at the start of a conversion/comparison.

(24A) Actual Initial Decision Date. Date the initial decision is announced. The initial decision is based on the apparent low bid or offer and is subject to preaward surveys and resolution of all appeals and protests. In a sealed bid procurement, the initial decision is announced at bid opening. In a negotiated procurement, the initial decision is announced when the cost comparison is made between the in-house estimate and the proposal of the selected offeror. In a conversion, the initial decision is announced when the in-house cost estimate is evaluated against proposed contractor proposals.

(25) Cost Comparison Preliminary Results Code. A one-character alpha designator indicating the results of the cost comparison as announced by the contracting officer at the time of the comparison (No entry required for a direct conversion). The entries are limited to two possibilities:

C—Contract.
I—In-house.

(26) Cost Method Code. A one-character numeric designator indicating the procedures under which the conversion/comparison was and/or is being conducted. Enter one of the following codes:

1—Simplified cost comparison conducted under the new costing procedures in the OMB Circular A–76 published August 4, 1983, and implemented by the Department of Defense in March 1984.
2—Direct conversion implemented by the Department of Defense in October 1988.

(27) Number of Bids or Offers Received. The number of commercial bids or offers received by the contracting officer.

Section Four

Event: The Contracting Officer Either Awards the Contract or Cancels the Solicitation

The entries in this section identify the final result, information on the contract, the in-house bid, and costing information from the direct conversion/simplified cost comparison fact sheet.

The DoD component shall enter the following data elements in the first quarterly update subsequent to the date the contracting officer either awards a contract or cancels the solicitation:

(28) Contract Award or Solicitation Cancellation Date. For conversions to contract, this is the date a contract was awarded in a sealed bid solicitation or the date the contractor was authorized to proceed on a conditional award contract in a negotiated solicitation. For retentions in-house, this is the date the solicitation was canceled (when the contracting officer publishes an amendment to cancel the solicitation).

(29) Cost Comparison Final Result Code. A one-character alpha designator identifying the final result of the comparison between in-house and contractor costs; the contracting officer either awards the contract or cancels the solicitation. Enter one of the following codes:

C—Contract.
I—In-house.

(30) Decision Rationale Code. A one-character alpha designator that identifies the rationale for awarding a contract or canceling the solicitation. The work shall be performed in-house or by contractor based on cost, for other than cost, or the work shall be performed in-house because no satisfactory commercial source was available (no bids or offers were received or the pre-award survey resulted in the determination that no commercial sources were responsive or responsible). Enter one of the following codes:

C—Cost.
N—No satisfactory commercial source.
O—Other.

(31) contract-Type Code. Enter one of the following alpha designators for the type of contract used in the cost comparison. This entry is required for all completed studies, regardless of their outcome.

CPAF—Cost Plus Award Fee.
CPFF—Cost Plus Fixed Fee.
CPIF—Cost Plus Incentive FEE.
FFP—Firm Fixed Price.
FP-EPA—Fixed Price with Economic Price Adjustment.
FPI—Fixed Price Incentive.
TM-LH—Time and Material or Labor Hour.

(31A) Prime Contractor Size. Enter one of the following:

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L—Large business.
S—Small or small and/or disadvantaged business.

(32) MEO Workyears. The number of annual workyears it takes to perform the work described in the PWS after the MEO study has been conducted. This entry will be equal to the number of annual workyears in the in-house bid (No entry required for a direct conversion).

For data elements (33) through (36) of this section, enter all data after all adjustments required by appeal board decisions. Do not include minimum cost differential in the computation of any of these data elements. If a valid conversion/comparison was not conducted (i.e., all bidders or offerors disqualified, no bids or offers received, etc.) do not complete data elements (33), (34) and (36) of this section. Explain lack of valid cost data in data element (56) of this section, "DoD Component Comments".

(33) First Performance Period. Expressed in months, the length of time covered by the contract. Do not include any option periods.

(34) Conversion/Comparison Period. Expressed in months, the total period of operation covered by the conversion or cost comparison; this is the period used as the basis for data elements (35) and (36) of this section.

(35) Total In-House Cost ($000). Enter the total estimated cost of in-house performance for the base year plus option years, in thousands of dollars, rounded to the nearest thousand. An entry is required although the activity remains in-house due to absence of a satisfactory commercial source (No entry required for a direct conversion).

(36) Total Contract Cost ($000). Enter the total estimated cost of contract performance for the base year plus option years, in thousands of dollars, rounded to the nearest thousand.

(37) Notification Date. The date the MEO certification is sent to Congress. DoD Components shall enter a date when data element (20) of this section, contains a figure greater than 10 (No entry required for a direct conversion).

(37A) Scheduled Contract or MEO Start Date. Date the contract and/or MEO was scheduled to start at the beginning of a conversion/comparison.

Section Five

Event: The Contract Starts

The entries in this section identify the contract start date and the personnel actions taken as a result of the conversion/comparison.

The DoD Component shall enter the following data elements in the first quarterly update subsequent to the start of the contract:

(38) contract/MEO Start Date. The actual date the contractor began operation of the contract or the Government implements the MEO.

(39) Permanent Employees Reassigned to Equivalent Positions. The number of permanent employees who were reassigned to positions of equivalent grade as of the contract start date.

(40) Permanent Employees Changed to Lower Positions. The number of permanent employees who were reassigned to lower grade positions as of the contract start date.

(41) Employees Taking Early Retirement. The number of employees who took early retirement as of the contract start date.

(42) Employees Taking Normal Retirement. The number of employees who took normal retirement as of the contract start date.

(43) Permanent Employees Separated. The number of permanent employees who were separated from Federal employment as of the contract start date.

(44) Temporary Employees Separated. The number of temporary employees who were separated from Federal employment as of the contract start date.

(45) Employees Entitled to Severance Pay. The estimated number of employees entitled to severance pay on their separation from Federal employment as of the contract start date.

(46) Total Amount of Severance Entitlements ($000). The total estimated amount of severance to be paid to all employees, in thousands of dollars, rounded to the nearest thousand, as of the contract start date.

(47) Number of Employees Hired by the Contractor. The number of estimated DoD civilian employees (full-time or otherwise) that will be hired by the contractors, or their subcontractors, at the contract start date.

Administrative Appeal

(48) Filed. Were administrative appeals filed?

N—No.
Y—Yes.

(49) Source. Who filed the appeal?

B—Both.
C—Contractor.
I—In-House.

(50) Result. Were the appeals finally upheld? (if both appealed, explain result in data element (56) of this section).

N—No.
P—Still in Progress.
Y—Yes.

GAO Protest

(51) Filed. Was a protest filed with GAO?

N—No.
Y—Yes.

(52) Source. Who filed the protest?

B—Both.
C—Contractor.
I—In-House.

(53) Result. Was the protest finally upheld? (explain result in data element (56) of this section).

N—No.
P—Still in Progress.
Y—Yes.

Arbitration

(54) Requested. Was there a request for arbitration?

N—No.
Y—Yes.

(55) Result. Was the case found arbitratible? (explain result in data element (56) of this section).

N—No.
P—Still in Progress.
Y—Yes.

General Information

(56) DoD Component Comments. Enter comments, as required, to explain situations that affect the conduct of the conversion/comparison. Where appropriate, precede each comment with the CAMIS data element being referenced.

(57) Effective Date. "As of" date of the most current update for the conversion/comparison. This data element will be completed by the DMDC.

(58) (Leave blank, for DoD computer program use).

Section Six

Event: Quarter Following Contract and/or Option Renewal

The entries in this section identify original costs, savings, information on subsequent performance periods and miscellaneous contract data. The DoD Component shall enter the following data elements in the first quarterly update annually.

(59) Actual Contract Cost First Performance Period ($000). Enter the actual contractor cost for the first performance period, in thousands of dollars, rounded to the nearest thousand.

(60) Actual Contract Cost Second Performance Period ($000). Enter the actual contractor cost for the second performance period, in thousands of dollars, rounded to the nearest thousand.

(61) Actual Contract Cost Third Performance Period ($000). Enter the actual contractor cost for the third performance period, in thousands of dollars, rounded to the nearest thousand.

(62) Contractor Change. Enter one of the following alpha designator to indicate whether the contract for the second or third performance period has changed from the original contractor.

N—No, the contractor has not changed.
Y—Yes, the contractor has changed.

Data elements (63) through (64) of this section, are not required if the answer to data element (62) of this section, is no (N).

(63) New Contractor Size (If data element (64) of this section contains the alpha designator "T" or "R," no entry is required).

L—New contractor is large business.
S—New contractor is small and/or small disadvantaged business.

(64) Reason for Change. DoD Components shall enter one of the following designators listed below, followed by the last two digits of the FY in which the change occurred.

C—Contract workload consolidated with other existing contract workload.
D—New contractor takes over because original contractor defaults.
I—Returned in-house because of original contractor defaults; etc., within 6 months of start date and in-house bid is the next lowest.

N—New contractor replaced original contractor because Government opted not to renew contract in option years.

R—Returned in-house temporarily pending resolicitation due to contract default, etc.

U—Contract workload consolidated with other existing contract workload.

(65) Contract Administration Staffing. The actual number of contract administration personnel hired to administer the contract.

Attachment 1 to Appendix D to Part 169a—Cost Comparison Record (CCR)

Section One

(1) Cost Comparison Number: ____ (2) Announcement and/or Approval Date: ____
(3) DoD Component Code: ____ (4) Command Code: ____ (5) Installation Code: ____
(6) State Code: ____ (7) CD Code: ____ (8) JIRSG Area Code: ____
(9) Title of Cost Comparison: _____
(10) DoD Functional Area Code(s): _____
(11) Prior Operation Code: ____ (12) Cost Comparison Status Code: ____
(13) Announcement—Personnel Estimate Civilian: _____
(14) Announcement—Personnel Estimate Military: _____
(15) Revised and/or Original Cost Comparison Number: _____
(16) PWS Scheduled Completion Date: ____ (16A) PWS Actual Completion Date: ____

Section Two

(17) Scheduled Solicitation Issuance Date: ____ (17A) Date Solicitation Issued: ____
(18) Solicitation-Type Code: ____ (19) Solicitation-Kind Code: ____
(20) Current Authorized Civilian: ____ (21) Current-Authorized Military: ____
(22) Baseline Annual Workyears Civ: ____ (23) Baseline Annual Workyears Mil: ____

Section Three

(24) Scheduled Initial Decision Date: ____ (24A) Actual Initial Decision Date: ____
(25) Cost Comparison Preliminary Results Code: ____ (26) Cost Method Code: ____
(27) Number of Bids or Offers Received: ____

Section Four

(28) Contract Award or Solicitation Cancellation Date: ____
(29) Cost Comparison Final Result Code: ____ (30) Decision Rational Code: ____
(31) Contract-Type Code: ____ (31A) Prime Contractor Size: ____ (32) MEO Workyears: ____
(33) First Performance Period: ____ (34) Cost Comparison Period: ____
(35) Total In-House Cost ($000): ____ (36) Total Contract Cost ($000): ____
(37) Notification Date: ____ (37A) Scheduled Contract or MEO Start Date: ____

Section Five

(38) Contract/MEO Start Date: ____
(39) Permanent Employees Reassigned to Equivalent Positions: ____
(40) Permanent Employees Changed to Lower Positions: ____
(41) Employees Taking Early Retirement: _____
(42) Employees Taking Normal Retirement: ____
(43) Permanent Employees Separated: ____
(44) Temporary Employees Separated: ____
(45) Employees Entitled to Severance Pay: _____
(46) Total Amount of Severance Entitlements ($000): _____
(47) Number of Employees Hired by the Contractor: _____

Administrative Appeal

(48) Filed: ____ (49) Source: ____ (50) Result: ____

GAO Protest

(51) Filed: ____ (52) Source: ____ (53) Result: ____

Arbitration

(54) Requested: ____ (55) Result: _____

General Information

(56) Total Staff-Hours Expended: _____
(56A) Estimated Cost of Conducting the Cost Comparison: _____
(57) DoD Component Comments: _____
(58) Effective Date: _____
(59) (Leave blank)

Section Six

(60) Original Cost of Function(s) ($000): ____ (60A) Estimated Dollar Saving ($000): ____
(61) Contract or In-House Bid First Performance Period ($000): _____
(61A) Actual Contract Costs First Performance Period ($000): _____
(61B) Adjusted Contract Costs First Performance Period ($000): _____
(61C) Adjusted In-House Costs First Performance Period ($000): _____
(61D) Actual In-House Costs First Performance Period Only ($000): _____
(61E) (Leave blank)
(62) Contract or In-House Bid Second Performance Period ($000): _____
(62A) Actual Contract Costs Second Performance Period ($000): _____
(62B) Adjusted Contract Costs Second Performance Period ($000): _____
(62C) Adjusted In-House Costs Second Performance Period ($000): _____
(62D) (Leave blank)
(63) Contract or In-House Bid Third Performance Period ($000): _____
(63A) Actual Contract Costs Third Performance Period ($000): _____
(63B) Adjusted Contract Costs Third Performance Period ($000): _____
(63C) Adjusted In-House Costs Third Performance Period ($000): _____
(63D) (Leave blank)
(64) Contractor Change: ____ (65) New Contractor Size: ____
(66) Reason for Change: ____ (67) Contract Administrative Staffing: ____

Attachment 2 to Appendix D to Part 169a—Direct Conversion and Simplified Cost Comparison Record (DCSCCR)

Section One

(1) Direct/Simplified Cost Comparison Number: ____ (2) Approval Date: ____
(3) DoD Component Code: ____ (4) Command Code: ____ (5) Installation Code: ____
(6) State Code: ____ (7) CD Code: ____ (8) JIRSG Area Code: ____
(9) Title of Conversion/Comparison: _____
(10) DoD Functional Area Code(s): _____
(11) Prior Operation Code: ____ (12) Conversion/Comparison Status Code: ____
(13) Announcement—Personnel Estimate Civilian: _____
(14) Announcement—Personnel Estimate Military: _____
(15) Revised and/or Original Conversion/Comparison Number: _____
(16) PWS Scheduled Completion Date: ____ (16A) PWS Actual Completion Date: ____

Section Two

(17) Scheduled Solicitation Issuance Date: ____ (17A) Date Solicitation Issued: ____
(18) Solicitation-Type Code: ____ (19) Solicitation-Kind Code: ____
(20) Current Authorized Civilian: ____ (21) Current-Authorized Military: ____
(22) Baseline Annual Workyears Civ: ____ (23) Baseline Annual Workyears Mil: ____

Section Three

(24) Scheduled Initial Decision Date: ____ (24A) Initial Decision Date: ____
(25) Cost Comparison Preliminary Results Code: ____ (26) Cost Method Code: ____
(27) Number of Bids or Offers Received: ____

Section Four

(28) Contract Award or Solicitation Cancellation Date: ____
(29) Cost Comparison Final Result Code: ____ (30) Decision Rational Code: ____
(31) Contract-Type Code: ____ (31A) Prime Contractor Size: ____ (32) MEO Workyears: ____
(33) First Performance Period: ____ (34) Conversion/Comparison Period: ____
(35) Total In-House Cost ($000): ____ (36) Total Contract Cost ($000): ____
(37) Notification Date: ____ (37A) Scheduled Contract or MEO Start Date: ____

Section Five

(38) Contract Start Date: _____
(39) Permanent Employees Reassigned to Equivalent Positions: _____
(40) Permanent Employees Changed to Lower Positions: _____
(41) Employees Taking Early Retirement: _____
(42) Employees Taking Normal Retirement: _____
(43) Permanent Employees Separated: ____
(44) Temporary Employees Separated: ____
(45) Employees Entitled to Severance Pay: _____
(46) Total Amount of Severance Entitlements ($000): _____
(47) Number of Employees Hired by the Contractor: _____

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Administrative Appeal
(48) Filed: _____ (49) Source: _____ (50) Result: _____
GAO Protest
(51) Filed: _____ (52) Source: _____ (53) Result: _____
Arbitration
(54) Requested: _____ (55) Result: _____
(56) DoD Component Comments: _____
(57) Effective Date: ____ (58) (Leave blank): ____

Section Six

(59) Actual Contract Costs First Performance Period ($000): _____
(60) Actual Contract Cost Second Performance Period ($000): _____
(61) Adjusted Contract Costs Third Performance Period ($000): _____
(62) Contractor Change: ____ (63) New Contractor Size: ____
(64) Reason for Change: ____ (65) Contract Administrative Staffing: ____

Appendix E [Amended]

15. Appendix E is proposed to be amended by revising the heading to read: "Appendix E to part 169a–Public Law 96–342, as amended and by 97–252, Public Law 99–145, and Public Law 99–661 (Hereafter referred to as Section 502)"; paragraph (2)(D)(i) by changing "50" to "75"; paragraph (2)(D)(iii)(d) by changing "(a)(1)" to "(a)(2)" and changing "ten" to "45".

Dated: December 10, 1991.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 91–30348 Filed 12–26–91; 8:45 am]

BILLING CODE 3810–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80 and 86

[FRL–4087–8]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Evaporative Emission Regulations for Gasoline- and Methanol-Fueled Light-Duty Vehicles and Light-Duty Trucks and Heavy-Duty Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public workshop; changed date.

SUMMARY: This notice announces a change in the date for the public workshop related to EPA's proposed evaporative emission control regulations.

DATES: The public workshop will be held on January 28, 1992. It will start at 9 a.m. and will continue throughout the day as long as necessary to complete testimony. Comments will be accepted until February 11, 1992.

ADDRESSES: The public workshop will be at Ulrich Hall, Domino's Farms, 24 Frank Lloyd Wright Dr., Ann Arbor, Michigan 48105 (telephone 313–930–5032).

FOR FURTHER INFORMATION CONTACT: Mr. Alan Stout, Standards Development and Support Branch, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Telephone: (313) 741–7805.

For copies of support documents, contact: Ms. Margaret Borushko, (313) 668–4272.

SUPPLEMENTARY INFORMATION: On December 17, 1991 EPA published a notice in the **Federal Register** announcing a public workshop related to EPA's proposed evaporative emission control regulations (56 FR 65461). In response to requests from the Association of International Automobile Manufacturers and the Motor Vehicle Manufacturers Association, EPA is changing the date of the workshop from January 8, 1992 to January 28, 1992.

The official record of the workshop will be kept open for 14 days following the workshop to allow submission of rebuttal and supplementary testimony.

Mr. Richard D. Wilson, Director of the Office of Mobile Sources, will be the presiding officer of the workshop. A court reporter will be present at the workshop to make a transcript of the proceedings and a copy will be placed in the docket. Anyone desiring a copy of the transcript should make individual arrangements with the court reporter at the time of the workshop.

Dated: December 20, 1991.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 91–30970 Filed 12–26–91; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91–49; Notice 1]

RIN 2127–AE29

Federal Motor Vehicle Safety Standards, Electric Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice of proposed rulemaking requests comments on potential safety-related issues associated with the use of electric vehicles and solicits ideas on whether NHTSA should, and if so how it might, address those problems through possible new and amended Federal Motor Vehicle Safety Standards. The purpose of this notice is to solicit comments to help NHTSA determine what existing Standards may need modification to meet the needs associated with the introduction of significant numbers of electric vehicles and what new Standards may have to be written specifically for electric vehicles.

DATES: The comment closing date for the advance notice is March 27, 1992.

ADDRESSES Comments should refer to the docket number and notice number shown above and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Samuel Daniel, Office of Rulemaking, NHTSA (202–366–4921).

SUPPLEMENTARY INFORMATION:

I. Introduction

The National Highway Traffic Safety Administration (NHTSA) is reviewing the safety needs of electrically powered vehicles (EVs) and considering possible rulemaking. The agency is taking this action in response to the increasing attention being given EVs as a means of achieving a cleaner and healthier environment. Due primarily to Federal and State requirements based upon environmental considerations, EVs appear likely to be introduced into the nation's motor vehicle fleet in significant numbers within the next 3 to 5 years.

NHTSA has twice previously reviewed the Federal Motor Vehicle Safety Standards (FMVSS) to determine their appropriateness for electric vehicles and published the findings in response to Congressional requirements. On those occasions, the agency concluded that all FMVSS are applicable to EVs although some of the crash avoidance standards may have to be revised because they contain text specifically addressing internal combustion engines or engine components. The agency also concluded that additional safety standards may be required by unique EV safety hazards. Most of these unique problems concern battery re-charging and the management of battery materials during a collision.

No rulemaking was initiated by the agency following those earlier reviews because the prospect of significant numbers of EVs being produced was much more uncertain than it is now.

The purpose of this advance notice is to seek comments on any existing safety standards that may need to be amended to address EV safety problems, and any new standard that may need to be developed specifically for EVs. Under the National Traffic and Motor Vehicle Safety Act of 1966 (the Act), NHTSA is responsible for establishing safety standards for new vehicles and equipment to reduce motor vehicle accidents, deaths, and injuries. NHTSA is issuing this notice now because it wishes to have any necessary safety standards in place as soon as possible to support the safe introduction and operation of EVs. To delay rulemaking until significant production of EVs actually begins could not only fail to prevent avoidable safety problems, but also disrupt and impede the development and commercialization of EVs.

II. Background

The federal government has been involved in activities designed to stimulate the development and marketing of EVs since 1976 when the Electric and Hybrid Vehicle Research, Development, and Demonstration Act (Pub. L. 94–413) was enacted. Pursuant to that law, the Department of Energy (DOE) has sponsored the development of several hundred EVs and evaluated their performance over the past 10 years.

Public Law 94–413 also required the Department of Transportation (DOT) to conduct a study of the current and future applicability of the FMVSS and regulations to electric and hybrid vehicles. NHTSA published a study of EV safety requirements in 1978 entitled "Applicability of Federal Motor Vehicle Safety Standards to Electric and Hybrid Vehicles." The study found that most existing FMVSS were suitable, although some containing reference to internal combustion engines or engine components would require modifications. The study also determined that new FMVSS may be necessary to address safety hazards unique to EVs. Specifically, it identified one standard addressed to isolating the electrical system from the occupant compartment to reduce the electric shock hazard, and another to the management of battery systems to reduce the potential for electrolyte spillage and explosion during a crash.

In 1988, the Alternative Motor Fuels Act (Pub. L. 100–494) was enacted. It included a requirement for a review by DOT, DOE, and the Environmental Protection Agency (EPA) of their respective regulations and a report identifying those rules or standards that are barriers to introduction of EVs into commerce. DOT's report to Congress in response to Public Law 100–494 is titled "Federal Regulations Needing Amendment to Stimulate the Production and Introduction of Electric/Solar Vehicles." The report, published in January 1990, reviewed EVs with respect to NHTSA safety regulations and procedures. The study concluded that EV performance (*i.e.*, range and acceleration) has been the major obstacle to the introduction of EVs into the marketplace and that federal safety standards have not been a significant obstacle. The initial cost of EVs has been another deterrent since it is not competitive with that of conventional internal combustion engine vehicles due, in large part, to low production volumes. The review reached many of the same conclusions regarding the applicability of the FMVSS to EVs that were reported in 1978 in response to Public Law 94–413. The principal conclusions in the later report were that existing standards for brakes, tires, and windshield defrosting and defogging will probably need to be modified so that they are suitable as they apply to EVs. The report also concluded that new standards might be required, primarily in the area of crashworthiness, to address the safety problems that electric propulsion systems might pose during a collision. The three areas of concern were the potential for electric shock hazard, occupant contact with toxic electrolytes, and battery system explosion.

Interest in the suitability of Federal regulations as they affect EVs has increased in the last several years in response to the efforts of many major foreign and domestic automobile manufacturers to develop electrically powered passenger cars, trucks, and multi-purpose vehicles (MPV). The manufacturers are also preparing to build demonstration vehicles for evaluation in 2 to 3 years. However, at this time, detailed information concerning EV development by other than major manufacturers is difficult to obtain. Small manufacturers, and companies which convert conventional vehicles to electric power have built and tested prototype EVs in the recent past and made public their intent to market EVs in the near future. The electrical energy storage systems for the initial models planned for introduction in the next 2 years will primarily be advanced lead-acid batteries. Considerable research has been conducted on sodium and zinc-based batteries as well as several other systems. It is anticipated that production EV's with these types of battery systems will be built in 4 to 6 years.

The primary impetus for the introduction of large numbers of EVs into the U.S. marketplace is a regulation of the California Air Resources Board. Similar regulations are under consideration by other States. The California regulation requires that not less than two percent of a manufacturer's sales in the State (roughly 40,000 vehicles total) must be zero emission vehicles (ZEVs), beginning in model year 1998. This requirement will increase to 10 percent or roughly 200,000 vehicles beginning in model year 2003. The definition of a ZEV is a vehicle that emits no exhaust or evaporative emission of any kind. Currently, the electric vehicle is the only vehicle which meets these requirements. The only other alternative fuel expected to meet the ZEV requirements is hydrogen fuel cells. However, this technology is still in the research and development stage.

III. Potential Problem Areas and Possible Solutions

As stated earlier, the purpose of this notice is to solicit comments to help NHTSA determine whether and how the existing FMVSS should be modified to improve their suitability for EVs, and to determine the types of any new standards that may be developed to address unique EV safety hazards.

Information and comments are requested from users and suppliers, manufacturers, government agencies, and all other interested persons. Commenters should bear in mind that the Federal motor vehicle safety standards established by NHTSA under the Vehicle Safety Act are performance-oriented standards. In commenting on a particular option or in responding to a particular question, commenters are requested to provide all relevant and factual information to support their conclusions or opinions. This should include, but not be limited to, statistical data, estimated costs and benefits, necessary manufacturer lead times, and the availability of technology. Accident data should also be provided including data related to vehicle fires, injuries, and fatalities. The sources of such information should be identified.

NHTSA emphasizes that this is an advance notice of proposed rulemaking. If the agency were ultimately to issue a final rule, it would do so only after first issuing a notice of proposed rulemaking seeking further comments.

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A. Modifications to FMVSS to Improve Suitability

The FMVSS are organized into three main categories covering crash avoidance, crashworthiness, and post crash factors. Based on studies and reviews of the FMVSS's concerning their suitability for EVs, NHTSA has concluded that EVs should comply with the intent or purpose of all existing FMVSS. Several standards may require modifications, however, as some aspects of them are premised on types of technology, *e.g.*, internal combustion engines, not found in EVs. Specific comments are sought on how these standards might be modified. In addition, compliance of EVs with several existing safety standards is difficult, if not impossible, due to the characteristics of current EV designs, *e.g.*, range limitations, lack of on-board heat source, limited auxiliary power. Specific comments are sought on whether the performance requirements of these standards should be reduced for EVs, and, if so, what performance requirements would be appropriate. These issues are discussed in greater detail below.

Crash Avoidance Standards

1. FMVSS No. 102, *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect.* EVs with multi-speed transmissions that are not equipped with regenerative braking may have difficulty complying with the transmission braking provision of Standard No. 102 which requires transmission braking effects at speeds under 25 mph for automatic multi-speed transmissions.

The questions for which NHTSA seeks comment are:

(a) Should EVs be required to comply with the transmission braking effect requirements of Standard No. 102?

(b) What percentage of EVs are likely to be equipped with multi-speed automatic transmissions?

2. FMVSS No. 103, *Windshield Defrosting and Defogging Systems.* One provision of Standard No. 103 requires the defrosting and defogging system of a vehicle to be capable of melting specific amount of windshield ice within a specified time period after allowing a time period for engine warm-up. In the past, some EVs equipped with an on-board combustion heater have used them for defrosting and defogging systems, although there is no record of an Ev meeting the requirements of this portion of the standard. However, for EVs, the reference to engine warm-up is meaningless and may require revision.

The questions for which NHTSA seeks comments are:

(a) How should Standard No. 103 be modified to reflect the fact that an engine-warm-up period may not be needed and a warm-up time period for a combustion heater may need to be substituted?

(b) Should the requirements of Standard No. 103 be revised for EVs? If so, what requirements for EV defrosting and defogging would be appropraite? What effect would these modifications to Standard No. 103 have on EV safety?

3. FMVSS No. 105, *Hydraulic Brake Systems.* Standard No. 105 specifies requirements for hydraulic service brakes and associated parking brake systems. One of the standard's provisions is that the vehicle be placed in neutral for some of the tests. For EVs with direct drive systems and/or regenerative braking, this test procedure may be difficult to follow.

The questions for which NHTSA seeks comment are: do the test procedures of Standard No. 105 need to be modified for EVs equipped with regenerative braking and/or direct drive transmissions? If so, what should the modifications be?

Crashworthiness Standards

4. FMVSS No. 204, *Steering Control Rearward Displacement.* Standard No. 204 specifies the maximum rearward displacement of the steering control system during a 30 mph rigid barrier collision. It is anticipated that EVs converted from internal combustion engine (ICE) vehicles may have problems complying with Standard No. 204 and some, if not all, of the other crashworthiness standards that contain the rigid barrier crash test procedure. The converted EVs are usually at least 10 percent heavier than the ICE vehicle from which they were derived. This is potentially significant because the weight increase may result in more overall deformation of the EV during the crash test. Increased overall frontal deformation would increase the likelihood that the requirements of Standard No. 204 would not be met. For EVs having difficulty meeting the requirements of this standard, NHTSA notes that the Vehicle Safety Act provides that a manufacturer may apply for a 2-year temporary exemption for up to 2,500 vehicles per year on the basis that an exemption would facilitate the development and field evaluation of low-emission motor vehicles.

The question for which the agency seeks comments is: should NHTSA consider seeking an amendment of the Vehicle Safety Act that would increase the number of vehicles that the exemption covers per year and would lengthen, from 2 years to 3 years, the maximum term allowed for exemptions greater on the basis of substantial economic hardship? These amendments might facilitate the production of these low-emission vehicles.

5. FMVSS No. 208, *Occupant Crash Protection.* Standard No. 208 places limits on the head, thorax, and leg impact responses of test dummies placed in front outboard seats during a 30 mph rigid barrier crash test. Many EVs that are designed and built as EVs (and not converted from ICE to electric propulsion) are small and light. There is concern that many such vehicles may have problems meeting the requirements of Standard No. 208 due to limited crash energy management capability. As previously stated, EVs converted from ICE vehicles may have problems complying with the standards that contain barrier crash test procedures because of the weight increase that often occurs as a result of the conversion. Previous studies of the suitability of the FMVSS for EVs have concluded that compliance with the barrier crash test standards may present problems, but is practicable and necessary for safety. There are few crash test data available on late model EVs with which to objectively assess the stability of those existing vehicles to meet the requirements of the barrier crash test standards. For EVs needing significant modifications to meet the requirements of Standard No. 208, use of the temporary exemption procedure as an interim measure might be appropriate.

The questions for which the agency seeks comment are:

(a) See the question under paragraph 5 above.

(b) If the number of exempted vehicles per year were increased for EVs, what would be the overall effect on the safety for occupants of these vehicles?

Post-Crash Standards

6. FMVSS No. 301, *Fuel System Integrity.* Standard No. 301 specifies requirements for the integrity of motor vehicle fuel systems by limiting fuel spillage and fuel spillage rates for vehicles after rollover, frontal barrier, and rear moving barrier tests. Since many EVs may contain combustion heaters with a tank and lines, the agency concluded in its previous studies of the suitability of the FMVSS for EVs that EVs should meet the requirements of Standard No. 301. The fire and explosion hazard that results from spilled fuel may be greater for EVs because of the large number of ignition sources compared to ICE vehicles. As to battery liquids, although most electrolytes are not nearly as likely to ignite, they are generally highly corrosive and toxic.

The questions for which the agency seeks comment are:

(a) Should EVs comply with Standard No. 301 as it is presently written, or should it be modified for EVs? If Standard No. 301 should be amended for EVs, what should those modifications be?

(b) Should requirements similar to the fuel spillage and fuel spillage rate requirements of Standard No. 301 be adopted to regulate the spillage of liquid electrolyte?

B. New Standards To Address Potentially Unique Electric Vehicle Safety Hazards

New federal EV safety standards may be needed to address potential safety hazards associated with routine servicing of the vehicles, re-charging of the battery systems, and crashworthiness and crash avoidance problems. Routine service and re-charging safety hazards can result from the possibility of a malfunction of the propulsion system such as a short circuit. Unique crash avoidance safety hazards may result primarily from the operational characteristics of EVs. For example, most of the drive motors make very little noise compared to internal combustion engines. This may result in a safety hazard for pedestrians, particularly when an EV is backing up. Also, acceleration performance of some EVs, which has been poor in comparison to conventional vehicles, may cause these vehicles to pose a safety hazard when operating on limited access roads and while merging into high speed traffic. Crashworthiness safety hazards unique to EVs may be primarily associated with the possibility that battery system components, chemicals, and electrical energy may not be contained during a collision. DOE adopted several crash avoidance and crashworthiness safety regulations (10 CFR part 475) to address unique EV safety hazards. EVs purchased by DOE under its development and demonstration program mandated by Public Law 94–413, The Electric and Hybrid Vehicle Research, Development, and Demonstration Act, were required to comply with these regulations. The DOE safety regulations form the basis for several questions that this notice asks below.

1. New Standards To Address Safety Hazards Associated with Maintenance and Re-Charging

The questions for which the agency seeks comment are:

(a) Should NHTSA consider rulemaking that would standardize cables, connectors, receptacles, transformers, and procedures involved in the re-charging of the traction or propulsion battery systems? If so, have standards for these devices and procedures been adopted by the U.S. Military, Society of Automotive Engineers (SAE), American National Standard/Electronic Industries Association (ANSI), or any other organization that would adequately reduce the re-charging safety hazards and thus be suitable to serve as a basis for NHTSA rulemaking?

(b) Should a procedure be standardized through NHTSA rulemaking for disabling the main drive power circuitry during routine EV maintenance in order to minimize the danger of shock, explosion or fire being caused by carelessness or inexperience? If so, are there currently regulations in existence that effectively address this problem and thus would be suitable to serve as a basis for NHTSA rulemaking?

2. New Standards To Address Unique Crash Avoidance Safety Hazards

The questions for which the agency seeks comment are:

(a) Should NHTSA consider a requirement for an audible signal that operates when an EV's transmission is in reverse? Such a signal would increase the likelihood that any pedestrian in the vicinity of a backing EV is aware of the vehicle's movements.

(b) Should NHTSA consider rulemaking that would require battery vents to have flame barrier provisions to inhibit battery explosions?

(c) Should NHTSA develop a regulation to require venting of the battery compartment in order to minimize the safety hazards that may result from an accumulation of explosive gases?

(d) Should the agency consider developing a standard to require that EV's have a device that positively disconnects the battery and that is operable from the normal operator position?

(e) Should lower bound limits be placed on the accelerator and velocity performance of EVs to ensure that they have some minimum capability of operating in a traffic mix that includes conventional vehicles?

(f) Since some EVs may have a single speed transmission which would allow the vehicles to operate at the same speed in reverse as they do in forward, should NHTSA consider a regulation that places a limit on maximum reverse speed? If so, what should this speed be?

(g) For EVs with a single speed transmission (Standard No. 102 applies to multi-speed transmissions), should NHTSA consider a regulation to require these vehicles to have a braking effect at any speed less than 25 mph? If so, what should the deceleration rate be? Would the effects of regenerative braking, for vehicles so equipped, be enough to satisfy this requirement?

(h) Should the agency consider a regulation requiring EVs to have a warning device, located in the direct forward view of the driver, that operates in the event of an electrical malfunction in the propulsion system?

3. New Standards To Address Potentially Unique EV Crashworthiness Safety Hazards

The questions for which the agency seeks comment are:

(a) Should NHTSA consider issuing a standard to require that the electric propulsion circuit be electically isolated from the other conductive portions of the vehicle sufficiently to prevent injury due to a person's contacting any portion of the electric propulsion circuit while in contact with other portions of the vehicle?

(b) Should NHTSA require that EVs be capable of complying with the requirements of Standard No. 208, *Occupant Crash Protection,* and Standard No. 301, *Fuel System Integrity,* without battery material intruding into the vehicle's occupant compartment?

(c) Should NHTSA consider rulemaking to require that all battery materials remain outside the occupant compartment but inside the vehicle during a barrier crash test at a speed less than 30 mph? If so, what crash test speeds should be considered?

(d) Should NHTSA consider requirements to limit the spillage and spillage rate of liquid electrolytes during a barrier collision with requirements similar to the fuel spillage and fuel spillage rates specified in Standard No. 301, *Fuel System Integrity*?

(e) Should NHTSA consider requirements to limit exposure to battery elements that operate at temperatures in excess of a specified value. If so, what should the compliance test for such a requirement be?

(f) Should NHTSA consider developing a standard to require EVs to have a device which automatically disconnects the propulsion battery

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circuitry in the event of a high energy crash?

Rulemaking Analyses

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

This advance notice of proposed rulemaking is not subject to Executive Order 12291.

However, the subject matter of the advance notice is considered "significant" under DOT's regulatory policies and procedures. The notice concerns a matter of substantial public interest. NHTSA believes that most, if not all, of the EVs being built for demonstration purposes incorporate features that address some or all of the potential safety problems discussed in this notice. The fact greatly reduces the potential cost of compliance with whatever standards NHTSA may ultimately adopt. Based on available information, the agency believes that the costs associated with various potential requirements discussed in this notice might not be significantly more than those now being incurred by manufacturers of existing electrically powered vehicles if no standards were developed. However, the impacts of this action can only be estimated with a significant degree of precision when the agency decides which, if any, of the various requirements will form the basis for a rule. Therefore, a full preliminary regulatory evaluation (PRE) for this notice has not been prepared. One of the purposes of this advance notice is to seek comments and information from the public on the costs, benefits, and feasibility of the various options and thus provide the basis for a more definitive evaluation at the next stage of this proceeding.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 "Federalism" and it has been determined that the advance notice does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

The agency will review proposals for rulemaking that arise from this advance notice to determine whether they would have a significant effect upon the environment for the purposes of the National Environmental Policy Act.

Regulatory Flexibility Act

Review of this advance notice under the Regulatory Flexibility Act is not required because the Act does not apply to an advance notice of proposed rulemaking. Should the agency decide to proceed with a notice of proposed rulemaking, review of that notice under the Regulatory Flexibility Act will be made at that time

Comments

NHTSA solicits public comments on this notice. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length, 49 CFR 553.21. Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a letter setting forth the information specified in the agency's confidential business information regulation, 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on the notice will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date and it is recommended that interested persons continue to examine the docket material.

Those persons desiring to be notified upon receiprt of their comments in the docket should enclose a self addressed stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

A regulatory information number (RIN) is assigned to each regulatory action listed in the United Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Authority: 15 U.S.C. 1392, 1401, 1407; delegations of authority at 49 CFR 1.50 and 501.8.

Issued: December 23, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-30965 Filed 12-26-91; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Parts 571 and 572

[Docket No. 88-07; Notice 4]

RIN 2127-AD73

Anthropomorphic Test Dummy; Side Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: In October 1990, NHTSA amended Standard No. 214, *Side Door Strength*, to add procedures and performance requirements for a new dynamic test. In the test, a passenger car must provide protection to the thoracic and pelvic regions of a specified side impact dummy (SID) in a full-scale crash test. NHTSA indicated at the time of the side impact final rule that if ongoing studies demonstrated that two alternative dummies, BioSID and/or EuroSID, compared satisfactorily to SID, it would consider proposing those dummies as alternative devices in the future. NHTSA is issuing this ANPRM to request comments on the desirability and need for specifying alternative dummies in Standard No. 214, and to obtain relevant technical data which could be used to support development of a possible NPRM.

DATES: Comments must be received on or before March 12, 1992.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted (preferably in 10 copies) to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. To 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Stan Backaitis, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-4912).

SUPPLEMENTARY INFORMATION:

Background

On October 30, 1990, NHTSA published in the **Federal Register** (55 FR 45765) a final rule which amended Standard No. 214, *Side Door Strength*, to add procedures and performance requirements for a new dynamic test. In the test, a passenger car must provide protection to the thoracic and pelvic regions of a specified side impact dummy (SID) in a full-scale crash test in which the car (known as the "target" car) is struck in the side by a moving deformable barrier simulating another vehicle. The new requirements are phased-in by an annually increasing percentage of each manufacturing's production beginning on September 1, 1993, with full implementation effective September 1, 1996.

The test procedure includes placing anthropomorphic test dummies in the outboard front and rear seats of the target car. For the thorax, the performance limit is expressed in terms of an injury criterion known as the Thoracic Trauma Index (dummy) or TTI(d). This injury criterion represents the average of peak acceleration values measured on the lower spine and the greater of the acceleration values of the upper and lower ribs of the tests dummy. For the pelvis, the performance limit is specified in terms of the peak acceleration measured on the pelvis of the test dummy.

The October 1990 final rule was the culmination of more than a decade of research by the agency, beginning in the late 1970's. One of the major projects of that research was developing a side impact dummy (SID) that would be an appropriate human surrogate for measuring injury risk in a side impact. The agency considered whether the human injury risk of the particular impact situation could be determined from measurement of responses obtained from SID, and whether those specific responses possess biofidelity of response with human beings. The term "biofidelity" refers to how well a test dummy duplicates the responses of a human being in an impact.

TTI(d) and pelvic acceleration were developed by the agency, using cadaver tests, as empirical criteria for measuring injury risk in side impacts. The bases for these injury criteria are fully discussed in the October 1990 final rule amending Standard No. 214, TTI(d) and pelvic acceleration predict the probability of differing levels of thoracic injury and pelvic fracture, respectively, that a person would experience in a real-world crash. It should be noted that the two injury criteria do not address all types of injuries in a side impact. For example, they do not address head injuries or some types of abdominal injuries.

In order for SID, or any other test dummy, to be considered an appropriate human surrogate for measuring TTI(d) and pelvic acceleration in the side test procedure, the TTI(d) and pelvic acceleration measurements obtained from the dummy must be correlated to those which would be obtained if a human being were subjected to the same impact conditions. In developing SID, NHTSA examined the biofidelity of the SID's thorax and pelvic acceleration responses by a number of means, including simulated vehicle crash tests. The agency also carefully considered the durability and reliability of SID, its repeatability and reproducibility, and other factors to ensure its appropriateness for use in the standard No. 214 dynamic test. The basis for adopting SID is fully discussed in a companion final rule to the Standard No. 214 amendment, also published in the **Federal Register** (55 FR 45757) on October 30, 1990.

As part of its side impact rulemaking, NHTSA considered two alternative dummies to SID, EuroSID and BioSID. The EuroSID dummy was developed by a group of European research organizations under the auspices of the European Experimental Vehicles Committee (EEVC). The first EuroSID prototype dummy was completed in 1986. General Motors (GM) developed the BioSID dummy, in cooperation with the Society of Automotive Engineers. The first BioSID prototype dummy was completed in 1989.

In specifying the use of SID in the side impact final rule, NHTSA recognized that both BioSID and EuroSID have potential advantages over SID to the extent that they can provide considerably more measurements to assess injuries in side impact crashes than those available on SID. The agency also recognized that specification of EuroSID might help promote international harmonization. However, BioSID and EuroSID were still under development at the time of the side impact final rule, and NHTSA did not believe that the potential advantages of those dummies should lead to a delay in the rulemaking. The SID dummy was ready at the time of the final rule, and the agency concluded that a final rule specifying SID could result in significant safety benefits.

Purpoe of ANPRM

NHTSA indicated at the time of the side impact final rule that if ongoing studies demonstrated that BioSID and/or EuroSID compared satisfactorily to SID, it would consider proposing those dummies as alternative devices in the future. NHTSA is issuing this notice to request comments on the desirability and need for specifying alternative dummies in Standard No. 214, and to obtain relevant technical data which could be used to support development of a possible NPRM.

Alternative Test Dummies

The BioSID and EuroSID dummies were designed to meet different biomechanical response corridors than the SID. While the SID was designed to ensure biofidelity with respect to TTI(d) and pelvic acceleration only, the other dummies were designed to more extensive biomechanical response corridors developed by the International Standards Organization (ISO). NHTSA notes that while BioSID and EuroSID were not designed to the biomechanical response corridors of SID, initial evaluations of BioSID and EuroSID indicate acceptable biofidelity with respect to TTI(d) and pelvic acceleration. See Chapter IIIB of the agency's Final Regulatory Impact Analysis for the October 1990 final rule.

Based on a combination of pendulum, body-drop and sled tests, the ISO has defined biomechanical response corridors for the thorax, spine, pelvis, head, neck, chest displacement, shoulder and abdomen. Since BioSID and EuroSID are designed to have biofidelity in a larger number of areas, and provide for considerably more measurements to assess injuries in side impact crashes than those available on SID, they offer possible advantages for research purposes or for assessing aspects of a vehicle's side impact performance not currently addressed by Standard No. 214.

NHTSA and others have conducted considerable research concerning BioSID and EuroSID. In January 1990, in order to make an initial assessment of the suitability of these dummies for impact testing and to establish whether they can distinguish different impact environments, NHTSA conducted sled tests in which the dummies impacted flat walls which were padded with foams of various degrees of stiffness. The same tests were also conducted using SID. The BioSID and EuroSID produced acceleration responses having the same directional trends as the SID. There was very little difference between the three dummies in the choice of an optimal padding, the typical environment expected in future passenger cars. The differences in responses became progressively larger as the dummies impacted increasingly softer and harder surfaces.

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NHTSA discontinued tests with EuroSID after discovery of certain mechanical and functional shortcomings. For example, the ribs were bottoming out, i.e., reaching maximum deflection capability, in the sled tests, which may have invalidated deflection measurements. Also, the EuroSID specifications have changed since NHTSA tested the prototype.

EEVC is conducting a new test program of EuroSID which was scheduled for completion during the summer of 1991. NHTSA understands the EEVC will make the test data publicly available as soon as possible. Once NHTSA receives the test data from EEVC, it will place the information in the docket.

During 1990, NHTSA conducted a number of additional tests using BioSID. The tests evaluated repeatability, reproducibility, and durability. The agency also conducted five vehicle crash tests. Also during 1990, the Motor Vehicle Manufacturers Association (MVMA) conducted a comparative evaluation of BioSID and SID in a series of 12 vehicle crash tests. The MVMA tests are reported in the following paper: K. L. Campbell, R. J. Wasko, S. E. Hensen, "Analysis of Side Impact Test Data Comparing SID and BioSID," SAE 902319, Proceedings, 34th Stapp Conference, SAE, Warrendale, PA, November 1990.

The BioSID tested by NHTSA appeared to have adequate repeatability of TTI(d) and pelvic acceleration impact responses and, for two dummies tested, acceptable reproducibility. The BioSID also appeared to have adequate durability. NHTSA notes, however, that its BioSID test experience was limited to only two dummies.

While the BioSID appeared to be a relatively consistent test tool during sled tests, NHTSA has some concerns about the results of its and MVMA's vehicle crash tests. In at least one of the five NHTSA tests, the data trace contains unusually high rib impact acceleration. The acceleration was considerably above the mean range of comparable responses measured in other vehicles under the same test conditions and appeared inconsistent with spine acceleration measurements. A similar such high impact response occurred during the MVMA tests. NHTSA has, to date, been unable to explain the causes for the high rib impact responses in those tests.

The results of NHTSA's research on EuroSID and BioSID are set forth in a six-volume research report entitled "Evaluation of the BioSID and EuroSID." The report will be made available for public inspection in the agency's Technical Reference Division. The agency notes that only the first volume of the six-volume report contains data on the EuroSID. NHTSA could not complete further tests with the EuroSID due to the dummy's functional limitations discussed previously. However, the EEVC is continuing the test program with the upgraded EuroSID (EuroSID I). The EEVC data from those tests will be made available to the public as soon as they are received by NHTSA. Other information concerning EuroSID and BioSID has been placed in dockets 79-04, 88-06 and 88-07.

Possible Specification of EuroSID and BioSID in Standard No. 214

The possible specification of alternative dummies to SID in Standard No. 214 raises a number of issues. Since EuroSID and BioSID allow assessment of more types of potential injuries than SID, there could be safety advantages if manufacturers design their vehicles using one of those dummies. Moreover, permitting the use of EuroSID might promote international harmonization.

There are, however, possible disadvantages in permitting multiple dummies. Some of these are illustrated by the agency's experience in specifying the use of two alternative dummies in Standard No. 208, *Occupant Crash Protection*. Based on that experience, NHTSA is planning to propose specifying the exclusive use of one dummy in that standard.

Standard No. 208 originally specified only one test dummy, the Hybrid II dummy. The agency later allowed use of a newer, more advanced test dummy, the Hybrid III dummy. See 51 FR 26688; July 25, 1986. This dummy has the capability of monitoring almost four times as many injury-indicating parameters as the Hybrid II dummy.

In deciding to permit use of the Hybrid III dummy, the agency found that the two types of dummies were essentially equivalent, i.e., when both types of test dummies were tested in vehicles, only minimal differences in test results were shown between the two types of dummies. The importance of equivalence is that vehicles which pass or fail Standard No. 208 using one type of dummy will achieve essentially the same result using the other type of dummy. Based on this finding of equivalence, the agency permitted the manufacturers to specify either type of dummy for Standard No. 208 compliance testing.

There are, however, slight differences in test results using the two equivalent dummies. In practice, these slight differences may affect the compliance test results in marginal cases. For instances, a manufacturer may have used one or the other dummy type for its certification and advised the agency to use that same dummy tape in the agency's compliance testing. However, if the agency obtains a marginal noncompliance for the vehicle using this test dummy, the manufacturer may conduct a subsequent test of the same vehicle with the other dummy type. Assuming that the vehicle passes using the other dummy type, the manufacturer can then inform the agency that it has changed its mind and now wishes to certify the vehicle with this different dummy type. In this case, the agency would have to conduct repetitive crash testing with the other type of test dummy for that vehicle. The repetitive testing represents an unnecessary expenditure of agency resources (both funds and staff time).

This source of potential variability and repetitive testing is eliminated by simply specifying one particular type of test dummy. For this reason, the agency believes that Standard No. 214 should ultimately specify only one dummy. It may, however, be appropriate to specify more than one test dummy in Standard No. 214 for an interim period.

NHTSA notes that, in requesting comments on alternative dummies, it is not at this time contemplating changing the existing injury criteria specified in Standard No. 214, i.e., TTI(d) and pelvic acceleration, nor is it contemplating major changes in the specified test procedure, such as going from full scale vehicle tests to a composite test procedure. The agency is also not contemplating any changes to the SID dummy. The agency therefore requests that commenters address the issue of alternative dummies in the context of the existing injury criteria and test procedure.

In order to obtain comments on the desirability and need for specifying alternative dummies in Standard No. 214, and to obtain relevant technical data which could be used to support development of a possible NPRM, NHTSA is requesting comments and data from interested persons. To aid the agency in obtaining useful comments, this notice asks a number of questions and makes a number of requests for data. Fro easy reference, the questions or requests are numbered consecutively throughout the document. Commenters need not limit themselves to addressing the specific questions asked in this notice but are instead encouraged to address in addition any issues that NHTSA should consider in regard to permitting the use of alternative dummies in Standard No. 214.

In proving a comment on a particular matter or in responding to a particular question, interested persons are requested to provide any relevant factual information to support their conclusions or options, including but not limited to test data, statistical and cost data, and the source of such information.

A. Desirability of Specifying Alternative Dummies

1. Is there a need to specify alternative dummies in Standard No. 214, given the availability of SID for side impact protection assessment?

2. What benefits could be obtained by specifying one or more alternative dummies?

3. If manufacturers had the option of using alternative dummies to SID for certifying compliance with Standard No. 214, would they use them? If so, which one and for what purposes? Would they use the dummies to assess the potential for types of injuries not addressed by Standard No. 214?

4. Assuming that one of the major benefits of specifying alternative dummies is that manufacturers could design their vehicles in light of supplemental injury measurements not covered by Standard No. 214, should the agency consider specifying additional requirements, based on such measurements, in Standard No. 214? If not, would the manufacturers use those supplemental measurements in the absence of requirements? If the agency should consider such requirements, what requirements should be considered, and why? Which of the two alternative dummies is capable of making the necessary measurements for such requirements? Should any additional injury indicating measurements, if proposed, be time limited and/or excluded, such as the data after barrier separation? In answering this question, please provide any available data that would support specification of additional requirements, including the biomechanical basis for the injury criteria and estimates of benefits.

5. What problems could result from specification of multiple dummies in Standard No. 214? What are the legal, design, competitive, and cost implications? Would manufacturers attempt to ensure that their vehicles complied with the standard using each of the dummies? Assuming that there would be at least some differences in the measurements obtained by different dummies, would manufacturers choose for particular models the dummy which gives the most favorable test results?

6. To what extent would specifying alternative dummies promote international harmonization? Which of the dummies would promote international harmonization? What would have to be done by NHTSA/other regulatory authorities to achieve harmonization in this area?

7. Is NHTSA correct in its view that Standard No. 214 should ultimately specify only one dummy? If so, should the single dummy specified for some future time be other than SID? What approach should the agency follow in reaching that result? Should the agency permit multiple dummies for a specified period of time, and specify a single dummy at the end of that time? Taking into account consideration of vehicle leadtimes, how long a transition period should be provided? What single dummy should ultimately be specified? What specific problems might result if manufacturers found it necessary to use multiple alternative dummies during the transition period?

8. Both BioSID and EuroSID are more complicated than SID and involve higher costs. How should higher costs be considered in deciding whether to permit the use of these dummies, and in deciding whether to ultimately specify the sole use of one of these dummies? Please provide estimates of the costs associated with BioSID and EuroSID, including calibration and maintenance costs, and of any product cost increases that would be associated with use of these alternative test dummies.

B. Adequacy of EuroSID and BioSID

9. How adequate are EuroSID and BioSID for assessing TTI(d) and pelvic acceleration?

10. How should NHTSA assess the biofidelity, with respect to TTI(d) and pelvic acceleration, of EuroSID and BioSID? Would the SID biomechanical response corridors represent a sufficient assessment? Should any or all of the ISO biomechanical response corridors be used to assess biofidelity?

11. How should NHTSA assess the repeatability, reproducibility and reliability of EuroSID and BioSID? What information/data are available in these areas? Are the pendulum and sled impact severity ranges specified in the BioSID documentation adequate?

12. How adequate are EuroSID and BioSID for assessing the potential for injuries other than those addressed by TTI(d) and pelvic acceleration? In answering this question, please address biofidelity, repeatability, reproducibility and reliability, and indicate what information/data are available in these areas. Is it important for BioSID and EuroSID to have biofidelity for injury measurements not covered by Standard No. 214's requirements?

13. What experiences have users had with BioSID and EuroSID? Have users been satisfied with the mechanical and measurement integrity of the dummies in the Standard No. 214 test environment? Have any problems occurred with these dummies? In answering this question, please discuss how many dummies have been used and in what test environments.

14. Is the response of any one dummy more sensitive to positional placement and/or adjustment in a given seating position? If so, please identify the position for each dummy and also the measurement or the set of measurements that contribute to the sensitivity. Is the response of any one dummy particularly insensitive or sensitive to protrusions into the passenger compartment and their locations? If so, what set of measurements are affected and what are the injury criteria implications? What are the impact response and kinematic sensitivities of EuroSID and BioSID in off-axis (off-lateral) impacts? Is there evidence of changes in response due to binding, friction, or differences in inertial properties and, if so, how significant are they in the assessment of injury potential?

15. Repeated exposures to impact sometimes cause shifts in responses due to component deterioration. Have users of alternative dummies identified any components which have caused instability of impact responses? If so, please indicate the components and provide supporting data.

16. Please provide estimates on the durability of BioSID and EuroSID and the frequency of expected component replacements.

17. The pelvic "H" point plug in the BioSID dummy requires replacement after every impact. Does this cause any problems?

18. The BioSID specifications require dummy operation at a considerably narrower temperature range than SID. Please discuss whether the narrower temperature operating environment would create any problems for users.

19. If BioSID or EuroSID were specified as the sole dummy for use in Standard No. 214, would there be any sourcing problems?

C. Equivalence of EuroSID and BioSID to SID

20. How should NHTSA assess the equivalence of EuroSID and BioSID to SID, i.e., the extent to which the test results obtained using these alternative dummies are the same as obtained when

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using SID? Can equivalence be assessed using sled tests only? What ranges of impact speeds and padding stiffness should be used in such tests? Should vehicle crash tests also be used in assessing equivalency?

21. If BioSID and/or EuroSID produce different TTI(d) or pelvic acceleration measurements than SID, is it still possible to establish equivalence? Could transfer functions be developed to normalize the responses of alternative dummies to the SID response level? If so, please discuss the rationale, procedures and data that would be needed for such development. Alternatively, should the agency consider different performance levels for different dummies?

D. Other Issues

22. If NHTSA decided to permit use of BioSID and/or EuroSID, what injury assessment sensors, in addition to those provided on SID, should the dummies incorporate?

23. What calibration requirements should the agency consider for BioSID and EuroSID? Should calibrations be limited to the lateral direction or should other impact directions be considered? Please provide recommendations for other calibration requirements, including specified impact and direction, and supporting rationale.

Potential Regulatory Impacts

NHTSA has considered the potential burdens and benefits associated with specifying alternative test dummies in Standard No. 214. This ANPRM is not subject to Executive Order 12291. However, NHTSA believes that this advance notice is a "significant" rulemaking action under the Department of Transportation regulatory policies and procedures, since it concerns a matter in which there is substantial public interest.

The agency believes that the economic and other effects of specifying alternative test dummies in Standard No. 214 would be minimal. This belief is based on the assumption that the agency could make a finding of equivalence between the alternative dummies and SID. If the agency should specify the sole use of a different dummy than SID, it would provide sufficient leadtime to enable manufacturers to incorporate use of the new dummy in their normal design cycles. While BioSID and EuroSID would likely involve somewhat higher costs than SID, the costs associated with dummies are a very small part of the overall costs associated with the side impact dynamic requirements. The agency has determined that the cost impacts associated with this rulemaking action are so minimal that a full regulatory evaluation is not required.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Public Comments

NHTSA solicits public comments on this notice. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the advance proposal will be considered. To the extent possible, comments filed after the closing date will also be considered. Comments on the advance proposal will be available for inspection in the docket.

The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date. It is therefore recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

(15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50).

Issued: December 23, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-30964 Filed 12-26-91; 8:45 am]
BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB73

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Giant Garter Snake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list the giant garter snake (*Thamnophis gigas*) as an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). This snake inhabits localized wetland habitats in portions of the Central Valley of California. The species is endangered by habitat loss caused by numerous factors, primarily urbanization, agricultural, and flood control activities. This proposal, if made final, would extend the Act's protective provisions to this animal. The service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by February 25, 1992. Public hearing requests must be received by February 10, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, room E-1803, Sacramento, California 95825-1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Peter Sorensen (see **ADDRESSES** section) at 916/978-4866 or FTS 460-4866.

SUPPLEMENTARY INFORMATION:

Background

The giant garter snake (*Thamnophis gigas*) is one of the largest garter snakes, reaching a total length of at least 140 centimeters (cm) (55 inches (in)) (Van Denburgh 1922). Females are slightly longer and proportionately heavier (typically 500-700 grams (g)) (1.0-1.4 pounds (lb)) than males (George Hansen, independent researcher, pers. comm., 1991). Dorsal background coloration is brownish with a checkered pattern of black spots, separated be a yellow dorsal stripe and two light colored lateral stripes. Prominence of the three yellow strips is geographically variable. First described by Fitch (1940) as a subspecies of the northwestern garter snake (*Thamnophis ordinoides gigas*), the status of the giant garter snake, along with the of other western garter snakes, has undergone several taxonomic revisions including its placement as a subspecies of the western terrestrial garter snake (*Thamnophis elegans*) (Johnson 1947, Fox 1951), and then the western aquatic garter snake (*Thamnophis couchii*) (Fox and Dessauer 1965, Lawson and Dessauer 1979). In 1987, it was accorded the status of a full species, (*Thamnophis gigas*) (Rossman and Stewart 1987).

Endemic to valley floor wetlands in the Sacramento and San Joaquin valleys of California, the giant garter snake inhabits sloughs, ponds, small lakes, low gradient streams, and other waterways, such as irrigation and drainage canals, where it feeds primarily on small fishes and frogs. Habitat requisites consist of (1) adequate water during the snake's active season (early-spring through mid-fall) to provide food and cover, (2) emergent, herbaceous wetland vegetation, such as cattails and bulrushes, for escape cover and foraging habitat during the active season, (3) grassy banks and openings in waterside vegetation for basking, and (4) higher elevation uplands for cover and refuge from flood waters during the snake's dormant season in the winter (California Department of Fish and Game (CDFG), unpubl. data). Giant garter snakes typically are absent from larger rivers and other water bodies that support large, predatory fish, and from wetlands with sand, gravel, or rock substrates (*ibid.*). Riparian woodlands with excessive shade do not provide suitable habitat because of the lack of basking sites and/or prey populations.

The giant garter snake inhabits small mammal burrows above prevailing flood elevations throughout its winter dormancy period (November to mid-March). Giant garter snakes typically select burrows with sunny aspects (along south and west facing slopes). Upon emergence, males immediately begin wandering in search of mates (George Hansen, pers. comm., 1991). The breeding season extends through March and April, and females give birth to live young from late July through early September (*ibid.*). Clutch size is variable, ranging from 10 to 46 young (*ibid.*). At birth, young average about 25 cm (10 in) and 3-5 g (0.1-0.18 ounces (oz)). Upon birth, young immediately scatter in search of food. In rice growing regions, young snakes are found more commonly in rice fields than in adjoining irrigation and drainage canals (*ibid.*). Although growth rates are variable, young typically more than double in size by 1 year of age (*ibid*). Sexual maturity averages 3 years of age in males and 5 years for females (*ibid.*).

Fitch (1940) described the historical range of the species as extending from the vicinity of Sacramento and Contra Costa Counties southward to Buena Vista Lake, near Bakersfield in Kern County. Prior to 1970, the giant garter snake was recorded historically from only 16 localities (Hansen and Brode 1980). With five of these localities clustered in and around Los Banos, Merced County, the paucity of early records makes it difficult to determine precisely the species' former range. Nonetheless, these records coincide with the historical distribution of wetland habitats. Reclamation of wetlands for agricultural and other purposes has extirpated the species from the southern portion of its range, including the former Buena Vista Lake and Kern Lake in Kern County, and probably also the historic Tulare Lake and other wetlands in Kings and Tulare Counties.

The current range of the giant garter snake extends from near Burrell, Fresno County, northward to the vicinity of Gridley, Butte County, (Hansen and Brode 1980). Unpublished studies sponsored by the California Department of Fish and Game indicate that giant garter snake populations currently are distributed in the rice production zones of Sacramento, Sutter, Butte, Colusa, and Glenn Counties; within portions of the Yolo Bypass and Putah Creek in Yolo County; along the eastern fringes of the Sacramento-San Joaquin River delta from the Laguna Creek-Elk Grove region of central Sacramento County southward to the Stockton area of San Joaquin County; in the north and south Grasslands district of Merced County; and in the Mendota area of Fresno County.

Within these regions, giant garter snake populations occur discontinuously in isolated patches of valley floor habitat, often in association with agricultural water delivery and drainage facilities. Extant populations are clustered in 11 areas, geographically and genetically isolated from one another (CDFG, unpubl. information). The species has been extirpated from 5 of the 16 localities known to exist prior to 1970. The 11 extant population clusters largely coincide with historical riverine flood basins throughout the Central Valley. Some of these clusters consist of numerous subpopulations, whereas others are limited to as few as one or two populations. The degree of genetic interchange within each of these 11 clusters is variable, depending on the number and quality of movement corridors connecting the constituent populations. Although other undiscovered populations probably remain, some of the known populations within these clusters probably have disappeared since their discovery (*ibid.*). Most known giant garter snake populations appear to support few individuals due to limited extent and quality of habitat (*ibid*).

The species appears absent from most or all of the northern portion of the San Joaquin Valley, where the floodplain of the San Joaquin River is restricted to a relatively narrow trough by alluvium from tributary rivers and streams. This apparent 100 kilometer (km) (62 mile (mi)) gap in its distribution separates populations in Merced County from those along the eastern fringes in the Sacramento-San Joaquin River delta (the Delta) in San Joaquin County (Hansen and Brode 1980). Suitable habitat for the giant garter snake has been eliminated from essentially all of the Delta (CDFG, unpubl. data).

On September 18, 1985, the Service published the Vertebrate Wildlife Notice of Review (50 FR 37958), which included the giant garter snake as a category 2 candidate species for possible future listing as threatened or endangered. Category 2 candidates are those species for which information contained in Service files indicates that proposing to list is possibly appropriate but additional data is needed to support a listing proposal. In the January 6, 1989, Animal Notice of Review (54 FR 554), the Service again included the giant garter snake as a category 2 candidate, soliciting information on the status of this species. On September 12, 1990, the California-Nevada Chapter of the American Fisheries Society petitioned the Service to list the giant garter snake as an endangered species. The Service published a 90-day petition finding on March 22, 1991 (56 FR 12146), which

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concluded that the petition presented substantial information indicating that listing may be warranted. The decision to propose this species for listing is based on information contained in the petition, referenced in the petition, and otherwise available to the Service. This proposal constitutes the final finding on the petitioned action.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists of threatened and endangered species. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the giant garter snake (*Thamnophis gigas*) (Fitch) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Examination of the historical localities from which giant garter snakes were recorded and the historic losses of wetland habitats throughout the Central Valley indicates that the current distribution and abundance of the species is much reduced from former times. As discussed above, agricultural and flood control activities have extirpated the giant garter snake from the southern one third of its range in former wetlands associated with the historic Buena Vista, Tulare, and Kern lakebeds. These lakebeds once provided the largest single block of wetland habitat in California. These shallow lakes, typically less than 12 meters (m) (40 feet (ft)) deep, supported vast expanses of ideal giant garter snake habitat, consisting of cattail and bulrush dominated marshes. Tulare and Buena Vista lakebeds alone covered over 2,000 square km (over 800 square mi) indicating that suitable habitat was prevalent over much of the San Joaquin Valley (San Joaquin Valley Drainage Program 1990).

Vast expanses of bulrush and cattail floodplain habitat also typified much of the Sacramento Valley historically (Hinds 1952). Prior to reclamation activities beginning in the mid to late 1800's, about 80 percent of the Sacramento Valley was subject to seasonal overflow flooding in broad, shallow flood basins that provided expansive areas of giant garter snake habitat (*ibid.*).

Several other studies on the historical and current extent of wetlands in the Central Valley shed additional light on the extent of decline in giant garter snake habitat. Of the estimated 1.6 million hectares (ha) (4.0 million acres (ac)) of wetlands originally present throughout the Central Valley, about 101,175 to 153,300 ha (250,000 to 378,800 ac) (6 to 9 percent) currently remain (Jones and Stokes Associates 1987, U.S. Fish and Wildlife Service (USFWS) 1989). Because much of the current wetland acreage consists of artificial habitats (e.g., managed duck hunting clubs, irrigation drainwater evaporation ponds), the loss of natural wetland communities probably exceeds 99 percent (Jones and Stokes Associates 1987). About 36,000 ha (88,963 ac) support emergent vegetation suitable for the giant garter snake (Kempka and Kollasch 1990). Field studies indicate, however, that giant garter snakes are absent from most areas with seemingly suitable habitat (CDFG, unpubl. data). This may be a result of habitat fragmentation and/or the presence of predatory fish. Therefore, only a small percentage of extant wetlands provides habitat for the giant garter snake.

A number of land use practices and other human activities currently threaten the survival of the giant garter snake throughout its range. Although some giant garter snake populations have survived in artificial habitats created by agricultural and flood control activities, many of these altered wetlands are now threatened with rapid urban development. Within the range of the species, development of several new cities are proposed, including three in San Joaquin County, one in Stanislaus County, and one in Sutter County. Numerous other expansions of existing cities are proposed as well (see below). Although the potential impact of these new and expanded cities on the giant garter snake is unknown at this time because environmental studies are as yet incomplete, these project proposals occur in areas of known or potential habitat.

The largest extant population inhabits extensive agricultural lands in the American Basin, a large flood basin at the confluence of the Sacramento and American Rivers, in Sacramento and Sutter Counties. Throughout this area, reconnaissance level surveys (USFWS 1991) indicate that about 570 ha (1,400 ac) of giant garter snake habitat exist in the form of man-made irrigation channels and drainage ditches, as well as an undetermined acreage of suitable habitat within nearly 5,260 ha (13,000 ac) of adjoining rice fields. The giant garter snake also uses an undetermined amount of habitat at higher elevations to escape from winter flooding during the inactive winter phases of the snake's like cycle. The U.S. Army Corps of Engineers (Corps) and local project sponsors are proposing a minimum of 400-year flood protection for this 22,260 ha (55,000 ac) agricultural area, as part of its American River Watershed Investigation. The U.S. Fish and Wildlife Service (USFWS 1991) anticipates that this flood control proposal would result in the conversion of most or all of this area to urban land uses within the next 50 years. Absent adequate mitigation, this project could extirpate the giant garter snake from the American Basin (CDFG, unpubl. information).

Other future and ongoing activities throughout the American Basin also may adversely impact the species. These include the North Natomas Community Drainage System, proposed by the City of Sacramento, which could eliminate or degrade about 42 km (26 miles) of giant garter snake habitat along existing canals and ditches, and additional rice field habitat (CDFG, unpubl. information). Potential effectiveness of a proposed mitigation plan remains undetermined. Although at the conceptual planning stage, the proposed Sutter Bay project at the north end of the American Basin could eliminate or degrade about 68 km (42 miles) of giant garter snake habitat associated with existing agricultural land (*ibid*). The proposed South Sutter Industrial Center, located near the Sutter Bay project, could eliminate another 14.5 km (9.0 miles) of aquatic habitat. The Sacramento Metropolitan Airport is proposing about 777 ha (1,920 ac) of development on agricultural and vacant lands that potentially could result in major adverse impacts to the species, including the loss of about 14.5 km (9.0 miles) of canal habitat and 607 ha (1,500 ac) of rice fields, as well as the disruption of movement corridors (*ibid*). Any highway improvement or construction projects, or the planned extension of the Sacramento Regional Transit system in this area, also increases the likelihood for major impacts to the species, including elevated mortality from increased traffic on local roads and highways.

In West Sacramento, Yolo County, local governments and the Corps are proposing the Sacramento Metropolitan Area Investigation, a 400-year flood protection project for over 3,240 ha (8,000 ac) of agricultural lands (USFWS, unpubl. information). As in the American Basin, improved flood protection would enable urban development to occur in agricultural lands throughout the 100-year life of the project. Within the study area, an estimated 45 km (28 miles) of small waterway habitat potentially inhabited by the giant garter snake would be threatened.

In the Laguna Creek-Elk Grove region of Sacramento County, residential developments and associated stream channelization and road improvement projects pose a severe threat to the few populations known to still survive in this region. These proposed and ongoing projects, sponsored by private interests and local governments, include 11 residential developments. Other proposals in Sacramento County that could adversely affect the giant garter snake include the closure of Mather Air Force Base; the North Delta Water Management Project, proposed by the California Department of Water Resources; and other residential developments.

Elsewhere, numerous other proposed or ongoing projects could adversely affect the giant garter snake. These include new and expanded residential developments in six counties, and wastewater treatment plant expansions, landfill expansions, water development projects, drainwater conveyance projects, and flood control projects in the San Joaquin Valley.

Ongoing maintenance of aquatic habitats for flood control and agricultural purposes poses additional threats to the giant garter snake throughout its range. Local agencies routinely control vegetative cover along canal banks and stream courses to maintain water conveyance capabilities. These activities eliminate or prevent the establishment of habitat characteristics required by this cover dependent species. Because many giant garter snake populations currently are restricted to such artificially created and maintained habitats, these vegetation control activities fragment and isolate available habitat, and prevent dispersal of snakes among habitat units.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Although giant garter snakes do not seem to be particularly popular among reptile collectors, the species has been found for sale in pet shops (John Brode, CDFG, pers. comm., 1991). Federal listing could raise the value of the giant garter snake within reptilian trade markets and increase the threat of unauthorized collection above current levels. Even limited interest in the species among collectors could pose a serious threat to smaller populations that contain few individuals.

C. Disease or Predation

The real or potential impact of disease on the giant garter snake is unknown. However, contamination of irrigation and drainage canals with agricultural and urban pollutants could affect the health of resident giant garter snakes. Less healthy individuals may be more prone to disease and infection.

A number of native mammals and birds are known or likely predators of giant garter snakes, including raccoons, skunks, opossums, foxes, hawks, egrets, and herons. Giant garter snakes of all sizes commonly are found scarred or injured, apparently from attacks by herons and egrets (George Hansen, pers. comm., 1991). In general, giant garter snakes have adapted physically and behaviorally to withstand predation levels from these animals. However, in situations where giant garter snake habitats have become fragmented, isolated, and otherwise impacted by human activities, increased predatory pressure may become excessive, especially where alien species, such as rats and feral and domestic house cats and dogs are introduced. These additional threats likely become particularly acute where urban development immediately abuts giant garter snake habitat. Although the actual impact of predation under such situations has not been studied, the likelihood for serious impact exists.

To date, studies indicate that the giant garter snake is typically absent from waters supporting large predatory fishes. Although most adult giant garter snakes are too large to represent suitably sized prey items for large fish, subadult snakes undoubtedly sustain mortality rates high enough to prevent sustainable populations. The artificial introduction of such alien game fish species as striped bass, largemouth bass, sunfish, crappie, and various catfish species, combined with the elimination of suitable shoreline vegetative cover from stream channelization and levee construction projects, may have contributed to the elimination of the giant garter snake from many areas throughout its former range, particularly in the Sacramento-San Joaquin River delta.

D. The Inadequacy of Existing Regulatory Mechanisms

The primary cause of the decline in giant garter snake numbers is believed to be the loss of habitat from human activities. Federal, State, and local laws and regulations have not proven adequate to arrest the historical and ongoing losses of giant garter snake habitat.

The National Environmental Policy Act and section 404 of the Clean Water Act represent the primary Federal laws that could afford some protection for the giant garter snake. These laws, however, do not protect candidate species *per se*. Nationwide Permit Number 26 (33 CFR part 330.5(a)(26)) was established by the Corps to facilitate issuance of permits for discharges of fill material into wetlands up to 4.0 ha (10 ac). For project proposals falling under Nationwide Permit 26, the Corps has been reluctant to withhold authorization unless a listed threatened or endangered species is known to be present, regardless of the significance of other wetland resources. Candidate species receive no special consideration. This situation may be attributable in part to the absence of any requirement to assess cumulative impacts of implementing this regulation on wetlands and candidate species such as the giant garter snake.

Pursuant to 33 CFR 323.4, the Corps also has promulgated regulations that exempt various farming, forestry, and maintenance activities from the regulatory requirements of section 404. Based on past jurisdictional determinations conducted by the Corps, many of the irrigation and drain water canals, and other agricultural wetlands, such as rice fields that provide giant garter snake habitat, are not subject to section 404 regulation. For example, in the recent jurisdictional determination for the American River Watershed Investigation, the Corps found that the 373 km (232 miles), totalling 515 ha (1,272 ac) of canal and waterway habitat in the American Basin, only 153 ha (379 ac) constituted jurisdictional wetlands. Moreover, most maintenance activities on agricultural lands are not subject to State laws or local ordinances. Thus, legal mechanisms often are not available to protect giant garter snake populations inhabiting artificially created and maintained wetlands.

The California Environmental Quality Act and California Endangered Species Act are the primary environmental legislation at the State level that potentially benefit giant garter snakes. The snake was listed as a threatened species by the State in 1971. Although these State laws provide a measure of protection to the species and have resulted in the formulation of mitigation measures to reduce or offset impacts for projects proposed in certain giant garter snake habitats, these laws do not adequately protect the species in all cases. Numerous activities do not fall under the purview of this legislation, such as projects proposed by the Federal government, and State statutory

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exemptions. Further, these laws at times are not adequately enforced. Where overriding social and economic considerations can be demonstrated, these laws allow project proposals to go forward, even in cases where the continued existence of the species may be jeopardized, or where adverse impacts are not mitigated to a point of insignificance.

Five of the known populations occur on State and Federal lands managed for wildlife purposes. These are: Gray Lodge Waterfowl Management Area, Kesterson National Wildlife Refuge (NWR), San Luis NWR, Los Banos Wildlife Area, and Mendota Wildlife Area. Although the giant garter snake populations in these areas appear relatively secure, these populations may be vulnerable to potentially incompatible management practices and flooding. For example, recent surveys indicate that giant garter snake population levels have not recovered from the effects of heavy flooding in 1986 at Mendota Wildlife Area (CDFG, unpubl. data).

E. Other Natural or Manmade Factors Affecting its Continued Existence

As discussed under Factors A, C, and D, agricultural activities affect giant garter snakes positively and negatively. Most of the historical habitat loss was caused by the diking and draining of wetlands for agricultural purposes. Agricultural conversions, including maintenance activities, incrementally continue to eliminate giant garter snake habitat. Particularly in the southern portion of its range, intensive control of vegetation along water delivery and drainage facilities progressively is eliminating remaining habitat and preventing reestablishment of former habitat. Application of fertilizers and pesticides, although not yet studied as potential threats to the species, could degrade water quality and reduce prey populations to the extent that giant garter snake populations are reduced or eliminated. In addition, selenium contamination of irrigation drainwater throughout portions of the San Joaquin Valley may pose a threat to some populations.

On the other hand, the species is known to inhabit irrigation and drainage canals where adequate vegetative cover remains. In fact, the majority of known populations occur in artificial wetlands associated with agricultural land uses. This is particularly true in certain rice production areas, where giant garter snakes inhabit water management facilities and adjoining rice fields. As described above, the largest extant population of giant garter snakes occurs in association with rice production areas of the American Basin. The seasonal drying of rice ponds and canals incidentally may benefit the giant garter snake by preventing establishment of populations of large predatory fish.

The recent 5-year drought in California has resulted in drying of many seasonal wetlands that potentially provide habitat for the giant garter snake during "normal" water years. Some populations inhabiting seasonal and intermittent wetlands probably have become extirpated or greatly reduced by this prolonged drought. In response to State-wide water shortages for agricultural, municipal, and industrial uses, water management agencies, including the California Department of Water Resources and U.S. Bureau of Reclamation, have announced major reductions in delivery for agricultural uses (Grubb 1991). Reduced levels of water delivery for agricultural purposes could adversely impact giant garter snake populations dependent upon agricultural water. In addition, the Department of Water Resources has begun acting as a broker to facilitate transfer of water from districts with extra supplies to those with inadequate reserves (Schnitt 1991). Water districts from around the State are offering to purchase water from water districts in rice production regions of the Sacramento Valley with superior water rights (*ibid.*). If such transactions are approved, these additional reductions in water delivery could accentuate the impact of drought on the giant garter snake.

Some giant garter snake populations also are vulnerable to adverse effects from flooding. As described above, giant garter snakes seek habitat at higher elevations in which to retreat during the winter dormancy period. Flooding of these retreat areas exposes inactive snakes to the threat of drowning and increased predation. Past, proposed, and ongoing projects have reduced greatly the availability of winter retreat habitat. Surveys conducted after the heavy flooding associated with the February 1986 storm indicated that several giant garter snake populations throughout the southern and central regions of its range had been eliminated or greatly reduced because of a lack of winter retreat habitat (CDFG, unpubl. data).

Livestock grazing also represents a threat to the species. The giant garter snake requires dense vegetative cover in proximity to foraging and basking areas in which to seek refuge from predators and other forms of disturbance. The attraction of livestock to water sources appears to have contributed to the elimination and reduction of the quality of available habitat throughout portions of the species' range (George Hansen, unpubl. report, 1982).

Habitat loss throughout the range of the giant garter snake has resulted in a patchwork of fragmented and isolated habitat remnants. Because of small population size and limited habitat availability, most of the remaining populations appear vulnerable to extirpation from unpredictable environmental, genetic, and demographic events. Island biogeographic theory suggests that extinction rates increase as habitat size decreases and distance from neighboring populations increases. Most remaining giant garter snake populations are small and geographically isolated from one another. These factors predispose such populations to mortality and emigration rates that exceed birth and immigration rates. Further, as remaining habitat units decrease in size, edge effects become increasingly important; smaller habitats have less space available to buffer adverse impacts from outside influences, such as predation, human disturbance, livestock grazing, or chemical contamination. In addition, giant garter snake populations in smaller habitat fragments often are more susceptible to the effects of chance environmental events, such as fire, flooding, and drought.

The breeding of closely related individuals can cause genetic problems in small populations, particularly the expression of deleterious genes (known as inbreeding depression). Individuals and populations possessing deleterious genetic material are less able to cope with environmental conditions and adapt to environmental change. Further, small populations are subject to the effects of genetic drift (the random loss of genetic variability). This phenomenon also reduces the ability of individuals and populations to successfully respond to environmental stresses. Overall, these genetic factors could influence the survivability of the many smaller, genetically isolated giant garter snake populations.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred course of action is to list the giant garter snake as endangered. The current restriction of most giant garter snake populations to small patches of variable quality, privately-owned habitat, and the numerous ongoing and proposed development projects within its range are imminent threats to the species. Because the giant garter snake is in danger of extinction throughout all or a significant portion of its range, it fits the definition of endangered as defined by the Act. Critical habitat is not being designated for this species for reasons discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for the giant garter snake. Five giant garter snake populations occur on wildlife refuges managed by the Service or California Department of Fish and Game. These agencies are aware of the presence of the species and the importance of protecting the giant garter snake and its habitat. However, most populations on private lands typically contain low numbers of individuals and occur in small patches of variable quality habitat. This situation renders the species vulnerable to acts of vandalism, such as trapping, habitat manipulation, poisoning, or collection, which could seriously deplete population levels and cause irreparable harm. Although fish eating snakes are relatively difficult to keep in captivity, giant garter snakes have been found for sale in pet shops (John Brode, pers. comm., 1991). Considering that rare and listed species typically generate high levels of demand relative to supply in reptilian trade markets, the Service anticipates that the threat of unauthorized collection would increase were the giant garter snake to be listed by the Federal government. Publication of maps and precise descriptions delineating critical habitat areas would likely lead to increased collection of this species and violation of section 9 of the Act.

As discussed above under Factor D, many of the artificially created habitats inhabited by giant garter snakes, such as irrigation and drainage canals, do not fall under Federal jurisdiction. Absent jurisdiction by Federal agencies, designation of critical habitat on private land does not afford additional protection to listed species. Where Federal jurisdiction does extend to populations on private lands, habitat protection will be addressed through the recovery process under section 4 of the Act and through the formal consultation requirements under section 7 of the Act. Therefore, the Service finds that designation of critical habitat is not prudent at this time, because such designation would increase the degree of threat from vandalism and collecting and because it is unlikely to aid in conservation of the giant garter snake.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Giant garter snake populations inhabiting wetlands on private and public lands would fall under the regulatory jurisdiction of the Corps, pursuant to section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act. As described under Factor A above, numerous commercial developments currently are proposed in known and likely giant garter snake habitat. Pursuant to 33 CFR 330.5(b)(3), project proposals in giant garter snake habitat otherwise allowed under nationwide permit authority would be subject to scrutiny under section 7 of the Endangered Species Act and imposition of special permit conditions needed to avoid and/or offset impacts incurred by the projects. Pursuant to 33 CFR part 325, individual permits, letters of permission, and regional permits issued by the Corps also would be subject to consultation requirements under section 7 of the Act. In addition, any water development projects proposed by Federal agencies, such as the Department of the Army and U.S. Bureau of Reclamation, would fall under the purview of section 7 of the Act. The American River Watershed Investigation, Sacramento Metropolitan Area Investigation, and the Merced County Streams project, among other Federal project proposals, may require modifications to avoid and/or offset impacts to the giant garter snake should this listing proposal be made final. As discussed above, the giant garter snake is known to occur on several waterfowl management areas owned by the State or Federal government. Habitat manipulation and recreational activities on these areas may be affected by the regulatory requirements of sections 7, 9, and 10 of the Act.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or

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suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor at the Sacramento Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Peter C. Sorensen (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17 subchapter B of chapter I, title 50 of the Code Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under REPTILES, to the list of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Reptiles:							
Snake, giant garter	*Thamnophis gigas*	U.S.A (CA)	Entire	E		NA	NA

Dated: December 5, 1991.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–30805 Filed 12–26–91; 8:45 am]

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Notices

Federal Register
Vol. 56, No. 249
Friday, December 27, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

December 20, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act [44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Office, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 720–2118

Revision

• *Agricultural Marketing Service*

Reporting Requirements Under Regulation Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products
DA 125, 132, 155
On occasion
Business or other for-profit; 11,100 responses; 660 hours
Lynn G. Boerger, (202) 720–9381

• *Animal and Plant Health Inspection Service*

Domestic Quarantines
PPQ Forms 527, 530, 537, 540, 543
On occasion
State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; 830,194 responses; 78,223 hours
Andrea M. Elston, (301) 436–4478

• *Agricultural Marketing Service*

Apricots Grown in Designated Counties in Washington—Marketing Order No. 922
On occasion; Annually; Biennially
Farms; Businesses or other for-profit; Small businesses or organizations; 186 responses; 34 hours
Gary D. Rasmussen, (202) 720–9918

• *Agricultural Marketing Service*

Peaches Grown in Designated Counties in Washington, Marketing Order No. 921
On occasion
Farms; Businesses or other for-profit; Small businesses or organizations; 326 responses; 62 hours
Gary Rasmussen, (202) 720–9918

• *Agricultural Marketing Service*

Melons Grown in South Texas, Marketing Order No. 979
Recordkeeping; On occasion; Monthly; Annually
Farms; Businesses or other for-profit; Small businesses or organizations; 200 responses; 27 hours
Robert F. Matthews, (202) 720–2431

Extension

• *Agricultural Cooperative Service*

Compliance Review (Farmer Cooperatives)
ACS–40
On occasion
Businesses or other for-profit; 30 responses; 15 hours
Andrew A. Jermolowicz, (202) 690–2362

Reinstatement

• *Farmers Home Administration*

7 CFR 1965–A, Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases
Forms FmHA 440–2, 9, 26, 443–16, 465–1, 5 and 1965–11, 13, 15
On occasion
Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations; 29,516 responses; 18,971 hours
Jack Holston, (202) 720–9736

• *Farmers Home Administration*

7 CFR 1943–A, Insured Farm Ownership Loan Policies, Procedures, and Authorizations
FmHA 443–17
On occasion
Individuals or households; Farms; 357 responses; 138 hours
Jack Holston, (202) 720–9736

• *Animal and Plant Health Inspection Service*

Application/Certification Purebred Animals Imported for Breeding—VS Form 17–338
VS Form 17–338
On occasion
Farms; 450 responses; 113 hours
Dr. Samuel Richeson, (301) 436–8590

Larry K. Roberson,
Deputy Departmental Clearance Officer.
[FR Doc. 91–30957 Filed 12–26–91; 8:45 am]
BILLING CODE 3410–01–M

Food Safety and Inspection Service

[Docket No. 90–025N]

Livestock and Poultry Connected With Biotechnology Research

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice (1) reaffirms a previously published policy statement concluding that animals involved in biotechnology experiments are research animals and are, therefore, subject to the existing regulations for livestock and poultry used for research, and (2) advises that the Food Safety and Inspection Service (FSIS) will inspect for food use livestock and poultry which were involved in such research but which are not genetically modified products of biotechnology. This notice is intended to accommodate public interest in Federal oversight of food applications of biotechnology.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Marvin A. Norcross, Deputy Administrator, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 205–0495.

SUPPLEMENTARY INFORMATION: The livestock and poultry addressed by this notice are those derived from attempts to bring about genetic improvements by transgenesis. Currently, this is usually done by injecting deoxyribonucleic acid (DNA) into fertilized eggs. Such experiments result in only a small proportion of animals being born with the intended genetic change. Currently, over 90 percent of the animals resulting from such experiments do not contain the intended gene. Because the genetic change is not present in these animals to distinguish them from the original animal line, they are not, in fact, transgenic.

In 1986, USDA published a statement of policy in the **Federal Register** (51 FR 23336) concerning research and the regulation of biotechnology applications in agriculture, including meat and poultry products. The policy statement (51 FR 23343) outlined how existing regulations would apply to food animals subjected to or resulting from biotechnology. It concluded that animals used in gene transfer experiments were subject to the experimental animal regulations, 9 CFR 309.17 and 9 CFR 381.75, because they were treated with a chemical such as injected DNA or other nucleic acid vector. This notice reaffirms that notice, specifically with regard to animals produced as a result of gene transfer experiments.

The experimental animal regulations specify that approval must be obtained from FSIS before experimental animals may be presented for slaughter under the Federal meat and poultry products inspection regulations. Thus, the sponsor or investigator of covered experiments must submit data or a summary evaluation of data to demonstrate that the products of livestock or poultry will not be adulterated. Points to consider in demonstrating that particular transgenic animal lines are not adulterated will be made available in 1992. For nontransgenic livestock or poultry derived from transgenic experiments, the data should be submitted to FSIS and would have to show that the animals to be slaughtered for food use do not have the experimental transgene and consequently are equivalent to the parental line and thus, are not adulterated as a result of the experiment. Given the current and continuously evolving technology in this area, there are likely to be a variety of ways in which to demonstrate that an intended g...tic change has not occurred in the animals. The Agency will issue guidelines concerning what would be considered sufficient data, or an acceptable summary evaluation of such data. These guidelines will be provided by the Science and Technology Program, upon request.

Written approval of requests to present experimental animals for slaughter, if granted, will be provided by the Deputy Administrator, Inspection Operations. Upon presentation for Federal inspection of experimental animals that have been approved for slaughter, they would then be subjected to the same inspection procedures and regulations as food animals from traditional production practices.

Done at Washington, DC, on: November 12, 1991.

Ronald J. Prucha,
Acting Administrator.
[FR Doc. 91–30960 Filed 12–26–91; 8:45 am]
BILLING CODE 3410–DM–M

Forest Service

Revocation of Exemption; Eagle Lake Ranger District, Lassen National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice for Revocation of Exemption from Appeal, Salvage and Fuel Reduction Environmental Assessment, Eagle Lake Ranger District, Lassen National Forest.

SUMMARY: The Forest Service is revoking the previous exemption from appeal regarding the decision to sell dead and dying trees that are being killed by the combined effects of severe drought and bark beetles. The project objectives were to reduce the fire hazard, to recover the value of the timber, and to rehabilitate the affected areas. The Salvage and Fuel Reduction Environmental Assessment (EA) has been prepared for all compartments of the Eagle Lake Ranger District, Lassen National Forest, which are located west of the community of Susanville, California

The Lassen National Forest initially identified a higher than normal level of tree mortality occuring throughout the Forest as a result of five years of below normal precipation.

The Forest Supervisor determined through environmental analysis, which included public scoping, that there was good cause to expedite the project. Consideration was given to the fact that the removal of dead and dying timber as soon as possible was essential if the timber is to be utilized, its value to be recovered, and the fire hazard to be reduced.

Subsequent to the Lassen National Forest Supervisor's request for exemption and my granting of the request, published in the **Federal Register** on Tuesday, October 29, 1991, management priorities have been adjusted on the Eagle Lake Ranger District, Lassen National Forest.

On December 10, 1991, the Lassen National Forest informed the Regional Office (Region 5) that as a result of the shift in priorities the Forest will not offer a salvage timber sale under the Salvage and Fuel Reduction EA until approximately June, 1992.

It is my conclusion that the basis for originally granting the exemption from appeals no longer exists. Therefore, it is my decision to revoke the exemption of October 29, 1991. Upon publication of the Decision Notice for the Salvage and Fuel Reduction Environmental Assessment for the Eagle Lake Ranger District, Lassen National Forest, the decision shall be subject to appeal as provided under 36 CFR part 217 *et seq.*

EFFECTIVE DATE: This decision will be effective December 27, 1991.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Joe Barratt, Acting Timber Management Staff Director, Pacific Southwest Region, Forest Service, USDA Forest Service, 630 Sansome Street, San Francisco, CA 94111 at (415) 705–2648, or to Leonard Atencio, Forest Supervisor, Lassen National Forest, 55 South Sacramento Street, Susanville, CA 96130 at (916) 257–2151.

ADDITIONAL INFORMATION: The Cooperative Forestry Assistance Act of 1978 authorizes the Secretary of Agriculture to enhance the growth and maintenance of forests, promote the stability of forest-related industries and employment associated therewith, aid in forest fire prevention and control, conserve the forest cover on watersheds, and protect recreational apportunities and other forest resources.

The environmental analysis for this proposal was documented in the Salvage and Fuel Reduction Environmental Assessment. Public participation in the analysis was solicited through Public Notice published in the Lassen County Times on February 19, 1990.

Additionally, scoping letters were sent to various individuals, businesses, and state and private organizations, soliciting their concerns about the project during February of 1991. Comments received were considered in the issues, range of alternatives and the management requirements and mitigation measures developed. The project files and related maps are available for public review at the Eagle Lake Ranger District, Susanville, California.

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Dated: December 19, 1991.

Edward Whitmore,

Acting Deputy Regional Forester.

[FR Doc. 91-30916 Filed 12-26-91; 8:45 am]

BILLING CODE 3410-11-M

Far East Salvage and Recovery Project, Boise National Forest, Boise County, Idaho; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for a salvage and recovery project in the Grandgean-South Fork Payette River area of the Lowman Ranger District, Boise National Forest. The area is approximately 80 miles northeast of Boise, Idaho.

The agency invites written comments and suggestions on the scope of the analysis. The agency also hereby gives notice of the environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: The proposal has been previously scoped by a public meeting and two mailings. The public meeting was held at the Boise National Forest Supervisor's Office, Boise Idaho, at 7 p.m. on December 11, 1991. The Lowman Ranger District mailed a scoping letter on September 27, 1991, and an additional scoping letter on November 7, 1991, to people who may be affected by the decision. In addition, a legal notice was published in the Idaho World on October 9, 1991. Comments recieved from this scoping meeting, the letters, and the notice, will be incorporated into the analysis process.

Additional written comments concerning the proposal are encouraged. To be considered in the Draft Environmental Impact Statement (DEIS), comments should be submitted on or before January 27, 1992.

ADDRESSES: Submit written comments to: District Ranger, Lowman, Ranger District, Boise National Forest, HC77 Box 3020, Lowman, Idaho 83637.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Dautis Pearson, Project leader, Lowman Ranger District, 208-259-361.

SUPPLEMENTARY INFORMATION: The purpose of the proposed action is to implement the Boise National Forest Land Resource Management Plan by increasing the growth and yield of timber stands through salvage harvesting of insect killed trees, pheremone baiting of insects to assist in control, and reforestation of mortality, stands. The project is located in the Grandjean and South Fork Payette River area of the Boise National Forest.

Alternatives to the proposal will consider lesser amounts of individual activities and varius combinations of the activities. The most significant differences between alternatives will be: (1) In any inventoried roadless area is treated; and (2) the amount of inventoried roadless area that is treated. A No Action (the project will not take place) alternative will also be considered in the analysis.

As lead agency, the Forest Service will analyze and document direct, indirect and cumulative environmental effects of the range of alternatives. Each alternative will include mitigation measures and monitoring requirements.

The EIS will tier to the Boise National Forest Land and Resource Management Plan (Forest Plan) FEIS (1990) which has specified goals, objectives, desired future conditions, management area direction and standards for the project area. The project area is located in the Upper South Fork Payette River Management Area. Direction for this area has emphasis on wildlife, timber, range, and visuals.

Preliminary issues for the proposal that have been identified to date include the following:

1. Fisheries habitat would need to be maintanined or improved.
2. Threatened, Endangered, and Sensitive plant and animal species would need to be assessed.
3. Soils and hydrology would need to be analyzed for impacts.
4. Timber harvest may alter visual quality and affect the undeveloped character of a part of the Ten Mile/Black Warrior Inventoried Roadless Area.
5. The beetle infestation and resulting mortality are occurring over a large area and may be impacting the potential for future harvest or recovery of forest products.

The scoping process for this project is intended to further define these and other preliminary issues.

Federal, State and local agencies, potential purchasers, and other organizations and individuals who may be interested in or affected by the decision are invited to participate in the scoping process. This process includes:

—Identifying significant issues.
—Determining potential cooperating agencies.
—Identifying groups or individuals interested or affected by the decision.

The analysis is expected to take approximately three months. The draft environmental impact statement (DEIS) is scheduled to be completed and available for public review in February, 1992. The final environmental impact statement and Record of Decision are scheduled to be completed by April, 1992.

Morris Huffman, District Ranger, Lowman Ranger District, Boise National Forest, is the responsible official.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.** It is very important that those interested in the proposed action participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequancy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for Implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contents. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Enviornmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel,* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to insure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

Dated: December 17, 1991.

Morris D. Huffman,

District Ranger, Lowman Ranger District, Boise National Forest.

[FR Doc. 91-30932 Filed 12-26-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 548]

Approval for Expansion of Foreign-Trade Zone 153, San Diego, CA

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

Whereas, the City of San Diego, California, Grantee of Foreign-Trade Zone No. 153, has applied to the Board for authority to expand its general-purpose zone within the Otay Mesa area in San Diego, California, within the San Diego Customs Port of entry;

Whereas, the application was accepted for filing on January 10, 1991, and notice inviting public comment was given in the **Federal Register** on January 22, 1991 (Docket 2–91, 56 FR 2160);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the San Diego area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed on January 10, 1991. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the Army District Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 16th day of December, 1991.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-30975 Filed 12-26-91; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 547]

Resolution and Order Approving the Application of the County of Monroe, New York, for a Special-Purpose Subzone at the Auto Components Plant of GM/DELCO in Rochester, New York

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the County of Monroe, New York, grantee of FTZ 141, filed with the Foreign-Trade Zones Board (the Board) on October 2, 1990, requesting special-purpose subzone status at the automobile parts manufacturing plant of General Motors Corporation, Delco Products Division, located in Rochester, New York, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the FTZ Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in Rochester, NY

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States:

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the County of Monroe, New York, grantee of Foreign-Trade Zone No. 141, has made application (filed October 2, 1990, FTZ Docket 39–90, 55 FR 43018, 10/25/90) in due and proper form to the Board for authority to establish a special-purpose subzone at the automobile components manufacturing plant of General Motors Corporation, Delco Products Division, located in Rochester, New York;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed October 2, 1990, the Board hereby authorizes the establishment of a subzone at the GM/Delco plant in Rochester, New York, designated on the records of the Board as Foreign-Trade Subzone No. 141C at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefore.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

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In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 16th day of December, 1991, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-30976 Filed 12-26-91; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 552]

Resolution and Order Regarding the Application of the Port of Houston Authority Approving With Restrictions Special-Purpose Subzone Status at the Phibro Refining, Inc., Refinery in Houston, Texas and Disapproving Subzone Status for the Phibro Refinery in Texas City, Texas; Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Port of Houston Authority, grantee of FTZ 84, filed with the Foreign-Trade Zones Board (the Board) on May 18, 1990, requesting special-purpose subzone status at the oil refineries of Phibro Refining, Inc., (formerly Hill Petroleum Company) located in Houston and Texas City, Texas, the Board, finding (1), in regard to the Houston site, that the requirements of the FTZ Act, as amended, and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval were subject to the following restrictions: foreign crude oil used as fuel for the refinery shall be dutiable; and, privileged foreign status shall be elected on foreign crude oil and other foreign merchandise admitted to the subzone, approves that part of the application subject to the foregoing restrictions; and, finding (2), in regard to the Texas City site, that such requirements would not be satisfied because approval of that part of the proposal would not be in the public interest, disapproves that part of the application.

The approval of the Houston site is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Board Order and Grant of Authority Establishing a Foreign-Trade Subzone in Houston, Texas and Disapproving Subzone Status for a Proposed Site in Texas City, Texas

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones;

Whereas, the Port of Houston Authority, grantee of FTZ 84, has made application (filed 5–18–90, FTZ Docket 19–90, 55 FR 22053, 5–31–90) to the Board for authority to establish special-purpose subzones at the oil refineries of Phibro Refining, Inc., (formerly Hill Petroleum Company) in Houston, and Texas City, Texas;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied with respect to the request for subzone status at the Houston refinery, but that such requirements are not satisfied with respect to the request for subzone status at the Texas City refinery;

Now, Therefore, the Board hereby authorizes the establishment of a subzone at the Phibro refinery in Houston, Texas, designated on the records of the Board as Foreign-Trade Subzone 84F, at the location described in the application, subject to the Act and the Board's Regulations (as revised, 56 FR 50790–50808, 10/8/91), including § 400.28, and to the restrictions in the resolution accompanying this action, and disapproves the request for subzone status at the Phibro Refinery in Texas City, Texas.

Signed at Washington, DC, this 20th day of December, 1991, pursuant to Order of the Board.

Francis J. Sailer,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-30978 Filed 12-26-91; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 553]

Resolution and Order Approving With Restrictions the Application of the Port of Houston Authority for a Subzone at the Heating and Cooling Equipment Manufacturing Plant of Goodman Manufacturing Corporation in Houston, Texas

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Port of Houston Authority, grantee of Foreign-Trade Zone 84, filed with the Foreign-Trade Zones Board (the Board) on February 19, 1991, requesting special-purpose subzone status for the heating and cooling equipment manufacturing plant of Goodman Manufacturing Corporation in Houston, Texas, within the Houston Customs port of entry, the Board, finds that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest, if approval were subject to the restrictions listed below, approves the application, subject to the following two restrictions:

1. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign steel mill products admitted to the subzone; and,

2. Privileged foreign status shall be elected on all foreign merchandise admitted to the subzone for use in the production of central-type (unitary) heating and/or air-conditioning products.

The approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority for Subzone Status at the Goodman Manufacturing Corporation Plant in Houston, Texas

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs port of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Port of Houston Authority, Grantee of Foreign-Trade Zone No. 84, has made application (filed 2–19–91, FTZ Docket 11–91, 56 FR 9667, 03–07–91) to the Board for authority to establish a subzone at the heating and cooling equipment manufacturing plant of Goodman Manufacturing Corporation in Houston, Texas;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval were given subject to the restrictions in the resolution accompanying this action;

Now, therefore, in accordance with the application filed February 19, 1991, the Board hereby authorizes the establishment of a subzone at the Goodman Manufacturing Corporation plant in Houston, Texas, designated on the records of the Board as Foreign-Trade Subzone 84G, at the location described in the the application, subject to the restrictions in the resolution accompanying this action, and to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including Section 400.28.

Signed this 20th day of December, 1991, pursuant to Order of the Board.

Francis J. Sailer,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-30977 Filed 12-26-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-533-803]

Notice of Postponement of Preliminary Antidumping Duty Determination: Bulk Ibuprofen From India

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Hager or Paulo F. Mendes, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–5055 or (202) 377–5050, respectively.

Postponement

On August 20, 1991, the Department of Commerce ("the Department") initiated an antidumping duty investigation of bulk ibuprofen from India. The notice stated that we would issue our preliminary determination on or before January 7, 1992 (56 FR 42026, August 26, 1991).

On December 11, 1991, counsel for petitioners requested that the Department postpone the preliminary determination in this investigation until 210 days after the date on which the antidumping petition was filed. We find no compelling reason to deny petitioner's request. Therefore, pursuant to 19 CFR 353.15(c), we are postponing the date of the preliminary determination in this investigation until not later than February 26, 1992. The U.S. International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Tariff Act of 1930, as amended ("the Act").

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: December 19, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-30979 Filed 12-26-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-508-604]

Industrial Phosphoric Acid From Israel; Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke in Part; Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and intent to revoke in part the antidumping duty order.

SUMMARY: In response to requests by the petitioner and one respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on industrial phosphoric acid from Israel. The review covers two manufacturers/exporters of this merchandise to the United States and the period August 1, 1989 through July 31, 1990.

We preliminarily determine the dumping margin for Negev Phosphates to be zero. Provided that this conclusion remains unchanged in the final results of this review, and that we are satisfied that Negev Phosphates is not likely to sell the subject merchandise at less than fair value in the future, the Department intends to revoke the antidumping duty order with respect to Negev Phosphates upon publication of these final results.

Because Haifa Chemicals did not respond to the Department's questionnaire, we are using best information otherwise available for cash deposit and appraisement purposes. As best information for Haifa Chemicals, we preliminarily determine the dumping margin to be 6.82 percent *ad valorem*, the highest dumping margin for any company under the order. We invite interested parties to comment on these preliminary results and intent to revoke.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 1990, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (55 FR 32279) of the antidumping duty order on industrial phosphoric acid from Israel (52 FR 31057, August 19, 1987) for the period August 1, 1989 through July 31, 1990. On

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August 29, 1990, FMC Corporation and Monsanto Company, the petitioners, requested an administrative review of two manufacturers/exporters, Negev Phosphates, Ltd., and Haifa Chemicals, Ltd. On August 31, 1990, Negev Phosphates also requested a review. We initiated the review of the two manufacturers/exporters on September 24, 1990 (54 FR 39032). A timely request for revocation from the antidumping duty order was submitted by Negev Phosphates. The Department has now conducted the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by the review are shipments of industrial phosphoric acid (IPA). This merchandise is currently classifiable under item number 2809.20.00 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers Negev Phosphates, Ltd., and Haifa Chemicals, Ltd., two manufacturers/exporters to the United States of Israeli industrial phosphoric acid, and the period August 1, 1989 through July 31, 1990. For Haifa Chemicals, which did not respond to the Department's questionnaire, we used best information available for assessment of antidumping duties and cash deposit purposes. Best information is the highest margin for a company under the order, 6.82 percent.

United States Price

As provided in section 772(b) of the Tariff Act, we used the purchase price of the subject merchandise to represent United States price since the merchandise was purchased by an unrelated U.S. customer directly from the foreign manufacuturer prior to importation. We calculated purchase price sales based on the unpacked, C&F prices to unrelated purchasers in the United States. We made deductions, where applicable, for brokerage/handling, foreign inland freight, and ocean freight.

Sales which entered the United States between August 1, 1989 and December 31, 1989 have been assessed countervailing duties; therefore, they are entitled to an upward adjustment to United States price pursuant to section 772(d)(1)(D) of the Tariff Act. See Industrial Phosphoric Acid From Israel; Final Results of Countervailing Duty Administrative Review, 56 FR 50854 (October 9, 1991). Therefore, we have increased Negev's U.S. price by the amount of the company's export subsidies found in the 1989 administrative review of the countervailing duty order on Israeli industrial phosphoric acid. For the period January 1, 1990 through July 31, 1990, countervailing duties have not been assessed on entries of the merchandise under review; therefore, we cannot make an adjustment to United States price at this time. See *Serampore Industries Pvt. Ltd. et. al.* v. *United States*, 11 CIT 866, 675 F. Supp. 1354 (1987); see also Final Results of Antidumping Duty Administrative Review; Certain Iron Construction Castings From India, 55 FR 40697 (October 4, 1990).

Foreign Market Value

In calculating foreign market value, the Department used home market price, as defined in section 773 of the Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed, ex-factory or delivered price to all purchasers in the home market. Where applicable, we made adjustments for inland freight, and differences in packing, direct selling and credit expenses.

Preliminary Results of Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period August 1, 1989 through July 31, 1990:

Manufacturer/exporter	Margin (percent)
Negev Phosphates	0.00
Haifa Chemicals	6.82
All others	0.00

Negev Phosphates has had sales at not less than fair value for at least three consecutive years. In addition, as provided in 19 CFR 353.25(a)(2)(iii), Negev Phosphates has agreed in writing to an immediate suspension of liquidation and reinstatement of the order if circumstances develop which indicate that Israeli industrial phosphoric acid exported to the United States by Negev Phosphates is being sold at less than fair value. Therefore, we intend to revoke the antidumping order on Israeli industrial phosphoric acid with respect to Negev Phosphates. If this partial revocation is made final, it will apply to all unliquidated entries of this merchandise produced by Negev Phosphates and exported to the United States entered, or withdrawn from warehouse, for consumption, on or after August 1, 1990.

Parties to the proceeding may request disclosure and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e).

The Department will publish the final results of the administrative review including the results of its analysis of issues raised in any case or rebuttal briefs or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from Israel entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies which remain subject to the order will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published in the final determination covering the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or if not covered in this review, the most recent review period or the original investigation; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews, and who are unrelated to the reviewed firms or any previously reviewed firm will be the "All Others" rate established in the final results of this administrative review. This rate represents the highest rate for any firm in the administrative review (whose shipments to the United States were reviewed), other than those firms receiving a rate based entirely on best information available. These deposit requirements, when imposed, shall remain in effect until the publication of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 17, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-30980 Filed 12-26-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-813]

Preliminary Determination of Sales at Less Than Fair Value: Nepheline Syenite From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: John Gloninger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2778.

PRELIMINARY DETERMINATION:

Background

Since the notice of initiation on August 1, 1991 (56 FR 37526), the following events have occurred.

On August 22, 1991, the Department of Commerce (the Department) presented its questionnaire to Unimin Canada Ltd., which accounted for at least 60 percent of known exports to the United States during the period of investigation (POI), in accordance with 19 CFR 353.42(b).

On August 26, 1991, the International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that a regional industry in the United States is being materially injured by reason of imports of nepheline syenite (NS) from Canada (56 FR 43938).

On September 9 and 26, 1991, we received responses to the Department's questionnaire. We issued deficiency letters on September 26 and October 21, 1991, and received responses on October 11 and November 5, 1991. We issued a supplementary deficiency letter on November 7, 1991, and received a response to it on November 19, 1991. On November 27, 1991, we received revised computer responses from Unimin.

On December 9, 1991, counsel for Pittsburgh Corning Corporation entered a notice of appearance in the investigation and submitted comments challenging the standing of the petitioner, The Feldspar Corporation (TFC). On September 19, 1991, Unimin requested a suspension agreement, pursuant to article 4.2 of the GATT Antidumping Code, which requires the Department to give respondents in a regional industry case the opportunity to enter into a suspension agreement before any antidumping duties can be levied. On November 20, 1991, Unimin submitted a draft suspension agreement for the Department to consider. On December 17, 1991, TFC submitted to the Department its comments concerning the Unimin draft agreement. We are considering both of these issues and will decide them in a subsequent determination in this proceeding.

Scope of Investigation

The product covered by this investigation is nepheline syenite. For purposes of this investigation, nepheline syenite is a coarse crystalline rock consisting principally of feldspathic minerals (*i.e.*, sodium-potassium feldspars and nepheline), with little or no free quartz, and ground no finer than 140 mesh.

Nepheline syenite is currently classifiable under item 2529.30.0010 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The POI is February 1, 1991, through July 31, 1991.

Such or Similar Comparisons

We have determined for purposes of the preliminary determination that the product covered by this investigation comprises a single category of "such or similar" merchandise.

Fair Value Comparisons

To determine whether sales of NS from Canada to the United States were made at less than fair value, we compared the United States price to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We compared U.S. sales of NS to sales of identical and similar NS sold in Canada.

United States Price

We based United States price on purchase price, in accordance with section 772(b) of the Tariff Act of 1930, as amended (the Act), because all U.S. sales were made to unrelated parties prior to the importation into the United States. Exporter's sales price methodology is not appropriate because the subject merchandise was not introduced into the inventory of Unimin's related U.S. selling agent, this was the customary commercial channel for sales of this merchandise between Unimin and its U.S. customers, and the selling agent acted only as a processor of sales-related documentation and a communication link with unrelated U.S. customers.

We calculated purchase price based on packed, f.o.b. plant and delivered prices. We made deductions, where appropriate, for foreign inland freight, inland freight, marine insurance, loading, U.S. brokerage and handling, and railcar leasing costs in accordance with section 772(d)(2) of the Act. In addition, we made deductions for discounts, rebates and post-sale price adjustments. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of the Canadian value-added tax that would have been collected had the Canadian government taxed the exports.

Foreign Market Value

In order to determine whether there were sufficient sales of NS in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of NS to the volume of third country sales of NS, in accordance with section 773(a)(1) of the Act. Unimin had a viable home market with respect to sales of NS during the POI.

We calculated FMV based on delivered prices to unrelated customers in the home market. We made deductions, where appropriate, for rebates, inland freight, railcar leasing, loading costs, and post-sale price adjustments. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

Pursuant to 19 CFR 353.56 of the Department's regulations, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses. We recalculated Unimin's imputed credit expenses incurred on home market and U.S. sales net of discounts and rebates. We recalculated credit expenses on those home market and U.S. sales for which Unimin had not

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received payment as of the date of its last deficiency response, using the average credit period reported for all sales for which payment had been received. Although Unimin borrowed in both markets, the U.S. interest rate was the lowest rate in both markets. Therefore, we have used Unimin's short-term U.S. interest rate to impute credit expenses on home market sales. This use of the lowest interest rate in both markets is consistent with the Court of Appeal's decision in LMI-La Metalli Industriale, S.P.A. v. United States (LMI), 912 F.2d 455 (Fed. Cir. 1990). We also made a circumstance of sale adjustment for differences in the amounts of value-added taxes.

Lastly, we made an adjustment for physical differences in merchandise, where appropriate, in accordance with 19 CFR 353.57.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of NS from Canada that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Unimin Corp.	9.61
All others	9.61

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than February 7, 1992, and rebuttal briefs no later than February 12, 1992. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on February 14, 1992, at 9:30 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15.

Dated: December 19, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-30981 Filed 12-27-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-201-504]

Porcelain-on-Steel Cooking Ware From Mexico; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by two respondents and the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on porcelain-on-steel cooking ware from Mexico. The review covers two manufacturers/exporters of this merchandise to the United States and the period December 1, 1989 through November 30, 1990. The preliminarily results indicate dumping margins exist. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Maria McKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2686.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1990, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (55 FR 51139) of the antidumping duty order on porcelain-on-steel cooking ware from Mexico for the period December 1, 1989 through November 30, 1990. On December 26, 1990, respondents Acero Porcelanizado, S.A. de C.V. (APSA) and CINSA, S.A. de C.V., requested an administrative review. On December 27, 1990, petitioner General Housewares Corporation also requested an administrative review. We initiated the review on January 30, 1991 (56 FR 3445). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of porcelain-on-steel cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item number 7323.94.00. Kitchenware currently entering under HTS item number 7323.94.00.10 is not subject to the order. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers two manufacturers/exporters, APSA and CINSA, of Mexican porcelain-on-steel cooking ware.

United States Price

In calculating United States price, the Department used purchase price and exporter's sales price, as defined in section 772 of the Tariff Act. For those sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act. In those cases where sales were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we also used purchase price as the basis for determining United States price. For the latter sales, the Department determined that purchase price was the appropriate determinant of United States price because the merchandise was shipped directly from the manufacturer to the unrelated buyers, without being introduced into the inventory of the related selling agent. Moreover, direct shipment from the manufacturers to the unrelated buyers was the customary commercial channel for sales of this merchandise between the parties involved. Finally, the related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyers.

Where all the above elements are met, we regard the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions take place in the United States or abroad does not change the substance of the transactions or the functions themselves.

Where sales to the first unrelated purchaser occurred after importation into the United States, we based U.S. price on exporter's sales price, in accordance with section 772(c) of the Tariff Act. Purchase price and exporter's sales price were based on the packed, f.o.b. price to unrelated purchasers in the United States. We made adjustments, where applicable, for brokerage, user fees, foreign inland freight and insurance, discounts and rebates, direct and indirect selling expenses, commissions, credit and U.S. Customs duties. An addition to U.S. price was made for value added taxes not imposed by reason of exportation.

Sales which entered the United States between December 1, 1989 and December 31, 1989, have been assessed countervailing duties; therefore, they are entitled to an upward adjustment to the U.S. price pursuant to section 772(d)(1)(D) of the Tariff Act. Therefore, we have increased the U.S. price by the amount of the export subsidies found in the concurrent countervailing duty review. For the period January 1, 1990 through November 30, 1990, countervailing duties have not yet been assessed for the merchandise under review; therefore, we have not made an adjustment to the United States price at this time.

Foreign Market Value

In calculating foreign market value, the Department used home market price, as defined in section 773 of the Tariff Act, for APSA. We also used home market price for CINSA, when sufficient quantities of such or similar merchandise were sold in the home market, at or above the cost of production, to provide a basis for comparison. Home market price was based on the packed, ex-factory or delivered price to related and unrelated purchasers in the home market. Where applicable, we made adjustments for inland freight and insurance, credit expenses, discounts, rebates, commissions, indirect U.S. selling expenses to offset those home market commissions, and home market indirect selling expenses up to the amount of U.S. indirect selling expenses. We used constructed value for CINSA's home market models for which there were insufficient sales at or above the cost of production. Constructed value consisted of the sum of materials, fabrication, overhead, general expenses, profit, and U.S. packing. In accordance with section 773(e)(1)(B), we used the actual amount of general expenses because those amounts were more than the statutory minimum of ten percent. We used the actual amount of profit because it exceeded the statutory minimum of eight percent.

Preliminary Results of the Review

As a result of our review, we preliminarily determine the dumping margins to be:

Manufacturer/exporter	Time period	Margin (percent)
APSA	Dec. 1, 1989 to Nov. 30, 1990.	3.12
CINSA	Dec. 1, 1989 to Nov. 30, 1990.	6.27
All others	Dec. 1, 1989 to Nov. 30, 1990.	6.27

Parties to the proceeding may request disclosure and interested parties may request a hearing not later than 10 days after publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due.

The Department will publish the final results of the administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published in the final results or final determination covering the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or if not covered in this review, the most recent review or the original investigation; and (4) the cash deposit rate for any furture entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews, and who are unrelated to the reviewed firm or any previously reviewed firm, will be the "all other" rate established in the final results of this administrative review. This rate represents the highest rate for any firm in the administrative review (whose shipments to the United States were reviewed), other than those firms receiving a rate based entirely on best information available.

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These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 20, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-30982 Filed 12-26-91; 8:45 am]

BILLING CODE 3510-DS-M

Articles of Quota Cheese; Annual Listing of Foreign Government Subsidies

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Publication of annual list of foreign government subsidies on articles of quota cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 note).

Dated: December 17, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

Appendix

QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Gross [1] subsidy (¢/lb.)	Net [2] subsidy (¢/lb.)
Belgium	European Community (EC) restitution payments.	42.8	42.8
Canada	Export assistance on certain types of cheese.	30.9	30.9
Denmark	EC restitution payments.	53.1	53.1
Finland	Export subsidy	162.3	162.3
France	EC restitution payments.	58.4	58.4
Greece	EC restitution payments.	81.6	81.6
Ireland	EC restitution payments.	55.4	55.4
Italy	EC restitution payments.	69.9	69.9
Luxembourg.	EC restitution payments.	42.8	42.8
Netherlands.	EC restitution payments.	46.8	46.8
Norway	Indirect (milk) subsidy.	17.8	17.8
	consumer subsidy.	39.4	39.4
		57.2	57.2
Portugal	EC restitution payments.	43.1	43.1
Spain	EC restitution payments.	46.1	46.1
Switzerland	Deficiency payments.	139.8	139.8
U.K.	EC restitution payments.	43.0	43.0.
W. Germany.	EC restitution payments.	51.9	51.9

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 91-30983 Filed 12-26-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-048]

Certain Textiles and Textile Products From Argentina; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on certain textiles and textile products from Argentina, specifically, men's and boys' woolen garments.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Anne D'Alauro, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On November 4, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 56407) its intent to revoke the countervailing duty order on certain textiles and textile products from Argentina (48 FR 53421; November 16, 1978). In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. We had not received a request for an administrative review of the order for the last four consecutive annual anniversary months.

On November 12, 1991, the petitioner, the Amalgamated Clothing and Textile Workers Union, objected to our intent to revoke the order. Therefore, we no longer intend to revoke the order.

This notice is in accordance with 19 CFR 355.25(d).

Dated: December 23, 1991.

Barbara E. Tillman,

Acting Deputy Assistant, Secretary for Compliance.

[FR Doc. 91-30984 Filed 12-26-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by José R. Pérez-Villamil From an Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of decision.

On November 20, 1991, the Secretary of Commerce (Secretary) issued a decision in the consistency appeal of José R. Pérez-Villamil (Appellant). The Appellant had applied to the U.S. Army Corps of Engineers (Corps) for a permit to construct a pier in an ecologically sensitive area which supports endangered and threatened sea turtles, near Tamarindo Bay, on Culebra Island, Puerto Rico. In conjunction with the Federal permit application, the Appellant submitted to the Corps for review of the Puerto Rico Planning Board (PRPB), the Commonwealth of Puerto Rico's (Commonwealth) coastal management agency, under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1456(c)(3)(A), a certification that the proposed activity is consistent with the Commonwealth's Federally-approved Coastal Management Program.

On July 24, 1989, the PRPB objected to the Appellant's consistency certification for the proposed project on the ground that the proposed pier is not in accordance with the Commonwealth's Coastal Management Program policies that protect sea turtle habitats. The PRPB did not recommend any alternatives to the proposed pier. Under CZMA section 307(c)(3)(A) and 15 CFR 930.131 (1988), the PRPB's consistency objection precludes the Corps from issuing a permit for the activity unless the Secretary finds that the activity is either consistent with the objectives or purposes of the CZMA (Ground I) or necessary in the interest of national security (Ground II).

Upon consideration of the information submitted by the Appellant, the Commonwealth and interested Federal agencies, the Secretary made the following findings pursuant to 15 CFR 930.121(b): the proposed pier will cause adverse effects on the resources of the coastal zone, when performed separately or in conjunction with other activities, substantial enough to outweigh its contribution to the national interest. Accordingly, the proposed project is not consistent with the objectives or purposes of the CZMA. Because the Appellant's proposed project failed to satisfy the requirements of Ground I, and the Appellant did not plead Ground II, the Secretary did not override the Commonwealth's objection to the Appellant's consistency certification, and consequently, the proposed project may not be permitted by Federal agencies. Copies of the decision may be obtained from the contact person listed below.

FOR ADDITIONAL INFORMATION CONTACT: Roger B. Eckert, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 606-4200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: December 23, 1991.

Thomas A. Campbell,

General Counsel.

[FR Doc. 91-30989 Filed 12-26-91; 8:45 am]

BILLING CODE 3510-08-M

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council (Council) and its Committees will meet on January 7-9, 1992, at the Radisson Philadelphia Airport, 500 Stevens Drive, Philadelphia, PA, 19113; telephone: 215-521-5900.

Council.—The Council will begin its regular meeting on January 8 at 8 a.m., and should adjourn for the day at approximately 3:45 p.m. This session will be followed by an Executive Committee meeting.

On January 9 the Council will reconvene at 8 a.m., and should adjourn at approximately 11 a.m. In addition to reviewing committee reports, the Council will consider approval of crew member permitting and other fishery management matters as deemed necessary. The Council may also go into closed session (not open to the public) to discuss personnel and/or national security matters.

Committees.—On January 7 the Council's Surf Clam and Ocean Quahog Committee will meet from 10-12 p.m., the Seafood Committee will meet from 1-3 p.m., and the Information and Education Committee will meet at 3:10 p.m. On January 9 at 1 p.m., the Atlantic States Marine Fisheries Commission's Habitat Committee will meet, following adjournment of Council meeting.

For more information, contact John Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901, telephone: (302) 674-2331.

Dated: December 20, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-30869 Filed 12-26-91; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce

A Bycatch Team, composed of staff members from the National Marine Fisheries Service, North Pacific Fishery Management Council (NPFMC), International Pacific Halibut Commission and Alaska, Washington and Oregon state agencies will meet on January 6, 1992. The meeting will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way NE., in room 2143, Building 4, Seattle, Washington and begin at 10 a.m. The Bycatch Team will continue its work on strategic bycatch management measures and prepare a status report for presentation to the NPFMC at its January meeting.

For more information contact Brent Paine, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Dated: December 20, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-30887 Filed 12-26-91; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Teleconference

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's (Council) Budget Committee will hold a telephone conference on January 7, 1992, at 1:30 p.m., at the Council's office (address below).

The purpose of the conference is to allocate additional funds for the operation of the Council during the 9-month period January 1 through September 30, 1992. The Council instructed the Budget Committee to decide on an allocation of additional funds when the total amount available

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for augmentation of the Council's FY92 budget was established by the National Marine Fisheries Service.

Members of the public wishing to participate in this conference or desiring further information should contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, room 410, Portland, Oregon 97201; telephone: (503) 326–6352.

December 20, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–30868 Filed 12–26–91; 8:45 am]

BILLING CODE 3510–22–M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Approval of Collection of Information, Compliance Survey of the Bicycle Industry

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval through September 30, 1992, of a collection of information in the form of a survey of firms which manufacture or import bicycles. The purpose of this survey is to assess the over-all level of compliance with regulations which establish safety requirements for bicycles (16 CFR 1500.18(a)(12) and part 1512). These regulations were issued under provisions of the Federal Hazardous Substances Act (15 U.S.C. 1261, 1261) to eliminate or reduce unreasonable risks of death or serious personal injury associated with bicycles. The regulations are applicable to bicycles introduced into interstate commerce after May 11, 1976, and establish safety requirements for the frame, wheels, front fork, brakes, reflectors, and other components of a bicycle. The survey of the bicycle industry is part of a comprehensive plan to assess compliance by regulated industries with 70 rules enforced by the Commission. The Commission will use the information obtained from the survey of the bicycle industry to establish priorities for enforcement of mandatory standards and regulations which the Commission administers. Information obtained from this survey will also be used to support appropriate legal action against any firm which has manufactured or imported bicycles failing to comply with the requirements of the bicycle safety regulations.

Additional Details About the Request for Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Survey of Compliance with the Requirements for Bicycles in 16 CFR 1512.

Type of request: New request.

Frequency of collection: One time.

General description of respondents: Manufacturers and importers of bicycles.

Estimated number of respondents: 65.

Estimated average number of hours per respondent: 8.

Estimated number of hours for all respondents: 520.

Comments: Comments on this request for extension of approval of information collection requirements should be addressed to Elizabeth Harker, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: December 23, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 91–30974 Filed 12–26–91; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 13 January 1992.

Time: 1300–1700 hours.

Place: Pentagon, Washington, DC.

Agenda

Members of the C31 Issue Group of the Army Science Board will meet in the Pentagon to begin work on a new study entitled, "Command and Control on the Move." The primary objective of the meeting will be to finalize the Terms of Reference for the study and to determine the general study plan. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91–30930 Filed 12–26–91; 8:45 am]

BILLING CODE 3710–08–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 91–6]

Radiation Protection for Workers and the General Public at DOE Defense Nuclear Facilities

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning radiation protection for workers and the general public at DOE defense nuclear facilities. The Board requests public comments on this recommendation.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before January 27, 1992.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Carole J. Council, at the address above or telephone (202) 208–6400.

Dated: December 20, 1991.

John T. Conway,

Chairman.

Radiation Protection for Workers and the General Public at DOE Defense Nuclear Facilities

Dated: December 19, 1991.

[Recommendation 91–6]

The Board and its staff have conducted extensive reviews of radiation protection programs at Department of Energy (DOE) Headquarters and several DOE sites in the defense nuclear facilities complex. In particular, the Savannah River Site (SRS) health and radiological protection programs have been reviewed on several occasions.

After an inquiry into worker exposures to tritiated water from a moderator water spill at the site, the Board transmitted a report to the Secretary of Energy on May 31, 1991, which reviewed the management and radiation protection issues, as well as other factors that DOE and its contractor identified as root causes of the spill. Before completion of that report, the Board had directed its staff to continue review of technical radiation protection issues that had been surfaced during the inquiry. In October, 1990, the Board's staff reviewed the SRS radiation protection program, which is included by SRS within what are commonly referred to as Health Protection (HP) program and Health Physics program. Board staff conducted follow-up reviews in February and April, 1991. Staff reports based on the October, 1990, and February, 1991, trips were provided to DOE's Defense Programs personnel in letters from the Board dated November 1, 1990, and June 10, 1991, respectively. In its transmittal letter of June 10, 1991, the Board indicated it was giving consideration to the possibility of developing recommendations to the Secretary of Energy in the radiation protection area after further Board review.

On June 20, 1991, representatives from DOE's Defense Programs, the DOE Savannah River Site Special Projects Office, and the operating contractor at SRS briefed the Board and its staff on radiation protection program issues. As a followup to that briefing, the Board conducted a site visit at SRS in July, 1991. During that visit, Board Members interviewed SRS HP personnel and supervisors.

The most recent Board staff assessment of DOE's radiation protection program and the operating contractor's HP program at SRS occurred during the period September 27 through October 10, 1991. The Board's staff reviewed relevant documents, attended briefings and discussions with DOE and operating contractor personnel at DOE Headquarters and at SRS, and observed selected evolutions at reactor and nonreactor facilities.

Other independent organizations and committees have documented required improvements in DOE's radiation protection program, including the Institute for Nuclear Power Operations (INPO) in December 1990, the Advisory Committee on Nuclear Facility Safety in Section 5 of its final report dated November 13, 1991, and the final DOE Operational Readiness Review (ORR) team in its report for Savannah River's K-reactor dated November, 1991.

Primarily as a result of these assessments at Savannah River, but also because of other reviews at Rocky Flats Plant and elsewhere in the defense nuclear facilities complex, the Board has found a need for increased DOE attention in five major areas: (1) DOE management and leadership in radiation protection programs; (2) radiation protection standards and practices at defense nuclear facilities; (3) training and competence of Health Physics technicians and supervisors; (4) analysis of Reported Occurrences and correction of radiation protection program deficiencies; and (5) understanding and attention to radiation protection issues by individuals in DOE and its contractor organizations.

Therefore, the Board recommends that:

1. The Secretary of the Department of Energy expeditiously issue a formal statement of the Department's radiological health and safety policy. Among the subjects that should be considered for inclusion are:

a. The goals of the Department's radiation protection program.

b. Potential sources of guidance and bases for the radiological protection standards adopted by, or to be adopted by, DOE.

c. A reaffirmation, by the Secretary of Energy, of DOE's full commitment to the "As Low As Reasonably Achievable" (ALARA) principle for both occupationally exposed personnel and the general public, which emphasizes the various commitments to radiological protection contained elsewhere in DOE rules, orders, and other requirements.

2. DOE review existing radiation protection training programs, and develop and implement a plan for an expanded training program that includes consideration of the following elements:

a. Comparison with guidance on training contained in "Guide to Good Practice in Radiation Protection Training," Training Resources and Data Exchange (TRADE) Oak Ridge Associated Universities (ORAU) 88/4–99 and "Guidelines for Training and Qualification of Radiological Protection Technicians," Institute of Nuclear Power Operations (INPO), INPO 87–088. While the Board does not necessarily endorse all of the guidance contained in these documents, it believes they are important sources of professional and commercial information on training which can be productively used by DOE in identifying improvements for DOE's programs.

b. Delineation of the level of knowledge, skills, abilities, and other qualifications necessary for each generic radiation protection personnel position within the DOE complex, based on professional and industry standards and guidance. This should include association and/or interaction with professional health physics organizations such as the Health Physics Society and American Board of Health Physics certification for appropriate personnel and managers.

c. Determination of the current level of knowledge of radiation protection managers, professionals, supervisors, and technicians, by means of written, oral, and practical examinations.

d. Delineation of the existing and supplemental training necessary to ensure that radiation protection personnel meet the qualifications of their respective positions.

e. Evaluation of individuals after supplemental training to ensure that they meet the qualifications for their positions.

f. Continuing radiation protection training requirements and retention testing.

g. Delineation of existing and supplemental training for workers, contractors, and subcontractors, other than radiation protection personnel, necessary to ensure adequate radiation protection for those workers.

3. The Department critically examine its existing infrastructure for radiation protection program development and implementation at DOE Headquarters to determine if resource, organizational, or managerial changes are needed to (a) emphasize the priority and importance of the radiation protection program to assuring public health and safety; (b) communicate the importance of the radiation protection program from the highest level of management to all appropriate Department personnel; (c) expand the radiation protection program and increase program resources to facilitate the rapid development and implementation of radiological protection standards throughout the defense nuclear facility complex; and (d) make other changes as are warranted.

4. The Department examine the corresponding radiation protection organizational units at DOE's principal Operations and Field Offices and DOE contractor organizations to determine if those organizations' radiation protection programs' infrastructure, responsibilities, and resources can be strengthened to expedite implementation of radiological

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protection standards. A critical aspect of DOE's review should be an assessment of management's involvement and effectiveness in implementing radiation protection programs and management's ability to communicate the steps to be taken to implement an effective radiation protection program to all levels within relevant DOE and contractor units, particularly within line organizations.

5. DOE focus its efforts relating to reporting of occurrences to enhance the usefulness of the Occurrence Reporting (OR) system as a tool for enhancing radiological health and safety at DOE facilities, by emphasizing determination of root causes and management follow-up of lessons learned.

6. DOE compare (a) its operating contractor practices and procedures, and (b) DOE radiological protection standards with the guidance used by other government, commercial, and professional organizations. The documents which DOE should use for this study and comparison include, at a minimum, this listed in the attachment to those recommendation. While the Board does not necessarily endorse any of the listed documents in their entirety, it believes they are important sources of government, commercial, and professional opinion on radiological protection standards, procedures, and practices. As such, they serve as valuable tools for identifying improvements needed in DOE's programs.

7. After completion of the study recommended in item 6, DOE identify any supplemental measures that are necessary or appropriate to compensate for the differences identified between practices which conform to the guidance enumerated above and actual operating contractor practices; and between standards and procedures listed and DOE standards and procedures for radiation protection at defense nuclear facilities.

John T. Conway,
Chairman.

Attachment

1. 29 CFR part 1910 "Occupational Safety and Health Standards".
2. Nuclear Regulatory Commission Regulatory Guides Division 8 Series "Occupational Health".
3. NUREG–0041 "Manual of Respiratory Protection Against Airborne Radioactive Materials".
4. American National Standards Institute (ANSI) Standard Z88.2 of 1980 "Practices for Respiratory Protection".
5. "Guidelines for Radiological Protection at Nuclear Power Stations" Institute of Nuclear Power Operations (INPO), INPO 88–010.
6. International Commission on Radiological Protection (ICRP) Publication 60 "1990 Recommendations of the International Commission on Radiological Protection," 21 Annals of the ICRP No. 1–3, 1991 Pergamon Press.
7. NRC, Draft Regulatory Guide 8.N.1, "Radiation Protection Programs for Nuclear Power Plants" (Implements revised 10 CFR part 20) (Draft RG no. DG–8004 was noticed for public comments in 56 Fed. Reg. 56671, 11/6/91).
8. NCRP Report No. 91 "Recommendations on Limits for Exposure to Ionizing Radiation," National Council on Radiation Protection and Measurements 1987.
9. Other relevant commercial or private standards and practices, including NCRP publications.

Appendix—Transmittal Letter to the Secretary of Energy

December 19, 1991.

The Honorable James D. Watkins,
Secretary of Energy, Washington, DC 20585.

Dear Mr. Secretary: On December 19, 1991, the Defense Nuclear Facilities Safety Board, in accordance with 42 U.S.C. 2286a(5), approved Recommendation 91–6 which is enclosed for your consideration. The Board is aware that the Department has just proposed rules in the Federal Register concerning Radiation Protection for Occupational Workers. 56 FR 64334 (Dec. 9, 1991). Recommendation 91–6 deals with radiation protection issues throughout the DOE defense nuclear facilities complex.

42 U.S.C. 2286d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. The Board believes the recommendation contains no information which is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. 2161–68, as amended, please arrange to have this recommendation promptly placed on file in your regional public reading rooms.

The Board intends to publish this recommendation in the **Federal Register**.

Sincerely,

John T. Conway,
Chairman.

[FR Doc. 91–30886 Filed 12–26–91; 8:45 am]
BILLING CODE 6820–KD–M

[Recommendation 91–5]

Power Limits for K-Reactor Operation at the Savannah River Site

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning power limits for K–Reactor Operation at the Savannah River Site. The Board requests public comments on this recommendation.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before January 27, 1992.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Carole J. Council, at the address above or telephone (202) 208–6400.

Dated: December 20, 1991.

John T. Conway,
Chairman.

Power Limits for K-Reactor Operations at the Savannah River Site

Dated: December 19, 1991.

[Recommendation 91–5]

The Defense Nuclear Facilities Safety Board (the Board) has been conducting an ongoing review of the bases and criteria for the operational plans for the K-reactor at the Savannah River Site. These plans currently include limitation of the power of the reactor to 30 percent of the historical full power, or to approximately 720 megawatts (MW). The information reviewed has been provided to the Board in numerous briefings and documents, including the Savannah River K Production Reactor Safety Analysis Report (WSRC–SA–10003).

The Board concluded on the basis of this information that operation of the K-reactor at a power level not exceeding 30 percent of the nominal historical maximum power would impose no undue risk to public health and safety assuming that all other improvement measures established as necessary for startup have been completed and effectively implemented. In this connection, the Board has been stationing members of its staff and some of its outside experts at the Savannah River Site during the period of restart to monitor the activities during restart and initial power ascension of the K-reactor with the initial reactor configuration.

Information in the K–14–1 Core Operations Report (September, 1991), and some of the Reactor Operations Management Plan (ROMP) closure packages implies that at a later time the Department of Energy may wish to increase the operating power level of the K-reactor above the 30 percent value. However, the Board is of the opinion that the existing information on the effectiveness of the engineered safety features, especially those that would be relied on in the event of a large loss-of-coolant accident, does not at present support operation at a power level much above the 30 percent value. The Board considers that justification of any increase in power would require further refinement of the thermal-hydraulic evidence on the cooling capability of the emergency cooling systems under accident conditions. Therefore, pursuant to 42 U.S.C. 2286b(d), DOE shall inform the Board well before any decision to increase the reactor's power level above 30 percent of the historical value of its maximum full power. Furthermore, if such an increase in operating power is to be contemplated by the DOE, the Board recommends that:

1. The DOE should conduct more definitive studies on the thermal-hydraulic methodology, criteria, and experimental test program used in analyzing performance of core cooling of the K-reactor during unusual conditions that could prevail during accidents. These studies should more fully reflect prototypical geometry and accident conditions (temperature, flow, pressure, and configuration).

2. Any proposal to operate the K-reactor at a level above the 30 percent value should be supported by accident analysis based on the thermal-hydraulic methodology revised in accordance with the above.

3. The evaluation model for analysis of postulated loss of coolant accidents should be documented and controlled in accordance with the procedures described in 10 CFR 50.46 (1991). Similar controls should be implemented for models used in analyzing non-LOCA accidents.

John T. Conway.

Appendix—Transmittal Letter to the Secretary of Energy

December 19, 1991.

The Honorable James D. Watkins,
Secretary of Energy, Washington, DC 20585.

Dear Mr. Secretary: On December 19, 1991, the Defense Nuclear Facilities Safety Board, in accordance with 42 U.S.C. 2286a(5), approved Recommendation 91–5 which is enclosed for your consideration.

42 U.S.C. 2286d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. The Board believes the recommendation contains no information which is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. 2161–68, as amended, please arrange to have this recommendation promptly placed on file in your regional public reading rooms.

The Board intends to publish this recommendation in the **Federal Register**.

Sincerely,

John T. Conway,
Chairman.

[FR Doc. 91–30885 Filed 12–26–91; 8:45 am]
BILLING CODE 6820–KD–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Teleconference Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Executive Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: January 13, 1992.

TIME: 11 a.m. (e.t.)

PLACE: National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC, 20005–4013, telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III–C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis, and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons. The Executive Committee of the National Assessment Governing Board will meet via teleconference call on January 13, 1992 at 11 a.m. (et). The proposed agenda includes: (1) Discussion of the status of the Memorandum of Understanding detailing the Board's relationship with the Department of Education; (2) review of the Reporting and Dissemination Committee's recommendations regarding the NCES plans for disseminating the new NAEP reports; and (3) review of the National Academy of Education's evaluation of NAEP. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: December 20, 1991.

Diane Ravitch,
Assistant Secretary and Counselor to the Secretary.

[FR Doc. 91–30909 Filed 12–26–91; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Wetlands Involvement Notification for Proposed Construction of an Industrial Waste Landfill at the Department of Energy's Y–12 Plant, Oak Ridge, TN

AGENCY: Department of Energy.

ACTION: Notice of wetlands involvement and opportunity to comment.

SUMMARY: The Department of Energy (DOE) proposes to construct a new landfill for disposal of industrial waste and dewatered bottom ash at the Y–12 Plant on the Oak Ridge Reservation (ORR) in Oak Ridge, Tennessee. All activities related to the proposed project would occur within a restricted area of about 20 hectares (50 acres) on federally owned property.

In accordance with the DOE Regulations for Compliance With Floodplains/Wetlands Environmental Review Requirements (10 CFR part 1022), DOE will prepare a wetlands assessment which will be incorporated into the Environmental Assessment (EA) being prepared for the proposed landfill.

SUPPLEMENTARY INFORMATION: The proposed landfill would provide additional landfill capacity for disposal of industrial wastes generated by the

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three major facilities operated at ORR—the Oak Ridge Y–12 Plant, the inactive Oak Ridge Gaseous Diffusion Plant, and the Oak Ridge National Laboratory (ORNL)—and would bring disposal of coal ash from the Y–12 Steam Plant into environmental compliance with the Tennessee Water Quality Control Act. The landfill would be developed on two disposal areas, totaling approximately 20 hectares (50 acres), on the East Chestnut Ridge site. Site preparation would include clearing, grading, and fencing; construction of access roads; and onsite disposal of construction spoils. Construction would require the dredging and filling of two wetland areas. One wetland is permanently flooded; the other wetland contains water only seasonally. The wetlands are classified as palustrine open-water wetlands and are approximately 0.15 acres and 0.05 acres in size.

The proposed action includes the construction of a 0.5-acre replacement pond that would replace the wetland functions of the two existing wetlands. The replacement pond would be located northwest of the proposed landfill site. Run-off from the landfill would be diverted from the replacement pond, and all run-off accepted by the replacement pond would be from offsite.

The proposed action would be carried out in coordination with the Environmental Protection Agency, the U.S. Army Corps of Engineers, and the Tennessee Department of Environmental Conservation. Maps and further information are available from DOE at the address shown below.

DATES: Any comments are due on or before January 13, 1992.

ADDRESS: Send comments to: Joy L. Sager, Environmental Engineer, Waste Management and K–25 Operations Division (EW–92), U.S. Department of Energy, Post Office Box 2001, Oak Ridge, Tennessee 37831–8541, phone number (615) 576–0850. Fax comments to: (615) 576–5333.

Paul D. Grimm,

Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 91–30985 Filed 12–26–91; 8:45 am]
BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. JD92–02043T; West Virginia–9]

State of West Virginia; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

December 19, 1991.

Take notice that on December 16, 1991, the West Virginia Department of Commerce, Labor and Environmental Resources (West Virginia) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Maxton/Maxon Sandstone (Maxton) in Matheny and McGraws Quadrangles, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The Maxton within the designated area consists of three successive Mauch Chunk Group sandstones, referred to as the "Upper Maxton", the "Middle Maxton" and the "Lower Maxton". The designated quadrangles in the notice are found in Raleigh and Wyoming Counties, West Virginia.

West Virginia previously filed to designate the Maxton Sandstone and the Big Lime as tight formations. On January 23, 1984, West Virginia withdrew the Maxton portion of its recommendation. See Order No. 372 (27 FERC ¶ 61,198), issued May 9, 1984 in Docket No. RM79–76–134 (West Virginia–2).

The notice of determination also contains West Virginia's findings that the referenced portion of the Maxton/Maxon Sand Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR § 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91–30884 Filed 12–26–91; 8:45 am]
BILLING CODE 6717–01–M

[Docket Nos. RP89–161–000, RP89–172–000, CP91–687–000, and CP90–2275–000]

ANR Pipeline Co.; Informal Settlement Conference

December 18, 1991.

Take notice that an informal settlement conference will be convened in this proceeding commencing on Tuesday, January 7, 1992, at 9 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets. The conference will continue through Wednesday, January 8, 1992.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Michael D. Cotleur at (202) 208–1076 or James A. Pederson at (202) 208–2158.

Lois D. Cashell,

Secretary.

[FR Doc. 91–30883 Filed 12–26–91; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. CP92–223–000]

National Fuel Gas Supply Corp.; Order Granting Request for Waiver and Clarifying Prior Order

Issued December 19, 1991.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

On December 9, 1991, National Fuel Gas Supply Corporation filed a petition for waiver of the requirement in § 2.55(b) of the regulations that interstate pipelines notify the Commission at least 30 days prior to commencing construction activities to replace existing facilities.[1] We will grant the request.

As a result of statements made by the National Fuel in its request for waiver, we will also clarify a portion of Order No. 555.[2]

[1] Section 2.55(b), 18 CFR 2.55(b) (1990), was amended, effective August 2, 1990, to adopt the notification requirements for replacement of existing facilities. See Interim Revisions to Regulations Governing Construction of Facilities Pursuant to section 311 and Replacement Facilities, Order No. 525, FERC Statutes and Regulations, Regulations Preambles 1986–1990 ¶ 30,895 (1990), and Order No. 525–A, 53 FERC ¶ 61,140 (1990).

[2] Docket No. RM90–1–000, Revisions to Regulations Governing Transportation under

Continued

Request for Waiver

National Fuel states that it owns and operates a 6-inch transmission line, known as Line Q, in Warren County, Pennsylvania that supplies gas to approximately 1,500 people in and around the Town of Tidioute. Tidioute can be served by gas coming out of a small nearby storage field or gas brought in over Line Q. Line Q crosses the Allegheny River.

On August 22, 1991, a valve failed near the south bank of the Allegheny River in the Allegheny National Forest due to the collapse of a hillside.

On August 23, National Fuel filed with the Commission an emergency gas transaction notice under § 284.264(b)(1) that described its plan to effectuate permanent repairs of Line Q within 60 days.[3] After further analysis of the repairs that would be required, on October 31, National Fuel filed an amendment to the emergency gas transaction notice that described a revised replacement plan. In its revised plan, National Fuel states that it intends to replace approximately 330 feet of Line Q with line that goes around the part of the hill having stability problems. National Fuel also states that it intends to bore about 300 feet of replacement line through the bedrock underneath the steepest part of the hillside. National Fuel estimates that the project will cost $132,000.

National Fuel states that Line Q has remained blocked since August 22 because it has not been able to obtain the necessary permission to begin construction activities to repair Line Q in the Allegheny National Forest. The only gas now reaching Tidioute comes from the nearby storage field. National Fuel alleges that "(m)uch of Tidioute" would be without gas service if the line from the storage field were to fail.

On November 6, National Fuel filed a petition for waiver to extend the emergency transaction for another 60 days.[4] (The original 60-day period had expired.) National Fuel, however, states that it is concerned that "if its petition (to extend the emergency transaction) was granted now giving (it) an additional 60 days beginning back in October, it would not be possible to complete the project (especially the 300 foot bore under the hillside) by December 26 (120 days after National (Fuel's) original notice was filed)." [5] Thus, National Fuel has filed this request for waiver of § 2.55(b). National Fuel contends that it will begin replacing facilities on December 9 under the emergency regulations in § 284.261 and will continue replacing facilities after December 26 under § 2.55(b).

National Fuel's petition describes the facilities to be replaced and the environmental mitigation procedures to be used as required by § 2.55(b). We have reviewed National Fuel's petition and determined that good cause exists to grant the request for waiver. Accordingly, National Fuel's waiver request is granted.

Clarification

In its request for waiver, National Fuel states that the "30-day notice requirement was abolished upon the issuance of Order No. 555." National Fuel further states that it "has not filed any 30-day notices for replacement projects commenced under § 2.55(b) after September 20, 1991," the date Order No. 555 was issued.[6]

In the interim rule in Order No. 525, we stated that the "interim rule is effective only until a final rule is issued in Docket No. RM90–1–000." [7] In Order No. 555, we stated that the "interim rule (Order No. 525) expires upon issuance of the final rule in this proceeding." [8] Order No. 555 was scheduled to become effective on November 19. On November 13, 1991, we issued an order that postponed the effective date of Order No. 555 until 30 days after publication in the **Federal Register** of an order on rehearing because of Order No. 555's "broad and potentially significant impact on the natural gas industry." [9]

Order No. 555 was issued on September 20, 1991. Numerous parties, including National Fuel, filed for rehearing of various provisions in that order and many parties requested a stay. We will address these requests in a rehearing order. Since an order on rehearing is contemplated, no final order has been issued in the proceedings in Docket No. RM90–1–000. Consequently, the interim rule in Order No. 525 remains in effect. Thus, interstate pipelines must continue to comply with the 30-day notice requirement in § 2.55(b) and 284.11(b) until a final order on rehearing is issued in Docket No. RM90–1–000 and the final order is made effective. Although this issue has arisen in a specific case, it obviously has generic applicability. Accordingly, we are directing the Secretary of the Commission to arrange for the publication of this order in the **Federal Register**.

The Commission orders:

(A) The notification requirement in § 2.55(b) of the regulations is waived to permit National Fuel to commence the replacement of facilities described in the petition.

(B) The interim rule in Order No 525 will remain in effect until a final order is issued in Docket No. RM90–1–000 and the final order is made effective.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91–30881 Filed 12–26–91; 8:45 am]
BILLING CODE 6717–01–M

section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates, Order No. 555, III FERC Statutes and Regulations ¶ 30,927 (September 20, 1991).

[3] Section 284.265(b)(1) provides, in part, that an emergency natural gas transaction is limited to 60 consecutive calendar days and that the transaction may be continued for an additional 60 days under certain conditions.

[4] The emergency transaction was assigned Docket No. EM91–104–000.

[5] National Fuel has now obtained the necessary permission to begin construction activities in the Allegheny National Forest.

[6] National Fuel states that it filed this request for waiver "(o)ut of an abundance of caution."

[7] Order No. 525 at p. 31,812.

[8] Order No. 555 at p. 30,216.

[9] 57 FERC ¶ 61,195 (1991).

Docket Nos. RP88–67–000, RP88–81–000, RP88–221–000, RP90–119–001, RP91–4–000, and RP91–119–000 (Phase I/Rates)]

Texas Eastern Transmission Corp.; Informal Settlement Conference

December 18, 1991.

Take notice that a conference of the Steering Committee is scheduled to be convened in this proceedng on January 14, 1992, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. Parties may designate anyone they wish for the Steering Committee, but business representatives are encouraged. Participants on the Steering Committee should include individuals who are in a position to commit their parties quickly on matters of substance.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Dennis H. Melvin at (202) 208–0042 or Arnold H. Meltz at (202) 208–0737.

Lois D. Cashell,

Secretary.

[FR Doc. 91–30882 Filed 12–26–91; 8:45 am]
BILLING CODE 6717–01–M

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Office of Fossil Energy

[FE Docket No. 91-74-NG]

Enron Gas Marketing, Inc.; Order Granting Authorization To Import and Export Natural Gas From and to Canada and Mexico

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of order granting blanket authorization to import and export natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Enron Gas Marketing, Inc., blanket authorization to import up to 900 Bcf of natural gas and to export up to 900 Bcf of natural gas to and from Canada and Mexico over a two-year period beginning on January 1, 1992, the date its current import and export authority expires.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 18, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-30986 Filed 12-26-91; 8:45 am]

BILLING CODE 6540-01-M

[FE Docket No. 91-78-NG]

Tenngasco Corp.; Order Granting Authorization To Import Natural Gas From Canada and Granting Intervention

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of order granting blanket authorization to import natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Tenngasco Corporation blanket authorization to import up to 200 Bcf of natural gas from Canada over a two-year period beginning on the date of first delivery. The order also grants intervention to Great Lakes Transmission Limited Partnership.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC December 18, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-30987 Filed 12-26-91; 8:45 am]

BILLING CODE 6540-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4087-9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 27, 1992.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: RCRA Hazardous Waste Permit Application and Modification, part A (ICR No. 262.04; OMB No. 2050-0034). This is a renewal of a currently approved collection.

Abstract: This ICR discusses the requirements for owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDFs) submitting part A permit applications or part A permit modifications as required by section 3005 of the Resource Conservation and Recovery Act (RCRA). The requirements for submitting and modifying a part A permit application are codified at 40 CFR part 270.

The RCRA permit application asks for the characteristics and conditions of the site and of the hazardous waste handled. The information requested includes general facility information (name, mailing address, location), a description of the hazardous waste activity, a topographic map, and a brief description of the nature of business. The application must be revised if certain changes are made to a facility.

EPA uses the information in the part A permit application for a variety of purposes, to include: Identifying the person(s) legally responsible for hazardous waste activity, determining which facilities require permits under more than one program, assessing potential for the facility to pollute nearby ground and surface waters, and defining the specific wastes a facility is legally allowed to handle for different purposes.

Burden Statement: The public reporting burden for this collection is estimated to average 12 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Owners and operators of hazardous waste treatment, storage, and disposal facilities.

Estimated Number of Respondents: 825.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 9,942 hours.

Frequency of Collection: One-time permit application.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460, and Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: December 19, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91-30971 Filed 12-26-91; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4088-5]

Environmental Impact Statement; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5073 or (202) 260-5075.

Availability of Environmental Impact Statements Filed December 16, 1991 Through December 20, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910439, Second Final EIS, SCS, CO, UT, Uintah Basin Unit Expansion Plan, Irrigation Improvement, Colorado River Salinity Control Program, Funding, Uintah and Duchesne, Cos. UT, Due: January 27, 1992, Contact: Francis T. Holt (801) 524-5054.

EIS No. 910440, Final EIS, AFS, WA, Lower Klickitat River Wild and Scenic River Management Plan, National Wild and Scenic Rivers System, Implementation, Columbia River, Gorge National Scenic Area, Klickitat County, WA, Due: January 27, 1991, Contact: Steve Mellor (503) 386-2333.

EIS No. 910441, Final EIS, FHW, CA, Hollister Bypass Construction, CA-156/Hollister from Union/Mitchell Road to San Felipe Road, Funding, Possible COE Permit, San Benito County, CA, Due: January 27, 1992, Contact: John R. Schultz (916) 551-1310.

EIS No. 910442, Final Supplement, COE, MS, Arkabutla, Enid, Grenda and Sardis Lakes, Operation and Maintenance, Update Information, Channel Restoration on the Tallatchie River and Yalobusha River, MS, Due: January 27, 1992, Contact: W. Harold Lee (601) 495-7104.

EIS No. 910443, Final EIS, APH, AL, AZ, AR, CA, FL, GA, KS, LA, MS, MO, NM, NC, OK, SC, TN, TX, VA, National Boll Weevil Cooperative Control Program, Implementation and Funding, AL, AZ, AR, CA, FL, GA, KS, LA, MS, MO, NM, NC, OK, SC, TN, TX, VA, Due: January 27, 1992, Contact: Sydney E. Cousins (301) 436-8247.

EIS No. 910444, Second Draft Supple, NPS, CA, Yosemite National Park, General Management Plan (GMP), Implementation, Concession Services Plan (CSP), Tuolumne, Mariposa and Madera Counties, CA Due: January 28, 1992, Contact: Michael Finley (209) 372-0204.

EIS No. 910445, Final EIS, AFS, UT, WY, Westside Analysis Area, Multiple Use Management Plan, Implementation, Wasatch-Cache National Forest, Summit County, Utah and Uinta County, WY, Due: January 27, 1992, Contact: Wayne Anderson (307) 782-6555.

EIS No. 910446, Final EIS, AFS, CA, Modoc National Forest, Land and Resource Management Plan, Implementation, Modoc, Lassen and Siskiyou Counties, CA, Due: January 27, 1992, Contact: Douglas G. Smith (916) 233-5811.

EIS No. 910447, Final Supplement, UAF, WY, NB, Peacekeeper System Deployment (Minuteman III Missile Replacement) Additional Information, Near Warren AFB, Laramie, Goshen and Platte Counties, Wyoming and Scotts Bluff, Banner and Kimball Counties, Nebraska, Due: January 27, 1992, Contact: Ltc. Tom Bartol (714) 382-2003.

EIS No. 910448, Draft EIS, IBR, CA, San Luis Unit Drainage Program, Central Valley Project, Implementation, Funding and Possible Section 404 Permit, San Joaquin River, Fresno, Merced and Kings Counties, CA, Due: March 25, 1992, Contact: Dr. Wayne Deason (916) 776-9336.

Amended Notices

EIS No. 910418, Final EIS, COE, GA, SC, Savannah Harbor Comprehensive Study and Harbor Deepening, Updated and New Information, Implementation, Chatham County, GA and Jasper County, SC, Due: January 21, 1992, Contact: David Crosby (912) 944-5781.

Published FR- 11-29-91—Review period extended.

Dated: December 23, 1991.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 91-30993 Filed 12-26-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4088-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 9, 1991, through December 13, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1991 (56 FR 14096).

Draft EISs

ERP No. D-AFS-L82011-ID Rating EC2, Coeur d'Arlene Nursery Pest Management, Implementation, Idaho Panhandle National Forests, Kootenai County, ID.

Summary: EPA has environmental concerns regarding the vulnerability of the Rathdrum Spokane Aquifer to chemical contamination. Additional information pertaining to the characteristics of the aquifer, the potential for contamination of wells and planned best management practices which would prevent the leaching of agricultural chemicals into the ground water has been requested.

ERP No. D-BOP-D81021-WV Rating EC2, Beckley Federal Correctional Institution, Construction and Operation, Raleigh County, WV.

Summary: EPA expressed concern about wetland and habitat impact and requested that discussions on these issues be expanded in the final document. EPA also requested additional information on alternatives.

ERP No. D-FHW-E40741-FL Rating EC2, Wonderwood Connector Transportation Facility, Construction, connecting the Dame Point Expressway (FL-9A) in the Arlington District to Mayport Road (FL-101), Funding, Section 10 and 404 Permits and NPDES Permit, City of Jacksonville, Duval County, FL.

Summary: EPA had concerns with wetland and noise impacts associated with the four proposed alternative alignments. Additional information on wetland impacts and wetland and noise mitigation was recommended.

ERP No. D-USA-A21035-OR Rating LO1, Umatilla Depot Activity, On-Site Facility for Disposal of Stockpiled Chemical Agents and Munitions, Construction and Operation, Morrow and Umatilla Counties, OR.

Summary: EPA did not identify any potential environmental impacts requiring substantive changes to the proposal, however, EPA recommended additional clarifying language which would strengthen the final EIS.

Final EISs

ERP No. F-NPS-E61066-FL, Big Cypress National Preserve, General Management Plan, Implementation, Collier, Dade, and Monroe Counties, FL.

Summary: EPA's concern with respect to protection of cultural resources during prescribed burning and air quality issues at oil/gas production sites were addressed in the Final EIS. EPA requested the final general management plan which will detail exotic plant control using herbicides and burning.

ERP No. FS-NSF-A84024-00, U.S. Antarctic Program Continued Operation, Updated Information, Implementing the Safety, Environment, and Health (SEH) Initiative, Antarctica.

Summary: EPA continues to be concerned about the lack of specific information on schedules for initiating and completing the studies identified as mitigation measures to be implemented under the preferred alternative. EPA

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recommended that the Record of Decision include this information and a process for tracking the progress of the mitigation.

Dated: December 23, 1991.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 91-30894 Filed 12-27-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4088-2]

Establishment of a Computer Matching Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, as amended (the Act), and the Office of Management and Budget's (OMB) guidelines implementing the Act, EPA is giving notice of the establishment of a computer matching program.

EFFECTIVE DATE: This matching program will be effective on February 25, 1992.

ADDRESSES: Comments or inquiries may be addressed to Stephen S. Hufford, Chief, Information Management Branch, Information Management and Services Division (PM-211D), Office of Information Resources Management, Room 2003 Waterside Mall, EPA, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Stephen S. Hufford, telephone (202) 260-5914.

SUPPLEMENTARY INFORMATION: In accordance with the Computer Matching and Privacy Protection Act of 1988, Public Law No. 100-503, as amended, OMB's Computer Matching Guidelines, 54 FR 25818 (June 19, 1989), and OMB Bulletin 89-22 (September 29, 1989), EPA is giving notice of the establishment of a matching program. This matching program is described as follows:

(1) *Name of Source Agency*: EPA.

(2) *Name of Recipient Agency*: Illinois Department of Public Aid (IDPA).

(3) *Beginning and Ending Dates of the Matching Program*: The matching program will begin on February 25, 1992. The matching program will continue until the purpose of the matching program is accomplished, or 18 months from the date the matching program was approved by EPA's Data Integrity Board, whichever comes first.

(4) *Description of the Matching Program*: The purpose of the matching program is to determine whether EPA employees are fraudulently or otherwise improperly receiving IDPA public assistance. If, as a result of the matching program, EPA and IDPA determine that an EPA employee fraudulently or otherwise improperly obtained IDPA public assistance, EPA and IDPA intend to initiate appropriate criminal, civil, and/or administrative remedies against that employee. Among other remedies, IDPA could terminate or reduce benefits and/or EPA could reprimand, suspend, or fire the employee.

The legal authorities for conducting the matching program are Illinois Revised Statutes, Chapter 23 (1988), under which IDPA is authorized to administer and monitor public assistance and food stamp programs, and the Inspector General Act of 1978, as amended, 5 U.S.C. app. (1988), under which the EPA Office of Inspector General (OIG) is authorized to conduct investigations and audits to prevent and detect fraud, waste, and abuse.

The EPA Privacy Act system of records that will be used in the matching program is "EPA-1, Environmental Protection Agency Payroll System (EPAYS)," which contains payroll and personnel information for all current EPA employees (approximately 17,000 records). The IDPA system of records that will be used in the matching program is the IDPA Client Data Base Files, which contains information on all individuals who are receiving General Assistance, Aid to Families with Dependent Children, and food stamps from IDPA (approximately 1.3 million records).

(5) *Name and Address of Contact for Public Inquiries*: Stephen S. Hufford, Chief, Information Management Branch, Information Management and Services Division (PM-211D), Office of Information Resources Management, Room 2003 Waterside Mall, EPA, 401 M Street, SW., Washington, DC 20460.

EPA's Data Integrity Board approved this computer matching program on November 21, 1991.

Dated: December 13, 1991.

Christian R. Holmes,

Acting Assistant Administrator for Administration and Resources Management.

[FR Doc. 91-30972 Filed 12-26-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

CBS Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 16, 1992.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. CBS Bancshares, Inc., Spencer, Tennessee; to acquire an additional 52.5 percent of the voting shares of First State Bank, Maynardville, Tennessee, for a total of 56.25 percent.

2. Crescent Banking Company, Jasper, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Crescent Bank and Trust Company, Jasper, Georgia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Old National Bancorp*, Evansville, Indiana; to merge with U.S.B. Corporation, Washington, Indiana, and thereby indirectly acquire United Southwest Bank, Washington, Indiana.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. West River Holding Company, Inc., Hettinger, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of West River State Bank, Hettinger, North Dakota.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. United Nebraska Financial, Grand Island, Nebraska; to acquire 86.4 percent of the voting shares of Citizens Bank and Trust Company, Columbus, Nebraska.

Board of Governors of the Federal Reserve System, December 20, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-30912 Filed 12-26-91; 8:45 am]

BILLING CODE 6210-01-F

CBT Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank's Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 16, 1992.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. CBT Corporation, Paducah, Kentucky; Paducah Bank Shares, Inc., Paducah, Kentucky; and Peoples First Corporation, Paducah, Kentucky; to engage *de novo* through their subsidiary, First Park Partners, Paducah, Kentucky, in acquiring, developing and selling and/or leasing parcels of a tract of commercial real property in order to promote community welfare pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in McCracken County, Kentucky.

Board of Governors of the Federal Reserve System, December 20, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-30913 Filed 12-26-91; 8:45 am]

BILLING CODE 6210-01-F

Wayne M. Miller, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 16, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Wayne M. Miller, Dundee, Illinois, and Robert Daniel, Waterman, Illinois; to acquire 55.21 percent of the voting shares of Waterman Bancshares, Inc., Waterman, Illinois, and thereby indirectly acquire Waterman State Bank, Waterman, Illinois.

2. Peter M. Mott, to acquire 13.74 percent of the voting shares of Kingston State Bank, Kingston, Illinois.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Terry Gerber, Exeland, Wisconsin, and Franz Gerber, Bruce, Wisconsin; to acquire 60 percent of the voting shares of Cameron Bancorp, Inc., Cameron, Wisconsin, and thereby indirectly acquire Community Bank of Cameron, Cameron, Wisconsin.

Board of Governors of the Federal Reserve System, December 20, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-30914 Filed 12-26-91; 8:45 am]

BILLING CODE 6210-01-F

National City Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than January 16, 1992.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. National City Corporation, Cleveland, Ohio; to acquire B&L Consultants, Inc., Norwood,

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Massachusetts, Norwood, Massachusetts, through its wholly-owned subsidiary, National Processing Company, Inc., and will be a financial services company providing payment, data processing services (freight payment and accounts payable) pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Trans Financial Bancorp, Inc., Bowling Green, Kentucky; to acquire First Federal Savings Bank of Tennessee, Tullahoma, Tennessee, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in the State of Tennessee.

2. Trans Financial Bancorp, Inc., Bowling Green, Kentucky; to acquire Maury Federal Savings Bank, Columbia, Tennessee, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in the State of Tennessee.

Board of Governors of the Federal Reserve System, December 20, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-30915 Filed 12-26-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Current Status of the Vessel Sanitation Program and Experience to Date With the Program: Meeting

The National Center for Environmental Health and Injury Control (NCEHIC) of the Centers for Disease Control (CDC) announces the following meeting.

Name: Current Status of the Vessel Sanitation Program and Experience to Date with the Program—Public meeting between CDC and the cruise ship industry, private sanitation consultants, and other interested parties.

Place: Miami Port Authority Passenger Terminal No. 10, 1007 North America Way, Miami, Florida.

Time and Date: 9 a.m.—Wednesday, January 29, 1992.

Status: Open.

Matters To Be Discussed: Current Status of the Vessel Sanitation Program and experience to date.

During the past 5 years, as part of the revised Vessel Sanitation Program, CDC has conducted a series of public meetings with members of the cruise ship industry, private sanitation consultants, and other interested parties. This meeting is a continuation of that series of public meetings.

For a period of 15 days following the meeting, through February 13, 1992, the official record of the meeting will remain open so that additional material or comments may be submitted to be made part of the record of the meeting.

The meeting will be open to the public for participation, comment, and observation, limited only by space available.

Contact Person for Further Information: Additional information concerning the meeting may be obtained from: Linda Anderson, Chief, Special Programs Group (F29), NCEHIC, CDC, 1600 Clifton Road, NE., Atlanta Georgia 30333, telephone 404/488-4595 or FTS 236-4595.

Dated: December 20, 1991.

Elvin Hilyer

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91-30917 Filed 12-26-91; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Statement of Organization, Functions, and Delegations of Authority; Office of Criminal Investigations et al.

Part H, chapter HK (formerly chapter HF) (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (56 FR 29484, June 27, 1991) is amended to reflect the establishment of substructure under the recent alignment of the Food and Drug Administration (FDA). As one of the oldest Federal regulatory agencies charged with consumer protection, FDA has investigated criminal activities for many years. However, evidence of increased criminal activity in product areas regulated by FDA has made it necessary for the Agency to establish an organizational component which will focus primarily on criminal investigations.

As part of this proposal, the functional statements for the Office of Enforcement, the Office of Regional Operations, and the Regional Field Offices within ORA will be revised to indicate their primary responsibility for noncriminal investigations.

Under section HK-B, Organization:

1. Insert the following new paragraphs Under the Office of Operations (HKB), Office of Regulatory Affairs (HFA4) reading as follows:

Office of Enforcement (HFA4B). Advises and assists the Associate Commissioner and other key officials on regulations and compliance matters that have an impact on policy development, implementation, and long-range program goals.

Coordinates, interprets, and evaluates the Agency's overall compliance efforts; as necessary, establishes compliance policy and recommends policy to the Associate Commissioner.

Stimulates an awareness within the Agency of the need for prompt and positive action to assure compliance by regulated industries; works to assure an effective and uniform balance between regulatory compliance and Agency responsiveness to consumer needs.

Acts as liaison with other Federal agencies on Agency compliance matters.

Evaluates and coordinates proposed legal actions to ascertain compliance with regulatory policy and enforcement objectives.

Directs and coordinates with the Office of Regional Operations (ORO), other Agency components, and Office of the General Counsel, new or novel cases which may be precedent-setting.

Resolves appeals when proposed compliance actions are disapproved by the centers or the Office of the General Counsel.

Coordinates development of the Agencywide bioresearch monitoring activities; monitors compliance activities to assure uniform application of compliance policy.

Office of Regional Operations (HFA4C). Coordinates and manages all Agency field operations, except certain criminal investigations, on behalf of the Associate Commissioner; develops, issues, approves, or clears proposals and instructions affecting field activities; serves as the central point within the Agency through which Headquarters offices obtain field support services.

Establishes field compliance and enforcement posture, based on Agency policy.

Develops and/or recommends to the Associate Commissioner policy, programs, and plans for activities between the Agency and State and local agencies; administers the Agency's overall Federal-State program and policy; coordinates the program aspects of FDA contracts with State and local counterpart agencies.

Coordinates field consumer affairs and information programs; distributes timely information to the field; coordinates activities with Agency counterpart organizations.

Serves as the Agency focal point for activities relating to the Federal Medical Products Quality Assurance Program and maintains liaison with other Government agencies procuring medical supplies; issues final administrative approval for quality assurance of specific products/firms.

Evaluates the overall management and capabilities of the Agency's field organization; initiates action to improve the management of field activities and coordinates the formulation and management of career development plans.

Implements nationwide information storage and retrieval systems for data originating in the field offices.

Develops and/or recommends to the Associate Commissioner policy, program, and plans for applied research that relate to Agency enforcement problems that will be conducted by field installations; coordinates such research efforts with appropriate Agency components.

Directs and coordinates the Agency emergency preparedness and civil defense programs.

Provides other Agency components with laboratory support in various highly specialized areas.

Recommends priorities for all field construction, repair, improvement, and renovation and recommends short- and long-range field facility utilization plans.

Office of Criminal Investigations (HFA4D). Advises and assists the Associate Commissioner and other key officials on regulations and criminal matters that affect the Agency.

Directs, plans, and develops criminal investigation activities in coordination with other Agency components and with other Federal, State, and local law enforcement agencies.

Develops, coordinates, and implements Agency policy related to criminal investigations.

Initiates and conducts criminal investigations under all statutes administered by the Food and Drug Administration, through area offices located throughout the United States; coordinates assignments involving undercover and surveillance personnel and activities.

Assures coordination of criminal investigation activities with FDA Regional Field Offices and District Offices and adherence to Agency's enforcement priorities; develops and maintains cooperative relationships with field and Headquarters components.

Provides recommendations, to the Office of General Counsel on referrals of criminal cases to the Department of Justice for further investigation and/or prosecution, or directly to the U.S. Attorney when such direct reference is authorized.

Develops automated data processing systems to be used for criminal investigations and related enforcement matters.

Develops, reviews, and approves training programs for FDA's criminal investigators and related personnel.

Participates in Grand Jury investigations and serves as agents of the Grand Jury.

Regional Field Offices (HFRN, HFRA, HFRS, HFRM, HFRW, HFRP). The Regional Office is the primary organizational component for each region and is organized into district offices, and/or specialized centers. A Regional Field Office is under the direction of a Regional Food and Drug Director who is the primary executive of the Agency within the region. The Regional Food and Drug Director is responsible for the effective implementation of all activities required to assure that regulated establishments within the region comply with laws and regulations enforced by FDA.

Within FDA Regional Offices, functions performed are as follows:

Provides managerial driection to the Agency's non-criminal field programs to achieve compliance with the laws and regulations for which the Agency is responsible through appropriate regulatory action.

Develops and maintains cooperative relationships with the Agency's Office of Criminal Investigations personnel; provides technical expertise from investigations, compliance, and laboratory staffs in suppport of criminal investigations.

Manages resource allocations, money, and people.

Manages a field management informaton system.

Coordinates Agency activities with related operations of the PHS Regional Health Administrator and the Department's Regional Director.

Develops and maintains cooperative relationships with State, local and other Federal agencies; serves on interagency councils; enccurages improved State and local consumer protection programs pertinent to Agency-enforced laws and regulations.

Assists State and local officials in the development of uniform legislation, codes, and regulations.

Represents the Agency, or provides policy and direction for Agency representation, in dealing with public and private organizations, such as governmental agencies, volunteer agencies, educational institutions, industry and professional associations, and the local media within the region.

Plans and evaluates program activities; measures accomplishments against annual field workplan objectives; initiates management and program analysis; manages a Quality Assurance Program; and advises Headquaters regarding strategy changes needed to reach existing or modified objectives.

Advises Headquarters on new or emerging problems and trends, future program needs and priorities, State legislative activities, manpower, equipment, financial needs, and long-range planning.

Coordinates emergency activities by maintaining liaison with Department components, and other Federal departments and agencies and by providing assitance to States and localities in the event of a national disaster or other emergency.

Advises, commissions, and certifies State personnel; monitors and evaluates State programs in milk, shellfish, food service sanitation, and radiation safety.

Determines acceptability of items subject to the Agency's jurisdiction, for entry into this country through examination of available records, inspection of the product, and/or by sampling and laboratory examination of the product followed by release, detention, and/or rejection.

Conducts investigations and inspections, and analyzes samples of foods, drugs and other commodities for which the Agency has regulatory responsibility.

Conducts administrative hearings on alleged violations, and initiates appropriate enforcement action.

Recommends legal action to Headquarters, to the Office of the General Counsel, or to the responsible U.S. attorney (when such direct reference is authorized), and assists in implementing approved action.

Detains medical devices and, in cooperation with USDA, detains meat, poultry, or egg products that may be violative.

Manages recalls and performs follow-up activities to assess recall effectiveness and prevent recurrences.

Condusts research to develop and refine analytical methodology and to explore new systems of analysis, maintains liaison with scientists and scientific bodies with interest pertinent to laboratory activities.

Manages, evaluates, and audits the program aspects of Federal-State Contracts.

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Dated: December 15, 1991.

David A Kessler,

Commissioner of Food and Drugs.

[FR Doc. 91-30852 Filed 12-26-91; 8:45 am]

BILLING CODE 4160-10-M

Health Care Financing Administration

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of New System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "Uniform Clinical Data Set (UCDS)," HHS/HCFA/HSQB No. 09-70-1516.

We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the "routine uses" portion of the system be published for comment, HCFA invites comments on all portions of this notice.

DATES: HCFA filed a new system report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on December 27, 1991.

The new system of records, including routine uses, will become effective 60 days from the date this notice is published in the **Federal Register** (January 27, 1992) unless HCFA receives comments which require alteration to the system.

ADDRESSES: The public should address comments to Mr. Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, 2-F-2 East Low Rise, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT:

Ms. Michael McMullan, Office of Peer Review, Health Standards and Quality Bureau, Health Care Financing Administration, 2-D-2 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207, 301-966-6651

or

Mr. Paul Elstein, Office of Peer Review, Health Standards and Quality Bureau, Health Care Financing Administration, 2-D-2 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207, 301-966-5885.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, notice is hereby given that the Health Care Financing Administration (HCFA) proposes to initiate a new system of records. This system will be the Uniform Clinical Data Set (UCDS). HCFA will collect a standard set of data about each case selected for Utilization and Quality Control Peer Review Organization (PRO) review when the initial review is conducted using the UCDS system. The short-term acute-care hospital stays of a random sample of beneficiaries enrolled in the Medicare program will be selected for review. When the UCDS system is fully implemented (now estimated for October 1993), approximately 1.3 million stays each year will be reviewed.

The UCDS automated system was developed for use by PROs in their initial review of cases selected for examination. It consists of two parts, the data acquisition system and the case finding algorithms. The data acquisition software is interactive and designed to be used by trained abstractors to collect data from a patient's medical record using desktop or portable computer hardware. The data collected describe the clinical characteristics of the patient at the time of hospital admission, processes of care and outcomes on the date of discharge from the hospital. The data also include certain management information and beneficiary sociodemographic elements. All data elements are drawn directly from the medical record maintained by the provider. The algorithms used by the PROs are an automated systematic method for reaching decisions regarding the quality and appropriate ultilization of care received by the beneficiary. The algorithms, using the data abstracted from the medical record, help decide what further action, if any, should be taken by the PRO on the case. PRO actions beyond the initial review will be identical to those currently in use. The PROs will forward to HCFA data on all cases selected for UCDS review regardless of the findings of that review. When those data are received and entered in the UCDS Data System, they will be subject to the Freedom of Information and Privacy Acts. (These Acts do not apply to data in the PROs' possession.)

The UCDS is established under the authority of section 1866(a)(1)(F) of the Social Security Act which requires hospitals participating in the Medicare program to have an agreement with a PRO for the latter to review various aspects of the hospital's activities; section 1154(a) of the Social Security Act, which requires that the Utilization and Control Peer Review Organizations (PROs), under contract to the Secretary, will review the care provided by physicians and other health care practitioners and providers under Medicare; section 1862(g) of the Social Security Act, which requires the Secretary to enter into contracts with PROs to assist in making certain types of determinations in the Medicare program and sections 1874 (a) and (b) of the Social Security Act, which authorizes the Secretary to administer the Medicare program through contracts with others, including contracts for procuring data as may be necessary in carrying out his functions under the Medicare statute. The system is subject to the Freedom of Information regulations at 45 CFR part 5.

The Privacy Act permits HCFA to disclose information without the consent of the individual for "routine uses"—that is, disclosure for purposes that are compatible with the purpose for which we collect the information (5 U.S.C. 552a(b)(3)). The proposed routine uses in the new system meet the compatibility criteria since they are consistent with the purpose of the system to promote the effective administration and operation of the Medicare program, to maintain the integrity of the Medicare program, and to assess the medical necessity for, appropriateness of, setting of, and quality of care received by Medicare beneficiaries. We anticipate that disclosure under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: December 18, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

09-70-1516

SYSTEMS NAME:

Uniform Clinical Data Set (UCDS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Care Financing Administration (HCFA), Bureau of Data Management and Strategy, Office of Computer Operations, HCFA Data Center, Lyon Building, 7131 Rutherford Road, Baltimore, Maryland 21207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A record will be generated for acute care hospital stay of a Medicare beneficiary which is randomly selected for review by a Utilization and Quality Control Peer Review Organization (PRO).

CATEGORIES OF RECORDS IN THE SYSTEM:

A single record for each case reviewed using the UCDS automated system will be maintained. Each record contains data in five general categories—(1) management information, (2) sociodemographic data on the beneficiary, (3) clinical characteristics of the beneficiary at admission, (4) processes of care during the stay and (5) outcomes/status at discharge. Examples of the data collected in each of these categories follow:

- *Management Information*—Peer Review Organization Identifier (PROID), hospital identifier, the beneficiary's hospital medical record number, his Health Insurance Claim (HIC) number, admission and discharge dates, discharge disposition code, attending physician identifier, date of birth, date of death (when death occurred in the institution) and sex.
- *Sociodemographic Data*—Admission caregiver, patient race, occupational status, insurance source, and current ambulatory care.
- *Clinical Condition at Admission*—Height, weight, and vital signs, medication history such as current medications at admission, history of drug/dye allergy or poisoning, history of radiation exposure, and medications administered in emergency room; history of permanent anatomic changes such as major organ removal, amputation of major limb, organ transplant, and congenital organ absence; history and physical including chronic diseases and/or conditions and evidence of current diseases and/or conditions; results of certain diagnostic tests conducted prior to admission.
- *Processes of Care*—Principal and secondary diagnoses; laboratory findings; results of selected diagnostic tests such as x-ray, CT scan, EKG, cardiac catheterization, EEG, pulmonary function, etc.; endoscopic procedures; operative episodes including the date of operation, anesthetic type, anesthetic risk, vascular access lines, surgical wound classification, adverse intra-operative occurrences, and tissue findings; noninvasive treatment interventions such as blood products, inhalation therapy, professional services, medication therapy, and delivery systems for medications; hospital course including special care unit days, total number of special care unit episodes, "do not resuscitate" order and date, adverse occurrences, trauma suffered in hospital, infections, and prolonged stay.
- *Outcome/Discharge Status*—Discharge vital signs; discharge exam finding; discharge tests; discharge planning including activities of daily living, caregiver, follow-up plans, discharge therapies, discharge medications, and discharge diagnoses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established under the authority of section 1866(a)(1)(F) of the Social Security Act, which requires hospitals participating in the Medicare program to have an agreement with a PRO for the latter to review various aspects of the hospital's activities; section 1154(a) of the Social Security Act, which requires the Utilization and Quality Control Peer Review Organizations (PROs), under contract to the Secretary, to review the care provided by physicians and other health care practitioners under Medicare; section 1862(g) of the Social Security Act, which requires the Secretary to enter into contracts with PROs to assist in making certain types of determinations in the Medicare program and section 1874 (a) and (b) of the Social Security Act, which authorize the Secretary to administer the Medicare program through contracts with others, including contracts for procuring data as may be necessary in carrying out functions under the Medicare statute and regulations at 45 CFR part 5b.

PURPOSE OF THE SYSTEM:

To collect a standard set of data about each hospitalization selected for UCDS review in order to make PRO review more consistent from State to State. To provide for the collection of data which can be used to monitor the care provided by the Medicare program in a more uniform way.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures may be made:

1. To a congressional office from the record of an individual in response to an inquiry from the congressional office at the request of that individual.

2. To an individual or organization for a research, evaluation or epidemiological project related to studying the effectiveness of health care or to the improvement of the quality of health care if HCFA:

(a) Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

(b) Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished.

(c) Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information; and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another research project, under these same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit; or

(d) When required by law.

(d) Secures a written statement attesting to the information recipient(s) understanding of and willingness to abide by these provisions.

3. The Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any

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of its components, or is a party to litigation, or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

4. To a contractor for the purpose of collating, analyzing, aggregating, or otherwise refining or processing records in or refining processes associated with the operation of this system or for developing, modifying and/or manipulating ADP software. Data will also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

5. To a third party where:

(a) HCFA needs information from the third party to verify information relating to program integrity, quality of care, and evaluation and measurement of system activities;

(b) The party to whom disclosure is to be made has, or is reasonably expected to have such information, and disclosure is needed in order to obtain the information; and

(c) HCFA determines that the purpose of disclosure is compatible with the purposes for which the records were collected.

6. To a Utilization and Quality Control Peer Review Organization or an entity under contract to HCFA or the Department acting in a manner consistent with maintaining the integrity of the Medicare program if HCFA determines that disclosure of beneficiary-specific information is necessary or relevant to an official investigation or litigation regarding a specific case, and if HCFA determines:

(a) That the use or disclosure of information does not violate legal limitations under which the record was provided, collected, or obtained; and

(b) That the purpose for which disclosure is to be made:

(1) Is compatible with the purposes for which the records were collected;

(2) Cannot be reasonably accomplished unless the record is provided in individual identifiable form; and

(3) Is of sufficient importance to warrant any effect on the privacy of the individual that disclosure of the record might bring.

(c) That adequate safeguards have been instituted so as to protect the confidentiality of the data and prevent unauthorized access to it; and

(d) That the appropriate procedures, format, and media will be used for the data disclosure process.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained at the system location site in magnetic media (e.g., magnetic tape and computer disks).

RETRIEVABILITY:

At a minimum, the data in the system are retrieved by the PRO identifier, the Health Insurance Claim (HIC) number (which is derived from the Social Security number) and the provider identifier. Data could be retrieved by other identifiers such as the attending physician identifier, the principal diagnosis, age, sex, etc.

SAFEGUARDS:

Safeguards for automated records have been established in accordance with the Department of HHS' Information Resources Management Manual, "Part 6, Automated Information Systems Security." This includes maintaining the records in a secure enclosure. Access to specific records is limited to those who have a need for them in the performance of their official duties.

RETENTION AND DISPOSAL:

Records are maintained in the system with identifiers as long as needed for program research.

SYSTEM MANAGER AND ADDRESS:

Director, Health Standards and Quality Bureau, Health Care Financing Administration, Room 2–D–2 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

To determine if a record exists, the individual should write to the system manager at the address indicated above and specify his or her HIC number.

RECORD ACCESS PROCEDURE:

Same as notification procedure. Requestors should also reasonably specify the record contents being sought. (These access procedures are in accordance with Department Regulations (45 CFR 5b.5(a)(2)).)

CONTESTING RECORD PROCEDURE:

Contact the system manager named above and reasonably identify the record and specify the information to be contested, and state the corrective action sought and your reasons for requesting the correction, along with information to show how the record is inaccurate, incomplete, untimely, irrelevant, or otherwise in need of correction. (These procedures are in accordance with Department Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORIES:

These records will be generated by the PRO as a result of its review of the medical record associated with selected inpatient hospital stays of Medicare beneficiaries. The data source will be the medical record of that stay provided by the institution.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 91–30922 Filed 12–26–91; 8:45 am]
BILLING CODE 4120–03

National Institutes of Health

National Cancer Institute; Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Scientific and Commercial Development of BUDR/IUDR as an Anticancer Agent

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) seeks a pharmaceutical company which can effectively pursue the clinical development of BUDR/IUDR for the treatment of cancer. The National Cancer Institute has established that this agent may be effective in treating several types of cancers. The selected sponsor will be awarded a CRADA for the development of this agent.

ADDRESSES: Questions about this opportunity may be addressed to Dale Shoemaker, Ph.D., Executive Secretary, CRADA Selection Committee, Division of Cancer Treatment, NCI, EPN, room 718, Bethesda, Maryland 20892 (301) 496–7912, from whom further information including a summary copy of the preclinical and clinical data may be obtained.

DATE: In view of the important priority of developing new drugs for the treatment of cancer, this notice is active until February 10, 1992.

SUPPLEMENTARY INFORMATION: The Government is seeking a pharmaceutical company which, in accordance with the requirements of the regulations governing the transfer of Government-developed agents (37 CFR 404.8), can develop BUDR/IUDR to a marketable status to meet the needs of the public and with the best terms for the Government. BUDR and IUDR are halogenated pyrimidines which can substitute for thymidine during DNA synthesis. Both agents are thought to effect radiosensitization in tumor cells through induction of DNA damage secondary to their incorporation into DNA. Clinical studies are underway with both agents to define the optimal dose, route and schedule of administration for use as a radiosensitizer. In addition, clinical studies are ongoing to study the cell cycle characteristics of tumor cells and to correlate these characteristics with prognosis and response to therapy. BUDR and IUDR are not covered by patents and may classify as orphan agents.

The Division of Cancer Treatment, NCI, is interested in establishing a CRADA for this agent with a pharmaceutical company to assist in the continuing development of the agent. The Government will provide all available expertise and information to date and will jointly pursue new clinical studies as required giving the pharmaceutical company exclusive rights to the New Drug Application-directed clinical data from Phase II/III trials. The successful pharmaceutical company will provide the necessary financial and organizational support to complete further development of this agent to establish clinical efficacy and possible commercial status.

The role of the Division of Cancer Treatment, NCI, includes the following:

1. The Government will provide information concerning pharmaceutical manufacturing and controls including dosage form development data.

2. The Government will allow the pharmaceutical company to review and cross-file the Division's IND for the agent; it is likely that the pharmaceutical company would wish to undertake clinical studies independently.

3. The Government will make the Division's IND for the agent proprietary under such circumstances and the IND data will be offered exclusively to the selected pharmaceutical company.

4. The Government will continue the preclinical and clinical development of this agent under its extramural clinical trials network.

The role of the successful pharmaceutical company for the agent under a CRADA will include the following:

1. Provide and implement plans to independently secure future continuing supplies of the agent to assure continued preclinical and clinical development.

2. Provide plan and support for clinical development leading to FDA approval for marketing.

Criteria for choosing the pharmaceutical company include the following:

1. Experience in the preclinical and clinical development of anticancer agents.

2. Experience and ability to produce, package, market and distribute pharmaceutical agents in the United States and to provide the agent at a reasonable price.

3. Experience in the monitoring, evaluation and interpretation of the data from investigational agent clinical studies under an IND.

4. A willingness to cooperate with the Public Health Service in the collection, evaluation, publication and maintenance of data from clinical trials of the investigational agent.

5. A willingness to cost share in the development of the agent. This includes the acquisition of bulk material and formulation of clinical products in adequate amounts as needed for future clinical trials and marketing.

6. An agreement to be bound by the DHHS rules involving human and animal subjects.

7. The aggressiveness of the development plan, including the appropriateness milestones and deadlines and clinical development.

8. Provisions for equitable distribution of patent rights to any inventions. Generally the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, nonexclusive, royalty-free license to the Government (when a company employee is the sole inventor) or (2) an exclusive or nonexclusive license to the company on terms that are appropriate (when the Government employee is the sole inventor).

Dated: December 6, 1991.

Reid Adler,

Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 91–30990 Filed 12–26–91; 8:45 am]
BILLING CODE 4140–01–M

National Cancer Institute; Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Scientific and Commercial Development of Suramin as an Anticancer Agent

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) seeks a pharmaceutical company which can effectively pursue the clinical development of suramin for the treatment of cancer. The National Cancer Institute has established that this agent may be effective in treating several types of cancers. The selected sponsor will be awarded a CRADA for the development of this agent.

ADDRESSES: Questions about this opportunity may be addressed to Dale Shoemaker, Ph.D., Executive Secretary, CRADA Selection Committee, Division of Cancer Treatment, NCI, EPN, room 718, Bethesda, Maryland 20892 (301) 496–7912, from whom further information including a summary copy of the preclinical and clinical data may be obtained.

DATE: In view of the important priority of developing new drugs for the treatment of cancer, this notice is active until February 10, 1992.

SUPPLEMENTARY INFORMATION: The Government is seeking a pharmaceutical company which, in accordance with the requirements of the regulations governing the transfer of Government-developed agents (37 CFR 404.8), can develop suramin to a marketable status to meet the needs of the public and with the best terms for the Government. Suramin is a polysulfonated naphthylurea which has demonstrated promising antitumor activity in prostate cancer patients. Some activity has also been noted in patients with adrenocortical cancer. Clinical studies are ongoing in both tumors to better define the response rate. Additional Phase I studies are planned to better determine the maximum tolerated dose and toxicity of suramin. Suramin is not covered by a patent and may classify as an orphan agent.

The Division of Cancer Treatment, NCI, is interested in establishing a CRADA for this agent with a pharmaceutical company to assist in the continuing development of the agent. The Government will provide all available expertise and information to date and will jointly pursue new clinical studies as required giving the pharmaceutical company exclusive

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rights to the New Drug Application-directed clinical data from Phase II/III trials.

The successful pharmaceutical company will provide the necessary financial and organizational support to complete further development of this agent to establish clinical efficacy and possible commercial status.

The role of the Division of Cancer Treatment, NCI, includes the following:

1. The Government will provide information concerning pharmaceutical manufacturing and controls including dosage form development data.

2. The Government will allow the pharmaceutical company to review and cross-file the Division's IND for the agent; it is likely that the pharmaceutical company would wish to undertake clinical studies independently.

3. The Government will make the Division's IND for the agent proprietary under such circumstances and the IND data will be offered exclusively to the selected pharmaceutical company.

4. The Government will continue the preclinical and clinical development of the agent under its extramural clinical trials network.

The role of the successful pharmaceutical company for the agent under a CRADA will include the following:

1. Provide and implement plans to independently secure future continuing supplies of the agent to assure continued preclinical and clinical development. The pharmaceutical company will reimburse the Division of Cancer Treatment, NCI for the costs of production of suramin produced from the date of this Notice until such time as the company shall assume responsibility for satisfying the supplies required by the Division of Cancer Treatment, NCI.

2. Provide plan and support for clinical development leading to FDA approval for marketing.

Criteria for choosing the pharmaceutical company include the following:

1. Experience in the preclinical and clinical development of anticancer agents.

2. Experience and ability to produce, package, market and distribute pharmaceutical agents in the United States and to provide the agent at a reasonable price.

3. Experience in the monitoring, evaluation and interpretation of the data from investigational agent clinical studies under an IND.

4. A willingness to cooperate with the Public Health Service in the collection, evaluation, publication and maintenance of data from clinical trials of investigational agents.

5. A willingness to cost share in the development of the agent. This includes the acquisition of bulk material and formulation of clinical products in adequate amounts as needed for future clinical trials and marketing.

6. An agreement to be bound by the DHHS rules involving human and animal subjects.

7. The aggressiveness of the development plan, including the appropriateness of milestones and deadlines and clinical development.

8. Provisions for equitable distribution of patent rights to any inventions. Generally the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, nonexclusive, royalty-free license to the Government (when a company employee is the sole inventor) or (2) an exclusive or nonexclusive license to the company on terms that are appropriate (when the Government employee is the sole inventor).

Dated: December 6, 1991.

Reid Adler,

Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 91-30991 Filed 12-26-91; 8:45 am]

BILLING CODE 4140-01-M

Regional Meetings

The National Institutes of Health (NIH) has been engaged in a strategic planning process aimed at developing the agency's first corporate long-range Strategic Plan. The purpose of the NIH Strategic Plan is to: (1) Identify areas of research that promise extraordinary dividends for the Nation's future health, (2) nurture the intellectual base of biomedical research and the conditions that lead to breakthroughs on the cutting edge of science, and (3) provide approaches for addressing broad administrative and science policy issues that affect the ability of the NIH to carry out its mandate. The Strategic Plan incorporates the ideas of all the organizational components of the NIH as well as the research components of the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA).

Notice is hereby given that the NIH will convene two regional meetings to provide a forum for the extramural community to comment on the draft Strategic Plan before it is finalized. The first meeting will take place on February 12, 1992, at Occidental College, Los Angeles, California, and will be co-hosted by Occidental College and the Charles R. Drew University of Medicine and Science. The second meeting will be held on February 25, at the University of Connecticut Health Center, Farmington, Connecticut.

Each of the regional meetings will be of one day duration, beginning at 9 a.m. and ending at 3 p.m. The meetings will begin with the NIH Director presenting an overview of the NIH Strategic Plan. Immediately afterwards, representatives of concerned organizations and institutions will be invited to present testimony before a panel of senior NIH officials, to be chaired by the Director, NIH. Due to time constraints, we would appreciate it if only one representative from each organization would present testimony; oral presentations will be limited to five minutes. Written testimony can be any length and should include a brief description of the organization presenting. Testimony will be scheduled based upon when notification of intent to present testimony is received. If the number of organizations wishing to present oral testimony exceeds the time available on the agenda, the individual written statements will serve as testimony presented. All testimony, whether oral or written, will form a part of the official record of the NIH Strategic Plan.

If you will be attending one of the regional meetings or if your organization would like to testify before the NIH panel, please notify Jay Moskowitz, Ph.D., National Institutes of Health, Shannon Building, Room 103, 9000 Rockville Pike, Bethesda, Maryland 20892, by mail or facsimile (301-402-1759) by January 13, 1992. A copy of the Draft NIH Strategic Plan, as well as additional information about the meetings, will be sent in advance of the regional meetings to participants attending and/or testifying.

If you or others from your organization who plan to attend one of these regional meetings have any special needs that require assistance, please inform the office listed above. If you have questions concerning either of the two regional meetings, please contact Ms. Mary Demory (301) 496-1454.

Dated: November 27, 1991.

Bernadine Healy,

Director, NIH.

[FR Doc. 91-30992 Filed 12-26-91; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, December 20, 1991.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package)

1. *National STD Hotline Survey of Callers*—New—The hotline is intended to serve the general population throughout the country, including rural communities and areas of low population density which have limited access to other sources of STD information. CDC is requesting clearance to gather information in order to manage the hotline more effectively and assess its national impact coverage. Respondents: Individuals of households; Number of Respondents: 1,100; Number of Responses per Respondent: 1; Average Burden per Response: .016 hour; Estimated Annual Burden: 18 hours.

2. *Case Control Study to Characterize the Risk of Seafood-Associated Disease*—New—Information will be collected by telephone or by household interview to establish population-based surveillance for laboratory confirmed infections by pathogens such as *Vibrio* sppl and *Salmonella jejuni*. This study will provide detailed and quality-controlled data on the risk of foodborne hazards and measure the magnitude of the public health burden imposed by seafood consumption. Respondents: Individuals or households; Number of Respondents: 1600; Number of Responses per Respondent: 1; Average Burden per Reponse: .5 hours; Estimated Annual Burden: 800 hours.

3. *NHANES I Epidemiologic Followup Study: 1992 Wave*—0920-0218—The NHANES I Epidemiologic Followup Study, a national longitudinal followup, investigates relationships between baseline factors and subsequent morbidity, mortality, hospital utilization and institutionalization. It includes the 14,407 adult persons examined in NHANES I (1971-75). The surviving cohort (n=11,195) will be recontacted in 1992/1993. Respondents: Individuals or households; State or local governments; businesses or other for-profit; Federal agencies or employees; non-profit institutions; small businesses or organizations; Number of Respondents: 6,248; Number of Responses per Respondent: 1; Average Burden per Response: .64 hours; Estimated Annual Burden: 4,022 hours.

4. *Organ Procurement and Transplantation Network (OPTN) Data System*—New—Information will be collected from organ procurement organizations; histocompatibility laboratories and transplant centers for the purposes of matching donor organs with recipients, monitoring compliance of member organizations with the data system rules, conducting research and statistical analysis, and for developing policies relating to organ procurement and transplantation. Respondents: Non-profit institutions; small businesses or organizations; businesses or other for-profit.

	No. of respondents	No. of responses per respondent	Average burden per response (hours)
Transplant Candidate Registration Form	69	272	0.2
Donor Registration Form	69	250	0.5
Potential Recipient Form	69	246	0.5
Donor Histocompatibility Form	39	123	0.1
Transplant Recipient Histocompatibility Form	39	414	0.1
Transplant Recipient Registrabon Form	265	61	0.5
Transplant Recipient Follow-up Form	265	307	0.5

Estimated Annual Burden: 71,774 hours.

5. *Cardiovascular Health Study (CHS)*—0925-0334—A random sample of 5,201 men and women aged 65 years and older was recruited from four communities between June, 1989, and May, 1990, and this cohort will be followed prospectively for the development of new cardiovascular disease risk factors, subclinical disease and overt disease. Respondents: Individuals or households; businesses or other for profit; small businesses or organizations.

	No. of respondents	No. of responses per respondent	No. of hours per response
Cohort Members	4,980	3	0.958
Next-of-Kin of Cohort Decendents	202	1,000	0.25
Physicians	184	1	0.10

Estimated Annual Burden: 15,062.

6. Oral Health Outcomes in San Antonio, Texas—0920-0284—Oral health surveys will be conducted in San Antonio, Texas. Respondents will be consumers, dentists, students and school officials. Data will be collected on personal oral health services, lifestyle behaviors, community-based activities and environmental agents as they contribute to resultant oral health. Respondents: Individuals or households; businesses or other for profit; small businesses or organizations; Number of Respondents: 18,439; Number of Responses per Respondent: 1; Average Burden per Response: .185 hours; Estimated Annual Burden: 3,420 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: December 23, 1991.

Sandra K. Mahkorn,

Deputy Assistant Secretary for Health Policy.

[FR Doc. 91-30955 Filed 12-26-91; 8:45 am]

BILLING CODE 4160-17-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on December 13, 1991.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package)

1. Real Property Current Market Value Estimate—0960-0471. The information collected on the form SSA-2794 is used to determine the value of non-home real property owned by applicants for or recipients of supplemental security income. The respondents are persons experienced in estimating the current market value of property.

Number of Respondents: 4,875.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

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Estimated Annual Burden: 1,625 hours.

2. Farm Self-Employment Questionnaire—0960–0061. The information collected on the form SSA–7156 is used by the Social Security Administration to determine whether an agricultural trade or business exists and possible covered earnings for social security purposes.

Number of Respondents: 47,500.
Frequency of Response: 1.
Average Burden Per Response: 10 minutes.
Estimated Annual Burden: 7,917 hours.

3. Request for Earnings and Benefit Estimate Statement—0960–0466. The information collected on the form SSA–7004 is used to provide a statement of earnings, quarters of coverage and future benefit estimates to certain workers and self-employed individual. The respondents are individuals requesting personal earnings and benefit statements.

Number of Respondents: 6,000,000.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 500,000 hours.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: December 13, 1991.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 91–30551 Filed 12–26–91; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning Development

[Docket No. N–91–1917; FR–2934–N–58]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v.Veterans Administration*, No. 88–2503–OG (D.D.C.)

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following address: U.S. Army: Robert Conte, Dept. of Army, Military Facilities, DAEN–ZCI–P, Rm. 1E671, Pentagon, Washington, DC 20310–2600; (202) 693–4583; U.S. Air Force: Bob Menke, USAF, Bolling AFB, SAF–MIIR, Washington, DC 20332–5000; (202) 767–6235; GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501–0067; Dept. of Veterans Affairs: Douglas Shinn, Management Analyst, Dept. of Veterans Affairs, room 414 Lafayette Bldg., 811 Vermont Ave. NW, Washington, DC 20420; (202) 233–8474; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW, room 10319, Washington, DC 20590; (202) 366–4246; Dept. of Energy: Tom Know, Realty Specialist, AD223.1, 1000 Independent Ave. SW, Washington, DC 20585; (20) 586–1191. (These are not toll-free numbers)

Dated: December 20, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 12/27/91

Suitable/Available Properties

Buildings (by State)

Alabama

Bldgs. T03204, T03205 Fort Rucker
Cowboy & Crusader Streets
Fort Rucker, Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219130096–219130097
Status: Unutilized.
Comment: 3003 sq. ft., one story wood structure, most recent use—administration, presence of asbestos, off-site use only.

Bldg. T03220, Fort Rucker
Cowboy & Crusader Streets
Fort Rucker, Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219130098
Status: Unutilized.
Comment: 1250 sq. ft., one story wood structure, most recent use—administration, presence of asbestos, off-site use only.

Bldg. T03224, Fort Rucker
Cowboy & Crusader Streets
Fort Rucker, Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219130099
Status: Unutilized.
Comment: 2677 sq. ft., one story wood structure, most recent use—administration, presence of asbestos, off-site use only.

Bldg. T03210, Fort Rucker
Cowboy & Crusader Streets
Fort Rucker, Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219130100
Status: Unutilized.
Comment: 3000 sq. ft., one story wood structure, most recent use—maintenance shop, presence of asbestos, off-site use only.

Bldg. T03212, Fort Rucker
Cowboy & Crusader Streets
Fort Rucker, Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219130101
Status: Unutilized.
Comment: 5310 sq. ft., two story wood structure, presence of asbestos, off-site use only.

Bldg. T03214, Fort Rucker
Cowboy & Crusader Streets
Fort Rucker, Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219130102
Status: Unutilized.
Comment: 3306 sq. ft., one story wood structure, presence of asbestos, most recent use—storehouse, off-site use only.

Bldg. T03201, Fort Rucker
Cowboy & Crusader Streets
Fort Rucker, Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219130103
Status: Unutilized.
Comment: 5310 sq. ft., two story wood structure, presence of asbestos, most recent use—barracks, off-site use only.

Bldg. 5119
Fort Rucker
3rd Avenue
Fort Rucker, Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219140023
Status: Unutilized.
Comment: 2500 sq. ft., 1 story, most recent use—supply building, off-site use only.

Bldg. 5120
Fort Rucker
3rd Avenue
Fort Rucker, Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219140024
Status: Unutilized.
Comment: 2500 sq. ft., 1 story, most recent use—supply building, off-site use only.

Bldg. 8913
Fort Rucker
7th Avenue
Fort Rucker, Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219140025
Status: Unutilized.
Comment: 3100 sq. ft., 1 story wood, most recent use—chaplain's conference room, off-site use only.

Bldg. 8914
Fort Rucker
7th Avenue
Fort Rucker, Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219140026
Status: Unutilized.
Comment: 2250 sq. ft., 1 story wood, most recent use—chaplain headquarters, off-site use only.

Arizona

Bldg. 67202, Fort Huachuca
Sierra Vista, Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219130061
Status: Excess.
Comment: 2165 sq. ft., two story wood frame, most recent use—office presence of asbestos.

Bldg. 67203, Fort Huachuca
Sierra Vista, Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219130062
Status: Excess.
Comment: 2166 sq. ft., two story wood frame, most recent use—office presence of asbestos.

Bldg. 67211, Fort Huachuca
Sierra Vista, Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219130063
Status: Excess.
Comment: 1070 sq. ft., one story, most recent use—storehouse, presence of asbestos.

Bldg. 68224, Fort Huachuca
Sierra Vista, Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219130064
Status: Excess.
Comment: 2614 sq. ft., one story wood frame, most recent use—storehouse, presence of asbestos.

Bldg. 68310, Fort Huachuca
Sierra Vista, Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219130065
Status: Excess.
Comment: 1653 sq. ft., one story wood frame, most recent use—office, presence of asbestos.

Bldg. 70227, Fort Huachuca
Sierra Vista, Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219130066
Status: Excess.
Comment: 1868 sq. ft., one story wood frame, most recent use—office, presence of asbestos.

Bldg. 70219, Fort Huachuca
Sierra Vista, Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219130067
Status: Excess.
Comment: 2180 sq. ft., one story wood frame, most recent use—office, presence of asbestos.

Bldg. 73440, Fort Huachuca
Sierra Vista, Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219130068
Status: Excess.
Comment: 1700 sq. ft., one story metal frame, most recent use—storage, possible asbestos.

California

Bldg. 116
VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles, Co: Los Angeles, CA 90073–
Landholding Agency: VA
Property Number: 979110009
Status: Underutilized.
Comment: 60309 sq. ft., 3 story brick frame, seismic reinforcement defics., underutil. port of bldg. used intermitly., needs rehab, poss. asbestos in pipes/floor tiles, site access lim.

Bldg. 283
VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles, Co: Los Angeles, CA 90073–
Landholding Agency: VA
Property Number: 979110010
Satus: Unutilized.
Comment: 1600 sq. ft., 1 story wood frame w/ stucco exterior, needs rehab, poss. asbestos on pipes/floor tiles, site access limitations, no operating utilities.

Colorado

Bldg. 1642, Fort Carson
Specker Ave.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140077
Status: Unutilized.
Comment: 1575 sq. ft., 1 story wood, needs rehab, most recent use—admin. bldg., presence of asbestos.

Bldg. 2218, Fort Carson
Specker Ave.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140078
Status: Unutilized.

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Comment: 2468 sq. ft., 1 story wood, needs rehab, most recent use—production, presence of asbestos.
Bldg. 2222, Fort Carson
Mister St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140079
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—admin. bldg., presence of asbestos.
Bldg. 2223, Fort Carson
Mister St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140080
Status: Unutilized.
Comment: 4720 sq. ft., 2 story wood, needs rehab, most recent use—classroom, presence of asbestos.
Bldg. 2224, Fort Carson
Mister St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140081
Status: Unutilized.
Comment: 4720 sq. ft., 2 story wood, needs rehab, most recent use—admin. bldg., presence of asbestos.
Bldg. 2225, Fort Carson
Mister St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140082
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—admin. bldg., presence of asbestos.
Bldg. 2226, Fort Carson
Mister St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140083
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—education center, presence of asbestos.
Bldg. 2317, Fort Carson
Mister St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140084
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—admin. bldg., presence of asbestos.
Bldg. 2320, Fort Carson
Mister St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140085
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—education center, presence of asbestos.
Bldg. 2321, Fort Carson
Mister St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140086
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—education center, presence of asbestos.
Bldg. 2323, Fort Carson
Mister St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140087
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—storage, presence of asbestos.
Bldg. 2324, Fort Carson
Mister St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140088
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—classroom, presence of asbestos.
Bldg. 2325, Fort Carson
Mister St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140089
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—admin. bldg., presence of asbestos.
Bldg. 2326, Fort Carson
Wetzel Ave.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140090
Status: Unutilized.
Comment: 2988 sq. ft., 1 story wood, needs rehab, most recent use—classroom, presence of asbestos.
Bldg. 2327, Fort Carson
Wetzel Ave.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140091
Status: Unutilized.
Comment: 2488 sq. ft., 1 story wood, needs rehab, presence of asbestos.
Bldg. 2330, Fort Carson
Polio St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140166
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—admin. bldg., presence of asbestos.
Bldg. 2331, Fort Carson
Mister St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140167
Status: Unutilized.
Comment: 1850 sq. ft., 1 story wood, needs rehab, most recent use—storage, presence of asbestos.
Bldg. 2333, Fort Carson
Polio St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140168
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—education center, presence of asbestos.
Bldg. 2334, Fort Carson
Polio St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140169
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—education center, presence of asbestos.
Bldg. 2335, Fort Carson
Specker Ave.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140170
Status: Unutilized.
Comment: 2468 sq. ft., 1 story wood, needs rehab, presence of asbestos.
Bldg. 2336, Fort Carson
Specker Ave.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140171
Status: Unutilized.
Comment: 2488 sq. ft., 1 story wood, needs rehab, most recent use—storage, presence of asbestos.
Bldg. 2418, Fort Carson
Polio St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140172
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—classroom, presence of asbestos.
Bldg. 2419, Fort Carson
Polio St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140173
Status: Unutilized.
Comment: 1852 sq. ft., 1 story wood, needs rehab, most recent use—education center, presence of asbestos.
Bldg. 2422, Fort Carson
Polio St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140174
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—classroom, presence of asbestos.
Bldg. 2424, Fort Carson
Polio St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140175
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—classroom, presence of asbestos.
Bldg. 2425, Fort Carson
Polio St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140176
Status: Unutilized.
Comment: 2700 sq. ft., 1 story wood, needs rehab, most recent use—admin. bldg., presence of asbestos.
Bldg. 2433, Fort Carson
Specker Ave.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140177
Status: Unutilized.

Comment: 3108 sq. ft., 1 story wood, needs rehab, most recent use—education center, presence of asbestos.
Bldg. 2435, Fort Carson
Specker Ave.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140178
Status: Unutilized.
Comment: 2488 sq. ft., 1 story wood, needs rehab, most recent use—admin., presence of asbestos.

Kansas

21 Bldgs., Fort Leavenworth
Pershing Park
Leavenworth, Co: Leavenworth, KS 66027–
Landholding Agency: Army
Property Number: 219140105–219140107, 219140110–219140111, 219140115, 219140117–219140118, 219140121, 219140127–219140128, 219140133, 219140141, 219140146–219140148, 219140152, 219140154, 219140156, 219140159–219140160
Status: Unutilized.
Comment: 1075 sq. ft., 1 story wood frame, needs rehab, off-site use only, presence of asbestos, most recent use—family housing.
18 Bldgs., Fort Leavenworth
Pershing Park
Leavenworth, Co: Leavenworth, KS 66027–
Landholding Agency: Army
Property Number: 219140108–219140109, 219140113–219140114, 219140116, 219140126, 219140129–219140132, 219140134, 219140136, 219140144–219140145, 219140151, 219140153, 219140155, 219140158
Status: Unutilized.
Comment: 863 sq. ft., 1 story wood frame, needs rehab, off-site use only, presence of asbestos, most recent use—family housing.
10 Bldgs., Fort Leavenworth
Pershing Park
Leavenworth, Co: Leavenworth, KS 66027–
Landholding Agency: Army
Property Number: 219140112, 219140119–219140120, 219140122–219140125, 219140135, 219140137, 219140150
Status: Unutilized.
Comment: 1025 sq. ft., 1 story wood frame, needs rehab, off-site use only, presence of asbestos, most recent use—family housing.
Bldg. 1466A, Fort Leavenworth
Pershing Park
Leavenworth, Co: Leavenworth, KS 66027–
Landholding Agency: Army
Property Number: 219140138
Status: Unutilized.
Comment: 1536 sq. ft., 1 story wood frame, needs rehab, off-site use only, presence of asbestos, most recent use—detached garage.
Bldg. 1467, Fort Leavenworth
Pershing Park
Leavenworth, Co: Leavenworth, KS 66027–
Landholding Agency: Army
Property Number: 219140139
Status: Unutilized.
Comment: 584 sq. ft., 1 story wood frame, needs rehab, off-site use only, presence of asbestos, most recent use—office scout bldg.
Bldg. 1357, Fort Leavenworth
Pershing Park
Leavenworth, Co: Leavenworth, KS 66027–
Landholding Agency: Army
Property Number: 219140140
Status: Unutilized.
Comment: 1512 sq. ft., 1 story wood frame, needs rehab, off-site use only, presence of asbestos, most recent use—detached garage.
5 Bldgs., Fort Leavenworth
Pershing Park
Leavenworth, Co: Leavenworth, KS 66027–
Landholding Agency: Army
Property Number: 219140142–219140143, 219140157, 219140161, 219140164
Status: Unutilized.
Comment: 1008 sq. ft., 1 story wood frame, needs rehab, off-site use only, presence of asbestos, most recent use—detached garage.
Bldg. 1400, Fort Leavenworth
Pershing Park
Leavenworth, Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219140149
Status: Unutilized.
Comment: 1776 sq. ft., 1 story wood frame, needs rehab, off-site use only, presence of asbestos, most recent use—detached garage.
Bldgs. 1450–1451, Fort Leavenworth
Pershing Park
Leavenworth, Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219140162–219140163
Status: Unutilized.
Comment: 1776 sq. ft., 1 story wood frame, needs rehab, off-site use only, presence of asbestos, most recent use—detached garage.

Kentucky

Bldg. 1459, Fort Leavenworth
Pershing Park
Leavenworth, Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219140165
Status: Unutilized.
Comment: 1272 sq. ft., 1 story wood frame, needs rehab, off-site use only, presence of asbestos, most recent use—detached garage.
Bldg. 6301
Fort Knox
Ft. Knox, Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219140015
Status: Unutilized.
Comment: 3774 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—office.
Bldg. 6302
Fort Knox
Ft. Knox, Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219140016
Status: Unutilized.
Comment: 1487 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—office.
Bldg. 6303
Fort Knox
Ft. Knox, Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219140017
Status: Unutilized.
Comment: 1254 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—storage.
Bldg. 6304
Fort Knox
Ft. Knox, Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219140018
Status: Unutilized.
Comment: 1062 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—storage.
Bldg. 6305
Fort Knox
Ft. Knox, Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219140019
Status: Unutilized.
Comment: 2257 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—storage.
Bldg. 6306
Fort Knox
Ft. Knox, Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219140020
Status: Unutilized.
Comment: 1941 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—office.
Bldg. 6307
Fort Knox
Ft. Knox, Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219140021
Status: Unutilized.
Comment: 1811 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—office.
Bldg. 6308
Fort Knox
Ft. Knox, Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219140022
Status: Unutilized.
Comment: 3113 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—classroom.

Louisiana

Bldg. T–4701
Fort Polk
Ft. Polk, Co: Vernon LA 71459–5000
Landholding Agency: Army
Property Number: 219140045
Status: Unutilized.
Comment: 1000 sq. ft., 1 story, most recent use—office.
Bldg. T–4701B
Fort Polk
Ft. Polk, Co: Vernon LA 71459–5000
Landholding Agency: Army
Property Number: 219140046
Status: Unutilized.
Comment: 660 sq. ft., 1 story, most recent use—storage.
Bldg. T–4702, T–4703, T–4705, T–4706
Fort Polk
Ft. Polk, Co: Vernon LA 71459–5000
Landholding Agency: Army
Property Number: 219140047–219140048, 219140050–219140051
Status: Unutilized.

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Comment: 5913 sq. ft., 2 story, most recent use—storage.
Bldg. T–4704
Fort Polk
Ft. Polk, Co: Vernon LA 71459–5000
Landholding Agency: Army
Property Number: 219140049
Status: Unutilized.
Comment: 3040 sq. ft., 1 story, most recent use—office.
Bldg. T–4707
Fort Polk
Ft. Polk, Co: Vernon LA 71459–5000
Landholding Agency: Army
Property Number: 219140052
Status: Unutilized.
Comment: 1045 sq. ft., 1 story, most recent use—office.
Bldg. T–4708
Fort Polk
Ft. Polk, Co: Vernon LA 71459–5000
Landholding Agency: Army
Property Number: 219140053
Status: Unutilized.
Comment: 2184 sq. ft., 1 story, most recent use—office.
Bldg. T–4709
Fort Polk
Ft. Polk, Co: Vernon LA 71459–5000
Landholding Agency: Army
Property Number: 219140054
Status: Unutilized.
Comment: 3587 sq. ft., 1 story, most recent use—storage.
Bldg. T–4716–T–4724, T–4726–T–4734
Fort Polk
Ft. Polk, Co: Vernon LA 71459–5000
Landholding Agency: Army
Property Number: 219140055–219140063, 219140065–219140073
Status: Unutilized.
Comment: 4357 sq. ft., 2 story, most recent use—barracks (storage).
Bldg. T–4725
Fort Polk
Ft. Polk, Co: Vernon LA 71459–5000
Landholding Agency: Army
Property Number: 219140064
Status: Unutilized.
Comment: 3044 sq. ft., 1 story, most recent use—library.

Massachusetts

Bldg. KB–0021
Fort Devens
Ft. Rodman, MA 02744–
Landholding Agency: Army
Property Number: 219140027
Status: Unutilized.
Comment: 4926 sq. ft., 1 story wood, presence of asbestos, most recent use—storage.
Bldg. KB–0100
Fort Devens
Ft. Rodman, MA 02744–
Landholding Agency: Army
Property Number: 219140028
Status: Unutilized.
Comment: 9100 sq. ft., 1 story insulated monopanel, most recent use—reserve center.
Bldg. KB–0102
Fort Devens
Ft. Rodman, MA 02744–
Landholding Agency: Army
Property Number: 219140029
Status: Unutilized.
Comment: 15480 sq. ft., 1 story concrete block, most recent use—reserve center.
Bldg. T–0208, T–0209
Fort Devens
Ft. Devens, Co: Middlesex/Worce MA 01433–
Landholding Agency: Army
Property Number: 219140030–219140031
Status: Unutilized.
Comment: 4720 sq. ft., 2 story wood, presence of asbestos, needs rehab.
Bldg. T–0236
Fort Devens
Ft. Devens, Co: Middlesex/Worce MA 01433–
Landholding Agency: Army
Property Number: 219140032
Status: Unutilized.
Comment: 4613 sq. ft., 1 story wood, presence of asbestos, needs rehab.
Bldg. T–2676
Fort Devens
Ft. Devens, Co: Middlesex/Worce MA 01433–
Landholding Agency: Army
Property Number: 219140033
Status: Unutilized.
Comment: 1176 sq. ft., 1 story wood, presence of asbestos, needs rehab.

Missouri

Bldgs. T375, T376, T385
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219140040–219140042
Status: Underutilized.
Comment: 4720 sq. ft., 2 story wood frame, presence of asbestos, not handicapped accessible, to be vacant Feb. 1992.
Bldg. 384
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219140043
Status: Underutilized.
Comment: 1292 sq. ft., 1 story wood frame, presence of asbestos, not handicapped accessible, to be vacant Feb. 1992.
Bldg. T6818
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219140044
Status: Underutilized.
Comment: 10092 sq. ft., 1 story concrete/block frame, presence of not handicapped accessible, limited utilities.

Oklahoma

Bldg. S–2643,. Fort Sill
2643 Tacy Street
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130069
Status: Unutilized.
Comment: 82 sq. ft., metal frame shed, off-site use only.
Bldg. S–2644, Fort Sill
2644 Tacy Street
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130070
Status: Unutilized.
Comment: 77 sq. ft., metal frame shed, off-site use only.
Bldg. 226, Fort Sill
226 Corral Road
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130071
Status: Unutilized.
Comment: 11118 sq. ft., one story wood frame, most recent use—administration, off-site use only, possible asbestos.
Bldg. T–255, Fort Sill
255 Corral Road
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130072
Status: Unutilized.
Comment: 2619 sq. ft., one story wood frame, off-site use only, possible asbestos.
Bldg. 932, Fort Sill
932 Ft. Sill Blvd.
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130073
Status: Unutilized.
Comment: 2134 sq. ft., one story wood stucco, off-site use only, possible asbestos, most recent use—exchange branch.
Bldg. 1667, Fort Sill
1667 Gruber Road
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130074
Status: Unutilized.
Comment: 3615 sq. ft., one story wood & stucco, off-site use only, possible asbestos, most recent use—administration.
Bldg. T–2609, Fort Sill
2609 Currie Road
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130075
Status: Unutilized
Comment: 4545 sq. ft., one story wood frame, off-site use only, possible asbestos, most recent use—administration.
Bldg. T–2612, Fort Sill
2612 Miner Road
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130076
Status: Unutilized.
Comment: 2144 sq. ft., two story wood frame, off-site use only, possible asbestos, most recent use—administration.
Bldg. T–2616, Fort Sill
2616 Ringold Road
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130077
Status: Unutilized.
Comment: 3702 sq. ft., two story wood frame, most recent use—barracks, off-site use only, possible asbestos.
Bldg. T–2617, Fort Sill
2616 Ringold Road
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130078
Status: Unutilized.
Comment: 3778 sq. ft., two story wood frame, most recent use—administration, off-site use only, possible asbestos.

Bldg. T–2755, Fort Sill
2755 Miner Road
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130079
Status: Unutilized.
Comment: 5090 sq. ft., two story wood frame, most recent use—barracks w/o dining, off-site use only, possible asbestos.
Bldg. T–3033, Fort Sill
3033 Hoskins Road
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130080
Status: Unutilized.
Comment: 2022 sq. ft., one story wood frame, most recent use—storage, off-site use only, possible asbestos.
Bldg. T–3034, Fort Sill
3034 Hoskins Road
Lawton, Co: Camanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130081
Status: Unutilized.
Comment: 4751 sq. ft., one story wood frame, most recent use—storage, off-site use only, possible asbestos.
Bldg. T–3158, Fort Sill
3158 Harvey Road
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130082
Status: Unutilized.
Comment: 1612 sq. ft., one story wood frame, most recent use—storehouse, off-site use only, possible asbestos.
Bldg. T–3159, Fort Sill
3159 Harvey Road
Lawton, Co: C.. anche OK 73503–5100
Landholding Agency: Army
Property Number: 219130083
Status: Unutilized.
Comment: 2071 sq. ft., one story wood frame, most recent use—storehouse, off-site use only, possible asbestos.
Bldg. T–3538, Fort Sill
3538 Tacy Street
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130084
Status: Unutilized.
Comment: 2762 sq. ft., one story wood frame, most recent use—administration, off-site use only, possible asbestos.
Bldg. T–3547, Fort Sill
3547 Walker Street
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130085
Status: Unutilized.
Comment: 1154 sq. ft., one story wood frame, most recent use—administration, off-site use only, possible asbestos.
Bldg. T–3556, Fort Sill
3556 Tacy Street
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130086
Status: Unutilized.
Comment: 3142 sq. ft., one story wood frame, most recent use—storage, off-site use only, possible asbestos.
Bldg. T–3557, Fort Sill
3557 Tacy Street
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130087
Status: Unutilized.
Comment: 3876 sq. ft., one story wood frame, most recent use—gen construction bldg., off-site use only, possible asbestos.
Bldg. T–3628, Fort Sill
3628 Tacy Street
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130088
Status: Unutilized.
Comment: 2084 sq. ft., one story wood frame, most recent use—administration, off-site use only, possible asbestos.
Bldg. T–3637, Fort Sill
3637 Scott Street
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130089
Status: Unutilized.
Comment: 2766 sq. ft., one story wood frame, most recent use—classroom, off-site use only, possible asbestos.
Bldg. T–3688, Fort Sill
3688 Tacy Street
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130090
Status: Unutilized.
Comment: 2760 sq. ft., one story wood frame, most recent use—storehouse, off-site use only, possible asbestos.
Bldg. T–3702, Fort Sill
3702 Walker Street
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130091
Status: Unutilized.
Comment: 2749 sq. ft., one story wood frame, most recent use—barracks, off-site use only, possible asbestos.
Bldg. T–4215, Fort Sill
4215 Thomas Street
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130092
Status: Unutilized.
Comment: 1311 sq. ft., one story wood frame, most recent use—storage, off-site use only possible asbestos.
Bldg. T–4216, Fort Sill
4216 Thomas Street
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130093
Status: Unutilized.
Comment: 1297 sq. ft., one story wood frame, most recent use—storage, off-site use only, possible asbestos.
Bldg. T–5612, Fort Sill
5612 Pratt Road
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130094
Status: Unutilized.
Comment: 149 sq. ft., one story metal, most recent use—gas station, off-site use only, possible asbestos.
Bldg. T–5620, Fort Sill
5620 Pratt Road
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130095
Status: Unutilized.
Comment: 1552 sq. ft., one story wood frame, most recent use—administration, off-site use only, possible asbestos.

South Carolina

Bldg. 2438
Fort Jackson
Ft. Jackson, Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219140003
Status: Unutilized.
Comment: 3779 sq. ft., 1 story wood frame, off-site removal only, needs rehab, most recent use—storage.
Bldg. 8562
Fort Jackson
Ft. Jackson, Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219140004
Status: Unutilized.
Comment: 992 sq. ft., 1 story wood frame, off-site removal only, needs rehab, most recent use—administrative.
Bldg. 8564
Fort Jackson
Ft. Jackson, Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219140005
Status: Unutilized.
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, needs rehab, most recent use—troop billets.
Bldg. 8568
Fort Jackson
Ft. Jackson, Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219140006
Status: Underutilized
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, needs rehab, most recent use—travel office.
Bldg. 8571
Fort Jackson
Ft. Jackson, Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219140007
Status: Underutilized
Comment: 3196 sq. ft., 1 story wood frame, off-site removal only, needs rehab, most recent use—storage.
Bldg. 8572
Fort Jackson
Ft. Jackson, Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219140008
Status: Unutilized
Comment: 2284 sq. ft., 1 story wood frame off-site removal only, needs rehab, most recent use—administrative.
Bldg. 8573
Fort Jackson
Ft. Jackson, Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219140009
Status: Unutilized
Comment: 720 sq. ft., 1 story wood frame, off-site removal only, needs rehab, most recent use—open sided waiting shelter.
Bldg. 8575
Fort Jackson
Ft. Jackson, Co: Richland SC 29207–
Landholding Agency: Army

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Property Number: 219140010
Status: Unutilized
Comment: 1029 sq. ft., 1 story wood frame, off-site removal only, needs rehab, most recent use—open sided waiting shelter.
Bldg. 8576
Fort Jackson
Ft. Jackson, Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21940011
Status: Unutilized
Comment: 3888 sq. ft., 1 story wood frame, off-site revoval only, needs rehab, most recent use—open sided waiting shelter.
Bldg. 9530
Fort Jackson
Ft. Jackson, Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 2191400–12
Status: Underutilized
Comment: 5782 sq. ft., 1 story wood frame, off-site removal only, needs, rehab, most recent use—administrative.
Bldg. 9616
Fort Jackson
Ft. Jackson, Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219140013
Status: Underutilized
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, needs rehab, most recent use—billets/storage.
Bldg. 9636
Fort Jackson
Ft. Jackson, Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219140014
Status: Underutilized
Comment: 1170 sq. ft., 1 story wood frame, off-site removal only, needs rehab, most recent use—storage.

Texas

Bldg. 666
Fort Bliss
666 Pleasonton Road
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219130020
Status: Unutilized
Comment: 972 sq. ft., one story wood frame, needs rehab, off-site use only, most recent use—general storehouse.
Bldg. 668
Fort Bliss
668 Pleasonton Road
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219130021
Status: Unutilized
Comment: 1770 sq. ft., one story wood frame, needs painting, most recent use—general storehouse, off-site use only.
Bldg. 839
Fort Bliss
839 Lafberry Road
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219130022
Status: Unutilized
Comment: 3540 sq. ft., two story wood frame, needs painting, most recent use—instructional bldg., off-site use only.
Bldg. 4746
Fort Bliss
4746 Grinder Avenue
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219130023
Status: Unutilized
Comment: 873 sq. ft., one story wood frame, needs painting, most recent use—day room, off-site use only.
Bldg. 4750
Fort Bliss
4750 Gatchell Avenue
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219130024
Status: Unutilized
Comment: 858 sq. ft., one story wood frame, needs painting, most recent use—general storehouse, off-site use only.
Bldg. 4759
Fort Bliss
4759 Grinder Avenue
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219130025
Status: Unutilized
Comment: 915 sq. ft., one story wood frame, needs painting, most recent use—general storehouse, off-site use only.
Bldg. 4760
Fort Bliss
4760 Gatchell Avenue
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219130026
Status: Unutilized
Comment: 915 sq. ft., one story wood frame, possible asbestos, most recent use—day room, off-site use only.
Bldg. 4767
Fort Bliss
4767 Burgin Street
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219130027
Status: Unutilized
Comment: 2169 sq. ft., one story wood frame, most recent use—general storehouse, presence of asbestos in boiler room, off-site use only.
Bldg. 4768
Fort Bliss
4768 Burgin Street
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219130028
Status: Unutilized.
Comment: 873 sq. ft., one story wood frame, most recent use—administrative, presence of asbestos in boiler room, off-site use only.
Bldg. 4822
Fort Bliss
4822 Gatchell Avenue
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219130029
Status: Unutilized.
Comment: 1770 sq. ft., one story wood frame, most recent use—general storehouse, off-site use only.
Bldg. 4831
Fort Bliss
4831 Hohenthal Avenue
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219130030
Status: Unutilized.
Comment: 915 sq. ft., one story wood frame, most recent use—day room, off-site use only.
Bldg. 4840
Fort Bliss
4840 Burgin Street
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219130031
Status: Unutilized.
Comment: 1770 sq. ft., one story wood frame, most recent use—general instructional bldg., presence of asbestos in boiler room, off-site use only.
Bldg. 4852
Fort Bliss
4852 Hohenthal Avenue
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219130032
Status: Unutilized.
Comment: 2169 sq. ft., one story wood frame, most recent use—instructional bldg., presence of asbestos in boiler room, off-site use only.
Bldg. 11254
Fort Bliss
11254 Sgt. F. Markle Street
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219130033
Status: Unutilized.
Comment: 1312 sq. ft., one story wood frame, most recent use—administrative, needs painting, off-site use only.
Bldg. 509
Fort Hood
Old Battalion Avenue
Ft. Hood, Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219140001
Status: Unutilized.
Comment: 2880 sq. ft., 2 story wooden structure, needs rehab, most recent use—storage.
Bldg. 510
Fort Hood
Old Battalion Avenue
Ft. Hood, Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219140002
Status: Unutilized.
Comment: 2880 sq. ft., 2 story wood structure, needs rehab, most recent use—youth center.
Bldg. 912
Fort Hood
Central Drive
Ft. Hood, Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219140035
Status: Unutilized.
Comment: 2763 sq. ft., 1 story, needs rehab, most recent use—storage.
Bldg. 913
Fort Hood
Central Drive
Ft. Hood, Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219140036
Status: Unutilized.
Comment: 1215 sq. ft., 1 story, needs rehab, most recent use—storage.

Bldg. 944
Fort Hood
Old Park Avenue
Ft. Bood, Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219140037
Status: Unutilized
Comment: 1098 sq. ft., 1 story, needs storage.
Bldg. 1035
Fort Hood
Battalion Avenue
Ft. Hood, Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219140038
Status: Unutilized.
Comment: 23211 sq. ft., 1 story, needs rehab, most recent use—storage.
Bldg. 1057
Fort Hood
Battalion Avenue
Ft. Hood, Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219140039
Status: Unutilized.
Comment: 17100 sq. ft., 1 story, needs rehab, most recent use—storage.

Utah

100 KW Solar Photovoltaic Sys.
Natl. Bridges National Monument
P.O. Box 1
Lake Powell, Co: San Juan UT 84533–
Landholding Agency: Energy
Property Number: 419140001
Status: Excess.
Comment: solar panels, off-site use only, current use-generate electrical power.

Virginia

Bldg. 97
Fort Monroe
Fort Monroe VA 23651–
Landholding Agency: Army
Property Number: 219130005
Status: Unutilized.
Comment: 2220 sq. ft., one story, most recent use—photo lab, needs major rehab, on National Register of Historic Landmarks.
Bldg. 45
Fort Myer
Washington Avenue
Ft. Myer, Co: Arlington VA 22211–
Landholding Agency: Army
Property Number: 219140034
Status: Unutilized.
Comment: 2034 sq. ft., 2 story brick/wood residence, needs rehab, presence of asbestos, off-site use only.
Bldg. 442, Warehouse Bldg.
Fort Myer
Pershing Drive
Ft. Myer, Co: Arlington VA 22211–
Landholding Agency: Army
Property Number: 219140074
Status: Unutilized.
Comment: 6088 sq. ft., 1 story, concrete floor contaminated with trichloroethane and perchloroethlene, presence of lead-based paint, off-site use only.
Bldg. 442A Warehouse Bldg.
Fort Myer
Pershing Drive
Ft. Myer, Co: Arlington VA 22211–
Landholding Agency: Army
Property Number: 219140075
Status: Unutilized.
Comment: 6088 sq. ft., 1 story, concrete floor contaminated with trichloroethane and perchloroethlene, presence of lead-based paint, off-site use only.
Bldg. 443, Dry Cleaning Plant
Fort Myer
Pershing Drive
Ft. Myer, Co: Arlington VA 22211–
Landholding Agency: Army
Property Number: 219140076
Status: Unutilized.
Comment: 3650 sq. ft., 1 story brick masonry, contaminated with trichloroethane, perchloroethlene and lead-based paint, off-site use only.

Wisconsin

Bldg. 2
VA Medical Center
County Highway E
Tomah, Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 979010055
Status: Underutilized.
Comment: 18000 sq. ft., 3 story masonry, needs rehab, possible asbestos, potential utilities.
Bldg. 8
VA Medical Center
County Highway E
Tomah, Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 979010056
Status: Underutilized.
Comment: 2200 sq. ft., 2 story wood frame, possible asbestos, potential utilities, structural deficiencies, needs rehab.

Land (By State)

Alabama

VA Medical Center
VAMC
Tuskegee, Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 979010053
Status: Underutilized.
Comment: 40 acres, buffer to VA Medical Center, potential utilities, undeveloped.

Georgia

Lake Sidney Lanier
Riverside Dr.
Gainesville, Co: Hall GA
Landholding Agency: GSA
Property Number: 549140003
Status: Excess.
Comment: 6.22 acres, leased to City for construction of an alum sludge dewatering and wash water handling facility.
GSA Number: 4–D–GA–731

Louisiana

Land—8.27 acres
VA Medical Center
2501 Shreveport Highway
Alexandria, Co: Rapides LA 71301–
Landholding Agency: VA
Property Number: 979010009
Status: Unutilized.
Comment: 8.27 acres, heavily wood with natural drainage ravine across property, most recent use—recreation/buffer area.

Maryland

VA Medical Center
9500 North Point Road
Fort Howard, Co: Baltimore MD 21052–
Landholding Agency: VA
Property Number: 979010020
Status: Underutilized.
Comment: Approx. 10 acres, wetland and periodically floods, most recent use—dump site for leaves.

Minnesota

Land around Bldg. 240–249, 253
VA Medical Center
Fort Snelling
St. Paul, Co: Hennepin MN 55111–
Landholding Agency: VA
Property Number: 979010007
Status: Unutilized.
Comment: 3.76 acres, potential utilities.

Texas

Land
Olin E. Teague Veterans Center
1901 South 1st Street
Temple, Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 979010079
Status: Underutilized.
Comment: 13 acres, portion formerly landfill, portion near flammable materials, railroad crosses property, potential utilities.
VA Medical Center
4800 Memorial Drive
Waco, Co: McLennan, TX 76711–
Landholding Agency: VA
Property Number: 979010081
Status: Underutilized.
Comment: 2.3 acres, leased to Owens-Illinois Glass Plant, expiration date 10/31/91, most recent use—parking lot.

Wisconsin

VA Medical Center
County Highway E
Tomah, Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 979010054
Status: Underutilized.
Comment: 12.4 acres, serves as buffer between center and private property, no utilities.

Suitable/Unavailable Properties

Buildings (by State)

Maryland

Bldg. 8A
DVA Medical Center
Perry Point
Perry Point, Co: Cecil MD 21902–
Landholding Agency: VA
Property Number: 979010047
Status: Underutilized.
Comment: 17000 sq. ft., 1 story masonry, needs a roof, utilities, most recent use—storage.
Bldg. 15
VA Medical Center
Near 5629 Minnehaha Avenue
Minnepolis Co: Hennepin, MN 55417–
Landholding Agency: VA
Property Number: 979010025
Status: Underutilized.
Comment: 15100 sq. ft., 2 story concrete/brick frame, asbestos present in pipe insulation, most recent use—laundry.

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Bldg. 16
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, Co: Hennepin MN 55417–
Landholding Agency: VA
Property Number: 979010026
Status: Underutilized.
Comment: 8000 sq. ft., 3 story concrete/brick, asbestos present on pipe insulation, most recent use—boiler plant.
Bldg. 21
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, Co: Hennepin MN 55417–
Landholding Agency: VA
Property Number: 979010027
Status: Underutilized.
Comment: 3200 sq. ft., 1 story prefab/quonset, most recent use—garage for motor vehicles.
Bldg. 48
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, Co: Hennepin MN 55417–
Landholding Agency: VA
Property Number: 979010028
Status: Underutilized.
Comment: 2000 sq. ft., 1 story concrete/block, most recent use—incinerator/storage.
Bldg. 64
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, Co: Hennepin MN 55417–
Landholding Agency: VA
Property Number: 979010029
Status: Underutilized.
Comment: 380 sq. ft., 1 story prefab, potential utilities.
Bldg. T–10
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, Co: Hennepin MN 55417–
Landholding Agency: VA
Property Number: 979010030
Status: Underutilized.
Comment: 1800 sq. ft., 1 story prefab/quonset, potential utilities, most recent use—storage.
Bldg. 43
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, Co: Hennepin MN 55417–
Location: 54th Street and 48th Avenue S.
Landholding Agency: VA
Property Number: 979010032
Status: Underutilized.
Comment: 26000 sq. ft., 8 story brick/steel frame, asbestos present on pipe insulation, most recent use—office/storage.
Bldg. 227
VA Medical Center
Fort Snelling
St. Paul, Co: Hennepin MN 55111–
Landholding Agency: VA
Property Number: 979010033
Status: Underutilized.
Comment: 850 sq. ft., 2 story wood frame and brick residence, utilities disconnected.

New York

Bldg. 5
V.A. Medical Center
Redfield Parkway
Batavia, Co: Genese NY 14020–
Landholding Agency: VA
Property Number: 979030001
Status: Underutilized
Comment: Portion of 16800 sq. ft., 3 story, brick and masonry bldgs., needs minor repairs.

Wyoming

Bldg. 13
Medical Center
N.W. of town at the end of Fort Road
Sheridan, Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110001
Status: Underutilized.
Comment: 3613 sq. ft., 3 story wood frame masonry veneered, potential utilities, possible asbestos, needs rehab.
Bldg. 79
Medical Center
N.W. of town at the end of Fort Road
Sheridan, Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110003
Status: Underutilized.
Comment: 45 sq. ft., 1 story brick and tile frame, limited utilities, most recent use—reservoir house, use for storage purposes.

Land (by State)

California

Land
VA Medical Center
Wilshire and Sawtelle Boulevards
Los Angeles, Co: Los Angeles CA 90073–
Landholding Agency: VA
Property Number: 979010077
Status: Underutilized.
Comment: Approx. 30 acres of 80 acre tract, 7 acre portion contaminated, portions may be environmentally protected.

Illinois

VA Medical Center
3001 Green Bay Road
North Chicago, Co: Lake IL 60064–
Landholding Agency: VA
Property Number: 979010082
Status: Underutilized.
Comment: 2.5 acres, currently being used as a construction staging area for the next 6–8 years, potential utilities.

Michigan

VA Medical Center
5500 Armstrong Road
Battle Creek, Co: Calhoun MI 49016–
Landholding Agency: VA
Property Number: 979010015
Status: Underutilized.
Comment: 20 acres, used as exercise trails and storage areas, potential utilities.

Minnesota

Bldg. 43 Land Site
VA Medical Center
54th Street & 48th Avenue South
Minneapolis, Co: Hennepin MN 55417–
Landholding Agency: VA
Property Number: 979010005
Status: Underutilized.
Comment: 8.9 acres, most recent use—parking, potential utilities.
Bldg. 227–229 Land
VA Medical Center
Fort Snelling
St. Paul, Co: Hennepin MN 55111–
Landholding Agency: VA
Property Number: 979010006
Status: Underutilized.
Comment: 2.0 acres, potential utilities, buildings occupied, residence/garage.
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, Co: Hennepin MN 55417–
Location: Land (Site of Building 15, 16, 21, 48, 64, T10)
Landholding Agency: VA
Property Number: 979010024
Status: Underutilized.
Comment: 12.1 acres, most recent use—parking, potential utilities.
Land—12 acres
VAMC
Near 5629 Minnehaha Avenue
Minneapolis, Co: Hennepin MN 55417–
Landholding Agency: VA
Property Number: 979010031
Status: Underutilized.
Comment: 12 acres, possible asbestos, leased to Department of Natural Resources as a park walking trail.

New York

VA Medical Center
Fort Hill Avenue
Canandaigua, Co: Ontario NY 14424–
Landholding Agency: VA
Property Number: 979010017
Status: Underutilized.
Comment: 27.5 acres, used for school ballfield and parking, existing utilities easements, portion leased.

Pennsylvania

VA Medical Center
New Castle Road
Butler, Co: Butler PA 16001–
Landholding Agency: VA
Property Number: 979010016
Status: Underutilized.
Comment: Approx. 9.29 acres, used for patient recreation, potential utilities.
Land No. 645
VA Medical Center
Highland Drive
Pittsburgh, Co: Allegheny PA 15206–
Location: Between Campania and Wiltsie Streets.
Landholding Agency: VA
Property Number: 979010080
Status: Unutilized.
Comment: 52.42 acres, heavily wooded, property includes dump area and numerous site storm drain outfalls.

West Virginia

VA Medical Center
1540 Spring Valley Drive
Huntington, Co: Wayne WV 25704–
Landholding Agency: VA
Property Number: 979010022
Status: Unutilized.
Comment: 72 acres, very rough terrain and wooded, potential utilities.

Unsuitable Properties

Buildings (by State)

Alaska

Galley/Rec. Bldg.
USCG Base Ketchikan
1300 Stedman Street
Ketchikan, Co: Ketchikan AK 99901–
Landholding Agency: DOT
Property Number: 879140002
Status: Excess.
Reason: Secured area.
Supply Warehouse
USCG Base Ketchikan
1300 Stedman Street
Ketchikan, Co: Ketchikan AK 99901–
Landholding Agency: DOT
Property Number: 879140003
Status: Excess.
Reason: Secured area.
Old Barracks
USCG Base Ketchikan
1300 Stedman Street
Ketchikan, Co: Ketchikan AK 99901–
Landholding Agency: DOT
Property Number: 879140004
Status: Excess.
Reason: Secured area.
Bldg. 517
USCG Support Center Kodiak
Kodiak Island
Kodiak, Co: Kodiak Island AK 99916–5000
Landholding Agency: DOT
Property Number: 879140007
Status: Excess.
Reason: Secured area. Within airport runway clear zone.

California

Bldgs. 5001, 8011, 11443
Vandenberg Air Force Base
Vandenberg AFB, Co: Santa Barbara CA 93437–
Location: Hwy 1, Hwy 246, Coast Rd. Pt Sal Rd, Miguelito Cyn
Landholding Agency: Air Force
Property Number: 189140025, 189140028–189140029
Status: Unutilized
Reason: Secured area.
Barracks
Former Long Beach Radio Station
Palos Verde Drive
Palos Verde, Co: Los Angeles CA 90274–
Landholding Agency: DOT
Property Number: 879140008
Status: Excess.
Reason: Secured area.
Paint Locker
Former Long Beach Radio Station
Palos Verde Drive
Palos Verde, Co: Los Angeles CA 90274–
Landholding Agency: DOT
Property Number: 879140009
Status: Excess.
Reason: Secured area.
Operations Bldg.
Former Long Beach Radio Station
Palos Verde Drive
Palos Verde, Co: Los Angeles CA 90274–
Landholding Agency: DOT
Property Number: 879140010
Status: Excess.
Reason: Secured area.

Hawaii

14 Bldgs.
USCG Base Honolulu
Sand Island
Honolulu, Co: Honolulu HI 96819–4398
Landholding Agency: DOT
Property Number: 879140011–879140024
Status: Excess.
Reason: Secured area. Within 2000 ft. of flammable or explosive material.

New York

Bldgs. 272, 888
Griffiss Air Force Base
Rome, Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 189140022–189140023
Status: Excess.
Reason: Secured area.

North Carolina

Bldg. 9
VA Medical Center
1100 Tunnel Road
Asheville, Co: Buncombe NC 28805–
Landholding Agency: VA
Property Number: 979010008
Status: Underutilized.
Reason: Other.
Comment: Friable asbestos.

Oregon

USCG Air Station North Bend
2000 Connecticut Avenue
North Bend, Co: Coos OR 97549–2399
Landholding Agency: DOT
Property Number: 879140001
Status: Excess.
Reason: Secured area.

Texas

Bldgs. 24–26
Olin E. Teague Veterans Center
1901 South 1st Street
Temple, Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 979010050–979010052
Status: Unutilized.
Reason: Other
Comment: Friable asbestos.

Washington

Garage
USCG Station Cape Disappointment
Foot of Canby Road
Ilwaco, Co: Pacific WA 98624–0460
Landholding Agency: DOT
Property Number: 879140005
Status: Excess.
Reason: Secured area.
Equipment Bldg.
USCG Station Cape Disappointment
Foot of Canby Road
Ilwaco, Co: Pacific WA 98624–0460
Landholding Agency: DOT
Property Number: 879140006
Status: Excess.
Reason: Secured area.

Wyoming

Bldg. 95
Medical Center
N.W. of town at the end of Fort Road
Sheridan, Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110004
Status: Unutilized.
Reason: Other
Comment: Sewage digester for disposal plant.
Bldg. 96
Medical Center
N.W. of town at end of Fort Road
Sheridan, Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110005
Status: Unutilized.
Reason: Other
Comment: Pump house for sewage disposal plant.
Structure 99
Medical Center
N.W. of town at the end of Fort Road
Sheridan, Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110006
Status: Unutilized.
Reason: Other
Comment: Mechanical screen for sewage disposal plant.
Structure 100
Medical Center
N.W. of town at the end of Fort Road
Sheridan, Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110007
Status: Unutilized.
Reason: Other
Comment: Dosing tank for sewage disposal plant.
Structure 101
Medical Center
N.W. of town at the end of Fort Road
Sheridan, Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110008
Status: Unutilized.
Reason: Other
Comment: Chlorination chamber for sewage disposal plant.

Land (by State)

California

DVA Medical Center
4951 Arroyo Road
Livermore, Co: Alameda CA 94550–
Landholding Agency: VA
Property Number: 979010023
Status: Unutilized.
Reason: Other
Comment: 750,000 pal water reservoir.

Louisiana

Land—3.4 acres
VA Medical Center
2501 Shreveport Highway
Alexandria, Co: Rapides LA 71301–
Landholding Agency: VA
Property Number: 979010010
Status: Unutilized.
Reason: Within 2000 ft. of flammable or explosive material.

Minnesota

VAMC
Va Medical Center
4801 8th Street No.
St. Cloud, CO: Sterns MN 56303–
Landholding Agency: VA
Property Number: 979010049
Status: Underutilized.
Reason: Within 2000 ft. of flammable or explosive material

New York

Tracts 1–4
VA Medical Center
Bath, Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.

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Landholding Agency: VA
Property Number: 979010011–979010014
Status: Unutilized.
Reason: Secured area

North Dakota

VAM & ROC—Land—6.1 acres
2101 Elm Street, N.
Fargo, Co: Cass ND 58102–
Landholding Agency: VA
Property Number: 979010018
Status: Underutilized.
Reason: Floodway.

VAM & Roc—Land—8.9 acres
2101 Elm Street, N.
Fargo, Co: Cass ND 58102–
Landholding Agency: VA
Property Number: 979010019
Status: Underutilized.
Reason: Floodway.

[FR Doc. 91–30845 Filed 12–26–91; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–08–4120–11; NDM 80399]

Coal Exploration License Application

AGENCY: Montana State Office, Bureau of Land Management, Interior.
ACTION: Notice of Invitation.

Coal Exploration License Application NDM 80099

Members of the public are hereby invited to participate with Estevan Coal Corporation in a program for the exploration of coal deposits owned by the United States of America in the following-described lands located in Divide County, North Dakota:

T. 163 N., R. 102 W., 5th P.M.
Sec. 4: SW¼NW¼
Sec. 9: NW¼NW¼
Sec. 17: NW¼NW¼
Sec. 20: NW¼NW¼
T. 163 N., R. 103 W., 5th P.M.
Sec. 2: SW¼SW¼
Sec. 10: Lot 1
Sec. 12: NW¼NW¼
Sec. 14: NW¼NE¼, NW¼NW¼
Sec. 18: Lots 1 and 4
Sec. 23: NW¼NW¼, NW¼SW¼
Sec. 25: NW¼NW¼
Sec. 26: SW¼NW¼
Sec. 27: Lots 1 and 2
T. 164 N., R. 103 W., 5th P.M.
Sec. 34: Lot 2, SE¼NE¼
Sec. 35: NW¼NW¼
700.82 acres—Divide County.

Any party electing to participate in this exploration program shall notify, in writing, both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107–6800; and Estevan Coal Corporation, 1600 Oxford Tower, 10235—101 Street, Edmonton, Alberta, Canada T5J3G1. Such written notice must refer to serial number NDM 80399 and be received no later than 30 calendar days after publication of this notice in the **Federal Register** or 10 calendar days after the last publication of this notice in The Journal, whichever is later. This Notice will be published once a week for 2 consecutive weeks.

The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. A copy of the exploration plan as submitted by Estevan Coal Corporation is available for public inspection at the Bureau of Land Management, Montana State Office, Granite Tower Building, 222 North 32nd Street, Billings, Montana during regular business hours (9 a.m. to 4 p.m.) Monday through Friday.

Dated: December 17, 1991.
Thomas P. Lonnie,
Acting State Director.
[FR Doc. 91–30935 Filed 12–26–91; 8:45 am]
BILLING CODE 4310–DN–M

[AZ–050–4331–02]

Arizona: Yuma District Advisory Council; Meeting

AGENCY: Bureau of Land Management; Interior.
ACTION: Yuma (Arizona) District Advisory Council Meeting.

FOR FURTHER INFORMATION CONTACT: Jeanette Davis, Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365, 602–726–6300.

SUPPLEMENTARY INFORMATION: A meeting of the Yuma District Advisory Council will be held Wednesday, February 12, 1991, 10 a.m. to 4 p.m. in the Bureau of Land Management Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona. The agenda will include: (1) Lake Havasu Fish Habitat Plan; (2) Parker Strip Visitor Center and boat ramp; (3) Wilderness Area Management Plans; (4) Verdstone Mine environmental assessment process; (5) Arizona State boundary realignment.

Following the meeting, members will participate in a field tour of the long-term visitor area, returning to the Yuma District Office at 4 p.m.

The public is invited to attend the meeting and the field trip, but must provide their own transportation. Interested persons may make oral statements to the council or file written statements for the council's consideration. Anyone wishing to make oral statements should make prior arrangements with the District Manager. Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Dated: December 17, 1991.
Herman L. Kast,
District Manager.
[FR Doc. 91–30936 Filed 12–26–91; 8:45 am]
BILLING CODE 4310–32–M

[WY–920–41–5700; WYW100480]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Public Law 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW100480 for lands in Washakie County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW100480 effective June 1, 1991, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Florence R. Speltz,
Supervisory Land Law Examiner.
[FR Doc. 91–30937 Filed 12–26–91; 8:45 am]
BILLING CODE 4310–22–M

[ID–942–02–4730–12]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., December 19, 1991.

The plat representing the dependent resurvey of portions of the subdivisional lines, Mineral Survey No. 2153, and the 1902–1906 meander lines of the right and left banks of the Salmon River, the subdivision of section 14, the survey of the 1990–1991 meander lines of the right and left banks of the Salmon River, and the land inside a portion of the 1904 meander lines of the Salmon River in section 14, T. 24 N., R. 1 E., Boise Meridian, Idaho, Group No. 801, was accepted, December 17, 1991.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: December 19, 1991.
Duane E. Olsen,
Chief Cadastral Surveyor for Idaho.

DEPARTMENT OF THE INTERIOR

[AZ–930–4214–10; AZA–26088, AZA–26089]

Proposed Withdrawal and Opportunity for Public Meeting; Arizona

December 16, 1991.
AGENCY: Bureau of Land Management, Interior.
ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed two applications to withdraw approximately 680 acres (AZA–26088 for 666.73 acres and AZA–26089 for 10.00 acres) of National Forest System lands for the protection of the existing Parker Canyon Lake Complex and the Carr Barn Administrative Site. This notice closes the lands for up to 2 years from location and entry under the United States mining laws. The lands will remain open to all uses other than the mining laws.

DATES: Comments and requests for a meeting should be received on or before March 27, 1992.

ADDRESSES: Comments and meeting requests should be sent to the Arizona State Director, Bureau of Land Management (BLM), 3707 N. 7th Street, Phoenix, Arizona 85014, or P.O. Box 16563, Phoenix, Arizona 85011–6563.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, (602) 640–5509.

SUPPLEMENTARY INFORMATION: On November 12 and 13, 1991, the U.S. Department of Agriculture, Forest Service, filed two applications to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Gila and Salt River Meridian; Coronado National Forest

T. 23 S., R. 19 E., (Parker Canyon Lake Complex, AZA–26088)
Sec. 18, Lots 1 and 2, 4 through 7 and 9, SW¼NE¼, E½NW¼, W½NE¼SE¼, W½E1/2, NE¼SW¼, HES 291;
Sec. 19, Lots 1 through 3, NE¼NE¼.
T. 21 S., R. 21 E., (Carr Barn Administrative Site, AZA–26089)
Sec. 7, SE¼NE¼NW¼.

The areas described aggregate 676.73 acres in Cochise County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawals may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawals. All interested persons who desire a public meeting for the purpose of being heard on the subject must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The applications will be processed in accordance with regulations as set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless an application is denied or cancelled or the withdrawals are approved prior to that date. The temporary uses which will be permitted during this segregative period are all those applicable to U.S. Forest Service administered lands except those under the mining laws.

The temporary segregation of the lands in connection with these applications shall not affect the administrative jurisdiction over the lands.

Phillip D. Moreland,
Acting Deputy State Director, Lands and Renewable Resources.
[FR Doc. 91–30872 Filed 12–26–91; 8:45 am]
BILLING CODE 4310–32–M

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for the Virginia Spiraea for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.
ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Virginia Spiraea Recovery Plan. This threatened plant occurs on public and private lands in Georgia, Kentucky, North Carolina, Tennessee, Virginia, and West Virginia. The Service solicits review and comment from the public on this draft Plan.

DATES: Comments on the draft Recovery Plan must be received on or before February 25, 1992, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft Recovery Plan may obtain a copy from the Northeast Regional Office, U.S. Fish and Wildlife Service, One Gateway Center, suite 700, Newton Corner, Massachusetts 02158 (617/965–5100 ext. 316) or the West Virginia Field Office, U.S. Fish and Wildlife Service, Route 250 South, Elkins Shopping Plaza, Elkins, West Virginia 26241 (304/636–6586). Comments on the plan should be addressed to Mary Parkin at the Northeast Regional Office at the above address. The plan is available for public inspection, by appointment, during normal business hours at the above addresses.

FOR FURTHER INFORMATION CONTACT: Mary Parkin (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these

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comments into account in the course of implementing Recovery Plans.

The document submitted for review is the draft Virginia Spiraea (*Spiraea virginiana*) Recovery Plan. This perennial shrub species consists of 30 stream populations in six mid-Atlantic and southeastern states, down from 37 populations in eight states. The plant is threatened by a small overall population size, a paucity of sexual reproduction and dispersal, and manipulation of its riverine habitat. The Virginia spiraea was listed as federally threatened in June of 1990.

The species is typically found in disturbed sites along rivers and streams, with the sole exception being a population found in a wet meadow site in West Virginia. The plant requires sufficient disturbance to inhibit arboreal competition, yet without the scour activity that will remove most organic material or clones.

The recovery objective is to return the species to a level that will ensure its continued existence in the wild on a self-sustaining basis. This will be accomplished through protecting and managing extant populations, maintaining captive populations and conducting reintroduction efforts, searching for additional populations, research, and implementing information and education programs. If the recovery objective is met, delisting of the Virginia spiraea will be considered.

This Recovery Plan is being submitted for technical/agency review. After consideration of comments received during the review period, the Plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the Plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 16, 1991.

Nancy M. Kaufman,

Acting Regional Director.

[FR Doc. 91-30811 Filed 12-26-91; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Technical/Agency Draft Recovery Plan for the Puerto Rican Crested Toad (Peltophryne lemur) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for the Puerto Rican Crested Toad (Peltophryne lemur).

DATES: Comments on the draft recovery plan must be received on or before February 25, 1992, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Southeast Regional Office, Richard B. Russell Federal Building, 75 Spring Streets SW., Atlanta, Georgia 30303. Written comments and materials regarding the plan should be addressed to Field Supervisor, Caribbean Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received are available upon request for public inspection, by appointment, during normal business hours at either of the above-mentioned address.

FOR FURTHER INFORMATION CONTACT: Ms. Gloria Lee, Caribbean Field Office, P.O. Box 491, Boquerón, PR 00622 (809/851-7297).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

This Technical/Agency draft is for the Puerto Rican crested toad (Peltophryne lemur), a medium-sized toad endemic to Puerto Rico. Historically, the species was found in nine locations in Puerto Rico and in one location in Virgin Gorda, British Virgin Islands. The Puerto Rican crested toad inhabits low-elevation arid or semi-arid, rocky areas with an abundance of limestone fissures and cavities in well drained soil. Habitat loss from urban, tourist, and agricultural expansion, and predation are the principal threats. At present, the species is found in the Guánica Commonwealth Forest and the Quebradillas-Isabela area.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 20, 1991.

James P. Oland,

Field Supervisor.

[FR Doc. 91-30934 Filed 12-26-91; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Draft Recovery Plan for the Cahaba Shiner, (Notropis cahabae) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Cahaba shiner, (*Notropis cahabae*). This species occurs in the Cahaba River in Perry, Bibb, and Shelby Counties, Alabama. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before February 25, 1992 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi 39213. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jim Stewart at the above address (601/965-4900).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery palns for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is the Cahaba shiner, (*Notropis cahabae*). The area of emphasis is the Cahaba River from Helena, Alabama for a distance of 76 river miles downstream. The entire known historic range of this species is contained within this river reach.

The primary goal of the recovery plan is to recover this species to the point where it can be reclassified as threatened. Since the species is restricted to the main stream Cahaba River, Alabama, is rarely found in 80 percent of its historic range, and its habitat is threatened by development of the City of Birmingham and smaller suburban communities, it will likely be several years before this species can be considered for reclassification.

Recovery efforts will focus on maintaining the current population and restoration of habitat. Recovery tasks include conducting population surveys, determining the impacts of permitted effluents, protecting and restoring historic habit, and determining life history requirements.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 18, 1991.

Robert Bowker,

Complex Field Supervisor.

[FR Doc. 91-30954 Filed 12-26-91; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Concession Services Plan, Yosemite National Park; Availability of Draft Plan and Supplemental Environmental Impact Statement to the Final General Management Plan and Environmental Impact Statement

SUMMARY: In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91-190, the National Park Service has prepared a Draft Concession Services Plan/Supplemental Environmental Impact Statement (EIS) to the 1980 Final General Management Plan/Environmental Impact Statement (GMP/EIS) for Yosemite National Park, Tuolumne, Mariposa and Madera Counties, California. The draft plan/supplemental EIS further defines and analyzes the management of concession services in Yosemite National Park and focuses on means to implement the goals outlined for concession services in the 1980 final GMP/EIS section entitled "Visitor Use/Park/Operations/Development."

Two alternatives are identified and evaluated. Alternative A would implement the concession services action items as written in the 1980 GMP/EIS. Alternative B, the proposal, would implement the 1980 GMP action items with certain revisions that would amend the 1980 GMP for concession services actions only.

SUPPLEMENTARY INFORMATION: Comments on the draft plan and supplemental EIS should be received no later than February 28, 1992 and should be addressed to: Superintendent, Yosemite National Park, P.O. Box 577, Yosemite National Park, CA 95389. Requests for additional information and/or copies of the draft plan/supplemental EIS should be directed to this address or telephone number (209) 372-0201. In addition, comments will be received at the following public meetings:

1/29/92, 7:00P—Los Angeles, CA. Univ. of Southern California. Davidson Conference Center. Figueroa and Jefferson Streets
1/30/92, 7:00P—Fresno, CA. Sanger Room. Convention Center. Ventura Ave. and "O" St.
1/31/92, 7:00P—San Francisco, CA. Fort Mason. Bldg. 201
2/1/92, 1:00P—Yosemite National Park, CA. East Auditorium. Yosemite Valley

Copies of the draft plan/supplemental EIS are available at the park headquarters and at libraries in Bishop, Bridgeport, Fresno, Los Angeles, Mariposa, Merced, Modesto, San Francisco and Sonora, CA. Copies also are available for inspection at the following address: Western Regional Office, National Park Service, Division of Planning, Grants and Environmental Quality, 600 Harrison St., suite 600, San Francisco, CA 94107-1372.

Dated: December 6, 1991.

Lewis Albert,

Acting Regional Director, Western Region.

[FR Doc. 91-31002 Filed 12-26-91; 8:45 am]

BILLING CODE 4310-70-M

Delaware and Lehigh Navigation Canal National Heritage Corridor

AGENCY: National Park Service; Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

DATES: February 3, 1992 1:30 p.m.

INCLEMENT WEATHER RESCHEDULE DATE: None.

ADDRESSES: Zinc Environmental Information Center, 480 Delaware Avenue, Palmerton, PA.

FOR FURTHER INFORMATION CONTACT: Millie Alvarez, Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 10 East Church Street, Room P-208, Bethlehem, PA 18018 (215) 861-9345.

SUPPLEMENTARY INFORMATION: The Commission was established by PL 100-692 to assist the Commonwealth and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historical and natural resources. The Commission will report to the Secretary of the Interior and to Congress. The agenda for the meeting will focus on the planning process.

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The meeting will be open to the public. Any member of the public may file a written statement concerning agenda items. The statement should be addressed to National Park Service, Mid-Atlantic Regional Office, Division of Park and Resource Planning, 260 Custom House, 200 Chestnut Street, Philadelphia, PA, 19106, attention: Deirdre Gibson.

Minutes of the meeting will be available for inspection four weeks after the meeting, at the above-named address.

Charles P. Clapper,

Regional Director, Mid-Atlantic Region.

[FR Doc. 91-31001 Filed 12-26-91; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-518 (Final)]

Aspherical Ophthalmoscopy Lenses From Japan

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: Date of Commission action.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202-205-3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION: On October 15, 1991, the Commission instituted the subject investigation and established a schedule for its conduct (56 FR 56660). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from January 22, 1992, to February 21, 1992. The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule.

The Commission's new schedule for the investigation is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than February 19, 1992; the prehearing conference will be held at the U.S. International Trade Commission Building on February 24, 1992; the prehearing staff report will be placed in the nonpublic record on February 14, 1992; the deadline for filing prehearing briefs in February 24, 1992; the hearing will be held at the U.S. International Trade Commission Building on February 27, 1992; and the deadline for filing posthearing briefs is March 6, 1992.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: December 20, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-30879 Filed 12-26-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-516 (Final)]

Fresh Kiwifruit From New Zealand

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-516 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from New Zealand of fresh kiwifruit, provided for in subheading 0810.90.20 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: November 26, 1991.

FOR FURTHER INFORMATION CONTACT: Jeff Doidge (202-205-3183), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of fresh kiwifruit from New Zealand are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The investigation was requested in a petition filed on April 25, 1991, by the Ad Hoc Committee for Fair Trade of the California Kiwifruit Commission and Individual California Kiwifruit Growers, Sacramento, CA.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on March 30, 1992, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on April 14, 1992, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 7, 1992. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 9, 1992, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is April 9, 1992. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is April 22, 1992; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before April 22, 1992. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: December 20, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-30878 Filed 12-26-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-312 (Preliminary)]

Softwood Lumber From Canada

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Canada of softwood lumber,[3] provided for in subheadings 4407.10.00, 4409.10.10, 4409.10.20, and 4409.10.90 of the Harmonized Tariff Schedule of the United States (HTS), that are alleged to be subsidized by the Government of Canada.

Background

On October 31, 1991, the U.S. Department of Commerce published in the **Federal Register** [4] a notice that it was self initiating a countervailing duty investigation to determine whether subsidies are being provided, or are likely to be provided, to manufacturers, producers, or exporters of certain softwood lumber products in Canada. Accordingly, effective October 31, 1991, the Commission instituted countervailing duty investigation No. 701-TA-312 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 6, 1991 (56 FR 56661). The conference was held in Washington, DC, on November 21, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 16, 1991. The views of the Commission are contained in USITC Publication 2468 (December 1991), entitled "Softwood Lumber from Canada: Determination of the Commission in Investigation No. 701-TA-312 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: December 20, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-30880 Filed 12-26-91; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioners Lodwick, Crawford, and Nuzum did not participate.

[3] For purposes of this investigation, "softwood lumber" means coniferous wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 mm, provided for in subheading 4407.10.00 of the HTS; and coniferous wood siding, flooring and other goods (except coniferous wood moldings and wood dowel rods; but including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated (rabbeted), chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed, provided for in HTS subheadings 4409.10.10, 4409.10.20 and 4409.10.90.

[4] 56 FR 56055, Oct. 31, 1991.

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

December 23, 1991.

The following notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the notice, Form BOP 102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Lewiston Grain Growers, Inc.

(2) P.O. Box 467, Lewiston, ID 83501.

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(3) 1200 Snake River Ave., Lewiston, ID 83501.

(4) David P. Hanson, P.O. Box 467, Lewiston, ID 83501.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-30926 Filed 12-26-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Notice of Consent Judgment in Action to Enjoin Violation of the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Consent Decree in *United States* v. *AroChem International Inc.* ("AROCHEM"), (D.P.R.), Civil Action No. 91-2549 (CC), was lodged with the United States District Court for the District of Puerto Rico on December 13, 1991. The Consent Decree provides for penalties for violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the National Pollutant Discharge Elimination System ("NPDES") permit no. PR0000345 as modified by NPDES permit no. PR0025666. The Consent Decree also requires AROCHEM to conduct certain remedial actions in order to achieve compliance with the effluent limitations in its NPDES permit. AROCHEM must construct a biological wastewater treatment system and a metals removal wastewater treatment system, modify its stormwater management practices.

The Department of Justice will receive, for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comment should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530 and should refer to *United States* v. *AroChem International Inc.*, D.O.J. Ref. No. 90-5-1-1-3678.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Puerto Rico, Federal Office Building Carlos E. Chardon Avenue, Hato Rey, Puerto Rico 00918; at the Region II office of the Environmental Protection Agency, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York, 10278, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Washington DC 20004 (202-347-2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $3.75 (25 cents per page reproduction charge) payable to Consent Decree Library.

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-30939 Filed 12-26-91; 8:45 am]

BILLING CODE 4410-01-M

Avco Corp.; Notice of Consent Judgment in an Action to Enjoin Violations of the Clean Air Act ("CAA")

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Consent Decree in *United States* v. *Avco Corp.; Textron Lycoming Div.; William B. Meyer Rigging, Inc.; Lorene Mattes, Thomas Dolan, Sally Gillon, Nancy Tsiaras and Stephen Lang as Trustees; Asbestos Abatement & Insulation Servs., Inc.; and Logano Trucking, Inc.*, ("Defendants"), (D. Conn.), Civil Action No. N-90-174 (WWE) was lodged with the United States District Court for the District of Connecticut on December 19, 1991. The Consent Decree provides for penalties for violations of section 112 of the Clean Air Act, 42 U.S.C. 7412, and the National Emission Standard for Hazardous Air Pollutants for asbestos ("NESHAPs"). The Consent Decree also requires Defendants to comply with stringent injunctive requirements in the following areas: Notification; sampling; inspection; awareness training; worker training; and appointment of an Asbestos Program Manager and an On-Site Supervisor.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Avco Corp., et al.* D.O.J. Ref. No. 90-5-2-1-1436.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Connecticut, 141 Church Street, New Haven, Connecticut 06510; at the Region I office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts 02203; and, at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Washington, DC 20004 (202-347-2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $3.75 (25 cents per page reproduction charge) payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 91-30941 Filed 12-26-91; 8:45 am]

BILLING CODE 4410-01-M

Schuylkill Metals of Plant City, Inc.; Lodging of Consent Decree Pursuant to Superfund (CERCLA)

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on December 18, 1991, a proposed Consent Decree in *United States* v. *Schuylkill Metals of Plant City, Inc.* was lodged with the United States District Court for the Middle District of Florida. The complaint in this action seeks injunctive relief and recovery of costs under sections 106 and 107(a) of the Comprehesive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 42 U.S.C. 9607(a). This action concerns the Superfund Site known as the Schuylkill Metals Corporation Site, located in Plant City, Florida.

Under the proposed Consent Decree, the six settling defendants will: (1) Perform the selected remedy at the Site, which generally requires remediation of all contamination at the Site, and specifically requires excavation and on-site solidification of contaminated soils, treatment of contaminated surface water and groundwater, and wetlands maintenance and mitigation, at a total estimated cost of over $6.2 million, not including the cost of the required wetlands mitigation; (2) reimburse the United States for all of its past response costs ($341,885.14); and (3) reimburse the United States for all future response and oversight costs incurred in connection with defendant's performance of the remedy under the Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Schuylkill Metals of Plant City, Inc.*, (Schuylkill Metals Corporation Site), D.J. Ref. 90-11-3-688.

The proposed Consent Decree may be examined at any of the following offices: (1) The Office of the United States Attorney for the Middle District of Florida, Robert Timberlake Bldg., Suite 400, 500 Zack Street, Tampa, Florida; (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, Georgia; and (3) the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (telephone (202) 347-2072). Copies of the proposed Decree may be obtained by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., P.O. Box 1097, Washington, DC 20004. Please enclose a check for $46.00 ($.25 per page reproduction charge) payable to "Consent Decree Library."

Barry M. Hartman,

Acting Assistant Attorney General Environment & Natural Resources Division.

[FR Doc. 91-30940 Filed 12-26-91; 8:45 am]

BILLING CODE 4410-01-M

Consent Decree in Clean Water Act Enforcement Action

In accordance with the Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *Sun Refining and Marketing Co.*, Civil ACtion No. 91-C-954 B, was lodged with the United States District Court for the Northern District of Oklahoma on December 12, 1991. This Consent Decree concerns a Complaint filed by the United States against Sun Refining and Marketing, Inc. (Sun), Tulsa, Oklahoma, pursuant to section 309 of the Clean Water Act for Sun's violation of the effluent limits established in its National Pollutant Discharge Elimination System (NPDES) permit and its violation of the Clean Water Act. The Complaint seeks injunctive relief requiring Sun to comply with the terms and conditions of its NPDES permit and to comply with the Clean Water Act.

The proposed Consent Decree requires that Sun implement a compliance plan designed to achieve and maintain compliance with its NPDES permit and the Act. The proposed Consent Decree also requires Sun to pay a civil penalty of $400,000 for its past violations of the requirements of its permit and of the Act, and to pay stipulated penalties for violations of the terms of the proposed Consent Decree.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *United States* v. *Sun Refining and Marketing Co.*, 90-5-1-1-3442.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of Oklahoma, 3600 U.S. Courthouse, 333 West Fourth Street, Tulsa, Oklahoma, 74103 and at the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202-2733. Copies of the proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave, NW., Box 1097, Washington, DC 20004, (202) 347-7829. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. When requesting a copy of the Consent Decree, please enclose a check in the amount of $5.00 payable to the "Consent Decree Library."

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-30953 Filed 12-26-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encourged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution

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Avenue, NW., room S-3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Florida:
FL91-15 (Feb. 22, 1991)..... p. 135, pp. 136-136
FL91-17 (Feb. 22, 1991)..... p. 141, pp. 142-143
Kentucky:
KY91-1 (Feb. 22, 1991)..... p. 309, pp. 310-312b
KY91-2 (Feb. 22, 1991)..... p. 313, pp. 314-316
KY91-3 (Feb. 22, 1991)..... p. 319, p. 320
KY91-4 (Feb. 22, 1991)..... p. 325, pp. 326-330b
KY91-5 (Feb. 22, 1991)..... p. 331, pp. 332-335
KY91-6 (Feb. 22, 1991)..... p. 337, p. 338
KY91-7 (Feb. 22, 1991)..... p. 343, p. 344
KY91-29 (Feb. 22, 1991).... p. 403, pp. 404-420
Maryland, MD91-17 (Feb. 22, 1991). p. all
Mississippi:
MS91-3 (Feb. 22, 1991)..... p. all
MS91-4 (Feb. 22, 1991)..... p. all
MS91-5 (Feb. 22, 1991)..... p. all
MS91-6 (Feb. 22, 1991)..... p. all
MS91-7 (Feb. 22, 1991)..... p. all
New York:
NY91-2 (Feb. 22, 1991)..... p. 777, p. 779
NY91-7 (Feb. 22, 1991)..... p. 837, p. 838
NY91-10 (Feb. 22, 1991).... p. 873
NY91-17 (Feb. 22, 1991).... p. 921, p. 924
NY91-21 (Feb. 22, 1991).... p. 952a, p. 952b
Pennsylvania:
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PA91-2 (Feb. 22, 1991)..... p. 965, p. 966
PA91-5 (Feb. 22, 1991)..... p. 995, pp. 996-997
PA91-6 (Feb. 22, 1991)..... p. 1007, p. 1008
PA91-8 (Feb. 22, 1991)..... p. 1029, p. 1130
PA91-9 (Feb. 22, 1991)..... p. 1039, p. 1040
PA91-13 (Feb. 22, 1991)..... p. 1061, p. 1062
PA91-14 (Feb. 22, 1991)..... p. 1063, pp. 1064-1065
PA91-15 (Feb. 22, 1991)..... p. 1073, p. 1074
PA91-17 (Feb. 22, 1991)..... p. 1079, p. 1080
PA91-18 (Feb. 22, 1991)..... p. 1085, p. 1086
PA91-20 (Feb. 22, 1991)..... p. 1099, p. 1100
PA91-26 (Feb. 22, 1991)..... p. 1137, p. 1138

Volume II

Arkansas, AR91-3 (Feb. 22, 1991) p. 9, p. 10
Illinois:
IL91-8 (Feb. 22, 1991)..... p. 145, p. 148
IL91-9 (Feb. 22, 1991)..... p. 153, pp. 155-156
IL91-17 (Feb. 22, 1991)..... p. 225, p. 226
IL91-19 (Feb. 22, 1991)..... p. all
Michigan, MI91-1 (Feb. 22, 1991) p. 441, pp. 442, 447-460
Oklahoma:
OK91-1 (Feb. 22, 1991)..... p. all
OK91-2 (Feb. 22, 1991)..... p. all
Texas, TX91-32 (Feb. 22, 1991) p. all

Volume III

Alaska, AK91-1 (Feb. 22, 1991) p. all
Arizona:
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Colorado:
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CO91-9 (Feb. 22, 1991)..... p. 190, pp. 191-192
Idaho:
ID91-4 (Feb. 22, 1991)..... p. 225, p. 226
ID91-5 (Feb. 22, 1991)..... p. 229, p. 230
Oregon, OR91-1 (Feb. 22, 1991) p. 371, pp. 374, 376, 381
Utah:
UT91-3 (Feb. 22, 1991)..... p. 409, p. 410
UT91-4 (Feb. 22, 1991)..... p. 419, p. 420
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UT91-7 (Feb. 22, 1991)..... p. 425, p. 426
UT91-8 (Feb. 22, 1991)..... p. all
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UT91-11 (Feb. 22, 1991).... p. 437, p. 438
UT91-13 (Feb. 22, 1991).... p. all
UT91-15 (Feb. 22, 1991).... p. all
Washington, WA91-2 (Feb. 22, 1991) p. 477, p. 478

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 20th day of December 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91-30840 Filed 12-26-91; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

AGFA Corp., et al; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other person showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 6, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 6, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 16th day of December 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
AGFA Corp (Wkrs)	West Caldwell, NJ	12/16/91	12/05/91	26,656	Coating, Converting of Photo Paper
Arco Oil and Gas Co (Wkrs)	Houston, TX	12/16/91	11/21/91	26,657	Oil, Gas Exploration.
Atlas Wireline Services (Co)	Broussard, LA 70518	12/16/91	12/04/91	26,658	Oilfield Service.
Bethlehem Steel Corp (Beth. Forge) (Wkrs)	Bethlehem, PA	12/16/91	12/04/91	26,659	Steel Products—Rotors.
Bethlehem Steel Corp (Mach. Shop) (Wkrs)	Bethlehem, PA	12/16/91	12/04/91	26,660	Steel Products—Rotors.
Bridgeport Machine, Inc (Co)	Bridgeport, CI	12/16/91	12/02/91	26,661	Vertical Milling Machines.
Brunswick Corp (URW)	Willard, OH	12/16/91	12/03/91	26,662	Multi-Dipped Butyl Glove.
Compaq Computer Corp (Wkrs)	Houston, TX	12/16/91	12/02/91	26,663	Personal Computers.
David Warren Enterprises, Inc (Co)	New York, NY	12/16/91	12/10/91	26,664	Ladies Dresses.
Dowell Schlumberger, Inc. (CO)	Houston, TX	12/16/91	12/16/91	26,665	Oil and Gas.
Exxon Company, U.S.A. (Wkrs)	Denver, CO	12/16/91	12/04/91	26,666	Oil and Gas Exploration.
Grace Drilling (Wkrs)	Oklahoma City, OK	12/16/91	12/04/91	26,667	Oil.
J.F. Pleating, Inc ILGWU	East Newark, NJ	12/16/91	12/04/91	26,668	Binding and Pleating.
Lance Corp (The) (Co)	Durham, NH	12/16/91	11/26/91	26,669	Giftware.
Lermer Corp (Wkrs)	Eatontown, NJ	12/16/91	11/27/91	26,670	Airline Carts for meals, beverage.
Massena Sportswear Inc. (Co)	Massena, NY	12/16/91	12/02/91	26,671	Sleewear.
Meilink Safe (Wkrs)	Whitehouse, OH	12/16/91	11/22/91	26,672	Safes.
Molly Fasteners (IAM)	Temple, PA	12/16/91	12/10/91	26,673	Anchors.
Occidental Chemical Corp North ABGWIU	Burlington, NJ	12/16/91	12/09/91	26,674	Vinyl Sheeting and Plastics.
Par Directional Drilling, Inc. (Co)	Lafayette, LA	12/16/91	12/01/91	26,675	Oil Drilling.
Prairie Manufacturing ACTWU	East Prairie, MO	12/16/91	12/03/91	26,676	Uniforms.
Smith Victor Corp (Wkrs)	Griffith, IN	12/16/91	12/05/91	26,677	Photographic Lighting Equipment
UDT Sensors, Inc (Co)	El Paso, TX	12/16/91	12/06/91	26,678	Micro Miniature Opto Electronics.
Unison Transformer Services, Inc (Wkrs)	Allentown, PA	12/16/91	11/26/91	26,679	PCB Transformers.
Val Mode, Inc. (UGW)	Prichard, AL	12/16/91	11/12/91	26,680	Ladies Sleepwear.
* Rockwell Intl. Corp. (Reopened (USW)	New Castle, PA	12/16/91	12/09/91	25,808	Front Axle Component.

[FR Doc. 91-30995 Filed 12-26-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,434]

Hewlett-Packard Co., Rockaway, NJ; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Hewlett-Packard Company, Rockaway, New Jersey. The review indicated that the appplication contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-26,434; Hewlett-Packard Company, Rockaway, New Jersey (December 11, 1991).

Signed at Washington, DC this 18th day of December, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-30996 Filed 12-26-91; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of December 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,444; RC Industries, New Brunswick, NJ.

TA-W-26,182; Fujitsu America, Inc., Palm Bay, FL.

TA-W-26,178; Crouse-Hinds Molded Products, Cincinnati, OH.

TA-W-26,465; Harris Semiconductor, Mountaintop, PA.

TA-W-26,357; Esco Corp, Proprietary Products Group, Portland, OR.

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-26,484; Dedoes Industries, Inc., Ossineke, MI

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,492; Quebecor Printing, Fridley, MN

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-26,438; Maple Gas Corp., Fritch, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-26,460 & TA-W-26,461; Dynapac Manufacturing, Hackettstown, NJ and Scjertz, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-26,447; Tuboscope, Inc., Rocky Mountain Coating Plant, Mills, WY

The workers' firm does not produce an article as required for certification

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under section 222 of the Trade Act of 1974.

TA–W–26,429; Echo Bay Mines, Republic, WA

U.S. imports of gold declined absolutely and relative to domestic shipment in 1990 compared with 1989.

TA–W–26,311; Smith International, Inc., Houston, TX

U.S. imports of oil and gas field machinery were negligible.

TA–W–26,450; Dresser Pump Div., Harrison, NY

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–26,420; US Metalsource Corp., Buffalo, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–26,408; Eberhard Manufacturing Co., Strongsville, OH

The investigation revealed that criterion (1) has not been met. Significant number or proportion of the workers did not become totally or partially separated as required for certification.

TA–W–26,402; Air Cruisers Co., Belmar, NJ

The investigation revealed that criterion (1) has not been met. Significant number or proportion of the workers did not become totally or partially separated as required for certification.

TA–W–26,473; WSI, Inc., dba Weaver Wireline Services, Inc., Synder, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period a required for certification.

TA–W–26,463; GLK Contract Services, Inc., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–26,446; Stroehmann Bakeries, Inc., Washington Blvd, Williamsport, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–26,427; Digital Equipment Corp., Colorado Springs, CO

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–26,309; Shell Oil Co Products Organization, Houston, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–26,477; Argus Dress, Inc., Albany, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–26,317; Armco Specialty Steel, dba Baltimore Specialty Steel, Baltimore, MD

U.S. imports of semi-finished steel products declined absolutely and relative to domestic shipment in the first nine months of 1991 compared to the same period in 1990. U.S. imports of wire rod declined absolutely and relative to domestic shipment in 1990 compared to 1989 and in the first eight months of 1991 compared to the same period in 1990.

Affirmative Determinations

TA–W–26,387; Junior Form Lingerie, Inc., Somerset, PA

A certification was issued covering all workers separated on or after September 19, 990 and before November 1, 1991.

TA–W–26,507; Elenburg Exploration, Inc., Casper, WY

A certification was issued covering all workers separated on or after January 1, 1991.

TA–W–26,358; General Electric Co (Cable Wire & Harness Section), Syracuse, NY

A certification was issued covering all workers separated on or after September 9, 1990.

TA–W–26,376; Witco Corp., Richardson Battery Parts Div., Indianapolis, IN

A certification was issued covering all workers separated on or after August 1, 1991.

TA–W–26,179; Eaglewear, Inc., Gallitzin, PA

A certification was issued covering all workers separated on or after August 1, 1990.

TA–W–26,396; Somerset Manufacturing Co., Inc., Somerset, PA

A certification was issued covering all workers separated on or after September 13, 1990 and before November 1, 1991.

TA–W–26,363; Holiday Fashions, Slatedale, PA

A certification was issued covering all workers separated on or after September 12, 1990.

TA–W–26,277; The Monarch Machine Tool Co., Monarch Sidney Div., Sidney, OH

A certification was issued covering all workers separated on or after September 3, 1990.

TA–W–26,432 & TA–W–26,433; Halliburton Logging Services, Inc., Farmington, NM and Abilene, TX

A certification was issued covering all workers separated on or after January 1, 1991.

TA–W–26,542; Melsig Dress Dinc., Union City, NJ

A certification was issued covering all workers separated on or after October 29, 1990.

TA–W–26,405; Construction Specialties, Inc., Cranford, NY

A certification was issued covering all workers separated on or after September 16, 1991 and before February 28, 1992.

TA–W–26,464; Halliburton Logging Services, Inc., Midland, TX

A certification was issued covering all workers separated on or after January 1, 1991.

TA–W–26,317; Armco Specialty Steel dba Baltimore Specialty, Baltimore, MD

A certification was issued covering all workers engaged in the production of stainless steel bar separated on or after September 5, 1990.

TA–W–26,441, TA–W–26,442 and TA–W–26,443; Quarles Drilling Corp., Tulsa, OK, Wheatland, OK and Belle Chasse, LA

A certification was issued covering all workers separated on or after January 1, 1991.

TA–W–26,457; Dowell Schlmberger, Inc., Western Div., Englewood, CO and Operating at Various Locations in the Following States:

TA–W–26,457A AK
TA–W–26,457B CA
TA–W–26,457C CO (Except Englewood)
TA–W–26,457D NM
TA–W–26,457E ND
TA–W–26,457F UT
TA–W–26,457G WY

A certification was issued covering all workers separated on or after February 15, 1991.

TA–W–26,428; Drilling Measurements, Inc., Brousssard, LA and Operating at Various Locations in the Following States:

TA–W–26,428A Houma, LA
TA–W–26,428B New Orleans, LA
TA–W–26,428C Pearsall, TX
TA–W–26,428D Midland, TX

A certification was issued covering all workers separated on or after January 1, 1991.

TA–W–26,281; Shell Oil Co., Shell Offshore, Inc., New Orleans, LA

A certification was issued covering all workers separated on or after September 15, 1991.

TA–W–26,305; Shell Oil Co., Administration, Houston, TX

A certification was issued covering all workers separated on or after September 15, 1991.

TA–W–26,307; Shell Oil Co., Development, Houston, TX

A certification was issued covering all workers separated on or after September 15, 1991.

TA–W–26,310; Shell Oil Co., Shell Western E & P, Inc., Houston, TX and Operating at Various Locations in the Following States

TA–W–26,310A AK
TA–W–26,310B CA
TA–W–26,310C CO
TA–W–26,310D LA
TA–W–26,310E MI
TA–W–26,310F MT
TA–W–26,310G OK
TA–W–26,310H TX (Except Houston)

A certification was issued covering all workers separated on or after September 15, 1991.

I hereby certify that the aforementioned determinations were issued during the month of December, 1991. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: December 18, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–30997 Filed 12–26–91, 8:45 am]

BILLING CODE 4510–30–M

[TA–W–26, 651]

Terry Colebrook, Colebrook, PA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 9, 1991 in response to a worker petition which was filed on behalf of workers at Terry Colebrook, Colebrook, Pennsylvania.

An active investigation covering the petitioning group of workers remains in effect (TA–W–26, 639). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 18th day of December 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–30998 Filed 12–26–91; 8:45 am]

BILLING CODE 4510–30–7

Job Corps: Finding of No Significant Impact for the Relocation of the San Jose Job Corps Center in San Jose, California

Pursuant to the Council on Environmental Quality regulations (40 CFR part 1500 to 1508) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Employment and Training Administration, Office of Job Corps, in accordance with 29 CFR 11.11(d), gives notice that an Environmental Assessment (EA) has been prepared and the proposed plans for the consolidation of the San Jose Job Corps Center in San Jose, California, will have no significant environmental impact.

The present San Jose Job Corps Center operations are split between two separate locations within the City of San Jose. The main campus located in downtown San Jose provides medical/dental, dormitory, food service, administrative, and some educational/recreational facilities. The Conniff site, located in surburban San Jose, provides administrative and educational services.

The purpose of the proposed action is to consolidate San Jose Job Corps Center operations at one location, and involves relocating the main campus activities to the Conniff site. This will allow the San Jose Job Corps Center program to provide, in a better manner, needed training to 305 residential and 135 non-residential students, with improved efficiency. The proposed action will also mitigate critical space limitations of the present center and eliminate Life Safety Code violations imposed by present conditions.

Consolidating operations at the Conniff site will necessitate the construction of six new buildings and the rehabilitation of five existing buildings. The consolidated center will provide dormitories; recreational, medical/dental, and administrative services; educational and vocational training; and storage space, consistent with Job Corps guidelines and center needs.

The alternatives considered in the preparation of the EA were (1) the "No Build" alternative and (2) to continue as proposed. Choosing the "No Build" alternative would require the continued operation of the San Jose Job Corps Center under the present inefficient conditions. This would also mean the continuation of present space limitations. The improvements in facilities and operational efficiency afforded by the proposed action indicate that the consolidation of all San Jose Job Corps Center activities to the Conniff site is the preferred alternative.

Construction activities associated with the proposed action could potentially increase noise levels at the Conniff site and within the site neighborhood; however, construction activities will be limited to the hours of 7 a.m. to 3:30 p.m. The use of sound control devices and muffled exhausts on all noise-generating construction equipment will be required. The use of appropriate techniques to minimize construction dust emissions will mitigate construction-related air pollution concerns. Construction activities will also be managed (e.g., through the use of construction fences, etc.) so that trees to be preserved on the site are adequately protected. Even though there are no known historical or archaeological resources at the Conniff site, a Phase 1 archaeological study will be performed by a certified State archaeologist. Further research will be performed if artifacts are found to be on site.

Noise from roof-mounted air conditioning units and exhaust fans may pose a potential adverse impact within the Conniff site and for some nearby residents. Job Corps, however, will undertake a thorough evaluation of this potential impact, and implement the corrective actions necessary.

Although the proposed project will cause an increase in traffic in the community near the Conniff site because of traffic flow direction and timing, the increase in traffic volume is not expected to adversely affect traffic flow on neighborhood streets. Bus traffic to and from the Conniff site is not expected to increase above existing levels.

The infrastructure necessary to support the proposed action will not be adversely affected. Utilities are of adequate supply, water and sewer are of sufficient capacity, and no net increases in solid waste are anticipated. The proposed project will be constructed in accordance with local fire requirements. An on-site security program is part of normal Job Corps center operations. The proposed project will not have a net adverse impact on either police, fire, or emergency services of either the City of San Jose or Santa Clara County.

Currently, the present lighting at the Conniff site is not consistent with San Jose City requirements. This proposed project will bring the exterior lighting conditions into compliance with City ordinances.

The bright-colored architectural scheme proposed for the project buildings will be reviewed by Job Corps.

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who will also consider input from representatives of the neighborhood.

Based upon the information gathered during the preparation of the EA, the Department of Labor, Employment and Training Administration, Office of Job Corps, finds that the consolidation of the San Jose Job Corps Center to the Conniff site in San Jose, California, will not cause any significant impact on the environment. Copies of the Environmental Assessment and additional information are available to interested parties by contacting Mr. James Mathews, Director, Region IX, Office of Job Corps, at (415) 744–6658 (this is not a toll free number).

Dated at Washington, DC, this 20th day of December, 1991.

Peter E. Rell,

Director of Job Corps.

[FR Doc. 91–30999 Filed 12–26–91; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL CREDIT UNION ADMINISTRATION

Public Information Collection Requirement Submitted to OMB for Review

Date: December 18, 1991.

The National Credit Union Administration has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submissions may be obtained by calling the NCUA Clearance Officer listed. Comments regarding information collections should be addressed to the OMB reviewer listed and to the NCUA Clearance Officer, NCUA, Administrative Office, Room 7344, 1776 G Street, Washington, DC 20456.

National Credit Union Administration

OMB Number: 3133–0076.

Form Number: NCUA 8040.

Type of Review: Extension of the expiration date of a currently approved collection.

Title: Voluntary Liquidation Procedures for Insured Federal Credit Unions.

Description: NCUA 8040—Voluntary Liquidation Procedures for Insured Federal Credit Unions. The booklet provides suggested forms and outlines procedures for voluntary liquidation of a federal credit union by officials.

Respondents: Federally-insured credit unions.

Estimated Number of Respondents: 25.

Estimated Burden Hours per Response: 20 hours.

Frequency of Response: One Occasion.

Estimated Total Reporting Burden: 500 hours.

Clearance Officer: Wilmer A. Theard, (202) 682–9700, National Credit Union Administration, Room 7344, 1776 G Street, NW., Washington, DC 20456.

OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Becky Baker,

Secretary of the NCUA Board.

[FR Doc. 91–30931 Filed 12–26–91; 8:45 am]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings was published November 25, 1991 (56 FR 59304). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be closed in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings, and when ACRS Subcommittee and ACNW Working Group meetings will start will be published prior to each meeting. Information was to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the January 1992 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committees (telephone: 301/492–4600 (recording) or 301/492–7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Joint Safety Philosophy, Technology and Criteria/Severe Accidents/ Regulatory Policies and Practices, January 7–8, 1992, Bethesda, MD. The Subcommittees will discuss a number of interrelated proposed staff position papers as follows: (1) Proposed Revisions at 10 CFR part 50 and part 100, Decoupling Siting from Design, (2) Site Characteristics to be Used in Part 100 Revision and Large Release Determination, (3) Proposed Definition of a Large Release for Safety Goals Implementation (tentative) and (4) Proposed Revision ot TID–14844 to Update Source Term.

Planning and Procedures, January 8, 1992, Bethesda, MD. The Subcommittee will discuss items proposed for consideration by the full Committee and other issues as appropriate.

Safety Research, January 14, 1992, Bethesda, MD. The Subcommittee will hold a roundtable discussion on the scope, nature and approach of a proposed Committee report on the research program of NRC's Office of Nuclear Regulatory Research.

Improved Light Water Reactors, January 22, 1992, Bethesda, MD. The Subcommittee will review SECY–91–300, Draft Safety Evaluation Report for Chapter 10 of the EPRI's Requirements Document for Evolutinary Designs.

Advanced Boiling Water Reactors, January 23–24, 1992, Bethesda, MD. The Subcommittee will review SECY–91–294 and SECY–91–309, addressing two Draft Safety Evaluatuion Reports (DSERs) related to different chapters of the GE/ Standard Safety Analysis Report (SSAR) for the ABWR design, and other related issues.

Reliability Assurance, Week of January 27, 1992, Bethesda, MD– CANCELLED.

Extreme External Phenomena, February 5, 1992, Bethesda, MD. The Subcommittee will continue the discussion of the proposed revisions to 10 CFR Part 100, Appendix A, "Seismic and Geologic Siting Criteria for Nuclear Power Plants," considered during the Subcommittee meeting on December 10, 1991.

Auxiliary and Secondary Systems, February 13–14, 1992 (tentative), Bethesda, MD. The Subcommittee will discuss the proposed resolution of Generic Issue 106, "Piping and Use of Highly Combustible Gases in Vital Areas," Generic Issue–57, "Effects of Fire Protection System Actuation on Safety-Related Equipment," and other fire-related matters.

Mechanical Components, February 19, 1992, Bethesda, MD. The Subcommittee will review the status of the motor-operated valve (MOV) and the check valve operability programs and other related matters.

Advanced Boiling Water Reactors, February 20–21, 1992, Bethesda, MD. The Subcommittee will review SECY–91–320 and SECY–91–355, addressing two DSERs related to different chapters of the GE/SSAR for the ABWR design, and other related issues.

Structural Engineering, Week of February 24, 1992 (tentative), Bethesda, MD. The Subcommittee will discuss with the NRC staff and the industry the status of Containment Structural Integrity programs, including foreign programs.

Joint Materials and Metallurgy/ Maintenance Practices and Procedures, April 1, 1992, Bethesda, MD. The Subcommittees will discuss Risk-Based Inspection Guidelines.

Advanced Reactor Designs, Date and location to be determined (January). The Subcommittee will visit the ORNL facility and will discuss the testing program and experiments for the MHTGR design.

Joint Plant Operations/Probabilistic Risk Assessment, Date to be determined (January/February), Bethesda, MD. The Subcommittees will continue the review of the NRC staff's program to address the issue of risk from low power/ shutdown operations of nuclear power plants.

Joint Individual Plant Examinations/ Severe Accidents, Date to be determined (February/March), Bethesda, MD. The Subcommittees will discuss the status of the IPE program and the development of Severe Accident Management Guidelines.

Advanced Pressurized Water Reactors, Date to be determined (March, tentative), Bethesda, MD. The Subcommittee will continue its review of the ABB CE System 80+ CESSAR for Design Certification. Subject material being proposed for discussion includes Engineered Safety Features systems and USIs/GSIs.

Thermal Hydraulic Phenomena, Date to be determined (March/April), Bethesda, MD. The Subcommittee will continue its review of the NRC staff program to address the issue of interfacing systems LOCAs.

Joint Thermal Hydraulic Phenomena/ Core Performance, Date to be determined (March/April, tentative) Bethesda, MD. The Subcommittees will continue the review of the issues pertaining to BWR core power stability.

Regional Programs, Date to be determined, NRC Region V Office, Walnut Creek, CA. The Subcommittee will discuss the activities of the NRC Region V Office.

Thermal Hydraulic Phenomena, Date to be determined, Bethesda, MD. The Subcommittee will review the status of the application of the Code Scaling, Applicability, and Uncertainty (CSAU) Evaluatuion Methodology to a small-break LOCA calculation for a B&W plant.

ACRS Full Committee Meetings

381st ACRS Meeting, January 9–11, 1992, Bethesda, MD. Items are tentatively scheduled.

A. *Nuclear Power Plant Siting*—Review and comment on proposed revision to 10 CFR part 100, Reactor Site Criteria to Decouple Nuclear Power Plant Siting from Facility Design. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

B. *TID–14844, Calculation of Distance Factors for Power and Test Reactor Sites, Proposed Revision*—Review and comment on proposed revision of TID–14844 to update the source term used as the basis to establish siting distances. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

C. *Proposed Site Characteristics to be Used in Part 100 Revisions and in the Definition of a Large Release*—Review and comment on proposed site characteristics to be used in nuclear power plant siting and the definition of a large release. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

D. *Definition of a "Large Release" (tentative)*—Review and report on the proposed definition of a "large release" to be used in connection with the NRC safety goal policy. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

E. *Safety Features of Advanced Reactors*—Briefing and discussion regarding the safety features of advanced reactors and their impact on public acceptance of nuclear power. An invited expert will brief the Committee.

F. *Computerized Safety and Control Systems in Nuclear Power Plants*—Briefing and discussion of national and international activities related to the use of integrated computerized control and safety systems in nuclear power plants. A representative of the NRC staff will brief the Committee.

G. *Nuclear Power Plant Integrated Schedules*—Review and report on proposed NRC policy statement regarding integrated schedules for nuclear power plant modifications, maintenance, etc. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

*H. *Westinghouse AP 600 Plant, Integral Testing*—Review and comment on integral testing needs for certification of the Westinghouse AP 600 passive plant design. Representatives of the NRC staff and the Westinghouse Electric Corporation will participate, as appropriate. Portions of this session will be closed to discuss proprietary information applicable to this matter.

I. *Design Acceptance Criteria*—Review and comment on proposed design acceptance criteria (DAC) for certification of standardized nuclear power plant designs. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

J. *Control of Nuclear Power Plant Switchyard Activities*—Discuss proposed ACRS comments and recommendations regarding control of nuclear power plant switchyards during plant transients and incidents.

K. *ACRS Subcommittee Activities*—Briefings and discussions regarding the status of assigned subcommittee activities including items proposed for consideration by the full Committee (Planning and Procedures Subcommittee meeting on 01/08/92).

L. *NRC Metrication Policy*—Discuss and comment as appropriate on the proposed NRC policy to implement use of the metric system of measurement in its regulatory activities. Representatives of the NRC staff will participate, as appropriate.

M. *Reconciliation of ACRS Recommendation*—Discuss replies and comments from the NRC Executive Director for Operations regarding ACRS comments and recommendations provided to the NRC.

N. *Anticipated ACRS Activities*—Discuss various policies and practices that will impact on the activities of the Committee including proposed action plans for the resolution of Key Technical Issues related to evolutionary, passive, and advanced reactor designs that are in need of early resolution and the impact of proposed amendments to the Federal Advisory Committee Act.

O. *Report to the U.S. Congress on Reactor Safety Research*—Discussion and preparation of the Committee's Annual Report to the U.S. Congress on the NRC Safety Research Program.

P. *Miscellaneous*—Discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

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382nd ACRS Meeting, February 6–8, 1992, Bethesda, MD—Agenda to be announced.

383rd ACRS Meeting, March 5–7, 1992, Bethesda, MD—Agenda to be announced.

ACNW Full Committee and Working Group Meetings

ACNW Working Group on the Licensing Requirements for Land Disposal of Radioactive Waste 10 CFR part 61, January 15, 1992, Bethesda, MD—CANCELLED.

39th ACNW Meeting, January 16–17, 1992, Bethesda, MD. Items are tentatively scheduled.

A. Continue deliberations to investigate the feasibility of a systems analysis approach to reviewing the overall high-level waste program, including the short and mid-range technical milestones for handling high-level waste with the goal of reporting back to the Commission the ACNW's recommendations as to the scope of such a review and the advisability of the ACNW undertaking it.

B. Review and comment on a revision to NUREG–1200, Standard Review Plan for a Low-Level Waste Facility.

C. Discuss a paper to be given at the January 29–31, 1992, Low-Level Waste Forum Winter Meeting.

D. Discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

40th ACNW Meeting, February 20–21, 1992, Bethesda, MD—Agenda to be announced.

41st ACNW Meeting, March 12–13, 1992, Bethesda, MD—Agenda to be announced.

ACNW Working Group on Inadvertent Human Intrusion Related to the Presence of Natural Resources at a High-Level Waste Site, Date to be determined, Bethesda, MD. The Working Group will discuss methdologies for the assessment of the potential for natural resources at the proposed high-level waste repository site at Yucca Mountain. The relationship between such resources and the potential for human intrusion will be emphasized.

ACNW Working Group on Residual Contamination Clean-up Criteria, Date to be determined, Bethesda, MD. The Working Group will discuss the clean-up criteria levels for unrestricted use of contaminated sites that are or have been under NRC/AEC license.

Dated December 20, 1991.

John C. Hoyle,

Advisory Committee Mangement Officer.

[FR Doc. 91–30950 Filed 12–26–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–29626–OM, Re: License Suspension ASLBP No. 92–653–02–OM]

Piping Specialists, Inc., (Byproduct Material License No. 24–24826–01 EA 91–136); Consolidated Discovery and Hearing

December 19, 1991.

A public hearing will be held both for the purpose of discovery and for the compilation of an evidentiary record on January 14 to 17, 1992, at the U.S. Federal Courthouse, Courtroom 829, 811 Grand Ave., Kansas City, MO 64106. The first session will start at 10 am; subsequent times will be announced.

Bethesda, Maryland.

For the Atomic Safety and Licensing Board.

Peter B. Bloch,

Chair.

[FR Doc. 91–30949 Filed 12–26–91; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–30095; File No. SR-Amex-91–27]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Filing of Amendment to Proposed Rule Change Relating to Options on the S&P MidCap 400 Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 13, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the amendment to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change form interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is hereby amending its proposed rule filing SR-Amex-91–27 which provides for the listing and trading of options on the S&P MidCap 400 Index ("MidCap" or "Index") developed by the Standard and Poor's Corporation ("S&P"). This amendment provides for a modification of certain MidCap option contract specifications in connection with (i) the expiration cycle; (ii) strike price intervals; (iii) the Index settlement value; and (iv) the ability to utilize the Amex's AUTO-EX system for orders up to 100 contracts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In SR-Amex-91–27, the Exchange proposed the listing and trading of options on the Index. The Exchange now proposes to amend the filing to modify certain MidCap option contract specifications with respect to the expiration cycle, strike price intervals, the Index's settlement value, and the Exchange's AUTO-EX capability for MidCap options.

1. Expiration Months

In accordance with Exchange Rule 903C, the Amex seeks to list put and call options on the MidCap having up to four consecutive near-term expiration months plus five additional further-term expiration months in the March cycle (instead of five additional months with alternating June and December expirations). For example, consecutive expirations of January, February, March and April plus the following June, September, December, March and June expirations would be listed. This change will facilitate hedging opportunities between options on the MidCap traded on the Amex and futures and futures options contracts which are the subject of a proposed rule filing to the Commodities Futures Trading Commission by the Chicago Mercantile Exchange ("CME")

2. Strike Price Intervals

The Exchange seeks to modify its strike price policy to obtain the flexibility to introduce 2½-point strike price intervals for certain near-the-money series in near-term expiration months for MidCap options.

It should be noted that the current index value of the MidCap is approximately 130, a level that will be the lowest of any broad market index which serves as the basis of listed index options trading. In this regard, the New York Stock Exchange currently lists 2½ point strikes for its New York Composite Index which has an index value in excess of 200. Further, the ability to add 2½ point intervals will provide closer uniformity with the CME's proposal which calls for 2½ point strike intervals for certain near-term futures options. Accordingly, the Exchange believes that the availability of narrower strike price intervals will enable customers to more finely tailor their options positions to achieve intended investment objectives.

3. Settlement Value

The Exchange now proposes that the Index value for purposes of settling MidCap options ("Settlement Value") will be calculated on the basis of opening market prices on the business day ("Settlement Day") prior to the expiration date of such options. Settlement Day is normally the Friday preceding "Expiration Saturday". For exchange-listed stocks, the "opening value" will be based on the primary market while securities trading through NASDAQ will be based on the first reported trade of the day. In the event a component security in the Index does not trade on Settlement Day, the closing price from the prior trading day will be used to calculate the Settlement Value. In view of the above change, trading in expiring MidCap options will cease at the close two business days preceding expiration Saturday (normally the Thursday preceding Expiration Saturday).

4. Auto-Ex

In anticipation of substantial customer (off-floor) activity in MidCap options (including institutional activity), the Exchange seeks to have the ability to utilize its Auto-Ex system for orders of up to 100 contracts. The ability to use Auto-Ex for certain near-term series will afford customers deep and liquid markets along with expeditious executions.

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–Amex–91–27 and should be submitted by January 17, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–30877 Filed 12–26–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30104; File No. SR–DTC–91–23]

Self-Regulatory Organizations; The Depository Trust Company; Notice of a Proposed Rule Change Relating to the Elimination of Certain Urgent Withdrawals of Corporate Issues Settling in Sameday Funds

December 19, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934, ("Act"), 15 U.S.C. 78s(b), notice is hereby given that on November 29, 1991, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–91–23) as described in Items I, II and III below, which Items have been prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of the elimination of most urgent withdrawals ("CODs")[1] for corporate securities eligible in DTC's Same-Day Funds Settlement ("SDFS") system and the implementation of DTC's Rush Withdrawal-by-Transfer ("RWT") service for these issues and the elimination of same-day CODs in SDFS—eligible municipal issues (next-day CODs will continue to be available for municipal issues).[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in

[1] "COD" is an acronym for Certificate on Demand.

[2] See DTC's Important Notice B–9591–91 dated November 4, 1991, in Exhibit 2 to the filing

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sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Certificates can be withdrawn from DTC in three ways:

(1) Withdrawals-by-Transfer ("WTs"), in which certificates are transferred routinely to the name of a participant's customer or another party. Depending on the issue, its transfer agent and the agent's location, newly registered certificates are generally available one to two weeks after DTC has received WT instructions.

(2) Rush Withdrawals-by-Transfer ("RWTs"), in which DTC expedites the transfer of certificates to the name of a participant's customer or another party. Depending on the issue, its transfer agent, its registrar and the agent's and registrar's locations, newly registered certificates for United States issues are generally available one to three days after DTC has received RWT instructions (six days for Canadian issues).

(3) Urgent COD withdrawals, in which certificates registered in the name of DTC's nominee, Cede & Co., or bearer certificates are released directly from the depository.

Since the volume of CODs in SDFS-eligible issues has dwindled to a nominal level, currently averaging 20 or fewer instructions per day, DTC believes that in general its participants no longer rely on urgent withdrawals to obtain corporate SDFS certificates.[3]

[3] Many of the SDFS issue types are now predominantly—if not exclusively—book-entry-only ("BEO") issues. BEO securities are certificated securities that are evidenced by one balance certificate registered in the name of DTC's nominee, Cede & Co. Beneficial owners generally cannot obtain negotiable certificates evidencing their ownership interests in BEO issues. This eliminates any type of certificate withdrawal for these issues, whether WT, RWT or COD. Of the issue types currently eligible in the SDFS system, medium-term notes ("MTN"), commercial paper, and auction-rate preferreds are solely BEO, municipal notes are almost entirely BEO, and many of the asset-backed securities ("ABS") and municipal variable-rate demand option ("VRDO") issues are BEO. This has significantly contributed to the sharp drop in SDFS withdrawals. For fully certificated issues, few withdrawals are needed because rules of the New York Stock Exchange, the National Association of Securities Dealers and other self-regulatory organizations now require, in general, that all deliveries of securities made against full payment in depository-eligible securities be settled by book-entry.

Discontinuance of the subject service will enable DTC to complete the elimination of storage for large numbers of corporate certificates in an assortment of round-lot quantities to match participants' most likely requirements for CODs, if CODs were needed, thereby reducing both risk of loss and vault costs for storage, security and personnel. It is expected that in most cases participants will be able to anticipate their withdrawal needs sufficiently in advance to rely on ordinary WTs for their certificates, and in some cases on RWTs. For the rare cases when a certificate must be obtained by a specific date, participants are directed to telephone DTC's Vault Expediting Department for assistance in meeting their deadline. During more than two years experience with DTC's NDFS corporate COD elimination pilot (see SR–DTC–89–01 amd SR–DTC–90–13), DTC is not aware that any participant, or any customer of a participant, has suffered a financial loss from a failure to receive a timely withdrawal when needed.

The proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder because it will reduce unnecessary costs in the safeguarding and other processing of securities certificates in the national clearance and settlement system. It will reduce vault and other physical security costs and concerns by substituting "jumbo" certificates for smaller denominations. It will eliminate a costly urgent withdrawal structure and staffing that is no longer needed on a routine basis and should reduce risks associated with that structure. It will cease to mutualize a cost that is better addressed and priced as exception processing.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited or received. DTC first announced the proposed rule change to participants on November 4, 1991, (see Exhibit 2 to the filing) and has received no objections from participants or others.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room at the address above.

Copies of the filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–91–23 and should be submitted by January 20, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–30962 Filed 12–26–91; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Determination of Disaster Loan Area #2543]

Territory of American Samoa; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on December 13, 1991, I find that the Territory of American Samoa constitutes a disaster area as a result of damages caused by Hurricane Val which occurred December 6 through and including December 10, 1991. Applications for loans for physical damage may be filed until the close of business on February 13, 1992, and for loans for economic injury until the close of business on September 14, 1992, at the address listed below:

Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853–4795.

or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 254308 and for economic injury the number is 750200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: December 20, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91–30943 Filed 12–26–91; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2544]

Hawaii; Declaration of Disaster Loan Area

Kauai County in the State of Hawaii constitutes a disaster area as a result of damages caused by heavy rains and severe flooding which occurred on December 13–14, 1991. Applications for loans for physical damage may be filed until the close of business on February 20, 1992 and for loans for economic injury until the close of business on September 21, 1992 at the address listed below:

Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853–4795

or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 254406 and for economic injury the number is 750300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: December 20, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91–30942 Filed 12–26–91; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2542]

Federated States of Micronesia; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on December 10, 1991, I find that the Island of Pohnpei (Ponape), Mwoakillon Atoll, and Pinegelap Atoll is in the Federal States of Micronesia constitute a disaster area as a result of damages caused by Typhoon Yuri which occurred November 25–29, 1991. Application for loans for physical damage may be filed until the close of business on February 10, 1992, and for loans for economic injury until the close of business on September 10, 1992, at the address listed below:

Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853–4795

or other locally announced locations.

The interest rates are:

For physical damage	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number is assigned to this disaster for physical damage is 254206 and for economic injury the number is 749400.

(Catalog of Federal Domestic Assistance Nos. 59002 and 59008).

Dated: December 13, 1991.

A. Wesley Moore,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91–30946 Filed 12–26–91; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2541]

Republic of the Marshall Islands; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on December 7, 1991, I find that Ebeye Island, Kwajalein Atoll, Lae Atoll, and Ujae Atoll in the Republic of the Marshall Islands constitute a disaster area as a result of damages caused by Typhoon Zelda which occurred November 28–29, 1991. Applications for loans for physical damage may be filed until the close of business on February 6, 1992, and for loans for economic injury until the close of business on September 8, 1992, at the address listed below:

Disaster Area 4 Office, Small Business Administration, P.O Box 13795, Sacramento, CA 95853–4795,

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000%
Homeowners without credit available elsewhere	4.000%
Business with credit available elsewhere	8.000%
Business and non-profit organizations without credit available elsewhere	4.000%
Others (including non-profit organizations) with credit available elsewhere	8.500%

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	Percent
For Economic Injury:	
Business and small agricultural cooperatives without credit available elsewhere	4.000%

The number assigned to this disaster for physical damage is 254106 and for economic injury the number is 749300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: December 13, 1991.

A. Wesley Moore,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91-30947 Filed 12-26-91; 8:45 am]

BILLING CODE 8025-01-M

Investment Advisory Council; Notice of Meeting

Time and Date: 8:30 a.m.–5 p.m. Wednesday, January 8, 1992.

Place: The meeting will be held in Administrator's Conference Room on the seventh floor of SBA headquarters at 409 Third Street, SW., Washington, DC.

Purpose: The meeting is being held to discuss such matters concerning the Small Business Investment Company (SBIC) and Specialized Small Business Investment Company (SSBIC) programs as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, contact John Simonds, room 8500, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, telephone (202) 205–7596.

Dated: December 19, 1991.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 91-30944 Filed 12-26-91; 8:45 am]

BILLING CODE 8025-01-M

Small Business Investment Company; Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 (a) and (b) limit maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "Debenture Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged on ten-year debentures sold by Licensees to the public. Notice of this rate will be published upon change in the Debenture Rate.

Accordingly, Licensees are hereby notified that effective the date of publication of this Notice, and until further notice, the Debenture Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is 7.89 percent per annum.

13 CFR 107.302 does not superseded or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to section 308(i) of the Small Business Investment Act, as further amended by section 1 of Public Law 99–226, December 28, 1985 (99 Stat. 1744), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

Dated: December 17, 1991.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 91-30945 Filed 12-26-91; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 09000061]

Sirrom Capital, L.P.; Application for a Small Business Investment Company License

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1991)) by Sirrom Capital, L.P., 511 Union Street, suite 900, Nashville, TN 37219, for a license to operate as a limited partnership small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended, (15 U.S.C. et seq.) and the Rules and Regulations promulgated thereunder.

The formation and licensing of a limited partnership SBIC is subject to the provisions of § 107.4 of the Regulations.

The initial investors and their percent of ownership of the Applicant are as follows:

Name	Percentage of ownership
General Partner:	
Sirrom Capital Corporation, 511 Union Street, Nashville, Tennessee 37219	2.8
Limited Partners:	
John A. Morris, Jr., M.D., 870 Tyne Blvd., Nashville, Tennessee 37220	44.2
Alfred H. Morris, 23 E. 94th Street, Suite 2A, New York, New York 10128	44.2
3 Limited Partners each owning less than 10 percent	6.8

Sirrom Capital, L.P. will be managed by Sirrom Capital Corporation. The offices and directors of Sirrom Capital Corporation are:

Name	Relationship to manager	Percentage ownership of manager
John A. Morris, Jr., M.D., 870 Tyne Blvd., Nashville, Tennessee 37220	President and Director	50.0
George M. Miller, II, 511 Union Street, Nashville, Tennessee 37219	Vice President, Secretary and Director	0.0
Alfred H. Morris, 23 E. 94th Street, Suite 2A, New York, New York 10128	Director	50.0
Raymond H. Pirtle, Equitable Securities Corp., 511 Union Street, 8th Fl., Nashville, Tennessee 37219, General Partner.	Director	0.0
Edwin W. Bass, 2700 First American Ctr., Nashville, Tennessee 37238	Director	0.0

The Applicant, a limited partnership organized under the provisions of the State of Tennessee Revised Uniform Limited Partnership Act, section 61–2–201, and duly qualified to do business in the State of Tennessee, will begin operations with a capitalization of $3,538,400. The applicent will conduct its activities primarily in the State of Tennessee and will be a source of equity capital and long term funds for qualified small business concerns.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the existing company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

A copy of the Notice shall be published in a newspaper of general circulation in the Nashville, Tennessee area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 17, 1991.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 91-30948 Filed 12-26-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Chase Federal Savings and Loan Assoc. Philadelphia, PA; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Chase Federal Savings and Loan Association, Philadelphia, Pennsylvania, on November 22, 1991.

By the Office of Thrift Supervision.

Dated: December 20, 1991.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30902 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

Cobb Federal Savings Assoc.; Notice of Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Cobb Federal Savings Association, Marietta, Georgia, on November 8, 1991.

Dated: December 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30891 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

Delta Savings Bank Westminster, California; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Delta Savings Bank, Westminster, California, OTS No. 7897, on November 8, 1991.

Dated: December 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30893 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

Guardian Federal Savings Assoc.; Notice of Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Guardian Federal Savings Association, Huntington Beach, California on December 5, 1991.

Dated: December 20, 1991.

By the Office of Thrift Supervision

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30903 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

Peoples Federal Savings Assoc.; Notice of Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Peoples Federal Savings Association, Ottumwa, Iowa, on November 20, 1991.

Dated: December 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30896 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

Western Federal Savings and Loan Association Glenview, IL; Notice of Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Western Federal Savings and Loan Association, Glenview, Illinois, on November 21, 1991.

Dated: December 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30900 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

White Horse Federal Savings and Loan Assoc., Trenton, NJ; Notice of Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in Section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for White Horse Federal Savings and Loan Association, Trenton, New Jersey, on November 21, 1991.

Dated: December 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30898 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

Atlantic Financial Savings, FA; Notice of Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of Section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Atlantic Financial Savings, FA, Bala Cynwyd, Pennsylvania ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on November 15, 1991.

Dated: December 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30894 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

Chase Savings and Loan Assoc., Philadelphia, PA; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2)(C) of the Home Owner's Loan

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Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Chase Savings and Loan Association, Philadelphia, Pennsylvania OTS No. 5164 on November 22, 1991.

Dated: December 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30901 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

Cobb Federal Savings Bank; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Cobb Federal Savings Bank, Marietta, Georgia, OTS No. 8414 on November 8, 1991.

Dated: December 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30892 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

[Order No. DM 91-14]

First Federal Savings & Loan Association of Fargo, F.A., Fargo, ND; Notice of Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of Section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Federal Savings & Loan Association of Fargo, F.A., Fargo, North Dakota ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on November 1, 1991.

Dated: December 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30890 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

Guardian Savings and Loan Assoc.; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Guardian Savings and Loan Association, Huntington Beach, California, OTS Docket No. 7961, on December 5, 1991.

Dated: December 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30904 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

Peoples Federal Savings Bank; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Peoples Federal Savings Bank, Ottumwa, Iowa, OTS No. 1319, on November 20, 1991.

Dated: December 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30895 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

Western Savings and Loan Assoc., Glenview, IL; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in § 5 (d)(2)(C) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Western Savings and Loan Association, Glenview, Illinois, OTS No. 1614, on November 21, 1991.

Dated: December 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30899 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

White Horse Savings and Loan Assoc., Trenton, NJ; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2)(C) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for White Horse Savings and Loan Association, Trenton, New Jersey, OTS No. 5711, on November 21, 1991.

Dated: December 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30897 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-82]

Termination of Section 302 Investigation Regarding Thailand's Enforcement of Copyright Protection

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of termination of investigation initiated under section 302 of the Trade Act of 1974, as amended, 19 U.S.C. 2414 and monitoring under section 306 (19 U.S.C. 2416.)

SUMMARY: Pursuant to section 304(a)(1)(A)(ii) of the Trade Act of 1974 (Trade Act), as amended, 19 U.S.C. 2414a(1)(A)(ii), the United States Trade Representative (USTR) has determined that acts, policies, and practices of the Government of Thailand concerning the enforcement of copyrights in that country are unreasonable and burden or restrict U.S. commerce. The Thai government, however, is taking steps to improve enforcement procedures and combat copyright piracy. The Thai government has also begun the process of amending its copyright law. The ultimate results of these efforts will not be known immediately. Thus, pursuant to section 301(b) (19 U.S.C. 2411(b)), USTR has determined that the appropriate action in this case is to terminate the investigation and to monitor Thai government implementation of measures to eliminate those acts, policies, and practices.

DATES: This investigation was terminated on December 20, 1991.

FOR FURTHER INFORMATION CONTACT: Peter Collins, Director for Southeast Asian Affairs, (202) 395-6813, or Catherine Field, Associate General Counsel, (202) 395-3432, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: On November 15, 1990, the International Intellectual Property Alliance (IIPA), the Recording Industry Association of America (RIAA), and the Motion Picture Export Association of America (MPEAA) field a petition under section 302(a) of the Trade Act, alleging that Thailand does not provide adequate and effective protection for U.S. copyrighted works.

Specific practices complained of included: (1) Difficulties in obtaining police searches for infringing product; (2) overly burdensome and unreasonable requests for documents to establish copyright ownership and authority to file complaints; (3) burdensome requirements regarding personal appearances by copyright owner's corporate personnel to present duplicative evidence; (4) lack of consistency in requirements to obtain prosecution of cases; and (5) inadequate sanctions for copyright piracy that do not deter further infringements.

On December 21, 1990, the USTR initiated an investigation of the Thai government's acts, policies, and practices relating to the enforcement of copyrights. By Federal Register notice dated January 3, 1991 (56 FR 292), USTR invited written public comments on the Thai government's acts, policies, and practices relating to the enforcement of copyrights, and on whether these acts, policies, and practices constituted a burden or restriction on U.S. commerce. On November 19, 1991, the USTR invited further public comment on these issues (56 FR 58416).

During the course of this investigation the U.S. and Thai governments held a series of consultations on the matters under investigation. The Thai government has increased efforts to enforce copyright through raids on pirates and seizure of evidence necessary to prosecute these persons. Prosecutions in many of the cases resulting from the raids conducted after the initiating of this investigation have not yet been initiated and none have been completed.

Thailand has provided commitments to the United States to: Effectively and expeditiously prosecute alleged copyright infringers and seek imposition of penalties sufficient to deter current and future infringers; simplify and regularize the process of raids, including reducing the documentation that copyright owners must submit for each new raid requested; and amend the current copyright law to strengthen its substantive provisions and improve its enforcement provisions. Implementation of these commitments, however, will be in the future.

Thus, USTR has determined, after consultation with the petitioners, that the appropriate action in this case is to terminate the investigation and monitor Thailand's implementation of these commitments to ensure that adequate and effective protection for U.S. copyrighted works is achieved.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 91-30876 Filed 12-26-91; 8:45 am]

BILLING CODE 3190-01-M

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Part II

Federal Election Commission

11 CFR Parts 100 and 104

Loans From Lending Institutions to Candidates and Political Committees; Transmittal to Congress; Final Rule

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FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 104

[Notice 1991-24]

Loans From Lending Institutions to Candidates and Political Committees

AGENCY: Federal Election Commission.

ACTION: Final rule; transmittal of regulations to Congress.

SUMMARY: The Commission has revised its regulations at 11 CFR 100.7(b)(11), 100.8(b)(12), and 104.3(d), concerning loans from lending institutions of candidates and political committees. These regulations implement 2 U.S.C. 431(8)(E)(vii), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act" or "FECA"), 2 U.S.C. 431 et seq. In particular, they provide guidance on when a loan is "made on a basis which assures repayment," as required at 2 U.S.C. 431(8)(B)(vii)(II). They also clarify that lines of credit are subject to the same requirements as other bank loans; emphasize restructuring, rather than settlement, of bank loans; and specify new information that is to be reported to the Commission concerning bank loans. Further information is provided in the supplementary information which follows.

DATES: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d).

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219-3690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations at 11 CFR parts 100 and 104. These regulations concern loans from lending institutions to candidates and political committees.

Under 2 U.S.C. 431(8)(B)(vii), a bank loan "made in accordance with applicable law and in the ordinary course of business" is not considered a contribution under the Federal Election Campaign Act ("FECA" or "the Act"), if certain conditions are met. One of these conditions is that the loan be "made on a basis which assures repayment." 2 U.S.C. 431(8)(B)(vii)(II).

On August 5, 1986, the Commission published a notice of proposed rulemaking on Public Financing, in connection with the 1988 presidential election cycle. 51 FR 28154. In that notice, the Commission raised its concerns about loans from lending institutions and sought comment on several alternative applications of this statutory phrase in the context of publicly funded campaigns, as well as loans made to congressional candidates and other political committees. The Commission received fifteen comments that responded to the loan aspect of this notice. In addition, the Commission's public financing regulations hearing of December 3, 1986, addressed some aspects of the bank loan question.

On January 22, 1987, the Commission published an announcement of a hearing and the extension of the comment period, in a notice that focused solely on the bank loan issue. 52 FR 2416. This notice analyzed the comments received to date; announced a hearing date; and sought further comment on the alternatives presented in the August 1986 notice, as well as on other alternatives. Although the Commission received two additional comments in response to the second notice, it did not receive any requests to testify and therefore canceled the public hearing.

Both the 1986 and the 1987 notices contained narrative proposals dealing with various aspects of the bank loan question, but did not contain specific regulatory language. On July 27, 1989, the Commission published a notice of proposed rulemaking which contained the text of a proposed regulation, and also included draft forms designed to obtain more information about the circumstances under which loans were made. 54 FR 31286. This notice's primary focus was on clarifying when loans are "made on a basis which assures repayment," but related topics were also presented. The Commission received eleven comments in response to this notice.

Throughout the course of this rulemaking, the Commission has had numerous, ongoing contacts with the banking regulatory agencies, in addition to receiving comments from banking trade associations and lending institutions themselves, regarding the drafting of these regulations. Each of these sources provided valuable information which serves as the basis for the revised rules published today.

Section 438(d) of title 2, United States Code, requires that any rules or regulations prescribed by the Commission to carry out the provisions of title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on December 20, 1991.

Explanation and Justification

The notice of proposed rulemaking requested comments on a number of suggestions on how to best implement the statutory requirement that bank loans be "made on a basis which assures repayment." In addition to responses on the specific questions raised by the notice, commenters raised the following general concerns.

Several noted that there is no definitive standard in the banking industry for the term, "assurance of repayment," and argued that the Commission should not attempt to draft one. However, the Act expressly requires that loans, to avoid being construed as campaign contributions, be "made on a basis which assures repayment." Even though there is no clear definition for the phrase in the banking industry, the Commission is responsible for implementing the statutory requirement that includes this phrase. The Commission's regulatory approach should not be limited by banking rules that were developed for other purposes.

Some comments also argued that "assurance of repayment" depends on each lending institution's case-by-case analysis of the circumstances of each loan, and suggested that all loans made "in the ordinary course of business" be found to comply with the "assurance of repayment" requirement. However, the statutory requirement that these loans be made "in the ordinary course of business" was enacted in 1971, while the phrase "made on a basis which assures repayment" was added in 1979. Under ordinary rules of statutory construction, it is presumed that Congress, by amending its original enactment, intended to make a substantive change in the law. Thus, as of the effective date of the 1979 amendment, the fact that a loan is made "in the ordinary course of business" is no longer in and of itself sufficient to guarantee that the loan does not constitute an illegal campaign contribution. In addition, it must meet the further qualifications, including the "assurance of repayment" requirement, now included at 2 U.S.C. 431(8)(B)(vii).

Commenters responding to the earlier notices noted that, while lending institutions cannot always predict when debtors' circumstances may change so as to make repayment of loan problematic, their ultimate focus is on whether the loan is repaid. In contrast, the concern of the FECA focuses not only on repayment but also on the initial making of the loan—whether, at the time it was made, it was made on a basis which assured repayment.

Several banking associations expressed the view that only a lending institution, not the Commission, is qualified to determine what constitutes assurance of repayment. Some regulatory agencies similarly stated that lending institutions should not be made answerable to the Commission, but only to those entities specifically charged with overseeing banking activities. One questioned the appropriateness of the Commission's imposing affirmative compliance burdens on persons or entities other than candidates or political committees.

The Act, however, contemplates that lending institutions, when making loans to candidates and political committees, be subject to Commission oversight of the bank loan provisions, since failure to make a loan under conditions which assure repayment could result in a prohibited contribution. In fact, the Act imposes numerous obligations on persons and entities other than candidates and political committees in a number of other contexts. For these reasons, the Commission feels that the Act imposes on banks some portion of the requirement that bank loans be made on a basis which assures repayment.

The revised rules specify two sources of repayment that the Commission will consider to have met the "assurance of repayment" standard: Traditional collateral, with a perfected security interest in that collateral; and other sources of repayment, including anticipated future income (e.g., the anticipated receipt of public financing funds, fundraising, and interest income). Loans which do not meet these criteria will be considered on a case-by-case basis, based on the totality of their circumstances.

The notice solicited comments on how the rules should address lines of credit, given the concern that political candidates could draw on a line of credit after dissipating the collateral that originally supported it. The comments were unanimous in stating that lines of credit could be regulated in the same way as bank loans. The revised rules follow this approach: Lines of credit are considered bank loans, to be treated in the same manner as other loans from lending institutions.

The revised rules also follow Commission precedent by focusing on restructuring, rather than settlement, of bank loans. Each restructuring of a loan is considered a new loan for FECA purposes.

A number of other issues that were raised for comment in the notice of proposed rulemaking did not result in new regulations.

The notice sought comments on whether the Commission should analogize political loans to "insider loans," i.e., loans that a bank makes to its officers and board of directors. The intent of these insider loan provisions is to prevent favoritism in loans to "insiders," while the intent of an analogous Commission provision would be to guard against preferential treatment for political loans, and to subject political loans to a high level of scrutiny.

However, the fact that a lending institution complies with standard lending policies and procedures, including use of "insider" procedures, does not necessarily mean that the loan is "made on a basis which assures repayment." Moreover, this approach would not give lending institutions, candidates and political committees any guidelines on what is "assurance of repayment." The rules thus do not take this approach.

The notice also requested comments on whether the rules should include any limit on the amount of loans that a candidate or political committee could have outstanding at any given time. Four commenters opposed setting any such limits, since borrowing capacity may vary substantially between candidates. Several argued that the Commission does not have the statutory authority to impose such limits.

No commenters responded in favor of this proposal. The rules do not include any limitation on the amount of loans a candidate or committee can have outstanding.

The notice invited comments on whether the regulations should require the borrower to set aside a certain percentage of pledged future funds when the borrower receives the funds. This requirement is unnecessary because of the final rules' requirement that a separate depository account be established, under certain circumstances. Also, establishing a mandatory set aside percentage would unnecessarily infringe on the ability of the bank and the borrower to structure each loan to reflect the particular circumstances of that loan.

The notice asked whether the Commission should require reporting of bank loans that are made close to a federal election. The FECA currently requires reporting of contributions of $1000 or more if they occur less than 20 days but more than 48 hours before an election. 2 U.S.C. 434(a)(6)(A); 11 CFR 104.5(f).

The Act clearly states at 2 U.S.C. 434(a)(6)(A) that any contribution received close to an election shall be reported within 48 hours. This requirement encompasses all loans except bank loans, since a bank loan which meets the statutory requirements is not a contribution. However, the proceeds of a bank loan obtained by a candidate, as well as any guarantees or endorsements of a bank loan, are subject to the 48 hour reporting requirement. The Commission sees no reason to add any additional requirements at this time.

Finally, the notice asked whether the rules should require loans made to political committees and candidates to include a due date for the loan that is at or near the election for which the loan is obtained. This approach would reflect a common banking practice, in which the timing of repayment is tied to the event for which the funds are used. For example, agricultural loans frequently fall due shortly after harvest.

All comments which addressed this issue responded negatively to this suggestion. These commenters said that due dates should be flexible, open to negotiation between lenders and borrowers. Also, while it may be difficult for a candidate to raise money after an unsuccessful campaign, it is also true that the kinds of collateral used by candidates and political committees are not necessarily received at the time of the election. The rules thus do not require loans to be subject to a due date at or near an election.

Part 100—Scope and Definitions

Section 100.7 Contribution

The rule specifies at paragraph (b)(11)(i) two general sources of repayment that the Commission will, by definition, find to have met the "assurance of repayment" standard: Traditional collateral, or a pledge of future receipts deposited in a separate account. A combination of these two methods is also acceptable.

The proposed rules would have required either traditional collateral or a pledge of future receipts deposited in a separate account to demonstrate that a loan is "made on a basis which assures repayment." This was presented as an either/or situation, so that a lending institution that wanted to make a loan backed in part by traditional collateral and in part by a pledge of future receipts might have felt obliged to make two separate loans to accomplish this purpose. Paragraph (b)(11)(i) has therefore been revised to specifically state that a loan may be obtained under either authorized method, or by using any combination of the two methods.

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The Commission believes that this approach will give candidates and committees the greatest possible flexibility in obtaining bank loans, while still assuring that they are made on a basis which assures repayment.

Paragraph (b)(11)(i)(A) sets forth the requirements for loans obtained on the basis of traditional types of collateral and possible secondary sources of repayment. It includes at paragraph (b)(11)(i)(A)(*1*) a non-exhaustive list of collateral sources. This list is similar to, although not as specific as, the list of acceptable collateral in the Federal Reserve Act's section on an insured institution's dealings with an affiliate, found at 12 U.S.C. 371c(c)(1). In the Commission's view, the description of traditional collateral set forth in this paragraph is sufficiently precise to provide adequate guidelines without running the risk of inadvertently excluding some acceptable sources due to over-specificity. However, the Commission notes that the cited section of the Federal Reserve Act may also be consulted for guidance regarding specific collateral that would satisfy this rule.

Paragraph (b)(11)(i)(A)(*1*) also includes a requirement that, if a financial institution relies on traditional collateral, the institution must perfect a security interest in that collateral. The banking regulatory agencies supported this requirement, because it protects lenders.

Moreover, the rule states that, if a security interest is not senior enough to cover the amount of the loan and any senior liens in existence on the date of the loan, the candidate or political committee must pledge additional collateral for this purpose. It also requires that sufficient collateral be maintained at all times to cover the full amount of the loan.

The Federal Deposit Insurance Corporation noted that secured loans are normally made on the fair market value of the security plus a margin of safety, so that there is some allowance for liquidation costs and interest. That agency said that it would regard a secured loan as not made on a basis which assures repayment if there was no safety allowance for costs associated with liquidation. The Comptroller of the Currency noted that the Commission could require lending institutions to have a security interest sufficiently senior to cover the loan amount, and require that the sufficiency be maintained when there is a decrease in value of the collateral securing the loan.

The Commission has not added specific language regarding a margin of safety, but believes this can be a relevant consideration in certain cases. For example, if a bank normally requires sufficient collateral to cover a margin of safety, but fails to do so in making a loan to a candidate or political committee, this may be seen as an indication that the loan was not made in the ordinary course of business.

Two commenters suggested that the Commission amend the proposed language to include a "good faith" standard which would cover those times when a security interest is not perfected because of a filing error. However, there is no codification of a "good faith" standard in the Federal Reserve Act or its regulations with regard to perfecting a security interest. Rather, if a security interest is not perfected because of a filing error, the Board takes that factor into consideration should any action subsequently be required. The Commission intends to take a similar approach in dealing with situations where a security interest is not perfected due to a filing error.

Paragraph (b)(11)(i)(B) permits loans to be made on the basis of a committee's anticipated future receipts, including but not limited to public financing payments, contributions, or interest income, if certain requirements are met. These requirements include that (1) the loan be evidenced by a written agreement; (2) the loan amount not exceed the amount of pledged funds; (3) the loan be made in an amount no higher than a reasonable expectation of the receipt of future funds, based on documentation provided by the candidate or political committee to the lending institution; (4) the borrower establish a separate account; (5) the borrower deposit the pledged funds in this separate account, to be used to retire the debt in accordance with the loan agreement; and (6) if the borrower pledges public financing payments, the borrower authorize the Secretary of the Treasury to directly deposit such payments into the separate account.

Various commenters stated throughout this rulemaking that the Commission's regulatory scheme should be flexible enough to better accommodate borrowers, while not imposing unnecessary constraints on the regular business of lending institutions. Paragraph (b)(11)(i)(B) allows this flexibility by providing that loans not based on traditional collateral may still be considered "made on a basis which assures repayment." The requirements set forth in this paragraph act as safeguards, since these loans are generally regarded by the banking agencies as "unsecured."

The FDIC indicated that, to the extent a loan is not backed by traditional security, banks rely primarily on the borrower's income, and that of any cosigners or guarantors to the loan, as security for the loan. Similarly, the Office of Thrift Supervision stated that, while it had no problem with the idea of using future receipts, it felt that the loan determinations should be based on the sound credit background of the borrower and adequate safeguards as evaluated by the lending institution. These approaches, however, could result in impermissible contributions and expenditures. For example, if the lender considers the income of a presidential candidate who receives public financing payments as the only source of repayment for a $100,000 loan, the candidate will have exceeded the $50,000 limitation on expenditures from personal funds. 26 U.S.C. 9004(d), 9035. Similarly, if the lender considers the guarantee of one other person for a $100,000 loan, that person will have made an excessive contribution. 2 U.S.C. 441a(a)(1)(A).

The recommendation to allow loans that are based on future receipts derives from prior Commission actions. In enforcement matters and advisory opinions involving future receipts, the Commission has looked to whether adequate safeguards exist, such as a separate depository account or an assignment of funds. If these safeguards exist, the Commission has determined that the loan was made on a basis which assures repayment. See, *e.g.*, Matter Under Review ("MUR") 1195 and Advisory Opinion 1980–108, for examples of safeguards the Commission has found sufficient to assure repayment of bank loans under particular circumstances.

Paragraph (b)(11)(i)(B) is consistent with these actions. Even though loans based on future receipts may be technically "unsecured," the Commission believes that the safeguards included in the rule are sufficient to ensure that such loans are made on a basis which assures repayment, in compliance with the statutory requirement.

Paragraph (b)(11)(i)(B)(*2*), as set forth in the notice, stated that loans were to be "based on a reasonable expectation of the receipt of pledged funds." This paragraph has been revised to clarify that it is the responsibility of the candidate or political committee to furnish the lending institution with documentation, such as cash flow charts or other financial plans, that reasonably establish that such future funds will be available.

The Commission notes that this factor alone is not enough to satisfy the "assurance of repayment" requirement. In addition, it does not absolve a lending institution from possible responsibility should a loan not otherwise be made on a basis which assures repayment. However, it provides another safeguard towards assuring that loans are made on that basis.

Paragraph (b)(11)(i)(B)(*3*) requires the candidate or political committee to set up a separate depository account for the receipt of any pledged future funds to be used to repay the debt. The Notice asked whether the regulations should allow a depository account that is not at the lending institution to be considered a valid source of repayment for loans obtained on the basis of future receipts. Commenters agreed that an assignment of contributions or other funds deposited with another financial institution would create as valid a security interest as a separate account at the lending institution. Also, courts have determined that, under the Uniform Commercial Code, assignments can be a valid security agreement. See *Mid-Eastern Electronics, Inc.* v. *First National Bank of Southern Maryland*, 455 F.2d 141, 146 (4th Cir. 1970) (assignment of proceeds which is signed by the maker and contains a description of collateral constitutes a security agreement); *Security Finance Group, Inc.* v. *United States*, 706 F.Supp. 83 (D.D.C. 1989) (debtor's assignment of proceeds of creditor gave creditor a security interest in the proceeds).

There are other reasons for allowing the assignment of funds at different depository institutions. Candidates may obtain loans from several institutions, and it may not be feasible to establish a separate account at each one. Also, the Department of the Treasury will only deposit matching fund payments into a single campaign depository. See, 11 CFR 9033.1(b)(7).

The final rule has thus been broadened to authorize the use of an account which is not at the lending institution where the loan is obtained as a depository for future receipts, if the candidate or political committee executes an assignment from that account to the lending institution, and notifies the depository institution of this assignment. A depository institution may seek to attach deposited funds if depositors do not meet their commitments to that institution; or it may fail to take action to freeze an account, if it does not know of the assignment. This notification requirement ensures that the depository institution is aware that some portion of the funds in a particular account has been pledged for other purposes.

The Commission notes that a separate depository account must be set up pursuant to paragraph (b)(11)(i)(B)(*3*) only if a committee has pledged future receipts as a source of repayment for all, or some portion, of a particular loan. If such an account is established, it can be structured in a variety of ways, as long as it complies with the requirement at paragraph (b)(11)(i)(B)(*4*) that the account be used for the purpose of retiring the debt according to the repayment requirements of the loan agreement. The borrower and the lending institution are thus free to structure the account, and the flow of funds in that account, in any manner consistent with the loan agreement.

For example, if the lender and borrower agree that $50,000 of a $100,000 loan is to be repaid using future receipts, at a rate of $10,000 a month for 5 months, the borrower must demonstrate that $10,000 will be available in the depository account at the time each such payment falls due. Additional amounts deposited in the account for any reason (e.g., public financing funds) may be withdrawn from the account, and used for other purposes. If all or part of the loan is repaid from other sources, any amount(s) so paid can also be withdrawn from the account, since they are no longer necessary "to assure repayment" of (that portion of) the loan.

Paragraphs (b)(11)(ii) of the proposed rules contained a presumption that a loan not obtained under either of the methods set forth in paragraph (b)(11)(i), or some combination of these methods, would not be considered made on a basis which assures repayment, unless the candidate or political committee could show otherwise. However, the Commission has now decided to consider the totality of circumstances on a case-by-case basis in determining whether loans that do not meet the criteria set forth at paragraph (b)(11)(i) were made on a basis which assures repayment.

Paragraphs (b)(11)(i)(A) and (B) provide avenues that, if followed, would clearly meet the "assurance of repayment" standard. Paragraph (b)(11)(ii) leaves open the possibility that other approaches, such as loans guaranteed in whole or in part by the borrower's signature, which are not specified in the rules, will also be found to have met this standard in specific cases.

Restructuring of Bank Loans

In issuing its final debt settlement rules last year, the Commission deferred until this rulemaking the question of how bank loans should be treated in the debt settlement process. The Explanation and Justification to those rules stated, "The Commission does not generally consider bank loans in the debt settlement process and does not intend to change its approach(,)" but noted that "(f)urther guidance on this may be provided in a separate rulemaking regarding the bank loan rules." 55 FR 26377, 26384 (June 27, 1990).

In response to the bank loan Notice, representatives from the Federal Reserve Board and the Office of Thrift Supervision stated that banks place primary emphasis on restructuring the terms of a loan if the borrower cannot repay it. Only if this proves impossible will a bank attempt to settle a particular loan or, as a last resort, write it off.

The final rules omit any reference to the settlement of loans from lending institutions. Rather, they provide at new § 104.3(d)(3), discussed below, that each time a loan is restructured to change its terms, the candidate or political committee must report it as a new loan. The terms of the restructured loan must again meet the "assurance of repayment" standard, as did the original loan.

This approach is consistent with Commission statements made over the course of the debt settlement rulemaking. While it is in the ordinary course of business for lending institutions to settle or write off certain loans, the Commission prefers not to encourage such actions, because this could result in prohibited contributions from lending institutions.

However, the Commission recognizes that, in certain cases, such as where a candidate declares bankruptcy or dies before anticipated funding can be raised, the settlement of a campaign loan may be the only realistic alternative. These extraordinary situations will be addressed by the Commission on a case-by-case basis.

Section 100.8 Expenditure

Revised paragraph 100.8(b)(12) is identical to revised § 100.7(b)(11), discussed above.

Section 104.3 Contents of Reports

The Notice requested comments on a proposal to require more detailed reporting of bank loans, and included draft supplements to Schedules C and C–P for candidates and political committees to report the required information. Revised section 104.3(d) implements these requirements through new reporting regulations.

A Schedule C–1 or C–P–1 must be filed with the next due report, for each bank loan obtained during the reporting period. Except as provided in paragraph

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(d)(3), a Schedule C–1 or C–P–1 need only be filed once for each loan, at the time the loan is first reported.

New paragraph (d)(1) specifies the information required by the supplemental forms, while paragraph (d)(2) requires the candidate or political committee to submit a copy of the loan agreement to the Commission at the time the loan is first reported. Paragraph (d)(3) requires committees to file with their next due report a Schedule C–1 or C–P–1, if any draw was made on a line of credit or any loan was restructured to change the terms of repayment during the reporting period.

In drafting these requirements, the Commission sought to strike a balance, by requiring the minimum amount of information necessary to provide adequate disclosure for monitoring purposes, while avoiding requirements that would have unduly burdened borrowers and lenders. It also sought to respect privacy concerns of candidates and committees, by requiring that only a copy of the loan agreement be submitted to the Commission with the committee's reports. The Commission notes, however, that if questions later arise regarding the loan, in the course of a compliance or other action, it may request additional documentation.

The rules require information from the borrower and certification from the lender. Under paragraph (d)(1), the borrower must provide information about the loan at the time it is obtained, including the types and value of collateral pledged, whether a security interest was perfected in any traditional collateral, and when and where depository accounts for pledged funds were established. If no traditional collateral or other source of repayment was pledged, the borrower must show that the loan was made on another basis which assures repayment.

Paragraph (d)(1)(v) requires the lender to certify that, to the best of its knowledge, the information provided by the borrower is accurate; the interest rate is usual and customary; the loan was made in accordance with the financial institution's usual policies and practices; and the lending institution is aware of the requirement that the loan must be made on a basis which assures repayment, and has complied with the revised Commission regulations at §§ 100.7(b)(11) and 100.8(b)(12).

While most commenters supported the proposed requirement that the borrower provide information about the loan, some raised the concern that lenders will be held responsible if they sign the supplemental forms. These commenters urged that the rules require the borrower, but not the lender, to sign the forms.

However, the requirement that the lender certify that the information provided by the borrower is correct is justified on several grounds. Only the bank has access to some of the information that either served as the basis for making the loan, or relates to the satisfaction of certain requirements in the rules—such as whether the interest rate is usual and customary, or whether a security interest has been perfected. Also, lending institutions clearly have obligations and responsibilities under the FECA. Should a violation occur, they may be held liable regardless of which party is required to sign the supplemental forms. Finally, requiring a bank to certify that the borrower's information is accurate ensures that the bank is aware of the requirements of §§ 100.7(b)(11) and 100.8(b)(12).

A banking association suggested that, instead of this requirement, the Commission require the loan note to be attached to the disclosure form to assist the Commission in determining the basis on which the loan was made. The new rules already require political committees that obtain loans from lending institutions to submit the loan agreement, which contains the terms and conditions of the loan. However, knowing the terms of the loan is not sufficient for Commission purposes. It is also nesessary to know, *inter alia*, if the terms are consistent with the bank's usual practices.

The FDIC suggested that, instead of requiring the lender to sign the conclusory statements as the Commission proposed, the rules should require the lender to state that "the loan was made on terms and conditions including interest no more favorable at the time than those imposed for similar extensions of credit to other borrowers of comparable credit worthiness." This is basically a definition of the ordinary course of business test. However, as already discussed, the "assurance of repayment" requirement may at times exceed the "ordinary course of business" standard. Thus, a statement that a loan meets the latter standard does not necessarily mean that it meets the former.

Paragraph (d)(2) requires the borrower to supply a copy of the loan agreement to the Commission at the time the loan is initially reported. The Commission expects the loan agreement to include such information as the interest rate at which the loan was made, the total of each payment (principal and interest), and any applicable later charges.

The draft Schedules C–1 and C–P–1 contained in the Notice would have required filers to include not only a signed copy of the loan agreement, but also any related security agreement(s), promissory note(s), and other related documents. The Commission has not determined that no other documentation is required when the report is filed. It again notes, however, that further documentation may be needed if questions arise with regard to a particular loan, or the original agreement does not contain all the required information.

Several commenters raised concerns about potential confidentiality problems of both the lending institution and the borrower if information in addition to that contained in the loan agreement was required. They argued that banks should be required to submit only those documents used in the ordinary course of making loans, and that to require anything further could conflict with certain state laws, in particular state privacy laws.

The FEC has authority to require the reporting of loan documentation. Under the Right to Financial Privacy Act, 12 U.S.C. 3401–3422, information involving financial transactions that is required by federal statute or regulation is exempt from the prohibitions and limitations of that Act. 12 U.S.C. 3413(d). This exemption encompasses information required to be reported under the FECA. The Right to Financial Privacy Act further exempts "the disclosure of financial records in accordance with procedures authorized by title 26." 12 U.S.C. 3413(c). Also, it has been held to supersede conflicting state laws. See, *e.g., In re Letter of Request for Judicial Assistance from the Tribunal Civil de Port-au-Prince, Republic of Haiti*, 669 F. Supp. 403 (S.D.Fla. 1987); *In re Grand Jury Subpoena (Connecticut Savings Bank)*, 481 F.Supp. 833 (D.Conn. 1979).

However, the Commission recognizes that practical problems may develop if it requires candidates and political committees to submit the documentation provided to lending institutions to the Commission at the time the loan is first reported. This documentation may include fundraising plans, cash flow charts, and other information which the borrower for tactical reasons my not want on the public record during a campaign. The rules thus require the candidate or political committee to submit documentation other than the loan agreement only to the lender. Should a loan later be questioned, the documentation could then be provided to the Commission.

As discussed above with regard to § 100.7(b)(11), the Commission has traditionally treated lines of credit the same as any other loan from a lending institution. However, there are currently no explicit rules on how political committees should report lines of credit.

The Commission's experience has been that some committees—typically presidential candidate committees that obtain large lines of credit—voluntarily report such information as when draws can be made and the maximum amount of each draw. However, they usually report lines of credit when the first draw is made, not when the line is first established.

Political committees are required to report the total amount of all "receipts" including loans, under 2 U.S.C. 434(b)(2) and 11 CFR 104.3(a)(2). Paragraphs (d)(1) and (d)(3) require candidates and political committees to include a Schedule C–1 or C–P–1 with their next report to the Commission whenever a line of credit is established, as well as each time a draw is made. In addition, the regulations specifically state at § § 100.7(b)(11)(i), 100.8(b)(12)(i), and 104.3(d)(1) that the bank loan rules apply to draws on lines of credit. Thus lines of credit are treated the same as other bank loans for purposes of these rules, except for the additional reporting requirement each time a draw is made.

The Commission notes that, if a loan is reported on schedule C, ordinarily there will be corresponding entries in Schedule A, both in the summary and in the itemized reports. This will not be so if the establishment of a line of credit is reported—since there is in fact no loan until such time as a draw is made, there is nothing to report on Schedule A until that time.

Nevertheless, the Commission believes it is important that lines of credit be reported at the time they are established. This approach minimizes the possibility that the same collateral was used for more than one loan or line of credit. It also provides a more accurate picture of a candidate's financial status for the public record.

As discussed above, the revised rules omit any reference to the settlement of loans from lending institutions. Rather, they provide at paragraph (d)(3) that each time a loan is restructured to change its terms, the candidate or political committee must report it as a new loan.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 104

Campaign funds, Political candidates, Political committees and parties, Reporting requirements.

Certification of no effect pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that the primary purpose of the amendments is to clarify the Commission's rules on the making of bank loans to candidates and political committees. This does not impose a significant economic burden because any entities affected are already required to comply with the Act's requirements in this area.

For the reasons set out in the preamble, subchapter A, chapter I, part 100 of title 11 of the Code of Federal Regulations is amended as follows:

PART 100—SCOPE AND DEFINITIONS

1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8).

2. Section 100 is amended by adding paragraph (b)(11) (i) and (ii) to read as follows:

§ 100.7 Contribution (2 U.S.C. 431(8)).

* * * * *

(b) * * *

(11) * * *

(i) A loan, including a line of credit, shall be considered made on a basis which assures repayment if it is obtained using either of the sources of repayment described in paragraphs (b)(11)(i) (A) or (B) of this section, or a combination of paragraphs (b)(11)(i) (A) and (B) of this section:

(A)(*1*) The lending institution making the loan has perfected a security interest in collateral owned by the candidate or political committee receiving the loan, the fair market value of the collateral is equal to or greater than the loan amount and any senior liens as determined on the date of the loan, and the candidate or political committee provides documentation to show that the lending institution has a perfected security interest in the collateral. Sources of collateral include, but are not limited to, ownership in real estate, personal property, goods, negotiable instruments, certificates of deposit, chattel papers, stocks, accounts receivable and cash on deposit.

(*2*) Amounts guaranteed by secondary sources of repayment, such as guarantors and cosigners, shall not exceed the contribution limits of 11 CFR part 110 or contravene the prohibitions of 11 CFR 110.4, part 114 and part 115; or

(B) The lending institution making the loan has obtained a written agreement whereby the candidate or political committee receiving the loan has pledged future receipts, such as public financing payments under 11 CFR part 9001 *et seq.* or part 9031 *et seq.*, contributions, or interest income, provided that:

(*1*) The amount of the loan or loans obtained on the basis of such funds does not exceed the amount of pledged funds;

(*2*) Loan amounts are based on a reasonable expectation of the receipt of pledged funds. To that end, the candidate or political committee must furnish the lending institution documentation, i.e., cash flow charts or other financial plans, that reasonably establish that such future funds will be available;

(*3*) A separate depository account is established at the lending institution or the lender obtains an assignment from the candidate or political committee to access funds in a committee account at another depository institution that meets the requirements of 11 CFR 103.2, and the committee has notified the other institution of this assignment;

(*4*) The loan agreement requires the deposit of the public financing payments, contributions and interest income pledged as collateral into the separate depository account for the purpose of retiring the debt according to the repayment requirements of the loan agreement; and

(*5*) In the case of public financing payments, the borrower authorizes the Secretary of the Treasury to directly deposit the payments into the depository account for the purpose of retiring the debt.

(ii) If the requirements set forth in paragraph (b)(11)(i) of this section are not met, the Commission will consider the totality of the circumstances on a case-by-case basis in determining whether a loan was made on a basis which assures repayment.

* * * * *

3. Section 100.8 is amended by adding paragraph (b)(12) (i) and (ii) to read as follows:

§ 100.8 Expenditure (2 U.S.C. 431(9)).

* * * * *

(b) * * *

(12) * * *

(i) A loan, including a line of credit, shall be considered made on a basis which assures repayment if it is obtained using either of the sources of repayment described in paragraphs

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(b)(12)(i) (A) or (B) of this section, or a combination of paragraphs (b)(12)(i) (A) and (B) of this section:

(A)(*1*) The lending institution making the loan has perfected a security interest in collateral owned by the candidate or political committee receiving the loan; the fair market value of the collateral is equal to or greater than the loan amount and any senior liens as determined on the date of the loan; and the candidate or political committee provides documentation to show that the lending institution has a perfected security interest in the collateral. Sources of collateral include, but are not limited to, ownership in real estate, personal property, goods, negotiable instruments, certificates of deposit, chattel papers, stocks, accounts receivable and cash on deposit.

(*2*) Amounts guaranteed by secondary sources of repayment, such as guarantors and cosigners, shall not exceed the contribution limits of 11 CFR part 110 or contravene the prohibitions of 11 CFR 110.4, part 114 and part 115; or

(B) The lending institution making the loan has obtained a written agreement whereby the candidate or political committee receiving the loan has pledged future receipts, such as public financing payments under 11 CFR part 9001 *et seq.* or part 9031 *et seq.*, contributions, or interest income, provided that:

(*1*) The amount of the loan(s) obtained the basis of such funds does not exceed the amount of pledged funds;

(*2*) Loan amounts are based on a reasonable expectation of the receipt of pledged funds. To that end, the candidate or political committee must furnish the lending institution documentation, i.e., cash flow charts or other financial plans, that reasonably establish that such future funds will be available;

(*3*) A separate depository account is established at the lending institution or the lender obtains an assignment from the candidate or political committee to access funds in a committee account at another depository institution that meets the requirements of 11 CFR 103.2, and the committee has notified the other institution of this assignment;

(*4*) The loan agreement requires the deposit of the public financing payments, contributions, interest or other income pledged as collateral into the separate depository account for the purpose of retiring the debt according to the repayment requirements of the loan; and

(*5*) In the case of public financing payments, the borrower authorizes the Secretary of the Treasury to directly deposit the payments into the depository account for the purpose of retiring the debt.

(ii) If the requirements set forth in paragraph (b)(12)(i) of this section are not met, the Commission will consider the totality of circumstances on a case-by-case basis in determining whether a loan was made on a basis which assures repayment.

PART 104—REPORTS BY POLITICAL COMMITTEES

4. The authority citation for part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8), 438(b).

5. Section 104.3 is amended by adding paragraph (d) (1), (2) and (3) to read as follows:

§ 104.3 Contents of reports (2 U.S.C. 434(b)).

* * * * *

(d) * * *

(1) In addition, when a candidate or political committee obtains a loan from, or establishes a line of credit at, a lending institution as described in 11 CFR 100.7(b)(11) and 100.8(b)(12), it shall disclose in the next due report the following information on schedule C–1 or C–P–1:

(i) The date and amount of the loan or line of credit;

(ii) The interest rate and repayment schedule of the loan, or of each draw on the line of credit;

(iii) The types and value of traditional collateral or other sources of repayment that secure the loan or the line of credit, and whether that security interest is perfected;

(iv) An explanation of the basis upon which the loan was made or the line of credit established, if not made on the basis of either traditional collateral or the other sources of repayment described in 11 CFR 100.7(b)(11)(i)(A) and (B) and 100.8(b)(12)(i)(A) and (B); and

(v) a certification from the lending institution that the borrower's responses to paragraphs (d)(1)(i)–(iv) of this section are accurate, to the best of the lending institution's knowledge; that the loan was made or the line of credit established on terms and conditions (including interest rate) no more favorable at the time than those imposed for similar extensions of credit to other borrowers of comparable credit worthiness; and that the lending institution is aware of the requirement that a loan or a line of credit must be made on a basis which assures repayment and that the lending institution has complied with Commission regulations at 11 CFR 100.7(b)(11) and 100.8(b)(12).

(2) The political committee shall submit a copy of the loan or line of credit agreement which describes the terms and conditions of the loan or line of credit when it files Schedule C–1 or C–P–1.

(3) The political committee shall file in the next due report a Schedule C–1 or C–P–1 each time a draw is made on a line of credit, and each time a loan or line of credit is restructured to change the terms of repayment.

* * * * *

Dated: December 20, 1991.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 91–30776 Filed 12–26–91; 8:45 am]

BILLING CODE 6715–01–M

federal register

Friday
December 27, 1991

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1 et al.

Federal Acquisition Circular 90–9; Final and Interim Rules; Technical Amendments; and Notice of Availability

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Federal Acquisition Circular 90-9]

Federal Acquisition Regulation; Introduction of Miscellaneous Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules and technical amendments.

SUMMARY: This document serves to introduce and relate together the final and interim rule documents and technical amendments which follow and which comprise Federal Acquisition Circular (FAC) 90-9. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to issue FAC 90-9 to amend the Federal Acquisition Regulation (FAR) to implement changes in the following subject areas:

Item	Subject	FAR case	DAR case	Analyst
I	Publicizing Procurement Actions	91-44	89-118	O'Neill.
II	Time Change for Announcement of Contract Awards	91-54	91-30	Scott.
III	Surveys of Blind and Other Severely Handicapped Workshops	90-47	90-417	Loeb.
IV	Debarment, Suspension, and Ineligibility	90-56	90-418c	Loeb.
V	Preference for Commercial Products (Interim)	91-48	89-315	O'Neill.
VI	Bundling of Requirements (Interim)	91-49	90-334	Scott.
VII	Determination and Findings of Nonavailability (Steel Conduit & Crane Rail)	91-47	91-020/91-021	Rosinski.
VIII	Deviations—FAR Part 31	91-46	90-401	Olson.
IX	Novation and Change of Name Agreements	90-65	90-40	Klein.
X	Termination of Contracts	91-43	90-513	Klein.
XI	Extraordinary Contractual Actions	91-15	90-321	Klein.
XII	Inspection of Services—Fixed Price	90-58	90-455	Klein.
XIII	Technical Amendments and Corrections (Also, pen-and-ink change to Optional Form 333)			

DATES: For effective dates and comment dates, see individual documents which follow.

ADDRESSES: Interested parties should submit written comments to:

General Services Administration, FAR Secretariat (VRS), ATTN: Deloris Baker, 18th & F Streets, NW., room 4041, Washington, DC 20405.

Please cite FAC 90-9 and the FAR case number(s) in all correspondence related to this and the following documents.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in relation to each FAR case or subject area. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-9 and FAR case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 90-9 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Publicizing Procurement Actions (FAR Case 91-44)

FAR 5.207(b)(4) is amended to provide contracting officers with notice that 200 character spaces are available for a descriptive summary of the award in Item 8. Item 17 is also amended to advise the contracting officer that this item is to be used for synopsizing solicitations and contract actions, but not for contract awards.

Item II—Time Change for Announcement of Contract Awards (FAR Case 91-54)

FAR 5.303(a) is amended to change the time for announcement of contract awards from 4 p.m. to 5 p.m. Eastern time.

Item III—Surveys of Blind and Other Severely Handicapped Workshops (FAR Case 90-47)

FAR 9.107 is added to give guidance on conducting capability surveys on blind and other severely handicapped workshops. A cross reference to 9.107 is added to 8.702(a).

Item IV—Debarment, Suspension, and Ineligibility (FAR Case 90-56)

Ten examples of remedial measures or mitigating factors that debarring officials should consider when making a decision to debar or suspend a contractor have been added at 9.406-1(a). New language at 9.407-1 suggests consideration of the remedial measures or mitigating factors in connection with suspension actions.

Item V—Preference for Commercial Products (Interim) (FAR Case 91-48)

Sections 10.001 and 10.002 are amended and 10.006(a) is being revised on an interim basis to provide an order of precedence for the various types of item descriptions used in contracting. The rule implements section 824 of the DOD Fiscal Year 1990 Authorization Act.

Item VI—Bundling of Requirements (Interim) (FAR Case 91-49)

FAR 19.202-1 is amended to add subparagraph (e) which requires contracting officers to forward proposed acquisition packages meeting specified criteria to Small Business Procurement Center Representatives for review. FAR 19.402(c) is amended to add reviewing of the proposed acquisitions as a duty of the SBA Procurement Center Representative.

Item VII—Determination and Findings of Nonavailability (Steel Conduit and Crane Rail) (FAR Case 91-47)

The Federal Acquisition Regulation is amended to incorporate the addition of 85-pound per foot crane rail and 5" and 6" steel conduit into the Buy American List of Exempt Items in FAR 25.108(d)(1).

Item VIII—Deviations—FAR Part 31 (FAR Case 91-46)

FAR 31.101 is amended to change the authority for approval of class deviations from the FAR part 31 cost principles for the Department of Defense.

Item IX—Novation and Change of Name Agreements (FAR Case 90-65)

FAR 42.1205(a)(3) is amended by making the submission requirements for "total dollar value as amended" and the "remaining unpaid balance" required only if requested by the contracting officer. It is felt that this data is not needed in all cases and in most, if not all cases, it is out of date shortly after receipt.

Item X—Termination of Contracts (Defense Management Review) (FAR Case 91-43)

FAR 49.101(f) is added to clearly establish that the release of excess funds after termination is the responsibility of the contracting officer unless specifically delegated to the termination contracting officer. A corresponding change is made to 49.105-2. FAR 49.110(a) is amended by revising its heading to read "Settlement negotiation memorandum" to differentiate from the memorandum developed under 15.800, Price Negotiation.

Item XI—Extraordinary Contractual Actions (FAR Case 91-15)

As a result of recent statutory revisions to 50 U.S.C. 1431, FAR 50.203(b)(4) is being revised by removing the words "and neither House of Congress has adopted a resolution disapproving the obligation."

Item XII—Inspection of Services—Fixed-Price (FAR Case 90-58)

FAR 52.246-4, Inspection of Services—Fixed-Price, is revised to allow the Government to inspect or test at the contractor's or subcontractor's facility and requires the contractor to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties.

Item XIII—Technical Amendments and Corrections

Technical amendments or corrections have been made to FAR sections 8.705-2, 8.705-4(a), 22.1003-5(k), 33.103(b)(1), 45.608-6(b), 52.202-1, 52.215-39, 52.228-11(b)(1), and 53.203(b) to correct inaccuracies and update information. The authorization for use and local reproduction of Optional Form 333 requires a pen-and-ink change by revising the date to read "March 31, 1992".

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular

[Number 90-9]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-9 is effective February 25, 1992, except for Items V and VI, which are effective December 27, 1991.

Dated: December 4, 1991.

Eleanor R. Spector,

Director of Defense Procurement.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-9 is effective February 25, 1992, except for Items V and VI, which are effective December 27, 1991.

Dated: December 11, 1991.

Richard H. Hopf, III,

Associate Administrator, for Acquisition Policy, General Services Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-9 is effective February 25, 1992, except for Items V and VI, which are effective December 27, 1991.

Dated: December 17, 1991.

Darlene A. Druyun,

Assistant Administrator for Procurement, NASA.

[FR Doc. 91-30752 Filed 12-26-91; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 5

[FAC 90-9; FAR Case 91-44; Item I]

RIN 9000-AE39

Federal Acquisition Regulation; Publicizing Procurement Actions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to make changes to the Federal Acquisition Regulation (FAR) to amend FAR 5.207(b)(4) to provide contracting officers more explicit instructions on synopsizing information for publication in the Commerce Business Daily.

EFFECTIVE DATE: February 25, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-9, FAR case 91-44.

SUPPLEMENTARY INFORMATION:

A. Background

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council believe that in order to increase subcontracting opportunities for small business, Commerce Business Daily (CBD) synopses must include clear, concise descriptions of the supplies or services needed. Such information will allow interested parties to make informed business judgments as to whether they can participate in a Government contract. The instructions being provided to contracting officers by this rule will improve the quality of CBD synopses, thereby increasing potential for subcontracting opportunities.

B. Regulatory Flexibility Act

This rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite FAR case 91-44 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.* Approval for the affected FAR segments was

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originally provided under OMB Control Number 9000–0102.

List of Subjects in 48 CFR Part 5

Government procurement.

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 5 is amended as set forth below:

PART 5—PUBLICIZING CONTRACT ACTIONS

1. The authority citation for 48 CFR part 5 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

5.207 [Amended]

2. Section 5.207 is amended in the text following paragraph (b)(4) by inserting at the end of Item 8 the parenthetical "(200 character spaces available.)"; and at the end of Item 17, removing the last parenthesis and inserting the sentence "Insert N/A when synopsizing awards.)"

[FR Doc. 91–30753 Filed 12–26–91; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 5

[FAC 90–9; FAR Case 91–54; Item II]

Federal Acquisition Regulation; Time Change for Announcement of Contract Awards

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to amend FAR subpart 5.3 to change the time for announcement of contract awards from 4 p.m. to 5 p.m. Eastern time.

EFFECTIVE DATE: February 25, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501–0168 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–9, FAR case 91–54.

SUPPLEMENTARY INFORMATION:

A. Background

The U.S. Securities and Exchange Commission has authorized the New York Stock Exchange to trade stocks for one additional hour each trading day. The trading day will now end at 5 p.m. Eastern time instead of 4 p.m. Eastern time. Accordingly, the time for announcement of contract awards has been changed to 5 p.m. Eastern time.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite FAR case 91–54 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 5

Government procurement.

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 5 is amended as set forth below:

PART 5—PUBLICIZING CONTRACT ACTIONS

1. The authority citation for 48 CFR part 5 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

5.303 [Amended]

2. Section 5.303(a) is amended in the first sentence by adding "5 p.m." after the word "by" and in the third sentence by revising "4 p.m." to read "5 p.m."

[FR Doc. 91–30754 Filed 12–26–91; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8 and 9

[FAC 90–9; FAR Case 90–47; Item III]

RIN 9000–AE49

Federal Acquisition Regulation; Surveys of Blind and Other Severely Handicapped Workshops

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to amend § 8.702 and add § 9.107 to include guidance on capability surveys for the blind and other severely handicapped workshops. The purpose of such guidance is to inform contracting officers as to their role in determining the responsibility of blind and other severely handicapped workshops.

EFFECTIVE DATE: February 25, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Edward C. Loeb at (202) 501–4547 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–9, FAR case 90–47.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577; consequently, the Regulatory Flexibility Act does not apply.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 8 and 9

Government procurement.

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 8 and 9 are amended as set forth below:

1. The authority citation for 48 CFR parts 8 and 9 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.702 [Amended]

2. Section 8.702 is amended in paragraph (a) by removing the semicolon at the end of the sentence and inserting in its place "(see 9.107);"

PART 9—CONTRACTOR QUALIFICATIONS

3. Section 9.107 is added to read as follows:

9.107 Surveys of blind and other severely handicapped workshops.

(a) The Committee for Purchase from the Blind and Other Severely Handicapped (Committee), as authorized by 41 U.S.C. 46–48c, determines what supplies and services Federal agencies are required to purchase from workshops for the blind and other severely handicapped (see subpart 8.7). The Committee is required to find a workshop capable of producing the supplies or providing the services before the workshop can be designated as a mandatory source under the Committee's program. The Committee may request a contracting office to assist in assessing the capabilities of a workshop.

(b) The contracting office, upon request from the Committee, shall request a capability survey from the activity responsible for performing preaward surveys, or notify the Committee that the workshop is capable, with supporting rationale, and that the survey is waived. The capability survey will focus on the technical and production capabilities and applicable preaward survey elements to furnish specific supplies or services being considered for addition to the Procurement List.

(c) The contracting office shall use the Standard Form 1403 to request a capability survey of blind and other severely handicapped organizations.

(d) The contracting office shall furnish a copy of the completed survey, or notice that the workshop is capable and the survey is waived, to the Executive Director, Committee for Purchase from the Blind and Other Severely Handicapped.

[FR Doc. 91–30755 Filed 12–26–91; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 9

RIN 9000–AE–25

[FAC 90–9; FAR Case 90–56; Item IV]

Federal Acquisition Regulation; Debarment, Suspension, and Ineligibility

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to add to FAR 9.406–1(a) a list of 10 examples of remedial measures or mitigating factors that debarring officials should consider when making a decision to debar a contractor. Additionally, new language at 9.407–1 suggests consideration of the remedial measures or mitigating factors in connection with suspension actions.

EFFECTIVE DATE: February 25, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb at (202) 501–4547 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–9, FAR case 90–56.

SUPPLEMENTARY INFORMATION:

A. Background

This revision is part of an on-going effort to make suspension and debarment procedures uniform throughout the Federal Government. The change will add remedial measures or mitigating factors for use by debarring officials when making debarment decisions. The remedial measures and mitigating factors may be considered by suspension officials in reaching a decision concerning a suspension action.

B. Regulatory Flexibility Act

This change is not expected to have a significant cost or administrative impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it merely provides procedural and policy guidance to debarring and suspending officials and imposes no requirements of any kind upon small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 9

Government procurement.

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 9 is amended as set forth below:

PART 9—CONTRACTOR QUALIFICATIONS

1. The authority citation for 48 CFR part 9 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 9.406–1 is amended by revising paragraph (a) to read as follows:

9.406–1 General.

(a) It is the debarring official's responsibility to determine whether debarment is in the Government's interest. The debarring official may, in the public interest, debar a contractor for any of the causes in 9.406–2, using the procedures in 9.406–3. The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any remedial measures or mitigating factors should be considered in making any debarment decision. Before arriving at any debarment decision, the debarring official should consider factors such as the following:

(1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any Government investigation of the activity cited as a cause for debarment.

(2) Whether the contractor brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner

(3) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.

(4) Whether the contractor cooperated fully with Government agencies during

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the investigation and any court or administrative action.

(5) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.

(6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment.

(7) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the Government.

(8) Whether the contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs.

(9) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment.

(10) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

The existence or nonexistence of any mitigating factors or remedial measures such as set forth in this paragraph (a) is not necessarily determinative of a contractor's present responsibility. Accordingly, if a cause for debarment exists, the contractor has the burden of demonstrating, to the satisfaction of the debarring official, its present responsibility and that debarment is not necessary.

* * * * *

3. Section 9.407–1 is amended by redesignating paragraph (b) as (b)(1) and by adding paragraph (b)(2) to read as follows:

9.407–1 General.

* * * * *

(b)(1) * * *

(b)(2) The existence of a cause for suspension does not necessarily require that the contractor be suspended. The suspending official should consider the seriousness of the contractor's acts or omissions and may, but is not required to, consider remedial measures or mitigating factors, such as those set forth in 9.406–1(a). A contractor has the burden of promptly presenting to the suspending official evidence of remedial measures or mitigating factors when it has reason to know that a cause for suspension exists. The existence or nonexistence of any remedial measures or mitigating factors is not necessarily determinative of a contractor's present responsibility.

* * * * *

[FR Doc. 91–30756 Filed 12–26–91; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 10

[FAC 90–9; FAR Case 91–48; Item V]

Federal Acquisition Regulation; Preference for Commercial Products

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to amend Federal Acquisition Regulation (FAR) sections 10.001, 10.002(d), and 10.006(a)(2) to provide an order of preference for the various types of item descriptions used in contracting. The rule also removes the requirement for mandatory use of military specifications by the Department of Defense. The intent of the rule is to increase the use of voluntary standards and commercial item descriptions, which in turn will facilitate the use of commercial and other nondevelopmental items.

DATES: *Effective Date:* December 27, 1991.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 25, 1992 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), ATTN: Deloris Baker, 18th & F Streets, NW., Room 4041, Washington, DC 20405.

Please cite FAC 90–9, FAR case 91–48 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–9, FAR case 91–48.

SUPPLEMENTARY INFORMATION:

A. Background

Section 2325 of title 10, United States Code, requires, to the maximum extent practicable, that DOD requirements be stated in terms of (1) functions to be performed, (2) performance required, or (3) essential physical characteristics, and that such requirements are fulfilled through the acquisition of nondevelopmental items. Additionally, OMB Circular A–119 established the policy, in 1982, that the Federal Government should rely on the use of voluntary standards to the maximum extent feasible. In addition, section 824(c) of the DOD Fiscal Year 1990 Authorization Act further requires the Secretary of Defense to consider whether revisions to the regulations governing specifications, standards, and other purchase descriptions are necessary to implement the statutory requirement of 10 U.S.C. 2325. The FAR revisions in this interim rule are necessary to implement these statutory requirements.

Currently, FAR 10.006(a)(2) contains a requirement for mandatory use of military specifications by DOD. This interim rule removes this requirement and establishes a clear order of preference at 10.002(d) for choosing item descriptions giving preference to the use of voluntary standards, in general, and for use of commercial item descriptions for commercial products.

B. Regulatory Flexibility Act

This interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule will impact any contractor that wants to do business with the Federal Government. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

The interim change to the FAR is necessary to implement section 2325 of title 10, United States Code, and OMB Circular A–119. The changes direct preferential use of voluntary standards and commercial item descriptions over Federal and military specifications. The rule will affect all small businesses that want to contract with the Government. There are no burden requirements or duplicate rules, nor are other alternatives available. A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration.

A copy of the IRFA may be obtained from the FAR Secretariat. Comments from small entities concerning the affected FAR subparts are invited and will be considered in accordance with section 610. Such comments must be submitted separately and cite FAR case 91–48 in all correspondence.

C. Paperwork Reduction Act

This interim rule does not impose any reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) to issue the regulations pertaining to preference for commercial products as an interim rule. Urgent and compelling reasons exist to publish an interim rule having a significant impact on the public, prior to affording the public an opportunity to comment. Section 824(c) of the DOD Fiscal Year 1990 Authorization Act required that regulations be prescribed by August 29, 1990, that ensure that requirements are stated in terms of functions to be performed, performance required, or essential physical characteristics.

List of Subjects in 48 CFR Part 10

Government procurement.

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 10 is amended as set forth below:

PART 10—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

1. The authority citation for 48 CFR part 10 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 10.001 is amended by adding the definitions "Commercial item description" and "Product description" in alphabetical order to read as follows:

10.001 Definitions.

* * * * *

Commercial item description (CID) means an indexed, simplified product description managed by the General Services Administration that describes, by functional or performance characteristics, the available, acceptable commercial products that will satisfy the Government's needs.

* * * * *

Product description, as used in this part, is the generic term for documents used for acquisition and management purposes, such as specifications, standards, voluntary standards, commercial item descriptions, or purchase descriptions.

* * * * *

3. Section 10.002 is amended by redesignating paragraph (d) as paragraph (e); by inserting a comma after the word "specifications" in the first sentence of paragraph (e); and by adding a new paragraph (d) to read as follows:

10.002 Policy.

* * * * *

(d)(1) In fulfilling the requirements of OMB Circular A–119, Federal Participation in Development and Use of Voluntary Standards, and FAR part 11, agencies shall, to the maximum practicable extent, use—

(i) Voluntary standards in lieu of other product descriptions, or as part of other product descriptions;

(ii) Commercial item descriptions in the acquisition of commercial or commercial-type products whenever voluntary standards cannot be used;

(iii) Government specifications stated in terms of functions to be performed or performance required, when voluntary standards or commercial item descriptions cannot be used; or

(iv) Government specifications stated in terms of material, finish, schematics, tolerances, operating characteristics, component parts, or other design requirements only when no other form of product description can be used.

(2) The above order of preference shall apply unless it—

(i) Is inconsistent with requirements of law; or

(ii) Does not meet the Government's needs.

* * * * *

4. Section 10.006 is amended by revising paragraph (a) to read as follows:

10.006 Using specifications and standards.

(a) *Mandatory specifications and standards.* Unless otherwise authorized by law or approved under 10.007(a), specifications and standards listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions are mandatory for use by all agencies acquiring supplies or services covered by such specifications and standards, except when the acquisition is—

(1) Required under an unusual and compelling urgency, and using the indexed product description would delay obtaining the requirement;

(2) Under the small purchase limitation at 13.000;

(3) For products acquired and used overseas;

(4) For items, excluding military clothing, acquired for authorized resale; or

(5) For construction or new installations of equipment, where nationally recognized industry or technical source specifications and standards are available.

* * * * *

[FR Doc. 91–30757 Filed 12–26–91; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 90–9; FAR Case 91–49; Item VI]

Federal Acquisition Regulation; Bundling of Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to amend FAR 19.202–1 to require contracting officers to forward proposed acquisitions meeting specified criteria to Small Business Procurement Center Representatives for review, and 19.402 to specify review of proposed acquisition as a procurement center representative duty.

DATES: *Effective Date:* December 27, 1991.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 25, 1992, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4041, ATTN: Deloris Baker, Washington, DC 20405.

Please cite FAC 90–9, FAR case 91–49 in all correspondence related to this case.

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FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501–0168 in reference in this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–9, FAR case 91–49.

SUPPLEMENTARY INFORMATION:

A. Background

Section 208 of Public Law 101–574 requires, whenever a proposed procurement of supplies or services currently being provided by a small business is of a quantity or estimated dollar value which makes small business prime contracting unlikely or when discrete construction projects are consolidated, that the procurement activity provide a copy of the proposed acquisition to the activity's Small Business Procurement Center Representative for review at least 30 days prior to the issuance of the solicitation.

B. Regulatory Flexibility Act

This interim rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments are invited for small businesses and other interested parties and will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite FAR case 91–49 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

Pursuant to 41 U.S.C. 418b, urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule reflects section 208 of Public Law 101–574, dated November 15, 1990, which requires contracting officers to provide Small Business Procurement Center Representatives with a copy of proposed acquisitions for review whenever the quantity or estimated dollar value makes small business prime contracting unlikely. This change in internal Government operating procedures may be beneficial to small business contractors because it provides additional opportunities for them to compete for Government contracts.

List of Subjects in 48 CFR Part 19

Government procurement.

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 19 is amended as set forth below:

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

1. The authority citation for 48 CFR part 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 19.202–1 is amended by adding paragraph (e) to read as follows:

19.202–1 Encouraging small business participation in acquisitions.

* * * * *

(e)(1) Provide a copy of the proposed acquisition package to the SBA procurement center representative at least 30 days prior to the issuance of the solicitation if—

(i) The proposed acquisition is for supplies or services currently being provided by a small business and the proposed acquisition is of a quantity or estimated dollar value, the magnitude of which makes it unlikely that small businesses can compete for the prime contract, or

(ii) The proposed acquisition is for construction and seeks to package or consolidate discrete construction projects and the magnitude of this consolidation makes it unlikely that small businesses can compete for the prime contract.

(2) The contracting officer shall also provide a statement explaining why the—

(i) Proposed acquisition cannot be divided into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement;

(ii) Delivery schedules cannot be established on a basis that will encourage small business participation to the extent consistent with the actual requirements of the Government;

(iii) Proposed acquisition cannot be structured so as to make it likely that small businesses can compete for the prime contract; or

(iv) Consolidated construction project cannot be acquired as separate discrete projects.

(3) The 30-day notification process shall occur concurrently with other processing steps required prior to the issuance of the solicitation.

(4) If the contracting officer rejects the SBA procurement center representative's recommendation, made in accordance with 19.402(c)(2), the contracting officer shall document the basis for the rejection and notify the SBA procurement center representative in accordance with 19.505.

3. Section 19.402 is amended by redesignating paragraphs (c)(2) through (c)(5) as (c)(3) through (c)(6), and by adding a new (c)(2) to read as follows:

19.402 Small Business Administration procurement center representatives.

* * * * *

(c) * * *

(2) Reviewing proposed acquisition packages provided in accordance with 19.202–1(e). If the SBA procurement center representative believes that the acquisition, as proposed, makes it unlikely that small businesses can compete for the prime contract, the representative shall recommend any alternate contracting method that the representative reasonably believes will increase small business prime contracting opportunities. The recommendation shall be made to the contracting officer within 15 days after receipt of the package.

* * * * *

[FR Doc. 91–30758 Filed 12–26–91; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAC 90–9; FAR Case 91–47; Item VII]

Federal Acquisition Regulation; Determination and Findings of Nonavailability (Steel Conduit and Crane Rail)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to amend the FAR at 25.108(d)(1) with the addition of crane rail (85-pound per foot) and steel conduit (5" and 6") to the Buy American List of Exempt Items for information only.

EFFECTIVE DATE: February 25, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Rosinski at (202) 501–0692 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–9, FAR case 91–47.

SUPPLEMENTARY INFORMATION:

A. Background

The addition of these items to the list in FAR 25.108(d)(1) arose as a result of an agency's determination of nonavailability under the Buy American Act of 85-pound per foot crane rail and 5" and 6" steel conduit.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAR case 91–47 (FAC 90–9) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 25 is amended as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR part 25 continues to read as follows:

Authority: 50 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

§ 25.108 [Amended]

2. Section 25.108 is amended in paragraph (d)(1) by adding the items "Crane rail (85-pound per foot)." and "Steel conduit (5" and 6")." in alphabetical order.

[FR Doc. 91–30759 Filed 12–26–91; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 90–9; FAR Case 91–46; Item VIII]

Federal Acquisition Regulation; Deviations—FAR Part 31

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to revise FAR 31.101 to change the approval authority within DOD for deviations from the cost principles in FAR part 31.

EFFECTIVE DATE: February 25, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy F. Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–9, FAR case 91–46.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite FAR case 91–46 in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 31 is amended as set forth below:

PART 1—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

31.101 [Amended]

2. Section 31.101 is amended in the third sentence by removing the words "DAR Council" and inserting in its place "Director of Defense Procurement, Office of the Under Secretary of Defense for Acquisition (USD(A)DP),"; and in the last sentence by removing the words "DAR Council" and inserting in its place "USD(A)DP".

[FR Doc. 91–30760 Filed 12–26–91; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 42

[FAC 90–9; FAR Case 90–65; Item IX]

RIN 9000–AE58

Federal Acquisition Regulation; Novation and Change of Name Agreements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to amend FAR 42.1205(a)(3) by making the current requirements listed in (a)(3) (iii) and (iv) required only if requested by the contracting officer. It was felt that this data is not needed in all cases and in most, if not all cases, it is out of date shortly after receipt.

EFFECTIVE DATE: February 25, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–9, FAR case 90–65.

SUPPLEMENTARY INFORMATION:

A. Background

This change was prompted by a deviation requested by the Department of Health and Human Services. A

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number of contractors have questioned the need and value to the Government of furnishing the data required by 42.1205(a)(3) (iii) and (iv); *i.e.*, the total dollar value as amended and the remaining unpaid balance. It is felt that this data is not needed in all cases and in most, if not all cases, it is out of date shortly after receipt. This is especially true of contractors having a number of purchase orders or contracts near physical completion.

The proposed rule was published in the **Federal Register** together with a request for comments on March 7, 1991 (see 56 FR 9832). Comments were requested on or before May 6, 1991. Ten responses were received consisting of no comments and concurrences.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the revision is considered to be less burdensome than the existing requirement. Comments were invited from small businesses and other interested parties (see 56 FR 9832, March 7, 1991) and none were received concerning this subject.

C. Paperwork Reduction Act

Since this rule is considered to reduce the burden on the contractor, a request for a decrease in burden hours for OMB Control No. 9000–0076, Novation/Change of Name Requirements, was submitted to OMB for approval. The Notice of OMB Request for Clearance appeared in the **Federal Register** on March 7, 1991 (see 56 FR 9890). An approval, valid through May 31, 1994, was received from OMB on May 16, 1991.

List of Subjects in 48 CFR Part 42

Government procurement.

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 42 is amended as set forth below:

PART 42—CONTRACT ADMINISTRATION

1. The authority citation for 48 CFR part 42 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 42.1205 is amended by revising paragraph (a)(3) to read as follows:

42.1205 Agreement to recognize contractor's change of name.

(a) * * *

(3) A list of all affected contracts and purchase orders remaining unsettled between the contractor and the Government, showing for each the contract number and type, and name and address of the contracting office. The contracting officer may request the total dollar value as amended and the remaining unpaid balance for each contract.

* * * * *

[FR Doc. 91–30761 Filed 12–26–91; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 49

[FAC 90–9; FAR Case 91–43; Item X]

Federal Acquisition Regulation; Termination of Contracts

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to the following changes to FAR part 49: FAR 49.101(f) is added to clearly establish that the release of excess funds after termination is the responsibility of the contracting officer unless specifically delegated to the termination contracting officer (TCO). A corresponding change is made to 49.105–2. FAR 49.110 is amended by revising its heading to read "Settlement Negotiation Memorandum" to differentiate from the memorandum developed under 15.800, Price Negotiation. Revisions to paragraph (a) clarify the responsibilities and duties of the contracting officer and the TCO and the document used in termination of contracts.

EFFECTIVE DATE: February 25, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–9, FAR case 91–43.

SUPPLEMENTARY INFORMATION:

A. Background

These changes arose as a result of the Defense Management Review Regulatory Reform initiative.

B. Regulatory Flexibility Act

The rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act (RFA) does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite RFA section 610, FAR case 91–43 (FAC 90–9) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Public Law 96–511) does not apply because the rule does not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 49

Government procurement.

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 49 is amended as set forth below:

PART 49—TERMINATION OF CONTRACTS

1. The authority citation for 48 CFR part 49 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 49.101 is amended by adding paragraph (f) to read as follows:

49.101 Authorities and responsibilities.

* * * * *

(f) The contracting officer is responsible for the release of excess funds resulting from the termination unless this responsibility is specifically delegated to the TCO.

3. Section 49.105–2 is revised to read as follows:

49.105–2 Release of excess funds.

(a) The TCO shall estimate the funds required to settle the termination, and within 30 days after the receipt of the termination notice, recommend the release of excess funds to the contracting officer. The initial deobligation of excess funds should be accomplished in a timely manner by the contracting officer, or the TCO, if delegated the responsibility. The TCO shall not recommend the release of amounts under $1,000, unless requested by the contracting officer.

(b) The TCO shall maintain continuous surveillance of required funds to permit timely release of any additional excess funds (a recommended format for release of excess funds is in 49.604). If previous releases of excess funds result in a shortage of the amount required for settlement, the TCO shall promptly inform the contracting officer, who shall reinstate the funds within 30 days.

4. Section 49.110 is amended by renaming the section heading and revising paragraph (a) to read as follows:

49.110 Settlement negotiation memorandum.

(a) The TCO shall, at the conclusion of negotiations, prepare a settlement negotiation memorandum describing the principal elements of the settlement for inclusion in the termination case file and for use by reviewing authorities. Pricing aspects of the settlement shall be documented in accordance with 15.808(a). The memorandum shall be distributed in accordance with 15.808(b).

* * * * *

[FR Doc. 91–30762 Filed 12–26–91; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 50

[FAC 90–9; FAR Case 91–15; Item XI]

RIN 9000–AE56

Federal Acquisition Regulation; (FAR); Extraordinary Contractual Actions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule revising FAR 50.203(b)(4) by removing the words "and neither House of Congress has adopted a resolution disapproving the obligation." The revisions are the result of amendments to Public Law 85–804 (50 U.S.C. 1431), by Public Law 101–510 (title XIII, section 1313), and Public Law 102–25 (title VII, section 705(f)).

EFFECTIVE DATE: February 25, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–9, FAR case 91–15.

SUPPLEMENTARY INFORMATION:

A. Background

FAR 50.203(B)(4) currently requires advance notice to Congress and a subsequent 60-day waiting period for any contract, amendment, or modification executed under the authority of Public Law 85–804 which will obligate the Government for an amount in excess of $25 million.

Section 1313 of title XIII of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101–510) amended Public Law 85–804 (50 U.S.C. 1431) by revising the third sentence to eliminate the 60 days of continuous session and the remainder of the sentence.

Section 705(f) of title VII of Public Law 102–25 further amended Public Law 85–804 (50 U.S.C. 1431) by revising the third sentence by inserting "and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees" before the period.

FAR 50.203(b)(4) has been revised accordingly. Because the revisions concern internal agency procedures only, a decision was made by the Councils to issue the rule as a final rule and not a proposed rule.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAC 90–9, FAR case 91–15 in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the final rule does not impose any recordkeeping requirements or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 50

Government procurement.

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 50 is amended as set forth below:

PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS

1. The authority citation for 48 CFR part 50 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 50.203 is amended by revising paragraph (b)(4) to read as follows:

50.203 Limitations on exercise of authority.

* * * * *

(b) * * *

(4) That will obligate the Government for any amount over $25 million, unless the Senate and the House Committees on Armed Services are notified in writing of the proposed obligation and 60 days of continuous session of Congress have passed since the transmittal of such notification. However, this paragraph (b)(4) does not apply to indemnification agreements authorized under 50.403.

* * * * *

[FR Doc. 91–30763 Filed 12–26–91; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 90–9; FAR Case 90–58; Item XII]

RIN 9000–AE27

Federal Acquisition Regulation; Inspection of Services—Fixed-Price

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Agency Regulations Council have agreed on a final rule amending 52.246–4, Inspection of Services—Fixed-Price.

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by adding a new paragraph (d) which will allow the Government to inspect or test at the contractor's or subcontractor's facility and requires the contractor to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties.

EFFECTIVE DATE: February 25, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–9, FAR case 90–58.

SUPPLEMENTARY INFORMATION:

A. Background

This rule is the result of a recommendation made by the Defense Management Review Regulatory Relief Task Force after its review of DOD regulations. It reflects language which is being removed from a component level regulation for more appropriate placement in the FAR.

The amendment to 52.246–4, Inspection of Services—Fixed Price, was published in the **Federal Register** as a proposed rule, together with a request for comments on December 19, 1990 (see 55 FR 52158). The 12 responses that were received consisted of 11 concurrences and no comments and one comment. The respondent recommended removing the phrase "without additional charge" from paragraph (d) of the clause. The Councils approved a recommendation to publish the proposed rule as a final rule without change.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the existing language in 52.246–4 is being clarified and is consistent with the coverage in 52.246–2.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 52 is amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 52.246–4 is amended by revising the introductory text; revising the date of the clause to read "(FEB 1992)"; redesignating existing paragraphs (d) and (e) as paragraph (e) and (f), and adding a new paragraph (d); and removing the derivation line following "(End of clause)" to read as follows:

52.246–4 Inspection of Services—Fixed-Price.

As prescribed in 46.304, insert the following clause:

Inspection of Services—Fixed-Price (Feb. 1992)

* * * * *

(d) If the Government performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties.

* * * * *

[FR Doc. 91–30764 Filed 12–26–91; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8, 22, 33, 45, 52, and 53

[Federal Acquisition Circular 90–9; Item XIII]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical amendments and corrections.

SUMMARY: Technical amendments or corrections have been made to FAR sections 8.705–2, 8.705–4(a), 22.1003–5(k), 33.103(b)(1), 45.608–8(b), 52.202–1, 52.203–4, 52.215–39, 52.228–11(b)(1), and 53.203(b) to correct inaccuracies and update information. The authorization for use and local reproduction of Optional Form 333 requires a pen-and-ink change by revising the date to read "March 31, 1992".

EFFECTIVE DATE: February 25, 1992.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–9.

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 8, 22, 33, 45, 52, and 53 are amended as set forth in the technical amendments appearing below:

1. The authority citation for 48 CFR parts 8, 22, 33, 45, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 8—[AMENDED]

8.705–2 and 8.705–4 [Technical correction]

2. Section 8.705–2 is corrected in the last two sentences by removing the words "leadtime" and inserting in their place the words "lead time"; section 8.705–4 is corrected in paragraph (a) by removing the word "leadtime" and inserting in its place the words "lead time".

PART 22—[AMENDED]

22.1003–5 [Technical amendment]

3. Section 22.1003–5 is amended in paragraph (k) by removing the word "telecommunication,".

PART 33—[AMENDED]

33.103 [Technical correction]

4. Section 33.103 is corrected in paragraph (b)(1) by removing the word "clause" and inserting in its place the word "provision".

5. Section 45.608–8(b) is amended by revising Item 5 to read as follows:

PART 45—[AMENDED]

45.608–8 Report of excess personal property (SF 120).

* * * * *

(b) * * *

Item 5, To. Enter the name(s) and address(es) of the screening agencies or the GSA regional office serving the geographic area in which the property is located.

* * * * *

PART 52—[AMENDED]

52.202–1 [Technical correction]

6. Section 52.202–1 is corrected in the clause title by removing the date "(APR 1984)" and inserting in its place "(SEPT 1991)".

52.203–4 [Technical correction]

7. Section 52.203–4 is corrected at the end of the first sentence by removing "(b)(6)" and inserting in its place "(b)(5)".

52.215–39 [Technical correction]

8. Section 52.215–39 is amended by revising the reference "FAR 31.205–6(o)(4)" to read "FAR 31.205–6(o)(5)".

52.228–11 [Technical correction]

9. Section 52.228–11 is corrected in paragraph (b)(1) by removing the word "sureties" and inserting in its place "securities".

PART 53—[AMENDED]

53.203 [Technical amendment]

10. Section 53.203 is amended in the last sentence of paragraph (b) by removing the date "March 31, 1991" and inserting in its place "March 31, 1992".

[FR Doc. 91–30765 Filed 12–26–91; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

FAR/FIRMR on CD-ROM Available Through the Superintendent of Documents

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability.

SUMMARY: The texts of the Federal Acquisition Regulation (FAR) and the Federal Information Resources Management Regulation (FIRMR) are available on an electronic medium—Compact Disk-Read Only Memory (CD-ROM). These texts are on a single disk and will be updated quarterly. The disk is available for purchase from the Superintendent of Documents on an annual subscription basis for $106.

ADDRESSES: To order the FAR/FIRMR CD-ROM, reference Stock No. 722-009-00000-2, and send prepayment to: Superintendent of Documents, Department 36-JR, Washington, DC 20402-9325. To order with VISA or Master Card, phone (202) 783-3238.

FOR FURTHER INFORMATION CONTACT: For the FAR, contact Mr. G. Doyle Dodge, Office of Federal Acquisition Policy, GSA, 18th & F Streets, NW., room 4037, Washington, DC 20405, telephone (202) 501-2801 or FTS 8-241-2801.

For the FIRMR, contact Mr. Donald Chiarella, IRMS Regulations Branch, GSA, 18th & F Streets, NW., room 3224, Washington, DC, 20405, telephone (202) 501-0836 or FTS 8-241-0836.

SUPPLEMENTARY INFORMATION:

System Requirements

The following minimum configuration is needed to use this CD-ROM disk:

1. An IBM PC/XT/AT or compatible with 500KB RAM.
2. MS-DOS version 3.1 or later.
3. CD-ROM drive with MS-DOS extensions capable of reading ISO 9660 format.

Benefits of CD-ROM

The CD-ROM contains built-in indexing and retrieval programs that enable users to locate information easily and quickly. If desired, small or large sections of information can be transferred to a computer hard disk or floppy disk; however, the indexing and retrieval program cannot be transferred.

Each new quarterly disk will incorporate the latest changes reflected in the FIRMR Transmittal Circulars and the FAR Federal Acquisition Circulars. Also, other information resources management and acquisition regulation publications will be included on future disks.

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

[FR Doc. 91-30766 Filed 12-26-91; 8:45 am]

BILLING CODE 6820-34-M

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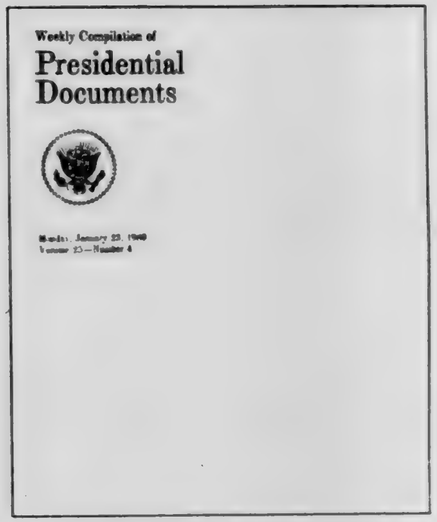
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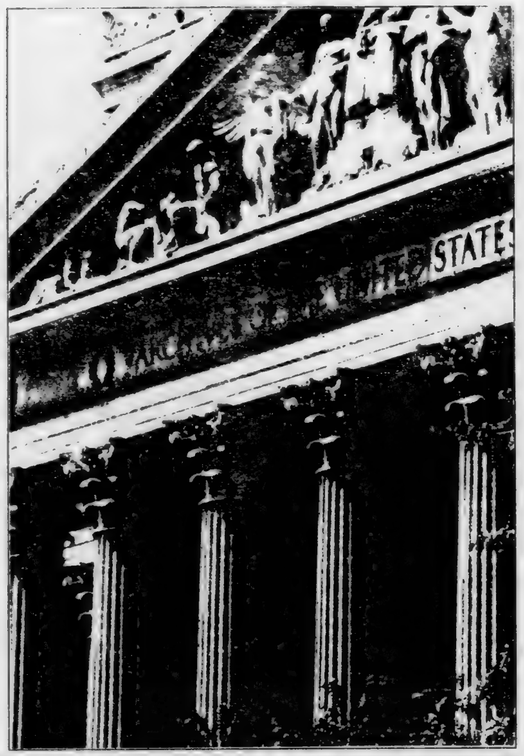
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Parts 305

Recommendations of the Administrative Conference Regarding Administrative Practice and Procedure

AGENCY: Administrative Conference of the United States.

ACTION: Recommendations.

SUMMARY: The Administrative Conference of the United States adopted four recommendations at its Forty-Fourth Plenary Session addressing: (1) Implementation of the Farmers Home Administration mediation program; (2) adjudication of civil penalties under the Federal Aviation Act; (3) specialized review of administrative action; and (4) administrative procedures used in antidumping and countervailing duty cases.

The Administrative Conference of the United States is a federal agency established to study the efficiency, adequacy, and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and to make recommendations for improvements.

Recommendations of the Administrative Conference are published in full text in the **Federal Register** upon adoption. Complete lists of recommendations, together with the texts of those deemed to be of continuing interest, are published in the Code of Federal Regulations (1 CFR part 305).

DATES: These recommendations were adopted December 12–13, 1991, and issued December 24, 1991

FOR FURTHER INFORMATION CONTACT: Cari Votava, Information Officer, or Jeffrey S. Lubbers, Research Director (202–254–7020).

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 571–576. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and makes recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 574(1)).

At its Forty-Fourth Plenary Session, held December 12–13, 1991, the Assembly of the Administrative Conference of the United States adopted four recommendations.

Recommendation 91–7, Implementation of Farmer-Lender Mediation by the Farmers Home Administration, suggests steps for improving the Farmers Home Administration's implementation of farmer-lender mediation programs under the Agricultural Credit Act. The recommendation calls on FmHA to amend its regulations to give its representatives greater flexibility in engaging in debt restructuring through mediation. It also calls for training of FmHA personnel and other steps to enable them to take full advantage of mediation, and it encourages other federal agencies involved in debt restructuring to be mindful of overall advantages of participation in mediation processes.

Recommendation 91–8, Adjudication of Civil Penalties Under the Federal Aviation Act, proposes to Congress that certain changes be made in adjudication of the administrative civil penalty program for violations of aviation safety. The Conference recommends that the program be made permanent, but that adjudication responsibility for cases involving pilots and flight engineers be transferred from the Federal Aviation Administration to the National Transportation Safety Board, if the relevant agencies and other interests cannot come to a mutually acceptable agreement.

Recommendation 91–9, Specialized Review of Administrative Action, identifies guidelines for Congress to consider in determining whether and how to create specialized courts for review of administrative action. The recommendation opposes creation of a single specialized court for review of all administrative cases and further advises that specialized courts are appropriate for particular administrative programs only if they involve a large volume of cases, the predominance of case-specific factual issues or technical issues requiring special expertise, and a need for uniformity in agency program administration. If Congress should create such a specialized court, the recommendation proposes structural approaches to increase the court's effectiveness and minimize duplication of review functions.

Recommendation 91–10, Administrative Procedures Used in Antidumping and Countervailing Duty Cases, suggests measures that can be taken to reduce the time and expense associated with these proceedings. The Department of Commerce's International Trade Administration and the International Trade Commission are urged to develop factfinding procedures that improve development of the administrative record. Specific reforms are suggested to improve the efficiency of case processing at the ITA and to encourage more collegial decisionmaking by the ITC. The Conference also recommends that Congress authorize and fund a study of possible changes in the agency structure and judicial review procedures for antidumping and countervailing duty cases.

The full texts of the recommendations are set out below. The recommendations will be transmitted to the affected agencies and, if so directed, to the Congress of the United States. The Administrative Conference has advisory powers only, and the decision on whether to implement the recommendations must be made by each body to which the various recommendations are directed.

The transcript of the Plenary Session will be available for public inspection at the Conference s offices at suite 500, 2120 L Street NW., Washington, DC.

List of Subjects in 1 CFR Part 305

Administrative practice and procedure, farmer-lender mediation, federal aviation civil penalties, specialized courts, and international trade procedures.

1 CFR part 305 is amended as follows:

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PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1. The authority citation for part 305 continues to read as follows:

Authority: 5 U.S.C. 571–576.

2. New §§ 305.91–7 through 305.91–10 are added to part 305, to read as follows:

§ 305.91–7 Implementation of Farmer-Lender Mediation by the Farmers Home Administration (Recommendation No. 91–7).

The Farmers Home Administration ("FmHA") is charged with serving as a temporary source of supervised credit and technical support to help rural Americans improve their farming enterprises, housing conditions, and other business endeavors until they are able to qualify for private sector resources. During the 1980s, an economic downturn seriously affected the agricultural sector and led FmHA, as a lender of last resort, to increase its loan portfolio. As the decline continued, FmHA and other lenders began more frequently to exercise their rights to accelerate loans and foreclose. Several midwestern states' legislatures responded to these economic (and resultant social) conditions by creating mediation programs, some of which required financial institutions to mediate prior to foreclosure if the borrower opted to do so. FmHA generally declined to participate in these programs or to restructure loans in connection with mediations.

In 1988, Congress passed the Agricultural Credit Act, a broad attempt to deal with problems related to farm debt. Among other things, the Act sought to encourage lenders to restructure loans when doing so would be in the government's interest and would help keep the farmer on the farm. The Act also provided for matching funds from FmHA for state mediation programs that were certified to meet prescribed standards. It further required FmHA to participate in such state mediation programs, and to make "a reasonable effort" to contact creditors and encourage them to take part in a restructuring plan. In carrying out this last requirement, FmHA has provided that delinquent borrowers in all states will routinely be offered a chance to participate in a voluntary meeting of creditors, chaired either by a mediator or a "designated FmHA representative," and has contracted for mediation services in many states that lacked mediation programs.

FmHA has found this venture into mediation to be cost effective. FmHA's approach to mediation pursuant to the Act has been quite diverse, however. This is due in significant part to differences among the certified state programs, but also to the diversity of approaches among the mediation providers in non-certified states, variations in local conditions, dissimilarities in the attitudes of FmHA state directors towards mediation, and varying enthusiasm of other creditors, including some federal agencies. Given the size and diversity of the farm credit program and the speed with which the Act was implemented, this is hardly surprising. On the whole, the Act's mediation provisions appear to have begun to restore frayed communications between numerous farmers and lenders, assisted many farm families to avoid crises, and avoided foreclosure in a large number of cases. Still, administering these statutory provisions has not been free of problems.

In many cases, mediation has occurred too late to produce successful outcomes. The FmHA, at present, is unable to report accurately on the numbers of mediations conducted in either the certified or noncertified states. As stated above, FmHA has sometimes had difficulty in securing satisfactory participation of non-FmHA creditors, including many that are part of the Farm Credit System, and, in some areas, agencies such as the Federal Deposit Insurance Corporation, Internal Revenue Service, Resolution Trust Corporation, and Small Business Administration. Observers have raised concerns that borrowers in FmHA's loan guarantee programs—in which it guarantees loans made by banks—may not receive timely notice of mediation's availability.

Finally, the mediators used have taken strikingly divergent views of their responsibilities and authority. These might be categorized conveniently as "broad" and "narrow." In some areas—particularly states with certified mediation programs—many mediators have taken a "broad" approach and sought to uncover the parties' real interests and develop responsive options. Thus, they have tried to lower barriers to communication and to address issues, such as off-farm employment and intra-family or interpersonal questions, important to the resolution of difficulties between the farmer and lenders. In other regions, especially some states where FmHA has contracted for mediation services, neutrals have typically taken a "narrow" approach; this emphasizes much shorter, more formulaic proceedings that focus almost exclusively on whether non-FmHA creditors will adjust their debts sufficiently to permit FmHA loan restructuring under its Debt and Loan Restructuring System computer program (DALR$). Resort to the latter approach to mediation may have been reinforced in some places by contracting procedures that emphasized low bids and by some FmHA state directors' narrow view of their mandates for restructuring under the Act. Each of these approaches has potential advantages and disadvantages and FmHA's openness to both is understandable, especially given that FmHA's resort to mediation in all but the certified states has been wholly voluntary. However, broader approaches are more likely to improve communication and assist the parties to develop diverse solutions that will meet their needs

While FmHA's implementation of the Agricultural Credit Act's farmer-lender mediation provisions has been energetic and generally effective, the Conference recommends several steps to enhance the likelihood that mediation will be used, and used successfully, in future disputes.

Recommendation

1. FmHA should take steps to remedy problems associated with the inconsistencies between the broad and narrow approaches to mediation evidenced in farmer-lender mediation by fostering a better understanding of the potential of the broad model of mediation in both certified state mediation programs and FmHA contract mediation programs. To achieve that goal, the FmHA should:

(a) Modify FmHA rules for processing delinquent loans to the extent necessary to give FmHA representatives at farmer-lender mediations greater discretion with respect to loan restructuring and providing new loans. FmHA should advise its personnel, mediators, and others involved in farmer-lender mediation that the Debt and Loan Restructuring System (DALR$) computer program should not significantly limit the purposes of mediation. FmHA also should encourage its county offices to initiate mediation proceedings at an appropriately early stage in the processing of delinquent loans.

(b) Provide additional training, including videotapes, to FmHA and other personnel who will be connected with farmer-lender mediation processes. Training should include approaches to mediation and emphasize problem-solving negotiation skills.

2. FmHA should enhance its ability to manage and improve the farmer-lender mediation program by:

(a) Ensuring that certified state mediation programs make timely, uniform submissions concerning numbers and results of mediations.

(b) Improving the system by which FmHA collects information on mediations conducted through FmHA state offices in noncertified states.

(c) Supporting research dealing with the conduct and short- and long-term outcomes of farmer-lender mediations. This research should examine economic outcomes, the extent to which mediators follow different mediation approaches in practice, and the extent to which varying approaches, as practiced, result in different kinds of outcomes, levels of participation, or levels of satisfaction among the various participants.

3. FmHA should take appropriate measures to notify parties to guaranteed (as opposed to direct) loans of the availability of farmer-lender mediation, without however revealing the borrowers' identities without their consent.

4. FmHA and the Department of Agriculture should:

(a) Continue to encourage additional states to develop farmer-lender mediation programs that can qualify to receive matching funds.

(b) Encourage full participation in farmer-lender mediation by institutions of the Farm Credit System and all appropriate agencies of the Department.

(c) Take steps to encourage the continuing development of a diverse, capable cadre of available mediators, including the use of volunteers.

5. All federal agencies that may be involved in farm credit disputes, such as the Federal Deposit Insurance Corporation, the Internal Revenue Service, the Resolution Trust Corporation, and the Small Business Administration, should consider the overall advantages of broad participation in farmer-lender mediation.

§ 305.91–8 Adjudication of Civil Penalties Under the Federal Aviation Act (Recommendation No. 91–8).

The Federal Aviation Administration is currently operating a demonstration civil penalty program under which the FAA may impose monetary penalties of up to $50,000 for violations of the Federal Aviation Act or its regulations. Under the program, the FAA prosecutes violations, proposing initial civil money penalties according to the discretion of the prosecuting FAA official. The persons on whom the penalties would be imposed, usually pilots, air carriers, mechanics, or airport operators, are entitled to an administrative hearing before an administrative law judge at the Department of Transportation, followed by the right to an administrative appeal to the administrator of the FAA. Judicial review is available in the federal courts of appeals.

Before the demonstration civil penalty program was enacted in 1987, the FAA could propose civil money penalties, but such penalties could be imposed only through a civil action brought in a United States District Court through Justice Department attorneys.

The Federal Aviation Act also provides that violations of the Act or the regulations may result in suspensions or revocations of certificates of pilots, mechanics or air carriers. These cases follow a different administrative path. While "certificate actions" begin with a prosecutorial decision made by an FAA official, exercising the right to a hearing takes the case to the National Transportation Safety Board, an independent agency. If a hearing is requested, an NTSB AL] holds the hearing, with a right to appeal to the Board. Judicial review is available in the federal courts of appeals.

In 1990, the Administrative Conference of the United States, in Recommendation 90–1, "Civil Money Penalties for Federal Aviation Violations," recommended that the FAA administrative civil money penalty program be made permanent, that the $50,000 ceiling on administratively-imposed penalties be eliminated, and that the responsibility for adjudication be studied further. In response to the Conference's Recommendation 90–1, Congress extended the program for an additional two years. In that legislation, Public Law 101–370, Congress expressly asked the Conference to study and make a recommendation on the issue of "whether the authority to adjudicate administrative complaints under the Federal Aviation Act of 1958 should remain with the Department of Transportation, should be transferred to the NTSB, or should be otherwise modified."

Discussion

Preliminarily, the Conference reiterates its previous recommendation that the civil money penalty program be made permanent and that the $50,000 ceiling on administratively-imposed penalties be removed.

The issues relating to how civil penalties should be adjudicated in the context of this program are controversial. There is no objectively correct resolution; nor do administrative law principles clearly lead to any single solution. Among the various (and not easily resolvable) concerns that arise in this context are:

—The regulated community has concerns about the fairness of FAA's administration of the civil money penalty program, resulting from the fact that appeals of civil penalty cases are heard by the FAA Administrator. The consultant's study, however, found no evidence of actual unfairness or mishandling of cases resulting from commingling prosecutorial and judging functions under the present system.

—The FAA is distinctive in its exercise of operational responsibility for the air traffic control system, which makes it a co-actor with persons or entities subject to its regulatory jurisdiction. The consultant's report noted a continuing perception that there is a conflict of interest between FAA as final adjudicator and its role as overseer of the air traffic control system.

—There is concern that cases based on similar facts being heard in two different agencies could have the potential for inconsistent standards and lead to forum shopping between the FAA civil money penalty program and the NTSB certificate revocation remedy

—The FAA Administrator, as the Secretary of Transportation's delegate, is the chief policy maker in the area of air safety, and is charged with the responsibility for the safety of the national aviation system. The Administrator therefore has a legitimate interest in having some control over a related enforcement program.

—The NTSB, in its role of recommending air safety improvements, benefits from its review of enforcement cases, as an opportunity to learn about potential safety problems in a context other than an accident investigation.

The best resolution of the controversies associated with civil penalty adjudication authority would be a consensual one, satisfying the legitimate concerns of the FAA and the reasonable needs of all of the affected interests.[1] The Conference encourages

[1] The Conference held a public hearing on Wednesday, June 19, 1991, to provide interested parties with the opportunity to present their views on these issues. 56 Fed. Reg. 22893 (May 16, 1991) (notice of Conference Committee on Adjudication public hearing). After the Conference consultant released his draft report, he convened an informal meeting with affected parties to explore the feasibility of a solution to the controversy that accommodates the reasonable needs of all of the affected interests. Participants in that meeting agreed that informal consultation was desirable and the consultant met further with representatives of the affected interests to discuss alternatives. While no overall resolution was agreed to, the willingness to seek common ground was enhanced.

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the FAA Administrator and the NTSB Chairman to convene and jointly host a conference with representatives of affected public and private interests to consider negotiating solutions for allocating adjudicatory authority over the civil money penalty and certificate revocation and suspension programs. The Administrative Conference is available to assist as appropriate. If such a mutually agreeable resolution is developed in the future, the Conference's Committee on Adjudication is available to provide comments to Congress on the proposed solution.

Because the success of an aviation safety program ultimately rests on voluntary compliance, improving the relationships among the regulated communities, public representatives and the government agencies is crucial. Representatives of the FAA and NTSB indicate that the relationship between the two agencies is a cooperative one. To further this cooperative spirit, the Conference recommends that, in addition to meeting to discuss the specific issues of allocating adjudicatory authority for the civil money penalty and certificate programs, the FAA and NTSB should encourage long-term proposals for ways to enhance compliance and enforcement of the Act, through discussions and communication with the regulated community and the traveling public.

In the absence of a consensual resolution on the issue of where adjudicatory authority for FAA enforcement cases should reside, the Conference recommends that adjudicatory authority over a small percentage of selected civil money penalty cases (those involving pilots and flight engineers) be transferred to the NTSB. This recommended solution would address several problems. It would locate both civil money penalty and certificate authority for these cases in one forum, eliminating the potential for forum shopping as to pilots and flight engineers. It would eliminate perceived conflicts of interest as to those classes of cases in which conflict is most likely between FAA employees with operational responsibility for air traffic control and persons subject to civil penalty authority (i.e., pilots and flight engineers). While the unitary enforcement (rather than the split enforcement) model is used in almost all administrative civil money penalty programs, the FAA's distinctive role in administering the air traffic control system is a sufficiently special characteristic to provide plausible justification for recommending this limited expansion of the existing split-enforcement model in this context.

This recommendation to use a split-enforcement model in this particular situation is not to be read as a general endorsement of this model for other government programs. Rather, it reflects the specific circumstances involved here, including the fact that the split-enforcement model is already in use in certificate cases, and that the FAA has a significant operational role in air traffic control that may result in potential conflicts of interest in cases involving pilots or flight engineers.

Removing pilot and flight engineer cases from the FAA also conflicts the least with comprehensive exercise of FAA safety policy authority, given the individual character of most violations involved in these cases. Conversely, retaining civil penalty authority at the FAA for nonpilot and nonengineer cases, which constitute more than 75 percent of the civil money penalty cases, presents less potential for conflict between respondent interests and the FAA's air traffic control responsibility. There is also greater likelihood that the problems exposed by civil penalty actions in air carrier, airport security and hazardous materials cases are more systemic in nature.

For those cases within the Board's authority, the Conference is making additional recommendations. First, because a split-enforcement model involves one agency ruling on the actions of another, the Act should address the issue of the appropriate level of deference that should be given in enforcement cases to the FAA's interpretations of its rules. The Conference recommends that validly adopted FAA interpretations of FAA regulations be deferred to, unless such interpretations are arbitrary, capricious or not in accordance with law. This recommendation is consistent with Recommendation 86–4, "The Split-Enforcement Model for Agency Enforcement." See also *Martin* v. *Occupational Safety and Health Review Commission*, __ U.S. __; 111 S. Ct. 1171 (1991). This does not, however, mean that NTSB should simply defer to litigation positions of the FAA prosecutor. Id. at 1179. In addition, the FAA should be given the authority to appeal to the Board from adverse NTSB decisions at the administrative law judge level and to seek judicial review in the appropriate court of appeals from decisions of the Board. The FAA is still the chief policy making agency in the area of aviation safety, and should have the ability to challenge decisions it believes are inconsistent with those policies.

The merger of sanction authority over pilots and flight engineers in one forum should provide the NTSB with increased flexibility to select the appropriate sanction from the range of available sanctions. However, such flexibility must operate within the bounds of FAA's validly adopted standards and criteria for sanctions. Such criteria may, as with all rules, be adopted through the appropriate rulemaking procedures or through adjudications.[2] In addition, a potential respondent must be on notice of the range of potential sanctions for which he or she potentially would be liable.

The Conference also encourages greater use of a variety of dispute resolution techniques in individual cases. The Administrative Dispute Resolution Act, Public Law No. 101–552, encourages agencies to use such techniques where appropriate. The growing body of alternative dispute resolution literature supports the view that efficiency gains for everyone are available from flexible means of resolving disputes. Such flexibility might be useful in a variety of contexts in civil money penalty and certificate cases. The Conference specifically recommends consideration of the utility of settlement judge procedures.[3]

Recommendation

1. Congress should make permanent the civil money penalty program for violations of the Federal Aviation Act (the Act) and eliminate the $50,000 ceiling on administratively-imposed penalties.[4]

2. The question of where adjudicatory authority over certification and civil money penalty proceedings under the Act should be placed raises complicated policy as well as legal issues. Principles of administrative law provide no single clear answer. The Federal Aviation Administration Administrator and the Chairman of the National Transportation Safety Board jointly should convene a conference with representatives of affected interests to consider possible consensual arrangements for allocating adjudicatory authority over the civil money penalty and certificate suspension and revocation programs.

[2] See SEC v. Chenery, 332 U.S. 194 (1947); NLRB v. Bell Aerospace Co., 416 U.S. 267 (1974).

[3] See Conference Recommendations 88–5, "Agency Use of Settlement Judges," 1 CFR § 305.88–5 (1991).

[4] See ACUS Recommendation 90–1, "Civil Money Penalties for Federal Aviation Safety Violations," 1 CFR § 305.90–1 (1991).

The FAA and the NTSB should also encourage long-term proposals for enhancing compliance and enforcement of the Act, and for changing the procedures to achieve the Act's objectives.

3. In the absence of consensus by the affected agencies and interests as to where the Act's certification and civil money penalty proceedings should be adjudicated, Congress should amend the Act consistent with the following recommendations:

A. Authority for adjudicating civil money penalties against pilots and flight engineers should be transferred from the FAA to the NTSB, with all other civil penalty adjudication authority remaining at the FAA. This recommendation is contingent on Congress' transfer of necessary budgetary resources for this purpose to the NTSB.

B. The Act should provide that, for purposes of review of FAA enforcement actions, courts and the NTSB should defer to validly adopted FAA interpretations of its statutes and regulations, unless it is shown that such interpretations are arbitrary, capricious, or otherwise not in accordance with the law.[5]

C. The FAA should be given the right to appeal an NTSB administrative law judge decision to the Board, and to seek judicial review of a decision of the Board in the appropriate court of appeals.

This recommendation is directed only to this specific program and the special circumstances involved, and should not be read as implying any views as to the merits, generally, of the "split enforcement" model as compared to the "unitary agency" model of adjudication in other government programs.

4. In an NTSB adjudication under the Act, the range of possible sanctions for violations of the Act should include certificate revocation, certificate suspension and/or a monetary penalty, as found by the NTSB to be appropriate and consistent with rules validly adopted by the FAA with respect to applicable standards or criteria for the imposition of sanctions. Notice of possible sanctions, as well as those proposed by the FAA in a particular enforcement matter, should be provided to the respondent upon the institution of the proceeding. The selected sanction(s) should be set forth in the ALJ's initial or recommended decision, together with the bases therefor, including a reference to any applicable FAA standard or criterion for the imposition of sanctions.

5. NTSB and FAA adjudicators, as well as FAA prosecutors, should place greater emphasis on alternative dispute resolution in individual cases. In particular, the FAA and NTSB, to the extent each has adjudicatory responsibility, should consider Recommendation 88–5, "Agency Use of Settlement Judges," and make greater use of the techniques described there.

§ 305.91–9 Specialized Review of Administrative Action (Recommendation No. 91–9).

In recent years, there has been much talk of a crisis in the federal courts. In response, Congress empaneled the Federal Courts Study Committee, charging it with responsibility to examine the problems facing the courts and to develop a long-range plan for addressing them. The Committee issued its report in April 1990, touching on many different aspects of the problem, among them those related to judicial review of administrative action.

The Federal Courts Study Committee specifically rejected a proposal to divert all administrative appeals to a specialized court within the Article III judiciary. The Committee recognized that administrative review cases do not form a major percentage of the caseload of the federal courts of appeals. Yet assigning jurisdiction to a specialized court may provide more efficient or effective review for some types of administrative cases. It, therefore, proposed diversion of some cases now in the Article III courts to other adjudicatory bodies; in particular, the Committee recommended creation of an Article I court to review Social Security disability claims and perhaps, eventually, other administrative benefit claims.

Finding the optimal structure for review of administrative cases involves a complex balancing of various factors: the need for uniform law versus the benefits of "percolation" in the decentralized circuits; the value of expert decisionmakers versus the broader perspective of generalists; the efficiency of specialization versus the risk of bias that specialization entails. And the calculation can vary in the context of different administrative programs, which differ in the volume, complexity, and level of technical content of the caseloads they generate. For these reasons, the Conference, like the Federal Courts Study Committee, opposes allocating review of all administrative cases to a single specialized court, whether inside or outside the Article III system.

Should Congress consider the creation of specialized courts for review of particular administrative programs, this recommendation sets forth criteria for Congress to take into account in determining when to create specialized courts and how to structure them to enhance their effectiveness. Certain characteristics held in common by many federal regulatory and benefit programs raise particular problems within the existing system of judicial review. Uniformity in decisionmaking can be especially important in the context of administrative action under national programs. The agencies themselves are structured hierarchically, so as to speak with a single voice in applying law and policy to individual circumstances. But the federal court system that reviews these agency programs is decentralized, and different circuits often reach different outcomes on the same issue. The Supreme Court's capacity to resolve these conflicts is severely limited by the modest number of administrative law cases it considers each year. As a result, agencies often face the choice of refusing to acquiesce in decisions below the Supreme Court level, abandoning policy positions they believe to be correct, or implementing programs differently in different regions (and, consequently, treating similarly situated individuals or entities differently and encouraging forum shopping).

Another special aspect shared by some federal regulatory programs is that they involve complex technical or scientific issues, which may present great challenges to reviewing courts without special expertise in the relevant areas. Cases on review of agency rulemaking and ratemaking actions, in particular, frequently involve lengthy administrative records filled with conflicting material on technical issues of fact and policy; the judges must devote extra time to poring over these records and to producing the longer opinions these cases often engender.

Other federal programs (such as individual benefit programs) produce masses of litigation involving primarily questions of specific fact. Resolution of these issues may be an inefficient allocation of the time of the federal courts.

While review by specialized courts may offer a solution for these problems, specialization brings dangers as well. One premise of the national system of courts of general jurisdiction is that sound decisionmaking results from exposure to a wide range of problems and issues; adjudicative bodies with

[5] See ACUS Recommendation 86–4, "The Split-Enforcement Model for Agency Enforcement," 1 CFR 305.86–4 (1991). See also Martin v. OSHRC, __ U.S. __, 111 S. Ct. 1171 (1991). This Recommendation should not be read to suggest that deference should automatically be given to FAA prosecutors litigation positions. Id. at 1179.

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limited subject matter jurisdiction may lack this generalist perspective. Specialization can also produce bias problems of two kinds: the appointments process may be distorted as interest group pressures lead to the selection and confirmation of nominees for their views on specific issues; in addition, the standard of review may be distorted, either because expertise leads the court to substitute its judgment for that of the agency or because familiarity with a particular agency leads the court to accept the agency's positions too readily. Public perception that a court is biased can reduce its effectiveness even when actual bias is not present. Finally, a specialized court may suffer reduced prestige if its repetitive subject matter attracts lower caliber judges.

The recommendations that follow offer guidance to Congress on the considerations it should take into account when it deliberates about whether to assign responsibility for review to a specialized court; they should be read as a whole. Thus, for example, the criteria in recommendation 2 may suggest assignment of Social Security disability cases to a specialized court; if Congress considers such an approach, however, it should take into account recommendations 3(B) and 3(C), favoring a balanced docket and a jurisdictional mix. These recommendations are intended to complement Conference Recommendation 75–3, "The Choice of Forum for Judicial Review of Administrative Action," 1 CFR 305.75–3 (1990), which the Conference continues to believe should form the foundation for decisionmaking about the appropriate forum for judicial review of administrative action within the Article III courts.

Recommendation

1. When considering proposals for the creation of a specialized court or courts to review administrative action, Congress should take into account that federal agency programs vary greatly in the volume, complexity, and level of technical content of the caseloads they generate, and, thus, any solutions adopted should be designed to fit the specific administrative programs to which they will apply. For these reasons, among others, the Conference opposes the creation or designation of a single specialized court, either within the Article III judiciary or under Article I, to handle review of all administrative cases.

2. Congress should recognize that it is appropriate to create specialized courts for particular administrative programs only if such programs are characterized by the following:

A. A program area in which one might reasonably expect a consistently large volume of cases, diversion of which might significantly alleviate burdens on the generalist federal courts;

B. The predominance of factual issues specific to particular cases, or the predominance of scientific or other technical issues requiring special expertise of decisionmakers; and

C. The particular importance of uniformity in agency administration of a program.

3. If Congress creates specialized courts to review particular administrative programs, it should, to the extent possible, structure the courts as follows:

A. To minimize jurisdictional uncertainty, the subject matter before the courts should be segregable from other claims.

B. To ensure that the courts maintain a balanced perspective on the issues before them, the courts' dockets should be designed to expose judges to all sides of pertinent controversies and to the broadest possible scope of related issues within a field of law.

C. To encourage generalist judicial appointments, to minimize distortion of the standard of review resulting from loss of the generalist perspective, and to avoid the fact or appearance of capture by special interests, the courts' subject matter jurisdiction should be diverse.

If the court provides the final stage of judicial review before Supreme Court review, satisfaction of criterion C is essential.

4. If Congress creates specialized courts to review particular administrative programs, it should provide for periodic evaluation of those courts to determine whether there is a continuing need for specialized review.

5. In any legislation providing for specialized review of particular administrative programs, Congress should assign to each court or reviewing body the type of functions it is best suited to perform and should minimize duplication of review functions. In particular, any such legislation should:

A. Avoid *de novo* review of factual issues already subject to formal adjudication at the agency.

B. Make the decisions of specialized courts final on review of questions of fact specific to the case (including the sufficiency of the evidence in that case by whatever standard it is reviewed).

C. When review has been assigned to an Article I specialized court, provide a subsequent layer of judicial review by an Article III court for questions of constitutional or statutory interpretation.

§ 305.91–10 Administrative Procedures Used in Antidumping and Countervailing Duty Cases (Recommendation No. 91–10).

This recommendation discusses several possible reforms of the administrative procedures used in U.S. antidumping (AD) and countervailing duty (CVD) cases. These cases usually arise when a petition is filed on behalf of a U.S. industry by one of several statutorily specified interested parties asking the U.S. Government to impose special duties to offset dumping or subsidization. The Government itself can also initiate cases.

Dumping occurs when foreign companies export goods to the United States for sale at less than their "fair value." Fair value is generally based on the exporter's prices for such goods in its home (or a third country) market or on its cost of producing the goods (including a profit margin). AD duties are imposed to offset the margin of dumping (i.e., the difference between the foreign market value and the U.S. price) if the U.S. industry producing like goods has suffered or is threatened with material injury by reason of the dumped imports, or if the establishment of a U.S. industry producing such goods has been materially retarded.

Countervailing duties may be imposed on goods exported to the United States that benefit from certain types of subsidies granted by a foreign government. In most CVD cases, duties may be imposed only if the U.S. industry producing like goods has suffered or is threatened with material injury by reason of the dumped imports, or if the establishment of a U.S. industry producing such goods has been materially retarded.

The decision whether dumping or subsidization has occurred is made by the International Trade Administration (ITA) of the Department of Commerce; the decision on injury is made by the U.S. International Trade Commission (ITC). These administrative decisions are subject to review, in the first instance, in the Court of International Trade, and then in the Court of Appeals for the Federal Circuit. In the case of Canadian exports, the decisions may be "appealed" instead to a binational panel established under the U.S.-Canada Free Trade Agreement.

In recent years, the use by the United States and other countries of AD and CVD laws has been controversial. While many of the complaints about these laws are essentially about their substantive provisions, a number of the

complaints concern procedural matters. In particular, some critics have contended that the high cost of defending these cases, which are often quite complex proceedings involving the collection and analysis of vast amounts of data and which often continue for years, amounts to a new form of protectionism—process or procedural protectionism. At the same time, U.S. domestic producers complain that the great expense of invoking these laws virtually precludes their use by some petitioners deserving of relief.

The two concerns that seem to be foremost in the minds of trade law practitioners are reducing the time and expense associated with AD and CVD proceedings and improving the decisionmaking process under the relevant statutes. The Conference notes, at the outset, that the complex procedures for AD and CVD cases, involving a division of responsibilities between two agencies with appeals to a specialized court and then to a federal court of appeals, may contribute to the time and expense associated with these proceedings. The Conference recommends in Part A that Congress authorize and fund a study of the agency structures and judicial review for AD and CVD cases. Recommendations B, C and D are intended to address problems arising under the current structure.[1]

The ITA and ITC both view AD/CVD proceedings as investigative rather than adjudicatory. Nonetheless, given the conflicting positions of the parties before the agencies—the domestic industry versus the foreign exporters—and their role in supplying much of the information on which the agency decisions are based, the parties do and should play an important part in the process. That part could be made more useful if hearings at which the factual submissions of the two sides are tested could be conducted more effectively than at present.

In the case of the ITA, the hearing officer typically does not participate in the hearing or engage in interchanges with counsel. The ITA hearing process would be improved if the hearing officer were more knowledgeable about the contested issues and participated more actively in interchanges with counsel than is presently the case.

In the case of the ITC, hearing times for cases are standardized and somewhat inflexible, even though cases vary widely in complexity and number of parties, with the result that in some cases parties have only a few minutes for oral presentations. Testing of factual information at the hearing is limited by practices that discourage cross-examination of witnesses. The ITC hearing process would be improved if, in setting the times for oral presentations, the ITC took into account factors such as the complexity of the case and the number of parties involved. The ITC should also allow reasonable time for cross-examination without subtracting such time from the questioner's time for affirmative presentation.

Several changes could be made to simplify ITA administrative procedures and reduce somewhat the time and expense associated with AD/CVD cases. First, preparing the administrative record more promptly would speed up the appeals of cases. Second, streamlining and standardizing the ITA's procedures for handling routine requests for access to information would reduce the amount of time spent by the parties in preparing such requests, thereby reducing costs. The ITA should also strive to reduce parties' costs by reducing where possible the number of copies of documents required to be filed.

Third, the ITA now sometimes decides to reject a party's factual submissions or to change significantly its methodology for calculating dumping/subsidy margins without notice to the parties. It would be desirable for the ITA to notify the parties when it makes such a decision, so that the parties will not continue to prepare their cases on the assumption that the agency has not taken such actions. Implementation of this recommendation would allow parties to argue their positions more effectively and avoid wasted effort. This recommendation is not intended to suggest that the ITA does not have the right to reject a party's evidentiary submissions, or that a party should have any new rights to more time to comply with ITA information requests or to object to methodology changes. The ITA should also consider whether there are methods within the statutory time constraints to permit parties to comment in response to substantial changes in methodology.

Fourth, at present there are a number of inconsistencies between the way that the ITA's investigations office (which handles the initial investigation to determine whether a AD/CVD order should be issued) and the ITA's compliance office (which reviews shipments made after the issuance of an AD/CVD order to assess the amount of duties owing) handle certain issues. The ITA ought to eliminate those inconsistencies for which there is no justification.

Fifth, under U.S. law the actual amount of AD/CVD duties owed is usually determined after the fact. Exporters deposit an estimated duty when goods are imported into the United States, and that amount may be adjusted upwards or downwards as a result of an annual review, if requested. (If not requested by anyone, the estimated duties are considered to have been collected as the final duties.) The ITA has traditionally had a large backlog of annual reviews, although the backlog has been reduced in recent years, and reduced substantially in recent months. The delay in finally determining duties owed is unnecessarily disruptive to trade flows and unfair to the parties to such cases. Accordingly, the ITA should continue its efforts to eliminate its backlog of annual reviews.

The Commissioners of the ITC apparently do not normally meet as a group to discuss their views of a case before their formal deliberations, evidently because of concerns stemming from the Government in the Sunshine Act. It appears that the Commission's reluctance to meet as a group adversely affects the ITC decisionmaking process. The Commission's general counsel has taken the position that its meetings to dispose of AD/CVD cases are not within the terms of exemption 10 of the Act, which exempts meetings involving determinations "on the record after opportunity for a hearing." Some practitioners, however, believe that exemption 10 applies, and the Commission should decide whether such meetings do or should come within the ambit of exemption 10. If the Commission concludes that the meetings in question are not in fact exempted from the Sunshine Act, then Congress should consider exempting such

[1] In 1973, the Administrative Conference recommended a number of reforms in the then existing procedures for administering AD cases. See Conference Recommendation 73–4, Administration of the Antidumping Law by the Department of the Treasury, 38 FR 4846 (1974). In 1984, it recommended reform of one narrow aspect of AD and CVD procedures—the availability of confidential information under protective order in ITC proceedings. See Conference Recommendation 84–6, Disclosure of Confidential Information Under Protective Order in International Trade Commission Proceedings, 1 CFR 305.84–6 (1991).

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meetings for AD/CVD cases from the Act. As an interim measure for achieving the benefits of collegial decisionmaking, the ITC should take steps to exchange drafts, views and other information among the commissioners before entering into formal deliberations.

Recommendation

A. Congressional Study

The Congress should authorize and fund a study, by the Administrative Conference or another appropriate agency, of the agency structures for handling AD/CVD cases. The study should address whether responsibility for these cases should continue to be divided between the ITA and the ITC. It should also consider whether the usual procedure for judicial review of agency adjudications should be followed for AD/CVD cases by providing for direct appeals from the ITA and/or ITC to the Court of Appeals for the Federal Circuit, or whether the additional level of specialized court review at the Court of International Trade is required in these cases.[2]

B. Improved Agency Factfinding Procedures

The ITA and the ITC should develop factfinding procedures that improve development of the administrative record, with increased opportunities for the parties and decisionmakers to test the factual submissions made in the proceedings.

1. ITA Procedures

To accomplish this goal, the hearing conducted by the ITA at the end of its investigation should be presided over by a senior official, with adequate staff support, who is knowledgeable about the contested issues in the proceeding and who actively participates in interchanges with counsel for the parties. Where appropriate, the hearing officer should make a recommendation with regard to the issues raised in the hearing.

2. ITC Procedures

To accomplish this goal, the ITC should provide adequate time for oral presentations, taking into account factors, such as multiple parties or countries under investigation, that may justify more time than normally allowed. The ITC should allow reasonable time for cross-examination in appropriate cases without reducing the cross-examiner's time for affirmative presentation at the hearing.

C. ITA Administrative Reforms

To improve the efficiency of case processing, the ITA should adopt the following reforms:

1. To speed judicial review, the ITA should complete the record in individual cases and make that record available to parties promptly.

2. The ITA should streamline its handling of applications for release of information under administrative protective orders and of requests for access to computerized information. It should also require that only a reasonable number of copies of documents be submitted by parties.

3. The ITA should give notice to parties before it (a) rejects portions of parties' evidentiary submissions or (b) adopts significant changes in methodology on which the parties have not had an opportunity to comment. The ITA should also consider whether there are techniques within the statutory time constraints to permit parties to comment in response to substantial changes in methodology.

4. The ITA should eliminate unjustified inconsistencies in the practices and policies of its investigations and compliance offices.

5. The ITA should continue its efforts to eliminate its backlog of annual reviews of the actual duties owed by specific companies subject to AD/CVD orders.

D. The ITC and the Government in the Sunshine Act

To encourage collegial decisionmaking, the ITC should exchange drafts, views and other information before entering into formal deliberations. The Commission should decide whether informal meetings to discuss the disposition of AD/CVD cases constitute meetings exempt from the Sunshine Act under exemption 10. If the Commission determines that such meetings are subject to the Sunshine Act, then Congress should consider amending the Tariff Act to provide that the Sunshine Act does not apply to informal meetings held to discuss the disposition of AD/CVD cases.

Dated: December 24, 1991.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 91-31124 Filed 12-27-91, 8:45 am]

BILLING CODE 6110-01-M

[2] The Administrative Conference has generally recommended that appeals from administrative agencies should be to the courts of appeals. See Conference Recommendation 75-3, The Choice of Forum for Judicial Review of Administrative Action, 1 CFR 305.75-3 (1991).

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 947

[Docket No. FV-91-401]

Potatoes Grown in Oregon-California; Revision in Pack and Safeguard Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule the provisions of an interim final rule (without change) revising the pack requirements established for potatoes packed in 50-pound cartons to conform to recent changes in the U.S. Standards for Grades of Potatoes (Standards) and eliminating reporting requirements for potatoes shipped between districts within the production area for grading or storage. These changes will promote consistency in potato packing practices and should reduce handling costs.

EFFECTIVE DATE: January 29, 1992.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone (202) 720-3610.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 113 and Order No. 947, both as amended (7 CFR part 947), regulating the handling of potatoes grown in Oregon and California. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Oregon-California potatoes subject to regulation under the marketing order and approximately 470 producers in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the Oregon-California producers and handlers may be classified as small entities.

The handling requirements for fresh Oregon-California potatoes are specified in 7 CFR 947.340 (53 FR 2996, February 3, 1988, as amended at 53 FR 49114, December 6, 1988, and 54 FR 46718, November 7, 1989). Current requirements include a minimum grade of U.S. No. 1 for potatoes packed in 50-pound cartons and U.S. No. 2 for potatoes in other containers. Potatoes shipped to points within the continental United States are required to be at least 2 inches in diameter or 4 ounces in weight, and potatoes shipped to export destinations must be at least 1⅛ inches in diameter. Red-skinned potatoes may be shipped without regard to a minimum size requirements if they otherwise grade at least U.S. No. 1. Non-red-skinned potatoes that are 1⅛ inches or less in diameter may be shipped if they grade at least U.S. No. 1, and are packed in containers of at least 50 pounds. Also included in the handling regulation are safeguard procedures for potatoes shipped to authorized exempt outlets, which are not required to meet the established quality and size requirements.

An interim final rule was issued on October 25, 1991, and was published in the **Federal Register** on October 31, 1991 [56 FR 55984]. The rule revised the pack requirements established for potatoes packed in 50-pound cartons and eliminated reporting requirements for potatoes shipped between districts within the production area for grading or storage. The interim rule provided that interested persons could file written comments through December 2, 1991. No comments were filed.

At a meeting held on June 13, 1991, the Oregon-California Potato Committee (committee), the agency responsible for local administration of the marketing order, unanimously recommended changes in the existing pack and safeguard requirements.

Potatoes packed in 50-pound cartons are required to grade at least U.S. No. 1, except that an additional tolerance is provided for hollow heart and internal discoloration.

Effective March 27, 1991, the United States Standards for Grades of Potatoes (7 CFR 51.1540-1566; 56 FR 7553, February 25, 1991) were revised to change the method for scoring hollow heart and internal discoloration. The Standards were revised to provide that hollow heart and certain other internal defects be scored based on specific diameter measurements rather than a method which scored these defects if they affected the appearance of the potato. For example, a potato was previously defined as damaged from hollow heart if the defect materially detracted from the internal appearance of the potato. Now hollow heart damage exists if the area affected is equal to or less than that of a circle ½ inch in diameter on a 6 ounce potato, with correspondingly greater or lesser amounts permitted on larger or smaller potatoes.

Under the previous Standards, photographs were used by inspectors as a guide to determine the extent of damage due to hollow heart and hollow heart discoloration. The marketing order regulation referenced these photographs. However, pursuant to the March 27, 1991, revision to the Standards, hollow heart and/or discoloration are scored based upon diameter. The committee therefore recommended deleting references to these photographs in the regulations. Although the method of scoring these defects has changed, the tolerance permitted under the handling regulation remains the same.

The committee believes that revising the method of scoring hollow heart and discoloration permitted under the handling regulation to conform to the revised Standards will promote more uniform trading practices in the potato industry and improve the consistency of inspection. Therefore, to assure that Oregon-California potatoes are packed and sold on the same basis as potatoes produced in other producing areas, it is necessary to amend the Oregon-California potato handling regulation accordingly.

The committee also unanimously recommended revising the safeguard requirements that apply to potatoes shipped to certain outlets free from grade, size, and inspection requirements. Before the interim final rule went into effect on October 31, handlers who wished to ship their potatoes to other districts within the production area for grading or storage had to apply for a Certificate of Privilege and report all such shipments on Special Purpose Shipment Report forms.

These safeguard requirements did not apply to shipments of potatoes between Districts 2 and 4. District 2 consists of four counties in southern Oregon, and District 4 is comprised of the two northern California counties included in the production area. Historically, movement of potatoes between these two adjacent districts for grading and storage has been common, while such movement between other districts has been limited. Recently, however, there has been increasing handler interest in packing potatoes grown in a district other than that in which the handler is located. Packing potatoes grown in other districts provides handlers with more flexibility in terms of varieties available and the timing of supplies.

The committee reports that allowing shipments between Districts 2 and 4 without regard to the safeguard requirements has been successful, in that shipments of ungraded or substandard potatoes have not been diverted to fresh market channels. Additionally, similar marketing order programs (e.g., that covering potatoes grown in the State of Washington) have operated effectively without regulating the movement of potatoes within the production area for purposes of grading or storage. The committee has therefore concluded that eliminating these safeguard provisions will not adversely affect program operations. Eliminating these requirements should reduce handling costs by eliminating unnecessary reporting requirements.

A conforming change is being made in § 947.132 "Reports" to eliminate reporting requirements pertaining to shipments for grading or storage.

The committee believes this action to eliminate safeguard requirements will result in reduced handler costs and more equitable treatment of handlers throughout the production area. It will also eliminate reporting requirements that are no longer necessary, while maintaining the quality of potatoes shipped to fresh market outlets.

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection requirements contained in this final rule were approved by the Office of Management and Budget (OMB), and have been assigned OMB No. 0581-0112.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

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After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 947 is hereby amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR part 947 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Note: These sections will appear in the Code of Federal Regulations.

For the reasons set forth in the preamble, the interim final rule amending 7 CFR part 947 which was published at 56 FR 55984 on October 31, 1991, is adopted as a final rule without change.

Dated: December 23, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–31037 Filed 12–27–91; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 971

[Docket No. FV–91–424]

Suspension of Container, Pack, Packing Holiday, Inspection and Certain Reporting Requirements Under Marketing Order No. 971 for Lettuce Grown in Lower Rio Grande Valley in South Texas

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule the provisions of an interim final rule (without change) which suspends for the 1991–92 season the container, pack, packing holiday, inspection, and certain reporting requirements currently in effect under Federal Marketing Order No. 971, regulating the handling of lettuce grown in South Texas. It has been determined that these regulations are not necessary during the upcoming season because it is anticipated that there will be only one person producing and handling South Texas lettuce.

EFFECTIVE DATE: January 29, 1992 through October 31, 1992.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 690–4244.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 144 and Order No. 971 (7 CFR part 971), regulating the handling of lettuce grown in the Lower Rio Grande Valley in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this section on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. Last season, there were 11 handlers and 20 producers of South Texas lettuce, and the majority could be classified as small entities. It is anticipated that there will be only one entity producing and marketing lettuce in the production area during the 1991–92 season.

An interim final rule was issued on October 25, 1991, and was published in the **Federal Register** on October 31, 1991 (56 FR 55986). The rule suspended for the 1991–92 season the container, pack, packing holiday, inspection, and certain reporting requirements currently in effect under the order. The interim rule provided that interested persons could file written comments through December 2, 1991. No comments were filed.

The South Texas Lettuce Committee (committee), the agency responsible for local administration of the order, met on May 29, 1991, and unanimously recommended that the handling regulations currently in effect under the marketing order be suspended for the 1991–92 lettuce season. These regulations, in effect from November 15 each year through the following March 31, specify the dimensions of the containers that may be used in shipping lettuce and the number of heads of lettuce that may be packed per container. Lettuce is required to be inspected, and no person may package lettuce on any Sunday or on Christmas Day. Certain reporting requirements are necessary for handlers who ship lettuce for relief, charity and experimental purposes.

The committee's recommendation to suspend these handling requirements for the upcoming season was based largely on the fact that there is only one entity expected to produce and handle lettuce this year. The regulations have therefore been deemed to be unnecessary.

Marketing Order No. 971 has been in effect since 1960. The order includes authority to specify the grade, size, quality, and quantity of lettuce which may be shipped during any period, as well as packing holiday, pack, container, inspection, and reporting requirements. Briefly used, the quantity restrictions were found to be impractical. Quality requirements were imposed until 1971, but such requirements were frequently found to be difficult to meet because of the variable weather in the production area. Since 1971, only packing holiday, pack container, and inspection authorities have been used.

The order was initially implemented to provide the industry with a means of dealing with volatility in South Texas lettuce prices due to fluctuations in the quality and quantity of lettuce marketed. Each year, the amount of lettuce acreage planted reflected prices received in the preceding season, so that high season-average prices resulted in increased plantings the following season. The marketing order, with its quality and volume control provisions, was looked upon as a mechanism to help producers and handlers manage supply and to maintain industry grade acceptance by improving quality.

Since the order became effective, South Texas lettuce production has declined. While shipment levels and the number of producers and handlers have fluctuated, there has been a downward trend in all three. During the first year the South Texas lettuce marketing order was in effect, there were 31 handlers and 68 producers who produced 1,793,500 cartons of lettuce from 6,842 acres. During the 1990–91 marketing season, there were 11 handlers and 20 producers who produced 90,427 cartons of lettuce from 2,625 acres. It is expected that there will only be one lettuce producer and handler this season. In addition, market share for South Texas lettuce has declined when compared to other lettuce producing areas, mainly California and Arizona.

Section 971.52(d) of the marketing order provides that regulations issued under the order may be suspended whenever such action is warranted upon recommendation of the committee or other available information. In view of the above information, particularly the fact that there will only be a single lettuce producer and handler, it has been determined that the pack, packing holiday, container, and inspection requirements established for South Texas lettuce are not necessary during the 1991–92 season.

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection requirements under the marketing order and the applicable handling regulation have been approved by the Office of Management and Budget. The handling regulation, under special purpose shipments, provides that handlers shipping lettuce for relief, charity, and experimental purposes are exempt from assessment, container, pack, and inspection requirements if such handler presents a Certificate of Privilege. Each handler of lettuce shipping under a Certificate of Privilege must supply the committee with reports, as requested by the committee, showing the name and address of the shipper, car or truck identification, loading point, destination, or any other information deemed necessary by the committee. Since this rule suspends container, pack, and inspection requirements currently in effect for shipments of South Texas lettuce for the 1991–92 season, it has been determined that the reporting requirements under the handling regulation applicable to special purpose shipments are also not necessary during the 1991–92 season.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that the rule, as hereinafter set forth, will tend to be effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 971

Lettuce, Marketing agreements, Reporting and recordkeeping requirements.

PART 971—LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

1. The authority citation for 7 CFR part 971 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Note: These sections will appear in the Code of Federal Regulations.

For the reasons set forth in the preamble, the interim final rule amending 7 CFR part 971 which was published at 56 FR 55986 on October 31, 1991, is adopted as a final rule without change.

Dated: December 23, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–31036 Filed 12–27–91; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 989

[FV–91–428FR]

Raisins Produced From Grapes Grown in California; Revision of the Substandard Dockage System for All Varietal Types of Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is adopting without modification, as a final rule the provisions of an interim final rule which eliminated for a period of one year the upper limit for substandard raisins in lots of raisins of all varietal types under the marketing order covering raisins produced from grapes grown in California. This action is needed because a relatively high percentage of the 1991–92 crop would not have met the previously established upper limit for the amount of substandard raisins allowed in lots of standard raisins. This revision was unanimously recommended by the Raisin Administrative Committee (RAC), which is responsible for local administration of the order. The purpose of this action is to reduce the number of lots of raisins returned by handlers to producers or reconditioned by handlers at the producers' expense.

EFFECTIVE DATE: January 29, 1992.

FOR FURTHER INFORMATION CONTACT: E. Richard Lower, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2861.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture under Executive Order 12291 and Departmental Regulation No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 23 handlers who are subject to regulation under the raisin marketing order and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A majority of raisin producers and a minority of raisin handlers may be classified as small entities.

This final rule adopts, without change, the provisions of an interim final rule that revised a portion of the supplementary regulations of the raisin marketing order. This action was

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unanimously recommended by the RAC at its August 15, 1991, meeting.

Prior to the interim final rule becoming effective, the marketing order regulations provided that handlers could acquire under an agreement with a producer, any lot of natural (sun-dried) seedless, golden seedless, dipped seedless, oleate and related seedless, Monukka, and other seedless raisins which contained from 5.1 percent to 10.0 percent, by weight, of substandard raisins under a weight dockage system. A handler could also acquire, subject to prior agreement, standard raisins of any lot of Muscat (including other raisins with seeds), Sultana, and Zante currant raisins containing from 12.1 percent to 17.0 percent, by weight, of substandard raisins under a weight dockage system. The creditable weight of each lot of raisins acquired by handlers under the substandard dockage system was obtained by multiplying the applicable net weight of the lot of raisins by the applicable dockage factors in the dockage tables in § 989.212. These factors reduced the weight of the raisin lots by an amount approximating the weight of the raisins needed to be removed in order for the remainder of the lot to meet minimum grade requirements. The weight determined in this manner represented the creditable weight of the raisins which was used as the basis for payments to producers by handlers. Those raisins that failed to meet the established substandard tolerance levels (10 percent or 17 percent, depending on the varietal type) were returned to the producer or reconditioned by the handler (at the producer's expense) to bring the lot up to acceptable quality standards.

The substandard dockage system was established in 1985 to encourage producers to deliver high quality raisins to handlers for processing. This season, however, extreme weather conditions seriously affected the quality of the crop, and the RAC predicted that a relatively high percentage of the 1991–92 crop would not meet the upper limit (10 percent or 17 percent, depending on the varietal type) for the amount of substandard raisins permitted in lots of standard raisins. Normally, approximately 2 to 6 percent of a crop is substandard. This season, the RAC estimated that the amount of substandard raisins would average about 14.5 percent of the crop. Therefore, the RAC recommended that, for the 1991–92 crop year only, a handler may acquire, under an agreement with a producer, lots of raisins containing more than 10 percent or 17 percent, depending on the varietal type, substandard raisins. Rather than return those lots to the producer, the handler will apply the weight dockage factors contained in § 989.212 (described above) to such lots of raisins.

For producers and handlers electing to use the relaxed upper limit for substandard raisins, the burden of removing substandard fruit is shifted from the producer to the handler. However, handlers can more efficiently and economically manage the situation since they already have equipment which is designed to remove substandard fruit. This action also eliminates the cost to producers for hauling such lots from the handlers' premises, for reconditioning, for returning such reconditioned lots to handlers, and for reinspection of the lots.

It is expected that this action will facilitate the delivery and handling of the 1991–92 crop and minimize the additional handling expenses caused by the lower quality of this year's crop for both producers and handlers, particularly for small producers. Producers will be able to deliver their 1991–92 crop raisins to the handlers, and the handlers can receive them and remove the excess substandard fruit during normal pre-grading or processing.

An interim final rule on this action was published in the **Federal Register** on October 10, 1991 (56 FR 51150). That rule provided that interested persons could file written comments through November 12, 1991. No comments were received.

Based on the above information, the Administrator of the AMS has determined that issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, including the Committee's recommendations, and other information, it is found that this action, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

California, Grapes, Marketing agreements and orders, Raisins.

For the reasons set forth in the preamble, 7 CFR part 989 is amended to read as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Subpart—Supplementary Regulations

2. Accordingly, the interim final rule revising § 989.212, which was published at 56 FR 51151 on October 10, 1991, is adopted as a final rule without change.

Dated: December 23, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–31035 Filed 12–27–91; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1945

Implementation of the Provisions of the Dire Supplemental Appropriations Act (Pub. L. 102–229)

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to provide special disaster assistance to eligible farmers and ranchers who sustained severe production losses in 1990 or 1991 as a result of natural disasters. This action is necessary to implement the provisions of the Dire Supplemental Appropriations Act, (Pub. L. 102–229), dated December 12, 1991. The intended effect is to incorporate the law into existing FmHA regulations.

DATES: Interim rule effective December 30, 1991. Written comments must be submitted on or before January 29, 1992.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Anslysis and Control Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mary Ferguson, Loan Specialist, Farmer Programs Loan Making Division, Farmers Home Administration, USDA, South Building, 14th Street and Independence Avenue SW., Washington, DC 20250, telephone (202) 690–4018.

SUPPLEMENTARY INFORMATION:

Classification

This action was reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor because it will not result in an annual effect on the economy of $100 million or more. The language in the Supplemental Appropriations Bill relating to the waiver of crop insurance is similar to such language in the Disaster Assistance Act of 1989, (Pub. L. 101–82) and the Food, Agriculture, Conservation and Trade Act of 1990 (FACT Act) (Pub. L. 101–624). In Fiscal Year (FY) 1988, 554 Emergency (EM) loans were made, totaling approximately $30 million. As a prerequisite to obtaining a loan, however, applicants were required to show that the damaged 1987 crop was insured, or was not eligible for crop insurance at the beginning of the 1988 crop year. In FY 1989, 2,806 EM loans were made for a total of approximately $73 million. In FY 1990, 2,609 EM loans were made for a total of approximately $102 million. In FY 1991, 1,181 loans were made for a total of approximately $82 million. The crop insurance requirement was waived for losses to the 1988 and 1989 crops by the Disaster Assistance Acts of 1988, (Pub. L. 100–387) and 1989, the FACT Act, as amended, waived the requirement for losses to the 1990 crop and the Dire Supplemental Appropriations Act waives it again for 1991 crop losses. Had there been no waiver during 1990 and 1991, some EM loans still would have been made as evidenced by loans made in 1988. As a result of this waiver for 1991 crop losses, we do not anticipate an annual effect on the economy of $100 million or more.

Intergovernmental Consultation

For the reasons set forth in the final rule related to Notice, 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Discussion of Interim Rule

FmHA is implementing this interim rule immediately with a 30-day comment period. The Dire Supplemental Appropriations Act dated December 12, 1991, amended FmHA's statutory loan making authorities. It is necessary to implement these authorities upon publication to provide immediate assistance to farmers and ranchers who have suffered major crop production losses as a result of natural disasters in 1990 and 1991.

Farmers who have suffered severe production losses are in dire need of disaster program assistance to purchase livestock feed for replacement of feed crops lost as a result of the disaster(s), and to repay creditors and suppliers annual production loans, open supplier accounts, and installments due on intermediate and long term debts.

The Act mandates changes in the emergency loan regulations. These changes ease the requirements for obtaining assistance under this program, as did previous changes made as a result of the Disaster Assistance Acts of 1988 and 1989 and the FACT Act of 1990. By implementing these regulations immediately, assistance can be provided to many needy farmers and ranchers who, without this assistance, would be in danger of losing their operations.

Background

The loan making, supervision and servicing of FmHA borrowers is governed primarily by the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1921 et seq.). Specifically, 7 U.S.C. 1961(b) makes applicants for EM loans ineligible if crop insurance was available, but not obtained, for crops lost in the disaster. The purpose for revising the FmHA regulations at this time is to implement various provisions of the Supplemental Appropriations Act as it applies to EM loans. In particular, Title I, Chapter III of the Act states, in part, that EM loans "made with respect to damage to an annual crop planted for harvest in 1991 * * * shall be made available without regard to the purchase of crop insurance * * *."

Due to the urgent need of financial assistance for many farmers and ranchers, FmHA has expedited the implementation of these changes.

Changes

The existing Emergency (EM) loan regulations state that applicants will not be eligible for EM loans to cover damages and losses to any crop(s) harvested after December 31, 1986, which was not insured, but could have been insured with Federal Crop Insurance Corporation (FCIC) crop insurance or multi-peril crop insurance, unless the crop(s) could not be planted due to the declared/designated/authorized disaster(s). The FACT Act of 1990 suspended this requirement for farmers and ranchers who suffered severe crop production losses due to drought and other natural disasters in 1990 and who otherwise qualified for emergency loan assistance due to crop production losses in 1990. The Supplemental Appropriations Bill again suspends this requirement for crop production losses in 1991. These statutes waive this requirement only for crops planted for harvest in 1990 and 1991.

The above-referenced statutes provide for the waiver of crop insurance for the 1990 and 1991 crop year. However, it is administratively required that eligible applicants must agree to purchase multi-peril crop insurance for the 1992 crop or commodity which suffered disaster losses due to natural disasters in 1991 and for which the EM loan is sought. However, if any of the following conditions exist, applicants will not be required to obtain crop insurance for their 1992 crop:

(1) Crop insurance is not available for the crop for which the loan is sought.

(2) The applicant's annual premium rate for the crop insurance will be more than 25 percent greater than the average premium rate charged for insurance on the 1990 crop in the county where the applicant's farming operation is located.

(3) The annual premium for such crop insurance is greater than 25 percent of the amount of the EM loan sought.

(4) The applicant's 1990 or 1991 production loss, with respect to the crop(s)/commodity(ies) for which the EM loan is made, does not exceed 65 percent.

(5) The applicant can establish, by appeal to the FmHA County Committee, that the purchase of crop insurance would impose an undue financial hardship, and that a waiver of the requirement to obtain crop insurance should be granted by the County Committee.

The crop insurance requirement on the 1992 crop and the existence of any of the conditions to waive it were mandated by the Disaster Assistance Act of 1989 and the FACT Act of 1990.

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The crop insurance requirement and waiver provisions, however, were not incorporated into the Dire Supplemental Appropriations Act. Nevertheless, FmHA has decided administratively to require that EM borrowers obtain insurance on their 1992 crops, except where the borrowers satisfy any one of the five waivers, which are identical to the waivers provided in the 1989 and 1990 Acts. This requirement is adopted because the agency believes that obtaining crop insurance reduces risk by minimizing the impact of weather disasters on crop production, and thus is a good management tool. In addition, requiring crop insurance on EM borrowers' 1992 crops furthers the Department's policy of supporting the crop insurance program, which thereby reduces the need for the enactment of costly disaster assistance provisions.

List of Subjects in 7 CFR Part 1945

Agriculture, Disaster assistance.

Therefore, chapter XVIII, title 7, Code of Federal Regulations, is amended as follows:

PART 1945—EMERGENCY

1. The authority citation for part 1945 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

2. Section 1945.167 is amended by revising paragraph (a) to read as follows:

§ 1945.167 Loan limitations and special provisions.

(a) *EM loans are not authorized for losses to crops grown in areas where FCIC crop insurance or multi-peril crop insurance is available.* Applicants will not be eligible for EM loans to cover damages and losses to any crop(s) harvested after December 31, 1986, which was not insured, but could have been insured with FCIC crop insurance or multi-peril crop insurance. In such instances, applicants will not qualify for EM loans based on losses to those crops which could have been insured against the losses, unless the crop(s) could not be planted due to the declared/designated/authorized disaster(s). However, as a result of 1990 and 1991 natural disasters, the Food, Agriculture, Conservation and Trade Act of 1990 and the Dire Supplemental Appropriations Act (Pub. L. 102–229) provide for the waiver of this mandatory crop insurance requirement, but only for crops planted for harvest in 1990 or 1991. Under these waiver provisions, disaster related production losses sustained to crops planted for harvest in 1990 or 1991 will be counted in the eligibility calculation and the maximum EM loan entitlement determination, regardless of whether or not crop insurance was available to the applicant, or whether or not such insurance was purchased by the applicant. Planted for harvest in 1990 or 1991 means: (1) *For annual crops,* planted for harvest in 1990 or 1991; (2) *for perennial crops,* planted in 1991 or earlier and producing an annual crop for harvest in 1990 or 1991.

* * * * *

3. Section 1945.169 is amended by revising the introductory text of paragraph (n)(5), and by revising paragraphs (n)(5) (ii), (iv) and (v), and (n)(6) to read as follows:

§ 1945.169 Security requirements.

* * * * *

(n) * * *

(5) As a result of 1990 and 1991 natural disasters affecting 1990 or 1991 crops, it is required that all recipients of EM loans, based on 1990 or 1991 production losses, must agree to obtain multi-peril crop insurance, under the Federal Crop Insurance Act, for the 1992 crop/commodity which suffered disaster losses in 1990 or 1991, and for which the EM loan is sought. However, applicants shall *not* be required to obtain crop insurance for a 1992 crop/commodity when any one of the following conditions exists:

* * * * *

(ii) The applicant's annual premium rate for crop insurance will be more than 25 percent greater than the average premium rate charged for insurance on the 1990 or 1991 crop (depending upon which year's losses are claimed) in the county where the applicant's farming operation is located;

* * * * *

(iv) The applicant's 1990 or 1991 production loss, with respect to the crop(s) for which the EM loan is made, does not exceed 65 percent. Calculations for this determination will be performed by ASCS and entered on Form FmHA 1945–29, "ASCS Verification of Farm Acreages, Production and Benefits," in part II, column (b). The ASCS County Office will enter all crops for which an application for disaster assistance has been filed in the disaster year for each farm unit, and enter the percent of loss after each crop listed. Any listed crop that *has* a loss greater than 65 percent must be insured for 1992, if it is planned to be planted. Any listed crop that does not have a loss greater than 65 percent will not have an insurance requirement, but EM borrowers would be encouraged to purchase insurance on all crops for which it is available;

(v) The applicant can establish, by appeal to the FmHA County Committee, that the purchase of crop insurance coverage would impose an undue financial hardship, *i.e.,* the premium cost of the required insurance would prevent the applicant from projecting a positive cash flow, and thus disqualify the applicant for EM loan assistance. Each appeal to the County Committee for waiver of purchasing crop insurance for the 1992 crop(s) must be accompanied by a completed FmHA 431–2, "Farm and Home Plan," or comparable plan of operation for 1992, signed by the applicant and the County Supervisor. When the County Committee approves the waiver, it will be so stated on the Form FmHA 440–2, "County Committee Certification or Recommendation." If the County Committee denies the waiver, that decision will be documented on Form FmHA 440–2 and the applicant will be given full appeal rights under subpart B of part 1900 of this chapter.

(6) When an applicant purchases the necessary crop insurance for 1992 as a condition to receiving an EM loan and, after the EM loan is closed, allows the policy(ies) to lapse or causes it(them) to be cancelled before completion of the 1992 production year, the borrower will become immediately liable for full repayment of all principal and interest outstanding on any EM loan made under the provisions of the Supplemental Appropriations Act of 1991. The loan approval official will insert this requirement in item 41 of Form FmHA 1940–1, "Request for Obligation of Funds," which is signed by the applicant and the FmHA loan approval official.

* * * * *

Dated: December 17, 1991.

LaVerne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91–31143 Filed 12–24–91; 12:44 pm]

BILLING CODE 3410–07–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

RIN 3150–AD29

Duplication Fees

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published on July 15, 1991 (56 FR 32070), that revises the charges for copying records publicly available at the NRC Public Document Room in Washington, DC. The action is necessary to correct an amendatory instruction.

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7758.

SUPPLEMENTARY INFORMATION: In the July 15, 1991, edition of the **Federal Register**, in the left-hand column of page 32071, amendatory instruction number 2 is corrected to read as follows:

2. In § 9.35, paragraphs (a)(1) and (a)(2) are revised to read as follows:

Dated at Bethesda, Maryland, this 23rd day of December 1991

For the Nuclear Regulatory Commission.

John D. Phillips,

Acting Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 91–31128 Filed 12–27–91, 8:45 am]

BILLING CODE 7590–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R–0731]

Delegations of Authority

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendments.

SUMMARY: Pursuant to sections 11(i) and (k) of the Federal Reserve Act (12 U.S.C. 248(i) and (k)), the Board is amending its Rules Regarding Delegations of Authority (12 CFR part 265). The amendments make technical corrections to the rules that were reorganized effective May 17, 1991.

EFFECTIVE DATE: December 23, 1991.

FOR FURTHER INFORMATION CONTACT: John Harry Jorgenson, Senior Attorney (202/452–3778), or Patrick J. McDivitt, Attorney (202/452–3818), Legal Division; for the hearing impaired *only,* Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544); Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 11(k) of the Federal Reserve Act provides that the Board may delegate any of its functions, other than those related to rulemaking or principally to monetary and credit policies. Section 11(i) authorizes the Board to make regulations necessary to enable the Board to perform its duties effectively. Pursuant to this authority, the Board is making technical amendments to its Rules Regarding Delegation of Authority (12 CFR part 265). The amendments correct technical mistakes discovered and personnel changes made since the major reorganization and revision of these delegation rules effective May 17, 1991 (56 FR 25614; June 5, 1991). These changes consist of correcting references and citations to several individual delegations and revising the language of a few delegations.

Notice and Public Participation; Effective Date

The provisions of 5 U.S.C. 553(b) relating to notice and public participation have not been followed in connection with the adoption of these amendments because they amend a rule of agency procedure and practice, and section 553(b) does not apply to such rules. The Board finds that it is impracticable and contrary to the public interest to delay adoption because the amendments correct technical mistakes currently appearing in this rule and reflect the personnel changes.

The provisions of 5 U.S.C. 553(d) generally prescribing 30 days' prior notice of the effective date of a rule have not been followed in connection with the adoption of these amendments. Section 553(d) provides that such prior notice is not necessary whenever a rule reduces regulatory burdens or there is good cause for finding that such notice is contrary to the public interest. This rule, which is procedural and technical in nature, does reduce such a burden, and, as noted, the Board has determined that delaying the effectiveness of that relief is contrary to the public interest.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 5 U.S.C. 601et seq.), the Board certifies that the proposed amendments will not have a significant adverse economic impact on a substantial number of small entities. The proposed amendments reorganize the Board's Rules Regarding Delegation of Authority and reduce certain regulatory burdens for all depository institutions, reduce certain burdens for small depository institutions, and have no particular adverse effect on other small entities.

List of Subjects in 12 CFR Part 265

Delegations of authority, Banks, Banking, Federal Reserve System.

For the reasons set forth above, the Board is amending 12 CFR part 265 by revising it to read as follows:

PART 265—[AMENDED]

1. The authority citation for part 265 is revised to read as follows:

Authority: Sections 11(i) and (k) of the Federal Reserve Act (12 U.S.C. 248(i) & (k)).

§ 265.5 [Amended]

2. Section 265.5(c)(2) is revised to read as follows:

* * * * *

(c) * * *

(2) *Reserve Bank director interlocks.* To take actions the Reserve Bank could take except for the fact that the Reserve Bank may not act because a director, senior officer, or principal shareholder of any holding company, bank, or company involved in the transaction is a director of that Reserve Bank or branch of the Reserve Bank.

* * * * *

§ 265.7 [Amended]

3. Section 265.7(c)(2) is amended by removing "§ 265.11(d)(5) and (f)" and adding in its place "§§ 265.11(c)(2)(ii) and 265.11(c)(3)(iii)".

4. Section 265.7(c)(4)(i) is amended by removing "225.71" and adding in its place "225.72".

§ 265.7 [Amended]

5. Section 265.7 is amended by adding a new paragraph (c)(6) to read as follows:

* * * * *

(c) * * *

(6) *ERISA violations.* To provide the Department of Labor written notification of possible significant violations of the Employee Retirement Income Security Act (ERISA) by bank holding companies, in accordance with section 3004(b) of ERISA and the Interagency Agreement adopted to implement its provisions.

* * * * *

6. Section 265.7(e)(3) is amended by adding "by" between "(ERISA)" and "member".

7. Section 265.7(e)(5) is revised to read as follows:

* * * * *

(e) * * *

(5) *Capital stock reduction; branch applications; declaration of dividends; investment in bank premises.* To exercise the functions described in §§ 265.11(e)(5), (11), and (12) of this part (reductions in capital, issuance of subordinated debt, and early retirement of subordinated debt) when the conditions specified in those sections

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preclude a Reserve Bank from acting on a member bank's request for action or when the Reserve Bank concludes that it should not take action, and to exercise the functions in §§ 265.11(e)(3), (4), and (7) of this part (approving branch applications, declaration of dividends, and investment in bank premises) in cases in which the Reserve Bank concludes that it should not take action.

8. Section 265.7(e)(6) is revised to read as follows:

* * * * *

(e) * * *

(6) *Security devices; Regulation P.* To exercise the functions described in § 265.11(e)(8) of this part in those cases in which the appropriate Reserve Bank concludes that it should not take action for good cause.

* * * * *

9. Section 265.7(f)(2) is amended by removing "78(h)" and adding in its place "78*l*(h)".

10. Section 265.7(f)(10) is revised to read as follows:

* * * * *

(f) * * *

(10) *Lists of OTC and foreign margin stocks.* To approve issuance of the lists of OTC margin stocks and foreign margin stocks and add, omit, or remove any stock in circumstances indicating that such change is necessary or appropriate in the public interest under section 207.6(d) of Regulation G (12 CFR part 207), § 220.17(f) of Regulation T (12 CFR part 220), or § 221.7(d) of Regulation U (12 CFR part 221).

§ 265.9 [Amended]

11. Section 265.9(b) is revised to read as follows:

* * * * *

(b) *Consumer Advisory Council.* Pursuant to section 703(b) of the Consumer Credit Protection Act (15 U.S.C. 1691b(b)), to call meetings of and consult with the Consumer Advisory Council established under that section, approve the agenda for such meetings, and accept any resignations from Consumer Advisory Council members.

* * * * *

§ 265.11 [Amended]

12. Section 265.11(c)(9)(i) is amended by removing "225.71" and adding in its place "225.72".

§ 265.11 [Amended]

13. Section 265.11(f) is revised to read as follows:

* * * * *

(f) *Securities.*—(1) *Application for termination of registration.* To approve applications by a registered lender for termination of the registration under § 207.3(a)(2) of Regulation G (12 CFR part 207).

(2) *Agreements from nonmember banks; extensions of credit.* To accept agreements concerning extensions of credit to finance securities transactions on behalf of the Board from nonmember banks in the form prescribed by the Board under section 8(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78h(a)).

* * * * *

§§ 265.4, 265.6, 265.7, 265.11 [Amended]

14. In addition to the amendments set forth above, in 12 CFR part 265 remove the word "Staff" where it appears with "Director" and refers to the Staff Director for the Division of Banking Supervision and Regulation in the following places:

a. In the Table of Contents at § 265.7
b. Section 265.4(a)(2)
c. Section 265.6(a)(4)
d. Section 265.6(c)(3)
e. Section 265.6(c)(5)
f. Section 265.6(d)(2)
g. Section 265.7 in the section heading and introductory text
h. Section 265.7(a)(2) in both places
i. Section 265.7(a)(4)
j. Section 265.7(d)(5)
k. Section 265.7(d)(7)(i)
l. Section 265.11(a)(15) introductory text
m. Section 265.11(c)(6)

§§ 265.5, 265.7, 265.11 [Amended]

15. In addition to the amendments set forth above, in 12 CFR part 265 remove the reference "25(a)" and add in its place "25A" in the following places:

a. Section 265.5(d)(1) introductory text
b. Section 265.5(d)(2) introductory text in both places
c. Section 265.7(d)(2)
d. Section 265.7(d)(3)
e. Section 265.11(a)(2)
f. Section 265.11(a)(3)
g. Section 265.11(a)(13)
h. Section 265.11(d)(2) introductory text

* * * * *

This action is approved by the Secretary of the Board, with the concurrence of the Board's General Counsel, pursuant to § 265.5(a)(4) of the Board's Rules Regarding Delegation of Authority (12 CFR 265.5(a)(4)).

By order of the Board of Governors of the Federal Reserve System, December 23, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-31067 Filed 12-27-91; 8:45 am]

BILLING CODE 6210-15-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 705

Community Development Revolving Loan Program for Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The National Credit Union Administration ("NCUA") is amending § 705.7(d) of its Rules and Regulations to allow the NCUA Board to charge interest rates of between one and three percent on loans made under this Part. The previous rate was set at three percent. This change gives the NCUA Board more flexibility in granting loans and will be helpful to credit unions, especially in today's environment of lower interest rates.

DATE: Effective December 30, 1991.

ADDRESSES: NCUA, Community Development Revolving Loan Program For Credit Unions, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Ronald N. Lewandowski at the above address or telephone (202) 682-9780.

SUPPLEMENTARY INFORMATION: Section 705.7(d) of NCUA's Regulations provides that loans made under the Community Development Revolving Loan Fund Program for Credit Unions (Program) shall bear interest at a fixed annual percentage rate of 3 percent. The NCUA Board is of the opinion that the interest rate charged on loans should be flexible and not exceed 3 percent, and that the Board should have the ability to reduce the rate below 3 percent but not less than 1 percent if this would be in the best interest of the credit unions participating in the Program. Since this rule change does not have an adverse or restrictive affect on credit unions participating in the Program, this rule change is effective immediately. The Board is issuing a final rule without first issuing a proposed rule because it believes a proposed rule unnecessary due to the benefit the change provides for credit unions participating in the Program.

The NCUA Board will announce the interest rate to be charged on loans at the same time it announces that applications for participation will be accepted pursuant to § 705.9 of the rule.

Regulatory Procedures

Neither the Paperwork Reduction Act, the Regulatory Flexibility Act nor Executive Order 12612 have any bearing on the final regulatory change since it is merely a change allowing the Board flexibility in lowering interest rates on Program loans.

List of Subjects in 12 CFR Part 705

Credit Unions, loan programs—housing and community development.

By the National Credit Union Administration Board on December 16, 1991.

Becky Baker,

Secretary, NCUA Board.

Accordingly, NCUA amends chapter VII of title 12 of the Code of Federal Regulations as follows:

Part 705—Community Development Revolving Loan Program for Credit Unions

1. The authority citation for part 705 continues to read as follows:

Authority: Pub. L. 97-35; Pub. L. 99-609, note to 42 U.S.C. 9822; Pub. L. 101-144.

2. Section 705.7(d) is revised to read as follows:

§ 705.7 Loans to participating credit unions.

* * * * *

(d) *Interest Rates.* Loans made under this rule shall bear interest at a fixed annual percentage rate of not more than 3 percent or not less than 1 percent as determined by the NCUA Board.

* * * * *

[FR Doc. 91-30590 Filed 12-27-91; 8:45 am]

BILLING CODE 7535-01-M

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 900

[91-643]

Description of Organization and Functions

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board ("Finance Board") is adopting a new part 900 describing its basic units of organization and their functions, and giving the address of the agency for purposes of requesting information. This action is being taken in accordance with the requirements of the Freedom of Information Act, as amended ("FOIA") (5 U.S.C. 552).

EFFECTIVE DATE: December 30, 1991.

FOR FURTHER INFORMATION CONTACT: Charles Szlenker, Attorney, Office of General Counsel, (202) 408-2554, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. General

Paragraphs (1)(A) and (1)(B) of section 552(a) of the FOIA mandate that each agency separately publish in its regulations a description of its organization and general means by which agency functions are channeled within its organization, as well as give the address to which requests for information may be made. 5 U.S.C. 552(a)(1) (A) & (B) (1988). Therefore, since the Finance Board is subject to FOIA (*See* H.R. Conf. Rep. No. 222, 101st Cong., 1st Sess. 424 (1989) *reprinted in* (1989) U.S. Code, Cong. & Ad. News 86, 463), the Finance Board is adopting this part to fulfill the FOIA requirements.

The Finance Board is adopting this part in tandem with other regulations that will deal with procedures for requesting information from the Finance Board, a description of available Finance Board forms, and a schedule of fees charged to the general public for the production of documents and records pursuant to the FOIA.

In addition to the office units described in this part, the Finance Board continues the established practice of the former Federal Home Loan Bank Board of issuing the Federal Home Loan Bank consolidated bonds and notes through the Office of Finance, which is a joint office of the Federal Home Loan Bank System.

B. Administrative Procedure Act

The Finance Board is adopting this part as a final rule, effective on December 30, 1991. The Finance Board believes that the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553) may be suspended pursuant to 5 U.S.C. 553(a)(2) and 553(d)(3) for purposes of this rule on two bases. First, paragraph (a)(2) of section 553 states that the Administrative Procedure Act does not apply to matters of agency management, and this rule deals exclusively with agency management issues. Second, paragraph (d)(3) of the same section permits an agency to find good cause that a rule may be effective in less than thirty days following its adoption by the agency. The concept of a thirty-day waiting period is inapplicable in the context of this part, since it is merely a description of the offices and units of the Finance Board. Therefore, the Board of Directors finds that good cause exists to suspend the notice and comment period when issuing this part.

C. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this regulation, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

List of Subjects in 12 CFR Part 900

Organizations and functions (Government agencies).

Accordingly, the Finance Board adds part 900 to chapter IX, title 12, Code of Federal Regulations, as follows:

PART 900—DESCRIPTION OF ORGANIZATION AND FUNCTIONS

Subpart A—Functions and Responsibilities of Finance Board

Sec.
900.1 Definitions.
900.2 General Statement and statutory authority.
900.3 Location and business hours.
900.4 Federal Home Loan Bank System.
900.5 Financing Corporation.

Appendix to Subpart A of Part 900—Federal Home Loan Banks

Subpart B—General Organization

900.10 Board of Directors.
900.11 Chairperson.
900.12 Office of Executive Director.
900.13 Executive Secretariat.
900.14 District Banks Directorate.
900.15 Housing Finance Directorate.
900.16 Office of General Counsel.
900.17 Office of the Inspector General.
900.18 Office of Strategic Planning.
900.19 Office of Administration.
900.20 Office of Public Affairs.
900.21 Office of Congressional Affairs.

Subpart C—Delegations of Authority

900.30 Director of the Office of Finance.

Subpart D—Procedures

900.50 General statement on procedures and forms.
900.51 Forms.
900.52 Submittal of requests for information.
900.53 Official seal.
900.54 Official logo.

Authority: 5 U.S.C. 552; sec. 2B(a), as added by sec. 702(a), 103 Stat. 414 (1989) (12 U.S.C. 1422b(a)).

Subpart A—Functions and Responsibilities of Finance Board

§ 900.1 Definitions.

As used in this part:

Bank means a Federal Home Loan Bank.

Bank Act means the Federal Home Loan Bank Act.

Bank System means the Federal Home Loan Bank System, consisting of the Federal Home Loan Banks.

Finance Board means the Federal Housing Finance Board.

§ 900.2 General statement and statutory authority.

(a) The Finance Board is an independent, executive agency in the

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Federal Government, responsible for regulating the Federal Home Loan Bank System. It is funded through assessments levied upon the Federal Home Loan Banks. These funds are not considered Government Funds or appropriated monies. The Finance Board is governed by a five-member Board of Directors and administered by a full-time staff.

(b) The members of the Board of Directors are individually referred to as Directors. The heads of the various administrative units, called offices or directorates, are also called Directors.

(c) The Finance Board administers Chapter 11 of the Bank Act, as amended, and is authorized to issue rules, regulations and orders affecting the Banks. The Finance Board performs all such duties and responsibilities as may be required by statute. Under section 302(b)(2) of the Federal National Mortgage Association Charter Act, it also conducts a monthly survey of all major lenders to calculate a national average for interest rates on mortages for one-family homes, on behalf of the Federal National Mortgage Association. Under section 305(b) of the Federal Home Loan Mortgage Corporation Act, it conducts a similar survey for the Federal Home Loan Mortgage Corporation.

§ 900.3 Location and business hours.

(a) *Location.* All office units of the Finance Board are located at 1777 F Street, NW., Washington, DC 20006.

(b) *Hours of operation.* The regular hours of operation of the Finance Board are from 8:30 a.m. to 5:30 p.m. Monday through Friday.

§ 900.4 Federal Home Loan Bank System.

(a) The Finance Board regulates the Banks, created under the Bank Act. Specifically, its duties are:

(1) To ensure that the Banks operate in a safe and sound manner;

(2) To supervise all lending and related operations of the Banks, which may include:

(i) Prescribing conditions upon which Banks may advance funds to their member lending institutions;

(ii) Prescribing rules and conditions under which a Bank may borrow funds, pay interest on those funds, or issue obligations;

(iii) Requiring examinations of the Banks;

(iv) Appointing the public members of the boards of directors of the Banks, conducting the elections of the members who are elected by the members of the Banks, and designating the Chairman and Vice-Chairman of the boards of directors of the Banks;

(v) Approving dividends paid by the Banks on their capital stock;

(vi) Approving applications for membership in a Bank; and

(vii) Approving the Bank Presidents selected by the Banks' board of directors and approving the salaries of top level Bank officers;

(3) To ensure that the Banks fulfill their mission of channeling funds to the housing finance industry by making long term loans to financial lending institutions for use in mortgage lending;

(4) To ensure that the Banks remain adequately capitalized; and

(5) To ensure that the Banks are able to raise funds in the capital markets.

(b) The Finance Board issues the Federal Home Loan Bank consolidated bonds or notes that are the joint and several obligations of the Banks. The Finance Board issues these obligations through the Office of Finance, which is a joint office of the Bank System.

§ 900.5 Financing Corporation.

The Finance Board oversees the operations of the Financing Corporation, including its issuance of obligations. The Financing Corporation is a mixed ownership government corporation chartered by the Finance Board under section 302 of the Competitive Equality Banking Act of 1987, 101 Stat. 552, 585 (1987) (12 U.S.C. 1441).

Appendix to Subpart A of Part 900—Federal Home Loan Banks

Federal Home Loan Bank District 1

(Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)

Federal Home Loan Bank of Boston

One Financial Center, 20th Floor, Boston, Massachusetts 02111

Federal Home Loan Bank District 2

(New Jersey, New York, Puerto Rico, Virgin Islands)

Federal Home Loan Bank of New York

One World Trade Center, 103rd Floor, New York, New York 10048

Federal Home Loan Bank District 3

(Delaware, Pennsylvania, West Virginia)

Federal Home Loan Bank of Pittsburgh

One Riverfront Center, 20 Stanwix Street, Pittsburgh, Pennsylvania 15222-4893

Federal Home Loan Bank District 4

(Alabama, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia)

Federal Home Loan Bank of Atlanta

1475 Peachtree Street, NE., Atlanta, Georgia 30309

Federal Home Loan Bank District 5

(Kentucky, Ohio, Tennessee)

Federal Home Loan Bank of Cincinnati

2400 Atrium Two, 221 East Fourth Street, Cincinnati, Ohio 45202

Federal Home Loan Bank District 6

(Indiana, Michigan)

Federal Home Loan Bank of Indianapolis

8250 Woodfield Crossing Bulevard, Indianapolis, Indiana 46240

Federal Home Loan Bank District 7

(Illinois, Wisconsin)

Federal Home Loan Bank of Chicago

111 East Wacker Drive, Suite 700, Chicago, Illinois 60601

Federal Home Loan Bank District 8

(Iowa, Minnesota, Missouri, North Dakota, South Dakota)

Federal Home Loan Bank of Des Moines

907 Walnut Street, Des Moines, Iowa 50309

Federal Home Loan Bank District 9

(Arkansas, Louisiana, Mississippi, New Mexico, Texas)

Federal Home Loan Bank of Dallas

5605 North MacArthur Boulevard, Irving, Texas 75038

Federal Home Loan Bank District 10

(Colorado, Kansas, Nebraska, Oklahoma)

Federal Home Loan Bank of Topeka

Townsite Plaza Two, 120 East Sixth Street, Topeka, Kansas 66603

Federal Home Loan Bank District 11

(Arizona, California, Nevada)

Federal Home Loan Bank of San Francisco

600 California Street, San Francisco, California 94108

Federal Home Loan Bank District 12

(Alaska, Guam, Hawaii, Idaho, Montana, Oregon, Pacific Islands, Utah, Washington, Wyoming)

Federal Home Loan Bank of Seattle

1501 Fourth Avenue, 19th Floor, Seattle, Washington 98101-1693

Subpart B—General Organization

§ 900.10 Board of Directors.

The Board of Directors consists of five members ("Directors"). Four Directors are appointed by the President, with the advice and consent of the Senate, for seven-year terms. The fifth Director, the Secretary of Housing and Urban Development, is an *ex officio* Director. Not more than three Directors may belong to the same political party. By law, the four appointed Directors must have backgrounds in housing finance or a demonstrated commitment to providing specialized housing credit, and one such Director must have a background with an organization with a two-year record of representing consumer or community interests on

either banking services, credit needs, financial consumer protection or housing. The Board of Directors sets agency policy and issues resolutions, rules, regulations and orders, as necessary.

§ 900.11 Chairperson.

The President designates one appointed Director as Chairperson of the Board of Directors, who presides over the meetings of the Board of Directors. The Board of Directors has delegated, by resolution, the responsibility of overall management and organizational or personnel administration of the Finance Board to the Chairperson.

§ 900.12 Office of the Executive Director.

The Executive Director has been delegated authority by order of the Chairperson to organize and manage the administration and operation of the Finance Board on a daily basis. The Executive Director is the senior staff official at the Finance Board and directs agency operations on behalf of the Chairperson. The Executive Director is authorized to sign documents on behalf of the Chairperson or the Board of Directors, including regulations, resolutions or orders when duly passed by the Board of Directors. The Executive Director certifies documents of the Finance Board or Board of Directors.

§ 900.13 Executive Secretariat.

The Executive Secretary to the Board of Directors ("Executive Secretary") is the recording officer for the Board of Directors and custodian of its records, including copies of any resolutions, rules, or orders. As the recording officer, the Executive Secretary is responsible for the preparation and maintenance of the minutes or other records of all official actions and proceedings of the Board of Directors, and is responsible for the official seal of the Finance Board. The Executive Secretary is the primary Liaison Officer with the Office of the Federal Register.

§ 900.14 District Banks Directorate.

The Director of the District Banks Directorate has responsibility for the Finance Board's regulatory oversight of the Bank System. The District Banks Directorate consists of three divisions: The Operations Division, the Financial Division, and the Examination Division.

(a) The Operations Division is responsible for developing and maintaining the Finance Board's Policy Manual for the Banks. The Division is also responsible for policies and procedures for Bank membership; the process of appointing and electing directors to the boards of directors of the Banks; maintaining copies of the minutes of meetings of the board of directors of each Bank; and maintaining records on all individual Bank policies and marketing activities.

(b) The Financial Division is divided into two sections:

(1) The Financial Reporting Section is responsible for Bank financial reporting, data collection and its analysis. It is responsible for the Bank System monthly financial reports for the Board of Directors. This Section also analyzes accounting policy issues and prepares the Bank System's combined financial reports.

(2) The Regulatory Analysis Section is responsible for the modeling and analysis of all Finance Board supervisory financial policies, including analysis of regulatory policies. This Section also monitors Bank System compliance with Finance Board regulations and policies, and reviews quarterly dividend recommendations. This Section is the Finance Board's primary liaison to the Bank System Office of Finance.

(c) The Examination Division is responsible for the examination of the Bank System to ensure its safety and soundness and compliance with its statutory mission as well as Finance Board regulations, orders, rules or policies. At least annually, the Division conducts regular examinations of the individual Banks and the Bank System Office of Finance, and conducts special examinations as the need arises. It is also responsible for reviewing and evaluating the work of each Bank's internal audit staff and is the primary liaison between the Finance Board and each Bank's audit committee.

§ 900.15 Housing Finance Directorate.

The Director of the Housing Finance Directorate is responsible for the development and implementation of the housing finance policies and programs of the Finance Board, and is the chief advisor to the Board of Directors on housing finance issues. The Director has responsibility for the operation and oversight of such programs as the Affordable Housing Program, the Community Investment Program, the Community Support Review Program, and the Monthly Survey of Rates and Terms of Conventional One-Family Nonfarm Mortgage Loans. The Director is responsible for the preparation of an annual report to Congress and to the Banks' Advisory Councils concerning Bank System support of low-income housing and community development. The Director is the Finance Board's primary liaison with the Banks' Advisory Councils, the Banks' Community Investment Officers, the Resolution Trust Corporation Affordable Housing Disposition Program, and public-interest organizations and community groups concerned with affordable housing and community economic development.

§ 900.16 Office of General Counsel.

The General Counsel is the chief legal officer of the Finance Board and, as such, advises the Board of Directors, and any Finance Board officer or employee upon request, on interpretations of law or regulations. The General Counsel prepares all legal documents on behalf of the Finance Board and prepares opinions, regulations, and legal interpretations at the request of the Chairperson, the Board of Directors, any Finance Board Office or Directorate and the Banks. The General Counsel represents the Finance Board in all administrative adjudicatory proceedings before the Board of Directors. The Board of Directors appoints the Finance Board Designated Agency Ethics Official from the staff of the Office.

§ 900.17 Office of Inspector General.

The Inspector General is subject to, and operates under, the provisions of the Inspector General Act of 1978, as amended (5 U.S.C. App. p. 1184 (1988)). The Inspector General reports directly to the Chairperson and the Board of Directors. The Inspector General is charged with policy direction for audits and investigations of Finance Board programs or operations, and to conduct, supervise and coordinate such audits and investigations in order to promote economy and efficiency in the administration of such programs and operations; and to detect fraud, waste and abuse at the Finance Board. The Inspector General transmits two semiannual reports to Congress on the activities of the Office of Inspector General.

§ 900.18 Office of Strategic Planning.

The Director of the Office of Strategic Planning is responsible for providing to the Finance Board policy and planning evaluation and recommendations designed to further the continued vitality of the Bank System.

§ 900.19 Office of Administration.

The Director of the Office of Administration is the senior administrative officer of the Finance Board, under the Executive Director, and is the chief advisor to the Chairperson and the Board of Directors on internal management and organization affecting

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Finance Board office units. The Office of Administration consists of five divisions: Budget and General Services; Personnel; Compensation and Benefits; Contracts; and Management Information Systems.

(a) The Budget and General Services Division is responsible for overall financial management of the Finance Board (except Federal Home Loan Bank consolidated obligations) and coordinates building services.

(b) The Personnel Division is responsible for developing and managing personnel policies and procedures of the Finance Board.

(c) The Compensation and Benefits Division is responsible for developing and managing policies and procedures for compensation, awards, insurance and retirement benefits, and other related benefits.

(d) The Contracts Division is responsible for contracting and procurement activities, under the Contracting Officer.

(e) The Management Information Systems Division is responsible for coordinating the design, programming, operation and maintenance of the Finance Board's electronic data system.

§ 900.20 Office of Public Affairs.

The Director of the Office of Public Affairs is responsible for the dissemination of Finance Board actions, policies, and press releases to the public and the news media. The Director is the Finance Board's primary liaison to news reporters. The Director prepares responses to inquiries of a general nature regarding any regulatory or internal operation of the Finance Board.

§ 900.21 Office of Congressional Affairs.

The Director of the Office of Congressional Affairs is responsible for ensuring the effective coordination and communication between the Congress and the Finance Board, and for briefing the Chairperson, or Executive Director, on legislative issues before Congress pertaining to the Finance Board, the Bank System or the Financing Corporation.

Subpart C—Delegations of Authority

§ 900.30 Director of the Office of Finance.

The Office of Finance is a joint office of the Bank System, created under the auspices of the Banks pursuant to a regulation promulgated by the former Federal Home Loan Bank Board, and currently at § 932.55. The Office of Finance is described as a joint or collective office at section 2B(b) of the Federal Home Loan Bank Act (12 U.S.C. 1422b(b)(2)). The Director of the Office of Finance, or the Deputy Director in the absence of the Director, is delegated the authority by the Board of Directors to issue Federal Home Loan Bank consolidated bonds or notes on behalf of the Finance Board, pursuant to section 10 of the Bank Act, and to set the interest rate on such bonds or notes, in accordance with such guidance or ranges determined through periodic resolutions by the Board of Directors.

Subpart D—Procedures

§ 900.50 General statement on procedures and forms.

Regulations and rules of procedure of the Finance Board are published in chapter IX of Title 12 of the Code of Federal Regulations and in supplementary material published in the **Federal Register.** The Finance Board will prescribe the procedures governing the course and conduct of proceedings before the Board of Directors in its General Regulations. When and wherever appropriate, the Finance Board may supplement its administrative procedures with informal procedures designed to aid the public or facilitate the proceedings, including the rendering of advice or assistance to persons dealing with the Finance Board or its Board of Directors.

§ 900.51 Forms.

The following forms are available at the Finance Board headquarters facility and shall be used for the purpose indicated:

Form:

10–91—Monthly Survey of Rates and Terms on Conventional 1 Family Nonfarm Mortgage Loans.

9102—Certificate of Nomination, Election of Federal Home Loan Bank Directors.

9103—Election Ballot, Election of Federal Home Loan Bank Directors.

A–1—Appointive Director Candidates—Personal Certification and Disclosure Form.

A–2—Appointive Directors—Personal Certification and Disclosure Form.

E–1—Elective Director Nominees—Personal Certification and Disclosure Form.

E–2—Elective Directors—Personal Certification and Disclosure Form.

FB–1—Finance Board Appointive Directors—Personal Certification and Disclosure Form.

90–T04—Local Travel Claim.

§ 900.52 Submittal of requests for information.

Requests for general information concerning the Finance Board or the Bank System should be made in person at the headquarters facility, at the address listed in § 900.3, or in writing, addressed to the Executive Secretary at the same address.

§ 900.52 Official Seal.

This section describes and displays the official seals used by the Finance Board to certify and authenticate official documents of the Board of Directors:

(a)(1) *Description.* A disc with the term "SEAL" in capital letters in its center, encircled by a designation scroll having an outer border with a roped edge and an inner border with a beaded edge, and containing the words "FEDERAL HOUSING FINANCE BOARD" in capital letters, in caslon type, with a mullet, in base.

(2) *Display.*



(b)(1) *Description.* A disc with a large mullet at its center and the term "FEDERAL" atop the term "HOUSING" in capital letters, in uncial type, arranged in a curved format on the upper part of the disc above the large mullet and the term "FINANCE" atop the term "BOARD" in capital letters, in uncial type, both terms arranged in a curved format on the lower part of the disc below the mullet, with two smaller mullets separating the two aforementioned terms "HOUSING" and "FINANCE", and with six mullets arranged three each in a vertical row on the left and right sides of the disc, and surrounded by a boarder consisting of two plain lines.

(2) *Display.*



(c) *Description.* A disc having the same design and description as the official logo, contained in § 900.54 and displayed in paragraph (b) of that section.

§ 900.54 Official logo.

This section describes and displays the logo adopted by the Board of Directors as the official symbol representing the Finance Board. It is displayed on correspondence and selected documents.

(a) *Description.* A disc with its center consisting of three polygons arranged in an irregular line partially overlapping—each polygon drawn in a manner resembling a silhouette of a pitched roof house and with distinctive eaves under its roof—encircled by a designation scroll having an outer and inner border of plain heavy lines and containing the words "FEDERAL HOUSING FINANCE BOARD" in capital letters, in sans serif type, with two mullets on the extreme left and right of the scroll.

(b) *Display.*



By the Federal Housing Finance Board.

Dated: December 18, 1991.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 91–31004 Filed 12–27–91; 8:45 am]

BILLING CODE 6725–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

Disaster—Physical Disaster and Economic Injury Disaster Loans

AGENCY: Small Business Administration.

ACTION: Interim final rule clarification.

SUMMARY: This notice is to provide clarification of the interim final rule, published in the **Federal Register** on December 19, 1991 (56 FR 65954), which amended SBA's regulations concerning physical and economic injury disaster loans to implement a program for direct loans to small business concerns which have sustained severe economic injury as a result of troop deployments, related to the Persian Gulf conflict, from military installations in the same county or a county contiguous thereto.

FOR FURTHER INFORMATION CONTACT: Alfred E. Judd, Acting Assistant Administrator for Disaster Assistance, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Section 1087 of Public Law 102–190, the National Defense Authorization Act for Fiscal Years 1992 and 1993, enacted on December 5, 1991, authorizes the Administrator of SBA to make emergency direct loans to small business concerns located in a county in the United States in which at least five (5) small business concerns have suffered severe economic injury as a result of the emergency deployment, after July 31, 1990, in connection with the Persian Gulf conflict, of members and units of the Armed Forces from military installations in or near that county. Section 123.68 of the regulation, provides that, pursuant to Public Law 102–190, the source of funding for this program is funds appropriated to the Department of Defense in Public Law 101–511, if and to the extent such funding is avaible.

Section 123.62 of the regulation establishes the procedures Governors are required to follow to designate which counties, within his or her respective state have military installations located within them and those counties contiguous thereto, where at least five (5) small business concerns have suffered severe economic injury as a result of emergency troop deployments in connection with the Persian Gulf conflict. (Hereinafter, the term "Governor" shall include other equivalent officials; the term "State" shall include other equivalent jurisdiction; and the term "county" shall include other equivalent political subdivisions, as defined in § 123.61 of the regulation.)

Subsection (e) of § 123.62 states that the Governor's certification, as well as all supporting documentation, should be received by the SBA Office of Disaster Assistance, Central Office, within 15 days of the effective date of the regulation. Further, the regulation provides that those certifications that are received within the 15-day period will be processed prior to the commencement of the application filing period. The certifications received after the 15-day period will be processed in an expeditious manner.

This 15-day period will not begin until the necessary funds have been made available for use by the Administrator of SBA to implement this program. As previously stated, the regulation provides that, pursuant to Public Law 102–190, the source of funding for this program is funds appropriated to the Department of Defense in Public Law 101–511, *if and to the extent such funding is available* (emphasis added). Thus, to reiterate, the 15-day period within which the Governors' certifications are to be *received* shall not begin to run unless and until funds are made available to SBA to implement this program.

Dated: December 20, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91–31134 Filed 12–27–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 26727; Amdt. No. 367]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory

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action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: *Effective:* January 9, 1992.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on December 19, 1991.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 g.m.t.:

1. The authority citation for part 35 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354, and 1510; 49 U.S.C. 106(g) and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

BILLING CODE 4910-13-M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 367 EFFECTIVE DATE, JANUARY 9, 1992

§

§95.1001 DIRECT ROUTES-U.S.95.55 GREEN FEDERAL AIRWAY 15
IS ADDED TO READ

FROM	TO	MEA
ST MARYS, AK NDB	ANVIK, AK NDB/DME	4000
ANVIK, AK NDB/DME	TAKOTNA RIVER, AK NDB	*9000
*6000 - MOCA		

§95.250 RED FEDERAL AIRWAY 50
IS AMENDED BY ADDING

NANWAK, AK NDB/DME	OSCARVILLE, AK NDB	3000
OSCARVILLE, AK NDB	ANVIK, AK NDB/DME	4100
ANVIK, AK NDB/DME	BISHOP, AK NDB	4800

§95.603 BLUE FEDERAL AIRWAY 3
IS ADDED TO READ

ANIAK, AK NDB	ANVIK, AK NDB/DME	3700
ANVIK, AK NDB/DME	NORTH RIVER, AK NDB	4600
NORTH RIVER, AK NDB	NORTON BAY, AK NDB	3000
NORTON BAY, AK NDB	HOTHAM, AK NDB	4500
HOTHAM, AK NDB	NOATAK, AK NDB/DME	3300

§95.6002 VOR FEDERAL AIRWAY 2
IS AMENDED TO READ IN PART

MADISON, WI VORTAC	WAITS, WI FIX	2800
WAITS, WI FIX	BADGER, WI VORTAC	4000

§95.6011 VOR FEDERAL AIRWAY 11
IS AMENDED TO READ IN PART

WESON, KY FIX	POCKET CITY, IN VORTAC	2200

§95.6016 VOR FEDERAL AIRWAY 16
IS AMENDED TO READ IN PART

BUCKEYE, AZ VORTAC	PERKY, AZ FIX	5000
PERKY, AZ FIX	PHOENIX, AZ VORTAC	
	E BND	*4000
	W BND	*5000
*4000 - MOCA		
PHOENIX, AZ VORTAC	*TOTEC, AZ FIX	5000
*5500 - MCA TOTEC FIX, E BND		

§95.6020 VOR FEDERAL AIRWAY 20
IS AMENDED TO READ IN PART

LAFAYETTE, LA VORTAC	DONBE, LA FIX	2000
DONBE, LA FIX	NEW ORLEANS, LA VORTAC	3500

§95.6026 VOR FEDERAL AIRWAY 26
IS AMENDED TO READ IN PART

SALEM, MI VORTAC	DETROIT, MI VOR/DME	2900
DETROIT, MI VOR/DME	U.S. CANADIAN BORDER	*3000
*2300 - MOCA		
U.S. CANADIAN BORDER	CETUS, OH FIX	*3000
*2300 - MOCA		
CETUS, OH FIX	DRYER, OH VORTAC	3000

§95.6043 VOR FEDERAL AIRWAY 43
IS AMENDED TO READ IN PART

ERIE, PA VORTAC	U.S. CANADIAN BORDER	3000
U.S. CANADIAN BORDER	BUFFALO, NY VORTAC	*3000
*2300 - MOCA		

§95.6044 VOR FEDERAL AIRWAY 44
IS AMENDED TO READ IN PART

NABB, IN VORTAC	FALMOUTH, KY VOR/DME	2700
PALEO, MD FIX	DONIL, DE FIX	7000
DONIL, DE FIX	SEA ISLE, NJ VORTAC	4000

§95.6045 VOR FEDERAL AIRWAY 45
IS AMENDED TO READ IN PART

LANSING, MI VORTAC	SAGINAW, MI VORTAC	2600

§95.6047 VOR FEDERAL AIRWAY 47
IS AMENDED TO READ IN PART

WESON, KY FIX	POCKET CITY, IN VORTAC	2200

§95.6051 VOR FEDERAL AIRWAY 51
IS AMENDED TO READ IN PART

LIVINGSTON, TN VORTAC	LOUISVILLE, KY VORTAC	3200

§95.6063 VOR FEDERAL AIRWAY 63
IS AMENDED TO READ IN PART

JANESVILLE, WI VORTAC	*DEBOW, WI FIX	3000
*10000 - MRA		

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FROM	TO	MEA
§95.6063 VOR FEDERAL AIRWAY 63—Continued		
DEBOW, WI FIX	RASTT, WI FIX	4000
RASTT, WI FIX	BADGER, WI VORTAC	3000
§95.6070 VOR FEDERAL AIRWAY 70 IS AMENDED TO READ IN PART		
LAFAYETTE, LA VORTAC	*ROSEY, LA FIX	1800
*5000 - MRA		
ROSEY, LA FIX	BATON ROUGE, LA VORTAC	1800
§95.6094 VOR FEDERAL AIRWAY 94 IS AMENDED TO READ IN PART		
TEACH, TN FIX	BOWLING GREEN, KY VORTAC	2600
§95.6095 VOR FEDERAL AIRWAY 95 IS AMENDED TO READ IN PART		
GILA BEND, AZ VORTAC	*POTER, AZ FIX	5000
*8000 - MRA		
POTER, AZ FIX	PHOENIX, AZ VORTAC	8000
PHOENIX, AZ VORTAC	WINSLOW, AZ VORTAC	10000
§95.6103 VOR FEDERAL AIRWAY 103 IS AMENDED TO READ IN PART		
U S CANADIAN BORDER	CRATR, MI FIX	*8000
*2600 - MOCA		MAA-16000
CRATR, MI FIX	LANSING, MI VORTAC	8000
		MAA-16000
§95.6105 VOR FEDERAL AIRWAY 105 IS AMENDED TO READ IN PART		
STANFIELD, AZ VORTAC	PHOENIX, AZ VORTAC	5000
PHOENIX, AZ VORTAC	*AVENT, AZ FIX	5000
*7000 - MRA		
AVENT, AZ FIX	CAVES, AZ FIX	
	NW BND	7000
	SE BND	5000
§95.6119 VOR FEDERAL AIRWAY 119 IS AMENDED TO READ IN PART		
NEWCOMBE, KY VORTAC	HENDERSON, WV VORTAC	2800
§95.6133 VOR FEDERAL AIRWAY 133 IS AMENDED TO READ IN PART		
CETUS, OH FIX	U.S. CANADIAN BORDER	*3000
*2300 - MOCA		
U S CANADIAN BORDER	DETROIT, MI VOR/DME	*3000
*2300 - MOCA		
DETROIT, MI VOR/DME	SALEM, MI VORTAC	2900
§95.6178 VOR FEDERAL AIRWAY 178 IS AMENDED TO READ IN PART		
NEW HOPE, KY VOR/DME	MCFEE, KY FIX	2700
TRENT, KY FIX	SLINK, WV FIX	8000
§95.6190 VOR FEDERAL AIRWAY 190 IS AMENDED TO READ IN PART		
PHOENIX, AZ VORTAC	*LAKEY, AZ FIX	5000
*7800 - MCA LAKEY FIX, NE BND		
TEDDI, AZ FIX	*SALTS, AZ FIX	**12000
*14000 - MRA		
**10100 - MOCA		
SALTS, AZ FIX	ST JOHNS, AZ VORTAC	12000
§95.6194 VOR FEDERAL AIRWAY 194 IS AMENDED TO READ IN PART		
SABINE PASS, TX VOR/DME	GUSTI, LA FIX	4000
GUSTI, LA FIX	LAFAYETTE, LA VORTAC	2800
LAFAYETTE, LA VORTAC	*ROSEY, LA FIX	1800
*5000 - MRA		
ROSEY, LA FIX	BATON ROUGE, LA VORTAC	1800
§95.6216 VOR FEDERAL AIRWAY 216 IS AMENDED TO READ IN PART		
WIPED, WI FIX	PETTY, WI FIX	*4000
*2400 - MOCA		
PETTY, WI FIX	SQUIB, MI FIX	*7000
*2000 - MOCA		
§95.6222 VOR FEDERAL AIRWAY 222 IS AMENDED TO READ IN PART		
LAKE CHARLES, LA VORTAC	HATHA, LA FIX	*2000
*1400 - MOCA		
HATHA, LA FIX	MAXON, LA FIX	2000
§95.6257 VOR FEDERAL AIRWAY 257 IS AMENDED TO READ IN PART		
PHOENIX, AZ VORTAC	*AVENT, AZ FIX	5000
*7000 - MRA		
AVENT, AZ FIX	CAVES, AZ FIX	
	NW BND	7000
	SE BND	5000
§95.6271 VOR FEDERAL AIRWAY 271 IS AMENDED TO READ IN PART		
MUSKEGON, MI VORTAC	WELKO, MI FIX	3000
WELKO, MI FIX	MANISTEE, MI VOR/DME	4000

FROM	TO	MEA
§95.6285 VOR FEDERAL AIRWAY 285 IS AMENDED TO READ IN PART		
WHITE CLOUD, MI VORTAC	MANISTEE, MI VOR/DME	4000
§95.6291 VOR FEDERAL AIRWAY 291 IS AMENDED BY ADDING		
FLAGSTAFF, AZ VOR/DME	KACEE, AZ FIX	11000
KACEE, AZ FIX	PEACH SPRINGS, AZ VORTAC	10000
§95.6305 VOR FEDERAL AIRWAY 305 IS AMENDED TO READ IN PART		
WESON, KY FIX	POCKET CITY, IN VORTAC	2200
§95.6310 VOR FEDERAL AIRWAY 310 IS AMENDED TO READ IN PART		
ROSAR, KY FIX	HOLSTON MOUNTAIN, TN VORTAC	6400
§95.6327 VOR FEDERAL AIRWAY 327 IS AMENDED TO READ IN PART		
PHOENIX, AZ VORTAC	KNOBB, AZ FIX	8000
KNOBB, AZ FIX	RADOM, AZ FIX	
	S BND	8000
	N BND	11000
RADOM, AZ FIX	FERER, AZ FIX	
	N BND	*12000
	S BND	*11000
*8100 - MOCA		
§95.6333 VOR FEDERAL AIRWAY 333 IS AMENDED TO READ IN PART		
WNSOR, KY FIX	LEXINGTON, KY VORTAC	3800
§95.6350 VOR FEDERAL AIRWAY 350 IS AMENDED BY ADDING		
BETHEL, AK VORTAC	DAHLS, AK FIX	2000
DAHLS, AK FIX	EMMONAK, AK VOR/DME	*3600
*3000 - MOCA		
EMMONAK, AK VOR/DME	NOME, AK VORTAC	3000
§95.6385 VOR FEDERAL AIRWAY 385 IS ADDED TO READ		
HOOPER BAY, AK VOR/DME	EMMONAK, AK VOR/DME	4500
EMMONAK, AK VOR/DME	UNALAKLEET, AK VORTAC	*3500
*2800 - MOCA		
§95.6440 VOR FEDERAL AIRWAY 440 IS AMENDED TO READ IN PART		
PUNTI, AK FIX	MIGAN, AK FIX	10000
MIGAN, AK FIX	WINOR, AK FIX	*10000
*8900 - MOCA		
*WINOR, AK FIX	MC GRATH, AK VORTAC	
	SE BND	**7000
	NW BND	**4000
*8600 - MCA WINOR FIX, E BND		
**4000 - MOCA		
§95.6459 VOR FEDERAL AIRWAY 459 IS AMENDED BY ADDING		
EMMONAK, AK VOR/DME	ST MARYS, AK NDB	3000
§95.6478 VOR FEDERAL AIRWAY 478 IS AMENDED TO READ IN PART		
FALMOUTH, KY VOR/DME	NEWCOMBE, KY VORTAC	3100
NEWCOMBE, KY VORTAC	BECKLEY, WV VORTAC	5900
§95.6496 VOR FEDERAL AIRWAY 496 IS ADDED TO READ		
HOOPER BAY, AK VOR/DME	ST MARYS, AK NDB	3500
§95.6510 VOR FEDERAL AIRWAY 510 IS AMENDED TO READ IN PART		
EMMONAK, AK VOR/DME	ANVIK, AK NDB/DME	3900
ANVIK, AK NDB/DME	ABEAR, AK FIX	*9000
*5500 - MOCA		
ABEAR, AK FIX	MC GRATH, AK VORTAC	*10000
*6000 - MOCA		
MC GRATH, AK VORTAC	*WINOR, AK FIX	
	NW BND	**4000
	SE BND	**7000
*8600 - MCA WINOR FIX, E BND		
**4000 - MOCA		
WINOR, AK FIX	MIGAN, AK FIX	*10000
*8900 - MOCA		
MIGAN, AK FIX	KLART, AK FIX	*10000
*8500 - MOCA		
KLART, AK FIX	BIG LAKE, AK VORTAC	*6000
*2500 - MOCA		
§95.6528 VOR FEDERAL AIRWAY 528 IS AMENDED TO READ IN PART		
PHOENIX, AZ VORTAC	EAGUL, AZ FIX	*14500
*9200 - MOCA		
EAGUL, AZ FIX	*PAYSO, AZ FIX	**16000
*16000 - MRA		
**9800 - MOCA		
PAYSO, AZ FIX	ST JOHNS, AZ VORTAC	*13000
*9800 - MOCA		

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FROM	TO	MEA
§95.6552 VOR FEDERAL AIRWAY 552		
IS AMENDED TO READ IN PART		
LAKE CHARLES, LA VORTAC *1400 - MOCA	HATHA, LA FIX	*2000
HATHA, LA FIX	LAFAYETTE, LA VORTAC	2000
LAFAYETTE, LA VORTAC *4000 - MRA **1500 - MOCA	*GRICE, LA FIX	**2000
GRICE, LA FIX *1500 - MOCA	TIBBY, LA VORTAC	*2000
§95.6562 VOR FEDERAL AIRWAY 562		
IS AMENDED TO READ IN PART		
PHOENIX, AZ VORTAC KNOBB, AZ FIX	KNOBB, AZ FIX	8000
	RADOM, AZ FIX S BND	8000
	N BND	11000
RADOM, AZ FIX	FERER, AZ FIX N BND	*12000

FROM	TO	MEA
§95.6562 VOR FEDERAL AIRWAY 562—Continued		
	S BND	*11000
*8100 - MOCA		
§95.6567 VOR FEDERAL AIRWAY 567		
IS AMENDED TO READ IN PART		
PHOENIX, AZ VORTAC KNOBB, AZ FIX	KNOBB, AZ FIX	8000
	RADOM, AZ FIX S BND	8000
	N BND	11000
RADOM, AZ FIX	*FERER, AZ FIX N BND	**12000
	S BND	**11000
*14000 - MCA FERER FIX, NE BND **8100 - MOCA		

FROM	TO	MEA	MAA
§95.7011 JET ROUTE NO. 11			
IS AMENDED TO READ IN PART			
TUCSON, AZ VORTAC	PHOENIX, AZ VORTAC	18000	45000
PHOENIX, AZ VORTAC	DRAKE, AZ VORTAC	18000	45000
§95.7018 JET ROUTE NO. 18			
IS AMENDED TO READ IN PART			
GILA BEND, AZ VORTAC	PHOENIX, AZ VORTAC	18000	45000
PHOENIX, AZ VORTAC	ST JOHNS, AZ VORTAC	18000	45000
§95.7019 JET ROUTE NO. 19			
IS AMENDED TO READ IN PART			
PHOENIX, AZ VORTAC	ZUNI, NM VORTAC	19000	45000
§95.7044 JET ROUTE NO. 44			
IS AMENDED TO READ IN PART			
PHOENIX, AZ VORTAC	WINSLOW, AZ VORTAC	18000	45000
§95.7065 JET ROUTE NO. 65			
IS AMENDED TO READ IN PART			
TRUTH OR CONSEQUENCES, NM VORTAC	PHOENIX, AZ VORTAC	#23000	45000
#MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE.			
PHOENIX, AZ VORTAC	BLYTHE, CA VORTAC	18000	45000
§95.7092 JET ROUTE NO. 92			
IS AMENDED TO READ IN PART			
KLAMATH FALLS, OR VORTAC	MUSTANG, NV VORTAC	18000	45000
DRAKE, AZ VORTAC	PHOENIX, AZ VORTAC	18000	45000
PHOENIX, AZ VORTAC	STANFIELD, AZ VORTAC	18000	45000
§95.7102 JET ROUTE NO. 102			
IS AMENDED TO READ IN PART			
PHOENIX, AZ VORTAC	ZUNI, NM VORTAC	18000	45000
§95.7244 JET ROUTE NO. 244			

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FROM	TO	MEA	MAA
§95.7244 JET ROUTE NO. 244—Continued			
	IS AMENDED TO READ IN PART		
ZUNI, NM VORTAC	PHOENIX, AZ VORTAC	19000	45000

§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT FROM	AIRWAY SEGMENT TO	CHANGEOVER POINTS DISTANCE	CHANGEOVER POINTS FROM
V-16			
	IS AMENDED TO DELETE		
PHOENIX, AZ VORTAC	TUCSON, AZ VORTAC	38	PHOENIX
V-20			
	IS AMENDED BY ADDING		
LAFAYETTE, LA VORTAC	NEW ORLEANS, LA VORTAC	51	LAFAYETTE
V-190			
	IS AMENDED BY ADDING		
PHOENIX, AZ VORTAC	ST JOHNS, AZ VORTAC	70	PHOENIX
V-194			
	IS AMENDED BY ADDING		
SABINE PASS, TX VOR/DME	LAFAYETTE, LA VORTAC	50	SABINE PASS
V-327			
	IS AMENDED TO DELETE		
PHOENIX, AZ VORTAC	FLAGSTAFF, AZ VOR/DME	73	PHOENIX
V-440			
	IS AMENDED TO READ IN PART		
MIDDLETON ISLAND, AK VOR/DME	ANCHORAGE, AK VOR/DME	95	MIDDLETON ISLAND
V-459			
	IS AMENDED BY ADDING		
EMMONAK, AK VOR/DME	ST MARYS, AK NDB	40	EMMONAK

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VOR FEDERAL AIRWAYS CHANGEOVER POINTS-CONT'D.

V-496

IS AMENDED BY ADDING

HOOPER BAY, AK VOR/DME	ST MARYS, AK NDB	40	HOOPER BAY

V-510

IS AMENDED BY ADDING

ANVIK, AK NDB/DME	MC GRATH, AK VORTAC	87	ANVIK

§95.8005 JET ROUTES CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM

J-18

IS AMENDED BY ADDING

PHOENIX, AZ VORTAC	ST JOHNS, AZ VORTAC	88	PHOENIX

[FR Doc. 91-31114 Filed 12-27-91: 8:45 am]
BILLING CODE 4910-13-C

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14 CFR Part 247

[Amdt. No. 247-2]

RIN 2137-AC17

Direct Airport-to-Airport Mileage Records; Amendment

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This rule amends 14 CFR part 247 by removing all references to organizational components of the former Civil Aeronautics Board and replacing them with the responsible organizations within the Department of Transportation. This rule is strictly editorial in nature and reflects the transfer to the Department of the function of maintaining the official direct airport-to-airport mileage records, which had been previously maintained by the former Civil Aeronautics Board.

EFFECTIVE DATE: This final rule is effective on December 30, 1991.

FOR FURTHER INFORMATION CONTACT: M. Clay Moritz, Jr. or Jack M. Calloway, Office of Airline Statistics, DAI-1, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001, (202) 366-4385 and 368-4383, respectively.

SUPPLEMENTARY INFORMATION: Part 247, Direct Airport-to-Airport Mileage Records, currently refers to various organizational components of the former Civil Aeronautics Board as the offices responsible for maintaining the up-to-date direct airport-to-airport mileage records that are used in carrying out the provisions of Titles IV and X of the Federal Aviation Act of 1958, as amended. Part 247 also refers to the "Official mileage record of the Board." With the sunset of the Civil Aeronautics Board on December 31, 1984, the responsibility for administering part 247 transferred to the Department of Transportation. This final rule amends part 247 by removing all references to the Civil Aeronautics Board and its organizational components and replacing them with the Department and its Research and Special Programs Administration's Office of Airline Statistics, which maintains the official direct airport-to-airport mileage records. Therefore, this rule provides, for the convenience of Federal, state, local, and private sector users, the name of the office within the Research and Special Programs Administration that may be directly contacted for information contained in the Department's direct airport-to-airport official mileage record files.

This rule also amends the authority citation for part 247 that is contained in the Code of Federal Regulations. The citation is specifically amended to include a reference to (1) the legislation transferring the aviation data collection authority of the former Civil Aeronautics Board to the Department of Transportation and (2) the regulation assigning the responsibility for administering the collection and dissemination of aviation information to the Research and Special Programs Administration.

Effective Date

Since these amendments relate to the Departmental management and are purely editorial in nature, notice and public comment are unnecessary. For the same reason, good cause exists for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). Therefore, the organizational designation revisions that are contained in this rule are effective as of the date of publication of this final rule.

Rulemaking Analyses and Notices

DOT Regulatory Policies and Procedures

This final rule is not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it has no economic impact on the public; therefore, a full regulatory evaluation is not required.

Executive Orders

Executive Order 12291

This action has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, state or local governments, agencies or geographic regions. Furthermore, this final rule would not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This regulation would not affect air carrier reporting burden. Accordingly, a regulatory impact analysis is not required.

Executive Order 12612

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this rulemaking action does not have any federalism implications that would warrant the preparation of a Federalism Assessment.

Executive Order 12630

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12630 and it has been determined that this rulemaking action does not pose the risk of a taking of constitutionally protected private property.

Legislative Acts

Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities. For purposes of its aviation economic regulations, Departmental policy categorizes certificated air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) in strictly domestic service as small entities for purposes of the Regulatory Flexibility Act. This final rule is editorial in nature and does not affect any air carriers.

Regulatory Identification Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 14 CFR Part 247

Official Direct Airport-to-Airport Mileages.

Accordingly, the Department of Transportation amends 14 CFR part 247, as follows:

PART 247—[AMENDED]

1. The authority for part 247 is revised to read as follows:

Authority: Sec. 204(a), Federal Aviation Act of 1958, as amended, 72 Stat. 743 (49 U.S.C. 1324); Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989 (49 U.S.C. 1324 (note)); Pub. L. 98-443, October 4, 1984; 49 FR 50994, December 31, 1984.

2. Part 247 is revised to read as follows:

§ 247.1 Official mileage record of the Department of Transportation.

The direct airport-to-airport mileage record now maintained, and as hereafter amended or revised from time to time by the Office of Airline Statistics of the Research and Special Programs Administration of the Department of Transportation in the regular performance of its duties, is hereby adopted as the official mileage record of the Department and the mileages set forth therein shall be used in all instances where it shall be necessary to determine direct airport-to-airport mileages pursuant to the provisions of Titles IV and X of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order of the Department pursuant thereto.

Issued in Washington, DC on December 20, 1991

Travis P. Dungan,

Administrator, Research and Special Programs Administration, DOT.

[FR Doc. 91-31078 Filed 12-27-91, 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 911214-1314]

Revision of Commerce Control List; Corrections

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule; Correction.

SUMMARY: This correction document makes a number of corrections to the Commerce Control List (CCL), Supplement No. 1 to 799.1 of the Export Administration Regulations (15 CFR parts 730-799) (EAR). The corrections made by this document clarify the scope of certain CCL entries and remove typographical errors that appeared in an interim rule that was published in the **Federal Register** on August 29, 1991 (56 FR 42824). That interim rule revised and renamed the Commodity Control List (now the Commerce Control List) in order to implement a total revision of the International Industrial List by the Coordinating Committee for Multilateral Export Controls (COCOM).

Most of the changes made by this document involve corrections of typographical errors such as misspellings and incorrect cross references. In a few instances, however, typographical errors in one or more of the technical parameters for certain CCL entries are corrected to reflect the appropriate control levels; these changes do not significantly alter the overall control levels of the affected entries and the impact of these changes on the number of items subject to validated licensing requirements will be negligible.

This document also corrects the headings of a number of the software and technology entries in Category 9 (Propulsion Systems and Transportation Equipment). These corrections do not affect the licensing requirements that apply to software and technology for Category 9 items; they merely clarify the scope of the individual software and technology entries.

Finally, this document revises the *GTDR* paragraphs in a number of national security controlled software and technology entries to clarify that General License GTDR is not available for exports to Iran and Syria.

EFFECTIVE DATE: September 1, 1991.

FOR FURTHER INFORMATION CONTACT: Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-3856.

Accordingly, the interim rule, which was published in the **Federal Register** on August 29, 1991 (56 FR 42824), is corrected as follows:

§ 799.1 [Corrected]

1. On page 42829, in the second column, under ECCN 1A48B, the phrase "(e.g., aircraft, ship or other counterweights;" is corrected to read "(e.g., aircraft, ship, or other counterweights)" in lines 3 and 4 of Note 1.

2. On page 42830, in the first and second columns, under ECCN 1B01A, in the List of Items Controlled:

a. The word "fibres" is corrected to read "fibers" in line 3 of 1B01.d introductory text, in lines 2, 4, and 5 of 1B01.d.1, in line 5 of 1B01.d.2, and in lines 2 and 3 of 1B01.d.4; and

b. The word "fibre" is corrected to read "fiber" in line 6 of 1B01.d.1.

3. On page 42830, in the second column, under ECCN 1B02A, in the Requirements section, "*CFW:* No" is corrected to read "*GFW:* No".

4. On page 42831, in the first column, under ECCN 1B19A, in the Requirements section:

a. The reference "1A19.a" is corrected to read "1B19.a" in the *GCT* paragraph; and

b. The phrase "Yes, for 1A19.c *only* (see Advisory Note)" is corrected to read "No".

5. On page 42831, in the first column, under ECCN 1B19A, the List of Items controlled is corrected by removing 1B19.c and by removing the Advisory Note at the end of the entry.

6. On page 42831, in the second column, under ECCN 1B51E, in line 8 of the entry heading, the phrase "or aluminum alloys" is corrected to read "or aluminum alloys, and such pressure sensing elements if supplied separately".

7. On page 42831, in the third column, under ECCN 1B70E, in the List of Items Controlled, the phrase "0.1 miligram" is corrected to read "0.1 milligram" in line 3 of 1B70.f.2.

8. On page 42831, in the third column, under ECCN 1B71E, in the Requirements section, the phrase "Supp. to part 778" is corrected to read "Supp. 5 to Part 778" in line 2 of the *Validated License Required* paragraph.

9. on page 42832, in the first column, under ECCN 1C01A, in the List of Items Controlled:

a. The phrase "absorbing frequencies exceeding $2\mu10^9$ Hz but less than $3\mu10^{12}$ Hz," is corrected to read "absorbing frequencies exceeding 2×10^9 Hz, but less than 3×10^{12} Hz," in lines 1 to 3 of 1C01.a introductory text;

b. The phrase "+15% of the center frequency" is corrected to read "±15% of the center frequency" in line 6 of 'C01.a.3.a.1; and

c. The phrase "−15% of the center frequency" is corrected to read "±15% of the center frequency" in line 4 of 1C01.a.3.a.2.

10. On page 42832, in the third column, under ECCN 1C02A, in the list of Items Controlled:

a. The phrase "material embargoed" is corrected to read "material controlled" in line 3 of 1C02.a.2 introductory text; and

b. The phrase "materials embargoed" is corrected to read "materials controlled" in line 2 of 1C02.b introductory text.

11. On page 42833, in the first column, under ECCN 1C02A, in the List of Items Controlled, the phrase "does not embargo" is corrected to read "does not control" in line 1 of the note immediately following 1C02.c.

12. On page 42833, in the third column, under ECCN 1C06A, in the List of Items Controlled, the phrase "(5,000 centistokes" is corrected to read "(5. centistokes)" in line 3 of 1C06.b.2.

13. On page 42834, in the first and second columns, under ECCN 1C07A:

a. The phrase " 'matric' 'composite' materials" is corrected to read " 'matrix' 'composite' materials" in line 3 of the ECCN heading; and

b. In the List of Items Controlled, the phrased "materials embargoed" is corrected to read "materials controlled" in line 4 of 1C07.e introductory text.

14. On page 42835, in the second column, under ECCN 1C18A, in the Requirements section, in the *GFW* paragraph, the phrase "Yes, see Advisory note" is corrected to read "Yes (Advisory Note only)".

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15. On page 42835, in the third column, under ECCN 1C19A, in the Requirements section, in the *GFW* paragraph, the phrase "Yes, for 1C19.a, see Advisory Note 1; Yes for 1C19.b, see Advisory note 2" is corrected to read "Yes, for 1C19.a (Advisory Note 1 only); Yes, for 1C19.b (Advisory Note 2 only)".

16. On page 42839, in the second column, under ECCN 1E02A, in the List of Items Controlled, the word "materials" is corrected to read "'composite' structures, laminates or materials" in line 2 of 1E02.f.

17. On page 42840, in the second column, under ECCN 2A19A, in the Requirements section, in the *GFW* paragraph, the phrase "Yes for 2A19.b (see Advisory Notes 1 and 2) and for 2A19.c (see Advisory Note 3)" is corrected to read "Yes for 2A19.b (Advisory Notes 1 and 2 only) and for 2A19.c (Advisory Note 3 only)".

18. On page 42840, in the second column, under ECCN 2A19A, in the List of Items Controlled:

a. The reference "6A19.a" is corrected to read "2A19.b" in line 8 of Advisory Note 1; and

b. The reference "6A19.c" is corrected to read "2A19.c" in line 5 of Advisory Note 3.

19. On page 42842, in the first column, under ECCN 2B01A, in the List of Items Controlled, the phrase "more axes than" is corrected to read "more axes that" in line 1 of 2B01.c.1.a.

20. On page 42842, in the third column, under ECCN 2B01A, in the List of Items Controlled, the word "workplace" is corrected to read "workpiece" in Note 1, paragraph c., line 1.

21. On page 42843, in the first column, under ECCN 2B01A, in the List of Items Controlled, the parenthetical phrase "(not letter)" is corrected to read "(not better)" in Note 3, paragraph c., line 2.

22. On page 42845, in the third column, under ECCN 2B09A, lines 2 and 3 in the heading of the ECCN are corrected by removing the phrase "and software therefor".

23. On page 42845, in the third column, under ECCN 2B18A, in the Requirements section, in the *GFW* paragraph, the parenthetical phrase "(see Advisory Note)" is corrected to read "(Advisory Note only)".

24. On page 42846, in the second column, under ECCN 2B40B, in the List of Items Controlled, the reference "9B27B" is corrected to read "9B26B" in line 2 of the Note at the end of the entry.

25. On page 42847, in the second column, under ECCN 2D02A, in the Requirements section, the word "Yes" is corrected to read "Yes, except Iran and Syria" in the *GTDR* paragraph.

26. On page 42856, in the first column, under ECCN 3A02A, in the List of Items Controlled:

a. The word "synthesiser" is corrected to read "synthesizer" in line 1 of 3A02.b.; and

b. The word "synthesised" is corrected to read "synthesized" in line 1 of 3A02.d introductory text.

27. On page 42857, in the third column, under ECCN 3A90C, "3A90C" is corrected to read "3A80C" in line 1 of the entry heading.

28. On page 42857, in the third column, under ECCN 3A91C, "3A91C" is corrected to read "3A81C" in line 1 of the entry heading.

29. On page 42858, in the first column, under ECCN 3A93F:

a. The *Validated License Required* paragraph is corrected by removing the parenthetical phrase "(see Note)" in line 3;

b. The word "No" is corrected to read "$1,000 for Syria only" in the *GLV* paragraph; and

c. The Note at the end of the entry is removed.

30. On page 42858, in the second column, under ECCN 2B01A, in the List of Items Controlled:

a. The phrase "less ± 2.5% across" is corrected to read "less than ± 2.5% across" in line 2 of 3B01.a.1; and

b. The word "electron" is corrected to read "Electron" in line 1 of 3B01.d.2.b.

31. On page 42860, in the first column, under ECCN 3B91F, in the List of Items Controlled, the phrase "+ 1 micrometer" is corrected to read "± 1 micrometer" in line 2 of 3B91.b.1.m.1.

32. On page 42860, in the second column, under ECCN 3B91F, in the List of Items Controlled, the phrase "+ 0.25 micrometer" is corrected to read "± 0.25 micrometer" in line 2 of 3B91.b.2.f.2.

33. On page 42860, in the third column, under ECCN 3B91F, in the List of Items Controlled, the phrase "2.5 micrometer" is corrected to read '3.5 micrometer" in line 2 of 3B91.b.6a.

34. On page 42861, in the first column, under ECCN 3B91F, in the List of Items Controlled:

a. The reference "3B01 b.7.b." is corrected to read "3B91.b.7.b" in line 1 of Note 1 that follows 3B91.b.7.b.2; and

b. The reference "3B01 b.7.b." is corrected to read "3B91.b.7.b" in line 1 of Note 2 that follows 3B91.b.7.b.2.

35. On page 42861, in the third column, under ECCN 3C03A, the word "aluminium" is corrected to read "aluminum" in line 2 of the ECCN heading.

36. On page 42861, in the third column, under ECCN 3D01A, in the Requirements section, the word "Yes" is corrected to read "Yes, except Iran and Syria" in the *GTDR* paragraph.

37. On page 42862, in the first column, under ECCN 3D02A, in the Requirements section, the word "Yes" is corrected to read "Yes, except Iran and Syria" in the *GTDR* paragraph.

38. On page 42862, in the first column, under ECCN 3D03A, in the Requirements section, the word "Yes" is corrected to read "Yes, except Iran and Syria" in the *GTDR* paragraph.

39. On page 42862, in the second column, under ECCN 3D90C, in the heading of the entry:

a. "3D90C" is corrected to read "3D80C" in line 1; and

b. The reference "3A90C and 3A91C" is corrected to read "3A80C and 3A81C" in line 3.

40. On page 42862, in the second column, under ECCN 3D91F, in the Requirements section, the word "No" is corrected to read "Yes, except Iran and Syria" in the *GTDU* paragraph.

41. On page 42862, in the third column, under ECCN 3E90C, in the heading of the entry:

a. "3E90C" is corrected to read "3E80C" in line 1; and

b. The reference "3A90C and 3A91C" is corrected to read "3A80C and 3A81C" in line 3.

42. On page 42862, in the third column, under ECCN 3E91F, in the Requirements section, the word "No" is corrected to read "Yes, except Iran and Syria" in the *GTDU* paragraph.

43. On page 42863, in the third column, under ECCN 4A03A, in the Requirements section, in the *GFW* paragraph, the phrase "See Advisory Notes 1 and 2" is corrected to read "Yes (Advisory Notes 1 and 2 only)".

44. On page 42866, in the first column, under ECCN 4E01A, the phrase "controlled by 4A, 4B, 4C, or NS or MT" is corrected to read "controlled by 4A, 4B, or 4C for NS or MT" in line 5 of the entry heading.

45. On page 42866, in the first column, under ECCN 4E02A, in the Requirements section, the word "Yes" is corrected to read "Yes, except Iran and Syria" in the *GTDR* paragraph.

46. On page 42869, in the first column, in line 1 of Note X, the word "ECs" is corrected to read "CEs".

47. On page 42869, in the third column, the section heading "Telecommunications" immediately following the Notice under the heading for Category 5 is corrected to read "I. Telecommunications".

48. On page 42870, in the first column, under ECCN 5A02A, in the Requirements section, in the *GFW* paragraph, the phrase "Yes, see Telecommunications Advisory Notes 1 and 5" is corrected to read "Yes (Telecommunications Advisory Notes 1 and 5 only)".

49. On page 42871, in the second column, under ECCN 5A05A, in the Requirements section, in the *GFW* paragraph, the phrase "Yes, see Telecommunications Advisory Note 2" is corrected to read "Yes (Telecommunications Advisory Note 2 only)".

50. On page 42871, in the third column, under ECCN 5B01A, in the Requirements section, in the *GFW* paragraph, the phrase "Yes, see Telecommunications Advisory Note 3" is corrected to read "Yes (Telecommunications Advisory Note 3 only)".

51. On page 42872, in the first column, under ECCN 5B02A, in the List of Items Controlled, the reference "5A02.a" is corrected to read "Telecommunications Category 5A" in line 3 of 5B02.b.

52. On page 42875, in the first column, the section heading " 'Information Security' " immediately following N.B. 2, paragraph c., is corrected to read "II. 'Information Security' ".

53. On page 42876, in the second column, the section heading "Other Equipment, Materials, 'Software' and Technology" immediately following Advisory Note 5 is corrected to read "III. Other Equipment, Materials, 'Software' and Technology".

54. On page 42879, in the second column, under ECCN 6A02A, in the Requirements section, in the *GFW* paragraph, the phrase "Yes (see Advisory Notes 2 and 3 to Category 6)" is corrected to read "Yes (Advisory Notes 2 and 3 to Category 6 only)".

55. On page 42880, in the first column, under ECCN 6A02A, in the List of Items Controlled, the word "intertially" is corrected to read "inertially" in line 4 of 6A02.d.3.a.

56. On page 42880, in the second column, under ECCN 6A22B, in the List of Items Controlled, the word "nonometers" is corrected to read "nanometers" in lines 3 and 4 of 6A22.a.1.

57. On page 42882, in the first column, under ECCN 6A05A, in the Requirements section, in the *GFW* paragraph, the phrase "Yes (see Advisory Notes 7 and 8 to category 6)" is corrected to read "Yes (Advisory Notes 7 and 8 to Category 6 only)".

58. On page 42884, in the third column, under ECCN 6A08A, in the Requirements section, in the *GFW* paragraph, the phrase "Yes (see Advisory Note 9 to Category 6)" is corrected to read "Yes (Advisory Note 9 to Category 6 only)".

59. On page 42885, in the first column, under ECCN 6A08A, in the List of Items Controlled, the phrase "a 'pulse compression' " is corrected to read "A 'pulse compression' " in line 1 of 6A08.k.1.

60. On page 42886, in the third column, under ECCN 6C04A, in the Requirements section, in the *GFW* paragraph, the phrase "Yes (see Advisory Note 6 to Category 6)" is corrected to read "Yes (Advisory Note 6 to Category 6 only)".

61. On page 42887, in the second column, under ECCN 6D03A, in the Requirements section, the word "Yes" is corrected to read "Yes, except Iran and Syria" in the *GTDR* paragraph.

62. On page 42888, in the second column, under ECCN 6E03A, in the Requirements section, the word "Yes" is corrected to read "Yes, except Iran and Syria" in the *GTDR* paragraph.

63. On page 42893, in line 6 of the third column, under ECCN 8A01A, in the List of Items Controlled, paragraph b.2.b. is correctly designated as paragraph b.1.b.

64. On page 42894, in the first column, under ECCN 8A01A, in the List of Items Controlled, the phrase "or 40 knots" is corrected to read "of 40 knots" in line 4 of 8A01.h.

65. On page 42897, in the first column, in lines 1 and 2 of the Note immediately following the heading of Category 9A, the phrase "vehicles equipped with any controlled item" is corrected to read "controlled equipment that is vehicle mounted for convenience of transport".

66. On page 42897, in the second column, under ECCN 9A02A, in the Requirements section, in the *GFW* paragraph, the phrase "Yes (See Advisory Note to Category 9)" is corrected to read "Yes (Advisory Note, Category 9, only)".

67. On page 42897, in the third column, under ECCN 9A18A, in the List of Items Controlled, the phrase "ground equipment, n.e.s. developed" is corrected to read "ground equipment, n.e.s., developed" in line 5 of 9A18.c.

68. On page 42898, in the second column, under ECCN 9A93F:

a. The heading "Requirements" is added immediately following the heading of the entry; and

b. The phrase "Iran, Syria" is corrected to read "SZ, Iran, Syria, South Africa military and police" in the *Validated License Required* paragraph.

69. On page 42900, in the second column, under ECCN 9D01A, in lines 2 and 3 of the ECCN heading, the phrase "equipment or technology controlled by 9A, 9B, or 9E03" is corrected to read "equipment controlled by 9A01, 9A02, 9A03, 9A18, 9B01, 9B02, 9B03, 9B04, 9B05, 9B06, 9B07, 9B08, or 9B09, or technology controlled by 9E03".

70. On page 42900, in the second column, under ECCN 9D02A, in lines 2 and 3 of the ECCN heading, the phrase "or controlled by 9A, 9B" is corrected to read "controlled by 9A01, 9A02, 9A03, 9A18, 9B01, 9B02, 9B03, 9B04, 9B05, 9B06, 9B07, 9B08, or 9B09".

71. On page 42900, in the second column, under ECCN 9D03A, in lines 3 through 5 of the ECCN heading, the phrase "propulsion systems controlled by 9A or equipment controlled by 9B" is corrected to read "propulsion systems controlled by 9A01, 9A02, or 9A03, or equipment controlled by 9B01, 9B02, 9B03, 9B04, 9B05, 9B06, 9B07, 9B08, or 9B09".

72. On page 42900, in the second column, under ECCN 9D04, "9D04" is corrected to read "9D04A" in the heading of the ECCN.

73. On page 42900, in the third column, under ECCN 9D24B:

a. The phrase "Other 'software' " is corrected to read " 'Software' " in line 1 of the ECCN heading;

b. The phrase " 'missile' systems and equipment controlled by 9A and 9B" is corrected to read "propulsion systems and equipment controlled by 9A21, 9A22, 9B21, 9B23, 9B24, 9B25, 9B26, or 9B27, and 'software', n.e.s., specially designed or modified for the 'use' of equipment controlled by 9B01, 9B02, 9B03, 9B04, 9B06, or 9B07" in lines 4 and 5 of the ECCN heading; and

c. The notation "NS, MT" is corrected to read "MT" in the *Reason for Control* paragraph in the Requirements section.

74. On page 42900, in the third column, under ECCN 9D94F, in the Requirements section, the word "No" is corrected to read "Yes, except Iran and Syria" in the *GTDU* paragraph.

75. On page 42900, in the third column, under ECCN 9D96G, in the Requirements section:

a. The phrase "SZ, Iran, Syria, South Africa military and police" is corrected to read "SZ, South Africa military and police" in the *Validated License Required* paragraph; and

b. The word "No" is corrected to read "Yes" in the *GTDU* paragraph.

76. On page 42901, in the first column, under ECCN 9E01A, in lines 3 through 6 of the ECCN heading, the phrase "equipment or 'software' controlled by 9A01.c, 9A18A, 9B, or 9D for national security and missile technology reasons" is corrected to read "equipment controlled by 9A01.c, 9A18, 9B01, 9B02, 9B03, 9B04, 9B05, 9B06, 9B07 9B08, or 9B09, or 'software' controlled by 9D01, 9D02, 9D03, or 9D04".

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77. On page 42901, in the first column, under ECCN 9E21B, in lines 2 and 3 of the ECCN heading, the phrase "items controlled by Category 9" is corrected to read "equipment controlled by 9A21, 9A22, 9B21, 9B23, 9B24, 9B25, 9B26, or 9B27, or 'software' controlled by 9D24, and technology for the 'use' of equipment controlled by 9B01, 9B02, 9B03, 9B04, 9B06, or 9B07".

78. On page 42901, in the first column, under ECCN 9E02A, in lines 3 and 4 of the ECCN heading, the phrase "equipment controlled by 9A01.c or 9B" is corrected to read "equipment controlled by 9A01.c, 9A18, 9B01, 9B02, 9B03, 9B04, 9B05, 9B06, 9B07, 9B08, or 9B09".

79. On page 42903, in the second column, under ECCN 0E96G, under the Requirements section, the word "No" is corrected to read "Yes" in the *GTDU* paragraph.

80. On page 42903, in the second column, in Supplement No. 2 to § 799.1 (General Technology and Software Notes), in lines 17 through 19 of the *General Technology Note*, the phrase "General Licenses G–DEST, GUS, GCG, C–TEMP, GFW or GCT, or that were exported under a validated export license" is corrected to read "General Licenses or that are exported under a validated export license."

81. On page 42904, in the first column, in Supplement No. 3 to § 799.1 (Definitions), in line 6 of the definition *Asynchronous transfer mode (ATM) (Cat. 5)*, this parenthetical phrase "(CCITT Recommendation I.113)" is corrected to read "(CCITT Recommendation I.113)".

Dated: December 19, 1991.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 91–30658 Filed 12–27–91; 8:45 am]

BILLING CODE 3510–DT–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1000

Change of Address

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission is amending its statement of organization and functions, 16 CFR part 1000, as published at 56 FR 30495, July 3, 1991 and amended 56 FR 46235, September 11, 1991, to include full 9 digit postal zip codes for its principal facilities.

EFFECTIVE DATE: December 30, 1991.

ADDRESSES: Consumer Product Safety Commission, Office of the Secretary, Washington, DC 20207–0001.

FOR FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207, telephone 301–504–0980.

SUPPLEMENTARY INFORMATION: Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553(b), notice and other public procedures are not required and it is effective immediately upon publication in the **Federal Register**. Further, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612, and, thus, is exempt from the provisions of the Act.

List of Subjects in 16 CFR Part 1000

Organization and Functions (Government agencies).

Accordingly, 16 CFR Part 1000 is amended as follows:

1. The authority citation for Part 1000 continues to read as follows:

Authority: 5 U.S.C. 552(a).

§ 1000.4 [Amended]

2. Section 1000.4 is amended by revising the zip code in paragraph (a) from "20207" to "20207–0001", by revising the zip code in paragraph (b)(1) from "60604–1604" to "60604–1601", by revising the zip code in paragraph (b)(2) from "10048–0950" to "10048–0950", and by revising the zip code in paragraph (b)(3) from "9411–2390" to 94111–2390.

Dated: December 20, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 91–30973 Filed 12–27–91; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Chorionic Gonadotropin for Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Intervet America, Inc. The NADA provides for the intramuscular use of reconstituted chorionic gonadotropin in cows for the treatment of nymphomania (frequent or constant heat) due to cystic ovaries.

EFFECTIVE DATE: December 30, 1991.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8623.

SUPPLEMENTARY INFORMATION: Intervet America, Inc., P.O. Box 318, 405 State St., Millsboro, DE 19966, filed NADA 140–927 which provides for the intramuscular use of reconstituted, freeze-dried chorionic gonadotropin in cows for the treatment of nymphomania (frequent or constant heat) due to cystic ovaries. The NADA is approved as of November 22, 1991, and 21 CFR 522.1081 is amended by adding paragraph (a)(2)(iii) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Under the Generic Animal Drug and Patent Term Restoration Act of 1988, this approval does not qualify for an exclusivity period under section 512(c)(2)(F) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)) because the active ingredient in this product has been approved under section 512(b) of the act for the same indication at the same dose in another NADA.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.1081 is amended by adding paragraph (a)(2)(iii) to read as follows:

§ 522.1081 Chorionic gonadotropin for injection; chorionic gonadotropin suspension.

(a) * * *

(2) * * *

(iii) No. 057926 for use of 10,000 U.S.P. units intramuscularly.

* * * * *

Dated: December 11, 1991.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 91–31014 Filed 12–27–91; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Parts 522 and 556

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Trenbolone Acetate and Estradiol in Combination

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Hoechst-Roussel Agri-Vet Co. The NADA provides for the use of trenbolone acetate and estradiol in combination in subcutaneous ear implants for increased rate of weight gain and improved feed efficiency in feedlot steers.

EFFECTIVE DATE: December 30, 1991.

FOR FURTHER INFORMATION CONTACT: Warner J. Caldwell, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8638.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Route 202–206 North, Somerville, NJ 08876, filed NADA 140–897 which provides for subcutaneous ear implantation of pellets containing 120 milligrams (mg) of trenbolone acetate and 24 mg of estradiol for increased rate of weight gain and improved feed efficiency in feedlot steers. The NADA is approved as November 27, 1991, and the regulations are amended by adding new 21 CFR 522.2477 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, FDA is amending 21 CFR 556.240 and removing 21 CFR 556.250. The tolerance is revised to reflect that concentrations of estradiol are given in terms of its activity and not in terms of the particular ester. Therefore, § 556.250 *Estradiol monopalmitate* is removed.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning November 27, 1991, because new clinical or field investigations (other than bioequivalence or residue studies) were essential to the approval of the application and conducted or sponsored by the applicant.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 522.2477 is added to read as follows:

§ 522.2477 Trenbolone acetate and estradiol in combination.

(a) *Specifications.* Each pellet for implanting contains 20 milligrams of trenbolone acetate and 4 milligrams of estradiol.

(b) *Sponsor.* See No. 012799 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See §§ 556.240 and 556.739 of this chapter.

(d) *Conditions of use*—(1) *Amount.* 120 milligrams of trenbolone acetate and 24 milligrams of estradiol (6 pellets) per animal.

(2) *Indications for use.* For increased rate of weight gain and improved feed efficiency in feedlot steers.

(3) *Limitations.* Implant subcutaneously in ear only. Do not use in animals intended for subsequent breeding or in dairy animals.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: Secs. 402, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 360b, 371).

4. Section 556.240 is amended by revising the heading and introductory text to read as follows:

§ 556.240 Estradiol and related esters.

No residues of estradiol, resulting from the use of estradiol or any of the related esters, are permitted in excess of the following increments above the concentrations of estradiol naturally present in untreated animals:

* * * * *

§ 556.250 [Removed]

5. Section 556.250 *Estradiol monopalmitate* is removed.

Dated: December 20, 1991.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 91–30103 Filed 12–27–91; 8:45 am]

BILLING CODE 4160–01–M

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8384]

RIN 1545-AP82

Certification of Enhanced Oil Recovery Projects

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide procedures whereby an operator or designated owner of an enhanced oil recovery project certifies to the Internal Revenue Service that a project satisfies the requirements of section 43(c) of the Internal Revenue Code. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the proposed rules section of this issue of the Federal Register.

DATES: These regulations are effective on January 1, 1991 and generally apply to taxable years beginning after December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Brenda M. Stewart, (202) 566-4919 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information requirement contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545-1292. The estimated average annual burden per respondent is 73 hours.

These estimates approximate the average time expected to be necessary to collect the information required by this regulation. They are based on the information available to the Internal Revenue Service. Individual respondents may require more time or less time, depending on their particular circumstances.

For further information on this collection of information requirement, where to submit comments on this requirement, the accuracy of the estimated burden, and where to submit suggestions for reducing this burden, please refer to the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section of this issue of the Federal Register.

Background

This document amends the Income Tax Regulations (26 CFR part 1) to provide procedures whereby an operator or designated owner of an enhanced oil recovery project certifies to the Internal Revenue Service that a project meets the definition of a qualified enhanced oil recovery project under section 43 of the Internal Revenue Code. The temporary regulations reflect the addition of section 43(c)(2)(B) to the Code by section 11511(a) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508.

Explanation of Provisions

Section 43(c)(2)(B) provides that a project is not treated as a qualified enhanced oil recovery project unless the operator submits a certification at the time and in the manner prescribed by the Secretary. Section 1.43-3T specifies the certification requirements and is being issued as a temporary regulation, effective for taxable years beginning after December 31, 1990. For the first year in which the enhanced oil recovery credit (the "credit") is allowable with respect to a project, the operator, or any operating mineral interest owner designated by the operator ("designated owner"), must submit a petroleum engineer's certification. The temporary regulations require relatively detailed information to be filed in a project's first year. For subsequent years in which the credit is allowable, the operator or designated owner must certify that the project is being implemented substantially in accordance with the petroleum engineer's certification.

The petroleum engineer's certification and the annual operator's certification must be submitted to the Internal Revenue Service Center, Austin, Texas, not later than the last date prescribed by law (including extensions) for filing the operator's or designated owner's federal income tax return. A failure by the operator or designated owner to timely file a petroleum engineer's certification or an annual operator's certification will not preclude taxpayers from claiming the credit; however, the credit with respect to any project will be allowed only after the appropriate certifications are submitted.

Upon the termination of a qualified enhanced oil recovery project, a notice of project termination must be submitted to the Internal Revenue Service Center, Austin, Texas, not later than the date prescribed by law (including extensions) for filing the operator's or designated owner's federal income tax return for the year in which the project terminates. The notice of project termination is needed to assist the Internal Revenue Service in ensuring that taxpayers do not continue to claim the credit with respect to a terminated project.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Brenda M. Stewart of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.37-1 through 1.44A-4

Credits, Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, title 26, chapter 1, parts 1 and 602, are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended by adding the following citation:

Authority: Sec. 7805, 68A Stat. 917 (26 U.S.C. 7805) * * * Section 1.43-3T also issued under 26 U.S.C. 43(c)(2)(B) * * *

Par. 2. New § 1.43-3T is added to read as follows:

§ 1.43-3T Certification (Temporary).

(a) *Petroleum engineer's certification of a project*—(1) *In general.* A petroleum engineer must certify, under penalties of perjury, that an enhanced oil recovery project meets the requirements of section 43(c)(2)(A). A petroleum engineer's certification must be submitted for each project. The petroleum engineer certifying a project must be duly registered or certified in any state.

(2) *Timing of certification.* The operator of an enhanced oil recovery project or any other operating mineral interest owner designated by the operator ("designated owner") must submit a petroleum engineer's certification to the Internal Revenue Service Center, Austin, Texas, or such other place as may be designated by revenue procedure or other published guidance, not later than the last date prescribed by law (including extensions) for filing the operator's or designated owner's federal income tax return for the first taxable year for which the enhanced oil recovery credit (the "credit") is allowable. The operator may designate any other operating mineral interest owner (the "designated owner") to file the petroleum engineer's certification.

(3) *Content of certification*—(i) *In general.* A petroleum engineer's certification must contain the following information—

(A) The name and taxpayer identification number of the operator or the designated owner submitting the certification;

(B) A statement identifying the project, including its geographic location;

(C) A statement that the project involves a tertiary recovery method (as defined in section 43(c)(2)(A)(i)) and a description of the process used, including—

(*1*) A description of the implementation and operation of the project sufficient to establish that it is implemented and operated in accordance with sound engineering practices and

(*2*) The date on which the first injection of liquids, gases, or other matter occurred or is expected to occur;

(D) A statement that the application of a qualified tertiary recovery method or methods is expected to result in more than an insignificant increase in the amount of crude oil that ultimately will be recovered, including—

(*1*) Data on crude oil reserve estimates covering the project area with and without the enhanced oil recovery process,

(*2*) Production history prior to implementation of the project and estimates or production after production of the project, and

(*3*) An adequate delineation of the reservoir, or portion of the reservoir, from which the ultimate recovery of crude oil is expected to be increased as a result of the implementation and operation of the project; and

(E) A statement that the petroleum engineer believes that the project is a qualified enhanced oil recovery project within the meaning of section 43(c)(2)(A).

(ii) *Additional information for significantly expended projects.* The petroleum engineer's certification for a project that is significantly expanded must in addition contain—

(A) If the expansion affects acreage that was substantially unaffected by a previously implemented project, a precise delineation of the acreage affected by the previously implemented project;

(B) If the expansion affects a reservoir that was unaffected by a previously implemented project, a precise delineation of the reservoir affected by the previously implemented project; or

(C) If the expansion involves the implementation of an enhanced oil recovery project more than 36 months after the termination of a qualified tertiary recovery method that was applied before January 1, 1991, the date on which the previous tertiary recovery method terminated and an explanation of the data or assumptions relied upon to determine the termination date.

(b) *Operator's continued certification of a project*—(1) *In general.* For each taxable year following the taxable year for which the petroleum engineer's certification is submitted, the operator or designated owner must certify, under penalties of perjury, that an enhanced oil recovery project continues to be implemented substantially in accordance with the petroleum engineer's certification submitted for the project. An operator's certification must be submitted for each project.

(2) *Timing of certification.* The operator or designated owner of an enhanced oil recovery project must submit an operator's certification to the Internal Revenue Service Center, Austin, Texas, or such other place as may be designated by revenue procedure or other published guidance, not later than the last date prescribed by law (including extensions) for filing the operator's or designated owner's federal income tax return for any taxable year after the taxable year for which the petroleum engineer's certification is filed.

(3) *Content of certification.* An operator's certification must contain the following information—

(i) The name and taxpayer identification number of the operator or the designated owner submitting the certification;

(ii) A statement identifying the project, including its geographical location and the date on which the petroleum engineer's certification was filed;

(iii) A statement that the project continues to be implemented substantially in accordance with the petroleum engineer's certification (as described in paragraph (a) of this section) submitted for the project; and

(iv) A description of any significant change or anticipated change in the information submitted under paragraph (a)(3) of this section, including a change in the date on which the first injection of liquids, gases, or other matter occurred or is expected to occur.

(c) *Notice of project termination*—(1) *In general.* If the application of a tertiary recovery method is terminated, the operator or designated owner must submit a notice of project termination to the Internal Revenue Service.

(2) *Timing of notice.* The operator or designated owner of an enhanced oil recovery project must submit the notice of project termination to the Internal Revenue Service Center, Austin, Texas, or such other place as may be designated by revenue procedure or other published guidance, not later than the last date prescribed by law (including extensions) for filing the operator's or designated owner's federal income tax return for the taxable year in which the project terminates.

(3) *Content of notice.* A notice of project termination must contain the following information—

(i) The name and taxpayer identification number of the operator or the designated owner submitting the notice;

(ii) A statement identifying the project, including its geographical location and the date on which the petroleum engineer's certification was filed; and

(iii) The date on which the application of the tertiary recovery method was terminated.

(d) *Failure to submit certification.* If a petroleum engineer's certification (as described in paragraph (a) of this section) or an operator's certification (as described in paragraph (b) of this section) is not submitted in the time or manner prescribed by this section, the credit will be allowed only after the appropriate certifications are submitted.

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(e) *Effective date.* Section 1.43–3T is effective for taxable years beginning after December 31, 1990.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by adding the following citation:

"§ 1.43–3T(a)(3)....1545–*1292* and § 1.43–3T(b)(3)....1545–*1292*".

Approved:
December 16, 1991.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91–30873 Filed 12–27–91; 8:45 am]

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26 CFR Part 301

[T.D. 8386]

RIN 1545–A095

Imposition of Penalty for Failure To Comply With Information Reporting Requirements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 6721, which imposes a penalty for failure to file correct information returns, section 6722, which imposes a penalty for failure to furnish correct payee statements, section 6723, which imposes a penalty for failure to comply with other reporting requirements, and section 6724, which provides that such penalties may be waived for reasonable cause. Changes to the applicable law were made by the Omnibus Budget Reconciliation Act of 1989. The regulations affect all persons that are required to file information returns with the Internal Revenue Service, furnish statements to payees, or comply with other Reporting Requirements and are necessary to provide them with guidance needed to comply with these changes.

DATES: Effective dates: These regulations are effective January 1, 1990.

Application: These regulations apply to information returns and payee statements the due date for which (determined without regard to extensions) is after December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Renay France of the Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention CC:CORP:T) (202–377–9344, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301), which provide rules under sections 6721 through 6724 of the Internal Revenue Code of 1986 (the "Code"), relating to the imposition of penalties for failure to comply with certain information reporting requirements. Code sections 6721 through 6724 were amended by the Omnibus Budget Reconciliation Act of 1989 ("OBRA 1989") (Pub. L. No. 101–239, 103 Stat. 2106) and are effective for information returns, payee statements, and certain other documents the due date for which (determined without regard to extensions) is after December 31, 1989. The final regulations provide a special transitional rule for information returns, payee statements, and certain other documents required to be filed after December 31, 1989 (without regard to extensions), and on or before April 22, 1991.

On February 21, 1991, the **Federal Register** published a notice of proposed rulemaking (56 FR 7001) by cross reference to temporary regulations published the same day in the **Federal Register** (56 FR 6969) under Code sections 6721 through 6724. The preamble to the temporary regulations contains an explanation of the temporary and proposed rules. A public hearing was held on September 9, 1991. After consideration of the public comments, the proposed regulations are adopted as revised by this Treasury decision, and the temporary regulations are removed.

Explanation of Statutory Provisions

Code section 6721(a) imposes a penalty of $50 for every information return with respect to which there is a failure to file timely or a failure to include correct and complete information. If an information return is filed both late and with incorrect or incomplete information, not more than one penalty is imposed with respect to the return. Inconsequential errors and omissions do not constitute failures to include complete and correct information. Section 6721(b) provides a time-sensitive tiered penalty structure under which the $50 penalty is reduced to $15 if the filer corrects the failure within 30 days of the required filing date and to $30 if a failure is corrected after the end of such 30-day period but on or before August 1 of the year in which the return is required to be filed (hereinafter August 1). Aggregate penalties for the filing of late or incorrect information returns in any calendar year may not exceed certain limits. Penalties for failures subject to the first-tier $15 penalty are capped at $75,000; penalties for failures subject to the second-tier $30 penalty are capped at $150,000; and the combined penalties for all failures are capped at $250,000. Lower limits apply to certain small businesses. Code section 6721(d).

Code section 6721(c) provides a *de minimis* exception under which a limited number of returns containing incorrect or incomplete information are treated as having been filed with the correct and complete information if the errors or omissions are corrected by August 1. The *de minimis* exception does not apply to the penalty for late filing. Relief under the *de minimis* exception is available for the greater of 10 returns or one-half of one percent of the total number of returns the filer is required to file during the calendar year.

Code section 6721(e) provides that if failures are due to intentional disregard of the information reporting requirements, higher penalty amounts are imposed for each such failure, and the reduced penalties under the tiered system, the limitations on aggregate penalties, and the *de minimis* rules do not apply.

Code section 6722 imposes a penalty of $50 for every payee statement (up to a maximum of $100,000 for any calendar year) with respect to which there is a failure to furnish timely or a failure to include correct and complete information. As with information returns, a failure to provide incomplete or incorrect information does not encompass inconsequential errors and omissions, and higher penalties apply if a failure is due to intentional disregard of the requirement to furnish timely a payee statement.

Code section 6723 imposes a $50 penalty (up to a maximum of $100,000) for every failure to comply timely with certain specified information requirements, including the requirement under section 6050K(c)(1) that a transferor partner notify the partnership of an exchange of a partnership interest, the requirement that a person provide his or her taxpayer identification number (TIN), or the TIN of another to the Internal Revenue Service or to other persons in specified circumstances. As

with information returns, a failure to provide correct and complete information does not encompass inconsequential errors and omissions.

Code section 6724(a) provides that the penalties imposed by sections 6721, 6722, and 6723 will be waived if the filer demonstrates that the failure was due to reasonable cause and not to willful neglect.

Response To Public Comments

Section 301.6721–1—Failure To File Correct Information Returns

Inconsequential Errors and Omissions

Section 301.6721–1T(c) of the temporary regulations provides that inconsequential errors and omissions are not considered errors, and sets forth a list of errors that are never inconsequential. A number of commentators recommended changes in the rule regarding inconsequential errors and omissions, including the removal of an example which suggested that an error in a payee address is never considered inconsequential. The Service has concluded that the list of errors that are never considered inconsequential reflects the needs and operation of its processing system and matching programs. Therefore, the list has not been altered. The incorrect address example has been removed, however, because an incorrect payee address may or may not be inconsequential, depending upon other information on the filed return. It was not clear in the example why the error in the address hindered the processing of the return. Deletion of the example does not imply, however, that in appropriate circumstances the Service may not impose a penalty for an incorrect address.

Returns Not Due on February 28

Section 301.6721–1T (b)(6) and (d)(4) of the temporary regulations excludes returns not required to be filed on February 28 from the application of the $30 tier of the phased penalty and from the *de minimis* rule. Certain of these returns, such as the Form 8300 on which persons report cash transactions in excess of $10,000, have required filing dates that are linked to the date of a transaction. In such cases, correction of erroneous returns by August 1 has limited, if any, practical effect. Commentators pointed out that because the August 1 correction date may be meaningful for filers of Form 1042S, which is required to be filed on March 15, Form 1042S filers should benefit from these rules. The final regulations adopt this suggestion. The final regulations also clarify that all information returns required to be filed during the calendar year are taken into account in calculating the number of returns subject to the *de minimis* rule, regardless of whether the returns themselves are subject to relief under the rule.

Other Comments

Section 301.6721–1T(f)(3) of the temporary regulations sets forth the facts and circumstances that are considered in determining whether a failure is due to intentional disregard of the information reporting requirements. One commentator recommended that the final regulations clarify that, subject to the special rules for magnetic media reporting, these facts and circumstances include a filer's economic decision to incur the penalty rather than bear the costs of complying with the applicable information reporting requirements. This recommendation applies with respect to both the filing of information returns and the furnishing of payee statements. The legislative history to OBRA 1989 expressly includes this circumstance as a basis for finding intentional disregard of the reporting requirements. H.R. Rep. No. 247, 101st Cong., 1st Sess. 1384 (1989). Therefore, the final regulations incorporate this recommendation.

Section 301.6721–1T(g)(6) defines the term "filer" as "not ordinarily includ[ing] a transfer agent or paying agent of the filer." Several commentators asked that the definition be clarified to indicate the circumstances in which a transfer agent might be considered a filer. The final regulations make clear that the filer of an information return is the person who is required to file under the applicable information reporting rules.

Section 301.6722–1—Failure To Furnish Correct Payee Statements

Section 301.6722–1T(a) of the temporary regulations requires that correct and complete payee statements be furnished timely. One commentator asked that the regulations provide special guidance for brokers holding shares of a regulated investment company in street name. In such cases, persons obligated to furnish correct and complete payee statements may receive the necessary information too late to comply timely with this obligation. Because Code section 6722 makes no provision for corrections made after the date the statement is required to be furnished, the final regulations do not adopt the special rules requested. Nevertheless, penalties imposed for failure to furnish timely correct and complete payee statements may be waived if the filer demonstrates that the failure is due to the filer's inability to obtain necessary information from a person on whom the filer must rely to furnish correct and complete payee statements. *See* the discussion of reasonable cause, below.

Section 301.6723–1—Failure To Comply with Specified Information Reporting Requirements

Section 301.6723–1T(a) of the temporary regulations sets forth the specified information reporting requirements to which the penalty may apply and states that failures subject to the penalty include: (1) A failure to comply timely with such a requirement; and (2) a failure to provide correct and complete information. The temporary regulations provide further that multiple penalties may be imposed with respect to a document with multiple failures, but that only one penalty is imposed for each discrete failure regarding such document. One commentator asked that the final regulations clarify that only a single penalty may be imposed with respect to any specified document. The final regulations make clear that if a return would be subject to a penalty because, with respect to any one specified reporting requirement, the required information is both late and incorrect or incomplete, only a single penalty is imposed. Section 301.6723–1T(b) *Example 1* shows, however, that if a single document contains failures to comply with more than one specified information reporting requirement or if on a single document there are multiple instances of a failure to comply with a specified information reporting requirement (such as reporting the TIN of a dependent), a penalty is imposed for each such requirement with respect to which a failure occurs.

Section 301.6724–1—Reasonable Cause

Under Code section 6724, a penalty imposed under sections 6721–6723 may be waived if the failure was due to reasonable cause and not willful neglect. Section 301.6724–1T(a)(2) of the temporary regulations provides that reasonable cause is present if the filer establishes that either (1) there are significant mitigating factors for the failure or (2) the failure arose from events beyond the filer's control. The filer must establish further that it acted in a responsible manner both before and after the failure occurred.

Significant Mitigating Factors

Under § 301.6724–1T(b) of the temporary regulations, significant mitigating factors include, but are not limited to, the following: (1) the filer is a

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first-time filer of the particular type of return or payee statement with respect to which the penalty arises; or (2) the filer has an established history of compliance with the information reporting requirement with respect to which the failure occurs. In determining a filer's history of compliance, the filer's prior penalty history and the filer's success in reducing its error rate from year to year are taken into account. In response to commentators' suggestions, the final regulations provide that, for purposes of determining a filer's prior penalty history, penalties that were self-assessed under provisions amended or repealed by OBRA 1989 are not treated as penalties incurred by the filer.

A number of commentators asked that the final regulations adopt a "safe harbor" under which a filer that has at least a 95 percent accuracy rate when matched against the information on records maintained by the Service would be deemed to have demonstrated a history of compliance. The final regulations do not adopt this recommendation because of the serious impediments it would present for the effectiveness of the Service's matching programs. First, a "safe harbor" standard would reduce the incentive for filers to improve their accuracy rate beyond the safe-harbor threshold. This would undermine the matching programs that depend on the Service's receiving the best possible information. Second, excusing five percent of the returns required to be filed annually from the penalty system would eliminate a significant number of returns from the matching programs every year.

Several commentators suggested that a filer's maintenance of a well-designed internal system for complying with information reporting requirements should satisfy the significant mitigating factors requirement. This suggestion would substitute the quality of the filer's efforts to comply for the quality of the filer's compliance results. The legislative history of Code section 6724 considered an established history of compliance in determining whether reasonable cause is present. It supports, however, only criteria based on compliance results for demonstrating that significant mitigating factors exist. Because the Service must rely on filers to provide the best possible information for use in its matching programs, the final regulations do not adopt this suggestion.

Other commentators focused on additional circumstances that should constitute significant mitigating factors. Commentators requested similar expansions of the circumstances that should be treated as "events beyond the filer's control" (see below). The regulations make clear that both the significant mitigating factors and the applicable criteria for establishing an event beyond the filer's control are not exclusive. Therefore, it is neither necessary nor useful to provide additional possible fact patterns regarding significant mitigating factors or events beyond a filer's control in the final regulations.

Events Beyond the Filer's Control

Section 301.6724–1T(c)(1) of the temporary regulations sets forth a non-exclusive list of events or circumstances that will be treated as events beyond the filer's control for purposes of establishing reasonable cause. A discussion of the comments on the list follows.

Unavailability of Filer's business records.

Under § 301.6724–1T(c)(2) of the temporary regulations, the unavailability of the filer's business records is an event beyond the filer's control if the records are unavailable for a two-week period prior to the required filing date of the return and the unavailability is due to a supervening event, such as a fire or other casualty, a statutory or regulatory change, or the unavoidable absence of the person solely responsible for filing. Commentators noted that the two-week requirement was unnecessarily rigid and should be modified to take into account differing situations. The final regulations adopt this suggestion.

Undue economic hardship relating to magnetic media filing. Section 301.6724–1T(c)(3)(iv) of the temporary regulations provides another circumstance that constitutes an event beyond the filer's control. This is a filer's inability to file on magnetic media because of undue economic hardship. Undue economic hardship is established only if the filer attempts, at least 90 days before the required filing date, to contract out the magnetic media filing and is unable to do so because of prohibitive cost. Ordinarily, a filer may not claim undue economic hardship in more than one year because the Service's acceptance of information on "floppy" disks should put the capability of complying with the magnetic media requirements within the reach of any person filing more than 250 information returns of any one type.

One commentator argued that the 90-day period should be shortened. The Service agrees that the 90-day period may be overlong in light of common business practices. Accordingly, the final regulations adopt a 45-day minimum period in place of the 90-day minimum period. Another commentator argued that the one-year only limitation is contrary to legislative intent as disclosed in the legislative history, which contemplates "multi-year exemptions" from the magnetic media requirements. H.R. Rep. No. 247, 101st Cong., 1st Sess., 1386 (1989). The pertinent language from that report states that the Service should take into consideration "other instances of undue hardship, such as temporary equipment breakdowns or destruction of magnetic media equipment in granting one-year or multi-year exemptions." The one-year limitation relating to a claim of undue economic hardship does not prevent a filer from establishing that records are unavailable due to equipment malfunction or destruction in as many years as the facts will support. Thus, the one-year limitation is consistent with the legislative history and is retained in the final regulations.

Actions of the Internal Revenue Service. Section 301.6724–1T(c)(4) of the temporary regulations provides that a filer's reasonable reliance on erroneous written information from the Service constitutes an event beyond the filer's control. One commentator asked that the written information upon which a filer may rely in establishing such reasonable reliance be expanded to include publications and forms instructions. The regulations already provide for filer reliance on such guidance. See §§ 301.6721–1T(a)(2)(ii) and 301.6722–1T(a)(2)(ii). Therefore, the final regulations retain the rule in the temporary regulations. However, the language of the regulation is modified to provide clarity.

Actions of an agent. Under § 301.6724–1T(c)(5) of the temporary regulations, an event beyond the filer's control can arise from the filer's contracting with an agent to perform the filing of information returns or the furnishing of the payee statements. The temporary regulations require that the filer establish that it contracted sufficiently in advance of the required filing date to permit timely filing; that it monitored the agent's efforts to perform; and that the agent can demonstrate that an event beyond the agent's control prevented timely correct filing.

Commentators asked that the requirement that filers monitor their agents be deleted because it is not consistent with ordinary business practices. The final regulations adopt this suggestion, and require instead that the filer exercise reasonable business judgment in selecting its agent.

Several commentators recommended that the requirement that the agent demonstrate that the failure was due to an event beyond its control be deleted because the filer does not control the agent. Another commentator suggested that the requirement not be deleted, but rather that the agent's ability to demonstrate significant mitigating factors also be taken into account. Because the Service believes that the mere act of hiring an agent should not insulate a filer from penalties, it has not adopted the first recommendation. The Service has concluded that it is appropriate to take into account the agent's ability to demonstrate the presence of significant mitigating factors. Therefore, the final regulations incorporate the requirement that the agent establish the presence of either an event beyond the agent's control or significant mitigating factors.

Actions of the payee or other person. Section 301.6724–1T(c)(6) of the temporary regulations provides that an event beyond the filer's control can result from the failure of the payee (or other person required to provide necessary information to the filer) to provide timely correct information to the filer. Commentators requested clarification that an inability to obtain information from any person, including upstream payors who may not be required to provide information until after the required filing date of the filer's information returns or payee statements, qualify as "action of the payee or other person" in establishing reasonable cause. The final regulations adopt this clarification.

Responsible Manner

Under § 301.6724–1T(d)(1) of the temporary regulations, every filer seeking a waiver for reasonable cause must establish that it acted in a responsible manner both before the failure (by prudently determining its filing obligations and handling its account obligations and by taking steps to avoid or prevent the failure where possible) and after the failure (by correcting the failure promptly, generally within 30 days of the time correction becomes possible).

One commentator argued that the 30-day correction period is onerous and can result in daily filings of corrections. For instance, if failures are discovered on a daily basis, the filer must correct the error almost on a daily basis to ensure that its corrections are made promptly within 30 days. The Service believes that the 30-day period provided in the regulations should require filing of corrections no more frequently than once every 30 days. Therefore, the final regulations modify the general rule that prompt corrections ordinarily occur within 30 days by permitting corrections to be made as part of a general submission of corrections no less frequently than once every 30 days.

Several commentators recommended that the final regulations clarify that the correction requirement of § 301.6724–1T(d)(1)(ii)(D) of the temporary regulations applies only to the information returns or payee statements filed for the year with respect to which the filer is notified under Code section 6721. Except as noted below with respect to incorrect TINs (which are not required to be corrected), the temporary regulations clearly provide that a filer may establish rectification of a failure on a document for which a penalty is imposed by showing correction of the document (*i.e.*, the information return, the payee statement, or document on which a specified information requirement must be satisfied) with respect to which the failure occurs. Thus, there is no indication that the filer must show correction of other documents in order to obtain a waiver. The final regulations, therefore, retain the rule in the temporary regulations. Filers, however, who have errors on returns or other documents for which the statute of limitations has not expired may want to rectify those errors for potential examination or audit.

Certain information reporting requirements prohibit the filer from altering information reported on the required filing date of the information return. See § 1.6045–4(i)(5) of the Income Tax Regulations. The final regulations also clarify that the requirement to correct promptly does not apply in the case of such a requirement.

Special Rules for Taxpayer Identification Numbers (TINs)

Under § 301.6724–1T(e) and (f) of the temporary regulations, a filer seeking to establish that it acted in a responsible manner with respect to failures resulting from missing or incorrect TINs must show that (1) it solicited the TIN at the time the payee's account was opened (or the transaction giving rise to the reporting requirement occurred) and (2) if the TIN was missing or the filer was notified that the TIN was incorrect, it made at least two additional solicitations at prescribed times after the initial solicitation. These solicitations may be conducted by mail or, under certain circumstances, by telephone. If a filer fails to make the required solicitations at the prescribed times, it may satisfy the solicitation requirement by performing solicitations in the proper manner in two consecutive subsequent years. Under § 301.6724–1T(h)(2) of the regulations, special transitional rules apply to returns required to be filed after December 31, 1989, and on or before April 22, 1991.

One commentator noted that reportable payments made to fiduciary and nominee accounts are temporarily exempt from backup withholding due to an incorrect TIN under Code section 3406(a)(1)(B) and correlatively from the solicitation for a correct TIN (B-notice mailings). This commentator argued that filers of returns reporting such payments should therefore not be subject to a penalty under section 6721 for the failure to include the correct TIN on the return. The preamble explaining § 35a.3406–1(a)(3)(x) of the Temporary Employment Tax Regulations, which provides this exemption from backup withholding for fiduciary and nominee accounts, makes clear that filers continue to be subject to penalties imposed by section 6721. 55 FR 39400 (September 27, 1990). It would be inappropriate, therefore, to exempt information returns that report payments to such accounts from the penalty imposed by section 6721. Nevertheless, in view of the exemption from backup withholding provided for these accounts, it is appropriate to permit payors to satisfy the less burdensome solicitation requirements under § 301.6724–1T(f)(3) of the Regulations on Procedure and Administration that apply to filers that have not received a notice of an incorrect TIN pursuant to section 3406(a)(1)(B). These requirements permit solicitations by telephone and generally provide a longer period within which the filer may make the solicitations. Therefore, the final regulations clarify that filers for such fiduciary accounts may satisfy the solicitation requirements applicable to non-backup-withholding type of accounts.

Several commentators requested clarification of requirements to solicit a TIN under § 301.6724–1T(e)(1)(vi) and (f)(5)(i) of the temporary regulations. These provisions provide, in part, that if the information reporting requirement under which an information return is filed sets forth specific requirements relating to the time or manner in which TINs must be solicited, the filer must satisfy those specific requirements to meet the solicitation requirements under the temporary regulations. The final regulations make clear that the specific solicitation requirements of timing (*i.e.*, within a certain number of days) and manner, (*i.e.*, by mail or otherwise) imposed under a particular information reporting requirement must be satisfied. It is not necessary that other substantive requirements (such as the request for a certified TIN or the requirement that a

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payor search for payee accounts other than the one to which the penalty notice relates) be satisfied.

In order to act in a responsible manner with respect to TINs, the solicitation requirements under §§ 301.6724–1T (e)(1)(iv) and (f)(1)(iv) of the temporary regulations require a filer, after receiving a TIN, to include that TIN in its business records, file a return correcting the missing (or incorrect TIN) and reflect the TIN on any returns thereafter filed. However, the solicitation requirements under Code section 3406, which satisfy the solicitation requirements of these regulations, do not require the filer to correct the missing or incorrect TIN by refiling the information return with correct information. To bring about parallel results, the final regulations delete the correction requirement for TINs from the special rule for acting in a responsible manner.

Comentators also requested clarification of particular circumstances that would satisfy the initial solicitation requirement, the application of the special transitional rules to accounts opened before 1989, the dates by which first annual solicitations must be made if accounts are opened in the month of December, the definition of a "missing TIN," and the application of the requirement that the filer make two consecutive annual solicitations to a year in which no return is required to be filed. The final regulations include clarifications on these points. The final regulations also provide clarification through a number of editorial changes.

Other Comments

Commentators made a number of recommendations relating to programs, systems, procedures and legislative initiatives the Service should adopt or pursue in connection with its administration of the information reporting penalty provisions. These comments are beyond the scope of the regulations and are therefore not addressed in the final regulations.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this Treasury decision was preceded by a notice of proposed rulemaking that solicited public comments, the notice was not required by 5 U.S.C. 553 because the regulations proposed in that notice and adopted by this Treasury decision are interpretative. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these final regulations is Renay France of the Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. Personnel from other Offices of the Internal Revenue Service and the Treasury Department participating in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate tax, Excise taxes, Gift tax, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Statistics, Taxes.

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURES AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part:

Authority: Sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805 * * *

§§ 301.6721–0T through 301.6724–1T [Removed]

Par. 2. Temporary regulations §§ 301.6721–0T through 301.6724–1T are removed.

Par. 3. Sections 301.6721–0 through 301.6724–1 are added to read as follows:

§ 301.6721–0 Table of Contents.

In order to facilitate the use of §§ 301.6721–1 through 6724–1, this § 301.6721–0 lists the paragraph headings contained in these sections.

§ 301.6721–1 Failure to file correct information returns.

(a) Imposition of penalty.
(1) General rule.
(2) Failures subject to the penalty.
(b) Reduction in the penalty when a correction is made within specified periods.
(1) Correction within 30 days.
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(3) Required filing date defined.
(4) Penalty amount for return with multiple failures.
(5) Examples.
(6) Applications to returns not due on February 28 or March 15.
(c) Exception for inconsequential errors or omissions.
(1) In General.
(2) Errors or omissions that are never inconsequential.
(3) Examples.
(d) Exception for a *de minimis* number of failures.
(1) Requirements.
(2) Calculation of the *de minimis* exception.
(3) Examples.
(4) Nonapplication to returns not due on February 28 or March 15.
(e) Lower limitations on the $250,000 maximum penalty amount with respect to persons with gross receipts of not more than $5,000,000.
(1) In general.
(2) Gross receipts test.
(f) Higher penalty for intentional disregard of requirement to file timely correct information returns.
(1) Application of section 6721(e).
(2) Meaning of "Intentional disregard."
(3) Facts and circumstances considered.
(4) Amount of the penalty.
(5) Computation of the penalty; aggregate dollar amount of the items required to be reported correctly.
(6) Examples.
(g) Definitions.
(1) Information return.
(2) Statements.
(3) Returns.
(4) Other items.
(5) Payee.
(6) Filer.

§ 301.6722–1 Failure to furnish correct payee statements.

(a) Imposition of penalty.
(1) General rule.
(2) Failures subject to the penalty.
(b) Exception for inconsequential errors or omissions.
(1) In general.
(2) Errors or omissions that are never inconsequential.
(3) Examples.
(c) Higher penalty for intentional disregard of requirement to furnish timely correct payee statements.
(1) Application of section 6722(c).
(2) Amount of the penalty.
(3) Computation of the penalty; aggregate dollar amount of items required to be shown correctly.
(d) Definitions.
(1) Payee.
(2) Payee statement.
(3) Other items.

§ 301.6723–1 Failure to comply with other information reporting requirements.

(a) Imposition of penalty.
(1) General rule.
(2) Failures subject to the penalty.
(3) Exception for inconsequential errors or omissions.
(4) Specified information reporting requirement defined.
(b) Examples.

§ 301.6724–1 Reasonable cause.

(a) Waiver of the penalty.
(1) General rule.
(2) Reasonable cause defined.
(b) Significant mitigating factors.
(c) Events beyond the filer's control.

(1) In general.
(2) Unavailability of the relevant business records.
(3) Undue economic hardship relating to filing on magnetic media.
(4) Actions of the Internal Revenue Service.
(5) Actions of agent—imputed reasonable cause.
(6) Actions of the payee or any other person.
(d) Responsible manner.
(1) In general.
(2) Special rule for filers seeking a waiver pursuant to paragraph (c)(6) of this section.
(e) Acting in a responsible manner—special rules for missing TINs.
(1) In general.
(i) Initial solicitation.
(ii) First annual solicitation.
(iii) Second annual solicitation.
(iv) Additional requirements.
(v) Failures to which a solicitation relates.
(vi) Exceptions and limitations.
(2) Manner of making annual solicitations—by mail or telephone.
(i) By mail.
(ii) By telephone.
(f) Acting in a responsible manner—special rules for incorrect TINs.
(1) In general.
(i) Initial solicitation.
(ii) First annual solicitation.
(iii) Second annual solicitation.
(iv) Additional requirements.
(2) Manner of making annual solicitation if notified pursuant to section 3406(a)(1)(B) and the regulations thereunder.
(3) Manner of making annual solicitation if notified pursuant to section 6721.
(4) Failures to which a solicitation relates.
(5) Exceptions and limitations.
(g) Due diligence safe harbor.
(h) Transitional rules for information returns required to be filed (or payee statements required to be furnished) after December 31, 1989 (without regard to extensions), and on or before April 22, 1991.
(1) In general.
(2) Special rule on TINs.
(i) [Reserved].
(j) Failures to which this section relates.
(k) Examples.
(l) [Reserved].
(m) Procedure for seeking a waiver.
(n) Manner of payment.

§ 301.6721–1 Failure to file correct information returns.

(a) *Imposition of penalty*—(1) *General rule.* A penalty of $50 is imposed for each information return (as defined in section 6724(d)(1) and paragraph (g) of this section) with respect to which a failure (as defined in section 6721(a)(2) and paragraph (a)(2) of this section) occurs. No more than one penalty will be imposed under this paragraph (a)(1) with respect to a single information return even though there may be more than one failure with respect to such return. The total amount imposed on any person for all failures during any calendar year with respect to all information returns shall not exceed $250,000. See paragraph (b) of this section for a reduction in the penalty when the failures are corrected within specified periods. See paragraph (c) of this section for an exception to the penalty for inconsequential errors or omissions. See paragraph (d) of this section for an exception to the penalty for a *de minimis* number of failures. See paragraph (e) of this section for lower limitations to the $250,000 maximum penalty. See paragraph (f) of this section for higher penalties when a failure is due to intentional disregard of the requirement to file timely correct information returns. See paragraph (a)(1) of § 301.6724–1 for waiver of the penalty for a failure that is due to reasonable cause.

(2) *Failures subject to the penalty.* The failures to which section 6721(a) and paragraph (a)(1) of this section apply are—

(i) A failure to file an information return on or before the required filing date ("failure to file timely"), and

(ii) A failure to include all of the information required to be shown on the return or the inclusion of incorrect information ("failure to include correct information"). A failure to file timely includes a failure to file in the required manner, for example, on magnetic media or in other machine-readable form as provided under section 6011(e). However, no penalty is imposed under paragraph (a)(1) of this section solely by reason of any failure to comply with the requirements of section 6011(e)(2)(A), except to the extent that such a failure occurs with respect to more than 250 information returns (the 250-threshold requirement). The 250-threshold requirements applies separately to each type of information return required to be filed. Further, the 250-threshold requirement applies separately to original and corrected returns. Thus, for example, if a filer files 300 returns on Form 1099–DIV and later files 70 corrected returns on Form 1099–DIV, the corrected returns may be filed either on the prescribed paper form (because they fall below the 250-threshold requirement) or on magnetic media or other machine-readable form. Filers who are required to file information returns on magnetic media and who file such information returns electronically are considered to have satisfied the magnetic media filing requirement. Except as provided in paragraph (c)(1) of this section, a failure to include correct information encompasses a failure to include the information required by applicable information reporting statutes or by any administrative pronouncements issued thereunder (such as regulations, revenue rulings, revenue procedures, or information reporting forms and form instructions). A failure to include information in the correct format may be either a failure to file timely an information return or a failure to include correct information on an information return. For example, an error on a magnetic media submission to the Internal Revenue Service that prevents processing by the Internal Revenue Service may constitute a failure to file timely. However, if information is set forth on the wrong field of the magnetic media submission, such an error may constitute a failure to file timely or a failure to include correct information, depending upon the extent of the failure.

(b) *Reduction in the penalty when a correction is made within specified periods*—(1) *Correction within 30 days.* The penalty imposed under section 6721(a) for a failure to file timely or for a failure to include correct information shall be $15 in lieu of $50 if the failure is corrected on or before the 30th day after the required filing date ("within 30 days"). The total amount imposed on a person for all failures during any calendar year that are corrected within 30 days shall not exceed $75,000.

(2) *Correction after 30 days but on or before August 1.* The penalty imposed under section 6721(a) for a failure to file timely or for a failure to include correct information shall be $30 in lieu of $50 if the failure is corrected after the 30-day period described in paragraph (b)(1) of this section but on or before August 1 of the year in which the required filing date occurs ("after 30 days but on or before August 1"). (See paragraph (b)(6) of this section for an exception to the provisions of this paragraph (b)(2) for returns that are not due on February 28 or March 15.) The total amount imposed on a person for all failures during any calendar year corrected after 30 days but on or before August 1 shall not exceed $150,000.

(3) *Required filing date defined.* The term "required filing date" means the date prescribed for filing an information return with the Internal Revenue Service (or the Social Security Administration in the case of Forms W–2) determined with regard to any extension of time for filing.

(4) *Penalty amount for return with multiple failures.* If a return is subject to a penalty for more than one failure, and the penalty amounts for the failures differ, the higher penalty amount will be imposed.

(5) *Examples.* The provisions of paragraphs (a) and (b) (1) through (4) of this section may be illustrated by the following examples. These examples do

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not take into account any possible application of the *de minimis* exception under paragraph (d) of this section, the lower small business limitations under paragraph (e) of this section, the penalty for intentional disregard under paragraph (f) of this section, or the reasonable cause waiver under paragraph (a) of § 301.6724–1:

Example 1. Corporation R fails to file timely 11,000 Forms 1099–MISC (relating to miscellaneous income) for the 1990 calendar year. Five thousand of these returns are filed with correct information within 30 days, and 6,000 after 30 days but on or before August 1, 1991. For the same year R fails to file timely 400 Forms 1099–INT (relating to payments of interest) which R eventually files on September 28, 1991, after the period for reduction of the penalty has elapsed. R is subject to a penalty of $20,000 for the 400 forms which were not filed by August 1 ($50 × 400 = $20,000), $150,000 for the 6,000 forms filed after 30 days ($30 × 6,000 = $180,000, limited to $150,000 under paragraph (b)(2) of this section), and $75,000 for the 5,000 forms filed within 30 days ($15 × 5,000 = $75,000), for a total penalty of $245,000.

Example 2. Corporation T fails to file timely 6,000 Forms 1099–MISC for the 1990 calendar year. T files the 6000 Forms 1099–MISC on September 1, 1991. Because T does not correct the failure by August 1, 1991, T is subject to a penalty of $250,000, the maximum penalty under paragraph (a) of this section. Without the limitation of paragraph (a), T would be subject to a $300,000 penalty ($50 × 6,000 = $300,000).

Example 3. Corporation U files timely 300 Forms 1099–MISC on paper for the 1990 calendar year with correct information. Under section 6011(e)(2) a person required to file at least 250 returns during a calendar year must file those returns on magnetic media. U does not correct its failures to file these returns on magnetic media by August 1, 1991. It is therefore subject to a penalty for a failure to file timely under paragraph (e)(2) of this section. However, pursuant to section 6724(c) and paragraph (a)(2) of this section, the penalty for a failure to file timely on magnetic media applies only to the extent the number of returns exceeds 250. As U was required to file 300 returns on magnetic media, U is subject to a penalty of $2,500 for 50 returns ($50 × 50 = $2,500).

Example 4. Corporation V files 300 Forms 1099–MISC on paper for the 1990 calendar year. The forms were filed on March 15, 1991, rather than on the required filing date of February 28,1991. Under Section 6011(e)(2), a person required to file at least 250 returns during a calendar year must file those returns on magnetic media. V does not correctly file these returns on magnetic media by August 1, 1991. V is subject to a penalty of $3,750 for filing 250 of the returns late ($15 × 250) and $2,500 for failing to file 50 returns on magnetic media ($50 × 50) for a total penalty of $6,250.

(6) *Application to returns not due on February 28, or March 15.* For returns that are not due on February 28 or March 15 (for example, Forms 8300 reporting certain cash payments of $10,000 or more), the penalty is $15 if the failure is corrected within 30 days. If the failure is corrected after 30 days, the penalty is $50 rather than $30. There is no period during which the penalty is reduced to $30 under paragraph (b)(2) of this section.

(c) *Exception for inconsequential errors or omissions*—(1) *In general.* An inconsequential error or omission is not considered a failure to include correct information. For purposes of this paragraph (c)(1), the term "inconsequential error or omission" means any failure that does not prevent or hinder the Internal Revenue Service from processing the return, from correlating the information required to be shown on the return with the information shown on the payee's tax return, or from otherwise putting the return to its intended use. See paragraph (g)(5) of this section for the definition of "payee."

(2) *Errors or omissions that are never inconsequential.* Errors or omissions relating to the following are never inconsequential—

(i) A taxpayer identification number;

(ii) A surname of a payee (*i.e.*, the person required to be furnished a copy of the information set forth on an information return); and

(iii) Any monetary amounts. The Internal Revenue Service may, by administrative pronouncement, specify other types of errors or omissions that are never inconsequential.

(3) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples, which do not take into account any possible application of the penalty for intentional disregard under paragraph (f) of this section or the reasonable cause waiver under paragraph (a) of § 301.6724–1:

Example 1. A filer files a Form 1099–MISC (relating to miscellaneous income) with the Internal Revenue Service. The Form 1099–MISC is complete and correct except that the word "street" is misspelled in the payee's address. The error does not prevent or hinder the Internal Revenue Service from processing the return, from correlating the information required to be shown on the return with the information shown on the payee's tax return, or from otherwise putting the return to its intended use. Therefore, no penalty is imposed under paragraph (a) of this section.

Example 2. A filer files a Form 1099–MISC with the Internal Revenue Service. The Form 1099–MISC is complete and correct except that the payee's first name, William, is misspelled as "Willaim." the error does not prevent or hinder the Internal Revenue Service from processing the return, from correlating the information required to be shown on the return with the information shown on the payee's tax return, or from otherwise putting the return to its intended use. See paragraph (c)(2) of this section. Therefore, no penalty is imposed under paragraph (a) of this section.

Example 3. A filer files a Form 1099–MISC with the Internal Revenue Service. The Form 1099–MISC is complete and correct except that the payee's name, "John Doe," is misspelled as "John Ode." Under paragraph (c)(2) of this section, supplying an incorrect surname for a payee is never considered an inconsequential error. Therefore, a penalty is imposed under paragraph (a) of this section.

(d) *Exception for a de minimis number of failures*—(1) *Requirements.* The penalty under paragraph (a) of this section is not imposed for a *de minimis* number of failures to include correct information if the filer corrects such failures on or before August 1 of the year in which the required filing date occurs. (See paragraph (d)(4) of this section for special rules relating to returns that are not due on February 28 or March 15.)

(2) *Calculation of the de minimis exception.* The number of returns to which the *de minimis* exception applies for any calendar year shall not exceed the greater of 10 or one-half of one percent of the total number of all information returns the filer is required to file during the year. If the number of returns on which the filer fails to include correct information exceeds the number of returns to which the *de minimis* exception applies, the *de minimis* exception applies to those returns that will afford the filer the greatest reduction in penalty. The *de minimis* exception applies to failures to include correct information that exist after the application (if any) of the waiver for reasonable cause under section 6724(a) and § 301.6724–1. Returns to which the *de minimis* exception applies are treated as having been originally filed with correct information.

(3) *Examples.* The provisions of this paragraph (d) may be illustrated by the following examples. In each of the examples, the failures to file and to include correct information are subject to penalty under paragraph (a) of this section. The examples do not take into account any possible application of paragraph (f) of this section or the reasonable cause waiver under paragraph (a) of § 301.6724–1 of this section.

Example 1. Corporation T files timely 10,000 Forms 1099–INT (relating to payments of interest) for 1990 by February 28, 1991. The 10,000 returns are all the information returns that T is required to file during the 1991 calendar year. Of the returns filed, 70 contained incorrect information. T corrects the failures on July 12, 1991. No penalty is imposed for 50 of the failures (*i.e.*, the greater of 10 or .005 x 10,000 = 50) even though the total failures, 70, exceed the number to which the *de minimis* exception may apply. The $30 penalty under paragraph (b)(2) of this section is imposed, in lieu of $50, for the remaining 20 failures, which were corrected after 30 days but on or before August 1, resulting in a total penalty of $600 ($30 x 20 = $600).

Example 2. Corporation U files timely 9,500 Forms 1099–INT for 1990 by February 28, 1991, the required filing date. Fifty of these returns contain incorrect information with respect to which U files correct information on August 1, 1991. U also files 500 Forms 1099–INT for 1990 on August 30, 1991, after the required filing date. The 10,000 returns are all the information returns that U is required to file during the 1991 calendar year. The calculation of the *de minimis* exception is based on the 10,000 returns required to be filed during the 1991 calendar year even though 500 of the returns filed during the year were not filed timely. Therefore, the number of failures for which the *de minimis* exception applies is 50, and accordingly no penalty is imposed for the 50 Forms 1099–INT that were corrected on August 1, 1991. However, the $50 penalty under paragraph (a)(1) of this section is imposed for each failure to file timely, resulting in a total penalty of $25,000 ($50 x 500 = $25,000).

Example 3. Corporation V files timely 9,950 Forms 1099–INT for 1990 by February 28, 1991. However, V fails to file timely 50 of its Forms 1099–INT. The 10,000 returns are all the information returns that V is required to file during the 1991 calendar year. Upon discovering the error, V files the 50 returns within 30 days of February 28, 1991. The 50 returns are complete and correct except that V fails to include the taxpayer identification numbers of the payees on the returns. V files corrected returns on August 1, 1991. Absent application of the *de minimis* exception, the penalty imposed for the failure to include correct information would be $1,500 ($30 x 50 = $1,500). Because the incorrect returns are corrected on August 1, the 50 forms are treated under the *de minimis* exception as originally filed with correct information, and therefore no penalty is imposed under paragraph (a) of this section for the failure to include correct information. Nevertheless, the penalty under paragraph (a) of this section is imposed for the failure to file timely the 50 returns because the *de minimis* exception does not apply to the penalty for the failure to file timely. Hence, a penalty of $750 ($15 x 50 = $750) is imposed.

Example 4. Corporation W files timely 100 Forms 1099–DIV and files an additional 50 Forms 1099–DIV late, but within 30 days of February 28, 1991. These are all the information returns that W was required to file during the 1991 calendar year. W discovers errors on 10 of the returns that were filed timely, and on 5 of the returns that were filed late. W corrects all the errors on August 1. The *de minimis* exception applies to 10 of the corrected returns. The exception will be allocated to the 10 returns that were filed timely with incorrect information, because that allocation is most favorable to W (*i.e.*, applying the exception to a return filed late with incorrect information would save W $15, by reducing the penalty on that return from $30 to $15, but applying the exception to a return filed timely would save W $30, by reducing the penalty on that return from $30 to $0). (See paragraph (b)(4) of this section.)

(4) *Nonapplication to returns not due on February 28 or March 15.* The exception for a *de minimis* number of failures provided in paragraph (d)(1) of this section does not apply to failures with respect to returns that are not due on February 28 or March 15 (for example, Forms 8300 reporting certain cash payments of $10,000 or more). Nevertheless, the returns that are not due on February 28 or March 15 are included in the total number of all information returns that the filer is required to file during a year for purposes of calculating the number of the returns subject to the *de minimis* exception under paragraph (d)(2) of this section.

(e) *Lower limitations on the $250,000 maximum penalty amount with respect to persons with gross receipts of not more than $5,000,000*—(1) *In general.* If a person meets the gross receipts test (as defined in paragraph (e)(2) of this section) for any calendar year, the total amount of the penalty imposed on such person for all failures described in section 6721(a)(2) and paragraph (a)(2) of this section during such calendar year shall not exceed $100,000. The total amount of the penalty imposed under paragraph (b)(1) of this section for failures corrected within 30 days shall not exceed $25,000 for such calendar year. The total amount of the penalty imposed under paragraph (b)(2) of this section for failures corrected after 30 days but on or before August 1 shall not exceed $50,000 for such calendar year.

(2) *Gross receipts test.* A person meets the gross receipts test for any calendar year if the average annual gross receipts for such person for the three most recent taxable years ending before such calendar year do not exceed $5,000,000. For purposes of determining the amount of gross receipts during the three most recent taxable years, the rules of section 448(c) (2) and (3) shall apply.

(f) *Higher penalty for intentional disregard of requirement to file timely correct information returns*—(1) *Application of section 6721(e).* If a failure is due to intentional disregard of the requirement to file timely or to include correct information on a return as described in paragraph (g) of this section, the amount of the penalty imposed under paragraph (a) of this section shall be determined under paragraph (f)(4) of this section.

(2) *Meaning of "intentional disregard."* A failure is due to intentional disregard if it is a knowing or willful—

(i) Failure to file timely, or

(ii) Failure to include correct information. Whether a person knowingly or willfully fails to file timely or fails to include correct information is determined on the basis of all the facts and circumstances in the particular case.

(3) *Facts and circumstances considered.* The facts and circumstances that are considered in determining whether a failure is due to intentional disregard include, but are not limited to—

(i) Whether the failure to file timely or the failure to include correct information is part of a pattern of conduct by the person who filed the return of repeatedly failing to file timely or repeatedly failing to include correct information;

(ii) Whether correction was promptly made upon discovery of the failure;

(iii) Whether the filer corrects a failure to file or a failure to include correct information within 30 days after the date of any written request from the Internal Revenue Service to file or to correct; and

(iv) Whether the amount of the information reporting penalties is less than the cost of complying with the requirement to file timely or to include correct information on an information return.

(4) *Amount of the penalty.* If one or more failures to file timely or to include correct information are due to intentional disregard of the requirement to file timely or to include correct information, then, with respect to each such failure determined under this paragraph (f)—

(i) Paragraphs (b), (d), and (e) of this section shall not apply;

(ii) The $250,000 limitation under paragraph (a) of this section shall not apply, and the penalty under this paragraph (f) shall not be taken into account in applying the $250,000 limitation (or any similar limitation under paragraph (b) or (e) of this section) to penalties not determined under this paragraph (f);

(iii) The penalty imposed under paragraph (a) of this section shall be $100 or, if greater, the statutory percentage; and

(iv) The term "statutory percentage" means—

(A) In the case of a return other than a return required under section 6045(a), 6041A(b), 6050H, 6050I (for amounts received after November 5, 1990), 6050J, 6050K, or 6050L, 10 percent of the aggregate dollar amount of the items required to be reported correctly.

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(B) In the case of a return required to be filed by section 6045(a), 6050K, or 6050L, 5 percent of the aggregate dollar amount of the items required to be reported correctly, or

(C) In the case of a return required to be filed under section 6050I(a) with respect to amounts received after November 5, 1990, for any transaction (or related transactions), the greater of $25,000 or the amount of cash (within the meaning of section 6050I(d)) received in such transaction to the extent the amount of such cash does not exceed $100,000.

(5) *Computation of the penalty; aggregate dollar amount of the items required to be reported correctly.* The aggregate dollar amount used in computing the penalty under this paragraph (f) is the amount that is not reported or is reported incorrectly. If the intentional disregard relates to a dollar amount, the statutory percentage is applied to the difference between the dollar amount reported and the amount required to be reported correctly. If the intentional disregard relates to any other item on the return, the statutory percentage is applied to the aggregate amount of items required to be reported correctly. In determining the aggregate amount of items required to be reported correctly, no item shall be taken into account more than once. For example, if a filer willfully fails to file a Form 1099–INT on which $800 of interest and $160 of Federal income tax withheld (*i.e.*, backup withholding) is required to be reported, only the $800 amount is taken into account in computing the penalty.

(6) *Examples.* The provisions of this paragraph (f) may be illustrated by the following examples:

Example 1. On December 1, 1990, Automobile dealer P receives $55,000 from an individual for the purchase of an automobile in a transaction subject to reporting under section 6050I. The individual presents documents to P that identify him as "John Doe." However, P completes the Form 8300 (relating to cash received in a trade or business) and reflects the name of a cartoon character as the payor. Because P knew at the time of filing the Form 8300 that the payor's name was not the name of the cartoon character, he willfully failed to include correct information as described under paragraph (f)(2) of this section. Therefore, the penalty under paragraph (f)(4) of this section is imposed for the intentional disregard of the requirement to include correct information. The amount used in computing the penalty under paragraph (f)(5) of this section is $55,000 (*i.e.*, the amount required to be reported on the return with respect to which the payee is not correctly identified). The amount of the penalty determined under paragraph (f)(4)(ii)(C) of this section is $55,000 (*i.e.*, the greater of $25,000 or the amount of cash received in the transaction up to $100,000).

Example 2. On December 1, 1990, Individual B contacts his agent, F, to act as his intermediary in the purchase of an automobile. B gives F $20,000 and requests F to purchase the automobile in F's name, which F does. F prepares the Form 8300 as required under section 6050I, but in the area designated for the name of the payor, F writes "confidential." Because F knew at the time the return was filed that it contained incomplete information, the penalty under paragraph (f)(4) of this section is imposed for the intentional disregard of the requirement to include correct information. The amount used in computing the penalty under paragraph (f)(5) of this section is $20,000 (*i.e.*, the amount required to be reported on the return with respect to which the payee is not correctly identified). The amount of the penalty determined under paragraph (f)(4)(ii)(C) of this section is $25,000 (*i.e.*, the greater of $25,000 or the amount of cash received in the transaction up to $100,000).

Example 3. Corporation M deliberately does not include $5,000 of dividends on a Form 1099–DIV (relating to payments of dividends) on which a total of $200,000 (including the $5,000 dividends) is required to be reported under section 6042(a). Because the failure was deliberate, Corporation M's failure is due to intentional disregard of the requirement to include correct information. Accordingly, the amount of the penalty imposed under paragraph (a) is determined under paragraph (f)(4) of this section. Because the Form 1099–DIV is required to be filed under section 6042(a), under paragraph (f)(4)(ii)(A) the amount of the penalty with respect to such failure is 10 percent of the aggregate dollar amount of the items that were required to be but that were not reported correctly. Under paragraph (f)(5) of this section, $5,000 is the difference between the dollar amount reported and the amount required to be reported correctly. Therefore, the amount of the penalty is $500 ($5,000 × .10 = $500).

Example 4. Form 8027 requires certain large food and beverage establishments to report certain information with respect to tips. The form requires (among other things) that the establishment report its gross receipts from food and beverage operations. Establishment A, in intentional disregard of the information reporting requirement, reported gross receipts of $1,000,000, when the correct amount was $1,500,000. The significance of the gross receipts reporting requirement is that section 6053(c)(3)(A) requires an establishment to allocate as tips among its employees the excess of 8 percent of its gross receipts over the aggregate amount reported by employees to the establishment as tips under section 6053(a). A's misstatement of its gross receipts caused A to show $80,000 on the Form 8027 as 8 percent of its gross receipts, rather than the correct amount of $120,000. A correctly reported the amount of tips reported to it by employees under section 6053(a) as $80,000. Thus A reported the excess of 8 percent of its gross receipts over tips reported to it as zero, rather than as the correct amount of $40,000. The requirement of reporting gross receipts is considered merely a step in the computation of the excess of 8 percent of gross receipts over tips reported to A under section 6053(a), so that the penalty for intentional disregard will be $4,000 (*i.e.*, 10 percent of the difference between the $40,000 required to be reported as the excess of 8 percent of gross receipts over tips reported under section 6053(a), and the zero amount actually reported).

(g) *Definitions*—(1) *Information return.* For purposes of this section the term "information return" means any statement described in paragraph (g)(2) of this section, any return described in paragraph (g)(3) of this section, and any other items described in paragraph (g)(4) of this section.

(2) *Statements.* The statements subject to this section are the statements required by—

(i) Section 6041 (a) or (b) (relating to certain information at source, generally reported on Form 1099–MISC, Form W–2G, Form W–2, and Form 1099–INT),

(ii) Section 6042(a)(1) (relating to payments of dividends, generally reported on Form 1099–DIV),

(iii) Section 6044(a)(1) (relating to payments of patronage dividends, generally reported on Form 1099–PATR),

(iv) Section 6049(a) (relating to payments of interest, generally reported on Form 1099–INT),

(v) Section 6050A(a) (relating to reporting requirements of certain fishing boat operators, generally reported on Form 1099–MISC),

(vi) Section 6050N(a) (relating to payments of royalties, generally reported on Form 1099–INT), or

(vii) Section 6051(d) (relating to information returns with respect to income tax withheld, generally reported on Form W–2).

(3) *Returns.* The returns subject to this section are the returns required by—

(i) Section 6041A(a) or (b) (relating to returns of direct sellers, generally reported on Form 1099–MISC),

(ii) Section 6045(a) or (d) (relating to returns of brokers generally reported on Form 1099–B for broker transactions, Form 1099–S for gross proceeds from the sale or exchange of real estate, and Form 1099–MISC for certain substitute payments),

(iii) Section 6050H(a) (relating to mortgage interest received in trade or business from individuals, generally reported on Form 1098),

(iv) Section 6050I(a) (relating to cash received in trade or business, generally reported on Form 8300),

(v) Section 6050J(a) (relating to foreclosures and abandonments of security, generally reported on Form 1099–A),

(vi) Section 6050K(a) (relating to exchanges of certain partnership interests, generally reported on Form 8308),

(vii) Section 6050L(a) (relating to returns relating to certain dispositions of donated property, generally reported on Form 8282),

(viii) Section 6052(a) (relating to reporting payment of wages in the form of group-life insurance, generally reported on Form W–2),

(ix) Section 6053(c)(1) (relating to reporting with respect to certain tips, generally reported on Form 8027),

(x) Section 1060(b) (relating to reporting requirements of transferors and transferees in certain asset acquisitions, generally reported on Form 8594), or section 1060(e) (relating to information required in the case of certain transfers of interests in entities (effective for acquisitions after October 9, 1990, except any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition)),

(xi) Section 4093(c)(4)(A) or (C) or, effective for information returns required to be filed after December 31, 1989, and before December 1, 1990, section 4093(e) (relating to information reporting with respect to tax on diesel and aviation fuels),

(xii) Section 4101(d) (relating to information reporting with respect to fuel oils (effective for information returns required to be filed after November 30, 1990)), or

(xiii) Section 338(h)(10)(C) (relating to information required to be furnished to the Secretary in case of elective recognition of gain or loss (effective for acquisitions after October 9, 1990, except any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition)).

(4) *Other items.* The term "information return" also includes any form, statement, or schedule required to be filed with the Internal Revenue Service with respect to any amount from which tax is required to be deducted and withheld under chapter 3 of the Code (or from which tax would be required to be so deducted and withheld but for an exemption under the Code or any treaty obligation of the United States), generally the Form 1042S.

(5) *Payee.* For purposes of section 6721 the term "payee" means any person who is required to receive a copy of the information set forth on an information return by the filer of the return as defined in section 6724(d)(1).

(6) *Filer.* For purposes of this section the term "filer" means a person that is required to file an information return as defined in paragraph (g)(1) of this section under the applicable information reporting section described in paragraph (g) (2) through (4) of this section.

§ 301.6722–1 Failure to furnish correct payee statements.

(a) *Imposition of penalty*—(1) *General rule.* A penalty of $50 is imposed for each payee statement (as defined in section 6724(d)(2)) with respect to which a failure (as defined in section 6722(a) and paragraph (a)(2) of this section) occurs. No more than one penalty will be imposed under this paragraph (a) with respect to a single payee statement even though there may be more than one failure with respect to such statement. However, the penalty shall apply to failures on composite substitute payee statements as though each type of payment and other required information were furnished on separate statements. A "composite substitute payee statement" is a single document created by a filer to reflect several types of payments made to the same payee. The total amount imposed on any person for all failures during any calendar year with respect to all payee statements shall not exceed $100,000. See section 6722(c) and paragraph (c) of this section for higher penalties when a failure is due to intentional disregard of the requirement to furnish timely correct payee statements. See paragraph (a)(1) of § 301.6724–1 for a waiver of the penalty for a failure that is due to reasonable cause.

(2) *Failures subject to the penalty.* The failures to which section 6722(a) and paragraph (a)(1) of this section apply are—

(i) A failure to furnish a payee statement on or before the prescribed date therefore to the person to whom such statement is required to be furnished ("failure to furnish timely"), and

(ii) A failure to include all of the information required to be shown on a payee statement or the inclusion of incorrect information ("failure to include correct information"). A failure to furnish timely includes a failure to furnish a written statement to the payee in a statement mailing as required under sections 6042(c), 6044(e), 6049(c), and 6050N(b), as well as a failure to furnish the statement on a form acceptable to the Internal Revenue Service. Except as provided in paragraph (b) of this section, a failure to include correct information encompasses a failure to include the information required by applicable information reporting statutes or by any administrative pronouncements issued thereunder (such as regulations, revenue rulings, revenue procedures, or information reporting forms).

(b) *Exception for inconsequential errors or omissions*—(1) *In general.* An inconsequential error or omission is not considered a failure to include correct information. For purposes of this paragraph (b), the term "inconsequential error or omission" means any failure that cannot reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her return or from otherwise putting the statement to its intended use.

(2) *Errors or omissions that are never inconsequential.* Errors or omissions relating to the following are never inconsequential:

(i) A dollar amount,

(ii) The significant items in the address of a payee, which is the address provided by the payee to the filer,

(iii) The appropriate form for the information provided (*i.e.*, whether or not the form is an acceptable substitute for an official form of the Internal Revenue Service), and

(iv) The manner of furnishing a statement required under sections 6042(c), 6044(e), 6049(e), and 6050N(b). The Internal Revenue Service may, by administrative pronouncement, specify other types of errors or omissions that are never inconsequential.

(3) *Examples.* The provisions of this paragraph (b) may be illustrated by the following examples which do not take into account any possible application of the penalty for intentional disregard under paragraph (c) of this section or the reasonable cause waiver under paragraph (a) of § 301.6724–1:

Example 1. A payor furnishes a statement with respect to a Form 1099–MISC (relating to miscellaneous income). The payee statement is complete and correct, except the word "boulevard" is misspelled in the payee's address. The error cannot reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her tax return or from otherwise putting the statement to its intended use. Therefore, no penalty is imposed under paragraph (a) of this section.

Example 2. Assume the same facts in *Example 1*, except that the only error on the payee statement is that the payee's street address, 4821 Grant Boulevard, is reported incorrectly as 8421 Grant Boulevard. A penalty is imposed under paragraph (a) of this section with respect to the payee statement because the error can reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her tax return or from otherwise putting the statement to its intended use.

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(c) *Higher penalty for intentional disregard of requirement to furnish timely correct payee statements*—(1) *Application of section 6722(c).* If a failure is due to intentional disregard of the requirement to furnish timely correct payee statements, the amount of the penalty shall be determined under paragraph (c)(2) of this section. Whether a failure is due to intentional disregard of the requirement to furnish timely correct payee statements is based upon the facts and circumstances surrounding the failure. The facts and circumstances considered include those under § 301.6721–1(f)(3), which shall apply in determining whether a failure under this section is due to intentional disregard.

(2) *Amount of the penalty.* If one or more failures under paragraph (a) of this section are due to intentional disregard of the requirement to furnish timely payee statements or of the requirement to include correct information, then, with respect to each such failure determined under this paragraph (c)(2)—

(i) The $100,000 limitation under paragraph (a) of this section shall not apply and the penalty under this paragraph (c)(2) shall not be taken into account in applying the $100,000 limitation to penalties not determined under this paragraph (c)(2);

(ii) The penalty imposed under paragraph (a) of this section shall be $100 or, if greater, the statutory percentage; and

(iii) The term "statutory percentage" means—

(A) In the case of a payee statement other than a statement required under section 6045(b), 6041A(e) (in respect of a return required under section 6041A(b)), 6050H(d), 6050J(e), 6050K(b), or 6060L(c), 10 percent of the aggregate dollar amount of the items required to be reported correctly, or

(B) In the case of a payee statement required under section 6045(b), 6050K(b), or 6050L(c), 5 percent of the aggregate dollar amount of the items required to be reported correctly

(3) *Computation of the penalty; aggregate dollar amount of items required to be shown correctly.* The aggregate dollar amount used in computing the penalty under this paragraph (c) is the amount that is not reported or is reported incorrectly. If the intentional disregard relates to a dollar amount, the statutory percentage is applied to the difference between the dollar amount reported and the amount required to be reported correctly. If the intentional disregard relates to any other item on the return, the statutory percentage is applied to the aggregate amount of items required to be reported correctly. In determining such amount the same item shall be counted only once. For example, if a filer willfully fails to furnish a Form 1099–INT on which $800 of interest and $160 of Federal income tax withheld (*i.e.*, backup withholding) is required to be shown, only the $800 amount is taken into account in computing the penalty.

(d) *Definitions*—(1) *Payee.* See § 301.6721–1(g)(5) for the definition of "payee."

(2) *Payee statement.* The term "payee statement" means any statement required to be furnished under—

(i) Section 6031(b) or (c), 6034A, or 6037(b) (relating to statements furnished by certain pass-thru entities, generally a Schedule K–1 (Form 1065) for section 6031(b) or (c), a copy of the Schedule K–1 (Form 1041) for section 6034A, and a copy of Schedule K–1 (Form 1120S) for section 6037(b)),

(ii) Section 6039(a) (relating to information required in connection with certain options),

(iii) Section 6041(d) (relating to information at source, generally the recipient copy of Form 1099–MISC, Form W–2, Form 1099–INT, and the winner's copies of Form W–2G),

(iv) Section 6041A(e) (relating to returns regarding payments of remuneration for services and direct sales, generally the recipient copy of Form 1099–MISC),

(v) Section 6042(c) (relating to returns regarding payments of dividends and corporate earnings and profits, generally the recipient copy of Form 1099–DIV),

(vi) Section 6044(e) (relating to returns regarding payments of patronage dividends, generally the recipient copy of Form 1099–PATR),

(vii) Section 6045(b) or (d) (relating to returns of brokers, generally the recipient copy of Form 1099–B for broker transactions, the transferor copy of Form 1099–S for reporting proceeds from real estate transactions, and the recipient copy of Form 1099–MISC for certain substitute payments),

(viii) Section 6049(c) (relating to returns regarding payments of interest, generally the recipient copy of Form 1099–INT),

(ix) Section 6050A(b) (relating to reporting requirements of certain fishing boat operators, generally the recipient copy of Form 1099–MISC),

(x) Section 6050H(d) (relating to returns relating to mortgage interest received in trade or business from individuals, generally the payor copy of Form 1098),

(xi) Section 6050I(e) (relating to returns relating to cash received in trade or business, generally a copy of Form 8300),

(xii) Section 6050J(e) (relating to returns relating to foreclosures and abandonments of security, generally the borrower copy of Form 1099–A),

(xiii) Section 6050K(b) (relating to returns relating to exchanges of certain partnership interests, generally a copy of Form 8308),

(xiv) Section 6050L(c) (relating to returns relating to certain dispositions of donated property, generally a copy of Form 8282),

(xv) Section 6050N(b) (relating to returns regarding payments of royalties, generally the recipient copy of Form 1099–MISC),

(xvi) Section 6051 (relating to receipts for employees, generally the employee copy of Form W–2),

(xvii) Section 6052(b) (relating to returns regarding payment of wages in the form of group-term life insurance, generally the employee copy of Form W–2),

(xviii)(Section 6053(b) or (c) (relating to reports of tips, generally the employee copy of Form W–2), and

(xix) Section 4093(c)(4)(B) (relating to certain purchasers of diesel and aviation fuels).

(3) *Other items.* The term "payee statement" also includes any form, statement, or schedule required to be furnished to the recipient of any amount from which tax is required to be deducted and withheld under chapter 3 of the Code (or from which tax would be required to be so deducted and withheld but for an exemption under the Code or any treaty obligation of the United States), generally the recipient copy of Form 1042S.

§ 301.6723–1 Failure to comply with other information reporting requirements.

(a) *Imposition of penalty*—(1) *General rule.* A penalty of $50 is imposed for each failure to comply timely with a specified information reporting requirement (as defined in paragraph (a)(4) of this section) or for each failure to include correct specified information. Multiple penalties are imposed with respect to a document with failures to comply with more than one of the requirements set forth in paragraph (a)(4) of this section or multiple instances of failures to comply with any one of these requirements. Nonetheless, if a failure that occurs with respect to any requirement defined in paragraph (a)(4) of this section would be subject to a penalty under both paragraph (a)(2)(i) and paragraph (a)(2)(ii) of this section, no more than one penalty is imposed for such failure. The total amount imposed on any person for all failures during any calendar year with respect to all specified information reporting requirements shall not exceed $100,000. See paragraph (a) of § 301.6724–1 for the waiver of the penalty for a failure that is due to reasonable cause.

(2) *Failures subject to the penalty.* The failures to which paragraph (a)(1) of this section apply are—

(i) A failure to comply timely with a specified information reporting requirement on or before the date prescribed therefor ("failure to comply timely"), and

(ii) A failure to include all the information required by a specified information reporting requirement or the inclusion of incorrect information ("failure to include correct information").

(3) *Exception for inconsequential errors or omissions.* An inconsequential error or omission is not considered a failure to comply with a specified information reporting requirement. For purposes of paragraph (a)(3) of this section, an error or omission is considered inconsequential if it does not frustrate the purpose or use for which the information is intended.

(4) *Specified information reporting requirement defined.* For purposes of section 6723 and this section, a "specified information reporting requirement" means—

(i) The requirement to provide the notice under section 6050K(c)(1) (relating to the requirement that a transferor notify the partnership of an exchange of a partnership interest);

(ii) Any requirement contained in the regulations under section 6109 that a person—

(A) Include his or her taxpayer identification number ("TIN") on any return, statement, or other document (other than an information return or payee statement),

(B) Include on any return, statement, or other document (other than an information return or payee statement) made with respect to another person the TIN of such person, or

(C) Furnish his or her TIN to another person;

(iii) Any requirement contained in the regulations under section 215 that a person—

(A) Furnish his or her TIN to another person, or

(B) Include on his or her return the TIN of another person; and

(iv) The requirement under section 6109(e) that a person include the TIN of any dependent on his or her return.

(b) *Examples.* The provisions of paragraph (a) of this section may be illustrated by the following examples which do not take into account the reasonable cause waiver under section 6724(a) and paragraph (a)(1) of § 301.6724–1.

Example 1. Individual A, who has two dependents ages 7 and 9, files his 1990 Form 1040 in 1991. The Form 1040 requires him to provide the TINs of his two dependents, which A fails to do. Because A fails to comply timely with two requirements to include on his return the TIN of another person, a $50 penalty under paragraph (a) of this section is imposed on A for each of the two failures, for a total penalty of $100.

Example 2. In 1991 Individual B opens with Bank X an account which pays reportable interest under section 6049. When B opens the account, Bank X requests that B provide his TIN on a Form W–9. B does not provide his TIN as required by § 301.6109–1(b). As a result B fails to comply timely with a specified information reporting requirement under paragraph (a) of this section for furnishing his TIN to another person. Therefore, a $50 penalty is imposed on B under paragraph (a) of this section for the failure. See section 6721(a) for the penalty to which X may be subject if X files a Form 1099–INT (relating to payments of interest) for calendar year 1991 without B's TIN. See section 3406(a)(1)(A) which requires X to impose backup withholding on reportable payments of interest to B's account.

Example 3. In 1991 Individual C is a nonresident alien with an account inside the U.S. with Bank Z. The account pays interest that would be reportable under section 6049 but for the fact that it is paid to a nonresident alien. Under section 6109 and § 301.6109–1(b), Bank Z is required to request the TIN from C. C claims that he is a nonresident alien and that his account is not subject to information reporting under section 6049. Because of this, C contends he is not required to provide any TIN information. As a result of this discussion, Bank Z then requests C to provide it with a Form W–8 in order for C to certify that he is a nonresident alien which C fails to do. C fails to comply timely with a specified information reporting requirement under paragraph (a) of this section to furnish his TIN to another person. Therefore, a penalty is imposed on C under paragraph (a) of this section for the failure. See section 6721(a) for the penalty that may be imposed on Z if Z files a Form 1099–INT for calendar year 1991 without C's TIN. See section 3406(a)(1)(A) under which Z is required to impose backup withholding on reportable payment of interest to C's account.

Example 4. In 1991 Partnership D opens with Bank Y an account that pays reportable interest under section 6049. When D opens the account, Y requests the partnership's employer identification number (EIN) on a Form W–9 as required under § 301.6109–1(b). The partnership provides its EIN on the Form W–9. Y files an information return with respect to D for the 1991 calendar year. Subsequently, the Internal Revenue Service later notifies Y that D's EIN is incorrect as defined under section 3406 and § 35a.3406–1(a)(6). D fails to comply timely with a specified reporting requirement under paragraph (a) of this section of furnishing its correct EIN to another person. Therefore, a penalty is imposed on D under paragraph (a) of this section for the failure. See section 6721(a) for the penalty to which Y may be subject if Y files a Form 1099–INT for calendar year 1991 without D's correct EIN. See section 3406(a)(1)(B), which requires Y to impose backup withholding on reportable payments of interest to B's account when the Internal Revenue Service or a broker has notified Y that the EIN is incorrect.

§ 301.6724–1 Reasonble cause.

(a) *Waiver of the penalty*—(1) *General rule.* The penalty for a failure relating to an information reporting requirement (as defined in paragraph (j) of this section) is waived if the failure is due to reasonable cause and is not due to willful neglect.

(2) *Reasonable cause defined.* The penalty is waived for reasonable cause only if the filer establishes that either—

(i) There are significant mitigating factors with respect to the failure, as described in paragraph (b) of this section; or

(ii) The failure arose from events beyond the filer's control ("impediment"), as described in paragraph (c) of this section.

Moreover, the filer must establish that the filer acted in a responsible manner, as described in paragraph (d) of this section, both before and after the failure occurred. Thus, if the filer establishes that there are significant mitigating factors for a failure but is unable to establish that the filer acted in a responsible manner, the mitigating factors will not be sufficient to obtain a waiver of the penalty. Similarly, if the filer establishes that a failure arose from an impediment but is unable to establish that the filer acted in a responsible manner, the impediment will not be sufficient to obtain a waiver of the penalty. See paragraph (g) of this section for the reasonable cause safe harbor for persons who exercise due diligence.

(b) *Significant mitigating factors.* In order to establish reasonable cause under this paragraph (b), the filer must satisfy paragraph (d) of this section and must show that there are significant mitigating factors for the failure. The mitigating factors include, but are not limited to—

(1) The fact that prior to the failure the filer was never required to file the particular type of return or furnish the particular type of statement with respect to which the failure occurred, or

(2) The fact that the filer has an established history of complying with the information reporting requirement with respect to which the failure occurred. In determining whether the filer has such an established history, significant consideration is given to—

(i) Whether the filer has incurred any penalty under §§ 301.6721–1, 301.6722–1,

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or 301.6723–1 in prior years for the failure (or under parallel provisions of prior law), and

(ii) If the filer has incurred any such penalty in prior years, the extent of the filer's success in lessening its error rate from year to year.

A filer may treat as a penalty not incurred any penalty under sections 6721 through 6723 that was self-assessed under section 6724(c)(3) and any penalty under section 6676(b) that was self-assessed under section 6676(d), prior to amendment or repeal by the Omnibus Budget Reconciliation Act of 1989. See paragraph (c)(5) of this section for the application of this paragraph (b) to failures attributable to the actions of a filer's agent.

(c) *Events beyond the filer's control*—(1) *In general.* In order to establish reasonable cause under this paragraph (c)(1), the filer must satisfy paragraph (d) of this section and must show that the failure was due to events beyond the filer's control. Events which are generally considered beyond the filer's control include but are not limited to—

(i) The unavailability of the relevant business records (as described in paragraph (c)(2) of this section),

(ii) An undue economic hardship relating to filing on magnetic media (as described in paragraph (c)(3) of this section),

(iii) Certain actions of the Internal Revenue Service (as described in paragraph (c)(4) of this section),

(iv) Certain actions of an agent (as described in paragraph (c)(5) of this section), and

(v) Certain actions of the payee or any other person providing necessary information with respect to the return or payee statement (as described in paragraph (c)(6) of this section).

(2) *Unavailability of the relevant business records.* In order to establish reasonable cause under paragraph (c)(1) of this section due to the unavailability of the relevant business records, the filer's business records must have been unavailable under such conditions, in such manner, and for such period as to prevent timely compliance (ordinarily at least a 2-week period prior to the due date (with regard to extensions) of the required return or the required date (with regard to extensions) for furnishing the payee statement), and the unavailability must have been caused by a supervening event. A "supervening event" includes, but is not limited to—

(i) A fire or other casualty that damages or impairs the filer's relevant business records or the filer's system for processing and filing such records;

(ii) A statutory or regulatory change that has a direct impact upon data processing and that is made so close to the time that the return or payee statement is required that, for all practical purposes, the change cannot be complied with; or

(iii) The unavoidable absence (*e.g.*, due to death or serious illness) of the person with the sole responsibility for filing a return or furnishing a payee statement.

(3) *Undue economic hardship relating to filing on magnetic media.* In order to establish reasonable cause under paragraph (c)(1) of this section due to an undue economic hardship for filing on magnetic media, the filer must show that it failed to file on magnetic media because the filer lacked the necessary hardware. For purposes of this paragraph (c)(3), the filer will not be considered to have acted in a responsible manner under paragraph (d) of this section unless—

(i) The filer attempted on a timely basis to contract out the magnetic media filing;

(ii) The cost of filing on magnetic media was prohibitive as determined at least 45 days before the due date of the returns (without regard to extensions) (90 days for information returns the due date for which (without regard to extensions) is after December 31, 1989, and by or before February 28, 1991 (March 15, 1991, for Forms 1042S));

(iii) The cost was supported by a minimum of two cost estimates from unrelated parties; and

(iv) The filer filed the returns on paper. Reasonable cause will not ordinarily be established under this paragraph (c)(3) if a filer received a reasonable cause waiver in any prior year under paragraph (c)(1) of this section due to an undue economic hardship relating to filing on magnetic media.

(4) *Actions of the Internal Revenue Service.* In order to establish reasonable cause under paragraph (c)(1) of this section due to certain actions of the Internal Revenue Service, a filer must show that the failure was due to the filer's reasonable reliance on erroneous written information from the Internal Revenue Service. Reasonable reliance means that the filer relied in good faith on the information. The filer shall not be considered to have relied in good faith if the Internal Revenue Service was not aware of all the facts when it provided the information to the filer. In order to substantiate reasonable cause under this paragraph (c)(4), the filer must provide a copy of the written information provided by the Internal Revenue Service and, if applicable, the filer's written request for the information.

(5) *Actions of agent—imputed reasonable cause.* In order to establish reasonable cause under paragraph (c)(1) of this section due to actions of an agent, the filer must show the following:

(i) The filer exercised reasonable business judgment in contracting with the agent to file timely correct returns or furnish timely correct payee statements with respect to which the failure occurred. This includes contracting with the agent and providing the proper information sufficiently in advance of the due date of the return or statement to permit timely filing of correct returns or timely furnishing of correct payee statements; and

(ii) The agent satisfied the reasonable cause criteria set forth in paragraph (b) or one of the reasonable cause criteria set forth in paragraph (c) (2) through (6) of this section.

(6) *Actions of the payee or any other person.* In order to establish reasonable cause under paragraph (c)(1) of this section due to actions of the payee or any other person, such as a broker as defined in section 6045(c), providing information with respect to the return or payee statement, the filer must show either—

(i) That the failure resulted from the failure of the payee, or any other person required to provide information necessary for the filer to comply with the information reporting requirements ("any other person"), to provide information to the filer, or

(ii) That the failure resulted from incorrect information provided by the payee (or any other person) upon which information the filer relied in good faith. To substantiate reasonable cause under this paragraph (c)(6), the filer must provide documentary evidence upon request of the Internal Revenue Service showing that the failure was attributable to the payee (or any other person). See paragraph (d)(2) of this section for special rules relating to the availability of a waiver where the filer's failure relates to a taxpayer identification number (TIN), and the failure is attributable to actions of the payee described in paragraph (c)(6) (i) or (ii) of this section.

(d) *Responsible manner*—(1) *In general.* Acting in a responsible manner means—

(i) That the filer exercised reasonable care, which is that standard of care that a reasonably prudent person would use under the circumstances in the course of its business in determining its filing obligations and in handling account information such as account numbers and balances, and

(ii) That the filer undertook significant steps to avoid or mitigate the failure, including, where applicable—

(A) Requesting appropriate extensions of time to file, when practicable, in order to avoid the failure,

(B) Attempting to prevent an impediment or a failure, if it was foreseeable,

(C) Acting to remove an impediment or the cause of a failure, once it occurred, and

(D) Rectifying the failure as promptly as possible once the impediment was removed or the failure was discovered. Ordinarily, a rectification is considered prompt if it is made within 30 days after the date the impediment is removed or the failure is discovered or on the earliest date thereafter on which a regular submission of corrections is made. Submissions will be considered regular only if made at intervals of 30 days or less. A failure may be rectified by filing or correcting the information return, furnishing or correcting the payee statement, or by providing or correcting the information to satisfy the specified information reporting requirement with respect to which the failure occurs. Paragraph (d)(ii)(D) of this section does not apply with respect to information the filer is prohibited from altering under specific information reporting rules. See § 1.6045–4(i)(5) of this chapter.

(2) *Special rule for filers seeking a waiver pursuant to paragraph (c)(6) of this section.* A filer seeking a waiver for reasonable cause pursuant to paragraph (c)(6) of this section with respect to a failure resulting from a missing or an incorrect TIN will be deemed to have acted in a responsible manner in compliance with this paragraph (d) only if the filer satisfies the requirements of paragraph (e) of this section (relating to missing TINs) or paragraph (f) of this section (relating to incorrect TINs), whichever is applicable.

(e) *Acting in a responsible manner—special rules for missing TINs*—(1) *In general.* A filer that is seeking a waiver for reasonable cause under paragraph (c)(6) of this section will satisfy paragraph (d)(2) of this section with respect to establishing that a failure to include a TIN or an information return resulted from the failure of the payee to provide information to the filer (*i.e.*, a missing TIN) only if the filer makes the initial and, if required, the annual solicitations described in this paragraph (e) (required solicitations). For purposes of this section, a number is treated as a "missing TIN" if the number does not contain nine digits or includes one or more alpha characters (a character or symbol other than an Arabic numeral) as one of the nine digits. A solicitation means a request by the filer for the payee to furnish a correct TIN. See paragraph (f) of this section for the rules that a filer must follow to establish that the filer acted in a responsible manner with respect to providing incorrect TINs on information returns. See paragraph (e)(1)(vi)(A) of this section for alternative solicitation requirements. See paragraph (g) of this section for the safe harbor due diligence rules. See paragraph (h) of this section for the rule applicable to failures with respect to information returns the due date for which (without regard to extensions) is after December 31, 1989, and on or before April 22, 1991.

(i) *Initial solicitation.* An initial solicitation for a payee's correct TIN must be made at the time an account is opened. The term "account" includes accounts, relationships, and other transactions. However, a filer is not required to make an initial solicitation under this paragraph (e)(1)(i) with respect to a new account if the filer has the payee's TIN and uses that TIN for all accounts of the payee. For example, see § 31.3406(h)–3(a) of this chapter. Further, a filer is not required to make an initial solicitation under this paragraph (e)(1)(i) with respect to accounts for which the filer filed an information return subject to paragraph (h) of this section. For purposes of this section, the initial solicitation requirement is deemed to have been met with respect to accounts opened after December 31, 1989, and on or before April 22, 1991. If the account is opened in person, the initial solicitation may be made by oral or written request, such as on an account creation document. If the account is opened by mail, telephone, or other electronic means, the TIN may be requested through such communications. If the account is opened by the payee's completing and mailing an application furnished by the filer that requests the payee's TIN, the initial solicitation requirement is considered met. If a TIN is not received as a result of an initial solicitation, the filer may be required to make additional solicitations ("annual solicitations").

(ii) *First annual solicitation.* Except as provided in paragraph (e)(1)(vi) of this section, a filer must undertake an annual solicitation if a TIN is not received as a result of an initial solicitation (or if the filer was not required to make an initial solicitation under paragraph (e)(1)(i) of this section and the filer has not received a payee's TIN). The first annual solicitation must be made on or before December 31 of the year in which the account is opened (for accounts opened before December) or January 31 of the following year (for accounts opened in the preceding December) ("annual solicitation period").

(iii) *Second annual solicitation.* If the TIN is not received as a result of the first annual solicitation, the filer must undertake a second annual solicitation. The second annual solicitation must be made after the expiration of the annual solicitation period and on or before December 31 of the year immediately succeeding the calendar year in which the account is opened.

(iv) *Additional requirements.* After receiving a TIN, a filer must include that TIN on any information returns the original due date of which (with regard to extensions) is after the date that the filer receives the TIN.

(v) *Failures to which a solicitation relates.* The initial and first annual solicitations relate to failures on returns filed for the year in which an account is opened. The second annual solicitation relates to failures on returns filed for the year immediately following the year in which an account is opened and for succeeding calendar years.

(vi) *Exceptions and limitations.* (A) The solicitation requirements under this paragraph (e) do not apply to the extent an information reporting provision under which a return, as defined in paragraph (g) of § 301.6721–1, is filed provides specific requirements relating to the manner or the time period in which a TIN must be solicited. In that event, the requirements of this paragraph (e) will be satisfied only if the filer complies with the manner and time period requirements of the specific information reporting provision and the provisions of this paragraph (e) to the extent applicable. Also, see section 3406(e) which provides rules on the manner and time period in which a TIN must be provided for certain accounts with respect to interest, dividends, patronage dividends, and amounts subject to broker reporting.

(B) An annual solicitation is not required to be made for a year under this paragraph (e) with respect to an account if no payments are made to the account for such year or if no return as defined in paragraph (g) of § 301.6721–1 is required to be filed for the account for the year.

(C) If a filer fails to make one (or more) of the required solicitations under paragraphs (e)(1) (i), (ii), and (iii) of this section, the filer may satisfy the requirements of this section by—

(*1*) Making two consecutive annual solicitations in subsequent years ("make-up solicitations"), and

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(2) Satisfying paragraph (e)(1)(iv) of this section.

For example, a filer who has made none of the required solicitations may satisfy the requirements of this section by making two consecutive solicitations. In determining whether a filer has made two consecutive solicitations, years to which paragraph (e)(1)(vi)(B) of this section applies shall be disregarded. If a filer fails to make the initial solicitation under paragraph (e)(1)(i) of this section, the make-up solicitations described in this paragraph (e)(1)(vi)(C) may be made in the years in which the first and second annual solicitations are required to be made; however, the penalty will apply with respect to the year in which the filer failed to make the initial solicitation. The penalty will apply to failures with respect to years for which a required solicitation is not made and to failures with respect to all subsequent years until the filer conducts its make-up solicitations. The penalty will not apply with respect to the year in which the first make-up solicitation is made (unless it is also the year in which the filer fails to make its initial solicitation) if the second make-up solicitation is made in the following year.

(D) A financial institution is not required to make an annual solicitation by mail on accounts with "stop-mail" or "hold-mail" instructions, provided the filer furnishes the solicitation material to the payee in the same manner as it furnishes other mail.

(E) A filer is not required to make annual solicitations on accounts with respect to which the filer undertook two consecutive annual mailings by December 31, 1989, under Q/A–5 through Q/A–7B or under Q/A–56 of § 35a.9999–1 of the Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983, as provided under section 6676(b) (prior to its amendment by the Omnibus Budget Reconciliation Act of 1989).

(F) A filer is not required to make annual solicitations by mail on accounts with respect to which the filer has an undeliverable address, *i.e.*, where other mailings to that address have been returned to the filer because the address was incorrect and no new address has been provided to the filer.

(G) Except as provided in paragraph (e)(1)(vi) (A) and (C) of this section, no more than two annual solicitations are required under this paragraph (e) in order for a filer to establish reasonable cause.

(2) *Manner of making annual solicitations—by mail or telephone*—(i) *By mail.* A mail solicitation must include—

(A) A letter informing the payee that he or she must provide his or her TIN and that he or she is subject to a $50 penalty imposed by the Internal Revenue Service under section 6723 if he or she fails to furnish his or her TIN,

(B) A Form W–9 or an acceptable substitute form, as defined in § 31.3406 (h)–3 (a), (b), or (c) of this chapter, on which the payee may provide the TIN, and

(C) A return envelope for the payee to provide the TIN which may be, but is not required to be, postage prepaid.

(ii) *By telephone.* An annual solicitation may be made by telephone if the solicitation procedure is reasonably designed and carried out in a manner that is conducive to obtaining the TIN. An annual solicitation is made pursuant to this paragraph (e)(2)(ii) for a failure if the filer—

(A) Completes a call to each person with a missing TIN and speaks to an adult member of the household, or to an officer of the business or the organization,

(B) Requests the TIN of the payee,

(C) Informs the payee that he or she is subject to a $50 penalty imposed by the Internal Revenue Service under section 6723 if he or she fails to furnish his or her TIN,

(D) Maintains contemporaneous records showing that the solicitation was properly made, and

(E) Provides such contemporaneous records to the Internal Revenue Service upon request.

(f) *Acting in a responsible manner—special rules for incorrect TINS*—(1) *In general.* A filer that is seeking a waiver for reasonable cause under paragraph (c)(6) of this section will satisfy paragraph (d)(2) of this section with respect to establishing that a failure resulted from incorrect information provided by the payee or any other person (*i.e.*, inclusion of an incorrect TIN) on an information return only if the filer makes the initial and annual solicitations described in this paragraph (f). See paragraph (e)(1) of this section for the definition of the term "solicitation." See paragraph (f)(5)(i) of this section for alternative solicitation requirements. See paragraph (g) of this section for the safe harbor due diligence rules. See paragraph (h) of this section for the rule applicable to failures with respect to information returns the due date for which (without regard to extensions) is after December 31, 1989, and on or before April 22, 1991.

(i) *Initial solicitation.* An initial solicitation for a payee's correct TIN must be made at the time the account is opened. The term "account" includes accounts, relationships, and other transactions. However, a filer is not required to make an initial solicitation under this paragraph (f)(1)(i) with respect to a new account if the filer has the payee's TIN and uses that TIN for all accounts of the payee. For example, see § 31.3406(h)–3(a) of this chapter. Further, a filer is not required to make an initial solicitation under this paragraph (f)(1)(i) with respect to accounts for which the filer filed an information return subject to paragraph (h) of this section. For purposes of this section, the initial solicitation requirement is deemed to have been met with respect to accounts opened after December 31, 1989, and on or before April 22, 1991. No additional solicitation is required after the filer receives the TIN unless the Internal Revenue Service or, in some cases, a broker notifies the filer that the TIN is incorrect. Following such notification the filer may be required to make an annual solicitation to obtain the correct TIN as provided in paragraph (f)(1) (ii) and (iii) of this section.

(ii) *First annual solicitation.* Except as provided in paragraph (f)(5) of this section, a filer must undertake an annual solicitation only if the payor has been notified of an incorrect TIN and such account contains the incorrect TIN at the time of the notification. The first annual solicitation must be made as required by paragraph (f) (2) or (3) of this section, whichever applies. An account contains an incorrect TIN at the time of notification if the name and number combination on the account matches the name and number combination set forth on the notice from the Internal Revenue Service or a broker. A filer may be notified of an incorrect TIN by the Internal Revenue Service or by a broker pursuant to section 3406(a)(1)(B) and § 35a.3406–1 (c) and (f) of this chapter issued under the Interest and Dividend Tax Compliance Act of 1983, or by a penalty notice issued by the Internal Revenue Service pursuant to section 6721(n). Except as otherwise provided in this section, the annual solicitation required by this paragraph (f) must be made on or before December 31 of the year in which the filer is notified of the incorrect TIN or by January 31 of the following year if the filer is notified of an incorrect TIN in the preceding December.

(iii) *Second annual solicitation.* A filer must undertake a second annual solicitation as required by paragraph (f) (2) or (3) of this section, whichever applies, if the filer is notified in any year following the year of the notification described in paragraph (f)(1)(ii) of this section that the account of a payee contains an incorrect TIN, as described in paragraph (f)(1)(ii) of this section.

(iv) *Additional requirements.* Upon receipt of a TIN, a filer must include that TIN on any information returns the original due date of which (with regard to extensions) is after the date that the filer receives the TIN.

(2) *Manner of making annual solicitation if notified pursuant to section 3406(a)(1)(B) and the regulations thereunder.* A filer that has been notified of an incorrect TIN pursuant to section 3406(a)(1)(B) and the regulations thereunder (except filers to which § 35a.3406–1(a)(3)(x) of this chapter applies) will satisfy the solicitation requirement of this paragraph (f) only if it makes a solicitation in the manner and within the time period required under § 35a.3406–1 (c) or (f) of this chapter, whichever applies. Section 35a.3406–1 (c)(2)(i) and (f)(1)(ii) of this chapter requires the filer to notify a payee that the payee's account contains an incorrect TIN within 15 business days after the date of the notice from the Internal Revenue Service or a broker.

(3) *Manner of making annual solicitation if notified pursuant to section 6721.* A filer that has been notified of an incorrect TIN by a penalty notice or other notification issued pursuant to section 6721 and that has received no effective notice pursuant to section 3406(a)(1)(B) during the same calendar year (or is a filer to which § 35a–3406–1(a)(3)(x) of this chapter applies) may satisfy the solicitation requirement of this paragraph (f) either by mail, in the manner set forth in paragraph (e)(2)(i) of this section, or by telephone, in the manner set forth in paragraph (e)(2)(ii) of this section, or by requesting the TIN in person.

(4) *Failures to which a solicitation relates.* The initial solicitation relates to failures on returns filed for the year an account is opened and for any succeeding year that precedes the year in which the filer receives a notification of an incorrect TIN. The first and second annual solicitations relate to failures on returns filed for the year in which a notification of an incorrect TIN is received. The second solicitation also relates to failures on returns filed for succeeding calendar years.

(5) *Exceptions and limitations.*—(i) The solicitation requirements under this paragraph (f) do not apply to the extent that an information reporting provision under which a return, as defined in paragraph (g) of § 301.6721–1, is filed provides specific requirements relating to the manner or the time period in which a TIN must be solicited. In that event, the requirements of this paragraph (f) will be satisfied only if the filer complies with the manner and time period requirement under the specific information reporting provisions and this paragraph (f), to the extent applicable.

(ii) An annual solicitation is not required to be made for a year under this paragraph (f) with respect to an account if no payments are made to the account for such year or if no return as defined in paragraph (g) of § 301.6721–1 is required to be filed for the account for such year.

(iii) If a filer fails to make one (or more) of the required solicitations under paragraph (f)(1) (i), (ii), and (iii) of this section, the filer may satisfy the requirements of this section by:

(A) Making two consecutive annual solicitations in subsequent years ("make-up solicitations"), and

(B) Satisfying paragraph (f)(1)(iv) of this section.

For example, a filer who has made none of the required solicitations may satisfy the requirements of this section by making two consecutive solicitations. In determining whether a filer has made two consecutive solicitations, years to which paragraph (f)(5)(ii) of this section applies are disregarded. If a filer fails to make the initial solicitation under paragraph (f)(1)(i) of this section, the make-up solicitations described in this paragraph (f)(5)(iii) may be made in the years in which the first and second annual solicitations are required to be made; however, the penalty will apply with respect to the year in which the filer failed to make the initial solicitation. The penalty will apply to failures in years in which a required solicitation is not made and to failures with respect to all subsequent years until the filer conducts its make-up solicitations. The penalty will not apply with respect to the year in which the first make-up solicitation is made (unless it is also the year in which the filer fails to make the initial solicitation) if the second make-up solicitation is made in the following year.

(iv) A financial institution is not required to make an annual solicitation by mail on accounts with "stop-mail" or "hold-mail" instructions, provided the filer furnishes the solicitation material to the payee in the same manner as it furnishes other mail.

(v) A filer is not required to make annual solicitations by mail on accounts with respect to which the filer has an undeliverable address, *i.e.*, where other mailings to that address have been returned to the filer because the address was incorrect and no new address has been provided to the filer.

(vi) In general, except as provided in paragraph (f)(5) (i) and (iii) of this section, no more than two annual solicitations are required under this paragraph (f) in order for a filer to establish reasonable cause. However, a filer who complies with this paragraph (f) during a calendar year after receiving a notice under section 6721 and who later during the same calendar year receives a notice pursuant to section 3406 may be required to undertake additional annual mailings in such calendar year pursuant to section 3406(a)(1)(B) in order to satisfy the annual solicitation requirement in paragraph (f)(2) of this section.

(g) *Due diligence safe harbor.* A filer may establish reasonable cause with respect to a failure relating to an information reporting requirement as described in paragraph (j) of this section for any return defined in paragraph (g) of § 301.6721–1 if the filer exercises due diligence as provided under section 6724(c)(1) with respect to failures described in sections 6721 through 6723 and under section 6676(b) and the Temporary Employment Tax Regulations related thereto issued under the Interest and Dividend Tax Compliance Act of 1983 (with respect to a failure to provide a correct TIN) (§ 35a.9999–1 of this chapter *et seq.*) (prior to amendment or repeal of these sections by the Omnibus Budget Reconciliation Act of 1989).

(h) *Transitional rules for information returns required to be filed (or payee statements required to be furnished) after December 31, 1989 (without regard to extensions), and on or before April 22, 1991*—(1) *In general.* With respect to information returns required to be filed (or payee statements required to be furnished) after December 31, 1989 (without regard to extensions), and on or before April 22, 1991, a filer will be deemed to have satisfied reasonable cause if, with respect to the failure, the filer would have satisfied reasonable cause under sections 6721, 6722, or 6723 (prior to their amendment by the Omnibus Budget Reconciliation Act of 1989) and the regulations thereunder.

(2) *Special rule on TINs.* With respect to information returns required to be filed after December 31, 1989 (without regard to extensions), and on or before April 22, 1991, which contain a missing or an incorrect TIN, a filer will be deemed to have satisfied reasonable cause if, at the time the account was opened, the filer—

(i) Exercised due diligence or fulfilled the requirements of Q/A–56 of § 35a.9999–1 of this chapter, as provided under section 6676(b) (prior to its repeal by the Omnibus Budget Reconciliation Act of 1989),

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(ii) Requested the TIN according to the regulations under the section requiring the filing of the information return, but if none, under section 6109, or

(iii) Would have satisfied reasonable cause under section 6676(a) (prior to its repeal by the Omnibus Budget Reconciliation Act of 1989).

(i) [*Reserved.*]

(j) *Failures to which this section relates.* For purposes of this section, a failure relating to an information reporting requirement means—

(1) A failure described under § 301.6721–1(a)(2) relating to the failure to file timely correct information returns as defined in section 6724(d)(1),

(2) A failure described under § 301.6722–1(a)(2) relating to the failure to furnish timely a correct payee statement as defined in section 6724(d)(2), and

(3) A failure described under § 301.6723–1(a)(2) relating to the failure to timely comply with and to include correct specified information as defined in section 6724(d)(3).

(k) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. (i) On August 1, 1991, Individual A, an independent contractor, establishes a relationship ("an account") with Institution L, which pays A amounts reportable under section 6041. When A opens the account L requests that A supply his TIN on the account creation document. A fails to provide his TIN. On October 1, 1991, L mails a solicitation for A's TIN that satisfies the requirement of paragraph (e)(1)(ii) of this section. A does not provide a TIN to L during 1991. L timely files an information return subject to section 6721, that does not contain A's TIN, for payments made during the 1991 calendar year with respect to A's account. A penalty is imposed on L pursuant to paragraph (a)(2) of § 301.6721–1 for L's failure to file a correct information return because A's TIN was not shown on the return. The penalty will be waived, however, if L establishes that the failure was due to reasonable cause as defined in this section.

(ii) To establish reasonable cause under this section, L must satisfy both paragraphs (c)(6) and (d) of this section. The criteria for obtaining a waiver under these paragraphs are as follows:

(A) L acted in a responsible manner in attempting to satisfy the information reporting requirement as described in paragraph (d) of this section, and

(B) L demonstrates that the failure arose from events beyond L's control, as described in paragraph (c)(6) of this section.

(iii) Pursuant to paragraph (d)(2) of this section, L may demonstrate that it acted in a responsible manner only by complying with paragraph (e) of this section. Paragraph (e) of this section requires a filer to request a TIN at the time the account is opened (the initial solicitation) and, if the filer does not receive the TIN at that time, to solicit the TIN on or before December 31 of the year the account is opened (for accounts opened before December) or January 31 of the following year (for accounts in the preceding December) (the annual solicitation). Because L has performed these solicitations within the time and in the manner prescribed by paragraph (e) of this section, L has acted in a responsible manner as described in paragraph (d) of this section. L satisfies paragraph (c)(6) of this section because under the facts, L can show that the failure was caused by A's failure to provide a TIN, an event beyond L's control. As a result, L has established reasonable cause under paragraph (a)(2) of this section. Therefore, the penalty imposed under paragraph (a)(2) of § 301.6721–1 for the failure on the 1991 information return is waived. See section 3406 (a)(1)(A) which requires L to impose backup withholding on reportable payments to A if L has not received A's TIN.

Example 2. (i) On August 1, 1991, Individual B opens an account with Bank M, which pays B interest reportable under section 6049. When B opens the account, M requests that B supply his TIN on the account creation document. B provides his TIN to M. On February 26, 1992, M includes the TIM that B provided on the Form 1099–INT for the 1991 calendar year. In October 1992 the Internal Revenue Service, pursuant to section 3406 (a)(1)(B), notifies M that the 1991 return filed for B contains an incorrect TIN. In April 1993 a penalty is imposed on M pursuant to paragraph (a)(2) of § 301.6721–1 for M's failure to file a correct information return for the 1991 calendar year, *i.e.*, the return did not contain B's correct TIN. The penalty will be waived, however, if M establishes that the failure was due to reasonable cause as defined in this section.

(ii) To establish reasonable cause under this section, M must satisfy the criteria in both paragraphs (c)(6) and (d)(2) of this section. Pursuant to paragraph (d)(2) of this section, M can demonstrate that it acted in a responsible manner only if M complies with paragraph (f) of this section. Paragraph (f) of this section requires a filer to request a TIN at the time the account is opened, an initial solicitation. Under paragraph (f)(4) of this section the initial solicitation relates to failures on returns filed for the year an account is opened. Because M performed the initial solicitation in 1991 in the time and manner prescribed in paragraph (f)(1)(i) of this section and reflected the TIM received from B on the 1991 return as required by paragraph (f)(1)(iv) of this section, M has acted in a responsible manner as described in paragraph (d) of this section. M satisfies paragraph (c)(6) of this section because, under the facts, M can show that the failure was caused by B's failure to provide a correct TIN, an event beyond M's control. As a result, M has established reasonable cause under paragraph (a)(2) of this section. Therefore, the penalty imposed under paragraph (a)(2) of § 301.6721–1 for the failure on the 1991 information return is waived. See section 3406 (a)(1)(B) which requires M to impose backup withholding on reportable payments to B if M has not received B's correct TIN.

Example 3. (i) *Table.*

1991	2/92	10/92	2/93
Account opened (solicits TIN).	1991 return.	B-notice w/ respect to 1991 return.	1992 return filed.
4/93	**10/93**	**2/94**	**4/94**
6721 penalty notice for 1991 return.	B-notice w/ respect to 1992 return.	1993 return filed.	6721 penalty notice for 1992 return.

(ii) The facts are the same as in *Example 2.* Under § 35a.3406–1(c)(1) of this paragraph and paragraph (f)(2) of this section, within 15 days of the October 1992 notification of the incorrect TIN from the Internal Revenue Service, M solicits the correct TIN from B. B fails to respond. M timely files the return for 1992 with respect to the account setting forth B's incorrect TIN. In October 1993 the Internal Revenue Service notifies M pursuant to section 3406(a)(1)(B) that the 1992 return contains an incorrect TIN. In April 1994, a penalty is imposed on M pursuant to paragraph (a)(1)(2) of § 301.6721–1T for M's failure to include B's correct TIN on the return for 1992. The penalty will be waived, if M establishes that the failure was due to reasonable cause as defined in this section.

(iii) M must satisfy the reasonable cause criteria in paragraphs (c)(6) and (d) of this section. M may demonstrate that it acted in a responsible manner as required under paragraph (d) of this section only by complying with paragraph (f) of this section. Paragraph (f) of this section requires a filer to make an initial solicitation for a TIN when an account is opened. Further, a filer must make an annual solicitation for a TIN by mail within 15 business days after the date that the Internal Revenue Service notifies the filer of an incorrect TIN pursuant to section 3406(a)(1)(B). M made the initial solicitation for the TIN in 1991 and, after being notified of the incorrect TIN in October 1992, the first annual solicitation within the time and manner prescribed by section 35a.3406–1(c)(1) of this chapter and paragraph (f)(1)(ii) and (2) of this section. M acted in a responsible manner. M satisfies paragraph (c)(6) of this section because, under the facts, M can show that the failure was caused by B's failure to provide his correct TIN, an event beyond M's control. As a result M has established reasonable cause under paragraph (a)(2) of this section. Therefore, the penalty imposed under paragraph (a)(2) of § 301.6721–1T for the failure on the 1992 return is waived due to reasonable cause.

Example 4. (i) *Table.*

1991	2/92	10/92	2/93
Account opened (solicits TIN).	1991 return filed.	B-notice w/ respect to 1991 return.	1992 return filed.
4/93	**10/93**	**2/94**	**4/94**
6721 penalty notice for 1991 return.	B-notice w/ respect to 1992 return.	1993 return filed.	6721 penalty notice for 1992 return.

(ii) The facts are the same as in *Example 3.* M timely solicits B's TIN in October 1993, which B fails to provide. M files the return for 1993 with the incorrect TIN. In April 1995 the Internal Revenue Service informs M that the 1993 return contains an incorrect TIN. M does not solicit a TIN from B in 1994 and files a return for 1994 with B's incorrect TIN. M seeks a waiver of the penalty under paragraph (a)(2) of § 301.6721–1 for reasonable cause. M must satisfy the reasonable cause criteria in paragraphs (c)(6) and (d) of this section. Because M made the initial and two annual solicitations as required by paragraph (f) of this section, M has demonstrated that it acted in a responsible manner and is not required to solicit B's TIN in 1994. See paragraph (f)(5)(iv) of this section. M satisfies paragraph (c)(6) of this section because, under the facts, M can show that the failure was caused by B's failure to provide his correct TIN, an event beyond M's control. Therefore, M has established reasonable cause under paragraph (a)(2) of this section.

Example 5. In 1992, Mortgage Finance Company N lends money to C to purchase property in a transaction subject to reporting under section 6050H and to section 6721. As part of the transaction, C gives N a promissory note providing for repayment of principal and the payment of interest. At the time C incurs the obligation N requests C's TIN, as required under § 1.6050H–2(f) of this chapter. C fails to provide the TIN as required by § 1.6050H–2(f) of this chapter. N sends solicitations by mail in 1992 and 1993 for the missing TIN, which C fails to provide. However, for 1994 M fails to send the solicitation required by § 1.6050H–2(f) of this chapter. N files returns for the 1992, 1993, and 1994 calendar years pursuant to section 6050H without C's TIN. Although N made the initial and the first annual solicitations in 1992 and the second annual solicitation in 1993, N did not solicit the TIN in 1994 as required under section 6050H, which requires continued annual solicitations until the TIN is obtained. Therefore, under paragraph (e)(1)(vi)(A) of this section the penalty imposed under paragraph (a) of § 301.6721–1T for the 1994 information return is not wavied.

Example (6). (i) *Table.*

10/91	2/92	10/92	2/93
Account opened (solicits TIN).	1991 return filed.	B-notice w/ respect to 1991 return.	1992 return filed.
4/93	**10/93**	**02/94**	**4/94**
6721 penalty notice.	B-notice w/ respect to 1992 return.	1993 return filed.	6721 penalty notice for 1992 return.

(ii) On October 1, 1991, Individual E opens an account with Institution R, which pays E amounts reportable under section 6049. When E opens the account, R requests that E supply his TIN on an account creation document, which E does. Pursuant to paragraph (f)(1)(iv) of this section, R uses the TIN furnished by E on the information return filed for the 1991 calendar year. In October 1992 the Internal Revenue Service notifies R pursuant to section 3406(a)(1)(B) that the information return filed for E for the 1991 calendar year contained an incorrect TIN. At the time R receives this notification, E's account contains the incorrect TIN. On December 31, 1992, R telephones E pursuant to paragraphs (f)(3) and (e)(2)(ii) of this section and receives different TIN information from E. R uses this information on the return that it files timely for E for the 1992 calendar year, *i.e.*, in February 1993.

(iii) In April 1993, the Internal Revenue Service notifies R pursuant to paragraph (a)(2) of § 301.6721–1 that the information return filed for the 1991 calendar year contains an incorrect TIN. The penalty will be waived, however, if R establishes the failure was due to reasonable cause as defined in this section.

(iv) To establish reasonable cause under this section, R must satisfy the criteria in both paragraphs (c)(6) and (d)(2) of this section. Pursuant to paragraph (d)(2) of this section, R can demonstrate that it acted in a responsible manner only if it complies with paragraph (f) of this section. R solicited E's TIN at the time the account was opened (initial solicitation). Under paragraphs (d)(2) and (f)(4) of this section, the initial solicitation relates to failures on returns filed for the year in which an account is opened (*i.e.*, 1991) and for subsequent years until the calendar year in which the filer receivers a notification of an incorrect TIN pursuant to section 3406. Because E failed to provide the correct TIN upon request, the failure arose from events beyond R's control as described in paragraph (c)(6) of this section. Therefore, the penalty with respect to the failure on the 1991 calendar year information return is waived due to reasonable cause.

Example (7). (i) The facts are the same as in *Example 6.* In April 1994 the Internal Revenue Service notifies R pursuant to paragraph (a)(2) of § 301.6721–1 that the information return filed for the 1992 calendar year for E contained an incorrect TIN.

(ii) To establish reasonable cause for the failure under this section, R must satisfy the criteria in both paragraphs (c)(6) and (d)(2) of this section. Pursuant to paragraph (d)(2) of this section R may establish that it acted in a responsible manner only by complying with paragraph (f) of this section. Pursuant to paragraph (f)(1)(ii) of this section, R must make an annual solicitation after being notified of an incorrect TIN if the payee's account contains the incorrect TIN at the time of the notification. Paragraph (f)(2) of this section provides that if the filer is notified pursuant to section 3406(a)(1)(B) the time and manner of making an annual solicitation is that required under § 35a.3406–(c)(1) of this chapter. Section 35a.3406–1 (c)(1) of this chapter requires R to notify E by mail within 15 business days after the date of the notice from the Internal Revenue Service, which R failed to do. As a result, R has failed to act in a responsible manner with respect to the failure on the 1992 information return, and the penalty will not be waived due to reasonable cause.

(l) [*Reserved.*]

(m) *Procedure for seeking a waiver.* In seeking an administrative determination that the failure was due to reasonable cause and not willful neglect, the filer must submit a written statement to the district director or the director of the Internal Revenue Service Center where the returns, as defined in section 6724(d), are required to be filed. The statement must—

(1) State the specific provision under which the waiver is being requested, *i.e.*, paragraph (b) or under paragraph (c) (2) through (6),

(2) Set forth all the facts alleged as the basis for reasonable cause,

(3) Contain the signature of the person required to file the return, and

(4) Contain a declaration that it is made under penalties of perjury. See § 1.6061–1 of the Income Tax Regulations for the rules on the signing of returns.

(n) *Manner of payment.* The penalty due under sections 6721 through 6723 shall be paid upon notice and demand by Internal Revenue Service, and in the same manner as a tax liability is paid.

Dated: December 16, 1991.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon

Assistant Secretary of the Treasury.

[FR Doc. 91–30908 Filed 12–27–91; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

Decrease in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is decreasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also decreased. These decreases in interest rates are possible because of recent improvements in the availability of funds in various credit markets. The decrease in the interest rates will allow eligible veterans to obtain loans at a lower monthly cost.

EFFECTIVE DATE: December 20, 1991.

FOR FURTHER INFORMATION CONTACT: Mrs. Judy Caden, Loan Guaranty Service (264), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3042.

SUPPLEMENTARY INFORMATION: The Secretary is required by section 1812(f), title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by VA as he/she finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general decrease in interest rates charged on conventional manufactured home loans, and the decrease of other short-term and long-term interest rates—have shown that the manufactured home capital markets have improved. It is now possible to decrease the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans while still assuring an adequate supply of funds from lenders and investors to make these types of VA loans.

The Secretary is also required by section 1803(c), title 38, United States Code, to establish maximum interest rates for home and condominium loans, including graduated payment mortgage loans, and loans for home improvement purposes. Market indicators similarly favor reductions in the maximum interest rates for these types of loans. These lower interest rates should assist more veterans in the purchase of homes and condominiums or to obtain improvement loans because of the decrease in the monthly loan payments for principal and interest.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 **Federal Register**, (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. VA finds that they are not "major rules" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured or direct loans would deny veterans the benefit of lower interest rates pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119.)

These regulations are adopted under the authority granted to the Secretary by sections 210(c), 1803(c)(1), 1811(d)(1) and 1812 (f) and (g) of title 38, United States Code.

These decreases are accomplished by amending §§ 36.4212(a) (1), (2), and (3), and 36.4311 (a), (b), and (c) and 36.4503(a), title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured Homes, Veterans.

Approved: December 19, 1991

Anthony J. Principi,

Deputy Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is amended as set forth below:

Part 36—LOAN GUARANTY

1. The authority citation for §§ 36.4201 through 36.4287 continues to read as follows:

Authority: Sections 36.4201 through 36.4287 issued under 72 Stat. 1114, 84 Stat. 1110 (38 U.S.C. 210, 1812).

§ 36.4212 [Amended]

2. In § 36.4212, remove the date "September 18, 1991", wherever it appears, and add, in its place, the date "December 20, 1991".

3. In § 36.4212, paragraph (a)(1), remove the number "11", wherever it appears, and add, in its place, the number "10½"; in paragraphs (a)(2) and (a)(3), remove the number "10½", wherever it appears, and add, in its place, the number "10".

4. The authority citation for §§ 36.4300 through 36.4375 continues to read as follows:

Authority: Sections 36.4300 through 36.4375 issued under 72 Stat. 1114 (38 U.S.C. 210).

§ 36.4311 [Amended]

5. In § 36.4311, remove the date "September 18, 1991", wherever it appears, and add, in its place, the date "December 20, 1991".

6. In § 36.4311, paragraph (a), remove the number "8½", wherever it appears, and add, in its place, the number "8"; in paragraph (b), remove the number "8¾", wherever it appears, and add, in its place, the number "8¼"; in paragraph (c), remove the number "10", wherever it appears, and add, in its place, the number "9½".

7. The authority citation for §§ 36.4500 through 36.4600 continues to read as follows:

Authority: Sections 36.4500 to 36.4600 issued under 72 Stat. 1114 (38 U.S.C. 210).

§ 36.4503 [Amended]

8. In § 36.4503, paragraph (a), remove the numbers "8½" and "10", wherever they appear, and add in their place, the numbers "8" and "9½", respectively.

[FR Doc. 91-31132 Filed 12-27-91, 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-4089-3]

Prevention of Significant Deterioration of Air Quality; North Carolina: Partial Delegation of Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: On August 13, 1991, the State of North Carolina requested delegation of authority for implementing the NO_x increment portion of the Prevention of Significant Deterioration (PSD) regulations. EPA's review of North Carolina's pertinent laws and the rules and regulations thereof, indicates that they provide an adequate procedure for the implementation and enforcement of these federal standards, and the Agency has made the delegation as requested.

EFFECTIVE DATE: The effective date of the delegation of authority is October 7, 1991.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection at the following address:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

All reports required, pursuant to the newly delegated standards, should not be submitted to the EPA Region IV office, but should instead be submitted to the following address:

Mr. Lee A. Daniel, Jr., Chief, North Carolina Department of Environment, Health, and Natural Resources, Division of Environmental Management, Air Quality Section, P.O. Box 29535, Raleigh, North Carolina 27626-0535.

FOR FURTHER INFORMATION CONTACT: Andrew Fischer of the EPA Region IV Air, Pesticides and Toxics Management Division, 345 Courtland Street, NE., Atlanta, Georgia 30365, telephone 404/347-2864.

SUPPLEMENTARY INFORMATION: On November 24, 1976, the Agency's Region IV Administrator initially delegated to the State of North Carolina authority to perform the administrative and technical portions of the Federal program for PSD air quality. On December 22, 1978, the Region IV Administrator requested a letter that the delegations be amended to apply to 40 CFR 52.21 as revised by the 1977 Clean Air Act Amendments. The State of North Carolina responded with a letter on January 22, 1979, that the PSD program be amended as requested. On August 13, 1991, the State of North Carolina requested partial delegation of authority for implementing the NO_x increment portion of the PSD regulations. On October 7, 1991, the EPA determined that the pertinent laws of the State of North Carolina and the rules, and regulations thereof, provide an adequate procedure for the implementation of these regulations. Therefore, in its October 7, 1991 letter, the EPA, pursuant to 40 CFR 52.21, and the conditions and limitations set forth therein, relinquished its primary responsibilities for the NO_x increment portion of the PSD regulations, as described in 40 CFR 52.21, to the State of North Carolina.

Dated: December 16, 1991.

Patrick M. Tobin,

Acting Regional Administrator

[FR Doc. 91-31151 Filed 12-27-91; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-4089-2]

Prevention of Significant Deterioration of Air Quality; Tennessee: Partial Delegation of Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: On July 17, 1991, the State of Tennessee requested partial delegation of authority (technical review portion) for the implementation and enforcement for the Nitrogen Dioxide (NO_2) increment portion of the Prevention of Significant Deterioration (PSD) regulations. EPA's review of Tennessee's laws, rules and regulations showed that they provide for adequate and effective implementation of the technical portion of the NO_2 PSD program.

EFFECTIVE DATE: The effective date of the delegation of authority is August 19, 1991.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection at the following address:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

All applications and reports pursuant to the NO_2 PSD newly delegated standards should be addressed to:

Mr. Harold E. Hodges, Technical Secretary of the Tennessee Air Pollution Control Board, Customs House, 701 Broadway, Nashville, Tennessee 37243.

FOR FURTHER INFORMATION CONTACT: Andrew Fischer of the EPA, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365, telephone 404/347-2864.

SUPPLEMENTARY INFORMATION: On June 15, 1981, EPA delegated the PSD program to the State of Tennessee. Prior to October 17, 1988, the PSD program required protection of PSD increments for only two pollutants: TSP and SO_2. On February 8, 1988, EPA proposed regulations to add NO_2 increments to the PSD program requirements. These regulations were promulgated by the EPA on October 17, 1988. The NO_2 increments regulation became effective November 19, 1990. On that date, the EPA Regional Office assumed the responsibility for reviewing the NO_2 increments portion of the PSD permit applications for States such as Tennessee that did not adopt requirements for the PSD NO_2 increments. On July 17, 1991, the State of Tennessee requested partial delegation of authority for the NO_2 increment portion of the PSD regulation. Therefore, in its August 19, 1991, letter, the EPA, pursuant to 40 CFR 52.01 and 52.21, and the conditions and limitations set forth therein, relinquished its primary responsibilities only for the technical portion of the Federal NO_2 PSD program, as described in 40 CFR 52.21, to the State of Tennessee.

Dated: December 16, 1991.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 91-31152 Filed 12-27-91; 8:45 am]

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40 CFR Part 261

[SW-FRL-4089-1]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

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SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 for certain solid waste generated at Reynolds Metals Company (Reynolds), Gum Springs, Arkansas. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: December 30, 1991.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW. (Room M2427), Washington, DC. 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260–9327 for appointments. The reference number for this docket is "F–91–CMF–FFFFF". The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 920–9810. For technical information concerning this notice, contact Chichang Chen, Office of Solid Waste (OS–333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. 20460, (202) 260–7392.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that: (1) The waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) no other hazardous constituents or factors that could cause the waste to be hazardous are present in the waste at levels of regulatory concern.

B. History of this Rulemaking

Reynolds Metals Company (Reynolds), located in Bauxite, Arkansas, petitioned the Agency to exclude from hazardous waste control its K088 spent potliner wastes treated at its R.P. Patterson facility in Gum Springs, Arkansas. After evaluating the petition, EPA proposed, on July 18, 1991 to exclude Reynolds' waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 56 FR 32993).

This rulemaking addresses public comments received on the proposal and finalizes the proposed decision to grant Reynolds' petition.

II. Disposition of Delisting Petition

A. Reynolds Metals Company, Gum Springs, Arkansas

1. Proposed Exclusion

Reynolds Metals Company (Reynolds), located in Bauxite, Arkansas, petitioned the Agency to conditionally exclude kiln residue derived from processing spent potliners using its rotary kiln treatment process. Reynolds plans to move its thermal treatment process from Bauxite, Arkansas to another Reynolds facility located in Gum Springs, Arkansas, and requested that the upfront exclusion apply to kiln residue generated at the new facility location. The kiln residue is presently listed, in accordance with 40 CFR 261.3(c)(2)(i) (*i.e.*, the "derived from" rule), as EPA Hazardous Waste No. K088—"Spent potliners from primary aluminum reduction". The listed constituent of concern for EPA Hazardous Waste No. K088 waste is cyanide (complexes) (see 40 CFR part 261, appendix VII).

In support of its petition, Reynolds submitted (1) Detailed descriptions of its waste treatment process; (2) a description of the processes generating spent potliners that were treated by the rotary kiln process; (3) total constituent analysis results for the eight metals listed in 40 CFR 261.24; (4) total constituent analysis results for antimony, beryllium, nickel, cyanide, and fluoride from representative samples of both the kiln residue and the untreated spent potliners; (5) EP leachate analysis results for the eight metals listed in 40 CFR 261.24, antimony, beryllium, nickel, cyanide, and fluoride from representative samples of the kiln residue; (6) TCLP leachate analyses for the metals in 40 CFR 261.24 (except mercury), antimony, beryllium, nickel, cyanide, and fluoride from representative samples of the kiln residue; (7) total constituent analysis results for volatile and semi-volatile organic compounds, dioxins, and furans from representative samples of the kiln residue; and (8) test results and information regarding the hazardous waste characteristics of ignitability, corrosivity, and reactivity.

The Agency evaluated the information and analytical data provided by Reynolds in support of its petition and determined that the hazardous constituents found in the petitioned waste would not pose a threat to human health and the environment. Specifically, the Agency used the modified EPA's Composite Model for Landfills (EPACML) and the Organic Leachate Model (OLM) to predict the potential mobility of the hazardous constituents found in the petitioned waste. Based on this evaluation, the Agency determined that the hazardous constituents in Reynolds' petitioned waste would not leach and migrate at concentrations above the Agency's health-based levels used in delisting decision-making. See 56 FR 32993, July 18, 1991, for a more detailed description of the EPACML, the modifications made to this model for delisting, and an explanation of why EPA proposed to grant Reynolds' petition for its kiln residue.

2. Agency Response to Public Comments

The Agency received public comments on the use of the EPACML in delisting petition evaluations and the proposed decision to grant an exclusion to Reynolds Metals from ten different parties. All commenters were generally in favor of the Agency's proposal to use the EPACML for delisting evaluations. The majority of commenters believed that the EPACML was a distinct improvement over the Vertical and Horizontal Spread (VHS) model and believed that the EPACML provides a sounder basis for evaluating wastes under a reasonable worst-case disposal scenario. Two commenters clearly supported the Agency's proposed decision to delist the kiln residue from Reynolds' rotary kiln process. These commenters believed that the granting of the final exclusion would minimize the toxicity of spent potliners and will provide a safer alternative to direct disposal in a landfill. In addition, the commenters believed that this exclusion would provide a needed treatment technology for the industry as a whole.

The remainder of this section addresses specific comments received on the Agency's decision to grant an exclusion for Reynolds Metals.

a. Length of the Comment Period

Comment: One commenter requested that the comment period should be extended for a minimum of 60 days so that the necessary documents to develop comments could be obtained or that EPA should promulgate the EPACML with additional information describing the model.

Response. The Agency believes that it is unnecessary to provide an extension of the comment period for this exclusion. The Agency believes that adequate information was provided in the proposed notice and in the RCRA public docket for the notice to allow individuals to develop comments on the use of the model in evaluating Reynolds' petition. The EPACML is not a new model and its general use in the delisting program has been suggested by the Agency in the past. Specifically, the Agency first proposed and requested comments on the use of the EPACML in delisting evaluations on August 1, 1988 (see 53 FR 28892). In the promulgation of the Toxicity Characteristic (see 55 FR 11798 March 29, 1990), the Agency addressed the comments received and provided detailed descriptions of the development and use of the EPACML. Therefore, the Agency believes that at the time this exclusion was proposed there was adequate information publicly available on the EPACML from a variety of sources from which to develop comments on the use of the EPACML in evaluating Reynolds petition. The Agency believes that an extension of the comment period is unnecessary

The Agency also notes that it may consider incorporating the EPACML into the delisting regulations (40 CFR 260.22) as a key criterion in evaluating delisting petitions. At that time adequate information describing the model will again be provided.

b. Analytical Methods and Testing Requirements

Comment: One commenter noted that the extraction procedure used by Reynolds for cyanide was modified by substituting distilled water for the acetate buffer The commenter stated that they believed that the concentration of leachable cyanide would be decreased when using distilled water rather than the prescribed acetate buffer in the extraction procedure. The commenter questioned why distilled water was allowed as a reagent since complex cyanides are the hazardous constituents for which K088 waste was listed.

Response: The Agency acknowledges the commenter's concern about the replacement of the leaching solution during cyanide analysis. The primary reason for this change is that the liberation of hydrogen cyanide gas during the use of an acidic leaching medium will likely lower the concentration of cyanide that will be measured in the waste leachate. Secondly, as hydrogen cyanide gas is highly toxic, its release is a grave concern for the safety of laboratory workers and bystanders. As a result, the Agency has determined that it would be prudent to modify the leaching procedure to prevent the liberation of hydrogen cyanide gas.

To further address the commenter's concern regarding the levels of leachable cyanide in the waste, the Agency evaluated the total cyanide concentrations in Reynolds' petitioned waste. The Agency assumed a worst-case leaching scenario (*i.e.*, that during the TCLP leaching procedure there is a 20-fold dilution inherent in the procedure and that all the cyanide leaches from the waste). When the maximum total cyanide concentration in Reynolds' waste (16 ppm) was evaluated in this manner, the maximum leachable concentration of cyanide was estimated to be 0.8 ppm. Using this value as an input to the EPACML resulted in a maximum compliance-point concentration of 0.067 ppm of leachable cyanide which is below the delisting health-based level of 0.2 ppm. Thus, the Agency continues to believe that leachable cyanide will not be present in the kiln residues at levels of concern.

Comment: One commenter believed that the extensive analytical requirements for organic constituents in the conditional testing requirements are unnecessary due to low levels of organics found in the kiln residues. A second commenter believed that the testing requirements for polyaromatic hydrocarbons (PAHs) should be discontinued if they do not show up in initial verification testing. This commenter also suggested that as PAHs are among the more immobile and insoluble compounds in the environment, a much higher DAF (such as 1,000) should be used for establishing the delisting levels for those compounds. Another commenter believed that the subsequent verification testing conditions for organic constituents may be excessive and suggested that an alternate sampling and analytical plan for the solid residues be used which would require fewer analyses of semi-volatile organics based on a statistical sampling approach. This commenter further noted that since the SW–846 Methods 8250 and 8270 practical quantitation limits (PQLs) for the organic constituents of concern were no higher than 10 ppb, the regulatory levels should be based on the PQLs.

Response The Agency believes that the testing requirement for organics listed in Condition (4)(B) is reasonable As noted in Table 4 of the proposed exclusion, Reynolds untreated spent potliner contained several organic constituents at significant concentrations. The Agency agrees with the commenter that the Reynolds process appears to be effective in reducing levels of organic constituents in the kiln residue based on total constituent data. The Agency is concerned that the concentrations of organic constituents in the kiln residue may vary somewhat depending on the potliner treated and the facility generating the spent potliner. As noted in the proposal, the Agency addressed this concern by proposing initial and subsequent regular analyses of the petitioned kiln residue, prior to disposal. The Agency believes that the potential for variation of constituent concentrations in the spent potliner provides sufficient justification for requiring on-going testing to ensure that the Reynolds treatment process continues to consistently and effectively reduce organic constituent levels. The Agency believes that on-going testing is especially prudent considering the potentially large volume of waste generated by Reynolds (3,360 tons of kiln residue per week per kiln). A reduction from daily testing during initial verification to weekly testing during subsequent verification provides sufficient assurance that any waste exceeding the delisting levels set in the exclusion will be disposed of properly and provides a minimal amount of analytical burden on Reynolds. The Agency believes that this testing scheme is reasonable and will provide adequate protection to human health and the environment.

The Agency does not believe that DAFs as high as 1,000 should be used for PAHs based on constituent-specific dilution/attenuation factors in the subsurface environment. The Agency believes that it is inappropriate to consider extensive site-specific factors as such, because a waste once delisted is no longer subject to RCRA control and may therefore be transported to any disposal unit at an unknown location of unknown site conditions. As described in the proposed rule, the Agency therefore used a Monte Carlo method to account for the wide range of environmental conditions found at various disposal sites across the nation. In addition, the immobility and insolubility of organic compounds has already been considered in the proposed use of the EPACML for Reynolds waste through the incorporation of the TCLP leachate concentrations for establishing the delisting levels for PAHs. While the TCLP leachate concentrations reflect the leachable constituents that may migrate in the subsurface, immobile constituents

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should not leach out using the TCLP. Although the commenter suggested the use of a DAF of 1,000 for PAHs, the commenter did not provide any quantitative basis for this number.

The Agency also does not believe that sufficient data are available in this case for use in determining sampling frequency using a statistical approach. While a statistical approach such as that presented by the commenter may have merits, the Agency does not believe that adequate information on the variable nature of the waste is available. Without such data on the variability of the waste, a statistical approach in developing a sampling plan for this waste stream may allow batches that have not been treated to the required levels to escape detection and be disposed in a manner that does not adequately protect human health and the environment. The sampling plan as proposed in the exclusion, in contrast, provides that each batch of waste be analyzed for constituents of concern prior to disposal. This procedure ensures that Reynolds consistently treats the spent potliners from various aluminum reduction facilities to the required levels and minimizes the risk of improper disposal of the petitioned waste.

The Agency recognizes that determination of some organic constituents using SW–846 analytical methods may be difficult. However, delisting levels for the leachable organics concentrations are not set at practical quantitation limits (PQL) in this case, because the PQLs are matrix-dependent and Reynolds did not provide any information in this regard. As described in the July 18 proposed rule (56 FR 33005), Reynolds only reported the total constituent concentrations of organic compounds in the kiln residue. The Agency did not require Reynolds to further quantify the leachable concentrations of those organic compounds, because the reported total constituent data reflected that leachable organic constituents were not expected to be present in the kiln residue samples analyzed at levels of concern. Without any specific information on the PQLs that would be associated with Reynolds' kiln residue for the analysis of leachable organic constituents of concern, the Agency, therefore, did not base the delisting levels for organics on the PQLs. The Agency understands that using current analytical methodologies, Reynolds may not be able to obtain quantitation levels for several constituents below the delisting levels set in Condition (4)(B). For these constituents, the Agency will accept data that are reported as "not detected" or "below detection limit" as long as an appropriate analytical method is used, the detection limit reported is reasonable for the analyzed matrix, and that all of the required QA/QC information is provided and is determined to be adequate.

C. Health-based Levels Used by Delisting

Comment: One commenter objected to some of the levels of regulatory concern, specifically lead, nickel, and cyanide, which are used in conjunction with the EPACML model to establish delisting levels. The commenter believed that the maximum contaminant level (MCL) for lead of 0.05 mg/l should be used, and that the Agency should not use the proposed MCLs for nickel and cyanide in the evaluation of the petitioned waste or setting the verification testing levels.

Response: The Agency believes that MCLs, when they exist, are the most appropriate health criteria to use for developing levels for use in this delisting decision. MCLs are promulgated under the Safe Drinking Water Act (SDWA) of 1974, as amended in 1986, and consider technology and economic feasibility as well as health effects. The exposure scenario evaluated for Reynolds' petitioned waste is based on the ingestion of contaminated drinking water and because MCLs are developed for regulation of drinking water, they are clearly useful for delisting evaluations. In the absence of formal MCLs, the Agency has also used proposed MCLs as health-based levels in delisting decisions, because proposed MCLs are typically the most up-to-date evaluation of the available toxicological and analytical data.

While the commenter is correct in stating that the existing MCL for lead is still 0.05 mg/l, this level will only remain effective until November 9, 1992. At that time, it will be replaced by a treatment standard with an action level of 0.015 mg/l, in accordance with the new drinking water regulations promulgated on June 7, 1991 (56 FR 26460). In the absence of a new formal MCL for lead, the Agency believes that prudence requires that the exclusion level be established using the more conservative action level of 0.015 mg/l. EPA established this new treatment standard for lead instead of an MCL because, as concluded in the preamble to the final rule, the threshold for various health effects associated with lead is difficult to determine. Given that the Agency's goal is to minimize lead exposure among sensitive populations, however, the treatment standard with an action level was established. While the action level is not a formal MCL, EPA stated in the preamble to the lead rule that the level of 0.015 mg/l is "associated with substantial public health protection" (see 56 FR 26477, June 7, 1991).

While the existing lead MCL of 0.05 mg/l will remain in effect until November 9, 1992, the Agency believes the use of this level in setting Reynolds' delisting level for lead would be inappropriate. The effective date for the action level and accompanying treatment standard for lead were delayed to allow public drinking water systems sufficient time to comply with this new rule. Such a delay is not warranted in the case of Reynolds' exclusion. Further, the Agency believes that to establish exclusion levels using an old MCL, that will soon be superseded by a more stringent standard, will not be sufficiently protective of human health.

For similar reasons, the Agency also believes that it is appropriate to use proposed MCLs in setting the delisting health-based levels for cyanide and nickel. As noted above, in the absence of final MCLs for nickel and cyanide, the Agency believes that exclusion levels established using the proposed levels of 0.1 and 0.2 mg/l for nickel and cyanide, respectively, will be appropriate for use in delisting evaluations.

Comment: One commenter believed that the delisting criteria should be expressed as a formula rather than a single concentration limit for each regulated metal of concern. The commenter suggested that the delisting concentration for a constituent should be expressed as the product of the health-based level (HBL) for that constituent multiplied by the dilution attenuation factor (DAF) for landfills that the EPACML specifies for the annual volume of waste generated by a facility.

Response: The Agency does not believe that it would be appropriate for the delisting criteria to be expressed as a formula. In setting verification testing conditions, the Agency provides specific concentrations for the facilities to meet in order for a petitioned waste to be excluded from hazardous waste control. The Agency actually uses the type of formula described by the commenter (*i.e.*, DAF x HBL) to calculate the acceptable delisting level. However, incorporating the formula into the verification testing conditions would not, by itself, provide specific delisting criteria necessary for Reynolds' conditional exclusion.

d Site-specific Delisting/Disposition of Delisted Wastes

Comment: Several commenters believed that the Agency should consider site-specific information along with waste specific information when evaluating petitions, especially in the case where the petitioner is requesting the delisting of wastes which will remain in place at a particular site. One commenter believed that the Monte Carlo Procedure uses over-simplified unrealistic and conservative stimulation scenarios that are not applicable to delisting scenarios. Another commenter felt that the use of an affidavit as proof of disposal intent was sufficient to justify use of site specific information.

Response: The Agency maintains that a delisting decision should be based on waste-specific, not disposal-site-specific, information. The Agency believes that the use of waste-specific, rather than site-specific, information during petition evaluation is necessary to ensure that the potential risks associated with the wastes are adequately assessed. The Agency does not believe that delisting evaluations should be based on the prediction of future storage or disposal conditions (such as the waste remaining in place) at a particular site, because once delisted, a waste can typically be disposed of in any subtitle D facility. In the Agency's view, an exclusion should be based on the waste's characteristic, not on its location. Furthermore, an affidavit of site-specific disposal intent does not bind a facility in the future from disposing of an excluded waste at a different location or in a different manner. For these reasons, the Agency believes that it is appropriate to model a reasonable worst-case scenario.

In addition, in this case, Reynolds did not petition the Agency for a site-specific delisting, and did not provide any site-specific data that could be used in such an analysis. Thus, the Agency believes that a reasonable worst-case disposal scenario was appropriate for evaluating Reynolds' petitioned waste.

Comment: One commenter believed that since the delisted waste may be beneficially reused, recycled or reclaimed, and that the EPACML is based on simulating fate and transport from a waste management unit, the delisted wastes should be confined to regulated management units (subtitle D or State regulated).

Response: In the case of Reynolds' petitioned waste, the Agency considers a landfill scenario as a reasonable worst-case scenario. Reynolds has stated in its petition that it expects to dispose of the waste in an on-site or off-site landfill. Thus, the Agency believes that the EPACML fate and transport model represents a reasonable worst-case waste disposal scenario for the petitioned waste. In addition, spent potliners in general, have been recycled or beneficially reused only on a small scale in the U.S. The Agency believes that the kiln residue from spent potliner will also have little potential for recycle or reuse. For these reasons, the Agency believes that the EPACML models the reasonable worst-case disposal scenario for this waste.

However, the Agency does not wish to constrain the disposal of excluded wastes to a regulated waste management unit and thereby inhibit the beneficial reuse or recycling of the material. Reuse of hazardous waste materials in a manner constituting disposal is allowable under 40 CFR 266.20. Therefore, in the case of Reynolds exclusion, EPA does not believe the limitation suggested by the commenter is either necessary or appropriate.

Verification Testing

Comment: Two commenters believed that Condition (5), which requires Reynolds to reinstitute initial verification testing if they wish to add a new source of spent potliner, was extremely burdensome and had minimal corresponding benefit. Both commenters stated that the 20-day testing requirement would require approximately 3,360 tons of untreated spent potliner for processing in Reynolds' kiln. Many facilities would be required to stockpile (at a hazardous waste storage facility) spent potliner for over a year before being able to supply sufficient potliners to Reynolds to meet this testing requirement. Both commenters believed reinstituting verification testing for a three-day period (which would require approximately 500 tons of spent potliner) would be sufficient to demonstrate that Reynolds could treat spent potliners from another primary reduction facility effectively and provide the Agency with adequate data to document the effectiveness of the treatment process relative to the potliner source.

Response: The Agency agrees that it may be overburdensome to aluminum reduction facilities to stockpile spent potliner for over a year prior to treatment. To balance the Agency's need for sufficient data and to ease the storage and analytical burden on smaller volume aluminum reduction facilities, the Agency has decided to reduce the verification testing period to a minimum of four days for each new source of spent potliner, during which daily composite samples must be collected and analyzed. This requirement is consistent with 40 CFR 260.22(h) regarding collection of a minimum of four representative samples for the delisting demonstration. While the Agency believes that Reynolds will have likely resolved any start-up operational problems during the first 20 days of initial verification testing, some initial verification testing requirements are still necessary to ensure that a new potliner source will not pose any technical or operational problems for Reynolds. The Agency believes that a return to initial verification testing for four operating days will allow Reynolds sufficient time to determine if it can successfully treat spent potliners from other aluminum reduction facilities, allow resolution of any processing problems, and collect information that demonstrates whether Reynolds' process can successfully treat the spent potliner from the new source. Therefore, the Agency modified Condition (5) of the exclusion so that, if Reynolds successfully completes the four-day period of initial verification testing, Reynolds may return to the subsequent testing conditions in Condition (2)(B) for the new potliner source upon receiving notification from EPA. If this four-day testing is not successful, then Reynolds must continue to test the kiln residue beyond the four-day period as required by Condition (5).

f. Use of Models for Delisting

Comment: One commenter believed that EPA misstated its reliance on the use of models in reviewing delisting petitions. The commenter claimed that EPA always, not often, uses fate and transport models to make delisting decisions. The commenter believed that EPA intends to use the model as a sole deciding factor (*i.e.*, a rule) and that the proposal should be withdrawn and re-proposed to amend 40 CFR 260.22. Furthermore, the commenter believed that the Agency used the model as a rule and thus violated the Administrative Procedure Act (5 U.S.C. 550 *et seq.*) by failing to articulate a rational basis for this proposal. The commenter also suggested that the proposal does not conform to the direction given EPA in the decision in *McLouth Steel Products Corp.* v. *Thomas*, 838 F.2d 1317, 1319 D.C. Cir. 1988, namely that EPA fails to be open to comments on the model and its use in specific delisting cases.

Response: While the Agency used fate and transport models in many past delisting evaluations, the Agency has also considered various other factors in

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making delisting decisions. For example, in some cases, the Agency has determined that petitioned wastes are characteristic wastes, relying on the criteria established under 40 CFR 261.24, not a fate and transport model. In other cases petitions have failed the Agency's evaluation on the basis of ground-water contamination that may have arisen from disposal of the petitioned waste. Regardless of the bases of any past decisions, the Agency believes that, in this case, the EPACML model is an appropriate tool to use in the evaluation of Reynolds' waste because, as noted in the proposal, the Agency believes that disposal in a landfill is a reasonable worst-case scenario for Reynolds' petitioned waste. Therefore, the Agency believes that it has appropriately used the EPACML model in evaluating Reynolds' petitioned waste. Furthermore, in evaluating Reynolds' petition the Agency also evaluated alternate exposure scenarios including inhalation exposure and contamination of surface water from runoff. The Agency believes that it did not violate the Administrative Procedure Act (APA). Consistent with the APA, the Agency proposed to use the EPACML as a tool in making the delisting determination for Reynolds, and accepted public comment. The Agency continues to believe that the model is appropriate and has presented justification for using the EPACML in evaluating Reynolds' petition.

The Agency also believes that using the EPACML model in evaluating Reynolds' petition is consistent with the *McLouth* decision. That decision allows the Agency to use delisting models as a non-binding policy so long as the Agency exercises discretion in individual delisting cases and remains open to challenges to its use. The Agency believes that it has treated the model as a non-binding policy in its evaluation of Reynolds' petition, that the model is appropriate to use in Reynolds' case, and that it has fully considered comments on the proposed use of the EPACML model. In today's notice, EPA has responded to each criticism of the EPACML model. EPA has carefully reviewed the commenter's concerns in what it believes is an open-minded fashion. In the future, the Agency may consider amending 40 CFR 260.22 to incorporate the use of the EPACML into the delisting regulations. However, the Agency believes it is still proper to use this model as a tool in evaluating individual delisting petitions, as appropriate.

Comment: One commenter believed that the proposal fails to meet statutory requirements of the Hazardous and Solid Waste Amendments (HSWA) to "consider other factors other than those for which the waste was listed." The commenter believed that the Agency has considered only "other constituents" but has failed to consider any other factors. The commenter believed that the proposed rule should be withdrawn and revised to reflect other factors to be considered in making the delisting petition decision.

Response: The Agency believes that it has fully complied with HSWA in evaluating this petition. HSWA requires the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. For example, the Agency evaluated whether the waste exhibited any of the hazardous waste characteristics of ignitability, reactivity, or corrosivity. In addition, the Agency evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). As noted above, the Agency has also considered alternate exposure scenarios in its evaluation. In each case, the Agency determined that Reynolds' petitioned waste did not meet the criteria for classification as a hazardous waste and thus proposed an exclusion for the waste. As a result, the Agency believes that it has complied with HSWA and evaluated those factors which could cause the waste to be hazardous. The Agency notes that the commenter failed to mention any specific additional factors that it felt were ignored during the Agency's evaluation.

Comment: One commenter believed that the Agency should continue to use the Organic Leachate Model (OLM) in deriving delisting levels or predicting the leachate concentration from a waste source, and recommended that the Agency update the OLM to include more recent data.

Response: The OLM was initially developed by the Agency to provide a means of predicting the leachate concentration of organic constituents of concern in delisting petition review prior to the development of the TCLP method. The Agency relied on the OLM because, at the time, no reliable laboratory leaching technique had been accepted by the Agency. The OLM is an empirical model developed based on a data base of EP, modified EP, lysimeter, and other leachate data. The Agency developed the form of the model based on a theoretical leaching model and performed curve fitting regression analyses to determine that optimum model parameters. The results of the model are controlled by the total constituent concentration and the constituent solubility. Since the Agency has promulgated the TCLP method, the Agency believes that it is more appropriate, in most cases, to use the extraction method to determine actual leachable organic concentrations instead of estimating the mobility of hazardous constituents based on total constituent data. Nevertheless, in Reynolds' case, the Agency evaluated organic constituent data from Reynolds' petition, using the OLM to estimate the concentration of organic constituents leaching from the petitioned waste because TCLP data were not specifically requested. The estimated organic constituent leachable concentrations were then used as inputs to the EPACML. The Agency evaluated this data and determined that the compliance-point concentrations were below the health-based levels for delisting decision-making. However, EPA established the levels in Condition (4)(B) based on the TCLP because the TCLP will provide a more direct indication of the potential leachability of organic constituents from this waste matrix than an empirical model. The Agency still believes, however, that the OLM is a useful tool in estimating the leachable levels of organic constituents, and may use it, as appropriate, in future delisting decisions.

Comment: One commenter believes that a consistent fate and transport model should be used in all delisting and related waste characterization rulemaking. The commenter went on to question whether the results of the VHS and EPACML are "correlatable", and if the Agency planned to reconsider past delistings and other rulemakings (*i.e.*, the Toxicity Characteristic) using the EPACML.

Response: As stated in the proposal to exclude Reynolds' waste, the Agency intends to use the EPACML, when appropriate, as a tool to evaluate the potential for waste to contaminate ground water at levels of concern. The Agency notes that the EPACML was used to support the promulgation of the Toxicity Characteristic (TC). While the input to the model used in the TC rule was somewhat different (*i.e.*, the delisting version uses the volume of the petitioned waste as an input, while the volume (more specifically the area of the landfill) was allowed to vary in the Monte Carlo simulation used in the TC rule), the use of the same model in both programs does, in fact, provide a measure of consistency. The Agency discussed the reason for the differences in the delisting and TC use of the EPACML in the proposal to today's rule.

While the results to the EPACML and VHS are similar in some ways (*e.g.*, both yield DAFs that decrease as waste volume increases), the EPACML yields somewhat higher DAFs than the VHS model for a given volume of waste. Therefore, the Agency believes that delistings granted in the past would likely be granted if re-evaluated using the newer model. EPA is evaluating the impact of the new model on conditional delistings (*i.e.*, delistings that require verification testing of the waste, similar to Reynolds exclusion) and will consider the need for re-evaluation on a case-by-case basis.

g. Scaling Factor of 20

Comment: One commenter stated that the Agency has not demonstrated that the average remaining life span of subtitle D landfills in the United States is 20 years. This commenter also claimed that the use of the scaling factor of 20 is biased against facilities petitioning, on a one-time basis, for the exclusion of a specific volume of waste. One commenter noted that the EPA believes the 20-year scaling factor would discourage "intermittently-generated batches of waste" from being delisted but gives no reason as to why delisting of such wastes must be discouraged.

Response: The Agency believes that the 20-year operating life of a landfill, and therefore, the scaling factor of 20 is fully supported by a nationwide Agency survey of landfills (see Ref. 7, 56 FR 32998). The purpose of the 20-year scaling factor is to account for the total waste volume for wastes generated on a continual basis, as well as for wastes generated in intermittent batches, that may be placed in the same landfill. If a waste were generated in intermittent batches, the total volume would exceed that of the initial batch generated. For example, a facility could petition for 8,000 yd^3 batches of waste every five years. If this were to continue for 20 years, the actual total volume of waste would be 32,000 yd^3 rather than the 8,000 yd^3 evaluated in each petition submitted intermittently. Therefore, delisting separate intermittent batches would not account for the total volume of waste and could underestimate the hazard to human health and the environment.

The Agency also notes that a provision is made for one-time generated wastes (56 FR 32998); "• • • if the petitioner can conclusively demonstrate that the waste is no longer being generated, it will not be generated in the future, and no other similar waste is stored or disposed of on-site, then the factor of 20 seems unwarranted. Therefore, the Agency intends to evaluate petitions for one-time exclusions on a case-by-case basis." Thus, as described in the proposal, the Agency does not believe that the scaling factor of 20 is biased against wastes generated on a one-time basis, rather it plans to investigate these petitions on a case-by-case basis.

Comment: One commenter stated that the EPACML, rather than the VHS model, should be used to establish generic delisting criteria, such as those for toxic metals present in residues generated by the high temperature metals recovery (HTMR) processing of high zinc K061. This commenter, however, believed that the scaling factor of 20 greatly exaggerates the potential ground-water contamination associated with the use of HTMR slag as a road base, since the slag will not be placed at the same site for a period of 20 years.

Response: EPA believes that this comment is not germane to Reynolds' delisting decision and notes that the comment seems to be based on information presented in a recent Agency rulemaking establishing treatment standards for K061 electric arc furnace dust (see 56 FR 41164, August 19, 1991). EPA has not proposed the use of EPACML in evaluating this disposal scenario, nor has it solicited comments on the use of waste as a road base material. Furthermore, the Agency notes that it has no indication that Reynolds' waste would be used as road base and therefore, believes that disposal at the same site for 20 years is the most reasonable worst-case assumption for Reynolds' waste.

h. Waste Volume Considerations for Stabilized Wastes

Comment: One commenter believed that the use of EPACML DAFs will make it more difficult to delist a waste that has been stabilized and that the disincentive to dilution will actually be a disincentive to stabilization when it increases the volume of a waste.

Response: The Agency believes that if the waste has been efficiently stabilized, any volume increase resulting from stabilization may not be significant. Proper stabilization should ensure that hazardous constituents will not leach out using the TCLP and allow the waste to qualify for delisting despite any increase in volume as a result of stabilization. However, the commenter provided no data suggesting that any increase in volume from stabilization would significantly impact the likelihood of delisting, therefore, the Agency could not conduct a more quantitative evaluation of the effects of stabilization of volume increases. In the case of Reynolds' waste, the treated material did not, in fact, exceed levels of regulatory concern based on the EPACML, despite the increase in volume.

i. Surface Impoundment Waste Volume

Comment: One commenter believed that the use of the "stored liquid volume" for surface impoundment wastes is arbitrary and capricious. The commenter stated that EPA should use only the volume of hazardous waste in the surface impoundment and that volume of liquid should not be included in the volume used in the modeling evaluation. The commenter stated that if the liquid and solid fractions are to be handled differently (such as by removing and dewatering the sludge), the delisting should be handled separately, *i.e.*, the volume evaluated should be the volume of the waste removed.

Response: The Agency notes that this comment is not germane to Reynolds' delisting petition because the Reynolds petition is for a solid (not liquid) waste, and the Agency views the landfill disposal scenario as the most reasonable, not surface impoundment disposal. The Agency intends, when appropriate, to evaluate one-time volumes of combined liquid and solid wastes disposed of in surface impoundments by sizing surface impoundments based on the reported volume of stored liquid and solid wastes. This approach is not arbitrary and capricious, but rather, based on actual reported volumes. The Agency also believes that it is expected that contaminants may mix with the entire volume of liquid present in the impoundment. The use of the "stored liquid volume" is therefore justified if a submitted petition is for combined liquid and solid wastes to be managed as a whole. The Agency notes that a facility can, in fact, submit a separate petition for a one-time exclusion for the solid fractions (*i.e.*, settled sludge) removed from an existing impoundment. In this case, the Agency agrees with the commenter that the petitioner could excavate and dewater the sludge, and then test the resulting solids and liquid separately in an attempt to delist the solid and liquid fractions separately. In this case, the Agency would likely evaluate the volume of the dewatered sludge under a landfill scenario, but would still evaluate the liquid phase under a surface impoundment scenario.

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j. Disposal Scenario Assumptions

Comment: A few commenters noted the assumption that the landfill's liner and cap will completely fail, combined with many other worst-case assumptions, fails to account for highly engineered state-of-the-art landfills and represents an unrealistic scenario, not a reasonable worst-case scenario. Another commenter believed that the uncapped landfill assumption greatly exaggerates the degree of ground-water contamination that could result from the use of HTMR slag as road base. The commenters suggested that the Agency reconsider the use of these assumptions and try to establish more realistic assumptions.

Response: The Agency notes that the EPACML does incorporate effects of a landfill soil cap in the modeling analyses. This is done indirectly through the assignment of infiltration rates calculated with the HELP model (see Ref. 1, 56 FR 32996) using different types of solids (*e.g.*, silty loam, silty clay loam, sandy loam). The Agency agrees that highly engineered landfills exist, but believes that wastes may not always be disposed of in highly-engineered, lined landfill systems that would effectively preclude the vertical migration of leachate. The Agency believes that a reasonable worst-case scenario consists of a subtitle D municipal waste landfill disposal scenario, and that the more sophisticated liners may eventually fail with time. Therefore, the Agency believes that it is appropriate to use the EPACML to evaluate plausible scenarios which might enhance the migration potential of hazardous constituents.

k. Use of the Infinite Source Assumption

Comment: A few commenters believed that the use of the infinite source assumption is unnecessary because data and modeling techniques are available to determine the leaching potential of any constituent in a waste disposal unit. One commenter urged EPA to abandon the infinite source assumption and more accurately determine, on a site-specific basis, the total volume of a particular constituent in a waste management unit. Another commenter suggested that the Agency check the validity of the infinite source assumption for each constituent modeled for the volume of waste that is assumed to be disposed. The same commenter also suggested that EPA decrease the scaling factor of 20 used to estimate the accumulation of wastes over multiple years to reflect the real-world dissipation and decay process. This commenter proposed that a more accurate method for deriving a scaling factor would include an adjustment for the mass of chemical removed based on the surface area of the landfill, the amount of rainfall, and the projected leachate concentration.

Response: EPA recognizes that, under some specific site conditions, the infinite source assumption may not hold true for some constituents subject to degradation. However, the Agency does not believe that there are sufficient data available at present to support the use of a finite-source model. The Agency is currently evaluating methods to address finite-source constituents and may consider use of these methods when they become available. However, the Agency believes that since the large majority of contaminants are stable under most subsurface conditions and will behave as an infinite source, this is an appropriate reasonable worst-case assumption. Furthermore, the commenters did not provide any specific data that indicated that an infinite source assumption would not be appropriate for the constituents evaluated for Reynolds' waste.

l. Biodegradation, Adsorption, and Metals Speciation

Comment: Some commenters encouraged EPA to refine and upgrade the EPACML to incorporate the phenomenon of attenuation brought about by other minerals in the soil (such as iron oxides) in addition to that of organic carbon. Several commenters recommended that biodegradation be considered. Several commenters suggested that, since delisting is a waste-specific regulatory action, EPA should use chemical-specific adsorption isotherms when they are available.

Response: The EPACML already handles different types of sorption reactions, as long as they follow a linear equilibrium isotherm. At the present time, there are insufficient data available to the Agency for general soil minerals (*e.g.*, clay minerals, iron oxides) to accurately model nonlinear sorption processes. In addition, none of the commenters provided specific data or procedures to allow incorporation of such sorption mechanisms in delisting evaluations. Therefore, the Agency assumed a reasonable worst-case scenario. EPA also recognizes that biodegradation can occur in the subsurface and has finalized a testing protocol for the development of biodegradation rates for use in the EPACML. Although the protocol was published on June 15, 1988 (55 FR 22300), the Agency still does not have sufficient data to develop a nationwide distribution of biodegradation rates for any of the organic contaminants of concern.

Comment: One commenter believed that the use of the linear equilibrium adsorption isotherm is overly conservative and is based on very idealistic analysis of existing literature data. This commenter believes further that the equilibrium partitioning approach is misused as it does not take into consideration the heterogeneity of soil and aquifer material.

Response: The Agency agrees that the assumption of linear equilibrium sorption is a simplifying assumption, given the complexity of chemical adsorption reactions in heterogeneous soil and aquifer materials. As a result, it is expected that the use of a linear equilibrium adsorption isotherm may be conservative in some cases, depending more on the magnitude of the distribution coefficients used, rather than on the linearity assumption. Heterogenity in aquifer adsorption effects is implicitly considered in the application through the Monte Carlo incorporation of distribution coefficients. The Agency believes this conservative assumption is appropriate, especially given possible kinetic limitations on sorption reactions in flowing ground-water systems.

Comment: One commenter believed that the handling of metals transport by the EPACML model does not account for precipitation reactions in the subsurface and is therefore unrealistic. The commenter recognized that the Agency is considering the use of the Mineral Thermal Equilibrium (MINTEQ) model to predict metals concentrations in the subsurface and considers this a positive step.

Response: The Agency is currently conducting research on the methodology and developing data to use the MINTEQ model for metals in association with the EPACML. When these results are available, the Agency may consider its use, as appropriate.

m. Other Modeling Assumptions

Comment: One commenter suggested that EPA should ensure that unrealistic or impossible combinations of input variables are not used in the EPACML. The commenter stated that the pairing of inconsistent model parameters may produce unreasonable results and that information on the parameters generated is not publicly available. The commenter recommended that EPA identify sets of realistic parameter combinations and document that these are indeed realistic combinations.

Response: The Agency points out that the EPACML does check for impossible combinations of input variables and these are rejected in the Monte Carlo analysis; however, EPA does not have enough data to develop comprehensive cross-correlations of input variables for use in the Monte Carlo analysis. The Agency believes that the 95th percentile DAF represents a conservative yet reasonable worst-case combination of input parameters, and that the Monte Carlo approach used will prevent unrealistic combinations of input parameters from controlling the output of the model. The Agency also points out that information on the input parameters is publicly available in the Background Document for the EPACML (see Ref. 2, 56 FR 32997). Moreover, as indicated in the proposal to today's rule (56 FR 32997), an independent review of the distributions of input parameters concluded that range of input parameter values and distributions used by the EPACML are similar to the results of an independent nationwide survey.

Comment: One commenter believed that the assumption of one-dimensional steady and uniform advective flow ignores the variable nature of precipitation and the resultant potential volumes of leachate that may be generated. The same commenter recommended that EPA compare the results of the Hydrologic Evaluation of Landfill Performance (HELP) model with more sophisticated numerical codes that more accurately predict the rate and movement of fluids in heterogenous landfill systems.

Response: The comment does not make clear whether it is directed to the unsaturated zone or saturated zone assumptions of EPACML. The assumption of steady state, one-dimensional flow is made in both the unsaturated and saturated modules of EPACML. The assumption of one-dimensional steady state flow through the unsaturated zone is reasonable provided that the area of the source (landfill) is not too small. There is a substantial body of literature that indicates that use of such an assumption for unsaturated zone flow is reasonable and will not lead to great errors in transport predictions. Site-to-site variations in precipitation rates and volumes of leachate are accommodated through the Monte Carlo analysis in which the precipitation rate is treated as a random parameter based on nation-wide data collected by the Agency.

The use of a steady state flow assumption for saturated zone ground-water flow is also justified, since the model considers transport over long-term average conditions. Actual temporal fluctuations of ground-water flow rates due to seasonal variations of precipitation will occur over much shorter time periods than considered in the model. The assumption of one-dimensional ground-water flow is justified for the landfill waste disposal scenario in which the rate of leakage through the facility is of the same order or less than the regional recharge rate. Under this assumption, the ambient ground-water flow is not greatly impacted by the effects of recharge.

While the Agency acknowledges that other numerical codes exist to predict contaminant migration through landfills, it believes that the HELP model is adequate for the purposes of the delisting EPACML modeling effort. The Agency has conducted several studies to validate and verify the HELP model results using both field-scale physical models and data from actual landfill sites. These studies have been directed towards evaluating both individual model components and the model as a whole and show reasonable agreement between model predictions and field data; no consistent trends of overestimation or underestimation of landfill water balance parameters were seen. See EPA publications EPA–600/2–87–049, "Verification of the Lateral Drainage Component of the HELP Model Using Physical Models", 1987a; and EPA–600/2–87–050, "Verification of the HELP Model Using Field Data", 1987b. Some researchers also supported the use of the HELP model (Schroeder, P. R. and R. L. Peyton, "Field Verification of Help Model for Landfills", Journal of Environmental Engineering, Vol. 114, No. 2, 1988). Considering this observation and the Monte Carlo approach to using the model in developing the TC regulations, it is likely that any errors associated with specific model runs will average out over the course of the Monte Carlo analysis.

n. Use of the 95th Percentile DAFs

Comment: One commenter believed that the use of the 95th percentile for all input parameters does not represent a reasonable worst-case disposal scenario, but rather an improbable or impossible scenario. One commenter believed that EPA's proposal of a 95th percentile cutoff level for the DAF (while an 85th level was used in the Toxicity Characteristic rule) is logically inconsistent and unnecessarily stringent. This commenter stated that under conditions of greater certainty (in the input parameters) the DAF percentile should be decreased to the 85th percentile. One 95th commenter recommended that the DAF for delisting should not be set below 100 and that DAFs below 100 are inconsistent with EPA's approach to listing hazardous wastes and are more conservative than DAFs used to identify wastes under the TC rule. The commenter stated that delisting employs risk levels when evaluating carcinogens that are in order of magnitude lower for delisting than for the TC. Another commenter believed that EPACML still produces a highly conservative estimate of contamination in a drinking water well and that selection of the upper 85th percentile DAF probability distribution is sufficiently conservative for delisting levels as it is for setting TC regulatory levels.

Response: The Agency would like to clarify that the Monte Carlo procedure used by the EPACML does not use 95th percentile values of each input parameter, but rather selects values from the entire range of possible values for each input parameter. The output resulting from multiple simulations using this full range of input parameter values is a single distribution of DAFs and the Agency selects the 95th percentile DAF from this distribution.

The use of the Monte Carlo procedure does account for the fact that some of the parameter values selected may represent 50th percentile values while the values of other parameters for the same simulation may represent different percentiles. The Agency points to an independent review of EPACML input parameters that concluded that the range of values used are sound (see Ref. 5 in 56 FR 32977).

The Agency maintains that the goals of the characteristics program are different from those of the delisting program and that it is appropriate for delisting to be more stringent than characteristics (56 FR 32998). Characteristics levels are those equal to or above which a waste is clearly hazardous, delisting regulatory levels are those below which a waste is clearly nonhazardous. The Agency believes that the 95th percentile DAFs developed for delisting are representative of reasonable worst-case disposal scenarios and are appropriate for use in delisting evaluations, such as in the case of Reynolds' petition. The commenters did not demonstrate that the 95th percentile cutoff level is inappropriate.

Comment: One commenter stated that the comparison of the DAF percentile to multiple well comparisons for ground-water monitoring data is a weak argument since the DAF percentile and ground-water data are derived in fundamentally different ways using scientifically and statistically different approaches.

Response: With regard to the confidence level or level of statistical significance, the Agency acknowledges that the approach used to estimate DAFs differs from the approach used for multiple ground-water monitoring well

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comparisons. However, the Agency believes that the goals of each evaluation are similar; *i.e.*, to state with a degree of statistical certainty that a statistical hypothesis holds true. In any case, the Agency continues to believe that use of the 95th percentile DAFs is appropriate in order to ensure delisted wastes are non-hazardous

3 Final Agency Decision

For the reasons stated in the proposal and described above, the Agency believes that Reynolds' kiln residue should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Reynolds Metals Company, located in Bauxite, Arkansas, for its kiln residue to be generated at its R.P. Patterson facility in Gum Springs, Arkansas described in its petition as EPA Hazardous Waste No. K088.

This exclusion initially applies only to the kiln residue generated by one rotary kiln at Gum Springs, Arkansas, during the treatment of spent potliner produced by Reynolds' four primary aluminum reduction facilities (*i.e.*, Massena, New York; Longview, Washington; Troutdale, Oregon; and Baie Comeau, Quebec). This exclusion will apply to kiln residues generated from a second kiln at the site, or residues from the treatment of spent potliners from other primary aluminum production facilities, only if the requirements in Condition (5) are satisfied. The maximum annual volume of kiln residues covered by this exclusion is a total of 300,000 cubic yards for all treatment kilns operated by Reynolds.

Although management of the waste covered by this petition is relieved from subtitle C jurisdiction, the generator of the delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to Section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under the State law.

IV. Effective Date

This rule is effective December 30, 1991. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon promulgation. These reasons also provide good cause for making this rule effective immediately under the Administrative Procedure Act, 5 USC 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule. This rule is not a major regulation, therefore, no Regulatory Impact Analysis is required.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 USC §§ 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis, which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 USC § 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. List of Subjects in 40 CFR Part 261

Hazardous Waste, Recycling, and Reporting and Recordkeeping Requirements.

Dated: December 19, 1991.

Jeffrey D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 USC 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 2 of appendix IX of part 261, add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under § 260.20 and § 260.22.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
Reynolds Metals Company	Gum Springs, Arkansas	Kiln residue (generated at a maximum annual volume of 300,000 cubic yards per year) from rotary kiln treatment of spent potliners (EPA Hazardous Waste No. K088). This exclusion was published on December 30, 1991. This exclusion does not apply to electrostatic precipitator dust generated by the rotary kiln. This exclusion initially applies only to the treatment by one rotary kiln of potliners generated by Reynolds Metals' four primary aluminum facilities (Massena, New York; Longview, Washington; Troutdale, Oregon; and Baie Comeau, Quebec) described in the petition. Reynolds may only accept spent potliners from other sources, or modify its treatment process, or add an additional rotary kiln in accordance with Condition (5). This exclusion is conditional upon the submission of data obtained from each rotary kiln after it is established at the R.P. Patterson facility in Gum Springs, Arkansas. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern while the treatment facility is in operation, Reynolds must implement a testing program. This testing program must meet the following conditions for the exclusion to be valid: (1) *Operating Conditions:* (A) *Initial Verification Testing:* During the first 20 days of full-scale operation of the rotary kiln, at typical operating conditions, Reynolds must monitor and submit to EPA the rotary kiln operating conditions (including, but not limited to: Temperature range of the kiln (hot and cold end), kiln residue exit temperature, spent potliner feed rate, brown sand feed rate, limestone feed rate, natural gas feed rate, oxygen/air feed rate, and rotary kiln residence time of the raw materials). The ratio of the spent potliner feed rate to the combined feed rates of the spent potliner, brown sand, and limestone must be no more than 0.35. Information on all other operating conditions should encompass all conditions used for preliminary testing runs and those anticipated for subsequent waste processing. During initial verification testing, the petitioner must also demonstrate to EPA how the range of operating conditions could affect the process (*i.e.*, submit analyses of representative grab samples, as specified under Condition (2), of the kiln residue generated under the expected range of operating conditions). The source of the brown sand must be from Reynolds' dry lake beds at the Bauxite, Arkansas facility. Reynolds must submit the information specified in this condition and obtained during this initial period no later than 90 days after the treatment of the first full-scale batch of spent potliner. (B) *Subsequent Verification Testing:* During subsequent verification testing, Reynolds must monitor the performance of the rotary kiln at all times to ensure that it falls within the range of operating conditions demonstrated during initial verification testing, to be adequate to maintain the levels of hazardous constituents below the delisting levels specified in Condition (4). The feed rates of spent potliner, lime and brown sand are to be as that described in Condition (1)(A). Records of the operating conditions of the rotary kiln (including, but not limited to: Temperature range of the kiln, kiln residue exit temperature, spent potliner feed rate, brown sand feed rate, limestone feed rate, natural gas feed rate, oxygen/air feed rate, and rotary kiln residence time of the raw materials) should be maintained on site for a minimum of five years. This information must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Arkansas. (2) *Testing:* Sample collection and analyses (including quality control (QC) procedures) must be performed according to SW–846 methodologies. For fluoride, samples must be analyzed using Method 340.2 from "Methods for Chemical Analysis of Water and Waste". If the EPA judges the treatment process to be effective under the operating conditions used during the initial verification testing, Reynolds may replace the testing required in Condition (2)(A) with the testing required in Condition (2)(B). Reynolds must continue to test daily composites of kiln residue generated beyond the time period specified in Condition (2)(A) until and unless notified by EPA in writing that testing in Condition (2)(A) may be replaced by Condition (2)(B) (to the extent directed by EPA). (A) *Initial Verification Testing:* During the first 20 operating days of full-scale operation of the new on-line rotary kiln, Reynolds must collect and analyze daily composites of kiln residue. Daily composites must be composed of representative grab samples collected every 6 hours during each 24-hour kiln operating cycle. The kiln residue samples must be analyzed, prior to the disposal of the kiln residue, for all constituents listed in Condition (4). Reynolds must report the analytical test data, including quality control information, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch of untreated spent potliner. (B) *Subsequent Verification Testing:* Following notification by EPA, Reynolds may substitute the testing conditions in (2)(B) for (2)(A). Reynolds must collect and analyze both daily and weekly composites of kiln residue. Daily composites must be composed of representative grab samples collected every 6 hours during a 24-hour kiln operating cycle and these samples must be analyzed, prior to the disposal of the kiln residue, for leachable concentrations of cyanide and fluoride. Weekly composites must be composed of representative grab samples collected every 6 hours during a 24-hour kiln operating cycle for each day in the week that the kiln is operating. The weekly samples must be analyzed, prior to the disposal of the kiln residue, for the leachable concentrations of the inorganics listed in Condition (4)(A) and leachable levels of the semi-volatile organic compounds listed in Condition (4)(B). Analyses of both daily and weekly samples must be completed prior to the disposal of waste generated during that week as set forth in Condition (3). The analytical data, including quality control information, must be compiled, summarized, and maintained on site for a minimum of five years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Arkansas. (3) *Waste Holding and Handling:* Reynolds must store, as hazardous, all kiln residue generated until verification testing (as specified in Condition (2)(A) and (2)(B)) is completed and compared, by the petitioner, with the delisting levels set forth in Condition (4). If the levels of hazardous constituents measured in the samples of kiln residue generated do not exceed any of the levels set forth in Condition (4), then the kiln residue is non-hazardous and may be managed and

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TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		disposed of in accordance with all applicable solid waste regulations. If hazardous constituent levels in any daily or weekly sample exceed any of the delisting levels set in Condition (4), the kiln residue generated during the time period corresponding to this sample must be retreated until it meets these levels (analyses must be repeated) or managed and disposed of in accordance with Subtitle C of RCRA. Kiln residue which is generated but for which the required analysis is not complete or valid must be managed and disposed of in accordance with Subtitle C of RCRA, until valid analysis demonstrates that Condition (4) is satisfied. (4) *Delisting Levels:* All concentrations must be measured in the waste leachate by the method specified in 40 CFR 261.24. (A) The leachable concentrations for metals may not exceed the following levels (ppm): arsenic, selenium, or silver—0.60; barium—12.0; antimony—0.12; lead—0.18; cadmium—0.06, chromium or nickel—1.2; mercury—0.024; beryllium—0.012; fluoride—48.0; and cyanide—2.4 (cyanide extraction must be conducted using deionized water). (B) The leachable constituent concentrations for organics may not exceed the levels listed below (ppm): Acenapthene—24 Benz(a)anthracene—$1.2x10^{-4}$ Benzo(b)fluoranthene—$2.4x10^{-4}$ Benzo(a)pyrene—$2.4x10^{-3}$ Chrysene—$2.4x10^{-3}$ Fluoranthene—12 Indeno (1,2,3-cd)pyrene—$2.4x10^{-3}$ Pyrene—12 (5) *Changes in Operating Conditions and Waste Sources:* If after completing the initial verification test period in Conditions (1)(A) and (2)(A), Reynolds decides to treat spent potliner from any other primary aluminum reduction facility; or use a new source for brown sand; or otherwise significantly change the operating conditions developed under Condition (1); then Reynolds must notify EPA in writing prior to instituting the change. Reynolds must also reinstitute the testing and reporting required in Conditions (1)(A) and (2)(A) for a minimum period of four operating days and fulfill all other requirements in Conditions (1) and (2), as appropriate. Reynolds may also add one additional kiln at its R.P. Patterson facility in Gum Springs, Arkansas if it can demonstrate that the new kiln can successfully treat spent potliners. Reynolds must fulfill all requirements contained in Conditions (1) and (2) for the second kiln. Reynolds must continue to test any kiln residue generated beyond the time period specified in Condition (2)(A) until and unless notified in writing by EPA that testing Condition (2)(A) may be replaced by (2)(B) to the extent directed by EPA. (6) *Data Submittals:* Reynolds must notify in writing the Section Chief, Delisting Section (see address below) when the rotary kiln is on-line and two weeks prior to when waste treatment will begin. The data obtained through Conditions (1)(A) and (2)(A) must be submitted to the Section Chief, Delisting Section, OSW (OS-333), U.S. EPA, 401 M Street, SW, Washington, DC 20460 within the time period specified. At the Section Chief's request, Reynolds must submit any other analytical data obtained through Conditions (1)(B) and (2)(B) within the time period specified by the Section Chief. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by the Agency, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 USC § 1001 and 42 USC § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. "As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. "In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."

[FR Doc. 91-31150 Filed 12-27-91; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF DEFENSE

48 CFR Parts 202, 204, 205, 209, 211, 214, 215, 217, 219, 222, 223, 225, 226, 227, 231, 232, 233, 237, 239, 242, 243, 245, 249, 250, 252, 253, and Appendix G

[Defense Acquisition Circular (DAC) 91-1]

Department of Defense Acquisition Regulations; Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final and interim rules.

SUMMARY: Defense Acquisition Circular (DAC) 91-1 amends the Defense FAR Supplement (DFARS) (1991 Edition) coverage on contractor identification systems, acquisition and distribution of commercial products, evaluation of acquisitions for services and uncompensated overtime, historically black colleges and universities and minority institutions, Pilot Mentor-Protege Program, hazardous material identification, drug-free work force, expiration of restrictions on Toshiba/Kongsberg, restriction on air circuit breakers for naval vessels, restriction on antifriction bearings, offset administrative costs, IR&D/B&P costs, customary progress payment rates, GAO protest regulations, contracting officer final decisions, parcel post eligible shipments, notifications of substantial impact on employment, plant clearance duties, and announcement of contract awards.

EFFECTIVE DATE: December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Lucile Hughes, Defense Acquisition Regulations System, OUSD(A), The Pentagon, Washington, DC 20301-3000, telephone (703) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD FAR Supplement is codified in chapter 2 title 48 of the Code of Federal Regulations.

The December 31, 1991 revision of the CFR is the most recent edition of that title.

The interim rules included in DAC 91-1 (Items IV, V, XI, and XVII) were published previously in the **Federal Register** for public comment. Their publication in DAC 91-1 does not constitute a request for comment.

Item IV is a revision of the interim rule published April 12, 1991 (56 FR 18610).

Item V was published September 5, 1991 (56 FR 43986) and amended September 30, 1991 (56 FR 49506).

Item XI was published December 9, 1991 (56 FR 64211).

Item XVII was published October 18, 1991 (56 FR 52440).

B. Regulatory Flexibility Act

DAC 91-1 Items IV, V, VI, VII, IX, XII, XIII, XIV, XV, XVI, XVII, and XX

These rules were published as either interim or final rules in DAC 88-19 (56 FR 60066). They are included in this DAC in substantially the same form as in DAC 88-19, except for minor editorial revisions which do not constitute significant revisions within the meaning of FAR 1.501 and Public Law 98-577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply.

DAC 91-1, Items I, II, III, VIII, X, XVIII, XIX, XXI, XXII, and XXIII

These informational items and final rules do not constitute significant revisions within the meaning of FAR 1.501 and Public Law 98-577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply.

DAC 91-1 Item XI

This item was published for public comment on December 9, 1991 (56 FR 64211). Public comments received in response to that notice will be considered in development of the final rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the revisions in this DAC do not contain and/or affect information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 202, 204, 205, 209, 211, 214, 215, 217, 219, 222, 223, 225, 226, 227, 231, 232, 233, 237, 239, 242, 243, 245, 249, 250, 252, 253, and Appendix G

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations System.

(Defense Acquisition Circular No. 91-1, dated December 31, 1991)

All Defense FAR Supplement and other directive material contained in this circular is effective December 31, 1991, unless otherwise specified in the Item summary.

Defense Acquisition Circular (DAC) 91-1 amends the Defense FAR Supplement (GFARS) 1991 edition, prescribes procedures to be followed, and provides informational interest items. The amendments, procedures, and information are summarized as follows:

Item I—Revision of Activity Address Codes and Call/Order Codes

For information and planning purposes, a proposed revision of DFARS Subpart 204.70, Uniform Procurement Instrument Identification Numbers, is included in this DAC as Attachment I. Effective October 1, 1993, the Activity Address Codes contained in DFARS appendix G will be replaced by the DoD Activity Address Codes in DoD 4000.25-D, DoD Activity Address Directory, and the two position call/order code will be replaced by the numbering system specified in the proposed revision of DFARS subpart 204.70. Appendix G will be eliminated at that time. Formal notice of these proposed changes will be published for public comment at a later date.

Item II—Contractor Identification Systems

DFARS 204.7202-2 and 204.7204-2 are revised to incorporate the new contractor identification numbering system that will become effective in January 1992. Also, several editorial clarifications have been made in 253.204-70. Both the new system and the old system (DUNS numbers) may be used through the end of fiscal year 1992. The new system must be used for reporting in fiscal year 1993 and after.

Item III—Debarment Decisions

The eight factors in 209.406-1(d) of the 1988 edition of DFARS, that are to be considered in making a debarment decision are being incorporated in FAR by FAC 90-09 and for this reason do not appear in the 1991 edition of DFARS.

Item IV—Acquisition and Distribution of Commercial Products

Departmental Letter 91-020, issued September 26, 1991, advised that the clause at 252.211-7005, Limitation of Liability, may not be appropriate for use in all contracts for commercial items and shall not be used in part 211 contracts, pending issuance of the part 211 final rule. Consequently, the clause at 252.211-7005 and its prescription in 211.7005(a)(25) have been deleted.

Until final rule is published, in contracts for commercial automatic data processing equipment, contracting officers shall follow the guidance at FIRMR 201-39.4601 and shall use the clause at FIRMR 201-39.5202-6, "Warranty Exclusion and Limitation of Damages," unless the contracting officer determines that a higher degree of protection is in the best interest of the Government.

In contracts for all other commercial items, contracting officers are to follow the guidance at FAR subpart 46.8, and may use the Limitation of Liability clauses at FAR 52.246-23 and 52.246-24 or other liability clauses authorized for use by a Military Department or Defense Agency.

Item V—Evaluation of Acquisitions for Services and Uncompensated Overtime

Departmental Letter 91-017, dated August 19, 1991, revised DFARS subparts 215.8 and 237.1 and added .

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solicitation provision entitled "Identification of Uncompensated Overtime" as interim implementation of section 834 of the FY 1991 DoD Authorization Act (Pub. L. 101–510). Section 834 requires the Secretary of Defense to issue regulations to ensure, to the maximum extent practicable, that professional and technical services are acquired on the basis of the task to be performed rather than on the basis of the number of hours provided. These interim DFARS revisions include guidance on evaluation of service acquisitions and on factors to consider in evaluating proposals to ensure that the use of uncompensated overtime does not degrade the level of technical expertise required. Language and a solicitation provision have been added on the use of uncompensated overtime. The new provision at 252.237–7019 is to be used in all solicitations estimated at $100,000 or more for services to be acquired on the basis of the number of hours to be provided.

Item VI—Historically Black Colleges and Universities and Minority Institutions

DFARS 219.705–2, 226.7000, and 226.7002 are revised to implement section 832 of the FY 1991 DoD Authorization Act (Pub. L. 101–510). Section 832 provides for further enhancement of opportunities for participation of historically black colleges and universities and minority institutions in DoD programs.

Item VII—Pilot Mentor-Protege Program

Departmental Letter 91–016, dated July 31, 1991, revised DFARS 232.412 and added subpart 219.71 and a clause entitled Reimbursement of Subcontractor Advance Payments-DoD Pilot Mentor-Protege Program, to implement section 831 of the FY 1991 Defense Authorization Act (Pub. L. 101–510), as amended. Section 831 required that DOD establish a test program offering incentives to major contractors which provide developmental assistance to small disadvantaged businesses. Policy and procedures for operation of the test program are described in detail in a DoD policy document entitled "DoD Policy For the Pilot Mentor-Protege Program," a copy of which was included in Defense Acquisition Circular 88–19.

Item VIII—Hazardous Material Identification

DFARS 223.302 and 223.303 are revised and 223.71 and the clauses at 252.223–7000 and 252.223–7004 are deleted as the language was incorporated in FAR by Item IV of FAC 90–08.

Item IX—Drug-Free Work Force

This final rule replaces the interim rule at subpart 223.5 and 252.223–7005, which is redesignated as 252.223–7004. It removes all language that duplicated the Drug-Free Workplace rule in FAR subpart 23.5 and it eliminates any ambiguity as to whether drug testing is required.

Item X—Expiration of Restrictions on Toshiba/Kongsberg

DFARS subpart 225.10 is deleted in consonance with the deletion of FAR subpart 25.10.

Item XI—Restriction on Air Circuit Breakers for Naval Vessels

DFARS Subpart 225.70 is amended to add the restriction on acquisition of air circuit breakers for naval vessels imposed by section 1421 of the fiscal year 1991 Defense Authorization Act (Pub. L. 101–510).

Item XII—Restriction on Antifriction Bearings

The restriction in the 1988 edition of the DFARS at 208.7902 on the acquisition of antifriction bearings has been extended from September 30, 1991 until December 31, 1992. DFARS 225.7103 is amended by adding paragraph (h) to recognize the December 31, 1992 limitation on the restriction.

Item XIII—Offset Administrative Costs

DFARS subpart 225.73 language on cost of doing business with a foreign government was revised on an interim basis by Departmental Letter 91–015, dated July 15, 1991, to permit defense contractors to recover allowable offset administrative costs from foreign governments under foreign military sales contracts. This revision of DFARS 225.7303–2(a)(2)(iii) supersedes and finalizes the interim rule.

Item XIV—IR&D/B&P Costs

DFARS parts 225, 231, and 242 were revised by a final rule issued by Departmental Letter 91–018. The rule implements Section 824 of the FY 1991 DoD Authorization Act (Pub. L. 101–510) by incorporating the new, broader standard for IR&D/B&P projects which are of "potential interest to DoD." DFARS 225.7303–2(b) was revised to remove an inconsistency that currently exists with 255.7303–2(c). DFARS 225.7303–2(c) was revised to correct an erroneous reference to IR&D/B&P ceiling limitations or formula constraints as being contained in DFARS part 231, rather than in FAR part 31. DFARS 231.205–18 incorporates the new, broader legislative standard for IR&D/B&P projects which are of "potential interest to DoD," including the specific examples of such projects listed in 10 U.S.C. 2372(c). DFARS 242.1005(a) was added to clarify that the DoD IR&D Technical Evaluation Group is responsible for providing appropriate guidance to contractors for submission of technical information to support IR&D proposals. DFARS 242.1005(b) was revised to clarify that the DoD IR&D Technical Evaluation Group is responsible for providing contracting officers with the required technical evaluation, including an opinion concerning the potential interest of the proposed IR&D projects to DoD. DFARS 242.1005(c), 242.1006, and 242.1007 were revised to incorporate the new standards of "potential interest to DOD" and to otherwise satisfy the requirements of 10 U.S.C. 2372.

Item XV—Customary Progress Payment Rates

DFARS 232.5 was revised and a clause entitled DoD Progress Payment Rates was added by Departmental Letter 91–014 to implement DoD's customary uniform progress payment rates for contracts awarded July 1, 1991 through March 31, 1992. Rates for subsequent years will be published in the first quarterly DAC for the calendar year. The customary uniform rates for July 1, 1991 through March 31, 1992, are 85 percent for large business, 90 percent for small business, and 95 percent for small disadvantaged business. This change does not affect progress payment rates for the repair, maintenance, or overhaul of naval vessels which are governed by rates established by the Secretary of the Navy in accordance with 10 U.S.C. 7312, as amended. For flow-down to subcontractors, refer to (j)(4) of the progress payments clause at FAR 52.232–16.

Item XVI—GAO Protest Regulations

This is a final rule which implements the General Accounting Office's (GAO) revised protest procedures (4 CFR part 21), which went into effect on April 1, 1991. The DFARS language covers only those portions of GAO's revised rules which pertain to contracting officers and is to be used until a permanent FAR change is made.

DFARS 233.104, which is a substantial rewrite and is to be used in lieu of FAR 33.104, implements GAO's revised procedures, presents procedures in a more logical order, and makes other editorial improvements. The most significant procedures address the information an agency is required to provide to GAO, protective orders issued by GAO, and formal fact-finding hearings.

Agency reports to the GAO must now include all evaluation documents. In addition, agencies must also make available to GAO any document specifically requested by the protestor. GAO's new rules provide interested parties with easier access to documents. Accordingly, DFARS 233.104(a)(5) addresses requests for, and GAO issuance of, protective orders to limit the right to use and disclose released documents. DFARS 233.104(e) gives notice of GAO's formal fact-finding hearings, with minimal discussion of the detailed procedures.

Item XVII—Contracting Officer Final Decisions

This interim rule was issued by Departmental Letter 91–021. It adds section 233.211 to require contracting officers to insert a "note" in all contracting officer final decisions, immediately following the paragraph required by FAR 33.211(a)(4)(v). The note advises the contractor to refer to a recent Circuit Court decision which may affect the contractor's choice of a forum for appeal.

Item XVIII—Effective Date of DFARS Part 241

DFARS part 241, Acquisition of Utility Services, included in the 1991 edition, shall not be used until publication of FAR part 41, Acquisition of Utility Services, in a Federal Acquisition Circular. The effective date of DFARS part 241 will be announced in a forthcoming Defense Acquisition Circular. It is anticipated that the final rule on FAR Part 41 will be published by April 15, 1992. Until DFARS part 241 becomes effective, continue to use ASPR Supplement #5, Procurement of Utilities Services, with the provisions and clauses prescribed by FAR and DFARS, as appropriate for each acquisition.

Item XIX—Parcel Post Eligible Shipments

DFARS 242.1404–1 is added to provide a reference to DoD 4525.8–M, DoD Official Mail Manual.

Item XX—Notification of Substantial Impact on Employment

DFARS subparts 243, 249, 252, and 253 are revised to implement section 4201 of the FY 1991 DoD Authorization Act (Pub. L. 101–510). Section 4201 requires the Secretary of Defense to notify the Secretary of Labor if the modification or termination of a major defense contract or subcontract will have a substantial impact on employment.

The rule requires reporting on modifications or convenience terminations of prime contracts valued at $5 million or more, or subcontracts of $500,000 or more, which will have a substantial impact on employment. Contracting officers must either modify existing contracts to incorporate the clause at 252.249–7001, Notification of Substantial Impact on Employment, or tailor any termination notices that are subsequently issued against these contracts to request the contractor to provide a statement of impact on employment.

Item XXI—Plant Clearance Duties

DFARS 245.603–70(a) is amended to eliminate the requirement for a plant clearance officer to be on site in order to authorize the contractor to perform plant clearance functions.

Item XXII—Announcement of Contract Awards

DFARS 205.303(a) is revised to change the instructions on reporting awards for public announcement. The basis for determining whether an award must be reported has been changed from contract obligations to contract face value.

Item XXIII—Editorial Revisions

(a) The name of the Defense Communications Agency has been changed to the Defense Information Systems Agency. DFARS has been amended to reflect the name change.

(b) The definition of "contracting activity" at DFARS 202.101 is amended to correct the name of the Defense Mapping Agency's contracting activity.

(c) DFARS 204.670–8 is amended to update an address.

(d) DFARS 209.403(1) is amended to update the designation of the Navy debarring official.

(e) DFARS 215.811–70(a)(3) is amended to revise "252.215–7001" to read "252.215–7002."

(f) DFARS 215.811–70(c)(1)(i) is amended to revise "252.215–7001" to read "252.215–7002."

(g) DFARS 217.502 is revised to clarify the language.

(h) DFARS 217.7404–4 is amended to change the word "obligations" to read "expenditures."

(i) DFARS 222.101–3(3) is amended to revise "RCS DD I&L (AR) 1153" to read "RCS DD P&L (AR) 1153."

(j) DFARS 225.102(b)(ii) is amended for clarification.

(k) DFARS 225.703 is amended for clarification.

(l) DFARS 225.802–70(a) and (b)(1) are amended to revise "administrtion" to read "administration."

(m) DFARS 225.7101 is amended to revise "252.225–7022" to read "252.225–7025."

(n) DFARS 227.403–77 is amended for clarification.

(o) DFARS 231.7003–1(a)(2)(i) is amended by changing "or" to "and."

(p) DFARS 245.104(a) is amended by revising "DoD 4275.5–M" to read "DoD 4161.2–M."

(q) DFARS 250.201–70(b)(2) is amended to update the approval authority for indemnification against unusually hazardous or nuclear risks.

(r) The date "May 1991" is added to the clause at 252.211–7019.

(s) DFARS 252.211–7019 is amended by changing the designation paragraph "a)" to read paragraph "(a)".

(t) DFARS 252.225–7006 is amended by revising in paragraph (c)(1)(i) the words "Trade Agreements Act" to read "Buy American Act and Balance of Payments Program".

(u) DFARS 252.225–7009 is amended in paragraph (f)(2)(iv) by removing the quotation marks at the end of the second sentence.

(v) DFARS 252.228–7001 is amended by revising in paragraph (i)(2)(ii) the word "damage" to read "damaged".

(w) DFARS 252.234–7000 is amended by revising the clause title to read "Notice of Cost/Schedule Control Systems (Dec 1991)" in lieu of "Cost/Schedule Control Systems (Dec 1991)"

(x) Paragraph (a)(1) of the clause at 252.239–7000 is amended by revising "NACSIM" to read "NACSEM."

(y) DFARS 253.204–70(d)(5)(i)(H) is amended by revising "Enter Code H" to read "Enter code N."

(z) DFARS 253.204–70(d)(5)(xi)(B)(1) is amended by revising "52.219–7019" to read "52.219–19."

(aa) Part 253 is amended by updating the DD Form 350 and DD Form 1057.

(bb) Appendix G, part 7, is amended by adding an activity address number.

Amendments to Defense FAR Supplement

Therefore, the Defense FAR Supplement is amended as set forth below.

1. The authority for 48 CFR parts 202, 204, 205, 209, 211, 214, 215, 217, 219, 222, 223, 225, 226, 227, 231, 232, 233, 237, 239, 242, 243, 245, 249, 250, 252, 253, and appendix G continues to read as follow:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, and FAR subpart 1.3.

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PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

2. Section 202.101 is amended by revising under the definition entitled "Contracting activity" the entry "*Defense Communications Agency*, Headquarters, Defense Communications Agency" to read "*Defense Information Systems Agency*, Headquarters, Defense Information Systems Agency"; by revising under the definition entitled "Contracting activity" the entry *Defense Mapping Agency*, "Headquarters, Logistics Office" to read "Headquarters, Office of Acquisition, Installations and Logistics"; by revising under the definition entitled "Departments and agencies" the entry "Defense Communications Agency" to read "Defense Information Systems Agency."

PART 204—ADMINISTRATIVE MATTERS

3. Section 204.670–8 is revised to read as follows:

204.670–8 Security classification.

Submit DD Forms 350 as unclassified documents. Classified contracts are not exempt from reporting solely because the contract is classified. Contact the appropriate departmental data collection points for special instructions if security reasons indicate that it is necessary to modify coding of all or any individual blocks on the DD Form 350. If such contact cannot be made for security reasons, obtain instructions from the Office of the Assistant Deputy Under Secretary of Defense for Security Policy, Attn: Assistant for Special Programs. Telephone number is (703) 614–0578/9 or DSN 224–0578/9.

204.7000 [Amended]

4. Section 204.7000 is amended by revising in paragraph (a) the words "Defense Communications Agency" to read "Defense Information Systems Agency."

204.7003 [Amended]

5. Section 204.7003 is amended by revising paragraph (a)(1)(i)(D) to read "Defense Information Systems Agency DISA)" in lieu of "Defense Communications Agency DCA."

204.7102 [Amended]

6. Section 204.7102 is amended by revising in paragraph (b)(3) the words "Defense Communications Agency" to read "Defense Information Systems Agency."

204.7202–2 [Amended]

7. Section 204.7202–2 is amended by adding two new sentences after the first sentence in the introductory paragraph to read "For Reporting in Fiscal Year 1992, the CEC may be either a DUNS number or the alphanumeric number in the Government-owned system operated by Dun & Bradstreet. The DUNS number will not be reported beyond FY 1992."; by revising paragraph (c)(1)(i) to read "Telephone (215) 865–0204."; by revising paragraph (c)(1)(ii) to read "Facsimile (215) 882–7295."; by revising paragraph (c)(1)(iii) to read "Writing to FPDC Department, Dun & Bradstreet Information Services, 899 Eaton Avenue, Bethlehem, PA 18025–0013."; by revising paragraph (c)(2)(ii) to read "Contracting office code assigned by the departmental data collection point and appropriate Agency code as follows: (A) Army activities—2100; (B) Navy activities—1700; (C) Air Force activities—5700; (D) Defense Logistics Agency—97AS; and (E) Other DoD contracting activities—9700."; and by revising paragraph (c)(2)(vi) to read "Contractor establishment name, street address (and/or P.O. Box), city/town, state/country, ZIP code, and telephone number, if applicable."

8. Section 204.7204–2 is revised to read as follows:

204.7204–2 Maintenance of the CEC codes.

Changes, except name changes, may be submitted in writing using company letterhead by the entity identified by the code through the contract administration office, by the contracting office or the contract administration office (see also FAR Subpart 42.12, Novation and Change-of-Name Agreements), using the agency letterhead, by mail, facsimile or electronic equivalent to FPDC Department, Dun & Bradstreet Information Services, 899 Eaton Avenue, Bethlehem, PA 18025–0013.

Part 205—PUBLICIZING CONTRACT ACTIONS

8.a. Section 205.303 is amended by revising paragraph (a)(i) and paragraph (a)(ii)(D) *(1)* and *(3)* to read as follows:

205.303 Announcement of contract awards.

(a) *Public Announcement.*

(i) The threshold for DoD awards is $5 million. Report all contractual actions, including modifications, that have a face value, excluding unexercised options, of more than $5 million.

(A) For undefinitized contractual actions, report the not-to-exceed (NTE) amount. Later, if the definitized amount exceeds the NTE amount by more than $5 million, report only the amount exceeding the NTE.

(B) For indefinite delivery, time and material, labor hour, and similar contracts, report the initial award if the estimated face value, excluding unexercised options, is more than $5 million. Do not report orders up to the estimated value, but after the estimated value is reached, report subsequent modifications and orders that have a face value of more than $5 million.

(C) Do not report the same work twice.

(ii) * * *

(D) * * *

(1) Contract data. Contract number, modification number, or delivery order number, face value of this action, total cumulative face value of the contract, description of what is being bought, contract type, whether any of the buy was for foreign military sales (FMS) and identification of the FMS customer;

* * * * *

(3) Contractor data. Name, address, and place of performance (if significant work is performed at a different location);

* * * * *

PART 209—CONTRACTOR QUALIFICATIONS

209.202 [Amended]

9. Section 209.202 is amended in paragraph (a)(1) by revising Defense Communications Agency—Director, Acquisition Management." to read "Defense Information Systems Agency—Director, Acquisition Management".

209.403 [Amended]

10. Section 209.403 is amended by revising under the definition entitled "Debarring official" the entry "Navy—Assistant Secretary of the Navy (Research, Development, and Acquisition)" to read "Navy—the General Counsel of the Department of the Navy"; and by revising the entry "Defense Communications Agency—The General Counsel" to read "Defense Information Systems Agency—The General Counsel."

PART 211—ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS

211.7005 [Amended]

11. Section 211.7005(a)(25) is revised to read " (25) 252.211–7005 Reserved."

214.406–3 [Amended]

12. Section 214.406–3 is amended by revising paragraph (e)(ii)(B) to read "Defense Information Systems Agency: General Counsel, DISA." in lieu of "Defense Communications Agency: General Counsel, DCA."

PART 215—CONTRACTING BY NEGOTIATION

13. Section 215.605 is amended by adding paragraph (c) to read as follows:

215.605 Evaluation factors.

* * * * *

(c) In competitive acquisitions of services—

(i) Evaluation and award should be based, to the maximum extent practicable, on best overall value to the Government in terms of quality and other factors.

(ii) The weighting of costs must be commensurate with the nature of the services being acquired.

(A) It may be appropriate to award to an offeror, based on technical and quality considerations, at other than the lowest price when—

(1) The effort being contracted for departs from clearly defined efforts; and

(2) Highly skilled personnel are required.

(B) It may be appropriate to award to the technically acceptable offeror with the lowest price when—

(1) Services being acquired are of a routine or simple nature;

(2) Highly skilled personnel are not required; and

(3) The product to be delivered is clearly defined at the outset of the acquisition.

14. Section 215.608 is amended by adding paragraph (a) to read as follows:

215.608 Proposal evaluation.

(a) Contracting officers shall ensure that the use of uncompensated overtime in contracts to acquire services on the basis of the number of hours provided (see 237.170) will not degrade the level of technical expertise required to fulfill the Government's requirements. When acquiring such services, contracting officers shall conduct a risk assessment, and evaluate for award on that basis, any proposals received that reflect factors such as—

(i) Unrealistically low labor rates or other costs that may result in quality or service shortfalls; and

(ii) Unbalanced distribution of uncompensated overtime among skill levels and its use in key technical positions.

* * * * *

215.811–70 [Amended]

15. Section 215.811–70 is amended by revising the reference in paragraph (a)(3) to read "252.215–7002" in lieu of "252.215–7001"; and by revising the reference in paragraph (c)(1)(i) to read "252.215–7002" in lieu of "252.215–7001".

PART 217—SPECIAL CONTRACTING METHODS

16. Section 217.502 is revised to read as follows:

217.502 General.

Unless otherwise stated in department or agency regulations, the agency head designee is the contracting officer.

217.7404–4 [Amended]

17. Section 217.7404–4 is amended by revising in the second sentence the word "obligations" to read "expenditures".

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

18. Section 219.705–2 is revised to read as follows:

219.705–2 Determining the need for a subcontracting plan.

(d) The extent to which offerors identify and commit to small disadvantaged business, historically black college and university, or minority institution performance of the contract, whether as joint venture, teaming arrangement, or subcontractor, shall be an evaluation factor in source selection for research and development acquisitions, major systems acquisitions, and other complex or sensitive acquisitions which use formal or alternative source selection procedures.

219.708 [Amended]

19. Section 219.708 is amended by adding a new sentence at the end of paragraph (c)(1)(A) to read "Incentives for exceeding SDB subcontracting goals shall be paid only if an SDB subcontracting goal was exceeded as a result of actual subcontract awards to SDBs, and not as a result of developmental assistance credit under the Pilot Mentor-Protege Program (see Subpart 219.71).

20. A new subpart 219.71 is added to read as follows:

Subpart 219.71—Pilot Mentor-Protege Program

Sec.

219.7100 Scope.
219.7101 Policy.
219.7102 General.
219.7103 Procedures.
219.7103–1 General.
219.7103–2 Contracting officer responsibilities.
219.7104 Developmental assistance costs eligible for reimbursement or credit.
219.7105 Other forms of assistance.
219.7106 Reporting.

Subpart 219.71—Pilot Mentor-Protege Program

219.7100 Scope.

This subpart implement the Pilot Mentor-Protege Program (the Program), established under section 831 of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101–510, as amended. The purpose of the Program is to provide incentives for DoD contractors to assist small disadvantaged businesses in enhancing their capabilities and to increase participation of such firms in Government and commercial contracts.

219.7101 Policy.

DoD policy for implementation of the Program is contained in a policy statement entitled, "DoD Policy for the Pilot Mentor-Protege Program." This statement addresses the program purpose, general procedures, duration, eligibility requirements, the selection/approval process, the mentor-protege agreement, advance agreements on the treatment of developmental assistance costs, and reporting requirements. A copy of the statement may be obtained from the Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense for Acquisition, OUSD(A) SADBU, room 2A340, The Pentagon, Washington, DC 20301–3061, (703) 697–1688.

219.7102 General.

The Program consists of:

(a) Mentor firms, which are prime contractors with at least one active subcontracting plan negotiated under FAR subpart 19.7.

(b) Protege firms, which are small disadvantaged business (SDB) concerns, eligible for receipt of Federal contracts and selected by the mentor firm.

(c) Mentor-protege agreements which establish a developmental assistance program for a protege firm.

(d) Incentives, which may be provided to mentor firms by the DoD including:

(1) Reimbursement for developmental assistance costs through a modification to an existing cost reimbursement contract to establish a separately priced contract line item; or

(2) Credit toward SDB subcontracting goals, established under a subcontracting plan negotiated under FAR subpart 19.7, for developmental assistance costs not reimbursed; or

(3) A combination of reimbursement and credit.

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219.7103 Procedures.

219.7103-1 General.

(a) In accordance with the DoD policy statement, a prospective mentor firm shall:

(1) Apply to OUSD(A) SADBU when seeking credit only or when funding is made available from a DoD program manager to implement a mentor-protege agreement; and

(2) Subsequent to approval as a mentor firm, submit a signed mentor-protege agreement(s) to OUSD(A) SADBU for approval before developmental assistance costs may be reimbursed through an existing DoD contract or credited against SDB subcontracting goals.

(b) OUSD(A) SADBU shall have responsibility for:

(1) Approving contractors as mentor firms;

(2) Approving mentor-protege agreements; and

(3) Forwarding the approved mentor-protege agreement to contracting officer(s) when program funding is available through a DoD program manager.

219.7103-2 Contracting Officer Responsibilities.

Contracting officers shall:

(a) Negotiate an advance agreement on the treatment of developmental assistance costs for credit, reimbursement, or both, if the mentor firm proposes such an agreement or delegate this authority to the administrative contracting officer (see FAR 31.109).

(b) Modify (without consideration) applicable contract(s) to incorporate the clause at 252.232-7009, Reimbursement of Subcontractor Advance Payments-DoD Pilot Mentor-Protege Program, when advance payments are provided by a mentor firm to a protege firm under the Program and the mentor firm requests reimbursement of advance payments.

(c) Modify (without consideration) applicable contract(s) to incorporate other than customary progress payments for small disadvantaged businesses in accordance with FAR 32.504(c) if such payments are provided by a mentor firm to a protege firm and the mentor firm requests reimbursement.

(d) Modify applicable contract(s) to establish a contract line item for reimbursement of developmental assistance costs—

(1) When funds have been made available for that purpose by a DoD program manager; and

(2) The contractor has an approved Mentor-Protege Agreement.

(e) Advise contractors of reporting requirements (see 219.7106).

219.7104 Developmental Assistance Costs eligible for Reimbursement or Credit.

(a) Developmental assistance provided under an approved mentor-protege agreement is distinct from, and shall not duplicate, any effort that is the normal and expected product of the award and administration of the mentor firm's subcontracts. Costs associated with the latter shall be accumulated and charged in accordance with the contractor's approved accounting practices. The following costs incurred by mentor firms are eligible for reimbursement or credit:

(1) Assistance to the protege firm by mentor firm personnel in—

(i) General business management including organizational management;

(ii) Financial management;

(iii) Personnel management;

(iv) Marketing;

(v) Business development and overall business planning;

(vi) Engineering and technical matters such as production, inventory control and quality assurance;

(vii) Any other assistance designed to develop the capabilities of the protege firm under the developmental program.

(2) Assistance to the protege firm provided by—

(i) Small Business Development Centers established pursuant to section 21 of the Small Business Act (15 U.S.C. 648);

(ii) Entities providing technical assistance pursuant to chapter 142 of title 10 U.S.C.;

(iii) Historically Black Colleges and Universities (HBCUs) as defined by 34 CFR 608.2; and

(iv) Minority Institutions of Higher Education with a student body as specified in 20 U.S.C. 1058(b)(3), (4), and (5).

(b) No profit may be associated with the reimbursement of developmental assistance costs.

(c) Before incurring any costs under the Program, mentor firms need to establish the accounting treatment of developmental assistance costs eligible for reimbursement or credit. Advance agreements are encouraged. To be eligible for reimbursement under the Program, costs must be incurred before October 1, 1996.

(d) If the mentor firm is suspended or debarred while performing under an approved mentor-protege agreement, the mentor firm may not be reimbursed or credited for developmental assistance costs incurred more than 30 days after the imposition of the suspension or debarment.

(e) Developmental assistance costs incurred before October 1, 1999 by a mentor firm pursuant to an approved mentor-protege agreement, that are not funded either directly or indirectly under any other DoD contract, may be credited towards subcontracting plan goals as follows:

(1) Four times the total amount of developmental assistance costs provided to protege firms by small business development centers, HBCUs, MIs, and entities providing technical assistance (see paragraph (a)(2) of this section);

(2) Three times the total amount of developmental assistance costs incurred by mentor firm personnel (see paragraph (a)(1)(i) through (vi) of this section); or

(3) Two times the total amount of other developmental assistance costs (see paragraph (a)(1)(vii) of this section).

219.7105 Other Forms of Assistance.

(a) Mentor firm subcontracts with protege firms may contain provisions for progress payments up to 100 percent (see FAR 32.504(c)) or advance payments (see 232.412(S-72)). However, DoD will reimburse the mentor firm for advance payments only when such payments have been provided under subcontract terms and conditions similar to FAR 52.232-12, Advance Payments.

(b) In accordance with paragraph (f) of section 831 of Public Law 101-510, mentor firms may award subcontracts to protege firms on a non-competitive basis under DoD or other contracts.

219.7106 Reporting.

(a) Mentor firms shall report on the progress made under active mentor-protege agreements semi-annually by including with their SF 295, Summary Subcontract Report,

(1) An attachment which identifies—

(ii) The progress in achieving the developmental assistance objectives under each mentor-protege agreement, including whether the objectives of the Program set forth in the DoD policy statement were met, any problem areas encountered, and any other appropriate information; and

(2) A copy of the SF 294, Subcontracting Report for Individual Contracts, for each contract where developmental assistance was credited, with a statement in Block 18 of the SF 294 identifying:

(i) the amount of dollars credited to the SDB subcontract goal as a result of developmental assistance provided to protege firms under the Program;

(ii) An explanation as to the relationship between the developmental assistance provided the protege firm(s) under the Program and the activities under the contract covered by the SF 294(s); and

(iii) The number and dollar value of subcontracts awarded to the protege firm(s).

(b) Mentor firms, which are also participants in DoD's comprehensive subcontracting plan test program (see 219.702(a)), shall indicate in Block 16 of the SF 295, Summary Subcontract Report:

(1) the total dollars credited to the SDB goal as a result of developmental assistance provided a protege firm(s) under the Program; and

(2) The total dollar amount of subcontracts awarded to the protege firm(s).

(c) OUSDA(A) SADBU will conduct an annual performance review of the progress and accomplishments realized under approved mentor-protege agreements.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

222.101-3 [Amended]

21. Section 222.101-3 is amended by revising the reference in paragraph (3) to read "RCS DD P&L (AR) 1153." in lieu of "RCS DD I&L (AR) 1153."

PART 223—HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

22. Section 223.302 is revised to read as follows:

223.302 General.

(b) Successful offerors are also required to submit hazard warning labels under the clause at 252.223-7001, Hazard Warning Labels.

(e) The contracting officer shall also provide hazard warning labels received from apparent successful offerors to the cognizant safety officer or other designated official in order to facilitate—

(i) Inclusion of relevant data in the department/agency's material safety data sheet information system or label information system; and

(ii) Other control, safety, or information purposes.

23. Section 223.303 is revised to read as follows:

223.303 Contract clause.

Use the clause at 252.223-7001, Hazard Warning Labels, in solicitations and contracts which require submission of hazardous material data sheets (see FAR 23.302(c)).

223.371 thru 223.371-3 [Removed]

24. Sections 223.371 through 223.371-3 are removed.

25. Subpart 223.5 is revised to read as follows:

Subpart 223.5 Drug-Free Workplace

Sec.
223.570 Drug-free work force
223.570-1 Policy
223.570-2 Definitions
223.570-3 Contract clause.

Subpart 223.5—Drug-Free Workplace

223.570 Drug-free work force.

223.570-1 Policy.

The unlawful use by contractor employees of controlled substances threatens national security and the safety of personnel and equipment. Therefore, DOD policy is to ensure that DOD contractors have a program for eliminating the unlawful use of controlled substances by employees whose duties affect health, safety, national security, or accomplishment of the DOD mission.

223.570-2 Definitions.

As used in this section—

Controlled substance and *employee* are as defined in FAR 23.503. "Employee in a sensitive position" is as defined in the clause at 252.223-7004, Drug-Free Work Force.

223.570-3 Contract clause.

(a) Use the clause at 252.223-7004, Drug-Free Work Force, in all solicitations and contracts that require contractor employees to perform in sensitive positions.

(b) Do not use the clause in solicitations and contracts—

(1) Below the small purchase limitation in FAR Part 13;

(2) For performance or partial performance (but only to the extent of the partial performance) outside the United States, its territories, and its possessions, unless the contracting officer determines inclusion to be in the best interest of the Government; or

(3) For law enforcement agencies when the head of such agency or designee determines that application of the requirements of this section would be detrimental to the law enforcement agency's undercover operations.

PART 225—FOREIGN ACQUISITION

225.102 [Amended]

26. Section 225.102 is amended by revising the introductory sentence in paragraph (b)(ii) to read "Except as provided in FAR 25.102(b)(1), the determination must be approved—".

225.302 [Amended]

27. Section 225.302 is amended by revising under paragraph (b)(i) the entry "Defense Communications Agency" to read "Defense Information Systems Agency."

28. Section 225.703 is revised to read as follows:

225.703 Exceptions.

The Secretary of Defense, or designee, may waive the restriction in 225.702(2) if the Secretary or designee determines it to be in the best interest of the Government. Designees for this waiver authority are—

(1) Army—Assistant Secretary of the Army (Research, Development, and Acquisition).

(2) Navy—Assistant Secretary of the Navy (Research, Development, and Acquisition).

(3) Air Force—Deputy Assistant Secretary of the Air Force (Contracting).

(4) Defense agencies—Director of Defense Procurement.

(a) For other than small purchases, the Secretary of the Department concerned may approve an exception. Before approving an exception for other than small purchases, the Secretary shall obtain the advice of the Assistant Secretary of Defense (International Security Affairs), except—

(i) For emergency purchases; or

(ii) Where supplies are not available from other source and substitute supplies are not acceptable.

225.872-7 [Amended]

29-30. Section 225.872-7 is amended by revising the words "Defense Communications Agency" to read "Defense Information Systems Agency."

225.10 [Removed]

31. Subpart 225.10 is removed in its entirety.

32. Sections 225.7016 through 225.7016-5 are added to read as follows:

225.7016 Restriction on air circuit breakers for naval vessels.

225.7016-1 Restriction.

In accordance with 10 U.S.C. 2507(f), do not purchase air circuit breakers for naval vessels unless—

(a) They are manufactured in the United States; and

(b) The cost of their U.S. components exceeds 50 percent of the cost of all their components.

225.7016-2 Exceptions.

This does not prevent the purchase of spares and repair parts needed to support air circuit breakers manufactured outside the United States.

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Support includes the purchase of spare air circuit breakers where those from alternate sources are not interchangeable.

225.7016-3 Waiver.

Subsequent to the notification at 225.7016-4, the Secretary of the Navy and the Director of the Defense Logistics Agency may waive the restriction on a case-by-case basis if it is determined that applying the restriction in a proposed acquisition—

(a) Is not in the national security interests of the United States;

(b) Will have an adverse effect on a U.S. company; or

(c) Will result in purchase from a U.S. company that, with respect to the sale of air circuit breakers for naval vessels, fails to comply with applicable Government procurement regulations or the anti-trust laws of the United States.

225.7016-4 Waiver notification.

A notice of proposed waiver, with a justification must be received by the Armed Services and Appropriations Committees of the Senate and House at least 30 days before a waiver can be granted.

225.7016-5 Contract clause.

Use the clause at 252.225-7029, Restriction on Acquisition of Air Circuit Breakers, in all solicitations and contracts requiring air circuit breakers for naval vessels, unless—

(a) An exception under 225.7016-2 is known to apply; or

(b) A waiver has been granted in accordance with 225.7016-3.

225.7101 [Amended]

33. Section 225.7101 is amended by revising "252.225-7022" to read "252.225-7025".

225.7103 [Amended]

34. Section 225.7103 is amended by adding paragraph (h) to read "(h) For antifriction bearings for contracts awarded after December 31, 1992."

35. Section 225.7303-2 is amended by revising paragraph (a)(2)(iii) and paragraphs (b) and (c) to read as follows:

225.7303-2 Cost of doing business with a foreign government or an international organization.

(a) * * *

(2) * * *

(iii) Offset administrative costs.

(A) A U.S. defense contractor may recover, under an FMS contract, costs incurred to implement specific requirements of its offset agreement with a foreign government or international organization if the foreign military sale Letter of Offer and Acceptance (LOA) contains a note that—

(1) Specifically addresses offsets;

(2) Advises foreign governments that the price of contracts awarded in support of the LOA may include administrative costs associated with implementing the foreign purchaser's offset agreement with the contractor; and

(3) Includes a statement that the U.S. Government assumes no obligation to satisfy or administer the offset requirement or to bear any of the associated costs.

(B) Offset administrative costs must be reasonable and readily identifiable. Estimated offset administrative costs must be included in foreign military sales pricing information provided to the foreign government as early as possible, but before submittal of the LOA.

(C) Some examples of offset administrative costs—

(1) In-house and/or purchased: organizational, administrative and technical support, including offset staffing; quality assurance, manufacturing, purchasing support; data acquisition; proposal, transaction and report preparation; broker/trading services; legal support; and similar support activities;

(2) Off-shore operations for technical representative and consultant activities, office operations, customer and industry interface, capability surveys;

(3) Marketing assistance and related technical assistance, transfer of technical information and related training;

(4) Employee travel and subsistence costs; and

(5) Taxes and duties.

(iv) * * *

(b) Costs not allowable under FAR Part 31 are not allowable in pricing foreign military sale contracts, except as noted in paragraph (c) of this subsection.

(c) The provisions of 10 U.S.C. 2372 do not apply to contracts for foreign military sales.Therefore, the ceiling limitations or the formula constraints on independent research and development and bid and proposal (IR&D/B&P) costs in FAR Part 31 do not apply to contracts for foreign military sales. IR&D/B&P costs allowed on contracts for foreign military sales shall be limited to their allocable share of the total expenditures. In pricing contracts for foreign military sales—

(1) Use the best estimate of reasonable costs in forward pricing.

(2) Use actual expenditures, to the extent that they are reasonable, in determining final cost.

* * * * *

PART 226—OTHER SOCIOECONOMIC PROGRAMS

36. Section 226.7000 is revised to read as follows:

226.7000 Scope of subpart.

This subpart implements the historically black college and university (HBCU) and minority institution (MI) provisions of section 1207 of Public Law 99-661, section 806 of Public Law 100-180, section 831 of Public Law 101-189, and section 832 of Public Law 101-510. These laws—

(a) Set a goal for DoD for each of fiscal years 1987-1993 to award five percent of contract and subcontract dollars to small disadvantaged business concerns and HBCU/MIs; and

(b) Require a separate goal, for each of fiscal years 1991-1993, as a subset of the five percent goal, for the participation of HBCUs and MIs.

37. Section 226.7002 is revised to read as follows:

226.7002 General policy.

The DoD will use outreach efforts, technical assistance programs, advance payments, HBCU/MI set-asides, and evaluation preferences to meet its contract and subcontract goal for use of HBCUs and MIs. In addition, DoD will establish "infrastructure assistance" (e.g., scholarships, faculty development, teaming agreements with defense laboratories, and laboratory renovation) at colleges, universities, and institutions that agree to bear a substantial portion of the costs associated with the progams.

PART 227—PATENTS, DATA, AND COPYRIGHTS

227.403-77 [Amended]

38. Section 227.403-77 is amended by revising paragraph (a)(1)(iii)(B) to read "Information in which the Government has unlimited rights; or" and by adding paragraph (a)(1)(iii)(C) to read "Information which is in the public domain;".

227.7004 [Amended]

39. Section 227.7004 is amended by revising paragraph (c)(5) to read "For the Defense Information Systems Agency—the Counsel;" in lieu of "For the Defense Communications Agency—the Counsel;".

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

40. Section 231.205-18 is revised to read as follows:

231.205-18 Independent research and development and bid and proposal costs.

(c)(1)(iii)*(1)* Total incurred IR&D/B&P costs, including total IR&D/B&P ceiling amounts which are negotiated pursuant to FAR 31.205-18(c)(1), are fully allocable to all final cost objectives of the contractor. The amount of IR&D/B&P costs allowable under contracts which are subject to advance agreements negotiated by DoD shall not exceed the lesser of—

(i) Such contracts' allocable share of incurred IR&D/B&P costs;

(ii) Such contracts' allocable share of the total IR&D/B&P ceiling; or

(iii) The amount of incurred IR&D/B&P costs for projects having potential interest to DoD.

(2) Allowable IR&D/B&P costs are limited to those for projects which are of potential interest to DoD, including activities that—

(i) Strengthen the defense industrial and technology base of the United States;

(ii) Enhance the industrial competitiveness of the United States;

(iii) Promote the development of technologies identified as critical in the plan required under 10 U.S.C. 2508;

(iv) Increase the development of technologies useful for both the private commercial sector and the public sector; or

(v) Develop efficient and effective technologies for achieving such environmental benefits as improved environmental data gathering, environmental cleanup and restoration, pollution-reduction in manufacturing, environmental conservation, and environmentally safe management of facilities.

(3) The contracting officer will—

(i) Determine whether IR&D/B&P projects are of potential interest to DoD; and

(ii) Provide the results of the determination to the contractor.

(4) See 225.7303 for additional allowability provisions affecting foreign military sale contracts.

231.7003-1 [Amended]

41. Section 231.7003-1 is amended by revising paragraph (a)(2)(i) to read "A DCAA Form 1, Notice of Contract Costs Suspended and/or Disapproved, (see FAR 42.705-2) which the contractor elected not to appeal and was not withdrawn by DCAA."

PART 232—CONTRACT FINANCING

232.412-70 [Amended]

42. Section 232.412-70 is amended by adding paragraph (c) to read "Use the clause at 252.232-7005, Reimbursement of Subcontractor Advance Payments-DoD Pilot Mentor-Protege Program, when advance payments will be provided by the contractor to a subcontractor pursuant to an approved mentor-protege agreement (See subpart 219.71).

43. Section 232.501-1 is amended by revising paragraph (a)(i) to read as follows:

232.501-1 Customary progress payment rates.

(a)(i) The customary uniform progress payment rate for DoD contracts is 85 percent for large businesses, 90 percent for small businesses, and 95 percent for small disadvantaged businesses.

* * * * *

44. Section 232.502-1-71 is amended by revising paragraphs (a)(7) and the table and (b)(5) to read as follows:

232.502-1-71 Customary flexible progress payments.

(a) * * *

(7) Table 32-1, Customary Uniform Progress Payment Rates, shows the customary uniform progress payment rates for other than small or small disadvantaged businesses (see also 232.501-1), minimum contractor investment (except for contracts funded with FY87 appropriations), and the applicable DoD Cash Flow Computer Model. For contracts or line items that are funded with FY87 appropriations, a contractor must retain at least a 25 percent investment in work in process inventory over the life of the contract or over the contract performance period applicable to the contract line item.

TABLE 32-1.—CUSTOMARY UNIFORM PROGRESS PAYMENT RATES

Contract award date	Uniform rate (percent)	Investment percentage	Cash flow model
Prior to May 1, 1985	[illegible]	5	CASH-II.
May 1, 1985 through October 17, 1986	80	15	CASH-III
October 18, 1986 through September 30, 1988	75	25	CASH-IV
October 1, 1988 through June 30, 1991	80	20	CASH-V.
After June 30, 1991	65	20	CASH-VI. (see note below).

Note: See paragraph (b)(5)(ii) for implementation instructions.

(b) * * *

(5) Prior to contract award, the contracting officer shall determine the customary flexible progress payment rate by applying the appropriate version of the DoD Cash Flow Computer Model.

(i) The model takes into account key cash flow factors including contract cost profile, delivery schedules, subcontractor progress payments, liquidation rates, and payment/reimbursement cycles. For contracts funded with FY87 appropriations, use the CASH-IV model.

(ii) From time to time the Department of Defense may change the uniform progress payment rate and/or the minimum contractor investment rate, which may have an effect upon the variables within the DoD Cash Flow Computer Program. In order to avoid frequent revision and redistribution of the computer program, the program is designed to permit use of either a particular model (CASH-II, CASH-V, etc.) or a program option to input the equivalent uniform progress payment rate and minimum contractor investment rate (90%/5%, 80%/20%, etc.), as shown in the table at (a)(7). Either method will result in the same flexible progress payment rate calculation. When the Cash Flow Computer Program does not contain the model needed for a particular situation, the contracting officer shall use the program option.

* * * * *

232.502-4 [Amended]

45. Section 232.502-4 is amended by removing paragraph (b).

46. Section 232.502-4-70 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

232.502-4-70 Additional clauses.

(a) * * *

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(b) Use the clauses at 252.232–7003, Flexible Progress Payments, and 252.232–7004, DoD Progress Payment Rates, in contracts using a customary flexible progress payment rate.

(c) Use the clause at 252.232–7004, DoD Progress Payment Rates, in addition to the clauses prescribed at FAR 32.502–4.

PART 233—PROTESTS, DISPUTES, AND APPEALS

47. A new subpart 233.1 is added to read as follows:

Subpart 233.1—Protests

Sec.
233.104 Protests to GAO.

Subpart 233.1—Protests

233.104 Protests to GAO.

The GAO revised its protest procedures (4 CFR part 21) effective April 1, 1991. Use the procedures in this section instead of those in FAR 33.104 until the FAR is amended to implement GAO's revised procedures.

(a) *General Procedures.* (1) A protestor is required to furnish a copy of its complete protest to the official or location designated in the solicitation or, in the absence of such a designation, to the contracting officer, no later than one work day after the protest is filed with the GAO. The GAO may dismiss the protest if the protestor fails to furnish a complete copy of the protest within one work day.

(2) Immediately after receipt of the CAO's written notice that a protest has been filed, the department/agency shall give notice of the protest to the contractor if the award has been made, or, if no award has been made, to all parties who appear to have a reasonable prospect of receiving award if the protest is denied. The department/agency shall also advise these parties that they may submit their views and relevant information directly to the GAO with a copy to the contracting officer and to other participating interested parties within a specified period of time. Normally, the time specified will be one week.

(3)(i) Upon notice that a protest has been filed with the GAO, the contracting officer shall immediately begin compiling the information necessary for a report to the GAO. The department/agency shall submit a complete report to the GAO within 25 work days after the GAO notifies the department/agency by telephone that a protest has been filed, or within ten work days after receipt from the GAO of a determination to use the express option (4 CFR 21.8), unless the GAO—

(A) Advises the department/agency that the protest has been dismissed; or

(B) Authorizes a longer period in response to a department/agency's written request for an extension. Any new date shall be documented in the department/agency's protest file.

(ii) The department/agency report to the GAO shall include a copy of—

(A) The protest;

(B) The offer submitted by the protesting offeror;

(C) The offer which is being considered for award or which is being protested;

(D) All evaluation documents;

(E) The solicitation, including the specifications or portions relevant to the protest;

(F) The abstract of offers or relevant portions;

(G) Any other documents that the department/agency determines are relevant to the protest;

(H) The contracting officer's signed statement setting forth findings, actions, and recommendations and any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to the allegation of the protest. If the contract action or contract performance continues after receipt of the protest, the report will include the determination(s) prescribed in paragraphs (b) or (c) of this section;

(I) A list identifying the other parties who are being provided copies of the report; and

(J) A list of the documents withheld from the protestor or other interested parties, and the reasons for withholding them. The list shall identify any documents specifically requested by, and withheld from, the protestor.

(iii) In addition to the documents contained in the report, the department/agency shall make available to the GAO any documents specifically requested by the protestor.

(4)(i) At the same time the department/agency submits its report to the GAO, it shall furnish copies of its report to the protestor and other interested parties who have responded to the notice given under paragraph (a)(2) of this section. A party shall receive all relevant documents, except:

(A) Those that the department/agency has decided to withhold from that party for any reason, including those covered by a protective order issued by the GAO. Documents covered by a protective order shall be released only in accordance with the terms of the order. Examples of documents the department/agency may decide to exclude from a copy of the report include documents previously furnished to or prepared by a party; classified information; information that would give a party a competitive advantage;

(B) Protestor's documents which the department/agency determines, pursuant to law or regulation, to withhold from any interested party.

(ii)(A) If, within two work days after receipt of the department/agency report, the protestor requests additional documents, the department/agency shall provide the requested documents to the GAO within five work days of receipt of the request.

(B) The additional documents shall also be provided to the protestor and other interested parties within the five-work day period unless the department/agency has decided to withhold them for any reason (see paragraph (a)(4)(i)(A) of this section). This includes any documents covered by a protective order issued by the GAO. Documents covered by a protective order shall be provided only in accordance with the terms of the protective order. A request for protective order to cover additional documents shall be made in accordance with 233.104(a)(5) within this five-work day period.

(C) The department/agency shall notify the GAO of any documents withheld from the protestor and other interested parties and state the reasons for withholding them.

(5) The GAO may issue a protective order to limit the release of particular documents to counsel for the protestor and to counsel for the other interested parties entitled to receive the documents if the documents contain information that is privileged, or if their release would create a competitive advantage (4 CFR 21.3(d)(1)).

(i) *Requests for Protective Orders.* Any party seeking issuance of a protective order shall file its request with the GAO as soon as practicable after the protest is filed, but not more than 20 work days after the protest filing date, with copies furnished simultaneously to all parties.

(ii) *Exclusions and Rebuttals.* Within two work days after receipt of a copy of the protective order request, any party may file with the GAO a request that particular documents be excluded from the coverage of the protective order, or that particular parties or individuals be included in or excluded from the protective order. Copies of the request shall be furnished simultaneously to all parties. Within one work day after receipt of a copy of the request, any rebuttal shall be filed with the GAO, with copies furnished simultaneously to all parties.

(iii) *Additional Documents.* If the existence or relevance of additional documents first becomes evident after a protective order has been issued, any party may request that these documents be covered by the protective order. Any party to the protective order also may request that individuals not already covered by the protective order be included in the order. Requests shall be filed with the GAO, with copies furnished simultaneously to all parties. Any rebuttal to such a request must be filed within one work day after receipt of a copy of the request.

(iv) *Sanctions and Remedies.* The GAO may impose appropriate sanctions for any violation of the terms of the protective order. Improper disclosure of protected information will entitle the aggrieved party to all appropriate remedies under law or equity. The GAO may also take appropriate action against a department/agency which fails to provide documents designated in a protective order.

(6) The protestor and other interested parties are required to furnish a copy of any comments on the department/agency report directly to the GAO within ten work days after receipt of the report, with copies provided to the contracting officer and to other participating parties.

(7) Departments/agencies shall furnish the GAO with the name, title, and telephone number of one or more officials (in both field and headquarters offices, if desired) whom the GAO may contact, who are knowledgeable about the subject matter of the protest. Each department/agency shall be responsible for promptly advising the GAO of any change in the designated officials.

(b) *Protests before award.* (1) When the department/agency has received notice from the GAO of a protest filed directly with the GAO, a contract may not be awarded unless authorized, in accordance with department/agency procedures, by the head of the contracting activity, on a nondelegable basis, upon a written finding that—

(i) Urgent and compelling circumstances which significantly affect the interest of the United States will not permit awaiting the decision of the GAO; and

(ii) Award is likely to occur within 30 calendar days of the written finding.

(2) A contract award shall not be authorized until the department/agency has notified the GAO of the finding in paragraph (b)(1) of this section.

(3) When a protest against the making of an award is received and award will be withheld pending disposition of the protest, the contracting officer should inform the offerors whose offers might become eligible for award of the protest. If appropriate, those offerors should be requested, before expiration of the time for acceptance of their offer, to extend the time for acceptance to avoid the need for resolicitation. In the event of failure to obtain such extension of offers, consideration should be given to proceeding under paragraph (b)(1) of this section.

(c) *Protests after award.* (1) When the department/agency receives notice of a protest from the GAO after award of a contract, but within ten calendar days after award, the contracting officer shall immediately suspend performance or terminate the awarded contract, except as provided in paragraphs (c)(2) and (3) of this section.

(2) In accordance with department/agency procedures, the head of the contracting activity may, on a nondelegable basis, authorize contract performance, notwithstanding the protest, upon a written finding that—

(i) Contract performance will be in the best interests of the United States; or

(ii) Urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for the GAO's decision.

(3) Contract performance shall not be authorized until the department/agency has notified the GAO of the finding in paragraph (c)(2) of this section.

(4) When it is decided to suspend performance or terminate the awarded contract, the contracting officer should attempt to negotiate a mutual agreement on a no-cost basis.

(5) When the department/agency receives notice of a protest filed with the GAO more than ten calendar days after award of the protested acquisition, the contracting officer need not suspend contract performance or terminate the awarded contract unless the contracting officer believes that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Government's interest.

(d) *Findings and notice.* If the decision is to proceed with contract award, or continue contract performance under paragraph (b) or (c) of this section, the contracting officer shall include the written findings or other required documentation in the file. The contracting officer also shall give written notice of the decision to the protestor and any other interested parties.

(e) *Hearings.* The GAO may hold a hearing at the request of the department/agency, a protestor, or other interested party who has responded to the notice in 233.104(a)(2). The GAO may designate representatives of the parties to attend the hearing. The attending parties and the hearing official may question representatives of the parties at the hearing. A recording or transcription of the hearing will normally be made, and copies are available from the GAO for a fee. All parties may file comments on the hearing and report within seven work days of the hearing.

(f) *GAO decision time.* GAO will issue its recommendation on a protest within 90 work days from the date of filing of the protest with the GAO, or within 45 calendar days under the express option (4 CFR 21.8), unless GAO establishes a longer period of time.

(g) *Notice to GAO.* The head of the department/agency or a designee (not below the level of the head of the contracting activity) responsible for the solicitation, proposed award, or award of the contract shall report to the Comptroller General within 60 calendar days of receipt of the GAO's recommendation, if the department/agency has decided not to comply with the recommendation. The report shall explain the reasons why the GAO's recommendation, including any recommendation concerning the award of protest costs (i.e., the costs of filing and pursuing the protest, including reasonable attorneys' fees and bid and proposal preparation), will not be followed by the department/agency.

(h) *Award of protest costs.* Pending a final, nonappealable judicial determination of the constitutionality of 31 U.S.C. 3554(c), a recommended award of protest costs (as defined under paragraph (g) of this section) may be paid by the department/agency out of funds available to or for the use of the department/agency for the acquisition of supplies or services, but such payments may be subject to recoupment by the department/agency if 31 U.S.C. 3554(c) is judicially determined not to be constitutional. Before paying a recommended award of protest costs (as defined under paragraph (g) of this section), department/agency personnel should consult the General Counsel's office of the department/agency. This paragraph (h) applies to all recommended awards of protest costs (as defined under paragraph (g) of this section) which have not yet been paid.

48. Section 233.211 is added to read as follows:

233.211 Contracting officer's decision.

(a)(4)(v) Insert the following "Note" in all final decisions immediately after the paragraph required by FAR 33.211(a)(4)(v) (i.e., after "claims of $50,000 or less"):

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"[Note: The U.S. Court of Appeals for the Federal Circuit has issued a decision that you should consider in evaluating your choice of a potential forum for any appeal from this final decision. See *Overall Roofing & Construction, Inc.* v. *U.S.*, 929 F.2d 687 (Fed. Cir. 1991)]."

PART 237—SERVICE CONTRACTING

49. Section 237.102 is added to read as follows:

237.102 Policy.

To the maximum extent practicable, acquire services on the basis of the task to be performed rather than on the basis of the number of hours to be provided.

50. Sections 237.170 through 237.170–3 are added to read as follows:

237.170 Uncompensated overtime.

237.170–1 Scope.

This section implements section 834 of Pub. L. 101–510 (10 U.S.C. 2331).

237.170–2 General policy.

(a) Use of uncompensated overtime is not encouraged.

(b) When services are acquired on the basis of the number of hours to be provided, rather than on the task to be performed, the solicitation shall require offerors to identify uncompensated overtime hours and the uncompensated overtime rate for Fair Labor Standards Act—exempt personnel included in their proposals and subcontractor proposals. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.

237.170–3 Solicitation provision.

Use the provision at 252.237–7019, Identification of Uncompensated Overtime, in all solicitations estimated at $100,000 or more for services to be acquired on the basis of the number of hours to be provided.

PART 239—ACQUISITION OF INFORMATION RESOURCES

239.7401 [Amended]

51. Section 239.7402(a)(3) is amended by revising the words "Defense Communications Agency" to read "Defense Information Systems Agency."

PART 242—CONTRACT ADMINISTRATION

52. Sections 242.1005 through 242.1007 are revised to read as follows:

242.1005 Lead negotiating agency responsibilities.

(a) The DoD IR&D Technical Evaluation Group is responsible for providing contractors the appropriate guidance for submission of technical information to support IR&D proposals.

(b) The DoD IR&D Technical Evaluation Group will provide the contracting officer with the required technical evaluation, including an opinion concerning the potential interest of the proposed IR&D projects to DoD.

(c) The determination shall address the 231.205–18(c)(1)(iii)(*2*) requirement that the proposed IR&D/B&P projects must be of potential interest to DoD.

242.1006 Conducting negotiations.

(a)(5) Ensure that the requirements of 231.205–18(c)(1)(iii)(*2*) are met.

(b) Contracting officers shall encourage contractors to engage in the IR&D/B&P activities cited in 231.205–18(c)(1)(iii)(*2*).

§ 242.1007 Content of advance agreements.

(e) The agreement shall specifically note that—

(i) A review was performed of the proposed IR&D/B&P projects for potential interest to DoD; and

(ii) A determination was made that the Government's allocable share of the negotiated ceiling met the requirement for potential interest to DoD at the time of negotiation.

(f)(2) Allowable IR&D/B&P costs are limited to those incurred for projects that are of potential interest to DoD.

53. Section 242.1404–1 is added to read as follows:

242.1404–1 Parcel post eligible shipments.

(b)(1) See DoD 4525.8–M, DoD Official Mail Manual.

PART 243—CONTRACT MODIFICATIONS

243.107–70 [Redesignated as 243.170]

54. Section 243.107–70 is redesignated as 243.170.

55. A new section 243.107–70 is added to read as follows:

243.107–70 Notification of substantial impact on employment.

The Secretary of Defense is required to notify the Secretary of Labor if a modification of a major defense contract or subcontract will have a substantial impact on employment. The clause prescribed at 249.7002(c) requires that the contractor notify the contracting officer when a contract modification will have a substantial impact on employment.

PART 245—GOVERNMENT PROPERTY

245.104 [Amended]

56. Section 245.104 is amended by revising the reference "DoD 4275.5–M" to read "DoD 4161.2–M".

245.603–70 [Amended]

57. Section 245.603–70 is amended by revising paragraph (a)(1) to read "Contract administration offices (CAOs) may, with head of the contracting activity approval and contractor concurrence, authorize selected contractors to perform certain plant clearance functions if the volume of plant clearance warrants performance by the contractor."

PART 249—TERMINATION OF CONTRACTS

249.102 [Amended]

58. Section 249.102 is amended by adding paragraph (a)(5) to read "Include a statement that, if a termination for convenience will have a substantial impact on employment, as defined in the clause at 252.249–7001, Notification of Substantial Impact on Employment, the contractor must provide the required notice to the contracting officer within 30 calendar days."

249.7001 [Amended]

59. Section 249.7001 is amended by revising paragraph (b)(5) to read "Defense Information Systems Agency—Contract Management Division (Code 260)" in lieu of Defense Communications Agency—Contract Management Division (Code 260)".

60. Section 249.7002 is added to read as follows:

249.7002 Notification and reporting of substantial impact on employment.

(a) Section 4201(a)(1)(B) of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101–510, Division D, title XLII; Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1991), requires the Secretary of Defense to notify the Secretary of Labor if a modification or termination for convenience of a major defense contract or subcontract will have a substantial impact on employment. "Substantial impact on employment" is defined in the clause at 252.249–7001, Notification of Substantial Impact on Employment.

(b) Within ten work days after the contractor provides the notification required under the clause at 252.249–7001, the head of the contracting activity shall notify the Office of Economic Adjustment (OEA), Assistant Secretary of Defense (Force Management and Personnel), in accordance with department/agency procedures.

(1) The notice to OEA shall include the data elements set forth in 252.249–7001(c).

(2) Notices may be mailed or telefaxed to OEA at: Office of Economic Adjustment, 400 Army-Navy Drive, suite 200, Arlington, VA 22202–2884. Attention: Division D Notification. Telefax: (703) 697–3021.

(c) Use the clause at 252.249–7001, Notification of Substantial Impact on Employment, in all contracts of $5 million or more and all contracts with subcontracts of $500,000 or more.

PART 250—EXTRAORDINARY CONTACTUAL ACTIONS

250.201–70 [Amended]

61. Section 250.201–70 is amended by revising paragraph (b)(2) to read "Requests for indemnification against unusually hazardous or nuclear risks must be submitted to the USD(A) for approval before using the indemnification clause at FAR 52.250–1, Indemnification Under Public Law 85–804."

250.303 [Amended]

62. Section 250.303 is amended by revising in paragraph (6) the entry "Defense Communications Agency" to read "Defense Information Systems Agency".

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.211–7005 [Removed and Reserved]

63. Section 252.211–7005 is removed and the section marked "Reserved."

252.211–7019 [Amended]

64. Section 252.211–7019 is amended by adding the date "(MAY 1991)" to the clause heading.

252.223–7000 [Removed and Reserved]

65. Section 252.223–7000 is removed and the section marked "Reserved."

252.223–7004 [Removed]

66. Section 252.223–7004 is removed.

67. Section 252.223–7005 is redesignated as 252.223–7004 and the redesignated section 252.223–7004 is revised to read as follows:

252.223–7004 Drug-Free Work Force.

As prescribed in 223.510–3, use the following clause:

Drug-Free Work Force (Dec 1991)

(a) *Definitions.* As used in this clause—

(1) *Controlled substance, employee,* and *criminal drug statute* have the meanings given in the Drug-Free Workplace clause of this contract.

(2) *Employee in a sensitive position* means an employee whose duties could reasonably be expected to affect health, safety, or national security, including, but not limited to, duties involving—

(i) Access to classified information;

(ii) Possession or use of firearms;

(iii) Design, manufacture, test and evaluation, or maintenance of aircraft, vessels, vehicles, heavy equipment, munitions, toxic materials, weapons, weapons systems, potentially dangerous equipment/materials/or applications (such as lasers, explosives, unstable chemicals, or medical equipment with potentially life threatening consequences), or major components of the foregoing which are directly contracted for by the Department of Defense;

(iv) Control, operation or use of aircraft, vessels, vehicles, heavy equipment, toxic or nuclear materials, munitions, weapons, weapon systems, or potentially dangerous equipment/materials/or applications (such as lasers, explosives, unstable chemicals, or medical equipment with potentially life threatening consequences);

(v) Transportation, storage, or protection of toxic or nuclear materials, or munitions, or potentially dangerous materials (such as explosives or unstable chemicals);

(vi) Direct treatment or rehabilitation of employees for unlawful use or abuse of controlled substances; or

(vii) Air traffic control.

(b) The Contractor shall institute and maintain a program for achieving a drug-free work force. As a minimum, the program shall provide for the random drug testing of Contractor employees working in sensitive positions. The Contractor's drug testing program shall conform to the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" published by the Department of Health and Human Services (53 FR 11970), April 11, 1988.

(c) The Contractor shall not permit an employee to work in a sensitive position in the performance of a Department of Defense contract if—

(1) The employee tests positive for the use of a controlled substance during a test pursuant to this clause or a test based on reasonable suspicion of drug use; and

(2) The use is determined to be unlawful; or

(3) The employee is convicted of violating a criminal drug statute.

(d) The Contractor may permit an employee covered by paragraph (c) of this clause to work in a sensitive position on a Department of Defense contract only—

(1) With the approval of the Contracting Officer; and

(2) After the employee has successfully completed a supervised rehabilitation program.

(e) The requirements of this clause take precedence over any State and local laws to the contrary.

(End of clause)

252.225–7006 [Amended]

68. Section 252.225–7006 is amended by revising paragraph (c)(1)(i) to read "Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product (as defined in the Buy American Act and Balance of Payments Program clause of this solicitation); and".

252.225–7009 [Amended]

69. Section 252.225–7009 is amended in paragraph (f)(2)(iv) by removing the quotation marks at the end of the second sentence.

70. Section 252.225–7029 is added to read as follows:

252.225–7029 Restriction on acquisition of air circuit breakers.

As prescribed in 225.7016–5, use the following clause:

Restriction on Acquisition of Air Circuit Breakers (Dec 1991)

(a) All air circuit breakers for naval vessels provided under this contract shall be manufactured in the United States and the cost of their U.S. components must exceed 50 percent of the cost of all their components.

(b) If compliance with this restriction will have an adverse effect on a U.S. company, the Offeror/Contractor may request a waiver.

(End of clause)

252.228–7001 [Amended]

71. Section 252.228–7001 is amended by revising in paragraph (i)(2)(ii) the word "damage" to read "damaged".

72. Sections 252.232–7004 and 252.232–7005 are added to read as follows:

252.232–7004 DoD Progress payment rates.

As prescribed in 232.502–4–70 (b) and (c), use the following clause:

DOD Progress Payment Rates (Dec 1991)

(a) If the contractor is a large business, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Undefinitized Contract Actions*) to 85 percent.

(b) If the contractor is a small business, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Undefinitized Contract Actions*) to 90 percent.

(c) If the contractor is a small disadvantaged business, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Undefinitized Contract Actions*) to 95 percent.

(d) The above rates are the customary uniform progress payment rates for DoD contracts.

(End of clause)

252.232–7005 Reimbursement of subcontractor advance payments—DoD pilot mentor-protege program.

As prescribed in 232.412–70(c), use the following clause:

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Reimbursement of Subcontractor Advance Payments—DOD Pilot Mentor-Protege Program (Dec 1991)

(a) The Government will reimburse the Contractor for any advance payments made by the Contractor, as a mentor firm, to a small disadvantaged business, as a protege firm, pursuant to an approved mentor-protege agreement, provided—

(1) The Contractor's subcontract with the protege firm includes a provision substantially the same as FAR 52.232–12, Advance Payments;

(2) The Contractor has administered the advance payments in accordance with the policies of FAR subpart 32.4; and

(3) The Contractor agrees that any financial loss resulting from the failure or inability of the protege firm to repay any unliquidated advance payments is the sole financial responsibility of the Contractor.

(b) For a fixed price type contract, advance payments made to a protege firm shall be paid and administered as if they were 100 percent progress payments. The Contractor shall include as a separate attachment with each Standard Form (SF) 1195, Request for Progress Payments, a request for reimbursement of advance payments made to a protege firm. The attachment shall provide a separate calculation of lines 14a through 14e of SF 1195 for each protege, reflecting the status of advance payments made to that protege.

(c) For cost reimbursable, contracts, reimbursement of advance payments shall be made via public voucher. The Contractor shall show the amounts of advance payments made to each protege on the public voucher, in the form and detail directed by the cognizant contracting officer or contract auditor.

(End of clause)

252.234–7000 [Amended]

73. Section 252.234–7000 is amended by revising the clause title to read "Notice of Cost/Schedule Control Systems (Dec 1991)" in lieu of Cost/Schedule Control Systems (Dec 1991)".

252.237–7019 [Added]

74. Section 252.237–7019 is added to read as follows:

252.237–7019 Identification of uncompensated overtime.

As prescribed in 237.170–3, use the following provision:

Identification of Uncompensated Overtime (Dec 1991)

(a) *Definitions.* As used in this provision—

(1) *Uncompensated overtime* means the hours worked in excess of an average of 40 hours per week by employees who are exempt from the Fair Labor Standards Act (FLSA) without additional compensation. Compensated personal absences, such as holidays, vacations, and sick leave, shall be included in the normal work week for purposes of computing uncompensated overtime hours.

(2) *Uncompensated overtime rate* is the rate which results from multiplying the hourly rate for a 40 hour work week by 40, and then dividing by the proposed hours per week. For example, 45 hours proposed on a 40 hour work week basis at $20.00 would be converted to an uncompensated overtime rate of $17.78 per hour. ($20 × 40) divided by 45=$17.78.

(b) For any hours proposed against which an uncompensated overtime rate is applied, the Offeror shall identify in its proposal the hours in excess of an average of 40 hours per week, by labor category, and the uncompensated overtime rate per hour, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in direct cost pools for personnel whose regular hours are normally charged direct.

(c) The Offeror's accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

(d) Proposals which include unrealistically low labor rates, or which do not otherwise demonstrate cost realism, will be considered in a risk assessment and evaluated for award in accordance with that assessment.

(e) The Offeror shall include a copy of its policy addressing uncompensated overtime with its proposal.

(End of provision)

252.239–7000 [Amended]

75. Section 252.239–7000 is amended by revising in paragraph (a)(1) the acronym "NACSIM" to read "NACSEM".

76. Section 252.249–7001 is added to read as follows:

252.249–7001 Notification of substantial impact on employment.

As prescribed in 249.7002(c), use the following clause:

Notification of Substantial Impact on Employment (Dec 1991)

(a) *Definitions.* (1) "Major defense contract or subcontract" means—

(i) All prime contracts of $5 million or more; and

(ii) All subcontracts of $500,000 or more.

(2) "Substantial impact on employment" means—

(i) A reduction of—

(A) 2,500 or more employee positions, in the case of a Metropolitan Statistical Area (MSA) or similar area. MSAs are identified in FIPS Publication 8–5, Metropolitan Statistical Areas, which is available from the U.S. Department of Commerce, National Technical Information Service, Springfield, VA 22161, Tel. (703) 487–4650. Telephone inquiries concerning MSAs may also be directed to the Bureau of the Census, Population Division, Population Distribution Branch, Washington, DC, Tel (301) 763–5158;

(B) 1,000 or more employee positions, in the case of a labor market area outside an MSA; or

(C) One percent of the total number of civilian jobs in that area; or

(ii) A reduction, or the threat of a reduction, of—

(A) 25 percent or more in sales or production of the contractor or subcontractor; or

(B) 80 percent or more of the workforce of the contractor or subcontractor in any division of such contractor or such subcontractor or at any plant or other facility of such contractor or subcontractor; or

(iii) Any group of 100 or more workers at a defense facility who are, or who are threatened to become, eligible to participate in the Defense Conversion Adjustment Program under section 325 of the Job Training Partnership Act (29 U.S.C. 1662–1662c, as amended).

(b) This clause applies only if a modification or termination for convenience of a major defense contract or subcontract will have a substantial impact on employment.

(c) The Contractor shall notify the Contracting Officer within 30 calendar days if the proposed modification or termination for convenience of this contract or a major defense subcontract under this contract will have a substantial impact on employment. The Contractor may use DD Form 2604, Notification of Substantial Impact. If the form is not used, the notice shall include:

(1) Contract number;

(2) Contractor name and division name;

(3) Type of business (e.g. small disadvantaged business, small business, large business, etc.)

(4) Address of affected work location, including county;

(5) Contract price of items canceled or terminated;

(6) Number of employees affected;

(7) Percentage reduction in sales or production;

(8) Percentage of contractor workforce at affected work location;

(9) Title and signature of the reporting official; and

(10) The information required by (1) through (9) for each subcontract.

(d) The Contractor shall include the substance of this clause in all subcontracts of $500,000 or more under this contract.

(End of clause)

PART 253—FORMS

253.204–70 [Amended]

77. Section 253.204–70 is amended by revising in paragraph (d)(5)(i)(H) "Enter Code H" to read "Enter Code N"; and by revising in paragraph (d)(5)(xi)(b)(*1*) the reference "52.219–7019" to read "52.219–19".

253.204–70 [Amended]

78. Section 253.204–70(c)(3) is amended by revising the heading in the table "Then code Part C block:" to read "Then code the blocks in Part C with reference to the:".

79. Section 253.204–70(c)(4)(vi) is revised to read as follows:

253.204–70 DD Form 350, Individual Contracting Action Report.

* * * * *

(c) * * *

(4) * * *

(vi) BLOCK C6, NUMBER OF OFFERORS SOLICITED. Leave Block C6 blank if the original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act). As an exception to the chart in paragraph (c)(3) of this subsection—

If Block B13 is coded	Then
6	Enter code 2 in Block C6.
7	Leave Block C6 blank.

If not an exception, enter,

(A) *Code 1—One.* Enter code 1 if only one offeror was solicited.

(B) *Code 2—More than one.* Enter code 2 if more than one offeror was solicited.

* * * * *

80. Section 253.204–70(c)(4)(vii) is revised to read as follows:

253.204–70 DD Form 250, Individual Contracting Action Report.

(c) * * *

(4) * * *

(vii) BLOCK C7, NUMBER OF OFFERS RECEIVED. Leave Block C7 blank if the original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act). As an exception to the chart in paragraph (c)(3) of this subsection—

If Block B13 is coded	Then
6	Enter code 2 in Block C7.

If not an exception, enter,

(A) *Code 1—One.* Enter code 1 if only one offer was received.

(B) *Code 2—More than one.* Enter code 2 if more than one offer was received.

* * * * *

81. Section 253.204–70 is amended by revising paragraph (e)(3)(ii) to read as follows:

253.204–70 DD Form 350, Individual Contracting Action Report.

(e) * * *

(3) * * *

(ii) Enter the offered price from the small business firm that would have been the low offeror if organizations for the blind or other severely handicapped had not participated in the acquisition. Enter the amount in whole dollars.

* * * * *

Appendix G to Chapter 2 [Amended]

82. Appendix G, Table of Contents, part 7, is amended by revising the part 7 entry to read "Defense Information Systems Agency Activity Address Numbers" in lieu of "Defense Communications Agency Activity Address Numbers."

83. Appendix G, part 1, General, section G–101 is amended by revising in paragraph (c) the "DEFENSE COMMUNICATIONS AGENCY entry to read as follows:

"DEFENSE INFORMATION SYSTEMS AGENCY, Chief, Logistics Management Office, Code 202, Defense Information Systems Agency, Washington, DC 20305–2000.

84. Appendix G is amended by adding a DLA activity address number to the end of part 6 to read as follows:

DLA920—Defense Electronics Supply Center

W4—DESC–PKCC, 1507 Wilmington Pike, Dayton, OH 45444–5198.

[FR Doc. 91–30637 Filed 12–27–91; 8:45 am]

BILLING CODE 3810–01–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 701, 702, 706, 715, 719, 728, 731, 732, 737, 750, 752, 753, and Appendix H

[AIDAR Notice 92–1]

Miscellaneous Amendments to Acquisition Regulations

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The Agency for International Development Acquisition Regulation (AIDAR) is being amended to change office designations to reflect a recent reorganization, to remove the list of countries for which Defense Base Act (DBA) insurance waivers are in effect, and to revise letter of credit coverage to reflect the discontinuation of the Treasury Financial Communication System letters of credit by the U.S. Treasury.

EFFECTIVE DATE: January 29, 1992.

FOR FURTHER INFORMATION CONTACT: FA/PPE, Mr. James M. Kelly, room 1600I, SA–14, Agency for International Development, Washington, DC 20523–1435. Telephone: (703) 875–1534.

SUPPLEMENTARY INFORMATION: AID has recently undergone a reorganization; the AIDAR is being amended to reflect new office designations and titles. The AIDAR is also being amended to remove the list of countries for which DBA insurance waivers are in effect. Because of the list's size and the irregular timing of changes, AID has decided to maintain and update it through an internal directive to agency contracting officers. The AIDAR as revised will tell interested persons what the DBA list is and how to find out if a country is on the list. Finally, the AIDAR is being amended to revise our rules regarding establishment of letters of credit. This is in response to the Treasury Department's decision to discontinue letters of credit under the Treasury Financial Communication System, and its suggestion that each agency establish its own letter of credit system. The revised system is substantially similar to the superseded system, and we do not believe it will have significant impact on AID contractors.

The changes being made by this notice are editorial and administrative and are not considered significant rules under FAR section 1.301 or subpart 1.5, nor major rules as defined in Executive Order 12291. This notice will not have an impact on a substantial number of small entities, nor does it establish any information collection as contemplated by the Regulatory Flexibility Act and Paperwork Reduction Act. Because of the nature and subject matter of this notice, use of the proposed rule/public comment approach was not considered necessary. AID has decided to issue this notice as a final rule; however, we welcome public comment on the material covered by this notice or any other part of the AIDAR at any time. Comments or questions may be addressed as specified in the "**FOR FURTHER INFORMATION CONTACT**" section of the preamble.

List of Subjects in 48 CFR Parts 701, 702, 706, 715, 719, 728, 731, 732, 737, 750, 752, 753 and Appendix H to Chapter 7

Government procurement.

Accordingly for the reasons set out in the preamble, 48 CFR chapter 7 is amended as follows:

1. The authority citations in parts 701, 702, 706, 715, 719, 728, 731, 737, 750, 752, 753 and appendix H to Chapter 7 continue to read as follows:

Authority: Sec. 621, Pub. L. 87–195, Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

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PART 701—FEDERAL ACQUISITION REGULATION SYSTEM

Subpart 701.1—Purpose, Authority, Issuance

701.105 [Amended]

2. Paragraph (b) of section 701.105, OMB approval under the Paperwork Reduction Act, is amended by removing "Office of Procurement Policy, Planning and Evaluation, MS/PPE" and replacing it with "Procurement Policy and Evaluation Staff (FA/PPE)".

Subpart 701.3—Agency for International Development Acquisition Regulation

701.372 [Amended]

3. Paragraph (b) of section 701.372, Applicability, is amended by removing "Office of Management Operations" and replacing it with "Office of Administrative Services".

701.376–4 [Amended]

4. Section 701.376–4, Implementation by AID contracting activities, is amended by removing "Planning, Policy and Evaluation Staff (MS/PPE)" and replacing it with "Procurement Policy and Evaluation Staff (FA/PPE)".

Subpart 701.4—Deviations to the FAR or AIDAR

701.470 [Amended]

5. Paragraph (a)(2) of section 701.470, Procedure, is amended by removing "Planning, Policy and Evaluation Staff, MS/PPE" and replacing it with "Procurement Policy and Evaluation Staff (FA/PPE)".

Subpart 701.6—Contracting Authority and Responsibility

701.601 [Amended]

6. Paragraph (b)(3) of section 701.601, General, is amended by removing "Office of Management Operations" and replacing it with "Office of Administrative Services".

PART 702—DEFINITIONS OF WORDS AND TERMS

Subpart 702.170—Definitions

702.170–3 [Amended]

7. Paragraph (a) of section 702.170–3, Contracting activities, is amended by removing "Office of Management Operations" and replacing it with "Office of Administrative Services".

702.170–10 [Amended]

8. Paragraph (a)(1)(ii) of section 702.170–10, Head of the contracting activity, is amended by removing "Office of Management Operations" and replacing it with "Office of Administrative Services".

702.170–13 [Amended]

9. Section 702.170–13, Procurement Executive, is amended as follows:

a. In paragraphs (a)(1) and (a)(2), remove "Assistant to the Administrator for Management" and replace it with "Associate Administrator for Finance and Administration".

b. In paragraph (b), remove "Deputy Assistant to the Administrator for Management" and replace it with "Deputy Associate Administrator for Finance and Administration".

PART 706—COMPETITION REQUIREMENTS

Subpart 706.5—Competition Advocates

706.501 [Amended]

10. Section 706.501, Requirement, is amended by removing "Planning, Policy and Evaluation Staff (MS/PPE)" and replacing it with "Procurement Policy and Evaluation Staff (FA/PPE)".

PART 715—CONTRACTING BY NEGOTIATION

Subpart 715.5—Unsolicited Proposals

715.504 [Amended]

11. Paragraph (a) of section 715.504, Advance guidance, is amended by removing "S&T/RUR, Room 309" and replacing it with "R&D/RES, Room 320".

PART 719—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 719.2—Policies

719.270 [Amended]

12. Paragraph (k) of section 719.270, Small business policies, is amended by removing "Office of Management Operations" in both places where it appears and replacing it with "Office of Administrative Services".

PART 728—BONDS AND INSURANCE

Subpart 728.1—Bonds

728.105–1 [Amended]

13. Paragraph (b) of section 728.105–1, Advance payment bonds, is amended by removing "Planning, Policy and Evaluation Staff (MS/PPE)" and replacing it with "Procurement Policy and Evaluation Staff (FA/PPE)".

Subpart 728.3—Insurance

14. Section 728.305–70 is amended by revising paragraph (a) as follows

728.305–70 Overseas worker's compensation and war-hazard insurance—waivers and AID insurance coverage.

(a) Upon the recommendation of the AID Administrator, the Secretary of Labor may waive the applicability of the Defense Base Act (DBA) with respect to any contract, subcontract, or subordinate contract, work location, or classification of employees. Either the contractor or AID can request a waiver from coverage. Such a waiver can apply to any employees who are not U.S. citizens, not residents of, or not hired in the United States. Waivers requested by the contractor are submitted to the contracting officer for approval and further submission to the Department of Labor, which grants the waiver Application for a waiver is submitted on Labor Department Form BEC 565. AID has a number of blanket waivers already in effect for certain countries that are applicable to its direct contracts with contractors performing in such countries. Where such waivers are granted from coverage under the DBA, the waiver is conditioned on providing other worker's compensation coverage to employees to which the waiver applies. Usually this takes the form of securing worker's compensation coverage of the country where work will be performed or of the country of the employee's nationality, whichever offers greater benefits. The Department of Labor has granted partial blanket waivers of DBA coverage applicable to AID-financed contracts performed in certain countries, subject to two conditions:

(1) Employees hired in the United States by the contractor, and citizens or residents of the United States are to be provided DBA insurance coverage;

(2) Waived employees (i.e., employees who are neither U.S. citizens nor U.S. resident aliens, and who were hired outside the United States) will be provided worker's compensation benefits as required by the laws of the country in which they are working or the laws of their native country, whichever offers greater benefits. Information as to whether a DBA Waiver has been obtained by AID for a particular country may be obtained from the cognizant AID contracting officer.

* * * * *

PART 731—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 731.7—Contracts With Nonprofit Organizations

731.770 [Amended]

15. Paragraph (a) of section 731.770, OMB Circular A–122; cost principles for nonprofit organizations; AID implementation, is amended by removing "OSC" and replacing it with "OCC".

16. Part 732 is revised as follows:

PART 732—CONTRACT FINANCING

Subpart 732.4—Advance Payments

732.401 Statutory authority.
732.402 General.
732.403 Applicability.
732.406–70 Agency-issued letters of credit.
732.406–71 Circumstances for use of an LOC.
732.406–72 Establishing an LOC.
732.406–73 LOC contract clause.
732.406–74 Revocation of the LOC.

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 732.4—Advance Payments

732.401 Statutory authority.

(a) Sections 635 (b) of the Foreign Assistance Act and Executive Order 11223, May 12, 1955, 30 FR 6635, permit the making of advance payments with respect to functions authorized by the Foreign Assistance Act. Advance payments may also be made under section 305 of the Federal Property and Administrative Services Act of 1949, which provides authority, not otherwise available to AID, to take a paramount lien.

(b) The Act of August 28, 1968, Public Law 85–804 does not apply to AID.

732.402 General.

(a)–(d) [Reserved]

(e) All U.S. Dollar advances to profit making organizations require the approval of the Procurement Executive; all such approvals are subject to prior consultation with the AID/W Controller.

732.403 Applicability.

References to nonprofit contracts with nonprofit educational or research institutions for experimental, research and development work include nonprofit contracts with nonprofit institutions for: (a) technical assistance services provided to or for another country or countries, and (b) projects which concern studies, demonstrations and similar activities related to economic growth or the solution of social problems of developing countries.

732.406–70 Agency-issued letters of credit.

This subsection provides guidance on use of AID issued letters of credit (LOC) for advance payments.

732.406–71 Circumstances for use of an LOC.

An LOC shall be used under the following circumstances:

(a) The contracting officer has determined that an advance payment is necessary and appropriate in accordance with this subpart, the guidance provided in FAR 32.4, and Chapter 15E of AID Handbook 1, Supplement B;

(b) A.I.D. has, or expects to have, a continuing relationship of at least one year with the recipient organization, and the annual amount required for advance financing will be at least $50,000; and

(c) The Office of Financial Management, Cash Management and Payment Division (FM/CMP) agrees that the LOC payment method is appropriate.

732.406–72 Establishing an LOC.

(a) While the contract will provide for the use of an LOC when it is justified under subsection 732.406–71, the LOC is a separate agreement between the contractor and FM/CMP, acting on behalf of the AID Controller. The terms and conditions of the LOC are established by FM/CMP/LC.

(b) In order to establish or amend an LOC, the contracting officer shall provide FM/CMP with the following information:

(1) The name of the Contractor;

(2) The official 10 digit AID contract number;

(3) The obligated amount of the contract;

(4) The budget plan code for the obligated funds;

(5) The effective date and estimated completion date.

This information should be provided in writing to FM/CMP together with a request to establish or amend an LOC as early in the negotiation cycle as possible.

(c) FM/CMP will prepare the LOC in accordance with AID's LOC procedures; issue or amend and maintain the LOC in accordance with its terms and AID procedures and regulations; and provide the contracting officer(s) a copy of each LOC and any other material governing its use at the time the LOC is issued or when it is amended or modified.

732.406–73 LOC contract clause.

If payment is to be provided by LOC, the contract shall contain the clause in subsection 752.232–70.

732.406–74 Revocation of the LOC.

If during the term of the contract FM/CMP believes that the LOC should be revoked, FM/CMP may, after consultation with the cognizant contracting officer(s) and GC, revoke the LOC by written notification to the contractor. A copy of any such revocation notice will immediately be provided to the cognizant contracting officer(s).

PART 737—SERVICE CONTRACTING

Subpart 737.2—Advisory and Assistance Services

737.206 [Amended]

17. Paragraph (c)(2)(ii) of section 737.206, Requesting activity responsibilities, is amended by removing "Bureau for Program and Policy Coordination, Center for Development Information and Evaluation, Development Information Division—PPC/CDIE/DI" and replacing it with "Directorate for Policy, Center for Development Information and Evaluation, Office of Development Information—POL/CDIE/DI".

737.270 [Amended]

18. Paragraph (a) of section 737.270, AID advisory and assistance executive, is amended by removing "Assistant to the Administrator for Management Services" and replacing it with "Associate Administrator for Finance and Administration".

PART 750—EXTRAORDINARY CONTRACTUAL RELIEF

Subpart 750.71—Extraordinary Contractual Actions to Protect Foreign Policy Interests of the United States

750.7109–1, 750.7110–1, 750.7110–2, 750.7110–3 [Amended]

19. Sections 750.7109–1, Filing requests; 750.7110–1, Investigation; 750.7110–2, Intra-agency coordination; and 750.7110–3, Submission of cases to the approving authority; are amended by removing "Planning, Policy and Evaluation Staff (MS/PPE)" and replacing it with "Procurement Policy and Evaluation Staff (FA/PPE)".

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.2—Texts of Provisions and Clauses

752.228–3 [Amended]

20. Section 752.228–3 is amended by revising paragraph (b) as follows:

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752.228-3 Worker's compensation insurance (Defense Base Act).

* * * * *

(b) If AID or the contractor has secured a waiver of DBA coverage (see AIDAR 728.305-70(a)) for contractor's employees who are not citizens of, residents of, or hired in the United States, the contractor agrees to provide such employees with worker's compensation benefits as required by the laws of the country in which the employees are working, or by the laws of the employee's native country, whichever offers greater benefits.

* * * * *

752.232-70 [Amended]

21. Paragraphs (a), (b) and (d) of the contract clause in section 752.232-70, Letter of Credit Advance Payment, are amended by removing "(PFM/FM/CMP)" and replacing it with "(FM/CMP)".

Subpart 752.70—Texts of AID Contract Clauses

752.7004 [Amended]

22. Paragraph (b)(4) of the contract clause in section 752.7004, Source and Nationality Requirements, is amended by removing "AID Transportation Support Division, Office of Commodity Management" and replacing it with "Transportation Division, Office of Procurement (OP/TRANS)".

752.7026 [Amended]

23. Paragraph (b)(3) of the contract clause in section 752.7026, Reports, is amended by removing "Bureau for Program and Policy Coordination, Center for Development Information and Evaluation, Development Information Division" and replacing it with "Directorate for Policy, Center for Development Information and Evaluation, Office of Development Information"; and by removing "PPC/CDIE/DI" and replacing it with "POL/CDIE/DI".

PART 753—FORMS

Subpart 753.1—General

753.107 [Amended]

24. Section 753.107, Obtaining Forms, is amended by removing "SER/MO/CPM/M" and replacing it with "FA/AS/PP/PP".

Appendices to Chapter 7

Appendix H—Response to Audit Recommendations

Appendix H [Amended]

25. Appendix H is amended as follows:

(a) In paragraph 2, remove "MS/OP" and replace it with "the Office of Procurement (FA/OP, hereinafter referred to as OP)";

(b) In paragraphs 5(b), 5(b)(1)(b), 5(b)(2)(a), 5(b)(2)(b), 5(b)(2)(c), 5(b)(4)(a), 6 and 7, remove all references to "MS/OP" replacing them with "OP"; and in 5(b)(1)(c) remove the reference to "SER/OP" and replace it with "OP".

(c) In paragraph 7, remove "DAA/MS" and replace it with "DAA/FA".

Dated: November 25, 1991.

John F. Owens,

Procurement Executive.

[FR Doc. 91-30933 Filed 12-27-91; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216 and 247

[Docket No. 910777-1177]

Taking and Importing of Marine Mammals; "Dolphin Safe" Tuna Labeling

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim final rule; extension of comment period.

SUMMARY: To implement title IX of the Fishery Conservation Amendments of 1990, called the Dolphin Protection Consumer Information Act (DPCIA), NMFS published an interim final rule on September 19, 1991, and invited comments from the general public and affected parties. The original effective date, with the exception of collection-of-information requirements, was September 19, 1991, and comments were due no later than January 1, 1992. NMFS had originally intended to provide an extended comment period for users to familiarize themselves with the requirements and procedures of the rule, and to discover any shortcomings. Sections 216.24(e)(3) and 247.4 contained collection-of-information requirements subject to the Paperwork Reduction Act and were not effective until approved by the Office of Management and Budget (OMB). Delays in OMB approval and publication of the notice, as well as requests by the importers to delay the compliance date, resulted in changing the effective date of the collection-of-information requirements until December 1, 1991, except for provisions of § 216.24(e)(3) applicable to canned tuna products entered into a bonded warehouse prior to December 1, 1991, which were not applicable until January 8, 1992. This considerably shortened the comment period on those measures.

To allow sufficient time to assess the operability of the new requirements and to receive comments from the parties involved, many of whom are exporters from nations designated as "large-scale driftnet nations" (Korea, Japan, Taiwan, and France), NMFS extends the comment period on the interim rule for an additional 121 days (See DATES).

DATES: Comments on the interim final rule must be received on or before May 1, 1992.

ADDRESSES: Comments should be mailed to E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: E.C. Fullerton (Director, Southwest Region, NMFS) telephone (213) 514-6196.

SUPPLEMENTARY INFORMATION: The provisions of the interim final rule (IFR) implementing the DPCIA published on September 19, 1991, (56 FR 47418) were not subject to routine notice-and-comment requirements of the Administrative Procedure Act because the rule involved a foreign affairs function of the United States. NMFS made a considerable effort to obtain and consider the views of interested parties in the process of drafting the IFR. Meetings were held with other Federal agencies, major U.S. tuna canners, interested environmental groups, and the Marine Mammal Commission to discuss NMFS strategy for implementation of the DPCIA and to familiarize NMFS with other Federal regulations governing the importation, processing and labeling of seafood. Since advance notice and opportunity for public comment was not given prior to establishing the IFR, NMFS believed there was justification in providing an extended comment period while the interim rule was in effect, and intended to provide 6 months for interested parties to fully evaluate and comment on the rule, its implementation, and its effects.

Portions of the rule (§§ 216.24(e)(3) and 247.4) contained collection-of-information requirements subject to the Paperwork Reduction Act and were not effective until approved by OMB. Upon OMB's approval, NMFS published a notice of effectiveness and enforcement of a collection-of-information requirement on October 4, 1991 (56 FR 50278). The delays in approval and publication of the notice allowed less than 30 days notice to importers and brokers to assure that their shipments were accompanied by the required

certification. Many of them requested an extension of the compliance date. On November 6, 1991, (56 FR 56603) NMFS published a notice changing the effective date to December 1, 1991, except for canned tuna product entered into a bonded warehouse prior to December 1, 1991, which will be subject to the new regulations beginning January 8, 1992.

Changing the effective date considerably shortened the evaluation period for comment. NMFS wants to give participants sufficient time to become acquainted with the requirements and procedures of the rule, to establish mechanisms to comply with the regulatory requirements, and to evaluate their operability and effectiveness. The comment period is therefore extended an additional 121 days to ensure adequate time for all interested parties, particularly affected nations, and those organizations and individuals not in the United States to respond to the rulemaking.

Authority: 16 U.S.C. 1361 *et seq.*

Dated: December 23, 1991.

Samuel W. McKeen,

Program Management Officer.

[FR Doc. 91-31029 Filed 12-27-91; 8:45 am]

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Proposed Rules

Federal Register
Vol. 56, No. 250
Monday, December 30, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Doc. No. 0013S]

General Administrative Regulations; Appeal Procedure

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation proposes to revise and reissue 7 CFR part 400, subpart J, General Administrative Regulations; Appeal Procedure, to: (1) Reflect the establishment of an Appeals and Litigation Staff, an organization within the Office of the Manager, FCIC; (2) set forth the authority of the Appeals and Litigation Staff; and, (3) to prescribe administrative procedures for a complete and independent review of determinations.

COMMENT DATE: January 29, 1992.

ADDRESSES: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, room 4096, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (703) 235–1168.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is March 1, 1996.

James E. Cason, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The Corporation has established an Appeals and Litigation Staff, an organization within the Office of the Manager, which is independent from agency officials making program decisions. These proposed revised and reissued regulations of subpart J set forth the authority of the Appeals and Litigation Staff and prescribe the manner and format of procedures under which any person or organization may appeal from a determination by the Corporation.

List of Subjects in 7 CFR Part 400

General administrative regulations; Appeal procedure, Administrative practice and procedure.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to revise and reissue 7 CFR part 400, subpart J, General Administrative Regulations; Appeal Procedure; Administrative Practice and Procedure, to read as set forth below:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart J—Appeal Procedure—Regulations

Sec.

400.80 General.
400.81 Definitions.
400.82 Appealable and nonappealable determinations.
400.83 Appeal requests.
400.84 Hearing rules.
400.85 Authority of the Hearing Officer.
400.86 Review requests.
400.87 Review rules.
400.88 Authority of Review Officer.
400.89 Effect of decision.
400.90 Records.
400.91 OMB Control numbers.
400.92 Basis of determination.
400.93 Reservation of authority.

Authority: 7 U.S.C. 1501 *et seq.*

Subpart J—Appeal Procedure—Regulations

§ 400.80. General.

(a) The Appeals and Litigation Staff is an organization within the Office of the Manager which is independent from agency officials having the responsibility for making program determinations. The Director, Appeals and Litigation Staff, reports directly to the Manager of the Corporation. This subpart contains rules and regulations issued pursuant to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), to be used by the Appeals and Litigation Staff to ensure that full, complete, and independent review is afforded to affected members of the public when certain adverse determinations have been made. It sets out the authority and procedures of the Appeals and Litigation Staff, which hears and reviews administrative appeals.

(b) The provisions of this subpart apply to determinations concerning insured and, to the extent applicable, reinsured crop insurance policies.

(c) The provisions of this subpart do not apply to determinations by the Corporation other than those specified in paragraph (b) of this section. Examples of determinations not covered by this subpart include Freedom of Information Act determinations to release or deny the release of information sought by members of the public (appealable under 7 CFR part 1), determinations to purchase or not to purchase goods and services from members of the public under the Federal contracting laws and regulations (appealable to the Department's Board of Contract Appeals under 7 CFR part 24), and suspension and debarment procedures.

(d) The provisions of this subpart do not apply to determinations by organizations outside the Corporation even when they are used as a basis for determinations falling within paragraph (b) of this section. Examples of determinations not covered by this subpart are determinations of the Soil Conservation Service or Agricultural Stabilization and Conservation Service which may determine whether an applicant qualifies for insurance.

(e) The provisions of the Administrative Procedures Act, 5 U.S.C. 551 through 559, as amended, are not applicable to proceedings under this subpart. The Equal Access to Justice Act, 5 U.S.C. 504, as amended, does not apply to these proceedings.

(f) Termination of crop insurance for debt and debt collection activities will be held in abeyance once an appeal has been filed until such time as a final decision on the appeal has been made under this Subpart. If the appeal is decided in the favor of the insured, insurance will remain in effect. If the decision on appeal is adverse to the insured, the Corporation, in its discretion, may terminate the policy retroactive to the debt termination date initially applicable or may elect to continue the policy in full force and effect through the crop year then in effect in accordance with its terms.

(g) Except as noted in subsection (f) above, filing an appeal or a request for review will not stay the effect of any adverse administrative action. Such action will be effective as and when issued. If, however, an appeal from an adverse administrative action is decided in favor of the appellant, the decision of the hearing officer or review officer will have retroactive effect to the date of the administrative action being appealed from. If an appeal from an adverse administrative action is decided adverse to the appellant, the appellant will be given 30 calendar days to satisfy any requirements of the adverse administrative action or to avail the appellant of any other option available under the contract as of the date of the administrative action.

(h) The regulations are applicable to any request for an appeal or a review filed after the effective date of this part. The procedures contained herein also apply to requests filed prior to the effective date hereof to the extent that they do not adversely affect any party in those proceedings.

§ 400.81 Definitions.

Unless the context indicates otherwise, words importing the singular include the plural, and words used in the present tense include the future.

For the purpose of these regulations:

(a) *Appeal Case File*—means the Corporation file and any other papers or calculations submitted by the decisionmaker; all papers, calculations and evidence submitted by the appellant; any recording or written transcript of the hearing; the appeal decision and appeal hearing report; the review decision and review report, if any; and relevant sections of Field Office files or audit investigation reports. The appeal case file is available in its entirety to the appellant.

(b) *Appellant*—means (1) any person who, as a crop insurance policy holder or applicant for crop insurance, is directly and adversely affected by a determination made by the Corporation; or (2) any insurance company which is directly and adversely affected by a determination made by the Corporation to the extent that such determinations are appealable under the provisions of this Subpart. The term "appellant" includes the appellant's authorized representative.

(c) *Authorized Representative*—means a person designated in writing by an appellant to act for and on behalf of the appellant. Representatives will be presumed to retain their authority to act for an appellant until the written authorization is revoked in writing. An insurance agent may not appear as an authorized representative of the appellant if the appellant is an insured. In the case of an appeal by the holder of a crop insurance policy issued by a reinsured company, no representative of the reinsured company may appear as the authorized representative of the appellant.

(d) *Contract*—means a written crop insurance policy entered into by a person with the Corporation.

(e) *Corporation*—means the Federal Crop Insurance Corporation and any authorized officer or employee thereof, as applicable.

(f) *Decision*—means the determination of the hearing officer or review officer. The basis of the decision shall not be limited to the issues raised by the appellant, but may be based on all information available to the hearing officer or the review officer from whatever source. Al information forming the basis of the decision will be available to the appellant in the appeal case file.

(g) *Hearing*—means an informal administrative proceeding granted an appellant at which issues of fact are presented to a hearing officer by an appellant and other persons.

(h) *Hearing Officer*—means an individual designated or appointed by the Corporation to conduct an administrative appeal hearing who has the authority to uphold, reverse, or modify determinations of the Corporation.

(i) *Reinsured Company*—means a company which is a party to a Standard Reinsurance Agreement with the Corporation.

(j) *Person*—means an individual, partnership, association, corporation, estate, trust, or other legal entity, and, whenever applicable, a State or a political subdivision or agency of a State.

(k) *Review*—means the review of the hearing officer's decision and all available information relevant to an appellant's case by a review officer.

(l) *Review Officer*—means an individual designated or appointed by the Corporation to conduct an appeal review who has the authority to uphold, reverse, or modify determinations of the Corporation and decisions of hearing officers.

§ 400.82 Appealable and nonappealable determinations.

(a) Final determinations of the Federal Crop Insurance Corporation that directly and adversely affect any person are appealable by that person or their successors in interest to the Appeals and Litigation Staff under the provisions of this subpart. All matters concerning the application of law and regulations to the issue may be considered. The Appeals and Litigation Staff does not have the authority to compromise claims or to change, waive, or modify applicable laws, regulations, or contracts.

(1) Determinations based on clear and objective statutory or regulatory requirements are not appealable. Examples include:

(i) Denial of insurance to an entity not identified as an eligible insured by the regulations;

(ii) Denial of insurance because an application was received by the agent after the sales closing date or any extension issued by the Corporation;

(iii) Requirements and conditions developed by agencies other than the Corporation (They include, but are not

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limited to "Sodbuster/Swampbuster" restrictions);

(iv) Denial of insurance because of a conviction under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance;

(v) Mathematical computations by the Corporation which are correctly calculated in accordance with written Corporation policy;

(vi) Penalties and interest rates as set forth in Corporation procedure, except the application of an incorrect penalty or interest rate; and

(vii) Debt collection and credit reporting initiatives included in the Federal Claims Collection Standards.

(2) Administrative procedures published through the Corporation's Issuance System are not appealable.

(3) Any matter previously decided by a court or administrative agency of competent jurisdiction is not appealable.

(4) In cases where denial of insurance is based upon both appealable and nonappealable actions, the denial of insurance is not appealable.

(b) Determinations by a reinsured company affecting those insured by such company are not appealable.

(c) Underpaid indemnities or overstated premiums within the Corporation's tolerance limit are not appealable.

(d) Determinations of the Corporation affecting those insured by a reinsured company related to rate and coverage issues are appealable, except that rate and coverage determinations of the Corporation that affect entire classes of insureds are not appealable.

(e) Denial of requests for relief under the Good Faith Reliance on Misrepresentation provisions contained in this chapter are appealable.

§ 400.83 Appeal requests.

(a) A request for an appeal must be in writing and must be physically received by the Corporation within 45 days of the date of written notice of the determination being appealed. The request for appeal must be sent to Chief, FCIC Appeals and Review Branch, U.S. Department of Agriculture, Washington, DC 20250.

(b) Whenever the final date for filing a request for an appeal prescribed in paragraph (a) of this section falls on a Saturday, Sunday, legal holiday, or other day on which the appropriate office is not open for the transaction of business during normal working hours, the time for filing shall be extended to the next working day.

(c) A request for an appeal may be accepted and acted upon even though it is not filed within the time prescribed in paragraph (a) or (b) of this section if, in the judgment of the Director, Appeals and Litigation Staff, the circumstances warrant such action.

(d) The request for the appeal must:

(1) Be signed by the Appellant;

(2) Contain a statement of the matter on which the appeal is sought;

(3) Contain a statement of the appellant's reasons for believing that the determination being appealed is incorrect;

(4) Contain a statement which clearly sets out the relief requested; and

(5) Provide a telephone number at which the appellant or his/her representative can be reached.

(e) When an appeal is filed, it will be handled as follows:

(1) The appeal case file will be made available to the appellant at the service office within 10 working days following receipt of a written request to inspect the file. A written request from the appellant will be required. Copies will be provided at a charge of $0.10 per page. This charge may be waived by the Corporation upon request and will be waived for requests of fewer than 30 pages.

(2) If the appeal is requested by a party to a crop insurance contract with a reinsured company, the reinsured company will be notified of the appeal request and will be offered an opportunity to participate in the hearing.

(3) The hearing officer may, upon review of the file, find that the determination must be reversed. In that event, he or she will notify all parties of this decision and of actions to be taken. Otherwise, the hearing officer will arrange for a hearing to be held. The hearing officer will notify the appellant by Certified Mail, return receipt requested, of the date, time, and place of the hearing. Such notice will be given at least 30 days prior to the date of the hearing. A hearing may be scheduled within 30 days provided that the appellant waives, in writing, the right to a 30-day notice, and further provided that no interested party is adversely affected thereby.

(4) The hearing will be held at a date, time, and location determined by the hearing officer, taking into consideration the desires of the appellant. If necessary, after being notified of the scheduled hearing date, the appellant may request that the hearing be rescheduled. Such rescheduling must be to a date within 10 working days of the original hearing date, except for circumstances beyond the control of the appellant or other good reasons as determined by the Director, Appeals and Litigation Staff.

(5) The appellant need not be physically present at the hearing. If the appellant chooses not to attend the hearing, the hearing officer will arrange a telephone conference call to include all necessary parties.

(6) When the appellant, without reasonable cause, fails to appear at the hearing when such hearing has been requested by the appellant, in person or by telephone, the appellant's appeal will be considered concluded. If the hearing officer, with the concurrence of the Director, Appeals and Litigation Staff, determines that the appellant's failure to appear was for reasons beyond the control of the appellant or for other good reason, the hearing officer may reschedule the hearing at a later date and time, but generally not later than 10 working days following the initially scheduled date.

(7) At any time before the scheduled hearing, the appellant may waive the opportunity for a hearing and, instead, request that the hearing officer make a decision based on the record, any written statements or evidence the appellant may submit and any other information the hearing officer deems necessary.

(8) The hearing will be based on the material in the hearing record, procedures, statutes, and regulations of the Corporation and on the reasons set out in the determination being appealed. The basis given for the determination being appealed will form the core of the hearing. However, nothing herein prevents the hearing officer from predicating its decision on an independent basis providing the appellant has the opportunity to address that independent basis. If any changes in circumstances or other occurrences material to the determination arises after the appeal has been requested, the hearing officer and the appellant must be advised immediately. The hearing officer may, in such event, delay the hearing, return the file for reconsideration, or take such other action as is appropriate.

(9) If other legal or administrative action, based on the facts reasonably assumed to be pertinent to the appeal, is initiated, pending, or in progress at the time an appeal is requested or at any time before an appeal hearing is concluded, the hearing officer may suspend or take any other reasonable action with regard to the appeal. Such legal or administrative action may include, but not be limited to, criminal investigation or indictment, bankruptcy, or civil action in which the appellant is either plaintiff or defendant.

§ 400.84 Hearing rules.

(a) The hearing will be an informal proceeding at which the appellant has the responsibility of showing why the determination should be modified or reversed. The appellant may provide any information or witnesses the appellant believes should be considered in reaching a proper decision. The appellant may present evidence, witnesses, and arguments in support of the appellant's appeal, and may controvert evidence relied on by the Corporation. Any evidence may be received by the hearing officer without regard to whether that evidence could be employed in judicial proceedings. The hearing officer has no authority to subpoena witnesses or documents, or to compel testimony. Neither does the hearing officer have the authority to administer oaths. However, all testimony and evidence submitted is subject to the provisions of 18 U.S.C. 1001 and 1014 and other Federal statutes.

(b) During and after the hearing, the hearing officer may request any further information he/she considers necessary to reach a proper decision. Such information must be provided to the hearing officer within ten (10) working days of the hearing unless an extension is granted for good cause shown. Failure of the appellant to provide information within the appellant's ability to provide may result in an unfavorable decision.

(c) The appellant may submit additional materials for the hearing officer's consideration if the hearing officer has been notified of the appellant's intention to submit that information. Such material must be provided to the hearing officer within the time period set by the hearing officer.

(d) Recording the hearing:

(1) The hearing officer will make a record of the hearing, either by written, audio, video, or stenographic means or any combination of these.

(2) Appellants may, with 10 days advance notice to the hearing officer, record the proceedings at their own expense within the rules and procedures established by the hearing officer.

(3) At the time the decision is rendered and upon request, the record of the hearing will be made available to the appellant. One (1) copy of any audio or video recording of the hearing, will be made available to the appellant upon request, free of charge. A reasonable charge may be made for additional copies requested by the appellant.

(4) Upon request, a transcript of the hearing will be provided, within a reasonable time period, for a fee approximately equal to the government's costs of having the transcript prepared.

(5) The appellant may make its own arrangements, independent of the Corporation, for a stenographic transcript of the hearing. The hearing officer must be given notice within a reasonable period of time if the appellant wishes to arrange for a stenographic transcript so that accommodations may be arranged. Unless the Corporation is provided with a copy of appellant's transcript, it will not be part of the administrative record.

(6) Any recording of a hearing or transcript thereof made by the Corporation, or at the Corporation's expense, will be included as part of the appeal case file.

(e) For good cause, the hearing officer may, at the request of either the appellant or a Corporation official or in the hearing officer's judgment, continue the hearing to a later time. The length of the continuance will be in the hearing officer's discretion.

(f) The decision of the hearing officer shall be based on all information available to the hearing officer from whatever source. This may include, but is not limited to facts presented at the hearing or in writing, additional information requested by the hearing officer or submitted voluntarily by the appellant, appropriate Corporation files, applicable statutes and regulations, and the relevant crop insurance policy. Except for published statutes and regulations, all information forming a base for the hearing officer's determination will be included in the appeal file.

(g) If an appellant waives the opportunity for a hearing and the hearing officer examines any information which has not previously been available for examination by the appellant, the appellant will be advised by the hearing officer of the additional information and be allowed an opportunity to examine it and respond accordingly. Usually, the total time given the appellant to examine and respond to this additional information will not exceed 20 working days.

(h) The hearing officer generally will render a decision within 30 calendar days of the date of the hearing, unless this would not allow sufficient time to consider any additional information requested by the hearing officer or submitted voluntarily by the appellant. Failure of the hearing officer to meet this goal will not divest the hearing officer of jurisdiction.

(i) Notwithstanding any provision of this section, the hearing officer may delay any hearing or issuance of a decision pending receipt of additional evidence; issuance of a report by the Office of Inspector General, the Corporation Compliance Division or other investigative agency; at the request of the Office of Inspector General or other lawful authority; or at the request of the United States Attorney's Office pending legal action, either civil or criminal; or for other good cause as determined by the Director, Appeals and Litigation Staff.

(j) the hearing officer will inform the appellant, Corporation officials, and any other person servicing the account, in writing, of the decision, the reason for it, and the action to be taken.

(k) the decision of the hearing officer will be mailed to the appellant by Certified Mail, return receipt requested.

(l) The decision letter will be accompanied by an appeal hearing report which states the facts pertaining to the appeal including, but not limited to: the date and time of the hearing and the identities of all those present in person or by telephone; the background of the appeal issues; a summary of the pertinent evidence, both oral and written; citations of the applicable provision of law, regulation, crop insurance policy or endorsement, or other Corporation directive on which the hearing officer based his/her decision; and the hearing officer's findings. Where a hearing was waived by the appellant, a similar report will be prepared and accompany the decision letter, omitting any irrelevant sections.

(m) If the decision does not grant the full relief the appellant was seeking, the decision letter must contain the following statement: "You may request, in writing, a review of this decision within 45 days of the date of this letter. A request for review should be sent to Chief, FCIC Appeals and Review Branch, U.S. Department of Agriculture Washington, DC 20250."

(n) If the applicant does not request in writing a review of the hearing officer's decision within the 45 day period provided in paragraph (m), the appeal will be concluded and the decision final.

§ 400.85 Authority of hearing officer.

(a) Under authority delegated by the Director, Appeals and Litigation Staff, the hearing officer has the authority to:

(1) Establish the time and place of the hearing;

(2) Adjourn the hearing from time to time and change the time and place of the hearing;

(3) Rule on motions and requests;

(4) Receive evidence;

(5) Admit or exclude evidence;

(6) Request evidence or additional information;

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(7) Hear oral arguments on facts or law;

(8) Do all acts and take all measures necessary for the maintenance of order at the hearing for the efficient conduct of the proceeding;

(9) Make a written determination based upon the record including the testimony submitted;

(10) Overturn or modify the determination appealed from in whole or in part; and

(11) Commit the Corporation to a course of action, without regard to the amount of money at issue.

(b) The hearing officer does not have the authority to compromise claims or to waive provisions of the regulations or the contracts of the Corporation.

§ 400.86 Review requests.

(a) A request for a review of an appeal decision must be in writing and must be physically received within 45 days of the date of the written notice of the appeal decision of which review is sought. A request for review must be sent to Chief, FCIC Appeals and Review Branch, U.S. Department of Agriculture, Washington, DC 20250.

(b) Whenever the final date for filing a request for review prescribed in paragraph (a) of this section falls on a Saturday, Sunday, legal holiday, or other day on which the appropriate office is not open for the transaction of business during normal hours, the time for filing shall be extended to the next working day.

(c) A request for review may be accepted and acted upon even though it is not filed within the time prescribed in paragraph (a) or (b) of this section if, in the judgment of the Director, Appeals and Litigation Staff, the circumstances warrant such action.

(d) The request for the review must:

(1) Be signed by the Appellant;

(2) Contain a statement of the matter on which the review is sought; –

(3) Contain a statement of the Appellant's reasons for believing that the hearing officer's decision is incorrect; and

(4) Contain a statement which clearly sets out the relief requested.

(e) When an Appellant requests a review of a decision, the review will be handled as follows:

(1) The appeal case file will be made available to the appellant or his/her authorized representative at the service office within 10 working days following receipt of a written request to inspect the file. A written request from the appellant will be required. Copies will be provided at a charge of $0.10 per copy. This charge may be waived by the Corporation upon request and will be waived for requests of fewer than 30 pages.

(2) If the review is requested by a party to a crop insurance contract with a reinsured company, the review officer will notify the reinsured company of the review request and such company will be offered an opportunity to submit evidence for consideration by the review officer.

(3) The review decision will be based on the appeal case file, arguments of the appellant in the appellant's request for review and on the reasons for the decision set out in the decision letter and appeal hearing report. However, the review officer may consider additional evidence submitted by any interested party upon notification and opportunity for review by the appellant.

(4) If other legal or administrative action, based on the facts reasonably assumed to be pertinent to the review, is initiated, pending, or in progress at the time a review is requested or at any time before a review decision is issued, the review officer may suspend or take any other reasonable action with regard to the review. Such legal or administrative action may include, but not be limited to, criminal investigation or indictment, bankruptcy, or civil action where the appellant is either plaintiff or defendant.

(5) The review officer may require that the appellant submit a copy of the transcript of the hearing if one was arranged for by the appellant.

(6) The review officer will review the appeal case file, applicable statutes and regulations, the insurance contract, any additional written information furnished by the appellant including appellant's comments on the transcript of the hearing, and any additional information as the review officer deems necessary. However, if the review officer reviews any information the appellant has not previously had the opportunity to review, the appellant will be advised by the review officer of the additional information and be allowed an opportunity to review it and respond accordingly. The total time given the appellant to review and respond to the additional information generally will not exceed 20 working days.

§ 400.87 Review rules.

(a) The review will be a thorough examination of the hearing record, together with any additional available evidence and any additional material allowed, to determine whether the hearing officer's decision should be upheld. Any evidence may be received by the review officer without regard to whether that evidence could be employed in judicial proceedings. The review officer has no authority to subpoena documents. However, all evidence submitted is subject to the provisions of 18 U.S.C. 1001 and 1014 and other Federal statutes.

(b) The review officer may request any further information he/she considers necessary to reach a proper decision. Such information must be provided to the review officer within ten (10) working days of the request unless an extension is granted for good cause shown. Failure of the appellant to provide information within the appellant's ability to provide may result in an unfavorable decision.

(c) The appellant may submit additional materials for the review officer's consideration. Such material must be provided to the review officer within the time period set by the review officer.

(d) The decision of the review officer shall be based on all information available to the review officer from whatever source. This may include, but is not limited to written facts presented for the review, the appeal case file, additional information requested by the review officer, appellant's written response to the additional information reviewed by the review officer, applicable statutes, procedures, and regulations, and the relevant crop insurance contract. Except for published statutes and regulations, all information forming the base for the review officer's determination will be included in the appeal file.

(e) If the review officer reviews any information which the appellant has not previously reviewed, the appellant will be advised by the review officer of the additional information and be allowed an opportunity to review it and respond to it. Usually, the total time given the appellant to review and respond to this information will not exceed 10 working days.

(f) The review officer generally will render a decision within 30 calendar days of the date of the hearing unless this would not allow sufficient time to consider any additional information requested by the review officer or submitted by the appellant within the applicable time limit. Failure of the review officer to meet this goal will not divest the review officer of jurisdiction.

(g) Notwithstanding any provision of this section, the review officer may delay issuing a decision pending receipt of additional evidence; issuance of a report by the Office of Inspector General, the Corporation Compliance Division or other investigative agency; at the request of the Office of Inspector General or other lawful authority; or at the request of the United States Attorney's Office pending legal action; either civil or criminal or for other good cause as determined by the Director, Appeals and Litigation Staff.

(h) The review officer will inform the appellant, hearing officer, original decisionmaker, and any other person servicing the account, by letter, of the decision, the reason for it, and the action to be taken.

(i) The decision letter will be mailed to the appellant by Certified Mail, return receipt requested.

(j) The decision letter will be accompanied by a review report which states the facts surrounding the hearing including, but not limited to: the background of the review issue; a summary of evidence; citations of the applicable provisions of law, regulation, applicable crop insurance policy or endorsement, or other Corporation directive on which the review officer relied for his/her decision; and the review officer's findings.

(k) The decision letter will contain the following statement: "This review concludes your administrative appeal."

§ 400.88 Authority of review officer.

(a) The review officer has the authority to:

(1) Rule on motions or requests;

(2) Receive evidence;

(3) Admit or [illegible]clude evidence;

(4) Request evidence or additional information;

(5) Make a written determination based on the record including additional evidence submitted;

(6) Overturn or modify the determination of the hearing officer in whole or in part; and

(7) Commit the Corporation to a course of action, without regard to the amount of money at issue.

(b) The review officer does not have the authority to compromise claims or to waive provisions of the regulations or the contracts of the Corporation.

§ 400.89 Effect of decision.

(a) *Effective date.* When an appeal or review is concluded, the effective date of the action to be taken will be the date of the determination or decision being appealed.

(b) *Finality.* The decision made in an appeal is administratively final if no review is requested within the allowable time period. The decision made in a review is administratively final.

(c) *Timeliness.* Whenever an adverse determination concerning a policy or application is appealed and the hearing officer or review officer reverses or modifies the final administrative action, the official who made the determination shall resume processing of the policy or application and notify the appellant of this within 15 days after receipt of the decision of the hearing officer or review officer. The official will advise the appellant if any further information is needed to complete processing.

§ 400.90 Records.

The hearing record and review record will be maintained in the offices of the Appeals and Litigation Staff for a minimum of three years.

§ 400.91 OMB control numbers.

Office of Management and Budget (OMB) control numbers are contained in subpart H to part 400 in title 7 CFR.

§ 400.92 Basis of determination.

The hearing officer and the review officer may only determine facts and apply applicable statutes, rules and regulations, and procedures of the Corporation to those facts. The hearing officer and review officer have no authority to make equitable adjustments contrary to the statutes, rules and regulations, or procedures of the Corporation. Any decision of a hearing officer or review officer claiming to contradict published statutes, rules and regulations, or procedures is not within the authority of said officer and is void.

§ 400.93 Reservation of authority.

Nothing contained in the regulations in this subpart shall preclude the Manager of the Corporation from determining any question arising under the program to which the regulations in this subpart apply.

Done in Washington, DC, on December 3, 1991.

Jane Wittmeyer,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 91-31033 Filed 12-27-91; 8:45 am]

BILLING CODE 3410-08-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-0743]

Truth in Lending; Home Equity Disclosure Rules

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is requesting comment on whether to revise provisions in Regulation Z (Truth in Lending) dealing with disclosure of any discounted initial rate and the payment examples for home equity lines of credit. The rules in question relate to the Home Equity Loan Consumer Protection Act of 1988, which requires creditors to provide consumers with information for open-end credit plans secured by the consumer's dwelling. Although the final regulations implementing the law were adopted in June 1989, the approach adopted by the Board for disclosure of the discounted initial rate and certain payment examples has been examined by the U.S. Court of Appeals for the District of Columbia Circuit in recent litigation, and remanded to the Board for further consideration. The Board also is soliciting comment on a separate proposal to resolve a conflict between the home equity rules and provisions of the Federal Reserve Act and Regulation O (dealing with loans to bank executive officers).

DATES: Comment must be received on or before February 28, 1992.

ADDRESSES: Comments should refer to Docket No. R-0743 and be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may be delivered to room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays or to the guard station in the Eccles Building courtyard on 20th Street, NW (between Constitution Avenue and C Street, NW.) any time. Comments will be available for inspection in the Freedom of Information Office, room B-1122 of the Eccles Building between 9 a.m. and 5 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Leonard Chanin, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452-3667 or (202) 452-2412; for the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) Background

The Home Equity Loan Consumer Protection Act was enacted in November 1988. On January 23, 1989, the Board published for comment a proposed rule to implement the statute (54 FR 3063) and on June 9, 1989, adopted a final rule (54 FR 24670). Compliance with the regulation was mandatory as of November 7, 1989.

On November 1, 1989, Consumers Union filed suit against the Board challenging certain aspects of the regulation. Among other issues, Consumers Union challenged the provision in the regulation permitting

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creditors to suspend advances of credit during any period the rate cap is reached. Consumers Union also challenged the part of the regulation permitting creditors to give disclosures about any "repayment" period—that is, when advances are no longer made and the consumer is paying off the amount borrowered—at the time the repayment period begins, rather than at the time of application. In March 1980 the Board published a proposed rule to amend the regulation relating to the rate cap and delayed timing issues. (55 FR 10465.) In September 1990 the Board adopted a final rule (55 FR 38310) (correction notice to 55 FR 39536).

The U.S. District Court for the District of Columbia issued a decision in favor of the Board on other aspects of the Consumers Union lawsuit in May 1990. *Consumers Union* v. *Federal Reserve Board* (736 F. Supp. 337). Consumers Union appealed that decision to the U.S. Court of Appeals for the District of Columbia Circuit. In July 1991, the Court of Appeals issued its decision, deciding in favor of the Board on four of the issues presented on appeal, and remanding to the Board for further consideration two other issues. *Consumers Union* v. *Federal Reserve Board* (938 F.2d 266). The two issues deal with how creditors disclose a "teaser" or initial discounted rate, and the payment examples that must be provided in the preapplication disclosures. This notice solicits comment on these two issues.

The Board is soliciting comment on a third issue, unrelated to the litigation, which has arisen since the last revision of the home equity rules. That issue concerns the conflict between § 22 of the Federal Reserve Act, which regulates member bank loans to executive officers, and the substantive rules contained in the home equity statute.

(2) Proposed Amendments to Regulation Z.

(i) Teaser Rate Provision. The home equity statute provides that creditors must state any initial "teaser" or discounted rate in the preapplication disclosures. Specifically, the statute states: "[i]f an initial annual percentage rate is offered which is not based on an index—

[i] A statement of such rate and the period of time such initial rate will be in effect."

In the final regulations implementing the statute, the Board did not require that the discounted rate be stated. (Creditors are required to disclose the fact that the initial rate is discounted, state the period of time the rate will be in effect, and alert consumers to "ask about" the current discount rate.) In its briefs to the District Court and the Court of Appeals, the Board stated that the regulation diverged from the statutory language in reliance on the Board's "exception" authority.

The Truth in Lending Act grants the Board broad authority in implementing the statute. Section 105 of the act provides that implementing regulations "may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of (the Truth in Lending Act), to prevent circumvention or evasion thereof, or to facilitate compliance therewith." This broad delegation of authority to the Board has been recognized by the Supreme Court.[1] In its briefs to the District Court and Court of Appeals the Board argued that an exception from the statute's literal language was justified because of the difficulty of disclosing the varying discounted rates in the preprinted early disclosures. The Board's briefs stated that requiring the specific discount to be included on a preprinted form could lead to the curtailment of such a feature since the disclosures would have to be reprinted any time the discounted rate changes. The Board also noted that of most importance to the consumer is the *fact* that a rate is temporary and will increase after a short period of time, rather than the exact amount of the discount. Moreover, since discounted rates are lower than the fully indexed rate and beneficial to the consumer, it seems likely that lenders will make sure the consumer knows the current rate.

The Court of Appeals noted that the issue of the Board's exception authority had been raised for the first time during the course of the litigation, and had not been passed upon in the first instance by the Board itself. The Court thus remanded this portion of the regulation to the Board, to allow it to identify the scope of its exception authority under the Truth in Lending Act, and to decide whether an exception was necessary or appropriate in the case of the teaser rate provision.

Few commenters addressed the discount provision in the proposed regulation; thus the administrative record and other documents (such as the **Federal Register** notice) contain little discussion of this provision. The Board is soliciting additional comment on the teaser rate disclosure and whether it should be left unchanged based on the reasons discussed above (or other reasons) or revised. If it were revised, the regulatory language could more closely track the statutory language and require creditors to state the discounted rate in the early disclosure, and delete the statement telling consumers to ask about the current discount. Commenters are requested to address the advantages and disadvantages to consumers of amending the regulation to require disclosure of the specific teaser rate. In addition, comment is requested on alternatives, such as requiring lenders to state the discount as a range, either specific numbers—for example, 5% to 7%—or specific amounts below the fully indexed rate—for example, 2 to 4 percentage points below the fully indexed rate. Such a disclosure could also alert the consumer to "ask about" the current discount. This would be similar to the approach taken in disclosing interest rate limitations for variable-rate plans. The Board requests comment on whether and the extent to which stating the specific amount of the discount is more burdensome than stating the amount of time any discounted rate is in effect, which is a current requirement of the regulation. Finally, the Board requests comment on whether an exception is necessary or appropriate in the case of the discounted initial rate disclosure.

(ii) Payment Examples Issue

The statute requires three types of payment examples to be provided for home equity plans: (1) "An example" showing the minimum periodic payment and amount of time needed to repay the line, based on a $10,000 balance and a recent annual percentage of rate (the "minimum payment" example); (2) a statement of the minimum periodic payment based on a $10,000 balance when the maximum annual percentage rate is in effect (the "worst case" example); and (3) an historical table, based on a $10,000 extension of credit, showing how annual percentage rates and payments would have been affected by index value changes over the most recent 15 year period (the "historical example"). The statute says the worst case example and the historical example must be stated for "each repayment option" under the plan.

In implementing the statute, the Board chose to allow creditors to provide representative examples of the various payment options offered, rather than requiring separate examples for each payment option. Commenters on the proposed regulation stated that lenders often offer a number of minimum payment options to consumers. For example, a creditor may offer consumers the option of paying interest only or 1%, 2%, 3%, 4%, or 5% of the outstanding balance under its plan.

To try to ensure consumers were not overwhelmed with multiple payment examples, the Board created three categories of payment options: "Interest-only" plans requiring a fixed percentage or fraction of the outstanding balance; and all other payment options offered. (See comments 5b(d)(5)(iii)-2, 5b(d)(12)(x)-1, and 5b(d)(12)(xi)-7 of the Official Staff Commentary.) Under this rule, no matter how many payment options were offered, creditors would never have to disclose more than three minimum payment examples, three worst case examples, and three historical examples. Creditors would of course have to narratively describe all payment choices. In its briefs to the District Court and Court of Appeals the Board noted that requiring a worst case example and historical example for every payment option offered would result in "information overload" and would likely lead lenders to reduce the options offered to consumers. The briefs argued that the Board adopted a rule different from the one set out in the statute pursuant to its exception authority. Again, the Court of Appeals remanded this issue to the Board because the issue of the Board's exception authority under the Truth in Lending Act has not been developed in the rulemaking record, but was raised only in litigation.

The Board is thus soliciting additional comment on the payment example rules and whether they should be left unchanged based on the reasons given above (or other reasons) or revised. Specifically, comments are requested to address the advantages and disadvantages to consumers of requiring an historical example and worst case example for each payment option offered by the creditor. Commenters are also requested to discuss whether these examples provide necessary or appropriate use of the Board's exception authority under the Truth in Lending Act.

Regulatory language reflecting such an approach is included in this notice. If this approach were adopted the Board would make appropriate changes to the Official Staff Commentary to Regulation Z.

(iii) Home Equity and Regulation O issue

The home equity statute provides that a creditor may not terminate and demand payment of a line of credit except in three specified circumstances: fraud, failure of the consumer to make payments, and action by the consumer that impairs the security for the plan. The regulation implementing this provision provides that a creditor may not include in its contract a provision permitting it to terminate and accelerate the balance due except for these situations.

Section 22(g) of the Federal Reserve Act establishes rules relating to loans to executive officers by member banks. The law provides that a member bank may extend credit to its own executive officers provided "it is on condition that it shall become due and payable on demand of the bank" any time the person is indebted to any bank in an amount in excess of that prescribed by the appropriate federal banking agency. Regulation O, which implements the statute, provides that a bank making loans to any of its executive officers shall retain the right to call the loan any time the officer is indebted to the bank (or any other bank) in excess of 2.5% of the bank's capital and unimpaired surplus or $25,000 (whichever is higher), but in all cases any amount over $100,000. The statute and implementing regulation are intended to limit the risks of insider lending and implement safety and soundness policies.

If the home equity statute and section (22)(g) of the Federal Reserve Act were both given full effect, they could be read as effectively prohibiting home equity loans by member banks to their executive officers. The home equity statute prohibits calling a loan except in the circumstances specifically set forth in the statute. Section 22(g) of the Federal Reserve Act prohibits member banks from making loans to executive officers unless the bank retains the ability to demand payment of the loan in certain circumstances. The home equity statute does not recognize the condition as a permissible reason to call a line of credit. Thus, if both laws were given full effect, member banks could not offer home equity lines to their executive officers.

An alternative way of reconciling these provisions is by adherence to the rule that if two statutes are in irreconcilable conflict, the most recent should govern. (See, for example, *Natural Resources Defense Council* v. *United States Environmental Protection Agency*, 824 F.2d 1258 (1st Cir. 1987).) Adherence to the more recent home equity rules would mean the Congress intended to repeal the permissive provisions in section 22(g) allowing loans to executive officers under certain circumstances. Under this approach, member banks could offer home equity lines to their executive officers, but would be prohibited from including demand features.

The Board believes that the Congress, in enacting the home equity statute, did *not* intend to override the provisions in the Federal Reserve Act dealing with demand provisions in loans made to executive officers. Absent evidence to the contrary courts generally have not deemed the Congress to have repealed a prior law when there is no indication of Congressional intent to do so.[2] Repeals by implication are accepted with great reluctance by the courts.[3] There is no suggestion in the legislative history of the home equity statute that the Congress intended to repeal section 22(g) of the Federal Reserve Act and prohibit banks from making home equity loans to their executive officers.

The Board favors a different approach. The home equity statute deals broadly with home equity loans to borrowers generally, while section 22(g) of the Federal Reserve Act, which deal with loans to specific types of borrowers, is much more specific in its focus. Broad statutes are not typically deemed to override specific statutes, absent evidence of Congressional intent to achieve that result. (See, for example, *Morton* v. *Mancari*, 417 U.S. 535 (1974).)

The Board believes the proper way to reconcile these provisions is by giving effect to the policies contained in section (g) of the Federal Reserve Act. This would permit banks to include a demand provision in loans to executive officers under which banks could exercise the demand feature only under the circumstances set forth in Regulation O. This approach would create an exception to the home equity rules to accommodate the express terms of section 22(g). This approach would give effect to the policies contained in the Federal Reserve Act, and at the same time create a very limited exception to the home equity statute. In addition to the statutory analysis, the Board believes its exception authority under the Truth in Lending Act may provide a basis for modifying the home equity rules and permitting member banks to include a demand feature in lines of credit made to executive officers. Thus the Board is soliciting comment on a proposed modification to the home equity regulation permitting a bank to include a call feature in its contract for home equity lines for executive officers and exercise that feature as provided in

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[1] See *Anderson Bros. Ford* v. *Valencia*, 452 U.S. 205 (1981); *Ford Motor Credit Co.* v. *Milhollin*, 444 U.S. 555 (1980).

[2] See, for example, *Rodriguez* v. *United States*, 480 U.S. 522, (1987).

[3] See, for example, *Watt* v. *Alaska*, 451 U.S. 259 (1981).

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section 22(g) of the Federal Reserve Act and implementing Regulation O.

If such a change were made, it would raise a related question regarding disclosures. Currently, § 226.5b(d)(4)(iii) of Regulation Z requires creditors to state the conditions under which a creditor may terminate a plan and accelerate the balance. (Alternatively the creditor may include a statement with the disclosures that the consumer may receive upon request such information.) If the Board adopts the amendment to the home equity rules permitting a member bank to terminate the plan as permitted by the Federal Reserve Act and Regulation O, this would raise the issue of whether an additional disclosure should be made to executive officers alerting them to such a provision. Comment is solicited on whether executive officers would be adequately informed of such a provision by its inclusion in the contract, and whether this feature should be required to be disclosed with the early disclosures. Comment is also requested on whether the creation of a separate disclosure form for executive officers would impose unjustifiable costs and burdens on institutions, and whether inclusion of such a notice on a form given to all consumers would be desirable.

(3) Comments Requested

Interested parties are invited to submit comments on the proposal. Depending on the resolution of the teaser rate and payment example issues and the conflict between the home equity rule and Regulation O, in the final rule the Board may make conforming changes to the regulation, the model forms and clauses in appendix G, and the Official Staff Commentary. The Board is including language for the Regulation O issue and the teaser rate and payment example issues should the regulation be amended in response to issues raised by commenters.

(4) Economic Impact Statement

The Board's Office of the Secretary has prepared an economic impact statement on the proposed revisions to Regulation Z. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3245.

(5) Text of Proposed Revisions

Certain conventions have been used to highlight the revisions that would be necessary if the regulation were changed. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets. Pursuant to authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board proposes to amend Regulation Z, 12 CFR part 226, by modifying §§ 226.5b(d)(12)(v), 226.5b(d)(12)(vi), 226.5b(d)(12)(xi), 226.5b(f)(2)(ii), and 226.5b(f)(2)(iii), and by adding § 226.5b(f)(2)(iv).

List of Subjects in 12 CFR Part 226

Advertising; Banks, banking; Consumer protection; Credit; Federal Reserve System; Finance; Penalties; Rate limitations; Reporting and recordkeeping requirements; Truth in lending.

1. The authority citation for part 226 continues to read as follows:

Authority: Sec. 105, Truth in Lending Act, as amended by sec. 605, Pub. L. No. 96–221, 94 Stat. 170 (15 U.S.C. 1604 et seq); sec. 1204(c), Competitive Equality Banking Act, Pub. L. No. 100–86, 101 Stat. 552.

Subpart B—Open-End Credit

2. 12 CFR 226.5b is amended by revising paragraphs (d)(12) (v), (vi), and (xi), first sentence, and (f)(2) (ii) and (iii), and by adding paragraph (f)(2)(iv) to read as follows:

§ 226.5b Requirements for Home Equity Plans.

* * * * *

(d) *Content of disclosures.* * * *

(12) *Disclosures for variable-rate plans.* * * *

(v) A statement that the consumer should ask about the current index value, margin, [discount or premium,] and annual percentage rate.

(vi) [A statement that] ►If◄ the initial annual percentage rate is not based on the index and margin used to make later rate adjustments, ►the initial rate◄ and the period of time such initial rate will be in effect.

* * * * *

(xi) An historical example ►for each payment option◄, based on a $10,000 extension of credit, illustrating how annual percentage rates and payments would have been affected by index value changes implemented according to the terms of the plan. * * *

* * * * *

(f) *Limitations on home equity plans.* No creditor may, by contract or otherwise—

(1) * * *

(2) * * *

(i) * * *

(ii) The consumer fails to meet the repayment terms of the agreement for any outstanding balance; [or]

(iii) Any action or inaction by the consumer adversely affects the creditor's security for the plan, or any right of the creditor in such security [.] ►; or

(iv) Federal law dealing with credit extended to executive officers of a depository institution specifically requires that as a condition of the plan the credit shall become due and payable on demand.◄

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 20, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91–30918 Filed 12–27–91; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 556

Policy Statement on Branching by Federal Savings Associations

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Proposed rule.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to amend its policy statement on branching by federal savings associations. The proposed amendment deletes current regulatory restrictions on the branching authority of federal savings associations to permit nationwide branching to the extent allowed by federal statute. The amendment is intended to facilitate consolidation and geographic diversification among savings associations, and thereby foster safety and soundness, and to improve the quality of services available to customers. The proposal also clarifies a provision regarding examination of a branching applicant's past record of compliance with the Community Reinvestment Act (CRA) and otherwise updates and streamlines the branching policy statement by deleting some provisions and consolidating the remaining paragraphs by subject matter

DATES: Comments must be received on or before January 29, 1992.

ADDRESSES: Send comments to: Director, Information Services Division, Office of Communications, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at 1776 G Street, NW., street level.

FOR FURTHER INFORMATION CONTACT: Michael P. Vallely, Senior Attorney, (202) 906–6241; Kevin A. Corcoran, Assistant Chief Counsel, (202) 906–6962; V. Gerard Comizio, Deputy Chief Counsel, Corporate and Securities Division, (202) 906–6411; Julie L. Williams, Senior Deputy Chief Counsel, (202) 906–6459, Therese L. Monahan, Project Manager, Supervisory Programs, (202) 906–5740; or Paula Lane, Financial Analyst, Corporate Activities Division, (202) 906–6727; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Framework

Section 5(r) of the Home Owners' Loan Act (HOLA),[1] applicable to federal associations since enactment of the Garn-St Germain Act of 1982, permits a federal savings association to branch outside of its home state if the association meets the domestic building and loan test of section 7701(a)(19) of the Internal Revenue Code or the asset composition test of subparagraph (c) of that section,[2] and it, with respect to each state outside of its home state where the association has established branches, the branches, taken alone, also satisfy one of the two tax tests. Few other laws have been enacted that restrict or otherwise limit the branching authority of federal savings associations.[3]

Through the HOLA, the Congress has given the OTS and its predecessor, the Federal Home Loan Bank Board (Bank Board), exceptionally broad authority to regulate, from "cradle to grave," [4] the branching operations and other activities of federal thrifts. On numerous occasions the courts have confirmed that the OTS's authority in this respect is plenary and not bounded by any restrictions of state law.[5] Pursuant to this authority, therefore, federal savings associations may be allowed to branch on an interstate basis.

Notwithstanding this broad and plenary authority, however, for various policy reasons, the OTS and the Bank Board had restrained the scope of permissible branching with the branching policy statement. Even before promulgation of the first branching policy statement in 1967, the Bank Board had imposed additional restrictions on branching by federal associations beyond those required by statute. However, since 1981, amendments to the branching policy statement gradually have expanded the branching authority of federal thrifts in recognition of the emerging national market for depository institution consumer services and to encourage the acquisition of failing associations.[6]

B. Reasons For Allowing Nationwide Branching By Federal Associations

Allowing federal savings associations to branch interstate to the full extent permitted by statute will enable thrifts to diversify geographically their operations and thereby enhance safety and soundness. Associations with interstate networks will be able to diversify their loan portfolios and lines of business, and thereby spread the risk of losses resulting from fluctuations in regional economies. Some associations that are currently subsidiaries of multiple savings and loan holding companies also may be able to reduce costs and enjoy economies of scale by consolidating operations into one association.

While the ability to expand nationwide is not alone the solution to avoiding future costly failures of thrift institutions, in conjunction with the new capital standards and safeguards against risky investments applied to savings associations by the FIRREA, interstate branching ability can be an important cornerstone in a new foundation of institutional safety and soundness. The primacy of the federal interest in such stability and the solvency and viability of the federal deposit insurance system has recently been emphatically reaffirmed by the courts.[7]

The proposal also reflects and responds to the unprecedented liberalization of state thrift and bank branching laws seen in the decade of the 1980s. From 1982 to the present, 13 states passed nationwide banking or branching laws generally permitting associations from any state in the United States to acquire the branches of an in-state association or establish new branches within state, while, prior to 1982, only one state had allowed such form of interstate expansion. In the same period, 21 states enacted laws that could be characterized as permitting nationwide banking or branching on a reciprocal basis; that is, on the condition that reciprocal privileges are available to in-state associations branching in the foreign jurisdiction. An additional 18 states now have laws generally permitting interstate banking or branching, on a reciprocal basis, by out-of-state associations from specified regions. Many of these so-called national and regional reciprocity laws impose some restrictions and conditions regarding the types of transactions by which branching may be effected.

Presently, all but four states provide for some degree of interstate branching by commercial banks via acquisition of banks by bank holding companies headquartered in other states. Most of these states have laws that require reciprocity, and some states restrict branching to specific regions of states.[8]

Thus, the OTS believes that nationwide branching authority for federal savings associations will enhance the safety and soundness of the industry, reduce operating costs, increase healthy competition among depository institutions, and improve the quality of services furnished to customers. These benefits will help decrease the risk to the SAIF deposit insurance fund and, ultimately, to the taxpayer.

II. Revisions

A. Nationwide Branching Authority

Under the proposed amendment, paragraphs 556.5 (a)(1) and (a)(2) of the branching policy statement have been combined and modified to eliminate limitations imposed by the branching policy statement on federal savings associations' ability to branch throughout the United States and its

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[1] 12 U.S.C. 1464(r).

[2] The requirement of meeting this test does not apply if: (1) The branch results from an emergency acquisition authorized under section 13(k) of the Federal Deposit Insurance Act (FDIA); (2) the branch was authorized for the association prior to October 15, 1982; (3) a state-chartered association organized under the laws of the federal association's home state would be permitted under relevant state law to operate in the other state; or (4) the branch was operated as a branch under state law prior to the association's conversion to a federal charter. The law also gives the Director of the OTS the discretion to allow the association, for good cause shown, up to two years to comply with the law.

[3] Section 10(e)(3) of the HOLA, 12 U.S.C. 1467a(e)(3) (as added by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA)); section 13(k)(4) of the FDIA, 12 U.S.C. 1823(k) (as added by section 217 of the FIRREA).

[4] *Fidelity Federal Savings and Loan Ass'n* v. *De La Cuesta*, 458 U.S. 141, 145, 102 S.Ct. 3014, 73 L.Ed.2d 664, 670 (1982) *citing People* v. *Coast Federal Savings and Loan Ass'n*, 96 F. Supp. 311, 316 (S.D Cal. 1951).

[5] *Id. See also Independent Bankers Ass'n of America* v. *Federal Home Loan Bank Board*, 557 F. Supp. 23 (D.D.C. 1982); *Smallwood* v. *OTS*, No. 90–3183 (6th Cir. Feb. 7, 1991).

[6] 46 FR 19221 (Mar. 30, 1981; 46 FR 45120 (Sept. 10, 1981); 47 FR 34125 (Aug. 6, 1982); 51 FR 16288 (May 2, 1986); 51 FR 16501 (May 5, 1986).

[7] *See Smallwood* v. *OTS*.

[8] See Report of the U.S. Treasury, "Modernizing the Financial System, Recommendations for Safer, More Competitive Banks," Discussion Chapter XVII. February 5, 1991 (submitted to the President of the Senate and the Speaker of the House of Representatives).

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territories. The limitations that remain are statutory.

Paragraph 556.5(b)(1) of the proposal prohibits establishment or operation of a branch outside the state in which the association has its home office if such branching would violate section 5(r) of the HOLA.

The second limitation at paragraph 556.5(b)(2) of the proposal prohibits any branching that would result in formation of a multiple savings and loan holding company controlling savings associations in more than one state in violation of section 10(e)(3) of the HOLA.[9] Formation of multistate multiple savings and loan holding companies are prohibited unless one of three exemptions set forth in sections 10(e)(3)(A)–(e)(3)(C) of the HOLA are met. The first exemption authorizes a savings and loan holding company or any of its savings association subsidiaries to acquire an association or operate branches in additional states pursuant to the supervisory acquisition provisions of section 13(k) of the FDIA. The second exemption permits a savings and loan holding company that, as of March 5, 1987, controlled an association subsidiary that operated an office in the additional state or states to acquire another association or branch in that state. The third exemption permits interstate holding company operations if the statutory law of the state in which the association to be acquired is located specifically authorizes acquisition of its state-chartered associations by state-chartered associations or their holding companies in the state where the acquiring association or holding company is located.

Paragraph 56.5(b)(3) of the proposal prohibits establishment and operation of new branch offices by an association in violation of section 13(k)(4) of the FDIA.[10] Section 13(k)(4) generally permits savings associations eligible for assistance under section 13(c) of the FDIA that are acquired by banks or bank holding companies pursuant to section 13(k) of the FDIA to retain and continue to operate branches existing at the time of the acquisition.

B. Provisions Under the Community Reinvestment Act of 1977

The proposal also clarifies provisions regarding compliance with the Community Reinvestment Act of 1977 (CRA) by all branching applicants.[11]

[9] Note 3 *supra*.

[10] *Id.*

[11] Housing and Community Development Act of 1977, Pub. L. No. 95–128, tit. 8, sec. 802, 91 Stat. 1147 (*codified at* 12 U.S.C. 2901, *et seq.* (1980)).

Consistent with the CRA [12] and the OTS's regulations thereunder,[13] the branching policy statement requires the OTS to review and evaluate a branching applicant's record of compliance with the CRA. In addition, the CRA, the regulations and the branching policy statement indicate that such a record may be the basis for denial of a branching application.

On March 21, 1989, the Bank Board, along with the other federal financial institution regulatory agencies, adopted a policy statement on the CRA (the CRA policy statement) to update implementation of the law and re-emphasize the importance of compliance with the CRA by all regulated financial institutions.[14] The CRA policy statement stressed that an applicant for branching or other type of transaction should address the applicant's CRA responsibilities and have policies necessary for compliance in place and working before filing an application. The CRA policy statement also noted that, in general, commitments for future action cannot be used to overcome a seriously deficient record of performance, but may, where appropriate, justify conditional approval effective only after the applicant has satisfied all appropriate conditions.

To emphasize the importance of an applicant's past record of CRA compliance, the proposal modifies the CRA provisions of the branching policy statement to state that, in most cases, commitments by a branching applicant for future action to improve the applicant's record of compliance with the CRA, however detailed, shall not be sufficient to overcome a deficient CRA record at the time of application.

III. Technical Revisions

Under the proposed amendment, the provisions regarding protest and oral argument procedures have been deleted as duplicative and replaced by a new provision that requires compliance with the procedures set forth in other policy pronouncements of the OTS. A reference also has been made to the OTS's branching application requirements at 12 CFR 545.92. Several provisions of the branching policy statement have been consolidated into new paragraphs grouped by common subject matter to enhance comprehension.

The proposal also deletes paragraph 556.5(h) that provides that when an association applies to establish a branch within the market area of another savings association having a similar name, the OTS may prescribe the name of such branch and the type of advertising that may be used in connection with it to "minimize public confusion and prevent unfair competition." This paragraph has remained essentially unchanged from its adoption in 1980. The Bank Board occasionally permitted (and, in the case of a protested application, required) use of a "doing business as" or trade name for a branch to minimize public confusion and promote safe and sound practices. The standards in paragraph 556.5(h) are very similar to those in the Bank Board's corporate title regulation, 12 CFR 543.1, prior to its amendment in 1982. With that amendment, the Bank Board eliminated consideration of unfair competition and trademark infringement issues from corporate title review standards because, among other things, these issues were better addressed in other forums and the procedures then in place for review of these issues were inadequate. A conforming change was not made to the branching policy statement, however. This inadvertent omission is corrected in the proposed rule. Henceforth, the OTS generally will not attempt to referee unfair competition and trademark infringement disputes. Such disputes will be left to the parties to settle in litigation or by other appropriate means. Similarly, and for the same reasons, the "public confusion" language has been eliminated from the branching policy statement.

Solicitation of Comments

The OTS solicits comment on all aspects of this proposed regulation. To facilitate processing of comments, the OTS requests that any comments clearly reference the Resolution Number of this proposal. The OTS has determined that a thirty (30)–day public comment period is appropriate because prompt action is in the public interest.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Executive Order 12291

The OTS has determined that this proposed regulation does not constitute a "major rule" for purposes of Executive Order 12291. Therefore, preparation of a regulatory impact analysis is not required.

[12] U.S.C. 2903.

[13] 12 CFR 563e.8.

[14] See Resolution No. 89–1039.

List of Subjects in 12 CFR Part 556

Savings associations.

Accordingly, the Director of the OTS hereby proposes to amend part 556, chapter V, title 12, Code of Federal Regulations, as set forth below:

SUPCHAPTER C—REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS

PART 556—STATEMENTS OF POLICY

1. The authority citation for part 556 continues to read as follows:

Authority: Sec. 552, 80 Stat. 388, as amended (5 U.S.C. 552); sec. 559, 80 Stat . 388, as amended (5 U.S.C. 559); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 341, 98 Stat . 1505, as amended (12 U.S.C. 1701j–3); secs. 902–920, as added by sec. 2001, 92 Stat. 3728–3741, as amended (15 U.S.C. 1693–1693r).

2. Section 556.5 is revised to read as follows:

§ 556.5 Establishment of branch offices.

(a) *General.* As a general policy, the OTS permits a federal savings association to branch freely in any state or states of the United States and its territories, except as provided in paragraph (b) of this section.

(b) *Limitations.* No branching will be permitted under paragraph (a) of this section that will result in the following:

(1) Establishment or operation of a branch outside the state in which the association has its home office in violation of section 5(r) of the Home Owners' Loan Act;

(2) Formation by any company of a multiple savings and loan holding company controlling savings association in more than one state in violation of section 10(e)(3) of the Home Owners' Loan Act; or

(3) Acquisition of a savings association and the establishment and operation of new branches by such savings association in violation of section 13(k)(4) of the Federal Deposit Insurance Act.

(c) *Branching applications—(1) General.* Prior to opening a branch, an association must obtain approval of a branching application pursuant to § 545.92 of this subchapter. The OTS may approve or deny an application based on information available from any source and supervisory objection may be interposed at any point during the processing of the application. In granting supervisory clearance to an applicant, the OTS will consider whether the policies, condition, and operation of the applicant are satisfactory and afford no basis for supervisory objection.

(2) *Regulatory capitol.* For supervisory clearance, an association's regulatory capital should meet or exceed the minimum requirements established by law and applicable regulations of the OTS.

(3) *Community reinvestment.* Pursuant to the Community Reinvestment Act of 1977 (12 U.S.C. 2901), the OTS encourages savings associations to help meet in an affirmative and continuing manner the credit needs of all communities in which they do business, including low- and moderate-income neighborhoods, consistent with safe and sound operation. The OTS will review and evaluate an applicant's record under part 563e of this chapter, may deny an application based on the assessment of an association's CRA record, and may approve a branch application on condition that the association improve specific aspects of its community-investment-related practices and performance. However, in must cases, commitments by an applicant to improve an applicant's record of compliance with the CRA shall not be regarded as sufficient to overcome a deficient CRA record at the time of application.

(4) *Protest and oral argument.* Protests to applications for branches must be submitted in writing and factually documented. Procedures governing protests and oral arguments are set forth in supervisory guidance issued by the OTS.

(5) *Expiration of approvals.* If an association does not open a branch within the time specified in the approval, and the Director or his or her designee finds that the association is not making a good-faith effort to open the branch promptly, the approval will be deemed to have expired and the association will be required to reapply if it wants to branch in that location.

(d) *Branch closings.* Pursuant to § 545.94 of this subchapter, the OTS requires an association to notify the OTS when it plans to close a branch.

Dated: March 5, 1991.
By the Office of Thrift Supervision

Timothy Ryan,

Director.

[FR Doc. 91–30906 Filed 12–27–91; 8:45 am]
BILLING CODE 6720–01–M

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 902

[91–641]

Operations

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board ("Finance Board") proposes to establish: the procedures for the semiannual assessments on the Federal Home Loan Bank System for Finance Board administrative and operating expenses; the procedures for conducting the Finance Board's monthly survey of rates and terms on conventional, one-family nonfarm mortgage loans; the schedule of fees for services available from the Finance Board; and the Minority Contractors Outreach Program.

DATES: Comments must be submitted by January 29, 1992.

ADDRESSES: Comments may be mailed to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Charles Szlenker, Attorney, Office of General Counsel, (202) 408–2554, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. General

This regulation establishes procedures for various Finance Board administrative activities not directly related to the supervision of the Federal Home Loan Banks ("FHLBB"), yet required under either the Federal Home Loan Bank Act ("Bank Act") or other statutes.

1. Assessments

The Bank Act, as amended, provides for funding of the Finance Board through semiannual assessments levied on the FHLBanks. This funding mode is similar to the one used by the former Federal Home Loan Bank Board ("FHLBB"), with one notable difference. While the FHLBB was subject to an appropriations process, (15 U.S.C. 712a(b)(1) (1988) repealed: 103 Stat. 183, 436 (1989)), the Finance Board's funds have a nonappropriated status. 12 U.S.C. 1422b(c). Accordingly, the procedure proposed by the Finance Board to assess the Federal Home Loan Banks will differ somewhat from the procedure used by the FHLBB. The essential difference is that the Finance Board must formally adopt its annual budget prior to assessing the FHLBanks, whereas previously, the FHLBB's overall budget was determined through enactment of the annual Housing and Urban Development—Independent Offices Appropriations Acts.

2. Monthly Interest Rate Survey

Section 731 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Public Law No.

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101–73, 103 Stat. 183, 423–426 (1989) amended section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) and section 305 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454) to make the Finance Board responsible for conducting a monthly survey of conventional, one-family nonfarm mortgage loans by all major lenders in order to determine a national average one-family house price. This survey was previously conducted by the FHLBB. This regulation details the procedures by which the Finance Board will conduct its survey.

3. User Fee Charges

Section 9701 of title 31, United States Code (31 U.S.C. 9701), calls for each federal agency to charge an appropriate fee for any services provided by it to only selected members of the public. The Office of Management and Budget provides guidance for agencies on promulgating such fees by regulation. The Finance Board provides an early fascimile transmission ("FAX") service to recipients of its adjustable-rate mortgage index, called "National Average Contract Mortgage Rate for Purchase of Previously Occupied Homes by Combined Lenders." These regulations provide the schedule of fees for such service.

4. Minority Contracting Requirements

Subsection (c) of section 1216 of the Financial Institutions, Reform, Recovery and Enforcement Act of 1989, 103 Stat. 183, 529–30 (1989) *codified at* 12 U.S.C. 1833e, requires the Finance Board to promulgate regulations establishing a minority outreach program in conjunction with its contracts for the procurement of goods or services in furtherance of its duties or mission. This regulation implements that requirement.

B. Administrative Procedure Act

The Finance Board is adopting this regulation as a proposed rule with a thirty day notice and comment period.

C. Regulatory Flexibility Act

The Board of Directors certifies that this rule will not have a significant economic impact on a substantial number of small entities. Four out of the five topics herein deal with internal agency procedures, and only the Minority Contractors Outreach Program will effect small entities. However, it will not have a substantial effect because of the nature of the Finance Board's procurement process. A portion of Finance Board procurement contracts already go to minority-owned entities. The Minority Contractors Outreach Program is a recruitment program and does not establish quotas or otherwise alter the agency's established procurement process for goods or services.

List of Subjects in 12 CFR Part 902

Assessments, Federal home loan banks, Government contracts, minority businesses, mortgages.

Accordingly, the Finance Board proposes to add part 902 as follows:

PART 902—OPERATIONS

Sec.

902.1 Definitions.
902.2 Assessments.
902.3 Mortgage interest rate survey.
902.4 Schedule of charges for agency services.
902.5 Minority Contractors Outreach Program.

Authority: Sec. 2B, as added by 103 Stat. 183, 413 (12 U.S.C. 1422b); sec. 18(b) as amended by 103 Stat. 183, 419 (12 U.S.C. 1438(b)); Pub. L. No. 101–73, 103 Stat. 183, 529–30 (1989) (12 U.S.C. 1833e).

§ 902.1 Definitions.

As used in this part:

Bank means a Federal Home Loan Bank.

Bank System means the Federal Home Loan Bank System, consisting of all twelve Banks.

Board of Directors means the governing Board of Directors of the Federal Housing Finance Board.

Business means an enterprise, including a firm, corporation, joint stock company, partnership, joint venture or association that engages in commerical activity on a regular basis.

Chairperson means the Chairperson of the Board of Directors.

Finance Board means the Federal Housing Finance Board.

Minority means:

(1) A male person or persons classified as either an African-American, a Native-American, a Hispanic-American, or an Asian-American; or

(2) A female person or persons regardless of ethnic or racial classification.

Minority-owned entity means a business, including an enterprise, corporation, professional association, partnership, joint stock company or joint venture that is:

(1) Owned or controlled by any combination of African-Americans, Native-Americans, Hispanic-Americans or Asian-Americans, regardless of gender, where such ownership or control includes the management of the daily business operations; or

(2) Owned or controlled by female persons, regardless of ethnic origin, where such ownership or control includes the management of its daily business operations.

§ 902.2 Assessments.

(a) Pursuant to section 18(b) of the Federal Home Loan Bank Act, as amended, the Finance Board will assess the Bank System for such funds as may be necessary to meet the annual administrative and operating expenses of the Finance Board. This section governs the procedures under which each Bank shall be assessed for its portion of the Finance Board's annual administrative and operating expenses.

(b) Prior to the end of each calendar year, or as soon as possible thereafter, the Board of Directors shall adopt a resolution approving an annual budget for all Finance Board expenses for the next calendar year. A copy of such resolution shall be forwarded to each Bank president.

(c) The Finance Board shall make two assessments on the Bank System for each calendar year. The first assessment shall cover the first six-month period of each calendar year, and the second assessment shall cover the second such period.

(d) Each assessment for each six-month period on the Bank System will be for one-half of the budget approved by the Board of Directors pursuant to paragraph (b) of this section, except that such amount may be offset by:

(1) Revenues received by the Finance Board from subleasing portions of its office building in the District of Columbia; and

(2) Funds, determined by the Finance Board to be surplus funds from prior assessments, in the Finance Board's special deposit account in the United States Treasury at the time of assessment.

(e) Each assessment made pursuant to this section shall be paid by the Bank System. Each Bank's *pro rata* share of such assessment will be based on the total paid-in value of all capital stock of the Bank System.

(f) Prior to an assessment being made pursuant to this section, the Board of Directors shall adopt a resolution notifying the Banks that an assessment is being levied for a particular six-month period, with a copy of such resolution being forwarded to each Bank president.

(g) Following the notification in paragraph (f) of this section, the Chairperson, or designee, shall determine the assessment for each Bank and notify the Banks in writing of the amount due under the assessment, based on the formula in paragraph (e) of this section.

(h) Unless otherwise instructed by the Chairperson, or designee, each Bank may transfer its *pro rata* share of an assessment to the Finance Board in equal monthly installments over the six-month period covered by the assessment.

§ 902.3 Mortgage Interest Rate Survey.

The Finance Board conducts its Monthly Survey of Rates and Terms on Conventional One-Family Nonfarm Mortgage Loans in the following manner:

(a) *Initial survey.* Each month, the Finance Board samples approximately 1,000 mortgage lenders (savings and loan association, savings banks, commerical banks, and mortgage loan companies) to report the terms and conditions on all conventional mortgages (not federally insured or guaranteed) used to purchase single-family homes that each such lender closes during the last five working days of the month. In most cases, the information is reported electronically in a format similar to Finance Board Form FHFB 10–91. The data is weighted so that the pattern of weighted responses matches the actual pattern of mortgage originations by lender type, by lender size class, and by state. The Finance Board tabulates the data and publishes it late in the following month.

(b) *Adjustable-rate mortgage index.* The weighted data, tabulated and published pursuant to paragraph (a) of this section, is used to compile the Finance Board's adjustable-rate mortgage index, entitled the "National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders." This index is the successor to the index maintained by the former Federal Home Loan Bank Board and is used for determining the movement of the interest rate on the renegotiable rate mortgages.

(c) *Means of survey.* The Finance Board collects the data for the compilation of the indices described in this section by contract. Pursuant to such contract, a Finance Board form, entitled "Monthly Survey of Rates and Terms on Conventional One-Family Nonfarm Mortgage Loans" (FHFB Form 10–91), is distributed to selected lending institutions. The data is collected, compiled and processed, and the completed survey results are forwarded to the housing Finance Directorate of the Finance Board for tabulation and distribution.

§ 902.4 Schedule of charges for agency services.

(a) *Authority.* Section 9701 of title 31, United States Code, directs government agencies to charge a fee for any special service provided to a selected segment of the public who make use of such special service (31 U.S.C. 9701). The Office of Management and Budget's Circular A–25 contains guidelines for agencies to follow when promulgating regulations for such user fee charges. This section implements this authority.

(b) *ARM Index FAX Broadcast Service.* The Finance Board makes available for early morning special facsimile transmission ("FAX") a particular adjustable-rate mortgage ("ARM") index, from its Mortgage Interest Rate Survey, which is called the "National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders."

(1) *Subscription.* (i) The ARM Index FAX Broadcast Service is available on an annual subscription basis only. Parties may subscribe to the service by contacting the Housing Finance Directorate, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, and forwarding the necessary fees to the same address.

(ii) Subscribers may cancel their subscriptions by notifying the Housing Finance Directorate.

(2) *Fee charge*—(i) *Schedule.* The annual fee of the ARM Index FAX Broadcast Service is $36.00, representing twelve months of service at $3.00 per month;

(ii) *Prepayment.* Each request for subscription to the ARM Index FAX Broadcast Service must be accompanied by a remittance of the entire annual fee for the subscription period;

(iii) *Form of prepayment.* Each fee prepayment accompanying a request must be by check, bank draft or a money order issued by the United States Postal Service and made payable to the Federal Housing Finance Board;

(iv) *Refund of prepayment.* Upon cancellation of the ARM Index FAX Broadcast Service, the Finance Board will remit to the canceling subscriber three (3) dollars for every month of canceled service, except that no money will be refunded for any fraction of a month.

(3) *Special programming charge.* The Finance Board may at its discretion provide special tabulations of other Mortgage Interest Rate Survey for individual users, upon written request, at the prepaid price of $100 per hour for the analyst's time, with a minimum charge of $100.

§ 902.5 Minority Contractors Outreach Program.

(a) *Scope.* (1) This section establishes the Finance Board's Minority Contractors Outreach Program and designates the officials responsible for implementing the Program and its oversight.

(2) The Minority Contractor Outreach Program:

(i) Seeks to encourage the maximum participation of minorities in all Finance Board procurement contracts for goods or services;

(ii) Shall operate consistent with the principle of full and open competition for all Finance Board contracts, and the concept of contracting for minimum agency needs at the lowest practical cost; and

(iii) Shall not be construed to be a substitute means of procurement for the Finance Board's established procedural process for the procurement of goods or services.

(b) *Responsibilities.* (1) The Director of Administration shall have general oversight of the Minority Contractors Outreach Program.

(2) The Chairperson shall:

(i) Appoint a Minority Contractors Advocate; who shall—

(A) Have primary responsibility for furthering the purposes of the Minority Contractors Outreach Program;

(B) Be responsible for challenging barriers to, and promoting maximum participation by, minorities or minority-owned entities in the Finance Board procurement process;

(C) Develop a manual describing the procedures by which the Finance Board will implement the Minority Contractors Outreach Program.

(ii) Assign such Advocate only such duties or responsibilities, with respect to the Minority Contractors Outreach Program, as are consistent with this section, and shall not assign such Advocate any duties of a contracting officer or of a technical representative on a contract.

(c) *Program components.* The Minority Contractors Outreach Program procedures shall include the following:

(1) *Contractor File.* (i) The Minority Contractors Advocate shall compile and maintain an ongoing file consisting of minority contractors or minority-owned entities that are interested in contracting with the Finance Board for goods or services through the competitive bidding or negotiation procurement process.

(ii) The information in such file shall list the current name and address of each such minority contractor or minority-owned entity and shall

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categorize each name and address as follows:

(A) Accounting services;
(B) Building support services;
(C) Computer services;
(D) Consulting services;
(E) Legal services;
(F) Office supplies and equipment.

(2) *Solicitation.* The Minority Contractors Advocate shall implement a procedure for soliciting potential candidates for the contractor file provided for in paragraph (c)(1) of this section, by means of any of the following:

(i) Referrals from executive departments, agencies or instrumentalities of the Federal Government;

(ii) Direct solicitation of selected candidates;

(iii) Advertising by direct mail or publications specifically directed to minorities, or minority-owned entities;

(iv) Sponsoring Finance Board seminars designed to explain the Minority Contractors Outreach Program to minority contractors or minority-owned entities who have the potential of contracting with the Finance Board;

(v) Attendance at conventions, seminars or other professional conferences of minorities or minority-owned entities.

(3) *Certification.* (i) No minority contractor or minority-owned entity (whether solicited by the Minority Contractors Advocate or not) may participate in the Finance Board procurement process as a minority contractor or minority-owned entity unless certified as such by the Chairperson, or designee.

(ii) The certification shall be by a means and form approved by the Finance Board.

(iii) Nothing in this section shall be deemed to prevent an non-certified minority contractor or minority-owned entity from participating in the procurement process as a contractor or entity not designated or deemed a minority or minority-owned.

(4) *Promotion.* (i) The Minority Contractors Advocate shall maintain an ongoing campaign of promotion of the Minority Contractors Outreach Program with all certified minority contractors and minority-owned entities.

(ii) This campaign shall include:

(A) Ongoing promotion of the Minority Contractors Outreach Program with certified minority contractors and minority-owned entities;

(B) Alerting appropriate certified minority contractors and minority-owned entities when the Finance Board makes a solicitation for a bid or initiates the negotiation of a procurement contract for goods or services;

(C) Acting as a liaison between the Finance Board contracting authorities and a particular minority contractor or minority-owned entity; and

(D) Assisting any certified minority contractor or minority-owned entity to understand Finance Board contracting procedures or other information regarding a particular bid or contract.

(iii) Nothing in this paragraph shall authorize the Minority Contractors Advocate to represent the interests of any minority contractor or minority-owned entity in any contract matter or bid before the Finance Board.

(5) *Contract award guidelines.*—(i) *Contracts not exceeding $25,000.* The Finance Board Contracting Officer shall, from time to time, award contracts for the procurement of goods or services, that do not exceed $25,000 in cost, to certified minority contractors or minority-owned entities listed in the contractor file provided for in paragraph (c)(1) of this section, to the extent not inconsistent with the principles of the Federal Government procurement process and the need of full and open competition. Such awards shall be made after consultation with the Minority Contractors Advocate.

(ii) *Contracts exceeding $25,000.* Contracts for goods or services that exceed $25,000 will be awarded strictly on the basis and principles of the Federal Government procurement process and the need for full and open competition. The Finance Board Contracting Officer and the Minority Contractors Advocate shall work to ensure, promote and facilitate the maximum participation of minority contractors or minority-owned entities in the Finance Board's procurement of goods or services in excess of $25,000.

By the Federal Housing Finance Board.

Dated: December 18, 1991.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 91-31008 Filed 12-27-91; 8:45 am]

BILLING CODE 6725-01

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12 CFR Part 904

[91-642]

Freedom of Information Act Regulations

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board ("Finance Board") proposes to issue regulations governing procedures for disclosure of information and records to the public pursuant to the Freedom of Information Act ("FOIA") (5 U.S.C. 552).

DATES: Comments must be submitted by January 29, 1992.

ADDRESSES: Comments may be mailed to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Charles Szlenker, Attorney, Office of General Counsel, (202) 408-2554, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") amended the Federal Home Loan Bank Act ("Bank Act") to create the Finance Board as an independent executive agency responsible for regulating the Federal Home Loan Bank System. 12 U.S.C. 1422a(a)(2) (Supp. I 1989). As such, the Finance Board is required to adopt regulations implementing the FOIA and to publish a fee schedule. 5 U.S.C. 552(a)(4) (1988). These proposed regulations fulfill that mandate. The FOIA further stipulates that an agency's FOIA fees conform to guidelines promulgated by the Office of Management and Budget ("OMB"). *Id.* at 552(a)(4)(A)(i). Accordingly, the Finance Board's fee schedule for FOIA is based on the OMB guidelines. 52 FR 10012 (Mar. 27, 1987). In formulating the FOIA fees, the Finance Board was guided by the cost to the Finance Board of complying with a FOIA request for information and by the fee schedules adopted by the Federal Deposit Insurance Corporation, the Office of Thrift Supervision and the Board of Governors of the Federal Reserve System.

The FIRREA continued the regulations of the former Federal Home Loan Bank Board in effect until superseded by the appropriate successor. 103 Stat. 183, 357 (1989). These new regulations will replace the former Federal Home Loan Bank Board's FOIA regulations.

Regulatory Flexibility Act

In accordance with section 605(b) of title 5, United States Code, the Board of Directors of the Finance Board hereby certifies that these proposed regulations will not have a significant impact on a substantial number of small entities. The Board reaches this conclusion because of (1) the very small number of FOIA requests handled by the Finance Board since its creation in August of 1989 and because (2) in most of those FOIA requests, the fee—if it had been assessed—would have fallen within the free 100 pages or two search hours exceptions. Accordingly, an analysis of the regulatory flexibility issues is not necessary

List of Subjects in 12 CFR Part 904

Freedom of information

Accordingly, the Finance Board hereby amends part 904 by revising the part heading, and by adding the text, to read as follows:

PART 904—AVAILABILITY AND CHARACTER OF RECORDS

Sec.

904.1 Purpose and scope
904.2 Definitions.
904.3 Published information.
904.4 Records available to public.
904.5 Procedure for requesting records.
904.6 Fees for records disclosed.
904.7 Records not disclosed.
904.8 Disclosure of Federal Home Loan Bank examination reports to Financial Regulatory Agencies.
904.9 Records of Financial Regulatory Agencies held by Federal Housing Finance Board.
904.10 Service of process.

Authority 5 U.S.C. 552, 12 U.S.C. 1422b(a)(1).

§ 904.1 Purpose and scope.

(a) This part implements section 552 of Title 5, United States Code, requiring the Federal Housing Finance Board to issue regulations informing the public of the places at which, the officers from whom, and the methods whereby the public may request records, and to set a uniform schedule of fees for obtaining records.

(b) Any action or determination required or permitted by this part to be performed by the Board of Directors, Executive Secretary or General Counsel may be delegated to another responsible Finance Board officer or employee specifically designated for that purpose.

§ 904.2 Definitions.

As used in this part:

Board of Directors means the five member governing Board of Directors of the Federal Housing Finance Board.

Commercial use request means a request from, or on behalf of, a requester seeking information for a use or purpose that furthers the commercial, trade or profit interest of the requester or ultimate user.

Direct costs means the expenditures actually incurred by the Finance Board in searching for, duplicating (and in the case of commercial use requests, reviewing) records in response to a FOIA request, including the time spent by Finance Board employees performing the work and the cost of operating duplicating equipment.

Duplication means the process of making a copy of a record necessary to respond to a FOIA request, including a paper copy, microform, audio-visual material, or magnetic tape or disc.

Educational institution means a public or private college preparatory school, college, university or similar accredited institution of professional or vocational education that operates a program or programs of scholarly research, or similar type of institution.

Executive Secretary means the Executive Secretary to the Board of Directors of the Federal Housing Finance Board.

Finance Board means the Federal Housing Finance Board.

Finance Board record or *record* means the rules, statements, opinions, orders, memoranda, interpretations, letters, reports, and other papers, or portions thereof, in the possession of the Finance Board, its governing Board of Directors or any Finance Board officer, employee or agent. The term also includes any information contained in such record.

Financial Regulatory Agency means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation or the National Credit Union Administration.

FOIA means the Freedom of Information Act.

Non-commercial scientific institution means a nonprofit institution operated solely for the purpose of conducting scientific research not intended to promote any particular product or industry.

Representative of the news media means a requester, as defined in this section, actively gathering information about current events of interest to the public for a publishing or broadcasting entity.

Requester means any person, including an individual, firm, corporation, organization, or other entity, making a request to the Finance Board for a record or records.

Review means the process of examining records in response to a commercial use request to determine whether any portion thereof is permitted to be withheld, and includes processing any records for disclosure, such as redacting portions thereof, to ready them for disclosure to a requester. The term does not include the time spent by Finance Board staff resolving general legal or policy issues regarding the application of FOIA exemptions to the record.

Search means the time spent locating records in response to a request, including page-by-page or line-by-line identification of information requested within a record, performed by Finance Board staff manually or by computer using existing programming.

§ 904.3 Published information.

(a) *Federal Register.* As required by Sections 552 and 553 of Title 5 of the United States Code, the Finance Board publishes in the **Federal Register** for the guidance of the public:

(1) A description of its organization;

(2) Statements of the general course and methods by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of available forms and where they may be obtained, and instructions as to the scope and contents of all papers or reports;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Board of Directors;

(5) Every amendment, revision, or repeal of the foregoing; and

(6) General notices of proposed rulemaking.

(b) *Annual Report.* The Finance Board submits an Annual Report to Congress pursuant to section 2B(d) of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1422b(d)). It is available to the public after its submission.

(c) *Other published information.* From time to time, the Finance Board issues statements to the press regarding particular dividend and credit actions, statements of policy, actions with respect to certain types of applications, and other matters.

(d) *Access to published information.* The publications referred to in paragraphs (b) and (c) of this section may be examined and, if available, copies may be obtained at the address set forth in § 904.5(b)(1).

§ 904.4 Records available to public.

(a) *General.* All Finance Board records are made available to any requester for inspection and duplication subject to the limitations stated in § 904.7 and § 904.9 of this part. The Finance Board may disclose a record to the public that is exempt from disclosure by section 552, Title 5, United States Code, or by § 904.7 of this part, where disclosure will not result in injury to a public or private interest intended to be protected by the FOIA or in a significant

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interference with the statutory mission of the Finance Board or the national interest.

(b) *Available records.* Subject to § 904.7 of this part, the Finance Board makes available for inspection and copying:

(1) All final opinions by the Finance Board;

(2) Statements of policy and interpretations adopted by the Board of Directors not published in the **Federal Register**; and

(3) Administrative manuals and instructions to staff that affect any member of the public. However, to the extent required to prevent a clearly unwarranted invasion of personal privacy, the Finance Board may delete identifying details in any material of the kinds above-described; in each such case the justification for such deletion will be fully explained in writing.

(c) *Votes of Board of Directors.* Subject to the provisions of § 904.7 of this part, a record of the final votes of each member of the Board of Directors in any proceeding is available for public inspection.

§ 904.5 Procedure for requesting records.

(a) *General.* Requests for access to, or copies of, Finance Board records shall be in writing, and describe the information or records requested in a manner reasonably sufficient to identify them. The request shall state that it is being made pursuant to the FOIA, and shall state the full name and address of the requester. The request also may specify a dollar limit which the requester is willing to pay for the costs of searching, reviewing or duplicating—in which event the Finance Board will limit its search, review or duplication of the record to the dollar amount specified in the request.

(b) *Initial determination.* (1) All requests to access or copy Finance Board records shall be in writing and addressed to the Executive Secretary, at the Executive Secretariat, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

(2) If it is determined that a request does not reasonably describe the records sought, the Executive Secretary shall advise the requester that additional information is needed.

(3) The Executive Secretary shall forward any request for records made under this section to the appropriate Finance Board administrative unit with the custody of the requested record. Such unit will determine whether to grant or deny the request for records promptly after receipt from the Executive Secretary of a written request for records that complies with paragraphs (a) and (b) of this section.

(4) All approvals or denials of requests for records under this part shall be in writing and signed by the Executive Secretary within ten days (except Saturdays, Sundays or Federal Government holidays) after receipt of the request by the Executive Secretary. Records will be disclosed after a party either pays the fees specified in § 904.6(l) or agrees to do so.

(5) All denials sent by the Executive Secretary to the requester shall:

(i) State if the denial is in part or in whole;

(ii) State the reasons therefor; and

(iii) Inform the requester that the denial is not a final agency action and may be appealed under paragraph (c) of this section.

(c) *Appeal.* (1) A requester may appeal a denial of a request for records under paragraph (b) of this section by mailing an appeal to the Executive Secretary at the address set forth in paragraph (b)(1) of this section, within 30 days (except Saturdays, Sundays or Federal Government holidays) of the date of written notification of the denial.

(2) The appeal shall be by written application addressed to the members of the Board of Directors and shall state the grounds for the appeal.

(3) The Board of Directors, or its designee, shall determine whether to grant the appeal or uphold the initial determination within 20 days (excluding Saturdays, Sundays or Federal Government holidays) after receipt of the application by the Executive Secretary. If the initial determination is upheld, the Executive Secretary, on behalf of the Board of Directors, will notify the requester in writing of the decision and of the provisions for judicial review of the final action under 5 U.S.C. 552(a)(4).

(d) *Appeal during pendency of judicial review.* If a suit is brought in a United States district court under 5 U.S.C. 552(a)(4) after the Executive Secretary has denied a request for Finance Board records but before the Board of Directors has ruled on the appeal, the Board may at its option:

(1) If an appeal has been made, continue to process the appeal; or

(2) If an appeal has not been made, decide on its own to initiate an appeal.

(e) *Time computation*—(1) *Agency.* For the Finance Board, the time limits in § 904.5(b)(4) and (c)(3) with respect to initial determinations or appeals shall begin as of the date on which a reasonably described, written request for records, or a written application on appeal, is actually received by the Executive Secretary.

(2) *Requester.* For a requester making an appeal, the time limits in § 904.5(c)(1) with respect to an appeal shall begin three days after an initial determination is post-marked.

(f) *Extension of time.* (1) The Executive Secretary may extend the time limits prescribed in § 904.5(b)(4) and (c)(3) for not more than ten working days by written notice to the requester, giving the reasons for the extension and a new date for the determination or appeal decision.

(2) Extensions may be granted for:

(i) The need to search for and collect the requested records from establishments other than the Finance Board;

(ii) The need to search, collect and examine a large amount of separate and distinct records demanded by a single request;

(iii) The need to consult with another executive department or agency having substantial interest in the outcome of the request or appeal.

§ 904.6 Fees for records disclosed.

(a) *General statement.* In accordance with this section, the Finance Board shall recover the full allowable direct costs of providing copies of records pursuant to 5 U.S.C. 552. Accordingly, except as provided herein, the Finance Board shall assess fees for searching, reviewing and duplicating any record in accordance with the fee schedule herein. The fee schedule is based upon the category of requester and upon the services requested.

(b) *Categories of requesting parties*—(1) *Designation.* The Finance Board shall categorize requesters based on the following five categories: (i) Commercial use requesters; (ii) educational institution requesters; (iii) non-commercial scientific institution requesters; (iv) representatives of the news media; and (v) all other requesters.

(2) *Limitations on fees charged.* The Finance Board shall assess fees pursuant to this section as follows:

(i) *Commercial use requesters.* Requesters making a commercial use request for a record shall be assessed the full direct costs for searching for, reviewing, and duplicating records, in accordance with the fee schedule at § 904.6(l). They are not entitled to the free search time or free pages of duplication provided to other categories of requesters.

(ii) *Educational institution requesters.* Requesters in this category may be assessed fees only for duplication of records in excess of the first 100 pages. They may not be assessed fees for search or review.

(iii) *Non-commercial scientific institution requesters.* Requesters in this category will be assessed in the same manner as educational institution requesters.

(iv) *Representatives of the news media.* Requesters in this category will be assessed in the same manner as educational institution requesters.

(v) *All other requesters.* Requesters for Finance Board records who do not fit into any of the categories above shall be assessed fees only for searching and duplicating records except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge. Requesters in this category may not be assessed fees for review.

(c) *Review of records.* Charges will be assessed only for the initial review of the located documents and not for time spent at the administrative appeal level on an exemption applied at the initial determination level. However, where records or portions thereof are withheld in full under an exemption that is subsequently determined not to apply, and these records are reviewed again to determine the applicability of other exemptions not previously considered, charges for review are properly assessable.

(d) *Additional copies.* The Finance Board will furnish one copy of any record. The allowance of 100 free pages of duplication under paragraphs (b)(2)(ii), (iii), (iv) and (v) of this section shall not apply to additional copies furnished at the request of the record requester. Full duplication fees shall be assessed for each page of each additional copy.

(e) *Requests under other statutes*—(1) *Privacy Act.* Requests from individuals for records about themselves filed in a system of records maintained by the Finance Board will be treated under the fee provisions of the Privacy Act of 1974 (5 U.S.C. 552a).

(2) *Sunshine Act.* Requests for copies of transcripts or minutes, or for transcription of electronic recordings of Board of Directors meetings, or portions thereof, closed to the public will be treated under the fee provisions of the government in the Sunshine Act (5 U.S.C. 552b).

(f) *Charges for unsuccessful search.* Where applicable under this section, fees may be assessed for time spent searching, even if the Finance Board fails to locate the records or if located records are determined to be exempt from disclosure. By making an application for a request for Finance Board records, a requester agrees to pay such charges for unsuccessful searches by Finance Board staff.

(g) *Procedure for fee collection.* The Finance Board will collect fees for the direct costs of searching, reviewing, duplicating and related costs under the following procedures:

(1) *Agreement.* If after receiving a request for Finance Board records, the Executive Secretary estimates that the search, duplication or review costs of such request will exceed $25.00 but not exceed $250.00, the Executive Secretary will notify the requester to execute an agreement with the Finance Board to pay the final actual costs of the request. Notwithstanding any provision of this part, the Finance Board will not disclose any record prior to receiving the executed agreement.

(2) *Advance payment.* If after receiving a request for records, the Executive Secretary estimates that the search, review or duplication costs of such request will exceed $250.00, the Executive Secretary will notify the requester to make an advance payment of the estimated amount prior to the disclosure of the requested records, when the Executive Secretary determines that the requester either has no prior history of payment of FOIA fees to the Finance Board or has previously failed to pay a FOIA fee in a timely fashion. For the purposes of this paragraph, "timely fashion" means a payment received by the Finance Board within 30 days following receipt of disclosed records by the requester. The Finance Board shall promptly remit any amount of an advance payment that exceeds the actual final cost of disclosing the requested records, and the requester shall be liable for any actual cost exceeding the estimate.

(3) *Interest.* Where the requesting party has executed an agreement to pay the fee for the FOIA request, the Finance Board will assess interest charges on any unpaid fees starting on the 31st day following the day on which the billing for fees was sent to the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing. Receipt of the fee by the Finance Board, even if not processed, will stay the accrual of interest. Interest is not chargeable for unpaid advance payments requested under this section.

(h) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of the document or documents, solely in order to avoid payment of fees. When the Finance Board reasonably believes that a requester or a group of requesters acting in concert is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, it may aggregate any such requests and charge accordingly.

(i) *Waiver or reduction of fee*—(1) *Collection and processing costs.* In its sole discretion, the Finance Board may opt to forego a fee for any costs of a request for records from any category if it determines that the routine costs of collection and processing of the fees are likely to equal or exceed the fee amount.

(2) *Public policy.* (i) The Finance Board will furnish documents without charge or at a reduced charge when it is determined that disclosure of the record is in the public interest because it is likely to contribute significantly to public understanding of the operations or activity of the government and is not primarily in the commercial interest of the requester.

(ii) In determining whether disclosure is in the public interest, the following factors may be considered:

(A) The relationship of the records to Finance Board operations or activities;

(B) The informative value of the record to be disclosed;

(C) Any contribution to an understanding of the subject by the general public likely to result from disclosure;

(D) The significance of that contribution to the public understanding of the subject;

(E) The nature of the requester's commercial interest, if any, in disclosure; and

(F) Whether the disclosure would be primarily in the requester's commercial interest.

(iii) In making a request for a waiver or reduction of fees, a requester should include:

(A) A clear statement of the requester's interest in the requested documents;

(B) The proposed use for the documents and whether the requester will derive income or other benefit from such use;

(C) A statement of how the public will benefit from such use or the release of the requested records; and

(D) If specialized use of a record is contemplated, a statement of the requester's qualification that are relevant to the specialized use.

(iv) The burden shall be on the requester to provide evidence or information in support of a waiver or reduction of fees.

(v) Determinations concerning waiver or reduction of fees shall be made by the Executive Secretary.

(vi) Appeals from such determinations shall be decided by the Director of the Office of Administration.

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(j) *Fee payment method.* Fees assessed under this part will be delivered to the Executive Secretary by check or money order, payable to the "Federal Housing Finance Board."

(k) *FAX transmission.* The Executive Secretary and the requester may agree that any Finance Board records made available pursuant to a request under this part shall be made by facsimile transmission ("FAX"). The charge for a FAX transmission shall be the long distance charge on the telephone call, or .25 for a call within the metropolitan Washington area in addition to a .25 charge for use of the FAX apparatus.

(l) *Fee schedule.* Fees for searching, reviewing, duplicating, and providing Finance Board records under this section will be assessed in accordance with the following schedule:

Search (Manual):	
Supervisory/ Professional Staff.	$16.00 per hour.
Clerical Staff	$8.00 per hour.
Search (Computer):	
Operator	$16.00 per hour.
Computer output (PC)	$6.00 per hour.
Computer output (Mainframe).	[Actual cost].
Review	$16.00 per hour.
Duplication:	
Photocopy	10 per page.
Computer generated	.76 per 1000 lines.
Copy of microfiche	.30 per page.
Transcription of audio tape.	$4.50 per page.
Certification with seal and attestation by Executive Secretary.	$5.00 per document.
Address lables	$8.00 per 1000 labels.

(m) *Other charges.* Complying with requests for special services associated with providing records (*e.g.* supplying special computer tabulations, or sending copies by express mail or messenger) is entirely at the Finance Board's discretion, and fees will be assessed to cover the actual costs of such services.

§ 904.7 Records not disclosed.

(a) *General.* Except as otherwise provided in this part, or as may be specifically authorized by the Board of Directors, Finance Board records not otherwise publicly available will not be disclosed to a requester if such records are:

(1) Authorized (i) under criteria established by an Executive order to be kept secret because of national defense or foreign policy, and (ii) in fact so classified pursuant to such order.

(2) Related solely to Finance Board internal personnel rules and practices.

(3) Specifically exempted from disclosure by:

(i) A statute other than the FOIA if:

(A) It requires that the record be withheld from the public in such a manner as to leave no discretion to the Finance Board; or

(B) It establishes particular criteria for withholding or refers to particular types of records to be withheld; or

(ii) Section 22 of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1442).

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(5) Inter-agency or intra-agency memoranda or letters that would not be available by law to a requester other than an agency in litigation with the Finance Board, including records of deliberation between the Board of Directors and staff.

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution or a Federal Home Loan Bank which furnished information on a confidential basis, and, in the case of a record compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of an individual.

(8) Contained in or related to examination, operating or conditio reports prepared by, on behalf of, or for the use of the Finance Board, a Financial Regulatory Agency or a Federal Home Loan Bank.

(b) *Segregation.* Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt from disclosure under this section.

(c) *Prohibition against disclosure.* (1) Except as authorized by this part or otherwise by the Board of Directors, no Finance Board officer, employee, or agent shall disclosure or permit disclosure of any unpublished Finance Board record to anyone (other than another officer, employee, or agent properly entitled to such information for the performance off official duties), whether by giving out or furnishing such record or a copy thereof or by allowing any person to inspect, examine or copy such record or copy thereof, or otherwise. Notwithstanding the foregoing, unpublished economic, statistical or similar information or unpublished records regarding Finance Board interpretations of statutory or regulatory provisions may be disclosed, orally or in writing, by a Finance Board officer, employee or agent, subject, however, to the restrictions stated in this section.

(2) Notwithstanding any other provision in this part, no disclosure of a record will be made to a requester when the Executive Secretary determines that such requester has failed to make a timely payment of a fee charged for a previous request for records under § 904.6(g) until such time as such requester pays the full fee plus accrued interest to the Finance Board.

§ 904.8 Disclosure of Federal Home Loan Bank examination reports to Financial Regulatory Agencies.

The Director of the District Banks Directorate may disclose a report of examination of a Federal Home Loan Bank, or related record, to a Financial Regulatory Agency. Before disclosing such report, the Director shall make an affirmative determination that the requesting agency official is authorized to request the record on behalf of the agency and that the records are requested for a legitimate regulatory purpose and that the requesting agency has agreed not to disclose the contents of the record pursuant to the FOIA or the agency's regulations.

§ 904.9 Records of Financial Regulatory Agencies held by Federal Housing Finance Board.

(a) *Policy.* The Finance Board will not disclose information contained in records that have been given to it by the Financial Regulatory Agencies.

(b) *Procedure.* Upon a receipt of a request for a record that has been given to the Finance Board by a Financial Regulatory Agency, the Finance Board will promptly forward the request to the appropriate Financial Regulatory Agency and also will notify the requester of this action. No further action by Finance Board will be taken on the request.

§ 904.10 Service of process.

(a) *Service on agency.* Any legal process served on the Finance Board demanding access to its records under the FOIA shall be addressed to the Executive Secretary and may be served by mailing the process, by certified mail, postage prepaid, to the address shown in § 904.5(b)(1).

(b) *Advice for person served.* (1) This section applies to any person in possession of a Finance Board record that may not be disclosed under this part, regardless of whether such person is a Finance Board officer or employee.

(2) Any person who is served with a subpoena, order or other process requiring attendance as a witness or document production of a record in any proceeding shall:

(i) Promptly advise the General Counsel of the Finance Board of such service and of all relevant facts, including the record requested; and

(ii) Advise both the authority issuing the subpoena, and the attorney for the party seeking the record, of the substance of these regulations.

(c) *Appearance by person served.* Except where disclosure of the record has been authorized by the Board of Directors or law, any person, described in paragraph (b)(1) of this section, who is required to respond to a subpoena, shall attend the proceeding and respectfully declined to produce such record or give testimony with respect thereto, on the basis of this part. If the authority nevertheless orders the disclosure of the record or testimony, such person shall continue to respectfully decline to produce such record or testimony and shall promptly report the incident to the Finance Board.

By the Federal Housing Finance Board.

Dated: December 18, 1991.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 91-31005 Filed 12-27-91; 8:45 am]

BILLING CODE 6725-01-M

12 CFR Part 906

[91-639]

Meetings of the Board of Directors of the Federal Housing Finance Board Under the Government in the Sunshine Act

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board ("Finance Board") is subject to the Government in the Sunshine Act ("Sunshine Act"), and proposes to add to its regulations a new part on public information regarding meetings of its governing Board of Directors. These regulations will replace the provisions of the former Federal Home Loan Bank Board ("FHLBB") relating to public information on meetings of the Board of Directors used by the Finance Board to date.

These regulations are being added to give the public a greater awareness of the Finance Board's duties, responsibilities, and functions by enabling the public to observe meetings of its Board of Directors.

DATES: Comments must be submitted by January 29, 1992.

ADDRESSES: Comments may be mailed to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Charles Szlenker, Attorney, Office of General Counsel, (202) 408-2554, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Pub. L. 101-73, 103 Stat. 183, enacted on August 9, 1989, abolished the FHLBB and established the Finance Board as an independent executive agency responsible for overseeing the Federal Home Loan Banks ("FHLBanks"). The Conference Report on FIRREA expressly provides that the Finance Board will be subject to the Sunshine Act (5 U.S.C. 552b). H.R. Conf. Rep. No. 222, 101st. Cong., 1st Sess. 424 (1989) *reprinted in* (1989) U.S. Code, Cong., & Ad. News 86, 463.

The FIRREA continued FHLBB regulations in effect until superseded by the appropriate successor. 103 Stat. 183, 357 (1989). Accordingly, the Board of Directors of the Finance Board has used the procedures in the former FHLBB Sunshine Act regulations until such time as new regulations are promulgated. On September 5, 1989, when the Finance Board established 12 CFR chapter IX (54 FR 36757), part 906 of its regulations was reserved for "Public Information Regarding Meetings of the Federal Housing Finance Board." These regulations now being proposed as part 906 will implement the Sunshine Act for the Finance Board.

Section 2 of the Sunshine Act states that its purpose is to provide the public the "fullest practical information regarding the decisionmaking processes of the Federal Government" while protecting legitimate individual privacy and "the ability of the Government to carry out its responsibilities." Pub. L. 94-409 sec. 2, 90 Stat. 1240-41 (1976) reprinted in 5 U.S.C. 552b note. The Sunshine Act does not clearly delineate when the public's right of observance gives way to an agency's need to carry out its administrative functions.

However, one United States Supreme Court case has drawn that line in favor of an agency's administrative needs over the public's right to observe meetings of its collegial governing body. In *FCC* v. *ITT World Communications Inc.*, 466 U.S. 463 (1984), the Supreme Court provided some guidance on this issue. That case holds that a gathering of members of an agency governing body and staff for background or generalized discussion of pending agency business is not a "meeting" within subsections 552b(a)(2) or (b) of the Sunshine Act. 466 U.S. at 469-72.

The proposed regulations include a provision enabling the Board of Directors to use an expedited process to close a meeting. The Sunshine Act makes this option available to an agency if a majority of its meetings may properly be closed to the public under 5 U.S.C. 552(c)(4), (8), (9)(A) or (10).

The Finance Board qualifies for the expedited closing process permitted in 5 U.S.C. 552b(d)(4). The exclusive function of the Finance Board is to oversee the FHLBanks and the Financing Corporation ("FICO"). In that capacity it reviews the budgets of the FHLBanks and FICO, and authorizes sales of FHLBank System consolidated bonds or FICO bonds. The Finance Board receives examination and operating reports on the FHLBanks and reviews audits of FICO.

Meetings of the Board of Directors involving the above mentioned issues may be closed to the public under 5 U.S.C. 552b(c)(4) (preventing disclosure of financial information that is privileged or confidential), (c)(8) (preventing disclosure of examination, operating or condition reports prepared for financial regulatory agencies) or (c)(9)(A) (preventing disclosure of information that would lead to

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significant financial speculation in securities or might endanger the financial stability of a financial institution).

Accordingly, the Finance Board qualifies for use of the expedited closing process.

The Finance Board proposes to amend its regulations by adding a new part 906 to its general regulations.

Regulatory Flexibility Act

In accordance with section 605(b), title 5, United States Code, the Board of Directors of the Finance Board has determined, and hereby certifies, that the proposed regulation will not have a significant economic impact on a substantial number of small entities. This regulation focuses on the conduct of agency business before the Board of Directors but does not address any specific regulatory matter dealing with either the FHLBanks or the FICO, that might affect a small entity.

List of Subjects in 12 CFR Part 906

Sunshine Act.

Accordingly, part 906 is amended by revising the Part heading, and by adding the text, to read as follows:

PART 906—INFORMATION REGARDING MEETINGS OF THE BOARD OF DIRECTORS OF THE FEDERAL HOUSING FINANCE BOARD

Sec.

906.1 Purpose and scope.
906.2 Definitions.
906.3 Open meetings.
906.4 Closed meetings.
906.5 Procedures for closing meetings.
906.6 Notice of meetings.

Authority: 5 U.S.C. 552b; sec. 2B, 103 Stat. 412 (12 U.S.C. 1422b).

§ 906.1 Purpose and scope.

(a) This part is issued by the Federal Housing Finance Board pursuant to the requirements of the Government in the Sunshine Act (5 U.S.C. 552b). The Government in the Sunshine Act requires Federal agencies, headed by collegial bodies, to promulgate regulations to implement its provisions. The purpose of these regulations is to provide the public with the fullest practicable information regarding the decisionmaking processes of the Board of Directors of the Finance Board while protecting the privacy rights of individuals and the ability of the Board of Directors to carry out its responsibilities.

(b) The Board of Directors shall not jointly conduct or dispose of official Finance Board business other than in accordance with this part.

§ 906.2 Definitions.

For the purpose of this part:

Sunshine Act means the Government in the Sunshine Act.

Board of Directors means the five member governing Board of Directors of the Federal Housing Finance Board.

Board Director or *Director* means a member of the Board of Directors.

Chairperson means the Chairperson of the Board of Directors and includes the Acting Chairperson.

Executive Secretary means the Executive Secretary to the Board of Directors, and includes the Acting Secretary in the event the Executive Secretary position is vacant.

Finance Board means the Federal Housing Finance Board.

Meeting means any deliberations of three or more Directors of the Board of Directors, that determine or result in the joint conduct or disposition of official Finance Board business, but does not include:

(1) Discussions to determine whether meetings will be open or closed or whether information pertaining to closed meetings will be disclosed;

(2) Discussions to determine whether to schedule a meeting with less than seven days notice, or to change the time, place or subject matter of a scheduled meeting; and

(3) Disposition of Finance Board business by circulation of written materials on proposed actions to individual Directors for proposed actions, and notational voting by the individual Directors on such proposed actions.

Public observation means the right of the general public to attend any open meetings of the Board of Directors, but does not include the right to participate therein unless invited to do so by the Chairperson.

§ 906.3 Open meetings.

(a) Except as provided in § 906.4, every portion of every meeting of the Board of Directors shall be open to public observation.

(b) Unless otherwise specified in the public notice, open meetings of the Board of Directors shall be held in the Board Room of the Finance Board at 1777 F Street, NW., Washington, DC, at the time specified in the public notice.

§ 906.4 Closed meetings.

(a) The Board of Directors may close a meeting, or portion thereof, to public observation, or withhold information from the public pertaining to a meeting, when it determines that opening the meeting, or a portion thereof, or the public disclosure of information pertaining to such meeting, or portion thereof, is likely to:

(1) Disclose matters that are:

(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy; and

(ii) In fact properly classified pursuant to such Executive Order;

(2) Relate solely to the internal personnel rules and practices of the Finance Board;

(3) Disclose matters specifically exempt from disclosure by statute (other than the Freedom of Information Act (5 U.S.C. 552)), *Provided* That such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding matters from the public or refers to particular types of matters to be withheld;

(4) Disclose trade secrets or commercial or financial information that is obtained from a person and is privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigative technique and procedures; or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Finance Board or another agency responsible for the regulation or supervision of FHLBanks or other financial institutions.

(9) Disclose information the premature disclosure of which would be likely to:

(i) (A) Lead to significant financial speculation in currencies, securities, or commodities;

(B) Significantly endanger the stability of any of the FHLBanks or any other financial institution; or

(ii) Significantly frustrate implementation of a proposed Finance Board action, except that this paragraph shall not apply in any instance where the Finance Board has already disclosed to the public the content or nature of its proposed action, or where the Finance Board is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) Specifically concern the issuance of a subpoena by the Board of Directors, or the Finance Board's participation in a civil action on proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct or disposition of a particular case of formal adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(b) A meeting or portions of a meeting shall not be closed nor information withheld pursuant to paragraph (a) of this section if the Board of Directors finds that the public interest requires otherwise.

§ 906.5 Procedures for closing meetings.

(a) *Regular procedures.* (1) Except as provided in paragraph (b) of this section, a meeting of the Board of Directors, or portion thereof, will be closed to public observation, and information pertaining to such meeting, or portion thereof, will be withheld from the public, when a majority of the Board of Directors determines by recorded vote that such meeting, or portion thereof, or the withholding of information qualifies for exemption under § 906.4 and the Board of Directors does not find that the public interest requires otherwise.

(2) Except as provided in paragraph (a)(3) of this section, a separate vote of the Board Directors will be taken with respect to the closing or the withholding of information as to each meeting or portion thereof which is proposed to be closed to public observation or with respect to which information is proposed to be withheld pursuant to paragraph (a) of this section.

(3) A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to public observation, or with respect to any information concerning such series of meetings proposed to be withheld, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series.

(4) The vote of each Board Director taken pursuant to paragraph (a) of this section shall be recorded, and no proxies shall be allowed.

(5) Whenever any person's interests may be directly affected by any portion of a meeting for any of the reasons referred to in paragraphs (a) (5), (6), or (7) of § 906.4, such person may send a written request to the Executive Secretary asking that such portion of the meeting be closed to public observation. The Executive Secretary will transmit the request to each Board Director and upon the request of a Director, a recorded vote will be taken of the Board of Directors whether to close the meeting to public observation.

(6)(i) Within one day of any vote taken pursuant to paragraph (a) of this section, the Finance Board will make publicly available through the Executive Secretary a written copy of such vote reflecting the vote of each Board Director.

(ii) If a meeting or portion thereof is to be closed to public observation, the Finance Board within one day of the vote taken pursuant to paragraph (a) of this section will make publicly available through the Executive Secretary a full, written explanation of its action closing the meeting, or portion thereof, together with a list of all persons expected to attend the meeting and their affiliation, except to the extent such information is determined by the Board to be exempt from disclosure under paragraph (a) of § 906.4.

(7) Any person may request in writing to the Executive Secretary that an announced closed meeting, or portion thereof, be open to public observation. The Executive Secretary will transmit the request to each Board Director, and upon the request of a Director, a recorded vote will be taken of the Board of Directors on whether to open the meeting to public observation.

(b) *Expedited procedures.* (1) Since a majority of the meetings of the Board of Directors may be closed pursuant to paragraphs (a) (4), (8), (9)(i) or (10) of § 906.4, subsection (d)(4) of the Act (5 U.S.C. 552b(d)(4)) allows the Finance Board to use expedited procedures in closing meetings of the Board of Directors under these four paragraphs of § 906.4. The following are examples of meetings of the Board of Directors, or portions thereof, that may be closed to the public under these expedited procedures: sale of FHLBank consolidated bonds or notes; sale of Financing Corporation bonds; review of examinations, operating or condition reports of FHLBanks.

(2) A decision to close a meeting, or portion thereof, under paragraph (b) of this section shall be made at the beginning of the meeting, or portion thereof, by majority vote of the Directors.

(3)(i) The Finance Board shall maintain a record of each of the votes taken by its Board of Directors to close a meeting, or portion thereof, or to withhold public access to information thereof, under paragraph (b) of this section.

(ii) A copy of such record, reflecting the vote of each Board Director on the question of closing a meeting, or portion thereof, or withholding public access to information thereof, under this paragraph (b) of this section, shall be made available to any member of the public upon request to the Executive Secretary.

(4) Public announcement of the time, place and subject matter of meetings, or portions thereof, closed under this paragraph (b) of this section shall be made at the earliest practical time.

(c) *Records of closed proceedings*—(1) *Transcripts or electronic recording.* Except as provided in paragraph (c)(2) of this section, the Finance Board shall make and maintain a complete transcript or verbatim electronic recording of the proceedings at each meeting, or portion thereof, closed to public observation under paragraphs (a) or (b) of this section.

(2) *Minutes.* The Finance Board may make and maintain a set of complete minutes, in lieu of such transcript or electronic recording, with respect to meetings, or portions thereof, closed or information withheld under paragraphs (a)(8), (9)(i) or (10) of § 906.4. Such set of minutes shall fully and clearly describe all matters discussed and provide a full and accurate summary of any action taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflecting the vote of each Board Director on the question). All documents considered in connection with any action shall be identified in such set of minutes.

(3) *Availability of Records.* (i) The transcript, electronic recording or set of minutes of an item discussed, or of testimony received, at meeting, shall be made available promptly to the public through the Executive Secretary except in cases where the Board of Directors determines that the item or testimony contains information which may be withheld under § 906.4(a).

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(ii) Copies of such transcript, electronic recording or set of minutes, disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(iii) The Finance Board shall maintain a complete copy of the transcript, verbatim electronic recording or complete set of minutes of each meeting, or portion thereof closed to the public, for at least two years after such meeting, or until one year after the conclusion of any proceeding of the Board of Directors with respect to which the meeting or portion thereof was held, whichever occurs later.

(d) *Legal certification for closing meeting.* (1) For every meeting, or portion thereof, of the Board of Directors closed pursuant to paragraphs (a) or (b) of this section, the General Counsel (or in the General Counsel's absence or incapacity the senior legal officer available) shall publicly certify that the meeting or portion thereof may be closed to the public pursuant to the Sunshine Act and this part, and specifically state the relevant exemption in support thereof.

(2) A copy of the certification, together with a statement from the Chairperson or, when appropriate, the Acting Chairperson or designee, setting forth the time and place of the meeting and the persons present, shall be retained in the permanent files of the Finance Board.

§ 906.6 Notice of meetings.

(a) *Scope of notice.* (1) Except as provided in paragraph (a) of § 906.4 that such information is determined to be exempt from disclosure, each open meeting of the Board of Directors, or each meeting closed under the regular procedures in paragraph (a) of § 906.5, will be preceded by public notice as described in this section.

(2) The notices for meetings of the Board of Directors closed under the expedited procedures pursuant to paragraph (b) of § 906.5 will be made in accordance with paragraph (b)(4) thereof.

(b) *Content of notice.* A notice of an open meeting or a meeting closed under the regular procedures in paragraph (a) of § 906.5 will state the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and telephone number of the Executive Secretary for information about the meeting. Each such notice shall be posted in the lobby of the Finance Board offices, and may be made available in addition by other means or at other locations as deemed desirable. Immediately following the posting of each such notice, the Finance Board will publish the notice in the **Federal Register**.

(c) *Time—(1) Seven days notice.* Except as provided in paragraph (c)(2) of this section, a public notice of open meetings or meetings closed under paragraph (a) of § 906.5 will be made at least seven days in advance of each meeting.

(2) *Less than seven days notice.* When a majority of the Board of Directors determine by recorded vote that Finance Board business requires a meeting to be called at any earlier date, the seven-day prior notice rule shall be suspended and notice shall be made at the earliest practicable time.

(d) *Amendment of notice—(1) Time and place.* A change in the time or place of a meeting following public notice may be made only if announced at the earliest practicable time.

(2) *Subject matter.* A change in the subject matter of a meeting or a re-determination to open or close a meeting, or portions thereof, may be made after public notice only if:

(i) At least three Board Directors determine by recorded vote of the entire Board of Directors that Finance Board business so requires and that no earlier notice of the change was possible; and

(ii) The Finance Board publicly announces the change and the vote of each Board Director by posting a notice thereof in the lobby of the Finance Board offices at the earliest practicable time.

(3) *Timing of amendment.* A public announcement of a change in either the time, place or subject matter of a meeting may be made after the commencement of the meeting affected.

(4) *Publication of amendment.* Each change to a notice of a meeting will be published in the **Federal Register**, following the Finance Board's public announcement of the change.

By the Federal Housing Finance Board.
Dated: December 18, 1991.

Daniel F. Evans, Jr.,
Chairman.

[FR Doc. 91-31067 Filed 12-27-91; 8:45 am]
BILLING CODE 6725-01

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12 CFR Part 909

[91-640]

Privacy Act Procedures

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board ("Finance Board") proposed to adopt regulations implementing the Privacy Act (5 U.S.C. 552a).

DATES: Comments must be submitted by January 29, 1992.

ADDRESSES: Comments may be mailed to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Charles Szlenker, Attorney, Office of General Counsel, (202) 408-2554, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. General

The Privacy Act applies to records kept by a federal agency on an individual person. It protects individuals from an agency's disclosure of information in such records without the written permission of the individual in question. The Privacy Act requires each agency to maintain regulations implementing the provisions of the Act. 5 U.S.C. 552a(f)(1) & (2) (1988).

The Finance Board is subject to the Privacy Act. The definition of an "agency" in the Act incorporates the definition used in the Administrative Procedure Act. 5 U.S.C. 552a(a)(1) *incorp. by ref. Id.* at 552(e). Since that definition of "agency" includes an independent regulatory agency, and since the Finance Board was created by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 as an independent executive agency (12 U.S.C. 1422a(a)(2) (Supp. I 1989)), the Finance Board is subject to the Privacy Act.

The Financial Institutions Reform, Recovery and Enforcement Act of 1989 stated that all former Federal Home Loan Bank Board (FHLBB) regulations continue in place until superseded. 103 Stat. 183, 357 (1989). These regulations will replace the former FHLBB Privacy Act regulations.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of title 5, United States Code, the Board of Directors of the Finance Board hereby certifies that this rule will not have a significant impact on a substantial number of small entities. The regulation implements the Privacy Act, which is concerned with records of an agency containing information on individual persons only. The Privacy Act does not address business or corporate entities. Accordingly, a regulatory impact analysis of this regulation is not necessary or required.

List of subjects in 12 CFR Part 909

Privacy.

Accordingly, the Finance Board hereby amends its general regulations, at chapter IX, title 12, Code of Federal Regulations by adding a new part 909 to read as follows:

PART 909—PRIVACY ACT PROCEDURES

Sec.
909.1 General.
909.2 Definitions.
909.3 Procedures for requesting individual records in a system of records; appeal of denials.
909.4 Time, place and identification requirements for requests.
909.5 Disclosure of requested records.
909.6 Procedures for requesting amendment to a record in a system of records; appeal of denials.
909.7 Fees.
909.8 Penalties.
909.9 Exemptions.

Authority: 5 U.S.C. 552a.

§ 909.1 General.

(a) *Purpose.* This part implements the provisions of the Privacy Act, 5 U.S.C. 552a, which require each executive agency to promulgate regulations for the protection of the privacy of individual persons on whom the agency maintains information in a record.

(b) *Scope.* These regulations establish procedures for:

(1) Disclosing Federal Housing Finance Board information on an individual contained in its records, and

(2) Notifying an individual, on whom information in its records is kept, that a request for such information has been made.

§ 909.2 Definitions.

As used in this part:

(a) *Amendment* means any correction, addition or deletion of information contained in a record, as defined in paragraph (g) of this section.

(b) *Board of Directors* means the five member governing Board of Directors of the Federal Housing Finance Board.

(c) *Business days* means all days except Saturdays, Sundays or Federal Government holidays.

(d) *Finance Board* means the Federal Housing Finance Board.

(e) *Individual* means a natural person who is either a citizen of the United States of America or an alien lawfully admitted to the United States for permanent residence. The term includes the parent(s) having custody of any minor or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction.

(f) *Maintain* means to keep or hold and preserve in an existing state, and includes the terms "collect," "use," "disseminate" and "control."

(g) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Finance Board within a system of records, and that contains such individual's name, or identifying number, symbol, or other identifying particular assigned to the individual, including a fingerprint, voice print or photograph.

(h) *Records systems manager* means the employee responsible for maintaining a designated system of records at the Finance Board, as such official or employee may be identified through public notice in the **Federal Register** from time to time by the Finance Board entitled: "Notice of Systems of Records on Individual Persons Maintained at the Federal Housing Finance Board."

(i) *Routine use* means the use of a record for a purpose compatible with the purpose for which it was originally created.

(j) *System of records* means a group of records maintained or controlled by the Finance Board from which information is or may be retrieved by the name of an individual or some identifying number, symbol or other identifying particular assigned to the individual.

(k) *Designated system of records* means a system of records, as defined in paragraph (j) of this section, that has been listed in the **Federal Register** as required by 5 U.S.C. 552a(e).

§ 909.3 Procedures for requesting individual records in a system of records; appeal of denials.

(a) *Current or former employees.* Any current or former Finance Board employee seeking access to such employee's official personnel record maintained by the Finance Board shall submit a request to the Finance Board in the manner prescribed by regulations of the Office of Personnel Management, at title 5, Code of Federal Regulations.

(b) *Other individuals.* (1) Individuals other than current or former Finance Board employees may submit requests for access to a record that contains information on the requesting individual and is maintained in a Finance Board designated system of records.

(2) Each such request shall be in writing, shall contain a reasonable, succinct description of the record sought, and shall identify the particular designated system of records in which the record may be maintained, as identified in the "Notice of Systems of Records on Individual Persons Maintained at the Federal Housing Finance Board" published by the Finance Board from time to time in the **Federal Register**.

(c) *Accounting for previous disclosures.* An individual may use the procedures of this section to request an accounting from the Finance Board of previous disclosures of records pertaining to such individual in a designated system of records, pursuant to the Privacy Act, 5 U.S.C. 552a(c).

(d) *Medical records procedures.* Information on an individual contained in medical records will be disclosed to a requesting individual in accordance with the procedures in paragraph (b) of this section and the requirements of this part, except, if in the judgment of the Finance Board the disclosure of such information could have an adverse effect on the individual, the Finance Board may withhold such information from the individual and transmit it to a licensed medical physician named by the requesting individual.

(e) *Response policy.* The Finance Board will acknowledge, or substantially respond to if practicable, a request made under this section within ten (10) business days of its receipt.

(f) *Initial review.* (1) The Executive Secretary will make the initial determination whether to grant or deny a request for records under this part, after consultation with the systems manager of the appropriate designated system of records.

(2) The Executive Secretary will notify the requesting individual whether the Finance Board:

(i) Has the requested record in a Finance Board designated system of records; and

(ii) Will release the requested record or not.

(3) If the request is denied, the Executive Secretary will inform the requesting individual of the reasons for nondisclosure, and describe the individual's right to appeal the determination.

(g) *Appeal process.* (1) An individual who has been denied a request made pursuant to paragraph (b) of this section, may appeal to the Board of Directors, or designee, within 30 business days of being notified of the denial pursuant to paragraph (f) of this section.

(2) The appeal shall be in writing, shall be mailed or delivered to the Executive Secretary, and shall give the reasons why the initial determination should be overturned.

(3) The Board of Directors, or such official designated by the Board of Directors, shall decide on the appeal within 30 business days following

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receipt of the appeal by the Executive Secretary. The Board of Directors or designated official may extend the time period for good cause, after giving notice, and reason therefor, to the individual making the appeal.

(4) If a decision is made to affirm the initial denial of a request for a record by an individual, the Board of Directors or designated official shall notify the individual making the appeal of the decision and the reason therefor, and shall inform the individual of the right of judicial review of the appeal.

§ 909.4 Time, place and identification requirements for requests.

(a) *Time.* An individual may hand deliver a written request for access to or amendment of records, made under § 909.3(b) or § 909.6 of this part, to the Finance Board on any business day, between the hours of 8:30 a.m. and 5:30 p.m.

(b) *Place.* All written requests for access to or amendment of records shall be mailed or hand delivered to the Executive Secretary, at the Executive Secretariat, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

(c) *Identification.*—(1) *Mailed requests.* All requests for access to or amendment of records that are mailed to the Finance Board shall be signed by the individual who is the subject of the requested record and who is making the request. The validity of each such signature shall be attested to by a notary public.

(2) *Hand delivered requests.* All requests for access to or amendment of records that are hand delivered to the Finance Board by the requesting individual shall be authenticated as to the identity of the requesting individual by two forms of identification with photographs, or by one such form of identification and a birth certificate.

§ 909.5 Disclosure of requested record.

(a) *Requesting individual.* Upon a request made pursuant to § 909.3(b) of this part, the Finance Board will disclose a record to the requesting individual, except when the record has been compiled in reasonable anticipation of a civil action or proceedings, in either of the following methods at the option of the requesting individual:

(1) By mailing a copy of the record to the address of the requesting individual; or

(2) By making the record available for inspection and copying by the requesting individual, as soon as practicable, at the offices of the Executive Secretary on regular business days, from 9:30 a.m. until 4:30 p.m. The requesting individual may choose to be accompanied by another person during the inspection and copying by submitting a signed statement authorizing the presence of such person.

(b) *Other individuals.* (1) The Finance Board will disclose a record to a person or entity other than the requesting individual, in the manner provided by paragraph (a) of this section, only when the Finance Board:

(i) Receives a copy of a written authorization for disclosure to such person or entity signed by the requesting individual and attested to by a notary public; and

(ii) Receives adequate identification from such person or entity.

(2) The restrictions contained in paragraph (b)(1) of this section on disclosure of a record shall not apply to:

(i) A disclosure to Finance Board officers or employees who have a need for the record in the performance of their duties;

(ii) A disclosure otherwise required by the Freedom of Information Act (5 U.S.C. 552);

(iii) A routine use listed with respect to a designated system of records;

(iv) A disclosure to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 of the United States Code;

(v) A disclosure to a recipient who has provided the Finance Board with advance written assurance that the record will be used solely as a statistical research or reporting record, and that the record is to be transferred in a form that is not individually identifiable;

(vi) A disclosure to the National Archives and Records Administration as a record with sufficient historical or other value to warrant its continued preservation by the Federal Government or for evaluation by the Archivist of the United States to determine whether it has such value.

(vii) A disclosure to another agency or to an instrumentality of any government jurisdiction within or under the control of the United States for civil or criminal law enforcement activity authorized by law if the head of such agency or instrumentality has made a written request to the Finance Board specifying the particular record requested and the law enforcement activity for which it is sought;

(viii) A disclosure to any person pursuant to a showing of compelling circumstances affecting the health and safety of an individual if notification of the disclosure is transmitted to the last known address of the individual who is the subject of the disclosed record;

(ix) A disclosure to a joint committee of Congress, or any subcommittee thereof, or to either House of Congress, or to any committee or joint committee, or subcommittee thereof, but only to the extent of matter within such joint committee's, committee's or subcommittee's jurisdiction; or

(x) A disclosure to the Comptroller General, or authorized representative, made in the course of performing the duties of the General Accounting Office.

(c) *Notification.* (1) The notification procedures described in this paragraph apply to disclosures of records made pursuant to paragraphs (b)(2) (i) through (vi) and (b)(2) (viii), (ix) and (x) of this section. They do not apply in the case of a disclosure made under paragraph (b)(2)(vii) of this section.

(i) The Finance Board will record the date, nature and purpose of each such disclosure, as well as the identity and address of the person or entity receiving the disclosed record;

(ii) The Finance Board will retain the information described in paragraph (c)(1) of this section for the life of the disclosed record, or for at least five years after such disclosure, and will make such information available to the individual named in the record upon request by such individual pursuant to § 909.3(c).

§ 909.6 Procedures for requesting amendment to a record in a system of records; appeal of denials.

(a) *Scope.* This section applies only to amendment of records on an individual maintained in a Finance Board system of records used in making a determination about such individual.

(b) *Individual request.* (1) Any individual may request the Finance Board to amend any portion of a record in a designated system of records pertaining to that individual, where such portion of the record is not accurate, relevant, timely or complete.

(2) A request to amend a record pursuant to this section shall be in writing, shall identify the particular designated system of records containing the record which the individual requests to amend and the portion of that record to be amended, and shall describe the reasons for the requested amendment.

(c) *Prior proceeding.* Nothing in this section shall permit a collateral attack upon any matter decided in a prior judicial, quasi-judicial or other proceeding.

(d) *Response policy.* The Finance Board shall acknowledge, or substantially reply to, if practicable, a request for amendment of records under this section.

(e) *Initial review.* (1) The Executive Secretary shall acknowledge all requests by individuals for amendment of records. The Executive Secretary shall refer all requests to the appropriate systems manager of the designated system of records containing the record to be reviewed, for disposition of the request within 10 business days of the referral. The systems manager shall promptly review the request and review the record for accuracy, relevance, timeliness, completeness or necessity.

(2) The systems manager will promptly notify the Executive Secretary of a decision whether to amend the record and shall state any reasons for denying the request in any part.

(3) The Executive Secretary will promptly notify the requesting individual of the decision and reasons for any denial, and describe the individual's rights to appeal any denial.

(f) *Appeal process.* (1) An individual who has been denied a request made pursuant to paragraph (b) of this section may appeal to the Board of Directors, or an official designated by the Board of Directors, within 30 business days of being notified of the denial pursuant to paragraph (e)(3) of this section.

(2) The appeal shall be in writing, shall be mailed to the Executive Secretary, and shall give the reasons why the initial determination should be overturned.

(3) The Board of Directors, or designated official, shall decide the appeal within 30 business days of its receipt by the Executive Secretary. The Board of Directors or designated official may extend the 30 days limit for good cause, after giving notice, and the reasons therefor, to the individual making the appeal.

(4) If a decision is made to affirm the initial denial of a request for a record by an individual, the Board of Directors or designated official shall notify the individual making the appeal of the decision and the reason therefor, and shall inform the individual of the right of judicial review of the appeal.

(g) *Statement.* (1) Within 30 business days after being denied an appeal pursuant to paragraph (f) of this section, an individual may submit a concise written statement setting forth the individual's reasons for disagreeing with the Finance Board's refusal to amend the record.

(2) Such statement shall be provided to persons or other agencies or entities to whom the record is disclosed.

§ 909.7 Fees.

The Finance Board, upon a request for records disclosable pursuant to these regulations, shall charge a fee of $0.10 per page for duplicating, unless:

(a) The Finance Board determines that it shall grant access to the record only by making a copy thereof;

(b) The total fee will not exceed $2.00; or

(c) The Finance Board determines, in its sole discretion, that a reduction or waiver of the fees is warranted for good cause.

§ 909.8 Penalties.

Subsection (i)(3) of the Privacy Act of 1974 (5 U.S.C. 552a(i)(3)) imposes criminal penalties for obtaining Finance Board records on individuals under false pretenses. It provides as follows:

> Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretense shall be guilty of a misdemeanor and fined not more than $5,000.00.

§ 909.9 Exemptions.

The following system of records are exempt from § § 909.3, 909.5 and 909.6 of this part:

(a) Investigatory material compiled and maintained in a Finance Board system of records solely for law enforcement purposes. *Provided,* That the Finance Board shall disclose such material to an individual if nondisclosure results in denying to such individual any right, privilege or benefit to which such individual would otherwise be eligible, unless the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality.

(b) Investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for Finance Board employment to the extent that disclosure of such material would reveal the identity of a source who furnished information to the Finance Board under an express promise that the identity of the source would be held in confidence.

(c) Testing or examination material used solely to determine or assess individual qualifications for appointment to employment at the Finance Board, or promotion therein—the disclosure of which would compromise the objectivity or fairness of the testing, evaluation or examining process.

Dated: December 18, 1991.

By the Federal Housing Finance Board.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 91-31006 Filed 12-27-91; 8:45 am]

BILLING CODE 6725-01

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 18, and 122

RIN 1515-AB12

Proposed Customs Regulations Amendments Concerning Use of an Air Waybill As An In-Bond Document

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations by adding specific mention of the availability of using an air waybill as in-bond document. Customs has concluded a successful test program allowing air carriers to forward in-bond shipments using an air waybill as the sole in-bond document. The use of the air waybill for this purpose has facilitated the movement of cargo and the delivery of in-bond freight. Accordingly, it is proposed to make the procedure available on a permanent basis and the regulations would be amended to reflect this.

DATE: Comments must be received on or before February 28, 1992.

ADDRESS: Comments (preferably in triplicate) should be addressed to and may be inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., room 2119, Washington, DC. 20229.

FOR FURTHER INFORMATION CONTACT: Ernie Cunningham, Office of Inspection and Control, 202-566-8151.

SUPPLEMENTARY INFORMATION:

Background

In November 1988, Customs commenced a test program allowing air carriers to use the air waybill (AWB) as the sole in-bond document in place of Customs Forms 7512 or 7512-C, or Transit Air Cargo Manifest (TACM) documents. Some documentation is necessary in order for Customs to retain control over unentered merchandise in transit from one port to another. The test was designed to take advantage of the unique AWB number and the detailed information available on an AWB. A number of air carriers have been participating in the test. The use of the AWB has facilitated the movement of cargo and the delivery of in-bond freight.

The AWB test was originally described in Temporary Directive 3240-01, August 31, 1988. That directive expired on September 29, 1989. As a

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result of the successful test period. Customs plans to make permanently available the option to use an AWB as the sole in-bond document. The new procedures are fully described in Customs Directive 3240–54, issued March 6, 1990, and that Directive became effective on May 5, 1990.

Under that directive, and in the proposed regulatory amendments, air carriers may forward in-bond shipments from the first port of arrival/unlading using an AWB as the in-bond document and the 11-digit AWB number as the in-bond control number. The first three digits of the number are the issuing airline's identification code. The AWB used must be similar in format to, and record the same information as the universal AWB recognized and accepted by the International Air Transport Association (IATA). The AWB must also contain the final port of destination in the U.S. or the actual ultimate country of destination of the shipment indicated by available airline shipping documents. The ultimate destination must be shown even though the air transportation may be scheduled to terminate in a country prior to the shipment's ultimate destination.

Importers may opt to use this procedure for merchandise entered for immediate transportation, transportation and exportation, and immediate exportation. Such use does not modify any carrier's liability for in-bond freight and does not modify bond requirements currently in the Customs Regulations. It is still necessary that the delivering carrier, whether or not it is the initial bonded carrier, surrender in the in-bond document as notice of arrival promptly, but no more than two working days after the arrival of any portion of the covered shipment at the port of destination.

District directors will consider individual port factors, such as presence of an operational Manifest Review Unit (MRU), in determining the level of supervision that is necessary in each district.

In regard to any regulatory changes necessary to make permanently available the ability to use the AWB as an in-bond document, § 122.92(a), Customs Regulations (19 CFR 122.92(a)), already states that, "Customs Form 7512 or other Customs approved documents" shall be used for both entry and manifest. The proposed amendments make specific reference to an AWB as one of those Customs approved documents and make other conforming changes.

Comments

Before adopting these proposals, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m., and 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) it is certified that, if adopted, the proposed amendments will not have a significant impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was John E. Doyle, Regulations and Disclosure Law Branch, Office of Regulations and Ruling, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in

19 CFR Part 18

Common Carriers, Exports, Freight forwarders.

19 CFR Part 122

Air carriers, Freight.

Proposed Amendments to the Regulations

It is proposed to amend parts 18 and 122, Customs Regulations (19 CFR parts 18, 122), as set forth below:

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The general and relevant specific authority citations for part 18 would continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1624;

* * * * *

§ § 18.11 and 18.12 also issued under 19 U.S.C. 1484;

* * * * *

2. It is proposed to amend § 18.11 by revising the first sentence of paragraph (h) to read as follows:

§ 18.11 Entry; classes of goods for which entry is authorized; form used.

* * * * *

(h) Either Customs Form 7512, a carnet, or an air waybill (see § 122.92 of this chapter), shall be used as a combined transportation entry, invoice, and manifest.* * *

* * * * *

3. It is proposed to amend § 18.20 by revising the first sentence of paragraph (a) to read as follows:

§ 18.20 Entry procedure; forwarding.

(a) When an importation is entered for transportation and exportation, except as provided for in subparts D, E, F and G of part 123 of this chapter (relating to merchandise in transit through the U.S. between two points in contiguous foreign territory), a carnet, three copies of an air waybill (see § 122.92 of this chapter), or four copies of Customs Form 7512 shall be required.* * *

* * * * *

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 would continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1524, 1644, 49 U.S.C. App. 1509.

2. It is proposed to amend § 122.92 by revising the heading and first sentence of paragraph (a)(1), adding a paragraph (a)(3), and by adding a sentence to paragraph (b)(1) to read as follows:

§ 122.92 Procedure at port of origin.

(a) *Forms required*—(1) *Customs Form 7512 or other document.* Customs Form 7512 or other approved documents, such as an air waybill (see paragraph (a)(3) of this section), shall be used for both entry and manifest.* * *

* * * * *

(3) *Air Waybill.* An air waybill may be used for both entry and manifest. Three copies of the air waybill are required unless the district director deems additional copies necessary. Photocopies of the original air waybill are acceptable. Either preprinted stock air waybills or electronically generated air waybills may be used. The air waybill must:

(i) Be in the format, and contain the information required of a universal air waybill as recognized and accepted by the International Air Transport Association (IATA), be legible and in the English language;

(ii) Display a unique 11-digit number, the first three digits being the air carrier's identification code;

(iii) Display the number of packages based on the smallest external packaging unit (*e.g.*, 14 packages is acceptable, 1 pallet is unacceptable);

(iv) Display the name of the final port of destination in the U.S. or the name of the ultimate country of destination of the cargo indicated by available air carrier shipping documents. The ultimate destination must be shown even though the air transportation may be scheduled to terminate in a country prior to the cargo's final destination;

(v) Be modified to contain the following information which should appear in a block or attachment in the upper right-hand corner as in this example. The numbers 1–8 correspond to the descriptions that follow; the numbers do not have to appear on the AWB;

(1) _____
Origin
(2) _____
Entry Type
(3) _____
Destination
(4) _____
Importing Carrier/Flight Number/Arrival Date
(5) _____
Bonded Carrier/Exporter
(6) _____
Date
(7) _____
Signature of Carrier's Agent (or Exporter)
(8) _____
Customs Officer Date

The item numbers correspond to the following information:

Item 1—Origin—The numeric district/port code is listed in Schedule D of the Harmonized Tariff Schedules of the United States, of the port where the in-bond entry is presented.

Item 2—Entry type—The appropriate in-bond code number such as I.T./61 for Immediate Transportation, T&E/62 for Transportation and Exportation, and I.E./63 for Immediate Exportation.

Item 3—Destination—The numeric district/port code for the intended port of destination for entry or exportation.

Item 4—Importing Carrier/Flight Number/Arrival Date—This information serves to identify the shipment in terms of the inward foreign manifest of the importing carrier. The "Arrival Date" is the date of arrival of the importing conveyance in the U.S. This information must be supplied in all instances.

Item 5—Bonded Carrier/Exporter—The bonded carrier or exporter who will be liable for the proper movement, handling, and safekeeping of the merchandise once the in-bond movement is authorized by Customs. If this information is not supplied, the in-bond movement will be carried out under the bond of the importing carrier. (See Item 7 for further information on transfer of liability.)

Item 6—Date—The date of the in-bond entry preparation. Since an in-bond entry can be prepared before the date of entry presentation and/or acceptance, and prior to the actual arrival of the importing conveyance, this date should only be used for duty assessment purposes when the date in Item 8 is left blank. If a date is not present, the date of in-bond preparation will be deemed to be the date of arrival.

Item 7—Signature of Carrier's Agent (or Exporter)—This signature of the authorized agent of the bonded carrier or exporter identified previously (See Item 5) constitutes acceptance of the liability for the in-bond shipment by the party signing. A signature is required except when the in-bond movement is under the bond of the importing carrier. If unsigned, the submission to Customs of an AWB requesting such a movement is evidence of the acceptance of liability if the AWB is approved by Customs.

Item 8—Customs Officer/Date—Signature of the Customs Officer who authorizes the initiation of the in-bond movement and the date of such authorization. Customs will check to make sure merchandise is released only to a bonded carrier. The date is used to start the time limit for completion of the in-bond movement and for consumption entry purposes in accord with § 141.69(b) of this chapter. Customs authorization procedures which use a perforation device are acceptable in lieu of the appropriate Customs signature. The district director will determine whether a signature will be required in this block prior to the time that the cargo is allowed to move.

(b) *Delivery of Customs form to carrier—(1) Merchandise entered for immediate transportation without appraisement.* When merchandise is entered for immediate transportation without appraisement, two copies of Customs Form 7512 or other Customs approved document, and the duplicate copy of Customs Form 7512–C shall be delivered to the carrier. When an airway bill is used, Customs Form 7512–C is not required.

* * * * *

Michael H. Lane,

(Acting) Commissioner of Customs.

Approved: December 20, 1991.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 91–31085 Filed 12–27–91; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–097–91]

RIN 1545–AQ22

Certification of Enhanced Oil Recovery Projects

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the rules and regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the certification of enhanced oil recovery projects. The temporary regulations provide procedures whereby an operator or designated owner of an enhanced oil recovery project certifies to the Internal Revenue Service that the project satisfies the requirements of section 43(c) of the Internal Revenue Code. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments, requests to appear, and outlines of oral comments to be presented at the public hearing must be received by March 24, 1992. The public hearing is scheduled to be held on April 7, 1992, beginning at 10 a.m..

ADDRESSES: Send comments, requests to appear, and outlines of oral comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (PS–097–91), room 5228, Washington, DC 20044. The hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, 1111 Constitution Avenue, NW. Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Brenda M. Stewart, (202) 566–4919 (not a toll-free number); concerning the hearing, Robert R. Boyer, (202) 377–9231 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirement contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information requirement should be sent to the Office of Management and Budget, Attention:

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Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information requirement in these regulations is in §§ 1.43–3T(a)(3) and (b)(3). This information is required by the Internal Revenue Service pursuant to section 43(c)(2)(B). This information will be used to verify that a project undertaken by a taxpayer is and continues to be a qualified enhanced oil recovery project. The taxpayers affected are operators or designated owners of enhanced oil recovery projects.

The following estimates approximate the average time expected to be necessary to collect the information required by this regulation. They are based on the information available to the Internal Revenue Service. Individual respondents may require more time or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 1,460 hours.

The estimated average annual burden associated with the collection of information requirement under § 1.43–3T(a)(3) is 72 hours per respondent. The estimated average annual burden associated with the collection of information requirement under § 1.43–3T (b)(3) is 1 hour per respondent.

Estimated total number of respondents: 20.

Estimated annual frequency of responses: 1.

Background

The temporary regulations published in the rules and regulations portion of this issue of the **Federal Register** add new § 1.43–3T to the Income Tax Regulations (26 CFR part 1). The temporary regulations provide procedures whereby an operator of an enhanced oil recovery project certifies to the Internal Revenue Service that the project satisfies the requirements of section 43(c) of the Internal Revenue Code. The text of the new temporary regulations serves as the comment document for this notice of proposed rulemaking.

For the text of the temporary regulations see T.D. 8384 published in the rules and regulations portion of this issue of the **Federal Register**.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing has been scheduled for Tuesday, April 7, 1992. The public hearing wil be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Written comments, requests to appear, and outlines of oral comments must be received by March 24, 1992.

Hearing Information

The subject of the hearing is proposed regulations under section 43(c)(2)(B) of the Internal Revenue Code. The temporary regulations appear elsewhere in this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the temporary regulations should submit not later than Tuesday, March 24, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the Government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

Drafting information

The principal author of these regulations is Brenda M. Stewart of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.37–1 through 1.44A–4

Credits, income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

The temporary regulations, T.D. 8384, published in the Rules and Regulations portion of this issue of the **Federal Register**, are hereby also proposed as final regulations under section 43(c)(2)(B) of the Internal Revenue Code.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

[FR Doc. 91–30874 Filed 12–27–91; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Parts 1 and 602

[PS–101–90]

RIN 1545–AP64

Enhanced Oil Recovery Credit

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document provides proposed regulations relating to the enhanced oil recovery credit for certain costs that are paid or incurred in connection with a qualified enhanced oil recovery project. Changes to the applicable law were made by the Omnibus Budget Reconciliation Act of 1990. These regulations provide the public with guidance in determining the costs that are subject to the credit and the circumstances under which the credit is available.

DATES: Written comments, requests to appear, and outlines of oral comments to be presented at the public hearing must be received by March 24, 1992. The public hearing is scheduled to be held on April 7, 1992, at 10 a.m..

ADDRESSES: Send comments, requests to appear, and outlines of oral comments to: Internal Revenue Service, P.O Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (PS–101–90), Room 5228, Washington, DC 20044. The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Brenda M. Stewart, (202) 566–4919 (not a toll-free number); concerning the hearing, Robert R. Boyer, (202) 377–9231 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirement contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)). Comments on this requirement should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer, T:FP, Washington, DC 20224.

The collection of information requirement in these regulations is in § 1.43–7. This information is required by the Internal Revenue Service to verify that a taxpayer has elected to apply the provisions of §§ 1.43–1, 1.43–2, 1.43–4, 1.43–5, and 1.43–6 for costs paid or incurred in connection with an enhanced oil recovery project for which first injection of liquids, gases, or other matter occurs after December 31, 1990.

The following estimates approximate the average time expected to be necessary to collect the information required by this regulation. They are based on the information available to the Internal Revenue Service. Individual respondents may require more time or less time, depending on their particular circumstances.

Estimated total reporting burden: 5 hours.

The estimated average burden associated with the collection of information in this notice of proposed rulemaking is .25 hours per recordkeeper.

Estimated number of respondents: 20.

Estimated frequency of responses: 1 time only.

Background

The proposed regulations implement section 43 of the Internal Revenue Code, which was enacted by section 11511 of the Omnibus Reconciliation Act of 1990, Public Law 101–508.

Explanation of Provisions

I. General

Section 43 of the Internal Revenue Code, enacted by the Omnibus Budget Reconciliation Act of 1990, provides a tax credit for projects employing enhanced oil recovery methods. Enhanced oil recovery methods, also referred to as tertiary recovery methods, are generally applied to increase or maintain production from mature oil fields. The proposed regulations provide guidance concerning the circumstances under which the section 43 credit is available. Section 1.43–3T, relating to certification requirements, is also issued as a temporary regulation.

The section 43 credit is an amount equal to 15 percent of the qualified enhanced oil recovery costs paid or incurred by a taxpayer in connection with a qualified enhanced oil recovery project. The proposed regulations provide that only taxpayers with operating interests in a property may claim the section 43 credit. Section 1.43–1(a). This rule is needed to prevent the credit from being claimed twice with respect to the same asset. For example, in the absence of this provision, an investor who does not hold an operating mineral interest could claim the credit on an asset used to produce a tertiary injectant, and the holder of the operating mineral interest could claim the credit on the cost of the injectant purchased from the investor.

Under section 43(b), the credit is reduced if oil prices exceed $28 and is eliminated if oil prices exceed $34, with both price levels adjusted for inflation. Section 1.43–1(c)(3) provides examples illustrating the phase-out and the inflation adjustment.

II. Qualified Enhanced Oil Recovery Costs

The section 43 credit base consists of tangible property costs, intangible drilling and development costs, and tertiary injectant expenses. The proposed regulations provide that tangible property costs are included in the credit base in the taxable year in which the property is placed in service for depreciation purposes, intangible drilling and development costs are included in the credit base in the taxable year in which deductible under section 263(c) (ignoring section 291), and tertiary injectant expenses are included in the credit base in the taxable year in which deductible under section 193.

As a general rule, the proposed regulations provide that an amount may be included in the credit base only if it is paid or incurred with respect to an asset which is used for the primary purpose of implementing a qualified enhanced oil recovery project. For example, intangible drilling and development costs incurred to drill a well that is used for primary production do not qualify as section 43 costs even if it is anticipated that the well may be used in connection with a tertiary recovery method in the future. Similarly, costs incurred in connection with the acquisition, construction, transportation, erection, or installation of an offshore drilling platform do not constitute qualified enhanced oil recovery costs unless the offshore platform is used for the primary purpose of implementing a qualified enhanced oil recovery project.

Costs paid or incurred for tangible property are included in the credit base only if the property is an integral part of a qualified enhanced oil recovery project. The proposed regulations provide that property is an integral part of a project if it is used directly in a tertiary recovery method and is essential to the completeness of the method. The regulations provide examples illustrating the types of property that constitute an integral part of a project. The Internal Revenue Service solicits suggestions of other types of property commonly used in enhanced oil recovery projects that should be the subject of additional examples.

The proposed regulations require an allocation of costs if tangible property is used partly for qualifying and partly for nonqualifying use. For example, the cost of a steam generator is allocated under this rule if the generator provides steam for both a qualified enhanced oil recovery project and an enhanced oil recovery project that is not a qualified project. Cost are allocated under this rule only if the asset with respect to which the costs are paid or incurred is used for the primary purpose of implementing a qualified enhanced oil recovery project.

The proposed regulations provide that costs paid or incurred prior to the date of the first injection of liquids, gases, or other matter (as defined in § 1.43–2(c)) may be qualified enhanced oil recovery costs; however, the credit may be claimed only after the first injection occurs. Therefore, if first injection occurs on or before the date a taxpayer files a federal income tax return for the taxable year for which the costs are included in the credit base, the costs may be taken into account on that return. If first injection occurs after that return is filed, the costs may be taken

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into account on an amended return. In no event, however, may costs be taken into account if the first injection occurs more than 36 months after the close of the taxable year in which the costs are paid or incurred.

The proposed regulations also provide that a purchaser of an existing qualified enhanced oil recovery project may claim the credit for any section 43 costs in excess of the acquisition cost. However, costs paid or incurred to acquire an existing qualified enhanced oil recovery project (or an interest in an existing qualified enhanced oil recovery project) are not eligible for the credit. Section 1.43–4(e)(2). Without this rule, the absence of a recapture provision under section 43 would facilitate duplication of the credit and might encourage churning of projects.

The proposed regulations further provide that costs paid or incurred for an asset that is acquired, used, or transferred in a manner designed to duplicate or otherwise unreasonably increase the amount of the credit are not qualified enhanced oil recovery costs. This rule applies regardless of whether the costs would otherwise be creditable for a single taxpayer or more than one taxpayer. This rule is needed to ensure that taxpayers cannot claim the credit more than once with respect to an asset. The proposed regulations provide a number of examples of this anti-abuse rule.

III. Qualified Enhanced Oil Recovery Project

Section 43(c)(2)(A) provides that a qualified enhanced oil recovery project must employ a tertiary recovery method specified in section 193(b)(3). Section 193(b)(3)(A) specifies nine tertiary recovery methods by cross-reference to regulations issued by the Energy Department in June 1979, as modified by the now-repealed section 4996(b)(8)(C) (relating to the crude oil windfall profit tax). Section 1.43–2(e)(2) of the proposed regulations restates the definitions of the nine methods, with modifications in certain cases. These modifications are generally minor and are intended to improve the accuracy of the definitions. The only significant modification is to the definition of a polymer augmented waterflood: section 1.43–2(e)(2)(v) provides that a qualified tertiary recovery method does not include the injection of polymers for the purpose of modifying the injection profile of the wellbore, rather than for modifying the water-oil mobility ratio. See H.R. Rep. No. 964, 101st Cong., 2d Sess. 1125 (1990) (Conference Report). Pursuant to section 43(c)(4), the proposed regulations also provide that, in addition to the restated nine methods, immiscible nonhydrocarbon gas displacement is a qualified tertiary recovery method. Section 1.43–2(e)(2)(x).

The Secretary is authorized to approve other methods as qualifying tertiary recovery methods. See Conference Report at 1125. The proposed regulations, however, do not expand the list of qualifying methods. Submissions made to the Internal Revenue Service during the drafting of these regulations have suggested that a variety of other types of oil discovery and recovery methods should be treated as qualifying methods under section 43. A number of these suggested methods are drilling methods (*e.g.*, horizontal drilling), or improved discovery or geologic surveying techniques (*e.g.*, three dimensional seismic surveying). There is no indication that Congress intended the credit to be available for drilling or exploration techniques. Other suggested methods do not appear to be in commercial use at the present time (*e.g.*, injection of genetically engineered microbes). The Internal Revenue Service may add to the list of qualifying methods when a tertiary method becomes available for commercial use, including use in a pilot or experimental project. It is anticipated that any new method will be approved by revenue ruling.

Section 43(c)(2)(A) provides that a qualified enhanced oil recovery project must reasonably be expected to result in more than an insignificant increase in the amount of crude oil which will ultimately be recovered. The proposed regulations do not define "more than an insignificant increase." Whether a project satisfies this standard is determined under all the facts and circumstances.

Under section 43(c)(2)(A)(iii), the credit is allowable only for projects with respect to which "the first injection of liquids, gases, or other matter" occurs after December 31, 1990. The proposed regulations define the first injection of liquids, gases, or other matter as the first injection of a tertiary injectant into the reservoir. Therefore, injections for the purpose of "pretreating" or "preflushing" the reservoir and test or experimental injections do not constitute a first injection for this purpose.

The legislative history provides that a significant expansion of a project is to be treated as a new project and states that a project is considered significantly expanded if it affects acreage substantially unaffected by the project's previously implemented tertiary activities. 101 Cong. Rec. S15675 (October 18, 1990). Section 1.43–2(d)(1)(i) incorporates this rule. The Secretary is permitted to expand the category of significant expansion by regulation. *Id.* Pursuant to this grant of authority, the proposed regulations treat two additional types of expansions as significant expansions. First, the expansion of a project to a reservoir previously unaffected by the project constitutes a significant expansion. For example, the application of a tertiary recovery method to a reservoir at 4,000 feet constitutes a separate project from a previous tertiary recovery project on the same acreage in a separate reservoir at 10,000 feet. Second, a project affecting a reservoir that was previously affected by a tertiary recovery method constitutes a significant expansion if the prior method has been terminated for at least 36 months. Neither a change in tertiary recovery method nor a more intensive application of a method constitutes a significant expansion.

IV. Election Not to Apply Section 43

The proposed regulations provide guidance concerning the election not to apply section 43 for a taxable year. Section 1.43–6. The proposed regulations provide that in the case of a partnership or S corporation, this election is made at the entity level.

IV. Effective Date

The regulations are proposed to apply to costs paid or incurred after December 31, 1991, in connection with a qualified enhanced oil recovery project. In addition, taxpayers may elect to apply the regulations for taxable years beginning after December 31, 1990, with respect to costs paid or incurred in connection with a qualified enhanced oil recovery project.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing is scheduled for Tuesday, April 7, 1992, at 10 a.m. Written comments, requests to appear, and outlines of oral comments must be received by March 24, 1992. The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Written comments, requests to appear, and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (PS–101–90), room 5228, Washington, DC 20044.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in this notice of proposed rulemaking and who desire to present oral comments at the hearing on the proposed regulations should submit not later than Tuesday, March 24, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the Government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Brenda M. Stewart of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.28–0 through 1.44A–4

Credits, Drugs, Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to Regulations

Accordingly, title 26, chapter 1, parts 1 and 602, are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended by adding the following citation:

Authority: Sec. 7805, 68A Stat. 917 (26 U.S.C. 7805) * * * Sections 1.43–0 through 1.43–2 and 1.43–4 through 1.43–7 also issued under section 26 U.S.C. 43.

§§ 1.43–1 and 1.43–2 [Redesignated as §§ 1.32–1 and 1.32–2]

Par. 2. Sections 1.43–1 and 1.43–2 are redesignated as §§ 1.32–1 and 1.32–2.

Par. 3. New §§ 1.43–0 through 1.43–2, 1.43–4, 1.43–6 and 1.43–7 are added and §§ 1.43–3 and 1.43–5 are added and reserved to read as follows:

§ 1.43–0 Table of contents.

This section lists the captions contained in §§ 1.43–0 through 1.43–7.

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§ 1.43–1 The enhanced oil recovery credit—general rules.

(a) *Claiming the credit—In general.* The enhanced oil recovery credit (the "credit") is a component of the section 38 general business credit. A taxpayer that owns an operating mineral interest (as defined in § 1.614–2(b)) in a property may claim the credit for qualified enhanced oil recovery costs (as described in § 1.43–4) paid or incurred by the taxpayer in connection with a qualified enhanced oil recovery project (as described in § 1.43–2) undertaken with respect to the property. A taxpayer that does not own an operating mineral interest in a property may not claim the credit. To the extent a credit included in the current year business credit under section 38(b) is unused under section 38, the credit is carried back or forward under the section 39 business credit carryback and carryforward rules.

(2) *Examples.* The following examples illustrate the principles of this paragraph (a).

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Example 1. Credit for operating mineral interest owner. In 1992, A, the owner of an operating mineral interest in a property, begins a qualified enhanced oil recovery project using cyclic steam. B, who owns no interest in the property, purchases and places in service a steam generator. B sells A steam, which A uses as a tertiary injectant described in section 193. Because A owns an operating mineral interest in the property with respect to which the project is undertaken, A may claim a credit for the cost of the steam. Although B owns the steam generator used to produce steam for the project, B may not claim a credit for B's costs because B does not own an operating mineral interest in the property.

Example 2. Credit for operating mineral interest owner. C and D are partners in CD, a partnership that owns an operating mineral interest in a property. In 1992, CD begins a qualified enhanced oil recovery project using cyclic steam. D purchases a steam generator and sells steam to CD. Because CD owns an operating mineral interest in the property with respect to which the project is undertaken, CD may claim a credit for the cost of the steam. Although D owns the steam generator used to produce steam for the project, D may not claim a credit for the cost of the steam generator because D paid these costs in a capacity other than that of an operating mineral interest owner. This result would not differ if C and D had elected under section 761 to be excluded from the application of all or part of subchapter K.

(b) *Amount of the credit.* A taxpayer's credit is an amount equal to 15 percent of the taxpayer's qualified enhanced oil recovery costs for the taxable year, reduced by the phase-out amount, if any, determined under paragraph (c) of this section.

(c) *Phase-out of the credit as crude oil prices increase*—(1) *In general.* The amount of the credit (determined without regard to this paragraph (c)) for any taxable year is reduced by an amount which bears the same ratio to the amount of the credit (determined without regard to this paragraph (c)) as—

(i) The amount by which the reference price determined under section 29(d)(2)(C) for the calendar year immediately preceding the calendar year in which the taxable year begins exceeds $28 (as adjusted under paragraph (c)(2) of this section), bears to

(ii) $6.

(2) *Inflation adjustment*—(i) *In general.* For any taxable year beginning in a calendar year after 1991, an amount equal to $28 multiplied by the inflation adjustment factor is substituted for the $28 amount under paragraph (c)(1)(i) of this section.

(ii) *Inflation adjustment factor.* For purposes of this paragraph (c), the inflation adjustment factor for any calendar year is a fraction, the numerator of which is the GNP implicit price deflator for the preceding calendar year and the denominator of which is the GNP implicit price deflator for 1990. The "GNP implicit price deflator" is the first revision of the implicit price deflator for the gross national product as computed and published by the Secretary of Commerce. Not later than April 1 of any calendar year, the inflation adjustment factor for the preceding calendar year will be published.

(3) *Examples.* The following examples illustrate the principles of this paragraph (c).

Example 1. Reference price exceeds $28. In 1992, E, the owner of an operating mineral interest in a property, incurs $100 of qualified enhanced oil recovery costs. The reference price for 1991 determined under section 29(d)(2)(C) is $30 and the inflation adjustment factor for 1992 is 1. E's credit for 1992 determined without regard to the phase-out for crude oil price increases is $15 ($100×15%). In determining E's credit, the credit is reduced by $5 ($15×($30−($28×1)/6). Accordingly, E's credit for 1992 is $10 ($15−$5).

Example 2. Inflation adjustment. In 1993, F, the owner of an operating mineral interest in a property, incurs $100 of qualified enhanced oil recovery costs. The 1992 reference price is $34, and the 1993 inflation adjustment factor is 1.10. F's credit for 1993 determined without regard to the phase-out for crude oil price increases is $15 ($100×15%). In determining F's credit, $30.80 (1.10×$28) is substituted for $28, and the credit is reduced by $8 ($15×($34−$30.80)/6). Accordingly, F's credit for 1993 is $7 ($15−$8).

(d) *Reduction of associated deductions*—(1) *In general.* Any deduction allowable under chapter 1 for an expenditure taken into account in computing the amount of the credit determined under paragraph (b) of this section is reduced by the amount of the credit attributable to the expenditure.

(2) *Certain deductions by an integrated oil company.* For purposes of determining the intangible drilling and development costs that an integrated oil company must capitalize under section 291(b), the amount allowable as a deduction under section 263(c) is the deduction allowable after paragraph (d)(1) of this section is applied. *See* § 1.43–4(b)(2) (extent to which integrated oil company intangible drilling and development costs are qualified enhanced oil recovery costs).

(e) *Basis adjustment.* For purposes of subtitle A, the increase in the basis of property which would (but for this paragraph (e)) result from an expenditure with respect to the property is reduced by the amount of the credit determined under paragraph (b) of this attributable to the expenditure.

(f) *Passthrough entity basis adjustment*—(1) *Partners' interests in a partnership.* To the extent a partnership expenditure is not deductible under paragraph (d)(1) of this section or does not increase the basis of property under paragraph (e) of this section, the expenditure is treated as an expenditure described in section 705(a)(2)(B) (concerning decreases to basis of partnership interests). Thus, the adjusted bases of the partners' interests in the partnership are decreased (but not below zero).

(2) *Shareholders' stock in an S corporation.* To the extent an S corporation expenditure is not deductible under paragraph (d)(1) of this section or does not increase the basis of property under paragraph (e) of this section, the expenditure is treated as an expenditure described in section 1367(a)(2)(D) (concerning decreases to basis of S corporation stock). Thus, the bases of the shareholders' S corporation stock are decreased (but not below zero).

(g) *Examples.* The following examples illustrate the principles of paragraphs (d) through (f) of this section.

Example 1. Deductions reduced for credit amount. In 1992, G, the owner of an operating mineral interest in a property, incurs $100 of intangible drilling and development costs in connection with a qualified enhanced oil recovery project undertaken with respect to the property. G elects under section 263(c) to deduct these intangible drilling and development costs under section 263(c). The amount of the credit determined under paragraph (b) of this section attributable to the $100 of intangible drilling and development costs is $15 ($100×15%). Therefore, G's otherwise allowable deduction of $100 for the intangible drilling and development costs is reduced by $15. Accordingly, in 1992, G may deduct under section 263(c) only $85 ($100−$15) for these costs.

Example 2. Integrated oil company deduction reduced. The facts are the same as in *Example 1*, except that G is an integrated oil company. As in *Example 1*, the amount of the credit determined under paragraph (b) of this section attributable to the $100 of intangible drilling and development costs is $15, and G's allowable deduction under section 263(c) is $85. Because G is an integrated oil company, G must capitalize $25.50 ($85×30%) under section 291(b). Therefore, in 1992, G may deduct under section 263(c) only $59.50 ($85−$25.50) for these intangible drilling and development costs.

Example 3. Basis of property reduced. In 1992, H, the owner of an operating mineral interest in a property, pays $100 to purchase tangible property that is an integral part of a qualified enhanced oil recovery project undertaken with respect to the property. The amount of the credit determined under paragraph (b) of this section attributable to the $100 is $15 ($100×15%). Therefore, for purposes of subtitle A, H's basis in the tangible property is $85 ($100−$15).

Example 4. Basis of interest in passthrough entity reduced. In 1992, I is a 50% partner in

IJ, a partnership that owns an operating mineral interest in a property. IJ pays $200 to purchase tangible property that is an integral part of a qualified enhanced oil recovery project undertaken with respect to the property. The amount of the credit determined under paragraph (b) of this section attributable to the $200 is $30 ($200×15%). Therefore, for purposes of subtitle A, IJ's basis in the tangible property is $170 ($200−$30). Under paragraph (f) of this section, the amount of the purchase price that does not increase the basis of the property ($30) is treated as an expenditure described in section 705(a)(2)(B). Therefore, I's basis in the partnership interest is reduced by $15 (I's allocable share of the section 705(a)(2)(B) expenditure ($30×50%)).

§ 1.43–2 Qualified enhanced oil recovery project.

(a) *Qualified enhanced oil recovery project.* A "qualified enhanced oil recovery project" is any project that meets all of the following requirements—

(1) The project involves the application (in accordance with sound engineering principles) of one or more qualified tertiary recovery methods (as described in paragraph (e) of this section) that is reasonably expected to result in more than an insignificant increase in the amount of crude oil that ultimately will be recovered;

(2) The project is located within the United States (within the meaning of section 638(1));

(3) The first injection of liquids, gases, or other matter for the project (as described in paragraph (c) of this section) occurs after December 31, 1990; and

(4) The project is certified under § 1.43–3T.

(b) *More than insignificant increase.* For purposes of paragraph (a)(1) of this section, all the facts and circumstances determine whether the application of a tertiary recovery method can reasonably be expected to result in more than an insignificant increase in the amount of crude oil that ultimately will be recovered. Certain information submitted as part of a project certification is relevant to this determination. *See* § 1.43–3T(a)(3)(i)(D). In no event is the application of a recovery method that merely accelerates the recovery of crude oil considered an application of one or more qualified tertiary recovery methods that can reasonably be expected to result in more than an insignificant increase in the amount of crude oil that ultimately will be recovered.

(c) *First injection of liquids, gases, or other matter*—(1) *In general.* The "first injection of liquids, gases, or other matter" generally occurs on the date a tertiary injectant is first injected into the reservoir. The "first injection of liquids, gases, or other matter" does not include—

(i) The injection into the reservoir of any liquids, gases, or other matter for the purpose of pretreating or preflushing the reservoir to enhance the efficiency of the tertiary recovery method or

(ii) Test or experimental injections.

(2) *Example.* The following example illustrates the principles of this paragraph (c).

Example. Injections to pretreat the reservoir. In 1989, A, the owner of an operating mineral interest in a property, began injecting water into the reservoir for the purpose of elevating reservoir pressure to obtain miscibility pressure to prepare for the injection of miscible gas in connection with an enhanced oil recovery project. In 1992, A obtains miscibility pressure in the reservoir and begins injecting miscible gas into the reservoir. The injection of miscible gas, rather than the injection of water, is the first injection of liquids, gases, or other matter into the reservoir for purposes of determining whether the first injection of liquids, gases, or other matter occurs after December 31, 1990.

(d) *Significant expansion exception*—(1) *In general.* If a project for which the first injection of liquids, gases, or other matter (within the meaning of paragraph (c)(1) of this section) occurred before January 1, 1991, is significantly expanded after December 31, 1990, the expansion is treated as a separate project for which the first injection of liquids, gases, or other matter occurs after December 31, 1990. A project is considered significantly expanded only if—

(i) The injection of liquids, gases, or other matter after December 31, 1990, is reasonably expected to result in more than an insignificant increase in the amount of crude oil that ultimately will be recovered from acreage that was substantially unaffected by the injection of liquids, gases, or other matter before January 1, 1991;

(ii) The injection of liquids, gases, or other matter after December 31, 1990, is reasonably expected to result in more than an insignificant increase in the amount of crude oil that ultimately will be recovered from a reservoir that was unaffected by the injection of liquids, gases, or other matter before January 1, 1991; or

(iii) Each qualified tertiary recovery method implemented in a project prior to January 1, 1991, terminated more than 36 months before implementing an enhanced oil recovery project that commences after December 31, 1990. For purposes of section 43, a qualified tertiary recovery method terminates at the point in time when the method no longer results in more than an insignificant increase in the amount of crude oil that ultimately will be recovered. All the facts and circumstances determine whether a tertiary recovery method has termianted. Among the factors considered is the project plan, the unit plan of development, or other similar plan. A tertiary recovery method is not necessarily terminated merely because the injection of the tertiary injectant has ceased. For purposes of this paragraph (d)(1), a project is implemented when costs that will be taken into account in determining the credit with respect to the project are paid or incurred.

(2) *Examples.* The following examples illustrate the principles of this paragraph (d).

Example 1. Substantially unaffected acreage. In January 1988, A, the owner of an operating mineral interest in a property, began injecting steam into the reservoir in connection with a cyclic steam enhanced oil recovery project. The project affected only a portion of the acreage. In 1992, A begins cyclic steam injections with respect to acreage that was substantially unaffected by the previous cyclic steam project. Because the injection of steam into the reservoir in 1992 affects acreage that was substantially unaffected by the previous project, the cyclic steam injection in 1992 is treated as a separate project with respect to which the first injection of liquids, gases, or other matter commences after December 31, 1990.

Example 2. Previously unaffected reservoir. In 1989, B, the owner of an operating mineral interest in a property, implemented a steam drive project on the property. B injected steam into the reservoir at a depth of 1,000 feet. B continued injecting steam at 1,000 feet until 1992, when B began injecting steam at 2,000 feet. The injection of steam at 2,000 feet affects a reservoir that was unaffected by the injection of steam at 1,000 feet. Because the injection of steam at 2,000 feet affects a reservoir that was unaffected by the injection of steam at 1,000 feet, the injection of steam at 2,000 feet is treated as a separate project with respect to which the first injection of liquids, gases, or other matter commences after December 31, 1990.

Example 3. Tertiary recovery method terminated more than 36 months. In 1982, B, the owner of an operating mineral interest in a property, implemented a tertiary recovery project using cyclic steam injection as a method for the recovery of crude oil. The project was certified as a tertiary recovery project for purposes of the windfall profit tax. In May 1988, the application of the cyclic steam tertiary recovery method terminated. In July 1992, B begins drilling injection wells as part of a project to apply the steam drive tertiary recovery method with respect to the same project area affected by the cyclic steam method. B begins cyclic steam injections in September 1992. Because B commences an enhanced oil recovery project more than 36 months after the previous tertiary recovery method was terminated, the

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project is treated as a separate project with respect to which the first injection of liquids, gases, or other matter commences after December 31, 1990.

Example 4. Change in tertiary recovery method. In 1984, C, the owner of an operating mineral interest in a property, implemented a tertiary recovery project using cyclic steam as a method for the recovery of crude oil. The project was certified as a tertiary recovery project for purposes of the windfall profit tax. C continued the cyclic steam injection until 1992, when the tertiary recovery method was changed from cyclic steam injection to steam drive. The steam drive affects the same reservoir that was affected by the cyclic steam. Because the steam drive does not affect acreage or a reservoir that was unaffected by the cyclic steam nor was the cyclic steam terminated for more than 36 months before the steam drive was implemented, the steam drive is not a significant expansion. Therefore, the steam drive is not treated as a separate project with respect to which the first injection of liquids, gases, or other matter commences after December 31, 1990.

Example 5. Change in tertiary recovery method. In 1988, D, the owner of an operating mineral interest in a property, undertook an immiscible nitrogen enhanced oil recovery project that resulted in more than an insignificant increase in the ultimate recovery of crude oil from the property. D continued the immiscible nitrogen project until 1992, when the project was converted from immiscible nitrogen displacement to miscible nitrogen displacement by increasing the injection of nitrogen to increase reservoir pressure. The miscible nitrogen displacement affects the same acreage and the same reservoir that was affected by the immiscible nitrogen displacement. Because the miscible nitrogen displacement does not affect acreage or a reservoir that was unaffected by the immiscible nitrogen displacement nor was the immiscible nitrogen displacement terminated for more than 36 months before the miscible nitrogen displacement was implemented, the miscible nitrogen displacement is not a significant expansion. Therefore, the miscible nitrogen displacement is not treated as a separate project with respect to which the first injection of liquids, gases, or other matter commences after December 31, 1990.

Example 6. Change in injection pattern. In 1988, E, the owner of an operating mineral interest in a property, undertook a steam drive enhanced oil recovery project with respect to the property. E drilled injection wells in a five spot pattern for purposes of injecting steam in connection with the project. Injection of steam in the five spot pattern resulted in more than an insignificant increase in the ultimate recovery of crude oil from the property. E continues injecting steam in the five spot pattern until 1992, when new engineering studies indicate that it is reasonably expected that a line drive injection pattern will result in more than an insignificant increase in the amount of crude oil that was recovered as a result of injection in the five spot pattern. Based on the engineering studies, E changes from a five spot injection pattern to a line drive pattern. The line drive injection pattern affects the same acreage and the same reservoir that was affected by the five spot pattern. Because the change in injection pattern does not affect acreage or a reservoir that was unaffected by the previous injection pattern and the steam drive project was not terminated for more than 36 months before the injection of steam in the line drive pattern, the change in injection pattern is not a significant expansion. Therefore, the change in injection pattern is not treated as a separate project with respect to which the first injection of liquids, gases, or other matter commences after December 31, 1990.

Example 7. More intensive application of a tertiary recovery method. In 1989, F, the owner of an operating mineral interest in a property, undertook an immiscible carbon dioxide displacement enhanced oil recovery project. F began injecting carbon dioxide into the reservoir under immiscible conditions. The injection of carbon dioxide under immiscible conditions resulted in more than an insignificant increase in the ultimate recovery of crude from the property. F continues to inject the same amount of carbon dioxide into the reservoir until 1992, when new engineering studies indicate that an increase in the amount of carbon dioxide injected is reasonably expected to result in a more than insignificant increase in the amount of crude oil that was recovered from the property as a result of the previous injection of carbon dioxide. Based on the engineering studies, F increases the amount of carbon dioxide injected into the reservoir. The increase in the amount of carbon dioxide injected affects the same acreage and the same reservoir that was affected by the previous injection of carbon dioxide. Because the additional carbon dioxide injected in 1992 does not affect acreage or a reservoir that was unaffected by the previous injection of carbon dioxide nor was the previous immiscible carbon dioxide method terminated for more than 36 months before the additional carbon dioxide was injected, the increase in the amount of carbon dioxide injected into the reservoir is not a significant expansion. Therefore, it is not a separate project with respect to which the first injection of liquids, gases, or other matter commences after December 31, 1990.

(e) *Qualified tertiary recovery methods*—(1) *In general.* For purposes of paragraph (a)(1) of this section, a "qualified tertiary recovery method" is any one or any combination of the tertiary recovery methods described in paragraph (e)(2) of this section. To account for advances in enhanced oil recovery technology, the Internal Revenue Service may by revenue ruling prescribe that a method not described in paragraph (e)(2) of this section is a "qualified tertiary recovery method." Generally, the methods identified in revenue rulings will be limited to those methods that involve the displacement of oil from the reservoir rock by means of modifying the properties of the fluids in the reservoir or providing the energy and drive mechanism to force the oil to flow to a production well. The recovery methods described in paragraph (e)(3) of this section are not "qualified tertiary recovery methods."

(2) *Tertiary recovery methods that qualify.* (i) Miscible fluid displacement—The injection of gas (*e.g.*, natural gas, enriched natural gas, a liquified petroleum slug driven by natural gas, carbon dioxide, nitrogen, or flue gas) or alcohol into the reservoir at pressure levels such that the gas or alcohol and reservoir oil are miscible;

(ii) Steam drive injection—The continuous injection of steam into one set of wells (injection wells) or other injection source to effect oil displacement toward and production from a second set of wells (production wells);

(iii) Microemulsion flooding—The injection of a surfactant system (*e.g.*, a surfactant, hydrocarbon, cosurfactant, electrolyte, and water) to enhance the displacement of oil toward producing wells;

(iv) In situ combustion—The combustion of oil or fuel in the reservoir sustained by injection of air, oxygen-enriched air, oxygen, or supplemental fuel supplied from the surface to displace unburned oil toward producing wells. This process may include the concurrent, alternating, or subsequent injection of water.

(v) Polymer augmented waterflooding—The injection of polymeric additives with water to improve the areal and vertical sweep efficiency of the reservoir by increasing the viscosity and decreasing the mobility of the water injected. Polymer augmented waterflooding does not include the injection of polymers for the purpose of modifying the injection profile of the wellbore, rather than modifying the water-oil mobility ratio.

(vi) Cyclic steam injection—The alternating injection of steam and production of oil with condensed steam from the same well or wells.

(vii) Caustic flooding—The injection of water that has been made chemically basic by the addition of alkali metal hydroxides, silicates, or other chemicals.

(viii) Carbon dioxide augmented waterflooding—The injection of carbonated water, or water and carbon dioxide, to increase waterflood efficiency.

(ix) Immiscible carbon dioxide displacement—The injection of carbon dioxide into an oil reservoir to effect oil displacement under conditions in which miscibility with reservoir oil is not obtained. This process may include the concurrent, alternating, or subsequent injection of water.

(x) Immiscible nonhydrocarbon gas displacement—The injection of nonhydrocarbon gas (*e.g.*, nitrogen) into an oil reservoir to effect oil displacement under conditions in which miscibility with reservoir oil is not obtained. This process may include the concurrent, alternating, or subsequent injection of water.

(3) *Recovery methods that do not qualify.* The term "qualified tertiary recovery method" does not include—

(i) Waterflooding—The injection of water into an oil reservoir to displace oil from the reservoir rock and into the bore of the producing well;

(ii) Cyclic gas injection—The increase or maintenance of pressure by injection of hydrocarbon gas into the reservoir from which it was originally produced;

(iii) Horizontal drilling—The drilling of horizontal, rather than vertical, wells to penetrate hydrocarbon bearing formations;

(iv) Gravity drainage—The production of oil by gravity flow from drainholes that are drilled from a shaft or tunnel dug within or below the oil bearing zones; and

(v) Other methods—Any recovery method not specifically designated as a qualified tertiary recovery method in either paragraph (e)(2) of this section or in a revenue ruling described in paragraph (e)(1).

§ 1.43-3 Certification. [Reserved]

§ 1.43-4 Qualified enhanced oil recovery costs.

(a) *Qualifying costs—in general.* Except as provided in paragraph (e) of this section, amounts paid or incurred in any taxable year beginning after December 31, 1990, that are qualified tertiary injectant expenses (as described in paragraph (b)(1) of this section), intangible drilling and development costs (as described in paragraph (b)(2) of this section), and tangible property costs (as described in paragraph (b)(3) of this section) are "qualified enhanced oil recovery costs" if the amount is paid or incurred with respect to an asset which is used for the primary purpose (as described in paragraph (c) of this section) of implementing a qualified enhanced oil recovery project. Any amount paid or incurred in any taxable year beginning after January 1, 1991, in connection with an enhanced oil recovery project is not a qualified enhanced oil recovery cost.

(b) *Costs defined*—(1) *Qualified tertiary injectant expenses.* For purposes of this section, "qualified tertiary injectant expenses" means any costs that are paid or incurred in connection with a qualified enhanced oil recovery project and that are deductible under section 193 for the taxable year. *See* section 193 and § 1.193-1. Except as provided in paragraph (d)(2) of this section, qualified tertiary injectant expenses are taken into account in determining the credit with respect to the taxable year in which the tertiary injectant expenses are deductible under section 193.

(2) *Intangible drilling and development costs.* For purposes of this section, "intangible drilling and development costs" means any intangible drilling and development costs that are paid or incurred in connection with a qualified enhanced oil recovery project and for which the taxpayer may make an election under section 263(c) for the taxable year. Except as provided in paragraph (d)(2) of this section, intangible drilling and development costs are taken into account in determining the credit with respect to the taxable year in which the taxpayer may deduct the intangible drilling and development costs under section 263(c). For purposes of this paragraph (b)(2), the amount of the intangible drilling and development costs for which an integrated oil company may make an election under section 263(c) is determined without regard to section 291(b).

(3) *Tangible property costs*—(i) *In general.* For purposes of this section, "tangible property costs" means an amount paid or incurred during a taxable year for tangible property that is an integral part of a qualified enhanced oil recovery project and that is depreciable or amortizable under chapter 1. Except as provided in paragraph (d)(2) of this section, an amount paid or incurred for tangible property is taken into account in determining the credit with respect to the taxable year in which the property is placed in service for depreciation purposes in connection with a qualified enhanced oil recovery project. Costs paid or incurred for property placed in service by a taxpayer prior to use of the property by the taxpayer in a qualified enhanced oil recovery project are not tangible property costs.

(ii) *Integral part.* For purposes of this paragraph (b), tangible property is an integral part of a qualified enhanced oil recovery project if the property is used directly in a tertiary recovery method and is essential to the completeness of the method. All the facts and circumstances determine whether tangible property is used directly in a tertiary recovery method and is essential to the completeness of the method. Generally, property used to acquire or produce the tertiary injectant or property used to transport the tertiary injectant to a project site is property that is an integral part of the project.

(iii) *Property used as an integral part of more than one qualified enhanced oil recovery project or for other activities.* If property is an integral part of more than one qualified enhanced oil recovery project, an amount paid or incurred for the property during a taxable year is allocated among the projects to determine the tangible property costs for each project during the taxable year. Similarly, if property is an integral part of a qualified enhanced oil recovery project and is also used in other activities (for example, an enhanced oil recovery project that is not a qualified enhanced oil recovery project), an amount paid or incurred for the property during a taxable year is allocated among the qualified enhanced oil recovery project and the other activities to determine the tangible property costs for the qualified enhanced oil recovery project during the taxable year. *See* § 1.613-5(a). Amounts paid or incurred for property are allocated under this paragraph (b)(3)(iii) only if the asset with respect to which the amounts are paid or incurred is used for the primary purpose of implementing a qualified enhanced oil recovery project. *See* paragraph (c) of this section. Any reasonable method may be used to allocate amounts paid or incurred for property. A method that allocates amounts paid or incurred for property based on the anticipated use in a project or activity is a reasonable method.

(4) *Examples.* The following examples illustrate the principles of this paragraph (b). Assume for each of these examples that the qualified enhanced oil recovery costs are paid or incurred with respect to an asset which is used for the primary purpose of implementing a qualified enhanced oil recovery project.

Example 1. Qualified costs—in general. (i) In 1992, X, a corporation, acquires an operating mineral interest in a property and undertakes a cyclic steam enhanced oil recovery project with respect to the property. X pays a fee to acquire a permit to drill and hires a contractor to drill six wells. As part of the project implementation, X constructs a building to serve as an office on the property and purchases equipment, including downhole equipment (*e.g.*, casing, tubing, packers, and sucker rods), pumping units, a steam generator, and equipment to remove gas and water from the oil after it is produced. X constructs roads to transport the equipment to the wellsites and incurs costs for clearing and draining the ground in preparation for the drilling of the wells. X purchases cars and trucks to provide transportation for monitoring the wellsites. In addition, X contracts with Y for the delivery of water to produce steam to be injected in

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connection with the cyclic steam project, and purchases storage tanks to store the water.

(ii) The leasehold acquisition costs and the fees paid for the permit are not qualified enhanced oil recovery costs. The costs associated with hiring the contractor to drill, constructing roads, and clearing and draining the ground are intangible drilling and development costs that are qualified enhanced oil recovery costs. The downhole equipment, the pumping units, the steam generator, and the equipment to remove the gas and water from the oil after it is produced are used directly in the tertiary recovery method and are essential to the completeness of the method. Therefore, this equipment is an integral part of the project and the costs of the equipment are qualified enhanced oil recovery costs. However, the building that X constructs as an office and the cars and trucks X purchases to provide transportation for monitoring the wellsites are not used directly in the tertiary recovery method and are not essential to the completeness of the method. Therefore, the building and the cars and trucks are not an integral part of the project and their costs are not qualified enhanced oil recovery costs. The cost of the water X purchases from Y is a tertiary injectant expense that is a qualified enhanced oil recovery cost. The storage tanks X acquires to store the water are required to provide a proximate source of water for the production of steam. Therefore, the water storage tanks are an integral part of the project and the costs of the water storage tanks are qualified enhanced oil recovery costs.

Example 2. Diluent storage tanks. In 1992, B, the owner of an operating mineral interest, undertakes a qualified enhanced oil recovery project with respect to the property. B acquires diluent to be used in connection with the project. B stores the diluent in a storage tank that B acquires for that purpose. The storage tank provides a proximate source of diluent to be used in the tertiary recovery method. Therefore, the storage tank is used directly in the tertiary recovery method and is essential to the completeness of the method. Accordingly, the storage tank is an integral part of the project and the cost of the storage tank is a qualified enhanced oil recovery cost.

Example 3. Oil storage tanks. In 1992, Z, a corporation and the owner of an operating mineral interest in a property, undertakes a qualified enhanced oil recovery project with respect to the property. Z acquires storage tanks that Z will use solely to store the crude oil that is produced from the enhanced oil recovery project. The storage tanks are not used directly in the tertiary recovery process and are not essential to the completeness of the tertiary recovery method. Therefore, the storage tanks are not an integral part of the enhanced oil recovery project and the costs of the storage tanks are not qualified enhanced oil recovery costs.

Example 4. Oil refinery. C, the owner of an operating mineral interest in a property, undertakes a qualified enhanced oil recovery project with respect to the property. Located on C's property is an oil refinery where C will refine the crude oil produced from the project. The refinery is not used directly in the tertiary recovery method and is not essential to the completeness of the method. Therefore, the refinery is not an integral part of the enhanced oil recovery project.

Example 5. Gas processing plant. The facts are the same as in *Example 4* except that a gas processing plant is located on C's property. The gas processing plant is not used directly in the tertiary recovery process and is not essential to the completeness of the method. Therefore, the gas processing plant is not an integral part of the enhanced oil recovery project.

Example 6. Steam generator costs allocated. In 1988, D, the owner of an operating mineral interest in a property, undertook a steam drive enhanced oil recovery project with respect to the property. The 1988 project is not a qualified enhanced oil recovery project. In 1992, D decides to undertake a steam drive project with respect to a reservoir that was unaffected by the 1988 project. The 1992 project is a significant expansion that is a qualified enhanced oil recovery project. D purchases a new steam generator with sufficient capacity to provide steam for both the 1988 project and the 1992 project. The steam generator is used directly in the tertiary recovery method in the 1992 project and is essential to the completeness of the method. Accordingly, the steam generator is an integral part of the 1992 project. The steam generator is primarily used to provide steam to the 1992 project. Because the steam generator is also used to provide steam for the 1988 project, which is not a qualified enhanced oil recovery project, D must allocate the cost attributable to the steam generator to the 1988 project and the 1992 project. Only the portion of the cost of the steam generator that is allocable to the 1992 project is a qualified enhanced oil recovery cost.

Example 7. Carbon dioxide pipeline. In 1992, E, the owner of an operating mineral interest in a property, undertakes an immiscible carbon dioxide displacement project with respect to the property. E constructs a pipeline to convey carbon dioxide to the project site. E contracts with F, a producer of carbon dioxide, to purchase carbon dioxide to be injected into injection wells in E's enhanced oil recovery project. The cost of the carbon dioxide is a tertiary injectant expense that is a qualified enhanced oil recovery cost. The pipeline is used by E to transport the tertiary injectant, that is, the carbon dioxide to the project site. Therefore, the pipeline is an integral part of the project. Accordingly, the cost of the pipeline is a qualified enhanced oil recovery cost.

Example 8. Water source wells. In 1992, G, the owner of an operating mineral interest in a property, undertakes a polymer augmented waterflood project with respect to the property. G drills water wells to provide water for injection in connection with the project. The costs of drilling the water wells are intangible drilling and development costs that are paid or incurred in connection with the project. Therefore, the costs of drilling the water wells are qualified enhanced oil recovery costs.

(c) *Primary purpose*—(1) *In general.* For purposes of this section, a cost is a qualified enhanced oil recovery cost only if the cost is paid or incurred with respect to an asset which is used for the primary purpose of implementing a qualified enhanced oil recovery project. All the facts and circumstances determine whether an asset is used for the primary purpose of implementing a qualified enhanced oil recovery project.

(2) *Tertiary injectant costs.* Tertiary injectant costs generally satisfy the primary purpose test of this paragraph (c).

(3) *Intangible drilling and development costs.* Intangible drilling and development costs paid or incurred with respect to a well that is used in connection with the recovery of oil by primary or secondary methods are not qualified enhanced oil recovery costs. A well used for primary or secondary recovery is not used for the primary purpose of implementing a qualified enhanced oil recovery project.

(4) *Tangible property costs.* Tangible property costs must be paid or incurred with respect to property which is used for the primary purpose of implementing a qualified enhanced oil recovery project. If tangible property is used partly in a qualified enhanced oil recovery project and partly in another activity, the property must be primarily used to implement the qualified enhanced oil recovery project.

(5) *Offshore drilling platforms.* Amounts paid or incurred in connection with the acquisition, construction, transportation, erection, or installation of an offshore drilling platform (regardless of whether the amounts are intangible drilling and development costs) that is used in connection with the recovery of oil by primary or secondary methods are not qualified enhanced oil recovery costs. An offshore drilling platform used for primary or secondary recovery is not used for the primary purpose of implementing a qualified enhanced oil recovery project.

(6) *Examples.* The following examples illustrate the principles of this paragraph (c).

Example 1. Intangible drilling and development costs. In 1992, H incurs intangible drilling and development costs in drilling a well. H intends to use the well as an injection well in connection with an enhanced oil recovery project in 1994, but in the meantime will use the well in connection with a secondary recovery project. H may not take the intangible drilling and development costs into account in determining the credit because the primary purpose of a well used for secondary recovery is not to implement a qualified enhanced oil recovery project.

Example 2. Offshore drilling platform. I, the owner of an operating mineral interest in an offshore oil field located within the United States, constructs an offshore drilling platform that is designed to accommodate the primary, secondary, and tertiary development of the field. Subsequent to primary and secondary development of the field, J commences an enhanced oil recovery project that involves the application of a qualified tertiary recovery method. As part of the enhanced oil recovery project, J drills injection wells from the offshore drilling platform J used in the primary and secondary development of the field and installs an additional separator on the platform. Because the offshore drilling platform was used in the primary and secondary development of the field and was not used for the primary purpose of implementing tertiary development of the field, costs incurred by J in connection with the acquisition, construction, transportation, erection, or installation of the offshore drilling platform are not qualified enhanced oil recovery costs. However, the costs J incurs for the additional separator are qualified enhanced oil recovery costs because the separator is used for the primary purpose of implementing tertiary development of the field. In addition, the intangible drilling and development costs J incurs in connection with drilling the injection wells are qualified enhanced oil recovery costs with respect to which J may claim the enhanced oil recovery credit.

(d) *Costs paid or incurred prior to first injection*—(1) *In general.* Qualified enhanced oil recovery costs may be paid or incurred prior to the date of the first injection of liquids, gases, or other matter (within the meaning of § 1.43–2(c)). Except as provided in paragraph (d)(2) of this section, if the first injection of liquids, gases, or other matter occurs after the taxable year with respect to which the qualified enhanced oil recovery costs are allowable, the costs may be taken into account in determining the amount of the credit as follows—

(i) If the first injection of liquids, gases, or other matter occurs on or before the date the taxpayer files the taxpayer's federal income tax return for the taxable year with respect to which the costs are allowable, the costs may be taken into account on that return, or

(ii) If the first injection of liquids, gases, or other matter occurs after the date the taxpayer files the taxpayer's federal income tax return for the taxable year with respect to which the costs are allowable, the costs may be taken into account on an amended return (or, in the case of a Coordinated Examination Program taxpayer, on a written statement treated as a qualified amended return) for the taxable year.

(2) *First injection more than 36 months after close of taxable year costs are paid or incurred* If the first injection of liquids, gases, or other matter occurs more than 36 months after the close of the taxable year in which costs are paid or incurred, the costs may not be taken into account in determining the credit for any taxable year. For purposes of this paragraph (d), injections in volumes significantly less than the volumes specified in the project plan, the unit plan of development, or another similar plan do not constitute the first injection of liquids, gases, or other matter.

(3) *Examples.* The following examples illustrate the provisions of paragraph (d) of this section.

Example 1. First injection before return filed. In 1992, K, a calendar year taxpayer, undertakes a qualified enhanced oil recovery project on a property in which K owns an operating mineral interest. K incurs $1,000 of intangible drilling and development costs, which K may elect to deduct under section 263(c) for 1992. The first injection of liquids, gases, or other matter (within the meaning of § 1.43–2(c)) occurs in March 1993. K files a 1992 federal income tax return in April 1993. Because the first injection occurs before the filing of K's 1992 federal income tax return, K may take the $1,000 of intangible drilling and development costs into account in determining the credit for 1992 on that return.

Example 2. First injection after return filed. The facts are the same as in *Example 1* except that the first injection does not occur until January 1994. Because the first injection has not occurred, K may not take the $1,000 of intangible drilling and development costs into account when K files the 1992 federal income tax return in April 1993. K may take the $1,000 intangible drilling and development costs into account in determining the credit for 1992 by filing an amended 1992 federal income tax return after the first injection occurs.

Example 3. First injection more than 36 months after taxable year The facts are the same as in *Example 1* except that the first injection does not occur until June 1996. Because the first injection does not occur within 36 months of the close of the taxable year in which the costs are paid or incurred, K may not take the $1,000 of intangible drilling and development costs into account, on either K's original 1992 federal income tax return or any other return, in determining the credit for any taxable year.

(e) *Other rules*—(1) *Anti-abuse rule.* Costs paid or incurred with respect to an asset that is acquired, used, or transferred in a manner designed to duplicate or otherwise unreasonably increase the amount of the credit are not qualified enhanced oil recovery costs, regardless of whether the costs would otherwise be creditable for a single taxpayer or more than one taxpayer.

(2) *Costs paid or incurred to acquire a project.* A purchaser of an existing qualified enhanced oil recovery project may claim the credit for any section 43 costs in excess of the acquisition cost. However, costs paid or incurred to acquire an existing qualified enhanced oil recovery project (or an interest in an existing qualified enhanced oil recovery project) are not eligible for the credit.

(3) *Examples.* The following examples illustrate the principles of paragraph (e) of this section.

Example 1. Duplicating or unreasonably increasing the credit. L owns an operating mineral interest in a property with respect to which a qualified enhanced oil recovery project is implemented. L acquires pumping units, rods, casing, and separators for use in connection with the project from an unrelated equipment dealer in an arm's length transaction. The equipment is used for the primary purpose of implementing the project. Some of the equipment acquired by L is used equipment. The costs paid by L for the used equipment are qualified enhanced oil recovery costs. L does not need to determine whether the equipment has been previously used in an enhanced oil recovery project.

Example 2. Duplicating or unreasonably increasing the credit. M and N are co-owners of an oil property with respect to which a qualified enhanced oil recovery project is implemented. In 1992, M and N jointly purchase and place in service a nitrogen plant that supplies the tertiary injectant used in the project. M and N claim the credit for their respective costs for the plant. In 1994, X, a corporation unrelated to M or N, purchases the nitrogen plant and enters into an agreement to sell nitrogen to M and N. Because this transaction duplicates or otherwise unreasonably increases the credit, the credit is not allowable for the amounts incurred by M and N for the nitrogen purchased from X.

Example 3. Duplicating or unreasonably increasing the credit. The facts are the same as in *Example 2*. In addition, in 1995, M and N reacquire the nitrogen plant from X. This constitutes the acquisition of property in a manner designed to duplicate or otherwise unreasonably increase the amount of the credit. Therefore, the credit is not allowable for amounts incurred by M and N for the nitrogen plant purchased from X.

Example 4. Duplicating or unreasonably increasing the credit. O owns an operating mineral interest in a property with respect to which a qualified enhanced oil recovery project is implemented. O acquires a pump that is installed at the site of the project. After the pump has been placed in service for 6 months, O transfers the pump to a secondary recovery project and acquires a replacement pump for the tertiary project. The original pump is suited to the needs of the secondary recovery project and could have been installed there initially. The pumps have been acquired in a manner designed to duplicate or otherwise unreasonably increase the amount of the credit. Depending on the facts, the cost of one pump or the other may be a qualified enhanced oil recovery cost; however, O may not claim the credit with respect to the cost of both pumps.

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Example 5. Acquiring a project. In 1993, P purchases all of Q's interest in a qualified enhanced oil recovery project, including all of Q's interest in tangible property that is an integral part of the project and all of Q's operating mineral interest. In 1994, P incurs costs for additional tangible property that is an integral part of the project and which is used for the primary purpose of implementing the project. P also incurs costs for tertiary injectants that are injected in connection with the project. In determining the credit for 1994, P may take into account costs P incurred for tangible property and tertiary injectants. However, P may not take into account any amount that P paid for Q's interest in the project in determining P's credit for any taxable year.

§ 1.43-5 At-risk limitation. [Reserved]

§ 1.43-6 Election out of section 43.

(a) *Election to have the credit not apply*—(1) *In general.* A taxpayer may elect to have section 43 not apply for any taxable year. The taxpayer may revoke an election to have section 43 not apply for any taxable year. An election to have section 43 not apply (or a revocation of an election to have section 43 not apply) for any taxable year is effective only for the taxable year to which the election relates.

(2) *Time for making the election.* A taxpayer may make an election under paragraph (a) of this section to have section 43 not apply (or revoke an election to have section 43 not apply) for any taxable year at any time before the expiration of the 3-year period beginning on the last date prescribed by law (determined without regard to extensions) for filing the return for the taxable year. The time for making the election (or revoking the election) is prescribed by section 43(e)(2) and may not be extended under § 1.9100-1.

(3) *Manner of making the election.* An election (or revocation) under paragraph (a)(1) of this section is made by attaching a statement to the taxpayer's federal income tax return or an amended return (or, in the case of a Coordinated Examination Program taxpayer, on a written statement treated as a qualified amended return) for the taxable year for which the election (or revocation) applies. The taxpayer must indicate whether the taxpayer is electing to not have section 43 apply or is revoking such an election and designate the project or projects to which the election (or revocation) applies. For any taxable year, the last election (or revocation) made by a taxpayer within the period prescribed in paragraph (a)(2) of this section determines whether section 43 applies for that taxable year.

(b) *Election by partnerships and S corporations.* For partnerships and S corporations, an election to have section 43 not apply (or a revocation of an election to have section 43 not apply) for any taxable year is made, in accordance with the requirements of paragraph (a) of this section, by the partnership or S corporation with respect to the qualified enhanced oil recovery costs paid or incurred by the partnership or S corporation for the taxable year to which the election relates.

§ 1.43-7 Effection date of regulations.

(a) *In general.* Unless a taxpayer makes an election under paragraph (b)(1) of this section, the provisions of §§ 1.43-1, 1.43-2, 1.43-3, 1.43-5, and 1.43-6 apply to costs paid or incurred after December 31, 1991, in connection with an enhanced oil recovery project for which the first injection of liquids, gases, or other matter occurs after December 31, 1990.

(b) *Election*—(1) *In general.* A taxpayer may elect to apply the provisions of §§ 1.43-1, 1.43-2, 1.43-4, 1.43-5, and 1.43-6 for any taxable years beginning after December 31, 1990, with respect to costs paid or incurred in connection with an enhanced oil recovery project for which the first injection of liquids, gases, or other matter occurs after December 31, 1990.

(2) *Time and manner of election.* An election under this paragraph (b) is made on the taxpayer's federal income tax return for a taxable year beginning after December 31, 1990, and before January 1, 1992, by attaching a written statement to the return that includes the name, address, and taxpayer identification number of the taxpayer making the statement and contains a declaration that an election is being made under this paragraph (b). The taxpayer's return must be filed not later than the last date prescribed by law (including extensions) for filing the return.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by removing the entry for section 1.43-2 and adding the following entry:

"1.32-2.....1545-0074".

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

[FR Doc. 91-30875 Filed 12-27-91; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA-14-1-5358; FRL-4088-8]

Approval and Promulgation of Air Quality Implementation Plans; MA.; (Amendment to Massachusetts' SIP, for Ozone and for Carbon Monoxide, for the Control of Air Pollution by Certifying Roadway Tunnel Ventilation Systems in the Metropolitan Boston Air Pollution Control District)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) amendment submitted by the Commonwealth of Massachusetts. This amendment establishes and requires the pre-construction and operating certification of roadway tunnel ventilation systems in the Metropolitan Boston Air Pollution Control District. The intended effect of this action is to control vehicular emissions of carbon monoxide (CO), hydrocarbons (HC) and nitrogen oxides (NO_x). These pollutants contribute to the carbon monoxide and ozone air pollution problems in the Boston urbanized area. This action is being taken under section 110 and part D of the Clean Air Act.

DATES: Comments must be received on or before January 29, 1992. Public comments on this document are requested and will be considered before taking final action on this SIP amendment.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and (Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 7th Floor, Boston, MA 02108).

FOR FURTHER INFORMATION CONTACT: Donald O. Cooke, (617) 565-3227; FTS 835-3227.

SUPPLEMENTARY INFORMATION: On January 30, 1991, the Massachusetts Department of Environmental Protection (DEP) submitted an amendment to its State Implementation Plan (SIP) for Ozone and for Carbon Monoxide, for the control of air pollution by certifying roadway tunnel ventilation systems in the Metropolitan Boston Air Pollution Control District. The amendment contains definitions for four new terms added to 310 C.M.R. 7.00 and adds a new section, 310 C.M.R. 7.38, to establish the roadway tunnel ventilation systems certification program.

Background

The Commonwealth of Massachusetts Department of Environmental Protection—Division of Air Quality Control (DEP) has adopted a state regulation for certifying roadway tunnel ventilation systems in the Metropolitan Boston Air Pollution Control District. This new regulation establishes a process for reviewing and accepting certification for the construction and operation of roadway tunnel ventilation systems built after January 1, 1991 in the Metropolitan Boston Air Pollution Control District.

The certification process requires that anyone proposing to construct and operate a tunnel ventilation system that services a public roadway certify in writing to DEP prior to construction that the operation will not cause a violation or exacerbation of the National Ambient Air Quality Standards (NAAQSs). In addition, approximately one year after opening the roadway to the public and every five years thereafter, the operator shall demonstrate by applying for an operation certification that the operation of the ventilation system will not cause violations of the NAAQSs. In addition, interim reporting of air quality and traffic monitoring data is required in order to demonstrate continued compliance with the NAAQSs.

Finally, EPA does not consider roadway tunnel ventilation systems to be stationary sources as defined by Clean Air Act Section 302(z), as amended, because emissions from roadway tunnel ventilation systems are generated directly by mobile sources that use the roadway and are not generated by stationary sources.

Summary of SIP Revision

Preconstruction Certificate

Any proponent of a highway project that includes the construction and operation of any tunnel ventilation system in the Metropolitan Boston Air Pollution Control District, which begins construction on or after January 1, 1991, is required to submit information sufficient for the DEP to review the certification. Such information shall include: (1) An analysis of the existing and projected non-methane hydrocarbon emissions from the project area, including the emissions from the tunnel ventilation system, the project roadway and the roadway network in the project area; (2) a comparative analysis that predicts the air quality impact within the project area after the project is built compared to a no-build alternative; (3) information concerning the ventilation building heights and locations, a conceptual site plan, the design criteria for the proposed ventilation equipment and project roadway, standard operating procedures and standard maintenance procedures for the tunnel ventilation system; (4) an analysis of the projected vehicle miles traveled (VTMs), average vehicle speeds and vehicle hours that are expected to occur within the project area when the project is completed compared with the projected VMT, projected average vehicle speeds, and projected vehicle hours travelled under the no-build alternative; and (5) an identification and analysis of feasible pollution prevention measures designed to reduce vehicle miles travelled including identification of the available short and long-term measures, the commitments to implement said measures, and a schedule for implementing said measures.

No construction on a tunnel ventilation system or project roadway subject to the tunnel ventilation certification process shall commence until the certification has been accepted. The DEP may impose conditions on any acceptance of a certification deemed necessary to meet the criteria of the state regulation and insure under standard operating and standard maintenance procedures that the ventilation system will not cause or exacerbate a violation of the NAAQSs, as set forth at 40 CFR 50, or result in an actual or projected increase in the total amount of non-methane hydrocarbons measured within the project area when compared with the no-build alternative.

Operation Certificate

Any person who has received written acceptance of certification to construct a tunnel ventilation system may commence operation of the tunnel ventilation system and open the project roadway to general public use for a period not to exceed eighteen (18) months. That person must submit an application for an operating certificate no earlier than twelve (12) nor later than fifteen (15) months following the commencement of full operation of the tunnel ventilation system or opening of the project roadway for general public use. Any operating certification shall demonstrate that the operation of the tunnel ventilation system shall, at a minimum, be in strict accordance with the maintenance of NAAQSs and demonstrate through actual measured emissions and traffic data that any actual or projected increase in the total amount of non-methane hydrocarbons measured within the project area is lower than when compared with the no-build alternative.

In addition to demonstrating compliance, the operating certificate submittal shall include a contingency plan consisting of measures which could be implemented in cases of exceedances of the emission limitations in the certification.

Any operating certification accepted by the DEP pursuant to this subsection shall be in effect for five (5) years from the date of acceptance and shall be subject to revnewal every five (5) years from the date of acceptance and shall be subject to renewal every five (5) years. The DEP shall apply the same criteria to the renewal of an operating certification that apply to the acceptance of pre-construction certification and the initial operating certification.

Completeness of the Application for Operating Certificate

The DEP shall, within 30 days of receipt of an initial operating certification or its renewal, make a determination whether all information necessary for review of said certification has been submitted. The DEP may impose such conditions on any acceptance of a certification issued as it deems necessary to ensure maintenance of the NAAQSs, and maintenance of any actual or projected increase in the total amount of non-methane hydrocarbons measured within the project area at a lower concentration than would be provided by the no-build alternative.

Contingency Plans

The certification process requires a contingency plan that would be implemented when exceedances of the emission limitations stated in the certification occur. A contingency plan shall identify available contingency measures including, but not limited to, alternative tunnel ventilation system operations and maintenance, and transportation control measures; a commitment to implement the above measures; a schedule for implementing measures on a days-to-full effectiveness basis; and an analysis of the daily air quality impact of the measures on the emissions from the tunnel ventilation system and within the project area.

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Mitigation Plan

If the DEP finds that one or more of the criteria set forth in the certification process or conditions established by DEP are being violated, or are likely to be violated within the period for which the operating certification is valid, then upon being notified by DEP the certificate holder shall submit to the DEP for review and approval a mitigation plan that identifies specific measures the operator intends to implement to bring the tunnel ventilation system and associated project area into compliance. These measures shall meet the criteria set forth in the State regulation and include implementation of any all conditions the DEP accepted as part of the certification. The mitigation plan shall at minimum contain: (1) A study that identifies the factors causing or contributing to the violation; (2) identification and an affirmative demonstration of specific measures which will result in compliance with the certificate criteria and DEP's conditions for acceptance of the certificate; (3) a demonstration of adequate funding mechanisms for implementation of these measures; and (4) a schedule for implementing the measures.

A mitigation plan shall examine measures that address the operation of the ventilation system as well as measures that address operation of the tunnel roadway and roadway network within the project area.

Completeness of the Mitigation Plan

The DEP shall review the mitigation plan and shall, after notice and public hearing, accept or reject the plan in writing no later than 90 days after the DEP determines that all information necessary to review the plan has been submitted. The DEP may impose any conditions on their acceptance of the plan it deems necessary to meet the certification criteria, as well as certification conditions accepted pursuant to the tunnel ventilation system certification process.

Compliance Monitoring

The certification process requires that the operator of the ventilation system (holder of the certificate) monitor air quality at the ventilation stack, downwind sites, and at DEP selected receptor sites. The certification process also requires the monitoring of traffic data within the project area, the numbers and locations of which shall be determined in consultation with the DEP.

Air Quality Impacts

The certification process established by this regulation is viewed as supporting air quality goals and assisting in the maintenance of projected air quality emissions.

EPA believes that the tunnel ventilation certification process will improve air quality because of the requirement to not cause or exacerbate a violation of any NAAQSs. In addition, the certification process will not allow a project to increase actual amounts of non-methane hydrocarbons as compared to a non-build alternative. The tunnel ventilation certification process requires the monitoring of emissions and traffic data to ensure that the tunnel ventilation system continues to meet the certification criteria in the future.

EPA's review of this material indicates that the certification process submitted as a SIP amendment will result in improved air quality. EPA is therefore proposing to approve the Massachusetts SIP amendment for Ozone and for Carbon Monoxide, for the control of air pollution by certifying Roadway Tunnel Ventilation Systems in the Metropolitan Boston Air Pollution Control District, which was submitted on January 30, 1991. EPA is soliciting public comment on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the "**ADDRESSES**" section of this notice.

Proposed Action

EPA is proposing to approve the SIP amendment for Ozone and for Carbon Monoxide, for the control of air pollution by certifying Roadway Tunnel Ventilation Systems in the Metropolitan Boston Air Pollution Control District.

Under 5 U.S.C. 605(b), I certify that this SIP amendment will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for amendment to any State Implementation Plan. Each request for amendment to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Administrator's decision to approve or disapprove the SIP amendment will be based on whether it meets the requirements of Sections 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401–7642.

Dated: December 17, 1991.

Julie Belaga,

Regional Administrator, Region I.

[FR Doc. 91–31153 Filed 12–27–91; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 185

[OPP–300238A; FRL–4008–3]

Dicofol; Revocation of Food Additive Regulation; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Extension of comment period.

SUMMARY: This document extends to February 18, 1992, the comment period for persons who want to submit comments on EPA's Carcinogen Review and Verification Effort (CRAVE) review of the carcinogenicity of dicofol.

DATES: Written comments on CRAVE review, identified by the Office of Pesticide Programs (OPP) document control number [OPP-300238A], must be received on or before February 18, 1992. Written comments on other aspects of the proposed revocation must be received by January 2, 1992.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. Further information on procedures for submitting comments, including "Confidential Business Information" (CBI), is provided in the proposed rule (see the **Federal Register** of October 4, 1991 (56 FR 50466)).

FOR FURTHER INFORMATION CONTACT: By mail: Ann Sibold, Special Review and Reregistration Division (H7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, 3rd Floor, Crystal Station Building # 1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8034.

SUPPLEMENTARY INFORMATION: CRAVE is a panel of EPA scientists that reviews carcinogenicity findings supporting EPA regulations. CRAVE also provides the official Agency position on the carcinogenicity of specific chemicals. The proposed revocation (56 FR 50466; Oct. 4, 1991) provides a detailed discussion of issues related to the carcinogenicity of dicofol. Further, it stated that the CRAVE meeting to review the carcinogenicity of dicofol would be held in early November of 1991. It was projected that minutes of this meeting would be issued within 2 weeks after the meeting and made available in the public docket for review by interested persons. EPA expected that the 90-day comment period would accommodate persons wanting to comment on the CRAVE review. After the revocation was published, the meeting was advanced to October 1991. Copies of letters notifying registrants of this change were placed in the public docket.

Subsequently, the October meeting was postponed. The rescheduled meeting was held on December 4, 1991. However, CRAVE did not reach a final decision at the meeting. CRAVE expects it will have a final decision by early January 1992, and the minutes will be available in the public docket by January 17, 1992. To ensure that persons wanting to comment on the CRAVE review will have adequate time to do so, the Agency is extending the comment period to February 18, 1992. This extension is limited to comments on the CRAVE review. All other comments must be submitted by January 2, 1992.

Further information on the proposed revocation, public comment procedures, availability of the administrative record, and other regulatory requirements are available in the proposed rule (56 FR 50466; Oct. 4, 1991).

Dated: December 20, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91–31148 Filed 12–27–91; 8:45 am]

BILLING CODE 6560–50–F

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1035

[Ex Parte No. 495]

Bills of Lading

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Interstate Commerce Commission proposes to vacate its prescription of uniform bills of lading and livestock contracts employed by rail and water carriers and to remove 49 CFR part 1035—Bills of Lading—from the Code of Federal Regulations. Continuing to prescribe the form of such documents appears unnecessary in light of our experience, widespread exemption of rail transactions from regulation, and the success of measures we have taken to minimize regulatory requirements. We invite comments from interested parties.

DATES: Comments must be received by February 13, 1992.

ADDRESSES: Send an original and 10 copies of comments, referring to Ex Parte No. 495, to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 927–5660. [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION:

In 1919 and 1921, the Interstate Commerce Commission prescribed uniform bills of lading and livestock to be used by rail and water carriers. The Commission took that action in response to complaints alleging varying and unfair carrier practices when carriers began implementing the Carmack and Cummins amendments to the Interstate Commerce Act relating to carrier liability for loss and damage. *Bills of Lading*, 52 I.C.C. 672 (1919); *Export Bill of Lading*, 64 I.C.C. 347 (1921); and *Domestic Bill of Lading and Live Stock Contract*, 64 I.C.C. 357 (1921). In the seven decades since then, the Commission has modified those prescriptions only a few times, in minor ways.

Although 49 U.S.C. 11707(a)(1) directs carriers to issue "receipts or bills of lading," the Interstate Commerce Act does not require the Commission to prescribe the form those documents must take. The Commission never found it necessary to prescribe a form for motor carrier bills of lading, although motor carriers are subject to the same requirements as rail carriers.[1] Nor has the Commission tightly controlled railroad and water carrier bills of lading. Moreover, in their present form, the regulations codified at 49 CFR part 1035 are confusing and outdated. Given these circumstances, as well as the many broad exemptions of railroad transactions from regulation granted by the Commission, and other measures taken by the Commission in recent years to minimize regulatory requirements, it appears necessary for us to continue to prescribe the form of bills of lading employed by rail and water carriers.[2]

Accordingly, we propose to vacate and to remove from the Code of Federal Regulations the bill of lading and livestock contract prescriptions codified at 49 CFR part 1035. Statutory provisions, such as those contained at 49 appendix U.S.C., 11707, Liability of Common Carriers Under Receipts and Bills of Lading, and 49 U.S.C. 10730, Rates and Liability Based on Value, would remain in effect. The Commission's reasonable practices jurisdiction under 49 U.S.C. 10707 would also remain in effect.

There may be little or no need or demand for changes in bills of lading terms and format. Bill of lading forms may still be published, because 49 U.S.C. 10702(a)(1) requires carriers to issue bills of lading and 49 U.S.C. 10702(a)(2)(A) requires that carriers "establish * * * rules and practices on * * * bills of lading * * *." The current bill of lading form, whether produced as a paper document or electronically generated and/or transmitted, may still be used. If a need for change develops,

[1] Commission regulations in 49 CFR 1051.1 require motor common carriers to issue receipts or bills of lading containing a few items of basic information. Nevertheless, the Commission has not prescribed the contract terms, conditions, or formats of motor carrier bills of lading. Because § 1051.1 is not outdated and confusing like the rail carrier material in part 1035, we see no need to vacate the section. There are two other regulations regarding bills of lading (49 CFR 1056.6 and 49 CFR 1061.1). We plan to retain them because they pertain to household goods service, a specialized operation affecting individual consumers.

[2] Moreover, Article 7 of the Uniform Commercial Code deals extensively with bills of lading. With a Commission-prescribed form, carriers have not been free to follow the UCC. To the extent the Commission frees carriers from prescribed forms, it will allow those carriers more closely to conform their business practices to the rest of the commercial marketplace, to the extent not otherwise consistent with federal law.

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however, implementation of this proposed action will have removed the regulatory impediment of the prescriptions now in place.

We invite comments from interested persons on this proposal.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1035

Railroads, Water carriers.

For the reasons set out in the preamble, title 49, chapter X, part 1035 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1035 [REMOVED]

1. Part 1035 is proposed to be removed.

Authority: 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: December 12, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91 31098 Filed 12–27–91; 8:45 am]

BILLING CODE 7035–01–M

Notices

Federal Register

Vol. 56, No. 250

Monday, December 30, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

December 27, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 720–2118.

Reinstatement

• *Farmers Home Administration*

7 CFR 1924–C, Planning and Performing Site Development Work

Form 1924–20

On occasion

Individuals or households; State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 1,150 responses; 6,500 hours

Jack Holston (202) 720–9736

• *Farmers Home Administration*

7 CFR 1944–J, Section 504 Rural Housing Loans and Grants

On occasion

Individuals or households; 16,300 responses; 1,394 hours

Jack Holston (202) 720–9736

• *Farmers Home Administration*

7 CFR 1951–F, Analyzing Credit Needs and Graduation of Borrowers

On occasion

Individuals or households; State or local governments; Farms; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 119,620 responses; 84,823 hours

Jack Holston (202) 720–9736

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 91–31141 Filed 12–27–91; 8:45 am]

BILLING CODE 3410–01–M

Federal Crop Insurance Corporation

[RCD–91–SRA; Doc. No. 0100s]

Termination of the Standard Reinsurance Agreement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of intent to terminate the standard reinsurance agreement.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith gives notice of its intention to terminate the current (1992) Standard Reinsurance Agreement (Agreement), effective as of June 30, 1992, in accordance with the provisions of Section V, Paragraph I, Renewal, of the Agreement.

The Food, Agriculture, Conservation, and Trade Act of 1990 (The Farm Act of 1990), enacted on November 28, 1990 (Pub.L. 101–284, 104 Stat. 3359), amended the Federal Crop Insurance Act (5 U.S.C. 1501 *et seq.*) to provide that, beginning with the 1992 reinsurance year, the Federal Crop Insurance Corporation shall revise its reinsurance agreements to require an assumption of a greater share of risk by reinsured companies, among other issues.

This notice of termination is necessary to provide FCIC sufficient time to address issues and changes for the 1993 Agreement consistent with the direction provided by the Farm Act of 1990.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 235–1168.

Done in Washington, DC on December 12, 1991.

James E. Cason,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 91–31032 Filed 12–27–91; 8:45 am]

BILLING CODE 3410–08–M

Soil Conservation Service

Blossom Lake Inlet Critical Area Treatment Measure, Michigan

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Blossom Lake Inlet RC&D Measure, Branch County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517–337–6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an

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environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of measures for critical area treatment. The planned works of improvement include the following items: 700 ft. of drain cleaning and shaping, 500 tons of rock riprap, 2 acres of seeding and the removal of 300 tons of sediment. Total construction cost $16,500: RC&D funds will pay 65% and local funds will pay 35%.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: December 19, 1991.

Homer R. Hilner,

State Conservationist.

[FR Doc. 91-31019 Filed 12-27-91; 8:45 am]

BILLING CODE 3410-16-M

Kalamazoo Nature Center Critical Area Treatment RC&D Measure, Michigan

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environment impact statement is not being prepared for the Kalamazoo Nature Center RC&D Measure, Kalamazoo County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517-337-6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of measures for Critical Area Treatment. The planned works of improvement include the following items: 500 ft. of diversion, 40 tons of rock riprap, 2 acres of seeding, 450 ft. of drop pipe spillway and 500 ft. of fence. Total construction cost is estimated to be $18,000: RC&D funds will pay 65% and local funds will pay 35%.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Dated: December 19, 1991.

Homer R. Hilner,

State Conservationist.

[FR Doc. 91-31020 Filed 12-27-91; 8:45 am]

BILLING CODE 3410-16-M

Mills Road Extension Critical Area Treatment RC&D Measure, Michigan

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969: the Council on Environmental Quality Guidelines, (40 CFR part 1500): and the Soil Conservation Service Guidelines (7 CFR part 650): the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Mills Road Extension RC&D Measure, Ogemaw County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517-337-6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or materials are encountered during actual construction. As result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of measures for critical area treatment. The planned works of improvement include the following items: 600 ft. of fencing, 20 ft. of stairs, 3 platforms, 1,800 ft. of walkway, 50 cu. yds. of topsoil, 150 yds. of gravel, 2 surface inlets, one-half acre of seeding, 1000 lbs. of mulching, 1,100 sq. ft. of erosion control netting and one project sign. Total construction cost is $24,000: RC&D funds will pay 65% and local funds will pay 35%.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Dated: December 20, 1991.

Homer R. Hilner,

State Conservationist.

[FR Doc. 91-31021 Filed 12-27-91; 8:45 am]

BILLING CODE 3410-16-M

Muddy Creek-Orderville Watershed, UT

AGENCY: Soil Conservation Service.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives the notice that an environmental impact statement is being prepared for the Muddy Creek-Orderville Watershed, Kane County, Utah.

FOR FURTHER INFORMATION CONTACT: Francis T. Holt, State Conservationist, Soil Conservation Service, PO Box 11350, Salt Lake City, Utah, 84147-0350, telephone (801) 524-5050.

SUPPLEMENTARY INFORMATION: An Environmental Assessment (EA) has been prepared for this federally assisted action. During the review of this Environmental Assessment concerns surfaced that this project would significantly impact the environment. As a result of these concerns, Frank Holt, State Conservationist, has determined that an Environmental Impact Statement (EIS) should be prepared and reviewed for this project.

Copies of the Environmental Assessment can be obtained by calling (801) 524-5054 or writing the Soil Conservation Service at P.O. Box 11350, Salt Lake City, UT 84147-0350.

The purpose of the action is watershed protection. The watershed is presently in a degrading condition, due to accelerating sheet, rill and gully erosion rates. This erosion is permanently damaging the long-term productivity of the watershed to support plant and animal life. It is also causing off-site damage by yielding salt-bearing sediment to the East Fork of the Virgin River, a part of the Colorado River System.

The Soil Conservation Service is presently seeking information and comments on the scope of issues to be addressed and alternatives and impacts to be considered in the EIS from agencies, groups and individuals.

Items that have raised a high level of concern either in the original Environmental Assessment or from comments received from reviewers include: Erosion and sedimentation, the use of chaining as a land management procedure, water quality, plant cover, economic analysis, future grazing impacts, wildlife habitat, threatened and endangered species, archaeology sites, change in hydrologic regime, downstream salinity impacts, riparian protection, wilderness, Native American religious sites, success of vegetative treatment, diversity of plants included in the proposed seed mix and use of hazardous chemicals.

The Soil Conservation Service invites written comments and suggestions on the scope of issues related to this proposal. For most effective use in preparing the EIS, information and comments should be received in the SCS office by February 28, 1992.

Interested people are invited to visit with Soil Conservation Service personnel at the State Office, room 4012, Federal Building, 125 S. State St., Salt Lake City or the Field Office, 82 N. 100 East, Cedar City during the EIS process.

Another formal comment period will be held during the review of the draft EIS. The comment period on the draft EIS will begin with publication of the Notice of Availability in the **Federal Register** and extend for 45 days from that date. The draft is scheduled to be completed in March of 1993.

The final EIS is expected to be released in June, 1993. Frank Holt, State Conservationist, who is the responsible official will then make a decision regarding this proposal after considering the comments, responses and environmental consequences discussed in the final EIS.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: December 23, 1991.

Francis T. Holt,

State Conservationist

[FR Doc. 91-31118 Filed 12-27-91; 8:45 am]

BILLING CODE 3410-16-M

Wayne Elementary Critical Area Treatment RC&D Measure Plan, West Virginia

AGENCY: U.S. Department of Agriculture, Soil Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102 (2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR part 1500); and the Soil Conservation Service Guidelines, (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Wayne Elementary Critical Area Treatment RC&D Measure Plan, Wayne County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, room 301, Morgantown, West Virginia 26505, Telephone (304) 291-4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Notice of a Finding of No Significant Impact

The purpose of the measure is critical area treatment for erosion control. The measure is designed to stabilize by regarding, shaping, and revegetating approximately 1 acre of land that has an average erosion rate of 75 tons per acre per year. Conservation practices include vegetated waterways land smoothing, culvert, heavy use area protection, seeding, and mulching.

Wayne County Critical Area Treatment RC&D Measure Plan, Wayne County, West Virginia

The Notice of a Finding of No Significant Impact has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, State Conservationist.

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No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials."

Dated: December 18, 1991.

Rollin N. Swank,

State Conservationist.

[FR Doc. 91-31099 Filed 12-27-91; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Mount Pleasant Hearing—Latino Concerns

Notice is hereby given pursuant to the provisions of the United States Commission on Civil Rights Act of 1983, Public Law 98-183, 97 Stat. 1301, as amended, that a public hearing of the U.S. Commission on Civil Rights will commence on January 29, 1992, beginning at 9 a.m., in the Auditorium at the Carlos Rosario Adult Education Center, 34th Street and Wisconsin Avenue, NW., Washington, DC.

The purpose of the hearing is to collect information within the jurisdiction of the Commission, particularly concerning the Latino community in the District of Columbia.

The Commission is an independent, bipartisan factfinding agency authorized to study, collect, and disseminate information and to appraise the laws and policies of the Federal Government, and to study and collect information concerning legal developments, with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice.

Dated at Washington, DC, December 23, 1991.

Arthur A. Fletcher,

Chairman.

[FR Doc. 91-31092 Filed 12-27-91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Interim Capital Construction Fund Agreement and Certificate.

Form number: NOAA Form 88-14; OMB—0648-0090.

Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 1,000 respondents; 2,250 reporting hours; average hours per response—2.25 hours.

Needs and uses: Information is used to establish eligibility for agreements for the Capital Construction Fund Program, and to certify completion of the agreements' objectives.

Affected public: Business or other for-profit, small businesses or organizations.

Frequency: On occasion.

Respondent's obligation: Required to obtain or retain a benefit.

OMB desk officer: Ronald Minsk, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 23, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-31085 Filed 12-27-91; 8:45 am]

BILLING CODE 3510-CW-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Nan-Wei Deng, Also Known as Charles Deng and Doing Business as Energy and Materials of America, Inc.; Order Modifying Temporary Denial Order

In the Matter of: Nan-Wei Deng, also known as Charles Deng individually with addresses at 1465 67th Street, Brooklyn, New York 11219 and 32 Alicewood Drive, Markham, Ontario L3S 3C9 Canada and doing business as Energy and Materials of America, Inc., 54 Walker Street, New York, New York 10013, Respondents.

On November 27, 1991, pursuant to the provisions of Section 788.19 of the Export Administration Regulations (currently codified at 15 CFR parts 768-799 (1991)) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended (currently codified at 49 U.S.C.A. app. 2401-2420 (1991)) (Act),[1] I issued an order temporarily denying all United States export privileges of Nan-Wei Deng, also known as Charles Deng, individually and doing business as Energy and Materials of America, Inc. (hereinafter collectively referred to as Deng). 56 FR 63496 (December 4, 1991). In addition to denying Deng's U.S. Export privileges for a period of 180 days from the date of issuance,[2] the Order also named Onyx Computers, 30 Mural Street, Unit #10, Richmond Hill, Ontario, Canada (Onyx), as a person related to Deng. Accordingly, Onyx was made subject to the provisions of the Order as a related person.

The Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce ("Department"), and Onyx have jointly moved, based on evidence presented to the Department by Onyx, to modify the temporary denial order by deleting Onyx as a person related to Deng. In addition, the Department and Onyx have moved to delete the "in care of Onyx" address from the addresses provided for Deng in the Order.

Based on the submission by the Department and Onyx, I hereby grant the motion to modify the temporary denial order. Accordingly, the temporary denial order entered against Deng on November 27, 1991, is modified to read as follows:

Ordered

I. All outstanding individual validated licenses in which Nan-Wei Deng, also known as Charles Deng, individually or doing business as Energy and Materials of America, Inc. (EMAI), appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Deng's or EMAI's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. For a period of 180 days from the date of entry of the November 27, 1991

[1] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701-1706 (1991)).

[2] The temporary denial order is effective until May 25, 1992, which is 180 days from November 27, 1991.

order, Nan-Wei Deng, also known as Charles Deng, individually with addresses at 1465 67th Street, Brooklyn, New York 11219, and 32 Alicewood Drive, Markham, Ontario L3S 3C9, Canada; and doing business as Energy and Materials of America, Inc., with an address at 54 Walker Street, New York, New York 10013, and all their successors, assignees, officers, partners, representatives, agents, and employees, hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 788.3(c) of the Regulations, any person, firm, corporation, or business organization related to Deng and/or EMAI by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. In accordance with the provisions of § 788.19(e) of the Regulations, either respondent may, at any time, appeal this temporary denial order by filing with the Office of the Administrative Law Judge, U.S. Department of Commerce, Room H-6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order is effective immediately and shall remain in effect until May 25, 1992.

VII. In accordance with the provisions of Section 788.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Either respondent may oppose a request to renew this temporary denial order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order shall be served on each respondent and this order shall be published in the **Federal Register**.

Dated: December 20, 1991.

Douglas E. Lavin,

Acting Assistant Secretary for Export Enforcement.

[FR Doc. 91-31100 Filed 12-27-91; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF COMMERCE

Economic Development Administration

Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance; Bitrode Corp, et al.

AGENCY: Economic Development Administration (EDA), D.C.

ACTION: To give firms an opportunity to comment.

Firm name	Address	Date petition accepted	Product
Bitrode Corporation	1642 Manufacturers Drive Fenton, MO 63026	11/20/91	Battery Testers and Battery Chargers.
Electrix, Inc.	45 Spring Street New Haven, CT 06519	11/20/91	Desk Fans and Heaters.
Lanpar, Inc. DBA Oakwood Interior.	19129 South Hamilton Avenue Cardena, CA 90248	11/20/91	Manufacturer of Wooden Bedroom Furniture.
Virginia Walton, Ltd.	1518 1st Avenue South Seattle, WA 98134	11/22/91	Men, Women and Children's Jackets and Pants and Adult Shorts.
The Master Products Company	6400 Park Avenue Cleveland, OH 44105	11/22/91	Washers, Fittings for Chairs, Ball Joints for Automobile Axles, Back Plates for Mirrors of Steel.
Bushmaster Firearms, Inc.	999 Roosevelt Trail Bldg. 3 Windham, ME 04062	11/22/91	M16/AR15 Rifles and Weapon Parts.
Global Manufacturing, Inc.	1102 W. 14th Street Little Rock, AR 72202	11/22/91	Rotary Industrial Vibrators.
Delta Clutch, Inc.	250 Main Street Harrisville, RI 02830	11/29/91	Remanufactured Clutches.
Hal Hardin Apparel, Inc.	117 East 14th Street Kansas City, MO 64146	11/29/91	Women's Dresses.
Bayer Glass Studios	179 Dogwood Avenue Crawford, CO 81415	12/02/91	Bowls of Sand, Soda, Color Rods (5% Lead).
Litho-Color Hawaii	443 Nimitz Highway Honolulu, HI 96817	12/02/91	Pre-Press Film.
Ski Tuner Manufacturing, Inc.	Route 100, Box 1059 Waitsfield, VT 05673	12/03/91	Ski Tuner Machines.

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Firm name	Address	Date petition accepted	Product
American Manufacturing Co., Inc.	3600 North Hawthorne Street Chattanooga, TN 37406	12/04/91	MDSE Display Racks, Harness and Saddlery Hardware, Floral Display Items and Appliance Racks.
Meirick, Inc.	741 Ten Mile Drive Frisco, CO 80443	12/05/91	Uninteruptible Power Systems for Computers and Telecommunication Equipment.
Salkin Seed Company, Inc.	HCR 85, Box 139 Bonners Ferry, ID 83805	12/05/91	Processed Timothy, Rape Seed and Feed Barley.
Ten-Tec, Inc.	1185 Dolly Parton Parkway Sevierville, TN 37862	12/05/91	Transceivers for Amateur Radio, Commercial and Nontactical Military Applications.
Granite Importers, Inc.,	South Vine St. Box 712 Barre, VT 05641	12/09/91	Fabricated Architectural Stone Made From Granite.
Parlec, Inc.	101 Perinton Parkway Fairport, NY 14450	12/09/91	Tool Holders, Tool Presetters, Auto Facer, Numer Tap/Numer Float and Boring Tools.
Questronics, Inc.	3570 South West Temple Salt Lake City, UT 84115	12/09/91	Monitors.
Sure-Cast industries, Inc.	11 Mill Street Batavia, NY 14020	12/09/91	Housing and Valves.
Transworld Supplies, Inc.	246 Cleveland Avenue Loveland, CO 80537	12/09/91	Prepared Pigments.
Electronic Plating Service, Inc.	13021 South Budlong Avenue Gardena, CA 90247	12/09/91	Loose, Continious, and Rack Parts.
Amtab Manufacturing Co., Inc.	1747 West Grand Avenue Chicago, IL 60622	12/09/91	Folding Leg Tables of Wood and Metal
Mo & Sam, Inc.	1372 Broadway-Room 402 New York, NY 10018	12/10/91	Ladies Knit Acrylic/Cotton Slacks and Tops
Mt. Baker Plywood, Inc.	2929 Roeder Avenue Bellingham, WA 98227	12/12/91	Plywood.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, room 4015A, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: December 23, 1991.

David F. Witschi,

Acting Deputy Assistant Secretary for Program Operations.

[FR Doc. 91-31094 Filed 12-27-91; 8:45 am]

BILLING CODE 3510-24-M

International Trade Administration

[C-557-806]

Preliminary Affirmative Countervailing Duty Determination: Extruded Rubber Thread from Malaysia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 30, 1991.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Gary Bettger, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2815 or 377-2239.

Preliminary Determination

Based on our investigation, we preliminarily determine that benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Malaysia of the subject merchandise.

Case History

Since the publication of the Notice of Initiation in the **Federal Register** (56 FR 48158, September 24, 1991), the following events have occurred. On October 1, 1991, we presented a questionnaire to the Government of Malaysia (GOM) in Washington, DC, concerning petitioner's allegations. On October 15, 1991, the United States International Trade Commission (ITC) issued its preliminary determination that imports of extruded rubber thread from Malaysia materially injure, or threaten material injury to, a U.S. industry.

On October 25, 1991, petitioner submitted additional subsidy allegations and requested a 21-day extension of the preliminary decision, which the Department granted. On November 21, 1991, petitioner amended its October 25, 1991, request for extension of the preliminary decision to include an additional seven-day extension, which the Department also granted. Finally, by letter dated December 10, 1991, respondents and their U.S. importers challenged petitioner's standing to file on behalf of the domestic producers of the like product for certain types of extruded rubber thread.

Scope of Investigation

The product covered by this investigation is extruded rubber thread from Malaysia. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, i.e., 0.007 inch or 140 gauge, to 1.42 mm, i.e., 0.56 inch or 18 gauge, in diameter. Extruded rubber thread is currently classified under subheading 4007.00.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Standing

In their letter of December 10, 1991 respondents challenged petitioner's

standing. Respondents stated that since they believe that North American Rubber Thread, Inc. does not produce, and may not have the capacity to produce, several categories of extruded rubber thread, the countervailing duty investigation should be terminated with respect to these certain products. Specifically, respondents question whether petitioner produces the following types of extruded rubber thread: (1) Food grade, (2) talc finish, (3) fine gauge, and (4) heat resistant.

The ITC has preliminarily determined in this proceeding that there is one like product, which includes all of the merchandise defined by the scope of this investigation. We have no basis to disagree with the ICT's determination. Accordingly, we determine that petitioner produces a product like the imported product and, hence, has standing to file this investigation.

Analysis of Programs

For purposes of this preliminary determination, the period for which we are measuring bounties or grants ("the review period") is calendar year 1990, which corresponds to the fiscal year of four of the five respondent companies. Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Programs Preliminarily Determined to Confer Bounties or Grants

In determining the benefits received under the various programs described below we used the following calculation methodology. We first calculated a country-wide rate for each program. This rate comprised the *ad valorem* benefit received by each firm weighted by each firm's share of exports to the United States. The program rates were then summed to arrive at a country-wide rate for all programs.

Pursuant to 19 CFR 355.20(d), we compared the total *ad valorem* benefit received by each firm to the country-wide rate for all programs. The rates for Filati and Rubfil were significantly different from the country-wide rate. Therefore, these firms received individual rates. For the remaining three firms, we recalculated the country-wide rate, based solely on the benefits received by these three firms. We then assigned the recalculated overall country-wide rate to these three firms, and all other manufacturers, producers, and exporters, except Filati and Rubfil.

1. Rubber Discount Scheme

Under this program, the GOM provides a rebate of 20 sen per kilogram on natural rubber latex purchased to manufacture products for exports. The natural rubber latex eligible for the discount must be purchased from, or through, the Malaysian Rubber Development Corporation (MARDEC), the Federal Land Development Authority (FELDA), or the Rubber Industry Smallholder Development Authority (RISDA). Subsequent to the purchase of the rubber an "authorization letter" from the Malaysian Department of Treasury directs these suppliers to provide the discount in the form of a cash rebate. Because this program is limited to exporters, we have preliminarily determined it to be countervailable.

A firm can precisely calculate the rubber discount rebate for each export transaction at the moment the transaction is made. Therefore, we have focused on rebates earned during the period of review. See Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Certain Steel Wire Nails from New Zealand (52 FR 37196, October 5, 1987). According to the responses, all respondent companies earned rubber discounts during the period of review.

To calculate the benefit from this discount, we first deducted the amount of fees paid in order to qualify for receipt of the discounts. Companies receiving benefits must pay an outside auditor's fee and an authorization fee to MARDEC. In accordance with section 771(6)(C) of the Act, we have deducted these fees from the rebate amount. Next, we made an allowance to the discount amount for its delayed receipt. Because the government has mandated that companies may apply for the discount only every six months, we have assumed an average deferral of three months before the discount may be received. In accordance with section 771(6)(B) of the Act, we have allowed an offset for this deferral, basing the offset on the opportunity cost to the company measured at the three-month fixed deposit rate.

We divided the ringgit amount of discounts earned by each company in 1990 (net of the fees and offset described above) by that company's total exports, since discounts applied to all exports. We then applied the calculation methodology outlined above. On this basis, we preliminarily determine the net subsidy from this program to be 2.78 percent *ad valorem* for all manufacturers, producers and exporters in Malaysia of extruded rubber thread, except for those firms listed below which have significantly different aggregate benefits. The net subsidy for those firms is as follows: Filati—3.23 percent and Rubfil—3.16 percent.

2. Export Credit Refinancing (ECR)

The Bank Negara Malaysia, the central bank of Malaysia, provides order-based pre- and post-shipment financing of exports through commercial banks for periods of up to 120 and 180 days, respectively, and "certificate of performance" (CP) based pre-shipment financing. Order-based financing is provided for specific sales to specific markets. CP-based financing, which is a line of credit based on the previous 12 months' export performance, cannot be tied to specific sales in specific markets.

According to the responses, all five respondent companies used export credit financing during the review period. We note that all of the pre-shipment financing received during the period was CP-based.

Because only exporters are eligible for ECR loans, we determine that they are countervailable to the extent that they are provided at preferential rates. In order to determine whether these loans were provided at preferential rates, we compared the interest rate charged to a benchmark interest rate. In past cases involving Malaysia, we used banker's acceptances as the most comparable source of short-term commercial financing. (See Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Carbon Steel Wire Rod from Malaysia (53 FR 13303, April 22, 1988) (Wire Rod)). Since Wire Rod, however, our practice has been to select the predominant source of short-term financing in the country as our benchmark for short-term loans. See Final Affirmative Countervailing Duty Determination, New Steel Rails, Except Light Rails, from Canada (54 FR 31991, August 3, 1989). Also see § 355.44(b)(3) Proposed Substantive Countervailing Duty Regulations, 54 FR 23366, May 31, 1989. Because banker's acceptances account for only a small portion of short-term financing in Malaysia, we have determined to discontinue the use of these loans as a benchmark. Instead, we will rely on the predominant source of short-term financing in Malaysia. In Malaysia, term loans offered by commercial banks are the most predominant form of short-term financing with overdraft loans being the second most predominant form. The average interest rates for these types of financing, however, are not available. Therefore, we have used as our benchmark for ECR loans, the average commercial bank lending rate as an estimate of these rates because over eighty percent of the loans made by commercial banks were either term loans or overdrafts.

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Based on a comparison of the ECR rates and the benchmark rate, we find that ECR loans are provided at preferential rates and, therefore, are countervailable.

To calculate the benefit from ECR loans on which interest was paid in 1990, we used our short-term loan methodology which has been applied consistently in our past determinations. See Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Butt Weld Pipe Fittings from Thailand (55 FR 1695, January 18, 1990), and Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Ceramic Tile from Mexico (53 FR 15290, April 28, 1988); see also *Alhambra Foundry* versus *United States*, 626 F. Supp. 402 (CIT, 1985). This methodology is also described in more detail under section 355.44(b)(3) of "Countervailing Duty Notice of Proposed Rulemaking and Request for Public Comment" (54 FR 23366, May 31, 1989). Because the post-shipment ECR loans were shipment-specific, we included in our calculations only those loans which financed exports of extruded rubber thread to the United States. Because the CP-based, pre-shipment loans were not shipment-specific, we included all CP loans on which interest was paid during the review period.

We compared the amount of interest actually paid during the review period to the amount that would have been paid at the benchmark rate. We then divided each company's interest savings by that company's total exports, in the case of the CP loans, or by its exports to the United States, in the case of post-shipment loans. We then applied the calculation methodology outlined above.

On this basis, we preliminarily determine the net subsidy from this program to be 1.84 percent *ad valorem* for all manufacturers, producers, and exporters in Malaysia of extruded rubber thread, except for those firms listed below which have significantly different aggregate benefits. The net subsidy for those firms is as follows: Filati—0.78 percent and Rubfil—1.06 percent.

3. Electricity Discount Program for Exporters

The Electricity Discount Program provided a reduction in the electricity rates charged to qualifying companies. The program was originally implemented in 1985 as a discount for rubber-based manufacturers. That program was, however, terminated and replaced by a new electricity Discount Program in 1989.

The program in effect during our review period provided discounts to companies that produced a manufactured product covered by the Industrial Coordination Act of 1975 and which exported at least 50 percent of their production. The amount of the discount was calculated by computing 20 percent of the ratio of export to total sales and multiplying the amount by the total electricity charge. According to the responses, Heveafil and Rubberflex received discounts from this program during the review period. Because this program is limited to exporters, we have preliminarily determined it to be countervailable.

To calculate the benefit from this program, we divided the total amount of discounts received by each company by that company's total exports because the benefits are not shipment-specific. We then applied the calculation methodology outlined above. On this basis, we preliminarily determine the net subsidy from this program to be 0.02 percent *ad valorem* for all manufacturers, producers, and exporters in Malaysia of extruded rubber thread, except for Filati and Rubfil, which have significantly different aggregate benefits. These two firms did not receive an electricity discount during the review period.

This program was terminated on March 1, 1990. Consistent with our policy of taking into account measurable program-wide changes that occur before the preliminary determination, we are taking into account the termination of the electricity discount program for cash deposit purposes. Therefore, for purposes of the preliminary determination, we will not include the net bounty or grant determined for this program in our calculation of the estimated countervailing duty cash deposit rate.

4. Abatement of Income Tax Based on the Ratio of Export Sales to Total Sales

The Investment Incentives Act of 1968 provided for an abatement of income tax based on the ratio of export sales to total sales. This law was repealed effective January 1, 1986, and replaced by the Promotion of Investments Act of 1986. Among other incentives, the new law also provides an abatement of income tax based on export performance. Specifically a portion of income, equal to 50 percent of the ratio of export sales to total sales is exempt from income tax. This program is not available to companies still participating in programs under the repealed Investment Incentives Act of 1968, including pioneer status, or to companies granted pioneer status or an investment tax allowance under the Promotion of Investments Act of 1986. Because this program is limited to exporters, we have preliminarily determined it to be countervailable.

According to the responses, only Heveafil used this program during the review period. In addition to the export abatement, Heveafil used several other tax allowances available to offset taxable income during the review period. As discussed below, we have found certain of these allowances to be countervailable.

During the review period, the combination of countervailable and non-countervailable allowances substantially exceeded taxable income. Because we countervail only that portion of the available export allowances actually used to offset taxable income in the review period, we had to determine first which of the allowances were used and to what extent. Heveafil was unable to document which of the allowances were actually used to offset taxable income. Therefore, we determined that it was reasonable to assume that a company would use the export abatement before any of the other allowances available in this case, because, unlike the other allowances, the export abatement could not be carried forward for use in future tax years.

To calculate the benefit, we determined the total income and development tax savings for each company from this program during the review period and divided it by the company's total exports because these benefits applied to all exports. We then applied the calculation methodology outlined above. On this basis, we preliminarily determine the net subsidy from this program to be 0.73 percent *ad valorem* for all manufacturers, producers, and exporters in Malaysia of extruded rubber thread, except for Filati and Rubfil, which have significantly different aggregate benefits. These two firms did not receive an export tax abatement during the review period.

For Heveafil, the export abatement did not fully offset taxable income and, hence, other allowances were used. Therefore, it was necessary to decide which of the remaining countervailable and non-countervailable allowances were used for tax abatement purposes. In making this decision, we took into account the fact that the central purpose of the countervailing duty law is to encourage foreign governments not to provide competitive benefits to their exporting industries. In this investigation, this purpose can best be served by selecting the remaining countervailable allowances before selecting any of the non-countervailable allowances available to the companies to offset taxable income. By taking this approach, we have countervailed the full amount of the countervailable export allowances earned by the companies and left as an unused balance to be carried forward to future tax years the non-countervailable allowances.

5. Abatement of Five Percent of the Value of Indigenous Malaysian Materials Used in Exports

In addition to the Export Abatement discussed above, the Promotion of Investments Act of 1986 provided for an abatement of income tax in the amount of five percent of the ratio of export sales to total sales times the value of indigenous Malaysian materials used in the manufacture of exported products. This program is not available to companies still participating in programs under the repealed Investment Incentives Act of 1986, including pioner status, or to companies granted pioneer status or an investment tax allowance under the Promotion of Investments Act of 1986. According to the responses, Heveafil used this program during the review period.

Because this program is limited to exporters, we have preliminarily determined it to be countervailable. To calculate the benefit, we determined the total income and development tax savings from this program during the review period for each company and divided it by the company's total exports, because these benefits applied to all exports. We then applied the calculation methodology outlined above. On this basis, we preliminarily determine the net subsidy from this program to be 0.09 percent *ad valorem* for all manufacturers, producers, and exporters in Malaysia of extruded rubber thread, except for Filati and Rubfil, which have significantly different aggregate benefits. These two firms did not receive an indigenous materials export abatement during the review period.

6. Industrial Building Allowance

Sections 63 through 66 of the Income Tax Act of 1967, as amended, allow an income tax deduction for a percentage of the value of constructed or purchased buildings used in manufacturing. In 1984, this allowance, which had been limited to manufacturing facilities, was extended to include buildings used as warehouses to store finished goods ready for export or imported inputs to be incorporated into exported goods. This program includes a ten percent initial and a two percent annual tax allowance. According to the responses, Heveafil used this program during the review period.

Because this program, as it applies to warehouses, is limited to exporters, we have preliminarily determined it to be countervailable. To calculate the benefit, we determined the total income and development tax savings from this program for each company during the review period and divided it by the company's total exports because these benefits applied to all exports. We then applied the calculation methodology outlined above. On this basis, we preliminarily determine the net subsidy from this program to be 0.00019 percent *ad valorem* for all manufacturers, producers, and exporters in Malaysia of extruded rubber thread, except for Filati and Rubfil, which have significantly different aggregate benefits. These two firms did not receive an industrial building allowance during the review period.

7. Double Deduction for Export Promotion Express

Section 41 of the Promotion of Investments Act of 1986 allows companies to deduct expenses related to the promotion of exports twice, once in calculating net income on the financial statement and again in calculating taxable income. According to the responses, only Heveafil used this program during the review period.

Because this program is limited to exporters, we have preliminarily determined it to be countervailable. To calculate the benefit, we determined the total income and development tax savings from this program during the review period and divided it by the company's total exports because these benefits applied to all exports. We then applied the calculation methodology outlined above. On this basis, we preliminarily determine the net subsidy from this program to be 0.03 percent for all manufacturers, producers, and exporters in Malaysia of extruded rubber thread except for Filati and Rubfil, which have significantly different aggregate benefits. These two firms did not double deduct export promotion expenses during the review period.

8. Pioneer Status

Pioneer status is a tax incentive offered to promote investment in the manufacturing, tourist, and agricultural sectors. Pioneer status was first introduced under the Pioneer Industries (Relief from Income Tax) Ordinance, 1958. This ordinance was replaced by the Investment Incentives Act (IIA) in 1968, which was subsequently replaced by the Promotion of Investment Act (PIA) of 1986. Under the IIA and the PIA, the Minister of International Trade and Industry may determine products or activities to be pioneer products or activities.

Companies petition for pioneer status for pioneer products or activities. Once a company receives pioneer status, its profits from the designated product or activity are exempt from the corporate income tax, the development tax, and the dividend tax for a period of five years with the possibility of an extension for an additional five years. The five-year extension was abolished effective October 1, 1991.

In evaluating a project for pioneer status, the Malaysian Industrial Development Authority will consider the following factors: (1) The number of companies already established in the industry and the extent of the development of the industry in the country; (2) the level of manufacturing operation or activity proposed by the project; (3) the level of technology already achieved by the particular industry; (4) the level of local content to be achieved by the project; (5) spin-off effects or benefits of the project; (6) the linkages created or the extent of integration with other industries; and (7) the extent of foreign exchange proposed to be earned by the project.

According to the response, export potential has always been one of the considerations in evaluating a project for pioneer status. Nevertheless, companies that produce only for the domestic market may receive pioneer status. Under certain conditions, however, companies must agree to export 80 percent or more of production to receive pioneer status. According to the response, the 80 percent export requirement may sometimes be applied to certain industries after it is determined that the domestic market will no longer support additional producers.

Rubberflex was the only company that used pioneer status during the review period. Rubfil, Filmax, and Filati qualified for the program, but they have not yet begun to use it. While Rubberflex met other requirements for pioneer status, it also had to meet the requirement to export 80 percent of production.

In Carbon Steel Wire Rod from Malaysia: Final Results of Administrative Review (56 FR 14927, April 12, 1991) (Wire Rod), the Department found that pioneer benefits had been approved for over 2,000 companies and almost as many products cutting across numerous industrial

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sectors during the period 1980 to 1989. We concluded, therefore, that no industry or group of industries used the program disproportionately and that the pioneer program a not countervailable. The Wire Rod determination, however, did not specifically address the case where companies had to export 80 percent or more of production to qualify for pioneer status.

After considering the implications of this criterion, the Department has decided to view the pioneer program as a two-faceted program. The first facet comprises those instances where one or more of the criteria described above applies, including favorable prospects for export, but where the export criterion does not carry preponderant weight. This facet of the program is what the Department found non-countervailable in Wire Rod.

In cases where pioneer status is conferred on a company because that company agrees to export 80 percent of its production, however, the program conveys an export subsidy, regardless of the other "neutral" criteria the company is required to meet. This is because receipt of benefits becomes contingent on export performance. Therefore, we have preliminarily determined that this facet of the pioneer program bestows an export subsidy.

To calculate the benefit from this program, we determined the total income and development tax savings realized during the review period and divided it by Rubberflex's total exports because these benefits apply to all exports. We then applied the calculation methodology outlined above. On this basis we preliminarily determine the net subsidy from this program to be 4.04 percent *ad valorem* for all manufacturers, producers, and exporters to Malaysia of extruded rubber thread, except for Filati and Rubfil, which have significantly different aggregate benefits and received no benefits under this program during the review period.

II. Program for Which we Need More Information

Research and Development

Created in 1958 under the Laws of Malaysia Act 401, the Malaysian Rubber Research Development Board (MRRDB) is a government agency under the auspices of the Ministry of Primary industries. It was established to oversee research, technical development and promotional work in support of the Malaysian natural rubber industry. The MRRDB operating units include the Rubber Research Institute of Malaysia (RRIM), the Malaysian Rubber Products Research Association (MRPRA), and the Malaysian Rubber Bureau (MRB). According to the response, the results of all of the research performed by MRRDB units is made available to the public.

Both RRIM and MRPRA operate commercial consulting units. These units provide consulting services related to the manufacture of rubber products. Users of these services are billed on a cost plus basis. On one occasion, Rubberflex had several samples of rubber thread analyzed by MRPRA's Rubber Consultants unit. According to the response, this analysis was the only occasion when any of the respondents used services of a MRRDB unit. Respondents indicate that they have never used any of the research and development facilities or services of MRRDB or its various units other than in this one instance.

Respondents claim that RRIM's consulting units provide services to all users on a cost-plus basis. We intend to seek further information on the nature of the services provided, the amounts charged for these services, the basis for the charges, the profitability of the units, and the amounts charged by private providers for these same services.

III. Programs Preliminarily Determined Not to be Used

A. Preferential Financing for Bumiputras
B. Allowances of a Percentage of Net Taxable Income Based on the F.O.B. Value of Export Sales
C. Double Deduction for Export Credit Insurance Payments
D. Investment Tax Allowance
E. Allowance of Taxable Income of Five Percent of the Adjusted Income of Companies Due to Capital Participation/Employment Policies
F. Abatement of Five Percent of Adjusted Income

IV. Programs Preliminarily Determined Not to Exist

A. Preferential Land Pricing
B. Five to Ten Year Tax Holidays
C. Electricity Discount for Rubber-Based Manufacturers

V. Programs Previously Determined not to be Countervailable

Petitioner included these programs in its petition and we incorrectly included them in our initiation in this investigation. Department practice requires that we not initiate on programs previously found not to be countervailable, unless changes in the program or its administration justify further investigation. In these instances, no information was received about changes in the program. Therefore, we are rescinding the investigation as it relates to:

A. Reinvestment Allowance
B. Accelerated Depreciation Allowance
C. Free Trade Zones

Preliminary Affirmative Determination of Critical Circumstances

Petitioner alleges that imports of extruded rubber thread from Malaysia present "critical circumstances." On December 17, 1991, respondents requested that the Department terminate the critical circumstances investigation. Because this request was made only three days before the date of our preliminary determination, we have not had sufficient time to fully consider their argument. We will address this issue in our final determination.

Under section 703(e)(1) of the Act, critical circumstances exist when the Department has a reasonable basis to believe or suspect that: (1) The alleged subsidy is inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"); and (2) there have been massive imports of the class or kind of merchandise which is subject of the investigation over a relatively short period.

In our preliminary determination we found that the government of Malaysia confers export subsidies on the manufacture, production or exportation of extruded rubber thread. These subsidies are inconsistent with the Subsidies Code.

In preliminary determining whether there is a reasonable basis to believe or suspect that there have been massive imports over a relatively short period, we considered the following factors: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. In making this determination, our preference is to examine company-specific shipment data on exports to the United States of the subject merchandise.

We asked all respondent companies to supply monthly volume and value shipment data from January 1989 to the present. We have not yet received complete data for November shipments.

Based on our analysis of the monthly shipment data for each respondent company, we have found that imports from three of the five companies have been massive over a relatively short period of time. Therefore, we find that the requirement of section 703(e)(1) are met for the following companies exporting extruded rubber thread to the United States.

Company	Critical circumstances
Heveafil	no
Filmax	yes
Rubberflex	yes
Filati	yes
Rubfil	no

Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of extruded rubber thread from Malaysia which are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the publication of this notice in the **Federal Register** and to require a cash deposit or bond for all entries of this merchandise in the following amounts:

Manufacturer/exporter	Net ad valorem subsidy (percent)
Filati Lastex Elastofibre	4.01
Rubfil Sdn. Bhd.	4.21
All other manufacturers or exporters	9.51

This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 355.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination on February 21, 1992, at 10:00 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, room B-099, at the above address within ten days of the publication of this notice in the **Federal Register**. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 355.38(c) and (d), case briefs and rebuttal briefs must be submitted to the Assistant Secretary in ten copies of the business proprietary version and five copies of the nonproprietary version by February 14, 1992, and February 18, 1992, respectively. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 355.38, written views will be considered if received not less than 30 days before the final determination is due or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671(b)(f)).

Dated: December 20, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-31093 Filed 12-27-91; 8:45 am]
BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Solicitation for Sea Grant Review Panelists

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

SUMMARY: This notice responds to section 209 (c) of the National Sea Grant College Program Act, 33 U.S.C. 112, which requires the Secretary of Commerce to solicit nominations for membership on the Sea Grant Review Panel at least once a year. This advisory committee provides advice on the implementation of the National Sea Grant College Program.

DATES: Resumes should be sent to the address specified and must be received by January 29, 1992.

ADDRESS: Dr. David B. Duane, Director, National Sea Grant College Program, 1335 East-West Highway, room 5465, (SH), Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Shephard of the National Sea Grant College Program at the address given above; telephone (301) 713-2431, (FTS) 8-301-713-2431.

SUPPLEMENTARY INFORMATION: Section 209 of the Act establishes a national review panel to advise the Secretary of Commerce, the Under Secretary for Oceans and Atmosphere, and the Director of the National Sea Grant College Program on the implementation of the Sea Grant Program. The panel provides advice on such matters as:

(a) The Sea Grant Fellowship program;

(b) Applications or proposals for, and performance under, grants and contracts awarded under section 205 and 206, and section 3 of the Sea Grant Program Improvement Act of 1976;

(c) The designation and operation of sea grant colleges and sea grant regional consortia; and the operation of the sea grant program;

(d) The formulation and application of the planning guidelines and priorities under section 203 (a) and (c)(1); and,

(e) Such other matters as the Secretary refers to the panel for review and advice.

The Panel is to consist of fifteen voting members composed as follows:

Not less than eight of the voting members of the panel should be individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more of the disciplines and fields included in marine science. The other voting members shall be individuals who by reason of knowledge, experience, or training, are especially qualified in, or representative of, education, extension services, state government, industry, economics, planning, or any other activity which is appropriate to, and important for, any effort to enhance the understanding, assessment, development, utilization, or conservation of ocean and coastal resources. No individual is eligible to be a voting member of the panel if the individual is (a) The director of a sea grant college, sea grant regional consortium, or sea grant program, (b) an applicant for or beneficiary (as determined by the Secretary) of, any grant or contract under Section 205; or

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206; or, (c) a full-time officer or employee of the United States.

The Director of the National Sea Grant College Program and one Director of a Sea Grant Program also serve as non-voting members. Two positions on the panel will become vacant during 1992. Candidates who are selected to fill these vacancies will be appointed for a three-year term.

Dated: December 18, 1991.

Ned A. Ostenso,

Assistant Administrator, OAR.

[FR Doc. 91-31164 Filed 12-27-91, 8:45 am]

BILLING CODE 3510-12-M

1990 Survey of Atlantic Striped Bass Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of survey results.

SUMMARY: NMFS publishes the results of a survey of Atlantic coast striped bass fisheries for 1990, as required by the Atlantic Striped Bass Conservation Act (the Act), to provide information on the status of the fisheries.

ADDRESSES: Copies are available from David G. Deuel, NOAA/NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: David G. Deuel, 301-713-2347.

SUPPLEMENTARY INFORMATION:

Comprehensive Annual Survey of the Atlantic Striped Bass Fisheries—Calendar Year 1990 Survey Results

Section 6 of the Act (Pub. L. 98-613, 16 U.S.C. 1851) requires the Secretary of Commerce and the Secretary of the interior to conduct a comprehensive annual survey of the Atlantic striped bass fisheries. Each survey is to include, but not be limited to, a compilation and assessment of the recreational and commercial landings of Atlantic striped bass in the coastal states during the period considered in the survey. The results of each annual survey are to be published in the **Federal Register**. Reauthorization of the Act in 1986 (Pub. L. 99-432), in 1988 (Pub. L. 100-589), and in 1991 (Pub. L. 102-130) extended the requirement for the annual survey. This report presents data for calendar year 1990.

The Act was signed into law on October 31, 1984. Under the Act, no funds were authorized for appropriation for activities in fiscal year 1985. For fiscal years 1986 through 1991, funds were authorized but not appropriated. Thus, for calendar years 1985 through 1990, no funds were appropriated for conduct of the comprehensive annual survey and no separate surveys were conducted on the Atlantic striped bass fisheries. However, NMFS routinely collects data on all U.S. commercial fisheries and on marine recreational fisheries on the Atlantic and Gulf coasts. In addition, in 1990, several states collected detailed harvest data on their commercial fisheries, based on the need for timely monitoring of the harvest. For these states, state collected data were used. Data from these surveys are used in this report to satisfy the requirements of section 6 of the Act. A description of the statistical survey procedures for the commercial fishery landings may be found in "Fishery Statistics of the United States 1977" (U.S. Department of Commerce, 1984), and for the recreational fishery data in "Marine Recreational Fishery Statistics Survey, Atlantic and Gulf Coasts, 1987-1989" (U.S. Department of Commerce, 1991). The Act addresses Atlantic coast striped bass (hereafter referred to as striped bass) from Maine through North Carolina; the data presented here are for the same area.

In 1990, commercial landings of striped bass totaled 823,000 pounds (373.3 mt), an increase of 538,000 pounds (244.0 mt) above the record low landings of 285,000 pounds (129.3 mt) in 1989. The previous record low landings of 335,000 pounds (152.0 mt) was in 1986. Highest landings of 14.7 million pounds (6,667.9 mt) occurred in 1973, but steadily declined at about 20 percent per year through 1989 (Figure 1). Part of the decline from 1982 through 1989 resulted from restrictive regulations on the commercial fishery. In 1990, much of the increase in landings resulted from a relaxation of regulations in the states that allow the commercial harvest of striped bass. Landings, by state, from 1982 through 1990 are shown in Table 1. During 1990, the Chesapeake Bay area (Maryland, Virginia and the Potomac River) accounted for 70 percent of the reported commercial landings, while Massachusetts landings accounted for 18 percent of the total landings of striped bass.

Catch and harvest of striped bass by recreational fishermen have been estimated from the annual Marine Recreational Fishery Statistics Surveys from 1979 through 1990. Catch is defined as the total number of fish caught, including those released alive. Harvest is the number of fish that were removed from the population. Estimated weights are available for the fish harvested. The reliability of the survey estimates is greater for species that occur more frequently in the catch than for those that occur infrequently. From 1979 through the late 1980's, with the striped bass stocks at low levels, the estimates for striped bass were less reliable than those for other species such as bluefish, winter flounder, or scup, which occur frequently in the catch. In addition, there is high interannual variability of striped bass catch estimates by state. Although a separate survey of the recreational fishery for striped bass would likely provide more reliable estimates of the catch and harvest of striped bass, such a survey would be extremely expensive to conduct. In recent years, several of the coastal states have augmented the level of sampling for the survey, which has resulted in an increase in the precision of catch estimates for striped bass. Additionally, as the striped bass stocks have continued to increase, striped bass have occurred more frequently in the catch, resulting in increased precision.

In 1990, recreational fishermen caught an estimated 2,030,000 striped bass, of which 238,000 were harvested; the remaining 1,792,000 were released alive (Table 2). The estimated weight of the 1990 recreational harvest was 2,668,00 pounds (1,201.2 mt). Estimates of the total recreational catch of striped bass, by state, from 1982 through 1990 are shown in Table 3. The total recreational catch of striped bass declined from about 2.0 million fish in 1979 to about 600,000 fish annually during 1983-1985. As with the commercial fishery, restrictions on the recreational fishery contributed to the decrease in catch. The increase in total catch from 1986 through 1989 likely reflects the abundance of the 1982 and subsequent year classes, which have received protection by management measures in force since 1985. Additionally, the relaxation of regulations in 1990 resulted in an appreciable increase in catch as well as harvest in most states.

The number of striped bass harvested by recreational fishermen generally declined from about 1.3 million fish in 1979 to 40,000 in 1989, but increased to 238,000 fish in 1990, largely a result of the decrease in minimum size, open seasons and other less restrictive measures. Since the early 1980's, the percentage of the total catch released alive has generally increased. During 1979-1981 an average of 24 percent were released alive; during 1982-1985, an average of 68 percent were released alive; and during 1986-1989, an average of 92 percent of the fish caught were released alive. This demonstrates the effectiveness of size limits and bag limits in conserving striped bass in the recreational fishery. Even in 1990, with regulations eased, 88 percent of the total catch was released alive.

The management measures imposed on striped bass fishing by the coastal states, as recommended by the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for the Striped Bass (as amended) (ASMFC Plan), have had a significant impact on the level of the recreational and commercial harvest. Management regulations restricting the harvest of striped bass began in 1982, with those having the most impact being implemented during 1984, 1985, and 1986. The regulations included closed seasons, closed areas, size limits, commercial gear restrictions, and bag limits on the recreational fishery. A moratorium was imposed on striped bass fishing in Maryland and Delaware in January 1985. During 1986, the striped bass fishery was closed in the marine waters of New York, Connecticut, and Rhode Island. From 1986 through 1989, a one fish per angler per day bag limit was allowed for the recreational fishery in New York (during the open season) and Rhode Island. Several other states had prohibited sale of striped bass and all states had implemented a 36-inch (91.4-cm) total length minimum-size limit. Bag limits ranged from one to five fish in states that allowed possession of recreationally caught fish.

The revised ASMFC Plan (Amendment 4) was adopted in October 1989. Implementation of a transitional fishery began later that year following the 1989 Maryland juvenile index of 25.2. The 1989 index increased the 3-year average of the Maryland juvenile index above 8.0. This trigger was assumed to represent a level of production that would signal partial recovery of the spawning stocks sufficient to allow a limited increase in commercial and recreational harvests. Amendment 4 of the ASMFC Plan specifies a 28-inch (71.1-cm) minimum-size limit along the coast and an 18-inch (45.7-cm) minimum-size limit in inshore producing areas. The commercial harvest in each state was restricted to 20 percent of the historical harvest from 1972 through 1979, and the recreational bag limit was set at one fish per angler per day. However, states could propose regulations that differ from the basic provisions of Amendment 4, as long as those regulations met the management objectives of the ASMFC Plan and resulted in a harvest at least as conservative as under the basic provisions. The ASMFC approved fisheries to be conducted during 1990 for each state, the District of Columbia, and the Potomac River Fisheries Commission. This limited level of harvest during 1990 was closely monitored by the states and, if needed, adjustments were to be made for the 1991 season. State regulations in effect for the commercial fisheries during 1990 are summarized in Table 4, and for the recreational fisheries, in Table 5.

During 1990, the ASMFC approved a total harvest (cap) for the commercial fishery of nearly 1.2 million pounds (529.0 mt), while the actual harvest was 823,000 pounds (373.1), or 29 percent less than the cap (Table 6). Most states did not reach the cap, although Virginia and the Potomac River Fisheries Commission exceeded their cap by 25 and 6 percent, respectively.

Historically, appropriate data from which to estimate the relative abundance of striped bass were not collected. Prior to 1982, striped bass commercial landings data were used as an indicator of the stock size. The commercial fishery has since been severely restricted by regulations; thus, landings in recent years are not comparable to those in earlier years, nor are they indicative of trends in stock size. The recreational fishery for striped bass has been similarly affected by management regulations. Thus, caution should be used in interpreting recent landings data.

Juvenile production is estimated annually based on surveys conducted in striped bass nursery areas in New York, Delaware, Maryland, Virginia and North Carolina. Production of juvenile striped bass in 1967 in the Hudson River, New York, and in the Virginia portion of the Chesapeake Bay reached record highs and remained high during 1968, 1969 and 1990. Production in the Maryland portion of the Chesapeake Bay remained low through 1988, but increased in 1989 to the second highest value (25.2) in the 36-year time series (long term average of 8.9). However, the index in Maryland in 1990 returned again to a low value (2.1). Reproduction in North Carolina has remained low in recent years. In the Delaware River, after many years of very low levels of spawning stocks, recruitment indices have increased steadily since surveys began in 1980.

Historically, spawning areas in Maryland have produced the majority of the striped bass found along the Atlantic coast. While fishing mortality was likely a major factor in the decline of the population, reduced water quality may have also played a role through reduced survival of eggs and/or larval fish. In some spawning rivers in Maryland during some years, larval striped bass exposed to various contaminants and/or low pH levels present in the rivers experienced greater mortality than the larvae exposed to water without contaminants or low pH. Thus, although an increased number of females are now in the spawning population, successful production also will depend on water quality during the spawning season to allow survival of eggs and larval fish.

In the last few years, commercial and recreational fishermen have reported increases in the numbers of striped bass. In addition to these undocumented reports, data obtained from sampling the population show an increased relative abundance of fish from recent year classes (fish born in the same year). This increase supports the hypothesis that high levels of fishing mortality contributed significantly to the severe decline of the striped bass population on the Atlantic coast during the 1970's, and certainly shows that management measures have been effective to date in conserving and rebuilding the striped bass population. Additional information on the status of striped pass populations may be found in the Emergency Striped Bass Research Study Report for 1989 (United States Deparment of the Interior and United States Department of Commerce, 1991, Washington, DC.).

Dated: December 20, 1991.

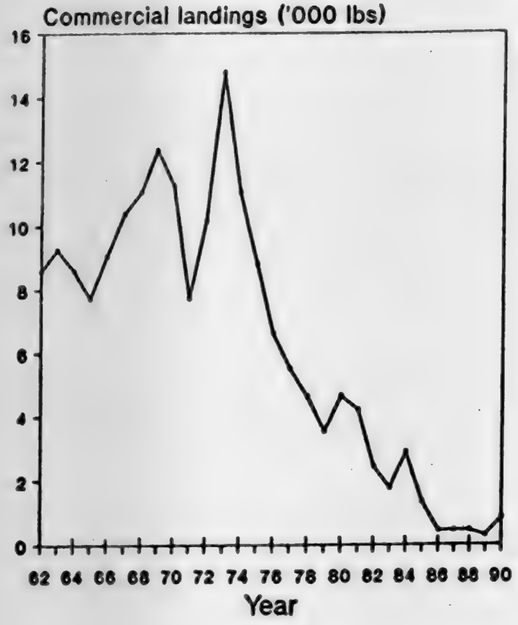
David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

BILLING CODE 3510-22-M

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Figure 1. Reported commercial landings (lbs.) of striped bass along the Atlantic Coast, 1962-1990.



BILLING CODE 3510-22-C

TABLE 1.—REPORTED COMMERCIAL LANDINGS (THOUSANDS OF POUNDS) OF STRIPED BASS IN ATLANTIC COASTAL STATES, 1979-1990.

State	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
Maine	**	**	1	—	—	—	1	—	—	—	—	—
New Hampshire	—	—	—	—	—	—	—	—	—	—	—	—
Massachusetts	695	886	708	543	224	107	119	96	78	80	172	148
Rhode Island	54	20	235	270	196	54	61	11	1	—	—	4
Connecticut	45	29	5	6	2	2	6	—	—	—	—	—
New York	570	598	822	471	310	595	469	—	—	—	—	82
New Jersey	40	24	14	10	20	9	12	10	—	—	—	—
Delaware	26	17	23	26	7	37	—	—	—	—	—	7
Maryland	858	1,892	1,502	478	379	815	2	—	24	27	—	139
Virginia	267	154	63	54	52	15	60	1	5	62	—	264
PRFC*	288	556	471	134	186	786	222	30	58	115	—	169
North Carolina	614	472	417	338	361	513	290	109	262	115	113	10
Total	3,456	4,650	4,261	2,429	1,717	2,939	1,232	337	431	400	285	823

Sources: National Marine Fisheries Service, F/RE1, unpublished data; some 1990 data are from state agencies. Dash denotes none reported; ** denotes less than 500 pounds.
Note: Restrictive regulations contributed to the decrease in landings since 1981.
*PRFC is the Potomac River Fisheries Commission.

TABLE 2.—ESTIMATED 1990 RECREATIONAL CATCH AND HARVEST OF STRIPED BASS BY JURISDICTION

[Thousands of Fish]

State	Total catch	Harvested	Released	Weight of fish harvested (thousand pounds)
ME [1]	18	3	15	75
NE [2]	15	1	14	16
MA [2]	453	16	437	484
RI [1]	82	5	77	79
CT [2]	159	5	154	145
NY [1]	286	26	260	434
NJ [1]	246	57	189	739
DE [1]	18	2	16	21
MD [3]	631	75	556	512
PRFC [3-4]	64	19	45	91
VA [3]	60	29	31	172
NC [1-5]	0	0	0	0
Total	2,030	238	1,792	2,576

[1] NMFS Marine Recreational Fishery Statistics Survey for 1990. (J. Witzig, personal communication.)
[2] Source: NMFS Marine Recreational Fishery Statistics Survey (J. Witzig, personal communication) supplemented by state-collected data.
[3] Source: State-collected data.
[4] PRFC: Potomac River Fisheries Commission.
[5] Ocean fishery only.

TABLE 3.—ESTIMATED TOTAL RECREATIONAL CATCH (THOUSANDS OF FISH) OF STRIPED BASS BY STATE, MAINE TO NORTH CAROLINA, 1979–1990

State	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
Maine	—	—	—	—	—	177	—	—	—	—	—	16
New Hampshire	0	0	—	0	—	0	—	0	—	—	—	15
Massachusetts	66	—	—	129	55	132	123	565	113	302	236	453
Rhode Island	31	—	—	—	—	72	50	—	66	91	47	82
Connecticut	91	42	—	555	45	41	41	—	60	30	111	159
New York	733	59	57	—	36	101	95	149	219	146	378	286
New Jersey	—	—	40	951	210	84	—	43	63	96	267	246
Delaware	—	0	0	0	—	—	—	0	—	—	—	18
Maryland	1,005	377	174	40	155	148	102	502	145	152	152	631
Virginia	—	0	0	0	—	—	—	—	—	76	66	60
PRFC*	*	*	*	*	*	*	*	*	*	*	*	64
North Carolina	57	—	576	0	—	—	—	—	0	—	—	0
Total	2,005	548	892	911	568	626	616	1,359	761	840	1,334	2,079

Estimates include both fish harvested and those released.
— = less than 30,000 reported (prior to 1990).
0 = none reported.
* = PRFC is the Potomac River Fisheries Commission; prior to 1990, catch was included with Maryland and Virginia.

Sources:
1979–1980: USDOC, 1984. Current Fishery Statistics No. 8322.
1981–1982: USDOC, 1985. Current Fishery Statistics No. 8324.
1983–1984: USDOC, 1985. Current Fishery Statistics No. 8326.

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1985: USDOC, 1986. Current Fishery Statistics No. 8327
1986: USDOC, 1987. Current Fishery Statistics No. 8392.
1987–1989: USDOC, 1991. Current Fishery Statistics No. 8904
1990: National Marine Fisheries Service, R. Essig, personal communicabon, and various state surveys
Note: Restrictive regulations contributed to the decrease in landings since 1981

TABLE 4.—SUMMARY OF STATE HARVEST REGULATIONS ON THE COMMERCIAL FISHERY FOR STRIPED BASS FOR 1990

State	Size limits	Cap (1000 lbs.)	Seasons [1]
ME	No fishery		
NH	No fishery		
MA	36" minimum	160	[1] Jul-30 Sep.
RI	18" minimum, 26" maximum, (40" maximum for gear other than trap net).	[2]35	
CT	No fishery		
NY	24" minimum, 28" maximum	[2]128	1 Sep-15 Dec.
NJ	No fishery		
PA	No fishery		
DE	28" minimum	34	18 Mar-31 Mar.
MD—Bay & River	18" minimum, 36" maximum	319	12 Nov-31 Jan [1] (includes all gears).
Ocean	28" minimum	[2]5	2 Jan-31 Jan.
PRFC	18" minimum, 36" maximum	156	Various weeks during Sep., Oct., Nov., & Dec (Total of 52 days).
DC	No fishery		
VA—Bay & River	18" minimum, 36" maximum	211	5 Nov-9 Nov.
Ocean	28" minimum, 36" maximum		
NC—Ocean	28" minimum	96	12 Feb, 19 Feb-23 Feb, 26 Nov-23 Dec.

[1] All seasons are during calenda- year 1990, except for Maryland Bay which extended into 1991.
[2] Caps were reduced by ASMFC to offset the effects of slot limits with minimum size limits less than 28" on coast.

TABLE 5.—SUMMARY OF STATE HARVEST REGULATIONS ON THE RECREATIONAL FISHERY FOR STRIPED BASS FOR 1990.

State	Size Limits	Daily Bag Limits	Seasonal Quota	1990 Seasons
ME	36" Minimum	1	None	Rivers: 1 Jul-30 Nov
NH	36" Minimum	1	None	All Year
MA	36" Minimum	1	None	All Year
RI	28" Minimum	1	None	All Year
CT	36" Minimum	1	None	1 Apr-14 Dec
NY—Hudson River	18" Minimum	1	None	15 Mar-30 Nov
Ocean	36" Minimum	1		8 May-31 Dec
NJ—Delaware Bay & Tributaries	36" Minimum	1	None	31 Mar-31 Dec
Other Rivers	28" Minimum	1	None	31 Mar-31 Dec
Ocean	28" Minimum	1	None	All Year
	38" Minimum	1	65,000	All Year
PA	36" Minimum	1	None	Delaware River: 1 Jan-31 Mar 1 Jun-31 Dec
DE	28" Minimum	1	None	Spawning area closure
MD—Bay & River	18" Minimum, 36" Maximum	2 or 5 (charter)	319,000 lbs.	5 Oct-14 Oct
Ocean	28" Minimum	1	113,000 lbs. (charter)	5 Oct-17 Oct (charter)
PRFC	18" Minimum, 36" Maximum	2 or 5 (charter)	57,000 lbs., 14,000 lbs. (charter).	5 Oct-17 Oct
DC	18" Minimum, 36" Maximum	2	None	5 Oct-16 Nov
VA—Bay & River	18" Minimum, 36" Maximum	2	None	5 Nov-5 Dec
Ocean	28" Minimum, 36" Minimum	2	None	All Year
NC—Roanoke [1]	16" Minimum	3	None	12 Feb-18 Mar
Bay & River [1]	14" Minimum	3		19 Nov-31 Dec
Ocean	28" Minimum	1		

[1] Striped bass in internal waters of North Carolina are not included under the ASMFC Plan.

TABLE 6.—COMMERCIAL FISHERIES CAP AND COMMERCIAL LANDINGS OF STRIPED BASS IN 1990, BY JURISDICTION

State	Cap(lbs.)	Landings(lbs.)	% Deviation
ME	[1]		
NH	[1]		
MA	160,000	148,000	−7
RI	35,000	4,484	−88
CT	[1]		
NY	128,000	81,872	−36
NJ	[1]		
DE	33,867	8,508	−79
MD	343,750	138,691	−59

TABLE 6.—COMMERCIAL FISHERIES CAP AND COMMERCIAL LANDINGS OF STRIPED BASS IN 1990, BY JURISDICTION—Continued

State	Cap(lbs.)	Landings(lbs.)	% Deviation
PRFC	158,619	169,060	+6
VA	211,000	264,000	+25
NC	96,000	9,797	−90
Total	1,166,236	822,569	−29

Note—PRFC is the Potomac River Fisheries Commission

[1] No Fishery

[FR Doc. 91–30956 Filed 12–27–91; 8:45 am]
BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Coastal Pelagics Species Plan Development Team (Team) and Advisory Subpanel will hold a public meeting on January 22–23, 1992, in Suite 50 of the California Department of Fish and Game office, 330 Golden Shore, Long Beach, CA. The meeting will begin at 9 a.m. on both days.

The purpose of the meeting is to review the history and current status of coastal pelagic species fisheries and plan development, plus pertinent issues, goals and objectives.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: December 23, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–31009 Filed 12–27–91; 8:45 am]
BILLING CODE 3510-22-M

Endangered Species; Application for Permit; Southwest Fisheries Center, National Marine Fisheries Service (P77#42)

Correction

In notice document 91–29727 beginning on page 64768, in the issue of Thursday, December 12, 1991, the subject heading is corrected to read, "Endangered Species; Application for Permit; U.S. Army Corps of Engineers, Waterways Experiment Station (P496)."

Dated: December 23, 1991.

Charles Karnella,

Acting Director, Office of Protected Resources.

[FR Doc. 91–31080 Filed 12–27–91; 8:45 am]
BILLING CODE 3510-22-M

Endangered Species; Issuance of Permit; Ms. Patricia Gerrior, Northeast Fisheries Science Center (P #761)

On July 15, 1991, notice was published in the **Federal Register** (54 FR 41132) that an application had been filed by Ms. Patricia Gerrior, of the Woods Hole Laboratories, Northeast Fisheries Science Center, National Marine Fisheries Service (NMFS), 166 Water Street, Woods Hole, Massachusetts 02543 for a permit to take turtles captured incidental to commercial fishing operations for scientific research. Onboard observers may collect up to 10 green turtles (*Chelonia mydas*), 60 loggerhead turtles (*Caretta caretta*), 10 hawksbill turtles (*Eretmochelys imbricata*), 10 leatherback turtles (*Dermochelys coriacea*), and 10 Kemp's Ridley turtles (*Lepidochelys kempi*) to measure, photograph, collect blood samples as required, tag, and release or retain as necessary for rehabilitation.

Notice is hereby given that on December 19, 1991, as authorized by the provisions of the Endangered Species Act of 1973 (ESA), NMFS issued a permit for the above taking, subject to certain conditions set forth therein.

Issuance of this permit, as required by the ESA of 1973, is based on the finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the permit; and (3) will be consistent with the purposes and policies set forth in section 2 of the ESA. This permit was also issued in accordance with, and is subject to, parts 220–222 of title 50 CFR, of NMFS regulations governing endangered species permits.

The permit is available for review in the following offices: The Office of Protected Resources, NMFS, 1335 East West Highway, room 7324, Silver Spring, Maryland 20910; and, Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, Massachusetts 01930.

Dated: December 19, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–31165 Filed 12–27–91; 8:45 am]
BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Application for scientific research permit (P475).

Notice is hereby given that Ms. Dena R. Matkin, Gustavus, AK 99826, has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Species and type of take: The applicant is requesting authorization to harass annually, over a five-year period, up to five times each, up to 150 killer whales (*Orcinus orca*) during photo-identification studies. The purposes of the proposed research are to: continue the applicant's long-term photo-identification of killer whales that utilize the southeastern Alaska ecosystem; determine pod composition and cohesiveness; define within-pod affiliations; and assess the effects of the Prince William Sound oil spill on habitat use by killer whales in southeastern Alaska.

Location of activity: The activities will occur in all of southeastern Alaska with an emphasis on Lynn Canal, Chatham Strait, and Frederick Sound regions.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application, should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices.

By appointment: Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20910 (301/713–2289).

Director, Alaska Region, National Marine Fisheries Service, NOAA, Federal Bldg., 709 W. 9th Street, Juneau, Alaska 99802 (907/586–7221); and

Director, National Marine Mammal Laboratory, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE BIN C15700, Seattle, Washington 98115 (206/526–4020).

Dated: December 20, 1991.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 91–31030 Filed 12–27–91; 8:45 am]
BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, DOC.

ACTION: Issuance of Marine Mammal Permit (P492).

On November 5, 1991, notice was published in the **Federal Register** (56 FR

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56504) that an application had been filed by Dr. Graham A.J. Worthy, Assistant Professor of Marine Mammalogy, Department of Marine Biology, Texas A&M University at Galveston, 4700 Avenue, U, Galveston, TX 77551–5932, to import blubber samples obtained from up to twenty (20) individuals of each of the following species: Commerson's dolphin (*Cephalorhyncus commersoni*), common dolphin (*Delphinus delphis*), dusky dolphin (*Lagenorhyncus obscurus*), spectacled porpoise (*Phocoena dioptrica*), harbor porpoise (*Phocoena phocoena*), Burmeister's porpoise (*Phocoena spinipinnis*), vaquita cochito (*Phocoena sinus*), Indo-Pacific humpbacked dolphin (*Sousa chinensis*), and bottlenose dolphin (*Tursiops truncatus*), which were either found stranded or were caught incidentally in a commercial fishery. The specimen materials will be imported from Argentina, eastern Canada, South Africa, Western Australia, New Zealand and Mexico, over a five-year period.

Notice is hereby given that on December 20, 1991, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the above importation, subject to certain conditions set forth therein.

The application and accompanying documentation satisfy the issuance criteria for scientific research permits. The requested activities are consistent with the purposes and policies of the MMPA. The research will further a *bona fide* scientific purpose that does not involve unnecessary duplication of other research.

Issuance of this Permit for the importation of Vaquita (*Phocoena sinus*) as required by the Endangered Species Act of 1973 was based on a finding that such Permit; (1) Was plied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this Permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

Documents submitted in connection with this permit are available for review in the following offices:

By appointment: Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Suite 7324, Silver Spring, Maryland 20910 (301/713–2289); and Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702 (313/893–3141).

Dated: December 20, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–31031 Filed 12–27–91; 8:45 am]

BILLING CODE 3510–22–M

Technology Administration

National Medal of Technology Nomination Evaluation Committee

AGENCY: Technology Administration, Commerce.

ACTION: Notice of closed meeting.

SUMMARY: This notice announces the forthcoming closed meeting of the National Medal of Technology Nomination Evaluation Committee. The Committee was rechartered on September 16, 1991.

The Committee shall make recommendations to the Secretary of Commerce, through a Steering Committee, concerning award of the National Medal of Technology.

The Committee will meet only in executive session to discuss matters concerned with applying the criteria for determining the relative merits of all persons and companies nominated for the Medal as a result of a public solicitation.

TIME AND PLACE: The meeting will begin at 10 a.m. and end at 3 p.m. on January 15, 1992. The meeting will be held in room 4830 at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW. Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Paul Braden, Manager, National Medal of Technology Nomination Evaluation Committee, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Herbert C. Hoover Building, room 4418, Washington, DC 20230, (202) 377–5572.

SUPPLEMENTARY INFORMATION: A Notice of Determination to close the meetings of the Committee to the public on the basis of 5 U.S.C. 552(c)(4) and (6) was approved by the Chief Financial Officer and Assistant Secretary for Administration, with the concurrence of the General Counsel on (December , 1991), in accordance with the Federal Advisory Committee Act, since the discussions are likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy and may also disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Herbert C. Hoover Building, room 6628, Washington, D.C. 20230. (202) 377–4210.

Date: December 23, 1991.

Deborah Wince-Smith,

Assistant Secretary for Technology Policy.

[FR Doc. 91–31096 Filed 12–27–91; 8:45 am]

BILLING CODE 3510–18–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a serve to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 29, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action. If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the service listed below from nonprofit agencies employing the blind or other severely disabled individuals.

It is proposed to add the following serve to the procurement list: Janitorial/Custodial, Oregon Air National Guard Base, Reserve Buildings, Portland, Oregon.

E. R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 91–3116 Filed 12–27–91; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Additions

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 29, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On September 13, 27, October 25, November 1 and December 9, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 46602, 49177, 55288, 56200 and 57323) of proposed additions to the procurement list. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Arming Adaptor, Self-Adjusting
1325–01–158–8635
Roll, Tools and Accessories
5140–00–106–5616
Flag, Signal, Combat Vehicle
8345–00–227–1405
8345–00–227–1511
Hood, Combat Vehicle Crewman's
8415–01–111–1159

Services

Embroidery of Name and Service Tapes
U.S. Marine Corps
Arlington, Virginia
Janitorial/Custodial
U.S. Courthouse
Pensacola, Florida
Janitorial/Custodial
Lawrence County Veterans Memorial USARC
533 Taylor Street
New Castle, Pennsylvania
Janitorial/Custodial
Federal Building
1st and Oak Streets
Port Angeles, Washington

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 91–31171 Filed 12–27–91; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Policy Board Advisory Committee

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Policy Board Advisory Committee Task Force on the Future of American Nuclear Forces will meet in closed as session on 8 January 1992 from 0800 until 1600 and 9 January 1992 from 0800 until 1200 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–462, as amended [5 U.S.C. app. II, (1982)], it has been determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b (c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: December 23, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–31024 Filed 12–27–91; 8:45 am]

BILLING CODE 3810–01–M

Strategic Defense Initiative Advisory Committee (SDIAC)

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The SDIAC will meet in closed session in Washington, DC, on January 9–10, 1992.

The mission of the SDIAC is to advise the Secretary of Defense and the Director, Strategic Defense Initiative Organization on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meetings on January 9–10, 1992, the committee will discuss Initial Deployment plans, review the Third World Threat report, and review Architecture Integration update.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C., app. II, (1982)), it has been determined that this SDIAC meeting concerns matters listed in 5 U.S.C., 552(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: December 23, 1991.

Linda M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–31025 Filed 12–27–91; 8:45 am]

BILLING CODE 3810–01–M

Women in Services Advisory Committee; Meeting

AGENCY: Defense Advisory Committee on Women in the Services (DACOWITS), DOD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to review unresolved resolutions made by the committee at the DACOWITS 1991 Fall Conference; review the Subcommittee Issue Agenda; review the proposed agenda for the DACOWITS 1992 Spring Conference; and discuss issues relevant to women in the Services. All meeting sessions will be open to the public.

DATES: February 10, 1992, 8:30 a.m.–4 p.m..

ADDRESSES: SECDEF Conference Room 3E869, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Captain Branda M. Weidner, Office of the DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, room 3D769,

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Washington, DC 20301-4000; telephone (703) 697-2122.

Dated: December 23, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-31026 Filed 12-27-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Exclusive Patent License

AGENCY: Department of the Navy, DOD.

ACTION: Intent to grant exclusive patent license; U.S. Alcohol Testing of America, Inc.

SUMMARY: The notice in the **Federal Register**, Vol. 56, No. 216, at page 56991 on November 7, 1991 was partially incomplete. The first sentence of the **SUMMARY** should have read as follows: The Department of the Navy hereby gives notice of its intent to grant to U.S. Alcohol Testing of America, Inc. a revocable, nonassignable, exclusive license in the United States and certain foreign countries to practice the Government-owned invention described in U.S. Patent Application Serial No. 07/486,024, "Flow Immunosensor Method and Apparatus" filed February 23, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), 800 North Quincy Street, Arlington, Virginia 22217-5000, telephone (703) 696-4001.

Dated: December 19, 1991.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer

[FR Doc. 91-31101 Filed 12-27-91; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

National Advisory Committee on Accreditation and Institutional Eligibility; Education

AGENCY: National Advisory Committee on Accreditation and Institutional Eligibility; Education.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the proposed agenda of the National Advisory Committee on Accreditation and Institutional Eligibility. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend this public meeting.

DATES AND TIMES: February 3-5, 1992, 8:30 a.m.-5 p.m..

LOCATION: Dupont Plaza Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Steven G. Pappas, Executive Director, National Advisory Committee on Accreditation, and Institutional Eligibility, U.S. Department of Education, 400 Maryland Avenue, SW., room 3915-ROB#3, Washington, DC 20202.

SUPPLEMENTARY INFORMATION: The National Advisory Committee on Accreditation and Institutional Eligibility is established under section 1205 of the Higher Education Act as amended by Public Law 93-374 (20 U.S.C. 1145).

The Committee advises the Secretary of Education regarding his responsibility to publish a list of nationally recognized accrediting agencies and associations, State agencies recognized for the approval of public postsecondary vocational education, and State agencies recognized for the approval of nurse education. The Committee also advises the Secretary of Education on policy matters concerning recognition of accrediting and State approval bodies and institutional eligibility for participation in Federally funded programs.

AGENDA: The meetig on February 3-5, 1992 is open to the public. The Advisory Committee will continue its consideration of issues concerning the relationship of accreditation to eligibility for Federal student financial assistance. The Committee will also review petitions and interim reports of accrediting agencies and State approval bodies relative to initial or continued recognition by the Secretary of Education. Subject to time constraints, the Committee will hear presentations by representatives of these petitioning agencies and third parties who have requested to be heard. The following petitions and interim reports are scheduled for review:

Accrediting Agencies

Petition for Initial Recognition

American Association of Higher Education in Oriental Medicine, Accrediting Commission (institutions and programs offering master's degrees in traditional Oriental medicine).

Petitions for Renewal of Recognition

1. Accreditation Board for Engineering and Technology, Inc. (basic [baccalaureate] and advanced [master's] level programs in engineering, associate and baccalaureate degree programs in engineering technology, and engineering-related programs at the baccalaureate level).

2. Accreditation Board of Funeral Service Education, Committee on Accreditation (independent schools and collegiate departments).

3. American Library Association, Committee on Accreditation (master's programs leading to the first professional degree).

4. American Society of Landscape Architects, Landscape Architectural Accreditation Board (baccalaureate and master's programs leading to the first professional degree).

5. Association of Advanced Rabbinical and Talmudic Schools, Accreditation Commission (advanced rabbinical and Talmudic Schools).

6. Council on Chiropractic Education, Commission on Accreditation (programs leading to the D.C. degree).

7. Council on Education for Public Health (graduate schools of public health and graduate programs offered outside schools of public health in community health education and in community health/preventive medicine).

8. Council on Social Work Education, Commission on Accreditation (master's and baccalaureate degree programs).

9. Foundation on Interior Design Education Research, Committee on Accreditation (two-year preprofessional assistant level programs (certificate and associate degree), first professional degree level programs (master's and baccalaureate degree and three-year certificate) and post-professional master's degree programs).

10. Middle States Association of Colleges and Schools, Commission on Higher Education (Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virgin Islands).

11. National Accreditation Council for Agencies Serving the Blind and Visually Handicapped (specialized schools for the blind and visually handicapped, including organizations providing postsecondary vocational education programs that prepare the blind and visually handicapped for employment).

12. National Accrediting Commission of Cosmetology Arts and Sciences (postsecondary schools and department of cosmetology arts and sciences).

13. National Association of Industrial Technology (baccalaureate degree programs).

14. National Association of Schools of Art and Design, Commission on Accreditation (degree-granting schools and departments of non-degree granting schools that are predominantly organized to offer education in art, design, or art/design related disciplines).

15. National Association of Schools of Music, Commission on Accreditation (institutions and units within institutions offering degree granting and non-degree granting programs in music and music-related disciplines including community/junior colleges and independent degree-granting institutions).

Request for Expansion of Scope of Recognition

National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine (from first professional master's degree and professional master's level certificate and diploma programs in acupuncture, to first professional master's degree and professional master's level certificate and diploma programs in acupuncture and Oriental medicine)

Interim Reports

1. Accrediting Bureau of Health Education Schools (private, postsecondary institutions offering allied health education).

2. American College for Nurse-Midwives (basic certificate and basic master's degree nurse-midwifery educational programs).

3. American Council on Pharmaceutical Education (professional degree programs).

4. American Culinary Federation Educational Institute, Accrediting Commission (postsecondary programs in culinary arts and foodservice management which award certificates, diplomas or associate degrees)

5. American Osteopathic Association, Bureau of Professional Education (programs leading to the D.O. degree).

6. Career College Association, Accrediting Commission for Independent Colleges and Schools (formerly Association of Independent Colleges and Schools) (private, postsecondary schools, junior colleges, and senior colleges that are predominantly organized to educate students for business careers, including master's degree programs in senior colleges of business).

7. Career College Association, Accrediting Commission for Trade and Technical Schools (formerly National Association of Trade and Technical Schools) (private, postsecondary degree and non-degree-granting institutions that are predominantly organized to educate students for trade, occupational, or technical careers).

8. National Architectural Accrediting Board, Inc. (first professional degree programs)

9. National Home Study Council, Accrediting Commission (home study schools (including associate, baccalaureate, or master's degree-granting home study schools).

9. National Home Study Council, Accrediting Commission (home study schools (including associate, baccalaureate, or master's degree-granting home study schools).

10. National League for Nursing, Inc. (programs in practical nursing, and diploma, associate, baccalaureate and higher degree nurse education programs).

11. New York State Board of Regents (registration [accreditation] of collegiate degree-granting programs or curriculums offered by institutions of higher education and of credit-bearing certificate and diploma programs offered by degree-granting institutions of higher education).

12. Southern Association of Colleges and Schools, Commission on Colleges (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia).

13. Southern Association of Colleges and Schools, Commission on Occupational Education Institutions.

14. United States Catholic Conference, Commission on Certification and Accreditation (centers/programs, including those that offer clinical pastoral education, that award certificates, baccalaureate and master's degrees for training for specialized ministries in the Catholic Church).

State Approval Agencies

Interim Reports

1. Colorado Board of Nursing
2. New York State Board of Regents
3. Office of the Superintendent of Public Instruction, State of Washington
4. Utah State Board for Vocational Education

Request for Voluntary Withdrawal of Recognition as a State Approval Agency

1. Delaware State Board of Education
2. Iowa State Department of Education

Requests for oral presentation before the Advisory Committee should be submitted to Mr. Pappas (address above) by January 15, 1992. Requests should include the names of all persons seeking an appearance, the organization they represent, and the purpose for which the presentation is requested.

A record will be made of the proceeding of the meeting and will be available for public inspection at the Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., (room 3036 ROB#3), Washington, DC, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

Authority: 5 U.S.C.A. Appendix 2.

Carolyn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 91-31131 Filed 12-27-91; 8:45 am]

BILLING CODE 4000-01-M

National Assessment Governing Board; Teleconference Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Reporting and Dissemination Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: January 7, 1992.

TIME: 11 a.m. (e.t.)

PLACE: National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC., 20005-4013, Telephone: (202) 357-6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III-C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297), (20 USC 1221e-1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis, and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and

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establishing standards and procedures for interstate and national comparisons.

The Reporting and Dissemination Committee of the National Assessment Governing Board will meet via teleconference on January 7, 1992. The proposed agenda includes three items: (1) Review of plans for release of two new NAEP reports; (2) discussion of plans for preparation and dissemination of booklets describing the content frameworks of 1992 and 1994 NAEP assessments; and (3) discussion of actions and plans for solicitation of written comments, surveys, and focus groups to evaluate the usefulness and impact of reporting 1990 mathematics results in terms of achievement levels.

Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: December 23, 1991.

Diane Ravitch,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 91-31086 Filed 12-27-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. QF91-233-001, et al.]

Orlando CoGen Limited, L. P., et al.; Electric rate, Small power production, and Interlocking Directorate filings

Take notice that the following filings have been made with the Commission:

1. Orlando CoGen Limited, L.P.

[Docket No. QF91-233-001]

December 16, 1991.

On December 10, 1991, Orlando CoGen Limited, L.P. (Applicant) of 7201 Hamilton Boulevard, Allentown, Pennsylvania 18195-1501, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in Orange County, Florida, and will consist of a combustion turbine generator, a heat recovery boiler and an extraction/condensing steam turbine generator. Steam recovered from the steam turbine generator will be used for refrigeration by the Air Products Manufacturing Corporation. The maximum net electric power production capacity of the facility will be 122.7 MW. The primary energy source will be natural gas. Construction of the facility is expected to commence by September of 1992.

Comment date: 30 days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. Montenay-Dade, Ltd.

[Docket No. QF81-19-001]

December 17, 1991.

On December 9, 1991, Montenay-Dade, Ltd, a Florida limited partnership, c/o Montenay Power Corp., 3225 Aviation Avenue, 4th Floor, Miami, Florida 33133, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in Dade County, Florida. The facility will include two steam turbine generators and two boilers. The maximum net electric power production capacity of the facility will be approximately 62.6 MW. The primary source of energy will be biomass in the form of municipal solid waste.

Comment date: 30 days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. Bonneville Yuma Corporation

[Docket No. QF90-143-000]

December 16, 1991.

On December 5, 1991, Bonneville Yuma Corporation tendered for filing an amendment to its filing in this docket.

The amendment provides additional information pertaining to the ownership structure of the cogeneration facility.

Comment date: January 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. AES CB Limited Partnership

[Docket No. QE89-126-003

December 18, 1991.

On December 9, 1991, AES CB Limited Partnership tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining to the ownership structure and economic viability of the cogeneration facility.

Comment date: January 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. El Paso Electric Company

[Docket No. ER92-58-000]

December 18, 1991.

Take notice that on December 10, 1991, El Paso Electric Company (EPE) filed an amendment to the contract filed on October 7, 1991 in the above named docket. The amendment, suggested by Staff, revises the pricing provisions in Service Schedule A applicable to sales of economy energy. EPE continues to request that the filing be made effective on June 28, 1991.

Comment date: January 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. UNITIL Power Corp.

December 18, 1991.

[Docket No. ER92-221-000]

Take notice that on December 10, 1991, UNITIL Power Corp. (UNITIL Power) tendered for filing a Notice of Cancellation of Service Agreement No. 4 to its FERC Electric Tariff, Original Volume No. 1.

UNITIL Power states that the Notice of Cancellation has been mailed to the only affected purchaser, Central Vermont Public Service Corporation.

UNITIL Power requests a waiver of notice to permit the Notice of Cancellation to be effective November 1, 1991, in accordance with the Service Agreement.

Comment date: January 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Baltimore Gas and Electric Company

December 18, 1991.

[Docket No. ER92-220-000]

Take notice that on December 11, 1991, Baltimore Gas and Electric Company (BG&E) tendered for filing, as an initial rate schedule, an agreement between BG&E and the Public Service Electric and Gas Company (PSE&G) reflecting BG&E's sale to PSE&G of up to 100% BG&E's entitlement for the use of Pennsylvania-New Jersey-Maryland Interconnection (PJM) transmission system which is used to import energy from Systems to the west of PJM at a rate of up to %5.50 MWH commencing February 10, 1992. PSE&G has concurred in this rate schedule by its execution of the agreement. BG&E requests the Commission allow the rate schedule to become effective February 10, 1992.

Comment date: January 3, 1992, in accordance with Standard Paragraph E end of this notice.

8. Central Vermont Public Service Corporation

December 18, 1991.

[Docket No. ER92-145-000]

Take notice that Central Vermont Public Service Corporation on December 13, 1991, tendered for filing an amendment to the letter agreement in this docket that reduces the quantity of power sold to the Village of Enosburg Falls.

Central Vermont requests that the Commission waive its notice requirements to allow the amendment to become effective on December 1, 1991.

Comment date: January 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Southern Indiana Gas and Electric Company

December 18, 1991.

[Docket No. ER92-43-000]

Take notice that on December 13, 1991, Southern Indiana Gas and Electric Company (Southern Indiana) tendered for filing an Addendum to its filing of October 7, 1991, for a change in its rate schedule FPC-29 under which it sells standby electrical power to ALCOA Generating Corporation (AGC). The original change filing is in pricing calculation methodology and will result in no rate increase or decrease or revenue change. Southern Indiana has requested a waiver of the minimum 60 day notice requirement. The Addendum sets a floor and ceiling on Southern Indiana's recovery. The only affected customer is the purchaser. Southern Indiana and AGC are parties to a written Letter Agreement executed on August 1, 1991, for the service.

The reason for the Letter Agreement and included change in the rate schedule is to simplify pricing and reduce significant monthly fluctuations in the cost per KWH experienced with the prior methodology, which is expected to be rectified by the new system average methodology. The Agreement is therefore mutually beneficial. The Addendum does not materially affect the original filing except to set a floor and ceiling on recovery by Southern Indiana which Southern Indiana does not anticipate will alter the mutual benefits.

A copy of the filing has been served upon AGC.

Comment date: January 3, 1992, in accordance with Standard Paragraph E end of this notice.

10. UNITIL Power Corp.

December 18, 1991.

[Docket No. ER92-89-000]

Take notice that on December 12, 1991, UNITIL Power Corp. (UNITIL Power) filed with the Commission Notice of Cancellation for three Service Agreements for short-term sales under its FERC Electric Tariff, Original Volume No. 1. The three Service Agreements were filed with the Commission in this docket on October 7, 1991. UNITIL Power states that it is submitting the Notices of Cancellation to supplement its October 7 filing, and that notice of the proposed cancellation has been mailed to each affected purchaser.

UNITIL Power requests a waiver of notice to permit the Notices of Cancellation to be effective in accordance with their terms, which correspond to the termination dates set forth in the Service Agreements.

A copy of UNITIL Power's supplemental filing has been served on each person on the official service list in this proceeding.

Comment date: January 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Duke Power Company

December 18, 1991.

[Docket No. ER90-315-003]

Take notice that on December 10, 1991, Duke Power tendered for filing its compliance refund report pursuant to the Commission's Letter Order dated October 9, 1991.

Comment date: January 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Orange and Rockland Utilities, Inc.

December 18, 1991.

[Docket No. ER92-219-000]

Take notice that December 11, 1991, Orange and Rockland Utilities, Inc. (Orange and Rockland) tendered for filing a one year extension dated November 27, 1991, to an agreement between Orange and Rockland and New York Power Authority (Authority) for the sale of system capacity and/or energy by Orange and Rockland to Authority.

Orange and Rockland requests waiver of the notice requirements of § 35.13 of the Commission's regulations so that the proposed extension can be made effective December 1, 1991 in accordance with the anticipated utilization by the parties.

Orange and Rockland states that a copy of this filing was served on New York Power Authority.

Comment date: January 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Arizona Public Service Company

December 18, 1991.

[Docket No. ER92-223-000]

Take notice that December 11, 1991, Arizona Public Service Company (Arizona) tendered for filing revised contract, maximum and/or estimated demand Exhibits applicable under the following rate schedules:

FPC/FERC No.	Customer	Exhibit name
52	Tohono O'odham Utility Authority.	Exhibit I
58	Wellton-Mohawk Irrigation District.	Exhibit B.
120	Southern California Edison Company.	Exhibit B.
142	McMullen Valley Water Conservation and Drainage District.	Exhibit "B"

The proposed rate levels are unaffected, revenue levels are unchanged or less than those currently on file with the Commission, and no other significant change in service to these or any other customer results from the revisions proposed herein. No new or modifications to existing facilities are inquired as a result of these revisions.

A copy of this filing has been served on the above customers, the California Public Utilities Commission, and the Arizona Corporation Commission.

Comment date: January 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Cincinnati Gas & Electric Company

December 18, 1991.

[Docket No. ER92-33-000]

Take notice that The Cincinnati Gas & Electric Company (CG&E) on December 13, 1991, tendered for filing an amendment to its filing in this docket, in response to various items identified in a deficiency letter dated November 27, 1991.

Copies of the amendment were served upon the Villages of Bethel, Blanchester, Georgetown, Hamersville, Ripley, and Lebanon municipalities in the State of Ohio; and The Union Light, Heat and Power Company, a wholly owned subsidiary of CG&E, which ultimately serves retail consumers and one wholesale customer within the

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Commonwealth of Kentucky; and The West Harrison Gas and Electric Company, a wholly owned subsidiary of CG&E, which ultimately serves retail consumers within the State of Indiana, the Public Utilities Commission of Ohio, the Kentucky Public Service Commission; the Indiana Utility Regulatory Commission; the Cities of Newport, Covington, and Erlanger, Kentucky; and the Municipal Government League of Northern Kentucky, Inc.

Comment date: January 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Minnesota Power & Light Company

December 18, 1991.

[Docket No. ER91-532-000]

Take notice that on December 9, 1991, Minnesota Power & Light Company (Minnesota Power) tendered for filing supplemental cost support information concerning a Transmission Services Agreement, dated July 1, 1991, with Cyprus Silver Pay Power Corporation (Cyprus).

Minnesota Power again requests waiver of the Commission's notice requirements and an effective date of July 1, 1991.

Copies of this filing have been served on Cyprus, the Minnesota Public Utilities Commission, and the Minnesota Department of Public Service.

Comment date: January 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Public Service Company of New Hampshire

December 18, 1991.

[Docket No. ER92-224-000]

Take notice that Public Service Company of New Hampshire (PSNH) on December 13, 1991, tendered for filing as an initial rate schedule an agreement between it and Central Vermont Public Service Corporation (Central Vermont) nominated, Purchase Agreement With Respect to Newington and dated as of December 1, 1991. The agreement provides for the sale by PSNH to Central Vermont of capability and energy from the Newington generating unit along with non-firm transmission service for delivery.

PSNH asks the Commission to waive its customary notice period and allow the agreement to become effective December 1, 1991. The agreement has been executed by PSNH and Central Vermont and copies have been delivered to the customer and the public service commissions of New Hampshire and Vermont.

Comment date: January 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Central Vermont Public Service Corporation

December 18, 1991.

[Docket No. ER91-573-000]

Take notice that on December 13, 1991, Central Vermont Public Service Corporation (Central Vermont) tendered for filing a Notice of Termination of Rate Schedule FERC No. 156. Central Vermont requests an effective date of October 1, 1991.

Comment date: January 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

18. Missouri Public Service Company

December 18, 1991.

[Docket No. ER91-682-000]

Take notice that on December 6, 1991, Missouri Public Service Company (Missouri) tendered for filing supplemental cost support information in the above-referenced docket.

Comment date: January 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31051 Filed 12-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10359-003 Washington]

Snoqualmie River Hydro; Availability of Environmental Assessment

December 23, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Youngs Creek Hydroelectric Project located on the Youngs Creek in Snohomish County, Washington, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 1000, of the Commission's office at 825 North Capitol Street, NE., Washington, DC 20426.

Lois Cashell,

Secretary.

[FR Doc. 91-31044 Filed 12-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 2645-029, et al.]

Niagara Mohawk Power Corp., et al.; Relicensing of Hydroelectric Projects

December 13, 1991.

Take notice that the following filings have been made with the Commission:

1. Niagara Mohawk Power Corp.

[Project No. 2645-029]

Take notice that on November 29, 1991, the Niagara Mohawk Power Corporation filed an application to relicense the Beaver River Hydroelectric Project No. 2645-029.

The Beaver River Project is located on the Beaver River, in Herkimer and Lewis Counties, New York. The project consists of 8 existing developments, with an installed capacity of 45.122 MW. The licensee proposes to install a minimum flow unit adding 210 kW of installed capacity to the Eagle Development and to redevelop the Belfort development by replacing the intake, penstocks powerhouse, and tailrace and increasing installed capacity by 1.11 MW. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

2. Central Maine Power Co.

[Project No. 2325-000]

December 13, 1991.

Take notice that on November 20, 1991, the Central Maine Power Company filed an application to relicense the Weston Hydroelectric Project No. 2325.

The Weston Project is located on the Kennebec River, in Somerset County, Maine. The project consists of two dams (the 529.5-foot-long and 38-foot-high North Channel Dam and the 391.6-foot-long and 51-foot-high South Channel Dam) that were constructed on the north and south channels of the Kennebec River where the river is divided by an island, a 930-acre reservoir, and a powerhouse with an existing installed capacity of 12,000 kW. The licensee proposes the rewinding of the generators to increase the project capacity to 14,750 kW. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

3. Finch, Pruyn and Co., Inc.

[Project No. 2385-000]

December 13, 1991.

Take notice that on December 4, 1991, Finch, Pruyn and Company, Inc., filed an application to relicense the Glen Falls Hydroelectric Project No. 2385.

The Glen Falls Project is located on the Hudson River, in Warren and Saratoga Counties, New York. The project consists of a 450-foot-long and 11-foot-high dam, a 167-acre reservoir, and a powerhouse with an existing installed capacity of 12,090 kW. The licensee proposes the construction of a new headgate structure and rewinding of the generators to increase the project capacity to 12,700 kW. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

4. Central Maine Power Co.

[Project No. 2552-000]

December 13, 1991.

Take notice that on November 26, 1991, the Central Maine Power Company filed an application to relicense the Fort Halifax Hydroelectric Project No. 2552.

The Fort Halifax Project is located on the Sebasticook River, in Kennebec County, Maine. The project consists of a 352-foot-long Ambursen Dam (spillway section), a 417-acre reservoir, and a powerhouse with an installed capacity of 1,500 kW. The licensee proposes no changes in operation or new construction for the project. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard paragraph L end of this notice.

5. Central Maine Power Co.

[Project No. 2519-000]

December 13, 1991.

Take notice that on November 12, 1991, the Central Maine Power Company filed an application to relicense the North Gorham Hydroelectric Project No. 2519.

The North Gorham Project is located on the Presumpscot River, in Cumberland County, Maine. The project consists of a 970.7-foot-long and 24-foot-long and 24-foot-high stone and concrete dam, a 98-acre reservoir, and a powerhouse with an installed capacity of 2,250 kW. The licensee proposes no changes in operation or new construction for the project. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

6. Wisconsin Electric Power Co.

[Project No. 2431-000]

December 13, 1991.

Take notice that on December 2, 1991, the Wisconsin Electric Power Company filed an application to relicense the Brule Hydroelectric Project No. 2431.

The Brule Project is located on the Brule River, in Florence County, Wisconsin and Iron County, Michigan. The project consists of a 139-foot-long concrete spillway with eight tainter gates, a 532-acre reservoir, and a powerhouse with an installed capacity of 5,335 kW. The licensee proposes no changes in operation or new construction for the project. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

7. Central Maine Power Co.

[Project No. 2555-000]

December 16, 1991.

Take notice that on December 4, 1991, the Central Maine Power Company filed an application to relicense the Automatic Hydroelectric Project No. 2555.

The Automatic Project is located on the Messalonskee Stream, in Kennebec County, Maine. The project consists of a concrete gravity dam, a 68-acre reservoir, and a powerhouse with an installed capacity of 800 kW. The licensee proposes no major changes in operation or new construction for the project. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

8. Central Maine Power Co.

[Project No. 2556-000]

December 16, 1991.

Take notice that on December 4, 1991, the Central Maine Power Company filed an application to relicense the Union Gas Hydroelectric Project No. 2556.

The Union Gas Project is located on the Messalonskee Stream, in Kennebec County, Maine. The project consists of a stone masonry gravity dam, a 25-acre reservoir, and a powerhouse with an installed capacity of 1.5 MW. The licensee proposes no major changes in operation or new construction for the project. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

9. Central Maine Power Co.

[Project No. 2557-000]

December 16, 1991.

Take notice that on December 4, 1991, the Central Maine Power Company filed an application to relicense the Rice Rips Hydroelectric Project No. 2557.

The Rice Rips Project is located on the Messalonskee Stream, in Kennebec County, Maine. The project consists of a concrete Ambursen dam, a 87-acre reservoir, and a powerhouse with an installed capacity of 1.6 MW. The licensee proposes no major changes in operation or new construction for the project. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

10. Central Maine Power Co.

[Project No. 2559-000]

December 16, 1991.

Take notice that on December 4, 1991, the Central Maine Power Company filed an application to relicense the Oakland Hydroelectric Project No. 2559.

The Oakland Project is located on the Messalonskee Stream, in Kennebec County, Maine. The project consists of a concrete gravity dam with a 10-acre reservoir, a concrete and masonry gravity dam with a 3,600-acre reservoir, and a powerhouse with an installed capacity of 2.8 MW. The licensee proposes no major changes in operation or new construction for the project. The

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current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

11. Niagara Mohawk Power Corp.

[Project No. 2569–004]

December 16, 1991.

Take notice that on November 29, 1991, the Niagara Mohawk Power Corporation filed an application to relicense the Black River Hydroelectric Project No. 2569–004.

The Black River Project is located on the Black River, in Jefferson County, New York. The project consists of 5 existing developments, with an installed capacity of 29.6 MW. The licensee proposes to add 2 new generating units to the Sewalls Powerhouse adding 1.2 MW of installed capacity. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

12. Niagara Mohawk Power Corp.

[Project No. 2474–004]

December 16, 1991.

Take notice that on December 6, 1991, the Niagara Mohawk Power Corporation filed an application to relicense the Oswego River Hydroelectric Project No. 2474–004.

The Oswego River Project is located on the Oswego River, in Oswego County, New York. The project consists of 3 existing developments, with an installed capacity of 18.05 MW. The licensee proposes to rewind and refurbish the turbine/generators at the Varick and Minetto developments to increase the installed capacity by 4.7 MW. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

13. Central Maine Power Co.

[Project No. 2329–005 New York]

December 17, 1991.

Take notice that on December 10, 1991, the Central Maine Power Company filed an application to relicense the Wyman Hydroelectric Project No. 2329–005.

The Wyman Project is located on the Kennebec River, in Somerset County, Maine. The project consists of an 84-foot-high dam, a 3,240-acre reservoir, and powerhouse with an installed capacity of 72 MW. The licensee proposes no changes in operation or new construction for the project. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

14. Central Maine Power Co.

[Project No. 2283–005 New York]

December 17, 1991

Take notice that no December 10, 1991, the Central Maine Power Company filed an application to relicense the Gulf Island—Deer Rips Hydroelectric Project No. 2283–005.

The Gulf Island—Deer Rips Project is located on the Androscoggin River, in Androscoggin County, Maine. The project consists of three developments with an installed capacity of 32.67 NW. The licensee proposes to increase the installed capacity at the Gulf Island Development by replacing the turbine runners and rewinding unit two. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

Standard Paragraph

L. Any resource agency, Indian tribe, or person believing that additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, a request for the study, together with justification for such request in accordance with section 4.32 of the Commission's regulations, must be filed no later than 60 days after the date of filing.

Lois D. Cashell,

Secretary.

[FR Doc. 91–31649 Filed 12–27–91; 8:45 am]

BILLING CODE 6717–01–M

[Dockets Nos. CP92–230–000, et al.]

Northern Natural Gas Company, et al., Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Northern Natural Gas Company

[Docket No. CP92–230–000]

December 16, 1991.

Take notice that on December 11, 1991, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP92–230–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a delivery tap to Koch Industries, Inc. (Koch) under Northern's blanket certificate issued in Docket No. CP82-401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Northern proposes to construct a delivery tap on its 24-inch Farmington "B" line in Dakota County, Minnesota and metering and appurtenant facilities at Koch's Rosemount Refinery in Rosemount County, Minnesota. Northern states that it would also construct approximately 4.5 miles of 12-inch pipeline from the tap to the metering facilities pursuant to subpart F of part 157 of the Commission's Regulations.

Northern further states that it would use the facilities to deliver natural gas transported for Koch pursuant to subpart G of part 284 of the Commission's Regulations to Koch's Rosemount Refinery.

Northern estimates the volumes of natural gas to be delivered through the proposed facilities to be 46,500 Mcf on a peak day and 13,300,000 Mfc annually.

Northern further states that it is currently providing services to Peoples Natural Gas Company, Division of Utilicorp United Inc., for resale to Koch's Rosemount Refinery. Northern asserts that Koch is expanding its facilities and that the present natural gas volumes and pressures would be insufficient to provide for future deliverability requirements.

Comment date: January 30, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. Transwestern Pipeline Company

[Docket No. CP92–207–000]

December 16, 1991

Take notice that on November 22, 1991, Transwestern Pipeline Company (Transwestern), P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP92–207–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon by sale to Continental Natural Gas, Inc. (Continental) certain pipeline, compression, measurement and appurtenant facilities, hereinafter referred to as the "Mocane System," located in Beaver County, Oklahoma. Transwestern also requests that the Commission authorize: The amendment of Transwestern's certificate authorization of an exchange between Transwestern and El Paso Natural Gas Company (El Paso) to remove a balancing point; and the abandonment of certificated gas sales by certain producers to Transwestern and its related gas purchases, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the Mocane System consists of approximately 54 miles of 2 to 8-inch diameter pipeline, 24 meter stations, the U.S. Allen No. 1 Compressor Unit No. 809 (Compressor Unit No. 809) and Compressor Unit No. 729. Transwestern states that the Mocane System gathers natural gas from 24 wells in the Mocane, Elmwood, Laverne and Camp Creek fields and currently delivers gas into low pressure gathering lines owned by Northern Natural Gas Company (Northern) and Continental. It is further stated that the Mocane System is connected to Transwestern's high pressure 12-inch Lipscomb Mocane Lateral (12-inch Lipscomb Lateral), but can't deliver gas into that lateral due to the pressure differential.

Transwestern states that it commenced construction of the Mocane System in 1960 under Docket No. G–20464 to purchase system supply gas and subsequently built additional gathering lines and meter stations to attach additional wells. It is stated that Compressor Unit No. 809, authorized in Docket No. G–20464 and installed to compress natural gas delivered into Transwestern's 12-inch Lipscomb Lateral, was abandoned by authorization granted in Docket No. CP90–521–000. It is also stated that to comply with the recommendation in the environmental assessment of the abandonment order, Compressor Unit No. 809 will be left on site. It is further stated that Compressor Unit No. 729, authorized in Docket No. CP80–132–000, was installed to increase deliverability from the 6-inch Hancock Lateral.

Transwestern states that it has existing interconnection facilities that have been used for the transportation and exchange of gas with Panhandle Eastern Pipeline Company (Panhandle), El Paso (facilities now owned by Continental) and Northern which are included in the Mocane System facilities to be sold to Continental.

Transwestern submits that it hasn't used its interconnection point with Panhandle, at which gas was exchanged, since the April 1, 1989 termination of a Gas Exchange Agreement dated December 1, 1960

It is stated that Transwestern and El Paso were authorized in Docket Nos. CP61–299 and CP61–265, respectively, to exchange gas in various counties in Texas and Oklahoma and to construct and operate certain facilities in Beaver County, Oklahoma to permit the exchange of gas. Transwestern states that part 284 interruptible transportation service pursuant to Docket No. CP91–32–000 has been provided to Continental at an interconnect Continental purchased from El Paso. Transwestern requests authorization pursuant to section 7(c) of the NGA to amend the certificate authorization granted in Docket No. CP61–299 to remove a balancing point located at the intersection of its and El Paso's pipelines in Beaver County, Oklahoma and will revise Rate Schedule X–1 of its FERC Gas Tariff Original Volume No. 2, upon approval of this application.

Also, it is stated that Transwestern and Northern were authorized in Docket Nos. CP63–290 and CP63–291, respectively, to install and operate facilities in Hutchinson County, Texas and Beaver County, Oklahoma and exchanged gas until authorization ended June 30, 1970. According to Transwestern, Northern currently provides it interruptible transportation service under Part 284.

According to Transwestern, it's remaining active gas purchase contracts allow for their unilateral assignment. Transwestern states it notified each of its producers of its intention to assign its contracts to Continental upon sale of the Mocane System. Transwestern requests abandonment authorization to its producer-suppliers of the certificated sales to Transwestern, and to Transwestern of its listed certificated gas purchases.

Transwestern states that while it still purchases some system gas from fields attached to the Mocane System, the total supply has decreased and that because of a decline in field pressures, gas volumes from the Mocane System must flow into lower pressure gathering lines, rather than directly into Transwestern's system. Transwestern reports it has limited operational flexibility from the Mocane System because it depends on other companies to transport the gas. Transwestern states that it no longer buys sufficient quantities of gas from the Mocane System to efficiently use its pipeline and related facilities and that upon receiving abandonment authorization it intends to assign its remaining gas purchase contracts in the Mocane System to Continental. Transwestern avers that abandonment by sale to Continental won't impair its existing service obligations nor impact the production and delivery of remaining reserves from the Mocane System wells. Transwestern submits that authorizing this abandonment will promote more efficient use of the Mocane System since Continental will be able to arrange for new purchases and attach additional wells.

Comment date: January 6, 1992, in accordance with Standard Paragraph F at the end of this notice

3. Phillips 66 Natural Gas Company

[Docket No. CI92–12–000]

December 17, 1991.

Take notice that on November 21, 1991, Phillips 66 Natural Gas Company (Phillips 66), Bartlesville, Oklahoma 74004, successor in interest to Phillips Petroleum Company, filed an application pursuant to section 7(b) of the Natural Gas Act for authorization permitting and approving the abandonment of certain exchanges of natural gas with El Paso Natural Gas Company (El Paso), all as more fully described in the application which is on file with the Commission and open to public inspection.

Phillips 66 requests authority to abandon a gas exchange with El Paso that is done in accordance with the provisions of a gas exchange agreement dated June 18, 1962, between Phillips 66 and El Paso. Phillips 66 indicates that the exchange service is preformed pursuant to a certificate issued in Docket No. CI66–85–000 (Order dated May 19, 1966) and its FERC Gas Rate Schedule No. 93. The application indicates that Phillips 66 and El Paso have agreed that the case-specific certificate exchange agreement can be consolidated and further transportation service necessary provided by El Paso for Phillips 66 ". . . under El Paso's blanket transportation certificate." Phillips 66 states that this filing was made to compliment El Paso's abandonment application filed October 24, 1991, in Docket No. C92–122–000.

Comment date: January 6, 1992, in accordance with Standard Paragraph J at the end of this notice.

4. Northern Natural Gas Company

[Docket No. CP92–234–000]

December 17, 1991.

Take notice that on December 12, 1991, Northern Natural Gas Company (Northern), P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP92–234–000 a request pursuant to § § 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to operate and upgrade an existing delivery point and appurtenant facilities to accommodate increased natural deliveries to Northern States Power Company of Wisconsin (NSP), for redelivery to the community of La Crosse, Wisconsin, under its blanket certificate issued in Docket No.

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CP82-401-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that it requests authority to operate and upgrade an existing delivery point for NSP in order to accommodate natural gas deliveries under Northern's CD-1, SS-1, FT-1, IT-1, and ISS Rate Schedules for redelivery to the community of La Crosse, Wisconsin. Northern states that due to extreme weather conditions in the area, operating conditions at this station posed a significant risk of failure. It was indicated that immediate action was necessary to upgrade the equipment with a temporary facility under the emergency regulations of subpart I of part 284 of the Commission's Regulations since failure of the facilities would result in a loss of pressure on NSP' distribution system resulting in a loss of service to approximately 315 residences. It is indicated that the upgraded facilities were ready for service on December 4, 1991.

Northern proposes to further upgrade the facilities on a permanent basis upon approval of the authorization of this proposal. Northern advises that the proposed deliveries to NSP would be served from the total firm entitlements currently to the community of La Crosse, Wisconsin and that NSP has not requested that any firm entitlements be assigned to the upgraded delivery point.

Northern estimates an increase in peak day and annual deliveries from the upgraded facilities of 790 million Btu and 57,422 million Btu, respectively. Northern states that the facilities would be financed in accordance with Paragraph 2 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1. Northern estimates the cost of upgrading the facility at $33,600.

Comment date: January 31, 1992, in accordance with Standard Paragraph G at the end of this notice.

5. Northwest Pipeline Corporation

[Docket No. CP92-236-000]

December 17, 1991.

Take notice that on December 12, 1991, Northwest Pipeline Corporation (Northwest), P.O. Box 58900, Salt Lake City, Utah 84158-0900, filed in Docket No. CP92-236-000 a request pursuant to §§ 157.205, 157.211 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to add a delivery meter station as a delivery point for firm gas sales to Intermountain Gas Company (Intermountain) under Northwest's blanket certificate issued in Docket No. CP82-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest states that under the Commission's prior notice procedure, Northwest received approval on November 2, 1991, to construct and operate a new delivery meter station in Caribou County, Idaho for delivery of up to 2,500 Dth equivalent of natural gas per day to Intermountain for service to Chemstar Lime Company (Chemstar). Northwest states that IGI Resources, Inc., as the natural gas procurement and administrative service agent for Intermountain, requested Northwest to add the Chemstar meter station to the Rate Schedule ODL-1 service agreement with Intermountain. Northwest indicates that Northwest and Intermountain have revised the service agreement to add the Chemstar meter station as a delivery point thereunder without making any changes to the existing contract demand or existing point specific maximum daily delivery obligations. The application states that this will allow Intermountain the opportunity to sell volumes of natural gas to Chemstar at or downstream of the Chemstar meter station after Northwest delivers gas to that point under either its firm sales or firm transportation service agreements with Intermountain.

Comment date: January 31, 1992, in accordance with Standard Paragraph G at the end of this notice.

6. Chevron U.S.A. Inc., et al.

[Docket No. G-5720-002, [1] et al.]

December 18, 1991.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective application which are on file with the Commission and open to public inspection.

Comment date: January 6, 1992, in accordance with Standard Paragraph J at the end of this notice.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-5720-002 D 10-15-91	Chevron U.S.A. Inc., P.O. Box 3725, Houston TX 77253-3725.	Texas Eastern Transmission Corporation, North Choudrant Field, Lincoln Parish, Louisiana.	Assigned 7-30-91 to WHW, Inc.
CI92-7-000 (CI84-4) B 10-29-91	OXY USA Inc., P.O. Box 300, Tulsa, OK 74102.	Williston Basin Interstate Pipeline Company, Lignite Plant, Burke County, North Dakota.	Assigned 4-1-91 to Interenergy Sheffield Processing Company.
CI92-8-000 (CI81-274) B 11-1-91	Samedan Oil Corporation, P.O. Box 909, Ardmore, Oklahoma 73402.	Tennessee Gas Pipeline Company, Brazos A-17 block, Offshore, Texas.	Depleted reserves.
CI92-14-000 (G-10293) B 12-4-91	Maxus Exploration Company, 717 N. Harwood Street, Dallas, Texas 75201.	Transcontinental Gas Pipe Line Corporation, Big Foot Field, Frio County, Texas.	Assigned 9-1-91 to Reservoir Enhancement & Operation Company, Inc.

7. Northern Natural Gas Company

[Docket No. CP92-242-000]

December 18, 1991.

Take notice that on December 16, 1991, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP92-242-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to operate an existing delivery point to accommodate natural gas deliveries to Peoples Natural Gas Company, a division of UtiliCorp United Inc. (Peoples), under Northern's blanket certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that the proposed delivery point was constructed pursuant to the emergency provisions of part 284, subpart I, of the Commission's Regulations. Northern further states that the delivery point would be used to provide service for the community of East Big Marine Lake, Minnesota, located in Washington County, Minnesota. Northern states that the total present and proposed peak day and annual volumes to be delivered to Peoples for delivery at the delivery point are 52 Mcf per day on a peak day and 5,821 Mcf on an annual basis. Northern advises that the volumes to be delivered to Peoples are within the currently authorized level of firm entitlements for Peoples. Northern further advises that the proposed deliveries to Peoples at the delivery point would be served from the total firm entitlements currently assigned to the community of Pine City, Minnesota. Northern states that Peoples has not requested that any firm entitlements be assigned to this delivery point. Northern avers that the delivery of such volumes would not impact Northern's peak day and annual deliveries as reflected above. It is stated that, in addition to jurisdictional gas sales to Peoples under Northern's Rate Schedule CF-1, SS-1, and WPS-1, Northern would deliver gas transported under Rate Schedule FT-1 to Peoples at the existing delivery point.

Comment date: February 3, 1992, in accordance with Standard Paragraph G at the end of this notice.

8. El Paso Natural Gas Company

[Docket No. CP92-238-000]

December 18, 1991.

Take notice that on December 13, 1991, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP92-238-000 a request pursuant to § 157.205 of the Commission's Regulations for permission and approval to abandon certain delivery taps located in Wheeler County, Texas and the related natural gas services used for the sale for resale of natural gas to West Texas Gas, Inc. (West Texas) under El Paso's blanket certificate issued in Docket No. CP82-435-000, pursuant to section 7 of the Natural Gas Act, all is as more fully set forth in the request on file with the Commission and open to public inspection.

El Paso proposes to abandon, in place, the Shamrock No. 1 tap consisting of one 4-inch tap with appurtenances located on Meridian Oil, Inc.'s (Meridian) B-7 Lateral pipeline in Wheeler County, Texas; the Shamrock No. 2 tap consisting of one 2-inch tap with appurtenances located on Meridian's Howe A #1 well-tie pipeline in Wheeler County, Texas; and the services used for the delivery and sale of natural gas to West Texas for resale to the community of Shamrock, Texas (Shamrock). El Paso states that, effective April 1, 1988, El Paso states that, effective April 1, 1988, El Paso sold the gathering facilities on which these delivery taps are located to Meridian and continues to make sales of natural gas to West Texas for resale to Shamrock and environs with Meridian providing deliveries to West Texas on El Paso's behalf. El Paso states that Meridian has advised El Paso that due to decline in reservoir pressures, the related gathering system pressure for delivery to West Texas has become to low to guarantee deliveries during periods of extreme cold temperatures. As a result, El Paso indicates it could no longer assure that future deliveries would be made at a pressure necessary to serve West Texas. Therefore, El Paso states that West Texas contracted with Palo Duro Pipe Line Company, Inc. (Palo Duro), an intrastate pipeline system, located in close proximity to serve Shamrock. Further, El Paso states that this abandonment would not result in or cause any interruption or reduction of natural gas service presently rendered by West Texas to Shamrock.

Comment date: February 3, 1992, in accordance with Standard Paragraph G at the end of this notice.

9. Peoples Natural Gas Company Division of Utilicorp United Inc. v. Williams Natural Gas Company and Vulcan Chemicals Division of Vulcan Materials Company

[Docket No. CP92-246-000]

December 18, 1991.

Take notice that on December 16, 1991, Peoples Natural Gas Company Division of UtiliCorp United Inc. (Peoples), 1815 Capitol Avenue, Omaha, Nebraska 68102, filed in docket No. CP92-246-000 a complaint against Williams Natural Gas Company (Williams) and Vulcan Chemicals Division of Vulcan Materials Company (Vulcan) alleging numerous violations of law and policy and requesting an immediate and permanent stay of the construction and proposed transportation, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

Peoples alleges that Williams and Vulcan have begun construction of a line from Williams' interstate pipeline to proposed plant facilities of Vulcan in Sedgwick County, Kansas. It is indicated that the construction and proposed transportation is being conducted ostensibly under authority of Natural Gas Policy Act of 1978 (NGPA).

Peoples alleges that the construction and transportation be enjoined immediately and permanently because, *inter alia*, the construction does not present the most environmentally acceptable route, the constructed required an environmental assessment before it commenced, the proposed facilities duplicate existing, available facilities that could be used to provide the proposed service at lower cost and with fewer adverse environmental impacts, the construction is illegal because the Commission regulation relied upon, *i.e.* 18 CFR 284.3, is unsupported by statutory authority, the construction and proposed transportation service do not meet the regulatory requirements for authorization under the NGPA, the construction and proposed transportation have the anticompetitive effect of preventing Vulcan from purchasing sales and transportation service from Peoples, and the construction and proposed transportation would produce unreasonable impacts in violation applicable laws and policies.

Comment date: January 17, 1992, in accordance with the first subparagraph of Standard Paragraph F at at the end of this notice.

10. Northwest Pipeline Corporation

[Docket No. CP92-235-000]

December 18, 1991.

Take notice that on December 12, 1991, Northwest Pipeline Corporation (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84158-0900, filed in Docket No. CP92-235-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon gathering and transportation services provided for Colorado Interstate Gas Company (CIG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest states that it is requesting approval to abandon the interruptible gathering and transportation services it provides for CIG pursuant to Rate Schedules X-43, X-51, X-54, and X-65 of Northwest's FERC Gas Tariff, Original Volume No. 2. By two Termination Agreements, each dated June 30, 1991, Northwest and CIG mutually agreed to

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

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terminate the Agreements effective upon Commission abandonment approval.

Northwest further states that no facilities will be abandoned in conjunction with the abandonment of these services.

Northwest states that abandonment of the transportation services is contingent upon retention of the existing Rate Schedule X–43, X–51, X–54 and X–65 priority of service dates for service under a replacement open-access transportation agreement with CIG dated June 1, 1991. Northwest further requests any necessary waivers of the first-come first-serve provisions of its tariff to allow December 29, 1977 (X–43), December 28, 1977 (X–51), March 16, 1978 (X–54) and February 27, 1979 (X–65), to be the initial priority of service dates for corresponding services under the replacement open-access transportation agreement.

Comment date: January 8, 1992, in accordance with Standard Paragraph F at the end of this notice.

11. Transcontinental Gas Pipe Line Corporation

[Docket No. CP92–227–000]

December 18, 1991.

Take notice that on December 11, 1991, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP92–227–000, a request pursuant to Section 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to operate certain existing delivery point facilities which have been constructed pursuant to section 311 of the Natural Gas Policy Act, all as more fully set forth with the Commission and open to public inspection.

Transco states that it has constructed, pursuant to section 311(a)(1) of the NGPA and § 284.3(c) of the Commission's Regulations, certain delivery point facilities to enable Transco to transport gas for the account of various customers pursuant to section 311 and part 284(B) of the regulations. The above mentioned facilities are located in counties or parishes in New Jersey, Maryland, Texas, Louisiana, Mississippi and Alabama. It is stated that a great majority of the delivery point facilities were utilized during the effective period of Order No. 526, the interim rule issued by the Commission on August 2, 1990 in Docket No. RM90–13–000, to transport gas under transportation arrangements converted from section 311 to blanket certificate authority. Transco further states that the utilization of such facilities for such "certificated" transportation was pursuant to the temporary certificate authority granted in the interim rule. Since such temporary certificate authority apparently expired on November 4, 1991, the effective date of the final rule (Order No. 537) issued by the Commission on September 20, 1991 in docket No. RM90–7–000, *et al.*, Transco states that it is seeking certificate authority for such facilities so that service under the converted transportation arrangements, as well as other blanket certificate transportation arrangements, may be provided through such facilities. Accordingly, Transco requests NGA certification pursuant to section 7 of the NGA and §§ 157.205 and 157.212 of the Commission's Regulations to operate the delivery point facilities.

Transco submits that (1) receipt of the authorization requested will not cause the total volumes authorized prior to the request for any customers on Transco's system to be exceeded, (2) the operation of the delivery point facilities is not prohibited by Transco's tariff, and (3) Transco has sufficient capacity to accomplish deliveries through the delivery point facilities for transportation customers without detriment or disadvantage to Transco's other customers.

Comment date: February 3, 1992, in accordance with Standard Paragraph G at the end of this notice.

12. Northwest Pipeline Corporation

[Docket No. CP92–247–000]

December 19, 1991.

Take notice that on December 17, 1991, Northwest Pipeline Corporation (Northwest) filed in Docket No. CP92–247–000 an application pursuant to sections 7(b) and 7(c) of the Commission's Regulations under the Natural Gas Act for permission and approval for temporary and partial abandonment of storage service for The Washington Water Power Company (Water Power) and for authorization to amend transportation service which Northwest provides BC Gas, Inc. (BC Gas), respectively, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Northwest requests the following:

(1) Permission and approval for temporary, partial abandonment of Northwest's obligation to render up to 13,000 dekatherm equivalent of natural gas per day (dt/d) of best efforts storage service to Water Power under Northwest's Rate Schedule SGS–1 as necessary to effect Water Power's temporary, partial releases to BC Gas of Water Power's right to best-efforts storage withdrawals at the Jackson Prairie Storage Project.

(2) Authorization to amend its existing certificate of public convenience and necessity [2] under Northwest's Special Rate Schedule X–82 to: (i) Provide for the interruptible transportation of the additional 19,000 dt/d for Water Power for the account of BC Gas; (ii) add a contemplated interconnect with Sumas International Pipeline Inc. (SIPI) as a receipt and delivery point; [3] (iii) eliminate the seasonal restrictions on service; and, (iv) generally update the rate references and other terms and conditions of service to be consistent with Northwest's current FERC Gas Tariff Volume 1 and 1–A.

Northwest states that Water Power and BC Gas are parties to a currently authorized agreement dated April 21, 1989, wherein Water Power has released to BC Gas 63,000 dt/d of the firm storage deliverability and a corresponding share of seasonal storage capacity which Water Power was entitled to utilize by virtue of its one-third ownership share in the Jackson Prairie Storage Project. Northwest states that Water Power and BC Gas recently have amended the April 21, 1989, agreement to provide for an additional release, on a best-efforts basis, of up to 19,000 dt/d of Water Power's best-efforts deliverability in Jackson Prairie. To help implement this additional release and to provide BC Gas with access to the additional storage volumes, Northwest requests the requisite approvals to further abandon its SGS–1 service obligations to Water Power and to modify its Rate Schedule X–82 transportation service for Water Power for the account of BC Gas.

Northwest states that the proposed additional abandonment will be only temporary and partial because the portion of the released 19,000 dt/d of best-efforts withdrawal capacity to be unavailable for SGS–1 service to Water Power and the duration of time for such unavailability will depend upon both BC Gas' daily requests for such service and Water Power's approval of such requests. Therefore, Northwest seeks to abandon its best-efforts service under SGS–1 to Water Power only to the extent of BC Gas' actual use of the additional 19,000 dt/d of capacity which Water Power, in its own judgment, makes available for release from day to day. Northwest states that no new facilities are proposed in this application.

Comment date: January 3, 1992, in accordance with Standard Paragraph F at the end of this notice.

[2] Certificated by Commission orders issued in Docket No. CP83–213, 23 FERC ¶ 61,361 (1983), 27 FERC ¶ 62,178 (1984), 29 FERC ¶ 62,247 (1984).

[3] Northwest states that SIPI, subsidiary of BC Gas is preparing an application to the FERC for a Presidential Permit and section 7(c) approval to construct pipeline facilities at Sumas, Washington to provide an interconnect between Northwest's facilities and Canadian pipeline facilities to be owned and operated by Huntingdon International Pipeline Corporation, another subsidiary of BC Gas Northwest states that it is preparing a related prior notice application to construct and operate a new meter station to service the proposed interconnect.

13. Iroquois Gas Transmission Company

[Docket No. CP92–245–000]

December 19, 1991.

Take notice that on December 16, 1991, Iroquois Gas Transmission System, L.P. (Applicant), One Corporate Drive, suite 606, Shelton, Connecticut 06484, filed in Docket No. CP92–245–000 an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing Applicant to construct and operate a compressor station to be located in the town of Wright, New York. Applicant states that the compressor station is necessary to provide natural gas transportation services for two shippers in the total amount of 65.2MMcf/d. Applicant states that it has entered into precedent agreements with Niagara Mohawk Power Corporation and Dartmouth Power Associates. Applicant will provide this firm. transportation service under its blanket certificate.

Comment date: January 9, 1992, in accordance with Standard Paragraph F at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the National Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91–31050 Filed 12–27–91; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10787–002 Washington]

Pacific Hydro, Inc.; Surrender of Preliminary Permit

December 23, 1991.

Take notice that Pacific Hydro, Inc., permittee of the McLeod Ridge Hydroelectric Project No. 10787 has requested that its permit be terminated. The permit was issued on December 8, 1989 and would have expired on November 30, 1992. The project would have been located on the North Fork of the Snoqualmie River in King County, Washington.

The permittee filed the request on December 2, 1991, and the permit for Project No. 10787 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 91–31038 Filed 12–27–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–22–015]

Algonquin Gas Transmission Co.; Report of Refunds

December 20, 1991.

Take notice that on November 15, 1991, Algonquin Gas Transmission Company (Algonquin) tendered for filing with the Federal Energy Regulatory Commission (Commission) a refund report in compliance with the provisions of the Stipulation and Agreement filed with the Commission on December 14, 1990, and approved by the Commission on April 19, 1991.

Algonquin states that copies of the refund summary and detailed calculations of their individual refund amounts was sent to each of Algonquin's affected customers and to the respective state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission,

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825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31056 Filed 12-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-222-000]

Arkansas Power & Light Co.; Filing

December 23, 1991.

Take notice that on November 13, 1991, Arkansas Power & Light Company (AP&L) tendered for filing a Compliance Report regarding refund by AP&L to certain wholesale customers resulting from the Settlement Agreement in Docket Nos. ER89-678-000, EL90-16-000 and EL90-45-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 3, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31042 Filed 12-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF90-87-002]

Camden Cogen L.P.; Amendment to Filing

December 20, 1991.

On December 19, 1991, Camden Cogen L.P. tendered for filing an amendment to its filing in this docket.

The amendment provides additional information pertaining to the ownership structure and clarifies certain technical information.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by January 9, 1992, and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31053 Filed 12-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER90-39-006]

Central Louisiana Electric Co., Inc.; Notice of Filing

December 23, 1991.

Take notice that on December 6, 1991, Central Louisiana Electric Company, Inc. (CLECO) tendered for filing its report of revenues refunded to Louisiana Energy and Power Authority in the amount of $169,360.04.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 3, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 91-31045 Filed 12-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER90-39-005]

Central Louisiana Electric Co., Inc.; Notice of Filing

December 23, 1991.

Take notice that on December 6, 1991 Central Louisiana Electric Company, Inc. (CLECO) tendered for filing copies of revised T-3 rates for interruptible transmission service to Louisiana Energy and Power Authority.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 3, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31048 Filed 12-27-91 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-186-053]

Great Lakes Gas Transmission Limited Partnership; Report of Refunds

December 20, 1991.

Take notice that on November 29, 1991, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed with the Federal Energy Regulatory Commission (Commission) a Refund Report pursuant to Article II of the Stipulation and Agreement (Settlement) filed May 18, 1990, in Docket Nos. RP89-186-000, RP90-20-000, RP86-35-013. The Settlement was approved by Commission orders issued September 13, 1990 and October 22, 1991. The report summarizes payments made on November 21, 1991, in accordance with the Settlement.

Great Lakes states that copies of the filing are being served on the Public Service Commissions of Minnesota, Wisconsin and Michigan and the parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance

with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31055 Filed 12-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR92-4-000]

The Maple Gathering Corp., Petition for Rate Approval

December 20, 1991.

Take notice that on December 11, 1991, The Maple Gathering Corporation (Maple Gathering) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of 15.22 cents per MMBtu for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Maple Gathering states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA in the state of New Mexico. Maple Gathering's petition states that its system consists of approximately 160 miles of pipeline located in Lea, Chaves, and Eddy Counties, New Mexico. Its previous maximum interruptible transportation rate of 33.62 cents per MMBtu for section 311(a)(2) service was approved by the Commission December 3, 1991 in Docket Nos. ST89-923-000.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before January 6, 1992. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31054 Filed 12-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP90-20-006]

Great Lakes Gas Transmission Limited Partnership; Report of Refunds

December 20, 1991.

Take notice that on December 10, 1991, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed with the Federal Energy Regulatory Commission (Commission) a Refund Report pursuant to Article III of the Stipulation and Agreement (Settlement) filed May 18, 1990, in Docket Nos. RP89-186-000, RP90-20-000, RP86-35-013. The Settlement was approved by Commission orders issued September 13, 1990 and October 22, 1991. The report summarizes payments made on December 6, 1991 in accordance with the Settlement.

Great Lakes states that copies of the refund report are being served on the Public Service Commissions of Minnesota, Wisconsin and Michigan and the parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31058 Filed 12-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-13-008]

Michigan Consolidated Gas Co.; Refund Report

December 20, 1991.

Take notice that Michigan Consolidated Gas Company-Interstate Storage Division (MichCon), filed with the Federal Energy Regulatory Commission, a refund report on December 10, 1991, in compliance with the Commission's orders of October 24, 1991 and November 13, 1991, in Docket No. RP84-13-008. MichCon was required to refund $95,958.20, with interest, to United Gas Pipe Line Company (United) and ANR (ANR) Pipeline Company.

MichCon states that refunds were made on December 9, 1991, and that copies of the refund report were sent to United, ANR, and the Michigan Public Service Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31057 Filed 12-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1582-000, CP90-1567-000, and RP89-49-000]

National Fuel Gas Supply Corp.; Informal Settlement Conference

December 23, 1991.

Take notice that an informal settlement conference will be convened in the above-referenced proceedings on January 6, 1992, at 9 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervener status pursuant to the Commission's regulations (18 CFR 385.214) (1991).

For additional information, please contact Warren C. Wood at (202) 208-2091.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31047 Filed 12-27-91 8:45 am]

BILLING CODE 6717-01-M

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[Project No. 2318-002 New York]

Niagara Mohawk Power Corp.; Filing of Application

December 23, 1991.

Take notice that on December 13, 1991, the Niagara Mohawk Power Corporation filed an application to relicense the E.J. West Hydroelectric Project No. 2318.

The E.J. West Project is located on the Sacandaga River, in Saratoga County, New York. The project consists of a 38.5-foot-wide by 96-foot-long reinforced concrete intake structure, a 25,940-acre reservoir, and a powerhouse with an installed capacity of 20,000 kW. The licensee proposes no changes in operation or new construction for the project. The current operating license expires December 31, 1993.

If any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an adequate basis factual basis for a complete analysis of the application on its merits, a request for the study, together with justification for such request in accordance with Section 4.32 of the Commission's regulations, must be filed no later than 60 days after the date of filing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31039 Filed 12-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER91-380-002]

Pennsylvania Power & Light Co.; Notice of Filing

December 23, 1991.

Take notice that on December 17, 1991, Pennsylvania Power & Light Company tendered for filing its Compliance Refund Report pursuant to the Commission's Letter Order issued November 13, 1991.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 3, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31043 Filed 12-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR92-5-000]

Picor Pipeline Co.; Petition for Rate Approval

December 20, 1991.

Take notice that on December 16, 1991, Picor Pipeline Company (Picor) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.0026 per MMBtu for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Picor states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA with facilities in Oklahoma, New Mexico and Texas. Picor's states that its Oklahoma system is the subject of this petition. Its previous maximum interruptible transportation rate of $0.0033 per MMBtu for section 311(a)(2) service for this system was approved by the Commission June 21, 1989 in Docket Nos. ST89-1257-000, *et al.*

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before January 6, 1992. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31052 Filed 12-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER91-587-000]

Public Service Company of Colorado; Notice of Filing

December 23, 1991.

Take notice that on December 10, 1991, Public Service Company of Colorado tendered for filing an amendment to its filing of initial Electric Tariff No. 49.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 31, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31046 Filed 12-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-140-008, RP91-140-010 and RP91-140-011]

Questar Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 23, 1991.

Take notice that Questar Pipeline Company (Questar) on November 15, 1991, tendered for filing in Docket No. RP91-140-008, proposed changes to its FERC Gas Tariff, Original Volume Nos. 1, 1-A and 3, in compliance with the Commission's May 31, 1991 order. [55 FERC 61,335 (1991)]

Questar requests an effective date of November 1, 1991 for the following tariff sheets:

Fourth Substitute Fourteenth Revised Sheet No. 12—Original Volume No. 1
Substitute Second Revised Sheet No. 39—Original Volume No. 1
Substitute First Revised Sheet No. 39A—Original Volume No. 1
Substitute Sixth Revised Sheet No. 5—Original Volume No. 1-A
Substitute Second Revised Sheet No. 5A—Original Volume No. 1-A
Substitute Seventh Revised Sheet No. 8—Original Volume No. 3
Substitute First Revised Sheet No. 10B—Original Volume No. 3

Questar states that Sheet Nos. 12, 5, 5A and 6 include base rates that reflect the removal of costs, as required by the Commission's May 31, 1991 order, related to plant additions that were not in service by the end of the September 30, 1991 test period. Sheet Nos. 39, 39A and 10B are required to correct the superseded sheet designation of Sheet No. 39 and to include the docket number and order date effecting the elimination of the D-2 billing determinants.

On December 10, 1991, Questar tendered for filing in Docket No. RP91-140-010 corrections to its filing of November 15, 1991, by filing the following tariff sheets:

Fifth Substitute Fourteenth Revised Sheet No. 12—Original Volume No. 1
Second Substitute Sixth Revised Sheet No. 5—Original Volume No. 1-A
Second Substitute Second Revised Sheet No. 5A—Original Volume No. 1-A
Second Substitute Seventh Revised Sheet No. 8—Original Volume No. 3

Questar further requests that the following tariff sheets submitted on November 15, 1991 be rejected:

Fourth Substitute Fourteenth Revised Sheet No. 12—Original Volume No. 1
Substitute Sixth Revised Sheet No. 5—Original Volume No. 1-A
Substitute Second Revised Sheet No. 5A—Original Volume No. 1-A
Substitute Seventh Revised Sheet No. 8—Original Volume No. 3

On December 12, 1991 Questar tendered for filing in Docket No. RP91-140-011 the correction of a typographical error in its filing of December 10, 1991, by filing the following tariff sheet:

3 Sub Sixth Revised Sheet No. 5—Original Volume No. 1-A

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31041 Filed 12-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC92-6-000]

South Georgia Natural Gas Co.; Tariff Filing

December 23, 1991.

Take notice that on December 16, 1991, South Georgia Natural Gas Company (South Georgia) tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to be effective January 15, 1992:

Tenth Revised Sheet No. 44
Original Sheet No. 44A
Eleventh Revised Sheet No. 45
Eighth Revised Sheet No. 46
Original Sheet No. 46A
Ninth Revised Sheet No. 47

South Georgia states that the purpose of this filing is to update its Index of Requirements (Index) as set forth in South Georgia's FERC Gas Tariff to reflect the requirements served by South Georgia's system during a new 12-month base period ending March 31, 1989. South Georgia also asserts that the Index reflects the authorizations granted South Georgia by the Commission in its Order Issuing Certificate and Approving Abandonment which was issued on October 31, 1991, in Docket No. CP92-6-000. South Georgia also indicates that the tariff filing also incorporates other service changes which have already been implemented by South Georgia and its customers and service changes authorized by the Commission. Accordingly, South Georgia has submitted the revised tariff sheets listed above and has requested that the Commission make these sheets effective January 15, 1992.

South Georgia states that copies of the filing will be served upon its jurisdictional purchasers, shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 6, 1992. Protests will be considered by the Commission in determining the parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31040 Filed 12-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-202-007]

Trunkline Gas Co.; Report of Refunds

December 20, 1991.

Take notice that on November 14, 1991, Trunkline Gas Company (Trunkline) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Refund Report in accordance with Article V of the Offer of Settlement (Settlement) dated March 27, 1991, approved by the Commission's orders issued August 1, 1991 and September 30, 1991 in Docket No. RP85-202-000. Trunkline states that the report summarizes repayment amounts Trunkline made on October 29, 1991, to its jurisdictional sales customers who were subject or sponsoring parties to the Settlement. Michigan Gas Utilities Company elected not to be a subject or sponsoring party to the Settlement and repayment is not applicable to them.

Trunkline states that copies of the filing were sent to Trunkline's affected customers and the respective state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31059 Filed 12-27-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[ERA Docket Nos. 86-48-NG; 91-82-NG]

Brooklyn Union Gas Co., et al., Commonwealth Gas Co.; Order Transferring Long-Term Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order transferring long-term authorization to import natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order transferring authority to import from Canada up to

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4,500 Mcf of gas per day over a 15-year term from Boston Gas Company (Boston Gas) to Commonwealth Gas Company. The transferred volumes are part of the 200 Bcf of natural gas authorized to be imported by Brooklyn Union Gas Company, *et al.* (Brooklyn Union), a group of local distribution companies, in DOE/ERA Docket No. 86-48-NG. Boston Gas is one of the Brooklyn Union authorization holders.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 19, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-31170 Filed 12-27-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-97-NG]

Interenergy Corp.; Application To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Application for Blanket Authorization to Import and Export Natural Gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt of November 12, 1991, of an application filed by Interenergy Corporation (Interenergy) requesting blanket authorization to import up to 73 Bcf of natural gas and export up to 73 Bcf of natural gas from and to Canada and any other country with which trade in natural gas is not prohibited. The application requests that the authorizations be approved for separate two-year terms beginning on the dates that the first import and the first export commence. Interenergy intends to use existing pipelines for the importation and exportation of gas supplies, and states that it will advise DOE of the date of first delivery and submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, January 29, 1992.

ADDRESSES:

Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Charles E. Blackburn, Office of Fuels Program, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7751;

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0503.

SUPPLEMENTARY INFORMATION:

Interenergy, a corporation organized under the laws of the State of Kentucky, has its principal place of business in Denver, Colorado. Interenergy requests authorization to import and export natural gas on a short-term or spot-market basis for its own account, as well as for the accounts of others for which Interenergy may agree to act as an agent. Although Interenergy is primarily interested in importing and exporting natural gas from and to Canada, it also seeks authority to import and export from and to any country with which trade in natural gas is not prohibited.

Interagency requests authorization to import gas for sale on a short-term basis to U.S. purchasers, including pipelines, local distribution companies, electric utilities and commercial and industrial end-users, or to re-export to foreign markets. The proposed export authority would enable Interenergy to sell U.S. gas it has purchased or act as an agent for other parties that desire to sell natural gas under short-term or spot-market basis to international purchasers. In support of its application, Interenergy states that the terms of each import or export transaction will be the product of arms length negotiations and determined by competitive factors in the natural gas market.

The decision on the application for the import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing the proposed export application, domestic need for the gas will be considered, and any other issue determined to be appropriate. Parties that may oppose this application should comment in their responses on the issues of competitiveness as set forth in the policy guidelines for the requested import authority, and on the domestic need for gas the applicant proposes to export. The applicant asserts the proposed imports would be competitive and there is no current need for the domestic gas that would be exported under the proposed arrangement. Parties opposing the arrangement bear the burden of overcoming these assertions.

NEPA Compliance. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures. In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Interenergy's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on December 24, 1991.

Anthony J. Como,

Director, Office of Coal and Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-31171 Filed 12-27-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-94-NG]

Michigan Consolidated Gas Co., Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application to import natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on November 1, 1991, of an application filed by Michigan Consolidated Gas Company (MichCon) requesting authorization to import up to 32,000 Mcf of natural gas per day from Canada over a five-year period ending October 31, 1996. The gas would enter the U.S. at a point on the international border near Emerson, Manitoba, where existing pipeline facilities of TransCanada Pipelines Limited (TCPL) interconnect with the facilities of Great Lakes Transmission Limited Partnership (Great Lakes). No new pipeline construction would be involved.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, January 29, 1992.

ADDRESSES: Offices of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Peter Lagiovane, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-8116;

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

MichCon, a Michigan corporation with its principal place of business in Detroit, Michigan, is engaged in the storage, transmission, and local distribution of natural gas to approximately one million customers in the State of Michigan.

Consistent with the terms of a September 1, 1991, gas purchase contract with Western Gas Marketing Limited (WGM), MichCon requests authority to import up to 30,000 Mcf of natural gas per day on a firm basis, and up to an additional 2,000 Mcf of natural gas per day on a interruptible basis, over a five-year period beginning on November 1, 1991, the date its current import authority, granted by DOE/ERA in Opinion and Order No. 157 (1 ERA Para. 70,687), expired. MichCon is subject to a minimum monthly purchase obligation equal to 720,000 Mcf.

The contract requires MichCon to Pay WGM a monthly demand charge, a commodity charge, and a deficiency payment, if any. The monthly demand charge is equal to the per Mcf Canadian transportation monthly demand tolls multiplied by 30,000. The commodity charge is indexed on a monthly basis to the cost to MichCon of spot gas delivered by ANR Pipeline Company, less the monthly demand charge based on a 100 percent load factor rate. The deficiency payment, if any, is equal to 20 percent of the commodity charge multiplied by the difference between the volume of gas purchase by MichCon in a given month and the minimum monthly purchase obligation. The price for interruptible gas would be the same as the price for firm contract volumes at the 100 percent load factor level.

In support of its application MichCon asserts the source of the natural gas to be imported is a supply of natural gas that TCPL has under contract in western Canada, the management and marketing of which is the responsibility of WGM. MichCon expects these reserves to provide the quantities of gas needed over the period of the import authorization. The gas to be imported would become part of MichCon's general system supply and, therefore, would be used by an and all of MichCon's nearly one million customers, including those communities in the northern peninsula of Michigan which are served only by the Great Lakes' system. Since MichCon intends to use only existing facilities of U.S. pipelines, it asserts the imports for which authorization is requested will have no significant impact on the environment. If its application is approved, MichCon would comply with DOE's quarterly reporting requirements.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In the case of a long-term arrangement such as this, other matters that will be considered in making a public interest determination include need for the gas and security of long-term supply. Parties, especially those that may oppose this application, should comment in their responses on these issues. MichCon asserts the price of natural gas under its sales contract with WGM is competitive and the reserves from which this gas will be drawn are secure and adequate for the quantities of gas required during the period of the requested import authorization. Parties opposing MichCon's request for import authorization bear the burden of overcoming these assertions.

NEPA Compliance. The Nation Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures. In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and

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to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trail-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trail-type hearing must show that thee are factual issues genuinely in dispute that are relevant and material to a decision and that a trail-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of MichCon's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on December 24, 1991.

Anthony J. Como,

Director, Office of Coal and Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-31173 Filed 12-27-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-98-NG]

New England Power Co.; Application for Blanket Authorization To Import Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed on November 15, 1991, by New England Power Company (NEP) requesting blanket authorization to import an unspecified amount of natural gas from Canada. In an amended application filed on November 22, 1991, NEP requested authorization to import up to 65,000 Mcf per day of natural gas over a two-year term beginning on the date of first delivery. The proposed imports would enter the U.S. at a point on the international border where TransCanada Pipeline Limited (TCPL) interconnects with the Iroquois Gas Transmission System (Iroquois). NEP would file quarterly reports with DOE detailing import transactions.

The applications are filed under section 3 of the Natural Gas Act of DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, January 29, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Peter Lagiovane, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8116;

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0503.

SUPPLEMENTARY INFORMATION: NEP, a Massachusetts corporation with its principal place of business in Westborough, Massachusetts, is a wholesale electrical generation subsidiary of New England Electric System. NEP is engaged in the generation and transmission of electric power for sale at wholesale to affiliated and unaffiliated utilities in the New England region. NEP is also a major source of power to the New England Power Pool.

The proposed imports would serve as an interim, supplemental, or replacement supply, and would be used to generate electricity, and, in particular, would displace residual fuel oil currently being burned at NEP's Brayton Point generating station in Somerset, Massachusetts, and at its Manchester Street generating station in Providence, Rhode Island. NEP states that the proposed imports would be purchased under market-responsive, competitive, short-term and spot arrangements of no more than two years in length. The gas would be imported at the Iroquois import point and be transported to NEP using the pipeline facilities of Iroquois, Tennessee Gas Pipeline Company, and Algonquin Gas Transmission Company (the Iroquois/Tennessee Phase II facilities). In DOE/FE Opinion and Order No. 551, issued on November 27, 1991, NEP was granted a long-term import authorization to import up to 60,000 Mcf per day of Canadian Natural Gas using the Iroquois/Tennessee Phase II facilities.

In support of its applications, NEP asserts that the blanket authorization will increase fuel diversity and enhance fuel security and reliability in New England. In addition, displacing oil with gas for electric generation at the Brayton Point and Manchester Street generating stations will help achieve compliance with environmental requirements and improve air quality.

The decision on the request for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an important arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that the proposed imports would be competitive. Parties opposing NEP's request for import authorization bear the burden of overcoming this assertion.

All parties should be aware that if DOE approves this requested blanket authorization, it may designate a total authorized volume for the two-year term rather than a daily limit specified by NEP in order to provide NEP with maximum operating flexibility. Based on its requested import authorization of 65,000 Mcf per day, NEP's two-year authorization would be 48 Bcf of natural gas.

NEPA Compliance. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures. In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protests with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of NEP's original and amended applications are available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on December 24, 1991.

Anthony J. Como,

Director, Office of Coal and Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-31174 Filed 12-27-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-99-NG]

Petro Source Corp.; Application for Blanket Authorization To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import and export natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on November 18, 1991, of an application filed by Petro Source Corporation (Petro Source) requesting blanket authorization to import from Canada and Mexico up to 100 Bcf of natural gas, over a two-year term beginning on the date of first delivery of either import or export. The proposed imports and exports would take place at any point on the international borders where existing pipeline facilities are located. No new pipeline construction would be involved. Petro Source would provide DOE with quarterly reports detailing any import or export transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, January 29, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Peter Lagiovane, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8116;

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0503.

SUPPLEMENTARY INFORMATION: Petro Source, a Utah corporation with its principal place of business in Houston, Texas, is a natural gas marketer involved in arranging the sale and transportation of domestic natural gas in the United States. Petro Source is a wholly owned subsidiary of Petro Source Investments, Inc., a Delaware corporation with its principal place of business in Houston, Texas.

Petro Source requests authorization to import natural gas for sales to pipelines, commercial and industrial end-users, and local distribution companies. Petro Source states that the requested export authorization would allow it to sell U.S. natural gas for which there is no present national or regional need. Petro Source requests authorization to import and export natural gas on its own behalf or acting as an agent on the behalf of others. Petro Source indicates in its application that the identity of its suppliers and purchasers, and the specifics of each sale, are not known at this time, but the contractual arrangements, including the price paid for the gas, would be competitive spot and short-term transactions based on market conditions.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing

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natural gas export applications, DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competitition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose the application should comment in their responses on these issues. Petro Source asserts that its proposal is in the public interest. Parties opposing Petro Source's application bear the burden of overcoming this assertion.

NEPA Compliance. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures. In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Petro Source's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on December 24, 1991.

Athony J. Como,

Director, Office of Coal and Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–31175 Filed 12–27–91, 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Termination of Exception Relief and Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of termination of exception relief and proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the termination of the exception relief granted to the 341 Tract Unit of the Citronelle Field and proposed procedures for the disbursement of $121,000,000, to be obtained by the DOE as the result of the termination of the relief, plus any interest that accrues on those funds. The OHA has tentatively determined that the participants in the DOE Crude Oil Entitlements Program will be eligible to receive a portion of those funds. The DOE proposes that the remaining funds be disbursed in accordance with its Modified Statement of Restitutionary Policy.

DATE AND ADDRESS: Comments on the proposed procedures must be filed in duplicate on or before January 29, 1992, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a reference to Case Number LFX–0006.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–2390.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the issuance of a final Decision and Order that terminates the exception relief granted to the 341 Tract Unit of the Citronelle Field. Pursuant to that relief the Unit recertified a sufficient quantity of its prior production of price-controlled crude oil to produce $63.8 million. That amount was placed in an escrow account to fund a tertiary crude oil recovery project. Notice is also hereby given of the issuance of a Proposed Decision and Order that sets forth the procedures the DOE proposes to use to disburse the escrowed funds, which, with accrued interest, now total approximately $121,000,000, plus any future interest that accrues on the funds.

Since the recertification by the Unit had the effect of raising per-barrel prices of crude oil to participants in the Entitlements Program, the DOE has tentatively decided that a portion of the escrowed funds should be reserved for refunds for those participants. The percentage of the escrowed funds that will be allocated to the refiners will reflect the level of absorption by the refiners of the additional costs associated with the recertification. The DOE proposes a 90 day period from the date of issuance of a final determination on the proposed refund procedures in which these participants may submit economic evidence on the absorption rate. The DOE also proposes this same 90 day deadline for submission of individual refund applications by Entitlements Program participants. The refund application process for participants in the Entitlements Program will be very streamlined.

The DOE also proposes to convene a hearing on the refiner absorption issue. After the level of refiner absorption is determined, remaining funds will be treated like crude oil overcharge funds pursuant to the DOE's Modified Statement of Restitutionary Policy. Accordingly, those funds will be divided as follows: 40 percent to the federal government, 40 percent to the States

and 20 percent set aside for direct restitution to end-users.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this Proposed Decision and Order in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1 p.m. through 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: December 24, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

December 24, 1991.

Name of case: The 341 Tract Unit of the Citronelle Field.

Date of filing: March 13, 1991.

Case number: LFX–0006.

This Decision and Order concerns the disbursement of an escrow fund that was originally established by the 341 Tract Unit of the Citronelle Field (the Unit or Citronelle) when exception relief was granted to it by the Office of Hearings and Appeals (OHA). The exception relief was designed to enable the Unit to undertake a tertiary crude oil recovery project. Pursuant to that exception relief, which was granted in December 1980, the Unit recertified a sufficient quantity of its prior production of price-controlled crude oil to produce $63.8 million, and that amount was placed in an escrow account. The Unit was allowed to make withdrawals for expenses incurred in connection with its project. Three Forty One Tract Unit of the Citronelle Field, 10 DOE ¶81,027 (1983).

In a Decision and Order issued concurrently with the present determination, the relief was terminated, and the funds directed to be moved to an escrow account established with the United States Department of the Treasury. The 341 Tract Unit of the Citronelle Field Case No. KEZ–0096 (*Citronelle*). With accrued interest, there is now approximately $121 million in the escrow account.

In *Citronelle* we determined that the entire escrow fund should be disbursed to parties who were injured as a result of the Unit's recertification of the price-controlled crude oil. When the recertification occurred, the DOE's Crude Oil Entitlements Program operated to spread the additional costs throughout the nation. As a result, the injured parties are difficult to identify and potentially numerous, a situation which is well suited to opening a special refund proceeding of the type utilized in the past for refunding oil overcharges. See 10 CFR part 205, subpart V. We therefore propose to hold a refund proceeding to identify those parties and to determine the amounts which they are entitled to receive.

Under the procedural regulations of the Department of Energy (DOE), the Office of Hearings and Appeals may formulate and implement special refund procedures for the purpose of refunding monies collected by the DOE to those injured by actual or alleged violations of the DOE regulations. 10 CFR part 205, subpart V. This subpart is applicable to those situations in which the DOE is unable to readily identify persons who are entitled to refunds specified in a Remedial Order, Remedial Order for Immediate Compliance, and Order of Disallowance or a Consent Order, or to readily ascertain the amounts that such persons are entitled to receive. 10 CFR 205.280.

We recognize that the funds involved in this proceeding originated with exception relief granted by the DOE. They were not the result of a violation, or the subject of a Remedial Order, Order of Disallowance or Consent Order, as specified in our subpart V regulations. However, through the operation of the Entitlements Program, the $63.8 million recertification by Citronelle did have the effect of raising crude oil costs throughout the United States. Therefore, we believe that the consequences of that recertification on the petroleum industry and on ultimate purchasers of refined petroleum products mimicked the effects of crude oil overcharge violations.

Parties injured by the overall increases in crude oil costs caused by the Unit's recertification of price-controlled crude oil should therefore have an opportunity to receive restitution from the escrowed funds. We believe a proceeding modeled after the type provided for at 10 CFR part 205, subpart V, best permits us to accomplish that goal. Consequently, we will refer to the subpart V regulations in fashioning a proceeding for the purposes of identifying those parties and ascertaining the amounts they should receive.

We believe that in general there are two classes of parties that incurred injury as a result of the Unit's recertification of the crude oil and that should be considered eligible to file applications and receive refunds directly from the escrowed monies: (i) Crude oil refiners and (ii) end-users of refined petroleum products. We therefore propose a bifurcated or two-stage proceeding. A portion of the Citronelle escrow fund will be allocated to a refund proceeding for refiners. The procedures we propose for disbursement of the refiners' share of the fund are set forth immediately below. A discussion of the methodology proposed for disbursing the remaining monies will follow:

Refiners

Due to the operation of the Entitlements Program, the $63.8 million recertification had the effect of raising the cost of crude oil charged to all crude oil purchasers on the entitlements list. This is so because under the Entitlements Program, the refiner of the crude oil recertified by the Unit received additional entitlements benefits, which compensated it for its increased crude oil costs. See The 341 Tract Unit of the Citronelle Field, 7 DOE ¶ 81,140 at 82,924 (1980). Since the Entitlements Program generally operated to equalize costs of crude oil to all refiners, these costs then rose slightly nationwide in response to the recertification. OHA Report on Stripper Well Overcharges, 6 Fed. Energy Guidelines ¶ 90,507 (V), (VI)(B). Thus, no one refiner bore all the cost of the recertification. Since crude oil prices rose by the same amount per barrel for all participants in the Entitlements Program, we believe that market prices for all refined products also tended to rise in concert, and refiners as a group were thus generally able to recoup most of the cost of the recertification by the Unit.

Nevertheless, we believe that refiners were not able to pass through all increased costs associated with the recertification. We have tentatively determined that they are thus eligible to receive a refund from these escrowed funds,[1] the portion of the fund that

[1] Under the Stripper Well Settlement Agreement, firms that received a refund from the Stripper Well escrow fund established on their behalf were required to waive their rights to a refund arising out of alleged crude oil violations. However, an exception was made for claims by refiners arising out of the funds involved in the Citronelle Unit's exception relief. Refiners Escrow, Release of Claims, (3)(F). Accordingly, refiners generally are not precluded from receiving a refund from these Citronelle funds by virtue of having signed a waiver

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refiners, as a group, should receive will be a significant issue in the subpart V proceeding. In connection with the settlement of the Stripper Well Exemption Litigation, Federal District Court Judge Frank Theis directed the OHA to conduct fact-finding to try to determine who bore the impact of the overcharges involved in that litigation. In response to that Court directive, the OHA issued a report in which one of its conclusions was that refiners were generally able to pass through most increased costs, but that the class of refiners absorbed between 2.7 and 8.1 percent of the impact on them of overcharges involved in the stripper well litigation. OHA Report on Stripper Well Oil Overcharges, 6 Fed. Energy Guidelines at 90,540.

As a starting point of our analysis, we will apply the same absorption rate that we found in the Stripper Well Report to the class of refiners in this refund proceeding. Accordingly, we propose that the average of the 2.7 and 8.1 percent absorption rates, or 5.4 percent of the monies in the Citronelle escrow account, be allocated to the refiners for refund purposes. Each refiner's proportionate share of the Citronelle fund shall be the same as its proportionate share of the Stripper Well Refiners escrow fund.

This percentage is tentative, however. The crude oil recertification benefitting the Citronelle Unit was approved in late 1980. The Entitlements Program, along with the overall petroleum price control program regulating the price of crude oil and refined petroleum products, ended on January 27, 1981. As a result of the proximity between the decontrol date and the recertification, as well as the short notice provided to refiners regarding the recertification, the refiners' level of absorption of the increased crude oil costs may have been greater than the level proposed above. In view of this fact, refiners may wish to present evidence in this refund proceeding to the effect that the absorption rate we proposed above should not be finally adopted, and that a higher rate is appropriate.

Accordingly, we propose that within 90 days from the date of publication in the Federal Register of a final Decision and Order setting forth refund procedures in this matter, refiners may submit briefs and economic evidence on the issue of the proper refiner absorption rate. Refiners are encouraged to file joint submissions regarding their economic evidence of the level of absorption. The opportunity to file a submission on the issue of the absorption of additional crude oil costs is not limited to refiners. Any participant in the Entitlements Program is eligible to submit evidence regarding the economic absorption issue.

In addition, we proposed that same 90 day deadline for each respective refiner or other Entitlements Program Participant to submit its individual Application for Refund from the Citronelle escrow fund. The application process itself in this proceeding will be streamlined. The refund application need only include the claimant's name, address, an authorizing signature and a statement to the effect that the claimant is applying to receive a share of the Refiners' Citronelle escrow fund. Claimants are not required to submit economic evidence regarding an absorption rate. They may elect simply to submit an Application for Refund.

We further propose that within 30 days of the day that the refiners' briefs and refund applications are due, interested parties may submit responses to the refiners' positions. We propose to hold an evidentiary hearing regarding the refiner absorption issue 45 days thereafter.

Disbursement of Remaining Funds

We further believe that it would be appropriate to disburse the Citronelle funds not allocated to the refiners in accordance with the DOE Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges (MSRP). 51 FR 27899 (August 4, 1986). The MSRP sets forth a disbursement procedure for funds remitted to the DOE in connection with crude oil violations. It provides for direct and indirect restitution for the adverse effects of crude oil overcharges on end-users of refined petroleum products. As we found above, the effects of the recertification by Citronelle on the Entitlements Program are identical to the effects of a crude oil violation. Similarly, we believe that the effects of that recertification on the prices charged end-users of refined petroleum products were identical to the effects of a crude oil overcharge on the prices of refined petroleum products purchased by end-users. Accordingly, we shall refer to the MSRP in our disposition of the remaining Citronelle monies.

The MSRP provides that crude oil overcharge funds will be divided among the States, the federal government and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Funds not reserved for the end-user claims (at least 80 percent) and any monies remaining after all valid claims are paid are to be disbursed equally to the States and federal government for indirect restitution. We propose to allocate the full 20 percent of the remaining Citronelle fund for the end-user claims process, since we believe that end-users are likely to have borne significant effects of the Citronelle recertification. *Cf. Texaco Inc.*, 19 DOE ¶ 85,200 (1989), *modified*, 19 DOE ¶ 85,236 (1989). Eighty percent will be divided equally between the States and the federal government. *See* MSRP.

The claims filing procedures and standards that we have adopted for end-users in crude oil refund proceedings are by now well-known and we will not repeat them here. For a discussion of the procedures and standards that we expect to use, see, for example, *Petrol Products, Inc.*, 20 DOE ¶ 85,436 (1990).

Comments regarding these proposed procedures with respect to both refiner claims and the procedures applicable to the remainder of the Citronelle fund must be filed within 30 days of the date of publication of this Proposed Decision and Order in the Federal Register.

It is therefore ordered that: The escrow account established at the United States Treasury and funded as a result of the termination of exception relief granted to the 341 Tract Unit of the Citronelle Field will be distributed in accordance with the foregoing Decision.

Decision and Order of the Department of Energy

Motion for Reconsideration Motion for Modification or Rescission Supplemental Order

December 24, 1991.

Names of petitioners: The 341 Tract Unit of the Citronelle Field, Exxon Company, USA *et al.*

Case numbers: HER–0050; HER–0106; KEZ–0096.

Dates of filing: March 2, 1983; June 24, 1985; July 12, 1989.

This Decision and Order concerns the 341 Tract Unit of the Citronelle Field, a very large crude oil producing property located in Alabama. During price controls, the DOE granted exception relief to permit the Unit to undertake a proposed tertiary project. This Decision and Order sets forth the DOE's determination that the exception relief should be terminated and the manner in which that termination will be accomplished. As explained below, the terms of the termination differ from those set forth in a proposed settlement submitted by the Unit and a group of refiners.

in connection with receipt of a Stripper Well refund. No such exception was made for resellers or retailers.

I. Background

In 1979, the DOE announced an incentive program for tertiary recovery projects, to begin on January 1, 1980. See 10 CFR 212.78(a)(2). Under the incentive program, a producer could obtain up to $20 million in "front-end" money for a given property, by selling price-controlled crude oil at exempt or market prices. Thus, the tertiary incentive program used the mechanism of decontrol to permit a producer to fund tertiary projects and thereby lessen U.S. dependence on foreign oil. Producers were not required to repay any benefits that they received pursuant to the incentive program. As a result of the way this regulatory program was structured, all projects that qualified were operated by major integrated oil companies.

The Unit was unable to obtain tertiary benefits comparable to those obtained by the integrated oil companies. Its inability to prepay expenses to other operating divisions was the primary impediment to its utilization of the incentive program.

Arguing that its inability to obtain tertiary benefits comparable to those obtained by the integrated oil companies was inequitable, the Unit applied to the DOE for exception relief. The DOE is required to grant exception relief in certain situations, including those in which the application of a regulatory requirement to a particular firm creates a gross inequity and frustrates a regulatory policy. The Office of Hearings and Appeals is the DOE office responsible for considering these exception requests.

In December 1980, the DOE determined that a "gross inequity" existed and that interim exception relief was appropriate to permit the Unit to participate in the tertiary incentive program. *See* The 341 Tract Unit of the Citronelle Field, 7 DOE ¶ 82, 523 (1980) (the December 15, 1980 Order). In the December 15, 1980 Order, the DOE determined that the Unit should be allowed to decontrol all its production as of January 1, 1980, which would result in approximately $22.5 million in tertiary benefits. Because of the Unit's unique problems with raising capital for a tertiary program of sufficient size, the DOE also offered the Unit an alternate form of relief. The alternate relief would provide the Unit with $63.8 million in financing for front-end costs. The alternate form of relief was subject to a repayment requirement in order to avoid excessive exception relief. The Unit was given 10 days to make an irrevocable election concerning the form of relief.

The Unit chose the $63.8 million in alternate relief, with its attendant repayment requirement. See *The 341 Unit of the Citronelle* Field, 7 DOE ¶ 81,140 (1980) (the December 31, 1980 Order). The Unit recertified a sufficient quantity of its prior production of price-controlled crude oil to produce $63.8 million in additional sales revenues, and that amount was placed in an escrow account, against which the Unit began to make withdrawals for a pilot tertiary project confined to a small area of the Unit. The Unit then began to deposit incremental tertiary revenues into the account.

In January 1983, after considering vigorous objections posed by refiners, the DOE determined that the interim exception relief granted in December 1980 should be issued in final form. *See* Three Forty One (341) Tract Unit of the Citronelle Field, 10 DOE ¶ 81,027 (1983) (the January 1983 Order). Shortly after the issuance of the January 1983 Order, the Unit suspended its tertiary operations.

The Unit requested that the Office modify the repayment terms.[1] The Unit also indicated that, even if the requested modifications were granted, adverse changes in economic conditions that had occurred since the December 31, 1980 Order could affect the Unit's decision to go ahead with the project. Finally, the Unit appealed the January 1983 Order to the Federal Energy Regulatory Commission (FERC) on the ground that the repayment provisions were too stringent. The FERC has granted stays of the appeal, which is still pending. The 341 Tract Unit of the Citronelle Field, FERC Docket No. RA 83–7–000.[2]

At the same time, the refiners were contesting the exception relief before the DOE and in the courts. In 1985, the refiners filed a motion with the Office, in which they requested that the Office terminate the relief.[3] In 1986, culminating the court challenge, the Temporary Emergency Court of Appeals (TECA) fully upheld the exception relief, citing the Department's broad authority to grant and fashion such relief. *See Exxon Corp.* v. *DOE*, 802 F.2d 1400 (Temp. Emer. Ct. App. 1986).

In late 1987, with the pilot tertiary project at the Citronelle Field still stalled, the Unit and the refiners began negotiating a settlement.[4] In 1989, the Unit and the refiners requested that the DOE approve a proposed settlement that would terminate the exception relief and distribute the funds in the escrow account, currently approximately $121 million,[5] as follows:

(i) 42 percent (approximately $50.8 million) to the Unit for the funding of a scaled-down tertiary project, with no repayment obligation,

(ii) 40 percent (approximately $48.4 million) to the refiners and their attorneys,

(iii) 18 percent (approximately $21.8 million) for distribution to end-users, i.e., $8.72 million each to the U.S. Treasury and the States and $4.36 million for distribution to end-user claimants.

In October 1989, the Office held a hearing on the proposed settlement. The Unit and the refiners appeared in support. Representatives of the States and a group of utilities, transporters and manufacturers argued that they were not represented in the negotiations and that the share allocated to them was too small.

II. Analysis

A. The Need To Terminate the Relief

It is undisputed that action is needed to resolve the current impasse. The Citronelle Unit's proposed tertiary project has now been stalled for eight years, without any sign of change. The Unit is unwilling to implement a tertiary project at the Field under the terms of the January 1983 Order. Although the Unit has pointed to alleged and actual changes in the repayment provisions as the cause of its unwillingness to proceed, the Unit has conceded that the driving force behind the Unit's problems with the repayment provisions is the decline in crude oil prices after the December 31, 1980 Order.

In 1980, the year that the Unit was granted interim exception relief, Citronelle crude oil had reached a high of $39 per barrel. January 1983 Order at 82,662. Moreover, crude oil prices were expected to rise. In 1981, the Unit predicted that the price of the Unit's crude oil would rise to $53 in 1985 and $60 in 1987. Unit April 6, 1981 Response, Attachment (February 25, 1981 Report of B.P. Huddleston & Co., Inc.) at 3.

Instead of rising as expected, crude oil prices declined. At the time of issuance

[1] *See* Motion for Reconsideration, filed March 2, 1983, Case No. HER–0050.

[2] In late 1988, the Unit asked that the Office give no further consideration to its modification request, and stated that the Unit would pursue its objections to the repayment provisions in connection with its FERC appeal.

[3] Motion for Modification or Rescission, filed June 24, 1985, Case No. HER–0106.

[4] In the meantime, the Unit continued to obtain disbursements from, and make payments into, the escrow account. Over the last ten years, the Unit has withdrawn a total of approximately $30 million, and has deposited a total of approximately $24 million in tertiary revenues.

[5] As of October 31, 1991, the market value of the escrow account was $121,166,878.23.

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of the January 1983 Order, the price of Citronelle crude oil had dropped to $32. January 1983 Order at 82,662. Crude oil prices have trended lower; Citronelle crude oil averaged $14.99 per barrel in 1988 and $17.98 per barrel in 1989. See NCNB Texas 1989 Report on Project Implementation Plan, dated March 15, 1990, at 2. Although current prices are higher, they are still far below their 1980 level.

It is clear that the decline in crude oil prices changed the entire economic outlook for the project. The Unit conceded as much in its March 1983 reconsideration request. Although the Unit requested modification of the repayment provisions, the Unit also indicated that, even if its requested modifications were granted, it might still be unwilling to proceed with the project, citing the decline in crude oil prices, as well as the increase in the Alabama severance tax. Unit Motion for Reconsideration at 21. Subsequently, in the March 29, 1983 hearing on the Unit's reconsideration request, the Unit's engineer indicated that the Unit would not have objected to the repayment provisions if high oil prices had continued. Transcript of March 29, 1983 Hearing, Case No. HER-0050, at 51-52. In fact, in response to a question from a member of the hearing panel, another representative of the Unit indicated that the repayment provisions were not objectionable under the crude oil prices projected in 1980. *Id.* at 131-32. Finally, in a subsequent hearing in September 1984, the Unit's engineer stated that, even if the Office were to grant the Unit's requested modifications, the prevailing $30 per barrel crude oil prices precluded the Unit from making any further capital expenditures on the project. Transcript of September 25, 1984 Hearing, Case No. HER-0050, at 72-73.

At various times, the Unit has submitted proposals to change the repayment provisions. Although the Unit has characterized these proposals as necessary to accomplish the purpose of the exception relief, the DOE agrees with the refiners that these proposals really amount to an increase in the amount of exception relief and are designed to offset the impact of declining crude oil prices on the economic viability of the tertiary efforts. *See, e.g.*, Refiners' December 9, 1987 Submission at 1-3. These proposals must be rejected.

An increase in the level of exception relief designed to offset the impact of lower oil prices on the project is beyond the purpose of the original exception relief. The purpose of the exception relief was not to insure that the Unit would have an economic incentive to proceed under whatever economic conditions developed. Cf. Wallace and Wallace Chemical and Oil Corp., 2 FEA ¶ 80,655 at 81,020 (exception relief to permit a firm to build a refinery not warranted where the firm's difficulties were the result of general business and financial problems unrelated to a DOE regulatory program). Rather, the purpose of the exception relief was to eliminate an inequity caused by the DOE regulatory program and afford the Unit benefits similar to those obtained by the major integrated oil companies through the tertiary incentive program. Producers participating in the tertiary program could receive $20 million per property. The DOE gave the Unit the choice of $22.5 million in tertiary benefits through the tertiary incentive program, or $63.8 million with a repayment requirement. The DOE offered the alternate form of relief because it was believed to be a form of exception relief that was roughly equivalent to the first form of exception relief and that would address the Unit's pressing need for financing for front-end capital expenditures. January 1983 Order, 10 DOE at 82,640. Accordingly, both the first and alternate forms of relief were designed to accomplish the same goal, i.e., to permit the Unit to obtain benefits comparable to those available to the major integrated oil companies through the tertiary incentive program. The purpose of the relief never was to insulate the Unit from the economic impact of changed economic circumstances on its proposed project.

Since the Unit will not proceed with the project under the current repayment provisions, and a modification of the repayment provisions is unwarranted, the relief must be terminated. As stated above, the Unit and refiners offer the proposed settlement as the means to terminate the proceeding. For reasons discussed later in this Decision and Order, the DOE's full consideration of the proposed settlement leads it to conclude that it cannot be accepted. Accordingly, it is incumbent upon the DOE to provide for an equitable termination of the relief.

Exception relief may be terminated when the factual assumptions underlying the relief prove incorrect. *See, e.g., Highway Oil, Inc.*, 6 DOE ¶ 82,524 (1980) (exception relief in the form of an additional allocation of gasoline to blend gasohol terminated after the firm reduced the level of gasohol operations upon which the relief was based). The January 1983 Order specifically contemplates this circumstance and provides that (i) The relief may be revoked or modified at any time upon a determination that the factual basis underlying the exception relief is incorrect" and (ii) "appropriate adjustments or remedial action" might be ordered where "the applicant's financial projections are demonstrated to have been materially different from its actual financial results." January 1983 Order, 10 DOE at 82,673 (¶ 12). Exception relief from the DOE regulations is thus never permanent, but always subject to modification in appropriate circumstances. The DOE may take such action sua sponte.

An alternative basis exists for withdrawing the Unit's exception relief. The refiners have filed a motion, which is currently pending, to terminate the Unit's relief. Subpart J of the DOE procedural regulations provides for the grant of motions for modification or rescission of a DOE order, where the DOE finds substantially changed circumstances. *See* 10 CFR 205.135(b).

The pivotal change in circumstances here is clearly evident. Exception relief was granted on the assumption that the Unit would go forward with its proposed tertiary project. At the time, the high existing and projected crude oil prices justified that assumption. As explained above, in December 1980 crude oil prices were $39 per barrel and expected to rise to $60. Instead, they fell. The decline has dimmed or extinguished the economic prospects of the proposed project and crippled the Unit's willingness to undertake it under the existing terms. The DOE does not criticize the Unit for being unwilling to proceed under the lower crude oil prices. Nonetheless, the failure of the project to go forward constitutes a fundamental change in the assumptions underlying the grant of relief. Accordingly, the DOE has determined that the exception relief should be terminated in the manner outlined below.

B. Providers for the Termination of Exception Relief

As TECA's affirmance of the DOE's decision to grant exception relief to the Unit recognizes, the DOE has broad discretion in the manner in which it fashions equitable relief. *Exxon Corp.* v. *DOE*, 802 F.2d at 1407-08, 1413-15. That discretion necessarily extends to the manner in which exception relief is terminated.

The DOE's guiding principle in fashioning a termination relief is that the termination should be tailored, to the extent possible, to minimize the original impact of the relief on affected parties. As the January 1983 Order specifically recognizes, the grant of exception relief

affected (1) The Unit, (2) the refiners, and (3) end-users.

The DOE has determined that the exception relief should be terminated as follows: (1) The escrow account will be closed out in an orderly manner, (2) the Unit will be relieved of any obligation to repay the benefits that it has obtained thus far as a result of the relief, (3) the Office will use subpart V procedures to distribute the escrow account to refiners and end-users. As explained below, this result is fair to the Unit, the refiners and end-users.

In order to accomplish an orderly closing of the escrow account, the DOE has determined that the Unit will be relieved of any obligation to deposit incremental tertiary revenues into the account as of the date of this Decision and Order. Disbursement from the account will be permitted for those expenses incurred through December 31, 1991, that are both permitted under the January 1983 Order and of the type for which the Unit has sought reimbursement in the last year. Any requests for disbursements must be submitted no later than January 31, 1992. The escrow agent will be directed to take the necessary steps to prepare for the closing of the account. The escrow agent will be instructed to close the account on February 15, 1992 and transfer the funds by wire transfer to the DOE Controller on the same date. The DOE Controller will set up a separate, interest-bearing account for the funds, identified as "The 341 Tract Unit of the Citronelle Field, OHA Case No. KEZ-0096" (hereinafter the "refund account"), where the funds shall remain until further order of this Office.

Our determination that the Unit be relieved of any repayment obligation for the benefits that it has received is based on our assessment that those benefits approximate $20 million.[6] Thus, relieving the Unit of its repayment obligation will afford it benefits roughly equivalent to (i) The $20 million in tertiary benefits that the Unit could have received if it had qualified for the tertiary program and (ii) the $22.5 million in exception relief that it could have chosen in lieu of the alternate form of relief. Accordingly, we believe that the receipt of any further benefits by the Unit is unwarranted.

As for refiners and end-users, the Office will use subpart V procedures to distribute the refund account, based on the extent to which they absorbed the cost of the relief. The December 15, 1980 Order recognized that refiner-participants in the Entitlements Program could pass through the increased costs of funding the Unit's exception relief to consumers of refined products, see December 15, 1980 Order, 7 DOE at 85,059, and, therefore, that ultimate consumers might bear the cost of the exception relief. The issue of the extent to which refiners absorbed the cost of the Unit's exception relief is best resolved in a subpart V type proceeding. The refiners have contended that their absorption is greater than the absorption range found in the Stripper Well Settlement proceeding. A subpart V type proceeding is the ideal forum for considering and resolving issues of passthrough. See 10 CFR 280 et seq. Accordingly, concurrently with the issuance of this Decision and Order, the DOE is issuing a proposed decision in which its sets forth proposed procedures for a subpart V type proceeding. All interested parties will have an opportunity to comment on these proposed procedures.

C. The Proposed Settlement

As indicated above, prior to making the foregoing determinations, the DOE considered the proposed settlement entered into by the Unit and the refiners. The DOE certainly has the authority to terminate the proceeding pursuant to a settlement. The fact that the settlement might terminate the relief in a manner different from that favored by the DOE is not critical. What is critical is that a settlement must provide for a termination of the relief in a manner that is within a range of reasonableness, given the nature and purpose of the exception relief and its impact on affected parties. The DOE's thorough consideration of the proposed settlement leads it to conclude that it does not meet this standard.

The benefits accorded the Unit in the proposed settlement are too far beyond those conferred in the grant of exception relief. The proposed settlement would relieve the Unit of any obligation to repay the approximately $20 million in benefits that it has received thus far. In addition, however the Unit would receive approximately $50.8 million. The Unit would use these funds to implement a scaled-down tertiary project designed to produce approximately 8 million barrels of crude over a 20 year period; the Unit would have no obligation to repay this amount. As a result of the waiver of the $20 million debt and the offer of $50.8 million for a tertiary project, the proposed settlement would allocate a total of $70.8 million in benefits to the Unit. This level of assistance is considerably in excess of the relief offered in the December 15, 1980 Order, i.e., the choice of a $22.5 million grant or $63.8 million subject to a repayment requirement.

Moreover, it is difficult to justify the large amount that the proposed settlement accords refiners. The proposed settlement would allocate to them 40 percent of the funds in the escrow account. This 40 percent allocation of the escrow account constitutes 68 percent of the total allocated to refiners and endusers. This 68 percent allocation is simply too large to accept, in the absence of further consideration of the issue of absorption. End-users, as well as refiners, should have the opportunity to participate in that consideration.

As the foregoing indicates, the DOE has considered the settlement and determined that it is not within a range of reasonableness, given the nature and purpose of the exception relief and its likely impact on affected parties. Accordingly, the DOE has determined that the settlement cannot be approved.

III. Conclusion

As the foregoing indicates, the DOE has determined that an equitable termination of the exception relief granted the Unit is appropriate. As also indicated above, the termination involves (i) the orderly closing of the escrow account, (ii) relieving the Unit of any obligation to repay the $20 million in net benefits that it has received from the account, and (iii) a further proceeding in which refiners and end-users may claim refunds.

It is therefore ordered that: (1) The exception relief granted The 341 Tract Unit of the Citronelle Field on January 31, 1983, Case No. DEE-0078, is hereby terminated as set forth in Paragraph 2 below.

(2) The termination of the exception relief shall be accomplished as follows:

(a) The Unit shall be relieved of any obligation to repay the approximately $20 million in net benefits that it has received from the escrow account.

(b) The Unit will be relieved of any obligation to pay incremental tertiary revenues into the escrow account as of the date of this Decision and Order.

(c) The Unit may receive reimbursement for tertiary expenses incurred through December 31, 1991, to the extent that those expenses are

[6] As stated above, over the course of the last ten years, the Unit has withdrawn approximately $39 million from the escrow account and paid in approximately $24 million. The current $15 million difference ignores the time value of the money and understates the benefit that Citronelle received. As a result of large withdrawals during the early period of exception relief, the outstanding amount has been much larger in the past. If the Unit believes that its benefit was less than $20 million, the Unit may file a Motion for Reconsideration.

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both permitted under the January 1983 Order and of the type for which the Unit has obtained reimbursement in the last year,

(d) All requests for disbursements must be submitted no later than January 31, 1992.

(e) The escrow agent shall take the necessary steps to prepare for the closing of the account,

(f) The escrow agent shall close the account on February 15, 1992 and transfer the funds by wire transfer to the DOE Controller on the same date, and

(g) The DOE Controller shall receive the proceeds of the escrow account and establish a separate account for the funds, identified as "The 341 Tract Unit of the Citronelle Field, OHA Case No. KEZ–0096," where the funds shall remain until further order of this Office.

(3) The Motion for Reconsideration filed by the Unit on March 2, 1983, Case No. HER–0050, is hereby denied.

(4) The Motion for Modification or Rescission filed by Exxon Company, U.S.A., *et al.* on June 24, 1985, Case No. HER–0106, is hereby granted to the extent set forth in Paragraph 2 above and denied in all other respects.

(5) The Joint Motion filed by the Unit and Exxon Company, U.S.A., et al. on July 12, 1989, Case No. KEZ–0096, is hereby denied.

(6) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the partial denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 CFR part 385, subpart J.

Date: December 24, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91–31167 Filed 12–26–91; 10 a.m.]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4088–9]

Agency Information Collection Activities under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATE: Comments must be submitted on or before January 29, 1992.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Part B Permit application, Permit Modifications, and Special Permits (ICR No. 1573). This ICR consolidates and reinstates the following six previously approved collections: ICR No. 814, Information Requirements for Hazardous Waste Storage and Treatment Facilities (OMB No. 2050–0009); parts of ICR No. 959, Reporting and Recordkeeping Requirements for Groundwater Monitoring Downgradient Well Amendments (OMB No. 2050–0033); ICR No. 970, Reporting and Recordkeeping for RCRA Permittees (OMB No. 2050–0037); parts of ICR No. 995, Land Disposal Permitting Standards (OMB No. 2050–0007); parts of ICR No. 999, Permit Application Information Requirements for Hazardous Waste Incinerators (OMB No. 2050–0002); and parts of ICR No. 1238, Hazardous Waste Tanks Reporting and Recordkeeping (OMB No. 2050–0050).

Abstract: This ICR is a comprehensive presentation of the information collection activities for owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDFs) submitting applications for a part B permit or permit modification, as provided in 40 CFR parts 264 and 270, and details the requirements for: Demonstrations and exemptions from permit requirements, the part B permit application, and permit modifications and special permits.

Applicants must respond to a variety of general reporting and recordkeeping requirements, including record retention, notice of changes, notice of health threat, etc. EPA will use this information to: (1) Issue permits, (2) substantiate information that has been submitted in the permit, (3) assure that facilities are in compliance with the conditions of their permits, and (4) identify instances where permits need to be revised to accommodate new situations.

Burden Statement: The public reporting burden for this collection is estimated to average 183 hours per response and includes all aspects of the information collection, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Owners and operators of hazardous waste TSDFs.

Estimated Number of Respondents: 982.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 179,560 hours.

Frequency of Collection: On occasion. Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460,

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: December 20, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91–31154 Filed 12–27–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–40959–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATE: Comments must be submitted on or before January 29, 1992.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Notification of Episodic Releases of Oil and Hazardous Substances, EPA ICR # 1049.04. This ICR requests renewal of a currently approved collection (OMB #2050–0046).

Abstract: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) establishes broad Federal authority to respond to releases of

hazardous substances from vessels and facilities. The term "hazardous substance" is defined in section 101(14) of CERCLA by reference to other environmental statutes, including Clean Water Act (CWA) sections 311 and 307; Clean Air Act (CAA) section 112; the Resource Conservation and Recovery Act (RCRA) section 3001; the Toxic Substances Control Act (TSCA) section 7; and CERCLA section 102(a). There are currently 780 CERCLA hazardous substances, approximately 1,500 radionuclides, and an unspecified number of enlisted RCRA hazardous wastes that are also considered CERCLA hazardous substances. The most recent addition to the CERCLA list of hazardous substances is the 51 hazardous air pollutants listed pursuant to CAA section 112.

Each CERCLA hazardous substance is assigned an RQ which is the quantity of hazardous substance that, when released into the environment, triggers CERCLA section 103 reporting requirements. Section 103(a) requires the person in charge of a facility to immediately notify the National Response Center (NRC) of any hazardous substance release that equals or exceeds its RQ. The information that must be provided to the NRC in the notification includes general background information, such as the location of the incident and the name and address of the discharger, as well as more detailed information about the circumstances surrounding the release, including the type of material(s) released, environmental medium(a) affected, and cause(s) and source(s) of the release. Notification under CERCLA section 103(a) is intended to ensure that Federal authorities receive prompt notification of hazardous substance releases for which a timely response may be necessary to protect public health or welfare or the environment.

Burden Statement: The estimated annual public reporting burden for this collection of information is estimated to average 3.1 hours per release, including time for reviewing regulatory requirements, gathering the required release information, contacting the NRC about the release, and keeping a log.

Estimated No. of Respondents: 52,118 release reports.

Estimated Total Annual Burden on Respondents: 161,566 hours.

Frequency of Collection: On occasion—when a release above the RQ occurs.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460,

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: December 23, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91–31155 Filed 12–27–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4089–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501*et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATE: Comments must be submitted on or before January 29, 1992.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Notification of Hazardous Waste Activity (ICR No. 261.08; OMB No. 2050–0028). This is a renewal of a currently approved collection.

Abstract: Any person generating, transporting, and/or operating a facility for storage, treatment, or disposal of hazardous waste must file a notification form with EPA (or an authorized State). The information requested includes the location and general description of hazardous waste activity. EPA uses the information for a variety of inspection, enforcement, and tracking purposes.

Burden Statement: The public reporting burden for this collection is estimated to average 3.1 hours per response and includes all aspects of the information collection including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Owners and operators of facilities that generate, transport, or handle hazardous waste.

Estimated Number of Respondents: 11,620.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 36,022 hours.

Frequency of Collection: On occasion Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460,

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: December 23, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91–31156 Filed 12–27–91; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–00117; FRL–4010–1]

Closure of Carpet Policy Dialogue Deliberations; Receipt of the Carpet Policy Dialogue: Compendium Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA announces the conclusion of the Carpet Policy Dialogue consensus deliberation process and lists the accomplishments attained during the Carpet Policy Dialogue year. EPA has received a Compendium Report from the Carpet Policy Dialogue. The report summarizes the activities of the Carpet Policy Dialogue from August 21, 1990 to September 27, 1991.

DATES: The Carpet Policy Dialogue: Compendium Report (EPA/560/2–91–002) was entered into the Carpet Emissions Administrative Record on December 20, 1991.

FOR FURTHER INFORMATION CONTACT: Dave Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone: (202)554–1404, TDD: (202)554–0557, or FAX (202)554–5603 (document requests only). For further

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information on the Carpet Policy Dialogue Project contact Richard W. Leukroth Jr., Carpet Policy Dialogue Coordinator, Telephone: (202)260–1832. Copies of the Executive Summary of the Carpet Policy Dialogue: Compendium Report may be obtained from the Environmental Assistance Division at the address listed above. Copies of the Carpet Policy Dialogue: Compendium Report may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, by requesting publication PB 92–115005.

SUPPLEMENTARY INFORMATION:

I. Background

On January 11, 1990, EPA received a citizen's petition under section 21 of the Toxic Substances Control Act (TSCA) from Local 2050 of the National Federation of Federal Employees (NFFE). The petition sought regulatory action to address carpet emissions. EPA denied the petition (55 FR 17404, April 24, 1990).

In its response to the citizen's petition, the Agency recognized that the combined total of volatile organic compound (TVOC) emissions from new carpet may increase indoor air exposures to VOCs in general, and agreed that, as a matter of policy, "it is prudent to minimize indoor human exposure to VOCs where reasonable." In essence, the Agency decided to apply pollution prevention principles to an exposure source in the indoor air environment. Thus an approach was sought to reduce TVOC exposure in the absence of a well defined health risk. In an effort to further these objectives, EPA convened a policy dialogue (55 FR 31640, August 3, 1990).

II. Carpet Policy Dialogue

EPA convened the Carpet Policy Dialogue on August 21, 1990, and committed to a 1–year effort to: (1) Develop an analytical test method to measure total volatile organic compound emissions (TVOCs) from carpet floor covering products; (2) obtain voluntary agreement by carpet floor covering industries to undertake testing programs to characterize TVOC emissions from these products; (3) examine process engineering aspects of carpet floor covering materials to identify opportunities for VOC emissions reductions from newly manufactured products and associated installation technologies for such products; and (4) provide the interested public with information about TVOCs that emit from new carpet floor coverings. The objective of the Carpet Policy Dialogue was to take practical steps to help reduce the public's exposure to TVOCs that emit from new carpet floor covering materials.

The Carpet Policy Dialogue involved three Offices within EPA [Office of Toxic Substances (OTS) [now know as the Office of Pollution Prevention and Toxics (OPPT)], Office of Air and Radiation (OAR), and Office of Research and Development (ORD)] and the following organizations: National Institute for Occupational Safety and Health (NIOSH); National Institute of Standards and Technology (NIST); Occupational Safety and Health Administration (OSHA); U.S. Consumer Product Safety Commission (CPSC); U.S. General Services Administration (GSA); American Fiber Manufacturers Association (AFMA); American Federation of State, County and Municipal Employees (AFSME); American Lung Association (ALA); Air Quality Sciences, Inc. (AQS); The Adhesive and Sealants Council, Inc. (ASC); American Society for Testing and Materials, Subcommittee D22.05 on Indoor Air (ASTM); American Textile Manufacturers Institute (ATMI); Carpet Cushion Council (CCC); Carpet and Rug Institute (CRI); Floor Covering Adhesives Manufacturers Committee (FCAMC), of the National Association of Floor Covering Distributors (NAFCD); Floor Covering Installation Contractors Association (FCICA); Georgia Tech Research Institute (GTRI); National Federation of Federal Employees, Local 2050 (NFFE); Research Triangle Institute (RTI); and Styrene Butadiene Latex Manufacturers Council (SBLMC). These organizations worked via a consensus process to address issues and concerns as stated in the EPA charter to the Carpet Policy Dialogue (55 FR 17404, April 24, 1990).

The Carpet Policy Dialogue formed three technical subgroups: Product Testing, Process Engineering, and Public Communications to work out the details of the analytical test method, develop TVOC emissions testing programs for carpet floor covering materials, review available information related to the EPA charter, identify information gaps, and develop draft report materials. During the Dialogue year a series of products gained consensus approval by the Dialogue Workgroup. These agreements paved the way for industry to commit to EPA on voluntary actions to address the objectives set by EPA. The Carpet Policy Dialogue concluded its activities on September 27, 1991.

A. Accomplishments

The Carpet Policy Dialogue made progress in several areas of exposure reduction (pollution prevention) and industry-wide product stewardship. Manufacturers of carpet floor covering products (i.e., carpet, carpet cushion, carpet installation adhesives, and raw materials such as fibers and styrene butadiene rubber latex), installers of carpet floor covering systems, public health organizations, Federal agencies, and other interested organizations demonstrated a willingness to commit the time and resources to working constructively toward an effective program to understand the role of new carpet, carpet associated products, and carpet installation practices on indoor air quality. The Carpet Policy Dialogue can be credited with the following accomplishments:

1. A standardized small chamber analytical test method was developed to measure TVOC emissions from carpet floor covering products (carpet, carpet cushion, and carpet installation adhesives). With this method TVOC emissions from carpet and related materials can be scientifically measured and compared. The procedure was peer reviewed and submitted to the American Society for Testing and Materials (ASTM) as the basis for a new standard method.

2. Three Carpet Policy Dialogue consensus agreements which outline the design for industry-sponsored voluntary testing programs that will develop information about TVOC emissions from carpet, carpet cushion, and carpet installation adhesives. These agreements include various follow-on activities such as multi-year testing programs, information reporting, industry proposed product certification programs, public communication activities, etc., and recognize that other additional testing may be needed to meet the objectives of the **Federal Register** notice of April 24, 1990 (55 FR 17404).

3. Four Memoranda of Understandings (MOU) were established between EPA and industry trade associations (Carpet and Rug Institute (55 FR 37913, August 9, 1991), Carpet Cushion Council (55 FR 61245, December 2, 1991), Floor Covering Adhesive Manufacturers Committee (55 FR 61246, December 2, 1991), and Styrene Butadiene Latex Manufacturers Council (55 FR 61247, December 2, 1991)). The first three MOUs formalize the voluntary testing and data reporting programs mentioned above, while the latter MOU provides for the submission of data from ongoing quality analysis programs.

4. A public information brochure ("Indoor Air Quality and New Carpet - What You Should Know") was developed to provide the interested public with information about TVOCs that emit from new carpet. The brochure identifies steps the public can take to reduce exposure to carpet emissions and lists sources for additional information. Sixteen organizations signed on as participants in developing the brochure. Availability of the brochure will be the subject of an upcoming **Federal Register** announcement.

5. A Compendium Report was prepared that summarizes the activities of the Carpet Policy Dialogue. The Compendium includes reports from the Product Testing, Process Engineering, and Public Communications subgroups.

The Dialogue can also be credited with numerous additional accomplishments including:

a. Compilation of process engineering information that identified potential control measures that may lead to reduced TVOC emission levels in carpet-related sources in the future.

b. Reinforced a market climate encouraging the accelerated introduction of low-emitting carpet installation adhesives. It is anticipated that such products will dominate the market in coming years.

c. The U.S. General Services Administration (GSA) established an initiative to develop requirements to make low VOC carpet floor covering available for use in Government offices. It is anticipated that a low TVOC carpet could be available from the GSA Federal Supply Schedule for the contract period beginning April 1994, provided adequate technical data are available from the testing program developed by the Carpet Policy Dialogue.

d. The Floor Covering Installation Contractors Association (FCICA) agreed to enhance training programs for installers to include information about indoor air quality, proper installation procedures, and encourage adherence to industry developed installation guidelines.

e. Both the carpet and carpet cushion industries proposed or are in the process of implementing quality assurance product certification programs for TVOC emissions from the various product types manufactured.

The Carpet Policy Dialogue process on TVOC emissions from carpet, carpet cushion, and carpet installation adhesive products is a prime example of multiple EPA offices working effectively with other Federal agencies, industry, and the interested public to achieve needed action on a voluntary basis. It highlights the commitment to action which is an integral part of OPPT's revitalized existing chemicals program and serves as a prototype for future consideration of indoor air and other issues of exposure reduction (pollution prevention).

B. Post Carpet Policy Dialogue Activities

The close of the Carpet Policy Dialogue on September 27th marks the conclusion of the "Consensus Process" which set in place the series of agreements for testing and information reporting programs mentioned above. These agreements and commitments form the framework by which EPA and the carpet floor covering industry can continue to work together to address scientific questions about TVOC emissions and indoor air quality. Data and information developed from testing programs and other post Carpet Policy Dialogue activities will be submitted to the TSCA Carpet Emissions Administrative Record as they become available.

EPA has committed to technical evaluation of the TVOC test results that will be generated by industry. This evaluation will judge whether these voluntary industry programs have adequately met the objectives outlined in the **Federal Register** (55 FR 17404, April 24, 1990) or if some other approach may be required.

III. Carpet Policy Dialogue - Compendium Report

In conjunction with the public outreach activities of the Carpet Policy Dialogue, a Compendium Report was submitted to EPA. This report summarizes the considerations, deliberations, accomplishments, conclusions, and recommendations reached by the Carpet Policy Dialogue and its various subgroups during the Dialogue year (August 21, 1990 through September 27, 1991). The report is a product of the Public Communications Subgroup of the Carpet Policy Dialogue. It was reviewed and approved for submission to EPA by the Carpet Policy Dialogue Plenary at a meeting held on September 27, 1991.

The Compendium is an assembly of reports from the Carpet Policy Dialogue Plenary Group, and the Product Testing, Process Engineering, and Public Communications Subgroups. The document contains background information about the dialogue process, describes structural organization, and explains the nature of consensus and voluntary actions. It summarizes the activities and products of the three working subgroups, lists accomplishments attributed to the Carpet Policy Dialogue and other activities related to EPA's charge to the Dialogue on TVOC emissions from new carpet floor covering materials. The report contains eighteen appendices that list Dialogue participants, document various products and agreements, and contains other informative materials relevant to product testing for TVOC emissions.

The EPA submitted the Compendium Report [EPA/560/2–91–002] to the TSCA Carpet Emissions Administrative Record on December 20, 1991. The Carpet Policy Dialogue: Compendium Report may be purchased ($66.00) from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, by requesting publication PB 92–115005.

IV. Administrative Record

The Carpet Policy Dialogue: Compendium Report is available to the public in the Carpet Emissions Administrative Record. This Administrative Record is available for reviewing and copying in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Dated: December 20, 1991.

Mark A. Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 91–31149 Filed 12–27–91; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Coastal Barrier Improvement Act Property Availability: Packery Pass Land

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Packery Pass Land, located on Mustang Island, Corpus Christi, Texas, is affected by section 10 of The Coastal Barrier Improvement Act of 1990.

DATES: Written notices of serious interest to purchase the property may be mailed or faxed to the Federal Deposit Insurance Corporation until March 30, 1992.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained by contacting the following person: Randall Johnson, Federal Deposit Insurance Corporation, Dallas Consolidated Office, 5080 Spectrum Drive, suite 400W, Dallas, Texas, 75248, (214) 701–2400, FAX (214) 991–4958.

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SUPPLEMENTARY INFORMATION: The 145 acre property is located on the southern end of Mustang Island, a barrier island, approximately one mile outside of Corpus Christi, Texas. The property is a beach front site facing the Gulf of Mexico, bounded on the west by Zahn Road and on the north by Park Road 53. The property is rectangular in shape, is undeveloped and is surrounded primarily by condominium developments, retail establishments and vacant land. The property is not located within any municipality and is not zoned.

Written notices of serious interest to purchase the property must be received on or before March 30, 1992 by Randall Johnson, Federal Deposit Insurance Corporation, Dallas Consolidated Office, 5080 Spectrum Drive, Suite 400W, Dallas, Texas, 75248, (214) 710–2400, FAX (214) 991–4958.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the federal government;

2. Agencies or entities of state or local government; and

3. "Qualified organization" pursuant to section 170(h) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(s)).

Form of Notice: Notices of serious interest should be in the following form: Notice of Serious Interest re: Packery Pass Land, Mustang Island, Corpus Christi, Texas

1. Name of eligible entity.

2. Declaration of eligibility to submit Notice under criteria set forth in Public Law 101–591, section 10(b)(2).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural or natural resource conservation purposes.

Dated: December 19, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91–31027 Filed 12–27–91; 8:45 am]

BILLING CODE 6714–01–M

Notice Concerning Issuance of Powers of Attorney

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Public notice.

SUMMARY: In order to facilitate the discharge of its responsibilities as a conservator and liquidator of insured depository institutions in the State of Oklahoma, the Federal Deposit Insurance Corporation ("FDIC") publishes the following notice. The publication of this notice is intended to comply with title 16, section 20 of the Oklahoma Statutes (16 O.S. 20) which, in part, declares Federal agencies that publish notices in the **Federal Register** concerning their promulgation of powers of attorney, to be exempt from the statutory requirement of having to record such powers of attorney in every county of Oklahoma in which the agencies wish to effect the conveyance or release of interests in land.

Notice

Pursuant to section 11 of the Federal Deposit Insurance ("FDI") Act (12 U.S.C. 1821), as amended by section 212 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), the FDIC is empowered to act as conservator or receiver of any state or federally chartered depository institution which it insures. Furthermore, under section 11A of the FDI Act (12 U.S.C. 1821a), as enacted under section 215 of FIRREA, the FDIC is also appointed to manage the FSLIC Resolution Fund.

Upon appointment as a conservator or receiver, the FDIC by operation of law becomes successor in title to the assets of the depository institutions on behalf of which it is appointed. As Manager of the FSLIC Resolution Fund, the FDIC became successor in title to both the corporate assets formerly owned by the now defunct Federal Savings and Loan Insurance Corporation ("FSLIC"), as well as to the assets of the depository institutions for which the FSLIC was appointed receiver prior to January 1, 1989. In addition, pursuant to section 13(c) of the FDI Act (12 U.S.C. 1823(c)), the FDIC also acquires legal title in its corporate capacity to assets acquired in furtherance of providing monetary assistance to prevent the closing of insured depository institutions or to expedite the acquisition by assuming depository institutions of assets and liabilities from closed depository institutions of which the FDIC is receiver.

In order to facilitate the conservation and liquidation of assets held by the FDIC in its aforementioned capacities, the FDIC has provided powers of attorney to selected employees of its Oklahoma City Consolidated Office. These employees include: Teresa R. Koechel, Deborah N. Biggers, Tommy K. Sears, John H. Fisher, Gary R. Belair, and Deborah J. Hall.

Each employee to whom a power of attorney has been issued is authorized and empowered to: Sign, seal and deliver as the act and deed of the FDIC any instrument in writing, and to do every other thing necessary and proper for the collection and recovery of any and all monies and properties of every kind and nature whatsoever for and on behalf of the FDIC and to give proper receipts and acquittances therefore in the name and on behalf of the FDIC; release, discharge or assign any and all judgments, mortgages on real estate or personal property (including the release and discharge of the same of record in the office of any Prothonotary or Register of Deeds wherever located where payments on account of the same in redemption or otherwise may have been made by the debtor(s), and to endorse receipt of such payment upon the records in any appropriate public office; receipt, collect and give all proper acquittances for any other sums of money owing to the FDIC for any acquired asset which the attorney-in-fact may sell or dispose of; execute any and all transfers and assignments as may be necessary to assign any securities or other choses in action; sign, seal, acknowledge and deliver any and all agreements as shall be deemed necessary or proper by the attorney-in-fact in the care and management of acquired assets; sign, seal, acknowledge and deliver indemnity agreements and surety bonds in the name of and on behalf of the FDIC; sign receipts for the payment of all rents and profits due or to become due on acquired assets; execute, acknowledge and deliver deeds of real property in the name of the FDIC; extend, postpone, release and satisfy or take such other action regarding any mortgage lien held in the name of the FDIC; execute, acknowlege and deliver in the name of the FDIC a power of attorney wherever necessary or required by law to any attorney employed by the FDIC; foreclose any mortgage or other lien on either real or personal property; wherever located; do and perform every act necessary for the use; liquidation or collection of acquired assets held in the name of the FDIC; and sign, seal, acknowledge and deliver any and all documents as may be necessary to settle any action(s) or claim(s) asserted against the FDIC, either in its Receivership or Corporate capacity, or as Manager of the FSLIC Resolution Fund.

Dated: December 19, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91–31028 Filed 12–27–91; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Evergreen Marine Corp. (Taiwan) Ltd., et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232–011184–004

Title: Evergreen Marine Corporation (Taiwan) Ltd., Italia di Navigazione, S.p.A. and Compagnie Generale Maritime Space Charter and Sailing Agreement

Parties: Evergreen Marine Corporation (Taiwan) Ltd. Italia di Navigazione S.p.A. Compagnie Generale Maritime

Synopsis: The proposed amendment restates and revises the basic Agreement. The amendment also: (1) Expands the scope of the Agreement to include Portland, Maine and Savannah, Georgia; (2) clarifies existing space chartering and sailing authority; (3) adds new articles pertaining to feeder operations and administrative matters; (4) revises Article 7 (Membership and Withdrawal), Article 9 (Duration and Termination of the Agreement) and Article 14 (Arbitration); and (5) makes other technical changes.

Agreement No.: 207–011341–001

Title: Transroll/Sea-Land Joint Service Agreement

Parties: Transroll Navegacao, S.A. Sea-Land Service, Inc.

Synopsis: The amendment would expand the scope of the Agreement to include Argentina, Uruguay and Paraguay. It would allow the Joint Service to enter into agreements such as connecting carrier, transshipment and space charter; and would make other nonsubstantive changes.

Dated: December 24, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–31123 Filed 12–27–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

The First National Company, et al.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 20, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. The First National Company, Storm Lake, Iowa; to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the State of Iowa.

2. Firstar Corporation, Milwaukee, Wisconsin; to engage *de novo* in acting as an investment adviser pursuant to § 225.25(b)(4)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 23, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–31088 Filed 12–27–91; 8:45 am]

BILLING CODE 6210–01–F

Garwin McNeilus; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than January 16, 1992.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Garwin McNeilus to acquire 37.75 percent, Denzil McNeilus to acquire 37.75 percent, and McNeilus Truck and Manufacturing, Inc., McNeilus Companies, Inc., and McNeilus Financial, Inc., all of Dodge Center, Minnesota, to acquire 24.50 percent, for a total of 100 percent, of the voting shares of Mower Agency, Inc., Austin, Minnesota, and thereby indirectly acquire Sterling State Bank, Austin, Minnesota.

Board of Governors of the Federal Reserve System, December 23, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–31089 Filed 12–27–91; 8:45 am]

BILLING CODE 6210–01–F

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Mercantile Acquisition Corporation I, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 20, 1992.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mercantile Bancorporation, Inc., and Mercantile Acquisition Corporation I, St. Louis, Missouri; to acquire Ameribanc, Inc., St. Joseph, Missouri, and thereby indirectly acquire American National Bank of St. Joseph, St. Joseph, Missouri; American Bank, Kansas City, Missouri; American Bank of Boone County, Centralia, Missouri; American Bank of Franklin County, Union, Missouri; American Bank of Morgan County, Versailles, Missouri; American Bank of North Central Missouri, Trenton, Missouri; American Bank of Northwest Missouri, Maryville, Missouri; American Bank of Platte County, Kansas City, Missouri; American Bank of St. Louis, St. Louis, Missouri; American Bank of Plattsburg/Edgerton, Plattsburg, Missouri; American Bank of Rolla, Rolla, MIssouri. In addition, Mercantile Acquisition Corporation I, St. Louis, Missouri, has applied to become a bank holding company.

In connection with this application, Applicants also propose to acquire Ameribank Life Insurance Company, St. Joseph, Missouri, and thereby engage in the reinsurance of credit life, accident, and health insurance sold in connection with extensions of credit made by Amerbanc, Inc.'s subsidiary banks pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted in the State of Missouri.

Board of Governors of the Federal Reserve System, December 23, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-31090 Filed 12-27-91; 8:45 am]

BILLING CODE 6210-01-F

South Arkansas Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 20, 1992.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. South Arkansas Bancshares, Inc., Pine Bluff, Arkansas; to become a bank holding company by acquiring 80 percent of the voting shares of Pine Bluff National Bank, Pine Bluff, Arkansas.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Minden Exchange Company, Minden, Nebraska; to acquire 15.7 percent of the voting shares of Midwest Banco Corporation, Cozad, Nebraska, and thereby indirectly acquire First Bank and Trust Company, Cozad, Nebraska; Enders State Bank, Enders, Nebraska; and Bank of Wilbur, Wilbur, Nebraska.

Board of Governors of the Federal Reserve System, December 23, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-31091 Filed 12-27-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR-46]

Quarterly Notice of Health Assessments Completed and Health Assessments To Be Conducted In Response to Requests From the Public

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice contains the following: 1. A list of sites for which ATSDR has completed a health assessment, or issued an addendum to a previously completed health assessment, during the period July–September 1991. This list includes sites that are on, or proposed for inclusion on, the National Priorities List (NPL). 2. A list of sites for which ATSDR, during the same period, has accepted a request from the public to conduct a health assessment (petitioned health assessment). Acceptance for a request for the conduct of a health assessment is based on a determination by the Agency that there is a reasonable basis for conducting a health assessment at the site.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E32, Atlanta, Georgia 30333, telephone (404) 639-0610, FTS 236-0610.

SUPPLEMENTARY INFORMATION: A list of completed health assessments, health assessments with addenda, and petitioned health assessments which were accepted by ATSDR during April–June 1991 was published in the **Federal Register** on September 25, 1991, (56 FR 48568). The quarterly announcement is the responsibility of ATSDR under the regulation, Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities (42 CFR part 90). This rule sets forth ATSDR's procedures for the conduct of health assessments under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9604(i)) and appeared in the **Federal Register** on February 13, 1990 (55 FR 5136).

Availability

The completed health assessments are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 31, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed health assessments are now available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 487-4650. There is a charge determined by NTIS for these health assessments. The NTIS order numbers are listed in parentheses after the site name.

1. Health Assessments or Addenda Completed or Issued

Between July 1, 1991, and September 30, 1991, health assessments or addenda to health assessments were issued for the NPL sites listed below:

Connecticut
- Precision Plating—Vernon—(PB92-108308)

Florida
- Davie Landfill—Davie—(PB91-238212)

Indiana
- Neal's Dump—Spencer—(PB92-106414)

Iowa
- Peoples Natural Gas Company-Dubuque—(PB92-108307)

Kansas
- Doepke Disposal Holliday Site—Holliday - (PB92-110592)

New Hampshire
- Holton Circle—Londonderry—(PB92-110584)

New York
- Carrol & Dubies—Port Jervis—(PB91-226290)

South Carolina
- Helena Chemical Company Landfill—Fairfax—(PB92-110600)

Utah
- Utah Power & Light/American Barrel Site—Salt Lake City—(PB91-218578)

Wisconsin
- Moss-American Kerr-McGee Oil Company—Milwaukee—(PB92-108380)

2. Petitions for Health Assessments Accepted

Between July 1, 1991, and September 30, 1991, ATSDR determined that there was a reasonable basis to conduct a health assessment for the sites or facilities listed below in response to requests from the public. As of September 30, 1991, ATSDR initiated health assessments at these sites.

Colorado
- Hansen Containers—Grand Junction

Georgia
- Basket Creek Drum and Surface Impoundment Site—Douglas County
- Young Refinery—Douglasville

Montana
- Burlington Northern—Livingston

New York
- Fresh Kills Landfill—Staten Island

Dated: December 23, 1991.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 91-31133 Filed 12-27-91; 8:45 am]

BILLING CODE 4160-70-M

Food and Drug Administration

Relocation of the Center for Veterinary Medicine

AGENCY: The Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the relocation of the Center for Veterinary Medicine (CVM) from its former address, 5600 Fishers Lane, Rockville, MD 20857, to 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Billy Don Weaver, Center for Veterinary Medicine (HFV-10), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8752

SUPPLEMENTARY INFORMATION: In August 1991, CVM was officially relocated. The address for CVM is hereby changed from 5600 Fishers Lane, Rockville, MD 20857, to 7500 Standish Pl., Rockville, MD 20855.

Dated: December 23, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 91-31012 Filed 12-27-91; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of January 1992:

Name: Council on Graduate Medical Education.

Time: January 30, 1992, 8:30 a.m.–12 p.m.; January 31, 1992, 8:30 a.m.–3:30 p.m.

Place: Conference Room G&H, Parklawn Conference Center, 5600 Fishers Lane, Rockville, MD 20857.

Open for entire meeting.

Purpose: Provides advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with respect to (A) the supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to foreign medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), and (C) above; (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Agenda: The plenary Council will hear updates from the Office of the Secretary, the Health Resources and Services Administration, the Health Care Financing Administration, the Department of Veterans Affairs and the Executive Secretary. Presentations will be made on the implications for medical education of the activities of the

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Johnson, Kellogg, and PEW Foundation; and current directions and activities of the Association of American Medical Colleges and American Medical Association. Reports will be given by the Physician Manpower Subcommittee along with a discussion of the draft discussion paper. Reports will be given by the Medical Education Programs and Financing Subcommittee and the Minority Representation in Medicine Subcommittee.

Anyone requiring information regarding the subject Council should contact Carol Gleich, Ph.D., Executive Secretary, Council on Graduate Medical Education, Health Resources and Services Administration, room 4C–25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3626.

• • • • •

Name: Subcommittee on Minority Representation in Medicine of the Council on Graduate Medical Education.

Time: January 30, 1992, 6:30 p.m.–9 p.m.

Place: Crowne Plaza, Holiday Inn, Parklawn Room, 1750 Rockville Pike, Rockville, Maryland 20852.

Open for entire meeting.

Purpose: To review and discuss final draft of the section on the underrepresentation of minorities in medicine of the COGME Special Report.

Agenda: The subcommittee will hear and discuss a presentation from the Association of American Medical Colleges "3000 by 2000" program for increasing minority representation in medicine, and will discuss a draft staff paper.

Anyone requiring information regarding the subject Subcommittee should contact Mr. Lanardo E. Moody, Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, Room 4C–25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 Telephone (301) 443–6326.

• • • • •

Name: Subcommittee on Medical Education Programs and Financing of the Council on Graduate Medical Education.

Time: January 30, 1992, 1 p.m.–5 p.m.

Place: Conference Room H, Parklawn Conference Center, 5600 Fishers Lane, Rockville, MD 20857.

Open for entire meeting.

Purpose: The subcommittee identifies the issues and problems in current methods of financing and support. Assesses the implications of alternative financing policies on medical education programs, service delivery, cost containment, physician supply & distribution, and shortages and excesses of physicians.

Analyzes existing information and data on current and alternative medical education programs of hospitals, schools of medicine and osteopathy, and accrediting bodies; federal policies regarding medical education programs; and their impact on the supply and distribution of physicians.

Agenda: The Subcommittee will discuss streamlined medical school-residency programs and a revised staff paper on medical education issues and draft conclusions and recommendations.

Anyone requiring information regarding the subject Subcommittee should contact Ms. Debbie M. Jackson, Subcommittee Principal Staff Liaison, or F. Lawrence Clare, M.D., M.P.H., Deputy Executive Secretary, Division of Medicine, Bureau of Health Professions, room 4C–25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 Telephone (301) 443–6326.

• • • • • •

Name: Subcommittee on Physician Manpower of the Council on Graduate Medical education.

Time: January 29, 1992, 8:30 a.m.–5 p.m. January 30, 1992, 1 p.m.–5 p.m.

Place: Conference Room G&H, Parklawn Conference Center, 5600 Fishers Lane, Rockville, MD 20857.

Open for entire meeting.

Purpose: The subcommittee reviews and analyzes currently applicable studies of under and oversupply of physician manpower giving special attention to number and distribution of specialists, primary care physicians and residents. It also is concerned with studies and recommendations regarding the number of undergraduate medical students as well as the need for improving physician manpower data.

Agenda: On January 29 the subcommittee will receive comments from organizations and individuals on a draft discussion paper and on January 30 will discuss the reactions. The paper focuses on conclusions and recommendations concerning the adequacy of the aggregate physician supply and the optimal proportion of generalists in that supply.

Anyone requiring information regarding the subject Subcommittee should contact Jerald M. Katzoff, Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, room 4C–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 Telephone (301) 443–6326.

Agenda Items are subject to change as priorities dictate.

Dated: December 20, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91–31011 Filed 12–27–91; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

President's Council on Physical Fitness and Sports

AGENCY: Office of the Assistant Secretary for Health.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Council on Physical Fitness and Sports. This notice also describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: January 10, 1992—9 a.m.–4 p.m.

ADDRESSES: Loews Hotel, 1700 Ocean Avenue, Santa Monica, CA 90401.

FOR FURTHER INFORMATION CONTACT: John A. Butterfield, Executive Director, President's Council on Physical Fitness and Sports, 450 5th Street, NW., suite 7103, Washington, DC, 202/272–3421.

SUPPLEMENTARY INFORMATION: The President's Council on Physical Fitness and Sports operates under Executive Order 12345, and subsequent orders. The functions of the Council are: (1) To advise the President and Secretary concerning progress made in carrying out the provisions of the Executive Order and recommending to the President and Secretary, as necessary, actions to accelerate progress; (2) advise the Secretary on matters pertaining to the ways and means of enhancing opportunities for participation in physical fitness and sports actions to extend and improve physical activity programs and services; (3) advise the Secretary on State, local, and private actions to extend and improve physical activity programs and services.

The Council will hold this meeting to apprise the members of the national program of physical fitness and sports, to report on ongoing Council programs, and to plan for future directions.

Dated: December 23, 1991.

John A. Butterfield,

Executive Director, President's Council on Physical Fitness and Sports.

[FR Doc. 91–31073 Filed 12–27–91; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–920–02–4212–13; AZA–23360 C]

Arizona: Exchange of Public and Private Lands

December 19, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of exchange documents.

SUMMARY: Notice is hereby given of the completion of an exchange between the United States and Walter E. and Edna M. Biewer. The United States transferred 135 acres in Mohave County, Arizona, and the Biewers' transferred 1,094.21 acres of land also in Mohave County, Arizona.

FOR FURTHER INFORMATION CONTACT: Laura Wood, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 640–5534.

SUPPLEMENTARY INFORMATION: On November 21, 1991, the Bureau of Land Management transferred the following described land by Patent No. 02–92–0006 and Deed No. AZ–02–001 pursuant to the Act of October 21, 1976:

Gila and Salt River Meridian, Arizona

T. 19 N., R. 21 W.,
Sec. 29, SW¼NW¼SW¼, W½SW¼SW¼;
Sec. 30 S½NE¼, N½NW¼SE¼, N½SW¼NW¼SE¼.

The area comprises 135 acres in Mohave County.

In the exchange for these lands; the following described lands were conveyed to the United States:

Gila and Salt River Meridian, Arizona

T. 21 N., R. 17 W.,
Sec. 17, S½N½, S½;
Sec. 19, W½, of lot 1, lots 2–7 incl., NE¼, E½NE¼NW¼, SE¼NW¼, NE¼SW¼, N½SE¼.

The area comprises 1,094.21 acres of land in Mohave County.

The values of Federal public land and the non-Federal land in the exchange were appraised at $931,500.00 and $930,000.00. An equalization payment in the amount of $1,500.00 was paid to the United States.

Mary Jo Yoes,

Chief, Branch of Lands Operations.

[FR Doc. 91–31102 Filed 12–27–91; 8:45 am]

BILLING CODE 4310–32–M

[ID–060–02–4212–13; IDI–28748]

Exchange of Public Lands; ID

AGENCY: Bureau of Land Management, Coeur d'Alene District, Interior.

ACTION: Notice of realty action; exchange of public lands in Benewah, Shoshone, Kootenai, Bonner and Boundary Counties, Idaho.

SUMMARY: This Notice is to advise the public that the Emerald Empire Resource Area, Coeur d'Alene District of the Bureau of Land Management has determined that the following described public lands are suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Boise Meridian, Idaho

T.44N., R.2W.,
Sec. 12. N½NW¼
T.45N., R.3E.,
Sec. 14, S½SW¼, SW¼SE¼
T.46N., R.2E.,
Sec. 24, SE¼NE¼
Sec. 25, E½E½, SW¼SE¼
T.52N., R.3W.,
Sec. 10, S½NE¼
T.55N., R.2W.,
Sec. 9, lots 1,2, S½NE¼
Sec. 32, SE¼SW¼, SW¼SE¼
T.55N., R.3W.,
Sec. 2, SE¼NE¼
Sec. 10, E½NE¼
Sec. 15, S½NE¼
Sec. 17, NW¼NE¼
Sec. 18, E½E½
Sec. 23, SE¼SE¼
Sec. 25, N½NW¼
Sec. 28, NE¼NE¼, S½NE¼, N½SE¼, SW¼SE¼, E½SW¼
Sec. 29, SE¼NW¼
T.59N., R.1W.,
Sec. 6, lot 4, SE¼SW¼, SE¼
T.59N., R.2W.,
Sec. 6, lot 1,2, S½NE¼
T.60N., R.1W.,
Sec. 28, N½NW¼, W½SW¼
T.61N., R.2E.,
Sec. 18, S½SE¼

The area described above aggregates approximately 2,286.52 acres in Benewah, Shoshone, Kootenai, Bonner, and Boundary Counties.

In exchange for these lands, the United States will acquire the following described lands:

Boise Meridian, Idaho

T. 49N., R. 3W.,
Sec. 1, Tax Lot #3466, Blk. 15
T.49N., R.1E.,
Sec. 36, lots 4,5,6, SW¼NW¼ north of county road

The area described above aggregates approximately 179.65 acres in Shoshone and Kootenai Counties, Idaho.

The purpose of the land exchange is to benefit the public interest by obtaining important resource values. The public lands to be exchanged are isolated and difficult to manage parcels with limited resource values. The private lands being offered have important values for access, wildlife, and recreation that merit acquisition for public ownership. There are no grazing leases, grazing permits, or range improvements on any of the above described public lands. The exchange is consistent with the Bureau of Land Management land use plans and the public interest will be well served by making this exchange. Final determination on disposal will await completion of an environmental analysis, which will be made available to the public. The value of the lands to be exchanged will be approximately equal.

The exchange will be subject to:

1. All valid existing rights, including any right-of-way, easement, permit or lease of record.

2. A reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. As provided by the regulations of 43 CFR 2201.1(b), and subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant. The segregative effect of this Notice will terminate upon issuance of patent or in two years, whichever occurs first.

ADDRESSES: Detailed information concerning the exchange is available for review at the Coeur d'Alene District Office, 1808 North Third Street, Coeur d'Alene, Idaho 83814.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

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Dated: December 19, 1991.

John B. O'Brien III,

Acting District Manager.

[FR Doc. 91-31022 Filed 12-27-91; 8:45 am]

BILLING CODE 4310-GG-M

[AZ-920-02-4212-12; AZA-23606]

Arizona; Exchange of Public and State Lands

December 19, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of exchange documents.

SUMMARY: Notice is hereby given of the completion of an exchange between the United States and the State of Arizona. The United States transferred 3,106.34 acres in Cochise, Graham, LaPaz, and Navaho Counties and the State of Arizona transferred 4,194.000 acres of land in Graham, Mohave, Navaho, and Yavapai Counties.

FOR FURTHER INFORMATION CONTACT: Mary Jo Yoas, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 640-5534.

SUPPLEMENTARY INFORMATION: On September 6, 1991, the Bureau of Land Management transferred the following described lands to the State of Arizona pursuant to the Federal Land Policy and Management Act of October 21, 1976:

Gila and Salt River Meridian, Arizona

Patent No. 02-91-0022A, Dated September 6, 1991, Containing 480 acres:

T. 15 N., R. 19 E.,
Sec. 14, NW¼, S½.

Deed No. AZ-91-003A, Dated September 6, 1991, Containing 2, 626.34 acres:

T. 5 N., R. 19 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½.
T. 10 N., R. 16 W.,
Sec. 2, N½N½NE½.
T. 6 S., R. 23 E.,
Sec. 31, lots 1 to 7, incl., NE¼, E½NW¼, NE¼SW¼, N½SE¼.
T. 7 S., R. 23 E.,
Sec. 2, lots 1 to 4, incl., S½NE¼, SE¼NW¼, N½SE¼NW¼;
Sec. 6, lots 1 to 6, incl., SW¼NE¼, SE¼NW¼.
T. 14 S., R. 27 E.,
Sec. 16, SE¼NE¼.
T. 14 S., R. 31 E.,
Sec. 2, lots 3 and 4, S½NW¼, SW¼.
T. 14 S., R. 32 E.,
Sec. 19, N½NE¼;
Sec. 20, N½.

The area described comprises 3,106.34 acres in Cochise, Gram, La Paz, and Navaho Counties, Arizona.

In exchange, the following described lands were conveyed to the United States:

Gila and Salt River Meridian, Arizona

Deed of Reconveyance No. 96-95038, Dated July 21, 1987, Containing 1,280.00 acres:

T. 18 N., R. 20 E.,
Sec. 20, all;
Sec. 28, all.

Deed of Reconveyance No. 96-94354, Dated June 17, 1987, Containing 541.18 acres.

T. 9 N., R. 9 W.,
Sec. 32, lots 1 to 10, incl., E½NE¼, NW¼NW¼, SW¼SW¼, SW¼SE¼, E½SE¼.

Deed of Reconveyance No. 96-94353, Dated June 17, 1987, Containing 2,361.76 acres:

T. 31 N., R. 11 W.,
Sec. 2, S½N½, N½SW¼, SW¼SW¼, SE¼.
T. 33 N., R. 12 W.,
Sec. 31, all.
T. 33 N., R. 13 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½ (Surface only).
T. 34 N., R. 12 W.,
Sec. 32, all (Surface only).

Deed of Reconveyance No. 96-95570, Dated April 29, 1988, Containing 11.46 acres:

T. 7 S., R. 25 E.,
Sec. 24, That portion of the W½NW¼NE¼ lying north of Golf Course Road.

The area described comprises 4,194.00 acres in Graham, Mohave, Navaho, and Yavapai Counties, Arizona.

The purposes of this Notice is to inform the public and interested State and local government officials of the exchange of public and State land.

This exchange finalizes actions between the Bureau of Land Management and the State of Arizona. Title acceptance provides a final accounting of our long term exchange program.

Mary Jo Yoas,

Chief, Branch of Lands Operations.

[FR Doc. 91-31103 Filed 12-27-91; 8:45 am]

BILLING CODE 4310-33-M

[UT-060-02-4410-08]

Notice of Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Draft Resource Management Plan/ Environmental Impact Statement for the Diamond Mountain Resource Area, Vernal District, Utah.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1970, section 202(f) of the Federal Land Policy and Management Act of 1976 and 43 CFR part 1610, a draft resource management plan/ environmental impact statement (RMP/ EIS) for the Diamond Mountain Resource Area, Vernal District, Utah, has been prepared and is available for review and comment. The draft RMP/ EIS describes and analyzes future options for managing approximately 709,000 acres of public land and 853,000 acres of federal mineral estate in Daggett County, Duchesne County, and portions of Uintah County, in northeastern Utah. It also examines the designations of Areas of Critical Environmental Concern (ACECs) and Wild and Scenic Rivers.

Decisions generated during this planning process will supersede land use planning guidance presented in the Browns Park, Diamond Mountain, and Ashley-Duchesne Management Framework Plans (MFPs) including the land exchange amendment, as well as land use guidance for the Diamond Mountain Resource Area contained in the 1986 Vernal District Off-Road Vehicle Designation Plan, the 1981 Vernal District Oil and Gas Environmental Assessment, and the 1984 Myton Bench Oil and Gas Developments Environmental Assessment. The draft RMP/EIS affects only those parts of the following documents involving forage allocation and assignment of leasing categories in the Diamond Mountain Resource area: Three Corners Grazing EIS, Ashley Creek Grazing EIS, Uintah Basin Synfuels Development EIS and Utah Combined Hydrocarbon Leasing EIS.

Copies of the draft RMP/EIS may be obtained from the Vernal District Office. Public reading copies will be available for review at the public libraries in Duchesne and Uintah Counties, the Daggett County Office Building, all government document depository libraries, and at the following BLM locations:

Office of External Affairs, Main Interior Building, room 5600, 18th and C Streets, NW., Washington, DC.

Office of External Affairs, Utah State Office, 324 South State Street, Salt Lake City, Utah.

Vernal District Office, 170 South 500 East, Vernal, Utah.

Background Information and maps used in developing the draft RMP/EIS are available at the Vernal District Office.

An open house will be held on Wednesday, Thursday and Friday, January 22, 23, and 24, 1992, at the Vernal District Office, 170 South 500 East, Vernal, Utah, from 3 p.m. until 8 p.m. Additional open houses will be scheduled as follows:

Salt Lake City, Olympus Hotel, 161 West 600 South, 5 p.m.–8 p.m., Tuesday, January 28, 1992.

Duchesne, City Office Building Council Room, 165 South Center Street, 5 p.m.–8 p.m., Wednesday, January 29, 1992.

Manila, County Office Building, 5 p.m.–8 p.m., Thursday, January 30, 1992.

The public is invited to present written comments and questions concerning the draft RMP/EIS to be considered in the final RMP/EIS, comments must be received in the Vernal District Office within 90 days after publication of EPA's notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Penelope Smalley, Team Leader, Bureau of Land Management, 170 South 500 East, Vernal, Utah 84078; Phone (801) 789-1362.

SUPPLEMENTARY INFORMATION: The draft RMP/EIS analyzes five alternatives to resolve the following three issues: Resource uses affecting vegetation, soils and watershed values, special management areas, and resource availability and accessibility. Each alternative represents a complete management plan for the area. The alternatives can be summarized as (A) no action or current management, (B) ecological systems, (C) forage production, (D) resource development, and (E) the preferred alternative, which is an optimal mix of management choices from the other four alternatives. Various combinations of special designations are analyzed under the alternatives.

ACECs Considered

Seven ACECs were considered for designation. The acreage of these units varies among alternatives and is displayed on the following table:

Area name	Critical concerns	Acreage by alternative				
		A	B	C	D	E
Browns Park Complex (includes existing Green River Scenic Corridor ACEC and Crouse Canyon).	Crucial deer winter range, scenic values, unique cultural and historic values, Class I trout fishery, riparian values, special status plant and animal habitat (bald eagle, peregrine falcon, Colorado cutthroat trout, river otter, and Ute Ladies' Tresses).	19,400	55,700	19,400	19,400	55,700
Lears Canyon	Relict vegetation community	0	1,400	1,400	0	1,400
Middle and Lower Green River	Special status animal and plant species habitat (bald eagle, peregrine falcon, whooping crane, western yellow-billed cuckoo, Swainson's hawk, western snowy plover, long-billed curlew, white-faced ibis, spotted bat, river otter, Uinta Basin hookless cactus, Colorado Squawfish, humpback chub, bonytail chub, razorback sucker), scenic values and natural characteristics.	0	12,700	0	0	7,900
Nine Mile Canyon	Cultural resources (Fremont rock art and occupational sites), special status plant habitat (Toad-flax cress and Uinta Basin hookless cactus).	0	50,600	0	0	47,400
Pariette Wetlands	Riparian systems, biological diversity associated with wetlands, special status plant habitat (Uinta Basin hookless cactus).	0	11,600	0	0	11,600
Red Creek	Watershed, riparian potential, fragile soils, Colorado River salinity control.	24,400	24,400	24,400	0	24,400
Red Mountain-Dry Fork Complex	Cultural and paleontological values, relict vegetation communities (Castle Cove and Red Mountain proper), scenic values, riparian system.	0	25,800	2,200	0	25,800

Wild and Scenic Rivers

The following river segments eligible for further study as Wild and Scenic Rivers were analyzed by the RMP/EIS and found either suitable or not suitable for designation:

Water segment	Values present	Suitable?
Upper Green River	Special status fish species, scenic values, cultural resources, wildlife values and riparian systems	Yes for scenic
Middle Green River	Special status fish species, riparian systems	No.
Lower Green River	Special status fish species, recreation values, and riparian systems	Yes for scenic
Nine Mile Creek—East	Scenic values, cultural resources, and riparian systems	No.
Nine Mile Creek—West	Scenic values, cultural resources, and riparian systems	No.
Argyle Creek	Scenic values and riparian systems	No.

Public participation has occurred throughout the RMP process. A Notice of Intent was filed in the **Federal Register** in January 1989. Since that time several workshops, meetings and mailings were conducted to solicit comments and ideas. Any comments presented throughout the process have been considered.

This notice meets the requirements of 43 CFR 1610.7-2 for designation of ACECs.

Dated: December 23, 1991.

W. R. Papworth,

Acting State Director.

[FR Doc. 91-31119 Filed 12-27-91; 8:45 am]

BILLING CODE 4310-DQ-M

[AZ-930-4214-10; AZA-26099]

Proposed Withdrawal and Opportunity for Public Meeting; Arizona

December 20, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed

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application AZA–26099, to withdraw 2,087.04 acres of National Forest System lands from location and entry under the mining laws for the purpose of protecting the Research Ranch from possible mineral development. This application is in compliance with regulations found in 43 CFR 2310.1–2 and the Coronado National Forest Plan. Publication of this notice closes the land for up to 2 years from location and entry under the United States mining laws only, the land will remain open to all other uses applicable to National Forest System lands.

DATE: Comments and requests for a meeting should be received on or before March 30, 1992.

ADDRESSES: Comments and meeting requests should be sent to the Arizona State Director, Bureau of Land Management (BLM), 3707 North 7th Street, Phoenix, Arizona 85014, or P.O Box 16563, Phoenix, Arizona 85011–6563.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, (602) 640–5509.

SUPPLEMENTARY INFORMATION: On November 29, 1991, the U.S. Department of Agriculture, Forest Service, filed application AZA–26099 to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Gila and Salt River Meridian

Coronado National Forest

T. 21 S., R. 18 E.,
Sec. 26, W½, W½E½;
Sec. 33, E½NE¼, NE¼SE¼;
Sec. 34, All;
Sec. 35, Lot 6, W½, W½NE¼, NW¼SE¼N E¼, W½SW¼SE¼NE¼, NW¼NW¼S E¼, N½SW¼SW¼SE¼.
T. 22 S., R. 18 E.,
Sec. 2, Lots 2, 3, 4, N½SW¼, NW¼SE¼, SW¼NE¼, S½NW¼
Sec. 3, Lots 1, 2, 3, 4, S½N½, N½N½SE¼, N½NE¼SW¼,
Sec. 4, Lot 5, SE¼NE¼NE¼.

The area described contains approximately 2,087.04 acres in Cochise County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with regulations as set forth in 43 CFR part 2300

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless an application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are all those applicable to U.S. Forest Service administered lands except those under the mining laws.

The temporary segregation of the lands in connection with this application shall not affect the administrative jurisdiction over the lands.

Sue E. Richardson,

Acting Deputy State Director Lands and Renewable Resources.

[FR Doc. 91–31104 Filed 12–27–91 8:45 am]

BILLING CODE 4310–32–M

[OR–943–4214–10; GP2–073; OR–47602]

Partial Termination of Proposed Withdrawal and Reservation of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has canceled its application in part to withdraw certain lands for protection of the Bagby Hot Springs Research Natural Area and Bagby Hot Springs Special Interest Area in the Mt. Hood National Forest. This action will terminate a portion of the proposed withdrawal.

EFFECTIVE DATE: January 29, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208–0039, 503–280–7171

SUPPLEMENTARY INFORMATION: The notice of the U.S. Department of Agriculture, Forest Service, application OR–47602 for withdrawal was published as FR Doc. 91–23811 of the issue of October 3, 1991 The purpose of the proposed withdrawal is to protect the Bagby Hot Springs Research Natural Area and Bagby Hot Springs Special Interest Area. The applicant agency has determined that a portion of the proposed withdrawal is no longer needed and has canceled the application insofar as it effects the following described lands:

Willamette Meridian

Mt. Hood National Forest

T. 7 S., R 5 E.,
Sec. 14, NW¼SE¼SW¼, NE¼SW¼SE¼ E½SE¼SE¼, and NW¼SE¼SE¼;
Sec. 26, that portion of the S½S½ in the Bull of the Woods Wilderness Area as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office;
Sec. 27, that portion of the S½SE¼ in the Bull of the Woods Wilderness Area as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office;
Sec. 34, that portion of the N½NW¼NE¼ in the Bull of the Woods Wilderness Area as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office;
Sec. 35, that portion of the N½NE¼NE¼ in the Bull of the Woods Wilderness Area as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office;

The areas described aggregate approximately 184.00 acres in Clackamas County, Oregon.

Pursuant to the regulation 43 CFR 2310.2–1(c), at 8:30 a.m., on January 29, 1992 the proposed withdrawal will be terminated in part The lands described above that are not within the Bull of the Woods Wilderness Area will be opened to operation of mining laws.

The lands remaining in withdrawal application OR–47602 are described and amended to read as follows.

Willamette Meridian

Mt. Hood National Forest

T. 7 S., R 5 E.,
Sec. 14, SE¼SW¼SW¼, E½SE¼SW¼, SW¼SE¼SW¼, NW¼SW¼SE¼, S½SW¼SE¼, and SW¼SE¼SE¼,
Sec. 22, SE¼SW¼ NE¼SE¼, S½NW¼SE¼, and S½SE¼,
Sec. 23, W½NE¼NE¼, SE¼NE¼NE¼, W½NE¼, SE¼NE¼, E½NW¼, E½NW¼NW¼, SW¼NW¼NW¼, SW¼NW¼, and S½,
Sec. 24 SW¼SW¼SW¼,
Sec. 25, W½W½NW¼, W½NW¼SW¼, and NW¼SW¼SW¼,
Sec. 26, N½, N½S½, and tht portion of the S½S½ outside the Bull of the Woods Wilderness Area as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office;
Sec. 27, NE¼ E½NW¼ E½NE¼SW¼, NE¼SE¼SW¼, N½SE¼ and that portion of the S½SE¼ outside the Bull of the Woods Wilderness Area as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office;
Sec. 34, that portion of the N½NW¼NE¼ outside the Bull of the Woods Wilderness Area as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office;
Sec. 35, that portion of the N½NE¼NE¼ outside the Bull of the Woods Wilderness Area as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Offices.

The area described contains approximately 1936.00 acres in Clackamas County, Oregon.

Dated December 17, 1991

Catherine H. Crawford,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91–311210 Filed 12–27–91; 8:45 am]

BILLING CODE 4310–33–M

[OR–943–4214–10; GP2–077; OR–47417]

Public Meeting; Illinois River Proposed Protective Withdrawal; Oregon

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: This notice announces the schedule and agenda for a forthcoming public meeting that will provide an opportunity for public involvement regarding the Forest Service s application for protective withdrawal of a 13-mile portion of the Illinois River.

EFFECTIVE DATE: February 19, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

SUPPLEMENTARY INFORMATION: Notice is hereby given that a public meeting will be held to provide an opportunity for public involvement regarding the application by the Forest Service, U.S. Department of Agriculture, for a 20-year protective withdrawal as to 4,239.95 acres of national forest lands under and adjacent to the Illinois River. The lands involved are in the Siskiyou National Forest in Josephine County, Oregon, and are located between the mouth of Briggs Creek and the mouth of Deer Creek.

The meeting will begin at 7 p.m., Wednesday, February 19, 1992, at the Siskiyou National Forest Headquarters Office, 200 NE. Greenfield Road, Grants Pass, Oregon. The agenda will include: (1) An information briefing by the Bureau of Land Management; (2) an information briefing by the Forest Service; (3) oral statements by interested parties; and (4) a question and answer period.

The meeting is open to the public. Interested parties may make oral statements at the meeting and/or may file written statements with the Bureau of Land Management, Oregon State Office. Oral statements should be limited to five minutes per party. All statements received will be considered by the Bureau of Land Management and the Forest Service before any recommendation concerning the proposed land withdrawal is submitted to the Secretary of Interior for final action under the authority of section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714).

Dated: December 17, 1991.

Catherine H. Crawford,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91–31121 Filed 12–27–91; 8:45 am]

BILLING CODE 4310–33–M

[OR–943–4214–10; GP2–072; OR–47602]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw an additional 70.00 acres of National Forest System land to protect the Bagby Hot Springs Research Natural Area and Bagby Hot Springs Special Interest Area in the Mt. Hood National Forest. Because this notice amends the original application, the two year temporary segregation from mining will expire on October 3, 1993. The land will remain open to mineral leasing.

DATE: Comments and requests for a public meeting must be received by March 30, 1992.

ADDRESS: Comments and meeting requests should be sent to the Oregon State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–0039.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Office, 503–280–7171.

SUPPLEMENTARY INFORMATION: On December 4, 1991, the U.S. Department of Agriculture, Forest Service, filed an amendment to the original application to withdraw the following described additional National Forest System land from location and entry under the United States mining laws (30 U.S.C. Ch. 2), subject to valid existing rights:

Willamette Meridian

Mt. Hood National Forest

T. 7 S., R. 5 E.,
Sec. 25, W½W½NW¼, W½NW¼SW¼, and NW¼SW¼SW¼.

The area described contains 70.00 acres in Clackamas County, Oregon.

The purpose of the proposed withdrawal is to protect the Bagby Hot Springs Research Natural Area and Bagby Hot Springs Special Interest Area.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

Because this is an amendment to the original application, the two year temporary segregation will expire on October 3, 1993. The land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are other National Forest management activities, including permits, licenses, and cooperative agreements, that are compatible with the intended use under the discretion of the authorized officer.

Dated: December 17, 1991

Catherine H. Crawford,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91–31023 Filed 12–27–91; 8:45 am]

BILLING CODE 4310–33–M

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf

AGENCY: Minerals Management Service, Interior

VOL 56 ISS 250 DEC 30 1991 UMI

ACTION: Notice of the Availability of Environmental Documents Prepared for OCS Mineral Proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/operator	Location	Date
Marathon Oil Company, one exploratory well, SEA No. R-2739	High Island Area, East Addition, South Extension, Block A-386, Lease OCS-G 9159, 118 miles southeast of the nearest coastline in Jefferson County, Texas.	July 29, 1991.
Sandefer Offshore Operating Company, structure removal operations, SEA No. ES/SR 91-009A.	East Cameron Area, Block 128, Lease OCS-G 5366, 36 miles south of Cameron Parish, Louisiana.	July 11, 1991.
Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA No. ES/SR 91-017A.	East Cameron Area, Block 26, Lease OCS-G 3527, 12 miles south of Cameron Parish, Louisiana.	June 10, 1991.
UNOCAL Exploration Corporation, structure removal operations, SEA No. ES/SR 91-018.	West Cameron Area, Block 595, Lease OCS-G 2437, approximately 112 miles south of Cameron Parish, Louisiana.	June 10, 1991.
Sandefer Offshore Operating Company, structure removal operations, SEA No. ES/SR 91-019.	East Cameron Area, Block 129, Lease OCS-G 3534, approximately 36 miles south of Cameron Parish, Louisiana.	May 8, 1991.
Diamond Shamrock Offshore Partners, structure removal operations, SEA No. ES/SR 91-025.	Brazos Area, Block 412, Lease OCS-G 5003, approximately 12 miles southeast of Matagorda County, Texas.	May 22, 1991.
Diamond Shamrock Offshore Partners, structure removal operations, SEA No. ES/SR 91-027.	West Cameron Area, Block 192, Lease OCS-G 4757, approximately 30 miles south of Cameron Parish, Louisiana.	May 24, 1991.
Kerr-McGee Corporation, structure removal operations, SEA No. ES/SR 91-032.	South Timbalier Area, Block 50, Lease OCS-G 4119, approximately 10 miles south of Lafourche Parish, Louisiana.	July 26, 1991.
Kerr-McGee Corporation, structure removal operations, SEA Nos. ES/SR 91-033, 91-036, 91-037, 91-038, and 91-039.	Ship Shoal Area, Block 28, Lease OCS 0346, 5 miles southeast of Terrebonne Parish, Louisiana.	Aug. 7, 1991.
ODECO Oil and Gas Company, structure removal operations, SEA Nos. ES/SR 91-044, 91-045, and 91-067.	South Timbalier Area, Block 86, Leases OCS 0605 and OCS-G 1555, approximately 20 miles south of Lafourche Parish, Louisiana.	June 20, 1991.
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 91-046.	South Timbalier Area, Block 135, Lease OCS 0462, approximately 28 miles south of Lafourche Parish, Louisiana.	May 12, 1991.
Energy Development Corporation, structure removal operations, ES/SR 91-047.	Main Pass Area, Block 96, Lease OCS-G 5243, approximately 12 miles southeast of the Breton Island National Wildlife Refuge and Wilderness Area in Louisiana.	Apr. 16, 1991.
Samedan Oil Corporation, structure removal operations, SEA No. ES/SR 91-048.	Brazos Area, Block A-28, Lease OCS-G 2659, approximately 40 miles south of Matagorda County, Texas.	Aug. 12, 1991.
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 91-049.	High Island Area, South Addition, Block A-416, Lease OCS-G 3946, approximately 82 miles south of Jefferson County, Texas.	May 7, 1991.
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 91-059.	Sabine Pass Area, Block 11, Lease OCS-G 4191, approximately 11 miles southeast of Jefferson County, Texas.	July 8, 1991.
Apache Corporation, structure removal operations, SEA No. ES/SR 91-060.	Matagorda Island Area, Block 636, Lease OCS-G 5001, approximately 22 miles east/southeast of Aransas County, Texas.	Aug. 2, 1991.
Mesa Limited Partnership, structure removal operations, SEA Nos. ES/SR 91-061 and 91-028/S.	High Island Area, East Addition, South Extension, Block A-315, Lease OCS-G 2786, approximately 97 miles southeast of Galveston County, Texas.	Sept. 6, 1991.
ODECO Oil and Gas Company, structure removal operations, SEA Nos. ES/SR 91-064 and 91-065.	High Island Area, East Addition, Block 119, Lease OCS-G 4739, approximately 30 miles south of Cameron Parish, Louisiana.	June 5, 1991.
General Atlantic Resources, structure removal operations, SEA No. ES/SR 91-066.	Vermilion Area, Block 52, Lease OCS-G 1119, approximately 12 miles southeast of Vermilion Parish, Louisiana.	Aug. 8, 1991.
General Atlantic Resources, structure removal operations, SEA Nos. ES/SR 91-068S, 91-081A, 91-082A, and 91-085A.	Vermilion Area, Block 52, Lease OCS-G 1119, approximately 14 miles south of Vermilion Parish, Louisiana.	Sept. 11, 1991.
Houston Oil and Minerals Corporation, structure removal operations, SEA Nos. ES/SR 91-069 through 91-074.	Vermilion Area, Block 50, Lease OCS-G 3392, approximately 18 miles south of Vermilion Parish, Louisiana.	July 26, 1991.
Enron Oil and Gas Company, structure removal operations, SEA No. ES/SR 91-075.	East Cameron Area, Block 65, Lease OCS-G 4416, approximately 22 miles southwest of Cameron Parish, Louisiana.	Aug. 8, 1991.
Freeport-McMoRan Inc., structure removal operations, SEA No. ES/SR 91-076.	High Island Area, East Addition, South Extension, Block A-289, Lease OCS-G 2726, approximately 73 miles south of Cameron Parish, Louisiana.	Sept. 12, 1991.
Phillips Petroleum Company, structure removal operations, SEA Nos. ES/SR 91-077 and 91-078.	West Cameron Area, Block 118, Lease OCS-G 0757, approximately 21 miles south of Cameron Parish, Louisiana.	July 26, 1991.
Phillips Petroleum Company, structure removal operations, SEA No. ES/SR 91-079.	West Cameron Area, Block 21, Lease OCS-G 1352, approximately 4 miles south of Cameron Parish, Louisiana.	July 31, 1991.
Phillips Petroleum Company, structure removal operations, SEA No. ES/SR 91-080.	West Cameron Area, Block 56, Lease OCS 0301, approximately 8 miles south of Cameron Parish, Louisiana.	Sept. 11, 1991.
Union Pacific Resources, structure removal operations, SEA Nos. ES/SR 91-083 and 91-084.	East Cameron Area, Block 106, Lease OCS-G 8644, approximately 27 miles southwest of Cameron Parish, Louisiana.	Aug. 23, 1991.
Mobil Exploration and Producing U.S. Inc., structure removal operations, SEA No. ES/SR 91-086.	Main Pass Area, Block 19, Lease OCS-G 1622, approximately 15 miles southwest of Breton National Wildlife Refuge, Louisiana.	July 26, 1991.
Freeport-McMoRan Inc., structure removal operations, SEA Nos. ES/SR 91-087 through 91-099.	Vermilion Area, Block 25, Lease OCS-G 12859, approximately 3 miles south of Vermilion Parish, Louisiana.	Aug. 23, 1991.
Mitchell Corporation, structure removal operations, SEA No. ES/SR 91-100.	Galveston Area, Block 189, Lease OCS 0092, approximately 10 miles southeast of Galveston County, Texas.	Aug. 22, 1991.
Chevron U.S.A. Inc., structure removal operations, SEA ES/SR 91-101	South Timbalier Area, Block 21, Lease OCS 0263, approximately 6 miles south of Lafourche Parish, Louisiana.	Sept. 10, 1991.
Chevron U.S.A. Inc., structure removal operations, SEA Nos. ES/SR 91-102 through 91-105.	West Cameron Area, Block 48, Lease OCS-G 1351, approximately 4 miles south of Cameron Parish, Louisiana.	Sept. 20, 1991.
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 91-106.	West Cameron Area, Block 91, Lease OCS-G 4387, approximately 13 miles south of Cameron Parish, Louisiana.	Sept. 20, 1991.

Activity/operator	Location	Date
Texaco USA, structure removal operations, SEA Nos. ES/SR 91-108, 91-109, and 91-110.	South Marsh Island Area, Blocks 212, 217, and 218, Lease OCS 0310, approximately 4 miles southwest of the Marsh Island Wildlife Refuge in Iberia Parish, Louisiana.	Sept. 27, 1991.
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 91-111.	West Cameron Area, Block 204, Lease OCS-G 3984, approximately 39 miles south of Cameron, Louisiana.	Oct. 3, 1991.
BP Exploration Inc., structure removal operations, SEA No. ES/SR 91-026S.	Eugene Island Area, South Addition, Block 315, Lease OCS-G 2112, approximately 88 miles south of St. Mary Parish, Louisiana.	July 2, 1991.
Forest Oil Corporation, structure removal operations, SEA No. ES/SR 91-029/S.	Eugene Island Area, South Addition, Block 326, Lease OCS-G 5517, approximately 90 miles south of St. Mary Parish, Louisiana.	July 17, 1991.
ODECO Oil and Gas Company, structure removal operations, SEA Nos. ES/SR 91-30/S and 91-31/S.	Green Canyon Area, Block 21, Lease OCS-G 5879, approximately 112 miles south of Terrebonne Parish, Louisiana.	Aug. 13, 1991.
Marathon Oil Company, structure removal operations, SEA Nos. ES/SR 91-32/S, 91/33/S, 91-34/S, and 91-35/S.	Vermilion Area, Block 331, Lease OCS-G 2572, approximately 97 miles south of Vermilion Parish, Louisiana.	Aug. 13, 1991.
Amerada Hess Corporation, structure removal operations, SEA Nos. ES/SR 91-36/S and 91-37/S.	North Padre Island Area, Block A-43, Lease OCS-G 6076, approximately 30 miles east of Kleberg County, Texas.	Sept. 10, 1991.

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, Telephone (504) 736-2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources and structure removals on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA. This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: December 18, 1991.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 91-31105 Filed 12-27-91; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31973]

Arthur T. Walker Estate Corporation and Dumaines—Continuance in Control Exemption—Mountain Laurel Railroad Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts, subject to standard labor protective conditions, Arthur T. Walker Estate Corporation (Walker), a Delaware corporation, and Dumaines, a New Hampshire trust, from the requirements of 49 U.S.C. 11343, *et seq.*, for their continuance in control of a newly formed corporation, Mountain Laurel Railroad Company (MLRR), when it becomes a rail carrier. Dumaines owns all of the stock of Walker and a controlling interest in Amoskeag Company. Walker owns all of the stock of the new corporation and of two existing class III railroads, Red Bank Railroad Company and Pittsburgh & Shawmut Railroad Company. Amoskeag Company controls class II railroad Bangor and Aroostook Railroad Company through a subsidiary. MLRR is purchasing 127.75 miles of rail line in western Pennsylvania from Consolidated Rail Corporation from Lawsonham (M.P. 6.0) to Driftwood (M.P. 110.0); and from Piney (M.P. 104.25) to Brookville (M.P. 128.0). MLRR will separately file a notice of exemption for that transaction in Finance Docket No. 31974.

DATES: This exemption will be effective on December 31, 1991. Petitions to reopen must be filed by January 9, 1992.

ADDRESSES: Send pleadings referring to Finance Docket No. 31973 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: William P. Quinn, Rubin Quinn Moss Heaney & Patterson, PC, 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA 19106.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927-5267. [TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359 [Assistance for the hearing impaired is available through TDD services (202) 927-5721].

Decided: December 19, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-31097 Filed 12-27-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 90-41]

Michael J. Schnitzer, M.D.; Revocation of Registration

On April 4, 1990, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Michael J. Schnitzer, M.D. (Respondent), of 4437 Robbins Street, San Diego, California 92122, proposing to revoke his DEA Certification of Registration, AS2919542, and to deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that the

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Respondent's continued registration is inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, requested a hearing in a letter dated May 21, 1990. The matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Sacramento, California, on February 21, 1991. On July 15, 1991, the administrative law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. No exceptions were filed and on August 22, 1991, the administrative law judge transmitted the record of these proceedings to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67 hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that sometime in 1988 a New York-based wholesale mail-order drug company reported to DEA that Respondent had made two unusual purchases of controlled substances. As a result, a DEA Investigator requested information from DEA's Automation of Reports and Consolidated Order System (ARCOS) and from two of Respondent's drug suppliers. On the basis of the ACROS report and records provided by the drug suppliers, the Investigator ascertained that in 1986 Respondent purchased 500 diazepam 10 mg. tablets and 500 acetaminophen with codeine tablets. For the period between May 1987 and May 1988, Respondent purchased the following controlled substances: 4,000 dextroamphetamine 10 mg. tablets; 2,500 diazepam 10 mg. tablets; 220 ml. of diazepam injectable 5 mg.; 25 ml. of phenobarbital; 200 cc. of Demerol 100 mg. injectables; 20 cc. of Numorphan 1.5 mg. injectables; 700 cc. of morphine sulfate ¼ gr. injectables; 200 APAP with codeine 60 mg. tablets; 200 cc. of Talwin 30 mg. injectables; 500 acetaminophen with codeine 1 gr. tablets; and 20 ml. of Sublimaze.

On August 9, 1988, DEA investigators interviewed Respondent concerning his purchases of controlled substances. Respondent told the Investigators that from July 1986 to April 1987 he was employed at a hospital in La Veta, California, and the he resigned that position in order to accept employment with a physician in El Cajon, California, on April 1, 1987. Respondent said that he left that position after two weeks and had been unemployed since April 14, 1987.

During the interview, Respondent further stated that he had planned to open a pediatric clinic and had ordered controlled substances for use in his practice. Respondent said that he stored the drugs first at his brother's home and then at this parents' residence. In June 1988, having been unsuccessful in obtaining a loan to open his practice, Respondent said that he flushed the drugs down the toilet at his parents' residence. Respondent further stated that there were no witnesses to the drug destruction.

At the administrative hearing, Respondent testified that he had never been disciplined by any professional regulatory body, nor had he ever been disciplined by the medical boards of California or Michigan, the states in which he is currently licensed to practice. Further, Respondent testified that he had never been disciplined by any of the hospitals in which he held staff privileges.

With respect to the controlled substance purchases in 1987 and 1988, Respondent testified that he ordered the drugs because he planned to use them when he opened his private practice in pediatric medicine and surgery and pediatrics. Respondent applied for loans to finance his establishment of a practice, but was unable to obtain credit. He further testified that he searched for office space.

Concerning the drug storage and destruction, Respondent testified, in part, that in April 1988 he was living at his parent's home and the drugs were stored there. On May 11, 1988, Respondent found the cardboard box of drug ripped apart. He confronted his father who admitted breaking into the box and who said that he did not want the drugs stored in his home. Respondent testified that he then decided to take the controlled substances to the police station in La Mesa, California. On the way, he stopped at a gas station, and flushed the pills down the toilet. Respondent said he took a steel toolbox and smashed all of the drug vials. Respondent further testified that he destroyed all of the records of his drug purchases and that he was unaware of the federal recordkeeping regulations.

The administrative law judge found Respondent to be less than credible on many aspects of his testimony and listed several reasons why Respondent's purchases of controlled substances should be viewed with suspicion. First, Respondent ordered substantial quantities of similar drugs. Second, in slightly less than one year Respondent ordered 2,500 dosage units of diazepam 10 mg. tablets; 220 ml. of diazepam 5 mg. injectable; 700 cc. of morphine; 200 cc. of Talwin; and 4,000 dosage units of dextroamphetamine 10 mg. Respondent failed to produce any credible evidence as to why he needed such a large quantity of controlled substances as an initial inventory. Third, Respondent's ordering pattern of certain drugs was consistent with depletion and consequent restocking of controlled substances rather than building an intial inventory. For example, Respondent ordered 1,000 dosage units of diazepam 10 mg. on May 20, 1987, and then ordered 500 tablets of the same drug in the same dosage units on February 18, 1988, and 1,000 tablets on March 1, 1988. Similarly, Respondent ordered diazepam injectable on June 8, 1987, February 18, 1988, and March 1, 1988. Further, Respondent ordered 200 cc. of morphine sulfate on June 8, 1987, and 500 cc. on November 5, 1987, and that invoice for the second order bore the instructions, "Urgent, to be shipped next day air, (cust will pay diff)."

The administrative law judge recommended that the Administrator revoke Respondent's DEA Certificate of Registration. The Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the administrative law judge in its entirety. Respondent's registration is clearly inconsistent with the public interest.

Under 21 U.S.C. 823(f) and 824(a)(4), the Administrator has the authority to revoke a registration based upon a sufficient showing that the continued registration would be inconsistent with the public interest. The factors which are considered in determing whether the continued registration would be inconsistent with the public interest are:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority;

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances;

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances;

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances;

(5) Such other conduct which may threaten the public health and safety.

There is no requirement that the Adminstrator make findings with respect to all five of the listed factors. Instead, the Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances presented in each case, in determining the public interest. See Henry J. Schwarz, Jr., M.D., Docket No. 88-42, 54 FR 16422 (1989); England Pharmacy, 52 FR 1674 (1987); and Felix Seisin, M.D., Docket No. 85-53, 51 FR 3863 (1986).

In this case, the second, fourth and fifth factors under 21 U.S.C. 823(f) are of importance in evaluating whether the continued registration of Respondent is contrary to the public interest. The Administrator finds that the evidence relating to Respondent's handling of controlled substances to be overwhelmingly negative. The testimony and evidence presented at the administrative hearing show that the Respondent used his DEA registration to obtain controlled substances for reasons outside the scope of legitimate medical practice. It is undisputed that Respondent ordered a substantial quantity of various controlled substances in 1987 and 1988, and that he was unemployed when most of the drugs were purchased. It is also undisputed, and the record amply demonstrates that Respondent totally ignored the regulations regarding recordkeeing and the storage, security, and disposal of controlled substances. While the Respondent flatly refuses to acknowledge that any of his handling of controlled substances was less than responsible, the Administrator finds that the Respondent egregiously abused his privileges as a DEA registrant to obtain controlled substances for other than legitimate medical purposes.

After considering the evidence in the record, the Administrator concludes that the Respondent's continued registration would be inconsistent with the public interest, and that Respondent's DEA registration must be revoked. Therefore, under the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), the Administrator of the Drug Enforcement Administration hereby orders that DEA Certificate of Registration AS2919542, be, and it hereby is, revoked. Any pending applications for registration or renewal are hereby denied.

This order is effective January 29, 1992.

Dated: December 19, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

DEPARTMENT OF LABOR

Employment and Training Administration

Unemployment Compensation for Ex-Servicemembers

General Administration Letter No. 3-92 for Implementing Statutory Amendments Affecting the Program of Unemployment Compensation for Ex-Servicemembers

On November 15, 1991, the President signed into law the Emergency Unemployment Compensation Act of 1991 (Pub. L. 102-164), which in title III contains amendments to the Unemployment Compensation for Ex-Servicemembers (UCX) program. On November 22, 1991, the Department issued General Administration Letter (GAL) No. 3-92. The provisions in section 301 of Public Law 102-164, as interpreted in GAL No. 3-92, supersede the prior provisions of Federal law, the regulations at 20 CFR part 614, and prior operating instructions implementing the UCX program, to the extent that they are inconsistent with the amendments in section 301 of Public Law 102-164 or the operating instructions in GAL No. 3-92.

GAL No. 3-92 is published below.

Signed at Washington, DC on December 20, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

Directive: General Administration Letter No. 3-92

To: All State Employment Security Agencies

From: Donald J. Kulick, Administrator for Regional Management

Subject: Unemployment Compensation for Ex-Servicemembers (UCX) Amendments Contained in the Emergency Unemployment Compensation Act of 1991

1. Purpose

To provide States and cooperating State agencies with the operating, fiscal and reporting instructions for implementing the UCX amendments contained in section 301 of Public Law (Pub. L. 102-164).

2. References

The Emergency Unemployment Compensation Act of 1991, Public Law. 102-164, signed by the President on November 15, 1991; TWX to Regional Administrators, dated November 18, 1991; 5 U.S.C. 8502 and 8521; and 20 CFR Part 614.

3. Background

This document furnishes information concerning section 301 of Public Law 102-164 which amends the UCX program and provides the Department's interpretation of the amendments as they affect the UCX program. This document also sets forth operating instructions of the Department of Labor to guide the States in implementing the amendments.

The provisions in section 301 of Public Law 102-164, as interpreted by these instructions, supersede the prior provisions of Federal law, regulations at 20 CFR part 614, and prior operating instructions issued by this Department to the extent that they are inconsistent with section 301 of Public Law 102-164 or these instructions.

The instructions in this document are issued to the States and cooperating State agencies as guidance provided by the Department of Labor in its role as the principal in the UCX program. As agents of the United States, the States and cooperating State agencies may not vary from the operating instructions in this document (or any subsequent or supplemental operating instructions) without the prior approval of the Department of Labor. Therefore, pending the issuance of final regulations implementing the provisions of the UCX amendments, the operating instructions in this document (and any subsequent and supplemental operating instructions) shall constitute the controlling guidance for the States and the cooperating State agencies in implementing and administering the provisions of the UCX amendments pursuant to the agreements between the States and the Secretary of Labor under 5 U.S.C. 8502. The provisions of 20 CFR 614.1(d) shall apply to the carrying out of the instructions in this document and any subsequent or supplemental operating instructions.

Section 301(c) of Public Law 102-164 provides that the UCX amendments contained in section 301 are effective for weeks of unemployment beginning on or after November 15, 1991, the date of enactment of Public Law 102-164. This means that the UCX amendments contained in Section 301 shall be effective for all UCX initial claims filed for weeks of unemployment beginning on or after November 15, 1991, as well as for weeks of unemployment beginning on or after November 15, 1991 for unexpired UCX claims. Furthermore, the Department interprets that the amendment in Section 301(b) of Public Law 102-164 applies to previously denied UCX claims of reservists who had less than 180 but at least 90 days of continuous active duty in a reserve status, for weeks of unemployment beginning on or after November 15, 1991. Although the application of the UCX amendments in sections 301(a) and 301(b) to unexpired UCX amendments shall only be applicable for weeks of unemployment beginning on or after November 15, 1991 as provided by section 301(c).

The general rule is that State law is followed on procedural matters (i.e., claims filing, determinations, and redeterminations) unless inconsistent with Federal law. Here, it would be inconsistent with Federal law to apply State time limitations on claims filing, determinations, and redeterminations. It is Congress's intent to cover Desert Shield and Desert Storm veterans under the UCX amendments made by section 301 of Public Law 102-164. The effective date of the UCX amendments as provided in the language of section 301(c) carries out the Congressional intent. Section 301(c) clearly provides that the UCX amendments apply to weeks of

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unemployment, rather than to new claims filed, on and after the date of enactment. Furthermore, the Congressional Record regarding these amendments expresses Congress's intent to include Desert Shield and Desert Storm veterans in the amendments' coverage. The only way to extend the UCX amendments to Desert Shield and Desert Storm veterans is to require States and cooperating State agencies to redetermine all UCX claims for claimants who have an unexpired benefit year after November 15, 1991. Thus, this Federal law authority will ensure a uniform application of the UCX amendments as intended by Congress. States and cooperating State agencies will also redetermine previously denied UCX claims of reservists who had less than 180 but at least 90 days of continuous active duty in a reserve status if such claimant would have an unexpired benefit year after November 15, 1991. Further, States and cooperating State agencies will not apply State law claims filing provisions to reservists who did not previously file UCX claims because they had less than 180 days of continuous active duty in a reserve status.

Once a UCX claimant meets the qualifying requirements of 5 U.S.C. 8521, as amended by section 301 of Public Law 102–164, it is the Congressional intent to treat UCX claimants for weeks of unemployment beginning on or after November 15, 1991 under the same terms and conditions as apply to claimants covered under the applicable State UI law.

The UCX amendments contained in section 301 of Public Law 102–164 do not require a revision to the existing UCX State agreements.

4. Amendments and Operating Procedures to Implement the Amendments

a. Section 301(a)

Amended Law: Section 301(a) repeals 5 U.S.C. 8521(c) and thus removes the 4-week waiting period and 13-week maximum amount of UCX benefits payable in a benefit year. Therefore, the UCX waiting period and maximum amount of benefits payable in a benefit year will be the same as provided under the applicable State's UI law as if the claimant's "Federal service" and "Federal wages" had been included as employment and wages under the State law.

Administration: The amendment made by section 301(a) applies to all weeks of unemployment beginning on or after November 15, 1991. This means that the provisions of section 301(a) shall be applied to all UCX first (initial) claims filed for weeks of unemployment beginning on and after November 15, 1991. In addition, effective for weeks of unemployment beginning on or after November 15, 1991, States and cooperating State agencies, consistent with the requirements of section 5 of this GAL, shall apply the amendment of section 301(a) of Public Law 102–164 and redetermine all existing UCX claims in which the claimant's benefit year has not expired.

In applying the amendment of Section 301(a) to active UCX claims, the States and cooperating State agencies shall ensure that UCX claimants in active claims status (including those claimants currently serving the waiting period) receive a monetary redetermination reflecting the application of the amendment repealing 5 U.S.C. 8521(c)

In order to apply the amendment of section 301(a) to claimants having an unexpired benefit year, the States and cooperating State agencies shall take appropriate actions to identify and inform UCX claimants having an unexpired benefit year of the change in Federal law which could potentially result in additional eligibility for UCX claimants. Such actions should include a search of the agency's files and an announcement in newspapers of general circulation and other appropriate media. When the claimant files a claim for weeks of unemployment beginning on or after November 15, 1991, during an unexpired benefit year or during a period where benefits are affected by the monetary determination of the parent UCX claim (see EXAMPLE 6. in this section 4.a. of this directive), the claimant will be issued a monetary redetermination reflecting the application of the amendment repealing 5 U.S.C. 8521(c). The procedures contained in EXAMPLE 6. of this Section 4.a. reflect the Congressional intent to treat UCX claimants under the same terms and conditions as apply to claimants covered under applicable State law for weeks of unemployment beginning on and after November 15, 1991.

Examples—*1. Ex-servicemember files UCX first (initial) claim on November 12, 1991.* The State shall redetermine the claim and apply the UCX amendments made by section 301 of Public Law 102–164 for all weeks of unemployment beginning on and after November 15, 1991.

2. Ex-servicemember files UCX first (initial) claim on November 18, 1991. The State shall apply the amendments made by section 301 of Public Law 102–164 for all weeks of unemployment beginning on and after November 15, 1991.

3. UCX claimant on November 15, 1991, has served 2 weeks of the former UCX 4-week waiting period. State law has a one-week waiting period. The State will issue the claimant a monetary redetermination applying section 301(a) of Public Law 102–164 for all weeks of unemployment beginning on and after November 15, 1991. The claimant would have already served the applicable State law waiting period, so if the claimant is otherwise eligible, UCX payments shall begin with the first week of unemployment beginning on or after November 15, 1991.

4. UCX claimant has served the former UCX 4-week waiting period and has received 5 weeks of benefits for weeks of unemployment beginning before November 15, 1991, and is still unemployed. The State will issue the claimant a monetary redetermination applying section 301(a) of Public Law 102–164 for all weeks of unemployment beginning on and after November 15, 1991. However, no payments of UCX shall be made for any weeks of the waiting period since such weeks occurred prior to the effective date of Section 301(a).

5. UCX claimant has exhausted 13-week entitlement before November 15, 1991, is still unemployed, and has an unexpired benefit year. Upon the filing of a claim by the claimant, the State will issue the claimant a monetary redetermination applying section 301(a) of Public Law 102–164 for all weeks of unemployment beginning on and after November 15, 1991. Also, if eligible, the State will issue UCX payments to the claimant for all weeks of unemployment until the end of the claimant's monetary entitlement or benefit year ending date, whichever occurs first.

6. UCX claimant has exhausted the monetary entitlement after March 1, 1991, and the benefit year before November 15, 1991, and is still unemployed. The claimant is not subject to the UCX amendments in so far as being eligible for additional weeks of UCX. However, the claimant may be eligible for emergency unemployment compensation (EUC) benefits (in a "reachback" State) if otherwise entitled. In such case, the State shall redetermine the claim applying the UCX amendments in section 301(a) of Public Law 102–164 to determine the number of weeks that the claimant would have received UCX as if his/her benefit year had not expired. This redetermined (but unpaid) claim will then be used in computing the EUC entitlement under section 102(b)(1) of Public Law 102–164.

b. Section 301(b)

Amended Law: Section 301(b) amends 5 U.S.C. 8521(a) by reducing the amount of active duty needed in a reserve status from 180 continuous days to 90 continuous days in order for such period of active duty in a reserve status to be considered "Federal service" for UCX qualifying purposes. No other provisions of 5 U.S.C. 8521(a) are amended by section 301(b). Therefore, this amendment only affects reservists who serve in active duty in a reserve status.

Administration: The amendment made by section 301(b) applies to all weeks of unemployment beginning on or after November 15, 1991. This means that the amendment made by section 301(b) shall be applied to all UCX first (initial) claims for weeks of unemployment beginning on and after November 15, 1991. In addition, effective for weeks of unemployment beginning on or after November 15, 1991, States and cooperating State agencies, consistent with the requirements of section 5. of this GAL, shall: (1) Take UCX first (initial) claims for weeks of unemployment beginning on or after November 15, 1991 for reservists who had not previously filed a UCX claim because they had less than 180 days continuous service in active duty in a reserve status; and (2) redetermine all UCX claims denied to reservists solely because the claimant had less than 180 but at least 90 days of continuous service. This claims filing and redetermination requirement shall be applied to reservists who have (or would have had but for not filing a UCX claim because of the former 180-day requirement) an unexpired benefit year for the first week of unemployment beginning on or after November 15, 1991. State law provisions regarding back dating of claims shall be applied to the UCX first (initial) claims filed by reservists as the result of the amendment made by section 301(b).

In order to apply the amendment made by section 301(b) to reservists whose UCX claims were denied solely because they had less than 180 but at least 90 days of continuous service, the States and cooperating State agencies shall take appropriate actions to identify and inform those denied UCX claimants. Such actions should include the search of agency files. In addition, States and cooperating State agencies shall announce in newspapers of general circulation and other appropriate media the application of the amendment made by section 301(b). This is especially important because many reservists may have not previously filed UCX claims because they did not have 180 continuous days of active duty in a reserve status. It is also important that the newspaper and media announcements include information about how certain State law claims filing and redetermination time limitations provisions are not applicable to UCX claims filed by reservists affected by the amendments made by section 301(b).

Examples—1 UCX claim filed by a reservist in April 1991, was denied solely because claimant served less than 180 (but more than 90 days) in continuous active duty in a reserve status. (If the claim had been approved, the benefit year would have expired April 1992.) The claimant is currently unemployed. The State shall search its files to attempt to locate and contact the claimant. The State shall also announce in newspapers and other media the application of the amendment made by section 301(b). When the previously denied claimant files a claim, such claim will be redetermined applying the amendment made by section 301(b), and, if eligible, UCX payments shall be made for weeks of unemployment which begin on and after November 15, 1991, for the remainder of the claimant's benefit year.

2. UCX claim never filed by a reservist who was discharged from active duty in a reserve status in April 1991 because the reservist has less than 180 continuous days of service. (If the claim had been approved, the benefit year would have expired April 1992.) The reservist is currently unemployed. The State shall announce in newspapers and other media the application of the amendment made by section 103(b) When the reservist files a UCX first (initial) claim, such claim will be determined by applying the amendment made by section 301(b), and, if eligible, UCX payments shall be made for weeks of unemployment which begin on and after November 15, 1991, for the remainder of the claimant's benefit year. The provisions of the applicable State law will be applied regarding back dating of the claimant's UCX first (initial) claim.

3. UI claim filed by a reservist in June 1991, based solely on civilian employment prior to activation for Operation Desert Storm. Military service and wages were not assignable because the claimant served less than 180 (but more than 90 days) in continuous active duty in a reserve status. The claimant is currently unemployed. The State shall search its files to attempt to locate and contact the claimant. The State shall also announce in newspapers and other media the application of the amendment made by section 301(b). When the claimant files a claim for a week of unemployment beginning on or after November 15, 1991, such claim will be redetermined applying the amendment made by section 301(b). If eligible, the claimant will have a joint UCX/UI claim for weeks of unemployment beginning on and after November 15, 1991, for the remainder of the claimant's benefit year. The State shall make appropriate adjustments to the benefit charges of the joint UCX/UI claim reflecting the application of the amendment made by section 301(b) for weeks of unemployment beginning on and after November 15, 1991, for the remainder of the claimant's benefit year.

4. Joint UCX/UI claim filed by a reservist in June 1991 is denied because the claimant served less than 180 (but more than 90 days) in continuous active duty in a reserve status. The claimant had insufficient civilian employment and wages prior to activation in order to monetarily qualify for UI. The individual is currently unemployed. The State shall search its files to attempt to locate and contact the claimant. The State shall also announce in newspapers and other media the application of the amendment made by section 301(b). When the claimant files an initial claim (either UCX or joint UCX/UI) on or after November 15, 1991, the State shall apply the amendment made by section 301(b) to determine if the claimant is entitled to UCX (or joint UCX/UI) benefits. The State shall apply the provisions of 5 U.S.C. 8521(a), as amended by section 301(b) of Public Law 102–164, and the provisions of applicable State law (i.e., base period wage and employment requirements) to determine if the claimant is eligible for UCX (or joint UCX/UI) benefits.

c. Section 301(c)

Amended Law: Provides that the amendments contained in section 301 of Public Law 102–164 are effective for weeks of unemployment beginning on or after November 15, 1991

Administration: States and cooperating State agencies shall take appropriate action to ensure that the UCX amendments in section 301 of Public Law 102–164 only apply to weeks of unemployment beginning on or after November 15, 1991 This means that all UCX determinations, redeterminations, and decisions on appeal which involve weeks of unemployment beginning on and after November 15, 1991 shall reflect the UCX amendments contained in section 301 and the Department's controlling instructions contained in this GAL. UCX determinations, redeterminations, and decisions on appeal involving weeks of unemployment beginning before November 15, 1991 shall not reflect the UCX amendments contained in section 301. Therefore, any determinations or redeterminations issued as required by sections 4.a. and 4.b. of this GAL shall only be applied to weeks of unemployment beginning on or after November 15, 1991. Newspaper and media announcements will contain language concerning the effective dates of the UCX amendments.

5. Claims Filing, Determinations, and Redeterminations

a. *Claims filing.* First (initial) and weekly claims for UCX shall continue to be filed in the established manner, applying the State law on procedural matters (except where inconsistent with the provisions of Federal law, regulations at 20 CFR part 614, and the operating instructions issued by this Department), and applying the provisions of Federal law on substantive matters, including the UCX amended provisions of Public Law 102–164, regulations at 20 CFR part 614, the controlling operating instructions and regulations issued by this Department, including paragraphs (a) and (b) of 20 CFR 614.5 and paragraph (a) of 20 CFR 614.6.

b. *Determinations.* Determinations for UCX shall continue to be made in the established manner, applying the State law on procedural matters (except where inconsistent with the provisions of Federal law regulations at 20 CFR part 614, and the operating instructions issued by this Department), and applying the provisions of Federal law on substantive matters, including the amended UCX provisions of Public Law 102–164, regulations at 20 CFR part 614, the controlling operating instructions and regulations issued by the Department, including paragraphs (a), (b), (d), (e), (f), and (g) of 20 CFR 614.6.

c. *Redeterminations.* Redeterminations of claims for UCX shall continue to be made in the established manner applying the State law on procedural matters (except where inconsistent with the provisions of Federal law, regulations at 20 CFR part 614, and the operating instructions issued by this Department), and applying the provisions of Federal law on substantive matters, including the amended UCX provisions of Public Law 102–164, regulations at 20 CFR part 614, and the controlling operating instructions and regulations issued by the Department, including paragraphs (c), (d), (e), (f), and (g) of 20 CFR 614.6.

For these purposes, the State UI law includes judicial decisions of the courts of the State in comparable UI cases as well as State statutory provisions, and thus is the same as the "State law" which is relevant for conformity and compliance purposes under title III of the Social Security Act and the Federal Unemployment Tax Act. However, the authority to file claims, and to issue determinations and redeterminations applying the UCX amendments uniformly derives from section 301(c) of Public Law 102–164 rather than State law. No departure from these rules shall be undertaken in any circumstances without the prior approval of the Department of Labor.

6. *Fiscal Instructions: Requesting and Certifying UCX Administrative Funds.* UI administrative requirements relating to the filing of UCX first (initial) claims and the redetermination of UCX claims as a result of the requirement of section 301 of Public Law 102–164 will be funded through the contingency funding process.

a. Staff years earned for UCX first (initial) claims as the result of section 301(b) of Public Law 102–164 will be computed using the States regular initial claim Minutes Per Unit (MPU). This information should be included on line 1 of the regular program UI–3 worksheet, Section B. Staff years used for this activity should be included on line 1, section A.

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b. Staff years earned for redetermination of UCX claims as the result of section 301 of Public law 102–164 will be computed by using an MPU value of no more than 25 minutes; States have the option to use a lesser value MPU if they deem appropriate. This information should be included on line 5 of the regular program UI–3 worksheet, section B. Staff years used for this activity should be included on line 1, section A.

7. *Reporting instructions.* Weeks claimed, nonmonetary determinations, and appeals resulting from these redeterminations will be included with the regular UI workload reports and on the regular UI–3 worksheet. UCX first (initial), weeks claimed, nonmonetary determinations, and appeals will be included in the regular UI workload reports and on the regular UI–3 worksheet.

8. *Drawdowns from the unemployment trust fund.* Drawdown procedures for UCX payments are not changed. Funds must be requisitioned via the State Unemployment Data System (SUDS). The funds will be transferred to the State benefit payment accounts in the normal fashion (via FEDWIRE, no later than the day after the request).

9. *Action required.* States are required to implement the provisions of the UCX amendments contained in section 301 of Public Law 102–164 in accordance with the controlling operating instructions contained in this GAL. States are required to:

a. Inform all appropriate staff of the requirements in this GAL.

b. Take appropriate actions to identify and inform UCX claimants having unexpired benefit years of the Department's interpretation of the requirements of section 301(a) of Public Law 102–164.

c. Announce in a newspaper of general circulation and appropriate media the enactment and the Department's interpretations of the UCX amendments contained in section 301 of Public Law 102–164. The announcements shall include mention of the authority under section 301 of Public Law 102–164 and State UI law to issue redeterminations applying the UCX amendments as provided in sections 4. and 5. of this GAL.

d. Take appropriate actions to redetermine all UCX claims with respect to which the decisions on ex-servicemembers eligibility are inconsistent with the operating instructions in this GAL, and take appropriate action to correct any real or potential underpayments of UCX benefits.

e. Take appropriate actions to apply the amendments of section 301(a) and section 301(b) to all UCX initial claims for weeks of unemployment beginning on or after November 15, 1991

10. *Inquiries.* Direct inquiries pertaining to this GAL to appropriate Regional Office.

[FR Doc. 91–31135 Filed 12–27–91 8:45 am]

BILLING CODE 4510–30–M

MARTIN LUTHER KING FEDERAL HOLIDAY COMMISSION

Business Meeting

December 24, 1991

Notice of a business meeting of The Martin Luther King, Jr. Federal Holiday Commission.

The Martin Luther King, Jr. Federal Holiday Commission will hold a business meeting on Monday, January 13, 1992, from 2 p.m. to 4 p.m. in the Rayburn House Office Building, rm. 2168 (Gold Room). Seating is limited to the space available.

Leonard Burchman,

Treasurer.

[FR Doc. 91–31122 Filed 12–27–91, 8:45 am]

BILLING CODE 4210–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506:

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on 202/786–0282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated September 9, 1991, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of title 5, United States Code

1. *Date:* January 10, 1992
Time: 9 a.m. to 5 p.m.
Room:: 315
Progran This meeting will review Reference Materials Tools and Guides applications in American Studies, submitted to the Division of Research Programs for projects beginning after July 1, 1992.

2. *Date:* January 13, 1992
Time: 9 a.m. to 5 p.m.
Room: 315
Program: This meeting will review Reference Materials Tools and Guides applications in Asia and Middle Eastern Studies, submitted to the Division of Research Programs, for projects beginning after July 1, 1992.

3. *Date:* January 13–14, 1992
Time: 8:30 a.m. to 5 p.m.
Room: 415
Program: This meeting will review applications for Preservation and Access, submitted to the Division of Preservation and Access, for projects beginning after July 1 1992.

4. *Date:* January 16–17, 1992
Time: 8:30 a.m. to 5 p.m.
Room: 415
Program: This meeting will review applications submitted to the Humanities Projects in Museums and Historical Organizations program received during the December 6, 1991 deadline, submitted to the Division of Research Programs, for projects beginning after July 1, 1992.

5. *Date:* January 16–17, 1992
Time: 8:30 a.m. to 5 p.m.
Room: 430
Program: This meeting will review applications for Preservation and Access programs, submitted to the Division of Preservations and Access, for projects beginning after July 1, 1992.

6. *Date:* January 17, 1992
Time: 9:00 a.m. to 5 p.m.
Room: 315
Program: This meeting will review Reference Materials Tools and Guides applications in American Studies, submitted to the Division of Research Programs, for projects beginning after July 1, 1992.

7. *Date:* January 21, 1992
Time: 8:30 a.m. to 5 p.m.
Room. 315
Program. This meeting will review applications to the Humanities, Science and Technology Program for project in History of Science, Technology and Medicine, submitted to the Division of Research Programs, for projects beginning after July 1, 1992.

8. *Date:* January 23, 1992
Time: 9 a.m. to 5 p.m.
Room: 315
Program: This meeting will review Reference Materials Tools and Guides applications in Literature, submitted to the Division of Research Programs, for projects beginning after July 1, 1992.

9. *Date:* January 23–24, 1992
Time: 8:30 a.m. to 5 p.m.
Room: 415
Program: This meeting will review applications submitted to the Humanities Projects in Museums and Historical Organizations programs received during the December 6, 1991 deadline, submitted to the Division of Research Programs, for projects beginning after July 1, 1992.

10. *Date:* January 24, 1992
Time: 8:30 a.m. to 5 p.m.
Room: 315
Program: This meeting will review applications to the Collaborative Projects and Humanities, Science, and Technology Programs for projects in Philosophy, Ethics, and Religious Studies, submitted to the Division of Research Programs, for projects beginning after July 1, 1992.

11. *Date:* January 27, 1992
Time: 8:30 a.m. to 5 p.m.
Room: 315
Program: This meeting will review applications to the Collaborative Projects Program for projects in Old World Archaeology, submitted to the Division of Research Programs, for projects beginning after July 1, 1992.

12. *Date:* January 28, 1992
Time: 9 a.m. to 5 p.m.
Room: 315
Program: This meeting will review Reference Materials Tools and Guides applications in European Studies and General Reference Tools, submitted to the Division of Research Programs, for projects beginning after July 1, 1992.

13. *Date:* January 30–31, 1992
Time: 8:30 a.m. to 5 p.m.
Room: 415
Program: This meeting will review applications submitted to the Humanities Projects in Museums and Historical Organizations program received during the December 6, 1991, submitted to the Division of Research Programs, for projects beginning after July 1, 1992.

14. *Date:* January 31, 1992
Time: 8:30 a.m. to 5 p.m.
Room: 315
Program: This meeting will review applications to the Collaborative Projects Program for projects in Literature, Film, Theater, and Art, submitted to the Division of Research Programs, for projects beginning after July 1, 1992.

15. *Date:* January 31, 1992
Time: 8:30 a.m. to 5 p.m.
Room: 430
Program: This meeting will review applications for Preservation and Access, submitted to the Division of Preservation and Access, for projects beginning after July 1, 1992.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 91–31142 Filed 12–27–91; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–348 and 50–364]

Alabama Power Co.; Joseph M. Farley Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. NPF–2 and NPF–8 issued to Alabama Power Company (the licensee) for operation of Joseph M. Farley Nuclear Plant, Units 1 and 2 (FNP), located in Houston County, Alabama.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would include provisions in Technical Specifications (TS) 5.3, Reactor Core, which allow for an increase in reload fuel enrichment from 4.3 weight percent U–235 to a nominal 5 weight percent U–235, and a change in reactor core fuel type to include Westinghouse Optimized Fuel Assemblies (OFA) and VANTAGE–5 fuel assemblies, in addition to the currently authorized Westinghouse Low Parasitic (LOPAR) fuel. In addition, TS 5.6, Fuel Storage, is revised to allow for storage of Westinghouse OFA and VANTAGE–5 fuel assemblies.

The proposed action is in accordance with the licensee's application for amendment dated July 1, 1991, as supplemented October 18, 1991.

The Need for the Proposed Action

The proposed changes are needed so that the licensee can use higher fuel enrichment to provide the flexibility of extending the fuel irradiation and to permit operation for longer fuel cycles.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revisions would permit use of fuel enrichment to a nominal 5.0 weight percent Uranium 235. The safety considerations associated with reactor operation with higher enrichment and extended irradiation have been evaluated by the NRC staff. The staff concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The higher enrichment, with fuel burnup to 60,000 magawatt days per metric ton Uranium, may slightly change the mix of fission products that might be released in the event of a serious accident, but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor operation with higher enrichment and extended irradiation, the proposed changes to the TS involve systems located within the restricted area, as defined in 10 CFR part 20. They do not affect nonradiological plant effluents and have no other environmental impact.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation were published and discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988, and published in the **Federal Register** (53 FR 30355) on August 11, 1988. As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may, in fact, be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c).

Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any other alternative would have equal or greater environmental impacts and need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce the environmental impact of plant operations and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously

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consideration in the Final Environmental Statement related to operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee s request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated July 1, 1991, as supplemented by letter dated October 18, 1991, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, P.O. Box 1369, Dothan, Alabama 36302.

Dated at Rockville, Maryland, this 20th day of December 1991.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate II–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–31127 Filed 12–27–9 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–245]

Northeast Nuclear Energy Co.; Millstone Nuclear Power Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 55.59(a)(2) to Northeast Nuclear Energy Company (NNECO/the licensee), for Millstone Nuclear Power Station, Unit 1, located in New London County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

Title 10 of the Code of Federal Regulations at § 55.59(a)(2) requires that all licensed reactor operators "Pass a comprehensive requalification written examination and an annual operating test." By application dated December 13, 1991, the licensee requested a 3-month extension to allow for the completion of the dynamic portion of the 1991 annual operating examination, for 14 licensed reactor operators, by March 31, 1992.

The proposed action is in accordance with 10 CFR 55.11, Specific Exemptions, and is based upon the information provided to the NRC in the licensee s request dated December 13, 1991

The Need for the Proposed Action

The proposed action will have no incremental impact relative to current practice because the exemption will permit the subject individuals to continue their licensed operator status at Millstone Unit 1.

Alternatives to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts attributed to this facility and would result in the subject individuals losing their status as licensed operators at Millstone Unit 1

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement (FES) for Millstone Unit 1 dated June 1973.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee s request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption date December 13, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, the 23rd day of December 199

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–31126 Filed 12–27–01; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Subcommittee on Planning and Procedures; Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on January 8, 1992, room P–422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, January 8, 1992—4:30 p.m. until 6:30 p.m.

The Subcommittee will discuss items proposed for consideration by the full Committee and other issues as appropriate.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Raymond F. Fraley (telephone 301/492–4516) between 7:30 a.m. and 4:15 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: December 23, 1991

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 91–31125 Filed 12–27–91, 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8027–MLA Sequoyah Fuels Corp. (Source Materials License No. SUB–1010)]

Receipt of Supplemental Petition for Director's Decision; Sequoyah Fuels Corp.

Notice is hereby given that by Supplemental Petition for Emergency and Remedial Relief dated November 15, 1991, Kathy Carter-White, Esq., on behalf of Citizens' Action for a Safe Environment (CASE), requested the U.S. Nuclear Regulatory Commission (NRC) to (1) Issue a temporary order staying the restart of Sequoyah Fuels Corporation's (SFC) operation of the Sequoyah Fuels facility (facility) under NRC License No. SUB–1010 and (2) revoke the license because of the "licensee s unfitness to operate a facility." (Supplemental Petition at 1). Petitioner seeks relief based on allegations of gross negligence in the operation of the facility, willful violations of License SUB–1010, erosion of licensing conditions to a meaningless level, and SFC ignoring such conditions as have been imposed until absolutely forced to fix things. Specifically, the Petitioner alleges that:

(1) The name change from "New Sequoyah Fuels Corporation" to "Sequoyah Fuels Corporation" was intended to shield Sequoyah Fuels International, the holding company, from liability for the acts of Sequoyah Fuels Corporation—the licensee in prior years; as a result, in the event of a forced cleanup, attorneys responsible for identifying primarily responsible parties will have a tougher time of properly identifying the Parent Corporation.

(2) The segregation of the process laboratory from the environmental laboratory results in an isolated testing environment not accurately reflecting the true radiological conditions at the facility and is an admission that background levels are so high as to influence environmental samples;

(3) SFC withdrew its plan for redrafting its "Solid Waste" plan and notice was not given to interested parties of the revision;

(4) A March 12, 1990, requested revision substituted Hydrogen (H_2) for dissociated ammonia in the Barium Treated Uranium Raffinate Solvent Extract being soil farmed on the 10,000 acre Monsanto Ranch, thereby significantly increasing fire risk within the facility; in addition, because the ammonia was the beneficial component in the Raffinate, surface application should be regulated as a waste stream and not as a beneficial "byproduct" of the process;

(5) The September 7, 1990, license amendment request to reduce SFC's onsite emergency exercises from annual to biennial is unwarranted, in light of the 1986 release of uranium hexafluoride into the atomsphere, because SFC did not identify what percentage of Plan cooperating agency personnel have never been through a drill; and

(6) On 9/11/89, Chapter 5 revisions were made, which (A) Do not appear in the license and increased the facility's permissible effluent discharge of Fluoride in violation of the Clean Water Act, (B) set Nitrate discharge levels at double the maximum permissible level allowed for public and private drinking water supplies, and (C) reduced monitoring frequency for wells, allowing the facility to continue to weaken its permit with less frequent modifications.[1]

Because the Petition does not give any basis for the request for immediate relief, that portion of the request is denied. In addition, Items 1 through 6 above do not provide a basis for granting immediate relief. With regard to Item 1, the name change has no bearing on the safety of the facility. Items 2, 3, and 4 did not require licensing action and do not correctly characterize the changes that were actually made by the licensee. The change in the emergency plan from annual to biennial drills, as alleged in Item 5, does not affect the safety of the facility during routine operations and is a change that was allowable under the current regulations. Item 6, concerning the revisions to Chapter 5, did not change any of the NRC-licensed discharge levels. The reduction in sampling frequency of monitoring wells does not affect the safety of plant operations. Therefore, the six items referred to by the Petitioner do not provide any basis for immediate relief. In addition, the Petitioner's request for immediate relief is moot in light of the "Order Modifying License (Effective Immediately) and Demand for Information" (Order) that the NRC issued on October 3, 1991 (56 FR 51421, October 11, 1991). The Order provides, in part, the SFC shall not operate the Sequoyah facility to produce Uranium Hexafluoride or Depleted Uranium Tetrafluoride until SFC obtains NRC approval of the plan and schedule to review the adequacy of the Health & Safety and Environmental Programs. The schedule is to indicate which procedures will be reviewed, revised (as necessary), and implemented prior to restart. (Order at section VI B)

The Staff will review the Supplemental Petition in accordance with 10 CFR 2.206 together with Petitioner's "Limited Appearance Intervention and Objection to Renewal" dated July 1, 1991, which the Atomic Safety and Licensing Board presiding over the Sequoyah Fuels Corporation license renewal proceeding (ASLBP No. 91–623–01–MLS) referred to the Staff pursuant to 10 CFR 2.1205(k)(2) (see 56 FR 43946, September 5, 1991). As provided by 10 CFR 2.206, appropriate action will be taken with regard to the Petition and Supplemental Petition within a reasonable time.

Copies of the Petition and the Supplemental Petition are available for inspection in the Commission s Public Document Room located at 2120 L Street, NW., Washington, DC 20555 and the Local Public Document Room, Stanley Tubbs Memorial Library, 101 E. Cherokee Street, Sallisaw, Oklahoma.

Dated at Rockville, Maryland, this 23d day of December 1991

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director Office of Nuclear Material Safety and Safeguards.

[FR Doc. 91–31130 Filed 12–27–91, 8:45 am]

BILLING CODE 7590–01–M

[1] In addition, Petitioner asked the Staff to inquire whether "Radium limits should not be set by Oklahoma, since Gross Alpha maximums would subsume these " Petitioner does not give further explanation of this matter

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[Docket No. 40–8027 Sequoyah Fuels Corp.; Sequoyah Fuels Facility License No. SUB–1010]

Receipt of Petition for Enforcement Action Against Sequoyah Fuels Corporation

Notice is hereby given that by Petition dated November 27, 1991, Diane Curran, on behalf of Native Americans for a Clean Environment and the Cherokee Nation, has requested that the Commission take immediatc enforcement action with regard to the Sequoyah Fuels Corporation (SFC) facility. Specifically, Ms Curran requests that the Commission immediately revoke the operating license for the Sequoyah Fuels facility or, in the alternative, withhold authorization to restart the plant until: (1) Completion of a formal adjudicatory hearing on whether the plant can be operated safely and in compliance with its license and NRC safety and environmental regulations; (2) access is provided to the Petitioners to certain internal SFC documents; (3) SFC undertakes a "truly independent" audit

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of its management and operations: and (4) SFC is required to complete and implement all changes to management and procedures that are necessary to assure safe operation of the facility. In addition, Ms. Curran requests that the NRC provide notice in the **Federal Register** of all proposed amendments to SFC's license, if and when SFC is permitted to resume operation.

By Commission Memorandum dated December 9, 1991, the Petition has been referred to the NRC staff for action pursuant to 10 CFR 2.206.

Ms. Curran alleges, as bases for these requests, that: (1) SFC's license renewal application contains material false statements of fact relating to ground water contamination at the site, and numerous documents indicate that SFC has long been aware of serious uranium contamination at the site that had the potential for offsite migration, but deliberately chose to ignore and withhold the information from the NRC; (2) the NRC's Order Modifying License (Effective Immediately) and Demand for Information (Issued October 3, 1991) constitutes the third time in five years that the NRC has cited SFC for a serious breakdown in plant management. however, the Order is inadequate to reasonably assure safe operation of the plant, and the experience of the past five years demonstrates that SFC is doomed to repeat its unsafe and environmentally hazardous practices until the basic causes of its poor environmental and safety record are resolved; (3) SFC has been given and wasted numerous chances to address and resolve its serious safety and environmental problems, at the expense of public safety and the environment, and, even now, it is not apparent that SFC has taken the NRC's enforcement action seriously.

By letter dated December 23, 1991, the Director, Office of Nuclear Material Safety and Safeguards (NMSS), has denied Ms. Curran's request for immediate action. As provided by § 2.206, appropriate action will be taken on the remainder of this request within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555 and the Local Public Document Room, Stanley Tubbs Memorial Library, 101 E. Cherokee Street, Sallisaw, Oklahoma.

Dated at Rockville, Maryland this 23 day of December 1991.

For the Nuclear Regulatory Commission
Robert M. Bernero,
Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 91-31129 Filed 12-27-91; 8:45 am]
BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of Approval of a Collection of Information Under the Paperwork Reduction Act; Form 5500 Series—Annual Report of Employee Benefit Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB extension of approval.

SUMMARY: The Pension Benefit Guaranty Corporation has requested that the Office of Management and Budget approve an extension of the expiration date of a currently approved information collection (1212-0026) without any change in the substance or in the method of collection. Current approval expires on February 29, 1992. The information collection is contained in the IRS/DOL/PBGC Form 5500 series. These forms are used by pension plan administrators to fulfill the requirements under section 4065 of ERISA and 29 CFR Part 2611 that an annual report be filed with the PBGC. The effect of this notice is to advise the public of the PBGC's request for OMB approval of this extension.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Management and Budget, Paperwork Reduction Project (1212-0026), Washington, DC 20503. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, suite 7100, 2020 K Street, NW., Washington, DC 20006, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Office of the General Counsel (Code 22500), 2020 K Street, NW., Washington, DC 20006, 202-778-8850 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) establishes policies and procedures for controlling the paperwork burdens imposed by Federal agencies on the public. The Act vests the Office of Management and Budget (OMB) with regulatory responsibility over these burdens, and OMB has promulgated rules on the clearance of collections of information by Federal agencies.

Section 4065 of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. 1365) and 29 CFR part 2611 require the administrator of a defined benefit pension plan to file an annual report with the Pension Benefit Guaranty Corporation (PBGC) in order that PBGC may monitor the plans' yearly operations insofar as they relate to the termination insurance program under title IV of ERISA. Other provisions in ERISA and the Internal Revenue Code (29 U.S.C. 1021(b)(4) and 26 U.S.C. 6058) require that annual reports be filed by administrators of employee benefit plans (including defined benefit pension plans) with the Department of Labor (DOL) and the Internal Revenue Service (IRS) for similar monitoring with respect to the ERISA requirements within their respective jurisdictions. DOL, IRS, and PBGC have established joint forms (the Form 5500 series) to be used for those annual reports.

When the appropriate form in the 5500 series is filed with the IRS, the filing requirement for each of the three agencies is satisfied; each agency utilizes the information applicable to it. In addition to general identifying information, the PBGC uses the coverage information reported on Form 5500 or Form 5500-C/R, and the actuarial information on Schedule B attached to the form, to fulfill its monitoring role.

OMB has previously approved the PBGC's collection of information contained in the Form 5500 series; PBGC is requesting an extension of that approval without any change in the substance or method of collection. The PBGC estimates that it will receive 146,524 reports annually, that the response to the PBGC's portion of the forms will take an average of .21 hours, and that the annual burden imposed by this information collection is 31,164 hours.

Issued at Washington, DC, this 24th day of December 1991.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 91-31159 Filed 12-27-91; 8:45 am]
BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30109; File No. SR-NASD-91-54]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Deposit of Adjournment Fees in Arbitration Proceedings

December 20, 1991.

On November 1, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted to the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder.[2] The proposal amends section 30(b) of the NASD's Code of Arbitration Procedure ("Code") [3] to require the deposit of adjournment fees with any request for adjournment.

Notice of the proposed rule change, together with its terms of substance was provided by the issuance of a Commission release (Securities Exchange Act Release No. 29933, November 13, 1991) and by publication in the **Federal Register** (56 FR 58597, November 20, 1991). No comments were received on the proposal. This order approves the proposed rule change.

Section 30 of the Code permits the arbitrators to adjourn any arbitration hearing on their own initiative or upon the request of any party to the arbitration proceeding. Section 30 also requires the party requesting adjournment to deposit a fee with the NASD equal to the initial deposit of hearing session fees for the first adjournment and twice the initial deposit of hearing session fees, not to exceed $1,000, for a subsequent adjournment request by that party. The hearing session fees are provided in sections 43 and 44 of the Code.[4]

Prior to the approval of the instant rule change, the party requesting adjournment was not required to deposit the applicable fee until the request for an adjournment was granted. The NASD has stated, however, that once an adjournment is granted, there is little or no inducement to pay the fee. Indeed, the NASD states that in many cases, after an adjournment is granted, the requesting party does not pay the fee voluntarily and that its staff is then forced to pursue collection of the fee. The NASD believes that the amendment to section 30 of the Code will alleviate the collection burden on the NASD by requiring the adjournment fee to be paid at the time a request is made.[5]

The NASD has stated that it is aware that the rule change may impose a hardship on some arbitration parties. Therefore, the rule change will amend section 30 to permit the Director of Arbitration to waive the deposit fee upon a showing of financial hardship.

Finally, the NASD intends to apply the instant rule change to all requests for adjournment made after the date of Commission approval of the rule change. The NASD believes that because the rule change does not impose any additional or different fee on the parties to an arbitration proceeding, but merely changes the timing of the fee collection, that application of the rule change to pending actions will not impose any undue burden.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 15A(b)(5) and 15A(b)(6) of the Act [6]. Pursuant to section 15A(b)(5), the NASD must "provide for the equitable allocation of reasonable dues, fees and other charges among members, issuers and other persons using any facility or system which the [A]ssociation operates or controls." The instant rule change will help ensure that parties to arbitration proceedings pay for the services provided by the NASD, and that such fees will be allocated equitably. Section 15A(b)(6) of the Act requires that the NASD's rules, among other things, be designed to prevent fraudulent and manipulative practices, promote just and equitable principles of trade, and provide for the protection of investors. The rule change approved by this order will help ensure that the NASD continues to be able to provide an effective arbitration program that promotes the goals of section 15A(b)(6). The Commission believes, for the reasons stated above, that the proposed rule change satisfies these stutatory requirements.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[7]

Jonathan G. Katz,
Secretary

[FR Doc. 91-31061 Filed 12-27-91; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-30113; File No. SR-NASD-91-70]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Extension of the NASD's Policy Statement on Market Closings

December 20, 1991.

Pursuant to section 19(b)(1), of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 19, 1991, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is filing this proposed rule change pursuant to section 19(b)(3)(A)(i) of the Act to extend its Policy Statement on Market Closings ("Statement" or "Policy Statement"), adopted pursuant to article VII, section 3 of the NASD By-Laws, to January 31, 1992. The Policy Statement will expire on December 31, 1991. The next meeting of the NASD Board of Governors ("Board") is on January 20 and 21, 1992. The NASD is filing this proposed rule change in order to provide an opportunity for the Board to consider whether to extend the Statement to December 31, 1992. If Board approval is obtained for an extension of the Policy, the NASD will file a proposed rule change pursuant to section 19(b)(2) of the Act.

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[1] 15 U.S.C. 78s(b)(1) (1988).
[2] 17 CFR 240.19b-4 (1991).
[3] NASD Securities Dealers Manual, Code of Arbitration Procedure, section 30, CCH, ¶ 3730.
[4] NASD Securities Dealers Manual, Code of Arbitration Procedure, sections 43 and 44, CCH, ¶¶ 3743 and 3746.
[5] Section 30 is also being amended to indicate that if the request for adjournment is not granted, the deposit will be refunded.
[6] 25 U.S.C. 78o-3 (1988).
[7] 17 CFR 200.30-3(a)(12) (1991).

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at this places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Policy Statement provides that the Board has determined that, at times when other major securities markets initiate marketwide trading halts in response to extraordinary market conditions, the NASD will upon request form the Commission, act to halt domestic trading in all securities quoted in the NASDAQ system and domestic trading in equity or equity-related securities in the over-the-counter market. In October 1988, the Commission approved proposals submitted by the American Stock Exchange ("Amex"), Boston Stock Exchange ("BSE") Chicago Board Options Exchange ("CBOE"), Cincinnati Stock Exchange ("CSE"), Midwest Stock Exchange ("MSE"), New York Stock Exchange ("NYSE"), Philadelphia Stock Exchange ("PHLX") and Pacific Stock Exchange ("PSE") (collectively, "the Exchanges") that provided for uniform circuit breaker procedures during volatile market conditions.[1] Specifically, the circuit breaker rules provide that trading in all markets will halt for one hour if the Dow Jones Industrial Average ("DJIA") declines 250 points or more from its previous day's closing level and, thereafter, trading will halt for an additional two hours if the DJIA declines 400 points from its previous day's closing value.[2] The circuit breaker mechanism was an important part of the measures adopted by the Exchanges to address market volatility concerns in the wake of the October 1987 Market Break. These circuit breaker mechanisms are still in effect today.[3]

The circuit breaker mechanisms were enacted in the wake of the October 1987 Market Break. Both the Report of the Presidential Task Force on Market Mechanisms ("Brady Report") and the Working Group's Interim Report [4] recommended that coordinated trading halts and reopening procedures be developed that would be implemented in all U.S. markets for equity and equity related products during large rapid market declines.[5] In response, the SROs submitted proposals to implement circuit breaker procedures that are designed to substitute planned trading halts for unplanned and destabilizing market closings. In addition, the stock index futures exchanges have implemented parallel circuit breakers that were approved by the Commodity Futures Trading Commission on a permanent basis.

The NASD believes the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, as the Policy Statement is designed to foster cooperation and coordination with the Commission and the other self-regulatory organizations engaged in regulating the U.S. securities markets.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Since the proposed rule change concerns an extension of a stated policy or practice of the NASD, it has become effective immediately upon filing pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to file No. SR–NASD–91–70 and should be submitted by January 21, 1992.

For the commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–31062 Filed 12–27–91; 8:45 am]

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[1] See Securities Exchange Act Release Nos. 26440 (January 10, 1989) 54 FR 1830 (CSE), 26386 (December 22, 1988) 53 (PSE); 26357 (December 14, 1988) 53 FR 51182 (BSE); 26218 (October 26, 1988) 53 FR 44137 (MSE); 26198 (October 19, 1988) 53 FR 41637 (Amex, CBOE, NASD and NYSE).

[2] If the 250-point trigger is reached within one hour of the scheduled close of trading for a day, or if the 400-point trigger is reached within two hours of the scheduled close of the trading day, trading will halt for the remainder of the day. If, however, the 250-point trigger is reached between one hour and one-half hours before the scheduled closing, or if the 400-point trigger is reached between two hours and one hour before the scheduled closing, the Exchanges would retain the power to use abbreviated reopening procedures either to permit trading to reopen before the scheduled closing or to establishing closing prices.

[3] See Securities Exchange Act Release Nos. 29868 (October 28, 1991), 56 FR 56535 (Amex, BSE, MSE, NYSE, and PHLX); 26440 (January 10, 1989) 54 FR 1830 (CSE); and 26366 (December 16, 1988) 53 FR 51942 (CBOE and PSE).

[4] The Working Group on Financial Markets was established by the President in March 1988 to provide a coordinating framework for consideration, resolution, recommendation, and action on the complex issues raised by the market break in October 1987. The Working Group consists of the chairmen of the Commission, Board of Governors of the Federal Reserve System and the CFTC, and the Under Secretary for Finance of the Department of the Treasury.

[5] In particular, the Working Group recommended a one-hour trading halt if the DJIA declined 250 points from its previous day's closing level, and a subsequent two-hour trading halt if the DJIA declined 400 points below its previous day's closing level. The Working Group also recommended that the NYSE use reopening procedures after these halts, similar to those used on Expiration Fridays, that are designed to enhance the information made public about market conditions.

[Release No. 34–30111; File No. SR–NASD–91–69]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Credit Against the Annual Assessment on Gross Income

December 20, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 17, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing an assessment imposed exclusively on its members under section 19(b)[(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing two rule changes to: (1) Advise that the NASD, during 1992, may amend the amount of the credit to the member provided under section 1, Schedule A to the NASD's By-Laws, such amendment to be applicable to the entire calendar year 1992; and (2) amend section 1, Schedule A to the NASD's By-Laws to change the effective period of the credit from calendar year 1991 to calendar year 1992.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In accordance with the NASD's shift from a fiscal to a calendar budget year in 1991, the NASD has determined that member assessments should be based upon gross income reported for the calendar or fiscal year immediately preceding the NASD's calendar budget year. Because the first assessment invoices are sent to NASD members prior to the receipt of final gross income reports, the invoices will be based upon the most recent gross income reports available. After final gross income reports for 1991 are received from the members, subsequent assessment invoices will be adjusted so that the 1992 assessment is based upon 1991 gross income. The NASD may determine, however, after receipt of final gross income reports for 1991, that it is necessary to amend the amount of the credit set forth in section 1(d) of Schedule A to the By-Laws which is currently fifty percent (50%). Any amendment to the credit would be applicable to the entire calendar year 1992.

The NASD is also proposing to amend section 1(d) of Schedule A to change the effective period of the credit from calendar year 1991 to calendar year 1992.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act, which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among issuers and other persons using any facility or system which the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of Rule 19b–4 thereunder in that it establishes or changes an assessment imposed exclusively on the NASD's members.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 21, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–31063 Filed 12–27–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30114; File No. SR–NASD–91–67]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Subscription Charge for the Firm Access Query System

December 20, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 16, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association")

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filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Section 9 of Schedule A to the NASD By-Laws relating to subscription charges for the Firm Access Query System ("FAQS"). Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

Schedule A

Section 9—Subscription Charges for Firm Access Query System (FAQS)

(a) Each firm electing to subscribe to the Firm Access Query System (FAQS) will be assessed a user fee consisting of three components (1) a monthly data base access charge, (2) an hourly usage fee, and (3) a charge per 1,000 characters ("kilocharacter") of information sent or received. The fee schedule to be paid by each firm is as follows:

(i) Monthly Data Base Access Charge—$70.00 (waived during calendar year 1992);

(ii) Hourly Usage Charge—$70.00 per hour and [after the first hour each month]

(iii) Kilocharacter Transmission Charge—$0.70.

(b) Each firm which subscribes to the service will provide its own terminal and modem.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD has determined that the current monthly subscription fees for the FAQS system is an impediment to attracting small and medium sized users. Further, because the NASD's Electronic Filing Program, which allows member firms to file membership related forms electronically, is only available to FAQS subscribers, the NASD has been unable to expand the use of that program.

Accordingly, the NASD is proposing to amend section 9 of Schedule A by waiving the $70 monthly data base access charge under section 9(a)(i) during calendar year 1992 and deleting the current credit for the first hour of use each month provided under section 9(a)(ii). The NASD intends to examine the effect of the waiver of the monthly access fee near the end of 1992 and determine whether to extend or repeal the waiver, or permanently eliminate the fee. The NASD believes the proposed amendments will increase the number of FAQS users and decrease the paperwork processing demands on the NASD by increasing the use of the Electronic Filing Program through FAQS.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act, which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among issuers and other persons using any facility or system which the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective on filing pursuant to section 19(b) (3) (A) (ii) of the Act and subparagraph (e) of Rule 19b-4 thereunder in that it constitutes a fee or assessment improved exclusively upon the NASD's members.[1]

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 21, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-31064 Filed 12-27-91; 8:45 am]

BILLING CODE 8010-01-M

[1] By the terms of the rule, however, the fee changes will take effect January 1, 1992.

[Release No. 34-30111; File No. SR-NYSE-91-42]

Self-Regulatory Organizations; Filing of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Amending Rule 758(b)(ii)(A) to Broaden Limitations on Principal/Agency Trading by Competitive Options Traders, Adding Rule 758(b)(ii)(A) to the List of Exchange Rule Violations and Fines Under NYSE Rule 476A, and Amending the Minor Rule Violation Enforcement and Reporting Plan

December 20, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 2, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an amendment to NYSE Rule 758(b)(ii)(A) that would broaden the limitations on principal/agency trading by Competitive Options Traders ("COTs") by changing the current limitations, which are series-specific, to encompass all options on the same underlying security or, in the case of an index option, on the same underlying stock group. In this regard, the proposed rule change also contains an NYSE Information Memo to options traders describing the restrictions on principal/agency trading by COTs.[1] In addition, the rule change proposes to add Rule 758(b)(ii)(A), as amended, to the ("Rule 476A List"), rule embodying the Exchange's Minor Rule violation plan. The proposed rule change also requests approval to amend the NYSE's Ruie 19d–1 minor rule violation enforcement and reporting plan ("minor rule plan") to include the aforementioned Exchange rule.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below The self-regulatory organization has prepared summaries, set forth in sections A. B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to broaden the limitations on principal/agency trading by COTs. Currently, NYSE Rule 758(b)(ii)(A) provides that a member, while acting as a COT, may not effect an options transaction on the floor of the Exchange as principal during the same trading session as he or she executes an off-floor order in an option of the same series. The proposed rule change would broaden this limitation to apply to any option on the same underlying security or, in the case of an index option, on the same underlying stock group, during the same trading session.

The proposed change would bring the Exchange's rule in line with similar rules of other options exchanges, thereby equalizing the regulation of principal/agency trading activity in options by non-specialist floor traders.[3]

The Exchange also proposes to amend NYSE Rule 476A to incorporate violations of the proposed COT principal/agency trading restrictions. NYSE Rule 476A provides that the Exchange may impose a fine, not to exceed $5,000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules in lieu of commencing a disciplinary proceeding.[4]

The purpose of the expedited sanction procedures contained in Rule 476A are to provide for a quick and timely response to a rule violation when a meaningful sanction is appropriate but when initiation of a disciplinary proceeding under Rule 476 is not suitable because such a proceeding would be more costly and time-consuming than would be warranted given the minor nature of the violation. Accordingly, Rule 476A provides for an appropriate response to minor violations of certain Exchange rules, while preserving the due process rights of the party accused through specified, required procedures. The Rule 476A List delineates both the rule violations that may be the subject of fines under the rule as well as the schedule of fines.

In filing SR–NYSE–84–27, which initially set forth the provisions and procedures of NYSE Rule 476A, the Exchange indicated that it would amended the Rule 476A List from time to time, as it considered appropriate, in order to phase-in the implementation of Rule 476A as experience with the rule was gained.[5] Since the initial implementation of Rule 476A, the Exchange's regulatory divisions have amended the Rule 476A List to include either existing rules or newly approved ones which are appropriate for inclusion in this particular disciplinary process when violations occur.[6]

The Exchange is presently seeking approval to add NYSE Rule 758(b)(ii)(A) to the list of rules subject to possible imposition of fines pursuant to the NYSE Rule 476A procedures. The purpose for the proposed change to NYSE Rule 476A is to facilitate the Exchange's ability to induce compliance with Rule 758(b)(ii)(A). The Exchange believes failure to comply with the requirements of this rule should be addressed with an

[1] The text of the NYSE Market Surveillance Information Memo was attached to the rule filing as Exhibit B and is available at the Commission and the NYSE.

[2] See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Howard Kramer, Assistant Director, Division of Market Regulation, Commission, dated November 29, 1991. The Commission approved the minor rule plan, embodied in NYSE Rule 476A, in Securities Exchange Act Release No. 22415 (September 17, 1985) 50 FR 38600, relieving the NYSE of the current

[3] See e.g., American Stock Exchange ("Amex") Rules 950(c) and 111(c) and the Amex Floor Transactions Handbook, part VI, section 6(d) at 105 and Chicago Board Options Exchange ("CBOE") Rule 8.8.

[4] A list of the NYSE rules subject to Exchange Rule 476A procedures and the corresponding fine schedule, as amended by this filing, were attached reporting requirements imposed under section 19(d)(1) of the Act. The Commission notes that Rule 476A fines in excess of $2,500 are not considered assessed pursuant to the minor rule plan and, accordingly, must be reported under section 19(d)(1).

to the rule filing as Exhibit C. A copy of the list is available at the NYSE and the Commission.

[5] See Securities Exchange Act Release No. 21680 (January 25, 1985), 50 FR 5025 (approving File No SR–NYSE–84–27).

[6] See Securities Exchange Act Releases No. 22480 (October 2, 1985), 50 FR 41084 (order granting accelerated approval to File No. SR–NYSE–85–30); No. 23104 (April 11, 1986), 51 FR 13307 (approving File No. SR–NYSE–86–12); No. 24985 (October 5, 1987), 52 FR 41643 (approving File No. SR–NYSE–87–21); No. 25763 (May 27, 1988), 53 FR 20825 (approving File No. SR–NYSE–87–10); No. 27702 (February 12, 1990), 55 FR 6139 (approving pilot of 5 rules until October 5, 1990, File No. SR–NYSE–90–04); No. 27878 (April 4, 1990), 55 FR 13345 (approving File No. SR–NYSE–89–44); No. 28003 (May 8, 1990), 55 FR 20004 (approving File No. SR–NYSE–90–09); No. 28505 (October 2, 1990), 55 FR 41268 (permanently approving File No. SR–NYSE–90–04); No. 28995 (March 21, 1991), 56 FR 12967 (approving File No. SR–NYSE–91–04); and No. 29955 (November 25, 1991), 56 FR 59311 (November 25, 1991) (notice of File No. SR–NYSE–91–38).

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appropriate sanction and seeks Commission approval to add violations of this rule's requirements to the NYSE Rule 476A List. Violations of this rule that are deemed by the Exchange not to be minor in nature are also subject to formal disciplinary proceedings under Exchange Rule 476.

Finally, consistent with the inclusion of Rule 758(b)(ii)(A) in Rule 476A, the NYSE proposes to amend the NYSE's Rule 19d–1 minor rule violation enforcement and reporting plan ("minor rule plan") to include the aforementioned Exchange rule.[7]

2. Statutory Basis

The statutory basis under the Act for the proposed rule change amending Rule 758(b)(ii)(A) is the requirement under section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposed rule change amending the Rule 476A List will advance the objectives of section 6(b)(6) of the Act in that it will provide a procedure whereby member organizations can be "appropriately disciplined" in those instances when a rule violation is minor in nature, but a sanction more serious than a warning or cautionary letter is appropriate. The proposed rule change provides a fair procedure for imposing such sanctions, in accordance with the requirements of Sections 6(b)(7) and 6(d)(1) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[7] See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Howard Kramer, Assistant Director, Division of Market Regulation, Commission, dated November 29, 1991. The Commission approved the minor rule plan, embodied in NYSE Rule 476A, in Securities Exchange Act Release No. 22415 (September 17, 1985), 50 FR 38800, relieving the NYSE of the current reporting requirements imposed under section 19(d)(1) of the Act. The Commission notes that Rule 476A fines in excess of $2,500 are not considered assessed pursuant to the minor rule plan and, accordingly, must be reported under section 19(d)(1).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–91–42 and should be submitted by January 21, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–31065 Filed 12–27–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30110; File No. SR–OCC–91–19]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval on an Accelerated Basis of a Proposed Rule Change Revising Sequences in the Pledge Program

December 20, 1991.

On November 22, 1991, The Options Clearing Corporation ("OCC") submitted a proposed rule change (File No. SR–OCC–91–19) to the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the Proposal appeared in the **Federal Register** on December 12, 1991, to solicit comment from interested persons.[2] No comments were received by the Commission. This order approves the proposal on an accelerated basis.

I. Description of the Proposal

The purpose of the proposed rule change is to modify the processing sequence for exercises or sales of options or index participations ("IPs")[3] that have been pledged pursuant to OCC Rule 614. OCC designed and implemented its pledge program to enable market-makers, specialists, and their clearing members to use their long positions in options and, IPs in more limited instances, to secure a greater number of collateralized loans on more favorable financing terms.[4]

In 1984, OCC's pledge program was enhanced to permit clearing members to utilize multiple pledgees.[5] That enhancement included a processing sequence for exercises or sales of pledged positions of the same options series (or IPs class) among multiple pledgees.[6] Currently, those processing procedures provide that exercises or sales of pledged positions, after being applied to positions in the primary account, must be allocated among pledge accounts in descending order.[7] Thus, after allocation to the primary account, exercises or sales are allocated first to the pledge account with the highest numerical designation and last to the pledge account with the first numerical designation.

Pledgees, however, have advised OCC that the language of OCC Rule 614 from time to time has resulted in confusion as to their priority status with respect to pledged positions, and they have requested OCC to clarify the Rule's processing sequence. Accordingly, OCC has determined to accede to their request. Thus, the language of OCC Rule 614 describing the processing sequence is being modified to provide that after being applied to the primary account, exercises or sales of pledged positions will be allocated first to the pledge account designated as the first pledge account, second to the pledge account designated as the second pledge account, and so forth. OCC believes that this description of the processing sequence is clearer and is more consistent with pledgees' expectations of their priority status as described in the second paragraph of OCC Rule 614(a).

OCC also is proposing, where appropriate, to call an "option" or "IP" a cleared security, or in the plural "cleared securities," to conform Rule 614 to certain proposed revisions to the Pledge Agreement executed by OCC, the pledgor, and the pledgee. The proposed revisions are contained in File No. SR–OCC–90–11, as amended.[8]

II. Discussion

The Commission believes that the proposed rule change is consistent with the Act and particularly with section 17A of the Act.[9] Section 17A(a)(1) of the Act [10] encourages the adoption of efficient and effective procedures for the clearance and settlement of securities transactions. Section 17A(b)(3)(F) of the Act [11] provides that the rule of the clearing agency should be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

This rule change will promote the prompt and accurate clearance and settlement of securities transactions by enhancing a pledge program that better enables participants in the options market to obtain collateralized loans to support their options trading activities. The Commission believes that the proposal will clarify for pledgees the pledge program's processing sequence thereby eliminating certain points of confusion and improving the efficiency of the program.

OCC has requested that the Commission find good cause for approving the proposed rule change prior to thirty days after the date of publication of the notice of filing in the **Federal Register**. The Commission finds good cause for so approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because of the Commission's belief that it is desirable for the proposed processing sequence to be approved prior to or at the same time of implementation of programming changes to OCC processing systems. It is the Commission's understanding that the computer logic that is used to incorporate this proposal's modifications of the OCC's pledge program into OCC's computer system also forms basis for other changes and is part of a larger program that OCC expects to implement in the near future.

III. Conclusion

For the reasons discussed in this order, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. The Commission also finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] That the above mentioned proposed rule change (SR–OCC–91–19) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. 91–31066 Filed 12–27–91; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 30038 (December 5, 1991), 56 FR 64822.

[3] Pending approval by the Commission of File No SR–OCC–91–05 (OCC's proposed rule change that would allow OCC to issue, guarantee, clear, and settle IPs, notice of which was published in Securities Exchange Act Release No. 29081 (April 12, 1991) 56 FR 16142). IPs may not be pledged to OCC under the pledge program.

[4] For a comprehensive description of the framework of the pledge program, see Securities Exchange Act Release No. 19956 (July 19, 1983), 48 FR 33856 (order approving OCC's pledge program) (File No. SE–OCC–82–25).

[5] Securities Exchange Act Release No. 20994 (May 25, 1984), 49 FR 23132 (notice of filing and immediate effectiveness of expansion of OCC's pledge program) (File No. SR–OCC–84–06).

[6] OCC Rule 614(f) sets forth the procedures governing the exercises or sales of pledged options.

[7] OCC Rule 614(f)(1) (i) and (ii).

[8] Securities Exchange Act Release No. 28676 (December 4, 1990), 55 FR 51365 (notice of filing of proposed rule change relating to OCC account structure) (File No. SE–OCC–90–11).

[9] 15 U.S.C. 78q–1 (1988).

[10] 15 U.S.C. 78q–1(a)(1) (1988).

[11] 15 U.S.C. 78q–(b)(3)(F) (1988).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 C.F.R. 200.30–3(a)(12).

[Release No. 34–30112; File No. SR–PSE–91–42]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Certain Options Fees Imposed by the PSE

December 20, 1991.

Pursuant to sections 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 10, 1991, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend certain charges for options operations. A copy of the text of the text of the amended charges is attached as Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed increases are intended to cover the increased costs of supporting the market making operations and other specific services on the PSE options trading floor.

The proposed rule change is consistent with section 6(d)(4) of the Act in that it provides for an equitable allocation of reasonable dues, fees, and other charges among the PSE members using the facilities of the PSE. In addition, the proposed rule filing is

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consistent with section 6(b)(5) of the Act in that it will enable the PSE to enhance its ability to facilitate transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change imposes a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The options fees changes were proposed by the Options Revenue Committee, which is composed of five options members, three of whom are Governors of the PSE. The Options Revenue Committee was established in July 1991, and met every two weeks to review and discuss fee changes. In addition, a Board Committee composed of four Board members—one options member, one equities member, one options/equities member and one public member—was established to discuss the fees.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19(b)(4) thereunder. At any time within 60 days of the date of filing of this proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the proposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–PSE–91–42 and should be submitted by January 21, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

EXHIBIT A

[Italicized text denotes amendments; bracketed text denotes deletions.]

PSE Options: Transactions Charges	
Transaction Charges:	
Market Maker	[$0.075] *$0.085* per contract side on transactions in equity options.
Firm	[$0.075] *$0.085* per contract side where the premium is less than $1 per contract. [$0.10] *$0.115* per contract side where the premium is $1 or more per contract.
Data Entry	[$0.02 per contract] *$0.25* per trade.
On-Line Trade Comparison	[$0.30] *$0.025* per trade plus [$0.005] *$0.025* per contract for all trades.
Monthly Reports	[$50] *$55* per month per symbol, plus [$0.005] per contract, to a maximum of [$500] *$550* per month.
User Extracts (Batch)	[$0.005] *$0.0075* per trade, plus development and production costs.
PSE Options: Poets[1] Charges	
Market and Marketable Limit Orders	
Market Maker transaction fees	
Auto Execution	[$0.05] *$0.075* per contract side.
Semi-auto Execution	[$0.10] *$0.125* per contract side.
Charge to firms for floor on semi-auto execution	[$0.10] *$0.125* per contract side.
PSE Options: Floor and Market Maker Charges	
Market Maker	[$600] *$660* per month per market maker.
Agency Stock Execution Fee	[$1,00] *$1,100* per month per firm.
Market Maker Give-Up Charge	[$0.075] *$0.10* per contract.
Booths (monthly per booth)	[$250] *$275* for retail booths. [$300] *$350* for clearing booths. [$400] *$450* for stock execution booths. [$250] *$300* surcharge for prime location.
Quotron Rental	[$425] *$475* per month per Q1000 terminal.
General Access Phones	[$100] *$110* per month per participating firm.
Drop Phone Charge	[$100] *$110* per month per drop phone.
Badges	[$25] *$30* initial issuance fee. [$25] *$30* per month for booth clerks. [$50] *$60* per month for stock firm clerks, hard badge managers, and all other floor personnel.
Trade Match Terminal Fee	[$70] *$80* per month per terminal.
Trade Match Table Fee	[$98] *$120* per month for 6' table. [$65] *$80* per month for 4' table. [$49] *$60* per month for shared 6' table.
POETS Workstation Fee	[$350] *$400* per month.
Printer Fee [2]	[$65] *$75* per month.

[1] Pacific Options Exchange Trading System.
[2] Operational service.

[FR Doc. 91–31067 Filed 12–27–91; 8:45 am]
BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

December 23, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following security:

Tenneco, Inc.
Depositary Shares (each representing 1/2 of a share of Series A Cumulative Preferred Stock "PERCS") (File No. 7–7745)

This security is listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 15, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–31138 Filed 12–27–91; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–30110; File No. SR–Phlx–91–44]

Self-Regulatory Organizations; Proposed Rule Change by Philadelphia Stock Exchange, Inc. Relating to Amendments to Its Arbitration Rule 950, Section 3, Composition and Appointment of Panels

December 20, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 4, 1991, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to amend Phlx Rule 950, Section 3, Composition and Appointment of Panels. The text of the proposed rule change is available for inspection and copying at the Commission and at the Phlx.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to alleviate difficulties presently experienced in the administration of the Member Arbitration Program.[1] Currently, panels consist of either five or seven appointees, depending on the amount of money in dispute. No provisions exist for Panel absenteeism. On several occasions, panel members who agreed to serve failed to attend a hearing or canceled an appearance with little advance notice. Under the current rule, an arbitration matter cannot proceed unless the entire panel is present.

The administration and resolution of the filed disputes would be aided considerably by the implementation of the proposed amendment to Rule 950, section 3. By allowing no more than two arbitration panel members to be absent from a proceeding, a member arbitration can proceed according to schedule. A new supplementary material provision to section 3 will require the Exchange staff to use its best efforts to effect a full panel's attendance at any hearing. For example, the Exchange will not schedule any hearing unless each day and every arbitration panel member, at least initially, agrees to attend the hearing on that assigned date and time. The proposed amendment enables the arbitration program to be operated pursuant to its original intent, *i.e.*, providing a fair, equitable and speedy resolution for all claims submitted. Absent the amendment, the program will be subject to perpetual delays in hearings with concomitant backlogs increasing in its docket.

This proposed amendment is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest pursuant to section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW.,

[1] Member arbitrations do not involve a public customer.

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Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-91-44 and should be submitted by January 21, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-31136 Filed 12-27-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

December 23, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities.

Vitro Sociedad Anoima
American Depositary Share (File No. 7-7719)
Old Republic International Corporation
Cumulative Preferred Stock (File No. 7-7720)
Morgan Stanley Group, Inc.
Depositary Shares (File No. 7-7721)
Banco Bilbo Vizcaya International Gibraltar Limited
American Depositary Shares (File No. 7-7722)
Employee Benefit, Inc.
Common Stock, $.01 Par Value (File No. 7-7723)
Fisher Scientific International
Common Stock, $.01 Par Value (File No. 7-7724)
ShopKo Stores, Inc.
Common Stock, $0.01 Par Value (File No. 7-7725)
Bombay Company
Common Stock, $.01 Par Value (File No. 7-7726)
Hanson Plc
Class C Warrants (File No. 7-7727
First Interstate Bancorp.
Depositary Shares Pfd. Stock (File No. 7-7728)
British Telecommunications Plc
American Depositary Shares Preferred (File No. 7-7729)
Tenneco, Inc.
Depositary Shares Cum. Pfd. Stock "Perks" (File No. 7-7730)
Healthtrust, Inc. The Hospital Company
Common Stock, $.001 Par Value (File No. 7-7731)
Oceaneering International, Inc.
Common Stock, $.25 Par Value (File No. 7-7732)
Partners Preferred Yield III, Inc.
Common Stock, $.01 Par Value (File No. 7-7733)
Partners Preferred Yield II, Inc.
Common Stock, $.01 Par Value (File No. 7-7734)
Struthers Industries, Inc.
Common Stock, $.10 Par Value (File No. 7-7735)
Professional Bancorp, Inc.
Common Stock, $.08 Par Value (File No. 7-7736)
Helionetics, Inc.
Common Stock, No Par Value (File No. 7-7737)
Intellicall, Inc.
Common Stock, $0.01 Par Value (File No. 7-7738)
Duty Free International, Inc.
Common Stock, $.01 Par Value (File No. 7-7739)
Delta Woodside Industries, Inc.
Common Stock, $0.01 Par Value (File No. 7-7740)
US West, Inc.
Common Stock, No Par Value (File No. 7-7741)
North Fork Bancorporation
Common Stock, $2.50 Par Value (File No. 7-7742)
Nationwide Health Properties, Inc.
Common Stock, $0.10 Par Value (File No. 7-7743)
Northeast Federal Corporation
Common Stock, $0.01 Par Value (File No. 7-7744)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 15, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-31137 Filed 12-27-91; 8:45 am]

BILLING CODE 8010-01-M

Performance Review Board; Membership

AGENCY: Securities and Exchange Commission.

ACTION: Notice of membership of Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), the U.S. Securities and Exchange Commission announces the appointment of Performance Review Board members.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: Susan Baumann, U.S. Securities and Exchange Commission, Washington, DC 20549 (202) 272-2700..

The following are the names and present titles of the individuals appointed to the Performance Review Board established by the U.S. Securities and Exchange Commission.

Name and Title

James Doty, General Counsel
Barbara Green, Executive Assistant & Senior Advisor
James McConnell, Executive Director

Dated: December 23, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-31068 Filed 12-27-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18454; 812-7712]

Oppenheimer Fund, et al.; Notice of Application

December 20, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Oppenheimer Fund, Oppenheimer Global Fund, Oppenheimer Time Fund, Oppenheimer Special Fund, Oppenheimer Tax-Free Bond Fund, Oppenheimer New York Tax-Exempt Fund, Oppenheimer Target Fund, Oppenheimer U.S. Government Trust, Oppenheimer Gold & Special Minerals Fund, Oppenheimer High Yield Fund, Oppenheimer Asset Allocation Fund, Oppenheimer Equity Income Fund, Oppenheimer Global Bio-Tech Fund, Oppenheimer Discovery Fund, Oppenheimer GNMA Fund, Oppenheimer Integrity Funds (a series fund having two series, Oppenheimer Value Stock Fund and Oppenheimer Investment Grade Bond Fund), Oppenheimer Blue Chip Fund, Oppenheimer Strategic Income Fund, Oppenheimer Champion High Yield Fund, Oppenheimer California Tax-Exempt Fund, Oppenheimer Pennsylvania Tax-Exempt Fund, Oppenheimer Global Environment Fund, Oppenheimer Global Growth & Income Fund, Oppenheimer Total Return Fund, Inc., and Oppenheimer Strategic Investment Grade Bond Fund (the "Funds") and any other open-end investment company which is or may become a member of the Oppenheimer "group of investment companies" as that phrase is defined by paragraph (a)(5) of rule 11a-3 under the Act, and having the same type of front-end sales charge for which the imposition of the contingent deferred sales charge arrangement proposed herein would be appropriate (such other investment companies shall hereinafter collectively be included in the reference to the "Funds"); Oppenheimer Management Corporation ("OMC"), and Oppenheimer Fund Management, Inc. (the "Distributor").

RELEVANT 1940 ACT SECTIONS: Order of exemption requested under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order to permit each of the Funds to assess a contingent deferred sales charge ("CDSC") on redemptions of shares of the Funds purchased without the imposition of a sales charge in the amount of one million dollars or more, and to waive the CDSC under certain circumstances.

FILING DATES: The application was filed on April 18, 1991 and amended on September 11, December 12, and December 20, 1991.

HEARING OR NOTIFICATION OF HEARING: an order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 14, 1992, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested.

Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Robert G. Galli, Esq., Oppenheimer Management Corporation, 2 World Trade Center, 34th Floor, New York, New York 10048-0203.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272-2511, or Max Berueffy, Branch Chief, (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are open-end management investment companies organized as Massachusetts business trusts or Maryland corporations and registered under the Act. OMC provides investment advisory and management services to the Funds. The Distributor, a wholly owned subsidiary of OMC, serves as the principal underwriter for the Funds.

2. The Funds currently offer their shares for sale at net asset value plus a front-end sales charge on aggregate purchases totaling less than $1 million. Applicants impose no front-end sales charge on aggregate purchase transactions totalling $1 million or more.

3. Under the proposed CDSC arrangement, if shares of a Fund purchased in aggregate amounts of $1 million or more (other than pursuant to transactions described in a respective Fund's prospectus permitting classes of sales transactions without imposition of any sales charges) are redeemed within 18 months after the end of the calendar month in which the purchase order was accepted, a CDSC will be imposed. The CDSC will be equal to 1% of the lesser of (a) the aggregate net asset value of the shares at the time of purchase, or (b) the aggregate net asset value of the shares at the time of redemption. The CDSC will be deducted from the redemption proceeds otherwise payable to the shareholder and will be retained by the Distributor.

4. No CDSC will be imposed upon the redemption of shares purchased through the reinvestment of dividends or capital gain distributions. Nor will a CDSC be imposed upon shares or amounts representing increases in the value of an account resulting from capital appreciation. In determining whether a CDSC is payable, it will be assumed that shares that are not subject to a CDSC are redeemed first and other shares are redeemed in the order purchased. This practice is consistent with Applicants' undertaking to comply with proposed rule 6c-10 under the Act. Furthermore, no CDSC will be assessed on shares acquired by exchange where a CDSC would not have been assessed upon the exchanged shares upon redemption (except for shares exchanged from money market funds purchased at net asset value without a sales charge). A CDSC will be imposed, however, on shares of a Fund acquired by exchange of shares subject to a CDSC if such acquired shares are redeemed within 18 months of the end of the calendar month in which such exchanged shares were purchased. With respect to exchanges, Applicants will comply with rule 11a-3.

5. Shareholders who are assessed a CDSC in connection with the redemption of shares of any Fund followed by a reinvestment of some or all of such amount in the shares of any Fund within six months after such redemption (or such other time period as the Funds may establish from time to time) may do so at net asset value if such entitlement is claimed at the time of reinvestment. In the event the reinvestment period changes after a shareholder redeems out of a Fund, the shareholder will be allowed to reinvest within the reinvestment period in effect at the time of redemption.

6. The CDSC will not be assessed on shares purchased prior to the date the Commission issues an order on the application.

7. Under the proposed CDSC arrangement, the CDSC will be waived in the following instances: (a) Redemptions in connection with retirement distributions to participants or beneficiaries of, or loans to participants or beneficiaries from, plans qualified under section 401(a) of the Internal Revenue Code of 1986, as amended (the "IRC"), custodial accounts under section 403(b)(7) of the IRC, Individual Retirement Accounts under section 408(a) of the IRC, deferred compensation plans created under section 457 of the IRC, and other employee benefit plans, and returns of excess contributions made to such plans; (b) redemptions pursuant to a Fund's automatic withdrawal plan but limited to no more than 12% of the original account amount annually; and (c) redemptions effected pursuant to a Fund's right to involuntarily redeem a shareholder's account if the aggregate net asset value of shares held in the account is less than the minimum account size set forth in the Fund's

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Declaration of Trust or Articles of Incorporation or as adopted by the Fund's Board of Directors or Trustees, as applicable, pursuant thereto, or involuntary redemptions by operation of law.

Applicants' Legal Conclusions

1. Applicants request an order pursuant to section 6(c) of the Act exempting the Applicants from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and rule 22c-1 thereunder to the extent necessary to permit Applicants to implement the proposed CDSC arrangement.

2. Applicants believe that the imposition of the CDSC arrangement is fair, consistent with the policy and provisions of the Act, in the best interests of investors, and meets the exemptive standards of section 6(c) of the Act. The proposed CDSC arrangement would allow shareholders the advantage of having their full payment invested for them at the time of their purchase of shares of the Funds with no deduction of a sales charge. Furthermore, the waiver of the CDSC, as described above, is in the interest of investors and consistent with the policies and provisions of the Act.

Applicants' Condition

If the requested order is granted, Applicants agree to comply with proposed rule 6c-10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-31099 Filed 12-27-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25436]

Filings; Les Developpements Hydroelectriques CHI Inc.

December 20, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 13, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Les Developpements Hydroelectriques CHI, Inc.

Consolidated Hydro, Inc. 31(31-859)

Les Developpements Hydroelectriques CHI Inc. ("LDH") and Consolidated Hydro, Inc. ("Consolidated") (together, "Applicants"), One Greenwich Plaza, Greenwich, Connecticut 06830, have filed a post-effective amendment to an application for an order granting the Applicants an exemption under section 3(a)(5) from all provisions of the Act, except section 9(a)(2).

By order dated October 16, 1991 (HCAR No. 25393) (the "October Order"), the Commission granted Applicants an order of exemption under section 3(a)(5) under the circumstances described below. Subsequently, Applicants were unable to consummate the transactions described in the October Order within the sixty-day time period required under rule 24(c)(1). Therefore, Applicants now request that the time period to carry out the transactions be extended through December 31, 1992.

Consolidated is a privately held Delaware corporation whose principal place of business is Greenwich, Connecticut. Consolidated states that it is engaged in the business of developing, operating and owning hydroelectric projects throughout the United States. Presently, Consolidated, or one of its subsidiaries, holds ownership interests in sixty-one operating hydroelectric facilities located in twelve different states. Pursuant to section 210 of the Public Utility Regulatory Policies Act of 1978, each such operating hydroelectric facility is a qualified energy facility and is therefore deemed not to be an "electric utility company" under section 2(a)(3) of the Act. At this time Consolidated is not a "public-utility company" within the meaning of the Act and derives no income whatsoever, directly or indirectly, from any one or more subsidiary companies which are "public-utility companies" within the meaning of the Act within the United States or elsewhere.

LDH, a wholly-owned subsidiary of Consolidated, is a Delaware corporation whose principal place of business is Montreal, Quebec, Canada. LDH is not presently a "public-utility company" within the meaning of the Act.

LDH seeks to acquire a 50% interest in a hydroelectric project in Montreal, Quebec, Canada (the "Project") owned by a nonaffiliated Canadian corporation, Developpements Hydromega, Inc. ("DHI"). LDH intends to establish a new corporation under the laws of Quebec ("NEWCO") to which DHI will transfer all assets and liabilities relating to the Project. LDH will acquire 50% of the issued and outstanding stock of NEWCO, and DHI will own the remaining fifty percent of the NEWCO stock.

NEWCO will be a "public utility company" under section 2(a)(5) of the Act, and both Consolidated and LDH will be holding companies as defined by section 2(a)(7)(A) of the Act and, as such, subject to regulation under the Act unless an exemption is obtained.

Consolidated and LDH assert that they qualify for an exemption under section 3(a)(5) of the Act. Neither is a company the principal business of which within the United States is that of a public-utility company, and neither derives (or will derive) any material part of its income, directly or indirectly, from any one or more subsidiary companies the principal business of which within the United States is that of a public utility.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-31070 Filed 12-27-91; 8:45 am]

BILLING CODE 8010-10-M

[Release No. 35-25435]

Filings; Central and South West Corp., et al.

December 20, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the

application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commissions Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 13, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact of law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice of order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central and South West Corp. (70-7895)

Central and South West Corporation ("CSW"), 1616 Woodall Rodgers Freeway, P.O. Box 660164, Dallas, Texas 75202, a registered holding company, has filed a declaration under sections 6(a), 7 and 12(c) of the Act and Rules 46 and 50(a)(5) thereunder.

CSW purposes to double the number of its shares of common stock outstanding through a two-for-one stock split-up (the "Stock Split"). The Stock Split will be accomplished by way of a stock dividend of one share of common stock for each share outstanding on the record date for such distribution. At September 30, 1991, CSW had: (i) 350,000,000 authorized shares of common stock, par value $3.50 per share, (ii) 94,133,936 shares issued and outstanding, and (iii) no shares in its treasury.

In connection with the proposed transaction, CSW proposes to transfer the sum of $3.50 for each additional share to be issued or to be held in CSW's treasury from its paid-in capital account (which, at September 30, 1991, was $884,705,604) to its common stock account (which, at September 30, 1991, was $329,468,777), so that the par value for each share outstanding or held in CSW's treasury after the Stock Split and distribution will continue to be $3.50.

Included in the number of shares outstanding are 26,366 shares of a total 1,500,000 shares initially authorized for CSW's Stock Option Plan, 175,277 of the 500,000 shares initially authorized for CSW's Restricted Stock Plan and 2,260,062 of the 4,000,000 shares initially reserved for CSW's Employees' Thrift Plan. After the proposed Stock Split, the total number of remaining shares authorized and available for insurance under the Stock Option Plan, the Restricted Stock Plan and the Employees' Thrift Plan will be 2,947,268, 649,446 and 3,449,876 shares, respectively.

CSW has requested that the proposed issuance of additional shares of common stock be excepted from the competitive bidding requirements of Rule 50 under subsection (a)(5).

CSW asserts that the proposed Stock Split and distribution of the additional shares and the consequent reduction in the market place per share will attract wider ownership and thus broaden the market for CSW's common stock, and that the improved and expanded market will be in the best interests of CSW and its stockholders.

Savannah Electric and Power Co. (70-7917)

Savannah Electric and Power Company ("Savannha"), 600 Bay Street, East, Savannah, Georgia 31401, an electric utility subsidiary of the Southern Company, a registered holding company, has filed an application-declaration under sections 6(a), 6(b), 7, 9(a) and 10 of the Act and Rule 50(a)(5) thereunder.

Savannah proposes to finance and/or refinance the cost of certain pollution control facilities and sewage and solid waste disposal facilities at one or more of Savannah's electric generating plants or other facilities located in Chatham and Effinghan Counties in the State of Georgia from time-to-time not later than December 31, 1995. It is proposed that the Development Authority or other appropriate entity of each county ("Authority") will issue its revenue bonds ("Revenue Bonds") for the purpose of making loans to Savannah to finance or refinance the costs of the acquisition, construction, installation and equipping of the facilities at the plant or other facility located in its county ("Project"). The aggregate principal amount of Revenue Bonds to be issued from time-to-time by the Authorities pursuant to authority granted hereunder will not exceed $25 million.

While the actual amount of Revenue Bonds to be issued by each Authority has not yet been determined, such amount will be based upon the cost of refunding outstanding bonds or the cost of the Project located in its county. Present estimates indicate that approximately $6 million of the $25 million principal amount of Revenue Bonds will be for new financing of Projects, with the remainder to be available for refunding.

Savannah will not use the proceeds of the sale of the Revenue Bonds to refund outstanding pollution control bonds unless the estimated present value savings derived from the net difference between interest payments on any Revenue Bonds to be issued for refunding purposes and the specific securities to be refunded is, on an after-tax basis, greater than the present value of all redemption and issuing costs, assuming an appropriate discount rate. Such discount rate is based on the estimated after-tax interest rate on the Revenue Bonds issued for refunding purposes.

Revenue Bonds will be sold by each Authority pursuant to arrangements with one or more purchasers or underwriters. The interest rate on the Revenue Bonds will be determined by the Board of Directors of the Authority and will be either a (1) Fixed rate, that may be convertible to a rate which will fluctuate in accordance with a specified prime or base rate(s) or may be determined pursuant to certain remarketing or auction procedures; or a (2) fluctuating rate, that may be convertible to a fixed rate.

Savannah will enter into a Loan Agreement with the Authority relating to each issue of the Revenue Bonds ("Agreement"). Under the Agreement, the Authority will loan to Savannah the proceeds of the sale of the Authority's Revenue Bonds, to be evidenced by the issuance of a non-negotiable promissory note by Savannah ("Note"). The proceeds will be deposited with a Trustee ("Trustee") under an indenture to be entered into between the Authority and the Trustee ("Trust Indenture"), under which the Revenue Bonds are to be issued and secured, and will be applied by Savannah to the payment of the Cost of Construction, as defined in the Agreement, of the Project or to refund outstanding pollution control revenue obligations.

The Note will provide for payments to be made at times and in amounts which shall correspond to the payments with respect to the principal of, premium, if any, and interest on the Revenue Bonds whenever and in whatever manner the same shall become due, whether at stated maturity, upon redemption or declaration or otherwise. The Agreement will provide for the assignment to the Trustee of the Authority's interest in, and of the moneys receivable by the Authority

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under, the Agreement and the Note. The Agreement will also obligate Savannah to pay the fees and charges of the Trustee and will provide that Savannah may at any time, so long as it is not in default, prepay the amount due under the Note, including interest, in whole or in part, in amounts sufficient to redeem or purchase the outstanding Revenue Bonds in the manner and to the extent provided in the Trust Indenture.

The Trust Indenture will provide that the Revenue Bonds will be redeemable at any time on or after a specified date from the date of issuance: (1) In whole or in part, at the option of Savannah, and may require the payment of a premium at a specified percentage of the principal amount; and (2) in whole, at the option of Savannah and without the payment of a premium under certain extraordinary circumstances. The Revenue Bonds will mature from one to 40 years from the first day of the month in which they are initially issued and may, in the case of a maturity of 15 to 40 years, be entitled to the benefit of a mandatory redemption sinking fund.

The Trust Indenture and the Agreement may give the holders of the Revenue Bonds the right, during such time as the Revenue Bonds bear interest at a fluctuating rate, to require Savannah to purchase the Revenue Bonds from time-to-time, and arrangements may be made for the remarketing of any such Revenue Bonds through a remarketing agent. Savannah may also be required to purchase the Revenue Bonds, or the Revenue Bonds may be subject to mandatory redemption at any time if the interest thereon is determined to be subject to federal income tax. Also in the event of taxability, interest on the Revenue Bonds may be effectively converted to a higher variable or fixed rate, or Savannah may be required to indemnify the bondholders against any other increases in interest, penalties or taxes.

Savannah may determine to secure its obligations under the Note by delivering to the Trustee, to be held as collateral, a series of its first mortgage bonds ("Collateral Bonds") in principal amounts either equal to (1) The principal amount of the Revenue Bonds or (2) the sum of such principal amount of the Revenue Bonds plus interest payments thereon for a specified period. Collateral Bonds will mature on the maturity date of the Revenue Bonds and will be non-transferable by the Trustee. The Collateral Bonds, in the case of clause (1) above, would bear interest at a rate or rates equal to the interest rate or rates to be borne by the related Revenue Bonds and, in the case of clause (2) above, would be non-interest bearing. The obligation of Savannah to make payments with respect to the Collateral Bonds will be satisfied to the extent that payment are made under the Note sufficient to meet payments when due in respect of the related Revenue Bonds. Upon acceleration by the Trustee of the principal amount of all related outstanding Revenue Bonds, the Trustee may demand the mandatory redemption of the related Collateral Bonds at a redemption price equal to the principal amount thereof plus accrued interest, if any, to the date fixed for redemption. Upon the optional redemption of the Revenue Bonds, in whole or in part, at any time after they have been outstanding for a specified period, it may be provided that a related principal amount of the Collateral Bonds will be redeemed at the redemption price of the Revenue Bonds.

As an alternative to or in conjunction with the issuance of the Collateral Bonds, Savannah may cause an irrevocable Letter of Credit ("LOC") of a bank ("Bank") to be delivered to the Trustee. The LOC would be an irrevocable obligation of the Bank to pay to the Trustee, upon request, up to an amount necessary to pay principal of an accrued interest on the Revenue Bonds when due. Pursuant to a separate agreement with the Bank, Savannah would agree to pay to the Bank on demand all amounts that are drawn under the LOC, as well as certain fees and expenses. As a further alternative to, or in conjunction with, securing its obligations under the Agreement and Note, Savannah may cause an insurance company to issue a policy of insurance guaranteeing the payment when due of the principal of and interest on such series of the Revenue Bonds. The insurance policy would extend for the term of the related Revenue Bonds, would be non-cancelable by the insurance company for any reason, and may provide for escrow payments by Savannah to indemnify the insurer. In the event that a LOC is delivered or an insurance policy is issued as alternatives to the issuance of the Collateral Bonds, or if none of the three security alternatives are exercised, Savannah may also convey to the Authority a subordinated security interest in the Project or other property of Savannah as further security for Savannah's obligations under the Agreement and the Note. Such subordinated security interest would be assigned by the Authority to the Trustee.

Savannah also proposes to enter into arrangements providing for the delayed or future delivery of Revenue Bonds to one or more purchasers or underwriters. The obligations of the purchasers or underwriters to purchase Revenue Bonds under any such arrangements may be secured by U.S. Treasury securities, letter or credit or other collateral.

For the Commission, by the Divisions of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-312071 Filed 12-27-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket 38418, et al.]

Employee Protection Program Investigations: Airlift International, et al.; Issued by the Department of Transportation on the 23rd Day of December, 1991

Employee protection program investigations: Airlift International, American Airlines, Continental Air Lines, Frontier Airlines, Pan American World Airways, Republic Airlines, Transamerica Airlines, Trans World Airlines, United Air Lines, and Western Airlines; Docket 38418, 38570, 38720, 45234, 38883, 41072, 44397, 38184, 38571, and 41061.

On November 15, 1991, the Department issued Order 91-11-16, its Preliminary Order of Investigation in the above-captioned proceedings. A summary of this order was subsequently published in the **Federal Register** (56 FR 58956 (November 22, 1991)). In it, we set forth our preliminary views on how to process these cases, reviewed the relevant issues, and called for information from various carriers and amended answers, comments, and response from interested persons. The carriers' information submissions and all answers and comments are due December 23, 1991, and responses to any answers and comments are due Janaury 2, 1991.

On December 16, 1991, Continental Airlines and Frontier Airlines filed a request for 30 days' additional time to respond to Order 91-11-16. In support of their request, they cite Continental's current bankruptcy, Frontier's past reorganization, a change in their personnel dealings with Employee Protection Provision matters, and a delay in the receipt of the order by their counsel. Continental and Frontier claim they need more time to search for the employment figure we directed them to file for People Express and New York Air. They also ask for 30 days' additional time to file comments and positions on substantive and procedural matters discussed in the order, claiming that they need that time to review both their own cases to date and the lead cases treated by Order 91-9-20.

We will grant Continental [1] and Airlift International, the other carrier required to file employment figures, an additional 30 days to file this information, but we will not grant extra time to file comments and positions in response to Order 91-11-16. Delaying our receipt of employment figures need not prolong the course of these proceedings. Even without this information, we need not delay issuance of our next order, which will establish further procedures, set forth a list of information and data to be obtained and made available to the parties, and direct those holding the information to provide it. Also, Continental and Frontier have given cogent reasons for needing extra time to assemble their employment data.

In contrast, delaying our receipt of carriers' and other interested persons' answers, positions, and comments would delay the issuance of our next order unduly. We see a strong public interest in processing these cases as expeditiously as possible. That being the case, and in view of the paucity of the records to date, the exhaustive discussion of the lead cases in Order 91-9-20, and the preliminary nature of the filings for which we have called, Continental and Frontier have not justified their request for additional time for these filings. We therefore deny it.

We will publish this notice in the **Federal Register** and serve a copy on all parties on the service lists of the above-referenced dockets.

Dated: December 23, 1991.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 91-31079 Filed 12-27-91; 8:45 am]

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[1] Order 91-11-6 did not require any additional information of frontier.

Aviation Proceedings; Agreements Filed During the Week Ended December 20, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47921.

Date filed: December 18, 1991.

Parties: Members of the International Air Transport Association.

Subject: Amendment To IATA Articles of Association (Article VIII).

Proposed Effective Date: Upon All Necessary Government Approvals.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-31140 Filed 12-27-91; 8:45 am]

BILLING CODE 4910-62-M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 20, 1991

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47925.

Date filed: December 19, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 16, 1992.

Description: Joint Application of Delta Air Lines, Inc. and Pan American World Airways, Inc., pursuant to section 401(h) of the Act and subpart Q of the Regulations for approval of the transfer to Delta of Pan American's authority to serve the New York, N.Y./Newark, N.J.–Mexico City, Mexico nonstop market contained in Pan American's certificate of public convenience and necessity for Route 136.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-31139 Filed 12-27-91; 8:45 am]

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Federal Aviation Administration

Advisory Circulars: Small Airplanes Airworthiness Standards

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Publication of Advisory Circulars; part 23 Airplanes.

SUMMARY: The purpose of this notice is to advise the public of advisory circulars (AC's) issued by the Small Airplane Directorate since January 1991. The AC's listed below relate to part 23 of the Federal Aviation Regulations (FAR) and/or part 3 of the Civil Air Regulations (CAR). They were issued to inform the aviation public of acceptable means of showing compliance with the Airworthiness Standards in the FAR and/or CAR, but the material is neither mandatory nor regulatory in nature

FOR FURTHER INFORMATION CONTACT: Mr. Mike Dahl, Manager, Policy and Guidance Section, ACE-111, Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; commercial telephone (816) 426-6941, or FTS 867-6941.

SUPPLEMENTARY INFORMATION:

Background: These AC's were developed to update existing policy information for small airplane certification programs.

Comments: Interested parties were given the opportunity to review and comment on each AC during the development phase. At that time, notices were published in the **Federal Register** to announce the availability of, and request written comments, to each proposed AC. Each comment was reviewed and resolved. Appropriate comments were incorporated in the AC.

Distribution: The published AC's are available upon request through the U.S. Department of Transportation, Utilization and Storage Section, M-443.2, Washington, DC 20590.

ADVISORY CIRCULARS PUBLISHED

AC No.	Date	Title
23.1521-1A	1/2/91	Certification of Nonoxygenated Automobile Gasoline (Autogas) Instead of Aviation Gasoline (Avgas) in Part 23 Airplanes with Reciprocating Engines.
23.1329-2	3/4/91	Automatic Pilot Systems Installations Approvals in Part 23 Airplanes.
23-10	8/5/91	Auxiliary Fuel Systems for Reciprocating and Turbine Powered Part 23 Airplanes.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc 91-31108 Filed 12-27-91; 8:45 am]

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[Summary Notice No. PE-91-44]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before January 20, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on December 23, 1991.

Pamela Trebbe,

Acting Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 100CE
Petitioner: Beech Aircraft Corporation
Sections of the FAR Affected: 14 CFR 23.473(c) and 23.1001
Description of Relief Sought: To permit a maximum landing weight less than 95 percent of maximum takeoff weight without requiring a fuel jettisoning system

Docket No.: 25233
Petitioner: Alaska Air Carriers Association
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought: To extend Exemption No. 4802B which permits pilots employed by air carriers that are members of the Alaska Air Carriers Association to perform the preventive maintenance task of removing and/or reinstalling passenger seats of aircraft used in Part 135 operations.

Docket No.: 26688
Petitioner: Helicopter Association International
Sections of the FAR Affected: 14 CFR 135.63(c) and (d)
Description of Relief Sought: To remove the requirement that members of the Helicopter Association International and the Association of Air Medical Services would need to prepare a load manifest in duplicate for multiengine aeromedical transport aircraft, which often operate from remote areas. In addition, the exemption would delete the requirement for the pilot to carry a duplicate manifest to the destination. Furthermore, it would delete the requirement that the operator maintain a copy of the completed manifest for at least 30 days.

Docket No.: 26695
Petitioner: Comair Aviation Academy
Sections of the FAR Affected: 14 CFR 141.65
Description of Relief Sought: To allow Comair Aviation Academy to hold examining authority for flight instructor and airline transport pilot written tests.

Docket No.: 26696
Petitioner: Ryan International Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.503(b) and 121.511(a)
Description of Relief Sought: To permit Ryan International Airlines, Inc., pilots and flight engineers to complete certain west coast to east coast transcontinental flight sequences with B-727 aircraft before being provided with at least 16 hours of rest, so long as crewmembers satisfy the requirements of § 121.505(a).

Dispositions of Petitions

Docket No.: 20853
Petitioner: United Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.99 and 121.351
Description of Relief Sought/ Disposition: To extend for 3 years the termination date of Exemption No. 3122, as amended. Exemption No. 3122E permits United Airlines, Inc. (UAL), to operate its turbojet airplanes in extended overwater operations with one high frequency (HF) communications radio system and one long range navigation system (LRNS) within certain named areas subject to certain conditions and limitations.
Grant, December 9, 1991, Exemption No. 3122F.

Docket No.: 23336
Petitioner: Simulator Training, Inc.
Sections of the FAR Affected: 14 CFR 61.56(b)(1), 61.57 (c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (3); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); appendix A of Part 61; and appendix H of part 121.
Description of Relief Sought/ Disposition: To permit Simulator Training, Inc., to use FAA-approved simulators to meet certain training and testing requirements of §§ 61.56(b)(1), 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (3); 61.67(d)(2); 61.157(d)(1) and (2), 61.157(e)(1) and (2), appendix A of part 61, and appendix H of part 121 of the FAR. On August 28, 1991 the FAA issued Exemption 5232A, granting Simulator Training, Inc. an extension until December 31, 1991. This grant provides a further extension of Exemption No. 5232A.
Grant, December 31, 1991, Exemption No. 5232B.

Docket No.: 23805
Petitioner: U.S. Department of the Interior
Sections of the FAR Affected: 14 CFR 91.119(b) and (c)
Description of Relief Sought/ Disposition: To permit operations below an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet from the aircraft, and closer than 500 feet to persons, vehicles, and structures in other than congested areas.
Grant, December 5, 1991, Exemption No. 5372.

Docket No.: 25559
Petitioner: Aerospace Industries Association
Sections of the FAR Affected: 14 CFR 21.182(a) and 45.11(a)
Description of Relief Sought/ Disposition: To extend Exemption No. 4913A to provide manufacturers of aircraft intended for operation under Parts 121 or 127 of the FAR, or in commuter air carrier operation (as defined in FAR Part 135 or Special Federal Aviation Regulations (SFAR) 38-4) and that are maintained under a FAA approved continuous airworthiness maintenance program, relief from the requirement to install the identification plate specified in the rule during the production phase. This exemption also applies to aircraft manufactured for export and to all activities until title is transferred.
Grant, December 9, 1991, Exemption No. 4913B.

Docket No.: 26072
Petitioner: Allison Gas Turbine Division of General Motors Corporation
Sections of the FAR Affected: 14 CFR 13.211
Description of Relief Sought/ Disposition: To amend Exemption No. 219A to expand the installation eligibility of Allison Model 250 series turboshaft engines on Type Certificate (TC) E4CE to include Transport Category A rotorcraft certificated under either Part 29 of the Federal Aviation Regulations or Part 7 of the Civil Air Regulations.
Grant, December 10, 1991, Exemption No. 219B

Docket No.: 26302
Petitioner: Flight Safety International
Sections of the FAR Affected: 14 CFR 135.293, 135.297, 135.299, 135.303, 135.337, and appendix H of Part 121
Description of Relief Sought/ Disposition: To amend Exemption No. 5241 so as to add a new condition and revise certain other conditions and limitations of Exemption No. 5241 to permit the use of visual simulators for training and checking FSI instructors. This amendment also allows FSI instructors to train and check a contracting operator's pilots in visual simulators, and extends the termination date of Exemption No. 5241.
Partial grant, December 9, 1991, Exemption No. 5241B

Docket No.: 26551
Petitioner: Flight Trails d/b/a Air Resorts Airlines
Sections of the FAR Affected: 14 CFR 121.356
Description of Relief Sought/ Disposition. To permanently exempt from § 121.356 of the Federal Aviation Regulations which requires Air Resorts Airlines (ARA) to install an approved Traffic Alert and Collision Avoidance System (TCAS) II in its airplanes. Alternatively, ARA petitions to be exempt from the requirement that 50 percent of its airplanes be equipped with TCAS II by no later than December 30, 1991.
Denial, December 11, 1991, Exemption No. 5376

Docket No.: 26577
Petitioner: Jet Tech, Inc.
Sections of the FAR Affected: 14 CFR 61.56(b)(1), 61.57 (c) and (d); 61.58(c)(1) and (d); 61.63(d) (2) and (3); 61.67(d)(2); 61.157(d) (1) and (2), 61.157(e) (1) and (2), Appendix A of Part 61, and Appendix H of Part 121
Description of Relief Sought/ Disposition: To exempt Jet Tech, Inc., from certain training and testing requirements of §§ 61.56(b)(1), 61.57 (c) and (d); 61.58(c)(1) and (d); 61.63(d) (2) and (3); 61.67(d)(2); 61.157(d) (1) and (2), 61.157(e) (1) and (2), appendix A of Part 61, and appendix H of part 121 of the Federal Aviation Regulations and permit Jet Tech, Inc., to use FAA approved simulators to meet certain training and testing requirements.
Grant, December 16, 1991, Exemption No. 5377

Docket No.: 26609
Petitioner: Jet Exam, Inc.
Sections of the FAR Affected: 14 CFR 61.56(b)(1), 61.57 (c) and (d); 61.58(c)(1) and (d); 61.63(d) (2) and (3); 61.67(d)(2); 61.157(d) (1) and (2), 61.157(e) (1) and (2), appendix A of part 61, and Appendix H of Part 121
Description of Relief Sought/ Disposition: To permit Jet Exam, Inc., to use FAA-approved simulators to meet certain training and testing requirements of §§ 61.57 (c) and (d); 61.157(e); Appendix A of Part 61; and Appendix H of Part 121 of the FAR.
Grant, December 11, 1991, Exemption No. 5373

Docket No.: 26644
Petitioner: Miami Flight Training Academy, Inc.
Sections of the FAR Affected: 14 CFR 61.56(b)(1), 61.75 (c) and (d); 61.58(c)(1) and (d); 61.63(d) (2) and (3); 61.67(d)(2); 61.57(d) (1) and (2), 61.157(e) (1) and (2), appendix A of part 61, and Appendix H of Part 121
Description of Relief Sought/ Disposition: To permit Miami Flight Training Academy, Inc., to use FAA-approved simulators to meet certain training and testing requirements of §§ 61.57 (c) and (d); 61.157(e); Appendix A of Part 61; and Appendix H of Part 121 of the FAR.
Grant, December 11, 1991, Exemption No. 5374

Docket No.: 26654
Petitioner: American Aviation Flight Academy
Sections of the FAR Affected: 14 CFR 61.56(b)(1), 61.57 (c) and (d); 61.58(c)(1) and (d); 61.63(d) (2) and (3); 61.67(d)(2); 61.157(d) (1) and (2), 61.157(e) (1) and (2), appendix A of part 61, and appendix H of Part 121
Description of Relief Sought/ Disposition: To permit American Aviation Flight Academy to use FAA-approved simulators to meet certain training and testing requirements of §§ 61.57 (c) and (d); 61.157(e); appendix A of part 61; and appendix H of part 121 of the FAR.
Grant, December 11, 1991, Exemption No. 5375

Docket No.: 26474
Petitioner: Deere & Company
Sections of the FAR Affected: 14 CFR 21.197(a)(1)
Description of Relief Sought: To amend Exemption No. 5348 in order to allow Deere & Company to operate their new Cessna Model 650, N900JD, serial number 650-0213 under the provisions of Exemption No. 5348. Exemption No. 5348 was issued on October 10, 1991 and subject to certain conditions and limitations, allows Deere & Company to operate their Cessna Model 650, N900JD, serial number 650-0035, without obtaining a special flight permit when the flaps fail in the up position.

[FR Doc. 91-31106 Filed 12-27-91; 8:45 am]

Billing Code 4910-13-M

[Summary Notice No. PE-91-43]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 9, 1992.

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ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915 G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM-1) Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulation (14 CFR part 11).

Issued in Washington, DC, on December 23, 1991.

Pamela Trebbe,

Acting Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 26706.
Petitioner: Regional Airline Association.
Sections of the FAR Affected: 14 CFR 121.337.
Description of Relief Sought/ Disposition: To allow member airlines of the Regional Airline Association and similarly situated airlines which operate shorts SD 3-60 airplines an extension of 6 months, until August 18, 1992, to complete the installation of protective breathing equipment for flight crewmembers on the flightdeck.

[FR Doc. 91-31107 Filed 12-27-91; 8:45 am]

BILLING CODE 4910-13-M

Emergency Evacuation Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Emergency Evacuation Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on January 24, 1992, at 9 a.m. Arrange for oral presentations by January 10, 1992.

ADDRESSES: The meeting will be held in the Boardroom, Air Transport Association of America, 5th floor, 1709 New York Avenue, NW., Washington, DC 20006-5206.

FOR FURTHER INFORMATION CONTACT: Ms. Marge Ross, Aircraft Certification Service (AIR-1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Emergency Evacuation Subcommittee to be held on January 24, 1992, in the Boardroom, Air Transport Association of America, 5th floor, 1709 New York Avenue, NW., Washington, DC 20591. The agenda for this meeting will include:

- A status report by the Performance Standards Working Group.
- Future activities.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by January 10, 1992, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Washington, DC, on December 20, 1991.

William J. Sullivan,

Executive Director, Emergency Evacuation Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-31110 Filed 12-27-91; 8:45 am]

BILLING CODE 4910-13-M

Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on February 4, 1992, at 9 a.m. Arrange for oral presentations by January 21, 1992.

ADDRESSES: The meeting will be held in the Goddard Room A and B, Aerospace Industries Association of America, 1250 Eye Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Marge Ross, Aircraft Certification Service (AIR-1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Transport Airplane and Engine Subcommittee to be held on February 4, 1992, in the Goddard Room A and B, Aerospace Industries Association of America, 1250 Eye Street, NW., Washington, DC 20005. The agenda for this meeting will include:

- Consideration of the final report of the Systems Review Working Group.
- Proposed task statements for the Airworthiness Assurance Working Group and for a parallel working group for commuter airplanes.
- Agreement to final subcommittee processes.
- Status reports from working groups.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by January 21, 1992, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Washington, DC, on December 20, 1991.

William J. Sullivan,

Executive Director, Transport Airplane and Engine Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc 91-31112 Filed 12-27-91; 8:45 am]

BILLING CODE 4910-13-M

General Aviation and Business Airplane Subcommittee on the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration General Aviation and Business Airplane Subcommittee on the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on January 29, 1992, at 9 a.m. Arrange for oral presentations by January 15, 1992.

ADDRESSES: The meeting will be held in Classroom 3, British Aerospace Training Center, 22170 Broderick Drive, Sterling, VA 22170.

FOR FURTHER INFORMATION CONTACT: Ms. Marge Ross, Aircraft Certification Service (AIR-1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. 11), notice is given of a meeting of the General Aviation and Business Airplane Subcommittee to be held on January 29, 1992, in Classroom 3, British Aerospace Training Center, 22170 Broderick Drive, Sterling, VA. The agenda for this meeting will include:

- Status reports from working groups.
- A briefing from the staff of the Aircraft Certification Small Airplane Directorate on the Directorate's Part 23 Harmonization program. The subcommittee will then develop recommendations to the Director, Aircraft Certification Service, as to the working groups the General Aviation and Business Airplane Subcommittee should be asked to form on the part 23 Harmonization Program.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by January 15, 1992, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 18 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Washington, DC, on December 20, 1991.

William J. Sullivan,

Executive Director, General Aviation and Business Airplane Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-31111 Filed 12-27-91; 8:45 am]

BILLING CODE 4910-13-M

Capital Airport, Springfield, IL; Notice of Intent to Rule on Application

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to rule on application to impose a passenger facility charge (PFC) at Capital Airport, Springfield, Illinois.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to impose a PFC at Capital Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and 14 CFR part 158.

On December 6, 1991, the FAA determined that the application to impose a PFC submitted by the Springfield Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 28, 1992.

DATES: Comments must be received on or before January 29, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon, room 258, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bruce E. Carter, Director of Aviation, of the Springfield Airport Authority at the following address: Capital Airport, Springfield Airport Authority, Springfield, Illinois 62707.

Comments from air carriers and foreign air carriers may be in the same form as provided to Springfield Airport Authority under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Louis H. Yates, Manager Chicago Airports District Office, 2300 East Devon, room 258, Des Plaines, Illinois 60018, (312) 694-7335. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The following is a brief overview of the application.

Level of proposed PFC: $3.00.

Proposed charge effective date: May 1, 1992.

Proposed charge expiration date: April 30, 1994.

Total estimated PFC revenue: $749,000.00.

Brief description of proposed projects:

1. Aircraft Rescue Firefighting Vehicle;
2. Overlay Runway 18/36;
3. Rehabilitate Taxiway A;
4. Widen Runway 4/22 at Both Ends;
5. Edge Lighting Improvements;
6. Taxiway CA Overlay;
7. Snow Removal Equipment Building, Site Work;
8. Snow Removal Equipment Building, Phase I;
9. Snow Removal Equipment Building, Phase II;
10. Acquisition of Boucher Property;
11. Acquisition of Niehaus Property;
12. Acquisition of Richardson Property;
13. Acquisition of Miller Property;
14. Acquisition of Bramblett Property;
15. Acquisition of Harris Property;
16. Snow Removal Equipment;
17. Airfield Signage (Phase II);
18. Security/Access Modification to meet Part 107.14 Requirements and Replace Airport Perimeter Fencing;
19. Environmental Assessment For Runway 12/30 Extension;
20. Extension of Runway 12/30;
21. Newly Required FAA Signage;
22. Two (2) Dodge Ram Chargers;
23. Removal of Selected Underground Storage Tanks;
24. Installation of Fuel Farm.

Availability of Application

Any person may inspect the application in person at the FAA office listed above. In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application at the Springfield Airport Authority.

Issued in Des Plaines, Illinois, on December 18, 1991.

W. Robert Billingsley,

Manager, Airports Division, Great Lakes Region.

[FR Doc. 91-31113 Filed 12-27-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1991 Rev., Supp. No. 8]

Surety Companies Acceptable on Federal Bonds; U.S. Capital Insurance Company

The above mentioned company was listed in 56 FR 30165, July 1, 1991, as a surety company acceptable on Federal bonds. Federal bond-approving officers are hereby notified that U.S. Capital Insurance Company is required by State law to conduct business in the State of California as U.S. Capital Insurance Company DBA MultiPlus Insurance Co.

Federal bond-approving officers should annotate their reference copies of Treasury Circular 570, 1991 Revision, to indicate that U.S. Capital Insurance Company DBA MultiPlus Insurance Co. is acceptable on Federal bonds in the State of California.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telehpone (202) 874-6850.

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Dated: December 23, 1991.

Charles F. Schwan III,

Director, Fund Management Division, Financial Management Service.

[FR Doc. 91-31158 Filed 12-27-91, 8:45 am]

BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

Management of Central and East European EFL Fellow Program

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The U.S. Information Agency (USIA) solicits interest from U.S. professional, not-for-profit institutions/organizations in conducting the recruitment and placement of 58 English as a Foreign Language (EFL) Fellows and English as a Foreign Language and English for Specific Purposes (EFL/ESP) Fellows as well as handling attendant administration for a special East European EFL Fellow program to provide EFL teacher trainers for teachers of English and ESP teachers in Albania, Poland, Hungary, Czechoslovakia, Romania, Bulgaria, Yugoslavia, Estonia, Latvia and Lithuania. This program is subject to the availability of funds from Support for East European Democracy III (SEED III) funding for Fiscal Year 1992.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. EST on January 21, 1992. Faxed documents will not be accepted, nor will documents postmarked on January 20, 1992 but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. Grants should begin February 17, 1992.

ADDRESSES: The original and 10 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Ref.: Management of Central and Eastern European EFL Fellow Program, Office of the Executive Director, E/X, room 336, 301 4th St., SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact William B. Royer, Jr. at U.S. Information Agency, 301 4th St., SW., Office of Cultural Centers and Resources, English Language Programs Division, E/CE, room 304, Washington, DC 20547, Telephone (202) 619-5869 to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Overview

The U.S. Information Agency (USIA) is soliciting proposals from U.S. professional, not-for-profit institutions/organizations to recruit and place 58 EFL Fellows and to handle attendant administration, including travel arrangements and payment of stipends, for a special Eastern European EFL Fellow program. The program is meant to provide teacher trainers for teachers of English and ESP teachers for Albania, Poland, Hungary, Czechoslovakia, Romania, Bulgaria, Yugoslavia, Estonia, Latvia and Lithuania. Recruitment will be conducted to fill positions in accordance with the basic objective of USIA's Fellow program for Central and Eastern Europe and the Baltic States, which is to promote the teaching of English as a vehicle to developing democracies throughout the region. The EFL Fellow Program, initiated last year with SEED II funding, was a response to the dramatic increase in the demand for English caused by the political changes in Eastern Europe and the shift in intellectual input from East to West. SEED III continues and expands the effort to promote English teaching in the region, thereby increasing the English language capability of Central and Eastern Europeans. Albania has been added to the list of countries receiving assistance under this program as have the Baltic States of Lithuania, Latvia, and Estonia. As in the first year of the program, USIA proposes to focus its resources on two areas: a) In-service teacher training; b) English for specific purposes (ESP). Personnel in the form of Eastern European EFL Fellows will coordinate and implement the teacher training program as well as teach individual language courses in ESP.

Guidelines

Among the responsibilities of the institution/organization receiving the assistance award will be:

1. Recruiting and Placing Fellows

This will include the following:

—Disseminate information through domestic and international mailings and other means concerning the Eastern European Fellow program;
—Arrange for and carry out interviews of all candidates having acceptable qualifications at, but not limited to, the annual TESOL convention in Vancouver, B.C. March 3–7, 1992 in collaboration with USIA's English Language Programs Division; [At least two interviewers should be assigned to this task;)
—Conduct all correspondence necessary to complete professional dossiers of each EFL Fellows candidate to be interviewed; establish and define duties expected of each EFL Fellow at the institution assigned, through correspondence with that institution in the particular country and in consultation with USIA's English Language Programs Division;
—Answer CVs and letters of inquiry with 'applicant package' of application materials, designed in consultation with USIA; enter data from applications/CVs into an ETF applicant database, on Paradox, sorting for experience, language, area preference, degree; contact candidates in priority order for acceptances based on best aggregate qualifications; print and mail Terms and Conditions of the ETF grant, letter of appointment, tax information, health insurance info and certificate to the nominee and secure the signed terms and conditions and the health certificate.

2. Finances and Payments

—Process the payments and financial arrangements and distribute the stipend checks to Fellows.
—Maintain budget figures for the program on a spreadsheet.

3. Travel

—Make all travel arrangements for the fellows to include travel from residence to Washington to place of assignment and return home, including finalizing their itineraries, booking, and mailing tickets and orientation letter to them.
—Finalize costs and update budget spreadsheet with final amount.

4. Orientation

—Arrange for and implement five-day orientation program for fellows in Washington, utilizing both outside experts and USIA officers, in consultation with USIA's English Language Programs Division. Oversee their departure to post.
—Finalize the agenda; design, type, and print handouts; type insurance cards for ETFs.

5. Review

Prepare and submit an evaluation report to USIA at mid-point and at the conclusion of the project.

Note: The period of the grant will be from February 17, 1992 to August 31, 1993.

Proposal should include allowance for a representative of the assistance award recipient institution/organization to visit Eastern European sites proposed for the EFL Fellows in order to become familiar with conditions at the host institutions.

Qualifications Required of the Responding Organization

To carry out the above tasks the institution/organization must be a not-for-profit or educational organization. It must have four years of international experience and possess a proven ability to network that provides and allows for the greatest dissemination of information to and among the profession of Teachers of English as a Second or Foreign Language; must be able to provide knowledgeable, TEFL-qualified, experienced staff capable of interviewing candidates and evaluating their qualifications for teaching, and/or for developing materials, or for conducting teacher-training in the context of English as a foreign language, in accord with criteria establish by USIA.

Proposed Budget

The grantee organization will be required to submit a comprehensive line item budget for which specific details are available in the application packet.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals may also be reviewed by the Agency's office of General Counsel, the appropriate geographic area office, and the budget and contracts offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. Quality of program plan and adherence of the proposed activity to the criteria and conditions described above.

2. Reasonable, feasible, and flexible objectives. Proposals should clearly demonstrate how the instituton will meet the program's objectives and plan.

3. Cost effectiveness. The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

4. Clear evidence of the ability to efficiently recruit and place suitable grantees for the Eastern European Fellow Program as described above. Proposals should demonstrate potential for program excellence and/or track record of applicant institution. The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants.

5. Demonstrated ability to gain access to and network with EFL/ESL professionals and programs.

6. Proposed personnel and institutional resources. These should be adequate and appropriate to achieve the program or project's goals. The proposal should include evidence of strong administrative and managerial capabilities and project management experience. At least two persons should be assigned to the recruiting and placement of the Fellows at the TESOL convention and afterwards.

7. Proposal should provide for a quarterly formative evaluation by the grantee institution and a summative evaluation at the conclusion of the project.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about February 17, 1992. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: December 19, 1991.

Barry Fulton,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-31016 Filed 12-27-91; 8:45 am]

BILLING CODE 8230-01-M

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Sunshine Act Meetings

Federal Register
Vol. 56, No. 250
Monday, December 30, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of January 2, 1992.

An open meeting will be held on Friday, January 3, 1992, at 10:00 a.m., in Room 1C30. A closed meeting will be held on Friday, January 3, 1992, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Friday, January 3, 1992, at 10:00 a.m., will be:

1. Consideration of whether to adopt revisions to the shareholder communications and related rules to implement provisions of the Shareholder Communications Improvement Act of 1990. These amendments would require: (1) investment companies registered under the Investment Company Act of 1940 ("Investment Company Act") to distribute information statements to shareholders in connection with a shareholder meeting where proxies, consents, or authorizations are not solicited by or on behalf of the registrant; and (2) brokers and banks that hold shares for beneficial owners of securities in nominee name to forward to the beneficial owners the proxy statements of investment companies registered under the Investment Company Act ("Investment Company Act registrants"), as well as the information statements of both Investment Company Act registrants and companies with a class of securities registered under Section 12 of the Securities Exchange Act of 1934. The amendments, if adopted, will be effective with respect to shareholder meetings held, or corporate action taken by consent or authorization, on or after March 31, 1992. For further information, please contact Elizabeth M. Murphy, Divisoin of Corporation Finance at (202) 272-2589; with regard to investment company issues, Kathleen K. Clarke, Division of Investment Management at (202) 272-2107.

2. Consideration of whether to adopt proposed Rule 17Ad-15 under the Securities Exchange Act of 1934 and an accompanying release that would provide for acceptance of signatures for eligible guarantor institutions on an equitable basis. Rule 17Ad-15 would: (1) prohibit inequitable treatment of eligible guarantor institutions; (2) require transfer agents to establish written standards for the acceptance of signature guarantees; and (3) enable transfer agents to reject a request for transfer because the guarantor is neither a member of or a participant in a signature guarantee program. For further information, please contact Ester Saverson, Jr. at (202) 272-2775.

3. Consideration of whether to issue for comment proposed rule 17Ad-16 under the Securities Exchange Act of 1934. The rule would require a registered transfer agent to provide written notice to at least one registered securities depository when terminating or assuming transfer agent services on behalf of an issuer or when changing its name or address. For further information, please contact Ester Saverson, Jr. at (202) 272-2775.

The subject matter of the closed meeting scheduled for Friday, January 3, 1992, at 2:30 p.m., will be:

Consideration of *amici* participation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: George Kramer at (202) 272-2000.

Jonathan G. Katz,

Secretary

December 24, 1991.

[FR Doc. 91-31241 Filed 12-26-91; 12:46 pm]

BILLING CODE 8010-01-M

federal register

Monday
December 30, 1991

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Part 56 et al.

Confined Spaces; Advance Notice of Proposed Rulemaking

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 70, 71, and 75

RIN 1219-AA54

Confined Spaces

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Mine Safety and Health Administration (MSHA) is in the early stages of developing regulations to reduce the incidence of accidents, injuries, and deaths caused by the hazards related to entering and working in confined spaces in mining. The Agency intends to develop a comprehensive regulation dealing with all aspects of confined spaces. This notice outlines issues on which MSHA is seeking comments and information from the mining community concerning the scope and content of a confined spaces standard and its potential impact on the mining industry.

DATES: All comments and information should be submitted by February 28, 1992.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA (703) 235–1910.

SUPPLEMENTARY INFORMATION: On August 29, 1989, MSHA published a proposed rule addressing air quality at mines (54 FR 35760). In that standard, which addresses dangerous atmospheres, MSHA defined confined space as one that "by design has restricted openings for entry and exit, an unfavorable atmosphere that could contain or produce dangerous air contaminants, and is not intended for continuous occupancy." Under this definition, confined spaces in mining would include bins, hoppers, silos, storage tanks, surge piles, draw-off tunnels, and processing vats that may be entered for cleaning or other maintenance. In the proposed rule, MSHA identified hazardous gases and vapors, and oxygen deficiency as hazards associated with confined spaces. MSHA intends that the comprehensive confined spaces standard will supersede the confined spaces provisions in the air quality rulemaking.

In developing a comprehensive confined spaces standard, MSHA also will consider the hazards of engulfment and entrapment. The vast majority of confined space mining fatalities are caused by engulfment and entrapment. The restricted area of confined spaces also increases the dangers posed to rescuers when a miner must be removed from a confined space. MSHA's review of accident investigation reports from 1980 through 1991 reveals that 45 metal and nonmetal mine fatalities and 33 coal mine fatalities involved confined spaces. MSHA believes a comprehensive confined space standard could have prevented some of these 78 fatalities.

Accident investigation reports also indicate that many mine operators do not fully recognize that hazards such as engulfment and entrapment are exacerbated by conditions of confined space work, or that existing MSHA standards apply to hazards wherever they are found including in confined spaces. The development of the confined spaces standard will consolidate operator responsibilities relative to confined spaces.

To develop a confined spaces standard, MSHA will consider its own data as well as information from the Occupational Safety and Health Administration (OSHA), the National Institute for Occupational Safety and Health (NIOSH), State regulations, company programs and any other relevant information. Outlined below are summaries of current MSHA regulations, OSHA's proposed confined spaces rule which requires a permit for entry, and NIOSH's criteria document "Working in Confined Spaces."

MSHA. Currently, MSHA standards require all operators to train miners in hazard recognition and avoidance (30 CFR part 48). This training includes hazards associated with confined spaces. MSHA also requires metal and nonmetal operators to post warning signs to warn miners at areas that contain hazards that are not immediately obvious (§§ 56/57.20011) and to label toxic substances in a manner that identifies both the hazard involved and the protective action required (§§ 56/57.20012). Additionally for metal and nonmetal mines, §§ 56/57.16002 require that individuals entering bins, hoppers, silos, tanks, and surge piles be equipped with mechanical devices or other effective means of handling materials so that they are not exposed to entrapment or other hazardous conditions.

OSHA. On June 5, 1989, OSHA published its proposed rule "Permit Required Confined Spaces" (54 FR 24080). In the proposed rule, OSHA introduced the term "permit required confined space" to cover the particular confined spaces it would regulate OSHA defined a "permit required confined space" as "an enclosed space which—

(i) Is large enough and so configured that an employee can bodily enter and perform assigned work;

(ii) Has limited or restricted means for entry or exit (some examples are tanks, vessels, silos, storage bins, hoppers, vaults, pits and diked areas);

(iii) Is not designed for continuous employee occupancy; and,

(iv) Has one or more of the following characteristics:

(A) Contains or has a known potential to contain a hazardous atmosphere;

(B) Contains a material with the potential for engulfment of an entrant;

(C) Has an internal configuration such that an entrant could be trapped or asphyxiated by inwardly converging walls, or a floor which slopes downward and tapers to a smaller cross-section; or

(D) Contains any other recognized serious safety or health hazard."

According to OSHA, confined spaces may include such areas as storage vessels, furnaces, railroad tank cars, manholes and autoclaves.

Under its proposed rule, OSHA would require employers to survey their workplaces, identify "permit spaces" and permanently block or post warning signs at any spaces which employees would never enter. If employers require employees to enter "permit spaces," they would have to develop a written program to identify hazards in each permit required space, restrict access to authorized personnel, control hazards and monitor a space during entry to ensure the safety and health of the worker entering a confined space.

The proposed standard would permit employers to rely on in-house rescue teams with proper training and equipment and a member certified in first aid and cardiopulmonary resuscitation, or the employer could plan to call in outside rescuers provided they are informed of potential hazards to enable them to prepare and equip themselves properly. The proposed standard would also require training for entrants, attendants, and permit authorizers.

OSHA's proposed rule classifies certain "permit required confined spaces" into a subcategory of "low-hazard permit spaces." Low-hazard permit spaces would be confined spaces with a very low likelihood of a flammable or explosive atmosphere, atmospheric toxins or engulfment hazards. Low-hazard spaces would require permits but no attendants.

NIOSH. In December 1979, NIOSH published a criteria document "Working in Confined Spaces," that identifies confined workspaces and work practice guidelines. NIOSH defines a confined space as "a space which by design has limited openings for entry and exit; unfavorable natural ventilation which could contain or produce dangerous air contaminants, and which is not intended for continuous employee occupancy." According to NIOSH, confined spaces include but are not limited to storage tanks, compartments of ships, process vessels, pits, silos, vats, degreasers, reaction vessels, boilers, ventilation and exhaust ducts, sewers, tunnels, underground utility vaults, and pipelines.

NIOSH classifies confined spaces into three subcategories; Class A—immediately dangerous to life; Class B—dangerous but not immediately life threatening; and Class C—potential hazard. Additionally, NIOSH's document provides oxygen, flammability and toxicity characteristics for each of these subcategories.

NIOSH lists eleven recommendations for entry, working in and exiting confined spaces. These recommendations consist of: permit; atmospheric testing; monitoring; medical surveillance; training of personnel; labeling and posting; preparation of a confined space; working procedures; safety equipment and clothing; rescue equipment; and recordkeeping/exposure. The application of these requirements differs among the classes. Class A has the most mandatory requirements, while Class C allows for a determination by a qualified individual for many provisions.

General Approach and Scope of an MSHA Standard

Confined space accidents in mining result from many different causes including asphyxiation, engulfment, entrapment, burn and explosion injuries, electrical shock, other mechanical and physical hazards, and exposure to toxic materials. MSHA requests comments on how these hazards should be addressed, as well as on the following general issues. Recommendations for specific provisions should include a rationale for their inclusion.

1. Should an MSHA standard include the same general concepts as OSHA's proposed "Permit Required Confined Spaces" standard? What would it cost a mine operator to comply with OSHA's proposed rule? What specific elements of the OSHA proposed rule should MSHA include or exclude in its standard? What costs would be associated with these elements? What elements should be mandatory or voluntary?

2. Should an MSHA standard include the same general concepts as NIOSH's criteria document? What would it cost a mine operator to comply with NIOSH's program? What specific elements of NIOSH's criteria document should MSHA include or exclude in its standard? What costs would be associated with these elements? What elements should be mandatory or voluntary?

3. MSHA is aware of three States which currently have confined space regulations; Maryland, Washington and Virginia. Are there other State regulations relating to confined spaces that MSHA should consider? What does it cost a mine operator to comply with these regulations? What specific elements of State regulations should MSHA include or exclude in its confined spaces standard? What costs are associated with these elements? What elements should be mandatory or voluntary?

4. Do you have or are there any company programs relating to confined spaces that MSHA should consider in the development of its confined spaces standard? What does it cost to operate such programs? What specific elements of these programs should MSHA include or exclude in its confined spaces standard? What are the costs associated with these elements? What elements should be mandatory or voluntary?

5. For operators with mining properties as well as properties regulated by other agencies, how should MSHA avoid conflicting provisions and duplication?

6. Are there any other relevant regulations, programs or data that MSHA should consider in developing its confined spaces standard?

Specific Issues Identified for Comment

MSHA is seeking comments and data on a number of specific issues in this advance notice of proposed rulemaking. Since an MSHA standard would affect all of the mining industry, commenters should provide a rationale for any suggestions, including specific data to support their respective positions based upon particular mining methods, practices, operational conditions, etc. MSHA requests comments on all aspects of a confined spaces standard and on the following issues in particular:

1. Should MSHA develop a new definition for "confined space" or use one of the following:

—The definition used in MSHA's August 29, 1989, air quality proposed rule (54 FR 35760);

—The definition used in OSHA's proposed rule "Permit Required Confined Spaces" (54 FR 24080); or

—The definition used in NIOSH's criteria document "Working in Confined Spaces."

2. How should confined spaces be classified? Should MSHA use a classification system similar to OSHA's or NIOSH's? Are there other classification systems that MSHA should consider?

3. How should confined spaces be identified or labeled for mine employees?

4. Should MSHA's standard contain minimum communication requirements between individuals within confined spaces and attendants on the outside? What would be the cost of the communication system, including maintenance? What communication procedures should be implemented in addition to those established in MSHA's air quality proposed rule?

5. Should MSHA's standard require posting of written permits at entrances into confined space areas? What would be the cost of materials and labor necessary to do posting? Should attendants be required? How many attendants would be needed and under what conditions? What conditions do not require an attendant?

6. Should MSHA's standard address duties and responsibilities of miners required to act as attendants at the entrance to a confined space?

7. What special training should miners receive? How should training for confined spaces interact with part 48 training? How often should it be provided? What training should be required for: (1) individuals who evaluate confined spaces and develop appropriate entry procedures; (2) miners who perform work in a confined space; (3) and miners who act as attendants at entrances of confined spaces? What would be the cost of this training, including the instructor's and trainee's time and labor as well as the cost of any materials?

8. MSHA has identified the following chemical hazards associated with confined spaces: flammable substances, explosives, toxic substances, and oxygen deficient or enriched atmospheres. For each hazard—

What requirements should be implemented for cleaning, purging, deactivating, or ventilating prior to entry into confined spaces? What equipment would be necessary? What would be the cost of these procedures and equipment? Under what conditions should these hazards be tested either before or during entry? What testing methods and

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instrumentation should be used and how should they be maintained? How often should these tests be performed, and how much do they cost? What personal protective equipment is necessary? What safety procedures and equipment should be used? What rescue equipment is necessary?

9. What type of respiratory protection in addition to that required in the air quality proposed rule should MSHA require for confined spaces? How should respiratory protection be integrated with MSHA's air quality proposed rule?

10. What limitations should be placed on welding and hot operations in confined spaces?

11. MSHA has identified the following physical hazards associated with confined spaces: engulfment, entrapment, electrical, and mechanical hazards. For each hazard—

What requirements should be implemented for blocking, cleaning, deenergizing, lockout and tagout, stabilizing, or ventilating prior to entry and during work in confined spaces? What equipment would be necessary? What would be the cost of these procedures and equipment? Under what conditions should these hazards be tested either before or during entry? What testing methods and instrumentation should be used and how should they be maintained? How often should these tests be performed, and how much do they cost? What personal protective equipment is necessary? What safety procedures and equipment should be used? What rescue equipment is necessary?

12. Numerous engulfment and entrapment fatalities in mining result from miners being drawn into confined spaces while performing work near or above the confined spaces; that is, working on unstable material which is located above a draw point. How should MSHA address these hazards?

13. What other hazards and issues associated with confined spaces should MSHA address?

14. What labor categories are normally employed in confined space work? What are the wages of these employees? What portion of their time do they spend on confined space work and related safety work practices?

Dated: December 20, 1991.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 91-31010 Filed 12-27-91; 8:45 am]

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Monday
December 30, 1991

Part III

Environmental Protection Agency

40 CFR Part 82

Stratospheric Ozone Protection; Direct Final Amendment to Temporary Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–4057–7]

Protection of the Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final amendment to the temporary final rule.

SUMMARY: Today's action makes several revisions to EPA's Stratospheric Ozone Protection temporary final rule published on March 6, 1991 (56 FR 9518). The March 6 rule implemented the requirements of section 604 of the Clean Air Act Amendments of 1990 for the year 1991 only. As originally published, the rule placed production and consumption restrictions on three previously unregulated groups of ozone-depleting chemicals as well as the previously-regulated chemicals (five chlorofluorocarbons and three halons) by allocating production and consumption allowances to producers and importers of the chemicals. A company must have both production and consumption allowances to produce these chemicals and consumption allowances only to import these chemicals.

The temporary final rule specified baseline allowances for importers and producers of the newly controlled substances. It also shifted the control period from a july through june period to a calendar year basis. Finally, it added record-keeping and reporting requirements for the new chemicals, while keeping in place most of the provisions of the original rule under 40 CFR part 82 that implemented restrictions on ozone-depleting chemicals under the Montreal Protocol on Substances that Deplete the Ozone Layer.

There are several provisions of the temporary final rule which require adjustment. The rule introduced a mechanism for producers of controlled substances that lacked baseline allowances (due to the large volume of their production that was transformed or exported, and thus not "consumed," in the baseline year) to petition for allowances with which to begin the production process for 1991. However, it did not include a requirement that the companies hold at least an equal volume of unexpended allowances at the end of the year. Without this requirement, companies could produce (and not transform) levels of the chemical equal to the allowances they had received through the petition process, and the companies' production and consumption limits could thus exceed the limits prescribed by the Clean Air Act.

Also, the temporary final rule did not include updated appendices which listed controlled substances, Parties to the Montreal Protocol and Article 5 Parties. These appendices are listed in today's rule. In addition, with the control period shift, the temporary final rule shifted the due date for end-of-year export reports to February 15, 1992. However, EPA must still require that information on Group I chemicals be submitted within 30 days to comply with the Montreal Protocol. Finally, the Agency has updated baseline allowance allocations based on receipt of additional documentation of baseline year production, imports and exports. These changes are included in this direct final amendment.

DATES: All the provisions of this amendment to the temporary final rule are effective retroactively from January 1, 1991, unless adverse or critical comments relating to the revision of §§ 82.5 and 82.6 are received by January 29, 1992.

ADDRESSES: Comments and other information relevant to this rulemaking are maintained in Docket A–91–50 at the Air Docket Room M–1500, First Floor, Waterside Mall, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8:30 a.m. until noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. As provided in 40 CFR part 2, reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: David Lee, Stratospheric Ozone Protection Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, ANR–445, 401 M Street SW., Washington, DC 20460, (202) 260–1497.

SUPPLEMENTARY INFORMATION:

A. End-of-Year Balancing of Accounts for Companies Which Petitioned for Up-Front Allowances Under § 82.9(e)

This amendment requires that companies which receive up-front production and consumption allowances under § 82.9(e) must have at least that level of unexpended allowances in their accounts at the end of 1991.

These allowances were originally granted for the purpose of allowing producers of controlled substances to receive baseline allowances to begin the production-transformation cycle. The statute and the rule define production as the manufacture of a substance but not including the manufacture of a substance that is used and entirely consumed in the manufacture of other chemicals ("transformed") or the reuse or recycling of a substance. Consumption is production plus imports minus exports. For several companies, the quantity of carbon tetrachloride transformed and exported in the baseline year exceeded or nearly exceeded the amount produced and imported. These companies thus received few or no baseline consumption allowances with which to begin producing carbon tetrachloride at the beginning of 1991. This situation had not occurred previously, when the regulations applied only to CFCs and halons. Carbon tetrachloride, however, is used primarily as a feedstock for the manufacture of other chemicals, and in the United States at least 81% of the carbon tetrachloride produced is transformed each year.

Since EPA's intent in allocating baseline allowances was not to terminate the production of carbon tetrachloride, particularly when it is intended for transformation in which case it presents no danger to stratospheric ozone, the Agency sought to aid these companies by including the petition process in the temporary final rule. Under § 82.9(e), companies whose baseline year exportation and transformation equalled or exceeded its baseline year production and importation were allowed to petition EPA for up-front production and consumption allowances upon providing EPA with documentation showing that an equivalent amount of the controlled substance would be transformed during the 1991 control period.

The Agency in the temporary final rule neglected to add that recipients of these allowances would have to hold an equivalent number of production and consumption allowances at the end of the 1991 control period. Since companies are permitted to request additional allowances after they have transformed controlled substance, a recipient of up-front allowances could exceed its production limit as specified by the Clean Air Act by producing and not transforming an amount equivalent to the allowances granted pursuant to its petition. Section 604 requires that in 1991 no company exceed its baseline level of production of controlled substances in Groups IV and V and that the Agency promulgate regulations implementing similar limits for the consumption of controlled substances in Groups IV and V. If companies with no baseline allowances were to receive up-front allowances and were not required to hold an equivalent amount at the end of the 1991 control period, they could conceivably exceed the statutory limit on production and consumption of the controlled substances.

EPA believes that this requirement will not create difficulties for affected companies. Once the carbon tetrachloride production cycle is started and the up-front allowances are expended, companies should be able to replace those allowances once the carbon tetrachloride is transformed or exported either by receiving transfers of allowances under § 82.12 or by requesting additional allowances from EPA under §§ 82.9 and 82.10 upon proof that the substance has been transformed or exported.

Sections 82.9 and 82.10 specify that companies that use and entirely consume a controlled substance in the manufacture of another chemical may request additional production and consumption allowances from the Agency. A transforming company may thus receive allowances equal to those expended in the production or importation of the controlled substances. It may then transfer those allowances back to a producing or importing company, if other than itself, and the producer or importer in this way may continue to produce or import controlled substances.

To further facilitate this cycling of allowances, EPA will accept, for transformations occurring within the 1991 control period, requests submitted by February 15, 1992 for allowances for the use of controlled substances as feedstock and for transfers of allowances. This lag period for the completion of paperwork will ensure that all companies will receive full credit for any controlled substances that they may have transformed in the last days of 1991.

B. Apportionment of Allowances

On November 26, 1990, EPA published in the **Federal Register** an information request (55 FR 49116) under section 114 of the Clean Air Act requiring firms to report to the Agency the amount of certain ozone-depleting substances they had produced, imported, exported or transformed in 1989. EPA needed this information to apportion to firms baseline production and consumption allowances for 1991, as well as for future years, as required under § 607 of title VI of the Clean Air Act Amendments of 1990. Although companies were required to respond within 20 days of this information request, several firms were not able to provide EPA with complete documentation of their 1989 activities until after the deadline. The Agency decided to continue accepting documentation of baseline data, recognizing the shortness of the 20-day response period.

Some of the late data consisted of revisions of previous submissions by large companies that discovered errors in the original data they had reported. These adjustments account for the majority of the significant changes in the allowances. New information was also received from smaller companies, particularly importers and companies that transform controlled substances, that did not become aware of the reporting requirement until after the promulgation of the temporary final rule. Several companies that should have received allowances, based on their 1989 activities, received no allowances in the March 6, 1991 rule and are being added with this amendment.

In this amendment, EPA is making two types of changes to baseline allowances: Changes due to a party's own submissions, and changes due to second-party information on transformation and exports. EPA is making the first type of change to reflect additional information that companies submitted to EPA about their own production, imports, exports and transformation in 1989.

EPA is making the second type of changes to baseline allowances to reflect additional second-party information about exported or transformed materials. Because of the additional information EPA received about the sources of exported or transformed materials, EPA must now adjust those sources' baseline allowances. EPA believes that the adjustments are necessary for the allowances to represent an accurate representation of the baseline year and views this as a noncontroversial amendment. However, since the action takes effect retroactively, the Agency has decided that if adverse comments are received in reference to the baseline allocation by January 29, 1992, the Agency will withdraw the portion objected to through the publication of a **Federal Register** notice. If any portion is withdrawn, it then will be included in a notice of proposed rulemaking and a comment period will be established.

EPA considered but rejected a third type of change to baseline allowances. EPA had used correction factors in the original baseline allocation to balance out unattributed exports and transformations. Due to the additional information EPA received after the original baseline allocation, the levels of unattributed exports and transformation has changed, and thus the correction factors would as well. The application of the adjusted correction factors to the new data would have reduced many companies' allowances by a fraction. For example, all Group IV and Group V production allowances would have been reduced by 0.10 percent, and Group V consumption allowances would have been reduced by 0.30 percent. EPA has decided that it is not appropriate to apply these correction factors to the new data, because the purpose of this amendment is solely to make adjustments to previously-granted allowances. The application of the correction factors at the initial allocation stage was an appropriate way to balance out unattributed allowances. However, applying correction factors at this stage, after baseline allocations have already been made, could be seen as a regulatory "taking."

The baseline allowances for Groups III, IV and V published here are adjusted to reflect the additional data. EPA revised the baseline production and consumption allowances by adding to or subtracting from the March 6, 1991 allocations using the company's own additional information or additional second-party information. A company that submitted no new information and was not noted in any second-party information would therefore have no change in its baseline allowance.

A company's production equals the total amount of the substance manufactured in 1989 minus the amount of its production that was transformed in that year and excluding any amount made by that company from reused or recycled substances. A company's consumption equals its production plus its imports minus its exports during the baseline year. Thus, if a company belatedly discovered that it had imported 50 kilograms (calculated level) more of a substance than originally reported, EPA simply added 50 to the company's baseline consumption allowances as published in the March 6 rule.

Most changes were due to companies' revision of their own submissions. One company discovered after the publication of the temporary final rule that recycled material had been reported by them as production. Another company discovered that production that had occurred at one plant had afterwards been transformed at another plant, and thus should not have been included as production. A third company stated that all the companies that transform its product had not reported to EPA and thus their production numbers were artificially elevated.

EPA does not believe that the adjustments to the baseline will cause

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any difficulties for companies. Those that revised their data are aware that EPA intends to incorporate their revisions for the 1991 control period. Quarterly production and import reports indicate that no company will be placed out of compliance by this action. Indeed, at least 3 companies could have significant compliance problems without the revision of these allowances.

In addition, there is no adverse environmental impact due to these changes. The net effect of the baseline revision is a reduction of the total amount of available allowances.

In evaluating the baselines for this notice, it became clear that the definition of transformation needed to be further clarified. There were several firms that used a chemical process during which carbon tetrachloride was decomposed but did not become part of the final product. EPA determined originally that the process did not transform carbon tetrachloride since it was not a feedstock that became part of another chemical. This decision was based on the assumption that the exclusion from production of "the manufacture of a substance that is used and entirely consumed in the manufacture of other chemicals" was intended for feedstock chemicals used to make "other chemicals" to be sold commercially.

The Parties to the Protocol have not addressed the application of the transformation provision to cases where the chemical is used up in a manufacturing process without its actually being incorporated in the commercial product. The Agency, at the time of the temporary final rule, was thus unsure of the appropriateness of excluding production used up in this way from a company's baseline production.

Since the temporary final rule was issued, EPA has reconsidered this issue. Companies with these types of processes (e.g., refineries that use carbon tetrachloride to regenerate a catalyst with free chlorine) are being designated as transformers through this amendment and thus amounts used up in these processes are subtracted from the production allocations of the companies that produced the chemicals. The overall effect of this revision on baseline allocations is very small, as the amounts of carbon tetrachloride used in these processes are minute. The Agency now believes that carbon tetrachloride used in such a process should be considered "transformed" on the theory that the carbon tetrachloride is used as a feedstock to produce another chemical, which, although not sold as a product, is used commercially in a manufacturing process. This interpretation is fully consistent with the text and the fundamental intent of both the Protocol's and the Clean Air Act Amendments' definition of production.

Most firms that submitted their 1989 production, import, export and transformation levels to EPA in response to the November 26 information request claimed the data as confidential business information (CBI). EPA has not yet ruled on those claims, but production, import, export and transformation levels are the type of information that may be entitled to confidential treatment. The Agency has treated the information claimed CBI as confidential in accordance with its business confidentiality regulations at 40 CFR part 2, subpart B, and so has not placed it in the public docket for this rulemaking. A full discussion of the confidentiality issues involved in the publishing of baseline allowances is included in the March 6, 1991 temporary final rule.

In many cases, companies claimed the information which was requested in the November 26, 1990 request to be confidential business information. As required by 40 CFR 2.301(g), EPA sent a letter to notify companies producing or importing the newly regulated ozone-depleting substances that the Agency intended to publish each company's allowances in the **Federal Register** for the March 6, 1991 temporary final rule. Since this notice includes only minor changes to the allowances originally published, and there were no objections to publishing the allowances at that time, only companies that were not included in the March 6 rulemaking were given the official 10-day comment period for the publishing of information claimed confidential.

C. End-of-Year Export Report

This amendment also requires companies that exported controlled substances in Group I from July 1, 1990 through June 30, 1991 to report to the EPA by January 29, 1992, any exports during that period which were not previously reported in requests for additional consumption allowances and authorizations to convert. These reports should include any exports for which additional consumption allowances and authorizations to convert were requested but not granted by EPA. In the March 6 rulemaking, EPA inadvertently moved the date for the end-of-year export report from August, 1991 to February, 1992 for all the chemical groups. Although for the purposes of all other reports, the control period is shifted under the Clean Air Act to coincide with the calendar-year, for the Group I end-of-year reporting requirement under § 82.13(h), this information is needed by EPA for the purpose of complying with Montreal Protocol reporting requirements for the period beginning on July 1, 1990 and ending on June 30, 1991. This requirement will only apply for this control period and for Group I chemicals.

Companies may request additional consumption allowances and authorizations to convert for the exports included in the report until December 31, 1991, if they should chose to do so. In such cases, firms should also complete the appropriate reports to receive allowances for those exports. The end of-year report will be used solely in the Agency's report to the Parties and does not affect the Clean Air Act allowance tracking system.

D. Publication of Appendices

Finally, revisions to the appendices which were inadvertently left out of the March 6, 1991 rule, are being published with this notice. Since the August 12, 1988 rule (53 FR 30566) which published these appendices, more chemicals have been added to the list of controlled substances, additional countries have become Parties to the Montreal Protocol, and additional countries have been granted Article 5 status. The newly-listed chemicals are those added by title VI of the Clean Air Act Amendments of 1990 and the addition of the newly-listed Protocol Parties and Article 5 countries is based on information obtained from the Protocol Secretariat.

E. Justification for the Direct Final Amendment

EPA finds it necessary to promulgate this amendment without giving prior notice and an opportunity for public comment for reasons the same as or related to those that EPA gave in the preamble to the temporary final rule for not providing prior notice and an opportunity to comment on that rule. At that time, EPA stated that it was necessary to forgo prior notice and an opportunity for comment because section 604 of the Clean Air Act called for production and consumption limits to take effect January 1, 1991. Production limits are self-effectuating under title VI. In order for the limits on production as well as consumption to be achieved, EPA believed it necessary to promulgate temporary regulations as soon as possible. However, the Agency found it impossible to promulgate regulations through notice and comment rulemaking in the short period between enactment of the Clean Air Act Amendments on November 15, 1990 and January 1, 1991.

Today's amendment includes relatively minor changes to the March 6, 1991 temporary final rule that are nonetheless important to fair and effective implementation of section 604's limits. It grants several companies allowances for groups of chemicals for which they had received no allowances because of their inability to submit the requisite documentation in time for the March 6 rule. To prevent these companies from having to shut down operations that section 604 permits, EPA believes it appropriate to grant them allowances now. Other companies' allowances are decreased based on information those companies submitted after the March 6 rule. In addition, the adjustments prevent recipients of certain allowances from inappropriately using them for emissive purposes and provide for reports required by the Montreal Protocol Secretariat. The public interest is best served by making these changes, and the companies affected are either benefitted by the rule or are not adversely affected to a significant or unexpected degree. Several companies allowances are decreased by large amounts, but those companies made EPA aware that they had been granted too many allowances. Companies affected by the rule would find it difficult to comply with its provisions for the 1991 control period if those provisions were not promulgated until later in the control period. Thus the direct promulgation of this amendment is in the public interest because it will ensure that the provisions of title VI of the Clean Air Act as amended in 1990 are correctly implemented for 1991.

EPA believes that it is necessary to have a January 1, 1991 effective date for the same reasons that were stated in the March 6, 1991 temporary final rule. EPA selected that date because section 604(a) specifies that the currently applicable production limit takes effect on January 1, 1991. The Agency believes that the retroactive effect of this amendment will not adversely affect any member of the regulated community. Most of the revisions to the 1989 baseline result in additional allowances for companies whose documentation was not completed until after the deadline for the promulgation of the temporary final rule. According to EPA records, it is extremely unlikely that any company could have exceeded its actual baseline allowances on the basis of the amounts allocated in the temporary final rule. Finally, the regulations must take effect on January 1, 1991 for them to be meaningful, as the production and consumption limits are on a control period basis, in this case from January 1, 1991 through December 31, 1991. The baseline allocations are valid for a control period, and making them effective for only part of the year would conflict with the rest of the provisions of the stratospheric ozone protection regulations.

EPA finds that these reasons constitute good cause under 5 U.S.C. 553(b) for a determination that the issuance of a notice of proposed rulemaking is unnecessary. This action will be retroactive to January 1, 1991 unless adverse or critical comments in reference to the revised baseline allowances are received by January 29, 1992. The Agency views this as a noncontroversial amendment and anticipates no adverse comments. If such comments are received, the portion of this action objected to will be withdrawn through the publication of a **Federal Register** notice. If any portion of this action is withdrawn, it will be included in a notice of proposed rulemaking and a comment period will be established. If no such comments are received, the public is advised that this action will be effective as of January 1, 1991.

F. Additional Information

1. Executive Order (E.O.) 12291

Executive Order (E.O.) 12291 requires the preparation of a regulatory impact analysis for major rules, defined by the order as those likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic industries; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA determined that its March 6, 1991 temporary final rule did not meet the definition of a major rule under E.O. 12291, and therefore did not prepare a regulatory impact analysis (RIA). Since this technical amendment only supplements the temporary final rule and does not impose any additional burdens, no RIA would need to be prepared for this action either.

2. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 604(b). EPA determined that no RFA was necessary for the temporary final rule, and so no RFA would be required for this amendment either.

3. Paperwork Reduction Act

The information collection required in this rule has been previously approved in the information collection request entitled Record-Keeping and Periodic Reporting of the Production, Import, Export and Feedstock-Use of Ozone-Depleting Substances, under OMB Control Number 2060–0170, including the end-of-year export reports of Group I substances.

Dated: December 13, 1991.

William Reilly,

Administrator.

List of Subjects in 40 CFR Part 82

Administrative practice and procedure, Air pollution, Chemicals, Exports, Imports, Reporting and recordkeeping requirements.

Title 40, Code of Federal Regulations, part 82, is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 is revised to read as follows:

Authority: 42 U.S.C. 7671–7671q.

2. In § 82.4, a new paragraph (e) is added to read as follows:

§ 82.4 Prohibitions.

* * * * *

(e) Any person that receives a quantity of production or consumption allowances under § 82.9(e) must hold the same quantity of unexpended production or consumption allowances on December 31, 1991. Every kilogram by which the person's unexpended production or consumption allowances falls short of the amount the person was originally granted under § 82.9(e) constitutes a separate violation.

3. In § 82.5, paragraphs (c), (d), and (e) are revised to read as follows:

§ 82.5 Apportionment of baseline production allowances.

* * * * *

(c) For Group III controlled substances:

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Person	Calculated level (kg)
Allied-Signal, Inc	127125
Atochem North America	3992
E.I. DuPont de Nemours & Co	359471
Great Lakes Chemical Corp	56381
Laroche Chemicals	29055

(d) For Group IV controlled substances:

Person	Calculated level (kg)
Akzo Chemicals, Inc	11350207
Degussa Corporation	29405
Dow Chemical Company, USA	27006146
E.I. DuPont de Nemours & Co	10077
Hanlin Chemicals-WV, Inc	245368
ICI Americas, Inc	145452
Occidental Chemical Corp	921302
Vulcan Chemicals	22009550

(e) For Group V controlled substances:

Person	Calculated level (kg)
Dow Chemical Company, USA	15806939
PPG Industries, Inc	5746415
Vulcan Chemicals	8971002

4. In § 82.6, paragraphs (c), (d), and (e) are revised to read as follows:

§ 82.6 Apportionment of baseline consumption allowances.

* * * * *

(c) For Group III controlled substances:

Person	Calculated level (kg)
Allied-Signal, Inc	127125
Atochem North America	3963
E.I. DuPont de Nemours & Co	329186
Great Lakes Chemical Corp	56112
ICI Americas, Inc	5844
Laroche Chemicals	28960
National Refrigerants	16626
Sumitomo Corporation of America	5912
TG (USA)	8254

(d) For Group IV controlled substances:

Person	Calculated level (kg)
Crescent Chemical	131
Degussa Corporation	29405
Dow Chemical Company, USA	32496490
E.I. DuPont de Nemours & Co	62052
Hanlin Chemicals-WV, Inc	244659
Hoechst-Celanese	7
ICI Americas, Inc	2064430
Occidental Chemical Corp	919178
Sumitomo Corporation of America	22

(e) For Group V controlled substances:

Person	Calculated level (kg)
3V Chemical Corp	354
Actex, Inc	5030
Atochem North America	7454
Dow Chemical Company, USA	12599654
IBM	203
ICI Americas	1421574
Laidlaw	42142
PPG Industries, Inc	4538256
Sumitomo Corporation of America	196
TG (USA)	709
Unitor Ships Service, Inc	1476
Vulcan Chemicals	7096589

5. In § 82.13, paragraph (h) is revised to read as follows:

§ 82.13 Recordkeeping and reporting requirements.

* * * * *

(h) For any exports of controlled substances not reported under § 82.10 (additional consumption allowances) or § 82.11 (Exports to Parties) or under this section, the exporter who exported the controlled substances must submit to the Administrator the following information within 45 days of the end of the control period in which the unreported exports left the United States. For any exports of controlled substances in Group I from July 1, 1990 through June 30, 1991 which were not reported under § 82.10 (additional consumption allowances) or § 82.11 (Exports to Parties), the exporter who exported the controlled substances must submit to the Administrator the following information within 30 days of the promulgation of this notice.

6. Part 82 is amended by removing appendices A, B, D and E, redesignating appendix C as appendix D and adding new appendices A, B, C and E to read as follows:

Appendix A—Class I Controlled Substances

Controlled substance	Ozone depletion weight
A. Group I:	
$CFCl_3$—Trichlorofluoromethane (CFC-11)	1.0
CCl_2F_2—Dichlorodifluoromethane (CFC-12)	1.0
$CCl_2F-CClF_2$—Trichlorotrifluoroethane (CFC-113)	0.8
$CF_2Cl-CClF_2$—Dichlorotetrafluoroethane (CFC-114)	1.0
$CClF_2-CF_3$—(Mono)chloropenthafluoroethane (CFC-115)	0.6
All isomers of the above chemicals	
B. Group II:	
CF_2BrCl—Bromochlorodifluoromethane (halon 1211)	3.0
CF_3Br—Bromotrifluoromethane (halon 1301)	10.0
$C_2F_4Br_2$—Dibromotetrafluoroethane (halon 2402)	6.0
All isomers of the above chemicals	
C. Group III:	
CF_3Cl—Chlorotrifluoromethane (CFC-13)	1.0
C_2FCl_5—(CFC-111)	1.0
$C_2F_2Cl_4$—(CFC-112)	1.0
C_3FCl_7—(CFC-211)	1.0
$C_3F_2Cl_6$—(CFC-212)	1.0
$C_3F_3Cl_5$—(CFC-213)	1.0
$C_3F_4Cl_4$—(CFC-214)	1.0
$C_3F_5Cl_3$—(CFC-215)	1.0
$C_3F_6Cl_2$—(CFC-216)	1.0
C_3F_7Cl—(CFC-217)	1.0
All isomers of the above chemicals	
D. Group IV:	
CCl_4—Carbon Tetrachloride	1.1
E. Group V:	
$C_2H_3Cl_3$—1,1,1-Trichloroethane (Methyl chloroform)	.1

Appendix B—Class II Controlled Substances

Controlled substance	Ozone depletion weight
$CHFCl_2$-Dichlorofluoromethane (HCFC-21)	[res.]
CHF_2Cl-Chlorodifluoromethane (HCFC-22)	0.05
CH_2FCl-Chlorofluoromethane (HCFC-31)	[res.]
C_2HFCl_4—(HCFC-121)	[res.]
$C_2HFCl_2Cl_3$—(HCFC-122)	[res.]
$C_2HF_3Cl_2$—(HCFC-123)	0.02
C_2HF_4Cl—(HCFC-124)	0.02
$C_2H_2FCl_3$—(HCFC-131)	[res.]
$C_2H_2F_2Cl_2$—(HCFC-132b)	[res.]
$C_2H_2F_3Cl$—(HCFC-133a)	[res.]
$C_2H_3FCl_2$—(HCFC-141b)	0.12
$C_2H_3F_2Cl$—(HCFC-142b)	0.06
C_2HFCl_6—(HCFC-221)	[res.]
$C_2HF_2Cl_5$—(HCFC-222)	[res.]
$C_2HF_3Cl_4$—(HCFC-223)	[res.]
$C_2HF_4Cl_3$—(HCFC-224)	[res.]
$C_2HF_5Cl_2$—(HCFC-225ca)	[res.]
(HCFC-225cb)	[res.]
C_2HF_6Cl—(HCFC-226)	[res.]
$C_2H_2FCl_5$—(HCFC-231)	[res.]
$C_2H_2F_2Cl_4$—(HCFC-232)	[res.]
$C_2H_2F_3Cl_3$—(HCFC-233)	[res.]
$C_2H_2F_4Cl_2$—(HCFC-234)	[res.]
$C_2H_2F_5Cl$—(HCFC-235)	[res.]
$C_2H_3FCl_4$—(HCFC-241)	[res.]
$C_2H_3F_2Cl_3$—(HCFC-242)	[res.]
$C_2H_3F_3Cl_2$—(HCFC-243)	[res.]
$C_2H_3F_4Cl$—(HCFC-244)	[res.]
$C_2H_4FCl_3$—(HCFC-251)	[res.]
$C_2H_4F_2Cl_2$—(HCFC-252)	[res.]
$C_2H_4F_3Cl$—(HCFC-253)	[res.]
$C_2H_5FCl_2$—(HCFC-261)	[res.]
$C_2H_5F_2Cl$—(HCFC-262)	[res.]
C_2H_6FCl—(HCFC-271)	[res.]
All isomers of the above chemicals	[res.]

Appendix C—Parties to the Montreal Protocol

Parties to the Montreal Protocol: Argentina, Australia, Austria, Bahrain, Bangladesh, Belgium, Brazil, Bulgaria (February 16, 1991), Burkina Faso, Byelorussian Soviet Socialist

Republic, Cameroon, Canada, Chile, China (September 12, 1991), Costa Rica (October 28, 1991), Czechoslovakia, Denmark, Ecuador, Egypt, European Economic Community, Fiji, Finland, France, Gambia, Germany, Ghana, Greece, Guatemala, Hungary, Iceland, Iran, Ireland, Italy, Japan, Jordan, Kenya, Libyan Arab Jamahiriya, Liechtenstein, Luxembourg, Malawi (April 9, 1991), Malaysia, Maldives, Malta, Mexico, Netherlands, New Zealand, Nigeria, Norway, Panama, Philippines (October 15, 1991), Poland, Portugal, Singapore, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Thailand, Trinidad and Tobago, Togo (May 26, 1991), Tunisia, Turkey (December 19, 1991), Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom, United States of America, Uruguay (April 8, 1991), Venezuela, Yugoslavia (April 3, 1991), Zambia.

Appendix E—Article 5 Parties

Argentina (June 21, 1991), Bangladesh (June 21, 1991), Brazil (June 21, 1991), Burkina Faso (June 21, 1991), Cameroon (June 21, 1991), Chile (June 21, 1991), China (September 12, 1991), Costa Rica (October 28, 1991), Ecuador (June 21, 1991), Egypt (June 21, 1991), Fiji (June 21, 1991), Gambia (June 21, 1991), Ghana (June 21, 1991), Guatemala (June 21, 1991), Iran (June 21, 1991), Jordan, Kenya (June 21, 1991), Libyan Arab Jamahiriya (June 21, 1991), Malawi (June 21, 1991), Malaysia, Maldives (June 21, 1991), Mexico, Nigeria (June 21, 1991), Panama (June 21, 1991), Philippines (October 15, 1991), Sri Lanka (June 21, 1991), Syrian Arab Republic (June 21, 1991), Thailand, Togo (June 21, 1991), Trinidad and Tobago (June 21, 1991), Tunisia (June 21, 1991), Turkey (December 19, 1991), Uganda (June 21, 1991), Uruguay (June 21, 1991), Venezuela, Yugoslavia (June 21, 1991), Zambia (June 21, 1991).

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Part IV

Department of Education

Pell Grant Program; Deadline Dates for Receipt of Reports and Other Documents for the 1990-91 Award Year; Notice

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DEPARTMENT OF EDUCATION

Pell Grant Program; Deadline Dates for Receipt of Reports and Other Documents for the 1990–91 Award Year

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces the deadline dates for the receipt of documents from institutions participating in the Pell Grant Program during the 1990–91 award year.

SUPPLEMENTARY INFORMATION: The Pell Grant Program provides grants to students attending eligible institutions of higher education to help them pay for their educational costs. Authority for the Pell Grant Program is contained in sections 411 through 411F of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1070a through 1070a–6. The regulations for the Pell Grant Program are codified in 34 CFR part 690 and 34 CFR part 668.

This notice announces the reports and information that institutions are required by 34 CFR 690.83(b) to submit to the Secretary, establishes the deadlines for submission of that information, and explains the manner in which the Secretary interprets and applies the requirements of 34 CFR 690.83(a) to requests by institutions for adjustments to their Pell Grant accounts with regard to Student Aid Report (SAR) Payment Vouchers (Part 3 of the SAR) submitted after the December 31 deadline established under § 690.83(a).

I. Submissions to the Secretary of Institutional Payment Summery and Student Aid Reports

Each institution that participates in the Pell Grant Program is required by 34 CFR 690.83(b) to submit to the Secretary reports and information required in connection with the Pell Grant funds made available to the institution for an award year. These required reports include the Institutional Payment Summary (IPS). Ordinarily, the Secretary provides an IPS form to the institution for completion and return to the Department.

The institution may also meet this reporting requirement by submitting the IPS information to the Department on a floppy disk, magnetic tape, or by an electronic transmission from a personal or mainframe computer through a modem. These are referred to, respectively, as the Pell Grant Floppy Disk Data Exchange, the Pell Grant Recipient Data Exchange (RDE), and the Electronic Data Exchange (EDE) Stage III. An institution that wishes to transmit by one of these three methods must enter into a written agreement with the Department and must agree to comply with the manner of formatting and presenting the information submitted as prescribed by the Department, to restrict access to the records from which the IPS information is derived, and to ensure that only authorized officials or agents of the institution may enter the data transmitted in or with the IPS submission to the Department.

The Department credits an institution's Pell Grant account on the basis of data submitted through the system described in this notice in a timely, certified, and acceptable form. A submission is timely if received by the Department by the deadlines prescribed in the table in part I. C. of this notice; certified, if its accuracy is attested to by the institution in the manner described in part I. D. of this notice; and acceptable if submitted in accordance with the directions provided by the Department for the particular medium of submission used by the institution.

Failure to meet these reporting requirements may result in administrative action by the Department under subpart G of 34 CFR part 668 to fine the institution, or to limit or terminate its participation in the Pell Grant Program. In addition, failure to accurately report a student's full award amount by the reporting deadline may render the student ineligible for all or part of his or her Pell Grant disbursement.

A. Data and Records to be Submitted

In each IPS submission, the institution must submit the following:

(1) On the IPS, or in the IPS format, the institution must provide information described in Section II of the IPS, including, in particular, the number and amount of Pell Grant awards to its students affected by events or transactions that take place and the institution's total payments to all Pell Grant recipients for the award year, generally, up to the date of the submission; and

(2) A SAR Payment Voucher (Part 3 of the SAR), or its equivalent as defined by the Secretary, that discloses—

(i) Any new Pell Grant recipients identified by the institution during the period in which the IPS is submitted; or

(ii) Any change in enrollment status, cost of attendance, or other event that occurred during either the period in which the IPS is submitted or the period immediately preceding that period, if that event causes a change in the amount of Pell Grant that a student has received or qualifies to receive for the award year.

The institution may submit the IPS without SAR Payment Vouchers or equivalents if the institution had no Pell Grant recipients in attendance, or identified no new Pell Grant recipients during the period in which the report is made, and did not identify any events affecting the awards of previously-reported recipients during the reporting period preceding the period in which the IPS is submitted. If an institution that transmits IPS information via the floppy disk, RDE, or EDE Stage III wishes to exercise this option, it must use the paper document.

(Approved by the Office of Management and Budget under OMB Control Numbers 1840–0132 (SAR) and 1840–0540 (IPS))

B. Addresses for Delivery

The institution must deliver the IPS and any accompanying SAR Payment Vouchers, or the floppy disk or magnetic tape containing this information, as follows:

If by regular mail: U.S. Department of Education, Pell Grant Branch, DPOS, P.O. Box 4158, Iowa City, Iowa 52244–4158.

If delivered by a courier other than U.S. Postal Service: U.S. Department of Education, Pell Grant Branch, DPOS, c/o National Computer Systems, 2510 N. Dodge St., Iowa City, Iowa 52240, Attention: GPS/DP.

C. Frequency and Schedules for IPS Submissions

The institution must make an IPS submission or its equivalent at least once during each of the reporting periods established in the following tables that apply to institutions with Pell Grant authorizations comparable to that of the reporting institution. The institution may make IPS submissions more frequently, up to 60 times in the entire reporting cycle (July 1st through the final reporting deadline). For purposes of complying with the reporting requirements of section I, an institution must ensure that the IPS and SAR Payment Vouchers are received by the Department by the applicable closing date for each reporting period specified in the applicable table of this notice; proof of mailing such as a dated U.S. Postal Service postmark is not considered confirmation of receipt by the Department. If the institution submits the IPS and SAR Payment Voucher information by means of the Electronic Data Exchange Stage III, the transmission must be received at the Department of Education s Central Processing System facility by midnight (Central Time) of the applicable closing date for the reporting periods indicated in tables A and B.

TABLE A.—INSTITUTIONS WITH A 1989–90 PELL GRANT AUTHORIZATION OF AT LEAST $750,000

Reporting periods	Closing date for receipt
July 1, 1990 through Oct. 15, 1990.	Oct. 15, 1990
Oct. 16, 1990 through Dec. 15, 1990.	Dec. 15, 1990
Dec. 16, 1990 through Feb. 15, 1991.	Feb. 15, 1990
Feb. 16, 1991 through Apr. 15, 1991.	Apr. 15, 1991
Apr 16, 1991 through June 15, 1991.	June 15, 1991
June 16, 1991 through Aug. 15, 1991	Aug. 15, 1991

TABLE B.—INSTITUTIONS WITH A 1989–90 PELL GRANT AUTHORIZATION OF LESS THAN $750,000

Reporting periods	Closing date for receipt
July 1, 1990 through Dec. 15, 1990.	Dec. 15, 1990
Dec. 16, 1990 through Apr. 15, 1991.	Apr. 15, 1991
Apr .16, 1991 through Aug 15, 1991.	Aug. 15, 1991

D. Certification of accuracy

The institution must certify the accuracy of the IPS submission, and must include with each IPS submission a certification to that accuracy. An institution transmitting an IPS must certify by including an original signed certification by the official of the institution accountable for the accuracy of the date submitted. An institution transmitting IPS information in a disk, magnetic tape, or electronic transmission must certify by including in that transmission the code or signature flag prescribed by the Department with which the institution signifies that the transmitted information has been provided from a file or record to which only officials with appropriate security clearance have access.

II. Annual Deadline for Submission of SAR Payment Vouchers and Requests for Adjustments of Pell Grant Accounts

Under the reporting system established under the regulations and described here, an institution obtains an adjustment in its Pell Grant account, and the amount of Pell Grant funds for which it is accountable, by submitting supporting SAR Payment Vouchers or equivalents under the procedures described in this notice. An institution is required by 34 CFR 690.83(a) to submit all SAR Payment Vouchers for an award year by a specified date following that award year; for 1990–91 and prior years, that date is the December 31 following the end of the award year. The institution may therefore submit any Payment Vouchers not previously submitted during the required reporting periods established in this notice by that annual deadline date, and receive an adjustment in its Pell Grant authorization on the basis of that submission. After December 31, the Secretary closes out the institution's Pell Grant account for the award year on the basis of information reported by the institution through submission of the IPS and supporting SAR Payment Vouchers through that date. The final IPS submitted by the institution must accurately report the institution's total payments to all Pell Grant recipients for the completed award year (IPS Item 15 or equivalent).

A. Timely Delivery for Final Submissions of SAR Payment Vouchers and Requests for Adjustments of Pell Grant Accounts: Proof of Delivery.

An institution may be required by the Department to show that it mailed or otherwise submitted its IPS and SAR Payment Vouchers by the December 31 deadline date.

The Department accepts as proof of the date of delivery by mail or by non-Postal Service courier one of the following:

(i) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(ii) A legibly-dated U.S. Postal Service postmark.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method of proof of mailing, an institution should check with the post office at which it mails its submission. An institution is strongly encouraged to use First Class Mail.

(iii) A dated shipping label, invoice, or receipt from a commercial courier.

(iv) Other proof of mailing or delivery acceptable to the Secretary.

The Department accepts hand-delivery at the address stated earlier between 8 a.m. and 4:30 p.m. Central Time on days other than Saturday, Sunday, or Federal holidays.

An institution that transmits IPS and SAR Payment Document information via the Electronic Data Exchange Stage III must ensure that its transmission is completed by midnight of the December 31 deadline date.

The Secretary regards 34 CFR 690.83(a) as intended to cause a timely closeout of the institution's account for the award year by closing the Pell Grant account of the institution solely on the basis of SAR Payment Vouchers or equivalents delivered to the Department by the annual deadline date, unless the closure would result in certain inaccuracies in the measurement of an institution's management of its Pell Grant authorization. Through the various notices published regarding the submission of this data, the Secretary has interpreted § 690.83(a) to recognize a very limited number of exceptions to the closing of the Pell Grant account on the deadline date.

B. Post-deadline Adjustments to Pell Grant Accounts

In final regulations published November 6, 1991, the Secretary amended 34 CFR 690.83(a) to change the annual deadline date from December 31 to September 30. That change applies to the 1991–92 award year and subsequent award years, but the interpretation included in the responses to comments applies to the intent and operation of the current version of § 690.83(a) as it applies to 1990–91 submissions (see 56 FR 56915, Nov. 6, 1991). As explained there, the Secretary interprets § 690.83(a) to permit a post-December 31 adjustment to the Pell Grant account of an institution for the 1990–91 award year or any prior award year in these two circumstances:

(1) Underpayment of Previously Reported Awards

If the institution timely submitted a SAR Payment Voucher or equivalent for a student in accordance with requirements of this notice and § 690.83(a), but did not timely submit, in an acceptable form, a SAR Payment Voucher necessary to document the full amount of the award to which that student is entitled, the institution may receive a payment or reduction in accountability in the full amount of that award, if—

(i) The underpayment for that award is or would be at least $100, and

(ii) A program review or an audit report produced in accordance with the standards prescribed in 34 CFR 668.23(c) demonstrates to the satisfaction of the Secretary that the student was eligible to receive an amount greater than that reported on the SAR Payment Voucher timely submitted to, and accepted by the Secretary.

(2) Overawards of Previously Reported Grants

At any time that the institution determines that a student on whose Pell Grant it had previously reported

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received more than the amount of Pell Grant funds for which the individual qualified, the institution may report the reduction to the proper amount. The institution should not make such a report, however, for an overaward for which it is not liable under § 690.79(a).

The Secretary, in addition, makes allowance for its own administrative errors where the institution demonstrates that its failure to timely submit SARs and have them accepted was caused by a processing or administrative error made by the Department or one of its contractors.

The Secretary does not adjust the Pell Grant account of an institution on the basis of submissions made after December 31 following the award year except in these specified circumstances. Thus, if an institution submits to the Department after the December 31 deadline, SAR Payment Vouchers or equivalents for the 1990-91 award year, the institution will not receive either added Pell Grant funds or a reduction in the amount of Pell Grant funds previously received from the Department for which it is accountable unless it demonstrates that one of these conditions exists. If the institution does not so demonstrate to the satisfaction of the Secretary, the institution, with respect to the amount not timely reported, will receive no additional funds for that grant, no reimbursement if the grant was already made using institutional funds, and will remain liable for those Federal funds received in advance that it used for that grant.

Moreover, if the institution was required by § 690.79(a) to use institutional funds for Pell Grants to compensate for overawards for which it was accountable, the Secretary takes those required reimbursements into account in determining whether the institution qualifies for added funds under the first exception described here.

If an institution believes that an adjustment is warranted on the basis of the conditions described here, it should contact the Pell Grant Program Financial Management Section at (202) 708-9807. If the institution seeks relief on the basis of administrative error by the Department or its contractor, that request must provide a complete description of all facts pertaining to the awards not credited, including identifying data and full payment history. The request must be received by the Department no later than March 31, 1992. The request must be delivered to: U.S. Department of Education, Pell Grant Branch, DPOS, P.O. Box 23791, Washington, DC 20026-0791.

C. Request for Duplicate Payment Vouchers or Related Information

An institution that wishes to receive a duplicate Payment Voucher, Processed Payment Voucher, or processed payment data, may do so by contacting a Pell Grant Program Financial Management Specialist in writing at: U.S. Department of Education, Pell Grant Branch, DPOS, P.O Box 23791, Washington, DC 20026-0791

In order to recieve a duplicate Payment Voucher the institution must include with its request a photocopy of either Part 1 or Part 2 of that student's SAR, or a photocopy of that student's Electronic Student Aid Report (ESAR).

APPLICABLE REGULATIONS: The regulations applicable to this program are the Pell Grant Program regulations in 34 CFR part 690 and the Student Assistance General Provisions regulations in 34 CFR part 668.

FOR FURTHER INFORMATION CONTACT: Jennifer Radden, Program Specialist, Policy Section, Pell Grant Branch, Division of Policy and Program Development, Office of Student Financial Assistance, Office of Postsecondary Education, 400 Maryland Avenue SW. (ROB-3, room 4318), Washington, DC 20202. Telephone (202) 708-7888. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1 (800) 877-8339 (in Washington, DC (202) 708-9300) between 8 a.m. and 7 p.m., Eastern time.

(20 U.S.C. 1070a).

(Catalog of Federal Domestic Assistance No. 84.063, Pell Grant Program).

Dated: December 23, 1991.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

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Monday
December 30, 1991

Part V

Department of Education

Office of Special Education and Rehabilitative Services

Notice Inviting Applications for New Awards Under the Training Personnel for the Education of Individuals With Disabilities—Grants for Fiscal Year 1992

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DEPARTMENT OF EDUCATION

[CFDA No. 84.029C]

Office of Special Education and Rehabilitative Services

Notice Inviting Applications for New Awards Under the Training Personnel for the Education of Individuals With Disabilities—Grants for Personnel Training for Fiscal Year 1992

NOTE TO APPLICANTS: This notice is a complete application package. The notice contains information, application forms and instructions needed to apply for a grant under this competition.

The estimates of funding levels and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants, unless the amount is otherwise specified by statute or regulation.

PURPOSE OF PROGRAM: The Individuals with Disabilities Education Act (IDEA) Amendments of 1991, Public Law 102–119 establishes a new personnel preparation program for projects supporting personnel development partnerships.

SUPPLEMENTARY INFORMATION: This program complements AMERICA 2000, the President's strategy for moving the Nation toward the achievement of the six National Education Goals. By strengthening the quality of personnel training for individuals in the fields of special education, related services, and early intervention services, this program will help individuals with disabilities reach the high levels of educational performance envisioned by the National Education Goals.

ELIGIBLE APPLICANTS: States and other public and private entities are eligible under this program.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: April 1, 1992.

DEADLINE FOR INTERGOVERNMENTAL REVIEW: June 29, 1992.

APPLICATIONS AVAILABLE: December 27, 1991.

AVAILABLE FUNDS: $1,500,000.

ESTIMATED RANGE OF AWARDS: $250,000 to $350,000.

ESTIMATED AVERAGE SIZE OF AWARDS: $300,000.

ESTIMATED NUMBER OF AWARDS: 5.

PROJECT PERIOD: Up to 60 months.

APPLICABLE REGULATIONS: The following regulations apply to assistance under this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), Part 81 (General Education Provisions Act—Enforcement), Part 82 (New Restrictions on Lobbying), Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in part 318—Training Personnel for the Education of Individuals with Disabilities—Personnel Preparation Grants. See 56 FR 57198–57204, November 7, 1991.

PRIORITIES: Under 34 CFR 75.105(c)(3) and Section 631(c) of the IDEA the Secretary gives an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet the absolute priorities in this notice.

The Secretary will make up to 5, 60-month awards for support of personnel development partnerships.

Priority—Personnel Development Partnerships

This priority supports the formation of consortia or partnerships of public and private entities for the purpose of providing opportunities for career advancement or competency-based training, including but not limited to, certificate or degree granting programs in special education, related services, and early intervention for current workers at public and private agencies that provide services to infants, toddlers, children, and youth with disabilities. The purposes for which such a grant may be expended include, but are not limited to, the following:

(1) Establishing a program with colleges and universities to develop creative new programs and coursework options or to expand existing programs in the field of special education, related services, or early intervention. Funds may be used to provide release time for faculty and staff for curriculum development, instructional costs, and modest start-up and other program development costs.

(2) Establishing a career development mentoring program using faculty and professional staff members of participating agencies as role models, career sponsors, and academic advisors for experienced State, city, county, and voluntary sector workers who have demonstrated a commitment to working in the above fields and who are enrolled in higher education institution programs relating to these fields.

(3) Supporting a wide range of programmatic and research activities aimed at increasing opportunities for career advancement and competency-based training in the above fields.

(4) Identifying existing public and private agency and labor union personnel policies and benefit programs that may facilitate the ability of workers to take advantage of higher education opportunities such as leave time and tuition reimbursement.

Selection Criteria

The Secretary is using the selection criteria in 34 CFR 318.22 to select grantees under this competition. The Secretary awards up to 100 points for these criteria. The maximum possible score for each criterion is indicated in parentheses.

(a) Impact on Critical Present and Projected Need. (30 points)

The Secretary reviews each application to determine the extent to which the training will have a significant impact on critical present and projected State, regional, or national needs in the quality or the quantity of personnel serving infants, toddlers, children, and youth with disabilities. The Secretary considers—

(1) The significance of the personnel needs to be addressed to the provision of special education, related services, and early intervention. Significance of need identified by the applicant may be shown by—

(i) Evidence of critical shortages of personnel to serve infants, toddlers, children, and youth with disabilities, including those with limited English proficiency, in targeted speciality or geographic areas, as demonstrated by data from the State Comprehensive System of Personnel Development; reports from the Clearinghouse on Careers and Employment of Personnel serving children and youth with disabilities; or other indicators of need that the applicant demonstrates are relevant, reliable, and accurate; or

(ii) Evidence showing significant need for improvement in the quality of personnel providing special education, related services and early intervention services, as shown by comparisons of actual and needed skills of personnel in targeted specialty or geographic areas; and

(2) The impact the proposed project will have on the targeted need. Evidence that the project results will have an impact on the targeted needs may include—

(i) The projected number of graduates from the project each year who will have necessary competencies and certification to affect the need;

(ii) For ongoing programs, the extent to which the applicant's projections are supported by the number of previous program graduates that have entered the field for which they received training, and the professional contributions of those graduates; and

(iii) For new programs, the extent to which program features address the projected needs, the applicant's plan for helping graduates locate appropriate employment in the area of need, and the program features that ensure that graduates will have competencies needed to address identified qualitative needs.

(b) Capacity of the Institution (25 points)

The Secretary reviews each application to determine the capacity of the institution or agency to train qualified personnel, including consideration of—

(1) The qualifications and accomplishments of the project director and other key personnel directly involved in the proposed training program, including prior training, publications, and other professional contributions;

(2) The amount of time each key person plans to commit to the project;

(3) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability;

(4) The adequacy of resources, facilities, supplies, and equipment that the applicant plans to commit to the project;

(5) The quality of the practicum training settings, including evidence that they are sufficiently available; apply state-of-the-art services and model teaching practices, materials, and technology; provide adequate supervision to trainees; offer opportunities for trainees to teach; and foster interaction between students with disabilities and their nondisabled peers;

(6) The capacity of the applicant to recruit well-qualified students;

(7) The experience and capacity of the applicant to assist local public schools and early intervention service agencies in providing training to these personnel, including the development of model practicum sites; and

(8) The extent to which the applicant cooperates with the State educational agency, the State designated lead agency under Part H of the Act, other institutions of higher education, and other appropriate public and private agencies in the region served by the applicant in identifying personnel needs and plans to address those needs.

(c) Plan of Operation (25 points)

The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) The extent to which the plan of management ensures effective, proper, and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The way the applicant plans to use its resources and personnel to achieve each objective;

(5) The extent to which the application includes a delineation of competencies that program graduates will acquire and how the competencies will be evaluated;

(6) The extent to which substantive content and organization of the program—

(i) Are appropriate for the students' attainment of professional knowledge and competencies deemed necessary for the provision of quality educational and early intervention services for infants, toddlers, children, and youth with disabilities; and

(ii) Demonstrate an awareness of methods, procedures, techniques, technology, and instructional media or materials that are relevant to the preparation of personnel who serve infants, toddlers, children, and youth with disabilities; and

(7) The extent to which program philosophy, objectives, and activities implement current research and demonstration results in meeting the educational or early intervention needs of infants, toddlers, children, and youth with disabilities.

(d) Evaluation Plan. (10 points)

The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project;

(2) To the extent possible, are objective and produce data that are quantifiable, including, but not limited to, the number of trainees graduated and hired; and

(3) Provide evidence that evaluation data and student follow-up data are systematically collected and used to modify and improve the program. (See 34 CFR 75.590, Evaluation by the grantee.)

(e) Budget and Cost-Effectiveness. (10 points)

The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The applicant presents appropriate plans for the institutionalization of Federally supported activities into basic program operations.

(Authority: 20 U.S.C. 318 (c))

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.029C), Washington, DC 20202–4725.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC, time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.029C), room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC 20202.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of

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application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–8494.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on September 17, 1990 (55 FR 38210 and 38211).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: **The Secretary, E.O. 12372—CFDA #84.029C, U.S. Department of Education, Room 4161, 400 Maryland Avenue, SW., Washington, D.C. 20202–0125.**

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Application Instructions and forms

The appendix to this application is divided into three sections plus a section on common questions and answers, a statement regarding estimated public reporting burden, and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted applications should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certification must each have an original signature. No grant may be awarded unless a completed application form has been received.

Authority: 20 U.S.C. 1410.

Dated: December 23, 1991.

Michael E. Vader,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this section. Applicants are required to submit an original and two copies of each application as provided in this section.

Common Questions and Answers

While we have always made every effort to make our application materials as clear and complete as possible, a major task of Division of Personnel Preparation staff from the date of the program announcement to the closing date in answering phone and mail requests with further questions. The next several pages list some of the most common issues raised by potential applicants in interpreting our regulations and application instructions.

The following issues are not hypothetical. They represent concerns repeatedly raised, even though in many cases they are answered in the regulations or application instructions. The problem seems to be that the issues are not sufficiently highlighted, or that they are disguised by the formal language of legislative documents. These issues and general responses are listed in approximately the frequency of occurrence.

• Extension of Deadlines

Waivers for individual applications are not granted, regardless of the circumstances. Under very extraordinary circumstances a closing date may be changed. Such changes are announced in the **Federal Register** and apply to all applications.

• Copies of the Application

Current Government-wide policy is that only an original and two copies need to be submitted. Division staff duplicate the two additional copies necessary to complete the review process by staff and peer readers. It is not required that applications be bound, though they may be if you wish. However, to facilitate our reproduction, please leave one copy unbound. Also, please do not use colored paper, foldouts, photographs, or other hard to duplicate materials. Some applicants prefer to make their own additional copies. If you do so, there is no need to submit more than two additional copies, as that is all that will be required for the review process.

• Help Preparing Applications

We are happy to provide general program information. Clearly it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about our application requirements and evaluation criteria, or about the announced priority. Applicants should understand that such previous contact is not required, nor does it guarantee the success of an application.

• Notification of Funding

The time required to complete the evaluation of applications is extremely variable. Once applications have been received staff must determine the areas of expertise needed to appropriately evaluate the applications, identify and contact potential reviewers, convene peer review panels, and summarize and review the recommendations of the review panels. You can expect to receive notification within 3 to 6 months of the application closing date. The requested start date should therefore be a minimum of 3 months after the closing date.

• Possibility of Learning the Outcome of Review Panels Prior to Official Notification

Every year we are called by a number of applicants who have really legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, etc. Regardless of the reason, we cannot share information about the review with anyone prior to officially completing the review process for a competition, nor can we tell you when you will be notified. *Please* do not call us and ask us for this information. You will be notified as quickly as possible either by a grant negotiator (if your application is recommended for funding) or through a letter to the certifying representative (if your application is not successful).

• Length of Application

The Department of Education is making a concerted effort to reduce the volume of paper work in applications to discretionary grant programs. The following suggestions should assist applicants to prepare applications which will convey the information necessary for the review and selection process, and also save America's forests, professional time and energy. The scope and complexity of projects are too variable to establish firm limits on length. Your application should provide enough information to allow the review panel to evaluate the importance and impact of the project as well as to make knowledgeable judgments about the methods you propose to use (design, subjects, sampling procedures, measures, instruments, data analysis strategies, etc.). Many applications include voluminous appended material. In most cases this material is not useful in the evaluation process. Very few projects require much supporting material. However, it is often helpful to have:

(1) *Staff Vitae*—when these include each person's title and role in the proposed project and contain *only* information that is relevant to this proposed project's activities and/or publications. Vitae for consultants and Advisory Council members should be similarly brief.

(2) *Instruments*—except in the case of generally available and well known instruments.

(3) *Agreements*—when the participation of an agency other than the applicant is critical to the project. This is particularly critical when an intervention will be implemented within an agency, or when subjects will be drawn from particular agencies. Letters of cooperation should be specific, indicating agreement to implement a particular intervention or to provide access to a particular group. General letters of support are *not* useful.

Except for the three items noted above, most appendix material is rarely useful. Typical extraneous materials include:

(1) Related project descriptions completed by applicant

(2) Maps

(3) State plans

(4) Brochures

(5) Copies of publications

• Use of Person Loading Charts

Program officials and applicants often find person loading charts useful formats for showing project personnel and their time commitments to individual activities. A person loading chart is a tabular representation of major activities by number of days spent by each person involved in each activity, as shown in the following example.

TABLE #

[Person Loading Chart]

Activity	Time in Day(s) by Person*			
	Person A	Person B	Person C	Person D
Program Development	15	100	0	0
Mentoring	0	0	0	5
Research	5	25	0	0
Information Services	0	3	0	0
Dissemination (manuscripts, etc.)	0	1	20	10

* Note: All figures represent FTE for the academic year.

• Return of Non-Funded Applications

Because of budget restrictions, we are no longer able to return original copies of applications. Thus, applicants should retain at least one copy of the application. Copies of reviewer comments will be mailed to all applicants.

• Delivering/Sending Applications to the Competition Manager

Applications can be mailed or hand delivered, but in either case *must* go the Application Control Center at the address listed in the Mailing Instructions in this packet. Delivering/sending the application to the competition manager in the program office may prevent it from being logged in on time to the appropriate competition.

• Format for Applications

Applications are more likely to receive favorable reviews by panels when they are organized according to the published evaluation criteria. If you prefer to use a different format you may wish to cross-reference the sections of your application to the evaluation criteria to be sure that reviewers are able to find all relevant information.

• Allowed Travel Under These Projects

Travel associated with carrying out the project is allowed (i.e. travel for data collection, etc.). Travel to conferences is the travel item that is most likely to be questioned during negotiations. Such travel is sometimes allowed when it is for purposes of dissemination, when there will be results to be disseminated, and when it is clear that a conference presentation or workshop is an effective way of reaching a particular target group.

• Funding of Approved Applications

It is often the case that the number of applications recommended for approval by the reviewers exceeds the dollars available for funding projects under a particular competition. When the panel reviews are completed for a particular competition, the individual reviewer scores and applications are ranked. The higher ranked, approved applications are funded first, and there are often lower ranked, approved applications that do not receive funding. Sometimes the one or two applications that are approved and fall next in rank order (after the projects selected for funding) are placed on hold. If dollars are freed up during negotiations or if a higher ranked applicant declines the award, the projects on hold may receive funding. If you receive a letter stating

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that you will not receive funding then your project has neither been selected for funding nor placed on hold.

• Issues Raised During Negotiations

During negotiations technical and budget issues may be raised. These are issues that have been identified during panel and staff review. Generally, technical issues are minor issues that require clarification. Alternative approaches may be presented for your consideration, or you may be asked to provide additional information or rationale for something you have proposed to do. Sometimes issues are stated as "conditions". These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions are also raised about the proposed budget during the negotiation phase. Generally, budget issues are raised because there is inadequate justification or explanation of the particular budget item, or because the budget item does not seem important to the successful completion of the project. The grants negotiator will present the negotiation questions or issues to you and ask you to respond. If you do not understand the question, you should ask for clarification. In responding to negotiation items you should provide any additional information or clarification requested. You may feel that an issue was addressed in the application. It may not, however, have been explained in enough detail to make it understood by reviewers, and more information should be provided. If you are asked to make changes that you feel could seriously affect the project's success you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the activities you may want to explain why and provide additional justification for the proposed expenses. Your changes, explanations, and alternative suggestions will be carefully evaluated by staff. In some instances additional negotiations or follow-up information may be needed. In such instances you will again be contacted by the grants negotiator. An award cannot be made until all negotiation issues have been resolved.

• Successful Applications and Estimated/Projected Budget Amounts In Subsequent Years

In this era of budget deficits and need for cost containment, a conservative policy toward current and out-year budget expenditures is necessary. Projects will not be funded in excess of the amount listed in the **Federal Register** announcement. Any project approved by the reviewers that exceeds the estimated size of award will be required to be performed within the announced amount. The budget estimates that you provide in your application for out-year costs are critical for planning purposes, but they in no way represent a commitment by the Department to a particular level of funding in subsequent years. Budget modifications during the negotiation process, the findings from the initial year, or needed changes in the research design can affect your budget requirements in subsequent years. However, keep in mind that multi-year projects are likely to be level funded unless there are increases in costs attributable to significant changes in activity level. Grantees having multi-year projects will be required to submit a continuation application and a detailed budget request prior to each year of the project.

• Difference Between a Cooperative Agreement and a Grant

A cooperative agreement is similar to a grant in that its principal purpose is to accomplish a public purpose of support or stimulation as authorized by a Federal statute. It differs from a grant in the sense that in a cooperative agreement substantial involvement is anticipated between the executive agency (in this case the Department of Education) and the recipient during the performance of the contemplated activity.

• Obtaining Copies of the Federal Register, Program Regulations and Federal Statutes

Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783–3238.

Application Narrative and Instructions

Applications are more likely to receive favorable reviews by panels when they are organized according to the published evaluation criteria found elsewhere in this packet. If you prefer to use a different format you may wish to cross-reference the sections of your application to the evaluation criteria to ensure that reviewers are able to find all relevant information.

The following is a suggested format you may wish to use in preparing your application. This suggested format is advisory only, since the scope and complexity of projects is too variable to establish firm limits on length and format. In your application you may wish to include the following features in the order listed below:

(a) An abstract of the project;

(b) The extent the project meets the purposes of the authorizing statute;

(c) The extent the project meets specific needs recognized in the statute that authorizes the program;

(d) The plan of operation which the applicant proposes to use to administer the project;

(e) The quality of key personnel to be used to achieve each objective;

(f) Budget and cost effectiveness to achieve the proposed activity;

(g) The evaluation plan to evaluate the project; and

(h) The adequacy of resources available and needed to achieve each objective.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify) _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify):

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date; Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant; b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4000-01-C

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Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invited comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 42 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of the information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0028, Washington, DC 20503.

(Information collection approved under OMB Control number 1820–0028. Expiration date: 11/30/92.)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 - Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

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ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

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CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted–

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

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Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award	3. Report Type: ☐ a. initial filing ☐ b. material change For Material Change Only: year _____ quarter ____ date of last report _____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier ____, *if known:* Congressional District, *if known:*	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, *if known:*	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____	
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $	
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):	
(attach Continuation Sheet(s) SF-LLL-A, *if necessary*)		
11. Amount of Payment (*check all that apply*): $ _____ ☐ actual ☐ planned	13. Type of Payment (*check all that apply*): ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____	
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, Including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: (attach Continuation Sheet(s) SF-LLL-A, *if necessary*)		
15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Monday
December 30, 1991

Part VI

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

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OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

The White House, Washington
December 19, 1991

Dear Mr. Speaker: In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report three new and two revised deferrals of budget authority for FY 1992 now totaling $3,944,898,210.

These deferrals affect International Security Assistance programs as well as programs of the Agency for International Development and the Departments of Agriculture and State. The details of these deferrals are contained in the attached report.

Sincerely,

George Bush

The Honorable Thomas S. Foley
Speaker of the House of Representatives
Washington, DC 20515

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Funds Appropriated to the President:	
	International Security Assistance:	
D92–1A	Economic support fund	1,868,089
D92–8	Foreign military financing	1,908,000
	Agency for International Development:	
	International disaster assistance,	
D92–9	Demobilization and transition fund	13,000
	Department of Agriculture:	
	Forest Service:	
D92–10	Expenses, brush disposal	101,006
	Department of State:	
	Bureau of Refugee Programs:	
	United States emergency refugee and	
D92–6A	migration fund	54,803
	Total, deferrals	3,944,898

SUMMARY OF SPECIAL MESSAGE
FISCAL YEAR 1992
(in thousands of dollars)

	RESCISSIONS	DEFERRALS
Second special message:		
New items	---	2,022,006
Revisions to previous special message	---	1,648,062
Effects of the second special message	---	3,670,068
Amounts from previous special message	---	1,817,020
Total amount proposed to date in all special messages	---	5,487,088

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Deferral No. D92-1A

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D92-1 transmitted to Congress on September 30, 1991.

This revision increases by $1,623,312,000 the previous deferral of $244,777,065 in the Economic support fund, resulting in a total deferral of $1,868,089,065. The increase results from a greater-than-anticipated level of unobligated funds being carried over from FY 1991, and funds made available through March 31, 1992, by P.L. 102-145, the second Continuing Resolution for FY 1992.

Deferral No. 92-1A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... * $ 3,216,624,000 (P.L. 102-145)
BUREAU: International Security Assistance	Other budgetary resources..... *$ -1,278,733,606
Appropriation title and symbol: Economic support fund 1/ 112/31037 111/21037 11X1037	Total budgetary resources..... * 1,937,890,394
	Amount to be deferred: Part of year..... *$ 1,868,089,065 2/ Entire year.....
OMB identification code: 11-1037-0-1-152	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other
Grant program: [X] Yes [ ] No	
Type of account or fund: [ ] Annual [X] Multi-year: September 30, 1992 September 30, 1993 (expiration date) [X] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

Coverage:

Appropriation	Account Symbol	OMB Identification Code		Deferred Amount Reported
Economic support fund.	11X1037	11-1037-0-1-152	*	54,769,000
Economic support fund.....	111/21037	11-1037-0-1-152		205,008,065
Economic support fund	112/31037	11-1037-0-1-152	*	1,608,312,000
			*	1,868,089,065

JUSTIFICATION: This action defers funds pending approval of specific loans and grants to eligible countries by the Secretary of State after review by the Agency for International Development and the Treasury Department. This interagency review process will ensure that each approved program is consistent with the foreign and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S C 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1991 (D91-1C).
2/ This deferred amount has been reduced to $1,243,865 045 due to subsequent releases.
* Revised from previous report.

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Deferral No. 92–8

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93–344

AGENCY: Funds Appropriated to the President	**New budget authority** (P.L. 102–145) $ 4,100,000,000
BUREAU: International Security Assistance	**Other budgetary resources** −2,050,000,000
Appropriation title and symbol: Foreign military financing (FMF) 1/ 1121082	**Total budgetary resources** 2,050,000,000
	Amount to be deferred: Part of year $ 1,908,000,000 Entire year ____
OMB identification code: 11–1082–0–1–152	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other ____
Grant program: [X] Yes [ ] No	
Type of account or fund: [X] Annual [ ] Multi–year: ____ (expiration date) [ ] No–Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other ____

JUSTIFICATION: The President is authorized by the Arms Export Control Act to sell or finance by grant, credit, or guarantee articles and defense services to friendly countries to facilitate the common defense. Further, the President is authorized by the International Narcotics Control Act of 1989 to provide military and law enforcement assistance to counter illegal narcotics. Under Section 2 of the Arms Export Act, the Secretary of State, under the direction of the President, is responsible for sales made under the Act, including determining whether there shall be a sale to a country and the amount thereof. Executive Order No. 11958 further requires the Secretary of State to obtain the prior concurrence of the Secretaries of Defense and Treasury, respectively, regarding standards and criteria for credit transactions that are based upon national security and financial policies. These funds have been deferred pending the approval of the Departments of State, Defense, and Treasury for the specific sales to eligible countries. Consultation among these Departments will ensure that each approved program is consistent with the foreign, national security, and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1991 (D91–8).

Deferral No. 92–9

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93–344

AGENCY: Funds Appropriated to the President	**New budget authority** ____
BUREAU: Agency for International Development	**Other budgetary resources** $ 13,000,000
Appropriation title and symbol: Demobilization and transition fund 11X1500	**Total budgetary resources** $ 13,000,000
	Amount to be deferred: Part of year $ 13,000,000 Entire year ____
OMB identification code: 11–1500–0–1–152	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other ____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multi–year: ____ (expiration date) [X] No–Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other ____

JUSTIFICATION: This account was established to facilitate cease–fire monitoring, demobilization, and transition to peace Funds were transferred into this account pursuant to P.L. 101–513, Section 531(f) (2). These funds are available solely to support costs of demobilization, retraining, relocation, and reemployment in civilian pursuits of former combatants in the conflict in El Salvador. Funds are available for obligation and expenditure only upon notification by the President to the Congress that the Government of El Salvador and representatives of the Farabundo Marti National Liberation Front (FMLN) have reached a permanent settlement of the conflict, including a final agreement on a cease–fire. This action is taken pursuant to the Antideficiency Act (31 U.S. C. 1512).

Estimated Program Effect: None

Outlay Effect: None

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Deferral No. 92-10

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... $ 36,421,000 (16 U.S.C. 576b)
BUREAU: Forest Service	Other budgetary resources..... 109,604,985
Appropriation title and symbol: Expenses, brush disposal 1/ 12X5206	Total budgetary resources..... 146,025,985
	Amount to be deferred: Part of year..... $ _____
	Entire year..... 101,006,495 2/
OMB identification code: 12-9922-0-2-302	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other _____
Type of account or fund: [ ] Annual	Type of budget authority: [X] Appropriation
[ ] Multi-year: _____ (expiration date)	[ ] Contract authority
[X] No-Year	[ ] Other

JUSTIFICATION: Purchasers of National Forest timber are required to deposit to the Forest Service the established cost for disposing of brush and other debris resulting from timber cutting operations by 16 U.S.C. 490. The deposits becoming available in the current year are estimated and the related disposal operations are planned for the following year. Efficient program planning and accomplishment is facilitated by operating a stable program well within the funds available in any one year for this purpose. Much of the brush disposal work for which fees are collected cannot be done in the same year because of weather conditions or because harvesting is not completed. The Forest Service is planning for a stable year-to-year program which will require $73 million in 1992. The current fiscal year reserve of $101 million is established pursuant to the provisions of the Antideficiency Act (31 U.S.C. 1512) as a reserve for contingencies.

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1991 (D91-2).

2/ This deferral amount has been reduced to $72,627,985 due to subsequent releases.

Deferral No. D92-6A

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D92-6 transmitted to Congress on September 30, 1991.

This revision to a deferral of the Department of State's Emergency refugee and migration assistance fund increases the amount previously reported as deferred from $30,052,650 to $54,802,650. This increase of $24,750,000 reflects the funds made available through March 31, 1992, provided by P.L. 102-145, the second Continuing Resolution for FY 1992.

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Deferral No. 92–6A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93–344

AGENCY: Department of State	New budget authority..... * $ 49,500,000 (P.L. 102–145)
BUREAU: Bureau of Refugee Programs	Other budgetary resources..... * $ 5,342,650
Appropriation title and symbol: United States emergency refugee and migration assistance fund 1/ 11X0040	Total budgetary resources..... * $ 54,842,650
	Amount to be deferred: Part of year..... * $ 54,802,650
	Entire year..... _____
OMB identification code: 11–0040–0–1–151	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other _____
Type of account or fund: [ ] Annual	**Type of budget authority:** [X] Appropriation
[ ] Multi–year: _____ (expiration date)	[ ] Contract authority
[X] No–Year	[ ] Other _____

JUSTIFICATION: Section 501(a) of the Foreign Relations Authorization Act, 1976 (Public Law 94–141) and Section 414(b) (1) of the Refugee Act of 1980 (Public Law 96–212) amended Section 2(c) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) by authorizing a fund to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs.

Executive Order No. 11922 of June 16, 1976, allocated all funds appropriated to the President for the Emergency Fund to the Secretary of State but reserved for the President the determination of assistance to be furnished and the designation of refugees to be assisted by the Fund.

These funds have been deferred pending Presidential decisions required by Executive Order No. 11922. Funds will be released as the President determines assistance to be furnished and designates refugees to be assisted by the Fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1991 (D91–6B).

* Revised from previous report.

[FR Doc. 91–31072 Filed 12–27–91; 8:45 am]
BILLING CODE 3116–01–C

federal register

Monday
December 30, 1991

Part VII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1, et al.
Federal Acquisition Regulations: Miscellaneous Amendments; Increase in Cost or Pricing Data Threshold; Removal of Toshiba Sanctions; and Alternative Dispute Resolution; Interim Rules and Final Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Federal Acquisition Circular 90-10]

Federal Acquisition Regulation; Introduction of Miscellaneous Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of interim rules with request for comment.

SUMMARY: This document introduces the documents set forth below which comprise Federal Acquisition Circular (FAC) 90-10. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing FAC 90-10 to amend the Federal Acquisition Regulation (FAR) to implement changes in the following subject areas:

Item	Subject	FAR case	DAR case	Analyst
I	Increase in Cost or Pricing Data Threshold (Interim rule)	91-53	90-303	Olson
II	Removal of Toshiba Sanctions	91-66	91-78	Rosinski
III	Alternative Dispute Resolution (Interim rule)	91-62	90-323	O'Neill

DATES: For effective dates, see separate documents which follow. Please cite FAC 90-10 and the appropriate FAR case number(s) in all correspondence related to this and the following documents.

FOR FURTHER INFORMATION CONTACT: the analyst whose name appears in relation to each far case or subject area. For general information, contact the far secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-10 and far case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 90-10 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Increase in Cost or Pricing Data Threshold (FAR Case 91-53)

This interim rule amends FAR subparts 14.2, 15.8, and 52.2 to increase the threshold for submission of certified cost or pricing data from $100,000 to $500,000 for contracts awarded by the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard pursuant to the requirements of section 803 of Public Law 101-510. The statutory threshold applicable to contracts awarded by other agencies remains at $100,000.

Item II—Removal of Toshiba Sanctions (FAR Case 91-66)

Subpart 25.10, Sanctions for Violations of Export Controls, the provision at 52.225-12, Notice of Restrictions on Contracting with Sanctioned Persons, and the clause at 52.225-13, Restrictions on Contracting with Sanctioned Persons, are being deleted, in their entirety, from the regulation because the sanctions imposed by Executive Order 12661 dated December 27, 1988, expire on December 28, 1991. Therefore, the regulatory policy contained in the subpart, provision, and clause no longer applies.

Item III—Alternative Dispute Resolution (FAR Case 91-62)

This interim rule revises FAR Subpart 33.2 and section 52.233-1 to add policy, guidance, and criteria for use of alternative dispute resolution techniques.

Dated: December 23, 1991.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition Policy.

Federal Acquisition circular

Federal Acquisition Circular (FAC) 90-10 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-10 is effective December 30, 1991, except for Item II, Removal of Toshiba Sanctions, which is effective December 29, 1991.

Dated: December 20, 1991

Eleanor R. Spector,

Director of Defense Procurement.

Dated: December 23, 1991.

Ida Ustad,

Acting Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: December 23, 1991.

Darleen A. Druyun,

Assistant Administrator for Procurement, NASA.

[FR Doc. 91-31081 Filed 12-27-91; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 14, 15, and 52

[FAC 90-10; FAR Case 91-53; Item I]

Federal Acquisition Regulation; Increase in Cost or Pricing Data Threshold

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to revise FAR parts 14, 15, and 52 to increase the threshold for submission of cost or pricing data for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard.

DATES: *Effective Date:* December 30, 1991.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 28, 1992 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), ATTN: Deloris Baker, 18th & F Streets, NW., room 4041, Washington, DC 20405.

Please cite FAC 90-10, FAR case 91-53 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-10, FAR case 91-53.

SUPPLEMENTARY INFORMATION:

A. Background

Section 803 of Public Law 101-510 amended subsection 2306a(a)(1) of title 10, United States Code, by increasing the threshold for submission of cost or pricing data from $100,000 to $500,000 for DOD, NASA, and the Coast Guard.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the requirements for certified cost or pricing data do not apply. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 601, *et. seq.* (FAC 90-10, FAR Case 91-53) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) is deemed to apply because the interim rule contains information collection requirements. Accordingly, a request for approval of a revision to reduce the burden of a currently approved information collection requirement concerning increase in cost or pricing data threshold was submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request were invited through a Federal Register (56 FR 56887) notice on November 7, 1991. Approval for the revised burden was granted under OMB Control Number 9000-0013 on November 27, 1991.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) to issue the regulations in Item I of FAC 90-10 as an interim rule. This action is necessary because section 803 of Public Law 101-510 amended subsection 2306a(a)(1) of title 10, United States Code, to increase the threshold for submission of cost or pricing data for the DoD, the NASA, and the Coast Guard.

In view of the statutory change, it is determined that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 14, 15, and 52

Government procurement.

Dated: December 23, 1991.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular (FAC) 90-10 amends the Federal Acquisition Regulation (FAR) as specified below:

Increase in Cost or Pricing Data Threshold

This interim rule amends FAR subparts 14.2, 15.8, and 52.2 to increase the threshold for submission of certified cost or pricing data from $100,000 to $500,000 for contracts awarded by the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard pursuant to the requirements of section 803 of Public Law 101-510. The statutory threshold applicable to contracts awarded by other agencies remains at $100,000.

Therefore, 48 CFR parts 14, 15, and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 14, 15, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 14—SEALED BIDDING

14.201-7 [Amended]

2. Section 14.201-7 is amended in paragraphs (a), (b)(1), and (c)(1) by removing the period after the figure "$100,000" and inserting ", or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, is expected to exceed $500,000." in its place.

PART 15—CONTRACTING BY NEGOTIATION

3. Section 15.804-2 is amended by revising paragraph (a) to read as follows:

15.804-2 Requiring certified cost or pricing data.

(a)(1) Except as provided in 15.804-3, certified cost or pricing data are required before accomplishing any of the following actions:

(i) The award of any negotiated contract (except for undefinitized actions such as letter contracts) expected to exceed $100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, for contracts awarded after December 5, 1990, expected to exceed $500,000.

(ii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) when the modification involves a price adjustment expected to exceed $100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, for modifications of any sealed bid or negotiated contract awarded after December 5, 1990 (whether or not cost or pricing data were initially required), when the modification involves a price adjustment expected to exceed $500,000. (For example, a $30,000 modification resulting from a reduction of $70,000 and an increase of $40,000 is a pricing adjustment exceeding $100,000, and a $150,000 modification resulting from a reduction of $350,000 and an increase of $200,000 is a pricing adjustment exceeding $500,000.) This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification.

(iii) The award of a subcontract at any tier, if the contractor and each higher tier subcontractor have been required to furnish certified cost or pricing data,

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when the subcontract is expected to exceed $100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, for subcontracts awarded under prime contracts awarded after December 5, 1990, when the subcontract is expected to exceed $500,000. (But see 15.804–3(i).)

(iv) The modification of any subcontract covered by subdivision (a)(1)(iii) of this subsection, when the price adjustment (see subdivision (a)(1)(ii) of this subsection) is expected to exceed $100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, for subcontracts awarded under prime contracts awarded after December 5, 1990, when the modification involves a price adjustment expected to exceed $500,000.

(2) The contracting officer may obtain certified cost or pricing data for pricing actions below the pertinent threshold in subparagraph (a)(1) of this subsection provided the action exceeds the small purchase limitation. For such pricing actions, the instances in which certified cost or pricing data and inclusion of defective pricing clauses would be justified should be few; however, the contracting officer shall give special consideration to requiring certified cost or pricing data for such pricing actions if the offeror, contractor, or subcontractor—

(i) Has been the subject of recent or recurring, and significant findings of defective pricing;

(ii) Currently has significant deficiencies in its cost estimating systems; or

(iii) Has recently been indicted for, convicted of, or the subject of an administrative or judicial finding of fraud regarding its cost estimating systems or cost accounting practices.

The contracting officer shall document the file to justify the requirement for cost or pricing data not required by regulation. The documentation shall include the contracting officer's written finding that certified cost or pricing data are necessary, the facts supporting that finding, and the approval of the finding at a level above the contracting officer.

(3) The contracting officer shall not require certified cost or pricing data when awarding a contract below the small purchase limitation at 13.000.

(4) When certified cost or pricing data are not required, the contracting officer may request partial or limited data to determine a reasonable price (see 15.804–6(a)(2)).

• • • • •

4. Section 15.804–3 is amended by (a) removing in the second sentence of paragraph (c)(7) the phrase "is $100,000 or more" and inserting "exceeds the pertinent threshold set forth at 15.804–2(a)(1)" in its place; (b) revising the introductory text of paragraph (e); and (c) amending the fifth sentence of paragraph (i) by removing the figure "$100,000" and inserting "the pertinent threshold set forth at 15.804–2(a)(1)" in its place to read as follows:

15.804–3 Exemptions from or waiver of submission of certified cost or pricing data.

• • • • •

(e) *Claiming and granting exemption.* To receive an exemption under paragraph (c) or (d) of this subsection, the offeror must ordinarily claim it on Standard Form 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data, when the total proposed amount exceeds the pertinent threshold set forth at 15.804–2(a)(1), and more than one catalog item for which an exemption is claimed exceeds $50,000. When an exemption is claimed for more than one item in a proposal, a separate SF 1412 is required for each item exceeding $50,000 except as otherwise provided in the solicitation. The contracting officer may grant an exemption and need not require the submission of SF 1412 when—

• • • • •

15.804–4 [Amended]

5. Section 15.804–4 is amended in paragraph (b) by removing the figure "$100,000" both times it occurs and inserting "the pertinent threshold set forth at 15.804–2(a)(1)" in its place.

6. Section 15.804–6 is amended by revising the heading and paragraph (a) to read as follows:

15.804–6 Submission of data.

(a)(1) The contracting officer shall specify (i) whether or not cost or pricing data are required, (ii) whether or not certification will be required, and (iii) the form (see paragraph (b) of this subsection) in which the cost or pricing data shall be submitted. Even if the solicitation does not so specify, however, the contracting officer is not precluded from requesting such data if they are later found necessary.

(2) When certified cost or pricing data are not required because an action is below the pertinent threshold set forth at 15.804–2(a)(1), the contracting officer may request partial or limited data to determine a reasonable price. The contracting officer shall request only that data which the contracting officer considers necessary to determine a reasonable price. For example, cost data might be necessary to support an analysis of material costs, but not for labor and overhead costs. When such partial or limited data are requested, the contracting officer should require, as a minimum, the submission of information on the prices and quantities at which the offeror has previously sold the same or similar products.

• • • • •

Table 15–2 Instructions for Submission or a Contract Pricing Proposal

7. Table 15–2, which follows section 15.804–6(b)(2), is amended in item 1 in the entry "Competitive Methods" by removing the words "over $100,000" and inserting in their place "exceeding the pertinent threshold set forth at 15.804–2(a)(1)"; in the first sentence of the entry "Noncompetitive Methods" by removing the words "over $100,000" and inserting in their place "exceeding the pertinent threshold set forth at 15.804–2(a)(1)"; and in the fourth sentence of the entry "Noncompetitive Methods" by removing the figure "$100,000" and inserting in its place "the pertinent threshold set forth in 15.804–2(a)(1) (iii) and (iv)".

• • • • •

15.806–1 [Amended]

8. Section 15.806–1 is amended in the first sentence of paragraph (b) by removing the figure "$100,000" the first time it appears and inserting in its place "the pertinent threshold set forth at 15.804–2(a)(1)(iii)"; and by removing the figure $100,000" the second time it appears and inserting in its place "the pertinent threshold set forth at 15.804–2(a)(1)(iv)".

• • • • •

15.806–2 [Amended]

9. Section 15.806–2 is amended in paragraph (a)(2) by removing the figure "$100,000" and inserting in its place "the pertinent threshold set forth at 15.804–2(a)(1) (iii) and (iv)".

• • • • •

15.808 [Amended]

10. Section 15.808 is amended in paragraph (a)(6) by removing the words "over $100,000" and inserting in their place "exceeding the thresholds set forth at 15.804–2(a)(1)"; and in paragraph (a)(7) by removing the phrase "in the case of any price negotiation under $100,000" and inserting in its place "by the contracting officer under 15.804–2(a)(2)".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.214–27 [Amended]

11. Section 52.214–27 is amended by removing in the heading of the clause the date "(JAN 1991)" and inserting in its place "(DEC 1991)"; and inserting in paragraph (a), after the figure "$100,000", the words ", or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, more than $500,000,".

12. Section 52.214–28 is amended by removing in the heading of the clause the date "(APR 1985)" and inserting in its place "(DEC 1991)"; inserting in paragraph (a), after the figure "$100,000", the words ", or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, expected to exceed $500,000,"; and revising paragraphs (b) and (d) to read as follows:

52.214–28 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.

• • • • •

Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding (Dec 1991)

• • • • •

(b) Before awarding any subcontract expected to exceed $100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, expected to exceed $500,000 when entered into, or pricing any subcontract modification involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed $100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, expected to exceed $500,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is—

• • • • •

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds $100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, in each subcontract that exceeds $500,000 when entered into. (End of clause)

52.215–23 [Amended]

13. Section 52.215–23 is amended by removing in the heading of the clause the date "(JAN 1991)" and inserting in its place "(DEC 1991)"; and inserting in paragraph (a), after the figure "$100,000,", the words "or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, expected to exceed $500,000,".

14. Section 52.215–24 is amended by removing in the heading of the clause the date "(APR 1985)" and inserting in its place "(DEC 1991)"; and revising paragraphs (a) and (c) to read as follows:

52.215–24 Subcontractor Cost or Pricing Data.

• • • • •

Subcontractor Cost or Pricing Data

(Dec. 1991)

(a) Before awarding any subcontract expected to exceed $100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, expected to exceed $500,000, when entered into, or before pricing any subcontract modification involving a pricing adjustment expected to exceed $100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, expected to exceed $500,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is—

• • • • •

(c) In each subcontract that exceeds $100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, in each subcontract that exceeds $500,000, when entered into, the Contractor shall insert either—

• • • • •

15. Section 52.215–25 is amended by removing in the heading of the clause the data "(APR 1985)" and inserting in its place "(DEC 1991)"; and revising paragraphs (a), (b), and (d) to read as follows:

52.215–25 Subcontractor Cost or Pricing Data—Modifications.

• • • • •

Subcontractor Cost or Pricing Data—Modifications (Dec 1991)

(a) The requirements of paragraphs (b) and (c) of this clause shall (1) become operative only for any modification to this contract involving a pricing adjustment expected to exceed $100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, expected to exceed $500,000; and (2) be limited to such modifications.

(b) Before awarding any subcontract expected to exceed $100,000, or $500,000 for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, when entered into, or pricing any subcontract modification involving a pricing adjustment expected to exceed $100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, expected to exceed $500,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is—

• • • • •

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds $100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, in each subcontract that exceeds $500,000, when entered into. (End of clause)

[FR Doc. 91–31082 Filed 12–27–91; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 90–10; FAR Case 91–66; Item II]

Federal Acquisition Regulation; Removal of Toshiba Sanctions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition and Defense Acquisition Regulations Councils have agreed to delete, in their entirety, FAR Subpart 25.10, Sanctions for Violations of Export Controls, the provision at 52.225–12, Notice of Restrictions on Contracting with Sanctioned Persons, and the clause at 52.225–13, Restrictions on Contracting with Sanctioned Persons.

EFFECTIVE DATE: December 29, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Rosinski at (202) 501–0692 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–10, FAR Case 91–66.

SUPPLEMENTARY INFORMATION:

A. Background

The current FAR subpart 25.10, and its prescribed provisions and clauses, imposes (a) procurement sanctions on Toshiba Corporation and its subsidiary, Toshiba Machine Company, and on Kongsberg Vaapenfabrikk and its subsidiary, Kongsberg Trading Company, and (b) import sanctions on all products produced by Toshiba Machine Company and Kongsberg Trading Company. These sanctions were imposed by Executive Order 12661, dated December 27, 1988. The sanctions expire on December 28, 1991; accordingly, the regulation is deleted, in

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its entirety, effective on December 29, 1991.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration, certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it merely removes the sanctions imposed by Executive Order 12661 which will expire on December 28, 1991. Effects on small entities, if any, would result from the expiration of the Executive Order and not from this regulatory change.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: December 23, 1991.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular (FAC) 90–10 amends the Federal Acquisition Regulation (FAR) as specified below:

Removal of Toshiba Sanctions

FAR Subpart 25.10, Sanctions for Violations of Export Controls, the provision at FAR 52.225–12, Notice of Restrictions on Contracting with Sanctioned Persons, and the clause at FAR 52.225–13, Restrictions on Contracting with Sanctioned Persons, are being deleted, in their entirety, from the FAR because the sanctions imposed by Executive Order 12661 dated December 27, 1988, will expire on December 28, 1991. Therefore, the regulatory policy contained in the subpart, the provision, and the clause no longer applies after December 28, 1991.

Therefore, 48 CFR parts 25 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

25.10 [Removed]

2. Supart 25.10, consisting of §§ 25.1000 through 25.1005, is removed.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.225–12 and 52.225–13 [Removed and reserved]

3. Sections 52.225–12 and 25.225–13 are removed and reserved.

[FR Doc. 91–31083 Filed 12–27–91; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 33 and 52

[FAC 90–10; FAR Case 91–62; Item III]

Federal Acquisition Regulation; Alternative Dispute Resolution

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: Federal Acquisition Circular (FAC) 90–10 amends the Federal Acquisition Regulation (FAR) to revise subpart 33.2 and section 52.233–1 to implement the Administrative Dispute Resolution Act (Pub. L. 101–552) and recommendations from the Defense Advisory Panel on Government-Industry Relations (DAPGIR). The revisions encourage the use of alternative dispute resolution (ADR) techniques to resolve issues in controversy.

DATES: *Effective Date:* December 30, 1991.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 28, 1992 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4041, Attn: Ms. Deloris Baker, Washington, DC 20405.

Please cite FAC 90–10, FAR case 91–62 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 510–4755. Please cite FAC 90–10, FAR case 91–62.

SUPPLEMENTARY INFORMATION:

A. Background

Revisions to FAR subpart 33.2 and 52.233–1 have been made in this interim rule. FAR 33.201, Definitions, is revised to add definitions of the terms "Alternative dispute resolution," "Issue in controversy," and "Neutral person." FAR 33.202, Contract Disputes Act of 1978, is revised to include a reference to Public Law 101–552 and to clarify the language. FAR 33.204, Policy, is revised to encourage use of alternative dispute resolution (ADR) techniques. FAR 33.207, Contractor claim certification, is revised at paragraph (a) to require that any claim subject to ADR, regardless of dollar amount, be certified by the contractor. A new section is added at 33.214, Alternative dispute resolution. It describes the objective of ADR, sets forth criteria for use of such techniques, authorizes agencies to establish ADR procedures, and suggests use of a neutral person. FAR 52.233–1, Disputes, is revised to encourage consideration of ADR to resolve disputes.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because less than 20% of small entities are affected by the disputes process and the economic impact on small businesses is expected to be less than significant. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from Small Businesses and other interested parties. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–10, FAR Case 91–62) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement the Administrative Dispute Resolution Act (Pub. L. 101–552). The Act requires that FAR regulations be promulgated by November 15, 1991. Pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this notice will be considered in formulating the final rule, however.

List of Subjects in 48 CFR Parts 33 and 52

Government procurement.

Dated: December 23, 1991.

Harry S. Rosinsky,

Acting Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular (FAC) 90–10 amends the Federal Acquisition Regulation (FAR) as specified below:

Alternative Dispute Resolution

This interim rule revises FAR subpart 33.2 and section 52.233–1 to add policy, guidance, and criteria for use of alternative dispute resolution techniques.

Therefore, 48 CFR parts 33 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 33 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 33—PROTESTS, DISPUTES, AND APPEALS

2. Section 33.201 is amended by adding, in alphabetical order, definitions to read as follows:

33.201 Definitions.

Alternative dispute resolution means any procedure or combination of procedures voluntarily used to resolve issues in controversy without the need to resort to litigation. These procedures include, but are not limited to, settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration.

Issue in controversy means a material disagreement between the Government and the contractor related to a claim or which could result in a claim. An issue in controversy can be all or part of a claim.

Neutral person, as used in this subpart, means an impartial third party, who serves as a mediator, fact finder, or arbitrator, or otherwise functions to assist the parties to resolve the issues in controversy. A neutral person may be a permanent or temporary officer or employee of the Federal Government or any other individual who is acceptable to the parties. A neutral person shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral person may serve (5 U.S.C. 583).

3. Section 33.202 is revised to read as follows:

33.202 Contract Disputes Act of 1978.

The Contract Disputes Act of 1978 (41 U.S.C. 601–613) (the Act), as amended by the Administrative Dispute Resolution Act (Pub. L. 101–552), establishes procedures and requirements for asserting and resolving claims subject to the Act. In addition, the Act provides for: (a) the payment of interest on contractor claims; (b) certification of contractor claims; and (c) a civil penalty for contractor claims that are fraudulent or based on a misrepresentation of fact.

4. Section 33.204 is revised to read as follows:

33.204 Policy.

The Government's policy is to try to resolve all contractual issues in controversy by mutual agreement at the contracting officer's level. Agencies are encouraged to use alternative dispute resolution (ADR) procedures to the maximum extent practicable in accordance with the authority and the requirements of the Administrative Dispute Resolution Act (Pub. L. 101–552) and agency policies.

5. Section 33.207 is amended by revising paragraph (a) introductory text to read as follows:

33.207 Contractor claim certification.

(a) A contractor claim exceeding $50,000, or any claim regardless of amount when using alternative dispute resolution procedures, shall be accompanied by a certification that—

* * * * *

33.214 [Redesignated as 33.215]

6. Section 33.214 is redesignated as 33.215 and a new 33.214 is added to read as follows:

33.214 Alternative dispute resolution.

(a) The objective of using alternative dispute resolution (ADR) procedures is to increase the opportunity for relatively inexpensive and expeditious resolution of issues in controversy. Essential elements of ADR include—

(1) Existence of an issue in controversy;

(2) A voluntary election by both parties to participate in the ADR process;

(3) An agreement on alternative procedures and terms to be used in lieu of formal litigation;

(4) Participation in the process by officials of both parties who have the authority to resolve the issue in controversy; and

(5) Certification by the contractor in accordance with 33.207.

(b) ADR procedures may be used at any time that the contracting officer has authority to settle the issue in controversy and may be applied to a portion of a claim. When ADR procedures are used subsequent to issuance of a contracting officer's final decision, their use does not alter any of the time limitations or procedural requirements for filing an appeal of the contracting officer's final decision and does not constitute a reconsideration of the final decision.

(c) When appropriate, a neutral person may be used to facilitate resolution of the issue in controversy using the procedures chosen by the parties.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Section 52.233–1 is amended by—

(a) Revising the introductory text, the date of the clause, and paragraph (a);

(b) Redesignating paragraphs (g) and (h) as (h) and (i) and adding a new paragraph (g);

(c) Removing the date "APR 1984" in Alternate I and inserting in its place "DEC 1991.";

(d) Redesignating paragraph (h) of Alternate I as paragraph (i);

(e) Removing from the introductory paragraph of Alternate I the words "paragraph (h)", everytime they appear, and inserting in their place "paragraph (i)"; and

(e) Removing the derivation lines following "(End of clause)" and Alternate I to read as follows:

52.233–1 Disputes.

As prescribed in 33.215, insert the following clause:

Disputes (Dec 1991)

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601–613).

* * * * *

(g) At the time a claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent,

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may agree to use alternative means of dispute resolution. When using alternative dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certification described in paragraph (d)(2) of this clause, and executed in accordance with paragraph (d)(3) of this clause.

(End of clause)

* * * * *

[FR Doc. 91-31084 Filed 12-27-91; 8:45 am]
BILLING CODE 6820-34-M

federal register

Monday
December 30, 1991

Part VIII

Department of Education

34 CFR Parts 300 and 303

Assistance to States for Education of Handicapped Children and Early Intervention Program for Infants and Toddlers With Handicaps; Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Parts 300 and 303

Assistance to States for Education of Handicapped Children and Early Intervention Program for Infants and Toddlers With Handicaps

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations at 34 CFR part 300, implementing the Assistance to States for Education of Handicapped Children program authorized by part B of the Individuals with Disabilities Education Act (part B), and the regulations at 34 CFR part 303, implementing the Early Intervention Program for Infants and Toddlers with Handicaps authorized by part H of the Individuals with Disabilities Education Act (part H), by removing from their nonsupplanting regulations the provisions that prohibit the use of funds awarded under those programs to displace State or local funds for any "particular cost".

DATES: Comments must be received before March 30, 1992.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Ms. Lucille Sleger, Program Administration Branch, Division of Assistance to States, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., Switzer Building, room 3615, Washington, DC 20202–2720; telephone: (202) 732–1104; (202) 732–1090 for TDD services.

FOR FURTHER INFORMATION CONTACT: Ms. Rhonda Weiss; telephone: (202) 732–1373; (202) 732–1090 for TDD services.

SUPPLEMENTARY INFORMATION: Part B authorizes formula grants to States, and through them to local educational agencies, to help provide special education and related services to children with disabilities. To receive Part B funds from the State, each local educational agency is required to submit an application that contains specified assurances regarding use of those funds, including an assurance that Part B funds will be used to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of children with disabilities, and in no case to supplant those State and local funds. The statutory requirement prohibiting local educational agencies from supplanting State and local funds with part B funds is implemented by 34 CFR 300.230 of the part B regulations.

Part H authorizes assistance to States to help them plan, develop, and implement a State-wide system of early intervention programs for infants and toddlers with disabilities and their families. Each participating State must make an application to the Secretary for its Part H grant award. The statute requires this application to contain specified assurances regarding the use of part H funds, including an assurance, similar to the assurance in part B, that part H funds will be used to supplement, and not supplant, State and local funds expended for early intervention services for infants and toddlers with disabilities. The statutory requirement prohibiting States from supplanting State and local funds with part H funds is implemented by 34 CFR 303.124 of the part H regulations.

During the Education Summit held in September 1989, President Bush made a commitment to the State Governors that the Federal Government would give States more flexibility in the use of Federal education program funds while ensuring accountability in the use of those funds by recipients. These proposed regulatory changes, which would continue to require that States maintain or increase the total amount of funds spent to meet Part B and Part H requirements, are being made consistent with this commitment. These proposed regulatory changes also are supportive of the goals of the AMERICA 2000 Education Strategy, because they will increase the ability of State and local educational agencies to develop and implement innovative strategies to meet the needs of children with disabilities more effectively. The part B and part H nonsupplanting provisions, which are virtually identical, currently include the following two-pronged test for determining compliance with the nonsupplanting requirements for these programs:

Aggregate Test: The total amount of State and local funds budgeted for expenditures in the current fiscal year for the education of children with disabilities under Part B or for early intervention services for infants and toddlers with disabilities and their families under part H must be at least equal to the amount of those funds actually expended in the most recent preceding fiscal year for which information is available.

Particular Cost Test: Funds awarded under part B and Part H may not be used to displace State or local funds for any "particular cost".

The "particular cost" test was included in the part B regulations, first published in 1977, to assist in ensuring that part B funds would be used to increase State and local efforts for the education of children with disabilities. Because the Secretary sought to coordinate the fiscal requirements in Part H with those of part B as closely as possible, the nonsupplanting provisions in the part H regulations published in 1989 were modeled after those in the part B regulations. However, based on the Secretary's experience in administering part B, the Secretary has found that under the "particular cost" test, local educational agencies have been found out of compliance with the part B nonsupplanting requirement, even in instances in which the total amount of State and local funds budgeted for the education of children with disabilities in a fiscal year was maintained at, or increased from the amount expended in the most recent preceding fiscal year. For example, if a local educational agency spends part B funds to pay for a teacher's salary that was previously paid for with State or local funds, a supplanting violation would occur, even though the total amount of State and local funds spent on special education is greater than the amount spent the previous year.

The Secretary believes that the particular cost test is unnecessary to ensure compliance with the statutory requirements that Federal funds be used to supplement, or increase, the level of State and local funds expended to meet the special educational needs of children with disabilities and the early intervention needs of infants and toddlers with disabilities and their families, and not to replace those State and local funds. The Secretary also believes that the particular cost provision limits the ability of State and local agencies to make financial adjustments that could assist in improving the quality of services for children with disabilities and for infants and toddlers with disabilities and their families.

Therefore, to give States and local educational agencies more flexibility in the use of part B and part H funds, while still requiring States to maintain or increase the total amount of State and local funds expended to meet part B and part H requirements, the Secretary proposes to amend the part B regulations at 34 CFR 300.230 by deleting the particular cost provision at § 300.230(b)(2) and to amend the part H regulation at 34 CFR 303.124 by deleting the particular cost provision at § 320.303.124(b)(2). Also, the Secretary proposes to delete the comment following § 300.230 of the Part B regulations and the note following § 303.124 of the part H regulations since this comment and note were intended primarily to distinguish between the "aggregate" and "particular cost" tests. The Secretary believes that these proposed regulatory changes will serve to enhance State and local efforts to meet the special educational needs of children with disabilities and the early intervention needs of infants and toddlers with disabilities and their families, and will in no way serve to diminish the rights and protections guaranteed to children with disabilities and their parents by part B of the Act and the rights and protections guaranteed to infants and toddlers with disabilities and their families by part H of the Act.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility and Certification

The Secretary certifies that these proposed regulations would not have a significant impact on a substantial number of small entities.

To the extent that these proposed regulations would affect States and State agencies, the regulations would not have an impact on small entities, since States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

The few small entities that would be affected by these proposed regulations are small local educational agencies receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small local educational agencies affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3615, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects

34 CFR Part 300

Administrative practice and procedures, Education, Education of individuals with disabilities, Grant programs—education, Privacy, Private schools, Reporting and recordkeeping requirements.

34 CFR Part 303

Education, Education of the handicapped, Grant programs—education, Medical personnel, State educational agencies.

Dated: November 1, 1991.

Lamar Alexander,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.027; Assistance to States for Education of Handicapped Children and 84.181; Early Intervention program for Infants and Toddlers with Handicaps)

The Secretary proposes to amend title 34 of the Code of Federal Regulations by amending parts 300 and 303 as follows:

PART 300—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

1. The authority citation for part 300 continues to read as follows:

Authority: 20 U.S.C. 1411–1420, unless otherwise noted.

§ 300.2 [Amended]

2. Section 300.230 is amended by removing the colon after the word "section" in paragraph (b); removing "(1) The" in paragraph (b)(1) and adding in its place ", the"; removing paragraph (b)(2) and redesignating paragraphs (b)(1)(i) and (ii) as (b)(1) and (2), respectively; and removing the Comment following the section.

PART 303—EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH HANDICAPS

3. The authority citation for part 303 continues to read as follows:

Authority: 20 U.S.C. 1471–1485, unless otherwise noted.

§ 303.124 [Amended]

4. Section 303.124 is amended by removing the dash after the word "section" in paragraph (b); removing the "(1) The" in paragraph (b)(1) and adding in its place ", the"; removing paragraph (b)(2) and redesignating paragraphs (b)(1)(i) and (ii) as (b)(1) and (2), respectively; and removing the Note following the section.

[FR Doc. 91–31074 Filed 12–27–91; 8:45 am]

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Part IX

Environmental Protection Agency

Twenty-Ninth Report of the Interagency Testing Committee to the Administrator; Notice

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ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-41036; FRL 4007-6]

Twenty-Ninth Report of the Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments Regarding Priority Testing List of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Interagency Testing Committee (ITC), established under section 4(e) of the Toxic Substances Control Act (TSCA), transmitted its Twenty-Ninth Report to the Administrator of EPA on November 27, 1991. As noted in this Report, which is included with this notice, the Committee revised the Priority Testing List by adding one chemical, white phosphorus, and one chemical group, the alkyl-, bromo-, chloro-, hydroxymethyl diaryl ethers. These chemicals are recommended. There are no designated or recommended with intent-to-designate chemicals.

The ITC removed six chemicals from the Priority Testing List in the 29th Report as a result of EPA actions. Five brominated flame retardants, designated in the 25th ITC Report, were removed because EPA issued a proposed rule on June 25, 1991 (56 FR 29140). 4-Vinylcyclohexene, designated in the 26th Report, was removed because EPA issued a consent order on September 23, 1991 (56 FR 47912).

EPA invites interested persons to submit written comments on the Report.

DATES: Written comments should be submitted by January 29, 1992.

ADDRESSES: Send four copies of written submissions to: TSCA Public Docket Office (TS-793), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NE G-004, 401 M St., SW., Washington, DC 20460. Submissions should bear the document control number (OPPTS-41036; FRL 4007-6). The public record supporting this action, including comments, is available for public inspection in Rm. NE G-004 at the address noted above from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA has received the TSCA Interagency Testing Committee's Report to the Administrator.

I. Background

TSCA (Pub. L 94-469, 90 Stat. 2003 et seq; 15 U.S.C. 2601 et seq.) authorizes the Administrator of EPA to promulgate regulations under section 4(a) requiring testing of chemicals and chemical groups in order to develop data relevant to determining the risks that such chemicals and chemical groups may present to health or the environment. Section 4(e) of TSCA established the Interagency Testing Committee to recommend chemicals and chemical groups to the Administrator of EPA for priority testing consideration. Section 4(e) directs the ITC to revise the TSCA section 4(e) Priority Testing List at least every 6 months. The ITC's most recent revisions to this List are included in the Committee's Twenty-Ninth Report. The Report was received by the Administrator on November 27, 1991, and is included in this Notice. The Report adds one chemical and one chemical group to the TSCA section 4(e) Priority Testing List.

II. Written and Oral Comments

EPA invites interested persons to submit detailed comments on the ITC's new recommendations. The Agency is interested in receiving information concerning additional or ongoing health and safety studies on the subject chemicals as well as information relating to the human and environmental exposure to these chemicals.

A notice will be published at a later date in the Federal Register adding the substances recommended in the ITC's Twenty-Ninth Report to the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR part 716), which requires the reporting of unpublished health and safety studies on the listed chemicals. The delay in publishing this notice is necessary to avoid an overlap in the reporting period for chemicals included in the ITC's 28th list. That notice will also add the chemicals to the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR part 712). The section 8(a) rule requires the reporting of production volume, exposure, and release information on the listed chemicals.

III. Status of List

The ITC's Twenty-Ninth Report notes the addition of one chemical and one chemical group to the Priority Testing List, and the removal of 5 brominated flame retardants and 4-vinylcyclohexene from the List. The current Priority Testing List contains 26 chemicals and 21 chemical groups, 13 of these chemicals are designated.

Authority: 15 U.S.C. 2603.

Dated: December 16, 1991.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Pollution Prevention and Toxics.

Twenty-Ninth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency

Summary

The U.S. Congress created the Interagency Testing Committee (ITC) under the Toxic Substances Control Act (TSCA) to recommend chemicals and chemical groups to the Administrator of the U.S. Environmental Protection Agency (EPA) for priority testing consideration and to facilitate coordination of chemical testing sponsored or required by U.S. Government organizations represented on the Committee. Congress directed the Committee to: (1) Organize their recommendations as the Priority Testing List, (2) revise the Priority Testing List at least every 6 months and (3) transmit these revisions to the EPA Administrator for publication in the Federal Register.

As a result of its deliberations during this reporting period (5/16/91 to 11/27/91), the Committee is revising the TSCA section 4(e) Priority Testing List by recommending one chemical and one chemical group. The Committee's computerized, substructure-based chemical selection expert systems were used to identify the chemicals in groups that are likely to satisfy multiple data needs of Member Agencies and others. During this reporting period, the Committee (1) considered available information on 5 chemicals and 14 chemical groups, (2) discussed information on Committee activities at the North American Benthological Society Technical Information Workshop on Toxicity Assessment Techniques for Aquatic Invertebrates, (3) participated in CPSC's, EPA's and NCI's chemical testing meetings, (4) met with the Synthetic Organic Chemical Manufactures Association and the Chemical Manufactures Association to discuss completed, ongoing and planned testing of chemical groups, (5) processed chemicals nominated by Maryland's Department of the Environment, (6) prepared testimony for U.S. Senate hearings on chemicals causing adverse reproductive effects, (7) published

unambiguous tables of the 124 chemicals and 39 chemical groups on or removed from the Priority Testing List, (8) initiated a review of 350 studies submitted to the EPA or retrieved from recent literature for chloroalkyl phosphates, (9) shared test data resulting from EPA's implementation of ITC's testing recommendation with a permitting authority and (10) deferred one chemical from testing consideration.

Chemicals or chemical groups (entries) on the Priority Testing List are designated, recommended with intent-to-designate or recommended by the Committee. Designations were created by the U.S. Congress when they drafted TSCA. Recommendations with intent-to-designate were established by the Committee in their 17th Report (50 FR 47603; November 19, 1985). Recommendations were established by the Committee in their 11th Report (47 FR 54626; December 3, 1982).

Revisions to the Priority Testing List

Revisions to the Priority Testing List are presented, together with the types of testing recommended, in Table 1. The footnote letters following Table 1 acknowledge the Committee's efforts to comprehensively search ongoing testing-related activities for chemicals under section 110 of the Superfund Amendments and Reauthorization Act (SARA), section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), section 301 of the Clean Air Act Amendments, Priority 1 substances in the Organization for Economic Cooperation and Development's chemical testing program and available information previously submitted under TSCA section 8(a) and 8(d). Table 1 reads as follows:

TABLE 1.—REVISIONS TO THE SECTION 4(E) PRIORITY TESTING LIST

Group	CAS No.	Chemical	Action	Date	Recommended Tests
	7723-14-0	White phosphorus[1] [2]	Recommended	11/91	Chemical fate: Persistence in surface waters and sediments. Health effects: None. Ecological effects: Toxicity to migratory birds and other wildlife.
Alkyl-, bromo-, chloro-, hydroxymethyl diaryl ethers.			Recommended	11/91	Chemical fate: Physical and chemical properties and biodegradation screening. Health effects: Screening for subchronic, mutagenic, reproductive, developmental and neurotoxic effects, except diphenyl oxide. Ecological effects: Screening for toxicity to algae, aquatic invertebrates and fish.

[1] Superfund Amendments and Reauthorization ACt (SARA) Section 110.
[2] Emergency Planning and Community Right-to-Know Act (EPCRA) section 313.

Listed below are the individual chemicals for the diaryl ethers in Table 1. Chemical nos. 1 through 7 are alkyldiaryl ethers, chemical no. 8 is a bromodiaryl ether, chemical nos. 9 through 12 are chlorodiaryl ethers, chemical nos. 13 and 14 are hydroxymethyl diaryl ethers.

No.	Chemical Name	CAS No.
1.	Benzene, 1,1'-oxybis-	101-84-8[1] [2]
2.	1,4-Diphenoxybenzene	3061-36-7
3.	Benzene, 1-methyl-3-phenoxy-	3586-14-9
4.	Benzene, 1,1'-oxybis[methyl-	28299-41-4
5.	1,1'-Biphenyl, phenoxy-	28984-86-6
6.	Benzene, 1,1'-oxybis[(1,1,3,3-tetramethylbutyl)-	61702-88-3
7.	Benzene, 1,1'-oxybis[dodecyl-	69834-19-1
8.	Benzene, 1-(bromomethyl)-3-phenoxy-	51632-16-7
9.	2-Chloro-l-(3-methylphenoxy)-4-(trifluoromethyl)benzene	42874-96-4
10.	Phenol, 3-[2-chloro-4-(trifluoromethyl)phenoxy]-,acetate	50594-77-9
11.	Benzoic acid, 3-[2-chloro-4-(trifluoromethyl)phenoxy]-	63734-62-3
12.	Benzoic acid, 3-[2-chloro-4-(trifluoromethyl)phenoxy]-,potassium salt	72252-48-3
13.	Benzenemethanol, 3-phenoxy-,	13826-35-2
14.	Benzenemethanol, 3-phenoxy-, acetate	50789-44-1

[1] Toxic Substances Control Act (TSCA) section 8(a) Preliminary Assessment Information Rule (PAIR).
[2] TSCA section 8(d) Health and Safety Data Reporting Rule.

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TSCA Interagency Testing Committee

Statutory Member Agencies and Their Representatives

Council on Environmental Quality
Larry Clark, member (see Note 1)

Department of Commerce
Willie E. May, member (see Note 2)

Environmental Protection Agency
James B. Willis, member (see Note 3)
John S. Leizke, alternate (see Note 4)

National Cancer Institute
Thomas P. Cameron, member (see Note 5)
Richard Adamson, alternate (see Note 6)

National Institute for Environmental Health Sciences
Errol Zeiger, member (see Note 7)
James K. Selkirk, alternate

National Institute for Occupational Safety and Health
Robert W. Mason, member and Chairperson
Rodger L. Tatken, alternate

National Science Foundation
Carter Kimsey, member (see Note 8)
Jarvis L. Moyers, alternate

Occupational Safety and Health Administration
Christine Whittaker, member (see Note 9)
Stephen Mallinger, alternate

Liaison Agencies and Their Representatives

Agency for Toxic Substances and Disease Registry
Sharunda Buchanan (see Note 10)

Consumer Product Safety Commission
Lakshmi C. Mishra

Department of Agriculture
Donald Derr, member (see Note 11)
Richard M. Parry, Jr., alternate

Department of Defense
Randall S. Wentsel

Department of the Interior
Clifford P. Rice, member
Barnett A. Rattner, alternate

Department of Transportation
James O'Steen, member
George Cushmac, alternate

Food and Drug Administration
Charles J. Kokoski, member
Raju Kammula, alternate

National Library of Medicine
Vera Hudson

National Toxicology Program
Miriam Davis, member
Victor A. Fung, alternate and Vice Chairperson

U.S. International Trade Commission
James Raftery, member
Edward Matusik, alternate

Committee Staff

John D. Walker, Ph.D., Executive Director
Norma S.L. Williams, Executive Assistant

Support Staff

Alan Carpien, office of the General Counsel, EPA

Notes:
1. Appointed on November 21, 1991.
2. Appointed on November 8, 1991.
3. Appointed on August 5, 1991.
4. Appointed on August 5, 1991.
5. Appointed on November 22, 1991.
6. Appointed on November 22, 1991.
7. Appointed on November 15, 1991.
8. Appointed on September 28, 1991; on an IPA from August 1990 to August 1991.
9. Appointed on August 15, 1991
10. Appointed on September 11, 1991.
11. Appointed on November 26, 1991

The Committee very much appreciates the efforts of former members and alternates from ATSDR (Deborah Barsotti, member from 3/89-11/91), EPA (Letitia Tahan, member from 8/89-8/91 and Vince Nabholtz, alternate from 8/89-8/91), NSF (Bill Pengelly, member from 8/90-8/91), and OSHA (Loretta Schuman, member from 9/89-8/91). These members and alternates were responsible for initiating and sustaining intraagency efforts that resulted in Member Agency nomination of chemical groups (brominated flame retardants, isocyanates, IRIS (RfC/RfD) chemicals, aldehydes, alkynes, nitroalcohols, phophoniums, hydrazines, oxiranes, alkoxysilanes, aldehyde hydrates and isothiocyanates) and chemicals (1,1' methylenebis-4-isocyanatocyclohexane and *N*-phenyl-1-naphthylamine) that were included in the Committee's 25th, 26th, 27th and 28th Reports. The ITC acknowledges the assistance and support given by the staff of Syracuse Research Corp. (technical support contractor) and personnel of the EPA Office of Pollution Prevention and Toxics.

Chapter 1—Introduction

1.1 *Background.* The U.S. Congress created the TSCA Interagency Testing Committee (ITC) in 1976 and provided the ITC with statutory authority to screen, select and recommend chemicals and chemical groups to the EPA Administrator for priority health effects, chemical fate, and ecological effects testing consideration. When screening chemicals or chemical groups for consideration, Congress directed the Committee (which consists of members from 8 statutory and 10 liaison U.S. Government organizations) to consider 8 statutory factors including: (1) Quantities manufactured or released, (2) numbers of individuals exposed, (3) duration of exposure, (4) extent of human exposure, (5) structural relationships to known toxic substances, (6) availability of existing toxicity data, (7) reliability of available toxicity data to predict hazard, and (8) availability of testing facilities to develop data for the recommended tests. Congress also directed the Committee to give priority attention to those chemicals or chemical groups known to cause or suspected of causing cancer, gene mutations or birth defects. Based on these Congressional directives, the Committee recommends chemicals or chemical groups that appear to have insufficient health effects, chemical fate, or ecological effects test data and that may present an unreasonable risk of injury to health or the environment, reasonably be anticipated to enter the environment in substantial quantities or involve significant or substantial human exposure.

Congress also created the ITC to facilitate coordination of chemical testing sponsored or required by U.S. Government organizations and to enhance information exchange to promote cost-effective use of U.S. Government chemical testing resources by recommending testing of chemicals or chemical groups that are likely to satisfy multiple data needs of Member Agencies and others. The Committee's statutory responsibilities are described in section 4(e) of the Toxic Substances Control Act (TSCA; Public Law 94-469, 90 Stat. 2003 et seq., 15 U.S.C. 2601 et seq.).

The Committee prepares the Priority Testing List of chemicals or chemical groups recommended for testing (by the chemical's manufacturers), transmits the Priority Testing List to the Administrator of the U.S. Environmental Protection Agency (EPA) and determines the order in which the EPA Administrator shall implement the testing recommendations under TSCA section 4(a) by designating those chemicals, from among its recommendations, to which the Administrator should respond within 12 months. Congress directed the Committee to revise the Priority Testing List at least every 6 months and required the EPA Administrator to publish the Committee's Reports in the **Federal Register**.

1.2 *Committee's previous reports.* Twenty-eight previous Reports to the EPA Administrator have been issued by the Committee and published in the **Federal Register**. In these 28 Reports, the Committee recommended testing for 123 chemicals and 38 chemical groups. Chemical groups consist of one or more chemicals, isomers, congeners, mixtures, and so on that have a common substructure, use, testing information deficiency, exposure scenario, etc., and for which there is one common testing recommendation, e.g., aldehydes

recommended for ecological effects testing in the 27th Report. Chemicals can be members of chemical groups, but each is counted as a single chemical if their testing recommendations are different, e.g., the five chloroalkyl phosphates recommended in the 23rd Report.

1.3 *Committee's activities during this reporting period.* Between May 16, 1991 and November 27, 1991, the Committee examined lists of ongoing activities related to reducing testing information deficiencies for commercial chemicals, used their computerized, substructure-based, chemical selection expert systems to identify chemical groups in need of testing, identified chemicals that appeared to have insufficient health effects, chemical fate or ecological effects test data, considered the multiple data needs of Member Agencies and others, and recommended chemicals and chemical groups with insufficient test data based on concerns for potential toxicity, exposure or environmental release.

1.3.a *Chemical and chemical group selections.* The Committee recommended one chemical (white phosphorus) and one chemical group (alkyl-, bromo-, chloro-, hydroxymethyl diarylethers) for testing (Table 1). White phosphorus and alkyl-, bromo-, chloro-, hydroxymethyl diarylethers were recommended, not designated, because the Committee wants to review the TSCA section 8(a) and 8(d) information and any use exposure and release information as well as any physical chemical property information that is voluntarily submitted, before deciding whether to designate or withdraw these chemicals for testing. When the Committee recommended white phosphorus for chemical fate and ecological effects testing, it considered the data needs of the U.S. Department of the Interior, the ongoing activities of the Department of Defense and the regulatory authorities of the Department of Transportation. Test data needs are considered during selection of chemicals and chemical groups for testing. However, it may be difficult to identify test data needs or to anticipate how test data might be used until EPA implements the ITC's testing recommendations and industry develops sufficient data to distinguish between hazardous versus non-hazardous chemicals (e.g., see third paragraph of chapter 1.3.c below). When the Committee recommended alkyl-, bromo-, chloro-, hydroxymethyl diarylethers for health effects, chemical fate and ecological effects screening tests, it considered the uncertainties related to production and use, potential exposures and releases from production, processing and use, potential for persistence in the environment, potential to cause adverse health or ecological effects and the paucity of publicly-available data for over 90 percent of these chemicals. These recommendations are consistent with the Committee's comprehensive approach of using their computerized processes to: (1) Identify chemicals in substructure-based groups in need of screening tests, (2) review recently requested production and exposure data and non-public health and safety studies, (3) meet with interested groups to identify commercially-important chemicals that need to be tested (4) withdraw chemicals or tests to avoid unnecessary or duplicative testing, (5) characterize testing information deficiencies identified by Member Agencies as well as others, and (6) integrate available information into a consolidated testing program likely to serve multiple users.

There are numerous advantages associated with nominating chemicals to the Committee. These were described in detail in chapter 1.3.a of the 27th Report (56 FR 9534, March 6, 1991). Further information about nominating chemicals or chemical groups to the Committee can be obtained by calling the Committee's Executive Director at area code 202/260-1820 or the Committee's Executive Assistant at area code 202/260-1825.

1.3.b *Comprehensive information processing.* During this reporting period, several For Your Information (FYI), TSCA section 8(d) and 8(e) documents were reviewed. These documents are stored on microfiche in the TSCA Public Docket Office, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Room G-004 NE Mall, 401 M Street, SW., Washington, D.C. 20460. These microfiched documents are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 (1-800-336-4700), and from Chemical Information Systems, Inc., 7215 York Road, Baltimore, Maryland 21212 (1-800-CIS-USER). The Committee referenced several of these documents in chapter 2 of this report and readers are referred to the above addresses to obtain further information. Interested parties can also obtain, from the EPA address, copies of publicly-available reports, letters and published references supporting recommendations of chemicals in this report.

The Committee continues to comprehensively search available domestic and international lists of ongoing activities related to reducing testing information deficiencies on chemicals under review. Efforts to conduct these searches have identified numerous chemicals previously reviewed or recommended by the Committee. Many of the chemicals previously reviewed or recommended by the Committee are on ATSDR's list, the Toxics Release Inventory or the list of Hazardous Air Pollutants because of test data developed, in part, as a response to EPA's implementation of ITC's testing recommendation or as a result of other testing after ITC review. Committee recommendations have resulted in the submission of: (1) Substantive TSCA section 8(a) production, exposure and release information, (2) thousands of non-public TSCA section 8(d) studies and (3) hundreds of TSCA section 4(a) and (d) studies that were conducted as a result of the EPA's implementation of the Committee's testing recommendations. The Committee continues to review information on these and other lists. Efforts to conduct searches also identified chemicals for which TSCA information-gathering activities are ongoing (see Table 1 footnotes). The Committee makes the results of these searches publicly available by referencing TSCA submissions in Reports to the EPA Administrator or making tables and references of these submissions available in the public dockets supporting a Report to the EPA Administrator.

During this reporting period, the Committee considered available information on 5 chemicals and 14 chemical groups. Chemical groups under consideration include: alkenes, alkylamines, alkylethers, alkylsulfonates, amino aromatics, anhydrides, anthraquinones, aromatic dianhydrides, aromatic sulfhydryls, aromatic sulfonates, aryl ethers, benzothiazoles, carbamates, dialkylamines, dihydroxybenzenes, ethylhexyl derivatives, fluorinated and iodinated organics, glycol ethers, haloalkyl ethers, heterocyclics, hindered phenols, imidazoles, inorganics, isoindoles, isophthalic acids, IRIS chemicals, nitriles, nitroaromatics, nitroparaffins, *N*-phenylenediamines, phenolic antioxidants, phosphates, pyrrolidinones, sulfenamides, sulfonic acids, thiocarbamates, thiols, triazines, and xanthenes. The Committee recommended one chemical and one chemical group to the TSCA section 4(e) Priority Testing List. Review of the remaining chemicals and chemical groups is ongoing.

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1.3.c *Information dissemination.* To emphasize the Committee's efforts to promote public understanding of the ITC's functions and purposes, the Committee is listing some of the Committee-related activities that occurred during this reporting period. On May 23, 1991, the Executive Director presented a keynote speech at the North American Benthological Society Technical Information Workshop on Toxicity Assessment Techniques for Aquatic Invertebrates. On several occasions, the Committee's Chairperson, Vice-Chairperson, Executive Director or Members participated in CPSC's, EPA's and NCI's meetings to discuss chemical testing.

To facilitate coordination of chemical testing and to promote conservation of chemical testing resources the Executive Director met with the Synthetic Organic Chemical Manufactures Association and the Chemical Manufactures Association to discuss completed, ongoing and planned testing of chemical groups. The Committee processed chemicals referred to the ITC by Maryland's Department of the Environment. The Executive Director prepared testimony for U.S. Senate hearings on chemicals causing adverse reproductive effects.

To enhance communication, the Executive Director and Executive Assistant frequently respond to questions related to chemicals reviewed or recommended by the ITC. During this reporting period, the Executive Director responded to a call from Peter Howe of EPA's Region V, who called to learn if the ITC had recommended 4-(1,1,3,3-tetramethylbutyl)phenol (TMBP) for testing. TMBP was recommended for testing in November 1982 as part of the Committee's 11th Report. EPA's implementation of the ITC's testing recommendation and industry testing of TMBP produced chemical fate and ecological effects data (TMBP is persistent and highly toxic to aquatic organisms) that Region V used as part of the Agency's National Pollutant Discharge Elimination System permitting activities.

To promote a comprehensive evaluation of recent exposure information similar to that requested in the 28th Report, the Committee is soliciting voluntary use exposure and release information that is unlikely to be submitted in response to the TSCA Section 8(a) rule that is promulgated for any chemical or chemical group recommended for testing. In this 29th Report, the Committee is soliciting voluntary use exposure and release information for the one chemical and one chemical group recommended for testing and listed in Table 1.

To promote a comprehensive evaluation of recent physical and chemical property information similar to that requested in the 28th Report, the Committee is soliciting voluntary submission of this information for the one chemical and one chemical group recommended for testing and listed in Table 1.The Committee is soliciting voluntary submissions, because under 40 CFR 716.50, TSCA Section 8(d) studies of physical and chemical properties must be submitted only if they are performed for the purpose of determining the environmental or biological fate of a substance, and only if they investigated water solubility, adsorption/desorption on particulate surfaces, vapor pressure, octanol/water partition coefficient, density, dissociation constant, etc. The Committee recognizes that before chemicals are manufactured, many physical and chemical properties are measured (including those mentioned above, but also including flash point, melting point, boiling point, etc.), but not for the purpose of determining the environmental or biological fate of a substance. Member Agencies often need these physical and chemical properties that would not be developed as part of an environmental or biological fate assessment.

The Committee hopes that a voluntary approach for use exposure data and physical chemical property information will prove more efficient than pursuing notice-and-comment rulemaking under a TSCA section 8(a) Comprehensive Assessment Information Rule.

1.3.d *Referrals.* During this reporting period, the Committee did not refer any chemicals to Member Agencies or other organizations for testing consideration.

1.3.e *Deferrals.* The Committee is deferring 5-chloro-2-(2,4-dichlorophenoxy) phenol (CAS No. 3380-34-5), because of uncertainties related to testing under TSCA. Deferred and other chemicals are recycled through the Committee's computerized processes to identify chemicals whose production volumes have substantially changed.

1.3.f *Removals.* Six chemicals were removed from the Priority Testing List as a result of EPA responses to Committee recommendations. Five brominated flame retardants designated in the Committee's 25th Report were removed from the Priority Testing List on June 25, 1991 when EPA promulgated a Notice of Proposed Rulemaking. 4-Vinylcyclohexene, designated in the Committee's 26th Report was removed from the Priority Testing List on September 23, 1991 when EPA published a negotiated Consent Order.

In addition, the Committee is providing a complete list of 98 chemicals and 18 chemical groups that have been recommended and removed from the Priority Testing List since the ITC's 1st Report in October 1977 (Table 2). Reasons for removing chemicals from the Priority Testing List as well as the reference for the original Committee designation or recommendation are contained in the FR citations listed in Table 2. The Report numbers for the original Committee designation or recommendation are listed in Table 2. Reports have been consistently published every 6 months since October 1977. Table 2 reads as follows:

TABLE 2.—REMOVALS FROM THE TSCA SECTION 4(E) PRIORITY TESTING LIST

Report	Chemical/Group	Citation	Publication Date
1	Alkyl epoxides	49 FR 449	January 4, 1984
1	Alkyl phthalates	46 FR 53775	October 30, 1981
1	Chlorinated benzenes (mono and di-health)	45 FR 48524	July 18, 1980
1	Chlorinated benzenes (mono and di-environmental)	49 FR 1760	January 13, 1984
1	Chlorinated paraffins	47 FR 1017	January 8, 1982
1	Chloromethane	45 FR 48524	July 18, 1980
1	Cresols	48 FR 31812	July 11, 1983
1	Hexachloro-1,3-butadiene	47 FR 58029	December 29, 1982
1	Nitrobenzene	46 FR 30300	June 5, 1981

TABLE 2.—REMOVALS FROM THE TSCA SECTION 4(E) PRIORITY TESTING LIST—Continued

Report	Chemical/Group	Citation	Publication Date
1	Toluene	47 FR 56391	December 16, 1982
1	Xylenes	47 FR 56392	December 16, 1982
2	1,1,1-Trichloroethane	46 FR 30300	June 5, 1981
2	Acrylamide (health)	45 FR 48510	July 18, 1980
2	Acrylamide (environmental)	48 FR 725	January 6, 1983
2	Aryl phosphates	48 FR 57452	December 29, 1983
2	Chlorinated naphthalenes	46 FR 54491	November 2, 1981
2	Dichloromethane	46 FR 30300	June 5, 1981
2	Halogenated alkyl epoxides	48 FR 57695	December 30, 1983
2	Polychlorinated terphenyls	46 FR 54482	November 2, 1981
2	Pyridine	47 FR 58031	December 29, 1982
3	1,2-Dichloropropane	49 FR 899	January 6, 1984
3	Chlorinated benzenes (tri, tetra and penta-health)	45 FR 48524	July 18, 1980
3	Chlorinated benzenes (tri, tetra and penta-environmental)	49 FR 1760	January 13, 1984
3	Glycidols	48 FR 57562	December 30, 1983
4	4,4'-Methylenedianiline	48 FR 31806	July 11, 1983
4	Acetonitrile	47 FR 58020	December 29, 1982
4	Aniline and bromo-, chloro- or nitroanilines	49 FR 108	January 3, 1984
4	Antimony metal	48 FR 717	January 6, 1983
4	Antimony sulfide	48 FR 717	January 6, 1983
4	Antimony trioxide	48 FR 717	January 6, 1983
4	Cyclohexanone	49 FR 136	January 3, 1984
4	Hexachlorocyclopentadiene	47 FR 58023	December 29, 1982
4	Isophorone	48 FR 727	January 6, 1983
4	Mesityl oxide	49 FR 30699	July 5, 1983
4	Methyl ethyl ketone	47 FR 50025	December 29, 1982
4	Methyl isobutyl ketone	47 FR 58025	December 29, 1982
5	Benzidine-, o-dianisidine and o-tolidine based dyes	46 FR 55004	November 5, 1981
5	Hydroquinone	49 FR 438	January 4, 1984
5	Quinone	49 FR 456	January 4, 1984
6	Phenylenediamines	47 FR 973	January 8, 1982
7	Alkyltins	47 FR 5456	February 5, 1982
7	Butyl benzyl phthalate	46 FR 53775	October 30, 1981
7	Butyl glycolyl butyl phthalate	46 FR 54487	November 2, 1981
7	Fluoroalkenes	46 FR 53704	October 30, 1981
8	2-Chlorotoluene	47 FR 3596	January 26, 1982
8	Diethylenetriamine	47 FR 18386	April 29, 1982
8	Hexachloroethane	47 FR 18175	April 28, 1982
9	4-Chlorobenzotrifluoride	47 FR 50555	November 8, 1982
9	Chlorendic acid	47 FR 44878	October 12, 1982
9	Tris(2-chloroethyl) phosphite	47 FR 49466	November 1, 1982
10	1,2,4-Trimethylbenzene	48 FR 23088	May 23, 1983
10	Biphenyl	48 FR 23080	May 23, 1983
10	Ethyltoluene	48 FR 23088	May 23, 1983
10	Formamide	48 FR 23090	May 23, 1983
11	1,3-Dioxolane	48 FR 51839	November 14, 1983
11	4-(1,1,3,3-Tetramethylbutyl)phenol	48 FR 51971	November 15, 1983
11	Bis(2-ethylhexyl)terephthalate	48 FR 51845	November 14, 1983
11	Carbofuran intermediates	50 FR 29761	July 22, 1985
11	Dibutyltin bis(isooctyl maleate)	48 FR 51361	November 8, 1983
11	Dibutyltin bis(isooctyl mercaptoacetate)	48 FR 51361	November 8, 1983
11	Dibutyltin bis(laurel mercaptide)	48 FR 51361	November 8, 1983
11	Dibutyltin dilaurate	48 FR 51361	November 8, 1983

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TABLE 2.—REMOVALS FROM THE TSCA SECTION 4(E) PRIORITY TESTING LIST—Continued

Report	Chemical/Group	Citation	Publication Date
11	Dimethyltin bis(isooctyl mercaptoacetate)	48 FR 51361	November 8, 1983
11	Monobutyltin tris(isooctyl mercaptoacetate)	48 FR 51361	November 8, 1983
11	Monomethyltin tris(isooctyl mercaptoacetate)	48 FR 51361	November 8, 1983
11	Tris(2-ethylhexyl)trimellitate	48 FR 51824	November 14, 1983
12	2-Phenoxyethanol	49 FR 21407	May 21, 1984
12	Calcium naphthenate	49 FR 21411	May 21, 1984
12	Cobalt naphthenate	49 FR 21411	May 21, 1984
12	Lead naphthenate	49 FR 21411	May 21, 1984
12	Methylolurea	49 FR 21371	May 21, 1984
13	1,2,3,4,7,7-Hexachloronorbornadiene	49 FR 45654	November 19, 1984
13	Diethyleneglycol butyl ether acetate	49 FR 45606	November 19, 1984
13	Ethylene bis(oxyethylene) diacetate	49 FR 45651	November 19, 1984
13	Oleylamine	49 FR 45610	November 19, 1984
14	1,2-Dibromo-4-(1,2-dibromoethyl)cyclohexane	50 FR 19460	May 8, 1985
14	2-Ethylhexanoic acid	50 FR 20678	May 17, 1985
14	3,4-Dichlorobenzotrifluoride	52 FR 23547	June 23, 1987
14	Bisphenol A	50 FR 20691	May 17, 1985
14	Diisopropylbiphenyl	50 FR 18920	May 3, 1985
14	Isopropylbiphenyl	50 FR 18920	May 3, 1985
15	9,10-Anthraquinone	50 FR 46090	November 6, 1985
15	Chloroprene	50 FR 29761	August 26, 1985
15	Cumene	50 FR 46104	November 6, 1985
15	2-Mercaptobenzothiazole	50 FR 46121	November 6, 1985
15	Octamethylcyclotetrasiloxane	50 FR 45123	October 30, 1985
15	Pentabromoethylbenzene	50 FR 46785	November 13, 1985
15	Sodium *N*-methyl-*N*-oleoyltaurine	50 FR 46178	November 6, 1985
16	Methylcyclopentane	51 FR 17854	May 15, 1986
16	Tetrabromobisphenol A	51 FR 17872	May 15, 1986
16	Triethylene glycol monobutylether	51 FR 27883	May 15, 1986
16	Triethylene glycol monoethylether	51 FR 27883	May 15, 1986
16	Triethylene glycol monomethylether	51 FR 27883	May 15, 1986
17	Diisodecyl phenyl phosphite	54 FR 8112	February 24, 1989
18	2,6-Di-tert-butylphenol	52 FR 23862	June 25, 1987
18	Cyclohexane	52 FR 19095	May 20, 1987
19	Disperse blue dye 79 (bromo ethoxy substituted)	54 FR 48102	November 21, 1989
19	Methylethyl ketoxime	53 FR 35836	September 15, 1988
19	Tributylphosphate	52 FR 43346	November 12, 1987
20	Disperse blue dye (chloro ethoxy substituted)	54 FR 48102	November 21, 1989
20	Disperse blue dye (chloro methoxy substituted)	54 FR 48102	November 21, 1989
20	Disperse blue dye 79:1 (bromo methoxy substituted)	44 FR 48102	November 21, 1989
20	Ethylbenzene	53 FR 46262	November 16, 1988
20	Isopropanol	53 FR 6638	March 16, 1988
20	Methyl *tert*-butyl ether	53 FR 10391	March 31, 1988
21	Acid blue 40	53 FR 18196	May 20, 1988
21	Acid blue 45	53 FR 18196	May 20, 1988
21	Acid form of Acid blue 40	53 FR 18196	May 20, 1988
21	Acid form of Acid blue 45	53 FR 18196	May 20, 1988
21	Disperse blue 56	53 FR 18196	May 20, 1988
21	Disperse red 60	53 FR 18196	May 20, 1988
22	1,6-Hexamethylene diisocyanate	54 FR 21240	May 17 1989
23	Crotonaldehyde	54 FR 47062	November 9, 1989
25	1,2-Bis(2,4,6-tribromophenoxy)-ethane	56 FR 29140	June 25, 1991
25	Hexabromocyclododecane	56 FR 29140	June 25, 1991

TABLE 2.—REMOVALS FROM THE TSCA SECTION 4(E) PRIORITY TESTING LIST—Continued

Report	Chemical/Group	Citation	Publication Date
25	Pentabromodiphenyl ether	56 FR 29140	June 25, 1991
25	Octabromodiphenyl ether	5FR 29140	June 25, 1991
25	Decabromodiphenyl ether	56 FR 29140	June 25, 1991
26	4-Vinylcyclohexene	56 FR 47912	September 23, 1991

1.4 *The TSCA section 4(e) Priority Testing List.* Section 4(e)(1)(B) of TSCA directs the Committee to: "* * * make such revisions in the [priority] list as it determines to be necessary and * * * transmit them to the Administrator together with the Committee's reasons for the revisions." Under this authority, the Committee is revising the Priority Testing List by recommending one chemical and one chemical group. These revisions are listed in Table 1.

The Priority Testing List (Table 3) includes 26 chemicals and 21 chemical groups designated, recommended with intent-to-designate or recommended for testing. Individual chemicals in Priority Testing List chemical groups are listed in Table 1 or the paragraph following Table 1 of this and previous Reports with appropriate notes that minimize ambiguities related to TSCA section 8(a) and 8(d) reporting requirements. Tables 2 (Removals from the Priority Testing List) and 3 (the Priority Testing List) list the 124 chemicals and 39 chemical groups that have been recommended or designated for testing since the Committee's 1st Report in October 1977. Table 3 reads follows:

TABLE 3.—THE TSCA SECTION 4(E) PRIORITY TESTING LIST

Date	Entry	Action
May 1988	Ethoxylated quaternary ammonium compounds	Recommended
May 1988	Imidazolium quaternary ammonium compounds	Recommended
November 1988	Tetrakis(2-chloroethyl)ethylene diphosphate	Recommended with intent-to-designate
November 1988	Tris(1,3-dichloro-2-propyl) phosphate	Recommended with intent-to-designate
November 1988	Tris(1-chloro-2-propyl) phosphate	Recommended with intent-to-designate
November 1988	Tris(2-chloro-1-propyl) phosphate	Recommended with intent-to-designate
November 1988	Tris(2-chloroethyl)-phosphate	Recommended with intent-to-designate
November 1988	Butyraldehyde	Recommended
November 1989	Brominated flame retardants	Recommended
May 1990	Isocyanates	Recommended with intent-to-designate
May 1990	Brominated flame retardants	Recommended
May 1990	Alkyl phosphates	Recommended
November 1990	Sodium cyanide	Designated
November 1990	Acrylic acid	Designated
November 1990	Acetophenone	Designated
November 1990	Phenol	Designated
November 1990	*N,N*-Dimethylaniline	Designated
November 1990	Ethylacetate	Designated
November 1990	2,6-Dimethylphenol	Designated
November 1990	Aldehydes	Recommended with intent-to-designate
November 1990	2,4-Dinitrophenol	Recommended
November 1990	3,4-Dimethylphenol	Recommended
November 1990	*N*-phenyl-1-naphthylamine	Recommended
November 1990	Sulfones	Recommended
November 1990	Substantially produced chemicals in need of subchronic tests	Recommended
May 1991	Acetone	Designated
May 1991	*n*-Butanol	Designated
May 1991	Isobutanol	Designated
May 1991	Di-(2-ethylhexyl)adipate	Designated
May 1991	Dimethyl terephthalate	Designated
May 1991	Thiophenol	Designated
May 1991	*m*-Dinitrobenzene	Recommended
May 1991	Allyl alcohol	Recommended
May 1991	2,4-Dichlorophenol	Recommended

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TABLE 3.—THE TSCA SECTION 4(E) PRIORITY TESTING LIST—Continued

Date	Entry	Action
May 1991	Alkynes	Recommended
May 1991	Nitroalcohols	Recommended
May 1991	Phosphoniums	Recommended
May 1991	Hydrazines	Recommended
May 1991	Oxiranes	Recommended
May 1991	Alkoxysilanes	Recommended
May 1991	Aldehyde hydrates	Recommended
May 1991	Propylene glycol ethers and esters	Recommended
May 1991	Methyl ethylene glycol ethers	Recommended
May 1991	Isothiocyanates	Recommended
May 1991	Cyanoacrylates	Recommended
November 1991	White phosphorus	Recommended
November 1991	Alkyl-, bromo-, chloro-, hydroxymethyl diarylethers	Recommended

Chapter 2—Recommendations of the Committee

2.1 *Chemicals recommended for priority consideration by the EPA Administrator.* As provided by section 4(e)(1)(B) of TSCA, the Committee is adding to the section 4(e) Priority Testing List one chemical and one chemical group (see Table 1). The recommendation of these chemicals is made after considering the factors identified in section 4(e)(1)(A) and other relevant information, such as the chemical testing data needs of Member Agencies.

2.2 *Designated chemicals.* None.

2.3 *Recommended with intent-to-designate chemicals.* None.

2.4 *Recommended chemicals*—2.4.a *White phosphorus.* White Phosphorus is recommended for testing based on concerns of the Department of Interior (DOI). DOI is concerned about and has few data on the persistence of white phosphorus in wetland sediments, the adverse effects of persistent white phosphorus to birds and wildlife that feed on sediments contaminated with white phosphorus, the potential for food chain effects and potential elimination of endangered species that may feed on carcasses of birds and wildlife that die from white phosphorus poisoning. The Department of Defense (DOD) is also concerned about the persistence and adverse effects of white phosphorus and has a task force that is developing a strategy for remediation of military sites contaminated with white phosphorus. The ITC is working with DOI and DOD to facilitate coordination of testing efforts and is aware of the Department of Transportation's regulation of white phosphorus as a flammable solid.

Summary of recommended studies. It is recommended that white phosphorus be tested for:

Chemical fate. Persistence in surface waters and sediments.

Health effects. None.

Ecological Effects. Toxicity to migratory birds and other wildlife.

White phosphorus

Physical and Chemical Information

CAS Number: 7723-14-0
Synonyms: Yellow phosphorus
Empirical Formula: P_4
Molecular Weight: 123.9
Physical State at 25 °C: Solid.
Description of Chemical: Colorless off white waxy solid, cubic crystals that spontaneously inflame in air at 30 °C. (Ref. 32, Windholz et al., 1983)
Melting Point: 44.1 °C
Vapor Pressure: 0.023 torr 25 °C (Ref. 26, Spanggord et al., 1985)1 atm at 76.6 °C (Ref. 3, Berkowitz et al., 1981)
Specific Gravity: Not Applicable
Log Octanol/Water
Partition Coefficient: 1200 ± 100 (Ref. 26, Spanggord et al., 1985)
Water Solubility at 25 °C: 4.1 mg/L (Ref. 26, Spanggord et al., 1985)
Log K_{oc}: 2,400 (Ref. 17, Lyman et al., 1990)
Henry's Law Constant: 2.1×10^{-3} atm m^3 $mole^{-1}$ at 25 °C.

Rationale for Recommendations

A. *Exposure information—Production/use/disposal/exposure/release.* In 1990, approximately 700 million pounds of white phosphorus were produced (Ref. 5, CMR, 1991); 1991 production is expected to be 792 million lbs (Ref. 27, SRI International, 1991).

Direct use of P_4 is mainly restricted to military applications (Ref. 30, Van Wazer, 1982); however, white phosphorus is commercially available for other applications such as in rodenticides (Ref. 23, Sax and Lewis, 1987). Otherwise white phosphorus is converted to phosphorus sulfides, halides, phosphorus pentoxide, phosphoric acid, and red phosphorus. The major uses of phosphorus compounds are in detergents, in the food and beverage industry and as fertilizers.

B. *Evidence for exposure—Human exposure.* The NOES conducted during 1981-83 by NIOSH reported that 135,453 workers (6811 females) were exposed to white phosphorus at 7,607 production and use facilities involving 83 occupations in 86 industries. The OSHA Permissible Exposure Limit for occupational exposure to white phosphorus is 0.1 mg/m^3 8-hour Time Weighted Average.

C. *Environmental exposure.* Catastrophic waterfowl mortality has been observed in the Eagle River Flats firing range, a salt marsh in Cook inlet in Alaska. Careful study of dying birds indicated that white phosphorus residues were present in their fat, gizzard contents and other digestive tissues, liver, skin, and breast muscle. White phosphorus was also found in the sediments on which they were feeding. Other munitions-derived chemicals were also found, but not at levels high enough to cause death. Feeding studies at levels similar to those found in the sediment produced death (Ref. 21, Racine et al., 1991). Other sites of exposure would be manufacturing operations and munitions packaging facilities. Direct release occurs during the production of white phosphorus (Ref. 15, Idler, 1969) and during the manufacture and combustion of white phosphorus/felt smoke-producing devices (Ref. 2, Bentley et al., 1978). During deployment of munitions, about 10 percent of the white phosphorus is not oxidized; thus it is

available for release in the environment (Ref. 26, Spanggord et al., 1985).

Test firing of U.S. Army munitions, especially smokes, into marshy areas may have serious consequences to waterfowl inhabiting these areas. A memorandum from the Regional Contaminants Coordinator (Region 7 - Alaska) describing the problem of white phosphorus in Eagle River Flats contained the following description (Ref. 22, Robinson-Wilson, 1991):

> White phosphorus is used in both flares and smokes by the U.S. Army. Shells are fired out over the impact area where they explode in the air, releasing the burning white phosphorus into the atmosphere. At ERF [Eagle River Flats], the falling particles of burning white phosphorus fall either onto snow or water, where they are quenched. Waterfowl, mainly dabbling ducks and swans, pick up white phosphorus particles during feeding. The particles are believed to have an oxidized coating and the birds are not exposed to the white phosphorus until the particles are ground up in their gizzards and released during digestion.

According to the TRI, 19,097 lbs were released to air, 11,569 lbs were discharged to water, 3,719,412 lbs were released to land, and 219,456 lbs were transferred to other off-site locations in 1988 (Ref. 29, TRI, 1991). In 1989, 16,174 lbs were released to air, 3,033 lbs were discharged to water, 3,291,402 lbs were released to land, and 85,573 lbs were transferred to other off-site locations (Ref. 29, TRI, 1991).

I. Chemical Fate Information

A. *Persistence.* In the few studies conducted near discharge sites, rapid dissipation out from the source was noted; however, it was determined in studies on the sediments from these locations that the surface deposits of a few parts per million probably oxidized quickly; whereas deeper deposits of higher concentrations could be stable for years (Ref. 1, Ackman et al., 1971; Ref. 26, Spanggord et al., 1985). This persistence is ascribed to the fact that most sediments are anaerobic a short distance below the surface, (Ref. 26, Spanggord et al., 1985; Ref. 8, Davidson et al., 1987; Ref. 28, Sullivan et al., 1979). This type of persistence is especially of concern to waterfowl which feed in these areas, since the particles of white phosphorus which are embedded in the sediment of the shallow water are believed to be ingested by ducks and swans.

B. *Rationale for chemical fate testing.* The U.S. Department of Interior is concerned about the fate of white phosphorus in sediments of a dabbling duck feeding environment. Release and persistence under these conditions is only poorly understood and further testing is needed.

II. Health Effects Information

The Committee is not recommending health effects testing at this time because it wants to review non-public health effects studies that may be submitted in response to the TSCA section 8(d) rule that EPA will publish for chemicals in the ITC's 29th Report.

A. *Metabolism and pharmacokinetics.* White phosphorus is rapidly absorbed from the digestive tract of mice, rats, and rabbits (complete within 24 hours). When radioactive P_4 is administered, radioactivity accumulates primarily in the liver, kidney, lung, bone, and skeletal muscle (Ref. 4, Cameron and Patrick, 1966; Ref. 13, Ghoshal et al., 1971; Ref. 16, Lee et al., 1975). Elimination is mainly via urinary excretion as inorganic and organic phosphates; some fecal elimination also occurs (Ref. 4, Cameron and Patrick, 1966; Ref. 16, Lee et al., 1975). It does not appear that white phosphorus is absorbed from the lungs or skin of laboratory animals (Ref. 7, Dalhamn and Holma, 1959).

There is no direct pharmacokinetic information for humans, but absorption from the digestive tract can be inferred by toxicity data (Ref. 20, Polson et al., 1983). There is no convincing evidence that white phosphorus is absorbed as a result of exposure by inhalation or dermal contact (Ref. 8, Davidson et al., 1987).

B. *Acute and subchronic (short-term) effects.* White phosphorus is highly toxic to humans and laboratory animals exposed by the oral route. Oral LD_{50} values for male and female rats are 3.76 and 3.03 mg/kg, and for male and female mice, 4.85 and 4.82 mg/kg, respectively (Ref. 16, Lee et al., 1975). The estimated minimal lethal oral dose in humans is 50 mg (0.7 mg/kg), but 15 mg (0.2 mg/kg) may cause serious toxicity (gastrointestinal, liver, renal, cardiovascular, and CNS effects) (Ref. 25, Sollman, 1957; Ref. 18, McCarron et al., 1981; Ref. 9, Diaz-Rivera et al., 1950).

Acute inhalation LC_{50} values for rats and mice are 1,400 and 660 mg/m^3, respectively. Because white phosphorus ignites spontaneously, (Ref. 30, Van Wazer, 1982), its contact with skin can cause serious burns. Dermal exposure of humans to white phosphorus via industrial accidents and on the battlefield has led to 3rd degree burns and death, massive hemolysis, and low plasma calcium (Ref. 31, Walker et al., 1947).

Young female rats fed diets containing median daily doses of white phosphorus of 0.075 mg/kg/day for 22 weeks showed severely depressed weight gain and weight loss, leading to a final weight less than the starting weight. Male rats fed 0.0027 mg per kg per day showed fluctuations in growth prior to the 15th week, but from the 15th to 25th week of exposure growth was rapid and was 13 percent above that of controls by the 25th treatment week (Ref. 24, Sollman, 1925).

C. *Genotoxicity.* White phosphorus was negative in Ames/*Salmonella* tests when evaluated as an undiluted saturated solution in distilled water; a concentration of up to 100 µL/plate in both the presence and absence of S9 fraction of liver did not induce increased incidence of mutations (Ref. 10, Ellis et al., 1978).

No data were located regarding the genotoxicity of white phosphorus in humans.

D. *Chronic toxicity.* Oral exposure of groups of 6 rats to 0.2, 0.4, 0.8, or 1.6 mg per kg per day of white phosphorus dissolved in peanut oil and mixed with stock diet for their lifetimes (up to 512 days) caused dose-related mortality. Retarded growth (effect level not reported) was believed due to inanition rather than systemic toxicity. Histopathological evaluation showed changes in the long bones (thickening of the epiphyseal line; extension of the trabeculae into the shaft). White phosphorus (0.05 mg per kg per day) dissolved in peanut oil and administered by subcutaneous injection to rats and guinea pigs for their lifetimes caused the same effects on bone, but to a lesser degree in the guinea pigs. Livers of these treated rats showed mild fatty degeneration, and lungs were also affected (bronchopneumonia, pneumonitis, bronchitis). These effects were not seen in guinea pigs (Ref. 11, Fleming et al., 1942).

Chronic exposure of humans to white phosphorus causes a characteristic lesion, necrosis of the jaw, which has been documented through numerous cases involving occupational exposure. In one study, the incidence of this condition was less than 5 percent of those exposed (Ref. 25, Sollman, 1957), and the estimated mortality rate from white phosphorus necrosis was about 20 percent, according to another study (Ref. 14, Hunter, 1969). Levels of exposure were not quantified.

E. *Reproductive and developmental effects.* Elemental yellow phosphorus was administered by gavage in corn oil to 8-week-old male and female rats in doses of 0, 0.005, 0.015, or 0.075 mg per kg per day for 80 days prior to mating, and continued through mating, gestation and lactation, then through a second

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cycle from mating through lactation. Seven of the 30 high-dose females died during parturition, and hair loss was noted on both forelimbs of the high-dose males and females. No effects were seen on body weights or reproductive indices. No evidence of developmental toxicity was noted. The NOAEL was 0.015 mg per kg per day (Ref. 19, Monsanto, 1965).

No data were found on the reproductive or developmental toxicity of white phosphorus in humans.

III. Ecological Effects Information.

A. *Acute and subchronic (short-term) effects.* Both laboratory and field studies indicated that white phosphorus is highly toxic to aquatic organisms. The effluent from white phosphorus production contains both suspended and dissolved white phosphorus, and environmental release can occur from the combustion of munitions with remobilization from aquatic sediments as well as sinks in anaerobic soils. The LC_{50} values for five freshwater fish species range from 2.4 to 73 µg/L; the most sensitive species is *Lepomis macrochirus*. The LC_{50} values for five invertebrate species range from 30 to >560 µg/L; the most sensitive species is *Daphnia magna*. Available LC_{50} data for fish and invertebrates indicate that the toxicity of white phosphorus is cumulative. Single doses of 3 to 6 mg/kg have been reported to cause death in mallards and black ducks within 24 hours (Ref. 6, Coburn et al., 1950). A memo from the Regional Contaminants Coordinator (Region 7 - Alaska) describing the problem of white phosphorus in Eagle River Flats contained the following description (Ref. 22, Robinson-Wilson, 1991).

> Birds typically go through protracted convulsions before death, indicating a possible nervous system involvement. Birds that are affected are often taken by bald eagles and/or gulls before they die. However, few bald eagles or gulls have been found dead on ERF [Eagle River Flats] to date. ..[one] bald eagle was found and subsequent analysis of tissues found that WP [white phosphorus] was present. Since no data are available on WP toxicity in raptors and since no data exists on transfer of WP between trophic levels, we cannot state that WP was the toxic agent, but all the circumstantial evidence points to WP as the toxic agent.

B. *Chronic (long-term) effects.* Chronic white phosphorus exposure in *Pimephales promelas* reduced survival at 1.5 µg/L, and hatchability was reduced at 0.4 µg/L. In studies with macroinvertebrates, exposure to 8.7 µg/L reduced survival in *Daphnia magna* (Ref. 8, Davidson et al., 1987).

C. *Other ecological effects (biological, behavioral, or ecosystem processes).* The issue of wildlife toxicity was raised when it was discovered that a long-standing problem of waterfowl mortality at Eagle River Flats in Alaska was apparently being caused by the ingestion of particles of white phosphorus that had settled into marsh sediments. This has resulted in the death of 1000 to 2000 migratory dabbling ducks and 10 to 50 swans per year for the last 10 years (Ref. 21, Racine et al., 1991).

D. *Bioconcentration and Food-chain transport.* Bioconcentration in 3 species of fish ranged from 11.7 to 67.7 in muscle and from 51.5 to 2,000 fold in liver (Ref. 8, Davidson et al., 1987). In 6 species of invertebrates, bioconcentration ranged from 10.5 to 1,267 fold. In 2 species of seaweed the factor was 22.2 to 22.8 fold (Ref. 12, Fletcher, 1971).

E. *Rationale for ecological effects testing recommendation.* The U.S. Department of Interior is concerned about the toxicity of white phosphorus to migratory birds that seasonally reside on bodies of water containing white phosphorus particles in the water and in the sediment. Ecological effects testing is recommended because data are insufficient to reasonably determine or predict the toxicity of white phosphorus to migratory birds and other wildlife.

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2.4.b *Alkyl-, bromo-, chloro-, hydroxymethyl diaryl ethers.* The Committee is recommending 14 alkyl-, bromo-, chloro-, hydroxymethyl diaryl ethers for physical chemical property, biodegradation rate, health effects and ecological effects screening tests. These chemicals will allow the Committee to evaluate the persistence and toxicity of the diaryl ether substructure. Alkyl-, bromo-, chloro-, hydroxymethyl diaryl ethers are defined as any two aromatic rings joined by an oxygen (i.e., Ar-*O*-Ar where Ar is any aryl group) where there are alkyl, bromo, chloro or hydroxymethyl substituents on one or both of the aromatic rings or on a methyl group attached to one of the aromatic rings. One minor exception to this definition is an acetate ester of hydroxymethyl diaryl ether. This chemical was included because the Committee believed that the ester would be metabolized to the alcohol. The Committee is making this recommendation based on: (1) concerns for potential persistence and toxicity, (2) the paucity of publicly-available data for a majority of these chemicals, and (3) the need to carefully review any studies that may be submitted under TSCA section 8(d), before designating or withdrawing recommended testing for any of these diaryl ethers.

Several diaryl ethers were previously reviewed. Diphenyl oxide was previously nominated for oncogenicity testing by the National Cancer Institute's Chemical Selection Working Group. The chemical was not selected for testing, pending the results of industry testing (Helmes et al., 1983, Ref. 13). 1-Amino-4-hydroxy-2-phenoxy-9,10-anthraquinone was recommended in ITC's 21st Report. Penta-, octa- and decabromodiphenyl ethers were designated in the ITC's 25th Report. 3-Phenoxybenzaldehyde was recommended in the ITC's 27th Report. Benzenesulfonic acid, 4,4'-oxybis-, dihydrazide was recommended in the ITC's 28th Report.

The 14 chemicals being recommended at this time were selected from a TSCA Inventory group of 55 diaryl ethers that have the general formula Ar-*O*-Ar. Of the 55 diaryl ethers that were considered, all but 16 were eliminated on the basis of substructural characteristics which indicated they would be better considered along with other chemical groups such as xanthenes, anthraquinones, sulfonic acids, isoindoles, amino and nitro aromatics, etc. Nonabromodiphenyl ether was not recommended because the Committee wanted to review any data developed for bromodiphenyl ethers. 5-Chloro-2-(2,4-dichlorophenoxy) phenol was deferred because of pesticide uses.

The Committee hopes that manufacturers, processors, and users will voluntarily provide use, exposure, and release data not required under TSCA section 8(a). Uncertainties related to production, toxicity and persistence may be clarified after the Committee's review of the data obtained from the automatic 8(a) and 8(d) rules.

Summary of recommended studies. Testing recommendations for the 14 diaryl ethers listed in the paragraph following Table 1 are summarized in Table 1.

Physical and Chemical Information

The Committee found limited information on measured physical and chemical properties for the diaryl ethers listed in the paragraph following Table 1: four boiling points, one log octanol/water partition coefficient, three melting points, one water solubility, and one vapor pressure (Ref. 1, Aldrich, 1988; Ref. 2, Ambrose et al., 1976; Ref. 4, Banerjee et al., 1980; Ref. 5, Bein, 1985; Ref. 9, Dean, 1985; Ref. 12, Hansch and Leo, 1985; Ref. 24, Weast, 1985).

Rationale for Recommendation

A. *Exposure information—Production/use/disposal/exposure/release.* The Committee believes that the diaryl ethers listed in the paragraph following Table 1 are commercially available, and that some of them may be produced in substantial quantities. Composite production volume for this group exceeds 70 million pounds; actual production volumes are confidential business information.

Alkyl diaryl ethers are used as heat transfer fluids, resins for laminated electrical insulators, chemical intermediates and antioxidants; the bromodiaryl ether is used as an intermediate in production of pyrethroids; chlorodiaryl ethers are used as bacteriostatic and preservative agents for cosmetics and detergents (Ref. 7, Chemcyclopedia 91, 1990; Ref. 8, Dagani, 1985; Ref. 11, Gusten et al., 1973; Ref. 18, Sax and Lewis, 1987). No use information was found for the hydroxymethyl diaryl ethers.

B. *Evidence for exposure—Human exposure.* The National Occupational Exposure Survey (NOES) conducted during 1981-83 by NIOSH reported that 90,789 workers were potentially exposed to diphenyl oxide in 24 industries and 145 workers were potentially exposed to 1-methyl-3-phenoxybenzene in business services (Ref. 16, NIOSH, 1989). Only diphenyl oxide has an OSHA Permissable Exposure Limit.

C. *Environmental exposure.* Diphenyl oxide has been detected in 1 of 14 treated drinking water supplies (Ref. 10, Fielding et al., 1981) and detected at concentrations of 69 and 388 µg/L in wastewater extract from the organics and plastics industry, 12 µg/L from the plastics and synthetics industry, 18 µg/L

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from rubber processing industry, 30 and 38 μg/L from the soaps and detergents industry, 35 μg/L from the electronics industry, and 1620 μg/L in wastewater extract from the organic chemicals industry (Ref. 6, Bursey and Pellizzari, 1982). Diphenyl oxide has been identified in wastewater, river and estuary water, and river, estuary and bay sediment (Ref. 14, Hites and Lopez-Avila, 1980).

I. Chemical Fate Information

The Committee searched published and unpublished chemical fate literature and found that there were studies on only one of the recommended diaryl ethers. In acclimated river water, diphenyl oxide (23.8 mg/L initial concentration) exhibited approximately 20 percent biodegradation under aerobic conditions during an 80 day incubation period (Ref. 15, Ludzack and Ettinger, 1963). In a review, diphenyl oxide was characterized as "unlikely to be removed during biological sewage treatment even after prolonged exposure" (Ref. 19, Thom and Agg, 1975). A degradation half-life in soil of 11 days was estimated from analysis of percolate groundwater samples; biodegradation is expected to be the primary fate process contributing to environmental degradation (Ref. 25, Zoeteman et al., 1981).

Alkyl-, bromo-, chloro-, hydroxymethyl diaryl ethers are recommended for physical and chemical property and biodegradation rate screening tests because there are insufficient data to reasonably determine or predict environmental persistence.

II. Health Effects Information

A search of published and unpublished health effects literature revealed that there were studies on six of the recommended diaryl ethers. The majority of health effects studies were published on diphenyl oxide or mixtures containing diphenyl oxide including: 18 oral, dermal and inhalation acute toxicity studies on 5 mammalian species (Ref. 17, RTECS 1991, Ref. 22, TSCATS 1991); 6 oral and inhalation prechronic studies on 3 mammalian species (Ref. 20, TOXLINE 1991); 9 genotoxicity studies, including those on mutagenicity in bacteria and yeast (Ref. 20, TOXLINE 1991, Ref. 22, TSCATS 1991), negative cytogenetics in hamsters (Ref. 22, TSCATS 1991), and DNA effects in rats (Ref. 22, TSCATS 1991); 1 negative developmental toxicity study in rats that used 77 percent diphenyl oxide and 33 percent biphenyl as the test substance (Ref. 20, TOXLINE 1991);1 positive developmental toxicity study in sea urchins (Ref. 20, TOXLINE); and 3 oral and intraperitoneal pharmacokinetics studies in rats (Ref. 20, TOXLINE 1991).

For the other five diaryl ethers recommended for testing [benzene, 1-methyl-3-phenoxy-; benzenemethanol, 3-phenoxy-; benzene, 1,1'-oxybis[methyl-; 1,1'-biphenyl, phenoxy-; benzene, 1(bromomethyl)-3-phenoxy-], there were 7 oral and dermal acute toxicity studies on 4 mammalian species (Ref. 20, TOXLINE 1991, Ref. 21, TOXLIT 1991, Ref. 17, RTECS 1991); 2 prechronic studies in rats (Ref. 22, TSCATS 1991, Ref. 20, TOXLINE 1991); and six genotoxicity studies, including those on mutagenicity in bacteria and cytogenetics in mice (Ref. 21, TOXLIT 1991, Ref. 20, TOXLINE 1991).

Alkyl-, bromo-, chloro-, hydroxymethyl diaryl ethers are recommended for health effects screening tests (except for diphenyl oxide) because there are insufficient data to reasonably determine or predict health effects.

III. Ecological Effects Information

Except for acute aquatic toxicity data for diphenyl oxide (LC_{50} values ranged from 3 to 4 mg/L for freshwater fish and 0.67 to 1.4 mg/L for freshwater invertebrates, Ref. 3, AQUIRE 1991) and 3-phenoxy-benzenemethanol (EC_{50} values ranged from 1.4 to 95.0 mg/L for freshwater algae, Ref. 3, AQUIRE 1991), no ecological effects testing information was located for the other 12 diaryl ethers.

Alkyl-, bromo-, chloro-, hydroxymethyl diaryl ethers are recommended for ecological effects screening tests because there are insufficient data to reasonably determine or predict ecological effects.

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Part X

Department of Health and Human Services

Food and Drug Administration

21 CFR Chapter I

Withdrawal of Certain Pre-1986 Proposed Rules

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. 91N-0300]

Withdrawal of Certain Pre-1986 Proposed Rules; Final Action

AGENCY: Food and Drug Administration, HHS.

ACTION: Withdrawal of proposed rules.

SUMMARY: The Food and Drug Administration (FDA) announces that it is withdrawing 89 proposed rules that were published in the **Federal Register** on or before December 31, 1985. In many cases, these proposals have been superseded by subsequent actions or events or no longer reflect the agency's regulatory objectives or priorities. In other cases, sufficient time has elapsed that it would be appropriate to publish a new proposal or tentative final rule before proceeding to final action. Accordingly, the agency concludes, after considering the public comments submitted in response to a notice published in the **Federal Register** of August 28, 1991 (56 FR 42778) announcing its intent to withdraw 115 proposed rules, that further action to issue final rules based on 89 of these proposals is not warranted, and that the proposals should be formally withdrawn. The agency also announces that it is deferring a decision on withdrawal of 26 of the 115 proposals listed in that notice of intent.

DATES: The proposed rules are withdrawn on December 30, 1991.

FOR FURTHER INFORMATION CONTACT: Robert L. Spencer, Office of Policy, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of August 28, 1991 (56 FR 42668), FDA announced that it had begun a comprehensive review of the agency's regulations process, including a review of the backlog of advance notices of proposed rulemaking, notices of proposed rulemaking, and other notices for which no final rule or notice of withdrawal has been issued. The review was begun partly in response to criticism that the agency's backlog of pending proposals dilutes the agency's ability to concentrate its attention on higher priority regulations mandated by statute or necessary to protect public health.

As a first step, FDA reviewed all of the proposals that the agency published in the **Federal Register** prior to December 31, 1985, but for which no final rules or notices of withdrawal have been published. The agency then tentatively concluded that 115 of these pre-1986 proposals should be withdrawn. The August 28, 1991, notice of intent (hereafter referred to as the notice of intent) identified these 115 pre-1986 proposals and invited interested persons to submit comments on FDA's intent to withdraw these proposals.

FDA received 34 written comments regarding the agency's intent to withdraw the 115 pre-1986 proposed rules. These comments were from a member of Congress, consumer organizations, trade associations, professional associations, law firms, consultants, individuals and commercial organizations. The comments generally supported the agency's efforts to withdraw the pre-1986 proposals; however, the comments requested additional procedures to provide for increased opportunity for public comment on the proposed withdrawals. Many of the comments concerned one or more of the specific proposals identified for withdrawal in the notice of intent. The comments specifically addressed 30 of the 115 proposals listed in the notice of intent; no specific comments were received regarding the other 85 proposals listed in the notice. The agency is deferring action on 9 of the 85 proposals on which no comments were received as well as 17 of the proposals on which comments were received.

The following is a summary of the comments received and the agency's response to these comments.

II. Summary of and Responses to Comments

A. General Comments

1. Six of the comments submitted expressed general support for FDA's action to withdraw pre-1986 proposed rules that have low priority or are outdated. One of these comments suggested that FDA consider the withdrawal of any proposal that is more than 4 years old because, with the advances being made in understanding the toxicology of chemical substances, issues more than 4 years old may well be scientifically and technically outdated. Another comment stated that, because of the long time that elapsed since the proposals were published, circumstances require a reexamination of these proposals to determine whether they are relevant and whether the factual basis and applicable science and policy still apply. Still another of these comments suggested that, in the future, FDA should not initiate proposed rulemaking unless it intends to complete the rulemaking in a timely manner.

As noted in the preamble to the notice of intent (56 FR 42668), FDA agrees that many of these pre-1986 proposals have become outdated in the time that has elapsed since their publication and that, before the agency could proceed further, it would be necessary to reexamine the factual and scientific bases for the proposals, the agency would publish a new proposal or tentative final rule before proceeding to final action.

The agency disagrees, however, with the comment that the agency should consider withdrawing a proposal solely on the basis of age, e.g., if it is more than 4 years old. Although the amount of time that has elapsed since publication of the proposal should be one of the criteria used in an initial screening of proposals for consideration to withdraw, a final decision to withdraw a proposal or to proceed to final rulemaking must address other factors including, but not limited to, statutory requirements and the public health.

The agency also agrees in principle with the comment that the agency should not initiate proposed rulemaking unless it intends to complete the rulemaking in a timely manner. Although the need for a particular rule may change with changes in the circumstances that caused the agency to initiate the rulemaking proceeding, the agency intends in the future to adhere to the general principle that any rulemaking activity important enough to initiate is important enough to be accompanied by a plan, timetable, and agency-level commitment sufficient to ensure its timely completion. This goal of timely completion includes not only the promulgation of a final rule but also recognizing when the time has come to withdraw a proposal.

2. One comment asked that FDA clarify that it is not disavowing any positions or standards established in the proposed rules the agency intends to withdraw.

Preambles to proposed rules are advisory opinions under 21 CFR 10.85(d) until they are amended or revoked. The agency's withdrawal of the pre-1986 proposals listed below constitutes a revocation of these preambles as advisory opinions under 21 CFR 10.85(g). As FDA acknowledged in the notice of intent, some of the withdrawn proposals still reflect current agency views and thus may still provide useful guidance. However, the withdrawn proposals no longer necessarily represent the formal position of FDA, and do not bind or otherwise obligate or commit the agency to the views expressed. Interested persons who believe that guidance provided in the preambles to the withdrawn proposals should be restated in the form of an advisory opinion should submit a request for an advisory opinion as provided in 21 CFR 10.85.

3. One comment asked that FDA reconsider the approach taken in inviting public comment on the agency's notice of intent to withdraw proposed rules. The comment suggested that FDA should describe the substance of the proposal at issue so that the public could intelligently comment on the agency's action. Another comment stated that the mere publishing of the titles and other references provides little assistance to persons reviewing the list of pre-1986 proposals, particularly where some of the proposals were more than 30 years old. This comment suggested that it would have been helpful if FDA had included brief summaries of the essence of the proposals on the withdrawal list, and possibly the reasons for their proposed withdrawal.

The notice of intent identified each of the proposals being considered for withdrawal by title, docket number, and the **Federal Register** publication date and cite. The agency believes that, in almost all cases, the title described the substance of the proposed rule sufficiently to allow readers to make an initial determination as to whether the proposed withdrawal might affect an issue in which they were interested. Any interested person could obtain additional, detailed information by reading the specific proposal in the cited **Federal Register** issue.

In addition, to assist persons interested in obtaining additional information about a certain proposal, the agency included in the notice the name, address, and telephone number of an agency contact. This employee was prepared to answer any questions and to provide copies of each of the listed proposals upon request.

The agency considered providing more information concerning the substance of each of the 115 proposals in the notice of intent. FDA believed, however, that persons interested in commenting would want to read the underlying proposals themselves, regardless of how detailed a summary the agency had provided in the notice of intent. In the end, the agency decided to move ahead with this initiative to reduce the backlog of pre-1986 proposals in a manner it judged to be efficient, expeditious, and more than adequately protective of the interests of affected parties. Based on the comments received, it appears that interested persons understood the intent of the notice and were able to formulate comments addressing their concerns.

Any person who believes that the subject of a withdrawn proposal still should be addressed by regulation is free to petition the agency to recommend rulemaking. Any such petition must be in accordance with § 10.30 (21 CFR 10.30) or other applicable FDA procedure and must present the legal, factual, and public health rationale for devoting FDA resources to the promulgation of such a rule.

4. One comment recommended that FDA make copies of the proposals listed in the notice of intent available to the public for a period of 1 year before removing the proposed regulations. Alternatively, the comment requested that the comment period for eight specific proposals remain open for a period of not less than 90 days to allow interested persons to review the substance of the proposals and present comments if appropriate.

Copies of all of the proposals listed in the notice of intent have been available to the public at all times since the documents were published in the **Federal Register**. Any member of the public may visit FDA's Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday, and review and/or obtain copies of all proposed rules, received comments, and other reference materials. After reviewing these documents, interested persons may submit comments on the proposals or on the received comments.

Because the 115 proposals listed in the notice of intent to withdraw have been available to the public for more than 5 years, and in some cases for more than 25 years, the agency believes that it would unnecessarily delay final action to withdraw these pre-1986 proposals the comment period was extended as requested in the comment.

5. One comment stated that it is not appropriate to withdraw a proposed rule simply because it is more than 6 years old and has not been designated as high priority. The comment added that each proposal should be considered independently, to be pursued if it has merit and withdrawn if it does not.

The proposals listed in the notice of intent were not proposed for withdrawal simply because they were published in the **Federal Register** before 1986. Each of the pre-1986 proposals, including those that were not included in the notice of intent, was reviewed on its merits by the appropriate program officials in each of FDA's Centers, by the Office of the General Counsel, and by other senior agency officials. The intent of the notice was not to withdraw proposed rules simply on the basis of age. Although the notice was confined to announcing the agency's intent to withdraw only proposed rules that had been published prior to 1986, the date of publication was not the sole or most important criterion for inclusion in the notice.

The agency had initially identified a larger number of pre-1986 proposals, all of which were considered for withdrawal. Where reviewers determined that further agency action to issue a final rule based on the pre-1986 proposal might be appropriate, the proposal was deleted from the list of proposals included in the notice of intent. Only those pre-1986 proposals that the agency found not to warrant the issuance of a final rule based on the proposal were included in the final list published in the notice of intent.

B. Specific Comments

The agency received specific comments concerning 30 of the 115 proposals listed in the notice of intent. These comments generally supported FDA's action to withdraw 11 of these 30 proposals and objected to FDA's action to withdraw 19 of these 30 proposals.

The specific comments received regarding these 30 proposals and the agency's response are as follows:

1. Methyl Salicylate; Oil of Wintergreen; Notice of Proposal to Establish Tolerance for Residues—Docket No. 91N-0301—September 28, 1962, 27 FR 9521.

One comment supporting the withdrawal of this proposal argued that data demonstrate that methyl salicylate is generally recognized as safe (GRAS) under its intended conditions of use, that FDA is fully justified in withdrawing this 1962 proposal, and that no further action is warranted.

FDA is withdrawing this proposal. Although FDA agrees that the proposal should be withdrawn, the agency's decision is not based on the merits of the argument that methyl salicylate (oil of wintergreen) is GRAS. The agency has not yet made such a determination. The agency's decision to withdraw this 1962 proposal is because the agency would initiate new notice and comment rulemaking before proceeding further in any determination concerning the GRAS status of methyl salicylate. The agency would not issue a final rule based solely on the proposal, which was issued almost 30 years ago.

2. Xylitol; Proposed Revocation of Food Additive Regulation—Docket No. 89-0421—October 20, 1971, 36 FR 20306.

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One comment from a commercial organization stated that the firm previously had an interest in this product for many years and had made a number of submissions to the Agency in connection with this proposed rule to revoke the food additive regulation providing for the use of xylitol in foods for special dietary use. The comment added that the firm no longer has a commercial interest in this product and supports withdrawal of the 1971 proposal. The comment suggested, however, that FDA should consider revising 21 CFR 172.395 to include additional uses of xylitol in candies, chewing gums, jams, and jellies.

FDA has decided to defer a decision as to whether this proposal should be withdrawn. Although the only comment received regarding this specific proposal supports the agency's initial decision to withdraw it, the agency has reconsidered the issues involved. In a future issue of the **Federal Register**, FDA will either publish a final rule based on the proposal, repropose the amendment in a new rulemaking proceeding, or withdraw the proposal.

3. Legal Status of Approved Labeling for Prescription Drugs; Prescribing for Uses Unapproved by the Food and Drug Administration—Docket No. 91N–0312—August 15, 1972, 37 FR 16503.

After further examination of this proposal, the agency, on its own initiative, has decided not to withdraw this proposed rule at this time. Although the agency does not intend to proceed to a final rule on the basis of this 1972 proposed rule, the agency has established an Unlabeled Use Task Force to examine the promotion and use of prescription drugs for indications not included in their approved labeling. (The agency's position concerning the veterinary use of human drugs is set forth in Compliance Policy Guide 7125.35 "Human Drugs Distributed to Veterinarians for Animal Use.") Therefore, the agency will defer consideration on the withdrawal of this proposed rule until after the task force has completed its review.

4. Infant Foods; Percentage Declaration of Ingredients—Docket No. 76P–03290–September 7, 1976, 41 FR 37595; and,

5. Infant and Junior Foods; Establishment of Common or Usual Name—Docket No. 76P–0330–September 7, 1976, 41 FR 37593.

One consumer organization objected to the withdrawal of these two proposed rules to require percentage-ingredient labeling of baby foods and a percentage declaration of the characterizing ingredient(s) as part of the common or usual name of such foods. The comment urged FDA to finalize these two proposals instead of rescinding them.

FDA does not intend to issue final rules on the basis of these two proposals and, therefore, has decided to withdraw the proposed rules. As noted in the preamble to the notice of intent (56 FR 42668), this action does not mean that the agency has no interest in the issues concerning percentage-ingredient labeling of baby foods. The agency is in the process of reviewing and revising all food labeling, in part in response to the Nutrition Labeling and Education Act of 1990. If the agency decides to proceed further to require percentage-ingredient labeling for baby foods, it will do so through new notice and comment rulemaking.

6. Saccharin and Its Salts—Docket No. 76N–0510—January 7, 1977, 42 FR 1486; and,

7. Saccharin and Its Salts—Docket No. 77N–0085—April 15, 1977, 42 FR 19996.

Two comments supported the withdrawal of these two proposals. The first proposal was to amend the interim food additive regulation for saccharin and its salts to establish a tolerance for toluenesulfonamide of 25 parts per million. The second proposal would ban the use of saccharin and its salts in foods, drugs, and cosmetics. These comments asserted that the safety of saccharin is no longer of concern and that these 1977 proposals have become outdated. One comment from a consumer organization asked the agency to keep the docket on these two proposals open for at least 90 days to allow for additional public comments if appropriate.

While not addressing the issue concerning the safety of saccharin and its salts, the agency has decided to withdraw these two proposals. The Saccharin Study and Labeling Act enacted on November 23, 1977, prohibited for 18 months any new regulations restricting or banning the sale of saccharin or products containing it. Congress has extended the legislative moratorium several times. Most recently, it was extended to May 1, 1992. Even if it were not extended further, the agency would have to consider any new data concerning the safety of saccharin and its salts and initiate new rulemaking proceedings prior to taking any action to alter the regulatory status of saccharin. This decision to withdraw these two 1977 proposals does not preclude the agency from reproposing a ban or other restrictions on the use of saccharin and its salts at a later date should such action be warranted.

8. Over-the-Counter Drugs; General Conditions for Use and Labeling of Inactive Ingredients—Docket No. 77N–0010—April 12, 1977, 42 FR 19156.

One comment objected to FDA's proposal to withdraw this proposal to amend regulations which establish the general conditions for use of inactive ingredients in over-the-counter (OTC) drug products so that these products are generally recognized as safe, effective, and not misbranded. The comment stated that the proposed rule has become an industry standard for the 15 years since it was first proposed. The comment added that inactive ingredient manufacturers and users have a problem with uncertainty as to the regulatory status of inactive ingredients that will be exacerbated if the proposed rule is withdrawn.

FDA concludes that the proposed rule should not be withdrawn at this time. FDA agrees with the comment that the principles set forth in the proposed rule have utility and should be retained in some manner. The agency intends to reevaluate the issues addressed in the proposed rule and determine whether to proceed with the rulemaking, repropose the requirements and provide new opportunity for comment, or to withdraw the proposed rule.

9. Ionizing Radiation Therapy Equipment; Notice of Intent to Propose Rules and Develop Guidelines—Docket No. 77N–0031—March 22, 1977, 42 FR 15428;

10. X-Ray Intensifying Screens; Intent to Develop a Radiation Protection Recommendation—Docket No. 78N–0074—June 2, 1978, 43 FR 24066;

11. Diagnostic Ultrasound Equipment; Intent to Propose Rules and Develop Regulations—Docket No. 78N–0288—February 13, 1979, 44 FR 9542; and

12. Procedures to Minimize Medical X-Ray Exposure of the Human Embryo and Fetus; Recommendations for Medical Radiation Exposure of Women of Childbearing Potential—Docket No. 75N–0340—November 20, 1979, 44 FR 66616.

Two professional associations supported FDA's action to withdraw these four proposals for which final rules were never developed. One of these comments stated that other FDA regulations and Nuclear Regulatory Commission regulations have significantly improved radiation equipment safety and superseded the need to develop regulations concerning ionizing radiation therapy equipment.

The agency agrees that these four proposals, three of which were only announcements of FDA's intent to issue proposed rules, should be withdrawn. If the agency decides that rulemaking is required in the future, it will initiate new proceedings.

13. Butylated Hydroxytoluene; Use Restrictions—Docket No. 77N–0003—May 31, 1977, 42 FR 27603.

One consumer organization urged FDA to ban the use of the food preservative butylated hydroxytoluene (BHT) until its safety has been established. The comment stated that conflicting and inconclusive studies regarding BHT's safety demand that FDA reappraise the safety of this food additive.

The agency is deferring a decision as to the withdrawal of this proposal. Although the 1977 proposal would have restricted the use of BHT as a direct and indirect food additive and not have banned the use of BHT as requested in the comment, the agency is in the process of reviewing the conflicting data and information it has received concerning the safety of BHT. After further review of this data and information concerning the safety of BHT, the agency will either initiate a new rulemaking proceeding or withdraw the 1977 proposal.

14. New Drugs for Investigational Use; Prompt Reporting of Animal Studies and Data—Docket No. 77N–0059—July 15, 1977, 42 FR 36490.

One consumer organization asked that FDA keep the docket on this proposal open for at least 90 days to allow the organization and other interested parties to review the substance of the proposal and present comments if appropriate.

The agency has decided to withdraw this proposed rule. The proposal was intended to ensure prompt reporting of animal studies and data following the submission of an investigational new drug application. The proposed requirements are superseded by the existing regulations at 21 CFR Part 312—Investigational New Drug Applications. Requirements for reporting of animal studies and data are set forth under §§ 312.23(a)(8), 312.32, and 312.33.

15. Skim Milk Cheese for Manufacturing; Proposal to Amend Identity Standard—Docket No. 77P–0071—October 4, 1977, 42 FR 53979.

One consumer organization asked that FDA keep the docket on this proposal open for at least 90 days to allow the organization and other interested parties to review the substance of the proposal and present comments if appropriate. The commercial organization that filed the petition on which this proposal was based did not submit comments on the notice of intent to withdraw this proposal.

The agency has decided to withdraw this 1977 proposal to amend the identity standard for skim milk cheese for manufacturing. The amendment would have provided for the use of skim milk cheese in producing lower fat cheese products. The agency's decision to withdraw the proposal is based primarily on the time that has elapsed since the proposal was issued and the apparent lack of interest on the part of the petitioner to pursue this action. In addition, circumstances have changed with the publication on November 27, 1991, of a proposed amendment to FDA's standard of identity regulations that will reduce regulatory barriers to the marketing of low fat substitutes for standardized cheese products (56 FR 60512). The agency's decision to withdraw the proposal does not, however, address the merits of the use of skim milk cheese in producing lower fat cheese products. If the agency, on its own initiative or in response to a new petition, decides that an amendment to the food standards regulations is warranted, it will initiate new rulemaking proceedings.

16. Sorbic Acid and Its Salts; Proposed Affirmation and Deletion of GRAS Status—Docket No. 77G–0379—March 10, 1978, 43 FR 9823.

One commercial organization urged the agency to complete this proposed rulemaking to affirm potassium sorbate and sorbic acid as GRAS as direct human food ingredients, to delete calcium and sodium sorbates from the GRAS list, and to amend the standards of identity for some cheeses, fruit jellies, jams and preserves, and margarine. The comment argued that sufficient scientific data were submitted to FDA on the safety of sorbic acid and its potassium salt during the rulemaking to enable the agency to affirm the GRAS status of these direct food additives for use as chemical preservatives. The firm stated that it was unaware of any new safety information on the calcium and sodium salts or on the stability of the sodium salt of sorbic acid to alter the agency's earlier conclusion that the GRAS status of calcium and sodium sorbates should be revoked.

The agency has reconsidered the issues involved in the agency's GRAS review program and has decided to defer a decision as to whether this proposal should be withdrawn. In a future issue of the **Federal Register**, FDA will publish a final rule based on the proposal, repropose the amendment in a new rulemaking proceeding, or withdraw the proposal.

17. Ethylene Oxide, Ethylene Cholohydrin, and Ethylene Glycol; Proposed Maximum Residue Limits and Maximum Daily Levels of Exposure—Docket No. 77N–0424—June 23, 1978, 43 FR 27474.

Two comments from commercial organizations objected to FDA's action to withdraw this proposal to impose restrictions on the continued use of ethylene oxide as a sterilant for certain drug products and medical devices for human use. The comments stated that this proposed rule is commonly used by medical device manufacturers as a guideline for product residual levels and patient exposure limits. The comments also stated that elimination of this guidance would not only serve to create chaos in the regulatory review process (both domestic and international) and in product development activities as well. The comments urged FDA to maintain its acceptance of the 1978 residue limits until such time as appropriate guidance documents can be issued. One of these comments, noting the shortcomings of the 1978 proposal, suggested that the International Standards Organization document developed by ISO/TC 198 and ISO/TC 194, "Sterilization of Health Care Products," be used as a reference document for establishing product residual levels.

FDA has decided to defer its decision to withdraw this proposal. The agency is evaluating toxicological studies on the affects of ethylene oxide residuals conducted subsequent to the issuance of the proposal. In addition, FDA is considering the utility of international standards already being proposed in this area as an alternative to promulgation of an agency rule. The decision concerning the necessity of an FDA rule will await the outcome of that process which is not expected to be completed until early 1993. Therefore, FDA's decision to issue a final rule based on the proposal and the received public comments; to repropose the rulemaking proceeding based on the toxicological studies conducted subsequent to the issuance of the proposal; or to withdraw the proposal will be announced in a future issue of the **Federal Register**.

18. Common or Usual Names for Vegetable Protein Products and Substitutes for Meat, Seafood, Poultry, Eggs, or Cheese Which Contain Vegetable Protein Products as Sources of Protein; Tentative Final Rule—Docket No. 75N–0205—July 14, 1978, 43 FR 30472.

One trade association supported FDA's announced intent to withdraw this tentative final regulation to establish common or usual names for all use of vegetable protein products. The comment stated that 13 years of experience, in which significant advances have been made in the utilization of soy proteins, have

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reconfirmed that the tentative final regulation is not workable (in whole) or desirable.

Without addressing the merits of the comment, FDA agrees that the tentative final rule should be withdrawn. The agency's decision to withdraw this 1978 tentative final rule is based on the time that has elapsed since publication of the tentative final rule. If the agency determines that rulemaking is warranted, it will initiate a new proceeding.

19. Tocopherols and Derivatives; Proposed Affirmation of GRAS Status for Certain Tocopherols and Removal of Certain Others from GRAS Status as Direct Human Food Additives—Docket No. 78N-0213—October 27, 1978, 43 FR 50193.

Three comments supported the agency's action to withdraw this proposal to affirm the GRAS status of certain tocopherols and derivatives as direct human food ingredients and to remove certain other tocopherols and derivatives from GRAS status as direct human food ingredients provided that this withdrawal does not constitute a finding that these tocopherol forms are not GRAS as human food ingredients.

The agency has reconsidered the issues involved in the agency's GRAS review program and has decided to defer a decision as to whether this proposal should be withdrawn. In a future issue of the **Federal Register**, FDA will either publish a final rule based on the proposal, repropose the amendment in a new rulemaking proceeding, or withdraw the proposal.

20. Cellulose Derivatives; Affirmation of GRAS Status—Docket No. 78N-0144—February 23, 1979, 44 FR 10751.

Four comments objected to FDA's intent to withdraw this proposal to affirm the GRAS status of cellulose derivatives and urged FDA to complete the rulemaking proceeding. These comments stated that sufficient data have been submitted to establish the safety of cellulose and to allow the agency to issue a final rule affirming the GRAS status of cellulose derivatives.

The agency has reconsidered the issues involved in the GRAS status of cellulose derivatives and has decided to defer a decision as to whether this proposal should be withdrawn. Among the issues that the agency is considering is whether dioxins or furans that may be formed during the bleaching of cellulose for paper may be present in cellulose or cellulose derivatives intended for food additive use. In a future issue of the **Federal Register**, FDA will either publish a final rule based on the proposal, repropose the amendment in a new rulemaking proceeding, or withdraw the proposal.

21. Requirements for Estrogen Labeling Directed to Patients—Docket No. 78N-0303—April 17, 1979, 44 FR 22752.

One consumer organization asked that the docket for this proposal remain open for at least 90 days to allow interested persons to review the substance of the proposal and present comments if appropriate to the FDA.

FDA is withdrawing this proposal. This proposed rulemaking would have exempted distribution of estrogen patient warning labeling to male patients and would have allowed distribution of the labeling after administration of the drug when, at the time of administration, the patient is unable to read and understand the labeling because of impaired consciousness. The agency has seen no sustained interest in this issue from physicians or pharmacists. If the agency in the future decides that a regulation is required, it will initiate a new rulemaking proceeding.

22. Lakes of Color Additives; Intent to List—Docket No. 79N-0043—June 22, 1979, 44 FR 36411.

Two trade associations and an individual objected to FDA's announced intent to withdraw this 1979 advance notice of proposed rulemaking announcing its intention to propose regulations concerning lakes of color additives. The comments argued that substantial years of work by the industry to resolve issues concerning this matter with FDA would be wasted if the proceeding were substantially delayed. One comment argued that agency action concerning the issue is one that must eventually be addressed in a rulemaking proceeding.

The agency has decided not to withdraw this advance notice of proposed rulemaking at this time.

23. Caffeine; Deletion of GRAS Status; Proposed Declaration That No Prior Sanction Exits, and Use on an Interim Basis Pending Additional Study—Docket No. 80N-0418—October 21, 1980, 45 FR 69817.

One consumer organization opposed recision of this proposal that would, among other things, delete caffeine used as an added food ingredient from the list of substances that are GRAS and declare that no prior sanction exists for the use of caffeine as an added food ingredient. The comment stated that there is evidence to suggest that the consumption of caffeine interferes with reproduction and urged FDA to revive its program to alert pregnant women to the dangers proposed by caffeine.

The agency agrees that the proposal should not be withdrawn at this time. The Agency will defer its decision until such time as it has reviewed all data and information it has received concerning the safety of caffeine. The agency then will either issue a final rule based on the proposal and the received comments, repropose a rule concerning the use of caffeine as a food ingredient, or withdraw the proposal.

24. Ascorbic Acid and Its Sodium and Calcium Salts, Erythorbic Acid and Its Sodium Salt, and Ascorbyl Palmitate; Proposed Affirmation of GRAS Status and Removal of Calcium Ascorbate From the List of GRAS Ingredients—Docket No. 82N-0246—January 14, 1983, 48 FR 1735.

One commercial organization suggested that this proposal to affirm that ascorbic acid and sodium ascorbate, its sodium salt; erythorbic acid and sodium erythorbic acid and sodium erythorbate, its sodium salt; and ascorbyl palmitate are GRAS as direct human food ingredients not be withdrawn. This comment added that this proposal remains the most recent FDA statement that the agency regards sodium erythorbate as GRAS and asked that the proposal not be withdrawn until further action by FDA with respect to GRAS affirmation of erythorbates. One other commercial organization stated that, although it would not object to the withdrawal of this proposal, if the agency decides at some point to reinstate the GRAS affirmation procedure for these ingredients, the agency should consider the comments submitted to the agency in response to the original proposal.

FDA has decided to defer its decision to withdraw this GRAS proposal. FDA's decision to issue a final rule based on the proposal and the received public comments, to repropose the rulemaking proceeding, or to withdraw the proposal will be announced in a future issue of the **Federal Register**.

25. Biotin; Proposed Affirmation of GRAS Status—Docket No. 78N-0306—January 14, 1983, 48 FR 1739.

One commercial organization stated that it has no objection to the withdrawal of this proposal to affirm that biotin is GRAS as a direct human food ingredient because the regulation at 21 CFR 182.8159 is quite adequate. The comment added, however, that if the agency decides at some point to reinstate a GRAS affirmation proposal for biotin, the agency should consider the comments that the firm submitted in response to the original proposal.

FDA has decided to defer its decision to withdraw this GRAS proposal. FDA's decision to issue a final rule based on the proposal and the received public comments, to repropose the rulemaking proceeding, or to withdraw the proposal will be announced in a future issue of the **Federal Register**.

26. Glycerin; Affirmation of GRAS Status as a Direct Human Food Ingredient—Docket No. 78N-0348, February 8, 1983, 48 FR 5758.

One commercial organization commented on this proposal to affirm glycerin as GRAS as a direct human food ingredient. The firm stated that it had responded to all FDA requests for information concerning the synthetic glycerin it produced in compliance with 21 CFR 182.1320 and other applicable regulations. These requests began in 1989 and the most recent submission was March 11, 1991. The firm stated that this information was provided at significant cost to the firm and that it was puzzled by the decision to withdraw this proposed rule when the review was quite active.

FDA has decided to defer its decision to withdraw this GRAS proposal. FDA's decision to issue a final rule based on the proposal and the received public comments, to repropose the rulemaking proceeding, or to withdraw the proposal will be announced in a future issue of the **Federal Register**.

27. Regenerated Collagen; Proposed GRAS Status as a Direct Human Food Additive—Docket No. 82N-0219—April 26, 1983, 48 FR 18833.

Two commercial organizations urged FDA to complete this rulemaking procedure to affirm that regenerated collagen is GRAS as a direct human food ingredient. These comments stated that a codified regulation for regenerated collagen would serve the needs of U.S. industry and protect the public from regenerated collagen produced in a manner different from the specifications in the GRAS affirmation proposal.

FDA has decided to defer its decision to withdraw this GRAS proposal. FDA's decision to issue a final rule based on the proposal and the received public comments, to repropose the rulemaking proceeding, or to withdraw the proposal will be announced in a future issue of the **Federal Register**.

28. Protein Hydrolysates and Enzymatically Hydrolyzed Animal (Milk Casein) Protein; Proposed GRAS Status—Docket No. 82N-0006—December 8, 1983, 48 FR 54990.

On behalf of its client, one consulting organization objected to FDA's announced intent to withdraw this proposal to affirm that certain protein hydrolysates and enzymatically hydrolyzed animal (milk casein) protein are GRAS for use as direct human food ingredients. The comment stated that the rulemaking process should be completed as proposed because the withdrawal of the proposed rule will convey a message of uncertainty regarding the regulatory status of these ingredients.

FDA has decided to defer its decision to withdraw this GRAS proposal. FDA's decision to issue a final rule based on the proposal and the received public comments, to repropose the rulemaking proceeding, or to withdraw the proposal will be announced in a future issue of the **Federal Register**.

29. Hydrochloric Acid; Proposed Affirmation of GRAS Status as Direct Human Food Ingredient—Docket No. 80N-0148—April 26, 1984, 49 FR 17966.

A law firm, on behalf of its client, commented that the 1984 proposal to affirm that hydrochloric acid is GRAS as a direct human food ingredient should be withdrawn because it is scientifically, administratively, and economically unsound. The comment stated that the proposal, which would not permit byproduct hydrochloric acid as a direct food ingredient, would cause significant economic disruption within the fluorocarbon industry. Although not objecting to the agency's action to withdraw this proposal, another law firm stated that its client understood that if the proposal is withdrawn, current regulations support its client's determination that byproduct hydrochloric acid is GRAS. A commercial organization recommended that the agency amend the proposal to include types of hydrochloric acid consistent with the Food Chemical Codex definition of food-grade acid or, alternatively, expand the list of acceptable processes to include byproduct hydrochloric acid from the fumed silica process and other suitable manufacturing processes.

FDA has decided to defer its decision to withdraw this GRAS proposal. FDA's decision to issue a final rule based on the proposal and the received public comments, to repropose the rulemaking proceeding, or to withdraw the proposal will be announced in a future issue of the **Federal Register**.

30. Margarine; Proposal to Amend the Standard of Identity—Docket No. 82P-0186—October 30, 1984, 49 FR 43560.

A trade association urged FDA to finalize the proposed rule as originally published, or to issue a tentative final rule and proceed to final rulemaking as expeditiously as possible. The proposal would amend the standard of identity for margarine to remove the list of permitted emulsifiers and the maximum use level restrictions for each from the current standard and to retain the provision for the use of safe and suitable emulsifiers without specified limitations.

The agency expects to complete this rulemaking proceeding. Therefore, the agency is deferring its decision to withdraw this proposed rule until a later date.

III. Additional FDA-Initiated Actions

In addition, the agency, on its own initiative, has further reviewed the proposals listed in the notice of intent and is deferring its decision to withdraw the following nine proposals:

1. Glycerophosphates; Proposed Affirmation and Deletion of GRAS Status—Docket No. 78N-0335—May 15, 1979, 44 FR 28336.

This proposal was inadvertently included in the notice of intent. On March 14, 1991, FDA issued a tentative final rule in the **Federal Register** (56 FR 10843) tentatively affirming the GRAS Status of glycerophosphates. This tentative final rule was based on the proposed rule published on May 15, 1979 (44 FR 28336) and the received comments. The agency is in the process of completing this rulemaking proceeding.

2. Brown and Yellow Mustard and Their Derivatives; Proposed Affirmation of GRAS Status as Direct Human Food Ingredient—Docket No. 77N-0033—August 26, 1977, 42 FR 43092;

3. Gelatin; Affirmation of GRAS Status as a Direct and Indirect Human Food Ingredient—Docket No. 77N-0232—November 11, 1977, 42 FR 58763;

4. Lard and Lard Oil; Proposed Affirmation of GRAS Status as Indirect Human Food Ingredients—Docket No. 78N-0336—May 18, 1979, 44 FR 29102;

5. Sodium Dithionite and Zinc Dithionite; Proposed Affirmation of GRAS Status—79N-0095—January 25, 1980, 45 FR 6117;

6. Japan Wax; Proposed Deletion from GRAS Status as an Indirect Human Food Ingredient—Docket No. 80N-0196—July 9, 1982, 47 FR 29965;

7. Thiodipropionic Acid and Dilaural Thiodipropionate; Proposed Removal of GRAS Status—Docket No. 80N-0361—August 13, 1982, 47 FR 35240;

8. Zinc Salts; Proposed Affirmation of GRAS Status—Docket No. 82N-0167—October 26, 1982—47 FR 47441; and

9. Unmodified Food Starches and Acid Modified Starches; Proposed Affirmation of GRAS Status as Direct and Indirect Human Food Ingredients—Docket No. 84N-0341—April 1, 1985, 50 FR 12821.

After considering the comments received on other proposals to implement the agency's GRAS review

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program. FDA has decided to defer its decisions on the withdrawal of all of the GRAS proposals included in the notice of intent. The agency is in the process of reexamining the issues involved in each of these proposed regulations that implement the agency's GRAS review program and expects to decide, in the near future, to either issue a final rule based on the proposal and the received public comments, repropose the rulemaking proceeding, or withdraw the proposal. The agency's decision in each case will be the subject of a future **Federal Register** publication.

Therefore, for the reasons set forth above, and under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, the agency announces that it is withdrawing the following proposed rules, published in the **Federal Register** on the dates indicated:

Title	Docket No.	FR publication date and cite
Prescription Drugs; Proposed Changes in Labeling Requirements Prescription Drugs	85N-0358	Nov. 10, 1961, 26 FR 10601.
Prescription Drugs; Further Proposals to Amend Labeling Requirements	85N-0358	May 10, 1962, 27 FR 4482.
Methyl Salicylate; Oil of Wintergreen; Notice of Proposal to Establish Tolerances for Residues	91N-0301	Sept. 26, 1962, 27 FR 9521.
Antibiotics in Combination with Analgesic Substances, Antihistaminics, and Caffeine; Proposal to Delete from List of Oral Drugs Acceptable for Certification.	91N-0302	Aug. 17, 1963, 28 FR 8471.
Food Additives in Animal Feed; Proposed Antibiotics for Growth Promotion and Feed Efficiency	91N-0304	Nov. 19, 1964, 29 FR 15536.
Tests, Methods of Assay and Certification of Certain Antibiotic Drugs	85N-0380	Oct. 6, 1965, 30 FR 12746.
Certain Drug-Labeling Exemptions; Proposed Termination	85N-0356	Nov. 23, 1966, 31 FR 14840.
Drugs; Current Good Manufacturing Practice in Manufacture, Processing, Packing or Holding; Repackaged Tablets or Capsules.	85N-0359	Mar. 2, 1967, 32 FR 3470.
Time-Release Dosage Forms of Drugs; Statement Regarding New-Drug Status	91N-0307	Sept. 6, 1967, 32 FR 12756.
Promotional Labeling of Oral Contraceptives; Proposed Statement of Policy	85N-0383	Sept. 13, 1967, 32 FR 13008
Drugs for Human Use; Drug Efficacy Study Implementation; Announcement and Proposal Regarding Methylergonovine Maleate Tablets and Methylergonovine Maleate Injection.	91N-0309	June 5, 1968, 33 FR 8348.
Kanamycin Sulfate; Kanamycin B Content Testng Method	91N-0310	Apr. 26, 1969, 34 FR 6983.
Pyrimethamine, Sulfaquinoxaline; Proposal to Revoke Exemption from Certification	91N-0311	Mar. 25, 1971, 36 FR 5619.
Food Additives; Proposed Revocation of Use of Morpholine	85N-0363	Nov. 3, 1972, 37 FR 23456.
Labeling or Misbranding of Drugs; Misleading Proprietary or Trade Names	85N-0357	Mar. 27, 1974, 39 FR 11298.
2-Mercaptoimidazoline; Use in Closures and Product Delivery Systems for Drugs and Cosmetics and in Components of Medical Devices.	91N-0255	May 2, 1974, 39 FR 15306.
Intramammary Infusion Products for Treating Mastitis; Proposed Revocation and Amendment of Antibiotic Certification Provisions and Related Regulations.	85N-0360	Aug. 30, 1974, 39 FR 31647
Aflatoxin in Shelled Peanuts and Peanut Products Used as Human Food; Proposed Tolerance	75N-0048	Dec. 6, 1974, 39 FR 42748.
Conditions for Marketing Human Prescription Drugs; Proposed Rulemaking and Notice of Enforcement Policy for Drugs Subject to the Effectiveness Requirements of the Drug Amendments of 1962.	75N-0052	June 20, 1975, 40 FR 26142.
Animal Food and Feed; Prohibited Substances	75N-0180	Sept. 9, 1975, 40 FR 41797.
Methadone; Proposal to Amend Procedures for Denying or Revoking Approval of Applications to Receive Shipments.	75N-0151	Nov. 7, 1975, 40 FR 52049
Drained Weights for Processed Fruits and Vegetables; Standards of Fill of Container and Label Statement	75P-0166	Nov. 7, 1975, 40 FR 52172.
Chloroform in Contact With Food; Proposal to Amend Food Additive Regulations	76N-0097	Apr. 9, 1976, 41 FR 15029.
Human Drugs; Current Good Manufacturing Practice in the Manufacture, Processing, Packing, or Holding of Large Volume Parenterals.	76N-0099	June 1, 1976, 41 FR 22202.
Infant Foods; Percentage Declaration of Ingredients	76P-0329	Sept. 7, 1976, 41 FR 37595.
Infant and Junior Foods; Establishment of Common or Usual Name	76P-0330	Sept. 7, 1976, 41 FR 37593.
Saccharin and its Salts	76N-0510	Jan. 7, 1977, 42 FR 1486.
Administrative Practices and Procedures; Publicity Policy	76N-0478	Mar. 4, 1977, 42 FR 12436.
Saccharin and its Salts	77N-0085	Apr. 15, 1977, 42 FR 19996.
Ionizing Radiation Therapy Equipment; Notice of Intent to Propose Rules and Develop Guidelines	77N-0031	Mar. 22, 1977, 42 FR 15428.
Enriched Rice; Proposal to Revise Standard	77N-0116	July 15, 1977, 42 FR 36487.
Drugs for Human and Veterinary Use; Public Disclosure of Specifications	77N-0124	July15, 1977, 42 FR 36485.
New Drugs for Investigational Use; Prompt Reporting of Animal Studies and Data	77N-0059	July 15, 1977, 42 FR 36490.
New Animal Drugs; Bovine Teat Dips	76N-0286	Aug. 9, 1977, 42 FR 40217.
New Drugs for Investigational Use; Availability of Draft of Bioresearch Monitoring Data Collection Form	77N-0190	Aug. 16, 1977, 42 FR 41301.
Annatto Extract, Paprika Oleoresin, and Turmeric Oleoresin; Removal of Provisions for Trichloroethylene	75P-0132	Sept. 27, 1977, 42 FR 49464.
Trichloroethylene; Removal from Food Additive Use	76N-0489	Sept. 27, 1977, 42 FR 49465.
Trichloroethylene in Human Drug and Cosmetic Products; Declaration of New Drug Status and Determination of Status in Cosmetics.	77N-0029	Sept. 27, 1977, 42 FR 49467.
Trichloroethylene; Prohibition in Animal and Pet Food	75P-0132	Sept. 27, 1977, 42 FR 49468.
Trichloroethylene in Animal Drug Products; Proposed Declaration of New Animal Drug Status	76N-0476	Sept. 27, 1977, 42 FR 49470.
Clinical Investigators; Proposed Establishment of Regulations on Obligations of Sponsors and Monitors	77N-0195	Sept. 27, 1977, 42 FR 49612.
Pasteurized Process Cheese and Cheese Products; Proposed Revision of Definitions and Standards of Identity.	77P-0070	Oct. 4, 1977, 42 FR 53970.
Skim Milk Cheese for Manufacturing; Proposal to Amend Identity Standard	77P-0071	Oct. 4, 1977, 42 FR 53979.
Preservation of Cosmetics Coming In Contact With The Eye; Intent to Propose Regulations and Request for Information.	77N-0105	Oct. 11, 1977, 42 FR 54837.
Drained Weight or Solid Content Weight for Canned Fruits and Vegetables; Label Statement, Standards of Fill of Container, and Temporary Labeling Exemption.	77P-0097	Dec. 9, 1977, 42 FR 62282.
Public Information; Disclosure of Existence	77N-0248	Mar. 28, 1978, 43 FR 12869.
Food Labeling; Ingredient Labeling Exemptions	76P-0430 77P-0123 77P-0357	Apr. 7, 1978, 43 FR 14675.
X-Ray Intensifying Screens; Intent to Develop a Radiation Protection Recommendation	78N-0074	June 2, 1978, 43 FR 24066.
Common or Usual Names for Vegetable Protein Products and Substitutes for Meat, Seafood, Poultry, Eggs, or Cheeses Which Contain Vegetable Protein Products as Sources of Protein; Tentative Final Rule.	75N-0205	July 14, 1978, 43 FR 30472.
Obligations of Clinical Investigators of Regulated Articles; Proposed Establishment of Regulations	77N-0278	Aug. 8, 1978, 43 FR 35210.
Bioresearch Monitoring Program; Clarification of Part Designation	78N-0282	Sept. 26, 1978, 43 FR 43468.

Title	Docket No.	FR publication date and cite
Orange B; Termination of Listing	78C-0215	Oct. 3, 1978, 43 FR 45611.
Estrogenic, Oral Contraceptive, and Progestational Drug Products; Proposed Requirements for Patient Labeling.	78N-0274	Oct. 13, 1978, 43 FR 47198.
2-Nitropropane; Proposed Removal from Food Additive Use	78N-0112	Dec. 1, 1978, 43 FR 56247.
Estrogens to Treat Postpartum Breast Engorgement; Proposed Requirements for Patient Labeling	78N-0383	Dec. 5, 1978, 43 FR 56906.
Status of Injectable Animal Drugs; Intent Regarding Sterility and Pyrogenicity of Injectable Animal Drugs	78N-0267	Dec. 15, 1978, 43 FR 58591.
Recombinant DNA; Intent to Propose Regulations	78N-0012	Dec. 22, 1978, 43 FR 60134.
Estradiol Benzoate, Progesterone, Testosterone Propionate, and Estradiol Monopalmitate for Use in Food-Producing Animals.	78N-0435	Jan. 5, 1979, 44 FR 1381.
Diagnostic Ultrasound Equipment; Intent to Propose Rules and Develop Regulations	78N-0266	Feb. 13, 1979, 44 FR 9542.
New Animal Drugs for Use in Animal Feeds; Definitions and General Considerations; Postponement of Final Action.	77N-0076	Mar. 6, 1979, 44 FR 12208.
Medical Devices; Classification of pH Catheter Probes	78N-1419	Mar. 9, 1979, 44 FR 13303.
Medical Devices; Classification of Catheter Guide Holders	78N-1425	Mar. 9, 1979, 44 FR 13309.
Medical Devices; Classification of Electrocardiograph Conducting Media	78N-1455	Mar. 9, 1979, 44 FR 13337.
Requirements for Estrogen Labeling Directed to Patients	78N-0303	Apr. 17, 1979, 44 FR 22752.
Protection of Human Subjects; Proposed Establishment of Regulations	78N-0031	Apr. 24, 1979, 44 FR 24106.
Hydrazine; Proposed Removal from Food Additive Use	78N-0208	June 12, 1979, 44 FR 33693.
Hydrazine in Human Drug Products; Declaration of New Drug Status	78N-0394	June 12, 1979, 44 FR 33694.
Medical Devices; Classification of Iron Kinetics Tests	78N-1870	Sept. 11, 1979, 44 FR 52992.
Medical Devices; Classification of Red Cell Survival Tests	78N-1875	Sept. 11, 1979, 44 FR 52997.
Medical Devices; Classification of Systems for the Identification fo Hepatitis B Antigen	78N-1934	Sept. 11, 1979, 44 FR 53056.
Medical Devices; Classification of Nonindwelling Blood Nitrogen Partial Pressure (PN2) Analyzer	78N-1651	Nov. 2, 1979, 44 FR 63309.
Medical Devices; Classification of Gas Cylinders	78N-1801	Nov. 2, 1979, 44 FR 63421.
Medical Devices; Classification of Gas Cylinder Holders	78N-1802	Nov. 2, 1979, 44 FR 63422.
Procedures to Minimize Medical X-Ray Exposure of the Human Embryo and Fetus; Recommendations for Medical Radiation Exposure of Women of Childbearing Potential.	75N-0340	Nov. 20, 1979, 44 FR 66616.
Biological Products; Labeling Standards; Position and Prominence of Proper Name	79N-0263	Jan. 25, 1980, 45 FR 6120.
Medical Devices; Voluntary Standards Development; Requests for Data and Information on In Vitro Diagnostics.	80N-0100	Feb. 1, 1980, 45 FR 7493.
Devices Used as a Radiation Source (in Combination With a Psoralen Drug) in the Photochemotherapy for Psoriasis; Intent to Propose Rules and Develop Recommendations.	79N-0013	Feb. 8, 1980, 45 FR 8870.
Additional Standards for Human Blood and Blood Products; Antihemophilic Factor (Human)	79N-0326	Apr. 4, 1980, 45 FR 22975.
Diluents for Cosmetic Color Additive Mixtures; Intent to Propose Rules; Request for Information	78N-0390	Apr. 22, 1980, 45 FR 26977.
Substances Prohibited from Use in Animal Food or Feed; Tentative Final Rule	75N-0160	Apr. 29, 1980, 45 FR 28349.
Allergenic Products; Proposed Testing and Labelling Requirements	79N-0410	May 2, 1980, 45 FR 29305.
Quality Control Testing of Platelet Concentrate (Human) and Cryoprecipitated Antihemophilic Factor (Human)	80N-0035	July 8, 1980, 45 FR 45924.
Blood and Blood Components; Error and Accident Reports	79N-0094	Aug. 8, 1980, 45 FR 52821.
Food Labeling; Net Weight Labeling Requirements	79N-0292	Aug. 8, 1980, 45 FR 53023.
Shipping Temperature Requirements for Certain Biological Products	80N-0497	Dec. 30, 1980, 45 FR 85785.
Apple Juice and Concentrated Apple Juice; Possible Establishment of Standards	82N-0216	Aug. 13, 1982, 47 FR 35234.
Medical Devices; Notice of Intent to Initiate Proceedings to Require Premarket Approval of Preamendments Devices.	83N-0240	Sept. 6, 1983, 48 FR 40272.
Clarification of Potency Standard for Certain Antibiotic Drugs	83N-0301	Dec. 2, 1983, 48 FR 54364.
Cheese and Related Cheese Products; Repeal of Four Class Standards of Identity	80N-0372	Apr. 23, 1984, 49 FR 17017.

Dated: December 19, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 91-30780 Filed 12-27-91; 8:45 am]

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federal register

Monday
December 30, 1991

Part XI

The President

Executive Order 12785—Extending the President's Education Policy Advisory Committee

Executive Order 12786—Adjustments of Certain Rates of Pay and Allowances

Notice of December 26—Continuation of Libyan Emergency

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Title 3—

The President

Executive Order 12785 of December 26, 1991

Extending the President's Education Policy Advisory Committee

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and in order to extend the President's Education Policy Advisory Committee, it is hereby ordered that section 4(b) of Executive Order No. 12687; as amended, is further amended by deleting the date "December 31, 1991" and inserting in lieu thereof the date "December 31, 1992".

George Bush

THE WHITE HOUSE,
December 26, 1991.

[FR Doc. 91-31285
Filed 12-26-91; 5:01 pm]
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Executive Order 12786 of December 26, 1991

Adjustments of Certain Rates of Pay and Allowances

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 704 of Public Law 101–194; section 302 of the Federal Employees Pay Comparability Act of 1990, as incorporated in section 529 of Public Law 101–509; section 633 of Public Law 101–509; section 301(a) of Public Law 102–40; section 305 of Public Law 102–140; section 601 of Public Law 102–190; section 31 of title 2, United States Code; section 104 of title 3, United States Code; sections 5303, 5318, and 5382 of title 5, United States Code; and section 461(a) of title 28, United States Code, it is hereby ordered as follows:

Section 1. *Statutory pay systems.* The rates of basic pay or salaries of the following statutory pay systems are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5303, 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (5 U.S.C. 5303; 22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Administration of the Department of Veterans Affairs (5 U.S.C. 5303; 38 U.S.C. 7404; section 301(a) of Public Law 102–40) at Schedule 3.

Sec. 2. *Senior Executive Service.* Pursuant to section 5382 of title 5, United States Code, the rates of basic pay for members of the Senior Executive Service are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Executive salaries.* The rates of pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312–5316, 5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 31) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a)) at Schedule 7.

Sec. 4. *Uniformed services.* Pursuant to section 601 of Public Law 102–190, the rates of monthly basic pay (37 U.S.C. 203(a)), the rates of basic allowances for subsistence (37 U.S.C. 402), and the rates of basic allowances for quarters (37 U.S.C. 403(a)) for members of the uniformed services are set forth at Schedule 8 attached hereto and made a part hereof.

Sec. 5. *Interim geographic adjustments.* (a) Pursuant to section 302 of the Federal Employees Pay Comparability Act of 1990, as incorporated in section 529 of Public Law 101–509, employees under the statutory pay systems covered under section 1 of this order, and members of the United States Park Police, who are assigned to a duty station located in one of the geographical areas listed in Schedule 9 shall be entitled, except as may be provided under subsection (b) of this section, to receive an interim geographic adjustment at the rate shown on Schedule 9, which schedule is attached hereto and made a part hereof.

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(b)(1) The Office of Personnel Management shall prescribe regulations governing the application of interim geographic adjustments to General Schedule employees, including the determination of what, if any, geographic adjustment shall be payable in the case of employees receiving special pay rates.

(2) The Secretary of State shall prescribe regulations governing the application of interim geographic adjustments to employees under the Foreign Service Schedule, consistent with the regulations and determinations prescribed under paragraph (1) of this subsection.

(3) The Secretary of Veterans Affairs shall prescribe regulations governing the application of interim geographic adjustments to employees under the schedules for the Veterans Health Administration of the Department of Veterans Affairs, consistent with the regulations and determinations prescribed under paragraph (1) of this subsection.

(4) The Secretary of the Interior shall prescribe regulations governing the application of interim geographic adjustments to members of the United States Park Police, consistent with the regulations and determinations prescribed under paragraph (1) of this subsection.

(c) The Office of Personnel Management is hereby designated and empowered to exercise the authority of the President under section 302(c)(1)(D) of the Federal Employees Pay Comparability Act of 1990, as incorporated in section 529 of Public Law 101–509, to extend the application of interim geographic adjustments shown on Schedule 9, upon the request of an agency head, to employees who would not otherwise be covered.

Sec. 6. *Effective dates.* The rates of monthly basic pay and allowances for subsistence and quarters for members of the uniformed services provided for at Schedule 8 are effective on January 1, 1992. The other schedules provided for herein are effective on the first day of the first applicable pay period beginning on or after January 1, 1992.

Sec. 7. Executive Order No. 12736 of December 12, 1990, is superseded.

George Bush

THE WHITE HOUSE,
December 26, 1991.

Billing code 3195–01–M

SCHEDULE 1--GENERAL SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1992)

	1	2	3	4	5	6	7	8	9	10
GS-1	$11,478	$11,861	$12,242	$12,623	$13,006	$13,230	$13,606	$13,986	$14,003	$14,356
2	12,905	13,212	13,640	14,003	14,157	14,573	14,989	15,405	15,821	16,237
3	14,082	14,551	15,020	15,489	15,958	16,427	16,896	17,365	17,834	18,303
4	15,808	16,335	16,862	17,389	17,916	18,443	18,970	19,497	20,024	20,551
5	17,686	18,276	18,866	19,456	20,046	20,636	21,226	21,816	22,406	22,996
6	19,713	20,370	21,027	21,684	22,341	22,998	23,655	24,312	24,969	25,626
7	21,906	22,636	23,366	24,096	24,826	25,556	26,286	27,016	27,746	28,476
8	24,262	25,071	25,880	26,689	27,498	28,307	29,116	29,925	30,734	31,543
9	26,798	27,691	28,584	29,477	30,370	31,263	32,156	33,049	33,942	34,835
10	29,511	30,495	31,479	32,463	33,447	34,431	35,415	36,399	37,383	38,367
11	32,423	33,504	34,585	35,666	36,747	37,828	38,909	39,990	41,071	42,152
12	38,861	40,156	41,451	42,746	44,041	45,336	46,631	47,926	49,221	50,516
13	46,210	47,750	49,290	50,830	52,370	53,910	55,450	56,990	58,530	60,070
14	54,607	56,427	58,247	60,067	61,887	63,707	65,527	67,347	69,167	70,987
15	64,233	66,374	68,515	70,656	72,797	74,938	77,079	79,220	81,361	83,502

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1992)

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$64,233	$52,048	$42,174	$34,174	$27,691	$24,755	$22,130	$19,784	$17,686
2	66,160	53,609	43,439	35,199	28,522	25,498	22,794	20,378	18,217
3	68,145	55,218	44,742	36,255	29,377	26,263	23,478	20,989	18,763
4	70,189	56,874	46,085	37,343	30,259	27,050	24,182	21,619	19,326
5	72,295	58,580	47,467	38,463	31,166	27,862	24,908	22,267	19,906
6	74,464	60,338	48,891	39,617	32,101	28,698	25,655	22,935	20,503
7	76,698	62,148	50,358	40,806	33,065	29,559	26,424	23,623	21,118
8	78,998	64,012	51,869	42,030	34,056	30,446	27,217	24,332	21,752
9	81,368	65,933	53,425	43,291	35,078	31,359	28,034	25,062	22,404
10	83,502	67,911	55,028	44,589	36,130	32,300	28,875	25,814	23,076
11	83,502	69,948	56,678	45,927	37,214	33,269	29,741	26,588	23,769
12	83,502	72,047	58,379	47,305	38,331	34,267	30,633	27,386	24,482
13	83,502	74,208	60,130	48,724	39,481	35,295	31,552	28,207	25,216
14	83,502	76,434	61,934	50,186	40,665	36,354	32,499	29,053	25,972

SCHEDULE 3--VETERANS HEALTH ADMINISTRATION SCHEDULES, DEPARTMENT OF VETERANS AFFAIRS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1992)

Office of the Chief Medical Director

Deputy Chief Medical Director	$109,086
Associate Deputy Chief Medical Director	104,483
Assistant Chief Medical Directors	101,404

	Minimum	Maximum
Medical Directors	$86,519	$98,056
Director of Nursing Service	86,519	98,056
Director of Pharmacy Service	75,335	93,558
Director of Dietetic Service	75,335	93,558
Director of Podiatric Service	75,335	93,558
Director of Optometric Service	75,335	93,558
Director of Chaplain Service	75,335	93,558

Physician and Dentist Schedule

Director Grade	$75,335	$93,558
Executive Grade	69,562	88,655
Chief Grade	64,233	83,502
Senior Grade	54,607	70,987
Intermediate Grade	46,210	60,070
Full Grade	38,861	50,516
Associate Grade	32,423	42,152

Nurse Schedule

Director Grade	$54,607	$83,502
Senior Grade	38,861	60,070
Intermediate Grade	26,798	42,152
Entry Grade	19,713	29,982

Clinical Podiatrist and Optometrist Schedule

Chief Grade	$64,233	$83,502
Senior Grade	54,607	70,987
Intermediate Grade	46,210	60,070
Full Grade	38,861	50,516
Associate Grade	32,423	42,152

Physician Assistant and Expanded-Function Dental Auxiliary Schedule*

Director Grade	$64,233	$83,502
Assistant Director Grade	54,607	70,987
Chief Grade	46,210	60,070
Senior Grade	38,861	50,516
Intermediate Grade	32,423	42,152
Full Grade	26,798	34,835
Associate Grade	23,061	29,982
Junior Grade	19,713	25,626

*Nurse Schedule in 38 U.S.C. 4107(b) as in effect on August 14, 1990, with subsequent adjustments as authorized by sec. 301(a) of Public Law 102-40.

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SCHEDULE 4--SENIOR EXECUTIVE SERVICE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1992)

ES-1	$90,000
ES-2	94,400
ES-3	98,600
ES-4	104,000
ES-5	108,300
ES-6	112,100

SCHEDULE 5--EXECUTIVE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1992)

level I	$143,800
level II	129,500
level III	119,300
level IV	112,100
level V	104,800

SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1992)

Vice President	$166,200
Senators	129,500
Members of the House of Representatives	129,500
Delegates to the House of Representatives	129,500
Resident Commissioner from Puerto Rico	129,500
President pro tempore of the Senate	143,800
Majority leader and minority leader of the Senate	143,800
Majority leader and minority leader of the House of Representatives	143,800
Speaker of the House of Representatives	166,200

SCHEDULE 7--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1992)

Chief Justice of the United States	$166,200
Associate Justices of the Supreme Court	159,000
Circuit Judges	137,300
District Judges	129,500
Judges of the Court of International Trade	129,500

SCHEDULE 8—PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

(Effective on January 1, 1992)

PART I—MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

PAY GRADE	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
						COMMISSIONED OFFICERS								
O-10**	$6417.60	$6643.50	$6643.50	$6643.50	$6643.50	$6898.20	$6898.20	$7280.40	$7280.40	$7801.20	$7801.20	$8323.50	$8323.50	$8842.20*
O-9	5687.70	5836.50	5961.00	5961.00	5961.00	6112.50	6112.50	6366.90	6366.90	6898.20	6898.20	7280.40	7280.40	7801.20
O-8	5151.60	5306.10	5431.80	5431.80	5431.80	5836.50	5836.50	6112.50	6112.50	6366.90	6643.50	6898.20	7068.30	7068.30
O-7	4280.40	4571.40	4571.40	4571.40	4776.60	4776.60	5053.50	5053.50	5306.10	5836.50	6238.20	6238.20	6238.20	6238.20
O-6	3172.80	3485.70	3714.30	3714.30	3714.30	3714.30	3714.30	3714.30	3840.30	4447.50	4674.60	4776.60	5053.50	5480.70
O-5	2537.40	2979.30	3185.40	3185.40	3185.40	3185.40	3281.70	3458.40	3690.30	3966.60	4193.70	4320.90	4471.80	4471.80
O-4	2138.70	2604.60	2778.30	2778.30	2829.90	2954.70	3156.30	3333.60	3485.70	3638.70	3739.20	3739.20	3739.20	3739.20
O-3***	1987.50	2222.40	2375.70	2628.60	2754.30	2853.00	3007.50	3156.30	3233.70	3233.70	3233.70	3233.70	3233.70	3233.70
O-2***	1733.10	1892.70	2274.30	2350.50	2399.40	2399.40	2399.40	2399.40	2399.40	2399.40	2399.40	2399.40	2399.40	2399.40
O-1***	1504.80	1566.30	1892.70	1892.70	1892.70	1892.70	1892.70	1892.70	1892.70	1892.70	1892.70	1892.70	1892.70	1892.70
						COMMISSIONED OFFICERS WITH OVER 4 YEARS' ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER								
O-3	-	-	-	$2628.60	$2754.30	$2853.00	$3007.50	$3156.30	$3281.70	$3281.70	$3281.70	$3281.70	$3281.70	$3281.70
O-2	-	-	-	2350.50	2399.40	2475.60	2604.60	2704.20	2778.30	2778.30	2778.30	2778.30	2778.30	2778.30
O-1	-	-	-	1892.70	2022.30	2096.70	2172.60	2248.20	2350.50	2350.50	2350.50	2350.50	2350.50	2350.50

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* Basic pay is limited to the rate of basic pay for level V of the Executive Schedule, which is $8,733.30 per month.

** While serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is $9,756.60*, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

*** Does not apply to commissioned officers who have been credited with over 4 years' active duty service as an enlisted member or warrant officer.

SCHEDULE 8—PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 2)

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

PAY GRADE	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
WARRANT OFFICERS														
W-5	-	-	-	-	-	-	-	-	-	-	-	$3455.90	$3587.10	$3846.30
W-4	$2025.00	$2172.60	$2172.60	$2222.40	$2323.20	$2425.80	$2527.50	$2704.20	$2829.90	$2929.20	$3007.50	3104.70	3208.50	3458.40
W-3	1840.50	1996.50	1996.50	2022.30	2045.70	2195.40	2323.20	2399.40	2475.60	2549.40	2628.60	2730.90	2829.90	2929.20
W-2	1611.90	1743.90	1743.90	1794.90	1892.70	1996.50	2072.10	2148.30	2222.40	2300.40	2375.70	2450.70	2549.40	2549.40
W-1	1342.80	1539.90	1539.90	1668.30	1743.90	1818.90	1892.70	1971.00	2045.70	2121.90	2195.40	2274.30	2274.30	2274.30
ENLISTED MEMBERS														
E-9*	-	-	-	-	-	-	$2355.90	$2408.70	$2463.30	$2519.70	$2576.10	$2626.20	$2763.90	$3032.70
E-8	-	-	-	-	-	$1975.50	2031.90	2085.60	2139.60	2196.30	2246.70	2301.90	2436.90	2708.40
E-7	$1379.10	$1488.90	$1544.10	$1598.10	$1652.40	1705.20	1759.80	1814.70	1896.90	1950.60	2004.90	2031.00	2167.20	2436.90
E-6	1186.80	1293.30	1347.30	1404.60	1457.10	1509.60	1565.10	1645.80	1697.40	1752.30	1779.00	1779.00	1779.00	1779.00
E-5	1041.30	1133.40	1188.60	1240.20	1321.80	1375.50	1430.10	1482.60	1509.60	1509.60	1509.60	1509.60	1509.60	1509.60
E-4	971.10	1025.70	1086.00	1170.00	1216.20	1216.20	1216.20	1216.20	1216.20	1216.20	1216.20	1216.20	1216.20	1216.20
E-3	915.00	965.40	1003.80	1043.40	1043.40	1043.40	1043.40	1043.40	1043.40	1043.40	1043.40	1043.40	1043.40	1043.40
E-2	880.50	880.50	880.50	880.50	880.50	880.50	880.50	880.50	880.50	880.50	880.50	880.50	880.50	880.50
E-1**	785.70	785.70	785.70	785.70	785.70	785.70	785.70	785.70	785.70	785.70	785.70	785.70	785.70	785.70
E-1***	726.60	-	-	-	-	-	-	-	-	-	-	-	-	-

* While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $3,686.40, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 3)

PART II--BASIC ALLOWANCE FOR QUARTERS RATES

PAY GRADE	Without dependents Full rate*	Without dependents Partial rate**	With dependents
COMMISSIONED OFFICERS			
O-10	$689.40	$50.70	$848.10
O-9	689.40	50.70	848.10
O-8	689.40	50.70	848.10
O-7	689.40	50.70	848.10
O-6	632.40	39.60	764.10
O-5	609.00	33.00	736.20
O-4	564.30	26.70	649.20
O-3	452.40	22.20	537.30
O-2	358.80	17.70	458.70
O-1	302.10	13.20	409.80
COMMISSIONED OFFICERS WITH OVER 4 YEARS' ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER			
O-3	$488.40	$22.20	$577.20
O-2	415.20	17.70	520.80
O-1	357.00	13.20	481.20
WARRANT OFFICERS			
W-5	$573.00	$25.20	$626.40
W-4	509.10	25.20	574.20
W-3	427.80	20.70	526.50
W-2	379.80	15.90	484.20
W-1	318.30	13.80	418.80
ENLISTED MEMBERS			
E-9	$418.20	$18.60	$551.10
E-8	384.30	15.30	507.90
E-7	327.90	12.00	471.90
E-6	296.70	9.90	436.20
E-5	273.60	8.70	392.10
E-4	238.20	8.10	341.10
E-3	233.70	7.80	317.40
E-2	190.20	7.20	302.10
E-1	168.90	6.90	302.10

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* Payment of the full rate of basic allowance for quarters at these rates to members of the uniformed services without dependents is authorized by title 37, United States Code, and Part IV of Executive Order 11157, as amended.

** Payment of the partial rate of basic allowance for quarters at these rates to members of the uniformed services without dependents who, under 37 U.S.C. 403(b) or 403(c), are not entitled to the full rate of basic allowance for quarters, is authorized by 37 U.S.C. 1009(c)(2) and Part IV of Executive Order 11157, as amended.

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SCHEDULE 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 4)

PART III--BASIC ALLOWANCE FOR SUBSISTENCE RATES

Officers (per month) $134.42

Enlisted Members (per day):

	E-1 (less than 4 months' active duty)	All Other Enlisted
When on leave or authorized to mess separately	$5.92	$6.41
When rations in-kind are not available	6.68	7.23
When assigned to duty under emergency conditions where no messing facilities of the United States are available	8.86	9.59

PART IV--RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by section 203(c)(1) of title 37, United States Code, is $543.90.

SCHEDULE 9--INTERIM GEOGRAPHIC ADJUSTMENTS FOR CERTAIN EMPLOYEES IN SPECIFIED AREAS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1992)

AREA	ADJUSTMENT RATE
New York-Northern New Jersey-Long Island, NY-NJ-CT Consolidated Metropolitan Statistical Area	8%
San Francisco-Oakland-San Jose, CA Consolidated Metropolitan Statistical Area	8%
Los Angeles-Anaheim-Riverside, CA Consolidated Metropolitan Statistical Area	8%

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Notice of December 26, 1991

Continuation of Libyan Emergency

On January 7, 1986, by Executive Order No. 12543, President Reagan declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Libya. On January 8, 1986, by Executive Order No. 12544, the President took additional measures to block Libyan assets in the United States. The President has transmitted a notice continuing this emergency to the Congress and the **Federal Register** every year since 1986. Because the Government of Libya has continued its actions and policies in support of international terrorism as evidenced by its involvement in the destruction of Pan Am Flight 103, the national emergency declared on January 7, 1986, and the measures adopted on January 7 and January 8, 1986, to deal with that emergency, must continue in effect beyond January 7, 1992. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Libya. This notice shall be published in the **Federal Register** and transmitted to the Congress.

George Bush

THE WHITE HOUSE,
December 26, 1991.

[FR Doc. 91-31207
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[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49 consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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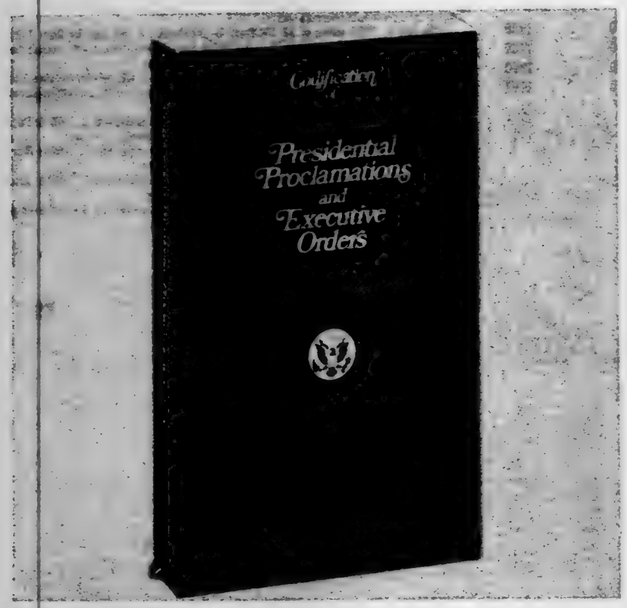
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Rules and Regulations

Federal Register
Vol. 56, No. 251
Tuesday, December 31, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

GENERAL ACCOUNTING OFFICE

4 CFR Parts 91 and 92

Standards for Waiver of Claims for Erroneous Payments of Pay and Allowances, and of Travel, Transportation, and Relocation Expenses and Allowances

AGENCY: General Accounting Office.

ACTION: Final rule.

SUMMARY: This rule updates the General Accounting Office's waiver regulations at 4 CFR parts 91 and 92 as amended at 56 FR 49582, Sept. 30, 1991, to conform the regulations to newly enacted legislation raising from $500 to $1500 the amount of a claim of the United States that agencies may waive. It does not affect the separate authority of the Director of the Administrative Office of the United States Courts to waive claims aggregating not more than $10,000.

EFFECTIVE DATE: December 5, 1991.

FOR FURTHER INFORMATION CONTACT: Robert L. Higgins, Associate General Counsel, U.S. General Accounting Office, 441 G Street NW., Washington, DC 20548, (202) 275–6410.

SUPPLEMENTARY INFORMATION: Title VI, section 657, Public Law 102–190, 105 stat. 1290, effective December 5, 1991, increased from $500 to $1500 the amount of a claim of the United States arising out of an erroneous payment of pay and allowances and travel and transportation expenses that agencies may waive under 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716. This rule conforms the GAO's regulations to the new limitation.

List of Subjects

4 CFR Part 91

Accounting, Claims, Government employees, Military personnel, Relocation expenses, Travel and Transportation expenses, Wages.

4 CFR Part 92

Accounting, Administrative practice and procedure, Claims, Government employees, Investigations, Military personnel, Wages.

For the reasons set out in the preamble, parts 91 and 92 of title 4, chapter I, subchapter G, Code of Federal Regulations, are amended as follows:

PART 91—[AMENDED]

Part 91 is amended as follows:

1. The authority citation for 4 CFR part 91 is revised to read as follows:

Authority: 31 U.S.C. 711. Interpret or apply 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716, as amended by Pub. L. 99–224, 99 Stat. 1741, December 28, 1985, Title X, sec. 1009, Pub. L. 100–702, 102 Stat. 4667, November 19, 1988, and Title VI, sec. 657, Pub. L. 102–190, 105 Stat. 1290, December 5, 1991.

2. Section 91.4 is amended by revising paragraph (c)(1) to read as follows:

§ 91.4 Authority to waive.

* * * * *

(c) * * *

(1) May grant waiver in whole or in part of a claim of the United States in an amount aggregating not more than $1500, when all of the requirements for waiver are met, except that the Director of the Administrative Office of the United States Courts may grant waiver in whole or in part of a claim in an amount aggregating not more than $10,000;

* * * * *

PART 92—[AMENDED]

Part 92 is amended as follows:

1. The authority citation for 4 CFR part 92 is revised to read as follows:

Authority: 31 U.S.C. 711. Interpret or apply 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716, as amended by Pub. L. 99–224, 99 Stat. 1741, December 28, 1985, Title X, sec. 1009, Pub. L. 100–702, 102 Stat. 4667, November 19, 1988, and Title VI, sec. 657, Pub. L. 102–190, 105 Stat. 1290, December 5, 1991.

2. Section 92.2 is amended by revising paragraph (c) and by designating the concluding text of the section as paragraph (d) to read as follows:

§ 92.2 Where to apply.

* * * * *

(c) The agency or department shall submit all waiver applications aggregating more than $1500 for which the agency recommends approval and all appeals regardless of the amount for consideration by the General Accounting Office to: Director, Claims Group, General Government Division. U.S. General Accounting Office, Washington, DC 20548.

* * * * *

Charles A. Bowsher,
Comptroller General of the United States.

[FR Doc. 91–31163 Filed 12–30–91; 8:45 am]
BILLING CODE 1610–01–M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Retirement—Service Credit; Correction

AGENCY: Office of Personnel Management.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error made in a final rule under 5 CFR parts 831 and 842 published October 29, 1991 (56 FR 55595). The Office of the Federal Register notified OPM that § 831.306(e) should have been listed as "revised" rather than "added." This correction provides the proper codification instruction.

EFFECTIVE DATE: November 29, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia A. Rochester, (FTS) 266–0299 or (202) 606–0299.

Office of Personnel Management.

Constance Berry Newman,
Director.

Accordingly, amendatory instruction 2 appearing in the third column of page 55595 of OPM's final rules under part 831 published on October 29, 1991, (56 FR 55595) is corrected to show § 831.306(e) as being "revised," not "added."

[FR Doc. 91–31160 Filed 12–30–91; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 726]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from December 27, 1991, through January 2, 1992. Consistent with program objectives, such action is needed to establish and maintain orderly marketing conditions for fresh California-Arizona navel oranges for the specified week. Regulation was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

EFFECTIVE DATE: Regulation 726 (7 CFR Part 907) is effective for the period from December 27, 1991, through January 2, 1992.

FOR FURTHER INFORMATION CONTACT: Christian D. Nissen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–1754.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the "Act."

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,000 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented about 79 percent of the total production in 1990–91. District 2 is located in the southern coastal area of California and represented almost 18 percent of 1990–91 production; District 3 is the desert area of California and Arizona, and it represented slightly less than 3 percent; and District 4, which represented slightly less than 1 percent, is northern California. The Committee's revised estimate of 1991–92 production is 64,600 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 32,895 cars during the 1990–91 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic fresh (regulated) market is a preferred market for California-Arizona navel oranges while the export market continues to grow. The Committee has estimated that about 68 percent of the 1991–92 crop of 64,600 cars will be utilized in fresh domestic channels (43,650 cars), with the remainder being exported fresh (14 percent), processed (16 percent), or designated for other uses (2 percent). This compares with the 1990–91 total of 16,675 cars shipped to fresh domestic markets, about 51 percent of that year's crop. In comparison to other seasons, 1990–91 production was low because of a devastating freeze that occurred during December 1990.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to producers. Producers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual producers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance producer revenue. Prices for navel oranges tend to be relatively inelastic at the producer level. Thus, even a small variation in shipments can have a great impact on prices and producer revenue. Under these circumstances, strong arguments can be advanced as to the benefits of regulation to producers, particularly smaller producers.

The Committee adopted its marketing policy for the 1991–92 season on June 25, 1991. The Committee reviewed its marketing policy at district meetings as follows: Districts 1 and 4 on September 24, 1991, in Visalia, California; and District 2 and 3 on October 1, 1991, in Ontario, California. The Committee subsequently revised its marketing policy at a meeting on October 15, 1991. The marketing policy discussed, among other things, the potential use of volume and size regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This marketing policy is available from the Committee or Mr. Nissen. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on December 23, 1991, in Newhall, California, to consider the current prospective conditions of supply and demand and recommended, with 7 members voting in favor, 3 opposing, and 1 abstaining, that 800,000 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by the Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions and weather and transportation conditions.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1991–92 marketing policy. The recommended amount of 800,000 cartons compares to the 1,000,000 cartons specified in the Committee's shipping schedule. Of the 800,000 cartons, 92.67 percent or 741,360 cartons are allotted for District 1, and 7.33 percent or 58,640 cartons are allocated for District 3. Handlers in Districts 2 and 4 will not be regulated as they are not shipping a sufficient quantity of navel oranges to warrant volume regulation at this point in the season.

During the week ending on December 19, 1991, shipments of navel oranges to fresh domestic markets, including Canada, totaled 1,796,000 cartons compared with 1,991,000 cartons shipped during the week ending on December 20, 1990. Export shipments totaled 129,000 cartons compared with 260,000 cartons shipped during the week ending on December 20, 1990. Processing and other uses accounted for 349,000 cartons compared with 485,000 cartons shipped during the week ending on December 20, 1990.

Fresh domestic shipments to date this season total 8,167,000 cartons compared with 11,535,000 cartons shipped by this time last season. Export shipments total 964,000 cartons compared with 1,298,000 cartons shipped by this time last season. Processing and other use shipments total 1,591,000 cartons compared with 2,497,000 cartons shipped by this time last season.

For the week ending December 19, 1991, regulated shipments of navel oranges to the fresh domestic market were 1,761,000 cartons on an adjusted allotment of 1,814,000 cartons which resulted in net undershipments of 53,000 cartons. Regulated shipments for the current week (December 20 through December 26) are estimated at 1,050,000 cartons on an adjusted allotment of 1,009,000 cartons. Thus, overshipments of 41,000 cartons could be carried forward into the week ending on January 2, 1992.

The average f.o.b. shipping point price for the week ending on December 19, 1991, was $10.33 per carton based on a reported sales volume of 1,472,000 cartons. The season average f.o.b. shipping point price to date is $10.43 per carton. The average f.o.b. shipping point prices for the week ending on December 20, 1990, was $8.70 per carton; the season average f.o.b. shipping point price at this time last year was $9.12.

The Department's Market News Service reported that, as of December 24, demand for first grade size 72s is moderate, fairly good for size 88s, and good for other sizes. Prices are reported as about steady.

Committee members discussed implementing volume regulation at this time, as well as different levels of allotment. It was reported that weather conditions have improved in District 1, and that maturity problems are continuing to affect some districts. Several Committee members commented the market is slow, and is expected to continue as such through the upcoming holiday week. Another member commented that inventory levels are high at the handler and retail levels. Three Committee members favored open movement at this time, while the majority of Committee members favored the issuance of general maturity allotment.

According to the National Agricultural Statistics Service, the 1990–91 season average fresh equivalent on-tree price for California-Arizona navel oranges was $7.75 per carton, 119 percent of the season average parity equivalent price of $6.52 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1991–92 season average fresh on-tree price is estimated at $8.33 per carton, about 85 percent of the estimated fresh on-tree parity equivalent price of $7.44 per carton.

Limiting the quantity of navel oranges that may be shipped during the period from December 27, 1991, through January 2, 1992, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

A proposed rule regarding the implementation of volume regulation and a proposed shipping schedule for California-Arizona navel oranges for the 1991–92 season was published in the September 30, 1991, issue of the Federal Register (56 FR 49432). The Department is currently in the process of analyzing comments received in response to this proposal and, if warranted, may finalize that action this season. However, issuance of this final rule implementing volume regulation for the regulatory week ending on January 2, 1992, does not constitute a final decision on that proposal.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until December 24, 1991, and this action needs to be effective for the regulatory week which begins on December 27, 1991. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

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2. Section 907.1026 is added to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 907.1026 Navel Orange Regulation 726.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from December 27, 1991, through January 2, 1992, is established as follows: (a) District 1: 741,360 cartons; (b) District 2: unlimited cartons; (c) District 3: 58,640 cartons; (d) District 4: unlimited cartons.

Dated: December 24, 1991.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 91-31325 Filed 12-26-91; 1:45 pm]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1807, 1822, 1823, 1890t, 1927, 1941, 1943, 1944, 1945, 1951, 1955, and 1965

Real Estate Title Clearance and Loan Closing

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Real Estate Title Clearance and Loan Closing regulations. This action will: (1) Eliminate gender-biased language, (2) eliminate inconsistencies between the CFR and the internal FmHA Instructions, (3) incorporate 7 CFR part 1890t, "Timesaving and Program Improvement," into the regulation, (4) renumber 7 CFR Parts 1807 to 1927, Subpart B, (5) change the title of 7 CFR part 1927 to "Federal Statute of Limitations and Title Clearance and Loan Closing," (6) provide clarification of loan approval officials' responsibilities in reviewing preliminary title information, (7) increase the deductible for liability coverage for attorneys, title insurance companies, and their employees, (8) eliminate certain FmHA forms and develop other FmHA forms, (9) eliminate the designation process for attorneys and title insurance companies, (10) change the requirement for describing notes in mortgages by specifying that, in most cases, only the note(s) for the new Loan(s) need(s) to be described when a subsequent loan is made and a subsequent mortgage is taken, and (11) to add a new section to include Administrator's exception authority. The purpose of this action is to bring FmHA procedures into conformance with title evidence requirements accepted by conventional lending institutions.

EFFECTIVE DATE: January 30, 1992.

FOR FURTHER INFORMATION CONTACT: Karen Savoie Murray, Senior Loan Specialist, Single Family Housing Processing Division, Farmers Home Administration, USDA, room 5338, South Agricultural Building, 14th and Independence Avenue, SW., Washington, DC 20250, telephone (202) 382-0099.

SUPPLEMENTARY INFORMATION:

Classification

This final action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be "non-major" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or price for consumers, individual industries; Federal, State or Local Government agencies; or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This action is not expected to substantially affect budget outlay or to affect more than one agency or to be controversial. The net result is expected to provide better service to rural residents.

Regulatory Flexibility Act

This final rule has been reviewed with respect to the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has determined that this action will not have a significant economic impact on a substantial number of small entities because only the approval method of these entities will be altered, not the frequency of their use. The self-certification method will increase the ease and efficiency of approving attorneys and title companies for loan closing purposes.

Intergovernmental Consultation

Programs Affected: These programs/activities listed in the Catalog of Federal Domestic Assistance under Numbers:

10.405	Farm Labor Housing Loans and Grants
10.415	Rural Rental Housing Loans
10.416	Soil and Water Loans
10.404	Emergency Loans
10.406	Farm Operating Loans
10.407	Farm Ownership Loans
10.410	Low Income Housing Loans

Catalog Nos. 10.405, 10.415, and 10.416 are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and Local officials (7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983). Catalog Nos. 10.404, 10.406, 10.407, 10.410, and non-program loans are excluded from the scope of Executive Order 12372.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal Action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Discussion of Comments Received

The proposed rule published in the **Federal Register** on March 24, 1989 (54 FR 12211), provided for a 60-day comment period. The comment period closed on May 23, 1989, but all comments received were considered. Thirty comments were received; twelve from attorneys who all appeared to be designated attorneys under the current system, three were from OGC attorneys, one from a rural advocacy group, and fourteen from FmHA employees at all levels. Twenty two respondents opposed the proposed changes, all based on the removal of the current designation system. One State Director strongly favored the new system because of the volume of attorneys and title companies that had to be maintained under the designation system. The comments are broken down as follows:

Four attorneys and four FmHA employees felt that the number of attorneys and title companies closing FmHA loans would increase under the certification system. The Agency feels that this is a desirable change because it would increase the applicant's options for closing agents and introduce competition that is expected to keep closing costs lower.

Five attorneys and two FmHA employees felt that the new system would increase the closing costs that would be charged to the applicants. We could find no verifiable basis for this comment. The intent in increasing the allowable insurance deductible was to eliminate or reduce the extra insurance requirements (and cost) imposed on closing agents by the existing regulations, and ultimately reduce the applicant's closing costs. The new requirements should more closely reflect the insurance coverage that closing agents are already carrying to close conventional mortgages.

Three attorneys and six FmHA employees anticipate a decrease in the quality of loan closings. Seven attorneys and nine FmHA employees feel the new regulation will increase the training burden on local offices. Three attorneys, one OGC attorney, and five FmHA employees felt the new system would slow down the loan closing process because the County Office would have to spend more time to review loan closing documents. Since the revised regulation is designed to be self-instructional, the closing agents will have more guidance that they were given under the old regulation. One employee felt the number of attorneys used per County should be limited to reduce these potential problems. FmHA has determined that there is no fair and equitable way to restrict the number of settlement agents. Five attorneys stated that FmHA closings were significantly different from conventional closings, but did not explain how this action negatively impacted FmHA closings. This action makes FmHA paperwork and settlement agent requirements more like those of conventional lenders. Forms have been combined, and in many cases simplified. Instructional forms manual inserts (not previously available) have been developed for all closing forms. The new regulation has combined 7 CFR parts 1807 and 1890t.2, for one clear and concise set of instructions. The regulation itself can now be used for instructing closing agents on the procedures FmHA requires to close its loans. It is not the responsibility of FmHA to train closing agents on state real estate law. FmHA feels that these comments are unfounded.

Four FmHA employees and five attorneys opposed the certification system because they felt it would increase the burden of work on the County Office. All but one respondent mentioned verifying the closing agents qualifications every time that agent closed a loan as a primary cause for the perceived increase in work. Under the new certification system, proposed closing agents will sign a statement in which they certify as to their qualifications. No further action is required by the approval official to approve a closing agent. It has been the experience of FmHA that attorneys and title companies either had the required qualifications, or withdrew their designated status. The burden on the County Office is expected to be minimal.

Six attorneys, the rural advocacy group, and one FmHA employee disliked the bonding and insurance requirements set forth in the proposed rule. The Agency proposed to increase the amount of errors and omissions coverage for attorneys from $100,000 to $250,000, and increase the allowable deductible from $1,000 to $5,000. Fidelity coverage of at least $50,000, increased from $10,000, must be provided for each individual who will have access to the loan funds. One attorney felt we should not have any requirements for these items and claimed he was closing FmHA loans now and is not a designated attorney. One attorney felt we should require malpractice insurance instead of a bond. The rural advocacy group and the remainder of attorneys felt the proposed requirements were still too restrictive and discouraged closing agents from participating. The FmHA employee felt they were too liberal and did not adequately protect the Government. The Agency feels that the new requirements are adequate because they more closely reflect the requirements of conventional lenders.

One FmHA employee recommended we adopt a system of contracting for attorney services, but in that case, the attorneys would be hired by FmHA, which would give the appearance that they were working for FmHA. Two FmHA employees felt that the list of designated attorneys and title companies helped inexperienced applicants select a closing agent, and eliminating the designation process would leave applicants with no guidance. The designated attorney system was not designated to provide advice to applicants. It is for the purpose of verifying credentials of closing agents who wished to close FmHA loans. The same credentials are required under the new regulation, but instead of State Office verification, the closing agent self-certifies that the requirements are met. We do not feel that it is the responsibility of the Agency to influence the applicant's choice of closing agent. Doing so would create the appearance of a conflict of interest.

Summary of Other Revisions

Additional revisions are included in this final rule that were not published for proposed rule as they clarify the intent of the regulation, and changes within the scope of internal agency management.

Several definitions were added as a result of comments received. Definitions for fee simple, closing agent, title, and certificate of title were added. The term "closing agent" was incorporated in lieu of "approval attorney/title company" in response to a comment suggesting that we use a uniform term throughout FmHA regulations. The regulation has been restructured to make it clear what the FmHA expects the closing agent to be responsible for, regardless of whether the closing agent is an attorney or a title company. This is to avoid the appearance that FmHA is requiring title companies to practice law, and not allowing attorneys to obtain title insurance.

Conflict of interest clauses have been clarified, prohibiting closing agents from performing closings for family, partners, and business associates. Language has been added prohibiting closing agents from acting on behalf of both the buyer and the seller.

Instructions for rejecting closing agents are also included. Instructions for releasing loans funds before a prior lien has been discharged were removed because placing a mortgage on the property will not give FmHA the required lien priority if the prior mortgage has not been discharged.

List of Subjects in 7 CFR Parts 1807, 1822, 1823, 1890t, 1927, 1941, 1943, 1944, 1945, 1951, 1955, and 1965

Loan closing agents, Loan programs—Agriculture, Loan programs—Housing and community development and mortgages, Home improvement, Loan program—Housing and community development, Low and moderate income housing—Rental, Mobile homes, Mortgages, Deeds of trust, Title insurance, Rural housing, Subsidies, Foreclosure, Administrative practice in procedure, Government acquired property, Government property management, Sale of Government acquired property, Surplus Government property, Non-profit organizations, Credit, Indians, Accounting servicing.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1807—TITLE CLEARANCE AND LOAN CLOSING [REMOVED]

1. Part 1807 is removed and reserved.

PART 1822—RURAL HOUSING LOANS AND GRANTS

2. The authority citation for part 1822 is revised to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart G—Rural Housing Site Loan Policies, Procedures, and Authorizations

3. In § 1822.270, paragraph (b) is revised to read as follows:

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§ 1822.270 Technical, legal, and other services.

* * * * *

(b) Title Clearance and Legal Services. For a loan to a public nonprofit organization, title clearance and legal services will be obtained in accordance with instructions from the OGC, observing the provisions of subpart B of part 1927 of this chapter to the extent feasible. For a loan to a private nonprofit organization, the provisions of subpart B of part 1927 of this chapter regarding title clearance and legal services will apply. The applicant will be encouraged to have the same approved closing agent, where practical, perform the title clearance work in connection with the purchase of the land and the sale of the individual sites.

* * * * *

4. In § 1822.274, paragraphs (a), (b), and (c)(2) are revised to read as follows:

§ 1822.274 Loan closing.

(a) *Applicable instructions.* The complete loan docket will be sent to the OGC for loan closing instructions. RHS loans will be closed in accordance with applicable provisions of Subpart B of Part 1927 of this chapter, and State Instructions which supplement this Instruction, and closing instructions of the OGC, and with the assistance of the approved attorney, representatives of the title insurance company, or local attorney, whichever is appropriate.

(b) *Mortgage.* Unless the OGC determines the Form to be inappropriate, real estate mortgage Form FmHA 1927–1 (state), "Real Estate Mortgage for _____," will be used for all RHS Section 524 loans modified as prescribed by or with the advice of the OGC with respect to the name, address, and other identification of the borrower, the style of execution, and the acknowledgement. Additional paragraphs will be included in the mortgage to read as follows:

The borrower agrees not to discriminate in the sale of the dwelling financed under this mortgage due to a prospective purchaser's race, color, national origin, sex, religion, age, marital status, or handicap. The borrower further agrees to comply with all Federal, State, or local laws and ordinances prohibiting discrimination in the sale of housing. The borrower's failure or refusal to comply with this agreement will be a basis for the FmHA to deny future requests for participation in its rural housing programs and activities.

This instrument also secures the obligations and covenants of borrower set forth in Borrower's Loan Resolution of _____ (date), which is hereby incorporated herein by reference.

(c) * * *

(2) The note will be signed in accordance with subpart B of part 1927 of this chapter and the forms manual insert for Form FmHA 1944–52 (available in any FmHA office).

* * * * *

5. Section 1822.277 is revised to read as follows:

§ 1822.277 Complaints regarding discrimination in opportunity to buy developed sites.

Any applicant wishing to purchase a site financed by an RHS loan who believes he or she has been discriminated against because of race, color, national origin, religion, sex, handicap, or age, may file a complaint with the County Supervisor or State Director. Any such complaint will be handled in accordance with § 1944.239 of part 1944, subpart E of this chapter.

6. In § 1822.278, paragraph (g) is revised to read as follows:

§ 1822.278 Special requirements for RHS Section 523 loans (loans to organizations providing sites for self-help housing).

* * * * *

(g) *Mortgage.* Unless the OGC determines the Form to be inappropriate, real estate mortgage Form FmHA 1927–1 (state), "Real Estate _____ for _____ (Direct Loan)," will be used modified as prescribed by or with the advice of the OGC with respect to the name, address, and other identification of the borrower, the style of execution, and the acknowledgement. Additional paragraphs will be included in the mortgage to read as follows:

The borrower agrees not to discriminate in the sale of the dwelling financed under this mortgage due to a prospective purchaser's race, color, national origin, religion, sex, handicap, or age, may file a complaint with the County Supervisor or State Director. Any such complaint will be handled in accordance with § 1944.239 of part 1944, subpart E of this chapter.

This instrument also secures the obligations and covenants of borrower set forth in Borrower's Loan Resolution of _____ *(date)*, which is hereby incorporated herein by reference.

PART 1823—ASSOCIATION LOANS AND GRANTS-COMMUNITY FACILITIES, DEVELOPMENT, CONSERVATION, UTILIZATION

Subpart N—Loans to Indian Tribes and Tribal Corporations

7. The authority citation for of part 1823 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

8. Section 1823.414 is amended by revising the introductory text of paragraph (a)(1) and (2) to read as follows:

§ 1823.414 Title to security property.

* * * * *

(a) * * *

(1) *Trust property.* The applicant will request BIA to furnish Title Status Reports to the County Supervisor. The County Supervisor will review the reports in accordance with subpart B of part 1927 of this chapter. Form FmHA 1927–13, "Waiver of Encumbrances, Exceptions, and Reservations," will be used as appropriate. The County Supervisor will ask the State Director for advice if necessary.

* * * * *

(2) *Nontrust land.* Title clearance will be obtained in accordance with subpart B of part 1927 of this chapter.

* * * * *

9. Section 1823.414 (a)(1)(i) is amended by changing the reference "Forms 427–1" to read "Forms 1927–1."

Exhibit A of Subpart N [Amended]

10. Exhibit A of Subpart N is amended by changing the references "Form FmHA 427–9" to "Form FmHA 1927–9," "Form FmHA 427–10" to Form FmHA 1927–10," "Form FmHA 427–13" to "Form FmHA 1927–13," "Form FmHA 440–1" to "Form FmHA 1940–1," and "Form FmHA 427–1" to "Form FmHA 1927–1."

PART 1890t—TIMESAVING AND PROGRAM IMPROVEMENT [REMOVED]

11. Part 1890t is removed and reserved.

12. A new part 1927 consisting of subpart B is being added to read as follows:

PART 1927—TITLE CLEARANCE AND LOAN CLOSING

Subpart B—Real Estate Title Clearance and Loan Closing

Sec.

1927.51 General.
1927.52 Definitions.
1927.53 Costs of title clearance and closing of transactions.
1927.54 Requirements for closing agents.
1927.55 Title clearance services.
1927.56 Scheduling loan closing.
1927.57 Preparation of closing documents.
1927.58 Closing the transaction.
1927.59 Subsequent loans and/or transfers with assumptions.
1927.60–1927.61 [Reserved]
1927.62 Voluntary conveyances.
1927.63–1927.64 [Reserved]
1927.65 Additional requirements in connection with loans to homestead entrymen, contract purchasers of farm units from the Bureau of Reclamation, and certain American Indians.
1927.66 Cancellation of loan, assumption, or credit sale.
1927.67–1927.89 [Reserved]
1927.90 State supplements.
1927.91 Exception authority.
1927.92–1927.99 [Reserved]
1927.100 OMB control number.

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Real Estate Title Clearance and Loan Closing

§ 1927.51 General.

(a) *Types of loans covered by this subpart.* This subpart sets forth the authorities, policies, and procedures for real estate title clearance and closing of loans, assumptions, voluntary conveyances and credit sales in connection with the following types of Farmers Home Administration (FmHA) loans: Farm Ownership (FO), Nonfarm Enterprise (FO–NFE), Emergency (EM), Operating (OL), Rural Housing (RH), Rural Housing Site Loans (RHS), Farm Labor Housing (LH), Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), Soil and Water (SW), Indian Land Acquisition Loans involving non-trust property, and Non Program (NP) loans. This subpart does not apply to guaranteed loans.

(b) *Programs not covered by this subpart.* Title clearance and closing for all other types of FmHA loans and assumptions will be handled as provided in the applicable program instructions or as provided in special authorizations from the National Office.

(c) *Review by the Office of the General Counsel (OGC).* When required by applicable program regulations, such as for multi-family housing (MFH) organizations or other complex cases as determined by the State Director, the State Director will request OGC to review the docket and issue closing instructions.

§ 1927.52 Definitions.

Approval official. The FmHA employee who has been delegated the authority to approve, close, and service the particular kind of loan will approve an attorney or title company as closing agent to close these loans. If, due to the amount of the loan request, the loan is approved outside the initiating office, the initiating office will approve the closing agent before forwarding the loan material to the loan approval official.

Approved attorney. A duly licensed attorney who provides title opinions or insurance, closes loans, assumptions, credit sales and voluntary conveyances; and disburses funds in connection with FmHA loans. The FmHA approval official approves the attorney on a case-by-case basis after reviewing the attorney's certification. Attorneys may use title insurance to meet the loan closing requirements of FmHA. For the purpose of this subpart "approved attorney" will subsequently be referred to as "attorney" or "closing agent."

Approved title insurance company. A title insurance company (including its local representatives, employees, and agents) that closes loans, assumptions, credit sales, and voluntary conveyances; provides title insurance; and disburses funds in connection with FmHA loans. The FmHA approval official approves the title insurance company for loan closing purposes on a case-by-case basis after reviewing the title insurance company's certification. For the purpose of this subpart "approved title insurance company" will subsequently be referred to as "title company" or "closing agent."

Borrower. The party(ies) indebted after the loan, assumption, or credit sale is closed.

Closed loan. A loan is considered to be closed when the mortgage is filed for record.

Closing agent. The attorney or title company selected by the applicant and approved by FmHA to provide closing services for the proposed loan.

Cosigner. A party who joins in the execution of a promissory note or assumption agreement to guarantee repayment of the debt.

Credit sale. A sale in which FmHA provides credit to the purchaser(s) of FmHA inventory property. Title clearance and closing of a credit sale are the same as for an initial loan except the property is conveyed by quitclaim deed.

Exceptions. Exceptions include but are not limited to recorded covenants, conditions, restrictions, reservations, liens, encumbrances, easements, rights-of-way, leases, mineral, oil, gas and geothermal rights (with or without the right of surface entry), timber and water rights, judgments, pending court proceedings, probate proceedings and agreements which limit or affect the title to the property.

Fee simple. An estate in land of which the owner has unqualified ownership and power of disposition.

FmHA. The United States of America acting through the Farmers Home Administration of the Department of Agriculture.

Land contract (Contract for Deed). This is a contract between the buyer and seller of land in which the buyer has the right to possession and use of the land and over a period of time (usually in excess of one year) makes periodic payments of a portion of the purchase price to the seller. The seller retains legal title to the property until the final payment is made, at which time the buyer will receive a deed to the land vesting fee title in the buyer. This is a security device whereby the seller finances a portion of the purchase price for the buyer.

Mortgage. Real estate security instrument; includes deed of trust and deed to secure debt. Forms FmHA 1927–7 (state), FmHA 1927–11 (state), and FmHA 1927–12 (state) will be used to secure a mortgage to FmHA.

Office of General Counsel (OGC). Refers to the United States Department of Agriculture (USDA) Regional Attorney, Associate Regional Attorney, or Assistant Regional Attorney, who provides legal counsel to FmHA for loan making and loan servicing actions.

Program regulations. Refers to the FmHA regulations for the particular loan program involved (e.g., 7 CFR part 1944 subpart A for rural housing loans).

Quitclaim deed. A transfer of the grantors' interest in the title, without warranties or covenants. This type of deed is used by FmHA to convey title to purchasers of inventory property.

Seller. Individual(s) or other entity(ies) which are conveying ownership in real property to an FmHA applicant/buyer.

Title, certificate of title. A certified statement as to land ownership, based upon examination of record title.

Title clearance. Examination of a title and its exceptions, to assure FmHA that the loan is legally secured and has the required priority.

Title defects. Any exception or legal claim of ownership (through deed, lien, judgment, or other recorded document), on behalf of a third party, which would prevent the seller from conveying a clear title.

Vendee. The buyer.

Vendor. The seller.

Voluntary conveyance. A method of liquidation by which title to FmHA security is transferred by a borrower to FmHA by deed in lieu of foreclosure.

Warranty deed. A deed in which the grantor warrants that he/she has the right to convey the property, the title is free from encumbrances, and the grantor shall take further action necessary to perfect or defend the title.

§ 1927.53 Costs of title clearance and closing of transactions.

The borrower or the seller, or both, will be responsible for payment of all

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costs of title clearance and closing of the transaction and will arrange for payment before the transaction is closed. In voluntary conveyance cases to FmHA, these costs will be paid as provided in § 1955.10 (g) of subpart A of part 1955 of this chapter. In a case involving the purchase or sale of real estate, the option or sales contract must state who will pay the title clearance and closing costs. These costs will include any costs of abstracts of title, land surveys, attorney's fees, owner's and lender's policies of title insurance, obtaining curative material, notary fees, documentary stamps, recordation costs, tax monitoring service, and other expenses necessary to complete the transaction.

§ 1927.54 Requirements for closing agents.

(a) *General.* An attorney or title company may act as a closing agent and close FmHA real estate loans, provide necessary title clearance, and perform such other duties as are set forth in this subpart. A closing agent will be responsible for closing FmHA loans and disbursing both FmHA loan funds and funds provided by the borrower in connection with the FmHA loan. The borrower will select his or her closing agent. The approval official will approve attorneys and title companies on a case-by-case basis prior to loan closing and without discrimination, based on the information supplied by the attorney on Form FmHA 1927–19, "Certification of Attorney," or by the title company on Form FmHA 1927–20, "Certification of Title Insurance Company." FmHA will use Form FmHA 1927–2, "Transmittal of Form FmHA 1927–19/1927–20," to transmit the appropriate form to the attorney or title company chosen by the applicant.

(b) *Approval of attorneys.* Any attorney selected by an FmHA applicant must submit a completed Form FmHA 1927–19 to the approval official, who will approve on a case-by-case basis any qualified attorney who is duly licensed to practice law in that State and complies with the bonding and insurance requirements in this section. Any attorney who has been debarred or suspended from participation in FmHA programs in accordance with FmHA Instruction 1940–M (available in any FmHA office) will not be approved.

(1) An attorney must have in full force and effect an acceptable liability insurance policy for errors and omissions in an amount of at least $250,000 per occurrence. This liability policy may have a deductible of what is customary in the area, but not more than $5,000 per claim unless prior authorization is obtained from the National Office on a statewide basis. If submitted to the National Office for a larger liability deductible, the request must be supported with information from the state bar showing what is customary throughout the state.

(2) An attorney must have in full force and effect a fidelity type bond of at least $50,000 or equivalent fidelity type protection. If partners, associates or members of the attorney's staff have access to the funds in the escrow account, each such individual must either have a separate fidelity type bond to cover any fraudulent or dishonest act or such person(s) may be covered by a blanket fidelity bond, provided that $50,000 of protection is maintained for each individual person.

(c) *Approval of title companies.* Any title company selected by an FmHA applicant must submit Form FmHA 1927–20 to the approval official who will approve, on a case-by-case basis, any company which issues title insurance policies in a form acceptable to FmHA, is licensed to do business in the state, is not debarred or suspended, and will meet the following requirements:

(1) The title company agrees, in writing, that it can furnish a title insurance binder and a mortgagee or joint mortgagee-owner policy of title insurance.

(2) The title company certifies that it has the financial ability to cover losses resulting from errors and omissions made in its activities as a title company.

(3) The title company must certify that it has fidelity coverage of at least $50,000 on each individual who will have access to the loan funds, or provide an indemnification agreement satisfactory to FmHA providing for reimbursement to FmHA for any loss caused by fraud or dishonesty or failure by the attorneys, agents or employees of the title company to comply with FmHA's written closing instructions. The approval official is authorized to approve title companies without each certification if the approval official and OGC determine that state law imposes requirements which give FmHA at least equivalent protection.

(4) The title company agrees that the mortgages title policy will be in a form acceptable to FmHA and will contain only standard types of exceptions and exclusions approved in advance by the approval official with the advice of OGC. If the company issues different types of mortgagee title policies the approval official will inform the title company which types are acceptable.

(5) The title insurance company agrees that the representative who supervises the closing of the transaction will be authorized by the company to receive funds and give receipts for the company's charges.

(d) *Responsibility of approval official.* In addition to approving closing agents, the approval official will inform all closing agents used in connection with FmHA closing of their duties and responsibilities under this subpart, applicable state supplements, and any changes or additional requirements which may be imposed. A package containing a copy of this subpart, applicable forms, state supplements, and other pertinent material will be provided to the closing agent as needed.

(e) *Conflict of interest.* A closing agent who has, or whose spouse, children, partners or business associates have, a financial interest in the real estate which will secure the FmHA debt cannot be involved in the title clearance or loan closing process. Financial interest includes having either an equity, creditor or debtor interest in any corporation, trust or partnership with a financial interest in the real estate which will secure the FmHA debt. Closing agents will not represent both the buyer and seller in FmHA transactions, except for credit sale transactions.

(f) *Special provisions.* Closing agents are responsible for:

(1) Having current knowledge of the requirements of state laws in connection with loan closing and title clearance,

(2) Advising the State Director of any changes in state laws which necessitate changes in state mortgage forms and/or state supplements, and

(3) Processing title work and loan closings in a timely, professional manner.

(g) *Rejecting closing agents.* If the approval official cannot approve the closing agent selected by the applicant in accordance with paragraphs (b) or (c) of this section, the following actions will be taken:

(1) The closing agent will be notified within five business days of the specific reasons for rejection. No appeal rights are appropriate, as the closing agent is not the direct recipient of program benefits.

(2) The applicant will be notified within five business days of the rejection. It is the applicant's responsibility to decide whether to continue with the rejected closing agent, if the reasons for rejection can be removed before any legal costs are incurred, or if another closing agent will be selected.

§ 1927.55 Title clearance services.

(a) *Responsibilities of closing agents.* Services to be provided to FmHA and the borrower by a closing agent in connection with the transaction vary depending whether a title insurance policy or title opinion is being furnished. The closing agent is expected to perform these services without unnecessary delay.

(1) *Title insurance.* A satisfactory title insurance binder and mortgagee and owner's title policies in a form satisfactory to FmHA and in an amount sufficient to adequately secure the FmHA mortgage must be provided, including any title examination or curative action necessary to issue such a policy.

(2) *Title opinion.* Title opinion services will include:

(i) A review of the legal description and title to the security,

(ii) A preliminary and final title opinion or certificate of title,

(iii) Preparing, obtaining, or approving curative material, conveyances, and security instruments,

(iv) Advising the approval official and borrower of the nature and legal effect of outstanding interests or exceptions such as liens, encumbrances, leases, easements, convenants, conditions, restrictions, reservations, and rights relating to mineral, oil, gas, geothermal, timber and water rights (including the presence or absence of the right of entry by the holder of such rights), prior sales of part of the property, judgments, probate proceedings or pending court actions affecting the real property or other outstanding exceptions or interests to assist in determining:

(A) Whether the outstanding interests or exceptions affect the value of the property or its operation, and

(B) Which exceptions must be corrected in order for the borrower(s) to obtain good and marketable title of record in accordance with prevailing title examination standards, and for FmHA to obtain a valid lien of the required priority.

(v) Provide copies of these interests and exceptions as requested by the approval official.

(b) *Initial responsibility of approval official.* The approval official will furnish the closing agent with Form FmHA 1927–4, "Transmittal of Title Information," all the information and documents called for therein (including waivers, easements, and FmHA forms), and any information not contained in this subpart regarding FmHA policies and procedures applicable to the type of transaction involved.

(c) *Ordering title services.* The approval official will notify the borrower and seller, if applicable, that an attorney or title company must be employed to examine the title and perform other services in connection with the closing of the transaction. Application for title examination or insurance will be made by the borrower to an attorney or title company. Application for mortgage title insurance will be on a form which has been approved by the approval official. The mortgagee policy will be for at least the amount of the loan. The United States of America will be named as the insured mortgagee. Attorney services may be requested in the form of FmHA Guide Letter No. 1927–1 (available in any FmHA office).

(d) *Use of title opinion.* If a title opinion will be issued, a title examination will include searches of the records, or certificates from the clerks of the appropriate State courts, Federal Bankruptcy courts and United States district courts, for the period determined necessary by local custom, to issue a title opinion. A preliminary title opinion will be issued to the approval official on Form FmHA 1927–9, "Preliminary Title Opinion." If that form is not legally sufficient in a particular state, an OGC approved state form will be used. The closing agent will determine:

(1) All owner(s) of record of the real property,

(2) Whether there are any outstanding mortgages, liens, judgments or pending suits in Federal or State courts (as disclosed by a lis pendens or other similar notice of a pending lawsuit),

(3) Whether there are outstanding Federal or State tax claims (including taxes which under state law may become a lien superior to a previously attaching mortgage lien),

(4) Whether outstanding bankruptcy, insolvency, or probate proceedings involving any part of the property, whether already owned by the borrower, or to be acquired by assumption or with loan funds, or involving the borrower or the seller exist,

(5) If a water right is to be included in the security for the loan. The closing agent must attach a full legal description of the water right,

(6) If wetlands easements or other conservation easements have been placed on the property,

(7) If there are any liens or recorded claims which would prevent FmHA from obtaining an enforceable mortgage lien of the required priority on the security property, and

(8) If there are any exceptions of record.

(e) *Use of title insurance.* When title insurance is to be obtained, the approval official will be furnished with a title insurance binder disclosing any defects in, encumbrances against, and exceptions to the title, the conditions to be met to make the title insurable, and the curative or other actions to be taken before closing of the transaction. The binder must include a commitment to issue a mortgagee title policy in an among at least equal the amount of the loan. In the case of an assumption without a subsequent loan, the existing policy may be continued if the coverage meets or exceeds the assumption balance and the title company agrees in writing to extend coverage in full force and effect.

(f) *Approval official's responsibilities after receipt of preliminary title opinion or title insurance binder.* Upon receipt of the preliminary title opinion or title insurance binder, the approval official will:

(1) Check the opinion or binder carefully. If any required information is omitted, or if the standard form of opinion or binder is amended, the approval official will return it for completion or correction. If the closing agent is unable or unwilling to comply, the approval official will send the opinion or binder with a full explanation to OGC through the State Director for advice.

(2) Check the legal description of the land, water rights, rights-of-way, easements, and other security involved, to determine that the description covers all of the property rights intended to be taken as security.

(3) Review all exceptions to title shown in the preliminary title opinion or title insurance binder. The approval official will determine which exceptions must be modified, eliminated or waived, or whether an agreement with prior lienholders is necessary or advisable to protect FmHA's interests. If prior encumbrance(s) will remain, the approval official should obtain and review a copy of each to insure that its terms are acceptable to FmHA. If an option or sales contract which lists acceptable exceptions is involved, the approval official will determine whether the exceptions in the preliminary title opinion or title insurance binder are the same as those in the option or sales contract and inform the applicant of discrepancies.

If the approval official has any doubt as to the acceptability or effect of any exception, the applicant will be requested to obtain a clarification. The approval official will consult with the closing agent and/or the State Director when necessary to determine the acceptability of any exception.

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(4) If the approval official determines that any defects cannot be corrected, or the effect of certain exceptions on the title, suitability, security value, or successful operation of the property is not clear, and they cannot be corrected or eliminated without undue expense, the approval official will forward the preliminary title opinion or title insurance binder to the State Director together with comments regarding the objectionable features and copies of the exceptions when needed.

(i) If, with the advice of OGC, the State Director determines that the exceptions will not adversely affect the title to the property or its suitability, security value, or successful operation, the State Director will advise the approval official. The approval official will then arrange for closing.

(ii) If the State Director, with the advice of OGC, finds that these exceptions will adversely affect the title to the property, its suitability, security value, or successful operation, the State Director may waive them conditionally and instruct the approval official as to how the conditions may be met, or instruct the approval official that the loan cannot be closed because of the defect.

§ 1927.56 Scheduling loan closing.

The approval official may arrange a closing when he/she determines that exceptions shown in the preliminary title opinion or title insurance binder (if any) will not adversely affect the suitability, security value or successful operation of the property.

(a) The approval official will make sure that all requirements of subpart I of part 1940 of this chapter have been met before the loan is closed.

(b) In arranging for loan closing, the approval official will send Form FmHA 1927-15, "Loan Closing Instructions," to the closing agent and at the same time send written notification of loan closing to the applicant. For single family housing loans Form FmHA 1927-16, "Notification of Loan Closing," will be used to notify the applicant.

§ 1927.57 Preparation of closing documents.

(a) *Preparation of deeds.* The closing agent will prepare, complete, or approve deeds necessary for title clearance and closing of the transaction. FmHA forms will be used whenever possible.

(1) *Types of estates for married borrowers.* If the borrowers are married, FmHA prefers, but will not require, that title to the real estate will be held in such a way that, upon the death of a borrower, it will pass to the surviving spouse by law to prevent the real estate from being tied up in probate proceedings. Title may be held in any manner that permits obtaining the required mortgage.

(2) Deeds will be prepared as follows:

(i) Conveyances of title to borrowers by parties other than FmHA will be by general warranty deed. If a general warranty deed cannot be obtained, a special warranty deed, quitclaim deed, or grant deed may be used if the entity providing title clearance (closing agent) determines that the deed used will vest in the borrower a good and marketable title of record. All conveyances by FmHA will be by quitclaim deed.

(ii) The deed to the security property will show the exceptions to which the title is subject and should, where customary, contain a tie-in description showing that it covers the same land or part of the same land as that designated or described in another deed or mortgage described specifically by date, parties, and recording data.

(iii) Each deed should recite legal consideration.

(b) *Preparation of mortgages.* The closing agent will insure that all mortgages are properly prepared, completed, executed, and filed for record. Where applicable, the mortgages should recite that it is a purchase money mortgage. The following requirements will be observed in preparing FmHA mortgages:

(1) *Real estate mortgage forms.* FmHA mortgage forms will be used in all cases and other FmHA forms will be used whenever possible. Form FmHA 1927-1 (State), "Real Estate Mortgage or Deed of Trust For ———," will be used for all insured and direct loans except where Form FmHA 1927-7 (State), "Real Estate Deed of Trust for ———," is used for all rural housing loans. These forms will be prepared and distributed in accordance with state supplements. When a loan is made to a homestead entryman or to a contract purchaser of a farm unit from the Bureau of Reclamation, a rider to Form FmHA 1927-1 (State) will be used per state supplement.

(2) *Number of copies.* (i) The original recorded mortgage is to be retained in the borrower's case file unless the original mortgage is retained by the recorder, and a conformed copy will be provided to the borrower.

(ii) When the original is to be retained by the recorder, an original and two conformed copies will be prepared. One conformed copy will be retained in the borrower's case file and one conformed copy will be provided to the borrower.

(iii) Extra copies of mortgages may be needed in individual cases in some participation loans, loans on reclamation projects, when security is taken on trust or restricted property involving loans to Native American, and other similar situations.

(iv) The closing agent will distribute copies to appropriate parties at loan closing or as soon as possible thereafter.

(3) Persons required to execute mortgage. The mortgage will be executed by the borrower and all other persons having an interest in the real property being mortgaged whose execution is necessary for FmHA to have the required lien priority, (for example, a spouse's right of dower or curtesy) so that, in the event of default, the mortgage will be enforceable against all such interests. Persons signing the promissory note and the mortgage will use exactly the same names which appear on the title.

(i) When the applicant is a corporation or cooperative, the mortgage will be executed by the authorized officers on behalf of the corporation or cooperative. Authorization must be granted to the officers by either:

(A) The Articles of Incorporation and Bylaws, or

(B) A duly adopted resolution of the board of directors authorizing such execution and indicating which officers are authorized to execute the loan documents on behalf of the corporation/cooperative, unless applicable FmHA instruction or state law prohibits. The resolution must bear the certification of the corporate/cooperative secretary that it was duly adopted and not revoked and have the corporate seal affixed, if applicable, to be acceptable. When shareholder approval is necessary the resolution must recite that shareholder approval has been obtained.

(ii) When the applicant is a partnership, the mortgage must be executed by the partners required by the partnership agreement to execute loan documents on its behalf.

(iii) When the applicant is a trust, the requirements of the trust agreement and state law shall control as to who is authorized to execute the loan documents.

(4) *Date of execution.* The mortgage will be dated and executed on the same date as the promissory note. If necessary, the mortgage may be done on a different date provided it is not executed before the date of the note or after the date of closing.

(5) *Title exceptions.* The mortgage will specifically describe all exceptions it will be subject to, if customary under local practice or required by state law or state supplement. The exceptions will normally be shown as part of or immediately following the legal description of the land and must be the same as shown on the final title opinion or mortgagee policy of title insurance. In cases where specific description of each exception to title is not customary or required, these exceptions may be described by use of a general statement similar to the following (unless inconsistent with applicable State law): "Subject, however, to all outstanding covenants, conditions, restrictions, reservations, liens, encumbrances, easements, rights of way, leases, mineral, oil, gas and geothermal rights (with or without the right of surface entry), timber and water rights, judgments, pending court proceedings, probate proceedings and agreements which limit the title to the property."

(6) *Releasing or retaining existing mortgages in refinancing cases.* When there is an outstanding FmHA real estate mortgage against the property and the loan secured by the mortgage is being refinanced with the current loan, the mortgage for the outstanding loan will be superseded and will be released at the time of loan closing, unless it is necessary under state law to keep the existing mortgage in effect to retain a valid lien of the same priority for the obligation being refinanced.

(7) *Describing notes in mortgages.* In most cases only the note(s) for the new loan(s) needs to be described when a subsequent loan is made and a subsequent mortgage is taken. The note(s) for any unpaid loan(s) secured by real estate will not be described in the mortgage unless the approval official determines:

(i) It is necessary to do so to protect the government's interest,

(ii) The description of the unpaid prior secured note(s) in the mortgage being taken would not result in a higher title insurance premium for the new mortgage, or

(iii) State law requires that all original notes be presented when filing a security instrument. A State supplement should reflect this exception when applicable.

(8) *Determining due date of final installments.* The "Due Date of Final Installment," as shown in the mortgage, is determined by adding the number of years over which the loan is payable to the date of the promissory note: for example, if the note is dated March 30, 1987, and the final payment is due and payable 20 years from that date, the "Due Date of Final Installment" is March 30, 2007.

(9) *Alteration of mortgage form.* A mortgage form may be altered pursuant to a state supplement having prior approval of the National Office, or in a special case, to comply with the terms of loan approval prescribed in accordance with program instructions. No other alterations in the printed mortgage forms will be made without prior approval of the National Office. Any changes made by deletion, substitution, or addition (excluding filling in blanks) will be initialed in the margin by all persons signing the mortgage.

(10) *Special requirements imposed by program instructions.* Some program instructions require that the mortgage forms be modified. In such cases, either OGC or the approval official will modify the FmHA mortgage form as specified. The closing agent will make sure that the modification has been made prior to execution of the mortgage.

(11) *Mortgages on leasehold estates.* When the FmHA security interest is a leasehold estate, unless state law or state supplement otherwise provides, the Form FmHA 1927-1 (State) or Form FmHA 1927-7 (State) will be modified as follows:

(i) In the space provided on the mortgage for the description of the real property security, the leasehold estate and the land covered by the lease must be described. The following language must be used: "All of borrower's right, title and interest in and to a leasehold estate for an original term of ____ years, commencing on _____, 19____ created and established by and between _____ as lessor and owner and _____ as lessee, including any extensions and renewals thereof, a copy of which lease was recorded/filed in book ____, page ____, as instrument number _____, in the Office of the _____ (e.g., County Clerk), for the aforesaid county and state and covering the following real property: _____."

(ii) Immediately preceding the covenant starting with the words "should default," the following covenant will be added: "( ) Borrower covenants and agrees to pay, when due, all rents and any and all other charges required by said lease, to comply with all other requirements of said lease, and not to surrender or relinquish, without the government's prior written consent, any of borrower's right, title or interest in or to said leasehold estate or under said lease while this mortgage remains of record."

(12) *Mortgages on land purchase contract.* When the FmHA security interest is on a borrower's interest in a land purchase contract, OGC will provide language to be used to modify the Form FmHA 1927-1 (State) or Form FmHA 1927-7 (State).

(c) *Preparation of the promissory note.* The closing agent will make sure that the promissory note (or assumption agreement) is completed in accordance with the FMI and executed. The approval official will determine who is to execute the promissory note, including cosigners if necessary, in accordance with program instructions and provide the closing agent with the names of these individuals. If the applicant is a corporation, partnership, or trust, the approval official will provide the name(s) and title(s) of the individual(s) executing the promissory note on behalf of the entity. Any other signatures on the note (or assumption agreement) needed to insure the required security, as provided in state supplements, will be obtained. Persons having a disability of minority or mental incompetency, or persons who have not been legally admitted for residency in the U.S., its territories, or possessions, are not to execute the promissory note. The date shown on the note will be the date it is executed by the borrower which may not be later than the date of the mortgage.

(d) *Preparation of protective instruments.* The closing agent will properly prepare, complete, and/or approve releases and curative documents necessary for title clearance and closing, in recordable form and record them if required.

(1) *Prior lienholder's agreement.* If any liens (other than FmHA liens or tax liens to local governmental authorities) or security agreements (hereafter called "liens"), with priority over FmHA's mortgage will remain against the real property securing the loan(s), the lienholders must execute, in recordable form, agreements containing all of the following provisions:

(i) The prior lienholder shall agree not to declare the lien in default or accelerate the indebtedness secured by the prior lien for a specific period of time after notice to FmHA. The agreement must:

(A) Provide that the specified period of time will not commence until the lienholder gives written notice of the borrower's default and the prior lienholder's intention to accelerate the indebtedness to the FmHA office servicing the loan,

(B) Include the address of the FmHA servicing office,

(C) Give FmHA the option to cure any monetary default by paying the amount of the borrower's delinquent payments to the prior lienholder, or pay the obligation in full and have the lien assigned to FmHA, and

(D) Provide that the prior lienholder will not declare the lien in default for any nonmonetary reason if FmHA commences liquidation proceedings

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against the property and thereafter acquires the property.

(ii) When the prior lien secures future advances, including the lienholder's costs for borrower liquidation or bankruptcy, which under state law have priority over the mortgage being taken (or a FmHA mortgage already held), the prior lienholder shall agree not to make advances for purposes other than taxes, insurance or payments on other prior liens without written consent of the State Director.

(iii) The prior lienholder shall consent to FmHA making (or transferring) the loan and taking (or retaining) the related mortgage if the prior lien instrument prohibits a loan or mortgage (or transfer) without the prior lienholder's consent.

(iv) The prior lienholder shall consent to FmHA transferring the property subject to the prior lien after FmHA has obtained title to the property either by foreclosure or voluntary conveyance if the prior lien instrument prohibits such transfer without the prior lienholder's consent.

(2) *Notice of foreclosure agreements.* These agreements will be obtained only when required by a state supplement. As a precautionary measure, the state supplement will require notice agreements when OGC determines that state law permits junior liens of private parties to be extinguished by foreclosure of a prior lien without the junior lienholder being made parties or being given actual notice. The state supplement will specify the number of days within which notice of foreclosure is required by the agreement.

(3) *Leaseholds.* When the FmHA security interest is on a leasehold, the approval official must review the lease to make sure that it meets the security and duration requirements of the program instructions. If not, it will be necessary for the landlord and tenant to amend the lease to meet these requirements at closing.

(4) Agreement by holder of vendor's interest under land contract. If the buyer's interest in the security property is that of a buyer under a land contract, it will be necessary for the seller (vendor) to execute, in recordable form, an agreement containing all of the following provisions:

(i) The vendor shall agree not to sell or voluntarily transfer the vendor's interest under the land contract without the prior written consent of the FmHA State Director.

(ii) The vendor shall agree not to encumber or cause any liens to be levied against the property.

(iii) The vendor shall agree not to commence or take any action to accelerate, forfeit or foreclose the buyer's interest in the security property until a specified period of time after notifying the State Director of intent to do so. This period of time will be ninety (90) days unless a state supplement otherwise provides. The agreement shall give FmHA the option to cure any monetary default by paying the amount of the buyer's delinquent payments to the vendor, or paying the vendor in full and having the contract assigned to FmHA.

(iv) The vendor shall consent to FmHA making the loan and taking a security interest in the borrower's interest under the land contract as security for the FmHA loan.

(v) The vendor shall agree not to take any actions to foreclose or forfeit the interest of the buyer under the land contract because FmHA has acquired the buyer's interest under the land contract by foreclosure or voluntary conveyance or because FmHA has subsequently sold or assigned the buyer's interest to a third party who will assume the buyer's obligations under the land contract.

(vi) When FmHA acquires a buyer's interest under a land contract by voluntary conveyance or foreclosure, FmHA will not be deemed to have assumed any of the buyer's obligations under the contract, provided that the failure of FmHA to perform any such obligations while it holds the buyer's interest is a ground to commence an action to terminate the land contract.

(5) *Form of agreement.* The form of prior lienholder's agreement, forbearance agreement, notice of foreclosure or assignment, and agreement by holder of vendor's interest under land contract will be prescribed in a state supplement with the concurrence of OGC. When only forbearance agreements are needed, they will be obtained on Form FmHA 1927–8, "Agreement with Prior Lienholder," or, if that form is not legally satisfactory, on a state form having the same title. When only notice of foreclosure or assignment are required, a separate form for this purpose will be used. When both forbearance agreements and notices of foreclosure or assignment are required, Form FmHA 1927–8 may be amended in order to serve both purposes, a substitute state form may be used for both purposes, or Form FmHA 1927–8 may be used and the notice agreement obtained on a separate state form.

(6) Executing, acknowledging, and recording. When an agreement is required by paragraphs (d)(1), (d)(2), (d)(3), or (d)(4) of this section, the closing agent will determine at the time of closing that the agreement is properly completed, executed, sealed, witnessed, acknowledged, and recorded as required by state law or state supplement.

(e) *Correction of errors in recorded security instruments.* A state supplement, subject to OGC's review and approval, will be issued to provide guidance in correcting error(s) in recorded security instruments.

§ 1927.58 Closing the transaction.

The closing agent will cooperate with the approval official, the borrower and the seller, and other necessary parties to arrange the time and place of closing. The closing agent will make sure that FmHA obtains a valid mortgage lien on the property of the priority required by FmHA, subject only to any defects and exceptions approved by the approval official or State Director.

(a) *Disbursement of loan funds.* When the closing agent indicates that the conditions necessary to close the loan have been met, loan funds will be forwarded to the closing agent. Loan funds will not be disbursed prior to filing of the mortgage for record; however, when necessary, loan funds may be placed in escrow before the mortgage is filed for record and disbursed after it is filed. No development funds will be kept in escrow by the closing agent after loan closing. Loan funds for the payment of a lien may be disbursed only upon receipt of a discharge, satisfaction, or release (or assignment where necessary to protect the interests of FmHA).

(b) *Title examination and liens or claims against borrowers.* The closing agent will examine the title for liens against the property and claims against the borrower from the terminal date of the preliminary title examination up to and including the time of recording the current mortgage. If there are no entries of record during the period, except the documents required in connection with title clearance and any partial release(s) or subordination(s) previously approved by FmHA, the transaction may be closed. If there are other entries of record during this period, the transaction will not be closed until these entries have been cleared of record or administratively approved. The closing agent will advise the approval official of the nature of such intervening instruments and the effect they may have on obtaining a valid mortgage of the priority required or the title insurance policy to be issued.

(c) *Taxes and assessments.* The closing agent will determine if all taxes and assessments against the property which are due and payable are paid at or before the time of loan closing. If the seller and the borrower have agreed to prorate any taxes or assessment which are not yet due and payable for the year in which the closing of the transaction takes place, the seller's proportionate share of the taxes and assessments will be deducted from the proceeds to be paid to seller at closing and will be credited to the amount required to be paid by borrower at closing. Certificates or receipts should be produced from the taxing authorities to show that taxes or assessments which are due and payable have been paid and, if possible, the certificates or receipts, or copies, will be kept in the borrower's County Office or District Office case file. Appropriate prorations as agreed upon between the borrower and seller may also be made for taxes paid by the seller which are applicable to a period after the closing date, common area maintenance fees, prepaid rentals, insurance (unless the borrower is to obtain a new policy of insurance) and growing crops.

(d) *Affidavit regarding work of improvement*—(1) *Execution by borrower.* The closing agent will require that a Form FmHA 1927–5, "Affidavit Regarding Work of Improvement," be completed and executed (including acknowledgment) when a loan is being made to a borrower who already owns the real estate to be mortgaged. This affidavit will be executed by the borrower at closing.

(2) *Execution by seller.* The closing agent will require that Form FmHA 1927–5 be completed and executed (including acknowledgment) by the seller when the FmHA is making a loan to a borrower to enable the borrower to acquire the property (including transfers). This affidavit will be executed by the seller at closing.

(3) *Legal insufficiency of affidavit form.* If Form FmHA 1927–5 is not legally sufficient in a particular state, a state form approved by OGC will be used.

(4) *Recording.* The affidavit will not be recorded unless the closing agent deems it necessary and state law permits.

(5) *Delay in closing.* The loan will not be closed if, at the loan closing, the seller (in a sale transaction) or the borrower (in a nonpurchase money loan situation) indicates that construction, repair or remodeling has been commenced or completed on the property, or related materials or services have been delivered to or performed on the property within the time limit specified in the affidavit, unless a state supplement otherwise provides. The closing agent will notify the approval official, who will determine if the work of improvement will result in a lien prior to the FmHA lien. The State Director will, with the advice and concurrence of OGC, provide in a state supplement the period of time to be used in completing the affidavit.

(e) *Completion of closing documents.* The closing agent will determine that deeds, promissory notes, mortgages, releases, and other curative instruments are completed in accordance with the FMI (sealed and witnessed if required by state law) and, if necessary, acknowledged and filed for record at the proper time.

(f) *Assignment of future income.* If Form FmHA 443–16, "Assignment of Income from Real Estate Security," is required in a particular case, the approval official will prepare the form and have it available for execution by the borrower when the transaction closes. The closing agent will see that the form is properly completed, executed (sealed and witnessed if required by state law), and acknowledged by the borrower.

(g) *Return of loan documents to approval official after loan closing.* Within 15 days after loan closing, the closing agent will return completed and executed copies of Form FmHA 1927–17, "Loan Closing Statement," the promissory note, all other documents required for loan closing (except the mortgage), and the final title opinion or policy of title insurance to the approval official. If the recorded mortgage is customarily returned to the borrower or closing agent after recording, then it must be forwarded to the approval official immediately.

(h) *Final opinion or mortgage title policy.* As soon as possible after the transaction has been closed:

(1) *Final opinion.* The attorney will issue a final opinion to FmHA and the borrower on Form FmHA 1927–10, "Final Title Opinion." If that form is not legally sufficient in a particular state, a state form approved by OGC may be used. Issuance of the final opinion should not be held up pending the return of recorded instruments. If it is not possible for the final title opinion to show the book and page of recordation of the FmHA security instrument, the words "and is recorded" in paragraph II B of Form FmHA 1927–10 may be deleted and the following blank space completed to show the filing office and the filing instrument number if available. Attached to the final opinion will be required documents then available, including any which the approval official has furnished to the attorney which were not previously returned. The attorney will ensure that all recorded instruments are forwarded or delivered, to the proper parties after recording. The certification of title will be forwarded for a voluntary conveyance.

(2) *Mortgagee title policy.* The closing agent will send or deliver the mortgagee title policy, with the United States listed as mortgage holder, to the approval official. The policy will be subject only to standard exceptions and those outstanding encumbrances, exceptions, reservations, and other defects approved by the approval official. If an owner's policy of title insurance is requested, the closing agent will send or deliver it to the borrower. The closing agent will ensure that all recorded instruments are delivered or sent to the proper parties after recording.

(3) *Responsibilities of the approval official.* The approval official will check the final title opinion or mortgagee title policy to make sure that the lien priority required in the loan approval has been obtained. Forms FmHA 1927–15 and FmHA 1927–17 will be checked to see that funds were disbursed as authorized. If these conditions have not been met, the approval official will report it to the State Director for advice.

(i) *Other services of the closing agent.* (1) The closing agent will assist the approval official in preparing, completing, obtaining execution, acknowledgment, and recording the required documents when necessary. Standard FmHA forms will be used whenever possible. The closing agent will keep the approval official advised as to the progress of title clearance and preparation of material for closing the transaction.

(2) The closing agent will provide services for voluntary conveyances as set forth in § 1927.62 of this subpart, and § 1955.10 of subpart A of part 1955 of this chapter.

§ 1927.59 Subsequent loans and/or transfers with assumptions.

Title services and closing for subsequent loans to an existing borrower will be done in accordance with previous instructions in this subpart, except that:

(a) *Loans closed using title insurance.* (1) Title insurance will only be obtained when:

(i) Additional land is being acquired,

(ii) An initial loan is being refinanced with a subsequent loan, or

(iii) An additional loan is being made where the prior secured loan was not subject to title clearance (e.g. where the prior loan was secured by the best mortgage obtainable).

(2) When a new mortgage title policy is required:

(i) It will cover the entire real property which is to secure the loan, including the

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real property already owned and any additional real property being acquired by the borrower with the loan proceeds.

(ii) Title insurance coverage will be obtained for the entire amount of any subsequent loan plus the amount of any existing loan being refinanced. If the existing loan is not being refinanced, the new mortgage policy will insure only the amount of the subsequent loan.

(b) *Loans closed using title opinions.* Unless the approval official is aware of problems with or discrepancies in the original title opinion, the title will be researched back to the date of the last FmHA mortgage except when the conditions of § 1927.59 (a)(1)(i), (ii), or (iii) exist, or the closing agent determines that a more extensive search is necessary. In these cases the title will be examined in accordance with § 1927.55 of this subpart.

(c) *Title services required in connection with assumptions.* This is set forth in subparts A, B, and C of part 1965 of this chapter as appropriate for the loan type.

§§ 1927.60–1927.61 [Reserved]

§ 1927.62 Voluntary conveyances.

When a borrower offers to convey security, the approval official will process and close the transaction according to § 1955.10 of subpart A of part 1955 of this chapter. The closing agent will issue a certification of title stating that title is vested in the United States of America subject only to FmHA liens or prior liens previously approved by FmHA under § 1955.10 of subpart A of part 1955 of this chapter.

§§ 1927.63–1927.64 [Reserved]

§ 1927.65 Additional requirements in connection with loans to homestead entrymen, contract purchasers of farm units from the Bureau of Reclamation, and certain American Indians.

Whenever loans or assumptions are subject to agreements with other agencies (e.g. loans to or assumptions by homestead entrymen, American Indians, or contract purchasers from the Bureau of Reclamation) the title clearance and closing of the transaction will be handled in accordance with special instructions issued by FmHA and/or other parties involved applicable to the type of transaction, as well as those of this subpart. The special instructions may be in form of a Memorandum of Understanding with the advice and approval of OGC.

§ 1927.66 Cancellation of loan, assumption, or credit sale.

If it is determined that the transaction will not be closed, the approval official will promptly notify the borrower and the following parties who are involved in the case at the time the determination is made: The seller, attorney(s), OGC, and the title company.

§§ 1927.67–1927.89 [Reserved]

§ 1927.90 State supplements.

The state supplement issued pursuant to this subpart will have prior National Office approval and will be the minimum necessary to comply with state laws.

§ 1927.91 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement provision of this subpart which is not inconsistent with applicable law or opinion of the Comptroller General. The Administrator may exercise this authority upon written request from the State Director or an Assistant Administrator provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Request for exception must be supported with documentation to explain adverse effect on the Governor's interest, proposed alternative courses of actions, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§§ 1927.92–1927.99 [Reserved]

§ 1927.100 OMB control number.

The reporting requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0147. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 1.5 hours per response, with an average of .38 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575–0147), Washington, DC 20503.

PART—1941 OPERATING LOANS

15. The authority citation for part 1941 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23 7 CFR 2.70.

Subpart A—Operating Loan Policies, Procedures, and Authorizations

§ 1914.19 [Amended]

15a. In § 1941.19, paragraphs (b) is amended by changing the reference "Form FmHA 427–1" to read "Form FmHA 1927–1."

Exhibit A of Subpart A [Amended]

15b. Exhibit A of subpart A part 1941 is amended under the "Form No." columns, by changing "427–8" to read "1927–8"; by changing "427–9" to read "1927–9"; and by removing the line that begins with "427–5".

Subpart B—Closing Loans Secured by Chattels

16. Section 1941.84 is amended by revising paragraphs (c) and (f) to read as follows:

§ 1941.84 Title clearance and closing requirements.

* * * * *

(c) When real estate is taken as security, title clearance and loan closing requirements will be carried out in accordance with subpart B of part 1927 of this chapter.

* * * * *

(f) Each real estate lien will be taken on Form FmHA 1927–1 (state), "Real Estate Mortgage for _____," unless a State supplement requires the use of another Form.

* * * * *

PART 1942—ASSOCIATIONS

16A. The authority citation for part 1942 continues to read as follow:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Community Facility Loans

§ 1942.17 [Amended]

16b. § 1942.17(j)(4)(i)(B) is amended in the introductory text by changing the reference "Form FmHA 427–9" to read "Form FmHA 1927–9"; and by changing the reference "Form FmHA 427–10" to read "Form FmHA 1927–10".

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

17. The authority citation for part 1943 continues to read:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations.

§ 1943.19 [Amended]

18. In § 1943.19, the second sentence of paragraph (b)(3)(ii), paragraph (b)(4), and the first sentence of the introductory text of paragraph (b)(5) are revised to read as follows:

§ 1943.19 Security.

* * * * *

(b) * * *

(3) * * *

(ii) * * * Any agreements needed will be obtained as provided in subpart B of part 1927 of this chapter.

(4) The approved closing agent or the OGC will furnish advice on obtaining security when a life estate is involved.

(5) Any loan of $10,000 or less may be secured by the best lien obtainable without title clearance or legal service as required in subpart B of part 1927 of this chapter provided the County Supervisor believes from a search of the County records that the applicant can give a mortgage on the farm. * * *

* * * * *

§ 1943.32 [Amended]

19. In § 1943.32, paragraph (a) is amended in the column titled "FmHA Form No." by changing "427–8" to read "1927–8".

20. Section 1943.34(a) is revised to read as follows:

§ 1943.34 Requesting title service and accepting option.

* * * * *

(a) The County Supervisor will request the applicant to obtain title clearance as provided in subpart B of part 1927 of this chapter, when required, if this has not been done.

* * * * *

21. In § 1943.35, paragraph (c)(2) is revised to read as follows:

§ 1943.35 Action after loan approval.

* * * * *

(c) * * *

(2) Interested parties will be notified of the cancellation as provided in subpart B of part 1927 of this chapter.

* * * * *

22. In § 1943.38, paragraph (a) is revised to read as follows:

§ 1943.38 Loan closing actions.

* * * * *

(a) *Real estate mortgage loans.* When a loan is to be secured by a real estate mortgage, it will be closed in accordance with the applicable provisions of subpart B of part 1927 of this chapter except as modified for loans of $10,000 or less in § 1943.19(b)(4).

* * * * *

§ 1943.38 [Amended]

22a. In § 1943.38, paragraph (f)(3) is amended by changing the reference "Form FmHA 405–1" to read "Form FmHA 1905–1".

Exhibit A of Subpart A [Amended]

23. In Exhibit A of subpart A, paragraph II D 1 is amended in the first sentence by changing "Form FmHA 427–1" to read "Form FmHA 1927–1."

Subpart B—Insured Soil and Water Loan Policies, Procedures, and Authorizations

24. In § 1943.69, the second sentence of paragraph (b)(3)(ii), paragraph (b)(4) and the first sentence of the introductory text of paragraph (b)(5) are revised to read as follows:

§ 1943.69 Security.

* * * * *

(b) * * *

(3) * * *

(ii) * * * Any agreements needed will be obtained as provided in subpart B of part 1927 of this chapter.

(4) The approved closing agent or OGC will furnish advice on obtaining security when a life estate is involved.

(5) Any loan of $10.000 or less may be secured by the best lien obtainable without title clearance or legal services as required in subpart B of part 1927 of this chapter, provided the County Supervisor believes from a search of the county records that the applicant can give mortgage on the farm.* * *

* * * * *

25. Section 1943.84 is amended by revising the first sentence to read as follows:

§ 1943.84 Requesting title service.

When the loan is approved and real estate will serve as security, the County Supervisor will request the applicant to obtain title clearance as provided in subpart B of part 1927 of this chapter, when required if this has not been done. * * *

26. In § 1943.85, paragraph (c)(2) is revised to read as follows:

§ 1943.85 Action after loan approval.

* * * * *

(c) * * *

(2) Interested parties will be notified of the cancellation as provided in subpart B of part 1927 of this chapter.

* * * * *

27. In § 1943.88, paragraph (a) is revised to read as follows:

§ 1943.88 Loan closing actions.

* * * * *

(a) *Real estate mortgage loans.* When a loan is to be secured by a real estate mortgage, it will be closed in accordance with the applicable provisions of subpart B of part 1927 of this chapter except as modified for loans of $10,000 or less in paragraph 1943.69(b)(5).

* * * * *

PART 1944—HOUSING

28. The authority citation for part 1944 is revised to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

29. In § 1944.18, paragraphs (a)(3), (b)(4), and (b)(11) are revised to read as follows:

§ 1944.18 Security requirements.

(a) * * *

(3) The provisions of subpart B of part 1927 of this chapter regarding title clearance and the use of legal services are complied with.

(b) * * *

(4) *Best mortgage obtainable.* Loans of $7,500 or less scheduled for repayment in not more than 15 years from the date of the note must be secured by a mortgage, except as provided in paragraph (b)(1) of this section, but title clearance and the use of legal services in accordance with subpart B of part 1927 of this chapter are not required. The best mortgage obtainable without use of these procedures will be sufficient unless the loan approval official determines that the procedures in subpart B of part 1927 of this chapter are necessary to assure repayment or accomplish the objective of the loan. Evidence of ownership must comply with § 1944.24 (d)(2).

* * * * *

(11) *Land purchase contract.* When the ownership interest is by virtue of a land purchase contract, a prior lienholder's agreement must be obtained as required by subpart B of part 1927 of this chapter.

* * * * *

30. In § 1944.24, the first sentence of paragraph (d)(1) and the fourth sentence of paragraph (d)(2) are revised to read as follows:

§ 1944.24 Technical services.

* * * * *

(d) * * *

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(1) When real estate will be taken as security except on a best mortgage obtainable basis (including a mortgage on a leasehold), title clearance and legal services for making and closing the loan will be provided in accordance with subpart B of part 1927 of this chapter.

* * *

(2) * * * Proof of ownership need not be as much as that required by Subpart B of Part 1927 of this chapter. * * *

31. In § 1944.30, paragraph (a) is amended in the column titled "Form No." by changing "FmHA 427–8" to read "FmHA 1927–8" and by revising the line beginning with the words "FmHA 427–9" to read as follows:

§ 1944.30 Preparation of loan docket.

(a) * * *

Form No.	Name of form	Total No. of copies	No. signed by borrower	Loan docket	Copy for borrower
FmHA 1927–9	Preliminary Title Opinion	2		1–0	1–C (approved attorney).

32. In § 1944.30, paragraph (b)(5) is revised to read as follows:

§ 1944.30 Preparation of loan docket.

* * * * *

(b) * * *

(5) Agreements from prior lienholders, if any, when necessary to comply with § 1944.18(b)(6) and subpart B of part 1927 of this chapter.

* * * * *

§ 1944.31 [Amended]

33. Section 1944.31(d)(1) is amended by changing the phrase "part 1807 of this chapter (FmHA Instruction 427.1)" to read "subpart B of part 1927 of this chapter."

§ 1944.32 [Amended]

34. Section 1944.32(c) is amended by changing the phrase "part 1807 of this chapter (FmHA Instruction 427.1)" to read "subpart B of part 1927 of this chapter."

35. In § 1944.33, introductory text of paragraph (c) and the first sentence of paragraph (d) are revised to read as follows:

§ 1944.33 Loan closing.

* * * * *

(c) *Promissory note.* Form FmHA 440–16, "Promissory Note," will be prepared and signed in accordance with subpart B of part 1927 of this chapter, and the FMI for the Form.

* * * * *

(d) *Real estate mortgage.* Form FmHA 1927–1, "Real Estate Mortgage for (state)," will be used for loans to be secured by a real estate mortgage. * * *

* * * * *

36. In § 1944.37, paragraph (c) is revised to read as follows:

§ 1944.37 Subsequent Section 502 loans.

* * * * *

(c) When a real estate mortgage is required in connection with a subsequent RH loan, outstanding RH notes will not be described in the mortgage unless required in accordance with subpart B of part 1927 of this chapter.

* * * * *

37. Section 1944.38 is amended in the third sentence by changing the reference "Form AD 625, 'Application for Federal Assistance (Short Form),'" to read "Form SF 424.1, 'Application for Federal Assistance (For Non-construction),'" and by removing the fifth and sixth sentences.

38. In § 1944.46, the second sentence of paragraph (d), and paragraph (i) are revised to read as follows:

§ 1944.46 Construction financing for builders by private credit sources.

* * * * *

(d) * * * Applicants who own the building site will be required to obtain and submit to the County Supervisor preliminary title evidence in accordance with subpart B of part 1927 of this chapter. * * *

* * * * *

(i) When construction is completed, the loan will be closed in accordance with subpart B of part 1927 of this chapter, usually within 10 days after satisfactory completion of construction.

* * * * *

38a. Subpart A of part 1944 is amended by removing Exhibits E, E–1 and E–2.

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

39. In § 1944.168, paragraph (b)(1) and the first sentence of the introductory text of paragraph (c) are revised to read as follows:

§ 1944.168 Security requirements.

* * * * *

(b) * * *

(1) A loan to an organization or association of farmers which can give a real estate mortgage will be secured by a mortgage on good and marketable title to the real estate including the housing, the related facilities, and the site, subject to any exceptions that may be waived as provided in subpart B of part 1927 of this chapter.

* * * * *

(c) *Loan to an individual farmowner or family farm corporation or partnership.* For every loan to an individual farm owner or family farm corporation or partnership, a real estate mortgage will be taken on the farm, whenever practicable, in accordance with subpart B of part 1927 of this chapter. * * *

* * * * *

§ 1944.169 [Amended]

40. Section 1944.169(f) is amended by changing the phrase "Part 1807 of this chapter (FmHA Instruction 427.1)" to read "subpart B of part 1927 of this chapter."

41. In § 1944.175, paragraph (e)(3) is revised to read as follows:

§ 1944.175 Actions subsequent to loan and/or grant approval.

* * * * *

(e) * * *

(3) All interested parties will be notified of cancellation as provided in subpart B of part 1927 of this chapter.

* * * * *

42. In § 1944.176, the first sentence of paragraph (a), the introductory text of paragraph (c) and paragraphs (d)(2) and (d)(5) are revised to read as follows:

§ 1944.176 Loan and/or grant closing.

(a) *Applicable instructions.* LH loans and/or grants will be closed in accordance with applicable provisions of subpart B of part 1927 of this chapter and State supplements. * * *

* * * * *

(c) *Mortgage.* Unless the OGC determines the Form to be inappropriate, real estate mortgage Form FmHA 1927–1 (state), "Real Estate Mortgage for _____," will be used. For loans and/or grants to organizations, Form FmHA 1927–1 will be modified as prescribed by or with the advice of the OGC with respect to the name, address, and other identification of the borrower, style of execution, acknowledgement, and any other provisions.

* * * * *

(d) * * *

(2) The note will be dated the date of loan closing as authorized in subpart B of part 1927 of this chapter.

* * * * *

(5) The promissory note(s) will be signed in accordance with subpart B of part 1927 of this chapter and any supplemental instructions from OGC.

* * * * *

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

43. In § 1944.235, paragraphs (a)(2), and the first sentence of paragraph (f)(2) are revised to read as follows:

§ 1944.235 Actions subsequent to loan approval.

(a) * * *

(2) FmHA will obtain closing instructions from OGC in accordance with the requirements of subpart B of part 1927 of this chapter and § 1944.236(a) and § 1944.236(b)(4) of this subpart.

* * * * *

(f) * * *

(2) *Notification.* Notify all interested parties of cancellation as provided in subpart B of part 1927 of this chapter.

* * * * *

44. Section 1944.236, the first sentence of paragraph (a), the introductory text of paragraph (b), the second sentence of paragraph (c)(2) and paragraph (c)(4) are revised to read as follows:

§ 1944.236 Loan closing.

(a) *Applicable regulations.* RRH loans will be closed in accordance with subpart B of part 1927 of this chapter and any State supplements. * * *

(b) *Mortgage.* Unless OGC determines the Form to be inappropriate, Form FmHA 1927–1 (state), "Real Estate Mortgage for _____," will be used. For loans to organizations, Form FmHA 1927–1 will be modified as prescribed by or with the advice of OGC with respect to the name, address, and other identification of the borrower, the style of execution and the acknowledgement.

* * *

* * * * *

(c) * * *

(2) * * * The note will be dated the date of loan closing except as authorized in subpart B of part 1927 of this chapter. * * *

* * * * *

(4) The note(s) will be signed in accordance with the FMI and subpart B of part 1927 of this chapter.

* * * * *

Subpart J—Section 504 Rural Housing Loans and Grants

45. In § 1944.463, the first sentence of paragraph (e)(1) and paragraph (e)(2) are revised to read as follows:

§ 1944.463 Technical services.

* * * * *

(e) * * *

(1) Total FmHA indebtedness of $7,500 or less, secured with a real estate mortgage, need not meet the title requirements of subpart B of part 1927 of this chapter. * * *

(2) Total FmHA indebtedness of more than $7,500, secured with a real estate mortgage, title clearance and legal services for making and closing the loan will be provided in accordance with subpart B of part 1927 of this chapter.

46. In § 1944.469, paragraph (b) and the first sentence of paragraph (d) are revised to read as follows:

§ 1944.469 Loan closing or grant settlement.

* * * * *

(b) *Promissory note.* Form FmHA 1940–16, "Promissory Note," will be used for each loan made under this subpart. The note will be prepared and signed according to subpart B of part 1927 of this chapter, including co-signers when appropriate. Each promissory note will be prepared for monthly payment.

* * * * *

(d) *Mortgage.* Form FmHA 1927–1, "Real Estate Mortgage for (state)," will be used for each loan to be secured by a real estate mortgage. * * *

* * * * *

PART 1945—EMERGENCY

47. The authority citation for part 1945 is revised to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Economic Emergency Loans

48. In § 1945.129, paragraphs (b)(1), (b)(2)(i)(A), the introductory text of paragraphs (b)(2)(ii), and the first sentence of paragraph (b)(2)(v) are revised to read as follows:

§ 1945.129 Approval and closing.

* * * * *

(b) * * *

(1) Loans secured by real estate are considered closed on the date the mortgage is filed for record. Such loans will be closed in accordance with the applicable provisions of subpart B of part 1927 of this chapter.

(2) * * *

(i) * * *

(A) FmHA real estate mortgage or deed of trust Form FmHA 1927–1 (state), "Real Estate Mortgage for _____," will be used in all cases.

* * * * *

(ii) *Leaseholds.* Security instruments for loans received by leaseholders will describe the security in accordance with subpart B of part 1927 of this chapter, and the following provisions will also apply:

* * * * *

(v) *Requesting title service.* When the loan is approved, the County Supervisor will see that the title service is requested in accordance with subpart B of part 1927 of the chapter, if this has not already been done. * * *

* * * * *

Subpart D—Emergency Loan Policies, Procedures and Authorizations

49. In § 1945.169, the introductory text of paragraph (j)(4) is revised as follows:

§ 1945.169 Security requirements.

* * * * *

(j) * * *

(4) If the conditions set out in paragraphs (j)(1), (2), and (3) of this section exist and an EM loan is approved, it can be closed provided the FmHA escrow agent or approved attorney certifies on Form 1927–10, "Final Title Opinion," or in separate writing that:

* * * * *

50. In § 1945.189, paragraphs (a)(1), (a)(2)(i), the introductory text of paragraph (a)(3), and paragraph (a)(6) are revised to read as follows:

§ 1945.189 Loan closing.

(a) * * *

(1) *General.* Loans secured by real estate are considered closed on the date the mortgage is filed for record. Such loans will be closed in accordance with the applicable provisions of subpart B of part 1927 of this chapter.

(2) * * *

(i) FmHA real estate mortgage or deed of trust Firm FmHA 1927–1 (state), "Real Estate Mortgage for _____," will be used in all cases where real estate is taken as security.

* * * * *

(3) *Leaseholds.* Security instruments for loans secured by leaseholds will describe security in accordance with subpart B of part 1927 of this chapter,

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and the following provisions will also apply:

* * * * *

(6) *Requesting title service.* When the loan is approved, the County Supervisor will see that title service is requested in accordance with subpart B of part 1927 of this chapter, if this has not already been done.

* * * * *

PART 1951—SERVICING AND COLLECTIONS

51. The authority citation for part 1951 is revised to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart S—Farmer Programs Account Servicing Policies

§ 1951.911 [Amended]

52. Section 1951.911 (a) (7) (i) is amended by changing the phrase "7 FR part 1807 (FmHA instruction 427.1)" to read "subpart B of part 1927 of this chapter."

PART 1955—PROPERTY MANAGEMENT

53. The authority citation for part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real Chattel Property

54. Section 1955.3 is amended by revising the definition of "Closing agent" to read as follows:

§ 1955.3 Definitions.

* * * * *

Closing agent. An attorney or title insurance company which is approved as a loan closing agent in accordance with subpart B of part 1927 of this chapter.

* * * * *

Subpart C—Disposal of Inventory Property

55. Section 1955.103 is amended by revising the definition of "Closing agent" to read as follows:

§ 1955.103 Definitions.

* * * * *

Closing agent. An attorney or title insurance company which is approved as a loan closing agent in accordance with subpart B of part 1927 of this chapter.

* * * * *

PART 1965—REAL PROPERTY

56. The authority citation for part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases

57. In § 1965.12, the second sentence of paragraph (c) is revised to read as follows:

§ 1965.12 Subordination of FmHA mortgage to permit refinancing, extension, increase in amount of existing prior lien, to permit a new prior lien, or to permit reamortization.

* * * * *

(c) *Request for subordination.* * * * If an agreement to give notice of foreclosure is required for approval of an initial FmHA loan, an agreement with the new prior lienholder will be obtained as required in subpart B of part 1927 of this chapter. * * *

* * * * *

58. In § 1965.27, the seventh sentence of paragraph (b)(13) and the first sentence of paragraph (g)(8) are revised to read as follows:

§ 1965.27 Transfer of real estate security.

* * * * *

(b) * * *

(13) * * * Prior lienholder's agreements will be obtained in accordance with subpart B of part 1927 of this chapter. * * *

* * * * *

(g) * * *

(8) *Title clearance and legal services.* Title clearance and legal services for closing transfers will be accomplished in accordance with subpart B of part 1927 of this chapter. * * *

* * * * *

59. In § 1965.31, the first sentence of paragraph (c) is revised to read as follows:

§ 1965.31 Taking liens or real estate as additional security in servicing FmHA loans.

* * * * *

(c) *Forms.* Each real estate lien taken as additional security for the FmHA loans will be taken on Form FmHA 1927-1 (state), "Real Estate Mortgage for _____" unless a State supplement requires the use of a form of mortgage comparable to that which secures the existing loan(s) to be additionally secured. * * *

Subpart B—Security Servicing for Multiple Housing Loans

60. In § 1965.65, paragraph (g)(1) is revised to read as follows:

§ 1965.65 Transfer of real estate security and assumption of loans.

* * * * *

(g) * * *

(1) Title clearance and legal services, including OGC closing instructions, will be obtained according to subpart B of part 1927 of this chapter.

* * * * *

61. In § 1965.77, paragraph (c)(7)(vii) is revised to read as follows:

§ 1965.77 Consent to sale or other disposition of security property.

* * * * *

(c) * * *

(7) * * *

(vii) To purchase or acquire property to be used for purposes for which a loan of the same type involved is authorized, if the FmHA debt will be as well secured after the transaction as before. FmHA will obtain a lien on the acquired property, and will obtain title evidence according to subpart B of part 1927 of this chapter.

* * * * *

62. In § 1965.79, the first sentence of paragraph (b)(16) is revised to read as follows:

§ 1965.79 Subordination.

* * * * *

(b) * * *

(16) An agreement to provide notice of foreclosure must be obtained from any new prior lienholder as required in subpart B of part 1927 of this chapter.

* * *

63. In § 1965.126, paragraph (e)(3) is revised to read as follows:

§ 1965.126 Transfer of property with assumption of indebtedness.

* * * * *

(e) * * *

(3) *Title clearance and loan closing.* Title clearance and closing of the assumption (and subsequent loan, if any) will be done in accordance with subpart B of part 1927 of this chapter and subpart A of part 1944 of this chapter for a Section 502 loan, or subpart J of part 1944 of this chapter for a Section 504 loan.

* * * * *

Dated: September 25, 1991.

LaVerne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91-31236 Filed 12-30-91; 8:45 am]

BILLING CODE 3410-07-M

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 87-025E]

RIN 0583-AA69

Net Weight Labeling of Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule; delay of effective date.

SUMMARY: On November 30, 1990, the Food Safety and Inspection Service (FSIS) published a final rule, effective January 2, 1992, that amended the Federal meat and poultry products inspection regulations to provide uniform net weight labeling requirements for meat and poultry products. The Agency has determined that the provisions in the rule which require scales to be tested and inspected prior to use in accordance with National Institute of Science and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," will not become effective until March 2, 1992. Additionally, the provisions requiring scales to be installed, maintained and operated to ensure accurate weights in accordance with applicable requirements contained in Handbook 44, and requiring such scales to be tested for accuracy, in accordance with NIST Handbook 44, once a year thereafter, will not become effective until March 2, 1992. All other provisions of the final rule will become effective January 2, 1992.

EFFECTIVE DATE: Sections 317.20 (a) and (c), 317.21, 381.121c (a) and (c), and 381.121d will not be effective until March 2, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Smith, Director, Processed Products Inspection Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Area Code (202) 720-3840.

SUPPLEMENTARY INFORMATION: FSIS's net weight labeling of meat and poultry products final rule (FR 49826) is effective January 2, 1992. The rule establishes objective, numerical variations from labeled net weight which are to be determined by prescribed procedures adopted by way of incorporation by reference of the Third Edition of the National Bureau of Standards (NBS) Handbook 133. This will permit Federal, State, and local agencies to enhance the industry-wide use of strict net weight standards at the packing, warehouse and retail level, and will establish greater uniformity with regulations of net weight compliance used by the Food and Drug Administration for other types of foods.

Sections 317.20(c) and 381.121c(c) of the meat and poultry products inspection regulations prohibit the use of any scale at federally inspected establishments unless the scale has been found upon test and inspection, as specified in NIST Handbook 44, to provide accurate weight. Additionally, before a scale may be used to weigh meat and poultry products, §§ 317.20(a) and 381.121c(a) require that scales be installed, maintained and operated to ensure accurate weights, and that such scales meet the applicable requirements contained in NIST Handbook 44.

Sections 317.21 and 381.121d require that official establishments have the scales tested and certified for accuracy, in accordance with NIST Handbook 44, once a year, by a State or local government weights and measures authority, or by a State registered or licensed scale repair firm or person, or have an FSIS approved net weight program under a quality control program.

FSIS has determined that more time is needed to coordinate the actions that must be undertaken by State or local government authorities, official establishments, and FSIS to assure compliance with §§ 317.20 (a) and (c), 317.21 or 381.121c (a) and (c), and 317.21 or 381.121d. Consequently, the Agency has decided to delay the effective date for the above listed provisions from January 2, 1992, to March 2, 1992. Therefore, §§ 317.20 (a) and (c), 317.21, 381.121c (a) and (c), and 381.121d of the meat and poultry products inspection regulations will not be effective until March 2, 1992. All other provisions of the final rule will be effective January 2, 1992.

Done at Washington, DC, on December 26, 1991.

Marvin A. Norcross,

Acting Administrator, Food Safety & Inspection Service.

[FR Doc. 91-31229 Filed 12-30-91; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 26707; Amdt. No. 1469]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591, or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards

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Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on December 6, 1991.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulation (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, I.S/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective March 5, 1992*

McGrath, AK—McGrath, VOR-A, Amdt. 7
McGrath, AK—McGrath, VORTAC RWY 16, Amdt. 5, CANCELLED
McGrath, AK—McGrath, VOR/DME or TACAN RWY 16, Orig.
McGrath, AK—McGrath, LOC/DME RWY 16, Amdt. 2
McGrath, AK—McGrath, NDB-B, Amdt. 1
San Diego (El Cajon), CA—Gillespie Field, LOC-D, Amdt. 8
Pueblo, CO—Pueblo Memorial, VOR or TACAN RWY 26R, Amdt. 27
Pueblo, CO—Pueblo Memorial, NDB RWY 8L, Amdt. 19
Pueblo, CO—Pueblo Memorial, NDB RWY 26R, Amdt. 17
Pueblo, CO—Pueblo Memorial, ILS RWY 8L, Amdt. 22
Pueblo, CO—Pueblo Memorial, ILS RWY 26R, Amdt. 13
Pueblo, CO—Pueblo Memorial, RADAR-1, Amdt. 7
Moultrie, GA—Moultrie Muni, VOR RWY 22, Amdt. 11
Medford, OR—Medford-Jackson County, VOR/DME-C, Amdt. 1
Houston, TX—William P Hobby, ILS RWY 30L, Amdt. 3
Yoakum, TX—Yoakum Muni, NDB RWY 31, Amdt. 1
Rock Springs, WY—Rock Springs-Sweetwater County, ILS/DME RWY 27, Amdt. 4

** * * Effective February 6, 1992*

Wabash, IN—Wabash Muni, VOR-A, Amdt. 9
Wabash, IN—Wabash Muni, NDB RWY 27, Amdt. 11
Cherokee, IA—Cherokee Muni, NDB RWY 36, Amdt. 4
Tulsa, OK—Tulsa Intl., NDB RWY 18L, Amdt. 9
Tulsa, OK—Tulsa Intl., ILS RWY 18L, Amdt. 11
Tulsa, OK—Tulsa Intl., ILS RWY 18R, Amdt. 5

** * * Effective January 23, 1992*

Dunkirk, NY—Chautauqua County/Dunkirk, VOR RWY 6, Orig.

** * * Effective January 9, 1992*

Salinas, CA—Salinas Muni, VOR RWY 13, Amdt. 11
Salinas, CA—Salinas Muni, LOC/DME RWY 31, Amdt. 4
Salinas, CA—Salinas Muni, ILS RWY 31, Amdt. 5
Windsor Locks, CT—Bradley Intl., ILS RWY 24, Amdt. 5
Decorah, IA—Decorah Muni, NDB RWY 29, Amdt. 8, CANCELLED
St. Francis, KS—Cheyenne County Muni, NDB RWY 31L, Amdt. 1
Bunkie, LA—Bunkie Municipal, VOR/DME-A, Amdt. 4
Motley, MN—Morey Fish House, NDB RWY 9, Orig.
Joplin, MO—Joplin Regional, LOC BC RWY 31, Amdt. 19
Joplin, MO—Joplin Regional, NDB RWY 13, Amdt. 23
Joplin, MO—Joplin Regional, ILS RWY 13, Amdt. 22
Robbinsville, NJ—Trenton-Robbinsville, VOR RWY 29, Amdt. 10
Ardmore, OK—Ardmore Downtown Executive, VOR/DME RNAV RWY 17, Amdt. 5
Hobart, OK—Hobart Muni, VOR RWY 35, Amdt. 7
Mitchell, SD—Mitchell Muni, ILS/DME RWY 30, Orig.
Lampasas, TX—Lampasas, VOR-A, Amdt. 3
Llano, TX—Llano Muni, VOR-A, Amdt. 2
Clarksburg, WV—Benedum, RADAR-1, Amdt. 1
Morgantown, WV—Morgantown Muni-Walter L. Bill Hart Fld., VOR/DME RWY 18, Amdt. 5
Morgantown, WV—Morgantown Muni-Walter L. Bill Hart Fld., NDB RWY 18, Amdt. 14
Morgantown, WV—Morgantown Muni-Walter L. Bill Hart Fld., ILS RWY 18, Amdt. 8
Wheeling, WV—Wheeling Ohio Co., VOR RWY 21, Amdt. 13
Wheeling, WV—Wheeling Ohio Co., ILS RWY 3, Amdt. 19

** * * Effective December 5, 1991*

Ocean City, MD—Ocean City Muni, LOC RWY 14, Amdt. 1

** * * Effective December 4, 1991*

Wilmington, NC—New Hanover County, RADAR-1, Amdt. 5

** * * Effective December 3, 1991*

Fresno, CA—Fresno-Chandler Downtown, VOR/DME-C, Amdt. 4
Fresno, CA—Fresno-Chandler Downtown, NDB-B, Amdt. 7

By amending: The FAA published an Amendment in Docket No. 26877, Amdt. No. 1464 to part 97 of the Federal Aviation Regulations (56 FR 56464 and 56465; dated Nov. 5, 1991) under § 97.23, 97.25, and 97.29 effective Dec. 12, 1991, which is hereby amended as follows:

Change Effective Date To January 9, 1992, for the following procedures:

Bettles, AK—Bettles, VOR/DME-B Orig. CANCELLED
Nome, AK—Nome, LOC/DME (BC) RWY 9, Amdt. 1, CANCELLED
Nome, AK—Nome, ILS RWY 27, Orig., CANCELLED
Unalakleet, AK—Unalakleet, VOR/DME-D, Amdt. 3

By amending: The FAA published an Amendment in Docket No. 26701, Amdt. No. 1468 to part 97 of the Federal Aviation Regulations (56 FR 63874 and 63875; dated Dec. 6, 1991) under § 97.29 effective Dec. 12, 1991, which is hereby amended as follows: Change Effective Date to January 9, 1992, for the following procedures:

Pittsburgh, PA—Greater Pittsburgh Intl., Converging ILS RWY 28R, Orig.
Pittsburgh, PA—Greater Pittsburgh Intl., Converging ILS RWY 32, Orig.

[FR Doc. 91-30266 Filed 12-30-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[T.D. 8367]

RIN 1545-AM74

Abatements, Credits, and Refunds—Special Rules for Insolvent Financial Institution That Is or Was Member of Consolidated Group

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations and final regulations.

SUMMARY: This document contains temporary regulations in part 301 providing for the payment of income tax refunds in certain situations to a statutory or court-appointed fiduciary of an insolvent financial institution that was a member of a consolidated group in the year to which the refund claim or application for tentative carryback adjustment relates (instead of payment to the common parent of the consolidated group). These temporary regulations reflect changes to the Internal Revenue Code made by the Technical and Miscellaneous Revenue Act of 1988. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking appearing in the Proposed Rules section of this issue of the **Federal Register**. Technical amendments referencing the temporary regulations are also made to part 1.

EFFECTIVE DATE: These regulations are effective January 30, 1992. These regulations apply to refunds and tentative carryback adjustments paid after December 30, 1991.

FOR FURTHER INFORMATION CONTACT: Rose L. Williams, (202) 566-3231 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document adds temporary regulations to part 301 of title 26 of the Code of Federal Regulations to implement section 6402(i) of the Internal Revenue Code, added by section 6276 of the Technical and Miscellaneous Revenue Act of 1988.

Section 1.1502-77(a) of the Income Tax Regulations provides generally that the common parent is the sole agent for each subsidiary in its consolidated group for all purposes, including the receipt of income tax refunds.

Section 6402(i) authorizes the Secretary of the Treasury to issue regulations providing for the payment of income tax refunds to the statutory or court-appointed fiduciary of an insolvent corporation that was a subsidiary in a consolidated group, to the extent the Secretary determines that the refund is attributable to losses or credits of the insolvent corporation.

The temporary regulations added by this document are limited to payment of refunds and tentative carryback adjustments to certain fiduciaries of insolvent financial institutions. The Internal Revenue Service (Service) has entered into agreements with the Federal Deposit Insurance Corporation and the Resolution Trust Corporation providing for the repayment of refund and tentative carryback amounts determined to be erroneous and for the suspension of any refund and tentative carryback amounts otherwise payable to the Federal Deposit Insurance Corporation or the Resolution Trust Corporation to the extent of any tax liabilities owed by an insolvent financial institution and the consolidated group of which it is a member.

Comments are solicited as to the application of these regulations to other insolvent corporations that may be within the scope of section 6402(i). The comments should address how, under a broadened rule, the Service can protect itself against double payments (or double uses of losses) without entering into an agreement with the representative for each insolvent corporation.

Section 6402(i) provides for payment to a fiduciary of an insolvent corporation of refunds "attributable to losses or credits of such insolvent corporation." The legislative history of this section indicates that access to income tax refunds should be consistent with the purposes of the consolidated return provisions. Therefore, under the temporary regulations, if the institution's loss arises during a taxable year in which it is a member of a consolidated group (whether or not the same group to which the loss is carried), the loss may be carried back to prior years only to the extent that the loss exceeds the income of other members for the year in which the loss arises. The institution's loss for any consolidated return year is determined by applying such rules as

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the deferred intercompany transaction rules of § 1.1502–13 and the rules providing for elimination of intercompany dividends under § 1.1502–14.

Under the temporary regulations, the fiduciary of an insolvent financial institution is made an agent of the relevant consolidated group for purposes of preparing a return for the year in which the loss arises, filing a claim for refund or application for tentative carryback adjustment, and additional matters for which permission is granted by the Service. Because payments under the temporary regulations are made to fiduciaries in their capacity as agent for a group, the payment discharges any liability of the government to the same extent as would payment to the common parent under §§ 1.1502–77 and 1.1502–78. Furthermore, payments under the temporary regulations to fiduciaries are considered payments to all members of the group for all purposes (including administrative or court proceedings relating to the allowability of the refund) and satisfy any responsibility of the Service to make payments to any member.

Under §§ 1.1502–77 and 1.1502–78, the common parent ordinarily makes federal income tax filings on behalf of a consolidated group. The temporary regulations provide that the fiduciary may also make filings on behalf of a consolidated group in connection with the fiduciary's claim for refund or application for tentative carryback adjustment. Because the fiduciary and the common parent may make filings with respect to the same group, the Service must reconcile these filings and, as a consequence, processing of claims and applications may be delayed (even in the case of filings at the close of an extension period).

Because financial institutions frequently conduct business activities through operating subsidiaries, the regulations adopt subgroup principles. For example, the fiduciary may, as an agent, generally claim refunds with respect to the losses of the institution's subsidiaries in addition to the losses of the institution.

The investment adjustment rules under § 1.1502–32 are not amended in connection with these regulations. Under the investment adjustment system, losses of a member absorbed by a consolidated group generally cause a negative adjustment to the basis of (or increase in an excess loss account with respect to) the member's stock. Income tax refunds received by the member as a result of carrying back a loss generally cause a positive adjustment (or reduce an excess loss account). These adjustments generally result in a net after-tax reduction in the basis of the member's stock. The reduction prevents the member's loss from being duplicated if the member's stock is sold by the group.

Assume, for example that P, the common parent of a consolidated group, owns all of the stock of S, an institution. During Years 1 through 5, a $66 excess loss account arises with respect to the S stock from adjustments described in § 1.1502–32(e)(1) as a result of $66 of S's losses being absorbed by income of other members of the P group. During Years 6 through 10, S earns $100 of income, pays $34 as its share of the group's tax liability, and thereby eliminates the excess loss account. During Year 11, S becomes an insolvent financial institution and sustains a $100 loss (not offset by Year 11 income of other members of the P group) that is carried back to Years 6 through 10, and $34 is refunded directly to S's fiduciary under § 301.6402–7T(g).

Because the temporary regulations do not amend the investment adjustment rules, the rules apply to reinstate the $66 excess loss account at the end of Year 11. If the rules did not apply, the P group would not be required to include the $66 excess loss account in income on a subsequent disposition of the S stock. Requiring the excess loss account to be included in income is necessary to recapture the losses of S that were absorbed by the P group in Years 1 through 5.

If instead, P earned the income and paid the taxes that are refunded to S's fiduciary P may argue that P is entitled to the refund. In all such cases, however, the issue of who is entitled to the refund is separate from how the investment adjustment rules should be applied. This issue has always been present when a refund is paid to one member but is attributable to income earned and taxes paid by another member.

Even if the negative investment adjustments to P's basis in S stock were limited to cases where P received the refund, if no negative investment adjustments were made to reflect S's loss in Year 11, additional modifications would be necessary to eliminate certain subsequent investment adjustments that are premised on the existence of the negative adjustment. For example, if the excess loss account is attributable to the loss of borrowed funds, positive adjustments from income that is used to retire the debt should not be made if the excess loss account is not reinstated.

Need for Temporary Regulations

Immediate application of the provisions contained in this Treasury Decision is needed to effectuate the purposes of section 6402(i), that refunds with respect to losses and credits of an insolvent financial institution be paid to a fiduciary for the institution. It is therefore impracticable and contrary to the public interest to issue this Treasury Decision with notice and public procedure under section 553(b) of title 5 of the United States Code or subject to the effective date limitation of section 553(d) of title 5 of the United States Code.

Special Analyses

It has been determined that this document does not constitute a major rule as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required.

No notice of proposed rulemaking is required by 5 U.S.C. 553 or any other law and the provisions of the Regulatory Flexibility Analysis Act (5 U.S.C. 601 *et seq.* do not apply).

Pursuant to section 7805(f)(1) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these temporary regulations is Rose L. Williams, Office of the Assistant Chief Counsel (Corporate), Internal Revenue Service. Other personnel from the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects

26 CFR 1.1502–21 through 1.1502–27

Income taxes.

26 CFR 1.1502–75 through 1.1502–100

Income taxes.

26 CFR 1.6411–2 through 1.6425–3

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, and Taxes.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citations:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805 * * * Sections 1.1502–21 and 1.1502–77(e) also issued under 26 U.S.C. 1502 and 6402(i). Section 1.1502–78(b) also issued under 26 U.S.C. 1502, 6402(i), and 6411(c) * * * Section 1.6411–4 also issued under 26 U.S.C. 6402(i) and 6411(c) * * *

Par. 2. Section 1.1502–21 is amended by adding paragraph (g) to read as follows:

§ 1.1502–21 Consolidated net operating loss deduction.

* * * * * *

(g) *Groups that include insolvent financial institutions.* For rules applicable to relinquishing the entire carryback period with respect to losses attributable to insolvent financial institutions, see § 301.6402–7T.

Par. 3. Section 1.1502–77(e) is revised to read as follows:

§ 1.1502–77 Common parent agent for subsidiaries.

* * * * * *

(e) *Cross-references*—(1) *Alternative agents.* For rules relating to alternative agents of the group, see § 1.1502–77T.

(2) *Groups that include insolvent financial institutions.* For further rules applicable to groups that include insolvent financial institutions, see § 301.6402–7T.

Par. 4. Section 1.1502–78(b) is amended by adding a new paragraph (b)(3) to read as follows:

§ 1.1502–78 Tentative carryback adjustments.

* * * * * *

(b) * * *

(3) *Groups that include insolvent financial institutions.* For further rules applicable to groups that include insolvent financial institutions, see § 301.6402–7T.

* * * * * *

Par. 5. Section 1.6411–4 is revised to read as follows:

§ 1.6411–4 Consolidated groups.

For further rules applicable to consolidated groups that include insolvent financial institutions, see §§ 1.1502–78 and 301.6402–7T of this chapter.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 6. The authority citation for part 301 is amended by adding the following citation:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. * * * § 301.6402–7T also issued under 26 U.S.C. 6402(i) and 6411(c) * * *

Par. 7. New § 301.6402–7T is added to read as follows:

§ 301.6402–7T Claims for refunds and applications for tentative carryback adjustments involving consolidated groups that include insolvent financial institutions (temporary).

(a) *In general*—(1) *Overview.* Section 6402(i) authorizes the Secretary to issue regulations providing for the payment of a refund directly to the statutory or court-appointed fiduciary of an insolvent corporation that was a subsidiary in a consolidated group, to the extent the Secretary determines that the refund is attributable to losses or credits of the insolvent corporation. This section provides rules for the payment of refunds and tentative carryback adjustments to the fiduciary of an insolvent financial institution that was a subsidiary in a consolidated group.

(2) *Notice.* This section provides notice to the common parent of a consolidated group of which an insolvent financial institution is or was a member that—

(i) The fiduciary for the institution may, in addition to the common parent, act as agent for the group in certain matters relating to the tax liability of the group in the year in which a loss arose and for the year to which a claim for refund or application for tentative carryback adjustment relates; and

(ii) The Internal Revenue Service may deal directly with the common parent or the fiduciary (or both) as agent for the group to the extent provided in this section.

(b) *Definitions.* For purposes of this section, the following terms have the meanings set forth below:

(1) *Carryback year group.* A carryback year group is a consolidated group of which a corporation that is or becomes an insolvent financial institution is a member during a consolidated carryback year.

(2) *Consolidated carryback year.* A consolidated carryback year is a consolidated return year to which a loss arising in a loss year is carried back.

(3) *Fiduciary.* A fiduciary is—

(i) The Federal Deposit Insurance Corporation;

(ii) The Resolution Trust Corporation; or

(iii) Any other entity established by federal law, or a federal agency, that is identified by the Commissioner in a revenue ruling or revenue procedure as a fiduciary for purposes of this section;

in its capacity as an authorized receiver or conservator of an insolvent financial institution.

(4) *Insolvent financial institution.* An insolvent financial institution (an institution) is a bank or domestic building and loan association for which the fiduciary is authorized to act as a receiver or conservator—

(i) On the ground that the institution is insolvent within the meaning of 12 U.S.C. 191, 12 U.S.C. 1821(c)(5)(A), 12 U.S.C. 1464(d)(2)(A)(i), or 12 U.S.C. 1464(d)(2)(C)(i) or any applicable state law (or any successor statute which adopts a substantially similar standard); or

(ii) On grounds other than insolvency, provided that the institution is insolvent within the meaning of paragraph (b)(4)(i) of this section at any time after commencement of the conservatorship or receivership.

A reference to an institution under these regulations includes, as the context requires, a reference to predecessors and successors of the institution.

(5) *Loss year.* A loss year is a taxable year for which any member or former member of the carryback year group claims a loss that may be carried back.

(6) *Loss year group.* A loss year group is a consolidated group of which a corporation that is or becomes an insolvent financial institution is a member during a loss year.

(7) *Procedure effective date.* The procedure effective date is the day on which the Internal Revenue Service has processed the notice described in paragraph (d)(1) of this section to the extent necessary for all Internal Revenue Service Centers to have access to information indicating that—

(i) Appropriate notice to the Internal Revenue Service has been filed; and

(ii) Payments with respect to losses of an institution are to be paid in accordance with the procedures set forth in this section.

(8) *Definitions in § 1.1502–1.* Unless otherwise provided, the definitions contained in § 1.1502–1 of this chapter apply in this section.

(c) *Deemed agency status of fiduciary*—(1) *In general.* Notwithstanding the general treatment of a common parent as the agent of a group under §§ 1.1502–77 and 1.1502–78 of this chapter, if the fiduciary satisfies the notice requirements of paragraph (d)(1) of this section, the fiduciary may

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also be deemed to be an agent under §§ 1.1502–77 and 1.1502–78 of this chapter—

(i) Of the loss year group (if any) for purposes of filing a consolidated return for the loss year;

(ii) Of the carryback year group for purposes of filing a claim for refund or an application for a tentative carryback adjustment for the consolidated carryback year under paragraph (e) of this section and receiving payments of any refund or tentative carryback adjustment under paragraph (g) of this section; and

(iii) Of the carryback year group, the loss year group or any other group of which the institution is a member for any matter pertaining to the determination of the refund or tentative carryback adjustment, but only to the extent provided in paragraph (c)(2) of this section.

(2) *Limitation.* The fiduciary may act as an agent for matters described in paragraph (c)(1)(iii) of this section only to the extent—

(i) Authorized by the district director, in his/her sole discretion, after receiving a written request from the fiduciary; or

(ii) Requested by the Internal Revenue Service under paragraph (f)(3) of this section.

(d) *Notice requirements*—(1) *Notice to the Internal Revenue Service.* To satisfy the notice requirement of this paragraph (d)(1), the fiduciary must file Form 56–F, Notice Concerning Fiduciary Relationship of Financial Institution, with the Internal Revenue Service Center indicated on the form. However, in its sole discretion, the Internal Revenue Service may treat notice to it in any other manner as satisfying the notice requirement under this paragraph (d)(1).

(2) *Notice to the common parent*—(i) *Form 56–F.* The fiduciary must send a copy of the Form 56–F filed with the Internal Revenue Service Center to the common parent of the loss year group (if any) and the common parent of all carryback year groups (if different from the loss year group).

(ii) *Claim for refund and loss year return.* If a claim for refund is filed by the fiduciary in accordance with paragraph (e)(1) of this section, the fiduciary must provide a copy of the claim for refund to the common parent of the carryback year group. If a loss year return is filed by the fiduciary in accordance with paragraph (e)(3) of this section, the fiduciary must provide a copy of the loss year return to the common parent of the loss year group (if any).

(iii) *Additional information.* The fiduciary must provide to the affected common parent a copy of the request for agency status referred to in paragraphs (c)(2) (i) and (ii) of this section, and a copy of any additional information submitted to the Internal Revenue Service as agent under of paragraph (c)(1)(iii) of this section.

(e) *Filing requirements of the fiduciary*—(1) *Claim for refund by the fiduciary.* If the fiduciary accepts a claim for refund of the common parent of the carryback year group for the consolidated carryback year, the fiduciary may claim a refund under this section by filing a copy of the common parent's claim for refund. If no claim for refund is filed by the common parent for the consolidated carryback year or the fiduciary does not accept a claim for refund filed by the common parent, the fiduciary may claim a refund under this section by filing its own claim for refund under section 6402, based on all information pertaining to the institution and all information pertaining to other members of the carryback year group and the loss year group to which the fiduciary has reasonable access. Any claim for refund filed by the fiduciary under this paragraph (e)(1) must contain the title "Claim for refund under section 6402(i) of the Code" at the top of the first page of the claim, and the following must be attached to the claim:

(i) The name and employer identification number of the institution that was a member of the carryback year group;

(ii) The name of the fiduciary;

(iii) A schedule demonstrating that the amount of the refund claimed by the fiduciary is determined in accordance with paragraph (g) of this section;

(iv) A representation that the institution is an insolvent financial institution as defined in paragraph (b)(4) of this section;

(v) A representation that the fiduciary has satisfied the requirements set forth in paragraphs (d)(2)(i) and (ii) of this section; and

(vi) A statement executed by an authorized representative of the fiduciary and any paid preparer utilized by the fiduciary that provides "Under penalties of perjury, I declare that I have examined the items listed in § 301.6402–7T(e)(1)(i) through (v), including accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than fiduciary) is based on all information of which the preparer has any knowledge."

(2) *Application for tentative carryback adjustment pursuant to section 6411.* Notwithstanding section 6411 and § 1.1502–78 of this chapter, an application for a tentative carryback adjustment must be signed by both the common parent of the carryback year group and the fiduciary if the payment with respect to the tentative carryback adjustment is not made before the procedure effective date (whether or not the application was filed before the procedure effective date). Any application for a tentative carryback adjustment filed under this paragraph (e)(2) must contain the title "Application for tentative carryback adjustment under section 6402(i) of the Code" at the top of the first page of the application. In addition, the following must be attached to the application:

(i) The name and employer identification number of the institution that was a member of the carryback year group;

(ii) The name of the fiduciary;

(iii) A schedule demonstrating that the amount claimed by the fiduciary is determined in accordance with paragraph (g) of this section;

(iv) A representation that the institution is an insolvent financial institution as defined in paragraph (b)(4) of this section; and

(v) A representation that the fiduciary has satisfied the requirements set forth in paragraph (d)(2)(i) of this section.

(3) *Loss year return by the fiduciary.* If the institution is a member of a loss year group, and either the common parent does not file a loss year return or the fiduciary does not accept the loss year return filed by the common parent, the fiduciary may file a loss year return with respect to the loss year group. The return must be based on all information pertaining to the institution and all information pertaining to other members to which the fiduciary has reasonable access. Any return filed by the fiduciary under this paragraph (e)(3) must contain the title "Loss year return under section 6402(i) of the Code" at the top of the first page of the return, and the following must be attached to the return:

(i) The name and employer identification number of the institution that is a member of the loss year group;

(ii) The name of the fiduciary;

(iii) A representation that the institution is an insolvent financial institution as defined in paragraph (b)(4) of this section; and

(iv) A representation that the fiduciary has satisfied the requirements set forth in paragraphs (d)(2)(i) and (ii) of this section.

(4) *Additional information.* If the fiduciary files additional information under paragraph (c)(1)(iii) of this section, the fiduciary must attach a representation that it has satisfied the

requirements set forth in paragraph (d)(2)(iii) of this section.

(5) *Election to waiver carryback.* Any election filed after December 30, 1991, by the common parent of a loss year group under section 172(b)(3) to relinquish the entire carryback period with respect to a consolidated net operating loss arising in a loss year is not effective with respect to the portion of the consolidated net operating loss attributable to a subsidiary that is an institution. Instead, the fiduciary may make the election under section 172(b)(3) with respect to the portion attributable to the institution after the notice described in paragraph (d)(1) of this section is filed. For purposes of this paragraph (e)(5), the portion attributable to an institution is determined under the principles of paragraph (g)(2)(ii) of this section.

(f) *Processing and reconciliation of information by the Internal Revenue Service*—(1) *Loss year return if the insolvent financial institution is a member of a loss year group.* The Internal Revenue Service may, in its sole discretion, adjust a loss year return filed by the common parent of a loss year group to take into account information filed by the fiduciary in accordance with paragraph (e) of this section, or accept or adjust a loss year return for the loss year group filed by the fiduciary. Nothing in this section relieves the common parent of a loss year group of its duty to file a consolidated return taking into account an institution's items of income, gain, loss, deduction, and credit for any taxable year, or obligates the Internal Revenue Service to accept a return filed by the fiduciary as the return of the loss year group.

(2) *Claim for refund with respect to consolidated carryback year.* The Internal Revenue Service may, in its sole discretion, adjust a claim for refund filed by the common parent of a carryback year group to take into account information filed by the fiduciary in accordance with paragraph (e) of this section, or accept or adjust a claim for refund for the carryback year group filed by the fiduciary. Nothing in this section obligates the Internal Revenue Service to pay a claim for refund, or to accept a claim for refund, filed by the fiduciary as a claim for refund for the carryback year group.

(3) *Additional information.* In determining the amount of any refund that may be paid to the fiduciary under paragraph (g) of this section, the Internal Revenue Service may, in its sole discretion, take into account any information that the Internal Revenue Service deems relevant and may require the fiduciary to file any additional information the Internal Revenue Service deems appropriate.

(g) *Payment of a refund or a tentative carryback adjustment to fiduciary*—(1) *In general.* If a claim for refund or an application for a tentative carryback adjustment is filed for the consolidated carryback year in accordance with paragraph (e) of this section, the Internal Revenue Service may, in its sole discretion, pay to the fiduciary all or any portion of the refund or tentative carryback adjustment that the Internal Revenue Service determines under this section to be attributable to the net operating losses of the institution. Nothing in this section obligates the Internal Revenue Service to pay to the fiduciary all or any portion of a claim for refund or application for tentative carryback adjustment.

(2) *Portion of refund or tentative carryback adjustment attributable to the net operating loss of an insolvent financial institution*—(i) *In general.* The portion of a refund or tentative carryback adjustment attributable to a net operating loss of an institution that is carried to a consolidated carryback year is determined based on the absorption, as described in paragraph (g)(2)(iii) of this section, of the institution's net operating loss carried to the consolidated carryback year.

(ii) *Member's net operating loss.* If the loss year is a consolidated return year, references in this section to the net operating loss of a member of the loss year group is a reference to the portion of the loss year group's consolidated net operating loss attributable to the member. The consolidated net operating loss for a taxable year that is attributable to a member is determined by a fraction, the numerator of which is the separate net operating loss of the member for the year of the loss and the denominator of which is the sum of the separate net operating losses for that year of all members having such losses. For this purpose, the separate net operating loss of a member is determined by computing the consolidated net operating loss by taking into account only the member's items of income, gain, deduction, and loss, including the member's losses and deductions actually absorbed by the group in the taxable year (whether or not absorbed by the member).

(iii) *Absorption of net operating losses.* The absorption of net operating losses generally is determined under applicable principles of the Code and regulations, including the principles of section 172 and § 1.1502–21 (b) of this chapter. Notwithstanding any contrary rule or principle of the Code or regulations, if an institution and another member of the carryback year group have net operating losses that arise in taxable years ending on the same date and are carried to the same consolidated carryback year, the carryback year group's consolidated taxable income for that year is treated as offset first by the loss attributable to the institution to the extent thereof.

(3) *Examples.* For purposes of the examples in this section, all groups file consolidated returns, all corporations have calendar taxable years, the facts set forth the only corporate activity, the fiduciary has met the notice and filing requirements of this section, and the common parent has filed a return for the loss year and a claim for refund. The principles of this paragraph (g) are illustrated by the following examples.

Example 1. Absorption of net operating losses. (a) P owns all the stock of S1, an insolvent financial institution, and S2, a corporation that is not a financial institution. For Year 1, P, S1, and S2 each have $50 of income, and the P group's consolidated taxable income is $150. On May 31 of Year 2, S1 becomes insolvent and is placed in receivership under the supervision of a fiduciary. For Year 2, the P group has a consolidated net operating loss of $200, of which $100 is attributable to S1 and $100 is attributable to S2.

(b) Under paragraph (g)(2)(iii) of this section, the $150 of consolidated taxable income for Year 1 is offset first by the $100 portion of the consolidated net operating loss for Year 2 attributable to S1. The remaining $50 is treated as offset by $50 of the $100 of consolidated net operating loss attributable to S2. Thus, the refund attributable to $100 of the loss may be payable to the fiduciary and the refund attributable to $50 of the loss may be payable to P. The remaining $50 consolidated net operating loss, available to be carried forward, is entirely attributable to S2.

Example 2. Separate return net operating loss. The facts are the same as in *Example 1*, except that S1 left the P group at the end of Year 1 and its $100 of loss in Year 2 is incurred in a separate return limitation year. Under paragraph (g)(2)(iii) of this section, the generally applicable absorption principles of section 172 and § 1.1502–21 of this chapter apply. Although S1 and S2 are carrying back losses to Year 1 from taxable years ending on the same date (Year 2), S1's loss is subject to a $50 limitation under § 1.1502–21 (c) of this chapter and only $50 of S1's loss is absorbed before S2's net operating loss. Therefore, the refund attributable to $50 of the net operating loss of S1 may be payable to the fiduciary, and the refund attributable to $100 of the net operating loss of S2 may be payable to P. The remaining $50 net operating loss of S1 is available to be carried forward.

(4) *Refund or tentative carryback adjustment allocation agreement.* The determination of the portion of any refund or tentative carryback adjustment payable to the fiduciary

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under this paragraph (g) shall be made without regard to—

(i) Any agreement among the members of the consolidated group; or

(ii) Whether the fiduciary is otherwise entitled to any portion of the refund or tentative carryback adjustment under applicable law.

(h) *Credits, net capital losses, and subgroups*—(1) *Credits and net capital losses*—(i) *In general.* The principles of this section also apply to credits and net capital losses, with appropriate adjustments to reflect differences between the rules applicable to net operating losses and those applicable to credits and net capital losses.

(ii) *Example.* The principles of this paragraph (h)(1) are illustrated by the following example.

Example. Net capital loss. (a) P owns all the stock of S1, an insolvent financial institution, and S2, a corporation that is not a financial institution. For Year 1, P, S1, and S2 each have $50 of capital gain, and the P group's consolidated capital gain net income is $150. On May 31 of Year 2, S1 becomes insolvent and is placed in receivership under the supervision of a fiduciary. For Year 2, the P group has a consolidated net operating loss of $100 that is attributable to S1, and a consolidated net capital loss of $100 that is attributable to S2.

(b) Under paragraphs (g)(2)(iii) and (h)(1) of this section, the generally applicable absorption principles of sections 172 and 1212 and §§ 1.1502–21(b) and 1.1502–22(b) of this chapter apply. Consequently, S2's capital loss is absorbed before S1's net operating loss. Therefore, the $150 of consolidated capital gain net income is offset first by S2's $100 capital loss and the remaining $50 by S1's net operating loss. The refund attributable to $50 of the net operating loss may be payable to the fiduciary, and the refund attributable to the $100 of capital loss may be payable to P. The remaining $50 consolidated net operating loss available to be carried forward is entirely attributable to S1.

(2) *Insolvent financial institution subgroup*—(i) *In general.* The principles of this section apply to all members included in an insolvent financial institution subgroup with appropriate adjustments to reflect differences resulting from the application to more than one corporation in a group. Unless otherwise determined by the Internal Revenue Service in its sole discretion, an insolvent financial institution subgroup is composed of an insolvent financial institution and those other members of a loss year group that, at any time during the conservatorship or receivership of the institution, bear the same relationship to the institution that the members of a group bear to their common parent under section 1504(a)(1).

(ii) *Examples.* The principles of this paragraph (h)(2) are illustrated by the following examples.

Example 1. Loss of other subgroup members. (a) S1 is a financial institution, and P, S2, and S3 are not financial institutions. P owns all the stock of S1, S1 owns all the stock of S2, and the stock of S3 is owned 20 percent by S2 and 80 percent by P. For Year 1, P, S1, and S2 each have $100 of income, S3 has no income or loss, and the P group's consolidated taxable income is $300. On May 31 of Year 2, S1 becomes insolvent and is placed in receivership under the supervision of a fiduciary. For Year 2, the P group has a consolidated net operating loss of $300, of which $200 is attributable to S1 and $100 is attributable to S2.

(b) S1 and S3 compose a subgroup because S2 bears the same relationship to S1 that the member of a group bears to its common parent under section 1504(a). S3 is not included in the subgroup because it is not connected to S1 through 80 percent stock ownership as described in section 1504(a).

(c) Because S1 and S2 are members of a subgroup, a claim for refund under paragraph (e) of this section must be based on the aggregate consolidated net operating loss of both S1 and S2. Under paragraph (e)(5) of this section, P may not elect under section 172(b)(3) to relinquish the entire carryback period with respect to the $300 of consolidated net operating loss arising in Year 2 that is attributable to S1 and S2. Any refund payable under paragraph (g)(1) of this section with respect to the $300 loss of S1 and S2 may be paid by the Internal Revenue Service directly to the fiduciary.

Example 2. Income of other subgroup members. (a) The facts are the same as in *Example 1*, except that S2 has $100 of income in Year 2 rather than $100 of loss. Any refund payable under paragraph (g) of this section with respect to the loss of S1 in Year 2 must take into account the income of S2, and therefore the refund will be based on a $100 loss of the subgroup.

(b) Although P and S3 are not members included in the subgroup, the loss year return and the claim for refund filed by the fiduciary under paragraph (e) of this section must be completed based on all information to which the fiduciary has reasonable access. Under paragraph (e)(3) of this section, if P does not file a loss year return that is accepted by S1, and S1 has reasonable access to information indicating that P and S3 have income in Year 2, S1 must take that income into account in filing the P group's return for Year 2 and reduce the amount of S1's loss that may be carried to Year 1 accordingly. However, if P or S3 has a loss in Year 2, any refund attributable to that loss will not be paid to the fiduciary.

(i) [Reserved]

(j) *Determination of ownership.* This section determines the party to whom a refund or tentative carryback adjustment will be paid but is not determinative of ownership of any such amount among current or former members of a consolidated group (including the institution).

(k) *Liability of the Government.* Any refund or tentative carryback adjustment paid to the fiduciary discharges any liability of the Government to the same extent as payment to the common parent under § 1.1502–77 or § 1.1502–78 of this chapter. Furthermore, any refund or tentative carryback adjustment paid to the fiduciary is considered a payment to all members of the carryback year group. Any determination made by the Internal Revenue Service under this section to pay a refund or tentative carryback adjustment to a fiduciary or the common parent may not be challenged by the common parent, any member of the group, or the fiduciary.

(l) *Effective dates.* This section applies to refunds and tentative carryback adjustments paid after December 30, 1991.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Approved: December 12, 1991.

Michael J. Graetz,

Acting Assistant Secretary of the Treasury.

[FR Doc. 91–31015 Filed 12–30–91; 8:45 am]

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26 CFR Parts 1 and 602

[T.D. 8361]

RIN 1545–AO58

Accuracy-related Penalty

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the accuracy-related penalty for negligence or disregard of rules or regulations, substantial understatement of income tax, and substantial (or gross) valuation misstatement under chapter 1 of the Internal Revenue Code. The applicable tax law was amended by the Omnibus Budget Reconciliation Act of 1989. The regulations affect all taxpayers that file returns of income tax and provide guidance necessary to comply with these changes.

EFFECTIVE DATES: Except for §§ 1.6662–3(c) and 1.6662–4(e) and (f), these final regulations are effective for income tax returns due after December 31, 1989 (determined without regard to extensions of time for filing). Sections 1.6662–3(c) and 1.6662–4(e) and (f) are effective for income tax returns due after December 31, 1991 (determined without regard to extensions of time for filing).

FOR FURTHER INFORMATION CONTACT: Gail M. Winkler of the Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:IT&A:4) or telephone (202) 566–5985 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545–0889. The estimated average annual burden per respondent is 4.79 hours.

This estimate is an approximation of the average time expected to be necessary for a collection of information. It is based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Office T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On March 4, 1991, the **Federal Register** (56 FR 8943) published a notice of proposed rulemaking regarding the accuracy-related penalty under section 6662 of the Internal Revenue Code and definitions and rules for purposes of this penalty (and the fraud penalty under section 6663) under section 6664. A public hearing was held on June 3, 1991. After consideration of the public comments regarding the proposed regulations, the regulations are adopted as revised by this Treasury decision. Descriptions of the revisions to the proposed regulations are included in the discussion of the public comments below.

Explanation of Statutory Provisions

Section 6662(a) provides for an accuracy-related penalty of 20 percent of any portion of an underpayment of tax required to be shown on a return that is attributable to any of the types of misconduct specified in section 6662(b), i.e., (1) Negligence or disregard of rules or regulations; (2) a substantial understatement of income tax; (3) a substantial valuation misstatement under chapter 1; (4) a substantial overstatement of pension liabilities; or (5) a substantial estate or gift tax valuation understatement. The accuracy-related penalty is not imposed on any portion of an underpayment on which the fraud penalty is imposed. These final regulations provide rules only for the first three types of misconduct and, in the case of negligence or disregard of rules or regulations, only in the context of income taxes imposed under subtitle A of the Code.

Section 6662(c) defines "negligence" for purposes of the negligence and disregard component of the accuracy-related penalty to include any failure to make a reasonable attempt to comply with the provisions of the internal revenue laws and "disregard" for purposes of this component to include any careless, reckless or intentional disregard.

Section 6662(d) provides for purposes of the substantial understatement component of the accuracy-related penalty that an understatement of tax is substantial if it exceeds the greater of 10 percent of the tax required to be shown on the return for the taxable year, or $5,000 ($10,000 in the case of a corporation other than an S corporation or personal holding company). The term "understatement" means the excess of (i) The amount of tax required to be shown on the return, over (ii) the amount of tax imposed which is shown on the return, reduced by any rebate. Except in the case of an item attributable to a tax shelter, an understatement is reduced by the portion of the understatement that is attributable to the tax treatment of an item for which there is substantial authority or that was adequately disclosed.

Section 6662(e) provides that there is a substantial valuation misstatement for purposes of the substantial valuation misstatement component of the accuracy-related penalty if the value or adjusted basis of any property claimed on any return of tax imposed by chapter 1 is 200 percent or more of the correct amount. The valuation misstatement is "gross" (and the penalty rate is 40 percent) when the value or adjusted basis of property claimed on the return is 400 percent or more of the correct amount.

This component of the accuracy-related penalty only applies if the portion of an underpayment attributable to substantial (and gross) valuation misstatements under chapter 1 for a year exceeds $5,000 ($10,000 in the case of a corporation other than an S corporation or personal holding company). These final regulations do not address substantial (or gross) valuation misstatements in connection with transactions between persons described in section 482 or net section 482 transfer price adjustments as described in section 6662(e)(1)(B).

Section 6664 provides that an "underpayment" for purposes of the accuracy-related (and fraud) penalty means the amount by which the tax imposed exceeds the excess of (i) The sum of (A) The amount of tax shown on the return, plus (B) amounts not so shown previously assessed (or collected without assessment), over (ii) the amount of rebates made. The accuracy-related penalty applies only where a return is filed (other than a return prepared by the Secretary under section 6020(b)).

Section 6664(c) provides that no accuracy-related penalty will be imposed with respect to any portion of an underpayment if it is shown that there was reasonable cause for such portion and that the taxpayer acted in good faith. Special rules apply for the reasonable cause and good faith exception in the case of any underpayment attributable to a substantial (or gross) valuation misstatement under chapter 1 with respect to charitable deduction property.

Public Comments

In General

The proposed regulations provide that both an accuracy-related penalty and a penalty under section 6651 for failure to timely file a return may be imposed on the same portion of an underpayment if a return is filed, but is filed late. Prop. Reg. § 1.6662–2(a). In response to a comment, the final regulations provide that the fact that a return is filed late will not be taken into account in determining whether an accuracy-related penalty should be imposed.

Negligence or Disregard of Rules or Regulations Meaning of "Negligence"

The proposed regulations provide that the term "negligence" includes any failure to make a reasonable attempt to comply with the provisions of the internal revenue laws or to exercise ordinary and reasonable care in the preparation of a tax return. Under the proposed regulations, negligence is strongly indicated if a taxpayer fails to make a reasonable attempt to ascertain the correctness of a deduction, credit or exclusion on a return which would seem to a reasonable and prudent person to be "too good to be true" under the

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circumstances. Prop. Reg. § 1.6662–3(b)(1).

Several commentators stated that the "too good to be true" formulation is too subjective and should be eliminated from the final regulations. The final regulations retain the "too good to be true" formulation as a strong indicator of negligence because it expresses in understandable terms a typical form of negligent behavior and has been used a number of times by courts in describing negligence. *See*, e.g., *McCrary* v. *Commissioner*, 92 T.C. 827 (1989); *Elliott* v. *Commissioner*, 90 T.C. 960 (1988); and *Starrett* v. *Commissioner*, 59 T.C.M. (CCH) 334 (1990).

The proposed regulations provide that a position is attributable to negligence if it is frivolous, or is not frivolous, but lacks a reasonable basis. Because reasonable basis is a higher standard than frivolous, the final regulations simply provide that a position is attributable to negligence if it lacks a reasonable basis.

Disregard of Rules or Regulations

The disregard prong of the negligence or disregard penalty applies to a careless, reckless or intentional disregard of "rules or regulations." The proposed regulations define "rules" to include revenue rulings issued by the Internal Revenue Service. Prop. Reg. § 1.6662–3(b)(2). One commentator stated that a revenue ruling should not be treated as a "rule" because (1) A revenue ruling does not constitute a rule under the Administrative Procedure Act (5 U.S.C. 500, *et seq.*) and (2) a revenue ruling is only the contention of one party and is not subjected to the give and take of a public comment process.

The legislative history of the Tax Reform Act of 1976 (which enacted section 6694 relating to income tax return preparers) expressly provides that rules and regulations include regulations and "IRS rulings." See S. Rep. No. 938, 94th Cong., 2d Sess. 355 (1976). Moreover, revenue rulings were expressly listed as "rules" under former § 1.6694–1(a)(3) (concerning the understatement of a taxpayer's liability by an income tax return preparer). Therefore, the final accuracy-related penalty regulations, in providing that revenue rulings are "rules," merely reflect a continuation of prior law.

Notices published in the Internal Revenue Bulletin by the Service also contain substantive interpretations of Federal tax law. In addition, these notices generally are subject to a level of review that is the same or higher than that accorded revenue rulings. Accordingly, the final regulations also provide that the term "rules or regulations" includes notices (other than notices of proposed rulemaking) that are issued by the Service and published in the Internal Revenue Bulletin. Revenue procedures are not listed, as they may or may not be treated as "rules or regulations" depending on all facts and circumstances.

The proposed regulations provide that a taxpayer will not be considered to have disregarded a revenue ruling for purposes of the disregard prong of the negligence or disregard penalty if the position that is contrary to the ruling has at least a realistic possibility of being sustained on its merits. Prop. Reg. § 1.6662–3(b)(2). One commentator objected to employing the realistic possibility standard in the accuracy-related penalty context and another commentator stated that a taxpayer should not be considered to have disregarded a revenue ruling if the position contrary to the ruling has at least a reasonable basis.

This provision in the proposed regulations is a taxpayer-favorable rule, as there is no statutory requirement that an exception be made from the general definition of "disregard" for positions contrary to revenue rulings. Framing this exception in terms of a standard that exists in the preparer penalty context helps coordinate the accuracy and preparer penalty regimes. Accordingly, the final regulations retain this "realistic possibility" exception to the disregard prong of the penalty for positions contrary to revenue rulings (as well as notices).

Disclosure of Positions Contrary to a Regulation

The proposed regulations provide that a taxpayer will not be considered to have disregarded a regulation if the position contrary to the regulation is not frivolous and is adequately disclosed. Prop. Reg. § 1.6662–3(c). A commentator stated that the legislative history of OBRA 1989 suggests that disclosure should only be a safe harbor and not the sole means of avoiding a penalty for intentional disregard of a regulation.

There is no indication in the legislative history of OBRA 1989 that Congress intended disclosure to be only a safe harbor. The taking of a position contrary to a regulation is of sufficient importance to the self-assessment nature of the Federal tax system that it is appropriate to require that the Service be notified of such positions. Therefore, the final regulations adopt the rule of the proposed regulations requiring adequate disclosure of a position contrary to a regulation.

In addition, because of the importance to the self-assessment system of disclosing positions contrary to regulations, the final regulations make two changes to the rules concerning positions contrary to regulations. First, the final regulations provide that disclosure of such positions is adequate only if the disclosure is separately made on a Form 8275–R. Until Form 8275–R is available, taxpayers must disclose positions contrary to regulations on a separate Form 8275 with the caption "REGULATIONS" appearing in the upper right corner of the form. (A similar disclosure rule is provided in the final preparer penalty regulations.) Second, because the legislative history of OBRA 1989 provides that the penalty for reckless or intentional disregard of a regulation may be avoided through disclosure only if the position represents a good faith challenge to the validity of the regulation, the final regulations incorporate this standard. See H.R. Rep. No. 247, 101st Cong., 1st Sess. 1393 (1989).

Alternative Methods of Disclosure

A number of commentators also criticized the requirement in the proposed regulations that disclosure be made on a Form 8275 for purposes of the negligence or disregard penalty. Commentators argued that disclosure on a return in accordance with an annual revenue procedure should be adequate.

There is no indication in the legislative history of OBRA 1989 that Congress intended to permit disclosure to be made on the return itself in accordance with an annual revenue procedure for purposes of the negligence or disregard penalty. It is in the interest of both taxpayers and the Service to have a relatively uniform disclosure regime that provides certainty as to whether adequate disclosure has been made. Thus, the final regulations do not relax the requirements for making adequate disclosure for purposes of the negligence or disregard penalty.

Meaning of "Frivolous"

The proposed regulations define a "frivolous" position as one that is "patently improper." Prop. Reg. § 1.6662–3(b)(3). Commentators recommended that this definition be changed, for example, to require that the position be both patently improper and knowingly advanced in bad faith, or that a frivolous position be defined as one that is "not litigable."

The "patently improper" definition was included in the proposed regulations because it represents an objective standard. Thus, neither the good nor the bad intentions of a person taking a position are relevant to a determination of whether that position is frivolous within the meaning of the regulations. The Service continues to believe that an objective standard is appropriate. The recommendation that a frivolous position be defined as one that is not litigable would place taxpayers who are not attorneys (or who are not represented by attorneys) at a disadvantage in assessing the effectiveness of disclosure in relation to taxpayers who are. Accordingly, the final regulations retain the definition of a frivolous position as one that is patently improper.

Failure to Maintain Books and Records

The proposed regulations provide that a taxpayer may not avoid a negligence or disregard penalty by disclosure if the taxpayer fails to maintain adequate books and records or to substantiate items properly. Prop. Reg. § 1.6662–3(c)(1). One commentator stated that a taxpayer should be able to avoid this penalty even if the taxpayer did not maintain adequate books and records, if the taxpayer discloses that he or she did not maintain adequate books and records. Such a rule would be inconsistent with the legislative history of OBRA 1989. *See* H.R. Rep. No. 247, 101st Cong., 1st Sess. 1393 (1989). Thus, the final regulations do not incorporate this rule. In response to another comment, the final regulations substitute the term "adequate books and records" for the term "proper books and records" wherever the latter term was used in the proposed regulations so that the former term is used consistently throughout the regulations.

Substantial Understatement of Income Tax Authorities

The proposed regulations provide that "authorities" for purposes of determining whether substantial authority is present include, among other items, applicable provisions of the Internal Revenue Code and other statutory provisions, Federal court cases interpreting such statutes, private letter rulings and technical advice memoranda issued after October 31, 1976, and actions on decisions and general counsel memoranda issued after March 12, 1981. The proposed regulations further provide that an authority ceases to be an authority once it is overruled or modified, implicitly or explicitly, by an authority of the same or higher source. For example, a district court opinion on an issue is not an authority if overruled or reversed. Similarly, a private letter ruling is not authority if revoked or if inconsistent with a subsequent proposed regulation, revenue ruling or other administrative pronouncement published in the Internal Revenue Bulletin. The proposed regulations provide that in weighing authorities to determine whether substantial authority is present, an older private letter ruling, technical advice memorandum, general counsel memorandum or action on decision generally must be accorded less weight than a more recent one. Any such document that is more than ten years old generally is accorded very little weight. Prop. Reg. § 1.6662–4(d)(3).

Court cases. Several commentators stated that court cases in addition to Federal court cases interpreting the Internal Revenue Code and other statutory provisions should constitute authorities. The final regulations adopt this comment by listing "court cases" as one of the types of authority.

Service rulings and memoranda. Commentators argued that all private letter rulings, technical advice memoranda, actions on decisions, and general counsel memoranda should constitute authorities, not just those issued after a certain date. Private letter rulings and technical advice memoranda first became available to the public after October 31, 1976. Except for certain general counsel memoranda published in the pre-1955 volumes of the Cumulative Bulletin, actions on decisions and general counsel memoranda first became available to the public after March 12, 1981.

The Service believes that treating its private rulings and similar memoranda as authorities for purposes of the substantial understatement penalty is appropriate only to the extent these documents were prepared and internally reveiewed in anticipation of the documents being made available to the public. The 1976 and 1981 cut-off dates in the proposed regulations are also consistent with the legislative history of OBRA 1989. See H.R. Rep. No. 247, 101st Cong., 1st Sess. 1390 n.79 (1989). Accordingly, the final regulations preserve the rule that only private letter rulings and technical advice memoranda issued after October 31, 1976 and only actions on decisions issued after March 12, 1981 are authorities. The proposed regulations are modified, however, to provide that general counsel memoranda published in the pre-1955 volumes of the Cumulative Bulletin are also authorities.

Commentators also contended that the age of a document should not be taken into account in testing for substantial authority and that in no event should the regulations contain a ten-year rule. It was argued that the relevance and persuasiveness of a document are more important than its age.

Older private letter rulings, technical advice memoranda, general counsel memoranda and actions on decisions are less likely to reflect the current state of the law and position of the Service than more recent ones. In view of this and the level of review for these administrative pronouncements, the ten-year rule is appropriate. However, in response to the comments, the final regulations clarify that the persuasiveness and relevance of any of these documents, viewed in light of subsequent developments, should be taken into account as well as the document's age.

Overruled or modified authorities. Several commentators objected to the statement in the proposed regulations that an authority ceases to be an authority once it is overruled or modified, implicitly or explicitly, by an authority of the same or higher source. In particular, there was concern that this language could be read to mean that a district court opinion could lose its status as an authority as a result of a contrary opinion by a United States Court of Appeals not located in the same circuit as the district court. In general, these commentators maintained that any rule attempting to nullify an authority is inconsistent with the notion that all authorities are to be taken into account and weighed in determining whether substantial authority is present.

In response to these comments, the final regulations clarify that an authority ceases to be an authority only to the extent that it is overruled or modified, implicitly or explicitly, by a body with the power to overrule or modify the earlier authority. For example, a district court opinion on an issue is not an authority if overruled, implicitly or explicitly, by the United States Court of Appeals for that district. Similarly, an opinion of the United States Tax Court is not considered to be overruled or modified by a United States Court of Appeals to which the taxpayer does not have a right of appeal, unless the Tax Court adopts the holding of the Court of Appeals.

Commentators also argued that the Service's position in a proposed regulation is too tentative to justify the rule that proposed regulations supersede prior, inconsistent private letter rulings. Proposed regulations are subject to a higher level of review than private letter rulings and, therefore, reflect the current position of the Service more accurately than previously issued private letter rulings. Proposed regulations also reflect intervening changes in the law. It is not

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appropriate to retain as an authority a document that does not accurately reflect the current status of the law and position of the Service. Thus, the final regulations retain the rule that a proposed regulation (or a revenue ruling or other administrative pronouncement published in the Internal Revenue Bulletin) supersedes a previously issued private letter ruling.

Nature of Substantial Authority Analysis

One commentator argued that the final regulations should state that the substantial authority analysis is similar to the analysis a court would follow. The final regulations, like the proposed regulations, do not contain this statement because the regulations already provide sufficient guidance as to the nature of the substantial authority analysis and the statement may be confusing to taxpayers who are not attorneys.

Written Determinations

Two commentators requested clarification on the date that a written determination issued to a taxpayer by the Service ceases to constitute substantial authority for the tax treatment of an item on the taxpayer's return. In response to these comments, the final regulations clarify that written determinations (other than those based on inaccurate facts) cease to be authority on the date, and to the extent, that such determinations are modified or revoked by a notice to the taxpayer, the enactment of legislation, or other enumerated events.

Disclosure

Commentators also advocated additional methods of disclosure out of the substantial understatements penalty. For the reasons discussed above concerning methods of disclosure for purposes of the negligence or disregard penalty, the final regulations do not relax the requirements for making adequate disclosure for purposes of the substantial understatement penalty. The final regulations also provide that a position contrary to a regulation must be disclosed on a Form 8275–R for purposes of both penalties. Thus, the final regulations provide that disclosure is adequate for purposes of the substantial understatement penalty if made on a Form 8275 or 8275–R, as appropriate, or in accordance with an annual revenue procedure.

Aggregation of Understatements

The proposed regulations contain special rules in the case of carrybacks and carryovers for determining whether an understatement of income tax is substantial. Prop. Reg. § 1.6662–4(c). Under the aggregation rule of the proposed regulations, the determination of whether an understatement is substantial for a year in which a loss, deduction or credit arises (a "loss or credit year") is to be made by treating any understatement that is attributable to a carryback or carryover item as an understatement with respect to the return of the loss or credit year.

Commentators criticized this approach as being too complicated and inconsistent with the prior regulations. In response to comments, the final regulations do not contain the aggregation rule contained in the proposed regulations. Instead, the final regulations include rules providing that the determination of whether an understatement is substantial is to be made on a year-by-year basis, without aggregation.

Substantial (or Gross) Valuation Misstatements

There is a substantial (or gross) valuation misstatement if the value or adjusted basis of property claimed on a return is 200 percent (400 percent in the case of a gross valuation misstatement) or more of the correct amount. The proposed regulations provide that a valuation misstatement is a gross valuation misstatement if the correct value or adjusted basis of property claimed on a return is zero. Prop. Reg. § 1.6662–5(g).

Some commentators argued that treating all valuation misstatements with respect to zero value or basis property as gross valuation misstatements is too harsh. However, this approach is consistent with the principle inherent in the statute that relatively greater misstatements are subject to penalty at a higher rate, as well as with the statutory language, and is, therefore, retained in the final regulations.

The proposed regulations also provide that the substantial (or gross) valuation misstatement penalty applies to an underpayment with respect to a return due after December 31, 1989 that is attributable to a valuation misstatement (*e.g.*, of the adjusted basis of property for which depreciation is claimed) on that return, even if the original misstatement (*e.g.*, of the adjusted basis of the property in the year it is placed in service) was claimed on a return due before January 1, 1990. Prop. Reg. § 1.6662–5(k). One commentator objected to this rule on the ground that the statute does not apply to misstatements of property first occurring on returns filed before its Janaury 1, 1990 effective date.

There is no indication that Congress intended to exclude an underpayment attributable to a misstatement of value or adjusted basis on a return filed after December 31, 1989 from the ambit of section 6662(e) simply because the initial misstatement was made on a return filed prior to 1990. Such an approach would enable a taxpayer to continue to benefit from past misstatements and would violate the general rule that each tax year stands on its own. Thus, the final regulations adopt the rule contained in the proposed regulations.

The proposed regulations also state that there is no disclosure exception to the valuation misstatement penalty. Prop. Reg. § 1.6662–5(a). Commentators argued that a disclosure exception similar to that provided for the negligence or disregard and substantial understatement penalties should be provided for the valuation misstatement penalty or, alternatively, that a disclosure exception should be provided for valuation misstatements due to legal errors.

Congress did not, by statute or legislative history, provide a disclosure exception from the valuation misstatement penalty and, accordingly, there is no basis for applying such an exception under the regulations. Moreover, the courts have consistently applied the penalty without regard to whether the valuation misstatements were based on legal or factual errors. Accordingly, the final regulations continue to provide that there is no disclosure exception to the valuation misstatement penalty.

Definition of Underpayment

The proposed regulations take overstated prepayment credits, such as overstated withholding credits and estimated tax payments, into account in computing the amount of an underpayment for purposes of the accuracy-related penalty. Prop. Reg. § 1.6664–2(c). Some commentators objected to this rule on the ground that overstated prepayment credits are not taken into account in computing the amount of a deficiency under section 6211.

There are differences in the section 6664 definition of "underpayment" and the section 6211 definition of "deficiency" that warrant taking overstated prepayment credits into account for purposes of the accuracy-related penalty. If a taxpayer's overstatement of withholding credits or estimated tax payments is inadvertent, the taxpayer may qualify for the reasonable cause and good faith exception to the accuracy-related penalty. Accordingly, the final regulations adopt the rule set forth in the proposed regulations.

Ordering Rules

The proposed regulations provide ordering rules for taking adjustments to a return into account in calculating the total amount of accuracy-related and fraud penalties that are imposed by sections 6662 and 6663 with respect to a return for a taxable year. Similar rules are provided for allocating unclaimed prepayment credits to adjustments on a return. Prop. Reg. § 1.6664–3.

One commentator suggested that these ordering rules be replaced by a rule that would allocate portions of an underpayment to adjustments on the basis of each adjustment's contribution to the amount of the underpayment. The suggestion is not dictated by OBRA 1989, is inconsistent with the established practice of the Service, and could raise substantial controversies as to the proper allocations. Accordingly, the final regulations retain the ordering rules of the proposed regulations.

Reasonable Cause and Good Faith Exception

No accuracy-related penalty will be imposed on any portion of an underpayment of tax if the taxpayer demonstrates that there was reasonable cause for such portion and that the taxpayer acted in good faith. The determination of whether a taxpayer acted with reasonable cause and in good faith is to be made on the basis of all facts and circumstances. Prop. Reg. § 1.6664–4.

Some commentators recommended that special reasonable cause and good faith rules be drafted for particular categories of taxpayers and that reasonable cause and good faith be presumed under certain circumstances. In particular, it was suggested that reliance on professional advice limited to the conclusion that there is substantial authority for a position should qualify for the reasonable cause and good faith exception.

A facts and circumstances approach to determining reasonable cause and good faith provides the greatest degree of flexibility in evaluating a taxpayer's situation. Special rules and presumptions, to the extent that they require that certain facts and circumstances be disregarded, are inconsistent with this flexible approach. Thus, the final regulations do not adopt these suggestions.

Special Analyses

It has been determined that these final rules are not major rules as defined in Executive Order 12291. Therefore, a final Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Gail M. Winkler, Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices in the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects

26 CFR 1.6654–1 through 1.6709–1T

Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part:

Authority: Sec. 7805, 68A Stat. 917; sec. 26 U.S.C. 7805, 26 U.S.C. 7805 * * *

Par. 2. The following new §§ 1.6662–0 through 1.6662–5 and 1.6664–0 through 1.6664–4 are added to read as follows:

§ 1.6662–0 Table of Contents.

This section lists the captions that appear in §§ 1.6662–1 through 1.6662–5.

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(5) Pass-through entities.

§ 1.6662–5 Substantial and gross valuation misstatements under chapter 1.

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(c) Special rules in the case of carrybacks and carryovers.
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(2) Transition rule for carrybacks to pre-1990 years.
(d) Examples.
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(1) Substantial valuation misstatement.
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(f) Multiple valuation misstatements on a return.
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(h) Pass-through entities.
(1) In general.
(2) Example.
(i) [Reserved]
(j) Transactions between persons described in section 482 and net section 482 transfer price adjustments. [Reserved]
(k) Returns affected.

§ 1.6662–1 Overview of the accuracy-related penalty.

Section 6662 imposes an accuracy-related penalty on any portion of an underpayment of tax required to be shown on a return that is attributable to one or more of the following:

(a) Negligence or disregard of rules or regulations;

(b) Any substantial understatement of income tax;

(c) Any substantial valuation misstatement under chapter 1;

(d) Any substantial overstatement of pension liabilities; or

(e) Any substantial estate or gift tax valuation understatement.

Sections 1.6662–1 through 1.6662–5 address only the first three components of the accuracy-related penalty, *i.e.*, the penalties for negligence or disregard of rules or regulations, substantial understatements of income tax, and substantial (or gross) valuation misstatements under chapter 1. The penalties for negligence or disregard of rules or regulations and for a substantial understatement of income tax may be avoided by adequately disclosing certain information as provided in § 1.6662–3(c) and § 1.6662–4 (e) and (f), respectively. The penalty for a substantial (or gross) valuation misstatement under chapter 1 may not be avoided by disclosure. No accuracy-related penalty may be imposed on any portion of an underpayment if there was reasonable cause for, and the taxpayer acted in good faith with respect to, such portion. The reasonable cause and good faith exception to the accuracy-related penalty is set forth in § 1.6664–4.

§ 1.6662–2 Accuracy-related penalty.

(a) *In general.* Section 6662(a) imposes an accuracy-related penalty on any portion of an underpayment of tax (as defined in section 6664(a) and § 1.6664–2) required to be shown on a return if such portion is attributable to one or more of the following types of misconduct:

(1) Negligence or disregard of rules or regulations (see § 1.6662–3);

(2) Any substantial understatement of income tax (see § 1.6662–4); or

(3) Any substantial (or gross) valuation misstatement under chapter 1 ("substantial valuation misstatement" or "gross valuation misstatement"), provided the applicable dollar limitation set forth in section 6662(e)(2) is satisfied (see § 1.6662–5).

The accuracy-related penalty applies only in cases in which a return of tax is filed, except that the penalty does not apply in the case of a return prepared by the Secretary under the authority of section 6020(b). The accuracy-related penalty under section 6662 and the penalty under section 6651 for failure to timely file a return of tax may both be imposed on the same portion of an underpayment if a return is filed, but is filed late. The fact that a return is filed late, however, is not taken into account in determining whether an accuracy-related penalty should be imposed. No accuracy-related penalty may be imposed on any portion of an underpayment of tax on which the fraud penalty set forth in section 6663 is imposed.

(b) *Amount of penalty*—(1) *In general.* The amount of the accuracy-related penalty is 20 percent of the portion of an underpayment of tax required to be shown on a return that is attributable to any of the types of misconduct listed in paragraphs (a)(1) through (a)(3) of this section, except as provided in paragraph (b)(2) of this section.

(2) *Increase in penalty for gross valuation misstatement.* In the case of a gross valuation misstatement, as defined in section 6662(h)(2) and § 1.6662–5(e)(2), the amount of the accuracy-related penalty is 40 percent of the portion of an underpayment of tax required to be shown on a return that is attributable to the gross valuation misstatement, provided the applicable dollar limitation set forth in section 6662(e)(2) is satisfied.

(c) *No stacking of accuracy-related penalty components.* The maximum accuracy-related penalty imposed on a portion of an underpayment may not exceed 20 percent of such portion (40 percent of the portion attributable to a gross valuation misstatement), notwithstanding that such portion is attributable to more than one of the types of misconduct described in paragraph (a) of this section. For example, if a portion of an underpayment of tax required to be shown on a return is attributable both to negligence and a substantial understatement of income tax, the maximum accuracy-related penalty is 20 percent of such portion. Similarly, the maximum accuracy-related penalty imposed on any portion of an underpayment that is attributable both to negligence and a gross valuation misstatement is 40 percent of such portion.

(d) *Effective date.* Section 1.6662–3(c) and § 1.6662–4 (e) and (f) (relating to methods of making adequate disclosure) will apply to returns the due date for which (determined without regard to extensions of time for filing) is after December 31, 1991. Except as provided in the preceding sentence, §§ 1.6662–1 through 1.6662–5 apply to returns the due date for which (determined without regard to extensions of time for filing) is after December 31, 1989. To the extent the provisions of these regulations were not reflected in the statute as amended by the Omnibus Budget Reconciliation Act of 1989 (OBRA 1989), in Notice 90–20, 1990–1 C.B. 328, or in rules and regulations in effect prior to March 4, 1991 (to the extent not inconsistent with the statute as amended by OBRA 1989), these regulations will not be adversely applied to a taxpayer who took a position based upon such prior rules on a return filed before January 1, 1992.

§ 1.6662–3 Negligence or disregard of rules or regulations.

(a) *In general.* If any portion of an underpayment, as defined in section 6664(a) and § 1.6664–2, of any income tax imposed under subtitle A of the Code that is required to be shown on a return is attributable to negligence or disregard of rules or regulations, there is added to the tax an amount equal to 20 percent of such portion. This penalty does not apply, however, if the requirements of § 1.6662–3(c)(1) are satisfied and the position in question is adequately disclosed as provided in § 1.6662–3(c)(2), or to the extent that the reasonable cause and good faith exception to this penalty set forth in § 1.6664–4 applies. In addition, if a position with respect to an item is contrary to a revenue ruling or notice (other than a notice of proposed rulemaking) issued by the Internal Revenue Service and published in the Internal Revenue Bulletin, this penalty does not apply if the position has a realistic possibility of being sustained on its merits. See § 1.6694–2(b) of the preparer penalty regulations for a description of the realistic possibility standard.

(b) *Definitions and rules*—(1) *Negligence.* The term *negligence* includes any failure to make a reasonable attempt to comply with the provisions of the internal revenue laws or to exercise ordinary and reasonable care in the preparation of a tax return. "Negligence" also includes any failure by the taxpayer to keep adequate books and records or to substantiate items properly. A position with respect to an item is attributable to negligence if it lacks a reasonable basis. Negligence is strongly indicated where—

(i) A taxpayer fails to include on an income tax return an amount of income shown on an information return, as defined in section 6724(d)(1);

(ii) A taxpayer fails to make a reasonable attempt to ascertain the correctness of a deduction, credit or exclusion on a return which would seem to a reasonable and prudent person to be "too good to be true" under the circumstances;

(iii) A partner fails to comply with the requirements of section 6222, which requires that a partner treat partnership items on its return in a manner that is consistent with the treatment of such items on the partnership return (or notify the Secretary of the inconsistency); or

(iv) A shareholder fails to comply with the requirements of section 6242, which requires that an S corporation shareholder treat subchapter S items on its return in a manner that is consistent with the treatment of such items on the corporation's return (or notify the Secretary of the inconsistency).

(2) *Disregard of rules or regulations.* The term *disregard* includes any careless, reckless or intentional disregard of rules or regulations. The term "rules or regulations" includes the provisions of the Internal Revenue Code, temporary or final Treasury regulations issued under the Code, and revenue rulings or notices (other than notices of proposed rulemaking) issued by the Internal Revenue Service and published in the Internal Revenue Bulletin. A disregard of rules or regulations is "careless" if the taxpayer does not exercise reasonable diligence to determine the correctness of a return position that is contrary to the rule or regulation. A disregard is "reckless" if the taxpayer makes little or no effort to determine whether a rule or regulation exists, under circumstances which demonstrate a substantial deviation from the standard of conduct that a reasonable person would observe. A disregard is "intentional" if the taxpayer knows of the rule or regulation that is disregarded. Nevertheless, a taxpayer who takes a position contrary to a revenue ruling or a notice has not disregarded the ruling or notice if the contrary position has a realistic possibility of being sustained on its merits.

(3) *Frivolous.* A *frivolous* position with respect to an item is one that is patently improper.

(c) *Exception for adequate disclosure*—(1) *In general.* No penalty under section 6662(b)(1) may be imposed on any portion of an underpayment that is attributable to negligence or a position contrary to a rule or regulation if the position is disclosed in accordance with the rules of paragraph (c)(2) of this section and, in the case of a position contrary to a regulation, the position represents a good faith challenge to the validity of the regulation. This disclosure exception does not apply, however, in the case of a position that is frivolous or where the taxpayer fails to keep adequate books and records or to substantiate items properly.

(2) *Method of disclosure.* Disclosure is adequate for purposes of this section if made in accordance with the provisions of §§ 1.6662–4(f) (1), (3), (4) and (5), which permit disclosure on a properly completed and filed Form 8275 or 8275–R, as appropriate. In the case of a position contrary to a rule or regulation, disclosure is adequate only if the preceding sentence is satisfied and the statutory or regulatory provision or ruling in question is adequately identified on the Form 8275 or 8275–R, as appropriate. The provisions of § 1.6662–4(f)(2), which permit disclosure in accordance with an annual revenue procedure for purposes of the substantial understatement penalty, do not apply for purposes of the penalty for negligence or disregard of rules or regulations.

(d) *Special rules in the case of carrybacks and carryovers*—(1) *In general.* The penalty for negligence or disregard of rules or regulations applies to any portion of an underpayment for a year to which a loss, deduction or credit is carried, which portion is attributable to negligence or disregard of rules or regulations in the year in which the carryback or carryover of the loss, deduction or credit arises (the "loss or credit year").

(2) *Transition rule for carrybacks to pre-1990 years.* A 20 percent penalty under section 6662(b)(1) is imposed on any portion of an underpayment for a carryback year, the return for which is due (without regard to extensions) before January 1, 1990, if—

(i) That portion is attributable to negligence or disregard of rules or regulations in a loss or credit year; and

(ii) The return for the loss or credit year is due (without regard to extensions) after December 31, 1989.

(3) *Example.* The following example illustrates the provisions of paragraph (d) of this section. This example does not take into account the reasonable cause exception under § 1.6664–4.

Example. Corporation M is a C corporation. In 1990, M had a loss of $200,000 before taking into account a deduction of $350,000 that M claimed as an expense in careless disregard of the capitalization requirements of section 263 of the Code. M failed to make adequate disclosure of the item for 1990. M reported a $550,000 loss for 1990 and carried back the loss to 1987 and 1988. M had reported taxable income of $400,000 for 1987 and $200,000 for 1988, before application of the carryback. The carryback eliminated all of M's taxable income for 1987 and $150,000 of taxable income for 1988. After disallowance of the $350,000 expense deduction and allowance of a $35,000 depreciation deduction with respect to the capitalized amount, the correct loss for 1990 was determined to be $235,000. Because there is no underpayment for 1990, the penalty for negligence or disregard of rules or regulations does not apply for 1990. However, as a result of the 1990 adjustments, the loss carried back to 1987 is reduced from $550,000 to $235,000. After application of the $235,000 carryback, M has taxable income of $165,000 for 1987 and $200,000 for 1988. This adjustment results in underpayments for 1987 and 1988 that are attributable to the disregard of rules or regulations on the 1990 return. Therefore, the 20 percent penalty rate applies to the 1987 and 1988 underpayments attributable to the disallowed carryback.

§ 1.6662–4 Substantial understatement of income tax.

(a) *In general.* If any portion of an underpayment, as defined in section 6664(a) and § 1.6664–2, of any income tax imposed under subtitle A of the Code that is required to be shown on a return is attributable to a substantial understatement of such income tax, there is added to the tax an amount equal to 20 percent of such portion. Except in the case of any item attributable to a tax shelter (as defined in paragraph (g)(2) of this section), an understatement is reduced by the portion of the understatement that is attributable to the tax treatment of an item for which there is substantial authority, or with respect to which there is adequate disclosure. General rules for determining the amount of an understatement are set forth in paragraph (b) of this section and more

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specific rules in the case of carrybacks and carryovers are set forth in paragraph (c) of this section. The rules for determining when substantial authority exists are set forth in § 1.6662–4(d). The rules for determining when there is adequate disclosure are set forth in § 1.6662–4 (e) and (f). This penalty does not apply to the extent that the reasonable cause and good faith exception to this penalty set forth in § 1.6664–4 applies.

(b) *Definitions and computational rules*—(1) *Substantial.* An understatement (as defined in paragraph (b)(2) of this section) is "substantial" if it exceeds the greater of—

(i) 10 percent of the tax required to be shown on the return for the taxable year (as defined in paragraph (b)(3) of this section); or

(ii) $5,000 ($10,000 in the case of a corporation other than an S corporation (as defined in section 1361(a)(1)) or a personal holding company (as defined in section 542)).

(2) *Understatement.* Except as provided in paragraph (c)(2) of this section (relating to special rules for carrybacks), the term "understatement" means the excess of—

(i) The amount of the tax required to be shown on the return for the taxable year (as defined in paragraph (b)(3) of this section), over

(ii) The amount of the tax imposed which is shown on the return for the taxable year (as defined in paragraph (b)(4) of this section), reduced by any rebate (as defined in paragraph (b)(5) of this section).

The definition of understatement also may be expressed as—

$$\text{Understatement} = X - (Y - Z)$$

where X = the amount of the tax required to be shown on the return; Y = the amount of the tax imposed which is shown on the return; and Z = any rebate.

(3) *Amount of the tax required to be shown on the return.* The "amount of the tax required to be shown on the return" for the taxable year has the same meaning as the "amount of income tax imposed" as defined in § 1.6664–2(b).

(4) *Amount of the tax imposed which is shown on the return.* The "amount of the tax imposed which is shown on the return" for the taxable year has the same meaning as the "amount shown as the tax by the taxpayer on his return," as defined in § 1.6664–2(c), except that—

(i) There is no reduction for the excess of the amount described in § 1.664–2(c)(1)(i) over the amount described in § 1.6664–2(C)(1)(ii), and

(ii) The tax liability shown by the taxpayer on his return is recomputed as if the following items had been reported properly:

(A) Items (other than tax shelter items as defined in § 1.6662–4(g)(3)) for which there is substantial authority for the treatment claimed (as provided in § 1.6662–4(d)).

(B) Items (other than tax shelter items as defined in § 1.6662–4(g)(3)) with respect to which there is adequate disclosure (as provided in § 1.6662–4 (e) and (f)).

(C) Tax shelter items (as defined in § 1.6662–4(g)(3)) for which there is substantial authority for the treatment claimed (as provided in § 1.6662–4(d)), and with respect to which the taxpayer reasonably believed that the tax treatment of the items was more likely than not the proper tax treatment (as provided in § 1.6662–4(g)(4)).

(5) *Rebate.* The term *rebate* has the meaning set forth in § 1.6664–2(e), except that—

(i) "Amounts not so shown previously assessed (or collected without assessment)" includes only amounts not so shown previously assessed (or collected without assessment) as a deficiency, and

(ii) The amount of the rebate is determined as if any items to which the rebate is attributable that are described in paragraph (b)(4) of this section had received the proper tax treatment.

(6) *Examples.* The following examples illustrate the provisions of paragraph (b) of this section. These examples do not take into account the reasonable cause exception under § 1.664–4:

Example 1. In 1990, Individual A, a calendar year taxpayer, files a return for 1989, which shows taxable income of $18,200 and tax liability of $2,734. Subsequent adjustments on audit for 1989 increase taxable income to $51,500 and tax liability to $12,339. There was substantial authority for an item resulting in an adjustment that increases taxable income by $5,300. The item is not a tax shelter item. In computing the amount of the understatement, the amount of tax shown on A's return is determined as if the item for which there was substantial authority had been given the proper tax treatment. Thus, the amount of tax that is treated as shown on A's return is $4,176, i.e., the tax on $23,500 ($18,200 taxable income actually shown on A's return plus $5,300, the amount of the adjustment for which there was substantial authority). The amount of the understatement is $8,163, i.e., $12,339 (the amount of tax required to be shown) less $4,176 (the amount of tax treated as shown on A's return after adjustment for the item for which there was substantial authority). Because the $8,163 understatement exceeds the greater of 10 percent of the tax required to be shown on the return for the year, i.e., $1,234 ($12,339 × .10) or $5,000, A has a substantial understatement of income tax for the year.

Example 2. Individual B, a calendar year taxpayer, files a return for 1990 that fails to include income reported on an information return, Form 1099, that was furnished to B. The Service detects this omission through its document matching program and assesses $3,000 in unreported tax liability. B's return is later examined and as a result of the examination the Service makes an adjustment to B's return of $4,000 in additional tax liability. Assuming there was neither substantial authority nor adequate disclosure with respect to the items adjusted, there is an understatement of $7,000 with respect to B's return. There is also an underpayment of $7,000. (See § 1.6664–2.) The amount of the understatement is not reduced by imposition of a negligence penalty on the $3,000 portion of the underpayment that is attributable to the unreported income. However, if the Services does impose the negligence penalty on this $3,000 portion, the Service may only impose the substantial understatement penalty on the remaining $4,000 portion of the underpayment. (See § 1.6662–2(c), which prohibits stacking of accuracy-related penalty components.)

(c) *Special rules in the case of carrybacks and carryovers*—(1) *In general.* The penalty for a substantial understatement of income tax applies to any portion of an underpayment for a year to which a loss, deduction or credit is carried that is attributable to a "tainted item" for the year in which the carryback or carryover of the loss, deduction or credit arises (the "loss or credit year"). The determination of whether an understatement is substantial for a carryback or carryover year is made with respect to the return of the carryback or carryover year. "Tainted items" are taken into account with items arising in a carryback or carryover year to determine whether the understatement is substantial for that year.

(2) *Understatements for carryback years not reduced by amount of carrybacks.* The amount of an understatement for a carryback year is not reduced on account of a carryback of a loss, deduction or credit to that year.

(3) *Tainted items defined*—(i) *In general.* Except in the case of a tax shelter item (as defined in paragraph (g)(3) of this section), a "tainted item" is any item for which there is neither substantial authority nor adequate disclosure with respect to the loss or credit year.

(ii) *Tax shelter items.* In the case of a tax shelter item (as defined in paragraph (g)(3) of this section), a "tainted item" is any item for which there is not, with respect to the loss or credit year, both substantial authority and a reasonable belief that the tax treatment is more likely than not the proper treatment.

(4) *Transition rule for carrybacks to pre-1990 years.* A 20 percent penalty under section 6662(b)(2) is imposed on any portion of an underpayment for a carryback year, the return for which is due (without regard to extensions) before January 1, 1990, if—

(i) That portion is attributable to one or more "tainted items" (as defined in paragraph (c)(3) of this section) arising in a loss or credit year; and

(ii) The return for the loss or credit year is due (without regard to extensions) after December 31, 1989.

The preceding sentence applies only if the understatement in the carryback year is substantial. See *Example 2* in paragraph (c)(5) of this section.

(5) *Examples.* The following examples illustrate the rules of paragraph (c) of this section regarding carrybacks and carryovers. These examples do not take into account the reasonable cause exception under § 1.6664–4.

Example 1. (i) Corporation N, a calendar year taxpayer, is a C corporation. N was formed on January 1, 1987, and timely filed the following income tax returns:

[In dollars]

	Tax Year			
	1987	1988	1989	1990 (before NOLCO)
Taxable income	30,000	100,000	[300,000]	50,000
Tax liability	4,757	22,250		7,500

(ii) During 1990, N files Form 1139, Corporation Application for Tentative Refund, to carry back the NOL generated in 1989 (NOLCB). N received refunds of $4,575 for 1987 and $22,250 for 1988.

(iii) For tax year 1990, N carries over $50,000 of the 1989 loss to offset $50,000 of income earned in 1990 and reduce taxable income to zero. N would have reported $7,500 of tax liability for 1990 if it were not for use of the net operating loss carryover (NOLCO). N assumes there is a remaining NOLCO of $120,000 to be applied for tax year 1991.

(iv) In June 1991, the Service completes its examination of the 1989 loss year return and makes the following adjustment:

Taxable income per 1989 return	($300,000)
Adjustment: Unreported income	310,000
Corrected taxable income	10,000
Corrected tax liability	1,500

(v) There was not substantial authority for N's treatment of the items comprising the 1989 adjustment and N did not make adequate disclosure.

(vi) As a result of the adjustment to the 1989 return, N had an understatement of $4,575 for tax year 1987; an understatement of $22,250 for tax year 1988; an understatement of $1,500 for tax year 1989; and an understatement of $7,500 for tax year 1990. Only the $22,250 understatement for 1988 is substantial understatement, i.e., it exceeds the greater of (a) $2,225 (10 percent of tax required to be shown on the return for the taxable year (.10 X $22,250)) or (b) $10,000. The underpayment for 1988 is subject to a penalty rate of 20 percent.

Example 2. The facts are the same as in *Example 1*, except that in addition to examining the 1989 return, the Service also examines the 1987 return and makes an adjustment that results in an understatement. (This adjustment is unrelated to the adjustment on the 1987 return for the disallowance of the NOLCB from 1989.) If the understatement resulting from the adjustment to the 1987 return, when combined with the understatement resulting from the disallowance of the NOLCB from 1989, exceeds the greater of (a) 10 percent of the tax required to be shown on the return for 1987 or (b) $10,000, the underpayment for 1987 will also be subject to a substantial understatement penalty. The portion of the underpayment attributable to the adjustment unrelated to the disallowance of the NOLCB will be subject to a penalty rate of 25 percent under former section 6661. The portion of the underpayment attributable to the disallowance of the NOLCB will be subject to a penalty rate of 20 percent under section 6662.

Example 3. Individual P, a calendar year single taxpayer, files his 1990 return reporting taxable income of $10,000 and a tax liability of $1,504. An examination of the 1990 return results in an adjustment for unreported income of $25,000. There was not substantial authority for P's failure to report the income, and P did not make adequate disclosure with respect to the unreported income. P's correct tax liability for 1990 is determined to be $7,279, resulting in an understatement of $5,775 (the difference between the amount of tax required to be shown on the return ($7,279) and the tax shown on the return ($1,504)). Because the understatement exceeds the greater of (a) $728 (10 percent of the tax required to be shown on the return (.10 × $7,279)) or (b) $5,000, the understatement is substantial. Subsequently, P files his 1993 return showing a net operating loss. The loss is carried back to his 1990 return, reducing his taxable income for 1990 to zero. However, the amount of the understatement for 1990 is not reduced on account of the NOLCB to that year. P is subject to the 20 percent penalty rate under section 6662 on the underpayment attributable to the substantial understatement for 1990, notwithstanding that the tax required to be shown on the return for that year, after application of the NOLCB, is zero.

(d) *Substantial authority*—(1) *Effect of having substantial authority.* If there is substantial authority for the tax treatment of an item, the item is treated as if it were shown properly on the return for the taxable year in computing the amount of the tax shown on the return. Thus, for purposes of section 6662(d), the tax attributable to the item is not included in the understatement for that year. (For special rules relating to tax shelter items see § 1.6662–4(g).)

(2) *Substantial authority standard.* The substantial authority standard is an objective standard involving an analysis of the law and application of the law to relevant facts. The substantial authority standard is less stringent than the "more likely than not" standard (the standard that is met when there is a greater than 50-percent likelihood of the position being upheld), but more stringent than the reasonable basis standard (the standard which, if satisfied, generally will prevent imposition of the penalty under section 6662(b)(1) for negligence). A return position that is arguable, but fairly unlikely to prevail in court, satisfies the reasonable basis standard, but not the substantial authority standard. The possibility that a return will not be audited or, if audited, that an item will not be raised on audit, is not relevant in determining whether the substantial authority standard (or the reasonable basis standard) is satisfied.

(3) *Determination of whether substantial authority is present*—(i) *Evaluation of authorities.* There is substantial authority for the tax treatment of an item only if the weight of the authorities supporting the treatement is substantial in relation to the weight of authorities supporting contrary treatment. All authorities relevant to the tax treatment of an item, including the authorities contrary to the treatment, are taken into account in determining whether substantial authority exists. The weight of authorities is determined in light of the pertinent facts and circumstances in the manner prescribed by paragraph (d)(3)(ii) of this section. There may be substantial authority for more than one position with respect to the same item. Because the substantial authority standard is an objective standard, the taxpayer's belief that there is substantial authority for the tax treatment of an item is not relevant in determining whether there is substantial authority for that treatment.

(ii) *Nature of analysis.* The weight accorded an authority depends on its relevance and persuasiveness, and the type of document providing the authority. For example, a case or revenue ruling having some facts in common with the tax treatment at issue is not particularly relevant if the authority is materially distinguishable on its facts, or is otherwise inapplicable to the tax treatment at issue. An authority that merely states a conclusion ordinarily is less persuasive than one that reaches its conclusion by cogently relating the applicable law to pertinent

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facts. The weight of an authority from which information has been deleted, such as a private letter ruling, is diminished to the extent that the deleted information may have affected the authority's conclusions. The types of document also must be considered. For example, a revenue ruling is accorded greater weight than a private letter ruling addressing the same issue. An older private letter ruling, technical advice memorandum, general counsel memorandum or action on decision generally must be accorded less weight than a more recent one. Any document described in the preceding sentence that is more than 10 years old generally is accorded very little weight. However, the persuasiveness and relevance of a document, viewed in light of subsequent developments, should be taken into account along with the age of the document. There may be substantial authority for the tax treatment of an item despite the absence of certain types of authority. Thus, a taxpayer may have substantial authority for a position that is supported only by a well-reasoned construction of the applicable statutory provision.

(iii) *Types of authority.* Except in cases described in paragraph (d)(3)(iv) of this section concerning written determinations, only the following are authority for purposes of determining whether there is substantial authority for the tax treatment of an item: Applicable provisions of the Internal Revenue Code and other statutory provisions; proposed, temporary and final regulations construing such statues; revenue rulings and revenue procedures; tax treaties and regulations thereunder, and Treasury Department and other official explanations of such treaties; court cases; congressional intent as reflected in committee reports, joint explanatory statements of managers included in conference committee reports, and floor statements made prior to enactment by one of a bill's managers; General Explanations of tax legislation prepared by the Joint Committee on Taxation (the Blue Book); private letter rulings and technical advice memoranda issued after October 31, 1976; actions on decisions and general counsel memoranda issued after March 12, 1981 (as well as general counsel memoranda published in pre-1955 volumes of the Cumulative Bulletin); Internal Revenue Service information or press releases; and notices, announcements and other administrative pronouncements published by the Service in the Internal Revenue Bulletin. Conclusions reached in treatises, legal periodicals, legal opinions or opinions rendered by tax professionals are not authority. The authorities underlying such expressions of opinion where applicable to the facts of a particular case, however, may give rise to substantial authority for the tax treatment of an item. Notwithstanding the preceding list of authorities, an authority does not continue to be an authority to the extent it is overruled or modified, implicitly or explicitly, by a body with the power to overrule or modify the earlier authority. In the case of court decisions, for example, a district court opinion on an issue is not an authority if overruled or reversed by the United States Court of Appeals for such district. However, a Tax Court opinion is not considered to be overruled or modified by a court of appeals to which a taxpayer does not have a right of appeal, unless the Tax Court adopts the holding of the court of appeals. Similarly, a private letter ruling is not authority if revoked or if inconsistent with a subsequent proposed regulation, revenue ruling or other administrative pronouncement published in the Internal Revenue Bulletin.

(iv) *Special rules*—(A) *Written determinations.* There is substantial authority for the tax treatment of an item by a taxpayer if the treatment is supported by the conclusion of a ruling or a determination letter (as defined in § 301.6110–2 (d) and (e)) issued to the taxpayer, by the conclusion of a technical advice memorandum in which the taxpayer is named, or by an affirmative statement in a revenue agent's report with respect to a prior taxable year of the taxpayer ("written determinations"). The preceding sentence does not apply, however, if—

(*1*) There was a misstatement or omission of a material fact or the facts that subsequently develop are materially different from the facts on which the written determination was based, or

(*2*) The written determination was modified or revoked after the date of issuance by—

(*i*) A notice to the taxpayer to whom the written determination was issued,

(*ii*) The enactment of legislation or ratification of a tax treaty,

(*iii*) A decision of the United States Supreme Court,

(*iv*) The issuance of temporary or final regulations, or

(*v*) The issuance of a revenue ruling, revenue procedure, or other statement published in the Internal Revenue Bulletin.

Except in the case of a written determination that is modified or revoked on account of § 1.6662–4(d)(3)(iv)(A)(*1*), a written determination that is modified or revoked as described in § 1.6662–4(d)(3)(iv)(A)(*2*) ceases to be authority on the date, and to the extent, it is so modified or revoked. See section 6404(f) for rules which require the Secretary to abate a penalty that is attributable to erroneous written advice furnished to a taxpayer by an officer or employee of the Internal Revenue Service.

(B) *Taxpayer's jurisdiction.* The applicability of court cases to the taxpayer by reason of the taxpayer's residence in a particular jurisdiction is not taken into account in determining whether there is substantial authority for the tax treatment of an item. Notwithstanding the preceding sentence, there is substantial authority for the tax treatment of an item if the treatment is supported by controlling precedent of a United States Court of Appeals to which the taxpayer has a right of appeal with respect to the item.

(C) *When substantial authority determined.* There is substantial authority for the tax treatment of an item if there is substantial authority at the time the return containing the item is filed or there was substantial authority on the last day of the taxable year to which the return relates.

(v) *Substantial authority for tax returns due before January 1, 1990.* There is substantial authority for the tax treatment of an item on a return that is due (without regard to extensions) after December 31, 1982 and before January 1, 1990, if there is substantial authority for such treatment under either the provisions of paragraph (d)(3)(iii) of this section (which set forth an expanded list of authorities) or of § 1.6661–3(b)(2) (which set forth a narrower list of authorities). Under either list of authorities, authorities both for and against the position must be taken into account.

(e) *Disclosure of certain information*—(1) *Effect of adequate disclosure.* Items for which there is adequate disclosure as provided in this paragraph (e) and in paragraph (f) of this section are treated as if such items were shown properly on the return for the taxable year in computing the amount of the tax shown on the return. Thus, for purposes of section 6662(d), the tax attributable to such items is not included in the understatement for that year.

(2) *Circumstances where disclosure will not have an effect.* The rules of paragraph (e)(1) of this section do not apply where the item or position on the return is—

(i) Frivolous (as defined in § 1.6662–3(b)(3));

(ii) Attributable to a tax shelter (as defined in section 6662(d)(2)(C)(ii) and paragraph (g)(2) of this section); or

(iii) Not properly substantiated, or the taxpayer failed to keep adequate books and records with respect to the item or position.

(f) *Method of making adequate disclosure*—(1) *Disclosure statement.* Disclosure is adequate with respect to an item (or group of similar items, such as amounts paid or incurred for supplies by a taxpayer engaged in business) or a position on a return if the disclosure is made on a properly completed form attached to the return or to a qualified amended return (as defined in § 1.6664–2(c)(3)) for the taxable year. In the case of an item or position other than one that is contrary to a regulation, disclosure must be made on Form 8275 (Disclosure Statement); in the case of a position contrary to a regulation, disclosure must be made on Form 8275–R (Regulation Disclosure Statement).

(2) *Disclosure on return.* The Commissioner may by annual revenue procedure (or otherwise) prescribe the circumstances under which disclosure of information on a return (or qualified amended return) in accordance with applicable forms and instructions is adequate. If the revenue procedure does not include an item, disclosure is adequate with respect to that item only if made on a properly completed Form 8275 or 8275–R, as appropriate, attached to the return for the year or to a qualified amended return.

(3) *Recurring item.* Disclosure with respect to a recurring item, such as the basis of recovery property, must be made for each taxable year in which the item is taken into account.

(4) *Carrybacks and carryovers.* Disclosure is adequate with respect to an item which is included in any loss, deduction or credit that is carried to another year only if made in connection with the return (or qualified amended return) for the taxable year in which the carryback or carryover arises (the "loss or credit year"). Disclosure is not also required in connection with the return for the taxable year in which the carryback or carryover is taken into account.

(5) *Pass-through entities.* Disclosure in the case of items attributable to a pass-through entity (pass-through items) is made with respect to the return of the entity, except as provided in this paragraph (f)(5). Thus, disclosure in the case of pass-through items must be made on a Form 8275 or 8275–R, as appropriate, attached to the return (or qualified amended return) of the entity, or on the entity's return in accordance with the revenue procedure described in paragraph (f)(2) of this section, if applicable. A taxpayer (i.e., partner, shareholder, beneficiary, or holder of a residual interest in a REMIC) also may make adequate disclosure with respect to a pass-through item, however, if the taxpayer files a properly completed Form 8275 or 8275–R, as appropriate, in duplicate, one copy attached to the taxpayer's return (or qualified amended return) and the other copy filed with the Internal Revenue Service Center with which the return of the entity is required to be filed. Each Form 8275 or 8275–R, as appropriate, filed by the taxpayer should relate to the pass-through items of only one entity. For purposes of this paragraph (f)(5), a pass-through entity is a partnership, S corporation (as defined in section 1361(a)(1)), estate, trust, regulated investment company (as defined in section 851(a)), real estate investment trust (as defined in section 856(a)), or real estate mortgage investment conduit ("REMIC") (as defined in section 860D(a)).

(g) *Items relating to tax shelters*—(1) *In general.* Tax shelter items (as defined in paragraph (g)(3) of this section) are treated as if such items were shown properly on the return for a taxable year in computing the amount of the tax shown on the return, and thus the tax attributable to such items is not included in the understatement for the year, if—

(i) There is substantial authority (as provided in paragraph (d) of this section) for the tax treatment of that item; and

(ii) The taxpayer reasonably believed at the time the return was filed that the tax treatment of that item was more likely than not the proper treatment (see paragraph (g)(4) of this section).

Disclosure made with respect to a tax shelter item does not affect the amount of an understatement.

(2) *Tax shelter*—(i) *In general.* For purposes of section 6662(d), the term "tax shelter" means—

(A) A partnership or other entity (such as a corporation or trust),

(B) An investment plan or arrangement, or

(C) Any other plan or arrangement,

if the principal purpose of the entity, plan or arrangement, based on objective evidence, is to avoid or evade Federal income tax. The principal purpose of an entity, plan or arrangement is to avoid or evade Federal income tax if that purpose exceeds any other purpose. Typical of tax shelters are transactions structured with little or no motive for the realization of economic gain, and transactions that utilize the mismatching of income and deductions, overvalued assets or assets with values subject to substantial uncertainty, certain nonrecourse financing, financing techniques that do not conform to standard commercial business practices, or the mischaracterization of the substance of the transaction. The existence of economic substance does not of itself establish that a transaction is not a tax shelter if the transaction includes other characteristics that indicate it is a tax shelter.

(ii) *Principal purpose.* The principal purpose of an entity, plan or arrangement is not to avoid or evade Federal income tax if the entity, plan or arrangement has as its purpose the claiming of exclusions from income, accelerated deductions or other tax benefits in a manner consistent with the statute and Congressional purpose. For example, an entity, plan or arrangement does not have as its principal purpose the avoidance or evasion of Federal income tax solely as a result of the following uses of tax benefits provided by the Internal Revenue Code: the purchasing or holding of an obligation bearing interest that is excluded from gross income under section 103; taking an accelerated depreciation allowance under section 168; taking the percentage depletion allowance under section 613 or section 613A; deducting intangible drilling and development costs as expenses under section 263(c); establishing a qualified retirement plan under sections 401–409; claiming the possession tax credit under section 936; or claiming tax benefits available by reason of an election under 992 to be taxed as a domestic international sales corporation ("DISC"), under section 927(f)(1) to be taxed as a foreign sales corporation ("FSC"), or under section 1362 to be taxed as an S corporation.

(3) *Tax shelter item.* An item of income, gain, loss, deduction or credit is a "tax shelter item" if the item is directly or indirectly attributable to the principal purpose of a tax shelter to avoid or evade Federal income tax. Thus, if a partnership is established for the principal purpose of avoiding or evading Federal income tax by acquiring and overstating the basis of property for purposes of claiming accelerated depreciation, the depreciation with respect to the property is a tax shelter item. However, a deduction claimed in connection with a separate transaction carried on by the same partnership is not a tax shelter item if the transaction does not constitute a plan or arrangement the principal purpose of which is to avoid or evade tax.

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(4) *Reasonable belief.* For purposes of section 6662(d), a taxpayer is considered reasonably to believe that the tax treatment of an item is more likely than not the proper tax treatment if—

(i) The taxpayer analyzes the pertinent facts and authorities in the manner described in paragraph (d)(3)(ii) of this section and, in reliance upon that analysis, reasonably concludes that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged by the Internal Revenue Service; or

(ii) The taxpayer in good faith relies on the opinion of a professional tax advisor, if the opinion is based on the tax advisor's analysis of the pertinent facts and authorities in the manner described in paragraph (d)(3)(ii) of this section and unambiguously states that the tax advisor concludes that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged by the Internal Revenue Service.

(5) *Pass-through entities.* In the case of tax shelter items attributable to a pass-through entity, the actions described in paragraphs (g)(4)(i) and (g)(4)(ii) of this section, if taken by the entity, are deemed to have been taken by the taxpayer and are considered in determining whether the taxpayer reasonably believed that the tax treatment of an item was more likely than not the proper tax treatment.

§ 1.6662–5 Substantial and gross valuation misstatements under chapter 1.

(a) *In general.* If any portion of an underpayment, as defined in section 6664(a) and § 1.6664–2, of any income tax imposed under chapter 1 of subtitle A of the Code that is required to be shown on a return is attributable to a substantial valuation misstatement under chapter 1 ("substantial valuation misstatement"), there is added to the tax an amount equal to 20 percent of such portion. Section 6662(h) increases the penalty to 40 percent in the case of a gross valuation misstatement under chapter 1 ("gross valuation misstatement"). No penalty under section 6662(b)(3) is imposed, however, on a portion of an underpayment that is attributable to a substantial or gross valuation misstatement unless the aggregate of all portions of the underpayment attributable to substantial or gross valuation misstatements exceeds the applicable dollar limitation ($5,000 or $10,000), as provided in section 6662(e)(2) and paragraphs (b) and (f)(2) of this section. This penalty also does not apply to the extent that the reasonable cause and good faith exception to this penalty set forth in § 1.6664–4 applies. There is no disclosure exception to this penalty.

(b) *Dollar limitation.* No penalty may be imposed under section 6662(b)(3) for a taxable year unless the portion of the underpayment for that year that is attributable to substantial or gross valuation misstatements exceeds $5,000 $10,000 in the case of a corporation other than an S corporation (as defined in section 1361(a)(1)) or a personal holding company (as defined in section 542)). This limitation is applied separately to each taxable year for which there is a substantial or gross valuation misstatement.

(c) *Special rules in the case of carrybacks and carryovers*—(1) *In general.* The penalty for a substantial or gross valuation misstatement applies to any portion of an underpayment for a year to which a loss, deduction or credit is carried that is attributable to a substantial or gross valuation misstatement for the year in which the carryback or carryover of the loss, deduction or credit arises (the "loss or credit year"), provided that the applicable dollar limitation set forth in section 6662(e)(2) is satisfied in the carryback or carryover year.

(2) *Transition rule for carrybacks to pre-1990 years.* The penalty under section 6662(b)(3) is imposed on any portion of an underpayment for a carryback year, the return for which is due (without regard to extensions) before January 1, 1990, if—

(i) That portion is attributable to a substantial or gross valuation misstatement for a loss or credit year; and

(ii) The return for the loss or credit year is due (without regard to extensions) after December 31, 1989.

The preceding sentence applies only if the underpayment for the carryback year exceeds the applicable dollar limitation ($5,000, or $10,000 for most corporations). See *Example 3* in paragraph (d) of this section.

(d) *Examples.* The following examples illustrate the provisions of paragraphs (b) and (c) of this section. These examples do not take into account the reasonable cause exception under § 1.6664–4.

Example 1. Corporation Q is a C corporation. In 1990, the first year of its existence, Q had taxable income of $200,000 without considering depreciation of a particular asset. On its calendar year 1990 return, Q overstated its basis in this asset by an amount that caused a substantial valuation misstatement. The overstated basis resulted in depreciation claimed of $350,000, which was $250,000 more than the $100,000 allowable. Thus, on its 1990 return, Q showed a loss of $150,000. In 1991, Q had taxable income of $450,000 before application of the loss carryover, and Q claimed a carryover loss deduction under section 172 of $150,000, resulting in taxable income of $300,000 for 1991. Upon audit of the 1990 return, the basis of the asset was corrected, resulting in an adjustment of $250,000. For 1990, the underpayment resulting from the $100,000 taxable income (−$150,000+$250,000) is attributable to the valuation misstatement. Assuming the underpayment resulting from the $100,000 taxable income exceeds the $10,000 limitation, the penalty will be imposed in 1990. For 1991, the elimination of the loss carryover results in additional taxable income of $150,000. The underpayment for 1991 resulting from that adjustment is also attributable to the substantial valuation misstatement on the 1990 return. Assuming the underpayment resulting from the $150,000 additional taxable income for 1991 exceeds the $10,000 limitation, the substantial valuation misstatement penalty also will be imposed for that year.

Example 2. (i) Corporation T is a C corporation. In 1990, the first year of its existence, T had a loss of $3,000,000 without considering depreciation of its major asset. On its calendar year 1990 return, T overstated its basis in this asset in an amount that caused a substantial valuation misstatement. This overstatement resulted in depreciation claimed of $3,500,000, which was $2,500,000 more than the $1,000,000 allowable. Thus, on its 1990 return, T showed a loss of $6,500,000. In 1991, T had taxable income of $4,500,000 before application of the carryover loss, but claimed a carryover loss deduction under section 172 in the amount of $4,500,000, resulting in taxable income of zero for that year and leaving a $2,000,000 carryover available. Upon audit of the 1990 return, the basis of the asset was corrected, resulting in an adjustment of $2,500,000.

(ii) For 1990, the underpayment is still zero (−$6,500,000+$2,500,000=−$4,000,000). Thus, the penalty does not apply in 1990. The loss for 1990 is reduced to $4,000,000.

(iii) For 1991, there is additional taxable income of $500,000 as a result of the reduction of the carryover loss ($4,500,000 reported income before carryover loss minus corrected carryover loss of $4,000,000=$500,000). The underpayment for 1991 resulting from reduction of the carryover loss is attributable to the valuation misstatement on the 1990 return. Assuming the underpayment resulting from the $500,000 additional taxable income exceeds the $10,000 limitation, the substantial valuation misstatement penalty will be imposed in 1991.

Example 3. Corporation V is a C corporation. In 1990, V had a loss of $100,000 without considering depreciation of a particular asset which it had fully depreciated in earlier years. V had a depreciable basis in the asset of zero, but on its 1990 calendar year return erroneously claimed a basis in the asset of $1,250,000 and depreciation of $250,000. V reported a $350,000 loss for the year 1990, and carried back the loss to the 1987 and 1988 tax years. V had reported taxable income of $300,000 in 1987 and $200,000 in 1988, before application of the carryback. The $350,000 carryback eliminated all taxable income for 1987, and $50,000 of the taxable income for 1988. After disallowance of the $250,000 depreciation deduction for 1990, V still had a loss of $100,000. Because there is no underpayment for 1990, no valuation misstatement penalty is imposed for 1990. However, as a result of the 1990 depreciation adjustment, the carryback to 1987 is reduced from $350,000 to $100,000. After absorption of the $100,000 carryback, V has taxable income of $200,000 for 1987. This adjustment results in an underpayment for 1987 that is attributable to the valuation misstatement on the 1990 return. The valuation misstatement for 1990 is a gross valuation misstatement because the correct adjusted basis of the depreciated asset was zero. (See paragraph (e)(2) of this section.) Therefore, the 40 percent penalty rate applies to the 1987 underpayment attributable to the 1990 misstatement, provided that this underpayment exceeds $10,000. The adjustment also results in the elimination of any loss carryback to 1988 resulting in an increase in taxable income for 1988 of $50,000. Assuming the underpayment resulting from this additional $50,000 of income exceeds $10,000, the gross valuation misstatement penalty is imposed on the underpayment for 1988.

(e) *Definitions*—(1) *Substantial valuation misstatement.* There is a substantial valuation misstatement if the value or adjusted basis of any property claimed on a return of tax imposed under chapter 1 is 200 percent or more of the correct amount.

(2) *Gross valuation misstatement.* There is a gross valuation misstatement if the value or adjusted basis of any property claimed on a return of tax imposed under chapter 1 is 400 percent or more of the correct amount.

(3) *Property.* For purposes of this section, the term "property" refers to both tangible and intangible property. Tangible property includes property such as land, buildings, fixtures and inventory. Intangible property includes property such as goodwill, covenants not to compete, leaseholds, patents, contract rights, debts and choses in action.

(f) *Multiple valuation misstatements on a return*—(1) *Determination of whether valuation misstatements are substantial or gross.* The determination of whether there is a substantial or gross valuation misstatement on a return is made on a property-by-property basis. Assume, for example, that property A has a value of 60 but a taxpayer claims a value of 110, and that property B has a value of 40 but the taxpayer claims a value of 100. Because the claimed and correct values are compared on a property-by-property basis, there is a substantial valuation misstatement with respect to property B, but not with respect to property A, even though the claimed values (210) are 200 percent or more of the correct values (100) when compared on an aggregate basis.

(2) *Application of dollar limitation.* For purposes of applying the dollar limitation set forth in section 6662(e)(2), the determination of the portion of an underpayment that is attributable to a substantial or gross valuation misstatement is made by aggregating all portions of the underpayment attributable to substantial or gross valuation misstatements. Assume, for example, that the value claimed for property C on a return is 250 percent of the correct value, and that the value claimed for property D on the return is 400 percent of the correct value. Because the portions of an underpayment that are attributable to a substantial or gross valuation misstatement on a return are aggregated in applying the dollar limitation, the dollar limitation is satisfied if the portion of the underpayment that is attributable to the misstatement of the value of property C, when aggregated with the portion of the underpayment that is attributable to the misstatement of the value of property D, exceeds $5,000 ($10,000 in the case of most corporations).

(g) *Property with a value or adjusted basis of zero.* The value or adjusted basis claimed on a return of any property with a correct value or adjusted basis of zero is considered to be 400 percent or more of the correct amount. There is a gross valuation misstatement with respect to such property, therefore, and the applicable penalty rate is 40 percent.

(h) *Pass-through entities*—(1) *In general.* The determination of whether there is a substantial or gross valuation misstatement in the case of a return of a pass-through entity (as defined in § 1.6662–4(f)(5)) is made at the entity level. However, the dollar limitation ($5,000 or $10,000, as the case may be) is applied at the taxpayer level (*i.e.*, with respect to the return of the shareholder, partner, beneficiary, or holder of a residual interest in a REMIC).

(2) *Example.* The rules of paragraph (h)(1) of this section may be illustrated by the following example.

Example. Partnership P has two partners, individuals A and B. P claims a $40,000 basis in a depreciable asset which, in fact, has a basis of $15,000. The determination that there is a substantial valuation misstatement is made solely with reference to P by comparing the $40,000 basis claimed by P with P's correct basis of $15,000. However, the determination of whether the $5,000 threshold for application of the penalty has been reached is made separately for each partner. With respect to partner A, the penalty will apply if the portion of A's underpayment attributable to the passthrough of the depreciation deduction, when aggregated with any other portions of A's underpayment also attributable to substantial or gross valuation misstatements, exceeds $5,000 (assuming there is not reasonable cause for the misstatements (*see* § 1.6664–4(c)).

(i) [Reserved]

(j) *Transactions between persons described in section 482 and net section 482 transfer price adjustments.* [Reserved]

(k) *Returns affected.* Except in the case of rules relating to transactions between persons described in section 482 and net sections 482 transfer price adjustments, the provisions of section 6662(b)(3) apply to returns due (without regard to extensions of time to file) after December 31, 1989, notwithstanding that the original substantial or gross valuation misstatement occurred on a return that was due (without regard to extensions) before January 1, 1990. Assume, for example, that a calendar year corporation claimed a deduction on its 1990 return for depreciation of an asset with a basis of X. Also assume that it had reported the same basis for computing depreciation on its returns for the preceding 5 years and that the basis shown on the return each year was 200 percent or more of the correct basis. The corporation may be subject to a penalty for substantial valuation misstatements on its 1989 and 1990 returns, even though the original misstatement occurred prior to the effective date of sections 6662(b)(3) and (e).

§ 1.6664–0 Table of contents.

This section lists the captions in §§ 1.6664–1 through 1.6664–4.

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§ 1.6664–2 Underpayment.

(a) Underpayment defined.
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§ 1.6664–3 Ordering rules for determining the total amount of penalties imposed.

(a) In general.
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§ 1.6664–4 Reasonable cause and good faith exception to section 6662 penalties.

(a) In general.
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(e) Valuation misstatements of charitable deduction property.
(1) In general.
(2) Definitions.
(i) Charitable deduction property.
(ii) Qualified appraisal.
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§ 1.6664–1 Accuracy-related and fraud penalties; definitions and special rules.

(a) *In general.* Section 6664(a) defines the term "underpayment" for purposes of the accuracy-related penalty under section 6662 and the fraud penalty under section 6663. The definition of "underpayment" of income taxes imposed under subtitle A is set forth in § 1.6664–2. Ordering rules for computing the total amount of accuracy-related and fraud penalties imposed with respect to a return are set forth in § 1.6664–3. Section 6664(c) provides a reasonable cause and good faith exception to the accuracy-related penalty. Rules relating to the reasonable cause and good faith exception are set forth in § 1.6664–4.

(b) *Effective date.* Sections 1.6664–1 through 1.6664–4 apply to returns the due date of which (determined without regard to extensions of time to file) is after December 31, 1989.

§ 1.6664–2 Underpayment.

(a) *Underpayment defined.* In the case of income taxes imposed under subtitle A, an underpayment for purposes of section 6662, relating to the accuracy-related penalty, and section 6663, relating to the fraud penalty, means the amount by which any income tax imposed under this subtitle (as defined in paragraph (b) of the section) exceeds the excess of—

(1) The sum of—

(i) The amount shown as the tax by the taxpayer on his return (as defined in paragraph (c) of this section), plus

(ii) Amounts not so shown previously assessed (or collected without assessment) (as defined in paragraph (d) of this section), over

(2) The amount of rebates made (as defined in paragraph (e) of this section).

The definition of underpayment also may be expressed as—

Underpayment = $W-(X+Y-Z)$,

where W = the amount of income tax imposed; X = the amount shown as the tax by the taxpayer on his return; Y = amounts not so shown previously assessed (or collected without assessment); and Z = the amount of rebates made.

(b) *Amount of income tax imposed.* For purposes of paragraph (a) of this section, the "amount of income tax imposed" is the amount of tax imposed on the taxpayer under subtitle A for the taxable year, determined without regard to—

(1) The credits for tax withheld under sections 31 (relating to tax withheld on wages) and 33 (relating to tax withheld at source on nonresident aliens and foreign corporations);

(2) Payments of tax or estimated tax by the taxpayer;

(3) Any credit resulting from the collection of amounts assessed under section 6851 as the result of a termination assessment, or section 6861 as the result of a jeopardy assessment; and

(4) Any tax that the taxpayer is not required to assess on the return (such as the tax imposed by section 531 on the accumulated taxable income of a corporation).

(c) *Amount shown as the tax by the taxpayer on his return*—(1) *Defined.* For purposes of paragraph (c) of this section, the "amount shown as the tax by the taxpayer on his return" is the tax liability shown by the taxpayer on his return, determined without regard to the items listed in § 1.6664–2(b) (1), (2), and (3), except that it is reduced by the excess of—

(i) The amounts shown by the taxpayer on his return as credits for tax withheld under section 31 (relating to tax withheld on wages) and section 33 (relating to tax withheld at source on nonresident aliens and foreign corporations), as payments of estimated tax, or as any other payments made by the taxpayer with respect to a taxable year before filing the return for such taxable year, over

(ii) The amounts actually withheld, actually paid as estimated tax, or actually paid with respect to a taxable year before the return is filed for such taxable year.

(2) *Effect of qualified amended return.* The "amount shown as the tax by the taxpayer on his return" includes an amount shown as additional tax on a qualified amended return (as defined in paragraph (c)(3) of this section), except that such amount is not included if it relates to a fraudulent position on the original return.

(3) *Qualified amended return defined.* A qualified amended return is an amended return, or a timely request for an administrative adjustment under section 6227, filed after the due date of the return for the taxable year (determined with regard to extensions of time to file) and before the earliest of—

(i) The time the taxpayer is first contacted by the Internal Revenue Service concerning an examination of the return;

(ii) The time any person described in section 6700(a) (relating to the penalty for promoting abusive tax shelters) is first contacted by the Internal Revenue Service concerning an examination of an activity described in section 6700(a) with respect to which the taxpayer claimed any tax benefit on the return directly or indirectly through the entity, plan or arrangement described in section 6700(a)(1)(A); or

(iii) In the case of a pass-through item (as defined in § 1.6662–4(f)(5)), the time the pass-through entity (as defined in § 1.6662–4(f)(5)) is first contacted by the Internal Revenue Service in connection with an examination of the return to which the pass-through item relates.

A qualified amended return includes an amended return that is filed solely to disclose information pursuant to § 1.6662–3(c) or § 1.6662–4 (e) and (f) and that does not report any additional tax liability.

(4) *Special rule for qualified amended returns.* The Commissioner may by revenue procedure prescribe the manner in which the rules of paragraph (c) of this section regarding qualified amended returns apply to particular classes of taxpayers.

(d) *Amounts not so shown previously assessed (or collected without assessment).* For purposes of paragraph (a) of this section, "amounts not so shown previously assessed" means only amounts assessed before the return is filed that were not shown on the return, such as termination assessments under section 6861 and jeopardy assessments under section 6851 made prior to the filing of the return for the taxable year. For purposes of paragraph (a) of this section, the amount "collected without assessment" is the amount by which the total of the credits allowable under section 31 (relating to tax withheld on wages) and section 33 (relating to tax withheld at source on nonresident aliens and foreign corporations), estimated tax payments, and other payments in satisfaction of tax liability made before the return is filed, exceed the tax shown on the return (provided such excess has not been refunded or allowed as a credit to the taxpayer).

(e) *Rebates.* The term "rebate" means so much of an abatement credit, refund or other repayment, as was made on the ground that the tax imposed was less than the excess of—

(1) The sum of—

(i) The amount shown as the tax by the taxpayer on his return, plus

(ii) Amounts not so shown previously assessed (or collected without assessment), over

(2) Rebates previously made.

(f) *Underpayments for certain carryback years not reduced by amount of carrybacks.* The amount of an underpayment for a taxable year that is attributable to conduct proscribed by sections 6662 or 6663 is not reduced on account of a carryback of a loss, deduction or credit to that year. Such conduct includes negligence or disregard of rules or regulations; a substantial understatement of income tax; and a substantial (or gross) valuation misstatement under chapter 1, provided that the applicable dollar limitation is satisfied for the carryback year.

(g) *Examples.* The following examples illustrate this section:

Example 1. Taxpayer's 1990 return showed a tax liability of $18,000. Taxpayer had no amounts previously assessed (or collected without assessment) and received no rebates of tax. Taxpayer claimed a credit in the amount of $23,000 for income tax withheld under section 3402, which resulted in a refund received of $5,000. It is later determined that the taxpayer should have reported additional income and that the correct tax for the taxable year is $25,500. There is an underpayment of $7,500, determined as follows:

Tax imposed under subtitle A		$25,500
Tax shown on return	$18,000	
Tax previously assessed (or collected without assessment)	None	
Amount of rebates made	None	
Balance		18,000
Underpayment		7,500

Example 2. The facts are the same as in *Example 1* except that the taxpayer failed to claim on the return a credit of $1,500 for income tax withheld. This $1,500 constitutes an amount collected without assessment as defined in paragraph (d) of this section. The underpayment is $6,000, determined as follows:

Tax imposed under subtitle A		$25,500
Tax shown on return	$18,000	
Tax previously assessed (or collected without assessment)	1,500	
Amount of rebates made	None	
Balance		19,500
Underpayment		6,000

Example 3. On Form 1040 filed for tax year 1990, taxpayer reported a tax liability of $10,000, estimated tax payments of $15,000, and received a refund of $5,000. Estimated tax payments actually made with respect to tax year 1990 were only $7,000. For purposes of determining the amount of underpayment subject to a penalty under section 6662 or section 6663, the tax shown on the return is $2,000 (reported tax liability of $10,000 reduced by the overstated estimated tax of $8,000 ($15,000–$7,000)). The underpayment is $8,000, determined as follows:

Tax imposed under subtitle A		$10,000
Tax shown on return	$2,000	
Tax previously assessed (or collected without assessment)	None	
Amount of rebates made	None	
Balance		2,000
Underpayment		8,000

§ 1.6664–3 Ordering rules for determining the total amount of penalties imposed.

(a) *In general.* This section provides rules for determining the order in which adjustments to a return are taken into account for the purpose of computing the total amount of penalties imposed under sections 6662 and 6663, where—

(1) There is at least one adjustment with respect to which no penalty has been imposed and at least one with respect to which a penalty has been imposed, or

(2) There are at least two adjustments with respect to which penalties have been imposed and they have been imposed at different rates.

This section also provides rules for allocating unclaimed prepayment credits to adjustments to a return.

(b) *Order in which adjustments are taken into account.* In computing the portions of an underpayment subject to penalties imposed under sections 6662 and 6663, adjustments to a return are considered made in the following order:

(1) Those with respect to which no penalties have been imposed.

(2) Those with respect to which a penalty has been imposed at a 20 percent rate (*i.e.*, a penalty for negligence or disregard of rules or regulations, substantial understatement of income tax, or substantial valuation misstatement, under sections 6662(b)(1) through 6662(b)(3), respectively).

(3) Those with respect to which a penalty has been imposed at a 40 percent rate (*i.e.*, a penalty for a gross valuation misstatement under sections 6662 (b)(3) and (h)).

(4) Those with respect to which a penalty has been imposed at a 75 percent rate (*i.e.*, a penalty for fraud under section 6663).

(c) *Manner in which unclaimed prepayment credits are allocated.* Any income tax withholding or other payment made before a return was filed, that was neither claimed on the return nor previously allowed as a credit against the tax liability for the taxable year (an "unclaimed prepayment credit"), is allocated as follows—

(1) If an unclaimed prepayment credit is allocable to a particular adjustment, such credit is applied in full in determining the amount of the underpayment resulting from such adjustment.

(2) If an unclaimed prepayment credit is not allocable to a particular adjustment, such credit is applied in accordance with the ordering rules set forth in paragraph (b) of this section.

(d) *Examples.* The following examples illustrate the rules of this § 1.6664–3. These examples do not take into account the reasonable cause exception to the accuracy-related penalty under § 1.6664–4.

Example 1. A and B, husband and wife, filed a joint federal income tax return for calendar year 1989, reporting taxable income of $15,800 and a tax liability of $2,374. A and B had no amounts previously assessed (or collected without assessment) and no rebates had been made. Subsequently, the return was examined and the following adjustments and penalties were agreed to:

Adjustment #1 (No penalty imposed)		$1,000
Adjustment #2 (Substantial understatement penalty imposed)		40,000
Adjustment #3 (Civil fraud penalty imposed)		45,000
Total adjustments		86,000
Taxable income shown on return		15,800
Taxable income as corrected		101,800
Computation of underpayment:		
Tax imposed by subtitle A		25,828
Tax shown on return	2,374	
Previous assessments	None	
Rebates	None	
Balance		2,374
Underpayment		$23,454

Computation of the portions of the underpayment on which penalties under

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section 6662(b)(2) and section 6663 are imposed.

Step 1 Determine the portion, if any, of the underpayment on which no accuracy-related or fraud penalty is imposed:

Taxable income shown on return	$15,800
Adjustment #1	1,000
"Adjusted" taxable income	16,800
Tax on "adjusted" taxable income	2,524
Tax shown on return	2,374
Portion of underpayment on which no penalty is imposed	150

Step 2 Determine the portion, if any, of the underpayment on which a penalty of 20 percent is imposed:

"Adjusted" taxable income from step 1	$16,800
Adjustment #2	40,000
"Adjusted" taxable income	56,800
Tax on "adjusted" taxable income	11,880
Tax on "adjusted" taxable income from step 1	2,524
Portion of underpayment on which 20 percent penalty is imposed	9,356

Step 3 Determine the portion, if any, of the underpayment on which a penalty of 75 percent is imposed:

Total underpayment		$23,454
Less the sum of the portions of such underpayment determined in:		
Step 1	$150	
Step 2	9,356	
Total		9,506
Portion of underpayment on which 75 percent penalty is imposed		13,948

Example 2. The facts are the same as in *Example 1* except that the taxpayers failed to claim on their return a credit of $1,500 for income tax withheld on unreported additional income that resulted in Adjustment #2. Because the unclaimed prepayment credit is allocable to Adjustment #2, the portion of the underpayment attributable to that adjustment is $7,856 ($9,356—$1,500). The portions of the underpayment attributable to Adjustments #1 and #3 remain the same.

Example 3. The facts are the same as in *Example 1* except that the taxpayers made a timely estimated tax payment of $1,500 for 1989 which they failed to claim (and which the Service had not previously allowed). This unclaimed prepayment credit is not allocable to any particular adjustment. Therefore, the credit is allocated first to the portion of the underpayment on which no penalty is imposed ($150). The remaining amount ($1,350) is allocated next to the 20 percent penalty portion of the underpayment ($9,356). Thus, the portion of the underpayment that is not penalized is zero ($150—$150), the portion subject to a 20 percent penalty is $8,006 ($9,356—$1,350) and the portion subject to a 75 percent penalty is unchanged at $13,948.

§ 1.6664–4 Reasonable cause and good faith exception to section 6662 penalties.

(a) *In general.* No penalty may be imposed under section 6662 with respect to any portion of an underpayment upon a showing by the taxpayer that there was reasonable cause for, and the taxpayer acted in good faith with respect to, such portion. Rules for determining whether the reasonable cause and good faith exception applies are set forth in paragraphs (b), (c), (d) and (e) of this section.

(b) *Facts and circumstances taken into account*—(1) *In general.* The determination of whether a taxpayer acted with reasonable cause and in good faith is made on a case-by-case basis, taking into account all pertinent facts and circumstances. The most important factor is the extent of the taxpayer's effort to assess the taxpayer's proper tax liability. Circumstances that may indicate reasonable cause and good faith include an honest misunderstanding of fact or law that is reasonable in light of the experience, knowledge and education of the taxpayer. An isolated computational or transcriptional error generally is not inconsistent with reasonble cause and good faith. Reliance on an information return or on the advice of a professional (such as an appraiser, attorney or accountant) does not necessarily demonstrate reasonable cause and good faith. Similarly, reasonable cause and good faith is not necessarily indicated by reliance on facts that, unknown to the taxpayer, are incorrect. Reliance on an information return, professional advice or other facts, however, constitutes reasonable cause and good faith if, under all the circumstances, such reliance was reasonable and the taxpayer acted in good faith. For example, reliance on erroneous information (such as an error relating to the cost or adjusted basis of property, the date property was placed in service, or the amount of opening or closing inventory) inadvertently included in data compiled by the various divisions of a multidivisional corporation or in financial books and records prepared by those divisions generally indicates reasonable cause and good faith, provided the corporation employed internal controls and procedures, reasonable under the circumstances, that were designed to identify such factual errors. Reasonable cause and good faith ordinarily is not indicated by the mere fact that there is an appraisal of the value of property. Other factors to consider include the methodology and assumptions underlying the appraisal, the appraised value, the relationship between appraised value and purchase price, the circumstances under which the appraisal was obtained, and the appraiser's relationship to the taxpayer or to the activity in which the property is used. (See paragraph (e) of this section for special rules relating to appraisals for "charitable deduction property.") A taxpayer's reliance on erroneous information reported on a Form W–2, Form 1099 or other information return indicated reasonable cause and good faith, provided the taxpayer did not know or have reason to know that the information was incorrect. Generally, a taxpayer knows or has reason to know that the information on an information return is incorrect if such information is inconsistent with other information reported or otherwise furnished to the taxpayer, or with the taxpayer's knowledge or the transaction. This knowledge includes, for example, the taxpayer's knowledge of the terms of his employment relationship or of the rate of return on a payor's obligation.

(2) *Examples.* The following examples illustrate the provisions of paragraph (b) of this section:

Example 1. A, an individual calendar year taxpayer, engages B, a tax professional, to give him advice concerning the deductibility of certain state and local taxes. A provides B with full details concerning the taxes at issue. B advises A that the taxes are fully deductible. A, in preparing his own tax return, claims a deduction for the taxes. Under these facts, A is considered to have demonstrated good faith by seeking the advice of a tax professional, and to have shown reasonable cause for any underpayment attributable to the deduction claimed for the taxes. However, if A had sought advice from someone that he knew, or should have known, lacked knowledge in federal taxation, A would not be considered to have shown reasonable cause or to have acted in good faith.

Example 2. C, an individual, sought advice from D, a friend who was not a tax professional, as to how C might reduce his Federal tax obligations. D advised C that, for a nominal investment in Corporation X, D had received certain tax benefits which virtually eliminated D's Federal tax liability. D also named other investors who had received similar benefits. Without further inquiry, C invested in X and claimed the benefits that he had been assured by D were due him. In this case, C did not make any good faith attempt to ascertain the correctness of what D had advised him concerning his tax matters, and is not considered to have reasonable cause for the underpayment attributable to the benefits claimed.

Example 3. E, an individual, worked for Company X doing odd jobs and filling in for other employees when necessary. E worked irregular hours and was paid by the hour. The amount of E's pay check differed from week to week. The Form W–2 furnished to E reflected wages for 1990 in the amount of $29,729. It did not, however, include compensation of $1,467 paid for some hours E worked. Relying on the Form W–2, E filed a return reporting wages of $29,729. E had no reason to know that the amount reported on the Form W–2 was incorrect. Under the circumstances, E is considered to have acted in good faith in relying on the Form W–2 and to have reasonable cause for the underpayment attributable to the unreported wages.

Example 4. H, an individual, did not enjoy preparing his tax returns and procrastinated in doing so until April 15th. On April 15th, H hurriedly gathered together his tax records and materials, prepared a return, and mailed it before midnight. The return contained numerous errors, some of which were in H's favor and some of which were not. The net result of all the adjustments, however, was an underpayment of tax by H. Under these circumstances, H is not considered to have reasonable cause for the underpayment or to have acted in good faith in attempting to file an accurate return.

(c) *Pass-through items.* In the case of an underpayment that is related to an item on the return of a pass-through entity (as defined in § 1.6662–4(f)(5)), reasonable cause and good faith by the entity generally is imputed to the taxpayer that has the underpayment. Reasonable cause and good faith is not imputed from the entity to the taxpayer, however, if there are factors which indicate that the taxpayer did not act with reasonable cause and in good faith. Correspondingly, a lack of reasonable cause or bad faith also may be imputed from the entity to the taxpayer.

(d) *Tranactions between persons described in section 482 and net section 482 transfer price adjustments.* [Reserved]

(e) *Valuation misstatements of charitable deduction property*—(1) *In general.* There may be reasonable cause and good faith with respect to a portion of an underpayment that is attributable to a substantial (or gross) valuation misstatement of charitable deduction property (as defined in paragraph (e)(2)(i) of this section) only if—

(i) The claimed value of the property was based on a qualified appraisal (as defined in paragraph (e)(2)(ii) of this section) by a qualified appraiser (as defined in paragraph (e)(2)(iii) of this section), and

(ii) In addition to obtaining a qualified appraisal, the taxpayer made a good faith investigation of the value of the contributed property.

The rules of this paragraph (e) apply regardless of whether § 1.170A–13 permits a taxpayer to claim a charitable contribution deduction for the property without obtaining a qualified appraisal. The rules of this paragraph (e) apply in addition to the generally applicable rules concerning reasonable cause and good faith.

(2) *Definitions*—(i) *Charitable deduction property.* For purposes of this paragraph (e), the term "charitable deduction property" means any property (other than money or publicly traded securities, as defined in § 1.170A–13(c)(7)(xi)) contributed by the taxpayer in a contribution for which a deduction was claimed under section 170.

(ii) *Qualified appraisal.* For purposes of this paragraph (e), the term "qualified appraisal" means a qualified appraisal as defined in § 1.170A–13(c)(3).

(iii) *Qualified appraiser.* For purposes of this paragraph (e), the term "qualified appraiser" means a qualified appraiser as defined in § 1.170A–13(c)(5).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority for part 602 continues to read as follows:

Authority: (26 U.S.C. 7805).

Par. 4. Section 602.101(c) is amended by adding the following in the table:

§ 1.6662–3(c)	1545–0889
§ 1.6662–4 (e) and (f)	1545–0889

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.
Approved: December 5, 1991.
Kenneth W. Gideon,
Assistant Secretary of the Treasury.
[FR Doc. 91–30708 Filed 12–30–91; 8:45 am]
BILLING CODE 4830–01–M

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26 CFR Parts 1 and 602

[T.D. 8382]

RIN 1545–AO62

Penalty on Income Tax Return Preparers Who Understate Taxpayer's Liability on a Federal Income Tax Return or a Claim for Refund

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning a penalty for understatement of a taxpayer's liability and relates to persons who prepare for compensation income tax returns and claims for refund. Changes to the applicable tax law were made by the Omnibus Budget Reconciliation Act of 1989. The regulations provide guidance necessary to comply with these changes.

EFFECTIVE DATE: Except for § 1.6694–3(c)(3), §§ 1.6694–1 through 1.6694–3 are effective for documents prepared and advice given after December 31, 1991. Section 1.6694–3(c)(3) is effective for documents prepared and advice given after December 31, 1989. Section 1.6694–4 is effective as of December 19, 1989. Section 1.6694–0 is effective December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Lisa J. Byun of the Office of Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:IT&A:4) or telephone 202–566–5985 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545–1231. The estimated annual burden per respondent is .5 hours.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On March 4, 1991, the Federal Register (56 FR 8959) published a notice of proposed rulemaking to provide guidance under section 6694 of the Internal Revenue Code as revised by

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sections 7732 and 7737 of the Omnibus Budget Reconciliation Act of 1989, Public Law No. 101–239 (OBRA 1989). The Internal Revenue Service received public comments on the proposed regulations and held a public hearing on June 3, 1991. After consideration of the public comments regarding the proposed regulations, the regulations are adopted as revised by this Treasury decision. Descriptions of the revisions to the proposed regulations are included in the discussion of the public comments below.

Explanation of Statutory Provisions

As amended by OBRA 1989, section 6694(a) provides that a $250 penalty will be imposed on an income tax return preparer ("preparer") who understates a taxpayer's tax liability on an income tax return or claim for refund if the understatement is due to a position for which there was not a realistic possibility of being sustained on its merits and the preparer knew or reasonably should have known of such position. The penalty does not apply, however, if the position is not frivolous and is adequately disclosed, or if there was reasonable cause for the position taken and the preparer acted in good faith.

As amended, section 6694(b) provides that a $1,000 penalty will be imposed on a preparer who understates a taxpayer's tax liability on an income tax return or claim for refund if the understatement is due to the preparer's willful attempt to understate tax liability or the preparer's reckless or intentional disregard of rules or regulations. There is no statutory disclosure exception to this penalty. However, the legislative history indicates that the penalty for disregarding rules or regulations should not be imposed if proper disclosure is made.

OBRA 1989 also amended section 6694(c) to expressly permit the Internal Revenue Service ("Service") to counterclaim in a refund proceeding for any portion of the section 6694 penalty that was not paid by the preparer prior to commencing the proceeding.

Public Comments

General Provisions

1. One-Preparer-Per-Firm Rule

a. *Sole proprietorships.* The proposed regulations provide that no more than one individual associated with a firm (for example, as a partner or employee) is treated as a preparer with respect to the same return or claim for refund. Prop. Reg. § 1.6694–1(b)(1). One commentator commented that this rule would prevent the Service from penalizing a sole proprietorship and an employee of the firm who was not the sole proprietor, on the ground that, in such a case, a preparer penalty would be imposed on two individuals associated with the same firm. The proposed regulations do not prevent the Service from imposing two preparer penalties in this context because the sole proprietor would be penalized in his capacity as the firm, not in his capacity as an individual "associated with" the firm. Nevertheless, to eliminate any confusion, the final regulations note that a firm includes a sole proprietorship.

b. *Signing preparer.* In the case of a signing preparer who is associated with a firm, the proposed regulations provide that only the signing preparer and no other individual associated with the firm is a preparer with respect to the return or claim. Prop. Reg. § 1.6694–1(b)(1). A corollary of this rule is that the signing preparer cannot avoid the penalty under section 6694(a) by relying on the advice of another individual in the same firm. Several commentators stated that a signing preparer should not be subject to a penalty if the signing preparer relied on the advice of another individual within the same firm.

The commentators did not object to the one-preparer-per-firm rule, but argued that the signing preparer should not be required to bear the penalty if he or she relied on advice of another individual in the firm. Such a rule would impose a heavy administrative burden on the Service because it would have to establish which individual within a firm was ultimately responsible for the position for which the penalty was imposed. This would require the imposition of standards for intrafirm advice and disclosure, and would burden practitioners with documenting intrafirm communcations in order to comply with the disclosure requirements of the preparer regulations and to establish justifiable reliance on the advice of others. These were the concerns that influenced the initial formulation of the one-preparer-per-firm rule.

After careful consideration of the comments, the Service has determined that the approach taken in the proposed regulations—limiting the penalty to one individual per firm but designating that individual on the basis of objective criteria—reasonably balances the interests of the Government and practitioners. Accordingly, the final regulations adopt the rule of the proposed regulations without change.

c. *Nonsigning preparer.* In the case of a nonsigning preparer who is associated with a firm, the proposed regulations provide that, ordinarily, the individual who is a preparer for purposes of section 6694 is the individual with direct supervisory responsibility for the matter. Prop. Reg. § 1.6694–1(b)(1). One commentator found this provision confusing, because more than one individual in a firm may have direct supervisory responsibility for matters relating to the same return or claim. The final regulations clarify this point by providing that the nonsigning preparer in such a case ordinarily is the individual with overall supervisory responsibility for the advice given by the firm with respect to the return or claim.

2. Maximum Penalty on Preparer of Partnership Return

Under the definition of an income tax return preparer in Treas. Reg. § 301.7701–15(b)(3), a preparer of a partnership return is considered a preparer of a partner's return if the entries on the partnership return that are reportable on the partner's return constitute a substantial portion of the partner's return. Given the increase in the section 6694 penalty amounts and the large size of some partnerships, one commentator asked that the Service limit the amount (*e.g.*, at $5,000 or $10,000) that a preparer of a partnership return can be penalized for returns of partners in the partnership. Because the Service does not have the authority to set limits on the section 6694 penalty amounts, the final regulations do not adopt the commentator's suggestion.

3. Procedural Matters

One commentator commented that the deficiency procedures available to preparers offer little recourse to small practitioners. Therefore, the commentator asked that additional consideration be given to providing administrative recourse (*e.g.*, a review by Appeals) before a preparer is required to contest the penalty assessment in district court. Another commentator requested clarification as to the office of the Service in which a final administrative determination will ordinarily be made.

The proposed regulations provide that unless the period of limitations may expire without adequate opportunity for assessment, the Service will also send, before assessment of either penalty, a 30-day letter to the preparer notifying him of the proposed penalty or penalties and offering an opportunity to the preparer to request further administrative consideration and a final administrative determination by the Service concerning the assessment. If the preparer then makes a timely request, assessment may not be made until the Service makes a final administrative determination adverse to the preparer. Prop. Reg. § 1.6694–4(a)(1). The final administrative determination is generally made by Appeals. Specific instructions on how and where to administratively appeal the proposed penalty assessment are contained in the letter issued to the preparer. Therefore, the Service believes further clarification or elaboration on the administrative appeals process is not necessary in the final regulations.

4. Effective Dates

The proposed regulations provide that, in the case of a position contrary to a revenue ruling, a preparer will not be considered to have recklessly or intentionally disregarded the ruling if the contrary position has a realistic possibility of being sustained on its merits. Prop. Reg. § 1.6694–3(c)(3). This provision was proposed to be effective with respect to documents prepared and advice given after December 31, 1991. A similar rule for taxpayers under the proposed section 6662 regulations (relating to the penalty for negligence or disregard of rules or regulations) was proposed to be effective with respect to returns due after December 31, 1989.

Several commentators urged that the December 31, 1989 effective date under section 6662 be adopted for the section 6694 provision as well. To respond to this concern, the final preparer penalty regulations adopt the effective date of the accuracy-related penalty regulations on this point. Thus, the provision in the preparer regulations which provides that a preparer is not considered to have recklessly or intentionally disregarded a revenue ruling if the position contrary to the ruling has a realistic possibility of being sustained on its merits is effective for documents prepared and advice given after December 31, 1989. The final preparer regulations contain a similar rule, which is also effective for documents prepared and advice given after December 31, 1989, regarding positions contrary to certain notices issued by the Service.

Section 6694(a) Provisions

1. "One-in-Three" Definition of the Realistic Possibility Standard

The proposed regulations provide that a position will be considered to have satisfied the realistic possibility standard if a reasonable and well-informed analysis by a person knowledgeable in the tax law would lead such a person to conclude that the position has approximately a one in three, or greater, likelihood of being sustained on its merits. Prop. Reg. § 1.6694–2(b)(1). Many commentators asked that the "one-in-three" definition be eliminated because it is difficult to assess the likelihood of a position being sustained on its merits. The final regulations retain the one-in-three definition, however, because a numerical benchmark helps prevent erosion of the standard and because other definitions suggested by commentators would not provide any more meaningful guidance.

2. Authorities

The proposed regulations provide that, in determining whether a position satisfies the realistic possibility standard, only the "authorities" listed in § 1.6662–4(d)(3)(iii) of the proposed regulations (relating to the authorities for determining substantial authority) are to be considered. Prop. Reg. § 1.6694–2(b)(2). Section 1.6662–4(d)(3)(iii) provides that the term "authorities" does not include conclusions reached in treatises, legal periodicals, legal opinions or opinions rendered by other tax professionals but that the authorities underlying such expressions of opinion may give rise to substantial authority. Several commentators argued that "authorities" should include additional sources such as well-reasoned treatises, articles in recognized professional tax publications, and other reference tools and sources of tax analyses commonly used by tax advisers and return preparers.

The commentators' suggestion was not adopted in the final regulations because (1) it would be too difficult to administratively determine which of these secondary sources were well-reasoned or were otherwise accurate expressions of the tax law, and (2) the regulations provide sufficient protection to preparers by allowing them to rely on the authorities underlying the conclusions in the secondary sources.

3. When Realistic Possibility Determined

The proposed regulations provide generally that, in the case of a signing preparer, the relevant date for determining whether a position satisfies the realistic possibility standard is the date the preparer signs and dates the return or claim. In the case of a nonsigning preparer, the relevant date is the date the preparer provides the advice. Prop. Reg. § 1.6694–2(b)(5).

One commentator stated that the dates for determining whether a position satisfies the realistic possibility standard should conform to the dates for determining whether a position satisfies the substantial authority standard. Under this approach, the realistic possibility standard could be satisfied either on the last day of the taxable year covered by a return or on the date the return was signed (or the advice was given). The commentator was concerned that the difference in determination dates creates a potential for conflict between preparers and taxpayers where an adverse technical development occurs after the end of the taxable year but before the return is signed (or the advice is given).

The commentator's suggestion was not adopted in the final regulations because a preparer should not be permitted to ignore developments in the law occurring after the taxable year covered by the return and before the preparer signs the return (or provides the advice).

4. Realistic Possibility Examples (§ 1.6694–2(b)(3))

a. *Example 2.* One commentator suggested expanding this example (which concerns a statutory change that adversely affects a taxpayer) to provide that if the committee reports can be read to provide some evidence or authority to support the taxpayer's position (although the committee reports do not specifically address the situation), the position is not frivolous and, therefore, may be taken if adequately disclosed. The commentator's suggestion was not adopted in the final regulations because the proposed modification to the example does not provide sufficient information to determine whether the position is frivolous.

b. *Example 3.* Several commentators stated that this example (which concerns a conflict between the statutory language and the legislative history) should be revised to conclude that a position consistent with either the statute or the committee reports satisfies the realistic possibility standard. The final regulations adopt this suggestion but add that a position consistent with the committee reports but contrary to the statute constitutes a disregard of a rule or regulation and, therefore, must be adequately disclosed in order to avoid the section 6694(b) penalty.

c. *Example 4.* A commentator asked that this example (which concerns an inconsistency between a regulation and instructions on a tax form) be revised to further provide that a position consistent with the incorrect tax form instructions is frivolous if the preparer knew of the Service's announcement acknowledging the error. The commentator's recommendation was not adopted in the final regulations because "frivolous" in an objective standard and, therefore, the preparer's knowledge of the announcement is not relevant to a determination of whether the position is frivolous. Knowledge of the announcement would, however, be relevant to a determination of whether the preparer intentionally disregarded the regulation.

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d. *Example 5.* Several commentators contended that the issuance of proposed regulations which are contrary to previously issued private letter rulings should not cause the earlier private letter rulings to cease being authorities; it should only diminish the weight of the private letter rulings. The commentators' suggestion was not adopted because proposed regulations are subject to a higher level of review than private letter rulings and it is not appropriate to retain as an authority a document that does not accurately reflect the current status of the law and position of the Service.

e. *Example 8.* Two commentators contended that a taxpayer should be treated as having a realistic possibility of success with respect to a position involving a statutory phrase if there is a favorable interpretation of identical language appearing in another place in the Internal Revenue Code. The example provides that interpretations of identical language are relevant, but that the context in which the identical language arises also must be taken into account in applying the realistic possibility standard. Because the context in which the identical language arises is important, the final regulations retain this example without any revisions.

5. Employer/Partnership Liability

The proposed regulations provide that an employer or partnership of a preparer subject to the section 6694(a) penalty is also subject to the penalty if the employer or partnership (or one or more of its principal officers of general partners) also knew or reasonably should have known of the position. Prop. Reg. § 1.6694–2(a). Several commentators expressed concern that the "also knew or reasonably should have known" language could result in automatic assertion of a penalty against a firm if an employee or partner of the firm were penalized. This was not the intent of the proposed regulations.

In response to this concern, the final regulations clarify the circumstances under which a firm will be subject to penalty under section 6694. The final regulations provide that an employer or partnership of a preparer subject to penalty under section 6694(a) is also subject to penalty only if (1) one or more members of the principal management (or principal officers) of the firm or a branch office participated in or knew of the conduct proscribed by section 6694(a), (2) the employer or partnership failed to provide reasonable and appropriate procedures for review of the position for which the penalty is imposed, or (3) such review procedures were disregarded in the formulation of the advice, or the preparation of the return or claim for refund, that included the position for which the penalty is imposed. A mid-level manager is not ordinarily considered a member of principal management for purposes of this provision; however, the principal managers of a branch office are considered members of principal management even if they are not principal managers of the firm as a whole. (Similar rules apply for purposes of section 6694(b).)

6. Definition of "Frivolous"

The proposed regulations define a "frivolous" position as one that is "patently improper." Prop. Reg. § 1.6694–2(c)(2). Commentators recommended that this definition be changed, for example, to require that the position be both patently improper and knowingly advanced in bad faith, or that a frivolous position be defined as one that is "not litigable."

The "patently improper" definition was included in the proposed regulations because it represents an objective standard. Thus, neither the good nor the bad intentions of a person taking a position are relevant to a determination of whether that position is frivolous within the meaning of the regulations. The Service continues to believe that an objective standard is appropriate. The recommendation that a frivolous position be defined as one that is not litigable would place preparers who are not attorneys at a disadvantage in assessing the effectiveness of disclosure in relation to preparers who are. Accordingly, the final regulations retain the definition of a frivolous position as one that is patently improper.

7. Adequate Disclosure

a. *Method of making adequate disclosure.* The proposed regulations provide that disclosure by a signing preparer is adequate for purposes of section 6694(a) if made on a Form 8275 or on the return in accordance with an annual revenue procedure. Prop. Reg. § 1.6694–2(c)(3)(i). Several commentators stated that the method for making adequate disclosure should not be so limited.

It is in the interest of both preparers and the Service to have a relatively uniform disclosure regime that provides certainty as to whether adequate disclosure has been made. Thus, the final regulations do not relax the requirements for making adequate disclosure for purposes of this penalty. The final regulations also add a special disclosure rule for positions contrary to regulations (see the "Adequate Disclosure" section below in the portion of this preamble that discusses the provisions under section 6694(b)).

b. *Tension between accuracy-related penalties and the preparer penalties.* One commentator noted that tension can exist between a taxpayer and a signing preparer with respect to disclosure of a position that (1) results in an understatement that is too small to be considered substantial, and (2) lacks a realistic possibility of being sustained on its merits. In such a case, the signing preparer would have to disclose the position to avoid a preparer penalty, but a taxpayer would not have to disclose to avoid the substantial understatement penalty. The different standards to taxpayers and preparers are established by statute and cannot be changed by regulation. Therefore, the final regulations adopt the position of the proposed regulations without change.

8. "Rare Case" Provision

The proposed regulations provide disclosure rules for nonsigning preparers in the "rare cases" in which a position has substantial authority but does not satisfy the realistic possibility standard. Prop. Reg.§ 1.6694–2(c)(3)(ii)(A)(*2*). Because many commentators criticized this provision as unnecessary and confusing, it has been eliminated.

9. Reasonable Cause and Good Faith

a. *Frequency of errors.* The proposed regulations provide that in determining whether the reasonable cause and good faith exception applies, one factor to consider is whether the understatement is due to an isolated error rather than a number of errors. Although the exception generally applies to an isolated error, the exception does not apply if the error is sufficiently obvious, flagrant or material. Prop. Reg. § 1.6694–2(d)(2). One commentator argued that the materiality of an error should not enter into this determination. The final regulations respond to this suggestion by clarifying that the materiality of an error is relevant to whether the error should have been discovered during a review of the return or claim.

b. *Preparer's normal office practice.* Under the proposed regulations, a preparer's normal office practice is one of the factors considered in making the reasonable cause and good faith determination. The proposed regulations provide that a normal office practice "generally must involve, at a minimum" certain procedures enumerated in the regulations. Prop. Reg. § 1.6694–2(d)(4). One commentator questioned whether the Service should mandate minimum standards for office procedures. In response to this comment, the final regulations eliminate the minimum office procedure requirement, but list these procedures as factors to consider in determining whether a practitioner's normal office practice promotes

accuracy and consistency in the preparation of returns and claims for refund. Stylistic changes were also made to this provision.

c. *Reliance on advice of another preparer.* The proposed regulations generally provide that the reasonable cause and good faith exception applies if the preparer relied in good faith on the advice of another preparer (or a person who would be considered a preparer had the advice constituted preparation of a substantial portion of the return or claim for refund). Prop. Reg. § 1.6694–2(d)(5). One commentator suggested clarifying this provision to expressly provide that the exception only applies if the preparer being relied on is a paid preparer.

The proposed regulations define an "income tax return preparer" as any person who is an income tax return preparer within the meaning of section 7701(a)(36) and the regulations thereunder. Under section 7701(a)(36), a person is not an income tax return preparer unless such person is compensated for preparing a return or claim. Because a preparer, by definition, must have been compensated, no further clarification is necessary.

Another commentator stated that this provision should cover the situation where a preparer, in preparing a taxpayer's return, relies on a Schedule K–1 that has been prepared by another preparer. No change is necessary to permit reliance on a Schedule K–1 prepared by another preparer as the proposed and final regulations both permit a preparer to rely on "the advice of, or schedules prepared by" another preparer (or by a person who would be considered a preparer had the advice or schedules constituted preparation of a substantial portion of the return or claim for refund).

Section 6694(b) Provisions

1. Recklessness

The proposed regulations provide that a preparer is reckless in not knowing of a rule or regulation if the preparer makes little or no effort to determine whether a rule or regulation exists, under circumstances which demonstrate a substantial deviation from the standard of conduct that a reasonable preparer would observe in the situation. Prop. Reg. § 1.6694–3(c)(1). One commentator asked that the term "reasonable preparer" either be defined or changed to "reasonably diligent preparer." This suggestion was not adopted because diligence is implicit in the standard contained in the proposed regulations.

2. Rules or Regulations

The proposed regulations define the term "rules or regulations" to include the provisions of the Internal Revenue Code, temporary or final Treasury regulations, and revenue rulings issued by the Service. Prop. Reg. § 1.6694–3(f). One commentator requested that we clarify the meaning of this term. Another commentator stated that a revenue ruling should not be treated as a "rule" because (1) a revenue ruling does not constitute a rule under the Administrative Procedure Act (5 U.S.C. §§ 500, *et seq.*) and (2) a revenue ruling is only the contention of one party and is not subjected to the give and take of a public comment process.

The legislative history to the Tax Reform Act of 1976 (which enacted section 6694) expressly provides that rules and regulations include regulations and "IRS rulings." See S. Rep. No. 938, 94th Cong., 2d Sess. 355 (1976). Moreover, revenue rulings were expressly listed as "rules" under former § 1.6694–1(a)(3). Therefore, the final preparer penalty regulations, in providing that revenue rulings are "rules," merely reflect a continuation of prior law.

Notices published in the Internal Revenue Bulletin by the Service also contain substantive interpretations of Federal tax law. In addition, these notices generally are subject to a level of review that is the same or higher than that accorded revenue rulings. Accordingly, the final regulations also provide that the term "rules or regulations" includes notices (other than notices of proposed rulemaking) that are issued by the Service and published in the Internal Revenue Bulletin. (Revenue procedures are not listed, as they may or may not be treated as "rules or regulations" depending on all facts and circumstances.) A corresponding provision is contained in the final regulations providing that a preparer is not considered to have recklessly or intentionally disregarded such a notice if the position contrary to the notice has a realistic possibility of being sustained on its merits.

3. Adequate Disclosure

The proposed regulations provide that a preparer will not be considered to have recklessly or intentionally disregarded a regulation if the position contrary to the regulation is not frivolous and is adequately disclosed. Prop. Reg. § 1.6694–3(c)(2). Commentators stated that a preparer should be permitted to take a position contrary to a regulation without disclosure if (1) the position has a realistic possibility of being sustained on its merits, or (2) the regulation was invalidated by a court. Another commentator stated that the legislative history to OBRA 1989 suggests only that disclosure should be a safe harbor and not the sole means of avoiding a penalty for reckless or intentional disregard of a regulation.

There is no indication in the legislative history of OBRA 1989 that Congress intended to permit the taking of positions contrary to regulations without disclosure in the circumstances described above or, more generally, that Congress intended disclosure to be only a safe harbor. The taking of a position contrary to a regulation is of sufficient importance to the self-assessment nature of the Federal tax system that it is appropriate to require that the Service be notified of such positions. Therefore, the final regulations adopt the rule of the proposed regulations requiring adequate disclosure of a position contrary to a regulation.

In addition, because of the importance to the self-assessment system of disclosing positions contrary to regulations, the final regulations make two changes to the rules concerning positions contrary to regulations. First, the final regulations provide that disclosure of such positions is adequate only if the disclosure is separately made on a Form 8275–R. Until Form 8275–R is available, preparers must disclose positions contrary to regulations on a separate Form 8275 with the caption "REGULATIONS" appearing in the upper right corner of the form. (A similar disclosure rule is provided in the final accuracy-related penalty regulations for the penalty for negligence or disregard of rules or regulations.) Second, because the legislative history of OBRA 1989 indicates that the penalty for reckless or intentional disregard of a regulation may be avoided through disclosure only if the position represents a good faith challenge to the validity of the regulation, the final regulations incorporate this standard. See H.R. Rep. No. 247, 101st Cong., 1st Sess. 1393, 1396–97 (1989).

4. Examples (§ 1.6694–3(d))

Example 3. Two commentators argued that the statement in the example that five different courts had arrived at the same position on an issue and that this position satisfies the realistic possibility standard created a negative inference that a position supported by fewer than five courts would not satisfy the standard. No such inference was intended. Accordingly, the inference has been eliminated by replacing "five" with "several" in the final regulations.

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5. Burden of Proof

The proposed regulations provide that the Government bears the burden of proof on the issue of whether a preparer willfully attempted to understate tax liability, but that the preparer bears the burden of proof on such other issues as whether the preparer recklessly or intentionally disregarded a rule or regulation or whether disclosure was adequately made. Prop. Reg. § 1.6694–3(h). One commentator stated that the Government should also bear the burden of proof on the issue of whether the preparer recklessly or intentionally disregarded a rule or regulation.

Section 7427 of the Code expressly provides that the burden of proof on the issue of whether a preparer willfully attempted to understate tax liability (within the meaning of section 6694(b)) is on the Government. Although OBRA 1989 added reckless disregard of rules or regulations as a basis for imposing the section 6694(b) penalty and made intentional disregard of rules or regulations subject to section 6694(b) rather than 6694(a), OBRA 1989 did not amend section 7427 to place the burden of proving reckless or intentional disregard on the Government. Furthermore, the regulations under former section 6694(a) (consistent with the legislative history of the Tax Reform Act of 1976) placed the burden of proof on the issue of whether a preparer intentionally disregarded a rule or regulation on the preparer. For these reasons, the commentator's suggestion was not adopted in the final regulations and the burden of proof on the issue of whether a position contrary to a regulation represents a good faith challenge to the validity of the regulation also is placed on the preparer.

Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Lisa J. Byun, Office of the Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects

26 CFR 1.6654–1 through 1.6709–1T

Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part:

Authority: Sec. 7805, 68A Stat. 917; sec. 26 U.S.C. 7805, 26 U.S.C. 7805 * * *

Par. 2. Sections 1.6694–1 and 1.6694–2 are revised and new §§ 1.6694–0, –3, and –4 are added to read as follows.

§ 1.6694–0 Table of contents.

This section lists the captions that appear in §§ 1.6694–1 through 1.6694–4.

§ 1.6694–1 Section 6694 penalties applicable to income tax return preparer.

(a) Overview.
(b) Income tax return preparer.
(1) In general.
(2) Signing and nonsigning preparers.
(3) Example.
(c) Understatement of liability.
(d) Abatement of penalty where taxpayer's liability not understated.
(e) Verification of information furnished by taxpayer.
(1) In general.
(2) Example.
(f) Effective date.

§ 1.6694–2 Penalty for understatement due to an unrealistic position.

(a) In general.
(1) Proscribed conduct.
(2) Special rule for employers and partnerships.
(b) Realistic possibility of being sustained on its merits.
(1) In general.
(2) Authorities.
(3) Examples.
(4) Written determinations.
(5) When "realistic possibility" determined.
(i) Signing preparers.
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(c) Exception for adequate disclosure of nonfrivolous positions.
(1) In general.
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(3) Adequate disclosure.
(i) Signing preparers.
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(A) Advice to taxpayers.
(B) Advice to another preparer.
(d) Exception for reasonable cause and good faith.
(1) Nature of the error causing the understatement.
(2) Frequency of errors.
(3) Materiality of errors.
(4) Preparer's normal office practice.
(5) Reliance on advice of another preparer.
(e) Burden of proof.

§ 1.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) In general.
(1) Proscribed conduct.
(2) Special rule for employers and partnerships.
(b) Willful attempt to understate liability.
(c) Reckless or intentional disregard.
(d) Examples.
(e) Adequate disclosure.
(1) Signing preparers.
(2) Nonsigning preparers.
(i) Advice to taxpayers.
(ii) Advice to another preparer.
(f) Rules or regulations.
(g) Section 6694(b) penalty reduced by section 6694(a) penalty.
(h) Burden of proof.

§ 1.6694–4 Extension of period of collection where preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) In general.
(b) Preparer must bring suit in district court to determine liability for penalty.
(c) Suspension of running of period of limitations on collection.
(d) Effective date.

§ 1.6694–1 Section 6694 penalties applicable to income tax return preparer.

(a) *Overview.* Section 6694(a) and section 6694(b) impose penalties on income tax return preparers for certain understatements of liability on a return or claim for refund. The section 6694(a) penalty is imposed for an understatement of liability with respect to tax imposed by subtitle A of the Internal Revenue Code that is due to a position for which there was not a realistic possibility of being sustained on its merits. The section 6694(b) penalty is imposed for an understatement of liability with respect to tax imposed by subtitle A of the Internal Revenue Code that is due to a willful attempt to understate tax liability or that is due to reckless or intentional disregard of rules or regulations. See § 1.6694–2 for rules relating to the penalty under section 6694(a). See § 1.6694–3 for rules relating to the penalty under section 6694(b).

(b) *Income tax return preparer*—(1) *In general.* Solely for purposes of the regulations under section 6694, the term "income tax return preparer" ("preparer") means any person who is an income tax return preparer within the meaning of section 7701(a)(36) and § 301.7701–15 of this Chapter, except that no more than one individual associated with a firm (for example, as a partner or employee) is treated as a preparer with respect to the same return or claim for refund. If a signing preparer is associated with a firm, that individual, and no other individual associated with the firm, is a preparer with respect to the return or claim for purposes of section 6694. If two or more individuals associated with a firm are income tax return preparers with respect to a return or claim for refund, within the meaning of section 7701(a)(36) and § 301.7701–15 of this Chapter, and none of them is the signing preparer, only one of the individuals is a preparer (i.e., nonsigning preparer) with respect to that return or claim for purposes of section 6694. In such a case, ordinarily, the individual who is a preparer for purposes of section 6694 is the individual with overall supervisory responsibility for the advice given by the firm with respect to the return or claim. To the extent provided in § 1.6694–2(a)(2) and § 1.6694–3(a)(2), an individual and the firm with which the individual is associated may both be subject to penalty under section 6694 with respect to the same return or claim for refund. If an individual (other than the sole proprietor) who is associated with a sole proprietorship is subject to penalty under section 6694, the sole proprietorship is considered a "firm" for purposes of this paragraph.

(2) *Signing and nonsigning preparers.* A "signing preparer" is any preparer who signs a return of tax or claim for refund as a preparer. A "nonsigning preparer" is any preparer who is not a signing preparer. Examples of nonsigning preparers are preparers who provide advice (written or oral) to a taxpayer or to a preparer who is not associated with the same firm as the preparer who provides the advice.

(3) *Example.* The provisions of paragraph (b) of this section are illustrated by the following example:

Example. Attorney A provides advice to Client C concerning the proper treatment of a significant item on C's income tax return. The advice constitutes preparation of a substantial portion of the return. In preparation for providing that advice, A discusses the matter with Attorney B, who is associated with the same firm as A, but A is the attorney with overall supervisory responsibility for the advice. Neither Attorney A nor any other attorney associated with A's firm signs C's return as a preparer. For purposes of the regulations under section 6694, A is a preparer with respect to C's return and is subject to penalty under section 6694 with respect to C's return. B is not a preparer with respect to C's return and, therefore, is not subject to penalty under section 6694 with respect to a position taken on C's return. This would be true even if B recommends that A advise C to take an undisclosed position that did not satisfy the realistic possibility standard. In addition, since B is not a preparer for purposes of the regulations under section 6694, A may not avoid a penalty under section 6694 with respect to C's return by claiming he relied on the advice of B. See § 1.6694–2(d)(5).

(c) *Understatement of liability.* For purposes of the regulations under section 6694, an "understatement of liability" exists if, viewing the return or claim for refund as a whole, there is an understatement of the net amount payable with respect to any tax imposed by subtitle A of the Internal Revenue Code, or an overstatement of the net amount creditable or refundable with respect to any tax imposed by subtitle A of the Internal Revenue Code. The net amount payable in a taxable year with respect to the return for which the preparer engaged in conduct proscribed by section 6694 is not reduced by any carryback. Tax imposed by subtitle A of the Internal Revenue Code does not include additions to the tax provided by section 6654 and section 6655 (relating to underpayments of estimated tax). Except as provided in paragraph (d) of this section, the determination of whether an understatement of liability exists may be made in a proceeding involving the preparer apart from any proceeding involving the taxpayer.

(d) *Abatement of penalty where taxpayer's liability not understated.* If a penalty under section 6694(a) or section 6694(b) concerning a return or claim for refund has been assessed against one or more preparers, and if it is established at any time in a final administrative determination or a final judicial decision that there was no understatement of liability relating to the return or claim for refund, then—

(1) The assessment must be abated; and

(2) If any amount of the penalty was paid, that amount must be refunded to the person or persons who so paid, as if the payment were an overpayment of tax, without consideration of any period of limitations.

(e) *Verification of information furnished by taxpayer*—(1) *In general.* For purposes of section 6694(a) and section 6694(b), the preparer generally may rely in good faith without verification upon information furnished by the taxpayer. Thus, the preparer is not required to audit, examine or review books and records, business operations, or documents or other evidence in order to verify independently the taxpayer's information. However, the preparer may not ignore the implications of information furnished to the preparer or actually known by the preparer. The preparer must make reasonable inquiries if the information as furnished appears to be incorrect or incomplete. Additionally, some provisions of the Code or regulations require that specific facts and circumstances exist— for example, that the taxpayer maintain specific documents, before a deduction may be claimed. The preparer must make appropriate inquiries to determine the existence of facts and circumstances required by a Code section or regulation as a condition to the claiming of a deduction.

(2) *Example.* The provisions of paragraph (e) of this section are illustrated by the following example:

Example. A taxpayer, during an interview conducted by the preparer, stated that he had paid $8,500 in doctor bills and $5,000 in deductible travel and entertainment expenses during the tax year, when in fact he had paid smaller amounts. On the basis of this information, the preparer properly calculated deductions for medical expenses and for travel and entertainment expenses which resulted in an understatement of liability for tax. The preparer had not reason to believe that the medical expense and travel and entertainment expense information presented was incorrect or incomplete. The preparer did not ask for underlying documentation of the medical expenses but inquired about the existence of travel and entertainment expense records. The preparer was reasonably satisfied by the taxpayer's representations that the taxpayer had adequate records (or other sufficient corroborative evidence) for the deduction of $5,000 for travel and entertainment expenses. The preparer is not subject to a penalty under section 6694.

(f) *Effective date.* Sections 1.6694–1 through 1.6694–3 are generally effective for documents prepared and advice given after December 31, 1991. However, § 1.6694–3(c)(3) (which provides that a preparer is not considered to have recklessly or intentionally disregarded a revenue ruling or notice if the position contrary to the ruling or notice has a realistic possibility of being sustained on its merits) is effective for documents prepared and advice given after December 31, 1989. Except as provided in the preceding sentence, section 6694 and the existing rules and regulations thereunder (to the extent not

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inconsistent with the statute as amended by the Omnibus Budget Reconciliation Act of 1989), and Notice 90–20, 1990–1 C.B. 328, apply to documents prepared and advice given on or before December 31, 1991. For the effective date of § 1.6694–4, see § 1.6694–4(d).

§ 1.6694–2 Penalty for understatement due to an unrealistic position.

(a) *In general*—(1) *Proscribed conduct.* Except as otherwise provided in this section, if any part of an understatement of liability relating to a return of tax under subtitle A of the Internal Revenue Code or claim for refund of tax under subtitle A of the Internal Revenue Code is due to a position for which there was not a realistic possibility of being sustained on its merits, any person who is a preparer with respect to such return or claim for refund who knew or reasonably should have known of such position is subject to a penalty of $250 with respect to such return or claim for refund.

(2) *Special rule for employers and partnerships.* An employer or partnership of a preparer subject to penalty under section 6694(a) is also subject to penalty only if—

(i) One or more members of the principal management (or principal officers) of the firm or a branch office participated in or knew of the conduct proscribed by section 6694(a);

(ii) The employer or partnership failed to provide reasonable and appropriate procedures for review of the position for which the penalty is imposed; or

(iii) Such review procedures were disregarded in the formulation of the advice, or the preparation of the return or claim for refund, that included the position for which the penalty is imposed.

(b) *Realistic possibility of being sustained on its merits*—(1) *In general.* A position is considered to have a realistic possibility of being sustained on its merits if a reasonable and well-informed analysis by a person knowledgeable in the tax law would lead such a person to conclude that the position has approximately a one in three, or greater, likelihood of being sustained on its merits (realistic possibility standard). In making this determination, the possibility that the position will not be challenged by the Internal Revenue Service (e.g., because the taxpayer's return may not be audited or because the issue may not be raised on audit) is not to be taken into account. The analysis prescribed by § 1.6662–4(d)(3)(ii) for purposes of determining whether substantial authority is present applies for purposes of determining whether the realistic possibility standard is satisfied.

(2) *Authorities.* The authorities considered in determining whether a position satisfies the realistic possibility standard are those authorities provided in § 1.6662–4(d)(3)(iii).

(3) *Examples.* The provisions of paragraphs (b)(1) and (b)(2) of this section are illustrated by the following examples:

Example 1. A new statute is unclear as to whether a certain transaction that a taxpayer has engaged in will result in favorable tax treatment. Prior law, however, supported the taxpayer's position. There are no regulations under the new statute and no authority other than the statutory language and committee reports. The committee reports state that the intent was not to adversely affect transactions similar to the taxpayer's transaction. The taxpayer's position satisfies the realistic possibility standard.

Example 2. A taxpayer has engaged in a transaction that is adversely affected by a new statutory provision. Prior law supported a position favorable to the taxpayer. The preparer believes that the new statute is inequitable as applied to the taxpayer's situation. The statutory language is unambiguous as it applies to the transaction (e.g., it applies to all manufacturers and the taxpayer is a manufacturer of widgets). The committee reports do not specifically address the taxpayer's situation. A position contrary to the statute does not satisfy the realistic possibility standard.

Example 3. The facts are the same as in *Example 2*, except the committee reports indicate that Congress did not intend to apply the new statutory provision to the taxpayer's transaction (e.g., to a manufacturer of widgets). Thus, there is a conflict between the general language of the statute, which adversely affects the taxpayer's transaction, and a specific statement in the committee reports that transactions such as the taxpayer's are not adversely affected. A position consistent with either the statute or the committee reports satisfies the realistic possibility standard. However, a position consistent with the committee reports constitutes a disregard of a rule or regulation and, therefore, must be adequately disclosed in order to avoid the section 6694(b) penalty.

Example 4. The instructions to an item on a tax form published by the Internal Revenue Service are incorrect and are clearly contrary to the regulations. Before the return is prepared, the Internal Revenue Service publishes an announcement acknowledging the error and providing the correct instruction. Under these facts, a position taken on a return which is consistent with the regulations satisfies the realistic possibility standard. On the other hand, a position taken on a return which is consistent with the incorrect instructions does not satisfy the realistic possibility standard. However, if the preparer relied on the incorrect instructions and was not aware of the announcement or the regulations, the reasonable cause and good faith exception may apply depending on all facts and circumstances. See § 1.6694–2(d).

Example 5. A statute is silent as to whether a taxpayer may take a certain position on the taxpayer's 1991 Federal income tax return. Three private letter rulings issued to other taxpayers in 1987 and 1988 support the taxpayer's position. However, proposed regulations issued in 1990 are clearly contrary to the taxpayer's position. After the issuance of the proposed regulations, the earlier private letter rulings cease to be authorities and are not taken into account in determining whether the taxpayer's position satisfies the realistic possibility standard. See § 1.6694–2(b)(2) and § 1.6662–4(d)(3)(iii). The taxpayer's position may or may not satisfy the realistic possibility standard, depending on an analysis of all the relevant authorities.

Example 6. In the course of researching whether a particular position has a realistic possibility of being sustained on its merits, a preparer discovers that a taxpayer took the same position on a return several years ago and that the return was audited by the Service. The taxpayer tells the preparer that the revenue agent who conducted the audit was aware of the position and decided that the treatment on the return was correct. The revenue agent's report, however, made no mention of the position. The determination by the revenue agent is not authority for purposes of the realistic possibility standard. However, the preparer's reliance on the revenue agent's determination in the audit may qualify for the reasonable cause and good faith exception depending on all facts and circumstances. See § 1.6694–2(d). Also see § 1.6694–2(b)(4) and § 1.6662–4(d)(3)(iv)(A) regarding affirmative statements in a revenue agent's report.

Example 7. In the course of researching whether an interpretation of a phrase incorporated in the Internal Revenue Code has a realistic possibility of being sustained on its merits, a preparer discovers that identical language in the taxing statute of another jurisdiction (e.g., a state or foreign country) has been authoritatively construed by a court of that jurisdiction in a manner which would be favorable to the taxpayer, if the same interpretation were applied to the phrase applicable to the taxpayer's situation. The construction of the statute of the other jurisdiction is not authority for purposes of determining whether the position satisfies the realistic possibility standard. See § 1.6694–2(b)(2) and § 1.6662–4(d)(3)(iii). However, as in the case of conclusions reached in treatises and legal periodicals, the authorities underlying the court's opinion, if relevant to the taxpayer's situation, may give a position favorable to the taxpayer a realistic possibility of being sustained on its merits. See § 1.6694–2(b)(2) and § 1.6662–4(d)(3)(iii).

Example 8. In the course of researching whether an interpretation of a statutory phrase has a realistic possibility of being sustained on its merits, a preparer discovers that identical language appearing in another place in the Internal Revenue Code has consistently been interpreted by the courts and by the Service in a manner which would be favorable to the taxpayer, if the same interpretation were applied to the phrase

applicable to the taxpayer's situation. No authority has interpreted the phrase applicable to the taxpayer's situation. The interpretations of the identical language are relevant in arriving at a well reasoned construction of the language at issue, but the context in which the language arises also must be taken into account in determining whether the realistic possibility standard is satisfied.

Example 9. A new statutory provision is silent on the tax treatment of an item under the provision. However, the committee reports explaining the provision direct the Treasury to issue regulations interpreting the provision in a specified way. No regulations have been issued at the time the preparer must recommend a position on the tax treatment of the item, and no other authorities exist. The position supported by the committee reports satisfies the realistic possibility standard.

(4) *Written determinations.* To the extent a position has substantial authority with respect to the taxpayer by virtue of a "written determination" as provided in § 1.6662–4(d)(3)(iv)(A), such position will be considered to satisfy the realistic possibility standard with respect to the taxpayer's preparer for purposes of section 6694(a).

(5) *When "realistic possibility" determined.* For purposes of this section, the requirement that a position satisfy the realistic possibility standard must be satisfied on the date prescribed by paragraph (b)(5)(i) or (b)(5)(ii) of this section, whichever is applicable.

(i) *Signing preparers.*—(A) In the case of a signing preparer, the relevant date is the date the preparer signs and dates the return or claim for refund.

(B) If the preparer did not date the return or claim for refund, the relevant date is the date the taxpayer signed and dated the return or claim for refund. If the taxpayer also did not date the return or claim for refund, the relevant date is the date the return or claim for refund was filed.

(ii) *Nonsigning preparers.* In the case of a nonsigning preparer, the relevant date is the date the preparer provides the advice. That date will be determined based on all the facts and circumstances.

(c) *Exception for adequate disclosure of nonfrivolous positions*—(1) *In general.* The section 6694(a) penalty will not be imposed on a preparer if the position taken is not frivolous and is adequately disclosed. For an exception to the section 6694(a) penalty for reasonable cause and good faith, see paragraph (d) of this section.

(2) *Frivolous.* For purposes of this section, a "frivolous" position with respect to an item is one that is patently improper.

(3) *Adequate disclosure*—(i) *Signing preparers.* In the case of a signing preparer, disclosure of a position that does not satisfy the realistic possibility standard is adequate only if the disclosure is made in accordance with § 1.6662–4(f) (which permits disclosure on a properly completed and filed Form 8275 or 8275–R, as appropriate, or on the return in accordance with an annual revenue procedure).

(ii) *Nonsigning preparers.* In the case of a nonsigning preparer, disclosure of a position that does not satisfy the realistic possibility standard is adequate if the position is disclosed in accordance with § 1.6662–4(f) (which permits disclosure on a properly completed and filed Form 8275 or 8275–R, as appropriate, or on the return in accordance with an annual revenue procedure). In addition, disclosure of a position is adequate in the case of a nonsigning preparer if, with respect to that position, the preparer complies with the provisions of paragraph (c)(3)(ii)(A) or (B) of this section, whichever is applicable.

(A) *Advice to taxpayers.* If a nonsigning preparer provides advice to the taxpayer with respect to a position that does not satisfy the realistic possibility standard, disclosure of that position is adequate if the advice includes a statement that the position lacks substantial authority and, therefore, may be subject to penalty under section 6662(d) unless adequately disclosed in the manner provided in § 1.6662–4(f) (or in the case of a tax shelter item, that the position lacks substantial authority and, therefore, may be subject to penalty under section 6662(d) regardless of disclosure). If the advice with respect to the position is in writing, the statement concerning disclosure (or the statement regarding possible penalty under section 6662(d)) also must be in writing. If the advice with respect to the position is oral, advice to the taxpayer concerning the need to disclose (or the advice regarding possible penalty under section 6662(d)) also may be oral. The determination as to whether oral advice as to disclosure (or the oral advice regarding possible penalty under section 6662(d)) was in fact given is based on all facts and circumstances. Contemporaneously prepared documentation of the oral advice regarding disclosure (or the oral advice regarding possible penalty under section 6662(d)) generally is sufficient to establish that the advice was given to the taxpayer.

(B) *Advice to another preparer.* If a nonsigning preparer provides advice to another preparer with respect to a position that does not satisfy the realistic possibility standard, disclosure of that position is adequate if the advice includes a statement that disclosure under section 6694(a) is required. If the advice with respect to the position is in writing, the statement concerning disclosure also must be in writing. If the advice with respect to the position is oral, advice to the preparer concerning the need to disclose also may be oral. The determination as to whether oral advice as to disclosure was in fact given is based on all facts and circumstances. Contemporaneously prepared documentation of the oral advice regarding disclosure generally is sufficient to establish that the advice regarding disclosure was given to the other preparer.

(d) *Exception for reasonable cause and good faith.* The penalty under section 6694(a) will not be imposed if considering all the facts and circumstances, it is determined that the understatement was due to reasonable cause and that the preparer acted in good faith. Factors to consider include:

(1) *Nature of the error causing the understatement.* Whether the error resulted from a provision that was so complex, uncommon, or highly technical that a competent preparer of returns or claims of the type at issue reasonably could have made the error. The reasonable cause and good faith exception does not apply to an error that would have been apparent from a general review of the return or claim for refund by the preparer.

(2) *Frequency of errors.* Whether the understatement was the result of an isolated error (such as an inadvertent mathematical or clerical error) rather than a number of errors. Although the reasonable cause and good faith exception generally applies to an isolated error, it does not apply if the isolated error is so obvious, flagrant or material that it should have been discovered during a review of the return or claim. Furthermore, the reasonable cause and good faith exception does not apply if there is a pattern of errors on a return or claim for refund even though any one error, in isolation, would have qualified for the reasonable cause and good faith exception.

(3) *Materiality of errors.* Whether the understatement was material in relation to the correct tax liability. The reasonable cause and good faith exception generally applies if the understatement is of a relatively immaterial amount. Nevertheless, even an immaterial understatement may not qualify for the reasonable cause and good faith exception if the error or errors creating the understatement are sufficiently obvious or numerous.

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(4) *Preparer's normal office practice.* Whether the preparer's normal office practice, when considered together with other facts and circumstances such as the knowledge of the preparer, indicates that the error in question would rarely occur and the normal office practice was followed in preparing the return or claim in question. Such a normal office practice must be a system for promoting accuracy and consistency in the preparation of returns or claims and generally would include, in the case of a signing preparer, checklists, methods for obtaining necessary information from the taxpayer, a review of the prior year's return, and review procedures. Notwithstanding the above, the reasonable cause and good faith exception does not apply if there is a flagrant error on a return or claim for refund, a pattern or errors on a return or claim for refund, or a repetition of the same or similar errors on numerous returns or claims.

(5) *Reliance on advice of another preparer.* Whether the preparer relied on the advice of or schedules prepared by ("advice") another preparer as defined in § 1.6694–1(b). The reasonable cause and good exception applies if the preparer relied in good faith on the advice of another preparer (or a person who would be considered a preparer under § 1.6694–1(b) had the advice constituted preparation of a substantial portion of the return or claim for refund) who the preparer had reason to believe was competent to render such advice. A preparer is not considered to have relied in good faith if—

(i) The advice is unreasonable on its face;

(ii) The preparer knew or should have known that the other preparer was not aware of all relevant facts; or

(iii) The preparer knew or should have known (given the nature of the preparer's practice), at the time the return or claim for refund was prepared, that the advice was no longer reliable due to developments in the law since the time the advice was given.

The advice may be written or oral, but in either case the burden of establishing that the advice was received is on the preparer.

(e) *Burden of proof.* In any proceeding with respect to the penalty imposed by section 6694(a), the issues on which the preparer bears the burden of proof include whether—

(1) The preparer knew or reasonably should have known that the questioned position was taken on the return;

(2) There is reasonable cause and good faith with respect to such position; and

(3) The position was disclosed adequately in accordance with paragraph (c) of this section.

§ 1.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general*—(1) *Proscribed conduct.* If any part of an understatement of liability relating to a return of tax under subtitle A of the Internal Revenue Code or claim for refund of tax under subtitle A of the Internal Revenue Code is due to—

(i) A willful attempt in any manner to understate the liability for tax by a preparer of the return or claim for refund; or

(ii) Any reckless or intentional disregard of rules or regulations by any such person,

such preparer is subject to a penalty of $1,000 with respect to such return or claim for refund.

(2) *Special rule for employers and partnerships.* An employer or partnership of a preparer subject to penalty under section 6694(b) is also subject to penalty only if—

(i) One or more members of the principal management (or principal officers) of the firm or a branch office participated in or knew of the conduct proscribed by section 6694(b);

(ii) The employer or partnership failed to provide reasonable and appropriate procedures for review of the position for which the penalty is imposed; or

(iii) Such review procedures were disregarded in the formulation of the advice, or the preparation of the return or claim for refund, that included the position for which the penalty is imposed.

(b) *Willful attempt to understate liability.* A preparer is considered to have willfully attempted to understate liability if the preparer disregards, in an attempt wrongfully to reduce the tax liability of the taxpayer, information furnished by the taxpayer or other persons. For example, if a preparer disregards information concerning certain items of taxable income furnished by the taxpayer or other persons, the preparer is subject to the penalty. Similarly, if a taxpayer states to a preparer that the taxpayer has only two dependents, and the preparer reports six dependents on the return, the preparer is subject to the penalty.

(c) *Reckless or intentional disregard.* (1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, a preparer is considered to have recklessly or intentionally disregarded a rule or regulation if the preparer takes a position on the return or claim for refund that is contrary to a rule or regulation (as defined in paragraph (f) of this section) and the preparer knows of, or is reckless in not knowing of, the rule or regulation in question. A preparer is reckless in not knowing of a rule or regulation if the preparer makes little or no effort to determine whether a rule or regulation exists, under circumstances which demonstrate a substantial deviation from the standard of conduct that a reasonable preparer would observe in the situation.

(2) A preparer is not considered to have recklessly or intentionally disregarded a rule or regulation if the position contrary to the rule or regulation is not frivolous as defined in § 1.6694–2(c)(2), is adequately disclosed in accordance with paragraph (e) of this section and, in the case of a position contrary to a regulation, the position represents a good faith challenge to the validity of the regulation.

(3) In the case of a position contrary to a revenue ruling or notice (other than a notice of proposed rulemaking) published by the Service in the Internal Revenue Bulletin, a preparer also is not considered to have recklessly or intentionally disregarded the ruling or notice if the position has a realistic possibility of being sustained on its merits.

(d) *Examples.* The provisions of paragraphs (b) and (c) of this section are illustrated by the following examples:

Example 1. A taxpayer provided a preparer with detailed check registers reflecting personal and business expenses. One of the expenses was for domestic help, and this expense was identified as personal on the check register. The preparer knowingly deducted the expenses of the taxpayer's domestic help as wages paid in the taxpayer's business. The preparer is subject to the penalty under section 6694(b).

Example 2. A taxpayer provided a preparer with detailed check registers to compute the taxpayer's expenses. However, the preparer knowingly overstated the expenses on the return. After adjustments by the examiner, the tax liability increased significantly. Because the preparer disregarded information provided in the check registers, the preparer is subject to the penalty under section 6694(b).

Example 3. A revenue ruling holds that certain expenses incurred in the purchase of a business must be capitalized. The Code is silent as to whether these expenses must be capitalized or may be deducted currently, but several cases from different courts hold that these particular expenses may be deducted currently. There is no other authority. Under these facts, a position taken contrary to the revenue ruling on a return or claim for refund is not a reckless or intentional disregard of a rule, since the position contrary to the revenue ruling has a realistic possibility of being sustained on its merits. Therefore, the preparer will not be subject to a penalty under section 6694(b) even though the position is not adequately disclosed.

Example 4. Final regulations provide that certain expenses incurred in the purchase of a business must be capitalized. One Tax Court case has expressly invalidated that portion of the regulations. Under these facts, a position contrary to the regulation will subject the preparer to the section 6694(b) penalty even though the position may have a realistic possibility of being sustained on its merits. However, because the contrary position on these facts represents a good faith challenge to the validity of the regulations, the preparer will not be subject to the section 6694(b) penalty if the position is adequately disclosed in the manner provided in paragraph (e) of this section.

(e) *Adequate disclosure*—(1) *Signing preparers.* In the case of a signing preparer, disclosure of a position that is contrary to a rule or regulation is adequate only if the disclosure is made in accordance with § 1.6662–4(f) (1), (3), (4) and (5) (which permit disclosure on a properly completed and filed Form 8275 or 8275–R, as appropriate). In addition, the disclosure of a position that is contrary to a rule or regulation must adequately identify the rule or regulation being challenged. The provisions of § 1.6662–4(f)(2) (which permit disclosure on the return in accordance with an annual revenue procedure) do not apply for purposes of this section.

(2) *Nonsigning preparers.* In the case of a nonsigning preparer, disclosure of a position that is contrary to a rule or regulation is adequate if the position is disclosed in the manner provided in paragraph (e)(1) of this section. In addition, disclosure of a position is adequate in the case of a nonsigning preparer if, with respect to that position, the preparer complies with the provisions of paragraph (e)(2) (i) or (ii) of this section, whichever is applicable.

(i) *Advice to taxpayers.* In the case of a nonsigning preparer who provides advice to the taxpayer with respect to a position that is contrary to a rule or regulation, disclosure of that position is adequate if the advice includes a statement that—

(A) The position is contrary to a specified rule or regulation and, therefore, is subject to a penalty described in section 6662(c) unless adequately disclosed in the manner provided in § 1.6662–3(c)(2) (which permits disclosure on a properly completed and filed Form 8275 or 8275–R, as appropriate, and which requires adequate identification of any rule or regulation being challenged); and

(B) In the case of a position contrary to a regulation, the position must represent a good faith challenge to the validity of the regulation.

If the advice with respect to the position is in writing, the statement concerning disclosure also must be in writing. If the advice with respect to the position is oral, advice to the taxpayer concerning the need to disclose also may be oral. The determination as to whether oral advice as to disclosure was in fact given is based on all facts and circumstances. Contemporaneously prepared documentation of the oral advice regarding disclosure generally is sufficient to establish that the advice was given to the taxpayer.

(ii) *Advice to another preparer.* If a nonsigning preparer provides advice to another preparer with respect to a position that is contrary to a rule or regulation, disclosure of that position is considered adequate if the advice includes a statement that disclosure under section 6694(b) is required. If the advice with respect to the position is in writing, the statement concerning disclosure also must be in writing. If the advice with respect to the position is oral, advice to the preparer concerning the need to disclose also may be oral. The determination as to whether oral advice as to disclosure was in fact given is based on all facts and circumstances. Contemporaneously prepared documentation of the oral advice regarding disclosure generally is sufficient to establish that the advice was given to the other preparer.

(f) *Rules or regulations.* The term "rules or regulations" includes the provisions of the Internal Revenue Code, temporary or final Treasury regulations issued under the Code, and revenue rulings or notices (other than notices of proposed rulemaking) issued by the Internal Revenue Service and published in the Internal Revenue Bulletin.

(g) *Section 6694(b) penalty reduced by section 6694(a) penalty.* The amount of any penalty to which a preparer may be subject under section 6694(b) for a return or claim for refund is $1,000 reduced by any amount assessed and collected against the preparer under section 6694(a) for the same return or claim.

(h) *Burden of proof.* In any proceeding with respect to the penalty imposed by section 6694(b), the Government bears the burden of proof on the issue of whether the preparer willfully attempted to understate the liability for tax. See section 7427. The preparer bears the burden of proof on such other issues as whether—

(1) The preparer recklessly or intentionally disregarded a rule or regulation;

(2) A position contrary to a regulation represents a good faith challenge to the validity of the regulation; and

(3) Disclosure was adequately made in accordance with paragraph (e) of this section.

§ 1.6694–4 Extension of period of collection where preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* (1) The Internal Revenue Service will investigate the preparation by a preparer of a return of tax under subtitle A of the Internal Revenue Code or claim for refund of tax under subtitle A of the Internal Revenue Code and will send a report of the examination to the preparer before the assessment of either—

(i) A penalty for understating tax liability due to a position for which there was not a realistic possibility of being sustained on its merits under section 6694(a); or

(ii) A penalty for willful understatement of liability or reckless or intentional disregard of rules or regulations under section 6694(b).

Unless the period of limitations (if any) under section 6696(d) may expire without adequate opportunity for assessment, the Internal Revenue Service will also send, before assessment of either penalty, a 30-day letter to the preparer notifying him of the proposed penalty or penalties and offering an opportunity to the preparer to request further administrative consideration and a final administrative determination by the Internal Revenue Service concerning the assessment. If the preparer then makes a timely request, assessment may not be made until the Internal Revenue Service makes a final administrative determination adverse to the preparer.

(2) If the Internal Revenue Service assesses either of the two penalties described in section 6694(a) and section 6694(b), it will send to the preparer a statement of notice and demand, separate from any notice of a tax deficiency, for payment of the amount assessed.

(3) Within 30 days after the day on which notice and demand of either of the two penalties described in section 6694(a) and section 6694(b) is made against the preparer, the preparer must either—

(i) Pay the entire amount assessed (and may file a claim for refund of the amount paid at any time not later than 3 years after the date of payment); or

(ii) Pay an amount which is not less than 15 percent of the entire amount assessed with respect to each return or

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claim for refund and file a claim for refund of the amount paid.

(4) If the preparer pays an amount and files a claim for refund under paragraph (a)(3)(ii) of this section, the Internal Revenue Service may not make, begin, or prosecute a levy or proceeding in court for collection of the unpaid remainder of the amount assessed until the later of—

(i) A date which is more than 30 days after the earlier of—

(A) The day on which the preparer's claim for refund is denied; or

(B) The expiration of 6 months after the day on which the preparer filed the claim for refund; and

(ii) Final resolution of any proceeding begun as provided in paragraph (b) of this section.

However, the Internal Revenue Service may counterclaim in any proceeding begun as provided in paragraph (b) of this section for the unpaid remainder of the amount asssessed. Final resolution of a proceeding includes any settlement between the Internal Revenue Service and the preparer, any final determination by a court (for which the period for appeal, if any, has expired) and, generally, the types of determinations provided under section 1313(a) (relating to taxpayer deficiencies). Notwithstanding section 7421(a) (relating to suits to restrain asssessment or collection), the beginning of a levy or proceeding in court by the Internal Revenue Service in contravention of this paragraph (a)(4) may be enjoined by a proceeding in the proper court.

(b) *Preparer must bring suit in district court to determine liability for penalty.* If, within 30 days after the earlier of—

(1) The day on which the preparer's claim for refund filed under paragraph (a)(3)(ii) of this section is denied; or

(2) The expiration of 6 months after the day on which the preparer filed the claim for refund, the preparer fails to begin a proceeding for refund in the appropriate United States district court, the Internal Revenue Service may proceed with collection of the amount of the penalty not paid under paragraph (a)(3)(ii) of this section.

(c) *Suspension of running of period of limitations on collection.* The running of the period of limitations provided in section 6502 on the collection by levy or by a proceeding in court of the unpaid amount of a penalty or penalties described in section 6694(a) or section 6694(b) is suspended for the period during which the Internal Revenue Service, under paragraph (a)(4) of this section, may not collect the unpaid amount of the penalty or penalties by levy or a proceeding in court.

(d) *Effective date.* The provisions of this section are effective as of December 19, 1989.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority for part 602 contunues to read as follows:

Authority: (26 U.S.C. 7805).

§ 602.101(c) [Amended]

Par. 4. Section 602.101(c) is amended by adding the following in the table:

§ 1.6694–2(c)	1545–1231
§ 1.6694–3(e)	1545–1231

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91–30709 Filed 12–30–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 791

Joint Employment Relationship Under Fair Labor Standards Act of 1938

CFR Correction

In title 29 of the Code of Federal Regulations, parts 500 to 899, revised as of July 1, 1991, on page 853 in § 791.2 (a), the last 11 words of the first sentence were inadvertently omitted. As corrected the first sentence should read as follows:

§ 791.2 Joint employment.

(a) A single individual may stand in the relation of an employee to two or more employers at the same time under the Fair Labor Standards Act of 1938, since there is nothing in the act which prevents an individual employed by one employer from also entering into an employment relationship with a different employer. * * *

* * * * *

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

New Mexico Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of proposed amendment.

SUMMARY: OSM is announcing its decision to approve, with an additional requirement, a proposed amendment to the New Mexico permanent regulatory program (New Mexico program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to excess spoil, coal processing waste, areas unsuitable for mining, geology, coal exploration, fish and wildlife, prime farmland, the use of explosives, operation plans, experimental practices, permitting, stream buffer zones, revegetation, backfilling and grading, inspection and enforcement, hydrology, and previously mined areas. The amendment revises the New Mexico program to be consistent with the corresponding Federal standards.

EFFECTIVE DATE: December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Telephone: (505) 776–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated March 15, 1990 (Administrative Record No. NM–566), New Mexico submitted a proposed amendment to its permanent regulatory program pursuant to SMCRA. New Mexico submitted the proposed amendment in response to the August 14, 1986, and November 3, 1988, letters that OSM sent to New Mexico in accordance with 30 CFR 732.17(c) (Administrative Record Nos. NM–331 and NM–457).

The rules that New Mexico proposed to revise pertain to hydrology at Coal Surface Mining Commission (CSMC) Rules 80–1–1–5, 80–1–8–15, 80–1–8–16, 80–1–9–21, 80–1–13–12, 80–1–20–41 though 44, and 80–1–20–52; excess spoil at CSMC Rules 80–1–1–5, 80–1–20–71, and 80–1–20–102; coal processing waste at CSMC Rules 80–1–1–5, 80–1–20–82, and 80–1–20–91; areas unsuitable for mining at CSMC Rules 80–1–2–11, 80–1–2–12, 80–1–4–15, and 80–1–8–24; geology at CSMC Rule 80–1–8–14; coal exploration at CSMC Rules 80–1–6–10 through 13; fish and wildlife at CSMC Rules 80–1–8–20, 80–1–9–16, and 80–1–20–97; prime farmland at CSMC Rules 80–1–8–27, 80–1–10–17, 80–1–24–11, 80–1–24–12, and 80–1–24–15; the use of explosives at CSMC Rules 80–1–9–13 and 80–1–20–61 through 68; operation plans at CSMC Rule 80–1–9–14; experimental practices at CSMC Rules 80–1–10–13, 80–1–13–11, and 80–1–13–12; permitting at CSMC Rules 80–1–11–11, 80–1–11–15, 80–1–11–27, and 80–1–13–18; stream buffer zones at CSMC Rule 80–1–20–57; revegetation at CSMC Rules 80–1–20–111, 80–1–20–112, and 80–1–20–116; backfilling and grading at CSMC Rules 80–1–20–102 and 80–1–28–12; and inspection and enforcement at CSMC Rules 80–1–30–13, 80–1–31–17, and 80–1–31–18. In addition to these rules, New Mexico proposed a policy statement supplementing CSMC Rule 80–1–29–16(a) for the retention of mining operation records, reports, inspection materials, and other written information.

OSM published a notice in the March 30, 1990, **Federal Register** (55 FR 11959) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. NM–572). The public comment period closed April 30, 1990.

During its review of the amendment, OSM identified concerns pertaining to areas unsuitable for mining at CSMC Rule 80–1–2–12; coal exploration at CSMC Rule 80–1–6–10; fish and wildlife at CSMC Rules 80–1–8–20 and 80–1–9–16; permitting at CSMC Rules 80–1–8–24 and 80–1–11–19; hydrology at CSMC Rule 80–1–20–52; stream buffer zones at CSMC Rule 80–1–20–57; coal processing waste at CSMC Rules 80–1–20–82 and 80–1–20–83; backfilling and grading at CSMC Rule 80–1–20–102; revegetation at CSMC Rules 80–1–20–112, 80–1–20–116, and 80–1–20–117; and the policy statement supplementing CSMC Rule 80–1–29–16(a) for the retention of mining operation records, reports, inspection materials, and other written information. OSM notified New Mexico of the concerns by letter dated June 1, 1990 (Administrative Record No. NM–590).

By letter dated July 11, 1990, New Mexico responded to OSM's concerns by submitting a revised amendment (Administrative Record No. NM–598). New Mexico submitted revisions pertaining to areas unsuitable for mining at CSMC Rule 80–1–2–12; coal exploration at CSMC Rule 80–1–6–10; permitting at CSMC Rules 80–1–8–24 and 80–1–11–19; hydrology at CSMC Rule 80–1–20–52; stream buffer zones at CSMC Rule 80–1–20–57; coal processing waste at CSMC Rule 80–1–20–82; and revegetation at CSMC Rule 80–1–20–112. New Mexico revised the policy statement supplementing CSMC Rule 80–1–29–16(a) for the retention of mining operation records, reports, inspection material, and other written information. New Mexico withdrew revisions relating to fish and wildlife at CSMC Rules 80–1–8–20(a) and 80–1–9–16(a), and revegetation at CSMC Rule 80–1–20–116. In addition to responding to OSM's concerns by revising and withdrawing rules, New Mexico proposed for the first time a definition for "previously mined area" at CSMC Rule 80–1–1–5.

OSM published a notice in the **Federal Register** on August 6, 1990 (55 FR 31842) reopening the comment period on the proposed amendment. OSM did so to provide the public the opportunity to reconsider the adequacy of the proposed amendment. The reopened comment period closed August 21, 1990.

By letter dated August 23, 1990 (Administrative Record No. NM–610), New Mexico withdrew from the amendment the proposed revisions relating to permitting actions and historic properties at CSMC Rule 80–1–11–19(p).

III. Director's Findings

After a thorough review, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director of OSM finds that the proposed amendment as submitted by New Mexico on March 15, 1990, and subsequently revised on July 11, 1990, and August 23, 1990, is no less stringent than SMCRA and no less effective than the corresponding Federal regulations.

1. Revisions to New Mexico's Rules That Are Substantively Identical to the Corresponding Federal Regulations

New Mexico proposed revisions to the following rules that are substantive in nature and contain language that is substantively identical to the corresponding Federal regulations (listed in parentheses):

CSMC Rule 80–1–1–5 (30 CFR 701.5), definitions of "cumulative impact area," "excess spoil," and "impoundment;"

CSMC Rule 80–1–2–11(f) (30 CFR 761.11(a)), areas where mining is prohibited or limited; CSMC Rule 80–1–2–12(b)(2) (30 CFR 761.12(b)(2)), areas designated as unsuitable for mining;

CSMC Rule 80–1–6–10 (30 CFR 772.12(a)), general requirements for coal exploration; CSMC Rule 80–1–6–11(b)(5) (30 CFR 772.11(b)(5)), coal exploration of less than 250 tons; CSMC Rule 80–1–6–12(b)(7) (30 CFR 772.12(b)(7)), coal exploration of more than 250 tons;

CSMC Rule 80–1–8–14(b)(1)(vi) (30 CFR 780.18(b)(4)), geology description; CSMC Rules 80–1–8–15(c), 80–1–8–16(b)(3), and 80–1–9–21 (b), (c), and (d) (30 CFR 780.21 (a), (i), and (j), and 784.14 (a), (i), and (j)), surface and ground-water information (reclamation plan and monitoring plan); CSMC Rule 80–1–8–27(a) (30 CFR 785.17(b)(1)), prime farmland investigation; CSMC Rule 80–1–9–13(f) (30 CFR 780.13), operation plan for blasting; CSMC Rule 80–1–9–14(c) (30 CFR 780.14(c));

CSMC Rule 80–1–10–13 (30 CFR 785.13(h)), CSMC Rule 80–1–10–13(a) (30 CFR 785.13(b)), and CSMC Rule 80–1–10–13(c) (30 CFR 785.13(c)), experimental mining practices; CSMC Rule 80–1–10–13(e) (30 CFR 785.13(e)), experimental prime farmland practices; CSMC Rule 80–1–10–13(e) (30 CFR 785.13(g)), experimental mining practices (permit requirements);

CSMC Rule 80–1–10–17(a)(1)(i) (30 CFR 785.17(c)(1)(ii)), application contents for prime farmlands; CSMC Rule 80–1–11–15(a) (30 CFR 773.13(d)(3)), permitting; CSMC Rule 80–1–11–19(c) (30 CFR 773.15(c)(5)), criteria for permit approval or denial; CSMC Rule 80–1–11–27(e) (30 CFR 773.17(g)), conditions of a permit; CSMC Rule 80–1–13–11(a) (30 CFR 785.13(g)), director's review of outstanding permits (experimental mining practices); CSMC Rule 80–1–13–12 (d) and (c) (30 CFR 785.13(h), 30 CFR 780.21 (f)(4), (g)(2), 784.14 (e)(4) and (f)(2)), permit revisions; CSMC Rules 80–1–13–18 (c)(3), (d) and (e) (30 CFR 774.17(e) (1) and (2)), notification of transfer, assignment, or sale of permit rights;

CSMC Rule 80–1–20–11(f) (30 CFR 816.11 and 817.11), signs and markers; CSMC Rule 80–1–20–41(a) (30 CFR 816.41 and 817.41(a)), hydrologic balance (general requirements); CSMC Rule 80–1–20–43(a) (30 CFR 816.43 and 817.43(a)), diversions; CSMC Rules 80–1–20–44 (a) and (c) (30 CFR 816.43 (a), (b), and (b)(4), and 817.43 (a), (b), and (b)(4)),

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diversions; CSMC Rules 80-1-20-52 (a) and (b) (30 CFR 780.21 (i) and (j) and 30 CFR 816.41(c)), hydrology; CSMC Rules 80-1-20-57(a) (1) and (2) (30 CFR 816.57(a) (1) and (2) and 817.57(a) (1) and (2)), stream buffer zones;

CSMC Rules 80-1-20-61 through 67(d)(2) and 80-1-20-67(d)(2)(ii) through 68 (30 CFR 816.61 and 817.61 through 68), use of explosives;

CSMC Rule 80-1-20-71(f) (30 CFR 816.71(e)(2)), disposal of excess spoil; CSMC Rule 80-1-20-82(a) (30 CFR 816.83(d)), coal processing waste banks; CSMC Rule 80-1-20-82(a) (30 CFR 816.83(d)), coal processing waste banks (site inspection); CSMC Rule 80-1-20-91(c) (30 CFR 816.84(b)(1)), coal processing waste (dams and embankments);

CSMC Rule 80-1-20-97(d)(10) (30 CFR 816.97(h)), protection of fish, wildlife, and related environmental values; CSMC Rules 80-1-20-102 (a), (f), and (g) (30 CFR 816/817.106), backfilling and grading of previously mined areas; CSMC Rules 80-1-20-102(a) (3), (4), and (5) (30 CFR 816.102 (b), (c), and (d)), backfilling and grading; CSMC Rule 80-1-20-111(c) (30 CFR 816.111(b) and 817.111(b)) revegetation; CSMC Rules 80-1-20-112 (c) and (d) (30 CFR 816.111(b) and 817.111(b)), revegetation; CSMC Rules 80-1-24-15(c) (2), (3), (4), (5), and (6) (30 CFR 823.15(b) (2), (5), (6), (7), and (8)), prime farmlands; CSMC Rule 80-1-24-12(a)(1) (30 CFR 823.12(c)(1)), soil removal on prime farmlands; CSMC Rule 80-1-28-12(c) (30 CFR 816.107(c) and 817.107(c)), steep slope mining;

CSMC Rule 80-1-30-13(d) (30 CFR 843.13(d)), permit suspension and revocation; and CSMC Rules 80-1-31-17(b)(1) and 80-1-31-18(b)(1) (30 CFR 845.17(b)(2) and 845.18(b)(1)), procedures for civil penalty assessments and assessment conferences.

Because the proposed revisions to these New Mexico rules are substantively identical to the corresponding Federal regulations, the Director (1) finds that these New Mexico rules are no less effective than the corresponding Federal regulations, and (2) approves these proposed rules.

2. CSMC Rule 80-1-1-5, Definition of "Previously Mined Area"

New Mexico proposed at CSMC Rule 80-1-1-5 to define "previously mined area" as "land previously mined before the date of enactment of SMCRA, August 3, 1977, which have not been fully and satisfactory reclaimed to the standards of the Act" (the State of New Mexico Surface Mining Act (Sections 69-25A-1 *et seq.* NMSA 1978)).

The Federal definition at 30 CFR 701.5 defines "previously mined area" as "land previously mined on which there were no surface coal mining operations subject to the standards of the Act." In the case of *National Wildlife Fed'n* v. *Lujan*, Nos. 87-1051, 87-1814 and 88-2788 (D.D.C. Feb. 12, 1990; hereinafter referred to as National Wildlife Fed'n), the court addressed two concerns pertaining to the Federal definition.

The first concern was whether "previously mined" means that mining occurred (1) before the date Congress enacted SMCRA (August 3, 1977) or (2) before the various dates that SMCRA's substantive requirements began to apply to specific mining operations or sites. This issue is important, because pursuant to 30 CFR 816.106(b), 817.106(b), and 819.19(b) (which are substantively identical to New Mexico's proposed rules at CSMC Rule 80-1-20-102 (f) and (g)), operators remining previously mined areas do not need to completely eliminate reaffected or enlarged highwalls if there is not enough reasonably available spoil to do so. Rather, in such situations, the operator's responsibility is to eliminate the highwalls only to the "maximum extent technically practical." Given this limited exception to the requirement to completely remove all highwalls, the second related concern was that the current definition might allow an operator to remine an area that had once been fully and satisfactorily reclaimed, and then to leave the area only partially reclaimed by not completely eliminating any remined or reaffected highwalls.

The court found that "a definition using the date of SMCRA's enactment more closely conforms to the Act and the court's previous ruling on the issue" (In re: Litigation II, 21 ERC 1193; National Wildlife Fed'n, mem. op. at 42). Consequently, the court held that the date of enactment of SMCRA (August 3, 1977) "must be the time from which the temporal concepts of 'preexisting' and 'previous' are measured" (*Id.*, mem. op. at 50). With respect to the second issue, the court held that a "definition cannot stand that lets full reclamation be undone for a later partial effort. The definition must be rewritten to make this impossible" (*Id.*, mem. op. at 48). Accordingly, the court remanded "the definition of previously mined area to the Secretary to correct both of the flaws identified above" (*Id.*, mem. op. at 51).

Although OSM has not yet actually suspended the above definition, OSM may not, because of the court's remand, use the existing Federal definition of "previously mined area" at 30 CFR 701.5 in evaluating the sufficiency of New Mexico's proposed definition. Accordingly, OSM evaluated the proposed amendment based upon its consistency with the appropriate provisions of SMCRA as interpreted by the court.

Based on the above discussion and the court's remand of the Federal definition of "previously mined area" to "correct both of the flaws identified" in the decision, the Director finds that New Mexico's proposed definition of "previously mined area" at CSMC Rule 80-1-1-5 satisfies both of the court's concerns because it (1) states that "previously mined" means August 3, 1977 (the date of enactment of SMCRA) and (2) does not allow lands which have once been fully and satisfactorily reclaimed to be reminded and then only partially reclaimed. Therefore, the Director (1) finds that New Mexico's proposed definition of "previously mined area" at CSMC Rule 80-1-1-5 is no less effective than the Federal definition of "previously mined area" at 30 CFR 701.5, as modified by the court, and (2) approves the proposed rule.

3. CSMC Rule 80-1-1-5, Definitions of "Coal Processing Waste" and "Coal Processing Waste Bank"

At CSMC Rule 80-1-1-5, New Mexico proposed definitions of "coal processing waste" and "coal processing waste bank" that are substantively identical to the corresponding Federal definitions of "coal mine waste" and "refuse pile" at 30 CFR 701.5. Although New Mexico uses different terms, the corresponding State and Federal terms have the same meaning. Because the proposed State definitions are substantively identical to the corresponding Federal definitions, the Director (1) finds that New Mexico's proposed definitions of "coal processing waste" and "coal processing waste bank" at CSMC Rule 80-1-1-5 are no less effective than the corresponding Federal definitions of "coal mine waste" and "refuse pile" at 30 CFR 701.5 and (2) approves the proposed definitions.

4. CSMC Rule 80-1-4-15(b), Announcement of Receipt of Petitions To Designate Lands Unsuitable for Mining

New Mexico proposed to add a new subsection (b)(1) to CSMC Rule 80-1-4-15 requiring that "[p]romptly after a petition is received, the Director of Mining and Minerals Division (MMD) shall notify the general public of the receipt of the petition and request submission of relevant information by a newspaper advertisement placed once a week for two consecutive weeks in a newspaper of general circulation in the county or counties in the area covered by the petition."

The corresponding Federal regulation at 30 CFR 764.15(b)(i) requires that promptly after a petition is received the regulatory authority shall notify the general public of the receipt of the petition by a newspaper advertisement placed in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area, and in any official State register of public notices.

New Mexico's proposed rule requires the prompt publishing of a newspaper advertisement, and another 1 week later, whereas the corresponding Federal regulations only require the prompt publishing of one newspaper advertisement. The Director finds that this proposed requirement at CSMC Rule 80-1-4-15(b)(1) is no less effective than the corresponding Federal requirement at 30 CFR 764.15(b)(1). The Director approves the proposed change.

New Mexico's proposed rule requires advertisements in a newspaper of general circulation in the county or counties in the area covered by the petition, whereas the corresponding Federal regulation requires an advertisement in the locale of the area covered by the petition and in a newspaper providing broadest circulation in the region of the petitioned area. The Director finds that this proposed requirement at CSMC Rule 80-1-4-15(b)(1) provides newspaper notification to interested parties in the locale and region of the petition area that is no less effective than the corresponding Federal requirement at 30 CFR 764.15(b)(1). The Director approves the proposed change.

New Mexico has a official State register of public notices, but the proposed rule does not require that a notice be published in the State register notifying the general public of New Mexico's receipt of a petition to designate lands unsuitable for mining. Because New Mexico has an official State register and 30 CFR 764.15(b)(1) requires notice in the State register, the Director finds that proposed CSMC Rule 80-1-4-15(b)(1) is less effective than the corresponding Federal regulation at 30 CFR 764.15(b)(1). The Director requires New Mexico to amend CSMC Rule 80-1-4-15(b)(1) to require notification of the general public, through publication of a notice in the New Mexico State register, of New Mexico's receipt of a petition to designate lands unsuitable for mining.

5. CSMC Rule 80-1-8-13(d), Application for Exploration Permit To Remove More Than 250 Tons of Coal

New Mexico proposed to amend CSMC Rule 80-1-8-13(d) to add a clarifying statement that the granting of a written approval to conduct exploration operations removing more than 250 tons of coal shall in no way be construed to ensure the issuance of a permit to conduct surface coal mining and reclamation operations under part 5 of the New Mexico program. Neither sections 506 and 515 of SMCRA nor the Federal regulations at 30 CFR part 772 ensure that the granting of an exploration permit will ensure the issuance of a permit to conduct surface coal mining and reclamation operations. Therefore, the Director (1) finds that the proposed CSMC Rule 80-1-8-13(d) is not inconsistent with sections 506 and 515 of SMCRA and the Federal regulations at 30 CFR part 772 and (2) approves the proposed rule.

6. CSMC Rule 80-1-8-24, Permit Application Maps

Existing CSMC Rule 80-1-8-24(j) requires that maps for surface coal mining and reclamation permit applications show cemeteries located in or within 100 feet of the proposed permit area. New Mexico proposed to revise CSMC Rule 80-1-8-24(j) by adding the requirement that these maps show "known grave sites" and "unmarked burial grounds" in addition to cemeteries. "Unmarked burial ground" is defined by other State statute. The corresponding Federal regulation at 30 CFR 779.24(j) requires that these maps show all cemeteries that are located in or within 100 feet of the proposed permit area.

At 30 CFR 761.5, the Federal regulations define "cemetery" as any area of land where human bodies are interred. New Mexico defines "cemetery" at CSMC Rule 80-1-1-5 as any place dedicated to, used, and maintained for the interment of the human dead. In Finding No. 4(a)(i) of the December 31, 1980, Federal Register (45 FR 86459, 86463), the Secretary of the Interior approved the State's more limited definition of "cemetery" but only because other State statutes provide protection for peviously undiscovered grave sites. At that time, the Secretary also approved existing CSMC Rule 80-1-8-24, which included the term "cemetery."

Because New Mexico's CSMC Rule 80-1-8-24 was already no less effective than the corresponding Federal regulation, New Mexico need not have revised it. However, at its own initiative, New Mexico proposed that the permit maps show each known grave site and unmarked burial grounds in addition to each cemetery.

New Mexico's proposed use at CSMC Rule 80-1-8-24(j) of the terms "known grave sites" and "unmarked burial grounds" in conjunction with the term "cemetery" is not inconsistent with the Federal regulation at 30 CFR 779.24(j), which uses the term "cemetery," and the Federal definition of "cemetery" at 30 CFR 761.5. The Director makes this finding because the combined meaning of the New Mexico terms "cemetery," "known grave sites," and "unmarked burial grounds" is the same as the meaning of the Federal term "cemetery," which is defined as any area of land where human bodies are interred.

For these reasons, the Director (1) finds that proposed CSMC Rule 80-1-8-24(j) is no less effective than the Federal regulation at 30 CFR 779.24(j) and (2) approves the proposed rule.

7. CSMC Rules 80-1-10-17(a)(6), 80-1-24-11(c) and 80-1-24-15(c)(3), Prime Farmlands

New Mexico proposed to delete in their entirety existing CSMC Rules 80-1-24-11(c) and 80-1-24-15(c) (2) and (3), and a part of CSMC Rule 80-1-10-17(a)(6), all of which address prime farmland. These deleted rules required, as the standards for determining restoration success on prime farmland, the use of crop yields at the time of permit application for the prime farmland to be mined. The Federal regulations at 30 CFR 823.15(b)(5) require the use of crop yields at the time of reclaimed prime farmland crop success measurement for similar unmined soils surrounding the mined area that are under management practices equivalent to those employed on the reclaimed prime farmland. The Director finds that the total deletion of CSMC Rules 80-1-24-11(c) and 80-1-24-15(c) (2) and (3) and the partial deletion of CSMC Rule 80-1-10-17(a)(6) are not inconsistent with the Federal regulations at 30 CFR 823.15(b)(5).

New Mexico proposed no revisions at CSMC Rule 80-1-24-11, in addition to the deletion at CSMC Rules 80-1-24-11(c). New Mexico did propose revisions at CSMC Rules 80-1-24-15 and 80-1-10-17 in addition to the total deletion of CSMC Rules 80-1-24-15(c) (2) and (3) and the partial deletion of CSMC Rule 80-1-10-17(a)(6). As discussed in finding No. 1, the Director finds these additional revisions substantively identical to the corresponding Federal regulations at 30 CFR 823.15(b) and 785.17(c).

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Because the proposed deletions are not inconsistent with the corresponding Federal regulations and the additional revisions are substantively identical to the corresponding Federal regulations, the Director (1) finds that proposed CSMC Rules 80–1–24–11, 80–1–24–15, and 80–1–10–17 are no less effective than the Federal regulations at 30 CFR 823.15(b) and 785.17(c) and (2) approves the proposed rules.

8. CSMC Rules 80–1–11–11(a)(3) and 80–1–11–15(b), Public Notices of Filing of Permit Applications.

New Mexico proposed to amend CSMC Rule 80–1–11–15(b) to require that the information requested to be held as confidential under CSMC Rule 80–1–11–15 would not be made publicly available until after notice and opportunity to be heard is afforded both persons seeking and opposing disclosure of the information. New Mexico also proposed to amend CSMC Rule 80–1–11–11(a)(3) to require that the newspaper advertisement announcing receipt of a permit application include a description of the information requested by the applicant to be held in confidence by the director of MMD and the location where a copy of the permit application is available for public inspection.

The Federal regulation at 30 CFR 773.13(d)(3) requires that each State program contain confidentiality procedures which include provisions for notice and opportunity to be heard on confidentiality determinations. The Federal regulation at 30 CFR 773.13(a)(1)(iii) requires that the newspaper notice announcing receipt of a permit application include the location where a copy of the application is available for public inspection.

The Director finds that proposed CSMC Rules 80–1–11–15(b) and 80–1–11–11(a)(3) contain confidentiality procedures that include notice and opportunity to be heard on confidentiality determinations. Therefore, these proposed rules are no less effective than the Federal regulation at 30 CFR 773.13(d)(3). The Director also finds that proposed CSMC Rule 80–1–11–11(a)(3), which includes a requirement to notify the public by newspaper advertisement of the location where a copy of the permit application is available for inspection, is no less effective than the Federal regulation at 30 CFR 773.13(a)(1)(iii). The Director approves the proposed rules.

9. CSMC Rules 80–1–20–67(d)(3)(i), Scaled-Distance Equation for Blasting

New Mexico proposed to add new CSMC Rule 80–1–20–67(d)(3)(i), which pertains to use of explosives. With one exception, New Mexico's proposed rule is substantively identical to the corresponding Federal regulations at 30 CFR 816.67(d)(3)(i) and 817.67(d)(3)(i). The exception is that the proposed scaled-distance equation for blasting contains a typographical error. New Mexico's proposed equation for the scaled-distance is $W=(D/Ds)^{2}$. The correct formula for the scaled-distance is $W=(D/Ds)^{a}$. By letter dated July 11, 1990 (Administrative Record No. NM–598), New Mexico stated that it will correct this typographical error before it promulgates the proposed rule. With the understanding that New Mexico will correct its scaled-distance equation prior to promulgating CSMC Rule 80–1–20–67(d)(3)(i), the Director finds that the proposed rule is no less effective than the Federal regulations at 30 CFR 816.67(d)(3)(i) and 817.67(d)(3)(i). On this basis, the Director approves the proposed rule.

10. CSMC Rule 80–1–20–71 (j) and (k), Disposal of Excess Spoil

New Mexico proposed excess spoil disposal rules at CSMC Rules 80–1–20–71 (j) and (k) that are, with one exception, identical to the corresponding Federal regulations at 30 CFR 816.71(h) (2), (3), and (4), and 817.71(h) (2), (3), and (4). The exception is that New Mexico requires that the qualified registered professional engineer who inspects an excess spoil fill provide the director of MMD a certified report within 2 weeks after each inspection. The Federal regulations require a certified report "promptly" after each inspection. The Director finds that providing the director of MMD a certified report within 2 weeks is prompt. Therefore, the Director finds that New Mexico's proposed CSMC Rules 80–1–20–71(j) and 80–1–20–71(k) are no less effective than the Federal regulations at 30 CFR 816.71(h) (2), (3), and (4), and 817.71(h) (2), (3), and (4). The Director approves the proposed rules.

11. CSMC Rule 80–1–29–16(a), Availability of Records, as Supplemented by the Records Retention Memorandum Dated July 11, 1990

New Mexico's existing CSMC Rule 80–1–29–16(a) requires that copies of all records, reports, inspection materials, or information obtained by the director of MMD shall be made immediately available to the public in the manner provided for by the State statutes providing for inspection of public records, Section 14–2–1 through 14–2–3, New Mexico Surface Mining Act of 1978. New Mexico submitted a policy statement dated July 11, 1990, that addresses records retention as it relates to existing CSMC Rule 80–1–29–16(a) (Administrative Record No. NM–598). This policy statement requires that all nonconfidential records, reports, inspection materials and any other written information pertaining to all mining operations be retained in the office of MMD for public inspection for a period of not less than 5 years after final bond release. The corresponding Federal regulations at 30 CFR 840.14(b) have the same requirements as the proposed policy statement. The Director finds that CSMC Rule 80–1–29–16(a), as supplemented by New Mexico's July 11, 1990, policy statement, is no less effective than the corresponding Federal regulations at 30 CFR 840.14(b). Therefore, the Director approves the July 11, 1990, policy statement as a part of the New Mexico program.

12. 30 CFR 931.12, New Mexico Regulations Affirmatively Disapproved in Accordance With Court Order

In the **Federal Register** notice announcing the Department's approval of New Mexico's original program, the Secretary, at 30 CFR 931.12, affirmatively disapproved several provisions of New Mexico's program that incorporated suspended or remanded Federal regulations (45 FR 86459, 86461; December 31, 1980). The affirmative disapprovals were based upon an order of the U.S. District Court for the District of Columbia that the Secretary "affirmatively disapprove * * * those segments of a State program that incorporate a suspended or remanded regulation" (*In re: Permanent Surface Mining Regulation Litigation*, Civil Action 79–1144, May 16, 1980, Mem. Op. at 49).

On August 15, 1980, however, the court partly stayed its May 16, 1980, order and allowed the Secretary to approve State program provisions similar to remanded or suspended Federal regulations when the State adopted such provisions in a rulemaking or legislative proceeding which occurred before the enactment of SMCRA or after the date of the District Court decision (May 16, 1980), since such State rules clearly were not based solely upon the suspended or remanded Federal regulations. In addition, the court stated that the Secretary need not affirmatively disapprove provisions based upon suspended or remanded Federal regulations if a responsible State official requested the Secretary to approve them.

The Director finds, consistent with the court decisions, that the remaining affirmative disapprovals at 30 CFR 931.12 (a), (c), (d), (f), (g), (h), (i), (j), (k), (l), (m), and (o) are no longer necessary because by letter dated August 31, 1990, the head of the New Mexico regulatory authority specifically requested approval of these rules (Administrative Record No. NM–612). Because the affirmative disapprovals at 30 CFR 931.12 (a), (c), (d), (f), (g), (h), (i), (j), (k), (l), (m), and (o) are no longer necessary, the Director removes them.

IV. Public and Agency Comments

Public Comments

OSM solicited public comments and provided opportunity for a public hearing on the proposed amendment. No comments were received. Because no one requested an opportunity to testify at a public hearing, no hearing was held.

Agency Comments

Pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(11)(i), OSM solicited comments from the Administrator of the Environmental Protection Agency (EPA), the Secretary of Agriculture, and various other Federal agencies with an actual or potential interest in the New Mexico program. The Bureau of Land Management (BLM), National Park Service (NPS), EPA, U.S. Forest Service (USFS), Soil Conservation Service (SCS), and Mine Safety and Health Administration (MSHA) responded to OSM's request for comments.

BLM. BLM commented on the proposed amendments at CSMC Rule 80–1–1–5, the definition of "cumulative impact area" and "previously mined area;" CSMC Rules 80–1–20–71(j) and 80–1–20–82(a), disposal of excess spoil and coal processing waste banks; CSMC Rules 80–1–20–102 (f) and (g), remining; and CSMC Rules 80–1–24–12(a) (1), (2), and (3), prime farmland (Administrative Record Nos. NM–579 and NM–609).

BLM commented that the wording "the proposed operation may interact with the impacts of all anticipated mining" as proposed in the definition of "cumulative impact area" at proposed CSMC Rule 80–1–1–5 was confusing. New Mexico's proposed definition of "cumulative impact area" is substantively identical to the Federal definition of "cumulative impact area" at 30 CFR 701.5. Therefore, the Director does not require New Mexico to revise its rule in response to BLM's comment.

BLM commented on New Mexico's proposed definition of "previously mined area" at CSMC Rule 80–1–1–5 that all lands mined before August 3, 1977, regardless of reclamation, would seem to be previously mined areas. New Mexico defines "previously mined area" to mean "land previously mined before the date of enactment of SMCRA, August 3, 1977, which have not been fully and satisfactory reclaimed to the standards of the ACT." New Mexico's proposed rule is consistent with 30 CFR 701.5 as modified by a U.S. district court decision. (See finding No. 2.) Therefore, the Director does not require New Mexico to revise the rule in response to BLM's comment.

BLM's comments on proposed CSMC Rules 80–1–20–71(j) and 80–1–20–82(a) concerned the term "qualified registered professional engineer." BLM commented that the term "qualified registered" was superfluous because only qualified individuals are registered and certified as professional engineers in particular engineering disciplines in accordance with State law. New Mexico's proposed CSMC Rules 80–1–20–71(j) and 80–1–20–82 are substantively identical to the corresponding Federal regulations at 30 CFR 816.71(h)(2) and 816.83(d), which use the term "qualified registered professional engineer." (See finding Nos. 1 and 10.) Therefore, the Director does not require New Mexico to revise its rule in response to BLM's comment.

BLM commented that the word "remaining" in CSMC Rules 80–1–20–102 (j) and (g) was not acceptable terminology. The term "remining" as used in the context of this proposed rule and the State program, pertains to the mining of lands previously affected by coal mining operations. Therefore, this term has a specific meaning as applied to the New Mexico program. The Federal regulations at 30 CFR 816.106 and 817.106 use this term and specify certain criteria for remining operations. New Mexico's proposed CSMC Rules 80–1–20–102 (j) and (g) are substantively identical to the corresponding Federal regulations at 30 CFR 816.106 and 817.106. (See finding No. 1.) Therefore, the Director does not require New Mexico to revise its rules in response to BLM's comment.

BLM commented that proposed CSMC Rules 80–1–24–12(a) (1) (2), and (3), which pertain to soil removal for prime farmlands, appear to inappropriately always require the separate removal of the A, B, and C horizons. BLM reasoned that, depending upon the characteristics and thickness of A, B, and C soil horizons, other combinations and proportions such as A with some B, or A and B, may be the most productive. The Director agrees with BLM that a combination of different soil horizons may have a greater productive capacity. In fact, CSMC Rules 80–1–24–12(a) (1), (2), and (3) require this. CSMC Rule 80–1–24–12(a)(1) requires an operator to separately remove the entire A horizon or other suitable soil material to create a final soil having an equal or greater productive capacity than that which existed prior to mining. CSMC Rule 80–1–24–12(a)(2) requires an operator to separately remove the B horizon, a combination of the B and underlying C horizon, or other suitable soil material that will create a final soil having and equal or greater productive capacity than that which existed prior to mining. CSMC Rule 80–1–24–12(a)(3) requires an operator to remove the underlying C horizons, or other strata, or a combination of horizons or other strata to be used instead of the B horizon. If such combination of soils is used, the combination must be more favorable for plant growth than the B horizon. Because these rules already require these practices, the Director does not require New Mexico to revise its rules in response to BLM's comment.

NPS. NPS commented on New Mexico's March 15, 1990, proposed amendment at CSMC Rule 80–1–6–10, coal exploration; and CSMC Rule 80–1–2–11 and 12, areas unsuitable for mining. NPS commented that CSMC Rule 80–1–6–10 referenced a wrong section; CSMC Rules 80–1–2–11(e) (1), (2), and (3) were misplaced; and CSMC Rule 80–1–2–12(b)(2) contained incorrect references. The Director forward NPS's comments to New Mexico, and New Mexico corrected these inconsistencies in its July 11, 1990, proposed amendment.

EPA. EPA, Region 6, responded that it had no objections to the proposed amendment (Administrative Record No. NM–576).

USFS And SCS. USFS and SCS responded that they had no comments on the proposed amendment (Administrative Record Nos. NM–569 and 575).

MSHA. MSHA responded that New Mexico's proposed rules were acceptable and did not appear to conflict with current MSHA regulations (Administrative Record Nos. NM–584 and NM–608).

EPA Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of EPA with the respect to provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*) EPA gave its written concurrence on June 22, 1990 (Administrative Record No. NM–595). In its concurrence letter EPA stated that, with respect to New Mexico's proposed stream channel diversions rule at CSMC

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Rule 80-1-20-44(a), ephemeral streams in addition to perennial and intermittent streams are waters of the United States under the Clean Water Act. In addition, EPA stated that, with respect to New Mexico's proposed stream channel diversions rule at CSMC rule 80-1-20-44(a)(2), diversions must comply with local, State, and Federal statutes and regulations. The Director acknowledges EPA's statements and has notified New Mexico of them by their inclusion in the administrative record.

State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation (ACHP) Comments

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments from SHPO and ACHP for all amendments that may have an effect on historic properties. Comments were solicited from these offices. SHPO responded to OSM's solicitation, but ACHP did not.

SHPO commented on proposed CSMC Rule 80-1-8-24(j), which requires applicants for surface coal mining and reclamation permits to show on permit application maps all known grave sites and cemeteries located in or within 100 feet of the proposed area. SHPO recommended that New Mexico substitute "unmarked burial ground" for "known grave site." SHPO recommended this substitution because "unmarked burial ground" is a term defined by State law. The Director forward SHPO's comment to New Mexico (Administrative Record No. NM-574). In response to SHPO's comment, New Mexico incorporated "unmarked burial ground" in its July 11, 1990, proposed amendment. (See finding No. 6.)

SHPO also commented on the July 11, 1990, proposed CSMC Rules 80-1-8-24(j) and 80-1-11-19(p). SHPO agreed with the changes to proposed CSMC Rule 80-1-8-24(j). Also, SHPO commented on proposed CSMC Rule 80-1-11-19(p), which deals with the director of MMD's right to impose conditions on a permit to insure the protection of historic properties. New Mexico proposed to delete this provision. SHPO commented that the requirement should be retained, because it would give the director of MMD discretion to include a specific permit stipulation to protect cultural resources. New Mexico withdrew its proposed changes to CSMC Rule 80-1-11-19(P) on August 23, 1990. Therefore, SHPO's comment on CSMC Rule 80-1-11-19(p) is moot.

V. Director's Decision

Based on the above findings, the Director approves, with an additional requirement, the proposed amendment as submitted by New Mexico on March 15, 1990, and as revised by it on July 20, and August 23, 1990. With one exception, the Director's approval of the proposed amendment is contingent upon New Mexico's promulgation of the proposed revisions in the identical form as submitted for OSM's review. The exception is, as discussed in finding No. 9, that the Director approves New Mexico's proposed scaled distance formula at CSMC Rule 80-1-20-67(d)(3)(i) with the understanding that New Mexico will correct the typographical error in the formula when it promulgates the rule.

As discussed in finding No. 4, the Director requires New Mexico to further amend CSMC Rule 80-1-4-15(b)(1) to require notification of the general public, through the publication of a notice in the New Mexico State register, of New Mexico's receipt of a petition to designate lands unsuitable for mining.

As discussed in finding No. 12, the Director removes the affirmative disapprovals at 30 CFR 931.12 (a), (c), (d), (f), (g), (h), (i), (j), (k), (l), (m), and (o).

To implement this decision, the Director amends the Federal regulations at 30 CFR part 931 that codify all decisions concerning the New Mexico program. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

National Environmental Policy Act

Pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Accordingly, for this action OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 20, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, of the Code of Federal Regulations is amended as set forth below:

PART 931—NEW MEXICO

1. The authority citation for part 931 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 931.12 [Removed]

2. Section 931.12 is removed.

3. Section 931.15 is amended by adding a new paragraph (o) to read as follows:

§ 931.15 Approval of amendments to State regulatory program.

* * * * *

(o) The following amendment, as submitted on March 15, 1990, and as revised on July 11, 1990, and August 23, 1990, is approved effective December 31, 1991. Revisions to:

CSMC Rule 80-1-1-5, definitions of "cumulative impact area," "previously mined area," "excess spoil," "impoundment," "coal processing waste," and "coal processing waste bank."
CSMC Rule 80-1-2-11(f), areas where mining is prohibited or limited.
CSMC Rule 80-1-2-12(b)(2), areas designated as unsuitable for mining.
CSMC Rule 80-1-4-15(b), receipt of lands unsuitable petitions.
CSMC Rule 80-1-6-10, general requirements for coal exploration.
CSMC Rule 80-1-6-11(b)(5), coal exploration of less than 250 tons.
CSMC Rule 80-1-6-12(b)(7) and 80-1-6-13(d), coal exploration of more than 250 tons.
CSMC Rule 80-1-6-13(d), application for approval or disapproval of exploration of more than 250 tons.
CSMC Rule 80-1-8-14(b)(1)(vi), geology description.
CSMC Rules 80-1-8-15(c) and 80-1-8-16(b)(3), 80-1-9-21(b), (c), and (d).

surface and ground-water information (reclamation plan and monitoring plan).
CSMC Rule 80-1-8-24, permit application maps.
CSMC Rule 80-1-8-27(a), prime farmland investigations.
CSMC Rule 80-1-9-13(f), blasting operations plan.
CSMC Rule 80-1-9-14(c), operation plans.
CSMC Rules 80-1-10-13 and 13 (a) and (c), experimental mining practices.
CSMC Rule 80-1-10-13(e), mining permit requirements for experimental practices.
CSMC Rule 80-1-10-17(a)(1)(i), application contents for prime farmlands.
CSMC Rules 80-1-10-17(a)(6), 80-1-24-11(c), and 80-1-24-15(c)(3), prime farmlands.
CSMC Rule 80-1-11-11(a)(3), public notices of filing of permit applications.
CSMC Rules 80-1-11-15 (a) and (b), permitting.
CSMC Rule 80-1-11-19(c), criteria for permit approval or denial.
CSMC Rule 80-1-11-27(e), conditions of permits.
CSMC Rule 80-1-13-11(a), director's review of outstanding experimental practice mining permits.
CSMC Rules 80-1-13-12 (c) and (d), permit revisions.
CSMC Rules 80-1-13-18(c)(3), (d), and (e), notification of transfer, assignment, or sale of permit rights.
CSMC Rule 80-1-20-11(f), signs and markers.
CSMC Rule 80-1-20-41(a), general requirements for hydrologic balance.
CSMC Rules 80-1-20-43(a), and 44 (a) and (c), diversions.
CSMC Rules 80-1-20-52 (a) and (b), hydrology.
CSMC Rules 80-1-20-57(a) (1) and (2), stream buffer zones.
CSMC Rules 80-1-20-61 through 68, use of explosives.
CSMC Rules 80-1-20-71 (f), (j), and (k), disposal of excess spoil.
CSMC Rule 80-1-20-82(a), coal processing waste banks.
CSMC Rule 80-1-20-91(c), coal processing waste dams and embankments.
CSMC Rule 80-1-20-97(d)(10), protection of fish, wildlife, and related environmental values.
CSMC Rules 80-1-20-102 (a), (f), and (g), backfilling and grading of previously mined areas.
CSMC Rules 80-1-20-102(a) (3), (4), and (5), backfilling and grading.
CSMC Rules 80-1-20-111(c) and 112 (c) and (d), revegetation.
CSMC Rule 80-1-24-12(a)(1), soil removal on prime farmlands.
CSMC Rules 80-1-24-15(c) (2), (3), (4), (5), and (6), prime farmlands.
CSMC Rule 80-1-26-12(c), steep slope mining.
CSMC Rule 80-1-30-13(d), permit suspension or revocation.
CSMC Rules 80-1-31-17(b)(1) and 80-1-31-18(b)(1), procedures for civil penalty assessments and assessment conferences.
Policy statement for records retention, dated July 11, 1990, as it relates to CSMC Rule 80-1-29-16(a).

4. Section 931.16 is amended by adding new paragraph (c) to read as follows:

§ 931.16 Required program amendments.

* * * * *

(c) By March 2, 1992, New Mexico shall submit for OSM approval a program amendment for CSMC Rule 80-1-4-15(b)(1) requiring publication in the New Mexico State register of a public notice of receipt of a petition to designate lands unsuitable for mining.

[FR Doc. 91-31248 Filed 12-30-91; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 91-07]

Drawbridge Operation Regulations; Coalbank Slough, John Day River, Nehalem River, and Skipanon River, OR and Deep River, WA

AGENCY: Coast Guard, DOT.

ACTION: Final rule—revocation.

SUMMARY: This amendment revokes the regulations for the following drawbridges: U.S. 101 highway bridge across Coalbank Slough (mile 0.4), U.S. 30 highway bridge across John Day River (mile 1.2), U.S. 101 highway bridge across the Nehalem River (mile 1.1), Burlington Northern Railroad bridge across the Skipanon River (mile 0.8) in Oregon, and the Washington State Route 4 bridge across Deep River (mile 3.5) in Washington. Notice and public procedure have been omitted from this action due to the removal of the bridges concerned.

EFFECTIVE DATE: This revocation of regulations is effective on December 31, 1991.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch (Telephone: (206) 553-5864).

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this rule amendment are Austin Pratt, project officer, and Lieutenant Deborah K. Schram, project attorney.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This action has no economic consequences. It merely revokes regulations that are now meaningless because they pertain to drawbridges which no longer exist. Consequently, this action is considered to be nonmajor under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 CFR 11034, February 26, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary. Because no notice of proposed rulemaking is required under 5 U.S.C. 553, this action is exempt from the Regulatory Flexibility Act. This action will not have a significant impact on a substantial number of small entities.

Environmental Impact

This action has been reviewed by the Coast Guard and has been determined to be categorically excluded from further environmental documentation in accordance with paragraph 2.B.2.g.(5) of the NEPA Implementing Procedures COMDINST M16475.1B.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of 33, Code of Federal Regulations is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to be read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

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§§ 117.867, 117.885, 117.891 and 117.1039 [Removed]

§ 117.881 [Amended]

2. Sections 117.867, paragraph (b) of § 117.881 and §§ 117.885, 117.891, and 117.1039 are removed and reserved.

Dated: December 13, 1991.

J. E. Vorbach,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 91-31211 Filed 12-30-91; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 111

Curbside Mailboxes; Manufacturing Standard USPS-STD-7

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This notice adopts, with minor revisions, rules which were published with an invitation to comment in the **Federal Register** on June 3, 1991, 56 FR 25059. It provides that mail receptacles designed for installation at the curb or edge of a roadway on city or highway contract routes, like those on rural routes, be approved by the Postal Service. It also revises the minimum requirements and test criteria for these curbside mail receptacles.

EFFECTIVE DATE: March 15, 1992.

FOR FURTHER INFORMATION CONTACT: Roy Preston, Office of Delivery and Retail Management (202) 268-3949.

SUPPLEMENTARY INFORMATION: Pursuant to its statutory responsibilities, including the duty to provide an efficient delivery and collection system, the Postal Service has long provided standards for mail receptacles, including receptacles installed at the curb or edge of a roadway (i.e., curbside boxes) on rural routes. Previously, the Postal Service did not require customers who received city delivery or highway contract delivery service to use approved boxes for curbside delivery. The same reasons which require the use of approved receptacles in rural delivery areas apply equally to city delivery and highway contract delivery. In the **Federal Register** of June 3, 1991, 56 FR 25059, the Postal Service proposed revisions to parts 151, 155, 156, and 157 of the Domestic Mail Manual (DMM) to require customers in all delivery areas to utilize approved boxes for curbside service. This notice also proposed that the same standards would apply to all curbside receptacles, and that the rules concerning these specifications would be set forth in DMM 151, rather than in the section concerning rural delivery service.

The Postal Service also proposed to reissue Manufacturing Standard USPS-STD-7, Mailboxes, City and Rural Curbside, which sets forth the detailed requirements concerning the production of these receptacles, and to revise certain of its provisions. The proposal permitted the use of plastics in the manufacture of receptacles, in view of the recent advances in the durability of these materials. The proposal also revised certain specifications and testing standards for all curbside receptacles in order to ensure efficient and safe delivery and security of the mail.

Evaluation of Comments Received

Comments on the proposal were received from eight parties, with four commenters stating that they agreed with the proposal and urging that the rule be adopted and four commenters suggesting changes to the proposal. These comments have been considered carefully, and a discussion of them follows.

DMM 151.511 (renumbered as DMM 151.512) changed the classification of rural boxes so that it now identifies the sizes as 1, 2, and 3 rather than sizes 1, 1A, and 2. One commenter questioned the new classification citing increased advertising cost and possible confusion between manufacturers, retailers, and customers because of their familiarity with the old classification. We believe the new classification will be much clearer to customers, retailers, and manufacturers because it makes the distinction between contemporary and traditional styles.

The same commenter questioned the need in DMM 151.514 (renumbered as DMM 151.517) for the markings "U.S. Mail" and "Approved by the Postmaster General" on wooden mailboxes if the internal mail receptacle is an approved mailbox. It is not sufficient that the metal receptacle within these boxes has previously been approved because modified boxes must be approved as if the box were a new box. See DMM 151.513, 151.514, 151.515, and 151.516.

The same commenter recommended that we include a statement in Section 3.1 of the USPS-STD-7 to allow the installation of a name, address, and box number placard kit. We believe this suggestion has merit and have revised this section to specify that no attachment will be allowed with the exception of the customer name and address.

The same commenter questioned the strict interpretation of rib centers and width of ribs for the bottom of the mailbox in Section 3.1.2 of USPS-STD-7, because it would require tooling changes. This requirement, which will provide consistency in the rib patterns among all mailbox manufacturers, is necessary to ensure that mail will not adhere to the surface of receptacles.

This commenter also questioned the change in the requirement in section 3.6.1 of USPS-STD-7 that the flag staff centerline be no more than 2 inches from the front of the receptacle instead of the original requirement that it be 4 inches. The 2-inch requirement will be retained because it responds to reports from delivery personnel that it is difficult to reach the flag from a delivery vehicle if it is positioned more than 2 inches from the front of the mailbox.

A second commenter questioned why we are limiting the impact test (dropping a 10-pound weight 3 feet) to plastic boxes in section 3.1 of USPS-STD-7. The impact test is necessary for plastic boxes to ensure they are not prone to shatter or leave unsafe jagged edges if struck.

The same commenter questioned the need to retain the requirement in section 3.6.1 of USPS-STD-7 which states that, with the flag in the raised position, not less than 6 square inches of the signal portion must be visible above the top of the box. While the requirement is necessary to ensure that the flag is visible to the carrier, we believe this suggestion has some merit. Accordingly, we have modified this section and section 3.6.2 to specify that 4 square inches, rather than 6 square inches, of the signal portion of the flag must be visible above the top of the box.

This commenter also questioned the need for the flammability requirement for curbside mailboxes set forth in sections 3.1 and 3.14.6. This requirement is based upon the concern that mail could be burned in wood and plastic boxes because they support combustion while metal does not.

The same commenter questioned the need for watertightness, as required by section 3.14.7, if mailboxes have a slot. Watertightness will still be required due to the need to avoid damage to mail. Accordingly, rain dump shields or flaps are required to prevent water from entering the box.

A third commenter questioned the requirement in section 3.1.2 of USPS-STD-7 that mailboxes must be designed to allow for all mail (incoming and outgoing) to be inserted and retrieved in a horizontal manner. For purposes of carrier safety and to facilitate delivery from a vehicle, mailboxes have to be able to accommodate mail delivery in a horizontal mode. An explanation has been added to the provision to clarify the meaning of "horizontal."

The same commenter also questioned the change in section 3.3 of USPS-STD-7 stating that the carrier service door must not be spring-loaded. This change is necessary because the carrier service door must remain open while the carrier is placing mail in the box. A spring-loaded carrier service door requires the carrier to use two hands to service the mailbox while sitting in their vehicles, creating a potentially unsafe condition for these carriers.

A fourth commenter recommended that we allow manufacturers to make newspaper receptacles part of the mailbox. The Postal Service has a regulation in DMM 151.529 establishing the conditions under which newspaper receptacles may be attached to the box support. Failure to adhere to these provisions, such as by making the receptacle part of the mailbox, would interfere with delivery and collection of mail and adversely affect efficient service.

The Engineering and Development Center will not accept mailboxes for evaluation under the old specification after the effective date of these regulations. Additionally, all currently approved manufacturers must receive approval for their receptacles under the new standards. Manufacturers will be given a grace period of 90 days after the effective date of the new standard to sell boxes approved under the old standard to retailers. Retailers will be given a grace period of 1 year after the effective date of the new standard to sell boxes approved under the old standard. In conjunction with this, customers may install receptacles approved under the old specification for 1 year after the effective date of the new regulation.

Based on the proposed rule, and following careful consideration of the comments received, as described above, the Postal Service adopts the following amendments to parts 151, 155, 156, and 157 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, 39 CFR part 111, and to USPS-STD-7.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

2. Parts 151, 155, 156, and 157 of the Domestic Mail Manual are amended to read as follows:

CHAPTER 1—DOMESTIC MAIL SERVICES

* * * * *

150—Collection and Delivery

151—MAIL RECEPTACLES

* * * * *

151.2 Use for Mail Only

(Revise the first two sentences of 151.2 to read as follows:)

Except as provided in 151.528, the receptacles described in 151.1 may be used only for matter which bears postage. Therefore, other than as permitted in 151.528, no part of a mail receptacle may be used to deliver any matter not bearing postage."

* * * * *

(Add 151.5 after 151.4 as follows:)

151.5 Curbside Mailboxes

151.51 Specifications for Manufacturers

151.511 Policy. Manufacturers of all mailboxes designed and manufactured to be erected at the edge of a roadway or curbside of a street and to be served by a carrier from a vehicle on any city, rural, or highway contract route must obtain approval of their products in accordance with U.S. Postal Service Standard 7 (USPS STD-7), Mailboxes, City and Rural Curbside. Construction standards and drawings (USPS STD-7) for guidance in the manufacture of curbside mailboxes may be obtained by writing to the Delivery Management Division, U.S. Postal Service, 475 L'Enfant Plaza SW., room 7142, Washington, DC 20260-7151.

151.512 Dimensions and Styles

a. Approved Sizes and Styles. Three standard sizes and two styles of mailboxes are approved for use on city, rural, and highway contract routes:

TRADITIONAL (T) AND CONTEMPORARY (C) MAILBOX STYLES *

Size	Length	Width	Height
T1 and C1	19"	6-½"	8-½"
T2 and C2	21"	8"	10-½"
T3 and C3	23-½"	11-½"	13-½"

* Dimensions given in approximate inches.

b. Variances. Curbside mailboxes may be constructed in any size between the maximum and minimum outside dimensions specified on approved drawings, provided that the general shape and the proportions of height, width, and length are maintained.

151.513 Application for Approval. To secure approval of a curbside mailbox, manufacturers must submit the following to the Delivery Equipment Division, Engineering and Development Center, U.S. Postal Service, 8403 Lee Highway, Merrifield, VA 22082-8101. Manufacturers must also notify the Delivery Management Division by letter that mailboxes are being submitted for approval.

a. Sample Mailboxes. No fewer than two complete mailboxes with markings required in paragraph 3.7 of USPS-STD-7 of each style made of exact materials, construction, coating, paint, etc., including the panels required by paragraph 3.14.8 of USPS-STD-7, and otherwise identical in every way with the boxes intended to be marketed.

b. Instructions. A copy of the instructions required by paragraph 3.11 of USPS-STD-7.

c. Color Samples. Color samples showing all color schemes to be used.

d. Proposed Packaging. Boxes or packaging of the type proposed for shipping production units.

e. Documentation. Two complete sets of manufacturing drawings and installation instructions, showing that the units submitted meet the requirements of USPS-STD-7. The drawings must be dated, signed, and certified to represent the production units exactly as submitted. The drawings must include sufficient details to allow the Postal Service to document and inspect all materials, construction methods, processes, coatings, treatments, finishes, control specifications, parts, and assemblies used in the construction of the units. The Postal Service may request individual piece parts to verify drawings.

151.514 Modifications During Application Process. No changes may be made by the manufacturer to its products or drawings without written notification of and approval from the Postal Service. Any changes must be submitted with an explanation of the reasons in writing and also documented in the revision block of the affected drawings. Two units of each type with the changes incorporated must be submitted for testing and approval. All changes are subject to written approval by the Postal Service.

151.515 Application Approval

a. Authorizing Organization. The decision to approve or disapprove mailboxes is issued by the Office of Delivery and Retail Management, U.S. Postal Service (for address, see Address List in Appendices). All correspondence

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and inquiries must be directed to that office.

b. Retention of Drawings and Sample Mailboxes. The Postal Service returns one set of manufacturing drawings to the manufacturer, together with written notification of approval or disapproval, including reasons for disapproval. The drawings are stamped and identified as representing the production unit type if the mailbox is approved. After testing, the Postal Service (1) Retains approved boxes and (2) disposes of disapproved boxes unless the manufacturer requests their return and pays the shipping costs.

151.516 Production Units

a. Construction. Manufacturers must construct production units in accordance with identified (stamped) drawings and USPS–STD–7. These units must be of the exact materials, construction, coating, workmanship, finish, etc., as the approved units. The Postal Service reserves the right at any time to examine and retest production units obtained either in the general marketplace or from the manufacturer, and may require the manufacturer to provide units for examination and testing. Failure of these production units to be manufactured in strict accordance with the approved units, the identified drawings, and the provisions of USPS–STD–7 may result in the rejection of units and the suspension or revocation of the manufacturer's authorization as an approved manufacturer through a decision issued by the Office of Delivery and Retail Management.

b. Packaging. Mailboxes and accessories must be packaged in a manner to ensure arrival at destination in satisfactory condition. Boxes must be shipped fully assembled except that the following parts may be removed if necessary to protect them from damage: Protruding portions, such as door latching hardware, mounting adapters, and mounting posts or stands. Containers and packaging must comply with the National Motor Freight Classification Rule 222, sections 2 and 3. Boxes must be suitably wrapped or protected and packaged in separate containers to prevent damage to painted surfaces by rubbing against other parts or the internal surfaces of the container.

c. Changes. Manufacturers must receive written approval from the Postal Service before making any change to the production unit or the identified design drawings. Approval for changes requires resubmission of units for testing and updated drawings for review.

151.517 Marking. All curbside mailboxes must have the following legible inscriptions on the carrier service door: "U.S. MAIL" and "APPROVED BY THE POSTMASTER GENERAL." Manufacturers must mark these inscriptions by embossing on sheet metal, using raised lettering on plastic, or engraving on wood or other materials not suitable for embossing. The name and address of the manufacturer and the month and year of manufacture must also be marked on the box. Manufacturers must either emboss this marking on the rear wall or affix a permanent decal on the inside near the front opening of the box.

151.518 List of Approved Manufacturers

Following is a list of manufacturers of traditional and contemporary style curbside receptacles whose mailboxes have been approved by the Postal Service:

Approved manufacturers	Type of mailbox
Add On's by Fischer, P.O. Box 746, Huntley, IL 60142–0746.	C1
Armor Plate Mailbox Inc., P.O. Box 1060, Sterling Heights, MI 48311–1060.	C1
Bacova Guild Ltd, Bacova, VA 24122–9999.	C1
Mr. Jerry Ballinger, 5119 West U Avenue, Schoolcraft, MI 49087–9769.	C1
Beacon Products Inc., 6065A 17th Street East, Bradenton, FL 34203–5002.	T2, C1, C2, C3
Carmel Wood Products, 24723 Upper Trail, Carmel, CA 93923–9043.	C1
Chicago Heights Furnace Supply Co. Inc., 94–104 East 22nd Street, Chicago Heights, IL 60411–4263.	T1, T2, T3
Decor House, P.O. Box 1108, Temple, TX 76503–1108.	C1
EZ Mail Corporation, 62 Carroll Avenue, P.O. Box 4038, Bridgeport, CT 06607–4038.	T1, C1
Innovative Plastics Corporation, 400 Route 303, Orangeburg, NY 10962–1395.	T2
The Janzer Corporation, 98 Lincoln Avenue, Langhorne, PA 19047–5238.	C1
Leigh A Harrow Company, 411 64th Avenue, Coopersville, MI 49404–1234.	C1
Macklanburg Duncan, P.O. Box 25188, Oklahoma City, OK 73125–0188.	T1, C1
Northwest Metal Products, Division of Noll Manufacturing Company, P.O. Box 10, Kent, WA 98035–0010.	T1
Norwell Manufacturing Company Inc., 82 Stevens Street, East Taunton, MA 02718–1396.	C1
Parker Mailboxes Company, 9571 Hoke Brady Road, Richmond, VA 23231–9744.	C1
Pony Express Manufacturing, P.O. Box 7916, Nashua, NH 03060–7916.	C1, C2, C3
Safe T Box Corporation, Route 1, Box 404, Washington, WV 26181–9743.	C1
Shaffer Inc., P.O. Box 30011, Indianapolis, IN 46230–0011.	T1
Steel City Corporation, P.O. Box 1227, Youngstown, OH 44501–1227.	T1, T2, T3, C1, C2, C3
The Country Corner, P.O. Box 18, Orchard Park, NY 14127–0018.	C1
The Solar Group, Southern Gemini, P.O. Box 525, Taylorsville, MS 39168–0525.	T1, T2, T3, C2
Timely Industries Inc., 701 Montrose Avenue, South Plainfield, NJ 07080–1687.	T1, T2, C2
Trailside Mailbox Inc., 1993 Stonehenge Drive, Lafayette, CO 80026–9115.	C1
Tuckay Metal Fabricators, P.O. Box 720, Carlisle, PA 17013–0720.	C1
Veeders Mailbox Inc., P.O. Box 42048, Cincinnati, OH 45242–0048.	T1, T2
Wood Quarters Inc., 7914 Ridgewood Drive, Jenison, MI 49428–7923.	C1

1—Curbside Box Size No. 1.
2—Curbside Box Size No. 2.
3—Curbside Box Size No. 3.
T—Traditional Curbside Box Style.
C—Contemporary Curbside Box Style.

151.52 Installation and Use

151.521 Custom-Built Curbside Mailboxes. Postmasters are authorized to approve curbside mailboxes constructed by individuals who, for aesthetic or other reasons, do not wish to use an approved manufactured box. The custom-built box must conform generally to the same requirements as approved manufactured boxes relative to the flag, size, strength, and quality of construction.

151.522 Painting and Identification. The Postal Service prefers that curbside mailboxes and posts or supports be painted white, although other colors may be used if desired. Where box numbers are used, the numbers must be inscribed in contrasting color in neat letters and numerals not less than 1 inch high on the side of the box visible to the carrier's regular approach, or on the door if boxes are grouped. Where street names and house numbers have been assigned by local authorities, and the postmaster has authorized use of a street name and house number as a postal address, the house number must be shown on the box. If the box is located on a different street from the customer's residence, the street name and house number must be inscribed on the box. Placement of the owner's name on the box is optional. Advertising on boxes or supports is prohibited.

151.523 Posts and Supports. Posts or other supports for curbside mailboxes must be neat and of adequate strength and size. They may not be designed to represent effigies or caricatures that tend to disparage or ridicule any person. The box may be attached to a fixed or movable arm.

151.524 Location. Curbside mailboxes must be placed so that they may be safely and conveniently served by carriers without leaving their conveyances, and must be located on the right-hand side of the road in the direction of travel of the carriers in all cases where traffic conditions are such that it would be dangerous for the carriers to drive to the left to reach the boxes, or where their doing so would constitute a violation of traffic laws and regulations. (For exception, see 156.312). On new rural or highway contract routes, all boxes must be located on the right side of the road in the direction of travel by the carrier. Boxes must be placed to conform to state laws and highway regulations. Carriers are subject to the same traffic laws and regulations as are other motorists. Customers must remove obstructions, including vehicles, trash cans, and snow, which make delivery difficult. Generally, customers should install boxes with the bottom of the box at a vertical height of between 3½ and 4 feet from the road surface, However, because of varying road and curb conditions and other factors, the Postal Service recommends that customers contact the postmaster or carrier before erecting or replacing their mailboxes and supports.

151.525 Grouping. Boxes should be grouped wherever possible, especially at or near crossroads, at service turnouts, or at other places where a considerable number of boxes are presently located.

151.526 More Than One Family. More than one family, but not more than five families, on rural or highway contract routes, may use the same box, provided a written notice of agreement, signed by the heads of the families, or by the individuals who desire to join in the use of such box, is filed with the postmaster at the distributing office.

151.527 Locks. The use of locks on mailboxes on rural and highway contract routes is not required. If, however, a box is equipped with a lock, the box must have a slot large enough to accommodate the customer's normal daily mail volume. The Postal Service does not open locked boxes and does not accept keys for this purpose.

151.528 Unstamped Newspapers. Curbside mailboxes are to be used for mail only, except that publishers of newspapers regularly mailed as second-class mail may, on Sundays and national holidays only, place copies of the Sunday or holiday issues in the rural and highway contract route boxes of subscribers, with the understanding that copies are removed from the boxes before the next day on which mail deliveries are scheduled.

151.529 Newspaper Receptacles. A receptacle for the delivery of newspapers may be attached to the post of a curbside mailbox used by the Postal Service, provided: no part of the receptacle touches or is attached to or is supported by any part of the mailbox, interferes with the delivery of mail, obstructs the view of the flag, or presents a hazard to the carrier or his vehicle. The receptacle must not extend beyond the front of the box when the box door is closed. No advertising may be displayed on the outside of the receptacle, except the name of the publication.

151.53 Nonconforming Mailboxes. Carriers must report to the postmaster any mailboxes not conforming to postal regulations. The postmaster sends Form 4056 to the owners of these boxes, requesting that they remedy the irregularities or defects.

155—CITY DELIVERY

* * * * *

155.41 Obligation of Customer

(Revise the first sentence in 155.41a as follows:)

a. Customers of the carrier delivery service must provide authorized receptacles (see 151.5) or door slots, except for mail receptacles authorized by the Postal Service to be owned and maintained by the Postal Service.

* * * * *

156—RURAL SERVICE

* * * * *

(Revise 156.26 and replace 156.5 as follows:)

156.26 Highway Contract Delivery. Persons residing on roads traveled by both rural and highway contract carriers may qualify as customers of either or both routes. If one curbside mailbox is used for both routes, it must be an approved receptacle (see 151.5).

* * * * *

156.5 Rural Mailboxes. Rules setting specifications for rural mailboxes, and other provisions concerning the installation, location, and use of boxes are set forth in 151.5.

* * * * *

157—HIGHWAY CONTRACT SERVICE

(Revise 157.32c and 157.4 as follows:)

157.32 Availability.

* * * * *

(c) Either erect a curbside mailbox approved under 151.5 on the highway contract route carrier's existing line of travel or are authorized to receive delivery through neighborhood delivery and collection box units and parcel lockers owned and maintained by the Postal Service.

* * * * *

157.4 Location of Receptacles. Approved curbside mailboxes (see 151.5) must be placed where they protect mail and may be conveniently served by carriers without leaving their vehicles. These receptacles must be located on the right side of the road in the direction of travel, when required by traffic conditions, or when driving to the left to reach the boxes would constitute a violation of traffic laws by the carrier.

3. USPS–STD–7, *Mailboxes, City and Rural Curbside*, is revised to read as follows:

U.S. Postal Service Standard Mailboxes, City and Rural Curbside

USPS–STD–7
July 31, 1991
Supersedes USPS–STD–7
Dated October 1985
Doc. 1088BLIB

1. SCOPE AND CLASSIFICATION

1.1 *Scope*—This standard covers all city and rural curbside mailboxes.

1.2 *Classification*—Curbside mailboxes must be of the following types and sizes:

Type I—Box, Traditional, Curbside Mail
Size T1—See Drawing 3730–0310, RD–4
Size T2—See Drawing 3730–0310, RD–5
Size T3—See Drawing 3730–0310, RD–6
Type II—Box, Contemporary, Curbside Mail
Size C1—18⅛" × 5" × 6"
Size C2—19⅛" × 6" × 7"
Size C3—22⅛" × 8" × 11⅛"
Minimum Parcel Size Acceptable (Applicable to both Types I and II).

1.3 *Approved Manufacturers.*

1.3.1 *Approved Manufacturers*—Manufacturers whose boxes have been approved by the United States Postal Service (USPS) will be listed in the Domestic Mail Manual (DMM).

1.3.2 *Interested Manufacturers*—Manufacturing standards and drawings concerning the manufacture of curbside mailboxes may be obtained by writing to:

Delivery Management Division, U.S. Postal Service, 475 L'Enfant Plaza, SW., room 7142, Washington, DC 20260–7151.
Telephone: (202) 268–3606

2. APPLICABLE DOCUMENTS

2.1 *Government Documents*—The following documents of the latest issue are incorporated by reference as part of this standard.

Specifications	
MIL-T-704	Treatment and Painting of Material.
MIL-A-8625	Anodic Coatings, for Aluminum and Aluminum Alloys.

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Specifications	
MIL-W-4858	Welding, Resistance: Spot and Seam.
Standards	
Military	
MIL-STD-171	Finishing of Metal and Wood Surfaces.
Federal	
FED-STD-406	Flammability of Plastic over 0.050 Inch in Thickness.
FED-STD-595	Colors Used in Government Procurement.

Copies of federal specifications and standards may be obtained from the General Services Administration, Specification Section, room 6654, 7th and D Streets, SW., Washington, DC 20407–9999.

Copies of military specifications and standards may be obtained from the Standardization Documents Order Desk, 700 Robbins Ave., Building 4, Section D, Philadelphia, PA 19111–5094.

2.2 *Non-Government Documents*—The following documents of the latest issue are incorporated by reference as part of this standard.

AMERICAN STANDARDS FOR TESTING MATERIALS (ASTM)

ASTM B117	Standard Test Methods of Salt Spray (Fog) Testing.
ASTM D968	Standard Test Methods for Abrasion Resistance of Organic Coatings by Falling Abrasive.
ASTM E308	Method for Computing the Colors of Objects by Using the CIE System.
ASTM E313	Standard Test Method for Indexes of Whiteness and Yellowness of Near-White, Opaque Materials.
ASTM G26	Standard Practice for Operating Light-Exposure Apparatus (Xenon-Arc Type) with and without Water for Exposure of Nonmetallic Materials.

Copies of the preceding documents may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103–1108.

Other documents	
AWS C1.1	Recommended Practices for Resistance Welding.
ANSI/AWS A2.4	Standard Symbols for Welding, Brazing and Nondestructive Examination.
ANSI/AWS D9.1	Specification for Welding of Sheet Metal.
AWS WHB–4 Ch 8	Aluminum Alloys-Welding Handbook.

Copies of the preceding documents may be obtained from the American Welding Society, 2501 NW. 7th St., Miami, FL 33125–3136.

National Motor Freight Classification Rules

Copies of the preceding documents may be obtained from the National Motor Freight Traffic Association, 2200 Mill Rd., Alexandria, VA 22314–4887.

2.3 Except where specifically noted, the specifications set forth herein shall apply to both Type I and Type II boxes.

3. *REQUIREMENTS*

3.1 *General Design*—All mailboxes must be capable of passing the load tests specified in table 1 and Figure 1. All plastic mailboxes must withstand an impact of a 10-pound weight being dropped 3 feet. Mailboxes made of plastic, wood, or other material that normally sustains a flame must be self-extinguishing. The mailbox must not contain any transparent material. No attachments with the exception of the customer name and/or residence number are permitted on any mailbox. No shapes or protrusions are permitted on the mailbox except as approved and do not interfere with mail delivery nor present a safety hazard. The box must be free from harmful projections, burrs, sharp edges, or other features that may be hazardous to carriers or customers or interfere with delivery, and must positively protect mail from all types of weather. All seams and joints must be tight to prevent loss of or damage to any mail placed in the box.

3.1.1 *Type I. Traditional Design*—The general configuration of the box must conform to USPS Drawings RD–4, RD–5, and RD–6. Minor design and construction changes may be considered for approval, provided they are equal to or better than the features they replace, and provided the operation of the box is unchanged.

3.1.2 *Type II. Contemporary Design*—The general configuration of the box must conform to USPS collection and delivery operations and requirements. Designs of the contemporary rural mailboxes are not restricted to shape, material, finish, or style; however, boxes must be designed and constructed so that they may be serviced in the same manner as the traditional curbside mailbox. The mailbox must be designed to allow for all mail (outgoing and incoming) to be inserted and retrieved in a horizontal manner, i.e., the longest axis of the mail must be horizontal. The bottom of the mailbox must contain no lip or protrusion that could restrict the mail from being pulled straight out of the box. The mailbox may contain only a front door or it may contain front and rear doors to enable the customer to remove mail without standing in the street.

The bottom of the box must be corrugated, ribbed, or otherwise formed similar to the bottom of the Type I boxes (with ribs .08 ±.015 inch wide and .10 ±.015 inch high on 1 ±.015 inch centers) to prevent mail from adhering to it as a result of moisture, rain or snow entering through an open door. Provisions must be incorporated to prevent damage or destruction of finishes by moving parts of the box.

3.2 *Materials*—Ferrous or nonferrous metals, wood, plastics, or other materials may be used, as long as their thickness, form, mechanical properties, and chemical properties adequately meet the operational, structural, and performance requirements set forth in this standard. Materials used must be compatible with each other and must be nontoxic and nonirritating to humans.

3.3 *Carrier Service Door*—The carrier service door must operate freely by pulling outward and downward with a convenient handle or knob at the top of the door. The handle or knob must have adequate clearance to permit grabbing and pulling it with one hand (with or without gloves) to open the door. No protrusions other than the handle, knob, door catch and markings are permitted on the carrier service door. The design of the door hinges, handles, etc. must provide the maximum protection against wind, rain, sleet, or snow. Door latches must hold the door closed but allow easy opening and closing. The doors must be capable of operating 7,500 normal operating cycles without breakage or failure to operate correctly. Action of the latch must be a positive mechanical one not relying solely on friction of the parts. The door must not be spring loaded. Magnetic latches are acceptable provided adequate closure power is obtained and maintained. The door, once opened, must remain in the open position until the carrier pushes it closed. Doors or door attachments that reduce the usable volume within the box or protrude into the opening of the box are not acceptable.

3.4 *Auxiliary Doors*—Doors other than the carrier service door must not interfere with the normal servicing of the box by the carrier or require the carrier to perform any unusual operations. The auxiliary door must not open as a result of newspapers, parcels, or other mail items being inserted through the carrier door.

3.5 *Locks*—The box may be provided with an effective means of locking, but the use of locks is not required. If the box is equipped with a lock, the box must have a slot large enough to accommodate the customer's normal daily mail volume. The Postal Service will not open boxes that are locked, accept keys for this purpose, or lock boxes after delivery of the mail.

3.6 *Carrier Signal Flag.*

3.6.1 *Type I. Traditional Design*—The carrier signal flag must be as shown on the drawings. The flag must be on the right side when facing the box from the front. The flag staff centerline must be no farther back from the foremost projection of the box (excluding protruding catch hardware) than 2 inches. When the flag is in the raised position, not less than 4 square inches of the signal portion must be visible above the top of the box and the flag may project not less than 2 inches above the top of the box. The signal portion of the flag must be in a plane perpendicular to the road or street on which the box is located. No portion of the flag must extend beyond the top outline of the box when the flag is in the lowered position. The flag operating mechanism must operate properly and positively, without binding or excessive free play, must not require lubrication, and must be resistant to freeze-up at temperatures specified under ambient conditions (3.13). The flag must be capable of operating 7,500 normal operating cycles without breakage or failure to operate correctly. The flag must not be free to rotate more than 100 degrees and must remain in a locked point in either the vertical or horizontal position until repositioned by the customer or carrier.

3.6.2 *Type II Contemporary Design*—The carrier signal flag may be of a contemporary design or similar to that used on the Type I

box and must operate freely. The flag may incorporate a self-lowering feature that automatically drops to the lowered position when the carrier door is opened. The flag must be located on the right side when facing the box from the front. The flag staff centerline must be no farther back from the foremost projection of the box (excluding protruding catch hardware) than 2 inches. When the flag is in the raised position, not less than 4 square inches of the signal portion must be visible above the top of the box and the flag must project not less than 2 inches above the top of the box. The signal portion of the flag may be in a plane perpendicular to the road or street on which the box is located. No portion of the flag must extend beyond the top outline of the box when the flag is in the lowered position. The flag operating mechanism must operate properly and positively, without binding or excessive free play. The operating mechanism must not require lubrication, and must be resistant to freeze-up at temperatures specified under ambient conditions (3.13). The flag must be capable of operating 7,500 normal operating cycles without breakage or failure to operate correctly. The flag must be free to rotate more than 100 degrees and must remain in a locked point in either the vertical or horizontal position until repositioned by the customer or carrier.

3.7 *Marking*—The box must bear two inscriptions on the carrier service door: "U.S. MAIL" in 1.0 ±.2 inch high letters and "Approved By The Postmaster General" in .25 ±.06 inch high letters. The markings must be accomplished by embossing on sheet metal, raised lettering on plastic or engraving on wood or other materials not suitable for embossing. All markings must be raised or incised enough to be easily read. The name and address of the manufacturer and the month and year of manufacture must also be noted on the box on the rear or on an inside wall of the box. This marking must be accomplished by embossing on the rear wall or placing a permanent decal on the inside of the box near the front opening.

3.8 *Coatings and Finishes*—Choice of materials for coatings and finishes is optional, provided all requirements of this standard are met. All finish coatings must be free from flaking, peeling, cracking, crazing, blushing, as well as orange peel and powdery surfaces. Finishes must be compatible with the box materials, and must be prepared by primers or other protective procedures. All painted mailboxes must be coated with a minimum of 3 mils of paint. Mirror-like finishes and coatings on large flat areas, which might cause reflected glare in motorists' eyes from the sun or vehicle lights will not be approved. No part of the coating or finish may show corrosion, blistering, peeling or other destructive reaction after 200 hours of the salt fog environment. The coating or finish is considered to fail the sand abrasion test if less than 15 liters of sand is required to penetrate a coating or if less than 75 liters of sand is required to penetrate any plating.

3.9 *Color*—Color intensity and yellowness indexes must not lose or gain more than 10 percent of their original values.

3.9.1 *Boxes*—The box may be any color. Colors and color schemes may be of a hue, saturation, and brilliance that provide sufficient contrast with normal surroundings to ensure visibility to carriers and persons using the road or street.

3.9.2 *Carrier Signal Flags*—The carrier signal flag must be any contrasting color with the exception of any shade of green, brown, or white and must be painted with high gloss paint. The flag color must not be used on any other portion of the box.

3.10 *Mounting*—The box must be provided with means for convenient and secure mounting. Types of mounting such as a metal post or stand may be offered by the manufacturer as an accessory. No part of the box mounting apparatus must project beyond the front or rear of the mounted box or interfere with the door(s). Mounting must not require the use of tools other than a hammer, screwdriver or common wrench unless such special tools are furnished with the box or accessory.

3.11 *Instructions*—A complete set of instructions for assembling and mounting the box must be furnished with each box. The instructions must include the following message in bold print:

CUSTOMERS ARE REQUESTED TO CONTACT THE LOCAL POST OFFICE BEFORE ERECTING THE BOX TO ENSURE ITS CORRECT PLACEMENT AND HEIGHT AT THE STREET.

3.12 *Workmanship*—Workmanship must be of the highest quality throughout. Highest quality is defined as the following: All parts and assemblies must be clean, straight, accurately formed and assembled, properly fitted, and uniform in size and shape. Parts must be free from delaminations, cracks, warpage, bulges, kinks, dents, porosity, voids, peelings, lumps, foreign matter, or other defects. All plastic parts must be free from flashing, injection header or mold marks, undercuts, voids, surface defects, or visual stresses. Plastic units must be free from releasing agents and any outgassing condition. Finished or coated surfaces must be smooth and uniform, and free from soft areas, stains, chips, color variations, runs, sags, peeling, bubbling, crazing and cracks. Seams and connections must be tight. Rivets must be installed in the rivet manufacturer's recommended hole diameter, be tight, have uniformly formed heads, and must not contain sharp burrs. Welding must be uniform, clean, and positioned properly, must use the correct amperage, and must be inspected as specified by AWS D9.1. The units must be free from sharp edges or corners, burrs, protruding rivets or screws, and design features or details including outside edging, doors, and underside that might injure or hamper carriers or customers using the box.

3.13 *Ambient Conditions*—The box must protect mail placed inside and must operate properly when subjected to the following ambient conditions: temperatures of −65 degrees Fahrenheit to +140 degrees Fahrenheit; relative humidities of 0 to 100 percent (limited by 35 degrees Fahrenheit dewpoint temperature); full solar radiation; snow and freezing rain; heavy rainstorms during which the rain strikes the box at any angle from 0 degrees (vertically downward) to 90 degrees (horizontal); wind velocities up to 100 miles per hour; water and slush thrown upwards by vehicles.

3.14 *Testing Requirements*—Two mailboxes/units of each type must be submitted for testing as specified herein. Test mailboxes must be submitted in packaging identical to that of the production units. Units which fail to pass any test will be rejected and failure of one type of unit can be cause for rejection of all of the units submitted by the manufacturer.

3.14.1 *Operational Requirements*—Carrier service doors, auxiliary doors, door catches and mechanisms, carrier signal flags, and accessory devices must be capable of operating 7,500 normal operating cycles at room temperature without breakage of parts while continuing to operate correctly and positively.

3.14.2 *Structural and Performance Requirements*—Refer to Figure 1 for an explanation of load positions, method of application and bolster plates to be used. At positions 1 through 4 and at position 7, the box must be supported on a horizontal board in a normal fashion. At positions 5 and 6, the load must be applied with the unmounted (without board or adapters) box lying on its opposite side (flag side up). The door(s) is in a closed position for loads in positions 1 through 6. For position 7, the door must be placed in its maximum open position and a load applied normal to the door surface. If the door is free to rotate greater than 120 degrees from the closed position, this part of the structural test is not required. Immediately after release of the slowly applied load in each position, permanent deformation of the box in the load direction must not exceed the permanent deformation indicated from the loads shown on Table I. Cracks in the material must not develop as a result of the load or cause the door to become inoperable. At position 6, the flag must be capable of withstanding an 8-pound load applied at the top of the flag without exceeding permanent deformation specified in Table I.

TABLE I.—PERMANENT DEFORMATION LIMITS

Position	Deformation (inches)	Load (pounds)
1	⅛	200
2	⅛	200
3	⅛	50
4	⅛	50
5	⅛	100
6	⅛	8
7	⅛	8

3.14.3 *Impact Test*—Refer to the Figure 1 for load position. Precondition the box for 4 hours at −20 degrees Fahrenheit. At position 3, with the unmounted box (without board or adaptors) lying on its side (flag side up), apply an impact load equivalent to a 10-pound weight dropped from a distance of 3 feet above the box surface onto a bolster plate having a surface not larger than 2 inches by 2 inches. The door(s) is in a closed position for this test. Repeat the impact load at position 4. No perforation, occurrence of sharp edges, or cracking of the material,

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either inside or outside the box, may develop as a result of the impact, nor may the door become inoperable or fail to close normally.

3.14.4 *Coating and Abrasion Resistance*—The coating of all painted units must meet the abrasive test specified herein. The test must be conducted in accordance with ASTM D–968, Method A for Abrasion Resistance of Coatings of Paint, Lacquer, and Related Products by the Falling Sand Method, rate of flow of 2 liters of sand in 22±3 seconds. The box is considered to fail this test if less than 15 liters of sand is required to penetrate painted coatings, or if less than 75 liters of sand is required to penetrate plating or protective coatings.

3.14.5 *Salt Spray Resistance*—A salt spray test must be conducted in accordance with ASTM B–117, Standard Method of Salt Spray (Fog) Testing. A 5 percent salt solution at 95 degrees Fahrenheit will be used. The salt test must be operated for 200 continuous hours. Units must be tested in a finished condition, including all protective coating, paint, and mounting hardware but must be thoroughly washed when submitted to remove all oil, grease, and other nonpermanent coatings. No part of the units may show finish corrosion, blistering or peeling, or other destructive reaction after 200 hours of continuous exposure. Corrosion is defined as any form of property change such as rust, oxidation, color changes, perforation, accelerated erosion, or disintegration. The build-up of salt deposits upon the surface must not be cause for rejection. However, any corrosion, paint blistering, or paint peeling is cause for rejection. The plastic units must be similarly exposed to test any metal hardware used in the construction or mounting of the units.

3.14.6 *Flammability*—Testing is performed in accordance with FED–STD–406, Method 2021. Cut a specimen 5 inches long by ½ inch wide. Scribe the specimen ½ inch from the end and three more times at 1-inch intervals. The specimen support fixture should hold the flammability sample with its longitudinal axis horizontal and its transverse axis inclined at 45 degrees to the horizontal. Apply a flame at the end of the sample for 30 seconds or until the flame reaches the first scribe mark. When the flame reaches this point, start a stopwatch and stop the stopwatch when the flame reaches the final scribe mark. If the flame goes out prior to this point, the sample is considered "self-extinguishing." If the burning rate exceeds 3 inches in 3 minutes, the unit is rejected.

3.14.7 *Watertightness*—Each mailbox is subjected to a heavy spray of water, equivalent to 3 to 5 inches per hour, for a period of 15 minutes for each side. The spray is directed downward at an angle of 0 to 90 degrees from the vertical. At the conclusion of the test, the outside of the unit is wiped dry and all doors are opened. The inside of the compartment must contain no water other than that produced by high moisture condensation.

3.14.8 *Solar Exposure/Weathering*—Twelve 3-inch by 6-inch panels of the material(s) used in the boxes must be submitted with the mailboxes for solar exposure/weathering testing. Panel thickness must be the same thickness as that of the submitted mailbox walls and door. All metal panels must be finished in the same manner as the mailbox. Plastic panels must be submitted in a natural state (without paint). The test is conducted in accordance with ASTM G–26 using a spectral irradiance level of 0.35 watts per meter squared per nanometer band at 340 nanometers, a black panel temperature of 145±5 degrees Fahrenheit and a relative humidity of 50±5 percent. Both Method 1 for weathering painted panels and Method 3 for UV degradation testing of painted panels and plastic panels must be conducted. The test is conducted for 336 hours. Any blistering, peeling or cracking of the paint is cause for rejection. Any blistering, cracking, disintegration or embrittlement of the plastic is cause for rejection. The test required by 3.14.10 will be performed before and after this test. The color intensity must not lose more than 10 percent of its original value when measured in 3.14.10.

3.14.9 *Capacity*—Conformance to 1.2 of this standard must be tested by insertion and removal of a test gauge for each size mailbox as follows:

Size	Test gauge (inches)				
	Length	×	Width	×	Height
T1 and C1	18½		5		6
T2 and C2	19½		6		7
T3 and C3	22½		8		11½

The test gauge for each size mailbox must be easily inserted and removed from each size mailbox and allow for the door(s) to be completely closed without interference.

3.14.10 *Color Intensity*—Color intensity must be measured in accordance with ASTM E–308 using the CIE method. A yellowness index must be measured using ASTM E–313. Color intensity and yellowness indexes must not lose or gain more than 10 percent of their original values when subjected to environmental conditions in 3.14.8.

3.14.11 *Flag*—The flag size conforms to the requirements of 3.6.1 and 3.6.2.

4. APPROVAL

4.1 *Application Requirements*—All correspondence and inquiries must be directed through the Delivery Management Division, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–7151. The manufacturer must notify the Delivery Management Division that mailboxes are being submitted for approval. To secure approval of a box, manufacturers must submit the following to the Engineering & Development Center, Delivery Equipment Division, U.S. Postal Service, 8403 Lee Highway, Merrifield, VA 22082–8101:

4.1.1 not less than two complete boxes, including markings required in 3.7, of each style made of the exact materials, construction, coatings, paint, etc., including the panels required by 3.14.8 and otherwise identical in every way with the boxes intended to be marketed.

4.1.2 a copy of the instructions required by 3.11.

4.1.3 color samples showing all color schemes expected to be used.

4.1.4 the boxes in the packaging proposed for shipping production units.

4.1.5 Documentation—The units submitted for approval must be accompanied by two complete sets of manufacturing drawings and installation instructions consisting of black on white prints (blueprints or sepia are unacceptable) showing that the units supplied meet the requirements of this standard. The drawings must be dated, signed, and certified to represent the production units exactly as submitted. The drawings must include sufficient details to allow the USPS to document and inspect all materials, construction methods, processes, coatings, treatments, finishes, control specifications, parts and assemblies used in the construction of the units. The USPS may request individual piece parts to verify drawings. No changes may be made by the manufacturer to its products or drawings without written notification of and approval from the USPS. Any changes must be submitted with an explanation of the reasons written in a letter and also documented in the revision block of the affected drawing(s). Two units of each type with the changes incorporated must be submitted for testing and approval. All changes are subject to USPS written approval.

4.1.6 Boxes that are approved will be retained after testing by the USPS. Boxes disapproved may be disposed of or returned to the manufacturer, if requested, provided the manufacturer pays shipping costs.

4.2 Approval or Disapproval—One set of manufacturing drawings, together with written notification of approval or disapproval, including reasons for disapproval, will be returned to the manufacturer. The drawings will be stamped and identified as representing the production unit type if approval notification is used. The USPS Office of Delivery and Retail Management will issue the written notification of approval or disapproval of the mailboxes. All correspondence and inquiries must be directed through that office at the address listed in 1.3.2.

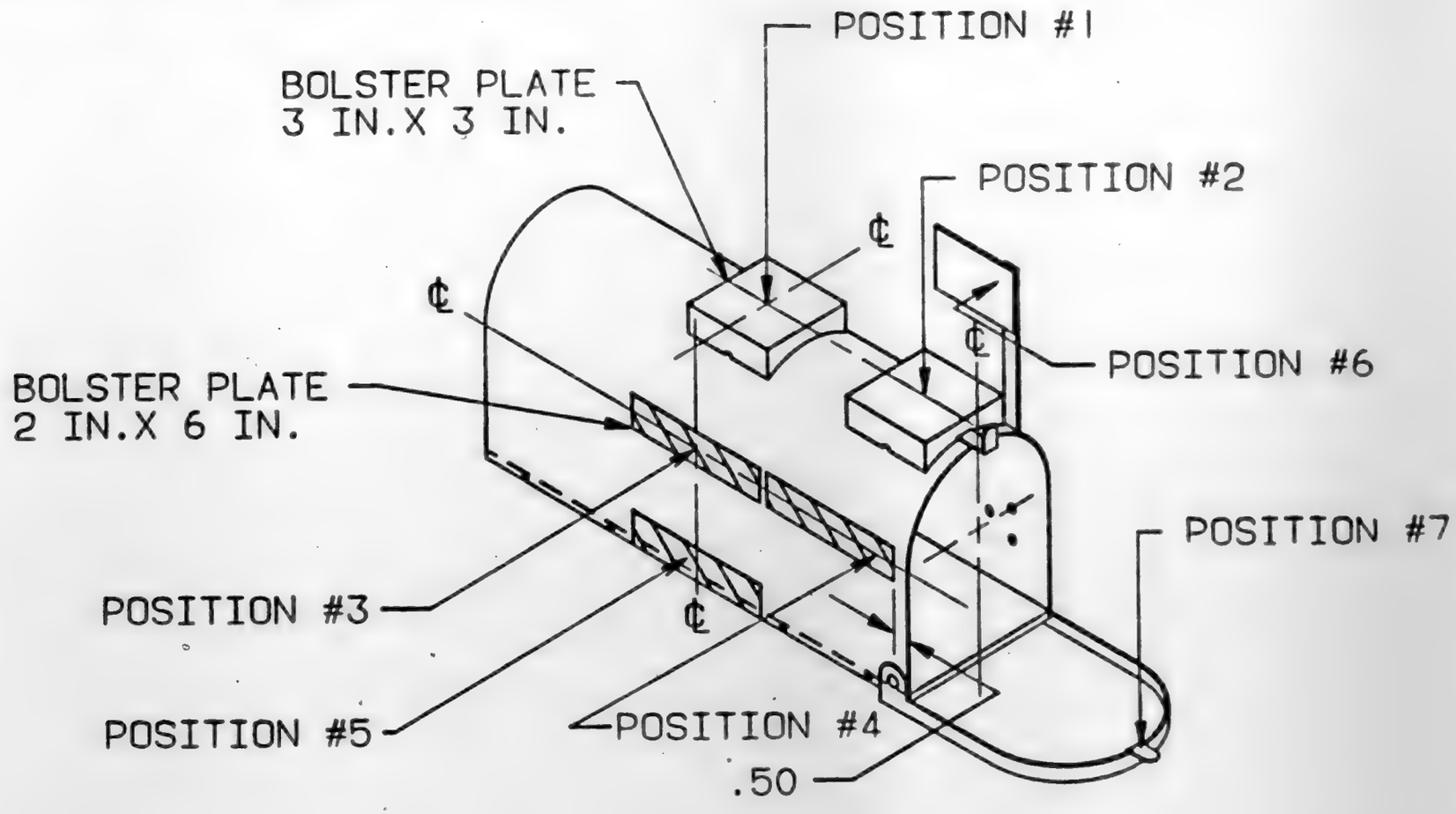
4.3 Production Units—Manufacturer's production units must be constructed in accordance with the identified (stamped) drawings and provisions of this specification, and be of the exact materials, construction, coating, workmanship, finish, etc. as the approved units. Manufacturers must receive written approval from the USPS before making any change to the unit or the identified design drawings. Approval for changes requires resubmission of units for testing and updated drawings for review. The USPS reserves the right at any time to examine and retest production units either obtained in the general marketplace or from the manufacturer. Failure of these production units to be manufactured in strict accordance with the approved units, the identified drawings, and the provisions of this specification may result in the rejection of units and the suspension or revocation of the manufacturer's authorization as an approved manufacturer and may require the manufacturer to provide units for

examination and testing. Suspension or revocation of the manufacturer's authorization of an approved manufacturer will be issued by the USPS Office of Delivery and Retail Management.

5. PREPARATION FOR DELIVERY

5.1 *Packaging*—The packaged mailbox and accessories must be packaged in a manner that will ensure arrival at destination in satisfactory condition. The box must be shipped fully assembled except that the following parts may be removed if necessary to protect them from damage: protruding portions, such as door latching hardware, mounting adapters, and mounting posts or stands. Containers and packing must comply with the National Motor Freight Classification Rule 222, Sections 2 and 3. The boxes must be suitably wrapped or protected and packaged in separate containers to prevent damage to painted surfaces by rubbing against the internal surfaces of the container or against other parts.

BILLING CODE 7710-12-M



DIRECTION OF LOADS

FIGURE 1

BILLING CODE 7710-12-C

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A transmittal letter making these changes in the Domestic Mail Manual will be published and will be transmitted automatically to subscribers. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91-31195 Filed 12-30-91; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-4087-6]

National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today issuing a final rule to stay the effectiveness of 40 CFR part 61, subpart T (subpart T), as it applies to owners and operators of uranium mill tailings disposal sites that are licensed by the Nuclear Regulatory Commission (NRC) or an affected NRC Agreement State (collectively NRC-licensees). Today's rule does not concern Subpart T sites that are under the control of the Department of Energy (DOE). This final rule stays the effectiveness of Subpart T as applied to NRC-licensed uranium mill tailings disposal sites until EPA concludes related rulemakings under section 112(d)(9) of the Clean Air Act, as amended, and the Atomic Energy Act, as amended, as described in a Memorandum of Understanding (MOU) between EPA, NRC and the affected NRC Agreement States, as signed by EPA on October 18, 1991, or June 30, 1994, whichever first occurs. Published elsewhere in today's **Federal Register** are two related rulemakings: a Notice of Proposed Rulemaking in which EPA is proposing a rule to rescind Subpart T as it applies to NRC-licensees and an Advanced Notice of Proposed Rulemaking (ANPR) in which EPA is announcing its intention to enter into a future rulemaking which would amend 40 CFR part 192, Subpart D, which was enacted pursuant to the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978.

DATES: Effective December 19, 1991, EPA is staying the effectiveness of subpart T of 40 CFR part 61 as applied to NRC-licensees that are owners and operators of uranium mill tailings disposal sites. This stay will remain in effect until such time as EPA takes final action on its related proposal to rescind subpart T for NRC-licensees pursuant to CAA sections 301(a) and 112(d)(9), as amended, or June 30, 1994, whichever first occurs.

ADDRESSES: Questions should be addressed to: Central Docket Section LE-131, Environmental Protection Agency, Attn: Docket No. A-91-67, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jamie Burnett, Environmental Standards Branch, Criteria and Standards Division, (ANR-460W), Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460 (703) 308-8787.

SUPPLEMENTARY INFORMATION:

A. Background

1. Regulatory History

On December 15, 1989, EPA promulgated national standards regulating radionuclide emissions to the ambient air from several source categories, including from non-operational sites used for the disposal of uranium mill tailings (54 FR 51654). These sites are either under the control of the DOE pursuant to Title I of the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978, or the sites are under the control of NRC-licensees pursuant to Title II of UMTRCA. These standards—40 CFR part 61, subpart T (subpart T)—were promulgated pursuant to the authority of Clean Air Act (CAA or Act) section 112 as it existed in 1989, and were part of a larger promulgation of National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Radionuclides.

Subpart T requires compliance by owners and operators of uranium mill tailings disposal sites within two years of becoming non-operational (40 CFR 61.222(b)). Pursuant to its authority under then-existing CAA section 112(C)(1)(B)(ii), EPA waived compliance for two years for sites that were non-operational at the time of promulgation. *Id.* Thus, the earliest date by which sites must comply with the subpart T standard is December 15, 1991. Even so, EPA recognized at the time of promulgation that many sources subject to Subpart T might not be able to achieve compliance by December 15, 1991. Because EPA felt constrained by the CAA as it existed at that time, EPA stated that for those sites the Agency would negotiate expeditious compliance schedules pursuant to its enforcement authority under CAA section 113. *See* 54 FR 51683.

Subpart T requires that radon-222 emissions not exceed a flux of 20 pCi/m^2—s. By so doing, it in effect mandates that emplacement of an earthen cover to meet that emissions level occur as expeditiously as practicable. In its 1989 action, EPA recognized that even though NRC implements general EPA standards (promulgated under UMTRCA) which also regulate these sites and call for compliance with 20 pCi/m^2—s flux standard (see 40 CFR part 192), the UMTRCA regulatory program does not answer the critical timing concern addressed by subpart T:

> The existing UMTRCA regulations set no time limits for disposal of the piles. Some piles have remained uncovered for decades emitting radon. Although recent action has been taken to move toward disposal of these piles, some of them may still remain uncovered for years.

54 FR at 51683.

In addition to regulating radon emissions, Subpart T also requires specific testing and record keeping. *See* 40 CFR 61.223 and 61.224. The UMTRCA regulations as currently implemented by NRC, while ultimately limiting emissions to the same level as Subpart T, are supported by a variety of design-based substantive and procedural requirements that speak to UMTRCA's unique concern that final site closure occur in a manner that will last up to 1,000 years. See generally 10 CFR part 40, appendix A.

Together, these programs complement, duplicate and complicate each other. They complement each other to the extent subpart T ensures that sites will proceed expeditiously towards closure. They duplicate to the extent they create dual regulatory oversight, including independent procedural requirements, seeking to ensure compliance with the 20 pCi/m^2—s flux standard. And they complicate to the extent that reporting is to different federal agencies, and compliance schedules under the two regulatory schemes vary, with subpart T requiring the impossible of some sites—compliance by December 15, 1991.

Concern over the above-described duplication and complication created by the dual regulations inspired several petitions for reconsideration, most notably from NRC and the American Mining Congress (AMC). While these petitions remain pending before EPA, today's final rule to stay subpart T and the companion proposed rulemakings to rescind subpart T pursuant to section 112(d)(9) of the CAA, as amended, and the ANPR to amend the 40 CFR part 192,

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subpart D mark EPA's steps towards addressing the issues they raise.

2. Clean Air Act Amendments of 1990

After promulgation of subpart T (and receipt of reconsideration petitions), in November 1990, the Clean Air Act was substantially amended. Included in this overhaul was an amendment that speaks directly to the duplication issue. Newly enacted section 112(d)(9) of the amendments provides:

> No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under this section if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health.

This provision strives to eliminate duplication of effort between EPA and NRC, so long as public health is adequately protected.

Moreover, Congress expressed sensitivity to the special compliance problems of uranium mill tailings sites through new section 112(i)(3). This provision provides an additional 3-year extension to mining waste operations (e.g., uranium mill tailings) if the 4 years allowed (including a one year extension) for compliance with standards promulgated under the amended section 112 is insufficient to dry and cover mining waste to control emissions.

In light of these provisions, and given the express authority of section 112(d)(9), as amended, EPA, NRC and the affected Agreement States, have been meeting to discuss the dual regulatory programs under UMTRCA and the CAA. As part of this effort, EPA has carefully reviewed NRC's program implementing EPA's UMTRCA standards as applied to uranium mill tailings disposal sites.

3. Memorandum of Understanding (MOU) Between EPA, NRC and the Affected Agreement States

The result of this inter-agency consultation and review has been the execution of a Memorandum of Understanding (MOU), a copy of which is printed at 56 FR 55434. The purpose of this MOU is to ensure that owners and operators of existing uranium mill tailings piles licensed by NRC or an affected Agreement State, or those that will in the future become non-operational, effect final radon site closure—emplacement of an earthen cover to permanently limit radon emissions to a flux of no more than 20 pCi/m^2-s—as expeditiously as practicable considering technological feasibility. This phrase means as quickly as possible considering: (1) The physical characteristics of the tailings and the site; (2) the limits of available technology; (3) the need for consistency with mandatory requirements of other regulatory programs; and (4) delays beyond the control of the licensee (e.g., inclement weather). While this phrase does not preclude economic considerations, it also does not contemplate utilization of a cost-benefit analysis in setting compliance schedules. In other words, the compliance schedules are to be developed consistent with the target set forth in the MOU as reasonably applied to the specific circumstances of each site.

A guiding objective is that this occur as to all current disposal sites by the end of 1997, or within seven years of when the existing operating and standby sites enter disposal status. This objective comports with Congress' concern over timing as reflected in CAA section 112(i)(3), as amended. Specific compliance dates for individual piles are listed in the MOU.

EPA has tentatively concluded that implementation of the MOU, including appropriate modifications to the general UMTRCA regulations (at 40 CFR part 192) to ensure specific, enforceable closure deadlines and monitoring requirements, and the performance by NRC and the affected Agreement States of their other commitments contained in the MOU, would render the NRC's regulatory program for nonoperational uranium mill tailings piles protective of public health with an ample margin of safety. This is because while both programs (subpart T and 40 CFR part 192) impose a 20 pCi/m^2-s flux standard, the timing issue was the principle reason justifying promulgation of subpart T under the CAA. The changes to UMTRCA and other actions contemplated by the MOU would alleviate this concern by committing NRC and the affected Agreement States to a course of action that ensures that all sites expeditiously comply with the 20 pCi/m^2-s standard.

The MOU sets forth a series of actions and rulemakings by NRC, EPA, and the affected Agreement States that will ensure expeditious compliance, eliminate duplication of regulation, and avoid having any site in violation. In skeletal form, the MOU contains the agreement by NRC and the affected Agreement States to immediately solicit from their licensees reclamation plans and final closure schedules, for incorporation into enforceable licenses. NRC and the affected Agreement States also agree to utilize their authority to order the necessary license amendments (to effect expeditious closure and compliance with the 20 pCi/m^2-s flux standard) to the extent not agreed to by the licensee, and defend against any challenge to those orders.

For its part, EPA today issues a final rule to stay subpart T. EPA also simultaneously issues a Notice of Proposed Rulemaking, published elsewhere in this issue of the **Federal Register**, to rescind subpart T as it applies to NRC-licensees. That proposed rulemaking is being issued pursuant to CAA sections 301(a), and 112(d)(9), as amended. Also elsewhere in today's **Federal Register**, EPA today issues an Advanced Notice of Proposed Rulemaking to amend 40 CFR part 192, subpart D, Standards for Management of Uranium Byproduct Materials, pursuant to its authority under UMTRCA.

The MOU marked the first step in a comprehensive scheme to ensure that all uranium mill tailings disposal piles are finally closed and in compliance with the 20 pCi/m^2-s flux standard as expeditiously as practicable, thereby protecting public health with an ample margin of safety. At the same time, the MOU responded to other important concerns. The MOU responded to Congress' goals of minimizing the burdens created by regulatory duplication and assuring that the regulated sites have the time they need to comply without jeopardizing public health. The MOU addressed the related concern that this occur without holding a site owner or operator in violation for failing to meet what may be an impossible deadline, while also ensuring that compliance will occur as quickly as technologically feasible. This latter provision is essential in that it responded to the timing concern that was the basis for EPA's 1989 decision to promulgate subpart T. In total, the MOU represents a commitment by EPA, NRC and the affected Agreement States to a course of conduct designed to finally, efficiently and comprehensively resolve the public health threats presented by the disposal of uranium mill tailings.

B. Final Stay of Subpart T for Non-Operational NRC-Licensed Uranium Mill Tailings Disposal Sites

EPA is today issuing a final rule to stay subpart T as it applies to NRC-licensees that are owners or operators of nonoperational uranium mill tailings disposal sites. The stay will remain in place pending the related rulemaking, pursuant to the authority of CAA section 112(d)(9), as amended, to rescind subpart T as it pertains to NRC-licensees. The stay will expire at the conclusion of this related rulemaking or on June 30, 1994, whichever first occurs. The rulemaking which proposes to rescind subpart T is published elsewhere in today's **Federal Register**. The authority for this proposal is provided by the general rulemaking provision at CAA section 301(a), as well as by section 112(d)(9), as amended. This entire action is being conducted in the context of, and pursuant to the agreements and commitments contained in the MOU entered into by EPA, NRC and the affected Agreement States. The MOU is designed to comprehensively and finally ensure that all non-operational uranium mill tailings disposal sites achieve final closure, including compliance with the 20 pCi/m^2-s flux standard, as expeditiously as practicable considering technological feasibility. This phrase means as quickly as possible considering: (1) The physical characteristics of the tailings and the site; (2) the limits of available technology; (3) the need for consistency with mandatory requirements of other regulatory programs; and (4) delays beyond the control of the licensee (e.g., inclement weather). While this phrase does not preclude economic considerations, it also does not contemplate utilization of a cost benefit analysis in setting compliance schedules. In other words, the compliance schedules are to be developed consistent with the target set forth in the MOU as reasonably applied to the specific circumstances of each site.

In section 112(d)(9), Congress authorized EPA to decline to regulate NRC licensees under section 112 in those instances where, after EPA, in consultation with the NRC, makes a finding that NRC regulation is sufficient to provide an ample margin of safety. Congress clearly intended to give EPA the discretion to relieve affected facilities from the burdens associated with parallel regulation when this would not adversely affect public health. Since EPA has concluded that a rulemaking under section 112(d)(9) to rescind subpart T for NRC-licensed sites is warranted, it would frustrate the clear purpose of section 112(d)(9) for EPA to permit subpart T to take effect for this subcategory during the pendency of the rulemaking concerning rescission. Accordingly, EPA is issuing a final rule to stay the effectiveness of subpart T for NRC-licensed sites while the rulemaking concerning rescission of subpart T for this category is pending, or until June 30, 1994, whichever occurs first.

C. Discussion of Comments and Response to Comment

Although no public hearing was requested, two sets of written comments were submitted in response to the proposal to stay subpart T as applied to nonoperational uranium mill tailings disposal sites licensed by NRC or an affected NRC agreement State (collectively NRC-licensees). These comments—one in support and one in opposition to the proposed stay—have been evaluated by the Agency, and a summary and response is set forth below. However, there are aspects to these comments that are not directed at the proposed stay but instead go to the related proposal to rescind subpart T, published elsewhere in today's **Federal Register**. Those comments are not fully addressed here, although the proposal to rescind subpart T does provide some initial response which will be further addressed in the course of that rulemaking, which includes an opportunity for a public hearing and submission of additional comments. Still other comments, which are also not addressed here, seem directed to EPA's earlier promulgation of subpart T, a rulemaking decision that is not being revisited by either this final stay or the proposed rescission. Indeed, those comments were made and responded to at the time the Agency promulgated subpart T, and have also been repeated in subsequent petitions to reconsider that action, which are pending before the Agency, but might become moot should subpart T ultimately be rescinded.

Comment: EPA improperly relies on CAA section 112(d)(9) (enacted as part of the Clean Air Act Amendments of 1990 (CAAA)) as authority to stay subpart T for NRC-licensees because section 112(d)(9) applies prospectively to future promulgations under the CAAA, not to such pre-existing NESHAPs as subpart T.

Response: EPA disagrees with this comment, and instead believes that section 112(d)(9) applies to all CAA section 112 NESHAPs regulating NRC-licensees. The only language arguably supportive of the commenter's interpretation of section 112(d)(9) is that the provision that instructs EPA that "no standard [i.e., NESHAP] for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or Agreement State) is required *to be promulgated under this section*" (emphasis added). The commenter reads the clause "to be promulgated under this section" as limiting the provision to only NESHAPs promulgated under CAA section 112 as revised by the CAAA, as opposed to any NESHAP under CAA section 112 before enactment of the CAAA. As such, the commenter posits, the authority does not apply to such pre-existing NESHAPs as subpart T. We find this reading unpersuasive because it not mandated by the plain language of section 112(d)(9), and the context in which it was enacted as well as its legislative history argue for a contrary interpretation.

By its plain terms, the phrase "under this section" applies to section 112 both as it existed before the CAAA and as it is now, not only, as the commenter would have it, to section 112 as amended by the CAAA. If Congress intended the narrow reading advocated, it logically would have referred only to the "Section 112 as amended" or to the CAAA generally. Moreover, although the sentence does refer to regulations "to be" promulgated, ordinarily a reference to future action, it is implicit that EPA is not required to regulate sources already adequately regulated by NRC, and therefore EPA should not have to implement and enforce existing regulations that are duplicative.

In addition, the context in which section 112(d)(9) was enacted argues against the commenter's prospective-only interpretation. At the time of the CAAA, the radionuclide NESHAPs that could be affected by this provision had already been promulgated (although some, including subpart T, had not yet taken effect) under the pre-existing version of CAA Section 112. An interpretation rendering section 112(d)(9) inapplicable to those provisions would render section 112(d)(9) meaningless at the time enacted. This is so even though EPA is authorized by the CAAA to repromulgate some (but not all) of the radionuclide NESHAPs under the amended version of section 112. Thus, under the commenter's scheme, EPA could conceivably repromulgate under section 112 of the CAAA in order to afford itself of the authority of section 112(d)(9) to not promulgate a NESHAP at all. However, we do not believe Congress intended this sort of elaborate rulemaking—repromulgation in order to authorize rescission—when it enacted section 112(d)(9), and in fact such a process ill serves the purpose of section 112(d)(9) to avoid needless regulation.

Finally, the legislative history of section 112(d)(9) also supports EPA's view that the provision applies to radionuclide NESHAPs regulating NRC-

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licensees no matter when promulgated. Section 112(d)(9) was crafted by Senator Simpson after an earlier provision was rejected. The rejected provision would have rescinded by operation of law all existing radionuclide NESHAPs as they apply to NRC-licensees, and prohibited any such future promulgations under section 112 as amended. Senator Simpson's alternative amendment—section 112(d)(9)—replaced automatic rescission and future prohibition by granting EPA the authority to find by rule that the NRC regulatory program protects public health with an ample margin of safety and, thus, EPA regulation is unnecessary. In enacting this alternative, there is no reason whatsoever to believe that Congress abandoned the initial concern over existing NESHAPs; rather, there is nothing in the legislative history to suggest that Congress intended that the amendments apply only to future NESHAPS. Section 112(d)(9) remained primarily directed to existing NESHAPs as they were the ones generating the immediate concern over duplicative regulation.

For these reasons, EPA believes that section 112(d)(9) authorizes EPA to make the finding necessary to rescind NESHAPs promulgated under the authority of CAA section 112 as it existed prior to the CAAA.

Comment: Because EPA has not made a finding that the regulatory program administered by NRC protects public health with an ample margin of safety, EPA should allow subpart T to remain "in effect" and not finalize the stay for NRC-licensees.

Response: As a preliminary matter, it should be noted that subpart T is not currently, and has not yet been, functionally "in effect" for NRC-licensees. This is because at the time it promulgated subpart T, EPA recognized that immediate compliance was impossible, and acted pursuant to its authority under then-existing CAA section 112 to waive compliance until December 15, 1991, which is two years from the statutory effective date for existing sites. Thus, this stay maintains the status quo pending related rulemaking to rescind subpart T as the NRC-licensees.

EPA believes this stay is authorized by CAA sections 301(a) and 112(d)(9), as amended, as it is a logical component to the implementation of the Congressional policy embodied in section 112(d)(9). Although the CAAA do not clearly establish all of the procedures to be followed by EPA in implementing section 112(d)(9) for previously promulgated NESHAPs, CAA section 301(a), which was retained by the CAAA, does provide the Agency with general rulemaking authority to implement the provisions of the statute. Moreover, EPA is unwilling to attribute to Congress an intention that EPA proceed with implementation of subpart T on an interim basis even though EPA believes that the NRC regulatory program will protect public health with an ample margin of safety, and is commencing rulemaking to rescind subpart T as to NRC-licensees simultaneous with today's action on this stay.

Given EPA's tentative determination that the NRC regulatory program will protect public health with an ample margin of safety (which assumes the MOU is implemented as intended), an interpretation of section 112(d)(9) to prohibit such an interim stay would undermine the purpose of that provision to avoid needlessly duplicative regulation. Indeed, such an interpretation would force all facilities affected by a previously promulgated NESHAP to make all of the expenditures necessary to demonstrate compliance, or negotiate a compliance schedule in the context of a judicial or administrative enforcement action, at the same time EPA is conducting rulemaking designed to provide relief from just that duplicative regulation. EPA is not prepared to presume that Congress intended this potential waste of administrative and judicial resources, or that it intended that section 112(d)(9) would provide meaningful regulatory relief only in the case of future NESHAPs.

Comment: Even if section 112(d)(9) authorizes a stay in certain circumstances, that authority may not be exercised here because EPA has not even tentatively found the existing NRC regulatory program protective of public health with an ample margin of safety.

Response: EPA believes the commenter misreads EPA's proposal and the authority provided by section 112(d)(9). Section 112(d)(9) authorizes rescission if EPA finds, by rule, that the NRC's "regulatory program" will protect public health with an ample margin of safety. The commenter narrowly construes that term to argue that because the actions contemplated by the MOU between EPA, NRC and the affected Agreement States have not yet concluded (e.g., license amendments to incorporate closure schedules), NRC's regulatory program is currently deficient.

EPA takes a broader view, however, determining instead that the MOU itself provides a basis for finding NRC's regulatory program protective of public health with an ample margin of safety, although the ongoing validity of that determination assumes that the MOU will be implemented as contemplated. In contrast to the commenter's characterization, EPA does tentatively find that the current NRC "regulatory program" as supplemented by the MOU satisfies section 112(d)(9), although it conditions its final determination upon the MOU's full implementation. In this way, subpart T will not be finally rescinded until the changes called for by the MOU are binding on and enforceable against the licensees.

This stay is an inextricable part of the MOU. The complication and needless duplication that would result should subpart T be allowed to go into effect (e.g., administrative, judicial and citizen enforcement actions) could unduly interfere with NRC's implementation of the other aspects of its regulatory program as modified by the remainder of the MOU. In contrast, EPA does not believe the stay will in any way interfere with the requirement that public health be protected with an ample margin of safety. Thus, while EPA believes it prudent to withhold final rescission of subpart T as to NRC-licensees until the MOU is implemented, this stay pending implementation is a reasonable exercise of the Agency's authority under section 112(d)(9).

Alternatively, even if the commenter is correct that EPA may not find that the NRC program protects public health with an ample margin until the MOU is fully implemented, EPA believes it is still authorized by section 112(d)(9) to stay Subpart T in the interim. In EPA's view, the fact that NRC is committed under the MOU to expeditiously implement a regulatory program that protects public health with an ample margin justifies EPA staying Subpart T as to NRC-licensees pending this process. Of course, should EPA become persuaded that NRC has abandoned the objectives and commitments set forth in the MOU, then EPA should take action to assure that subpart T is effective as to NRC-licensees. This may occur during the period of the stay, which expires by its own terms in two-and-a-half years (June 30, 1994), or even after rescission of subpart T through proceedings to reconsider the section 112(d)(9) finding. As to this latter course, EPA has included in its proposal to rescind subpart T a variety of procedural and substantive mechanisms designed to assure that if the MOU is not effectively implemented, subpart T will be reinstated.

Comment: This stay is inappropriate because the NRC regulatory program does not resolve the timing concern that led EPA to promulgate subpart T in the first place. This timing problem is also not addressed by the MOU because (1) the MOU affects only existing nonoperational disposal sites, not those that will become nonoperational in the future, and (2) the MOU allows NRC to retain the authority to waive timely compliance with the 20 pCi/m^2—s flux standard for economic reasons, which would not be allowed under the CAA.

Response: It is true that EPA initially promulgated Subpart T because the existing NRC regulatory program did not require that uranium mill tailings disposal sites expeditiously comply with the 20 pCi/m^2—s flux standard. However, EPA believes that the MOU fully addresses this concern. The MOU calls for NRC to assure that compliance with the 20 pCi/m^2—s standard occur as "expeditiously as practicable considering technological feasibility." The MOU states an overriding objective that existing sites achieve compliance by December 31, 1997, and that sites that become nonoperational in the future comply within seven years of becoming nonoperational. To this end, the MOU directs that NRC immediately commence soliciting reclamation plans for incorporation into licenses to set forth enforceable compliance schedules. This process has already begun.

Because the MOU fully addresses the timing concern, EPA believes it has the authority to stay subpart T as the MOU is implemented. The commenter's concern that the MOU does not speak to sites that become nonoperational in the future is unfounded. In fact, the MOU is explicit that newly nonoperational sites will also have to comply with the 20 pCi/m^2—s standard as expeditiously as practicable considering technological feasibility. Although this requirement can not be the immediate subject of reclamation plans or licenses for those sites since by definition, they are not yet nonoperational, the MOU does call for EPA to modify its existing general UMTRCA regulations to codify this requirement. Once this occurs NRC will, in all probability, have to amend its implementing criteria to reflect the regulatory change.

As to its final point, the commenter is correct that the NRC has authority under the AEA to waive for economic reasons strict compliance with the dual requirement that sites meet the 20 pCi/m^2-s standard as expeditiously as practicable considering technological feasibility. However, the full exercise of this authority is not contemplated by the MOU, and thus if this authority is used in a manner inconsistent with purposes and objectives of the MOU, EPA will not rescind subpart T, and this stay will expire. Also, if the waiver authority is used after subpart T is rescinded, the proposal includes procedural and substantive provisions designed to facilitate reconsideration of the rescission and possible reinstatement of subpart T. These results flow from the meaning of "expeditiously as practicable considering technological feasibility," as defined in today's simultaneous proposal to rescind subpart T as to NRC-licensees, which is consistent with the CAA: Costs play a very limited role, and utilization of a cost-benefit analysis in setting compliance schedules is not contemplated.

Comment: This stay, coupled with the compliance waiver, means that subpart T sites have had four-and-a-half years to comply with the section 112 requirement, a schedule that is inconsistent with the CAA.

Response: EPA agrees that the existing uranium mill tailings disposal sites have had more time to comply with the 20 pCi/m^2-s standard than was contemplated by CAA section 112 as it existed prior to the CAAA. This is a function not of regulatory leniency, however, but instead of the physical reality of these sites. Unlike the typical source regulated under CAA section 112, where a regulatory option includes downsizing or shut-down, these sites are already shut down and a variety of time-consuming physical changes must occur (e.g., drying of the tailings) before compliance may be achieved. Indeed, these realities were addressed by Congress in enacting the CAAA, and special provisions were inserted at section 112(i)(3) that would allow these sites up to seven years to achieve compliance if EPA determined to repromulgate (or, perhaps, retain) subpart T. Moreover, in the context of negotiating compliance agreements with EPA, which is what would occur if subpart T went into effect for NRC-licensees, EPA would negotiate compliance schedules consistent with the "expeditiously as practicable considering technological feasibility" schedule committed to by NRC. However, in so doing and unlike NRC, EPA would be in the disadvantageous position of not being the regulatory agency involved in all other aspects of final closure of these sites. For these reasons, EPA believes the compliance schedules and regulatory requirements contemplated by the MOU reflect of physical reality and are consistent with what would result under subpart T, and as such are authorized by section 112(d)(9).

Comment: One commenter favored and one opposed EPA's authority to stay subpart T as to NRC-licensees for ninety days under CAA section 307(d)(7)(B). The commenter that opposed EPA's authority also argued that EPA lacks stay authority under section 301(a). The commenter that favored section 307(d)(7)(B) authority also argued that EPA has additional authority under APA section 10(d) (5 U.S.C. 705(d)).

Response: EPA believes this stay is authorized by section 112(d)(9) and 301(a), and does not rely upon the authority of section 307(d)(7)(B) or APA section 10(d). Nevertheless, upon initial reflection, the Agency does not find any statutory bar to its ability to utilize these alternative authorities. In this regard, EPA does not find persuasive the comment that EPA lacks authority because the referenced provisions are of a "general" nature, and more specific savings and statutory stay provisions exist to bar their application in this context. Thus, should litigation regarding this stay result, EPA reserves the right to present these authorities as alternatives. Finally, as to section 301(a), the Agency likewise does not find persuasive the argument that its general applicability is excluded from this context because of the allegedly more specific savings and statutory stay provisions. In EPA's view, those provisions either serve a separate purpose or function to do by operation of law what EPA is here doing by rulemaking. As such, they do not preclude EPA's utilization of section 301(a), in conjunction with section 112(d)(9), in this context.

Comment: The proposed stay of subpart T for NRC-licensees should be finalized because subpart T should not have been promulgated in the first place given (1) the impossibility of compliance, and (2) the regulatory scheme under UMTRCA.

Response: While EPA is today finalizing the subpart T stay for NRC-licensed uranium mill tailing disposal sites, it is not revisiting its earlier decision to promulgate subpart T.

Comment: EPA is slightly mistaken in stating, alternatively, that "many" or "some" existing uranium mill tailings disposal sites could not meet the December 15, 1991, compliance deadline under subpart T. In fact, no sites could meet that date. In addition, EPA misspeaks when it states that "some piles have remained uncovered for decades emitting radon." The commenter states "In fact, virtually all of the sites * * * were conducting operations until the early or mid-1980s". Thus it is true only of operational piles

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and is not evidence of any failure of NRC's regulatory program.

Response: EPA is not revisiting its decision to promulgate subpart T in regard to either of these points. As to the first point, in claiming that no sites can come into compliance with subpart T, the commenter fails to mention two NRC-licensed piles, Edgemont and Ray Point, have already come into compliance. In addition, many piles designated as Title I piles have achieved closure under the DOE program.

As to the second point relating to decades of radon emission, EPA reaffirms its observation that in fact some currently nonoperational disposal sites have emitted radon for decades. The commenter's statement that virtually all sites were conducting operations until the early or mid-1980s acknowledges that "some" were not. Furthermore many of the DOE Title I piles have emitted radon for decades.

It is worth noting, however, that whether the currently nonoperational sites were operational during some or most of that period is not of consequence to the health risk identified by EPA in promulgating Subpart T, which is not being revisited here. This point is emphasized by EPA's promulgation of Subpart W at the same time it promulgated subpart T. Subpart W regulates operational disposal sites to ensure that their emissions also will not exceed 20 pCi/m^2–s; this stay does not affect Subpart W.

Comment: The discussion of the MOU in the preamble to the proposed stay may create confusion. By referring to "final closure" it suggests total site closure (e.g., groundwater restoration), when in fact radon control is all that is addressed by the MOU.

Response: EPA agrees that the MOU is directed only to compliance with the 20 pCi/m^2–s flux standard.

Comment: EPA should take steps to amend the MOU in certain respects.

Response: EPA believes the MOU is sufficient as executed and does not currently intend any revisions. The concerns underlying the changes requested, however, are being addressed to the extent appropriate in the rulemaking proposing to rescind subpart T.

List of subjects in 40 CFR Part 61

Air pollution control, Hazardous materials, Asbestos, Beryllium, Mercury, Vinyl Chloride, Benzene, Arsenic, and Radionuclides.

Dated: December 19, 1991.

William K. Reilly,

Administrator.

For all of the reasons given in the preamble, part 61 of title 40 of the Code of Federal Regulations is amended to read as follows:

PART 61 [AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401,7412, 7414, 7416, 7601.

2. Section 61.220 of subpart T of part 61 is amended by designating the current text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 61.220 Designation of facilities.

* * * * *

(b) The effective date for subpart T is stayed for owners and operators of all sites that are used for the disposal of tailings, commonly referred to as uranium mills and their associated tailings, that are regulated under Title II of the Uranium Mill Tailings Control Act of 1978, until the date on which EPA takes final action concerning its proposal to rescind subpart T for owners and operators of all sites that are used for the disposal of tailings that are regulated under title II of the Uranium Mill Tailings Control Act of 1978, pursuant to section 112(d)(9) of the Clean Air Act, as amended, as published on (date of this publication), or June 30, 1994, whichever first occurs. EPA will publish any such final action in the **Federal Register**.

[FR Doc. 91–30833 Filed 12–30–91; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket No. HM–198A; Amdt. No. 173–227]

RIN 2137–AB31

Elevated Temperature Materials

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; delay of compliance dates.

SUMMARY: RSPA is delaying the compliance dates for certain provisions of a final rule concerning elevated temperature materials and clarifying the effective date of this final rule in conjunction with the final rule published December 21, 1990, under Docket HM–181. This action is in response to numerous petitions asking RSPA to delay the compliance dates contained in the rule to allow affected entities sufficient time to come into compliance with the new requirements and to provide RSPA additional time to review petitions for reconsideration received in response to the final rule. RSPA will respond to other petitions for reconsideration in a separate document.

DATES: *Effective date:* These amendments are effective March 30, 1992. However, compliance with the regulations as amended herein is authorized as of October 30, 1991.

FOR FURTHER INFORMATION CONTACT: Beth Romo, Office of Hazardous Materials Standards, (202) 366–4488, or James K. O'Steen, Office of Hazardous Materials Technology, (202) 366–4545, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On October 2, 1991, RSPA published a final rule (Docket HM–198A; 56 FR 49980) amending the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) to regulate materials which pose a hazard due to their being offered for transportation or transported at elevated temperatures. The final rule established requirements to communicate the hazards of these elevated temperature materials by means of marking, shipping papers and placarding, and to prescribe packaging requirements for these materials. Based on the petitions received, RSPA finds it impracticable to take action and respond to certain substantive issues discussed in the petitions within the 90-day period prescribed by 49 CFR 106.37(b). In addition, RSPA has received requests from six petitioners, representing cargo tank manufacturers and shippers, to delay the effective date of the final rule. The petitioners stated that additional time is needed for newly-regulated entities to come into compliance with the new requirements. Delaying certain compliance dates allows RSPA an opportunity to more thoroughly study issues raised in the petitions for reconsideration and to prepare an appropriate response.

Clarification of Effective Date

This final rule is effective March 30, 1992. However, under the transition provisions of the Docket HM–181 final rule, as revised on December 20, 1991 (56 FR 66124), in § 171.14 (b)(3) and (b)(4), classification and hazard communication requirements may be delayed until October 1, 1993, except for placarding requirements which may be delayed until October 1, 1994.

Summary of Compliance Dates

October 30, 1991: Compliance with the regulations is authorized.

October 1, 1993: Authorized packagings in service prior to October 1, 1993, and not in full compliance with § 173.247(b), may continue to be used for up to 20 years from their date of manufacture. All packagings manufactured after this date must be in compliance with the packaging standards contained in § 173.247(b).

March 30, 1995: All authorized packagings must conform to closure requirements contained in § 173.247(b)(2). Packagings used for transportation of asphalt or bitumen also must be in conformance with § 173.247 (b)(5) and (b)(6).

Administrative Notices

A. Executive Order 12291

This final rule has been reviewed under the criteria specified in § 1(b) of Executive Order 12291 and (1) is determined not to be a major rule; (2) is determined not to be a significant rule under the regulatory procedures of the Department of Transportation (44 FR 11034); and (3) does not require a Regulatory Impact Analysis, or an environmental impact statement under the National Environmental Policy Act (42 U.S.C., 4321 *et seq.*) This final rule does not impose additional requirements and has the net result of reducing costs imposed under the final rule published in the **Federal Register** on October 2, 1991, without reducing safety (56 FR 49980). The original regulatory evaluation of the final rule was not modified because this final rule does not impose additional requirements and does not make substantive changes to the final rule. That document is available for review in the docket.

B. Executive Order 12612

This action has been analyzed in accordance with Executive Order 12612 ("Federalism"). It has no substantial direct effect on the States, on the current Federal-State relationship, or the current distribution of power and responsibilities among levels of government. Thus this final rule contains no policies that have Federalism implications, as defined in Executive Order 12612, and no Federalism Assessment is required.

C. Impact on Small Entities

Based on available information, I certify that the changes in this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A regulatory flexibility analysis prepared for the October 2, 1991 final rule is available for review in the docket.

D. Paperwork Reduction Act

This amendment imposes no changes to the information collection and recordkeeping requirements contained in the October 2, 1991 final rule, which was approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 under OMB control number 2137–0034 (expiration date: June 30, 1992).

E. Regulatory Information Number (RIN)

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, 49 CFR part 173, as amended in the final rule published October 2, 1991 (56 FR 49980), is further amended as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The authority citation for part 173 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808, 1817; 49 CFR part 1, unless otherwise noted.

§ 173.247 [Amended]

2. In § 173.247, as added on page 49989, the following changes are made:

a. In paragraph (c)(5), the date "March 30, 1993" is revised to read "October 1, 1993".

b. In paragraph (d)(2), the date "March 30, 1993" is revised to read "March 30, 1995".

c. In paragraphs (d)(3) and (d)(4), the date "March 30, 1993" is revised to read "October 1, 1993" both places it appears.

Issued in Washington, DC on December 24, 1991, under authority delegated in 49 CFR part 1.

Douglas B. Ham,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 91–31184 Filed 12–30–91; 8:45 am]

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Proposed Rules

Federal Register
Vol. 56, No. 251
Tuesday, December 31, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. LS-91-007]

7 CFR Parts 53 and 54

Standards for Grades of Lamb, Yearling Mutton, and Mutton Carcasses and Standards for Grades of Slaughter Lambs, Yearlings, and Sheep

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Proposed Rule; extension of comment period.

SUMMARY: On November 20, 1991, the Agricultural Marketing Service (AMS) published a proposed rule (56 FR 58518) to amend the official U.S. standards for grades of lamb, yearling mutton, and mutton carcasses and the related standards for grades of slaughter ovines. At the request of sheep producers, the Department developed a proposal to revise the yield grade standards for ovine carcasses in recognition that many of the lambs being produced today are too fat to meet the desires of consumers for lean meat products. Therefore, AMS proposed to revise the official U.S. standards for grades of lamb, yearling mutton, and mutton carcasses (and the related standards for grades of slaughter lambs, yearlings, and sheep) to: (1) Require that ovine carcasses be identified for both quality and yield grade when officially graded; (2) require that most of the kidney and pelvic fat be removed from ovine carcasses prior to grading; (3) shift and narrow that fat thickness range in each yield grade; and (4) eliminate consideration of leg conformation score in determining the yield grade. AMS is extending the comment period to January 21, 1992, because the Western States Meat Association requested additional time to evaluate the proposal and file comments.

DATES: Comments must be received by January 21, 1992.

ADDRESSES: Comments must be submitted in duplicate, signed, include the address of the sender, and should bear reference to page number 58518 of the November 20, 1991, issue of the **Federal Register**. The comments should include definitive information which explains and supports the sender's views. Send comments to: Herbert C. Abraham; Livestock and Meat Standardization Branch; Livestock and Seed Division; AMS-USDA; Room 2603-South Building; P.O. Box 96456, Washington, DC 20090-6456.

Comments will be available for public inspection during regular business hours in room 2603-South Building; 14th Street and Independence Avenue, SW.; Washington, DC.

FOR FURTHER INFORMATION CONTACT: Herbert C. Abraham, Livestock and Meat Standardization Branch—202/720-4486.

SUPPLEMENTARY INFORMATION: On November 20, 1991, AMS published a proposed rule in the **Federal Register** (56 FR 58518-58526) to amend the official U.S. standards for grades of lamb, yearling mutton, and mutton carcasses (7 CFR part 54) and the related standards for grades of slaughter ovines (7 CFR part 53). The Department was requested by sheep producers to revise the yield grade standards for ovine carcasses in recognition that many of the lambs being produced today are too fat to meet the desires of consumers for lean meat products. Their feeling was that a revised yield grading system, which would be widely used by the lamb industry, is essential to ensure the efficient production and marketing of the type of lamb products consumers want. The Department agreed to propose such revisions. Therefore, AMS proposed to revise the official U.S. standards for grades of lamb, yearling mutton, and mutton carcasses (and the related standards for grades of slaughter lambs, yearlings, and sheep) to: (1) Require that ovine carcasses be identified for both quality and yield grade when officially graded; (2) require that most of the kidney and pelvic fat be removed from ovine carcasses prior to grading; (3) shift and narrow the fat thickness range in each yield grade; and (4) eliminate consideration of leg conformation score in determining the yield grade.

The orginal comment period was scheduled to close on December 20, 1991. However, the Western States Meat Association requested addtional time to evaluate the proposal and file comments. AMS has reviewed the matter and determined that there is sufficient justification for extending the comment period until January 21, 1992.

Done at Washington, DC, on December 24, 1991.

Daniel Haley,
Administrator.

[FR Doc. 91-31234 Filed 12-30-91; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 985

[FV-91-439PR]

Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 1992-93 Marketing Year, and Amendment of the Administrative Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on changes to the administrative rules and regulations of the Far West spearmint oil marketing order. This action would: (1) Establish the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 1992-93 marketing year, which begins on June 1, 1992; and (2) amend the order's regulations, for the 1992-93 and 1993-94 seasons, to provide that the one half of one percent of the additional allotment base available each year for distribution to existing producers be issued first to growers who apply and who have under 3,000 pounds of base. The first part of this action is taken in order to avoid extreme fluctuations in supplies and prices and thus help to maintain stability in the spearmint oil market. The second part of this action is proposed because an allotment level of 3,000 pounds is considered to be a better measure of the minimum economic enterprise level required for spearmint oil production. These changes were recommended by the Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the order.

DATES: Comments must be received by January 30, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Christian Nissen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-1754.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 985 (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in the Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

The Far West spearmint oil industry is characterized by primarily small producers whose farming operations generally involve more than one commodity and whose income from farming operations is not exclusively dependent on the production of spearmint oil. The production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered under the marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order normally accounts for more than 75 percent of U.S. production of spearmint oil annually.

The Committee reports that there are approximately 9 handlers and 253 producers of spearmint oil under the marketing order for spearmint oil produced in the Far West. Of the 253 producers, 160 producers hold "Class I" (Scotch) oil allotment base, and 136 producers hold "Class III" (Native) oil allotment base.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Far West spearmint oil producers and handlers may be classified as small entities.

This proposed rule invites comments on changes to the administrative rules and regulations of the Far West spearmint oil marketing order.

The salable quantities and allotment percentages were unanimously recommended by the Committee at its October 9, 1991, meeting.

The first part of this proposed rule would establish salable quantities of 934,523 pounds and 1,033,161 pounds, respectively, for Scotch and Native spearmint oils produced in the Far West and an allotment percentage of 54 percent for both Scotch and Native spearmint oils produced in the Far West. This action would limit the amount of spearmint oil that may be purchased from or handled for producers by handlers, during the 1992-93 marketing year, which begins on June 1, 1992. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

The amounts recommended for sale reflect moderate and steady increases in trade demand for both Scotch and Native spearmint oil over the past four years. Based on available information, the Committee indicates that trade demand is likely to be near the average of the last three years for the 1992-93 marketing year.

The proposed salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market needs which may develop for spearmint oil can be satisfied by an increase in the salable quantity which producers can fill with reserve stocks. The estimated reserve pools for Class I and Class III spearmint oil stand at 176,479 pounds and 232,625 pounds, respectively. Both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 1992-93 season may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment.

This proposed regulation, if adopted, would be similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this proposed action are expected to be offset by the benefits derived from improved returns.

The proposed salable quantity and allotment percentage for each class of spearmint oil for the 1992-93 marketing year, which begins on June 1, 1992, is based upon recommendations of the Committee and the following data and estimates:

(1) "Class I" (Scotch) Spearmint Oil

(A) Estimated carryin on June 1, 1992—105,978 pounds.

(B) Estimated trade demand (domestic and export) for the 1992-93 marketing year—1,000,000 pounds.

(C) Recommended desirable carryout on May 31, 1993—0 pounds.

(D) Salable quantity required from 1992 regulated production—894,022 pounds.

(E) Total allotment bases for Scotch oil for the 1992-93 marketing year—1,730,598 pounds.

(F) Computed allotment percentage—51.7 percent.

(G) Recommended allotment percentage—54 percent.

(H) The Committee's recommended salable quantity—934,523 pounds.

(2) "Class III" (Native) Spearmint Oil

(A) Estimated carryin on June 1, 1992—49,066 pounds.

(B) Estimated trade demand (domestic and export) for the 1992-93 marketing year—1,075,000 pounds.

(C) Recommended desirable carryout on May 31, 1993—0 pounds.

(D) Salable quantity required from 1992 production—1,025,934 pounds.

(E) Total allotment bases for Native oil—1,913,262 pounds.

(F) Computed allotment percentage—53.6 pounds.

(G) Recommended allotment percentage—54 percent.

(H) The Committee's recommended salable quantity—1,033,161 pounds.

The salable quantity is the total quantity of each class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is

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allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The establishment of these salable quantities and allotment percentages would allow for anticipated market needs based on historical sales, changes and trends in production and demand, and information available to the Committee. Adoption of this proposed rule would provide spearmint oil producers with information on the amount of oil which should be produced for next season.

The second change recommended by the Committee and included in this proposed rule would amend § 985.153(c)(2) of the order's Administrative Rules and Regulations by revising the procedures for issuing additional allotment base to existing producers. The authority for this action is contained in § 985.53(d)(3) of the order which prescribes that the Committee may, with the approval of the Secretary, establish rules and regulations to be used for determining the distribution of additional allotment base. In establishing such rules, the Committee is required to take into account the minimum economic enterprise requirements for spearmint oil production, the applicant's ability to produce spearmint oil, the area where the spearmint oil will be produced, and other economic and marketing factors.

This amendment of the procedures for issuing additional allotment base would provide that, for a period of two years for Class I oil and Class III oil, existing small producers would be given priority when applying for additional allotment base. This amendment is intended to help small producers increase their supply of spearmint oil to a level which will approximate the minimum economic enterprise level required for spearmint oil production. Additionally, this rule would provide that such additional allotment cannot be used to replace allotment which a producer has transferred.

Section 985.53(d)(1) of the order provides for an amount equal to no more than 1 percent of the total allotment base for each class of oil to be issued annually and distributed equally as additional allotment base to both new and existing producers. This rule would provide that the ½ percent of the additional allotment base, available to existing producers for the 1992–93 and 1993–94 seasons, would be issued first to small producers who apply. Existing producers applying for additional Class I or Class III allotment base with less than 3,000 pounds of base as of June 7, 1990, would be issued sufficient additional allotment base over a two year period (1992–93 and 1993–94) to bring them up to a level not to exceed 3,000 pounds.

This action is similar to a previous rule which provided that for the 1987–88 and 1988–89 seasons, additional allotment base would be issued to existing producers applying for additional spearmint oil allotment base with less than 2,000 pounds of Class I base or 2,200 pounds of Class III oil. In the 1989–90 and 1990–91 seasons, additional allotment bases were distributed equally to those existing producers requesting additional base who could demonstrate the ability to produce additional oil.

The Committee has recommended this action because an allotment level of 3,000 pounds is considered to be a better measure of the minimum economic enterprise level required for spearmint oil production. The Committee believes increasing the minimum allotment base of small producers would allow more of them to remain producers and would assure that there will continue to be a broad base of production.

The Committee has estimated that 55 producers of Class I oil, and 30 producers of Class III oil would be eligible for additional allotment base under the amendment. If there is any additional allotment available for either class during the 1992–93 or 1993–94 seasons, such amounts would be distributed equally among the other existing producers who apply.

Based on available information, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in the regulations that would be amended by this proposed action have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0065.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received within the comment period will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, and Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is proposed to be amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 985.211 is added to read as follows:

Note.—This section, if adopted, will not appear in the Code of Federal Regulations.

Subpart—Salable Quantities and Allotment Percentages

§ 985.211 Salable quantities and allotment percentages—1992–93 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year which begins on June 1, 1992, shall be as follows:

(a) "Class 1" (Scotch) oil—a salable quantity of 934,523 pounds and an allotment percentage of 54 percent.

(b) "Class 3" (Native) oil—a salable quantity of 1,033,161 pounds and an allotment percentage of 54 percent.

3. Section 985.153 is amended by revising paragraph (c)(2)(i) and the first sentence of paragraph (c)(2)(ii) to read as follows:

Subpart—Administrative Rules and Regulation

§ 985.153 Issuance of additional allotment base to new and existing producers.

* * * * *

(c) * * *

(2) *Existing producers.* (i) The Committee shall review all requests from existing producers for additional allotment base. With respect to the additional Class I or Class III allotment base for existing producers for the 1992–93 and 1993–94 marketing years, existing producers with less than 3,000 pounds of allotment base as of June 7, 1990, who apply and who have the ability to produce additional quantities of spearmint oil, shall be issued additional allotment base sufficient to bring them up to a level not to exceed 3,000 pounds: *Provided,* That additional allotment base shall not be issued to any person that would replace all or part of allotment base such person has transferred. Additional allotment base in excess of the amount needed to bring eligible producers up to 3,000 pounds of allotment base for Class I or Class III oil shall be distributed equally among all existing producers who apply and who have the ability to produce additional quantities of spearmint oil, and;

(ii) For each marketing year after 1993–94, each existing producer of a class of spearmint oil who requests additional allotment base and who has the ability to produce additional quantities of that class of spearmint oil, shall be eligible to receive a share of the additional allotment base for that class of oil. * * *

* * * * *

Dated: December 23, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–31034 Filed 12–30–91; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1427

Upland Cotton Adjusted World Price

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The purpose of this proposed rule is to amend the regulations found at 7 CFR part 1427 to change the time of announcement by the Commodity Credit Corporation ("CCC") of the adjusted world price ("AWP") and coarse count adjustment ("CCA") for upland cotton from 4 p.m. to 8 p.m. Eastern time each Thursday and to provide that the AWP and CCA will be effective at the time of announcement. These actions are initiated in accordance with section 103B(a)(5)(C) of the Agricultural Act of 1949, as amended. Implementation of the changes made by this proposed rule will improve the effectiveness of the marketing loan and loan deficiency payment programs for upland cotton and eliminate an inequity permitted under current regulations.

DATES: Comments must be received by January 15, 1992, in order to be assured of consideration.

ADDRESSES: Submit comments to: Deputy Administrator, Program Planning and Development, USDA-ASCS, room 3090–S, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA-ASCS, room 3756–S, P.O. Box 2415, Washington, DC 20013 or call 202–720–7954.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been designated as "nonmajor". It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, State or local governments or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the federal assistance programs, as found in the catalogue of Federal Domestic Assistance, to which this notice applies are:

Titles	Numbers
Commodity Loans and Purchases	10.051
Cotton Production Stabilization	10.052

It has been determined that the Regulatory Flexibility Act is not applicable since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This provision is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This amendment will not result in any change in the public reporting burden. Therefore, the information collection requirements of the Paperwork Reduction Act are not applicable to this amendment.

Background

The AWP and CCA for upland cotton are currently announced by CCC as soon as possible after 4 p.m. Eastern time each Thursday and are in effect from 12:01 a.m. Friday through midnight the following Thursday. During periods when the AWP is below the loan level but above 70 percent of the loan level, a producer or agent or subsequent agent authorized on CCC Form 605 may (1) repay the loan amount for one or more bales of cotton pledged as collateral for a loan at the AWP in effect on the day the repayment is received by the county office or authorized Loan Servicing Agent that disbursed the loan, or (2) a producer may agree to forgo loan eligibility on one or more bales of cotton and file an application for a loan deficiency payment on such bales at a payment rate equal to the amount that the AWP is below the loan level.

Under this procedure, a loan may be repaid or an application for a loan deficiency payment may be filed on Thursday afternoon after the loan repayment rate or loan deficiency payment rate for the following week is known but before such rates become effective. If the AWP is increasing for the following week, having this knowledge in advance of the effective time of the new rates permits transactions to be conducted that afternoon that might not otherwise have been conducted thereby providing an advantage to those persons having this knowledge. On the other hand, if the AWP is decreasing for the following week, transactions may be delayed until the following day to obtain additional program benefits. Making the AWP effective at the time of announcement would eliminate these advantages and make the program more effective.

Furthermore, under the current procedures, producers in time zones west of the Eastern time zone have an additional one, two or three hours in which to repay their loans or file an application for a loan deficiency payment. This creates inequities between producers in different time zones, particularly during periods when the additional discretionary AWP adjustment under § 1427.25(c)(4) is applicable. Delaying the announcement of the AWP until 8 p.m. Eastern time each Thursday, after all ASCS county offices are closed throughout the United States, and making the AWP effective upon announcement would alleviate this inequity.

Discussion of Changes

This proposed rule would amend § 1427.25(e) to change the time of announcement of the AWP and CCA to 8 p.m. Eastern time each Thursday and would provide that the AWP and CCA shall be effective from 8 p.m. Thursday through 7:59 p.m. the following Thursday.

Interested persons are invited to submit written comments on the proposed rule changes. Comments must be received by January 15, 1992, in order to be assured of consideration. The comment period is being limited to 15 days so that the provisions of this proposed rule can become effective as soon as possible in order to eliminate the inequities of the current provisions.

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List of Subjects in 7 CFR Part 1427

Cotton, Loan programs (agriculture), Price support programs, Warehouses, Marketing certificate programs.

Proposed Rule

Accordingly, 7 CFR part 1427 is proposed to be amended as follows:

PART 1427—COTTON

1. The authority citation for 7 CFR part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1444, and 1444–2; 15 U.S.C. 714b and 714c.

2. Section 1427.25(e) is revised to read as follows:

§ 1427.25 Determination of the prevailing world market price and the adjusted world price for upland cotton.

* * * * *

(e) The adjusted world price for upland cotton as determined in accordance with paragraph (c) of this section and the amount of the additional adjustment, as determined in accordance with paragraph (f) of this section, shall be determined weekly by CCC and shall be announced at 8 p.m. Eastern time each Thursday and shall be effective from 8 p.m. Eastern time Thursday through 7:59 p.m. Eastern time the following Thursday. In the event that Thursday is a nonworkday, the determination will be announced the next workday but shall still be effective from 8 p.m. Eastern time Thursday through 7:59 p.m. Eastern time the following Thursday.

* * * * *

Signed at Washington, DC, on December 26, 1991.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91–31298 Filed 12–27–91; 1:15 pm]

BILLING CODE 3410–05–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 564

[No. 91–644]

RIN 1550–AA39

Appraisals

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision ("OTS") is proposing to amend its appraisal regulations, 12 CFR part 564, to exempt additional transactions from certain requirements of those regulations. The OTS's current appraisal regulations implement title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101–73, 103 Stat. 183, 511 (1989), and are intended to protect federal financial and public policy interests in real estate-related financial transactions requiring the services of an appraiser. The proposed amendments to the appraisal regulations would, if adopted: (1) eliminate the requirements for regulated institutions to obtain appraisals by certified or licensed appraisers for real estate related financial transactions having a value, as defined in the rule, of $100,000 or less; and (2) define "real estate" and "real property" to clarify that the appraisal regulation does not apply to mineral rights, timber rights, or growing crops.

DATES: Comments must be received by January 30, 1992.

ADDRESSES: Comment should be directed to Director, Information Services Division, Office of Communications, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Comments will be available for inspection at 1776 G Street NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Diana Garmus, Deputy Assistant Director, Supervisory Operations, (202) 906–5683; Linda Matthias, Program Analyst, (202) 906–5747, Supervision Policy; Ellen J. Sazzman, Counsel (Banking and Finance), (202) 906–7133, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

A. Background

Title XI of the FIRREA directed the OTS, and the other federal financial institutions regulatory agencies ("agencies"), to publish appraisal rules for federally related transactions within the jurisdiction of each agency.[1] 12 U.S.C. 3332, 3336. In accordance with statutory requirements and in coordination with the other agencies, the OTS's final rule sets minimum standards for appraisals used in connection with federally related transactions and identifies those federally related transactions that require appraisals performed by State licensed or certified appraisers as appropriate. 12 CFR 564.3, 564.4. The OTS's final rule, along with those of the OCC, the FDIC, the NCUA, and the RTC, establishes a threshold level of $50,000 at or below which appraisals are not required for federally related transactions. 12 CFR 564.3(a) (OTS); 12 CFR 34.43 (OCC); 12 CFR 323.3 (FDIC); 12 CFR 722.3 (NCUA); 12 CFR 1608.3 (RTC).[2] However, transactions below the threshold are expected to have an evaluation pursuant to guidelines to be issued by the OTS and the other agencies. *Id.*

The OTS is proposing these amendments to evaluate whether raising the threshold level at or below which appraisals are not required would reduce an institution's costs of complying with the appraisal regulation without posing significant systemic risks to the safety and soundness of the thrift industry. If adopted, this proposal would potentially decrease the number of real estate related financial transactions requiring an appraisal prepared by a certified or licensed appraiser, thereby reducing costs associated with those transactions. Other financial institutions regulatory agencies, including the Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation ("FDIC"), and the Resolution Trust Corporation ("RTC") are proposing similar amendments to their appraisal regulations. See 56 FR 42546 (August 28, 1991) (OCC); 56 FR 47035 (September 17, 1991) (FDIC); and 56 FR 47184 (September 18, 1991) (RTC).

The OTS is soliciting comments regarding all aspects of the proposed rule and is requesting that comments include specific information regarding real estate-related loans held by savings associations where the transaction value is: $50,000 or below; $50,001 to $100,000; and above $100,000.

B. De Minimis Threshold Level

The OTS originally proposed not to require the services of a State certified or licensed appraiser for federally related transactions at or below a $15,000 threshold. 55 FR 5464 (Feb. 15, 1990). Instead, analyses for such transactions would be completed on Federal Home Loan Mortgage Corporation ("Freddie Mac") Form 704 or a similar form. The OTS explicitly solicited comment on "whether a *de minimis* level below which a state certified or licensed appraiser is not required would be appropriate * * *." 55 FR at 5465.

During the comment period, seven commenters suggested raising the transaction value at or below which appraisals would not be required. Ten others urged uniformity of appraisal regulation by all the financial institutions regulatory agencies, including the threshold level, so that all regulated institutions would be subject to the same requirements. Two commenters opposed any *de minimis* level. Two commenters suggested varying the threshold level depending on the size of the institution. After the close of the comment period, OTS received additional comment letters focusing on the threshold issue.

As explained in its notice of final rulemaking, after evaluating those comments and consulting with the other agencies, the OTS determined to establish a $50,000 threshold level. 55 FR 34533, 34536 (Aug. 23, 1990). The OTS believed that a threshold figure higher than originally proposed was appropriate for several reasons. First, no substantial evidence showed that transactions at or below the level selected have posed significant systemic risks to the safety and soundness of the thrift industry. Second, transactions at or below the level selected would still be subject to federal supervision and would be supported by an appropriate evaluation of real property collateral consistent with guidelines to be issued by the OTS. Finally, the OTS believed that a threshold at this level might also reduce the cost to the public and regulated institutions of complying with the appraisal rule.

In adopting a $50,000 threshold level at or below which appraisals would not be required, the OTS stated that it would consider adopting "a revised *de minimis* level should additional experience with the rule indicate that a different *de minimis* is appropriate." 55 FR 34536. Today, the OTS is proposing these amendments to evaluate whether raising the threshold level could potentially reduce an institution's costs of complying with the appraisal regulation without posing significant systemic risks to the safety and soundness of the thrift industry. Moreover, the OTS, along with the other agencies, expects to issue interagency guidelines addressing requirements to be followed for evaluations which must be performed in connection with, *inter alia*, real estate-related transactions at or under the threshold level. These interagency guidelines should address certain safety and soundness concerns that might otherwise arise in the context of raising the threshold level of the appraisal regulation.

As discussed in section E, Public Comment, the OTS solicits comments on whether savings associations have experienced substantial losses from real estate related financial transactions below $100,000. The OTS is also soliciting comment on whether savings associations have experienced increased costs and substantial delays in obtaining appraisals that conform with the regulation because of the increased demand for appraisers meeting state certification and licensing requirements. *Id.*

The OTS is also proposing this amendment in an effort to maintain uniformity of regulation among all the agencies. Title XI of FIRREA encouraged uniform appraisal rules among the agencies. The OTS also believes that such uniformity enhances regulated institutions' ability to compete on an equal basis, because all institutions are subject to the same appraisal requirements and do not suffer any competitive disadvantage. The OCC, the FDIC, and the RTC are proposing to raise the threshold level at or below which appraisals are not required to $100,000, and the Board's current regulation contains an $100,000 threshold level. Because the OTS believes that all regulated institutions should be subject to uniform appraisal requirements, it is also proposing to raise to $100,000 the threshold level at or below which appraisals are not required.[3]

The OTS has received a petition from the American Institute of Real Estate Appraisers ("AIREA"), the Society of Real Estate Appraisers, and the International Right of Way Association (hereinafter "petitioners"), requesting that the OTS reopen its earlier rulemaking to amend the appraisal regulation by, *inter alia*, reducing or eliminating the *de minimis* threshold and recognizing two classes of appraiser certification.[4] The petitioners argue that Title XI does not authorize the OTS to establish a *de minimis* provision and that the $50,000 threshold established in the final rule is too high and cannot be supported in the record. As discussed below, the OTS disagrees with the petitioners' assertions, including their challenge to its statutory authority. Nonetheless, today's rulemaking is responsive to the petition, because it does reopen the rulemaking on the very issue the petitioners have taken up.[5]

Title XI explicitly authorizes the OTS to "prescribe appropriate standards for the performance of real estate appraisals" only "in connection with federally related transactions * * *" See 12 U.S.C. 3339. A federally related transaction is defined as "any real estate-related financial transaction which—(A) a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates; and (B) *requires the services of an appraiser.*" 12 U.S.C. 3350(4) (emphasis added). Title XI does not define the phrase "requires the services of an appraiser", but rather leaves the OTS with the discretion to determine which transactions require the services of an appraiser.

Had Congress wanted every transaction to have an appraisal no matter what the size or circumstances of the transaction, there would have been no reason to include the clause "requires the services of an appraiser" as one of the elements of the definition of "federally related transaction." To give effect to the clause "requires the services of an appraiser," agencies must necessarily have the discretion to determine that not all transactions require such services and therefore do not fail within the definition of "federally related transaction." Sutherland on Statutory Construction (4th Ed.) § 46.06.

Moreover, even before the passage of title XI, the Federal Home Loan Bank

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[1] Section 1121(6) of FIRREA defines the term "Federal financial institutions regulatory agencies" to mean the Board of Governors of the Federal Reserve System ("Board"), the Federal Deposit Insurance Corporation ("FDIC"), the National Credit Union Administration ("NCUA"), the Office of the Comptroller of the Currenty ("OCC"), and the OTS.

[2] In its final appraisal rule, published on July 5, 1990, 55 FR 27762, the Board established a threshold level of $100,000, at or below which an appraisal would not be required. 12 CFR 225.63. On November 26, 1990, the Board proposed amending its appraisal regulation to change its threshold level to $50,000. 55 FR 49057 (Nov. 26, 1990). The Board has not yet issued any final response to this notice of proposed rulemaking.

[3] The OCC and the FDIC are also proposing an amendment to their appraisal regulations to permit the use of appraisals prepared for loans insured or guaranteed by an agency of the federal government if the appraisal conforms to the requirements of the federal insurer or guarantor. OTS regulations already provide for the use of valuations prepared for loans made pursuant to certain federally insured and guaranteed loan programs. See 12 CFR 541.13, 541.17, 545.32, 563.170.

[4] A copy of this petition is on file with the Information Services Division for public review. The Petitioners also raised certain other concerns regarding notice and the adequacy of the rulemaking record which the OTS disputes, but which the reopening of the rulemaking has rendered moot. The petitioners also questioned whether State licensed appraisers should perform appraisals of nonresidential properties and complex residential properties having a transaction value of $250,000 or less. As explained in its notice of final rulemaking, the OTS believes that an experienced licensed appraiser may well be qualified to perform such appraisals. 55 FR 34537, 34539. Moreover, an appraiser must be competent to perform the appraisal in question, regardless of the individual's title or designation. *Id.*, 12 CFR 564.6.

[5] The OCC and the FDIC also received similar petitions from the AIREA and have responded in a similar fashion in their respective notices of proposed rulemaking to amend the appraisal regulation. See 56 FR 42547 (August 28, 1991) (OCC); 56 FR 47038 (September 17, 1991) (FDIC).

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Board ("FHLBB"), the predecessor agency to the OTS, had authority to define and prohibit unsafe and unsound practices by savings associations, including the authority to determine when appraisals were required. The FHLBB exercised that authority by promulgating appraisal standards and policies for savings associations. See 12 CFR 563.171, 571.27 (1988)). There is no indication that Congress, in enacting title XI, had any intent to limit the agency's power to regulate real estate lending and appraisal practices under its safety and soundness authority.

Accordingly, the OTS has inherent authority under title XI and its enabling statute to determine when the services of an appraiser will be required, including the authority to set a *de minimus* threshold.

The petitioners also request that the OTS recognize two classifications of certification. The final OTS appraisal regulation uses the same designation terms as title XI, i.e., "State Certified" and State Licensed" appraisers. However, the OTS final rule does not preclude recognition of two classifications within the "State Certified" designation. Indeed the Appraisal Subcommittee, which is charged with monitoring State certification and licensing requirements pursuant to Title XI, recently stated in its Revised Guidelines that a State could adopt a second certification classification called "Certified residential appraiser" as long as the State developed appropriate procedures to distinguish among the various certifications. See Revised Guidelines, 56 FR 26090 (June 6, 1991), incorporating Advisory 91–1 "Guidelines Regarding Two Classes of Certification," dated January 25, 1991.

C. Definition of "Real Estate" and "Real Property"

Finally, the OTS is proposing a technical amendment that adds a definition of "real estate or real property" to its appraisal rule. This change is being proposed in response to questions from several institutions concerning the application of the appraisal rule to interests in real property such as mineral rights, standing timber, and growing crops.

Title XI of FIRREA does not define "real estate" or "real property", nor does the context in which these terms are used unambiguously suggest that the terms are intended to have different technical meanings. For instance, 12 U.S.C. 3350 defines "real estate-related financial transaction" as: any transaction involving (A) the sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof; (B) the refinancing of real property or interests in real property; and the use of real property or interests in real property as security for a loan or investment, including mortgage-backed securities.

Title XI of FIRREA also directs the OTS to issue regulations requiring "that *real estate appraisals* be performed in accordance with generally accepted appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation." (Emphasis supplied.) The Appraisal Foundation's standards, the Uniform Standards of Professional Appraisal Practice ("USPAP"), have separate definitions for real property ("the interest, benefits, and rights inherent in the ownership of real estate") and real estate ("an identified parcel or tract of land, including improvements, if any"). USPAP also recognizes that the terms are used interchangeably in some jurisdictions.

In its appraisal rule, the OTS used "real property" and "real estate" interchangeably to mean interests in an identified parcel or tract of land and improvements. However, the OTS did not intend these terms to include mineral rights, timber rights, or growing crops, since valuation of such interests generally requires the services of a professional other than an appraiser. The proposed amendment makes the OTS's intent clear by defining "real property" and "real estate" for purposes of the appraisal regulation as "an identified parcel or tract of land and any improvements, and includes easements, rights of way, undivided or future interests and similar rights in a tract of land, but excludes mineral rights, timber rights, or growing crops."

D. Public Comment

Public comment is solicited on all aspects of this proposed rule. In conjunction with the comments on the proposal to increase the *de minimis* threshold to $100,000, the OTS also requests financial institutions commenting on the regulation to determine or estimate:

(I) The total assets of the institution;

(II) The number and total dollar amount of real estate related loans held by the institution and losses experienced within the last 12-month period for all real estate secured loans, for real estate secured loans above $100,000, for all real estate secured loans of $50,001 to $100,000, and all real estate secured loans of $50,000 or below; and

(III) The cost and time necessary to obtain a residential and/or commercial appraisal (A) before August 23, 1990, (B) on or after August 23, 1990, and (C) after regulated institutions are required to use either licensed or certified appraisers for all federally related transactions.

All commenters are advised that, pursuant to the Administrative Procedure Act, all information provided to the OTS will be available for public inspection. To assist the OTS in compiling and analyzing the comments, the OTS requests that commenters supply the above described information in the format set forth above. All comments, however, are voluntary and no individual or institution is required to provide any of the information requested above, nor must the information be provided in the format outlined above.

All comments provided to the OTS regarding this proposed rule will be available to the public as part of the public file of the rulemaking.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

The Director of OTS has determined that this proposal does not constitute a "major rule" within the meaning of Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Paperwork Reduction Act

When this regulation was adopted in August 1990, the information collection requirements in 12 CFR part 564 were approved by the Office of Management and Budget under control number 1550–0054 in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h). At that time, the annual reporting burden for part 564 was estimated at 298,091 hours.

The changes proposed in this notice of proposed rulemaking, would, if adopted as a final rule, reduce this burden by approximately 126,491 hours to a total of 171,600 burden hours.[6] The OTS estimates that 2200 thrifts would maintain records, with an estimated average annual recordkeeping burden of 78 hours.

The average burden will be approximately 21 minutes per federally related transaction. Depending on the type of property appraised, the actual burden per transaction is estimated to range from approximately two hours for a large, complex commercial real estate loan appraisal to approximately fifteen minutes or less for an appraisal of a loan secured by a single family residence. Large thrifts, by their nature, will make more large commercial loans.

The information collection requirements in part 564 are intended to protect federal financial and public policy interests in real estate-related financial transactions requiring the services of an appraiser. Thrifts will use this information in determining whether and on what terms to enter into federally related transactions, such as making loans secured by real estate or selling foreclosed real estate collateral. The OTS will use this information in its examination of thrifts to ensure that thrifts undertake real estate related financial transactions in accordance with principles of safety and soundness. The likely recordkeepers are for-profit institutions.

Comments on the collections of information contained in this notice of proposed rulemaking should be directed to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503 with copies to the Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

Total Burden if the Rule is Adopted as Proposed

2200 recordkeepers × 78 hours = 171,600 total burden hours.

List of Subjects in 12 CFR Part 564

Appraisals, Real estate appraisal, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons set forth in the preamble, The Office of Thrift Supervision hereby proposes to amend part 564, subchapter D, Chapter V, title 12 of the Code of Federal Regulations, as follows:

PART 564—APPRAISALS

1. The authority citation for part 564 continues to read as follows:

Authority: Title XI, Pub. L. No. 101–73, 103 Stat. 511 (1989) (12 U.S.C. 3301 *et seq.*); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3 as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 18(m), 64 Stat. 873, as added by sec. 221, 103 Stat. 267 (12 U.S.C. 1828(m)).

2. Section 564.2 is amended by redesignating paragraphs (g) through (k) as paragraphs (h) through (l),

[6] The decrease in the number of savings associations also contributed to this reduction in burden hours.

respectively, and by adding a new paragraph (g) to read as follows:

§ 564.2 Definitions.

* * * * *

(g) *Real estate* or *real property* means an identified parcel or tract of land and improvements, and includes easements, rights of way, undivided or future interests and similar rights in a tract of land, but excludes mineral rights, timber rights, and growing crops.

* * * * *

3. Section 564.3 is amended by republishing the introductory text to paragraph (a) and revising paragraph (a)(1) to read as follows:

§ 564.3 Appraisals not required; transactions requiring a State certified or licensed appraiser.

(a) *Appraisals not required.* While supervisory guidelines, general financial institution operating practices, or other prudent standards require an appropriate valuation of real property collateral, an appraisal performed in accordance with this part is not required for any real estate-related financial transaction in which:

(1) The transaction value is $100,000 or less;

* * * * *

Dated: October 18, 1991.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 91–30905 Filed 12–30–91, 8:45 am]

BILLING CODE 6720–01–M

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12 CFR Part 567

[No. 91–721]

RIN 1550–AA40

Regulatory Capital: Residential Bridge Loans

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision ("OTS") proposes to amend its risk-based capital regulation to include in the 50 percent risk-weight category certain construction loans made in accordance with sound lending principles to builders to construct pre-sold homes. The homes must be sold under firm contracts to purchasers who have obtained firm commitments for permanent qualifying mortgages and have made substantial earnest money deposits. This regulatory amendment will help to ensure that credit is available for credit-worthy builders to construct homes for individuals who have made substantial financial commitments to such projects.

DATES: Comments must be received on or before January 30, 1992.

ADDRESSES: Send comments to Director, Information Services, Communications, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at 1776 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: John F. Connolly, Program Manager, Capital Policy, (202) 906–6465, Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Office of Thrift Supervision ("OTS") is today proposing to amend its capital rule, 12 CFR part 567, by placing certain conservatively underwritten residential construction in the 50 percent risk-weight category. To qualify for the 50 percent risk-weight category, the loans must satisfy designated prudential criteria in addition to generally applicable conservative underwriting standards. These loans must be made in accordance with sound lending principles to builders with substantial project equity for the construction of pre-sold homes. The homes must be sold under firm contracts to purchasers who have obtained firm commitments for permanent qualifying mortgages and have made substantial earnest money deposits ("residential bridge loans").

These loans would be placed in the 50 percent risk-weight category for use in computing associations' risk-based capital requirements. Such loans are currently in the 100 percent risk-weight category. The risk characteristics of loans satisfying these criteria warrant their placement in the 50 percent category.

Qualifying loans by national banks and savings associations to individuals to fund construction of their own homes are already included in the 50 percent category under the risk-based capital rules of the Office of the Comptroller of the Currency ("OCC") and the OTS. The proposed amendment would give parallel treatment to qualifying residential bridge loans made directly to builders for the construction of individuals' homes. The other federal banking agencies are considering adoption of similar capital treatment for these types of loans.

The development of this OTS regulatory proposal preceded, is independent of, and would not implement the statutory provisions relating to certain pre-sold, single-family

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construction loans and multifamily housing loans set forth in Section 618 of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991. H.R. 3435, 102nd Cong., 1st Sess., 137 Cong. Rec. H11851–52.

Supervisory Experience

In general, supervisory experience and available data suggest that single-family residential construction loans result in significantly less losses than either acquisition and development loans for residential property or construction loans for multifamily and commercial real estate. Furthermore, our supervisory experience generally indicates that most losses incurred on residential construction would be avoided by compliance with the criteria for residential bridge loans set forth in this proposal.

The charge-off data for residential construction lending from the Thrift Financial Reports for the six quarters ended March 1990 through June 1991 shows that thrifts involved in 1–4 family residential construction lending suffered charge-offs on such lending of 0.60 percent of their holdings. This compares with charge-offs for multifamily construction lending of 1.62% and non-residential construction lending of 2.7%.

In addition, single-family construction lending that has experienced the 0.60% charge-off rate is a much broader category of lending than we propose to make eligible for the lower risk-weight category. In addition to qualifying residential bridge loans, 1–4 family residential construction loans include much riskier types of lending—large tract construction, speculative construction, and some land development loans. As a result, although we do not collect data in sufficient detail to distinguish between these categories, we expect the charge-off rates for residential bridge loans to be significantly below the 0.60% rate for the broader category.

Our supervisory experience also indicates, as a general matter, that residential construction lending entails significantly lower risk than commercial lending. Furthermore, genuinely pre-sold residential construction is safer than speculative and tract development lending. Residential construction loans meeting strict underwriting criteria, as being proposed, are the safest type of residential construction lending.

Our experience also reflects that the building of tract developments under the pre-sold arrangements common in the industry (small amount of earnest money held by the builders; many contract contingencies) does not provide any loss protection over other types of residential construction loans. The criteria that would be imposed on residential bridge loans under this proposal are designed to ensure that purchasers have entered into firm contracts for the purchase of their homes and made substantial earnest money deposits.

Accordingly, based on our experience and available loss, data, we believe that imposing a 4 percent risk-based capital requirement on residential bridge loans meeting the criteria below would create an ample capital cushion to protect associations from losses on these loans.

Residential Bridge Loan Proposal

Amend the OTS capital regulation to permit associations to place residential bridge loans in the 50 percent risk-weight category if such loans meet the following criteria:

- The builder has significant equity in the construction project before any drawdown is to be made under the construction loan.
- The home buyer has entered into a firm contract to purchase the home;
- The home buyer has made a substantial "earnest money" deposit that would be lost if the buyer caused the contract not to be consummated;
- The home buyer has obtained a firm commitment for a permanent qualifying mortgage loan; and
- The loans are made in accordance with other more broadly applicable sound lending principles.

Under these standards, both the builder and home purchaser would have substantial equity at risk that would be lost by failing to fulfill their obligations. We currently are contemplating defining significant builder equity to require builders to have project equity (e.g., the market value of builder-owned property on which the residence will be constructed, the incurred cost of improvements and other expenditures not funded from the loan) of at least 25 percent of the projected value of the residence. We also are planning to define the requirement for a "substantial earnest money deposit" by a purchaser as requiring earnest money of at least 5 percent of the approved loan. In addition to requesting comment on the entire proposal, we specifically solicit comment on these builder equity and purchaser earnest money standards. One of the points on which we specifically seek comment is the most appropriate way to define and compute a builder's project equity.

We believe that compliance with the specific criteria above, along with requiring sound underwriting practices, will ensure that qualifying residential bridge loans pose significantly less risk to thrifts than other types of construction loans and, therefore, warrant inclusion in the 50 percent risk-weight category.

Broader Prudential Principles Applicable to Residential Construction Lending

The rule's requirement that residential bridge loans be made "in accordance with sound lending principles" encompasses the requirement that such associations comply with the following principles. Moreover, associations will be responsible for demonstrating compliance with these lending principles to the OTS examination staff. Failure to do so will cause the loans involved to be placed into the 100 percent risk-weight category.

Those additional criteria for compliance are:

- The underlying lot is validly platted and bonded by the appropriate municipal regulatory authorities based on a determination that the development is permissible and that necessary infrastructure improvements (appropriate for a given project stage) have been substantially completed;
- The lot, the house under construction and other improvements on the lot must serve as collateral for the construction loan; and
- Disbursement of loan funds under the construction loan by the thrift is to be made to the builder in accordance with a reasonable construction budget and reasonable percentage-of-completion schedule.

Associations must also incorporate other fundamental lending principles into their loan underwriting decisions. Associations must be able to demonstrate compliance with the associations' concentration/exposure limits, market area knowledge, satisfactory payment and performance records of the builders, and sufficient reserves and cashflow available to the builders.

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), it is hereby certified that this proposal will not have a significant or disproportionate economic impact on a substantial number of small savings associations. Furthermore, this proposed rule would not impose any new recordkeeping or other requirements on any associations and would lower the current risk-weighting of residential bridge loans from 100 percent to 500 percent. Accordingly, a Regulatory Flexibility Act analysis is not required.

Executive Order 12291

The Director of the OTS has determined that this proposed regulation does not meet any of the conditions set forth in Executive Order 12291 for designation as a major rule. This proposed rule does not impose any new or increased requirements and solely reduces the capital required to be held against residential bridge loans in computing associations' risk-based capital requirements. Consequently, a Regulatory Impact Analysis has not been prepared.

List of Subjects in 12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision hereby proposes to amend part 567, chapter V, title 12, Code of Federal Regulations, as set forth below.

Subchapter D—Regulations Applicable to All Savings Associations

1. The authority for part 567 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a).

2. Section 567.6 is amended by adding a new paragraph (a)(1)(iii)(D) to read as follows:

§ 567.6 Risk-based capital credit risk weight categories.

(a) *Risk-weighted Assets.* * * *

(1) *On-Balance Sheet Assets.* * * *

(iii) *50 percent Risk Weight (Category 3).* * * *

* * * * *

(D) Loans made in accordance with sound lending principles to builders with substantial project equity for the construction of single family residences that have been pre-sold under firm contracts to purchasers who have obtained firm commitments for permanent qualifying mortgage loans and have made substantial "earnest money" deposits.

* * * * *

Dated: December 17, 1991.
By the Office of Thrift Supervision.

David Kelso,

Associate Director for RTC Operations.

[FR Doc. 91-30907 Filed 12-30-91; 8:45 am]
BILLING CODE 6720-01-M

Internal Revenue Service

26 CFR Parts 1 and 301

[CO-98-88]

RIN 1545-AP57

Abatements, Credits, and Refunds—Special Rules for Insolvent Financial Institution That Is or Was Member of Consolidated Group

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: The Internal Revenue Service is issuing temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** to implement amendments to the Internal Revenue Code made by the Technical and Miscellaneous Revenue Act of 1988. These temporary regulations provide for the payment of income tax refunds in certain situations to a statutory or court-appointed fiduciary of an insolvent financial institution that was a member of the consolidated group in the year to which the refund claim relates (instead of payment to the common parent of the consolidated group). The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments must be received by March 2, 1992. Requests to speak (with outlines of oral comments) at a public hearing scheduled on March 24, 1992, beginning at 10 a.m., must be received by March 10, 1992. See notice of hearing on these proposed regulations published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send comments and requests to speak (with outlines of oral comments) at the public hearing to: Internal Revenue Service, ATTN: CC:CORP:T:R [CO–98–88], room 5228, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, Carol Savage, Regulations Unit, at (202) 377–9236 (not a toll-free number); concerning regulations, Rose L. Williams at (202) 566–3231 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The regulations published in the Rules and Regulations section of this issue of the **Federal Register** add new § 301.6402–7T to part 301 of title 26 of the Code of Federal Regulations ("CFR") and make amendments to §§ 1.1502–77(e), 1.1502–78(b), and 1.6411–4. The final regulations that are proposed to be based on the temporary regulations would be added to part 301 of title 26 of the CFR. The final regulations would provide guidance for determining when a statutory or court-appointed fiduciary can receive payment of a refund from the Internal Revenue Service. For the text of the new temporary regulations, see T.D. 8387, published in the Rules and Regulations section of this issue of the **Federal Register**. The preamble to the temporary regulations explains the proposed regulations.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required.

It is hereby certified that these rules will not have a significant economic impact on a substantial number of small entities. The rules will primarily affect affiliated groups of corporations filing (or required to file) consolidated returns, which tend not to be small businesses. The rules will not significantly alter the reporting or recordkeeping duties of small entities. An initial Regulatory Flexibility Analysis is not required.

Pursuant to section 7805(f)(1) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests to Appear at the Public Hearing

Before adopting these proposed regulations as final regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and nine copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be held on March 24, 1992, beginning at 10 a.m., in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC. Comments must be received by March 2, 1992. Requests to speak (with outlines of oral comments) at the public hearing must be received by March 10, 1992. See notice of hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of these regulations is Rose L. Williams, Office of the Assistant Chief Counsel (Corporate), Internal Revenue Service. Other

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personnel from the Internal Revenue Service and the Treasury Department participated in their development.

Proposal of Regulations

The temporary regulations (T.D. 8367), published in the Rules and Regulations section of this issue of the Federal Register, are hereby also proposed as final regulations under section 6402(i) of the Internal Revenue Code of 1986

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

[FR Doc. 91-31016 Filed 12-30-91; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Parts 1 and 301

[CO-98-88]

RIN 1545-AP57

Abatements, Credits, and Refunds—Special Rules for an Insolvent Financial Institution That Is or Was a Member of a Consolidated Group; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of public hearing on proposed regulations relating to the payment of income tax refunds in certain situations to a statutory or court-appointed fiduciary of an insolvent financial institution that was a member of a consolidated group in the year to which the refund claim relates (instead of payment to the common parent of the consolidated group).

DATES: The public hearing will be held on Tuesday, March 24, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Tuesday, March 10, 1992.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC: CORP:T:R, (CO-98-88), room 5228, Washington, D 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9236 or (202) 566-3935 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 1502, 6402(i) and 6411(c) of the Internal Revenue Code. The proposed regulations appear elsewhere in this issue of the Federal Register.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Tuesday, March 10, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-31017 Filed 12-30-91; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Parts 1 and 301

[PS-56-89]

RIN 1545-AN92

Certain Publicly Traded Partnerships Treated as Corporations—Transition Provisions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document sets out a notice of proposed rulemaking describing when a publicly traded partnership adds a "substantial new line of business," thus forfeiting the partnership status preserved for "existing partnerships" by the transition rule applicable to section 7704 of the Internal Revenue Code of 1986. Section 10211 of the Revenue Act of 1987 added section 7704 of the Internal Revenue Code. These regulations would provide the public with guidance needed to comply with the transition rules of section 7704.

DATES: Comments and requests to speak at the public hearing scheduled for February 24, 1992, and outlines of oral comments must be received by February 10, 1992. See notice of hearing published elsewhere in this issue of the Federal Register.

ADDRESSES: Send comments, requests to speak, and outlines of oral comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attention: CC:CORP:T:R; (PS-56-89), room 5228).

FOR FURTHER INFORMATION CONTACT: Ann Veninga at 202-566-4751 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 10211 of the Revenue Act of 1987, Pub. L. No. 100-203, 101 Stat. 1330-382, 1330-403 *et seq.* (the 1987 Act), added section 7704 to the Internal Revenue Code. Section 7704 generally treats publicly traded partnerships as corporations for Federal tax purposes and is generally effective for taxable years beginning after December 31, 1987. Section 10211(c)(2) of the 1987 Act, however, exempts "existing partnerships" from the effect of section 7704 until partnership taxable years beginning after December 31, 1997.

Under section 10211(c)(2)(B) of the 1987 Act, a partnership otherwise qualifying as an existing partnership will cease to be an existing partnership as of the first day after December 17, 1987, on which there has been an addition of a "substantial new line of business" with respect to the partnership. Notice 88-75, 1988-2 C.B. 386, addressed this provision in part. These proposed regulations define "existing partnership," "substantial," and "new line of business." The Internal Revenue Service invites requests for rulings on the question of when a new activity is a "new line of business."

Section 7704 and the rules under Notice 88-75 generally apply to taxable years beginning after December 31, 1987. The regulations are proposed to be effective for taxable years beginning after December 31, 1991, and no inference is intended concerning the interpretation of section 10211(c)(2) prior to the effective date of these regulations. However, taxpayers may rely on these regulations prior to the effective date.

Special Analyses

These proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests To Appear at the Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing is scheduled for February 24, 1992. See notice of public hearing published elsewhere in this issue of the Federal Register.

Drafting Information

The principal author of these proposed regulations is Ann Veninga, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.7001-1 through 1.7704-2

Bonds, Closing agreement, Compromises, Crimes, Definitions, Discovery of liability, Employment taxes, Enforcement of title, Estate taxes, Excise taxes, Forfeiture, Gift taxes, Income taxes, Judicial proceedings, Licensing and registration, Miscellaneous provisions, Other offenses, Penalties, Publicly traded partnerships, Taxes.

26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Proposed Amendments to the Regulations

Accordingly, title 26, chapter 1, parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part:

Authority: Sec. 7805, 68A Stat. 917; sec. 26 U.S.C. 7805 * * *

Par. 2. A new § 1.7704-2 is added to read as follows:

§ 1.7704-2 Transition provisions.

(a) *Transition rule*—(1) *Statutory dates.* Section 7704 generally applies to taxable years beginning after December 31, 1987. In the case of an existing partnership, however, section 7704 and the regulations thereunder apply to taxable years beginning after December 31, 1997.

(2) *Effective date of regulations.* These regulations apply to taxable years beginning after December 31, 1991.

(b) *Existing partnership*—(1) *In general.*—For purposes of § 1.7704-2, the term "existing partnership" means any partnership if—

(i) The partnership was a publicly traded partnership (within the meaning of section 7704(b)) on December 17, 1987;

(ii) A registration statement indicating that the partnership was to be a publicly traded partnership was filed with the Securities and Exchange Commission (SEC) with respect to the partnership on or before December 17, 1987; or

(iii) With respect to the partnership, an application was filed with a state regulatory commission on or before December 17, 1987, seeking permission to restructure a portion of a corporation as a publicly traded partnership.

(2) *Changed status of an existing partnership.* A partnership will not qualify as an existing partnership after a new line of business is substantial.

(c) *Substantial.* A new line of business is substantial as of the earlier of—

(1) The taxable year in which the partnership derives more than 15 percent of its gross income from that line of business; or

(2) The taxable year in which the partnership directly uses in that line of business more than 15 percent (by value) of its total assets.

If a substantial new line of business is added during the taxable year (*e.g.*, by acquisition), the line of business is treated as substantial as of the date it is added; otherwise a substantial new line of business is treated as substantial as of the first day of the taxable year in which it becomes substantial.

(d) *New Line of Business*—(1) *In general.* A new line of business is any business activity of the partnership not closely related to a pre-existing business of the partnership to the extent that the activity generates income other than "qualifying income" within the meaning of section 7704 of the regulations thereunder.

(2) *Pre-existing business.* A business activity is a pre-existing business of the partnership if—

(i) The partnership was actively engaged in the activity on or before December 17, 1987; or

(ii) The partnership is actively engaged in the business activity that was specifically described as a proposed business activity of the partnership in a registration statement or amendment thereto filed on behalf of the partnership with the SEC on or before December 17, 1987. For this purpose, a specific description does not include a general grant of authority to conduct any business.

(3) *Closely related.* All of the facts and circumstances will determine whether a new business activity is closely related to a pre-existing business of the partnership. The following factors, among others, will help to establish that a new business activity is closely related to a pre-existing business of the partnership and therefore is not a new line of business:

(i) The activity provides products or services very similar to the products or services provided by the pre-existing business.

(ii) The activity markets products and services to the same class of customers as that of the pre-existing business.

(iii) The activity is of a type that is normally conducted in the same business location as the pre-existing business.

(iv) The activity requires the use of similar operating assets as those used in the pre-existing business.

(v) The activity's economic success depends on the success of the pre-existing business.

(vi) The activity is of a type that would normally be treated as a unit with the pre-existing business in the business' accounting records.

(vii) If the activity and the pre-existing business are regulated or licensed, they are regulated or licensed by the same or similar governmental authority.

(viii) The United States Bureau of the Census assigns the activity the same

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four-digit Industry Number Standard Identification Code ("Industry SIC Code") as the pre-existing business. Such Codes are set forth in the Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual, prepared, and from time to time revised, by the Statistical Policy Division of the United States Office of Management and Budget. For example, if a partnership's pre-existing business is manufacturing steam turbines and then the partnership begins an activity manufacturing hydraulic turbines, both activities would be assigned the same Industry SIC Code, 3511—Steam, Gas, and Hydraulic Turbines, and Turbine Generator Set Units. In the case of a pre-existing business or activity that is listed under the Industry SIC Code, 9999—Nonclassifiable Establishments—or under a miscellaneous category (e.g., most Industry SIC Codes ending in a "9" are miscellaneous categories), the similarity of the SIC Codes is ignored as a factor in determining whether the activity is closely related to the pre-existing business. The dissimilarity of the SIC Codes is considered in determining whether the business activity is closely related to the pre-existing line of business.

(e) *Activities conducted through other entities*—(1) *Controlled corporations*—(i) *In general.* An activity conducted by a corporation controlled by an existing partnership is not deemed to be an activity of the partnership for purposes of paragraph (d) of this section (determination of whether an existing partnership has added a new line of business) if no more than 10% of the gross income that the partnership derives from the corporation during the taxable year is section 7704(d) qualifying income that is recharacterized as nonqualifying income under paragraph (e)(1)(iii) of this section.

(ii) *Control.* Control of a corporation is determined under the rules of section 304(c).

(iii) *Recharacterization of qualifying income*—(A) *In general.* Gross income received by a partnership from a controlled corporation that would be qualifying income under section 7704(d) is subject to recharacterization as nonqualifying income if the amount is deductible in computing the income of the controlled corporation.

(B) *Extent of recharacterization.* The amount of income described in paragraph (e)(1)(iii)(A) of this section that is recharacterized as nonqualifying income is:

(*1*) The amount described in paragraph (e)(1)(iii) of this section, multiplied by

(*2*) The controlled corporation's taxable income that would not be qualifying income within the meaning of section 7704(d) if earned directly by the partnership, divided by

(*3*) The controlled corporation's taxable income.

For purposes of paragraph (e)(1)(iii)(B)(*2*) and (*3*) of this section, a corporation's taxable income is determined without regard to deductions for amounts paid to the partnership.

(2) *Tiered partnerships.* An activity conducted by a partnership in which an existing partnership holds an interest (directly or through another partnership) will be considered an activity of the existing partnership.

(3) *Example.* The following example illustrates the application of this paragraph (e):

Example. (i) PTP, an existing partnership, acquired all the stock of X corporation on January 1, 1993. During PTP's 1993 taxable year it received $185,000 of dividends and $15,000 of interest from X. Determined without regard to interest paid to PTP, X's taxable income during that period was $500,000 none of which was "qualifying income" within the meaning of section 7704 and the regulations thereunder. In computing the income of X, the $15,000 of interest paid to PTP is deductible.

(ii) Under paragraph (e)(1)(iii) of this section, all $15,000 of PTP's interest income was nonqualifying income ($15,000 × 500,000/500,000). Under paragraph (e)(1)(i) of this section, however, the activities of X will not be considered to be activities of PTP for the 1993 taxable year because no more than 10 percent of the gross income that PTP derived from X would be treated as other than qualifying income (15,000/200,000=7.5%).

(f) *Exceptions*—(1) *Coordination with gross income requirements of section 7704(c)(2).* A partnership that is either an existing partnership as of December 31, 1997, or an existing partnership that ceases to qualify as an existing partnership is subject to section 7704 and the regulations thereunder. Section 7704(a) does not apply to these partnerships, however, if these partnerships meet the gross income requirements of paragraphs (c) (1) and (2) of section 7704. For purposes of applying section 7704(c) (1) and (2) to these partnerships, the only taxable years that must be tested are those beginning on and after the earlier of—

(i) January 1, 1998; or

(ii) The day on which the partnership ceases to qualify as an existing partnership because of the addition of a new line of business; or

(iii) The first day of the first taxable year in which a new line of business becomes substantial (if the new line of business becomes substantial after the year in which it is added).

(2) *Specific exceptions.* In determining whether a partnership is an existing partnership for purposes of section 7704, the following events do not in themselves terminate the status of existing partnerships—

(i) Termination of the partnership under section 708(b)(1)(B) due to the sale or exchange of 50 percent or more of the total interests in partnership capital and profits;

(ii) Issuance of additional partnership units; and

(iii) Dropping a line of business. This event, however, could affect an existing partnership's status indirectly. For example, dropping one line of business could change the composition of the partnership's gross income. The change in composition could make a new line of business "substantial," under paragraph (c) of this section, and terminate the partnership's status. See paragraph (b)(2) of this section.

(g) *Examples.* The following examples illustrate the application of this section:

Example 1. (i) On December 17, 1987, PTP, a calendar-year publicly traded partnership, owned and operated citrus groves. On March 1, 1993, PTP purchased a processing business involving frozen citrus products. In the partnership's 1993 taxable year, the partnerships directly used in the processing business more than 15 percent (by value) of its total assets.

(ii) The citrus grove activities provide different products from the processing activities, are marketed to customers different from the customers of the processing activities, require different types of operating assets, are not commonly conducted at the same location, are not commonly treated as a unit in accounting records, do not depend upon one another for economic success, and do not have the same Industry SIC Code. Under the facts and circumstances, the processing business is not closely related to the citrus grove operation and is a new line of business under paragraph (d)(1) of this section.

(iii) The assets of the partnership used in the new line of business are substantial under paragraph (c)(2). Because PTP added a substantial new line of business after December 17, 1987, paragraph (b)(2) of this section terminates PTP's status as an existing partnership on March 1, 1993.

Example 2. (i) On December 17, 1987, PTP, a calendar-year publicly traded partnership, owned and operated retirement centers that serve the elderly. Each center contains three sections:

(1) a residential section, which includes suites of rooms, dining facilities, lounges, and gamerooms;

(2) an assisted-living section, which provides laundry and housekeeping services, health monitoring, and emergency care; and

(3) a nursing section, which provides private and semiprivate rooms, dining facilities, examination and treatment rooms, drugs, medical equipment, and physical, speech, and occupational therapy.

The business activities of each section constitute preexisting businesses of PTP under paragraph (d)(2) of this section, because PTP was actively engaged in the activities on or before December 17, 1987.

(ii) The nursing sections primarily furnish health care. They employ nurses and therapists, are subject to federal, state, and local licensing requirements, and may charge certain costs to government programs like Medicare and Medicaid.

(iii) In 1993, PTP acquired new nursing homes that treat inpatient adults of all ages. The nursing homes provide private and semiprivate rooms, dining facilities, examination and treatment rooms, drugs, medical equipment, and physical, speech, and occupational therapy. The nursing homes primarily furnish health care. They employ nurses and therapists, are subject to federal, state, and local licensing requirements, and may charge certain costs to government programs like Medicare and Medicaid.

(iv) PTP's new nursing homes and old nursing sections provide very similar services, market to very similar customers, use similar types of property and personnel, and are licensed by the same regulatory agencies. The nursing homes and old nursing sections have the same Industry SIC Code. Under these facts and circumstances, the new nursing homes are closely related to a pre-existing business of the partnership. Accordingly, under paragraph (d)(1) of this section, the acquisition of the new nursing homes is not the addition of a new line of business.

(v) PTP was a publicly traded partnership on December 17, 1987, and was an existing partnership under paragraph (b)(1)(i) of this section. Because PTP has added no substantial new line of business after December 17, 1987, paragraph (b)(2) of this section does not terminate PTP's status as an existing partnership.

Example 3. (i) On December 17, 1987, PTP, a calendar-year publicly traded partnership, owned and operated cable television systems in the northeastern United States. PTP's registration statement described as its proposed business activities the ownership and operation of cable television systems, any ancillary operations, and any business permitted by the laws of the state in which PTP was formed.

(ii) PTP's cable systems include cables strung along telephone lines, converter boxes in subscribers' homes, other types of cable equipment, satellite dishes that receive programs broadcast by various television networks, and channels that carry public service announcements of local interest. Subscribers pay the systems a fee for the right to receive both the local announcements and the network signals relayed through the cables. Those fees constitute PTP's primary revenue. The systems operate under franchise agreements negotiated with each municipality in which they do business.

(iii) On September 1, 1993, PTP purchased a television station in the northwestern United States. The station owns broadcasting facilities, satellite dishes that receive programs broadcast by the station's network, and a studio that produces programs of interest to the area that receives the station's broadcasts. Fees from advertisers constitute the station's primary revenue. The station operates under a license from the Federal Communications Commission.

(iv) In the partnership's 1993 taxable year, the station generated less than 15 percent of PTP's gross income and constituted less than 15 percent of its total assets (by value). In PTP's 1994 taxable year, the station generated more than 15 percent of PTP's gross income.

(v) The cable systems relay signals through cables to subscribers and earn revenue from subscriber fees; the station broadcasts signals to the general public and earns revenue by selling air time for commercials. Despite certain similarities, the two types of activities generally require different operating assets and earn income from different sources. They are regulated by different agencies. They are not commonly conducted at the same location and do not generally depend upon one another for their economic success. They have different Industry SIC Codes. Under the facts and circumstances, the television station activities are not closely related to PTP's pre-existing business, the cable system activities.

(vi) As of December 17, 1987, PTP did not own and operate any television station. PTP's registration statement specifically described as its proposed business activities only the ownership and operation of cable television systems and any ancillary operations. For purposes of paragraph (d)(2) of this section, a specific description does not include PTP's general authority to carry on any business permitted by the state of its formation. Therefore, the television station line of business was not specifically described as a proposed business activity of PTP in its registration statement. PTP's acquisition of the television station business activity constitutes a new line of business under paragraph (d)(1) of this section.

(vii) PTP was a publicly traded partnership on December 17, 1987, and was an existing partnership under paragraph (b)(1)(i) of this section. PTP added a new line of business in 1993, but that line of business was not substantial under paragraph (c) of this section, and thus PTP remained an existing partnership for its 1993 taxable year. In 1994, the new line of business became substantial because it generated more than 15 percent of PTP's gross income. Paragraph (b)(2) of this section therefore terminates PTP's existing partnership status as of January 1, 1994, the first day of the first taxable year beginning after December 17, 1987, in which PTP's new line of business became substantial.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority for part 301 continues to read in part:

Authority: Sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805 * * *

Par. 4. A new § 301.7704–2 is added under the heading "Definitions" to read as follows:

§ 301.7704–2 Transition provisions.

See the regulations under section 7704 contained in part 1 of this chapter for a definition of the "substantial new line of business" that an "existing" publicly traded partnership cannot enter without forfeiting its partnership status under the transition provisions applicable to section 7704.

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

[FR Doc. 91–31144 Filed 12–30–91; 8:45 am]
BILLING CODE 4830–01–M

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26 CFR Parts 1 and 301

[PS–56–89]

RIN 1545–AN92

Certain Publicly Traded Partnerships Treated as Corporations—Transaction Provisions; Public Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing relating to a description of when a publicly traded partnership adds a "substantial new line of business," thus forfeiting the partnership stats preserved for "existing partnerships" by the transaction rule applicable to section 7704 of the Internal Revenue Code of 1986.

DATES: The public hearing will be held on Monday, February 24, 1991, beginning at 10 a.m. Outlines of oral comments must be received by Monday, February 10, 1991.

ADDRESSES: The public hearing will be held in the Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outline of oral comments should be submitted to the Commissioner of Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (PS–56–89), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Felicia A. Daniels of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–566–3935, (not a toll-free number).

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SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 7704 of the Internal Revenue Code. The proposed regulations appear in the proposed rules section of this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, February 10, 1991, an outline of oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By the direction of the Commissioner of the Internal Revenue.

Dale D. Goode

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-31145 Filed 12-30-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program; Kentucky's Small Operator Assistance Program (SOAP) and Assistance Application

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of comment period on proposed amendment.

SUMMARY: OSM is announcing the receipt of revisions to a previously proposed program amendment to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). By a letter dated December 5, 1991 (Administrative Record No. KY-1085), Kentucky submitted additional information to both support and modify its proposed amendment dated June 28, 1991 (Administrative Record No. KY-1059) which was published in the **Federal Register** of July 22, 1991, as it relates to Kentucky Administrative Regulations (KAR) at 405 KAR 7:080 Small Operator Assistance.

This notice sets forth the times and locations that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on January 15, 1992. If requested, a public hearing on the proposed amendment will be held at 10 a.m. on January 10, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on January 6, 1992.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand delivered to: William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, suite 28, Lexington, Kentucky 40504. Copies of the Kentucky program, the proposed amendment, and all written comments received in response to this notice will be available for review at the addresses listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendment by contacting OSM's Lexington Field Office.

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Legion Drive, suite 28, Lexington, Kentucky 40504, Telephone: (606) 233-2896.

Office of Surface Mining Reclamation and Enforcement, Eastern Support Center, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937-2828.

Department for Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564-6940.

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone (606) 233-2896.

SUPPLEMENTARY INFORMATION:

I. Background

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404-21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.15, 917.16, and 917.17.

II. Discussion of Amendment

By letter dated December 5, 1991, (Administrative Record No. KY-1085), Kentucky resubmitted a proposed program amendment which was part of a larger proposed program amendment originally submitted June 28, 1991 (Administrative Record No. KY-1059) (56 FR 33398, July 22, 1991). This resubmission identifies and incorporates Kentucky's Small Operator application forms that have been revised to capture information required by the State's recently proposed small operator assistance regulation modifications. In addition, Kentucky's Statement of Consideration relating to the proposed regulation 405 KAR 7:080 is included in the submission. Additionally, the resubmission contains some grammatical corrections for clarity and proper citation.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Kentucky on December 5, 1991, satisfies the applicable program approval criteria of 30 CFR 732.15. If the revised amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking as set forth in Kentucky's submission dated December 5, 1991, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on January 6, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM, Lexington Field Office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 19, 1991.

Jeffrey Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 91-31251 Filed 12-30-91; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 935

Ohio Permanent Regulatory Program; Revision of Administrative Rule

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of proposed Program Amendment Number 55 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to revise one rule in the Ohio Administrative Code to authorize reclamation agreements between Ohio and coal mine operators who are in danger of bond forfeiture. The amendment would also delete a redundant provision concerning delinquent reclamation and would delete a provision terminating the rights of the permittee to reclaim all or part of a forfeited permit upon issuance of the bond forfeiture order.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on January 30, 1992. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on January 27, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on January 15, 1992.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requesters may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232. Telephone: (614) 866-0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H-3 Columbus, Ohio 43224. Telephone: (614) 265-6675

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated December 11, 1991, (Administrative Record No. OH-1612), Ohio submitted proposed Program Amendment Number 55. The substantive changes proposed by Ohio in this amendment are discussed briefly below:

1. Delinquent Reclamation

Ohio Administrative Code (OAC) 1501:13-7-06 paragraphs (A) and (B)(1): Ohio is deleting paragraph (A) and is incorporating some of the deleted language in paragraph (B)(1). Revised paragraph (B)(1) would provide that a permittee will forfeit performance bond whenever the Chief of the Ohio Department of Natural Resources, Division of Reclamation (the Chief) determines that "the permittee failed to comply with a notice of violation issued for failure to complete any phase of reclamation within the time required by the mining and reclamation plan and any time extensions given for good cause."

2. Conditions Under Which Forfeiture May Be Avoided

OAC 1501:13-7-06 paragraphs (C)(1) and (2): Ohio is adding these new paragraphs to specify that performance bond forfeiture may be avoided if the permittee enters into an agreement with the Chief to perform reclamation operations in accordance with a compliance schedule which meets the conditions of the permit, the reclamation plan, and the Ohio program. The proposed amendment would allow that the permittee and the Chief may enter into such an agreement prior to the Chief's issuance of a cessation order if the reason for the forfeiture is the permittee's failure to comply with a notice of violation for noncontemporaneous reclamation.

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3. Terminating the Rights of the Permittee to Reclaim

OAC 1501:13–7–06 paragraph (D)(2)(d): Ohio is deleting this existing paragraph which provides that bond forfeiture orders issued by the Chief shall declare that the rights of the permittee to perform reclamation on the entire permit area or the incremental area, when applicable, are terminated.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4 p.m. on January 15, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meeting shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under **"ADDRESSES."** A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 19, 1991.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 91–31205 Filed 12–30–91; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 950

Wyoming Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed Rule; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Wyoming Abandoned Mine Land Reclamation Program (hereinafter, the "State Reclamation Plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1231 *et seq.* The proposed amendment is intended to change the State Reclamation Plan to conform with the new provisions of the Abandoned Mine Reclamation Act of 1990 (Pub. L. 101–508; AMRA). The proposed amendment includes: A plan narrative; program administration; legal basis for the amended program; project eligibility; public participation; analysis of program authority and policy; and the State's administrative record.

This notice sets forth the times and locations that the State Reclamation Plan and the proposed amendment to that plan are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.s.t. January 30, 1992. If requested, a public hearing on the proposed amendment will be held on January 27, 1992. Requests to present oral testimony at the hearing must be received by 4 p.m., m.s.t. on January 15, 1992.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the State Reclamation Plan, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office; Office of Surface Mining Reclamation and Enforcement; 100 East B Street, room 2128; Casper, WY 82601–1918. Telephone (307) 261–5776.

Gary Beach, Program Administrator; Abandoned Mine Lands Division, Department of Environmental Quality; Herschler Building, Third Floor West; 122 West 25th Street; Cheyenne, WY 82002. Telephone (307) 777–6145.

FOR FURTHER INFORMATION CONTACT: Guy Padgett; Telephone (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the State Reclamation Plan

On February 14, 1983, the Secretary of the Interior approved the State Reclamation Plan. General background information, including the Secretary's findings, the disposition of comments, and the conditions of approval of the State Reclamation Plan can be found in the February 14, 1983 **Federal Register** (48 FR 6538).

II. Proposed Amendment

By letter dated December 16, 1991 (Administrative Record No. WY 17–1), Wyoming submitted a proposed amendment to its State Reclamation Plan pursuant to SMCRA. Wyoming submitted the proposed amendment on its own initiative. Wyoming proposes to modify its State Reclamation Plan to implement and accomplish the objectives of AMRA. The proposed amendment consists of changes to both the Wyoming Statutes (W.S. 35–11–1202 through 1304) and chapters I through VIII of the rules of the Abandoned Mine Lands Program.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.14, OSM is seeking comment on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 884.15. If the amendment is deemed adequate, it will become part of the State Reclamation Plan.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4 p.m., m.s.t. January 15, 1992. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested, as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **"ADDRESSES."** A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Abandoned Mine Land Reclamation.

Dated: December 24, 1991.

Allen D. Klein,

Acting Assistant Director, Western Support Center.

[FR Doc. 91–31249 Filed 12–30–91; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL 4067–5]

National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is today proposing to rescind 40 CFR part 61, subpart T (subpart T) as it applies to owners and operators of uranium mill tailings disposal sites that are licensed by the Nuclear Regulatory Commission (NRC) or an affected NRC Agreement State (affected Agreement States). Today's proposal does not concern subpart T sites that are under the control of the Department of Energy (DOE). Subpart T, which regulates radon emissions into ambient air, is one of the Agency's National Emissions Standards for Hazardous Air Pollutants (NESHAPs) for radionuclides, which were promulgated on December 15, 1989 (54 FR 51654) pursuant to Clean Air Act (CAA) Section 112, as it existed prior to the 1990 amendments. EPA is establishing a 60 day period for receipt of comments on this issue. Published elsewhere in today's **Federal Register** are two related rulemakings: a Notice of a Final Rule which stays the effectiveness of subpart T as it applies to non-operational uranium mill tailings disposal sites that are licensed by the NRC or an affected Agreement State pending completion of this rulemaking, or June 30, 1994, whichever first occurs, and an Advanced Notice of Proposed Rulemaking (ANPR) in which EPA is announcing its intention to enter into a future rulemaking which would amend 40 CFR part 192, subpart D, which was enacted pursuant to the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978.

DATES: Comments concerning this proposed rule must be received by EPA on or before February 24, 1992. Public hearings will be held on January 15, 1992 in Washington, DC, and in Sante Fe, New Mexico on January 21 and 22, 1992.

ADDRESSES: Comments should be submitted (in duplicate if possible) to: Central Docket Section LE–131, Environmental Protection Agency, Attn: Docket No. A–91–67, Washington, DC 20460. Requests to participate in the hearing should be made in writing to the Director, Criteria and Standards Division, ANR–460W, Office of Radiation Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments and requests to participate in the hearings may also be faxed to EPA at (703) 306–8763.

Public hearings will be held on January 15, 1992 at 11 Dupont Circle, 8th Floor, Washington, DC 20036, and on January 21 and 22 at the Inn at Loretto, 211 Old Santa Fe Trail, Sante Fe, New Mexico 87501. Comments concerning this proposed rule must be received by EPA on or before February 24, 1991.

FOR FURTHER INFORMATION CONTACT: Jamie Burnett, Air Standards and Economics Branch, Criteria and Standards Division, ANR–460W, Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460 (703) 306–8787.

SUPPLEMENTARY INFORMATION:

A. Background

1. Regulatory History

On December 15, 1989, EPA promulgated national standards regulating radionuclide emissions to the ambient air from several source categories, including from non-operational sites used for the disposal of uranium mill tailings. 54 FR 51654. These sites are either under the control of the DOE pursuant to title I of the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978, 42 U.S.C. 7901 *et. seq.*, or the sites are under the control of NRC or Agreement State-licensees pursuant to title II of UMTRCA. These standards—subpart T of 40 CFR part 61 (subpart T)—were promulgated pursuant to the authority of Clean Air Act (CAA or Act) section 112 as it existed in 1989, and were part of a larger promulgation of National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Radionuclides.

Subpart T requires compliance by owners and operators of uranium mill tailings disposal sites within two years of becoming non-operational (40 CFR 61.22(b)). Pursuant to its authority under then-existing CAA section 112(c)(1)(B)(ii) EPA waived compliance for two years for sites that were non-operational at the time of promulgation. *Id.* Thus, the earliest date by which sites must comply with the subpart T standards is December 15, 1991. Even so, EPA recognized at the time of

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promulgation that many sources subject to subpart T might not be able to achieve compliance by December 15, 1991. Because EPA felt constrained by the CAA as it existed at that time, EPA stated that for those sites the Agency would negotiate expeditious compliance schedules pursuant to its enforcement authority under CAA section 113. See 54 FR 51683. By so doing, subpart T in effect mandates that the earthen cover to meet that emissions level be installed as expeditiously as practicable considering technological feasibility.

The primary subpart T standard is the requirement that radon–222 emissions not exceed a flux of 20 pCi/m²-s. 40 CFR 61.222(a). In its 1989 action, EPA recognized that even though NRC implements general EPA standards (promulgated under UMTRCA) which also regulate these sites and call for compliance with a 20 pCi/m²-s flux standard (see 40 CFR part 192, subpart D), the UMTRCA regulatory program does not answer the critical timing concern addressed by subpart T.

The existing UMTRCA regulations set no time limits for disposal of the piles. Some piles have remained uncovered for decades emitting radon. Although recent action has been taken to move toward disposal of these piles, some of them may still remain uncovered for years.

54 FR at 51683

In addition to regulating radon emissions, subpart T also requires specific testing and record keeping. See 40 CFR 61.223 and 61.224. The UMTRCA regulations, as currently promulgated by EPA and implemented by NRC, while ultimately limiting emissions to the same level as subpart T, are supported by a variety of design-based substantive and procedural requirements that speak to UMTRCA's unique concern that final site closure occur in a manner that will last at least 1,000 years, but do not require monitoring of emissions to confirm the performance of the earthen cover. See generally 10 CFR part 40, appendix A and 40 CFR part 192.

These CAA and UMTRCA programs duplicate each other by creating dual regulatory oversight, including independent procedural requirements, while seeking to ensure compliance with the identical 20 pC1/m²-s flux standard. Concern over this duplication inspired several petitions for reconsideration, most notably from NRC and the American Mining Congress (AMC). While these petitions remain pending before EPA, today's proposal to rescind subpart T, as well as the companion actions (1) An Advance Notice of Proposed Rulemaking (ANPR) to amend 40 CFR part 192 (UMTRCA regulations) and (2) a Notice of Final Rule to stay subpart T pending the conclusion of today's proposed rescission, comprises EPA's efforts towards addressing the issues they raise. As discussed further below, underlying these actions is a Memorandum of Understanding (MOU) which has been entered into by EPA, NRC, and the affected Agreement States (the MOU is published at the end of this notice, as it was at the end of the notice proposing to stay subpart T (see 56 FR at 55434)).

2. Clean Air Act Amendments of 1990

After promulgation of subpart T (and receipt of reconsideration petitions), in November 1990, the Clean Air Act was substantially amended. Included in the new Act was an amendment that speaks directly to the duplication issue. Newly enacted section 112(d)(9) of the amendments provides:

> No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under this section if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health.

This provision strives to eliminate duplication of effort between EPA and NRC, so long as public health is protected with an ample margin of safety.

Moreover, Congress expressed sensitivity to the special compliance problems of uranium mill tailings sites through new section 112(i)(3). This provision provides an additional 3-year extension to mining waste operations (e.g., uranium mill tailings) if the 4 years allowed (including a one-year extension) for compliance with standards promulgated under the amended section 112 is insufficient to dry and cover the mining waste (thereby controlling emissions).

3. Memorandum of Understanding (MOU) between EPA, NRC and the Affected Agreement States

In light of these provisions, and given the express authority of section 112(d)(9), as amended, EPA, NRC and the affected Agreement States, have been meeting to discuss the dual regulatory programs under UMTRCA and the CAA. The result of this intensive inter-agency consultation has been the execution of a Memorandum of Understanding (MOU), a copy of which is attached to this proposal and was also attached to the proposed stay published in the **Federal Register** on October 25, 1991 (56 FR 55434). The purpose of the MOU is to ensure that owners and operators of existing non-operational uranium mill tailings piles licensed by NRC or an affected Agreement State, or owners and operators of piles that will in the future become non-operational, effect site closure—emplacement of an earthen cover to permanently limit radon emissions to a flux of no more than 20 pCi/m²-s—as expeditiously as practicable considering technological feasibility. The goal is that all current and future disposal sites achieve compliance by the end of 1997, or within seven years of when the currently operating and standby sites become non-operational.

B. Discussion of Existing EPA Standard 40 CFR Part 61, Subpart T

As described in section A(1) above, subpart T (of 40 CFR part 61) limits radon-222 emissions to the ambient air from non-operational uranium mill tailings disposal sites licensed by the NRC or an affected Agreement State. Subpart T requires that these sites, which consist of large (i.e., numerous acre) impoundments or piles, comply with a radon flux standard of 20 pCi/m²-s (40 CFR 61.222(a)). Moreover, compliance must be achieved within two years of when the site becomes non-operational, 40 CFR 61.222(b), which for piles which had ceased operation prior to the time of promulgation is December 15, 1991. While at the time of promulgation EPA recognized that many sources might not be able to achieve this date, EPA was constrained by existing CAA section 112(c)(1)(B)(ii)) which allows a maximum of two years for facilities to come into compliance. EPA stated that for those sites which could not meet the two-year date, the Agency would negotiate expeditious compliance schedules pursuant to its enforcement authority under CAA section 113. See 54 FR 51683. Subpart T also calls for monitoring and record keeping to establish and demonstrate compliance. See 40 CFR 61.223 and 61.224.

Subpart T is part of a larger promulgation of radionuclide NESHAPs that represent the Agency's application of the policy for regulating CAA section 112 pollutants which was first announced in the benzene NESHAP (54 FR 38044 (Sept. 14, 1989)). The NESHAP policy utilized a two-step approach. In the first step, EPA considered the lifetime risk to the maximally exposed individual, and found that it is presumptively acceptable if it is no higher than approximately one in ten

thousand. This presumptive level provides a benchmark for judging the acceptability of a category of emissions. This first step also considers other health and risk factors such as projected incidence of cancer, the estimated number of persons exposed within each individual lifetime risk range, the weight of evidence presented in the risk assessment, and the estimated incidence of non-fatal cancer and other health effects. After considering all of this information, a final decision on acceptable risk is made. This becomes the starting point for the second step, determining the ample margin of safety.

In the second step, EPA strives to provide protection for the greatest number of persons possible to an individual lifetime risk level no higher than approximately one in one million. In this ample margin decision, the Agency again considers all of the health risk and other health information considered in the first step, as well as additional factors such as costs and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors.

As part of the risk assessment associated with the promulgation of subpart T, EPA examined the doses to the maximally exposed individuals (MEI) from uranium mill tailings disposal sites. In so doing, EPA noted that standards it had already promulgated pursuant to the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978 would eventually limit radon emissions from those sites to a flux of 20 pCi/m²-s (see 40 CFR part 192, subpart D), and thus EPA referred to that level as "baseline." EPA's risk assessment revealed that compliance with the 20 pCi/m²-s baseline would result in an MEI of approximately 1×10^{-4}, a level EPA determined to be safe under the first step of the analysis. EPA further concluded in the second step, which considers additional factors such as cost and technological feasibility, that the baseline level also provided an ample margin of safety.

Even though EPA determined that the baseline was protective of public health with an ample margin of safety, EPA still found it was necessary to promulgate subpart T. This was because the baseline assumed compliance with the UMTRCA regulations even though those regulations did not require that compliance occur in the foreseeable future and, in fact, many sites were not proceeding towards the baseline level at the time subpart T was promulgated. In other words, EPA promulgated subpart T to address the timing issue, which was not addressed in the UMTRCA regulations. However, due to then-existing CAA section 112(c)(1)(B)(ii), EPA was constrained to requiring compliance with the 20 pCi/m²-s baseline within two years, a date the Agency recognized many sites might find impossible to meet. EPA announced that those situations could be dealt with through site-specific enforcement agreements under CAA section 113.

C. Rationale for Proposed Rule to Rescind 40 CFR Part 61 Subpart T for NRC Licensees

In light of the new statutory authority provided EPA by CAA section 112(d)(9) of the Clean Air Amendments of 1990, EPA has been meeting with NRC and the affected Agreement States to determine whether, with certain modifications to its regulatory program under UMTRCA, the NRC regulatory program might provide an ample margin of safety. If so, subpart T would be rendered superfluous and, therefore, needlessly duplicative and burdensome such that rescission pursuant to CAA section 112(d)(9) would be appropriate.

In applying the risk methodology for CAA section 112 to the risk assessment for subpart T, EPA has already determined that the baseline that would result once the 20 pCi/m²-s UMTRCA standard is met protects public health with an ample margin of safety. Thus, if the regulatory program implemented by NRC assures that sites will achieve the baseline as soon as practicable considering technological feasibility, then subpart T would not be necessary. More specifically, appropriate modifications to the UMTRCA regulatory scheme as implemented by NRC and the affected Agreement States to ensure specific, enforceable closure deadlines and monitoring requirements such that compliance with the baseline will occur as expeditiously as practicable considering technological feasibility, would protect public health with an ample margin of safety. In so concluding, EPA relies wholly upon the risk analysis it conducted in promulgating subpart T. EPA is neither revisiting that analysis here, nor does the Agency seek comment on that analysis.

1. The Regulatory Scheme Under UMTRCA

As a supplement to the Atomic Energy Act of 1954, as amended, the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978 (42 U.S.C. 2022, 7901–7942) was enacted to comprehensively address the dangers presented by uranium mill tailings, including their disposal:

> uranium mill tailings located at active and inactive mill operations may pose a potential and significant radiation health hazard to the public, and * * * the protection of the public health, safety, and welfare * * * require[s] that every reasonable effort be made to provide for the stabilization, disposal, and control in a safe and environmentally sound manner of such tailings in order to prevent or minimize radon diffusion into the environment * * *."

42 U.S.C. 7901(a); *see American Mining Congress* v. *Thomas*, 772 F.2d 617 (10th Cir. 1985), *cert. denied*, 428 U.S. 1158 (1986). As to uranium mill tailings disposal sites in particular, UMTRCA gives the Department of Energy (DOE) the responsibility to clean up and dispose of certain (i.e., title I) sites, and gives NRC the responsibility for those (i.e., title II) sites that are owned and operated by its licensees. EPA is responsible for promulgating the generally applicable environmental standards to be implemented by both NRC and DOE. 42 U.S.C. 2022(a), 7911–7924; AMC, 724 F.2d at 621. EPA promulgated its final UMTRCA regulations on December 15, 1982 for title I sites and on September 30, 1983 for title II sites. 48 FR 590 and 48 FR 45926 (codified at 40 CFR part 192).

Parts of EPA's final UMTRCA regulations are directed to the permanent disposal of uranium mill tailings. See 40 CFR part 192, subpart D (subpart D). Among the requirements of Subpart D is the mandate that radon releases from the disposal sites not exceed a flux of 20 pCi/m²-s. 40 CFR 192.32 (a) and (b). Other aspects of subpart D pertain to ground water, monitoring, design, and duration of closure. See 40 CFR 192.32 and 192.33. With the exception of the ground water provisions at 40 CFR 192.20(a) (2)–(3), all of subpart D was upheld by the Tenth Circuit in *AMC* v. *Thomas*, 772 F.2d at 640. EPA is currently engaged in rulemaking to address the ground water remand.

Because NRC implements EPA's general UMTRCA standards for its licensees (as do its Agreement States), it has promulgated its own implementing regulations in the form of "criteria." See generally 10 CFR part 40, appendix A. While these criteria set forth a variety of specific requirements—financial, technical, and administrative—to govern the final reclamation (i.e., closure) design for each disposal site, they also provide for "site-specific" flexibility by authorizing alternatives that are at least as stringent as EPA's general standards and NRC's criteria, "to the extent practicable" as provided in Section 84c

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of the Atomic Energy Act of 1954, as amended. *Id.* at Introduction.

Overall, NRC's implementation criteria set forth a rigorous program governing the reclamation of the disposal sites so that closure will (1) Last for 1,000 years to the extent reasonable, but in any event at least 200 years, and (2) limit radon release to 20 pCi/m^2-s throughout that period. The design must be able to withstand extreme weather and other natural forces. Upon review, EPA believes the NRC criteria comprise a comprehensive response to EPA's general standards at 40 CFR part 192, subpart D. However, as noted above, nothing in either EPA's general standards or NRC's implementing criteria compel sites to proceed toward final closure by a certain date. This was the reason for EPA's decision in 1989 to promulgate the subpart T NESHAP under the CAA. Moreover, neither EPA's general UMTRCA regulations, nor NRC's implementing criteria require appropriate monitoring to ensure compliance with the 20 Pci/m^2-s standard. Nevertheless, as discussed below, the CAA was subsequently amended to allow the EPA not to regulate NRC licensees if it concludes that the NRC regulatory scheme provides an ample margin of safety to protect the public health.

2. Clean Air Act Amendments of 1990: Section 112(d)(9)

As set forth and discussed above in section A(2), the CAA was substantially amended in 1990. As part of that enactment, section 112(d)(9) was added to the statute. The purpose of this provision is to preserve governmental resources and avoid needless, burdensome, and potentially contradictory CAA regulations. Specifically, section 112(d)(9) makes explicit that EPA need not regulate under the CAA, radionuclide sources that are sufficiently regulated by NRC or its Agreement States (under the Atomic Energy Act or its component acts, such as UMTRCA). More particularly, section 112(d)(9) allows EPA to not regulate under section 112 if the Administrator determines "by rule, and after consultation with the [NRC]," that NRC's regulatory program for a particular source "category or subcategory provides an ample margin of safety to protect the public health."

As EPA interprets section 112(d)(9), the Agency may rescind the Subpart T NESHAP as it applies to non-operational uranium mill tailings disposal facilities licensed by NRC or an affected Agreement State if the Agency (1) Consults with NRC, (2) engages in public notice and comment rulemaking, and (3) finds that the separate NRC regulatory program provides an equivalent level of public health protection (i.e., an ample margin of safety) as would implementation of subpart T. While this rulemaking may commence prior to final development of NRC's regulatory program, that program must fully satisfy the statute at the time EPA takes final action. In so doing, EPA must find that the NRC regulatory program satisfies the CAA standard, not that full and final implementation of that program has already successfully occurred.

3. The Memorandum of Understanding (MOU)

EPA has had intensive discussions about these matters with NRC and the affected Agreement States. The result of this interagency consultation and review has been the execution of a Memorandum of Understanding (MOU), a copy of which is printed at the end of this notice. The primary purpose of the MOU is to ensure that non-operational uranium mill tailings piles licensed by NRC or an affected Agreement State achieve compliance (through installation of an earthen cover) with the 20 pCi/m^2-s flux standard from EPA's UMTRCA standards (40 CFR 192.32(b)(1) as expeditiously as practicable considering technological feasibility. A guiding objective is that this occur as to all current disposal sites by the end of 1997, or within seven years of when the existing operating and standby sites enter disposal status. This objective comports with Congress's concern over timing as reflected in CAA section 112(i)(3), as amended.

The MOU calls for EPA to modify its UMTRCA regulations (at 40 CFR part 192, subpart D) to address the timing concern that resulted in EPA's 1989 decision to promulgate subpart T. Moreover, EPA understands that NRC staff will recommend to the Commission to modify its implementing regulations at 10 CFR part 40, appendix A, as appropriate. The MOU also calls for NRC and the affected Agreement States to immediately commence efforts to amend the licenses of the non-operational mill tailings disposal site owners and operators to include reclamation plans that require compliance with the 20 pCi/m^2-s standard as expeditiously as practicable considering technological feasibility. This will be done either through voluntary cooperation with the licensees, or through administratively enforceable orders. These actions, coupled with NRC's commitment to enforce the amended licenses, are intended to provide the basis for EPA to make the requisite findings under CAA section 112(d)(9) necessary for rescission of subpart T.

4. Evaporation Ponds

This proposal is directed to a finding that the UMTRCA regulatory program as implemented by NRC and the affected Agreement States protects public health with an ample margin of safety from the risks associated with releases into ambient air of radon-222. The regulations contemplated by this notice seek to control the emission of radon-222 by requiring the installation of an earthen cover over the disposal piles as expeditiously as practicable considering technological feasibility. However, there are other aspects to the UMTRCA regulatory scheme, including the long-term maintenance of the piles (once controlled) against erosion, and the reclamation and maintenance of ground water. To these other ends, remedial actions have already commenced, under the regulatory program of the NRC and the affected Agreement States, that have the dual purpose of both readying the piles for installation of the earthen cover that will control radon and reclaiming and maintaining ground water. These actions entail the use of evaporation ponds that in some instances, for varying reasons, have been placed directly upon the disposal site. In seeking to modify the UMTRCA regulations to require the expeditious installation of an earthen cover to control radon, the question has arisen whether the requirement extends to the evaporation pond thereby jeopardizing the other remedial aspects of the UMTRCA program.

EPA does not intend that the expeditious radon cover requirement extend to the areas where evaporation ponds are located, even if on the pile itself, to the extent that such evaporation pond is deemed by the implementing agency (NRC or an affected Agreement State) to be an appropriate aspect to the overall remedial program for the particular site involved. Rather, the evaporation pond area may be covered to control radon after it is no longer in use and ready for covering. EPA believes the overall public health interest in comprehensively resolving the problems associated with each site is best served by requiring that the radon cover be expeditously installed in a manner that does not require interruption of this other aspect of remediation. Moreover, the ponds themselves serve as an effective radon barrier, thus this decision is bolstered by the absence of any evidence that there is a significant public health risk presented by the radon emissions from these evaporation ponds during the period they are employed as part of the overall remediation of the site. Rather, EPA believes that provided all other parts of the pile are covered with the earthen cover, compliance with the 20 pCi/m^2-s standard will result, and this will be maintained by covering the evaporation pond area when it is no longer in use.

D. Proposed Rule to Rescind 40 CFR Part 61, Subpart T for NRC and Agreement State Licensees

EPA today proposes to rescind subpart T as it applies to non-operational uranium mill tailings disposal sites licensed by NRC or an affected Agreement State. The Agency makes this proposal pursuant to its authority under CAA section 112(d)(9), as amended. The proposal is supported by the MOU, which both reflects consultation with NRC and sets forth a course of conduct that will bolster NRC's regulatory program under UMTRCA so that it is protective of public health with an ample margin of safety. As part of this action, EPA has reviewed the regulatory program implemented by NRC under UMTRCA (as contained at 10 CFR part 40, appendix A) and determined that, once the timing and monitoring concerns are fully addressed, consistent with and including the other actions (e.g., license amendment) contemplated by the MOU, the NRC criteria will result in reclamation designs and schedules fully adequate to ensure compliance with the 20 pCi/m^2-s flux standard as expeditiously as practicable considering technological feasibility.

40 CFR part 61, subpart T requires owners or operators of uranium mill tailings piles to conduct a one-time measurement of their radon emissions using monitoring methods specified in appendix B, Method 115, or other procedures which have EPA approval. This measurement must be performed 60 days following the closure of the pile but prior to long term stabilization under UMTRCA standards found in 40 CFR 192.02(a) or 192.32(b)(i). The UMTRCA standards have no such monitoring requirements associated with them since radon control is achieved through design of the cover.

Under the MOU, EPA will engage in rulemaking to modify its UMTRCA regulations to require compliance with the 20 pCi/m^2-s flux standard as expeditiously as practicable considering technological feasibility, and to require appropriate monitoring to verify compliance. The goal of this revision will be that compliance will occur no later than the end of 1997 for all existing non-operational disposal sites, or within seven years of when operating or standby sites become non-operational. Moreover, all NRC and affected Agreement State licenses will be modified to incorporate a reclamation schedule that assures compliance with the 20 pCi/m^2-s flux standard under UMTRCA as expeditiously as practicable considering technological feasibility.

As intended by EPA, the phrase "expeditiously as practicable considering technological feasibility," means as quickly as possible considering: (1) The physical characteristics of the tailings or the site; (2) the limits of available technology; (3) the need for consistency with mandatory requirements of other regulatory programs; and (4) delays beyond the control of the licensee (e.g., inclement weather). While this phrase does not preclude economic considerations, it also does not contemplate utilization of a cost-benefit analysis in setting compliance schedules. In other words, the compliance schedules are to be developed consistent with the target set forth in the MOU as reasonably applied to the specific circumstances of each site. By definition, no more rapid compliance can, as a practical matter occur, because this schedule represents the earliest that the sites could be closed. EPA has already made a determination in promulgating subpart T that compliance with the 20 pCi/m^2-s standard protects public health with an ample margin of safety. Thus, once these actions are taken, including requiring appropriate monitoring to verify compliance, EPA believes the basis will exist for a finding that the NRC regulatory program protects public health with an ample margin of safety.

EPA does not intend to take final action on this proposal until after (1) It effectively promulgates the above-discussed revision to its UMTRCA regulations at 40 CFR part 192, subpart D, (2) NRC's regulations at 10 CFR part 40, appendix A, are effectively revised, as necessary and appropriate to implement the revisions to EPA's regulations, and (3) the other conditions of the MOU occur, including the revision of the NRC and affected Agreement State licenses to reflect these new requirements. In determining whether the above regulatory changes have been effectively promulgated, EPA will assess whether any judicial challenge to these regulations is pending and, if so, whether such challenge presents a significant risk of interference with the purposes and objectives of the MOU, as reflected in the regulatory changes.

E. Reconsideration

EPA will take final action on this proposal only after it revises the UMTRCA regulations to require compliance with the 20 pCi/m^2-s flux standard as expeditiously as practicable, NRC revises its implementing regulations, as appropriate, to reflect EPA's changes, and NRC and the affected Agreement States have amended the applicable licenses to reflect these requirements. However, EPA does intend to take final action on this proposal prior to when actual compliance with the 20 pCi/m^2-s flux standard is achieved at all sites. In addition, under the Atomic Energy Act, NRC has the authority to waive, for reasons of practicability, the dual requirement of the MOU that compliance with the 20 pCi/m^2-s flux standard occur as expeditiously as practicable considering technological feasibility. As currently understood and defined by NRC, the term "practicability" includes certain economic considerations which are not contemplated by the requirement of the MOU which requires that compliance occur as expeditiously as practicable considering technological feasibility. Thus, as a theoretical matter, this waiver authority may be exercised even in a manner not addressed in the MOU even after the UMTRCA regulations are promulgated and each license is amended, although EPA has no reason to believe such relaxation of restriction will actually occur. Nevertheless, EPA does recognize that this authority would not exist under the CAA and subpart T and, thus, there is some concern over the potential for deviation from the agreements contained in the MOU.

In response to the concern over the waiver authority in the Atomic Energy Act, and in order to ensure that authority is not utilized to defeat the finding that the NRC regulatory program protects public health with an ample margin of safety, EPA is in advance proposing that certain conditions and grounds for reconsideration be included in any final decision to rescind subpart T. In this way, EPA may base its rescission finding upon its view of the NRC regulatory program contemplated by the MOU at the time of taking final action, while also providing some assurance that EPA will revisit that finding should NRC or the affected Agreement States substantially deviate from that program. Thus, the following conditions and grounds for

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reconsideration are proposed by EPA to provide assurance that any finding by EPA that the NRC program is sufficient to justify rescission of subpart T under CAA section 112(d)(9) will be revisited if the NRC program is actually implemented in a manner inconsistent with that finding:

1. Because any decision to rescind subpart T will be based upon EPA finding, as called for by the MOU, that the UMTRCA regulatory program implemented by NRC and the affected Agreement States requires (1) compliance with the 20 pCi/m^2—s flux standard (2) as expeditiously as practicable considering technological feasibility, it is important that any alleged failure of those findings be addressed in a timely manner. Thus, EPA is proposing that it establish a non-discretionary duty that it propose to grant or deny the petition within 90 days, and to take final action granting or denying the petition for reconsideration within 90 days of the proposal (180 days total). Failure to meet that deadline may be subject to an unreasonable delay action in District Court under CAA section 304 to order that EPA propose and take final action on the petition. Review of that final response would be in the Court of Appeals under CAA section 307(b).

2. As noted above, any finding to rescind Subpart T will be based on the dual purpose of the MOU to require (1) Compliance with the 20 pCi/m^2—s flux standard (under EPA's general UMTRCA regulations at 40 CFR part 192, subpart D) (2) as expeditiously as practicable considering technological feasibility. The first part of the finding derives from the risk analysis conducted by EPA in promulgating Subpart T in 1989. At that time, EPA determined that the 20 pCi/m^2—s flux standard was a "baseline" that was provided by EPA's general UMTRCA standards at 40 CFR part 192, subpart D. EPA further determined that compliance with that baseline would be protective of public health with an ample margin of safety. EPA promulgated subpart T to ensure that all sites comply with that standard as expeditiously as practicable. In so doing, the CAA did not permit, and EPA did not consider, site-specific waivers from ultimate compliance with that standard. In conducting this rescission rulemaking, EPA is *not* revisiting the risk analysis or decision methodology that supported the promulgation of subpart T; rather, EPA is only visiting whether NRC's regulatory program under UMTRCA will meet the 20 pCi/m^2—s standard in a timely manner thereby rendering Subpart T unnecessarily duplicative. With this in mind, EPA is setting the following grounds for examining the recision finding once finalized:

(a) The 20 pCi/m^2—s flux standard must be strictly met by all sites, and once met the obligation is ongoing. Below are two options for implementing that requirement in the context of reconsideration of the rescission. Note that under either option, EPA does not intend to reconsider the rescission for any site that is in fact meeting the 20 pCi/m^2—s standard, and has not sought or received permission from NRC or an affected Agreement State to exceed that standard in the future.

Option 1

If the weight of the evidence shows that either (1) NRC or an affected Agreement State is authorizing that one or more sites exceed the 20 pCi/m^2—s flux standard (pursuant to a waiver, license revision, reclamation plan modification, or other means), or (2) that monitoring reveals the standard is not being met and the source, NRC or the affected Agreement State decides not to take or require corrective action within a reasonable period of time, even though such has been requested of them in writing (as contemplated by the MOU), EPA will revoke its rescission of subpart T as to that source. However, should it ultimately be determined that EPA lacks the authority to reinstate subpart T on a site-specific basis, subpart T shall instead be reinstated in its entirety.

Option 2

The same as Option 1, above, except that EPA must further find that the failure(s) to meet the standard is of such a nature as indicates a "programmatic failure" on the part of NRC or an affected Agreement State. Programmatic failure is demonstrated when the weight of the evidence indicates an intent by the implementing agency to depart from its obligation (and commitment under the MOU) to ensure compliance with the 20 pCi/m^2—s standard. This is in contrast to excusable inadvertence, aberration, or a benign exercise of prosecutorial discretion. The intent is that the rescission be revoked only if NRC or the affected Agreement States, for legal or policy reasons, appear not to be keeping the commitments contained in the MOU. Under this option, revocation of the recision would be as to all licensees under the control of NRC or the affected Agreement State, or both.

(b) The requirement that compliance with the 20 pCi/m^2—s flux standard occur as expeditiously as practicable considering technological feasibility must also be met by all sites. Below are two options for implementing that requirement in the context of reconsideration of the rescission.

Option 1

If the substantial weight of the evidence shows that schedule slippages or delays from the requirement that compliance occur as expeditiously as practicable considering technological feasibility are occurring, EPA will revoke its rescission of subpart T as to that site. The phrase "expeditiously as practicable considering technological feasibility" means as quickly as possible considering: (1) The physical characteristics of the tailings and the site; (2) the limits of available technology; (3) the need for consistency with mandatory requirements of other regulatory programs; and (4) delays beyond the control of the licensee. While this phrase does not preclude economic considerations, it also does not contemplate utilization of a cost benefit analysis in setting compliance schedules. In other words, the compliance schedules are to be developed consistent with the target set forth in the MOU as reasonable applied to the specific circumstances of each site. However, should it ultimately be determined that EPA lacks the authority to re-institute subpart T on a site-specific basis, subpart T shall instead be reinstated in its entirety.

Option 2

The same as Option 1, above, except that EPA must further find that the failure(s) to achieve compliance as expeditiously as practicable considering technological feasibility is (are) of such a nature as to indicate a "programmatic failure" on the part of NRC or the affected Agreement State. Programmatic failure is defined when the weight of the evidence indicates an intent by the implementing agency to depart from its obligation (and commitment under the MOU) to ensure that this requirement is met. It is contrasted to excusable inadvertence, aberration, or a benign exercise of prosecutorial discretion. The intent is that the rescission be revoked only if NRC or the affected Agreement States, for legal or policy reasons, appear not to be keeping the commitments contained in the MOU. Under this option, revocation of the rescission would be as to all licensees under the control of NRC or an affected Agreement State, or both.

3. Any decision to revoke the rescission of subpart T will be done pursuant to notice and comment rulemaking. This means that EPA will subject any finding under 2(a) or 2(b) above to public comment. However, in so doing, EPA will neither consider novel arguments such as whether public health was significantly threatened by the alleged failure, nor revisit the findings that underlie subpart T. Rather, because the health risk analyses necessary for the original promulgation of subpart T are not being revisited in conducting the rulemaking to rescind subpart T as to NRC or affected Agreement State licensees, such analysis will likewise not be a part of any decision to reconsider or ultimately revoke the recision. All that is at issue is whether the 20 pCi/m^2—s flux standard is being met as expeditiously as practicable considering technological feasibility under the UMTRCA regulatory scheme, thereby supporting the finding that subpart T was unnecessarily duplicative.

F. Miscellaneous

1. Paperwork Reduction Act

There are no information collection requirements in this proposed rule.

2. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether this regulation, if promulgated, would be a "major rule" and therefore subject to certain requirements of the Order. The EPA has determined that rescinding subpart T as it applies to owners and operators of uranium mill tailings disposal sites that are licensed by the NRC would not result in one of the adverse economic effects set forth in section I of the Order as grounds for finding a regulation to be a "major rule." This regulation would not be major because the nationwide compliance costs would not meet the $100 million threshold, the regulation would not significantly increase prices or production costs, and the regulation would not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation or competition in foreign markets.

The Agency has not conducted a Regulatory Impact Analysis (RIA) of this purposed regulation because this action does not constitute a major rule. This regulation has been reviewed by the Office of Management and Budget and their written comments (if any) are available in the public docket.

3. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" which describes the effect of the proposed rule on small business entities. However, section 604(b) of the Act provides that an analysis not be required when the head of an Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

This proposed rule to rescind 40 CFR part 61, subpart T, if promulgated as a final rule, will have the effect of easing the burdens associated with the provisions of subpart T and for those reasons, I certify that this rule will not have significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 61

Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Radionuclides, Radon, Reporting and Recordkeeping requirements, Uranium, Vinyl chloride.

Dated: December 19, 1991.

William K. Reilly,

Administrator.

Part 61 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

2. Section 61.220 is amended by revising paragraph (a) to read as follows:

§ 61.220 Designation of facilities.

(a) The provisions of this subpart apply to owners and operators of all sites that are used for the disposal of tailings, and that managed residual radioactive material during and following the processing of uranium ores, commonly referred to as uranium mills and their associated tailings, that are listed in, or designated by the Secretary of Energy under title I of the Uranium Mill Tailings Control Act of 1978.

* * * * *

3. Section 61.221 is revised to read as follows:

§ 61.221 Definitions.

As used in this subpart, all terms not defined here have the meanings given them in the Clean Air Act or subpart A of part 61. The following terms shall have the following specific meanings:

(a) *Long term stabilization* means the addition of material on a uranium mill tailings pile for purpose of ensuring compliance with the requirements of 40 CFR 192.02(a). These actions shall be considered complete when the Nuclear Regulatory Commission determines that the requirements of 40 CFR 192.02(a) have been met.

(b) *Operational* means a uranium mill tailings pile that is licensed to accept additional tailings, and those tailings can be added without violating subpart W or any other Federal, state or local rule or law. A pile cannot be considered operational if it is filled to capacity or the mill it accepts tailings from has been dismantled or otherwise decommissioned.

(c) *Residual radioactive materials* means:

(1) Waste (which the Secretary determines to be radioactive) in the form of tailings resulting from the processing of ores for the extraction of uranium and other valuable constituents of the ores; and

(2) Other waste (which the Secretary determines to be radioactive) at a processing site which relate to such processing, including any residual stock of unprocessed ores or low grade materials.

(d) *Tailings* means the remaining portion of a metal-bearing ore after some or all of such metal, such as uranium, has been extracted.

4. Section 61.222 is amended by revising paragraph (b) to read as follows:

§ 61.222 Standard.

* * * * *

(b) Once a uranium mill tailings pile or impoundment ceases to be operational it must be disposed of and brought into compliance with this standard within two years of the effective date of the standard. If it is not physically possible for DOE to complete disposal within that time, EPA shall, after consultation with DOE, establish a compliance agreement which will assure that disposal will be completed as quickly as possible.

5. Section 61.223 is amended by revising paragraph (b)(5) to read as follows:

§ 61.223 Compliance procedures.

* * * * *

(b) * * *

(5) Each report shall be signed and dated by a public official in charge of the facility and contain the following declaration immediately above the signature line:

I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the

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information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See, 18 U.S.C. 1001.

* * * * *

Memorandum of Understanding Between EPA, NRC and The State of Colorado, Texas, and Washington Concerning Clean Air Act Standards for Radon Releases from Uranium Mill Tailings, Subparts T and W, 40 CFR Part 61

In accordance with section 112(d)(9) and 122(c)(2) of the Clean Air Act, as amended in 1990, and in order to minimize regulatory duplication and conserve resources in the control of radionuclide emission to air from uranium mill tailings sites licensed by the Nuclear Regulatory Commission (NRC) or its Agreement States under the Atomic Energy Act of 1954, as amended, NRC, the Environmental Protection Agency (EPA), and the States of Colorado, Texas, and Washington (the affected Agreement States) agree as follows:

General Goal of Agreement

EPA, NRC and affected Agreement States are entering into this MOU to ensure that owners and operators of existing uranium mill tailings disposal sites licensed by the NRC, or the affected Agreement States, who have ceased operations and those owners and operators that will in the future cease operation, effect emplacement of a final earthen cover to limit radon emissions to a flux of no more than 20 $pCi/m^2/s$, as expeditiously as practicable considering technological feasibility. A guiding objective is that this occur to all current disposal sites (see Attachment A) by the end of 1997, and within seven years of when the existing operating and standby sites cease operation. The final closure requirement shall be enforceable by NRC or the affected Agreement States.

NRC and Affected State Lead Actions

1. NRC or the affected Agreement States will complete review and approval of detailed reclamation (i.e., final closure) plans, including schedules for emplacement of earthen covers on non-operational tailing impoundments such that radon emissions will not exceed a flux of 20 $pCi/m^2/s$, as soon as practicable but in any event not later than September of 1993. NRC or the affected Agreement States will immediately solicit voluntary requests by uranium mill tailings disposal site licensees to amend their licenses to set forth, or incorporate by reference, the schedule for reclamation schedules will be enforceable. If any licensee fails to voluntarily have a firm reclamation schedule (consistent with this MOU) incorporated into its license, NRC or the Agreement States will impose the appropriate license amendments by order (in accordance with applicable regulatory procedures).

NRC or the affected Agreement States will ensure that the schedules and conditions for effecting final closure are flexible enough to contemplate technological feasibility and that cover emplacement on the tailings impoundments occurs as expeditiously as practicable considering both short-term reductions in radon releases and long-term stability of the uranium tailings.

2. NRC agrees to provide for public notice and comment by publishing in the **Federal Register** receipt of requests, intent to issue amendments, or intent to issue orders which (1) Incorporate reclamation plans or other schedules for effecting final closure into licenses, and (2) amend reclamation schedules as necessary for reasons of technological feasibility (including inclement weather, litigation which compels delays to emplacement, or other factors beyond control of the licensee) after the reclamation plans have been incorporated into the licenses. The affected Agreement States agree to provide comparable public notice and comment.

3. NRC will conduct enforcement actions in accordance with 10 CFR part 2, appendix C, to compel licensee adherence to reclamation schedules, except when the licensee both demonstrates that compliance was not technologically feasible and has made written application to NRC for a license amendment to reflect that concern. The affected Agreement States shall act pursuant to their authority to similarly enforce. NRC and the affected Agreement States will consider and act within a reasonable time period upon requests from EPA or other interested parties to institute a proceeding to modify, suspend, or revoke a license or other enforcement action as may be proper. NRC will consider such requests in accordance with the procedures in 10 CFR 2.206; the affected Agreement States will consider such requests in accordance with State law and existing State procedures.

EPA Lead Actions

4. In or about October 1991, EPA will develop and publish in the **Federal Register** a Notice of Proposed Rulemaking to stay existing 40 CFR part 61, subpart T pending implementation of this agreement, including the rulemaking initiatives described in paragraphs 5 and 6, below, and the license amendments described in paragraphs 1 and 2, above. Final action will be taken on or about December 15, 1991.

5. On or about December 15, 1991, EPA will develop and publish in the **Federal Register** a Notice of Proposed Rulemaking or an Advance Notice of Proposed Rulemaking, pursuant to its authority under Atomic Energy Act Section 275, to make specific amendments to 40 CFR part 192 that would require emplacement of a final earthen cover on non-operational tailing impoundments such that radon emissions will not exceed a flux of 20 $pCi/m^2/s$, as expeditiously as practicable, but with a goal that such occur no later than December 31, 1997 or seven years after the date on which the impoundment ceased operations, whichever is later. This proposal will include generic performance obligations towards closure. NRC and the affected Agreement States will assist EPA in developing the technical basis to support this rulemaking. Final action will be taken as soon as practicable.

6. On or about December 15, 1991, EPA will develop and publish in the **Federal Register** a Notice of Proposed Rulemaking, pursuant to its authority under Clean Air Act Action section 112(d)(9), to rescind its existing uranium mill tailings disposal regulations at 40 CFR part 61, subpart T. This proposal, which will occur only if the purposes and provisions of this MOU are proceeding expeditiously, requires that the Administrator find that the regulatory program implemented by NRC and the affected Agreement States will protect public health with an ample margin of safety. It is expected, subject to public notice and comment, that the basis for this finding will ultimately be provided through compliance by NRC, the affected Agreement States, and EPA with all aspects of this agreement, including finalized, enforceable reclamation plans and expeditious closure schedules for all affected facilities. Final action will be taken as soon as practicable after completion of the rulemaking described in paragraph 5 and the licensing described in paragraphs 1 and 2.

7. During or after performance of the actions described in paragraphs 1, 4, 5 and 6, EPA, NRC and the affected Agreement States will cooperate in addressing pursuant to CAA section 112 (d)(9) duplication of regulation presented by 40 CFR part 61, subpart W, which relates to radionuclide emissions from uranium mill tailings piles that are operational or in standby status.

Effective Date, Revision, and Termination

This memorandum shall be effective immediately and shall continue in effect until revised by mutual agreement, unless terminated by any party after 120 days notice in writing.

Nuclear Regulatory Commission.

Dated: October 17, 1991.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

Environmental Protection Agency.

October 18, 1991.

William G. Rosenberg,

Assistant Administrator For Air and Radiation.

State of Colorado.

Dated: October 23, 1991.

Joel Kohn,

Interim Executive Director, Department of Health.

State of Texas.

Dated: October 23, 1991.

Robert A. MacLean,

Acting Commissioner of Health.

State of Washington.

Dated: October 23, 1991.

Kristine Gebbie,

Secretary, Department of Health.

ATTACHMENT A

[Non-Operational Tailings Impoundments]

Facility	Target date [1]
ANC, Gas Hills, WY	1995
—1 impoundment operational for in-situ waste disposal	
—1 non-operational impoundment	
ARCO Coal, Bluewater, NM	1995
Atlas, Moab, UT	1996
Conoco, Conquista, TX	1998
Ford-Dawn Mining, Ford, WA	2010
—1 operational impoundment	
—3 non-operational impoundments	
Hecla Mining, Durita, CO	1997
Homestake, Milan, NM:	
(large impoundment)	1998
(small impoundment)	2001
Pathfinder-Lucky Mc, Gas Hills, WY	1998
Petrotomics, Shirley Basin, WY	1995
Quivra, Ambrosia Lake, NM	1997
—2 operational impoundments	
—1 non-operational impoundment	
Rio Algom, Lisbon, UT	1996
Sohio-L-Bar, Cebolleta, NM	1992
UMETCO, Gas Hills, WY	1995
—1 operational impoundment	
—1 non-operational impoundment	
UMETCO, Maybell, CO	1997
UMETCO, Uravan, CO	[2] 2002
UNC, Church Rock, NM	1997
Union Pacific, Bear Creek, WY	1996
WNI, Sherwood, WA	1998
WNI, Split Rock, WY	1995

[1] For completing emplacement of final earthen cover to limit radon emissions to a flux of no more than 20 $pCi/m^2/s$.

[2] CERCLA Consent Decree requires final cover over tailings by 1997 but allows small portion (roughly 1% of the impoundment) to remain open to receive residues from groundwater restoration activities.

[FR Doc. 91-30635 Filed 12-30-91; 8:45 am]

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40 CFR Part 192

[FRL-4087-4]

Health and Environmental Standards for Uranium and Thorium Mill Tailings

AGENCY: Environmental Protection Agency.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: EPA is today announcing its intention to enter into a future rulemaking pursuant to the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978 (42 U.S.C. 2022, 7901-7942) to amend its general environmental regulations pertaining to uranium mill tailings disposal sites at 40 CFR part 192, subpart D (subpart D). The anticipated amendments will supplement subpart D by requiring enforceable closure deadlines and appropriate monitoring for uranium mill tailing disposal sites that are licensed by the Nuclear Regulatory Commission (NRC) or one of its Agreement States (affected Agreement States). EPA intends to issue a proposed rule by April 30, 1992 and will at that time further delineate the scope and rationale for the amendments to subpart D, as well as solicit additional comments. Published elsewhere in today's **Federal Register** are two related rulemakings: A Notice of a Final Rule which stays the effectiveness of subpart T as it applies to nonoperational uranium mill tailings disposal sites that are licensed by the NRC or an affected Agreement State pending completion of this rulemaking, or June 30, 1994, whichever first occurs, and a Notice of Proposed Rulemaking in which EPA is proposing a rule to reacind subpart T as it applies to NRC-licensees.

DATES: Comments concerning this ANPR must be received by EPA on or before February 24, 1992. Public hearings will be held on January 15, 1992 in Washington, DC, and in Santa Fe, New Mexico on January 21 and 22, 1992.

ADDRESSES: Comments should be submitted (in duplicate if possible) to: Central Docket Section LE-131, Environmental Protection Agency, Attn: Air Docket No. A-91-67, Washington, DC 20460. Requests to participate in the hearing should be made in writing to the Director, Criteria and Standards Division, ANR-460W, Office of Radiation Programs, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Comments and requests to participate in a hearing may be faxed to EPA at (703) 308-8763.

Public hearings will be held on January 15, 1992 at 11 Dupont Circle, 8th Floor, Washington, DC 20036, and on January 21 and 22 at the Inn at Loretto, 211 Old Santa Fe Trail, Santa Fe, New Mexico 87501. Comments concerning this ANPR must be received by EPA on or before February 24, 1991.

FOR FURTHER INFORMATION CONTACT: Jamie Burnett, Air Standards and Economics Branch, Criteria and Standards Division, ANR-460W, Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460, (703) 308-8787.

SUPPLEMENTARY INFORMATION:

A. Background

1. Description of Uranium Mill Tailings Piles

Uranium mill tailings are sand-like wastes that result from the processing of uranium ore to remove the uranium. Tailings are stored in large surface impoundments, called piles, in amounts from less than 1 million tons to over 30 million tons, over an area that may be as large as hundreds of acres. The majority of the piles are located in the Western United States.

To deal specifically with the risks associated with these piles, Congress passed the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978 (42 U.S.C. 2022, 7901-7942). In enacting UMTRCA, Congress found that uranium mill tailings" * * * may pose a potential and significant radiation health hazard to the public, * * * and * * * that every reasonable effort be made to provide for the stabilization, disposal, and control in a safe and environmentally sound manner of such tailings in order to prevent or minimize radon diffusion into the environment and to prevent or minimize other environmental hazards from such tailings." 42 U.S.C. 7901(a). Under UMTRCA, two programs were established to protect public health and the environment from the hazards associated with uranium mill tailings. One program (title I) required the Department of Energy (DOE) to conduct the necessary remedial actions at designated inactive uranium mill tailing sites to achieve compliance with the general environmental standards to be promulgated by EPA. These sites were generally abandoned uranium processing sites for which a license issued by the NRC or its predecessor, the Atomic Energy Commission (AEC), was not in effect on January 1, 1978.

The other program (title II) was for active sites: Those licensed by the NRC or an affected Agreement State. Requirements for licensed sites include the final disposal of tailings, including the control of radon after milling operations cease. UMTRCA also requires that EPA promulgate standards for these licensed sites, including standards that protect human health and the environment in a manner consistent with standards established under subtitle C of the Solid Waste Disposal Act, as amended. The NRC, or the licensing Agreement State, is responsible for assuring compliance with EPA standards at licensed uranium milling sites.

2. UMTRCA Rulemaking—EPA

UMTRCA required that EPA promulgate standards for title I sites within one year of enactment (1978) and for title II sites within 18 months of enactment. UMTRCA was amended in January 1983 (Pub. L. 97-415) to include a provision to strip EPA of standard setting authority if EPA failed to establish standards by September 30, 1983 for title II sites.

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On April 22, 1980 EPA proposed cleanup standards for inactive uranium processing sites (to be codified at 40 CFR part 192, subpart A), which were made immediately effective as interim standards pending public review and promulgation of final standards (45 FR 27370). These standards were for the cleanup of open lands and buildings contaminated with residual radioactive materials from inactive uranium processing sites. On January 9, 1981 EPA proposed (40 CFR 192, subpart B) disposal standards for inactive uranium processing sites (46 FR 2556). On January 5, 1983 EPA promulgated final rules for the disposal and cleanup of the inactive uranium mill tailings sites under UMTRCA Title I (48 FR 605).

On April 29, 1983 EPA proposed general environmental standards for title II uranium and thorium mill tailings sites. 48 FR 19584. These rules were promulgated on September 30, 1983. 48 FR 45925 (codified at 40 CFR part 192, subparts D and E).

Both the UMTRCA title I and title II standards were challenged in the Tenth Circuit Court of Appeals by several parties (Case Nos. 83–1014, 83–1041, 83–1206, and 83–1300) (Case Nos. 83–2226, 83–2227, 83–2277, 83–2504, 83–2524, 84–1349, 84–1352, 84–1482, and 84–1909). On September 3, 1985, the court upheld all aspects of EPA's standards except the ground water provisions of the title I regulations at 40 CFR 192.20(a)(2)–(3). *American Mining Congress* v. *Thomas*, 772 F.2d 617 (10th Cir. 1985), *cert. denied* 426 U.S. 1158 (1986). On September 24, 1987, EPA proposed new regulations to replace those set aside (40 CFR 192, subpart C, 52 FR 36000). The final rulemaking action is currently under review by the Office of Management and Budget.

As of this date, only two sorts of radon emissions are not governed by EPA's general environmental standards under UMTRCA: (1) Radon emissions during uranium mill operations, and (2) radon emissions after operations but prior to completion of final earthen cover. However, these two areas are addressed by EPA's Clean Air Act rules, as discussed below.

3. UMTRCA Rulemaking—NRC

On August 24, 1979, NRC proposed rules under UMTRCA title II for criteria relating to uranium mill tailings and construction of major plants to 10 CFR 30, 40, 70, 150, and 170 (44 FR 50015). Also on August 24, 1979, NRC promulgated final regulations with request for public comment for uranium mill tailings licensing at 10 CFR 40, appendix A. 44 FR 50012. On October 3, 1980, NRC promulgated final rules to specify licensing requirements for uranium and thorium milling activities. 45 FR 65521 (codified at 10 CFR parts 30, 40, 70, and 150).

As required by Congress, on May 28, 1983, NRC proposed to suspend portions of their 10 CFR part 40, appendix A (appendix A) rules as they would be affected by EPA's recently proposed general UMTRCA standards for uranium mill tailings disposal. 48 FR 23649 (to be codified at 40 CFR part 192, subpart D, 48 CFR 35350). NRC placed in abeyance its 10 CFR part 40 regulations since they could have a significant cost impact on its licensees if NRC regulations were implemented before modification to conform to EPA standards, as required by the 1983 Amendments to UMTRCA (Pub. L. 97–415).

On November 26, 1984, NRC proposed rules at 10 CFR Part 40 that would conform NRC requirements to EPA standards for uranium mill tailings piles (49 FR 46418). Since these proposed rules excluded EPA ground water protection requirements, NRC also issued an ANPR on November 26, 1984 announcing their intention to incorporate ground water protection provisions and other requirements established by EPA (40 CFR part 192, subpart D) for similar wastes into NRC regulations (49 FR 46425). On October 1, 1985, NRC promulgated rules to conform their appendix A regulations to the provisions of EPA's general UMTRCA standards at 40 CFR part 192, as affecting matters other than ground water protection (50 FR 41852). On July 8, 1986, NRC proposed rules for ground water protection and other issues at uranium mill tailings sites (10 CFR part 40, 51 FR 2497). On November 13, 1987, NRC promulgated final rules for ground water protection at uranium mill tailings sites that conformed to provisions of EPA's standards for ground water protection at 40 CFR part 192, subparts D and E (52 FR 43553).

4. Clean Air Act Rulemaking

EPA listed radionuclides as a hazardous air pollutant under section 112 of the CAA on December 27, 1979 (44 FR 76738). Once listed, radionuclides became subject to the requirements of section 112(b)(1)(B) that EPA establish National Emission Standards for Hazardous Air Pollutants (NESHAPs) "at a level which (in the judgment of the Administrator) provides an ample margin of safety to protect the public health from such hazardous air pollutant," or find that they are not hazardous and delist them.

EPA promulgated NESHAPs for emissions of radionuclides on October 31, 1989 for the following source categories: DOE Facilities, Licensees of the NRC and Non-DOE Federal Facilities, Uranium Fuel Cycle Facilities, Elemental Phosphorus Plants, Phosphogypsum Stacks, Underground Uranium Mines, and the operation and disposal of Uranium Mill Tailings Piles. These NESHAPs were published on December 15, 1989. (54 FR 51654).

The NESHAP for the disposal of uranium mill tailings is codified at 40 CFR part 61, subpart T, and it applies to both sites operated by DOE (UMTRCA title I) and sites licensed by NRC and Agreement States (UMTRCA title II). The standard has three primary requirements. First, it imposes an emission limit of 20 pCi/m²-s to radon-222 emissions from a disposed pile. Second, it requires that, once a uranium mill tailings pile or impoundment ceases to be operational, it must be disposed of and brought into compliance with this emission limit within two years of the effective date of the standard (by December 15, 1991) or within two years of the day it ceases to be operational, whichever is later. If it is not physically possible for a mill owner or operator to complete disposal within that time, EPA shall, after consultation with the mill owner or operator, establish a compliance agreement pursuant to EPA's enforcement authority under CAA section 113 to assure that disposal will be completed as quickly as possible. Third, it requires monitoring of the disposed pile to demonstrate compliance with the radon emission limit.

The two year disposal requirement and the radon monitoring requirement are unique to Subpart T as they are not a part of the requirements of the UMTRCA, AEA, or the Clean Water Act (CWA) standards (contained at 40 CFR parts 190, 192, and 440). The numerical radon emission limit, however, is the same as the UMTRCA standard at 40 CFR part 192, subpart D (subpart D).

B. Challenge to Subpart T

The overlap between EPA's Subpart D of the UMTRCA standard and its subpart T of the CAA NESHAP has generated concern that the regulations are unnecessarily burdensome and duplicative. As a result, several petitions for reconsideration have been filed, most notably from NRC and the American Mining Congress (AMC). While these petitions remain pending before EPA, this ANPR is part of EPA's effort to address the issues they raise. Another part of the effort has been a number of meetings between EPA, NRC and affected Agreement States to discuss the dual regulatory programs.

The result of this intensive inter-agency consultation has been the execution of a Memorandum of Understanding (MOU) between EPA, NRC and the affected Agreement States. The MOU was published on October 25, 1991 at 56 FR 55434. The purpose of the MOU is to ensure that owners and operators of existing uranium mill tailings piles licensed by NRC or an affected Agreement State, or owners and operators of piles that will in the future become non-operational, effect final site closure—emplacement of an earthen cover to permanently limit radon emissions to a flux of no more than 20 pCi/m²-s—as expeditiously as practicable considering technological feasibility. This should occur at all current disposal sites by the end of 1997, or within seven years of when the existing operating and standby sites enter disposal status. This objective comports with Congress' concern over timing as reflected in CAA section 112(i)(3), as amended.

EPA has tentatively concluded that with appropriate modifications to the general UMTRCA regulations to ensure specific, enforceable closure deadlines and monitoring requirements, and with the performance by NRC and the affected Agreement States of their other commitments contained in the MOU, the NRC's regulatory program for non-operational uranium mill tailings piles would protect public health with an ample margin of safety.

In a related action published elsewhere in today's FR, and also in accordance with the MOU and with this amendment to UMTRCA 40 CFR part 192, EPA is today also proposing to rescind its Subpart T CAA NESHAP as it applies to non-operational uranium mill tailings disposal sites that are licensed by NRC or an affected Agreement State. This proposal does not concern Subpart T sites that are under the control of the Department of Energy (DOE). These sites are proceeding to closure according to a separate schedule.

In another related action also published elsewhere in today's **Federal Register**, EPA is issuing a final stay of subpart T pending the rescission rulemaking. The stay was proposed on October 25, 1991 (56 FR 55432). All three actions—this ANPR to modify EPA's general subpart D UMTRCA regulations, the proposal to rescind the subpart T NESHAP, and the final stay of subpart T pending these rulemakings—are contemplated by the MOU recently entered into by EPA, NRC, and the affected Agreement States. The MOU, which is published at the end of the proposed rescission of subpart T (as it was for the proposed stay (see 56 FR at 55434)), delineates a course of action designed to achieve the result that the regulatory programs administered by NRC and its affected Agreement States will control radionuclide emissions to ambient air so that public health is protected with an ample margin of safety.

C. Future Rulemaking to Amend 40 CFR Part 192, Subpart D

As envisioned by the MOU and announced by this ANPR, the modifications EPA intends to make through rulemaking to its general UMTRCA regulations for non-operational uranium mill tailings disposal sites at 40 CFR Part 192, (subpart D) are meant to fill a specific regulatory gap that currently exists in subpart D. While subpart D, as currently written, does require eventual compliance with the 20 pCi/m²-s flux standard, it does not mandate that such occur by a specific date. Rather, as promulgated by EPA under subpart D and implemented by NRC (pursuant to its regulations at 10 CFR part 40, appendix A), a title II site licensed by NRC, or an affected Agreement State, could indefinitely continue to emit radon at levels which present risks higher than those allowed under the CAA for emission of hazardous air pollutants. It was this possibility which compelled EPA to promulgate subpart T under CAA section 112. If, however, this gap is filled by appropriate revisions to subpart D to mandate compliance with the 20 pCi/m²-s flux standard in a timely manner, and these changes are implemented by NRC and its regulatory program, EPA may then have the basis for rescinding subpart T pursuant to CAA section 112(d)(9), thereby avoiding unnecessarily duplicative and burdensome regulation.

With these purposes in mind, the specific modifications to subpart D currently being contemplated by EPA would lead to each non-operational uranium mill tailings disposal site receiving (either voluntarily or by administrative order) an amended license from NRC or an affected Agreement State that incorporates an enforceable reclamation plan designed to ensure compliance with the 20 pCi/m²-s flux standard as expeditiously as practicable considering technological feasibility. EPA also intends to propose modifications to include appropriate monitoring provisions designed to verify that the flux standard is achieved and ensure that compliance will be ongoing.

Once these anticipated proposals are promulgated by EPA and implemented by NRC, subpart D should comprehensively address the hazards associated with the process of disposing of uranium mill tailings in a manner that adequately protects public health. EPA believes since it has the authority for the anticipated modifications to subpart D, these actions are consistent with what Congress envisioned when it enacted UMTRCA. EPA's current plan is to propose modifications of subpart D at 40 CFR 192.31(k), 192.31(l), and 192.32(a). These actions also fulfill the intent of Congress of section 112(d)(9) of the Clean Air Act, as amended in 1990, to avoid duplication of effort between government agencies.

D. Request for Comments

EPA is soliciting public comments on today's advanced notice of proposed rulemaking. Send comments to the Docket listed above on or before February 22, 1992. EPA is especially interested in receiving information related to current radon emissions and installed radon emission control methods currently in use, and what generally applicable timing requirements EPA should impose to achieve compliance as expeditiously as practicable considering technological feasibility.

List of Subjects in 40 CFR Part 192

Air pollution control, Radiation protection, Hazardous materials, Uranium, Environmental protection, Hazardous constituents, Groundwater protection, Radon, Radium, and Thorium.

Dated: December 19, 1991.

William K. Reilly,

Administrator.

[FR Doc. 91–30834 Filed 12–30–91; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 911221–1321]

RIN 0648–AE25

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues this proposed rule to implement Amendment 4 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). This proposed rule would: (1)

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Add almaco jack and banded rudderfish to the management unit; (2) specify that scamp would be counted against the shallow-water grouper quota until that quota is reached, after which scamp would be counted against the deep-water grouper quota; (3) establish a moratorium for a maximum of 3 years on additional commercial permits in the fishery, with allowances for permit transfers and sales of permitted vessels, while a more comprehensive limited access system is developed; (4) commencing with commercial permits for 1993, allow the earned income requirement to be met in either of the 2 years preceding the permit application; (5) revise the definitions of "Charter vessel" and "Headboat"; (6) clarify what constitutes having trawl gear or a longline on board a fishing vessel; and (7) make other minor changes for consistency and clarity. In addition, Amendment 4 would modify the timing and requirements of the framework procedure for implementing or changing certain management measures. The intended effects of Amendment 4 and this rule are to protect the reef fish stocks, some species of which are overfished, to ensure the continued economic viability of the reef fish fishery, to provide the Gulf of Mexico Fishery Management Council (Council) with necessary flexibility in the rebuilding program for reef fish, and to conform the regulations with current usage.

DATES: Written comments must be received on or before February 10, 1992.

ADDRESSES: Comments on the proposed rule should be sent to Robert A. Sadler, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Requests for copies of Amendment 4, which includes a regulatory impact review/environmental assessment (RIR/EA), and the minority report, should be sent to the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813-893-3722.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP, prepared by the Council, and its implementing regulations at 50 CFR part 641, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.*

Amendment 4 to the FMP would: (1) Modify the framework procedure for establishing or modifying certain management measures to provide for receipt of NMFS stock and socioeconomic assessments prior to August each year, and to require the Regional Director to notify the Council within 15 days of receipt of the Council's proposal under the framework procedure, if he decides not to accept it; (2) add almaco jack and banded rudderfish to the reef fish management unit; (3) retain scamp in the shallow-water grouper category until the quota is met and the shallow-water grouper fishery is closed, after which, scamp landings would be counted under the deep-water grouper quota for the remainder of the fishing year; (4) establish a moratorium, for a maximum of 3 years, on the acceptance of new applications for commercial vessel permits, with allowances for certain permit transfers and sales of permitted vessels (and retirement of permits not renewed); and (5) commencing with commercial permits for 1993, allow the earned income requirement to be met in either of the 2 years preceding the permit application.

A minority report was submitted on Amendment 4 that objects to the 3-year moratorium on the issuance of commercial vessel permits and development of a more comprehensive limited access system. A response to that minority report will be included in the preamble to the final rule on Amendment 4. The availability of Amendment 4 and the minority report was announced in the **Federal Register** on November 26, 1991 (56 FR 59922).

Changes to the Framework Procedure

The current framework procedure for implementing or modifying certain management measures provides for receipt by the Council from NMFS of stock and socioeconomic assessment information in April of each year. Landings data for the previous fishing year, which form a significant component of the assessment information, are typically not available by April. Consequently, data approximately 2 years old must be relied upon for adjusting management measures. Amendment 4 proposes that stock and socioeconomic assessments be provided prior to August, thus allowing the assessments to include more timely landings data.

Amendment 4 proposes to require the Regional Director, Southeast Region, NMFS (Regional Director), to notify the Council within 15 days of receipt of the Council's recommended changes under the framework procedure when he decides not to publish as a proposed rule, or otherwise holds in abeyance, the recommended changes. Notification to the Council would include the reasons for NMFS's concerns, suggested changes to the proposed management measures, and the Regional Director's intended action. The notification would specify: (1) The applicable law with which the recommended changes are inconsistent; (2) the nature of such inconsistencies; and (3) recommendations to conform the recommended changes with applicable law. This action would ensure timely additional guidance to the Council regarding framework adjustments that the Regional Director initially determines to be inconsistent with applicable law. This requirement is similar to that required by the Magnuson Act for disapproval of amendments to a fishery management plan.

It is expected that these changes to the framework procedures would provide a more stable condition for Council determinations on specific management issues and may reduce management costs.

Additions to the Management Unit

The addition of almaco jack and banded rudderfish to the management unit would have little or no immediate impact on the fishery or impact on the resource, but will allow management measures to be implemented on these species by framework procedure, if required, when stock assessment information becomes available. The anticipated impacts of such future action would be analyzed and discussed at that time.

Scamp

Amendment 4 proposes to allow scamp to be harvested throughout the year until both the shallow-water grouper and deep-water grouper quotas are met. Scamp would be counted under the shallow-water grouper quota until that quota is reached and, thereafter, under the deep-water grouper quota. Scamp are currently classified as a shallow-water species of grouper but are caught in both shallow-water and deep-water fishing operations. When the shallow-water grouper fishery is closed, the continued catch of scamp in deep-water fishing operations results in waste of the resource because they are usually dead from embolism when brought up from deeper water. The proposed action will reduce such waste. Because scamp are an incidental, minor component of the grouper fishery that cannot be targeted, it is not likely that catches will significantly affect the timing of a closure of either component of the grouper fishery or that an illegal shallow-water fishery for scamp will develop after closure of the shallow-water grouper fishery.

Permit Moratorium

Amendment 4 proposes to cap the number of participants in the commercial reef fish fishery for a maximum of 3 years, pending Council development and consideration of a more comprehensive limited access program. The reef fish fishery has over 1,700 permitted vessels competing for a limited reef fish population. The gear used is not highly selective, and single-species fishery closures are hampered by the multi-species nature of the catch. Accordingly, several of the major species, already overfished, have continued to decline in abundance despite the comprehensive management regime. The fishing capacity in the fishery is considered to be excessive compared to the available resource. The proposed moratorium is a first step towards solving these problems by stabilizing fishing effort.

The moratorium would be effective on the effective date of the final rule that implements Amendment 4. Thereafter, with two exceptions, no applications for new vessel permits would be accepted, and a permit holder would have to maintain permit eligibility, i.e., demonstrate that more than 50 percent of his or her earned income was derived from commercial, charter, or headboat fishing, in order to renew a permit. A permit that is not renewed, or is revoked, would not be reissued. During the moratorium, only those vessels that were permitted in 1991, or vessels for which the applicant qualifies on the basis of earned income in 1991 and applies before the effective date of the moratorium, would be permitted in the fishery. Two exceptions to the moratorium on new permits, in cases of vessel transference, are described below.

As one exception, an owner would be allowed to substitute another vessel owned by him for one currently permitted. Such substitution would alleviate problems caused by loss of vessels through sinking or permanent structural damage.

As the second exception, a permitted vessel would be entitled to a permit upon its sale. Transfer of a permit upon sale would alleviate possible reduction of a vessel's value to a potential buyer who does not meet the earned income requirement. If the purchaser does not meet the earned income requirement for the vessel permit, he or she would have to meet that requirement during a calendar year not later than the first calendar year after the purchase. This temporary exemption from the earned income requirement could not be used by a purchaser when the seller has not met the earned income requirement. Limiting the temporary exemption from the earned income requirement would prevent speculative gains by a person who has no intention of entering the fishery.

The proposed moratorium is expected to enhance stability while both the fishing industry and the management agencies collect the necessary information for a more comprehensive limited access system for the fishery. Stability in the fishery, the collection of necessary information, and, ultimately, a comprehensive limited access system are expected to result in positive benefits.

Earned Income Requirement

Under the current earned income requirement for a vessel permit, an applicant must demonstrate that more than 50 percent of his or her earned income was derived from commercial, charter, or headboat fishing during the calendar year preceding the application. The current income requirement has no hardship allowance, i.e., it does not recognize that sickness of the owner/operator, prolonged vessel repairs, or other temporary problems could preclude a person from meeting the income requirement for a single year. To address this problem, Amendment 4 proposes that, commencing with vessel permits for 1993, the earned income requirement may be met during either of the 2 years preceding the permit renewal. Implementation of this change is expected to have a positive economic impact on participants in the fishery.

Additional information on these proposed changes is contained in Amendment 4.

Additional Changes Proposed by NMFS

This rule would modify the definitions of "Charter vessel" and "Headboat" to conform them to current usage, and would correct inconsistent language regarding when the bag limits apply to charter vessels and headboats.

Among other things, the reef fish regulations specify that the bag and possession limits for certain reef fish apply to a person who fishes from a vessel: (1) With trawl gear on board; or (2) with a longline on board, when such vessel is fishing or has fished on its present trip in the specified longline restricted area (50 CFR 641.24(a)(2) (ii) and (iii)). This rule would add specifications of what constitutes having trawl gear or a longline on board a fishing vessel. Removal of all trawl doors or nets would constitute removal of trawl gear. Removal of the longline hauler, the longline cable, or all gangions would constitute removal of a longline. NMFS expects that removal from a vessel of all gangions would be the least cumbersome and most frequently used means to remove a longline. NMFS believes the specified gear removals are the least burdensome of the practicable methods of rendering a trawl or a longline inoperable. Other methods could be readily changed while at sea and, thus, would pose significant difficulties for enforcement.

Finally, a new section would be added to describe the types of management measures that could be established or modified by means of the framework procedure specified in the FMP, as amended. The procedure, with Amendment 4's proposed changes, is summarized below to provide the public appropriate information.

The framework procedure for establishing an annual total allowable catch (TAC) and adjusting management measures provides for the Southeast Science and Research Director, NMFS, to prepare or update the stock assessment for each species or stock complex annually. The Council is required to appoint a scientific stock assessment panel to review the information and prepare a report specifying a range of acceptable biological catch (ABC) for each stock or stock complex in need of catch restrictions for attaining or maintaining optimum yield. The panel should include in the report a risk analysis, economic and social impacts, and recommendations for management measures to attain the ABC. The Council, after holding a public hearing(s) and reviewing comments on the report, is required to specify a TAC from within or below the range of ABC or a series of TACs to attain the selected level of ABC by 1994.

The Council must subdivide the TACs into commercial and recreational allocations. The Council then provides the Regional Director its recommendations for TACs for each species or species group, proposed regulations revising quotas and management measures necessary to attain each TAC, the Council's rationale, and analyses of impacts (EA and RIR) of the proposed regulations. A proposed rule containing the recommended TACs, quotas, and harvest restrictions is published in the **Federal Register** for public comment up to 30 days. If the Regional Director does not agree with the recommendation, the Regional Director must notify the Council, within 15 days, of his reasons for disagreement and recommendations for conforming the Council's proposed measures with the requirements of applicable law. If

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the Regional Director concludes after review of public comment that the proposed regulations are consistent with the FMP objectives and other applicable law, he implements them by final rule published in the **Federal Register**. The FMP, as amended, may be consulted for additional detail on this procedure. The framework procedure was instituted by Amendment 1, modified by Amendment 3, and would be further modified by Amendment 4. The types of management measures that may be established or modified by this procedure are set forth in § 641.28 of this proposed rulemaking.

Classification

At this time, the Secretary has not determined that Amendment 4, which this proposed rule would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Assistant Administrator for Fisheries, NOAA, has initially determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a regulatory impact review (RIR) as part of Amendment 4, which concludes that this rule, if adopted, would have net positive benefits. A summary of the regulatory impacts of individual management measures was included above in the discussion of each measure. Additional analysis and discussion is contained in the RIR.

In addition, the RIR concludes that this rule, if adopted, would not have a significant economic impact on a substantial number of participants in the reef fish fishery, most of whom are small business entities. Accordingly, the General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis was not prepared.

The Council prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. The EA, which is contained in Amendment 4, may be obtained at the address listed above, and comments on it are requested.

The Council has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, and Mississippi. Texas does not participate in the coastal zone management program. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 24, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 641 is proposed to be amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 641.2, the definitions for *Charter vessel* and *Headboat* are revised, and in the definition for *Reef fish*, in paragraph (a) under "Jacks—Carangidae Family", two new species are added after "Lesser amberjack" to read as follows:

§ 641.2 Definitions.

* * * * *

Charter vessel means a vessel less than 100 gross tons (90.8 metric tons) that meets the requirements of the Coast Guard to carry six or fewer passengers for hire and that carries a passenger for hire at any time during the calendar year. A charter vessel with a permit issued under § 641.4 is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

* * * * *

Headboat means a vessel that holds a valid Certificate of Inspection issued by the Coast Guard to carry passengers for hire. A headboat with a permit issued under § 641.4 is considered to be operating as a headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

* * * * *

Reef fish * * *

(a) * * *

Jacks—Carangidae Family

* * * * *

Almaco jack, *Seriola rivoliana*

Banded rudderfish, *Seriola zonata*

* * * * *

3. In § 641.4, paragraphs (a)(2), (b)(2)(xi), and the first sentence of paragraph (g) are revised, and a new paragraph (l) is added to read as follows:

§ 641.4 Permits and fees.

(a) * * *

(2) A qualifying owner or operator of a charter vessel or headboat may obtain a permit. However, a charter vessel or headboat must adhere to the bag limits when operating as a charter vessel or headboat.

* * * * *

(b) * * *

(2) * * *

(xi) A sworn statement by the applicant certifying that more than 50 percent of his or her earned income was derived from commercial, charter, or headboat fishing during the calendar year preceding the application, except that, for renewal of permits for 1993 and ensuing years, the earned income requirement may be met in either of the two calendar years preceding the application;

* * * * *

(g) *Transfer.* Except as provided for under paragraph (l) of this section, a permit issued under this section is not transferable or assignable. * * *

* * * * *

(l) *Moratorium on permits.* The provisions of this paragraph (l) are effective for 3 years commencing on the effective date of this rule.

(1) An application for a vessel permit under this section that is postmarked or hand-delivered after the effective date of this rule will not be accepted, except for an application for renewal of an existing vessel permit or as provided in paragraphs (l), (2) and (3) of this section.

(2) An owner of a permitted vessel may transfer the vessel permit to another vessel owned by him or her by returning the existing permit with an application for a vessel permit for the replacement vessel.

(3) A person purchasing a vessel with a permit issued under this section may obtain a permit for that vessel, and renew the permit for that vessel for the first calendar year after the purchase, without meeting the earned income requirement of paragraph (b)(2)(xi) of this section, provided that the seller met the earned income requirement. However, to renew the vessel permit for the second calendar year after the purchase, the new owner must meet that earned income requirement not later than the first calendar year after the purchase takes place.

(4) A permit that is not renewed or is revoked will not be reissued.

4. In § 641.24, paragraph (a)(2)(iv) is revised and new paragraphs (a)(4) and (a)(5) are added to read as follows:

§ 641.24 Bag and possession limits.

(a) * * *

(2) * * *

(iv) That is operating as a charter vessel or headboat; or

* * * * *

(4) For the purpose of paragraph (a)(2)(ii) of this section, a vessel is considered to have trawl gear on board when trawl doors and a net are on board. Removal from the vessel of all trawl doors or all nets constitutes removal of trawl gear.

(5) For the purpose of paragraph (a)(2)(iii) of this section, a vessel is considered to have a longline on board when a power-operated longline hauler, a cable of diameter and length suitable for use in the longline fishery, and gangions are on board. Removal of any one of these three elements, in its entirety, constitutes removal of a longline.

* * * * *

5. In § 641.25, paragraphs (b) and (c) are revised to read as follows:

§ 641.25 Commercial quotas.

* * * * *

(b) Deep-water groupers, i.e., yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, speckled hind, and, after the commercial quota for shallow-water grouper is reached, scamp, combined—1.8 million pounds.

(c) Shallow-water groupers, i.e., all other groupers, including scamp before the commercial quota for shallow-water groupers is reached, but excluding jewfish, combined—9.2 million pounds.

* * * * *

§ 641.28 [Redesignated as § 641.29]

6. Section 641.28 is redesignated as § 641.29 and a new § 641.28 is added to read as follows:

§ 641.28 Adjustment of Management Measures.

In accordance with the procedures and limitations of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico, the Regional Director may establish or modify for species or species groups in the reef fish fishery the following: Target dates for rebuilding overfished species, total allowable catch, bag limits, size limits, vessel trip limits, closed seasons or areas, gear restrictions, and quotas.

[FR Doc. 91-31181 Filed 12-26-91; 9:46 am]
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Notices

Federal Register
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Tuesday, December 31, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Compliance With Privacy Act of 1974

AGENCY: ACTION.

ACTION: Notice of systems of records.

SUMMARY: Notice is hereby given that in accordance with the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), ("the Act"), ACTION proposes to publish a new notice of systems of records as set forth below.

Special note should be taken of the Preliminary Statement to the systems of records containing an indication of general routine uses, general regulations as to notification, access and contest, and other material applicable to ACTION record systems generally. The Agency desires to avoid unnecessary repetition and duplication in the publication of each system of records which might make it difficult for the public to review and locate a system in which a record might be available. The publication of general routine uses and exemptions does not serve as an indication that each system will be normally used or usable for such purposes or subject to such exemptions, but that the use of any system for such routine use shall be permitted upon request of a designated routine user.

This notice does not include specific identification of certain Office of Personnel Management (OPM) systems of records in the custody of the Agency because OPM has assumed responsibility for publishing government-wide notices. OPM's systems of records pertain primarily to Federal employee personnel records.

EFFECTIVE DATE: January 30, 1992.

ADDRESS: Comments may be mailed or delivered to the Director, Administrative and Management Services Division, ACTION, 1100 Vermont Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Edward F. Carey, Privacy Act Officer, 202–606–5242 or Stewart Davis, Deputy General Counsel, 202–606–4833. Copies of these Systems may be obtained in an alternate format: TDD, 202–606–5256 or Management Services Branch, ACTION, 1100 Vermont Avenue, NW., Washington, DC 20525.

SUPPLEMENTARY INFORMATION: Peace Corps was an autonomous part of the ACTION agency, and was covered by ACTION's Privacy Act regulations (45 CFR part 1224). This notice being published by ACTION officially excludes Peace Corps from its systems of records because it is now an independent agency.

Dated in Washington, DC on December 19, 1991.

Jane A. Kenny

Director, ACTION.

The Agency proposes to publish the following notice of systems of records:

Notice of Systems of Records—Preliminary Statement

The term *Agency* when used in this notice refers to ACTION.

Operating Units—The names of the operating units within the Agency to which a particular system or records pertains are listed under the system manager and address section of each system notice.

Official Personnel Files—Official personnel files of Federal employees in the General Schedule in the custody of the Agency are considered the property of the Office of Personnel Management. Access to such files shall be in accordance with such notices published by OPM. Access to such files in the custody of the Agency will be granted to individuals to whom such files pertain upon request to the Director, Personnel Management Division, ACTION, 1100 Vermont Avenue, NW., Washington, DC 20525.

Various offices in the Agency maintain files which contain copies of miscellaneous personnel material affecting ACTION employees. These include copies of standard personnel forms, evaluation forms, etc. These files are kept only for immediate office reference and are considered by the Agency to be part of the personnel file system. The Agency's internal regulations provide that such information is a part of the general personnel files and can be disclosed only through the Director, ACTION Personnel Management Division, in order that he or she may insure that any material to be disclosed is relevant, current, and fair to the individual employee. Also, it is the policy of the Agency to limit the use of such files and to encourage the destruction of as many as possible.

Statement of General Routine Uses—The following general routine uses are incorporated by this reference into each system of records set forth herein, unless specifically limited in the system description.

1. In the event that a record in a system of records maintained by the Agency, indicates, either by itself or in combination with other information in the Agency's possession, a violation or potential violation of the law (whether civil, criminal, or regulatory in nature, and whether arising by statute or by regulation, rule or order issued pursuant thereto), that record may be referred, as a routine use, to the appropriate agency, whether Federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto. Such referral shall include, and be deemed to authorize (1) any and all appropriate and necessary uses of such records in a court of law or before an administrative board or hearing, and (2) such other interagency referrals as may be necessary to carry out the receiving agencies' assigned law enforcement duties.

2. A record may be disclosed as a routine use to designated officers and employees of other agencies and departments of the Federal government having an interest in the individual for employment purposes including the hiring or retention of any employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter involved, provided, however, that other than information furnished for the issuance of authorized security clearances, information divulged hereunder as to full-time volunteers under Title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951) shall be limited to the provision of dates of service and a standard description of service as heretofore provided by the Agency.

3. A record may be disclosed as a routine use in the course of presenting evidence to a court, magistrate or administrative tribunal of appropriate jurisdiction and such disclosure shall include disclosures to opposing counsel in the course of settlement negotiations.

4. A record may be disclosed as a routine use to a member of Congress submitting a request involving an individual who is a constituent of such member who has requested assistance from the member with respect to the subject matter of the record.

5. Information from certain systems of records, especially those relating to applicants for Federal employment or volunteer service, may be disclosed as a routine use to designated officers and employees of other agencies of the Federal government for the purpose of obtaining information as to suitability qualifications and loyalty to the United States Government.

6. Information from records systems may be disclosed to any source from which information is requested in the course of an investigation to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

7. Information in any system may be used as a data source, for management information, for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies. Information may also be disclosed to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

8. A record from any system of records may be disclosed as a routine use of the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

9. A record may be disclosed to a Federal or state grand jury agent pursuant to a Federal or state grand jury subpoena or prosecution request that such record be released for the purpose of its introduction to a grand jury.

10. A record may be referred to suspension/debarment authorities, internal to the Agency, when the record released is germane to a determination of the propriety of, or necessity for, a suspension or debarment action.

11. A record may be disclosed to a contractor, grantee or other recipient of Federal funds when the record to be released reflects serious inadequacies with the recipient's personnel, and disclosure of the record is for the purpose of permitting the recipient to effect corrective action in the Government's best interests.

12. A record may be disclosed to a contractor, grantee or other recipient of Federal funds when the recipient has incurred an indebtedness to the Government through its receipt of Government funds, and release of the record is for the purpose of allowing the debtor to effect a collection against a third party.

Location of Regional Offices—The Agency maintains nine (9) Regional Offices with State Offices under their jurisdiction. The Regional Offices, their addresses, and the States within their respective jurisdictions are listed below. In the event of any doubt as to whether a record is maintained in a Regional Office, a query should be directed to the Director, Administrative and Management Services Division, ACTION, 1100 Vermont Avenue, NW., Washington, DC 20525, who shall furnish all assistance necessary to locate a specified record.

Region I, 10 Causeway Street, room 473, Boston, MA 02222 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont).

Region II, 6 World Trade Center, room 756, New York, NY 10048 (New Jersey, New York, Puerto Rico, and the Virgin Islands).

Region III, U.S. Customs House, 2nd and Chestnut Streets, room 108, Philadelphia, PA 19106 (Delaware, District of Columbia, Kentucky, Maryland, Ohio, Pennsylvania, Virginia, and West Virginia).

Region IV, 101 Marietta Street, NW., room 1003, Atlanta, GA 30323 (Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee).

Region V, 175 West Jackson Boulevard, room 1207, Chicago, IL 60604 (Illinois, Indiana, Iowa, Michigan, Minnesota, and Wisconsin).

Region VI, 1100 Commerce Street, room 6B11, Dallas, TX 75242 (Arkansas, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, and Texas).

Region VIII, Executive Tower Building, room 2930, 1405 Curtis Street, Denver, CO 80202 (Colorado, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming).

Region IX, 211 Main Street, room 530, San Francisco, CA 94105 (American Samoa, Arizona, California, Guam, Hawaii, and Nevada).

Region X, Jackson Federal Building, 915 Second Ave., suite 3190, Seattle, WA 98174 (Alaska, Idaho, Oregon, and Washington).

Notification—Individuals may inquire whether any system contains information pertaining to them by addressing the System Manager in writing. Such request should include the name and address of the individual, his or her social security number, and any relevant data concerning the information sought, and, where possible, the place of assignment or employment, etc. In case of any doubt as to which system contains a record, interested individuals should contact the Director, Administrative and Management Services Division, ACTION, 1100 Vermont Avenue, NW., Washington, DC 20525, who has overall supervision of records systems and who will provide assistance in locating and/or identifying appropriate systems.

Access and Contest—In response to a written request by an individual, the appropriate System Manager arranges for access to the requested record or advises the requester if no record exists. If an individual wishes to contest the content of any record, he or she may do so by addressing a written request to the Director, Administrative and Management Services Division, ACTION, 1100 Vermont Avenue, NW., Washington, DC 20525. The Director shall provide all necessary information regarding such contest and appeal.

Alphabetical Listing of Systems of Records

Accounts Payable File—ACTION–1
Accounts Receivable and Advances File—ACTION–2
ACTION Domestic Full-Time Volunteer Census Master File—ACTION–3
ACTION Domestic Full-Time Volunteer Personnel File—ACTION–4
ACTION Employee and Applicant Records File—ACTION–5
ACTION Employees/Volunteers Occupational Injury/Illness Reports and Claims File—ACTION–6
ACTION Travel Files—ACTION–7
Conflict of Interest Records File—ACTION–8
Counselors' Report Files—ACTION–9
Discrimination Complaint Files—ACTION–10
Employee Pay and Leave Records File—ACTION–11
Freedom of Information Act Requests and Privacy Act Requests File—ACTION–12
Legal Office Litigation/Correspondence Files—ACTION–13
Merit Promotion Plan Files—ACTION–14
Office of the Inspector General Investigative Files—ACTION–15
Travel Authorization File—ACTION–16
Vendor Name and Identification Number, File—ACTION–17
VISTA Volunteer Payroll System File—ACTION–18

ACTION–1

SYSTEM NAME:

Accounts Payable File.

SYSTEM LOCATION:

Accounting and Financial Management Division, ACTION, Room

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3100, 100 Vermont Avenue, NW, Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals to whom the agency owes money.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of payee, address, taxpayer, identification number, amount owed, date of liability, amount paid, schedule number authorizing Treasury to issue payment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Domestic Volunteer Service Act of 1973, and the Budget and Accounting Procedures Act, 1950.

PURPOSE:

To maintain a current record of amounts owed and paid by the agency.

ROUTINE USE OF RECORDS IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses contained in Preliminary Statement. Data is also released to the Internal Revenue Service in accordance with the Internal Revenue Code.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESS, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders which are stored in locked metal cabinets.

RETRIEVABILITY:

Records are indexed alphabetically by name.

SAFEGUARDS:

Records are available only to staff in the Accounting & Financial Management Division and other appropriate ACTION officials with the need for such records in the performance of their official duties.

RETENTION AND DISPOSAL:

Records are held for three (3) years and then retired to the Federal Records Center.

SYSTEM MANAGER AND ADDRESS:

Director, Accounting & Financial Management Division, ACTION, room 3100, 1100 Vermont Avenue, NW., Washington, DC 20525.

NOTIFICATION PROCEDURES:

To determine whether there is a record in the system about individual, that individual should submit a request in writing to the System Manager giving name, taxpayer identification number, and address.

RECORD ACCESS PROCEDURES:

See Notification procedures.

CONTESTING RECORD PROCEDURES:

Anyone desiring to contest or amend information contained in this system should write to the System Manager at the address given and set forth the basis for which the record is believed to be incomplete or incorrect.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from documents submitted by individuals covered by the system as well as documents issued by ACTION officials involved with managing funds.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

ACTION-2

SYSTEM NAME:

Accounts Receivable and Advances File.

SYSTEM LOCATION:

Accounting and Financial Management Division, ACTION, Room 3100, 1100 Vermont Avenue, NW., Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals owing money to the agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of debtor, address, taxpayer identification number, amount owed, date of liability, amount collected.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Domestic Volunteer Service Act of 1973, and the Budget and Accounting Procedures Act of 1950.

PURPOSE:

To maintain a current record of amounts owed and paid to the agency.

ROUTINE USE OF RECORDS IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses contained in Preliminary Statement. Data may be disclosed to the Department of Justice or to the General Accounting Office in connection with requests to institute litigation or approve writing off a debt when ACTION is unable to collect a debt through its own efforts.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESS, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders which are stored in locked metal cabinets.

RETRIEVABILITY:

Records are indexed alphabetically by name.

SAFEGUARDS:

Records are available only to staff in the Accounting & Financial Management Division and other appropriate ACTION officials with the need for such records in the performance of their official duties.

RETENTION AND DISPOSAL:

Records are held for three (3) years and then retired to the Federal Records Center.

SYSTEM MANAGER AND ADDRESS:

Director, Accounting & Financial Management Division, ACTION, room 3100, 1100 Vermont Avenue, NW., Washington, DC 20525.

NOTIFICATION PROCEDURES:

To determine whether there is a record in the system about an individual, that individual should submit a request in writing to the System Manager giving name, taxpayer identification number, and address.

RECORD ACCESS PROCEDURES:

See Notification procedures.

CONTESTING RECORD PROCEDURES:

Anyone desiring to contest or amend information contained in this system should write to the System Manager and set forth the basis for which the record is believed to be incomplete or incorrect.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from documents submitted by individuals covered by the system as well as documents issued by ACTION officials involved with managing funds.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

ACTION-3

SYSTEM NAME:

ACTION Domestic Full-Time Volunteer Census Master File.

SYSTEM LOCATION:

ACTION/VISTA, 1100 Vermont Avenue, NW., Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person who has served or is serving as a VISTA Volunteer or other full-time, stipended volunteer under an ACTION program.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records maintained contain information extracted from the volunteer's application, information about the volunteer's period of service, and information about the volunteer's history with ACTION.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Domestic Volunteer Service Act of 1973.

PURPOSE:

The system of records was established to maintain service histories on all current and former VISTA Volunteers and other full-time, stipended volunteers serving in ACTION programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses contained in Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESS, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tape; disks and hard copy are kept in a locked room when not in use.

RETRIEVABILITY:

Records are retrieved by social security number and the first four letters of the Volunteer's last name.

SAFEGUARDS:

The material on tapes and disks is generally available only to ACTION's Automation Staff and is so coded as to be unavailable to anyone else. Hard copy records are available only to ACTION staff with a need for such records in the performance of their duties.

RETENTION AND DISPOSAL:

These records are maintained permanently.

SYSTEM MANAGER AND ADDRESS:

Director of VISTA, ACTION, 1100 Vermont Avenue, NW Washington, DC 20525

NOTIFICATION PROCEDURES:

Volunteers and former Volunteers wishing to determine if this system contains their records should contact the Director of VISTA, ACTION, 1100 Vermont Avenue, NW., Washington, DC 20525, providing name, social security number, and dates of volunteer service.

RECORDS ACCESS PROCEDURES:

Volunteers and former Volunteers wishing access to information about their records should contact the Director of VISTA, ACTION, 1100 Vermont Avenue, NW., Washington, DC 20525.

CONTESTING RECORD PROCEDURES:

A Volunteer wishing to amend his/her record may do so by addressing such request to the Director, Administrative and Management Services Division, ACTION, 1100 Vermont Avenue, NW., Washington, DC 20525.

RECORD SOURCE CATEGORIES:

The data is obtained from the Volunteer application and status change and payroll change notices.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

ACTION-4

SYSTEM NAME:

ACTION Domestic Full-Time Volunteer Personnel File.

SYSTEM LOCATION:

All ACTION Regional Offices and State Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All active VISTA Volunteers and any other full-time, stipended Volunteers assigned under an ACTION program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained contain Volunteer application and reference forms, volunteer status and payroll information, volunteer travel vouchers, future plans forms, including evaluation of service, and general correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Domestic Volunteer Service Act of 1973.

PURPOSE:

This system of records was established to maintain information on VISTA Volunteers and other full-time ACTION Volunteers while they are assigned to local sponsoring organizations

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The content of these records may be disclosed to the Volunteers sponsor concerning placement, performance, support and related matters, as well as to ACTION Regional and State staff and other ACTION officials with a need for such records in the performance of their duties. Also see General Routine Uses contained in Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESS, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are maintained in folders in filing cabinets with manipulation proof combination locks, or in a room with a combination lock on the door.

RETRIEVABILITY:

Records are retrievable alphabetically by last name.

SAFEGUARDS:

Records in the system are available only to appropriate ACTION staff in Regional or State Offices and other appropriate officials of ACTION with the need for such records in the performance of their duties.

RETENTION AND DISPOSAL:

Records are retained for one (1) year after Volunteer has terminated and then retired to the Federal Records Center where they are maintained for six (6) years.

SYSTEM MANAGER AND ADDRESS:

The system manager is the Executive Officer in each ACTION Region.

NOTIFICATION PROCEDURES:

Volunteers wishing to determine if this system contains their records should contact the ACTION Regional Executive Officer for the Region in which the Volunteer is assigned.

RECORD ACCESS PROCEDURES:

Volunteers wishing access to information about their records should contact the particular ACTION Regional Executive Officer providing name, social security number, and dates and location of volunteer service.

CONTESTING RECORD PROCEDURES:

A Volunteer wishing to amend his/her record may do so by addressing a request to the Director, Administrative and Management Services Division, ACTION, 1100 Vermont Avenue, NW., Washington, DC 20525.

RECORD SOURCE CATEGORIES:

The data is supplied by the Volunteer or through forms signed and executed by the Volunteer, or by ACTION Regional or State Office personnel.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

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ACTION-5

SYSTEM NAME:

ACTION Employee and Applicant Records File.

SYSTEM LOCATION:

ACTION, Personnel Management Division, 1100 Vermont Avenue, NW., Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees; applicants; any individual involved in a grievance or grievance appeal or who has filed a complaint with the Department of Labor, Federal Labor Relations Council, Federal Mediation and Conciliation Service, or similar organization; and individuals considered for access to classified information.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) The Staff Security Files contain investigative information regarding an individual's character, conduct, behavior in the community where he or she lives; loyalty to the U.S. Government; arrests and convictions for any violations against the law; reports or interviews with former supervisors, coworkers, associates, educators, etc., about qualifications of an individual for a specific position; reports of inquiries with law enforcement agencies, former employers, educational institutions attended; and other similar information developed from the above.

(2) The Grievance, Appeal and Arbitration Files contain copies of petitions, complaints, charges, responses, rebuttals, evidentiary materials, briefs, affidavits, statements, records of hearings and decisions or findings of fact with respect thereto and incidental correspondence regarding complaints and appeals with respect to grievances and arbitration matters.

(3) The Employees Indebtedness Files contain records which are primarily correspondence regarding alleged indebtedness of ACTION employees, including employees' responses, the agency's response to the employee and/or creditor and administrative correspondence and records relating to agency assistance to the employee in resolving the indebtedness, if appropriate.

(4) The Employee Reemployment and Repromotion Priority Consideration Files list a person's name and the positions he or she was considered for, dates of consideration and a copy of the individual's latest Standard Form 171 and performance evaluation.

(5) The Performance Evaluation File consists of the annual performance evaluations of employee performance prepared by supervisors and reviewed by supervisory reviewing officials, together with comments, if any, by the employee evaluated.

(6) The Management-Union Records System consists of automated data printouts showing an employee's name, grade, series, title, organizational entity and other data which determine inclusion or exclusion from the bargaining unit under the existing union contract. The record also contains a printout showing the amount of dues withheld from each employee who has authorized such withholding, and other related data.

(7) The Personnel Management System is a computer based record which includes data relating to tenure, benefits eligibility, awards, etc., and other data needed by Personnel and agency managers.

(8) The Inactive Service Record Card and/or the Personnel History Program contain a record of personnel actions made during employment, forwarding address, reason for leaving, social security number, date of birth, tenure, information regarding date and reason for termination.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Domestic Volunteer Service Act of 1973, provisions of the Federal Personnel Manual, Executive Orders concerning management relations with employee organizations and Executive Order 10450, and various acts of Congress relating to personnel investigations authorizing the same by the Office of Personnel Management whose responsibility can, under Civil Service regulations and law, be delegated in whole or in part to agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

As indicated below, the subsystems incorporate all or some of the published routine uses.

(1) Staff Security Files—in addition to our general routine uses may be disclosed to the Office of Personnel Management as part of the central personnel investigation records system.

(2) Grievance, Appeal and Arbitration Records and Files—in addition to our general routine uses may be disclosed and used: (a) To OPM; the Merit System Protection Board; and the Office of Special Counsel, Merit System Protection Board, on request in conjunction with any appeal or in conjunction with its official duties with regard to personnel matters and investigations regarding complaints of Federal employees and applicants. (b) To designated hearing examiners, arbitrators and third-party appellate authorities involved in the hearing or appeal procedures.

(3) Employees Indebtedness Records and Files—may be released under our routine uses numbers 1, 2, and 3 except that under routine use number 1 records may be released only to an appropriate Federal agency and the records may also be referred to a court of law or an administrative board of hearing on matters related to probation and parole.

(4) Employee Reemployment and Repromotion Priority Consideration Records and Files—in addition to our general routine uses may be disclosed to (a) OPM as part of the OPM personnel management evaluation system, and (b) to OPM for information concerning reemployment and repromotion rights.

(5) Performance Evaluation Files—in addition to our general routine uses may be disclosed to OPM in connection with any request for information or inquiry as to Federal personnel regulations.

(6) Management Union Records—in addition to the general routine uses may be disclosed to and used for: (a) The ACTION employees union for maintenance of its dues and inclusion in the bargaining unit, (b) the Treasury Department for preparation of payroll checks with appropriate withholding of dues, and (c) OPM for reports of management/labor relations.

(7) Personnel Management Information System—used by agency officials for day-to-day work information; statistical reports without personal identifiers and for in-house reports relating to management. Information contained in this record is reflected in the individual's official personnel folder.

(8) Inactive Service Record Care File/Personnel History Program—is used by personnel staff to verify service and for day-to-day information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESS, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, floppy disks, lists or looseleaf binders and are stored in metal file cabinets with a lock or in secured rooms with access limited to those employees whose duties require access. Where data is obtained via computer, controlled access is maintained through computer security control procedures.

RETRIEVABILITY:

Records are indexed by name, social security number or employee number.

SAFEGUARDS:

Records are generally available to ACTION employees having a need for such records in the performance of their duties. Generally, the Security Files are available only to office heads or security personnel. Such personnel must have an appropriate security clearance.

RETENTION AND DISPOSAL:

After termination, death or retirement or consideration of an applicant, the Staff Security Files are kept in the security office three (3) years and then retired to a Federal Records Center for twenty-seven (27) years and then destroyed. The Grievances, Appeals and Arbitration Files are retained indefinitely in the Personnel Management Division. The Employee Indebtedness Files are destroyed on a bi-annual basis or when the problem is resolved. The Employee Reemployment and Repromotion Priority Consideration Files are retained according to length of reemployment or repromotion eligibility. The Performance Evaluation Files are retained one year or until superseded. The Personnel Management Information system records and the Inactive Employee Service Record Cards/Personnel Program data are kept indefinitely in the Personnel Management Division. The management-Union Lists are retained until superseded by a corrected or updated list.

SYSTEM MANAGER AND ADDRESS:

Director, Personnel Management Division, ACTION, 1100 Vermont Avenue, NW., Washington, DC 20525.

NOTIFICATION PROCEDURES:

See the Notification paragraph in the Preliminary Statement.

RECORD ACCESS PROCEDURES:

See the Notification paragraph in the Preliminary Statement.

CONTESTING RECORD SOURCE CATEGORIES:

Same as "Record Access Procedures".

RECORD SOURCE CATEGORIES:

From the individual, the official personnel folder, statistical and other information developed by Personnel Management Division staff, such as enter on duty date and within grade increase due dates; agency supervisors and reviewing officials; individual employee fiscal and payroll records alleged creditors of employees; witnesses to occurrences giving rise to a grievance, appeal or other action; hearing records and affidavits and other documents used or usable in connection with grievance, appeal and arbitration hearings. Information contained in the Staff Security files is obtained from (a) applications and other personnel and security forms furnished by the individual, (b) investigative material furnished by other Federal agencies, (c) by personal investigation or written inquiry from associates, police departments, courts, credit bureaus, medical records, probation officials, prison officials, and other sources as may be developed from the above, and (d) from the individual.

ACTION-6

SYSTEM NAME:

ACTION Employees/Volunteers Occupational Injury/Illness Reports and Claims File.

SYSTEM LOCATION:

Headquarters, ACTION, room 5100, 1100 Vermont Avenue, NW., Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

ACTION staff persons and full-time Volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of work related injuries and illnesses and claims for workers' compensation submitted to Department of Labor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Employees Compensation Act & OSHA Act.

PURPOSE:

To maintain injury/illness reports data, to file and submit workers' compensation claims on behalf of ACTION staff and full-time Volunteers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To determine annual work related injury/illness data re: ACTION staff, and to identify trends if possible. To prepare and submit workers' compensation claims. Additionally, please see General Routine Uses contained in Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESS, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are maintained in folders in metal file cabinet with tamper proof combination lock.

RETRIEVABILITY:

Records are maintained by name in alphabetical sequence.

SAFEGUARDS:

Records are available only to claimants and ACTION Staff who demonstrate a need to know.

RETENTION AND DISPOSAL:

Official Files are kept seven (7) years following year of occurrence. Disposal of records is by shredding.

SYSTEM MANAGER AND ADDRESS:

OWCP Liaison, ACTION, 1100 Vermont Avenue, NW., Washington, DC 20525.

NOTIFICATION PROCEDURES:

Send to address listed. Claimant writes request for data.

RECORD ACCESS PROCEDURES:

Requester should give OWCP claim number, but it is not mandatory. Data requests may be requested in the name of injured employee/volunteer.

CONTESTING RECORD PROCEDURES:

Claimant or injured employee/volunteer may submit any data deemed relevant to the case to address listed.

RECORD SOURCE CATEGORIES:

Individual who suffers work related injury/illness submits any pertinent data necessary: Medical reports, witness statements, time and attendance records, medical bills, legal briefs.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

ACTION-7

SYSTEM NAME:

ACTION Travel Files.

SYSTEM LOCATION:

ACTION, 1100 Vermont Avenue, NW., room 2116, Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All ACTION Staff, Consultants, Invitational travelers and Relocated Staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individuals' records and special event records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Domestic Volunteer Service Act of 1973.

PURPOSE:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses contained in Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESS, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are maintained in individual folders in a locked metal file cabinet when not in immediate use.

RETRIEVABILITY:

Individual's name in alphabetical order and Travel Authorization number.

SAFEGUARDS:

Access only to appropriate personnel and ACTION officials. The metal travel file cabinet is always under lock and key.

RETENTION AND DISPOSAL:

Retention three (3) years—Disposal by shredding.

SYSTEM MANAGER AND ADDRESS:

Budget/Travel Analyst, ACTION, MB/AMS, 1100 Vermont Avenue, NW., Washington, DC 20525.

NOTIFICATION PROCEDURES:

Send to address listed.

RECORD ACCESS PROCEDURES:

Budget/Travel Analyst, ACTION, MB/AMS, 1100 Vermont Avenue, NW., Washington, DC 20525.

CONTESTING RECORD PROCEDURES:

Send to address listed.

RECORD SOURCE CATEGORIES:

Submitted by ACTION employees, etc.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

ACTION-6

SYSTEM NAME:

Conflict of Interest Records File.

SYSTEM LOCATION:

Office of General Counsel/ACTION, room 9200, 1100 Vermont Avenue, NW., Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, Contractors, Consultants and other persons employed by or dealing with ACTION.

CATEGORIES OF RECORDS IN THE SYSTEM:

Statement of personal and family interests in business enterprise, public and confidential disclosure of financial interests, and correspondence with respect thereto including opinions of counsel and confirmation materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR 735.401 and E.O. 11222(5865)

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses contained in Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESS, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are kept in separate file folders in cabinets in a room locked when not in use.

RETRIEVABILITY:

Records are indexed alphabetically and by year.

SAFEGUARDS:

Records are generally available only to attorneys and other personnel of the Office of General Counsel and to designated ACTION officials having a need for such knowledge in the performance of their official duties.

RETENTION AND DISPOSAL:

Records are destroyed when six (6) years old; except that documents needed in an on-going investigation will be retained until no longer needed in the investigation.

SYSTEM MANAGER AND ADDRESS:

General Counsel/ACTION, room 9200, 1100 Vermont Avenue, NW., Washington, DC 20525.

RECORD SOURCE CATEGORIES:

Data is obtained from the following categories of sources: 1. Employees of ACTION. 2. Work product of attorneys for ACTION.

ACTION-9

SYSTEM NAME:

Counselors' Report Files.

SYSTEM LOCATION:

Director, Equal Opportunity, ACTION, 1100 Vermont Avenue, NW., Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any employee or applicant for employment, volunteer or applicant or trainee for volunteer status, or employee of a grantee who has contacted an ACTION Equal Opportunity Counselor for counseling but has not filed a formal discrimination complaint.

CATEGORIES OF RECORDS IN THE SYSTEM:

Counselors' Reports, Privacy Act notice, confidentiality agreement, notice to members of collective bargaining agreement, notice of final interview, notes and correspondence, and copies of personnel records or other documents relevant to the matter presented to the Counselor, and any other records relating to the counseling instance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Titles VI and VII of the Civil Rights Act of 1964, as amended; Age Discrimination in Employment Act, as amended; Rehabilitation Act of 1973, as amended; Title IX of the Education Amendments of 1972, as amended; Domestic Volunteer Service Act of 1973, as amended; Age Discrimination Act, as amended.

PURPOSE:

To enable Equal Opportunity Counselors to look into matters brought to their attention, provide counseling, and attempt to resolve the matter.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Referral or disclosure: (1) To a Federal, state, or local agency charged with the responsibility of investigating, enforcing, or implementing the statute, rule, regulation, or order; (2) to an investigator, Counselor, grantee or other recipient of Federal financial assistance, or hearing officer or arbitrator charged with the above responsibilities; (3) any and all appropriate and necessary uses of such records in a court of law or before an administrative board or hearing; and (4) such other referrals as may be necessary to carry out the enforcement and implementation of the statutes, rules, regulations, or orders.

2. Disclosure to the Congressional committees having legislative jurisdiction over the program involved, including when actions are proposed to be undertaken by suspending or terminating or refusing to grant or to continue Federal financial assistance for violation of the statutes, rules, regulations, or orders for recipients of Federal financial assistance from ACTION.

3. Disclosure to any source, either private or governmental, to the extent necessary to secure from source information relevant to, and sought in furtherance of, a legitimate investigation or EO counseling matter.

4. Disclosure to a contractor, grantee or other recipient of Federal financial assistance, when the record to be released reflects serious inadequacies

with the recipient's personnel, and disclosure of the record is for the purpose of permitting the recipient to effect corrective action in the Government's best interests.

5. Disclosure to any party pursuant to the receipt of a valid subpoena.

6. Disclosure during the course of presenting evidence to a court, magistrate or administrative tribunal of appropriate jurisdiction and such disclosure shall include disclosures to opposing counsel in the course of settlement negotiations.

7. Disclosure to a member of Congress submitting a request involving an individual who is a constituent of such member who has requested assistance from the member with respect to the subject matter of the record.

8. Information in any system may be used as a data source, for management information, for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies. Information may also be disclosed to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

9. Information in any system of records to be disclosed to a Congressional office, in response to an inquiry from any such office, made at the request of the individual to whom the record pertains.

10. A record from any system of records may be disclosed as a routine use of the National Archives and Records Administration, in records management inspection conducted under authority of 44 U.S.C. 209 and 290.

11. Referral to Federal, state, local and professional licensing authorities when the record to be released reflects on the moral, educational, or vocational qualifications of an individual seeking to be licensed.

12. Disclosure to the Office of Government Ethics (OGE) for any purpose consistent with OGE's mission, including the compilation of statistical data.

13. Disclosure to the Department of Justice in order to obtain the Department's advice regarding ACTION's disclosure obligations under the Freedom of Information Act.

14. Disclosure to the Office of Management and Budget (OMB) or the Equal Employment Opportunity Commission (EEOC) in order to obtain OMB's advice regarding ACTION's obligations under the Privacy Act.

Note: The Agency-wide statement of general routine uses does not apply to this system of records (ACTION-9).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESS, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are maintained in folders or computer diskettes and locked in metal file cabinets when not in immediate use.

RETRIEVABILITY:

Retrievability is by the name of the person who contacted the Counselor.

SAFEGUARDS:

Records in the system are available only to appropriate personnel in the Office of Equal Opportunity and other designated officials of ACTION with a need for such records in the performance of their duties.

RETENTION AND DISPOSAL:

Two (2) years after completion of counseling, the files are discarded.

SYSTEM MANAGER AND ADDRESS:

Director, Equal Opportunity, ACTION, 1100 Vermont Avenue, NW., Washington, DC 20525.

NOTIFICATION PROCEDURES:

Request by individuals on whether a record is maintained about himself/herself should be addressed to the System Manager.

RECORD ACCESS PROCEDURES:

Request for access to these records should be addressed to the System Manager.

CONTESTING RECORD PROCEDURES:

Contest to information included in these records should be addressed to the System Manager.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from the following categories of sources: 1. Aggrieved persons, witnesses, etc., in counseling matters. 2. Counselors' Reports. 3. Copies of documents relevant to any counseling matters. 4. Correspondence.

ACTION-10

SYSTEM NAME:

Discrimination Complaint Files.

SYSTEM LOCATION:

Director, Equal Opportunity, ACTION, 1100 Vermont Avenue, NW., Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any employee or applicant for employment, volunteer or applicant or trainee for volunteer status, or employee of a grantee, or program beneficiary who has filed a formal complaint with or against ACTION.

CATEGORIES OF RECORDS IN THE SYSTEM:

Formal complaints, Reports of Investigation, Counseling documents, case decisions, and relevant correspondence, including settlement agreements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Titles VI and VII of the Civil Rights Act of 1964, as amended; Age Discrimination in Employment Act, as amended; Rehabilitation Act of 1973, as amended; Title IX of the Education Amendments of 1972, as amended; Domestic Volunteer Service Act of 1973, as amended; Age Discrimination Act, as amended.

PURPOSE:

To enable Agency to investigate and adjudicate complaints of discrimination.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Referral or disclosure: (1) To a Federal, state, or local agency charged with the responsibility of investigating, enforcing, or implementing the statute, rule, regulation, or order; (2) to an investigator, counselor, grantee or other recipient of Federal financial assistance or hearing officer or arbitrator charged with the above responsibilities; (3) any and all appropriate and necessary uses of such records in a court of law or before an administrative board or hearing; and (4) such other referrals as may be necessary to carry out the enforcement and implementation of the statutes, rules, regulations, or orders.

2. Disclosure to the Congressional committees having legislative jurisdiction over the program involved, including when actions are proposed to be undertaken by suspending or terminating or refusing to grant or to continue Federal financial assistance for violation of the statutes, rules, regulations, or orders for recipients of Federal financial assistance from ACTION.

3. Disclosure to any source, either private or governmental, to the extent necessary to secure from source information relevant to, and sought in furtherance of, a legitimate investigation or EO counseling matter.

4. Disclosure to a contractor, grantee or other recipient of Federal financial assistance, when the record to be released reflects serious inadequacies with the recipient's personnel, and

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disclosure of the record is for the purpose of permitting the recipient to effect corrective action in the Government's best interests.

5. Disclosure to any party pursuant to the receipt of a valid subpoena.

6. Disclosure during the course of presenting evidence to a court, magistrate or administrative tribunal of appropriate jurisdiction and such disclosure shall include disclosures to opposing counsel in the course settlement negotiations.

7. Disclosure to a member of Congress submitting a request involving an individual who is a constituent of such member who has requested assistance from the member with respect to the subject matter of the record.

8. Information in any system may be used as a data source, for management information, for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies. Information may also be disclosed to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

9. Information in any system of records may be disclosed to a Congressional office, in response to any inquiry from any such office, made at the request of the individual to whom the record pertains.

10. A record from any system of records may be disclosed as a routine use of the National Archives and Records Administration, in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

11. Referral to Federal, state, local and professional licensing authorities when the record to be released reflects on the moral, educational, or vocational qualifications of an individual seeking to be licensed.

12. Disclosure to the Office of Government Ethics (OGE) for any purpose consistent with OGE's mission, including the compilation of statistical data.

13. Disclosure to the Department of Justice in order to obtain the Department's advice regarding ACTION's disclosure obligations under the Freedom of Information Act.

14. Disclosure to the Office of Management and Budget (OMB) or the Equal Employment Opportunity Commission (EEOC) in order to obtain OMB's advice regarding ACTION's obligations under the Privacy Act.

Note: The Agency-wide statement of general routine uses does not apply to this system of records (ACTION–10).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESS, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are maintained in folders or computer diskettes locked in metal file cabinets when not in immediate use.

RETRIEVABILITY:

Files are retrieved by the complainant's name.

SAFEGUARDS:

Records in the system are available only to appropriate personnel in Equal Opportunity and other designated officials of ACTION with a need of such records in the performance of their duties.

RETENTION AND DISPOSAL:

Records are destroyed four (4) years after the close of the case.

SYSTEM MANAGER AND ADDRESS:

Director, Equal Opportunity, ACTION, 1100 Vermont Avenue, NW., Washington, DC 20525.

NOTIFICATION PROCEDURES:

Request by individuals on whether a record is maintained about himself/herself should be addressed to the System Manager.

RECORD ACCESS PROCEDURES:

Request for access to these records should be addressed to the System Manager.

CONTESTING RECORD PROCEDURES:

Contest to information included in these records should be sent to the System Manager.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from the following categories of sources: 1. Complainants, witnesses, etc., in discrimination complaints. 2. Reports of investigations and Counselors' Reports. 3. Copies of documents relevant to any EO investigation. 4. Records of hearings on complaints. 5. Correspondence.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

ACTION–11

SYSTEM NAME:

Employee Pay and Leave Records File.

SYSTEM LOCATION:

ACTION, Personnel Management Division, 1100 Vermont Avenue, NW., Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons employed by ACTION.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel actions; employing, promoting and terminating employees; savings bond applications, advises of allotments, IRS tax withholdings, applications, and records regarding collections for overpayments, and time and attendance records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

GAO Policy and Procedures Manual; 31 U.S.C. 66(a); and the Budget and Accounting Procedures Act of 1950.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from these records is routinely provided: 1. To the Treasury for payroll and savings bonds and other deduction purposes. 2. To Internal Revenue Service with regard to tax deductions. 3. To participating insurance companies holding policies with respect to employees of ACTION. Also, see General Routine Uses contained in Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESS, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are maintained in folders in metal file cabinets with manipulation proof combination locks. The individual Time and Attendance records maintained by designated timekeepers throughout the agency are stored in metal file cabinets with a key lock or manipulation proof combination lock.

RETRIEVABILITY:

Records are by name in alphabetical order.

SAFEGUARDS:

Records in the system are available only to employees of ACTION with a need for such records in the performance of their official duties.

RETENTION AND DISPOSAL:

Records in the system are maintained for three (3) years after the end of the fiscal year in which an employee terminates employment with ACTION, and then retired to the nearest Federal Records Center in accordance with General Accounting Office instructions.

SYSTEM MANAGER AND ADDRESS:

Chief, Staff Payroll, ACTION, 1100 Vermont Avenue, NW., Washington, DC 20525.

NOTIFICATION PROCEDURES:

See the Notification paragraph in the Preliminary Statement.

RECORD ACCESS PROCEDURES:

See the Access and Contest paragraph in the Preliminary Statement.

CONTESTING RECORD PROCEDURES:

Same as Record Access Procedures category.

RECORD SOURCE CATEGORIES:

ACTION employee to whom the record pertains.

ACTION–12

SYSTEM NAME:

Freedom of Information Act (FOIA) Requests and Privacy Act (PA) Requests File.

SYSTEM LOCATION:

ACTION, Administrative and Management Services Division, Management Services Branch, room 3200, 1100 Vermont Avenue, NW., Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have submitted FOIA and/or PA requests to ACTION.

CATEGORIES OF RECORDS IN THE SYSTEM:

Formal requests (FOIA/PA), research data, written decisions, and relevant correspondence, including final responses to the requesters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Freedom of Information Act of 1966 and The Privacy Act of 1974.

PURPOSE:

To maintain files of FOIA/PA requests and ACTION's responses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses contained in Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESS, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are kept in separate file folders in a cabinet locked when not in use.

RETRIEVABILITY:

Records are indexed by number and by year.

SAFEGUARDS:

Records in the system are available only to the FOIA/PA officer and other designated officials of ACTION with a need of such records in the performance of their duties.

RETENTION AND DISPOSAL:

Records concerning requests and appeals are destroyed three (3) years after initial request.

SYSTEM MANAGER AND ADDRESS:

FOIA/PA Officer, ACTION, room 3200, 1100 Vermont Avenue, NW., Washington, DC 20525.

NOTIFICATION PROCEDURE:

See Notification paragraph in the Preliminary Statement.

RECORD ACCESS PROCEDURE:

See Access and Consent paragraph in the Preliminary Statement.

CONTESTING RECORD PROCEDURES:

See Access and Contest paragraph in the Preliminary Statement.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from documents submitted by individuals engaging in official FOIA/PA requests as well as from responses issued by officials of ACTION.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

ACTION–13

SYSTEM NAME:

Legal Office Litigation/Correspondence Files.

SYSTEM LOCATION:

Office of General Counsel/ACTION, room 9200, 1100 Vermont Avenue, NW., Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in litigation which requires General Counsel action.

CATEGORIES OF RECORDS IN THE SYSTEM:

Statements; affidavits/declarations; investigatory and administrative reports; personnel, financial, medical and business records; discovery and discovery responses; motions; orders, rulings; letters; messages; forms; reports; surveys; audits; summons; English translations of foreign documents; photographs; legal opinions; subpoenas; pleadings; memos; related correspondence; briefs; petitions; court records involving litigation; and, related matters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These records are maintained under the general authority of the Office of the General Counsel to represent the Agency in connection with its dealings with its employees and the general functions of the Office of the General Counsel to provide advice and counsel to the Director of the Agency and his/her staff.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To prepare correspondence and materials for litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESS, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File cabinets and computerized docket system.

RETRIEVABILITY:

Name of individual and the year litigation commenced.

SAFEGUARDS:

Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is outside of official working hours. Computer terminals are located in supervised areas.

RETENTION AND DISPOSAL:

Records will be maintained in the Office of General Counsel for one (1) year after closure. Records will then be sent to the Federal Records Center where they will be destroyed after ten (10) years.

SYSTEM MANAGER AND ADDRESS:

General Counsel/ACTION, room 9200, 1100 Vermont Avenue, NW., Washington, DC 20525.

RECORD ACCESS PROCEDURES:

Litigation files are not subject to access. Other files may be accessed in accordance with agency-wide regulations.

RECORD SOURCE CATEGORIES:

Data is obtained from the following categories of sources: 1. ACTION employees. 2. Correspondence and reports from persons and agencies dealing with the agency and its employees. 3. Work product and research of lawyers of the office. 4. Court records.

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SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Any information compiled in reasonable anticipation of a civil action or proceeding. 5 U.S.C. 552a(d)(5).

ACTION–14

SYSTEM NAME:

Merit Promotion Plan Files.

SYSTEM LOCATION:

ACTION, Personnel Management Division, 1100 Vermont Avenue, NW., Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for employment with ACTION.

CATEGORIES OF RECORDS IN THE SYSTEM:

These files contain copies of applications for employment (SF–171), submitted by applicants and other background information regarding qualifications of the applicant for staff positions in ACTION.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Domestic Volunteer Service Act of 1973.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The contents of these records and files may be disclosed and used as follows: 1. To the Office of Personnel Management with regard to any question of eligibility, suitability or qualifications of an applicant for employment. 2. To any source which requests information in the course of an inquiry as to the qualifications of an applicant to the extent necessary to identify the individual, inform the source of the nature and purpose of the inquiry, and to identify the type of information requested. Also, see General Routine Uses contained in Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESS, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are maintained in folders in metal file cabinets with combination locks.

RETRIEVABILITY:

Records are indexed in order of vacancy announcement number.

SAFEGUARDS:

Records are generally available only to ACTION employees with the need for such records in the performance of their duties.

RETENTION AND DISPOSAL:

Records are destroyed when applications are two (2) years old. Applications which resulted in appointment are filed in the Official Personnel Folder and are subsequently retired to the Federal Records Center, St. Louis, Missouri.

SYSTEM MANAGER AND ADDRESS:

Chief, Personnel Staffing and Employee Development Branch, ACTION, 1100 Vermont Avenue, NW., Washington, DC 20525.

NOTIFICATION PROCEDURE:

See the Notification paragraph in the Preliminary Statement.

RECORD ACCESS PROCEDURES:

See the Access and Contest paragraph in the Preliminary Statement.

CONTESTING RECORD PROCEDURES:

Same as Record Access Procedures category.

RECORD SOURCE CATEGORIES:

Information contained in the system is obtained from the following categories of sources: Applications and other personnel forms furnished by the individual; oral or written inquiries from sources disclosed by the applicant, such as, employers, schools, references, etc.

ACTION–15

SYSTEM NAME:

Office of the Inspector General Investigative Files.

SYSTEM LOCATION:

Office of the Inspector General, ACTION, 1100 Vermont Avenue, NW., room 12100, Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects of investigations or complaints, including (but not necessarily limited to) former and present ACTION employees; former and present ACTION grant recipients, applicants, consultants, contractors and subcontractors and their employees; and other parties doing business with ACTION.

CATEGORIES OF RECORDS IN THE SYSTEM:

All correspondence relevant to the investigation; all internal staff memoranda; information provided by subjects, witnesses, and governmental investigatory or law enforcement organizations; copies of all subpoenas issued during the investigation; affidavits, statements from witnesses, memoranda of interviews, transcripts of testimony taken in the investigation and accompanying exhibits; documents and records or copies obtained during the investigation; working papers of the staff, investigators' notes, and other documents and records relating to the investigation; information about criminal, civil, or administrative referrals; and opening reports, progress reports, and closing reports, with recommendations for corrective action.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, as amended, 5 U.S. Code appendix 3.

PURPOSE:

To maintain files of investigations and investigative activities carried out by the Office of the Inspector General.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Referral to Federal, state, local and foreign investigative or prosecutive authorities.

A record in the system of records, *which indicates either by itself or in combination with other information within the Agency's possession,* a violation or potential violation of law, whether civil, criminal or regulatory and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, may be disclosed, as a routine use, to the appropriate Federal, foreign, state or local agency or professional organization charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing or investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

2. Disclosure to a Federal or state grand jury agent pursuant to a Federal or state grand jury subpoena or prosecution request that such record be released for the purpose of its introduction to a grand jury.

3. Referral to suspension/debarment authorities, internal to the Agency, when the record released is germane to a determination of the propriety of, or necessity for, a suspension or debarment action.

4. Referral to Federal, state, local and professional licensing authorities when the record to be released reflects on the moral, educational, or vocational qualifications of an individual seeking to be licensed.

5. Disclosure to a contractor, grantee or other recipient of Federal funds, when the record to be released reflects serious inadequacies with the recipient's personnel, and disclosure of the record is for the purpose of permitting the recipient to effect corrective action in the Government's best interests.

6. Disclosure to a contractor, grantee or other recipient of Federal funds, when the recipient has incurred an indebtedness to the Government through its receipt of Government funds, and release of the record is for the purpose of allowing the debtor to effect a collection against a third party.

7. Disclosure to any source, either private or governmental, to the extent necessary to secure from such source information relevant to, and sought in furtherance of, a legitimate investigation or audit.

8. Disclosure to a domestic, foreign or international governmental agency considering personnel or other internal actions, such as assignment, hiring or retention of an individual, issuance of a security clearance, reporting an investigation of an individual, award of a contract or issuance of a license, grant or other benefit, to the extent that the information is relevant and necessary to such agency's decision on the matter.

9. Disclosure to the Office of Government Ethics (OGE) for any purpose consistent with OGE's mission, including the compilation of statistical data.

10. Disclosure to a Board of Contract Appeals, the General Accounting Office, or other tribunal hearing a bid protest involving an Agency procurement.

11. Disclosure to a domestic, foreign or international governmental law enforcement agency maintaining civil, criminal or other relevant enforcement information, or other pertinent information, in order that ACTION may obtain information relevant to an Agency decision concerning the assignment, hiring or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

12. Disclosure to the Department of Justice in order to obtain the Department's advice regarding ACTION's disclosure obligations under the Freedom of Information Act.

13. Disclosure to the Office of Management and Budget (OMB) in order to obtain OMB's advice regarding ACTION's obligations under the Privacy Act.

14. Disclosure to a member of Congress making a request at the behest of a party protected under the Privacy Act, when the member of Congress informs the appropriate Agency official that the individual to whom the record pertains has authorized the member of Congress to have access.

15. Disclosure to any Federal agency pursuant to the receipt of a valid subpoena.

16. Disclosure to the Department of the Treasury or the Department of Justice when ACTION is seeking an ex parte court order to obtain taxpayer information from the Internal Revenue Service.

17. Disclosure to debt collection contractors for the purpose of collecting delinquent debts as authorized by the Debt Collection Act of 1982, 31 U.S.C. 3713.

18. Disclosure to a "consumer reporting agency" as that term is defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)), in order to obtain information in the course of an investigation or audit.

19. Disclosure to Agency counsel, the administrative hearing tribunal, and counsel to the adverse party, in a Program Fraud Civil Remedies Act litigation.

20. Disclosure to a Federal, State, or local agency for use in computer matching programs to prevent and detect fraud and abuse in benefit programs administered by those agencies, to support civil and criminal law enforcement activities of those agencies and their components, and to collect debts and overpayments owed to those agencies and their components.

21. Disclosure to any court or administrative authority or during the course of any litigation in which ACTION is a party or has an interest.

A record in the system of records may be disclosed in a proceeding before a court or adjudicative body before which ACTION is authorized to appear, or in the course of settlement negotiations with opposing counsel when—

(1) ACTION, or any component thereof,

(2) Any employee of ACTION in his or her official capacity,

(3) Any employee of ACTION in his or her individual capacity, where the Government has agreed to represent the employee, or

(4) The United States, where ACTION determines that the litigation is likely to affect ACTION or any of its components—

is a party to the litigation or has an interest in such litigation, and ACTION determines that the use of such records is relevant and necessary to the litigation; provided, however, that in each case ACTION determines that disclosure of the records is a use of the information contained in the records that is compatible with the purpose for which the records were collected. A record relating to the case also may be provided to an actual or potential party or his/her attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or discovery proceedings.

22. Disclosure to ACTION's legal representative, including the Department of Justice and other outside legal counsel, when ACTION is a party in litigation or has an interest in litigation.

A record in the system of records may be disclosed to the Department of Justice or outside legal counsel when—

(1) ACTION or any component thereof,

(2) Any employee of ACTION in his or her official capacity,

(3) Any employee of ACTION in his or her individual capacity, where the Department of Justice has agreed or is considering a request to represent the employee, or

(4) The United States, where ACTION determines that the litigation is likely to affect ACTION or any of its components—

is a party to the litigation or has an interest in such litigation, and ACTION determines that the use of such records by the Department of Justice or outside legal counsel is relevant and necessary to the litigation; provided, however, that in each case, ACTION determines that disclosure of the records to the Department of Justice or outside legal counsel is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESS, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Office of the Inspector General Investigative Files consist of paper records maintained in folders and an automated data base maintained on computer diskettes. The folders and diskettes are stored in locked metal file cabinets. The file cabinets are located in the Office of the Inspector General.

RETRIEVABILITY:

The records are retrieved by the name of the subject of the investigation or by a unique control number assigned to each investigation.

SAFEGUARDS:

Records in the system are available only to those persons whose official duties require such access. The records are kept in limited access areas during

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duty hours and in locked file cabinets in a locked office at all other times.

RETENTION AND DISPOSAL:

Records will be held in the office pursuant to General Records Schedule 22, June 1988, and will be destroyed by shredding or burning when no longer needed.

SYSTEM MANAGER AND ADDRESS:

Inspector General, Office of the Inspector General, ACTION, 1100 Vermont Avenue, NW, Washington, DC 20525.

NOTIFICATION PROCEDURES:

To determine whether this system of records contains a record pertaining to the requesting individual, the individual should write to the System Manager, furnishing his or her name, address and social security number.

RECORD ACCESS PROCEDURES:

See Notification procedures.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in this system of records should write to the System Manager, setting forth the basis for which the individual believes the record is incomplete, irrelevant, incorrect or untimely.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from ACTION staff and official Agency records, current and former employees, contractors, grantees and their employees, volunteers or former volunteers in ACTION-funded programs, and from non-ACTION persons and records, to the extent necessary to carry out Inspector General investigations authorized by 5 U.S.C. app. 3. Individuals to be interviewed and records to be examined are selected based on the nature of the allegations being investigated.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Office plans to publish an exemption under 5 U.S.C. 552a (j) and (k).

ACTION-16

SYSTEM NAME:

Travel Authorization File.

SYSTEM LOCATION:

Accounting and Financial Management Division, ACTION, room 3100, 1100 Vermont Avenue, NW., Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

ACTION employees or any other person invited to travel at the expense of the agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records consist of travel authorizations, vouchers, receipts payment records, and other materials related to official travel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Domestic Volunteer Service Act of 1973, and the Budget and Accounting Procedures Act of 1950.

PURPOSE:

To record and manage the payment of expenses for official travel.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses contained in Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESS, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE

Records are maintained in file folders which are stored in locked metal cabinets.

RETRIEVABILITY:

Records are indexed alphabetically by name.

SAFEGUARDS:

Records are available only to staff in the Accounting & Financial Management Division and other appropriate ACTION officials with the need for such records in the performance of their official duties.

RETENTION AND DISPOSAL:

Records are held for three (3) years and then retired to the Federal Records Center.

SYSTEM MANAGER AND ADDRESS:

Director, Accounting & Financial Management Division, ACTION, room 3100, 1100 Vermont Avenue, NW., Washington, DC 20525.

NOTIFICATION PROCEDURES:

To determine whether there is a record in the system about an individual, that individual should submit a request in writing to the System Manager giving name, taxpayer identification number, and address.

RECORD ACCESS PROCEDURE:

See Notification procedures.

CONTESTING RECORD PROCEDURES:

Anyone desiring to contest or amend information contained in this system should write to the System Manager and set forth the basis for which the record is believed to be incomplete or incorrect.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from documents submitted by individuals engaging in official travel as well as documents issued by ACTION officials involved with authorizing and managing travel.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

ACTION-17

SYSTEM NAME:

Vendor Name and Identification Number File.

SYSTEM LOCATION:

Accounting and Financial Management Division, ACTION, room 3100, 1100 Vermont Avenue, NW., Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals with whom ACTION does business.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Domestic Volunteer Service Act of 1973, and the Budget and Accounting Procedures Act of 1950.

PURPOSE:

To maintain a single list of all entities with which the agency does business.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data may be disclosed to the Department of Justice or the General Accounting Office in connection with attempting to collect debts or to the Internal Revenue Service in the reporting of disbursements as required by the Internal Revenue Code. See General Routine Uses contained in Preliminary Statement.

CATEGORIES OF RECORDS IN THE SYSTEM:

The data recorded includes the name, the taxpayer identification number, and the address of the entity.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESS, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is stored on magnetic media in a computer system with access controlled by a security system that requires passwords and identification of each user.

RETRIEVABILITY:

Data can be retrieved by taxpayer identification number.

SAFEGUARDS:

Access to data stored on magnetic media is controlled by a security system that requires passwords and identification of each user.

RETENTION AND DISPOSAL:

Records are held for three (3) years and then retired to the Federal Records Center.

SYSTEM MANAGER AND ADDRESS:

Director, Accounting & Financial Management Division, ACTION, room 3100, 1100 Vermont Avenue, NW., Washington, DC 20525.

NOTIFICATION PROCEDURES:

To determine whether there is a record in the system about an individual, that individual should submit a request in writing to the System Manager giving name, taxpayer identification number, and address.

RECORD ACCESS PROCEDURES:

See Notification procedures.

CONTESTING RECORD PROCEDURES:

Anyone desiring to contest or amend information contained in this system should write to the System Manager and set forth the basis for which the record is believed to be incomplete or incorrect.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from documents submitted by individuals covered by the system as well as documents issued by ACTION officials involved with managing funds.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

ACTION-18

SYSTEM NAME:

VISTA Volunteer Payroll System File.

SYSTEM LOCATION:

Accounting and Financial Management Division, ACTION, room 3100, 1100 Vermont Avenue, NW., Washington, DC 20525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former VISTA Volunteers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

the Domestic Volunteer Service Act of 1973, and the Budget and Accounting Procedures Act of 1950.

PURPOSE:

To record payments and allowances to VISTA volunteers.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Uses contained in Preliminary Statement. Information is also disclosed to the Social Security Administration and the Internal Revenue Service about the funds paid to comply with legal requirements that enable these agencies to perform their functions. Data from the system is also disclosed to the Financial Management Service of the Department of the Treasury to enable payments to be made.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include names of individuals covered by the system, address, social security number, data concerning the individual's sex, marital status, skills, service as a VISTA volunteer, including dates served and projects served, amounts paid to the volunteer while serving, amounts overpaid and repayment records of such overpayment.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESS, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual data is stored alphabetically in filing cabinets that are kept in a room that is only used for storing such materials. That room is kept locked except when employees who work with the VISTA payroll system are using the data. Access to all other individuals is not allowed. Data is also stored on magnetic media in a computer system with access controlled by a security system that requires passwords and identification of each user.

RETRIEVABILITY:

Data can be retrieved by individual name for manual records or by social security number for automated records.

SAFEGUARDS:

The storage room is kept locked except when employees who work with the VISTA payroll system are using the data. Access to all other individuals is not allowed. Access to data stored on magnetic media is controlled by a security system that requires passwords and identification of each user.

RETENTION AND DISPOSAL:

Records are held for three (3) years and then retired to the Federal Records Center.

SYSTEM MANAGER AND ADDRESS:

Director, Accounting & Financial Management Division, ACTION, room 3100, 1100 Vermont Avenue, NW., Washington, DC 20525.

NOTIFICATION PROCEDURES:

To determine whether there is a record in the system about an individual, that individual should submit a request in writing to the System Manager giving name, taxpayer identification number, and address.

RECORD ACCESS PROCEDURES:

See Notification procedures.

CONTESTING RECORD PROCEDURES:

Anyone desiring to contest or amend information contained in this system should write to the System Manager and set forth the basis for which the record is believed to be incomplete or incorrect.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from documents submitted by individuals covered by the system as well as documents issued by ACTION officials involved with managing funds.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 91-31147 Filed 12-30-91; 8:45am]

BILLING CODE 8050-28

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board; Meeting

Acording to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Office of Grants and Program Systems, Cooperative State Research Service, announces the followng meeting:

Name: National Agricultural Research and Extension Users Advisory Board.

Date: February 13-18, 1992.

Time: 3 p.m.-6 p.m., February 13, 1992, 8 a.m.-5 p.m., February 14, 1992, 8 a.m.-5 p.m., February 15, 1992, 8 a.m.-5 p.m., February 16, 1992, 8 a.m.-5 p.m., February 17, 1992, 8 a.m.-5 p.m., February 18, 1992.

Place: Embassy Suites Hotel, 1300 Jefferson Davis Hotel, Arlington, VA.

Type of Meeting: Open to the public. Persons may participate in the meeting and site visits as time and space permit.

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Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The Board will be preparing a report assessing the President's proposed FY 1993 budget for agricultural science and education agencies.

Contact Persons for Agenda and More Information: Marshall Tarkington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; room 432–A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250-2200; telephone (202) 720–3684. Done in Washington, DC, this 19th day of December 1991.

John Patrick Jordan,

Administrator.

[FR Doc. 91–31233 Filed 12–30–91; 8:45 am]

BILLING CODE 3410–22–M

Forest Service

Oil and Gas Leasing EIS, Shoshone National Forest, Park and Fremont Counties, WY

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Shoshone National Forest, Wyoming, announced (56 FR 14682, April 11, 1991) its intent to prepare an environmental impact statement (EIS) on oil and gas leasing for the Forest. A draft EIS was to have been completed by December 1991, and offered for a comment period of 90 days. At this time, the draft is scheduled for release in June of 1992. A forty-five day comment period will follow. The final EIS is scheduled to be published in November 1992.

FOR FURTHER INFORMATION CONTACT: Bob Rossman, Interdisciplinary Team Leader (307) 527–6241, Shoshone National Forest, P.O. Box 2140, Cody, WY 82414.

Dated: December 20, 1991.

Barry Davis,

Forest Supervisor.

[FR Doc. 91–31237 Filed 12–30–91; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–502]

Low-Fuming Brazing Copper Wire and Rod From South Africa; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on low-fuming brazing copper wire and rod from South Africa. Interested parties who object to this revocation must submit their comments in writing no later than January 31, 1992.

EFFECTIVE DATE: December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On January 29, 1986, the Department of Commerce ("the Department") published an antidumping duty order on low-fuming brazing copper wire and rod from South Africa (51 FR 3640). The Department has not received a request to conduct an administrative review of this duty order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than January 31, 1992, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by January 31, 1992, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by January 31, 1992, we shall conclude that the order/finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: December 23, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91–31186 Filed 12–30–91; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–601]

Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof From the People's Republic of China

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

EFFECTIVE DATE: December 31, 1991.

FOR FURTHER INFORMATION CONTACT: John Beck, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–3464.

Final Results

Background

On October 4, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 50309) the preliminary results of this administrative review of the amended antidumping duty order on tapered roller bearings and parts thereof (TRBs), from the People's Republic of China (PRC) (55 FR 6669, February 26, 1990). This order was amended pursuant to a remand of the final determination by the Court of International Trade. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

The Timken Company (petitioner), Premier Bearing and Equipment, Ltd. (Premier), a Hong Kong trading company that exports TRBs, which are produced in the PRC, to the United States, China National Machinery and Equipment Import and Export Corporation (CMEC), Guizhou Machinery Import and Export Corporation (Guizhou), Henan Machinery and Equipment Import and Export Corporation (Henan), Jilin Machinery Import and Export Corporation (Jilin), Liaoning Machinery and Equipment Import and Export Corporation (Liaoning), Luoyang Bearing Factory (Luoyang), and Shanghai General Bearing Co., Ltd. (Shanghai General) (respondents in this review), and interested parties submitted case and rebuttal briefs on October 16 and 23, 1991. A public hearing was held on October 25, 1991.

Scope of Review

Imports covered by this review are shipments of tapered roller bearings and parts thereof from the PRC. This merchandise is currently classifiable under items 8482.20.00, 8482.91.00.60, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30 and 8483.90.80 of the *Harmonized Tariff Schedule*, (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

This review covers the period June 1, 1989, through May 31, 1990, for Premier and Shanghai General, and from May 12, 1989, to May 31, 1990, for all other companies.

United States Price

For sales made by CMEC, Guizhou, Henan, Jilin, Liaoning, Luoyang, and Premier, we based the United States Price (USP) on purchase price, in accordance with section 772(b) of the Act, both because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States and because exporter's sales price (ESP) methodology was not indicated by other circumstances. For sales made by Shanghai General, we based the USP on ESP, in accordance with section 772(c) of the Act, because sales to the first unrelated purchaser took place after importation into the United States. We made adjustments to purchase price based on errors discovered at verification.

We calculated purchase price based on either the packed, CIF or packed ex-factory prices to unrelated purchasers. With respect to CIF sales, we made deductions, where appropriate, for foreign inland freight, ocean freight, marine insurance, brokerage and handling and customs declaration fees (Premier only). We valued the inland freight deduction for all companies in the PRC using surrogate information provided by the U.S. Embassy in India. We selected India as the surrogate country for the reasons explained in the "Foreign Market Value" section of this notice. We calculated ESP based on the packed, ex-warehouse U.S. subsidiary price. We made deductions for foreign inland freight, ocean freight, marine insurance, U.S. duty, U.S. inland freight, U.S. inland insurance, and U.S. brokerage. Given that SG&A expenses were shown as a percentage of the cost of manufacture in our constructed value, we were unable to isolate the selling expenses from the total SG&A on the foreign market value side. Therefore, we made no further adjustments to ESP for selling expenses.

Foreign Market Value

Section 773(c)(1) of the Act provides that the Department will determine foreign market value (FMV) using a factors of production methodology if: (1) The merchandise is exported from a non-market economy (NME) country; and (2) the information does not permit the calculation of FMV using home market prices, third country prices, or constructed value (VC) under section 773(a).

Pursuant to section 771(18) of the Act and consistent with determinations made in prior proceedings, we have determined that the PRC is an NME in this case. (See, e.g., Initiation of Antidumping Duty Investigation: Refined Antimony Trioxide from the People's Republic of China (56 FR 23549, May 22, 1991); Final Determination of Sales at Less than Fair Value: Natural Menthol from the People's Republic of China (46 FR 24614, May 1, 1981)). Respondents have not contested this determination. Nor did respondents attempt to show that FMV could be based on home market prices, third-country prices, or CV under section 773(a). As a result, section 773(c) of the Act, requires the Department to determine FMV on the basis of the market valuation of the factors of production used in producing the subject merchandise.

Section 773(c) of the Act further requires the Department to value the factors of production in one or more market economy countries that are at a level of economic development comparable to that of the NME and that are significant producers of comparable merchandise.

Of countries known to produce TRBs, we have determined that India, Pakistan, Indonesia, and the Philippines are comparable to the PRC in terms of per capita gross national product (GNP), the growth rate in per capita GNP, and the national distribution of labor. We chose India as the most comparable surrogate on the basis of these criteria. We calculated FMV based on factors of production reported by the seven companies in the PRC. We used publicly available information relating to India to value the various factors of production.

The material cost for each component was determined by multiplying the gross weight of steel for each component by the steel unit price for that component. The result was reduced by the gross weight of steel scrap multiplied by the scrap value. The gross weight of steel scrap was reduced to account for waste and burn-off. Based on our findings at verification, Luoyang's reported material input for eight U.S. TRB part numbers did not account for additional steel bar used in the production process. We have included this additional steel bar input for the appropriate part numbers in our calculations. See Comment 10 in the "Analysis of Comments Received" section of this notice.

The direct labor hours for each unit of output were reported by the seven companies in the PRC. These direct labor hours were calculated by dividing the total direct labor hours for the product by the total production of the product.

We valued the factors of production as follows:

- For hot rolled alloy steel bars and rods, irregular coils used in the production of rollers, hot rolled alloy steel bars and rods used in the production of cups and cones, and cold rolled strip and sheet used in the production of cages, we used the FOB U.S. dollar per kilogram value of exports from the European Community to India for 1989. We adjusted those FOB values to CIF values using a conversion factor obtained in the International Monetary Fund's International Financing Statistics. Furthermore, we adjusted these values forward in time to the period of review (POR) to reflect inflation, using a price index obtained from the International Financial Statistics. Finally, we adjusted these values to include freight from the port to the factory. For bearing quality and non-bearing quality steel scrap, we used, as best information available (BIA), ratios of the price of bearing and non-bearing quality steel scrap used in the remanded determination to the average price of bar and steel sheet used in the remanded determination. We then applied these ratios to the applicable steel input values described above to arrive at a value for bearing and non-bearing quality steel scrap.
- For direct labor, we used the U.S. Department of Labor, Bureau of Labor Statistics rate for India from 1985, adjusted forward in time to the POR to reflect inflation, using a price index obtained from the International Financial Statistics. For indirect labor and sales, general and administrative (SG&A) labor, we used the appropriate percentage of direct labor from the respondents' deficiency responses.
- For factory overhead, we used information obtained from a financial report of a producer of similar merchandise in India as BIA. This information showed factory overhead as a percentage of total materials and total labor costs. We adjusted the overhead

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percentage downward to account for depreciation expenses from prior years and an amount for depreciation which we included under SG&A. We have also allocated the amount of miscellaneous expenses in the financial statement to overhead and SG&A. See Comment 8 in the "Analysis of Comments Received" section of this notice.

- For SG&A expenses, we used information obtained from the same financial report used to obtain factory overhead. This information showed SG&A expenses as a percentage of the cost of manufacture. We adjusted the SG&A expenses downward to account for packing, forwarding and excise taxes which were included in the reported amount. We also adjusted the SG&A expenses downward to account for interest income applicable to short-term interest-bearing assets. We adjusted the SG&A expenses upward to account for depreciation originally included as part of overhead, and for the entire amount of the auditing fees. We have also allocated the amount of miscellaneous expenses in the financial statement to overhead and SG&A. After these adjustments were made, SG&A as a percentage of the cost of manufacture was less than ten percent. Therefore, we used the statutory minimum of ten percent of the cost of manufacture for SG&A. See Comment 9 in the "Analysis of Comments Received" section of this notice.
- For profit, we used the statutory minimum of eight percent of the cost of manufacture plus SG&A expenses.
- For packing, we used as BIA one percent of the total ex-factory cost and SG&A expenses combined. This amount, obtained from publicly available data, is contained in the Final Determination of Sales at Less Than Fair Value: TRBs from Italy, 52 FR 24198 (June 29, 1987), and is consistent with the Department's valuation of packing in the Final Determination of Sales at Less than Fair Value: TRBs from the People's Republic of China, 52 FR 19748 (May 27, 1987). See also, TRBs from the Hungarian People's Republic, 52 FR 17428 (May 8, 1989), TRBs from the Socialist Republic of Romania, 52 FR 17433 (May 8, 1989), and the Final Results of Antidumping Duty Administrative Review: TRBs from the Republic of Hungary, 56 FR 41819 (August 23, 1991).

We have based FMV for Premier on its third-country sales since: (1) Premier is a Hong Kong reseller of the subject merchandise, and the producers of TRBs in the PRC who supplied Premier were unaware of the countries to which Premier intended to resell the merchandise (see section 773(f) of the Act); and (2) Premier does not have a viable home market for TRBs. In order to determine whether there were sufficient sales of TRBs in the home market to serve as a viable basis for calculating FMV, we compared the volume of Premier's home market sales of TRBs to the volume of Premier's third country sales of TRBs, in accordance with section 773(a)(1)(B) of the Act. Premier did not have a viable home market with respect to sales of TRBs during the POR, and thus we calculated FMV based on delivered prices to unrelated customers in Brazil and Singapore, in accordance with section 773(a)(1)(B) of the Act.

As we stated in our preliminary results, Premier claimed that it did not have access to information concerning the physical characteristics of the merchandise produced in the PRC. Therefore, for those comparisons that involve non-identical merchandise, Premier did not report differences in these physical characteristics. In our preliminary results, we determined that the BIA rate for comparisons of non-identical merchandise should be the greater of either: (1) The weighted-average rate obtained from a comparison of the identical merchandise; or (2) the 0.97% rate used in the first two administrative reviews. We then determined that the 0.97% rate would be the greater of these two rates.

In deciding what to use as BIA, 19 CFR 353.37(b) provides that the Department may take into account whether a party refused to provide requested information. Thus, the Department determines on a case-by-case basis what is BIA. When a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's review, the Department will normally assign to that company the highest margin for the subject merchandise of either: (1) The highest margin calculated for that company in any previous review or the original investigation; or (2) the highest calculated margin for any respondent that supplied adequate responses for the current review. When a company has cooperated with the Department's request for information but fails to provide the information requested in a timely manner or in the form required, the Department will normally assign the affected company the highest margin assigned to that company in any previous review or in the investigation.

Since our preliminary results, we have concluded that Premier has cooperated with the Department but was unable to provide the requested information. We do not believe that the information on the record demonstrates that Premier could obtain difference in merchandise information from its suppliers. Therefore, we do not see evidence of a lack of cooperation sufficient to warrant the use of an adverse BIA. Furthermore, even if Premier could supply difference in merchandise information for those unmatched sets sold in the United States, the Department would still be unable to match the sales of cups and cones sold to the United States with comparable merchandise sold to third countries. See Comment 6 in the "Analysis of Comments Received" section of this notice. Therefore, we are assigning Premier's unmatched sales the highest margin assigned to the company in any previous review or the investigation, which is 0.97%.

For Premier, we made deductions for brokerage and handling, ocean freight, marine insurance and customs declaration fees. Pursuant to 19 CFR 353.56, we made circumstance-of-sale adjustments for differences in credit expenses and commissions. We made further adjustments to foreign market value based on errors discovered at verification.

Currency Conversion

We made currency conversions in accordance with 19 CFR 353.60(a). Currency conversions were made at the rates certified by the Federal Reserve Board (for Premier) or at the rates published by the International Monetary Fund in International Financial Statistics (for all other companies).

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received case and rebuttal briefs from the petitioner, the respondents, and other interested parties.

Comment 1

Petitioner contends that the information it provided to value materials and scrap based on figures from the remanded determination and adjusted for transportation costs and inflation should be used in this administrative review. Petitioner argues that, since the values used in the remanded determination are actual prices in India of steel used in the production of TRBs, their use would be most consistent with the statutory objective of using actual prices of inputs where possible. Petitoner also states that the value information from the remanded determination is consistent with the value information contained in Asian Bearing, Ltd.'s (Asian's) (a producer of similar merchandise in India) annual report. Furthermore, petitioner states that the methodology used in the remanded determination for converting steel values using the Trigger Price Mechanism is reasonable.

Respondents argue that petitioner has not provided any significant basis for rejection of the EC export statistics showing shipments to India. Respondents state that the Department was fully justified in rejecting the steel and scrap values used in the remanded determination, since this information was outdated, was for a type of steel not used by Chinese TRB producers, and was obtained through the use of a conversion factor based on nine-year-old steel cost information. Interested parties note that the information supplied by petitioner was also never verified. Respondents state that the steel bar value methodology used in the remanded determination was never considered by the courts, and that the Department used the scrap values in the remanded determination as BIA at the time. As for petitioner's comment that the remanded price information is consistent with Asian's prices, respondents and interested parties note that petitioner: (1) Did not specify what kind of steel bar was used by Asian; and (2) admitted that the prices for steel bar in Asian's annual report do not appear to be representative of the Indian bearing industry. Also, respondents contend that the domestic Indian steel prices are artificial due to the influence of and control by the Indian government.

DOC Position

We agree with respondents that the adjusted figures from the remanded determination are not the best source of information for this review. Information from the remanded determination, although adjusted for inflation, is from 1986, further removed from the POR than the EC export statistics. Furthermore, information supplied by petitioner is skewed by the fact that it is necessary to adjust the price of tube to bar using a 1982 ratio of production costs for the two products in Japan. Moreover, we do not know if this information is from the Tata Iron and Steel Company, a joint venture partner of petitioner. Finally, we do not agree with petitioner's contention that, since the remanded information is consistent with Asian's information, the remanded information should be used. We have found Asian's financial information not to be in accordance with the generally accepted accounting principles of India. Accordingly, we have not used the information from the remanded determination for purposes of valuing material inputs. Instead, we have used the EC export statistics to India as discussed in the "Foreign Market Value" section of this notice.

Comment 2

Petitioner argues that, if market price data were not available, it would be more reasonable to use Indian import statistics from all countries for valuation purposes, rather than EC export statistics to India. Petitioner notes that, in the Final Administrative Review of Tapered Roller Bearings from the Republic of Hungary (56 FR 41819) (August 23, 1991), the Department rejected the use of EC export data to Yugoslavia and used instead the Yugoslav Statistics of Foreign Trade.

DOC Position

Although we agree with petitioner that it would be preferable to use Indian import statistics from all countries, this is not possible for this review. In the Hungarian TRB review cited by petitioner, EC export data and Yugoslav Statistics of Foreign Trade data were both submitted on the record and in time for all parties to comment on their use. The Yugoslav Statistics of Foreign Trade data was found to be a better measure of the value of raw materials than the EC export data. In this review, the Indian import statistics submitted by petitioner were untimely. Furthermore, the Department did not have independent access to current Indian trade statistical information. Therefore, as BIA, we are using the EC export statistics to India, with appropriate adjustments.

Comment 3

Petitioner contends that, if the EC export statistics to India were used, an adjustment would be necessary to convert the FOB value to a CIF value. Petitioner reiterated its claim that, if import values are used, import duties must be added to reflect full market costs in India. Petitioner also argues that, even if a refund of duties was possible, the full amount of duty would not be refunded due to scrap.

Respondents and interested parties maintain that there is no indication on the record whether the EC export statistics are based upon CIF, C&F or FOB values. Respondents state that the Department has used these statistics in other reviews without applying any conversion factor. Respondents further contend that, should a conversion factor be applied, this factor should represent the difference between CIF and FOB values of exports of appropriate types of steel, and that there is no indication of how petitioner's conversion data was calculated.

Interested parties contend that, even if the EC export data to India does not include freight and other costs, it would still be incorrect to adjust the data, since Chinese manufacturers, as a rule, do not import steel. Therefore, interested parties claim that CIF expenses would not be applicable to Chinese factories. If an adjustment is to be made, interested parties urge the Department to use U.S. import statistics which contain a breakdown between Customs values and CIF values. Finally, interested parties contend that the Indian CIF/FOB factor should be revised to reflect the 20 percent decline found in the world CIF/FOB factor since 1983.

DOC Position

We agree with petitioner that an adjustment is necessary to convert the FOB value to a CIF value. After contacting the European Community's Office in Washington, DC, we have found that the EC export statistics are based on FOB values, not CIF values. Therefore, we have applied a CIF/FOB conversion factor obtained from the International Monetary Fund's International Financial Statistics for 1990 to these EC export statistics. This factor was the same for both 1989 and 1990 and was derived from India's CIF imports compared to its FOB imports. However, we disagree with petitioner's statement that refunded duties do not include scrap used in the production of TRBs. Petitioner has provided no evidence in this review that would suggest that the full amount of the duty paid is not refunded upon exportation of the merchandise. We also disagree with interested parties' statement that, since Chinese manufacturers do not import steel, an adjustment should not be made to the EC export statistics. Converting an FOB price to a CIF price more closely reflects what is actually paid by Indian producers in the surrogate country. The amount of steel imported into China is not relevant.

Comment 4

Petitioner maintains that, since Asian and Bimetal Bearing Ltd. (Bimetal) represent the known universe of producers of comparable merchandise in India, Asian's experience has not been shown to be unlike the experience of PRC producers, and Asian appears to be a more significant producer of TRBs than Bimetal, the overhead and SG&A rates for the two companies should be averaged.

Respondents argue that Asian is inappropriate for use as a surrogate company since it is considered a failing company under Indian tax law.

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Respondents note that Asian has accumulated losses equal to or exceeding its entire net worth, and therefore is eligible for various types of assistance from the Indian government. Respondents further argue that there is no evidence to suggest that Asian is representative of the Chinese TRB industry.

Interested parties note that the information from Asian does not relate to the POR. Interested parties also maintain that Asian is primarily a ball bearings producer, and therefore should not be deemed a better surrogate than Bimetal, which also produces ball bearings. Furthermore, respondents and interested parties contend that the calculation of SG&A for Asian is flawed due to the inclusion of interest expenses, excise duties, turnover tax and handling costs. Finally, respondents contend that the calculation of overhead for Asian is flawed due to the inclusion of miscellaneous expenses.

DOC Position

We agree with respondents that Asian is inappropriate for use as a surrogate company and therefore believe that the overhead and SG&A rates for Asian and Bimetal should not be averaged. We recognize, as respondents argue, that Asian has accumulated losses equal to or exceeding its entire net worth, and that its information is further removed from the POR than that of Bimetal. However, we believe that Asian is not an appropriate surrogate primarily because the auditor's report notes that the financial statements are not presented in accordance with the generally accepted accounting principles of India.

Comment 5

Petitioner contends that the failure of Premier to identify all related parties in the PRC in its questionnaire response renders all of its responses unusable. Petitioner notes that the verification report for Premier indicates that Premier has a relationship with a range of related parties. Petitioner argues that Premier withheld information about these parties. Furthermore, petitioner claims that, since the record does not reveal exactly what is manufactured or marketed by each of the related parties, the Department should use BIA in calculating a rate for Premier. Petitioner notes that the statute authorizes the Department to use BIA whenever it is unable to verify the accuracy of the information submitted or whenever a party refuses or is unable to produce information in a timely manner or in the form required.

Premier contends that the questionnaire required it to provide information on related companies which deal with the products in this investigation, which Premier did. Premier stated that it interpreted the questionnaire as asking for all affiliations that deal with TRBs only. Premier argues that it has no relationship with companies that produce TRBs. According to Premier, it owns no interest in such companies, such companies own no interest in Premier, and there is no third party that owns a 20 percent interest in both Premier and such companies. Premier further argues that transactions between itself and another Hong Kong trading company were financing accommodations, and that the other trading company did not know the final destination of merchandise sold to Premier.

DOC Position

Although we agree with petitioner that Premier failed to identify all of its affiliations in the PRC, we do not agree that this failure renders its responses unusable. Premier did not report its affiliations with companies involved with other products. However, at verification, we did not find any relationships with manufacturers of TRBs. As stated in the Final Results of Antidumping Duty Administrative Review; Lug Nuts From the People's Republic of China (56 FR 46153) (September 10, 1991), "During verification, it is the Department's practice to select only a certain number of items to verify. Due to time constraints, the Department often is unable to complete the review of source documentation for all selected items. Nevertheless, if the Department's verification team establishes the integrity of the source documents for those sales that it does review, then it assumes that source documents for the remaining sales are similarly reliable." In this instance, the verifier established to the best of his ability, that Premier is not related to any other company that produces TRBs. Therefore, we are accepting this finding for purposes of these final results.

Comment 6

Petitioner maintains that the BIA rate used in the preliminary determination was not adverse, and that the highest rate calculated for any respondent in this review should be used for either: (1) The entire margin for Premier; or (2) the margin for Premier's unmatched sales. Petitioner notes that the difficulties encountered in the previous reviews in obtaining matching data and difmer information for Premier have not been resolved in this review. Furthermore, petitioner contends that using the 0.97 percent margin from the first two reviews for this review is contrary to the Department's promise to use a more adverse BIA rate if the need arose. Petitioner argued that an adverse BIA rate was used in a number of other cases where the respondent was either uncooperative or unable to provide an adequate response due to circumstances beyond its control. Petitioner suggested that, as an alternative BIA rate for Premier, the Department could use information provided by Premier itself and presented by petitioner. This rate would limit the similar matches to those with variable costs within plus or minus 20 percent.

Premier asserts that it answered the Department's questions to the best of its ability, but it was not able to report difmer information because it is not a manufacturer of TRBs. Premier argues that the circumstances of this review do not warrant a punitive BIA rate, because Premier fully cooperated with the Department. Premier states that, although it should not be penalized for failing to provide information that it does not have, if such a BIA rate is applied, it should be the rate applied in the preliminary results.

DOC Position

We agree with respondent. We do not believe that an adverse BIA rate is appropriate for Premier's entire margin or its unmatched sales. We have therefore assigned these unmatched sales the 0.97% margin used in the preliminary results as BIA. Based on the information on the record, there is no basis to support a conclusion that Premier is able to get difference in merchandise information from its suppliers. Furthermore, the information provided by Premier to limit the similar matches to those with variable costs within plus or minus 20 percent is not adequate since it does not take into account the sales of cups and cones to the United States. See the "Foreign Market Value" section of this notice for an explanation of the Department's methodology.

Comment 7

Respondents maintained in their case briefs that the department's use of Bimetal's expenses as the basis for calculating certain factors of production was incorrect. Respondents point out that Bimetal produces other than TRBs, and that its costs are not representative of costs incurred in a market economy by a manufacturer of the subject merchandise. However, during the hearing, respondents and interested parties stated that, if there were no other viable alternatives, Bimetal's information should be used with various adjustments. Respondents and interested parties stated at the hearing that Bimetal is a viable producer, that its auditors gave it an unqualified audit report, and that the record does not indicate whether the products produced by Bimetal are more or less technologically advanced than TRBs.

Although in its case brief petitioner argued in favor of averaging the overhead and SG&A rates of Bimetal and Asian, in its rebuttal brief petitioner stated that, since Bimetal does not produce TRBs, it is not an appropriate source for calculating certain factors of production. Petitioner urges that the Department use only Asian's information instead, since Asian does produce TRBs.

DOC Position

We believe that Bimetal's information is the most accurate information on the record, and therefore believe that the use of this information is appropriate. We agree with respondents' and interested parties' statements that Bimetal is a viable producer of bearings, its auditors found no inconsistencies, and the Department has in the past used information from companies that were not producers of such or similar merchandise for use in constructing a value.

Comment 8

Interested parties contend that the overhead rate used in the preliminary results is a rate suited to developed countries and should not be used in the final results. Interested parties state that the Department should use either: (1) The rate from the previous review; or (2) the Yugoslavian rate data provided by interested parties.

Respondents and interested parties argue that, should the Department use Bimetal's expenses in its analysis, the Department should correct the calculation of overhead. Respondents and interested parties state that depreciation expenses from prior years were incorrectly included in the overhead expense. Interested parties also argue that some depreciation should be included with SG&A expenses. Respondents and interested parties further argue that unidentified and unexplained miscellaneous expenses were incorrectly included in the overhead expense.

Petitioner asserts that, if Bimetal's data were used in the final results, there is no basis for excluding miscellaneous expenses or depreciation costs from the overhead total. According to petitioner, miscellaneous expenses are not included anywhere in Bimetal's material or labor accounts. Furthermore, petitioner maintains that, since it is impossible to know the amount of depreciation expense for a given year until future years have passed, the only reasonable approach is to estimate this expense on the basis of the past year's experience, as was done in the preliminary results. Finally, petitioner contends that the overhead rate used in the preliminary results is consistent with the known experience of TRB manufacturers around the world.

DOC Position

We disagree with interested parties that the overhead information used in the preliminary results is suited only to developed countries. As stated in our position to Comment 7, we are using this information for purposes of our final results. However, we do agree with respondents and interested parties that certain adjustments need to be made to the overhead rate provided by petitioner. We have therefore recalculated overhead by deducting from the total overhead figure depreciation expenses from prior years and an amount for depreciation which we are including under SG&A. Furthermore, we have allocated the miscellaneous expenses contained in overhead to both overhead and SG&A based on the percentage of overhead and SG&A net of miscellaneous expenses to the combined amount of overhead and SG&A net of miscellaneous expenses.

Comment 9

Respondents and interested parties argue that, should the Department use Bimetal's expenses in its analysis, the calculation of Bimetal's SG&A expenses should be revised to correct certain errors. Respondents and interested parties argue that packing, forwarding, and shipping costs were incorrectly included in SG&A expenses. Furthermore, respondent and interested parties note that the amount of excise duty included in SG&A expenses was completely recovered and therefore Bimetal incurred no actual expense for this item. Interested parties argue that, if it is not clear that this expense was completely recovered, this expense should be treated as a materials expense. Interested parties further argue that an amount of depreciation included in overhead should be allocated to SG&A. Finally, respondent and interested parties argue that the amount of interest income reported by Bimetal should be used as an offset to Bimetal's interest expense.

Petitioner agrees that respondents' claims regarding the effect of packing, forwarding and excise taxes upon the SG&A expenses are valid if Bimetal's information was used in the final results. However, petitioner states that respondents' claims concerning interest is unfounded in that the links necessary to make the requested adjustment in the constructed value calculations have not been shown.

DOC Position

We agree with all parties that Bimetal's SG&A expenses should be revised to exclude packing, forwarding and excise taxes which were included in SG&A in the preliminary results. We have made this adjustment. In addition, we agree with respondents and interested parties that the interest income reported by Bimetal should be used as an offset to the interest expense. However, we have offset interest expense only by the amount of interest income applicable to short-term interest-bearing assets. Furthermore, we agree with interested parties that an amount of depreciation included in overhead should be allocated to SG&A and have done so. We have increased SG&A to account for the entire amount of auditing fees incurred by Bimetal as there was no basis for excluding certain portions of this expense. Finally, we have allocated the miscellaneous expenses contained in overhead to both overhead and SG&A, based on the respective ratios of overhead net of miscellaneous expenses and SG&A amounts to the combined amount of overhead and SG&A.

Comment 10

Luoyang contends that the Department should value steel scrap used as inputs by Luoyang at the cost of steel scrap, not steel bar. Luoyang maintains that there are essential differences between steel bar and steel scrap used by Luoyang. Furthermore, Luoyang asserts that steel bar has a much higher value than steel scrap. Finally, Luoyang states that, since it takes a significantly greater amount of steel scrap inputs to produce TRBs than steel bar, if both types of inputs had the same value, Luoyang would manufacture TRBs with steel bar entirely, and sell the scrap at steel bar prices.

Petitioner counters that new material remains new product throughout the production process. According to petitioner, the only time scrap has any significance is when a respondent

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demonstrates that it recovered and sold scrap from its production process, thereby reducing its net material cost. Petitioner maintains that there is no such thing as input scrap.

DOC Position

We do not believe that the scrap steel input reused by Luoyang should be valued at the cost of steel scrap. Respondent had sufficient time before verification to bring this issue to the attention of the Department and to suggest alternatives with which to value this reused steel input. However, respondent failed to do so. Since this issue was discovered during verification, and since there is no other reasonable valuation alternative, we have valued this reused steel input at the price of steel bar.

Comment 11

Respondents and interested parties assert that the Department should not have included Guizhou and Jilin in this administrative review, since the petitioner did not request a review for these companies. Interested parties assert that the inclusion of Guizhou and Jilin is not legally permissible. Respondents argue that petitioner's request for review did not equate CMEC with all PRC companies that exported TRBs to the United States. Interested parties state that the only companies that can be legally reviewed are those listed in the Notice of Initiation or those listed in petitioner's request for review. Both respondent and interested parties contend that Guizhou and Jilin were never part of CMEC. Thus, respondents state that the data obtained from Guizhou and Jilin should not be used to determine the "all other" rate in this review, and that entries made by these two companies during the POR should be liquidated at the deposit rate. Furthermore, interested parties point out that, since the Department's preliminary results show the respondents to be independent, there is no basis to include Guizhou and Jilin in the review.

Petitioner maintains that respondents themselves identified CMEC as the sole exporter of TRBs from the PRC in the original investigation and in the two subsequent reviews. Petitioner points out that identifying the name of individual plants in its request for review was unnecessary. In spite of this fact, petitioner notes that there were no imports reported in this review for which Timken did not request a review of either the producer or the exporter.

DOC Position

We agree with petitioner. Respondents' and interested parties' contention that the Department was wrong in including all Chinese companies in this review because they were not specifically requested by petitioner is without merit. Our reasoning for including all Chinese companies has been quite clear. As we stated in our preliminary results, at the time of the investigation, CMEC was the umbrella organization through which all companies in the PRC exported TRBs to the United States. The notion that CMEC was the only exporter of TRBs in the PRC was also accepted during our initiation of this review. As such, in reviewing CMEC, we included all PRC companies that exported TRBs to the United States. By initiating this review for CMEC and Premier, we therefore meant to include all exports of TRBs from the PRC. Even if the umbrella organization situation with CMEC did not exist, 19 CFR 353.22(c) specifically permits the Department to review any firm on its own initiative when appropriate. Furthermore, we note that there were no imports reported in this review for which Timken did not request a review of either the producer or the exporter.

Comment 12

Respondents assert that the Department should base the "all others" rate on the weighted-average margin of all TRB producers, not on the highest margin calculated for any single producer. Respondents argue that the use of the highest margin calculated for any single producer is particularly inappropriate in this case because the rate is unrepresentative of Chinese exports. Respondents note that the highest margin calculated in the preliminary results was based on one sale of one unusual part number, which was not exported by any other company during the POR.

Interested parties contend that the Department has no legal right to impose an "all others" rate on companies that did not participate in this review for purposes of assessing duties on imports which entered during the POR. Interested parties argue that the application of an "all others" rate should only be used to determine what the estimated antidumping duty rates will be on future entries. Even if the Department is allowed to impose an "all others" rate, interested parties maintain that the highest non-BIA rate used by the Department in the preliminary results is unfair. Interested parties suggest that the weighted-average margin of all companies reviewed should be the "all others" rate.

DOC Position

We disagree with interested parties. For assessment purposes, all shippers not individually reviewed in this case will be assessed duties equal to the highest rate for any non-BIA reviewed firm, which is the "all others" rate. As noted in Comment 11, the Department intended to cover all exporters of the subject merchandise in this review. The fact that the Department did not specifically name a company is attributable to the unique and evolving circumstances of non-market economy cases from the PRC. However, all companies not specifically named, but nevertheless covered in this review, had the opportunity to participate and receive their own margins.

We also disagree with respondents that a weighted-average margin is the appropriate "all others" rate for estimated duty deposit purposes. As stated in the Final Results of Antidumping Duty Administrative Review: Certain Fresh Cut Flowers From Mexico (56 FR 29621) (June 28, 1991), the Department has changed its practice with respect to the "new shipper/all others" rate because of difficulties Customs has in determining when a producer/exporter begins shipping the subject merchandise to the United States. The current practice of the Department is to assign all shippers not having an individual rate in any previous administrative review or the investigation, and which are not related to any firms with individual rates, regardless of when they began exporting, the "all others" rate, which is the highest rate calculated for any reviewed firm. (Note that this rate was formerly called the "new shipper" rate. The Department will no longer calculate a separate "new shipper" rate, but will update the "all others" rate with each administrative review.) Therefore, the "all others" rate will continue to be the highest margin calculated for any single producer.

Comment 13

Interested parties maintain that, in the event that a "new shipper" rate or "all other" rate is imposed after this review, this new rate should not apply to Chin Jun Industrial Ltd. (Chin Jun). Chin Jun is an exporter of TRBs to the United States which first exported bearings after May 31, 1989.

DOC Position

We disagree with interested parties. As stated in response to Comment 12, the "all others" rate applies to all shippers not receiving individual rates in this review, regardless of when they began exporting.

Final Results of the Review

For purposes of these final results, we have determined that company-specific dumping margins are warranted for the eight companies listed below. (For a further discussion of company-specific dumping margins, see the preliminary results of this administrative review (56 FR 50309, October 4, 1991), and a July 23, 1991, memo from the Director, Office of Antidumping Investigations, to the DAS for Investigations, both of which are on file in room B-099, U.S. Department of Commerce.) For any other exporters, with entries during the review period, we have assigned an "all others" rate equal to the highest rate for any company in this administrative review. This rate will also be the deposit rate for all companies who have not received an individual rate in any administrative review or the less than fair value investigation, and are not related to any firms with individual rates. As a result of our review, we determine the margins to be:

Manufacturer/exporter	Time period	Margin (percent)
CMEC	5/12/89-5/31/90	0.00
Guizhou	5/12/89-5/31/90	0.00
Henan	5/12/89-5/31/90	0.00
Jilin	5/12/89-5/31/90	8.83
Liaoning	5/12/89-5/31/90	0.00
Luoyang	5/12/89-5/31/90	1.05
Premier	6/01/89-5/31/90	0.60
Shanghai General	6/01/89-5/31/90	0.00
All Others	5/12/89-5/31/90	8.83

This Department will instruct the Customs Service to assess antidumping duties at these rates on all appropriate entries. Individual differences between United States Price and Foreign Market Value may vary from the percentages stated above. The Department will issue appraisement instructions concerning these eight companies and all others directly to the Customs Service.

Furthermore, as provided by section 751(a)(1) of the Tariff Act: (1) A cash deposit of estimated antidumping duties based on the above margins shall be required on entries of this merchandise from Jilin, Luoyang, Premier and all others; and (2) since the margins for CMEC, Guizhou, Henan, Liaoning and Shanghai General are 0.00 percent, the Department shall not require a cash deposit of antidumping duties on entries of TRBs from these companies. These deposit requirements are effective for all shipments of TRBs from the PRC entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

The administrative review and notice are in accordance with sections 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(6).

Dated: December 23, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-31185 Filed 12-30-91; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications: Ponce, Puerto Rico (Service Area)

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first Budget period (12 months) is estimated as $184,260 in Federal funds, and a minimum of $32,516 in non-Federal (cost sharing) contribution, from June 1, 1992 to May 31, 1993. Cost-sharing contributions, may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Ponce, Puerto Rico SMSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state, local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued fundings will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and the Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with OMB Circular A-129, "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the

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Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applications are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

The departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Work-place Act of 1988 (Pub. L. 100-690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreements" and SF-LLL the "Disclosure of Lobbying Activities" (if applicable) is required in accordance with section 319 of Public Law 101-121, which generally prohibits recipients of Federal contracts, grants, and loans from using legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

CLOSING DATE: The closing date for application is February 18, 1992. Applications must be postmarked on or before February 18, 1992.

Proposals will be reviewed by the Washington Regional Office. The mailing address for submission is:

ADDRESSES:

Gina A. Sanchez, Regional Director, Washington Regional Office, Minority Business Development Agency, 14th & Constitution Ave. NW., room 6711, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT:

John F. Iglehart, Regional Director, New York Regional Office at (212) 264-3283.

SUPPLEMENTARY INFORMATION:

Anticipated processing time of this award is 120 days. Executive Order 12372 "Inter-governmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above New York address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance).

Dated: December 24, 1991.

William R. Fuller,

Deputy Regional Director, New York Regional Office.

[FR Doc. 91-31162 Filed 12-30-91; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

[Docket No. 911192-1292]

Western Pacific Bottomfish and Seamount Groundfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of control date for entry into the bottomfish fishery in the Mau Zone of the Northwestern Hawaiian Islands.

SUMMARY: This notifies owners of vessels that enter the bottomfish fishery in the Mau Zone of the Northwestern Hawaiian Islands (NWHI) after December 17, 1991, that they may be determined to be ineligible for future participation in that fishery should the Western Pacific Fishery Management Council (Council) decide to limit access to the fishery based in part on historical participation. Owners are defined as persons listed as owners on Coast Guard vessel documentation records, or on state vessel registration records for undocumented vessels.

This announcement is intended to alert bottomfish fishery participants in the Mau Zone who enter the fishery after the referenced date that their investment may be at risk if the Council decides to limit access to the fishery. This announcement does not preclude consideration of any other date for eligibility from being proposed and implemented.

FOR FURTHER INFORMATION CONTACT:

Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, (808) 523-1368; or E. C. Fullerton, Regional Director, Southwest Region, NMFS (213) 514-6196 or (FTS) 795-6196.

SUPPLEMENTARY INFORMATION: A limited entry permit is currently required to participate in the bottomfish fishery in the Ho'omalu Zone of the NWHI, that portion of the exclusive economic zone (EEZ) west of 165° W. longitude. Access is not limited in the Mau Zone, that portion of the EEZ between 161° 20' and 165° W. longitudes, but participants must hold Federal permits. Persons fishing in the Mau Zone can earn points for possible qualification for a Ho'omalu Zone limited entry permit.

Due in part to restrictions in other Hawaiian fisheries such as the longline and lobster fisheries, the Mau Zone fishery is experiencing a significant increase in fishing effort. While the number of Ho'omalu Zone limited entry permits has decreased by 50 percent in the past year, the number of Mau Zone permits increased by 75 percent. There are now 29 Mau Zone permits.

The Council is concerned about the increasing effort in this fishery. Estimates of Spawning Potential Ratio (SPR) indicate that the status of opakapaka stocks in the Mau Zone (SPR = 0.28) more closely resembles the status of opakapaka in the Main Hawaiian Islands (SPR = 0.35), than in the Ho'omalu Lone (SPR = 0.65). The Plan Team has expressed concern that the bottomfish stocks in the Main Hawaiian Islands are showing signs of stress, and the Mau Zone stocks may be approaching a similar condition. In addition, an economic analysis by the NMFS Honolulu Laboratory indicates that the Mau Zone can economically sustain a fleet of 6 full-time vessels; 14 vessels were active in the Mau Zone in 1990

The Council's Bottomfish Advisory Review Board (BARB), which was established to advise the Council on the NWHI limited entry program, has requested several times that the Council consider limited access for the Mau Zone. At its December 17-18, 1991, meeting, the Council agreed to establish a December 17, 1991 control date for possible use in a limited access program for the Mau Zone. The Council has directed the bottomfish plan team to evaluate the BARB's proposal and develop alternative approaches for the Council to consider

Establishment of a potential control date is needed to minimize a rush to enter the fishery while limited access alternatives are being discussed. However, establishment does not commit the Council to any particular management regime or criterion for entry to the bottomfish fishery in the Mau Zone. Fishermen are not guaranteed future participation in the Mau Zone fishery regardless of their date of entry or intensity of participation in the fishery before or after the control date. The Council may choose a different control date, or it may choose a management regime that does not make use of a control date. The Council may choose to give variable consideration to participants in the fishery before and after the control date. The Council may also choose to take no further action to control entry or access to the fishery.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 24, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91-31246 Filed 12-30-91; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council (Council), and its Advisory Panel (AP) and its Scientific and Statistical Committee (SSC) will hold public meetings on January 13-17, 1992, at the Downtown Hilton Hotel, Portland, OR. A Council executive session, pertaining to a briefing on litigation, which is not open to the public, is scheduled to begin on January 16 at noon. The Council is scheduled to convene its regular public meeting on January 17 at 8 a.m. The Council's AP and SSC will begin their meetings on January 13 at 1 p.m. Their agendas will be similar to that of the Council (see below). Other workgroup and committee meetings also may be held on short notice during the meeting week.

The Council will consider the following agenda items: (1) Report on the status of seabirds, and review of the draft Alaska Seabird Management Plan prepared by the U.S. Fish and Wildlife Service; (2) review of progress on the revision to the North Pacific Fisheries Research Plan, and consideration of approval of a program for public review; (3) review of progress on the development of a moratorium on all fisheries under the Council's jurisdiction and on a comprehensive rationalization program; (4) a status report on an amendment to the Marine Mammal Protection Act proposed by the National Marine Fisheries (NMFS); (5) a status report on Secretarial action taken on Amendment 17/22—Walrus Islands; (6) an update on research on pollock in the Gulf of Alaska; (7) review of research priorities and recommendations to the NMFS; (8) an overview of crab management and consideration of the need for adjustments to the management plan; (9) review of staff tasking; and (10) restrictions on U.S. operations affiliated with foreign activities in the Central Bering Sea.

In relation to groundfish management, the Council will: (1) Receive a report from the NMFS on plan amendments, regulatory changes and emergency rules in progress; (2) discuss catch and discard estimation procedures; (3) receive a report from the Alaska Fisheries Science Center on the need for the current joint U.S./Japan longline survey; and (4) hear results of scoping on the proposed delay in the Bering Sea/Aleutian Islands pollock "B" season, and consider the need for a plan amendment.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone (907) 271-2809.

Dated: December 24, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-31247 Filed 12-30-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Costa Rica; Correction

December 24, 1991.

As the result of a data investigation, the import level for Costa Rica 443 is being revised. In the letter to the Commissioner of Customs published in the **Federal Register** on October 24, 1991 (56 FR 55120), second column, the import level for Category 443 is changed from 176,810 numbers to 187,983 numbers.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-31188 Filed 12-30-91; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Thailand

December 24, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 30, 1991.

FOR FURTHER INFORMATION CONTACT:

Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6581. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for special shift, carryforward and cancellation of special shift previously added and subtracted.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 56 FR 32558, published on July 17, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 24, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on July 11, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on December 30, 1991, you are directed to amend further the directive dated July 11, 1991 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Thailand:

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Category	Adjusted twelve-month limit [1]
Sublevels in Group II	
338/339	1,572,760 dozen.
345	208,050 dozen.
347/348/847	516,990 dozen.
638/639	1,583,990 dozen.
647/648	711,555 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-31189 Filed 12-30-91; 8:45 am]

BILLING CODE 3510-DR-F

Denial of Participation in the Special Access and Special Regime Programs

December 24, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs denying the right to participate in the Special Access and Special Regime Programs.

EFFECTIVE DATE: April 1, 1992.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Committee for the Implementation of Textile Agreements (CITA) has determined that Western Caribbean Jeans is in violation of the requirements set forth for participation in the Special Access and Special Regime Programs.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs, effective on April 1, 1992, to deny Western Caribbean Jeans the right to participate in the Special Access and Special Regime Programs, for a period of three years, beginning April 1, 1992 and ending March 31, 1995. In addition, for the period April 1, 1992 through March 31, 1995, U.S. Customs will not sign ITA-370P forms for export of U.S.-formed and cut fabric for Western Caribbean Jeans.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

Requirements for participation in the Special Regime Program are available in **Federal Register** notices 53 FR 15724, published on May 3, 1988; 53 FR 32421, published on August 25, 1988; 53 FR 49346, published on December 7, 1988; and FR 50425, published on December 6, 1989.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 24, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has determined that Western Caribbean Jeans is in violation of the requirements for participation in the Special Access and Special Regime Programs.

Effective for entry on or after April 1, 1992, you are directed to prohibit Western Caribbean Jeans from further participation in the Special Access and Special Regime Programs for a period of three years, beginning April 1, 1992 and ending March 31, 1995. Goods accompanied by Form ITA-370P which are presented to U.S. Customs for entry under the Special Access and Special Regime Programs will no longer be accepted. In addition, for the period April 1, 1992 through March 31, 1995, you are directed not to sign ITA-370P forms for export of U.S.-formed and cut fabric for Western Caribbean Jeans.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-31187 Filed 12-30-91; 8:45 am]

BILLING CODE 3510-DR-F

Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States; Change to the 1992 Correlation

December 23, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Change to the 1992 Correlation.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

SUPPLEMENTARY INFORMATION:

The Correlation: Textile and Apparel Categories based on the Harmonized Tariff Schedule of the United States (1992) presents the harmonized tariff numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the bilateral agreement program. The 1992 Correlation should be amended to correct the unit of measure for Category 632 from dozen to dozen pair.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-31190 Filed 12-30-91; 8:45 am]

BILLING CODE 3510-DR-F

COMMODITY FUTURES TRADING COMMISSION

Coffee, Sugar & Cocoa Exchange, Inc.: Proposed Amendments Relating to the Delivery of Coffee in Licensed Warehouses in New Orleans on the Coffee "C" Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Proposed Contract Market Rule Changes.

SUMMARY: The Coffee, Sugar & Cocoa Exchange, Inc. (CSCE) has submitted proposed amendments to its coffee "C" futures contract that will declare a moratorium on the licensing of additional wharf warehouses located in the Port of New Orleans and require that any new coffee certified by the CSCE must not be stored in existing CSCE-licensed wharf warehouses located in New Orleans. The proposed amendments will be made effective by the CSCE immediately following Commission approval with respect to all existing and newly listed contract months. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis (Division) of the Commodity Futures Trading Commission (Commission) has determined, on behalf of the Commission, that the proposed amendments are of major economic significance. On behalf of the Commission, the Division is requesting comments on this proposal.

DATES: Comments must be received on or before January 30, 1992.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the proposed changes affecting CSCE-licensed wharf warehouses in the Port of New Orleans for the Coffee "C" futures contract.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, telephone (202) 254-7303.

SUPPLEMENTARY INFORMATION: The existing terms of the coffee "C" futures contract provide for the delivery of CSCE-certified coffee stored in CSCE-licensed warehouses located in the Port of New York and the Port of New Orleans.[1] Currently, the contract's terms stipulate certain requirements that coffee warehouses located in the above-cited ports must meet in order to be eligible for licensing as delivery warehouses for the futures contract. These warehouse licensing standards currently do not place any restrictions on where licensed warehouses may be located within the above-noted ports. At present, in the Port of New Orleans, the CSCE-licensed warehouses are located at both wharf and inland locations.

The CSCE is proposing to declare a moratorium on the licensing of additional wharf warehouses in the Port of New Orleans and to require that any new coffee certified by the CSCE must not be stored in wharf warehouses located in the Port of New Orleans. Under the proposals, the CSCE will continue to certify new coffee that is stored at inland warehouses located in the Port of New Orleans and will continue to permit the delivery of existing certified coffee that is stored at currently licensed wharf warehouses in New Orleans. The proposed amendments will be implemented immediately following Commission approval with respect to all existing and newly listed contract months.

The CSCE indicates that the proposed amendments are being adopted to address concerns regarding the potential for bags of coffee held in storage at wharf warehouses in New Orleans to burst at a higher rate than bags of coffee stored in other CSCE-licensed warehouses. In this respect, the CSCE indicates that an independent consultant hired by the CSCE conducted two inspections of coffee stored in CSCE-licensed wharf and inland warehouses, and determined that bags of coffee stored in wharf warehouses in New Orleans are more likely to burst than bags of coffee stored at other CSCE-licensed warehouses. The CSCE indicates that the consultant also determined that bags of coffee from certain origins were more likely to burst than bags of coffee of other origins. The CSCE further indicates that a CSCE analysis of the situation confirmed the consultant's findings.

The Commission is seeking comment on the proposed amendments noted above. In particular, the Commission is requesting comment on the appropriateness and acceptability of the CSCE's proposal to apply to all existing contract months the proposed amendment specifying that newly certified coffee must not be stored in CSCE-licensed wharf warehouses located in the Port of New Orleans. In addition, in consideration of the fact that the eventual effect of the proposed amendments will be to eliminate the possibility of futures delivery in wharf warehouses in New Orleans, the Commission is requesting comment on the extent to which the proposed amendments will affect the level of economically deliverable supplies available for the coffee "C" futures contract.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, at the above address. Copies of the amended terms and conditions of the coffee "C" futures contract can be obtained through the Office of the Secretariat by mail at the same address or by telephone at (202) 254-6314.

The materials submitted by the CSCE in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the above address in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, at the above address by the specified date.

Issued in Washington, DC on December 27, 1991.

Gerald Gay,

Director.

[FR Doc. 91-31322 Filed 12-30-91; 8:45 am]

BILLING CODE 6351-01-M

[1] Beginning with the July 1992 contract month, delivery on the coffee "C" futures contract also will be permitted at CSCE-licensed warehouses located in the Port of San Francisco.

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 91-3-SCRA]

1991 Satellite Carrier Royalty Rate Adjustment Proceeding

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice.

SUMMARY: The Tribunal gives notice that negotiations to adjust the satellite carrier royalty rate have not proved successful. As a result, the arbitration proceeding is initiated and an arbitration panel is being formed. The Tribunal gives notice of those arbitrators that are available for selection by the copyright owners, satellite carriers, and satellite distributors.

DATES: The arbitration proceeding is initiated, effective December 31, 1991. By January 10, 1992, the copyright owners shall select one arbitrator, and the satellite carriers and distributors shall select one arbitrator.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009 (202-606-4400).

SUPPLEMENTARY INFORMATION: The Satellite Home Viewer Act of 1988 created a satellite carrier compulsory copyright license which permits satellite carriers to retransmit broadcast signals so long as those carriers pay 12 cents per subscriber per month for each independent broadcast signal, and 3 cents per subscriber per month for each network-affiliated broadcast signal.

Congress provided that the 12 cents/3 cents rate would be reviewed in 1991-1992, first by negotiations between the affected parties, and then by arbitration if negotiations prove unsuccessful.

The Tribunal was informed by the copyright owners, the satellite carriers and the satellite distributors that a negotiated adjustment of the rate will not be reached.

Accordingly, the Tribunal gives notice that the arbitration proceeding has begun, effective December 31, 1991.

The Tribunal has received from the American Arbitration Association a list of 26 qualified and available arbitrators.

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Their names and qualifications are listed below. By January 10, 1992, the copyright owners shall select one arbitrator, and the satellite carriers and distributors shall select one arbitrator.

The names and qualifications of available arbitrators are as follows:

Donald Banner—copyright attorney/law professor; Elizabeth Barad—copyright attorney; Thomas Barocci—arbitrator/business consultant; William Becker—copyright attorney; Richard Bennet—copyright attorney; Terrell Birch—copyright attorney; Virginia Carson—copyright/communications attorney; Bernard Corbett—attorney/former CEO of electronics systems company; George Douglas—economic consultant; Stuart Dwork—copyright attorney; Lenore Ehrig—former Chief ALJ for the FCC; Prof. Charles Engle—professor of copyright law; Kenneth Frankl—communications attorney; Hon. George Gallagher—Senior Judge, D.C. Court of Appeals; Prof. James Heisler—professor of economics; James Hobson—former chief, Cable TV Bureau, FCC; David Horowitz—attorney/former CEO, MTV Networks; James Johnston—copyright/communications attorney; Neal Jackson—copyright attorney; Tobey Marzouk—computer/copyright attorney; Bernard Norwood—economic consultant; Douglas Rae—economic and market research consultant; Stephen Rubin—copyright attorney; Edward Shafer—former professor of management & finance/communications consultant; Michael Walter—computer/copyright attorney; Michael Yokell—economic and business consultant.

The biographies of the available arbitrators are available from the Tribunal upon request. For further information about the available arbitrators, the parties are advised to contact Lois Garmon at the American Arbitration Association.

Dated: December 20, 1991.

Mario F. Aguero,

Acting Chairman.

[FR Doc. 91-30988 Filed 12-30-91; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DoD Policy for the Pilot-Mentor Protege Program.

Type of Request: New Collection.

Average Burden Hours/Minutes Per Response: 8 Hours.

Responses Per Respondent: 2.

Number of Respondents: 30.

Annual Responses: 60.

Annual Burden Hours (Including Recordkeeping): 720.

Needs and Uses: Section 831 of the Fiscal Year 1991 Department of Defense (DoD) Authorization Act (Pub. L. 101-510) requires the Secretary of Defense to establish a pilot program to provide incentives for DoD contractors to furnish disadvantaged small business concerns with assistance designed to enhance their capabilities to perform as subcontractors and suppliers under DoD contracts and other contracts and subcontracts in order to increase the participation of such business concerns under DoD, other Federal Government, and commercial contracts. Because the law provides for credit toward subcontracting goals which are reported on Standard Form (SF 295, "Summary Subcontract Report," and the law requires a report evaluating whether the purposes of the program have been attained, it is necessary to collect additional information to that currently required on the SF 295.

Affected Public: Businesses or other for profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: December 26, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-31202 Filed 12-30-91; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

DOD Advisory Group on Electron Devices Advisory Committee Meeting

SUMMARY: Working Group C (Mainly Opto-Electronics) of the DoD Advisory Group on Electron Devices (AGED) annuonces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday and Thursday, January 15 and 16, 1992.

ADDRESS: The meeting will be held at the Lawrence Livermore National Lab, Livermore, CA.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: December 26, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-31196 Filed 12-30-91; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices Advisory Committee Meeting

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wednesday, 22 January 1992.

ADDRESS: The meeting will be held at the Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Walter Gelnovatch, AGED Secretariat, 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92-463, as amended (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

L. M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 91-31197 Filed 12-30-91; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, 11 February 1992.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Warner Kramer, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Public Law No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: December 26, 1991.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-31198 Filed 12-30-91; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Feasibility of Employing Pit Reuse in the Production of W88 Warheads for Trident II Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Feasibility of Employing Pit Reuse in the Production of W88 Warheads for Trident II will meet in closed session on January 28-29, 1992 at Science Applications International Corporation, McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will investigate the feasibility of reusing existing plutonium pits in the production of Mark 5 Reentry Body/W88 warheads for deployment in Trident II SLBMs.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c) (1) (1988), and that accordingly this meeting will be closed to the public.

Dated: December 26, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-31199 Filed 12-30-91; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on SDI Countermeasures; Meeting

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on SDI Countermeasures will meet in closed session on January 16-17, 1992 at Science Applications International Corporation, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine and make recommendations on the overall area of countermeasures to the Strategic Defense Initiative (SDI) to assure that systems concepts are responsive to plausible threats and countermeasures.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: December 26, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-31200 Filed 12-30-91; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Joint Precision Interdiction (JPI); Change in Meeting Location

ACTION: Change in location of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Joint Precision Interdiction (JPI) scheduled for January 16-17, 1992 as published in the **Federal Register** (Vol. 56, No. 222, Page 58230, Monday, November 18, 1991, FR Doc. 91-27642) will be held at the Pentagon, Arlington, Virginia. In all other respects the original notice remains unchanged.

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Dated: December 26, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-31201 Filed 12-30-91; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Regulatory Guidance Letters Issued by the Corps of Engineers

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The purpose of this notice is to provide a copy of the latest Regulatory Guidance Letter (RGL) to all known interested parties. RGL's are used by the Corps of Engineers as a means to transmit guidance on the permit program (33 CFR 320-330) to its division and district engineers.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph T. Eppard, Regulatory Branch, Office of the Chief of Engineers, at (202) 272-1783.

SUPPLEMENTARY INFORMATION: In accordance with a notice published by the Corps of Engineers on January 22, 1991, (56 FR 2408), we will publish all RGL's upon issuance. Accordingly, RGL No. 91-1, subject: Extension of Time for Individual Permit Authorizations, is hereby published. This is the first RGL published in 1991.

Regulatory Guidance Letter, RGL 91-1

Date: 6 Nov 1991 Expires: 31 Dec 96.

Subject: Extension of Time For Individual Permit Authorizations.

1. The purpose of this guidance is to provide clarification for District and Division offices relating to extensions of time for Department of the Army permits (See 33 CFR 325.6).

2. General: A permittee is informed of the time limit for completing an authorized activity by General Condition #1 of the standard permit from (ENG Form 1721). This condition states that a request for an extension of time should be submitted to the authorizing official at least one month prior to the expiration date. This request should be in writing and should explain the basis of the request. The District Engineer (DE) may consider an oral request from the permittee provided it is followed up with a written request prior to the expiration date. A request for an extension of time will usually be granted unless the DE determines that the time extension would be contrary to the public interest. The one month submittal requirement is a workload management time limit designed to prevent permittees from filing last minute time extension requests. Obviously, the one month period is not sufficient to make a final decision on all time extension requests that are processed in accordance with 33 CFR 325.2. It should be noted that a permittee may choose to request a time extension sooner than this (e.g., six months prior to the expiration date). While there is no formal time limit of this nature, a request for an extension of time should generally not be considered by the DE more than one year prior to the expiration date. A permit will automatically expire if an extension is not requested and granted prior to the applicable expiration date (See 33 CFR 325.6(d)).

3. Requests for Time Extensions Prior to Expiration: For requests of time extensions received prior to the expiration date, the DE should consider the following procedures if a decision on the request cannot be completed prior to the permit expiration date:

(a) The DE may grant an interim time extension while a final decision is being made; or

(b) The DE may, when appropriate, suspend the permit at the same time that an interim time extension is granted, while a final decision is being made.

4. Requests for Time Extensions after Expiration: A time extension cannot be granted if a time extension request is received after the applicable time limit. In such cases, a new permit application must be processed, if the permittee wishes to pursue the work. However, the DE may consider expedited processing procedures when: (1) The request is received shortly (generally 30 days) after the expiration date, (2) the DE determines that there have been no substantial changes in the attendant circumstances since the original authorization was issued, and (3) the DE believes that the time extension would likely have been granted. Expedited processing procedures may include, but are not limited to, not requiring that a new application form be submitted or issuing a 15 day public notice.

5. This guidance expires 31 December 1996 unless sooner revised or rescinded.

For the Director of Civil Works

John P. Elmore,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

[FR Doc. 91-31180 Filed 12-30-91; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF ENERGY

Availability of Restricted Eligibility Solicitation, DE-PS01-91W00231, for the Conduct of Feasibility Studies for the Siting of a Monitored Retrievable Storage Facility

AGENCY: Department of Energy.

ACTION: Amended notice of availability to make grants of financial assistance on a restricted eligibility basis pursuant to 10 CFR 600.7(b)(1) in response to applications received from eligible states, Indian Tribes and affected units of local government pursuant to section 406(b) of the Nuclear Waste Policy Act Of 1982, as amended.

SUMMARY: On June 5, 1991, the Department of Energy published a Notice of Availability of a Restricted Eligibility Solicitation for the Conduct of Feasibility Studies for the siting of a Monitored Retrievable Storage (MRS) Facility. (56 FR 25674).

On August 30, 1991, the Department of Energy published an amendment to the restricted eligibility solicitation. (56 FR 43006).

The Department of Energy hereby announces a second amendment to the restricted Eligibility Solicitation. This amendment includes extension of closing dates to March 31, 1992 for Phase 1 grants and June 30, 1992 for Phase 2 grants. The solicitation is now available inviting the submission by eligible states, Indian Tribes and affected units of local government of applications for financial assistance. Executive Order 12372, Intergovernmental Review of Federal Programs, as implemented by 10 CFR part 1005, applies to this program.

Those who have previously requested copies of the solicitation will be sent copies of the amendment.

ADDRESSES: Requests for copies of the solicitation and amendments must be in writing to: U.S. Department of Energy, Office of Placement and Administration, Attn: Mr. Nick Graham, PR-322.1, 1000 Independence Avenue, SW., Washington, DC 20585. For further information, contact Mr. Nick Graham on (202) 586-9634.

Arnold A. Gjerstad,

Acting Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91-31243 Filed 12-30-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ST92-0437-000 through ST92-1047-000 and ST92-0352-000 through ST92-0380-000]

ANR Pipeline Co.; Self-Implementing Transactions

December 24, 1991.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to section 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-LT" or "G-LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G-HT" or "G-HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K-S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity [2]	AFF. Y/N	Rate schedule	Date commenced	Projected termination date
ST92-0437	ANR Pipeline Co	Northern Indiana Pub. Serv., et al.	11-01-91	B	152,738	N	I	10-01-91	Indef.
ST92-0438	Transok, Inc	KN Energy, Inc	11-01-91	C	15,000	N	I	10-05-91	Indef.
ST92-0439	Natural Gas P/L Co. of America	Energy Marketing Exchange, Inc	11-01-91	G-S	20,000	N	I	10-04-91	02-01-92
ST92-0440	Exxon Gas System, Inc	Phillips Gas Pipeline Co	11-01-91	C	30,000	N	I	10-01-91	Indef.
ST92-0441	Ozark Gas Transmission System	TXO Gas Marketing, Corp	11-01-91	G-S	50,000	N	F/I	10-10-91	Indef.
ST92-0442	Ozark Gas Transmission System	Vesta Energy Co	11-01-91	G-S	50,000	N	F/I	10-11-91	Indef.
ST92-0443	Ozark Gas Transmission System	Union Pacific Fuels, Inc	11-01-91	G-S	30,000	N	F/I	10-10-91	Indef.
ST92-0444	Ozark Gas Transmission System	Omega Pipeline Co	11-01-91	G-S	50,000	N	F/I	10-11-91	Indef.
ST92-0445	Ozark Gas Transmission System	Graham Energy Marketing Corp	11-01-91	G-S	100,000	N	F/I	10-21-91	02-18-92
ST92-0446	United Gas Pipe Line Co	Mobil Natural Gas Inc	11-01-91	G-S	52,400	N	F/I	10-21-91	02-18-92
ST92-0447	United Gas Pipe Line Co	Neste Trading (USA) Inc	11-01-91	G-S	209,800	N	I	10-24-91	02-21-92
ST92-0448	United Gas Pipe Line Co	Hadson Gas Systems, Inc	11-01-91	G-S	25,152	N	I	10-21-91	02-18-92
ST92-0449	United Gas Pipe Line Co	Fina Natural Gas Co	11-01-91	G-S	26,200	N	I	10-01-91	01-29-92
ST92-0450	Williston Basin Inter. P/L Co	Wyoming Gas Co	11-01-91	B	3,620	N	I	10-01-91	09-30-92
ST92-0451	Transcontinental Gas P/L Corp	Atlanta Gas Light Co	11-01-91	B	350,000	N	I	06-26-91	Indef.
ST92-0452	Columbia Gulf Transmission Co	Ledco, Inc	11-01-91	G-S	100,000	N	I	10-09-91	02-05-92
ST92-0453	Columbia Gulf Transmission Co	Seagull Marketing Services	11-01-91	G-S	75,000	N	I	10-05-91	02-01-92
ST92-0454	Columbia Gulf Transmission Co	Enron Gas Marketing, Inc	11-01-91	G-S	50,000	N	I	10-05-91	02-01-92
ST92-0455	Panhandle Eastern Pipe Line Co	NGC Transportation Inc	11-01-91	G-S	10,000	N	I	10-10-91	02-07-92
ST92-0456	Panhandle Eastern Pipe Line Co	Coastal Gas Marketing Co	11-01-91	G-S	12,000	N	I	10-08-91	02-05-92
ST92-0457	Panhandle Eastern Pipe Line Co	Coastal Gas Marketing Co	11-01-91	G-S	100,000	N	I	10-15-91	02-12-92
ST92-0458	Panhandle Eastern Pipe Line Co	Indiana Gas Co., Inc	11-01-91	B	1,000	N	I	10-16-91	Indef.
ST92-0459	Ozark Gas Transmission System	Boston Gas Co	11-04-91	B	100,000	N	I	10-11-91	Indef.
ST92-0460	Ozark Gas Transmission System	Sonat Marketing Co	11-04-91	G-S	50,000	N	F/I	10-11-91	09-20-91
ST92-0461	Ozark Gas Transmission System	Mountain Front Pipeline Co., Inc	11-04-91	G-S	30,000	N	F/I	10-11-91	09-20-91
ST92-0462	Ozark Gas Transmission System	Aquila Energy Marketing Corp	11-04-91	G-S	100,000	N	I	10-10-91	09-20-91
ST92-0463	Southern Natural Gas Co	City of Trussville	11-06-91	G-S	3,500	N	F	10-26-91	02-23-92
ST92-0464	Southern Natural Gas Co	Access Energy Corp	11-06-91	G-S	100,000	N	I	10-11-91	02-08-92
ST92-0465	Southern Natural Gas Co	Stellar Gas Co	11-06-91	G-S	50,000	N	I	10-02-91	01-30-92
ST92-0466	Southern Natural Gas Co	City of Nashville	11-06-91	G-S	169	N	F	10-05-91	02-02-92
ST92-0467	Southern Natural Gas Co	Mobil Natural Gas Inc	11-06-91	G-S	100,000	N	I	10-05-91	02-02-92
ST92-0468	Southern Natural Gas Co	City of Cuthbert	11-06-91	G-S	264	N	F	10-05-91	02-02-92
ST92-0469	Southern Natural Gas Co	City of Pelham	11-06-91	G-S	276	N	F	10-05-91	02-02-92

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Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity [2]	AFF. Y/N	Rate schedule	Date commenced	Projected termination date
ST92-0470	Southern Natural Gas Co	Mississippi Valley Gas	11-06-91	G-S	34,000	N	F	10-03-91	01-31-92
ST92-0471	Southern Natural Gas Co	Access Energy Corp	11-06-91	G-S	40,000	N	I	10-18-91	02-15-92
ST92-0472	Southern Natural Gas Co	Access Energy Corp	11-06-91	G-S	100,000	N	I	10-11-91	02-08-92
ST92-0473	South Georgia Natural Gas Co	City of Cuthbert	11-06-91	G-S	283	N	F	10-05-91	02-02-92
ST92-0474	South Georgia Natural Gas Co	City of Nashville	11-06-91	G-S	159	N	F	10-05-91	02-02-92
ST92-0475	South Georgia Natural Gas Co	City of Pelham	11-06-91	G-S	275	N	F	10-05-91	02-02-92
ST92-0476	Tennessee Gas Pipeline Co	Ucar Carbon Co	11-06-91	G-S	7,890	N	I	10-11-91	Indef.
ST92-0477	Tennessee Gas Pipeline Co	Equitable Resources Marketing Co.	11-06-91	G-S	307,500	N	I	08-28-91	Indef.
ST92-0478	Tennessee Gas Pipeline Co	Southern Natural Gas Co	11-06-91	B	1,000,000	N	I	10-08-91	Indef.
ST92-0479	Tennessee Gas Pipeline Co	Hadson Gas Systems, Inc	11-06-91	G-S	200,000	N	I	09-01-91	Indef.
ST92-0480	Tennessee Gas Pipeline Co	Sonat Marketing Co	11-06-91	G-S	40,000	N	I	09-01-91	Indef.
ST92-0481	Tennessee Gas Pipeline Co	Stellar Gas Co	11-06-91	G-S	1,000,000	N	I	08-01-91	Indef.
ST92-0482	Tennessee Gas Pipeline Co	Maxus Exploration Co	11-06-91	G-S	40,000	N	I	10-18-91	Indef.
ST92-0483	Tennessee Gas Pipeline Co	Gulf Energy Marketing Co	11-06-91	G-S	310,000	N	I	08-30-91	Indef.
ST92-0484	Tennessee Gas Pipeline Co	Tejas Hydrocarbons Co	11-06-91	G-S	55,000	N	I	10-11-91	Indef.
ST92-0485	Tennessee Gas Pipeline Co	VHC Gas Systems L.P.	11-06-91	G-S	100,000	N	I	08-01-91	Indef.
ST92-0486	Enogex Inc	Northern Natural Gas	11-06-91	C	20,000	N	I	10-01-91	Indef.
ST92-0487	Enogex Inc	Northern Natural Gas	11-06-91	C	10,000	N	I	10-01-91	Indef.
ST92-0488	Enogex Inc	Williams Natural Gas Co	11-06-91	C	50,000	N	I	10-03-91	Indef.
ST92-0489	Enogex Inc	Williams Natural Gas Co	11-06-91	C	15,000	N	I	10-23-91	Indef.
ST92-0490	Enogex Inc	Natural Gas Pipeline Co	11-06-91	C	150,000	N	I	10-01-91	Indef.
ST92-0491	Enogex Inc	Natural Gas Pipeline Co	11-06-91	C	100,000	N	I	10-04-91	Indef.
ST92-0492	Transcontinental Gas P/L Corp	North Penn Gas Co	11-06-91	B	3,636	N	F	09-17-91	07-31-06
ST92-0493	Gas Co. of New Mexico	El Paso Natural Gas Co	11-06-91	G-HT	15,000	N	I	10-01-91	04-30-92
ST92-0494	K N Energy, Inc	Transok, Inc	11-06-91	B	100,000	N	I	10-05-91	Indef.
ST92-0495	K N Energy, Inc	Transok, Inc	11-06-91	B	50,000	Y	I	10-10-91	Indef.
ST92-0496	K N Energy, Inc	Transok, Inc	11-06-91	B	100,000	N	I	10-05-91	Indef.
ST92-0498	Northern Natural Gas Co	Austin Utilities Department	11-06-91	B	10,000	N	F	11-01-91	Indef.
ST92-0499	Northern Natural Gas Co	Midwest Gas	11-06-91	B	65,000	N	F	11-01-91	Indef.
ST92-0500	Northern Natural Gas Co	Western Gas Utilities, Inc	11-06-91	B	2,696	N	F	11-01-91	Indef.
ST92-0501	Northern Natural Gas Co	Fremont Department of Utilities	11-06-91	B	10,000	N	F	11-01-91	Indef.
ST92-0502	Northern Natural Gas Co	Michigan Gas Co	11-06-91	B	17,449	N	F	11-27-91	Indef.
ST92-0503	Northern Natural Gas Co	Wisconsin Power & Light Co	11-06-91	B	15,000	N	F/I	10-03-91	Indef.
ST92-0504	Northern Natural Gas Co	Tenaska Marketing Ventures	11-06-91	G-S	200,000	N	F/I	10-07-91	Indef
ST92-0505	Northern Natural Gas Co	City of Cedar Falls	11-06-91	B	8,200	N	F	10-26-91	Indef.
ST92-0506	Northern Natural Gas Co	Michigan Gas Co	11-06-91	B	1,800	N	F	11-01-91	Indef.
ST92-0507	Northern Natural Gas Co	Fairbank Municipal Utilities	11-06-91	B	450	N	F/I	11-01-91	10-31-92
ST92-0508	Northern Natural Gas Co	Wisconsin Gas Co	11-06-91	B	13,264	N	F	11-01-91	Indef.
ST92-0509	Northern Natural Gas Co	Metropolitan Utilities District	11-06-91	B	19,500	N	F	11-01-91	Indef.
ST92-0510	Enogex Inc	Northern Natural Gas Co	11-06-91	C	2,000	N	I	11-01-91	Indef.
ST92-0511	Colorado Interstate Gas Co	Western Gas Resources, Inc	11-06-91	G-S	1,500	N	I	10-01-91	09-30-92
ST92-0512	Sabine Pipe Line Co	North Carolina Natural Gas Corp	11-06-91	B	100,000	N	I	10-01-91	Indef.
ST92-0513	Gas Transport, Inc	River Gas Co., et al	11-06-91	B	10,000	N	I	11-01-91	Indef.
ST92-0514	Gas Transport, Inc	Hope Gas, Inc	11-06-91	B	590	N	I	10-01-91	12-31-92
ST92-0515	Gas Transport, Inc	River Gas Co	11-06-91	B	6,000	N	I	10-01-91	Indef.
ST92-0516	Columbia Gas Transmission Corp.	Gulf Oil Corp	11-06-91	G-S	500,000	Y	I	10-15-91	Indef.
ST92-0517	Columbia Gas Transmission Corp.	Columbia Gas OC Ohio, Inc	11-06-91	B	1,350	Y	F	10-15-91	Indef.
ST92-0518	Columbia Gas Transmission Corp.	Dayton Power and Light Co	11-06-91	B	900	Y	I	10-15-91	Indef.
ST92-0519	Columbia Gulf Transmission Co	Nerco Oil & Gas, Inc	11-06-91	G-S	50,000	N	I	10-10-91	02-06-92
ST92-0520	Columbia Gulf Transmission Co	Oxy USA Inc	11-06-91	G-S	6,000	N	I	10-19-91	02-15-92
ST92-0521	Columbia Gulf Transmission Co	Meth Corp	11-06-91	G-S	120,000	N	I	10-19-91	02-15-92
ST92-0522	Natural Gas P/L Co. of America	Texas Utilities Fuel Co	11-07-91	B	30,000	N	I	04-30-90	Indef.
ST92-0523	ONG Transmission Co	Ozark Pipeline Co	11-07-91	C	50,000	N	I	10-16-91	Indef.
ST92-0524	ONG Transmission Co	Ozark Pipeline Co	11-07-91	C	10,000	N	I	10-09-91	Indef.
ST92-0525	Equitrans, Inc	Phoenix Diversified Ventures, Inc.	11-07-91	G-S	1,519	N	F	11-01-91	02-28-92
ST92-0526	ANR Pipeline Co	UMC Petroleum Corp	11-07-91	G-S	1,000	N	I	10-10-91	08-31-92
ST92-0527	ANR Pipeline Co	Interstate Gas Marketing, Inc	11-07-91	G-S	1,000	N	I	10-11-91	09-30-92
ST92-0528	ANR Pipeline Co	Coastal Gas Marketing Co	11-07-91	G-S	800,000	N	I	10-10-91	05-31-92
ST92-0529	Alabama-Tennessee Nat. Gas Co.	Citizens Gas Supply Corp	11-07-91	G-S	400,000	N	I	10-18-91	02-14-92
ST92-0530	Overthrust Pipeline Co	Union Pacific Fuels, Inc	11-08-91	G-S	50,000	N	I	11-01-91	Indef.
ST92-0531	Questar Pipeline Co	Nephi City Corp., et al	11-08-91	B	2,000	N	I	11-01-91	09-15-92
ST92-0532	ONG Transmission Co	Ozark Pipeline Co	11-08-91	C	50,000	N	I	10-09-91	Indef.
ST92-0533	Tennessee Gas Pipeline Co	Exxon Corp	11-08-91	G-S	100,000	N	I	10-09-91	Indef.
ST92-0534	Tennessee Gas Pipeline Co	United Texas Transmission Co	11-08-91	B	100,000	N	I	10-01-91	Indef.
ST92-0535	Tennessee Gas Pipeline Co	Enron Gas Marketing Inc	11-08-91	G-S	703,297	N	I	09-05-91	Indef.
ST92-0536	Delhi Gas Pipeline Corp	Ozark Gas Transmission System	11-08-91	C	250,000	N	I	10-11-91	Indef.
ST92-0537	Ozark Gas Transmission System	Citizens Gas Supply Corp	11-08-91	G-S	100,000	N	F/I	10-14-91	Indef.
ST92-0538	Ozark Gas Transmission System	Santanna Natural Gas Corp	11-08-91	G-S	100,000	N	F/I	10-15-91	Indef.
ST92-0539	Ozark Gas Transmission System	Tejas Hydrocarbons Co	11-08-91	G-S	100,000	N	F/I	10-16-91	Indef.
ST92-0540	Ozark Gas Transmission System	Enogex Services Corp	11-08-91	G-S	50,000	N	F/I	10-12-91	Indef.
ST92-0541	Ozark Gas Transmission System	Transok Ventures Co	11-08-91	G-S	100,000	N	F/I	10-16-91	Indef.
ST92-0542	Ozark Gas Transmission System	Continental Natural Gas, Inc	11-08-91	G-S	50,000	N	F/I	10-16-91	Indef
ST92-0543	Ozark Gas Transmission System	Northeast Energy Associates	11-08-91	G-S	50,000	N	F/I	10-16-91	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity [2]	AFF. Y/N	Rate schedule	Date commenced	Projected termination date
ST92-0544	Ozark Gas Transmission System	North Jersey Energy Associates	11-08-91	G-S	50,000	N	F/I	10-16-91	Indef.
ST92-0545	Ozark Gas Transmission System	Delhi Gas Pipeline Corp	11-08-91	G-S	50,000	N	F/I	10-14-91	Indef.
ST92-0546	Ozark Gas Transmission System	Delhi Gas Pipeline Corp	11-08-91	G-S	50,000	N	F/I	10-14-91	Indef.
ST92-0547	Ozark Gas Transmission System	Nicor Exploration Co	11-08-91	G-S	20,000	N	F/I	10-17-91	Indef.
ST92-0548	Ozark Gas Transmission System	Centennial Natural Gas Corp	11-08-91	G-S	105,000	N	F/I	10-15-91	Indef.
ST92-0549	Ozark Gas Transmission System	Golden Gas Energies, Inc	11-08-91	G-S	5,000	N	F/I	10-14-91	Indef.
ST92-0550	Ozark Gas Transmission System	Coastal Gas Marketing Co	11-08-91	G-S	150,000	N	F/I	10-16-91	Indef.
ST92-0551	Ozark Gas Transmission System	Midcon Marketing Corp	11-08-91	G-S	80,000	N	F/I	10-16-91	Indef.
ST92-0552	Ozark Gas Transmission System	Access Energy Corp	11-08-91	G-S	100,000	N	F/I	10-11-91	Indef.
ST92-0553	Arkansas Oklahoma Gas Corp	Columbia Gas Transmission Corp.	11-08-91	G-HT	800	N	I	11-08-91	Indef.
ST92-0554	Arkansas Oklahoma Gas Corp	Columbia Gas Transmission Corp.	11-08-91	G-HT	400	N	I	11-08-91	Indef.
ST92-0555	Arkansas Oklahoma Gas Corp	Columbia Gas Transmission Corp.	11-08-91	G-HT	20,000	N	I	11-08-91	Indef.
ST92-0556	Arkansas Oklahoma Gas Corp	Columbia Gas Transmission Corp.	11-08-91	G-HT	25,000	N	I	11-08-91	Indef.
ST92-0557	Arkansas Oklahoma Gas Corp	Columbia Gas Transmission Corp.	11-08-91	G-HT	300	N	I	11-08-91	Indef.
ST92-0558	Arkansas Oklahoma Gas Corp	Columbia Gas Transmission Corp.	11-08-91	G-HT	1,000	N	I	11-08-91	Indef.
ST92-0559	Arkansas Oklahoma Gas Corp	Tennessee Gas Pipeline Co	11-08-91	G-HT	450	N	I	11-08-91	Indef.
ST92-0560	Arkansas Oklahoma Gas Corp	Tennessee Gas Pipeline Co	11-08-91	G-HT	1,000	N	I	11-08-91	Indef.
ST92-0561	Arkansas Oklahoma Gas Corp	Tennessee Gas Pipeline Co	11-08-91	G-HT	300	N	I	11-08-91	Indef.
ST92-0562	Arkansas Oklahoma Gas Corp	Tennessee Gas Pipeline Co	11-08-91	G-HT	500	N	I	11-08-91	Indef.
ST92-0563	Arkansas Oklahoma Gas Corp	Tennessee Gas Pipeline Co	11-08-91	G-HT	150	N	I	11-08-91	Indef.
ST92-0564	Arkansas Oklahoma Gas Corp	Tennessee Gas Pipeline Co	11-08-91	G-HT	4,000	N	I	11-08-91	Indef.
ST92-0565	Arkansas Oklahoma Gas Corp	Tennessee Gas Pipeline Co	11-08-91	G-HT	25,000	N	I	11-08-91	Indef.
ST92-0566	Arkansas Oklahoma Gas Corp	Tennessee Gas Pipeline Co	11-08-91	G-HT	5,000	N	I	11-08-91	Indef.
ST92-0568	Arkansas Oklahoma Gas Corp	Tennessee Gas Pipeline Co	11-08-91	G-HT	1,600	N	I	11-08-91	Indef.
ST92-0569	Arkansas Oklahoma Gas Corp	Tennessee Gas Pipeline Co	11-08-91	G-HT	2,500	N	I	11-08-91	Indef.
ST92-0570	Arkansas Oklahoma Gas Corp	Tennessee Gas Pipeline Co	11-08-91	G-HT	400	N	I	11-08-91	Indef.
ST92-0571	Arkansas Oklahoma Gas Corp	Tennessee Gas Pipeline Co	11-08-91	G-HT	260	N	I	11-08-91	Indef.
ST92-0572	Arkansas Oklahoma Gas Corp	Tennessee Gas Pipeline Co	11-08-91	G-HT	20,000	N	I	11-08-91	Indef.
ST92-0573	Arkansas Oklahoma Gas Corp	Columbia Gas Transmission Corp.	11-08-91	G-HT	2,000	N	I	11-08-91	Indef.
ST92-0574	Transcontinental Gas P/L Corp	Ponchartrain Natural Gas System.	11-08-91	E	335,000	N	I	10-25-91	10-24-92
ST92-0575	Transcontinental Gas P/L Corp	Philadelphia Gas Works	11-08-91	E	840,000	N	I	05-01-88	Indef.
ST92-0576	Columbia Gulf Transmission Co	Superior Natural Gas Corp	11-08-91	G-S	10,000	N	I	10-25-91	02-21-92
ST92-0577	Columbia Gulf Transmission Co	Diamond Shamrock Offshore Partners.	11-08-91	G-S	3,000	N	I	10-26-91	02-22-92
ST92-0578	Columbia Gulf Transmission Co	NGC Transportation, Inc	11-08-91	G-S	200,000	N	I	10-24-91	02-20-92
ST92-0579	Columbia Gulf Transmission Co	Columbia Gas of Ohio, Inc	11-08-91	B	560	Y	I	10-18-91	Indef.
ST92-0580	Columbia Gulf Transmission Co	MacMillian Bloedel Container	11-08-91	G-S	1,000	Y	I	10-18-91	Indef.
ST92-0581	Columbia Gulf Transmission Co	Ohio Farm Bureau Development Corp.	11-08-91	G-S	1,600	N	I	10-25-91	Indef.
ST92-0582	Williston Basin Inter. P/L CO	Chevron USA, Inc	11-08-91	G-S	18,750	Y	I	10-11-91	08-31-92
ST92-0583	Arkla Energy Resources	Arkansas Louisiana Gas Co	11-08-91	B	15,000	Y	I	11-01-91	Indef.
ST92-0584	Arkla Energy Resources	Arkansas Louisiana Gas Co	11-08-91	B	50,000	Y	I	11-01-91	Indef.
ST92-0585	Arkla Energy Resources	Arkansas Louisiana Gas Co	11-08-91	B	15,000	Y	I	11-01-91	Indef.
ST92-0586	Trunkline Gas Co	O & R Energy, Inc	11-08-91	G-S	100,000	N	I	10-12-91	02-09-92
ST92-0587	Trunkline Gas Co	O & R Energy, Inc	11-08-91	G-S	100,000	N	I	10-12-91	02-09-92
ST92-0588	Trunkline Gas Co	O & R Energy, Inc	11-08-91	G-S	100,000	N	I	10-12-91	02-09-92
ST92-0589	Trunkline Gas Co	O & R Energy, Inc	11-08-91	G-S	100,000	N	I	10-12-91	02-09-92
ST92-0590	Trunkline Gas Co	O & R Energy, Inc	11-08-91	G-S	100,000	N	I	10-12-91	02-09-92
ST92-0591	Trunkline Gas Co	Louisiana Intrastate Gas Corp	11-08-91	B	50,000	N	I	10-19-91	Indef.
ST92-0592	Trunkline Gas Co	Louisiana Intrastate Gas Corp	11-08-91	B	50,000	N	I	10-21-91	Indef.
ST92-0593	Colorado Interstate Gas Co	Associated Intrastate Pipeline Co.	11-12-91	G-S	50,000	N	I	11-01-91	Indef.
ST92-0594	Colorado Interstate Gas Co	Enron Oil & Gas Marketing, Inc	11-12-91	G-S	120,000	N	I	11-01-91	11-01-99
ST92-0595	Stingray Pipeline Co	Catex Energy Inc	11-12-91	G-S	100,000	N	I	11-01-91	Indef.
ST92-0596	Wyoming Interstate Co., Ltd	Union Pacific Fuels, Inc	11-12-91	B	50,000	N	I	11-01-91	Indef.
ST92-0597	Moraine Pipeline Co	Continental Natural Gas, Inc	11-12-91	G-S	150,000	Y	I	11-01-91	Indef.
ST92-0598	Tennessee Gas Pipeline Co	Yuma Gas Corp	11-12-91	G-S	120,000	N	I	02-01-90	Indef.
ST92-0599	Tennessee Gas Pipeline Co	Reliance Gas Marketing Co	11-12-91	G-S	50,000	N	I	09-01-91	Indef.
ST92-0600	Transok, Inc	Phillips Gas Pipeline Co	11-12-91	C	100,000	N	I	10-11-91	Indef.
ST92-0601	Transok, Inc	Arkla Energy Resources Co	11-12-91	C	20,000	N	I	10-15-91	Indef.
ST92-0602	United Gas Pipe Line Co	Bishop Pipeline Corp	11-12-91	G-S	41,920	N	I	10-30-91	02-27-92
ST92-0603	United Gas Pipe Line Co	Williams Gas Marketing	11-12-91	G-S	524,400	N	I	10-31-91	02-28-92
ST92-0604	United Gas Pipe Line Co	Laser Marketing Co	11-12-91	G-S	675,600	Y	I	10-29-91	02-26-92
ST92-0605	Ozark Gas Transmission System	Catex Energy, Inc	11-13-91	G-S	100,000	N	F/I	10-26-91	Indef.
ST92-0606	Ozark Gas Transmission System	Mobil Natural Gas, Inc	11-13-91	G-S	50,000	N	F/I	10-26-91	Indef.
ST92-0607	Ozark Gas Transmission System	TXO Gas Ventures Corp	11-13-91	G-S	50,000	Y	F/I	10-23-91	Indef.
ST92-0608	Ozark Gas Transmission System	Delhi Gas Pipeline Corp	11-13-91	B	50,000	Y	F/I	10-23-91	Indef.
ST92-0609	Ozark Gas Transmission System	Delhi Gas Pipeline Corp	11-13-91	B	50,000	Y	F/I	10-23-91	Indef.
ST92-0610	Ozark Gas Transmission System	Transok, Inc	11-13-91	B	100,000	N	F/I	10-15-91	Indef.
ST92-0611	Ozark Gas Transmission System	Sunbelt Oil Field Services, Inc	11-13-91	G-S	10,000	N	F/I	10-15-91	Indef.
ST92-0612	Ozark Gas Transmission System	Tennegasco Corp	11-13-91	G-S	150,000	Y	F/I	10-24-91	Indef.

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Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity [2]	AFF. Y/N	Rate schedule	Date commenced	Projected termination date
ST92-0613	Trunkline Gas Co	Unocal Exploration Corp	11-13-91	G-S	70,000	N	I	11-01-91	02-29-92
ST92-0614	Trunkline Gas Co	Unocal Exploration Corp	11-13-91	G-S	20,000	N	F	11-01-91	02-29-92
ST92-0615	Trunkline Gas Co	American Central Gas Cos., Inc	11-13-91	G-S	20,000	N	F	11-01-91	02-29-92
ST92-0616	Trunkline Gas Co	Stellar Gas Co	11-13-91	G-S	50,000	N	F	11-01-91	02-29-92
ST92-0617	Trunkline Gas Co	Mississippi River Trans. Corp	11-13-91	G	30,000	N	F	11-01-91	Indef.
ST92-0618	Trunkline Gas Co	Enron Gas Marketing, Inc	11-13-91	G-S	100,000	N	I	11-01-91	02-29-92
ST92-0619	Trunkline Gas Co	Conoco, Inc	11-13-91	G-S	20,161	N	F	11-01-91	02-29-92
ST92-0620	Trunkline Gas Co	North Canadian Marketing Corp	11-13-91	G-S	150,000	N	I	11-01-91	02-29-92
ST92-0621	Trunkline Gas Co	Tejas Power Corp	11-13-91	G-S	100,000	N	I	11-01-91	02-29-92
ST92-0622	Trunkline Gas Co	Tejas Power Corp	11-13-91	G-S	15,000	N	I	11-01-91	02-29-92
ST92-0623	Inland Gas Co., Inc	Sipple Brick	11-12-91	G-S	300	N	I	10-18-91	02-15-92
ST92-0624	Columbia Gas Transmission Corp.	City of Richmond	11-12-91	G-S	26,000	N	I	11-01-91	Indef.
ST92-0625	Blue Dolphin Pipe Line Co	Dow Pipeline System	11-12-91	E	20,000	N	I	10-25-91	Indef.
ST92-0626	Equitrans, Inc	O & R Energy, Inc	11-12-91	G-S	4,843	N	F	11-01-91	02-28-92
ST92-0627	Transcontinental Gas P/L Corp	Nan Ya Plastics, America	11-12-91	G-S	1,000	N	I	10-24-91	Indef.
ST92-0628	Florida Gas Transmission Co	Enron Gas Processing Co	11-12-91	G-S	5,047	Y	I	10-25-91	Indef.
ST92-0629	Transwestern Pipeline Co	Tennegasco Marketing Corp	11-12-91	G-S	100,000	N	I	10-12-91	Indef.
ST92-0630	Northern Natural Gas Co	Western Gas Utilities, Inc	11-12-91	B	250	N	F	11-01-91	03-31-92
ST92-0631	Northern Natural Gas Co	Sheehan's Natural Gas Co	11-12-91	B	405	N	F	11-01-91	Indef.
ST92-0632	Northern Natural Gas Co	Northwest Natural Gas Co	11-12-91	B	75	N	F	11-01-91	Indef.
ST92-0633	Northern Natural Gas Co	Wisconsin Power & Light Co	11-12-91	B	28,682	N	F	11-01-91	Indef.
ST92-0634	Northern Natural Gas Co	Owantonna Public Utilities	11-12-91	B	3,397	N	F	11-01-91	Indef.
ST92-0635	Northern Natural Gas Co	Circle Pines Utilities	11-12-91	B	1,300	N	F	11-01-91	Indef.
ST92-0636	Northern Natural Gas Co	Northwestern Public Service Co	11-12-91	B	12,300	N	F	11-01-91	Indef.
ST92-0637	Northern Natural Gas Co	Huchinson Utilities Commission	11-12-91	B	4,318	N	F	11-01-91	Indef.
ST92-0638	Northern Natural Gas Co	Huchinson Utilities Commission	11-12-91	B	2,873	N	F	11-01-91	Indef.
ST92-0639	Northern Natural Gas Co	Midwest Natural Gas, Inc	11-12-91	B	2,500	N	F	11-01-91	Indef.
ST92-0640	Northern Natural Gas Co	Access Energy Corp	11-12-91	G-S	100,000	N	I	10-15-91	Indef.
ST92-0641	Tennessee Gas Pipeline Co	Birkshire Gas Co	11-13-91	B	118,700	Y	I	10-19-91	Indef.
ST92-0642	Tennessee Gas Pipeline Co	City of Holyoke	11-13-91	B	118,700	Y	I	10-31-91	Indef.
ST92-0643	Transcontinental Gas P/L Corp	Washington Gas Light Co	11-13-91	B	100,000	Y	I	10-31-91	Indef.
ST92-0644	Transcontinental Gas P/L Corp	Public Service Electric & Gas Co	11-13-91	B	720,000	N	I	09-20-91	Indef.
ST92-0645	Transcontinental Gas P/L Corp	Public Service Co. of N. Carolina	11-13-91	B	900,000	N	I	10-26-91	Indef.
ST92-0646	Transcontinental Gas P/L Corp	Washington Gas Light Co	11-13-91	B	400,000	N	I	08-01-91	Indef.
ST92-0647	Transcontinental Gas P/L Corp	United Cities Gas Co	11-13-91	B	56,000	N	I	12-30-88	Indef.
ST92-0648	Texas Eastern Transmission Corp.	Highland Energy Co	11-14-91	G-S	4,000	N	I	10-01-91	Indef.
ST92-0649	Northern Natural Gas Co	City of Hibbing	11-14-91	B	700	N	F	11-01-91	02-29-92
ST92-0650	Northern Natural Gas Co	City of Duluth	11-14-91	B	4,000	N	F	11-01-91	03-31-92
ST92-0651	Northern Natural Gas Co	City of New Ulm	11-14-91	B	5,535	N	F	11-01-91	Indef.
ST92-0652	Northern Natural Gas Co	Harlan Municipal Utilities	11-14-91	B	1,500	N	F	11-02-91	Indef.
ST92-0653	Northern Natural Gas Co	Twister Transmission Co	11-14-91	G-S	50,000	N	F/I	10-28-91	Indef.
ST92-0654	Trunkline Gas Co	Consumers Power Co	11-13-91	G-S	40,000	N	F	11-01-91	02-29-92
ST92-0655	Ozark Gas Transmission System	Consolidated Edison Co. of NY, Inc.	11-13-91	B	150,000	Y	I	10-24-91	Indef.
ST92-0656	Williston Basin Inter. P/L Co	Coastal Gas Marketing Co	11-13-91	G-S	76,584	Y	I	11-06-91	06-18-92
ST92-0657	Williston Basin Inter. P/L Co	Koch Hydrocarbon Co	11-13-91	G-S	170,100	Y	I	10-15-91	05-01-93
ST92-0658	Williston Basin Inter. P/L Co	Rainbow Gas Co	11-13-91	G-S	320,188	Y	I	11-06-91	07-31-92
ST92-0659	Panhandle Eastern Pipe Line Co	General Motors Corp	11-14-91	G-S	90,000	N	I	11-01-91	Indef.
ST92-0660	Panhandle Eastern Pipe Line Co	Anadarko Trading Co	11-14-91	G-S	20,000	N	I	11-01-91	Indef.
ST92-0661	Panhandle Eastern Pipe Line Co	Conoco, Inc	11-14-91	G-S	200	N	F	11-01-91	Indef.
ST92-0662	Panhandle Eastern Pipe Line Co	Union Gas Limited	11-14-91	G-S	20,000	N	F	11-01-91	Indef.
ST92-0663	Panhandle Eastern Pipe Line Co	Boyd Rosene and Associates, Inc.	11-14-91	G-S	10,000	N	F	11-01-91	Indef.
ST92-0664	Panhandle Eastern Pipe Line Co	Unocal Exploration Corp	11-14-91	G-S	20,000	N	F	11-01-91	Indef.
ST92-0665	Panhandle Eastern Pipe Line Co	Amgas, Inc	11-14-91	G-S	50	N	I	11-01-91	Indef.
ST92-0666	Panhandle Eastern Pipe Line Co	North America Resources Co	11-14-91	G-S	20,000	N	I	11-01-91	Indef.
ST92-0667	Panhandle Eastern Pipe Line Co	Amgas, Inc	11-14-91	G-S	40	N	I	11-01-91	Indef.
ST92-0668	Panhandle Eastern Pipe Line Co	NGC Transportation Inc	11-14-91	G-S	200,000	N	I	10-24-91	Indef.
ST92-0669	Panhandle Eastern Pipe Line Co	Santanna Natural Gas Corp	11-14-91	G-S	50,000	N	I	10-26-91	Indef.
ST92-0670	Panhandle Eastern Pipe Line Co	Bridgegas U.S.A. Inc	11-14-91	G-S	100,000	N	I	10-30-91	Indef.
ST92-0671	ANR Pipeline Co	Kogas, Inc	11-14-91	G-S	100,000	N	I	10-16-91	09-30-92
ST92-0672	ANR Pipeline Co	Coastal Gas Marketing Co	11-14-91	G-S	50,00	Y	I	10-01-91	Indef.
ST92-0673	ANR Pipeline Co	Unigas Corp	11-14-91	G-S	200,000	Y	I	10-16-91	Indef.
ST92-0674	ANR Pipeline Co	Peoples Natural Gas Co., et al	11-14-91	B	23,740	Y	I	10-17-91	Indef.
ST92-0675	Transcontinental Gas P/L Corp	Transco Offshore Gathering Co	11-14-91	B	750,000	N	I	04-05-90	Indef.
ST92-0676	Transcontinental Gas P/L Corp	United Cities Gas Co	11-14-91	B	91,000	N	I	12-30-88	Indef.
ST92-0677	Delhi Gas Pipeline Corp	Williams Natural Gas Co	11-15-91	C	5,000	N	I	11-01-91	Indef.
ST92-0678	Trailblazer Pipeline Co	Presidio Gas Resources, Inc	11-15-91	G-S	353,000	N	I	11-08-91	Indef.
ST92-0679	Tennessee Gas Pipeline Co	NGC Transportation, Inc	11-15-91	G-S	5,000	N	F	11-01-91	11-01-92
ST92-0680	Channel Industries Gas Co	Brandywine Industrial Gas Inc	11-15-91	C	50,000	Y	I	11-01-91	Indef.
ST92-0681	Pacific Gas Transmission Co	Northwest Pipeline Corp	11-15-91	B	114,695	N	I	08-01-89	09-20-90
ST92-0682	Pacific Gas Transmission Co	Oregon Natural Gas Develop. Corp.	11-15-91	G-S	101,500	N	I	10-10-91	08-01-92
ST92-0683	Pacific Gas Transmission Co	Northwest Natural Gas Co	11-15-91	B	101,500	N	I	06-01-89	09-20-90
ST92-0684	Pacific Gas Transmission Co	Northwest Pipeline Co	11-15-91	G	114,695	N	I	10-24-91	07-31-92
ST92-0685	Texas Gas Transmission Corp	Endevco Oil and Gas Co	11-15-91	G-S	50,000	N	I	10-30-91	Indef.
ST92-0686	Texas Gas Transmission Corp	Western Kentucky Gas Co	11-15-91	B	3,500	N	I	11-01-91	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity [2]	AFF. Y/N	Rate schedule	Date commenced	Projected termination date
ST92-0687	Texas Gas Transmission Corp	Western Kentucky Gas Co	11-15-91	B	515	N	I	11-02-91	Indef.
ST92-0688	Texas Gas Transmission Corp	City of Hamilton	11-15-91	B	10,000	N	F	11-01-91	Indef.
ST92-0689	Texas Gas Transmission Corp	Bridgeline Gas Distribution Co	11-15-91	B	50,000	N	I	11-08-91	Indef.
ST92-0690	Eaton Rapids Gas Storage System.	Central Illinois Public Service Co	11-15-91	G-ST	10,000	N	N/A	11-01-91	01-31-92
ST92-0691	Northern Border Pipeline Co	Northern Natural Gas Co., et al	11-15-91	G	120,000	N	F	10-16-91	Indef.
ST92-0692	Northern Border Pipeline Co	Northern Natural Gas Co., et al	11-15-91	G	30,000	N	F	10-16-91	Indef.
ST92-0693	Northern Natural Gas Co	Midwest Natural Gas, Inc	11-15-91	B	2,529	N	F	11-01-91	Indef.
ST92-0694	Northern Natural Gas Co	Midwest Natural Gas, Inc	11-15-91	B	2,229	N	F	11-01-91	Indef.
ST92-0695	Northern Natural Gas Co	Iowa Electric Light & Power Co	11-15-91	B	87,182	N	F	11-01-91	Indef.
ST92-0696	Northern Natural Gas Co	Northern Illinois Gas Co	11-15-91	B	16,300	N	F	11-01-91	Indef.
ST92-0697	Northern Natural Gas Co	Remsen Municipal Utilities	11-15-91	B	400	N	F	11-01-91	Indef.
ST92-0698	Northern Natural Gas Co	City of Duluth	11-15-91	B	3,000	N	F	11-01-91	Indef.
ST92-0699	Mississippi River Trans. Corp	Louisiana Intrastate Gas Corp	11-15-91	B	25,000	N	I	10-18-91	Indef.
ST92-0700	Columbia Gulf Transmission Co	Hunt Oil Co	11-15-91	G-S	20,000	N	I	10-21-91	Indef.
ST92-0701	Columbia Gas Transmission Corp.	Energy Marketing Services, Inc	11-15-91	G-S	2,878	Y	F	10-15-91	Indef.
ST92-0702	Columbia Gas Transmission Corp.	Columbia Gas of Penn., Inc	11-15-91	B	35,000	Y	I	11-06-91	Indef.
ST92-0703	Columbia Gas Transmission Corp.	Delmarva Power & Light Co	11-15-91	B	7,000	Y	I	11-11-91	Indef.
ST92-0704	Columbia Gas Transmission Corp.	East Ohio Gas Co	11-15-91	G-S	400	Y	I	10-15-91	Indef.
ST92-0705	Columbia Gas Transmission Corp.	Eastern Pipeline Corp	11-15-91	B	8,000	Y	I	10-15-91	Indef.
ST92-0706	Columbia Gas Transmission Corp.	Columbia Gas of Ohio, Inc	11-15-91	B	4,111	Y	F	11-01-91	Indef.
ST92-0707	United Texas Transmission Corp	Natural Gas Pipeline Co. of America.	11-15-91	C	100,000	Y	I	07-06-91	Indef.
ST92-0708	Trunkline Gas Co	BHP Petroleum (Americas), Inc	11-18-91	G-S	1,000	N	I	11-01-91	02-29-92
ST92-0709	Trunkline Gas Co	Continental Natural Gas, Inc	11-18-91	G-S	50,000	N	I	11-01-91	02-29-92
ST92-0710	Ozark Gas Transmission System	Ward Gas Marketing, Inc	11-18-91	G-S	100,000	N	I	11-08-91	Indef.
ST92-0711	Ozark Gas Transmission System	Mitchell Marketing Co	11-18-91	G-S	50,000	N	I	11-07-91	Indef.
ST92-0712	Delhi Gas Pipeline Corp	Northern Natural Gas Co	11-18-91	C	250,000	N	I	11-01-91	Indef.
ST92-0713	Delhi Gas Pipeline Corp	Natural Gas P/L Co. of America	11-18-91	C	30,000	N	I	10-31-91	Indef.
ST92-0714	Delhi Gas Pipeline Corp	United Gas Pipe Line Co	11-18-91	C	6,000	N	I	11-01-91	Indef.
ST92-0715	Delhi Gas Pipeline Corp	El Paso Natural Gas Co	11-18-91	C	50,000	N	I	10-25-91	Indef.
ST92-0716	Natural Gas P/L Co. of America	Arco Natural Gas Marketing, Inc	11-18-91	G-S	500,000	N	I	10-18-91	Indef.
ST92-0717	Colorado Interstate Gas Co	Western Sugar Co	11-18-91	G-S	700	N	F	10-01-91	Indef.
ST92-0718	Northern Natural Gas Co	Northern States Power Co	11-18-91	B	10,000	N	F	11-02-91	12-31-91
ST92-0719	Northern Natural Gas Co	Wisconsin Natural Gas Co	11-18-91	B	1,620	N	F	11-02-91	12-31-91
ST92-0720	Northern Natural Gas Co	Northwestern Public Service Co	11-18-91	B	25,000	N	F/I	11-01-91	Indef.
ST92-0721	Northern Natural Gas Co	Peoples Natural Gas Co	11-18-91	B	50,000	N	F/I	10-31-91	Indef.
ST92-0722	Transwestern Pipeline Co	Chevron U.S.A., Inc	11-18-91	G-S	40,000	N	I	10-19-91	Indef.
ST92-0723	Gulf Energy Pipeline Co	Natural Gas P/L Co. America	11-18-91	C	5,405	N	I	10-01-91	Indef.
ST92-0724	Williams Natural Ga Co	Caspen Gas Co	11-18-91	G-S	30,000	N	I	10-16-91	01-01-93
ST92-0725	Louisiana Resources Co	Louisiana Gas Marketing Co	11-18-91	C	50,000	N	I	10-18-91	Indef.
ST92-0726	Southern Natural Gas Co	City of Adel	11-18-91	G-S	154	N	F	11-02-91	03-02-92
ST92-0727	South Georgia Natural Gas Co	City of Tallahassee	11-18-91	G-S	4,545	N	F	11-01-91	03-01-92
ST92-0728	Southern Natural Gas Co	City of Tallahassee	11-18-91	G-S	4,567	N	F	11-01-91	03-01-92
ST92-0729	South Georgia Natural Gas Co	City of Adel	11-18-91	G-S	153	N	F	11-02-91	03-02-92
ST92-0730	Southern Natural Gas Co	Atlanta Gas Light Co	11-18-91	G-S	114,905	N	F	11-01-91	03-01-92
ST92-0731	Southern Natural Gas Co	City of Bay Springs	11-18-91	B	150	N	F	11-01-91	Indef.
ST92-0732	Southern Natural Gas Co	Chevron U.S.A., Inc	11-18-91	G-S	10,000	N	F	11-01-91	03-01-92
ST92-0733	Southern Natural Gas Co	Chevron U.S.A., Inc	11-18-91	G-S	5,000	N	F	11-01-91	03-01-92
ST92-0734	Sea Robin Pipeline Co	Chevron U.S.A., Inc	11-18-91	G-S	100,000	N	I	11-01-91	03-01-92
ST92-0735	Southern Natural Gas Co	Chattanooga Gas Co	11-18-91	G-S	3,300	N	F	11-02-91	03-02-92
ST92-0736	Southern Natural Gas Co	CMS Gas Marketing	11-18-91	G-S	100,000	N	I	11-07-91	03-07-92
ST92-0737	El Paso Natural Gas Co	Duncan Rural Services Corp	11-18-91	G-S	393	Y	F	11-01-91	Indef.
ST92-0738	El Paso Natural Gas Co	Arizona Electric Power Corp., Inc.	11-18-91	G-S	60,873	Y	F	10-25-91	Indef.
ST92-0739	El Paso Natural Gas Co	Gas Co. of New Mexico	11-18-91	G-S	243,399	Y	F	10-01-91	Indef.
ST92-0740	El Paso Natural Gas Co	Asarco, Inc	11-18-91	G-S	5,097	Y	F	10-01-91	Indef.
ST92-0741	El Paso Natural Gas Co	Asarco, Inc	11-18-91	G-S	8,724	Y	F	10-01-91	Indef.
ST92-0742	El Paso Natural Gas Co	Magma Copper Co	11-18-91	G-S	24,939	Y	F	10-01-91	Indef.
ST92-0743	El Paso Natural Gas Co	Arizona Public Service Co	11-18-91	G-S	220,432	Y	F	10-01-91	Indef.
ST92-0744	El Paso Natural Gas Co	City of Spur	11-18-91	G-S	401	Y	F	11-01-91	Indef.
ST92-0745	El Paso Natural Gas Co	Rio Grande Natural Gas Assoc	11-18-91	G-S	6,342	Y	F	11-01-91	Indef.
ST92-0746	El Paso Natural Gas Co	Cyprus Miami Mining Corp	11-18-91	G-S	6,081	Y	F	11-01-91	Indef.
ST92-0747	El Paso Natural Gas Co	City of Las Cruces	11-18-91	G-S	34,934	Y	F	11-01-91	Indef.
ST92-0748	El Paso Natural Gas Co	Aquila Energy Marketing Corp	11-18-91	G-S	450,000	Y	I	11-04-91	Indef.
ST92-0749	El Paso Natural Gas Co	EMW Gas Assoc	11-18-91	G-S	2,277	Y	F	11-01-91	Indef.
ST92-0750	El Paso Natural Gas Co	Nassau Resources, Inc	11-18-91	G-S	18,540	Y	I	11-01-91	Indef.
ST92-0751	El Paso Natural Gas Co	Black Mountain Gas Co	11-18-91	G-S	845	Y	F	11-01-91	Indef.
ST92-0752	El Paso Natural Gas Co	Rimrock Gas Co	11-18-91	G-S	593	Y	F	11-01-91	Indef.
ST92-0753	El Paso Natural Gas Co	Navajo Tribal Utility Authority	11-18-91	G-S	25,347	Y	F	11-01-91	Indef.
ST92-0754	El Paso Natural Gas Co	City of Mesa	11-18-91	G-S	22,668	Y	F	11-01-91	Indef.
ST92-0755	Panhandle Eastern Pipe Line Co	National Refractories and Minerals	11-18-91	G-S	650	Y	F	11-01-91	Indef.

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Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity [2]	AFF. Y/N	Rate schedule	Date commenced	Projected termination date
ST92-0756	Kentucky West Virginia Gas Co	Penn Virginia	11-18-91	G-S	3,000	N	I	11-01-91	03-01-92
ST92-0757	Panhandle Eastern Pipe Line Co	Kimball Energy Corp	11-18-91	G-S	1,000	N	I	11-01-91	Indef.
ST92-0758	Panhandle Eastern Pipe Line Co	Anadarko Trading Co	11-18-91	G-S	20,000	N	I	11-01-91	Indef.
ST92-0759	Panhandle Eastern Pipe Line Co	Anadarko Trading Co	11-18-91	G-S	100,000	N	F/I	11-01-91	Indef.
ST92-0760	Panhandle Eastern Pipe Line Co	NGC Transportation Inc	11-18-91	G-S	100,000	N	I	11-01-91	Indef.
ST92-0761	Sea Robin Pipeline Co	Union Pacific Fuels, Inc	11-18-91	G-S	30,000	N	I	10-29-91	02-23-92
ST92-0762	Transcontinental Gas P/L Corp	Atlanta Gas Light Co	11-19-91	B	175,000	N	I	04-17-89	Indef.
ST92-0763	Transcontinental Gas P/L Corp	South Carolina Pipeline Corp	11-19-91	B	135,000	N	I	06-29-90	Indef.
ST92-0764	Transcontinental Gas P/L Corp	North Carolina Gas Service Co	11-19-91	B	115,000	N	I	04-17-89	Indef.
ST92-0765	Transcontinental Gas P/L Corp	Piedmont Natural Gas Co	11-19-91	B	180,000	N	I	04-15-89	Indef.
ST92-0766	Arkla Energy Resources	Santa Fe Minerals, Inc	11-19-91	G-S	45,000	N	I	11-01-91	Indef.
ST92-0767	Northern Natural Gas Co	City of New Ulm	11-19-91	B	1,500	N	F	11-01-91	02-29-92
ST92-0768	Colorado Interstate Gas Co	Public Service Co. of Colorado	11-19-91	B	3,500	N	I	11-01-91	Indef.
ST92-0769	Acadian Gas Pipeline System	United Gas Pipe Line Co	11-19-91	C	50,000	N	I	11-06-91	Indef.
ST92-0770	Sabine Pipe Line Company	Phibro Energy Inc	11-18-91	G-S	50,000	N	I	11-01-91	02-28-92
ST92-0771	Tennessee Gas Pipeline Co	The Polaris Pipeline Corp	11-19-91	G-S	150,000	N	I	10-01-91	Indef.
ST92-0772	Tennessee Gas Pipeline Co	New York State Gas & Electric Corp.	11-19-91	B	10,000	N	F	11-01-91	Indef.
ST92-0773	Tennessee Gas Pipeline Co	Hadson Gas Systems, Inc	11-19-91	G-S	80,000	N	I	10-25-91	Indef.
ST92-0774	Tennessee Gas Pipeline Co	Enron Gas Marketing, Inc	11-19-91	G-S	200,000	N	I	10-01-91	Indef.
ST92-0775	Enogex Inc	Northern Natural Gas	11-20-91	C	100,000	N	I	11-01-91	Indef.
ST92-0776	Enogex Inc	Natural Gas Pipeline Co	11-20-91	C	20,000	N	I	11-02-91	Indef.
ST92-0777	Enogex Inc	Arkla Energy Resources	11-20-91	C	30,000	N	I	11-02-91	Indef.
ST92-0778	Enogex, Inc	Northern Natural Gas	11-20-91	C	20,000	N	I	11-01-91	Indef.
ST92-0779	Tennessee Gas Pipeline Co	Conoco, Inc	11-20-91	G-S	212,175	N	I	10-26-91	Indef.
ST92-0780	United Gas Pipe Line Co	Trade & Development Corp	11-20-91	G-S	2,096	N	I	11-01-91	02-29-92
ST92-0781	United Gas Pipe Line Co	The Polaris Pipeline Corp	11-20-91	G-S	20,960	N	I	11-01-91	02-29-92
ST92-0782	United Gas Pipe Line Co	Shell Gas Trading Co	11-20-91	G-S	40,000	N	I	11-01-91	02-29-92
ST92-0783	United Gas Pipe Line Co	Mobil Natural Gas Inc	11-20-91	G-S	52,400	N	I	11-01-91	02-29-92
ST92-0784	Florida Gas Transmission Co	Peoples Gas System, Inc	11-20-91	G-S	1,185	N	F	11-01-91	Indef.
ST92-0785	Florida Gas Transmission Co	Enron Gas Marketing, Inc	11-20-91	G-S	20,000	Y	F	11-01-91	Indef.
ST92-0786	Northern Natural Gas Co	Louis Dreyfus Energy Corp	11-20-91	G-S	100,000	N	F/I	10-31-91	Indef.
ST92-0787	Northern Natural Gas Co	Iowa Southern Utilities Co	11-20-91	B	1,513	N	F	11-01-91	Indef.
ST92-0788	Northern Natural Gas Co	Delhi Gas Pipeline Corp	11-20-91	B	100,000	N	F/I	11-01-91	Indef.
ST92-0789	Northern Natural Gas Co	Delhi Gas Pipeline Corp	11-20-91	B	100,000	N	F/I	11-01-91	Indef.
ST92-0790	Northern Natural Gas Co	Centran Corp	11-20-91	G-S	40,000	N	F/I	11-01-91	Indef.
ST92-0791	Northern Natural Gas Co	Minnegasco, Inc	11-20-91	B	125,000	N	F	10-21-91	Indef.
ST92-0792	Northern Natural Gas Co	Rangeline Corp	11-20-91	G-S	100,000	N	F/I	10-25-91	Indef.
ST92-0793	Texas Eastern Transmission Corp.	Village of Norris City	11-20-91	B	50,000	N	I	10-12-91	Indef.
ST92-0794	Columbia Gas Transmission Corp.	Meridian Marketing & Trans. Corp.	11-20-91	G-S	35,000	Y	I	11-01-91	Indef.
ST92-0795	Transcontinental Gas P/L Corp	Public Service Electric & Gas Co	11-20-91	B	47,000	N	I	11-26-91	10-09-90
ST92-0796	Transcontinental Gas P/L Corp	Alabama Gas Corp., et al	11-20-91	B	78,000	N	I	07-10-90	10-09-90
ST92-0797	Valero Transmission, LP	Texas Eastern Transmission Corp.	11-21-91	C	1,200	N	I	10-23-91	Indef.
ST92-0798	Viking Gas Transmission Co	City of Hawley	11-21-91	G-S	151	N	F	11-01-91	Indef.
ST92-0800	Phillips Gas Pipeline Co	Phillips Natural Gas Co	11-21-91	B	50,000	Y	I	09-01-91	Indef.
ST92-0801	Tennessee Gas Pipeline Co	Tejas Hydrocarbons Co	11-21-91	G-S	15,000	N	I	10-31-91	Indef.
ST92-0802	Tennessee Gas Pipeline Co	Graham Energy Marketing Corp	11-21-91	G-S	80,000	N	I	11-08-91	Indef.
ST92-0803	Tennessee Gas Pipeline Co	New York State Electric & Gas Corp.	11-21-91	G-S	22,532	N	F	11-01-91	Indef.
ST92-0804	Northern Natural Gas Co	Northern States Power Co	11-21-91	B	55,914	N	F	11-01-91	Indef.
ST92-0805	Northern Natural Gas Co	Conoco, Inc	11-21-91	G-S	25,000	N	I	11-08-91	Indef.
ST92-0806	Northern Natural Gas Co	Northern States Power Co	11-21-91	B	153,349	N	F	11-01-91	Indef.
ST92-0807	Northern Natural Gas Co	Northwestern Public Service Co	11-21-91	B	3,605	N	F	11-01-91	Indef.
ST92-0808	Northern Natural Gas Co	Northwestern Public Service Co	11-21-91	B	1,860	N	F	11-01-91	Indef.
ST92-0809	Texas Gas Transmission Corp	Central Illinois Public Service Co	11-21-91	G-S	1,000	N	F	11-01-91	Indef.
ST92-0810	Texas Gas Transmission Corp	CMS Gas Marketing	11-21-91	G-S	100,000	N	I	11-01-91	Indef.
ST92-0811	Texas Gas Transmission Corp	CMS Gas Marketing	11-21-91	G-S	100,000	N	I	11-01-91	Indef.
ST92-0812	Texas Gas Transmission Corp	CMS Gas Marketing	11-21-91	G-S	100,000	N	I	11-01-91	Indef.
ST92-0813	Texas Gas Transmission Corp	Coast Energy Group, Inc	11-21-91	G-S	50,000	N	I	11-01-91	Indef.
ST92-0814	Delhi Gas Pipeline Corp	United Gas Pipe Line Co	11-22-91	C	15,000	N	I	11-01-91	Indef.
ST92-0815	Delhi Gas Pipeline Corp	United Gas Pipe Line Co	11-22-91	C	30,000	N	I	11-01-91	Indef.
ST92-0816	Ozark Gas Transmission Corp	Kogas, Inc	11-22-91	G-S	75,000	N	I	11-13-91	Indef.
ST92-0817	East Tennessee Natural Gas Co	Citizens Gas Utility District	11-22-91	B	300,000	N	I	11-03-91	Indef.
ST92-0818	East Tennessee Natural Gas Co	Marion Natural Gas System	11-22-91	B	200,000	N	I	11-02-91	Indef.
ST92-0819	East Tennessee Natural Gas Co	City of Etowah	11-22-91	B	250,000	N	I	11-02-91	Indef.
ST92-0820	East Tennessee Natural Gas Co	Atlanta Gas Light	11-22-91	B	50,000	N	I	11-05-91	Indef.
ST92-0821	Florida Gas Transmission Co	Consolidated Minerals, Inc	11-22-91	G-S	2,147	N	I	11-01-91	Indef.
ST92-0822	Florida Gas Transmission Co	Georgia Pacific Corp	11-22-91	G-S	7,396	N	I	11-01-91	Indef.
ST92-0823	Transwestern Pipeline Co	Conoco, Inc	11-22-91	G-S	50,000	N	I	11-11-91	Indef.
ST92-0824	Transwestern Pipeline Co	Arco Natural Gas Marketing, Inc	11-22-91	G-S	300,000	N	I	10-25-91	Indef.
ST92-0825	Northern Natural Gas Co	Enron Oil and Gas Co	11-22-91	G-S	50,000	Y	F/I	11-02-91	Indef.
ST92-0826	Northern Natural Gas Co	Honeymead Products Co	11-22-91	G-S	10,000	N	F/I	11-01-91	Indef.
ST92-0827	Northern Natural Gas Co	Minnegasco, Inc	11-22-91	B	575,000	N	F	11-01-91	Indef.
ST92-0828	Viking Gas Transmission Co	Midwest Gas	11-22-91	B	329	N	F	11-01-91	11-01-92
ST92-0829	Tennessee Gas Pipeline Co	Energy Marketing Exchange, Inc	11-22-91	G-S	200,000	N	I	11-01-91	Indef.
ST92-0830	Tennessee Gas Pipeline Co	CNG Transmission Corp	11-22-91	B	119,291	N	F	11-02-91	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity [2]	AFF. Y/N	Rate schedule	Date commenced	Projected termination date
ST92-0831	Tennessee Gas Pipeline Co	Rochester Gas & Electric Corp	11-22-91	B	30,725	N	F	11-01-91	Indef.
ST92-0832	Tennessee Gas Pipeline Co	Chevron U.S.A., Inc	11-22-91	G-S	1,000,000	N	I	11-01-91	Indef.
ST92-0833	Tennessee Gas Pipeline Co	East Ohio Gas Co	11-22-91	B	25,400	N	F	11-01-91	11-01-00
ST92-0834	Tennessee Gas Pipeline Co	Niagara Mohawk Power Corp	11-22-91	B	56,330	N	F	11-01-91	Indef.
ST92-0835	Texas Gas Transmission Corp	City of Elizabethtown	11-22-91	G-S	2,225	N	F	11-01-91	Indef.
ST92-0836	Texas Gas Transmission Corp	Indiana Gas Co., Inc	11-22-91	G-S	20,500	N	F	11-01-91	Indef.
ST92-0837	Texas Gas Transmission Corp	Energy Development Corp	11-22-91	G-S	40,000	N	I	11-01-91	Indef.
ST92-0838	Texas Gas Transmission Corp	Louisville Gas and Electric Co	11-22-91	G-S	10,000	N	F	11-01-91	Indef.
ST92-0839	Texas Gas Transmission Corp	Memphis Light, Gas and Water Div.	11-22-91	G-S	50,000	N	F	11-01-91	Indef.
ST92-0840	ANR Pipeline Co	Santanna Natural Gas Corp	11-22-91	G-S	250,000	N	I	10-24-91	Indef.
ST92-0841	Great Lakes Gas Trans. L.P	Kamine/Besicorp S. Glen Falls L.P.	11-22-91	G-S	13,815	N	F	11-01-91	10-31-06
ST92-0842	Great Lakes Gas Trans. L.P	Michigan Consolidated Gas Co	11-22-91	G-S	30,000	Y	F	11-01-91	11-01-96
ST92-0843	Great Lakes Gas Trans. L.P	Northern States Power Co	11-22-91	G-S	15,000	N	F	11-01-91	03-31-10
ST92-0844	Great Lakes Gas Trans. L.P	Brymore Energy Inc	11-22-91	G-S	3,250	N	F	11-01-91	10-31-01
ST92-0845	Great Lakes Gas Trans. L.P	Michigan Gas Co	11-22-91	G-S	5,800	N	F	11-01-91	11-01-01
ST92-0846	Columbia Gas Transmission Corp.	CMS Gas Marketing	11-22-91	G-S	100,000	Y	I	11-11-91	Indef.
ST92-0847	Columbia Gas Transmission Corp.	Atlas Gas Marketing, Inc	11-22-91	G-S	100	Y	F	11-07-91	Indef.
ST92-0848	Columbia Gas Transmission Corp.	Base Petroleum, Inc	11-22-91	G-S	1,500	N	I	11-01-91	Indef.
ST92-0849	Columbia Gas Transmission Corp.	Base Petroleum, Inc	11-22-91	G-S	1,500	N	I	11-01-91	Indef.
ST92-0850	Columbia Gas Transmission Corp.	Stand Energy Corp	11-22-91	G-S	150	Y	F	11-01-91	03-31-92
ST92-0851	Columbia Gas Transmission Corp.	Energy Marketing Services, Inc	11-22-91	G-S	733	Y	F	11-01-91	Indef.
ST92-0852	Columbia Gas Transmission Corp.	Endevco Oil and Gas Co	11-22-91	G-S	555	Y	F	11-06-91	02-29-92
ST92-0853	Columbia Gas Transmission Corp.	Corning Glass Works	11-22-91	G-S	2,000	Y	F	11-01-91	Indef.
ST92-0854	Columbia Gas Transmission Corp.	Coshocton Stainless Divi, Cyclops.	11-22-91	G-S	460	Y	F	11-02-91	06-30-92
ST92-0855	Columbia Gas Transmission Corp.	Energy Marketing Service, Inc	11-22-91	G-S	3,335	Y	F	11-01-91	Indef.
ST92-0856	Wyoming Interstate Co., Ltd	Public Service Co. of Colorado	11-22-91	B	200,000	Y	I	11-06-91	Indef.
ST92-0857	Natural Gas P/L Co. of America	Northern Illinois Gas Co	11-22-91	B	200,000	N	I	11-01-91	Indef.
ST92-0858	Natural Gas P/L Co. of America	Minnegasco, Inc	11-22-91	B	25,500	N	F	11-01-91	03-31-92
ST92-0859	Natural Gas P/L Co. of America	TXO Gas Ventures Corp	11-22-91	G-S	100,000	N	I	10-23-91	Indef.
ST92-0860	CNG Transmission Corp	Graham Energy Marketing Corp	11-22-91	G-S	5,760	N	I	11-02-91	03-07-92
ST92-0861	CNG Transmission Corp	Genstar Stone Products Co	11-22-91	G-S	3,000	N	I	11-01-91	03-01-92
ST92-0862	CNG Transmission Corp	O & R Energy, Inc	11-22-91	G-S	100,000	N	I	10-25-91	Indef.
ST92-0863	CNG Transmission Corp	O & R Energy, Inc	11-22-91	G-S	100,000	N	I	10-26-91	Indef.
ST92-0864	CNG Transmission Corp	Graham Energy Marketing Corp	11-22-91	G-S	100,000	N	I	11-07-91	03-07-92
ST92-0865	CNG Transmission Corp	O & R Energy, Inc	11-22-91	G-S	100,000	N	I	11-07-91	Indef.
ST92-0866	CNG Transmission Corp	Energy Marketing Exchange	11-22-91	G-S	20,000	N	I	11-01-91	Indef.
ST92-0867	Delhi Gas Pipeline Corp	United Gas Pipeline Co	11-25-91	C	15,000	N	I	11-06-91	Indef.
ST92-0868	El Paso Natural Gas Co	City of Dumas	11-25-91	G-S	5,779	Y	F	10-01-91	Indef.
ST92-0869	Natural Gas P/L Co. of America	Aquila Energy Marketing Corp	11-25-91	G-S	100,000	N	I	10-25-91	Indef.
ST92-0870	Natural Gas P/L Co. of America	Tenaska III Texas Partners	11-25-91	G-S	50,000	N	I	11-06-91	Indef.
ST92-0871	Natural Gas P/L Co. of America	Archer Daniels Midland Co	11-25-91	G-S	55,050	N	F	11-01-91	11-30-96
ST92-0872	Natural Gas P/L Co. of America	United Texas Transmission Co	11-25-91	B	200,000	N	I	11-01-91	Indef.
ST92-0873	Natural Gas P/L Co. of America	Tejas Power Corp	11-25-91	G-S	50,000	N	I	11-01-91	Indef.
ST92-0874	Natural Gas P/L Co. of America	Aquila Energy Marketing Corp	11-25-91	G-S	100,000	N	I	11-01-91	Indef.
ST92-0875	Tennessee Gas Pipeline Co	Tennagasco Corp	11-25-91	G-S	15,000	Y	F	11-01-91	04-01-92
ST92-0876	Tennessee Gas Pipeline Co	Equitable Resources Marketing	11-25-91	G-S	370,500	N	I	11-02-91	Indef.
ST92-0877	Tennessee Gas Pipeline Co	Vesta Energy Co	11-25-91	G-S	10,000	N	I	10-25-91	Indef.
ST92-0878	United Gas Pipe Line Co	Victoria Gas Corp	11-25-91	G-S	25,568	N	I	11-12-91	03-11-92
ST92-0879	United Gas Pipe Line Co	Intercon Gas Inc	11-25-91	G-S	50,000	N	I	11-04-91	03-03-92
ST92-0880	United Gas Pipe Line Co	Amoco Energy Trading Corp	11-25-91	G-S	52,400	N	I	11-04-91	03-03-92
ST92-0881	United Gas Pipe Line Co	Delta Pipeline Co	11-25-91	G-S	70,138	N	I	11-11-91	03-10-92
ST92-0882	United Gas Pipe Line Co	Oryx Gas Marketing Ltd Partnership	11-25-91	G-S	62,380	N	I	11-12-91	03-11-92
ST92-0883	United Gas Pipe Line Co	Coastal Gas Marketing Co	11-25-91	G-S	52,400	N	I	11-01-91	02-29-92
ST92-0884	United Gas Pipe Line Co	Texaco Gas Marketing Inc	11-25-91	G-S	41,920	N	I	11-12-91	03-11-92
ST92-0885	United Gas Pipe Line Co	Equitable Resources Marketing Co.	11-25-91	G-S	262,000	N	I	11-01-91	02-29-92
ST92-0886	United Gas Pipe Line Co	Graham Energy Marketing Corp	11-25-91	G-S	125,760	N	I	10-31-91	02-28-92
ST92-0887	United Gas Pipe Line Co	Chevron U.S.A., Inc	11-25-91	G-S	104,800	N	I	10-29-91	02-26-92
ST92-0888	United Gas Pipe Line Co	Ledco Inc	11-25-91	G-S	486,629	N	I	11-11-91	03-10-92
ST92-0889	Orange and Rockland Util., Inc	Hadon Gas Systems, Inc	11-25-91	G-HT	75,000	N	I	10-25-91	11-30-91
ST92-0890	Texas Gas Transmission Corp	Santa Fe Minerals, Inc	11-25-91	G-S	50,000	N	I	11-01-91	Indef.
ST92-0891	Texas Gas Transmission Corp	Mississippi Valley Gas Co	11-25-91	G-S	9,500	N	F	11-01-91	Indef.
ST92-0892	Texas Gas Transmission Corp	Procter & Gamble Co	11-25-91	G-S	2,300	N	F	11-02-91	Indef.
ST92-0893	Texas Gas Transmission Corp	Brooklyn Interstate Nat. Gas Corp	11-25-91	G-S	100,000	N	I	11-01-91	Indef.
ST92-0894	Florida Gas Transmission Co	Champion International Corp	11-25-91	G-S	50,000	N	I	11-01-91	Indef.

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Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity[3]	AFF. Y/N	Rate schedule	Date commenced	Projected termination date
ST92-0895	Florida Gas Transmission Co	City Gas Co. of Florida	11-25-91	G-S	14,324	N	F	11-01-91	Indef.
ST92-0896	Black Marlin Pipeline Co	Houston Pipeline Co	11-25-91	B	100,000	Y	I	11-01-91	Indef.
ST92-0897	Transcontinental Gas P/L Corp	Doswell Limited Partnership	11-25-91	G-S	165,000	N	I	11-04-91	Indef.
ST92-0898	Transcontinental Gas P/L Corp	Kerr McGee Corp	11-25-91	G-S	100,000	N	I	11-07-91	Indef.
ST92-0899	Transcontinental Gas P/L Corp	Visage Energy Corp	11-25-91	G-S	80,000	N	I	11-02-91	Indef.
ST92-0900	Transcontinental Gas P/L Corp	Energy Marketing Exchange, Inc	11-25-91	G-S	5,868	N	I	11-09-91	Indef.
ST92-0901	Tejas Gas Corp	Florida Gas Transmission Co	11-25-91	C	2,000	N	I	10-24-91	Indef.
ST92-0902	Blue Dolphin Pipe Line Co	Dow Pipeline System	11-25-91	B	6,000	Y	I	11-01-91	Indef.
ST92-0903	Peach Ridge Pipeline Inc	El Paso Natural Gas Co	11-25-91	C	15,000	N	I	11-01-91	Indef.
ST92-0904	Louisiana Intrastate Gas Corp	Tennessee Gas Pipeline Co	11-25-91	C	8,000	N	I	10-05-91	Indef.
ST92-0905	Trunkline Gas Co	NGC Transportation, Inc	11-25-91	G-S	50,000	N	I	11-15-91	Indef.
ST92-0906	Trunkline Gas Co	American Central Gas Cos., Inc	11-25-91	G-S	100,000	N	I	11-15-91	Indef.
ST92-0907	Transok, Inc	Panhandle Eastern Pipe Line Co	11-25-91	C	50,000	N	I	10-24-91	Indef.
ST92-0908	Columbia Gas Transmission Corp	Texas-Ohio Gas, Inc	11-25-91	G-S	15,000	Y	I	10-31-91	Indef.
ST92-0909	Ong Transmission Co	Ozark Pipeline Co	11-26-91	C	50,000	N	I	11-01-91	Indef.
ST92-0910	Ong Transmission Co	Panhandle Eastern Pipe Line Co	11-26-91	C	50,000	N	I	11-01-91	Indef.
ST92-0911	Ong Transmission Co	Natural Gas P/L Co. of America	11-26-91	C	20,000	N	I	11-03-91	Indef.
ST92-0912	Ong Transmission Co	Natural Gas P/L Co. of America	11-26-91	C	50,000	N	I	11-03-91	Indef.
ST92-0913	Ong Transmission Co	Northern Natural Gas Co	11-26-91	C	40,000	N	I	10-29-91	Indef.
ST92-0914	Ong Transmission Co	Ozark Pipeline Co	11-26-91	C	20,000	N	I	11-02-91	Indef.
ST92-0915	Orange & Rockland Util., Inc	Commonwealth Gas Co	11-26-91	G-HT	15,000	N	I	11-08-91	10-31-93
ST92-0916	Viking Gas Transmission Co	Grate Plains Natural Gas Co	11-26-91	B	2,352	N	F	11-01-91	10-30-92
ST92-0917	Viking Gas Transmission Co	Northern Minnesota Utilities	11-26-91	B	1,301	N	F	11-06-91	11-01-92
ST92-0918	Tennessee Gas Pipeline Co	Flagg Energy Development Corp	11-26-91	G-S	4,968	N	I	11-05-91	Indef.
ST92-0919	Tennessee Gas Pipeline Co	Flagg Energy Development Corp	11-26-91	G-S	4,140	N	F	11-05-91	Indef.
ST92-0920	Tennessee Gas Pipeline Co	Cincinniti Gas & Electric Co	11-26-91	B	4,179	N	F	11-01-91	Indef.
ST92-0921	Tennessee Gas Pipeline Co	Citizens Gas Supply Corp	11-26-91	G-S	200,000	N	I	11-05-91	Indef.
ST92-0922	Transwestern Pipeline Co	NGC Transportation, Inc	11-26-91	G-S	20,000	N	I	11-01-91	Indef.
ST92-0923	Transwestern Pipeline Co	Bridgegas U.S.A., Inc	11-26-91	G-S	100,000	N	I	11-01-91	Indef.
ST92-0924	Transwestern Pipeline Co	Texaco Gas Marketing, Inc	11-26-91	G-S	200,000	N	I	11-05-91	Indef.
ST92-0925	Transwestern Pipeline Co	KN Gas Marketing, Inc	11-26-91	G-S	100,000	N	I	10-31-91	Indef.
ST92-0926	Transwestern Pipeline Co	Boyd Rosene and Associates, Inc	11-26-91	G-S	30,000	N	I	11-01-91	Indef.
ST92-0927	Transwestern Pipeline Co	Yates Petroleum Corp	11-26-91	G-S	2,000	N	I	10-26-91	Indef.
ST92-0928	Transwestern Pipeline Co	Gas Co. of New Mexico	11-26-91	G-S	15,000	N	I	11-07-91	Indef.
ST92-0929	Northwest Pipeline Corp	Bridge Oil Co	11-26-91	G-S	150,000	N	I	11-02-91	Indef.
ST92-0930	Llano, Inc	Minerals, Inc	11-26-91	C	100,000	N	I	11-01-91	Indef.
ST92-0931	Columbia Gulf Transmission Co	Tejas Power Corp	11-26-91	G-S	6,500	N	F	11-01-91	Indef.
ST92-0932	Columbia Gulf Transmission Co	Centran Corp	11-26-91	G-S	100,000	N	I	11-01-91	Indef.
ST92-0933	Columbia Gulf Transmission Co	American Central Gas Cos., Inc	11-26-91	G-S	40,000	N	I	11-12-91	Indef.
ST92-0934	Columbia Gulf Transmission Co	Columbia Gas Development Corp.	11-26-91	G-S	315,000	Y	I	11-01-91	Indef.
ST92-0935	Columbia Gulf Transmission Co	Columbia Gas Development Corp.	11-26-91	G-S	250,000	Y	I	11-08-91	Indef.
ST92-0936	Columbia Gulf Transmission Co	North Canadian Marketing Corp	11-26-91	G-S	150,000	N	I	11-01-91	Indef.
ST92-0937	Columbia Gulf Transmission Co	Transcontinental Gas Pipeline Co.	11-26-91	G	60,000	N	I	11-01-91	Indef.
ST92-0938	Columbia Gulf Transmission Co	Graham Energy Marketing Corp	11-26-91	G-S	200,000	N	I	11-02-91	Indef.
ST92-0939	Columbia Gulf Transmission Co	Shell Gas Trading Co	11-26-91	G-S	55,000	N	I	11-01-91	Indef.
ST92-0940	Columbia Gulf Transmission Co	Sonat Marketing Co	11-26-91	G-S	20,000	N	I	11-01-91	Indef.
ST92-0941	Columbia Gulf Transmission Co	Williams Gas Marketing Co	11-26-91	G-S	15,000	N	I	11-01-91	Indef.
ST92-0942	Columbia Gulf Transmission Co	Tejas Power Corp	11-26-91	G-S	35,000	N	F	11-01-91	Indef.
ST92-0943	ANR Pipeline Co	Santanna Natural Gas Corp	11-26-91	G-S	150,000	N	I	10-26-91	Indef.
ST92-0944	ANR Pipeline Co	Triumph Gas Marketing Co	11-26-91	G-S	100,000	N	I	11-01-91	Indef.
ST92-0945	ANR Pipeline Co	Santanna Natural Gas Corp	11-26-91	G-S	150,000	N	I	10-26-91	Indef.
ST92-0946	ANR Pipeline Co	Sterling Power Partners, L.P	11-26-91	G-S	12,822	N	I	11-01-91	Indef.
ST92-0947	ANR Pipeline Co	Mobil Natural Gas, Inc	11-26-91	G-S	50,000	N	I	11-01-91	Indef.
ST92-0948	ANR Pipeline Co	Unigas Energy, Inc	11-26-91	G-S	25,000	N	I	11-01-91	Indef.
ST92-0949	Mississippi Fuel Co	Transcontinental Gas P/L Corp	11-27-91	C	1,500	N	I	11-01-91	Indef.
ST92-0950	Pacific Gas Transmission Co	Northwest Pipeline Corp	11-27-91	G	2,300	N	I	11-10-91	01-14-92
ST92-0951	Pacific Gas Transmission Co	Dome Petroleum Corp	11-27-91	G-S	204,102	N	I	11-03-91	07-31-92
ST92-0952	Pacific Gas Transmission Co	Amoco Gas Co	11-27-91	B	204,102	N	I	08-01-89	09-25-90
ST92-0953	Pacific Gas Transmission Co	Amoco Gas Co	11-27-91	B	207,651	N	I	08-01-89	09-25-90
ST92-0954	Pacific Gas Transmission Co	Amoco Energy Trading Corp	11-27-91	G-S	207,651	N	I	11-03-91	08-01-92
ST92-0955	Pacific Gas Transmission Co	Intermountain Gas Co	11-27-91	B	75,000	N	I	09-01-89	09-25-90
ST92-0956	Pacific Gas Transmission Co	Grand Valley Gas Co	11-27-91	G-S	75,000	N	I	11-20-91	09-01-92
ST92-0957	Pacific Gas Transmission Co	American Hunter Exploration Ltd	11-27-91	G-S	20,000	N	I	11-03-91	10-31-92
ST92-0958	Pacific Gas Transmission Co	American Hunter Exploration Ltd	11-27-91	G-S	30,000	N	I	11-03-91	10-31-92
ST92-0959	Pacific Gas Transmission Co	American Hunter Exploration Ltd	11-27-91	G-S	100,000	N	I	11-16-91	11-04-93
ST92-0960	Pacific Gas Transmission Co	American Hunter Exploration Ltd	11-27-91	G-S	10,000	N	I	08-01-91	10-31-92
ST92-0961	Michigan Consolidated Gas Co	Northern Indiana Public Service Co.	11-27-91	G-HT	10,000	N	I	08-01-91	03-31-95
ST92-0962	Michigan Consolidated Gas Co	Western Gas Marketing USA, Ltd.	11-27-91	G-HT	10,000	N	I	08-01-91	03-31-93
ST92-0963	Michigan Consolidated Gas Co	Western Gas Marketing USA, Ltd.	11-27-91	G-HT	10,000	N	I	08-01-91	03-31-93
ST92-0964	Michigan Consolidated Gas Co	Michigan Gas Utilities Co	11-27-91	G-HT	8,000	N	I	08-01-91	03-31-93
ST92-0965	Michigan Consolidated Gas Co	Panhandle Eastern Pipe Line Co	11-27-91	G-HT	500	N	I	08-01-91	03-31-95

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity[3]	AFF. Y/N	Rate schedule	Date commenced	Projected termination date
ST92-0966	Michigan Consolidated Gas Co	Panhandle Eastern Pipe Line Co	11-27-91	G-HT	15,500	N	I	08-01-91	03-31-95
ST92-0967	Michigan Consolidated Gas Co	Panhandle Eastern Pipe Line Co	11-27-91	G-HT	15,000	N	I	08-01-91	03-31-95
ST92-0968	Michigan Consolidated Gas Co	ANR Pipeline Co	11-27-91	G-HT	150,000	N	I	08-01-91	03-31-95
ST92-0969	Michigan Consolidated Gas Co	United Cities Gas Co	11-27-91	G-HT	500	N	I	08-01-91	03-31-95
ST92-0970	Valero Transmission, L.P	El Paso Natural Gas Co	11-27-91	C	10,000	N	I	11-02-91	Indef.
ST92-0971	Valero Transmission, L.P	El Paso Natural Gas Co	11-27-91	C	19,703	N	I	11-01-91	Indef.
ST92-0972	Valero Transmission, L.P	Transwestern Pipe Line Co	11-27-91	C	10,000	N	I	11-06-91	Indef.
ST92-0973	Valero Transmission, L.P	Tennessee Gas Pipeline Co	11-27-91	C	10,000	N	I	11-15-91	Indef.
ST92-0974	Transcontinental Gas P/L Corp	Transco Energy Marketing Co	11-27-91	B	77,295	N	I	11-01-91	07-31-95
ST92-0975	Transcontinental Gas P/L Corp	Fina Natural Gas Co	11-27-91	G-S	112,000	N	I	11-01-91	02-29-92
ST92-0976	Tennessee Gas Pipeline Co	Hadson Gas Systems, Inc	11-27-91	G-S	100,000	N	I	11-01-91	Indef.
ST92-0977	Tennessee Gas Pipeline Co	Cincinnati Gas & Electric Co	11-27-91	B	100,000	N	I	11-01-91	Indef.
ST92-0978	Tennessee Gas Pipeline Co	Peoples Natural Gas Co	11-27-91	B	6,760	N	F	11-06-91	Indef.
ST92-0979	Midwestern Gas Transmission Co.	Flagg Energy Development Corp	11-27-91	G-S	4,968	N	I	11-05-91	Indef.
ST92-0980	Tennessee Gas Pipeline Co	Industrial Energy Services Co	11-27-91	G-S	20,065	N	I	11-01-91	Indef.
ST92-0981	Tennessee Gas Pipeline Co	National Fuel Gas Supply Corp	11-27-91	B	250,000	Y	I	11-08-91	Indef.
ST92-0982	Tennessee Gas Pipeline Co	Industrial Energy Service Co	11-27-91	G-S	25,000	N	I	11-02-91	Indef.
ST92-0983	Panhandle Eastern Pipe Line Co	Westfield Gas Corp	11-27-91	G-S	1,150	N	I	11-01-91	Indef.
ST92-0984	Panhandle Eastern Pipe Line Co	Aquila Energy Marketing Corp	11-27-91	G-S	52,000	N	F	11-01-91	Indef.
ST92-0985	Panhandle Eastern Pipe Line Co	Montezuma Municipal Utilities	11-27-91	G-S	650	N	I	11-01-91	Indef.
ST92-0986	Panhandle Eastern Pipe Line Co	City of Roachdale	11-27-91	G-S	600	N	I	11-01-91	Indef.
ST92-0987	Arkla Energy Resources	Arco Natural Gas Marketing, Inc	11-27-91	G-S	70,000	N	I	11-02-91	Indef.
ST92-0988	Williams Natural Gas Co	City of Gates	11-27-91	B	13	N	F	11-01-91	Indef.
ST92-0989	Williams Natural Gas Co	Wakita Utilities Authority	11-27-91	B	43	N	F	11-01-91	Indef.
ST92-0990	Williams Natural Gas Co	Kansas Power & Light Co	11-27-91	G-S	14,727	N	F	11-01-91	Indef.
ST92-0991	Williams Natural Gas Co	Freedom Municipal Trust	11-27-91	B	29	N	F	11-01-91	Indef.
ST92-0992	Williams Natural Gas Co	Continental Natural Gas, Inc	11-27-91	G-S	1,145	N	F	11-01-91	Indef.
ST92-0993	Williams Natural Gas Co	City of Burlington	11-27-91	B	17	N	F	11-01-91	Indef.
ST92-0994	Columbia Gulf Transmission Co	Excel Gas Marketing, Inc	11-27-91	G-S	50,000	N	I	11-01-91	Indef.
ST92-0995	Columbia Gulf Transmission Co	Coastal Gas Marketing Co	11-27-91	G-S	100,000	N	I	11-13-91	Indef.
ST92-0996	Columbia Gulf Transmission Co	Entrade Corp	11-27-91	G-S	50,000	N	I	11-01-91	Indef.
ST92-0997	Columbia Gulf Transmission Co	Stellar Gas Co	11-27-91	G-S	50,000	N	I	11-01-91	Indef.
ST92-0998	Williston Basin Inter. P/L Co	Exxon Corp	11-27-91	G-S	150,350	Y	I	10-30-91	03-13-92
ST92-0999	Williston Basin Inter. P/L Co	Western Gas Resources, Inc	11-27-91	G-S	257,850	N	I	10-31-91	08-31-93
ST92-1000	Williston Basin Inter. P/L Co	Koch Hydrocarbon Co	11-27-91	G-S	16,434	Y	F	11-01-91	03-31-92
ST92-1001	Williston Basin Inter. P/L Co	Koch Hydrocarbon Co	11-27-91	G-S	754	Y	F	11-06-91	03-31-92
ST92-1002	Williston Basin Inter. P/L Co	Koch Hydrocarbon Co	11-27-91	G-S	756	Y	F	11-01-91	03-31-92
ST92-1003	Northern Natural Gas Co	Northern States Power Co., et al	11-27-91	B	39,804	N	F	11-18-91	05-31-92
ST92-1004	Northern Natural Gas Co	Amarillo Natural Gas Inc	11-27-91	B	2,000	N	I	11-01-91	Indef.
ST92-1005	Northern Natural Gas Co	NGC Transportation, Inc	11-27-91	G-S	200,000	N	I	11-01-91	Indef.
ST92-1006	Northern Natural Gas Co	Enron Gas Marketing, Inc	11-27-91	G-S	50,000	Y	I	11-01-91	Indef.
ST92-1007	Northern Natural Gas Co	Amoco Energy Trading Corp	11-27-91	G-S	100,000	N	I	11-01-91	Indef.
ST92-1008	Northern Natural Gas Co	Meridian Oil Trading, Inc	11-27-91	G-S	10,200	N	I	11-01-91	Indef.
ST92-1009	Northern Natural Gas Co	Peoples Natural Gas Co	11-27-91	B	175,204	N	F/I	11-01-91	Indef.
ST92-1010	Northern Natural Gas Co	Industrial Energy Applications	11-27-91	B	100,000	N	I	11-02-91	Indef.
ST92-1011	Northern Natural Gas Co	Interstate Power Co	11-27-91	B	11,010	N	F	11-01-91	Indef.
ST92-1012	Northern Natural Gas Co	Samedan Oil Corp	11-27-91	G-S	15,000	N	I	11-01-91	Indef.
ST92-1013	Transwestern Pipeline Co	Enron Gas Marketing Inc	11-27-91	G-S	500,000	N	I	11-02-91	Indef.
ST92-1014	Transwestern Pipeline Co	Sunrise Energy Co	11-27-91	G-S	50,000	N	I	11-01-91	Indef.
ST92-1015	Transwestern Pipeline Co	Aquila Energy Marketing Corp	11-27-91	G-S	100,000	N	I	11-02-91	Indef.
ST92-1016	ANR Pipeline Co	Kaztex Energy Management, Inc	11-27-91	G-S	2,559	N	F	11-01-91	Indef.
ST92-1017	ANR Pipeline Co	East Syracuse Generating Co., L.P.	11-27-91	G-S	20,306	N	F	11-01-91	Indef.
ST92-1018	ANR Pipeline Co	Indeck-Olean Limited Partnership.	11-27-91	G-S	16,600	N	F	11-01-91	Indef.
ST92-1019	ANR Pipeline Co	Kamine/Besicorp South Glens Falls	11-27-91	G-S	13,760	N	F	11-01-91	Indef.
ST92-1020	ANR Pipeline Co	North Canadian Marketing, Inc	11-27-91	G-S	50,000	N	I	11-01-91	Indef.
ST92-1021	ANR Pipeline Co	Shell Gas Trading Co	11-27-91	G-S	10,000	N	F	11-01-91	Indef.
ST92-1022	ANR Pipeline Co	Kaztex Energy Management, Inc	11-27-91	G-S	6,953	N	F	11-01-91	Indef.
ST92-1023	ANR Pipeline Co	Sterling Power Partners, L.P	11-27-91	G-S	12,822	N	F	11-01-91	Indef.
ST92-1024	ANR Pipeline Co	Centran Corp	11-27-91	G-S	1,434	N	F	11-01-91	Indef.
ST92-1025	ANR Pipeline Co	Iowa-Illinois Gas and Electric Co	11-27-91	B	100,000	N	I	11-01-91	Indef.
ST92-1026	ANR Pipeline Co	Wisconsin Public Service Corp	11-27-91	B	75,000	N	I	11-02-91	Indef.
ST92-1027	ANR Pipeline Co	Nipsco, Peoples Gas Lt. & Coke	11-27-91	B	3,250	N	F	11-02-91	Indef.
ST92-1028	ANR Pipeline Co	Peoples Natural Gas Co	11-27-91	B	100,000	N	I	10-31-91	Indef.
ST92-1029	National Fuel Gas Supply Corp	National Fuel Gas Distri. Corp	11-29-91	G-S	14,200	N	F	11-01-91	02-29-92
ST92-1030	Overthrust Pipeline Co	Amoco Energy Trading Corp	11-29-91	G-S	50,000	N	I	11-09-91	08-31-96
ST92-1032	East Texas Gas Systems	United Gas Pipe Line Co	11-29-91	C	100,000	N	I	10-28-91	Indef.
ST92-1033	Gas Gathering Corp	MW Petroleum Corp	11-29-91	G-S	10,000	N	I	10-01-91	Indef.
ST92-1034	Tennessee Gas Pipeline Co	CNG Transmission Corp	11-29-91	G	12,200	N	F	11-01-91	Indef.
ST92-1035	Tennessee Gas Pipeline Co	Enron Gas Marketing Inc	11-29-91	G-S	703,297	N	I	11-19-91	Indef.
ST92-1036	Lone Star Gas Co	El Paso Natural Gas Co	11-29-91	G	200,000	N	I	11-01-91	Indef.
ST92-1037	Lone Star Gas Co	Northern Natural Gas Co	11-29-91	C	30,000	N	I	11-06-91	Indef.
ST92-1038	Lone Star Gas Co	Arkla Energy Resources	11-29-91	C	15,000	N	I	11-01-91	Indef.
ST92-1039	Gas Co. of New Mexico	El Paso Natural Gas Co	11-29-91	G-HT	15,000	N	I	11-11-91	05-31-95
ST92-1040	Gas Co. of New Mexico	El Paso Natural Gas Co	11-29-91	G-HT	1,000	N	I	11-01-91	08-31-92
ST92-1041	Gas Co. of New Mexico	El Paso Natural Gas Co	11-29-91	G-HT	5,000	N	I	11-01-91	10-24-92

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Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity[2]	AFF. Y/N	Rate schedule	Date commenced	Projected termination date
ST92-1042	Overthrust Pipeline Co	Grand Valley Gas Co	11-29-91	G-S	50,000	N	I	11-12-91	Indef.
ST92-1043	Questar Pipeline Co	Pesdido Gas Resources, Inc	11-29-91	G-S	50,000	N	I	11-01-91	Indef.
ST92-1044	Questar Pipeline Co	Williams Gas Marketing Co	11-29-91	G-S	54,000	N	I	11-10-91	Indef.
ST92-1045	Questar Pipeline Co	Northern Illinois Gas	11-29-91	B	35,000	N	I	11-02-91	Indef.
ST92-1046	Questar Pipeline Co	Mountain Fuel Supply Co	11-29-91	B	5,000	N	I	11-10-91	Indef.
ST92-1047	Arkansas Oklahoma Gas Corp	Tennessee Gas Pipeline Co	11-29-91	G-HT	100	N	I	11-10-91	Indef.
	Below are listed 29 initial reports. These filings are noticed out of sequence because they required additional commission review.								
ST92-0352	El Paso Natural Gas Co	City of Big Lake	10-29-91	G-S	1,346	Y	F	10-01-91	Indef.
ST92-0353	El Paso Natural Gas Co	Phelps Dodge Corp	10-29-91	G-S	28,682	Y	F	09-01-91	Indef.
ST92-0354	El Paso Natural Gas Co	City of McLean	10-29-91	G-S	789	Y	F	09-01-91	Indef.
ST92-0355	El Paso Natural Gas Co	City of Plains	10-29-91	G-S	666	Y	F	10-01-91	Indef.
ST92-0356	El Paso Natural Gas Co	Sterling Natural Gas, Inc	10-29-91	G-S	273	Y	F	10-01-91	Indef.
ST92-0357	El Paso Natural Gas Co	Southern California Gas Co	10-29-91	G-S	1,802,500	Y	F	09-01-91	Indef.
ST92-0358	El Paso Natural Gas Co	City of Wilcox	10-29-91	G-S	1,729	Y	F	10-02-91	Indef.
ST92-0359	El Paso Natural Gas Co	City of Goldsmith	10-29-91	G-S	190	Y	F	09-01-91	Indef.
ST92-0360	El Paso Natural Gas Co	City of Whiteface	10-29-91	G-S	277	Y	F	09-01-91	Indef.
ST92-0361	El Paso Natural Gas Co	Apache Nitrogen Products, Inc	10-29-91	G-S	1,954	Y	F	09-01-91	Indef.
ST92-0362	El Paso Natural Gas Co	Southern Union Gas Co	10-29-91	G-S	191,359	Y	F	09-01-91	Indef.
ST92-0363	El Paso Natural Gas Co	Southwest Gas Corp	10-29-91	G-S	204,169	Y	F	09-01-91	Indef.
ST92-0364	El Paso Natural Gas Co	Village of Corna	10-29-91	G-S	54	Y	F	09-01-91	Indef.
ST92-0365	El Paso Natural Gas Co	City of Denver City	10-29-91	G-S	2,219	Y	F	10-01-91	Indef.
ST92-0366	El Paso Natural Gas Co	City of Deming	10-29-91	G-S	4,011	Y	F	10-01-91	Indef.
ST92-0367	El Paso Natural Gas Co	Town of Benson	10-29-91	G-S	1,193	Y	F	10-01-91	Indef.
ST92-0368	El Paso Natural Gas Co	Pacific Gas and Electric Co	10-29-91	G-S	1,174,200	Y	F	09-01-91	Indef.
ST92-0369	El Paso Natural Gas Co	North Bailey Gas Farmers' Co-Op.	10-29-91	G-S	416	Y	F	09-12-91	Indef.
ST92-0370	El Paso Natural Gas Co	Graham County Utilities, Inc	10-29-91	G-S	1,833	Y	F	09-08-91	Indef.
ST92-0371	El Paso Natural Gas Co	Citizens Utilities Co	10-29-91	G-S	13,842	Y	F	09-01-91	Indef.
ST92-0372	El Paso Natural Gas Co	Chemstar, Inc	10-29-91	G-S	5,414	Y	F	10-01-91	Indef.
ST92-0373	El Paso Natural Gas Co	Capitan-Carrizozo Nat. Gas Assoc.	10-29-91	G-S	4,252	Y	F	10-02-91	Indef.
ST92-0374	El Paso Natural Gas Co	El Paso Electric Co	10-29-91	G-S	74,908	Y	F	09-01-91	Indef.
ST92-0375	El Paso Natural Gas Co	Southwest Gas Corporation	10-29-91	G-S	570,481	Y	F	09-01-91	Indef.
ST92-0376	El Paso Natural Gas Co	Ajo Improvement Co	10-29-91	G-S	292	Y	F	10-01-91	Indef.
ST92-0377	El Paso Natural Gas Co	City of Morton	10-29-91	G-S	1,173	Y	F	09-01-91	Indef.
ST92-0378	El Paso Natural Gas Co	Town of Texola	10-29-91	G-S	206	Y	F	09-01-91	Indef.
ST92-0379	El Paso Natural Gas Co	Southern Union Gas Co	10-29-91	G-S	89,014	Y	F	09-02-91	Indef.
ST92-0380	El Paso Natural Gas Co	City of Grandfalls	10-29-91	G-S	166	Y	F	09-01-91	Indef.

[1] Transportation service converted from authority under 18 C.F.R. section 284.106, subpart B, to authority under 18 C.F.R. section 284.223(F)(1), subpart G-S.
[2] Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with order no. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).
[3] Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.

[FR Doc. 91-31214 Filed 12-30-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP92-60-000]

Canyon Creek Compression Co.; Changes in FERC Gas Tariff

December 24, 1991

Take notice that on December 20, 1991, Canyon Creek Compression Company (Canyon) tendered for filing First Revised Sheet Nos. 12A, 32A and 33 to be a part of its FERC Gas Tariff, First Revised Volume No. 1A, to be effective January 19, 1992.

Canyon states that the purpose of the filing is to add tariff provisions as required by Order No. 537 that require shippers to certify that their service qualifies under section 311.

Canyon requested waiver of the Commission's Regulations to be extent necessary to permit the tariff sheets to become effective January 19, 1992.

Canyon states that a copy of the filing is being mailed to Canyon's jurisdictional customers and interested states regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before January 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 91-31215 Filed 12-30-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RP92-57-000 and GT92-10-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

(December 24, 1991).

Take notice that CNG Transmission Corporation ("CNG"), on December 17, 1991, pursuant to section 4 of the Natural Gas Act and part 154 of the Commission's regulations, filed the following tariff sheets to comply with Commission Order Nos. 500-K and 537:

First Revised Sheet Nos. 181, 182, and 183

CNG is removing from its tariff all provisions containing language related to Order No. 500 offers of credit, in compliance with ordering paragraph (A) of Order No. 500-K. And, CNG states that it is adding new tariff language to clarify that it may require certifications from shippers to verify that certain transportation qualifies under NGPA § 311.

The proposed effective date for these tariff sheets is January 16, 1992.

CNG states that it has provided copies of its filing to its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before December 31, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Persons that are already parties to these proceedings need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-31216 Filed 12-30-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM92-4-22-000]

CNG Transmission Corp.; Changes in FERC Gas Tariff

December 24, 1991.

Take notice that CNG Transmission Corporation ("CNG"), on December 18, 1991, pursuant to section 4 of the Natural Gas Act, provisions of the Stipulation and Agreement approved by the Commission on October 6, 1989, in Docket Nos. RP88-217-000, *et al.*, section 12.10 of the General Terms and Conditions of CNG's FERC Gas Tariff, and Order Nos. 528 and 528-A, filed six copies of Seventh Revised Sheet no. 44, to First Revised Volume No. 1 of CNG's FERC Gas Tariff.

The proposed effective date for this tariff sheet is January 17, 1992.

CNG states that the purpose of the filing is to flow through changes in take-or-pay costs allocated to CNG by Tennessee Gas Pipeline Company (Tennessee). CNG proposes to reflect the revised allocation of take-or-pay costs proposed by Tennessee in its November 27, 1991, filing in Docket no. RP92-52.

CNG states that copies of the filing were served upon CNG's customers as well as interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party just file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,
Secretary.

[FR Doc. 91-31217 Filed 12-30-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP92-58-000]

El Paso Natural Gas Co.; Compliance Tariff Filing

December 24, 1991.

Take notice that on December 17, 1991, El Paso Natural Gas Company ("El Paso") filed pursuant to part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the Natural Gas Act and in compliance with the Commission's Order No. 537, Original Sheet No. 222A to be contained in its FERC Gas Tariff, First Revised Volume No. 1-A, to be effective January 17, 1992.

El Paso states that in compliance with § 284.102(e) of the Commission's Regulations, it is filing Original Sheet No. 222A which, when accepted and made effective by the Commission, will revise Section 13, Service Conditions, of the General Terms and Conditions in its FERC Gas Tariff, First Revised Volume No. 1-A in compliance with Order No. 537. El Paso states that as a condition to El Paso providing service under § 284.102(d), El Paso may require Shipper's certification including sufficient information to verify that its services qualify under said section. Prior to commencing transportation service, El Paso must receive the certification required from a local distribution company or an intrastate pipeline pursuant to § 284.102(d)(3) of the Commission's Regulations.

El Paso requested that the tendered tariff sheet be accepted for filing and permitted to become effective January 17, 1992.

El Paso states that copies of the filing were served upon all of El Paso interstate pipeline system transportation customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 31, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,
Secretary.

[FR Doc. 91-31218 Filed 12-30-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP92-56-000]

Florida Gas Transmission Co.; Compliance Filing

December 24, 1991.

Take notice that on December 17, 1991 Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets to be effective December 30, 1991:

First Revised Sheet No. 103
First Revised Sheet No. 133
Original Sheet No. 172A

FGT states that on September 20, 1991 the Commission issued the Final Rule in Order No. 537 amending the regulations governing transportation by intrastate and interstate pipelines under Section 311 of the Natural Gas Policy Act of 1978 and transportation by interstate pipelines under blanket certificates issued pursuant to § 284.221 of the Commission's regulations. Among other things, the Final Rule added a new § 284.102(e) requiring interstate pipelines to file tariff revisions necessary to obtain certification that transportation of natural gas on behalf of an intrastate pipeline or local distribution company meets the requirements of § 284.102(d) of the Commission's regulations as revised in

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the Final Order. Accordingly, in the instant compliance filing, FGT is revising its Rate Schedules ITS–1, PTS–1, and FTS–1 to require the necessary certifications.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 31, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–31219 Filed 12–30–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM92–8–4–000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

December 24, 1991.

Take notice that on December 19, 1991, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581 filed Fourth Revised Sheet No. 24 in its FERC Gas Tariff, Second Revised Volume No. 1, proposing changes in rates for effectiveness on January 19, 1992.

According to Granite State, its filing is submitted to passthrough to its customers the take-or-pay buydown and buyout costs directly billed to Granite State by Tennessee Gas Pipeline Company (Tennessee).

Granite State states that in November 1991, Tennessee filed revised tariff sheets to recover additional transition costs in Docket No. RP92–51–000. According to Granite State, its tariff sheet reflects the changes in Tennessee's allocation of take-on-pay costs to Granite State and also complies with the requirements of the reallocation of costs to small customers pursuant to Order No. 528–A.

According to Granite State the proposed rate changes are applicable to its jurisdictional sales services rendered to Bay State Gas Company and Northern Utilities, Inc. and to a sale to a direct customer, Pease Air Force Base. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, New Hampshire and Massachusetts.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–31220 Filed 12–30–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–63–000]

Moraine Pipeline Co.; Changes in FERC Gas Tariff

December 24, 1991.

Take notice that on December 20, 1991, Moraine Pipeline Company (Moraine) tendered for filing First Revised Sheet Nos. 5, 6, 16 and 17 to be a part of its FERC Gas Tariff, Original Volume No. 1, to be effective January 19, 1992.

Moraine states the purpose of the filing is to add tariff provisions as required by Order No. 537 that require shippers to certify that their service qualifies under section 311.

Moraine requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective January 19, 1992.

Moraine states that a copy of the filing is being mailed to Moraine's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before January 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–31221 Filed 12–30–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–1–003]

Northern Natural Gas Co.; Proposed Changes in F.E.R.C. Gas Tariff

December 24, 1991.

Take notice that Northern Natural Gas Company (Northern) on December 17, 1991, tendered for filing to become part of Northern's F.E.R.C. Gas Tariff Third Revised Volume 1, the following tariff sheets with their associated proposed effective dates:

Docket No. RP92–1–011 and Effective Dates

Original Sheet No. 4G.5a, December 1, 1991
Original Sheet No. 4G.5b, December 1, 1991
Original Sheet No. 4G.5c, December 1, 1991
Original Sheet No. 4G.5d, December 1, 1991

Docket Nos. TA92–1–59–000 and TM92–2–59–000 and Effective Dates

Substitute First Revised Sheet No. 4G.4, January 1, 1992
Substitute First Revised Sheet No. 4G.5, January 1, 1992

Northern states that such tariff sheets are being submitted in compliance with the Commission's Letter Order dated December 6, 1991, in Docket No. RP92–1–001, to clarify the MIDs matrix by including, when applicable, ACA, TCR, TOP, and the Market Area commodity rate. Additionally, Northern is filing tariff sheets to include the specific fuel charges.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street. NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–31222 Filed 12–30–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–27–001]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

December 24, 1991.

Take notice that on December 17, 1991 Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance Substitute First Revised Sheet No. 441, to be a part of its FERC Gas Tariff, First Revised Volume No. 1–A.

The purpose of this filing was to correct First Revised Sheet No. 441, which was filed November 12, 1991 in compliance with the Commission's Final Rule in Order No. 537, issued on September 20, 1991, wherein the Commission modified § 284.102, expanding the definition of "on behalf of" for section 311 transportation.

Northwest has requested an effective date of January 17, 1992 for the tendered tariff sheet.

Northwest states that copies of the filing were served on Northwest's jurisdictional customers list and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before January 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–31223 Filed 12–30–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–61–000]

Stingray Pipeline Co.; Changes in FERC Gas Tariff

December 24, 1991.

Take notice that on December 20, 1991, Stingray Pipeline Company (Stingray) tendered for filing First Revised Sheet Nos. 57A, 58, 95, 96 and 97 to be a part of its FERC Gas Tariff, First Revised Volume No. 1, to be effective January 19, 1992.

Stingray states the purpose of the filing is twofold: first, to add tariff provisions as required by Order No. 537 that require shippers to certify that their service qualifies under Section 311; and second, to change the time that transportation nominations are due.

Stingray requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective January 19, 1992.

Stingray states that a copy of the filing is being mailed to Stingray's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before January 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–31224 Filed 12–30–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–62–000]

Trailblazer Pipeline Co.; Changes in FERC Gas Tariff

December 24, 1991.

Take notice that on December 20, 1991, Trailblazer Pipeline Company (Trailblazer) tendered for filing as part of its FERC Gas Tariff, the below listed tariff sheets to be effective January 19, 1992:

Original Volume No. 1

Title Page
Second Revised Sheet No. 119

First Revised Volume No. 1A

First Revised Sheet No. 13
Original Sheet No. 13A
First Revised Sheet No. 32
Original Sheet No. 32A

Trailblazer states that the purpose of the filing is to: (a) Update the title page; (b) change the time that transportation nominations are due; and (c) add tariff provisions as required by Order No. 537 that require shippers to certify that their service qualifies under section 311.

Trailblazer requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective January 19, 1992.

Trailblazer states that a copy of the filing is being mailed to Trailblazer's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before January 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–31225 Filed 12–30–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–9–29–003]

Transcontinental Gas Pipe Line Corp.; Compliance Filing

December 24, 1991.

On December 17, 1991, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing First Revised Sheet Nos. 138 and 151 to its FERC Gas Tariff, Third Revised Volume No. 1.

Transco proposes to notify its customers via its electronic bulletin board of any rate change proposal filed by CNG Transmission Corporation, Penn-York Energy Corporation, and National Fuel Gas Supply Corporation which Transco will track under its Rate Schedule LSS and any rate change proposal filed by Penn-York and National Fuel which Transco will track under its Rate Schedule SS–1 within 3 business days following Transco's receipt of notice of such filing.

Transco proposes to file to track any such rate change no later than 15 days following the date Transco receives a copy of the Commission order which accepts and makes effective the rate change.

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Transco has requested that this revised tariff sheet be effective January 16, 1992.

Transco states that copies of the filing have been sent to all interested state commissions and all parties in the captioned proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before January 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31226 Filed 12-30-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-5-29-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

December 24, 1991.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on December 19, 1991, the following revised tariff sheets to its FERC Gas Tariff, which tariff sheets are proposed to be effective November 1, 1991:

Third Revised Volume No. 1.

Third Revised Sheet No. 28
Second Revised Sheet No. 50

Transco states that the purpose of the filing is to track rate changes attributable to (1) storage services purchased from Consolidated Natural Gas (CNG) under its Rate Schedule GSS the costs of which are included in the rates and charges payable under Transco's Rate Schedule LSS, (2) transportation services purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT-NT, and (3) transportation services purchased from CNG under its Rate Schedule X-74 the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT-NT. The tracking filing is being made pursuant to Section 4 of Transco's Rate Schedule LSS and Section 4 of Transco's Rate Schedule FT-NT.

Included in Appendices A and B attached to the filing are explanations of the tracking rate changes and details regarding the computation of the revised LSS and FT-NT rates.

Transco states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protests said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31227 Filed 12-30-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 91-82-NG]

The Maple Gas Corp.; Order Granting Blanket Authorization To Export Natural Gas to Mexico

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of order granting blanket authorization to export natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting The Maple Corporation blanket authorization to export up to 109.5 Bcf of natural gas to Mexico over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 24, 1991.

Anthony J. Como,

Director, Office of Coal and Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-31244 Filed 12-30-91; 8:45 am]

BILLING CODE 6540-01-M

[FE Docket No. 91-101-NG]

Tarpon Gas Marketing Ltd.; Application To Import Natural Gas from Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application for blanket authorization to import natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on November 20, 1991, of an application filed by Tarpon Gas Marketing Co. (TGM), for blanket authorization to import up to 100 Bcf of Canadian natural gas for a term of two years beginning on January 20, 1992, the date its existing blanket import authority expires. The proposed imports would take place at any point on the international border where existing pipeline facilities are located. No new pipeline construction would be involved.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., Eastern time January 30, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478.

FOR FURTHER INFORMATION CONTACT:

Thomas Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, FE-53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9590.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0503.

SUPPLEMENTARY INFORMATION: TGM is an independent Canadian corporation with its principal place of business in Calgary, Alberta. TGM indicates that the contracts it plans to enter into would be similar to those it is currently engaged in under blanket import authority granted by DOE in DOE/ERA Opinion and Order No. 265 (Order 265).[1] Order 265 expires on January 20, 1992. The arrangements would continue to be month-to-month spot sales, typically tied to price indices of gas trade journals, and on an interruptible basis. TGM asserts that its application request would be in the public interest since sales would only be made where they would be responsive to current market forces, pose no environmental impacts, and where they further DOE's policy goals on natural gas imports and the 1988 U.S.-Canada Free Trade Agreement. According to quarterly reports filed with FE, TGM has imported approximately 9.96 Bcf of Canadian natural gas through September 30, 1991, under its existing blanket import authority.

The decision on the application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment on the issue of competitiveness as set forth in the policy guidelines regarding the requested import authority. The applicant asserts that imports made under the proposed arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C., 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of TGM's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

[1] ERA ¶ 70,804 (August 10, 1988).

Issued in Washington, DC, December 20, 1991.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-31245 Filed 12-30-91; 8:45 am]

BILLING CODE 6540-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4089-8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces OMB responses to Agency PRA clearance requests.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

EPA ICR #1129; NSPS for Secondary Brass and Bronze Production plants (subpart M); was approved 10/09/91; OMB #2060-0110; expires 09/30/94.

EPA ICR #0229/06; NPDES Discharge Monitoring Report; was approved 10/11/91; OMB #2040-0004; expires 10/31/94.

EPA ICR #1071.04; NSPS for Stationary Gas Turbines (Subpart GG)—Information Requirements; was approved 11/08/91; OMB #2060-0028; expires 11/30/94.

EPA ICR #0309.05; Application to Register Lead Substitute Gasoline Additive for Reducing Valve Seat Wear; was approved 12/02/91; OMB #2060-0150; expires 06/30/94.

EPA ICR #1153.04; NESHAP for Benzene Equipment Leaks (Subpart J) Information Requirements; was approved 12/12/91; OMB #2060-0068; expires 12/31/94.

EPA ICR #1056.04; NSPS for Nitritic Acid Plants (Subpart G) Information Requirements; was approved 12/12/91; OMB #2060-0019; expires 12/31/94.

OMB Disapproval

EPA ICR #1432.07; Servicing of Motor Vehicle Air Conditioners; was disapproved by OMB 10/31/91.

Extension of Expiration Dates

EPA ICR #1287; National Operations and Maintenance Excellence; expiration date extended to 03/31/92.

EPA ICR #0827; Construction Grants Program Information; expiration date extended to 02/28/92.

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Dated: December 24, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91-31239 Filed 12-30-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4089-7]

Innovative Regulatory Strategies Workshop: Market-Based Incentives and Other Innovations for Air Pollution Control

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public workshop.

SUMMARY: The EPA will sponsor a workshop on innovative regulatory strategies for air quality management. This workshop is part of an EPA innovative regulatory strategies program to encourage and facilitate, as appropriate, the development, demonstration, and implementation of innovative regulatory programs, including market-based, informational, and pollution prevention approaches. The Clean Air Act as amended in 1990 allows, and in some cases requires, States to consider the adoption of effective market-based strategies or other innovative types of control.

The workshop will focus primarily on market-based air pollution control programs. The purpose of the workshop is to bring together and facilitate discussion among individuals who have practical experience or interest in developing market-based strategies. The workshop is designed to meet the following objectives:

(1) Promote the consideration and use of appropriate market-based strategies.

(2) Explore design and implementation issues related to strategies such as marketable emissions permits, pollution fees, and transportation controls.

(3) Facilitate peer exchange of information and ideas on actual programs (either existing or being developed).

(4) Identify implementation obstacles and other issues for future research.

Participation is being invited from a diverse population, including Federal, State and local regulators, industry, environmental groups, and academic/scientific groups.

DATES: The workshop will begin at 1 p.m. on Wednesday, January 15, 1992 and conclude at noon on Friday, January 17, 1992.

ADDRESSES: The workshop will be held at the Georgetown University Conference Center, 3800 Reservoir Road, NW., Washington, DC.

To assist the EPA in planning the workshop, persons interested in attending should request registration information from Ms. Tricia Crabtree at (919) 541-5655, Ambient Standards Branch, (MD-12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

FOR FURTHER INFORMATION CONTACT: Dr. Connie Oldham at (919) 541-7774 or Dr. Karen Martin at (919) 541-5274, Regulatory Strategies Section, Ambient Standards Branch (MD-12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Dated: December 20, 1991.

John Calcagni,

Director, Air Quality Management Division.

[FR Doc. 91-31240 Filed 12-30-91; 8:45 am]

BILLING CODE 6560-50-M

[PF-551; FRL-3949-1]

Mobay Corp.; Amendment of Pesticide Petition for Fenamiphos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Mobay Chemical Corp. the filing of a Section F amendment of pesticide petition (PP) 7F3523, which proposed amending 40 CFR 180.349 by establishing a regulation to permit residues of the pesticide fenamiphos and its sulfone and sulfoxide metabolites in or on peanut shells at 0.5 part per million. The amendment proposes establishing tolerances of 1.0 ppm on peanuts and 5.0 ppm on peanut hulls.

ADDRESSES: By mail, submit written comments identified by the document control number, [PF-551], to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker (PM-22), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 251, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-557-0705.

SUPPLEMENTARY INFORMATION: This notice announces that EPA has received from the Mobay Chemical Corp., Agricultural Chemicals Div., P.O. Box 4913, Kansas City, MO 64120, a revised Section F for PP 7F3523, which originally appeared in the **Federal Register** of August 5, 1987 (52 FR 29061) and proposed amending 40 CFR 180.349 by establishing a regulation to permit residues of the pesticide fenamiphos (ethyl-3-methyl-4-(methylthio)phenyl (1-methylethyl)phosphoramidate) and its sulfone and sulfoxide metabolites in or on peanut shells at 0.5 ppm. The amended petition would establish tolerances for fenamiphos in or on peanuts at 1.0 ppm and peanut hulls at 5.0 ppm. The proposed analytical method for determining residues is gas chromatography.

Authority: 21 U.S.C. 346a and 348.

Dated: December 16, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-30773 Filed 12-30-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

December 23, 1991.

Background

Notice is hereby given of the submission of proposed information collection to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (title 44 U.S.C. chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR part 1320). A copy of the proposed information collection and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal

should be sent to the agency clearance officer and to the OMB desk officer listed in the notice.

DATES: Comments on this proposed revision to information collection are welcome and should be submitted on or before January 24, 1992.

FOR FURTHEN INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829).

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503 (202-395-7340).

Request for OMB Approval to Revise the Following Report

1. *Report title:* Reports of Condition and Income.

Agency form number: FFIEC 031-034.

OMB Docket number: 7100-0036.

Frequency: Quarterly.

Reporters: State member banks.

Annual reporting hours: 161,023.

Estimated average hours per response: 39.7.

Number of respondents: 1,014.

This information collection is mandatory (12 U.S.C. 324) and is given partial confidential treatment.

On a quarterly basis, State member banks are required to file detailed schedules of assets, liabilities, and capital in the form of a condition report and summary statement; detailed schedule of operating income and expense, sources and disposition of income, and changes in equity capital in the form of an income statement; and a variety of supporting schedules. Data are used for supervisory and monetary policy purposes. The proposed changes for March 1992 affect several existing Call Report schedules. Unless otherwise indicated, the proposed changes would apply to all four sets of reporting forms (FFIEC 031, FFIEC 032, FFIEC 033, and FFIEC 034); the proposed changes are as follows:

(1) Other Real Estate Owned By Type of Property

The existing item for other real estate owned in the memoranda schedule (Schedule RC-M) would be broken down by type of property (e.g., construction, farmland, residential, and nonfarm nonresidential properties). On the FFIEC 031 reporting forms, banks with domestic and foreign offices would also separately report a single figure for other real estate owned in foreign offices.

(2) Residential Mortgages Serviced for Others by Type of Servicing Contract

New items for the principal amount outstanding of one-to-four family residential mortgages serviced for others under certain servicing contracts would be added to the memoranda schedule (Schedule RC-M). The types of servicing contracts specified include: GNMA, FHLMC with recourse, FHLMC without recourse, FNMA "special option," FNMA "regular option," and all other contracts.

(3) Purchased Credit Cardholder Relationships

An existing item for identifiable intangible assets other than purchased mortgage servicing rights would be split into items for purchased credit cardholder relationships and all other identifiable intangibles on the memoranda schedule (Schedule RC-M).

(4) Floating Rate Debt Securities Maturing Within One Year

A memorandum item for floating rate debt securities with a remaining maturity of one year or less would be added to the securities schedule (Schedule RC-B).

(5) Other Data for Deposit Insurance Assessments

The following new items would be added to the assessments schedule (Schedule RC-O): (i) Accrued interest on deposits of consolidated subsidiaries, (ii) accrued interest on deposits in insured branches in Puerto Rico and U.S. territories and possessions (on the FFIEC 031 report forms only), (iii) premiums and discounts on time and savings deposits that cause the amount reported for these deposits in the deposit liabilities schedule (Schedule RC-E) under applicable accounting and reporting standards to differ from the amounts actually due to the depositors and subject to assessment, and (iv) the amount of "adjusted attributed deposits" held by banks with SAIF-insured deposits acquired from thrifts (referred to as "Oakar deposits").

The effective date for these reporting changes, if approved, would be the March 31, 1992, report date. Nonetheless, as is customary for Call Report changes, banks will be advised that they may provide reasonable estimates for any of the new items in their March 31, 1992, Call Reports if the requested information is not readily available.

Board of Governors of the Federal Reserve System, December 23, 1991.

William W. Wiles

Secretary of the Board.

[FR Doc. 91-31194 Filed 12-30-91; 8:45 am]

BILLING CODE 6210-01-M

Australia and New Zealand Banking Group Limited, Melbourne, Australia; Application to Provide Investment Advisory and Brokerage Services on a Combined Basis, to Provide Certain Financial Advisory Services, and to Arrange for Sales and Purchases of Loans or other Extensions of Credit as Agent

Australia and New Zealand Banking Group Limited, Melbourne, Australia, ("Applicant"), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (the "BHC Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), for prior approval to retain its interest in ANZ McCaughan Securities (USA) Inc., New York, New York ("Company"), an indirect wholly owned subsidiary of Applicant, and thereby to engage through Company in providing to institutional customers:

(1) Securities brokerage services and investment advisory services on a combined basis ("full-service brokerage");

(2) (a) Corporate finance advisory services by acting as a financial adviser, either on a retainer or success fee basis, including advice with respect to structuring, financing, and negotiating domestic and international mergers and acquisitions, joint ventures, divestitures, leveraged buyouts, capital raising vehicles, interest rate swaps, interest rate caps, interest rate collars, currency swaps, similar hedging devices, and other corporate transactions, and to provide ancillary services or functions incidental to the foregoing activities; (b) performing feasibility studies, principally in the context of determining the financial attractiveness and feasibility of particular corporate transactions; (c) providing valuation services; and (d) rendering fairness opinions in connection with corporate transactions.

(3) Arranging for sales and purchases of loans or other extensions of credit originated by affiliated and unaffiliated lenders as agent. Company would conduct the proposed activities domestically and internationally.

Pursuant to the Board's Regulation K, Applicant currently engages through Company in the proposed activities, that are "incidental" to its foreign or

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international business. Applicant seeks authority under section 4(c)(8) of the BHC Act, so that it may provide these services generally to its U.S. customers.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with prior Board approval, engage directly or indirectly in any activities "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

The Board has previously determined that engaging in full-service brokerage activities is closely related and a proper incident to banking. See, e.g., National Westminster Bank PLC, 72 Federal Reserve Bulletin 584 (1986)("Natwest"). Applicant has committed for Company to conduct these activities subject to the limitations in Natwest, as they were modified in The Toronto Dominion Bank, 76 Federal Reserve Bulletin 573 (1990); The Bank of Tokyo, Ltd., 76 Federal Reserve Bulletin 654 (1990); Bankers Trust New york Corporation, 74 Federal Reserve Bulletin 695 (1988); and Manufacturers Hanover Corporation, 73 Federal Reserve Bulletin 930 (1987).

The Board has previously determined that the proposed financial advisory services are closely related and a proper incident to banking, and Applicant proposes to conduct these activities in accordance with the limitations relied upon by the Board in approving these activities. See, e.g., The Fuji Bank, Limited, 75 Federal Reserve Bulletin 577 (1989); Banc One Corporation, 76 Federal Reserve Bulletin 756 (1990).

In addition, the Board has previously determined that arranging for sales of loans or other extensions of credit originated by affiliated and unaffiliated lenders as agent is encompassed within the authorization of § 225.25(b)(1) of the Board's Regulation Y, 12 CFR 225.25(b)(1). See, e.g., Toronto-Dominion Bank, 78 Federal Reserve Bulletin 573 (1990); Bryn Mawr Bank Corporation, 74 Federal Reserve Bulletin 329 (1988).

In determing whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." 12 U.S.C. 1843(c)(8). Applicant contends that permitting it to engage in the proposed activities would result in increased competition and greater convenience to customers. Applicant believes that the proposed activities will not result in any unsound banking practices or other adverse effects.

In publishing the proposal for comment the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act or the Glass-Steagall Act.

Any comments or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than January 27, 1992. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, December 24, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-31193 Filed 12-30-91; 8:45 am]

BILLING CODE 6210-01-M

BankAmerica Corp., San Francisco, CA and Security Pacific Corp., Los Angeles, CA; Acquisitions by and Mergers of Bank Holding Companies and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a) of Regulation Y (12 CFR 225.23(a)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of companies engaged in nonbanking activities that are listed in § 225.25 of Regulation Y and that are not listed in Regulation Y but have previously been approved by Board Order as closely related to banking and permissible for bank holding companies, or to engage in such an activity. These activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank located in San Francisco as well as the offices of the Board of Governors in Washington, DC. Interested persons may express their views in writing on the applications including the factors set forth in section 3(c) of the Bank Holding Company Act (12 U.S.C. 1842(c)) and in section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)), including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comment on an application that requests a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding these applications must be received not later than January 30, 1992, and should be addressed to the attention of Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551.

A Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director) 101 Market Street, San Francisco 94105:

1. BankAmerica Corporation, San Francisco ("BankAmerica"); to acquire and merge with Security Pacific Corporation, Los Angeles, California ("Security Pacific"), and thereby indirectly acquire Security Pacific National Bank, Los Angeles, California; Security Pacific Bank, National Association, Tempe, Arizona; Security Pacific National Trust Company (New York), New York, New York; Security Pacific State Bank, Costa Mesa, California; Sequor National Bank Texas, Dallas, Texas; Security Pacific Bancorporation Northwest, Seattle, Washington; and its subsidiaries Security Pacific Bank Alaska, N.A., Anchorage, Alaska; Security Pacific Bank Idaho, N.A., Coeur d'Alene, Idaho; Security Pacific Bank Washington, N.A., Seattle, Washington; Security Pacific Oregon BanCorp, Portland, Oregon; Security Pacific Bank Oregon, Portland, Oregon; Security Pacific Savings Bank, Tacoma, Washington; Security Pacific Bancorporation Southwest, Phoenix, Arizona; and its subsidiaries Security Pacific Bank Arizona, Phoenix, Arizona; and Security Pacific Bank Nevada, National Association, Las Vegas, Nevada. In a subsequent reorganization of the bank operations of Security Pacific and BankAmerica, SeaFirst Corporation and Nevada First Development Corporation (two BankAmerica subsidiaries) and Security Pacific Bancorporation Northwest and Security Pacific Bancorporation Southwest may merge or may obtain control of one or more of the banks named above or one or more of the domestic bank subsidiaries of BankAmerica.

BankAmerica has applied to exercise an option to buy up to 19.9 percent of the voting shares of Security Pacific.

In connection with this application, Security Pacific has applied to exercise an option to buy up to 9.95 percent of the voting shares of BankAmerica.

Nonbanking Activities

BankAmerica has also applied under section 4 of the Bank Holding Company Act, 12 U.S.C. 1843, to acquire all of the existing nonbanking subsidiaries of Security Pacific. All of the proposed activities will be conducted subject to all of the commitments, conditions and limitations in the Board's Regulations and Orders governing conduct of these activities by Security Pacific. These subsidiaries include—

Lending Activities

The following companies engaged in commercial and/or consumer finance pursuant to § 225.25(b)(1) of the Board's Regulation Y: First Fenwick Mortgage Corporation, San Diego, California, and other locations in Virginia; Rainier Industrial Loan Company, Seattle, Washington; Security Pacific Business Credit, Inc., San Diego, California, and other locations in California, Illinois, Massachusetts, Minnesota, New York, Pennsylvania, and Texas; Security Pacific Consumer Discount Company, San Diego, California, and other locations in Pennsylvania; Security Pacific Corporate Funding Inc., Los Angeles, California; Security Pacific Executive/Professional Services Inc., San Dimas, California, and Aurora, Colorado; Security Pacific Credit Corporation, San Diego, California and other locations in California, Illinois, Massachusetts, New Jersey, and Texas; Security Pacific Finance Credit Corp., San Diego, California, and other locations in Connecticut, Florida, Georgia, Kansas, North Carolina, Ohio, Tennessee, and Texas; Security Pacific Financial Services Inc., San Diego, California, and other locations in Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Missouri, North Carolina, New Hampshire, New Jersey, New Mexico, Nevada, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Virginia, Vermont, Washington, West Virginia; Security Pacific Financial Services of Des Moines Inc., San Diego, California, and other locations in Iowa; Security Pacific Financial Services of Florida Inc., San Diego, California; Security Pacific Financial Services of Iowa Inc., San Diego, California, and other locations in Indiana, Nebraska, South Dakota, and Wisconsin; Security Pacific Financial Services of Minnesota Inc., San Diego, California, and Bloomington and Duluth, Minnesota; Security Pacific Financial Services of New York Inc., San Diego, California, and other locations in New York; Security Pacific Housing Services, Inc., San Diego, California, and other locations in Arizona, California, Florida, Georgia, Indiana, Kansas, North Carolina, New Mexico, Nevada, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington; Security Pacific Realty Corp., San Diego, California, and other locations in New York; Security Pacific Southwest Financial Services Company, Phoenix, Arizona, and Albuquerque, New Mexico; Security-First CMO–I Corporation, Cypress, California; Security Pacific Acceptance Corp., San Diego, California; Security Pacific Acceptance Corp. II, San Diego, California; Security Pacific E/P Assets, Inc., San Diego, California; and Security Pacific Leasing Services Corporation, San Francisco, California.

In addition, BankAmerica proposes to acquire the following inactive nonbanking companies which have authority to engage in making or servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y: American Finance Corporation, San Diego, California; Orbanco Real Estate Services Co., Portland, Oregon; Rainier Bancorporation, Seattle, Washington, Rainier Mortgage Company, Seattle, Washington; Security Pacific Automotive Financial Services Corp., San Diego, California and other locations in New Jersey and Texas; and Security Pacific Mortgage Corporation, San Diego, California.

Industrial Banking Activities

The following companies engaged in operating an industrial loan company, as authorized by state law, pursuant to § 225.25(b)(2) of the Board's Regulation Y: Security Pacific Financial Services of West Virginia Inc., San Diego, California, and other locations in West Virginia; Security Pacific Industrial Loan Company, Bellevue, Tacoma and Tukwilla, Washington; and Rainier Industrial Loan Company, Seattle, Washington.

Trust Company Activities

The following company engaged in providing trust services pursuant to § 225.25(b)(3) of the Board's Regulation Y: SP Escrow Service, Inc., Los Angeles, San Diego, and San Bernardino, California.

The following company engaged in clearing fixed income securities in a fiduciary capacity and making call loans to securities dealers pursuant to § 225.25(b)(3) of the Board's Regulation Y: Security Pacific Clearing & Services Corp., Jersey City, New Jersey, and other locations in Illinois and New York.

Investment Advisory Activities

The following companies engaged in furnishing investment, financial and economic advisory services pursuant to § 225.25(b)(4) of the Board's Regulation Y: Security Pacific Investment Managers, Inc., Los Angeles, California; 50 percent of the outstanding voting shares of Sumisei SecPac Investment Advisors, Inc., Los Angeles, California; 50 percent of the outstanding voting shares of Sumitrust Security Pacific Investment Managers, Inc., Los Angeles, California.

The following company engaged in providing portfolio investment advice regarding fixed income municipal bonds pursuant to § 225.25(b)(4)(iii) of the Board's Regulation Y: Security Pacific Investments Inc., a Washington Corporation, Seattle, Washington.

Leasing Activities

The following companies engaged in personal and real property leasing and furnishing investment, financial and economic advisory services regarding such leasing pursuant to § 225.25(b)(5) of the Board's Regulation Y: MCOG Leasing Corp., San Francisco, California; Security Pacific Capital Leasing Corporation, San Francisco, California; Security Pacific Credit Corporation, San Diego, California and other locations in California, Illinois, Massachusetts, New Jersey, and Texas; and Security Pacific Leasing Services Corporation, San Francisco, California.

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The following company engaged in personal and real property leasing pursuant to § 225.25(b)(5) of the Board's Regulation Y and in leasing personal property, and acting as agent, broker, or adviser in leasing such property, including leasing transactions that allow this company to rely for its compensation on an estimated residual value of the leased property at the expiration of the initial lease term of up to 100 percent of the acquisition costs of the property in accordance with the Board's Order in *Security Pacific Corporation*, 76 Federal Reserve Bulletin 462 (1990): Security Pacific Leasing Corporation, San Francisco, California.

Community Development Activities

The following company engaged in making debt and equity investments in corporations or projects designed to promote community welfare, including the purchase, construction, rehabilitation, restoration, and sales of residential and commercial properties, pursuant to § 225.25(b)(6) of the Board's Regulation Y: Security Pacific Community Service Corporation, Seattle, Washington.

Data Processing Activities

The following companies engaged in providing to others data processing and data transmission services with respect to banking data, pursuant to § 225.25(b)(7) of the Board's Regulation Y: Security Pacific Information Services Corporation, San Diego, California, Denver, Colorado, and New York, New York; Security Pacific Automation Company, Inc., Los Angeles, California, and other locations in California, Delaware, and Oregon; and American Data Services, Inc., Los Angeles, California and other locations in Montana, Oregon, and Washington.

Insurance Activities

The following companies engaged in the sale as principal of insurance directly related to an extension of credit by Security Pacific or its subsidiaries and limited to ensuring the repayment of the outstanding balance due on the extension of credit in the event of death and disability of the debtor pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y: Chartered Protective Life Insurance Company, San Diego, California; and General Fidelity Life Insurance Company, San Diego, California.

The following companies engaged in the sale as agent of insurance directly related to an extension of credit by Security Pacific or its subsidiaries and limited to ensuring the repayment of the outstanding balance due on the extension of credit in the event of death, disability or involuntary unemployment of the debtor pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y and in the sale as agent or broker for insurance directly related to extensions of credit by finance company subsidiaries of Security Pacific pursuant to § 225.25(b)(8)(ii) of the Board's Regulation Y: Dealers Credit, Inc., San Diego, California, and other locations in Arizona, California, Colorado, Hawaii, Iowa, Maryland, Missouri, Nevada, Oregon, Pennsylvania, Virginia, and Washington; Security Pacific Financial Services of Nevada Inc., San Diego, California, and Las Vegas and Reno, Nevada; and the Midwestern Agency Corporation, Inc., San Diego, California, and other locations in Arizona, California, Colorado, Hawaii, Iowa, Maryland, Missouri, Nevada, Oregon, Pennsylvania, Virginia, and Washington.

The following company engaged in the sale as principal of insurance directly related to an extension of credit by Security Pacific or its subsidiaries and limited to ensuring the repayment of the outstanding balance due on the extension of credit with respect to involuntary unemployment of the debtor pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y: General Fidelity Insurance Company, San Diego, California.

The following company engaged in the sale as agent of insurance directly related to an extension of credit by Security Pacific or its subsidiaries and limited to ensuring the repayment of the outstanding balance due on the extension of credit in the event of death, disability or involuntary unemployment of the debtor pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y and in the sale as agent of property insurance protecting collateral on loans made by subsidiaries of Security Pacific, which company engaged in this activity prior to May 1, 1982, as permitted under § 225.25(b)(8)(iv) of the Board's Regulation Y: SP Insurance Agency, Inc., San Diego, California.

BankAmerica also proposes to acquire the following inactive nonbanking company which has authority to act as principal, agent, or broker for credit-related insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y: Security Pacific Southwest Insurance Agency, Inc., Phoenix, Arizona.

Securities Activities

The following company engaged in underwriting and dealing in "bank-eligible" securities pursuant to § 225.25(b)(16) of the Board's Regulation Y; in underwriting and dealing in, on a limited basis, the following securities:

(a) Municipal revenue bonds, including certain industrial development bonds;

(b) Residential mortgage-related securities;

(c) Consumer-receivable-related securities; and

(d) Commercial paper;

as authorized by Board Orders. Security Pacific Corporation, 73 Federal Reserve Bulletin 622 (1987); Security Pacific Corporation, 73 Federal Reserve Bulletin 731 (1987): Security Pacific Securities, Inc., Seattle, Washington.

The following company engaged in providing discount securities brokerage pursuant to § 225.25(b)(15) of the Board's Regulation Y: Security Pacific Investments Inc., a Washington Corporation, Seattle, Washington.

Intermediate Companies Which Do Not Engage Directly in Nonbank Activities

The following companies which engage in holding subsidiaries pursuant to 12 U.S.C. 1843(a): SP Financial Services Holdings, Inc., San Diego, California; SPC Acquisition, Inc., Los Angeles, California; SP Insurance Services, Inc., San Diego, California; Security Pacific Equipment Finance, Inc., Los Angeles, California; Security Pacific Finance System Incorporated, San Diego, California; Security Pacific Financial Services System, Inc., San Diego, California; The Sequor Group Inc., Los Angeles, California, and other locations in California and New York; White Sands Leasing Corporation, San Francisco, California; and Windmill Sands Leasing Corporation, San Diego, California.

Edge Act Corporations and Foreign Branches and Subsidiaries

Bank of America National Trust and Savings Association has also applied to acquire:

(1) Security Pacific Overseas Corp., Los Angeles, California, an investment Edge Act corporation, and all its foreign subsidiaries, joint ventures and portfolio investments, pursuant to section 25 and 25(a) of the Federal Reserve Act, 12 U.S.C. 601 and 611–31, and § 211.4 of the Board's Regulation K; and

(2) Security Pacific International Bank, New York, New York, an Edge Act corporation engaged in banking, pursuant to section 25 and 25(a) of the Federal Reserve Act, 12 U.S.C. 601 and 611–31, and § 211.4 of the Board's Regulation K;

(3) The foreign branch of Security Pacific National Bank, located in Nassau, Bahamas, pursuant to 12 U.S.C. 601; and

(4) The foreign subsidiaries of Security Pacific National Bank.

Security Pacific National Bank also has branches in the Bahamas where neither BankAmerica nor any of its affiliates have branches. Bank of America National Trust and Savings Association is filing a notice to establish branches in the Bahamas pursuant to § 211.3(a).

Seattle First-National Bank has applied to acquire the foreign branch of Security Pacific Bank Washington, N.A., located in Grand Cayman, Cayman Islands, and plans to apply to acquire the foreign branch of Security Pacific Bank Washington, N.A., located in Kaohsuing, Taiwan pursuant to 12 U.S.C. 601.1.

Finally, BankAmerica seeks the Board's specific consent under section 4(c)(13) of the BHC Act, 12 U.S.C. 1843(c)(13), and the Board's Regulation K to acquire all of the foreign subsidiaries, joint ventures and portfolio investments of Security Pacific held under section 4(c)(13) of the BHC Act.

Board of Governors of the Federal Reserve System, December 27, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–31321 Filed 12–30–91; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress:

National Advisory Council on Migrant Health

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC, or weekdays between 9 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department of Library, HHS North Building, room G–619, 330 Independence Avenue, SW., Washington, DC, telephone (202) 619–0791. Copies may be obtained from: Mr Jack Egan, Executive Secretary, National Advisory Council on Migrant Health, room 7A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–1153.

Dated: December 26, 1991

Jackie E. Baum,

Advisory Committee Management Officer HRSA.

[FR Doc. 91–31203 Filed 12–30–91; 8:45 am]

BILLING CODE 4160–15–M

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of February 1992:

Name: National Advisory Council on Migrant Health.

Date and Time: February 9–11, 1992—8:30 a.m.

Place: Hyatt Rgency Washington on Capital Hill, 400 New Jersey Avenue, NW Washington, DC.

The meeting is open to the public.

Purpose: The Council is charged with advising, consulting with, and making recommendations to the Secretary and the Administrator, Health Resources and Services Administration, concerning the organization, operation, selection, and funding of Migrant Health Centers and other entities under grants and contracts under section 329 of the Public Health Service Act.

Agenda: The agenda will cover presentation and discussion with other organizations and agencies, of the National Advisory Council on Migrant Health 1991/92 recommendations to the Secretary, Department of Health and Human Services.

Anyone requiring information regarding the subject Council should contact Mr. Jack Egan, Acting Executive Secretary, National Advisory Council on Migrant Health, room 7A–55, Parklawn Building, 5600 Fishers Lane Rockville, Maryland 20857, telephone (301) 443–1153.

Agenda Items are subject to change as priorities dictate.

Dated: December 26, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91–31204 Filed 12–30–91; 8:45 am]

BILLING CODE 4160–15–M

Social Security Administration

Social Security Acquiescence Ruling 91–X(5)—Lidy v. Sullivan, 911 F.2d 1075 (5th Cir. 1990)—Right To Subpoena an Examining Physician for Cross-Examination Purposes

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(2) published January 11, 1990 (55 FR 1012), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 91–X(5).

EFFECTIVE DATE: December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Ethel Hill, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 966–5044.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 422.406(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals decision as explained in this Social Security Acquiescence Ruling to claims at the disability hearing, Administrative Law Judge, and Appeals Council levels within the Fifth Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made at these levels on or after December 31, 1991. If we made a determination or decision at these levels on your application for benefits between September 17, 1990, the date of the Court of Appeals' decision and December 31 1991, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b), 410.670c(b), or 416.1485(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e), 410.670c(e), or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c), 410.670c(c), or 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

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Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivor's Insurance; 93.806—Special Benefits for Disabled Coal Miners; 93.807—Supplemental Security Income.

Dated: December 24, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Acquiescence Ruling 91–X(5)

Lidy v. *Sullivan*, 911 F.2d 1075 (5th Cir. 1990)—Right to Subpoena an Examining Physician for Cross-examination Purposes—titles II and XVI of the Social Security Act.

Issue

Whether a claimant for disability insurance benefits and/or supplemental security income payments based on disability has an absolute right, upon request, to have the Secretary issue a subpoena in order that the claimant may cross-examine an examining physician.

Statute/Regulation/Ruling Citation

Section 205 of the Social Security Act (42 U.S.C. 405), 20 CFR 404.916(b), 404.950(d), 416.1416(b), 416.1450(d), SSR 71-53c.

Circuit

Fifth (Louisiana, Mississippi, and Texas) *Lidy* v. *Sullivan*, 911 F.2d 1075 (5th Cir. 1990).

Applicability of Ruling

This Ruling applies to claims at the disability hearing, Administrative Law Judge and Appeals Council levels.

Description of Case

The plaintiff, Mr. Lidy, filed an application for disability insurance benefits. The report of Dr. Finney, who examined plaintiff following a referral by his worker's compensation insurer, formed the basis of the Administrative Law Judge's finding of no disability.

In order to challenge Dr. Finney's report, the plaintiff sought to subpoena him for cross-examination. The Administrative Law Judge refused the plaintiff's request, but did permit him to submit a set of written interrogatories. The plaintiff then sought to submit a second set of interrogatories to clarify some of Dr. Finney's responses and urged the Administrative Law Judge to require live cross-examination. These requests were denied and the plaintiff's application for benefits was denied. The Administrative Law Judge's decision became the final decision of the Secretary.

The plaintiff filed a civil action in district court. A magistrate recommended that the court grant the plaintiff's motion for summary judgment on the ground that the refusal to permit cross-examination of Dr. Finney constituted a denial of due process. The district court disagreed with the magistrate and found that the Administrative Law Judge had acted within his discretion in denying cross-examination. The plaintiff then appealed the decision to the United States Court of Appeals for the Fifth Circuit.

Holding

The Fifth Circuit Court of Appeals interpreted the Supreme Court's holding in *Richardson* v. *Perales*, 402 U.S. 389 (1971) to mean that, under section 205(d) of the Social Security Act, entitlement to a subpoena for cross-examination purposes is automatic. Therefore, the court held that once a claimant has requested a subpoena for the purpose of cross-examining an examining physician, the request must be granted.

Statement as to How Lidy Differs from SSA Policy

SSA has interpreted *Richardson* v. *Perales* to mandate the issuance of a subpoena only when it is shown that the testimony sought is "reasonably necessary for the full presentation of a case." Therefore, SSA's policy is that a claimant's right to a subpoena is qualified.

Social Security Administration Regulations at 20 CFR 404.950(d) and 416.1450(d) state that when the claimant requests a subpoena, he or she must "state the important facts that the witness or document is expected to prove; and indicate why these facts could not be proven without issuing a subpoena." These sections also state that the Administration Law Judge may issue a subpoena, "(w)hen it is reasonably necessary for the full presentation of a case."

Current instructions provide that an Administrative Law Judge "may deny the claimant's request to subpoena an individual if the claimant fails to show that the evidence or testimony he or she wishes to obtain from the individual is essential, or that the evidence or testimony cannot be obtained in any other way." An exception to this policy is made when securing expert medical opinion after a hearing. Section I-2-540 states that if the claimant objects to the use of interrogatories and requests a supplemental hearing, the Administrative Law Judge must grant the request in such event.

As indicated above, the Fifth Circuit has held that in the Social Security hearings process the right to a subpoena for the purposes of cross-examining an examining physician is absolute.

Explanation of How SSA Will Apply this Decision within the Circuit

This Ruling applies only to cases involving claimants for disability insurance benefits and/or supplemental security income payments based on disability who reside in Louisiana, Mississippi, or Texas at the time of the proceedings at the disability hearing, Administrative Law Judge, or Appeals Council levels. In such cases, when a claimant requests, prior to the closing of the record, that a subpoena be issued for the purpose of cross-examining an examining physician, the adjudicator must issue the subpoena.

[FR Doc. 91–31231 Filed 12–30–91; 8:45 am]

BILLING CODE 4190–25–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–030–2–4212–18; MIES–043236]

Realty Actions, Sales, Leases, etc.; MI

AGENCY: Bureau of Land Management, Interior.

ACTION: Sale of Public Land in Chippewa County, Michigan—Modified Competitive Method.

SUMMARY: The following public land has been found suitable for sale under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1713), at not less than the estimated fair market value (FMV) of $6,600.00. The public land will not be offered for sale for at least 60 days following the date of this notice. The public land is described as follows:

MIES–043236

T. 41N., R. 7E., Sec. 30, Lot 3, Michigan Meridian, Drummond Township, Chippewa County, Michigan (containing approximately 2.50 acres).

The public land described above is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action, or 270 days from the date of publication of this notice in the **Federal Register**, whichever occurs first.

The public land will be offered for sale at a public auction beginning at 10 a.m., CST, on March 16, 1992 at Reuss Federal Plaza, suite 225, West Tower, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203. This sale will be by modified competitive procedures. Mr. Thomas A. McCaskill will be given the opportunity to meet the highest bid received at public auction. Sale will be by sealed bid only.

All sealed bids must be submitted to the BLM's Milwaukee District Office at Reuss Federal Plaza, suite 225, West Tower, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203, no later than 3 p.m. CST on March 13, 1992. Bid envelopes must be marked on the left front corner with MIES–043236 and March 16, 1992. Bids must be for not less than the appraised FMV specified in this notice. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the U.S. Department of the Interior, BLM for not less than 10 percent of the amount bid.

The terms and conditions applicable to the sale are: (1) All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at the Milwaukee District Office.

Federal law requires that all bidders must be U.S. citizens, 18 years or older, or in the case of corporations, be subject to the laws of any State of the United States. Proof of these requirements must accompany the bid.

Under modified competitive sale procedures, an apparent high bid will be declared at public auction. The apparent high bidder and the designated bidder (Mr. Thomas A. McCaskill) will be notified. The designated bidder shall have fifteen (15) days from the date of modification to exercise the preference consideration given to meet the high bid. Should the designated bidder fail to submit a bid that matches the apparent high bid within the specified time period, the apparent high bidder shall be declared high bidder. The total purchase price for the land shall be paid within 180 days of the date of the sale.

Detailed information concerning the sale, including the reservations, procedures for and conditions of sale, planning and environmental documents, are available at the Milwaukee District Office.

DATES: On or before February 14, 1992, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631. In the absence of objections, this proposal shall become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Duane Marti, Realty Specialist, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631; telephone number (414) 297–4429 or (FTS) 362–4429.

Gary D. Bauer,

District Manager.

[FR Doc. 91–31183 Filed 12–30–91; 8:45 am]

BILLING CODE 4310–GJ–M

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Eighth Regular Meeting; Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice sets forth summaries of the proposed United States negotiating positions for the eighth regular meeting of the Conference of the Parties (COP8) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Comments or other relevant information concerning these proposed negotiating positions are solicited. A public meeting to discuss these proposed negotiating positions will also be held.

DATES: A public meeting will be held on January 8, 1992, in room 7000 of the Department of the Interior, 18th and C Streets NW, Washington, DC. The Service will consider information and comments received by close of business January 28, 1992.

ADDRESS: Comments should be sent to the Director, U.S. Fish and Wildlife Service, c/o Office of Management Authority, 4401 N. Fairfax Drive, room 432, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Marshall P. Jones, Chief, Office of Management Authority, at the above address; telephone 703/358–2093.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as CITES or the Convention, is an international treaty designed to control international trade in certain animal and plant species which are or may become threatened with extinction, and are listed in Appendices to the treaty. Currently, 113 countries, including the United States, are CITES Parties. CITES calls for biennial meetings of the Conference of the Parties which review its implementation, make provisions enabling the CITES Secretariat (in Switzerland) to carry out its functions, consider amending the list of species in appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of the Convention.

This is a part of a series of notices which, together with public meetings, provide the public with an opportunity to participate in the development of the U.S. positions for the eighth regular meeting of the Conference of the Parties (COP8) to CITES. The first **Federal Register** notice was published on February 7, 1991 (56 FR 4965), which requested information from the public on animal or plant species that should be considered by the United States. The second **Federal Register** notice was published on June 11, 1991 (56 FR 26832), which announced the time and place of the meeting of COP8 and the provisional agenda, requested information and comments on the provisional agenda, announced procedures for those applying for observer status at the COP, and announced a public meeting on June 25, 1991. The third **Federal Register** notice was published on July 24, 1991 (56 FR 33894), which invited comments and information on those proposals for amending the Convention's appendices that the United States was considering. The Service's regulations governing this public process are found in title 50 of the Code of Federal Regulations §§ 23.31–23.39.

Proposed Negotiating Positions

In this notice, the Service summarizes proposed negotiating positions for COP8. Numerals next to each agenda item correspond to the numbers used in the provisional agenda received from the CITES Secretariat. Some of the documents have not yet been received from the CITES Secretariat; they will be available on request from the Service after they have been received. They will be available at the January 8, 1992 public meeting, if they have been received by that time. When information and comments on the agenda items were submitted in writing to the Service or received at the June 25, 1991 public meeting, they are included with the proposed negotiating position. Each proposed position includes a brief rationale explaining the basis of the position.

Agenda (Provisional)

I. Opening ceremony by the Authorities of Japan

Proposed negotiating position: No position necessary.

Rationale: Not an issue for negotiation.

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II. Welcoming Addresses

Proposed negotiating position: No position necessary.

Rationale: Not an issue for negotiation.

III. Adoption of the Rules of Procedure

Proposed negotiating position: Support the use of electronic voting for COP8 if it can be made available. Support the anticipated request by some Parties to change the rules of procedure to make it easier to obtain a secret vote, provided use of this process does not result in excessive loss of time. Oppose any attempt to define criteria by which Parties determine the eligibility for observer status of a national non-governmental organization (NGO). Support addition of the Budget Committee chair to be a member of the Bureau.

Rationale. Electronic voting is a faster and more accurate method of casting and tallying votes, which would minimize the amount of time necessary to conduct a secret vote; however, Japan may not be able to provide electronic voting for budgetary and other reasons. A rules change making it easier to obtain a secret vote will allow Parties to cast their votes on controversial or sensitive issues free from their concern, whether justified or not, of retaliation. It might be possible to release an electronic vote tally to Party governments on official request to ensure delegate accountability. If electronic voting is not available, the rules could be relaxed to make it easier to obtain a secret ballot for a limited number of targeted issues. This would prevent excessive time loss from too many secret ballots. Regardless of how few or many secret ballots are taken, all U.S. positions and votes on issues will be publicly disclosed. In terms of observer eligibility, the United States has always interpreted the phrase in the treaty "technically qualified in protection, conservation or management of wild fauna and flora" liberally, and will oppose any attempt to further define this language. The Bureau is the entity responsible for forwarding the business of the meeting of the COP. Addition of the Budget Committee Chairman to the Bureau would increase the stature of the committee and enable the Conference to have a better geopolitical balance in leadership positions.

IV. Election of Chair and Vice-Chair of the Meeting and of Committees I and II

Proposed negotiating position: Support the host government's choice for Conference chair, and work to encourage this person's constructive participation in Conference preparations, including attendance at the CITES Standing Committee meeting January 20–21, 1992. Support a candidate for Committee I chair who possesses the best combination of scientific credibility, CITES knowledge, and chairmanship skills. Support a candidate for Committee II chair who possesses a combination of knowledge of CITES management issues and chairmanship skills. The United States is prepared to offer one of the senior members of its delegation to serve as chair of Committee II, if requested by the Bureau.

Rationale: It is traditional for the host government to put forward a candidate to chair the meeting and for the Parties to approve that individual. The Chair of Committee I will be required to provide knowledge and leadership for the controversial and potentially divisive species listing issues which will be taken by this Committee. Like Committee I, Committee II will also have a number of controversial issues with which to deal, with substantial importance to the long-term future of CITES. Representatives of Europe, and South America, Central America, and the Caribbean, were Chairs of Committee I and II (respectively) at COP7. CITES benefits from the participation and leadership from every region of the world. The Budget Committee has taken on much greater importance in recent conferences as the Parties have taken on an increasingly active role in overseeing the Secretariat's financial and work priorities.

V. Adoption of the Agenda and Working Programme

Proposed negotiating position: Support adoption of an Agenda and Working Programme that guarantees a smoothly operating meeting that addresses all species and implementation issues. Support requests by Zimbabwe and other southern African countries to have the following resolutions considered at the beginning of the meeting: Recognition of the Benefits of Trade, Criteria for Amendments to the appendices, Support of Range States for Amendments of appendices I and II. This support for moving these resolutions up on the agenda does not imply support for them; see discussion under agenda items XIII (6, 28, 30).

Rationale: It is logical to consider these resolutions early in the meeting as they have relevance to more than a few of the other agenda items.

VI. Establishment of the Credentials Committee and Committees I and II

Proposed negotiating position: Support the establishment of the Credentials Committee and Committees I and II.

Rationale: Establishment of the Credentials Committee is a pro forma matter. The United States supports the establishment of Committees I and II, provided most participating Parties have been able to send at least two delegates, or that the rules governing debate of the Committees ensure that most delegations will have an opportunity to debate recommendations before a final decision is made.

VII. Report of the Credentials Committee

Proposed negotiating position: Support adoption of the report of the Credentials Committee if it does not recommend the exclusion of legitimate representatives of countries that art Parties to CITES. Representatives whose credentials are not in order should be afforded observer status as provided for under article XI. If credentials have been delayed, representatives should be allowed to vote on a provisional basis. A liberal interpretation of the rules of procedure on credentials should be adhered to in order to permit clearly legitimate representatives to participate.

Rationale: Adoption of the report is generally pro forma. Exclusion of Party representatives whose credentials are not in order could undermine essential cooperation among Parties.

VIII. Admission of Observers

Proposed negotiating position: Support admission to the meeting of all technically qualified NGOs and oppose unreasonable limitations on their full participation at COP8.

Rationale: NGOs play an important role in CITES activities and have much to offer to the debates and negotiations at a COP. Their participation is specifically provided by article XI of CITES. The United States supports the opportunity for all technically qualified observers to fully participate at COPs.

IX. Matters Related to the Standing Committee

Proposed negotiating position: Stress the leadership role of the Standing Committee in the oversight of the Secretariat's activities. Encourage selection of new members from regions whose current members are due to rotate off the Committee (Africa, Asia, and South America) who will also take an active role in Standing Committee activities. Encourage a country with a commitment to active involvement in CITES affairs to seek election as the new Standing Committee chair.

Rationale: The Standing Committee is the governing body of CITES between meetings of the COP. It is composed of representatives of North America (Canada), South and Central America and the Caribbean (Peru), Asia (Nepal), Oceania (New Zealand), Africa (Malawi) and Europe (Sweden), along with Switzerland (the depository country) and Japan (the host country). The regional representatives of Africa, Asia, and South and Central America and the Caribbean are open for review at COP8. In order for the Standing Committee to continue in the strengthened oversight role the United States advocated when it chaired the Committee (1987–1989), countries with a commitment to active participation are needed for Committee membership. The new Committee will need a capable and experienced chair to guide its activities during the 1992–1993 biennium.

X. Report of the Secretariat

Proposed negotiating position: The Report of the Secretariat has not yet been received by the Service. When received, the Service will carefully review issues pertaining to: The relationship of CITES to the United Nations Environment Programme (UNEP); success of the new procedures for Parties to set budgetary and work priorities; setting of new short term objectives for the Secretariat; evaluation of the performance of the Secretary General; and progress in assisting Parties to more forcefully implement the Convention.

Rationale: The biennial report provides the major way for the Secretariat, and the Secretary General, to report priorities, accomplishments, and problems to the Parties. These are critical management issues facing CITES which need to be addressed in the Secretariat's report.

XI. Financing and Budgeting of the Secretariat and of Meetings of the Conference of the Parties

1. Financial Report for 1989–1990–1991

Proposed negotiating position: This document has not yet been received from the CITES Secretariat; no position is possible at this time.

2. Anticipated Expenditure for 1992

Proposed negotiating position: This document has not yet been received from the CITES Secretariat; no position is possible at this time.

3. Budget for 1993–1995 and Medium Term Plan for 1993–1998

Proposed negotiating position: Oppose any substantial increase in the Secretariat's budget representing a significant increase in its work plan. Support budget increases requested by the Secretariat in cases where the growing membership is placing increasing burdens on staff, without any commitment to an increased U.S. contribution. Support the permanent budgeting of an enforcement officer.

Rationale: The budget increases requested by the Secretariat are justified and reasonable in cases where the growing membership is placing increasing burdens on the staff, although the United States cannot at present commit to a larger contribution to the CITES budget.

4. External Funding

Proposed negotiating position: This document has not yet been received from the CITES Secretariat; no position is possible at this time.

Information and comments: One organization recommended requiring 6 months of review by the Standing Committee prior to fund raising for or funding of externally funded projects.

XII. Committee Reports and Recommendations

1. Animals Committee

Proposed negotiating position: The United States supports the active role of the Animals Committee in scientific and management issues pertaining to animal species listed in the CITES Appendices. Efforts should be made to secure a budget for the Animals Committee consistent with its increasing role.

Rationale: The Animals Committee report may contain information or recommendations dealing with appendix II species subject to significant trade, breeding facilities for appendix I species, marking techniques, and other issues. The United States will continue to be an active participant in Animals Committee functions.

2. Plants Committee

Proposed negotiating position: The United States supports the continued activities of the Plants Committee to improve the effectiveness of CITES for plants, with a focus on the following: publication of identification guides and checklists; significant trade in orchids, succulents, and other species; review of the timber trade; trade in artificially propagated plants. Efforts should be made to secure a budget for the Plants Committee consistent with its diverse role.

Rationale: The United States has chaired the Plant Working Group and Plants Committee since 1983, and will continue to actively support Plants Committee functions.

3. Identification Manual Committee

Proposed negotiating position: Continue to support the Identification Manual Committee and development of animal and plant identification manuals for use by port and border enforcement officers, in providing a standard of reference for the identification of CITES species. Endeavor to ensure that membership in the committee will be adequate to handle the enormous problems involved in fulfilling the needs of the parties.

Rationale: The enforcement officers of the Parties must be equipped with guides which are accurate, realistic, and helpful in the identification of the many CITES species and products found in trade throughout the world.

4. Nomenclature Committee

Proposed negotiating position: Encourage and support the development and adoption of checklists for all taxa. Support the reprinting and necessary revisions of existing checklists for fauna prior to development of new ones. Because of the expense in developing checklists for taxa, the United States supports recognition of existing checklists for remaining taxa when suitable. Efforts should be made to secure a budget for the Nomenclature Committee consistent with its role, including consideration of partial funding for a checklist coordinator.

Rationale: Implementation of the Convention is strengthened by the use of uniform names of listed species.

XIII. Interpretation and Implementation of the Convention

1. Terms of Reference for the Administration of the Secretariat by UNEP

Proposed negotiating position: Support continuing efforts by a Standing Committee working group to develop a proposal to UNEP to clarify its rule in CITES as that of providing administrative support for the Secretariat, with the Secretariat answering to the Standing Committee and the Parties for general policy direction.

Rationale: Clarification of the relationship between the CITES Secretariat and UNEP will help the administration of the Secretariat, including financial, personnel, and policy matters. The CITES Secretariat is not an organ of the United Nations;

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UNEP provides administrative support, but not policy direction, which is the function of the Parties. It is critical that the Standing Committee clarify UNEP's role.

2. Report on National Reports under Article VIII, Paragraph 7, of the Convention

Proposed negotiating position: Support efforts to encourage all Parties to submit annual reports, consistent with their domestic legislation.

Rationale: Each Party is required by the Convention to submit an annual report containing a summary of the permits it has granted, and the types and numbers of specimens of species in the CITES appendices that it has imported and exported. Accurate report data are essential to measure the impact of international trade on species, and can be a useful enforcement tool.

3. Review of Alleged Infractions

Proposed negotiating position: Support the Secretariat's review of alleged infractions by the Parties, and necessary and appropriate recommendations to obtain wider compliance with the terms of the Convention. Support an open discussion at COP8 of major infractions, and a greater emphasis by the Parties on the enforcement of the laws and regulations implementing the Convention.

Information and comments: One organization recommended adoption of a resolution urging trade sanctions against countries that are the subject of infractions or are otherwise not in compliance with the Convention, including not having a Scientific Authority or CITES-implementing legislation.

Rationale: Article XIII provides for COP review of alleged infractions. The Secretariat prepares an Infractions Report for each COP, which details instances that the Convention is not being effectively implemented, or where trade is adversely affecting a species. The first draft of the Infractions Report contains 138 such alleged infractions. A cursory review of the alleged infractions indicates a great difference in the depth of the reporting on infractions over previous reports. A large number of infractions are caused by lack of training, lack of personnel, or lack of knowledge on the workings of CITES; however, the majority of the alleged infractions should be a major cause of concern to the Parties.

4. Implementation of the Convention in the European Economic Community

Proposed negotiating position: Support a tightening of controls on trade with those members of the EEC highlighted in the Secretariat's Infractions Report as posing particular problems for CITES enforcement and implementation. Support a report by the Secretariat on CITES implementation in those countries, but not a new major study on the implementation of CITES within the EEC. The United States cannot support ratification of the Gaborone amendment at this time.

Rationale: Some EEC countries are mentioned several times in the Secretariat's Infractions Report for COP8. The United States should support recommendations requiring more effective implementation or even restricting trade with those countries that may be undermining the effectiveness of CITES, while encouraging EEC countries which are effectively implementing the Convention. A focus needs to be placed on those EEC countries with implementation problems, along with informing the Parties of anticipated changes in the EEC that will become effective in 1993. In 1983, an amendment to article XXI was adopted that permitted the accession to the Convention of any Regional Economic Integration Organization (REIO) constituted by sovereign States, such as the EEC. The Amendment is not specific to the EEC, but would allow other REIO's to accede to the Convention. Only 27 of the required 54 Parties have ratified the amendment; the United States has not ratified it. There are serious problems with the implementation and enforcement of CITES within some of the countries of the EEC. There are concerns that the changes in Europe in 1993 will undermine CITES and increase illegal trade.

5. Illegal Trade of Singapore

Proposed negotiating position: Support urging all importing countries to reject export permits or re-export certificates issued by Singapore for trade in any crocodilian product, since it cannot be guaranteed that such products come from legally acquired skins from the producer countries.

Rationale: The illegal trade in crocodilian parts and products is one of the serious wildlife problems for the United States and the rest of the world. Every effort should be made to close any loophole in achieving the adequate protection of these species, to prevent illegal exports from the range states to the consumer states. This illegal trade undermines the Convention and should not be allowed to continue.

6. Recognition of the Benefits of Trade in Wildlife

Proposed negotiating position: Support the concept that commercial trade can provide conservation benefits to species and ecosystems, although economic values are of no greater weight than scientific, aesthetic, cultural and recreational values, as stated in the CITES preamble. Support enumerating conditions under which trade provides conservation benefits to appendix II species. Support a recommendation that Parties not penalize ranching and breeding/propagation, provided they meet CITES criteria, but do not support a general recommendation that specifically encourages them over other management regimes.

Rationale: A statement that commercial trade can provide conservation benefits to a species reconfirms the economic value of species already recognized in the CITES preamble. While CITES does not require a finding of a conservation benefit to the species, the concept of beneficial commercial trade may be useful to exporting countries in making nondetriment findings for appendix II species. The Parties should not penalize ranching or captive breeding/propagation that meets CITES requirements, but should not encourage one type of management over another, except in very specific circumstances; that is an internal matter for each Party to decide.

7. Reconsideration of "Primarily Commercial Purposes"

Proposed negotiating position: Oppose a resolution which effectively would amend Resolution Conf. 5.10 by calling for a finding of noncommercial use by the Management Authority of an importing country if an appendix I species were to benefit from its commercial trade. Oppose efforts to effectively amend the treaty by allowing primarily commercial trade in appendix I species.

Rationale: Conservation benefit to the species is not relevant to whether an appendix I specimen is to be used for primarily commercial purposes, as per article III, paragraph 3(c). It is relevant to the finding of "nondetriment" only, under article III, paragraph 3(b). Since the "primarily commercial purposes" finding is made by the Management Authority of the importing country, conservation benefits which normally occur in the exporting country are not relevant to that finding. This resolution is contrary to accepted interpretations of the Convention. If this resolution were accepted, it would substantially increase the amount of commercial trade in endangered species.

8. Exports of Leopard Hunting Trophies and Skins

Proposed negotiating position: No document has been received on this topic. However, the United States opposes any increases in quotas without adequate supporting data.

Rationale: The SErvice anticipates that this document will be similar to Resolution Conf. 7.7, which refers to the importation of leopard skins, including hunting trophies, under a quota system approved by the COP. Trade in leopard skins for noncommercial purposes is allowed under CITES Resolution Conf. 7.7, which recognizes killing in defense of life and property and to enhance the survival of the species.

9. Exports of Cheetah Hunting Trophies and Skins

Proposed negotiating position: No document has been received on this topic. No position is possible at this time.

10. Trade in Specimens of Species Transferred to Appendix II Subject to Annual Export Quotas

Proposed negotiating position: No document has been received on this topic, and no position is possible at this time.

11. Trade in Birds

a. Significant Trade Species

Proposed negotiating position: Advocate adoption of the resolution submitted by the United States to: Suspend commercial trade in wild bird species listed in appendix II that are identified as "significant trade" species for which either there is insufficient information on which to base a nondetriment finding, or for which remedial measures have been recommended but not implemented; allow the Standing Committee to recommend the removal of a species from the list of those suspended from trade, based on consultations with the Animals Committee and the Secretariat. Support (as proposed by another Party) urging countries not to export animal species that do not meet the criteria in article IV. Oppose (as submitted by another Party) suspending all commercial shipments of live animals until the Standing Committee can confirm that the requirements of article IV have been satisfied.

Information and comments: One organization recommended restricting trade in wild birds which are either declining due to trade or for which insufficient data exist to determine the adverse impacts of trade. The same organization recommended that all appendix II psittacines be transferred to apendix I or otherwise restricted from trade until such trade can be demonstrated to be nondetrimental to their survival in the wild. Another organization recommended a resolution calling for the cessation of all trade in psittacine species listed in the CITES Appendices.

Rationale: The trade in live wild-caught birds is an issue of great concern to both the United States and the CITES Parties, in that the trade in many species of birds listed in appendix II may be detrimental to their survival. The COP will address issues relating to the trade in species identified by previous COPs as subject to significant trade and for which insufficient information exists to assess the effects of trade on their populations (see also agenda item XIII.16). The United States supports the sustainable utilization of wildlife, including wild-caught birds, but is opposed to utilization that is not known to be sustainable, particularly when these species have been identified as potential problems for over five years. It is time for the CITES Parties to take decisive action on significantly trade species.

b. Trade in Species Sensitive to High Mortality Rates

Proposed negotiating position: Advocate a suspension of commercial trade in species that experience high mortalities during transport, based on criteria adopted by the CITES Transport Working Group (TWG) (resolution submitted by the United States). Support reducing shipment sizes for species that warrant further study of their sensitivity to transport, also based on criteria adopted by the TWG; provide for review and lifting of restrictions when shown to be justified by improved transport practices.

Information and comments: One organization recommended that a resolution be adopted promoting the humane holding and transport of all live animals, as well as requiring the consideration of mortality in capture and transport as bearing on determination of nondetriment under article IV. Another organization recommended a resolution calling for the cessation of all trade in psittacine species listed in the CITES appendices, due to transport-related mortalities.

Rationale: Article IV, paragraph 2(c) requires that prior to the issuance of an appendix II export permit, a Management Authority must be "satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health, or cruel treatment". Many Management Authorities in exporting countries are unable to make such a finding, but continue to export the shipments. The transport of live specimens has been an issue at every COP. The TWG found that for many bird species, mortality in transport remains unacceptably high and compliance with article IV paragraph 2(c) is inadequate.

For those species that experience high mortalities during transport, implementation of article IV is particularly difficult or impossible, and those species should not be traded for commercial purposes. More extensive data collection on transport-related mortalities is needed. Preliminary studies indicate that higher transport mortalities result from larger shipment sizes, due to a number of factors. Therefore, the United States supports a reduction in shipment sizes for sensitive species requiring further study.

12. Trade in Wild-Caught Animal Specimens

Proposed negotiating position: Advocate adoption of the resolution prepared by the Animals Committee (and submitted by the United States) dealing with wild-caught significant trade animal species, whereby the Animals Committee will (in consultation with the Secretariat): Identify problems with the implementation of article IV, which may be operating to the detriment of species; recommend appropriate remedial measures; recommend a consultative process with the exporting Party (to be engaged in by the Secretariat); and recommend the suspension of trade from countries not implementing the recommended remedial measures.

Information and comments: One commenter recommended that the United States take a leadership role in requesting that the CITES Secretariat review the implementation of CITES article IV, including the consideration of appropriate remedial measures.

Rationale: Article IV paragraph 2(a) requires that a Scientific Authority of the State of export advise that an export will not be detrimental to the survival of that species, prior to the issuance of an export permit for specimens of a species listed in appendix II. Many Parties have not been able to conduct properly designed surveys and necessary biological studies, so as to identify scientifically-based quotas and to implement effective management plans for species listed in appendix II. There is

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cause for serious concern that the international commercial trade in wild-caught specimens is contributing to the decline in the wild of some species listed in appendix II.

13. Detrimental Trade in Sea Turtles

Proposed negotiating position: No document has been received on this topic. The U.S. position is to continue the certification of Japan under the Pelly Amendment until Japan ends all trade in sea turtles and remove its CITES reservations.

Rationale: On March 20, 1991, the Departments of Interior and Commerce certified Japan under the Pelly Amendment for diminishing the effectiveness of CITES, by its continued trade in endangered sea turtles. Japan announced on June 19, 1991 that it will sharply limit hawksbill sea turtle (*Eretmochelys imbricata*) imports between now and December 1992, at which time it will end all sea turtle trade, and it will withdraw its hawksbill sea turtle reservation by 1994. The Pelly amendment certification will remain in effect until Japan removes its CITES reservations and ceases trade in sea turtles. The United States is on record that such detrimental trade by reserving Parties undermines the effectiveness of CITES.

14. Trade in Crocodilian Products

Proposed negotiating position: Advocate adoption of the resolution submitted by the United States and Australia to require the skins of all crocodilian species to be tagged before being allowed to be traded by CITES Parties (whether or not a reservation has been entered by a Party).

Rationale: This refers to a resolution submitted by both the United States and Australia to institute a system of universal marking for all crocodilian skins in trade, as a response to serious problems of illegal trade in crocodilian skins, parts, and products.

15. Trade in Plant Specimens

a. Trade in Flasked Seedlings

Proposed negotiating position: Oppose an exemption from CITES document requirements for artificially propagated Appendix I flasked orchid seedlings; encourage efforts to expedite document issuance for these specimens.

Rationale: This refers to seedlings of appendix I orchids still in aseptic flasks, which are artificially propagated and therefore deemed to be specimens of appendix II species The proposed resolution would deregulate such flasked seedlings, arguing that because they cannot be distinguished from hybrid seedlings of appendix I species, they are not readily recognizable, and should be exempted from the treaty's requirements. The United States is strongly opposed to categorical assumptions on what may or may not be readily recognizable. Additionally, even though trade in such specimens may not be detrimental to wild populations, the treaty does not provide for any exemption from permit requirements for parts or derivatives of Appendix I plant or animal species. The Service will encourage efforts to expedite issuance of permits (if commercial) or certificates (if noncommercial) for these specimens.

b. Nursery Registration for Artificially Propagated Appendix I Species

Proposed negotiating position: Oppose the resolution establishing registration criteria for operations and shipping, with defined inspection of nurseries that produce artificially propagated specimens of appendix I plants and hybrids for commercial purposes. Support sound conservation practices in nurseries by cooperative development of guidelines.

Rationale: The proposed system is overly strict and inflexible, and would be counterproductive as well as prohibitively expensive to implement. Resolution Conf. 5.15 provides an adequate basis for registration.

c. Artificial Propagation and Trade in Appendix I Hybrids

Proposed negotiating position: Support efforts to refine and clarify the meaning of artificially propagated and the trade in such appendix I hybrids, but not the need to replace conf. 2.12(c) and 6.19.

Rationale: The need for replacement of prior resolutions of the COP on artificially propagated plants is not considered necessary, and is not established in the supporting document, which is confusing. The Plants Committee and the secretariat's Plant's Officer may need to develop training and implementation materials or guidelines on artificial propagation before COP9.

d. Plan Nomenclature

Proposed negotiating position: Support: The adoption of the checklist of names for Cactaceae; the use of certain texts as generic standards; the preparation of an orchid checklist; and the issuance of CITES documents utilizing these standard names. Oppose the adoption of the checklist of cycads. Support cooperative assignment of priorities for nomenclatural work on orchid taxa subject to significant trade. Support the allocation of some funds from the CITES Trust Fund for the preparation of the orchid checklist.

Rationale: Implementation of the Convention is strengthened by the consistent use of names of listed species.The checklist of Cactaceae will be complete, but that for cycads is without synonyms and thus unsuitable, because of the high usage of synonyms by growers.

16. Significant Trade in Appendix II Species

Proposed negotiating position: No document has been received on this agenda item. Support the continued focus of the Parties on appendix II species identified as subject to significant trade and the proper implementation of article IV, as critical to the implementation of the treaty and species conservation. Support the provision of funding for the coordination and implementation of significant trade study projects, with oversight by the Animals, Plants, and Standing Committee.

Information and comments: One commenter recommended that the United States take a leadership role in requesting that the CITES Secretariat review the implementation of CITES article IV, including the consideration of appropriate remedial measures.

Rationale: This topic refers to the trade in those appendix II species identified as subject to significant trade, for which insufficient biological information exists to warrant trade at current levels. Many of these species may have been traded at levels detrimental to their survival. The CITES Parties have provided funds to the World Conservation Union (IUCN) and the Conservation Monitoring Centre to assess priorities in studying these species.

17. Trade With States Not Parties to the Convention

Proposed negotiating position: Support a procedure leading to refusal of documentation from non-parties that have not identified Management and Scientific Authorities, provided the same procedure applies to Parties that have not identified such Authorities. Oppose an unqualified ban on trade in wild-origin appendix I specimens with non-Parties. The United States does not support the cumbersome process of requiring approval by the Animals or Plants Committees of imports of captive-bred or artificially propagated appendix I specimens from non-Parties.

Rationale: the United States supports recommendations on trade moratoria when it is shown that trade is continuing without Scientific Authority advices, to the detriment of species, whether from Parties or non-Parties. Issuance of export permits without Scientific Authority determinations of nondetriment is not allowed under the treaty. For wild-origin appendix I specimens, the resolution submitted would ban such trade regadless of whether the non-Party had identified relevant authorities, and regardless of whether those Authorities oversee functioning in accordance with article X and Resolution Conf. 3.8. In the case of captive-bred or artificially propagated appendix I specimens, the advice of the Animals and Plants Committees would be useful. However, decisions on trade moratoria should be made in accordance with functions and procedures set forth in articles XII and XIII.

18. Existence of Hair, Wool and Cloth of Vicuna in the European Economic Community, Japan and Hong Kong

Proposed negotiating position: Oppose additional controls over stockpiles of vicuna (*Vicugna vicugna*) wool and cloth legally traded and held by certain non-range States. Oppose placing a time limit on legally traded stockpiles. Support instead calling on the Parties to accept only cloth with certain registered marks exported only from those CITES Parties that are members of the Vicuna Convention.

Rationale: The vicuna has been listed in appendix I since 1975 and certain populations in Chile and Peru in appendix II since 1987, in order to export wool and cloth. The cloth must be marked according to CITES requirements, and a properly executed appendix II export permit from either Chile or Peru is required. Under the Vicuna Convention Chile and Peru must have the cloth identified by a registered mark, and it must be made from wool sheared from live animals.

This resolution would create a precedent whereby the parties disallow the trade in items already legally found in trade. The vicuna cloth has been traded legally as Appendix II items and has been placed in stockpiles. This resolution would give the countries with stockpiles one year to identify and liquidate these stockpiles. This would cause an unnecessary burden upon the Parties which allowed legal import of the appendix II products in good faith with the proper CITES documents. If the range states for vicuna are having a problem with illegal vicuna exports, the solution is not found in such an ex post facto requirement on legal appendix II vicuna wool.

19. Return to the Wild of Confiscated Live Animals of Species Included in Appendixes II and III

Proposed negotiating position. Oppose requiring Scientific Authority advice on the return of confiscated appendix II and III specimens to the State of export. Oppose requiring a postal vote of the Parties requesting advice on reintroduction to the wild of specimens that are returned to their State of origin. The United States supports the return to the wild of confiscated live animals, when biologically and ecologically appropriate, and encourages interested scientific organizations, such as IUCN, to develop a list of considerations to be assessed before introducing or reintroducing animals to the wild, to be consulted by interested Parties.

Rationale: Interest in what Parties should do with confiscated specimens, both live and dead and their products goes back to the drafting of the Convention. The re-export of appendix II specimens does not require a Scientific Authority finding. The Parties have spoken quite clearly on the issue of return of confiscated specimens to the country of origin and have consistently left the management of native wild specimens in the hands of each sovereign State when trade is not involved. This resolution goes beyond the Convention as discussed in article VIII, paragraph 4(b), and attempts to intrude upon a State's management prerogatives for wildlife within its borders. The United States supports the return to the wild of confiscated live animals, when biologically or ecologically appropriate, but considers such determinations beyond the scope of CITES. The United States encourages the development by scientists of a list of considerations to be assessed before introducing or reintroducing animals to the wild, to be consulted by interested Parties, and would encourage IUCN or other international scientific organizations to pursue such an effort.

20. Export of Confiscated Specimens

Proposed negotiating position: Advocate the adoption of the resolution proposed by the United States to clarify eligibility for export permits (under certain conditions) of illegally obtained specimens that have been subsequently confiscated.

Rationale: While illegally imported specimens have been deemed eligible for reexport certificates under Conf. 4.17, no similar clarification has been made for specimens illegally obtained in the country of export. The prohibition against export of illegally obtained specimens was obviously meant to prevent those who illegally obtained the specimens from getting permits to export them. Export of confiscated specimens should also not be allowed if the individuals from whom the specimens were seized received any financial compensation for the specimens. The Scientific Authority would still have to make its "no detriment" finding before the permit could be issued, and appendix I specimens could not be traded for primarily commercial purposes.

21. Marking of Specimens

Proposed negotiating position: Support a resolution requiring the use of coded microchip implants for marking live appendix I captive bred animals in trade and those which form part of a travelling exhibition or circus.

Rationale: In Conf. 7.12 the Parties recommended that coded microchip implants be tried on a trial basis and that the Animals Committee further explore the issue. The Animals Committee looked at the issue in its fourth and fifth meetings in Australia in 1990 and Canada in 1991, and recognized the value of micrchip technology in the marking of high value captive bred specimens. This resolution is a direct result of those two meetings. The United States has long supported efforts to develop practical and effective methods of marking CITES specimens, particularly of high value Appendix I species. The IUCN/SSC Captive Breeding Specialist Group has studied microchip technology, availability, and reliability, and recommended standards for micrchip use throughout the world. Efforts should be made to ensure that microchips meet uniform standards and are properly controlled and registered.

22. Standardization of CITES Permits and Certificates

Proposed negotiating position: This document has not yet been received from the CITES Secretariat; no position is possible at this time.

23. Transport of Live Specimens

Proposed negotiating position: Support the adoption by the COP of the report of the Chairman of the Transport Working Group (TWG). The United States will remain actively involved with the TWG, and with all aspects of the transport of live wild animals.

Rationale: The humane transport of live wild animals remains a significant concern of the United States. The TWG's Terms of Reference with the Standing Committee include working to improve implementation of the Convention and relevant resolutions,

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training, improvement of international standards, coordination with the International Air Transport Association Live Animals Board, and the transport of live wild birds.

24. Role of the Scientific Authority

Proposed negotiating position: Advocate adoption of the resolution submitted by the United States outlining the responsibilities of Scientific Authorities, and the process for the issuance of nondetriment findings by the Scientific Authority, which are required by the CITES treaty.

Rationale: The Animals Committee agreed that such a resolution was necessary, and asked the United States to help develop it. It is critical that a country consult with the Scientific Authority and involve the scientific community in providing the best available biological information on decisions to conserve wildlife and plant resources. The effectiveness of the Convention is seriously undermined when a country does not have an active Scientific Authority.

25. Proposals to Register the First Commercial Captive-Breeding Operation for an Appendix I Animal Species

Proposed negotiating position. Support the proposed resolution to return the major responsibility for approving new commercial breeding operations for appendix I species to each Management Authority, while strengthening the role of the Secretariat in accepting or refusing such registrations; support the establishment of new, consolidated criteria for approval of such facilities.

Rationale: This resolution replaces Resolutions Conf. 6.21 and 7 10, which allow for the registration of the first commercial captive-breeding operation for an appendix I animal species, upon a two-thirds majority vote of the Parties. On the recommendation of the Animals Committee, this resolution establishes standards by which each Party's Management Authority could determine which facilities are registered as captive-breeding an appendix I animal species for commercial purposes. The Secretariat is delegated authority to approve and register facilities put forward by a Party, after consultation with all Parties and appropriate experts.

26. Guidelines for Evaluating Marine Turtle Ranching Proposals

Proposed negotiating position: None necessary; guidelines will not be discussed at COP8.

Rationale: The Secretariat has stated that no discussion of guidelines for evaluating marine turtle ranching proposals (none of which were submitted by Parties) can occur at COP8. IUCN has informed the Secretariat that it is not able to follow up on the proposed Guidelines.

27. Exemption for Blood and Tissue Samples for DNA Studies From CITES Permit Requirements

Proposed negotiating position. Oppose exemptions from permit requirements for blood and tissue samples for DNA studies.

Rationale: Such exemptions go beyond those specified in the treaty. The United States supports encouraging efficient and timely issuance of permits for perishable samples, as was suggested by the Secretariat at COP7.

28. Criteria for Amendments to the Appendices

Proposed negotiating position. The Service supports the need to reevaluate the Berne Criteria for listing species in the Appendices, but opposes consideration at COP8 of the complex and extensive document revising the Berne Criteria. The Service supports the establishment of a separate working group reporting to the Standing Committee to address these important issues, accompanied by a workshop involving a diverse group of scientists and experts, to revise the criteria for consideration at COP9.

Rationale: The Berne Criteria need to be reviewed and adapted to address a broader array of taxa and to be more descriptive and definitive, to the extent possible. The diverse scientific and management issues addressed in the proposed resolution and background statement are too complex to deal with at a COP, but deserve detailed scientific and technical deliberations.

29. Review of Procedures and Criteria for the Transfer of Crocodilians From Appendix I to Appendix II

Proposed negotiating position: Support adoption of the resolution recommending that commercial captive-breeding operations only be established using wild-caught specimens if captive-bred specimens are not available, and only if it can be established that use of wild-caught stock does not result in the depletion of breeding stock in the wild. Support recommending limits on harvest of wild adults.

Rationale: Ranching programs for crocodilians based on controlled egg or hatchling collection can be a positive force for conservation. Crocodilian species have been (and can again be) overharvested quickly unless strong management programs exist; emphasis should be placed on not harvesting wild adults.

30. Support of Range States for Amendments to Appendices I and II

Proposed negotiating position. Support a recommendation that a Party proposing to amend the Appendices notify and consult with the range States concerned, and include any range State opinions in the proposal. The United States supports recommending submission of the full text of the proposal to range States 60 days prior to submission to the Secretariat. The United States opposes an amendment to the Rules of Procedure requiring withdrawal of an appendix I listing proposal upon a ⅔ vote of the range States, as contrary to the text to the Convention. However, the United States supports suggestions that range States consider and if they desire vote on species proposals in their respective COP regional meetings, and be given a specific opportunity to present their recommendations to Committee I.

Rationale: The United States supports the exchange of information with the range States, and the full participation and democratic decisions of all Parties on species to be included in appendix I and II.

31. Review of Appendix III

Proposed negotiating position. Oppose the proposed resolution urging more judicious use of appendix III, including direct consultation with the Animals or Plants Committee and a review of existing appendix III listings.

Rationale: The CITES Secretariat has been working to screen Appendix III proposals and consult with the submitting Party. The Service supports the need for judicious use of appendix III, but not the need for a resolution at this time. The Service supports urging all Parties to carry out their responsibilities in implementing and enforcing appendix III listings.

32. "Stricter Domestic Measures"

Proposed negotiating position. The United States opposes a recommendation that would limit a State's right to take any stricter domestic measures with regard to its own or other countries' species, but could support a recommendation that such State consult with range States before taking stricter measures. The United States supports a recommendation that range States and all Parties have laws that adequately implement CITES (including means to minimize illegal trade), but opposes a recommendation that range States promote sustainable use.

Rationale: The Convention provides that nothing shall "affect the right of a party to adopt * * * stricter measures regarding the conditions for trade * * * or the complete prohibition thereof * * *" The United States endorses consultations with range States prior to adopting stricter domestic measures, and full consideration of their views, but it will not limit itself to adopting only those measures supported by range States. The United States reserves its sole authority to make final decisions under the Endangered Species Act, Marine Mammal Protection Act, Lacey Act, etc., and supports the similar right of all other countries regarding their stricter domestic laws. The United States has been a leader in efforts to see that all Parties have laws that adequately implement CITES. The United States also supports the principles of sustainable use, and the utilization of natural resources, including wildlife, on a sustainable basis. In recognizing the sovereign rights of individual countries, however, it is not the business of CITES to promote sustainable use of wildlife over other conservation regimes; rather, it is up to each Party to decide the basis of its conservation programs. CITES does provide that if a CITES-controlled species is traded internationally, its trade shall not be detrimental to that species' survival.

XV. Conclusion of the Meeting

1. Determination of the Time and Venue of the Next Regular Meeting of the Conference of the Parties

Proposed negotiating position: No documents have been received indicating requests from possible host governments. Favor holding COP9 in country where all Parties will be admitted without political difficulties. Support the holding of COPs on a biennial basis, or, as in the case of COP8, after an interval of two and one half years.

Rationale: COP meetings energize governmental and nongovernmental organizations concerned with CITES issues to examine its implementation, and species that need it. Stretching out intervals between meetings to 3 years is not in the interest of conservation; the cost savings that might result from a 3-year interval would be partially reduced by an increase in committee meetings in the interim.

Announcement of Public Meeting

A public meeting will be held on Wednesday, January 8, 1992, from 2:00 to 4:30 p.m., in room 7000, U.S. Department of the Interior, 18th and C Streets NW, Washington, DC, for the purpose of receiving information and comments on the proposed negotiating positions summarized above. Written statements may be submitted at or before the meeting, and comments received by January 28, 1992 will be considered in developing final negotiating positions for the U.S. delegation to COP8. The meeting will be conducted in an informal manner, with all participants provided the opportunity, to the extent that time allows, to comment on each point.

Request for Information and Comments

The Service invites information and comments on the proposed negotiating positions on COP8 agenda items, excluding item XIV, "Consideration of proposals for amendment of appendices I and II", which is the subject of a separate **Federal Register** notice. Information and comments should be submitted to the Service no later than January 31, 1992.

Observers

Article XI, paragraph 7 of the Convention provides that: "Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the Parties object: (a) International agencies or bodies, either governmental or non-governmental, and national governmental agencies and bodies; and (b) national non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located. Once admitted, these observers shall have the right to participate but not to vote."

Persons wishing to be observers representing national non-governmental organizations in the United States must receive prior approval of the U.S. Fish and Wildlife Service. Requests for such approval should include evidence of technical qualification in protection, conservation or management of wild fauna or flora, on the part of both the organization and the individual representative. Such requests should be sent to the Office of Management Authority (see "ADDRESSES", above). Copies of the letters of approval from the Office of Management Authority should be used by these organizations to inform the CITES Secretariat of their wish to send observers to the meeting. The Secretariat requires such information to be received at least one month prior to the meeting (February 2, 1992). Approved observers should send copies of their letters of approval to the following address: CITES Secretariat, 6 rue du Maupas, Case postale 78, CH-1000 Lausanne 9 Chauderon, Switzerland.

Author: This notice was prepared by Dr. Susan S. Lieberman, Office of Management Authority, U.S. Fish and Wildlife Service (703/358-2095).

Dated: December 26, 1991.

Richard N. Smith,

Deputy Director.

[FR Doc. 91-31253 Filed 12-30-91; 8:45 am]

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National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 21, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by January 15, 1992.

Beth Boland,

Acting Chief of Registration, National Register.

ARIZONA

Maricopa County

Coronado Neighborhood Historical District (Boundary Increase), Roughly bounded by 13th St., Coronado Rd., 14th St. and Monte Vista Rd., and W side 13th St. between Monte Vista and Oak, Phoenix, 91002029

ARKANSAS

Clark County

Boaz, Dr., House, AR 26, Clear Spring vicinity, 91002014

COLORADO

Boulder County

Wall Street Assay Office (Boundary Increase), Area W and across Wall St. from Assay Office, Wall Street, 91002028

Montezuma County

Roy's Ruin [Great Pueblo Period of the McElmo Drainage Unit MPS], Address Restricted, Cortez vicinity, 91002027

CONNECTICUT

New Haven County

Jones, Theophilus, House, 40 Jones Rd., Wallingford, 91001981

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FLORIDA

Palm Beach County

Northwest Historic District, Roughly bounded by Tamarind Ave., Eleventh St., Rosemary Ave. and Third St., West Palm Beach, 91002005

GEORGIA

Catoosa County

Ringgold Commerical Historic District, Nashville St. between Tennessee and Depot Sts., Ringgold, 91002001

Clarke County

Sorrells, R.P., House, 220 Prince Ave., Athens, 91002003

Habersham County

Tallulah Falls School, Jct. of US 441 and Tallulah School Rd., Tallulah Falls, 91002026

Toombs County

Citizens Bank of Vidalia, 117 SE. Main St., Vidalia, 91002004

ILLINOIS

Vermilion County

Danville Branch, National Home for Disabled Volunteer Soldiers Historic District, 1900 and 2000 E. Main St., Danville, 91001973

KANSAS

Douglas County

Benedict House, 923 Tennessee St., Lawrence, 91001978

Sedgwick County

Mack, John, Bridge (Rainbow Arch [Marsh Arch]) Bridges of Kansas MPS), S. Broadway across the Big Arkansas R., Wichita, 91002018

LOUISIANA

De Soto Parish

Grand Cane United Methodist Church, US 171 S of LA 3015, Grand Cane, 91002024

Livingston Parish

St. Margaret Catholic Church, Jct. of LA 43 and I–12, Albany vicinity, 91002025

MASSACHUSETTS

Middlesex County

Cutter, Jefferson, House (Arlington MRA), 1146 Massachusetts Ave., Arlington, 91001028

MICHIGAN

Allegan County

Sutton, Warner P., House, 736 Pleasant St., Saugatuck, 91001999

Hillsdale County

McCourtie, W. H. L., Estate, Jct. of US 12 and Jackson Rd., Somerset Center, 91001984

Leelanau County

Saint Joseph's Catholic Church, 5899 Co. Rd. 669, Cleveland Township, Glen Arbor vicinity, 91001997

Lenawee County

Goodrich, Heman R., House, 428 Church St. S., Hudson, 91001996

Oakland County

Milford Rural Agricultural School, 630 Hickory St., Milford, 91001995

Tuscola County

Hotel Columbia, 194 E. Huron Ave., Vassar, 91001998

Washtenaw County

Earl, Thomas, House, 415 N. Main St., Ann Arbor, 91002000

Wayne County

Norris, Philetus W., House, 17815 Mt. Elliott Ave., Detroit, 91001982

Palmer Park Boulevard Apartments District, 1981, 2003 and 2025 W. McNichols Rd., Highland Park, 91001983

Saint Joseph Roman Catholic Parish Complex (Boundary Increase), 1828 Jay St., Detroit 91002013

NEW YORK

New York County

Andrews United Methodist Church, 95 Richmond St., Brooklyn, 91001977

NORTH CAROLINA

Guilford County

Fisher Park Historic District (Greensboro MPS), Roughly bounded by Fisher and Bessemer Aves. and Wharton and Church Sts., Greensboro, 91002006

NORTH DAKOTA

Walsh County

Minto School, Jct. of Major Ave. and Third St., Minto, 91002002

PENNSYLVANIA

Adams County

Wirts House, 798 Schrivers Corner Rd. (PA 394), Straban Township, Gettysburg, 91002010

Montgomery County

Kenerdine Mill Complex, Jct. of Keith Valley and Davis Grove Rds., Horsham, 91002011

Yeakle and Miller Houses, 500 and 502 Bethlehem Pike and 9 Hillcrest Ave., Springfield Township, Erdenheim, 91002009

Philadelphia County

Most Precious Blood Roman Catholic Church, Rectory and Parochial School, 2800—2818 Diamond St., Philadelphia, 91002008

Union County

Reading Railroad Freight Station, Jct. of S. Fifth and St. Louis Sts., Lewisburg, 91002017

PUERTO RICO

San Juan Municipality

House at 659 La Paz Street, 659 La Paz St., Miramar, 91002007

TEXAS

Goliad County

Stoddard, Jessie W., House, Jct. of US 183, Fannin and Hord Sts., Goliad, 91002020

Lubbock County

Snyder, Fred and Annie, House, 2701 19th St. Lubbock, 91002019

Potter County

Amarillo College Administration Building and Gymnasiumn, 2201 S. Washington St., and 2221 S. Washington St., Amarillo, 91002023

Polk Street Methodist Church, 1401 S. Polk St., Amarillo, 91002021

Tarrant County

Masonic Widows and Orphans Home Historic District, Roughly bounded by E. Berry St., Mitchell Blvd., Vaughn St., Wichita St. and Glen Garden Dr., Fort Worth, 91002022

VIRGINIA

Northumberland County

Shiloh School, Jct. of VA 605 and VA 606, Kilmarnock vicinity, 91001976

Orange County

Hare Forest Farm, VA 700 W of jct. with VA 615 Orange vicinty, 91002016

Rockingham County

Harnsberger Farm, Jct. of VA 601 and VA 602, Shenandoah vicinity, 91001974

Warren County

Front Royal Recreational Park Historic District, VA 665, 1.1 mi. N of Riverton from VA 522, Front Royal, 91001975

Clifton Forge Independent City

Clifton Forge Commercial Historic District, Roughly, E. Ridgeway St. from Roxbury St. to Main St. and Main from Commercial Ave. to Railroad St., Clifton Forge (Independent City), 91002015

Salem Independent City

Salem Presbyterian Parsonage, 530 E. Main St., Salem (Independent City), 91002017

WISCONSIN

Brown County

Lawton, C. A., Company, 233 N. Broadway, De Pere, 91001985

Dane County

Henry Mall Historic District, 420, 425, 440, 445, 460 and 465 Henry Mall and 1450 Linden Dr., Madison, 91001986

West School, 404 Garfield St., Stoughton, 91001992

Dodge County

Wisconsin State Prison Historic District, 200 S. Madison St., Waupun, 91001994

Fond Du Lac County

El Dorado Apartments, 130 Forest Ave., Fond Du Lac, 91001979

Oneida County

Tomahawk Lake Camp Historic District, 8500 Raven Rd., Lake Tomahawk, 91001987

Outagamie County

US Post Office, Former, 112 Main Ave., Kaukauna, 91001990

Ozaukee County

Columbia Historic District, Roughly bounded by Cedar Cr., Highland Dr. and Bridge Rd., Cedarburg, 91001980

Sheboygan County

Jung Shoe Manufacturing Company Factory, 620 S. Eighth St., Sheboygan, 91001993

Wolff-Jung Company Shoe Factory, 531 S. Eighth St., Sheboygan, 91001989

Waukesha County

First Congregational Church, 100 E. Broadway, Waukesha, 91001991

Wood County

Wahle—Laird House, 208 S. Cherry Ave., Marshfield, 91001988

[FR Doc. 91–31242 Filed 12–30–91, 8:45 am]

BILLING CODE 4310-70-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362]

San Onofre Nuclear Generating Station, Units 2 and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a one-time exemption from the requirements of 10 CFR part 55 to the Southern California Edison Company and the San Diego Gas and Electric Company (the licensees), for the San Onofre Nuclear Generating Station, Units 2 and 3, located in San Diego County, California.

Environmental Assessment

Identification of the Proposed Action

The exemption would grant relief from the requirements of 10 CFR 55.59 (a) and (c) which require licensed operators to complete a requalification program that does not exceed 24 months in duration. The licensees are requesting a one-time extension of the program duration from 24 to 25 months. The licensees' request for exemption is contained in a letter dated November 5, 1991.

The Need for the Proposed Action

In an effort to align the San Onofre licensed operator examination schedule with the NRC National Examination Schedule, the licensees propose to change the end date of the current requalification program from December 1991 to January 1992. This proposed change will extend the current requalification cycle to 25 months. The schedule realignment will decrease the administrative burdens associated with the requalification examinations.

Environmental Impacts of the Proposed Action

The proposed action would align the San Onofre Units 2 and 3 operator requalification schedule with the NRC National Examination Schedule. This exemption will not increase the risk of facility accidents. Thus, post-accident radiological releases will not be greater than previously determined, nor does the proposed exemption otherwise affect the quantity of radiological plant effluent, nor result in any increase in occupational exposure. Likewise, the exemption does not affect nonradiological plant effluent and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiolgical or nonradiological impacts associated with the proposed exemption.

Alternative to the Proposed Action

Because it has been concluded that there is no measurable impact associated with the proposed exemption, any alternatives to the exemption will have either no environmental impact or greater environmental impact. Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative to the exemption would be to deny the requested exception. This would not reduce environmental impacts attributable to this facility and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement dated April 1981, related to the operation of San Onofre Units 2 and 3.

Agencies and Persons Consulted

The Commission's staff reviewed the exemption request and did not consult with other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated November 5, 1991 which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 23rd day of December, 1991.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Director, Project Directorate V, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–31209 Filed 12–30–91; 8:45 am]

BILLING CODE 7590-01-M

Trojan Nuclear Power Plant; Environmental Assessment and Finding of No Significant Impact

[Docket No. 50–344]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a one-time exemption from the requirements of 10 CFR part 55 to Portland General Electric Company (the licensee), for the Trojan Nuclear Plant, located in Columbia County, Oregon.

Environmental Assessment

Identification of Proposed Action

The exemption would grant relief from 10 CFR 55.59 paragraphs (a)(1) and (c)(1) which require a successful completion of a requalification program to be conducted for a continuous period not to exceed 24 months in duration.

The licensee's request for exemption is contained in a letter dated March 27, 1991.

The Need for the Proposed Action

The proposed exemption is from the requirements of 10 CFR 55.59 paragraphs (a)(1) and (c)(1) which require each licensee to successfully complete a requalification program to be conducted for a continuous period not to exceed 24 months in duration. The licensee is requesting an extension to align the Trojan requalification program with the National Examination Schedule. This one-time exemption will result in a permanent adjustment to the 24-month requalification cycle and the annual requalification examination schedule.

Environmental Impacts of the Proposed Action

The proposed action would align the Trojan requalification cycle with the NRC National Examination Schedule.

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This exemption will not increase the risk of facility accidents, thus, post-accident radiological releases will not be greater than previously determined, nor does the proposed exemption otherwise affect the quantity of radiological plant effluent, nor result in any significant increase in occupational exposure. Likewise, the exemption does not affect nonradiological plant effluent and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Because it has been concluded that there is not measurable impact associated with the proposed exemption, any alternatives to the exemption will have either no environmental impact or greater environmental impact. Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative to the exemption would be to deny the requested exemption. This would not reduce environmental impacts attributable to this facility and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement dated August 1973, related to operation of the Trojan facility.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated March 27, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Branford Price Millar Library, Portland State University, 934 SW. Harrison Street, P.O. Box 1151, Portland, Oregon 97207.

Dated at Rockville, Maryland, this 20th day of December 1991.

For the Nuclear Regulatory Commission.

Charles M. Trammell,

Acting Director, Project Directorate V, Division of Reactor Projects III/IV/V Office of Nuclear Reactor Regulation.

[FR Doc. 91-31208 Filed 12-30-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-344]

Portland General Electric, Trojan Nuclear Plant; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-1, issued to Portland General Electric Company (the licensee), for operation of the Trojan Nuclear Plant located in Columbia County, Oregon.

The amendment would revise: (1) Trojan Technical Specification (TTS) section 3.4.6.2.c, "Operational Leakage," and Bases 3/4.4.5, "Steam Generators," and 3/4.4.6.2, "Operational Leakage," to reduce the total allowable primary-to-secondary leakage for any one steam generator from 500 gallons per day (gpd) to 130 gpd and to reduce the total allowable primary-to-secondary leakage through all steam generators from one gallon per minute (gpm) to 400 gpd; and, (2) Technical Specification Surveillance Requirement 4.4.5.4.a.6, "Repair Limit," and associated Bases will be modified to clarify that the percent tube wall degradation criteria is inappropriate to determine serviceability of tubes with outer diameter stress corrosion cracking/intergranular attack (ODSCC/IGA) at tube support plate (TSP) intersections. Rather, the appropriate method for determining serviceability for tubes with ODSCC/IGA at TSP intersections is by a methodology that more reliably assesses structural integrity. TTS 4.4.5.4.a.6 and the associated Bases will indicate that this change is applicable only for Operating Cycle 14.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

1. Reduction of Allowed Primary-to-Secondary Leak Rate

a. The operation of Trojan Nuclear Plant (TNP) with primary-to-secondary leak rate limits reduced from 500 gpd to 130 gpd for any one steam generator and from 1 gpm to 400 gpd through all steam generators will not involve a significant increase in the probability or consequences of an accident previously evaluated.

In fact, the reduction of the allowed primary-to-secondary leak rate may decrease the probability of a tube rupture accident postulated in the Final Safety Analysis Report (FSAR) section 15.6.3. The individual steam generator leak rate was based on licensing basis assumptions that a steam generator tube could leak, through stress corrosion-induced cracks, up to a certain rate and still maintain tube integrity. The total steam generator tube leakage limit for all steam generators is based on limiting the dose contribution from the leakage to a small fraction of 10 CFR part 100 (title 10, Code of Federal Regulations, part 100) limits in the event of either a steam generator tube rupture or steam line break.

The PGE (Portland General Electric Company, et al) Report (Steam Generator Tube Integrity Safety Analysis Report for Tube Support Plate Intersection, submitted December 15, 1991) concludes, among other things, that ODSCC/IGA (Outside Diameter Stress Corrosion Cracking/Intergranular Attack) that may remain in the TNP steam generator tubes at TSP (tube support plate) intersections during Operating Cycle 14 will not result in the burst pressure criteria provided by the NRC Staff in RG (Regulatory Guide) 1.121 being exceeded.

PGE has subsequently concluded based on its evaluation of ODSCC/IGA at TSP intersection that a more conservative individual steam generator primary-to-secondary leak rate limit would be appropriate. The amount of leakage from a crack is directly related to the size, characteristics, and orientation of the crack. It is clear that since the primary-to-secondary leak rate limit will be reduced to 130 gpd, the corresponding effective crack size also is reduced. Therefore, since the effective crack size is reduced, the probability of a steam generator tube rupture as a result of such a crack also will be reduced * * *.

Correspondingly, the total steam generator tube leakage limit was reduced from 1 gpm to 400 gpd to be consistent with the reduction in the individual steam generator leakage limit.

Further RG 1.121, which has been used by the TNP, states in part that, "(t)he rupture of a number of single tube wall barriers between primary and secondary fluid has safety consequences only if the resulting fluid flow exceeds an acceptable amount and rate." Should a tube rupture occur due to ODSCC/IGA at TSP intersections, there will not be a significant increase in the consequences of the accident since the results will still be within the 10 CFR part 100 limits as applied to TNP operation * * *.

b. The operation of the TNP with the primary-to-secondary leak rate limits reduced will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The FSAR postulates in Section 15.6.3, a steam generator tube rupture. The kind of accident that could result from operating TNP with different leakage limits for primary-to-secondary leakage will continue to be a steam generator tube rupture.

c. The operation of TNP with the primary-to-secondary leak rate limits reduced will not involve a significant reduction in a margin of safety.

The margin of safety may be increased in that (1) Less leakage, which correlates to a smaller effective crack size, will be allowed from each steam generator and (2) a smaller total leakage limit will further ensure that the dose contribution from tube leakage will be a small fraction of 10 CFR/Part 100 limits for the analyzed accidents.

2. Modification of Technical Specification 4.4.5.4.a.6 to clearly state the specific serviceability requirements that are applicable for ODSCC/IGA at TSP intersections for Operating Cycle 14.

a. Operation of the TNP with in-service tubes that meet the more specific steam generator tube serviceability criteria applicable to TSP intersections for Operating Cycle 14 will not involve a significant increase in the probability or consequences of an accident previously evaluated.

* * * [The PGE Report] addresses the probability of a steam generator tube rupture at the TNP from ODSCC/IGA at TSP intersections. Each type of tube defect contributes to the overall probability of tube failure. ODSCC/IGA is but one of those contributors. The [PGE] Report concludes that based on extensive data collected during this TNP outage there is a 3.4E-05 probability of a steam generator tube rupture due to operation with acceptable ODSCC/IGA at TSP intersections during Operating Cycle 14.

The contribution of ODSCC/IGA at TSP intersections to the overall probability of steam generator tube failure is related in great part to the residual strength of the tube to resist bursting. Other critical factors that have been considered when assessing probability of a steam generator tube failure due to ODSCC/IGA at TSP intersections include the geometry of the defect and defect growth rate. It is not expected that growth rate will change significantly during Operating Cycle 14, when compared to previous operating cycles. Therefore, since growth rate for ODSCC/IGA at TSP intersections will not significantly change, there will not be a significant increase in the probability of a steam generator tube rupture.

The remaining significant contributor to the probability of a steam generator tube rupture due to ODSCC/IGA at the TSP intersections is the residual strength (i.e., integrity) of the tube. The residual strength of a tube at the TSP intersection, has been analyzed (as shown in the PGE Report). The NRC Staff has provided, in RG 1.121, the required tube integrity (i.e., tube strength) that must be maintained for any in-service tube (three times the differential pressure). PGE has satisfied RG 1.121, and has confirmed that the tube integrity criteria of the RG will be satisfied during Operating Cycle 14. Since the residual strength of the tubes that will remain in service at the TSP intersections satisfies RG 1.121, the contribution from ODSCC/IGA at TSP intersections to the overall probability of a tube failure is minimal, if any.

The contribution to the probability of tube failure as a result of traditional 40 percent through-wall degradation was also based on tube integrity criteria (which later became RG 1.121). It does not appear that the industry or the NRC has quantified tube burst probability specifically for traditional 40 percent through-wall degradation. Terminology that has been used to describe probability for traditional degradation is that the steam generator tube rupture is highly unlikely (i.e., of low probability). PGE equates this description of probability for a tube rupture from traditional 40 percent through-wall degradation to the probability of a tube rupture from ODSCC/IGA at TSP intersections (3.4E-05). It follows that the probability of accident occurrence associated with this Technical Specification change is essentially the same or less than the tube burst probability that exists if the 40 percent through-wall degradation criteria option (applied to more traditional tube degradation) of the Technical Specification is applied.

Should a tube rupture occur due to ODSCC/IGA at TSP intersections, there will not be a significant increase in the consequences of an accident since the results will still be within the 10 CFR part 100 limits as applied to TNP operation. (as shown in the PGE Report.)

Based on the above, there will not be a significant increase in the probability or consequences of a steam generator tube break due to ODSCC/IGA at TSP intersections.

b. Operation of TNP based on clarified steam generator tube inspection criteria will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The FSAR postulates in section 15.6.3, a steam generator tube rupture. The kind of accident that could result from operating TNP with steam generator tubes that have been inspected using the methodology described in this change will continue to be a steam generator tube rupture.

c. Operation of the TNP with in-service tubes that meet the more specific serviceability criteria applicable to the TSP intersections for Operating Cycle 14 will not involve a significant reduction in a margin of safety.

As previously noted, this Technical Specification change is being submitted to clarify that PGE will demonstrate that steam generator tubes left in service with ODSCC/IGA at TSP intersections will not become unserviceable prior to the next inspection. It is PGE's understanding that allowed tube imperfection depths are established by the NRC based on maintaining a factor of safety of three (for differential pressure) against a tube bursting during normal operating conditions. The NRC Staff has stated this position in RG 1.121. This Guide states that, "(t)he margin of safety against tube rupture under normal operating conditions shall be not less than 3 at any tube location where defects have been detected * * * (t)he margin of safety against tube failure under postulated accidents, such as LOCA, (Loss of Coolant Accident), steam line break, or feedwater line break concurrent with the SSE, [Safe Shutdown Earthquake], should be consistent with the margin of safety determined by the stress limits specified in NB-3225 of Section III of the ASME Boiler and Pressure Vessel Code."

PGE concludes from the above that 40 percent imperfection depth for the TNP as specified in TTS 4.4.5.4.a.6 was also based on a factor of safety of three. In the case of ODSCC/IGA at TSP intersections, structural integrity margin of a tube can be established by demonstrating that the basis for the 40 percent imperfection depth is maintained (i.e., demonstrating a factor of safety of three) * * *.

As such, PGE has established tube integrity criteria that will confirm that any tube with ODSCC/IGA at TSP intersections, which is left in-service, will satisfy the factor of three test. Therefore, the margin of safety required for a tube with the traditional 40 percent imperfection depth will be the same as the required margin of safety for a tube with ODSCC/IGA at TSP intersections.

In addition, the margin of safety likely will be increased since (1) TNP will be installing N-16 [Nitrogen-16] monitors which are designed to provide early detection of primary-to-secondary leakage; (2) additional operator training on steam generator tube ruptures has been conducted; (3) the allowed primary-to-secondary leak rate for any one steam generator has been reduced significantly from 500 gpd to 130 gpd; and finally, (4) PGE has applied a conservative limit for tube flaw detection and repair for ODSCC/IGA at TSP intersections. Therefore, there will not be a significant reduction in the margin of safety if this change is approved."

The staff has reviewed the licensee's no significant hazards analysis and concurs with the licensee's conclusions. As such, the staff proposes to determine that the requested changes do not involve a significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination

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unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Philips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 30, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at Branford Price Millar Library, Portland State University, 934 S.W. Harrkson Street, P.O. Box 1151, Portland, Oregon 97207. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to shoe that genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves a no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Theodore R. Quay, Project Director: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to D. R. Nichols, Esquire, Trojan Nuclear Plant at 71760 Columbia River Road, Ranier, Oregon 97048, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 15, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Branford Price Millar Library, Portland State University, 934, SW. Harrison Street, P.O. Box 1151, Portland, Oregon 97207.

Dated at Rockville, Maryland, this 23rd day of December, 1991.

For the Nuclear Regulatory Commission.

Lawrence E. Kokajko,

Project Manager, Project Directorate V, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-31207 Filed 12-30-91; 8:45am]

BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of the State of New York; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-59, issued to the Power Authority of the State of New York (the licensee), for operation of the James A. FitzPatrick Nuclear Power Plant located in Oswego County, New York.

The proposed amendment would revise Technical Specification (TS) Sections 3.12.F and 4.12.F, "Fire Barrier Penetration Seals,' and the associated Bases to be more consistent with the NRC's Standard Technical Specifications (STS) NUREG-0123, "Standard Technical Specifications for General Electric Boiling Water Reactors," dated Fall 1980. Specifically, TS 3.12.F.1.a. and 4.12.F.1.a would be revised to clarify which fire barriers are covered by the associated Limiting Conditions for Operation (LCO) and what actions are required when a fire barrier penetration is found not in the as-designed condition, respectively. Furthermore, TS 3.12.F.1.b would be revised to allow the use of hourly fire watch patrols supplementing operable fire detectors in lieu of continuous fire watches when a fire barrier penetration is deemed non-functional. The proposed revision will change TS 3.12.F.1.b to read:

"With one or more of the required fire barrier penetrations non-functional, within one hour establish a continuous fire watch on at least one side of the affected penetration or verify the operability of fire detectors on at least one side of the non-functional fire barrier and establish an hourly fire watch patrol. Restore the non-functional fire barrier penetration(s) to functional status within 7 days or, in lieu of any other report required by Specification 6.9.A, prepare and submit a Special Report to the Commission pursuant to Specification 6.9.B within 30 days outlining the action taken, the cause of the non-functional penetration and plans and schedule for restoring the fire barrier penetration(s) to functional status.

Bases section 3/4.12.F would also be revised to reflect the changes to the associated LCOs and Surveillance Requirements and to provide clarifying information.

Administrative changes would also be made as a part of the proposed amendment.

This proposed amendment is being processed on an exigent basis to reduce unnecessary personnel exposure and adhere to accepted ALARA principles. Specifically, on August 2, 1991, during a meeting with the NRC's staff concerning FitzPatrick's fire protection program, the licensee committed to complete a full baseline barrier seal inspection not later than 30 days after startup from the 1993 refueling outage. As a baseline inspection, this inspection uses inspection requirements more detailed than previously employed at FitzPatrick and a new acceptance criteria. On November 8, 1991, the first fire barrier penetration seal was inspected. Engineering evaluations of the seals inspected have resulted in a significantly higher failure rate than anticipated by the licensee. In accordance with TS 3.12.F.1.b, when a fire barrier penetration seal is determined to be non-functional, a continuous fire watch is established on one side of the fire barrier. As a result of the non-functional fire barrier penetration seals found to date during the baseline inspection, approximatley 28 continuous fire watches have been established. Furthermore, as more fire barrier penetration seals are determined to be non-functional during this baseline inspection, additional personnel will be required to stand continuous fire watch. Because many of these penetrations are in radiation and high radiation areas, the posting of continuous fire watches (as opposed to hourly roving fire watches) results in unnecessary personnel exposures and is contradictory to ALARA principles. The use of roving hourly fire watches would provide an estimated reduction in personnel exposure of approximately 20 person-rem during the remainder of the baseline inspection. On December 19, 1991, the NRC granted a Temporary Waiver of Compliance allowing hourly fire watch patrols in areas with operable fire detection capability in lieu of continuous fire watches when a fire barrier penetration is determined to be non-functional. This Temporary Waiver of Compliance will remain in effect until the NRC has completed its review of the associated application for an exigent technical specification amendment.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes involve no hardware changes, no changes to the functions of the fire barrier penetration seals or the fire barriers, and does not change the ability of fire protection equipment to perform its intended functions. The compensatory actions implemented by the Authority constitute a level of protection equivalent to that required in the existing FitzPatrick Technical Specifications and identical to that previously accepted by the NRC staff.

2. Create the possibility of a new or different kind of accident from those previously evaluated.

The proposed changes involve no hardware changes, no changes to the functions of the fire barrier penetration seals or the fire

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barriers, and do not change the ability of fire protection equipment to perform its intended functions. These changes will not introduce any new fire hazards. A functional fire detection system on one side of the barrier plus an hourly patrol or a continuous fire watch constitutes an equivalent level of protection.

3. Involve a significant reduction in the margin of safety.

The proposed changes involve no hardware changes, no changes to the functions of the fire barrier penetration seals or the fire barriers, and does not change the ability of fire protection equipment to perform its intended functions. The probability of a fire will not be increased nor will the ability of the fire detection and suppression systems to detect and extinguish a fire be degraded as a result of these changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within fifteen (15) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 30, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13128.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30 days, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert A. Capra: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Charles H. Pratt, 1633 Broadway, New York, New York 10019, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 19, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 24th day of December 1991.

For the Nuclear Regulatory Commission.

John E. Menning,

Acting Project Manager, Project Directorate, Division of Reactor Projects—Office of Nuclear Reactor Regulation.

[FR Doc. 91-31206 Filed 12-30-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Request for Extension of OF-300 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a proposed unchanged extension of a form which collects information from the public. Optional Form 300, Qualifications Analysis and Appraisal of Candidates for Supervisory Positions, is completed by the employers and/or co-workers of applicants for supervisory positions throughout the Federal Government. The qualification standard for supervisory positions in General Schedule occupations (GS-15 and below) contained in the Qualifications Standards Handbook, recommends the use of this form to facilitate the collection of information used in evaluating supervisory candidates. Approximately 400 forms are completed annually and require about 15 minutes to complete for a total burden of 100 hours. For copies of this proposal, call C. Ronald Trueworthy on (703) 908-8550.

DATES: Comments on this proposal should be received on or before January 30, 1992.

ADDRESSES: Send or deliver comments to:

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, Room CHP 500, 1900 E Street, NW., Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Steve Perloff, (202) 606-2557.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91-31162 Filed 12-30-91; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Advisory Commission on Conferences in Ocean Shipping; Open Meeting

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice of open meeting of the Advisory Commission on Conferences in Ocean Shipping.

SUMMARY: The Commission will be holding a meeting in Washington, DC on Thursday and Friday, January 16-17, 1992; the meeting is open to the public. The Commission plans to examine key issues before the Commission, particularly antitrust immunity and tariff filing and enforcement.

DATES: *Meeting:* Thursday and Friday, January 16-17, 1992; 9:30 AM to 5:30 PM EST.

ADDRESSES: The address for the public meeting is Department of Transportation Headquarters Building, 400 Seventh Street, SW., Washington, DC., room 10234.

FOR FURTHER INFORMATION CONTACT: Florizelle B. Liser, Executive Director; telephone (202) 366-9781; FAX (202) 366-7870.

SUPPLEMENTARY INFORMATION: The Commission was created by the Shipping Act of 1984 to conduct an independent and comprehensive study of conferences in ocean shipping, particularly whether the Nation would be best served by prohibiting conferences, or by closed or open conferences. The Commission is to provide its report, including recommendations, to the President and the Congress by April 10, 1992. After holding five field hearings around the country during the summer, the Commission began the deliberative stage of its work in October. In particular, they will focus on tariff filing and enforcement on Thursday, January 16, 1992 and on antitrust immunity on Friday, January 17, 1992.

Issued in Washington, DC on December 26, 1991.

Florizelle B. Liser,

Executive Director.

[FR Doc. 91-31228 Filed 12-30-91; 8:45 am]

BILLING CODE 4910-62-M

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Coast Guard

[CGD 91-065]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership on the Merchant Marine Personnel Advisory Committee (MERPAC). The Committee is a nineteen member Federal advisory committee that advises the Coast Guard on matters related to the training, qualification, licensing, certification and fitness of seamen serving in the U.S. merchant marine. To assure a balanced representation, members shall be chosen, insofar as practicable, from the following groups: Ten active U.S. merchant mariners, including three deck officers, three engineering officers, two unlicensed seamen, one staff officer and one pilot; five marine educators; two shipping company managers; and two persons from the general public, one of whom should be an attorney. Members are appointed by the Secretary of Transportation. Each member shall normally hold office for a term of three years. However, the length of the terms of the original appointees shall be staggered, with approximately one-third of the terms expiring each year.

Applications are being sought for initial membership. To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women.

The Committee will meet at least once each year at a location selected by the Coast Guard. When attending meetings of the Committee, members are entitled to travel expenses, subsistence and accommodations as allowed by current regulations.

DATES: Requests for applications should be received no later than January 30, 1992.

ADDRESSES: Persons interested in applying should write to Commandant (G–MVP), room 1210, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: LCDR S.J. Glover, Executive Director, Merchant Marine Personnel Advisory Committee, room 1210, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593–0001, (202) 267–0221.

Dated: December 19, 1991.

D.H. Whitten,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91–31212 Filed 12–30–91, 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: December 23, 1991.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0216.

Form number: ATF F 5120.17.

Type of review: Extension.

Title: Monthly Report of Wine Cellar Operations.

Description: This report is used to monitor wine operations, insure collection of wine tax revenue, and insure wine is produced in accordance with law and regulations. AFT F 5120.17 provides raw data for the Bureau of Alcohol, Tobacco and Firearms (ATF's) Monthly Statistical Release on Wine, which is used by ATF and other Federal agencies, along with industry itself, as a tool in trend analysis and planning.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated number of respondents: 1,610.

Estimated burden hours per respondent: 1 hour, 6 minutes.

Frequency of response: Monthly

Estimated total reporting burden: 21,252 hours.

Clearance officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91–31210 Filed 12–30–91; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF VETERANS AFFAIRS

Geriatrics and Gerontology Advisory Committee; Meeting

The Department of Veterans Affairs gives notice under Pub. L. 92–463 that a meeting of the Geriatrics and Gerontology Advisory Committee (GGAC) will be held January 16–17, 1992 by the Department of Veterans Affairs, at 801 I Street, NW., Washington, DC, in the Omar Bradley Conference Room. The purpose of the Geriatrics and Gerontology Advisory Committee is to advise the Secretary of Veterans Affairs and the Chief Medical Director relative to the care and treatment of the aging veterans, and to evaluate the Geriatric Research, Education and Clinical Centers. The meeting will convene at 8:30 a.m. and adjourn at 5 p.m. on January 16 and will reconvene at 8:30 a.m. on January 17 and adjourn at 12 noon. The meeting is open to the public up to the seating capacity of the room. For those wishing to attend contact Jacqueline Holmes, Program Assistant, Office of Assistant Chief Medical Director for Geriatrics and Extended Care (phone 202/535–7164) prior to January 14, 1992.

Present and future Geriatric Research, Education, and Clinical Centers and Veterans Health Administration Long Term Care Task Force activities will be the primary topics for discussion.

Dated: December 19, 1991.

By Direction of the Secretary.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 91–31192 Filed 12–30–91; 8:45 am]

BILLING CODE 8320-01-M

Prosthetics Services Advisory Committee Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Executive Committee of the Prosthetics Services Advisory Committee (PSAC) will be held on January 14, 1992, in room 548, 801 I (EYE) Street, NW., Washington, DC.

The purpose of the PSAC is to advise the Secretary of Veterans Affairs and the Chief Medical Director on major policy questions raised by VA's responsibility to provide state-of-the-art prosthetics and associated rehabilitation research, development, and evaluation of such technology.

The purpose of this Executive Committee meeting is to review the PSAC progress to date, plan the schedule of PSAC meetings during the remainder of the fiscal year and discuss PSAC goals and procedures. The PSAC Executive Committee consists of the Chairperson and three members of the full committee.

The meeting will convene at 9 a.m. and adjourn at 4 p.m. on January 14, 1992. The meeting is open to the public to the capacity of the room. For those wishing to attend, contact Jim Mayer, Voluntary Service, phone (202) 535–7405, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, prior to January 8, 1992.

Dated: December 19, 1991.

By Direction of the Secretary:

Diane H. Landis,

Committee Management Officer.

[FR Doc. 91–31191 Filed 12–30–91; 8:45 am]

BILLING CODE 8320-01-M

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Sunshine Act Meetings

Federal Register
Vol. 56, No. 251
Tuesday, December 31, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, January 6, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 27, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-31282 Filed 12-27-89; 10:50 pm]
BILLING CODE 6210-01-M

federal register

Tuesday
December 31, 1991

Part II

Department of Energy

10 CFR Part 961
Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste; Final Rule

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DEPARTMENT OF ENERGY

10 CFR Part 961

Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste

AGENCY: Department of Energy.

ACTION: Final Rule.

SUMMARY: On April 18, 1983, the Department of Energy (DOE) published a rule, pursuant to the Nuclear Waste Policy Act of 1982, which established the Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste. The Standard Contract established, among other things, the fees and terms of payment required of the owners or generators of spent nuclear fuel and/or high-level radioactive waste for receiving disposal services. This rule was amended on September 18, 1987, in conformance with a December 6, 1985, ruling of the U.S. Court of Appeals for the District of Columbia that the ongoing 1.0 mill per kilowatt hour fee in the Standard Contract should be based on net rather than gross generation of electricity. On March 17, 1989, the U.S. Court of Appeals for the District of Columbia ruled that by use of the phrase "* * * electricity generated * * * and sold * * *" in the Nuclear Waste Policy Act of 1982 Congress intended to include in the fee only that electricity which is both generated and actually sold. In response to this ruling, on September 7, 1990, DOE published for comment conforming amendments to Articles I 13, and VIII–A.1, B.1, and appendix G of the Standard Contract. Having reviewed the comments, DOE is hereby publishing conforming amendments to Articles I–13, and VIII–A.1, B.1, and appendix G of the Standard Contract. This final rule implements the Court's decision and modifies the annex A of appendix G, NWPA–830G form, "Standard Remittance Advice for Payment of Fees" previously approved for use by the U.S. Office of Management and Budget (OMB) under OMB No. 1901–0260.

EFFECTIVE DATE: January 30, 1992.

FOR FURTHER INFORMATION CONTACT:

Alan B. Brownstein, Office of Civilian Radioactive Waste Management, Department of Energy, 1000 Independence Avenue SW., room 7F–075, Washington, DC 20585 (202) 586–4973.

Michael J. Detmer, Office of Placement and Administration, Department of Energy, 1000 Independence Avenue SW., room 1J–027, Washington, DC 20585 (202) 586–6753.

Susan K. Kuznick, Office of General Counsel, Department of Energy, 1000 Independence Avenue SW., room 6B–634, Washington, DC 20585 (202) 586–6975.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion
A. Point of Sale
B. Assumptions and Approach
III. Comments
A. Areas of Primary Interest
B. Analysis of Public Comments
1. Assumptions and Approach
2. Calculation Methodology
3. Supporting Documentation
4. Credit for Past Overpayments and Payment of Interest
C. Other Administrative Changes
IV. Calculation Methodology and Sample Calculations
A. Calculation Methodology
B. Sample Calculations
V. Final Rule
VI. Procedural Requirements
A. Executive Order No. 12291
B. Executive Order No. 12612
C. Regulatory Flexibility Act
D. National Environmental Policy Act
E. Paperwork Reduction Act

I. Background

The Nuclear Waste Policy Act of 1982, as amended, (NWPA), 42 U.S.C. 10101 *et seq.*, provides a comprehensive framework for disposing of commercial spent nuclear fuel (SNF) and high-level radioactive waste (HLW) of domestic origin. Section 302 of the NWPA required the Department of Energy (DOE) and each owner or generator of SNF and/or HLW (hereinafter also referred to as "contract holder" or "purchaser") to execute, by June 30, 1983, a contract under which DOE will accept and dispose of such waste in return for the payment of certain specified fees. The fee as prescribed in Article VIII–A.1 of the Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste (Standard Contract) is currently 1 mill per kilowatt hour (1M/kWh). Pursuant to 302(c) of the NWPA, these fees are to be paid into the Nuclear Waste Fund (NWF).

On April 18, 1983, DOE published its final rule which established the Standard Contract (48 FR 16590, codified at 10 CFR part 961). Article I–13 defined "kilowatt hours generated" as being the reactors' gross electricity generation, and Articles VIII–A.1 and B.1 used this definition as a basis for calculating the 1M/kWh fee. By its decision on December 6, 1985, the U.S. Court of Appeals for the District of Columbia held that the definition of "kilowatt hours generated" must be based on "net" generation of electricity, not "gross" generation (*Wisconsin Electric Power Co.* v. *Hodel*, 778 F.2d 1 (D.C. Cir. 1985)).

Subsequent to this ruling, on September 18, 1987, DOE published an amended final rule (52 FR 35356) which defined "kilowatt hours generated" as "net kilowatt hours generated" (also referred to as "net electricity generated"). This term was further defined as the gross electrical output produced by a civilian nuclear power reactor, as measured at the output terminals of the turbine generator, minus the normal onsite nuclear station service loads during the time electricity is being generated. The owners of nuclear power reactors were to pay fees to the NWF based on "net electricity generated" rather than on "gross" electricity generation. At the conclusion of the rulemaking process, DOE requested that all utilities revise historical nuclear electricity generation data to conform to the new definition. DOE verified the historical "net electricity generated" data and allowed utilities a credit for any overpayments resulting from the adjustments (including interest on the overpayments) on subsequent payments to the NWF. This resulted in a total repayment of approximately $50 million in principal and interest.

On March 17, 1989, the U.S. Court of Appeals for the District of Columbia ruled that the Department's definition of the term "net electricity generated" did not conform to the "generated and sold" provision specified in section 302(a)(2) of the Act [*Consolidated Edison Company of New York, Inc.* v. *DOE*, 870 F.2d 694 (D.C. Cir. 1989)]. The Court held that "despite the obstacles to precise measurement, we require that DOE adopt a method that implements Congress's intent that the ongoing fee under 42 U.S.C. 10222(a)(2) applies only to electricity that is both generated and actually sold." The Court recognized that "* * * to some extent, DOE must rely on approximations or industry-based averages in deducting the amount of electricity used offsite and lost in the T&D [transmission and distribution] process, and we leave it to the agency to decide upon a reasonable method."

II. Discussion

On September 7, 1990, DOE published for comment a Notice of Proposed Rulemaking (NOPR) (55 FR 37152) which proposed to revise the Standard Contract in a manner which would comply with the Court's decision. For the convenience of the reader and to provide a consolidated record, this section states the basis and purpose of the approach which DOE has determined will most effectively comply

with the Court's decision. Section III discusses the comments received on the NOPR and DOE's analysis and evaluation of those comments. Section IV determines the calculation methodology which contract holders will use to compute "electricity generated and sold" and provides samples of the computations. Section V identifies pertinent amendments to the Standard Contract resulting from these final rule determinations, and Section VI addresses relevant procedural requirements.

A. Point of Sale

The threshold issue involved in implementing the court ruling concerns the appropriate interpretation of the phrase "* * * and sold * * *" in section 302(a)(2) of the NWPA. Specifically, the issue is to define, for fee calculation purposes, the point (between the generation of electricity and its delivery to the retail customer) at which the nuclear electricity is sold. For the majority of contract holders, which are sole owners of a reactor and sell all their electricity directly to the retail customer, there is no question as to the point of sale, i.e., the sale to the retail customer. However, other organizational, contractual, legal, and operational considerations exist in today's electricity markets which add considerable complexity to this issue, especially when dealing with electricity sold to wholesalers for resale.

Neither the Standard Contract, the NWPA and its legislative history, nor previous court decisions have addressed whether the term "and sold" should be interpreted to refer to the electricity sold at the point of first sale, after the electricity leaves the busbar (which may be either to a reseller or the ultimate consumer), or whether it refers only to the electricity sold to the ultimate consumer. DOE examined whether its obligation in implementing the court decision on electricity "generated and sold" extends to sales to the ultimate consumer when other utilities, on a purchase-resale basis, intervene between the point of electricity generation and the ultimate consumer.

DOE recognizes that although sales for resale represent less than 15 percent of total sales by utilities with nuclear reactors, some utilities sell all or most of their nuclear-generated electricity to non-contract holders at the busbar or at some other intermediate point prior to ultimate sale to the consumer. While most energy losses are negligible for sales at the busbar, some sales for resale occur at subsequent connection points after experiencing additional energy losses. Another level of complexity is introduced by the fact that sales for resale, while predominantly made without regard to the generation source, are sometimes from a designated nuclear unit. In either case, the electricity initially sold for resale is subsequently resold to ultimate consumers and additional energy losses occur prior to the final sale.

To interpret the term "and sold" to refer to first sales (whether or not the electricity is resold) would mean that the marketing arrangement of a particular utility would influence the amount of electricity subject to the fee. Such a result would not provide an equitable basis for the collection of the fee and might even result in utilities seeking to alter their marketing arrangements. DOE believes that construing "and sold" to mean "sold to the ultimate consumer" is a reasonable and preferable interpretation of the statute. Given this interpretation, DOE must then address the practical consideration of how to obtain necessary loss data (including data from non-contract holders) while minimizing the administrative burden of data collection for owners/generators and fee verification by DOE. DOE has decided to define energy losses on net electricity sold for resale in a way that enables owners to adjust for these losses in a reasonable manner using an adjustment factor that represents a national average of all net electricity generated but not sold to an ultimate consumer.

B. Assumptions and Approach

Since it is impossible because of the interconnected distribution system to determine precisely the nuclear electricity that has been generated and sold on a plant-specific basis, DOE has made several simplifying assumptions. These assumptions are required to support DOE's decision to develop a reasonable calculation methodology which: (1) Can be applied uniformly by each contract holder and (2) relies exclusively on existing data historically supplied to the Federal Government. This will eliminate the burdens and cost of collecting, documenting, and maintaining itemized energy losses specifically associated with each nuclear plant as well as controlling DOE's cost of fee verification.

While this approach does not fully accommodate all unique circumstances that exist in the industry, DOE believes that the benefit of a reduced administrative burden for both utilities and DOE far outweighs the benefits of more exact results from more complicated approaches and is consistent with the U.S. Court of Appeals ruling that DOE is obligated to implement some reasonable and fair method of uniform accounting for transmission and distribution losses and other electricity which was not sold.

DOE intends to use existing data supplied to the Federal Government. These data are reported by each owner on either the "Annual Electric Utility Report," Energy Information Administration (EIA) Form EIA–861 or the "Annual Report of Major Electric Utilities, Licensees and Others," Federal Energy Regulatory Commission (FERC) Form No. 1. These owner-level data will be used for all computations required to adjust net electricity generated as currently reported to the Department on the Annex A of Appendix G, NWPA–830G form, "Standard Remittance Advice for Payment of Fees."

In order to determine the estimated amount of electricity generated and sold from a specific nuclear powerplant, it is necessary to calculate each purchaser's share of electricity sold based on: (1) electricity sold to ultimate consumers and (2) electricity sold for resale. In turn, these two components must then be adjusted to account for the amount of electricity lost or otherwise not sold.

In determining these two components, DOE specifies that each of the purchasers use individual utility-level data rather than plant-specific data. DOE believes that a utility's division of total sales between sales to ultimate consumers and sales for resale is sufficiently representative of how a specific utility's nuclear plant net generation is actually split. The variations in industry practices on sales for resale were considered when making this simplifying assumption of using utility-level data. For example, the predominant industry practice is for a utility to make short-term commitments, generally without specifying the energy source, which vary over time both by quantity and by purchaser. However, there also exist long-term contracts which specify a percentage of a nuclear powerplant's net generation to be sold for resale. While this simplifying assumption affects the calculations of individual utilities with each of these different practices, DOE believes the utility-level approach is reasonable, and that its uniformity and simplicity outweigh any benefits to be derived from creating methods to accommodate relationships that would require plant-specific data.

For the "sales to ultimate consumers component," DOE specifies that each purchaser adjust this component by the amount of electricity not sold to the total electricity available to be sold as

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reported on the Form EIA–861 or FERC Form No. 1 submissions.

For the "sales for resale component," DOE specifies that each contract holder adjust this component using an industry-wide average consistent with this approach for sales to ultimate consumers. DOE believes that this simplification is necessary because of the complexities involving the number of reseller non-contract holders, the short-term and temporal characteristics of most sales for resale transactions, and, for most utilities, the relatively small amount that sales for resale represents of the total sales.

DOE used a national average sales for resale adjustment factor based upon electricity data collected from more than 3,000 utilities over a 3-year period. As illustrated in Table 1, using a 3-year average results in an adjustment factor of .9400. This 3-year average term will be evaluated annually and revised in increments of .005. For example, if the 3-year average is calculated to be .9374 or .9426, the adjustment factor would be changed to .9350 or .9450, respectively. Subsequent adjustments will be made by written notification from the Contracting Officer.

TABLE 1.—NATIONAL SALES FOR RESALE ADJUSTMENT FACTOR [1]

[In Gigawatt hours]

	1986	1987	1988	Total
Energy furnished without charge	4	5	6	15
Energy used by the utility's electric department	17	17	17	51
Total energy losses	188	199	209	596
Total electricity not sold	209	221	231	661
Total electricity sold	3,273	3,361	3,510	10,144
Total electricity available for sale	3,482	3,582	3,741	10,806
Sales for resale adjustment factor	.9400	.9393	.9382	.9368

[1] Totals may not equal sum of components due to independent rounding.

Source: Energy Information Administration, Electric Power Annual, 1988, Table 34 (revised), "Energy Account Balance of Electricity, 1986–1988," adjusted to remove Alaska and Hawaii; the "Annual Electric Utility Report," Form EIA–861, 1986, 1987, 1988; and "Annual Report of Major Electric Utilities, Licensees and Others," FERC Form No. 1, 1986, 1987, and 1988.

In summary, the approach that DOE will use to determine the total electricity generated and sold at each plant will require the reporting utility to:

(1) Sum each owners' adjustment for "sales to ultimate consumer" and "sales for resale";

(2) Multiply this summation by each owner's respective share of the plant, to calculate each owner's weighted energy adjustment factor;

(3) Sum the owners' weighted energy adjustment factors to obtain the nuclear powerplant's total energy adjustment factor; and

(4) Multiply the total energy adjustment factor by the "net electricity generated" as currently reported on the annex A of appendix G, NWPA–830G form submitted to DOE.

III. Comments

Written comments on the proposed rule were received from the following 18 organizations representing nuclear power companies and an electric power association:

- Cajun Electric Power Cooperative, Inc.
- Carolina Power & Light Company
- Commonwealth Edison
- Connecticut Yankee Atomic Power Company
- Consolidated Edison Company of New York, Inc.
- Duke Power Company
- Edison Electric Institute
- Energy Operations, Inc.
- Florida Power and Light
- The Light Company (Houston Lighting & Power)
- New York Power Authority
- Northeast Utilities
- Philadelphia Electric Company
- Portland General Electric Company
- Southern Company Services
- Tennessee Valley Authority
- Washington Public Power Supply System
- Yankee Atomic Electric Company

Every comment received by DOE in response to the NOPR of September 7, 1990, was reviewed and fully considered in the formulation of this final rule. A summary of the comments received by DOE is set forth below together with DOE's action regarding these comments. Copies of all comments received are available for inspection in DOE Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

A. Areas of Primary Interest

Overall, the written comments received on the NOPR addressed four primary areas: (1) Assumptions and approach; (2) calculation methodology; (3) supporting documentation; and (4) credit for past overpayments and payment of interest. As described more fully below, several provisions were revised or clarified as a result of the comments received. They are grouped under the four primary areas of interest.

B. Analysis of Public Comments

1. Assumptions and Approach

(a) *Clarification of annual data submission.* Six commenters requested clarification of which annual data submission should be used for calculating energy adjustment factors for each quarterly payment. There was also a request for clarification of the dates when purchasers should begin to use the most recent annual data submissions (i.e., the "changeover date" for fee calculation purposes).

DOE has determined that it will use existing data supplied to the Federal Government on the Energy Information Administration (EIA) form "Annual Electric Utility Report" Form EIA–861 and on the Federal Energy Regulatory Commission's "Annual Report of Major Electric Utilities, Licensees and Others," Form No. 1. Utilities for future submissions should use their latest EIA or FERC submissions; all utilities are required to file such forms annually by May 1 or April 30, respectively. Accordingly, all quarterly payments after the respective submission dates should use the information in the latest forms, and thus the annual submission date becomes the effective changeover date. Section III–B.4 provides details on specific periods to use for calculating revised payments.

(b) *Availability of owner-level data.* Two commenters addressed this issue. One commenter requested further guidance on how to provide the necessary data since ownership of a multi-unit nuclear powerplant was jointly shared with several municipal and cooperative utilities and this ownership arrangement does not precisely conform to those discussed in the proposed rule. The second commenter suggested that two forms from the United States Department of Agriculture's Rural Electrification Administration (REA): the "Financial and Statistical Report," REA Form 7, and the "Operating Report," REA Form 12, be included in the list of reference documents suitable for use in calculating the Total Energy Adjustment Factor (TEAF).

DOE reviewed data actually reported by these entities where ownership of a multi-unit nuclear powerplant is jointly shared with several municipal and cooperative utilities. This review indicated that since Form EIA–861 and FERC Form No. 1 were filed by such organizations to report energy losses and electricity as "Sales for Resale," adequate data is available and no change in forms, instructions, or filing of forms is required.

The Form EIA–861, along with FERC Form No. 1, will serve as the basis for the calculation of the energy loss ratios. Since all of the commenters have filed Form EIA–861, DOE considers that no further clarification or change in calculating energy adjustment factors is needed. With respect to the second commenter's concern, since distribution system loss calculations are routinely reported by distribution cooperatives on REA Form 7 at the end of each year, DOE accepts the suggestion that REA Forms 7 and 12 may be included as supporting documentation in the calculation of the energy adjustment factors.

(c) *Jointly-owned generating companies and generation and transmission (G&T) cooperatives.* Two commenters addressed this issue. One commenter stated that because of its company's legal and financial arrangement the fee calculation based on the proposed algorithms would lead to inequities to the owners of jointly owned generating companies. The commenter suggested amending the definition of Owners's Share of the plant (OS) to include "Sponsor company's fixed entitlement percentage of the plant's output." DOE never intended that any inequity occur regarding jointly owned generating companies and has accepted the commenter's suggestion and clarified the definition of OS accordingly.

A second commenter stated that because of the G&T cooperatives' legal and financial framework, member cooperatives should be allowed to include data on transmission losses as if they were owners. DOE has determined that those utilities that are joint owners of generating companies (and thereby own a portion of a nuclear unit) or who participate in a G&T cooperative will be allowed to offset net generation with appropriate energy losses for fee calculation purposes. DOE has modified the definition of OS accordingly.

(d) *Offsets and reporting inconsistencies for out-of-service units.* Two commenters addressed this issue. The first commenter suggested that the final rule should allow station use for unit(s) out-of-service to be used to offset generation for a unit in-service regardless of whether or not the unit is collocated on the same site.

Typically, a utility's base load generation (e.g. nuclear) is used to power its out-of-service nuclear units. Rarely is this power purchased from another utility. If a utility has multiple nuclear units and one or more is generating electricity, some of this base load nuclear power is used to power the out-of-service unit. When the units share the same site, meters usually quantify this usage.

When a power line connects the operating unit with an off-site unit, and the power line is metered, again the usage is quantified. In both of these cases, DOE has allowed and continues to allow the offset.

This same issue was discussed in the previous final rulemaking on the Standard Contract (52 FR 35358 September 18, 1987). In that rulemaking, DOE did not adopt this recommendation stating,

"* * * there is little assurance the nuclear electricity generated offsite will actually serve the load of a non-operating station because: (1) the contribution of nuclear generation to total system generation fluctuates from minute to minute according to customer demands and (2) the stations may be hundreds of miles apart. This situation would also differ significantly from that of a collocated multi-unit station where a direct relationship exists between nuclear generation and station use. If a direct line were to exist between non-collocated units, and if this line were metered, DOE would treat these units according to the collocated multi-unit assumption. If the commenter's recommended methodology were adopted, DOE believes that the additional burden and cost of the data collection and verification effort that would be needed to maintain current confidence levels for fee calculations would outweigh any financial benefit to a particular utility."

DOE has received no information which refutes this analysis or warrants a change in the previous position. Therefore, DOE has not adopted the suggestion.

The second commenter suggested that a calculational bias is introduced because station service load for stations out-of-service is not being fully accounted for on the FERC Form No. 1. Specifically, the commenter stated the FERC Form No. 1 treats non-running station service as a subtraction from "Total Source Energy." The commenter recommended two alternatives for addressing this concern. First, DOE could treat non-running station service as a company use which increases the Total Source Energy by an equal amount. Alternatively, DOE could allow a utility to subtract non-running station service from the gross electrical generation in the same manner as running station service.

DOE acknowledges that variations in the reported data exist and that these variations (such as reporting non-running station service load as a subtraction from Total Source Energy) can create inequities for some utilities. DOE conducted an analysis using station service data submitted on the Annex A of appendix G, NWPA–830G forms over the past several years to quantify and evaluate the bias. For both single unit and multi-unit stations, the variations were not statistically significant. As stated in the NOPR (55 FR 37153):

"Since it is impossible because of the interconnected distribution system to determine precisely the nuclear electricity that has been generated and sold on a plant-specific basis, DOE has made several simplifying assumptions. These assumptions are required to support DOE's decision to develop a reasonable calculation methodology which: (1) Can be applied uniformly by each contract holder and (2) relies exclusively on existing data historically supplied to the Federal Government. While the proposed approach reflects tradeoffs in precision and may not fully accommodate all unique circumstances that exist in the industry, DOE believes that the benefit of a reduced administrative burden for both utilities and DOE far outweighs the benefits of more exact results from more complicated approaches * * *."

Therefore, the suggested change has not been adopted.

(e) *Offsets for pumped-storage hydro facilities.* Two commenters addressed the need for offsets for pumped-storage hydro facilities. One comment was made that the proposed methodology does not account for a pumped-storage hydro facility which uses nuclear base load electrical power to store the energy for subsequent use. The commenter stated that when nuclear power provides a significant portion of base

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load power, an offset should be allowed for the pumping losses associated with operating the facility.

When a utility's base load generation is used to power pumped-storage hydro facilities, and a nuclear share of that electricity is used, DOE will allow the offset for pumping losses under certain circumstances. If a power line connects the operating pumped storage unit with an off-site nuclear unit, and the power line is metered, the usage is considered to be quantified and DOE will allow an offset for the associated pumping losses.

DOE will also allow such offsets if the proportion of nuclear generated electricity consumed by a pumped-storage hydro facility can be estimated and if the electricity losses associated with pumped storage facilities can be documented (e.g., based on routine and uniform records of district power data on contributions from different electricity sources). In such cases, a prorated nuclear share shall be allowed as an offset to gross electricity generation reported on the Annex A of appendix G, NWPA–830G form. The burden of demonstrating the validity of the offset will be on the utility. Specific methodologies for calculating these offsets must be approved by the Contracting Officer in advance.

A second comment requested that the definition of the term Sales to ultimate Consumer Adjustment Factor (SCAF) be modified to exclude that net energy used for the pumped-storage hydro facility. The NOPR guidelines for the acceptance of an approach to determine electricity "generated and sold" included: Simplicity, data availability, and verifiability. Calculating rather than metering the nuclear electricity consumption by a pumped-storage facility as an offset to a nuclear unit's gross electricity generation introduces problems associated with assumptions and verification. DOE believes that the type and range of assumptions which would need to be developed to adequately address the issue of calculating the nuclear share for all specific circumstances would not be consistent with these NOPR guidelines and would significantly expand the task of fee verification. Therefore, DOE has decided not to modify the definition of SCAF to include offsets to the gross electricity generation associated with pumped-storage losses. However, DOE will consider such offsets on a case-by-case basis as discussed in the preceding paragraph.

2. Calculation Methodology

(a) *Adjustment of Fraction of Sales to ultimate Consumer (FSC) and Fraction of Sales for Resale (FSR) in relation to National average Adjustment Factor (NAF).* One commenter proposed that purchasers be allowed to set their FSC to 100% and the FSR to 0% so that the total system energy losses could be adjusted accordingly. The commenter is a utility with a SCAF less than the NAF, and the proposal would allow the utility to lower the fees of their bulk power purchasers.

The NAF is calculated on a national basis, using aggregate data from all utilities generating electrical energy, in order to significantly decrease the information gathering and administrative burden on reporting utilities. This approach eliminates the requirement for collecting energy loss data from other companies to which the nuclear generated electricity is wholesaled. Calculating this term on a national level also decreases the burden on the validation of the calculations and the verification of fees. By using this approach, DOE recognized that some utilities might accrue an advantage, but DOE believes that the aggregate benefits outweigh isolated individual disadvantages. Therefore, DOE has not adopted the commenter's suggestion.

(b) *Adjustment of SCAF, FSC and FSR in relation to mixed energy sales.* A commenter suggested that the formula for SCAF as well as the formulas for FSC and FSR be revised because in the case of two utilities with equal system transmission and distribution losses, the utility with a mixture of retail and wholesale energy sales will have a higher value for Owner's Energy Adjustment Factor (OEAF) than the utility with all retail sales. The commenter stated that this situation arises because in the case of a utility with a mixture of retail and wholesale energy sales the reported losses under the rule would be biased toward a value with a higher content of transmission losses (e.g., resale energy sold at the tieline) or even no losses (e.g., resale energy sold at the busbar).

This commenter suggested that in such situations, a fraction of the NAF be used to create an assumed value for the portion of underreported energy losses. Specifically, a calculation methodology was suggested that would be proportional to 50 percent of the national average for electricity not sold or roughly 3 percent. The proposed formula would adjust the calculated FSC upwards while adjusting the FSR downwards. The commenter suggested that this approach would provide a value more reflective of sales to the ultimate consumer. In the formula for SCAF, the total reported losses would be increased by the same amount that the Sales for Resale are decreased.

DOE acknowledges that reporting energy losses as a portion of electricity sales might lead to variations in the reported data, and that these variations might create a minor calculational bias for some utilities. However, for DOE to allow a utility to modify the FSC and FSR by setting it proportional to the NAF would create a more significant bias. In addition, the uniformity of the basic approach would be distorted by the implementation of this suggestion. Therefore, the commenter's suggested calculation method has not been accepted.

(c) *Calculation of the NAF.* One commenter recommended that the NAF be based upon last year's data consistent with the individual utility's adjustment factors. Another commenter suggested that DOE allow the SCAF to be set equal to the NAF when the majority of the sales are sales for resale and total system energy losses related to their sales transactions are included on Form EIA–861 under "Sales for Resale" and "Sales to Ultimate Consumers" (lines l and k), rather than as "Total Energy Losses" (line o).

As previously stated, the NAF is calculated on a national basis using aggregated data from all utilities generating nuclear energy. If the NAF were set equal to the adjustment factor of an individual utility, the potential for an inequitable fee calculation would arise. For example, a utility with a high adjustment factor, which sells electricity to another utility with an adjustment factor approaching the industry average, would have to pay higher fees than would another utility with a low adjustment factor in the same situation. The uniformity of the basic approach would be distorted by the implementation of either of these suggestions. Therefore, the two suggested changes have not been implemented.

(d) *Use of decimal places and rounding.* Five commenters stated that while the sample problems in the proposed rule use values expressed to four decimal places, there is nothing in the rule to preclude the use of two, three, five, or some other number of decimal places. A second question raised was when to round the decimal places (i.e., at what stage of the calculations). One other commenter suggested that, for consistency, it may be advantageous to specify the NAF to four decimal places instead of three as proposed in the NOPR. Another commenter stated that in order to avoid potential disputes and questions during DOE's data validation or audits, the final rule should specify the number of decimal places to be used and when the values are to be rounded.

According to EIA Standard 86–05–07 (Standards Manual, Energy Information Administration, April 1989), "to round a number to n digits (decimal places): add one unit to the nth digit if the (n+1)st digit is 5 or larger, and keep the nth digit unchanged if the (n+1)st digit is less than 5." DOE has determined that the NAF should be specified to four decimal places to avoid an unnecessary increase in the burden of its calculation. The FSC, SCAF, Adjustment for Sales to ultimate Consumer (ASC), FSR, Adjustment for Sales for Resale (ASR), OEAF, OS, Weighted Energy Adjustment Factor (WEAF), and Total Energy Adjustment Factor (TEAF) should be computed to n+1 digits, i.e., five decimal places, then rounded and reported to four decimal places. The Current Fee Due will have the same number of significant digits as the Gross Electricity, the Net Electricity, and the Electricity Generated and Sold.

(e) *Annual establishment of the NAF value.* Two commenters recommended that the NAF definition be changed from a specific current value of .9400 to reflect a NAF that would be set by the Contracting Officer who then would notify purchasers of any changes. DOE has accepted this recommendation and after annual review, when a change is considered to be necessary, a formal notification will be issued by the Contracting Officer. Article I–13.k has been revised accordingly. For purposes of setting the initial value only, this Federal Register Notice will substitute for formal notification by the Contracting Officer and establishes .9400 as the value for NAF.

(f) *Definitional consistency of SCAF.* A commenter pointed out that the term SCAF is defined in the NOPR as one minus the quotient of energy lost or not sold "divided by the total energy available for sale." The commenter suggested that this phrase should read "total energy available for disposition." DOE agrees and the suggested wording has been incorporated into the annex A of appendix G, NWPA–830G form instructions.

(g) *Exclusion of electricity sold for resale from the denominator in SCAF.* Two commenters stated that the proposed calculation method did not deduct the portion of electricity sold for resale from the denominator in the equation for SCAF. One commenter stated that the "calculation of the SCAF as presently proposed by DOE * * * will not meet the Court's fairness test nor DOE's own equity test."

DOE has determined that for a utility with a mixture of retail and wholesale energy sales the commenter is correct that the proposed calculation methodology would result in a bias to SCAF. Therefore, DOE has revised the calculation method. Using the references to the EIA Form–861 as an example,

$$SCAF = 1 - \frac{\text{line m} + \text{line n} + \text{line o}}{\text{line j}}$$

is changed to:

$$SCAF = 1 - \frac{\text{line m} + \text{line n} + \text{line o}}{\text{line j} - \text{line l}}$$

which deducts the portion of electricity sold for resale from the denominator. In the event that "line j—line l" is zero, the value of SCAF will remain equal to one. Article I–13.g has been revised accordingly.

(h) *Owner's Share of the plant (OS).* One commenter stated that in determining the OS multiplier for each owner, the methodology allows flexibility between the use of owner fraction and total sales fraction. DOE agrees with the commenter's observation and has determined that either method is appropriate for use in the fee calculations.

(i) *Typographical error in the instructions for the calculation of the FSC and FSR.* The annex A of appendix G, Form NWPA–830G of the proposed Standard Remittance Advice used the plural possessive term "years'" instead of the singular possessive "year's" in calculating FSC and FSR. The final rule has been changed to "year's."

(j) *Definition of Owners Energy Adjustment Factor (OEAF).* One commenter stated that in the annex A of appendix G, Form NWPA–830G definitions, the OEAF is incorrectly defined as "the product of ASC and ASR" rather than "the sum of ASC and ASR." The commenter is correct and the final rule has been changed accordingly.

3. Supporting Documentation

(a) *Data required for DOE audits.* Five commenters stated that the proposed requirement for routinely preparing and maintaining supporting documentation to support DOE's fee verification process would be excessively burdensome. The recommendation was made that the utilities have the necessary information available and be able to explain any inconsistencies on an "as requested" basis or shortly prior to an audit.

Since this recommendation is consistent with DOE's intent, DOE accepts this suggestion and will require the comparison data to be available for all audits or reviews in order to explain any data differences. This supporting documentation includes but is not limited to: station diagrams showing meter locations; a table displaying and comparing the net electricity generated reported on (a) "Annex A of appendix G," Form NWPA–830G, (b) "Electric Power Monthly," Form EIA–759, (c) the Nuclear Regulatory Commission's (NRC) Operating Data Report, (d) the NRC's Average Daily Unit Power Level Report, and (e) Rural Electrification Administration (REA) Forms 7 and 12, if appropriate, and; annual data displaying and comparing the net electricity generated reported on the Annex A with the data reported on the "Annual Report of Major Electric Utilities, Licensees and Others," FERC Form No. 1, and with the data reported on the "Annual Electric Utility Report," Form EIA–861. This supporting documentation should include explanations of any inconsistencies among the data.

(b) *Changes in the referenced forms.* Four commenters stated that the FERC Form 1 is currently undergoing revisions through the rulemaking process. These commenters suggested that provisions be made in the final rule to accommodate any changes in reporting energy sources and disposition on the FERC Form No. 1 or Form EIA–861.

On November 13, 1990, the FERC Form No. 1 was formally modified (55 FR 47311). DOE has determined that the changes adopted by FERC will not have a significant effect on the use of this data in the calculation of the energy adjustment factor. The FERC Form No. 1 modification was limited, for purposes of this rulemaking, to the division of "Sales for Resale" into two separate categories: "Requirements Sales for Resale" and "Non-Requirements Sales for Resale" and the corresponding change in applicable line numbers referenced in the proposed rule. Table 2 shows the specific line number changes for use in the TEAF calculation.

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TABLE 2.—SPECIFIC LINE NUMBER CHANGES FOR USE IN THE TEAF CALCULATION

Category	Form EIA-861 schedule II No. 1 question No. 8	Previous FERC form No. 1 (12/87) page 401	Revised FERC from (12/90) page 401
Total sources of energy	line j	line 19	line 20.
Sales to ultimate consumers	line k	line 21	line 22.
Sales for resale	line l	line 22	line 23+24.
Energy furnished w/o charge	line m	line 23	line 25.
Energy used by the company	line n	line 25	line 26.
Total energy losses	line o	line 30	line 27.

4. Credit for Past Overpayments and Payment of Interest

(a) *Past overpayments.* Three commenters requested guidance on the appropriate data to use for the appropriate period in computing past overpayments.

The process of calculating and submitting annex A of appendix G, NWPA–830G forms whether ongoing or revised, involves determining the appropriate reference data to be used. The filing dates for each form are intended to establish which data submission is to be used. A changeover from one year's data for the next year's data will occur either May 1 or April 30 of each year for the EIA–861 or FERC Form No. 1 respectively. Revisions of the annex A of appendix G, NWPA–830G submissions will use data appropriate to each respective calendar year. For example, for the following payment submissions, utilities may use the referenced Form EIA–861 or the FERC Form No. 1:

Payment submission date	EIA–861 filing date	FERC form No. 1 filing date
July 1983–December 1983	May 1, 1984	April 30, 1984.
January 1984–December 1984	May 1, 1985	April 30, 1985.
January 1985–December 1985	May 1, 1986	April 30, 1986.
January 1986–December 1986	May 1, 1987	April 30, 1987.
January 1987–December 1987	May 1, 1988	April 30, 1988.
January 1988–December 1988	May 1, 1989	April 30, 1989.
January 1989–December 1989	May 1, 1990	April 30, 1990.
January 1990–December 1990	May 1, 1991	April 30, 1991.
January 1991–April 1991	May 1, 1991	April 30, 1991.
May 1991–April 1992	May 1, 1991	April 30, 1991.
May 1992–April 1993	May 1, 1992	April 30, 1992.

For each annex A of appendix G, NWPA–830G form previously submitted, contract holders should submit to the Contracting Officer a signed revision to the annex A of appendix G, NWPA–830G and appendix G, NWPA–830G with a summary sheet detailing the total refund (principal) requested. The revisions will be reviewed and verified by DOE prior to authorization of the refund of the overpayments.

(b) *Specification of NAF instead of calculation of SCAF.* A commenter proposed that the NAF should be specified as the only value needed to offset historical net electrical generation for the ensuing reverification and refund process instead of each utility calculating a separate SCAF for each co-owner for each quarter over the history of payments made to the NWF.

DOE believes that the specification of one value for all SCAF for all utilities for all historic submissions, while simple, would result in an inequitable sharing of the program costs for many utilities. Therefore, the commenter's suggestion has not been implemented. DOE has determined, however, that in the resubmission of the revised annex A of appendix G, NWPA–830G to specify the amounts of historical overpayments, the NAF value of .9400 should be used.

(c) *Payment of interest.* Four commenters supported DOE efforts to obtain interest on past overpayments and two commenters disagreed with DOE's determination that congressional authorization is needed to pay interest on all overpayments.

The issue of whether interest on the overpayments can be paid by DOE has been resolved by Congress. The Fiscal Year 1991 Energy and Water Development Appropriations Act (Pub. L. 101–514) authorized DOE to pay interest on overpayments pursuant to *Consolidated Edison Company of New York, Inc.* v. *DOE,* 870 F.2d 694 (D.C. Cir. 1989), "* * * at a rate to be determined by the Secretary of the Treasury and calculated from the date the amounts were deposited into the Nuclear Waste Fund."

C. Other Administrative Changes

DOE has made several administrative changes to the appendix G, NWPA–830G and annex A of appendix G, NWPA–830G forms.

First, pursuant to modified procedures required by the Office of Management and Budget (OMB), the statement of public reporting burden on the appendix G, NWPA–830G form has been expanded to include the estimate of reporting time per response and points of contact for comments on burden and information collection.

Second, several clarifications have been made on the annex A of appendix G, NWPA–830G form:

(1) Under section 4, columns for individual generating units have been added for accounting purposes;

(2) Under section 4.2 and 4.3, the phrases "station total, 1 Mill/KWh" and "4.2 times $1.00" have been deleted to minimize redundancy;

(3) Under section 2.4 of the Instructions, the phrase "as part of section 3" has been deleted from paragraphs C. and D. to minimize redundancy.

(4) Under section 3.1 of the Instructions, the phrase "disposition to ultimate consumers" in the paragraph Sales to Consumer Adjustment Factor (SCAF) replaces "for sale by that owner," in response to comments. In the paragraph Owner's Share (OS), the phrase "or the sponsor company's fixed entitlement percentage of the Plant's output" has been added in response to comments. A section defining NAF has been added for completeness. Under the paragraph Weighted Energy Adjustment Factor (WEAF), the word "times" has been added for clarity.

(5) Under section 3.2 of the Instructions, the words "individual owners" have been added for clarification.

(6) Under section 4.2 of the Instructions, to assure editorial consistency with the form, the sentence "Multiply the values in Item 4.1 by the 'Unit' and 'Station Total' values in Item 2.6 to calculate these values for the reporting station" has been changed to "Multiply values in Item 4.1 by the 'Unit' values in Item 2.6. Sum these values and enter in 'Station Total'."

Third, minor editorial corrections have been made including: the correction of zip code numbers; the addition of OMB authorization numbers and expiration dates; the deletion of the word "disposal" in line 1.4 of annex A of appendix G, NWPA–830G; and references to forms in section 3.1 of annex A of appendix G, NWPA–830G Instructions have been re-ordered but not changed

IV. Calculation Methodology and Sample Calculations

A. Calculation Methodology

DOE specifies that to calculate the amount of electricity generated and sold for a specific nuclear plant, the net electricity generated must be decreased by a factor to account for the amount of nuclear generation lost in transmission and distribution or otherwise not ultimately sold. This calculation is represented by the following formula:

Electricity Generated and Sold = Net Electricity Generated × Total Energy Adjustment Factor

1. Net Electricity Generated

This rule does not alter the basic methodology used to calculate "net electricity generated" as defined in the final rule published on September 18, 1987 (i.e., "the gross electrical output produced by a civilian nuclear power reactor measured at the output terminals of the turbine generator, minus the normal onsite nuclear station service loads during the time electricity is being generated"). The calculation of "net electricity generated" will now be used as an intermediate value in the determination of "electricity generated and sold."

In calculating "net electricity generated" DOE has determined, however, that all onsite use can be deducted from the gross generation if the onsite use came from a nuclear power reactor and is not double counted in any other energy loss term of the calculation methodology provided below. This determination revokes DOE Contracting Officer's letter, dated February 1, 1988, focusing on the deduction of service loads during startup testing. The calculated "net electricity generated" is to be recorded on the annex A of appendix G, NWPA–830G Remittance Advice form.

2. Total Energy Adjustment Factor

The Total Energy Adjustment Factor (TEAF) is the sum of all the Weighted Energy Adjustment Factors (WEAF) for each of a plant's owners. The WEAF is derived by multiplying the Owner's Energy Adjustment Factor (OEAF) by the Owner's Share of the plant (OS) (or share of metered sales). The OEAF is calculated by adding an owner's adjustment for "sales to ultimate consumers" to an owner's adjustment for "sales for resale." The TEAF is represented by the following formula:

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$$TEAF = \sum_{i=1}^{NO} WEAF_i$$

where:

WEAF = OEAF × OS
= (ASC + ASR)OS
= [(FSC × SCAF) + (FSR × NAF)]OS

where:

TEAF = Total Energy Adjustment Factor
NO = Number of Owners
WEAF = Weighted Energy Adjustment Factor for each plant owner
OS = Owner's Share of the plant (station) or share of metered sales
OEAF = Owner's Energy Adjustment Factor
ASC = Adjustment for Sales to ultimate Consumer
ASR = Adjustment for Sales for Resale
FSC = Fraction of Sales to ultimate Consumer
SCAF = Sales to ultimate Consumer Adjustment Factor
FSR = Fraction of Sales for Resale
NAF = National average Adjustment Factor, currently defined as .9400

In developing these adjustment factors, as detailed below, utilities will use the following information from Form EIA-861 (Schedule 2, question 9) or the FERC Form No. 1 (page 401):

Category	Form EIA-861 Line	FERC Form No. 1 Line
Total sources of energy	j	20
Sales to ultimate consumer	k	22
Sales for resale	l	23 + 24
Energy furnished w/o charge	m	25
Energy used by the company	n	26
Total energy losses	o	27

(a) Owner's Adjustment for Sales to the Ultimate Consumer

The owner's Adjustment for Sales to the ultimate Consumer (ASC) is the product of the owner's Fraction of Sales to ultimate Consumer (FSC) and the owner's Sales to ultimate Consumer Adjustment Factor (SCAF) calculated as follows:

ASC = FSC × SCAF

where:

ASC = Adjustment for Sales to ultimate Consumer
FSC = Fraction of Sales to ultimate Consumer calculated as either:

Form EIA-861

$$\frac{\text{line k}}{\text{line k + line l}}$$

or

FERC Form No. 1

$$\frac{\text{line 22}}{\text{line 22 + (line 23 + line 24)}}$$

SCAF = Sales to ultimate Consumer Adjustment Factor, calculated as either:

Form EIA-861

$$1 - \frac{\text{line m + line n + line o}}{\text{line j - line l}}$$

or

FERC Form No. 1

$$1 - \frac{\text{line 25 + line 26 + line 27}}{\text{line 20 - (line 23 + line 24)}}$$

(b) Owner's Adjustment for Sales for Resale

The owner's Adjustment for Sales for Resale (ASR) is the product of the owner's Fraction of Sales for Resale (FSR) and the sales for resale National average Adjustment Factor (NAF), calculated as:

ASR = FSR × NAF

where:

ASR = Adjustment for Sales For Resale
FSR = Fraction of Sales For Resale, calculated as either:

Form EIA-861

$$\frac{\text{line l}}{\text{line k + line l}}$$

or

FERC Form No. 1

$$\frac{\text{line 23 + line 24}}{\text{line 22 + (line 23 + line 24)}}$$

NAF = National average Adjustment Factor, currently defined as .9400

(c) Owner's Share of the Plant

The Owner's Share of the plant (OS) is based on either the fraction of plant ownership or the fraction of metered sales. The sum of all owner's shares must equal 1.00. For a nuclear station with more than one reactor and different ownerships for each reactor, a separate Annex A of Appendix G, NWPA-830G will be required for each reactor.

B. Sample Calculations

Two sample calculations based on the final rule for adjusting net electricity generated are detailed below.[2] The first example illustrates a sample case for a single owner, while the second example details the TEAF calculation for a plant with multiple owners.

EXAMPLE 1—SINGLE OWNER

Owner Data	
Owner's share	1.0000
Total sources of energy	26,167,838 MWh
Sales to ultimate consumer	24,248,986 MWh
Sales for resale	582,437 MWh
Energy furnished w/o charge	4,410 MWh
Energy used by the company	40,045 MWh
Total energy losses	1,291,960 MWh

Since the utility owns 100% of the net electricity generated, the Owner's Share of the plant (OS) (station) or share of metered sales is equal to 1.00, and the Total Energy Adjustment Factor (TEAF) is equal to the Weighted Energy Adjustment Factor (WEAF). Using the methodology developed above, the TEAF would be calculated as follows (expressed to five significant digits):

OEAF = ASC + ASR

ASC = FSC x SCAF

$$FSC = \frac{24,248,986}{24,248,986 + 582,437} = .97654$$

$$SCAF = 1 - \frac{4,410 + 40,045 + 1,291,960}{26,167,838 - 582,437} = .94777$$

ASC = .97654 x .94777 = .92554

ASR = FSR x NAF

$$FSR = \frac{582,437}{24,248,986 + 582,437} = .02346$$

NAF = .9400

ASR = .02346 x .9400 = .02205

OEAF = ASC + ASR = .92554 + .02205 = .94758

WEAF = OEAF x OS = .94758 x 1.00000 = .94758

TEAF = WEAF = .94758

Table 3 illustrates how the TEAF would be reported on the Annex A of Appendix G, NWPA-830G. The net electricity generated value would then be multiplied by the TEAF resulting in the amount of nuclear electricity generated and sold.

[2]Totals in these examples may not add due to independent rounding.

TABLE 3.—EXAMPLE OF REPORTING TEAF ON ANNEX A FOR A SINGLE OWNER

Name(s) of owners	Adjustment for Sales to ultimate Consumer (ASC)		Adjustment for Sales for Resale (ASR)		Owner's Energy Adjustment Factor (OEAF)	Owner's Share (OS)	Weighted Energy Adjustment Factor (WEAF)
	Fraction of Sales to ultimate Consumer (FSC)	Sales to ultimate Consumer Adjustment Factor (SCAF)	Fraction of Sales for Resale (FSR)	National average Adjustment Factor (NAF)			
Owner	(.9765 x	.9478) + (.0235 x	.9400) =	.9476 x	1.0000 =	.9476
_____	(_____ x	_____) + (_____ x	.9400) =	_____ x	_____ =	_____
_____	(_____ x	_____) + (_____ x	.9400) =	_____ x	_____ =	_____
_____	(_____ x	_____) + (_____ x	.9400) =	_____ x	_____ =	_____
Total Energy Adjustment Factor (TEAF = Σ WEAF)							.9476

EXAMPLE 2—MULTIPLE OWNERS

Three utilities, A, B, and C, own 41.2%, 41.0%, and 17.8% of a nuclear powerplant, respectively. As in Example 1, the WEAF must be calculated for each of the plant owners before the plant TEAF can be calculated.

Owner A Data	
Owner's share	.4120
Total sources of energy	8,942,417 MWh
Sales to ultimate consumer	6,650,363 MWh
Sales for resale	1,700,699 MWh
Energy furnished w/o charge	0 MWh
Energy used by the company	22,580 MWh
Total energy losses	568,776 MWh

OEAF = ASC + ASR

ASC = FSC x SCAF

$$FSC = \frac{6,650,363}{6,650,363 + 1,700,699} = .79635$$

$$SCAF = 1 - \frac{0 + 22,580 + 568,776}{8,942,417 - 1,700,699} = .91834$$

ASC = .79635 x .91834 = .73132

ASR = FSR x NAF

$$FSR = \frac{1,700,699}{6,650,363 + 1,700,699} = .20365$$

NAF = .9400

ASR = .20365 x .9400 = .19143

OEAF = ASC + ASR = .73132 + .19143 = .92275

WEAF = OEAF x OS = .92275 x .41200 = .38017

Owner B Data	
Owner's share	.4100
Total sources of energy	9,611,602 MWh
Sales to ultimate consumer	6,441,439 MWh
Sales for resale	2,617,181 MWh
Energy furnished w/o charge	0 MWh
Energy used by the company	11,111 MWh
Total energy losses	541,571 MWh

OEAF = ASC + ASR

ASC = FSC x SCAF

$$FSC = \frac{6,441,439}{6,441,439 + 2,617,181} = .71108$$

$$SCAF = 1 - \frac{0 + 11,111 + 541,571}{9,611,602 - 2,617,181} = .92094$$

ASC = .71108 x .92094 = .65487

ASR = FSR x NAF

$$FSR = \frac{2,617,181}{6,441,439 + 2,617,181} = .28892$$

NAF = .9400

ASR = .28892 x .9400 = .27158

OEAF = ASC + ASR = .65487 + .27158 = .92645

WEAF = OEAF x OS = .92645 x .41000 = .37984

Owner C Data	
Owner's share	.1780
Total sources of energy	2,204,391 MWh
Sales to ultimate consumer	2,068,231 MWh
Sales for resale	22,288 MWh
Energy furnished w/o charge	0 MWh
Energy used by the company	414 MWh
Total energy losses	113,458 MWh

OEAF = ASC + ASR

ASC = FSC x SCAF

$$FSC = \frac{2,068,231}{2,068,231 + 22,288} = .98934$$

$$SCAF = 1 - \frac{0 + 414 + 113,458}{2,204,391 - 22,288} = .94782$$

ASC = .98934 x .94782 = .93772

ASR = FSR x NAF

$$FSR = \frac{22,288}{2,068,231 + 22,288} = .01066$$

NAF = .9400

ASR = .01066 x .9400 = .01002

OEAF = ASC + ASR = .93771 + .01002 = .94782

WEAF = OEAF x OS = .94782 x .17800 = .16870

In the above example, the TEAF for this station is the sum of each owner's WEAF, calculated as:

Owner	WEAF
A	.38017
B	.37984
C	.16870
TEAF	.92871

Table 4 illustrates how the TEAF would be reported on the revised Annex A of Appendix G, NWPA-830G. The net electricity generated value would then be multiplied by the TEAF resulting in the amount of nuclear electricity generated and sold.

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TABLE 4.—EXAMPLE OF REPORTING TEAF ON ANNEX A FOR MULTIPLE OWNERS

Name(s) of owners	Adjustment for Sales to ultimate Consumer (ASC)		Adjustment for Sales for Resale (ASR)		Owner's Energy Adjustment Factor (OEAF)	Owner's Share (OS)	Weighted Energy Adjustment Factor (WEAF)
	Fraction of Sales to ultimate Consumer (FSC)	Sales to ultimate Consumer Adjustment Factor (SCAF)	Fraction of Sales for Resale (FSR)	National average Adjustment Factor (NAF)			
Owner A	(.7963 ×	.9183) +	(.2037 ×	.9400) =	.9228 ×	.4120 =	.3902
Owner B	(.7111 ×	.8209) +	(.2889 ×	.9400) =	.9265 ×	.4100 =	.3798
Owner C	(.9893 ×	.9478) +	(.0107 ×	.9400) =	.9478 ×	.1780 =	.1687
_____	(_____ ×	_____) +	(_____ ×	.9400) =	_____ ×	_____ =	_____
_____	(_____ ×	_____) +	(_____ ×	.9400) =	_____ ×	_____ =	_____
Total Energy Adjustment Factor (TEAF = Σ WEAF)							.9287

V. Final Rule

The purpose of this final rule is to amend the Standard Contract consistent with the court ruling that the ongoing fee should be based on nuclear electricity generated and sold. Electricity which is generated and intended for sale, as metered at the station busbar, will be adjusted for losses prior to ultimate sale, hereafter referred to as "electricity generated and sold."

The following is a summary of the changes which have been made to the Standard Contract (10 CFR Part 961) necessary to implement the payment of the ongoing fee based on electricity generated and sold:

Article I—Definitions—Remove the definition of "net kilowatt hours generated" and add a new definition of "electricity (kilowatt hours) generated and sold."

Article VIII-A.1—Fees—Remove the term "net kilowatt hours generated" and add in its place the term "electricity generated and sold."

Article VIII-B.1—Payment—Remove the term "net electricity generated" and add in its place the term "electricity generated and sold."

Appendix G—Standard Remittance Advice for Payment of Fees—The annex A of appendix G, NWPA–830G form currently used by utilities has been revised to reflect payment based on electricity generated and sold. Also, section 4 of the annex A of appendix G, NWPA–830G has been modified slightly in order to accommodate existing accounting procedures, which track payments by specific nuclear units rather than the station as a whole. The annex A of appendix G, NWPA–830G form instructions have also been changed to reflect the proposed calculation procedures for identifying net generation for fee calculation purposes, for identifying and calculating the energy adjustment factors, and for reporting electricity generated and sold. The revised annex A of appendix G, NWPA–830G form and instructions are appended to this final rule.

VI. Procedural Requirements

A. Executive Order No. 12291

Under Executive Order No. 12291, agencies are required to determine whether proposed rules are major rules as defined in the Order. DOE has reviewed this proposed rule and has determined that it is not a major rule because: It will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have any significantly adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. This notice was submitted to the Office of Management and Budget (OMB) for review under Executive Order 12291. OMB has completed its review.

B. Executive Order No. 12612

Under Executive Order No. 12612, agencies are required to ensure adequate consideration and respect for the institutional interests of States and their subdivisions when an agency is formulating or implementing proposed policies that have federalism implications. DOE has reviewed this final rule and has determined that the rule is unlikely to have a substantial direct effect on the States, the relationship between the States and Federal Government, or distribution of the power and responsibilities among various levels of government.

C. Regulatory Flexibility Act

In accordance with section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, DOE finds that sections 603 and 604 of that Act do not apply to this rule because it will not have a significant economic impact on a substantial number of small entities. This finding is based on the fact that the parties to the contract, who are owners and generators of spent nuclear fuel or high-level radioactive waste, are not small entities.

D. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), execution of amendments to the Standard Contract in this rulemaking will not result in any activities which could cause environmental impacts. Therefore, this rulemaking is not a proposal for a major Federal action significantly affecting the quality of the human environment. Accordingly, preparation of either an environmental assessment or an environmental impact statement is not required.

E. Paperwork Reduction Act

Information collection requirements contained in this Final Rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 95–511) and assigned control number 1901–0260. This Final Rule does not substantively alter or materially modify the information collection requirements set forth in the Notice of Proposed Rulemaking as approved by OMB. Therefore, further review by OMB is not necessary (see 5 CFR 1320.13(f) and (g)). Comments on the information collection requirements of this rule should be submitted both to DOE address noted above and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Ronald Minsk.

List of Subjects in 10 CFR Part 961

Government contracts, Nuclear materials, Nuclear powerplants and reactors, Radiation protection, Waste treatment and disposal.

In consideration of the foregoing, part 961, chapter III of title 10, Code of Federal Regulations is amended as set forth below.

Berton J. Roth,

Acting Director, Office of Procurement, Assistance and Program Management.

PART 961—STANDARD CONTRACT FOR DISPOSAL OF SPENT NUCLEAR FUEL AND/OR HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for part 961 continues to read as follows:

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254) and sec. 302, Pub. L. 97–425, 96 Stat. 2257 (42 U.S.C. 10222).

2. The Standard Contract in § 961.11 is amended by revising Article I, paragraph 13, and Articles VIII–A.1, and B.1, and appendix G to the Contract, including annex A to appendix G as set forth below. Annex B to appendix G remains unchanged.

§ 961.11 Text of the contract.

* * * * *

Article I—Definitions

* * * * *

13. The term *electricity (kilowatt hours) generated and sold* means gross electrical output produced by a civilian nuclear power reactor measured at the output terminals of the turbine generator minus the normal onsite nuclear station service loads during the time electricity is being generated multiplied by the total energy adjustment factor. For purposes of this provision, the following definition shall apply:

a. The term *Total Energy Adjustment Factor (TEAF)* means the sum of individual owners' weighted energy adjustment factors.

b. The term *Weighted Energy Adjustment Factor (WEAF)* means the product of an owner's energy adjustment factor times the owner's share of the plant.

c. The term *Owner's Energy Adjustment Factor (OEAF)* means the sum of the individual owner's adjustment for sales to ultimate consumers and adjustment for sales for resale.

d. The term *Owner's Share of the plant (OS)* means the owner's fraction of metered electricity sales, the owner's fraction of plant ownership, or the sponsor company's fixed entitlement percentage of the plant's output. This definition includes joint owners of generating companies or participants in a generation and transmission cooperative.

e. The term *Adjustment for Sales to ultimate Consumer (ASC)* means the owner's fraction of sales to the ultimate consumer multiplied by the owner's sales to ultimate consumer adjustment factor.

f. The term *Fraction of Sales to ultimate Consumer (FSC)* means the owner's fractional quantity of electricity sold to the ultimate consumer relative to the total of electricity sales (sales to ultimate consumers plus the sales for resale).

g. The term *Sales to ultimate Consumer Adjustment Factor (SCAF)* means one minus the quotient of all electricity lost or otherwise not sold for each owner divided by the total electricity available for disposition to ultimate consumers. Electricity lost or otherwise not sold includes:

(1) Energy furnished without charge;
(2) Energy used by the company;
(3) Transmission losses;
(4) Distribution losses; and
(5) Other unaccounted losses as reported to the Federal Government "Annual Report of Major Electric Utilities, Licensees and Others," Federal Energy Regulatory Commission (FERC) Form No.1; Rural Electrification Administration (REA) Forms 7 and 11 if appropriate; or the "Annual Electric Utility Report," Energy Information Administration (EIA) Form EIA–861.

h. The term *Total Electricity Available for Disposition to Ultimate Consumers* means the reporting year's total of all of a utility's electricity supply which is available for disposition, expressed in kilowatt hours, and is equal to the sum of the energy sources minus the electricity sold for resale by the utility.

i. The term *Adjustment for Sales for Resale (ASR)* means the owner's fraction of sales for resale multiplied by the national average adjustment factor.

j. The term *Fraction of Sales for Resale (FSR)* means the owner's fractional quantity of electricity sold for resale by the utility relative to the total of electricity sales.

k. The term *National Average Adjustment Factor (NAF)* means the ratio of the national total of electricity sold to the national total of electricity available for disposition, based on the most recent 3 years of national data provided to the Federal Government, and will be set by the Contracting Officer. This term will be evaluated annually and revised in increments of .005.

l. Pumped storage losses. If the proportion of nuclear generated electricity consumed by a pumped-storage hydro facility can be measured or estimated and if the electricity losses associated with pumped storage facilities can be documented (e.g. based on routine and uniform records of district power data on contributions from different electricity sources), a prorated nuclear share shall be allowed as an offset to gross electricity generation reported on the annex A of appendix G, NWPA–830G form. Specific methodologies for calculating these offsets must be approved by the Contracting Officer in advance.

Instructions to annex A of appendix G, NWPA–830G provide the necessary information to calculate the energy adjustment factors.

* * * * *

Article VIII—Fees and Terms of Payment

A. Fees

1. Effective April 7, 1983, Purchaser shall be charged a fee in the amount of 1.0 mill per kilowatt hour (1M/kWh) electricity generated and sold.

* * * * *

B. Payment

1. For electricity generated and sold by the Purchaser's civilian nuclear power reactor(s) on or after April 7, 1983, fees shall be paid quarterly by the Purchaser and must be received by DOE not later than the close of the last business day of the month following the end of each assigned 3-month period. The first payment shall be due on July 31, 1983, for the period April 7, 1983, to June 30, 1983. (Add as applicable: A one-time adjustment period payment shall be due on _____, for the period _____ to _____.) The assigned 3-month period, for purposes of payment and reporting of electricity generated and sold shall begin _____.

* * * * *

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NWPA-830G

U.S. DEPARTMENT OF ENERGY
Germantown, MD 20875

OMB No.: 1901-0260
Expires: 11/30/93

Appendix G - Standard Remittance Advice for Payment of Fees

This information is being collected under mandatory authorities vested in the U.S. Department of Energy under Public Law 97-425, Late filing, failure to file or to otherwise comply with the instructions provided may result in interest penalties as provided by Article VIII.C of the Standard Contract for Disposal of Spent Nuclear Fuel under High Level Radioactive Waste. For information concerning confidentiality of information see item 6 of the instructions. Public reporting burden for this collection of information is estimated to average 40 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Statistical Standards, EI-73, Mail Station 2H-087, 1000 Independence Ave., S.W. Washington D.C. 20585, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503

1.0 IDENTIFICATION INFORMATION

1.1 Purchaser Information
(a) Name _____
(b) Address _____
(c) City, State & Zip Code _____

1.2 Contact Person
(a) Name _____
(b) Telephone (Include Area Code) _____

1.3 Standard Contract Identification Number: _____

1.4 Period Covered by this Remittance Advice
(a) From _____ (Month/Day/Year) to _____ (Month/Day/Year)
(b) Date of this Payment _____ (Month/Day/Year)

2.0 SPENT NUCLEAR FUEL (SNF) FEE

2.1 Number of Reactors Covered _____
2.2 Total Purchaser Obligation as of April 7, 1983 $ _____
2.3 Date of First Payment:

Month	Day	Year

2.4 10-Year Treasury Note Rate as of the Date of First Payment ----------→ _____ %
2.5 Unpaid Balance Prior to this Payment $ _____
2.6 Option Chosen _____
2.7 Fee Date
(a) Principal _____
(b) Interest _____
(c) Total Spent Nuclear Fuel Fee Transmitted with this Payment
$ _____

3.0 FEE FOR ELECTRICITY GENERATED AND SOLD (MILLS PER KILOWATT HOUR, M/kWh)

3.1 Number of Reactors Covered _____
3.2 Total Electricity Generated and Sold (Megawatt hours) (Sum of Line 4.2 from all Annex A's) _____
3.3 Current Fee Rate _____ (M/kWh)
3.4 Total Fee for Electricity Generated and Sold (M/kWh) Transmitted with this Payment
$ _____

4.0 UNDERPAYMENT/LATE PAYMENT (As notified by DOE)

Type of Payment (a)	Date of Notification (Month/Day/Year) (b)	DOE Invoice Number (c)	Date of Payment Transmittal (Month/Day/Year) (d)	Interest Paid (e)	Amount Transmitted (f)
4.1 SNF Underpayment					
4.2 Electricity Generation Late Payment					
4.3 TOTAL UNDERPAYMENT					
4.4 SNF Late Payment					
4.5 Electricity Generation Late Payment					
4.6 TOTAL LATE PAYMENT					

5.0 OTHER CREDITS CLAIMED (Attach Explanation)

Enter the Total Amount Claimed for All Credits $ _____

6.0 TOTAL REMITTANCE

6.1 Total Spent Nuclear Fuel Fee Transmitted (from 2.7(c)) $ _____
6.2 Total Fee for Electricity Generated and Sold (from 3.4) $ _____
6.3 Total Underpayment (from 4.3(f)) $ _____
6.4 Total Late Payment (from 4.6(f)) $ _____
6.5 Total Credits (from 5.0) $ _____
6.6 TOTAL REMITTANCE (Sum of 6.1 through 6.4 minus 6.5) $ _____

7.0 CERTIFICATION

I certify that the Total Remittance is true and accurate to the best of my knowledge.

Name _____ Date _____ Signature _____

TITLE 18 USC 1001 makes it a crime for any person to knowingly and willfully make to any department or agency of the United States any false, fictitious, or fraudulent statements as to any matter within its jurisdiction.

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• GPO: 193-122

DEPARTMENT OF ENERGY
Germantown, MD 20875

APPENDIX G - STANDARD REMITTANCE ADVICE FOR PAYMENT OF FEES

General Information

1. Purpose
Standard Remittance Advice (RA) form is designed to serve as the source document for entries into the Department's accounting records to transmit data from Purchasers concerning payment of their contribution to the Nuclear Waste Fund.

2. Who Shall Submit
The RA must be submitted by Purchasers who signed the Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste. Submit Copy 1, 2, and 3 to DOE, Office of the Controller, Special Accounts and Payroll Division and retain Copy 4.

3. Where to Submit
Purchasers shall forward completed RA to:

U.S. Department of Energy
Office of the Controller
Special Accounts and Payroll Division (C-216 GTN)
Box 500
Germantown, MD 20875-0500
Request for further information, additional forms, and instructions may be directed in writing to the address above or by telephone to (301) 353-4014.

4. When to Submit
For electricity generated on or after 4-7-83 fees shall be paid quarterly by the Purchaser and must be received by DOE not later than the close of the last business day of the month following the end of each assigned three month period. Payment is by electronic wire transfer only.

5. Sanctions
The timely submission of RA by a Purchaser is mandatory. Failure to file may result in late penalty fees as provided by Article VIII.C of the Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste.

6. Provisions Regarding the Confidentiality of Information
The information contained in these forms may be (i) information which is exempt from disclosure to the public under the exemption for trade secrets and confidential commercial information specified in the Freedom of Information Act of 5 USC 522(b)(4)(FOIA) or (ii) prohibited from public release by 18 USC 1905. However, before a determination can be made that particular information is within the coverage of either of these statutory provisions, the person submitting the information must make a showing satisfactory to the Department concerning its confidential nature.

Therefore, respondents should state briefly and specifically (on an element-by-element basis if possible), in a letter accompanying submission of the form why they consider the information concerned to be a trade secret or other proprietary information, whether such information is customarily treated as confidential information by their companies and the industry, and the type of competitive hardship that would result from disclosure of the information. In accordance with the provisions of 10 CFR 1004.11 of DOE's FOIA regulations, DOE will determine whether any information submitted should be withheld from public disclosure.

If DOE receives a response and does not receive a request, with substantive justification, that the information submitted should not be released to the public, DOE may assume that the respondent does not object to disclosure to the public of any information submitted on the form.

A new written justification need not be submitted each time the NWPA-830G is submitted if:
a. views concerning information items identified as privileged or confidential have not changed and
b. a written justification setting forth respondent's views in this regard was previously submitted.

In accordance with the cited statutes and other applicable authority, the information must be made available upon request, to the Congress or any committee of Congress, the General Accounting Office, and other Federal agencies authorized by law to receive such information.

INSTRUCTIONS FOR COMPLETING STANDARD REMITTANCE ADVICE FOR PAYMENT OF FEES

Section 1.0 *Identification Information*
1.1 Name of Purchaser as it appears on the Standard Contract, the mailing address, state, and zip code
1.2 Name and telephone number of person responsible for the completion of this form.
1.3 Standard Contract identification number as assigned by DOE.
1.4 Period covered by this advice and date of this payment. Any period different from the assigned three month period should be explained on a separate attachment.

Section 2.0 *Spent Nuclear Fuel (SNF) Fee*
2.1 Enter the number of reactors for which the Purchaser had irradiated fuel as of midnight between 4/7 April 1983 (equal to the number of Annex B forms attached).
2.2 Total amount owed to the Nuclear Waste Fund for spent fuel used to generate electricity prior to April 7, 1983 (See Annex B for calculation)
2.3 Self explanatory.
2.4 Ten year Treasury Note rate on the date the payment is made, to be used if payments are being made using the 40 quarter option or if lump sum payment is made after June 30, 1985.
2.5 Unpaid balance before this payment is made.
2.6 Enter the payment option (1, 2, or 3) chosen. The selection of payment option must be made within two years of Standard Contract execution
2.7 Total payment of fee which this advice represents. Show principal, interest, and total.

Section 3.0 *Fee for Electricity Generated and Sold (M/kWh)*
3.1 Enter the number of reactors the Purchaser is reporting on during this reporting period.
3.2 Enter total electricity generated and sold during the reporting period from all reactors being reported. This is the sum of Station Total figures of line 4.2 from all Annex A forms attached, expressed in megawatt hours.
3.3 Current Fee Rate as provided by DOE (initially 1.0 M/kWh which is equal to 1.0 $/MWh)
3.4 Total Fee for Electricity Generated and Sold (M/kWh) represented by this advice.

Section 4.0 *Underpayment/Late payment (as notified by DOE)*
4.1 - 4.6 Self Explanatory.

Section 5.0 *Other Credits Claimed*
Represents all items for which a Purchaser may receive credit, as specified in the Standard Contract

Section 6.0 *Total Remittance*
6.1 - 6.6 This section is a summary of the payments made in the previously mentioned categories with this remittance

Section 7.0 *Certification*
Enter the name and title of the individual your company has designated to certify the accuracy of the data. Sign the "Certification" block and enter the current date.

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U.S. Department of Energy
Energy Information Administration
Form NWPA-830G

ANNEX A TO APPENDIX G
Standard Remittance Advice for Payment of Fees

OMB No. 1901-0260
(Expires 11/30/93)

Section 1. Identification Information: Please first read the Instructions on the back.

1.1 **Purchaser Information:**
- 1.11 Name:
- 1.12 Address:
- 1.13 Attention:
- 1.14 City:
- 1.15 State: 1.16 Zip:
- 1.17 Utility ID Number: — —

1.2 **Contact Person:**
- 1.21 Name:
- 1.22 Title:
- 1.23 Phone No.:( )( ) Ext.:

1.3 **Station Name:**

1.4 **Standard Contract Identification Number:**

1.5 **Period Covered (MM/DD/YY):**

1.51 From: / / To: / /

1.52 Date of This Submission: / /

Section 2. Net Electricity Generated Calculation

Item	Unit 1	Unit 2	Unit 3	Station Total*
2.1 Unit ID Code:				
2.2 Gross Thermal Energy Generated (MWh):				
2.3 Gross Electricity Generated (MWh):				
2.4 Nuclear Station Use While At Least One Nuclear Unit Is In Service** (MWh):				
2.5 Nuclear Station Use While All Nuclear Units Are Out Of Service** (MWh):				
2.6 Net Electricity Generated (MWh) (Item 2.3 minus Item 2.4):				
2.7 Footnote (If any):				

*For a nuclear station with more than one reactor and different ownerships for each reactor, a separate Annex A will be required.
**Utilities unable to meter individual unit use shall report estimated unit use and shall explain in a footnote how the unit data were estimated.

Section 3. Total Energy Adjustment Factor Calculation

3.1 Weighted Energy Adjustment Factor Calculation	Adj. for Sales to ultimate Consumer (ASC)		Adjustment for Sales for Resale (ASR)				
Name of Nuclear Station Owner(s)	Fraction of Sales to ult. Consumer (FSC)	Sales to ultimate Consumer Adj. Factor (SCAF)	Fraction of Sales for Resale (FSR)	National average Adj. Factor (NAF)	Owner's Energy Adj. Factor (OEAF)	Owner's Share (OS)	Weighted Energy Adj. Factor (WEAF)
1.	.	X .	) + (.	X .	) = .	X .	= .
2.	.	X .	) + (.	X .	) = .	X .	= .
3.	.	X .	) + (.	X .	) = .	X .	= .
4.	.	X .	) + (.	X .	) = .	X .	= .
5.	.	X .	) + (.	X .	) = .	X .	= .
6.	.	X .	) + (.	X .	) = .	X .	= .
7.	.	X .	) + (.	X .	) = .	X .	= .
8.	.	X .	) + (.	X .	) = .	X .	= .
9.	.	X .	) + (.	X .	) = .	X .	= .
10.	.	X .	) + (.	X .	) = .	X .	= .
11.	.	X .	) + (.	X .	) = .	X .	= .
12.	.	X .	) + (.	X .	) = .	X .	= .
3.2 Total Energy Adjustment Factor (TEAF = ∑ WEAF)							.

Section 4. Fee Calculation for Electricity Generated and Sold

Item	Unit 1	Unit 2	Unit 3	Station Total*
4.1 Total Energy Adjustment Factor (Enter value from 3.2 above):				
4.2 Electricity Generated and Sold (Items in 4.1 times Items in 2.6):				
— Current Fee Rate (Dollars):	$1.00/MWh	$1.00/MWh	$1.00/MWh	$1.00/MWh
4.3 Current Fee Due (Dollars): (Transfer Station Total to line 3.4 of Appendix G)				

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U.S. Department of Energy
Energy Information Administration
Form NWPA-830G

Annex A to Appendix G
Standard Remittance Advice for Payment of Fees

OMB No. 1901-0260
(Expires 11/30/93)

Annex A Instructions

0. General Information

0.1 Purpose: To report the calculations of fees due the Department of Energy's Nuclear Waste Fund.

0.2 Please read all instructions before completing this form.

0.3 Complete a separate Annex A for each nuclear station. For a nuclear station that has different ownership arrangements for more than one reactor, a separate Annex A will be required for each reactor.

0.4 Submit Annex A Quarterly with Appendix G.

0.5 Where to submit:

U.S. DOE, Office of the Controller
Special Accounts & Payroll Division
(C-216 GTN), Box 500
Germantown, MD 20875-0500

Section 1. Identification Information: (Self explanatory)

Section 2. Net Electricity Generated Calculation

2.1 Unit ID Code: Enter the Reactor Unit Identification (ID) Code as assigned by DOE, for each reactor in the station.

2.2 Gross Thermal Energy Generated (MWh): Utility shall report the thermal output of the nuclear steam supply system during the gross hours of the reporting period.

2.3 Gross Electricity Generated (MWh): Utility shall report this amount for each unit in the appropriate column, and the total in the column labeled "Station Total." This amount is measured at the output terminals of the generator during the reporting period.

2.4 Nuclear Station Use While At Least One Nuclear Unit Is In Service (MWh): Utility shall report this amount for each unit in the appropriate column, and the total in the column called "Station Total." The utility is to report consumption of electricity by the nuclear portion of the station during days in which at least one of the station's nuclear units was on-line and producing electricity. A utility unable to meter an individual unit shall report the estimated unit use, and shall explain in item 2.7 how the unit data were estimated. **Note that:**

A. During days in which nuclear station use exceeds nuclear station generation, the utility shall treat all resulting negative values as zero for fee calculation purposes.

B. A utility that has multiple nuclear units at one station

- when at least 1 nuclear unit is operating and when generation from that unit exceeds the nuclear station's use, the utility may assume that the operating unit is supplying electricity for nuclear station use whether or not the electricity has been metered separately or the units terminate to a common electrical busbar, and
- shall report under item 2.5 any electricity use by the nuclear portion of the station during the days in which all nuclear units at the station were out of service simultaneously.

C. A utility that has a metered transmission line connecting an off station nuclear reactor with another nuclear station may treat the off station plant as part of this station for fee calculation purposes if it is not double counted.

D. Utility may deduct small quantities of unmetered non nuclear electricity generation included in "Gross Electricity Generated," provided that it is identified and explained in item 2.7.

E. A utility may deduct nuclear electricity generation which is not sold and does not pass the busbar, provided they identify and explain the deduction in item 2.7 and that the deduction is not double counted.

2.5 Nuclear Station Use While All Nuclear Units Are Out Of Service (MWh): Utility shall report this amount for each unit in the appropriate column, and the total in the "Station Total" column. In this row, the utility shall report the consumption of electricity by the nuclear portion of the station during days in which total nuclear unit use exceeds nuclear generation (e.g., a day in which all nuclear units at the station were out of service at once). Note that a utility unable to meter individual unit use will report estimated unit use, and shall explain in item 2.7 how the unit data were estimated.

2.6 Net Electricity Generated (MWh): The utility shall report this amount for each unit in the appropriate column, and the total in the "Station Total" column. This amount is the result of subtracting items 2.4 from items 2.3.

2.7 Footnote (If any): Utilities that are unable to meter individual unit use shall explain here how the unit data were estimated.

Section 3. Total Energy Adjustment Factor Calculation: The reporting utility shall obtain necessary data from all owners to calculate the Total Energy Adjustment Factor and maintain consistent, accurate, and complete records to support these submissions. The values provided in this section must be accurate to 4 significant digits. If there are more than 12 owners, use a continuation sheet. For a nuclear station with more than one reactor and different ownerships for each reactor, a separate Annex A will be required for each reactor.

3.1 Weighted Energy Adjustment Factor Calculation:

Name of Nuclear Station Owner(s): provide the name(s) in items 1. thru 12. of 3.1. If more than 12 names, use a continuation sheet.

Adjustment for Sales to ultimate Consumer (ASC): is the product of Fraction of Sales to ultimate Consumer (FSC) and the Sales to ultimate Consumer Adjustment Factor(SCAF).

Fraction of Sales to ultimate Consumer (FSC): is determined by dividing the owner's previous year's annual sales to the ultimate consumer by the sum of the owner's previous year's annual sales to the ultimate consumer plus the owner's previous year's annual sales for resale. These figures can be found on the Energy Information Administration (EIA) Form EIA-861 or the Federal Energy Regulatory Commission (FERC) Form No. 1.

Sales to ultimate Consumer Adjustment Factor (SCAF): is equal to one minus the quotient of all electricity lost or otherwise not sold for each owner, divided by the total electricity available for disposition to ultimate consumers. The total electricity available is the reporting year total of all of an owner's electricity supply which is available for disposition, expressed in kilowatt hours. Electricity lost or otherwise not sold includes (a) energy furnished without charge, (b) energy used by the company, (c) transmission losses, (d) distribution losses, (e) other unaccounted losses as reported on the Form EIA-861 or the FERC Form No. 1.

Adjustment for Sales for Resale (ASR): **Is the product of Fraction of Sales for Resale (FSR) and National average Adjustment Factor (NAF).**

Fraction of Sales for Resale (FSR): is determined by dividing the owner's previous year's annual sales for resale by the sum of the owner's previous year's annual sales to the ultimate consumer plus the owner's previous year's annual sales for resale. These figures can be found on the Form EIA-861 or the FERC Form No. 1.

National average Adjustment Factor (NAF): is the quotient of the national total of electricity sold divided by the national total of electricity available for disposition.

Owner's Energy Adjustment Factor (OEAF): is the Owner's fraction of metered electricity.

Weighted Energy Adjustment Factor (WEAF): is the product of an Owner's Energy Adjustment Factor (OEAF) times the Owner's Share (OS).

3.2 Total Energy Adjustment Factor (TEAF): is the sum of individual owner's Weighted Energy Adjustment Factors (WEAF).

Section 4. Fee Calculation for Electricity Generated and Sold:

4.1 Total Energy Adjustment Factor. Enter the value from item 3.2 as appropriate.

4.2 Electricity Generated and Sold. Multiply the values in item 4.1 by the "Unit" values in item 2.6. Sum these values and enter in "Station Total."

4.3 Current Fee Due (Dollars): Multiply the values in item 4.2 by one (1) dollar/megawatt hour (or 1.0 mill/kWh), which is the current fee. Add this station fee to the current fee due for all other reactors operated by the Purchaser, and then enter the sum on line 3.4 of the Appendix G, Remittance Advice.

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Part III

Department of Health and Human Services

Health Care Financing Administration

Medicare: Update of Ambulatory Surgical Center Payment Rates; Additions and Deletions; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD-710-NC]

RIN 0938-AE95

Medicare Program; Update of Ambulatory Surgical Center Payment Rates and Additions to and Deletions from the Current List of Covered Surgical Procedures

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice implements section 1833(i)(2)(A) of the Social Security Act, which requires that the payment rates for ambulatory surgical center (ASC) services be reviewed and updated annually, and responds to the public comment we received concerning the ambulatory surgical center payment rate update notice with comment period published on July 5, 1990 (55 FR 27690). It also implements section 1833(i)(1) of the Social Security Act, which requires, in part, that the list of covered ambulatory surgical center procedures be reviewed and updated at least every 2 years. This notice announces additions to and deletions from the list of surgical procedures for which facility services are covered when the procedures are performed in an ASC. This notice also announces the assignment of payment groups for each procedure and responds to public comments received in response to the notice proposing additions to and deletions from the list of covered surgical procedures that was published on December 7, 1990 (55 FR 50590).

DATES: *Effective Dates:* The payment rates contained in this notice are effective for services furnished on or after December 31, 1991. For ASC procedures that are being removed from the current list, the effective date is March 31, 1992. The effective date for procedures that are being added to the list is January 30, 1992.

Comment Date: Written comments on the payment rate update and on the twelve deletions from the list of covered ASC procedure found in this document at section V will be considered if we receive them at the appropriate address, as provided below, by 5 p.m. on March 2, 1992.

ADDRESSES:

Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-710-NC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses: Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201.

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept audio, visual, or facsimile (FAX) copies of comments.

In commenting, please refer to file code BPD-710-NC. Comments will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

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FOR FURTHER INFORMATION CONTACT:

Joan H. Sanow—Payment issues, (301) 966-5723

Robert Cereghino—ASC procedures: additions to and deletions from surgical procedures, (301) 966-4645

SUPPLEMENTARY INFORMATION:

I. Background

A. Update of Payment Rates

Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) provides that benefits under the Medicare Supplementary Medical Insurance program (Part B) include services furnished in connection with those surgical procedures that, under section 1833(i)(1)(A) of the Act, are specified by the Secretary and are performed on an inpatient basis in a hospital but which also can be performed safely on an ambulatory basis in an ambulatory surgical center (ASC) or in a hospital outpatient department. To participate in the Medicare program as an ASC, a facility must meet the standards specified under section 1832(a)(2)(F)(i) of the Act and 42 CFR 416.25.

Generally, there are two elements in the total charge for a surgical procedure—a charge for the physician's professional services for performing the procedure and a charge for the facility's services (for example, use of an operating room). Section 1833(i)(2)(A) of the Act authorizes the Secretary to pay ASCs a prospectively determined rate for facility services associated with covered surgical procedures. ASC facility services are subject to the usual Medicare Part B deductible and coinsurance requirements. Therefore, participating ASCs are paid 80 percent of the prospectively determined rate. This rate is intended to represent the Secretary's estimate of a fair payment that takes into account the cost incurred by ASCs generally in providing the services which are furnished in connection with performing the procedure. Currently, this rate is a standard overhead amount that does not include physician fees and other medical items and services (for example, durable medical equipment) for which separate payment may be authorized under other provisions of the Medicare program.

The ASC facility payment for all procedures in each group is established at a single rate adjusted for geographic variation. The rate is a standard overhead amount that covers the cost of services such as nursing, supplies, equipment, and use of the facility.

Under section 1833(i)(3)(A) of the Act, the aggregate payment to hospital outpatient departments for covered ASC procedures is equal to the lesser of the following two amounts:

- The amount paid for the same services that would be paid to the hospital under section 1833(a)(2)(B) of the Act (that is, the lower of the hospital's reasonable costs or customary charges); or
- The amount determined under section 1833(i)(3)B)(i) of the Act based on a blend of the lower of the hospital's reasonable costs or customary charges and the amount that would be paid to a freestanding ASC in the same area for the same procedure.

Under section 1833(i)(3)(B)(i) of the Act, the blend amount for a cost reporting period is the sum of the cost proportion and the ASC proportion.

Under section 1833(i)(3)(B)(ii) of the Act, the cost proportion and the ASC proportion are determined as follows:

- For cost reporting periods beginning on or after October 1, 1987 and before October 1, 1988, the cost proportion is 75 percent and the ASC proportion is 25 percent.
- For cost reporting periods beginning on or after October 1, 1988 and on or before December 31, 1990, the cost proportion is 50 percent and the ASC proportion is 50 percent.
- For cost reporting periods beginning on or after January 1, 1991, the cost proportion is 42 percent and the ASC proportion is 58 percent.

The Report of the Conference Committee accompanying section 934 of the Omnibus Budget Reconciliation Act of 1980 (Pub. L. 96-499), enacted on December 5, 1980, (the legislation that added the ASC benefit to the Medicare program) states, "This overhead factor is expected to be calculated on a prospective basis * * * utilizing sample survey and similar techniques to develop reasonable estimated overhead allowances for each of the listed procedures * * *" (See H.R. Rep. No. 1479, 96th Cong., 2nd Sess. 134 (1980).) Section 416.140 of the regulations provides that a survey of ASCs participating in the program will be conducted periodically to collect data for analysis or re-evaluation of the payment rates. Such a survey will be conducted no more often than annually. In addition, section 1833(i)(2)(A)(ii) of the Act requires that the ASC facility payment rate result in substantially lower Medicare expenditure than would have been paid if the same procedure was performed on an inpatient basis in a hospital.

Section 9343(b)(1) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) revised section 1833(i)(2) of the Act to require annual rather than periodic updating of ASC rates.

The first ASC survey was conducted between May and August of 1986. The "Ambulatory Surgical Center Payment Rate Survey" (Form HCFA-452) was mailed to nearly 500 Medicare participating ASCs. We randomly selected ninety-seven of these facilities for audit. The ASC rate methodology implemented March 12, 1990 was based on the cost, charge, and utilization data collected by the survey.

A new ASC survey is being prepared to gather more current cost data. The survey form is being revised to enhance and refine the quality of the data received from ASCs. We anticipate distributing the revised survey to ASCs in 1992. Data obtained from the new survey will allow for changes in both ASC rates and the rate-setting methodology. These changes and rate-setting methodology will be announced through notice and comment procedures in the **Federal Register**.

On February 8, 1990, we published a final notice in the **Federal Register** (55 FR 4526) that set forth a revised methodology for determining the payment rates for ASC services furnished to beneficiaries under Part B of Medicare. The provisions of the final notice—

- Refined the methodology used to determine the payment rates;
- Based the payment rates on the most recent survey data collected from participating ASCs;
- Computed the payments using the HCFA hospital wage index;
- Incorporated a $200 payment for IOLs inserted during or subsequent to cataract surgery into the facility rate as required by section 4063(b) of Public Law 100-203;
- Established the payment policy for surgical procedures that are terminated due to medical complications; and
- Established eight payment groups. (Group 6 and 8 contain only procedures related to the insertion of IOLs.)

The new ASC payment rate methodology and IOL allowance were effective March 12, 1990. However, the rates were not implemented, but were superseded by rates contained in a separate notice with comment period that was also published in the **Federal Register** on February 8, 1990 (55 FR 4577). The provisions of that notice increased the ASC facility services payment rates for the eight groups by the estimated annual rate of increase (4.88 percent) in the consumer price index for urban consumers (CPU-U) for calendar year 1989. The IOL allowance remained $200.

A notice with comment period published in the **Federal Register** on July 5, 1990 (55 FR 27690) updated ASC facility rates for services furnished beginning July 1, 1990 by the estimated annual rate of change in the CPI-U for calendar year 1990. ASC payment group rates were increased by 4.21 percent. The IOL allowance remained at $200.

Section 4151(c)(3) of Public Law 101-508 froze the amount of payment for an IOL furnished by an ASC for insertion during or subsequent to cataract surgery at $200 through December 31, 1992.

B. Covered Procedures

Section 934 of Public Law 96-499 amended sections 1832(a)(2) and 1833 of the Act to authorize Medicare Part B coverage for facility services furnished in connection with certain surgical procedures performed in an ambulatory surgical center (ASC).

With respect to the surgical procedures covered under this provision, section 1833(i)(1) of the Act requires the Secretary to specify, in consultation with appropriate medical organizations, surgical procedures that, although appropriately performed in an inpatient hospital setting, can also be performed safely on an ambulatory basis. The report accompanying the legislation (Report of the Committee on the Budget, House of Representatives, that accompanied H.R. 7765, H.R. Rep. No. 1167, 96th Cong., 2nd Sess. 390 (1980)) explained that Congress intended that procedures currently performed on an ambulatory basis, especially in physicians' offices, which do not generally require the more elaborate facilities of an ASC, should not be included on the list of covered procedures.

In line with this Congressional intent, our current regulations (42 CFR 416.65(a)) specify the following four requirements regarding the range of covered services:

1. Procedures on the list are to be those commonly performed on an inpatient basis but which also may be safely performed in an ASC.
2. The list excludes procedures that are commonly performed, or may be safely performed, in physicians' offices.
3. Procedures are limited to those requiring a dedicated operating room and generally do not require an overnight stay.
4. The list does not contain procedures excluded from Medicare coverage.

We recognize that for individuals with certain medical conditions, a procedure on the list may nevertheless be safely performed only on an inpatient basis. The choice of operating site remains a matter for the professional judgment of the patient's physician.

Section 9343 of Public Law 99-509 requires that the ASC list of procedures be reviewed and updated by April 21, 1987 and not less often than every 2 years thereafter. Accordingly, we published the latest updates to the list of covered ASC procedures in the **Federal Register** on April 21, 1987 (52 FR 13176) and on June 1, 1989 (54 FR 23540). These updates supplement the original list of covered ASC procedures published on August 5, 1982 (47 FR 34099).

On December 7, 1990, we published a notice (55 FR 50590) proposing additions to and deletions from the current list of covered surgical procedures for ASCs. This final notice results from our consideration of the public comments received in response to the proposed

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notice, consideration of the Part B Medicare Annual Data (BMAD) files, and correspondence from the medical community and other members of the public over the past few years. In the December 7, 1990 proposed notice, we published payment group rates established in the July 5, 1990 notice alongside the proposed procedures. We established these rates by using already existing procedure payment rates in the same coding and medical category.

II. Discussion of Comments

A. Payment Update

In response to the July 5, 1990 ASC payment rate update notice with comment period, we received one timely response from a hospital administrator who raised two issues. These issues and our responses to them follow:

Comment: HCFA has not stated that it will annually review and update the IOL allowance based on the market price similar to the current review process for the ASC group payment rates. Review of the payment allowance for IOLs should be part of the annual overall rate review process.

Response: Section 4151(c)(3) of Public Law 101–508, mandates that the amount of payment for an IOL inserted in an ASC during or subsequent to cataract surgery remain at $200 effective November 5, 1990, through December 31, 1992. Notwithstanding this freeze in the allowance for IOLs, we are continuing to collect data about IOL costs as a part of our ongoing, overall rate review process.

Comment: The current blend of ASC and hospital costs dilutes the impact of changes in wage index adjustments on payments to hospital outpatient departments. If the blended rate were phased out and replaced exclusively with the published ASC rate, changes in the wage index and groupings would have a noticeable impact on payment as compared to the costs of those services to an individual hospital.

Response: The method for determining payments for ASC covered procedures performed in hospitals on an outpatient basis is provided by law and, thus, we do not have the option of changing it.

B. Covered Procedures

We solicited comments on the December 7, 1990 proposed additions to and deletions from the ASC list. We requested specific comments on the appropriateness of our proposed payment group assignment for lithotripsy together with detailed information on facility charges and associated lithotripsy service costs in an ASC. We also proposed to coordinate ASC procedure list updates with payment rate updates and to make both ASC updates concurrent with the annual update of the inpatient hospital prospective payment system wage index. We requested that commenters refer to all surgical procedures by procedure codes as provided in the CPT.

We received 330 pieces of correspondence timely, 177 of which only addressed the lithotripsy payment provision. One hundred forty-nine comments were from urologists who perform lithotripsy services, 19 from lithotripsy centers, and nine from suppliers of mobile lithotripsy. The other 153 comments were submitted by 47 ASCs, 32 hospitals, 19 professional or medical societies, 6 medical centers, 4 suppliers, 3 law firms, 13 ophthalmologists, 2 plastic surgeons, 1 ultrasound radiologist and 26 other physicians, including hand surgeons, otolaryngologists, cardiovascular surgeons, gastroenterologists, and general practitioners. A summary of these comments and our responses follow:

1. Criteria for Determining Procedures to be Added to or Deleted from the ASC List

Comment: Thirty commenters asserted that the formula used in screening procedures for inclusion on the list is outdated. Under the formula, a procedure that is virtually always performed in a hospital outpatient department will not qualify because it is not performed on an inpatient basis at least 20 percent of the time. Yet, such a procedure is probably ideal for performance in an ASC.

Response: Given the progression in movement away from hospitalization over the past 10 years, there are some procedures virtually always performed in an outpatient setting that do not meet our 20 percent inpatient criteria. Some of these procedures may be suited for ASC coverage. In the interest of expediting the publication of this notice, which is adding a large number of procedures for ASC coverage, we are taking this suggestion under advisement for future study. In the meantime, based on the advice of our medical staff, we have extended coverage to a few procedures that do not meet the general criteria. We developed criteria consistent with Congressional intent and with the requirement in the regulations excluding procedures that are commonly performed in physicians' offices or are not commonly performed on an inpatient basis. We acknowledge that the threshold levels are, to some extent, judgmental and could be replaced with higher or lower levels.

Comment: In the December 7, 1990 proposed notice (at 55 FR 50591) HCFA stated that its medical consultants may make exceptions and override the general threshold criteria when they believe an exception to be clinically appropriate. One commenter suggested that Medicare contractors should also be allowed to override the threshold criteria.

Response: The provision for overriding the threshold criteria by our medical consultants was developed for acceptance or rejection of a procedure for the ASC list. This provision has been primarily used in those instances in which our database shows low frequency, and thus the data are susceptible to a disproportionate impact by reporting errors. The provision was not developed for use by Medicare contractors in special or unusual circumstances. The intent of the list is that it be national in scope with the approved surgical procedures being based on their generally accepted appropriateness and safety in the ASC. If Medicare contractors were permitted to make subjective decisions, there would be different ASC coverage policies throughout the country.

Procedures are covered in an ASC when they meet the statutory provisions and are generally considered safe and effective in that setting; that is, they meet the conditions for covered surgical procedures in an ASC set forth at § 416.65(a). For the most part, we look to generally accepted medical practice as evidenced by the BMAD files on site of service.

Comment: One commenter questioned why a list is required, and another commenter said all hospital outpatient procedures should be on Medicare's ASC list.

Response: The use of a list of procedures covered in an ASC is not discretionary. Section 1833(i)(1) of the Act specifically requires the Secretary, after consultation with appropriate medical organizations, to develop a list of surgical procedures that can be performed appropriately and safely on an ambulatory basis instead of in a hospital on an inpatient basis. This legal requirement for a list does not exist for hospital outpatient departments, which were already in existence at the time the Medicare program began. In contrast to the ASC, a hospital outpatient department has the safety feature of proximity to inpatient services should unforeseen complications develop in surgery. Outpatient departments also perform numerous medical procedures not available in the ASC. Finally, procedures must be determined covered

in order to be assigned to an ASC payment group.

2. Proposed Additions

a. *Additions based on data.* We listed in the addendum of the December 7, 1990 (55 FR 50595) proposed notice approximately 900 new procedures, which were the result of our review of the BMAD files, suggestions from our medical staff, and suggestions from the general public. The following proposed procedures received negative comment.

Comment: Nine urologists, one professional society, and one supplier opposed our proposal to add penile prosthesis surgery to the ASC list, that is, CPT codes 54400, 54401, 54402, 54405, 54407, and 54409. The commenters noted that these procedures should not be covered in an ASC because: (1) The necessary stabilization for elderly patients may be medically difficult; (2) The length of the surgical procedure often exceeds the 90 minutes specified for maximum length of ASC procedures; (3) The patient's frequent need for irrigation and drainage and the possibility of urinary retention prolongs recovery over the 4 hours anticipated; and (4) Patients frequently require continued administration of intravenous antibiotics to diminish the risk of infection.

Response: A further review of recent billing data shows inpatient percentages ranging from 74 percent to 83 percent for penile prosthesis procedures. Based upon information obtained from surgeons, penile prosthesis surgery recovery time is 24 to 72 hours. We have therefore concluded that at this time penile prostheses implantations are not suitable in the ASC setting.

Comment: Some physicians opposed performance of the following procedures on an outpatient basis for safety reasons. The procedures are grouped by body system, appropriate terminology, and the CPT code. (All of the procedures are on the proposed list unless otherwise noted).

- *Integumentary System*

One comment each: Treatment for burns 16030 and 16035.

Three comments: Chest wall tumor excision 19260.

- T3Musculoskeletal System

One comment each: Neck incision 21501 (on current list); neck tumor resection 21557; rib fracture treatment 21800; vertebral fracture treatment 22325, 22326, and 22327; arm muscle transfer 23397; scapulopexy 23400; sternoclavicular dislocation treatment 23530 and 23532; acromioclavicular dislocation treatment 23550 and 23552; scapular fracture treatment 23585; humeral fracture treatment 23615; shoulder arthrodesis 23800 and 23802; shoulder disarticulation 23921; upper arm/elbow tumor resection 24077; humerus tumor resection 24150 and 24151; head/neck tumor resection 24152 and 24153; elbow arthroplasty 24360, 24361, and 24363; humeral shaft, multiple osteotomies 24410; humerus repair 24430 and 24435; elbow fracture treatment 24587 and 24588; elbow joint arthrodesis 24800 and 24802; pelvis/hip tumor resection 27049; ligamentous reconstruction 27427, 27428, and 27429; knee arthroplasty 27440, 27441, 27442, and 27443; thigh amputation 27594; ankle fracture treatment 27814, 27822, and 27823.

Two comments: Rib fracture treatment 21810.

- *Cardiovascular System*

One comment: Intra-arterial infusion pump insertion 36260.

- *Digestive System*

One comment each: Parotid tumor excision 42410 (on current list), 42420, and 42425; anal abscess excisions 46050.

Two comments: Parotid tumor excision 42426.

- *Endocrine System*

One comment: Thyroid lobectomy 60220 (on current list).

- *Eye and Ocular Adnexa*

One comment each: Vitreous 67031 and 67040; retinal detachment 67115 and 67121; prophylaxis 67141; and orbit exploration, excision 67420, 67430, 67440, and 67450.

Two comments: Vitrectomy 67036.

Three comments: Retinal detachment repair 67112.

- *Urinary System*

One comment: The American Urological Association was opposed to extending ASC coverage to the following procedures noting that surgical and recovery time usually exceeded that specified for ASC coverage: perirenal abscess 50020 (on current list); renal biopsy 50200 and 50205; ureterotomy 50600 and 50605 (both on current list); ureterocutaneous fistula closure 50920; delegation of ureter 50940; cystotomy 51020, 51030, 51040, and 51045; cystolithotomy 51050; transvesical ureterolithotomy 51060; cystotomy with stone basket extraction 51065; perivesical abscess drainage 51080; urachal cyst excision 51500; cystotomy 51520, 51525, 51530, and 51535; cystostomy closure 51880, vesicouterine fistula closure 51920; cystourethroscopy 52310 (on current list), 52325, 52334, 52336, 52337, 52338, and 52340 (on the current list); transurethral resection 52500, and 52640 (both on current list); urethrectomy 53210 and 53215; bulbourethral gland excision 53250 and 53260; perineal prosthesis removal 53442; and penile urethrorrhaphy 53505. The American Urological Association also noted concerns with the following procedures in the male genital system: penis incision 54105; penis biopsy 54100:, penile plaque excision 54111 and 54112; penis plastic operation 54300 and 54360; priapism surgery 54420, 54430, and 54435; penis plastic operation for injury 54440; testis biopsy 54500; underscended testis exploration 54550 and 54560; testis torsion reduction 54600; contralateral testis fixation 54620; orchiopexy 54640 and 54645; vesiculectomy 55600; prostatotomy 55725; prostatolithotomy 55740; and prostate exposure for radioactive substance insertion 55860.

Response: Based on the commenters' suggestions and our further review of the latest billing data, our medical staff found that some of the cited procedures are usually provided in an inpatient setting. Therefore, from the body systems codes mentioned above, we are not adding the following codes: Ureterotomy 50600 and 50605; ureter suture 50920 and 50940; bladder incision 51040, 51050, 51060, 51065, and 51080; bladder excision 51520, 51525, 51530, and 51535; penis incision 54015; penis excision 54111 and 54112; penile prosthesis implants 54400, 54401, 54402, 54405, 54407, and 54430; testis excision 54560; testis repair 54645; prostate incision 55725 and 55740; and prostate excision 55860. Of the other codes from the urological system and the other 6 body systems mentioned above, our medical staff can find no data supportive of the commenters' allegations that these procedures should not be performed on an outpatient basis due to safety reasons. On the contrary, our data indicates these other procedures are now being performed a high percentage of the time on an outpatient basis.

We recognize that for individuals with certain medical conditions, a procedure on the list may nonetheless be safely performed only on an inpatient basis. The choice of operating site remains a matter for the professional judgment of the patient's physician.

Comment: The American College of Surgeons opposed extending coverage in the ASC setting to the following procedures, which are usually performed as inpatient hospital services: excision of chest wall tumor including ribs 19260; neck tumor resection 21557;

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treatment of rib fracture, closed or open requiring external fixation 21810; thigh amputation 27594; insertion of intra-arterial infusion pump 36260; and parotid tumor excision 42426.

Response: Based on the comments by the American College of Surgeons and our further review of the latest billing data, our medical staff found that several of the above procedures are usually provided in an inpatient setting. Therefore, we are deleting from our proposed list the following codes: neck tumor resection 21557, thigh amputation 27594, insertion of intra-arterial infusion pump 36260, and parotid tumor excision 42426.

b. *Additions not on the basis of data alone.* In the December 7, 1990 proposed notice, we stated our intention to reinstate four of the 29 skin lesion removal codes deleted from the ASC list by the June 1, 1989 notice.

Comment: Eight commenters favored the reinstatement of the nine skin lesion excisions deleted from the ASC list by the June 1, 1989 notice. Four commenters wanted the restoration of all 29 deleted skin lesion excision codes; two commenters suggested 3.0 cm lesion excisions be restored; and two commenters wanted all malignant and benign scalp and neck lesion excisions and up to 4 cm facial benign lesions restored to the current list. The commenters stated that these procedures should be covered when their necessity is substantiated with documentation.

Response: As we proposed in the December 7, 1990 notice, we are reinstating coverage for the four 3.1 to 4.0 cm skin lesion removal codes because upon further investigation our medical advisors have determined that they are not routinely removed in physician offices. Because smaller size lesions are routinely removed in physician offices, we have determined they should continue to be excluded from the list of covered ASC procedures.

Comment: One commenter suggested that there should be a provision for payment of noncovered procedures under the following circumstances: (1) When noncovered procedures are performed in conjunction with covered procedures; and (2) When multiple non-reimbursable procedures are performed.

Response: When performed with a covered procedure, a noncovered procedure would still not meet our criteria. Payment for noncovered procedures would defeat the purpose of our list to cover only procedures that meet our criteria.

We do not believe the simultaneous performance of a procedure with other procedures should change the coverage decision on that procedure. A situation in which multiple surgery warrants performance in a facility-equipped setting does not alter the failure of an individual procedure to meet the coverage criteria. Medicare coverage of procedures in an ASC does not preclude the physician from determining the most appropriate setting for an individual patient. When medical necessity indicates the need for a level of care higher than the physician's office setting, Medicare provides coverage of the procedure in a hospital outpatient department.

Comment: One commenter stated that we should develop a technique to allow the occasional transfer of a procedure from the inpatient to the ASC setting if the procedure can be safely performed in an ASC for a particular patient.

Response: Under section 1833(i)(A) of the Act, the Secretary, in consultation with appropriate medical organizations, must specify surgical procedures appropriately performed on an inpatient basis in a hospital but which also can be performed safely in an ASC. In implementing this statutory requirement, we have promulgated regulations at 42 CFR 416.65(b) outlining the conditions that a procedure must meet in order to be covered by Medicare. These regulations specify that the surgical procedures must meet specific standards such as not exceeding 90 minutes operating time or 4 hours recovery time. Obviously, surgical times and recovery times will vary with individual patients. Thus, while a procedure may on occasion meet the conditions for an individual patient, we must look to general or average surgical and recovery times in setting forth our covered procedures list. For these reasons, we cannot develop a technique for the occasional transfer of a procedure from the inpatient setting to the ASC as requested by the commenter. We note that outpatient surgery for beneficiaries such as those mentioned by the commenter may still be covered in hospital outpatient departments.

c. Additional suggestions for coverage—*Comment:* Commenters suggested that the following additional integumentary system procedure codes be added to the ASC list:

One comment each: Skin incision 10121; skin excisions 11200 and 11201; intralesional injections 11900; tattooing including micropigmentation 11920 and 11921.

Two comments each: Superficial wound repair 12013; lesion destruction 17106, 17107, and 17108; and reduction mammaplasty 19318.

Three comments each: Skin incisions 10060, 10061, 10080, and 10121; debridement 11040 and 11041; skin biopsy 11100 and 11101; benign lesion excision 11400 and 11420; wound repair 12001, 12002, and 12011; abdominoplasty 15831; benign lesion destruction 17101, 17102, 17104, 17105, 17110, 17200, and 17201.

Four comments each: Cyst incision 10081; benign lesion excision 11401, 11402, and 11440; lesion destruction 17001, 17002, and 17010.

Five comments each: Benign lesion excision 11421 and 11422; superficial wound repair 12004, 12014, and 12015; lesion destruction17000 and 17100.

Six comments each: Benign lesion excision 11423, 11441, and 11442; malignant lesion excision 11600 and 11601.

Seven comments each: Malignant lesion excision 11602, 11603, 11620, 11621, 11622, and 11623.

Eight comments each: Malignant lesion excision 11640, 11641, 11642 and 11643.

Response: Concerning integumentary system procedures, only abdominoplasty, code 15831, and reduction mammaplasty, code 19318, meet our threshold criteria. However, our medical staff advises that abdominoplasty is almost always for cosmetic purposes and, as such, is excluded from Medicare coverage. Reduction mammaplasty, code 19318, will be added to the list to be covered when medical necessity is documented.

Comment: Commenters suggested that the following musculoskeletal system codes be added to the ASC list:

One comment each: Arthrocentesis, major joint 20610; elbow arthroplasty 24362; foot excision 28108; arthroscopy 29804 and 29909 (for temporomandibular joint arthroscopy).

Three comments: Injection, tendon sheath 20550.

Response: Concerning musculoskeletal system procedures, only code 29909, temporomandibular joint arthroscopy, meets the ASC coverage criteria but it is a miscellaneous unspecified procedure code. As a rule, we do not include unspecified procedure codes on the ASC list because these codes generally are not clinically consistent. The unspecified codes often include a myriad of procedures rather than a single procedure.

Comment: Commenters recommended that the following respiratory system procedure codes be added to the list of covered ASC procedures:

One comment: Laryngoscopy 31575.

Three comments: Nasal endoscopy 31250.

Response: Neither code meets our criteria.

Comment: A commenter recommended that arteriovenous fistula revision 36832 be added to the covered cardiovascular system codes.

Response: Code 36832, arteriovenous fistula revision, meets our criteria and will be added to the list.

Comment: Commenters recommended that the following digestive system codes be added to the ASC list:

One comment each: Mouth biopsy 41108; gingivectomy 41820; alveoplasty 41874.

Two comments each: Gastrostomy tube change 43760; sigmoidoscopy 45330; hemorrhoid destruction 46934.

Response: Code 43760, change of gastrostomy tube, meets our criteria and will be added to the list.

Comment: Five commenters proposed the addition of code 49310, laparoscopic cholecystectomy, by the development of a mechanism for obtaining prior approval to perform a procedure not on the ASC list.

Response: Our medical staff advises that laparoscopic cholecystectomy usually requires at least one overnight stay and thus is not appropriate to the ASC setting at this time.

Comment: Concerning male genital system codes, four commenters suggested that balloon dilatation of the prostate for benign prostatic hyperplasia be covered under a durable medical equipment/prosthetic device code.

Response: There is no specific code in the 1991 CPT for this surgical approach. If a unique CPT code is published, the procedure can be reconsidered.

Comment: Concerning the female genital system commenters recommended addition of the following codes:

One comment each: Bartholin's gland abscess 56420; cervix cauterization 57511.

Response: Neither code meets our criteria.

Comment: Concerning nervous system codes, commenters recommended addition of the following codes:

One comment each: Somatic nerves injections 64400, 64402, 64405, 64412, 64418, 64425, 64435, 64440, 64441, 64445, and 64450; sympathetic nerve injection 64505; other procedure 64999.

Response: None of the above codes meets our criteria.

Comment: Concerning eye and ocular adnexa codes, commenters suggested addition of the following codes:

One comment each: Corneal lesion destruction 65450; corneal wedge resection 65775; aqueous shunts 66180 and 66185; corneal chalazion 67800, 67801, and 67805; eyelid excisions 67840 and 67850; and conjunctiva lesion excision 68110.

Two comments each: Radial keratotomy 65771 (for noncosmetic); corneal relaxing incision 65772; ciliary body destruction 66702; lens material removal 66852; intravitreal injection 67028; retinal detachment repair 67110; strabismus surgery 67334, 67335, 67340, 67343, and 67345; and tarsorrhaphy 67875.

Three comments each: Secondary membranous cataract excision 66820; Tenon's capsule injection 67515; eyelid wound suture 67930; subconjunctival injection 68200; lacrimal passage foreign body removal 68530.

Four comments each: Iris lesion destruction 66770; retinal lesion destruction 67210; trichiasis correction 67825; conjunctival lesion 68115; lacrimal gland excision 68400; closure of lacrimal puncture 68760.

Five comments: Lacrimal sac incision 68420.

Seven comments: Photocoagulation, retinal detachment prophylaxis 67145.

Eight comments: Retinopathy photocoagulation 67228.

Nine comments: Laser trabeculoplasty 65855.

Ten comments: Iridotomy photocoagulation 66761.

Response: None of the above codes meets our criteria. However, our medical staff has decided that lens material removal 66852 should be added for clinical consistency (that is, the previous and subsequent code numbers are on the list).

Comment: Concerning auditory system codes, one commenter suggested the addition of cochleostomy for the insertion of a cochlear implant. Another commenter suggested the addition of tympanotomy 69433. Three commenters recommended the addition of myringotomy 69420.

Response: The code 69930, cochlear device, implantation, has been proposed and accepted for the final list of additions. This procedure code includes the cochleostomy necessary for insertion of the device. Neither tympanotomy 69433 nor myringotomy 69420 meet our criteria.

Comment: Concerning nonsurgical codes, three commenters proposed that radioactive seed implantation for prostatic cancer be covered under some durable medical equipment/prosthetic device code.

Response: One of the criteria for inclusion on the ASC list is that the procedure be considered surgical. Radioactive seed implantation is radiation therapy and not surgery. Therefore, we are not extending coverage to the ASC setting.

Comment: The following codes not in the CPT surgical section were suggested for addition:

One comment each: Epidural drug daily management 01996; intravenous drug injection 90784; nasopharyngoscopy 92511; implantable pump maintenance 96530.

Two comments each: Other biofeedback training 90915; esophageal motility study 91010, 91011, and 91012; esophagitis acid tests 91030, 91032, and 91033; anorectal manometry 91122.

Three comments: Cardioversion 92960.

Four comments each: Ophthalmological examinations under anesthesia 92018 and 92019.

Response: Because only CPT surgical codes are listed on Medicare's list of covered procedures in an ASC, none of these codes can be added.

Comment: One commenter specifically suggested the following codes/procedures with language modifiers: skin incisions 10080, 10100, 10120, 10140, 10160, and 11041; and superficial wound repairs 12001 through 12021.

Response: We do not understand to what "language modifiers" the commenter might be referring. We do occasionally use code modifiers in the billing process, but we have an agreement with the American Medical Association to use the CPT without applying any language modifications to the existing CPT procedure descriptions.

Comment: Twelve commenters requested that the proposed 107 codes listed as not accepted in the December 7, 1990 notice be either added to the list or covered under certain circumstances. They also suggested that other physician's office procedures, under certain medical circumstances and with prior carrier or PRO approval, be covered in an ASC.

Response: We have previously reviewed these 107 procedures and under our criteria have determined that the majority (skin lesions) are performed in physician offices over 50 percent of the time and therefore do not meet our threshold criteria. Twenty-two of the procedures are not surgical in nature according to their section placement in the CPT. Congressional intent in establishing ASCs was to provide surgical care on an outpatient basis when inpatient care was unnecessary, not to move physician's office procedures to a more costly setting. Should any of these procedures warrant the hospital inpatient or outpatient setting based on the patient's medical needs, the physician should perform the surgery in these settings.

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3. Proposed Retentions

We did not receive any comments to this specific provision in the proposed notice.

4. Proposed Deletions

We proposed to delete the following seven procedures from the ASC list because our data indicate that they are performed 50 percent or more of the time in physicians' offices:

CPT code	Description
41826	Excision of lesion or tumor, dentoalveolar.
42665	Ligation salivary duct, intraoral.
54205	Injection procedure for Peyronie disease with surgical exposure of plaque.
54230	Injection procedure for corpora cavernosography.
57450	Culdoscopy, diagnostic.
64408	Injection, anesthetic agent; vagus nerve.
69105	Biopsy external auditory canal.

In addition, we proposed to delete hysterosalpingography; complete procedure, code 74741, because it is a radiological procedure. We also proposed to delete the following three codes because they are performed only in conjunction with radiological procedures:

CPT code	Description
27095	Injection procedure for hip arthrography; with anesthesia.
31708	Instillation of contrast material for laryngography or bronchography, without catheterization.
50394	Injection procedure for pyelography.

Comment: Two commenters were opposed to our proposed deletion of dentoalveolar excision of lesion, code 41826, and ligation of salivary duct, code 42665. They believe these two procedures should continue to be performed in an ASC in cases where a patient is "medically compromised."

Response: Our medical staff advises that excision of lesion, dentoalveolar, code 41826, is performed in dental offices most of the time. Ligation of salivary duct, code 42665, is rarely performed. However, as we have stated previously, any patient who has a significant medical problem should have surgery in an appropriate setting as directed by his physician. In those cases where the patient's condition indicates the need for these two surgeries to be performed in a setting with a higher level of care than that available in a physician's office, surgery in a hospital outpatient department is appropriate.

Comment: One commenter wrote that whenever a procedure is deleted from the ASC list because we consider it a physician's office procedure, the procedure may be performed in a hospital outpatient department, which results in a greater Medicare expense.

Response: We recognize that patient needs and lack of necessary equipment in an individual physician's office may result in procedures that are generally performed in a physician's office being performed in a hospital outpatient department. However, under section 1833(i)(1) of the Act, we must establish a list of covered surgeries, and our threshold criteria were developed to implement this statutory provision.

Comment: A few commenters suggested that we delete some currently covered procedures because it is their belief that they cannot be safely performed in an ASC.

Response: Our data indicate these procedures are commonly performed on an outpatient basis, and we have no evidence of adverse consequences.

5. Suggested Procedures that are Sometimes Cosmetic

Comment: Fifty-four commenters wanted the four proposed blepharoplasty procedure codes (particularly the two upper eyelid codes) to be covered. They wanted these covered when the surgery is non-cosmetic and medically necessary. They stated that pre-operative visual field photos to substantiate non-cosmetic medical necessity are already required of the surgeon for a surgical fee, and these photos should be sufficient documentation to obtain an ASC facility fee.

Response: We are not adding these codes because our medical staff has informed us that ophthalmological codes 67901 through 67908 that involve blepharoplasty affecting vision are currently on the ASC covered procedures list.

6. Proposed Coordination of ASC Procedures List and Payment Rate Updates

We received 23 timely comments regarding our proposal to make the effective date of the ASC procedures list and payment group rates concurrent with the annual update of the hospital wage index.

Comments were submitted by 4 medical or professional associations or societies, 10 physicians, and 14 non-physician administrators. Commenters represented 17 ASCs located in 13 States. Nine of the letters received were "form" letters.

Comment: Five commenters wrote that it made sense, both administratively and economically, to make the procedure list and payment rate updates concurrent. Eighteen commenters asserted that if the ASC procedure list and payment rates were updated in October they will get "lost in the shuffle" bcause HCFA will be focusing on other issues, such as hospital prospective payment rates and budget reconciliation. As a result, ASC procedure list and payment rate updates will not receive the full attention they deserve. Two commenters preferred following the present schedule of separate procedures list and payment rate updates if consolidation of the updates necessitated going to an October effective date.

Response: The Secretary's annual review of ASC payment rates and biennial review of the ASC procedure list will be thorough regardless of when the resulting updates go into effect.

Comment: Twelve commenters wrote that HCFA lacks the statutory authority to make the annual ASC rate update any later than July 1 because July 1 is the only date mentioned in section 1833(i)(2)(A) of the Act, the section that requires payment rate updates, and there is nothing in the statute to authorize HCFA to implement the annual updates on a later date. Three commenters claimed that for similar reasons HCFA lacks the statutory authority to update the ASC procedures list any later than April 26 of alternate years.

Response: Section 1833(i)(2)(A) of the Act directs the Secretary to update ASC payment rates by no later than July 1, 1987, and to review and update the rates annually thereafter. Congress set July 1, 1987 as the deadline for the Secretary to update ASC payment rates that had not changed since September 1982. Congress also mandated that ASC rate updates be annual rather than "periodic" as had been previously required. However, while Congress required that the payment rate updates be annual and the procedure list updates biennial, it did not require that the changes take place on the anniversary date of the legislation. We believe that the Secretary is not precluded from changing these schedules when justified by sound administrative reasons and in the interest of good management. HCFA intends to adhere to annual and biennial updates, as required by the statute, but is making a one-time-only change in the update months to October with this notice. In the future, when we update the ASC procedure list, we intend to update the ASC payment rates at the same time. This would be done concurrently with the annual update in the hospital prospective payment system wage index because this wage index is used to calculate ASC payments. It is because the hospital wage index is updated annually effective October 1 that the ASC updates are being changed to October.

Comment: Four commenters objected to moving the ASC updates to October 1, because they assert that ASC rate updates have been so erratic that imposing another delay, even of only 3 months duration, would be unfair to ASCs.

Response: As noted previously, we have reviewed ASC payment rates and have prepared for publication in the **Federal Register** a notice updating the rates each calendar year since the statutory July 1, 1987 deadline for beginning annual updates. ASC payment rates have increased by 33 percent since August 1982, and 25 times as many procedures are covered now than were covered in August 1982.

Comment: Twenty-one commenters recommended that the ASC procedures list and the ASC payment rates be updated concurrently in April rather than in October since the statute does not prohibit HCFA from selecting a date earlier than July 1 or April 26 for making procedures list and payment rate updates. One commenter suggested making the updates concurrent as of July 1 rather than moving to an October effective date.

Response: We proposed making the effective date for the procedure list and payment rate updates coincide with the annual update of the hospital wage index, which we use for calculating payment to ASCs. Making these updates concurrently enables us to apply the most up-to-date hospital wage index in determining ASC payments. Making the ASC procedure list and payment rate updates concurrent in April or in July would perpetuate the use of an outdated wage index in determining ASC rates and payments.

Comment: One commenter suggested that we make an interim adjustment on July 1 of the first year the change is implemented followed by a final adjustment on October 1 for the next 12-month period, to avoid penalizing ASCs by extending from 12 months to 15 months the duration of the current ASC payment rates. Another commenter suggested that an allowance be included in the first October update to offset the 3 month shortfall to ASCs resulting from moving the rate update from July 1 to October 1.

Response: We anticipate that timely use of the most current data available will minimize and offset any payment shortfalls for the provision of ASC facility services.

We are also aware that had we updated the ASC payment rates in July 1991, the payment groups would have increased by 4.3 percent based on the change in the consumer price index for all urban consumers (CPI-U) forecast by Data Resources Incorporated (DRI) for calendar year 1991, and ASCs would have received payments in July, August, and September that reflected this increase. Therefore, we agree with the commenter who suggested that the first October update take into account the three-month delay in setting the rates. See section III.B Updated Payment Rates, below, for a more detailed discussion.

7. Lithotripsy

In the December 7, 1990 notice, we proposed for inclusion on the ASC list CPT-4 code 50590, extracorporeal shock wave lithotripsy, a method of treating kidney stones using shock waves generated outside the body to break up urinary tract stones. The procedure focuses the shock waves specifically on the stones under X-ray visualization and then pulverizes them by repeated shocks.

For coverage purposes under the ASC provision, we consider lithotripsy a surgical procedure. At one time, surgical procedures were thought of as only those involving an incision of some type done with a scalpel and followed by removal or repair of an organ or other tissues. In more recent years, the development of lasers and fiberoptics technology has resulted in surgical procedures that, while invasive and manipulative, do not require incisions. Scope procedures on the ASC list, such as bronchoscopy, gastroscopy, colonscopy, etc. are performed without an incision through various body openings. Many of these scope procedures may be employed either for diagnostic or therapeutic purposes or both at the same time, such as when the scope permits both detection and removal of a polyp.

Since the development of lithotripsy, many in the medical community have considered this procedure, which is in the CPT-4 surgical section, as invasive since it involves risks, requires anesthesia, destroys tissue and causes internal bleeding. Lithotripsy is frequently associated with the use of other invasive technology such as puncturing the body with a tube to allow drainage of urine and stone fragments from the kidney as well as cystoscopy and placement of appropriate drainage tubes, either prior to or concomitant with the shock wave treatment.

We received 177 timely comments in response to our proposal to set payment for lithotripsy at the Group 7 rate of $812. Comments were received from urologists, hospitals, lithotripsy centers, industry associations, and medical universities. Thirty-seven commenters submitted duplicate form letters. Also, 21 commenters submitted lithotripsy cost information in response to our request for information.

Comment: There were several comments regarding Medicare coverage of mobile lithotripsy services in an ASC.

Response: Procedures included on the ASC-approved list are covered in an ASC and payable at the prescribed rate. Section 416.41 permits an ASC to contract for services with an outside resource provided the ASC assures that the contracted services are provided in a safe and effective manner. Thus, mobile lithotripsy services in an ASC may be covered under a contract arrangement. The contract with the mobile lithotripsy company should state that, while in service to the ASC, the mobile lithotripsy premises will be treated as part of the ASC and will meet the conditions for coverage in part 416, especially requirements for a safe and sanitary environment set forth in § 416.44. Also, the contract should specify that Medicare payment for ASC facility services attributable to the mobile lithotripsy facility are made to the ASC.

Comment: Commenters opposed the $812 facility rate proposed for lithotripsy. They claimed that the procedure is capital intensive and that lithotripter capital costs warrant a substantially higher rate than that proposed.

Response: After carefully reviewing all comments and cost information submitted by the public and that obtained from some lithotripter manufacturers, we believe that ESWL services warrant a payment rate higher than we proposed. Therefore, we have assigned lithotripsy to a new payment group, Group 9, and set the rate for this procedure at $1,150. We believe that this allowance appropriately reflects procedure capital costs and encourages the provision of efficient and effective lithotripsy services.

Section 1833(i)(2)(A)(i) of the Act authorizes the Secretary to establish the ASC payment rate based on an estimate of a fair fee that takes into account the costs incurred, generally, in providing facility services in connection with a covered procedure. Since lithotripsy is being covered for the first time as an

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ASC procedure and ASC charges relative to this procedure are not included in our current database, we used the cost information submitted by commenters supported by discussions with several lithotripsy facilities and lithotripter manufacturers to identify resources consumed in performing ESWL.

We then created a procedure cost matrix model using direct and indirect procedure costs and annual utilization estimates based on operating a single lithotripter 5 days a week, 8 hours a day for 50 weeks. Annual utilization estimates ranged from a facility averaging less than one procedure per day to a facility performing on average a maximum of six procedures per day.

Capital costs used in this model are based on current manufacturer prices for state-of-the-art lithotripters and facility renovation required to house this equipment. Fixed (for example, labor, service contract) and variable (for example, medical supplies, electrodes) operating costs were derived from the latest and most reliable data sources available as indicated below. Costs were inflated to the midpoint of the October 1, 1991 to September 30, 1992 rate period (March 31, 1992) using the consumer price index for all urban consumers (CPI–U) as forecast by Data Resources, Incorporated. These inflation adjustments are provided below.

Cost items	Data sources
1. Salary/Wages	1991 Hay Management nursing survey published May 27, 1991 in Modern Healthcare. The survey includes salary data on 211,772 nurses employed at 897 hospitals as of January 1, 1991.
2. Indirect Expense	American Society of Radiologic Technologists.
3. Service Contract	Lithotripter manufacturers
4. Indirect Costs	Lithotripter manufacturers
5. Medical Supplies	Blue Cross and Blue Shield Association, Extracorporeal Shock Wave Lithotripsy: Clinical Assessment, Utilization and Cost Projections, May 1985
6. Electrodes	Same data source as for indirect costs. Medicare Part B Annual Data Files.
	Lithotripter manufacturer.

Capital costs and fixed operating costs were held constant across all estimated utilization levels. Variable operating costs on a per treatment basis were multiplied by each utilization estimate. We then summed capital costs, fixed costs, and variable operating costs separately for each utilization level. We set the payment level based on a facility performing an average of three ESWL procedures per day or 750 procedures annually. We believe that this payment level encourages efficient and optimal machine usage.

A review of lithotripsy per procedure costs as reported by 21 commenters showed that such costs varied widely, ranging from $1,469 to $4,185. Annual procedure volume ranged from 100 to about 1,100 treatments.

Cost comparability across facility settings was limited due to reporting inconsistencies. For example, a number of commenters submitted incomplete cost information. Some commenters reported costs on a per procedure basis or provided utilization information to permit the calculation of costs while others did not. Some simply stated total facility costs as a calculated value while others itemized components of such costs. Among those itemizing costs, some appeared to have commingled electrode costs with medical supplies while others reported these disposables separately.

While it was expected that costs would be a function of volume, distinct patterns between cost and volume were not evidenced. For example, eight facilities reported lower per procedure costs than the facility reporting the highest annual utilization. Seven of these eight facilities experienced less than one-half of the annual volume achieved by this high volume facility.

Published reports indicate that the demand for renal lithotripsy is leveling off and that early market saturation has resulted in low utilization of many lithotripters. When this noninvasive procedure was initially covered by Medicare in 1985, the Secretary estimated that ESWL would replace about 80 to 90 percent of conventional kidney stone surgery. It was then estimated that 100,000 kidney stone patients would seek treatment annually. This level of demand was projected to require about 100 extracorporeal shock wave lithotripters. According to the 1989–90 edition of the American Hospital Association's Hospital Statistics, the 283 lithotripters in the United States in 1988 were more than double the number needed. Biomedical Business International, a west coast research firm, estimated that the number of ESWL systems topped 300 in 1990.

Comment: Many commenters argued that adoption of the proposed rate would adversely impact hospitals performing lithotripsy in their outpatient departments since these facilities would be paid based on a blend comprised of 42 percent reasonable costs and 58 percent of the ASC payment rate.

Response: We agree and have increased our ESWL payment rate to $1,150.

Comment: Some commenters recommended a rate as much as $4,060, which is 5 times higher than $812.

Response: Section 1833(i)(2)(A)(ii) of the Act requires that Medicare payment to ASCs be substantially less than that for similar services furnished on an inpatient basis in the hospital. Under the Medicare hospital inpatient prospective payment system, the average FY 1992 payment for inpatient lithotripsy treatment is expected to be $2,600. Therefore, a rate established at the suggested level of $4,060 would violate this statutory requirement. Further, our final ESWL rate appropriately recognizes costs incurred by efficient facilities.

8. Miscellaneous Comments

a. *Appropriateness of proposed payment group assignment.* (See Addendum A.1 for a summary of payment group changes discussed below that are specific to procedures covered prior to this notice.)

Comment: Three commenters believe that high supply costs associated with performing complex repair procedures, 13100, 13120, 13150 and 13151 warrant assigning them to Group 3 rather than Group 2, as proposed.

Response: Based on careful review of the latest billing data, our medical staff has determined that only procedures 13150 and 13151 should be reclassified and they have been reassigned to Group 3.

Comment: Three commenters advocated assigning procedures 21390 and 21395 (treatment of "blowout" fractures) to Group 7 rather than Group 5, as proposed, because they allegedly incur higher facility costs than those associated with performing related procedures 21385, 21386 and 21387 that are assigned to Group 5.

Response: We concur and have reclassified procedures 21390 and 21395 to payment Group 7.

Comment: Two commenters contend that scapulopexy, 23400, is a difficult and time consuming procedure that should be assigned to Group 7 rather than Group 4, as proposed.

Response: We agree that the facility resources used in performing this procedure may be more similar to those consumed in performing procedures assigned to Group 7 rather than those assigned to Group 5. Therefore, we have reclassified procedure 23400 to payment Group 7.

Comment: Two commenters allege that procedure 23485 (repair of a nonunion or malunion of a clavicle) should be assigned to Group 7 rather than Group 5, as proposed, because the supply costs required to perform this procedure are similar to those incurred in performing procedures 23412 and 23466 both of which are assigned to Group 7.

Response: We concur and have reclassified procedure 23485 to payment Group 7.

Comment: Two commenters claim that procedure 23802 (fusion of shoulder joint) should be placed in Group 7 rather than Group 5, as proposed, because it is more difficult to perform than Group 7 procedure 23412 (repair of a torn rotator cuff in a shoulder).

Response: We agree that the level of facility resources used in performing procedure 23802 is more similar to those associated with procedures assigned to Group 7 and have reclassified this procedure to payment Group 7.

Comment: One commenter stated that procedure 25446 (complete elbow replacement) is equally as difficult and complex as a total hip or knee replacement commonly performed on a inpatient basis. The commenter believes that this procedure warrants a much higher payment level than the proposed Group 7 rate.

Response: After carefully reviewing that latest billing data, our medical staff found no basis for assigning this procedure to a higher payment group.

Comment: One commenter claims that procedure 28120 (partial bone excision (craterization, saucerization, or diaphysectomy) of bone (for example, for osteomyelitis or talar bossing), talus or calcaneus) assigned to Group 3 should be reclassified to Group 7 because it is equally as complex and require as much time to perform as procedure 26230 (partial excision (craterization, saucerization, or diaphysectomy) of bone (for example, for osteomyelitis); metacarpal).

Response: We agree that the two procedures are clinically similar and have reclassified procedure 28120 to payment Group 7.

Comment: One commenter advocated raising the payment level for procedure 28285 (hammertoe) from Group 3 to Group 5 to be consistent with procedure 26535 (arthroplasty interphalangeal joint).

Response: Based on a careful review of the latest billing data, our medical staff has determined that reassignment of procedure 28285 to payment Group 5 is not warranted.

Comment: Two commenters claim that the payment level for procedure 28293 (bunion correction that includes joint resection with implant) should be raised from Group 2 to Group 7. One commenter believes that the payment level for this procedure should be consistent with that for procedure 28531 (arthroplasty, metacarpophalangeal joint with prosthetic implant). The other commenter believes that the payment rate should cover the cost of the prosthetic implanted during this procedure.

Response: Our medical staff has reviewed the latest billing data and determined that it is more appropriate to reassign procedure 28293 to payment Group 3 rather than Group 7 as suggested.

With regard to payment for the prosthetic implanted during this procedure, the ASC facility payment rate does not include payment for prosthetic devices other than IOLs. Rather, a separate payment is allowed for this implant when furnished to a Medicare beneficiary during covered bunion correction surgery performed in a participating ASC. Medicare carriers have been advised to process claims for this hallux implant prosthesis using code "Q0073" until the 1992 HCPCS update is issued and a new code is established.

Comment: One commenter claims that the payment level for procedure 28525 (open treatment of closed or open fracture, phalanx or phalanges, other than great toe) should be raised from Group 3 to Group 4 to be consistent with that for procedure 26735 (open treatment of closed or open phalangeal shaft fracture).

Response: Our medical staff has carefully reviewed the latest billing data and determined that a payment group change is not warranted for this procedure.

Comment: One commenter claims that the payment level should be raised from Group 1 to Group 5 for procedures 28545, 28575, and 28805 (treatment of closed tarsal, talotarsal, and tarsometatarsal bone dislocations (respectively) requiring anesthesia) because they are extremely complex and more difficult to perform than procedure 28675 (open treatment of closed or open interphalangeal joint dislocation).

Response: After careful review of the latest billing data, our medical staff has determined that such claims about increased facility resource usage for these procedures is not supported. Therefore, we have retained the Group 1 assignment for all three procedures.

Comment: We received the following comments on several arthroscopy procedures.

One commenter claims that the proposed Group 3 payment level for procedures 29822 and 29826 (shoulder arthroscopy) should be increased due to high supply costs. The commenter suggests that a new Group 9 be established for these two procedures.

Another commenter claims that the currently covered procedure 29877 (arthroscopy, knee, surgical; debridement/shaving of articular cartilage (chondroplasty)) is inappropriately assigned to payment Group 4. The commenter believes that high supply costs associated with performing this procedure warrant establishing a new Group 9 for it.

Two commenters claim that the proposed payment Group 3 rate is inadequate for procedures 29888 and 29889 (arthroscopically aided anterior cruciate ligament repair). These commenters argue that the disposable supplies used in performing these procedures are quite expensive. They also believe that the facility rate for these procedures should be higher to cover equipment repair and replacement costs and related x-ray costs and recommended establishing a new Group 9 for these procedures.

Response: Based on a careful review of the latest billing data, our medical staff has found that these claims are not substantiated; therefore, payment group changes are not warranted for any of these procedures.

Comment: One commenter advocates raising the respective payment level to Group 5 for each of the following currently approved laryngoscopy procedures to account for high equipment costs incurred in performing these procedures.

Group 2 rate	Group 3 rate	Group 4 rate
31526	31531	31541
31530	31536	
31535	31540	

Response: Our medical staff has carefully reviewed the appropriateness of the proposed payment groups for the above 7 procedures using the latest billing data and determined that a change in payment groups is not warranted.

Comment: Three commenters contend that the payment level should be raised from Group 5 to Group 7 for procedure 65112 (exenteration of orbit) to be consistent with the related procedure 65114, that is, assigned to Group 7.

Response: We concur and have reclassified procedure 65112 to payment Group 7.

Comment: Three commenters argue that the proposed payment level should be increased to Group 2 from Group 1

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for procedure 65270 (repair of laceration; conjunctiva, with or without nonperforating laceration) to be clinically consistent with 65272 (repair of laceration; conjunctiva, by mobilization and rearrangement, without hospitalization) that is assigned to Group 2.

Response: We concur and have reclassified procedure 65270 to payment Group 2.

Comment: Three commenters recommended raising the proposed payment level to Group 4 from Group 3 for procedure 65275 (repair of laceration cornea, nonperforating, with or without removal of foreign body) to achieve clinical consistency with procedure 65280 (repair of laceration cornea and/or sclera, perforating, not involving uveal tissue) that is assigned to Group 4.

Response: We agree and have reclassified procedure 65275 to payment Group 4.

Comment: Three commenters claim that the costs associated with performing procedure 65850 (trabeculotomy) are similar to those required to perform procedure 66170 (trabeculectomy); and that 65850 should be assigned to Group 4 the same as 66170 rather than Group 2, as proposed.

Response: We concur and have reclassified procedure 65850 to payment Group 4.

Comment: Three commenters recommended raising the payment level to Group 7 from Group 5 for procedure 67108 (repair of retinal detachment with vitrectomy) because the American Medical Association's 1991 code revision of this procedure substantially altered it by expanding its surgical scope beyond that established when HCFA assigned this procedure to payment Group 5 in 1990. These commenters claim that high supply and equipment costs associated with performing this revised procedure warrant reassigning it to payment Group 7.

Response: We concur and have reclassified procedure 67108 to Group 7.

We received six comments on our proposal to add two vitrectomy procedures, codes 67038 and 67040, to our current ASC list and set payment for them at the Group 5 rate. Commenters included one ASC, two societies representing ophthalmic surgeons, and three ophthalmologists.

Comment: One commenter believed that the proposed Group 5 payment rate is too low for procedure code 67038, vitrectomy, mechanical, pars plana approach; with epiretinal membrane stripping. The commenter argued that the supply costs associated with performing this procedure are high and that it requires the use of special equipment and specially trained operating room technicians. The commenter further claimed that any comparison between the payment group assignment for this procedure and that of the currently approved vitrectomy procedure, code 67036, is inappropriate because the data used to derive the Group 4 assignment for procedure code 67036 were flawed. The commenter believed that use of these data as a benchmark for assigning the payment group for procedure code 67038 would result in an erroneous classification.

Response: Ophthalmologists represented by the two national opthalmology societies supported our proposed Group 5 payment rate for procedure code 67038. In commenting, they acknowledged that assignment of procedure code 67036 to Group 4 is appropriate and that the proposed Group 5 rate for procedure code 67038 adequately reflects higher costs associated with performing this procedure. Therefore, we have retained the Group 5 classification for procedure code 67038.

Comment: A number of ophthalmologists believe that the proposed Group 5 payment rate is inadequate for procedure code 67040, vitrectomy, mechanical pars plana approach; with endolaser panretinal photocoagulation. Some commenters suggested reclassifying this procedure from Group 5 to Group 7. One recommended establishing a Group 9 payment rate for it. All of the commenters claimed that this procedure requires the use of an endolaser with photocoagulation ability that costs $35,000 and a non-reusable probe that costs $125. They also contended that costs of inservice teaching, laser maintenance, and supplies are expensive.

Response: We are adopting the recommendation to assign procedure code 67040 to Group 7 rather than to Group 5. While we acknowledge that the facility costs incurred to perform this procedure may be significantly more than those of Group 5 procedures, we do not believe that these costs warrant developing a new payment group.

Comment: One commenter advocated changing the payment level to Group 7 from Group 5 for procedure 67112 (repair of retinal detachment, one or more sessions; previously operated upon, any technique) because it requires more time to perform than other retinal detachment repair procedures.

Response: We agree that the level of facility resources used in performing procedure 67112 is more similar to those associated with procedures assigned to Group 7 and have reclassified this procedure to payment Group 7.

Comment: Four commenters recommended raising the payment level to Group 4 from Group 2 for procedure 67121 (removal of implanted material, posterior segment; intraocular) to be clinically consistent with other intraocular posterior segment eye procedures.

Response: After carefully reviewing the latest billing data, our medical staff has found no basis for assigning this procedure to a higher payment group.

Comment: One commenter suggested that we raise the respective payment level to Group 7 for each of the following currently approved blepharoptosis and the extropion and entropion repair procedures to be consistent with that recommended for four blepharoplasty procedures (15820, 15821, 15822, and 15823).

CURRENT PAYMENT GROUP CLASSIFICATIONS

Group 1	Group 3	Group 4	Group 5
A. Blepharoptosis Procedures			
	67903	67908	67901
	67907		67902
	67909		67906
B. Repair Ectropion and Entropion Procedures			
67914	67917	67916	
67921		67923	
		67924	

Response: Procedures 15820, 15821, 15822, and 15823 were not accepted for addition to the ASC list; therefore, the rationale for revising the current payment groups for the above blepharoptosis and ectropion and entropion repair procedures to Group 7 was not sustained. However, after carefully reviewing the latest billing data, our medical staff has determined that payment group changes are warranted for six of the above procedures. These changes are shown below. We have retained the current payment group structure for all other blepharoptosis and ectropion and entropion repair procedures not indicated below.

PAYMENT GROUP CHANGES

Procedure	Reassigned group
67903	4
67907	4
67909	4
67914	3
67917	4
67921	3

Comment: Three commenters recommended that we raise the payment level from Group 1 to Group 3 for procedure 67911 (correction of lid retraction).

Response: We concur.

Comment: Three commenters claim that the payment level should be raised to Group 5 from Group 1 for procedures 68525, (biopsy of lacrimal sac) and 68825 (probing of nasolacrimal duct, requiring general anesthesia) to reflect the high cost associated with performing these procedures under general anesthesia.

Response: We incorrectly described procedure 68525 in Addendum A of our proposed notice. Through error, we combined the narrative descriptor for this procedure with that for procedure 68825. Since the narrative descriptor for procedure 68525, as shown, in the CPT manual does not specify the required use of general anesthesia, we find no basis for reclassifying this procedure to Group 5.

However, based on careful review of the latest billing data, our medical staff has determined that it is more appropriate to reassign procedure 68825 to Group 2 rather than Group 5.

b. *Other miscellaneous comments—*

Comment: One commenter stated that once a code is entered on the ASC list, after a few years that procedure must be performed on an outpatient basis. The commenter stated this has happened to a few eye codes that should not be routinely performed on an outpatient basis.

Response: A procedure generally is already performed a significant percentage of the time in the outpatient setting before it is placed on the ASC list. Again, whether or not a procedure has been placed on the ASC list, we expect physicians to select the appropriate setting for the performance of any procedure, taking into account the circumstances of a particular patient.

Comment: Twenty-one commenters stated that we should make clear in our final rule that prosthetic implants (other than IOLs) are not included in the ASC facility fee. The Gortex graft material used in the vascular access procedures was cited as an example of a surgical procedure for which the facility fee is inadequate to cover the cost of the implant. Adequate separate payments should be made for these as well as other implants.

Response: Under § 416.60(b), ASC facility services do not include items and services for which payment may be made under Part 405, such as prosthetic devices. Therefore, we are approving separate implant HCPCS alpha-numeric codes for metacarpophalangeal, interphalangeal and metatarsal joints, temporomandibular joint, orbit, mandible, and maxilla, distal humerus, proximal ulna, wrist, distal radius, distal ulna, scaphoid, lunate, trapezium, carpus, extensor tendon (hand/finger), tendon, patella, palate, cochleas, testicle, ossicles, breast, ocular, and vascular grafts. All these protheses are related to procedures that are on the current ASC list, as well as those procedures being added to the list by this notice.

Comment: One commenter expressed concern about the difference between Medicare payment for surgical procedures performed in a free-standing ASC and those performed in a hospital-affiliated (nonMedicare-participating) ASC.

Response: For Medicare purposes, a hospital-affiliated ASC that does not participate in Medicare as an ASC is an integral and subordinate part of a hospital. It is operated with other departments of the hospital under common licensure, governance, and professional supervision.

Section 9343(a) of Public Law 99–509 intended to eliminate disparity between the methods of payment for similar surgical procedures performed in Medicare-participating ASCs and in the hospital outpatient setting. This legislative provision mandates a totally prospective payment system for surgery performed in hospital outpatient departments and in hospital-affiliated ASCs. Until a fully prospective payment system is implemented, section 1833(i)(3) of the Act requires that the ASC payment rates be used in the formula to calculate Medicare payment for hospital outpatient ASC services.

Since 1987, the aggregate payment to hospitals for ASC-approved procedures performed in hospital-affiliated ASCs or hospital outpatient departments has been the lower of the hospital's reasonable costs or customary charges; or a blended payment amount comprised of the lower of the hospital's reasonable costs or charges and the ASC payment amount. Currently, the blend is comprised of 42 percent hospital cost and 58 percent ASC payment rate.

Comment: One commenter wants the former 100 percent payment for ASC physician services to be reinstated because the payment is warranted based on a procedure's complexity, technical support requirements, duration, type of anesthesia used, and the intensity of post-operative care and monitoring required.

Response: Section 4055 of the Omnibus Budget Reconciliation Act of 1987, Public Law 100–203, enacted on December 22, 1987, revised section 1833(i)(2)(A), of the Act to impose the Medicare Part B coinsurance and deductible requirements on physician services furnished in connection with an ASC covered procedure. Effective April 1, 1988, physicians' services are paid at 80 percent of reasonable charges, and beneficiaries are responsible for 20 percent coinsurance and the Medicare Part B deductible. Previously, these physician services were paid at 100 percent of reasonable charge; the Part B deductible did not apply in the ASC setting. To reinstate the 100 percent physician payment would require Congress to change the existing law.

Comment: Eight commenters indicated many State Medicaid plans and private insurers use Medicare's ASC list, and therefore we should not exclude from the list an otherwise qualified procedure solely because it is not frequently covered for Medicare patients.

Response: We have attempted to restrict the list to only those procedures applicable to the Medicare population. This restriction has even resulted in the deletions of some procedures from the original list. The ASC list is based on Medicare patient data and may not be appropriate for other patient populations. Its use for other groups should be cautionary.

Comment: One commenter stated he would like to see more frequent and simpler list expansions.

Response: Section 1833(i)(1) of the Act, as amended by section 9343 of Public Law 99–509, provides that the list of procedures must be reviewed and updated every 2 years. However, we believe this suggestion is important. Annual lists, rather than biennial lists, would more efficiently accommodate the annual CPT changes and make the list less cumbersome for each update. At this time, we are planning annual updates to the list.

III. Provisions of this Notice

A. Coordination of ASC Payment Rate and Procedure Updates

Beginning with this notice, changes in ASC payment rates and the list of ASC covered procedures will be implemented concurrently during the years in which both are updated. ASC rates and the ASC procedure list will be updated concurrently with the hospital wage index for the first time effective for ASC services provided on or after December 31, 1991. In addition, so that the most current wage index values can be used in determining future payment amounts for ASC facility services, annual ASC updates will be implemented

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concurrently with the annual update of the inpatient hospital operating prospective payment system wage index.

B. Updated Payment Rates

We are updating the ASC facility rates published in the **Federal Register** (55 FR 27690) on July 5, 1990 that have been in effect since July 1, 1990. To adjust ASC payment rates for the effect of changing price levels on ASC costs, we multiplied the eight ASC payment amounts published in the July 5, 1990, **Federal Register** notice by an inflation factor of 5.1 percent. This factor takes into account actual and projected price changes occurring between January 1, 1991 (the midpoint of the rate period that began July 1, 1990) and March 31, 1992 (the midpoint of the rate period to which the rates published in this notice will apply.)

If we had retained the July 1 update cycle, ASCs would have received a 4.3 percent rate increase on July 1, 1991. However, by moving the update cycle to October, ASCs will receive a 5.1 percent increase for this update. This 0.8 percent difference in the rate increase reflects the change in the ASC update cycle that takes into account a 15-month rather than a 12-month rate period. Since ASCs did not have the advantage of receiving the 4.3 percent increase on July 1, we believe that this additional adjustment paid over the next 12 months is appropriate compensation for this 3-month period without an update. However, the 0.8 percent difference in the two inflation factors will not significantly affect program outlays over time.

As we did in 1987, 1989, and 1990, we are updating the ASC rates using changes in the consumer price index for all urban consumers (CPI–U) based on forecasts by Data Resources, Incorporated (DRI). The CPI–U is a generalized index that measures increases in the prices paid for a representative market basket of goods and services. We are using this across-the-board approach to establish revised rates until our database is updated with new survey information.

Section 4151(c)(3) of Public Law 101–508 revised section 1833(i)(2)(A)(iii) of the Act to freeze the amount of payment for an IOL furnished for insertion at an ASC during or subsequent to cataract surgery at $200, effective beginning November 5, 1990 and before January 1, 1993. The inflation adjustment for Groups 6 and 8, which include a $200 allowance for IOLs, was made prior to blending the IOL allowance into the facility rate.

Group 9 is a new payment group consisting of one procedure code, CPT–4 50590, renal extra corporeal shock wave lithotripsy (ESWL). The manner in which the payment amount for Group 9 was determined is explained in section II.B.7. above in this notice. The updated ASC facility services payment rates for services furnished on or after December 31, 1991, are as follows:

Group 1: $285
Group 2: $382
Group 3: $438
Group 4: $539
Group 5: $615
Group 6: $780 ($580 + 200)
Group 7: $853
Group 8: $905 ($705 + 200)
Group 9: $1,150

C. Wage Index Changes

Section 6003(h) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) added section 1886(d)(10) to the Act (which was later amended by section 4002(h) of Public Law 101–508) to provide for the establishment of the Medicare Geographic Classification Review Board (the MGCRB) to consider applications by hospitals for geographic reclassification for purposes of payment under the prospective payment system, including the HCFA wage index. On September 6, 1990, we published an interim final rule with comment period (55 FR 36754) to implement the provisions in section 6003(h) of Public Law 101–239. In that interim final rule we set forth criteria and procedures to be used by the MGCRB in making determinations about hospital reclassifications. On June 4, 1991, we published a final rule with comment period (56 FR 25458) that implemented the provisions of section 4002(h) of Public Law 101–508 and responded to public comments on the September 6, 1990 interim final rule.

Although one hospital or all the hospitals in a county may seek geographic reclassification, the overwhelming majority of decisions made by the MGCRB concern a request for reclassification by one hospital only.

We have had to determine the appropriate wage index value to be applied to an ASC that is located in the same geographic area in which one or more hospitals have been reclassified by the MGCRB for purposes of the wage index value. Because in § 416.2 we define an ASC as a "* * * distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization * * *", there is no mechanism to uniformly match the wage index value for a redesignated hospital with an individual ASC that is located in the same geographic area. Therefore, with the exception of certain rural counties that are deemed urban, which are discussed below and listed separately in Addendum B, the wage index values for urban areas and rural areas that were set forth in Tables 4A and 4B of the August 30, 1991 prospective payment system final rule at 56 FR 43274 that apply to hospital discharges on or after October 1, 1991, will also be used to calculate the amount to be paid to ASCs for services furnished beginning December 31, 1991. The hospital wage index values for urban areas and for rural areas are set forth in this notice as Addendum B. (We have made two changes to the hospital wage index to correct typographical errors in the August 30, 1991 prospective payment system final rule. These changes will also be published in a forthcoming correction notice that will include other typographical errors in the August 30, 1991 final rule.

Consistent with ASC payment methodology set forth previously in the February 8, 1990 ASC final notice (55 FR 4540), we are continuing our provision that rural counties that have been deemed urban under section 1886(d)(8)(B) of the Act are to have a unique wage index value, that is, the wage index value derived for hospitals that were reclassified by the MGCRB. These wage index values are set forth in the final table in Addendum B entitled—Wage Index Values For Counties That Are Deemed Urban—Computed As Separate Urban Areas. Also listed in the same table are several counties for which we have had to designate a wage index value because there are not prospective payment hospitals in those counties that would enable a county-specific hospital wage index value to be calculated. (See the inpatient hospital prospective payment final rule at 56 FR 43196 published August 30, 1991 for more detailed information on the calculation of hospital wage index values.)

Below are two examples of how the applicable wage index value is applied to the portion of the ASC payment rate that is attributable to labor costs (34.45 percent) in order to standardize payments amounts for variation across geographical areas.

Example 1:

The following is an example of how the payment is determined for a procedure in Group 4 ($539) for an ASC located in Vancouver, Washington. The appropriate hospital wage index value is 1.0722. The labor-related portion is 34.45 percent and the nonlabor-related portion is 65.55 percent.

Wage Adjusted Rate

= [($539 × .3445) × 1.0722] + ($539 × .6555)
= ($185.69 × 1.0722) + $353.31
= $199.10 + $353.31
= $552.41

The steps set forth in this example are used for calculating payment rates for Groups 1 through 5, Group 7, and Group 9. These are the groups whose payment rates do not include an allowance for IOLs.

Example 2:

The following is an example of how payment is determined for the two procedures in Group 8 ($905) performed in an ASC located in Vancouver, Washington. The steps set forth in this example are also used in calculating the payment amount for the one procedure in Group 6.

Since the IOL allowance is not subject to the labor adjustment, the $200 allowance must be subtracted from the composite payment rate ($905) before adjusting for labor variation.

Wage Adjusted Rate

= [(($905–200) × .3455) × 1.0722] + [($905–$200) × .6555]
= [($705 × .3445) × 1.0722] + ($705 × .6555)
= [$242.87 × 1.0722) + $462.13
= $260.41 + $462.13
= $722.57

Composite Adjusted Rate

= $722.57 + $200
= $922.57

D. Proposed Additions Not Accepted

1. Procedures Appropriate in an Inpatient Setting But Not in an ASC

We had proposed coverage for the following CPT codes but, after consideration of the comments, have decided they should not be covered in an ASC because they are more appropriate to the inpatient setting:

CPT code	Description
15820	Blepharoplasty, lower eyelid
15821	Blepharoplasty, lower eyelid; with extensive herniated fat pad
15822	Blepharoplasty, upper eyelid
15823	Blepharoplasty, upper eyelid; with excessive skin weighting down lid
21557	Radical resection of tumor (for example, malignant neoplasm), soft tissue of neck or thorax
27594	Amputation, thigh, through femur, any level; secondary closure or scar revision
36260	Insertion of implantable intra-arterial infusion pump (for example, for chemotherapy of liver)
42426	Excision of parotid tumor or parotid gland; total, with unilateral radical neck dissection
50600	Ureterotomy with exploration or drainage (separate procedure)
50605	Ureterotomy with exploration or drainage (separation procedure)
50920	Closure of ureterocutaneous fistula
50940	Deligation of ureter
51040	Cystostomy, cystotomy with drainage
51050	Cystolithotomy, cystotomy with removal of calculus, without vesical neck resection
51060	Transvesical ureterolithotomy
51065	Cystotomy, with stone basket extraction and/or ultrasonic or electrohydraulic fragmentation of ureteral calculus
51080	Drainage of perivesical or prevesical space abscess
51520	Cystotomy; for simple excision of vesical neck (separate procedure)
51525	Cystotomy; for excision of bladder diverticulum, single or multiple (separate procedure)
51530	Cystotomy; for excision of bladder tumor
51535	Cystotomy for excision, incision, or repair of ureterocele
54015	Incision and drainage of penis, deep
54111	Excision of penile plaque (Peyronie disease); with graft to 5 cm in length
54112	Excision of penile plaque (Peyronie disease); with graft greater than 5 cm in length
54400	Insertion of penile prosthesis; non-inflatable (semi-rigid)
54401	Insertion of penile prosthesis; inflatable (self-contained)
54402	Removal or replacement of non-inflatable (semi-rigid) or inflatable (self-contained) penile prosthesis
54405	Insertion of inflatable (multi-component) penile prosthesis, including placement of pump, cylinders, and/or reservoir
54407	Removal, repair, or replacement of inflatable (multi-component) penile prosthesis, including pump and/or reservoir and/or cylinders
54409	Surgical correction of hydraulic abnormality of inflatable (multi-component) prosthesis including pump and/or reservoir and/or cylinders
54430	Corpora cavernosa-corpus spongiosum shunt (priapism operation), unilateral or bilateral
54560	Exploration for undescended testis with abdominal exploration
54645	Orchiopexy, any type, with or without hernia repair, second stage (Torek type)
55725	Prostatotomy, external drainage of prostatic abscess, any approach; complicated
55740	Prostatolithotomy, removal of prostatic calculus (separate procedure)
55860	Exposure of prostate, any approach, for insertion of radioactive substance

2. Pediatric Procedures

We had also proposed the following CPT codes for addition to the ACS list. However, we realized addition of these codes would conflict with our policy that the ACS list be for Medicare patients only. Therefore, we have decided not to add these codes to our list:

CPT code	Description
31529	Laryngoscopy direct, with or without tracheoscopy; diagnostic, newborn
36488	Placement of central venous catheter (subclavian, jugular, or other vein) (for example, for central venous pressure, hyperalimentation, hemodialysis, or chemotherapy; percutaneous, age 2 years or under
36490	Placement of central venous catheter (subclavian, jugular, or other vein) (for example, for central venous pressure, hyperalimentation, hemodialysis, or chemotherapy; cutdown, age 2 years or under
42820	Tonsillectomy and adenoidectomy, under age 12
42825	Tonsillectomy, primary or secondary; under age 12
42830	Adenoidectomy, primary; under age 12
42835	Adenoidectomy, secondary; under age 12
46705	Anoplasty, plastic operation for stricture; infant
49580	Repair umbilical hernia, under age 5 years

E. Eye Procedure Additions

After further review by our medical staff and after consultation with appropriate outside medical sources, we are adding the following eye procedure codes not listed in our proposed notice. We are adding these codes to maintain clinical consistency or because some of the codes involve laser surgery, which is appropriate to the ASC setting. The eye procedure codes are the following:

CPT code	Description
65755	Keratoplasty (corneal transplant), penetrating (in pseudophakia)
66852	Removal of lens material; pars plana approach, with or without vitrectomy
67039	Vitrectomy, mechanical, pars plana approach; with focal endolaser photocoagulation

F. Additions and Deletions as a Result of Annual CPT Changes

The CPT is updated annually and some additions and deletions affect the ASC list. The following codes in the 1991 CPT have replaced the codes in the 1990 CPT which are listed in parentheses and we are now adding (except for CPT 65235 which is already on the ASC list) these codes to the ASC list:

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CPT code	Description
65235	Removal of intraocular foreign body from anterior chamber or lens (replaces codes 65230 and 65245)
66702	Ciliary body destruction, any method (for example, diathermy, cryotherapy, laser, dialysis) (replaces codes 66700, 66701, 66702, 66721, and 66741)
67314	Strabismus surgery, recession or resection procedure (patient not previously operated on); one vertical muscle (excluding superior oblique)
67316	Strabismus surgery, recession or resection procedure (patient not previously operated on); two or more vertical muscles (excluding superior oblique) (replaces code 65515)
67318	Strabismus surgery, any procedure (patient not previously operated on), superior oblique muscle (replaces code 67313)

We are deleting the following eleven procedure codes from the ASC list since they were deleted from the 1991 CPT:

CPT code	Description
65290	Removal of foreign body, intraocular; from anterior chamber, magnetic extraction
65245	Removal of foreign body, intraocular; from lens (without extraction lens), nonmagnetic extraction
66700	Cyclodiathermy; initial
66701	Cyclodiathermy; subsequent
66720	Cyclocryotherapy; initial
66721	Cyclocryotherapy; subsequent
66741	Cyclodialysis; subsequent
66500	Discission of lens capsule; incisional technique (needling of lens), initial
66801	Discission of lens capsule; incisional technique (needling of lens), subsequent
66915	Expression of lens, linear, one or more stages
67313	Strabismus surgery on patient not previously operated on, any procedure, any muscle (may include minor displacement, for example for A or V pattern); three or more muscles, one or both eyes

We are also deleting CPT code 50205, Renal biopsy; percutaneous, by surgical exposure of kidney, based on information from a professional nephrology organization that it is a hospital inpatient procedure. Our review of recent billing data verifies this information.

Because the above deleted codes were not suggested in our proposed notice, we are now requesting public comment solely on these deletions.

IV. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Actuarial estimates of the cost of updating the ASC rates by 5.1 percent are as follows:

Fiscal year	Cost (in millions)
1992	$30
1993	$50
1994	$60
1995	$70
1996	$80

In addition, this notice will permit facility fees to be paid when the approximately 900 surgical procedure codes being added by this notice are performed in an ASC. However, payments to ASCs are generally lower than payments to hospitals for surgery performed in a hospital, whether on an inpatient or outpatient basis. Although we do not anticipate that many services will shift from the hospital inpatient setting to ASCs, we anticipate some program savings due to shifting of services from hospital outpatient departments to ASCs because payments to ASCs for a given surgical procedure are generally lower than payments to hospitals for the same procedure. Additional savings will be realized as a result of lower payments to hospitals when newly listed procedures continue to be performed on an outpatient basis because the hospital rate will become a blended payment amount comprised of the lower of the hospital's reasonable costs or charges and the ASC payment amount instead of hospital costs alone. Currently, the blend is comprised of 42 percent hospital cost and 58 percent ASC payment rate. Office of the Actuary data indicate that payments based on the ASC blended rate are approximately 10 percent lower than payments based solely on reasonable cost.

A small number of procedures are expected to shift from physicians' offices to the ASC setting as a result of the expansion of the list of covered ASC services. Since a facility fee is not paid when surgery is performed in the physician's office, this shifting may result in slightly increased program costs. However, the additional payments made to ASCs as a result of surgical procedures being shifted from physicians' offices to ASCs, are not likely to be so great as to offset the savings realized from the addition of nearly 900 procedures to the ASC list. We estimate $10 million in savings in each year from FY 1992 through FY 1996 as a consequence of expanding the list of ASC procedures. The net effect of these savings would be an estimated $10 million reduction in the above projected program costs for each year beginning FY 1992 through FY 1996.

Since this final notice will not meet the $100 million criterion or meet the other E.O. 12291 criteria, a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all physicians, ASCs and hospitals to be small entities.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final notice may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. It is possible that small rural hospitals may believe the updated ASC rates are inadequate compared to the costs likely to be incurred in performing ASC procedures. While the updated ASC rates do not fully recognize actual cost increases to hospitals, the payment methodology applicable to hospitals for furnishing ASC procedures is based on a blended amount which is determined based on 42 percent of actual hospital costs and 58 percent of ASC payment rates. For the portion of the blended payment amount that is based on a hospital's actual costs, cost increases resulting from inflation are fully recognized.

Under section 1833(i)(3)(A) of the Act, Congress mandated the method of determining payments to hospitals for ASC-approved procedures performed in an outpatient setting. Congress believed

some comparability should exist in the amount of payment to hospitals and ASCs for similar procedures. However, Congress recognized that hospitals have certain overhead costs that ASCs do not and allowed for a blending of the payment. Finally, the total impact of these rates would also depend upon the number of Medicare beneficiaries a hospital services and the case-mix variation. For these reasons, we have determined, and the Secretary certifies, that this notice will not have a significant effect on a substantial number of small rural hospitals. Therefore, we have not prepared a small rural hospital impact analysis.

Although we believe an impact analysis on small rural hospitals is not required, this notice could have a significant impact on a substantial number of ASCs. Therefore, we believe that a regulatory flexibility analysis is required for ASCs. In addition, we are voluntarily providing a brief general discussion of the impact this notice may have on hospitals.

1. Impact on ASCs

We are updating the 1990 ASC payment rates, which were published in the **Federal Register** on July 5, 1990 (55 FR 27690). Although these new rates incorporate the estimated annual rate of increase in the CPI–U for calendar year 1991 and the first quarter of calendar year 1992, (5.1 percent), there are other factors affecting the actual payments that ASCs may receive.

First, we are using the revised HCFA hospital wage index values published in the prospective payment system final rule effective October 1, 1991 (see 56 FR 43196, published August 30, 1991). Although there may be significant changes in wage index values in some locales, because the labor portion of the ASC rate is only about one-third of the total payment amount, we believe that this will not have a major impact on ASC payments.

Second, variations in an ASC's Medicare case mix will affect the size of an ASC's aggregate payment increase. Although the ASC payment rates were uniformly inflated by the CPI–U change forecast for calendar year 1991 and the first quarter of calendar year 1992, the IOL payment allowance of $200 per lens has not been adjusted. Therefore, the increase in payments to ASCs that specialize primarily in IOL insertion procedures will be about 3.8 percent as compared to the increase in payments to multispecialty ASCs that primarily perform procedures in payment groups other than Groups 6 and 8. The actual increase in total payments to such multi-specialty ASCs will more closely approximate, in the aggregate, the 5.1 percent increase in the CPI–U.

A third factor determining the effect of the change in the payment rates is the percentage of total revenue an ASC receives from Medicare. The larger the proportion of revenues an ASC receives from the Medicare program, the greater the impact of the updated rates being implemented by this document. The percentage of revenues derived from the Medicare program depends on the volume and types of services furnished. For example, cataract surgery accounts for nearly 60 percent of all surgeries performed in Medicare participating ASCs. Since cataract surgery is generally performed on Medicare patients, an ASC that performs a high percentage of cataract procedures will probably receive a higher percentage of its payments from Medicare than would an ASC with a case mix comprised largely of non-cataract cases. For an ASC that receives a large portion of its revenues from the Medicare program, the changes implemented by this notice will likely have a greater influence on the ASC's operations and management decisions than they will have on an ASC that receives a large portion of revenue from other sources.

In general, however, we expect the changes implemented by this notice to affect ASCs positively by raising the rates upon which payments are based.

2. Impact on Hospitals

For ASC approved procedures performed in an outpatient setting, hospitals are paid the lowest of their aggregate cost, charges, or a blend of 58 percent of the applicable wage-adjusted ASC rate and 42 percent of the hospital-specific amount (the lower of their cost or charges). It should be noted that, although the blended payment methodology requires payments to be composed of a blend of 58 percent of the wage-adjusted ASC rate and 42 percent of the hospital-specific amount, the ASC portion may actually be less than 58 percent of the total payment. This is especially true for the more expensive cases, including cataract procedures in Groups 6 and 8. Hospital costs for these procedures may be almost twice the ASC rate. Thus, the effect of the ASC rate increase being implemented by this notice is diluted, since the actual percentage increase in payment to hospitals is equal to the ratio of the ASC payment amount to the total hospital payment amount multiplied by the average increase in the ASC rates of 5.1 percent. The other factors that may significantly affect payments to ASCs (that is, changes to the wage index and case-mix variations) will have less effect on payment to hospitals. For example, the wage adjustment to the ASC portion of a hospital payment is made only to the labor portion of the ASC amount, which accounts for one-third of the ASC rate. Similarly, the differences in the payments attributable to case-mix variations may be masked by variations in the ratio of the ASC payment portion to the total payment amount.

Another element that reduces the effect of the ASC rate increase is the application of the lowest payment screen in determining payments. Applying the lowest of costs, charges, or a blend can result in some hospitals being paid entirely on the basis of a hospital's costs or charges. In those instances, the increase in the ASC rates will have no effect on hospital payments.

Finally, we anticipate that adding CPT–4 code 50590, extracorporeal shock wave lithotripsy (ESWL), to the list of ASC covered procedures could result in a slight shifting of that procedure from a hospital outpatient to a hospital inpatient setting in order to maximize payment. However, outpatient ESWL currently represents only one-tenth of one percent (.10 percent) of provider bills to Medicare, and ESWL patients are typically drawn from outside the Medicare population. Therefore, we believe that the new ASC facility Group 9 payment rate for ESWL will not adversely affect the operation of lithotripsy facilities that serve a normal ratio of non-Medicare to Medicare patients and that operate efficiently within optimal utilization levels.

C. Conclusion

Overall, ASCs and hospitals will benefit from the updated rates implemented by this notice. We have noted that the increase in payment to ASCs may be affected by the changes in the wage index values for hospitals that were published in the **Federal Register** on October 1, 1991 and by differences in case mix. The amount of the increase to hospitals, however, appears to be less sensitive to changes in the wage index or case mix because the blended payment methodology used to pay most ASC procedures performed in hospital outpatient settings greatly reduces the effect of variations in the wage index or case mix on the ASC portion of the payment blend.

V. Other Required Information

A. Paperwork Reduction Act

This final notice does not impose any information collection requirements;

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consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511).

B. Public Comments

We will consider public comments concerning the updating of the payment rates and the comments concerning deletion of the following twelve procedure codes, which were not discussed in the December 7, 1990 proposed notice.

CPT code	Description
50205	Renal biopsy; percutaneous, by surgical exposure of kidney.
65220	Removal of foreign body, intraocular; from anterior chamber, magnetic extraction.
65245	Removal of foreign body, intraocular; from lens (without extraction lens), nonmagnetic extraction.
66700	Cyclodiathermy; initial.
66701	Cyclodiathermy; subsequent.
66720	Cyclocryotherapy; initial.
66721	Cyclocryotherapy; subsequent.
66741	Cyclodialysis, subsequent.
66800	Discussion of lens capsule; incisional technique (needling of lens), initial.
66801	Discussion of lens capsule; incisional technique (needling of lens), subsequent.
66915	Expression of lens, linear, one or more stages.
67313	Strabismus surgery on patient not previously operated on, any procedure, any muscle (may include minor displacement, for example for A or V pattern); three or more muscles, one or both eyes.

C. Waiver of 30-Day Delay in the Effective Date

We ordinarily provide a delay of 30 days in the effective date for documents such as this. However, if adherence to this procedure would be impractical, unnecessary, or contrary to the public interest, we may waive the delay in the effective date. We find good cause to waive the usual 30-day delay in the effective date for the update of the ASC rates.

As explained above, we believe that it will be beneficial to ASCs for the effective date of the biennial update of covered ASC procedures and the annual update of ASC payment rates to coincide as closely as possible with the annual update of the hospital wage index, which we use for calculating payment to ASCs. Making these updates close together enables us to apply the most up-to-date hospital wage index in determining ASC payments. Making the ASC procedure list and payments rate updates in April or in July would perpetuate the use of an outdated wage index in determining ASC rates and payments.

Any delay in the effective date would deprive the ASCs of the benefit of the use of the most up-to-date hospital wage index and coverage for the 858 procedure codes added in this notice. (This notice also deletes eight procedure codes.)

Thus, a 30-day delay in the effective date for the update of the ASC rates would be contrary to the public interest. Therefore, we find good cause to waive the usual 30-day delay in this effective date.

Authority: Sections 1832(a)(2)(F) and 1833(i)(1) and (2) of the Social Security Act (42 U.S.C. 1395k(a)(2)(F) and 13951(i)(1) and (2)); 42 CFR 416.120, 416.125, and 416.130.

(Catalog of Federal Domestic Assistance Program No. 93.744, Medicare—Supplementary Medical Insurance Program)

Dated: September 29, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Dated: October 18, 1991.

Louis W. Sullivan,

Secretary.

Addendum A

Additions to the Current List of Covered Surgical Procedures for Ambulatory Surgical Centers (ASCs)

The following addendum is the final list of additions to the ASC List and the corresponding new payment groups. The additions are listed according to body system, appropriate terminology, and Physicians' Current Procedural Terminology, Fourth Edition, 1991 (CPT) coding.

ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)

Payment GRP	CPT code	Description
		Integumentary System
		Skin, Subcutaneous and Areolar Tissues
		Incision
2	10180	Incision and drainage, complex, postoperative wound infection.
		Excision—Benign Lesions
1	11404	Excision, benign lesion, except skin tag (unless listed elsewhere), trunk, arms or legs, lesion diameter 3.1 to 4.0 cm.
1	11444	Excision, other benign lesion (unless listed elsewhere), face, ears, eyelids, nose, lips, mucous membrane, lesion diameter 3.1 to 4.0 cm
2	11450	Excision of skin and subcutaneous tissue for hidradenitis, axillary; with primary suture.
2	11451	Excision of skin and subcutaneous tissue for hidradenitis, axillary; with other closure.
2	11462	Excision of skin and subcutaneous tissue for hidradenitis, inguinal; with primary suture.
2	11463	Excision of skin and subcutaneous tissue for hidradenitis, inguinal; with other closure.
2	11470	Excision of skin and subcutaneous tissue for hidradenitis, perianal, perineal, or umbilical; with primary closure.
		Excision—Malignant Lesions
2	11604	Excision, malignant lesion, trunk, arms, or legs; lesion diameter 3.1 to 4.0 cm.
2	11624	Excision, malignant lesion, scalp, neck, hands, feet, genitalia; lesion diameter 3.1 to 4.0 cm.
2	11644	Excision, malignant lesion, face, ears, eyelids, nose, lips; lesion diameter 3.1 to 4.0 cm.
		Miscellaneous
		Introduction
2	11960	Insertion of tissue expander(s).
3	11970	Replacement of tissue expander with permanent prosthesis.
1	11971	Removal of tissue expander(s) without insertion of prosthesis.

ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

Payment GRP	CPT code	Description
		Repair
		Repair—Simple
2	12005	Simple repair of superficial wounds of scalp, neck, axillae, external genitalia, trunk and/or extremities (including hands and feet); 12.6 cm to 20.0 cm.
2	12016	Simple repair of superficial wounds of face, ears, eyelids, nose, lips and/or mucous membranes; 12.6 cm to 20.0 cm.
1	12020	Treatment of superficial wound dehiscence; simple closure.
1	12021	Treatment of superficial wound dehiscence; with packing.
		Repair—Intermediate
2	12034	Layer closure of wounds of scalp, axillae, trunk and/or extremities (excluding hands and feet); 7.6 cm to 12.5 cm.
2	12035	Layer closure of wounds of scalp, axillae, trunk and/or extremities (excluding hands and feet); 12.6 cm to 20.0 cm.
2	12044	Layer closure of wounds of neck, hands, feet and/or external genitalia; 7.6 cm to 12.5 cm.
2	12045	Layer closure of wounds of neck, hands, feet and/or external genitalia; 12.6 cm to 20.0 cm.
2	12054	Layer closure of wounds of face, ears, eyelids, nose, lips and/or mucous membranes; 7.6 cm to 12.5 cm.
2	12055	Layer closure of wounds of face, ears, eyelids, nose, lips and/or mucous membranes; 12.6 cm to 20.0 cm.
		Repair—Complex
2	13100	Repair, complex, trunk; 1.1 cm to 2.5 cm.
2	13120	Repair, complex, scalp, arms, and/or legs; 1.1 cm to 2.5 cm.
2	13131	Repair, complex, forehead, cheeks, chin, mouth, neck, axillae, genitalia, hands and/or feet; 1.1 cm to 2.5 cm.
3	13150	Repair, complex, eyelids, nose, ears and/or lips; 1.0 cm or less.
3	13151	Repair, complex, eyelids, nose, ears and/or lips; 1.1 cm to 2.5 cm.
2	13160	Secondary closure of surgical wound or dehiscence, extensive or complicated.
2	14000	Adjacent tissue transfer or rearrangement, trunk; defect 10 sq cm or less.
2	14040	Adjacent tissue transfer or rearrangement, forehead, cheeks, chin, mouth, neck, axillae, genitalia, hands and/or feet; defect 10 sq cm or less.
		Free Skin Grafts
2	15120	Split graft, face, eyelids, mouth, neck, ears, orbits, genitalia, and/or multiple digits; 100 sq cm or less, or each one percent of body area of infants and children (except 15050).
3	15121	Split graft, face, eyelids, mouth, neck, ears, orbits, genitalia, and/or multiple digits; each additional 100 sq cm, or each one percent of body area of infants and children, or part thereof.
2	15400	Application of xenograft, skin.
		Pressure Ulcers (Decubitus Ulcers)
3	15934	Excision, sacral pressure ulcer, with local or regional skin flap closure (eg, advancement, rotation, rhomboid, bipedicle).
4	15935	Excision, sacral pressure ulcer, with local or regional skin flap closure (eg, advancement, rotation, rhomboid, bipedicle); with ostectomy.
4	15936	Excision, sacral pressure ulcer, with other flap closure.
4	15937	Excision, sacral pressure ulcer, with other flap closure; with ostectomy.
3	15940	Excision, iachial pressure ulcer, with primary suture.
		Burns, Local Treatment
1	16030	Dressing and/or debridement, initial or subsequent; without anesthesia, large (eg, more than one extremity).
2	16035	Escharotomy.
		Breast
		Excision
1	19100	Biopsy of breast; needle (separate procedure).
2	19110	Nipple exploration, with or without excision of a solitary lactiferous duct or a papilloma lactiferous duct.
3	19112	Excision of lactiferous duct fistula.
7	19162	Mastectomy, partial; with axillary lymphadenectomy.
5	19260	Excision of chest wall tumor including ribs.
		Repair and Reconstruction
4	19318	Reduction mammaplasty.
1	19328	Removal of intact mammary implant.
1	19330	Removal of mammary implant material.
2	19340	Immediate insertion of breast prosthesis following mastopexy, mastectomy or in reconstruction.
3	19342	Delayed insertion of breast prosthesis following mastopexy, mastectomy or in reconstruction.
4	19350	Nipple/areola reconstruction.
5	19360	Breast reconstruction with muscle or myocutaneous flap.
5	19364	Breast reconstruction with free flap.
5	19368	Breast reconstruction with other technique.
4	19370	Open periprosthetic capsulotomy, breast.
4	19371	Periprosthetic capsulectomy, breast.
5	19380	Revision of reconstructed breast.
		Musculoskeletal System
		General
		Excision
2	20200	Biopsy, muscle; superficial.
1	20206	Biopsy, muscle, percutaneous needle.
1	20220	Biopsy, bone, trocar or needle; superficial (eg, ilium, sternum, spinous process, ribs).
		Introduction or Removal
1	20670	Removal of implant; superficial, (eg, buried wire, pin or rod) (separate procedure).
2	20690	Application of external fixation system (eg, Hoffmann apparatus), including removal.

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ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

Payment GRP	CPT code	Description
		Grafts (or implants)
4	20924	Tendon graft, from a distance (eg, palmaris, toe extensor, plantaris).
		Head
		Excision
2	21025	Excision of bone (eg, for osteomyelitis or bone abscess); mandible.
2	21026	Excision of bone (eg, for osteomyelitis or bone abscess); facial bone(s).
2	21041	Excision of benign cyst or tumor of mandible; complex.
3	21070	Coronoidectomy (separate procedure).
		Repair, Revision, or Reconstruction
5	21206	Osteotomy (eg, for prognathism, micrognathism, apertognathism or for reconstruction); maxilla, segmental.
7	21208	Osteoplasty, facial bones; augmentation (autograft, allograft, or prosthetic implant).
5	21209	Osteoplasty, facial bones; reduction.
7	21210	Graft, bone; nasal, maxillary or malar areas (includes obtaining graft).
7	21215	Graft, bone; mandible (includes obtaining graft).
7	21230	Graft; rib cartilage, autogenous, to face, chin, nose or ear (includes obtaining graft).
7	21235	Graft; ear cartilage to nose or ear (includes obtaining graft).
4	21240	Arthroplasty, temporomandibular joint, with or without autograft.
5	21242	Arthroplasty, temporomandibular joint, with allograft.
5	21243	Arthroplasty, temporomandibular joint, with prosthetic joint replacement.
7	21244	Reconstruction of mandible, extraoral, with transosteal bone plate (eg, mandibular staple bone plate).
7	21245	Reconstruction of mandible or maxilla, subperiosteal implant; partial.
7	21246	Reconstruction of mandible or maxilla, subperiosteal implant; complete.
7	21248	Reconstruction of mandible or maxilla, endosteal implant (eg, blade, cylinder); partial.
7	21249	Reconstruction of mandible or maxilla, endosteal implant (eg, blade, cylinder); complete.
7	21267	Orbital repositioning, periorbital osteotomies, unilateral, with bone grafts; extracranial approach.
5	21270	Malar augmentation, bone or alloplastic material.
7	21275	Secondary revision of orbitocraniofacial reconstruction.
5	21280	Medial canthoplasty.
5	21282	Lateral canthopexy.
		Fracture and/or Dislocation
2	21300	Treatment of closed skull fracture without operation.
2	21337	Treatment of closed nasal septal fracture.
5	21339	Open treatment of nasoethmoid fracture; with external fixation.
5	21385	Open treatment of orbital floor "blowout" fracture; transantral approach (Caldwell-Luc type operation).
5	21386	Open treatment of orbital floor "blowout" fracture; periorbital approach.
5	21387	Open treatment of orbital floor "blowout" fracture; combined approach.
7	21390	Open treatment of orbital floor "blowout" fracture; periorbital approach, with alloplastic or other implant.
7	21395	Open treatment of orbital floor "blowout" fracture; periorbital approach with bone graft (includes obtaining graft).
2	21400	Treatment of fracture of orbit, except "blowout"; without manipulation.
3	21401	Treatment of fracture of orbit, except "blowout"; with manipulation.
4	21406	Open treatment of fracture of orbit, except "blowout"; without implant.
5	21407	Open treatment of fracture of orbit, except "blowout"; with implant.
4	21421	Treatment of palatal or alveolar ridge fractures (Lefort I type); closed manipulation with interdental wire fixation or fixation of denture or splint.
5	21422	Treatment of palatal or alveolar ridge fractures (Lefort I type); open treatment.
3	21440	Manipulative treatment of alveolar ridge fracture (separate procedure).
4	21445	Open treatment of alveolar ridge fracture (separate procedure).
5	21454	Open treatment of closed or open mandibular fracture with external fixation.
4	21455	Closed manipulative treatment by interdental fixation of closed or open mandibular fracture.
4	21461	Open treatment of closed or open mandibular fracture; without interdental fixation.
5	21462	Open treatment of closed or open mandibular fracture; with interdental fixation.
4	21465	Open treatment of mandibular condylar fracture.
5	21470	Open treatment of complicated closed or open mandibular fracture by multiple surgical approaches including internal fixation, interdental fixation, and/or wiring of dentures or splints.
3	21493	Treatment of closed or open hyoid fracture; without manipulation.
2	21497	Interdental wiring, for condition other than fracture.
		Neck (Soft Tissues) and Thorax
		Excision
1	21550	Biopsy, Soft tissue of neck or thorax.
2	21620	Ostectomy of sternum, partial.
		Repair, Revision or Reconstruction
2	21700	Division of scalenus anticus; without resection of cervical rib.
3	21720	Division of sternocleidomastoid for torticollis, open operation; without cast application.
3	21725	Division of sternocleidomastoid for torticollis, open operation; with cast application.
		Fracture and/or Dislocation
1	21800	Treatment of rib fracture; closed, uncomplicated, each.
2	21805	Treatment of rib fracture; open or complicated, each.
2	21810	Treatment of rib fracture; closed or open requiring external fixation ("flail chest").
1	21820	Treatment of sternum fracture; closed.

ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

Payment GRP	CPT code	Description
		Back and Flank
		Excision
1	21920	Biopsy, soft tissue of back or flank; superficial.
2	21925	Biopsy, soft tissue of back or flank; deep.
2	21930	Excision, tumor, soft tissue of back or flank.
3	21953	Radical resection of tumor (eg, malignant neoplasm), soft tissue of back or flank.
		Spine (Vertebral Column)
		Excision
3	22100	Partial resection of vertebral component, spinous processes; cervical.
3	22101	Partial resection of vertebral component, spinous processes; thoracic.
3	22102	Partial resection of vertebral component, spinous processes; lumbar.
		Fracture and/or Dislocation
1	22305	Closed treatment of vertebral process fracture(s).
1	22310	Closed treatment of vertebral body fracture(s), without manipulation.
2	22315	Closed treatment of vertebral fracture and/or dislocation, with or without anesthesia, by manipulation or traction, each.
3	22325	Open treatment of vertebral fracture and/or dislocation; lumbar, each.
3	22326	Open treatment of vertebral fracture and/or dislocation; cervical, each.
3	22327	Open treatment of vertebral fracture and/or dislocation; thoracic, each.
		Manipulation
2	22505	Manipulation of spine requiring anesthesia, any region.
		Shoulder
		Excision
1	23065	Biopsy, soft tissue of shoulder area; superficial.
2	23075	Excision, tumor, shoulder area; subcutaneous.
3	23077	Radical resection of tumor (eg, malignant neoplasm), soft tissue of shoulder area.
4	23105	Arthrotomy for synovectomy; glenohumeral joint.
4	23106	Arthrotomy for synovectomy; sternoclavicular joint.
4	23107	Arthrotomy, glenohumeral joint, with joint exploration, with or without removal of loose or foreign body.
5	23120	Claviculectomy; partial.
5	23125	Claviculectomy; total.
5	23145	Excision or curettage of bone cyst or benign tumor of clavicle or scapula; with autograft (includes obtaining graft).
5	23146	Excision or curettage of bone cyst or benign tumor of clavicle or scapula; with allograft.
5	23155	Excision or curettage of bone cyst or benign tumor of proximal humerus; with autograft (includes obtaining graft).
5	23156	Excision or curettage of bone cyst or benign tumor of proximal humerus; with allograft.
		Introduction or Removal
1	23330	Removal of foreign body, shoulder; subcutaneous.
		Repair, Revision or Reconstruction
5	23395	Muscle transfer, any type for paralysis of shoulder or upper arm; single.
7	23397	Muscle transfer, any type for paralysis of shoulder or upper arm; multiple.
7	23400	Scapulopexy (eg, Sprengel's deformity or for paralysis).
5	23410	Repair of ruptured supraspinatus tendon (rotator cuff) or musculotendinous cuff; acute.
7	23412	Repair of ruptured supraspinatus tendon (rotator cuff) or musculotendinous cuff; chronic.
5	23415	Coracoacromial ligament release, with or without acromioplasty, for chronic ruptured supraspinatus tendon (rotator cuff)
7	23420	Repair of complete shoulder (rotator) cuff avulsion, chronic (includes acromioplasty).
4	23430	Tenodesis for rupture of long tendon of biceps.
4	23440	Resection or transplantation of long tendon of biceps, for chronic tenosynovitis.
5	23450	Capsulorrhaphy for recurrent dislocation, anterior; Putti-Platt procedure or Magnuson type operation.
7	23455	Capsulorrhaphy for recurrent dislocation, anterior; Bankart type operation with or without stapling.
5	23460	Capsulorrhaphy for recurrent dislocation, anterior, any type; with bone block.
7	23462	Capsulorrhaphy for recurrent dislocation, anterior, any type; with coracoid process transfer.
5	23465	Capsulorrhaphy for recurrent dislocation, posterior, with or without bone block.
7	23466	Capsulorrhaphy for recurrent dislocation with any type multi-directional instability.
4	23480	Osteotomy, clavicle, with or without internal fixation.
7	23485	Osteotomy, clavicle, with or without internal fixation; with bone graft for nonunion or malunion (includes obtaining graft and/or necessary fixation).
3	23490	Prophylactic treatment (nailing, pinning, plating or wiring) with or without methyl methacrylate; clavicle.
3	23491	Prophylactic treatment (nailing, pinning, plating or wiring) with or without methyl methacrylate; proximal humerus and humeral head.
		Fracture and/or Dislocation
1	23500	Treatment of closed clavicular fracture; without manipulation.
3	23510	Treatment of open clavicular fracture, with uncomplicated soft tissue closure.
1	23520	Treatment of closed sternoclavicular dislocation; without manipulation.
1	23525	Treatment of closed sternoclavicular dislocation; with manipulation.
3	23530	Open treatment of closed or open sternoclavicular dislocation, acute or chronic.
4	23532	Open treatment of closed or open sternoclavicular dislocation, acute or chronic; with fascial graft (includes obtaining graft).
1	23540	Treatment of closed acromioclavicular dislocation; without manipulation.
1	23545	Treatment of closed acromioclavicular dislocation; with manipulation.
3	23550	Open treatment of closed or open acromioclavicular dislocation, acute or chronic.
4	23552	Open treatment of closed or open acromioclavicular dislocation, acute or chronic; with fascial graft (includes obtaining graft).
1	23570	Treatment of closed scapular fracture; without manipulation.
1	23575	Treatment of closed scapular fracture; with manipulation (with or without shoulder joint involvement).
3	23580	Treatment of open scapular fracture, with uncomplicated soft tissue closure.

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ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

Payment GRP	CPT code	Description
3	23585	Open treatment of closed or open scapular fracture juxta-articular.
1	23600	Treatment of closed humeral (surgical or anatomical neck) fracture; without manipulation.
4	23615	Open treatment of closed or open humeral (surgical or anatomical neck) fracture, with or without internal or external skeletal fixation.
1	23620	Treatment of closed greater tuberosity fracture; without manipulation.
1	23650	Treatment of closed shoulder dislocation, with manipulation; without anesthesia.
		Arthrodesis
4	23800	Arthrodesis, shoulder joint with or without local bone graft.
7	23802	Arthrodesis, shoulder joint, with primary autogenous graft (includes obtaining graft).
		Amputation
3	23921	Disarticulation of shoulder; secondary closure or scar revision.
		Humerus (Upper Arm) and Elbow
		Incision
2	23931	Incision and drainage, upper arm or elbow area; infected bursa.
		Excision
1	24065	Biopsy, soft tissue of upper arm or elbow area; superficial.
2	24066	Biopsy, soft tissue of upper arm or elbow area; deep.
3	24077	Radical resection of tumor (eg, malignant neoplasm), soft tissue of upper arm or elbow area.
4	24102	Arthrotomy, elbow; for synovectomy.
3	24150	Radical resection for tumor, shaft or distal humerus.
4	24151	Radical resection for tumor, shaft or distal humerus; with autograft (includes obtaining graft).
3	24152	Radical resection for tumor, radial head or neck.
4	24153	Radical resection for tumor, radial head or neck; with autograft (includes obtaining graft).
		Repair, Revision and Reconstruction
5	24360	Arthroplasty, elbow; with membrane.
5	24361	Arthroplasty, elbow; with distal humeral prosthetic replacement.
7	24363	Arthroplasty, elbow; with distal humerus and proximal ulnar prosthetic replacement ("total elbow").
5	24365	Arthroplasty, radial head.
5	24366	Arthroplasty, radial head; with implant.
4	24400	Osteotomy, humerus, with or without internal fixation.
4	24410	Multiple osteotomies with realignment, on intramedullary rod, humeral shaft (Sofield type procedure).
3	24430	Repair of nonunion or malunion, humerus; without graft (eg, compression technique).
4	24435	Repair of nonunion or malunion, humerus; with iliac or other autograft (includes obtaining graft).
3	24498	Prophylactic treatment (nailing, pinning, plating or wiring); with or without methylmethacrylate, humerus.
		Fracture and/or Dislocation
1	24500	Treatment of closed humeral shaft fracture; without manipulation.
1	24560	Treatment of closed humeral epicondylar fracture, medial or lateral; without manipulation.
1	24576	Treatment of closed humeral condylar fracture, medial or lateral; without manipulation.
1	24587	Open treatment of closed or open comminuted elbow fracture (fracture distal humerus and/or proximal ulna/radius), with or without internal or external skeletal fixation; with implant.
5	24586	Open treatment of closed or open comminuted elbow fracture (fracture distal humerus and/or proximal ulna/radius), with or without internal or external skeletal fixation; with implants and fascia lata ligament reconstruction.
1	24600	Treatment of closed elbow dislocation; without anesthesia.
2	24660	Treatment of open radial head or neck fracture, with uncomplicated soft tissue closure.
1	24670	Treatment of closed ulnar fracture, proximal end (olecranon process); without manipulation.
		Arthrodesis
4	24800	Arthrodesis, elbow joint; with or without local autograft or allograft.
5	24802	Arthrodesis, elbow joint; with autograft (includes obtaining graft other than locally obtained).
		Amputation
1	24925	Amputation, arm through humerus; secondary closure or scar revision.
		Forearm and Wrist
		Incision
2	25031	Incision and drainage, forearm and/or wrist; infected bursa.
		Excision
1	25065	Biopsy, soft tissue of forearm and/or wrist; superficial.
2	25075	Excision, tumor, forearm and/or wrist area; subcutaneous.
3	25077	Radical resection of tumor (eg, malignant neoplasm), soft tissue of forearm and/or wrist area.
4	25105	Arthrotomy, wrist joint; for synovectomy.
4	25115	Radical excision of bursa, synovia of wrist, or forearm tendon sheaths (eg, tenosynovitis, fungus, TBC, or other granulomas, rheumatoid arthritis); flexors.
4	25116	Radical excision of bursa, synovia of wrist, or forearm tendon sheaths (eg, tenosynovitis, fungus, TBC, or other granulomas, rheumatoid arthritis); extensors, with or without transposition of dorsal retinaculum.
2	25118	Synovectomy, extensor tendon sheath, wrist, single compartment.
3	25119	Synovectomy, extensor tendon sheath, wrist, single compartment; with resection of distal ulna.
3	25170	Radical resection for tumor, radius or ulna.
		Introduction or Removal
1	25250	Removal of wrist prosthesis (separate procedure).
1	25251	Removal of wrist prosthesis; complicated, including "total wrist".

ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

Payment GRP	CPT code	Description
		Repair, Revision or Reconstruction
5	25330	Arthroplasty, wrist.
5	25331	Arthroplasty, wrist; with implant.
5	25332	Arthroplasty, wrist; pseudarthrosis type with internal fixation.
3	25335	Centralization of wrist on ulna (eg, radial club hand).
3	25350	Osteotomy, radius; distal third.
3	25355	Osteotomy, radius; middle or proximal third.
3	25360	Osteotomy; ulna.
3	25365	Osteotomy; radius and ulna.
3	25370	Multiple osteotomies, with realignment on intramedullary rod (Sofield type procedure); radius or ulna.
4	25375	Multiple osteotomies, with realignment on intramedullary rod (Sofield type procedure); radius or ulna.
3	25400	Repair of nonunion or malunion, radius or ulna; without graft (eg, compression technique).
4	25405	Repair of nonunion or malunion, radius or ulna; with iliac or other autograft (includes obtaining graft).
3	25415	Repair of nonunion or malunion, radius and ulna; without graft (eg, compression technique).
4	25420	Repair of nonunion or malunion, radius and ulna; with iliac or other autograft (includes obtaining graft).
3	25425	Repair of defect with autograft; radius or ulna.
4	25426	Repair of defect with autograft; radius and ulna.
4	25440	Repair of nonunion, scaphoid (navicular) bone, with or without radial styloidectomy (includes obtaining graft and necessary fixation).
5	25441	Arthroplasty with prosthetic replacement; distal radius.
5	25442	Arthroplasty with prosthetic replacement; distal ulna.
5	25443	Arthroplasty with prosthetic replacement; scaphoid (navicular).
5	25444	Arthroplasty with prosthetic replacement; lunate.
5	25445	Arthroplasty with prosthetic replacement; trapezium.
7	25446	Arthroplasty with prosthetic replacement; distal radius and partial or entire carpus ("total wrist").
5	25447	Interposition arthroplasty, intercarpal or carpometacarpal joints.
5	25449	Revision of arthroplasty, including removal of implant, wrist joint.
3	25490	Prophylactic treatment (nailing, pinning, plating or wiring), with or without methyl methacrylate; radius.
3	25491	Prophylactic treatment (nailing, pinning, plating or wiring), with or without methyl methacrylate; ulna.
3	25492	Prophylactic treatment (nailing, pinning, plating or wiring), with or without methyl methacrylate; radius and ulna.
		Fracture and/or Dislocation
2	25624	Treatment of closed carpal scaphoid (navicular) fracture; with manipulation.
		Arthrodesis
4	25800	Arthrodesis, wrist joint (including radiocarpal and/or ulnocarpal fusion); without bone graft.
5	25805	Arthrodesis, wrist joint (including radiocarpal and/or ulnocarpal fusion); with sliding graft.
5	25810	Arthrodesis, wrist joint (including radiocarpal and/or ulnocarpal fusion); with iliac or other autograft (includes obtaining graft).
4	25820	Intercarpal fusion; without bone graft.
5	25825	Intercarpal fusion; with autograft (includes obtaining graft).
		Amputation
3	25907	Amputation, forearm, through radius and ulna; secondary closure or scar revision.
3	25922	Disarticulation through wrist; secondary closure or scar revision.
3	25929	Transmetacarpal amputation; secondary closure or scar revision.
		Hand and Fingers
		Excision
3	26117	Radical resection of tumor (eg, malignant neoplasm), soft tissue of hand or finger.
3	26130	Synovectomy, carpometacarpal joint.
3	26236	Partial excision (craterization, saucerization, or diaphysectomy) of bone (eg, for osteomyelitis); distal phalanx of finger
3	26250	Radical resection (ostectomy) for tumor, proximal or middle phalanx of finger.
3	26262	Radical resection (ostectomy) for tumor, distal phalanx of finger.
		Introduction or Removal
2	26320	Removal of implant from finger or hand.
		Repair, Revision or Reconstruction
4	26357	Flexor tendon repair or advancement, single, in "no man's land"; secondary, each tendon.
4	26415	Extensor tendon excision, implantation of plastic tube or rod for delayed extensor tendon graft, hand or finger.
3	26437	Extensor tendon realignment, hand.
1	26478	Tendon lengthening, flexor, hand or finger, single, each.
1	26479	Tendon shortening, flexor, hand or finger, single, each.
4	26504	Tendon pulley reconstruction; with tendon prosthesis (separate procedure).
5	26527	Arthroplasty, carpometacarpal joint.
4	26548	Repair and reconstruction, finger, volar plate, interphalangeal joint.
2	26560	Repair of syndactyly (web finger) each web space; with skin flaps.
3	26561	Repair of syndactyly (web finger) each web space; with skin flaps and grafts.
4	26562	Repair of syndactyly (web finger) each web space; complex (eg, involving bone, nails).
5	26565	Osteotomy for correction of deformity; metacarpal.
5	26580	Repair cleft hand.
5	26590	Repair macrodactylia.
3	26591	Repair, intrinsic muscles of hand (specify).
3	26593	Release, intrinsic muscles of hand (specify).
2	26596	Excision of constricting ring of finger, with multiple Z-plasties.
3	26597	Release of scar contracture, flexor or extensor, with skin grafts, rearrangement flaps, or Z-plasties, hand and/or finger.
		Fractures and/or Dislocations
4	26615	Open treatment of closed or open metacarpal fracture, single, with or without internal or external skeletal fixation, each bone.
2	26742	Treatment of closed articular fracture, involving metacarpophalangeal or proximal interphalangeal joint; with manipulation, each

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ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

Payment GRP	CPT code	Description
2	26756	Treatment of closed distal phalangeal fracture, finger or thumb; with percutaneous pinning, each.
2	26776	Treatment of closed interphalangeal joint dislocation, single, with manipulation; with percutaneous pinning.
		Arthrodesis
4	26850	Arthrodesis, metacarpophalangeal joint, with or without internal fixation.
4	26852	Arthrodesis, metacarpophalangeal joint, with or without internal fixation; with autograft (includes obtaining graft).
		Pelvis and Hip Joint
		Excision
3	27049	Radical resection of tumor (eg, malignant neoplasm), soft tissue of pelvis and hip area.
3	27050	Arthrotomy, for biopsy; sacroiliac joint.
5	27060	Excision; ischial bursa.
5	27062	Excision; trochanteric bursa or calcification.
		Introduction and/or Removal
1	27086	Removal of foreign body, pelvis or hip; subcutaneous tissue.
		Repair, Revision or Reconstruction
3	27097	Hamstring recession, proximal.
3	27098	Adductor transfer to ischium.
4	27100	Transfer external oblique muscle to greater trochanter including fascial or tendon extension (graft).
4	27105	Transfer paraspinal muscle to hip (includes fascial or tendon extension graft).
4	27110	Transfer iliopsoas to greater trochanter.
4	27111	Transfer iliopsoas to femoral neck.
		Fractures and/or Dislocations
1	27190	Treatment of closed sacral fracture.
2	27192	Open treatment of closed or open sacral fracture.
1	27195	Treatment of sacroiliac and/or symphysis pubis dislocation, without manipulation.
2	27196	Treatment of sacroiliac and/or symphysis pubis dislocation, with anesthesia and with manipulation.
1	27210	Treatment of closed iliac, pubic or ischial fracture.
1	27230	Treatment of closed femoral fracture, proximal end, neck; without manipulation.
1	27238	Treatment of closed intertrochanteric, pertrochanteric, or subtrochanteric femoral fracture; without manipulation.
1	27246	Treatment of closed greater trochanteric fracture, without manipulation.
1	27250	Treatment of closed hip dislocation, traumatic; without anesthesia.
2	27252	Treatment of closed hip dislocation, traumatic; requiring anesthesia.
1	27265	Treatment of atraumatic hip dislocation (eg, post-total hip arthroplasty); without anesthesia.
1	27266	Treatment of atraumatic hip dislocation (eg, post-total hip arthroplasty); requiring general anesthesia.
		Femur (Thigh Region) and Knee Joint
		Excision
1	27323	Biopsy, soft tissue of thigh or knee area; superficial.
4	27331	Arthrotomy, knee with joint exploration, with or without biopsy, with or without removal of loose or foreign bodies.
4	27332	Arthrotomy, knee, for excision of semilunar cartilage (meniscectomy); medial or lateral.
4	27333	Arthrotomy, knee, for excision of semilunar cartilage (meniscectomy); medial and lateral.
4	27334	Arthrotomy, knee, for synovectomy; anterior or posterior.
4	27335	Arthrotomy, knee, for synovectomy; anterior and posterior including popliteal area.
3	27340	Excision, prepatellar bursa.
4	27356	Excision or curettage of bone cyst or benign tumor of femur; with allograft.
		Repair, Revision or Reconstruction
1	27380	Suture of infrapatellar tendon; primary.
3	27381	Suture of infrapatellar tendon; secondary. Reconstruction, including fascial or tendon graft.
3	27385	Suture of quadriceps or hamstring muscle rupture; primary.
3	27386	Suture of quadriceps or hamstring muscle rupture; secondary reconstruction, including fascial or tendon graft.
4	27403	Arthrotomy with open meniscus repair.
4	27405	Repair, primary, torn ligament and/or capsule, knee; collateral.
4	27407	Repair, primary, torn ligament and/or capsule, knee; cruciate.
4	27409	Repair, primary, torn ligament and/or capsule, knee; collateral and cruciate ligaments.
3	27418	Anterior tibial tubercle plasty for chondromalacia patellae (Maquet procedure).
3	27427	Ligamentous reconstruction (augmentation), knee; extra-articular.
4	27428	Ligamentous reconstruction (augmentation), knee; intra-articular (open).
4	27429	Ligamentous reconstruction (augmentation), knee; intra-articular (open) and extra-articular.
4	27437	Arthroplasty, patella; without prosthesis.
5	27438	Arthroplasty, patella; with prosthesis.
5	27440	Arthroplasty, knee, tibial plateau.
5	27441	Arthroplasty, knee, tibial plateau; with debridement and partial synovectomy.
5	27442	Arthroplasty, knee, femoral condyles or tibial plateaus.
5	27443	Arthroplasty, knee, femoral condyles or tibial plateaus; with debridement and partial synovectomy.
		Fractures and/or Dislocations
1	27500	Treatment of closed femoral shaft fracture (including supracondylar); without manipulation (includes traction).
2	27502	Treatment of closed femoral shaft fracture (including supracondylar); with manipulation.
2	27504	Treatment of open femoral shaft fracture (including supracondylar), with uncomplicated soft tissue closure.
1	27506	Treatment of closed femoral fracture, distal end, medial or lateral condyle; without manipulation.
1	27510	Treatment of closed femoral fracture, distal end, medial or lateral condyle; with manipulation.
2	27512	Treatment of open femoral fracture, distal end, medial or lateral condyle, with uncomplicated soft tissue closure.

ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

Payment GRP	CPT code	Description
1	27516	Treatment of closed distal femoral epiphyseal separation; without manipulation (includes traction).
1	27517	Treatment of closed distal femoral epiphyseal separation; with manipulation.
1	27520	Treatment of closed patellar fracture, without manipulation.
1	27530	Treatment of closed tibial fracture, proximal (plateau); without manipulation.
1	27538	Treatment of closed intercondylar spine(s) fracture(s) of knee.
1	27550	Treatment of closed knee dislocation; without anesthesia.
1	27560	Treatment of closed patellar dislocation; without anesthesia.
		Incision
2	27604	Incision and drainage, leg or ankle, infected bursa.
		Excision
1	27613	Biopsy, soft tissue of leg or ankle area; superficial.
2	27614	Biopsy, soft tissue of leg or ankle area; deep.
3	27615	Radical resection of tumor (eg, malignant neoplasm), soft tissue of leg or ankle area.
2	27618	Excision, tumor, leg or ankle area; subcutaneous.
3	27619	Excision, tumor, leg or ankle area; deep, subfascial or intramuscular.
4	27625	Arthrotomy, ankle, for synovectomy.
4	27626	Arthrotomy, ankle, for synovectomy; including tenosynovectomy.
		Repair, Revision or Reconstruction
3	27687	Gastrocnemius recession (eg, Strayer procedure).
2	27695	Suture, primary, torn, ruptured or severed ligament, ankle; collateral.
2	27696	Suture, primary, torn, ruptured or severed ligament, ankle; both collateral ligaments.
2	27698	Suture, secondary repair, torn, ruptured or severed ligament, ankle; collateral (eg, Watson-Jones procedure).
5	27700	Arthroplasty, ankle.
2	27704	Removal of ankle implant.
2	27705	Osteotomy; tibia.
2	27707	Osteotomy; fibula.
2	27709	Osteotomy; tibia and fibula.
4	27715	Osteotomy; tibia and fibula, lengthening.
2	27730	Epiphyseal arrest by epiphysiodesis or stapling; distal tibia.
2	27732	Epiphyseal arrest by epiphysiodesis or stapling; distal fibula.
2	27734	Epiphyseal arrest by epiphysiodesis or stapling; distal tibia and fibula.
2	27740	Epiphyseal arrest by epiphysiodesis or stapling; combined, proximal and distal tibia and fibula.
2	27742	Epiphyseal arrest by epiphysiodesis or stapling; combined, proximal and distal tibia and fibula and distal femur.
3	27745	Prophylactic treatment (nailing, pinning, plating or wiring); with or without methylmethacrylate; tibia.
		Fractures and/or Dislocations
1	27750	Treatment of closed tibial shaft fracture; without manipulation.
1	27752	Treatment of closed tibial shaft fracture; with manipulation.
2	27754	Treatment of open tibial shaft fracture; with uncomplicated soft tissue closure.
1	27760	Treatment of closed distal tibial fracture (medial malleous); without manipulation.
1	27762	Treatment of closed distal tibial fracture (medial malleous); with manipulation.
1	27780	Treatment of closed proximal fibula or shaft fracture; without manipulation.
1	27786	Treatment of closed distal tibial fracture (lateral malleous); without manipulation.
1	27788	Treatment of closed distal tibial fracture (lateral malleous); with manipulation.
1	27800	Treatment of closed tibia and fibula fractures, shafts; without manipulation.
1	27808	Treatment of closed bimalleolar ankle fracture (including potts); without manipulation.
1	27810	Treatment of closed bimalleolar ankle fracture (including potts); with manipulation.
2	27812	Treatment of open bimalleolar ankle fracture with uncomplicated soft tissue closure.
3	27814	Open treatment of closed or open bimalleolar ankle fracture, with or without internal skeletal fixation.
1	27816	Treatment of closed trimalleolar ankle fracture; without manipulation.
1	27818	Treatment of closed trimalleolar ankle fracture; with manipulation.
2	27820	Treatment of open trimalleolar ankle fracture; with uncomplicated soft tissue closure.
3	27822	Open treatment of closed or open trimalleolar ankle fracture; with or without internal or external skeletal fixation, medial and/or lateral malleolus; only.
3	27823	Open treatment of closed or open trimalleolar ankle fracture, with or without internal or external skeletal fixation, medial and/or lateral malleolus; including internal skeletal fixation of posterior lip (malleolus).
1	27830	Treatment of proximal tibiofibular joint dislocation; without anesthesia.
1	27831	Treatment of proximal tibiofibular joint dislocation; requiring anesthesia.
2	27832	Open treatment of proximal tibiofibular joint dislocation with fixation or excision.
1	27840	Treatment of ankle dislocation; without anesthesia.
		Arthrodesis
4	27870	Arthrodesis, ankle, any method.
4	27871	Arthrodesis, tibiofibular joint, proximal or distal.
		Amputation
3	27884	Amputation leg, through tibia and fibula; secondary closure or scar revision.
		Foot
		Incision
2	28020	Arthrotomy, with exploration, drainage or removal of loose or foreign body; intertarsal or tarsometatarsal joint.
		Excision
2	28043	Excision, tumor, foot; subcutaneous.
3	28046	Radical resection of tumor (eg, malignant neoplasm), soft tissue of foot.
2	28054	Arthrotomy for synovial biopsy; interphalangeal joint.

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ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

Payment GRP	CPT code	Description
2	28060	Fasciectomy, excision of plantar fascia; partial (separate procedure).
3	28070	Synovectomy; intertarsal or tarsometatarsal joint, each.
2	28100	Excision or curettage of bone cyst or benign tumor, talus or calcaneus.
2	28104	Excision or curettage of bone cyst or benign tumor, tarsal or metatarsal bones, except talus or calcaneus.
3	28106	Excision or curettage of bone cyst or benign tumor, tarsal or metatarsal bones, except talus or calcaneus; with iliac or other autograft (includes obtaining graft).
3	28118	Ostectomy, excision of tarsal coalition.
4	28119	Ostectomy, calcaneus for spur, with or without plantar fascial release.
3	28130	Talectomy (astragalectomy).
2	28150	Phalangectomy of toe, single, each.
		Introduction and/or Removal
2	28192	Removal of foreign body, foot; deep.
		Repair, Revision or Reconstruction
2	28236	Transfer of tendon, anterior tibial into tarsal bone.
3	28238	Advancement of posterior tibial tendon with excision of accessory navicular bone (Kidner type procedure).
2	28240	Tenotomy, lengthening, or release, abductor hallucis muscle.
4	28262	Capsulotomy, midfoot; extensive, including posterior talotibial capsulotomy and tendon(s) lengthening as for resistant clubfoot deformity.
2	28280	Webbing operation (create syndactylism of toes) for soft corn (Kelikian type procedure).
3	28288	Ostectomy, partial, exostectomy or condylectomy, single, metatarsal head, first through fifth, each metatarsal head, (separate procedure)
2	28300	Osteotomy; calcaneus (Dwyer or Chambers type procedure), with or without internal fixation.
2	28302	Osteotomy; talus.
2	28304	Osteotomy, midtarsal bones, other than calcaneus or talus.
3	28305	Osteotomy, midtarsal bones, other than calcaneus or talus; with autograft (includes obtaining graft) (Fowler type).
4	28309	Osteotomy, metatarsals, multiple, for cavus foot (Swanson type procedure).
2	28313	Reconstruction, angular deformity of toe (overlapping second toe, fifth toe, curly toes), soft tissue procedures only.
		Fracture and/or Dislocation
1	28400	Treatment of closed calcaneal fracture; without manipulation.
3	28410	Treatment of open calcaneal fracture, with uncomplicated soft tissue closure.
3	28415	Open treatment of closed or open calcanesi fracture, with or without internal or external skeletal fixation.
3	28440	Treatment of open talus fracture, with uncomplicated soft tissue closure.
3	28445	Open treatment of closed or open talus fracture, with or without internal skeletal fixation.
3	28460	Treatment of open tarsal bone fracture (except talus and calcaneus), with uncomplicated soft tissue closure, each.
2	28476	Treatment of closed metatarsal fracture; with manipulation and percutaneous pinning, each.
3	28480	Treatment of open metatarsal fracture, with uncomplicated soft tissue closure, each.
2	28496	Treatment of closed fracture great toe, phalanx or phalanges; with manipulation and percutaneous pinning.
1	28635	Treatment of closed metatarsophalangeal joint dislocation; requiring anesthesia.
3	28640	Treatment of open metatarsophalangeal joint dislocation, with uncomplicated soft tissue closure.
1	28665	Treatment of closed interphalangeal joint dislocation; requiring anesthesia.
		Arthrodesis
4	28705	Pantalar arthrodesis.
4	28715	Triple arthrodesis.
4	28725	Subtalar arthrodesis.
4	28730	Arthrodesis, midtarsal or tarsometatarsal, multiple or transverse.
4	28735	Arthrodesis, midtarsal or tarsometatarsal, multiple or transverse; with osteotomy as for flatfoot correction.
5	28737	Arthrodesis, midtarsal navicular-cuneiform, with tendon lengthening and advancement (Miller type procedure).
4	28740	Arthrodesis, midtarsal or tarsometatarsal, single joint.
		Arthroscopy
3	29815	Arthroscopy, shoulder, diagnostic, with or without synovial biopsy (separate procedure).
3	29819	Arthroscopy, shoulder, surgical; with removal of loose body or foreign body.
3	29820	Arthroscopy, shoulder, surgical; synovectomy, partial.
3	29821	Arthroscopy, shoulder, surgical; synovectomy, complete.
3	29822	Arthroscopy, shoulder, surgical; debridement, limited.
3	29823	Arthroscopy, shoulder, surgical; debridement, extensive.
3	29825	Arthroscopy, shoulder, surgical; with lysis and resection of adhesions with or without manipulation.
3	29830	Arthroscopy, elbow, diagnostic, with or without synovial biopsy (separate procedure).
3	29834	Arthroscopy, elbow, surgical; with removal of loose body or foreign body.
3	29835	Arthroscopy, elbow, surgical; synovectomy, partial.
3	29836	Arthroscopy, elbow, surgical; synovectomy, complete.
3	29837	Arthroscopy, elbow, surgical; debridement, limited.
3	29838	Arthroscopy, elbow, surgical; debridement, extensive.
3	29840	Arthroscopy, wrist, diagnostic, with or without synovial biopsy (separate procedure).
3	29843	Arthroscopy, wrist, surgical; for infection, lavage and drainage.
3	29844	Arthroscopy, wrist, surgical; synovectomy, partial.
3	29845	Arthroscopy, wrist, surgical; synovectomy, complete.
3	29846	Arthroscopy, wrist, surgical; excision of triangular fibrocartilage and/or joint debridement.
3	29847	Arthroscopy, wrist, surgical; internal fixation for fracture or instability.
4	29880	Arthroscopy, knee, surgical; with meniscectomy (medial and lateral, including any meniscal shav.
3	29882	Arthroscopy, knee, surgical; with meniscus repair (medical and lateral).
3	29885	Arthroscopy, knee, surgical drilling for osteochondritis dissecans with bone grafting; with or without internal fixation (including debridement of base of lesion).
3	29888	Arthroscopically aided anterior cruciate ligament repair/augmentation or reconstruction.
3	29889	Arthroscopically aided posterior cruciate ligament repair/augmentation or reconstruction.
3	29894	Arthroscopy, ankle (tibiotalar and fibulotalar joints), surgical; with removal or loose body or foreign body.
3	29895	Arthroscopy, ankle (tibiotalar and fibulotalar joints), surgical synovectomy, partial.

ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

Payment GRP	CPT code	Description
3	29897	Arthroscopy, ankle (tibiotalar and fibulotalar joints), surgical; debridement, limited.
3	29898	Arthroscopy, ankle (tibiotalar and fibulotalar joints), surgical; debridement, extensive.
		Respiratory System
		Nose
		Excision
1	30120	Excision or surgical planing of skin of nose for rhinophyma.
1	30124	Excision dermoid cyst, nose; simple, skin, subcutaneous.
		Repair
5	30540	Repair choanal atresia; intranasal
2	30560	Lysis intranasal synechia.
		Other Pocedures
1	30820	Cryosurgery of turbinates, unilateral or bilateral.
1	30903	Control nasal hemorrhage, anterior, complex (cauterization with local anesthesia and packing).
1	30905	Control nasal hemorrhage, posterior, with posterior nasal packs and/or cauterization; initial.
1	30906	Control nasal hemorrhage, posterior, with posterior nasal packs and/or cauterization; subsequent.
		Accessory Sinuses
		Incision
2	31050	Sinusotomy, sphenoid, with or without biopsy.
4	31051	Sinusotomy, sphenoid, with or without biopsy; with mucosal stripping or removal of polyp(s).
4	31075	Sinusotomy frontal; transorbital, unilateral (for mucocele or osteoma, lynch type).
4	31080	Sinusotomy frontal; obliterative without osteoplastic flap, brow incision (includes ablation).
4	31086	Sinusotomy frontal; nonobliterative, with osteoplastic flap, brow incision.
5	30190	Sinusotomy combined, three or more sinuses.
		Endoscopy
2	31252	Nasal endoscopy, surgical; with nasal polypectomy.
3	31254	Nasal endoscopy, surgical; with ethmoidectomy, partial.
5	31255	Nasal endoscopy, surgical; with ethmoidectomy, anterior and posterior (total).
3	31256	Nasal endoscopy, surgical; with maxillary antrostomy.
3	31258	Nasal endoscopy, surgical; with removal of foreign body(s).
2	31260	Maxillary sinus endoscopy, diagnostic, with or without biopsy.
3	31263	Maxillary sinus endoscopy, surgical; with removal of foreign body(s).
3	31265	Maxillary sinus endoscopy, surgical; with removal of cyst.
3	31267	Maxillary sinus endoscopy, surgical; with removal of mucous membrane and/or polyps.
3	31268	Maxillary sinus endoscopy, surgical; with removal of fungus ball.
1	31270	Sphenoid endoscopy, diagnostic.
2	31275	Sphenoid endoscopy, surgical, including sphenoidotomy.
3	31277	Sphenoid endoscopy, surgical; with removal of mucous membrane.
		Larynx
		Excision
5	31300	Laryngotomy (thyrotomy, laryngofissure); with removal of tumor or laryngocele, cordectomy.
2	31320	Laryngotomy (thyrotomy, laryngofissure); diagnostic laryngoscopy direct, with or without tracheoscopy; diagnostic, newborn.
		Endoscopy
2	31528	Laryngoscopy direct, with or without tracheoscopy; with dilatation, initial.
2	31529	Laryngoscopy direct, with or without tracheoscopy; with dilatation, subsequent.
5	31580	Laryngoplasty; for laryngeal web, two stage, with keel insertion and removal.
5	31582	Laryngoplasty; for laryngeal stenosis, with graft or core mold, including tracheotomy.
4	31584	Laryngoplasty; with open reduction of fracture.
1	31585	Treatment of closed laryngeal fracture; without manipulation.
2	31586	Treatment of closed laryngeal fracture; with closed manipulative reduction.
5	31588	Laryngoplasty, not otherwise specified (eg, for burns, reconstruction after partial laryngectomy).
5	31590	Laryngeal reinnervation by neuromuscular pedicle.
2	31595	Section recurrent laryngeal nerve, therapeutic (separate procedure), unilateral.
		Trachea and Bronchi
		Endoscopy
2	31629	Bronchoscopy; with transbronchial needle aspiration biopsy.
		Repair
5	31750	Tracheoplasty; cervical.
2	31755	Tracheoplasty; tracheopharyngeal fistulization, each stage.
4	31785	Excision of tracheal tumor or carcinoma; cervical.
		Suture
2	31800	Suture of external tracheal wound or injury; cervical.
1	31820	Surgical closure tracheostomy or fistula; without plastic repair.
2	31825	Surgical closure tracheostomy or fistula; with plastic repair.
2	31830	Revision of tracheostomy scar.

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Payment GRP	CPT code	Description
		Lungs and Pleura
		Incision
1	32000	Thoracentesis, puncture of pleural cavity for aspiration, initial or subsequent.
2	32005	Chemical pleurodesis (eg, for recurrent or persistent pneumothorax).
2	32020	Tube thoracostomy with or without water seal (eg, for abscess, hemothorax, empyema) (separate procedure).
		Excision
1	32400	Biopsy, pleura; percutaneous needle.
1	32405	Biopsy, lung or mediastinum, percutaneous needle.
1	32420	Pneumonocentesis, puncture of lung for aspiration.
		Cardiovascular System
		Heart and Pericardium
		Pericardium
2	33010	Pericardiocentesis; initial.
2	33011	Pericardiocentesis; subsequent.
		Arteries and Veins
		Arterial embolectomy or thrombectomy
3	34101	Embolectomy or thrombectomy, with or without catheter: axillary, brachial, innominate, subclavian artery, by arm incision.
		Intra-arterial—intra-aortic
2	36261	Revision of implanted intra-arterial infusion pump.
1	36262	Removal of implanted intra-arterial infusion pump.
		Venous
1	36489	Percutaneous, over age 2.
1	36491	Placement of central venous catheter (subclavian, jugular, or other vein) (eg, for central venous pressure, hyper-alimentation, hemodialysis, or chemotherapy); cutdown, over age 2.
3	36495	Insertion of implantable intravenous infusion pump or venous access port.
2	36496	Revision of implantable intravenous infusion pump or venous access port.
1	36497	Removal of implantable intravenous infusion pump or venous access port.
		Arterial
1	36640	Arterial catheterization for prolonged infusion therapy (chemotherapy), cutdown.
		Intervascular Cannulization or Shunt (Separate Procedure)
3	36800	Insertion of cannula for hemodialysis, other purpose; vein to vein.
3	36810	Insertion of cannula for hemodialysis, other purpose; arteriovenous, external (Scribner type).
3	36815	Insertion of cannula for hemodialysis, other purpose; arteriovenous, external revision or closure.
3	36820	Insertion of Cannula for hemodialysis, other purpose; arteriovenous, internal (Cimino type).
3	36821	Arteriovenous anastomosis, direct, any site; creation of arteriovenous fistula.
4	36825	Autogenous graft.
4	36830	Creation of arteriovenous fistula: nonautogenous graft.
4	36832	Revision of an arteriovenous fistula, with or without thrombectomy, autogenous or nonautogenous graft.
4	36835	Insertion of Thomas shunt.
4	36840	Insertion mandril.
4	36845	Anastomosis mandril.
2	36860	Cannula declotting; without balloon catheter.
3	36861	Cannula declotting; with balloon catheter.
		Hemic and Lymphatic Systems
		Lymph Nodes and Lymphatic Channels
		Incision
1	38300	Drainage of lymph node abscess or lymphadenitis, simple.
		Excision
1	38505	Biopsy or excision of lymph node(s); by needle, superficial (eg, cervical, inguinal, axillary).
2	38525	Biopsy or excision of lymph node(s); deep axillary node(s).
		Digestive System
		Vestibule of Mouth
		Incision
1	40806	Incision of labial frenum (frenotomy).
		Excision, Destruction
1	40819	Excision of frenum, labial or buccal (frenumectomy, frenulectomy, frenectomy).
1	40820	Destruction of lesion or scar of vestibule of mouth by physical methods (eg, laser, thermal, cryo, chemical).
		Tongue, Floor of Mouth
		Incision
1	41006	Intraoral incision and drainage of abscess, cyst, or hematoma of tongue or floor of mouth; sublingual, deep, supramylohyoid.

ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

Payment GRP	CPT code	Description
1	41007	Intraoral incision and drainage of abscess, cyst, or hematoma of tongue or floor of mouth; submental space.
1	41008	Intraoral incision and drainage of abscess, cyst, or hematoma of tongue or floor of mouth; submandibular space.
1	41009	Intraoral incision and drainage of abscess, cyst, or hematoma of tongue or floor of mouth; masticator space.
1	41010	Incision of lingual frenum (frenotomy).
1	41015	Extraoral incision and drainage of abscess, cyst, or hematoma of floor of mouth; sublingual.
1	41016	Extraoral incision and drainage of abscess, cyst, or hematoma of floor of mouth; submental.
1	41017	Extraoral incision and drainage of abscess, cyst, or hematoma of floor of mouth; submandibular.
1	41018	Extraoral incision and drainage of abscess, cyst, or hematoma of floor of mouth; masticator space.
		Excision
1	41110	Excision of lesion of tongue without closure.
2	41112	Excision of lesion of tongue with closure; anterior two-thirds.
2	41113	Excision of lesion of tongue with closure; posterior one-third.
		Repair
2	41250	Repair of laceration 2.5 cm or less; floor of mouth and/or anterior two-thirds of tongue.
2	41252	Repair of laceration of tongue, floor of mouth, over 2.6 cm or complex.
		Other Procedures
1	41500	Fixation of tongue, mechanical, other than suture (eg, k-wire).
1	41510	Suture of tongue to lip for micrognathia (Douglas type procedure).
2	41520	Frenoplasty (surgical revision of frenum, eg, with z-plasty).
		Dentoalveolar Structures
		Incision
1	41800	Drainage of abscess, cyst, hematoma from dentoalveolar structures.
1	41805	Removal of embedded foreign body from dentoalveolar structures soft tissues.
		Palate, Uvula
		Excision, Destruction
5	42145	Palatopharyngoplasty (eg, uvulopalatopharyngoplasty, uvulopharyngoplasty).
1	42160	Destruction of lesion, palate or uvula (thermal, cryo or chemical).
		Repair
1	42180	Repair, laceration of palate; up to 2 cm.
5	42200	Palatoplasty for cleft palate, soft and/or hard palate only.
5	42205	Palatoplasty for cleft palate, with closure of alveolar ridge; soft tissue only.
5	42210	Palatoplasty for cleft palate, with closure of alveolar ridge; with bone graft to alveolar ridge (includes obtaining graft).
7	42215	Palatoplasty for cleft palate; major revision.
5	42220	Palatoplasty for cleft palate; secondary lengthening procedure.
5	42225	Palatoplasty for cleft palate; attachment pharyngeal flap.
5	42235	Repair of anterior palate, including vomer flap.
4	42260	Repair of nasolabial fistula.
3	42281	Insertion of pin-retained palatal prosthesis.
		Salivary Gland and Ducts
		Incision
1	42300	Drainage of abscess; parotid, simple.
1	42310	Drainage of abscess; submaxillary or sublingual, intraoral.
		Excision
2	42405	Biopsy of salivary gland; incisional.
3	42409	Marsupialization of sublingual salivary cyst (ranula).
7	42420	Excision of parotid tumor or parotid gland; total, with dissection and preservation of facial nerve.
7	42425	Excision of parotid tumor or parotid gland; total, en bloc removal with sacrifice of facial nerve.
		Repair
4	42510	Parotid duct diversion, bilateral (Wilke type procedure); with ligation of both submandibular (Wharton's) ducts.
		Pharynx, Adenoids, and Tonsils
		Incision
1	42700	Incision and drainage abscess; peritonsillar
		Excision
1	42802	Biopsy; hypopharynx.
1	42804	Biopsy; nasopharynx, visible lesion, simple.
5	42821	Tonsillectomy and adenoidectomy; age 12 or over.
4	42826	Tonsillectomy, primary or secondary; age 12 or over.
4	42831	Adenoidectomy, primary; age 12 or over.
4	42836	Adenoidectomy, secondary; age 12 or over.
		Other Procedures
1	42960	Control oropharyngeal hemorrhage, primary or secondary (eg, posttonsillectomy); simple.
2	42962	Control oropharyngeal hemorrhage, primary or secondary (eg, posttonsillectomy); with secondary surgical intervention.

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ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

Payment GRP	CPT code	Description
		Esophagus
		Endoscopy
1	43234	Upper gastrointestinal endoscopy, simple primary examination (eg, with small diameter flexible fiberscope).
2	43241	Upper gastrointestinal endoscopy, including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; with transendoscopic tube or catheter placement.
2	43243	Upper gastrointestinal endoscopy, including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for injection sclerosis of esophageal and/or gastric varices.
2	43245	Upper gastrointestinal endoscopy, including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for dilation of gastric outlet for obstruction.
2	43246	Upper gastrointestinal endoscopy, including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for directed placement of percutaneous gastrostomy tube.
2	43265	Endoscopic retrograde cholangiopancreatography (ERCP), with or without biopsy and/or collection of specimen; for destruction lithotripsy of stone, any method.
2	43267	Endoscopic retrograde cholangiopancreatography (ERCP), with or without biopsy and/or collection of specimen; for insertion of nasobiliary or nasopancreatic drainage tube.
2	43268	Endoscopic retrograde cholangiopancreatography (ERCP), with or without biopsy and/or collection of specimen; for insertion of tube or stent into bile or pancreatic duct.
2	43269	Endoscopic retrograde cholangiopancreatography (ERCP), with or without biopsy and/or collection of specimen; for removal and/or change of tube, stent or foreign body.
2	43271	Endoscopic retrograde cholangiopancreatography (ERCP), with or without biopsy and/or collection of specimen; for balloon dilation of ampulla, biliary or pancreatic duct.
2	43272	Endoscopic retrograde cholangiopancreatography (ERCP), with or without biopsy and/or collection of specimen; for ablation of tumor or mucosal lesion (eg, laser, hot biopsy/fulguration).
		Stomach
		Excision
1	43600	Biopsy of stomach; by capsule, tube, peroral (one or more specimens).
		Introduction
2	43750	Percutaneous placement of gastrostomy tube.
1	43760	Change of gastrostomy tube.
		Suture
1	43870	Closure of gastrostomy, surgical.
		Intestines (Except Rectum)
		Excision
1	44100	Biopsy of intestine by capsule, tube, peroral (one or more specimens).
		Enterostomy—External Fistulization of Intestines (Separate Procedure)
1	44312	Revision of ileostomy; simple (release of superficial scar).
		Endoscopy, Small Bowel and Stoma
2	44372	Small intestinal endoscopy, enteroscopy beyond second portion of duodenum; for placement of percutaneous jejunostomy tube.
2	44373	Small intestinal endoscopy, enteroscopy beyond second portion of duodenum; for conversion of percutaneous gastrostomy tube to percutaneous jejunostomy tube.
1	44385	Fiberoptic evaluation of small intestinal (Kock) or pelvic pouch.
1	44386	Fiberoptic evaluation of small intestinal (Kock) or pelvic pouch; for biopsy and/or collection of specimen by brushing or washing.
1	44393	Fiberoptic colonoscopy through colostomy; for ablation of tumor or mucosal lesion (eg, laser, hot biopsy/fulguration).
		Rectum
		Excision
1	45100	Biopsy of anorectal wall, anal approach (eg, congenital megacolon).
2	45108	Anorectal myomectomy.
1	45150	Division of structure of rectum.
		Endoscopy
1	45305	Proctosigmoidoscopy; for biopsy.
1	45307	Proctosigmoidoscopy; for removal of foreign body.
1	45310	Proctosigmoidoscopy; for removal of polyp or papilloma.
1	45315	Proctosigmoidoscopy; for removal of multiple excrescences, papillomata or polyps.
1	45317	Proctosigmoidoscopy; for control of hemorrhage (eg, electrocoagulation, laser photocoagulation).
1	45320	Proctosigmoidoscopy; for ablation of tumor (eg, electrocoagulation, photocoagulation, hot biopsy/fulguration).
1	45321	Proctosigmoidoscopy; for decompression of volvulus.
1	45332	Sigmoidoscopy, flexible fiberoptic; for removal of foreign body.
1	45336	Sigmoidoscopy, flexible fiberoptic; for ablation of tumor or mucosal lesion (eg, electrocoagulation, photocoagulation, hot biopsy/fulguration).
1	45337	Sigmoidoscopy, flexible fiberoptic for decompression of volvulus.
		Manipulation
1	45905	Dilation of anal sphincter (separate procedure) under anesthesia other than local.

ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

Payment GRP	CPT code	Description
		Anus
		Incision
1	46030	Removal of anal seton, other marker.
1	46050	Incision and drainage, perianal abscess, superficial.
		Excision
2	46210	Cryptectomy single.
1	46220	Papillectomy or excision of single tag, anus (separate procedure).
		Endoscopy
1	46606	Anoscopy; for removal of foreign body.
1	46610	Anoscopy; for removal of polyp.
1	46612	Anoscopy; for multiple polyp removal.
		Repair
3	46700	Anoplasty, plastic operation for stricture; adult.
		Destruction
1	46922	Destruction of lesion(s), anus, (eg, condyloma, papilloma, molluscum contagiosum, herpetic vesicle), simple; surgical excision.
		Biliary Tract
		Introduction
2	47510	Introduction of percutaneous transhepatic catheter or stent for biliary drainage.
1	47525	Change of percutaneous biliary drainage catheter.
1	47530	Revision and/or reinsertion of transhepatic T-tube.
		Endoscopy
2	47552	Biliary endoscopy, percutaneous via T-tube or other tract; diagnostic.
3	47553	Biliary endoscopy, percutaneous via T-tube or other tract for biopsy and/or collection of specimen by brushing or washing.
3	47554	Biliary endoscopy, percutaneous via T-tube or other tract for removal of stone(s).
3	47555	Biliary endoscopy, percutaneous via T-tube or other tract for dilation of biliary duct stricture.
		Excision
3	47630	Biliary duct stone extraction, percutaneous via T-tube tract, basket or snare (eg, Burhenne technique).
		Pancreas
		Excision
1	48102	Biopsy of pancreas, percutaneous needle.
		Abdomen, Peritoneum, and Omentum
		Incision
2	49080	Peritoneocentesis, abdominal paracentesis, or peritoneal lavage; initial.
2	49081	Peritoneocentesis, abdominal paracentesis, or peritoneal lavage; subsequent.
2	49085	Removal of peritoneal foreign body from peritoneal cavity.
		Excision and Destruction
1	49180	Biopsy, abdominal or retroperitoneal mass, percutaneous needle.
		Urinary System
		Kidney
		Introduction
1	50395	Introduction of guide into renal pelvis and/or ureter; with dilation to establish nephrostomy tract, percutaneous.
		Suture
1	50520	Closure of nephrocutaneous or pyelocutaneous fistula.
		Endoscopy
1	50551	Renal endoscopy through established nephrostomy or pyelostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service.
1	50555	Renal endoscopy through established nephrostomy or pyelostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with biopsy.
1	50557	Renal endoscopy through established nephrostomy or pyelostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with fulguration and/or incision, with or without biopsy.
1	50574	Renal endoscopy through nephrotomy or pyelotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with biopsy.
		Other Procedures
9	50590	Lithotripsy, extracorporeal shock wave.
		Ureter
1	50685	Change of ureterostomy tube.
		Endoscopy
1	50951	Ureteral endoscopy through established ureterostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service.

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ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

Payment GRP	CPT code	Description
		Bladder
		Incision
4	51020	Cystotomy or cystostomy; with fulguration and/or insertion of radioactive material.
4	51030	Cystotomy or cystostomy; with cryosurgical destruction of ravesical lesion.
4	51045	Cystotomy, with insertion of ureteral catheter or stent (separate procedure).
		Excision
4	51500	Excision of urachal cyst or sinus, with or without umbilical hernia repair.
		Urodynamics
1	51725	Simple cystometrogram (CMG) (eg, spinal manometer).
1	51726	Complex cystometrogram (eg, calibrated electronic equipment).
1	51772	Urethral pressure profile studies (UPP) (urethral closure pressure profile), any technique.
1	51785	Electromyography studies (EMG) of anal or urethral sphincter, any technique.
		Repair
1	51840	Closure of cystostomy (separate procedure).
3	51920	Closure of vesicouterine fistula.
		Transurethral Surgery (Ureter and Pelvis)
4	52325	Cystourethroscopy (including ureteral catheterization); with fragmentation of ureteral calculus (eg, ultrasonic or electrohydraulic technique).
3	52334	Cystourethroscopy with insertion of ureteral guide wire through kidney to establish a percutaneous nephrostomy, retrograde.
3	52336	Cystourethroscopy, with ureteroscopy and/or pyeloscopy (includes dilation of the ureter by any method); with removal or manipulation of calculus (ureteral catheterization is included).
4	52337	Cystourethroscopy, with ureteroscopy and/or pyeloscopy (includes dilation of the ureter by any method); with lithotripsy (ureteral catheterization is included).
4	52338	Cystourethroscopy, with ureteroscopy and/or pyeloscopy (includes dilation of the ureter by any method); with biopsy and/or fulguration of lesion.
		Urethra
		Excision
1	53200	Biopsy of urethra.
5	53210	Urethrectomy, total, including cystostomy; female.
5	53215	Urethrectomy, total, including cystostomy; male.
2	53250	Excision of bulbourethral gland (Cowper's gland).
2	53260	Excision of fulguration; urethral polyp(s), distal urethra.
		Repair
1	53442	Removal of perineal prosthesis introduced for continence.
		Suture
2	53505	Urethrorrhaphy, suture of urethral wound or injury; penile.
		Destruction
1	54057	Destruction of lesion(s), penis (eg, condyloma, papilloma, molluscum contagiosum, herpetic vesicle), simple; laser surgery.
1	54060	Destruction of lesion(s), penis (eg, condyloma, papilloma, molluscum contagiosum, herpetic vesicle), simple; surgical excision.
1	54065	Destruction of lesion(s), penis (eg, condyloma, papilloma, molluscum contagiosum, herpetic vesicle), extensive, any method.
		Excision
1	54100	Biopsy of penis; cutaneous (separate procedure).
		Repair
3	54300	Plastic operation of penis for straightening of chordee (eg, hypospadias), with or without mobilization of urethra.
3	54360	Plastic operation on penis to correct angulation.
4	54420	Corpora cavernosa-saphanous vein shunt (priapism operation), unilateral or bilateral.
4	54435	Corpora cavernosa-glans penis fistulization (eg, biopsy needle, winter procedure, rongeur, or punch) for priapism.
		Manipulation
1	54450	Foreskin manipulation including lysis of preputial adhesions and stretching.
		Testis
		Excision
1	54550	Biopsy of testis, needle (separate procedure).
4	54550	Exploration for undescended testis (inguinal or scrotal area).
4	54600	Reduction of torsion of testis, surgical, with or without fixation of contralateral testis.
3	54620	Fixation of contralateral testis (separate procedure).
4	54640	Orchiopexy, any type, with or without hernia repair.
2	54660	Insertion of testicular prosthesis (separate procedure).
		Epididymis
		Excision
1	54800	Biopsy of epididymis, needle.
		Scrotum
		Incision
1	55100	Drainage of scrotal wall abscess.

ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

Payment GRP	CPT code	Description
2	55110	Scrotal exploration.
		VAS Deferens
		Incision
2	55200	Vasotomy, cannulization with or without incision of VAS, unilateral or bilateral (separate procedure).
		Seminal Vesicles
		Incision
1	55600	Vesiculotomy.
		Female Genital System
		Perineum
		Excision
1	56100	Biopsy of perineum (separate procedure).
		Repair
5	56200	Perineoplasty, repair of perineum, nonobstetrical (separate procedure).
		Vulva and introitus
		Excision
5	56620	Vulvectomy; partial (less than 80% of vulvar area).
7	56625	Vulvectomy; complete (skin and subcutaneous tissue).
1	56700	Hymenectomy, partial excision of hymen.
1	56720	Hymenotomy, simple incision.
		Repair
3	56800	Plastic repair of introitus.
		Vagina
		Incision
1	57000	Colpotomy; with exploration.
2	57010	Colpotomy; with drainage of pelvic abscess.
		Destruction
1	57065	Destruction of vaginal lesion(s); extensive, any method.
		Excision
2	57135	Excision of vaginal cyst or tumor.
		Introduction
1	57180	Introduction of any hemostatic agent or pack for spontaneous or traumatic nonobstetrical vaginal hemorrhage (separate procedure).
		Repair
1	57200	Colporrhaphy, suture of injury of vagina (nonobstetrical).
2	57210	Colpoperineorrhaphy, suture of injury of vagina and/or perineum (nonobstetrical).
3	57220	Plastic operation on urethral sphincter, vaginal approach (eg, Kelly urethral plication) (separate procedure).
3	57230	Plastic repair of urethrocele (separate procedure).
5	57240	Anterior colporrhaphy, repair of cystocele with or without repair of urethrocele (separate procedure).
5	57250	Posterior colporrhaphy, repair of rectocele with or without perineorrhaphy.
5	57260	Combined anteroposterior colporrhaphy.
7	57265	Combined anteroposterior colporrhaphy; with enterocele repair.
3	57300	Closure of rectovaginal fistula; vaginal or transanal approach.
3	57310	Closure of urethrovaginal fistula.
4	57311	Closure of urethrovaginal fistula; with bulbocavernosus transplant.
3	57320	Closure of vesicovaginal fistula; vaginal approach.
		Endoscopy
2	57451	Culdoscopy, diagnostic; with biopsy and/or lysis of adhesions or tubal sterilization.
		Cervix Uteri
		Excision
2	57513	Cauterization of cervix; laser surgery.
3	57530	Trachelectomy (cervicectomy), amputation of cervix (separate procedure).
3	57550	Excision of cervical stump, vaginal approach.
		Repair
1	57700	Cerclage of uterine cervix, nonobstetrical.
1	57800	Dilation of cervical canal, instrumental (separate procedure).

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ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

Payment GRP	CPT code	Description
		Corpus Uteri
		Excision
5	58145	Myomectomy, excision of fibroid tumor of uterus, single or multiple (separate procedure); vaginal approach.
		Ovary
		Incision
3	58800	Drainage of ovarian cyst(s), unilateral or bilateral, (separate procedure), vaginal approach.
3	58820	Drainage of ovarian abscess; vaginal approach.
		Endoscopy-Laparoscopy-Hysteroscopy
1	58990	Hysteroscopy; diagnostic.
		Endocrine System
		Thyroid Gland
		Incision
1	60000	Incision and drainage of thyroglossal cyst, infected.
		Excision
4	60281	Excision of thyroglossal duct cyst or sinus; recurrent.
		Nervous System
		Skull, Meninges, and Brain
		Puncture for Injection, Drainage or Aspiration
1	61055	Cisternal or lateral cervical puncture with injection of drug or other substance for diagnosis or treatment.
		Twist Drill, Burr Hole(s) or Trephine
3	61215	Insertion of subcutaneous reservoir, pump or continuous infusion system for connection to ventricular catheter.
		Stereotaxis
3	61790	Creation of lesion by stereotactic method, percutaneous, by neurolytic agent (eg, alcohol, thermal, electrical, radiofrequency); Gasserian ganglion.
3	61791	Creation of lesion by stereotactic method, percutaneous, by neurolytic agent (eg, alcohol, thermal, electrical, radiofrequency); trigeminal medullary tract.
		Neurostimulators, Intracranial
2	61885	Incision for subcutaneous placement of neurostimulator receiver, direct or inductive coupling.
1	61888	Revision or removal or intracranial neurostimulator receiver.
		CSF Shunt
1	62194	Replacement or irrigation, subarachnoid/subdural catheter.
1	62225	Replacement or irrigation, ventricular catheter.
2	62230	Replacement or revision of CSF shunt, obstructed valve, or distal catheter in shunt system.
2	62256	Removal of complete CSF shunt system; without replacement.
		Spine and Spinal Cord
		Puncture for Injection, Drainage, or Aspiration
1	62268	Percutaneous aspiration, spinal cord cyst or syrinx.
1	62269	Biopsy of spinal cord, percutaneous needle.
1	62272	Spinal puncture, therapeutic, for drainage of spinal fluid (by needle or catheter).
1	62290	Injection of neurolytic substance (eg, alcohol, phenol, iced saline solutions); subarachnoid.
1	62292	Injection of neurolytic substance (eg, alcohol, phenol, iced saline solutions); lumbar or caudal epidural.
3	62294	Injection procedure, arterial, for occlusion of arteriovenous malformation, spinal.
		Stereotaxis
2	63600	Creation of lesion of spinal cord by stereotactic method, percutaneous, any modality (including stimulation and/or recording).
1	63610	Stereotactic stimulation of spinal cord, percutaneous, separate procedure not followed by other surgery.
		Neurostimulators, Spinal
2	63650	Percutaneous implanation of neutrostimulator electrodes; epidual.
1	63660	Revison or removal of spinal neurostimulator electrorodes.
2	63685	Incision for subcutaneous placement of neurostimulator receiver, direct or inductive coupling.
1	63688	Revision or removal of spinal neurostimulator receiver.
		Shunt, Spinal CSF
3	63744	Replacement, irrigation or revision of lumbosubarachnoid shunt.
2	63746	Removal of entire lumbosubrachnoid shunt system without replacement.
4	63750	Insertion, subarachnoid cathereter with reservoir and/or pump for intermittent or continous infusion of drug, including laminectomy.
2	63760	Insertion, subarachnoid or epidual catheter, with reservoir and/or pump for drug infusion, without laminectomy.
		Extracranial Nerves, Peripheral Nerves, and Autonomic Nervous System
		Introduction/Injection of Anesthetic Agent (Nerve Block), Diagnostic or Therapeutic
		Neurostimulators, Peripheral nerve
1	64575	Incision for implantation of neurostimulator electrodes; peripheral nerve.
2	64590	Incision for subcutaneous placement of neurostimulator receiver, direct or inductive coupling.

ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

Payment GRP	CPT code	Description
1	64595	Revision or removal of peripheral neurostimulator receiver.
		Destruction by Neurolytic Agent (eg, Chemical, Thermal, Electrical, Radiofrequency)
		Somatic Nerves
1	64620	Destruction by neurolytic agent; intercostal nerve.
1	64623	Destruction by neurolytic agent; paravertebral facet joint nerve, lumbar, each additional level.
		Sympathetic Nerves
2	64680	Destruction by neurolytic agent, celiac plexus, with or without radiologic monitoring.
		Transection or Avulsion of Nerve
2	64746	Transection or avulsion of phrenic nerve.
2	64771	Transection or avulsion of other cranial nerve, extradural.
		Excision—Somatic Nerves
2	64783	Excision of neuroma; hand or foot, each additional nerve, except same digit (list separately by this number).
3	64792	Excision of neurofibroma or neurolemmoma; extensive (including malignant type).
		Nerve Repair by Suture (Neurorrhaphy)
2	64858	Suture of sciatic nerve.
1	64859	Suture of each additional major peripheral nerve.
3	64861	Suture of brachial plexus.
3	64862	Suture of lumbar plexus.
3	64864	Suture of facial nerve; extracranial.
4	64865	Suture of facial nerve; intratemporal, with or without grafting.
4	64870	Anastomosis; facial-phrenic.
		Eye and Ocular Adnexa
		Eyeball
		Removal of Eye
7	65112	Exenteration of orbit (does not include skin graft), removal of orbital contents; with therapeutic removal of bone.
7	65114	Exenteration of orbit (does not include skin graft), removal of orbital contents; with temporalis muscle transplant.
		Repair of Laceration of Eyeball
2	65270	Repair of laceration; conjunctiva, with or without nonperforating laceration sclera, direct closure.
4	65275	Repair of laceration; cornea, nonperforating, with or without removal foreign body.
		Anterior Segment—Cornea
		Keratoplasty
7	65755	Keratoplasty (corneal transplant); penetrating.
		Anterior Segment—Anterior Chamber
		Incision
2	65850	Trabeculotomy ab Externo.
		Anterior Segment—Iris, Ciliary Body
		Destruction
2	66702	Ciliary body destruction, any method (eg, diathermy, cyrotherapy, laser, dialysis).
		Removal cataract
4	66852	Removal of lens material; aspiration technique, one or more stages, pars plana approach, with or without vitrectomy.
		Posterior Segment—Vitreous
2	67031	Severing of vitreous strands, vitreous face adhesions, sheets, membranes or opacities, laser surgery (one or more stages).
5	67038	Vitrectomy, mechanical, pars plana approach; with epiretinal membrane stripping.
7	67039	Vitrectomy, mechanical, pars plana approach, with focal endolaser photocoagulation.
7	67040	Vitrectomy, mechanical, pars plana approach; with endolaser panretinal photocoagulation.
		Posterior Segment—Retinal Detachment
		Repair
7	67112	Repair of retinal detachment, one or more sessions; previously operated upon, any technique.
2	67115	Release of encircling material (posterior segment).
2	67121	Removal of implanted material, posterior segment; intraocular.
2	67141	Prophylaxis of retinal detachment (eg, retinal break, lattice degeneration) without drainage, one or more sessions, cryotherapy, diathermy.
		Ocular Adnexa—Extraocular Muscles
4	67314	Strabismus surgery, recession or resection procedure (patient not previously operated on); one vertical muscle excluding superior oblique).
4	67316	Strabismus surgery, recession or resection procedure (patient not previously operated on); two or more vertical muscles (excluding superior oblique).
4	67318	Strabismus surgery, any procedure (patient not previously operated on); superior oblique muscle.
		Ocular Adnexa—Orbit
		Exploration, Excision
5	67420	Orbitotomy with bone flap, lateral approach (eg, Kroenlein); with removal of lesion.

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ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

Payment GRP	CPT code	Description
5	67430	Orbitotomy with bone flap, lateral approach (eg, Kroenlein); with removal of foreign body.
5	67440	Orbitotomy with bone flap, lateral approach (eg, Kroenlein); with drainage or decompression.
5	67450	Orbitotomy with bone flap, lateral approach (eg, Kroenlein); for exploration, with or without biopsy.
		Ocular Adnexa—Eyelids
		Excision or Removal of Lesion Involving More than Skin (ie, Involving Lid Margin, Tarsus, and/or Palpebral Conjunctiva
		Repair Blepharoptosis, Lid Retraction
3	67911	Correction of lid retraction.
		Ocular Adnexa—Conjunctiva
		Conjunctivoplasty
4	68330	Repair of symblepharon; conjunctivoplasty, without graft.
4	68335	Repair of symblepharon; with free graft conjunctiva or buccal mucous membrane (includes obtaining graft).
4	68340	Repair of symblepharon; division of symblepharon with or without insertion of conformer or contact lens.
		Ocular Adnexa—Lacrimal System
		Excision
1	68525	Biopsy of lacrimal sac; probing of nasolacrimal duct, with or without irrigation, unilateral or bilateral; requiring general anesthesia.
		Probing and Related Procedures
2	68825	Probing of nasolacrimal duct, with or without irrigation, unilateral or bilateral; requiring general anesthesia.
		Auditory System
		External Ear
		Removal Foreign Body
1	69205	Removal foreign body from external auditory canal; with general anesthesia.
		Repair
3	69310	Reconstruction of external auditory canal (meatoplasty) (eg, for stenosis due to trauma, infection), (separate procedure).
7	69320	Reconstruction of external auditory canal for congenital atresia, single stage.
		Middle Ear
		Incision
3	69421	Myringotomy including aspiration and/or eustachian tube inflation requiring general anesthesia.
1	69424	Ventilating tube removal when originally inserted by another physician.
3	69436	Tympanostomy (requiring insertion of ventilating tube), general anesthesia.
		Excision
7	69502	Mastoidectomy; complete.
7	69505	Mastoidectomy; modified radical.
7	69511	Mastoidectomy; radical.
7	69530	Petrous apicectomy including radical mastoidectomy.
5	69550	Excision aural glomus tumor; transcanal.
7	69552	Excision aural glomus tumor; transmastoid.
		Repair
7	69601	Revision mastoidectomy; resulting in complete mastoidectomy.
7	69602	Revision mastoidectomy; resulting in modified radical mastoidectomy.
7	69603	Revision mastoidectomy; resulting in radical mastoidectomy.
7	69604	Revision mastoidectomy; resulting in tympanoplasty.
7	69605	Revision mastoidectomy; with apicectomy.
		Other Procedures
3	69710	Implantation or replacement of electromagnetic bone conduction hearing device intemporal bone.
1	69711	Removal or repair of electromagnetic bone conduction hearing device in temporal bone.
		Inner Ear
		Incision, Destruction
5	69801	Labyrinthotomy, with or without cryosurgery or other nonexcisional destructive procedures or tack procedure; transcanal.
7	69802	Labyrinthotomy, with or without cryosurgery or other nonexcisional destructive procedures or tack procedure; with mastoidectomy.
7	69805	Endolymphatic sac operation; without shunt.
7	69806	Endolymphatic sac operation; with shunt.
5	69820	Fenestration semicircular canal.
5	69840	Revision fenestration operation.
		Excision
7	69905	Labyrinthectomy; transcanal.
7	69910	Labyrinthectomy; with mastoidectomy.
7	69915	Vestibular nerve section, translabyrinthine approach.
7	69930	Cochlear device implantation, with or without mastoidectomy.

DELETIONS TO COVERED PROCEDURES IN ASCS

CPT code	
27095	Injection procedure for hip arthrography; with anesthesia.
31578	Irrigation of constrast material for laryngography or bronchography, without catheterization.
41828	Excision of lesion or tumor, dentoalveolar.
42665	Ligation salivary duct, intraoral.
50205	Renal biopsy; percutaneous, by surgical exposure of kidney.
50394	Injection procedure for pyelography.
54205	Injection procedure for peyronie disease with surgical exposure of plaque.
54230	Injection procedure for corpora cavernosography.
57450	Culdoscopy, diagnostic.
64408	Injection, anesthestic agent; vegus nerve.
65230	Removal of foreign body, intraocular; from anterior chamber, magnetic extraction.
65245	Removal of foreign body, intraocular; from lens (without extraction lens), nonmagnetic extraction.
66700	Cyclodiathermy; initial.
66701	Cyclodiathermy; subsequent.
66720	Cyclocryotherapy; initial.
66721	Cyclocryotherapy; subsequent.
66741	Cyclodialysis; subsequent.
66800	Discission of lens capsule; incisional technique (needling of lens), initial.
66801	Discission of lens capsule; incisional technique (needling of lens), subsequent.
66915	Expression of lens, linear, one or more stages.
67312	Strabismus surgery on patient not previously operated on, any procedure, any muscle (may include minor displacement, for example for a or V pattern); three or more muscles, one or both eyes.
69105	Biopsy external auditory canal.
74741	Hysterosalpingography; complete procedure.

ADDEMDUM A.1. PAYMENT GROUP CHANGES FOR SELECT AMBULATORY SURGICAL CENTER (ASC) PROCEDURES COVERED ON SEPTEMBER 30, 1991 [1]

Old pymt grp	New pymt grp	CPT code	Description
			Musculoskeletal System
			Foot.
			Excision
3	7	28120	Partial excision (craterization, saucerization, sequestrectomy, or diaphysectomy) of bone (eg, for osteomyelitis or talar boosing); talus or calcaneus.
			Repair, Revision or Reconstruction
2	3	28293	Hallux valgus (bunion) correction, with or without sesamoidectomy; resection of joint with implant.
			Eye and Ocular Adnexa
			Posterior segment—Retinal detachment.
			Repair
5	7	67106	Repair of retinal detachment, one or more sessions; with vitrectomy, any method, with or without air or gas tamponade, with or without focal endolaser photocoagulation, may include procedures 67101–67107 and/or removal of lens by same technique.
			Ocular Adnexa—Eyelids
			Repair blepharoptosis, lid retraction.
3	4	67903	Repair of blepharoptosis; (tarso) levator resection or advancement, internal approach.
3	4	67907	Repair of blepharoptosis; superior rectus tendon transplant.
3	4	67909	Reduction of overcorrection of ptosis.
			Repair ectropion, entropion.
1	3	67914	Repair of ectropion; suture.
3	4	67917	Repair of ectropion; blepharoplasty, extensive (eg, Kuhnt-Szymanowski operation).
1	3	67921	Repair of entropion; suture.

[1] This addendum provides a listing of payment group changes that are discussed in section 6a. "Appropriateness of Proposed Payment Group Assignment" of this notice which are specific to certain ASC procedures covered on September 30, 1991.

ADDENDUM B.—WAGE INDEX FOR URBAN AREAS

[Areas that Qualify as Large Urban Areas Are Designated with an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Abilene, TX	0.9437
Taylor, TX	
Aguadilla, PR	0.4572

ADDENDUM B.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that Qualify as Large Urban Areas Are Designated with an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Aguada, PR	
Aguadilla, PR	
Isabella, PR	
Moca, PR	
Akron, OH	0.9016

ADDENDUM B.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that Qualify as Large Urban Areas Are Designated with an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Portage, OH	
Summit, OH	
Albany, GA	3.8057
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	0.8991

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ADDENDUM B.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that Qualify as Large Urban Areas Are Designated with an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1.0133
Bernalillo, NM	
Alexandria, LA	0.8253
Rapides, LA	
Allentown-Bethlehem-Easton, PA-NJ	0.9265
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	0.9247
Blair, PA	
Amarillo, TX	0.8747
Potter, TX	
Randall, TX	
*Anaheim-Santa Ana, CA	1.2021
Orange, CA	
Anchorage, AK	1.4189
Anchorage, AK	
Anderson, IN	1.0122
Madison, IN	
Anderson, SC	0.7255
Anderson, SC	
Ann Arbor, MI	1.1394
Washtenaw, MI	
Anniston, AL	0.7938
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	0.9229
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR	0.3957
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	0.8747
Buncombe, NC	
Athens, GA	0.8218
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
*Atlanta, GA	0.9604
Barrow, GA	
Bulte, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	1.0516
Atlantic, NJ	
Cape May, NJ	
Augusta, GA-SC	0.9409
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	0.9208
Kane, IL	
Kendall, IL	
Austin, TX	0.9608
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.0878
Kern, CA	
*Baltimore, MD	1.0165
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	0.9072
Penobscot, ME	
Baton Rouge, LA	0.9097
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	0.9107
Calhoun, MI	
Beaumont-Port Arthur, TX	0.9612
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.0174
Beaver, PA	
Bellingham, WA	1.0506
Whatcom, WA	
Benton Harbor, MI	0.7713
Berrien, MI	
*Bergen-Passaic, NJ	1.0305
Bergen, NJ	
Passaic, NJ	
Billings, MT	0.9333
Yellowstone, MT	
Biloxi-Gulfport, MS	0.8069
Hancock, MS	
Harrison, MS	
Binghamton, NY	0.9268
Broome, NY	
Tioga, NY	
Birmingham, AL	0.8777
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	0.8851
Burleigh, ND	
Morton, ND	
Bloomington, IN	0.7848
Monroe, IN	
Bloomington-Normal, IL	0.8666
McLean, IL	
Boise City, ID	1.0120
Ada, ID	
*Boston-Lawrence-Salem-Lowell-Brockton, MA	1.1620
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	1.0158
Boulder, CO	
Bradenton, FL	0.8828
Manatee, FL	
Brazoria, TX	0.8805
Brazoria, TX	
Bremerton, WA	1.0375
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury, CT	1.2043
Fairfield, CT	
Brownsville-Harlingen, TX	0.8609
Cameron, TX	
Bryan-College Station, TX	0.9497
Brazos, TX	
Buffalo, NY	0.9916
Erie, NY	
Burlington, NC	0.7868
Alamance, NC	
Burlington, VT	0.9366
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	0.4592
Caguas, PR	
Guarabo, PR	
San Lorenz, PR	
Agues Buenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	0.8461
Carroll, OH	
Stark, OH	
Casper, WY	0.8899
Natrona, WY	
Cedar Rapids, IA	0.7534
Linn, IA	
Champaign-Urbana-Rantoul, IL	0.8753
Champaign, IL	
Charleston, SC	0.8339
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	0.9701
Kanawha, WV	
Putnam, WV	
*Charlotte-Gastonia-Rock Hill, NC-SC	0.9495
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenberg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	0.9624
Albermarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA	0.8206
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	0.7915
Laramie, WY	
*Chicago, IL	1.0527
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.1062
Butte, CA	
*Cincinnati, OH-KY-IN	0.9830

ADDENDUM B.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that Qualify as Large Urban Areas Are Designated with an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	0.7326
Christian, KY	
Montgomery, TN	
*Cleveland, OH	1.0748
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Median, OH	
Colorado Springs, CO	0.9825
El Paso, CO	
Columbia, MO	0.9515
Boone, MO	
Columbia, SC	0.8648
Lexington, SC	
Richland, SC	
Columbus, GA-AL	0.7577
Russell, AL	
Chattanooches, GA	
Muscogee, GA	
*Columbus, OH	0.9682
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	0.8602
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	0.8195
Allegany, MD	
Mineral, WV	
*Dallas, TX	0.9447
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	0.7513
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL	0.8478
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	0.9160
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	0.8951
Volusia, FL	
Decatur, AL	0.7493
Lawrence, AL	
Morgan, AL	
Decatur, IL	0.8293
Macon, IL	
*Denver, CO	1.0767
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	0.9179
Dallas, IA	
Polk, IA	
Warren, IA	
*Detroit, MI	1.0637
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	0.7576
Dale, AL	
Houston, AL	
Dubuque, IA	0.8382
Dubuque, IA	
Duluth, MN-WI	0.9526
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	0.8495
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	0.9722
El Paso, TX	
Elkhart-Goshen, IN	0.8589
Elkhart, IN	
Elmira, NY	0.8818
Chemung, NY	
Enid, OK	0.8529
Garfield, OK	
Erie, PA	0.9184
Erie, PA	
Eugene-Springfield, OR	1.0174
Lane, OR	
Evansville, IN-KY	0.9264
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	0.9715
Clay, MN	
Cass, ND	
Fayetteville, NC	0.8303
Cumberland, NC	
Fayetteville-Springdale, AR	0.7997
Washington, AR	
Flint, MI	1.1554
Genesee, MI	
Florence, AL	0.7724
Colbert, AL	
Lauderdale, AL	
Florence, SC	0.8436
Florence, SC	
Fort Collins-Loveland, CO	1.0247
Larimor, CO	
*Fort Lauderdale-Hollywood-Pompano Beach, FL	1.0383
Broward, FL	
Fort Myers-Cape Coral, FL	0.9506
Lee, FL	
Fort Pierce, FL	1.1051
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	0.7939
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	0.8849
Okaloosa, FL	
Forth Wayne, IN	0.8910
Allen, IN	
DeKalb, IN	
Whitley, IN	
*Fort Worth-Arlington, TX	0.9496
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.0747
Fresno, CA	
Gadsden, AL	0.8205
Etowah, AL	
Gainesville, FL	0.8806
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	0.9459
Galveston, TX	
Gary-Hammond, IN	0.9485
Lake, IN	
Porter, IN	
Glen Falls, NY	0.8759
Warren, NY	
Washington, NY	
Grand Forks, ND	0.8586
Grand Forks, ND	
Grand Rapids, MI	0.9692
Kent, MI	
Ottawa, MI	
Great Falls, MT	1.0001
Cascade, MT	
Greeley, CO	0.9365
Weld, CO	
Green Bay, WI	0.9584
Brown, WI	
Greensbero-Winston-Salem-High Point, NC	0.9173
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	0.8811
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	0.9166
Washington, MD	
Hamilton-Middletown, OH	0.8481
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	0.9429
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
*Hartford-Middletown-New Britain-Bristol, CT	1.1827
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	0.8609
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.1591
Honolulu, HI	
Houma-Thibodaux, LA	0.7184
Lafourche, LA	
Terrebonne, LA	
*Houston, TX	0.9788
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	0.9446

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ADDENDUM B.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that Qualify as Large Urban Areas Are Designated with an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	0.8843
Madison, AL	
*Indianapolis, IN	0.9609
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	0.9536
Johnson, IA	
Jackson, MI	0.8833
Jackson, MI	
Jackson, MS	0.7740
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	0.7969
Madison, TN	
Jacksonville, FL	0.9059
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	0.7161
Onslow, NC	
Jamestown-Dunkirk, NY	0.7069
Chatauqua, NY	
Janesville-Beloit, WI	0.8453
Rock, WI	
Jersey City, NJ	1.0536
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	0.8676
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	0.8851
Cambria, PA	
Somerset, PA	
Joliet, IL	1.0516
Grundy, IL	
Will, IL	
Joplin, MO	0.7886
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.1720
Kalamazoo, MI	
Kankakee, IL	0.8496
Kankakee, IL	
*Kansas City, KS-MO	0.9597
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	0.8853
Kenosha, WI	
Killeen-Temple, TX	1.1305
Bell, TX	
Coryell, TX	
Knoxville, TN	0.8700
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	0.9444
Howard, IN	
Tipton, IN	
LaCrosse, WI	0.8964
LaCrosse, WI	
Lafayette, LA	0.8234
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	0.8440
Tippecanoe, IN	
Lake Charles, LA	0.8382
Calcasieu, LA	
Lake County, IL	0.9417
Lake, IL	
Lakeland-Winter Haven, FL	0.7665
Polk, FL	
Lancaster, PA	0.9256
Lancaster, PA	
Lansing-East Lansing, MI	1.0232
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	0.7284
Webb, TX	
Las Cruces, NM	0.7916
Dona Ana, NM	
Las Vegas, NV	1.0641
Clark, NV	
Lawrence, KS	0.8945
Douglas, KS	
Lawton, OK	0.8396
Comanche, OK	
Lewiston-Auburn, ME	0.9065
Androscoggin, ME	
Lexington-Fayette, KY	0.8454
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	0.8070
Allen, OH	
Auglaize, OH	
Lincoln, NE	0.8964
Lancaster, NE	
Little Rock-North Little Rock, AR	0.8428
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	0.8699
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	0.8919
Lorain, OH	
*Los Angeles-Long Beach, CA	1.2366
Los Angeles, CA	
Louisville, KY-IN	0.9100
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	0.8798
Lubbock, TX	
Lynchburg, VA	0.8551
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	0.8812
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0320
Dane, WI	
Manchester-Nashua, NH	1.0139
Hillsborough, NH	
Merrimack, NH	
Mansfield, OH	0.8400
Richland, OH	
Mayaguez, PR	0.4776
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
San German, PR	
McAllen-Edinburg-Mission, TX	0.7722
Hidalgo, TX	
Medford, OR	1.0054
Jackson, OR	
Melbourne-Titusville, FL	0.9208
Brevard, FL	
Memphis, TN-AR-MS	0.9068
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Merced, CA	1.0321
Merced, CA	
*Miami-Hialeah, FL	1.0196
Dade, FL	
*Middlesex-Somerset-Hunterdon, NJ	1.0410
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.0386
Midland, TX	
*Milwaukee, WI	0.9728
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
*Minneapolis-St. Paul, MN-WI	1.0826
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	0.8327
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.1593
Stanislaus, CA	
Monmouth-Ocean, NJ	0.9909
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	0.7871
Ouachita, LA	
Montgomery, AL	0.7745
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	0.8075
Delaware, IN	
Muskegon, MI	0.9491
Muskegon, MI	
Naples, FL	1.0333
Collier, FL	
Nashville, TN	0.9406
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
*Nassau-Suffolk, NY	1.2650
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	1.1723
Bristol, MA	
New Haven-Waterbury-Meriden, CT	1.2106
New Haven, CT	
New London-Norwich, CT	1.1582
New London, CT	
*New Orleans, LA	0.8509
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
*New York, NY	1.3479
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
*Newark, NJ	1.1242
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	0.7567
Niagara, NY	
*Norfolk-Virginia Beach-Newport News, VA	0.8523
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
*Oakland, CA	1.4532
Alameda, CA	
Contra Costa, CA	
Ocala, FL	0.8522
Marion, FL	
Odessa, TX	1.0849

ADDENDUM B.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that Qualify as Large Urban Areas Are Designated with an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Ector, TX	
Oklahoma City, OK	0.9153
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.1012
Thurston, WA	
Omaha, NE-IA	0.8997
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	0.9205
Orange, NY	
*Orlando, FL	0.9829
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	0.8158
Daviess, KY	
Oxnard-Ventura, CA	1.2091
Ventura, CA	
Panama City, FL	0.8640
Bay, FL	
Parkersburg-Marietta, WV-OH	0.8547
Washington, OH	
Wood, WV	
Pascagoula, MS	0.8763
Jackson, MS	
Pensacola, FL	0.8631
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	0.8717
Peoria, IL	
Tazewell, IL	
Woodford, IL	
*Philadelphia, PA-NJ	1.0962
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
*Phoenix, AZ	1.0438
Maricopa, AZ	
Pine Bluff, AR	0.7879
Jefferson, AR	
*Pittsburgh, PA	1.0137
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0792
Berkshire, MA	
Ponce, PR	0.4606
Juana Diaz, PR	
Ponce, PR	
Portland, ME	0.9300
Cumberland, ME	
Sagadahoc, ME	
York, ME	
*Portland, OR	1.1583
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	1.0115
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	1.0456
Dutchess, NY	
*Providence-Pawtucket-Woonsocket, RI	1.0657
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
Provo-Orem, UT	1.0239
Utah, UT	
Pueblo, CO	0.8730
Pueblo, CO	
Racine, WI	0.8453
Racine, WI	
Raleigh-Durham, NC	0.9474
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	0.8408
Pennington, SD	
Reading, PA	0.9048
Berks, PA	
Redding, CA	1.0559
Shasta, CA	
Reno, NV	1.1628
Washoe, NV	
Richland-Kennewick, WA	0.9410
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	0.9426
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
*Riverside-San Bernardino, CA	1.1091
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	0.8292
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.1039
Olmsted, MN	
*Rochester, NY	0.9719
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	0.9291
Boone, IL	
Winnebago, IL	
*Sacramento, CA	1.2244
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.0461
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	0.8927

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ADDENDUM B.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that Qualify as Large Urban Areas Are Designated with an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	0.9422
Buchanan, MO	
*St. Louis, MO-IL	0.9397
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Salem, OR	1.0455
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.3052
Monterey, CA	
*Salt Lake City-Ogden, UT	0.9941
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	0.8147
Tom Green, TX	
*San Antonio, TX	0.8450
Bexar, TX	
Comal, TX	
Guadalupe, TX	
*San Diego, CA	1.1945
San Diego, CA	
*San Francisco, CA	1.4517
Marin, CA	
San Francisco, CA	
San Mateo, CA	
*San Jose, CA	1.4861
Santa Clara, CA	
*San Juan, PR	0.4991
Barceloneta, PR	
Bayoman, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.1779
Santa Barbara, CA	
Santa Cruz, CA	1.1829
Santa Cruz, CA	
Santa Fe, NM	0.9170
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.2968
Sonoma, CA	
Sarasota, FL	0.9790

ADDENDUM B.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that Qualify as Large Urban Areas Are Designated with an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Sarasota, FL	
Savannah, GA	0.8335
Chatham, GA	
Effingham, GA	
Scranton-Wilkes Barre, PA	0.8923
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
*Seattle, WA	1.0681
King, WA	
Snohomish, WA	
Sharon, PA	0.9180
Mercer, PA	
Sheboygan, WI	0.8880
Sheboygan, WI	
Sherman-Denison, TX	0.9097
Grayson, TX	
Shreveport, LA	0.9308
Bossier, LA	
Caddo, LA	
Sioux City, IA-NE	0.8511
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	0.8841
Minnehaha, SD	
South Bend-Mishawaka, IN	1.0076
St. Joseph, IN	
Spokane, WA	1.0701
Spokane, WA	
Springfield, IL	0.9304
Menard, IL	
Sangamon, IL	
Springfield, MO	0.8089
Christian, MO	
Greene, MO	
Springfield, MA	0.9632
Hampden, MA	
Hampshire, MA	
State College, PA	0.9910
Centre, PA	
Steubenville-Weirton, OH-WV	0.8720
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.1623
San Joaquin, CA	
Syracuse, NY	0.9570
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	0.9877
Pierce, WA	
Tallahassee, FL	0.9229
Gadsden, FL	
Leon, FL	
*Tampa-St. Petersburg-Clearwater, FL	0.9196
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	0.8766
Clay, IN	
Vigo, IN	
Texarkana-TX-Texarkana, AR	0.8050
Miller, AR	
Bowie, TX	
Toledo, OH	0.9002
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	0.9311
Shawnee, KS	
Trenton, NJ	1.0216

ADDENDUM B.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that Qualify as Large Urban Areas Are Designated with an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Mercer, NJ	
Tucson, AZ	0.9628
Pima, AZ	
Tulsa, OK	0.8540
Creeka, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	0.8529
Tuscaloosa, AL	
Tyler, TX	0.9847
Smith, TX	
Utica-Rome, NY	0.8162
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.2929
Napa, CA	
Solano, CA	
Vancouver, WA	1.0722
Clark, WA	
Victoria, TX	0.9002
Victoria, TX	
Vineland-Millsville-Bridgeton, NJ	0.9768
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.0402
Tulare, CA	
Waco, TX	0.7822
McLennan, TX	
*Washington, DC-MD-VA	1.0951
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	0.8650
Black Hawk, IA	
Bremer, IA	
Wausau, WI	0.9757
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	1.0067
Palm Beach, FL	
Wheeling, WV-OH	0.8098
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	0.9618
Butler, KS	
Harvey, KS	
Sedgwick, KS	
Wichita Falls, TX	0.8179
Wichita, TX	
Williamsport, PA	0.8872
Lycoming, PA	
Wilmington, DE-NJ-MD	1.0879
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	0.8720
New Hanover, NC	
Worcester-Fitchburg-Leominister, MA	1.0740
Worcester, MA	
Yakima, WA	1.0210

ADDENDUM B.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that Qualify as Large Urban Areas Are Designated with an Asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Yakima, WA	
York, PA	0.9581
Adams, PA	
York, PA	
Youngstown-Warren, OH	0.9675
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0176
Sutter, CA	
Yuba, CA	
Yuma, AZ	0.8893

WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.7127
Alaska	1.3529
Arizona	0.8604
Arkansas	0.6975
California	1.0151
Colorado	0.8416
Connecticut	1.1916
Delaware	0.9580
Florida	0.8736
Georgia	0.7770
Hawaii	0.9527
Idaho	0.8961
Illinois	0.7707
Indiana	0.7807
Iowa	0.7534
Kansas	0.7454
Kentucky	0.7800
Louisiana	0.7391
Maine	0.8362
Maryland	0.8069
Massachusetts	1.1723
Michigan	0.8822
Minnesota	0.8316
Mississippi	0.6953
Missouri	0.7218
Montana	0.8262
Nebraska	0.7001
Nevada	0.9711

WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
New Hampshire	0.9555
New Jersey [1]	
New Mexico	0.8325
New York	0.8476
North Carolina	0.7886
North Dakota	0.7726
Ohio	0.8461
Oklahoma	0.7407
Oregon	0.9615
Pennsylvania	0.8621
Puerto Rico	0.4337
Rhode Island [1]	
South Carolina	0.7657
South Dakota	0.7175
Tennessee	0.7347
Texas	0.7996
Utah	0.8052
Vermont	0.9617
Virginia	0.7822
Washington	0.9644
West Virginia	0.8501
Wisconsin	0.8453
Wyoming	0.8465

[1] All counties within the State are classified urban.

WAGE INDEX VALUES FOR COUNTIES THAT ARE DEEMED URBAN-COMPUTED AS SEPARATE URBAN AREAS

County	Urban areas	Wage index
Limestone, AL	Huntsville, AL	0.8486
Marshall, AL	Huntsville, AL	0.8486
Charlotte, FL	Sarasota, FL	0.9593
Indian River, FL	Fort Pierce, FL	1.0313
Christian, IL	Springfield, IL	0.9202
Macoupin, IL	St. Louis, MO-IL	0.9397
Mason, IL	Peoria, IL	0.8717
Clinton, IN	Lafayette, IN	0.8440
Henry, IN	Anderson, IN	1.0122
Owen, IN	Bloomington, IN	0.7846
Jefferson, KS	Topeka, KS	0.9311
Allegan, MI	Grand Rapids, MI	0.9892
Barry, MI	Battle Creek, MI	0.9107
Cass, MI	Benton Harbor, MI	0.8872
Ionia, MI	Lansing-East Lansing, MI	1.0120
Lenawee, MI	Ann Arbor, MI	1.1073
Shiawassee, MI	Flint, MI	1.1347
Tuscola, MI	Saginaw-Bay City-Midland, MI	1.0154
Van Buren, MI	Kalamazoo, MI	1.1251
Clinton, MO	Kansas City, KS-MO	0.9597
Cass, NE	Omaha, NE	0.8997
Caswell, NC	Danville, VA	0.7668
Currituck, NC	Norfolk-VA Beach-Newport News, VA	0.8523
Harnett, NC	Fayetteville, NC	0.7688
Genesee, NY	Rochester, NY	0.9594
Columbiana, OH	Beaver County, PA	0.9679
Morrow, OH	Mansfield, OH	0.8461
Preble, OH	Dayton-Springfield, OH	0.9100
Van Wert, OH	Lima, OH	0.8461
Lawrence, PA	Beaver County, PA	0.9679
Cherokee, SC	Greenville-Spartanburg, SC	0.8766
Bedford, VA	Roanoke, VA	0.8292
Fredericksburg City, VA	Washington, DC-MD-VA	1.0951
Isle of Wight, VA	Norfolk-VA Beach-Newport News, VA	0.8523
Spotsylvania, VA	Washington, DC-MD-VA	1.0951
Jefferson, WI	Milwaukee, WI	0.9594
Walworth, WI	Milwaukee, WI	0.9594
Jefferson, WV	Washington, DC-MD-VA	1.0951
Lincoln, WV	Charleston, WV	0.9547

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Tuesday
December 31, 1991

Part IV

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 420

State Energy Conservation Program; Notice of Proposed Rulemaking and Public Hearings

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DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 420

[Docket No. CE-RM-91-120]

State Energy Conservation Program

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Department of Energy (DOE) proposes to amend the regulations for the State Energy Conservation Program (SECP) to incorporate modifications to its enabling legislation occasioned by the passage of the State Energy Efficiency Programs Improvement Act of 1990 (SEEPIA), Public Law 101-440, which amended title III, part D of the Energy Policy and Conservation Act (the Act) (42 U.S.C. 6321 *et seq.*). Changes required by SEEPIA include: Updating State energy efficiency goals; providing for a State energy emergency plan; broadening the range of permissible elements of State Energy Conservation Plans and eliminating the Supplemental State Energy Conservation Plan; and establishing an Energy Technology Commercialization Services Program.

DATES: Written comments (six copies) on the proposed rule must be received no later than February 14, 1992 to ensure their consideration. Two public hearings are scheduled to be held: Washington, DC, on February 4, and Dallas, Texas, on January 29. Requests to speak at the hearing must be received no later than February 3, for Washington, DC, and January 27, for Dallas, Texas.

ADDRESSES: All written comments (six copies), as well as requests to speak at the public hearing, are to be submitted to: U.S. Department of Energy, Office of Conservation and Renewable Energy, Hearings and Dockets, CE-90, room 6B-025, Docket Number CE-RM-91-120, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-3012.

The public hearings will each begin at 8:30 a.m., and will be held at the following locations:

Dallas, Texas: Earle Cabel Federal Building, 1100 Commerce Street, Room 1B16A (1st Floor)

Washington, DC: U.S. Department of Energy, 1000 Independence Avenue, SW., Room 1E-245.

Each person to be heard is requested to bring fifteen copies of his/her statement. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made with the Office of Hearings and Dockets in advance by so indicating in the letter or phone request to make an oral presentation.

A transcript of the hearing, as well as other parts of the record, will be available for inspection between the hours of 9 a.m. and 4 p.m., Monday through Friday except Federal holidays at the following address: DOE Freedom of Information Reading Room, United States Department of Energy, room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6020.

For more information concerning public participation in this rulemaking proceeding, see section III, "Opportunity for Public Comment," of this notice.

FOR FURTHER INFORMATION CONTACT:

Sandra S. Monje, State Energy Programs Division, Office of Technical and Financial Assistance, Department of Energy, Mail Stop CE-522, 5E-052, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8295.

Neal J. Strauss or Vivian Lewis, Office of General Counsel, Conservation and Regulations, Mail Stop GC-41, 6B-256, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. The Proposal
III. Opportunity for Public Comment
IV. Review Under Executive Order 12291
V. Review Under Executive Order 12612
VI. Review Under the Regulatory Flexibility Act
VII. Review Under the Paperwork Reduction Act
VIII. Review Under the National Environmental Policy Act
IX. Other Federal Agencies
X. The Catalog of Federal Domestic Assistance

I. Introduction

The enactment of the State Energy Efficiency Programs Improvement Act of 1990 (SEEPIA), Public Law 101-440, on October 18, 1990, requires changes to the regulations for the State Energy Conservation Program (SECP), which are codified at 10 CFR part 420. With this notice the Department proposes to amend the regulations for the SECP to bring that program into conformance with SEEPIA and to make several minor technical corrections to the existing regulatory language.

The passage of SEEPIA expands the role of the SECP by: broadening the permissible program measures that may be included in the State plan; eliminating the Supplemental State Energy Conservation Plan; and establishing an Energy Technology Commercialization Services Program. SEEPIA also sets new energy efficiency goals and provides for energy emergency planning activities.

II. The Proposal

DOE is proposing to delete all references to "supplemental plans" because SEEPIA repealed section 367 of the Act. In addition DOE proposes to revise references in § 420.6 to "ASHRAE 90-75" to reflect the updating of that standard by the Association of Heating and Refrigeration Engineers (ASHRAE), and to reference the Council of Building Code Officials (CABO) model code that provides design requirements for energy improvements in new residential buildings.

Section 420.1 Purpose and Scope

DOE proposes to revise this section by adding a new paragraph (c) to reflect the SEEPIA requirement for States to plan for a goal of at least a 10 percent increase in energy efficiency from calendar year 1990 to calendar year 2000. A State may choose to establish interim energy efficiency goals as well. This provision should be interpreted in view of explanatory comments contained in the House Committee report on SEEPIA, dated July 30, 1990:

> The expired goal was written in terms of reducing total energy consumption. The new goal contained in this legislation was written in terms of efficiency, not total consumption. Efficiency in this instance means energy consumed per unit of state economic product. This distinction is important because it allows states that are growing to increase their total use of energy while still improving the efficiency with which they use energy. (H. Rept. No. 646, 101st Cong., 2nd Sess. 13 (1990), reprinted in 1990 U.S. Code Cong. & Admin. News 1654).

Section 420.2 Definitions

As noted above, DOE is proposing to delete the definition of "supplemental plan," because the requirements for such a plan was repealed by SEEPIA. DOE also is proposing to delete the definition of "ASHRAE 90-75" and substitute the definition of "ASHRAE/IES 90.1-1989" to reflect the fact that ASHRAE has updated its standard. Definitions would be added for "institution of higher education," "small business," "start-up business," and "State economic product" because these terms have been introduced by SEEPIA. A definition for "commercially available" also would be added because questions concerning its meaning come up from time to time. The term "energy conservation measure" would be deleted because it is used only in reference to "supplemental plans." In addition, all references to "Operations Office Manager" would be replaced with "Support Office Director," to reflect a recent DOE functional realignment.

Section 420.3 Financial Assistance

DOE proposes to delete references to supplemental plans, which no longer exist, and to delete that portion of the allocation formula (subsection c) which applies only to supplemental plans.

Section 420.4 Annual State Plans

As required by SEEPIA, DOE is proposing that States give assurance that Federal financial assistance under this program will be used to supplement and not supplant State and local funds devoted to program activities. The intent of this provision is to increase the amount of funds available for the program, not to offset funds available from other sources.

As mandated by SEEPIA, DOE proposes in § 420.4(b)(6) to require, effective October 1, 1991, that a State shall submit to DOE, as part of its annual State plan, an energy emergency plan as a contingency against an energy supply disruption. The submission of such plan, while mandatory, will be for informational purposes only and without any requirement of approval by DOE. DOE regards this statutory requirement as a self-implementing provision, the language of which is self-explanatory. Should any questions arise, they will be handled by interpretation on a case-by-case basis.

Section 420.6 Minimum Criteria for Required Program Measures for Plans

As indicated earlier, DOE proposes to revise references to ASHRAE 90-75 for commercial and multifamily high-rise buildings to reflect the most recent version of the standard, now designated as ASHRAE/IES 90.1-1989, and for single-family and multifamily low-rise buildings to reference the CABO MEC-89. DOE also is proposing, as prescribed by SEEPIA, to require that States discuss in their annual State plans what procedures they have in effect for ensuring coordination among various local, State, and Federal programs, including any program administered by DOE's Office of Technical and Financial Assistance and the Low Income Home Energy Assistance Program administered by the Department of Health and Human Services.

Section 420.7 Optional Elements of State Energy Conservation Plans

In this section, DOE proposes a significant expansion of optional program measures that may be included in State plans in addition to the five mandatory measures. The expanded list of eligible measures is taken from the statutory language contained in SEEPIA and is, for the most part, self-explanatory. One new optional program measure is an Energy Technology Commercialization Services Program, which is intended by Congress to strengthen State outreach programs to aid small and start-up businesses by fostering a broader application of engineering principles and techniques to energy technology products, manufacturing, and commercial production, as well as greater assistance in dealing with the Federal Government on energy technology related matters. Because a number of States have already successfully implemented such programs, DOE is reluctant to go beyond those requirements imposed on States by SEEPIA. However, DOE would particularly like to receive comments on this section which are informed by actual State experience. States wishing to explore setting up a program of this nature may wish to contact DOE's Inventions and Innovation Division, which has had considerable experience in the commercialization process.

Section 420.12 Prohibited Expenditures

DOE proposes to revise this section to conform its language to the provisions of new § 420.7. The "33 percent limitation" on building retrofit and weatherization measures remains with one exception. The 33 percent limitation will not apply in the case of regular and revolving loan programs, funded with petroleum violation escrow funds, that issue loans requiring repayment within 10 years or less. Additionally, DOE is proposing correction of two typographical errors: In § 420.12(c), removing the reference to § 420.12(a)(6) and replacing it with the corrected reference, § 420.12(a)(5); and in § 420.12(e)(4), correcting the word "find" to read "fund."

III. Opportunity for Public Comment

A. Written Comment Procedures

Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to the matters set forth in this notice.

Comments (6 copies) should be identified on the outside of the envelope, and on the documents themselves, with the designation: "State Energy Conservation Program, Notice of Proposed Rulemaking, Docket Number CE-RM-91-120. Six copies should be submitted. In the event any person wishing to submit a written comment cannot provide six copies, alternative arrangements can be made in advance with the Hearings and Dockets Office.

Any person submitting information which that person believes to be confidential, and which may be exempt by law from public disclosure, should submit one complete copy, as well as two copies from which the information claimed to be confidential has been deleted. DOE shall make a determination of any such claim as set forth in 10 CFR 1004.11 [53 FR 15661, May 3, 1988].

B. Public Hearing Procedures

DOE will hold two public hearings on this proposed rule on the dates and at the locations indicated in the "**ADDRESSES**" section of this notice.

Any person who has an interest in the proposed regulation or who is a representative of a group or class of persons which has an interest in it may make a request for an opportunity to make an oral presentation. Request to speak at a hearing should be addressed to the Hearings and Dockets Office, at the address or phone number indicated in the "**ADDRESSES**" section of this notice.

The person making the request should briefly describe his or her interest in the proceedings and, if appropriate, state why that person is a proper representative of a group. The person also should provide a phone number where they may be reached during the day. Each person selected to speak at a public hearing will be notified. They should bring fifteen copies of their statement to the hearing. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made in advance with the Hearings and Dockets Office by so indicating in the letter or phone call requesting an opportunity to make an oral presentation.

DOE reserves the right to select persons to be heard at the hearings, to schedule their presentations, and to establish procedures governing the conduct of the hearing. The length of each presentation will be limited to ten minutes.

A DOE official will preside at the hearing. This will not be a judicial or evidentiary-type hearing, but conducted in accordance with 5 U.S.C. 553. At the conclusion of all initial oral statements, each person will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made.

Any participant who wishes to ask a question at the hearing may submit the question in writing to the registration

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desk. The presiding officer will determine whether the question is relevant and material, and whether the time limitations permit it to be presented for an answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

If DOE must cancel a hearing, DOE will make every effort to publish an advance notice of such cancellation in the **Federal Register**. Notice of cancellation will also be given to all persons scheduled to speak at the hearing. Hearing dates may be canceled in the event no public testimony has been scheduled in advance.

IV. Review Under Executive Order 12291

Today's regulatory amendments were reviewed under Executive Order 12291. DOE has concluded that the rule is not a "major rule" because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete in domestic export markets. In accordance with the requirements of the Executive Order, this notice has been reviewed by the Office of Management and Budget.

V. Review Under Executive Order 12612

Executive Order 12612 requires that regulations be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power among various levels of government. If there are sufficient substantial direct effects, the Executive Order requires preparation of a federalism assessment to be used in decisions by senior policy-makers in promulgating or implementing the regulation.

Today's regulatory amendments will not have a substantial direct effect on the traditional rights and prerogatives of States in relationship to the Federal Government. Preparation of a federalism assessment is therefore unnecessary.

VI. Review Under the Regulatory Flexibility Act

These regulations were reviewed under the Regulatory Flexibility Act, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e., small businesses, small government jurisdictions. DOE has concluded that the rule will affect most of the State and local government operating State energy conservation programs. The impact of the amendments in this rule will be to provide even greater flexibility to State and local governments to develop and operate their respective programs. Therefore, DOE certifies that there will not be a significant economic impact on a substantial number of small entities, and that preparation of a regulatory flexibility analysis is not warranted.

VII. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed on the public by today's rules. However, OMB approval on Energy Savings Report, CD–62, has expired, and the form has been resubmitted for clearance under the Paperwork Reduction Act, 44 U.S.C. 3501, et seq., or implementing regulations at 5 CFR part 1320. Comments on the information collection requirements contained in this rule should be submitted both to: U.S. Department of Energy, Office of Conservation and Renewable Energy, Hearings and Dockets, Docket Number CE–RM–91–120, at the address given earlier in this notice; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention Ron Minsk.

VIII. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of these rules would not represent a major Federal action having a significant impact on the human environment under the National Environmental Policy Act (42 U.S.C. 4321, et seq.), Council of Environmental Quality guidelines (40 CFR parts 1500–1508) and DOE environmental guidelines (10 CFR part 1021). Therefore, no environmental impact statement has been prepared.

IX. Other Federal Agencies

DOE has provided a draft copy of this notice to the Administrator of the Environmental Protection Agency, pursuant to section 7 of the Federal Energy Administration Act, as amended, 15 U.S.C. 766. The Administrator had no comment.

X. The Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the State Energy Conservation Program is 81.041.

List of Subjects in 10 CFR Part 420

Energy conservation, Grant programs—energy, Reporting and recordkeeping requirements, Technical assistance.

For the reasons set forth in the preamble, DOE hereby proposes to amend chapter II of title 10, Code of Federal Regulations, as set forth below:

Issued in Washington, DC, November 5, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

In 10 CFR, chapter II, part 420 is amended as follows:

PART 420—STATE ENERGY CONSERVATION PROGRAM

1. The authority citation for part 420 is revised to read as follows:

Authority: Title III, part D, as amended, of the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.); Department of Energy Organization Act (42 U.S.C. 7101 et seq.).

12. The table of contents is revised to read as follows:

Sec.
420.1 Purpose and scope.
420.2 Definitions.
420.3 Financial assistance.
420.4 Annual State applications.
420.5 Review and approval of annual State applications and State plans.
420.6 Minimum criteria for required program measures for plans.
420.7 Optional elements of State energy conservation plans.
420.8 Extensions for compliance with required program measures.
420.9 Administrative review.
420.10 Technical assistance.
420.11 Reports.
420.12 Prohibited expenditures.
420.13 Administration of financial assistance.

3. Section 420.1 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 420.1 Purpose and scope.

(a) This part prescribes requirements for program measures included in plans and guidelines for the development, modification, and funding of plans. It is the purpose of this part to promote the conservation of energy and to reduce the rate of growth of energy demand through the development and implementation of a comprehensive State energy conservation program and the provision of Federal financial and technical assistance to States in support of such program.

* * * * *

(c) Each State energy conservation plan with respect to which assistance is made available under this part on or after October 1, 1991, shall contain a goal, consisting of an improvement of 10 percent or more in the efficiency of use of energy in the State concerned in the calendar year 2000, as compared to the calendar year 1990, and may contain interim goals.

§ 420.2 [Amended]

4. Section 420.2 is amended by (a) removing the definitions for "ASHRAE 90–75," "Energy conservation measure," "Operations Office Manager," and "Supplemental plan;" and by (b) adding the definitions of "ASHRAE/IES 90.1–1989," "CABO MEC–89," "commercially available," "institution of higher education," "small business," "start-up business," "State economic product," and "Support Office Director" to read as follows:

§ 420.2 Definitions.

* * * * *

ASHRAE/IES 90.1–1989 means the building design standard published in December 1989 by the American Society of Heating, Refrigeration, and Air-Conditioning Engineers, Incorporated, titled "Energy Efficient Design of New Building Except Low-Rise Residential Buildings."

* * * * *

CABO MEC–89 means the model building code published in 1989 by the Council of American Building Officials, titled "CABO Model Energy Code/1989."

* * * * *

Commercially available means available for purchase by the general public or target audience in the State.

* * * * *

Institution of higher education has the same meaning as such term is defined in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

* * * * *

Small business means a private firm that does not exceed the numerical size standard promulgated by the Small Business Administration under section 3(a) of the Small Business Act (15 U.S.C. 632) for the Standard Industrial Classification (SIC) codes designated by the Secretary of Energy.

Start-up business means a small business which has been in existence for 5 years or less.

State economic product means State gross national product (GNP).

Suppport Office Director means the director of a DOE Field Support Office with responsibility for grant administration or any official to whom that function may be redelegated.

§§ 420.3, 420.4, 420.5, 420.8, 420.9, and 420.11 [Amended]

5. In §§ 420.3, 420.4, 420.5, 420.8, 420.9, and 420.11 the words "Operations Office Manager" are changed to read "Support Office Director" in the following places: § 420.3(a); § 420.4 (a), and (c) (2 times); § 420.5 (a) (3 times), and (b) (2 times); § 420.8; § 420.9 (b) (2 times), and (f); and § 420.11 (introductory paragraph).

6. 10 CFR 420.3 is amended by removing paragraph (c), redesignating paragraph (d), (e), and (f) as paragraphs (c), (d), and (e), and revising paragraphs (a), and newly redesignated paragraphs (c), and (e) to read as follows:

§ 420.3 Financial assistance.

(a) The Support Office Director shall provide financial assistance to each State having an approved annual application from funds available for any fiscal year to develop, modify, or implement a plan.

* * * * *

(c) The budget period covered by the financial assistance provided to a State according to § 420.3(b) will be set by the State within parameters established by DOE.

* * * * *

(e) Subawards which are included in a State's approved SECP plan are authorized under this part.

7. Section 420.4 is amended by revising the introductory text to paragraph (b), paragraphs (b)(2)(iv), and (b)(3), and by adding paragraphs (b)(5), (b)(6) and (b)(7) to read as follows:

§ 420.4 Annual State applications.

* * * * *

(b) An application shall include with respect to a plan:

* * * * *

(2) * * *

(iv) An explanation of how the minimum criteria for required program measures prescribed in § 420.6 shall be satisfied.

(3) A detailed description of the increase or decrease in environmental residuals expected from implementation of a plan defined insofar as possible through the use of information to be provided by DOE, and an indication of how these environmental factors were considered in the selection of program measures.

* * * * *

(5) Each State receiving Federal financial assistance pursuant to this section shall provide reasonable assurance to DOE that it has established policies and procedures designed to assure that Federal financial assistance under this part and under 10 CFR part 455 will be used to supplement, and not to supplant, State and local funds, and to the extent practicable, to increase the amount of such funds that otherwise would be available, in the absence of such Federal financial assistance, for those programs set forth in the State energy conservation plan approved pursuant to this part.

(6) Effective October 1, 1991, to be eligible for Federal financial assistance pursuant to this section, a State shall submit to DOE, as a supplement to its energy conservation plan, an energy emergency plan for an energy supply disruption, as designed by the State consistent with applicable Federal and State law. The contingency plan provided for by the program shall include an implementation strategy or strategies (including regional coordination) for dealing with energy emergencies. The submission of such plan shall be for informational purposes only and without any requirement of approval of DOE.

(7) Federal financial assistance made available under this part to a State may be used to develop an energy emergency plan for dealing with energy emergencies referred to in paragraph (b)(6) of this section.

8. Section 420.6 is amended by revising paragraphs (a)(3), (d)(3) and (d)(4), and by adding paragraph (f), to read as follows:

§ 420.6 Minimum criteria for required program measures for plans.

* * * * *

(a) * * *

(3) For new public buildings, be no less stringent than the relevant provisions of ASHRAE/IES 90.1–1989; and

* * * * *

(d) * * *

(3) For all new commercial and multifamily high-rise buildings, be no less stringent than ASHRAE/IES 90.1–1989;

(4) For all new single-family and multifamily low-rise residential buildings, be no less stringent than CABO MEC–1989;

* * * * *

(f) Procedures must exist for ensuring effective coordination among various local, State, and Federal energy conservation programs within the State, including any program administered within the Office of Technical and Financial Assistance of the Department of Energy and the Low Income Home Energy Assistance Program

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administered by the Department of Health and Human Services.

8. Section 420.7 is revised to read as follows:

§ 420.7 Optional elements of State energy conservation plans.

(a) Other appropriate measures or programs to conserve and to promote efficiency in the use of energy may be included in the State plan. These measures or programs may include, but are not limited to, the following:

(1) Programs of public education to promote energy conservation;

(2) Programs to increase transportation energy efficiency, including programs to accelerate the use of alternative transportation fuels for State Government vehicles, fleet vehicles, taxis, mass transit, and privately owned vehicles;

(3) Programs for financing energy efficiency and renewable energy capital investments, projects, and programs—

(i) Which may include loan programs and performance contracting programs for leveraging of additional public and private sector funds, and programs which allow rebates, grants, or other incentives for the purchase and installation of eligible energy efficiency and renewable energy measures; or

(ii) In addition to or in lieu of programs described in paragraph (a)(3)(i) of this section, which may be used in connection with public or nonprofit buildings owned and operated by a State, a political subdivision of a State or an agency or instrumentality of a State, or an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

(4) Programs for encouraging and for carrying out energy audits with respect to buildings and industrial facilities (including industrial processes) within the State;

(5) Programs to promote the adoption of integrated energy plans which provide for:

(i) Periodic evaluation of a State's energy needs, available energy resources (including greater energy efficiency), and energy costs, and

(ii) Utilization of adequate and reliable energy supplies, including greater energy efficiency, that meet applicable safety, environmental, and policy requirements at the lowest cost;

(6) Programs to promote energy efficiency in residential housing, such as:

(i) Programs for development and promotion of energy efficiency rating systems for newly constructed housing and existing housing so that consumers can compare the energy efficiency of different housing; and

(ii) Programs for the adoption of incentives for builders, utilities, and mortgage lenders to build, service, or finance energy efficient housing;

(7) Programs to identify unfair or deceptive acts or practices which relate to the implementation of energy efficiency measures and renewable resource energy measures and to educate consumers concerning such acts or practices;

(8) Programs to modify patterns of energy consumption so as to reduce peak demands for energy and improve the efficiency of energy supply systems, including electricity supply systems;

(9) Programs to promote energy efficiency as an integral component of economic development planning conducted by State, local, or other governmental entities or by energy utilities; and

(10) In accordance with paragraph (b) of this section, programs to implement the Energy Technology Commercialization Services Program.

(b) This section prescribes requirements for establishing State-level Energy Technology Commercialization Services Programs as an optional element of State plans.

(1) The programs to implement the functions of the Energy Technology Commercialization Services Program shall:

(i) Aid small and start-up businesses in discovering useful and practical information relating to manufacturing and commercial production techniques and costs associated with new energy technologies;

(ii) Encourage the application of such information in order to solve energy technology product development and manufacturing problems;

(iii) Establish an Energy Technology Commercialization Services Program affiliated with an existing entity in each State;

(iv) Coordinate engineers and manufacturers to aid small and start-up businesses in solving specific technical problems and improving the cost effectiveness of methods for manufacturing new energy technologies;

(v) Assist small and start-up businesses in preparing the technical portions of proposals seeking financial assistance for new energy technology commercialization; and

(vi) Facilitate contract research between university faculty and students and small start-up businesses in order to improve energy technology product development and independent quality control testing.

(2) Each State Energy Technology Commercialization Services Program shall develop and maintain a data base of engineering and scientific experts in energy technologies and product commercialization interested in participating in the service. Such data base shall, at a minimum, include faculty of institutions of higher education, retired manufacturing experts, and National Laboratory personnel.

(3) The services provided by the Energy Technology Commercialization Services Program established under this part shall be available to any small or start-up business. Such service programs shall charge fees which are affordable to a party eligible for assistance, which shall be determined by examining factors, including the following: the costs of the services received; the need of the recipient for the services; and the ability of the recipient to pay for the services.

10. Section 420.11 is amended by revising paragraph (a) to read as follows:

§ 420.11 Reports.

* * * * *

(a) A quarterly program performance report and a quarterly financial status report. The reports shall contain such information as the Secretary may prescribe in order to monitor effectively the implementation of a plan. The reports shall be submitted within 30 days following the end of each calendar year quarter.

* * * * *

11. Section 420.12 is amended by revising paragraphs (a)(4), (a)(5), (c), (e), (e)(1), (e)(2), (e)(4), (e)(5), and (e)(7), removing paragraph (e)(6)(iii), and redesignating paragraphs (e)(6) (iv) and (v), as (e)(6) (iii) and (iv) to read as follows:

* * * * *

(a) * * *

(4) To subsidize utility rate demonstrations or State tax credits for energy conservation or load management;

(5) To purchase equipment to conduct research, development, or demonstration of conservation techniques and technologies not commercially available.

* * * * *

(c) Demonstrations of commercially available conservation techniques and technologies are permitted, and are not subject to the prohibitions of § 420.12(a) (1) and (5), or to the limitation on equipment purchases of § 420.12(b).

* * * * *

(e) A State may use funds under this part to promote the purchase and installation of equipment and materials for energy conservation building retrofits or weatherization subject to the following terms and conditions:

(1) Such use must be included in the State's approved plan and, if funded by petroleum violation escrow funds, must be consistent with any judicial or administrative terms and conditions imposed upon State use of such funds;

(2) A State may use for these purposes no more than 33 percent of all funds allocated by the State to SECP in a given year, regardless of source, except that this limitation shall not include regular and revolving loan programs funded with petroleum violation escrow funds in which loans issued through such programs require repayment of principal and interest within 10 years or less. Loan documents shall ensure repayment and shall not include provisions of loan forgiveness.

* * * * *

(4) Funds must be used to supplement and no funds may be used to supplant energy conservation building retrofits or weatherization activities under the Weatherization Assistance Program for Low-Income Persons, 42 U.S.C. 6861 *et seq.*, or the Institutional Conservation Program, 42 U.S.C. 6371 *et seq.*, nor to fund operation and maintenance activities in any building which is eligible for assistance under the Institutional Conservation Program;

* * * * *

(5) Subject to paragraph (e)(6) of this section, a State may use a variety of financial incentives to fund purchases and installation of materials and equipment under this paragraph including, but not limited to, regular loans, revolving loans, loan buy-downs, performance contracting, rebates, and grants.

* * * * *

(7) A State may use loan repayments, including any interest (or fees), only for activities which are included in the State's approved SECP plan.

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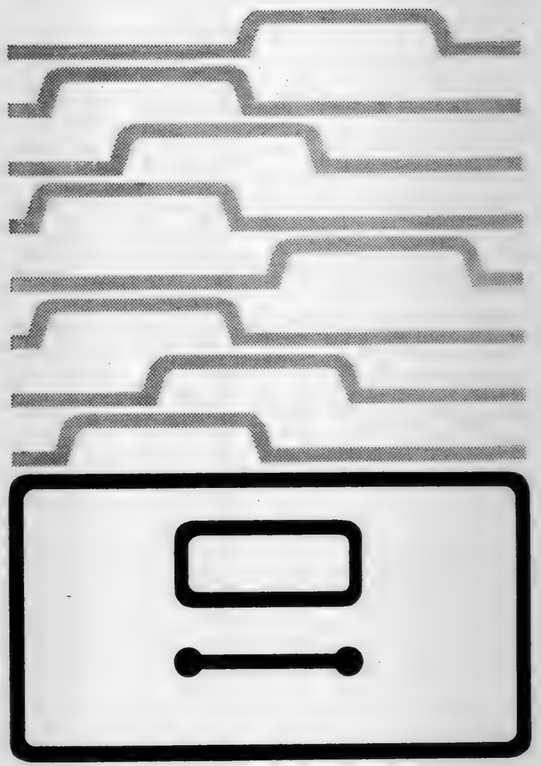
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Note: The List of Public Laws for the first session of the 102d Congress has been completed and will be resumed when bills are enacted into public law during the second session of the 102d Congress, which convenes on January 3, 1992. A cumulative list of Public Laws for the first session will be published in Part II of the **Federal Register** on January 2, 1992.

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in the Code of Federal Regulations (CFR)

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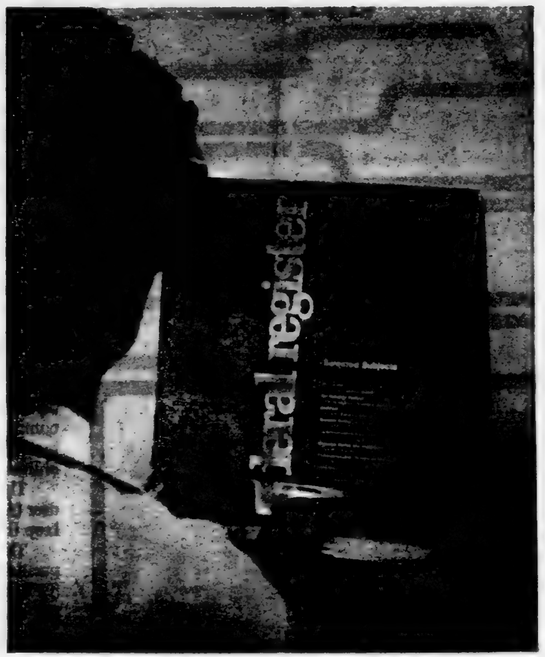
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Following Title 50 is an update to Table I—Parallel Table of Authorities and Rules found in the CFR Index and Finding Aids. This table contains authority citations added to or removed from Table I as a result of documents published in the Federal Register since January 1, 1991.

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Jim Wickliffe was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Laurice Clark. INQUIRIES, telephone 202-523-5227.

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3.1 (b)(10) added; interim 624
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(b)(1) and (3) amended 12649
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240.12 (a) amended 23498
240.14 (b)(1) and (3) amended; (d) removed 23498
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2 Authority citation revised 50321
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NOTE 2: **Boldface entries indicate June changes.**

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NOTE 1: **Boldface page numbers indicate 1991 changes.**
NOTE 2: **Boldface entries indicate June changes.**

Additions to Table I, June 1991

This table lists the sections of the U.S. Code, U.S. Statutes at Large, Public Laws, and Presidential documents which are being added to Table I as a result of authority citations carried in the **Federal Register** during January through June 1991. Recent legislation is carried by public law number.

Table I is in the CFR Index and Finding Aids revised as of January 1, 1991. Additions during 1990 are in the December 1990 LSA (List of CFR Sections Affected).

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This table lists the sections of the U.S. Code, U.S. Statutes at Large, Public Laws, and Presidential documents which are being removed from Table I as a result of documents published in the **Federal Register** during January through June 1991.

Table I is in the CFR Index and Finding Aids revised as of January 1, 1991. Removals during 1990 are in the December 1990 LSA (List of CFR Sections Affected).

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Jim Wickliffe was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Laurice Clark. INQUIRIES, telephone 202-523-5227.

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**No amendments to this volume were promulgated during the period April 1, 1990 through March 30, 1991. The CFR volume issued as of April 1, 1990 should be retained.

****No amendments to this volume were promulgated during the period July 1, 1989 through June 30, 1990. The CFR volume issue as of July 1, 1989 should be retained.

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TITLE 17—COMMODITY AND SECURITIES EXCHANGES

Chapter I—Commodity Futures Trading Commission (Parts 1—199)

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1.46 (d)(7) added 14314
4.21 (a)(4) introductory text, (ii)(F) and (5) introductory text revised 28056
4.31 (a)(3) introductory text revised 28056
15.01 Introductory text and (d) revised 14194
15.03 Revised 14194
16.04 Removed 14194
19 Heading revised 14194
19.00 (a)(2) and (b) introductory text revised 14194
19.02 Revised 14194
19.10 Introductory text revised 14194
30 Appendix C amended 14019
150.1 (d) redesignated as (e) and revised; new (d) added 14315

Chapter II—Securities and Exchange Commission (Parts 200—399)

200 Implementation 22824
200.1—200.30-16 (Subpart A) Authority citation revised 22319
Authority citation revised 30052
200.30-1 (e)(5) through (8) added 22319
(f)(14) added; authority citation removed 30053
200.30-3 (a)(50) added 27194
(a)(35) revised; authority citation removed 30053
201 Authority citation revised 30053
201.24 Introductory text amended; authority citation removed 30053
210 Authority citation revised 30053
210.3-01 (h) revised; authority citation removed 30053
210.3-02 (d) revised; authority citation removed 30053
210.3-12 (f) revised; authority citation removed 30053
210.3-19 (a) revised; authority citation removed 30053
211 Staff Accounting Bulletin No. 91 added 33376
229 Authority citation revised 22319
229.302 (a)(5) introductory text revised; authority citation removed 30053
229.402 General Instruction 1 revised 30053
229.404 Authority citation removed 30053
Instruction 3 revised 30054
229.512 (j) added 22319
229.601 (b)(10)(iii)(B)(5) revised 30054
230 Authority citation revised 30054
230.158 (a) and (b) revised; authority citation removed 30054
230.175 (b)(1)(i) revised; authority citation removed 30054
230.424 (b)(3) revised; (b)(6) added 30054
230.467 Added 30054
230.473 Authority citation removed 30054
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230.502 Authority citation removed 30054
(b)(2)(i)(D) and (ii)(D) revised 30055
231 Interpretive releases 28986
239 Authority citation revised 30055
239.12 (e) revised; Form S-2 amended 30055
239.13 (a) (5) revised; Forms F-1, S-3 and S-4 amended 30055
Forms S-8 and S-11 amended 30056
239.31 Authority citation removed 30055
(a) revised; Form F-1 amended 30056
239.32 Authority citation removed 30054
(a), (b)(2), (d), (e) and (g) revised; Form F-2 amended 30056

Note: **Boldface entries indicate July changes.**

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239.33 Authority citation removed....30055
(a)(1), (6)(iii), (6) note, (b)(1) and (3) revised; Form F-3 amended....30057
239.34 Revised; Form F-4 amended....30058
239.37 Added....30060
239.38 Added....30061
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239.41 Added....30065
239.42 Added....30067
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240.3a12-2 Removed....32078
240.3a12-3 (b) revised; authority citation removed....30067
240.3b-6 (b)(1)(i) revised; authority citation removed....30067
240.12g-3 Authority citation removed....30067
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240.12a-7 Added....28322
240.12g3-2 Authority citation removed....30067
(b)(4), (d)(1) and (2) revised....30068
240.12h-4 Added....30068
240.13a-3 Added....30068
240.13a-10 (g)(1) and (i) note revised....30068
240.13a-16 Authority citation removed....30067
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240.13e-4 Authority citation removed....30067
(g) redesignated as (h); new (g) added....30069
240.13e-102 Added....30069
240.14d-1 Authority citation removed....30067
(b) redesignated as (c); new (b) added....30071
240.14d-102 Added....30071
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240.15c2-11 Preliminary note added; (a) introductory text, (1) through (4), (5) introductory text, (5) concluding text, (b) through (d) and (f)(5) revised; (a)(5)(i) through (xvi) amended; authority citation removed....19156
240.15d-4 Added....30075
240.15d-5 Authority citation removed....30067
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240.15d-10 (g)(1) and (i) note revised....30075
240.15d-16 Authority citation removed....30067
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240.16a-1 (a)(2)(ii)(A) and (f) amended; (c)(3)(i) and (ii) revised....19927
240.16a-4 (b) introductory text and (c) introductory text revised....19927
240.16a-8 (b) introductory text revised....19927
240.16b-3 (c)(2)(i), (e) introductory text and (g) revised....19927
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249 Authority citation revised....30075
249.104 Form 4 amended....14467
249.220f (a) revised; (b) removed; (c) and (d) redesignated as (b) and (c); Form 20-F amended....30075
249.240f Added....30075
249.250 Added....30076
249.306 Form 6-K amended....30076
249.310 Authority citation removed....30075
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251 Interpretive releases....19928
260 Authority citation revised....22319
260.0-11 (b)(1)(i) revised....30077
260.4d-7 Added....22319
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260.5a-2 Revised....22320

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260.5b-1 Added....22320
260.5b-2 Added....22320
260.5b-3 Added....22320
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260.10a-1 Added....22320
260.10a-2 Added....22320
260.10a-3 Added....22320
260.10a-4 Added....22320
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260.10a-5 Added....30077
260.10b-4 Added....22320
260.10b-5 Added....22321
260.10b-6 Added....22321
269 Authority citation revised....22321
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269.2 Form T-2 revised....22324
269.5 Redesignated as 269.6; new 296.5 added....30078
269.6 Redesignated as 269.7; new 269.6 redesignated from 269.5....30078
269.7 Redesignated as 269.8; new 269.7 redesignated from 269.6....30078
269.8 Redesignated from 269.7....30078
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270.2a-7 (a)(20)(ii)(A) and (c)(3) corrected; (a)(21)(a) correctly designated as (a)(21)....23106
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271 Interpretive releases....19928
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4 Authority citation revised....23146
Authority citation revised....31331
4.30 (b)(9) revised; (b)(11) removed; (b)(10) and (25) through (28) redesignated as (b)(11), (26) and (28) through (30); new (b)(10), (25) and (27) added....23146
4.32 Heading, (a)(2)(iii)(B) and (iv) revised; (a)(2)(v) and (b)(3) through (9) added; (d)(4) revised....23147
4.34 Revised....23148
4.35 (e)(4) revised....23149
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4.92 (a)(2) and (3) revised; (a)(4) added....23153
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16 Authority citation revised....23154
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16.8 (f)(7)(i)(B), (ii) and (iii) revised....23154
16.10 Heading revised; (f) added....23154
37 Appendix revised....16000
37.9 (d) revised....15999
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271.101 (a) Table I and Table II amended....20346
271.102 (c) Table III amended....20347

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375 Authority citation revised....23154
375.314 (s) and (t) added....23154
380 Authority citation revised....23154
380.3 (b)(3) and (c)(1) amended....23155
381 Authority citation revised....15497
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381.202 Amended....15497
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381.204 (a) and (b) amended....15497
381.205 (a)(1) through (4) and (b)(1) through (4) amended....15497
381.207 (b) amended....15497
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4.75 (c) amended....32085
4.93 (b)(1) and (2) amended....13395
12.104g (b) amended....15182
24 Authority citation amended....21446
24.17 (a)(12) through (14) added; interim....15038
(a)(12) corrected....25721
24.22 (d)(5) revised; (j) added; interim....15038
24.23 Revised; interim....15039
(a)(3), (5) and (b)(1)(i)(B) corrected....25721
24.24 (a), (e)(1)(ii), (2)(ii), (3)(iii) and (4)(ii) revised; (e)(5) added....21446
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162.47 (a) and (b) amended....25364
178.2 Table amended....32087

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404.1770 (a)(3) revised....24132
404.1776 Added....24132
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416.902 Regulation at 56 FR 5553 comment time extended....21075
416.905 Regulation at 56 FR 5553 comment time extended....21075
416.906 Regulation at 56 FR 5553 comment time extended....21075
416.913 Regulation at 56 FR 5553 comment time extended....21075
416.916 Regulation at 56 FR 5554 comment time extended....21075
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416.921 Regulation at 56 FR 5554 comment time extended....21075
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416.924d Regulation at 56 FR 5558 comment time extended....21075
416.924e Regulation at 56 FR 5559 comment time extended....21075
416.926 Regulation at 56 FR 5561 comment time extended....21075
416.926a Regulation at 56 FR 5561 comment time extended....21075
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416.1100—416.1182 (Subpart K) Authority citation revised....36000
416.1121 (e) and (g) revised....36000
416.1201—416.1266 (Subpart L) Authority citation revised....36001
416.1201 (a)(4) added....36001
416.1545 Introductory text revised....24132
416.1550 (a), (d) and (e)(2) revised; (f) amended....24132
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416.1590 (e) revised....24133
416.1599 (c) and (e) revised....24133
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625.1 Regulation at 55 FR 554 confirmed 22805
625.2 Regulation at 55 FR 554 confirmed; (p), (q)(1), (2) and (r)(1)(ii) amended 22805
625.3 Regulation at 55 FR 554 confirmed 22805
(b) amended 22806
625.4 Regulation at 55 FR 555 confirmed 22805
625.5 Regulation at 55 FR 555 confirmed 22805
(a)(1) and (b)(1) amended 22806
625.6 Regulation at 55 FR 555 confirmed; (a)(1) amended 22805
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625.8 Regulation at 55 FR 555 confirmed 22805
625.9 Regulation at 55 FR 555 confirmed 22805
625.10 Regulation at 55 FR 555 confirmed; (a)(1) and (b)(1) amended 22805
625.12 Regulation at 55 FR 556 confirmed 22805
625.13 Regulation at 55 FR 556 confirmed 22805
625.14 Regulation at 55 FR 556 confirmed 22805
625.20 Regulation at 55 FR 557 confirmed 22805
625.30 Regulation at 55 FR 557 confirmed; heading, (a) and (b)(1) amended 22805
625 Appendix A regulation at 55 FR 558 confirmed 22805
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655 Authority citation revised 24666
655.0 (c) redesignated as (a)(3); new (c) added; interim; effective 12-31-91 24667
655.000 (a) amended; interim; effective to 12-31-91 24667
655.500—655.550 (Subpart F) Added; interim; effective to 12-31-91 ..... 24654, 24667
655.510 Corrected; OMB number 29431
655.520 Corrected; OMB number 29431
655.550 Corrected; OMB number 29431
655.500—655.550 (Subpart F) Appendix 1 correctly added 29431
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5.20 (e) redesignated as (f); new (e) added 36001
5.35 (a)(1) amended; (b) redesignated as (c); new (b) and (c)(3) added; new (c) introductory text revised 23788
5.67 (d) added 25025
10.40 (b) introductory text and (d) revised 13758
14.100 (d)(1)(i) and (ii) revised 26613
50.3 (l) revised 28028
56.102 (i) revised; (m) added 28028
56.104 (d) added 28028
56.107 (a), (b) and (c) revised 28028
(a) corrected 29756
56.108 (a) revised; (c) removed; (d) redesignated as (c); new (b) added; OMB number 28028
Corrected 29756
56.110 (b) added 28019
56.111 (a)(3) and (b) revised 28029
56.115 (a)(6) revised; OMB number 28029

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58.90 (d) amended 32088
173.25 (a)(20) and (b)(5) added; (b) introductory text and (d) revised 16268
175.105 (c)(5) table amended 14316
176.170 (b)(2) table amended 19930
177.1520 (b) table amended 21447
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177.1680 (a)(2) and (b) table amended 15278
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312.120 (c)(4) revised 22113
510.600 (c)(1) table and (2) table amended 14019, 14641, 16269, 19022, 19023, 19263
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(c)(1) table and (2) table amended 27196
520 Authority citation corrected 14978
520.1065 Removed 31075
520.1450c Added 13396
522.540 (d)(2)(ii) amended 19022
522.562 Removed 31075
522.1081 (a)(2)(ii) amended 14642
522.1680 (b) amended 16002
522.1720 (b)(2) amended 16002
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522.1192 (d)(4)(i) revised 14020
522.1301 Removed 31075
522.1680 (b) amended 14642
522.1880 (b) amended 19022
546.110c (c)(2) amended 20126
555.110b (c)(2)(ii) amended 19263
558.3 (b)(1) introductory text revised 19268
558.4 (d) table amended 19268
(d) table amended 29897
558.20 Table amended 19269
558.62 (a) and (c) revised 19268
558.76 (d)(1) table amended 21076
558.108 Added 19269
558.145 (a)(1) amended 14019
558.195 (d) table amended 15498
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558.274 (a)(4) and (c)(1) table amended 16269
558.342 (c)(4)(ii), (5)(ii) and (6)(ii) amended 14021
558.625 (b)(23) removed 16269
558.630 (b)(10) amended 16269, 19023
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630.12 (a)(3) corrected 27787
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812 Clarification 29177
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878.5010 Added 24685
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1020 Authority citation revised 36098
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40 Revised 30422
41 Authority citation revised 30428
41.1 Introductory text amended 30428
41.2 Introductory text amended 30428
41.3 Introductory text, (b) and (c) amended 30428
41.21 (b) introductory text amended; (d)(2) and (3) revised 30428
41.42 (a) amended 30428
41.81 (c) amended 30428
41.104 (b) and (d) amended 30428
41.113 (k)(2) amended 30428
41.121 (a) amended 30428
42 Authority citation revised 20347
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42.22 (c) amended 30428
42.35 (a) and (b) amended 30428
42.52 (b)(3)(iii) amended 30428
42.53 (b)(1) and (2)(ii) amended 30428
42.54 Revised 20347
42.72 (e) added 32323
43 Authority citation revised 20349
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43.5 Amended 30428
43.6 Added 20349
44 Authority citation revised 30428
44.6 Amended 30428
45 Added 32506
47 Added 32325

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89 Added; interim; effective to 12-31-91 24341
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121.1 (b) amended 23020

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225 Added 28012, 28020
225.101 (b)(5) corrected 29756
225.103 (f) corrected 29756

Chapter V—United States Information Agency (Parts 500—599)

521 Added 25028

Chapter VI—United States Arms Control and Disarmament Agency (Parts 600—699)

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TITLE 23—HIGHWAYS

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771.135 (p) added; eff. 5-1-91 13279
777.11 (f) revised 14196

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1204.4 Amended 19278

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1313 Authority citation revised 19932
1313.3 (c) amended 19932
1313.5 (a)(1)(i)(F) revised; (a)(1)(ii)(B), (iii)(A), (2)(i) through (iii), (b) introductory text, (1)(i), (ii) and (2)(i) amended 19932

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4 Added 22090
30 Added 23631
35.24 (b)(2)(i) amended; interim 15172
50 Authority citation revised 30326
50.4 (c) revised 30326

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58 Authority citation revised 30326
58.5 (c) revised 30326
60 Added 28012, 28020
60.101 (b)(5) corrected 29756
60.103 (f) corrected 29756
86 Added 22941
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100.205 Technical correction 18878
111.107 Introductory text republished; (a) revised 22643
100—125 (Subchapter A) Appendix II corrected 28704

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203 High-cost limits 14021, 22114
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672 Figures 1 and 2 redesignated from 672.2 Figure 1 and 672.24 Figure 2 2706
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675.5 (b)(2), (3), (4)(i)(C), (G) and (c) revised; interim 9645
(c)(1)(i) corrected; (c)(2)(iii)(I) correctly amended; interim 15052
675.7 (f) added 500
(c) and (d) added 2711
(g) added; interim 21627
675.20 (h)(2) through (5) redesignated as (h)(3) through (6); (h)(1) and new (h)(6) revised; new (h)(2) added 385
(a)(2) redesignated as (a)(2)(ii) and revised; (a)(2)(i) and (j) added; (a)(7) and (8) revised 500
(b)(1)(ii) revised; (e)(1)(iii) and (2)(ii) amended; (e)(4) added 2711
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675.21 Added 2712
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675.22 (a) through (e) added; (f) amended 2713
675.23 (a) revised; (c) added 386
675.24 (a), (b), (c), and (d) redesignated as (c)(1), (2), (d), and (a); new (b) and (c) introductory text added 2714
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675.25 (c)(1) and (2) revised; (f) added 30876
675.26 Added; interim 21627
675 Figures 2, 3 and 4 added 2709

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683 Technical correction 27298
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685.2 Amended; interim emergency effective to 2-24-91 49287
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The CFR is revised annually according to the following schedule:

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Following Title 50 is an update to Table I—Parallel Table of Authorities and Rules found in the CFR Index and Finding Aids. This table contains authority citations added to or removed from Table I as a result of documents published in the Federal Register since January 1, 1991.

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INQUIRIES AND SUGGESTIONS

Jim Wickliffe was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Laurice Clark. INQUIRIES, telephone 202-523-5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Martha L. Girard, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

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700 Authority citation revised 13398
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1.382(b)-1 Redesignated as 1.382-2A 29433
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1.401(k)-0 Revised 40516
1.401(k)-1 Revised 40517
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1.411(d)-4 A-2(b)(2)(x) and (xi) added 40549
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1.1031(a)-1 (b) amended 14854
(a) revised; (b) through (d) amended; (e) added 19937
1.1031(a)-2 Added 14854
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1.6038A-1 Removed 28060
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1.6038A-2 Added 28063
1.6038A-3 Added 28065
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1.6038A-4 Added 28072
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31.6051-2 (c) amended 15042
31.6302(c)-1 (a) introductory text, (1)(i) introductory text and (ii) revised 13401
(a)(1)(ii)(*b*) corrected 26191
(a)(1)(ii)(*a*) corrected 35816
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4.25a (a)(1)(v) amended 31076
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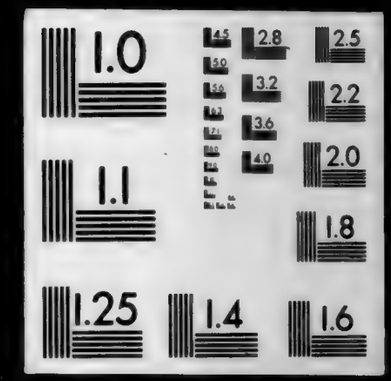
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The CFR is revised annually according to the following schedule:

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PARALLEL TABLE OF AUTHORITIES AND RULES

Following Title 50 is an update to Table I—Parallel Table of Authorities and Rules found in the CFR Index and Finding Aids. This table contains authority citations added to or removed from Table I as a result of documents published in the Federal Register since January 1, 1991.

TABLE OF FEDERAL REGISTER ISSUE PAGES AND DATES

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INQUIRIES AND SUGGESTIONS

Jim Wickliffe was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Laurice Clark. INQUIRIES, telephone 202-523-5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Martha L. Girard, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

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1737.22 Introductory text revised; (a)(17), (18) and (19) added; (b)(5) redesignated as (b)(10); new (b)(5) through (9) added 26599
1737.41 (b) revised; OMB number 26599
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1737.70 (d) through (g) redesignated as (g) through (j); (a) and new (g) revised; (b) and new (h) amended; new (d), (e), (f), (k) and (l) added 26599
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1737.90 (a)(4) and (8) removed; (a)(5) through (7) redesignated as (a)(4) through (6) 26600
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1061 Added 3416
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15.00 Heading and (b)(2) revised 43697
15.01 Introductory text and (d) revised 14194
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19 Heading revised 14194
19.00 (a)(2) and (b) introductory text revised 14194
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19.10 Introductory text revised 14194
30 Appendix C amended 14019
33.4 (a)(5)(iii), (b)(1)(iv), (d)(1) and (g) revised; (b)(2) added 43697
150.1 (d) redesignated as (e) and revised; new (d) added 14315

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201 Authority citation revised 30053
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210.3-02 (d) revised; authority citation removed 30053
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[EDITORIAL NOTE: The revision date for the 1991 revision of title 48, chapter 2, will be delayed. The 1991 revision will include amendments promulgated during the period of October 1, 1990 through December 31, 1991. For the convenience of the user, this LSA contains all amendments promulgated since the October 1, 1990 revision.]

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INQUIRIES AND SUGGESTIONS

Jim Wickliffe was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Laurice Clark. INQUIRIES, telephone 202-523-5227.

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1951.252 (c), (d) and (e) redesignated as (d), (e) and (f); (b) revised; new (c) and (g) added 12442
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[EDITORIAL NOTE: The revision date for the 1991 revision of title 49, chapter I, will be delayed. The 1991 revision date has yet to be determined. For the convenience of the user, this LSA contains all amendments promulgated since the October 1, 1990 revision.]

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HOW TO USE THIS FINDING AID

The CFR is revised annually according to the following schedule:

Titles 1-16—as of Jan. 1
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To bring these regulations up to date, consult the most recent LSA for any changes, additions, or removals published after the revision date of the volume you are using. Then check the CUMULATIVE LIST OF PARTS AFFECTED appearing in the Reader Aids of the latest Federal Register for less detailed but timely changes published after the final date included in this publication.

Boldface entries are used to distinguish current month amendments from previous entries. Example: **1413.23 Amended.....12345. Boldface** page numbers under a particular title indicate that the page numbers span 2 years.

Cite a page reference from this publication using the volume number (i.e. 56 FR for 1991) and the page number. Example: 24727 cite as 56 FR 24727. For your convenience, the volume number has been included in the Table of Federal Register Issue Pages and Dates.

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PARALLEL TABLE OF AUTHORITIES AND RULES

Following Title 50 is an update to Table I—Parallel Table of Authorities and Rules found in the CFR Index and Finding Aids. This table contains authority citations added to or removed from Table I as a result of documents published in the Federal Register since January 1, 1991.

TABLE OF FEDERAL REGISTER ISSUE PAGES AND DATES

A table is included at the end of this publication which identifies the volume number, the inclusive page numbers, and the corresponding Federal Register issue dates for the period covered.

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INQUIRIES AND SUGGESTIONS

Jim Wickliffe was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Laurice Clark. INQUIRIES, telephone 202-523-5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Martha L. Girard, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

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338.6 Added 50040
338.7 Redesignated as 338.4; (a)(1) introductory text, (i) heading, (B)(*3*), (2) introductory text, (i) heading, (B)(*3*), (c) and (d) revised; (a) footnote 2 and (a)(2)(ii) footnotes 3 redesignated as footnote 1 and footnote 2; (a)(2)(iv) removed (OMB number) 50039
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338 Appendix A designated as appendix A to subpart B and revised 50040
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906.15 (n) added 33383
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914.15 (ff) added 37015
(gg) added 37019
(hh) added 60062
914.16 (f) added 37015
(a) revised 37019
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915.16 Added 56594
916.15 (k) added 46547
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17 Added 40788

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1.14 (d) revised 55461
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1.684 Revised 42529
(c)(3) corrected 46823
2.120 (d)(1) revised 46379
(d)(1) corrected 54917

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201 Authority citation revised 38341
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201.5 (c)(1) introductory text and footnote 2 amended 59885
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201.10 (f)(2) revised 59885
201.12 (h) revised 59885
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201.25 Added 38341
201.26 Added 50658
202.3 (b)(4)(ii)(B), (5)(ii)(C) and (c)(2) amended 59885
202.17 (c)(2)(ii) amended 59885
202.19 (c)(5) revised 47403
(f)(3) amended 59885
202.20 (c)(2)(vii) introductory text and (ix) revised; (c)(2)(iii) introductory text amended; (c)(2)(xix) added 47403
(c)(2)(xix) correctly designated 55632
(c)(1)(iv) revised 60065
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(d)(2) revised 42512
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261.4 (a)(9) revised 30195
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261.35 (b) revised 30195
261 Appendix IX amended 41289
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265.147 (a)(2) revised 30200
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[EDITORIAL NOTE: The revision date for the 1991 revision of title 48, chapter 2, will be delayed. The 1991 revision will include amendments promulgated during the period of October 1, 1990 through December 31, 1991. For the convenience of the user, this LSA contains all amendments promulgated since the October 1, 1990 revision.]

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INQUIRIES AND SUGGESTIONS

Jim Wickliffe was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Laurice Clark. INQUIRIES, telephone 202-523-5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Martha L. Girard, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

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210-299	(869-013-00012-9)	24.00	Jan. 1, 1991
300-399	(869-013-00013-7)	12.00	Jan. 1, 1991
400-699	(869-013-00014-5)	20.00	Jan. 1, 1991
700-899	(869-013-00015-3)	19.00	Jan. 1, 1991
900-999	(869-013-00016-1)	28.00	Jan. 1, 1991
1000-1059	(869-013-00017-0)	17.00	Jan. 1, 1991
1060-1119	(869-013-00018-8)	12.00	Jan. 1, 1991
1120-1199	(869-013-00019-6)	10.00	Jan. 1, 1991
1200-1499	(869-013-00020-0)	18.00	Jan. 1, 1991
1500-1899	(869-013-00021-8)	12.00	Jan. 1, 1991
1900-1939	(869-013-00022-6)	11.00	Jan. 1, 1991
1940-1949	(869-013-00023-4)	22.00	Jan. 1, 1991
1950-1999	(869-013-00024-2)	25.00	Jan. 1, 1991
2000-End	(869-013-00025-1)	10.00	Jan. 1, 1991
8	(869-013-00026-9)	14.00	Jan. 1, 1991
9 Parts:			
1-199	(869-013-00027-7)	21.00	Jan. 1, 1991
200-End	(869-013-00028-5)	18.00	Jan. 1, 1991
10 Parts:			
0-50	(869-013-00029-3)	21.00	Jan. 1, 1991
51-199	(869-013-00030-7)	17.00	Jan. 1, 1991
200-399	(869-013-00031-5)	13.00	[4] Jan. 1, 1987
400-499	(869-013-00032-3)	20.00	Jan. 1, 1991
500-End	(869-013-00033-1)	27.00	Jan. 1, 1991
11	(869-013-00034-0)	12.00	Jan. 1, 1991
12 Parts:			
1-199	(869-013-00035-8)	13.00	Jan. 1, 1991
200-219	(869-013-00036-6)	12.00	Jan. 1, 1991
220-299	(869-013-00037-4)	21.00	Jan. 1, 1991
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500-599	(869-013-00039-1)	17.00	Jan. 1, 1991
600-End	(869-013-00040-4)	19.00	Jan. 1, 1991
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60–139	(869–013–00043–9)	21.00	Jan. 1, 1991
140–199	(869–013–00044–7)	10.00	Jan. 1, 1991
200–1199	(869–013–00045–5)	20.00	Jan. 1, 1991
1200–End	(869–013–00046–3)	13.00	Jan. 1, 1991
15 Parts:			
0–299	(869–013–00047–1)	12.00	Jan. 1, 1991
300–799	(869–013–00048–0)	22.00	Jan. 1, 1991
800–End	(869–013–00049–8)	15.00	Jan. 1, 1991
16 Parts:			
0–149	(869–013–00050–1)	5.50	Jan. 1, 1991
150–999	(869–013–00051–0)	14.00	Jan. 1, 1991
1000–End	(869–013–00052–8)	19.00	Jan. 1, 1991
17 Parts:			
1–199	(869–013–00054–4)	15.00	Apr. 1, 1991
200–239	(869–013–00055–2)	16.00	Apr. 1, 1991
240–End	(869–013–00056–1)	23.00	Apr. 1, 1991
18 Parts:			
1–149	(869–013–00057–9)	15.00	Apr. 1, 1991
150–279	(869–013–00058–7)	15.00	Apr. 1, 1991
280–399	(869–013–00059–5)	13.00	Apr. 1, 1991
400–End	(869–013–00060–9)	9.00	Apr. 1, 1991
19 Parts:			
1–199	(869–013–00061–7)	28.00	Apr. 1, 1991
200–End	(869–013–00062–5)	9.50	Apr. 1, 1991
20 Parts:			
1–399	(869–013–00063–3)	16.00	Apr. 1, 1991
400–499	(869–013–00064–1)	25.00	Apr. 1, 1991
500–End	(869–013–00065–0)	21.00	Apr. 1, 1991
21 Parts:			
1–99	(869–013–00066–8)	12.00	Apr. 1, 1991
100–169	(869–013–00067–6)	13.00	Apr. 1, 1991
170–199	(869–013–00068–4)	17.00	Apr. 1, 1991
200–299	(869–013–00069–2)	5.50	Apr. 1, 1991
300–499	(869–013–00070–6)	28.00	Apr. 1, 1991
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1–299	(869–013–00075–7)	25.00	Apr. 1, 1991
300–End	(869–013–00076–5)	18.00	Apr. 1, 1991
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200–499	(869–013–00079–0)	27.00	Apr. 1, 1991
500–699	(869–013–00080–3)	13.00	Apr. 1, 1991
700–1699	(869–013–00081–1)	26.00	Apr. 1, 1991
1700–End	(869–013–00082–0)	13.00	[5] Apr. 1, 1990
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§§ 1.61–1.169	(869–013–00085–4)	28.00	Apr. 1, 1991
§§ 1.170–1.300	(869–013–00086–2)	18.00	Apr. 1, 1991
§§ 1.301–1.400	(869–013–00087–1)	17.00	Apr. 1, 1991
§§ 1.401–1.500	(869–013–00088–9)	30.00	Apr. 1, 1991
§§ 1.501–1.640	(869–013–00089–7)	16.00	Apr. 1, 1991
§§ 1.641–1.850	(869–013–00090–1)	19.00	[5] Apr. 1, 1990
§§ 1.851–1.907	(869–013–00091–9)	20.00	Apr. 1, 1991
§§ 1.908–1.1000	(869–013–00092–7)	22.00	Apr. 1, 1991
§§ 1.1001–1.1400	(869–013–00093–5)	18.00	[5] Apr. 1,1990
§§ 1.1401–End	(869–013–00094–3)	24.00	Apr. 1, 1991
2–29	(869–013–00095–1)	21.00	Apr. 1, 1991
30–39	(869–013–00096–0)	14.00	Apr. 1, 1991
40–49	(869–013–00097–8)	11.00	Apr. 1, 1991
50–299	(869–013–00098–6)	15.00	Apr. 1, 1991
300–499	(869–013–00099–4)	17.00	Apr. 1, 1991
500–599	(869–013–00100–1)	6.00	[5] Apr. 1, 1990
600–End	(869–013–00101–0)	6.50	Apr. 1, 1991
27 Parts:			
1–199	(869–013–00102–8)	29.00	Apr. 1, 1991
200–End	(869–013–00103–6)	11.00	Apr. 1, 1991
28	(869–013–00104–4)	28.00	July 1, 1991
29 Parts:			
0–99	(869–013–00105–2)	18.00	July 1, 1991
100–499	(869–013–00106–1)	7.50	July 1, 1991
500–899	(869–013–00107–9)	27.00	July 1, 1991
900–1899	(869–013–00108–7)	12.00	July 1, 1991
1900–1910 (§§ 1901.1 to 1910.999)	(869–013–00109–5)	24.00	July 1, 1991
1910 (§§ 1910.1000 to end)	(869–013–00110–9)	14.00	July 1, 1991
1911–1925	(869–013–00111–7)	9.00	[6] July 1, 1989
1926	(869–013–00112–5)	12.00	July 1, 1991
1927–End	(869–013–00113–3)	25.00	July 1, 1991
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200–699	(869–013–00115–0)	15.00	July 1, 1991
700–End	(869–013–00116–8)	21.00	July 1, 1991
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200–End	(869–013–00118–4)	20.00	July 1, 1991
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630–699	(869–013–00122–2)	14.00	July 1, 1991
700–799	(869–013–00123–1)	17.00	July 1, 1991
800–End	(869–013–00124–9)	18.00	July 1, 1991
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125–199	(869–013–00126–5)	18.00	July 1, 1991
200–End	(869–013–00127–3)	20.00	July 1, 1991
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1–299	(869–013–00128–1)	24.00	July 1, 1991
300–399	(869–013–00129–0)	14.00	July 1, 1991
400–End	(869–013–00130–3)	26.00	July 1, 1991
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200–End	(869–013–00133–8)	26.00	July 1, 1991
37	(869–013–00134–6)	15.00	July 1, 1991
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18–End	(869–013–00136–2)	22.00	July 1, 1991
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61–80	(869–013–00141–9)	14.00	July 1, 1991
81–85	(869–013–00142–7)	11.00	July 1, 1991
86–99	(869–013–00143–5)	29.00	July 1, 1991
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18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
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500–1199	(869–011–00167–0)	26.00	Oct. 1, 1990
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500–End	(869–013–00177–0)	11.00	Oct. 1, 1991
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50 Parts:			
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CFR Index and Finding Aids	(869-013-00053-6)	30.00	Jan. 1, 1991
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[1]Because title 3 is and annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2]The July 1, 1985 edition of 32 CFR parts 1—189 contains a note only for parts 1—39 inclusive. For the full text of the Defense Acquisition Regulations in parts 1—39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3]The July 1, 1985 edition of 41 CFR chapters 1—100 contains a note only for chapters 1 to 49 inclusive. For the full text of procurement regulations in chapters 1 to 49, consult the three CFR volumes issued as of July 1, 1984 containing those chapters.

[4]No amendments to this volume were promulgated during the period January 1, 1987 through December 31, 1990. The CFR volume issued as of January 1, 1987 should be retained.

[5]No amendments to this volume were promulgated during the period April 1, 1990 through March 30, 1991. The CFR volume issued as of April 1, 1990 should be retained.

[6]No amendments to this volume were promulgated during the period July 1, 1989 through June 30, 1991. The CFR volume issue as of July 1, 1989 should be retained.

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(a) amended; eff. 8-1-92 63613
273.9 (c)(1)(ii) introductory text revised; (c)(1)(ii)(D) and (E) amended; (c)(1)(ii)(F) and (5)(i)(F) added; interim 12845
(b)(4) and (5)(i) amended 54777
(c)(5)(i)(A) amended; (c)(5)(i)(G) and (15) added; (c)(5)(ii)(A) revised 55062
(b)(1)(iii) and (v) amended; (c)(10)(v) revised; eff. 2-1-92 63597
(a) introductory text amended; eff. 8-1-92 63613
(d)(5) introductory text and (i) through (v) redesignated as (d)(5)(ii) introductory text and (A) through (E); new (d)(5)(i) added; new (d)(5)(ii) introductory text amended; eff. 2-1-92 63617
273.10 (e)(2)(ii)(C) and (vi)(D) amended; (e)(2)(vi)(B) revised; eff. 2-1-92 63597
(g)(1)(ii) amended; eff. 8-1-92 63613

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273.11 (c) introductory text and (c)(2) introductory text amended; interim 12845
(c) introductory text corrected 14289
(h), (i) and (j) redesignated as (i), (j) and (k); new (h) added; new (j)(2)(ii), (iii), (v), (vi), (vii), (j)(4), (5)(i)(B), (ii), (j)(6) and (7) amended 54777
273.12 (e)(1)(i) introductory text revised; eff. 1-3-92 63603
(f)(1) amended; eff. 8-1-92 63613
273.18 (g)(4) amended; eff. 2-1-92 63597
(a)(2), (b)(1)(iv) and (2)(vi) amended; eff. 8-1-92 63613
273.21 (a) introductory text, (d) introductory text, (1), (f)(1)(iii)(B) and (C), (g) introductory text, (3), (j)(1)(vii)(A), (B)(2), (k)(2)(ii), (m)(2)(iv), (p)(2)(i), (iii) and (q)(3)(ii) amended; (f)(2)(iv) and (v) redesignated as (f)(2)(vii) and (viii); (b) introductory text, (e)(2), (f)(2)(ii), (iii), (h)(3), (i), (j)(1)(ii)(B), (C), (l)(1) and (q)(4)(ii) revised; (b)(4), (f)(1)(iii)(D), new (f)(2)(iv), (v), (vi), (j)(1)(viii)(B) concluding text, (r) and (s) added; effective in part 11-28-92, 11-3-92 and 2-1-92 63603
274 Authority citation revised 12845
274.6 (b)(3) amended; eff. 2-1-92 63617
275 Authority citation revised 12845
275.1 (b) revised 60051
275.3 (c)(1)(i)(A) and (3)(i)(A) revised; (c)(1)(i)(B) and (3)(i)(B) redesignated as (c)(1)(i)(C) and (3)(i)(C); new (c)(1)(i)(B) and (3)(i)(B) added 60051
275.10 (a) amended 60051
275.11 (a)(2)(ii) through (v) removed; (a)(2)(vi), (vii) and (viii) redesignated as (a)(2)(ii), (iii) and (iv); (a)(2) introductory text and (b)(4) introductory text amended; (b)(4)(i), (ii) and (iii) added 60051
275.16 (b)(2) revised; (b)(6) added 60052
275.23 (e)(4) through (7) redesiganted as (e)(5) through (8); (c)(2), (d)(2), (e)(2) heading, (i), (3) heading, new (e)(7)(i) and (iii) revised; (c)(3) amended; (e)(9) added 60052
276 Authority citation revised 12845
277 Authority citation revised 12845
277.4 (b)(2) revised; (b)(8) amended 60053
278 Authority citation revised 12845
278.1 (c)(4) amended; (c)(5) redesignated as (c)(6); new (c)(5) and (r) added 54777
(f) amended; eff. 2-1-92 63597
278.2 (a) through (d), (g) and (h) amended; (l) added 54778
278.3 (a) amended 54778
278.4 (c) amended 54778
278.6 (e)(2)(iii), (iv), (3)(iii) and (v) amended 54778
278.9 (e) and (g) added 54778
279 Authority citation revised 12845
280 Authority citation revised 12845
280.7 Amended; eff. 2-1-92 63617
281 Authority citation revised 12845
282 Authority citation revised 12845
284 Authority citation revised 12845
285 Authority citation revised 12845

Chapter III—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

301.38-2 (b) amended 7784
301.52 (a) amended; interim 9274
Regulation at 56 FR 9274 confirmed 23491

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301.52-2a Amended; interim 9274
Regulation at 56 FR 9274 confirmed 23491
301.64 Regulation at 55 FR 47738 confirmed 7784
301.64-3 Regulations at 55 FR 42699 and 47738 confirmed 7784
(c) revised; interim 46108
301.75-4 (d)(1) amended 8103
301.78—301.78-10 (Subpart) Added; interim 57576
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301.78-3 (c) corrected 63550
301.78-10 Introductory text corrected 63550
301.80-2a Regulation at 55 FR 41984 confirmed 4933
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301.81-2a Amended; interim 4934, 4935
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Corrected 26191
301.93—301.93-10 (Subpart) Removal at 55 FR 40376 confirmed 4932
Added; interim 57583
301.96—301.96-10 (Subpart) Removed; interim 14460
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318 Authority citation revised 18501
318.13-1 Amended; eff. 7-1-92 59207
318.13-4f Removed; new 318.13-4f redesignated from 318.13-4g; eff. 7-1-92 59207
318.13-4g Redesignated as 318.13-4f; new 318.13-4g redesignated from 318.13-4h; eff. 7-1-92 59207
318.13-4h Redesignated as 318.13-4g; eff. 7-1-92 59207
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318.58-15 Amended 18501

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319.27—319.27-11 (Subpart) Removed 33704
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319.37-2 (a) amended; interim 19790
319.56-2 (j) added 1731
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321 Authority citation revised; sectional authority citations removed 19791
321.2 Revised; interim 19791
321.3 (a) amended; interim 19791
321.8 Revised; interim 19791
321.9 Added; interim 19791
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330.107 Revised 14844
352 Authority citation revised 14844
352.14 Revised 14844
352.30 (e) and (f) redesignated as (f) and (g); new (e) added; new (f) amended 13066
354 Heading and authority citation revised 14844
354.1 (a)(1) introductory text and (iii) amended 1082
354.2 Table amended 11350, 21064, 46724
Table corrected 26895
354.3 Added 14844
354.4 Added 18501
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401.113 Amended; interim....58302
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448 Removed....64940
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451 Sunset review date extended....56569
452 Removed....64940
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457 Added....1351
458 Added; interim....30490

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(a) Table I and (b) Table II amended; interim....21917
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1.411(d)-4 A-2(b)(2)(x) and (xi) added 40549
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1.412(c)(1)-3T (g)(7) corrected 19038
1.414(r)-0 Added 63434
1.414(r)-1 Added 63437
1.414(r)-2 Added 63439
1.414(r)-3 Added 63442
1.414(r)-4 Added 63446
1.414(r)-5 Added 63446
1.414(r)-6 Added 63452
1.414(r)-7 Added 63453
1.414(r)-8 Added 63457
1.414(r)-9 Added 63459
1.414(r)-11 Added 63460
1.414(s)-1 Added 47662
1.414(s)-1T Removed 47666
1.415-2 (d) revised 47667
1.415-6 (b)(1) and (6) introductory text revised; (b)(6)(iv) amended 40549
1.416-1 Amended 40550
1.422-1 Removed 61160
1.422-2 Removed 61160
1.422-4 Added 61160
1.422-5 Redesignated from 14a.422A-2 and revised 61160
1.612-3 (d) revised 21938
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1.613A-0 Added 21938
1.613A-2 Added 21939
1.613A-3 Added 21939
1.613A-4 Added 21946
1.613A-7 Added 21949
1.702-1 (f) amended 21952
1.703-1 (a)(2)(vii) redesignated as (a)(2)(viii); new (a)(2)(vii) added 21952
1.704 (b)(5) *Examples* (21) through (23) removed 66983
1.704-1 (b)(0), (1)(i) and (ii)(*d*)(*6*) amended; (b)(4)(iv) revised 66983
1.704-1T (b)(4)(iv) removed 66983
1.704-2 Added 66983
1.752-0 Added 66350
1.752-0T Amended 36702
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1.752-1 Added 66351
1.752-1T Removed 66350
1.752-2 Added 66351
1.752-2T Removed 66350
1.752-3 Added 66355
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1.752-4 Added 66356

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1.752-4T (d)(2) and (f) redesignated as (d)(3) and (g); new (d)(2) and (f) added 36702
Removed 66350
1.752-5 Added 66356
1.752-6 Added 66356
1.860D-1 Added 49516
1.860D-1T Removed 49516
1.860F-4 Added 49516
1.860F-4T Removed 49516
1.861-8 (g) *Examples* 25, 27 and 33 corrected 22760
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1.901-2 (e)(3) revised 56008
1.907-0 Corrected 21926
1.907(e)-1 Corrected 21926
1.936-10 Added 21927
1.936-10T Removed 21927
1.987-0T Removed 48434
1.987-1 Added 48434
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1.987-4 Added 48434
1.987-5 Added 48434
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1.989(b) Redesignated as 1.989(b)-1 48437
1.989(b)-1 Redesignated from 1.989(b); heading amended 48437
1.989(c)-0T Removed 48437
1.989(c)-1 Added 48437
1.989(c)-1T Removed 48437
1.992-1 (a)(6) and (i) removed; (d)(1) revised 55235
1.1031(a)-1 (b) amended 14854
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1.1031(a)-2 Added 14854
1.1031(b)-2 Added 19937
1.1031(j)-1 Added 14855
1.1031(k)-1 Added 19938
1.1031-0 Added 19937
1.1286-1T Added (temporary) 38340
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1.1502-12 Revised 47401
1.1502-19 (a)(6) redesignated as (a)(6)(i) and amended; (a)(6)(ii) added 47393
1.1502-20 Added 47392
1.1502-21 (g) added 67489
1.1502-32 (a) revised 47401
1.1502-33 (c)(6) revised 47402
1.1502-77 (e) revised 67489
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1.6050I-1 (c)(1) and (g) revised; (c)(2), (3) and (4) redesignated as (c)(6), (7) and (8) and amended; new (c)(2) through (5) added 57976
(c)(7) and (8) amended 57977
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15.808 (a)(6) and (7) amended; interim 67414
19.202-1 (e) added 67132
19.402 (c)(2) through (5) redesignated as (c)(3) through (6); new (c)(2) added 67132

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19.804–3 (c)(2) amended 55380
19.808–1 (b) amended 55378
22.102–1 Introductory text revised 55374
22.102–2 (c) added 55374
22.1003–5 (k) amended 67136
23.301 Revised 55374
23.302 Heading, (b) and (c) revised; (d) and (e) added 55374
23.303 Revised 55374
23.601—23.602 (Subpart 23.6) Added 55374
25.108 (d)(1) amended 67133
25.109 (a) and (d) revised 55379
25.1000—25.1005 (Subpart 25.10) Removed 67416
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33.103 (b)(1) amended 67136
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33.207 (a) introductory text revised; interim 67417
33.214 Redesignated as 33.215; new 33.214 added; interim 67417
33.215 Redesignated from 33.214; interim 67417
36.513 Existing text designated as (a); (b) and (c) added 55375
37.112 Added 55380
38.201 (b) amended 55372
42.1205 (a)(3) revised 67134
45.608–8 (b) amended 67136
49.101 (f) added 67134
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50.203 (b)(4) revised 67135
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52.207–3 Amended 55372
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52.209–8 Amended 55377
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52.214–28 Amended; interim 67415
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52.215–24 Amended; interim 67415
52.215–25 Amended; interim 67415
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52.223–3 Revised 55375
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52.228–11 (b)(1) amended 67137
52.233–1 Amended; interim 67417
52.236–7 Amended 55376
52.236–13 Revised 55376
52.246–4 Amended 67136
53.203 (b) amended 67137

Chapter 2—Department of Defense (Parts 200—299)

[EDITORIAL NOTE: The revision date for the 1991 revision of title 48, chapter 2, will be delayed. The 1991 revision will include amendments promulgated during the period of October 1, 1990 through December 31, 1991. For the convenience of the user, this LSA contains all amendments promulgated since the October 1, 1990 revision.]

Chapter 2 Revised; eff. 12-31-91 36284
202.101 (a) amended 9084
Amended 67212
203.104–1 Revised 9084
203.104–4 Revised 9084
203.104–5 Heading revised 9084
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203.571–2 Amended; interim 9084
203.571–3 (a) and (b) amended; interim 9084
203.571–4 Amended; interim 9085
204.670–2 Regulation at 54 FR 4246 confirmed 9089
204.670–8 Revised 67212
204.671–5 Regulation at 54 FR 4246 confirmed 9089
204.672–2 Regulation at 54 FR 4247 confirmed 9089

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204.675–3 Regulation at 54 FR 4247 confirmed 9089
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952.250-70 Revised 57828
952.250-71 Removed 57830
952.250-72 Removed 57830
970.0901 Added 65448
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970.5204-7 Removed 57830
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1815.872 (c)(1) and (2) corrected 56691
1825.102 Corrected 52213
1832.501-1 Added; interim 63877
1832.503-4 Added; interim 63877
1852.219-76 (a) corrected 56682
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[EDITORIAL NOTE: The revision date for the 1991 revision of title 49, chapter I, will be delayed. The 1991 revision will include amendments promulgated during the period of October 1, 1990 through December 31, 1991. For the convenience of the user, this LSA contains all amendments promulgated since the October 1, 1990 revision.]

106 Authority citation revised 39978
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106.5 Amended 39978
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106 Appendix A amended 66156
107 Authority citation revised 8621
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107.9 (c) amended 8622
107.101 Introductory text amended 52465
107.103 (b)(1) amended 39978
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107.121 Amended 8621
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107.101—107.123 (Subpart B) Appendix A amended 39978
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107.203—107.211 Undesignated center heading revised 8622
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177.818 Heading and (a) introductory text amended 52710
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177.856 Heading, (a), (b) and (d) amended 52714
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178.345–7 (a)(2) revised; (c) and (d) introductory text amended 27876
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178.345–8 (d)(3) amended 27877
178.345–9 (a) revised 27877
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178.520 (b)(3) amended 66285
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179.102–20 Removed 52728
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179.105–7 (a) amended; (c) revised 52729
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179.105–8 (d) and (e) added 52729
179.106—179.106–4 Removed 52729
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179.202—179.202–22 Removed 52729
179.203–1 (c) and (d) removed; (e) redesignated as (c) 52729
179.203–2 (a)(1) removed; (a)(2) through (4) redesignated as (a)(1) through (3) 52729
179.302 Removed 52729
180.2 (b)(2) revised 27877
180.405 (g)(3) and (h) introductory text amended 27877
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(h)(1) revised; (g) introductory text added 27878
180.409 (b)(2) amended 66287
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195.52 (a) revised 26925
195.57 Added; eff. 1-6-92 63771
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195.111 Added 26926
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385.12 Revised 51344

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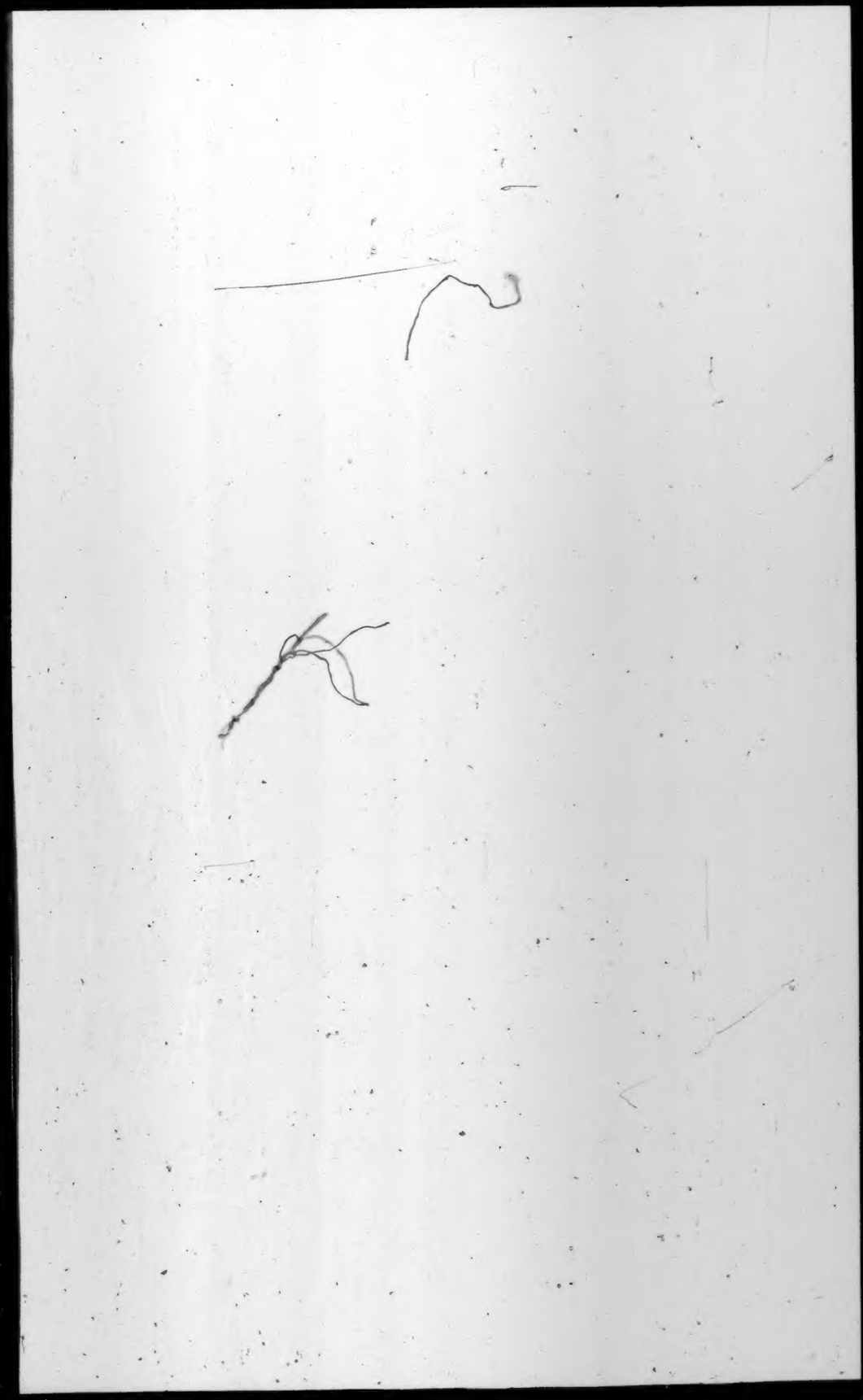
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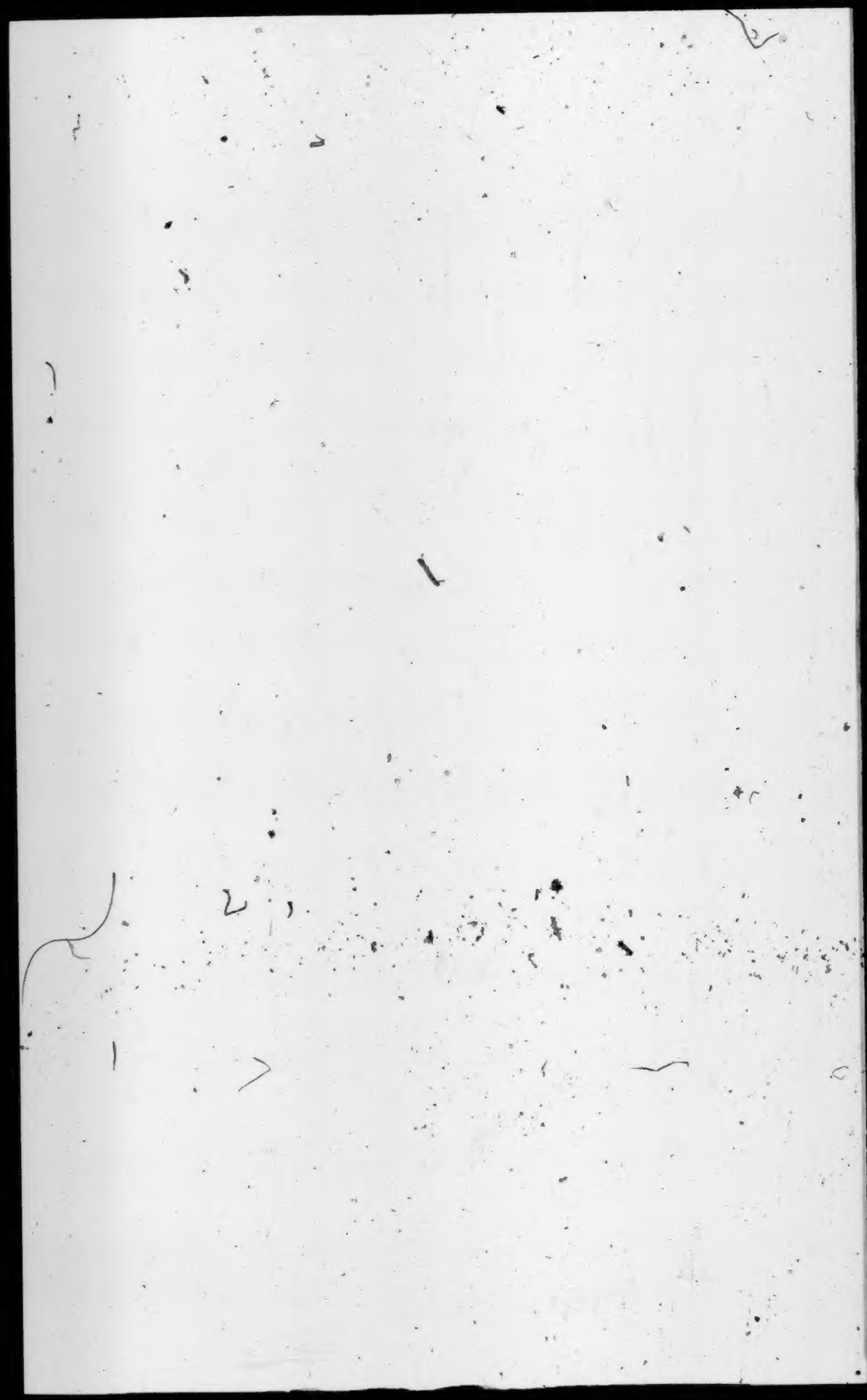
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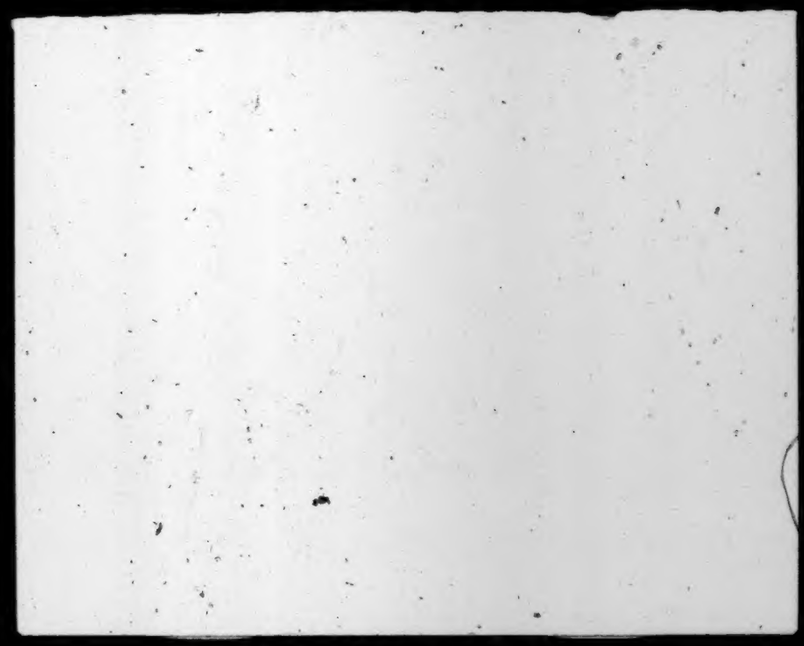
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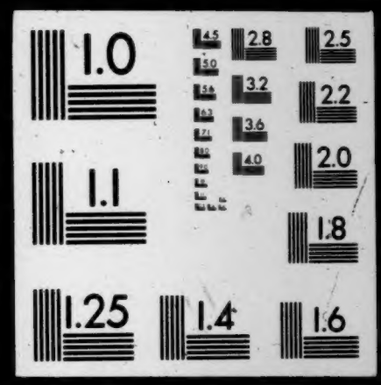
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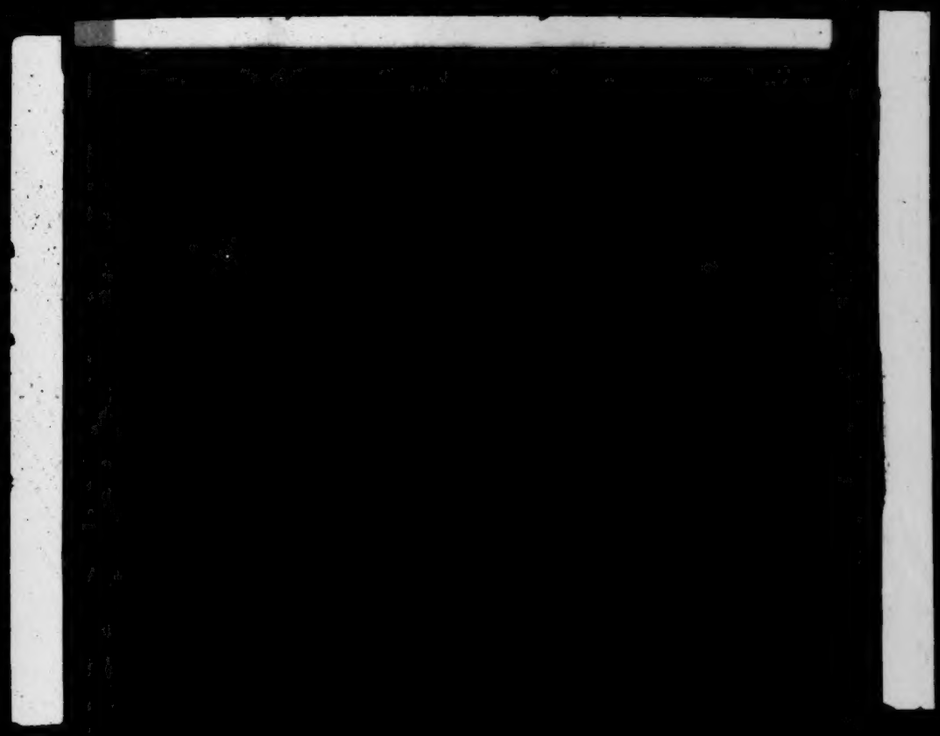
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